

Appendix E

**Section 4(f) Evaluation**

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# Draft Section 4(f) Evaluation

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## E.1 Introduction

This appendix addresses a federal regulation known as Section 4(f), which protects parks, recreation areas, historic and cultural resources, and wildlife and waterfowl refuges. 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:

...a significant publicly-owned park, recreation area or wildlife and waterfowl refuge or any significant historic site, 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.

Section 4(f) applies to significant publicly owned parks and recreation areas that are open to the public, publicly owned wildlife and waterfowl refuges, and historic sites of national, state, or local significance. The DOT regulations for Section 4(f) define historic properties as those listed in or eligible for the National Register of Historic Places (NRHP).

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

## 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 if:

- The use of the property meets the requirements for a regulatory exception established under Section 4(f). For instance, a temporary use 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* impacts are those which 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. Before FTA can make this finding, it must send a written notice to notify the official with jurisdiction over the resource, and there must be an opportunity for public notice and comment (the Draft Environmental Impact Statement [EIS] comment period is serving this purpose for the Federal Way Link Extension [FWLE]).

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. 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 analyze 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) regulations.

### **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) Evaluation was prepared in conjunction with the FWLE Draft EIS. The Draft EIS Chapter 1, Purpose and Need, and Chapter 2, Alternatives Considered, provide a complete description of the proposed action.

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

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

Table E-1 lists all park and recreation resources in the FWLE study area, indicates whether each is a 4(f) resource, and if so, provides the Section 4(f) use assessment. The cities of Kent and Federal Way have identified possible future parks in their local planning documents that could be within the study area, although specific locations have not yet been defined. In addition, city zoning requirements in the corridor may provide for additional land dedicated as public parks or open space as part of private residential and mixed use developments in the future. At this time, no planned parks in the study area are considered Section 4(f) properties.

The Mark Twain Elementary school playfield would be affected during construction of the I-5 Alternative. Public school property is typically not considered under Section 4(f) unless the recreational area is used outside of school hours by the public and the school district owning the property determines that it is “of national, State, or local significance.” The playfield at Mark Twain Elementary is used outside of school hours by community youth softball, baseball, and soccer leagues, primarily as a practice field. The field would be closed for approximately 9 months during construction of a cut-and-cover tunnel segment through the property. Following construction, the playfield would be restored to its existing condition and use of the playfield would not change. The school district has indicated that during the FWLE construction period, use of the field by community youth leagues could be programmed at other playfields owned by the district. Given the nature of non-school uses at the playfield, and the school district’s ability to provide for these recreational functions at other facilities, FTA’s preliminary determination is that the playfield is not a “recreation area of national, State, or local significance” and therefore is not considered a Section 4(f) property. Federal Way Public Schools agreed with this conclusion on December 30, 2014.

TABLE E-1

## Section 4(f) Park and Recreation Resource Assessment Summary

| Resource Name                                | Size (acres) | Type and/or Function  | Facilities   | Ownership                  | Section 4(f) Resource?  | Preliminary Section 4(f) Determination      |
|--|--------------|-----------------------|--|----------------------------|-------------------------|---|
| <b>Existing Parks</b>                        |              |                       |  |                            |                         |   |
| Steven J. Underwood Memorial Park            | 20.5         | Community park        | Three lighted softball fields.   | City of Des Moines         | Yes                     | No 4(f) use                                 |
| Midway Park                                  | 1.6          | Community park        | Play area, picnicking areas, basketball hoops, and a walking path.   | City of Des Moines         | Yes                     | No 4(f) use                                 |
| Parkside Park                                | 4.4          | Community park        | Basketball hoops and a walking path.   | City of Des Moines         | Yes                     | No 4(f) use                                 |
| Dr. Shirley B. Gordon Park                   | 0.9          | Community park        | Playground and open space.   | City of Des Moines         | Yes                     | 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        | Yes                     | No 4(f) use                                 |
| Mark Twain Elementary School Athletic Fields | 1.7          | School athletic field | Playfield for softball and soccer.   | Federal Way Public Schools | No<br>(see Appendix E1) | Not applicable                              |
| 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        | Yes                     | No 4(f) use                                 |
| Federal Way Town Square Park                 | 4.1          | Community park        | Labyrinths, basketball courts, open lawn area, patch, chess boards, and picnic area. Future plans include a seating area and stage.  | City of Federal Way        | Yes                     | Preliminary <i>de minimis</i> determination |

