

Interim Section 4(f) and Section 6(f) Report*



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Prepared for the City of Wilsonville



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*Final version to be issued when the bridge alignment and type have been selected.

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Summary

The two primary Federal regulations that pertain to the protection of parks and recreational areas are Section 4(f) of the United States Department of Transportation (USDOT) Act and Section 6(f) of the Land and Water Conservation Fund (LWCF) Act.

Section 4(f) protects historic sites and publicly owned parks, recreation areas, and wildlife and waterfowl refuges. This report only addresses Section 4(f) as it pertains to parks, recreation areas, and wildlife and waterfowl refuges. Section 4(f) as it pertains to historic resources is addressed in a separate report. Within the Project Area, there are a number of such lands. In the City of Wilsonville, both Boones Ferry Park and the multi-use path leading east from the park are public parks or recreational areas. In unincorporated Clackamas County, the Boones Ferry Boat Launch and its associated parking and picnicking areas are recreational areas. In addition, the Willamette River Water Trail, encompassing the river and boat launches, is also a recreational resource protected by Section 4(f).

In addition to the facilities that are currently protected by Section 4(f), there is one potential Section 4(f) resource: the Boones Ferry Marina. Clackamas County owns the land on which the marina is located, but leases it to River City Boat Sales and Marina Services, a private company. Because the company is private, the marina property is not protected by Section 4(f). However, the lease will expire within the next few years. If Clackamas County takes over management of the marina (either directly or by hiring a concessionaire) and converts it to a public facility, the marina will become a Section 4(f) resource. Section 4(f) stipulates that a USDOT project must attempt to avoid using any part of a Section 4(f) resource through avoidance or minimization measures. If the use is unavoidable and has been minimized to the greatest extent possible, such use is only allowable if there is no prudent and feasible alternative or if the use is so minor that it could be classified as *de minimis*.

Section 4(f) applies only to USDOT projects that are considered transportation projects. The proposed project is included in the City of Wilsonville's Parks and Recreation Master Plan as a recreational enhancement and is intended to connect existing and planned recreational trails for non-motorized uses. It is up to FHWA to determine whether this project is a transportation or purely recreational facility. If FHWA determines that the project is not a transportation project, then there would be no Section 4(f) impacts.

If the project is considered a transportation facility, it is probable that the project will result in some sort of use of Section 4(f) resources, given that the French Prairie Bridge project is intended to span the Willamette River, with at least portions of the north end likely to be in Boones Ferry Park and piers on the south end possibly in the Boones Ferry Boat Launch. So long as the bridge design is compatible with the existing park and recreational uses on either side of the river, does not impede river travel, and does not

preclude planned park development, Section 4(f) uses of parklands are likely to qualify as *de minimis*.

Section 6(f) protects parklands that have been purchased or improved using LWCF grants. It stipulates that, if such lands are converted to a use other than public outdoor recreation, they must be replaced with lands of equivalent appraised value, recreational value, and size. The City of Wilsonville received four LWCF grants to purchase and improve Boones Ferry Park in the 1980s, then removed the LWCF encumbrance for the portion of the park on which the Tauchman House is located. As a result, most of the developed portion of Boones Ferry Park is protected by Section 6(f). So long as the National Park Service (NPS) and the Oregon Parks and Recreation Department (OPRD) agree that the proposed project is considered a recreational enhancement, which is likely, use of the Section 6(f) lands would not be considered a conversion.

Section 4(f)

Regulatory Overview

Section 4(f) of the U.S. Department of Transportation Act was enacted in 1966 to protect public parks, recreation areas, waterfowl and wildlife refuges, and historic resources from adverse impacts caused to USDOT projects. This report addresses that act's applicability to parks, recreation areas, and wildlife refuges (the act's applicability to historic resources is addressed in a separate report). There are no wildlife refuges in the Project Area, so the focus of this regulatory overview is on parks and recreation areas.

Section 4(f) stipulated that a USDOT project could only use a public park or recreation area if the project could prove that there was no prudent and feasible alternative and that the project had incorporated all possible planning to minimize the harm that results from the use. In 2005, Congress amended the provision to allow for uses that are so minor that they could be considered *de minimis*. These requirements are now codified in 23 U.S.C. Part 138 and 49 U.S.C. Part 303, but are still referred to as "Section 4(f)" because of the original legislation.

To be protected under Section 4(f), a park or recreation area must be publicly owned and open to the general public. Section 4(f) applies to planned facilities, so long as the land is publicly owned and the agency that owns the land has formally designated it as a future park or recreation area.

A "use" of a Section 4(f) property is defined in 23 CFR¹ 774.17. A use can be permanent or temporary. An example of permanent use is when a portion of a park is permanently incorporated into a transportation facility. A temporary use can occur if construction activities interfere with recreational activities, such as if a multi-use path is temporarily closed. Both permanent and

¹ Code of Federal Regulations.

temporary uses can qualify as *de minimis*, so long as they do not result in adverse impacts to the protected activities, features, or attributes and the uses are minor.

