



**Public Works Department**

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July 7, 2017

**SUBJECT: ODOT Impact Determination**

To Members of the Parks and Recreation Advisory Board:

I know the June 28 public notice from ODOT requesting comments on the proposed *de minimis* impact determination of the Salem River Crossing Project on Wallace Marine Park is a topic of interest to many of you. The notice is posted at <http://www.cityofsalem.net/Pages/input-requested-on-river-crossing-impacts.aspx>.

Our staff will provide a verbal informational report on this subject at the next SPRAB meeting on July 13. I am enclosing a 22-page Findings Memorandum from October 5, 2016, that provides information on the regulatory background, the methodology, and the basis for the *de minimis* determination.

To help introduce the topic—and at the risk of oversimplifying the matter—here is my short summary:

The term *de minimis* is derived from the Latin phrase *de minimis non curat lex*, which translated means “the law is not concerned with trivial matters.” In practice, a *de minimis* determination means the subject is negligible or is otherwise so minor that it lacks significance or importance when considered within the larger context of whatever topic is being considered.

Section 4(f) is a component of the US Department of Transportation Law of 1966. This section contains provisions designed to protect publicly owned parks, recreation areas, and significant historic sites from adverse impacts caused by US DOT-funded projects. There are three considerations in evaluating the extent of a project’s impacts:

1. *Permanent Incorporation of Land*. In short, what are the impacts if the project acquires property through purchases or easements?
2. *Temporary Occupancy of Land*. This criterion generally relates to how the land may be impacted during the project’s construction period.
3. *Constructive Use*. To what degree does the project’s proximity impact the activities, features, or attributes of the resource?

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In the 2016 Findings Memorandum, four specific resources were initially evaluated for potential impacts under Section 4(f):

1. Wallace Marine Park
2. Wallace Marine Natural Area
3. Union Street Railroad Pedestrian/Bicycle Trail
4. Willamette River Water Trail

These four resources are evaluated against the three considerations to determine if there is a use and if so, the degree to which the resources are impacted.

The impacts to Wallace Marine Park include: (1) Construction of Marine Drive NW, which requires acquiring about 1.4 acres along a narrow strip of land on the western edge of the park; (2) Installation of a stormwater facility to the northeast of the intersection of Glen Creek Road NW and Marine Drive NW; (3) Increase in traffic noise; and (4) Impacts to the visual quality of the park. The Findings describes how each was considered in the context of the overall features, attributes, and activities at Wallace Marine Park and concluded that these will not be significantly impacted. In other words, a proposed *de minimis* determination.

The Wallace Marine Natural Area will be impacted by the placement of six piers in the northern panhandle of the area and the introduction of the elevated bridge structure over the area. The total land estimated to be acquired, which includes the area under the bridge, is about 1.62 acres. The impacts of these on the features, attributes, and activities of this area are proposed to be *de minimis*.

The impact to the Union Street Bridge and trail is from the two flyover ramps that are envisioned in the fully built project in the future. It was concluded that these ramps will have no impact on the use of the bridge or trail, and therefore is not considered a use within the context of 4(f) regulations.

The Willamette River Water Trail will be impacted by the bridge piers constructed in the waterway. It was determined, however, that these piers would be constructed in such a manner as to not impede recreational users, except possibly during portions of the construction phase when segments of the channel may be temporarily closed for safety owing to overhead work. Impacts to the Willamette River Water Trail are proposed to be *de minimis*.

During this comment period, the public is being asked to consider the information and provide input specifically on the proposed findings that the Salem River Crossing project will have a *de minimis* impact on the features, attributes, or activities of the remaining three subject areas: Wallace Marine Park, Wallace Marine Natural Area, and Willamette River Water Trail.

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In that the City of Salem has been a partner with ODOT and Federal Highway Administration in developing the findings, we are not expected to provide comments on the *de minimis* determination at this point in the process. Procedurally, *after* FWHA has received public comments and made their proposed determination, the City, as the “Official with Jurisdiction” over Wallace Marine Park and Wallace Natural Area will be asked by FWHA to concur (or otherwise) in writing. The Oregon Department of Parks and Recreation will similarly be asked to concur regarding the Willamette River Water Trail. The final Section 4(f) determination will be made by the FHWA Division Administrator.

As I noted, I am only providing my summary of the topic and I encourage you to read the attached Findings Memorandum. For those who want to delve deeper into the matter, FWHA has a more detailed Section 4(f) Policy Paper available online at

<https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

In this paper, Section 3.3.1 (Determination of a *De Minimis* Impact to Section 4(f) Property) is very instructive.

The deadline for receiving public comments was initially set as July 12. Earlier this week, ODOT received a request to extend the deadline. In response to this request, the deadline has been extended to July 28. Councilor Kaser (Ward 1) will present a motion at the City Council on Monday, July 10, which if approved, would direct staff to request ODOT extend the deadline for receiving comments from July 28 to August 12.

I hope to see you all at the next SPRAB meeting on July 13.

Best regards,



Robert D Chandler, PhD, PE  
Assistant Public Works Director

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Enclosure: Findings Memorandum

## Salem River Crossing Project Final Section 4(f) Evaluation: Draft Findings for Park/Recreation Resources

TO: City of Salem; Oregon Department of Transportation  
FROM: Michael Hoffmann/CH2M  
DATE: October 5, 2016

The intent of this memorandum is to document draft Final Section 4(f) Evaluation findings for park and recreation Section 4(f)-eligible resources in the project study area. Historic resources will be documented in the Final Section 4(f) Evaluation being prepared in tandem with the Final Environmental Impact Statement.

### 1.1 Regulatory Background/Methodology

Section 4(f) of the United States Department of Transportation (USDOT) Act of 1966, 49 United States Code (U.S.C.) § 303(c) is a federal law that protects publicly owned parks, recreation areas, wildlife and/or waterfowl refuges, as well as significant historic sites, whether publicly or privately owned. Section 4(f) requirements apply to all transportation projects that require funding or other approvals by the USDOT. As a USDOT agency, FHWA must comply with Section 4(f). FHWA's Section 4(f) regulations are at 23 Code of Federal Regulations (CFR) Part 774.

This documentation has been prepared in accordance with legislation established under the United States Department of Transportation Act of 1966 (49 U.S.C. § 303; 23 U.S.C. § 138, hereafter referred to as "Section 4(f)" and the FHWA regulations for Section 4(f) compliance codified as Title 23 of the Code of Federal Regulations Part 774 (23 CFR Part 774). Additional guidance was obtained from *FHWA Technical Advisory T6640.8A* (FHWA, 1987) and the *FHWA Section 4(f) Policy Paper* (FHWA, 2012).

The methodology utilized in this Final 4(f) Evaluation to establish a study area entailed identifying potential Section 4(f) resources within 200 feet of the proposed project right-of-way footprint to conservatively account for potential proximity impacts.

#### 1.1.1 Types of Section 4(f) Resources

Section 4(f) requires consideration of:

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

### 1.1.2 Section 4(f) Determinations

Per 23 CFR Part 774.3, FHWA cannot approve the use of a Section 4(f) resource, as defined in 23 CFR Part 774.17, unless FHWA determines that:

- There is no feasible and prudent avoidance alternative, as defined in 23 CFR Part 774.17, to the use of land from the resource, and
- The action includes all possible planning, as defined in 23 CFR Part 774.17, to minimize harm to the resource resulting from such use.

