

CHAPTER 13

SECTION 4(f) EVALUATIONS

TABLE OF CONTENTS

13-1	OVERVIEW	13-3
13-2	PROCEDURE	13-5
13-2.1	Section 4(f) Applicability	13-5
13-2.1.1	Section 4(f) Resources	13-6
13-2.1.2	"Use" Under Section 4(f)	13-9
13-2.2	Determination of Section 4(f) Applicability	13-13
13-2.3	Section 4(f) and Transportation (ISTEA) Enhancement Activities	13-15
13-2.4	Section 4(f) Evaluations	13-16
13-2.4.1	Individual Section 4(f) Evaluations	13-17
13-2.4.2	Programmatic Section 4(f) Evaluations	13-21
13-2.5	Concurrent Requirements	13-28
13-2.5.1	Section 6(f)	13-29
13-3	PROCESSING	13-31
13-3.1	Programmatic Section 4(f) Evaluations	13-31
13-3.2	Individual Section 4(f) Evaluations	13-32
13-4	REFERENCES	13-34

EXHIBITS AND FIGURES

EXHIBIT 13.1 FHWA Guidance on Section 4(f) Applicability 13-36

FIGURE 13.1 Draft Section 4(f) Transmittal Letter to FHWA 13-45

FIGURE 13.2 Final Section 4(f) Transmittal Letter to FHWA 13-46

FIGURE 13.3 Table of Contents for Programmatic Section 4(f) Evaluations 13-47

13. SECTION 4(F) EVALUATIONS

13-1 OVERVIEW

Section 4(f) has been a part of Federal law since 1966. It was enacted as Section 4(f) of the Department of Transportation (DOT) Act of 1966 [Title 49, USC, Section 1653(f)], and only applies to agencies within the U.S. Department of Transportation [primarily, the Federal Highway Administration (FHWA), the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Transit Administration (FTA), the Federal Railroad Administration (FRA), etc]. Also, in 1966, a similar provision was added to Title 23, USC, Section 138. The wording was somewhat different until the Federal-Aid Highway Act of 1968 amended the wording in both sections to be consistent.

The two sections read :

"It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall 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.

After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance as determined by the Federal, State or local officials having jurisdiction thereof, or any land from an historic site of National, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreation area, wildlife and waterfowl refuge, or historic sites resulting from such use. In carrying out the national policy declared in this Section, the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas."

In January of 1983, as part of an overall recodification of the DOT Act, Section 4(f) was amended and codified in 49 USC, Section 303. The wording in Section 303 reads as follows:

"(a) It is the policy of the United States Government that special effort be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

- (b) The Secretary of Transportation shall 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 lands crossed by transportation activities or facilities.
- (c) The Secretary may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or site) only if:
 - (1) there is no prudent and feasible alternative to using that land; and
 - (2) the program or project included all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use."

Section 138 was not amended, so the wording in the two sections is once again different. The legislative history of the 1983 recodification indicates that no substantive change was intended. Further, because of familiarity with Section 4(f) by thousands of Federal and State personnel, the FHWA continues to refer to the requirements as Section 4(f).

The guidance provided in this chapter has been taken from numerous FHWA policy papers and federal regulations. For a complete listing of these sources, see the "References" section at the end of the chapter.

The first step in assessing Section 4(f) is to determine if Section 4(f) applies to a particular property and to determine if the project activities entail a "use" (either actual or constructive) of land from that property. This is done through the preparation of a "Section 4(f) Determination". FHWA makes all decisions on the applicability of Section 4(f). After the determination has been made that Section 4(f) applies to a particular action and property then the evaluation is made to ascertain if one of the four Nationwide Programmatic Section 4(f) Evaluations is appropriate. If so, then the Section 4(f) Evaluation is prepared and submitted to the FHWA Division Office for approval. If the Programmatic is not appropriate then an Individual Section 4(f) Evaluation is prepared and processed as Draft and Final Section 4(f) Evaluations. Whenever possible, the Draft Section 4(f) Evaluation is processed with the Environmental Assessment or Draft Environmental Impact Statement. The Final Section 4(f) Evaluation is processed with the Finding of No Significant Impact (FONSI) or the Final Environmental Impact Statement (FEIS).

Approval of the Final Section 4(f) Evaluation is by the Regional FHWA Administrator and normally concurrent with the approval of the environmental document. A Section 4(f) Evaluation for a project processed as a Type 2 Categorical Exclusion (CE) is processed as a separate Draft and Final Section 4(f) Evaluation and must be completed before submittal to FHWA of the Class of Action Determination for Type 2 CE approval.

13-2 PROCEDURE

The Section 4(f) statutes do not establish any procedures for preparing Section 4(f) documents, for circulating them, or for coordinating them with other agencies. The FHWA, however, has developed Section 4(f) procedures (23 CFR771.135 and T6640.8A) for the preparation, circulation, and coordination of Section 4(f) documents. The purpose of these procedures is to establish an administrative record of the basis for determining that there is no feasible and prudent alternative, and to obtain informed input from knowledgeable sources on feasible and prudent alternatives and on measures to minimize harm.

Numerous legal decisions on Section 4(f) have resulted in a DOT policy that conclusions on no feasible and prudent alternatives and on measures to minimize harm must be well documented and supported. The Supreme Court in the Overton Park case [*Citizens to Preserve Overton Park v. Volpe*, 401 U.S.402 (1971)] ruled that determinations on no feasible and prudent alternative must find that there are unique problems or unusual factors involved in the use of alternatives or that the cost, environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes.

Please note that Section 4(f) applies to **all agencies** of the USDOT. Therefore, occasions may arise in which Section 4(f) will apply to a particular project due to the involvement of an agency other than the FHWA, even on projects which are solely state funded. For example, a state funded bridge replacement project utilizing lands from a public park and requiring a Coast Guard permit would involve Section 4(f). Regardless of which agency of the USDOT leads, the requirements for Section 4(f) remain constant. Coordination in such cases, of course, is done through the lead agency for each particular project. For the purposes of the narrative in this Chapter, however, the lead agency has been assumed to be the FHWA.

13-2.1 Section 4(f) Applicability

The applicability of Section 4(f) is based upon a project's use of land from property which is used as a designated Section 4(f) resource. In order to determine the applicability of Section 4(f), therefore, not only must the property represent a Section 4(f) resource, but the project or undertaking must entail a "use" of land from that property within the meaning of Section 4(f). **As a result, all Section 4(f) applicability determinations are made on a case by case basis.**

The determination of the applicability of Section 4(f) to any particular property is made by FHWA. To aid in making this decision, the following guidance is provided. The information provided below in Sections 13-2.1.1 and 13-2.1.2 and in Exhibit 13.1 of this chapter is intended for general guidance. For advice on specific situations or issues not covered below or in the questions and answers contained in Exhibit 13.1, contact the project manager or the Central Environmental Management Office (CEMO).

13-2.1.1 Section 4(f) Resources

Section 4(f) resources can be divided into three principal categories: (A) publicly owned parks, recreation areas, and wildlife and waterfowl refuges, (B) historic and archaeological sites, and (C) properties which represent public multiple-use land holdings. In order to be considered a Section 4(f) resource, a property must function or be designated as a **significant** public park, recreation area, wildlife or waterfowl refuges, or historic site (see below, parts A, B, and C of this Section for the definitions of significance for the specific resource groups). In addition, publicly owned land which has been formally designated and determined to be significant for park, recreation area, wildlife refuge, or waterfowl refuge purposes represent Section 4(f) resources even when they may not be functioning as such during project development.

Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archaeological resources (see below, part B of this Section), the FHWA may permit a project to proceed without consideration under Section 4(f) if the property interest in the Section 4(f) lands 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.

It is important to note that Section 4(f) applies to historic sites regardless of ownership type, but only to publicly owned public parks, recreation areas, and wildlife and waterfowl refuges. When parks, recreational areas, and wildlife and waterfowl refuges are owned by private institutions and individuals, even if such areas are open to the general public, Section 4(f) does not apply. The FHWA, however, strongly encourages the preservation of such privately owned lands. If a government body has a proprietary interest in the land (such as fee ownership, drainage easement, or wetland easement), it can be considered "publicly owned." Further, case law holds that land subject to a public easement in perpetuity can be considered to be publicly owned land for the purpose which the easement exists. Under special circumstances, lease agreements may also constitute a proprietary interest in the land. Such lease agreements must be evaluated on a case-by-case basis, and such factors as the term of the lease, the understanding of the parties to the lease, and cancellation clauses, and the like should be considered. Any questions on whether or not a leasehold or other temporary interest constitutes public ownership should be referred to the FHWA.

A. Public Parks, Recreation Areas, and Wildlife and Waterfowl Refuges.

Publicly owned land is considered to be a park, recreation area, or wildlife and waterfowl refuge when the land has been **officially designated** as such. This designation occurs when the Federal, State, or local officials having jurisdiction over the land have made a written designation that the land either (1) represents a park, recreation area, or wildlife or waterfowl refuge, or that (2) one of its major purposes or functions is for park, recreation, or refuge purposes. Incidental, secondary, occasional, or dispersed recreational activities do not constitute a major purpose. For the most part, the "officials having jurisdiction" are the officials of the agency owning or administering the land. There may be instances where the agency owning or administering the

land has delegated or relinquished its authority to another agency, via an agreement on how some of its land will be used. The FHWA will review this agreement and determine which agency has authority on how the land will be used. If the authority has been delegated/relinquished to another agency, that agency must be contacted to determine the major purpose(s) of the land. After consultation and in the absence of an official designation of purpose or function by the officials having jurisdiction, the FHWA will base its decision on its own examination of actual functions that exist.

The final decision on applicability of Section 4(f) to a particular type of land is made by the FHWA. In reaching their decision, however, the FHWA normally relies on the official having jurisdiction over the land to identify the kinds of activity or function that take place.

