

# Appendix J

## Section 4(f) Exception (g)





**Planning and Engineering**  
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December 13, 2022

Tom Lehmkuhl, Environmental Engineer  
Federal Highway Administration  
South Dakota Division  
116 East Dakota Avenue, Suite A  
Pierre, SD 57501

**Subject: Section 4(f) Exception for Transportation Enhancement Activities, Transportation Alternatives Projects, and Mitigation Activities [23 CFR 774.13(g)]**

**RE: Project P 0044(207)290, PCN 05X0, Charles Mix and Gregory Counties  
SD44 - Missouri River Bridge Platte-Winner Bridge Replace Str Bridge, Grading,  
Interim Surfacing-Section 4(f) Mitigation at West Platte Game Production Area**

Dear Mr. Lehmkuhl:

This letter requests FHWA approval as SDDOT intends to pursue an exception to the requirement of Section 4(f) review associated with the proposed Platte-Winner Bridge Replacement project. The Project's compliance with the National Environmental Policy Act will be documented as an Environmental Assessment. Included an attachment is a map detailing the project location and extents. This project will replace the Platte-Winner Bridge over the Missouri River and realign SD44 through the Snake Creek Recreation Area (SCRA).

The impacts to the SCRA require Section 4(f) mitigation of a one acre sanitary dump/drinking water station. The site selected for mitigation is the West Platte Game Production Area (GPA). The West Platte GPA is publicly owned and publicly used recreational property owned by the State of South Dakota making it also subject to the Section 4(f) protection. One acre of the West Platte GPA will be used to construct a sanitary dump/drinking water station, associated paved parking lot, leach field, and paved access from existing SD44. The SCRA and West Platte GPA are managed by the South Dakota Game Fish and Parks. I have attached maps showing the work area and the affected Section 4(f) property, West Platte GPA.

Due to the use of federal funds, the proposed transportation project is subject to the requirements of Section 4(f) of the Department of Transportation (DOT) Act of 1966, which affords protection to publicly owned parks, recreation areas, and wildlife and waterfowl refuges.

A 'Use' of Section 4(f) property occurs when:

1. Land is permanently incorporated into a transportation facility;
2. There is a temporary occupancy of land that is adverse in terms of the Section 4(f) statute's preservationist purposes; or
3. There is a constructive use of a Section 4(f) property.

In accordance with 23 CFR 774.13(g), the SCRA mitigation activities on lands associated with West Platte GPA will constitute a "Use", based on the following assessment:

- The use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection; and
- The official(s) with jurisdiction over the Section 4(f) resource agrees in writing to the above paragraph.

The proposed mitigation at West Platte GPA are access related and considered an overall enhancement with minimal impact to the site. The proposed paved access off of SD44 and paved parking lot would improve access for all users including hunters and those with disabilities, which is line with the mission of the West Platte GPA and other GPAs located throughout the state. This use of the Section 4(f) property is solely for enhancing the activities, features, and attributes that quality the property for Section 4(f) protection. The South Dakota Game Fish and Parks (SDGFP) is the official with jurisdiction over the West Platte GPA. They have agreed in writing that the use of the West Platte GPA enhances the activities, features, and attributes that qualify the property for Section 4(f) protection. Their concurrence letter is attached.

Based on the scope of the proposed project and type of work, the construction activities are solely for the purpose of preserving and/or enhancing the protected recreational activities, features, or attributes associated with West Platte GPA that qualified the property for Section 4(f) protection and that there is no adverse effect to the property. The SDGFP Official with Jurisdiction concurrence is attached. I am requesting FHWA's concurrence that 23 CFR 774.113(g) exception applies for this project. If you have questions and/or concerns, please feel free to contact me.

Sincerely,



Joanne Hight  
Administration Program Manager  
605.773.8149  
Joanne.Hight@state.sd.us

Attachments:

- Maps
- OWJ Concurrence
- Section 4(f) Exception to FHWA Supplemental Information

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The FHWA, SD Division has reviewed the information as described in this document and concurs that the work associated with this project at this Section 4(f) resource meets the criteria set forth in 23 CFR 774.13(g), and therefore exempt from Section 4(f) regulations.



