

SECTION 4(f) EXCEPTIONS/EXEMPTIONS DETERMINATION

Florida Department of Transportation

District One

Big Carlos Pass Bridge Replacement

Limits of Project: From Estrellita Drive to south of the Lovers Key State Park Entrance

Lee County, Florida

Financial Management Number: 445323-1-22-01

ETDM Number: 14301

Date: February 2020

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated December 14, 2016 and executed by FHWA and FDOT.

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

650-050-48  
Environmental  
Management  
01/19

<b>Project Name:</b>	CR 865/Big Carlos Pass Bridge Replacement		
<b>FM#:</b>	445323-1-22-01	<b>ETDM#:</b>	14301
<b>FAP#:</b>			
<b>Project Review Date:</b>	<a href="#">Click here to enter a date.</a>		
<b>FDOT District:</b>	1		
<b>County(ies):</b>	Lee County		

**Project Description including Section 4(f) Specific Information:**

Lee County is conducting a Project Development and Environment (PD&E) study to evaluate the proposed replacement of the Big Carlos Pass Bridge from Estrellita Drive to Lovers Key State Park, a distance of approximately 0.6 miles. The existing bridge is proposed to be replaced by either a high-level fixed span bridge or a low-level bascule bridge option. A no-build alternative whereas the existing bridge is not replaced is also being evaluated.

As shown in Attachment 1, the current conceptual design requires no permanent relocation of the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail. The Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail, along with the Great Calusa Blueway Paddling Trail, all pass underneath the Big Carlos Pass Bridge together. Because no permanent relocation of the paddling trails is anticipated and the horizontal navigation clearance underneath the bridge is expected to remain the same or increase, the FDOT proposes a Section 4(f) Exception/Exemption: Temporary Occupancy Determination for the paddling trails. Once construction is complete, the paddling trails will be returned to their normal use.

**Type of Property: Public Parks and Recreation Areas**

**Description of Property:** The Estero Bay and River Paddling Trail is a nine-mile paddling trail beginning at Koreshan State Historic Park on the Estero River and passes through and around Lovers Key State Park. The trail passes underneath the Big Carlos Pass Bridge from Estero Bay and enters Lovers Key State Park just south of the bridge. A map (Attachment 1) depicting the Estero Bay and River Paddling Trail in the vicinity of the project is attached to this application.

**Establishing Section 4(f) Exception Eligibility (from 23 CFR 774.13):**

**The facts of the case must match the circumstances as described below:**

- Restoration, rehabilitation or maintenance of transportation facilities that are on or eligible for the National Register when:
  - (1) The Administration [FDOT] concludes, as a result of the consultation under 36 CFR 800.5, that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and
  - (2) The OWJ over the Section 4(f) resource have not objected to the FDOT conclusion.
- Archaeological sites that are on or eligible for the National Register when:
  - (1) The Administration [FDOT] concludes that the archaeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken and where the Administration [FDOT] decides, with agreement of the OWJ, not to recover the resource; and
  - (2) The OWJ over the Section 4(f) resource have been consulted and have not objected to the Administration [FDOT] finding.
- Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. With the exception of the treatment of archaeological resources in §774.9(e) discovered during construction, the Administration [FDOT] may permit a project to proceed without consideration under Section 4(f) if the property interest in the Section 4(f) land was acquired for transportation purposes prior to the designation or change in the determination of significance, and if an adequate effort was made to identify properties protected by Section 4(f) prior to acquisition. However, if it is reasonably foreseeable that a property would qualify as eligible for the National Register prior to the start of construction, then the property should be treated as a historic site and does not qualify for the Section 4(f) exception.  
In applying this exception, the analyst must consider whether:

**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

- (1) The property acquisition was completed prior to the designation or the change in the determination of significance.
  - (2) The Cultural Resources Assessment Survey (CRAS) report was considered complete and sufficient at the time of its submittal.
  - (3) The CRAS report identified the property in question as a resource that would require re-examination or that would become significant prior to construction.
  - (4) The property in question is an archaeological site important primarily for the information it contains.
- Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f). The following conditions must be satisfied:
- (1) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
  - (2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;
  - (3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;
  - (4) The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and
  - (5) There must be documented agreement of the OWJ over the Section 4(f) resource regarding the above conditions.
- Park road or parkway projects under 23 U.S.C. 204 which is the Federal Lands Access Program, providing access to transportation facilities located on or adjacent to, or provide access to Federal Lands.
- Certain trails, paths, bikeways, and sidewalks, in the following circumstances:
- (1) Trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2);
  - (2) National Historic Trails and the Continental Divide National Scenic Trail, designated under the National Trails System Act, 16 U.S.C. 1241-1251, with the exception of those trail segments that are historic sites as defined in 23 CFR 774.17, such as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the NRHP. The term includes properties of traditional religious and cultural importance to an Indian tribe that are included in, or are eligible for inclusion in the NRHP.
  - (3) Trails, paths, bikeways, and sidewalks that occupy a transportation facility right-of-way without limitation to any specific location within that right-of-way, so long as the continuity of the trail, path, bikeway, or sidewalk is maintained; and
  - (4) Trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation unless they are historic.
- Transportation enhancement 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; and
  - (2) The OWJ over the Section 4(f) resource agrees in writing to the use described in (1) of this section.

**Establishing Section 4(f) Exemption Eligibility (Refer to Chapter 7.3.4 for further information and criteria)**

- Section 1303 of the FAST Act incorporates the ACHP Program Comment exemption for common post-1945 concrete and steel bridges and culverts into Section 4(f), eliminating review requirements for these structures under Section 4(f). This exemption applies to specific types of bridges and culverts built after 1945, including various forms of reinforced concrete slab bridges, reinforced concrete beam and girder bridges, steel multi-beam bridges or multi-girder bridges, and culverts and reinforced concrete boxes (See Section V Program Comment).
- (Section 11502 (23 U.S.C. 138(f)/49 U.S.C. 303(h)) exempts from Section 4(f) review the use of rail. The exemption to **Section 4(f)** applies regardless of whether the railroad or rail transit line, or element thereof, is listed in or is eligible for listing in the National Register of Historic Places.

The exemption applies to the following resource types which might otherwise be considered abandoned or not in use:

**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

- Railroad and transit lines over which service has been discontinued under the process described in 49 U.S.C. 10903;
  - Railroad and transit lines that have been railbanked (a voluntary agreement between a railroad company and a trail agency to use an out-of-service rail corridor as a trail until a railroad might need the corridor again for rail service as described in 16 U.S.C. 1247(d)); and
  - Railroad and transit lines that have been otherwise reserved for the future transportation of goods or passengers.
- 23 CFR 774.11(e)(2). The interstate highway system is exempt from being treated as a historic resource under Section 4(f), unless the U.S. Secretary of Transportation determines individual elements possess national or exceptional historic significance and should receive protection. Interstate highway-related facilities in Florida determined historically significant by the Secretary of Transportation and therefore not exempt under Section 4(f) are:
- I-275 Bob Graham/Sunshine Skyway Bridge
  - I-75 Alligator Alley- Milepost range 19.6-49.3
  - I-75 Snake Wall
  - I-95 Myrtle Avenue Overpass
- (23 CFR 774.11(h)) When a property formally reserved for a future transportation facility temporarily functions for park, recreation, or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of duration, will not subject the property to Section 4(f).
- 23 CFR 774.11 (i) When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area, or wildlife and waterfowl refuge is established and concurrent or joint planning or development of the transportation facility and the Section 4(f) resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in §774.17. Examples of such concurrent or joint planning or development include, but are not limited to:
- Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation facility and the Section 4(f) property; or
  - Designation, donation, planning, or development of property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.

**Explanation supporting the Section 4(f) property meets all of the criteria of the Exception or Exemption**

As shown in Attachment 1, the current conceptual design requires no permanent relocation of the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail. The Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail, along with the Great Calusa Blueway Paddling Trail, all pass underneath the Big Carlos Pass Bridge together. Because no permanent relocation of the paddling trails is anticipated and the horizontal navigation clearance underneath the bridge is expected to remain the same or increase, the FDOT proposes a Section 4(f) Exception/Exemption: Temporary Occupancy Determination for the paddling trails. Once construction is complete, the paddling trails will be returned to their normal use.

**Documentation**

The following items **must** be attached to this form to ensure proper documentation of the Section 4(f)

Exception/Exemption:

1. DOA package (if used)
2. Required communications with the OWJ (i.e. concurrence letters) for the Exception/Exemption as applicable

**Signatures**

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

650-050-48  
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The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

\_\_\_\_\_  
Preparer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Environmental Manager, or designee

\_\_\_\_\_  
Date

**OEM  
Concurrence:**

\_\_\_\_\_  
OEM Subject Matter Expert

\_\_\_\_\_  
Date

**OEM  
Approval:**

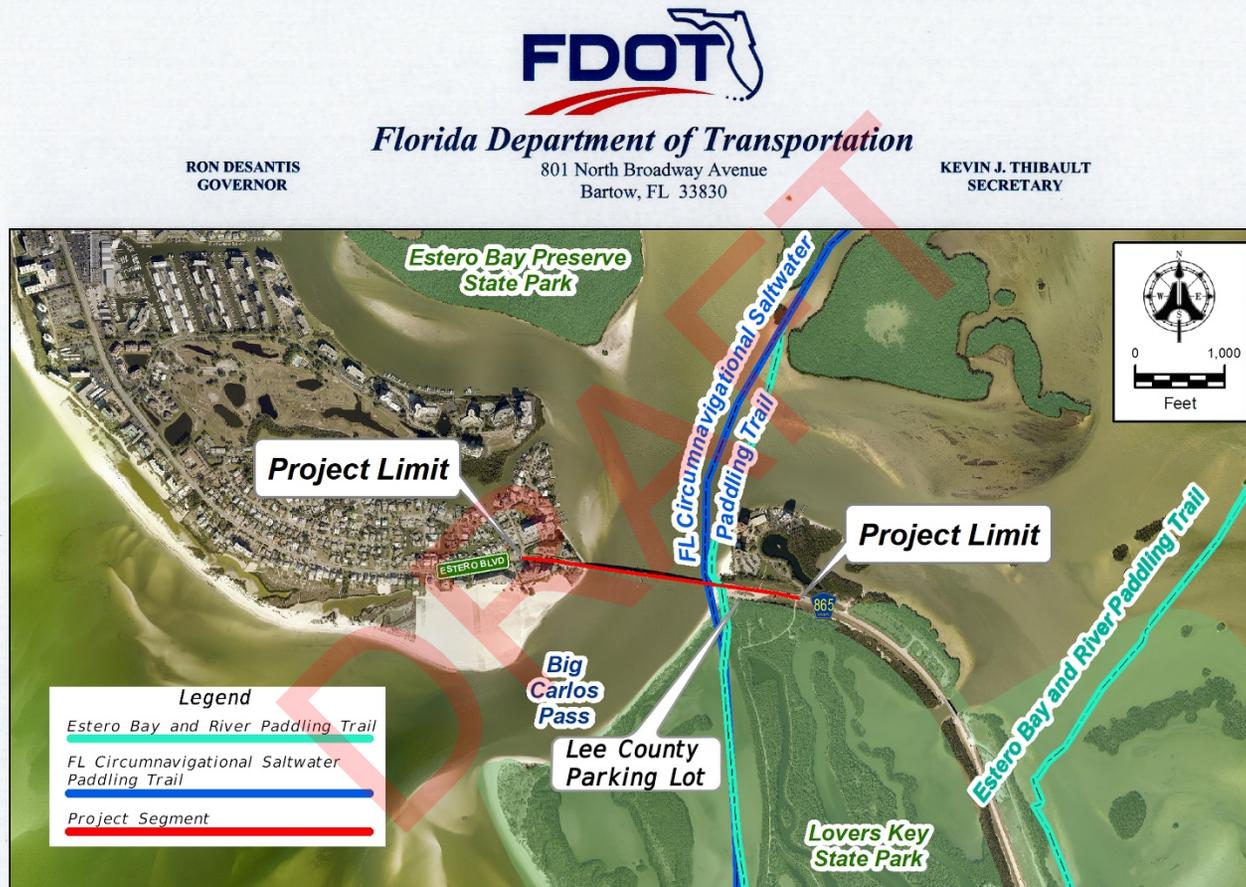
\_\_\_\_\_  
Director of OEM, or designee

\_\_\_\_\_  
Date

DRAFT

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

**Attachment 1**



**Figure 1: Project Location Map**

**FDOT**  
*Florida Department of Transportation*  
801 North Broadway Avenue  
Bartow, FL 33830

RON DESANTIS  
GOVERNOR

KEVIN J. THIBAUT  
SECRETARY



*Florida Department of Transportation*

RON DESANTIS  
GOVERNOR

801 North Broadway Avenue  
Bartow, FL 33830

KEVIN J. THIBAUT  
SECRETARY

October 9, 2019

Mr. Steven Cutshaw  
Bureau Chief, Office of Park Planning  
Florida Department of Environmental Protection  
3800 Commonwealth Boulevard  
Tallahassee, FL 32399

Re: CR 865/Big Carlos Pass Bridge Replacement  
Lee County, Florida  
Financial ID No. 445323-1-22-01  
Section 4(f) Resources

Dear Mr. Cutshaw:

The Florida Department of Transportation (FDOT) in coordination with the Federal Highway Administration (FHWA) and Lee County is conducting a Project Development and Environment (PD&E) study to evaluate improvement alternatives for the CR 865/Big Carlos Pass Bridge in Lee County, Florida (see **Figure 1**). The existing Big Carlos Pass Bridge was constructed in 1965 and has been deemed functionally and structurally obsolete by the FDOT. The proposed alternatives being evaluated include the no-build alternative, replacement of the existing two-lane double leaf bascule bridge with a high-level fixed span bridge, and the replacement of the existing two-lane double leaf bascule bridge with a low-level bascule bridge. All three bridge alternatives would include two 12-ft travel lanes, two seven-ft shoulders with bicycle lanes, one six-ft sidewalk, and one 10-ft shared use path.

