

6. Section 4(f)

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Chapter Abbreviations/Acronyms

AASHTO – American Association of State Highway and Transportation Officials
ACHP – Advisory Council on Historic Preservation
APA – Administrative Procedure Act
CE – Categorical Exclusion
CFR – Code of Federal Regulations
DNR – Department of Natural Resources
DOI – Department of Interior
DOT&PF – Department of Transportation & Public Facilities
EA – Environmental Assessment
e.g. – for example
EIS – Environmental Impact Statement
FHWA – Federal Highway Administration
FONSI – Finding of No Significant Impact
FTA – Federal Transit Administration
HAER – Historic American Engineering Record
HUD – Department of Housing and Urban Development
i.e. – that is
ISTEA – Intermodal Surface Transportation Efficiency Act
MOA – Memorandum of Agreement
NEPA – National Environmental Policy Act
NHPA – National Historic Preservation Act
NPS – National Park Service
NRHP – National Register of Historic Places
REM – Regional Environmental Manager
ROD – Record of Decision
SAFETEA-LU – Safe, Accountable, Flexible, Efficient Transportation Equity Act; a Legacy for Users
SHPO – State Historic Preservation Officer
TEA – transportation enhancement activity
U.S.C. – United States Code
USDA – US Department of Agriculture
USDOT – US Department of Transportation

6.1. Overview

Section 4(f) was enacted as part of the *Department of Transportation (USDOT) Act of 1966* as a means to protect significant publicly owned public parks, recreation areas and wildlife and waterfowl refuges as well as historic sites of national, State or local significance from conversion to transportation uses. It was initially codified at Title 49, United States Code (U.S.C.) Section 1653(f) and repealed in 1983 when it was recoded without

substantive changes at 49 U.S.C. Section 303. A similar provision that applies only to FHWA actions may be found in 23 U.S.C. Section 138. With the recodification, the original provision no longer exists, but Section 4(f) remains the common name for both statutes. Congress added the *de minimis* provision in 2005 as part of the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU). Section 4(f) only applies to USDOT agencies.

Section 4(f) is one of the most stringent national environmental protection laws. It provides that the Secretary of the USDOT will not approve any program or project that requires the use of land from a significant publicly owned public park, recreation area or wildlife and waterfowl refuge or any significant historic site unless the use is found to result in only a *de minimis* impact; or (1) there is no feasible and prudent alternative to the use of such land and (2) the action includes all possible planning to minimize harm to the park, recreational area, wildlife and waterfowl refuge or historic site resulting from such use.

The following is a brief overview of the important points about Section 4(f):

1. Section 4(f) Authority and Responsibility. Section 4(f) applies only to the actions of agencies within the USDOT. While other agencies may have an interest in Section 4(f), the agencies within the USDOT are responsible for applicability determinations, evaluations, findings and overall compliance.
2. Section 4(f) Applicability. Section 4(f) applies to use of publicly owned land of a public park, recreation area or wildlife and waterfowl refuge of national, State or local significance or land from an historic site of national, State or local significance unless the land or proposed use is covered by an exception in the Section 4(f) regulations. See [Section 6.2.2](#) and 23 CFR 774.13 for a list of exceptions.
3. Public Ownership and Public Access Criteria. Section 4(f) applies to significant publicly owned public parks and recreational areas that are open to the public and to significant publicly owned wildlife and waterfowl refuges regardless of whether these areas are open to the public or not, because the “major purpose” of a refuge may make it necessary for the resource manager to limit public access. When private institutions, organizations or individuals own parks, recreational areas or wildlife and waterfowl refuges, Section 4(f) does not apply to these projects, even if such areas are open to the public. If a governmental body has a permanent proprietary interest in the land (e.g., fee ownership or easement), it is considered “publicly owned” and, thus, Section 4(f) may be applicable. Section 4(f) also applies to all historic sites of national, State or local significance, whether publicly owned or not or open to the public. Except in unusual circumstances, only historic properties on or eligible for inclusion on the National Register of Historic Places (NRHP) are protected under Section 4(f).
4. Significance Criteria. A publicly owned park, recreation area or wildlife and waterfowl refuge must be a “significant” resource for Section 4(f) to apply. Pursuant to 23 CFR 774.11(c), Section 4(f) resources are considered significant unless the official having jurisdiction over the site concludes that the entire site is not significant. Even if this is done, an independent evaluation by FHWA (non-assigned projects) or by a Statewide NEPA Manager for 6004 (for assigned CEs) should be made to assure that the official’s finding of non-significance is reasonable.
5. Feasible and Prudent Criteria. Numerous legal decisions on Section 4(f) have resulted in a USDOT policy that findings of “no feasible and prudent alternatives” and “all possible planning to minimize harm,” must be well documented and supported. The definition of “feasible and prudent avoidance alternative” included in 23 CFR 774.17 states that:
 - a. A feasible and prudent avoidance alternative avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property. It also provides that in assessing the importance of protecting the Section 4(f) property, it is appropriate to consider the relative value of the resource to the preservation purposes of the Section 4(f) statute.
 - b. An alternative is not feasible if it cannot be built as a matter of sound engineering judgment.

- c. An alternative is not prudent if:
- i. it compromises the project to a degree that it is unreasonable to proceed with the project in light of the stated purpose and need;
 - ii. it results in unacceptable safety or operational problems;
 - iii. after reasonable mitigation, it still causes:
 - severe social, economic or environmental impacts;
 - severe disruption to established communities;
 - severe disproportionate impacts to minority or low income populations; or
 - severe impacts to environmental resources protected under other Federal statutes;
 - iv. it results in additional construction, maintenance or operational costs of an extraordinary magnitude;
 - v. it causes other unique problems or unusual factors; or
 - vi. it involves multiple factors in paragraphs c. i. through c. v., of this definition, that while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.
6. Documentation and Coordination. Though the original statute does not require the preparation, distribution or circulation of any written document; FHWA's implementing regulations do. A public comment element was not included in the original statute, however Section 6009(a) of SAFETEA-LU amended 23 U.S.C. 138 "Preservation of Parklands" to require that the public be afforded an opportunity to review and comment on any *de minimis* impact finding with respect to parks, recreation areas or wildlife and waterfowl refuges (see [Section 6.8](#)). Other than the US Departments of the Interior, Housing and Urban Development and Agriculture, as appropriate, the statute also does not require or establish any procedures for coordinating with other agencies. USDOT has developed departmental requirements for documenting Section 4(f) decisions. For example, FHWA regulations have incorporated the requirements of USDOT Order 5610.1C, *Procedures for Considering Environmental Impacts* and its predecessors. Procedures for the preparation, circulation and coordination of Section 4(f) documentation can be found in two places:
- 23 CFR Part 774 (March 12, 2008) and a correcting amendment to 23 CFR 774.3(c) effective July 3, 2008; and
 - FHWA's *Technical Advisory T 6640.8A, Guidance for Preparing and Processing of Environmental and Section 4(f) Documents* (October 30, 1987).

Both of these sources of information are available at the FHWA NEPA Project Development Website www.environment.fhwa.dot.gov/projdev/index.asp. Additionally, the FHWA Section 4(f) Policy Paper (2005) provides guidance and answers to common frequently asked questions and also explains how Section 4(f) applies in general and specific situations where resources meeting Section 4(f) criteria may be involved. See [Sections 6.4, 6.6, 6.7, 6.8, 6.9 and 6.10](#) for more information on determination, coordination and documentation of Section 4(f) impacts.

A written Section 4(f) evaluation or finding attempts to establish an administrative record and make sure that the approving agency has followed regulatory and statutory requirements. The agency keeps the administrative record to detail the basis for determining there is no feasible and prudent alternative to the use of the Section 4(f) resource and demonstrates that the agency has used all possible planning measures to minimize harm. Likewise, when circulated with the NEPA document, it permits the agency to obtain comments on avoidance alternatives and measures to minimize harm.

In accordance with the *Administrative Procedure Act* (APA) a court will examine legal challenges to a Section 4(f) evaluation. The reviewing court will hold unlawful and set aside a Federal agency's action,

findings or conclusions if they are found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law [5 U.S.C. 706 (2)(A)]. The court will review the administrative record to determine whether the approving agency's action, findings and conclusions were in accordance with the requirements of Section 4(f).

If the administrative record is incomplete or not prepared at all, the court will lack the required Section 4(f) elements to review (this is even truer if no Section 4(f) Evaluation is prepared). While agency decisions are entitled to a presumption of regularity and courts are not empowered to substitute their judgment for that of the agency, courts will carefully review whether the agency followed the applicable requirements. Therefore, the administrative record should contain the following essential information:

- the applicability or non-applicability of Section 4(f) to a property used by a project;
- the coordination efforts with the officials having jurisdiction over or administering the land (relative to significance of the land, primary use of the land, mitigation measures, etc.);
- the location and design alternatives that would avoid the use altogether or minimize the use and harm to the Section 4(f) land;
- analysis of impacts of avoidance and Section 4(f) use alternatives; and
- all measures to minimize harm (e.g., design variations, landscaping, other mitigation).

7. **Other Laws and Requirements.** Concurrent requirements of other Federal agencies are often involved when using Section 4(f) lands in highway projects; however, Section 4(f) requirements are independent from obligations found in these other authorities. A Section 4(f) resource may have more than one federal law that is applicable, but even though an agency may have complied with one law, Section 4(f) requirements may not be fully satisfied. The approving agency's responsibility is to comply with all requirements of applicable laws in addition to its Section 4(f) obligation. See [Section 6.10.3](#) for more information on possible other agency requirements.

Since a project must include all possible planning to minimize harm to a Section 4(f) resource, compliance with other concurrent requirements may help FHWA or DOT&PF (for assigned CEs) satisfy this condition. For example, when a project will adversely affect a historic property, under Section 106 of the *National Historic Preservation Act* a Memorandum of Agreement (MOA) with the State Historic Preservation Officer (SHPO) must be developed. In this instance, the MOA would identify mitigation that the Department would be required to implement per the terms of the MOA. This mitigation would be considered for purposes of Section 4(f) compliance, along with other measures proposed to minimize harm, as appropriate.

6.2. Section 4(f) Applicability

As indicated in [Section 6.1](#), Section 4(f) applies to use of publicly owned land of a public park, recreation area or wildlife and waterfowl refuge of national, State or local significance and to use of land of an historic site of national, State or local significance (i.e., Section 4(f) property). As defined in 23 CFR 774.17, except as set forth in the "Applicability" provisions in 23 CFR 774.11 and the "Exceptions" provisions in 23 CFR 774.13, "use" of Section 4(f) property occurs under the following circumstances:

1. **Permanent Incorporation of Land.** When land is permanently incorporated into a transportation facility.
2. **Adverse Temporary Occupancy.** When there is a temporary occupancy of land that is adverse in terms of the Section 4(f) statute's preservation purposes as determined by the criteria in 23 CFR 774.13(d).
3. **Constructive Use.** When there is a constructive use of a Section 4(f) property as determined by the criteria in 23 CFR 774.15.

Applicability of Section 4(f) to specific projects and properties will be determined in accordance with the applicability provisions set forth in 23 CFR 774.11 and the exceptions discussed in 23 CFR 774.13.

See the FHWA “Section 4(f) Policy Paper,” March 1, 2005, for further guidance on Section 4(f) applicability.