If FHWA determines that the proposed project is not a transportation project, but rather a recreational enhancement, there would be no Section 4(f) use associated with the project. On the side of the project being considered a transportation project, the bridge is designed to accommodate emergency vehicles, and is also intended to facilitate the movement of people from one side of the river to the other. On the side of the project being considered a recreational enhancement, emergency vehicle use is only incidental and the project is listed in the City of Wilsonville's Parks and Recreation Master Plan as part of a proposed regional trail. It is up to FHWA to decide the issue.

If a proposed project results in a use of a Section 4(f) property and the project intends to seek a *de minimis* determination for the use, the public must be given the opportunity to review and comment on the proposed project's impacts on the Section 4(f) resource. Once the comment period has ended, the official with jurisdiction – either the City of Wilsonville or Clackamas County, in this case – would need to concur, in writing, that the project will not adversely affect the activities, features, or attributes that qualify the property for protection under Section 4(f). After the official with jurisdiction concurs, the FHWA will make its final determination.

If a proposed project results in a use of a Section 4(f) resource and that use is significant enough that it does not qualify as *de minimis*, the project must prove that there is no prudent and feasible alternative to that use, the project has made an effort to minimize the impacts to the Section 4(f) resource, and that the preferred alternative is the one with the least overall harm to Section 4(f) resources. The process for proving that the project complies with these three requirements can be complex and lengthy.

City of Wilsonville

Within the City of Wilsonville, there are two Section 4(f) resources: Boones Ferry Park and a multi-use path that connects Boones Ferry Park to the neighborhood on the east side of I-5.

Boones Ferry Park

Section 4(f) Resource

Boones Ferry Park is a city park located on the north bank of the Willamette River between I-5 and the railroad bridge. The City of Wilsonville owns the park, its Parks and Recreation Department maintains the park, and the park is free and open to the general public.

As shown on Figure 1, slightly over half of the park is formally developed and includes the Tauchman House; a gazebo; two playgrounds; a half-court basketball court; restrooms; a large, sloping, open lawn; and pathways. In addition to the developed portion of the park, there are two areas of land that the City of Wilsonville owns and intends to develop as parts of Boones

Ferry Park. One area is a former orchard on the west side of the park, across SW Boones Ferry Road from the developed portion of the park. The other area is a parcel of land on the east side of the park, between the wastewater treatment facility and the river. It is a former mobile home park. The first two areas – Boones Ferry Park and the former orchard - qualify as Section 4(f) resources. The former mobile home park's status is currently in flux with respect to Section 4(f).

There is not currently a master plan for this park, but the City has budgeted money for developing a master plan and expects to begin the planning process within a year. This plan will encompass the current park, itself, as well as the additional land that will be incorporated into the park. The City's Parks and Recreation Master Plan includes Boones Ferry Park and cites the former orchard area as a site for potential expansion of the park. It does not address the former mobile home park property. The City of Wilsonville recently purchased the former mobile home park and removed the mobile homes from it, with the intent to make it part of Boones Ferry Park. The City intends to include the land in the Boones Ferry Park master plan. By the time the French Prairie Bridge is constructed, the mobile home property is likely to be subject to Section 4(f).

Boones Ferry Park is primarily a local park that serves residents of the nearby neighborhoods. The Tauchman House, which can be rented for private events, has a slightly more regional draw. Activities in the park include picnicking, fishing, basketball, passive recreation (e.g., sunbathing) in the open area, and play. There is no formal boat launch, but the riverfront is suitable for launching paddleboards, kayaks, and other watercraft that can be hand-carried to and from the water. Although not officially condoned, dog owners use the orchard area to exercise their pets.

Section 4(f) Implications

The project will almost certainly be located on Boones Ferry Park lands, resulting in a Section 4(f) use if the project is determined to be a transportation facility and subject to Section 4(f). In order to ensure that the use qualifies as *de minimis*, the bridge design will need to avoid the developed areas of the park, including the basketball court, picnic area, gazebo, playgrounds, and Tauchman House. The lands that are not yet developed as part of the park are more flexible because the Wilsonville Parks and Recreation Department does not yet have solid plans for how those areas will be developed. Construction plans will need to be developed to avoid interfering with ongoing recreational activities in the parks.

Figure 1. Section 4(f) Resources: Boones Ferry Park



Multi-Use Path

Section 4(f) Resource

There is a paved, multi-use path that connects Boones Ferry Park to the neighborhood on the east side of I-5. The path crosses both city-owned land and I-5 right-of-way owned by the Oregon Department of Transportation (ODOT). The Wilsonville Parks and Recreation Department built the path to improve access to Boones Ferry Park and maintains the path for public recreational use. There is an easement agreement between the City and ODOT. This path is primarily used by nearby residents for non-motorized access to the park.

