

Appendix E

## **Section 4(f) and Section 6(f) Evaluation**

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## Section 4(f) and Section 6(f) Evaluation

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### E.1 Introduction

This appendix addresses federal statutes known generally as Section 4(f) and Section 6(f). Section 4(f) protects certain parks, recreation areas, historic and cultural resources, and wildlife and waterfowl refuges. Section 6(f) protects properties that were acquired or developed using Land and Water Conservation Funds.

The U.S. Department of Transportation Act of 1966, Section 4(f), generally prohibits U.S. Department of Transportation (DOT) agencies (including the Federal Transit Administration [FTA]) from approving projects that would use land from significant publicly owned parks or recreation areas that are open to the public; publicly owned wildlife and waterfowl refuges; and historic properties listed in or eligible for the National Register of Historic Places (NRHP), unless there is no feasible and prudent alternative to the use of land from the property and the action includes all possible planning to minimize harm to the property resulting from the use.

A use is generally defined as a transportation activity that permanently or temporarily acquires land from a Section 4(f) property, or that substantially impairs the important activities, features, or attributes that qualify the property as a Section 4(f) resource.

The Section 4(f) study area for the Federal Way Link Extension (FWLE) is based on the Area of Potential Effects (APE) used for cultural, archaeological, and historic resources (see Section 4.16) and the study area for the parks and recreational resources analysis (see Section 4.17). It also takes into account the analyses from other environmental investigations, including acquisitions, displacements, and relocations; transportation; land use; noise and vibration; and visual and aesthetic resources.

Section 6(f) of the Land and Water Conservation Fund (LWCF) Act of 1965 applies to properties that were acquired or developed with LWCF Act funds. Land purchased with these funds cannot be converted to a non-recreation use without coordination with the National Park Service and mitigation that includes replacing the quality and quantity of land used. Conversion of any portion of these lands must follow 36 CFR 59.3 of the LWCF Program.

The Washington State Recreation and Conservation Office also administers other grants, referred to as “RCO” (Recreation and Conservation Office) grants, that are subject to similar requirements for conversion as Section 6(f) without requiring approval from the National Park Service.

### E.2 “Uses” of Section 4(f) Resources

Under Section 4(f), a use can be permanent, temporary, or constructive.

**Permanent use** would acquire or incorporate all or part of a Section 4(f) property as part of the transportation facility.

**Temporary use** occurs when the project temporarily occupies any portion of the resource (typically during construction), and it substantially impairs the resources. A temporary occupancy can avoid a use if:

- The project would occupy the property less than the time needed for the construction of the project, and there will be no change in ownership;
- There are minimal changes to the Section 4(f) resource;
- There are no permanent adverse physical changes or interference with protected activities, features, or attributes of the resource;
- The land is restored to the same or better condition; and
- The federal, state, or local officials with jurisdiction over the resource and the authority over the land agree in writing that the use is not adverse.

**Constructive, or indirect, use** can occur when the project is near the Section 4(f) resource and has effects that substantially impair the protected activities, features, or attributes of a property. For example, a park property that is primarily a scenic viewpoint could have a constructive use if a transportation project blocks its views.

The FTA can approve a transportation use of a Section 4(f) property only if it demonstrates that:

- The use of the property meets the requirements for a regulatory exception established under Section 4(f). For instance, a temporary occupancy can be allowed if it meets the requirements described above.

Or:

- The use will have a *de minimis* impact on the property.

Or:

- There is no feasible and prudent avoidance alternative to using the property; and
- The program or project includes all possible planning to minimize harm to the property resulting from the use.

#### De Minimis

De minimis impacts are those that do not “adversely affect the activities, features, and attributes” of a Section 4(f) resource. A de minimis impact finding can take into account any mitigation or enhancement measures that would be implemented, including design measures to avoid or reduce impacts.

For public parks or recreation properties, a *de minimis* impact finding requires written concurrence from the agency with jurisdiction over the property, such as a city or county parks department. There must also be an opportunity for public notice and comment; the Draft Environmental Impact Statement [EIS] comment period served this purpose for the FWLE. For historic and archaeological sites, a *de minimis* impact finding is allowed if FTA has made a “no adverse effect” finding in compliance with Section 106 of the National Historic Preservation Act of 1966 (NHPA) (see Section 4.16). Before making a *de minimis* finding, FTA must send a written notice to the State Historic Preservation Office (SHPO). If the SHPO concurs or does not object, FTA may proceed with its finding.

When FTA has made a *de minimis* determination, the project is not required to determine whether there are reasonable and feasible avoidance alternatives for that Section 4(f) property.