6.2.1 Applicability Determination Provisions

The applicability of Section 4(f) will be determined in accordance with the following provisions:

1. **“Not Significant” Determination.** Consideration under Section 4(f) is normally not required when the official(s) with jurisdiction over a park, recreation area or wildlife and waterfowl refuge determine that the property, considered in its entirety, is not significant. In the absence of such a determination, the Section 4(f) property will be presumed to be significant. The approving agency will review a determination that a park, recreation area or wildlife and waterfowl refuge is not significant to assure its reasonableness.
2. **Multiple-Use Properties.** Where Federal lands or other public land holdings (e.g., State Forests) are administered under statutes permitting or requiring management for multiple uses and, in fact, are managed for multiple uses, Section 4(f) applies only to those portions of such lands that function for or are designated in the plans of the administering agency as being for, significant park, recreation or wildlife and waterfowl purposes. The determination of which lands so function or are so designated, and the significance of those lands, must be made by the official(s) with jurisdiction over the Section 4(f) resource. The approving agency will review this determination to assure its reasonableness.
3. **Historic Sites.** In determining the applicability of Section 4(f) to historic sites, the approving agency will consult with the official(s) with jurisdiction to identify all properties on or eligible for the NRHP. The Section 4(f) requirements apply to historic sites on or eligible for the NRHP unless the approving agency determines that an exception under 23 CFR 774.13 applies, as follows:
 - a. The Section 4(f) requirements apply only to historic sites on or eligible for the NRHP unless the approving agency determines that the application of Section 4(f) is otherwise appropriate.
 - b. The Interstate System is not considered to be a historic site subject to Section 4(f), with the exception of those individual elements of the Interstate System formally identified by FHWA for Section 4(f) protection based on national or exceptional historic significance.
4. **Archeological Sites.** Section 4(f) applies to all archeological sites on or eligible for inclusion on the NRHP, including those discovered during construction, except as set forth in [Section 6.2.2, item 2](#).
5. **Wild and Scenic Rivers.** Section 4(f) applies to those portions of federally designated Wild and Scenic Rivers that are otherwise eligible as historic sites or that are publicly owned and function as or are designated in a management plan as, a significant park, recreation area or wildlife and waterfowl refuge.
6. **Lands Reserved for Future Transportation Facilities.** When a property formally reserved for a future transportation facility temporarily functions for park, recreation or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of duration, will not subject the property to Section 4(f).
7. **Joint Development.** When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area or wildlife and waterfowl refuge is established and concurrent or joint planning or development of the transportation facility and the Section 4(f) resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in 23 CFR 774.17. Examples of such concurrent or joint 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 facility and the Section 4(f) property; or
 - b. designation, donation, planning or development of property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.

6.2.2 Exceptions

There are various exceptions to the requirement for Section 4(f) approval. These exceptions include, but are not limited to the following:

1. Restoration, rehabilitation or maintenance of transportation facilities that are on or eligible for the NRHP when:
 - a. The FHWA Environmental Program Manager (for non-assigned projects) or the Statewide NEPA Manager for 6004 (for assigned CE projects) concludes, as a result of the consultation under 36 CFR 800.5 that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and
 - b. The official(s) with jurisdiction over the Section 4(f) resource (SHPO, in the case of historic sites) have not objected to the conclusion made by the FHWA Environmental Program Manager or Statewide NEPA Manager for 6004 in paragraph (1)(a) above.
2. Archeological sites that are on or eligible for the NRHP when:
 - a. The FHWA Environmental Program Manager (for non-assigned projects) or the Statewide NEPA Manager for 6004 (for assigned CE projects) concludes that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken and where the FHWA Environmental Program Manager or Statewide NEPA Manager for 6004 decides, with agreement of the official(s) with jurisdiction (SHPO) not to recover the resource, and
 - b. The official(s) with jurisdiction over the Section 4(f) resource (SHPO) have been consulted and have not objected to the finding in paragraph (2)(a) above.
3. Designations of park and recreation lands, wildlife and waterfowl refuges and historic sites that are made or determinations of significance that are changed, late in the development of a proposed action. With the exception of archaeological resources in 23 CFR 774.9(e), the FHWA Environmental Program Manager (non-assigned projects) or the Statewide NEPA Manager for 6004 (assigned CE projects) may permit a project to proceed without consideration under Section 4(f) if the property interest in the Section 4(f) land was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by Section 4(f) prior to acquisition. However, if it is reasonably foreseeable that a property would qualify for the NRHP prior to the start of construction, then the property should be treated as a historic site for the purposes of Section 4(f).
4. Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f). The following conditions must be satisfied:
 - a. duration must be temporary, i.e., less than the time needed for construction of the project and there should be no change in ownership of the land;
 - b. scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;
 - c. there are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features or attributes of the property, on either a temporary or permanent basis;
 - d. the land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and
 - e. there must be documented agreement from the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.
5. Park road or parkway projects under 23 U.S.C. 204.

6. Certain trails, paths, bikeways and sidewalks, in the following circumstances:
 - a. trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2);
 - b. National Historic Trails and the Continental Divide National Scenic Trail, designated under the *National Trails System Act*, 16 U.S.C. 1241-1251, with the exception of those trail segments that are historic sites as defined in 23 CFR 774.17;
 - c. trails, paths, bikeways and sidewalks that occupy a transportation facility right-of-way without limitation to any specific location within that right-of-way, so long as the continuity of the trail, path, bikeway or sidewalk is maintained; and
 - d. trails, paths, bikeways and sidewalks that are part of the local transportation system and which function primarily for transportation.
7. Transportation enhancement projects and mitigation activities where the use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature or attribute that qualifies the property for Section 4(f) protection and the official(s) with jurisdiction agrees in writing that the use of the Section 4(f) is solely for the purpose described.

6.2.3 Section 4(f) Property

In order to be considered a Section 4(f) property a resource must function or be designated as a significant publicly owned park, recreation area, wildlife and waterfowl refuge or significant historic site. In addition, publicly owned land that has been formally designated and determined to be significant for public park, recreation area or wildlife and waterfowl refuge purposes represents a Section 4(f) property even when it may not be functioning as such during project development.

State or local governments can change the designations of park and recreation lands, wildlife and waterfowl refuges and historic sites late in the development of a proposed action. With the exception of the treatment of archaeological resources, a project may 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. In addition, a project may proceed if the Regional Environmental Manager (REM) made an adequate effort to identify properties protected by Section 4(f) prior to acquisition. (See [Section 6.2.2, item 3.](#)) Section 4(f) applies to historic sites regardless of ownership type, but only to publicly owned 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 these areas are open to the public, Section 4(f) normally does not apply. However, FHWA strongly encourages the preservation of these types of privately owned lands. If a governmental body has a proprietary interest in the land (e.g., fee ownership, drainage easement, wetland easement), it can be considered publicly owned. Further, case law holds that land subject to a public easement in perpetuity can be considered publicly owned land for the purpose for which the easement exists. Under special circumstances, lease agreements may also constitute a public interest in the land. Evaluate these types of lease agreements on a case-by-case basis and consider the term of the lease, the understanding of the parties to the lease, cancellation clauses, etc. Coordinate with the approving agency for questions on whether a leasehold or other temporary interest constitutes public ownership.

6.2.3.1 Publicly Owned 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:

- represents a park, recreation area, wildlife and waterfowl refuge; or
- its major purpose/function is for park, recreation or refuge purposes.

Incidental, secondary, occasional or dispersed recreational activities do not constitute a major purpose.

Generally, the official(s) with jurisdiction are the official(s) of the agency that own or administer the land. There may be instances where the agency that owns or administers the land has delegated or relinquished their authority to another agency through an agreement stating how some of its land will be used. These agreements should be reviewed to determine which agency has authority on land use. If the authority has been delegated or relinquished to another agency, contact that agency to determine the major purpose of the land.

After consultation and in the absence of an official designation of purpose or function by the officials with jurisdiction, FHWA or the Statewide NEPA Manager for 6004 (for assigned CE projects only) will base its decision on its own examination of actual functions. FHWA or the Statewide NEPA Manager for 6004 (for assigned CE projects only) makes the final decision on applicability of Section 4(f); however, they normally rely on the official with jurisdiction over the land to identify the kinds of activity or functionality that take place.

Consultation with the official with jurisdiction over the publicly owned park, recreation area or wildlife and waterfowl refuges is needed when the FHWA Environmental Program Manager or Statewide NEPA Manager for 6004 make a Section 4(f) determination. For certain types of Section 4(f) lands, more than one agency may have jurisdiction over the site. The official(s) with jurisdiction for the purposes of determining significance are typically the officials of the agency owning or administering the land. The significance determination must consider the significance of the entire property and not just the portion of the property being used for the project. Significance means that in comparing the availability and function of the recreation, park or wildlife and waterfowl refuge area with the recreation, park and refuge objectives of that community, the land in question plays an important role in meeting those objectives. If a determination can not be obtained from the official with jurisdiction, presume the Section 4(f) land is significant.

If the public is permitted visitation during normal operating hours to publicly owned parks and recreation areas that are significant, 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 to the public at large. Examples include:

- residents of a public housing project;
- military and their dependents; and
- students of a school and students, faculty and alumni of a college or university.

6.2.3.2 Historic and Archaeological Sites

Section 4(f) also applies to significant historic properties (including archaeological sites) that are on or eligible for inclusion on the NRHP [see 36 CFR 800.16(l)(1)]. Pursuant to the Section 106 process requirements of the *National Historic Preservation Act* (NHPA), the approving agency consults with the State Historic Preservation Officer, Tribes, Alaska Native Claims Settlement Act Corporations, local officials and the public to determine whether a property is on or eligible for listing on the NRHP.

The FHWA Environmental Program Manager (non-assigned projects) or the Statewide NEPA Manager for 6004 (assigned CE projects) may determine that Section 4(f) requirements do not apply to restoration, rehabilitation or maintenance of transportation facilities that are on or eligible for the NRHP when:

- as a result of the consultation under 36 CFR 800.5, such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for listing on the NRHP; and
- the officials with jurisdiction [i.e., the SHPO and when appropriate, the Advisory Council on Historic Preservation (ACHP)] have been consulted and do not object to the finding of no adverse effect.

(See [Section 6.2.2, item 1.](#))

In the case of archaeological sites, Section 4(f) only applies to those sites that are on or eligible for inclusion on the NRHP and have more than minimal value for preservation in place. Section 4(f) does not apply if the FHWA or the Statewide NEPA Manager for 6004 (for assigned CE projects only) finds that the archaeological resource is important chiefly because of what can be learned by data recovery (see [Section 6.2.2, item 2](#)) and has minimal value for preservation in place; and the SHPO (and the ACHP if participating) has been consulted and has not

objected to this finding. The project's Section 106 correspondence should reflect this specific consultation and conclusion for each site in question.

6.2.3.3 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 that 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 officials with jurisdiction over the lands make the determination as to which lands function or are designated as such and the significance of those lands. The FHWA Environmental Program Manager (non-assigned projects) or the Statewide Manager for Section 6004 (assigned CE projects) reviews this determination to ensure reasonableness (see [Section 6.2.1, item 2](#)). The determination of significance applies to the entire area of each site functioning or designated for park, recreation or wildlife and waterfowl refuge purposes. For public land holdings that do not have management plans or where existing management plans are not current, Section 4(f) applies to those areas that function primarily for Section 4(f) purposes and are determined significant. Section 4(f) does not apply to areas of multiple-use lands that function primarily for purposes not protected by Section 4(f).