The only park or recreational property directly affected by an FWLE alternative is Town Square Park in Federal Way. Town Square Park is a 4.1-acre community park constructed in July 2014 in the Federal Way City Center. 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 park includes basketball courts, a playfield, labyrinths, an open grass area with picnic tables and benches, a kiosk, chess boards, landscaping, and parking. The park and recreational facilities are concentrated on the northern half of the property. Parking stalls, a driveway, and landscaping are located on the southern half of the property.

The parcel where the park is located was acquired by the City in 2007 with the intent of coordinating with a private developer to develop the parcel as a mixed-use property with a public park. The property is not currently included in the City's Parks, Recreation, and Open Space Plan. Last updated in

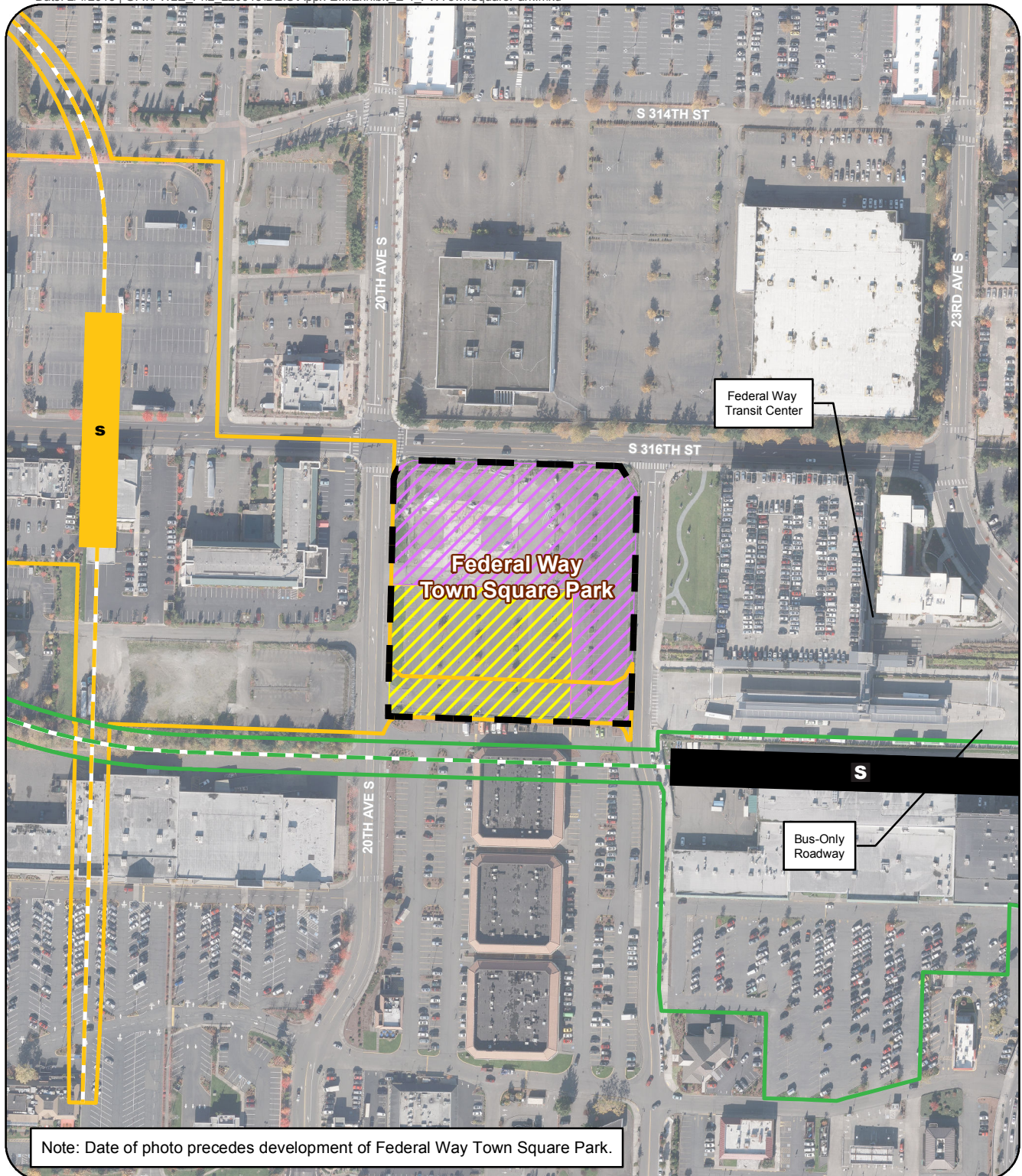
January 2013, the City's plan includes goals and policies related to creating community gathering spaces in higher density areas of the city, particularly in the City Center. The plan does not identify specific properties in the City Center, but describes working with development groups when opportunities arise to develop park space in the City Center (City of Federal Way, 2013a). After acquisition of the property, the City issued Requests for Proposals with the intention of selling the property to a private-sector developer to develop the site with a mixed-use project that included a public park component. As of 2014, no such development had yet occurred, and the City developed the entire property as a park. The City indicates that portions of the property could be redeveloped by a private developer, but that some portion of the property is intended to remain as a public park. It is unknown at this time how the park might be reconfigured when further development occurs or the timing of such development. While it is unclear whether this kind of facility is considered a 4(f) resource, the City of Federal Way believes Town Square Park is a recreational resource of local significance, and as such is being considered a Section 4(f) property.