Tom Lehmkuhl  
2022.12.20 16:19:06 -06'00'

Tom Lehmkuhl  
South Dakota Division  
Federal Highway Administration

Date

November 7, 2022

Kevin Robling  
Department Secretary  
South Dakota Game Fish and Parks  
523 East Capitol Avenue  
Pierre, SD 57501

**Subject: Official with Jurisdiction (OWJ) Concurrence to Section 4(f) Exception for Transportation Enhancement Activities, Transportation Alternatives Projects, and Mitigation Activities [23 CFR 774.13(g)]**

**RE: Project P 0044(207)290, PCN 05X0, Charles Mix and Gregory Counties**  
SD44 - Missouri River Bridge (Platte/Winner)Platte-Winner Bridge Replace Str Bridge, Grading, Interim Surfacing-Section 4(f) Mitigation at West Platte Game Production Area

Dear Secretary Robling,

Attached is the map detailing the location of the above referenced project. This project will replace the Platte-Winner Bridge over the Missouri River and realign SD44 through the Snake Creek Recreation Area (SCRA). The impacts to the SCRA require Section 4(f) mitigation of a one acre dump/drinking water station. The site selected for mitigation is the West Platte Game Production Area (GPA). The SCRA and West Platte GPA are managed by the South Dakota Game Fish and Parks. I have attached a map showing the work area and the affected Section 4(f) property, West Platte GPA.

Due to the use of federal funds, the proposed transportation project is subject to the requirements of Section 4(f) of the Department of Transportation (DOT) Act of 1966, which affords protection to publicly-owned parks, recreation areas, and wildlife and waterfowl refuges. The purpose of this correspondence is to document that the Official with Jurisdiction (OWJ) concurs with the measures to minimize harm and the assessment of impacts.

A 'Use' of Section 4(f) property occurs when:

1. Land is permanently incorporated into a transportation facility;
2. There is a temporary occupancy of land that is adverse in terms of the Section 4(f) statute's preservationist purposes; or
3. There is a constructive use of a Section 4(f) property.

In accordance with 23 CFR 774.13(g), Transportation enhancement activities, transportation alternatives projects, and mitigation activities of lands associated with the West Platte GPA will not constitute a "Use", based on the following assessment:

- The use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection; and

Based on the scope of the proposed project and type of work, the construction activities are solely for the purpose of preserving and/or enhancing the protected recreational activities, features, or

attributes associated with West Platte GPA that qualified the property for Section 4(f) protection. If you concur with the measures to minimize harm and the work proposed to preserve or enhance the property in regard to the proposed project, please indicate as such by providing your signature in the space provided below at your earliest convenience so the project's environmental documentation can be completed. Thank you for your time and cooperation on this matter. If you have questions and/or concerns, please feel free to contact me.

Sincerely,



Joanne Hight  
Administration Program Manager  
605.773.8149  
Joanne.Hight@state.sd.us

Attachments

OWJ Concurrence:



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Name

11/10/22

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Date

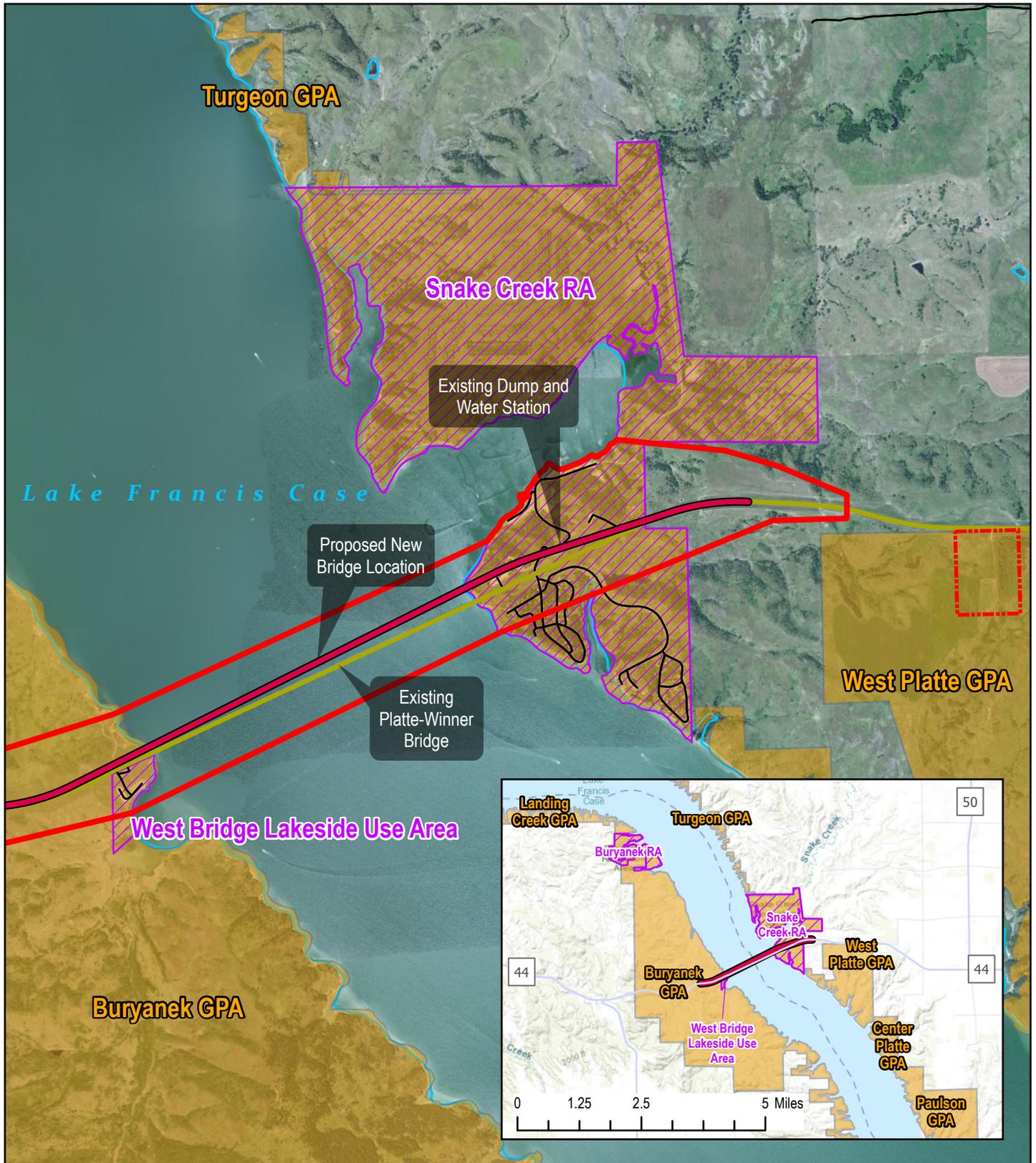


Figure 1

**SD44/Platte-Winner Bridge  
Environmental Assessment**

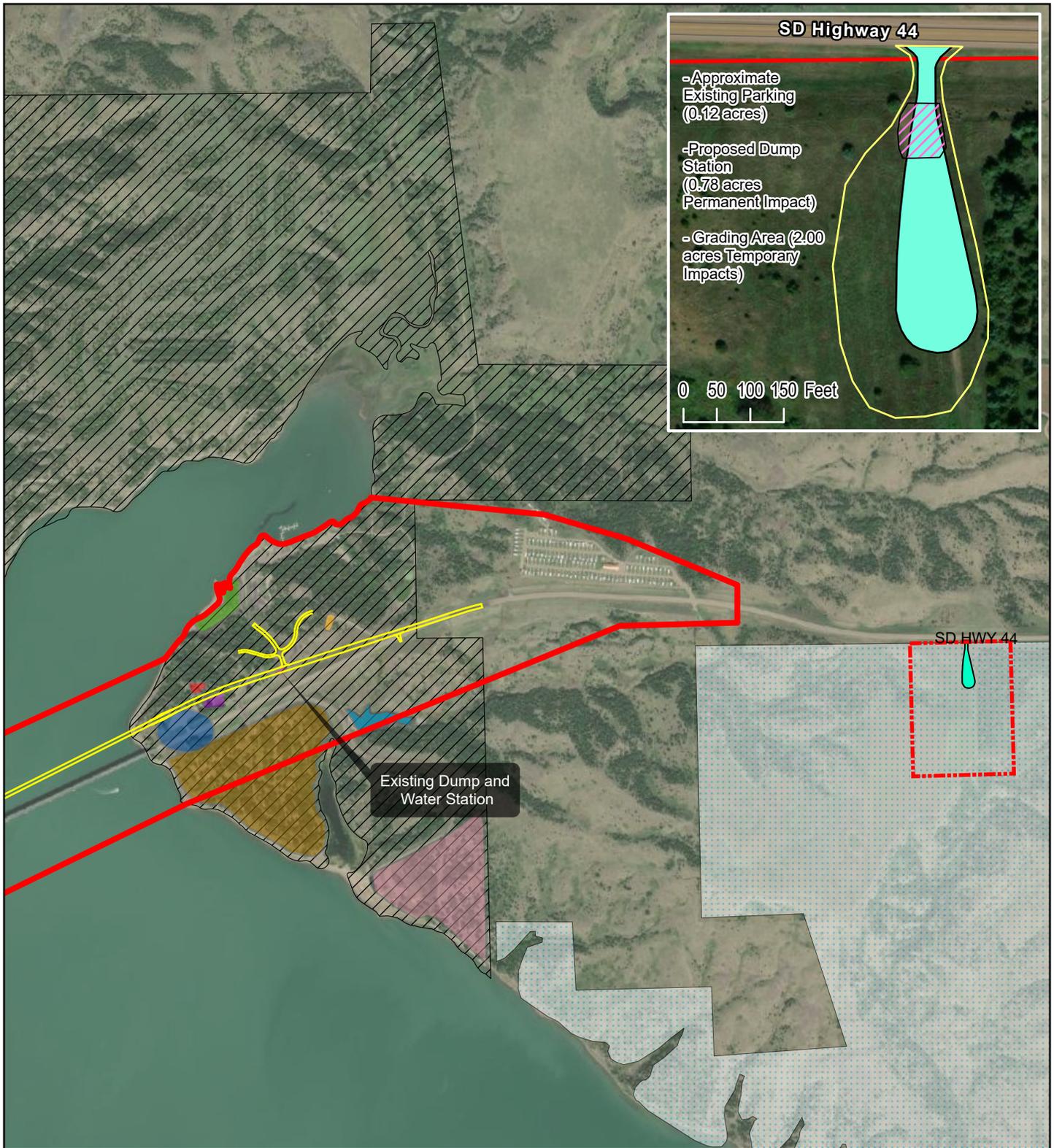
Gregory and Charles Mix Counties

-  Recommended New Alignment ("North Skew Alternative")
-  Parks and Recreation Areas (RA)
-  Public Lands/Game Production Areas (GPA)
-  Study Area (APE)
-  New Dump Station Area



0 1,000 2,000  
Feet





**Figure 2**

**SD44/Platte-Winner Bridge  
Environmental Assessment**

**Gregory and Charles Mix Counties**

- |                                  |                             |
|----------------------------------|-----------------------------|
| Study Area (APE)                 | Existing Dump Station       |
| New Dump Station Area            | Fishing Pond                |
| Recommended Alternative          | Maintenance Shop            |
| West Platte Game Production Area | Scenic Overlook             |
| Cultural Resource Concern        | Boat Ramp Parking           |
| South Campground                 | Park Manager Residence      |
| North Campground                 | Snake Creek Recreation Area |
|                                  | Proposed Dump Station       |



