

# CHAPTER 5

## Section 4(f)





## 5 SECTION 4(f)

### 5.1 Introduction

This chapter provides a summary of a preliminary evaluation of potential effects to resources protected under a USDOT statute known as Section 4(f). It also discusses a regulation known as Section 6(f) that applies to park and recreation resources that have been acquired or developed with certain federal funds. Appendix I contains the preliminary Section 4(f) evaluation.

### 5.2 Section 4(f) Guidelines and Regulations

The U.S. Department of Transportation Act of 1966, Section 4(f), generally prohibits USDOT agencies (including the FTA) from approving projects that would use land from:

...a significant publicly-owned park, recreation area or wildlife and waterfowl refuge or any significant historic site, unless there is no feasible and prudent alternative to the use of land from the property and the action includes all possible planning to minimize harm to the property resulting from the use. Section 4(f) applies to three types of resources:

- Significant publicly owned parks, and significant recreation areas that are open to the public.
- Significant publicly owned wildlife and waterfowl refuges, whether or not they are open to the public.
- Historic sites of national, state, or local significance, whether or not these sites are publicly owned or open to the public. In most cases, only historic properties listed in or eligible for inclusion in the National Register of Historic Places (NRHP) are protected under Section 4(f).

A *use* is generally defined as a transportation activity that acquires land from a Section 4(f) property. A use can be permanent, temporary, or constructive. A constructive use occurs when the proximity effects of the project are so great that they substantially impair the protected activities, features, or attributes of a property, even though the project does not physically use the property.

Section 4(f) properties may not be used for any transportation project receiving federal funds or approval from a USDOT agency, except where: (a) *de minimis* impact occurs; (b) there is a specific exception to a use in Section 4(f) regulations; or (c) no feasible or prudent alternative exists. Section 4(f) requires that the action includes all possible planning to minimize harm to properties covered by the act.

The Section 4(f) study area for this project is based on the Area of Potential Effects (APE) used for the historic, cultural, and archaeological resources investigations, and

also takes into account the areas of effect and analyses from other EIS analyses, including parks and recreation.

### 5.3 Section 6(f) Resources

State and local governments often obtain grants through the Land and Water Conservation Fund Act to acquire or make improvements to parks and recreation areas. Section 6(f) of this act prohibits the conversion of property acquired or developed with these funds to a non-recreational purpose, without the approval of the U.S. Department of the Interior's (DOI), National Park Service. Because Section 4(f) lands may have been developed with Section 6(f) funds, a Section 6(f) analysis was also conducted. It confirmed that no potentially affected property was acquired or developed with these funds.