Portions of this path are too steep to comply with the Americans with Disabilities Act (ADA), and the City of Wilsonville has a funded, two-phase plan to bring the path into ADA compliance and improve access to the park. Phase I is scheduled to begin in August 2017 and will bring the grade of the existing segment in and around the I-5 undercrossing to ADA standards. Phase II is tentatively scheduled to begin in August 2018, if funding is available; it will construct a new trail segment linking the I-5 undercrossing to Boones Ferry Park along a route closer to the Willamette River.

Section 4(f) implications

The main concern for Section 4(f) compliance with respect to the multi-use path is path closures during construction, if the project is determined to be a transportation facility and subject to Section 4(f). Temporary occupancy of a Section 4(f) resource is not considered a Section 4(f) use if, among other things, it does not interfere with the use of the path. If the project requires that the path be closed for public safety, even if those closures are brief, the project will need to provide an alternative route in order to avoid interfering with the recreational activities on the path. If a safe, convenient detour is not provided and recreational activities are adversely impacted, a path closure would be considered a Section 4(f) use. The construction/path closure plans would need to be designed to minimize the duration of the closure to ensure that the impact would qualify as *de minimis*.

If the proposed bridge spans over this path and does not interfere with use of the path (i.e., it is high enough above the path that even the tallest path users can pass comfortably), then there would not be a Section 4(f) use. Furthermore, if the project realigns this path to provide better bicycle and pedestrian connections between the proposed bridge, Boones Ferry Park, and nearby neighborhoods, the realignment would not constitute a Section 4(f) use, so long as the new path provides a similar recreational experience.

Clackamas County

There is one Section 4(f) resource in unincorporated Clackamas County: the Boones Ferry Boat Launch, located on the south shore of the Willamette River between the river and NE Butteville Road. Clackamas County also owns

the land on which the Boones Ferry Marina is located. See Figure 2. Both are addressed below.

Boones Ferry Boat Launch

Section 4(f) Resource

As shown on Figure 2, the Boones Ferry Boat Launch includes a public boat launch, picnic area, river access, and parking areas, including an overflow parking lot about 200 feet west of the parking lot at the boat launch. The State of Oregon owns the land on which the boat launch itself is located, but Clackamas County owns and maintains the boat launch improvements under an agreement with the State. Clackamas County both owns and operates the picnic and parking areas and charges a day-use fee for parking. The public boat launch and parking areas are publicly owned and open to the general public and are therefore protected by Section 4(f). Uses on the Section 4(f) lands include boat launching, picnicking, and fishing. Recreational bicyclists also park their cars in the parking lots while on day rides. Clackamas County does not have a master plan for the boat launch.

Section 4(f) Implications

If the project is located on Boones Ferry Boat Launch lands, there could be a Section 4(f) use if the project is determined to be a transportation facility and subject to Section 4(f). In order to ensure that the use qualifies as *de minimis*, the bridge design will need to avoid the boat ramp and picnic area. If the project must remove parking spaces, the number of impacted parking spaces should be kept to a minimum. Section 4(f) does not include quantitative standards for the number or percentage of parking spaces that could be impacted and still have the impacts be considered *de minimis*; the requirement is simply that the impacts be extremely minor. The project will also need to maintain access between the boat launch and parking area. If necessary, the existing riverfront access road could be moved, so long as an equally good replacement road is provided.

Boones Ferry Marina (River City Boat Sales and Marina Services)

Potential Section 4(f) Resource

Clackamas County owns the land on which River City Boat Sales and Marina Services is located. The business is a privately-run marina and boating club which offers membership-based moorage, boat sales and service, and private parking. The docks in the Willamette River are part of the marina. Mooring at the docks is limited to marina customers, but the general public is allowed to walk on the docks. When the County purchased the property on which the marina is located, it entered into a lease agreement with the seller. Under this agreement, the seller would continue to operate its marina business,

Figure 2. Section 4(f) Resources: Boones Ferry Boat Launch



with an initial 10-year lease term followed by two, five-year renewals. When the second five-year lease expires in a few years, for the first time since purchasing the property, Clackamas County will need to decide how to manage the marina. The County does not yet have an adopted management plan for the marina after the lease expires.

Section 4(f) implications

Because River City Boat Sales and Marina Services is privately owned, the marina property is not currently protected by Section 4(f). However, the property could become protected by Section 4(f) within the project timeframe, if Clackamas County decides to take over management of the marina (either directly or by hiring a concessionaire) and convert it to a public facility. In that case, the Section 4(f) requirements described above as applying to Boones Ferry Park and the Boones Ferry Boat Launch would apply to the marina property if the project is determined to be a transportation facility and subject to Section 4(f).