As per FHWA policy and as part of the PD&E study, one of the objectives is to identify parcels or other facilities that may be protected under Section 4(f) of the Department of Transportation Act of 1966 (49 USC 303). Section 4(f) typically applies to publicly owned land such as a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance. Section 4(f) also applies to historic or archaeological sites of national, state, or local significance regardless of ownership.

The FDOT has identified the following resources as potential Section 4(f) resources:

- Lovers Key State Park
- Florida Circumnavigational Saltwater Paddling Trail
- Estero Bay and River Paddling Trail

These properties/facilities are publicly owned and managed by your agency, the Florida Department of Environmental Protection. We believe Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail are locally significant resources that play an important role for recreation in the area. Significance means that in comparing the availability and function of Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail with the recreational objectives of the community, the land and paddling trails in question play an important role in meeting those objectives.

It is FHWA and FDOT policy to avoid and/or minimize impacts to potential Section 4(f) resources. As shown in **Figure 1**, the current conceptual design requires no right-of-way (ROW) from Lovers Key State Park. The dirt parking lot located south of CR 865 on the east side of the Big Carlos Pass Bridge is entirely within the county's ROW. This ROW may be used for temporary occupancy during construction of the replacement bridge. Although this parking lot does provide access to the west side of Lovers Key State Park, the FDOT is proposing a Section 4(f) No Use Determination because the main entrance to Lovers Key State Park is located 1.08 miles east of the project area and trails connect park guests from the main entrance to the west side of the park, and the project is not anticipated to use any protected property from Lovers Key State Park. Use of the parking lot during construction will not affect access to the main entrance of the park or activities associated with the park.

As shown in **Figure 1**, the current conceptual design requires no permanent relocation of the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail. The Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail, along with the Great Calusa Blueway Paddling Trail, all pass underneath the Big Carlos Pass Bridge together. Because no permanent relocation of the paddling trails is anticipated and the horizontal navigation clearance underneath the bridge is expected to remain the same or increase, the FDOT proposes a Section 4(f) Exception/Exemption: Temporary Occupancy Determination for the paddling trails. Once construction is complete, the paddling trails will be returned to their normal use.

Prior to making a determination of whether or not Section 4(f) applies, the FHWA requires a statement of significance from the official who has jurisdiction over the subject parcels. We are requesting the Florida Department of Environmental Protection's concurrence with the determination that Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail are significant resources (as described previously) and that there will be no use of these resources due to implementing the proposed project.

In addition, the FHWA requires that this office undertake further coordination with your agency regarding the proposed project's involvement with the park and paddling trails during construction and possible temporary impacts associated with construction activities. Accordingly, the FDOT is providing the following commitments that would be associated with implementing the proposed project:

1. Construction activities within Lovers Key State Park access points, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties" that would be associated with the construction of the Big Carlos Pass Bridge Replacement will be of a temporary duration (i.e., less than the time needed for the construction of the entire project) and there will be no change in ownership of the park

and trail "properties". The replacement bridge will occur within CR 865/Lee County ROW.

2. Construction activities within the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties" will be minor and changes, if any, will be minimal. Adequate vertical and horizontal navigation clearances will be provided for trail users.
3. Construction activities within Lovers Key State Park access points, the Florida Circumnavigational Paddling Trail and the Estero Bay and River Paddling Trail "properties" will create no anticipated permanent adverse physical impacts, nor will there be interference with protected activities, features, or attributes of the property on a permanent basis. The FDOT plans to keep trails accessible during construction activities, however access points to Lovers Key State Park from the existing parking lot located within Lee County ROW may be closed during construction. Activities within Lovers Key State Park are not anticipated to be adversely impacted because the main entrance to Lovers Key State Park is located east of the project area. The FDOT will add a plan note into the General Notes of the project's final design plans to ensure the contractor equipment staging, materials stockpiling, or storing activities will not be allowed within Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties".
4. The Lovers Key State Park access points, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties" within the limits of the project's construction area will be restored to a condition which is at least as good as that which existed prior to the project being started.

We are requesting your concurrence with the determination that Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail meet the Section 4(f) definition of significant resources. We are also requesting your concurrence with the temporary impacts from construction assessment. If you concur with FDOT's assessment of the significance of these resources, please sign and date the concurrence block at the bottom of this letter and return it to my attention at the address below.

If you have any questions or concerns regarding the findings of this letter, please contact me at (863) 519-2495 or [Jonathon.Bennett@dot.state.fl.gov](mailto:Jonathon.Bennett@dot.state.fl.gov).

Sincerely,



Jonathon A. Bennett  
Environmental Project Manager  
Florida Department of Transportation, District One  
801 North Broadway Avenue  
Bartow, Florida 33830

***I concur that the Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail are significant resources to the Florida Department of Environmental Protection.***

*(Signature)*

*(Date)*

Steven Cutshaw  
Bureau Chief, Office of Park Planning

cc: Jeff Jacquin, AIM Engineering & Surveying, Inc.

DRAFT



# Florida Department of Transportation

RON DESANTIS  
GOVERNOR

801 North Broadway Avenue  
Bartow, FL 33830

KEVIN J. THIBAUT  
SECRETARY

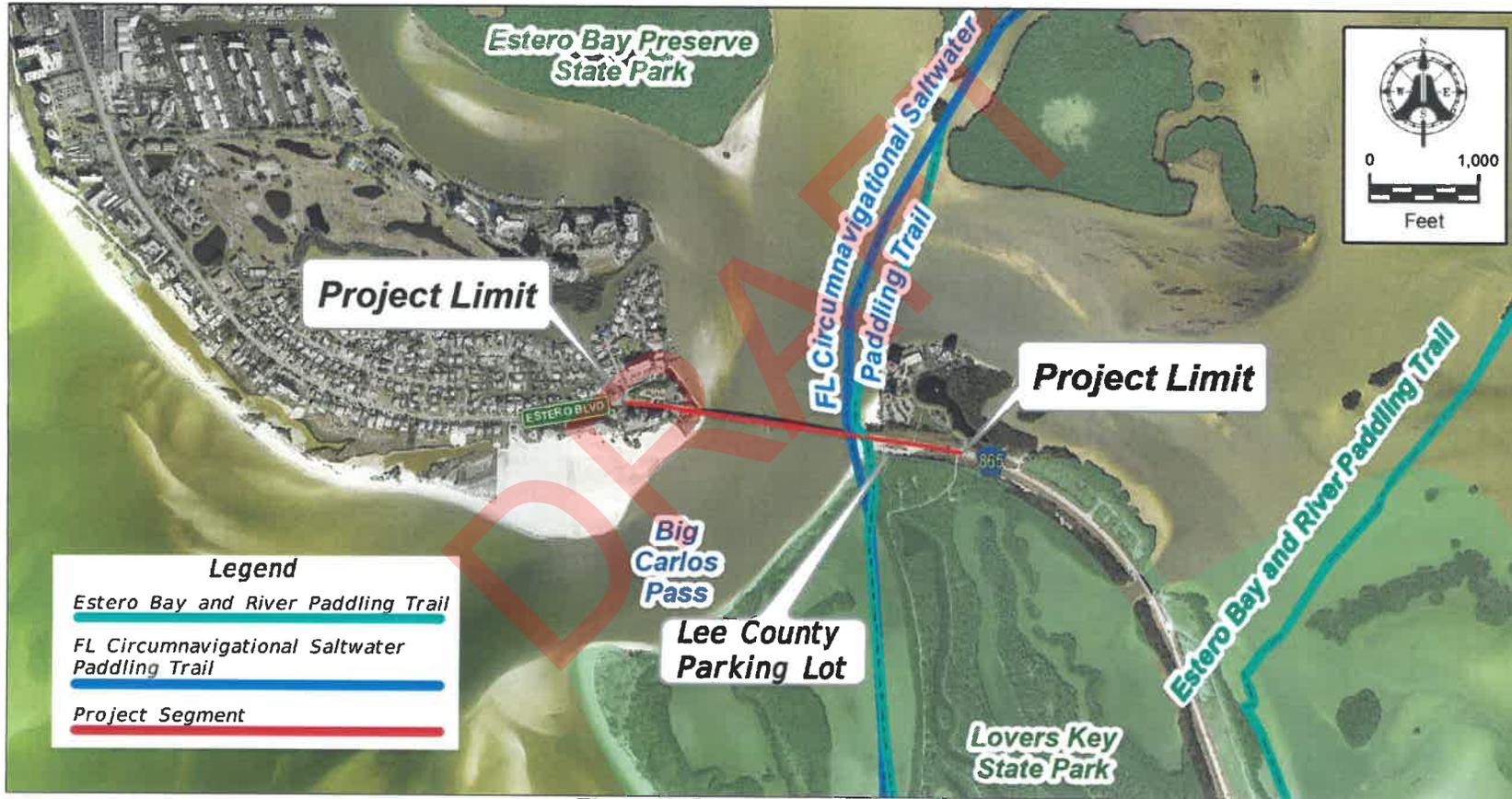


Figure 1: Project Location Map



# FLORIDA DEPARTMENT OF Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, FL 32399

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Noah Valenstein**  
Secretary

January 28, 2020

Mr. Jonathon A. Bennett  
Environmental Project Manager  
FDOT-District 1  
801 North Broadway Avenue  
Bartow, Florida 33830

RE: Section 4(f) Statement of Significance  
Lover's Key State Park  
Florida Circumnavigational Saltwater Paddling Trail  
Estero Bay and River Paddling Trail  
CR 865/Big Carlos Pass Bridge Replacement  
Lee County  
Financial ID No. 433856-1-22-01

Dear Mr. Bennett:

The DEP Division of Recreation and Parks (DRP) has been working with the coordinating agencies involved in Big Carlos Pass Bridge Replacement/CR 865 project as it relates to section 4(f) applicability for Lover's Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail. According to the FDOT PD&E Manual, Part 2, Chapter 7, a Statement of Significance is necessary from the Official with Jurisdiction over Section 4(f) resources.

DRP concurs with FDOT's determination that these managed areas are significant resources and that there will be no loss of use of these resources due to implementing the proposed project. Our position is based on details outlined in FDOT's October 9, 2019, letter from Jonathon A. Bennett and Mr. Bennett's subsequent email dated December 18, 2019, submitting the updated project limits map.

This letter provides a context for understanding the local and statewide significance of our parks and trails for outdoor recreational opportunities and protection of ecologically sensitive environments. Lovers Key State Park is located within Lee County, within the city limits of Bonita Springs, just north of Bonita Beach, Florida. Access to the park is from State Road 865 (Estero Boulevard). Lovers Key State Park currently contains

Mr. Jonathon A. Bennett  
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January 28, 2020

approximately 1,464 acres. Acquisition began on May 25, 1983 under the Save Our Coast (SOC) Program. During this time, the adjacent Carl Johnson Park, located on the southern part of Lovers Key and managed by Lee County, was providing similar recreational services. In 1996, as a cost-saving measure to avoid replication of services, Lee County signed a letter of agreement with the Division of Recreation and Parks to merge Carl Johnson Park with Lovers Key State Park. The agreement called for the two units to be managed by the Division of Recreation and Parks as a unit of the state park system. Public outdoor recreation and conservation is the designated single use of the property. There are no legislative or executive directives that constrain the use of this property. The park features several important coastal natural communities including mangrove fringed canals and tidal lagoons and consists of four barrier islands -- Lovers Key, Inner Key, Long Key and Black Island -- all approximately two miles offshore from the mainland in the Gulf of Mexico. Collectively the islands form a barrier between the Gulf of Mexico and Estero Bay. Lovers Key is the principal island having beach frontage on the Gulf of Mexico.

