

Mirror Lake Trailhead Relocation Project
US Highway 26

Clackamas County, Oregon

Sections 4(f) and 6(f) Memorandum

Revised Draft



Prepared for:

Western Federal Lands Highway Division, Oregon Department of Transportation,
and United States Forest Service

WFLHD Task Order No. DTFH7016F02009

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Acronyms

AINW	Archaeological Investigations Northwest, Inc.
APE	Area of Potential Effects
CFR	Code of Federal Regulations
DEA	David Evans and Associates, Inc.
FHWA	Federal Highway Administration
LRMP	Land and Resource Management Plan
LWCF	Land and Water Conservation Fund
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NPS	National Park Service
NRHP	National Register of Historic Places
OCTA	Oregon-California Trails Association
ODOT	Oregon Department of Transportation
ROW	Right-of-way
SHPO	State Historic Preservation Office
USC	United States Code
USDOT	United States Department of Transportation
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
WFLHD	Western Federal Lands Highway Division

Introduction

At the request of the Western Federal Lands Highways Division (WFLHD), David Evans and Associates, Inc. (DEA) assessed the Sections 4(f) and 6(f) conditions related to the proposed Mirror Lake Trailhead Relocation Project in Clackamas County, Oregon (see Figure 1). The project is being developed by WFLHD of the Federal Highway Administration (FHWA), and thus is subject to the requirements of Section 4(f) of the United States Department of Transportation (USDOT) Act of 1966 and Section 6(f) of the Land and Water Conservation Fund Act of 1965.

Executive Summary

The proposed Mirror Lake Trailhead Relocation Project is subject to the requirements of Section 4(f) of the United States Department of Transportation (USDOT) Act of 1966 and Section 6(f) of the Land and Water Conservation Fund Act of 1965. At the request of the Western Federal Lands Highways Division, David Evans and Associates, Inc. (DEA) assessed the Sections 4(f) and 6(f) conditions related to the proposed project in Clackamas County, Oregon.

This memorandum identifies properties in the area of potential effect (APE) that would be potentially encumbered by Section 6(f) of the Land and Water Conservation Fund Act or that would meet the definition of Section 4(f) resources: public parks, recreation areas, wildlife or waterfowl refuges, or publicly or privately owned historic sites. It also assesses the applicability of Section 4(f) and the potential use of the identified resources, summarizes the needed agency coordination regarding Section 4(f), and describes the alternatives analysis process.

This memorandum finds that there are no Section 6(f) resources that are subject to the requirements of Section 6(f) in the APE, and thus Section 6(f) does not apply to the project. With the exception of the potential impacts to the Barlow Road Historic District and to the historic Mirror Lake Trail, any impacts to the 4(f) resources identified in the APE are anticipated to be *de minimis* uses, with no need for modifications to the proposed project. However, at this stage of project planning, it is possible that the effects to the Barlow Road Historic District and the historic Mirror Lake Trail might be adverse, in which case additional analysis and coordination with U.S. Forest Service (USFS) and the State Historic Preservation Office (SHPO), and documentation to satisfy the requirements of Section 4(f), would be required.

Overview of Memorandum

This memorandum accomplishes multiple objectives:

- Addresses the applicability of Section 6(f) and identifies properties in the area of potential effects (APE) that would be potentially encumbered by Section 6(f) of the Land and Water Conservation Fund Act.
- Identifies properties in the APE that meet the definition of Section 4(f) resources: public parks, recreation areas, wildlife or waterfowl refuges, or publicly or privately owned historic sites.
- Assesses the applicability of Section 4(f) and the potential use of the identified resources.
- Summarizes the needed agency coordination regarding Section 4(f).
- Describes the alternatives analysis process and whether: (1) there is a “feasible and prudent alternative to the use” of the property, and (2) the proposed action “includes planning to minimize harm” to the property.



Mirror Lake Trailhead Relocation Project

Since historic sites are included in Section 4(f), and the National Historic Preservation Act of 1966 regulates the effects of Federal agencies' undertakings on historic properties, this report uses the APE, which is defined as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking." (36 CFR 800.16 (d))

Project Description

The existing Mirror Lake Trail is a popular public recreation trail during all seasons. The Mirror Lake Trail provides an easy walk to a scenic lake, and is highly convenient to Portland and surrounding communities. The parking at the existing trailhead is limited, essentially consisting of a widened section of the US 26 road shoulder. The trail is heavily used during winter, during which time the trailhead parking is unusable because of the presence of plowed snow. Snowshoers typically park several miles east at the Skibowl ski resort parking lot and walk down US 26 to the trailhead during winter. During summer months, overflow parking occurs in hazardous locations, including on the opposite (north) side of US 26, or farther east on US 26, in which case people must walk along the highway to reach the trailhead (see Figure 2: Area of Potential Effects and Vicinity).

Because of the popularity of the trail, the existing parking capacity at the trailhead is strained, thus creating an unsafe situation as people walk along and cross this busy stretch of highway on a sharp curve, with limited visibility to oncoming traffic, and without the benefit of signals or pedestrian facilities. The existing trailhead location (approximately MP 51.8), according to a recent ODOT Roadway Safety Audit, is identified as a "High" road safety risk due to limited sight distance and poor signage.

The proposed action would relocate the existing trailhead and parking lot to a location east of the existing site. This action would move the trailhead from a location directly adjacent to US 26 on a sharp curve to a safer location off the highway. The parking layout will aim to provide 50 parking spots to accommodate users of the Mirror Lake Trail. The design includes a universal trail to accommodate all users that will start at the parking lot and go down to the crossing of Camp Creek. From the new



View of current parking area for the Mirror Lake Trail, view facing west.

pedestrian bridge across Camp Creek, a proposed trail would provide a new connection between the relocated trailhead facilities and the existing Mirror Lake Trail. The new trail connection would be maintained by the United States Forest Service (USFS), and it would be wide enough to accommodate snowshoers and skiers in the winter. Finally, roadway improvements would be made in the vicinity of the new trailhead to preserve and enhance safety.

Mirror Lake Trailhead Relocation Project

The project is along US 26 and traverses lands of the Mt. Hood National Forest. The proposed roadway improvements would occur mostly within or immediately adjacent to the existing highway right-of-way (ROW). The State of Oregon maintains the highway. The Mt. Hood National Forest proposes to grant additional ROW width to the State of Oregon (the Oregon



Existing trailhead and bridge across Camp Creek. Sign announcing proposed project and inviting public participation posted at trailhead.