The FWLE project team met with the City of Federal Way on June 19 and October 24, 2014, regarding potential impacts to the Federal Way Town Square Park. The Federal Way SR 99 Station Option for the SR 99 Alternative and the I-5 to SR 99 Alternative would directly impact the Federal Way Town Square Park. As shown on Exhibit E-1, a 0.7-acre linear section at the southern end of the park parcel would be converted to transportation use by the project 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 impacted contains parking and landscaping, which would be removed; no recreational features or amenities would be impacted.

The Federal Way SR 99 Station Option was designed prior to the planning and development of the Federal Way Town Square Park. The location of the transit-only roadway at the southern end of this property was informed by the City's comprehensive plan for transportation improvements in the City Center. Specifically, as shown in Exhibit E-2, the City's plan calls for creating an enhanced street network, including a new roadway in this general area (City of Federal Way, 2013b). It is possible that this roadway could be constructed by the City or as part of a private development project on the property before the FWLE is built. At this time, no such plans have been developed. If the Federal Way SR 99 Station Option is selected for the FWLE, its final design would seek to avoid or minimize the impact on the parking and landscaping in the park. Mitigation could include financial compensation for the use of land as agreed with the City or providing replacement parking, and any park areas temporarily disturbed during construction would be restored to existing conditions following construction. FTA and the City are discussing ways to minimize the project's impacts on the park and whether such measures would reduce the impacts to a *de minimis* level. The FWLE would only impact parking stalls and landscaping and would not adversely affect the park's recreational activities, features, and attributes.

Consultation with City of Federal Way is ongoing. FTA is the lead federal agency for DOT on the FWLE and as such would make the final determination on *de minimis* for this resource in the Final EIS or Record of Decision.





Note: Date of photo precedes development of Federal Way Town Square Park.