Additionally, DRP's Office of Greenways and Trails has responded that it appears the project will have no significant impacts on the Florida Circumnavigational Saltwater Paddling Trails or the Estero Bay and River Paddling Trail.

Sincerely,



Steven A. Cutshaw, Chief  
Office of Park Planning  
Division of Recreation and Parks

SAC/dm

cc: Brian Fugate  
B.J. Givens  
Catherine Moses  
Chris Becker

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

650-050-48  
Environmental  
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<b>Project Name:</b>	CR 865/Big Carlos Pass Bridge Replacement		
<b>FM#:</b>	445323-1-22-01	<b>ETDM#:</b>	14301
<b>FAP#:</b>			
<b>Project Review Date:</b>	<a href="#">Click here to enter a date.</a>		
<b>FDOT District:</b>	1		
<b>County(ies):</b>	Lee County		

**Project Description including Section 4(f) Specific Information:**

Lee County is conducting a Project Development and Environment (PD&E) study to evaluate the proposed replacement of the Big Carlos Pass Bridge from Estrellita Drive to Lovers Key State Park, a distance of approximately 0.6 miles. The existing bridge is proposed to be replaced by either a high-level fixed span bridge or a low-level bascule bridge option. A no-build alternative whereas the existing bridge is not replaced is also being evaluated. The east side of the Big Carlos Pass Bridge provides access to Lovers Key State Park, a 1,616 acre state park that provides recreational opportunities such as hiking, camping, canoeing, fishing, swimming and wildlife viewing. The park boasts seven miles of hiking trails and five miles of multi-use trails. Lovers Key State Park is abundant with wildlife which includes white-tailed deer, alligators, manatees, bottlenose dolphins, osprey, wading birds, and gopher tortoises.

As shown in Attachment 1, the current conceptual design requires no right-of-way (ROW) from Lovers Key State Park. The parking lot located south of CR 865 on the east side of the Big Carlos Pass Bridge is within ROW owned by Lee County and may be used for temporary occupancy during construction of the replacement bridge, however this parking lot does provide access to the west side of Lovers Key State Park. The FDOT is proposing a Section 4(f) Exception/Exemption: Temporary Occupancy Determination. Section 4(f) Exception/Exemption: Temporary Occupancy Determination states that the resource may be occupied during construction, but there will be no change in ownership of the property, there are no permanent adverse impacts anticipated, and the resource will be restored to its original condition. During construction the access points from the parking lot owned by Lee County may not be accessible, but because the main entrance to Lovers Key State Park is located 1.08 miles east of the project area, the project will not affect the activities associated with the park.

**Type of Property: Public Parks and Recreation Areas**

**Description of Property:** Lovers Key State Park is a 1,616 acre state park that provides recreational opportunities such as hiking, camping, canoeing, fishing, swimming and wildlife viewing. Lovers Key State Park is abundant with wildlife which includes white-tailed deer, alligators, manatees, bottlenose dolphins, osprey, wading birds, and gopher tortoises. The park provides protection to the animals listed above as well as preserving plants and endangered ecosystems such as mangrove habitats. Within the property are two playground areas with picnic pavilions, a visitor center/snack bar, seven miles of hiking trails, five miles of multi-use trails, a restaurant on the south end of the beach, and paddling trails.

**Establishing Section 4(f) Exception Eligibility (from 23 CFR 774.13):**

**The facts of the case must match the circumstances as described below:**

- Restoration, rehabilitation or maintenance of transportation facilities that are on or eligible for the National Register when:
  - (1) The Administration [FDOT] concludes, as a result of the consultation under 36 CFR 800.5, that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and
  - (2) The OWJ over the Section 4(f) resource have not objected to the FDOT conclusion.
  
- Archaeological sites that are on or eligible for the National Register when:
  - (1) The Administration [FDOT] concludes that the archaeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken and where the Administration [FDOT] decides, with agreement of the OWJ, not to recover the resource; and
  - (2) The OWJ over the Section 4(f) resource have been consulted and have not objected to the Administration [FDOT] finding.

**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

- Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. With the exception of the treatment of archaeological resources in §774.9(e) discovered during construction, the Administration [FDOT] may permit a project to proceed without consideration under Section 4(f) if the property interest in the Section 4(f) land was acquired for transportation purposes prior to the designation or change in the determination of significance, and if an adequate effort was made to identify properties protected by Section 4(f) prior to acquisition. However, if it is reasonably foreseeable that a property would qualify as eligible for the National Register prior to the start of construction, then the property should be treated as a historic site and does not qualify for the Section 4(f) exception.

In applying this exception, the analyst must consider whether:

- (1) The property acquisition was completed prior to the designation or the change in the determination of significance.
- (2) The Cultural Resources Assessment Survey (CRAS) report was considered complete and sufficient at the time of its submittal.
- (3) The CRAS report identified the property in question as a resource that would require re-examination or that would become significant prior to construction.
- (4) The property in question is an archaeological site important primarily for the information it contains.

- Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f). The following conditions must be satisfied:

- (1) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
- (2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;
- (3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;
- (4) The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and
- (5) There must be documented agreement of the OWJ over the Section 4(f) resource regarding the above conditions.

- Park road or parkway projects under 23 U.S.C. 204 which is the Federal Lands Access Program, providing access to transportation facilities located on or adjacent to, or provide access to Federal Lands.

- Certain trails, paths, bikeways, and sidewalks, in the following circumstances:

- (1) Trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2);
- (2) National Historic Trails and the Continental Divide National Scenic Trail, designated under the National Trails System Act, 16 U.S.C. 1241-1251, with the exception of those trail segments that are historic sites as defined in 23 CFR 774.17, such as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the NRHP. The term includes properties of traditional religious and cultural importance to an Indian tribe that are included in, or are eligible for inclusion in the NRHP.
- (3) Trails, paths, bikeways, and sidewalks that occupy a transportation facility right-of-way without limitation to any specific location within that right-of-way, so long as the continuity of the trail, path, bikeway, or sidewalk is maintained; and
- (4) Trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation unless they are historic.

- Transportation enhancement 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; and
- (2) The OWJ over the Section 4(f) resource agrees in writing to the use described in (1) of this section.

**Establishing Section 4(f) Exemption Eligibility (Refer to Chapter 7.3.4 for further information and criteria)**

- Section 1303 of the FAST Act incorporates the ACHP Program Comment exemption for common post-1945 concrete and steel bridges and culverts into Section 4(f), eliminating review requirements for these structures under Section 4(f). This exemption applies to specific types of bridges and culverts built after 1945, including various

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

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forms of reinforced concrete slab bridges, reinforced concrete beam and girder bridges, steel multi-beam bridges or multi-girder bridges, and culverts and reinforced concrete boxes (See Section V Program Comment).

- (Section 11502 (23 U.S.C. 138(f)/49 U.S.C. 303(h)) exempts from Section 4(f) review the use of rail. The exemption to **Section 4(f)** applies regardless of whether the railroad or rail transit line, or element thereof, is listed in or is eligible for listing in the National Register of Historic Places.

The exemption applies to the following resource types which might otherwise be considered abandoned or not in use:

- Railroad and transit lines over which service has been discontinued under the process described in 49 U.S.C. 10903;
- Railroad and transit lines that have been railbanked (a voluntary agreement between a railroad company and a trail agency to use an out-of-service rail corridor as a trail until a railroad might need the corridor again for rail service as described in 16 U.S.C. 1247(d)); and
- Railroad and transit lines that have been otherwise reserved for the future transportation of goods or passengers.

- 23 CFR 774.11(e)(2). The interstate highway system is exempt from being treated as a historic resource under Section 4(f), unless the U.S. Secretary of Transportation determines individual elements possess national or exceptional historic significance and should receive protection. Interstate highway-related facilities in Florida determined historically significant by the Secretary of Transportation and therefore not exempt under Section 4(f) are:

- I-275 Bob Graham/Sunshine Skyway Bridge
- I-75 Alligator Alley- Milepost range 19.6-49.3
- I-75 Snake Wall
- I-95 Myrtle Avenue Overpass

- (23 CFR 774.11(h)) When a property formally reserved for a future transportation facility temporarily functions for park, recreation, or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of duration, will not subject the property to Section 4(f).

- 23 CFR 774.11 (i) When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area, or wildlife and waterfowl refuge is established and concurrent or joint planning or development of the transportation facility and the Section 4(f) resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in §774.17. Examples of such concurrent or joint planning or development include, but are not limited to:
- Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation facility and the Section 4(f) property; or
  - Designation, donation, planning, or development of property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.

**Explanation supporting the Section 4(f) property meets all of the criteria of the Exception or Exemption**

As shown in Attachment 1, the current conceptual design requires no right-of-way (ROW) from Lovers Key State Park. The parking lot located south of CR 865 on the east side of the Big Carlos Pass Bridge is within ROW owned by Lee County and may be used for temporary occupancy during construction of the replacement bridge, however this parking lot does provide access to the west side of Lovers Key State Park. The FDOT is proposing a Section 4(f) Exception/Exemption: Temporary Occupancy Determination. Section 4(f) Exception/Exemption: Temporary Occupancy Determination states that the resource may be occupied during construction, but there will be no change in ownership of the property, there are no permanent adverse impacts anticipated, and the resource will be restored to its original condition. During construction the access points from the parking lot owned by Lee County may not be accessible, but

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

because the main entrance to Lovers Key State Park is located 1.08 miles east of the project area, the project will not affect the activities associated with the park.

**Documentation**

The following items **must** be attached to this form to ensure proper documentation of the Section 4(f)

Exception/Exemption:

1. DOA package (if used)
2. Required communications with the OWJ (i.e. concurrence letters) for the Exception/Exemption as applicable

**Signatures**

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

\_\_\_\_\_  
Preparer Date

\_\_\_\_\_  
Environmental Manager, or designee Date

**OEM  
Concurrence:**

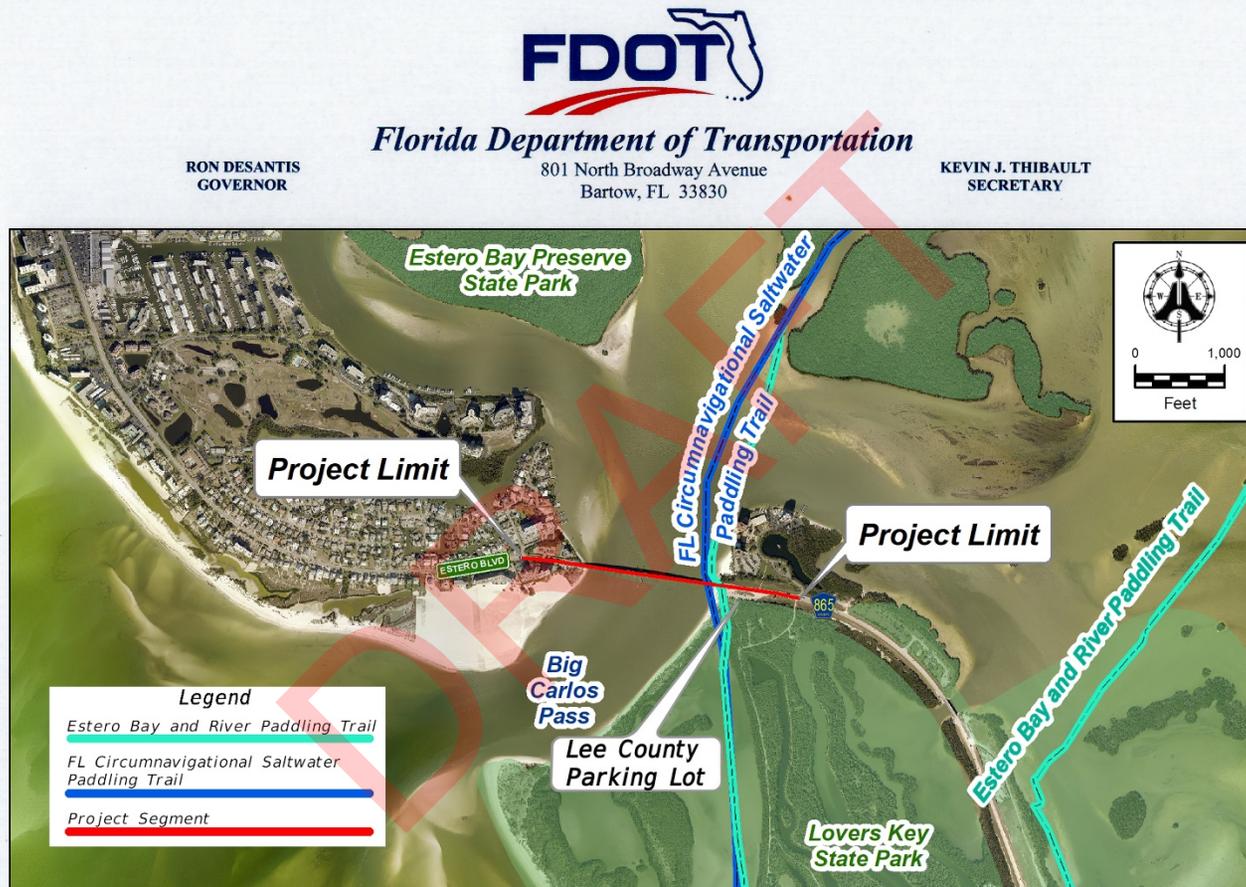
\_\_\_\_\_  
OEM Subject Matter Expert Date