6.2.4 "Use" Under Section 4(f)

There are three types of Section 4(f) uses:

1. Permanent. When land from a Section 4(f) property is permanently incorporated into a transportation facility. Permanent land use includes transportation activities that acquire right-of-way that is designated as a significant public park, recreation area, waterfowl and wildlife refuge or a significant historic site.
2. Temporary Occupancy. When there is a temporary occupancy of land that is adverse in terms of the statute's preservation purposes. Temporary occupancy does not constitute a use within the meaning of Section 4(f) if the following conditions are met:
 - a. Temporary Duration. The duration of the occupancy must be temporary (i.e., no greater than the time needed for the construction of the project) and there is no change in the ownership of the land.
 - b. Minor Scope of Work. The scope of the work must be minor. Both the nature and the magnitude of the changes to the Section 4(f) property must be minimal.
 - c. No Permanent Adverse Impacts. There are no permanent adverse physical impacts anticipated and no interference with the protected activities, features or attributes of a property, on a temporary or a permanent basis.
 - d. Land Fully Restored. The land used must be fully restored to a condition at least as good as what existed prior to the project.
 - e. Documented Agreement. There must be documented, written agreement of the official(s) with jurisdiction over the resource regarding the conditions listed above.(See [Section 6.2.2, item 4](#).)
3. Constructive Use. A constructive use occurs when a transportation project does not incorporate land from a Section 4(f) property, but the project's proximity impacts are so severe that the protected activities, features or attributes that qualify the property for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features or attributes of the resource are substantially diminished. The degree of impairment should be determined in consultation between the REM and the official(s) with jurisdiction over the resource.

The FHWA Environmental Program Manager or Statewide NEPA Manager for 6004 will determine when there is a constructive use, but is not required to document each determination. It is important to consult with the FHWA Environmental Program Manager or Statewide NEPA Manager for 6004 (for assigned CE projects

only) as soon as a potential for constructive use is identified. The results of the consultation will provide direction on what level of documentation that may be necessary for a decision. When a constructive use determination is made, it will be based upon the following:

- identification of the current activities, features or attributes of the property that qualify it for protection under Section 4(f) and that may be sensitive to proximity impacts;
- an analysis of the proximity affects of the proposed project on the Section 4(f) property. If any of the proximity impacts will be mitigated, only the net impacts need be considered in this analysis. The analysis should also describe and consider the impacts that could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project; and
- consultation on the foregoing identification and analysis, with the official(s) with jurisdiction over the Section 4(f) property.

Note that a constructive use will require the preparation of an Individual Section 4(f) Evaluation and therefore would exclude the project from 6004 assignment. An affirmative constructive use decision will be required from FHWA. In addition to the standard information normally available for consultation, provide information to address each of the three factors described above which would help determine if there will be a substantial impairment of the Section 4(f) resource and, therefore, a constructive use.

If a project results in a constructive use of a nearby Section 4(f) property, the Environmental Impact Analyst will evaluate the use in accordance with 23 CFR 774.3(a) (i.e., regarding feasible and prudent avoidance alternatives and inclusion of all possible planning to minimize harm to the property resulting from the use).

A constructive use generally occurs when one or more of the following conditions exist:

1. Noise Interference. The projected noise level increase attributable to the project will substantially interfere with the use and enjoyment of a noise-sensitive facility of a property protected by Section 4(f) (e.g., 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, enjoyment of an urban park where serenity and quiet are significant attributes; or viewing wildlife in an area of a wildlife and waterfowl refuge intended for such viewing).
2. Aesthetic Impairment. The proximity of the proposed project will substantially impair aesthetic features or attributes of a property protected by Section 4(f), when these features or attributes are considered important contributing elements to the value of the property (e.g., 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 Section 4(f) property that derives its value in substantial part due to its setting).
3. Access Restriction. The project results in a restriction of access that substantially diminishes the utility of a significant publicly owned park, recreation area or an historic site.
4. Vibration Impact. The vibration impact from construction or operation of the project substantially impairs the use of a Section 4(f) property (e.g., projected vibration levels that are great enough to physically damage an historic building or substantially diminish the utility of the building, unless the damage is repaired and fully restored consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, i.e., the integrity of the contributing features must be returned to a condition which is substantially similar to that which existed prior to the project).
5. Ecological Intrusion. The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife and waterfowl refuge adjacent to the project, substantially interferes with access to a wildlife or waterfowl refuge when such access is necessary for established wildlife migration or critical life cycle processes or substantially reduces the wildlife use of a wildlife and waterfowl refuge.

A constructive use does not occur under the following circumstances:

1. “No Historic Properties Affected” or “No Adverse Effect” Finding. Compliance with the requirements of 36 CFR 800.5 for proximity impacts of the proposed action on a site listed on or eligible for the NRHP results in a finding of “No Historic Properties Affected” or “No Adverse Effect.”
2. Noise Levels Do Not Exceed Abatement/Impact Criteria. The impact of projected traffic noise levels of the proposed highway project on a noise-sensitive activity do not exceed the FHWA noise abatement criteria as contained in Table 1 of 23 CFR Part 772 or the projected operational noise levels of the proposed transit project do not exceed the noise impact criteria for a Section 4(f) activity in the Federal Transit Authority (FTA) guidelines for transit noise and vibration impact assessment.
3. Negligible Increase in Noise Levels. 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 project is constructed, when compared to the projected noise levels if the project is not built, is barely perceptible (i.e., 3 dBA or less).
4. Project Location Established Prior to 4(f) Designation of Resource. There are proximity impacts to a Section 4(f) property, but a governmental agency’s right-of-way acquisition or adoption of project location or 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 property. However, if it is reasonably foreseeable that a property would qualify as eligible for the NRHP prior to the start of construction, then the property should be treated as an historic site for the purposes of Section 4(f).
5. No Substantial Impairment. Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features or attributes that qualify a property for protection under Section 4(f).
6. Mitigated Impacts. Proximity impacts will be mitigated to a condition equivalent to or better than, that which would occur if the project was not built, as determined after consultation with the official(s) with jurisdiction.
7. Use Not Substantially Diminished. Change in accessibility will not substantially diminish the use of the Section 4(f) property.
8. Vibration Levels Mitigated. 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 protected activities, features or attributes of the Section 4(f) resource.

The following process is suggested for constructive use determinations:

Step 1. Recognize that a constructive use can occur.

Step 2. Establish a threshold or standard for determining when constructive use occurs. FHWA has determined that the threshold for constructive use is proximity impacts that substantially impair the function, integrity, use, access, value or setting of a park, recreation area, wildlife or waterfowl refuge or historic site.

Step 3. Identify the functions, activities and qualities of the Section 4(f) resource that may be sensitive to proximity impacts.

Step 4. Analyze the proximity impacts on the Section 4(f) resource. Quantify impacts (e.g., noise, water runoff) that can be quantified. Other proximity impacts (e.g., visual intrusion, access) that lend themselves to qualitative analysis should be qualified. If any of the proximity impacts will be mitigated, only the net loss must be considered in the analysis. The analysis should also describe and consider the impacts that could reasonably be expected if the proposed project were not built since these impacts should not be attributed to the project.

Step 5. Determine if these impacts substantially impair the function, value, etc., of the Section 4(f) resource. This determination on impairment should be coordinated with the official(s) with jurisdiction over the park, recreation area, refuge or historic site.

Steps 3, 4 and 5 are project specific. Apply them when there is likelihood that constructive use could occur or will be an issue on a project.

6.3. Assigned and Non-Assigned Section 4(f) Responsibilities

The following procedures apply for Section 4(f) determinations, evaluations and approval responsibilities:

1. Determination. The DOT&PF Statewide NEPA Manager for 6004 is responsible for Section 4(f) applicability determinations for assigned CE projects. The FHWA Environmental Program Manager makes Section 4(f) applicability determinations for all non-assigned CE, EA and EIS projects. See [Section 6.4](#) for determination procedures and [Chapter 5, Section 5.2](#) for information on assigned and non-assigned CE projects.
2. Approval. The DOT&PF Statewide NEPA Manager for 6004 will review and approve Programmatic Section 4(f) Evaluations and issue *de minimis* impact findings for assigned CEs. If an Individual Section 4(f) Evaluation is required then the project is excluded from 6004 assignment and FHWA approval is required.

The FHWA Environmental Program Manager issues Section 4(f) approvals or findings on behalf of the FHWA Alaska Division Administrator. Typically, approval for Evaluations contained in Environmental Assessment (EA) or Environmental Impact Statement (EIS) documents is concurrent with the approval of the environmental document. Approvals for programmatic evaluations or *de minimis* findings processed for Categorical Exclusion (CE) projects will usually be concurrent with the approval of the CE.

See [Sections 6.7, 6.8, 6.9](#) and [6.10](#) for Section 4(f) Evaluation documentation procedures.

6.4. Section 4(f) Applicability Determination

Section 4(f) has been a frequent issue when projects are litigated. Therefore, it is essential to document the applicability or non-applicability of Section 4(f). If there is uncertainty regarding Section 4(f) applicability, consult with the FHWA Environmental Program Manager or Statewide NEPA Manager for 6004 (for assigned CE projects only) to ascertain if a formal applicability determination request might be appropriate. If a formal request is needed, submit the following information for a formal Determination of Section 4(f) Applicability:

1. Detailed Map or Drawing. A detailed map or drawing of sufficient scale to identify the relationship of the alternatives to the Section 4(f) property.
2. Property Boundary, Size and Location. Determine the property boundary, size (i.e., acres, square feet) and location (e.g., maps, photographs, sketches) of the affected Section 4(f) property.
3. Ownership and Property Type. Ownership (e.g., City, Borough, State) and type of Section 4(f) property (e.g., park, recreation, refuge, historic).
4. Property Function. Function of or available or planned activities on the property (e.g., baseball, swimming, tennis, golf).
5. Description. Description and location of all existing and planned facilities, features, and attributes (e.g., baseball diamonds, tennis courts).
6. Access. Access (e.g., pedestrian, vehicular) and usage (e.g., approximate number of users, visitors a year).
7. Vicinity Relationship. Relationship to other similarly used lands in the vicinity.
8. Ownership Status. Applicable information relating to the ownership (e.g., lease, easement, covenants, restrictions, conditions, including forfeiture).

9. Unusual Characteristics. Unusual characteristics of the Section 4(f) property (e.g., flooding problems, terrain conditions) that either reduce or enhance the value of all or part of the property.
10. Statement of Significance. Statement of significance from the official who has jurisdiction over the Section 4(f) property. The significance statement is for the entire Section 4(f) property, not just for the area of the proposed use.
11. Attribute Description. If a potential constructive use is identified, include a description of the attributes or features of the Section 4(f) property that may be sensitive to proximity impacts along with a discussion and evaluation of project activities that may result in proximity impacts to the resource.

