

# CHAPTER 5

## Section 4(f) Evaluation

### PROCEDURES FOR PROTECTING SECTION 6(f) AND SECTION 4(f) RESOURCES

#### SECTION 6(f)

Section 6(f) of the Land and Water Conservation Fund Act (LWCFA), administered by the Interagency Committee for Outdoor Recreation and National Park Service (NPS), pertains to projects that would cause impacts on or result in the permanent conversion of outdoor recreational property acquired with LWCFA assistance. The LWCFA established the Land and Water Conservation Fund (LWCF), a matching assistance program providing grants paying half the acquisition and development cost of outdoor recreational sites and facilities. Section 6(f) prohibits the conversion of property acquired or developed with these grants to a nonrecreational purpose without approval from the Interagency Committee for Outdoor Recreation and NPS. NPS must ensure replacement lands of equal value, location, and usefulness are provided as conditions of approval for land conversions (16 U.S.C. §§ 4601-4 through 4601-11). Section 4(f) properties that have received LWCFA assistance are discussed in tables associated with Figures 5-6 and 5-7, beginning on page 5-10. All Section 6(f) properties in the Study Area would be avoided and are, therefore, not discussed further.

#### SECTION 4(f)

Sections of this chapter are presented to focus on an overall understanding of Section 4(f) of the U.S. Department of Transportation Act and related legislation. It explains how properties afforded protection under Section 4(f) are addressed in the planning and

locating of the proposed action. Table 5-1 provides a summary of topics, content, and intended benefits of the chapter to the reader. Section 4(f) states that the Secretary of Transportation

may approve a transportation program or project . . . requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—(1) there is no prudent and feasible alternative to using [see text box, on this page, regarding the definition of “use” as it applies to the proposed action] that land; and (2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use. (49 United States Code [U.S.C.] § 303)

Not all properties eligible for listing in the National Register of Historic Places (NRHP) are afforded protection under Section 4(f). To be determined eligible for listing, Section 106 of the National Historic Preservation Act (NHPA) specifies four criteria of significance: Criterion A (association with an important event[s]), Criterion B (association with an important person[s] significant in the past), Criterion C

Section 4(f) Use	
<p>A “use” of a Section 4(f) resource, as defined in 23 Code of Federal Regulations (C.F.R.) § 774.17, occurs 1) when land is permanently incorporated into a transportation facility (a direct use), 2) when there is a temporary occupancy of land that is adverse in terms of the statute’s preservationist purpose (a direct use), as determined by the criteria in 23 C.F.R. § 774.13(d), or 3) when there is a constructive use of land as determined by the criteria in 23 C.F.R. § 774.15. A constructive use of a Section 4(f) resource occurs when the transportation project does not incorporate land from the Section 4(f) resource, but the project’s proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the resource are substantially diminished (23 C.F.R. § 774.15). For example, a constructive use can result when one or more of the following occur:</p> <ul style="list-style-type: none"> <li>• The projected noise level attributable to the proposed action substantially interferes with the use and enjoyment of a noise-sensitive facility of</li> </ul>	<p>a resource protected by Section 4(f). The Federal Highway Administration (FHWA) has defined this noise level as 67 A-weighted decibels (dBA) or higher.</p> <ul style="list-style-type: none"> <li>• The proximity of the proposed action substantially impairs aesthetic features or attributes [such as blocking the view from a Section 4(f) property] of a resource protected by Section 4(f), where such features or attributes are considered important contributing elements to the value of the resource. An example of such an effect would be locating a proposed transportation facility in such proximity that it obstructs or eliminates views that are considered part of an NRHP-eligible, architecturally significant, historical property’s Section 4(f) eligibility. Another example would be locating a proposed transportation facility in such proximity that it detracts from the setting of a park or historic site which derives its value in substantial part because of its setting.</li> <li>• The proposed action results in a restriction on access that substantially diminishes the utility of a significant publicly owned park, recreation area, or historic site.</li> </ul>

(embodiment of a distinctive design of a given type, period, or method of construction), and Criterion D (have yielded, or are likely to yield, information important in prehistory or history). Generally, cultural resources eligible