**OEM  
Approval:**

\_\_\_\_\_  
Director of OEM, or designee Date

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

**Attachment 1**



**Figure 1: Project Location Map**

**FDOT**  
*Florida Department of Transportation*  
801 North Broadway Avenue  
Bartow, FL 33830

RON DESANTIS  
GOVERNOR

KEVIN J. THIBAUT  
SECRETARY



*Florida Department of Transportation*

RON DESANTIS  
GOVERNOR

801 North Broadway Avenue  
Bartow, FL 33830

KEVIN J. THIBAUT  
SECRETARY

October 9, 2019

Mr. Steven Cutshaw  
Bureau Chief, Office of Park Planning  
Florida Department of Environmental Protection  
3800 Commonwealth Boulevard  
Tallahassee, FL 32399

Re: CR 865/Big Carlos Pass Bridge Replacement  
Lee County, Florida  
Financial ID No. 445323-1-22-01  
Section 4(f) Resources

Dear Mr. Cutshaw:

The Florida Department of Transportation (FDOT) in coordination with the Federal Highway Administration (FHWA) and Lee County is conducting a Project Development and Environment (PD&E) study to evaluate improvement alternatives for the CR 865/Big Carlos Pass Bridge in Lee County, Florida (see **Figure 1**). The existing Big Carlos Pass Bridge was constructed in 1965 and has been deemed functionally and structurally obsolete by the FDOT. The proposed alternatives being evaluated include the no-build alternative, replacement of the existing two-lane double leaf bascule bridge with a high-level fixed span bridge, and the replacement of the existing two-lane double leaf bascule bridge with a low-level bascule bridge. All three bridge alternatives would include two 12-ft travel lanes, two seven-ft shoulders with bicycle lanes, one six-ft sidewalk, and one 10-ft shared use path.

As per FHWA policy and as part of the PD&E study, one of the objectives is to identify parcels or other facilities that may be protected under Section 4(f) of the Department of Transportation Act of 1966 (49 USC 303). Section 4(f) typically applies to publicly owned land such as a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance. Section 4(f) also applies to historic or archaeological sites of national, state, or local significance regardless of ownership.

The FDOT has identified the following resources as potential Section 4(f) resources:

- Lovers Key State Park
- Florida Circumnavigational Saltwater Paddling Trail
- Estero Bay and River Paddling Trail

These properties/facilities are publicly owned and managed by your agency, the Florida Department of Environmental Protection. We believe Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail are locally significant resources that play an important role for recreation in the area. Significance means that in comparing the availability and function of Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail with the recreational objectives of the community, the land and paddling trails in question play an important role in meeting those objectives.

It is FHWA and FDOT policy to avoid and/or minimize impacts to potential Section 4(f) resources. As shown in **Figure 1**, the current conceptual design requires no right-of-way (ROW) from Lovers Key State Park. The dirt parking lot located south of CR 865 on the east side of the Big Carlos Pass Bridge is entirely within the county's ROW. This ROW may be used for temporary occupancy during construction of the replacement bridge. Although this parking lot does provide access to the west side of Lovers Key State Park, the FDOT is proposing a Section 4(f) No Use Determination because the main entrance to Lovers Key State Park is located 1.08 miles east of the project area and trails connect park guests from the main entrance to the west side of the park, and the project is not anticipated to use any protected property from Lovers Key State Park. Use of the parking lot during construction will not affect access to the main entrance of the park or activities associated with the park.

As shown in **Figure 1**, the current conceptual design requires no permanent relocation of the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail. The Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail, along with the Great Calusa Blueway Paddling Trail, all pass underneath the Big Carlos Pass Bridge together. Because no permanent relocation of the paddling trails is anticipated and the horizontal navigation clearance underneath the bridge is expected to remain the same or increase, the FDOT proposes a Section 4(f) Exception/Exemption: Temporary Occupancy Determination for the paddling trails. Once construction is complete, the paddling trails will be returned to their normal use.

Prior to making a determination of whether or not Section 4(f) applies, the FHWA requires a statement of significance from the official who has jurisdiction over the subject parcels. We are requesting the Florida Department of Environmental Protection's concurrence with the determination that Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail are significant resources (as described previously) and that there will be no use of these resources due to implementing the proposed project.

In addition, the FHWA requires that this office undertake further coordination with your agency regarding the proposed project's involvement with the park and paddling trails during construction and possible temporary impacts associated with construction activities. Accordingly, the FDOT is providing the following commitments that would be associated with implementing the proposed project:

1. Construction activities within Lovers Key State Park access points, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties" that would be associated with the construction of the Big Carlos Pass Bridge Replacement will be of a temporary duration (i.e., less than the time needed for the construction of the entire project) and there will be no change in ownership of the park

and trail "properties". The replacement bridge will occur within CR 865/Lee County ROW.

2. Construction activities within the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties" will be minor and changes, if any, will be minimal. Adequate vertical and horizontal navigation clearances will be provided for trail users.
3. Construction activities within Lovers Key State Park access points, the Florida Circumnavigational Paddling Trail and the Estero Bay and River Paddling Trail "properties" will create no anticipated permanent adverse physical impacts, nor will there be interference with protected activities, features, or attributes of the property on a permanent basis. The FDOT plans to keep trails accessible during construction activities, however access points to Lovers Key State Park from the existing parking lot located within Lee County ROW may be closed during construction. Activities within Lovers Key State Park are not anticipated to be adversely impacted because the main entrance to Lovers Key State Park is located east of the project area. The FDOT will add a plan note into the General Notes of the project's final design plans to ensure the contractor equipment staging, materials stockpiling, or storing activities will not be allowed within Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties".
4. The Lovers Key State Park access points, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties" within the limits of the project's construction area will be restored to a condition which is at least as good as that which existed prior to the project being started.

We are requesting your concurrence with the determination that Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail meet the Section 4(f) definition of significant resources. We are also requesting your concurrence with the temporary impacts from construction assessment. If you concur with FDOT's assessment of the significance of these resources, please sign and date the concurrence block at the bottom of this letter and return it to my attention at the address below.

If you have any questions or concerns regarding the findings of this letter, please contact me at (863) 519-2495 or [Jonathon.Bennett@dot.state.fl.gov](mailto:Jonathon.Bennett@dot.state.fl.gov).

Sincerely,



Jonathon A. Bennett  
Environmental Project Manager  
Florida Department of Transportation, District One  
801 North Broadway Avenue  
Bartow, Florida 33830

***I concur that the Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail are significant resources to the Florida Department of Environmental Protection.***

*(Signature)*

*(Date)*

Steven Cutshaw  
Bureau Chief, Office of Park Planning

cc: Jeff Jacquin, AIM Engineering & Surveying, Inc.

DRAFT



# Florida Department of Transportation

RON DESANTIS  
GOVERNOR

801 North Broadway Avenue  
Bartow, FL 33830

KEVIN J. THIBAUT  
SECRETARY

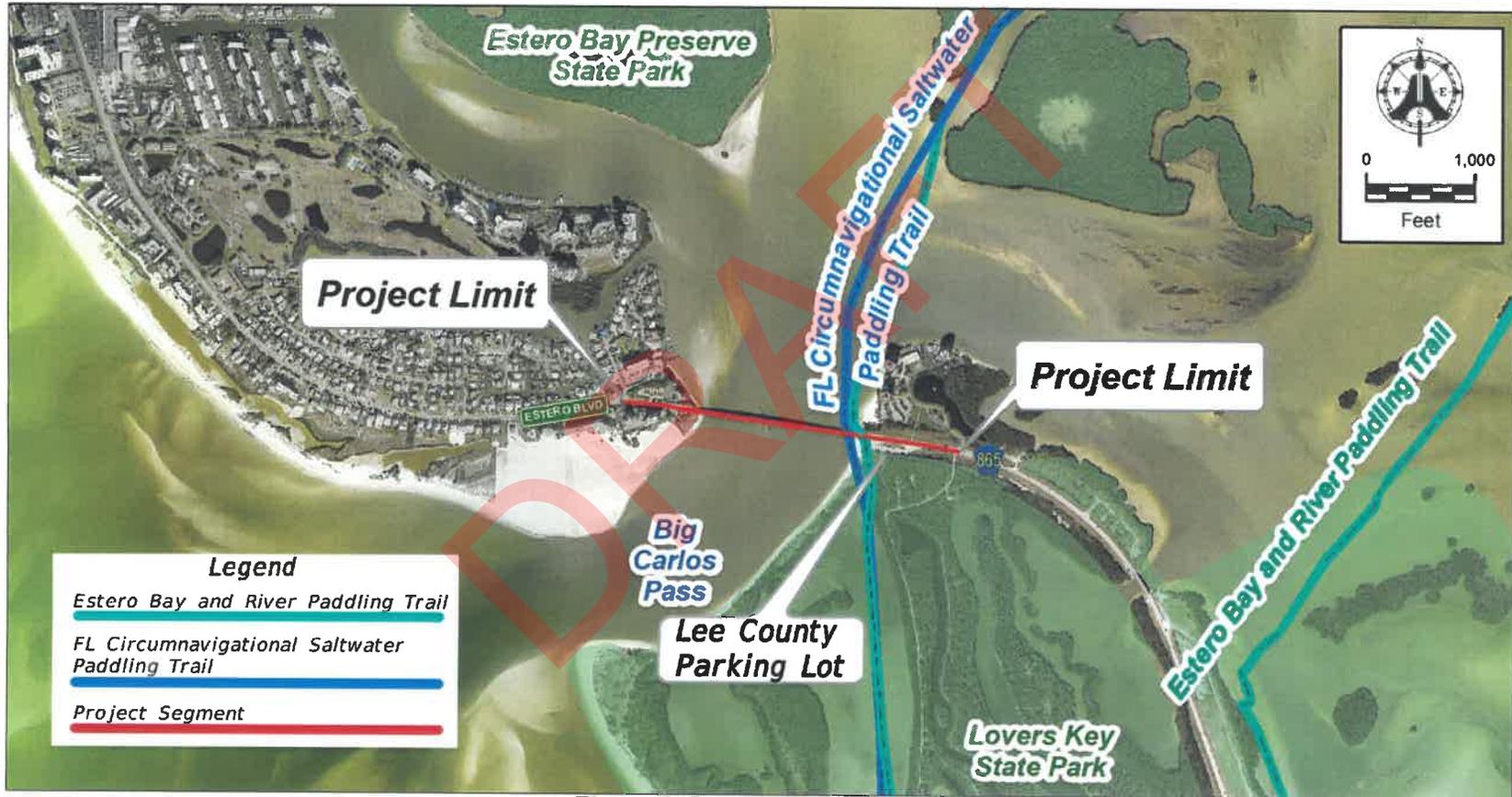


Figure 1: Project Location Map



# FLORIDA DEPARTMENT OF Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, FL 32399

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Noah Valenstein**  
Secretary

January 28, 2020

Mr. Jonathon A. Bennett  
Environmental Project Manager  
FDOT-District 1  
801 North Broadway Avenue  
Bartow, Florida 33830

RE: Section 4(f) Statement of Significance  
Lover's Key State Park  
Florida Circumnavigational Saltwater Paddling Trail  
Estero Bay and River Paddling Trail  
CR 865/Big Carlos Pass Bridge Replacement  
Lee County  
Financial ID No. 433856-1-22-01

Dear Mr. Bennett:

The DEP Division of Recreation and Parks (DRP) has been working with the coordinating agencies involved in Big Carlos Pass Bridge Replacement/CR 865 project as it relates to section 4(f) applicability for Lover's Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail. According to the FDOT PD&E Manual, Part 2, Chapter 7, a Statement of Significance is necessary from the Official with Jurisdiction over Section 4(f) resources.