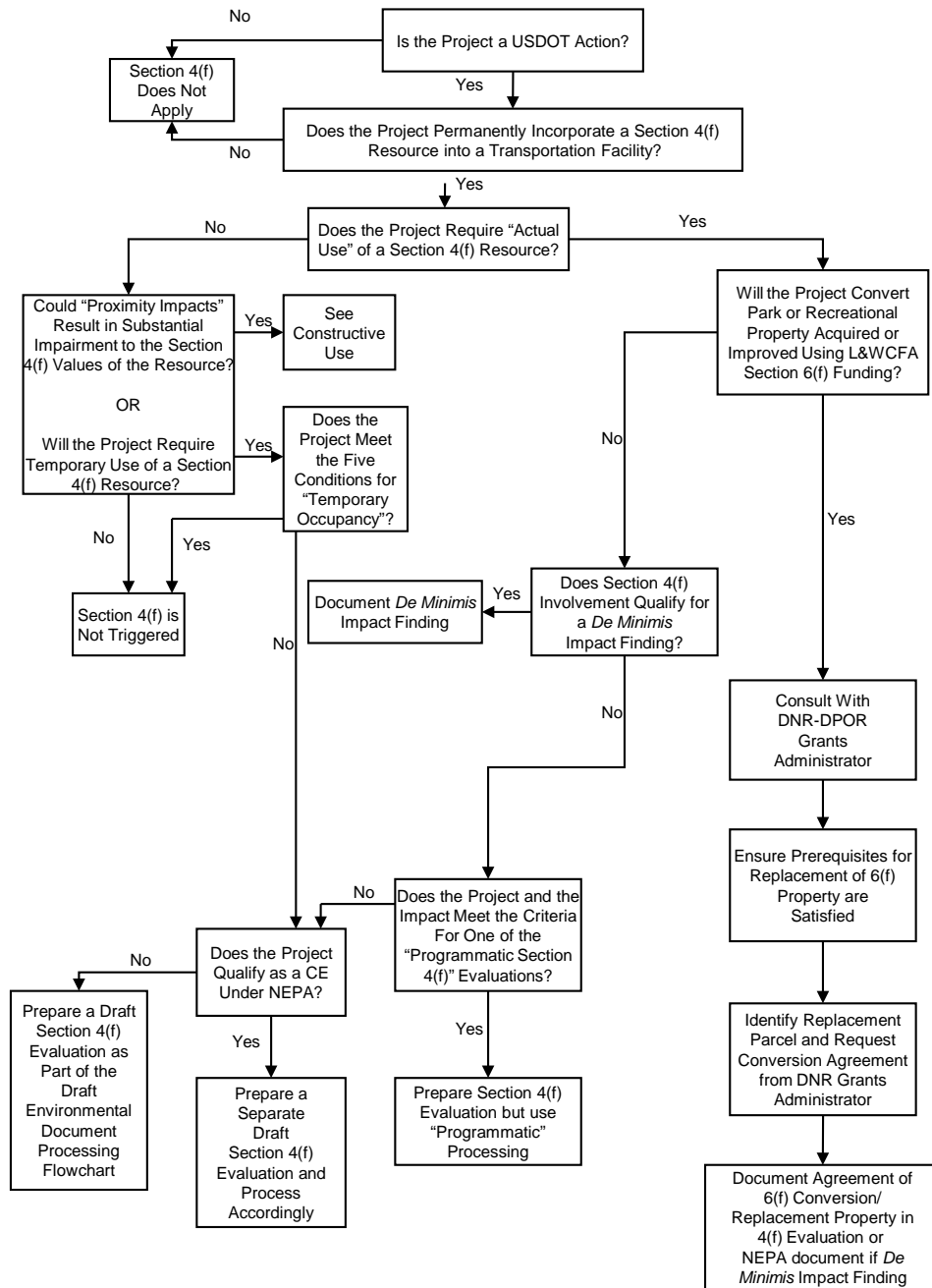
If it is determined that Section 4(f) is applicable, then a Section 4(f) Evaluation may be prepared (see [Sections 6.7, 6.8, 6.9 and 6.10](#)). If Section 4(f) is not applicable, insert the following standard statement in the environmental document:

“The proposed project will not use property from the (resource, name the property). [FHWA or the DOT&PF Statewide NEPA Manager for 6004] has determined that Section 4(f) does not apply.”

The information in the request for a determination of applicability may also serve to document the decision for an Individual or Programmatic Section 4(f) Evaluation. The Statewide Environmental Manager for 6004 or FHWA are responsible for determining Section 4(f) applicability and potential use of a Section 4(f) resource.

[Figure 6-1](#) illustrates the decision process to follow for making Section 4(f) determinations.

**Figure 6-1
Section 4(f) Decision Tree**



6.5. Transportation Enhancement Projects and Stand-alone Mitigation Projects

The *Intermodal Surface Transportation Efficiency Act* of 1991 (ISTEA), Section 1007(c) created the Transportation Enhancements Program. A transportation enhancement activity (TEA) is one of twelve specific types of activities set forth by statute at 23 U.S.C. 101(a)(35). TEAs often involve the enhancement of or improvement to land that qualifies as a Section 4(f) protected resource. The following TEAs have the greatest potential for Section 4(f) use:

- facilities for pedestrians and bicycles;
- acquisition of scenic easements and scenic or historic sites;
- scenic or historic highway programs including tourist and welcome centers;
- historic preservation;
- rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals); and
- preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).

Conversely, the TEAs below are less likely to be subject to Section 4(f):

- safety and educational activities for pedestrians and bicyclists;
- landscaping or other scenic beautification;
- control and removal of outdoor advertising;
- archeological planning and research;
- environmental mitigation of highway runoff pollution, reduction of vehicle-caused wildlife mortality, habitat connectivity; and
- establishment of transportation museums.

In both categories above, the question of Section 4(f) use must be evaluated on a case-by-case basis.

Based on experience with Section 4(f) impacts of highway projects, Section 4(f) applicability determinations for enhancement projects will be made at the project level. In order to determine Section 4(f) applicability for a Transportation Enhancement project, use the same two-step process that is applied for any other project:

- determine if the resource in question is protected by Section 4(f), and
- determine if there is a use of land from the Section 4(f) resource for a transportation facility/project.

If the two-step process results in a determination that the resource in question is not protected by Section 4(f) or that the project does not involve use of land from the Section 4(f) resource, the provisions of Section 4(f) do not apply to the project and a Section 4(f) Evaluation is not required. In addition, if it is determined that a use would occur, TEAs and stand-alone mitigation projects are exempted from Section 4(f) where: 1) the use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for 4(f) protection; and 2) the official(s) with jurisdiction over the Section 4(f) resource agrees in writing to the above determination.

The DOT&PF Statewide NEPA Manager for 6004 (assigned CE projects) or FHWA (non-assigned projects) will make the final determination of Section 4(f) applicability/non-applicability.

6.6. Coordination with Other Agencies

The REM must consult with the official or the agency owning or administering the land (e.g., Department of the Interior [DOI], Department of Housing and Urban Development [HUD], US Department of Agriculture [USDA] Forest Service). For DOI and HUD, consultation occurs at the regional level, while consultation with the USDA Forest Service occurs with the applicable Forest Supervisor. For projects that use land from a State park or that would have an adverse effect on a historic site or archaeological site, consultation with the appropriate division within the Alaska Department of Natural Resources (ADNR) is required (i.e., SHPO, Park Superintendent). For State game refuges, consult with the Department of Fish and Game, Sport Fish Habitat Supervisor. Document the results of the consultation in the Section 4(f) Evaluation or finding, as appropriate.

Consultation with the officials having jurisdiction should start as early in the project development process as practicable; preferably from scoping through to the NEPA decision document. The purpose of the consultation is to gather information about the resource as specified above, to determine the effects to the resource and to develop and negotiate avoidance and mitigation measures. Many of the officials with jurisdiction will be unaware of Section 4(f) and will benefit from a summary/briefing of the requirements. It is also important to clarify with them any correspondence that will be required to capture any agreements and to comply with the requirements. The *De Minimis* Impact Finding or Programmatic Section 4(f) Evaluation may require written concurrence on the assessment of impacts, adequacy of mitigation or other facts. The language in this correspondence must be precise so practitioners are advised to refer to guidance, consult and assist the official(s) with jurisdiction by providing a template or sending them a letter for their concurrence and signature.

6.7. Section 4(f) Documentation

Once it has been determined that a project will use land from a Section 4(f) resource, the REM in consultation with a Statewide NEPA Manager for 6004 (for assigned CE projects) or FHWA's Environmental Program Manager (for non-assigned projects) must determine the appropriate level of Section 4(f) documentation necessary for the project as one of the following:

- *De Minimis* Impact Finding,
- Programmatic Section 4(f) Evaluation, or
- Individual Section 4(f) Evaluation.

The FHWA "Section 4(f) Policy Paper" (<http://www.environment.fhwa.dot.gov/projdev/4fpolicy.asp>) and the *FHWA Environmental Guidebook* provide comprehensive guidance on when and how to apply the provisions of Section 4(f) on highway projects that use Section 4(f) land or resources. Additionally, the FHWA has issued Guidance for Determining *De Minimis* Impacts to Section 4(f) Resources. The guidance is available at <http://www.fhwa.dot.gov/hep/guidedeminimis.htm>. The fundamental difference between a *De Minimis* Impact Finding and preparing a Programmatic or Individual Section 4(f) Evaluation is whether or not you must prepare an avoidance alternatives analysis. No alternatives analysis is required to issue a *De Minimis* Impact Finding while preparation of an alternatives analysis is required for a Programmatic or Individual Section 4(f) Evaluation.

The purpose of the alternatives analysis is to determine if there are prudent and feasible alternatives to the use of a Section 4(f) resource(s), so the analysis must address new location alternatives and design shifts that avoid the Section 4(f) resource(s). An alternative is feasible if it is technically possible to design and build the alternative. Determining if an alternative is prudent is more difficult. An alternative may be rejected as not prudent for any of the following reasons.

- It does not meet the project purpose and need.
- It involves unacceptable operational or safety problems.
- It causes unique problems or unusual factors.
- After reasonable mitigation it still causes severe adverse social, economic or other environmental impacts.
- It would cause severe community disruption.

- It has additional construction, maintenance or operational costs of an extraordinary magnitude.
- It would cause severe disproportionate impacts to minority or low income populations.
- There would be severe impacts to environmental resources protected under other Federal statutes.
- There is an accumulation of factors that collectively, rather than individually, have adverse impacts that present unique problems or reach extraordinary magnitudes.

For more information on prudent and feasible see the “Feasible and Prudent Standard” discussion in the FHWA Section 4(f) Policy paper, available at <http://www.environment.fhwa.dot.gov/projdev/4fpolicy.asp>

Where sufficient analysis demonstrates that a particular avoidance alternative is not feasible and prudent, the analysis of that alternative as a viable alternative ends. The level of analysis required differs from project to project and from alternative to alternative. If multiple alternatives are under consideration and all alternatives use land from Section 4(f) resources, and it is determined that there is no prudent and feasible avoidance alternative, then an analysis must be performed to determine which alternative results in the least overall harm. Note that the least overall harm analysis requires balancing seven factors. The seven factors are:

1. Ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);
2. Relative severity of remaining harm to each Section 4(f) property after mitigation;
3. Relative significance of each Section 4(f) property;
4. Views of official(s) with jurisdiction;
5. Degree to which each alternative meets the purpose and need for the project;
6. Magnitude of any adverse impacts to resources not protected by Section 4(f); and
7. Substantial differences in costs among the alternatives.

The regulation requires that all possible planning to minimize harm (including, but not limited to, mitigation measures) is incorporated into the proposed action. All possible plans to minimize harm must be determined through consultation with the official with jurisdiction over the Section 4(f) resource.

6.8. *De Minimis* Impact Finding

On August 10, 2005, Section 6009(a) of SAFETEA-LU amended existing Section 4(f) legislation in Section 138 of Title 23 and Section 303 of Title 49, USC. The amendment simplifies the process and approval of projects that only have *de minimis* impacts on lands protected by Section 4(f). This is the first substantive revision of Section 4(f) legislation since passage of the U.S. Department of Transportation Act of 1966. Under the new provisions, the FHWA Environmental Program Manager (non-assigned projects) or the Statewide NEPA Manager for 6004 (assigned CE projects) may determine, after consideration of any impact avoidance, minimization and mitigation or enhancement measures, and agency and public input, that the project results in a *de minimis* impact on a property. In this case, an analysis of avoidance alternatives is not required and the Section 4(f) evaluation process is complete. This decision must be made in consultation with the official(s) with jurisdiction over the Section 4(f) property and will require some level of documentation from them. See <http://www.fhwa.dot.gov/hep/guidedeminimis.htm> for FHWA guidance.