The "significance" determinations on publicly owned land considered to be a park, recreation area, or wildlife and waterfowl refuge are also made by the Federal, State, or local officials having jurisdiction over the land. As above, the "officials having jurisdiction" are usually officials of the agency owning or administering the land. For certain types of Section 4(f) lands, more than one agency may have jurisdiction over the site. At all times a finding on significance from the local officials involved in the administration of the land is needed. The significance determination must consider the significance of the entire property and not just the portion of the property being used for the project. The meaning of the term "significance" for purposes of Section 4(f) should be explained to the officials having jurisdiction. Significance means that in comparing the availability and function of the recreation, park, or wildlife and waterfowl refuge area with the recreational, park, and refuge objectives of that community, the land in question plays an important role in meeting those objectives. If a determination from the official(s) with jurisdiction cannot be obtained, the Section 4(f) land will be presumed to be significant. All determinations (whether stated or presumed) are subject to review by FHWA for reasonableness.

It should be noted that if the general public is permitted visitation at any time to publicly owned parks and recreation areas which are significant then the requirements of Section 4(f) apply. However, Section 4(f) does not apply when visitation is permitted to only a select group and not the general public at large. Examples of such specific groups include residents of a public housing project; military and their dependents; students of a school; and students, faculty, and alumni of a college or university. The FHWA does, however, strongly encourage the preservation of such parks and recreation areas even though they may not be open to the public at large.

B. Historic and Archaeological Resources

Section 4(f) also applies to significant historic and archaeological sites and districts. Normally, the sites considered as Section 4(f) resources must be either individually significant or a contributing element in a significant historic district. Pursuant to the National Historic Preservation Act, the FHWA in cooperation with the Florida Department of Transportation consults with the State Historic Preservation Officer (SHPO) and, if appropriate, the local officials to determine whether a site is on or eligible for listing on *The National Register of Historic Places*. In case of doubt or disagreement between FHWA and the SHPO, a request for determination of eligibility is made to the Keeper of the National Register (See Part 2, Chapter 12 of this Manual).

A third party may also request the Keeper for a determination of eligibility. For purposes of Section 4(f), a historic or archaeological site is significant only if it is on or eligible for *The National Register of Historic Places*, unless the FHWA determines that the application of Section 4(f) is otherwise appropriate. If a historic site is determined not to be on or eligible for *The National Register of Historic Places*, but an official (such as the Mayor, President of the local historic society, etc.) provides information to indicate that the historic site is otherwise significant, the FHWA may apply Section 4(f). In the event that Section 4(f) is found inapplicable, the FHWA Division Office should document the basis for not applying Section 4(f). Such documentation might include the reasons why the historic site was not eligible for the National Register.

In the case of archaeological sites, Section 4(f) only applies to those sites which are on or eligible for inclusion on the National Register **and** which warrant preservation in place (including those discovered during construction). Section 4(f) does not apply if FHWA, after consultation with the SHPO and the Advisory Council on Historic Preservation (ACHP), determines that the archaeological resource is important chiefly because of what can be learned by data recovery (even if it is agreed not to recover the resource) and has minimal value for preservation in place. In the cases where preservation in place is not warranted, the project documents should reflect the consultation and conclusion for the site in question. For sites discovered during construction, where preservation of the resource in place is warranted, the Section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made. The review process, including the consultation with other agencies, should be shortened, as appropriate. An October 19, 1980 memorandum with the Heritage Conservation and Recreation Service (now National Park Service) provides emergency procedures for unanticipated cultural resources discovered during construction.

The FHWA may determine that Section 4(f) requirements do not apply to restoration, rehabilitation, or maintenance of transportation facilities (such as bridges) that are on or eligible for the National Register when: (1) the work will not adversely affect the historic qualities of the facility that cause it to be on or eligible for listing on the National Register and (2) the SHPO and the ACHP have been consulted and have not objected to the finding of "no adverse effect".

C. Public Multiple-use Land Holdings

Where Federal lands or other public land holdings (e.g. State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, Section 4(f) applies only to those portions of such lands which function for, or are designated in the management plans of the administering agency as being for significant park, recreation, or wildlife and waterfowl purposes. The determination as to which lands so function or are so designated, and the significance of those lands, shall be made by the officials having jurisdiction over the lands. The FHWA will review this determination to assure its reasonableness. The determination of significance shall apply to the entire area of such park, recreation, or wildlife and waterfowl refuge sites. For public land holdings which do not have management plans (or where existing management plans are not current) Section 4(f) applies to those areas which function

primarily for Section 4(f) purposes. Section 4(f) does not apply to areas of multiple-use lands which function primarily for purposes not protected by Section 4(f).

13-2.1.2 "USE" UNDER SECTION 4(f)

A Section 4(f) use can occur either directly or indirectly (i.e. constructive use). For the purposes of Section 4(f), a "use" occurs:

Directly:

- (1) when land from a Section 4(f) site is permanently acquired, and incorporated into a transportation project, or
- (2) when there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes;

or Indirectly:

- (3) when the proximity impacts of a transportation project on a Section 4(f) site, without the acquisition of land from the 4(f) site, are so great that the purposes for which the Section 4(f) site exists are substantially impaired (this is normally referred to by courts as a constructive use).

Due to the special relationship between transportation facilities such as bridges and highways and transportation projects, the following types of work do not "use" land from a Section 4(f) site provided the historic qualities of the facility will not be adversely affected: (a) modification / rehabilitation of a historic highway; and (b) maintenance / rehabilitation of a historic bridge. Such determinations should be made only after the SHPO and the ACHP have been consulted pursuant to the requirements of the Section 106 Process of the National Historic Preservation Act of 1966, as amended (see Part 2, Chapter 12 of this Manual) and have not objected to the finding.

A. Actual or Direct Use

The two types of direct use, as listed above, occur when land from a 4(f) resource is **permanently** incorporated into a transportation facility or when there is a **temporary** occupancy of land from a 4(f) resource which results in an adverse affect upon the resource in terms of the 4(f) statute's preservation purposes.

The first type of direct use, the permanent incorporation of land from a 4(f) resource, is self-explanatory. It includes such activities as the expansion of a roadway or right-of-way, as well as any similar actions, into land which is designated as a significant public park, recreation area, waterfowl or wildlife refuge area, or a historic site as described above [see Section 13-2.1.1, Section 4(f) Resources].

The second type of direct use, the temporary occupancy of land designated as a Section 4(f) resource (such as construction easements, etc.) do not constitute a "use" within the meaning of Section 4(f) if the following conditions are met:

- (1) the duration of the occupancy must be temporary (less than the time needed for the construction of the project) and there should be no change in the ownership of the land;
- (2) the scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) resource are minimal;
- (3) there are no permanent, adverse physical impacts anticipated and no interference with the activities or purposes of the resource on either a temporary or permanent basis;
- (4) the land being used must be fully restored to a condition at least as good as that which existed prior to the project; and
- (5) there must be documented, written agreement of the appropriate Federal, State, or local official(s) having jurisdiction over the resource regarding the conditions listed above.

B. Constructive or Indirect Use

Constructive use of a Section 4(f) site occurs when a transportation project does not incorporate land from a Section 4(f) resource, but due to the proximity impacts of the project the activities, features, or attributes of the site's vital functions are "substantially impaired". Such "substantial impairment" occurs only when the protected activities, features, or attributes of the resource are substantially diminished. The degree of impairment should be determined in consultation with the officials having jurisdiction over the resource. FHWA policy maintains that a constructive use of Section 4(f) lands is possible, but because of its rarity, it should be carefully examined.

The following five-step process has been suggested by the FHWA for constructive use determinations (see below, part C of this Section, Constructive Use Guidance, for examples of situations in which the FHWA has determined that a constructive use does or does not occur):

The first step is a recognition that a constructive use can occur. The second step is to establish a threshold or standard for determining when constructive use occurs. The FHWA has determined that the threshold for constructive use is proximity impacts which substantially impair the function, integrity, use, access, value, or setting of a park, recreation area, waterfowl or wildlife refuge, or historic site.

Steps three, four, and five are project specific and should be applied whenever there is a likelihood that constructive use could occur or will be an issue on a project. The third step is to

identify the functions, activities, and qualities of the Section 4(f) resource which may be sensitive to proximity impacts. The fourth step is to analyze the proximity impacts on the Section 4(f) resource. Impacts (such as noise, water runoff, etc.) which can be quantified, should be quantified. Other proximity impacts (such as visual intrusion, access, etc.) which lend themselves to qualitative analysis should be qualified. If any of the proximity impacts will be mitigated, only the net impact must be considered in the analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not built since such impacts should not be attributed to the project. The fifth step is to determine whether these impacts substantially impair the function, value, etc. of the Section 4(f) resource. This determination on impairment should, of course, be coordinated with the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or historic site.

If it is concluded that the proximity effects do not cause a substantial impairment, the FHWA can reasonably conclude that there is no constructive use. Project documents should contain the analysis of proximity effects and whether there is substantial impairment to a Section 4(f) resource. Except for responding to review comments in environmental documents which specifically address constructive use, the term "constructive use" need not be used. Further, the FHWA is not required to determine that there is no constructive use. However, such a determination could be made at the discretion of the FHWA. Where it is decided that there will be a constructive use, the Draft Section 4(f) Evaluation must be cleared with the Washington Headquarters, through the Division Office, prior to circulation.

Whenever a potential constructive use is identified for a project, a request for a determination of Section 4(f) applicability should be completed and provided to the FHWA Division Headquarters. In addition to the standard information required for the request (see section 13-2.2), a description of the attributes or features of the Section 4(f) property which may be sensitive to proximity impacts should be delineated and any project activities which may result in proximity impacts to the resource should be identified and evaluated. Only FHWA may determine if any such impacts constitute a "substantial impairment" of the Section 4(f) resource.

C. Constructive Use Guidance

The FHWA has reviewed the following situations and determined that a constructive use occurs when:

1. The projected noise level increases attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a resource protected by Section 4(f), such as hearing the performances at an outdoor amphitheater, sleeping in the sleeping area of a campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes;
2. The proximity of the proposed project substantially impairs aesthetic features or attributes of a resource protected by Section 4(f), where such features or attributes are considered important contributing elements to the value of the resource. Examples of

substantial impairment to visual or aesthetic qualities would be the location of a proposed transportation facility in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a park or historic site which derives its value in substantial part due to its setting;

3. The project results in a restriction on access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site;
4. The vibration impact from operation of the project substantially impairs the use of a Section 4(f) resource, such as projected vibration levels from a rail transit project that are great enough to affect the structural integrity of a historic building or substantially diminish the utility of the building; or
5. The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes.