DRP concurs with FDOT's determination that these managed areas are significant resources and that there will be no loss of use of these resources due to implementing the proposed project. Our position is based on details outlined in FDOT's October 9, 2019, letter from Jonathon A. Bennett and Mr. Bennett's subsequent email dated December 18, 2019, submitting the updated project limits map.

This letter provides a context for understanding the local and statewide significance of our parks and trails for outdoor recreational opportunities and protection of ecologically sensitive environments. Lovers Key State Park is located within Lee County, within the city limits of Bonita Springs, just north of Bonita Beach, Florida. Access to the park is from State Road 865 (Estero Boulevard). Lovers Key State Park currently contains

Mr. Jonathon A. Bennett  
Page Two  
January 28, 2020

approximately 1,464 acres. Acquisition began on May 25, 1983 under the Save Our Coast (SOC) Program. During this time, the adjacent Carl Johnson Park, located on the southern part of Lovers Key and managed by Lee County, was providing similar recreational services. In 1996, as a cost-saving measure to avoid replication of services, Lee County signed a letter of agreement with the Division of Recreation and Parks to merge Carl Johnson Park with Lovers Key State Park. The agreement called for the two units to be managed by the Division of Recreation and Parks as a unit of the state park system. Public outdoor recreation and conservation is the designated single use of the property. There are no legislative or executive directives that constrain the use of this property. The park features several important coastal natural communities including mangrove fringed canals and tidal lagoons and consists of four barrier islands -- Lovers Key, Inner Key, Long Key and Black Island -- all approximately two miles offshore from the mainland in the Gulf of Mexico. Collectively the islands form a barrier between the Gulf of Mexico and Estero Bay. Lovers Key is the principal island having beach frontage on the Gulf of Mexico.

Additionally, DRP's Office of Greenways and Trails has responded that it appears the project will have no significant impacts on the Florida Circumnavigational Saltwater Paddling Trails or the Estero Bay and River Paddling Trail.

Sincerely,



Steven A. Cutshaw, Chief  
Office of Park Planning  
Division of Recreation and Parks

SAC/dm

cc: Brian Fugate  
B.J. Givens  
Catherine Moses  
Chris Becker

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

650-050-48  
Environmental  
Management  
01/19

<b>Project Name:</b>	CR 865/Big Carlos Pass Bridge Replacement		
<b>FM#:</b>	445323-1-22-01	<b>ETDM#:</b>	14301
<b>Project Review Date:</b>	<a href="#">Click here to enter a date.</a>		
<b>FAP#:</b>			
<b>FDOT District:</b>	1		
<b>County(ies):</b>	Lee County		

**Project Description including Section 4(f) Specific Information:**

Lee County is conducting a Project Development and Environment (PD&E) study to evaluate the proposed replacement of the Big Carlos Pass Bridge from Estrellita Drive to Lovers Key State Park, a distance of approximately 0.6 miles. The existing bridge is proposed to be replaced by either a high-level fixed span bridge or a low-level bascule bridge option. A no-build alternative whereas the existing bridge is not replaced is also being evaluated.

As shown in Attachment 1, the current conceptual design requires no permanent relocation of the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail. The Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail, along with the Great Calusa Blueway Paddling Trail, all pass underneath the Big Carlos Pass Bridge together. Because no permanent relocation of the paddling trails is anticipated and the horizontal navigation clearance underneath the bridge is expected to remain the same or increase, the FDOT proposes a Section 4(f) Exception/Exemption: Temporary Occupancy Determination for the paddling trails. Once construction is complete, the paddling trails will be returned to their normal use.

**Type of Property: Public Parks and Recreation Areas**

**Description of Property:** The Florida Circumnavigational Saltwater Paddling Trail is a 1,515 mile paddling trail that begins at Big Lagoon State Park near Pensacola and goes around the entire coast of Florida to end at Fort Clinch State Park near the Georgia border. The trail passes underneath the Big Carlos Pass Bridge from Estero Bay and enters Lovers Key State Park just south of the bridge. A map (Attachment 1) depicting the Florida Circumnavigational Saltwater Paddling Trail in the vicinity of the project is attached to this application.

**Establishing Section 4(f) Exception Eligibility (from 23 CFR 774.13):**

**The facts of the case must match the circumstances as described below:**

- Restoration, rehabilitation or maintenance of transportation facilities that are on or eligible for the National Register when:
  - (1) The Administration [FDOT] concludes, as a result of the consultation under 36 CFR 800.5, that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and
  - (2) The OWJ over the Section 4(f) resource have not objected to the FDOT conclusion.
- Archaeological sites that are on or eligible for the National Register when:
  - (1) The Administration [FDOT] concludes that the archaeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken and where the Administration [FDOT] decides, with agreement of the OWJ, not to recover the resource; and
  - (2) The OWJ over the Section 4(f) resource have been consulted and have not objected to the Administration [FDOT] finding.
- Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. With the exception of the treatment of archaeological resources in §774.9(e) discovered during construction, the Administration [FDOT] may permit a project to proceed without consideration under Section 4(f) if the property interest in the Section 4(f) land was acquired for transportation purposes prior to the designation or change in the determination of significance, and if an adequate effort was made to identify properties protected by Section 4(f) prior to acquisition. However, if it is reasonably foreseeable that a property would qualify as eligible for the National Register prior to the start of construction, then the property should be treated as a historic site and does not qualify for the Section 4(f) exception.  
In applying this exception, the analyst must consider whether:

**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

- (1) The property acquisition was completed prior to the designation or the change in the determination of significance.
  - (2) The Cultural Resources Assessment Survey (CRAS) report was considered complete and sufficient at the time of its submittal.
  - (3) The CRAS report identified the property in question as a resource that would require re-examination or that would become significant prior to construction.
  - (4) The property in question is an archaeological site important primarily for the information it contains.
- Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f). The following conditions must be satisfied:
- (1) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
  - (2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;
  - (3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;
  - (4) The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and
  - (5) There must be documented agreement of the OWJ over the Section 4(f) resource regarding the above conditions.
- Park road or parkway projects under 23 U.S.C. 204 which is the Federal Lands Access Program, providing access to transportation facilities located on or adjacent to, or provide access to Federal Lands.
- Certain trails, paths, bikeways, and sidewalks, in the following circumstances:
- (1) Trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2);
  - (2) National Historic Trails and the Continental Divide National Scenic Trail, designated under the National Trails System Act, 16 U.S.C. 1241-1251, with the exception of those trail segments that are historic sites as defined in 23 CFR 774.17, such as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the NRHP. The term includes properties of traditional religious and cultural importance to an Indian tribe that are included in, or are eligible for inclusion in the NRHP.
  - (3) Trails, paths, bikeways, and sidewalks that occupy a transportation facility right-of-way without limitation to any specific location within that right-of-way, so long as the continuity of the trail, path, bikeway, or sidewalk is maintained; and
  - (4) Trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation unless they are historic.
- Transportation enhancement 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; and
  - (2) The OWJ over the Section 4(f) resource agrees in writing to the use described in (1) of this section.

**Establishing Section 4(f) Exemption Eligibility (Refer to Chapter 7.3.4 for further information and criteria)**

- Section 1303 of the FAST Act incorporates the ACHP Program Comment exemption for common post-1945 concrete and steel bridges and culverts into Section 4(f), eliminating review requirements for these structures under Section 4(f). This exemption applies to specific types of bridges and culverts built after 1945, including various forms of reinforced concrete slab bridges, reinforced concrete beam and girder bridges, steel multi-beam bridges or multi-girder bridges, and culverts and reinforced concrete boxes (See Section V Program Comment).
- (Section 11502 (23 U.S.C. 138(f)/49 U.S.C. 303(h)) exempts from Section 4(f) review the use of rail. The exemption to **Section 4(f)** applies regardless of whether the railroad or rail transit line, or element thereof, is listed in or is eligible for listing in the National Register of Historic Places.

The exemption applies to the following resource types which might otherwise be considered abandoned or not in use:

**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

- Railroad and transit lines over which service has been discontinued under the process described in 49 U.S.C. 10903;
  - Railroad and transit lines that have been railbanked (a voluntary agreement between a railroad company and a trail agency to use an out-of-service rail corridor as a trail until a railroad might need the corridor again for rail service as described in 16 U.S.C. 1247(d)); and
  - Railroad and transit lines that have been otherwise reserved for the future transportation of goods or passengers.
- 23 CFR 774.11(e)(2). The interstate highway system is exempt from being treated as a historic resource under Section 4(f), unless the U.S. Secretary of Transportation determines individual elements possess national or exceptional historic significance and should receive protection. Interstate highway-related facilities in Florida determined historically significant by the Secretary of Transportation and therefore not exempt under Section 4(f) are:
- I-275 Bob Graham/Sunshine Skyway Bridge
  - I-75 Alligator Alley- Milepost range 19.6-49.3
  - I-75 Snake Wall
  - I-95 Myrtle Avenue Overpass
- (23 CFR 774.11(h)) When a property formally reserved for a future transportation facility temporarily functions for park, recreation, or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of duration, will not subject the property to Section 4(f).
- 23 CFR 774.11 (i) When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area, or wildlife and waterfowl refuge is established and concurrent or joint planning or development of the transportation facility and the Section 4(f) resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in §774.17. Examples of such concurrent or joint planning or development include, but are not limited to:
- Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation facility and the Section 4(f) property; or
  - Designation, donation, planning, or development of property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.

**Explanation supporting the Section 4(f) property meets all of the criteria of the Exception or Exemption**

As shown in Attachment 1, the current conceptual design requires no permanent relocation of the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail. The Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail, along with the Great Calusa Blueway Paddling Trail, all pass underneath the Big Carlos Pass Bridge together. Because no permanent relocation of the paddling trails is anticipated and the horizontal navigation clearance underneath the bridge is expected to remain the same or increase, the FDOT proposes a Section 4(f) Exception/Exemption: Temporary Occupancy Determination for the paddling trails. Once construction is complete, the paddling trails will be returned to their normal use.

**Documentation**

The following items **must** be attached to this form to ensure proper documentation of the Section 4(f)

Exception/Exemption:

1. DOA package (if used)
2. Required communications with the OWJ (i.e. concurrence letters) for the Exception/Exemption as applicable

**Signatures**

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

650-050-48  
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Management  
01/19

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

\_\_\_\_\_  
Preparer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Environmental Manager, or designee

\_\_\_\_\_  
Date

**OEM  
Concurrence:**

\_\_\_\_\_  
OEM Subject Matter Expert

\_\_\_\_\_  
Date

**OEM  
Approval:**

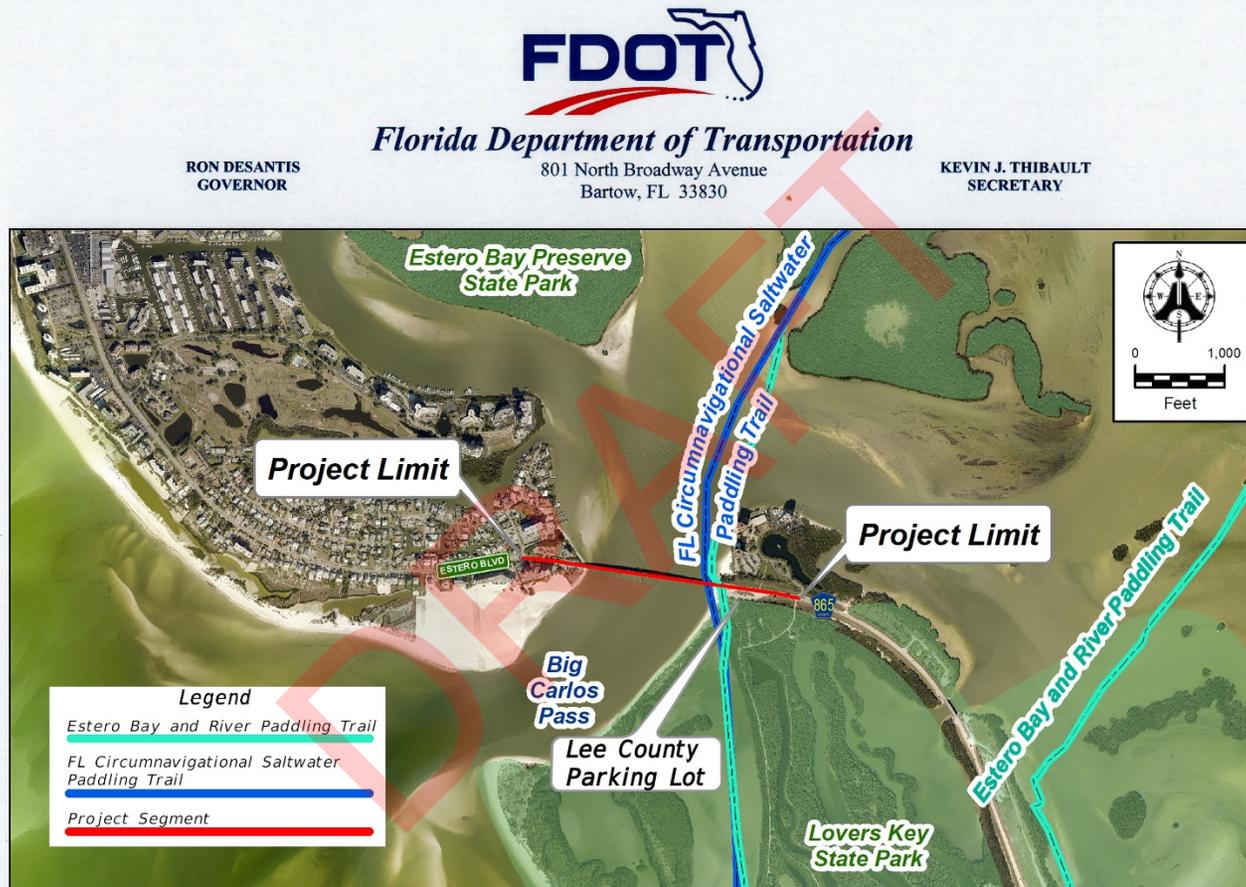
\_\_\_\_\_  
Director of OEM, or designee