0 1,000 2,000 Feet



# SD44/PLATTE-WINNER BRIDGE CORRIDOR STUDY AND ENVIRONMENTAL ASSESSMENT

Agreement No. 410583, Work Order PD-19-16

Project Nos. HP5596(19); P0044(207)290, PCN 05X0



## PROJECT MEMORANDUM

# SECTION 4(F) EXCEPTION TO FHWA SUPPLEMENTAL INFORMATION

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To: Study Advisory Team (SDDOT, FHWA, SDGFP)

From: Tim Thoreen, Ted McCaslin, Stacy Woodson (HR Green)

Date: 12/12/2022

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### Document Summary

There are several Section 4(f) resources within the SD44 Platte-Winner Bridge project study area. Section 4(f) resources include publicly owned parks, recreation areas, wildlife and waterfowl refuges, and historic sites. Section 4(f) refers to the original section with the U.S. Department of Transportation Act of 1966 that is codified in 49 U.S.C. §303 and 23 U.S.C. §138 and implemented by the Federal Highway Administration (FHWA) through 23 Code of Federal Regulations (CFR) 774. The purpose of this memorandum is to provide supplemental information as the South Dakota Department of Transportation (SDDOT) intends to pursue an exception to the requirement of Section 4(f) review associated with the proposed Platte-Winner Bridge Replacement project.