**Table 5-1** Section 4(f) Evaluation Content Summary, Chapter 5

Topic	Page	Highlights	Reader Benefit
<b>Procedures for Protecting Section 6(f) and Section 4(f) Resources</b>	5-1	<ul style="list-style-type: none"> <li>• Definition of what properties qualify as having protection under Section 6(f) and Section 4(f)</li> <li>• Definition of “use” under Section 4(f), both through direct and proximity impacts (the latter constituting a “constructive use”)</li> <li>• Description of Section 4(f) in the EIS<sup>a</sup> process and the steps associated with a Section 4(f) evaluation</li> </ul>	<ul style="list-style-type: none"> <li>• An understanding of protection provided to recreational facilities acquired with Land and Water Conservation Fund Act assistance</li> <li>• An understanding of the U.S. Department of Transportation Act governing USDOT<sup>b</sup> when planning the location of the action alternatives</li> <li>• An understanding of what USDOT can and cannot do in relation to resources afforded protection under Section 4(f)</li> <li>• An understanding of what constitutes avoidance of Section 4(f) resources</li> <li>• An understanding of what determinations have been made and what future determinations ADOT<sup>c</sup> and FHWA<sup>d</sup> must undertake</li> <li>• An understanding of actions already undertaken by ADOT and FHWA to avoid resources afforded protection under Section 4(f)</li> <li>• An understanding of how public, stakeholder, and Community<sup>e</sup> concerns and issues affect the evaluation</li> </ul>
<b>Presentation of Section 4(f) Resources, Impacts, and Measures to Minimize Harm</b>	5-5	<ul style="list-style-type: none"> <li>• Presentation of all resources (including descriptions) located near the action alternatives (except on Community land)</li> <li>• Presentation of which resources would be used by the proposed action</li> <li>• Specific measures to minimize harm</li> <li>• Description of alternatives examined to avoid use of Section 4(f) resources of the South Mountains</li> </ul>	<ul style="list-style-type: none"> <li>• Descriptions of all qualifying resources</li> <li>• An understanding of how the action alternatives may or may not affect the resources</li> <li>• An understanding of where direct use would occur, what the impacts would be, and what measures would be proposed to minimize harm to the resource(s)</li> <li>• An understanding of what future actions may be warranted to fully implement measures to minimize harm</li> <li>• A separate discussion of resources in the South Mountains afforded protection under Section 4(f)</li> <li>• Understanding of unique problems or unusual factors of extraordinary magnitude that would make avoidance of some affected Section 4(f) resources neither feasible nor prudent</li> </ul>
<b>Coordination</b>	5-29	<ul style="list-style-type: none"> <li>• Summary of coordination to date with all vested agencies and parties</li> <li>• Summary of future coordination efforts</li> </ul>	<ul style="list-style-type: none"> <li>• Illustration that Section 4(f)-related determinations involved stakeholder engagement</li> </ul>
<b>Conclusions</b>	5-31	<ul style="list-style-type: none"> <li>• Summary of effort to avoid Section 4(f) resources</li> <li>• Documentation of use of the South Mountains as a park, NRHP<sup>f</sup>-eligible site, and TCP<sup>g</sup></li> </ul>	<ul style="list-style-type: none"> <li>• An understanding of the efforts undertaken to avoid Section 4(f) resources</li> <li>• An understanding of the measures to minimize harm from use of the South Mountains as a park, NRHP-eligible site, and a TCP</li> </ul>

<sup>a</sup> environmental impact statement <sup>b</sup> U. S. Department of Transportation <sup>c</sup> Arizona Department of Transportation <sup>d</sup> Federal Highway Administration <sup>e</sup> Gila River Indian Community <sup>f</sup> National Register of Historic Places <sup>g</sup> traditional cultural property

for listing in the NRHP under Criterion D are not eligible for protection under Section 4(f).

If the evaluation concludes feasible and prudent avoidance of protected resources is not possible, FHWA may approve, from among the remaining alternatives that use resources afforded protection under Section 4(f), only the alternative that causes the least overall harm in light of the statute’s preservationist purpose [23 C.F.R. § 774.3(c)]. Least overall harm is established by balancing:

- the ability to mitigate adverse impacts on each resource afforded Section 4(f) protection (including any measures that benefit the resource)
- the relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each Section 4(f) resource for protection
- the relative significance of each resource afforded Section 4(f) protection
- the views of the official(s) with jurisdiction over each resource afforded Section 4(f) protection
- the degree to which each alternative meets the purpose and need for the project
- after reasonable mitigation, the magnitude of any adverse impacts on resources not protected by Section 4(f)
- substantial differences in costs among the alternatives