The FHWA has reviewed the following situations and determined that a constructive use does not occur when:

1. Compliance with the requirements of Section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action on a site listed on or eligible for the National Register of Historic Places results in an agreement of "no effect" or "no adverse effect";
2. The projected traffic noise levels of the proposed highway project do not exceed the FHWA noise abatement criteria as contained in Table 1, 23 CFR part 772, or the projected operational noise levels of the proposed transit project do not exceed the noise impact criteria in the American Public Transit Association (APTA) guidelines;
3. The projected noise levels exceed the relevant threshold in item 2, above, because of high existing noise, but the increase in projected noise levels if the proposed project is constructed, when compared with the projected noise levels if project is not built, is barely perceptible (3 dBA or less);
4. There are proximity impacts to a Section 4(f) resource, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the FHWA's approval of a final environmental document, established the location for a proposed transportation project before the designation, establishment, or change in the significance of the resource. However, if the age of an historic site is close to, but less than, 50 years at the time of the governmental agency's acquisition, adoption, or approval, and except for its age would be eligible for the National Register, and

construction would begin after the site was eligible, then the site is considered a historic site eligible for the National Register;

5. There are impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resource are concurrently planned or developed. Examples of such concurrent planning or development include, but are not limited to:
 - A. 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 project and the Section 4(f) resource, or
 - B. Designation, donation, planning or development of property by two or more governmental agencies with jurisdiction for the potential transportation project and the Section 4(f) resource, in consultation with each other;
6. Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a resource for protection under Section 4(f);
7. Proximity impacts will be mitigated to a condition equivalent to, or better than, that which would occur under a no-build scenario;
8. Change in accessibility will not substantially diminish the utilization of the Section 4(f) resource; or
9. Vibration levels from project construction activities are mitigated through advance planning and monitoring of the activities to levels that do not cause a substantial impairment of the Section 4(f) resource.

13-2.2 Determination of Section 4(f) Applicability

Section 4(f) has been a frequent issue when projects are litigated. Therefore, it is essential that the applicability / nonapplicability of Section 4(f) be documented. When unsure of Section 4(f) applicability, an applicability request should be prepared in consultation with the FHWA and address all potential Section 4(f) involvements. The following information must be submitted to FHWA for a formal Determination of Section 4(f) Applicability:

1. A detailed map or drawing of sufficient scale to identify the relationship of the alternatives to the Section 4(f) property.

2. Size (hectares or meters followed by acres or square feet in parentheses; i.e. 1 hectare (2.47 acres)) and location (maps or other exhibits such as photographs, sketches, etc.) of the affected Section 4(f) property.
3. Ownership (City, County, State, etc.) and type of Section 4(f) property (park, recreation, historic, etc.).
4. Function of or available activities on the property (ball playing, swimming, tennis, golfing, etc.).
5. Description and location of all existing and planned facilities (ball diamonds, tennis courts, etc.).
6. Access (pedestrian, vehicular) and usage (approximate number of users / visitors, etc.).
7. Relationship to other similarly used lands in the vicinity.
8. Applicable clause affecting the ownership, such as lease, easement, covenants, restrictions, or conditions, including forfeiture.
9. Unusual characteristics of the Section 4(f) property (flooding problems, terrain conditions, or other features) that either reduce or enhance the value of all or part of the property.
10. Statement of significance from the official who has jurisdiction over the Section 4(f) property. The significance is on the entire Section 4(f) property and not of the proposed use.
11. Whenever a potential constructive use is identified include a description of the attributes or features of the Section 4(f) property which may be sensitive to proximity impacts along with a discussion and evaluation of project activities which may result in proximity impacts to the resource.

The above information will be used by the FHWA to document the applicability / nonapplicability of Section 4(f) on a property. If the FHWA determines that Section 4(f) is applicable then a Section 4(f) Evaluation is performed in accordance with Section 13-2.4 of this Chapter. If Section 4(f) is determined not to be applicable the following standard statement is made in the environmental document :

" The proposed project will not use property from the (resource, name the property). FHWA has determined Section 4(f) does not apply. "

It is important to note that except when direct use obviously does or does not apply, a Section 4(f) determination of applicability must be made by the FHWA. The information in the request

for a determination of applicability also serves to document the decision as to whether an Individual or Programmatic Section 4(f) must be pursued. The applicability of constructive use and Section 4(f) land use is **always** made by the FHWA.

13-2.3 Section 4(f) and Transportation (ISTEA) Enhancement Activities

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), in Section 1007(c), created "Transportation Enhancements" and identified ten specific types of activities which could receive such funds (for more information on these, see Procedure # 525-030-300 and Part 1, Chapter 3 of this Manual). In many cases, this program would be considered to also fall under the strict interpretation of Section 4(f) requirements since the program could involve working on a Section 4(f) protected resource.

Because the "Transportation Enhancements" Program is administered by the FHWA which is an Agency of the U.S.D.O.T., it is subject to the provisions of Section 4(f) as programs or projects just as the Federal-aid highway program is subject to Section 4(f) provisions. Therefore, determinations can be made at either the program or project level that the provisions of Section 4(f) do not apply provided certain conditions are satisfied. Because of past experience with highway projects having impacts ranging from no impact to total acquisition the FHWA has determined that the applicability determinations for enhancement projects will be made at the project level.

Basically, the same two-step process for determining a Section 4(f) use for a Transportation Enhancement project is the same as that used for any other project when determining whether or not to prepare a Section 4(f) Evaluation for an individual project. This two-step process is as follows:

1. First, it must be determined that the resource in question is protected by Section 4(f) (see Section 13-2.1.1).
2. Second, there must be a "use" of land from the Section 4(f) resource for a transportation facility/project (see Section 13-2.1.2).

Notice that these two steps only address whether a resource protected under Section 4(f) is present and whether the project entails a "use" of that resource. The steps do not address the "feasible and prudent" alternative issue.

Should one of the steps not be satisfied, the provisions of Section 4(f) would not apply to the project in question and, therefore, a Section 4(f) evaluation would not be required, but this fact would have to be documented in the NEPA document for the project (see Section 13-2.2).

Currently, there are ten activities considered as eligible for funding as transportation enhancements any one of which could either involve or impact a Section 4(f) protected resource. If it is determined that a Section 4(f) resource is involved, either because (1) the activity is designed as an enhancement of a particular Section 4(f) resource (such as a walkway construction

project for a recreational park enhancement) or because (2) a Section 4(f) resource is part of the affected environment of the enhancement project (such as a historic lock rehabilitation in a wildlife or waterfowl refuge), then a determination of "use" must be made. As with standard project development activities, these determinations of use must be made in consultation with the officials having jurisdiction over the Section 4(f) resource and the final determination of Section 4(f) applicability/non-applicability is made by the FHWA. In order to determine whether or not the enhancement project involves a Section 4(f) use of land from a Section 4(f) resource, the following criteria should be applied:

- I. Section 4(f) is invoked whenever Section 4(f) land is acquired for permanent incorporation into a transportation facility. However, the simple act of acquiring land/property does not automatically invoke Section 4(f). It is the change in land use from Section 4(f) protected to a transportation facility that causes Section 4(f) to be invoked. If the land/property is being acquired solely for the protection, preservation, or enhancement of a scenic or historic site, the official with jurisdiction has been consulted and concurs with the acquisition, and conditions, such as historical covenants, deeding to other land management agencies, etc., are in place to provide long-range protection the provisions of Section 4(f) do not apply since there is no permanent incorporation of land into a transportation facility.
- ii. Should a temporary occupancy occur Section 4(f) will apply unless it can be documented that this occupancy is not adverse in keeping with the provisions of 23 CFR 771.135(p)(7) (see above, Section 13-2.1.2, A). Such a determination will have to be coordinated with the official having jurisdiction over the resource.
- iii. Constructive use occurs when the proximity impacts from a transportation project (the enhancement activity in this case) substantially impairs the activities, features, or attributes of an adjacent 4(f) resource. Because constructive use deals with adjacent resources, it must be examined for these on an individual project basis.
- iv. Please note that all the Transportation Enhancement Activities will have to be examined for all potential Section 4(f) involvements within the affected environment, that is, with any Section 4(f) resources which the project may involve including, but not limited to, the resource being enhanced.

13-2.4 Section 4(f) Evaluations

When a project uses land protected by Section 4(f), a Section 4(f) Evaluation must be prepared. The Section 4(f) Evaluation can be either an Individual or a Programmatic evaluation [see Section 13-2.4.2 for the four Programmatic Section 4(f) evaluations]. Because the four Programmatic Section 4(f) evaluations have been coordinated with the DOI, USDA, and HUD, the coordination process required under Section 4(f) is more streamlined for the programmatic.

The intent of the Section 4(f) statute and the policy of the Department of Transportation is to avoid public parks, recreation areas, refuges, and historic sites. The FHWA may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

- A) There is no feasible and prudent alternative to the use of land from the property; and
- B) The action includes all possible planning to minimize harm to the property resulting from such use.

In order to demonstrate that there is no feasible and prudent alternative to the use of Section 4(f) land, the evaluation must address location alternatives and design shifts that avoid the Section 4(f) land. Supporting information must demonstrate that such alternatives result in unique problems. Unique problems are present when there are truly unusual factors or when the costs or community disruption reach extraordinary magnitude.

Further, the statute and the FHWA regulation require all possible planning to minimize harm (including, but not limited to, mitigation measures). All possible planning to minimize harm should be determined through consultation with the official of the agency owning or administering the land. In order to identify the most prudent and feasible alternative which results in the least **net** harm to the Section 4(f) resource, the alternative analysis should include any mitigation measures associated with the various alternatives.

13-2.4.1 Individual Section 4(f) Evaluations

A Section 4(f) Evaluation must be prepared for each location within a proposed project before the use of Section 4(f) land is approved [23 CFR 771.135(a)]. For projects processed with an EIS or an EA / FONSI, the Individual Section 4(f) Evaluation must be included as a separate section of the document, and for projects processed as Type 2 Categorical Exclusions, as a separate Section 4(f) Evaluation. Pertinent information from various sections of the EIS or EA / FONSI may be summarized in the Section 4(f) Evaluation to reduce repetition. Where an issue on constructive use arises and FHWA decides that Section 4(f) does not apply, the environmental document should contain sufficient analysis and information to demonstrate that the resource(s) is not substantially impaired.

