



## Chapter 8 — Section 4(f)

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

- Section 8.2 - Added information regarding US Department of Interior (USDOI) correspondence concurring with determination of impacts.
- Section 8.3 – Added information regarding USDOI and SHPO correspondence concurring with Section 4(f) determination.
- Section 8.3 – Discussed results of Phase Ia archaeological investigations, and development of a Memorandum of Agreement.
- Section 8.5 – Added information relating to FHWA’s final determination regarding Section 4(f).

### 8.1 Introduction

Section 4(f) of the Department of Transportation Act of 1966, 49 USC 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 which 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 on or eligible for inclusion in the National Register of Historic Places (NRHP).
- Archaeological sites where preservation in place provides important value.

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 or eligible for listing in the NRHP



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are not required to be publicly-owned in order to be protected under Section 4(f). Archaeological sites must also be on or eligible for the National Register and important for ‘preservation in place’ in order not to be considered an exception from Section 4(f).

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 C.F.R. Part 774. The Section 4(f) findings made in the Tier 1 ROD relied on the previous regulations found at 23 C.F.R. 771.135. The findings in this Tier 2 document are based on the new regulations in Part 774.

### **8.2 Section 4(f) Resources-Parks, Recreation Areas, and Wildlife Refuges**

The Section 4(f) evaluation for parks, recreation areas, and wildlife or waterfowl refuges involve 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.

There are no known publicly-owned parks, recreation areas, or wildlife or waterfowl refuges within the corridor for Section 4. Although some properties in the Section 4 corridor use public funding to support the types of programs subject to Section 4(f) (See Section 5.22), 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 Section 4(f).

The 7,863-acre Martin State Forest is managed by the Indiana Department of Natural Resources (IDNR), Division of Forestry. The Combs Unit of the Martin State Forest is situated on approximately 806 acres of land in close proximity to the Section 4 corridor (see **Figure 8-1**, p. 8-7), extending from the Taylor Ridge area east to Koleen, in Greene County. The Martin State Forest provides opportunities for dispersed recreational activities, such as primitive camping, hunting, fishing, picnicking, bird watching, and hiking. However, the Property Manager (the state official with jurisdiction) for the Combs Unit has stated that there is no specific management plan that describes its primary function as a sanctuary or refuge. There are no goals or objectives in a management plan that describe a sanctuary or refuge function. According to the Property Manager, the area is managed as a forest, with timber harvested occasionally. As a result, the requirements of Section 4(f) do not apply to the Combs Unit of the Martin State Forest, see 23 C.F.R. § 774.11(d).

The City of Bloomington Parks and Recreation Foundation Inc. owns a parcel of land (Parcel No. 014-17050-00) along a railroad right-of-way, located to the south of Tramway Road and west of Victor Pike in Monroe County (see **Figure 8-1**, p. 8-7). This parcel of land encroaches into the Section 4 corridor. Dave Williams, the Operations Director for the City of Bloomington Department of Parks and Recreation stated in a February 3, 2010, letter that the subject parcel is



significant for alternative transportation purposes. See **Appendix P**, *Correspondence-Government Other Than Resource Agencies*, for the full text of the letter. The letter states in part, “The subject parcel has been determined significant for alternative transportation purposes as formalized in the following City of Bloomington and Monroe County planning documents:

“--*Alternative Transportation & Greenways System Plan City of Bloomington -Adopted March 2008*

“--*Alternative Transportation & Greenways System Plan Monroe County Planning Department - Adopted May 2006.*”

Because the property has been determined significant for alternative transportation purposes, the requirements of Section 4(f) do not apply.

In a letter dated September 15, 2010 the USDOJ concurred with FHWA and INDOT that there are no public park/recreation or refuge properties eligible to be considered under Section 4(f) of the Department of Transportation Act of 1966 (48 U.S.C. 1653(f)). The Department of Interior indicated the Martin State Forest and the parcel of land owned by the City of Bloomington Parks and Recreation Foundation Inc., do not qualify as Section 4(f) properties.

### **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. Listed and eligible historic and archeological resources are identified through Section 106 consultation under the National Historic Preservation Act per 23 C.F.R. §774.17 (definition of "Section 4(f) Property"). FHWA's Section 4(f) regulations exempt archeological sites from Section 4(f) protection if the archeological resource is important "chiefly because of what can be learned by data recovery and has minimal value for preservation in place" per 23 C.F.R. §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 C.F.R. §774.13(b)(2). Most archeological resources qualify for this exemption.

