Chapter 8 — Section 4(f)

For purposes of this chapter, Preferred Alternative 8 that was identified in the Draft Environmental Impact Statement (DEIS) will be referred to as "Alternative 8." The Preferred Alternative for the Final Environmental Impact Statement (FEIS) will be referred to as the "Refined Preferred Alternative 8."

Since the DEIS, the following substantive changes have been made to this chapter:

- **Sections 8.2** and **8.5** – The boundary and impacts of the Wapehani Mountain Bike Park have been updated. Revisions incorporate Refined Preferred Alternative 8 and City of Bloomington's concurrence with a *de minimis* use of Wapehani Mountain Bike Park.
- **Sections 8.3** and **8.5** – Revised to reflect the State Historic Preservation Officer (SHPO) concurrence with Federal Highway Administration (FHWA) findings and documentation package, including No Adverse Effect finding for above-ground resources.
- **Section 8.3.2.2** – Added information to reflect the completion of Phase Ia studies within the project corridor (June-August 2012).

8.1 Introduction

Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. §303(c), requires that, prior to the use of any of the land types listed below, it must be determined that there are no prudent and feasible alternatives that avoid such use and that the project includes all possible planning to minimize harm to such resources.

- A publicly-owned park.
- A publicly-owned recreation area.
- A publicly-owned wildlife or waterfowl refuge.
- Land from an historic property that is listed in or eligible for inclusion in the National Register of Historic Places (NRHP).
- Archaeological sites listed in or eligible for inclusion in the NRHP and that warrant preservation in place.

According to FHWA regulations, a "use" can be either (1) permanent, (2) constructive, or (3) temporary [See 23 CFR §774.17].

- A permanent use occurs when land from a Section 4(f) resource is permanently incorporated into a transportation project.

- A constructive use occurs when the proximity impacts of the project are so severe that they substantially impair the protected activities, features, or attributes that qualify the resource for Section 4(f) protection.

- A temporary use occurs when there is a temporary occupancy of the Section 4(f) property that is adverse in terms of the statute's preservation purposes.

In order for a park, recreation area, or wildlife/waterfowl refuge to qualify for protection under Section 4(f), it must be publicly-owned and officially designated as a park, recreational area, or wildlife or waterfowl refuge. Historic resources that are listed in or are eligible for listing in the NRHP are not required to be publicly-owned in order to be protected under Section 4(f). In addition to being listed in or eligible for listing in the NRHP, archaeological sites must also be important for "preservation in place" to qualify for protection as a Section 4(f) property.

Since the approval of the Tier 1 Record of Decision (ROD), the FHWA amended the regulations implementing Section 4(f). The new regulations are now found at 23 CFR Part 774. The Section 4(f) findings made in the Tier 1 ROD relied on the previous regulations found at 23 CFR §771.135. The findings in this Tier 2 document for Section 5 are based on the new regulations in Part 774.

When FHWA determines that a project may use a Section 4(f) property, there are three methods available for FHWA to approve the use:

- Preparing a *de minimis* impact determination;

- Applying a programmatic Section 4(f) evaluation; or,

- Preparing an individual Section 4(f) evaluation.

Refined Preferred Alternative 8 impacts to Section 4(f) resources have been determined to warrant *de minimis* determinations. Comments received on the DEIS have been considered in making this determination.

As stated in FHWA's *Section 4(f) Policy Paper,*[1] 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 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); or

- A Section 106 finding of no adverse effect or no historic properties affected on a historic property.

[1] USDOT/FHWA, Office of Planning, Environment, and Realty, Project Development and Environmental Review, "Section 4(f) Policy Paper," July 20, 2012, http://www.environment.fhwa.dot.gov/4f/4fpolicy.asp (Accessed July 13, 2012).

FHWA guidance further states that a *de minimis* impact determination is made for the net impact on the Section 4(f) property. The final project National Environmental Policy Act (NEPA) decision document 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 a 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 a permanent incorporation or temporary occupancy of Section 4(f) property.

8.2 Section 4(f) Resources - Parks, Recreation Areas, and Wildlife or Waterfowl Refuges

The Section 4(f) evaluation for parks, recreation areas, and wildlife or waterfowl refuges involved the following steps: (1) identifying publicly-owned lands that may be protected by Section 4(f) as parks, recreation areas, or wildlife or waterfowl refuges; (2) evaluating the applicability of Section 4(f) to those lands; (3) determining whether any of the alternatives would result in a "use" of Section 4(f) protected park, recreation, or wildlife or waterfowl refuge lands; and, (4) evaluating avoidance and minimization alternatives for any such lands that would be used by an alternative.

8.2.1 *De Minimis* Impact Findings – Wapehani Mountain Bike Park

Within the proposed right-of-way of the I-69 Section 5 project, the Wapehani Mountain Bike Park is the only publicly-owned park, recreation area, or wildlife refuge that will be directly used by Refined Preferred Alternative 8 (see **Figure 8-1** through **Figure 8-3**, located at the end of this chapter). The City of Bloomington owns 32.77 acres of Wapehani Mountain Bike Park; a 12.66-acre addition to the park is owned by the Bloomington Community Park & Recreational Foundation (Foundation). The Monroe County tax assessor records indicate the entire facility is 45.43 acres in size. While the two parcels are owned by independent entities, the City promotes and manages the site as a combined facility under a licensing agreement with the City of Bloomington Utilities Service Board.

The park was established in 1990 and is the first mountain bike park in the state of Indiana. It is located in southwestern Bloomington, adjacent to SR 37, and accessed from Weimer Road and Wapehani Road. The park includes a small lake (formerly a public water reservoir) created by placement of an earthen dam across an unnamed stream, as well as fringe wetlands, woods, springs, sinkholes, and five miles of bike trails with minor wooden trail features (bridges, walkways, bike jump). In addition, the lake receives runoff/storm water from commercial development and the existing SR 37 to the west.

As noted by the City of Bloomington in comments dated January 2, 2013, Wapehani Mountain Bike Park Resolution 11-27 (2011) of the Redevelopment Commission of the City of Bloomington, Indiana provided $30,000 in support of the *Breaking Away Journey to Platinum* recommendation to make Wapehani Mountain Bike Park a regional draw for mountain bike enthusiasts as an International Mountain Biking Association (IMBA) designated Gateway Trail

System. Improvements include trail rerouting, new trail development, trail features, and other park improvements. Gateway Trail Systems aim to serve youth and family friendly mountain bike riders in close proximity to urban areas. They can be built in small parks at a reasonable cost and with a minimal environmental footprint. Wapehani Mountain Bike Park uses a series of looped trails designed for beginner, intermediate, and expert riders. Future activities include sanctioned mountain bike races and other community events.

In the I-69 Tier 1 FEIS and ROD, there is a commitment to avoid any direct use of the Wapehani Mountain Bike Park (ROD Section 4.2.2). Because the park was established when SR 37 already existed as a major multi-lane highway, the proximity impacts (noise and visual) associated with a highway such as I-69 were accepted at the park's opening, and thus, the upgrade of SR 37 to I-69 does not constitute a constructive use.

Since the approval of the I-69 Tier 1 ROD, subsequent legislation (Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users [SAFETEA-LU]), permitted FHWA to determine that a direct use of a Section 4(f) resource which, after taking into account any measures to minimize harm, does not adversely affect the features, attributes and activities of the resource constitutes a *de minimis* impact. In such cases, the protections of Section 4(f) do not apply and such uses do not require a determination that there is no feasible and prudent alternative to that use.

For FHWA to make a *de minimis* finding, it must receive written concurrence from the party that has ownership or control of the resource stating that the proposed impact will not affect the resource's features, attributes, and activities. Further, such concurrence may occur after public notice is provided, and interested parties are afforded 30 days in which to provide comments on the proposed use. The regulations implementing SAFETEA-LU contemplate that such notice typically is provided as part of the NEPA process. In the case of an EIS, the notice is provided by documentation in the DEIS, with the DEIS comment period affording the opportunity for interested parties to comment. As such, DEIS comments applicable to Wapehani Mountain Bike Park were provided to the City of Bloomington for consideration.