The evaluations of alternatives to avoid the use of Section 4(f) land and of possible measures to minimize harm to such lands shall be developed by the FDOT in cooperation with the FHWA. The Section 4(f) Evaluation shall be provided for coordination and comment to the officials having jurisdiction over the Section 4(f) property and to the Department of Interior, and as appropriate to the Department of Agriculture and the Department of Housing and Urban Development. A minimum of 45 days shall be established by the FHWA for receipt of comments.

A. Draft Section 4(f) Evaluations

The following format and content are suggested. The listed information should be included in the Section 4(f) Evaluation, as applicable (See Part 2, Chapter 1, Section 1-2.8 of this Manual).

1. Proposed Action :

Where a separate Section 4(f) Evaluation is prepared, describe the proposed project and explain the purpose and need for the project.

2. Section 4(f) Property :

Describe each Section 4(f) resource which would be used by any alternative under consideration. The following information should be provided :

- (a) A detailed map or drawing of sufficient scale to identify the relationship of the alternatives to the Section 4(f) property.
- (b) Size (hectares or square meters followed in parentheses by acres or square feet) and location (maps or other exhibits such as photographs, sketches, etc.) of the affected Section 4(f) property.
- (c) Ownership (City, County, historic, etc.) and type of Section 4(f) property (park, recreation, historic, etc.).
- (d) Function of or available activities on the property (ball playing, swimming, golfing, etc.).
- (e) Description and location of all existing and planned facilities (ball diamonds, tennis courts, etc.).
- (f) Access (pedestrian, vehicular) and usage (approximate number of users / visitors, etc.).
- (g) Relationship to other similarly used lands in the vicinity.
- (h) Applicable clauses affecting the ownership, such as lease, easement, covenants, restrictions, or conditions, including forfeiture.

- (I) Unusual characteristics of the Section 4(f) property (flooding problems, terrain conditions, or other features) that either reduce or enhance the value of all or part of the property.

3. Impacts on the Section 4(f) Property(ies) :

Discuss the impacts on the Section 4(f) property for each alternative (e.g., amount of land to be used, facilities and functions affected, noise, air pollution, visual, etc.). Where an alternative(s) uses land from more than one Section 4(f) property, a summary table would be useful in comparing the various impacts of the alternatives. Impacts (such as facilities and functions affected, noise, etc.) which can be quantified should be quantified. Other impacts (such as visual intrusion) which cannot be quantified should be described.

4. Avoidance Alternatives :

Identify and evaluate location and design alternatives on either side of the property. Where an alternative would use land from more than one Section 4(f) property, the analysis needs to evaluate alternatives which avoid each and all properties [23 CFR 771.135(i)]. The design alternatives should be in the immediate area of the property and consider minor alignment shifts, a reduced facility, retaining structures, etc. individually or in combination, as appropriate. Detailed discussions of alternatives in an EIS or EA need not be repeated in the Section 4(f) portion of the document, but should be referenced and summarized. However, when alternatives [avoiding Section 4(f) resources] have been eliminated from detailed study, the discussion should also explain whether these alternatives are feasible and prudent and, if not, the reasons why.

5. Measures to Minimize Harm :

Discuss all possible measures which are available to minimize the impacts of the proposed action on the Section 4(f) property(ies). Detailed discussions of mitigation measures in the EIS or EA may be referenced and appropriately summarized, rather than repeated.

6. Coordination :

Discuss the results of preliminary coordination with the public official having jurisdiction over the Section 4(f) property and with regional (or local) offices of DOI and, as appropriate, the Regional Office of HUD and the Forest Supervisor of the affected National Forest. Generally, the coordination should include discussion of avoidance alternatives, impacts to the property, and measures to minimize harm. In addition, the coordination with the public official having jurisdiction should include, where necessary, a discussion of significance and primary use of property. Such discussion should necessarily include coordination efforts resulting from any concurrent requirements such as Section 106 of the National Historic Preservation Act

and Section 6(f) of the Land and Water Conservation Fund Act (see below, Section 13-2.5, *Concurrent Requirements*).

The following standard statement should be used for the conclusion of the Draft Section 4(f) Evaluation :

" Upon final alternative selection the provisions of Section 4(f) and 36 CFR Part 800 (if appropriate) will be fully satisfied."

B. Final Section 4(f) Evaluation

See Part 2, Chapter 1 of this Manual for format (Section 1-2.9).

When the preferred alternative uses Section 4(f) land, the Final Section 4(f) Evaluation must contain [23 CFR 771.135(i) and (j)]:

1. All of the above information for the Section 4(f) Draft Evaluation.
2. A discussion of the basis for concluding that there are no feasible and prudent alternatives to the use of the Section 4(f) land. *The supporting information must demonstrate that "there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic, and environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes"* [23 CFR 771.135(a)(2)]. This language should appear in the document together with the supporting information.
3. A discussion of the basis for concluding that the proposed action includes all possible planning to minimize harm to the Section 4(f) property. When there are no feasible and prudent alternatives which avoid the use of Section 4(f) land, the Final Section 4(f) Evaluation must demonstrate that the preferred alternative is a feasible and prudent alternative with the least harm on the Section 4(f) resources after considering mitigation to the Section 4(f) resources.
4. A summary of the appropriate formal coordination with the Headquarters Offices of DOI (and/or appropriate agency under that Department) and, as appropriate, the involved offices of USDA and HUD.
5. Copies of all formal coordination comments and a summary of other relevant Section 4(f) comments received, and an analysis and response to any questions raised. Where new alternatives or modifications to existing alternatives are identified and will not be given further consideration, the basis for dismissing these alternatives should be provided and supported by factual information. Where Section 6(f) land is involved, the National Park Service's position on the land transfer should be documented.

The following standard statement will be used for a conclusion:

" Based upon the above considerations, there is no feasible and prudent alternative to the use of land from the [identify Section 4(f) property] and the proposed action includes all possible planning to minimize harm to the [Section 4(f) property] resulting from such use".

13-2.4.2 Programmatic Section 4(f) Evaluations

As an alternative to preparing an Individual Section 4(f) Evaluation, FHWA may, in certain circumstances, have the option of applying a Section 4(f) Programmatic Evaluation. Under a Programmatic Section 4(f) Evaluation, certain conditions are laid out such that, if a project meets the conditions, it will satisfy the requirements of Section 4(f) that there are no feasible and prudent alternatives and that there has been all possible planning to minimize harm. These conditions generally relate to the type of project, the severity of impacts to Section 4(f) property, the evaluation of alternatives, the establishment of a procedure for minimizing harm to the Section 4(f), and adequate coordination with appropriate entities. Programmatic Section 4(f) Evaluations can be nationwide, regionwide, or statewide.

There are four Nationwide Programmatic Section 4(f) Evaluations:

- A. Projects which use historic bridges,
- B. Projects that use minor amount of land from public parks, recreation areas and wildlife and waterfowl refuges,
- C. Projects that use minor amounts of land from historic sites, and
- D. Independent bikeway projects.

The fact that the Nationwide Programmatic Section 4(f) Evaluations are approved does not mean that these types of projects are exempt from or have advance compliance with the requirements of Section 4(f). Section 4(f) does, in fact, apply to each of the types of projects addressed by the programmatic evaluations. Furthermore, the Programmatic Section 4(f) does not relax the Section 4(f) standards; it is just as difficult to justify using Section 4(f) land with the Programmatic Section 4(f) Evaluation as it is with an Individual Section 4(f) Evaluation.

These Programmatic Section 4(f) Evaluations may be applied only to projects meeting the applicability criteria. How the project meets the applicability criteria must be documented and acceptable to FHWA. In preparing a Programmatic Section 4(f) Evaluation, the documentation needed to support the conclusions required are comparable to the documentation needed for an Individual Section 4(f) Evaluation.

These Programmatic Section 4(f) Evaluations streamline the amount of interagency coordination that is required for an Individual Section 4(f) Evaluation. Interagency coordination

is required only with the official(s) with jurisdiction and not with DOI, USDA, or HUD (unless the Federal agency has a specific action to take, such as DOI approval of a conversion of land acquired using Land and Water Conservation Funds).

The FHWA Florida Division Administrator is responsible for ensuring that each individual project meets the criteria and procedures of these Programmatic Section 4(f) Evaluations. It is, therefore, necessary to clearly document the items that have been reviewed. The written analysis and determinations will be combined in a single document and placed in the public record and will be made available to the public upon request.

A. For Projects that Necessitate the Use of Historic Bridges:

Applicability Criteria

This Programmatic Section 4(f) Evaluation may be applied by the 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 Landmark.
4. The FHWA Division Administrator determines that the facts of the project match those set forth in the section of the Programmatic Section 4(f) Evaluation in sections labeled Alternatives, Findings, and Measures to Minimize Harm.
5. Agreement among the FHWA, the SHPO, and the ACHP has been reached through procedures pursuant to Section 106 of the National Historic Preservation Act (NHPA).

Alternatives and Findings

The alternatives listed below avoid any use of the historic bridge within the meaning of Section 4(f). In order for this Programmatic Section 4(f) Evaluation to be applied to a project, each of the following findings must be supported by the circumstances, studies, and consultations on the project. This list of alternatives is intended to be all-inclusive. The Programmatic Section 4(f) Evaluation does not apply if a reasonable alternative is identified that is not discussed below. The project record must clearly demonstrate that each of the alternatives was fully evaluated and it must further demonstrate that all applicability criteria listed above were met before the FHWA Division Administrator concluded that the Programmatic Section 4(f) applied to the project.

1. Do Nothing. The do nothing alternative has been studied and is not feasible and prudent because it does not correct the situation that causes the bridge to be considered

structurally deficient and functionally obsolete to the degree where the bridge poses serious and unacceptable safety hazards to the public or places intolerable restriction on transport or travel.