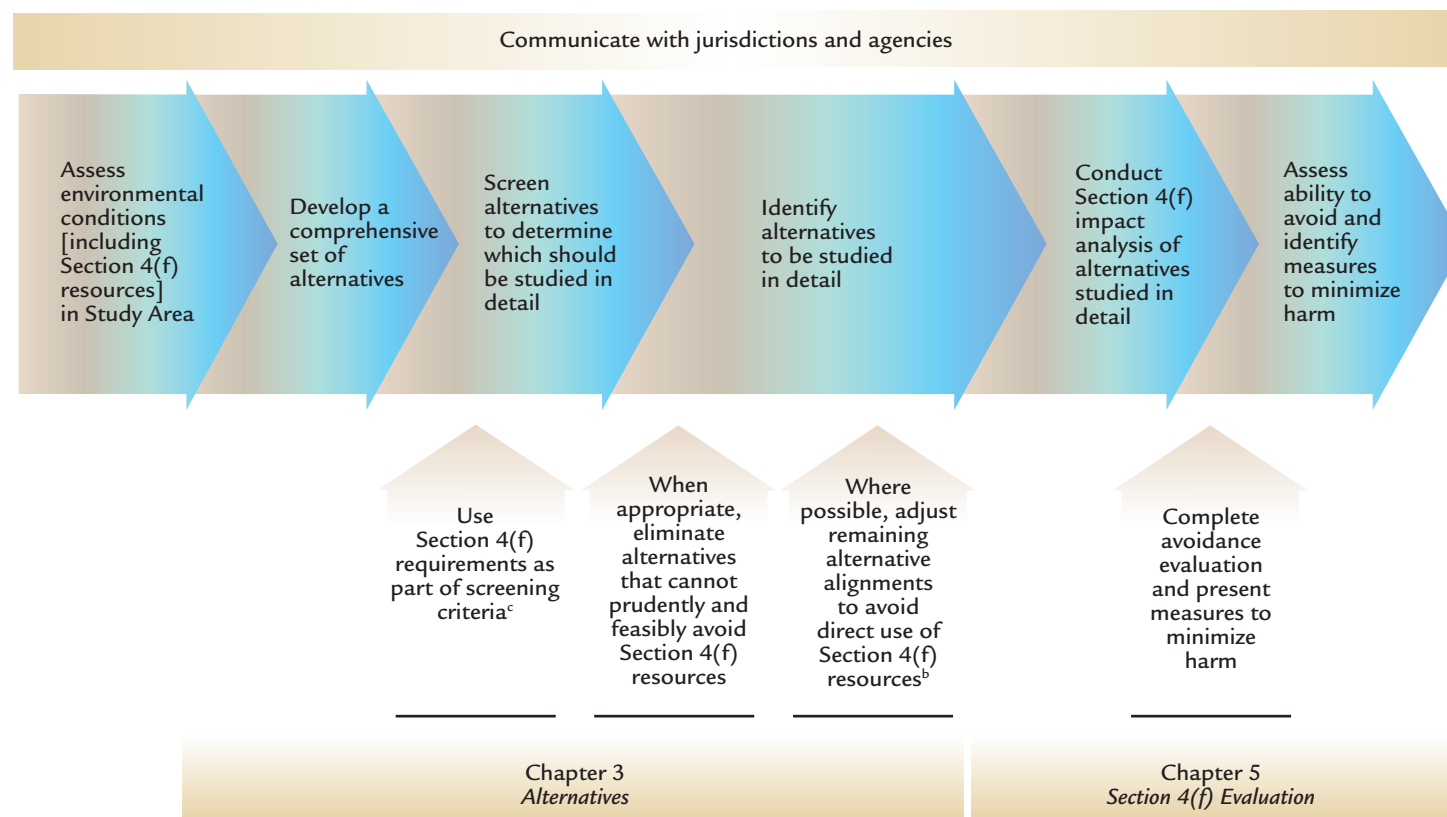
**Process**

This chapter presents results of an evaluation examining potential use of public recreational land, historic resources, and traditional cultural properties (TCPs); no designated wildlife or waterfowl refuges are within the Study Area. Figure 5-1 illustrates the process used to address analytical and procedural requirements of Section 4(f); the main body of text throughout the chapter extends the discussion of the process presented in Figure 5-1.