### 5.4 Section 4(f) Resources

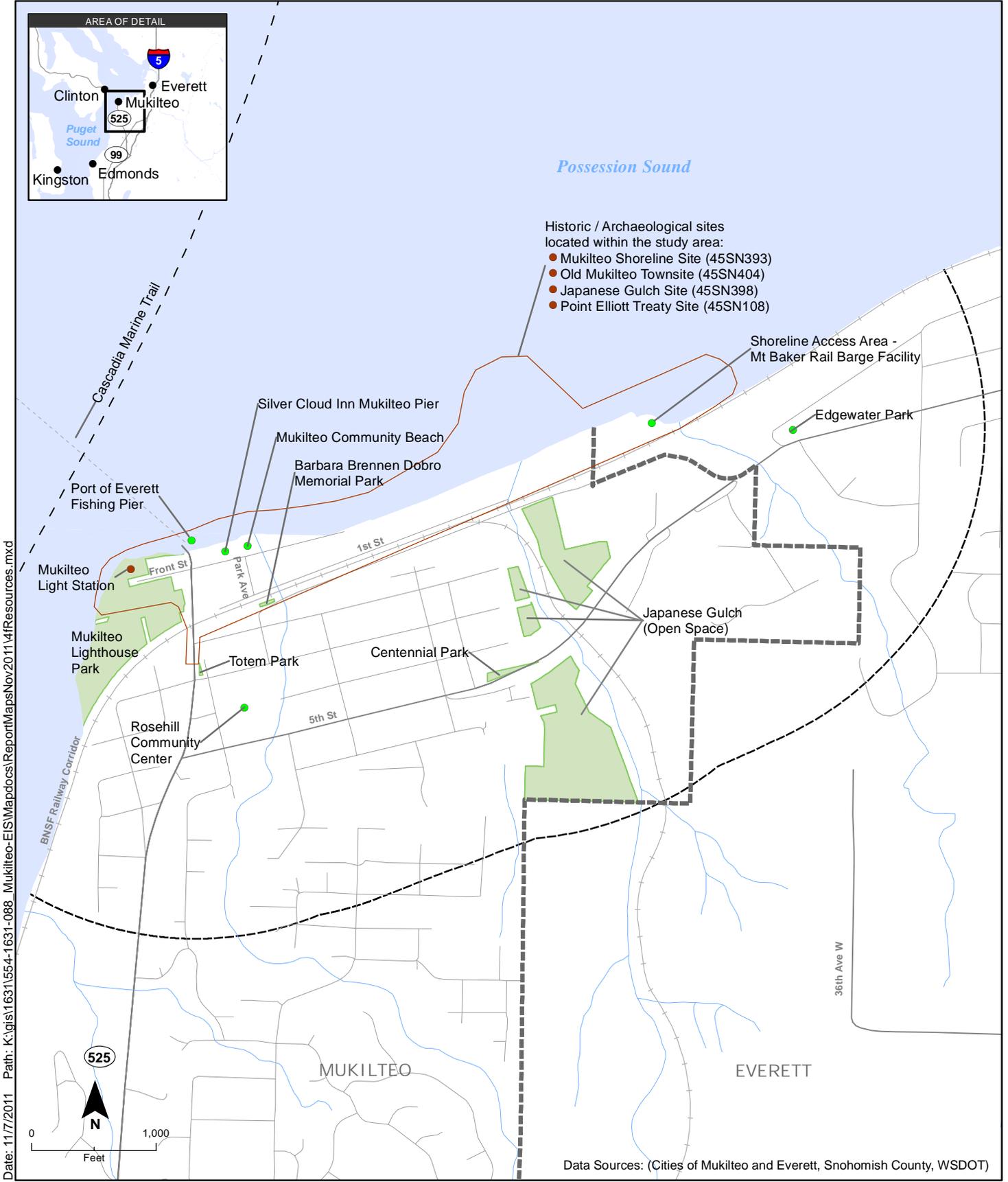
Section 4(f) resources in the study area are shown on Figure 5-1.

#### Parks and Recreation Resources

The project alternatives are near a number of park and recreational areas. Figure 5-1 shows the locations of the park and recreation Section 4(f) resources within the study area; these facilities are listed in Table 5-1 and described below.

**Table 5-1. Parkland and Recreational Section 4(f) Resources**

Park Resource	Owner/ Custodian	Recreational Use	Within the Study Area?	Section 4(f) Resource?
Cascadia Marine Trail	U.S. waters	Recreation	Yes	Yes
Mukilteo Lighthouse Park	City of Mukilteo	Active and passive recreation	Yes	Yes
Port of Everett Fishing Pier and Seasonal Day Moorage	Port of Everett	Active recreation	Yes	Yes
Silver Cloud Inn Pier	City of Mukilteo	Active recreation	Yes	Yes
Mukilteo Community Beach	City of Mukilteo	Shoreline access	Yes	Yes
Totem Park	City of Mukilteo	Passive recreation	Yes	Yes
Barbara Brennen Dobro Memorial Park	City of Mukilteo	Passive recreation	Yes	Yes
Centennial Park	City of Mukilteo	Passive recreation	Yes	Yes
Edgewater Park	City of Everett	Active and passive recreation	Yes	Yes
Port of Everett Mount Baker Terminal Shoreline Access Area	Port of Everett	Shoreline access (not currently open)	Yes	Yes
Japanese Gulch	City of Mukilteo	Passive recreation	Yes	Yes



- Legend**
- Historic Resources
  - Park and Recreational Resources
  - ▭ 1/2 Mile Study Area
  - ▭ Section 106 Area of Potential Effects
  - City Boundary

**Figure 5-1. 4(f) Resources**

The Cascadia Marine Trail is one of 16 non-motorized water trails designated as National Millennium Trails by the White House Millennium Council. It extends through Puget Sound from Olympia to Point Roberts on the U.S.-Canada border.