Department of Transportation [ODOT]), where needed to encompass the Mirror Lake

Trailhead Relocation Project. The proposed parking relocation would encroach on the existing Skibowl parking lot at the west end, but would not reduce the number of parking spaces once parking mitigation at the east end of the Skibowl lot is incorporated. The addition of the parking spaces at the east end of the existing Skibowl lot

would require widening the lot to the north.



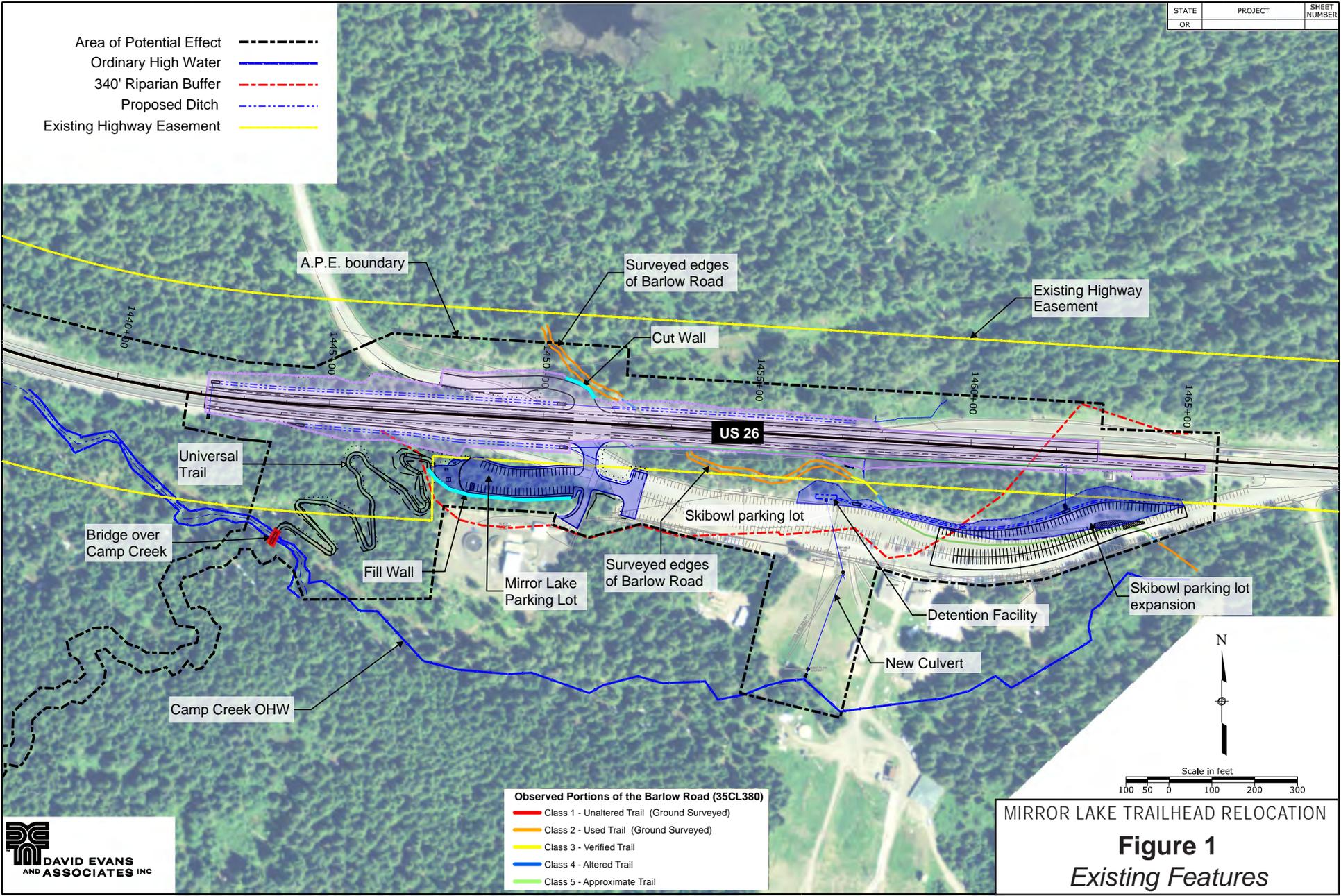
Existing trailhead, view facing east.

Figures 1 and 2 show the APE and vicinity for the Mirror Lake Trailhead Relocation Project. Figure 1 shows the location of the proposed new trailhead and the associated roadway improvements. Figure 2 shows the existing Mirror Lake trailhead that would be decommissioned as part of this proposal, and the alignment of the proposed connection trail from the new trailhead. The figures highlight the known park, recreational, and cultural resources in and adjacent to the APE.

STATE	PROJECT	SHEET
OR		NUMBER

- Area of Potential Effect ————
- Ordinary High Water ————
- 340' Riparian Buffer - - - - -
- Proposed Ditch - - - - -
- Existing Highway Easement ————

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- Observed Portions of the Barlow Road (35CL380)**
- Class 1 - Unaltered Trail (Ground Surveyed)
 - Class 2 - Used Trail (Ground Surveyed)
 - Class 3 - Verified Trail
 - Class 4 - Altered Trail
 - Class 5 - Approximate Trail