### 1.1.3 Section 4(f) Evaluation Process

After identifying the Section 4(f) resources in the project study area, it was determined whether and to what extent the project would result in a use of each resource. The type of Section 4(f) use was then determined according to the following Section 4(f) use definitions:

- **Permanent Incorporation of Land.** Pursuant to 23 CFR Part 774.17, a permanent use occurs when land from a Section 4(f) property is permanently incorporated into a transportation project. This may occur as a result of partial or full acquisition of the Section 4(f) property, permanent easements, or temporary easements that exceed regulatory limits.
- **Temporary Occupancy of Land.** As defined in 23 CFR Part 774.13(d), a temporary use occurs when there is a temporary use of land that is “adverse in terms of the statute’s preservation purpose as determined by the criteria in 23 CFR 774.13(d).” If the criteria in 23 CFR Part 774.13(d) are met, the “temporary use exception” applies, meaning that the temporary occupancy of the land is so minimal that it does not constitute a “use” within the meaning of Section 4(f). If the criteria in 23 CFR Part 774.13(d) are not met, the use is evaluated as permanent (see Section 6.4.4.2 for a listing of the temporary occupancy criteria).
- **Constructive Use.** As defined in 23 CFR Part 774.15(a), a constructive use occurs when a transportation project does not incorporate land from a Section 4(f) property, but the project’s proximity impacts are so severe that the protected activities, features or attributes that qualify that Section 4(f) resource for protection under Section 4(f) are substantially impaired.

### 1.1.4 De Minimis Impact Determinations

A determination of *de minimis* impacts can be made only if the project will not adversely affect the features, attributes or activities that make the Section 4(f) resource significant, after receipt and consideration of public comment, and FHWA receives concurrence with the official(s) with jurisdiction. If the official with jurisdiction does not agree with a *de minimis* impact determination in writing, an analysis of avoidance alternatives must be conducted. If the analysis concludes that there is no feasible and prudent alternative to use of the Section 4(f) resource, FHWA may only approve the alternative or alternatives that cause the least overall harm. A least overall harm analysis is conducted to determine which alternative/s may proceed. A *de minimis* impact determination is inappropriate where a project results in a constructive use (23 CFR Parts 774.3(b) and 774.17).

As noted in FHWA’s *Section 4(f) Policy Paper*, a *de minimis* impact on a public parkland, recreational area, or wildlife and waterfowl refuge is defined as that which does not “adversely affect the features, attributes or activities qualifying the property for protection under Section 4(f)” (FHWA, 2012).

## 1.2 Section 4(f) Park/Recreation Resources in the Study Area

This section identifies Section 4(f) park/recreation resources within the project's study area, describes the impacts on these resources, and makes determinations on whether impacts result in a "use" of the resource under the Section 4(f) statute. Figure 1 illustrates the location of Section 4(f) park/recreation resources in the project study area.

Table 1 lists the name of each Section 4(f) park/recreation resource located in the study area and summarizes FHWA's Section 4(f) use determination for the resource.

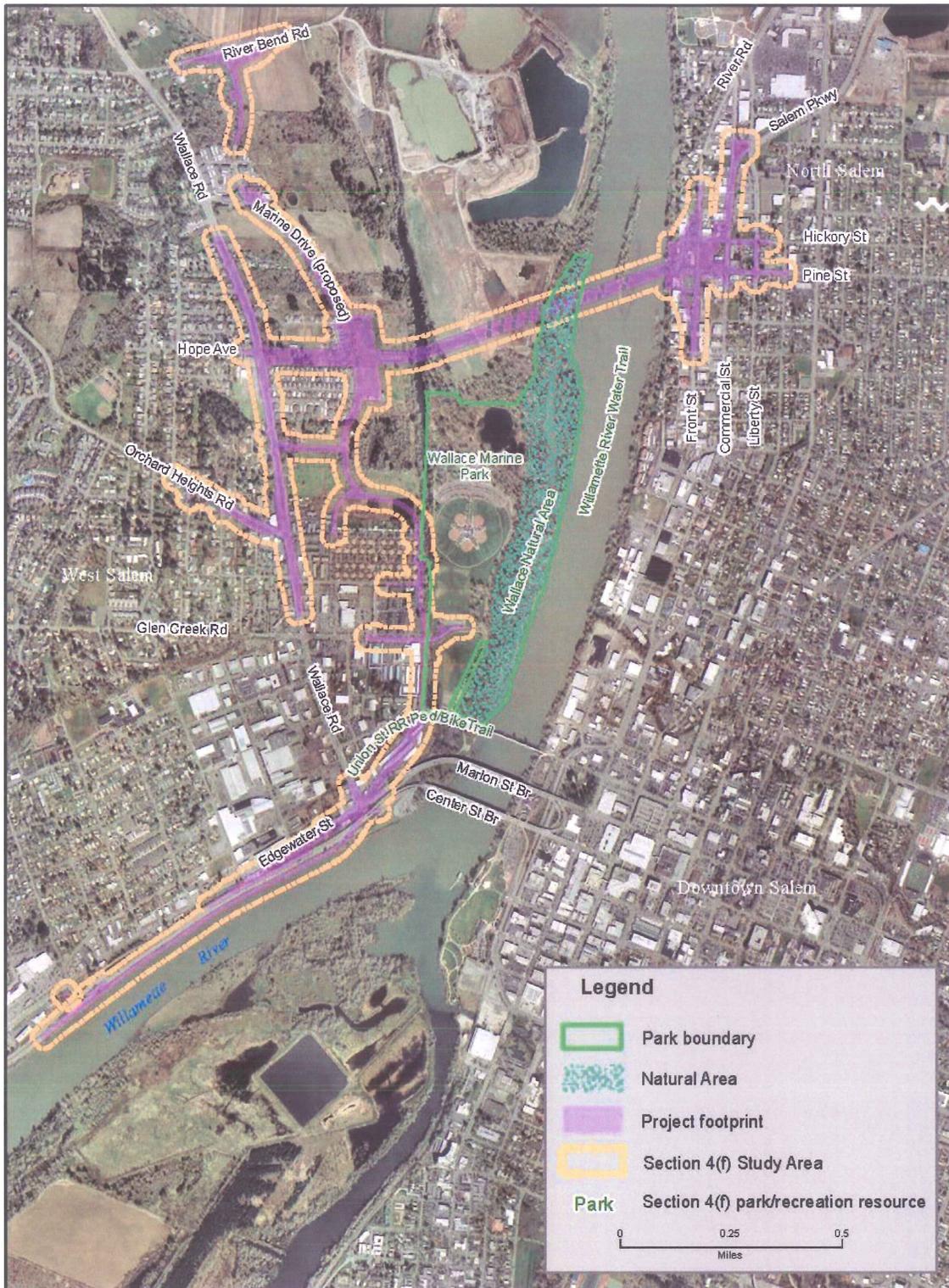
*Table 1: Summary of Impacts to Section 4(f) Park/Recreation Resources in the Project Study Area*

Section 4(f) Park/Recreation Resource Name	Non-de minimis Use	De minimis Impact	No Use
Wallace Marine Park		X	
Wallace Marine Natural Area		X	
Union Street Railroad Pedestrian and Bicycle Trail			X
Willamette River Water Trail		X	

The remainder of this section assesses the Section 4(f) park/recreation resources noted in Table 1 in the following manner:

1. A description of the Section 4(f) resource;
2. A Section 4(f) permanent use determination;
3. A Section 4(f) temporary use determination/temporary occupancy exception determination (for those resources that will not have a Section 4(f) use or a Section 4(f) *de minimis* use);
4. A Section 4(f) constructive use determination (for those resources that will not have a Section 4(f) use); and
5. An overall Section 4(f) determination.