The chapter contains:

- A presentation of resources and properties afforded protection under Section 4(f) within ¼ mile of the

**Figure 5-1** Section 4(f) in the EIS<sup>a</sup> Process as Applied to the Proposed Action



<sup>a</sup> environmental impact statement  
<sup>d</sup> assumes avoidance of resources located in the South Mountains afforded protection under Section 4(f) has been determined not to be prudent and feasible

*Consideration of Section 4(f) begins at the start of the EIS process. A clear benefit of the iterative EIS process is recognition that measures were taken early in the process to avoid or reduce impacts on resources afforded protection under Section 4(f).*

action alternatives. The ¼-mile distance is used because it is the approximate maximum distance from which traffic noise would be disruptive to human or wildlife uses. All other proximity impacts, such as those to the viewshed, would be detected at distances less than ¼ mile. Qualifying resources are presented in the following order:

- properties eligible for inclusion in the NRHP (not associated with the South Mountains or TCPs)
- recreational trails
- public school recreational facilities
- public parkland (not associated with the South Mountains)
- public parkland resources (Phoenix South Mountain Park/Preserve [SMPP]) associated with the South Mountains

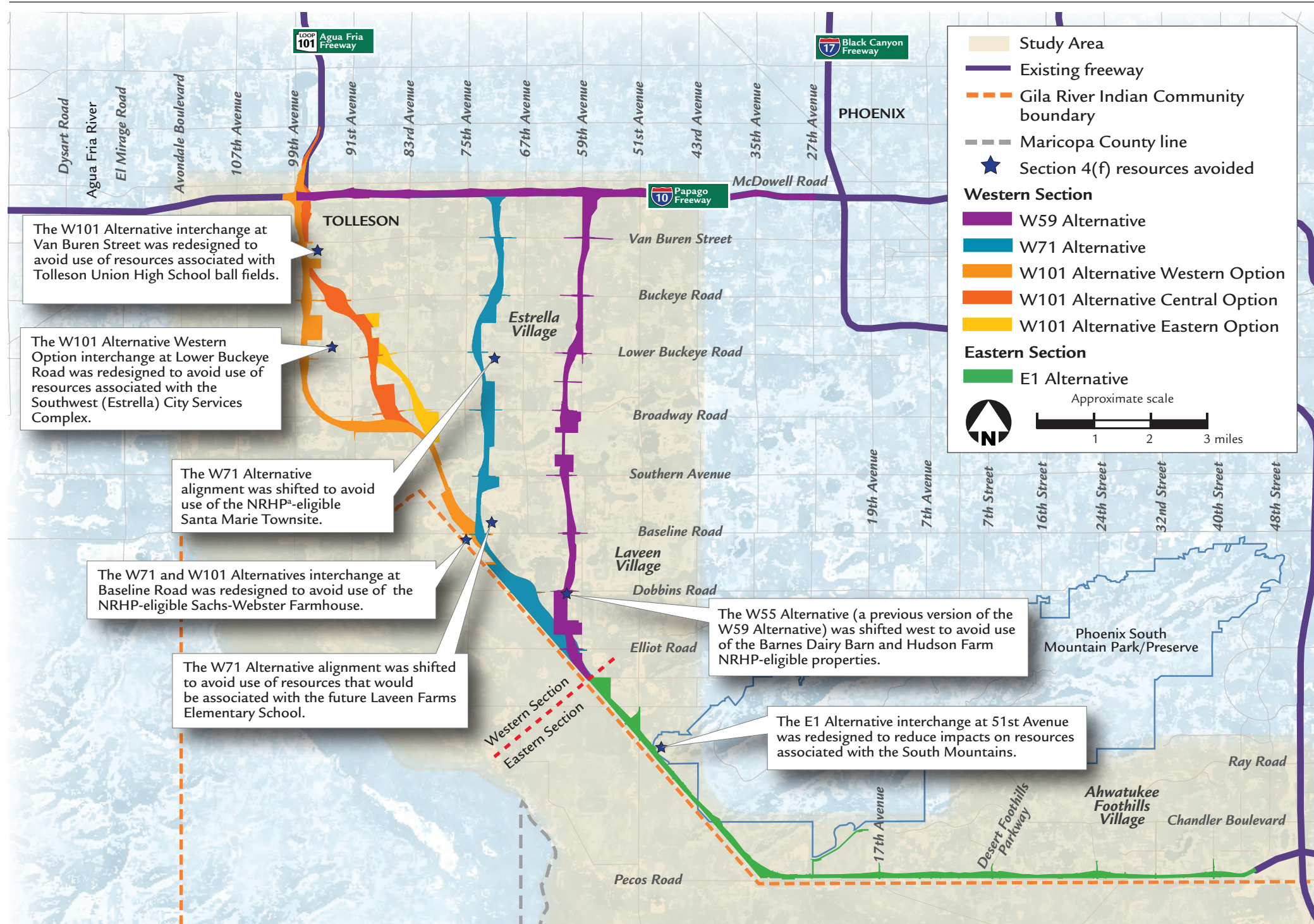
- NRHP-eligible historic resources associated with the South Mountains
- NRHP-eligible TCP resources associated with the South Mountains
- Appendix 5-1, beginning on page A583, presents properties initially considered for protection; however, based on further analysis, they were determined to be ineligible for Section 4(f) protection.
- A demonstration of why proximity impacts associated with the action alternatives would not constitute constructive use of any resource afforded protection under Section 4(f).
- Because prudent and feasible avoidance of direct use of some resources afforded Section 4(f) protection

