

## **Appendix C**

# **Final Environmental Impact Statement Reevaluation**

# Circ-Williston Transportation Project

Reevaluation of the Final Environmental Impact Statement

FHWA-VT-EIS-07-02-F

May 18, 2011

The purpose of this Reevaluation of the Final Environmental Impact Statement (FEIS) for the Circ-Williston Transportation Project is to discuss the continued validity of the July 2010 FEIS in light of minor revisions in the Section 4(f) analysis for the Preferred Alternative (Alternative 17). This FEIS Reevaluation discusses the revisions made to the analysis that was presented in the FEIS and the result that the revisions have on the conclusions reached in the FEIS.

#### I. Revisions to the FEIS Section 4(f) Analysis for the Circ A/B Alternatives

The Section 4(f) discussion (FEIS Chapter 21) addressed the Preferred Alternative's involvement with the Williston Alternative Transportation Path (WATP) at two locations where either the existing and/or planned WATP would need to be realigned to accommodate the construction of the Preferred Alternative. One location occurs at the existing, temporary WATP's crossing of the Preferred Alternative alignment within the Circ A/B corridor; the other location occurs where the WATP runs parallel to VT 2A within the VT 2A right-of-way in the vicinity of the Mountain View Road/Industrial Avenue intersection. At both locations the WATP was assumed to be a Section 4(f) resource and the Preferred Alternative's effect of necessitating the realignment of the WATP was considered to be a use of Section 4(f) resources. Also at both locations, the FEIS documented FHWA's determination that the use of the Section 4(f) resource constituted a de minimis impact (FEIS pp. 21-17, 21-20, and 21-30 through 21-31). The effect of the de minimis impact determination was to eliminate the need to consider avoidance alternatives in a Section 4(f) evaluation (see 23 CFR 774.3(b)).

Subsequent to the FEIS, FHWA reconsidered the project circumstances in light of its Section 4(f) regulations and policy. As explained below, FHWA has now determined that the Preferred Alternative will not require the use of any Section 4(f) resources. The revised analysis for each location is discussed separately:

##### A. Temporary WATP Crossing of the Preferred Alternative within the Circ A/B Corridor

In 1997 the Town Of Williston requested permission from VTrans to construct a temporary at-grade multi-use path across the Circ A/B limited access right-of-way (FEIS Fig. 21.4-4, Label H) in advance of a permanent grade-separated multi-use path crossing to be constructed after completion of the "Circ Highway." Although the multi-use path is primarily intended for transportation purposes, there is substantial incidental recreational use at this location and FHWA continues to consider the path subject to Section 4(f) considerations. However, as discussed in the FEIS (pg. 21-22), FHWA made clear at the time of its approval of the proposed VTrans permit that the future discontinuation of the temporary bike path for the construction of the highway would not constitute a use under Section 4(f). The reasoning behind this determination was that the need to close the temporary path and rebuild it permanently on an overpass could not be considered a conversion to a transportation use because the use of the highway right-of-way for transportation purposes had already been established beforehand. Furthermore, and as also noted in the FEIS, the subsequent revisions to FHWA's Section 4(f) regulations in 2008 explicitly addressed this situation in 23 CFR 774.11(h):

*When a property formally reserved for a future transportation facility temporarily functions for park, recreation, or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of duration, will not subject the property to Section 4(f).*

Consistent with this regulation, FHWA's Section 4(f) Policy Paper (March 1, 2005) addresses the situation where land was reserved for a highway prior to the establishment of a Section 4(f) resource in Question and Answer (Q&A) No. 16:

***Question:*** *When a public park, recreation area, or wildlife and waterfowl refuge is established and an area within the 4(f) resource is reserved for highway use prior to, or at the same time the 4(f) resource was established, do the requirements of Section 4(f) apply?*