This Section 4(f) evaluation addresses:

- Whether lands in the FWLE study area are considered Section 4(f) properties; and
- Whether FWLE alternatives would “use” Section 4(f) properties as defined by Section 4(f) statutes.

### E.3 Proposed Action

The proposed action is to expand the existing Sound Transit Link light rail system south to serve the cities of SeaTac, Des Moines, Kent, and Federal Way in south King County. This 7.6-mile extension would connect the future Angle Lake Station at S 200th Street in SeaTac with the Federal Way Transit Center in Federal Way.

This Section 4(f) and Section 6(f) Evaluation was prepared in conjunction with the FWLE Final EIS. Chapter 1, Purpose and Need, and Chapter 2, Alternatives Considered, of the Final EIS provide a complete description of the proposed action. Chapter 4, Section 4.16, Parkland and Open Space, and Chapter 4, Section 4.17, Historic and Archaeological Resources, of the Final EIS describe the park and recreational resources and historic properties in the study area, respectively.

### E.4 Section 4(f) Resources

Sound Transit reviewed maps, aerial photography, and local comprehensive plans to determine the location of parks and recreational lands. A survey of historical properties for the FWLE has been completed consistent with Section 106 of the NHPA.

#### E.4.1 Public Parks and Recreation Areas

Table E-1 lists all park and recreation resources in the FWLE study area for all build alternatives considered in this EIS process. There would be no use of any park/recreation Section 4(f) resources as a result of the Preferred Alternative or any of the other build alternatives except the Federal Way SR 99 Station Option would have a *de minimis* impact on Federal Way Town Square Park.

There are no designated wildlife or waterfowl refuges in the study area.

FTA has determined that Section 4(f) **does not apply** to the Mark Twain School playfield, which would be impacted by the Preferred Alternative, SR 99 to I-5 Alternative, and the S 272nd Elevated Station Option. The Federal Way Public School District has agreed with this determination (see Appendix E1). Section 4(f) also **does not apply** to the City of SeaTac Open Space, Ridge West Open Space, Landmarque Open Space, Greenfield Park Native Growth Protection Area, or WSDOT Resource Conservation Areas (RCAs). Public access to the SeaTac Open Space and WSDOT RCAs is restricted by fencing. There is also no public access to the Ridge West Open Space because it is surrounded by private property and WSDOT right-of-way. The Greenfield Park Native Growth Protection Area and the Landmarque Open Space are privately owned.

The records of grants under the LWCF and RCO, which are maintained by the Washington State Recreation and Conservation Office, confirm that there are no properties with a potential use by any of

the FWLE alternatives that were developed with LWCF or RCO funds. No further evaluation is needed for the FWLE to comply with Section 6(f) requirements (National Park Service, 2015).