Figure 1: Section 4(f) Park/Recreation Resources in Project Study Area

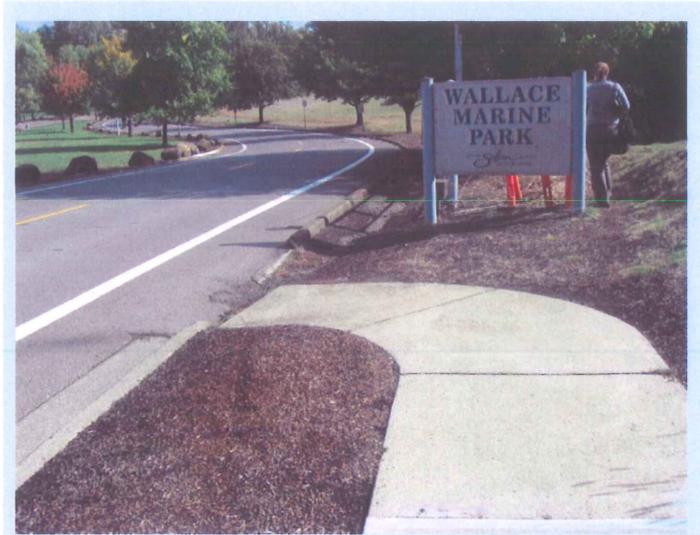


## 1.2.1 Wallace Marine Park

### 1.2.1.1 Section 4(f) Resource Description

Wallace Marine Park is located in West Salem at 200 Glen Creek Road NW. The park is 93.76 acres in size and includes land underneath, and south of, the Center Street and Marion Street Bridges complex.

Per the City of Salem's *Comprehensive Park System Master Plan Update* (City of Salem, 2013), 73.73 acres are considered "developed" while 20.03 acres are considered "undeveloped". The *Comprehensive Park System Master Plan Update* also notes that 57.66 acres of riverfront city-owned property that was formerly considered part of Wallace Marine



Glen Creek Road entrance to Wallace Marine Park

Park has been re-classified as "natural area" and is now referred to as the "Wallace Natural Area"; as such the Wallace Natural Area is treated as a distinct Section 4(f) resource in this report and is therefore assessed separately. Figure 2 depicts an excerpt from the City's *Comprehensive Park System Master Plan Update* which shows the location of Wallace Marine Park and Wallace Natural Area (the entire parks master plan, from which Figure 2 was excerpted, can be seen at:

[http://www.cityofsalem.net/Residents/Parks/Documents/park\\_system\\_master\\_plan\\_adopted\\_2013-05-13\\_web.pdf](http://www.cityofsalem.net/Residents/Parks/Documents/park_system_master_plan_adopted_2013-05-13_web.pdf)).

The *Comprehensive Park System Master Plan Update* (City of Salem, 2013) designates Wallace Marine Park as an "Urban Park." The plan defines "Urban Parks" as those parks that "meet the active and passive recreational needs of the entire city and may even be a regional draw."

Wallace Marine Park is owned and maintained by the City of Salem; therefore, the City is the official with jurisdiction for this resource. The boat ramp area located south of the Center Street Bridge is owned by ODOT and leased to Salem for park/recreational use.

Existing park facilities include the Wallace Marine Park Softball Complex (five softball/baseball fields), four soccer fields, an open turf field, a boat dock and launch, restrooms, a concessions building, drinking fountains, three picnic areas, benches, two play equipment, four parking lots, and an unpaved pedestrian trail (City of Salem, 2013).

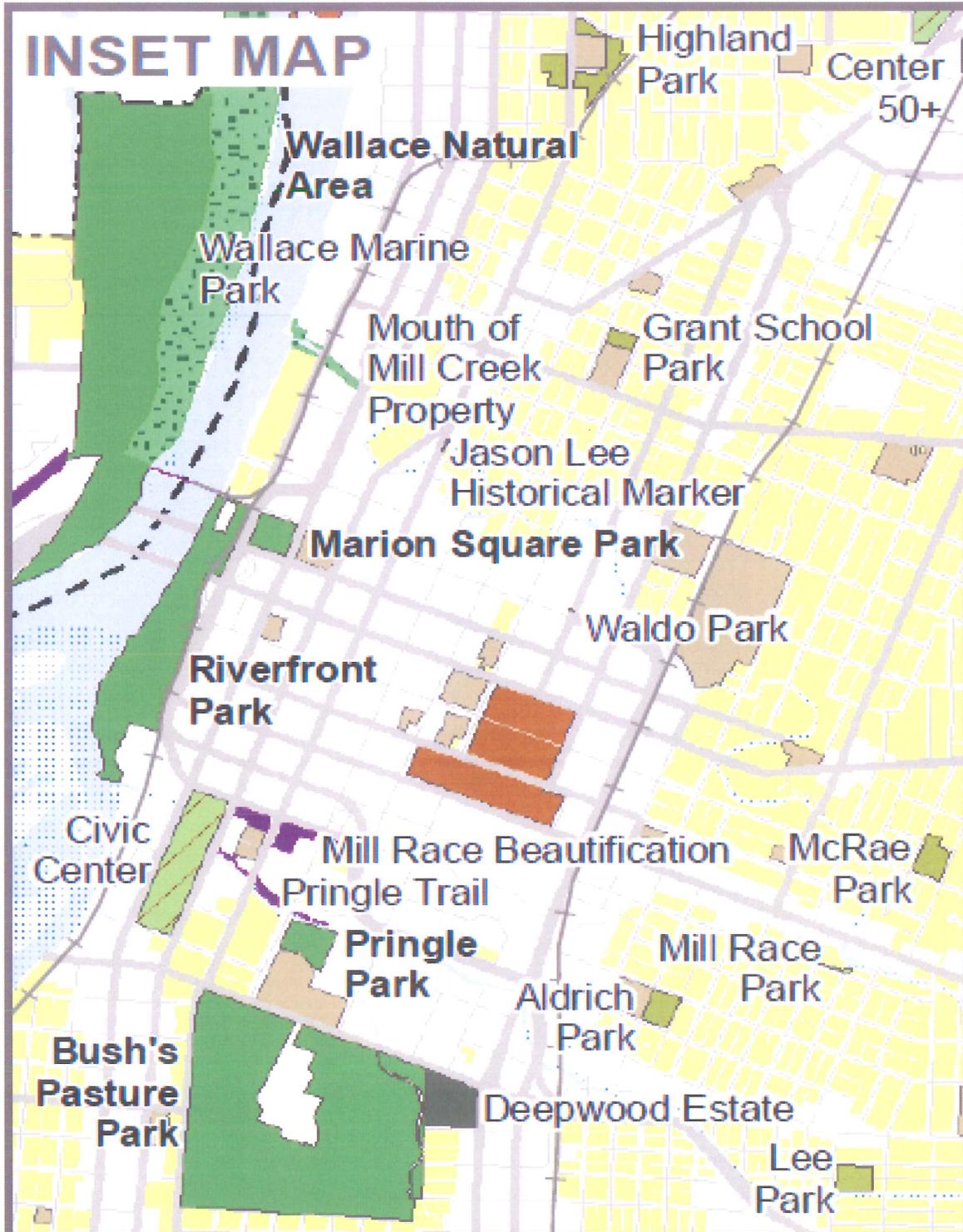
The primary function of Wallace Marine Park is for active recreational use, although the park also functions as a place for passive recreational use (i.e., picnicking). Salem has a rich softball history, and Wallace Marine Park has been a destination for every level of softball since the Softball Complex opened in 1986. The Complex hosts an active tournament season from spring through fall, and includes state, national, and world championship events (SoftballCityUSA.com, 2010).

