



**HANDBOOK ON
DEPARTMENTAL REVIEW OF
SECTION 4(f) EVALUATIONS**

Department of the Interior
Office of Environmental Policy and Compliance
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This handbook provides guidance in the review of and the preparation of Department of the Interior (Department) comments on Section 4(f) evaluations prepared by the U.S. Department of Transportation (DOT) and its modal administrations: the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA).

This handbook makes frequent use of hyperlinks to supporting information. Therefore, it is more useful in electronic form than in print.

Additional resources for reviewers of Section 4(f) evaluations are found on FHWA's [Section 4\(f\) website](#). Most notable are [Section 4\(f\) at a Glance](#), FHWA's [Section 4\(f\) Policy Paper](#), and a [Section 4\(f\) Tutorial](#).

Section 4(f) Overview

Statutory Mandate

Section 4(f) of the Department of Transportation Act of 1966, resides in the United States Code at [49 USC § 303](#) and [23 USC § 138](#). Section 4(f) protects publicly owned parks, recreation areas, and wildlife and waterfowl refuges of national, state, or local significance and historic sites of national state, or local significance from use by transportation projects. These properties may only be used if there is no prudent or feasible alternative for their use and the program or project encompasses all possible planning to minimize harm resulting from its use. If transportation use of a Section 4(f) property results in a *de minimis* impact, analysis of avoidance alternatives is not required.

Section 4(f) also requires the Secretary of Transportation to “cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. The statute provides significant authority to the Secretary of the Interior to seek the protection of public recreational lands, including parks and wildlife refuges, in the planning of DOT proposals.

Regulatory Definition

The FHWA and FTA regulations at [23 CFR 771.107\(e\)](#) define “Section 4(f)” as follows:

Section 4(f). Refers to [49 U.S.C. 303](#) and [23 U.S.C. 138](#).²

² Section 4(f), which protected certain public lands and all historic sites, technically was repealed in 1983 when it was codified, without substantive change, as [49 U.S.C. 303](#). This regulation continues to refer to section 4(f) because it would create needless confusion to do otherwise; the policies section 4(f) engendered are widely referred to as “section 4(f)” matters. A provision with the same meaning is found at [23 U.S.C. 138](#) and applies only to FHWA actions.

The FHWA and FTA regulations at [23 CFR 774](#) implement the requirements of Section 4(f).

Use of Section 4(f) Property

Use of Section 4(f) property is defined in [23 CFR 774.17](#). A use occurs when:

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

Permanent Incorporation

Land is considered permanently incorporated into a transportation project when it has been purchased as right-of-way or sufficient property interests have otherwise been acquired for the purpose of project implementation.

Temporary Occupancy

Examples of temporary occupancy of Section 4(f) land include right-of-entry, project construction, a temporary easement, or other short-term arrangement involving a Section 4(f) property. A temporary occupancy will not constitute a Section 4(f) use when all of the conditions listed in [23 CFR 774.13\(d\)](#) are satisfied:

- Duration must be temporary;
- Scope of the work must be minor;
- There are no anticipated permanent adverse physical impacts;
- The land being used must be fully restored; and
- There must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.

In situations where the above criteria cannot be met, the temporary occupancy will be a use of Section 4(f) property and the appropriate Section 4(f) analysis, coordination, and documentation will be required.

Constructive Use

Constructive use occurs when impacts of a project in proximity to an adjacent or near-by Section 4(f) property are so severe that the activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired.

Additional details on use of Section 4(f) property are found in FHWA's Section 4(f) Policy Paper at [Question #7](#).

Departmental Policy on Comments

The Department considers it a priority to provide competent and timely review comments on Section 4(f) evaluations. ([516 DM 4.2](#)) Therefore, a Section 4(f) review will conclude with

comments. The Department's comments will be in the form of a concurrence or non-concurrence with rationale. Suggested language is provided in a later section of this handbook.

The Department's Office of Environmental Policy and Compliance (OEPC) manages the review of proposals by other Federal agencies through its environmental review (ER) system. This system includes assignment of control numbers, lead bureaus, reviewing bureaus, and review schedules.

The National Park Service (NPS) usually serves as the lead bureau for preparing the Department's comments on projects that may affect units of the National Park System, other public park and recreation resources, or historic and archeological properties.

The Fish and Wildlife Service (FWS) is usually designated as lead bureau for projects involving fish and wildlife refuges, dedicated wetlands, and similar areas. However, because refuges often involve recreational uses and values, the NPS should provide its views to the FWS on Section 4(f) issues involving refuges.

When the Bureau of Land Management, the Bureau of Reclamation, or the Bureau of Indian Affairs is made the lead bureau for a project involving Section 4(f) lands under its direct jurisdiction, the bureau should actively solicit the views of the FWS and the NPS if they have not already been provided. As a practical matter, however, these three bureaus are seldom involved in Section 4(f) matters and are very rarely named lead bureau.

Some Section 4(f) reviews involve lands and areas of interest to more than one bureau—for example, a park and a refuge, or a refuge and a historic site. The lead bureau in these cases must ensure that the views of other bureaus are considered for incorporation in the Department's comments. **The lead bureau must also perform its lead role in responding on behalf of the Department even if it has no comments of its own.** Sometimes intra-Departmental conflicts arise. These conflicts must be resolved before a Departmental letter is finalized. The following general procedures apply:

- The field level official of the lead bureau resolves conflicts through inter-bureau discussions. If unsuccessful, then,
- OEPC's regional environmental officer resolves conflicts through regional level coordination. If unsuccessful, then,
- The lead (or any other) bureau refers the case to OEPC headquarters through its Washington office. If unsuccessful, then,
- OEPC headquarters will refer the case to the Assistant Secretary PMB.

The OEPC is always available for informal consultations at any stage of the process. Attempts at resolution should be documented in the package sent to the OEPC. The OEPC's distribution memorandum and the comments of other bureaus must be on hand when the Departmental letter of comment is prepared. If the comments of any bureau are not on hand, the bureau should be contacted by telephone and the call documented. *Original bureau comments must accompany the draft Departmental comments through the process for final review and signature by the OEPC.*

Section 4(f) Properties Under the Department's Jurisdiction

Accepted Section 4(f) Properties

It is important that reviewers familiarize themselves with Environmental Review Memorandum [ERM13-3](#), which states:

Section 4(f) of the Department of Transportation Act provides the Department with a significant tool for the protection and preservation of parklands, recreation areas, wildlife and waterfowl refuges, and historical sites. While there is no veto by agencies over the Department of Transportation (DOT) in these matters, the Secretary of Transportation must determine that there is no feasible and prudent alternative to a proposed DOT action and that such action includes all possible planning to minimize harm to the park or historic resource before approving the action.

Accordingly, the Department has declared the following listed lands as being significant parks, recreation areas, wildlife and waterfowl refuges, and historic sites, and has stated its opinion that Section 4(f) applies to them for any use by DOT. The following list was developed consistent with the advice of the Department's solicitor. However, the list may not be exhaustive, and there may be other areas that have been inadvertently omitted or that may need to be evaluated on a case-by-case basis. The DOT [Section 4\(f\) Policy Paper](#) must also be consulted in these matters. Issues where the Department may still be in conflict with DOT should be brought to the attention of the OEPC and the solicitor's office as necessary for final decision.