TABLE E-1

Section 4(f) Park and Recreation Resources Within Study Area

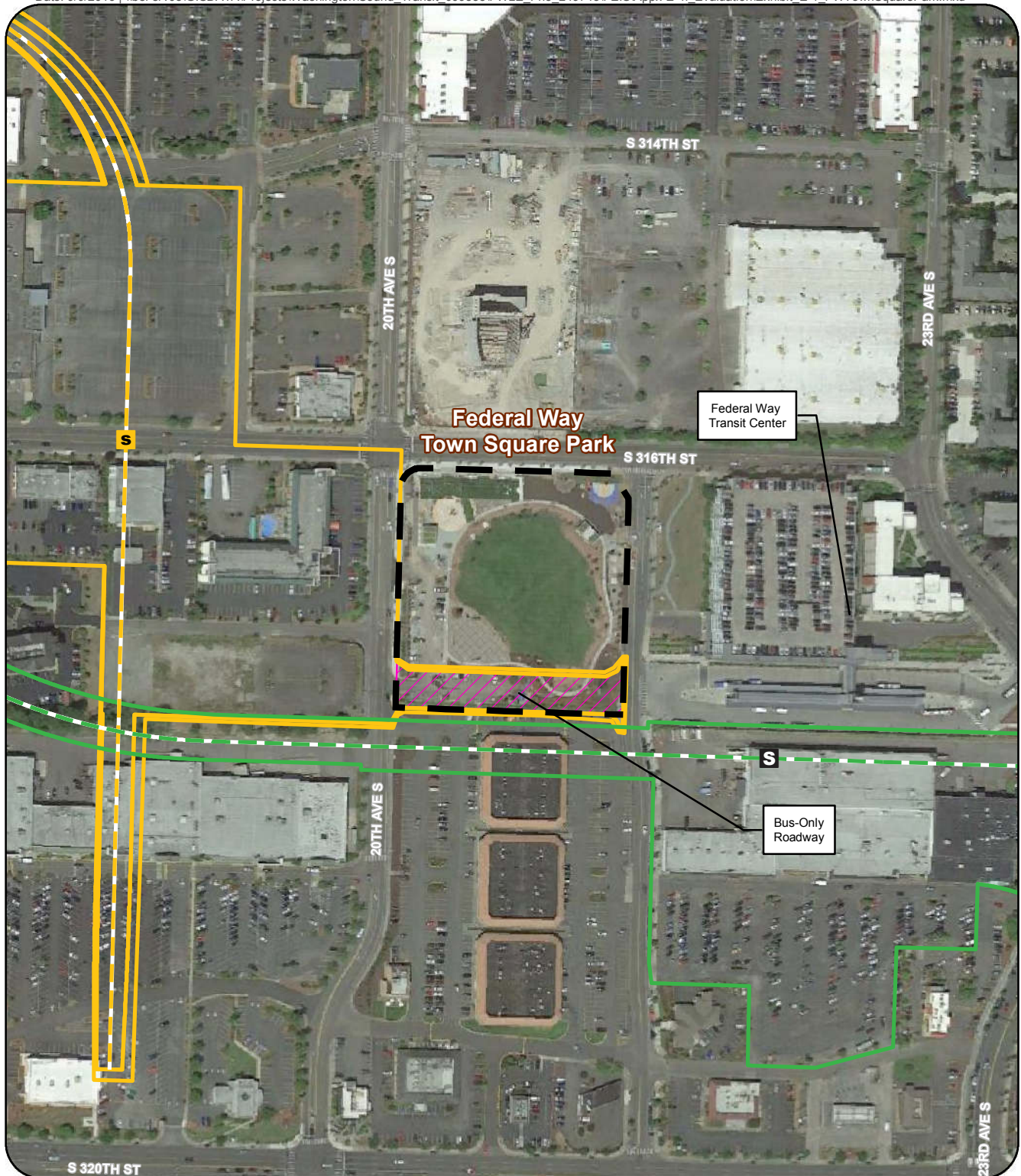
Resource Name	Size (acres)	Type and/or Function	Facilities	Ownership	Funding	Potential Use
<b>All Build Alternatives</b>						
Steel Lake Park	52.0	Community park	Beach, swimming area, boat launch, a sand volleyball pit, horseshoe pits, a concession building, restrooms, playgrounds, five picnic areas, open lawn areas, a trail, parking.	City of Federal Way	RCO, LWCF	No 4(f) use under any alternative
Federal Way Town Square Park	4.1	Community park	Basketball courts, splash park, open lawn, path, play area, picnic shelter, picnic tables, and areas set aside for development of potential future park facilities.	City of Federal Way		<i>De minimis</i> under Federal Way SR 99 Station Option only.
<b>SR 99 Alternative and SR 99 to I-5 Alternative</b>						
Steven J. Underwood Memorial Park	20.5	Community park	Three lighted softball fields.	City of Des Moines	RCO	No 4(f) use
<b>SR 99 Alternative and I-5 to SR 99 Alternative</b>						
Midway Park	1.6	Community park	Play area, picnicking areas, basketball hoops, and a walking path.	City of Des Moines		No 4(f) use
Dr. Shirley B. Gordon Park	0.9	Community park	Playground and open space.	City of Des Moines		No 4(f) use
Sacajawea Park	18.0	Community park	Two lighted baseball fields, a tennis court, a soccer field, a football field, a 440-yard track, walking pathways, a playground, and restrooms.	City of Federal Way	RCO, LWCF	No 4(f) use



#### E.4.1.1 Town Square Park


Town Square Park is a 4.1-acre community park constructed in 2014 in the Federal Way City Center (Exhibit E-1). This property is bounded by S 316th Street to the north, 20th Avenue S to the west, 21st Avenue S to the east, and a private parcel to the south. The City improved it in the winter of 2015-2016 to make some features more permanent and add other features requested by the public.



The property is not included in the City's Parks, Recreation, and Open Space Plan (City of Federal Way, 2013), but the plan describes working with development groups when opportunities arise to develop park space in the City Center. The park is included in the City Center chapter of the *City of Federal Way Comprehensive Plan*, updated in 2015. The City of Federal Way considers Town Square Park to be a recreational resource of local significance, and therefore the park is being considered a Section 4(f) property. There are potential permanent impacts to Town Square Park under the Federal Way SR 99 Station Option associated with the SR 99 Alternative and the I-5 to SR 99 Alternative. The impacts are described below.