**Why are some schools afforded protection under Section 4(f) while others are not?**

Not all public schools are afforded protection under Section 4(f). To be considered a Section 4(f) resource, school recreational areas must be publicly owned and must be available for “walk-on” activity by the public. Walk-on activity implies individuals do not have to make arrangements with school officials prior to use of the school’s recreational amenities after school hours. School recreational amenities serving only school activities and functions are not subject to Section 4(f) protections. Policies to allow or not allow for walk-on use typically are set by individual schools or the school districts. The following two examples may help clarify how schools are determined to be Section 4(f) resources:

- King’s Ridge Preparatory Academy, located at 3650 S. 64th Lane in Phoenix, is a publicly owned school with several outdoor recreational facilities, including athletic fields, basketball courts, and play equipment. According to the Riverside Elementary School District, school grounds are fenced and locked after hours. Members of the public can use the facilities only if arrangements are made in advance. Such a policy/practice does not qualify as allowing walk-on activity; therefore, the school is not afforded protection under Section 4(f).
- Fowler Elementary School, located at 6707 W. Van Buren Street in Phoenix, is a publicly owned school with outdoor recreational amenities consisting of baseball fields, basketball courts, athletic fields, and covered playgrounds. While Fowler Elementary School is fenced, the gates remain open. Fowler Elementary School District indicated its recreational facilities are available for public use, without prior authorization, after school hours. This policy/practice qualifies as walk-on activity; therefore, the school is afforded protection under Section 4(f).

Figure 5-2 Alignment Adjustments, Action Alternatives, Western and Eastern Sections



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would not be possible, measures to minimize harm are presented. Some measures to minimize harm require further coordination on the part of the Arizona Department of Transportation (ADOT) and FHWA with agencies, jurisdictions, the Gila River Indian Community (Community), and possibly major user groups. Those measures, as presented, will include a discussion of future additional steps needed to fully commit to the measures.

- ▶ A discussion of alternatives considered to avoid all Section 4(f) resources and why they were determined not to be “prudent and feasible.”
- ▶ Results of coordination with agencies, jurisdictions, the Community, and major user groups.

**Consideration of Alternatives Early in the EIS Process**

The action alternatives studied in detail in Chapter 3, *Alternatives*, are the result of an iterative process that began in 2001. Conducted to identify the range of reasonable action alternatives for detailed study, the process considered potential impacts, including direct or constructive use, on resources afforded protection under Section 4(f) (see Figure 5-1). During early development and screening of alternatives (see the section, *Alternatives Development and Screening*, beginning on page 3-1, to learn more about the screening process), several early alignments that would have directly used properties afforded protection under Section 4(f) were either eliminated from the process entirely or modified to avoid use of the resources.

Figure 5-2 illustrates where adjustments were made to avoid impacts on resources afforded protection under Section 4(f) early in the environmental impact statement (EIS) process.

<sup>a</sup> National Register of Historic Places

A result of the iterative alternatives development and screening process was that alignment adjustments were made early at numerous locations along the alignments to avoid use of existing and planned Section 4(f) resources.