Multiple Section 4(f) resources are in the project area. One of the impacted resources, a sanitary dump/ drinking water station located within the Snake Creek Recreation Area (SCRA), requires mitigation measures that trigger the analysis of exceptions. This memorandum documents the considerations and coordination with the Official with Jurisdiction, South Dakota Game Fish and Parks (SDGFP), that has led to a recommendation for relocation of the sanitary dump/ drinking water station to a separate SDGFP property outside of the SCRA. The basis for this recommendation is found in exception "g" of 23 CFR 774.13.

## Introduction

The proposed project impacts the Snake Creek Recreation Area (SCRA). Impacts to the SCRA include 8.6 acres of open space of the 700-acre site. Approximately 1.2 percent of the SCRA would be converted to roadway use. However, when the construction of the proposed roadway is complete, about 12.9 acres of the existing SD44 roadway would be converted back to parkland. The majority of the 8.6 acres of impact is to open space within the SCRA that is not actively used for features, attributes, or activities that contribute to the parks' overall recreational use. The exception is the impacts to the one-acre Sanitary Dump/ Drinking Water Station. This feature/ attribute/ activity of the SCRA would be permanently converted to roadway right-of-way and needs to be mitigated.

The site selected for mitigation is the West Platte Game Production Area (GPA). The West Platte GPA is also subject to the Section 4(f) protection since it is publicly owned and publicly used recreation property owned by

# SD44/PLATTE-WINNER BRIDGE CORRIDOR STUDY AND ENVIRONMENTAL ASSESSMENT

## Section 4(f) Exception to FHWA Supplemental Information

South Dakota. The SCRA and West Platte GPA are managed by the South Dakota Game Fish and Parks (SDGFP).

## Potential Mitigation Strategies

### Existing Sanitary Dump/ Water Station

The proposed bridge and roadway alignment impacts one SCRA feature, attribute, activity, the sanitary dump/ water station, that could not be avoided or minimized with the preferred alignment of the proposed improvements. The existing sanitary dump/ drinking water station from an aerial view is about 0.1 acres in size, but together with the associated leach field, parking space, it is estimated to be approximately one acre in size. It is located as a pull off area on SCRA access road to the boat launch facility north of SD44. Two recreational vehicles can use the facility at one time. According to the SDGFP, the facility is undersized, is not located in an ideal location, and can cause traffic backups on the boat launch road during the summer months.



Photo 1.  
Aerial view of existing Sanitary Dump/ Water Station located in SCRA

The SDGFP considers the features, attributes, and activities of the SCRA critical to the operation of the park and will need to remain open to the public during the two or three year construction period including the use of the sanitary dump/ water station. Discussions with the SDGFP indicate that a suitable location for mitigating the sanitary dump/water station needs to include the following:

- Allows the new sanitary dump/ water station to be reconstructed and operational during construction of bridge and roadway improvements
- Allows for the development of a suitable sized leach field
- Located away from water bodies
- Has suitable soils
- Avoids impacting other features, attributes, and activities of the park
- Avoids impacting archaeological resources



Photo 2  
Existing Sanitary Dump/Water Station

Relocating the sanitary dump/water station to another space within the SCRA became prohibitive because no sites at SCRA will meet the requirements of a new sanitary dump/ water station and maintain dump/water station access during project construction. Many different solutions were discussed and vetted including relocating the dump/ water station in a temporary location until after construction is complete and then finding a permanent location. This is cost prohibitive. Ideas of relocating the station to where the existing SD44 roadway was discussed. Placing the dump/ water station within the existing SD44 alignment is not consistent with continuous use since the roadway will need to be demolished and access will need to be available within the bridge approach

# SD44/PLATTE-WINNER BRIDGE CORRIDOR STUDY AND ENVIRONMENTAL ASSESSMENT

## Section 4(f) Exception to FHWA Supplemental Information

construction footprint. Additional areas within SCRA were found to be not suitable for dump/ water station construction by SDGFP.

### Proposed Location for Mitigation

As a result, the SDGFP found a suitable site located approximately 1.5 miles east of the existing bridge on the south side of SD44 as shown in Figure 1.

The site is located within the West Platte GPA which is a 825-acre contiguous property that is owned and operated by the SDGFP for public hunting and wild game production purposes. The West Platte GPA is subject to Section 4(f) protection.