Per the Section 106 process, historic resources have been identified (see **Figure 8-1**, p. 8-7) and the effects of the undertaking on those properties listed in or eligible for listing in the NRHP have been assessed. It was determined that no aboveground historic property would be adversely affected. Auditory and/or visual effects were identified at all historic property locations, and the effects were determined not to be adverse (See Section 5.13 for additional information regarding historic properties.)

There is no Section 4(f) use (permanent, temporary or constructive) of the identified aboveground historic properties. No land within the listed or eligible aboveground historic property boundaries will be permanently or temporarily incorporated into a transportation project. In addition, as described below, no proximity 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 C.F.R. § 774.15(a).



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The evaluation of potential proximity impacts for the Scotland Hotel, Blackmore Store and Stipp-Bender Farmstead determined that while there would be a minor change in the settings of these properties relating to noise level increases and visibility of the alternatives from the properties, the effect would not be adverse. The evaluation of potential proximity impacts for the Clifty Church, Greene County Bridge No. 311, Koontz House, Harris Ford Bridge, Maurice Head House and Monroe County Bridge No. 83 determined that while there would be a minor change in the settings of these properties relating to noise level increases, the effect would not be adverse. Because the above-described effects, if any, would not be adverse, it is determined that there would be no constructive use of these resources in accordance with 23 CFR 774.15(f)(1).

In a letter dated September 15, 2010 the USDOJ acknowledged that none of the historic properties eligible for inclusion in the National Register of Historic Places in the project area were found to be adversely affected by the project. The USDOJ indicated that the Draft EIS adequately documented appropriate consultation for these properties and had no further comments regarding Section 4(f).

In a letter dated October 26, 2010, the IDNR-DHPA issued its response to the DEIS. In this letter the SHPO agreed with the findings relating to aboveground historic resources.

Phase Ia archaeological surveys were conducted in Section 4 to identify whether NRHP-eligible archaeological resources are located within the APE of the preferred alternative, and to determine what effect the proposed I-69 undertaking could have on those resources. The Phase Ia survey identified 65 archaeological sites within the APE of the preferred alternative: 2 previously recorded and 63 new sites. The sites included: 15 prehistoric isolated finds, 35 prehistoric lithic scatters, 4 historic scatters/farmsteads, 7 multicomponent prehistoric/historic scatters, a historic logging feature, a historic excavation pit, a historic quarry, and a railroad spur. See **Table 5.14-2** for additional details. Four sites were recommended for Phase II investigations: 12Gr1775, 12Gr1783, 12Mo1345, and 12Mo1350. Seven sites were recommended for avoidance or additional study: 12Gr1779, 12Gr1784, 12Mo1268, 12Mo1272, 12Mo1273, 12Mo1325, and 12Mo776. Seven creek crossing locations (two crossings in Black Ankle Creek, one crossing in Mitchell Branch, and four crossings in Indian Creek) were also identified for Phase Ic archaeological investigations.

In addition, two NRHP-eligible archaeological districts were identified within the APE: the Virginia Iron Works Discontiguous Archaeological District and the Victor Limestone Discontiguous Archaeological District. One Contributing site within the Virginia Iron Works Discontiguous Archaeological District (12Mo1293), and one Contributing site within the Victor Limestone Discontiguous Archaeological District (12Mo1280) will be impacted by the project. In a letter dated February 15, 2011, the IDNR-DHPA concurred that these districts would be adversely affected. The IDNR-DHPA also noted that the impacted Contributing sites do not warrant preservation in place. Therefore, in accordance with 23 CFR 774.13(b), Section 4(f) does not apply to these sites.

Four resources identified through Phase Ia surveys are considered potentially eligible for listing in the NRHP, per evaluation through criteria outlined in 36 CFR 60.4. Commitments for the completion of Phase Ic and Phase II investigations, and any subsequent phases of archaeological



investigation have been incorporated into a Memorandum of Agreement (MOA) (dated May 12, 2011) between FHWA and IDNR-DHPA (included in FEIS **Appendix N Section 106 Documentation**). 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.

Archaeological sites, even if eligible for the NRHP, are not typically protected under Section 4(f) and none of the archaeological sites identified for this project have value for preservation in place. In accordance with 23 CFR 774.13(b), Section 4(f) does not apply to archaeological sites where it is determined that “the archaeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place.” Archaeological sites that must be preserved in place are rarely identified and it is unlikely that any would be identified within the APE of the preferred alternative in the remaining sites requiring surveys. The MOA establishes the necessary procedures for evaluating this potential, and addressing this if necessary with the SHPO and other consulting parties by applying the protections of Section 4(f) to the site.