Mukilteo Lighthouse Park, a 14.4-acre park located west of the current terminal, includes the former Mukilteo State Park property, the former U.S. Coast Guard Light Station property, and adjacent Front Street right-of-way.

The Port of Everett has a fishing pier and seasonal day moorage located on the east side of the existing Mukilteo ferry terminal dock. The pier is documented in the City of Mukilteo's Public, Private Open Spaces and Recreational Facilities Map. The pier is open year-round to the public, and offers seasonal day moorage slips for boaters.

Adjacent to the Silver Cloud Inn is a public shoreline promenade that includes a pier. This pier supports recreation activities, such as view enjoyment and fishing.

Mukilteo Community Beach provides limited access to the shoreline at the terminus to Park Avenue. SCUBA divers use Mukilteo Community Beach as a launching site.

The Port of Everett's Mount Baker Terminal shoreline access area partially overlaps with an area locally referred to as Edgewater Beach. The area is not yet officially open, but it includes parking and a shoreline walkway and access area. As land dedicated to be a public recreational facility, it is a Section 4(f) resource.

Japanese Gulch is a designated open space owned by the City of Mukilteo. It offers informal trails and open space areas around Japanese Creek, adjacent to Mukilteo Lane and Fifth Street.

The other four resources are small parks located near the edges of the study area. Totem Park, at the intersection of SR 525 and Third Street, occupies approximately 0.10 acre, and features a picnic area, public views of Puget Sound, and art. Barbara Brennen Dobro Memorial Park is a small open space area featuring unobstructed views of Puget Sound. Centennial Park, located at 1126 Fifth Street, occupies approximately 0.25 acre and has picnic tables, public art, and a parking area. Edgewater Park, located in Everett, is in the southeast part of the study area, and includes picnic tables, tennis and basketball courts, and a playground.

### **Historic Resources**

Some properties within the project's APE are old enough to qualify for the NRHP. Table 5-2 presents the properties and identifies those that are listed or eligible for listing, and are Section 4(f) resources.

**Table 5-2. Historic and Cultural Section 4(f) Resources**

Resource	Location	NRHP-Eligible?	Within the APE?	Section 4(f) Resource?
Mukilteo Shoreline Site (45SN393)	Mukilteo Tank Farm Elliot Point	Yes	Yes	Yes
Point Elliott Treaty Site (45SN108)	Central Waterfront	Yes	Yes	Yes
Old Mukilteo Site (45SN404)	Park Avenue/ Front Street	Yes	Yes	Yes
Japanese Gulch Site (45SN398)	Japanese Creek/Mukilteo Tank Farm	Yes	Yes	Yes
Mukilteo Light Station (45SN123)	Elliot Point	Yes (listed)	Yes	Yes

The five properties that are Section 4(f) resources are discussed below. Additional detail on these properties is provided in *Section 4.6 Cultural Resources* and in *Appendix I Preliminary Section 4(f) Evaluation*.

#### **Mukilteo Shoreline Site**

The Mukilteo Shoreline Site (designated 45SN393 by DAHP) is a shell midden related to native inhabitants of the Puget Sound region, holding artifacts dating back more than 1,000 years. This site is eligible for the NRHP under Criterion D, for the important information the property may yield about the native inhabitants of the Puget Sound region.

#### **Point Elliott Treaty Site**

The Point Elliott Treaty Site (designated 45SN108 by DAHP) is significant for its association with the treaty signers, the history of Indian-White relations, and the development of federal Indian policy in the last half of the nineteenth century both nationally and regionally. The treaty, was one of five treaties negotiated between 1854 and 1856 that represented a major change in relations with the Indian nations in the northwestern United States.

#### **Old Mukilteo Townsite**

The Old Mukilteo Townsite (designated 45SN404 by DAHP) consists of historic remains from Mukilteo's business district dating from at least 1880 to 1938.

#### **Japanese Gulch Site**

The project has identified historic archaeological resources at Japanese Gulch (designated 45SN398 by DAHP), which contains two areas where an early twentieth century Mukilteo Japanese community was located.

## Mukilteo Light Station

The Mukilteo Light Station (designated 45SN123 by DAHP), a lighthouse complex consisting of 11 buildings and structures, is listed in the NRHP. It is a well-preserved complex of buildings and structures typical of those produced by the federal Light House Board in the Pacific Northwest during the late nineteenth and early twentieth centuries. The Mukilteo Light Station is also historically significant for its association with the maritime history of Puget Sound.