A boat launch facility was originally built just north of the Marion Street Bridge. However, the launch became blocked by gravel bars and is no longer usable by most motorized boats; it is, however, still used as a canoe and kayak launch site. A new boat launch area for motorized craft and associated floating dock was built to the south of the Center Street and Marion Street Bridges. This boat launch is now used to support the annual Fourth of July event and the Bite of Salem festival. Anglers use the launch in the spring and summer, waterfowl hunters in the fall, and water-skiers occasionally use it in the summer. Each year, however, the docks are removed and stored under the bridge from early October to mid-May to prevent damage from high waters. The parking lot for this boat launch is almost entirely located within ODOT right-of-way and is subject to a lease agreement between the City of Salem and ODOT. The canoe launch area is located completely on park property.

The only public vehicular entrance to Wallace Marine Park is from the west via Glen Creek Road NW. Glen Creek Road NW passes between the soccer fields and connects with Musgrave Lane, a north-south intra-park road. (Musgrave Lane is closed to public vehicular traffic approximately 700 feet northeast of the intersection with Wallace Road.)

According to the Capital Projects List included in Appendix E of the *Comprehensive Park System Master Plan Update*, the City plans major renovations to Wallace Marine Park along with a master planning effort and park design/development (City of Salem, 2013). A draft master plan for Wallace Marine Park provided at the City of Salem Parks and Recreation web site identifies several planned park features (City of Salem, 2016). New softball fields, soccer fields, boat ramps, and natural areas are potential improvements planned for expansion or renovation (see Figure 3). Additional potential new park features include a BMX bike park near the southern boat launch, and a “street course” skateboard facility north of the Marion Street Bridge.

Figure 2: City of Salem Comprehensive Park System Master Plan Update (Excerpt Map)



Source: City of Salem Comprehensive Park System Master Plan Update, Map 1, Existing Park System (City of Salem, 2013)

Figure 3: Draft Wallace Marine Park Master Plan



Figure created by GreenWorks, PC (2002).

Wallace Marine Park is a publicly owned, documented recreational resource of significance for the City of Salem and is therefore eligible for Section 4(f) protection.

#### 1.2.1.2 *Determination of Permanent Incorporation*

Figure 4 shows the potential impact area at Wallace Marine Park under the preferred alternative.

The preferred alternative would result in a permanent incorporation of approximately 1.4 acres from Wallace Marine Park. The following are anticipated impacts on Wallace Marine Park under the preferred alternative:

- The construction of the proposed Marine Drive would permanently incorporate a thin strip of land from the western edge of the park between Glen Creek Road and a point approximately 510 feet south of Glen Creek Road. From this point south for approximately another 330 feet to the southern boundary of the park the impact along the western edge of the park would be from fill and columns to support the elevated ramp from Marine Drive to OR 22. The impacted area is landscaped with trees and grass, but there are no existing nor planned formal recreational amenities or features.
- The installation of a stormwater treatment swale/pond facility to the northeast of the intersection of Glen Creek Road NW and Marine Drive in tandem with the widening of this intersection would result in the incorporation of parkland that is landscaped with trees and grass but contains no planned formal recreational amenities or features.

As described above, the area of Wallace Marine Park affected by the project does not include recreational activities, features, and attributes that qualify the park as a Section 4(f) recreational property.

The part of the park to be permanently incorporated by the project will also be temporarily occupied during construction. However, during the period of construction, no actively used portion of the park would be closed to public use. The access to the park at Glen Creek Road would continue to be open throughout construction (though detours might be used). All bicycle and pedestrian facilities in the park would continue to be open to users during construction.

The detailed noise analysis performed for the Salem River Crossing FEIS indicates that no park noise receptor would approach or exceed the NAC of 70 dBA, therefore there will be no noise impacts to park users. The project is not anticipated to result in changes to the park's setting and a visitor's visual experience; per visual analysis performed for the Salem River Crossing FEIS there would be a negligible change in visual quality at the park.

The project was designed to avoid impacts to any actively used recreational areas of the park. The portion of the park to be temporarily occupied during construction will be restored to existing conditions or better. The project and the City of Salem would provide the public with ongoing notification of construction activities within the park, such as the timing and location of heavy construction activities and trail detours; this notification would be provided via the project and City of Salem websites as well as signage to be placed at prominent locations at the park. Project staff would coordinate the scheduling of construction activities with park staff from the City of Salem so that they avoid park activities identified by the city.



#### 1.2.1.3 Section 4(f) Use Determination

Based on the design and analysis as described in this section, and consistent with the requirements of 23 CFR Part 774.5(b), FHWA has made a preliminary determination that project actions will not adversely affect the features, attributes, or activities that qualify Wallace Marine Park for Section 4(f) protection. As such, FHWA has preliminarily determined that project actions will result in a Section 4(f) *de minimis* impact to the Wallace Marine Park, consistent with 23 CFR Part 774.17.

The project will be publishing a public notice/opportunity for comment with regard to a finding of *de minimis* impacts to Wallace Marine Park. Following the close of the public comment period on the published *de minimis* finding, FHWA will be requesting written concurrence from the City of Salem prior to making a final *de minimis* impact determination for Wallace Marine Park.

Figure 4: Project Impacts at Wallace Marine Park



## 1.2.2 Wallace Natural Area

### 1.2.2.1 Section 4(f) Resource Description

As noted in Section 2.1.1, the City of Salem's *Comprehensive Park System Master Plan Update* notes that 57.66 acres of riverfront city-owned property that was formerly considered part of Wallace Marine Park has been re-classified as "natural area" and is now referred to as the "Wallace Natural Area" (see Figure 2); as such the Wallace Natural Area is considered a distinct Section 4(f) resource in this report and is assessed separately in this section of the report. Wallace Natural Area is owned and maintained by the City of Salem, therefore the City is the official with jurisdiction for this resource.

The *Comprehensive Park System Master Plan Update* defines "natural areas" as "...primarily undeveloped lands left in a natural state for conservation, and they may provide opportunities for passive recreation" (City of Salem, 2013).