Table 8-1 provides a summary of impacts to Wapehani Mountain Bike Park by alternative. **Figure 8-4** is a northbound view of the portion of trail adjacent to SR 37 and **Figure 8-5** is a more detailed view of the existing SR 37 sideslope at the foot bridge.

Table 8-1: Section 4(f) Use of Wapehani Mountain Bike Park

Alternative	Area of Use (acres)	Areas of Use (%)[b]*	Remaining Acreage	Section 4(f) Use
Alternative 4	0.00	0.0%	45.43	No
Alternative 5	1.10	2.4%	44.33	*de minimis*
Alternative 6	0.00	0.0%	45.43	No
Alternative 7	1.73	3.8%	43.70	*de minimis*
Alternative 8	0.00	0.0%	45.43	No
Refined Preferred Alternative 8	1.73	3.8%	43.70	*de minimis*

Figure 8-4: Portion of Trail Adjacent to SR 37 – Wapehani Mountain Bike Park
Source: Section 5 Project Team Field Visit

Figure 8-5: SR 37 Sideslope near Foot Bridge – Wapehani Mountain Bike Park
Source: Section 5 Project Team Field Visit

The DEIS considered alternatives that avoid the park (Alternatives 4, 6, and 8); however, these alternatives are not prudent given the increased impacts on existing homes and businesses and the need to relocate major utilities such as natural gas and electric transmission lines. These avoidance alternatives would also require a new bridge structure at SR 45/2nd Street, increasing both project cost and travel detours/congestion during construction in this area. While Alternative 5 has less impact on the park than Alternative 7; impacts west of I-69 are not avoided because of its wider footprint. Input was sought from interested parties at the Public Hearing and DEIS comment period based on Alternatives 7 and 8. A comparison of cost and potential displacement impacts and between Alternative 7 and Alternative 8 (the DEIS Preferred Alternative) showed that implementing avoidance alternatives would result in a $5.4 million increase in project costs and result in total take of seven additional residential properties.

DEIS comments pertaining to this resource and the potential for mitigation and other measures that may minimize harm to the park have since been considered. As such, Refined Preferred Alternative 8 has minimized to the extent practical the area required to construct I-69 (see **Figure 8.3**). The Refined Preferred Alternative 8 proposes "no shift" of the alignment at this location (similar to Alternative 7) and makes further refinements to the right-of-way in the Hickory Heights and Van Buren neighborhoods west of SR 37. With Refined Preferred Alternative 8, 11 residential displacements are avoided by not shifting the mainline alignment to avoid the park, as compared to 7 displacements avoided with Alternative 7.

Construction of Refined Preferred Alternative 8 will require acquisition of a strip of land approximately 20 to 80 feet wide from the current western boundary of the park, adjacent to and east of the existing SR 37 right-of-way containing approximately 310 feet of wooded trail with a foot bridge. Up to 1.06 acres of right-of-way for highway purposes is needed from lands owned by the City as part of Wapehani Mountain Bike Park and another 0.67 acres of right-of-way for highway purposes from lands that are privately owned by the Foundation, but managed by the City as part of the park, for a total of up to 1.73 acres (3.8% of the total park property). It is anticipated that the permanent physical impact on the Wapehani Mountain Bike Park will not diminish the overall function nor interfere with the activities or purpose of this park. Refined Preferred Alternative 8 is recommended because it avoids certain impacts west of SR 37 and a *de minimis* determination for use of the park is warranted. The recommendation for Refined Preferred Alternative 8 is based on the comparison of impacts, consideration of DEIS comments pertaining to this resource, and the potential for mitigation and other measures that may minimize harm to the park.

In the case of public parks, the officials with jurisdiction are the public officials of the agency or agencies that own or administer the property in question and who are empowered to represent the agency on matters related to the property. The City of Bloomington, as the agency with jurisdiction over the park, concurs that the use of 1.73 acres (3.8%) of Wapehani Mountain Bike Park, as well as use of a bridge and portion of a bicycle path, would result in a *de minimis* use (i.e., does not adversely affect the features, attributes and activities after considering proposed mitigation). This concurrence and specific stipulations to minimize and mitigate potential use of this resource are outlined within a Memorandum of Agreement (MOA) between FHWA, the Indiana Department of Transportation (INDOT), and the City of Bloomington (see **Appendix QQ**, *Wapehani MOA*), which was signed by all parties and executed as of June 3, 2013.

As stipulated in the Wapehani MOA, the Wapehani Mountain Bike Park land owned by the City and the Foundation required for right-of-way will be purchased in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended in 1987 (Uniform Act). In addition, the City will be compensated to reconnect the portion of the trail impacted by the project in a manner that provides a similar challenge for the user and to provide other aesthetic improvements identified by the City on property owned by the City within the Wapehani Mountain Bike Park. Coordination with the City will continue during final design. By approval of this Tier 2 FEIS/ROD, the FHWA hereby determines that the Wapehani Mountain Bike Park is protected as a significant public park and the I-69 Section 5 improvements qualify as a *de minimis* Section 4(f) impact finding for the WBMP, after taking into account the efforts to avoid, minimize, and mitigate impacts.

8.2.2 Resources Not Meeting Section 4(f) Applicability Criteria

The applicability of Section 4(f) to three other resources was taken into consideration, but for various reasons, they were found not eligible for Section 4(f) protection. These resources are the Morgan-Monroe State Forest, the Mill Creek Conservation Easement, and Brown's Woods.

The Morgan-Monroe State Forest is located within the Section 5 corridor and encompasses over 25,000 acres in Morgan and Monroe counties (see **Figure 4.2-17** at the end of **Section 4.2**, *Human Environment*). While IDNR has adopted a general Division of Forestry Strategic Plan for publicly-owned Indiana State Forests, no management plan specific to the Morgan-Monroe State Forest was available. Based on communications with forest personnel, the portions of the Section 5 corridor that abut the Morgan-Monroe State Forest are part of a multiuse management area that includes undeveloped recreation and resource management use. IDNR personnel indicated there are no campgrounds or any mapped/designated recreational trails or wildlife refuges along the SR 37 corridor. The area is managed primarily for timber harvesting and wildlife. Therefore, the requirements of Section 4(f) do not apply to the portion of the Morgan-Monroe State Forest within Section 5 (see 23 CFR §774.11(d)). While not a Section 4(f) resource, potential impacts to the state forest are addressed in **Sections 5.3**, *Land Use and Community Impacts*, and **Section 5.22**, *Managed Lands and Natural Areas*.

The Mill Creek Conservation Easement (see **Figure 5.22-2** at the end of **Section 5.22**, *Managed Lands and Natural Areas*) is located directly adjacent to and south of Wapehani Mountain Bike Park. It is privately owned by the Public Investment Corporation, but managed by the City of Bloomington for habitat conservation purposes. Because the easement is not under public ownership and the purpose of the easement does not provide for public use, the requirements of Section 4(f) do not apply to the Mill Creek Conservation Easement (see 23 CFR §774.11(d)). While not a Section 4(f) resource, potential impacts to the Mill Creek Conservation Easement are addressed in **Sections 5.3**, *Land Use and Community Impacts*, and **Section 5.22**, *Managed Lands and Natural Areas*.

Brown's Woods (see **Figure 5.22-3** at the end of **Section 5.22**, *Managed Lands and Natural Areas*), consists of two woodland parcels on either side of Basswood Drive and east of SR 37, in a developing area of the city. The property was donated under a Memorandum of Understanding to the Community Foundation of Bloomington and Monroe County, Inc. (Foundation) to

preserve it, in perpetuity, as undeveloped land for the benefit of wildlife, plant communities, and the general public. The property is privately owned by the Community Real Estate Holdings, LLC, a holding company for the Foundation. The City of Bloomington Parks and Recreation Department maintains the property as a woodland under a Lease Agreement with the Foundation.[2] Section 4(f) does not apply to Brown's Woods (see 23 CFR §774.11(d)) because it is not under public ownership; and, while public access is allowed, the property is maintained by the City of Bloomington as a natural woodland. While there is no use of this resource under Refined Preferred Alternative 8, potential impacts to Brown's Woods (Public-3) under Alternatives 4 and 5 are addressed in **Sections 5.3**, *Land Use and Community Impacts*, and **Section 5.22**, *Managed Lands and Natural Areas*.