## 5.5 Evaluation of Section 4(f) Resource Use

### 5.5.1 Summary of Effects to Section 4(f) Properties

Table 5-3 provides a summary of impacts and preliminary use determinations for the Section 4(f) parks and recreation resources, and Table 5-4 provides the same information for the Section 4(f) historic resources. FTA will update the use determinations in the Final EIS by taking into account public comments and the results of coordination with the agencies that have jurisdiction over the resources.

**Table 5-3. Summary of Effects on Section 4(f) Parks and Recreation Resources**

Name	Owner/ Custodian	Alternative	Description of Project Activity	Preliminary Use Determination
Port of Everett Fishing Pier and Day Moorage	Port of Everett	No-Build	Construction of replacement marine terminal facilities (trestle and transfer span) may require the fishing pier to be closed temporarily.	Temporary use or use, depending on duration of closure
		Existing Site Improvements	Replacement marine terminal facilities would be constructed in the space currently occupied by the fishing pier, so it would need to be moved.	Use
		Elliot Point 1	The existing ferry terminal would be removed, but the fishing pier would remain in place. A temporary closure may be needed during terminal demolition.	Temporary use
		Elliot Point 2	Same as Elliot Point 1	Temporary use
Mount Baker Terminal Shoreline Access Area	Port of Everett	No-Build	No impact	No use
		Existing Site Improvements	No impact	No use
		Elliot Point 1	The alternative redesigns the shoreline area, changing planned access, amenities, and public parking elements. Public parking would be moved to the new ferry terminal. A waterfront promenade would link the ferry terminal to the shoreline access area.	Use, or a potential <i>de minimis</i> finding if the alternative is modified
		Elliot Point 2	No impact.	No use

**Table 5-4. Summary of Effects on Section 4(f) Historic and Cultural Resources**

Name	Alternative	Description of Project Activity	Preliminary Use Determination
Mukilteo Shoreline Site (45SN393)	No-Build	Potential adverse effect per Section 106 due to replacement of passenger building and foundation	Potential use or Criterion D exception
	Existing Site Improvements	Potential adverse effect per Section 106 due to passenger/maintenance building, utilities, underground stormwater treatment facility	Potential use or Criterion D exception
	Elliot Point 1	Potential adverse effect per Section 106 due to utility and tank footing removal over midden	Potential use or Criterion D exception
	Elliot Point 2	Potential adverse effect per Section 106 due to utility and tank footing removal over midden	Potential use or Criterion D exception
Point Elliott Treaty Site (45SN108)	No-Build	No adverse effect; the alternative would replace existing facilities not related to the site's historic characteristics	Potential <i>de minimis</i> finding
	Existing Site Improvements	No adverse effect; the alternative would replace and expand facilities not related to the site's historic characteristics	Potential <i>de minimis</i> finding
	Elliot Point 1	No adverse effect; the alternative would remove existing ferry facilities not related to the site's historic characteristics, and develop other portions of the site where there are no visible features related to its historic significance	Potential <i>de minimis</i> finding
	Elliot Point 2	No adverse effect; the alternative would remove existing ferry facilities not related to the site's historic characteristics, and develop other portions of the site where there are no visible features related to its historic significance	Potential <i>de minimis</i> finding
Old Mukilteo Townsite (45SN404)	No-Build	No effect	No use
	Existing Site Improvements	Potential adverse effect per Section 106 due to utilities, roadways, terminal supervisor's building foundation, retaining walls	Potential use or Criterion D exception
	Elliot Point 1	Potential adverse effect per Section 106 due to roadways and stormwater treatment facility excavation	Potential use or Criterion D exception
	Elliot Point 2	Potential adverse effect per Section 106 due to roadways and retaining walls	Potential use or Criterion D exception
Japanese Gulch Site (45SN398)	No-Build	No effect	No use
	Existing Site Improvements	No effect	No use
	Elliot Point 1	Potential adverse effect per Section 106 due to excavation for the restoration of Japanese Gulch as an open stream and for construction of First Street extension	Potential use or Criterion D exception
	Elliot Point 2	No effect	No use

### 5.5.2 Comparison of the Ability of Alternatives to Avoid or Minimize Uses of Section 4(f) Resources

As shown in Table 5-5, all of the project Build alternatives might involve the use of one or more Section 4(f) resources. Table 5-5 also provides information on potential avoidance options.