***Answer:*** *No, the requirements of Section 4(f) do not apply to the subsequent use of the reserved area for its intended highway purpose. This is because the land used for the highway project was reserved from and, therefore, has never been part of the protected 4(f) area. Nor is there a constructive use (23 C.F.R. 771.135(p)(5)(v)) of the 4(f) resource, since it was jointly planned with the highway project. The specific governmental action that must be taken to reserve a highway corridor from the 4(f) resource is a question of state law and local law, but evidence that the reservation was contemporaneous with or prior to the establishment of the 4(f) resource is always required. Subsequent statements of intent to construct a highway project within the 4(f) resource are not sufficient. All measures which have been taken to jointly develop the highway and the park should be completely documented in the project records. To provide flexibility for the future highway project, state and local transportation agencies are advised to reserve wide corridors.*

Similarly, FHWA Policy Paper Q&A No. 18 specifically addresses temporary or interim recreational use of land designated for future transportation purposes:

***Question:*** *Does Section 4(f) apply to temporary recreational uses of land owned by a State Department of Transportation or other Applicant and designated for transportation purposes?*

***Answer:*** *In situations where land which is owned by a State DOT or other Applicant and designated for future transportation purposes (including highway rights-of-way) is temporarily occupied or being used for either authorized or unauthorized recreational purposes such as for a playground or a trail (bike, snowmobile, hiking, etc.) on property purchased as right-of-way, Section 4(f) does not apply. For authorized temporary occupancy of highway rights-of-way for park or recreation, it is advisable to make clear in a limited occupancy permit, with a reversionary clause that no long-term right is created and the park or recreational activity is a temporary one pending completion of the highway or transportation project.*

Although this location is not subject to Section 4(f) the FEIS contains a commitment to include construction of the overpass as part of the project and minimize temporary disruption due to construction activities. Thus the planning for both the multi-use path and the highway would be fulfilled by the project. The permanent WATP will not change from its original plan and will continue to serve the same function as a multi-use transportation path with incidental recreational use, with minimal to no disruption to its uses or benefits.

For all of the above reasons it is clear that the vertical realignment of the WATP onto an overpass within the Circ A/B corridor to accommodate the Preferred Alternative does not constitute a use of a Section 4(f) resource, including any constructive use.

#### B. Preferred Alternative Spot Improvements at VT 2A/Mountain View Road Intersection

As described in FEIS Section 21.4, the Town of Williston has been implementing a system of multi-use paths that is in various stages of planning and construction. The FEIS describes five segments of the WATP (FEIS pg. 21—17) that have been constructed along VT 2A including two segments that will likely be affected by the Preferred Alternative's spot improvements (see FEIS pg. 3-38). These segments are on the east side of VT 2A from Mountain View Road south to Meadow Run Road and on the west side of VT 2A from Industrial Avenue north to River Cove Road. Including the east-west VT 2A crosswalk at the Mountain View Road/ Industrial Avenue intersection, the combined length of these two segments total about 3,100 feet with further extensions planned along VT 2A to both the north and south (see FEIS Fig. 21.4-3). The existing segments were constructed as ten-foot wide paths within the existing VT 2A right-of-way. FEIS Section 21.5.2 (pg. 21-31) states that the planned spot improvement at this intersection would include the lateral relocation of a short section of the WATP north of Industrial Avenue within the widened roadway right-of-way.

FHWA's Section 4(f) Policy Paper addresses the applicability of Section 4(f) to bike paths in Q&A No. 15:

**Question:** *Do the requirements of Section 4(f) apply to bikeways?*

*If the publicly owned bikeway is primarily used for transportation and is an integral part of the local transportation system, the requirements of Section 4(f) would not apply, since it is not a recreational area. Section 4(f) would apply to publicly owned bikeways (or portions thereof) designated or functioning primarily for recreation, unless the official having jurisdiction determines it is not significant for such purpose. During early consultation with the official with jurisdiction it should be determined whether or not a management plan exists that addresses the primary purpose of the bikeway in question.*