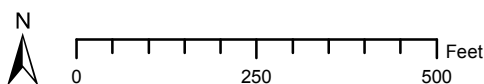


-  Section 4(f) Resource Parcel
-  Park Area to be Permanently Incorporated by Project

-  SR 99 Alternative Elevated
-  Permanent Footprint
-  Station

-  Federal Way SR 99 Station Option Elevated
-  Permanent Footprint
-  Station

Data Sources: King County, City of Federal Way (2015), Google Earth (2017).



**EXHIBIT E-1**  
Impacts to Federal Way Town Square Park  
under Federal Way SR 99 Station Option  
*Federal Way Link Extension*

### **Preferred Alternative and SR 99 to I-5 Alternative**

The Preferred Alternative and SR 99 to I-5 Alternative would have no impacts to or use of Town Square Park.

### **SR 99 Alternative and I-5 to SR 99 Alternative, Federal Way SR 99 Station Option**

The Federal Way SR 99 Station Option for the SR 99 and the I-5 to SR 99 alternatives would directly impact the Federal Way Town Square Park. As shown on Exhibit E-1, this option would convert a 0.7-acre linear section at the southern end of the park parcel to transportation use to accommodate a new transit-only roadway between the light rail station and the existing Federal Way Transit Center. The area of the parcel that would be permanently impacted contains parking, landscaping, part of the loop pathway, and a bioretention pond.

The Federal Way SR 99 Station Option's conceptual design preceded the planning and development of the Federal Way Town Square Park, and the location of the transit-only roadway at the southern end of this property responds to the City's comprehensive plan for transportation improvements in the City Center. As shown in Exhibit E-2, the City's plan calls for creating an enhanced street network, including a new roadway in this area. If the Federal Way SR 99 Station Option were selected as part of the project to be built, Sound Transit would minimize the impact on the park in the following manner:

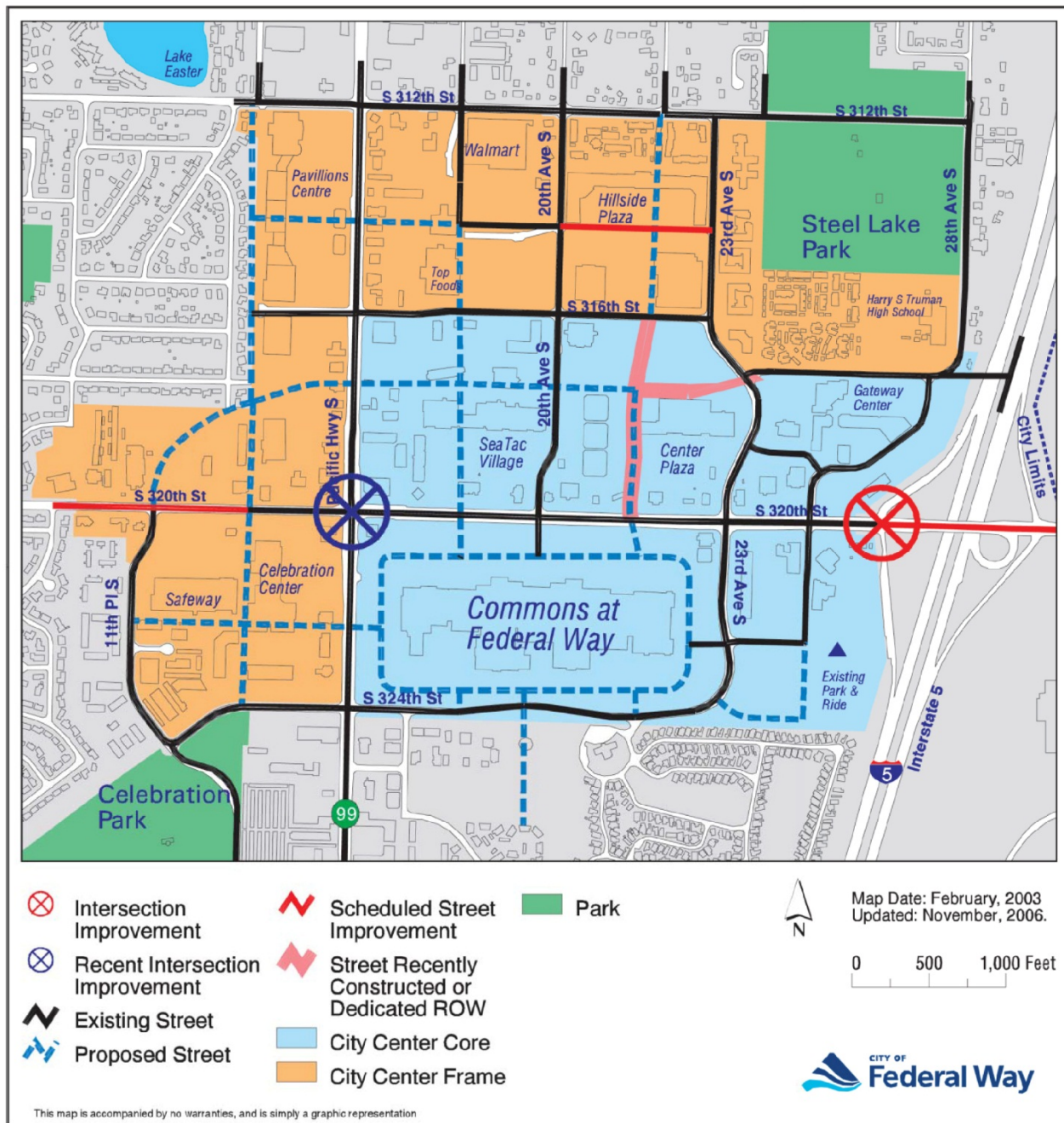
- It would mitigate for loss of 26 of 64 parking stalls either through financial compensation for the use of land as agreed with the City or by providing replacement parking.
- It would realign the segment of the paved path in this area to preserve the continuity of the park's path loop.
- It would replace the bioretention facility with a similar feature or another method of stormwater detention and treatment.
- It would restore any park areas temporarily disturbed during construction.
- It would coordinate with the City regarding the design of all project impact mitigation actions.