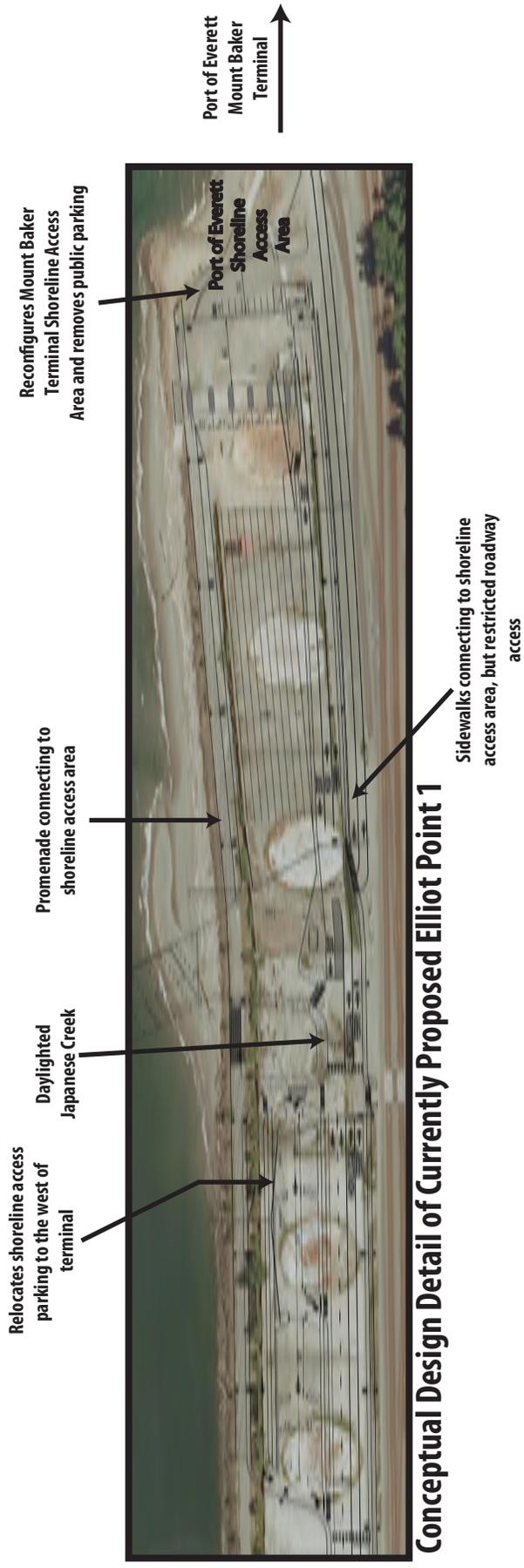
**Table 5-5. Summary of Potential Section 4(f) Uses by Build Alternatives**

	Existing Site Improvements	Elliot Point 1	Elliot Point 2
<b>Section 4(f) Resource Affected</b>			
Port of Everett Fishing Pier	Use	Temporary use	Temporary use
Mount Baker Terminal Shoreline Access Area		Use (or potential <i>de minimis</i> if alternative is modified; see Figure 5-2)	
Mukilteo Shoreline Site (45SN393)	Use (or exception)	Use (or exception)	Use (or exception)
Point Elliott Treaty Site (45SN108)	Proposed <i>de minimis</i>	Proposed <i>de minimis</i>	Proposed <i>de minimis</i>
Old Mukilteo Townsite (45SN404)	Use (or exception)	Use (or exception)	Use (or exception)
Japanese Gulch Site (45SN398)	Not affected	Use (or exception)	Not affected
<b>Total Section 4(f) Resources with Potential Use</b>	Up to 4	Up to 6	Up to 4
Ability to Completely Avoid	No avoidance for at least one use. Ability to avoid, find <i>de minimis</i> impacts or seek exceptions for three of the sites would be the same as other alternatives.	Possible avoidance or exceptions for all. Ability to avoid, find <i>de minimis</i> impacts or seek exceptions for three of the sites would be the same as other alternatives.	Possible avoidance or exceptions for all. Ability to avoid, find <i>de minimis</i> impacts or seek exceptions for three of the sites would be the same as other alternatives.