Currently there are informal trails that traverse the natural area which allow visitors to engage in passive recreational pursuits such as birdwatching as well as access the riverbank. Per the *Draft Wallace Marine Park Master Plan*, a formal non-paved crushed-rock trail network is planned through the natural area (see Figure 3). The natural area consists of an overstory of poplars and alder, with an understory of ferns, dogwood, Oregon grape, grasses, and sedges. Invasive species such as English ivy and blackberry are rampant along the river frontage. The undeveloped north end of the natural area, including the panhandle, is heavily used for camping by homeless persons. Current management of the area is limited to periodic sweeps to clear out illegal camping. While the northern panhandle is officially undeveloped parkland, there are user-constructed bike paths (dirt) that traverse this area. City staff members are aware of these paths and allow people to use them, but do not maintain them. There are no development or recreational uses planned for the northern panhandle of the park.

Wallace Natural Area is a publicly owned, documented recreational resource of significance for the City of Salem and is therefore eligible for Section 4(f) protection.

### 1.2.2.2 Determination of Permanent Incorporation

Under the preferred alternative, there would be impacts associated with the placement of six bridge piers in the northern panhandle of Wallace Natural Area (see the generalized depiction in Figure 5) and the introduction of elevated bridge structure over the natural area. The total amount of natural area ground disturbance from the installation of the bridge piers would be 0.12 acres. For the purposes of assessing total amount of permanent incorporation at Wallace Natural Area, it is assumed that the project would acquire all land underneath the elevated roadway structure – a total of 1.62 acres.

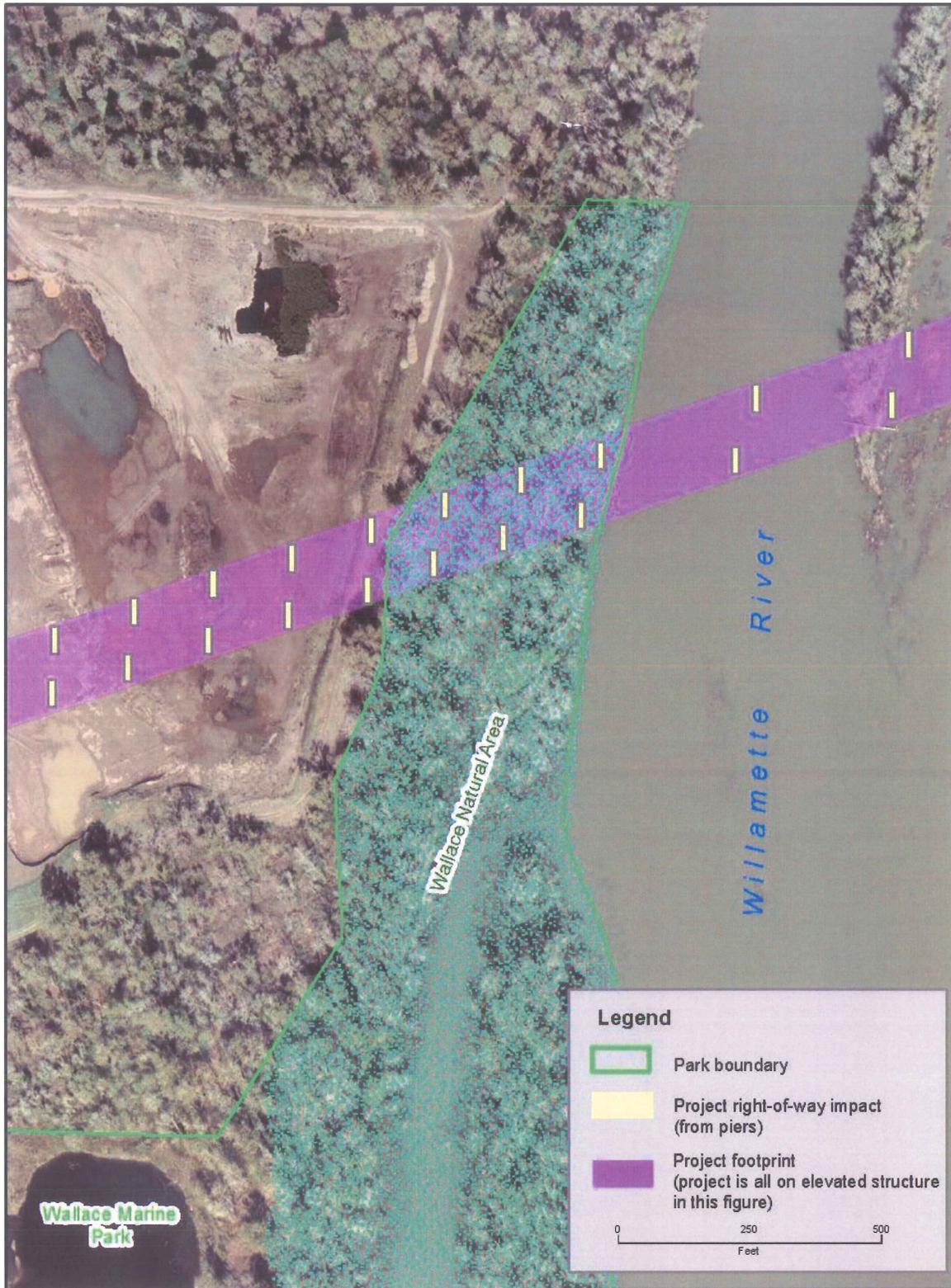
The part of Wallace Natural Area that would be permanently incorporated under the preferred alternative is undeveloped and does not contain any existing or proposed park features or attributes, therefore no impacts to any recreational activities are anticipated as a result of project actions. The area to be permanently incorporated consists predominantly of non-native forest and other vegetation. The part of the natural area to be permanently incorporated by the project would also be temporarily occupied during construction.

### 1.2.2.3 Section 4(f) Use Determination

Based on the design and analysis as described in this section, and consistent with the requirements of 23 CFR Part 774.5(b), FHWA has made a preliminary determination that project actions will not adversely affect the features, attributes, or activities that qualify the Wallace Natural Area for Section 4(f) protection. As such, FHWA has preliminarily determined that project actions will result in a Section 4(f) *de minimis* impact to the Wallace Natural Area, consistent with 23 CFR Part 774.17.

The project will be publishing a public notice/opportunity for comment with regard to a finding of *de minimis* impacts to Wallace Natural Area. Following the close of the public comment period on the published *de minimis* finding, FHWA will be requesting written concurrence from the City of Salem prior to making a final *de minimis* impact determination for Wallace Natural Area.