De Minimis Impact Findings are made for the individual Section 4(f) resources when there are multiple resources present in the area of a proposed project. It is important to note that the *de minimis* impact definition and associated determination requirements for historic sites are different from those for parks, recreation areas and wildlife and waterfowl refuges, as described below. Examples of the *de minimis* documentation forms are provided in [Figures 6-2](#) and [6-3](#).

The *De Minimis* Impact Finding is based on the degree or level of impact including any avoidance, minimization, mitigation or enhancement measures that are included in the project to address the Section 4(f) use. *De Minimis* Impact Findings are conditioned upon the implementation of any measures that were relied upon to reduce the impact to a *de minimis* level. A *de minimis* finding cannot be made for a constructive use of a Section 4(f) property. A constructive use, by definition, involves impacts where the protected activities, features and attributes would be substantially impaired. A *de minimis* finding can sometimes be made for a temporary occupancy of a Section 4(f) property, if applicable, when the project does not already meet temporary occupancy exception criteria.

The definitions of a *de minimis* impact are as follows:

1. Historic Properties. *De minimis* impacts on historic sites rely on the determination of either “no adverse effect” or “no historic properties affected” in compliance with Section 106 regulations (36 CFR Part 800). The SHPO must concur with the Section 106 determination in writing (and ACHP must provide written concurrence if they are participating in the Section 106 process) for the FHWA or DOT&PF Statewide NEPA Manager for 6004 to issue a *De Minimis* Section 4(f) Impact Finding. Additionally, the FHWA or State must have notified the SHPO of their intent to issue a *De Minimis* Impact Finding based on their Section 106 concurrence and the FHWA or State must have considered the views of consulting parties and public during the Section 106 consultation. Public input should be solicited during the NEPA public notices; no individual public notice is necessary for a *de minimis* finding for historic sites.
2. Publicly Owned Parks, Recreation Areas and Wildlife and Waterfowl Refuges. *De minimis* impacts on publicly owned parks, recreation areas and wildlife and waterfowl refuges are defined as those that do not adversely affect the activities, features and attributes of the Section 4(f) resource. The official with jurisdiction over the property must provide written concurrence that the project will not adversely affect the activities, features and attributes that qualify the property for protection under Section 4(f). In addition, the public must be afforded the opportunity to review and comment on the effects of the project on the protected activities, features and attributes of the identified Section 4(f) resource.

When identifying *de minimis* impacts for publicly owned parks, recreation areas and wildlife and waterfowl refuges, the activities, features and attributes of the Section 4(f) resource must be considered. For example, when identifying impacts to a public park, portions of the resource (e.g., playground equipment) should be distinguished from other areas (e.g., parking facilities).

In most cases, a separate public review process, with a public notice of opportunity to comment, is not necessary. The information supporting the *De Minimis* Impact Finding will be included in the *National Environmental Policy Act* (NEPA) document and the public will be afforded an opportunity to comment during the formal NEPA process (see [Chapters 3, 4 and 5](#)). However, for those actions that may not require public review and comment (e.g., Re-evaluations, Categorical Exclusions), a 30 day public notice and opportunity for review and comment will be necessary. Notices for public involvement conducted to request input on potentially *de minimis* impacts to Section 4(f) resources must explicitly state the purpose in any notice. The public newspaper notice should:

1. State in the heading “Notice of Proposed *De minimis* Section 4(f) Finding” along with the project name and number.
2. Mention that the FHWA or DOT&PF (for assigned CE projects) is requesting public comments on an intended *De Minimis* Section 4(f) Finding for the proposed project and identify the property that is protected under Section 4(f) of the Department of Transportation Act of 1966. Add that the agency intends to make a finding that after consideration of impact avoidance, minimization, and mitigation or enhancement measures the proposed project will not adversely affect the activities, features and attributes of the Section 4(f) site.
3. Identify where the public can find copies of the draft *de minimis* Section 4(f) finding and where comments should be submitted to.



**Section 4(f) *De Minimis* Impact Finding
for
Parks, Recreation Areas, and Wildlife & Waterfowl Refuges
For FHWA Projects**

Project Name: _____

Project Number (State and Federal): _____

Property Name: _____ (Site 1)

Property Name: _____ (Site 2)

Applicable only if the use of the Section 4(f) property including consideration of avoidance, minimization, mitigation or enhancement measures, does not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f).

I. Project Description:

II. Section 4(f) Property Description(s):

Describe each impacted Section 4(f) property. Description should include size, location, type of property, ownership and identification of official with jurisdiction over the Section 4(f) property, and existing and/or documented planned activities, features and attributes of the property. Include a map depicting the boundaries and major features of the Section 4(f) property.

III. Project Use of the Section 4(f) Property(s):

Identify the impacts the project will have on the activities, features and attributes of the Section 4(f) property that qualify the property for protection under Section 4(f).

IV. Impact Avoidance, Minimization, and Mitigation or Enhancement Measures to the Section 4(f) Property(s):

Identify any avoidance (such as avoidance of a feature), minimization, and mitigation or enhancement measures that are included in the project to address the Section 4(f) use.

V. Coordination with the Public:

The information supporting FHWA's intent to make a de minimis impact finding will be included in the NEPA document and the public will be afforded the opportunity to comment during the NEPA review process. For those actions that may not require public review and comment, a public notice for opportunity to review and comment will be needed. Public involvement efforts must state FHWA's intent to make a de minimis impact finding and provide information necessary to solicit comments.

Public Notice Date: _____

Name of Newspaper: _____

Project Name:
Project Number

- 1 -

Date of Form: August 25, 2008

**Figure 6-2
Section 4(f) *De Minimis* Impact Finding Form for Parks, Recreational Areas,
and Wildlife and Waterfowl Refuges for FHWA Project
Page 1 of 2**

Summarize Issues Raised and Responses to comments (attach all comments received and a copy of the Public Notice);

VI. Coordination with Official(s) with Jurisdiction over the Section 4(f) Property:

Describe the coordination that was done prior to and after the coordination with the public. A request for written concurrence from the official with jurisdiction must be initiated after the public has been afforded the opportunity to comment.

The official(s) with jurisdiction over the Section 4(f) property concurs in writing that the project will not adversely affect the activities, features and attributes that qualify the property for protection under Section 4(f) and has been informed of FHWA's intent to make a *de minimis* impact finding based on this documentation. Attach documentation.

YES ☐

NO ☐

VII. Signatures:

A. I recommend that the FHWA find the impacts on the Section 4(f) property to be *de minimis* based on the fact that this project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f).

Date: _____

DOT&PF Regional Environmental Manager

B. I have determined that:

1. The transportation use of the Section 4(f) property, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f);
2. The public has been informed of FHWA's intent to make a *de minimis* finding and been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) property;
3. The official(s) with jurisdiction over the property were informed of FHWA's intent to make the *de minimis* impact finding based on written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f); and

4. The project will have a *de minimis* impact on _____ (Property 1).

5. The project will have a *de minimis* impact on _____ (Property 2 if applicable).

Date: _____

FHWA Environmental Program Manager

Attachment(s): Copy of Official with Jurisdiction Concurrence
Copy of Public Notice and comments/responses

Project Name:
Project Number:

- 2 -

Date of Form: August 25, 2008

Figure 6-2
Section 4(f) *De Minimis* Impact Finding Form for Parks, Recreational Areas,
and Wildlife and Waterfowl Refuges for FHWA Projects
Page 2 of 2



**Section 4(f) *De Minimis* Impact Finding
for
Historic Sites
For FHWA Projects**

Project Name: _____

Project Number (State and Federal): _____

AHRS Site Number or Site Name: _____ (Site 1)

AHRS Site Number or Site Name: _____ (Site 2)

De minimis impacts related to historic sites are limited to the determination of either "no adverse effect" or "no historic properties affected" in compliance with Section 106 of the National Historic Preservation Act.

I. Project Description:

II. Section 4(f) Property Description(s):

Describe each historic site that is on or eligible for inclusion on the National Register of Historic Places (NRHP). For each site include type of historic property, the significance criterion & aspects of historic integrity that qualify the property to be eligible, and location of the historic site(s). Include a map depicting the boundaries and features of the Section 4(f) property in relation to the proposed improvement.

III. Project Use of the Section 4(f) Property(s):

Describe all impacts the project will have on the historic site.

IV. Impact Avoidance, Minimization, and Mitigation or Enhancement Measures to the Section 4(f) Property(s):

Identify any avoidance, minimization, and mitigation or enhancement measures that are included in the project to address the Section 4(f) use.

Project Name: _____

- 1 -

Date of Form: August 25, 2008

Project Number: _____

AHRS Site Number(s): _____

**Figure 6-3
Section 4(f) *De Minimis* Impact Finding Form for Historic Sites for FHWA Projects
Page 1 of 2**

V. Consulting Party Involvement:

List all Section 106 consulting parties that were contacted and summarize their comments. Please include contacts that were made even if no response was received.

VI. Coordination:

The State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP) (if participating), and the National Park Service (if the historic site is within a National Historic Landmark) has been informed in writing of FHWA's intent to make a *de minimis* impact finding based on written concurrence of the Section 106 determination. Attach documentation.

YES ☐ NO ☐

Written concurrence has been received. Attach documentation

YES ☐ NO ☐

VII. Signatures:

A. I recommend that FHWA find the project's impacts on the Section 4(f) property(s) to be *de minimis*.

Date: _____

DOT&PF Regional Environmental Manager

B. I have determined that:

1. The process required by Section 106 of the National Historic Preservation Act resulted in the determination of "no adverse effect" or "no historic properties affected" with the written concurrence of the SHPO, the NPS (for a landmark), and the ACHP (if participating);
2. The SHPO, ACHP (if participating in the Section 106 consultation), and NPS (if the historic site is within a National Historic Landmark) was informed of FHWA's intent to make a *de minimis* impact finding based on their written concurrence(s) in the Section 106 determination;
3. FHWA has considered the views of any consulting parties participating in the Section 106 consultation; and
4. The project will result in a *de minimis* impact on (Site 1).
5. The project will result in a *de minimis* impact on (Site 2 if applicable).

Date: _____

FHWA Environmental Program Manager

Attachment(s):

- Copy of the finding letter that notified the SHPO of the intended *de minimis* impact finding and any concurrences received from the SHPO and ACHP (if participating).
- Copies of any consulting party correspondence.

Project Name: _____

- 2 -

Date of Form: August 25, 2008

Project Number: _____

AHRS Site Number(s): _____

Figure 6-3
Section 4(f) *De Minimis* Impact Finding Form for Historic Sites for FHWA Projects
Page 2 of 2

6.9. Programmatic Section 4(f) Evaluation

6.9.1 Background/Applicability

As an alternative to preparing an Individual Section 4(f) Evaluation or a *de minimis* impact finding, in certain circumstances a Programmatic Section 4(f) Evaluation may be used. The decision to use a Programmatic Section 4(f) Evaluation must be made in consultation with the Statewide NEPA Manager for 6004 (assigned CE projects) and the FHWA (non-assigned projects). A Programmatic Section 4(f) Evaluation should be developed to a similar level of detail as an Individual Section 4(f) Evaluation and will be determined applicable to a project based on meeting criteria included in each programmatic evaluation. These conditions generally relate to the type of project, the severity of impacts to the Section 4(f) property, the evaluation of alternatives, the establishment of a procedure for minimizing harm to the Section 4(f) resource, adequate coordination with appropriate entities and the NEPA class of action. If a project meets the conditions contained in a programmatic evaluation then it may be approved with no additional public comment period or legal sufficiency review and no further DOI coordination (unless a DOI resource is being affected).