The above measures would prevent construction of the Federal Way SR 99 Station Option from adversely affecting any of the park's recreational activities, features, or attributes. If the Federal Way SR 99 Station Option were included as part of the project, FTA has concluded that the use resulting from the permanent incorporation of Town Square Park property would likely be a *de minimis* impact. FTA would coordinate with the City of Federal Way to obtain its concurrence on a *de minimis* determination if the Federal Way SR 99 Station Option was selected to be part of the project to build.

### **E.4.2 Historic Sites**

Section 4(f) evaluation of historic sites relates directly to the evaluation of resources and impacts through the NHPA Section 106 process. The results of the Section 106 analysis are a critical part of determining the applicability and outcome of the Section 4(f) use determination.





Source: City of Federal Way, 2015.

EXHIBIT E-2  
Proposed Street Network

Section 4.16 of the Final EIS (Historic and Archaeological Resources) discusses the historic properties in the FWLE study area.

None of the build alternatives would adversely affect any NRHP-listed or eligible properties. The Washington State Department of Archaeology and Historic Preservation concurred with this finding on May 9, 2016. Therefore, there would be no use of any historic or archaeological Section 4(f) resources under any of the build alternatives.

The Kent/Des Moines HC Campus Station Option for the SR 99 Alternative would partially acquire the Highline College parcel where eligible buildings are located (Exhibit E-3). This option would occupy part of the east campus parking lot, which is on a large parcel that contains most of the Highline College campus, including the historic buildings in the area of potential effects (APE). The east parking lot does not contribute to the eligibility of the historic buildings.

The SR 99 and I-5 to SR 99 alternatives would acquire a narrow strip of property at the NRHP-eligible US Bank building for road widening adjacent to SR 99. Neither alternative would affect the building (Exhibit E-4).

For both the Highline College parcel and the US Bank property, the acquisition of land would not affect the physical integrity of NRHP-eligible buildings and would have at most a minor effect on the buildings' setting. If the SR 99 Alternative, I-5 to SR 99 Alternative, or Kent/Des Moines HC Campus Station Option were selected as the project to be built, FTA's preliminary determination is that they would have a *de minimis* impact to Section 4(f) resources.

## E.5 Conclusion

The Preferred Alternative and the SR 99 to I-5 Alternative would not use Section 4(f) resources.

The minor impacts to the Federal Way Town Square Park under the Federal Way SR 99 Station Option would likely support a *de minimis* finding. Before FTA could make a Section 4(f) approval for the project, it would need the written concurrence on the *de minimis* determination from the City of Federal Way.

The Kent/Des Moines HC Campus Station Option for the SR 99 Alternative would have a *de minimis* impact to the NRHP-eligible Highline College buildings. The SR 99 and I-5 to SR 99 alternatives would have a *de minimis* impact to the US Bank historic property. If the Sound Transit Board selected one of these alternatives to build, concurrence from the SHPO regarding the associated Section 106 finding of no adverse effect for these impacts would be required prior to FTA making a Section 4(f) approval for the project under 23 CFR 774.3(a).

## E.6 References



City of Federal Way. 2015. *City of Federal Way Comprehensive Plan*. Adopted 1995, revised 2015.