2. Build a new structure at a different location without affecting the historic integrity of the old bridge, as determined by procedures implementing the NHPA. Demonstrate that investigations have been conducted to construct a bridge on a new location or parallel to the old bridge (allowing for a one-way couplet), but, for one of the following reasons, this alternative is not feasible and prudent:
 - (1) terrain--the existing bridge has already been located at the only feasible and prudent site,
 - (2) building a new bridge away from the present site would result in social, economic, or environmental impact of extraordinary magnitude,
 - (3) the new site would not be feasible and prudent where cost **and** engineering difficulties reach extraordinary magnitude, and
 - (4) It would not be feasible and prudent to preserve the existing bridge, even if a new bridge were to be built at a new location.
3. Rehabilitate the historic bridge without affecting the historic integrity of the structure, as determined by procedures implementing the NHPA. Show that studies have been conducted of the rehabilitation measures, but because the bridge is so structurally or geometrically deficient, it cannot be rehabilitated to meet either the minimum acceptable load requirements or the minimum required capacity of the highway system on which it is located without affecting the historic integrity of the bridge. Flexibility in the application of the American Association of State Highway and Transportation Officials (AASHTO) geometric standards should be exercised as permitted in 23 CFR Part 625 during the analysis of geometric deficiency.

Measures to Minimize Harm

This Programmatic Section 4(f) Evaluation and approval may be used only for projects where the FHWA, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm. This has occurred when:

1. For bridges that are to be rehabilitated, the historic integrity of the bridge is preserved, to the greatest extent possible, consistent with unavoidable transportation needs, safety, and load requirements.
2. For bridges that are to be rehabilitated to the point that the historic integrity is affected or that are to be moved or demolished, the FHWA ensures that, in accordance with the Historic American Engineering Record (HAER) standards, or other suitable means developed through consultation, fully adequate records are made of the bridge.

3. For bridges that are to be replaced, the existing bridge is made available for an alternative use, provided a responsible party agrees to maintain and preserve the bridge.
4. For bridges that are adversely affected, agreement among the SHPO, ACHP, and FHWA is reached through the Section 106 process of the NHPA on measures to minimize harm and those measures are incorporated into the project. This Programmatic Evaluation does not apply to projects where such an agreement cannot be reached.

B. For Projects Which use Minor Amounts of Land from Public Parks, Recreation Areas, and Wildlife and Waterfowl Refuges :

Applicability Criteria

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 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
less than 4 hectares (10 acres)	--	10 percent of site
4-40 hectares (10 -100 acres)	--	.4 hectare (1 acre)
more than 40 hectares (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 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.

Alternatives and Findings

The alternatives listed below avoid any use of the public park land, recreational area, or wildlife and waterfowl refuge. In order for this Programmatic Section 4(f) Evaluation to be applied to a project, each of the following findings must be supported by the circumstances, studies, and consultations on the project. This list is intended to be all-inclusive. The Programmatic Evaluation does not apply if a feasible and prudent alternative is identified that is not discussed below. The project record must clearly indicate that each of these alternatives was fully evaluated before the FHWA Division Administrator concluded that the Programmatic Section 4(f) Evaluation applied to the project.

1. Do Nothing. The do nothing alternative is not feasible and prudent because it would not correct existing or projected capacity deficiencies, safety hazards, or deteriorated conditions and maintenance problems and not providing such correction would constitute a cost or community impact of extraordinary magnitude, or would result in truly unusual or unique problems, when compared with the proposed use of the Section 4(f) lands.

2. Improve the Highway Without Using the Adjacent Public Park, Recreational Land, or Wildlife or Waterfowl Refuge. It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management techniques because implementing such measures would result in: (a) substantial adverse community impacts to adjacent homes, businesses or other improved properties; or (b) substantially increased roadway or structure costs; or (c) unique engineering, traffic, maintenance, or safety problems; or (d) substantial adverse social, economic, or environmental impacts; or (e) the project not meeting identified transportation needs; and (f) the impacts, costs, or problems would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of AASHTO geometric standards should be exercised, as permitted in 23 CFR Part 625, during the analysis of this alternative.
3. Build an Improved Facility on a New Location Without Using the Public Park, Recreation Land, or Wildlife or Waterfowl Refuge. It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because (a) the new location would not solve existing transportation, safety, or maintenance problems; or (b) the new location would result in substantial adverse social, economic, or environmental impacts; or (c) the new location would substantially increase the costs or engineering difficulties; and (d) such problems, impacts, costs, or difficulties would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application AASHTO geometric standards should be exercised, as permitted in 23 CFR Part 625, during analysis of this alternative.

Measures to Minimize Harm

This Programmatic Section 4(f) Evaluation and approval may be used only for projects where the FHWA Division Administrator, in accordance with this evaluation, ensures that the proposed action includes all planning to minimize harm. This has occurred when the officials having jurisdiction over the Section 4(f) property have agreed, in writing, with the assessment of impacts resulting from the use of the Section 4(f) property and with the mitigation measures to be provided.

If the project uses Section 4(f) lands that are encumbered with a Federal interest, coordination is required with the appropriate agency to ascertain what special measures to minimize harm, or other requirements, may be necessary under that agency's regulations. To the extent possible, commitments to accomplish such special measures and/or requirements shall be included in the project record.

C. For Projects with Minor Involvements with Historic Sites

Applicability Criteria

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 archaeological resources that are important to preserve in place rather than to recover for archaeological research. The determination of the importance to preserve in place will be based on consultation with the SHPO, and if appropriate, the 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 NHPA 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 the impacts of the proposed project on and the proposed mitigation for the historic sites.
7. This Programmatic Section 4(f) 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.

Alternatives and Findings

The alternatives and findings guidance provided for the Programmatic Section 4(f) concerning minor involvement with public parks, recreation area, and wildlife and waterfowl refuges provided in (B) above can be used as guidance in the evaluation of the Programmatic Section 4(f) for minor involvement with Historic Sites.

Measures to Minimize Harm

This Programmatic Section 4(f) Evaluation and approval may be used only for projects where the FHWA Division Administrator, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm. Measures to minimize harm will consist of those measures necessary to preserve the historic integrity of the site and agreed to, in accordance with 36 CFR Part 800 by the FHWA, the SHPO, and as appropriate, the ACHP.

For historic sites encumbered with Federal interests, coordination is required with the Federal agencies responsible for the encumbrances.

D. For Bikeway Projects:

Applicability Criteria

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

1. The bikeway or walkway construction project is an independent construction project which requires the use of recreation and park areas established and maintained primarily for active recreation, open space, and similar purposes.
2. The official(s) having specific jurisdiction over the Section 4(f) property has given 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.
3. When the project does not require the use of critical habitat of endangered species, or land from a publicly owned wildlife or waterfowl refuge, or any land from a historic site of national, State, or local significance.
4. Where there are no unusual circumstances such as major impacts, adverse effects, or controversy.
5. When the bicycle or pedestrian facilities are not incidental items of construction in conjunction with highway improvements serving the primary purpose of serving motor vehicular traffic.

13-2.5 Concurrent Requirements

There are often concurrent requirements of other Federal agencies when Section 4(f) lands are involved in highway projects. Examples of such concurrent requirements include compatibility determinations for the use of lands in the National Wildlife Refuge System and the National Park System, consistency determinations for the use of public lands managed by the Bureau of Land

Management, determinations of direct and adverse effects for Wild and Scenic Rivers under the jurisdiction of such agencies as the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, and Forest Service, and approval of land conversions covered by the Federal-aid in Fish Restoration and the Federal-Aid in Wildlife Restoration Acts (the Dingell-Johnson and Pittman-Robertson Acts), the Recreational Demonstration Projects and the Federal Property and Administrative Service (Surplus Property) Acts, and Section 6(f) of the Land and Water Conservation Fund Act. The mitigation plan developed for the project should include measures that would satisfy the requirements for these determinations and for Section 4(f) approval. When Federal lands, which are needed for highway projects are not subject to Section 4(f), there is still a need for close coordination with the Federal agency owning or administering the land in order to develop a mitigation plan that would satisfy any other requirements for a land transfer.

13-2.5.1 Section 6(f)

State and local governments often obtain grants through the Land and Water Conservation Fund Act to acquire or make improvements to parks and recreation areas. Section 6(f) of this Act prohibits the conversion of property acquired or developed with these grants to a non-recreational purpose without the approval of the Department of the Interior's National Park Service (NPS). Section 6(f) directs the NPS to assure that replacement lands of equal value, location and usefulness are provided as conditions to such conversions. Consequently, where conversions of Section 6(f) land are proposed for highway projects, replacement lands will be necessary. Importantly, Section 6(f) applies to all transportation projects involving such a conversion whether or not federal funding is being utilized for the project. Normally, any federally-funded transportation project requiring the conversion of recreational or park land covered by Section 6(f) will also involve Section 4(f). The coordination and agreements entered into as part of completing FDOT's Section 6(f) responsibilities, therefore, should be reflected in the Section 4(f) evaluation. Regardless of the mitigation proposed, the Section 4(f) Evaluation should document the National Park Service's tentative position relative to Section 6(f) conversion. In addition, all 6(f) coordination must include the Florida Department of Environmental Protection (DEP), Parks and Recreation. Further, this coordination, along with DEP's position regarding the Section 6(f) conversion, should be documented in the Section 4(f) Evaluation.

13-2.5.1.1 Section 6(f) for Non-Federal Transportation Improvements

For non-Federal projects requiring the preparation of a State Environmental Impact Report (SEIR), a Section 6(f) Land Replacement Plan, as discussed below, is required if Land and Water Conservation Act funding was used in improving the public outdoor recreational resource. The District will develop the plan in cooperation with the Section 6(f) property owner and coordinate the Land Replacement Plan with the DEP for concurrence. In some cases, it may be advisable to obtain a binding agreement concerning the Land Replacement Plan. Once the DEP concurs with the plan, the District will submit the plan directly to the National Park Service (NPS) of the DOI for their concurrence. The District must work with the NPS, DEP, and the Section 6(f) land owner to resolve any comments. Upon concurrence in the plan by the NPS, the District will

incorporate the plan into the SEIR. Be aware that Section 6(f) may also apply to projects considered as Non-major State Actions. For these type of projects, the Section 6(f) report will be processed as a separate document.