MIRROR LAKE TRAILHEAD RELOCATION

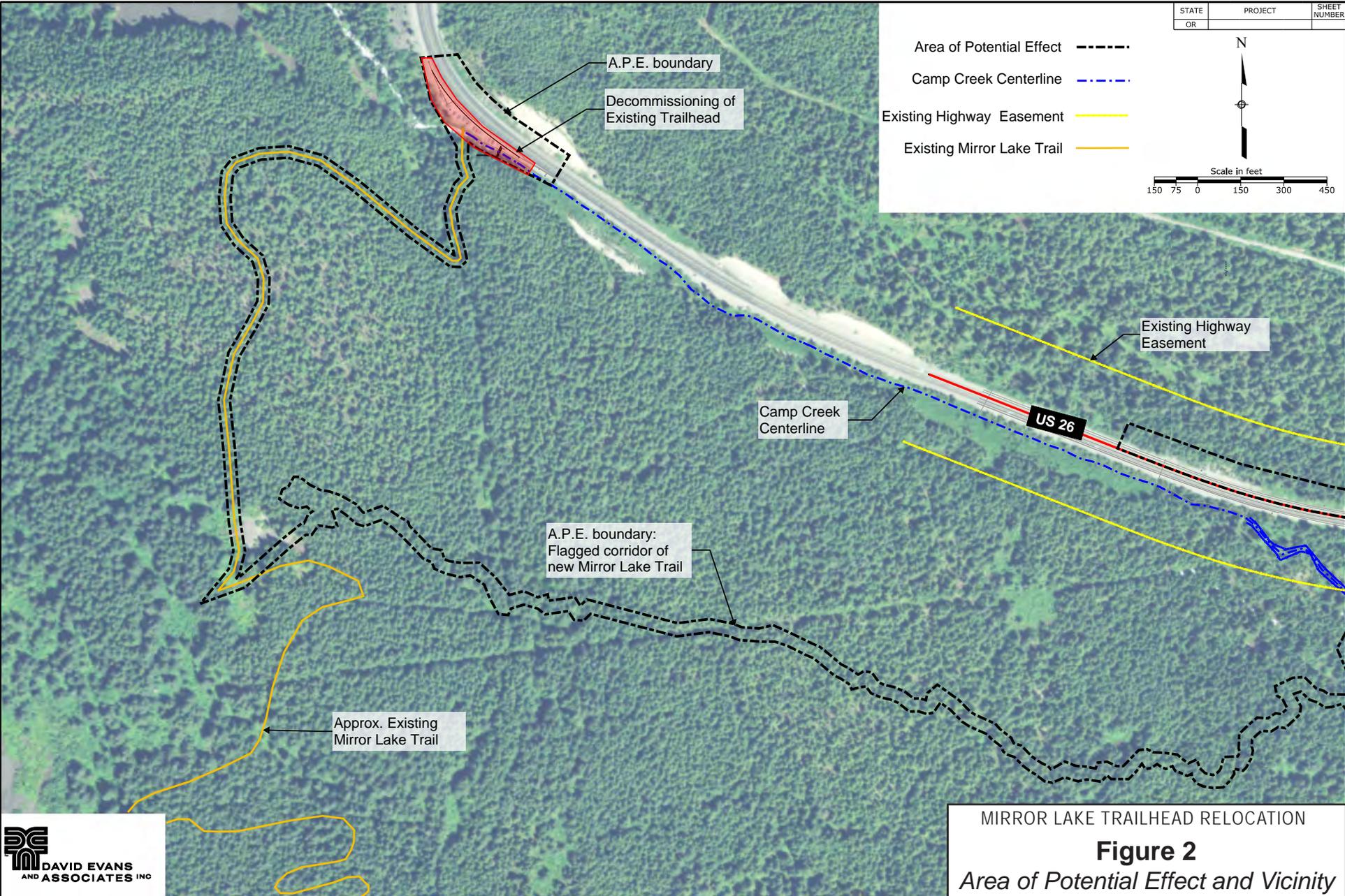
Figure 1
Existing Features



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STATE	PROJECT	SHEET
OR		NUMBER



Scale in feet
150 75 0 150 300 450

- Area of Potential Effect - - - - -
- Camp Creek Centerline -
- Existing Highway Easement —————
- Existing Mirror Lake Trail —————

A.P.E. boundary

Decommissioning of Existing Trailhead

Existing Highway Easement

Camp Creek Centerline

US 26

A.P.E. boundary:
Flagged corridor of
new Mirror Lake Trail

Approx. Existing
Mirror Lake Trail

MIRROR LAKE TRAILHEAD RELOCATION
Figure 2
Area of Potential Effect and Vicinity



Section 6(f)

The purpose of the Land and Water Conservation Fund (LWCF) Act is to assist in preserving, developing, and ensuring accessibility to outdoor recreation resources and to strengthen the health and vitality of the citizens of the United States by providing funds, planning, acquisition, and development of facilities. Recreation facilities awarded such funds are subject to the provisions of the Act.

Section 6(f) of the Land and Water Conservation Fund Act of 1965 (16 United States Code [USC] Chapter 1, Subchapter LXIX) applies to all projects that affect recreational lands purchased or improved with land and water conservation State grant funds. Section 6(f) prohibits the conversion of property acquired or developed with State grants to a non-recreational purpose without National Park Service (NPS) approval. NPS is required to ensure that replacement lands of equal value, location, and usefulness are provided as a condition of such conversions, also known as in-kind replacement. Consequently, where conversions of Section 6(f) lands are proposed for highway projects, replacement lands are required. The LWCF Act has specific requirements for Federal-aid and Federal lands projects. The Federal lands portion of the law (e.g., related to purchase of land for national wildlife refuges) does not include the in-kind replacement provision.

Section 6(f) Properties

Based on a review of the NPS database for applicable grants on May 25, 2016, there are no resources subject to the requirements of Section 6(f) in the APE or vicinity (see Attachment A). Thus, the requirements of Section 6(f) do not apply to the project and are not considered further.

Section 4(f)

Section 4(f) of the USDOT Act of 1966, codified in Federal law at 49 USC 303, declares that it is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. Section 4(f) protects publicly owned public parks, recreation areas, and wildlife/waterfowl refuges. Section 4(f) also protects historic sites of national, state, or local significance on public or private land that are potentially eligible for listing or that are listed on the National Register of Historic Places (NRHP) and are protected under Section 106 of the National Historic Preservation Act of 1966 (NHPA). The regulations require coordination with the official or officials with jurisdiction when making determinations about the significance of protected properties or resources.

If a project uses a Section 4(f) property and a finding of *de minimis* impact is not made (see “Defining Use of Section 4(f) Properties” below for a definition of *de minimis* impact), Section 4(f) specifies that the Secretary [of Transportation] may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if:

- (1) There is no prudent and feasible alternative to using that land; and
- (2) The program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

Section 6009(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) amended existing Section 4(f) legislation in 23 USC 138 and 49 USC 303 to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). This is

Mirror Lake Trailhead Relocation Project

the first substantive revision of Section 4(f) legislation since passage of the USDOT Act of 1966. This revision provides that when USDOT determines that a transportation use of Section 4(f) property (after consideration of any impact avoidance, minimization, and mitigation or enhancement measures) results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required, and the Section 4(f) evaluation process is complete. The impact criteria and associated determination requirements are explained in FHWA's Section 4(f) Policy Paper (Attachment B) (FHWA 2012).

The remainder of this section identifies Section 4(f) properties in the APE and vicinity, assesses the applicability of Section 4(f) and the potential use of those properties, and then outlines the required analysis and coordination needed to complete the 4(f) process.

Identification of Section 4(f) Properties

Section 4(f) requires consideration of:

- Parks and recreational areas of national, state, or local significance that are both publicly owned and open to the public;
- Publicly owned wildlife and waterfowl refuges of national, state, or local significance that are open to the public to the extent that public access does not interfere with the primary purpose of the refuge; and
- Historic sites of national, state, or local significance in public or private ownership regardless of whether they are open to the public.

A publicly owned park, recreational area, or wildlife or waterfowl refuge must be a significant resource for Section 4(f) to apply. The following section outlines the park, recreation, and cultural resource properties that are potentially subject to Section 4(f) for the project.