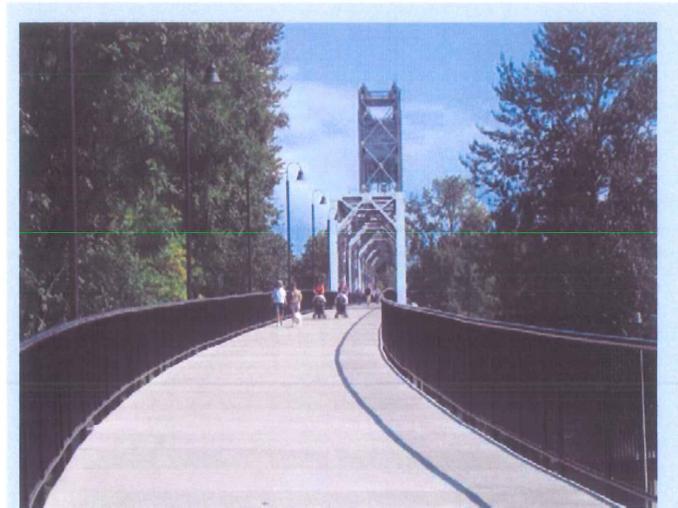
Figure 5: Project Impacts at Wallace Natural Area



### 1.2.3 Union Street Railroad Pedestrian & Bicycle Trail

#### 1.2.3.1 Section 4(f) Property Description

The Union Street Railroad Pedestrian and Bicycle Trail is a recreational facility that was recently renovated. This trail, which includes the bridge itself and a segment of trail on former railroad right-of-way extending from the west side of the bridge to Wallace Road, is located on City of Salem property and the City is the official with jurisdiction for the trail. The bridge itself was originally built across the Willamette River in 1913 by Southern Pacific Railway, and was in operation until the lift span permanently closed in 1980. Plans to convert the Union Street Railroad



Union Street Railroad Pedestrian and Bicycle Trail

Bridge to a bicycle and pedestrian facility were developed in the late 1990s and included in the City's 1998 TSP (City of Salem, 1998). The City of Salem purchased the bridge in 2004. A Salem contractor, Carter & Company, began construction in April 2008, and the project opened to the public on April 18, 2009. The bridge itself is listed on the NRHP as a locally significant example of railroad bridge design type and construction methodology. It is the only local example of this type of railroad infrastructure.

The Union Street Railroad Pedestrian and Bicycle Trail, which is included in the *Comprehensive Park System Master Plan* (City of Salem, 1999) as a "primary trail," is managed by the City of Salem Public Works Department using funds allocated for park purposes. The Union Street Railroad Pedestrian and Bicycle Trail is owned and maintained by the City of Salem. The Union Street Railroad Pedestrian and Bicycle Bridge crosses the Willamette River and passes over the park just north of the Marion Street Bridge. This pedestrian/bicycle bridge provides a direct connection into Wallace Marine Park from the west end of the bridge's timber trestle and to Wallace Road NW. The bridge provides direct access to the park from east Salem for pedestrians and bicyclists. The east end of the pedestrian/bicycle connects to Front Street, Water Street, and Union Street.

The Union Street Railroad Pedestrian and Bicycle Trail provides active recreational and transportation opportunities for bicyclists, pedestrians, and users of other non-motorized transportation modes. The trail is accessible by bicycle, foot, and other non-motorized transportation modes from Wallace Marine Park and Salem Riverfront Park. In Wallace Marine Park, the bridge is accessible to bicyclists and pedestrians from Musgrave Avenue NW, Glen Creek Road NW, and Wallace Road NW. The trail is designed to complement both the Willamette River Water Trail and a footbridge project that will connect Salem Riverfront Park to Minto-Brown Island Park (opening in late 2016). With this vision fully realized, the Union Street Railroad Bridge serves as a vital link between a 1,036-acre network of parks and a 16-mile network of trails.

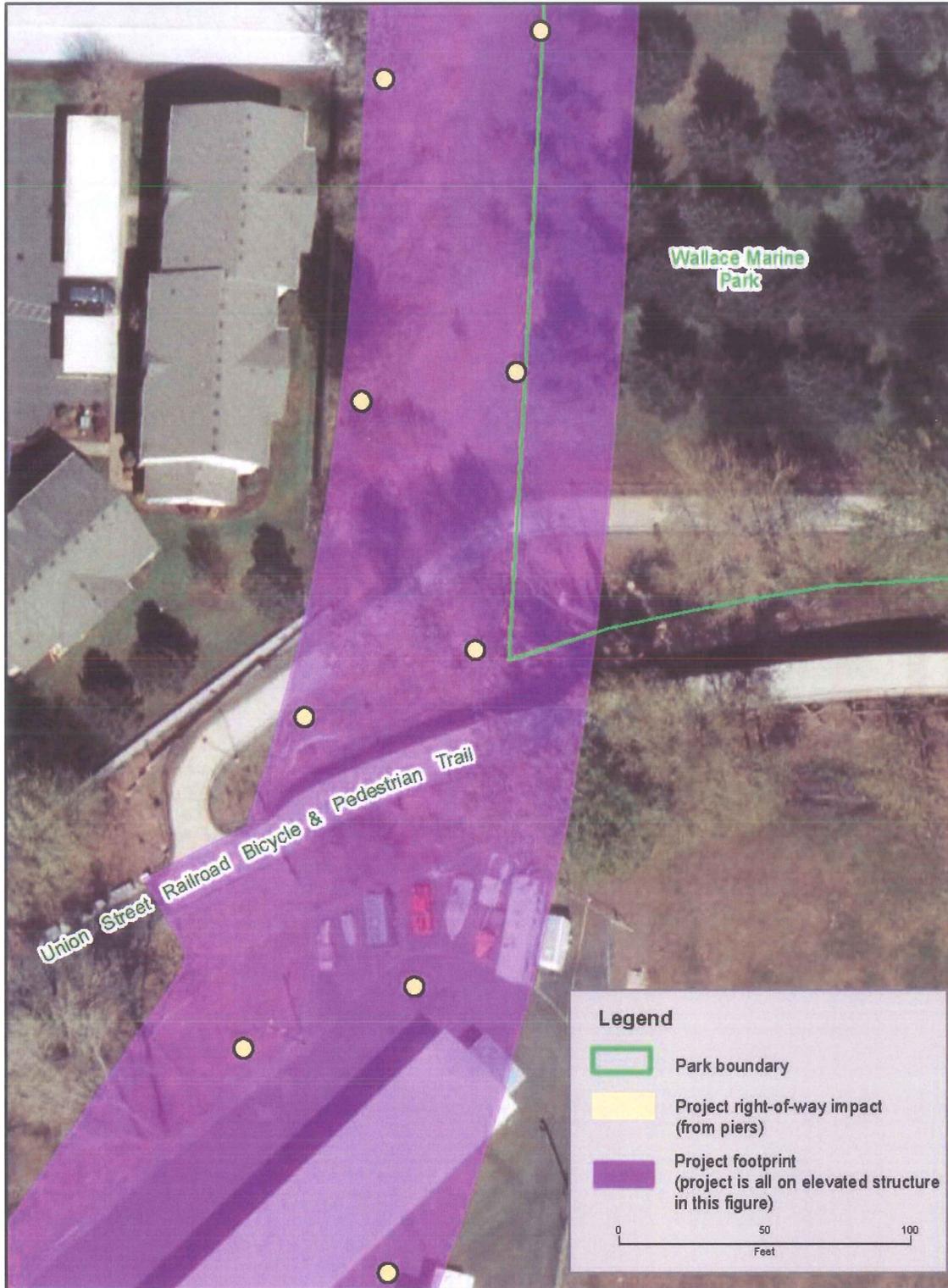
The Union Street Railroad Pedestrian and Bicycle Trail is a publicly owned, documented recreational resource of significance for the City of Salem and is therefore eligible for Section 4(f) protection.