Section 4(f)  
Resource Parcel



Recreational Use



Parking Use

#### Federal Way SR 99 Station Option

--- Elevated

Permanent Footprint

**S** Station

#### SR 99 Alternative

--- Elevated

Permanent Footprint

**S** Station

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

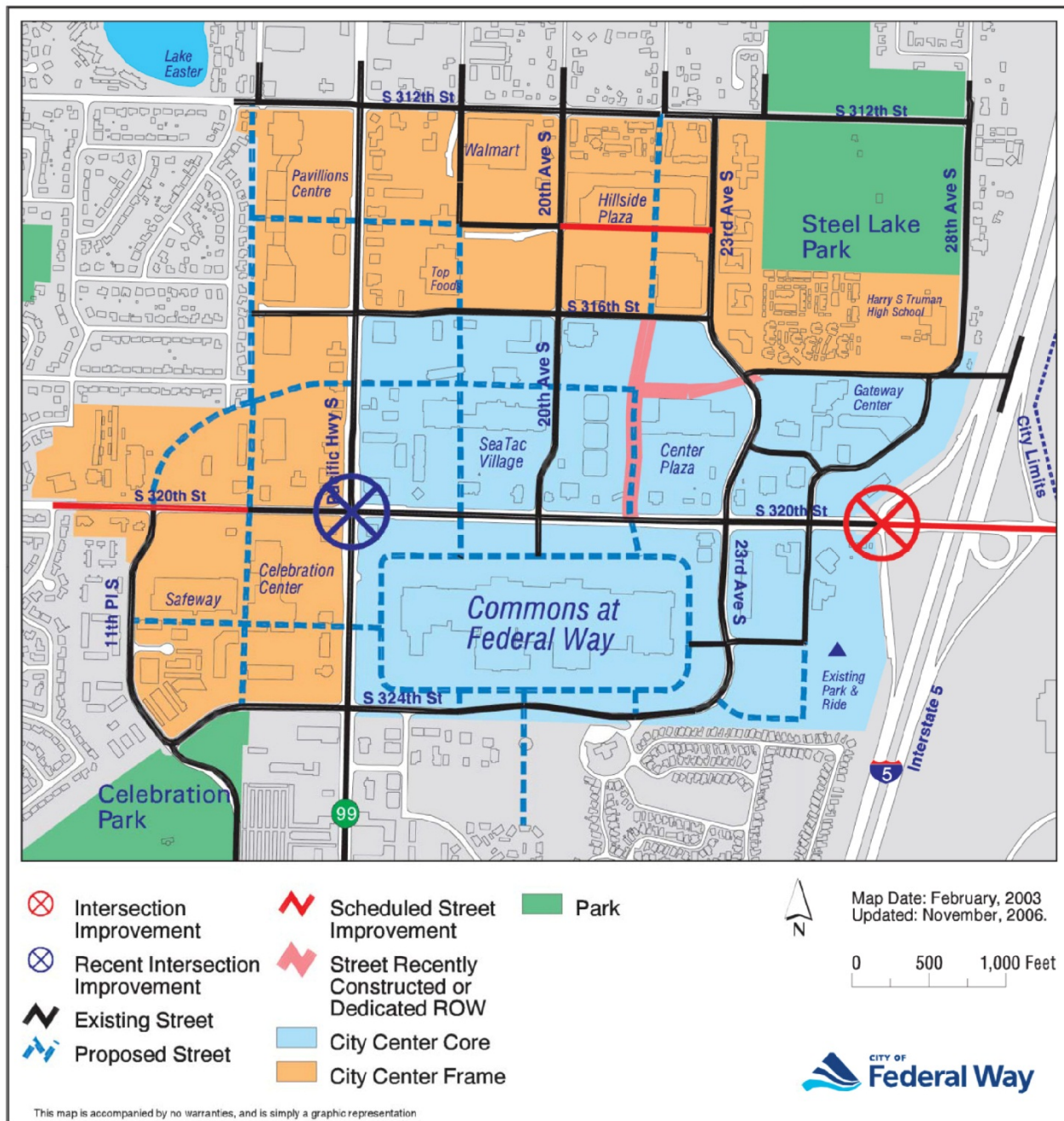


0 250 500 Feet

## EXHIBIT E-1 Impacts to Federal Way Town Square Park

Federal Way Link Extension





Source: City of Federal Way, 2013b.