Park and Recreational Properties

The proposed trailhead location, parking lot, and trail connection are located on land within the Mt. Hood National Forest. The APE and vicinity consists of public transportation facilities, public forest land, the Skibowl recreational area, and the Skibowl parking lot.

The existing Mirror Lake Trail is a recreational facility, and a portion of the existing trail is also a historic resource. Figure 1 (above) shows the existing trail. For information about the historic trail, see the cultural resources section below.

Skibowl is a recreational facility on public land. It is privately operated but is still subject to the provisions of Section 4(f) because it is open to the public (see Question 18A of the FHWA policy paper, Attachment B) (FHWA 2012).



Current Mirror Lake Trail (foreground), historic and abandoned Mirror Lake Trail above (crew member station).



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As noted above, the project would be constructed on land within the Mt. Hood National Forest. The APE includes no existing campgrounds or other facilities. However, the existing trailhead located on US 26 would be closed at the highway access, and the Mirror Lake Trail would be rerouted from the new trailhead located near the Skibowl facility (see Figure 2 above).

The APE and adjacent area encompasses three land designations in the Mt. Hood National Forest, per the Land and Resource Management Plan (LRMP—USFS, 1991). The LRMP designates the area with roadway improvements as a “Special Interest Area,” with allocation code A4/DV. The existing trailhead and recreational trail are within the designated “Unroaded” area, and the area that includes Skibowl is designated as a “Winter Recreation Area.” Figure 3 shows the LRMP designations along with the APE for the project.

Wildlife and Waterfowl Refuges

The U.S. Fish and Wildlife Service manages wildlife and waterfowl refuges. There are no wildlife or waterfowl refuges within the APE or in the vicinity of the APE (USFWS, no date).

Cultural Resources

Cultural resources are identified in the Cultural Resources Investigation Report prepared for this project (AINW, 2016—see Appendix C). The Section 4(f) cultural resources are: (1) Barlow Road Historic District, (2) Mt. Hood Skibowl, (3) Mirror Lake Trail, and (4) the Mt. Hood Loop Highway segment 3. Figure 4 shows the identified cultural resources in the APE and vicinity. These resources are further described in the Cultural Resources Investigation Report.

Barlow Road Historic District

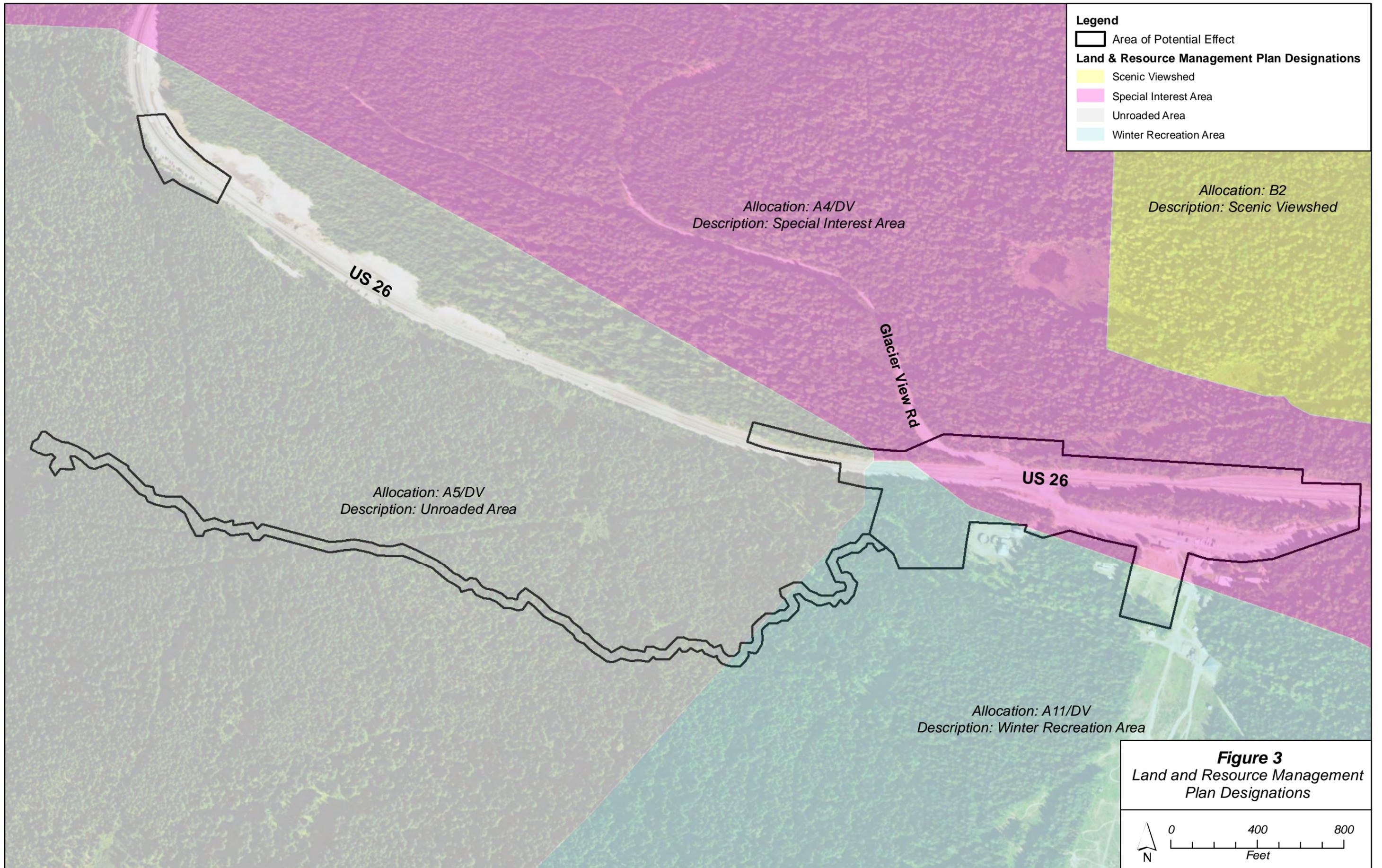
The Barlow Road Historic District (designated as 35CL380) is part of the Oregon Trail and was listed on the NRHP in 1992. Based on that listing, it is a Section 4(f) property.