\_\_\_\_\_  
Date

DRAFT

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

**Attachment 1**



**Figure 1: Project Location Map**

**FDOT**  
*Florida Department of Transportation*  
801 North Broadway Avenue  
Bartow, FL 33830

RON DESANTIS  
GOVERNOR

KEVIN J. THIBAUT  
SECRETARY



*Florida Department of Transportation*

RON DESANTIS  
GOVERNOR

801 North Broadway Avenue  
Bartow, FL 33830

KEVIN J. THIBAUT  
SECRETARY

October 9, 2019

Mr. Steven Cutshaw  
Bureau Chief, Office of Park Planning  
Florida Department of Environmental Protection  
3800 Commonwealth Boulevard  
Tallahassee, FL 32399

Re: CR 865/Big Carlos Pass Bridge Replacement  
Lee County, Florida  
Financial ID No. 445323-1-22-01  
Section 4(f) Resources

Dear Mr. Cutshaw:

The Florida Department of Transportation (FDOT) in coordination with the Federal Highway Administration (FHWA) and Lee County is conducting a Project Development and Environment (PD&E) study to evaluate improvement alternatives for the CR 865/Big Carlos Pass Bridge in Lee County, Florida (see **Figure 1**). The existing Big Carlos Pass Bridge was constructed in 1965 and has been deemed functionally and structurally obsolete by the FDOT. The proposed alternatives being evaluated include the no-build alternative, replacement of the existing two-lane double leaf bascule bridge with a high-level fixed span bridge, and the replacement of the existing two-lane double leaf bascule bridge with a low-level bascule bridge. All three bridge alternatives would include two 12-ft travel lanes, two seven-ft shoulders with bicycle lanes, one six-ft sidewalk, and one 10-ft shared use path.

As per FHWA policy and as part of the PD&E study, one of the objectives is to identify parcels or other facilities that may be protected under Section 4(f) of the Department of Transportation Act of 1966 (49 USC 303). Section 4(f) typically applies to publicly owned land such as a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance. Section 4(f) also applies to historic or archaeological sites of national, state, or local significance regardless of ownership.

The FDOT has identified the following resources as potential Section 4(f) resources:

- Lovers Key State Park
- Florida Circumnavigational Saltwater Paddling Trail
- Estero Bay and River Paddling Trail

These properties/facilities are publicly owned and managed by your agency, the Florida Department of Environmental Protection. We believe Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail are locally significant resources that play an important role for recreation in the area. Significance means that in comparing the availability and function of Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail with the recreational objectives of the community, the land and paddling trails in question play an important role in meeting those objectives.

It is FHWA and FDOT policy to avoid and/or minimize impacts to potential Section 4(f) resources. As shown in **Figure 1**, the current conceptual design requires no right-of-way (ROW) from Lovers Key State Park. The dirt parking lot located south of CR 865 on the east side of the Big Carlos Pass Bridge is entirely within the county's ROW. This ROW may be used for temporary occupancy during construction of the replacement bridge. Although this parking lot does provide access to the west side of Lovers Key State Park, the FDOT is proposing a Section 4(f) No Use Determination because the main entrance to Lovers Key State Park is located 1.08 miles east of the project area and trails connect park guests from the main entrance to the west side of the park, and the project is not anticipated to use any protected property from Lovers Key State Park. Use of the parking lot during construction will not affect access to the main entrance of the park or activities associated with the park.

As shown in **Figure 1**, the current conceptual design requires no permanent relocation of the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail. The Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail, along with the Great Calusa Blueway Paddling Trail, all pass underneath the Big Carlos Pass Bridge together. Because no permanent relocation of the paddling trails is anticipated and the horizontal navigation clearance underneath the bridge is expected to remain the same or increase, the FDOT proposes a Section 4(f) Exception/Exemption: Temporary Occupancy Determination for the paddling trails. Once construction is complete, the paddling trails will be returned to their normal use.

Prior to making a determination of whether or not Section 4(f) applies, the FHWA requires a statement of significance from the official who has jurisdiction over the subject parcels. We are requesting the Florida Department of Environmental Protection's concurrence with the determination that Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail are significant resources (as described previously) and that there will be no use of these resources due to implementing the proposed project.

In addition, the FHWA requires that this office undertake further coordination with your agency regarding the proposed project's involvement with the park and paddling trails during construction and possible temporary impacts associated with construction activities. Accordingly, the FDOT is providing the following commitments that would be associated with implementing the proposed project:

1. Construction activities within Lovers Key State Park access points, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties" that would be associated with the construction of the Big Carlos Pass Bridge Replacement will be of a temporary duration (i.e., less than the time needed for the construction of the entire project) and there will be no change in ownership of the park

and trail "properties". The replacement bridge will occur within CR 865/Lee County ROW.

2. Construction activities within the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties" will be minor and changes, if any, will be minimal. Adequate vertical and horizontal navigation clearances will be provided for trail users.
3. Construction activities within Lovers Key State Park access points, the Florida Circumnavigational Paddling Trail and the Estero Bay and River Paddling Trail "properties" will create no anticipated permanent adverse physical impacts, nor will there be interference with protected activities, features, or attributes of the property on a permanent basis. The FDOT plans to keep trails accessible during construction activities, however access points to Lovers Key State Park from the existing parking lot located within Lee County ROW may be closed during construction. Activities within Lovers Key State Park are not anticipated to be adversely impacted because the main entrance to Lovers Key State Park is located east of the project area. The FDOT will add a plan note into the General Notes of the project's final design plans to ensure the contractor equipment staging, materials stockpiling, or storing activities will not be allowed within Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties".
4. The Lovers Key State Park access points, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail "properties" within the limits of the project's construction area will be restored to a condition which is at least as good as that which existed prior to the project being started.

We are requesting your concurrence with the determination that Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail meet the Section 4(f) definition of significant resources. We are also requesting your concurrence with the temporary impacts from construction assessment. If you concur with FDOT's assessment of the significance of these resources, please sign and date the concurrence block at the bottom of this letter and return it to my attention at the address below.

If you have any questions or concerns regarding the findings of this letter, please contact me at (863) 519-2495 or [Jonathon.Bennett@dot.state.fl.gov](mailto:Jonathon.Bennett@dot.state.fl.gov).

Sincerely,



Jonathon A. Bennett  
Environmental Project Manager  
Florida Department of Transportation, District One  
801 North Broadway Avenue  
Bartow, Florida 33830

***I concur that the Lovers Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail are significant resources to the Florida Department of Environmental Protection.***

*(Signature)*

*(Date)*

Steven Cutshaw  
Bureau Chief, Office of Park Planning

cc: Jeff Jacquin, AIM Engineering & Surveying, Inc.

DRAFT



# Florida Department of Transportation

RON DESANTIS  
GOVERNOR

801 North Broadway Avenue  
Bartow, FL 33830

KEVIN J. THIBAUT  
SECRETARY

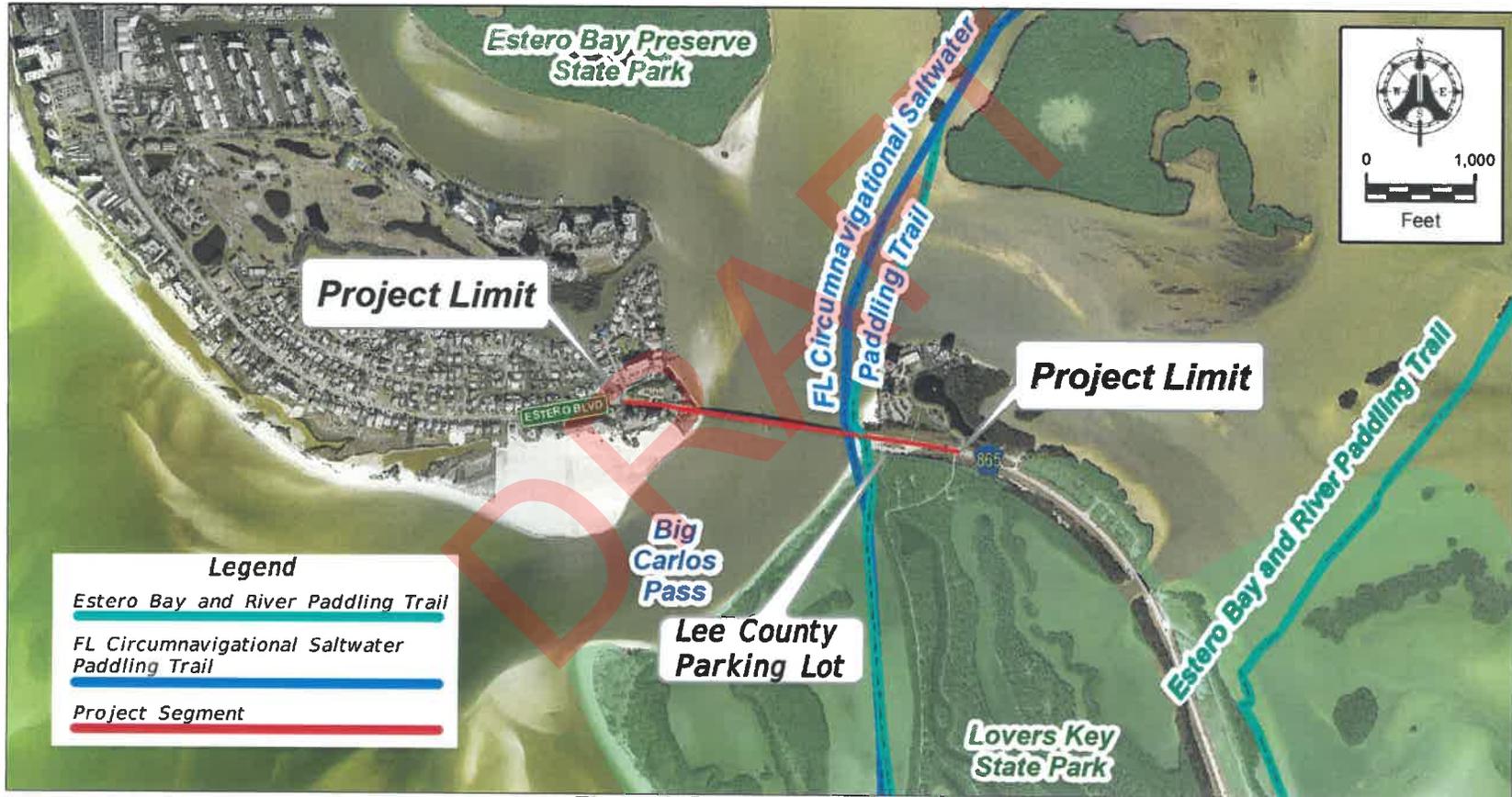


Figure 1: Project Location Map



# FLORIDA DEPARTMENT OF Environmental Protection

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, FL 32399

**Ron DeSantis**  
Governor

**Jeanette Nuñez**  
Lt. Governor

**Noah Valenstein**  
Secretary

January 28, 2020

Mr. Jonathon A. Bennett  
Environmental Project Manager  
FDOT-District 1  
801 North Broadway Avenue  
Bartow, Florida 33830

RE: Section 4(f) Statement of Significance  
Lover's Key State Park  
Florida Circumnavigational Saltwater Paddling Trail  
Estero Bay and River Paddling Trail  
CR 865/Big Carlos Pass Bridge Replacement  
Lee County  
Financial ID No. 433856-1-22-01

Dear Mr. Bennett:

The DEP Division of Recreation and Parks (DRP) has been working with the coordinating agencies involved in Big Carlos Pass Bridge Replacement/CR 865 project as it relates to section 4(f) applicability for Lover's Key State Park, the Florida Circumnavigational Saltwater Paddling Trail, and the Estero Bay and River Paddling Trail. According to the FDOT PD&E Manual, Part 2, Chapter 7, a Statement of Significance is necessary from the Official with Jurisdiction over Section 4(f) resources.