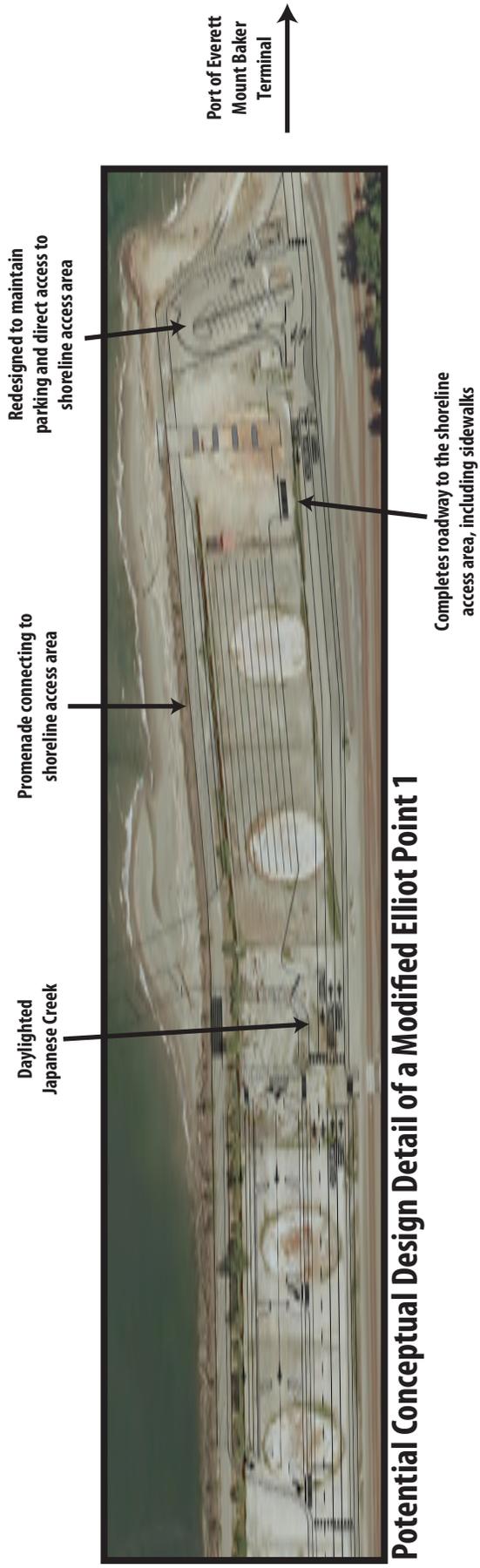
### 5.5.3 Initial Conclusion on Available Prudent and Feasible Avoidance Alternatives

None of the project’s alternatives, including the No-Build Alternative, completely avoids using Section 4(f) resources. The No-Build Alternative is in the EIS for environmental comparisons, but is not proposed as an action to be approved by FTA and, therefore, would not be proposed as a Section 4(f) avoidance alternative because it would not meet the project’s purpose and need.

While regulatory exceptions to a Section 4(f) use determination for some of the resources may be applicable, three Section 4(f) resources would be affected by all Build alternatives. Any other alternative within the Mukilteo waterfront area would have similar issues for encountering these resources, even if some design elements were modified or the alternatives had different footprints. Alternatives outside of Mukilteo were considered but eliminated because they did not meet the project’s purpose and need and worsened environmental effects (see *Chapter 2 Alternatives*).