The existing West Platte GPA is undeveloped land that is publicly owned and publicly used for hunting, habitat for game and non-game species, and passive recreation. A grass/dirt vehicle path within the site allows access into the West Platte GPA. The facility includes food plots and coniferous and deciduous tree shelterbelts managed for wildlife production.



Photo 3.  
Looking northwest across West Platte GPA from SD44

The dump/ water station site was selected by SDGFP for further investigation as the most conducive area for the least amount of ground disturbance, relatively low existing habitat value, and convenience SCRA using the dump/water station.

Near the entrance of the facility, there are three white signs posted that indicate no vehicles, except for those that are authorized, are not allowed beyond a fenced area.

Authorized vehicles are expected to park in the designated area, and no camping or fires are allowed at the facility. There is a blue sign indicating "Handicapped entrance only."

Those with disabilities are allowed to use the path but need to follow the blue posted signs for vehicle access. Vehicle travel is only allowed on designated handicap access path. The path is also used for site maintenance.



Photo 4.  
Existing vehicle path and signage within parking area of West Platte GPA

The routine operation and maintenance of the West Platte GPA includes controlled burns and grazing. Fire is used to control tree and plant species and occurs approximately ever two to five years when conditions allow. Pasture grazing occurs annually on a two pasture rotation schedule within the West Platte GPA. Grazing leases

## SD44/PLATTE-WINNER BRIDGE CORRIDOR STUDY AND ENVIRONMENTAL ASSESSMENT

### Section 4(f) Exception to FHWA Supplemental Information

are held from March 1 thru May 21 annually and fence maintenance is completed during this time. Signage maintenance occurs as needed typically in July and August.

According to the *2017 West Platte Area Management Plan*, the primary species the facility is managing for is deer and pheasant. The secondary species is grouse. The plan states that noxious weed control is needed and controlled burns are prescribed in areas near the highway.

The objectives of the West Platte GPA as identified in the *2017 West Platte Area Management Plan* are to:

- Provide habitat for non-game species
- Provide public hunting opportunities
- Provide habitat for small game wildlife production
- Provide trapping opportunities

### New Sanitary Dump/ Water Station

The proposed new sanitary dump/ water station would be placed in an existing open grassy area located near the SD44 roadway. The new facility would include a paved entrance, paved angle parking for up to ten parking spaces for easy access to the sanitary and water facilities.

This site meets the SDGFP's criteria needed for a new location of the facility. This site would be constructed in advance of the bridge and roadway construction, and dump/ water station demolition, allowing campers at the SCRA the ability to use this facility for the duration of construction and after. The West Platte GPA dump/ water station area is a geotechnically stable location in an area known for landslides. Additionally, it is in an area where risk of impacting environmental resources is low. This area provides stable soil, away from water bodies, is void of eligible archaeological resources and wetlands according to 2022 surveys, has no existing park attributes to avoid outside of providing access to the larger West Platte GPA, and has space for the associated dump/ water station leach field.

Approximately two acres of the 825-acre West Platte GPA (0.2 %) would be disturbed to construct the new sanitary dump/ water station. Approximately one acre of that West Platte GPA two acres area would constitute a use of the property to be used as mitigation for the impacts to the SCRA sanitary dump/ water station. The one acre mitigation site within the West Platte GPA is commensurate to the one acre of impact occurring within the SCRA to construct a new sanitary dump/water station. The one acre mitigation site within the West Platte GPA would be permanently converted from its current undefined parking area use to a new dump/ water station facility. This new facility proposal includes paved access, the paved dump/water station area, angled parking, and the needed drain field areas. The other acre is needed to construct the facility and is a temporary impact to the West Platte GPA that would not be considered a use of the property or mitigation to the SCRA sanitary dump/ water station. The SDDOT and SDGFP will work together to determine the correct seed mix needed to reseed the disturbed land around the new dump/ water station facility with native, high quality seeds that contribute to the mission of providing habitat for deer, pheasants, and grouse.

## Enhancements to West Platte GPA

The SDGFP considers the proposed new sanitary dump/water station to be located at the West Platte GPA a use of one acre of the property but also as an enhancement to the access, parking, and habitat of the site. According to 23 CFR 774.13(g), the FHWA has identified various exceptions to the requirement for Section 4(f) approval including 23 CFR 774.13(g). This exception states that “Transportation enhancement activities, transportation alternatives projects, and mitigation activities, where: 1) the use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection; 2) and the official with jurisdiction over the Section 4(f) resource agrees in writing to the use<sup>1</sup>.”