There are five (5) Nationwide Programmatic Section 4(f) Evaluations. These include the following:

1. [Programmatic Section 4\(f\) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges](#). This evaluation sets forth the basis for approval that there are no feasible and prudent alternatives to the use of certain historic bridge structures to be replaced or rehabilitated with Federal funds and that the projects include all possible planning to minimize harm resulting from such use.
2. [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](#). This programmatic evaluation is applicable for projects that improve existing highways and use minor amounts of publicly owned public parks, recreation lands or wildlife and waterfowl refuges that are adjacent to existing highways.
3. [Final Nationwide Section 4\(f\) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites](#). This programmatic evaluation has been prepared for projects that improve existing highways and use minor amounts of land (including non-historic improvements thereon) from historic sites that are adjacent to existing highways where the effect is determined not to be adverse.
4. [Section 4\(f\) Statement and Determination for Independent Bikeway or Walkway Construction Projects](#). This 1977 negative declaration applies to stand-alone bikeway and/or walkway projects that require the use of land from public recreation and park areas.
5. [Section 4\(f\) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4\(f\) Property](#). This Nationwide Programmatic Section 4(f) Evaluation has been prepared for certain federally assisted transportation improvement projects on existing or new alignments that will use property of a Section 4(f) park, recreation area, wildlife or waterfowl refuge or historic property, which in the view of the agency signing the NEPA document and official(s) with jurisdiction over the Section 4(f) property, will result in a net benefit to the Section 4(f) property.

These Programmatic Section 4(f) Evaluations apply only to projects meeting the applicability criteria stipulated in each programmatic evaluation. Therefore, the Section 4(f) Evaluation must explicitly document the basis for determining that the project meets the applicability criteria.

6.9.2 Processing

Programmatic evaluations shall be prepared to follow the format of the applicable evaluation and must be approved to satisfy Section 4(f) compliance requirements. The purpose of completing the evaluation is to perform an alternatives analysis, identify measures to minimize harm and confirm that all criteria have been met to ensure that the use of the programmatic evaluation applies to the action. Once the evaluation has been completed and the official(s) with jurisdiction have agreed in writing per the requirements of the evaluation, then the programmatic may be approved by the FHWA Environmental Program Manager (non-assigned projects) or the DOT&PF Statewide NEPA Manager for 6004 (assigned CE projects). The Programmatic Section 4(f) Evaluation does not

relax the Section 4(f) standards of feasible and prudent alternatives and minimization of harm. The FHWA Environmental Program Manager (for non-assigned projects) or DOT&PF Statewide NEPA Manager for 6004 (for assigned CE projects) is responsible for reviewing each individual project to determine that it meets the criteria and procedures of the specific Programmatic Section 4(f) Evaluation. Determinations will be thorough and will clearly document the items that have been reviewed. The evaluation will generally be a stand-alone document prepared to summarize relevant portions of a NEPA document, if appropriate.

Programmatic Section 4(f) Evaluations streamline the documentation and approval process and amount of interagency coordination from that required for an Individual Section 4(f) Evaluation. Draft and final evaluations do not need to be prepared and legal sufficiency review is not required. 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 (e.g., DOI approval of a conversion of land acquired or developed with Land and Water Conservation Funds). An accurate decision needs to be made as early as possible regarding the applicability of a Programmatic Section 4(f) Evaluation. If it is determined that an Individual Section 4(f) Evaluation is required late in the project development process, lengthy delays could result due to the exclusion from 6004 assignment.

Processing a Programmatic Section 4(f) Evaluation is handled differently based on the NEPA class of action, as follows:

1. **CE Projects.** CE projects generally involve only one alternative or proposed action so the Programmatic Section 4(f) Evaluation should be completed and approved when the CE Documentation Form is submitted for approval. (See [Figure 2-6](#) for the CE Documentation Form).
2. **EA Projects.** The Programmatic Section 4(f) Evaluation may not be approved until after release of the EA for public review. The programmatic evaluation must be included as an appendix or section of the revised EA and cited in any resulting Finding of No Significant Impact (FONSI).
3. **EIS Projects.** Three of the five nationwide Programmatic Section 4(f) Evaluations may not be used for projects involving an EIS. These are the programmatic evaluation for projects that use minor amounts of land from public parks, recreation areas and wildlife and waterfowl refuges; the programmatic evaluation for projects that have minor involvement with historic sites and the Section 4(f) Statement and Determination for Independent Bikeway Projects. For these projects, an Individual Section 4(f) Evaluation must be prepared; this will result in exclusion from 6004 assignment.

For use of the Programmatic Section 4(f) Evaluations for projects that necessitate the use of historic bridges or projects that have a net benefit and that require the preparation of an EIS, follow the same processing as that outlined for the EA. The Programmatic Section 4(f) Evaluation can not be approved until after circulation of the Draft EIS (DEIS) and the public hearing. For EA and EIS projects that involve use of a Programmatic Section 4(f) Evaluation, include the following standard statement in the EA or DEIS text or appendices for public review:

“The Department will comply with the Section 4(f) requirements for use of land from (name of Section 4(f) resource) by applying the (insert the title of the appropriate Nationwide Programmatic Section 4(f) Evaluation).”

The programmatic evaluation will then be included in the NEPA document and will be approved in either a subsequent Revised EA or FONSI, Final EIS (FEIS) or Record of Decision (ROD). Once the Region is ready to request approval for the programmatic evaluation they should send two copies to the FHWA Division Office (non-assigned projects) or to a DOT&PF Statewide NEPA Manager for 6004 (assigned CE projects). FHWA or the Statewide NEPA Manager for 6004 will either approve the evaluation or return comments to the REM. The Regional Environmental Impact Analyst will make appropriate revisions and return two revised copies to FHWA or the Statewide NEPA Manager for 6004. When the evaluation is approved, one signed copy will be returned to the REM and the approving official will retain one copy.

6.9.3 Current Programmatic Evaluations

There are five Nationwide Programmatic Section 4(f) Evaluations.

1. Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges. This evaluation sets forth the basis for approval that there are no feasible and prudent alternatives to the use of certain historic bridge structures to be replaced or rehabilitated with Federal funds and that the projects include all possible planning to minimize harm resulting from such use. The historic bridges covered by this programmatic Section 4(f) evaluation are unique because they are historic, yet also part of either a Federal-aid highway system or a state or local highway system that performs as an integral part of a modern transportation system. For more detail on this programmatic see <http://www.environment.fhwa.dot.gov/projdev/4fbridge.asp>. Below is a summary of the nationwide programmatic and the approved evaluation form (Figure 6-4) that can be used for historic bridges:
 - a. Applicability. This Programmatic Section 4(f) Evaluation applies to projects that meet the following criteria:
 - the bridge is to be replaced or rehabilitated with Federal funds;
 - the project will require the use of a historic bridge structure which is on or is eligible for listing on the NRHP;
 - the bridge is not a National Historic Landmark;
 - the facts of the project match those set forth in the sections of the Programmatic Section 4(f) Evaluation labeled Alternatives, Findings and Mitigation; and
 - FHWA (for non-assigned projects), DOT&PF (for assigned CE projects), the SHPO and the ACHP have reached agreement through procedures pursuant to Section 106 of the NHPA.
 - b. Alternatives and Findings. The alternatives listed below avoid any use of the historic bridge within the meaning of Section 4(f). In order for the Programmatic Section 4(f) Evaluation to apply, support each of the following findings by the circumstances, studies and consultations on the project. This list of alternatives is all-inclusive. The Programmatic Section 4(f) Evaluation does not apply if a reasonable alternative that is not discussed below is identified. The project record must clearly demonstrate that each of the alternatives have been fully evaluated and verify that all applicability criteria listed above have been met before the FHWA Division Office or DOT&PF Statewide NEPA Manager for 6004 can conclude that the Programmatic Section 4(f) applies to the project.
 - Do Nothing. The do nothing alternative is not feasible and prudent because it ignores the basic transportation need. 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. Normal maintenance is not considered adequate to cope with the situation.
 - Build on New Structure Without Using the Old Bridge. Investigations have been conducted to build a new structure at a different location without affecting the historic integrity of the old bridge, as determined by procedures implementing Section 106 of the NHPA. Demonstrate that the Department has investigated constructing a bridge on a new location or parallel to the old bridge (allowing for a one-way couplet), but this alternative is not feasible and prudent because of one of the following reasons.
 - Terrain - The existing bridge has already been located at the only feasible and prudent site, i.e. a gap in the landform, the narrowest point of the river, etc. To build a new bridge at another site would result in extraordinary bridge and approach engineering and construction difficulty or costs, or extraordinary disruption to established traffic patterns.
 - Adverse Social, Economic or Environmental Effects - Building a new bridge away from the present site would result in social, economic or environmental impact of extraordinary magnitude. Such impacts as extensive severing of productive farmlands, displacement of a significant



State of Alaska
Department of Transportation & Public Facilities

PROGRAMMATIC SECTION 4(f) EVALUATION FORM
For Use of Historic Bridges

Project Name:
Project Number (Federal and State):
Bridge Name & Number (Federal and State):
Date:

This programmatic Section 4(f) form is to be used when a project will "use" a bridge that is on or eligible for listing on the National Register of Historic Places (NRHP) and when the action will impair the historic integrity of the bridge either by rehabilitation or demolition. Rehabilitation that does not impair the historic integrity of the bridge as determined by procedures implementing the National Historic Preservation Act of 1966 is not subject to Section 4(f).

If any of your responses are contained within [brackets], do not continue filling out the form but consult the DOT&PF Statewide NEPA Manager for 6004 (for assigned CE) or the FHWA Environmental Program Manager (for all non-assigned projects) for the appropriate action.