- Lands of the National Park System.
- National Park Service "Affiliated Areas."
- Lands of the National Wildlife Refuge System.
- Lands of the National Fish Hatchery System.
- Lands acquired for mitigation purposes pursuant to the authority of the Fish and Wildlife Coordination Act, including general plan lands under Section 3(b) of that act.
- Lands under the jurisdiction of the Bureau of Reclamation that are administered as parks, recreation areas, wildlife refuges, or historic sites.
- Lands under the jurisdiction of the Bureau of Land Management that are administered for recreation, cultural, and wildlife purposes.
- Indian lands held in trust by the Department as parks, recreation areas, wildlife refuges, or historic sites.
- Local and state lands, and interests therein, and certain federal lands under lease to the states, acquired or developed in whole or in part with moneys from the Land and Water Conservation Fund (LWCF).

- Recreation areas and facilities developed or improved, in whole or in part, with grants under the Urban Park and Recreation Recovery Act of 1978. ([16 U.S.C. § 2501 et seq.](#))
- State lands and interests therein acquired or developed or improved with federal grants for fish and wildlife conservation, restoration, or management such as the Federal Aid in Sport Fish Restoration Act of 1950 referred to as the Dingell-Johnson Act. ([16 U.S.C. 777 et seq.](#))
- State lands managed with grants under the Federal Aid in Wildlife Restoration Act of 1937, better known as the Pittman-Robertson Act. ([16 U.S.C. §§ 669-669i](#))
- State lands managed with grants under the Anadromous Fish Conservation Act of 1965. ([16 U.S.C. 757a-757g](#))
- Federal surplus real property that has been deeded to state and local governments for park, recreation, wildlife, and historic purposes.
- Abandoned railroad rights-of-way acquired by state and local governments for recreational or conservation uses under Section 809(b) of the [Railroad Revitalization and Regulatory Reform Act](#) of 1976.
- Properties listed on or eligible for inclusion in the National Register of Historic Places.
- Areas publicly owned in fee, less than fee, lease, or otherwise, that receive de facto use as park, recreation, or refuge lands. De facto use is determined on a case-by-case basis by the bureau having statutory or program jurisdiction over or interest in the land in question. In the case of Indian trust lands, such determination will be made in consultation with the appropriate tribal officials. De facto use may also include publicly owned lands or interest therein proposed or under study for inclusion in the National Wild and Scenic Rivers System, the National Trails System, or the National Wilderness Preservation System, or as critical habitat for endangered or threatened species. Early coordination with The Department about the applicability of Section 4(f) is especially important whenever lands administered by the Bureau of Reclamation or the Bureau of Land Management, or Indian trust lands administered by the Bureau of Indian Affairs, are affected by DOT projects.

All of the lands listed above may also contain significant, but presently unknown or undesignated, historic or archeological sites or properties that fall under the protection of Section 4(f). This matter will be determined on a case-by-case basis by the administering bureau/tribal officials in consultation with the state historic preservation officer (SHPO) (or others with historical expertise). Coordination of this matter with the Department is, therefore, essential. Such coordination with respect to Section 4(f) should be undertaken in addition to (although it may be concurrent with) any coordination that may be required under [Section 106](#) of the [National Historic Preservation Act](#). It should be noted, however, that each law is independent of the other.

Properties to Which Section 4(f) Might Apply

For some properties, the Department has no direct or program jurisdiction; for others, the Department and DOT disagree as to the applicability of Section 4(f). In general, the Department believes the properties listed below should receive Section 4(f) protection. Surface waters associated with these lands are also subject to Section 4(f). DOT, however, does not recognize historic sites of state and local significance as automatically falling under the protection of Section 4(f), unless such sites are also on or eligible for the National Register. The responsible DOT official may, at his or her discretion, apply Section 4(f) to such historic sites, but this is not mandatory. Such application of Section 4(f) may require further discussion among the NPS, the OEPC, the Office of the Solicitor, and the SHPO.

The following are some common 4(f) problem areas that reviewers have encountered. The list is not all-inclusive. Such problems should be resolved on a case-by-case basis, with frequent reference to the DOT [Section 4\(f\) Policy Paper](#):

Government-Leased Private Lands

Private lands leased by governmental entities and operated as community parks and recreation areas may fall under the protection of Section 4(f). Factors such as lease conditions, significance, and use of the area must be considered in determining the application of 4(f). At the very least, reviewers should recommend special attention for such areas and request Section 4 (f) considerations by DOT.

Public School Property

Public school property serving only as a recreation area for a school is not covered by Section 4(f). However, an area that is open to general public use, and that serves the recreational needs of the community as well as the school, is covered by Section 4(f), if it is found to be significant by the officials having responsibility for providing recreation opportunities to the community.

Private School Property

Private school property that receives public financial assistance in return for public recreational use of that property may be subject to Section 4(f). Applicability depends on conditions of the lease and other circumstances. Therefore, all the necessary facts with appropriate analysis must be assembled for any private school case in which Section 4(f) may be applicable.

Fairgrounds

Fairgrounds or portions of them that are open to the general public as a community park, recreation area, or similar area are generally considered to be under Section 4(f) protection. ([See FHWA Policy Paper Question 20.](#))

Public Open Space

Public open spaces will fall under the protection of Section 4(f) when they are part of a park or recreation area, a historic site, or a wildlife area and local park and recreation officials have determined them to be significant.

State Game Lands

The Department believes that all state lands and interests therein acquired or developed or improved for fish and wildlife conservation, restoration, or management with grants under the [Pittman-Robertson Act](#), the [Dingell-Johnson Act](#), [Section 6 of the Endangered Species Act of 1973](#), or the [Anadromous Fish Conservation Act of 1965](#) (including, but not limited to, state fish hatcheries, state wildlife conservation areas, and state game lands) are protected by Section 4(f). However, the final decision on applicability lies with DOT. In making its determination, DOT will rely on the official having jurisdiction over the lands to identify the kinds of activities and functions that take place. The Fish and Wildlife Service (FWS) will normally be the Department's lead bureau for reviews involving these lands.

Wetlands Easements

Wetlands easements lands are acquired pursuant to the Act of March 16, 1934, as amended, 48 Stat. 451, [16 U.S.C. 718](#), and administered by the FWS. The Department considers wetlands easements protected under Section 4(f). The FWS will normally be the lead for reviews concerning these lands.

Floodplains

Floodplains are not 4(f) areas unless otherwise designated as park and recreation lands or wildlife refuges under other authority.

Projects Involving Highway Rights-of-Way Temporarily Used for Park Purposes

These lands should include sufficient documentation to show that the affected parkland is within the highway right-of-way. The deed and accompanying maps drawn at the time the right-of-way was acquired will usually provide satisfactory evidence. If the deed is not available and the exact boundary cannot be determined from existing records, the highway agency should carry out sufficient design work to address the parkland taking and involvement, including an on-the-ground finding to support the fact that no parkland will be taken outside the designated right-of-way. Measures to minimize harm in such cases should include removal or relocation of facilities that may be involved, fencing, noise abatement, landscaping, and access. Measures should be coordinated with and approved by the park authority, and implemented at project expense. Evidence to that effect should be included in the final statement.

