

5 SECTION 4(F) EVALUATION

5.1 Regulatory Framework and Policies

Section 4(f) Resources are governed by the following:

- 23 CFR 774-Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f))
- 49 USC 303-Policy on Lands, Wildlife and Waterfowl Refuges, and Historic Sites

Section 4(f) of the United States Department of Transportation Act of 1966, codified in Federal law at 49 USC 303, states that “It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.” Section 4(f) specifies that “The Secretary [of Transportation] may approve a transportation program or project...requiring the use of any publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or land of a historic site of national, state, or local significance (as determined by the federal, state or local officials having jurisdiction of the park area, refuge, or site), only if:

- There is no prudent and feasible alternative to using that land, and
- The program or project includes all possible planning to minimize harm to the park, recreational area, wildlife and waterfowl refuge, or historic site resulting from the use.”

Section 4(f) further requires consultation with the Department of the Interior and, as appropriate, the involved offices of the Departments of Agriculture and Housing and Urban Development. Section 4(f) “use” is defined as:

- When Section 4(f) land is permanently incorporated into a transportation facility;
- When there is a temporary occupancy of land that is adverse in terms of the statute’s preservation purpose; or when there is a constructive use of a Section 4(f) property. Constructive use occurs when the transportation project does not incorporate land from a 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 CFR 774.17].

5.2 Proposed Action and Purpose and Need

The purpose of this project is to improve public safety and increase highway capacity on US-95 south of Moscow between Thorncreek Road (MP 337.67) and the South Fork Palouse River Bridge (MP 344.00). Within the project limits, US-95 does not meet current American Association of State Highway and Transportation Officials (AASHTO) Standards. The primary deficiencies of the roadway are described in detail in the DEIS, Chapter 1, Introduction and Section 3.10, Transportation.

5.3 Section 4(f) Properties

The Deesten/Davis Farmstead is the only National Register of Historic Properties (NRHP) eligible cultural resource that could be affected by the Action Alternatives and is the only Section 4(f) resources considered in this Section 4(f) Evaluation. See Exhibit 33.

Deesten/Davis Farmstead as viewed from US-95.

Exhibit 33. Deesten/Davis Farmstead as viewed from US-95



The Deesten/Davis Farmstead (Field #US-95-22) is located immediately west of US-95 and approximately four miles south of Moscow between Zietler Road and Jacksha Road. It consists of eight primary buildings; a farmhouse, garage, barn, granary, chicken house, smoke house, shop, equipment shed and groves of trees. Within the historic site boundary, the

property is estimated to be 10.43 acres and is surrounded by actively cultivated Palouse farmland.

The two groves of trees were planted in the 1930s by the Civilian Conservation Corps. There is also an orchard, cottonwoods, a conifer windbreak and a black walnut tree from Germany. The farm was originally patented to William Plummer in 1882 as a cash entry land claim (BLM 2005) and is remarkably intact with the house, barn and other primary buildings in good condition with no intrusive modern elements. The property is eligible for NRHP listing under Criterion A, for its association with regional agricultural development. The property is also eligible under Criterion C as an excellent example of early twentieth century farmstead architecture and layout.