13-2.5.1.2 Section 6(f) for Federal-Aid Transportation Improvements

As a part of the Section 4(f) Evaluation, the District must determine ownership of the property and whether or not the Section 4(f) resource was purchased or some improvement made to the property using Land and Water Conservation funds. Once it has been determined that Land and Water Conservation funds were used to purchase the property, then Section 6(f) of the Act applies.

The District, in cooperation with the local government land owner, must identify replacement land of equal value, location and usefulness before a transfer of property under Section 6(f) can occur. Upon identification of such land(s), the District and the local government must develop a written plan as part of the Section 4(f) mitigation, which demonstrates that the Section 6(f) replacement land is acceptable to the local government entity. The plan must also include any special conditions, mutually agreed to by both parties, as deemed necessary, to bring about equal value, location, and usefulness in the replacement land as required under Section 6(f). Coordination with the NPS will occur during the processing of the Draft and Final Section 4(f) Evaluations.

Upon agreement with the plan by the District and the local government, the District will submit the Section 6(f) Land Replacement Plan to the DEP for concurrence. The DEP may comment on the plan resolving any issues. Upon acceptance of the plan by the DEP, a letter concurring in the Section 6(f) Land Replacement Plan will be sent by the DEP to the District with a copy to the local government.

The District will then discuss the Section 6(f) property and the plan, as mitigation, in the Section 4(f) Evaluation. The plan and the DEP concurrence letter should be incorporated into the Appendix of the Section 4(f) Evaluation.

For Programmatic Section 4(f) Evaluations, the Section 6(f) issue is to be resolved prior to processing the Programmatic Section 4(f) Evaluation. In this case, the District through FHWA would work directly with the NPS to obtain concurrence in the Section 6(f) Land Replacement Plan. The results of this coordination effort would be documented in the Appendix of the Programmatic 4(f) Evaluation and submitted to the FHWA for approval. If the NPS objects to the conversion or transfer of the land under Section 6(f), then an individual Section 4(f) Evaluation must be prepared.

For individual Section 4(f) Evaluations the normal process is followed. The Draft Section 4(f) Evaluation will be sent to USDOJ and NPS for review as part of the normal Section 4(f) process. At that time, the NPS will comment or concur on the Section 6(f) issue as a normal part of the Section 4(f) process. The District will resolve any Section 6(f) comments received on the Draft Section 4(f) Evaluation with the NPS, DEP, and the local government, as required, and

amend the Final Section 4(f) Evaluation accordingly. This may require modifying the Section 6(f) Land Replacement Plan. Agreement among all parties should be documented in the Final Section 4(f) Evaluation prior to FHWA approval. Copies of the approved Final Section 4(f) Evaluation should be sent to USDOJ, NPS, DEP, and the local government entity for their use during the right-of-way acquisition phase.

13-2.5.2 Section 6(f) Conversion

The conversion of the Section 6(f) land to transportation right-of-way and the acquisition of the replacement land occurs during the right-of-way acquisition phase. Subsequent reevaluations must include, in their Mitigation Status and Commitment Compliance Sections, status discussions on the implementation of the Section 6(f) Land Replacement Plan. Coordination with the DEP and the NPS must occur to assure their cooperation in the land conversion transaction. Special effort must be made to provide each agency with a copy of the Section 4(f) Evaluation or the SEIR, both of which should incorporate the Land Replacement Plan. The DEP and NPS will not permit the conversion of Section 6(f) land to occur until the replacement property has been fully acquired and is available to serve the public outdoor recreational uses of the Section 6(f) property it is meant to replace. Therefore, the acquisition or conversion of the Section 6(f) land cannot take place until after the replacement land has been purchased and integrated into the recreational facility involved. Be aware that because the functional replacement must occur prior to the conversion of the 6(f) property it is imperative to contact the Right-of-way and Work Program offices and inform them of the requirements of Section 6(f) once it is known that Section 6(f) land is required for the project. This sequence may require an advance acquisition of the replacement land prior to opening the project's right-of-way phase or it may require a use of State funds for the mitigation. It is, therefore, important that the Right-of-way Office participate in the development of the Land Replacement Plan and the Work Program Office in the funds programming effort. Failure to implement the agreed upon Land Replacement Plan will cause delays in subsequent project construction.

13-3 Processing

13-3.1 Programmatic Section 4(f) Evaluation

After it has been determined that the Programmatic Section 4(f) is appropriate, the evaluation should be completed. The format for a Programmatic Section 4(f) Evaluation is shown in Part 2, Chapter 1 (Section 1-2.10) of this Manual and in Figure 13.3 of this Chapter. The evaluation is then processed to FHWA for concurrence.

For Type 2 Categorical Exclusion type projects, the Programmatic Section 4(f) Evaluation is prepared and submitted to FHWA at the same time as the Class of Action Determination (Part 1, Chapter 3). The public hearing must be held prior to submittal of the Class of Action Determination and the Programmatic Section 4(f) Evaluation. Since all Section 4(f) alternatives are still viable until after the public hearing, these two actions must parallel each other.

For projects processed with an Environmental Assessment (EA) the Programmatic Section 4(f) Evaluation is submitted independently of the EA, but after the public hearing. The EA or EIS will contain the following standard statement :

" The Section 4(f) requirement for [name of Section 4(f) resource] will be complied with by applying a nationwide evaluation in accordance with [name the appropriate Nationwide Programmatic Section 4(f) statement]. "

Two of the four Nationwide Programmatic Section 4(f) Evaluations may not be used for those projects which require the preparation of an Environmental Impact Statement. These two are the Programmatic Section 4(f) Evaluations for those projects which use minor amounts of land from public parks, recreation areas, and wildlife and waterfowl refuges or from historic sites (see applicability requirements listed in 13-2.4.2 B & C). For these projects, an Individual Section 4(f) Evaluation must be prepared and incorporated into the environmental document whenever the preparation of an Environmental Impact Statement (EIS) is involved.

For Programmatic Section 4(f) Evaluations concerning Historic Bridge or Independent Bikeway projects and which involve the preparation of an EIS, the same processing as that outlined for the EA should be followed.

Three (3) copies of the Programmatic Section 4(f) Evaluation are sent to the FHWA Division Office. The FHWA will either concur with the Evaluation or return comments to the District and to the CEMO. The District will make appropriate revisions and return three (3) revised copies to FHWA. Upon concurrence by FHWA, they will return one (1) signed copy to the District and one (1) signed copy to the CEMO. These copies are maintained in the project files.

13-3.2 Individual Section 4(f) Evaluations

A. Draft Section 4(f) Evaluations

Six (6) copies of the Draft Section 4(f) Evaluation are forwarded to the FHWA Division Office for review and approval. One (1) copy is sent to the CEMO for their review. If the Section 4(f) Evaluation is included in a Draft EIS, the DOI Headquarters does not need additional copies of the Draft or Final EIS/Section 4(f) Evaluation. If the Section 4(f) Evaluation is processed separately or as part of an EA, the DOI should receive twelve copies of the Draft Section 4(f) Evaluation for coordination and six copies of the Final Section 4(f) for information. In addition to coordination with DOI, Draft Section 4(f) Evaluations must be coordinated with the officials having jurisdiction over the Section 4(f) property and the Department of Housing and Urban Development (HUD) and the United States Department of Agriculture (USDA) where these agencies have an interest in or jurisdiction over the affected Section 4(f) resource [23 CFR 771.135(i)]. The point of coordination for HUD is the appropriate Regional Office and for USDA, the Forest Supervisor of the affected National Forest. One copy should be provided to the officials with jurisdiction and two copies should be submitted to HUD and USDA when coordination is required.

The FHWA will send one (1) copy to the FHWA Regional Office for review before the document is signed by the Division Administrator. Upon signing, FHWA will return one (1) copy each to the District and to the CEMO. The District will reproduce the document and circulate the Draft Section 4(f) Evaluation to the appropriate agencies. After a 45-day comment period, the District will prepare the Final Section 4(f) Evaluation.

B. Final Section 4(f) Evaluations

After completion of the circulation period and the public hearing, six (6) copies of the Final Section 4(f) Evaluation are submitted to the FHWA Division Office and one (1) copy is forwarded to the CEMO. If the Section 4(f) Evaluation is included in a Draft EIS, the DOI Headquarters does not need additional copies of the Draft or Final EIS/Section 4(f) Evaluation. If the Section 4(f) Evaluation is processed separately or as part of an EA, the DOI should receive twelve copies of the Draft Section 4(f) Evaluation for coordination and six copies of the Final Section 4(f) for information. In addition to coordination with DOI, Final Section 4(f) Evaluations must be coordinated with the officials having jurisdiction over the Section 4(f) property and the Department of Housing and Urban Development (HUD) and the United States Department of Agriculture (USDA) where these agencies have an interest in or jurisdiction over the affected Section 4(f) resource [23 CFR 771.135(i)]. The point of coordination for HUD is the appropriate Regional Office and for USDA, the Forest Supervisor of the affected National Forest. One copy should be provided to the officials with jurisdiction and two copies should be submitted to HUD and USDA when coordination is required. The FHWA will forward the Final Section 4(f) document to the Regional Office for a review for legal sufficiency and approval.

For actions processed with EIS's, the FHWA will make the Section 4(f) approval either in its approval of the Final EIS or in the Record of Decision (ROD). Where the Section 4(f) approval

is documented in the Final EIS, the FHWA will summarize the basis for its Section 4(f) approval in the ROD. Actions requiring the use of Section 4(f) property, and proposed to be processed with a FONSI or classified as a Type 2 CE, shall not proceed until notified by the FHWA of Section 4(f) approval. For these actions, any required Section 4(f) approval will be documented separately. After the approval, the Division Office will return one (1) signed copy to the District and one (1) signed copy to the CEMO. The District will distribute copies to the agencies which received the Draft. After thirty (30) days, FHWA may grant location and design concept acceptance.

The circulation of a separate Section 4(f) Evaluation will be required when:

1. A proposed modification of the alignment or design would require the use of Section 4(f) property after the CE, FONSI, Draft EIS, or Final EIS has been processed;
2. The FHWA determines, after processing the CE, FONSI, Draft EIS, or Final EIS that Section 4(f) applies to a property;
3. A proposed modification of the alignment, design, or measure(s) to minimize harm [after the original Section 4(f) approval] would result in a substantial increase in the amount of Section 4(f) land used, a substantial increase in the adverse impacts to Section 4(f) land, or a substantial reduction in mitigation measures; or
4. Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the Section 4(f) Evaluation.