With the exception of Wapehani Mountain Bike Park, there are no known publicly-owned parks, recreation areas, or wildlife or waterfowl refuges within the corridor for Section 5 that qualify for protection under Section 4(f). Although some properties in the Section 5 corridor use public funding to support the types of programs subject to Section 4(f) (see **Section 5.22**, *Managed Lands and Natural Areas*), none of the identified properties are encumbered by any permanent governmental proprietary interest in the land (such as fee ownership or permanent easement). Thus, these lands are not subject to the protections of Section 4(f).

8.3 Section 4(f) Resources—Historic and Archaeological Resources

Section 4(f) applies to historic properties and archeological resources that are listed in or are eligible for listing in the NRHP. In addition, for archaeological resources, sites must also be important for "preservation in place" to qualify for protection as a Section 4(f) property. Listed and eligible historic and archaeological resources were identified through Section 106 consultation under the National Historic Preservation Act per 23 CFR §774.17 (definition of "Section 4(f) Property"). In addition, the effects of the undertaking on those properties listed in or eligible for listing in the NRHP have been assessed (see **Section 5.13**, *Historic Resource Impacts* and **Appendix N,** *Section 106 Documentation*).[3,4] The proposed project would permanently use only one of the 11 historic properties that are either NRHP-listed or NRHP-eligible: the North Clear Creek Historic Landscape District.

8.3.1 *De Minimis* Impact Findings – North Clear Creek Historic Landscape District

North Clear Creek Historic Landscape District is located in Perry Township, Monroe County, as shown on **Figure 8-1**, **Figure 8-2**, and **Figure 8-6**. Within the Area of Potential Effects (APE),

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[2] Personal communications, Renee Chambers with the Community Foundation, January 23, 2013 and March 23, 2013.

[3] Michael Baker Jr., Inc. for Federal Highway Administration and Indiana Department of Transportation. I-69 Evansville to Indianapolis Tier 2 Studies: *Draft Identification of Effects Report*. Section 5, SR 37 South of Bloomington to SR 39. April 2012.

[4] Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology. Project coordination letters, dated July 12, 2012; May 23, 2012; and February 20, 2012.

the district is approximately 139.3 acres. It is eligible for the NRHP under Criterion A[5] as it represents a "late-developed pocket" of industrial activity that occurred at the end of the period of "boom, merger, and overcapacity," in the Indiana limestone industry.[6] The district is also eligible for the NRHP under Criterion D for its data potential.[7]

North Clear Creek Historic Landscape District refers to the geographic area west of Rockport Road and north of Fullerton Pike, to the east of existing SR 37. The historic landscape district is situated north of the Clear Creek limestone area, which is located in the Indiana Limestone Belt of south-central Indiana. This area has been historically well-suited for limestone quarrying and milling due to the large presence of good-quality stone just below the earth's surface, good water supply, and nearby transportation networks. For detailed information on this historic landscape district, see the *Identification of Effects Report* and the 800.11(e) documentation in **Appendix N**, *Section 106 Documentation*.

On October 26, 2012, FHWA sent the SHPO the signed findings and documentation package for the undertaking including a statement informing the SHPO that FHWA intended to make a *de minimis* impact finding for the North Clear Creek Historic Landscape District based upon their concurrence in the Section 106 determination (see **Appendix N,** *Section 106 Documentation*).[8] In a letter dated November 21, 2012, SHPO concurred with FHWA's finding that the undertaking would not adversely affect any above-ground historic resources. Because Refined Preferred Alternative 8 would have No Adverse Effect to the North Clear Creek Historic Landscape District, FHWA finds the project will result in a *de minimis* impact for the property.

On April 23, 2013, FHWA transmitted a letter to ACHP to formally notify the latter of the "No Adverse Effect" determination for the North Clear Creek Historic Landscape District. The letter requested the ACHP provide written concurrence of the finding. It also indicated that after receiving ACHP's concurrence with the finding, FHWA would make a *de minimis* impact finding for the property under Section 4(f). The ACHP concurred with the No Adverse Effect Finding on North Clear Creek Historic Landscape District on May 9, 2013. See the 800.11(e) documentation in **Appendix N**, *Section 106 Documentation*, for copies of the letters.

Table 8-2 provides a summary of each alternative's use of lands within the North Clear Creek Historic Landscape District (due to improvements along West Fullerton Pike) and a determination of effect that each alternative would have on the district.

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5 The National Park Service's National Register criteria for evaluating properties states that Criterion (A) is associated with events that have made a significant contribution to the broad patterns of our history.

6 Steelwater, Woolery Stone Company, Sect.8, p. 35; Batchelor, *Economic History of the Limestone Industry*, 183.

7 The National Park Service's National Register criteria for evaluating properties states that Criterion (D) is associated with resources or places that have yielded or may be likely to yield information important in prehistory or history.

8 Michael Baker Jr., Inc. for Federal Highway Administration and Indiana Department of Transportation. Federal Highway Administration Documentation of Section 106 Finding of Adverse Effect Submitted to the State Historic Preservation Officer Pursuant to 800.6(A)(3) I-69 Evansville to Indianapolis Tier 2 Study: Section 5, SR 37 South of Bloomington to SR 39 Des No.: 0300381. October 2012.

Table 8-2: Section 4(f) Use of Lands within North Clear Creek Historic Landscape District[a]

Alternative	Area of Use (acres)	Areas of Use (%)[b]	Determination of Effect	Section 4(f) Use
Alternative 4	12.69	9.1%	Adverse Effect	Yes
Alternative 5	12.68	9.1%	Adverse Effect	Yes
Alternative 6	2.42	1.7%	No Adverse Effect	*de minimis*
Alternative 7	0	0.0%	No Adverse Effect	No
Alternative 8	2.41	1.7%	No Adverse Effect	*de minimis*
Refined Preferred Alternative 8	1.96	1.4%	No Adverse Effect	*de minimis*

Notes:

[a] *For more information on the effects to the district, reference the Federal Highway Administration Documentation Of Section 106 Finding Of Adverse Effect Submitted To The State Historic Preservation Officer Pursuant To 800.6(A)(3), I-69 Evansville To Indianapolis Tier 2 Study: Section 5, SR 37 South Of Bloomington To SR 39 Des No.: 0300381 and the Identification of Effects Report can be found in* ***Appendix N****, Section 106 Documentation.*

[b] *Areas of Use (%) are based on the area of the Section 4(f) resource within the Area of Potential Effects (APE). In this case, 139.3 acres. The total acreage for the district is much larger than that which falls within the APE, but the number has not been calculated.*

Alternatives 4, 5, 6, 8, and Refined Preferred Alternative 8 would result in the direct loss of property from the southern boundary of the district. Alternative 7 would avoid the acquisition of property from the district for permanent conversion to transportation use. As shown in **Figure 8-6**, Alternatives 4 and 5 would shift West Fullerton Pike to the northwest and require improvements along South Rockport Road to realign and change the grade of approaches to the West Fullerton Pike-South Rockport Road intersection to reduce its skew and improve sight distance. A new local access road would be constructed on the southwest corner of the district to provide access to an approximately 92-acre parcel and align with the City of Bloomington's long-term plans for a new road between West Fullerton Pike and West Tapp Road that roughly parallels existing SR 37. Alternative 4 and 5 would use approximately 9.1% of the district that falls within the APE (the total acreage for the district is much larger than that which falls within the APE, but the number has not been calculated).[9]

In their July 12, 2012 letter, the SHPO concurred with FHWA that Alternatives 4 and 5 would have a direct effect along South Rockport Road that adversely affects the setting of the district. This direct effect results from the fill material associated with construction of an access road for the properties west of North Clear Creek Historic Landscape District and the realignment of

[9] The Federal Highway Administration Documentation Of Section 106 Finding Of Adverse Effect Submitted To The State Historic Preservation Officer Pursuant To 800.6(A)(3), I-69 Evansville To Indianapolis Tier 2 Study: Section 5, SR 37 South Of Bloomington To SR 39 Des No.: 0300381 and the *Identification of Effects Report* can be found in Appendix N, *Section 106 Documentation.*

South Rockport Road, which is a Contributing feature of the district. A Section 4(f) use of this resource would result if Alternatives 4 or 5 were to be incorporated into the preferred alternative at this location.