I. Applicability

YES NO

- | | | |
|--|--------------------------|--------------------------|
| 1. The proposed action will replace or rehabilitate a bridge with Federal funds. Include a project description: | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. The project will require the use of a historic bridge structure which is on or is eligible for listing on the NRHP. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. The historic bridge is a National Historic Landmark. | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Will the project impair the historic integrity of the bridge either by demolition or rehabilitation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Describe the Section 4(f) property (i.e., historic bridge) being directly used by any alternative under consideration. | | |
| 6. Describe the Section 4(f) site (include a map/plan set/diagram depicting the boundaries and features of the historic bridge in relation to the proposed replacement or rehabilitation): | | |
| • <u>Type (design) of historic bridge:</u> | | |
| • <u>Ownership:</u> | | |
| • <u>Location:</u> | | |
| • <u>Historic Significance:</u> | | |

Programmatic Section 4(f) Evaluation Form
For Use of Historic Bridges
Project Name:
Project Number:

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Figure 6-4
Programmatic Section 4(f) Evaluation Form for Use of Historic Bridges
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	<u>YES</u>	<u>NO</u>
7. Fully describe the project impacts to the historic bridge. Include a map/diagram depicting the boundaries and features of the historic bridge in relation to the proposed replacement or rehabilitation (it may be possible to include this on the earlier referenced figure).		
8. Has SHPO and ACHP (if appropriate) concurred in writing with the assessment of impacts (i.e., finding of effect) and the proposed mitigation? Attach documentation.	<input type="checkbox"/>	<input type="checkbox"/>
 II. Alternatives and Findings		
Support the following project alternatives with evaluations that clearly discuss potential impacts and demonstrate each finding. Include maps and diagrams.		
1. Discuss the impacts of the No-Build Alternative.		
Demonstrate:		
<ul style="list-style-type: none"> • <u>Maintenance</u>: That the action does not correct the situation that causes the bridge to be considered structurally deficient or deteriorated, and normal maintenance is not considered adequate to cope with the situation; or • <u>Safety</u>: That the action does not correct the situation that causes the bridge to be considered deficient, and the bridge poses serious and unacceptable safety hazards to the traveling public or places intolerable restriction on transport and travel. 		
Discussion:		
Finding: The No-Build Alternative has been evaluated and has been determined for reasons of maintenance and safety not to be feasible and prudent.	<input type="checkbox"/>	<input type="checkbox"/>
2. Discuss building a new structure at a different location without using the historic bridge or affecting the historic integrity of the old bridge.		
Demonstrate:		
<ul style="list-style-type: none"> • <u>Terrain</u>: That the present bridge structure has already been located at the only feasible and prudent site (i.e., a gap in the land form, the narrowest point of the river canyon, etc.), and to build a new bridge at another site will result in extraordinary bridge and approach engineering and construction difficulty or costs, or extraordinary disruption to established traffic patterns; or • <u>Adverse Social, Economic or Environmental Effects</u>: That building a new bridge away from the present site would result in social, economic, or environmental impact of extraordinary magnitude, and such impacts as extensive severing of productive farmlands, displacement of a significant number of families or businesses, serious disruption of established travel patterns, and access and damage to wetlands may individually or 		
Programmatic Section 4(f) Evaluation Form For Use of Historic Bridges Project Name: Project Number:	2	March 2009

Figure 6-4
Programmatic Section 4(f) Evaluation Form for Use of Historic Bridges
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	<u>YES</u>	<u>NO</u>
<p>cumulatively weigh heavily against relocation to a new site; or</p> <ul style="list-style-type: none"> ▪ Engineering and Economy: Where difficulty associated with the new location is less extreme than those encountered above, a new site would not be feasible and prudent where cost and engineering difficulties reach extraordinary magnitude, and factors supporting this conclusion include significantly increased roadway and structure costs, serious foundation problems, or extreme difficulty in reaching the new site with construction equipment; additional design and safety factors to be considered include an ability to achieve minimum design standards or to meet requirements of various permitting agencies such as those involved with navigation, pollution, and the environment; and ▪ Preservation of Old Bridge: That it is not feasible and prudent to preserve the existing bridge, even if a new bridge were to be built at a new location. This could occur when the historic bridge is beyond rehabilitation for transportation or an alternative use, when no responsible party can be located to maintain and preserve the bridge, or when a permitting authority, such as the Coast Guard requires removal or demolition of the old bridge. 		
Discussion:		
Finding: Constructing a bridge on a new location or parallel to the historic bridge has been evaluated and is not considered feasible and prudent.	<input type="checkbox"/>	<input type="checkbox"/>
3. Discuss rehabilitating the historic bridge without affecting the historic integrity of the structure, as determined by the Section 106 procedures implementing the NRHP and fully discuss the resulting impacts.		
Demonstrate:		
<ul style="list-style-type: none"> ▪ That the bridge is so structurally deficient that it cannot be rehabilitated to meet minimum acceptable load requirements without affecting the historic integrity of the bridge; or ▪ That the bridge is seriously deficient geometrically and cannot be widened to meet 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 AASHTO geometric standards should be exercised, as permitted in 23 CFR Part 625, during the analysis of this alternative. 		
Discussion:		
Finding: Rehabilitation without affecting the historic integrity of the bridge has been evaluated and is not considered feasible or prudent.	<input type="checkbox"/>	<input type="checkbox"/>
III. Minimization of Harm	<u>YES</u>	<u>NO</u>
1. Have you identified measures to minimize harm on the Section 4(f) property?	<input type="checkbox"/>	<input type="checkbox"/>

Programmatic Section 4(f) Evaluation Form
For Use of Historic Bridges
Project Name:
Project Number:

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Figure 6-4
Programmatic Section 4(f) Evaluation Form for Use of Historic Bridges
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	<u>YES</u>	<u>NO</u>
<p>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 FHWA (or DOT&PF if the project qualifies as an assigned CE), SHPO, and as appropriate, ACHP:</p> <p>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. <input type="checkbox"/></p> <p>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 (or DOT&PF if the project qualifies as an assigned CE) 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. <input type="checkbox"/></p> <p>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. <input type="checkbox"/></p> <p>For bridges that are adversely affected, written agreement with SHPO and ACHP (as appropriate) 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 Section 4(f) evaluation does not apply to projects where such an agreement cannot be reached. <input type="checkbox"/></p> <p>Discuss minimization measures and attach relevant documentation:</p>		
<p>IV. Coordination</p> <p>1. Has the proposed project been coordinated with SHPO, ACHP, Tribal and other interested parties (including property owners) as called for in 36 CFR Part 800; and has SHPO (and ACHP if appropriate) concurred in writing with the assessment of the impacts on the proposed project on and the proposed measures to minimize harm for the Section 4(f) property? <input type="checkbox"/> <input type="checkbox"/></p> <p>2. Summarize coordination and include documentation of concurrence from SHPO. (The regional environmental manager should prepare a letter with the specific language required for the official's concurrence. A "concurrence line" on the letter is acceptable documentation for compliance.)</p>		
<p>V. Certification and Approval</p> <p>I certify that all applicable coordination and consultations have occurred during the development of this Section 4(f) Evaluation, and that this project meets all criteria and findings required for approval under the FHWA, programmatic Section 4(f) evaluation approval dated July 5, 1983.</p> <p>Certified by: _____ Date: _____</p> <p style="text-align: center;">Regional Environmental Manager</p>		
<hr/> <p>Programmatic Section 4(f) Evaluation Form 4 March 2009</p> <p>For Use of Historic Bridges</p> <p>Project Name: _____</p> <p>Project Number: _____</p>		

Figure 6-4
Programmatic Section 4(f) Evaluation Form for Use of Historic Bridges
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YES NO

Based on the above considerations, there is no feasible and prudent alternative to the use of land from the _____ Bridge and the proposed action includes all possible planning to minimize harm to the _____ Bridge resulting from such use.

It has been determined that the project complies with the July 5, 1983, "Final Nationwide Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges" (1983 Programmatic) and that:

1. This project meets the applicability criteria prescribed.
2. All of the alternatives set forth have been fully evaluated.
3. The findings in this document, which include that there is no feasible and prudent alternative to the use of the historic bridge is clearly applicable to the project.
4. The project complies with the Measures to Minimize Harm section of the 1983 Programmatic, and
5. The coordination called for in the 1983 Programmatic has been successfully completed.
6. For bridge replacement projects, FHWA has coordinated with the U.S. Coast Guard.
7. Documentation in the project file clearly identifies the basis for the above determinations and assurances.

The approving authority has ensured that the measures to minimize harm will be incorporated into the project.

Non-Assigned projects

Approved by: _____ Date: _____
FHWA, Environmental Program Manager

or

Assigned CE project

Approved by: _____ Date: _____
DOT&PF Statewide NEPA Manager for 6004

List of Attachments:

Programmatic Section 4(f) Evaluation Form
For Use of Historic Bridges
Project Name:
Project Number:

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Figure 6-4
Programmatic Section 4(f) Evaluation Form for Use of Historic Bridges
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number of families or businesses, serious disruption of established travel patterns and access and damage to wetlands may individually or cumulatively weigh heavily against relocation to a new site.

- Engineering and Economy – Where difficulty associated with the new location is less extreme than those encountered above, a new site would not be feasible and prudent where cost and engineering difficulties reach extraordinary magnitude. Factors supporting this conclusion include significantly increased roadway and structure costs, serious foundation problems or extreme difficulty in reaching the new site with construction equipment. Additional design and safety factors to be considered include an ability to achieve minimum design standards or to meet requirements of various permitting agencies such as those involved with navigation, pollution and the environment.
- Preservation of Old Bridge - 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. This could occur when the historic bridge is beyond rehabilitation for a transportation or an alternative use, when no responsible party can be located to maintain and preserve the bridge or when a permitting authority, such as the U.S. Coast Guard requires removal or demolition of the old bridge.
- Rehabilitation Without Affecting the Historic Integrity of the Bridge. Studies have been conducted to rehabilitate the historic bridge without affecting the historic integrity of the structure (as determined by Section 106 procedures implementing the NHPA) but for one or more of the following reasons this alternative is not feasible and prudent.
 - The bridge is so structurally deficient that it can not be rehabilitated to meet minimum acceptable load requirements without affecting the historic integrity of the bridge.
 - The bridge is seriously deficient geometrically and can not be widened to meet 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.
- c. Measures to Minimize Harm. This Programmatic Section 4(f) Evaluation and Approval may only be used for projects where the proposed action includes all possible planning to minimize harm. This has occurred when:
 - Historic Integrity Preserved. 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.
 - Documentation. For bridges that are to be rehabilitated to the point where the historic integrity is affected or that are to be moved or demolished, the Department documents fully adequate records of the bridge per the Historic American Engineering Record (HAER).
 - Availability of Bridge for Alternative Use. 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.
 - Harm Minimization. For bridges that are adversely affected, FHWA (for non-assigned CE, EA and EIS projects), DOT&PF, SHPO and ACHP (if participating) reach agreement through the Section 106 process 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 can not be reached.

2. 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. This programmatic evaluation is applicable for projects that improve existing highways and use minor amounts of publicly owned public parks, recreation lands, or wildlife and waterfowl refuges that are adjacent to existing highways. For detailed information refer to the following website www.environment.fhwa.dot.gov/4f/4fmparks.asp. The programmatic is summarized below:

- a. Applicability. This Programmatic Section 4(f) Evaluation applies to projects that meet the following criteria:
 - Operational Characteristics Improvement. The proposed project is designed to improve the operational characteristics, safety and/or physical condition of existing facilities on essentially the same alignment. Project types that address these characteristics include the following:
 - 4R work (resurfacing, restoration, rehabilitation and reconstruction);
 - safety improvements (e.g., shoulder widening, correcting substandard curves and intersections);
 - traffic operation improvements (e.g., signalization, channelization and turning or climbing lanes);
 - bicycle and pedestrian facilities;
 - bridge replacements on essentially the same alignment; and
 - construction of additional lanes.

This Programmatic Section 4(f) Evaluation does not apply to the construction of a highway on a new location.

- Lands are Adjacent to Existing Highway. The Section 4(f) lands are publicly owned public parks, recreation lands or wildlife and waterfowl refuges located adjacent to the existing highway.
- No Impairment to Purpose. 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 or DOT&PF (for assigned CE projects) in concurrence with the official(s) 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 acquired from any Section 4(f) site shall not exceed the values in Table 9-1.

**Table 6-1
Acquisition Limitation Requirements**

Total Size of Section 4(f) Site	—	Maximum to Be Acquired
less than 10 acres	—	10% of site
10-100 acres	—	1 acre
more than 100 acres	—	1% of site

- No Impairment to Use. 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 FHWA or the DOT&PF Statewide NEPA Manager for 6004 (for assigned CE projects) in concurrence with the official(s) 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.
- Written Agreement. The official(s) with jurisdiction over the Section 4(f) lands must agree, in writing, with the assessment of the impacts of the proposed project on and the proposed mitigation for the Section 4(f) lands.