If the FHWA determines under 23 CFR 771.135(m) (see above, points 1 through 4) or otherwise, that Section 4(f) is applicable after the CE, FONSI, or Final EIS has been processed, the decision to prepare and circulate a Section 4(f) Evaluation will not necessarily require the preparation of a new or supplemental environmental document. Where a separately circulated Section 4(f) Evaluation is prepared, such evaluation does not necessarily:

1. Prevent the granting of new approvals;
2. Require the withdrawal of previous approvals; or
3. Require the suspension of project activities; for any activity not affected by the Section 4(f) Evaluation.

13-4 REFERENCES

1. Federal Highway Administration, September 24, 1987. Section 4(f) Policy Paper.
2. Federal Register, August 22, 1983. FR Vol. 48, No. 163, 38139-38140.
3. Federal Register, August 19, 1987. FR Vol. 52, No. 160, 31116-31119.
4. Federal Register, August 28, 1987. Environmental Impact and Related Procedures; Final Rule. FR Vol. 52, No. 167, 32667-32669.
5. Federal Register, April 1, 1991. Environmental Impact and Related Procedures. FR Vol. 56, No. 62, 13279-13280.
6. U.S. Department of Transportation, Federal Highway Administration, October 30, 1987. Guidance For Preparing and Processing Environmental and Section 4(f) Documents. FHWA Technical Advisory T6640.8A.
7. U.S. Department of Transportation, Federal Highway Administration, May 23, 1977. Negative Declaration / Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects.
8. U.S. Department of Transportation, Federal Highway Administration, May 1986. Section 4(f) and Historic Bridges Position Paper.
9. U.S. Department of Transportation, Federal Highway Administration, December 23, 1986. Final 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.
10. U.S. Department of Transportation, Federal Highway Administration, December 23, 1986. Final Nationwide Section 4(f) Evaluation and Approval For Federally-Aided Highway Projects With Minor Involvement With Historic Sites.
11. U.S. Department of Transportation, Federal Highway Administration, July 5, 1983. Historic Bridges, Programmatic Section 4(f) Evaluation and Approval.
12. U.S. Department of Transportation, Federal Highway Administration, December 9, 1991. Federal Aid Policy Guide, Transmittal 1, 23-31.

13. U.S. Department of Transportation, Federal Highway Administration, September 21, 1994. Interm Guidance on Applying Section 4(f) on Transportation Enhancement Projects and Recreation Trails Projects.

EXHIBIT 13.1
FHWA GUIDANCE ON SECTION 4(F) APPLICABILITY

The series of questions and answers provided below were extracted from a FHWA Section 4(f) Policy Paper. The situations discussed represent specific cases frequently encountered. Please note, however, that Section 4(f) applicability is determined on a case by case basis. For advice on situations or issues not covered in these questions and answers nor discussed in Section 13-2 *Procedure*, contact the Central Environmental Management Office.

The questions and answers include:

1. Historic Sites	13-38
2. Historic Bridges and Highways	13-38
3. Archaeological Resources	13-39
4. Wild and Scenic Rivers	13-39
5. Fairgrounds	13-40
6. School Playgrounds	13-40
7. Bodies of Water	13-41
8. Trails	13-41
9. Bikeways	13-42
10. Joint Development (Park with Highway Corridor)	13-43
11. "Planned Facilities"	13-43
12. Temporary Occupancy of Highway Right-of-Way	13-43
13. Tunneling	13-43
14. Wildlife Management Areas	13-44
15. Air Rights	13-44
16. Access Ramps to Public Boat Launches	13-45
17. Scenic Byways	13-45

1. Historic Sites

A. Question : How does Section 4(f) apply to either permanent or temporary occupancy of nonhistoric property within a historic district but an integral part of the historical basis for designation of the district?

Answer : Normally, Section 4(f) does not apply where a property is not individually historic, is not an integral part of the historic district in which it is located, and does not contribute to the factors which make the district historic. The property and the district must be carefully evaluated to determine whether or not such a property could be occupied without adversely affecting the integrity of the historic district. If the occupancy of the property adversely affects the integrity of the district, then Section 4(f) would apply. Appropriate steps (including consultation with the SHPO) should be taken to establish and document that the property is not historic, that it has no value in the context of the historic district, and its occupancy would not adversely affect the integrity of the historic district.

B. Question : If a highway project does not occupy land in a historic site or district but does cause an "adverse effect" under 36 CFR Part 800, do the Section 4(f) requirements apply (i.e., is there a constructive use)?

Answer : An "adverse effect" under 36 CFR Part 800 does not automatically mean that Section 4(f) applies. If the impact would not substantially impair the historic integrity of a historic site or district, Section 4(f) requirements do not apply. Whether or not the historic integrity of the historic site or district is substantially impaired should be determined in consultation with the SHPO and thoroughly documented in the project records.

2. Historic Bridges and Highways

A. Question : How does Section 4(f) apply to historic bridges and highways?

Answer : The Section 4(f) statute places restrictions on the use of land from historic sites for highway improvements. The statute makes no mention of historic bridges or highways which are already serving as transportation facilities. The Congress clearly did not intend to restrict the rehabilitation, repair, or improvement of historic bridges and highways if the historic integrity is not adversely affected. The FHWA has, therefore, determined that Section 4(f) would apply if a historic bridge or highway is demolished or if its historic integrity (the criteria for which the bridge was designated historic) is adversely affected due to the proposed improvement. The affect on the historic integrity is determined in consultation with the SHPO. Section 4(f) does not apply

to the construction of a replacement bridge when a historic bridge is left in place and the proximity impacts of the replacement bridge do not substantially impair the historic integrity of the historic bridge.

B. Question : How do the requirements of Section 4(f) apply to donations [pursuant to 23 USC 144(o)] to State, locality, or responsible private entity?

Answer : A Section 4(f) use exists when the donee cannot maintain the features that give the bridge its historic significance. In such cases the Section 4(f) evaluation would need to establish that it is not feasible and prudent to leave the historic bridge alone. If the bridge marketing effort is unsuccessful and the bridge is to be demolished, a finding would have to be made that there is no feasible and prudent alternative.

3. Archaeological Resources

Question : How should the Section 4(f) requirements be applied to archaeological districts?

Answer : Section 4(f) requirements apply to an archaeological district the same as they do to an archaeological site (only where preservation in place is warranted). However, as with historic districts, Section 4(f) would not apply if after consultation with the SHPO, FHWA determines that the project occupies only a part of the district which is a noncontributing part of that district provided such portion could be occupied without adversely affecting the integrity of the archaeological district. In addition, Section 4(f) would not apply if, after consultation with the SHPO and the ACHP, it is determined that the project occupies only a part of the district which is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place, provided such portion could be occupied without adversely affecting the integrity of the archaeological district.

4. Wild and Scenic Rivers

A. Question : Are rivers and adjoining lands under study [pursuant to Section 5(a) of the Wild and Scenic Rivers Act] as potential wild and scenic rivers subject to Section 4(f)?

Answer : No. However, publicly owned public parks, recreation areas, and refuges and historic sites in a potential river corridor would still be subject to Section 4(f).

B. Question : Are rivers which are included in the National Wild and Scenic Rivers System and the adjoining lands subject to Section 4(f)?

Answer : Publicly-owned waters of designated wild and scenic rivers are protected by Section 4(f). Public-owned lands in the immediate proximity of such rivers may be protected by Section 4(f) depending on the manner in which they are administered by the Federal, State, or local government which administers the land. Wild and scenic rivers are managed by different Federal agencies including the U. S. Forest Service, the National Park Service, and the Fish and Wildlife Service. The FHWA should examine the management plan developed for the river (as required by the Wild and Scenic Rivers Act) to determine how the public lands adjacent to the rivers are administered. Section 4(f) would apply to those portions of the land designated in the management plan for recreation or other Section 4(f) activities. Where the management plan is not sufficiently specific, FHWA should consult further with the river manager and document the primary function of the area in order to make a Section 4(f) determination. Those areas that function primarily and/or are managed for recreational purposes are subject to Section 4(f).

5. Fairgrounds

Question : Are publicly owned fairgrounds subject to the requirements of Section 4(f)?

Answer : Section 4(f) is not applicable to publicly owned fairgrounds that function primarily for commercial purposes (e.g., stock car races, annual fairs, etc.), rather than recreation. When fairgrounds are open to the public and function primarily for public recreation other than an annual fair, Section 4(f) only applies to those portions of land determined significant for recreational purposes.

6. School Playgrounds

Question : Are publicly owned school playgrounds subject to the requirements of Section 4(f)?

Answer : While the primary purpose of school playgrounds is for structured physical education classes and recreation for students, such lands may also serve public recreational purposes and as such, may be subject to Section 4(f) requirements. When the playground serves only school activities and functions, the playground is not considered subject to Section 4(f). However, when the playground is open to the public and serves either organized or recreational purposes (walk-on activity), it is subject to the requirements of Section 4(f) if the playground is determined to be significant for recreational purposes (Question 2B). In determining the significance of the playground facilities, there may be more than one official having jurisdiction over the facility. A school official is considered to be the official having jurisdiction of the land during school activities. However, the school board may have authorized the city's park and recreation department or a public organization to control the facilities after school hours. The

actual function of the playground is the determining factor under these circumstances. Therefore, documentation should be obtained from the official(s) having jurisdiction over the facility stating whether or not the playground is of local significance for recreational purposes.

7. Bodies of Water

Question : How does the Section 4(f) apply to publicly owned lakes and rivers?

Answer : Lakes are sometimes subject to multiple, even conflicting, activity and do not readily fit into one category or another. When lakes function for park, recreation, or refuge activities, Section 4(f) would only apply to those portions of water which function primarily for those purposes. Section 4(f) does not apply to areas which function primarily for other purposes. In general, rivers are not subject to the requirements of Section 4(f). Rivers in the National Wild and Scenic Rivers System are subject to the requirements of Section 4(f) in accordance with Questions 8A and 8B. Those portions of publicly owned rivers which are designated as recreational trails are subject to the requirements of Section 4(f). Of course, Section 4(f) would also apply to lakes and rivers or portions thereof which are contained within the boundaries of parks, recreational areas, refuges and historic sites to which Section 4(f) otherwise applies.