National Forest System Lands

Usually the Department does not involve itself in national forest Section 4(f) matters if the Forest Service determines that Section 4(f) is not applicable to National Forest System lands that are

affected by transportation projects. However, the Department should make an independent evaluation of the park, recreational, or refuge values of the area in question, and as appropriate request DOT and the Forest Service to reevaluate their position.

Wild and Scenic Rivers

In general, rivers under study for designation as wild and scenic rivers are not subject to Section 4(f), but publicly owned parks, recreation areas, refuges, and historic sites within their corridors would be. Publicly owned waters of designated wild and scenic rivers are protected by 4(f). Publicly owned lands within immediate proximity of such rivers may be protected by 4(f). Refer to the DOT [Section 4\(f\) Policy Paper, Question 21B](#).

Section 4(f)/Section 106 Involvements

Environmental statement/Section 4(f) evaluations should document actions taken to preserve and enhance districts, sites, buildings, structures, and objects of historical, archeological, architectural, or cultural significance. Reviewers should, therefore, familiarize themselves with Section 106 of the National Historic Preservation Act of 1966, and its implementing regulations at [36 CFR 800](#) as it pertains to these properties.

Section 4(f) requires a more rigorous level of consideration for historic properties than does Section 106. Section 106 requires only that effects on historic properties be considered and that the SHPO or the tribal historic preservation officer, as well as the Advisory Council on Historic Preservation if necessary, be afforded the opportunity to comment. Section 4(f), in contrast, requires that historic properties be used only if there is no feasible and prudent alternative.

Although transportation agencies often contend that Section 4(f) and Section 106 compliance duplicate each other, we do not agree. We do, however, favor concurrent compliance and processing under both laws. Field reviewers should recommend (during early coordination) the circulation of a draft environmental document (environmental assessment (EA) or environmental impact statement (EIS)) with a combined preliminary Section 106 case report/Section 4(f) evaluation. When an EA/EIS is not required, the combined 106/4(f) document will suffice. Such draft documents must discuss proposed mitigation, and may include a *proposed* memorandum of agreement (MOA). The SHPO and the Department will then make their *independent* comments on the combined document. The final EIS or the final 4(f)/106 documentation would then include DOT's 4(f) approval determination and an executed MOA, or otherwise indicate disposition of the case.

A rather special case is presented by archeological sites, some of which are significant only or primarily because they contain information that can be fully extracted through a data recovery program. Advisory Council on Historic Preservation regulations state that when a site is excavated, the effect on the site is considered adverse without exception. The FHWA's procedures for considering impacts to archeological sites and the relationship to Section 106 are generally described at [23 CFR § 774.11\(f\)](#) and [23 CFR § 774.13\(b\)](#).

***De Minimis* Determinations**

A *de minimis* impact determination is a finding by DOT (*see* DOT's [Section 4\(f\) Policy Paper, Questions 11 – 13](#)). A *de minimis* impact is one that, after taking into account any measures to minimize harm (such as avoidance, minimization, mitigation or enhancement measures), results in either:

- A Section 106 finding of no adverse effect or no historic properties affected on a historic property; or
- A determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f).

In other words, a *de minimis* impact determination is made for the net impact on the Section 4(f) property.

A *de minimis* impact determination may be made for a permanent incorporation or temporary occupancy of Section 4(f) property.

The definition of all possible planning in [23 CFR 774.17](#) explains that use of a Section 4(f) property having a *de minimis* impact can be approved by DOT without the need to develop and evaluate alternatives that would avoid using the Section 4(f) property. The definition also explains that a *de minimis* impact determination does not require the traditional second step of including all possible planning to minimize harm because avoidance, minimization, mitigation, or enhancement measures are included as part of the determination. Therefore, DOT agencies will not normally conduct project-level coordination with the Department when making *de minimis* impact determinations unless the Department has jurisdiction over the Section 4(f) property.

A *de minimis* impact determination requires agency coordination and public involvement as specified in [23 CFR 774.5\(b\)](#). The regulation has different requirements depending upon the type of Section 4(f) property that would be used. For historic sites, the consulting parties identified in accordance with [36 CFR Part 800](#) must be consulted. The Department will have the opportunity to participate as a consulting party during Section 106 consultation on historic sites and National Historic Landmarks administered by the Department.

The official(s) with jurisdiction must be informed of the intent to make a *de minimis* impact determination and must concur in a finding of no adverse effect or no historic properties affected in accordance with [36 CFR Part 800](#). Compliance with [36 CFR Part 800](#) satisfies the public involvement and agency coordination requirement for *de minimis* impact findings for historic sites.

For parks, recreation areas, or wildlife and waterfowl refuges, the official(s) with jurisdiction over the property must be informed of the intent to make a *de minimis* impact determination, after which an opportunity for public review and comment must be provided. After considering any comments received from the public, if the official(s) with jurisdiction concurs in writing that

the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection, then FHWA may finalize the *de minimis* impact determination.

It is possible for FHWA to make a *de minimis* determination even though some portion of a property acquired or developed with assistance under Land and Water Conservation Fund Act would be converted to other than public outdoor recreation use. For example, a highway realignment project might encroach on an unused portion of an otherwise developed city park. If conversion of the park's unused portion would not adversely affect the activities, features, or attributes qualifying a park, a *de minimis* determination may be appropriate. However, a Section 6(f) involvement may result and the NPS, under its delegated authority, will have to consider approval of the conversion. See discussion under the heading [Projects Involving Section 6\(f\) of the Land and Water Conservation Fund Act](#) in this handbook.

Nationwide Section 4(f) Programmatic Evaluations

Programmatic Section 4(f) Evaluations allow transportation and resource agency officials in the field to make determinations on projects having minor impacts on areas protected by Section 4(f). When the following programmatic evaluations and approvals are exercised, the Department will not be consulted. However, use of three of the five programmatic evaluations and approvals, require that officials with jurisdiction be consulted and their concurrence/approval obtained. Use of the other two – dealing with historic bridges and historic properties – requires agreement from the appropriate SHPO and concurrence from the ACHP.

For detailed descriptions of each of the following nationwide Section 4(f) programmatic evaluations, see <http://www.environment.fhwa.dot.gov/4f/4fnspeval.asp>.

Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects

This negative declaration/preliminary Section 4(f) document is only applicable for independent bikeway or walkway construction projects which require the use of recreation and park areas established and maintained primarily for active recreation, open space, and similar purposes. Additionally, **this document is applicable only when the official having specific jurisdiction over the Section 4(f) property has given his approval in writing** that the project is acceptable and consistent with the designated use of the property and that all possible planning to minimize harm has been accomplished in the location and design of the bikeway or walkway facility. This document does not apply if the project would require the use of critical habitat for endangered species.