City of Federal Way. 2013. *City of Federal Way Parks, Recreation, and Open Space Plan*. Final Plan. January.



National Park Service. 2015. *Land and Water Conservation Fund Project List by County and Summary Reports*. <http://waso-lwcf.ncrc.nps.gov/public/index.cfm>. December 2015.






## Legend

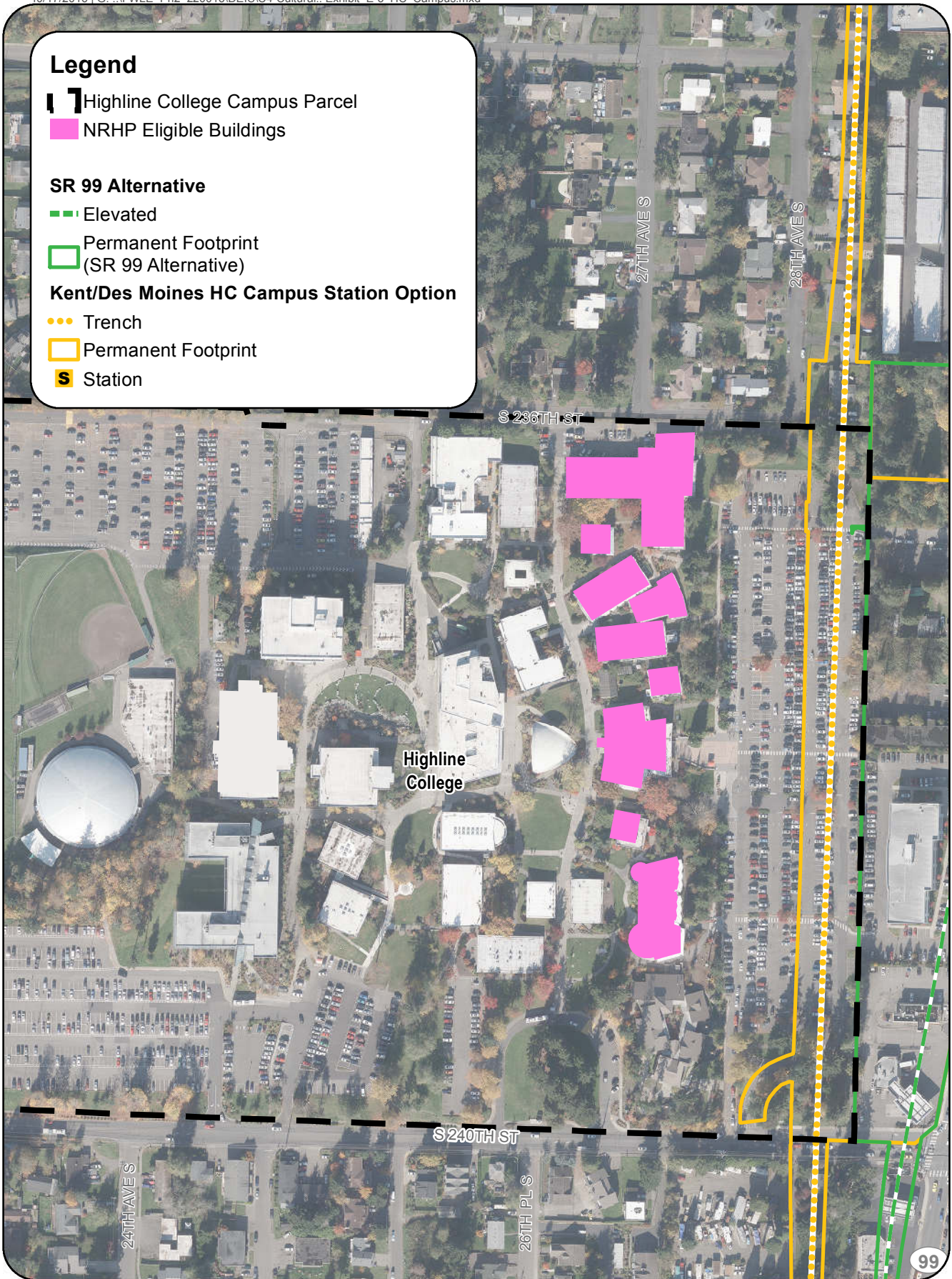
-  Highline College Campus Parcel
-  NRHP Eligible Buildings

### SR 99 Alternative

-  Elevated
-  Permanent Footprint (SR 99 Alternative)

### Kent/Des Moines HC Campus Station Option

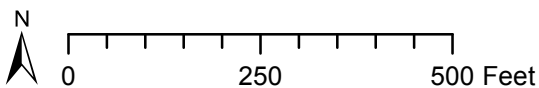
-  Trench
-  Permanent Footprint
-  Station



Data Sources: AeroMetric (2013). King County, Cities of Des Moines, Federal Way, Kent, SeaTac (2015).