8. Trails

A. Question : The National Trails System Act permits the designation of scenic and recreational trails. Are these trails or other designated scenic or recreational trails on publicly owned land subject to the requirements of Section 4(f)?

Answer : Yes, except for the Continental Divide National Scenic Trail which was exempted from Section 4(f) by Public Law 95-625.

B. Question : Are trails on privately owned land (including land under public easement) which are designated as scenic or recreational trails subject to the requirements of Section 4(f)?

Answer : Section 4(f) does not apply to trails on privately owned land unless there is a public easement to permit the public to utilize the trail. Nevertheless, every reasonable effort should be made to maintain the continuity of designated trails in the National System.

C. Question : Are trails on highway rights-of-way which are designated as scenic or recreational trails subject to the requirements of Section 4(f)?

Answer : If the trail is simply described as occupying the rights-of-way of the highway and is not limited to any specific location within the right-of-way, a "use" of land would not occur provided adjustments or changes in the alignment of the highway or the trail would not substantially impair the continuity of the trail. In this regard, it would be helpful if all future designations made under the National Trails System Act describe the location of the trail only as generally in the right-of-way.

D. Question : Are historic trails which are designated (pursuant to the National Trails System Act) as national historic trails (but not scenic or recreational) subject to the requirements of Section 4(f)?

Answer : Only lands or sites adjacent to historic trails which are on or eligible for the National Register of Historic Places are subject to Section 4(f). Otherwise (pursuant to Public Law 95-625), national historic trails are exempt from Section 4(f).

9. Bikeways

Question : Do the requirements of Section 4(f) apply to bikeways?

Answer : If the bikeway is primarily for transportation and is an integral part of the local transportation system, the requirements of Section 4(f) would not apply. Section 4(f) would apply to bikeways (or portions thereof) designated or functioning primarily for recreation unless the official having jurisdiction determines it not to be significant for such purpose. However, as with recreational trails, if the recreational bikeway is simply described as occupying the highway rights-of-way and is not limited to any specific location within that rights-of-way, a "use" of land would not occur [Section 4(f) would not apply] provided adjustments or changes in the alignment of the highway or bikeway would not substantially impair the continuity of the bikeway.

Regardless of whether Section 4(f) applies to a bikeway, Title 23, Section 109(n), precludes the approval of any project which will result in the severance or destruction of an existing major route for non-motorized transportation traffic unless such project provides a reasonably alternative route or such a route exists.

10. Joint Development (Park with Highway Corridor)

Question : Where a public park or recreation area is planned on a publicly owned tract of land and a strip of land within the tract is reserved for a highway corridor at the time the development plan for the tract is established, do the requirements of Section 4(f) apply?

Answer : The requirements of Section 4(f) do not apply to the subsequent highway construction on the reserved right-of-way as previously planned. All measures which were taken to jointly develop the highway and the park should be completely documented in the project records.

11. "Planned" Facilities

Question : Do the requirements of Section 4(f) apply to publicly owned properties "planned" for park, recreation area, wildlife refuge, or waterfowl refuge purposes even though they are not presently functioning as such?

Answer : Section 4(f) applies if the agency that owns the property has formally designated and determined it to be significant for park, recreation area, wildlife refuge, or waterfowl purposes.

12. Temporary Occupancy of Highway Right-of-Way

Question : Is temporary occupancy of highway rights-of-way for park and recreational activity (e.g., a playground or snowmobile trail is allowed to be located on highway property) subject to the requirements of Section 4(f)?

Answer : Section 4(f) does not apply to either authorized or unauthorized temporary occupancy of highway right-of-way pending further project development. For authorized temporary occupancy of highway rights-of-way for recreation, it would be advisable to make clear in a limited occupancy permit with a reversionary clause that no right is created and the park or recreational activity is a temporary one pending completion of the highway project.

13. Tunneling

Question : Is tunneling under a publicly owned public park, recreation area, wildlife refuge, and waterfowl refuge, or historic site subject to the requirements of Section 4(f)?

Answer : Section 4(f) would apply only if the tunneling (1) will disturb any archaeological sites on or eligible for *The National Register of Historic Places* which warrant preservation in place, or (2) causes disruption which will harm the purposes for which the park, recreation, wildlife or waterfowl refuge was established or will adversely affect the historic integrity of the historic site.

4. Wildlife Management Areas

Question : Do the requirements of Section 4(f) apply to Wildlife Management Areas?

Answer : Section 4(f) may apply to publicly owned wildlife management areas (or any other wildlife area, e.g., Wildlife Reserve, Wildlife Preserve, Wildlife Sanctuary, Waterfowl Production Area, etc.), which are not a wildlife refuge but perform some of the same functions as a refuge. If a Federal, State, or local law clearly delineates a difference between Wildlife Refuges and Wildlife Management Areas, the intentional separation of these systems demonstrates that Section 4(f) should not apply to Wildlife Management Areas in the jurisdiction for which the law governs. If a Federal, State, or local law does not establish such clear distinction, the property should be examined to determine its "refuge" characteristics. If the wildlife management area primarily functions as a sanctuary or refuge for protection of species, Section 4(f) would apply.

Publicly owned wildlife management areas (or any other wildlife area, which is not a refuge or sanctuary) may allow recreation opportunities. The areas on which the recreation occurs may be subject to the requirements of Section 4(f) as a public multiple-use land holding.

15. Air Rights

Question : Do the requirements of Section 4(f) apply to bridging over a publicly owned public park, recreation area, wildlife refuge, waterfowl refuge, or historic site?

Answer : Section 4(f) applies if piers or other appurtenances are placed on the park, recreation, wildlife refuge or waterfowl refuge or historic site. Section 4(f) also applies if the bridge harms the purposes for which these lands were established or adversely affects the historic integrity of the historic site.

16. Access Ramps (In accordance with Section 147)

Question : Is construction of access ramps (pursuant to Section 147 of the Federal-aid Highway Act of 1976, Public Law 94-280) to public boat launching areas located within a publicly owned public park, recreation area, wildlife refuge, or waterfowl refuge subject to the requirements of Section 4(f)?

Answer : Section 147 provides for the construction of access ramps to public boat launching areas adjacent to bridges under construction, reconstruction, replacement, repair, or alteration on the Federal-aid primary, secondary, and urban system highways. Such access ramps are not an integral or necessary component of the bridge project (to which they are appended) which is approved by the FHWA nor do such access ramps meet any transportation need or provide any transportation benefits.

Where boat launching areas are located in publicly owned parks, recreational areas, or refuges otherwise protected by the provisions of Section 4(f), it would be contrary to the intent of Section 147 to search for "feasible and prudent alternatives" to the use of such areas as a site for a ramp to a boat launching area. A consistent reading of Section 147 and Section 4(f) precludes the simultaneous application of the two sections to boat launching ramp projects through or to the publicly owned park, recreation area or refuge with which the boat launching area is associated. Therefore, Section 4(f) does not apply to access ramp projects to such boat launching areas carried out pursuant to Section 147. However, the construction, replacement, repair or alteration of a bridge on Section 4(f) land will be subject to Section 4(f).

17. Scenic Byways

Question: How does Section 4(f) apply to Scenic Byways?

Answer: The designation of a road as a scenic byway is not intended to create a park or recreation area within the meaning of 49 USC 303 or 23 USC 138. The improvement (reconstruction, rehabilitation or relocation) of a publicly-owned scenic byway would not come under the purview of Section 4(f) unless the improvement were to otherwise use land from a protected resource.

(DATE)

Division Administrator
Federal Highway Administration
227 N. Bronough Street, Room 2015
Tallahassee, Florida 32301-2015

Attention: (FHWA Transportation Supervisor)

Dear Mr. John Doe:

Subject: Draft Section 4(f) Evaluation
State Project Number: XXXXX-XXXX
Federal Aid Project Number: X-XXX(X)-X
Work Program Item Number: XXXXXXXX
Any County, Florida

Enclosed are six (6) copies of the Draft Section 4(f) Evaluation for the subject project as required by the National Environmental Policy Act of 1969 and submitted in compliance with 49 U.S.C. 303.

Please advise us of your actions so that we may proceed with the project.

Sincerely

John Doe
District Environmental
Management Engineer

XX/XXX
Enclosures

cc:

FIGURE 13.1 Example Transmittal Letter to FHWA for Draft Section 4(f) Evaluation

(DATE)

Division Administrator
Federal Highway Administration
227 N. Bronough Street, Room 2015
Tallahassee, Florida 32301-2015

Attention: (FHWA Transportation Supervisor)

Dear Mr. John Doe:

Subject: Final Section 4(f) Evaluation
State Project Number: XXXXX-XXXX
Federal Aid Project Number: X-XXX(X)-X
Work Program Item Number: XXXXXXXX
Any County, Florida

Enclosed are six (6) copies of the Final Section 4(f) Evaluation for the subject project as required by the National Environmental Policy Act of 1969 and submitted in compliance with 49 U.S.C. 303.

Please advise us of your actions so that we may proceed with the project.

Sincerely

John Doe
District Environmental
Management Engineer

XX/XXX
Enclosures

cc:

FIGURE 13.2 Example Transmittal Letter to FHWA for Final Section 4(f) Evaluation

TABLE OF CONTENTS

List of Figures

List of Tables

Description of Proposed Action

Alternatives

Do Nothing

Improvement without using Section 4(f) Property

Alternatives on New Location without using Section 4(f) Property

Impacts and Findings

Do Nothing

Improvement without using Section 4(f) Property

Alternatives on New Location without using Section 4(f) Property

Measures to Minimize Harm

Coordination

Appendix

On the Appendix page, a listing should be provided of all correspondence and other support material contained in the Appendix. If the Appendix can be broken down into Advance Notification, Pre-hearing, and Post-hearing type correspondence then this should be done. All material contained in the Appendix must be numbered for ease in referencing (See section 1-2.3).

FIGURE 13.3 Table of Contents for Programmatic Section 4(f) Evaluations