This document does not cover the use of any land from a publicly owned wildlife or waterfowl refuge or any land from a historic site of national, State, or local significance. It also does not cover those projects where there are unusual circumstances (major impacts, adverse effects, or

controversy). A separate Section 4(f) statement and environmental document must be prepared in these categories.

This document does not cover bicycle or pedestrian facilities that are incidental items of construction in conjunction with highway improvements having the primary purpose of serving motor vehicular traffic.

The FHWA is required to coordinate with the Department if there will be use of properties acquired or developed with Federal monies from the Land and Water Conservation Fund. [See guidance for Section 6\(f\)](#) in this handbook.

Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges

This programmatic Section 4(f) evaluation may be applied by FHWA to projects which meet the following criteria:

1. The bridge is to be replaced or rehabilitated with Federal funds.
2. The project will require the use of a historic bridge structure which is on or is eligible for listing on the National Register of Historic Places.
3. The bridge is not a National Historic Landmark.
4. The FHWA Division Administrator determines that the facts of the project match those set forth in the sections of this document labeled Alternatives, Findings, and Mitigation.
5. Agreement among the FHWA, the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) has been reached through procedures pursuant to Section 106 of the NHPA.

Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites

This programmatic Section 4(f) evaluation may be applied by FHWA only to projects meeting the following criteria:

1. The proposed project is designed to improve the operational characteristics, safety, and/or physical condition of existing highway facilities on essentially the same alignment. This includes "4R" work (resurfacing, restoration, rehabilitation and reconstruction); safety improvements, such as shoulder widening and the correction of substandard curves and intersections; traffic operation improvements, such as signalization, channelization, and turning or climbing lanes; bicycle and pedestrian facilities; bridge replacements on essentially the same alignment, and the construction of additional lanes. This programmatic Section 4(f) evaluation does not apply to the construction of a highway on a new location.
2. The historic site involved is located adjacent to the existing highway.
3. The project does not require the removal or alteration of historic buildings, structures or objects on the historic site.

4. The project does not require the disturbance or removal of archeological resources that are important to preserve in place rather than to remove for archeological research. The determination of the importance to preserve in place will be based on consultation with the State Historic Preservation Officer (SHPO) and, if appropriate, the Advisory Council on Historic Preservation (ACHP).
5. The impact on the Section 4(f) site resulting from the use of the land must be considered minor. The word minor is narrowly defined as having either a "no effect" or "no adverse effect" (when applying the requirements of Section 106 of the National Historic Preservation Act and 36 CFR Part 800) on the qualities which qualified the site for listing or eligibility on the National Register of Historic Places. The ACHP must not object to the determination of "no adverse effect."
6. The SHPO must agree, in writing, with the assessment of impacts of the proposed project on and the proposed mitigation for the historic sites.
7. This programmatic evaluation does not apply to projects for which an environmental impact statement (EIS) is prepared, unless the use of Section 4(f) lands is discovered after the approval of the final EIS.

Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges

This programmatic Section 4(f) evaluation may be applied by FHWA only to projects meeting the following criteria:

1. The proposed project is designed to improve the operational characteristics, safety, and/or physical condition of existing highway facilities on essentially the same alignment. This includes "4R" work (resurfacing, restoration, rehabilitation, and reconstruction), safety improvements, such as shoulder widening and the correction of substandard curves and intersections; traffic operation improvements, such as signalization, channelization, and turning or climbing lanes; bicycle and pedestrian facilities; bridge replacements on essentially the same alignment; and the construction of additional lanes. This programmatic Section 4(f) evaluation does not apply to the construction of a highway on a new location.
2. The Section 4(f) lands are publicly owned public parks, recreation lands, or wildlife and waterfowl refuges located adjacent to the existing highway.
3. The amount and location of the land to be used shall not impair the use of the remaining Section 4(f) land, in whole or in part, for its intended purpose. **This determination is to be made by the FHWA in concurrence with the officials having jurisdiction over the Section 4(f) lands**, and will be documented in relation to the size, use, and/or other characteristics deemed relevant. The total amount of land to be acquired from any Section 4(f) site shall not exceed the values in the following table:

Total Size of Section 4(f) Site Maximum to Be Acquired

< 10 acres	10 percent of site
10 acres - 100 acres	1 acre
> 100 acres	1 percent of site

4. The proximity impacts of the project on the remaining Section 4(f) land shall not impair the use of such land for its intended purpose. This determination is to be made by the FHWA in concurrence with the officials having jurisdiction over the Section 4(f) lands, and will be documented with regard to noise, air and water pollution, wildlife and habitat effects, aesthetic values, and/or other impacts deemed relevant.
5. The officials having jurisdiction over the Section 4(f) lands must agree, in writing, with the assessment of the impacts of the proposed project on, and the proposed mitigation for, the Section 4(f) lands.
6. For projects using land from a site purchased or improved with funds under the Land and Water Conservation Fund Act, the Federal Aid in Fish Restoration Act (Dingell-Johnson Act), the Federal Aid in Wildlife Act (Pittman-Robertson Act), or similar laws, or the lands are otherwise encumbered with a Federal interest (e.g., former Federal surplus property), **coordination with the appropriate Federal agency is required** to ascertain the agency's position on the land conversion or transfer. The programmatic Section 4(f) evaluation does not apply if the agency objects to the land conversion or transfer.
7. This programmatic evaluation does not apply to projects for which an environmental impact statement (EIS) is prepared, unless the use of Section 4(f) lands is discovered after the approval of the final EIS. Should any of the above criteria not be met, this programmatic Section 4(f) evaluation cannot be used, and an individual Section 4(f) evaluation must be prepared.

In the early stages of project development, FHWA is required to coordinate with the Federal, state and/or local agency officials having jurisdiction over the Section 4(f) lands. In the case of non-Federal Section 4(f) lands, the official with jurisdiction will be asked to identify any Federal encumbrances. Where such encumbrances exist coordination will be required with the Federal agency responsible for the encumbrance.

Nationwide Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property

This programmatic evaluation satisfies the requirements of Section 4(f) for projects meeting all of the applicability criteria listed below. An individual Section 4(f) evaluation will not need to be prepared for such projects:

1. The proposed transportation project uses a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic site.

2. The proposed project includes all appropriate measures to minimize harm and subsequent mitigation necessary to preserve and enhance those features and values of the property that originally qualified the property for Section 4(f) protection.
3. For historic properties, the project does not require the major alteration of the characteristics that qualify the property for the National Register of Historic Places (NRHP) such that the property would no longer retain sufficient integrity to be considered eligible for listing. For archeological properties, the project does not require the disturbance or removal of the archaeological resources that have been determined important for preservation in-place rather than for the information that can be obtained through data recovery. The determination of a major alteration or the importance to preserve in-place will be based on consultation consistent with 36 CFR part 800.
4. For historic properties, consistent with 36 CFR part 800, there must be agreement reached amongst the SHPO and/or THPO, as appropriate, the FHWA and the Applicant on measures to minimize harm when there is a use of Section 4(f) property. Such measures must be incorporated into the project.
5. The official(s) with jurisdiction over the Section 4(f) property agree in writing with the assessment of the impacts; the proposed measures to minimize harm; and the mitigation necessary to preserve, rehabilitate and enhance those features and values of the Section 4(f) property; and that such measures will result in a net benefit to the Section 4(f) property.
6. The Administration determines that the project facts match those set forth in the Applicability, Alternatives, Findings, Mitigation and Measures to Minimize Harm, Coordination, and Public Involvement sections of this programmatic evaluation.