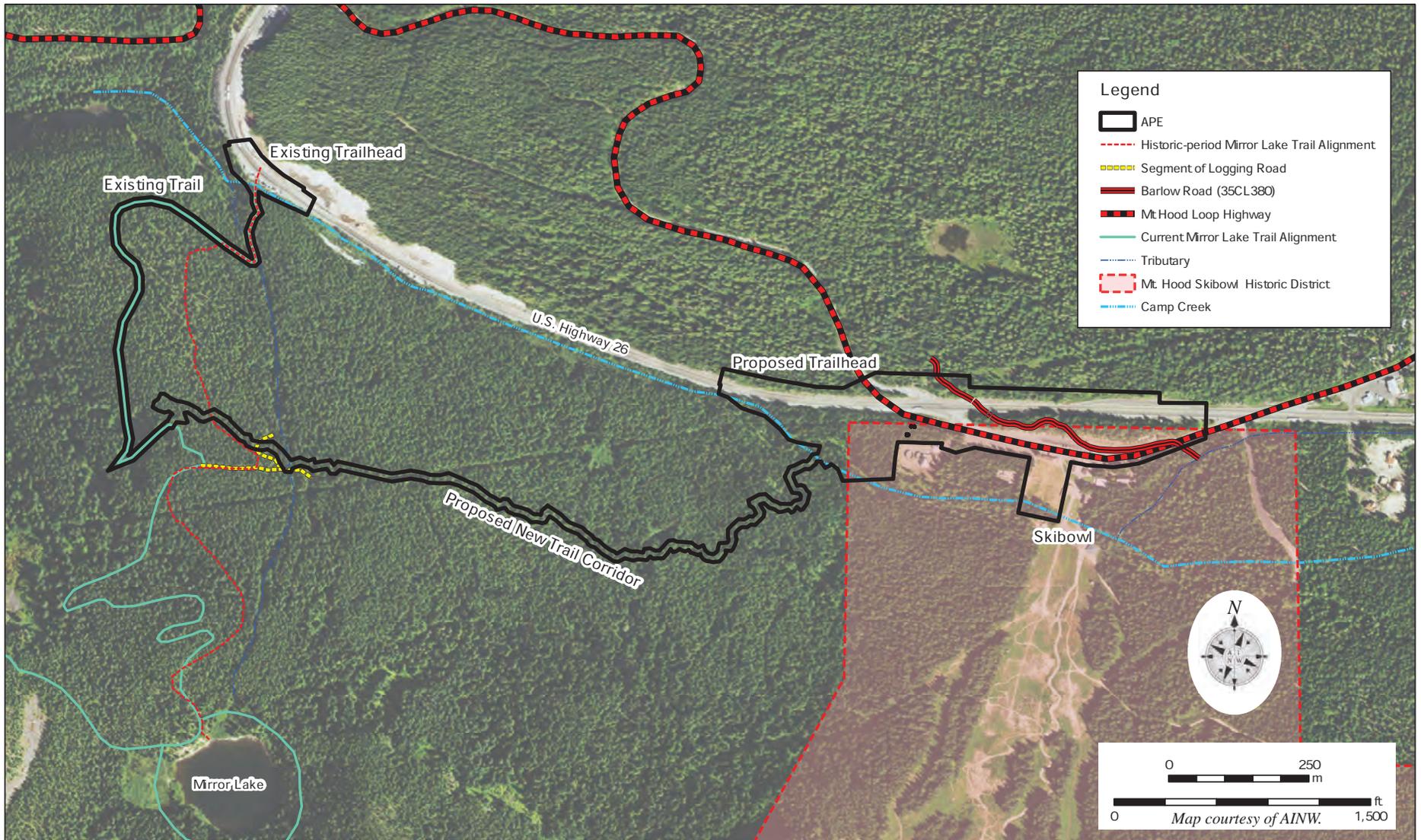
The Barlow Road Historic District (35CL380) is listed on the NRHP under Criterion A for its association with important historical events, namely Oregon Trail emigration from 1845 to 1919 (see Cultural Resources Investigation Report in Appendix C). The portions of the Barlow Road Historic District that cross the project APE were grouped into classes that have



Class 1 Segment of the Barlow Road Historic District north of US 26.

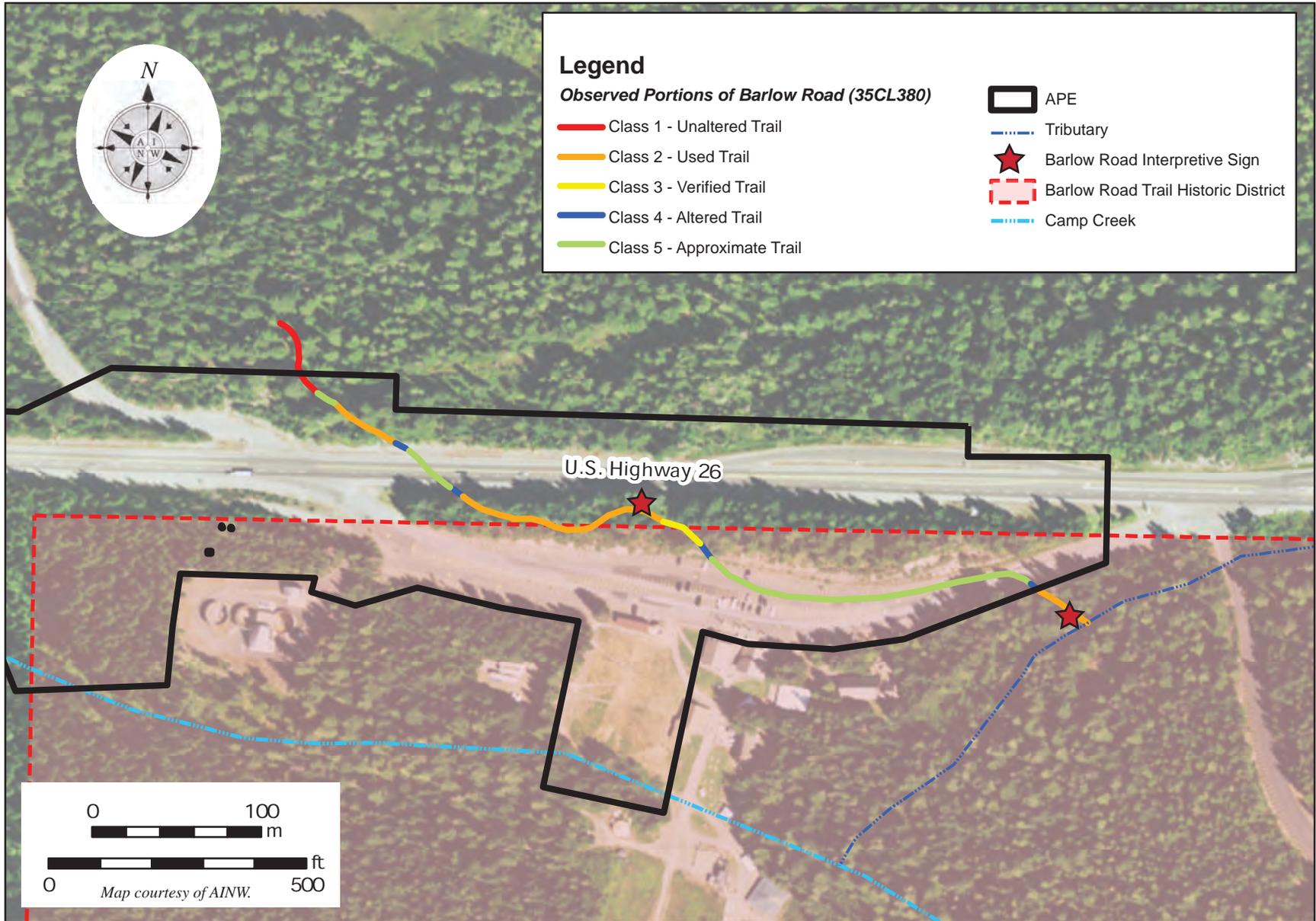
been defined by the Oregon-California Trails Association (OCTA). There are intact portions of trail traces of the Barlow Road (also referred to as road ruts or trail segments) that are contributing features to the historic district. The recommendations of AINW regarding project effects for each trail class are based on aspects of historical integrity that are correlated to the respective classes. Within the APE, Class 1 (“Unaltered Trail”) and Class 2 (“Used Trail”) have the most historical integrity and are recommended for complete avoidance. These areas are shown in Figure 5.