EXHIBIT E-2  
Proposed Street Network

## E.4.2 Wildlife and Waterfowl Refuges

No designated wildlife and waterfowl refuges of national, state, or local significance exist in the study area.

## E.4.3 Historic Sites

Section 4(f) evaluation of historic sites relates directly to evaluation of resources and impacts through the NHPA Section 106 process, the method by which a cultural resource's significance is determined

for a federal undertaking. The results of the Section 106 analysis are a critical part of determining the applicability and outcome of the Section 4(f) use determination. Historic sites protected under Section 4(f) include “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places.”

Section 4.16 of the Draft EIS (Historic and Archaeological Resources) provides information on historic properties in the FWLE project area. No NRHP-listed or eligible historic properties would be physically impacted by a project alternative, and there are no NHPA Section 106 findings of adverse effect for any of the NRHP-listed or eligible properties in the study area. The project's potential Section 4(f) use of historic properties is limited to partial acquisitions of parcels where eligible buildings are located. Under the SR 99 Alternative Kent/Des Moines HC Campus Station Option, the FWLE would occupy part of the east campus parking lot (Exhibit E-3). The parking lot is on a large parcel that contains most of the Highline College campus, including the historic buildings in the APE. The east parking lot does not contribute to the historic buildings in the APE. The SR 99 Alternative, the I-5 to SR 99 Alternative, and the Federal Way SR 99 Station Option would acquire a narrow strip of the US Bank property for road widening adjacent to SR 99 (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 a minor effect on the buildings' setting. FTA's preliminary determination is that these potential effects would be *de minimis* use of historic properties.

## E.5 References



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

City of Federal Way. 2013b. *City of Federal Way Comprehensive Plan*. Adopted 1995, revised 2013.




City of Kent. 2011. *Midway Subarea Plan*. Adopted December 13, 2011. Available at <http://kentwa.gov/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=21286&libID=20835>.