*However, as with recreational trails, if the bikeway is simply described as occupying the highway rights-of-way and is not limited to any specific location within that right-of-way, a use of land would not occur and Section 4(f) would not apply, provided adjustments or changes in the alignment of the highway or bikeway would not substantially impair the continuity of the bikeway. Just as with trails, Title 23 Section 109(m) precludes the approval of any project, which will result in the severance or destruction of an existing major route for non-motorized transportation traffic, unless such project provides a reasonable alternative route or such a route exists.*

In applying the above FHWA policy to the WATP along VT 2A it could be noted that, in contrast to the WATP in the Circ A/B corridor, Section 4(f) might not apply to the WATP at this location since it is used primarily for transportation purposes with incidental recreational use limited due to the incompleteness of the path system. More importantly however, even if the

WATP was considered to be a recreational resource, the existing WATP merely occupies an easement within the VT 2A highway right-of-way and therefore, in accordance with Q&A No. 15, the Section 4(f) issue would be treated as it would be for a recreational trail, which is a reference to FHWA Policy Paper Q&A No. 14C:

***Question C:** Are trails on highway rights-of-way, which are designated as scenic or recreational trails subject to the requirements of Section 4(f)?*

***Answer C:** If the trail is simply described as occupying the rights-of-way of the highway and is not limited to any specific location within the right-of-way, a use of land would not occur provided that adjustments or changes in the alignment of the highway or the trail would not substantially impair the continuity of the trail. In this regard, it would be helpful if all future designations including those made under the National Trails System Act describe the location of the trail only as generally in the right-of-way.*

Similar to the WATP crossing in the Circ A/B corridor, the FEIS contains a commitment to relocate the path within the VT 2A right-of-way as part of the project using the same width, pavement type, and roadway offset that is currently provided. The adjustment of the alignment will not substantially impair the continuity of the multi-use path. The WATP will continue to serve the same function as a multi-use transportation path with incidental recreational use, with minimal to no disruption to its uses or benefits.

Based on the above, the horizontal realignment of the WATP within the VT 2A right-of-way to accommodate the construction of the Preferred Alternative spot improvements does not constitute a use of Section 4(f) resources.

## II. Effect of Revised Analysis on FEIS Conclusions

As stated above, the revised analysis has resulted in a change in the characterization of the Preferred Alternative's involvement with Section 4(f) resources at two locations. The revised analysis was not a result of changes to the Preferred Alternative or changes to the WATP, both of which continue to be as described in the FEIS. Those descriptions and the assessment of impacts, including associated measures to avoid, minimize, and mitigate impacts, on the WATP were coordinated with the Town of Williston and disclosed to the public through circulation of the DEIS and FEIS documents. None of the comment letters received on those documents disputed the characterization of impacts on the WATP.

The commitments contained in the FEIS will ensure that the bike path will continue to function as planned and designed in both locations. The revisions are only in how FHWA has decided how to bring its regulations and policies concerning Section 4(f) to bear on the particular circumstances. At both locations FHWA had made a Section 4(f) determination in the July 2010 FEIS that the Preferred Alternative would have a de minimis impact on the WATP. At both locations FHWA has now determined that the Preferred Alternative would not require the use of Section 4(f) resources. Since the effect of the revised analysis is only to eliminate two de minimis (i.e. minimally important) impacts that appeared in the FEIS, the conclusions of the

FEIS relative to the Preferred Alternative remain valid and a Supplemental FEIS would not be required under 23 CFR 771.130.

For the purpose of completeness, it should be noted that the revised analysis would be applicable to some extent to all the build alternates considered in the FEIS in that they all involved impacts to the WATP that were characterized as de minimis. Using the same reasoning these alternatives could also now be characterized as not having any Section 4(f) use of the WATP. It is not necessary to provide these analyses in detail since the focus of this FEIS reevaluation was only to determine whether the FEIS conclusions continue to be valid in light of the minor revisions to the Preferred Alternative's assessment.