DRP concurs with FDOT's determination that these managed areas are significant resources and that there will be no loss of use of these resources due to implementing the proposed project. Our position is based on details outlined in FDOT's October 9, 2019, letter from Jonathon A. Bennett and Mr. Bennett's subsequent email dated December 18, 2019, submitting the updated project limits map.

This letter provides a context for understanding the local and statewide significance of our parks and trails for outdoor recreational opportunities and protection of ecologically sensitive environments. Lovers Key State Park is located within Lee County, within the city limits of Bonita Springs, just north of Bonita Beach, Florida. Access to the park is from State Road 865 (Estero Boulevard). Lovers Key State Park currently contains

Mr. Jonathon A. Bennett  
Page Two  
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approximately 1,464 acres. Acquisition began on May 25, 1983 under the Save Our Coast (SOC) Program. During this time, the adjacent Carl Johnson Park, located on the southern part of Lovers Key and managed by Lee County, was providing similar recreational services. In 1996, as a cost-saving measure to avoid replication of services, Lee County signed a letter of agreement with the Division of Recreation and Parks to merge Carl Johnson Park with Lovers Key State Park. The agreement called for the two units to be managed by the Division of Recreation and Parks as a unit of the state park system. Public outdoor recreation and conservation is the designated single use of the property. There are no legislative or executive directives that constrain the use of this property. The park features several important coastal natural communities including mangrove fringed canals and tidal lagoons and consists of four barrier islands -- Lovers Key, Inner Key, Long Key and Black Island -- all approximately two miles offshore from the mainland in the Gulf of Mexico. Collectively the islands form a barrier between the Gulf of Mexico and Estero Bay. Lovers Key is the principal island having beach frontage on the Gulf of Mexico.

Additionally, DRP's Office of Greenways and Trails has responded that it appears the project will have no significant impacts on the Florida Circumnavigational Saltwater Paddling Trails or the Estero Bay and River Paddling Trail.

Sincerely,



Steven A. Cutshaw, Chief  
Office of Park Planning  
Division of Recreation and Parks

SAC/dm

cc: Brian Fugate  
B.J. Givens  
Catherine Moses  
Chris Becker

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

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Environmental  
Management  
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<b>Project Name:</b>	CR 865/Big Carlos Pass Bridge Replacement		
<b>FM#:</b>	445323-1-22-01	<b>ETDM#:</b>	14301
<b>FAP#:</b>			
<b>Project Review Date:</b>	<a href="#">Click here to enter a date.</a>		
<b>FDOT District:</b>	1		
<b>County(ies):</b>	Lee County		

**Project Description including Section 4(f) Specific Information:**

Lee County is conducting a Project Development and Environment (PD&E) study to evaluate the proposed replacement of the Big Carlos Pass Bridge from Estrellita Drive to Lovers Key State Park, a distance of approximately 0.6 miles. The existing bridge is proposed to be replaced by either a high-level fixed span bridge or a low-level bascule bridge option. A no-build alternative whereas the existing bridge is not replaced is also being evaluated.

As shown in Attachment 1, the current conceptual design requires no permanent relocation of the Great Calusa Blueway Paddling Trail. The Great Calusa Blueway Paddling Trail, along with the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail, all pass underneath the Big Carlos Pass Bridge together. Because no permanent relocation of the paddling trails is anticipated and the horizontal navigation clearance underneath the bridge is expected to remain the same or increase, the FDOT proposes a Section 4(f) Exception/Exemption: Temporary Occupancy Determination for the Great Calusa Blueway Paddling Trail. The Section 4(f) Exception/Exemption: Temporary Occupancy Determination states that the resource may be occupied during construction, but there will be no change in ownership of the property, there are no permanent adverse impacts anticipated, and the resource will be restored to its original condition.

**Type of Property: Public Parks and Recreation Areas**

**Description of Property:** The Great Calusa Blueway Paddling Trail is a 190 mile paddling trail beginning in Bonita Springs on the Imperial River and passes through and around Lovers Key State Park, up the Estero River, up the Caloosahatchee River, through Pine Island Sound to Cayo Costa State Park and down the eastern side of Captiva and Sanibel Islands to the Sanibel Causeway. The trail passes underneath the Big Carlos Pass Bridge from Estero Bay and enters Lovers Key State Park just south of the bridge. A map depicting the Great Calusa Blueway Paddling Trail in the vicinity of the project is attached to this application.

**Establishing Section 4(f) Exception Eligibility (from 23 CFR 774.13):**

**The facts of the case must match the circumstances as described below:**

- Restoration, rehabilitation or maintenance of transportation facilities that are on or eligible for the National Register when:
  - (1) The Administration [FDOT] concludes, as a result of the consultation under 36 CFR 800.5, that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and
  - (2) The OWJ over the Section 4(f) resource have not objected to the FDOT conclusion.
  
- Archaeological sites that are on or eligible for the National Register when:
  - (1) The Administration [FDOT] concludes that the archaeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies to both situations where data recovery is undertaken and where the Administration [FDOT] decides, with agreement of the OWJ, not to recover the resource; and
  - (2) The OWJ over the Section 4(f) resource have been consulted and have not objected to the Administration [FDOT] finding.
  
- Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. With the exception of the treatment of archaeological resources in §774.9(e) discovered during construction, the Administration [FDOT] may permit a project to proceed without consideration under Section 4(f) if the property interest in the Section 4(f) land was acquired for transportation purposes prior to the designation or change in the determination of significance, and if an adequate effort was made to identify properties protected by Section 4(f) prior to acquisition. However, if it is reasonably foreseeable that a property would qualify as eligible for the National Register prior to the

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start of construction, then the property should be treated as a historic site and does not qualify for the Section 4(f) exception.

In applying this exception, the analyst must consider whether:

- (1) The property acquisition was completed prior to the designation or the change in the determination of significance.
- (2) The Cultural Resources Assessment Survey (CRAS) report was considered complete and sufficient at the time of its submittal.
- (3) The CRAS report identified the property in question as a resource that would require re-examination or that would become significant prior to construction.
- (4) The property in question is an archaeological site important primarily for the information it contains.

- Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f). The following conditions must be satisfied:
- (1) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
  - (2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;
  - (3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;
  - (4) The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and
  - (5) There must be documented agreement of the OWJ over the Section 4(f) resource regarding the above conditions.
- Park road or parkway projects under 23 U.S.C. 204 which is the Federal Lands Access Program, providing access to transportation facilities located on or adjacent to, or provide access to Federal Lands.
- Certain trails, paths, bikeways, and sidewalks, in the following circumstances:
- (1) Trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2);
  - (2) National Historic Trails and the Continental Divide National Scenic Trail, designated under the National Trails System Act, 16 U.S.C. 1241-1251, with the exception of those trail segments that are historic sites as defined in 23 CFR 774.17, such as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the NRHP. The term includes properties of traditional religious and cultural importance to an Indian tribe that are included in, or are eligible for inclusion in the NRHP.
  - (3) Trails, paths, bikeways, and sidewalks that occupy a transportation facility right-of-way without limitation to any specific location within that right-of-way, so long as the continuity of the trail, path, bikeway, or sidewalk is maintained; and
  - (4) Trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation unless they are historic.
- Transportation enhancement 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; and
  - (2) The OWJ over the Section 4(f) resource agrees in writing to the use described in (1) of this section.

**Establishing Section 4(f) Exemption Eligibility (Refer to Chapter 7.3.4 for further information and criteria)**

- Section 1303 of the FAST Act incorporates the ACHP Program Comment exemption for common post-1945 concrete and steel bridges and culverts into Section 4(f), eliminating review requirements for these structures under Section 4(f). This exemption applies to specific types of bridges and culverts built after 1945, including various forms of reinforced concrete slab bridges, reinforced concrete beam and girder bridges, steel multi-beam bridges or multi-girder bridges, and culverts and reinforced concrete boxes (See Section V Program Comment).
- (Section 11502 (23 U.S.C. 138(f)/49 U.S.C. 303(h)) exempts from Section 4(f) review the use of rail. The exemption to **Section 4(f)** applies regardless of whether the railroad or rail transit line, or element thereof, is listed in or is eligible for listing in the National Register of Historic Places.

FLORIDA DEPARTMENT OF TRANSPORTATION  
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The exemption applies to the following resource types which might otherwise be considered abandoned or not in use:

- Railroad and transit lines over which service has been discontinued under the process described in 49 U.S.C. 10903;
  - Railroad and transit lines that have been railbanked (a voluntary agreement between a railroad company and a trail agency to use an out-of-service rail corridor as a trail until a railroad might need the corridor again for rail service as described in 16 U.S.C. 1247(d)); and
  - Railroad and transit lines that have been otherwise reserved for the future transportation of goods or passengers.
- 23 CFR 774.11(e)(2). The interstate highway system is exempt from being treated as a historic resource under Section 4(f), unless the U.S. Secretary of Transportation determines individual elements possess national or exceptional historic significance and should receive protection.  
Interstate highway-related facilities in Florida determined historically significant by the Secretary of Transportation and therefore not exempt under Section 4(f) are:
- I-275 Bob Graham/Sunshine Skyway Bridge
  - I-75 Alligator Alley- Milepost range 19.6-49.3
  - I-75 Snake Wall
  - I-95 Myrtle Avenue Overpass
- (23 CFR 774.11(h)) When a property formally reserved for a future transportation facility temporarily functions for park, recreation, or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of duration, will not subject the property to Section 4(f).
- 23 CFR 774.11 (i) When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area, or wildlife and waterfowl refuge is established and concurrent or joint planning or development of the transportation facility and the Section 4(f) resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in §774.17. Examples of such concurrent or joint planning or development include, but are not limited to:
- Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation facility and the Section 4(f) property; or
  - Designation, donation, planning, or development of property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.

**Explanation supporting the Section 4(f) property meets all of the criteria of the Exception or Exemption**

As shown in Attachment 1, the current conceptual design requires no permanent relocation of the Great Calusa Blueway Paddling Trail. The Great Calusa Blueway Paddling Trail, along with the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail, all pass underneath the Big Carlos Pass Bridge together. Because no permanent relocation of the paddling trails is anticipated and the horizontal navigation clearance underneath the bridge is expected to remain the same or increase, the FDOT proposes a Section 4(f) Exception/Exemption: Temporary Occupancy Determination for the Great Calusa Blueway Paddling Trail. The Section 4(f) Exception/Exemption: Temporary Occupancy Determination states that the resource may be occupied during construction, but there will be no change in ownership of the property, there are no permanent adverse impacts anticipated, and the resource will be restored to its original condition.