## EXHIBIT E-3

Impacts to Highline College Campus under SR 99  
Alternative Kent/Des Moines HC Campus Station  
Federal Way Link Extension









## Legend

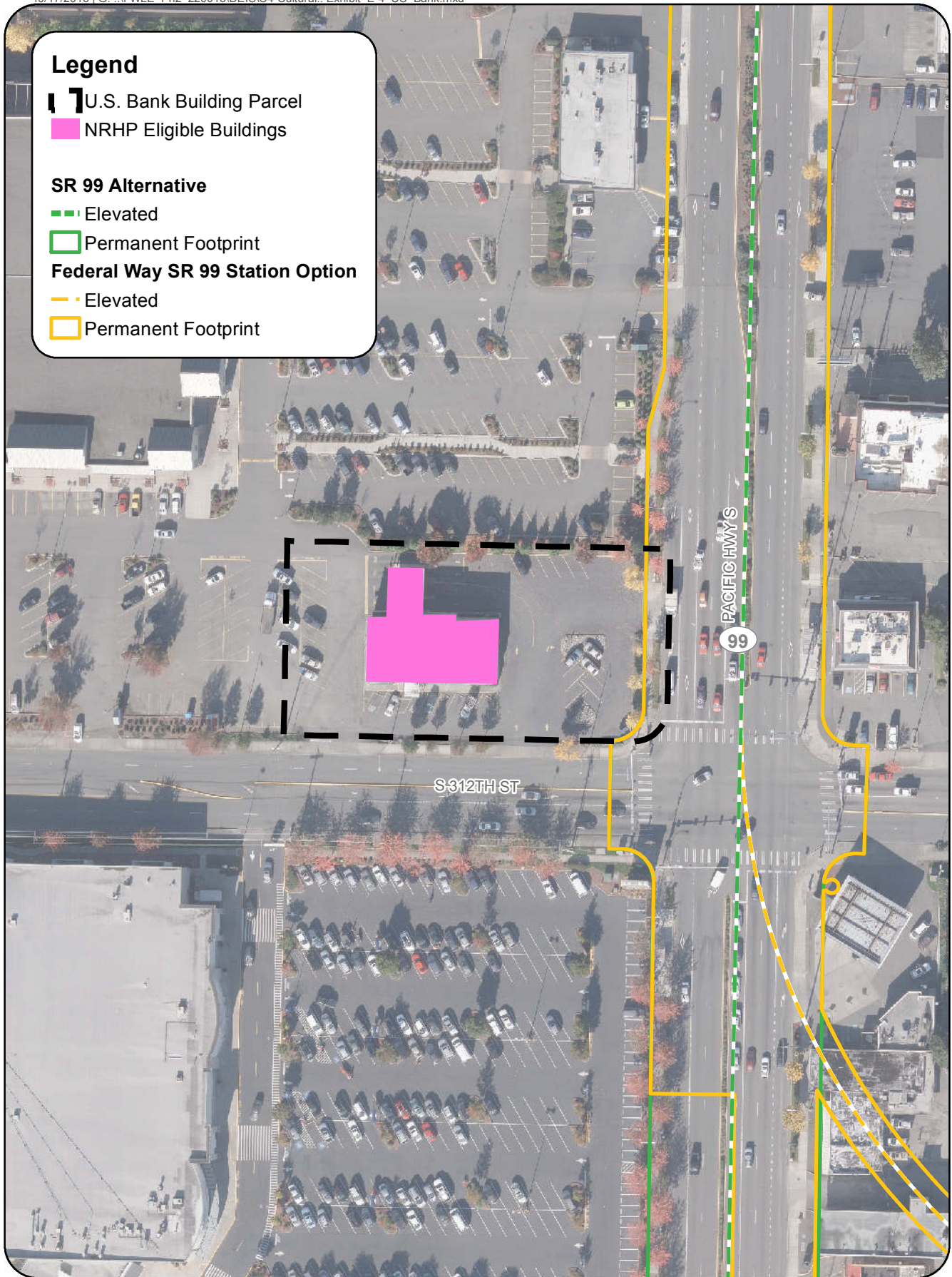
-  U.S. Bank Building Parcel
-  NRHP Eligible Buildings

### SR 99 Alternative

-  Elevated
-  Permanent Footprint

### Federal Way SR 99 Station Option

-  Elevated
-  Permanent Footprint



Data Sources: AeroMetric (2013); King County, Cities of Des Moines, Federal Way, Kent, SeaTac (2015).