The Mirror Lake Trailhead Relocation project APE showing identified resources.

Figure 4
Cultural Resources



The Mirror Lake Trailhead Relocation project APE showing portions of the Barlow Road Historic District.

Figure 5
 Barlow Trail Road Historic District,
 Trail Classification Map



Mirror Lake Trailhead Relocation Project

The project's potential effects on the historic road are undetermined at this time. FHWA has avoided direct impacts to the Barlow Road trail trace (a contributing feature to the Barlow Road Historic District) through the design of the project, and FHWA is working with the USFS and the SHPO with respect to avoiding and minimizing indirect (e.g., visual) impacts to the Barlow Road Historic District.

During construction, the Barlow Road trail trace would be protected by temporary construction management measures. After the work is complete, the Barlow Road trail trace would be permanently protected from the proposed turning lane by a retaining wall. If, in this manner, avoidance of direct impacts to specific areas can be achieved, and if indirect effects are minimized or mitigated, a finding of "No Historic Properties Adversely Affected" is recommended for the Barlow Road Historic District (35CL380).

Mt. Hood Skibowl Historic District

Mt. Hood Skibowl Historic District was recommended to be potentially eligible for listing in the NRHP in 2013. The APE overlaps the parking lot and the bunny slope, which are non-contributing elements of the historic district. A finding of "No Historic Properties Affected" is recommended for the Mt. Hood Skibowl Historic District.

Mirror Lake Trail

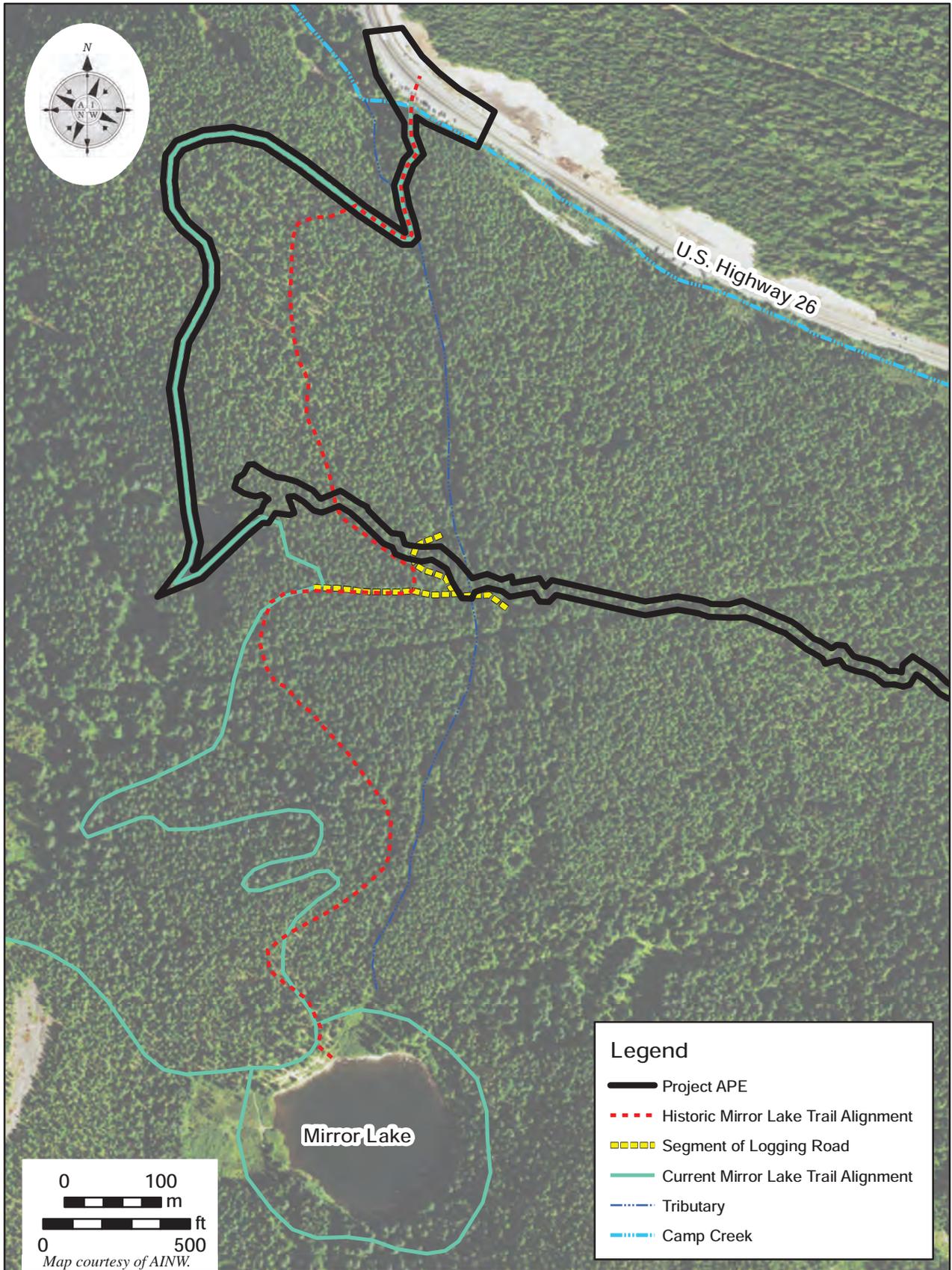
The Mirror Lake Trail was recommended to be eligible for listing in the NRHP in 2015. AINW recommends that the project avoid direct impacts to the historic trail alignment. If avoidance can be achieved, a finding of "No Historic Properties Affected" is recommended for the historic Mirror Lake Trail. However, current project design could have an adverse effect on the historic trail under Section 106. As shown in Figure 6, the existing trailhead is being removed, and the lower part of the original trail will be realigned. In addition, an old alignment of the trail with a distinct swale or rut is being crossed by the new trail alignment. These effects can likely be minimized and mitigated, possibly to achieve a finding of "No Historic Properties Adversely Affected" finding. Further coordination with USFS and SHPO will be needed to resolve the potential effects to the historic Mirror Lake Trail.