Willamette River Water Trail

Section 4(f) Resource

The OPRD has designated the length of the Willamette River, from its headwaters near Eugene to its mouth at the Columbia River, as a water trail. Water trails in Oregon are designated water bodies that provide a recreational experience for non-motorized boating. As a result, the Willamette River within the Project Area is a Section 4(f) resource. Primary users of the water trail are canoeists and kayakers who use the water trail for single- and multi-day trips. The Willamette River bisects the Project Area. In addition, publicly owned and operated amenities that are easily accessible from the river are part of the water trail. The non-motorized boat launch area at Boones Ferry Park and the Boones Ferry Boat Launch provide access to the water trail. As such, they are protected by Section 4(f) as parts of the Willamette River Water Trail, in addition to as parts of Boones Ferry Park and the Boones Ferry Boat Launch.

Section 4(f) Implications

Section 4(f) implications for the Willamette River Water Trail are minimal. So long as the project does not interfere with kayaking and canoeing on the river, the proposed bridge could span over the river (and also, if necessary, include in-water piers) without resulting in a Section 4(f) use. Interfering with the Boones Ferry Boat Launch would need to be avoided, as discussed above, as would interfering with the non-motorized boat launch in Boones Ferry Park.

Explanation of Why the Section 4(f) Impacts of the Proposed Bridge Will be *De Minimis*

To be added when bridge alignment and type have been selected.

Boones Ferry Park

Boones Ferry Boat Launch

Willamette River Water Trail

Section 6(f)

Through the Land and Water Conservation Fund (LWCF) Act of 1965, Congress established a federal program to provide funds and matching grants to Federal, state, and local governments to acquire land and water, and easements on land and water, to benefit all Americans. The fund emphasizes recreation and protecting national natural treasures in the forms of parks and protected forest and wildlife areas. Section 6(f)(3) of the LWCF Act contains strong provision to protect Federal investments in and the quality of assisted resources (see 36 CFR 59).

Sec. 6(f)(3) of the LWCF Act:

No property acquired or developed with assistance under this section shall, without the approval of the Secretary [of the Interior], be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he [or she] finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he [or she] deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

The National Park Service (NPS) administers the LWCF grant program and must approve conversions of LWCF-encumbered land.

If the NPS determines that the proposed project qualifies a recreational enhancement with only incidental transportation use for emergency vehicles, there would be no Section 6(f) impact because whatever parkland is needed for the project would remain in public outdoor recreation use.

If OPRD or NPS determines that the proposed project is not a recreational enhancement and, instead, a transportation facility, then any land protected under Section 6(f) that is physically converted to the project would need to be replaced with equivalent lands. The City of Wilsonville would need to identify and purchase the replacement land, have both the converted land and the new land assessed to confirm that they are of similar real estate and recreational value, and submit the appropriate documentation to complete the conversion process. This would be expensive and would take time to complete

City of Wilsonville

Section 6(f) Resource

Most of the developed portion of Boones Ferry Park is encumbered by LWCF funds and is therefore protected under Section 6(f). Figure 3 shows the boundary of the Section 6(f) resource. During the 1980s, the City of Wilsonville received four separate LWCF grants for the purchase and improvement of Boones Ferry Park. One LWCF requirement is that the lands be used for public outdoor recreation; the Tauchman House is an indoor facility. This requirement limited the ways in which the City could use the house, so the City transferred the LWCF encumbrance on the Tauchman House to a parcel of land adjacent to Memorial Park. The conversion was formalized in 1998. That conversion only applied to the 0.2 acres on which the Tauchman House is located. The remainder of the developed area of the park is still considered a Section 6(f) resource. The tax parcels to the west of the park (on the west side of Boones Ferry Road) and to the east of the park were purchased after the City received LWCF grants and are not included in the Section 6(f) lands.

Section 6(f) Implications

If the proposed project is located in Boones Ferry Park, it will be necessary to consult OPRD and possibly NPS to determine whether the bridge would be considered to be a recreational or transportation facility. If it is a recreational facility, there would be no conversion of park lands to something other than public outdoor recreation, and there would therefore be no Section 6(f) impact. . If it is not considered to be a conversion, then the Section 6(f) conversion process would not need to occur. The key to avoid having the project be considered a conversion is to demonstrate that it would result in a recreational enhancement. This argument is likely to be successful, because the bridge will provide new and much-needed connections between recreational routes on either side of the Willamette River. Even though the project has received FHWA funding and is intended to provide emergency vehicle access, this does not preclude the project from also providing improved conditions for recreational uses. The project will need to continue to keep OPRD informed about the project design and obtain formal agreement about its status as a recreational enhancement once the designs are more complete.

Clackamas County

There are no lands encumbered with LWCF funds on the Clackamas County side of the river.

Figure 3. Section 6(f) Boundary, Boones Ferry Park