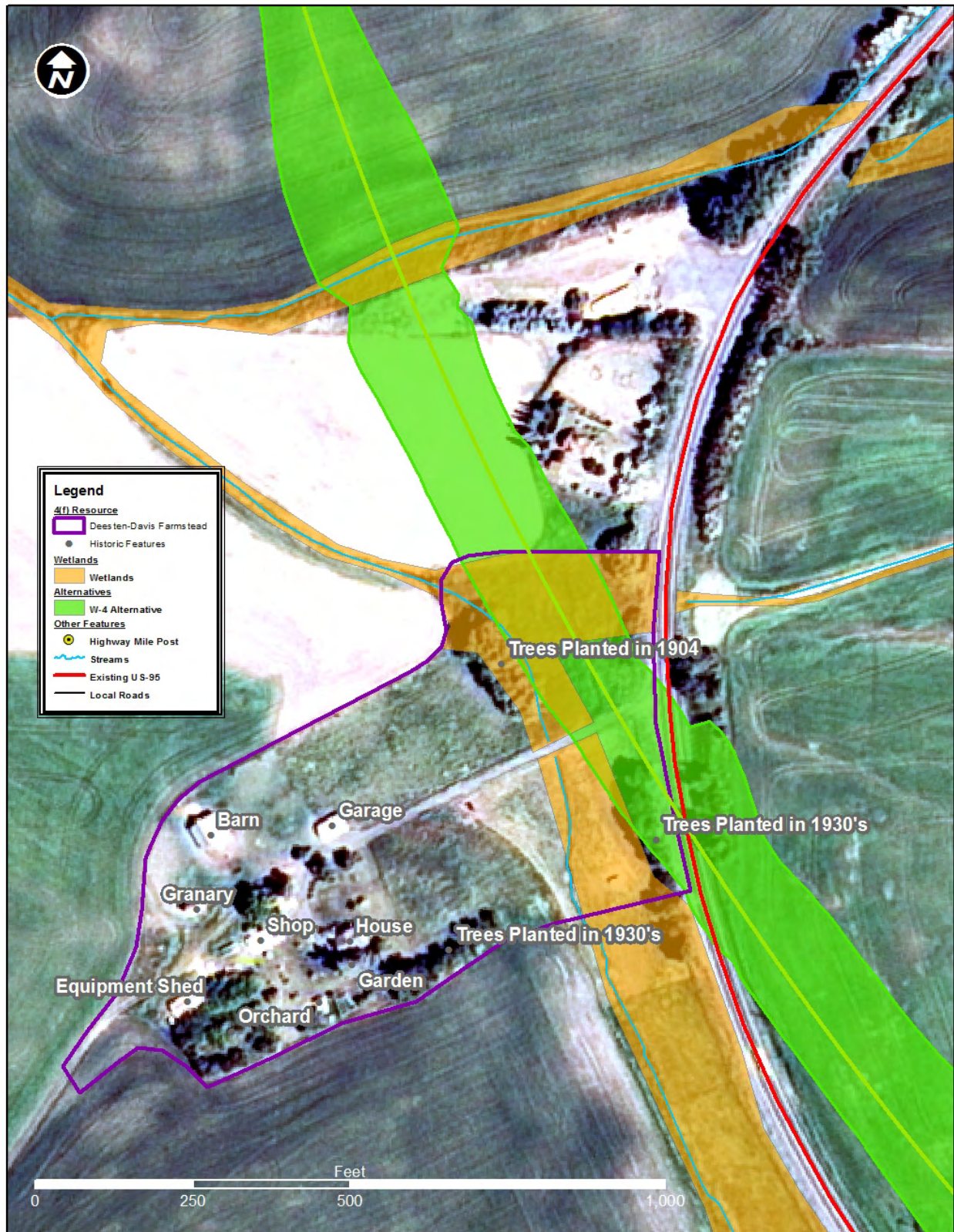
5.4 Section 4(f) Use

The W-4 Alternative would result in an adverse effect to the Desteen/Davis Farmstead under Section 106 of the NHPA and would constitute a use under Section 4(f) of the USDOT Act. The No Action, C-3 and E-2 alternatives would not result in Section 4(f) use.

The W-4 Alternative would encroach upon approximately 1.73 acres of the Desteen/Davis Farmstead. This encroachment would not adversely affect any of the historic buildings but would remove several of the trees which were planted in the 1930s by the Civilian Conservation Corps. These trees provide a partial visual screen between the roadway and the farmstead. Removing the trees could alter the views of the farmstead adversely affecting the setting. Acquiring right-of-way and removing the trees would result in a Section 4(f) use.

There are approximately 2.23 acres of Wetland 9 within the boundary farmstead. The W-4 Alternative would affect 0.84 acres of the wetland located on the farmstead. See Sections 3.6 and 4.6 for a discussion of wetlands. See Exhibit 34. Deesten/Davis Farmstead Section 4(f) Use.

Exhibit 34. Deesten/Davis Farmstead Section 4(f) Use



5.5 Avoidance Alternatives

The avoidance alternatives would include using either the C-3 or E-2 Alternatives. Shifting the roadway approximately 300 feet to the east would also avoid the historic site boundary. This would require W-4 to follow the existing alignment in this area which experiences many accidents due to the substandard curvature. Realigning the W-4 Alternative in this location to follow the existing US-95 alignment would not improve the substandard curvature of roadway in that area. This would not meet the project purpose and need.

5.6 Measures to Minimize Harm

If the W-4 Alternative is identified as the Preferred Alternative in the FEIS, a determination of adverse effect and Memorandum of Agreement (MOA) will be prepared and implemented at that time to comply with Section 106 of the NHPA. The MOA will be developed in coordination with the SHPO, the ACHP, ITD and FHWA. It will outline agreed upon mitigation measures to minimize harm to the resource which could include measures such as planting replacement trees along the highway right-of-way to offer screening of the farmstead or additional photo-documentation.

5.7 Coordination

The following coordination relevant to Section 4(f) has been completed See Appendix 1, Key Agency Correspondence and Forms for associated documentation.

- The Nez Perce Tribe and SHPO were contacted in 2003 regarding the Area of Potential Effect (APE).
- Cultural resource surveys and reports were completed between 2003 and 2011. See Section 3.4. Cultural Resources.
- Tribal consultation letters and meetings were held annually between 2003 and 2012. See Chapter 7, Public Involvement and Agency Coordination.
- The report titled *Cultural Resources Surveys of Idaho Transportation Department Proposed US-95, Thorn Creek Road to Moscow, Phase 1; Project Latah County Idaho (AHS 2006)* was submitted to the Idaho SHPO. SHPO concurred with the suggested NRHP eligibility and determination of effects for the alternatives in January 2, 2007.
- The report titled *Historic Resources Survey update to An Historic Buildings/Structures Survey for the Idaho Transportation Department's Proposed US 95, Thorn Creek Road to Moscow, Stage 1 Project, Latah County, Idaho (November 2011)* was submitted to SHPO. SHPO determined that one additional

resource, the Mountain Mart or Goodman Oil building is eligible for listing on the NRHP.

- During the 45-day public comment period for this DEIS, the Department of Interior (DOI) and SHPO will have an opportunity to review and provide comment on the DEIS and Section 4(f) Evaluation. Comments will be addressed in the Final Environmental Impact Statement (FEIS).