*1.2.3.2 Determination of Permanent Incorporation*

The preferred alternative would not entail a permanent incorporation of property from the Union Street Railroad Pedestrian and Bicycle Trail. The project was designed to avoid impacts to the trail. The project impact in the area of the trail is associated solely with two elevated structures – the flyover ramps from proposed Marine Drive to OR 22 (see generalized depiction in Figure 6). Each elevated structure has a concrete column located between the trestle and the trail access ramp into the park. The installation of columns to support these structures would not be placed on trail property and the elevated structure above the trail would have 10 to 15 feet of vertical clearance from the trail, thereby not necessitating the conversion of any trail property nor impeding the trail for users. The trail would pass beneath the elevated roadway structures, collectively, for approximately 150 feet.

Based on the above analysis, it is concluded that a Section 4(f) permanent use would not occur at the Union Street Railroad Pedestrian and Bicycle Trail as a result of preferred alternative actions.

Figure 6: Project Impacts at Union Street Railroad Bicycle & Pedestrian Trail



#### 1.2.3.3 *Determination of Temporary Occupancy*

During construction of the project a protective walkway would be installed over the Union Street Railroad Pedestrian and Bicycle Trail to allow trail users to continue to use the trail unimpeded when the work overhead is being completed (the construction of the elevated ramp structures), therefore the project will not entail the temporary occupation of trail property during construction. The project may entail brief closures of the trail (approximately 1-3 hours) as a safety precaution to protect the public when precast girders are lowered into place with a crane over the trail; these activities would be shifted to occur at night to avoid impacts to users. The portion of the trail to be temporarily occupied during construction will be restored to existing conditions or better. The project and the City of Salem would provide the public with ongoing notification of construction activities related to the trail, such as the timing and location of heavy construction activities and trail detours; this notification would be provided via the project and City of Salem websites as well as signage to be placed at prominent locations along the trail. Project staff would coordinate the scheduling of construction activities with staff from the City of Salem.

#### 1.2.3.4 *Determination of Constructive Use*

No constructive use of the Union Street Railroad Pedestrian and Bicycle Trail is anticipated as a result of project actions. User access to the Union Street Railroad Pedestrian and Bicycle Trail will remain as it is currently. The function of the existing trail is as an active recreational facility located in an urbanized area in close proximity to highly-used transportation infrastructure (Marion Street Bridge); as such the increased noise and changed aesthetics associated with the introduction of an elevated structure over one part of the trail would not amount to proximity impacts so severe that the protected recreational activities, features, and attributes that qualify the Union Street Railroad Pedestrian and Bicycle Trail for protection under Section 4(f) would be substantially impaired.

#### 1.2.3.5 *Section 4(f) Use Determination*

The preferred alternative would not result in a Section 4(f) use of the Union Street Railroad Pedestrian and Bicycle Trail.

### 1.2.4 *Willamette River Water Trail*

#### 1.2.4.1 *Section 4(f) Resource Description*

The Willamette Water Trail was designated as a “national water trail” in September 2012. The water trail is utilized by non-motorized watercraft users such as kayakers and canoeists.

A description of the Willamette River Water Trail is provided at the Willamette Water Trail website (<http://willamettewatertrail.org/about-the-water-trail/>):

The Willamette River Water Trail is an assemblage of properties that provide access for paddlers to the Willamette River, or afford opportunities to camp along the river. The trail also has two key guides that enable people to identify campsites, track river features, and that offer a bit of history and information on what can be found as you travel the river.

In the project study area, there are both official recreational properties (Wallace Marine Park) and unofficial recreational properties (McLane Island) associated with the river trail that can be utilized by water trail users. The *Willamette River Water Trail Guide* notes that Wallace Marine Park has a gravel bar launch site and picnic areas as well as being in walking distance of a

grocery store and that McLane Island, although it contains no amenities, can be utilized by water trail users as a rest stop or for informal camping. The part of the Willamette River Water Trail that exists in the project study area can be seen on Figure 1.

The National Park Service's (NPS) "National Water Trail System" website (<https://www.nps.gov/WaterTrails/Home/About>) notes the following with respect to national water trails:

The National Water Trails System has been established to:

- Protect and restore America's rivers, shorelines, and waterways and conserve natural areas along waterways
- Increase access to outdoor recreation on shorelines and waterways

The aforementioned NPS website states further:

Water trails are recreational routes on waterways with a network of public access points supported by broad-based community partnerships. Water trails provide both conservation and recreational opportunities.

#### Applicability of Section 4(f)

Regarding the question of whether the Willamette River Water Trail qualifies for protection under the Section 4(f) statute, it is helpful to first consider how national water trails are designated as such; per the National Park Service's "National Water Trail System" webpage (<https://www.nps.gov/WaterTrails/Home/About>):

While national scenic trails and national historic trails may only be designated by an act of Congress, national recreation trails (including national water trails) may be designated by the Secretary of the Interior or the Secretary of Agriculture (for trails on or in cooperation with National Forest Service lands). The designations recognize exemplary trails of local and regional significance. Through designation, these trails are recognized as part of the National Trails System.

Based on the above National Park Service language, water trails are part of the national recreation trails system. The *Section 4(f) Policy Paper* (FHWA, 2005) provides guidance with respect to designated recreation trails:

#### 15. Trails and Shared Use Paths

**Question 15B:** The National Trails System Act permits the designation of scenic, historic, and recreation trails. Are these trails or other designated scenic or recreation trails on publicly owned land subject to the requirements of Section 4(f)?

**Answer:** FHWA must comply with 23 CFR 774.13(f) when determining if a Section 4(f) approval is necessary for the use of a trail, path, bikeway, or sidewalk. National Scenic Trails (other than the Continental Divide National Scenic Trail) and National Recreation Trails that are on publicly owned recreation land are subject to Section 4(f), provided the trail physically exists on the ground thereby enabling active recreational use.

#### 21. Bodies of Water

**Question 21A:** How does the Section 4(f) apply to publicly owned lakes and rivers?

**Answer:** ...In general, rivers are not subject to the requirements of Section 4(f). Those portions of publicly owned rivers, which are designated as recreational trails are subject to the requirements of Section 4(f).

Based on the available federal guidance discussed in this section in combination with the fact that none of the exceptions noted in 23 CFR 774.13(f) are applicable to the Willamette River Water Trail, this report assumes that the water trail does indeed qualify as a Section 4(f) resource and should be assessed under the Section 4(f) statute as a recreational trail in the same manner that a terrestrial trail (e.g. recreational bicycle trail) would be assessed. It should be noted that the assessment of the Willamette River Water Trail in the *Salem River Crossing Draft Environmental Impact Statement/Draft Section 4(f) Evaluation* (CH2M, 2012) was that the water trail did not qualify as a Section 4(f) resource, but that document was published prior to the water trail's federal designation as a "national water trail" in September 2012.

#### Official with Jurisdiction

Regarding what party would be the official with jurisdiction over the water trail it is helpful to note the Section 4(f) statute's definition of "official with jurisdiction" for a park/recreation resource found in 23 CFR 774.17:

*Official(s) with jurisdiction.*

(2) In the case of public parks, recreation areas, and wildlife and waterfowl refuges, the official(s) with jurisdiction are the official(s) 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.