Alternatives 6 and 8 would require 2.42 acres and 2.41 acres for new right-of-way, respectively, or up to about 1.7% of the North Clear Creek Historic Landscape District (within the APE). Approximately 1.0 acre of the district's southern border would be covered with fill material. Refined Preferred Alternative 8 further minimized right-of-way needs at this location and would acquire 1.96 acres of property for new right-of-way, which represents about 1.4% of the North Clear Creek Historic Landscape District (within the APE). Approximately 1.0 acre of the district's southern border would be covered with fill material. A Non-Contributing modern driveway and office building would be directly affected by these alternatives due to upgrades to existing West Fullerton Pike between SR 37 and South Rockport Road, but no Contributing resources would be taken. The elevation of West Fullerton Pike at the C&H Stone Company driveway would increase approximately 16 feet. The layout of and relationship between Contributing features in the district would not be changed.

The southern property boundary of the North Clear Creek Historic Landscape District would border the project right-of-way for approximately 1,058 feet along the West Fullerton Pike roadway improvement area. The undertaking would be visible from the southwestern edge of the district. The mainline of Refined Preferred Alternative 8 would use existing SR 37 and would feature a folded loop interchange at West Fullerton Pike with ramps in the northwest and southeast quadrants. The nearest project right-of-way is immediately adjacent to the historic district along West Fullerton Pike. The nearest mainline right-of-way would be approximately 1,100 feet from the district's western boundary.

Roadway improvements for Refined Preferred Alternative 8 along West Fullerton Pike will be visible in the North Clear Creek Historic Landscape District; the low points of West Fullerton Pike will be raised up to 40 feet above the existing elevation. At the modern entrance to C&H Stone Company on West Fullerton Pike, the road would be elevated as much as 16 feet above current elevations. Future negotiations with the property owner will determine if the Non-Contributing, modern driveway feature will remain open and elevated to the new level of West Fullerton Pike or be abandoned and access to the parcel provided by the historic main entrance on South Rockport Road. The undertaking would be visible from the southern border of the district, including from the southern entrance to C&H Stone Company.

Present sources of ambient light include headlights from traffic on West Fullerton Pike and South Rockport Road, and scattered lights from homes along the south side of West Fullerton Pike. Ambient light will not likely increase significantly. Moreover, a limestone district is not a property type whose setting is sensitive to changes in light levels. A noise analysis is not required for this resource because noise, or lack thereof, is not an aspect of the property's setting that qualifies it for the NRHP. Consulting parties have indicated that the undertaking has the potential to affect water quality and the quantity of drainage, especially as it relates to inactive quarrying operations in proximity to the undertaking. Per the Section 106 MOA, coordination will occur during the early stages of design "to ensure that roadway drainage from the Project

does not introduce effects that adversely impact the water quality and quantity at these historic properties." (See **Appendix N**, *Section 106 Documentation*, for a copy of the MOA.)

Contributing resources include buildings, structures, circulation networks, and quarrying/milling related features (e.g. quarry pits and waste piles) that convey the significance of the district. Concurrence from the SHPO through the Section 106 process affirms this small acquisition does not constitute an adverse effect because it does not remove any Contributing resources, does not diminish the overall integrity of the district, and does not impair the property's ability to convey its significance.

In their May 23, 2012 letter to FHWA, the SHPO concurred with FHWA that Alternatives 6 and 8 would have No Adverse Effect on the property's setting or the characteristics that made the district eligible for listing in the NRHP. This was confirmed in a meeting with the SHPO on August 7, 2012. The SHPO reaffirmed their position in a letter dated November 21, 2012, in response to FHWA's October 11, 2012 findings document. The Refined Preferred Alternative 8 mimics Alternative 8 (with refinements made to the proposed right-of-way in this area to further minimize impacts by 0.45-acre at this site). Alternative 7 would not require right-of-way, and would not include cut/fill from within the North Clear Creek Historic Landscape District. In their May 23, 2012 letter to FHWA, the SHPO concurred with FHWA that Alternative 7 would have No Adverse Effect on the district.

While Alternative 7 serves as the avoidance alternative, it would have substantial impacts to non-Section 4(f) resources. As the SHPO stated in its May 23, 2012 letter, "Given the presence of non-historic residences and wooded areas along West Fullerton Pike and South Rockport Road, we can imagine that the avoidance or minimization of such an adverse effect on the historic district might have other kinds of impacts on the natural and human environment." In order for Alternative 7 to avoid the historic landscape district, it would have to shift to the south, requiring the relocation of four additional residences, and it would impact six additional karst features (sinkholes). In addition, Alternative 7 would require double-s curves on West Fullerton Pike, thereby reducing the overall speed of the proposed facility and increasing the operational complexity for trucks hauling limestone to and from the adjacent mill and quarry. For these reasons, and because Alternatives 6 and 8 both have No Adverse Effect to the district (SHPO letter to FHWA, May 23, 2012, subsequent meeting with SHPO on August 7, 2012, and SHPO letter to FHWA, November 21, 2012), Alternatives 6 and 8 were identified as the preferred alternatives at this location.

As with the Wapehani Mountain Bike Park, a direct use of the North Clear Creek Historic Landscape District that does not adversely affect the features, attributes, and activities of the resource constitutes a *de minimis* impact. In such cases, the protections of Section 4(f) do not apply and such uses do not require a determination that there is no feasible and prudent alternative to that use. Alternatives 6 and 8, as well as Refined Preferred Alternative 8 meet the *de minimis* impact criteria.

As part of the public input process, input was sought on this proposed *de minimis* use of the North Clear Creek Historic Landscape District under Alternative 8 (the DEIS Preferred Alternative). Based upon public input and a comparison of impacts, the Refined Preferred

Alternative 8, which is similar to Alternative 8 in terms of impacts, is recommended adjacent to this district. The SHPO concurred in writing with the Section 106 determination of No Adverse Effect for the North Clear Creek Historic Landscape District under Alternative 8. The request for concurrence in the Section 106 determination included a statement informing the SHPO that the FHWA intended to make a *de minimis* finding regarding the use of this portion of the North Clear Creek Historic Landscape District based upon their concurrence with the effect finding in the Section 106 determination.

Section 106 consulting parties had disagreed in writing with the agency's finding of No Adverse Effect for some aboveground resources, including the North Clear Creek Historic Landscape District. Therefore, as per 36 CFR §800.5(c)(2), on February 4, 2013, the FHWA requested the Advisory Council on Historic Preservation (ACHP) review the finding and provide comments as to whether the Adverse Effect criteria had been correctly applied. On February 26, 2013, the ACHP indicated that it would "participate in consultation under Section 106 of the National Historic Preservation Act (16 U.S.C. §470[f]) to develop a Memorandum of Agreement for the proposed project." After a site visit and meeting with the consulting parties (March 13 and 14, 2013), the ACHP responded to the March 26, 2013 meeting summary and draft MOA in a letter dated April 15, 2013. In it, ACHP expressed general appreciation with the opportunities provided to consulting parties to share their concerns. The ACHP indicated that "the revised MOA accurately reflects our understanding of changes agreed upon as a result of these discussions." They provided several suggested revisions to the MOA, including correction of typographical errors, clarification in *Whereas* and *Now, Therefore* clauses, additional language in the *Drainage Impacts to Historic Resources* section, explanation in the *Multiple Property Documentation Form* section, and others.

On April 23, 2013, FHWA sent the ACHP a letter requesting written concurrence with the No Adverse Effect determination for the North Clear Creek Historic Landscape District for the undertaking. The letter included a statement informing the ACHP that FHWA intended to make a *de minimis* impact finding for the North Clear Creek Historic Landscape District based upon their concurrence with the Section 106 determination (see **Appendix N,** *Section 106 Documentation*).[10] In a letter dated May 9, 2013, the ACHP concurred with FHWA's determination that the undertaking would not adversely affect the North Clear Creek Historic Landscape District. See the 800.11(e) documentation in **Appendix N**, *Section 106 Documentation*, for copies of the letters.