Portion of the abandoned historic Mirror Lake Trail tread. View is to the north.

Mt. Hood Loop Highway

The Mt. Hood Loop Highway was determined to be eligible for the NRHP in 2003. Figure 7 shows the historic Mt. Hood Loop Highway in the project area. The eligibility of the resource is different depending on the segment. The Mt. Hood Loop Highway segment 4, which is south of US 26 and includes the segment in the Skibowl West parking lot, is not eligible for the National Register (AINW, 2003). Segment 3, which is located north of the proposed intersection with the current US 26 (segment 3) was realigned after the current highway opened in 1958. Any project work in that location would have, at most, a No Adverse Effect on the highway segment, and likely it will be No Effect. There is no Section 4(f) use of segment 3, because it is a historic transportation resource and the effect will not be adverse.



The Mirror Lake Trailhead Relocation project APE showing the modern and historic trail alignment

Figure 6
Mirror Lake Trail (Historic)



Archaeological Resources

Supplemental cultural resource survey fieldwork was conducted within the Mirror Lake Trailhead Relocation Project APE on May 12, 2016, by AINW archaeologists Terry Ozburn, M.A., R.P.A., and Kristen A. Fuld, M.A., R.P.A. Fieldwork included a pedestrian survey of two areas newly added to the APE since the majority of the APE was surveyed in 2015. No artifacts or evidence of an archaeological site was observed, and no further cultural resource work is needed in these areas.

Because of the presence of the historic Barlow Road Historic District in the APE, the USFS has raised concern about the potential for finding archaeological material during ground-disturbing work activities in the vicinity of the intact portions of the Barlow Road trail trace. Before engaging in ground-disturbing activities within a specific distance of the Barlow Road trail trace (the distance is yet to be determined), SHPO, FHWA, and USFS will work together on procedures for protection of cultural resources during ground-disturbing work. For example, monitoring by a professional archaeologist may be recommended. An archaeologist monitored the geotechnical investigations associated with the stormwater treatment area adjacent to the Barlow Road Historic District, near the Skibowl parking lot, that was conducted on July 7, 2016, and no below-ground resources were found during those investigations.

Section 4(f) Applicability Analysis

Once Section 4(f) properties have been identified in the APE, it is necessary to determine whether any of them would be used by an alternative or alternatives being carried forward for detailed study. The most common form of use is when land is permanently incorporated into a transportation facility. This occurs when land from a Section 4(f) property is either purchased outright as transportation ROW or when the applicant for Federal-aid funds has acquired a property interest that allows permanent access onto the property, such as a permanent easement for maintenance or other transportation-related purpose.

This section provides an overview of how to define the type of use of a 4(f) resource, and what thresholds apply for different types of use.

Defining Use of Section 4(f) Properties

Once Section 4(f) properties have been identified in the APE, it is necessary to determine whether any of them would be used by an alternative or alternatives being carried forward. “Use” in the context of Section 4(f) is discussed below. A use of Section 4(f) property is defined in 23 Code of Federal Regulations (CFR) 774.17 and occurs when:

- Land is permanently incorporated into a transportation facility;
- There is a temporary occupancy of land that is adverse in terms of the Section 4(f) statute's preservationist purposes; or
- There is a constructive use of a Section 4(f) property.

Permanent Incorporation: Land is considered permanently incorporated into a transportation project when it has been purchased as ROW or sufficient property interests have otherwise been acquired for the purpose of project implementation.



Temporary Occupancy: Examples of temporary occupancy of Section 4(f) land include right-of-entry, project construction, a temporary easement, or other short-term arrangement involving a Section 4(f) property. A temporary occupancy will not constitute a Section 4(f) use when all of the conditions listed below are satisfied:

- Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
- Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;
- There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;
- The land being used must be fully restored, i.e., the property must be returned to a condition that is at least as good as that which existed prior to the project; and
- There must be documented agreement of the official or officials with jurisdiction over the Section 4(f) resource regarding the above conditions.

Constructive Use: Constructive use of Section 4(f) property is only possible in the absence of a permanent incorporation of land or a temporary occupancy of the type that constitutes a Section 4(f) use.

Constructive use occurs when the proximity impacts of a project on an adjacent or nearby Section 4(f) property, after impact mitigation is incorporated, are so severe that the activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired. Substantial impairment occurs when the protected activities, features, or attributes of the Section 4(f) property are substantially diminished. A project's proximity to a Section 4(f) property is not in itself an impact that results in constructive use.

De Minimis Impact: A *de minimis* impact is one that, after taking into account any measures to minimize harm (such as avoidance, minimization, mitigation or enhancement measures), results in either:

- A Section 106 finding of no adverse effect or no historic properties affected on a historic property; or
- A determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f).

A *de minimis* impact determination is made for the net impact on the Section 4(f) property. The final National Environmental Policy Act (NEPA) decision document for the project must include sufficient supporting documentation for any measures to minimize harm that were applied to the project by FHWA in order to make the *de minimis* impact determination (see 23 CFR 774.7(b)). A use of Section 4(f) property having a *de minimis* impact can be approved by FHWA without the need to develop and evaluate alternatives that would avoid using the Section 4(f) property. A *de minimis* impact determination may be made for either a permanent incorporation or a temporary occupancy of Section 4(f) property.

Potential Impacts/Anticipated Use of Public Recreation Sites

As indicated above, it is necessary to determine whether any of the identified 4(f) resources would be used by the Mirror Lake Trailhead Relocation Project. For the proposed project, there would be no transfer of ROW. All work would occur on USFS lands that would remain the property of the USFS. The roadway improvement activities would occur wholly within the existing ODOT easement along US 26.