## EXHIBIT E-4

Impacts to U.S. Bank Building Parcel

Federal Way Link Extension

*Appendix E1*

*Mark Twain Elementary School Correspondence*

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November 26, 2014

Cindy Wendland, Director  
Support Services Center  
Federal Way Public Schools  
1211 South 332<sup>nd</sup> Street  
Federal Way, WA 98003

Dear Ms. Wendland:

As part of the Federal Way Link Extension (FWLE) Draft Environmental Impact Statement (DEIS) documentation process, Sound Transit and the Federal Transit Administration (FTA), as the lead federal agency, are evaluating the potential impacts of the project on public parks and recreational facilities. We have been coordinating with the Federal Way School District because two of the FWLE alternatives would impact Mark Twain Elementary school property: the I-5 Alternative, and the SR 99 to I-5 Alternative. The Draft EIS will describe the potential impacts to the school and school operations, as well as potential mitigation measures.

Potential construction-period (temporary) impacts to the playfield at Mark Twain Elementary school raise questions about the applicability of a federal requirement known as Section 4(f). This letter generally describes Section 4(f), and confirms our understanding of the District's position about facts relevant to that law's applicability.

Sound Transit is working with the FTA to prepare a draft Section 4(f) Evaluation that describes the impacts of the project on certain public parks, recreation areas, and land from significant historic sites. The draft Section 4(f) Evaluation will be included in the DEIS and is expected to be distributed to the public and agencies for comment in early 2015.

Section 4(f) originated with the U.S. Department of Transportation Act of 1966. Its implementing regulations, including definitions of the terms used below are now codified in 23 CFR 774. These regulations generally prohibit FTA from approving a transportation project such as Federal Way Link Extension that requires the use of publicly-owned land from a significant public park, recreation area, or wildlife and waterfowl refuge, or any land from a significant historic site, unless a determination is made that:

- There is no feasible and prudent avoidance alternative to the use of land from the property; and
- The action includes all possible planning to minimize harm to the property resulting from such use.

Publicly owned park and recreational property is considered Section 4(f) property only when certain conditions are met. The land must be officially designated as such by a Federal, State or local agency, and the officials with jurisdiction over it must determine that its primary purpose is as a park or recreation area. "Incidental, secondary, occasional, or dispersed activities" similar to park or recreational activities do not constitute a primary purpose under Section 4(f)." The property must be also be "significant," which means that in comparing the availability and function of the park or recreation area with the objectives of the agency, community, or authority, the property plays an important role in meeting those objectives. (US DOT Section 4(f) Policy Paper, 2012, pg. 23). Thus, consideration under Section 4(f) is not required when the officials with jurisdiction over a park or recreation area determine that the property, considered in its entirety, is not significant.

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**Joni Earl**

Section 4(f) does not typically apply to school properties, because the primary purpose of the property is for education. However, "when a public school playground is open to the public and serves either organized or substantial walk-on recreational purposes that are determined to be significant, it will be subject to the requirements of Section 4(f). The actual function of the playground is the determining factor in these circumstances" (DOT Policy Paper, pg. 48).

Federal guidance encourages early coordination with officials with jurisdiction of the Section 4(f) resource to ascertain the position of the officials to obtain their preliminary views.

We understand from District staff that the Mark Twain Elementary School playfield is used as a practice field for community youth league soccer and softball. We also understand that these programmed uses could be relocated to other District-owned playfields during the period of construction. Following construction (approximately nine months in duration), Sound Transit would restore the playfield for use by the school and the community. For these reasons, Sound Transit believes the playfield at Mark Twain Elementary is not a "recreation area of national, State, or local significance" for purposes of Section 4(f).

If you agree, we ask that you sign this letter and return a copy to me to confirm that the District concurs that the playfield at Mark Twain Elementary School is not a Section 4(f) property because it is not a significant recreation area. Please keep in mind that regardless of the playfield's Section 4(f) status, Sound Transit will mitigate construction impacts to it and to the school. Mitigation measures to address school bus operations, safety, and construction noise will be developed in coordination with the District if the Sound Transit Board identifies either the I-5 Alternative or SR-99 to I-5 Alternative as the FWLE preferred alternative.

This letter will assist Sound Transit as the project progresses toward a preferred alternative that would avoid a Section 4(f) use.

Sincerely,



Kent Hale  
Senior Planner



Cindy Wendland, Director  
Federal Way Public Schools, Support Services Center  
Signature for Preliminary Concurrence

cc: Shirley White, FWPS  
Rick Levitt, FWPS  
Greg Flynn, FWPS Fields Coordinator