8.3.2 Resources Not Meeting Section 4(f) Applicability Criteria

The proposed project would permanently use only one of the 11 historic properties that are either NRHP-listed or NRHP-eligible: the North Clear Creek Historic Landscape District. For the remaining 10 historic properties, Refined Preferred Alternative 8 would not result in a direct use

[10] Michael Baker Jr., Inc. for Federal Highway Administration and Indiana Department of Transportation. Federal Highway Administration Documentation of Section 106 Finding of Adverse Effect Submitted to the State Historic Preservation Officer Pursuant to 800.6(A)(3) I-69 Evansville to Indianapolis Tier 2 Study: Section 5, SR 37 South of Bloomington to SR 39 Des No.: 0300381. October 2012.

of nine of these resources. Monroe County Bridge No. 913 has been incorporated into the designs for all alternatives and is discussed in **Section 8.3.2.1**, *Historic Bridges Not Meeting Criteria*.

The evaluation of potential proximity impacts to the remaining historic properties found that there would be No Adverse Effect of these properties and that no such impacts of the project will be so severe that the activities, features, or attributes that qualify these resources for protection under Section 4(f) are substantially impaired per 23 CFR §774.15(a). Therefore, it is determined that there would be no constructive use of these remaining 10 resources in accordance with 23 CFR §774.15(f)(1).

8.3.2.1 Historic Bridges Not Meeting Criteria

Section 4(f) has special provisions for historic bridges and highways. The Section 4(f) statute places restrictions on the use of land from historic sites for highway improvements, but makes no mention of historic bridges or highways that are already serving as transportation facilities such as Bridge No. 913. Congress clearly did not intend to restrict the rehabilitation, repair, or improvement of these facilities. FHWA, therefore, determined that Section 4(f) only applies when an historic bridge or highway is demolished, or if the historic quality for which the facility was determined to be eligible for the NRHP is adversely affected by the proposed improvement.

Monroe County Bridge No. 913 has been incorporated into the designs for all alternatives, including Refined Preferred Alternative 8, to avoid adversely affecting it through neglect. While Monroe County Bridge No. 913 would be used as part of the design, the bridge would not be physically altered. The bridge is currently serving as a transportation resource and that use would not change. In addition, the SHPO, through the Section 106 process, has concurred that there would be No Adverse Effect to the resource. Because it has been incorporated into the design, and because it is in closer proximity to potential effects, additional consideration was given to Bridge No. 913. Bridge No. 913 was built in 1946. It is a single-span, steel, Warren polygonal chord pony truss bridge that carries two lanes of North SR 37 Business over Beanblossom Creek in Bloomington Township, Monroe County. It has been determined eligible for the NRHP (NBI No. 5300130; Select Bridge) in the Indiana Historic Bridge Inventory under Criterion C.[11] Through the Section 106 process, it has been determined that none of the alternatives would directly alter any of the characteristics of Bridge No. 913 that are the cause for its NRHP eligibility. Indirect visual and auditory effects upon the bridge's setting are anticipated, but would not be adverse. Therefore, there will be no Section 4(f) use of and a Section 4(f) Evaluation will not be prepared for Bridge No. 913 based on the following:

- Bridge No. 913 is already serving as a transportation facility for North SR 37;

[11] The National Park Service's National Register criteria for evaluating properties states that Criterion (C) is associated with resources that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

- There would be no direct changes to the existing bridge under any of the proposed alternatives; and,
- The indirect and visual effects of any of the alternatives on the bridge have been determined to not be adverse. A noise analysis is not required for this resource because noise, or lack thereof, is not an aspect of the property's setting that qualifies it for the NRHP.

8.3.2.2 Archaeological Resources Not Meeting Criteria

Phase Ia archaeological surveys were conducted for the Section 5 alternatives to identify whether NRHP-eligible archaeological resources are present and to determine what effect the proposed I-69 undertaking could have on those resources. A Phase Ia archaeological survey of most of the southern half of the proposed Alternatives 4 and 5 project rights-of-way was conducted in 2006-2007; the remaining unsurveyed portions of the archaeological APE for Alternative 8 as described in the DEIS were surveyed and documented in June-August and in November of 2012. Necessary Phase Ib background research (for sites initially surveyed during the 2006-2007 investigation) was conducted at the same time.

As stated in **Section 5.14**, *Archaeology Impacts,* the 2006-2007 Phase Ia archaeological investigations within portions of the Section 5 Alternatives 4 and 5 identified 41 previously unrecorded archaeological sites. In the summer of 2012 (June-August), 41 additional sites were identified. In the fall of 2012, one additional site was identified for a total of 83 archaeological sites. The results of the 2006-2007 Phase Ia archaeological survey have been incorporated into *Phase Ia Archaeological Survey of the I-69 Evansville-to-Indianapolis Study, Section 5 (from SR 37 to SR 39), Monroe and Morgan Counties, Indiana* (April 13, 2012). The results of the 2012 Phase Ia archaeological surveys have been incorporated into the *Addendum I* and *Addendum II: Phase Ia Archaeological Surveys of the I-69 Evansville-to-Indianapolis Study, Section 5 (from SR 37 to SR 39), Monroe and Morgan Counties, Indiana* (October 26, 2012 and March 2013). (See **Appendix N**, *Section 106 Documentation*, for management summaries from these reports.) These sites are also summarized in **Section 5.14**, *Archaeology Impacts*, **Table 5.14-2**.

Of all the surveyed sites, one site is a Contributing element to the North Clear Creek Historic Landscape District (12Mo1416), but is located outside the Refined Preferred Alternative 8 right-of-way limits. Three sites within, or in proximity to, the Refined Preferred Alternative 8 right-of-way limits are potentially eligible for listing in the NRHP (Site 12Mo1442 is located partially within the Refined Preferred Alternative 8 right-of-way; sites 12Mg456 and 12Mo1413 are located in proximity to the right-of-way). If unavoidable, the sites that are potentially eligible will be subjected to Phase II testing as provided in the MOA, the results of which will be submitted to SHPO for review and comment. Eleven sites have insufficient data for eligibility determination (12Mo1401, 12Mg467, 12Mg458, 12Mo1432, 12Mo1434, 12Mo1435, 12Mo1444, 12Mo1445, 12Mo1450, 12Mo1451, and 12Mo1452). The portions of these sites within the right-of-way limits did not contain significant archaeological deposits. Therefore, additional archaeological investigations were not recommended at these sites. The portions of sites outside the right-of-way were recommended for avoidance or additional study. There was also insufficient information regarding archaeological site 12Mg450. However, given its location, Phase Ic testing is recommended if it cannot be avoided by the project. The remaining

67 identified archaeological sites have been recommended as not eligible for listing in the NRHP. In addition, limited Phase Ic testing was recommended at 19 low-lying alluvial floodplain areas, in the vicinities of Little Indian Creek, Jordan Creek, and Buckner Branch, as well as other drainage areas in the project area (such as Beanblossom Creek and Bryant Creek).

Commitments for completion of additional archaeology investigations at these sites are included in an MOA. If the results of further testing show that additional archaeological investigations or mitigation would be warranted, that work would be completed, in consultation with the Indiana SHPO, before construction of the project could begin in those areas. The MOA also outlines procedures for completing additional Phase Ia survey work in previously unsurveyed areas of the APE. When the Refined Preferred Alternative 8 was delineated at the beginning of 2013, minor shifts in the proposed right-of-way created several small areas where the Phase Ia archaeological survey has not taken place. (See **Appendix N**, *Section 106 Documentation* for a copy of the MOA.)

The FHWA's Section 4(f) regulations exempt archeological sites from Section 4(f) protection if the archaeological resource is important "chiefly because of what can be learned by data recovery and has minimal value for preservation in place" per 23 CFR §774.13(b)(1). This exemption from Section 4(f) is effective only if the "official with jurisdiction over the Section 4(f) resource ha[s] been consulted and ha[s] not objected…" to the use of the exemption per 23 CFR §774.13(b)(2). Most archaeological resources qualify for this exemption. The archeological sites identified within Section 5 thus far are all chiefly important for what information can be gained from data recovery and have little value for preservation in place.