This programmatic evaluation can be applied to any project regardless of class of action under NEPA.

In the early stages of project development, FHWA is required to coordinate with the Federal, State, and/or local agency official(s) with jurisdiction over the Section 4(f) property. For non-Federal Section 4(f) properties, i.e., State or local properties, the official(s) with jurisdiction will be asked to identify any Federal encumbrances. When encumbrances exist, coordination will be required with the Federal agency responsible for such encumbrances.

Organization and Content of Departmental Comment Letters

The following sections provide a standard format for Section 4(f) letters and EIS/4(f) letters. It is advisable to use this format so as to ensure that all Section 4(f) considerations are accounted for and processed.

The content of a Departmental letter of comment on environmental impact statement/Section 4(f) evaluations may have several major sections: general comments, Section 4(f) evaluation comments, environmental impact statement comments, and summary comments. Sections

dealing with other specific laws, such as Section 6(f) of the Land and Water Conservation Fund Act, the Fish and Wildlife Coordination Act, or the Endangered Species Act, should be added if applicable. However, guidance in this handbook is focused on the Section 4(f) review.

Addressee

The letter must be addressed to the responsible Federal official (FHWA Division Administrator or equivalent), with a copy to the state, local, or other sponsor (if any exists). The address should be on the first page at the upper left-hand corner of the letter. The OEPC control number should also appear at the upper left-hand corner of the letter under the Departmental seal. The second and succeeding pages of the letter should carry a header with the name of the addressee, exactly as it is shown on the first page, flush with the left margin and the page number located to the right in the same header. The complimentary close, “Sincerely,” should be two lines below the last line of the letter and flush left on the center of the page. If the signatory is known, type the signatory’s name five lines below the complimentary close, with title below the name. Material accompanying a letter should be identified in the text, with a notation at the end indicating an enclosure. When a copy of the letter is being sent to someone other than the addressee, note this fact at the lower left hand corner under the signature and include each recipient’s full address(es).

Project Identification

Generally, the initial paragraph should read something like,

This letter is in response to your recent request for the Department of the Interior’s comments on the (type of document received) for the (include project identification exactly as it appears in the OEPC’s distribution memorandum).

Reviewers should independently check project identification. Reviewers should also check the type of review—for example, do not identify the review as a draft environmental impact statement/Section 4(f) evaluation unless a Section 4(f) evaluation is actually included or as an environmental assessment/Section 4(f) evaluation if no environmental assessment is attached. The OEPC frequently distributes a draft EIS for Department Section 4(f) comments when the DOT agency does not recognize a Section 4(f) involvement. These are referred to as having a potential Section 4(f) involvement. In these cases, cite the document only as a draft EIS. Always include the project name, the county, and the state. The name of the city or town may be included if appropriate.

General Comments

This section may contain comments of a general nature, and any that occur throughout the document should be consolidated to avoid needless repetition. The Section 4(f) and EIS sections of the letter may also contain a “General” section if it is appropriate to those sections.

General Section 4(f) Evaluation Comments

The first paragraph under Section 4(f) may include general comments as to the adequacy or inadequacy of the Section 4(f) submission. We may review projects for which the DOT agency does not recognize, or rejects outright, the application of Section 4(f). This section would be a good place to address our differences with DOT about the application of Section 4(f), the use of Section 4(f) properties, determinations of significance, and other matters that may be needed to address the document's compliance with the requirements of DOT's Section 4(f) regulations.

Specific Section 4(f) Evaluation Comments

Preliminary Section 4(f) Documents

The Department's Section 4(f) comments are provided on a clearly identifiable Section 4(f) document that discusses alternatives and measures to minimize harm. This may appear in a combined environmental impact statement/Section 4(f) evaluation or as a separate Section 4(f) document circulated for review and comment. However, there are instances where only *preliminary* Section 4(f) comments may be appropriate. Preliminary Section 4(f) comments are provided to give the sponsor an early indication of the Department's thoughts about the Section 4(f) information and involvements associated with a proposed project. In cases of this nature, we should make clear that the comments provided are preliminary and do not represent the results of formal consultation by DOT with the Department, pursuant to the consultative requirements of Section 4(f), and that this requirement will be fulfilled only when the Secretary of the Interior comments on a Section 4(f) document that may be prepared and approved by DOT for circulation. Normally, preliminary comments are provided in two kinds of cases: the case of environmental statements that have no identifiable Section 4(f) involvements but that the Department believes may involve Section 4(f) lands, or the case where the sponsor specifically asks for preliminary Section 4(f) comments before the circulation of a Section 4(f) document.

Alternatives and Their Impacts on Section 4(f) Properties

Section 4(f) requires a finding that there is *no* feasible and prudent *alternative to the proposed use of a Section 4(f) property*. We must make an initial determination in writing that we concur (or do not concur). If we do not concur, we must state why.

The DOT Section 4(f) regulations, require rigorous exploration and objective evaluation of alternative actions that would avoid all use of Section 4(f) properties and that would avoid some or all adverse environmental effects. Analysis of such alternatives, their costs, and the impacts on the Section 4(f) properties should be included in draft National Environmental Policy Act documents. In addition to Council on Environmental Quality regulations, the reviewer should be familiar with the specific Section 4(f) requirements of 23 CFR 774 and other regulations of DOT's modal administrations. The reviewer should consider that Section 4(f) lands are "...not to be lost unless there are truly unusual factors present...or...the cost of community disruption resulting from alternative routes reaches extraordinary magnitudes." (*Citizens to Preserve*

Overton Park v. Volpe, [401 U.S. 402 \(1972\)](#)) Also, consider the dictates of sound land use planning in accepting or rejecting alternatives. If not satisfied with an analysis of alternatives, the reviewer should explain the reasons in detail or request additional information and data essential for comparing alternatives. Reviewers can always suggest alternatives of their own for evaluation and not confine their comments to the alternatives presented.

If, on the other hand, the reviewer is satisfied that all alternatives have been thoroughly examined by the sponsor and the federal agency and there is no feasible and prudent alternative to the use of Section 4(f) lands, simply say: “We concur that there is no feasible and prudent alternative to the proposed use of (insert the name of the Section 4(f) property to be used by the proposed action or preferred alternative).” In the absence of a “proposed action,” the “preferred alternative” will be treated as the proposed action for purposes of the Section 4(f) review.

In dealing with alternatives, reviewers should avoid using the phrase “based on the information provided in the document.” It is appropriate to use this phrase only in cases where we might have a thought about another alternative but are not prone to promote it for whatever reason. Unless this is the situation, this phrase should not be used. Also, avoid using wording such as the “most” feasible and prudent alternative.