As a navigable waterway, the Willamette River itself (and the land underneath the river) is publicly owned by the State of Oregon. The *Willamette River Water Trail Conceptual Plan* (Oregon Parks and Recreation Department, 2007) provides further guidance on the question of who should be considered the official with jurisdiction for the water trail):

Each land manager will be responsible for their respective sites along the Willamette River Water Trail. Islands and other public parcels incorporated into the water trail that are not currently receiving maintenance will be cared for by the volunteer oriented organizations. This plan envisions that the Willamette Riverkeeper, and the Oregon Parks and Recreation Department will take the lead on the overall coordination of the water trail.

Based on the above, this report assumes that the officials with jurisdiction for the water trail are the City of Salem and the Oregon Parks and Recreation Department (OPRD) because they both would qualify as "land managers" with respect to this segment of the river: the river bank land areas where the bridge touches down are managed by the City of Salem and the land on McLane Island (which is located in the middle of the river/water trail) is managed by OPRD.

It is also important to note that the trail is co-managed by OPRD in tandem with the Willamette Riverkeepers, and therefore all project coordination regarding the water trail should include this organization. The Willamette Riverkeepers is a non-profit organization whose stated sole mission is "...to protect and restore the Willamette River" (<http://willamette-riverkeeper.org/mission/>); the Riverkeepers have been instrumental in the development of the water trail and public outreach of the water trail as a recreational resource.

#### 1.2.4.2 *Determination of Permanent Incorporation*

This report assumes that the Willamette River Trail resource consists of the entirety of the river (from west bank to east bank). Under this assumption, the project would result in a permanent incorporation of the resource due to the installation of concrete bridge piers in the river, as shown in Figure 7. Six piers would be placed in the river trail itself (the area between the east and west riverbanks); four in the river itself and two on McLane Island. Each pier is 8 foot by 16 foot, for a total permanent incorporation of 768 square feet of the Willamette River Trail resource (512 square feet in water; 256 square feet on McLane Island).

The project was designed to provide for a wide and open west channel (around McLane Island) that would be navigable for all potential watercraft using this stretch of the Willamette River. The presence of the new bridge piers will not inhibit the ability of non-motorized water craft users to continue to recreationally utilize the water trail in the same manner they do currently and the presence of a new bridge structure over the river would be a similar condition for users to that which they experience currently with the multitude of other structures that cross the Willamette River in other urbanized segments of the river (or non-urban areas with infrastructure over the river).

No impacts to small watercraft using the Willamette River Water Trail during construction are anticipated. Preliminary assumptions for construction are that a temporary work bridge would be constructed across the full extent of the east channel of the river only (on the east side of McLane Island). In the west channel a temporary work bridge would only need to extend approximately 200 feet west of McLane Island, thereby leaving approximately 300 feet of the river clear (from that point to the west bank of the river); as such, there will be an open channel on the west side of McLane Island during the entirety of construction for water trail users (e.g. kayakers, canoeists) to utilize. The new bridge superstructure erection is assumed to be done from above by delivering segments across the already completed portion of the bridge (from the east bank). While segments are being placed, no boat traffic would be allowed for safety reasons, but the time durations would be limited to about an hour for each segment. Typically, only one or two segments per day would be erected. The span being erected is 300 feet long, and each segment is 10 feet long, so boat traffic could be diverted temporarily away from the actual lifting.

In summary, the design of the project has and will continue to ensure that recreation activities that currently occur within the Willamette River Water Trail will be maintained both during and after construction of the Project.

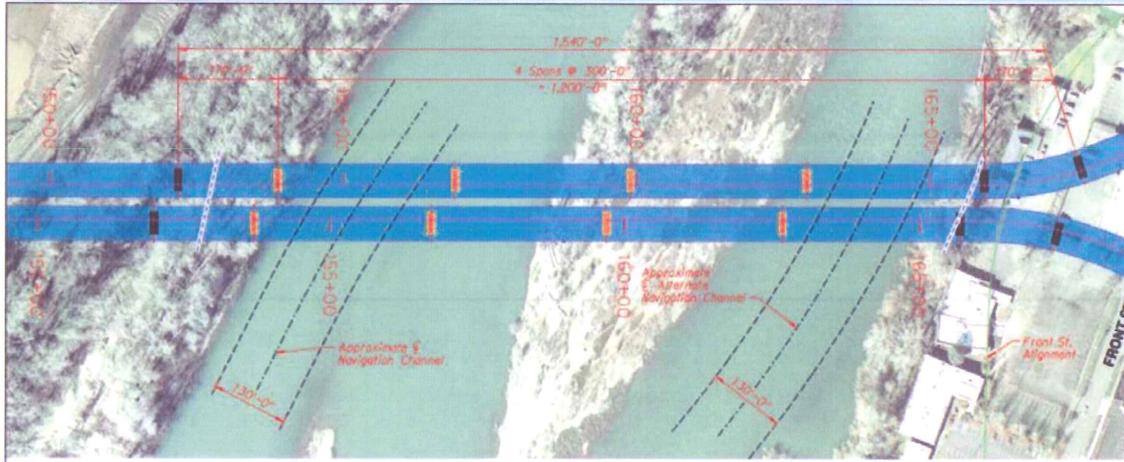
#### 1.2.4.3 *Section 4(f) Use Determination*

Based on the design and analysis as described in this section, and consistent with the requirements of 23 CFR Part 774.5(b), FHWA has made a preliminary determination that project actions will not adversely affect the features, attributes, or activities that qualify the Willamette River Water Trail for Section 4(f) protection. As such, FHWA has preliminarily determined that project actions will result in a Section 4(f) *de minimis* impact to the Willamette River Water Trail, consistent with 23 CFR Part 774.17.

The project will be publishing a public notice/opportunity for comment with regard to a finding of *de minimis* impacts to Willamette River Water Trail. Following the close of the public comment period on the published *de minimis* finding, FHWA will be requesting written

concurrence from the City of Salem and Oregon Parks and Recreation Department prior to making a final *de minimis* impact determination for the Willamette River Water Trail.

Figure 7: Plan View of Proposed New Bridge Crossing Showing Locations of Piers



Note: Blue shaded polygons represent the bridge structure; orange and black rectangular polygons represent bridge piers

### 1.3 Summary

FHWA’s preliminary Section 4(f) use determinations for the Salem River Crossing Project are summarized in Table 2. As noted in the table, the Salem River Crossing Project would not result in the *non-de minimis* use of any Section 4(f) resource. In total, FHWA has preliminarily determined that there would be *de minimis* impacts to three park/recreation resources.

Table 2: Summary of FHWA Preliminary Final Section 4(f) Use Determinations for Park/Recreation Resources

Section 4(f) Resource Name/Address	Property Type	Official(s) with Jurisdiction	Non-de minimis Use	De minimis Impact
Wallace Marine Park	Park/recreation	City of Salem		X
Wallace Marine Natural Area	Park/recreation	City of Salem		X
Willamette River Water Trail	Park/recreation	City of Salem; OPRD		X