## Legend

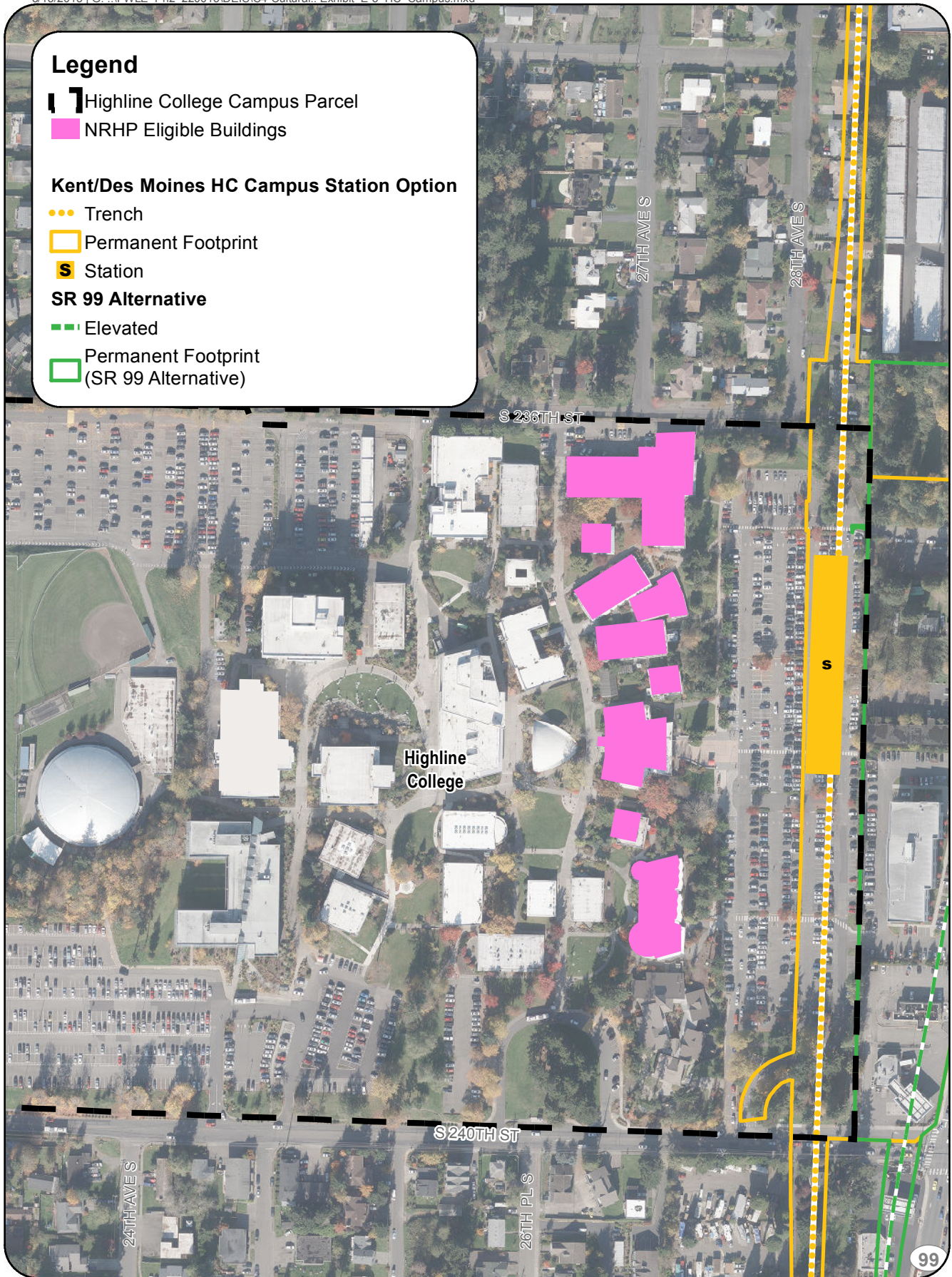
-  Highline College Campus Parcel
-  NRHP Eligible Buildings

### Kent/Des Moines HC Campus Station Option

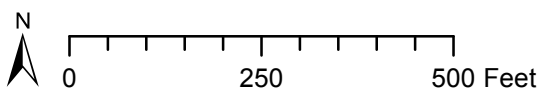
-  Trench
-  Permanent Footprint
-  Station

### SR 99 Alternative

-  Elevated
-  Permanent Footprint (SR 99 Alternative)