Measures to Minimize Harm to Section 4(f) Properties

The second phase of a Section 4(f) review is to ensure that all possible planning has been done to minimize harm to Section 4(f) properties. This is often the most important phase and the one where we can be most effective because of our special expertise in the protection and management of all types of Section 4(f) areas.

Reviewers are alerted that a general statement indicating that the sponsor will comply with all federal, state, and local standards and specifications to minimize harm is not acceptable. Also not acceptable is a statement that all planning to minimize harm has been done because there is no feasible and prudent alternative. Reviewers should make sure that all possible site-specific planning has been done to identify and list the measures which will be undertaken, at project expense, to minimize harm to Section 4(f) properties.

The following is a partial list of the kinds of measures that might be taken to minimize harm to Section 4(f) properties:

- Replacement of the Section 4(f) properties to be used or provision of compensation based on the market value of those lands.
- Horizontal and vertical alignment changes to reduce, if not eliminate, the Section 4(f) involvement.
- Elevated facility over the site (this may, however, increase aesthetic impacts).
- Depressed facility or tunnel through or under the site (this may increase costs, impacts on ground water, etc.).
- Reduction in the number of travel lanes, parking lanes, and so on, or reduction of median width.

- Access improvement to Section 4(f) properties to help motorists and pedestrians.
- Access limitation, in some cases, to control induced development and other secondary effects.
- Landscaped buffer zones, noise barriers, and similar measures.
- Appropriate signing and marking of sites to increase public awareness (this may, however, produce aesthetic impacts or increase usage beyond carrying capacity).
- Sensitive aesthetic design of facilities to maintain and enhance ambiance—for instance, compatible architectural design, tinted concrete, special surface textures, stone or brick facings, use of weathering steel, prevention of rust staining on masonry surfaces, and graffiti prevention.
- Adaptive re-use of historic structures.
- Moving and adequate restoration of historic structures on appropriate new sites (this is usually a last-resort measure).
- Adequate recordation and curatorial care of demolished historic structures (this, too, is a last-resort measure).
- Coordination of construction with recreation activities to permit orderly transition and continual usage of Section 4(f) properties.
- Various regulatory measures such as speed limits, traffic capacity limits, and limited access to adjacent lands.

Replacement of Section 4(f) Lands

Sponsors of transportation projects are responsible for minimizing harm to Section 4(f) properties. Lands may be replaced by the sponsor directly with lands of equivalent usefulness and location, but if monetary compensation is made (for areas not involving Federal grant moneys), that compensation should be sufficient to replace the lost lands and improvements thereon. Compensation based on “fair market value” of land taken is not necessarily satisfactory because purchasing areas of reasonable equivalent usefulness and location may require paying more than the appraised value of lost lands.

Monetary Compensation for Use of Section 4(f) Lands Not Involving Federal Grant Moneys

If replacement lands are not available, monetary compensation equal to replacement value may be acceptable. This compensation should be earmarked for capital park and recreation purposes. The conversion of parklands to transportation uses without compensation, or the diversion of monetary compensation received to other uses, constitutes indirect subsidization of the transportation programs by recreation funds. The occurrence of either should give rise to serious reservation about the advisability of approving future federal grant applications for park and recreation purposes to the agency responsible. Reviewers should always keep in mind that from a strict Section 4(f) viewpoint, land replacement is simply one of the most logical methods to minimize harm.

Constructive Use

Constructive use occurs when transportation projects do not incorporate land from a Section 4(f) property but due to their proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired.

Constructive use remains a general issue between The Department and DOT because of its very subjective nature. However, the level, nature, and extent to which an area is constructively used should be subject to the expertise and determination of the agency responsible for management and administration of the parkland impacted by the constructive use. When constructive use is an issue in a particular project review, the reviewer is advised to consult [23 CFR 774.15](#); and the DOT [Section 4\(f\) Policy Paper Question 7](#).

Projects Involving Section 6(f) of the [Land and Water Conservation Fund Act](#)

Section 6(f) provides, in part, that “...no property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and reasonable equivalent usefulness and location.”

When a project results in a change in use of an LWCF-assisted park or recreation area, a determination has to be made, first by the state and ultimately by the NPS, as to whether a Section 6(f) involvement will result. If a Section 6(f) involvement will result and the NPS, under its delegated authority, is willing to consider approval of the conversion, then it is mandatory to acquire replacement land. *Only land will satisfy the provisions of Section 6(f). The value of new capital improvements or a reimbursement to the LWCF are not acceptable.* If the subject lands are considered part of the LWCF project scope, the NPS would generally consider a conversion of use to occur if one of the following actions were to be taken:

- Granting by the participant to another party either control or partial control of the land that would result in uses other than public outdoor recreation as approved by the NPS. Examples would be the construction and maintenance of a utility line, pipeline, irrigation ditch, road, or other similar facility, whether the intrusion is above or below ground level. A possible exception could occur if the participant, without relinquishing any control over the area, were to allow a non-owner to construct a subsurface water line, pipeline, underground utility, or similar facility that would not impair the present and future recreational use of the property and then to restore the surface area to its preconstruction condition.
- Constructing or installing structures or facilities by the project sponsor or others on lands considered within the project scope that would not be compatible with the existing outdoor recreation uses or would result in a non-recreational use other than that acknowledged and approved by the NPS.

- Granting control or partial control of land for transportation rights-of-way, power line rights-of-way, pipelines, sewer lines, and landfills, or for construction of structures such as fire stations, civic centers, libraries, indoor recreation facilities, communication towers, and tornado sirens.

The list above is not all-inclusive because other actions may also result in Section 6(f) involvement. The authority to determine whether a potential Section 6(f) involvement exists rests with the NPS, which administers the LWCF. As prerequisites for approval of any Section 6(f) conversion request, it should be determined that:

- All practical alternatives to the conversion have been evaluated and rejected on sound basis.
- The proposed replacement land is "...of reasonably equivalent usefulness and location."
- All necessary coordination with other federal agencies has been satisfactorily accomplished.
- The guidelines for environmental evaluation enumerated in LWCF Manual Part 650 have been completed and considered by the NPS during its review of the proposed 6(f) action. In cases where the proposed conversion arises from another federal action, final review of a state's proposal shall not occur until the region is assured that all environmental requirements related to that other action have been met.
- Clearinghouse review procedures set forth in LWCF Manual Part 66.1.ID have been adhered to if the proposed conversion and substitution constitute significant changes to the original LWCF project.
- The proposed conversion and substitution are in accord with a state comprehensive outdoor recreation plan.

It should be noted that the Department's policy on conflicts between grants-in-aid and transportation projects provides that not only the property actually developed or acquired with LWCF moneys, but the entire area identified in the project agreement, is subject to the requirements of the LWCF and the conditions of the project agreement. Further, the Department has established that when assistance is provided to only one of five entirely separate parks within a state park system, and this fact is clearly recognized in the grant project agreement, then an area being taken for highway construction from a park that received no assistance would not be subject to the provisions of Section 6(f) of the LWCF Act.