The proposed improvements at West Platte GPA are access related and considered an overall enhancement with minimal impact to the site. The proposed paved access off of SD44 and paved parking lot would improve access for all users including hunters and those with disabilities, which is line with the mission of the West Platte GPA and other GPAs located throughout the state.

Providing a sanitary dump/ water station within the West Platte GPA would be consistent with the use of the GPA and other GPAs and recreational facilities managed by the SDGFP located within the area. According to the SDGFP, there are 706 GPAs located across the state managed at the local level. Of the 706 GPAs, approximately half of them have amenities such as parking lots, boat ramps, restrooms, picnic shelters, roads/trail, and fish cleaning stations. None of SDGFP’s GPAs currently include a sanitary dump/ water station.

Within the SD44 Platte-Winner Bridge project study area, the West Bridge Lakeside Use Area (LUA), while not a GPA, is managed by the SDGFP and offers a paved driveway, paved parking lots, vault toilets, and a dock/boat launch area. The West Bridge LUA is located immediately adjoined to the Buryanek GPA, conceivably providing that functionality to users of the Buryanek GPA. Additionally, the Buryanek GPA itself offers an access trail similar to the one described above within the existing West Platte GPA used by those with a disability. This information is provided to demonstrate how providing an amenity at a GPA is consistent with SDGFP’s local management in this area according to public access and wildlife/habitat management needs.

West Platte GPA currently has a loosely-defined grassy area that is available for use as a parking area. This space is currently not high-quality habitat for non-game species or small game due to its close proximity to the roadway and undesirable distance (from a wildlife habitat perspective) from food sources and trees or similar shelter. A clearly defined, paved access and parking lot would help delineate the areas that are to be used for parking, sanitary dumping, and water station space while also discouraging use of vehicles in areas that contain high-quality game production lands. Having a defined access and parking place would enhance the user’s experience at the site by providing a clarity in expectations at the site.

The sanitary dump/ water station parking lot would be open to the public after winterization in October for enhanced outdoor recreation use and hunting seasons. The proposed area would provide ample safe parking closer to walk in food plots and desirable hunting locations within West Platte GPA.

As part of its proposed project, SDDOT bears responsibility for mitigating the one acre impact to the existing SCRA sanitary dump/water station. The mitigation proposal includes construction of a new sanitary dump/ water station that is one acre in size at the West Platte GPA. Furthermore, the mitigation includes paved access from

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<sup>1</sup> Source: <https://www.law.cornell.edu/cfr/text/23/774.13>

## **SD44/PLATTE-WINNER BRIDGE CORRIDOR STUDY AND ENVIRONMENTAL ASSESSMENT**

### **Section 4(f) Exception to FHWA Supplemental Information**

existing SD44, the construction of a new paved parking lot, and construction of the new sanitary dump/ water station and associated leach field that is commensurate to the impacted SCRA sanitary dump/ water station. Approximately two acres of West Platte GPA is anticipated to be impacted, of which one will be used for mitigation and the other acre is temporary construction impact. The SDDOT and SDGFP will work together to determine an appropriate seed mix to reseed the one acre used temporarily for construction.

As a separate and independent future action that may or may not occur at the same time as the construction of the new sanitary dump/ water station, the SDGFP may consider other enhancements such as planting trees, shrubs, other types of vegetation and food plots around the new sanitary/ water station that enhances the quality of habitat for the target species. This would likely result in better habitat for the target species in the GPA. The SDGFP will determine what the public and wildlife needs are after the new sanitary dump/ water station is constructed as part of the overall management strategy of the West Platte GPA going forward.

In summary, construction of a sanitary dump/ water station within the West Platte GPA property is consistent with the exception described at 23 CFR 774.13(g). This mitigation measure would enhance the property by making it more accessible for current and potential new users of the facility. This use of the West Platte GPA is consistent and in line with the mission of SDGFP's GPA program. The official with jurisdiction, the SDGFP, agrees that the addition of the sanitary dump/ water station to the West Platte GPA would enhance the facility. Letters from the SDGFP are included in Appendix A.

Section 4(f) Exception to FHWA Supplemental Information

Figure 1. Location of New Sanitary/ Water Station