Recreational Properties

The existing Mirror Lake Trail is a recreational facility. The trailhead would be closed at US 26, and a new trail would be rerouted to meet the existing recreational trail. The key feature of the resource, a recreational connection to Mirror Lake, would be preserved. The historic segment of the trail would still be accessible from the forest lands, and would not be closed to public use. Thus, the project would not adversely affect the activities, features, or attributes of the Mirror Lake Trail.

The proposed project would have a temporary occupancy of part of the Skibowl West parking lot during construction staging, and will also alter the configuration of the parking lot. These actions would require either a temporary occupancy letter from the “official with jurisdiction” over Skibowl West or a Section 4(f) *de minimis* finding, depending on how construction affects the use of the parking lot. The construction is planned for the summer months, and, because summer is the off-peak season for use of the facility, the timing of construction would minimize the impact of the temporary occupancy to the operator of Skibowl and the public.

Significant Cultural (Historic and Archaeological) Properties with No Adverse Effect

Use of the Mt. Hood Skibowl Historic District and the historic Mirror Lake Trail Section 4(f) resources likely can be considered “*de minimis*” because AINW anticipates that the Section 106 finding by USFS and the SHPO will not be adverse.

As noted above, there is no Section 4(f) use of the Mt. Hood Loop Highway.

Cultural Section 4(f) Properties

The USFS has determined that the effects of the project to the Barlow Road Historic District, a historic resource, on the north side of US 26 may be adverse. An initial consultation with SHPO indicated that this potential adverse effect could be avoided based on current project design. The effects on the Barlow Road Historic District and the historic Mirror Lake Trail have not yet been determined; if SHPO finds an adverse effect for either or both resources, such an effect would constitute a 4(f) impact that would trigger an alternatives analysis for the project. A preliminary approach to the alternatives analysis is outlined below.

Additionally, if subsurface work occurs and if any significant archaeological resources are found during construction, coordination with the SHPO and coordination with Tribes will be required.

Alternatives Analysis Process

Once Section 4(f) properties have been identified in the APE, it is necessary to determine whether any of them would be used by an alternative or alternatives being carried forward for detailed study. The most common form of use is when land is permanently incorporated into a transportation facility. This occurs when land from a Section 4(f) property is either purchased outright as transportation ROW or when the applicant for Federal-aid funds has acquired a property interest that allows permanent access onto the property such as a permanent easement for maintenance or other transportation-related purpose. There would be no transfer of ROW associated with the project. All work will occur on USFS lands that would remain the property of the USFS. The parking lot, the trailhead, and the roadway improvements would be wholly within the existing ODOT easement along US 26.

The new Mirror Lake Trail connection will not use any land that is currently used for camping or campground amenities, or other recreational resources, and therefore it would not be subject to the restrictions of Section 4(f). The existing trail, which is a recreational resource, will be rerouted. Overall, the project will not adversely affect



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the activities, features, or attributes of the existing trail, and other recreational uses would be temporary or *de minimis*, as described above.

There is a potential use associated with sections of the Barlow Road Historic District that are present within the APE. If the SHPO finds that there would be an adverse effect to the Barlow Road Historic District as a result of the project, then, under Section 4(f), there will be a “use” of that resource. If there will be a use, the next step is to determine whether the following apply:

- (1) There is a “feasible and prudent alternative to the use” of the property, and
- (2) The proposed action “includes planning to minimize harm” to the property.

The remainder of this section addresses the potential use and outlines the required analysis for the Barlow Road Historic District.

Feasible and Prudent Alternative

The proposed alternative was selected as the most reasonable, feasible, and prudent alternative that meets the needs of the public and minimizes negative impacts to the land and environment.

The Mirror Lake Trail is a popular public recreation trail during all seasons. Its popularity has strained the existing parking capacity, which has caused a high safety risk as users have begun to park along US 26 opposite the trailhead and walk across the roadway at the double-blind curve. Leaving the trailhead in its existing location is not a prudent alternative, because accessing the trail would continue to be a safety risk. As FHWA and USFS considered options for relocating the trailhead, multiple alternatives were developed and screened out. This screening process is summarized in the project’s Reconnaissance Report (DEA 2014).

Planning to Minimize Harm

Planning to minimize harm to the historic Mirror Lake Trail will be conducted as part of further project development.

The project-related roadway and stormwater elements have been designed to eliminate direct impacts to the trail trace and to the Barlow Road Historic District. The need for the improvements on the north side of US 26 is to eliminate a safety hazard with the existing off-set intersection. The FHWA and USFS project team are currently working together to determine whether further avoidance and minimization of potential impacts to the Barlow Road Historic District can be achieved. The stormwater treatment area on the south side of US 26 was also designed to avoid direct impacts to the Barlow Road trail trace; the stormwater swale will be located on the north side of the existing parking lot, across from the Skibowl ski area. As noted above, an archaeologist was on-site during the geotechnical investigation in this area, and no resources were found.

Coordination

Section 4(f) requires coordination with applicable local, state, and federal agencies to determine the potential impacts on these properties and whether these impacts constitute a “use.”

For the recreational resources, FHWA will need coordination and confirmation from the USFS that the use of the (recreational) Mirror Lake Trail would be classified as a *de minimis* use. Coordination with the official with

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jurisdiction for the Skibowl facility (to be determined based on review of the lease agreement) will be required to confirm that the use of Skibowl would be a temporary occupancy or *de minimis* use.

For the cultural resources, USFS will lead the coordination with the SHPO, with support and participation from FHWA. The key issues to coordinate with the SHPO are the finding of effect for the Barlow Road Historic District, the Mt. Hood Historic District, and the historic Mirror Lake Trail.

In addition, the Section 4(f) regulations require public notice and the opportunity for public comment on a proposed action. This required notification could be accomplished through the project website.

Conclusion

As indicated in the Section 6(f) section of this memorandum, there are no resources that are subject to the requirements of Section 6(f) in the APE, and thus Section 6(f) does not apply to the project.

With the exception of the potential impacts to the Barlow Road Historic District and to the historic Mirror Lake Trail, any impacts to the 4(f) resources identified in the APE are anticipated to be *de minimis* uses, with no need for modifications to the proposed project. As noted above, additional coordination between FHWA and USFS will be required to confirm and document these findings.

At this stage of project planning, it is possible that the effects to the Barlow Road Historic District and the historic Mirror Lake Trail might be adverse, in which case additional analysis and coordination with USFS and the SHPO, and detailed documentation to satisfy the requirements of Section 4(f) would be required, as described and outlined above.

References

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