If we do not concur that the first proviso of Section 4(f) is satisfied (in other words, there are feasible and prudent alternatives to the proposed Section 4(f) use), then we could not concur in a Section 6(f) conversion either, and this should be so stated in our letter. If we *do* concur in the Section 4(f) use, the Department would be willing to consider a conversion request, and Section 6(f) compliance becomes one (but not necessarily the only one) of the measures to minimize harm to the Section 4(f) area. In this case we should be helpful in stating *exactly* what would be required by the Department under Section 6(f). We should recommend that Section 6(f) details be worked out and that a full proposed replacement package be included in the final Section 4(f)

document. Unless we foresee grave Section 6(f) problems, we should not make our Section 4(f) concurrence contingent upon Section 6(f) approval (tentative or otherwise); *final* Section 6(f) approval can be given *only after* Section 4(f) approval. Our Section 4(f) comments could be words to the effect of: “We have no objection to Section 4(f) approval, *provided that* all measures to minimize harm, including an acceptable Section 6(f) replacement package, as discussed above, are included in project plans.”

Lands Acquired Under [Section 7 of the LWCF Act](#)

Unlike Section 6(f) of the Act, Section 7 has no requirement that land purchased by a federal agency with LWCF moneys under this section must continue to be used solely for outdoor recreation purposes. In such a situation, there is no legal necessity for reimbursement to the LWCF, or a replacement of the taken land, by either the administering agency or the agency preparing to use the land for other than recreation purposes.

Therefore, when a transportation project encroaches upon federal lands acquired under Section 7 of the LWCF, only the requirements of Section 4(f) apply. However, there is no reason we cannot use replacement land in this case if, in our view, that is appropriate. When Department lands (National Park Service, Bureau of Land Management, Fish and Wildlife Service, Bureau of Reclamation, Bureau of Indian Affairs) are involved, wording related to our follow-up action should follow the statement on our Section 4(f) position, for instance: “The Department of the Interior would be willing to consider a right-of-way permit application for this project upon receipt of notice of Section 4(f) approval.” Or: “Because of our jurisdictional involvement, until the measures to minimize harm are mutually resolved, we do not concur with Section 4(f) approval and would defer acting on any right-of-way application.” Or, with Section 6(f) involvements: “Upon receipt of notice of Section 4(f) approval by DOT, the NPS would be willing to consider a request for a conversion of use as required by Section 6(f) of the LWCF Act.”

Lands Under the [Urban Park and Recreation Recovery Act of 1978](#)

Recreation areas and facilities developed or improved, in whole or part, with a grant under the Urban Park and Recreation Recovery Act of 1978 (Title 10 of PL 95-625)([16 U.S.C. Sections 2501 through 2514](#)) are subject to Section 1010 of the Act, which requires independent approval of the Secretary of the Interior for conversion to other than public recreation uses (see [guidance above with respect to Section 6\(f\)](#)).

Lands Under the [Railroad Revitalization and Regulatory Reform Act of 1976](#)

Abandoned railroad rights-of-way acquired by state and local governments for recreational or conservation uses with grants under Section 809(b) of the Railroad Revitalization and Regulatory Reform Act of 1976 require independent approval of conversion of use by the Secretary of the Interior (see [guidance above on Section 6\(f\)](#)).

Lands Under Other Federal Grant-In-Aid Programs

When a project results in a change in use of a Section 4(f) property purchased or improved with Federal grant-in-aid funds under the Federal Aid in Fish Restoration Act ([Dingell-Johnson Act](#)), the Federal Aid in Wildlife Act ([Pittman-Robertson Act](#)), or other similar law, or lands that are otherwise encumbered with a Federal interest, DOT must consult with the officials with jurisdiction to determine whether Federal requirements apply to the property. If any Federal requirements apply to converting the Section 4(f) land to a different function, DOT must coordinate with the appropriate Federal agency and such requirements must be satisfied, independent of the Section 4(f) approval. (See [23 CFR 774.5\(d\)](#) and [Section 4\(f\) Policy Paper Question 31](#).)

Landscaping and Scenic Enhancement

Landscaping and scenic enhancement is a legitimate transportation project cost. A plan for landscaping and scenic enhancement should be developed jointly with and to the satisfaction of the agency having jurisdiction over affected Section 4(f) properties. The visual impact on Section 4(f) properties requires a professional value judgment. No one is better qualified to make this judgment than the land administrator who knows the historical, natural, recreational, and other environmental resource values that are to be preserved and protected.

Noise Abatement Measures

Noise abatement measures should be incorporated into projects when necessary to minimize harm to Section 4(f) properties. These may include planting special belts of trees and shrubs, building earthen berms or other noise barriers, building depressed roadways, and planting grass to reduce reflected noise. Noise abatement measures are especially important if affected Section 4(f) properties are used for passive recreation or for enjoyment as natural areas or historic sites. Reviewers might consider giving some advice about what constitutes an adverse noise impact on Section 4(f) properties.

Safety and Access

Project plans should include measures to protect park users and the motorists. These measures may include fencing, pedestrian overpasses or underpasses, lights, traffic signals, and adequate vehicular (including bicycle) access to and from a park.

Project Design

Often highways are designed with wide median strips and require excessive right-of-way from Section 4(f) lands. In such situations, the amount of “use” can be reduced greatly in the Section 4(f) areas if the project uses a median barrier in lieu of a wide median strip. Use of such barriers should be discussed as a measure to minimize harm to Section 4(f) lands.

Historic and Archeological Properties

Reviewers should keep in mind that the memorandum of agreement (MOA) concluded under the Section 106 consultation process by the DOT agency, the SHPO, and the Advisory Council on Historic Preservation is not a Section 4(f) evaluation document. The Department should independently review the measures to minimize harm for a historic site and express judgment about them. The measures to minimize harm may be only described in a Section 4(f) document with no reference to an MOA, or they may be identified in a proposed MOA. The reviewers should address the listed measures and comment accordingly.

If the Section 4(f) evaluation contains a signed MOA, concurrence in the proposed measures to minimize harm is appropriate. If it contains only a draft MOA, any concurrence should be conditional upon its signature by the SHPO. In the absence of a signed or draft MOA, concurrence is not appropriate.

An exception occurs when an NPS historic property is involved. Here we make Section 4(f) comments and become a signatory to the MOA in some cases. Hence reference to the MOA and the Advisory Council on Historic Preservation is acceptable. A number of measures to minimize harm to recreation resources discussed before, such as improved access, noise barriers, and landscaped buffer zones, may be applicable to historic sites. However, there are some specific measures to minimize harm that are unique to historic sites. These may include the following:

- Appropriate signing and marking of historic sites to increase public awareness. These measures may produce aesthetic impacts or increase usage beyond carrying capacity.
- Sensitive aesthetic design of facilities to maintain and enhance historic ambiance. Examples are compatible architectural design, tinted concrete, special surface textures, stone or brick facings, use of weathering steel, prevention of rust staining on masonry surfaces, and graffiti prevention.
- Adaptive re-use of historic structures, such as moving and adequate restoration of historic structures on appropriate new sites (usually a last-resort measure).
- Adequate recordation and curatorial care of demolished structures (again a last-resort measure).