**Conceptual Design Detail of Currently Proposed Elliot Point 1**



**Potential Conceptual Design Detail of a Modified Elliot Point 1**

**Figure 5-2. Potential Elliot Point 1 Modification**

### 5.5.4 Determining “Least Harm” Alternatives

If no alternative completely avoids Section 4(f) uses, FTA may identify one or more “least harm” alternatives, considering factors defined in Section 4(f) regulations. The final least harm analysis will incorporate the results of the environmental analysis, public comments on the Draft EIS, the information gathered through continuing Section 4(f) evaluation and coordination, and Section 106 consultations with other agencies, tribes, and interested parties. Based on the initial assessment of Section 4(f) least harm factors (see Appendix I for details), FTA has identified the following primary environmental differences and trade-offs among the alternatives:

- The Elliot Point 2 Alternative has the fewest potentially affected Section 4(f) resources, and use exceptions could allow it to qualify as an avoidance alternative.
- The Elliot Point 1 Alternative has the most potentially affected Section 4(f) resources, but can be modified to avoid one use, and use exceptions could allow it to qualify as an avoidance alternative.
- The Existing Site Improvements Alternative has an unavoidable use of the Port of Everett fishing pier and seasonal day moorage, and a suitable replacement site would still need to be confirmed to mitigate the impact. At least one of the options (relocating the pier to the west side of the replacement terminal) could lead to subsequent impact if a second slip is later built. If the Elliot Point 1 Alternative or Elliot Point 2 Alternative is found to be a Section 4(f) avoidance alternative, the Existing Site Improvements Alternative could not be selected for the project.
- Both Elliot Point alternatives offer the most overall environmental advantages. Notably, they remove the Tank Farm Pier and existing terminal facilities, they reduce the terminal’s impacts on the local transportation system, and they best support local land use plans.
- The Existing Site Improvements Alternative creates higher traffic impacts and more conflicts with the future land use plans of the City of Mukilteo.
- Both Elliot Point alternatives open up a larger area of the waterfront to public use and access.
- The Elliot Point 1 Alternative provides additional natural resource and open space benefits because it would daylight Japanese Creek, although this action could impact an archaeological site. Because the site is currently buried under fill, restoration of the creek combined with an approved archaeological recovery and treatment plan could reduce impacts and improve the historic record of the Japanese immigrant community that once settled there.

- The Existing Site Improvements Alternative would not allow the terminal facility to be readily secured to respond to increased maritime security orders from the U.S. Coast Guard. It would improve but not remove the potential for traffic accidents, including pedestrians and bicyclist accidents.
- The Elliot Point alternatives would provide features to help secure the facility during high security alert periods, and the relocated facility would reduce the potential for traffic accidents and provide safe pedestrian and bike routes.
- The Existing Site Improvements Alternative would partially improve reliability but would still have opportunities for conflicts and delays during loading and unloading. It would improve the transit center and terminal facilities, but users would have a slightly longer walk distance between them compared to the No-Build Alternative. This alternative would not shorten connections to the commuter rail station, but would improve some sidewalk connections.
- The Elliot Point 1 Alternative would improve reliability and reduce queues the most, and it would have the shortest distance between the transit center and the terminal. It would have the second shortest distance between the commuter rail station and the terminal after the Elliot Point 2 Alternative.
- The Elliot Point 2 Alternative would improve reliability and reduce queues the second most. It also would have the shortest distances between the transit center, terminal, and the commuter rail station, but it would relocate parking for the commuter rail station, which would increase walk distances for some commuter rail patrons.

### **5.5.5 Next Steps in the Section 4(f) Evaluation**

To approve an alternative with a Section 4(f) use for the Mukilteo Multimodal Project, FTA must find that:

- The use of the resource is among the specified regulatory exceptions to Section 4(f). This includes two exceptions being considered for this project: (a) an exception for temporary uses of protected resource; and/or (b) an exception for archaeological sites that could be important for the information they may yield, but do not require protection in place; or
- The project will have only a *de minimis* impact on the resource (which for this project may include the Elliott Point Treaty Site for all alternatives, and the Mount Baker Terminal Shoreline Access Area for the Elliot Point 1 Alternative)

If any potential Section 4(f) uses remain after applying the above exceptions, FTA must find that:

- There is no feasible and prudent avoidance alternative to using the protected resource. FTA has found no feasible and prudent avoidance alternatives other than those in the Draft EIS; the Elliot Point alternatives may still qualify as avoidance alternatives, as explained above.
- The program or project includes all possible planning to minimize harm to the property resulting from its use. These measures are still being defined through the Section 4(f) and Section 106 processes, and through the public review of the Draft EIS and the preliminary Section 4(f) evaluation.

Finally, if there are no prudent and feasible alternatives that can avoid all Section 4(f) resources, then FTA must determine which alternative results in the least overall harm to Section 4(f) resources and the environment.