Commitments to mitigate adverse impacts to archaeological resources that are determined eligible for the NRHP as a result of the Section 5 project have been developed through a MOA. Additional commitments for the completion of Phase Ia, Phase Ic and Phase II investigations, and any subsequent phases of archaeological investigation have also been incorporated into the MOA (see **Appendix N**, *Section 106 Documentation* for a copy of the MOA). The ACHP, SHPO, INDOT, FHWA and other signatories are parties to the document. If the results of this additional testing show that a Phase III is warranted, that work will be completed before construction on the project could begin at that site. If a site is determined to require consideration under Section 4(f), the appropriate procedures will be initiated.

8.4 Section 6(f) Resources

The Land and Water Conservation Fund Act of 1965 established grants-in-aid funding to assist states in the planning, acquisition, and development of outdoor recreational land and water area facilities. Section 6(f) of the Act prohibits the conversion of any property acquired or developed with any assistance of the fund to anything other than public outdoor recreation use without the approval of the Secretary of the Department of the Interior.

Fieldwork, communications with the public, and coordination with the Indiana Department of Natural Resources (Division of Outdoor Recreation), and the National Park Service's Land and Water Conservation Fund (LWCF) website confirmed that there are no known resources funded by the Land and Water Conservation Act that would be affected by Section 5.

8.5 Conclusion

The *de minimis* impact determinations regarding the use of up to 1.73 acres of Wapehani Mountain Bike Park and approximately 1.96 acres of North Clear Creek Historic Landscape District include consideration of supporting documentation that demonstrate that the impacts, after avoidance, minimization, mitigation, or enhancement measures are taken into account, are *de minimis* as defined in 23 CFR §774.17; and coordination required by 23 CFR §774.5(b) has been completed.

These determinations are made in accordance with 23 CFR §774.7(e)(2), with regard to the preliminary Section 4(f) findings made in Tier 1 with respect to Section 5 of the I-69 Evansville to Indianapolis project. As established by the additional analysis in this Tier 2 study of the preliminary findings in the Tier 1 study, a new Section 4(f) use was identified.

Based upon public input and a comparison of impacts, Refined Preferred Alternative 8 proposes "no shift" of the alignment at the Wapehani Mountain Bike Park (similar to Alternative 7); thereby using up to 1.73 acres of the park. Right-of-way needed will be in the form of a strip of land approximately 20 to 80 feet wide along the current western boundary of the park, adjacent to and east of the existing SR 37 right-of-way containing approximately 310 feet of wooded trail with a foot bridge. Upon the approval of the FEIS/ROD, FHWA hereby makes a *de minimis* finding regarding the use of the Wapehani Mountain Bike Park. This finding is made after consideration of mitigation to offset impacts, and with the written concurrence of the City of Bloomington after the City was afforded the opportunity to review public comments on the DEIS pertaining to this resource (as documented in **Appendix QQ**, *Wapehani MOA*).

Refined Preferred Alternative 8 also uses approximately 1.96 acres of the North Clear Creek Historic Landscape District. As evidence that Alternative 8 (the DEIS Preferred Alternative) minimizes harm, the SHPO agreed with FHWA's determination that it would have No Adverse Effect on the historic district. Upon the approval of the FEIS/ROD, FHWA hereby makes a *de minimis* finding regarding the use of the district. FHWA notified the SHPO of its plans to make a *de minimis* finding; SHPO formally concurred with the No Adverse Effect finding for above-ground historic resources in a letter dated November 21, 2012; the ACHP formally concurred with the No Adverse Effect finding for the North Clear Creek Historic Landscape District in a letter dated May 9, 2013; and, FHWA received and considered public comments on the issue. The refinements made to the right-of-way for Refined Preferred Alternative 8 have further minimized impacts, by 0.45-acre, at this site, thus reducing the impact that would have resulted from the DEIS Preferred Alternative 8.

Though it has been determined to be unlikely, in accordance with 23 CFR §774.11(f) and §774.13(b), if any archaeological sites eligible for the NRHP are identified that should be preserved in place, the protections under Section 4(f) will be applied.

Chapter 8 Figure Index

(Figures follow this index, except as otherwise noted)

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Figure 8-3:	Section 4(f) Uses - Wapehani Mountain Bike Park	2 Sheets
Figure 8-4:	Portion of Trail Adjacent to SR 37– Wapehani Mountain Bike Park	(p. 8-5)
Figure 8-5:	SR 37 Sideslope near Foot Bridge – Wapehani Mountain Bike Park	(p. 8-5)
Figure 8-6:	Section 4(f) Uses - North Clear Creek Historic Landscape District with Contributing and Non-Contributing Resources	1 Sheet