Environmental Document Comments

This section is a consolidation of all bureau comments on the EIS or EA, in addition to settlement by the lead bureau of any conflicting comments, recommendations, or positions. If lead bureau reviewers have doubts or questions, they should discuss the matter with the other reviewers who supplied the comments and enlist the assistance of the regional environmental officer as needed. *The lead bureau must provide this service even if it has no comments.* (See [516 DM 4](#) for guidance on environmental document reviews.)

Departmental comments on environmental review documents prepared by other Federal agencies shall be based upon the Department's jurisdiction by law or special expertise with respect to the

agency mission, related program experience, or environmental impact of the proposed action or alternatives to the action. The adequacy of the document in regard to applicable statutes is the responsibility of the agency that prepared the document and any comments on its adequacy shall be limited to the Department's jurisdiction or environmental expertise. ([516 DM 4, section 4.5\(A\)](#))

Comments of Other Bureaus

The comments of all of the Department's bureaus must be appropriately incorporated in the Departmental letter. We emphasize this so that, in a lead bureau role, a bureau develops a letter that reflects the full and balanced interests of the Department in the protection and enhancement of the environment rather than just the items of interest to that bureau's programs. These comments should be used verbatim. Substantive changes or deletions must be discussed with the bureau supplying the comments and such discussion documented in the package sent forward.

Reviewers should avoid specific mention of each bureau in the Departmental letter because the comments belong to the Department. We usually write "The Department believes..." in a Departmental letter. However, when a comment is clearly related to a bureau and recognizing the bureau by name is important, the letter should do so. An example would be,

The Fish and Wildlife Service has stated that it will oppose the issuance of a U.S. Coast Guard bridge permit pursuant to its responsibilities under the Fish and Wildlife Coordination Act.

Otherwise, if any bureau has major problems in its area of expertise, we should say something like,

Because of the above hydrologic problems, we recommend that you consult further with the US Geological Survey, which would be happy to provide technical assistance in the development of a mitigation plan for inclusion in the final statement.

We must always send copies of all comments received with the proposed Departmental letter of comment so that OEPC's file will be complete. A "No Comment" email from another bureau constitutes its comment; make a record of this, including date, on a separate sheet and forward it with the package.

Summary Comments

Section 4(f) Evaluation Comments

Reviewers should keep in mind that Section 4(f) evaluation comments focus on:

- Concurring or not concurring (with supporting evidence) with the agency's response to the first proviso of Section 4(f) – that there is no feasible and prudent alternative that completely avoids the use of Section 4(f) property.

- Concurring or not concurring (with supporting evidence) with the agency’s response to the second proviso of Section 4(f) – that the project includes all possible planning to minimize harm to the Section 4(f) property resulting from the transportation use.

Based on the discussion of alternatives and measures to minimize harm under Section 4(f) evaluation comments, the text of the summary comments may address different scenarios as follow:

On projects where the Section 4(f) comments state full concurrence with both provisos of Section 4(f), a simple sign-off sentence is recommended, such as,

The Department of the Interior has no objection to Section 4(f) approval of this project.

On projects where we would otherwise concur except for an unsigned MOA, we can provide conditional concurrence. This can relieve the Department of a subsequent review of a final Section 4(f) evaluation provided the condition is met. The summary comments can state,

The Department of the Interior has no objection to Section 4(f) approval of this project, contingent upon an executed MOA with the SHPO.

On projects where we concur only with the first proviso of Section 4(f), but have recommended additional measures to minimize harm about which we feel strongly, we can state,

The Department of the Interior has no objection to Section 4(f) approval of this project, provided the measures to minimize harm mentioned above are included in project plans and documented in the final environmental document. This Department has a continuing interest in this project and we are willing to cooperate and coordinate with you in further project evaluation and assessment. For matters pertaining to cultural and recreational resources, please contact (provide necessary contact person as well as email and telephone number).

On projects where we object to Section 4(f) approval, the Department’s objection may take several forms, the most common of which are the following:

The Department objects to the proposed action or preferred alternative and indicates a preference for another or identifies and recommends further alternatives for study and evaluation. Measures to minimize harm can be discussed for our alternatives, or we can defer comments on measures to minimize harm pending the selection of a feasible and prudent alternative. We should urge field consultation among involved parties to select a feasible and prudent alternative and develop measures to minimize harm. Indicate that in order to resolve recreational and cultural resource

issues mentioned above, we would be willing to provide expeditious review of any revised Section 4(f) documentation that may be circulated for review and comment.

The Department concurs that there is no feasible and prudent alternative, yet it objects to the project because measures to minimize harm are grossly inadequate. Our summary comments might read,

The Department of the Interior does not concur with Section 4(f) approval of this project at this time. We would be pleased to reconsider this position upon receipt of revised material that includes adequate information and full discussion of measures to minimize harm as mentioned earlier in our Section 4(f) evaluation comments.

There may be occasions where a project's involvement with Section 4(f) lands/properties has been totally ignored by the project sponsor. The lack of Section 4(f) information in the statement, namely the absence of discussion of the provisos of Section 4(f), should be pointed out in our letter and a recommendation made that a Section 4(f) evaluation be prepared and circulated for review. Summary comments could be,

The Section 4(f) evaluation comments in this letter are provided to give you an early indication of our thoughts about the Section 4(f) information and involvements. They do not represent the results of formal consultation by DOT with the Department of the Interior, pursuant to the consultative requirements of Section 4(f). Such requirements would be fulfilled only when the Office of the Secretary of the Interior comments on a Section 4(f) evaluation prepared and approved by you for circulation.

In those few cases where we have no formal Section 4(f) evaluation but field-level consultations uncover the highway agency's preference for a particular alternative and we can concur that (1) there is no feasible and prudent alternative and (2) the measures to minimize harm are *totally* adequate. In the interest of efficiency, we then could sign off at this early stage. Our summary comments could state,

Usually we make preliminary Section 4(f) comments when commenting on Section 4(f) information in a draft environmental document. However, for this case, we are willing to provide you with Section 4(f) comments that will satisfy the consultative requirements of Section 4(f) of the Department of Transportation Act. If the preferred alternative is selected, we would concur that there is no feasible and prudent alternative to use of the Section 4(f) area for the proposed transportation project. In addition, contingent upon a commitment for the implementation of all proposed measures to minimize harm, we would concur that the second proviso of Section 4(f) will be satisfied. Accordingly, the Department of the Interior offers no objection to Section 4(f) approval of the alternative.

The examples above are intended primarily as suggestions and are offered to assist the reviewer facing a unique situation for the first time. Reviewers are urged to continue to develop letters that are responsive to the specific conditions of each statement under review.

Acronyms Used In This Handbook

DOT	U.S. Department of Transportation
EA	Environmental Assessment
EIS	Environmental Impact Statement
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
FWS	Fish and Wildlife Service
LWCF	Land and Water Conservation Fund Act
MOA	Memorandum of Agreement
NPS	National Park Service
OEPC	Office of Environmental Policy and Compliance
SHPO	State Historic Preservation Officer