**Documentation**

The following items **must** be attached to this form to ensure proper documentation of the Section 4(f)

Exception/Exemption:

1. DOA package (if used)

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2. Required communications with the OWJ (i.e. concurrence letters) for the Exception/Exemption as applicable

**Signatures**

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

\_\_\_\_\_  
Preparer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Environmental Manager, or designee

\_\_\_\_\_  
Date

**OEM  
Concurrence:**

\_\_\_\_\_  
OEM Subject Matter Expert

\_\_\_\_\_  
Date

**OEM  
Approval:**

\_\_\_\_\_  
Director of OEM, or designee

\_\_\_\_\_  
Date

DRAFT

FLORIDA DEPARTMENT OF TRANSPORTATION  
**SECTION 4(F) EXCEPTIONS/EXEMPTIONS DETERMINATION**

**Attachment 1**

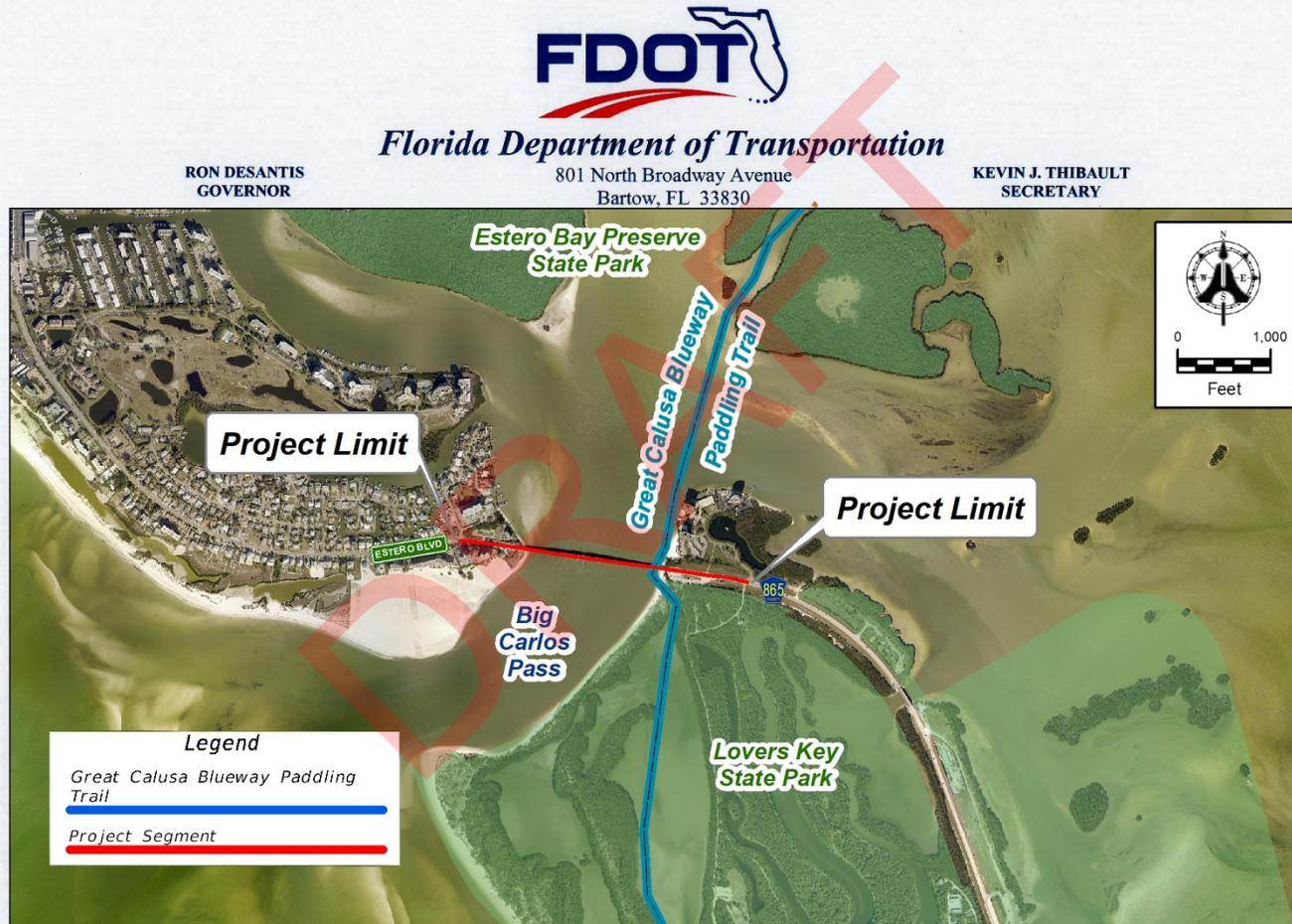


Figure 1: Project Location Map



## Florida Department of Transportation

RON DESANTIS  
GOVERNOR

801 North Broadway Avenue  
Bartow, FL 33830

KEVIN J. THIBAUT  
SECRETARY

October 9, 2019

Mr. Jesse Lavender, Director of Lee County Parks & Recreation Department  
c/o Mike Hammond, Great Calusa Blueway Coordinator  
Lee County Parks and Recreation  
3410 Palm Beach Boulevard  
Ft. Myers, FL 33916

Re: CR 865/Big Carlos Pass Bridge Replacement  
Lee County, Florida  
Financial ID No. 445323-1-22-01  
Section 4(f) Resources

Dear Mr. Lavender:

The Florida Department of Transportation (FDOT) in coordination with the Federal Highway Administration (FHWA) and Lee County is conducting a Project Development and Environment (PD&E) study to evaluate improvement alternatives for the CR 865/Big Carlos Pass Bridge in Lee County, Florida (see **Figure 1**). The existing Big Carlos Pass Bridge was constructed in 1965 and has been deemed functionally and structurally obsolete by the FDOT. The proposed alternatives being evaluated include the no-build alternative, replacement of the existing two-lane double leaf bascule bridge with a high-level fixed span bridge, and replacement of the existing two-lane double leaf bascule bridge with a low-level bascule bridge. All three bridge alternatives would include two 12-ft travel lanes, two seven-ft shoulders with bicycle lanes, one six-ft sidewalk, and one 10-ft shared-use path.

As per FHWA policy and as part of the PD&E study, one of the objectives is to identify parcels or other facilities that may be protected under Section 4(f) of the Department of Transportation Act of 1966 (49 USC 303). Section 4(f) typically applies to publicly owned land such as a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance. Section 4(f) also applies to historic or archaeological sites of national, state, or local significance regardless of ownership.

The FDOT has identified the following resource as a potential Section 4(f) resource:

- Great Calusa Blueway Paddling Trail

This property/facility is publicly owned and managed by your agency, the Lee County Parks and Recreation Department. We believe the Great Calusa Blueway Paddling Trail is a locally significant resource and plays an important role as a recreation area. Significance means that in comparing the availability and function of the Great Calusa Blueway Paddling Trail with the recreational objectives of the community, the facility in question plays an important role in meeting those objectives.

It is FHWA and FDOT policy to avoid and/or minimize impacts to potential Section 4(f) resources. As shown in Figure 1, the current conceptual design requires no permanent relocation of the Great Calusa Blueway Paddling Trail. The Great Calusa Blueway Paddling Trail, along with the Florida Circumnavigational Saltwater Paddling Trail and the Estero Bay and River Paddling Trail, all pass underneath the Big Carlos Pass Bridge together. Because no permanent relocation of the paddling trails is anticipated and the horizontal navigation clearance underneath the bridge is expected to remain the same or increase, the FDOT proposes a Section 4(f) Exception/Exemption: Temporary Occupancy Determination for the Great Calusa Blueway Paddling Trail. The Section 4(f) Exception/Exemption: Temporary Occupancy Determination states that the resource may be occupied during construction, but there will be no change in ownership of the property, there are no permanent adverse impacts anticipated, and the resource will be restored to its original condition.

Prior to making a determination of whether or not Section 4(f) applies, the FHWA requires a statement of significance from the official who has jurisdiction over the subject parcels. We are requesting Lee County Parks and Recreation Department's concurrence with the determination that the Great Calusa Blueway Paddling Trail is a significant resource (as described previously) and that there will be no use of this resource due to implementing the proposed project.

In addition, the FHWA requires that this office undertake further coordination with your agency regarding the proposed projects involvement with the paddling trail during construction and possible temporary impacts associated with construction activities. Accordingly, the FDOT is providing the following commitments that would be associated with implementing the proposed project:

1. Construction activities within the Great Calusa Blueway Paddling Trail "property" that would be associated with the construction of the Big Carlos Pass Bridge Replacement will be of a temporary duration (i.e., less than the time needed for the construction of the entire project) and there will be no change in ownership of the trail "property". The replacement bridge will occur within CR 865/Lee County ROW.
2. Construction activities within the Great Calusa Blueway Paddling Trail "property" will be minor and changes, if any, will be minimal. Adequate vertical and horizontal navigation clearances will be provided for trail users.
3. Construction activities within the Great Calusa Blueway Paddling Trail "property" will create no anticipated permanent adverse physical impacts, nor will there be interference with protected activities, features, or attributes of the property on a permanent basis. The FDOT plans to keep trails accessible during construction activities. The FDOT will add a plan note into the General Notes of the project's final design plans to ensure the contractor equipment staging, materials stockpiling, or storing activities will not be allowed within the Great Calusa Blueway Paddling Trail "property".
4. The Great Calusa Blueway Paddling Trail "property" within the limits of the project's construction area will be restored to a condition which is at least as good as that which existed prior to the project being started.

We are requesting your concurrence with the determination that the Great Calusa Blueway Paddling Trail meets the Section 4(f) definition of significant resources. We are also requesting your concurrence with the temporary impacts from construction assessment. If you concur with

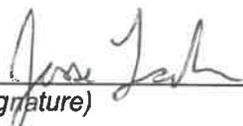
FDOT's assessment of the significance of this resource, please sign and date the concurrence block at the bottom of this letter and return it to my attention at the address below.

If you have any questions or concerns regarding the findings of this letter, please contact me at (863) 519-2495 or [Jonathon.Bennett@dot.state.fl.gov](mailto:Jonathon.Bennett@dot.state.fl.gov).

Sincerely,



Jonathon A. Bennett  
Environmental Project Manager  
Florida Department of Transportation, District One  
801 North Broadway Avenue  
Bartow, Florida 33830

<b><i>I concur that the Great Calusa Blueway Paddling Trail is a significant resource to the Lee County Parks and Recreation Department.</i></b>	
 (Signature)	10/9/19 (Date)
Jesse Lavender Director of Lee County Parks & Recreation Department	

cc: Jeff Jacquin, AIM Engineering & Surveying, Inc.



**Florida Department of Transportation**  
801 North Broadway Avenue  
Bartow, FL 33830

RON DESANTIS  
GOVERNOR

KEVIN J. THIBAUT  
SECRETARY

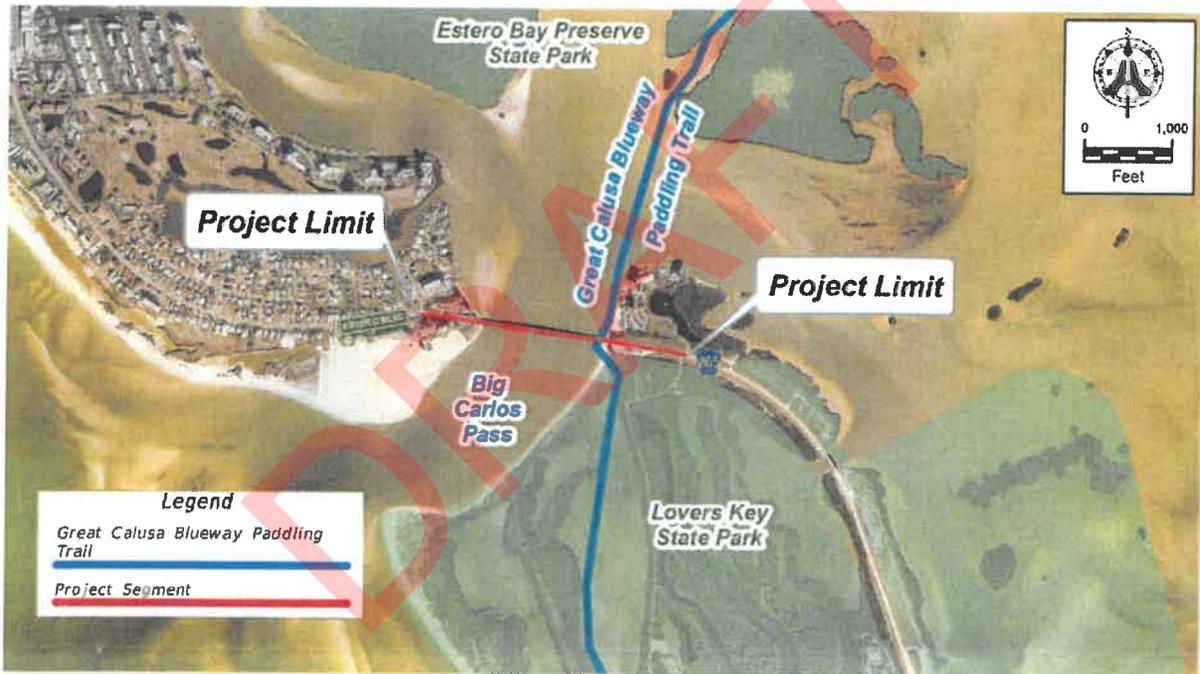


Figure 1: Project Location Map