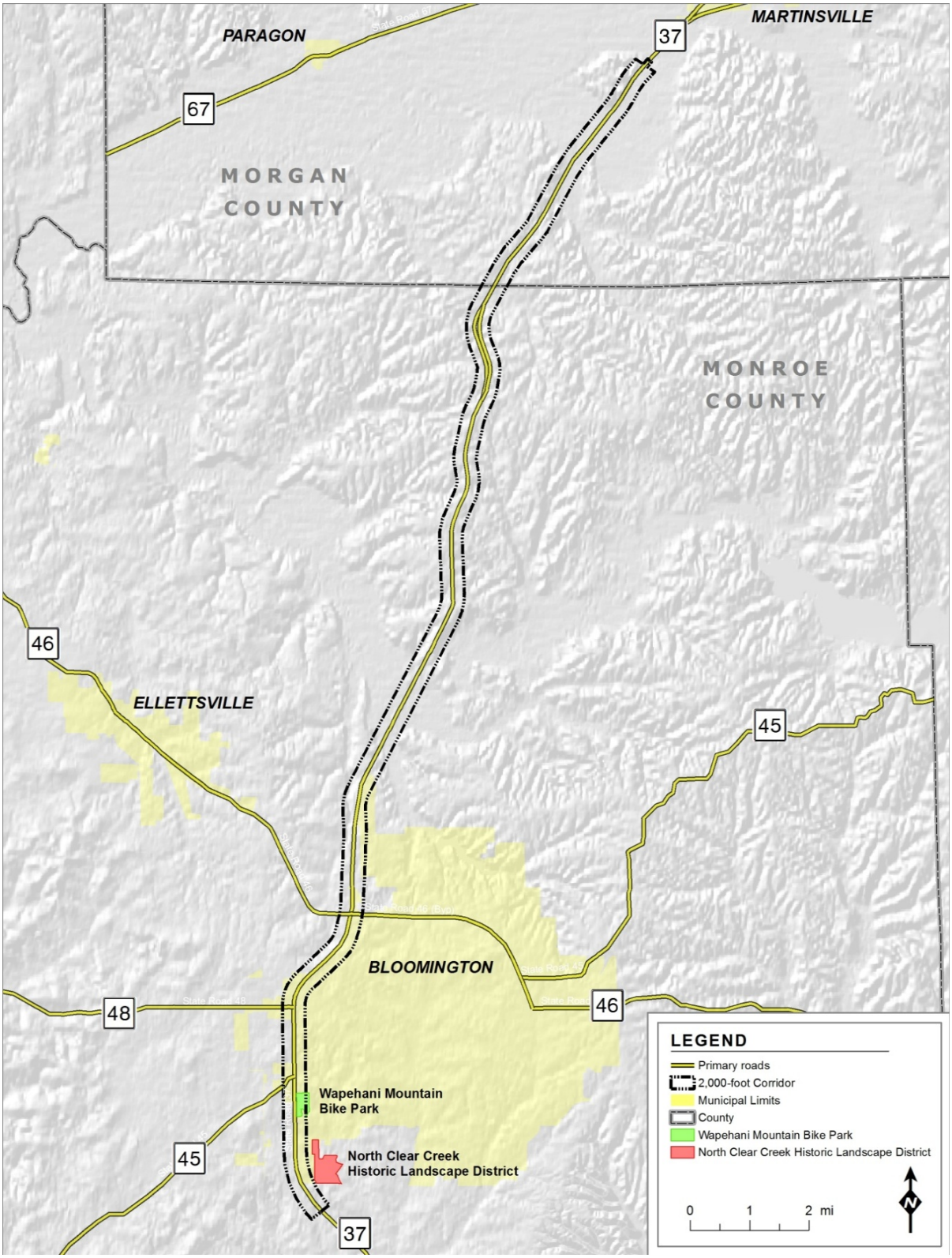

Figure 8-1: Location of Section 4(f) Resources

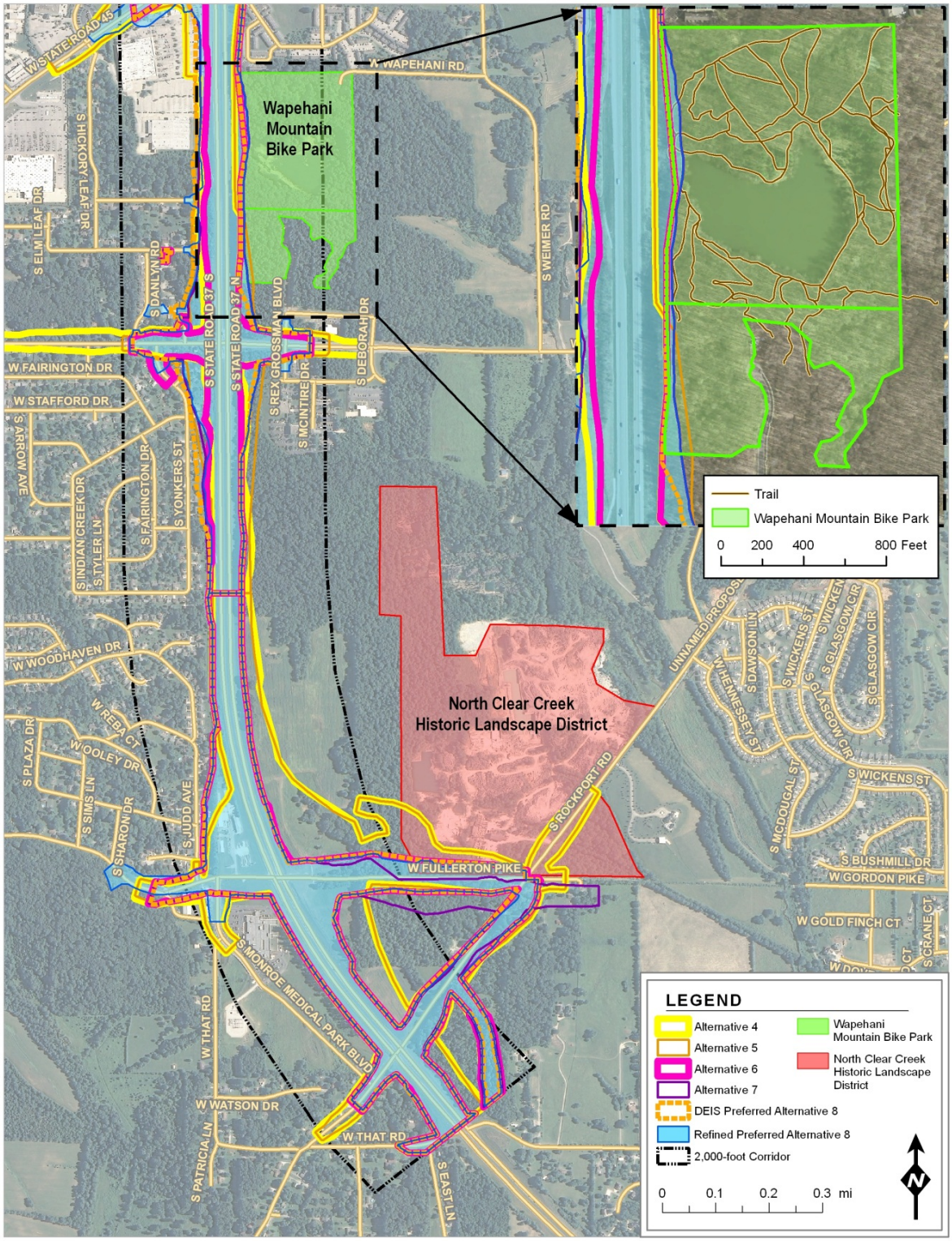

Figure 8-2: Section 4(f) Uses - Aerial View

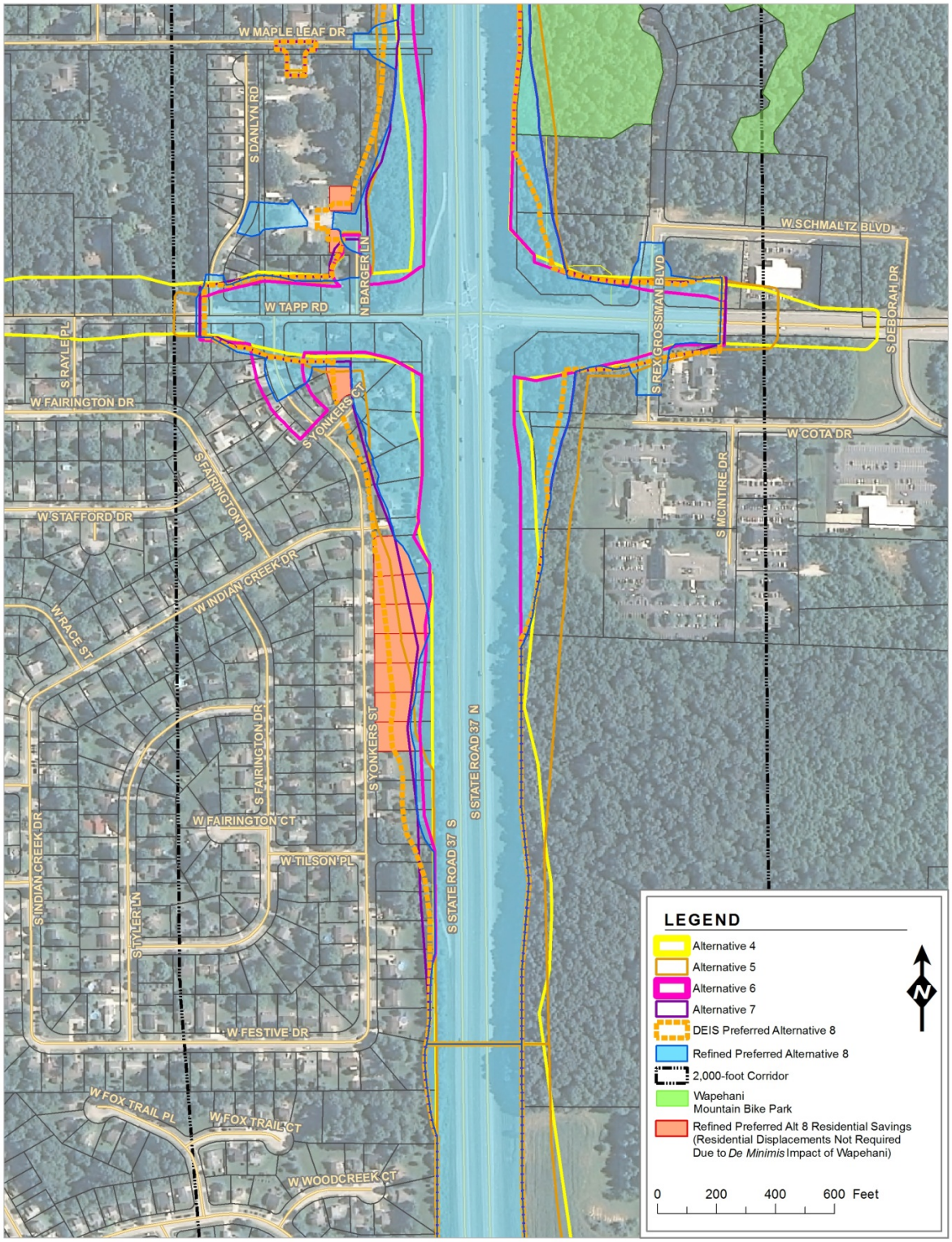

Figure 8-3: Section 4(f) Uses – Wapehani Mountain Bike Park (Sheet 1 of 2)