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





**EXHIBIT E-3**  
Impacts to Highline College Campus



Federal Way Link Extension





## Legend

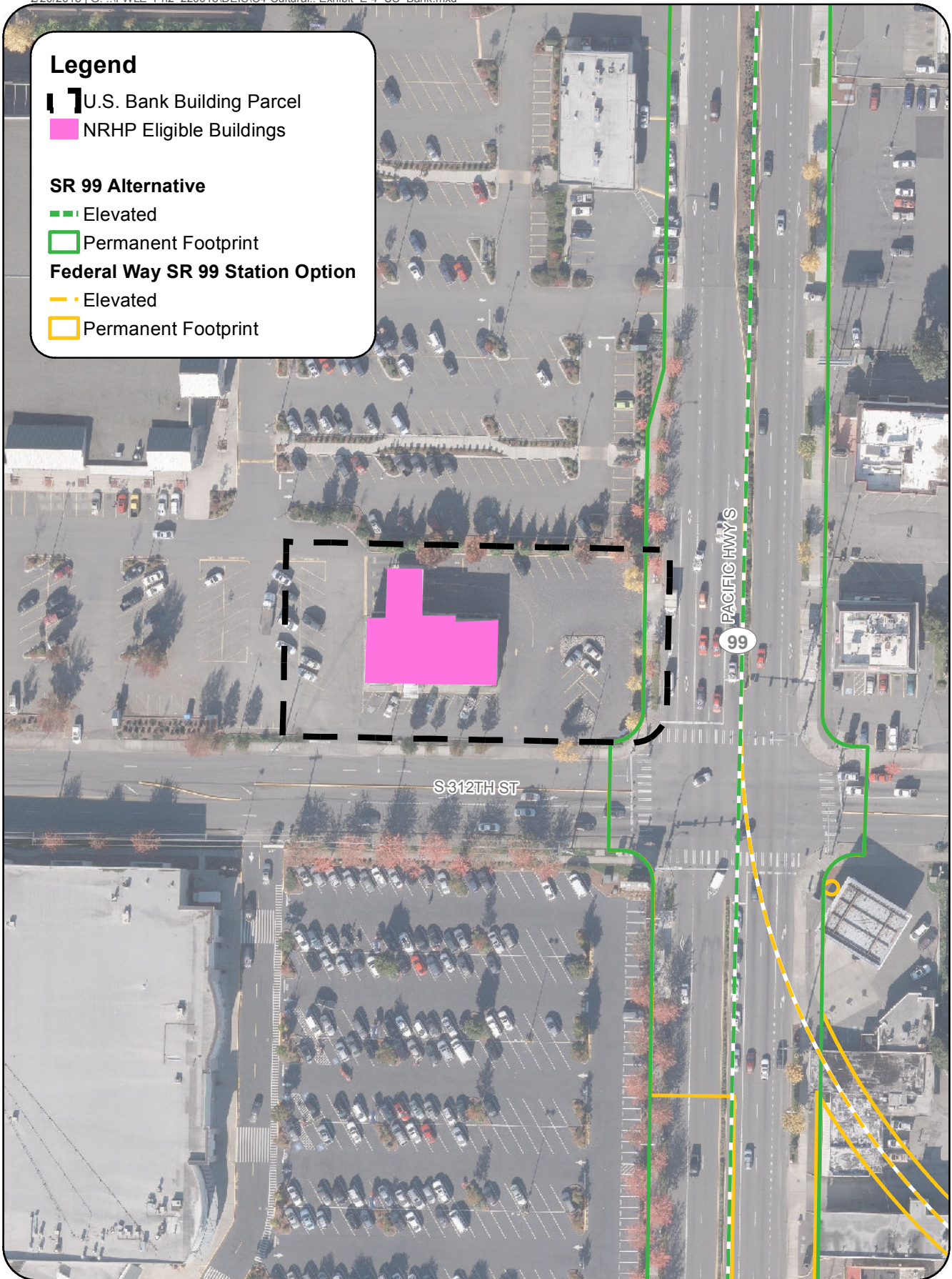
-  U.S. Bank Building Parcel
-  NRHP Eligible Buildings

### SR 99 Alternative

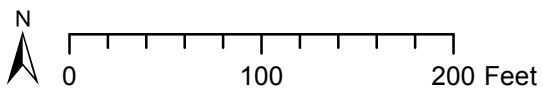
-  Elevated
-  Permanent Footprint

### Federal Way SR 99 Station Option

-  Elevated
-  Permanent Footprint



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



**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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**CHIEF EXECUTIVE OFFICER**

**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).

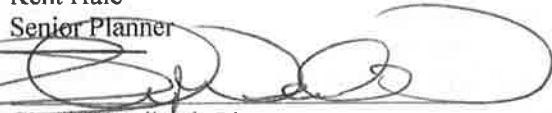
If you agree, we ask that you sign this letter and return a copy to me to confirm that the District concurs that the playfield at Mark Twain Elementary School is not a Section 4(f) property because it is not a significant recreation area. Please keep in mind that regardless of the playfield's Section 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