#### **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) confirmed that there are no known resources funded by the Land and Water Conservation Act that would be affected by Section 4.

#### **8.5 Conclusion**

In accordance with 23 CFR 774.7(e)(2), the FHWA has made the following determination regarding the preliminary Section 4(f) findings made in Tier 1 with respect to Section 4 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, no new Section 4(f) use has been found and all possible planning to minimize the harm has occurred. Therefore the findings made in the Tier 1 Record of Decision are affirmed. The more detailed analysis conducted in Tier 2 did not raise any Section 4(f) issues not previously considered in Tier 1, and confirms the preliminary determination of "no use" with respect to Section 4 portion of the I-69 Evansville to Indianapolis project made during the Tier 1 study.



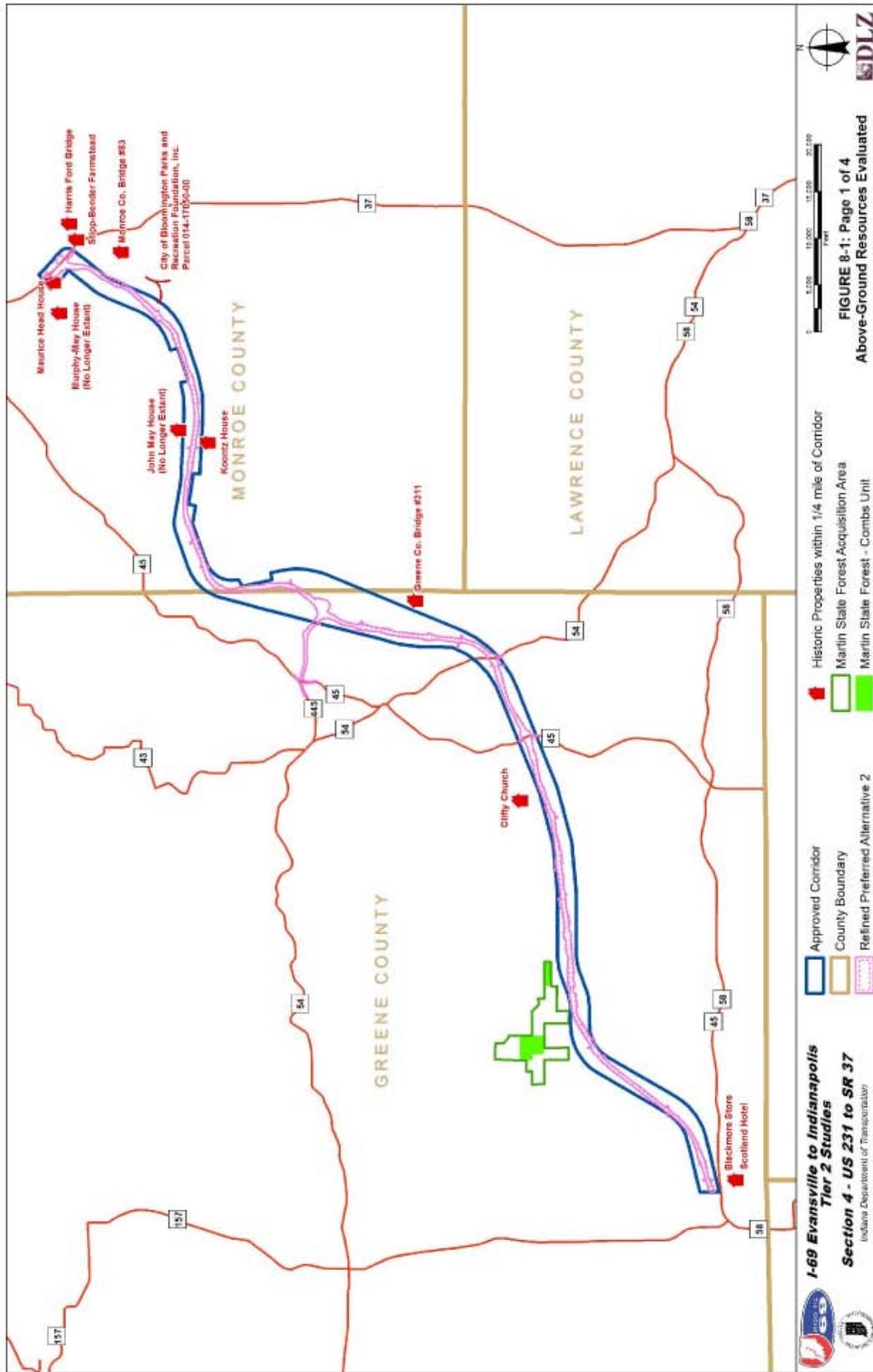
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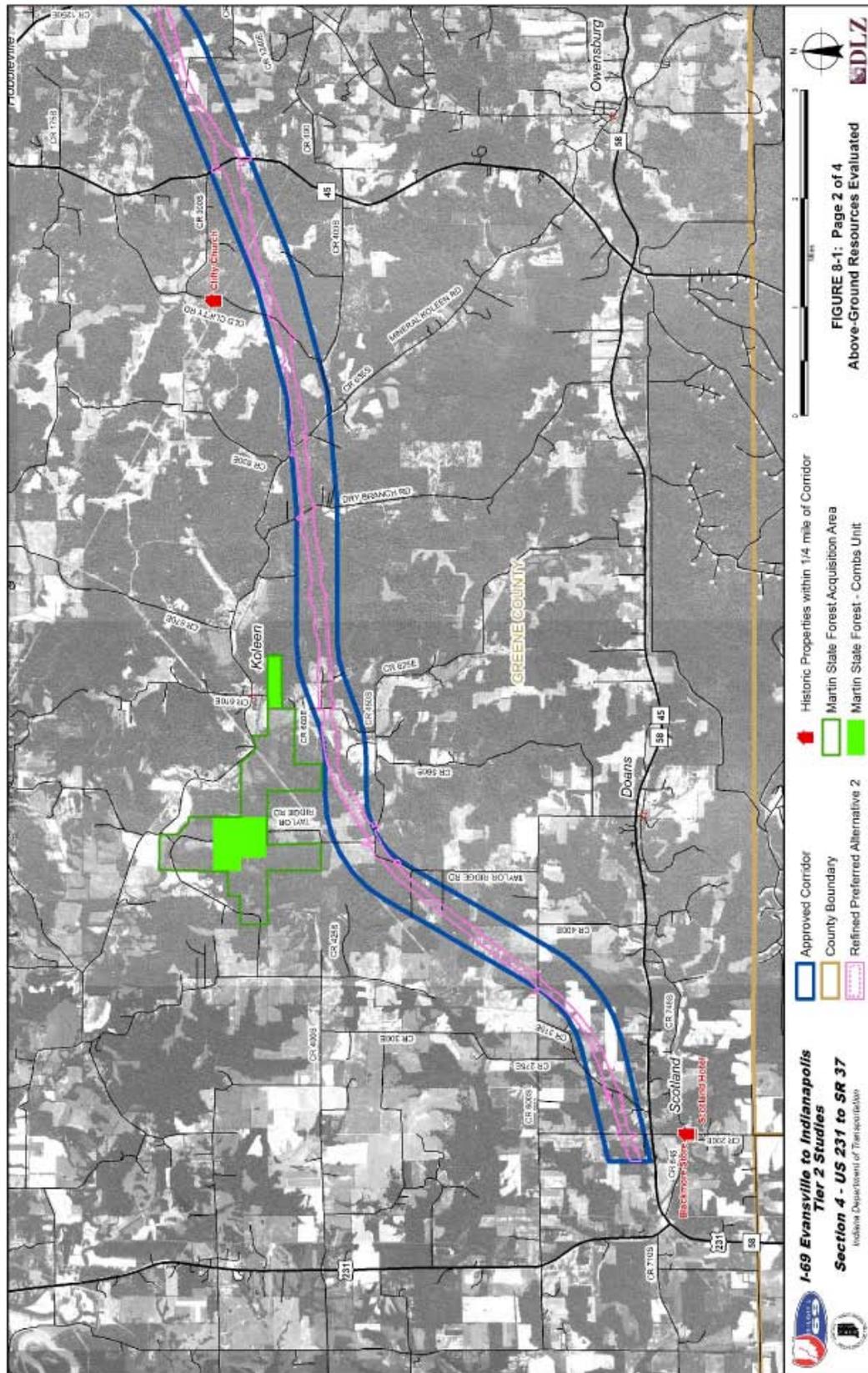
Though it has been determined to be unlikely, in accordance with 23 CFR 774.11(f) and 774.13(b), if any archaeological sites eligible for the NRHP are identified that should be preserved in place, the protections under Section 4(f) will be applied.



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