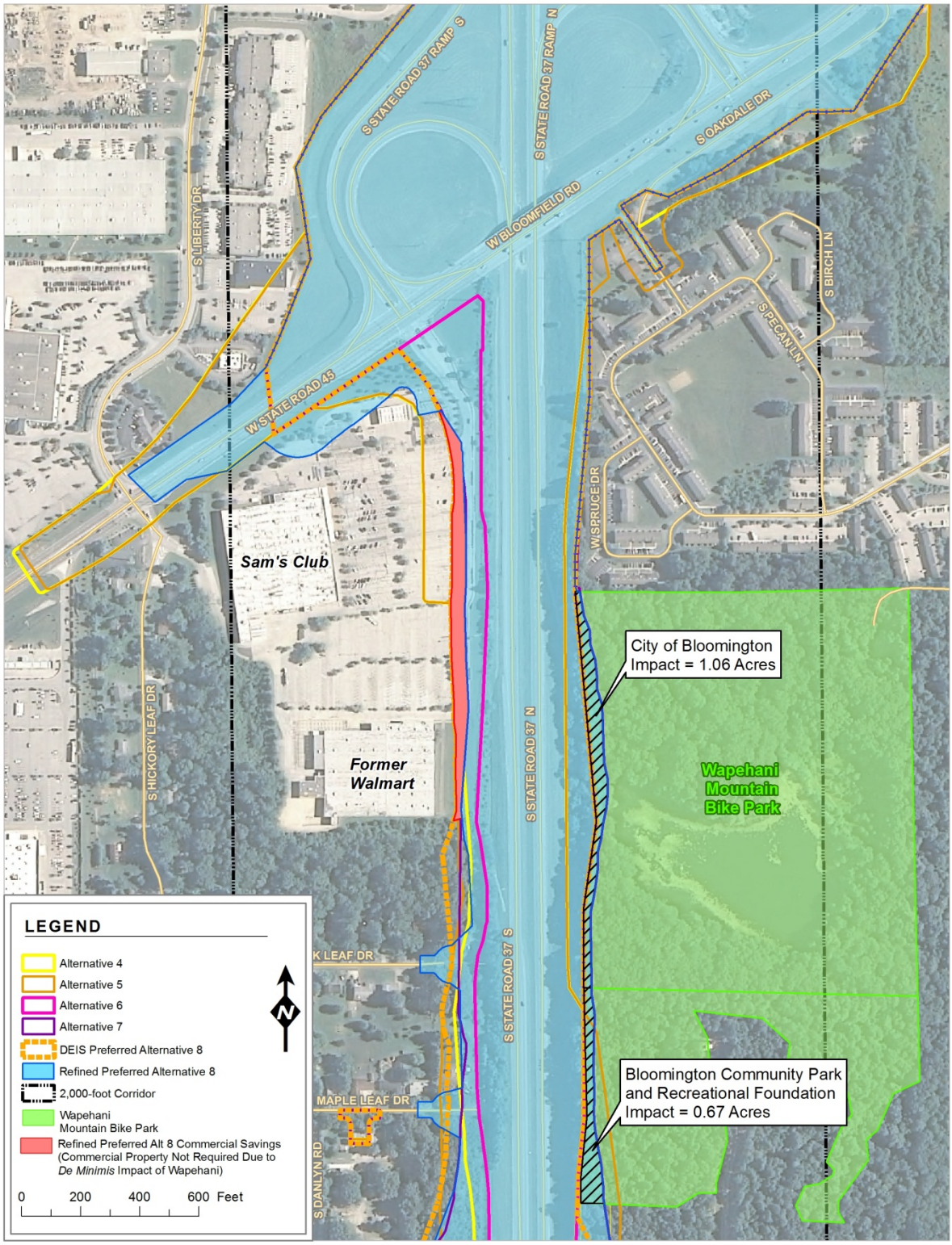

Figure 8-3: Section 4(f) Uses - Wapehani Mountain Bike Park (Sheet 2 of 2)

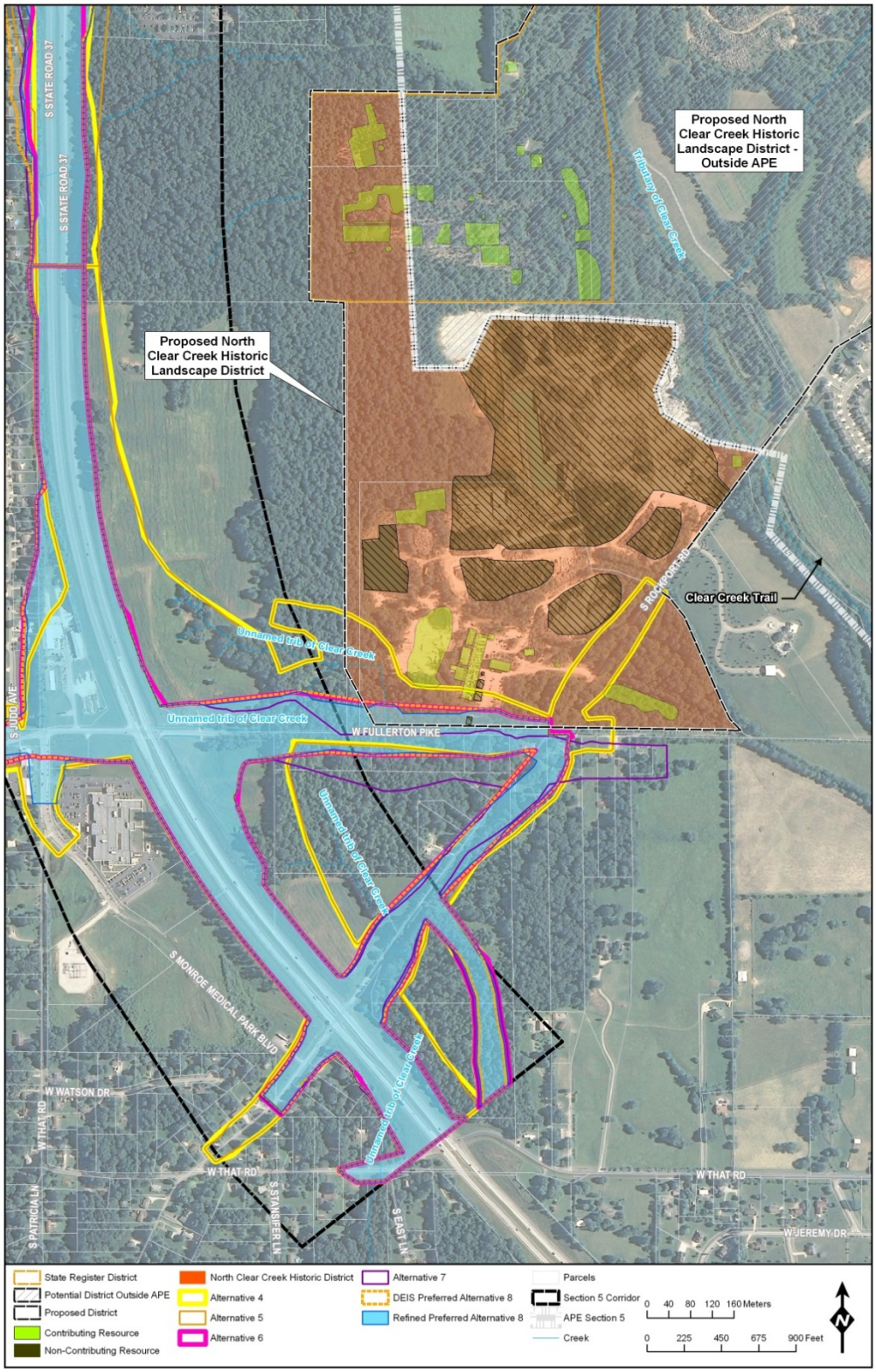

Figure 8-6: Section 4(f) Uses – North Clear Creek Historic Landscape District with Contributing and Non-Contributing Resources

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