- Coordination. 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 Alaska DNR Grants Administrator 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.
 - Not Applicable for EIS. This programmatic evaluation does not apply to projects where an 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, the Programmatic Section 4(f) Evaluation cannot be used and an Individual Section 4(f) Evaluation must be prepared.
- b. Alternatives and Findings. The alternatives listed below avoid any use of the public park, recreational area or wildlife and waterfowl refuge. This list is intended to be all-inclusive. The Programmatic Section 4(f) Evaluation does not apply if a feasible and prudent alternative is identified that is not discussed in the programmatic evaluation. The project record must clearly demonstrate that the Department fully evaluated each of the listed alternatives before the FHWA Environmental Program Manager or DOT&PF Statewide NEPA Manager for 6004 can conclude that the Programmatic Section 4(f) Evaluation applies to the project.
- Do Nothing Alternative. 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. 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.
 - Improvement Without Using the Adjacent Section 4(f) Lands. It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management techniques (including, but not limited to, minor alignment shifts, changes in geometric design standards, use of retaining walls and/or other structures and traffic diversions or other traffic management measures) because implementing such measures would result in:
 - substantial adverse community impacts to adjacent homes, businesses or other improved properties; or
 - substantially increased roadway or structure costs; or
 - unique engineering, traffic, maintenance or safety problems; or
 - substantial adverse social, economic or environmental impacts; or
 - the project does not meet identified transportation needs; and
 - 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.

- Alternative(s) on a New Location. It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because:
 - the new location would not solve existing transportation, safety or maintenance problems; or
 - the new location would result in substantial adverse social, economic or environmental impacts (including such impact as extensive severing of productive farmlands, displacement of a

substantial number of families or businesses, serious disruption of established patterns, substantial damage to wetlands or other sensitive natural areas or greater impacts to other Section 4(f) lands); or

- the new location would substantially increase costs or engineering difficulties (such as an inability to achieve minimum design standards or to meet the requirements of various permitting agencies such as those involved with navigation, pollution and the environment); and
- 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 of AASHTO geometric standards should be exercised, as permitted in 23 CFR Part 625, during the analysis of this alternative.

c. Measures to Minimize Harm. This Programmatic Section 4(f) Evaluation and Approval may be used only for projects where the FHWA Environmental Program Manager or DOT&PF Statewide NEPA Manager for 6004, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm. This has occurred when the official(s) 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. Mitigation measures shall include one or more of the following:

- replacement of lands used with lands of reasonably equivalent usefulness and location and of at least comparable value;
- replacement of facilities impacted by the project including sidewalks, paths, benches, lights, trees and other facilities;
- restoration and landscaping of disturbed areas;
- incorporation of design features (e.g., reduction in right-of-way width, modifications to the roadway section, retaining walls, curb and gutter sections and minor alignment shifts) and habitat features (e.g., construction of new or enhancement of existing wetlands or other special habitat types) where necessary to reduce or minimize impacts to the Section 4(f) property. Such features should be designed in a manner that will not adversely affect the safety of the highway facility. Flexibility in the application of AASHTO geometric standards should be exercised, as permitted in 23 CFR Part 625, during such design;
- payment of the fair market value of the land and improvements taken or improvements to the remaining Section 4(f) site equal to the fair market value of the land and improvements taken; and
- such additional or alternative mitigation measures may be determined necessary based on consultation with the official(s) having jurisdiction over the parkland, recreation area or wildlife or waterfowl refuge.

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.

3. Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects With Minor Involvements With Historic Sites. This programmatic Section 4(f) evaluation has been prepared for projects which improve existing highways and use minor amounts of land from historic sites that are adjacent to existing highways. The exact programmatic language can be found on the FHWA website www.environment.fhwa.dot.gov/4f/4fmhist.asp which has been summarized below.

- a. Applicability. This Programmatic Section 4(f) Evaluation applies only to projects meeting the following criteria:
- Operational Characteristics Improvement. 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 the following:
 - 4R work (resurfacing, restoration, rehabilitation and reconstruction);
 - safety improvements (e.g., shoulder widening, correcting substandard curves and intersections);
 - traffic operation improvements (e.g., signalization, channelization and turning or climbing lanes);
 - bicycle and pedestrian facilities;
 - bridge replacements on essentially the same alignment; and
 - construction of additional lanes.

The Programmatic Section 4(f) Evaluation does not apply to the construction of a highway on a new location.

- Lands are Adjacent to Existing Highway. The historic site involved is located adjacent to the existing highway.
- No Removal or Alteration of Historic Features. The project does not require the removal or alteration of historic buildings, structures or objects on the historic site.
- No Disturbance or Removal of Archaeological Resources. 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. FHWA or the DOT&PF Statewide NEPA Manager for 6004 (for assigned CE projects only) will make the determination of the importance to preserve in place based on consultation with the SHPO and if appropriate, the ACHP.
- Minor Impact. 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 that qualified the site for listing or eligibility for listing on the NRHP. The ACHP must not object to the determination of “no adverse effect.”
- SHPO Agreement Required. The SHPO must agree, in writing, with the assessment of the impacts of the proposed project on the historic site(s) and the proposed mitigation for the historic site(s).
- Not Applicable for EIS. The Programmatic Section 4(f) Evaluation does not apply to projects for which an 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, the Programmatic Section 4(f) Evaluation cannot be used and an Individual Section 4(f) Evaluation must be prepared.

- b. 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 can be used as guidance in the evaluation of the Programmatic Section 4(f) for minor involvement with historic sites.
- c. Measures to Minimize Harm. This Programmatic Section 4(f) Evaluation may only be used for projects where the FHWA Division Office (for non-assigned projects) or DOT&PF Statewide NEPA Manager for 6004 (for assigned CE projects), ensures that the proposed action includes all possible planning to minimize harm. Measures to minimize harm consist of those measures necessary to preserve the historic integrity of the site and are agreed to, in accordance with 36 CFR Part 800. For historic sites encumbered with federal interests, coordinate with the agency responsible for the encumbrance.

4. Programmatic Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects. In 1977 due to the growing interest in bicycling and walking for commuting, for recreation and for other trip purposes FHWA signed this programmatic. The exact programmatic is found at www.environment.fhwa.dot.gov/4f/4fmbikeways.asp and is summarized below.

a. Applicability Criteria. This Programmatic Section 4(f) Evaluation applies to projects that meet the following criteria:

- Independent Construction Project. The bikeway or walkway construction project is an independent construction project (in contrast to a project whose primary purpose is to serve motorized vehicles) that requires the use of recreation and park areas established and maintained primarily for active recreation, open space and similar purposes.
- Approval by Official(s) Having Jurisdiction. 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.
- Critical Habitat Not Used. 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.
- No Unusual Circumstances. There are no unusual circumstances such as major impacts, adverse effects or controversy.
- Not Incidental Construction Item. The bicycle or pedestrian facilities are not incidental items of construction in conjunction with highway improvements whose primary purpose is serving vehicular traffic.

b. Alternatives and Findings. The bikeways and walkways will be designed and constructed in a manner suitable to the site conditions and the anticipated extent of usage. In general, a bikeway will be designed with an alignment and profile suitable for bicycle use with a surface that will be reasonably durable, that incorporates drainage as necessary and that is of a width appropriate for the planned one-way or two-way use.

The facilities will be accessible to the users or will form a segment located and designed pursuant to an overall plan.

Projects may include the acquisition of land outside the right-of-way, provided the facility will accommodate traffic, which would have normally used a Federal-aid highway route, disregarding any legal prohibitions on the use of the route by cyclists or pedestrians.

It is required that a public agency be responsible for maintenance of the federally funded bikeway or walkway. No motorized vehicles will be permitted on the facilities except those for maintenance purposes and snowmobiles or all-terrain vehicles where state or local regulations permit.

Noise and air quality will not be affected by bicycles. There would be an increase in the noise level if snowmobiles were permitted. However, this would likely occur at a time when other uses of the recreational facilities will be minimal.

Temporary impacts on water quality will be minimal. Erosion control measures will be used through the construction period. A certain amount of land will be removed from other uses. The type of land and uses will vary from project to project. However, due to the narrow cross section of the bikeways and walkways, a minimal amount of land will be required for the individual projects. The projects will be blended into the existing terrain to reduce any visual impacts.

Displacement of families and businesses will not be required.

No significant adverse social or economic impacts are anticipated. There will be beneficial impacts such as the enhancement of the recreational potential of the parks and the provision of an alternate mode of transportation for the commuter.

- c. Measures to Minimize Harm. The written approval of the official(s) having jurisdiction over the Section 4(f) property will confirm that (1) there is no feasible and prudent alternative to the use of Section 4(f) lands and (2) all possible planning to minimize harm has been accomplished in the location and design of the bikeway or walkway facility.
5. Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property. The newest programmatic, this programmatic has been prepared for certain federally assisted transportation improvements projects on existing or new alignments that will use property of a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property, which in the view of the official(s) with jurisdiction over the Section 4(f) property and the approving agency will result in a net benefit to the Section 4(f) property. For detailed information see the website www.environment.fhwa.dot.gov/4f/4fnetbenefits.asp. For a summarization of the programmatic read the following.
- a. Applicability Criteria. This Nationwide Programmatic Section 4(f) Evaluation applies to federally assisted transportation projects on existing or new alignments that will use property of a Section 4(f) park, recreation area, wildlife or waterfowl refuge or historic property, where such use will result in a net benefit to the Section 4(f) property.

A net benefit is achieved when the transportation use, the measures to minimize harm and the mitigation incorporated into the project results in an overall enhancement of the Section 4(f) property when compared to both the future do-nothing or avoidance alternatives and the present condition of the Section 4(f) property considering the activities, features and attributes that qualify the property for Section 4(f) protection. A project does not achieve a net benefit if it will result in a substantial diminishment of the function or value that made the property eligible for Section 4(f) protection.

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

- Section 4(f) Land Used. The proposed transportation project uses a Section 4(f) park, recreation area, wildlife or waterfowl refuge or historic site.
- Measures to Minimize Harm. The proposed project includes all appropriate measures to minimize harm and subsequent mitigation necessary to preserve and enhance those features and values of the property that originally qualified the property for Section 4(f) protection.
- No Effect on NRHP Eligibility. For historic properties, the project does not require the major alteration of the characteristics that qualify the property for the NRHP such that the property would no longer retain sufficient integrity to be considered eligible for listing. For archeological properties, the project does not require the disturbance or removal of the archaeological resources that have been determined important for preservation in-place rather than for the information that can be obtained through data recovery. The determination of a major alteration or the importance to preserve in-place will be based on consultation consistent with 36 CFR Part 800.
- SHPO Agreement. For historic properties (consistent with 36 CFR Part 800), there must be agreement reached among SHPO, FHWA and the applicant on measures to minimize harm when there is a use of Section 4(f) property. Such measures must be incorporated into the project.
- Written Agreement of Official(s) with Jurisdiction. The official(s) with jurisdiction over the Section 4(f) property agrees in writing with the assessment of the impacts; the proposed measures to minimize harm; and the mitigation necessary to preserve, rehabilitate and enhance those features and values of

the Section 4(f) property; and that such measures will result in a net benefit to the Section 4(f) property.

- Determination of Project Conformance. The FHWA Environmental Program Manager (non-assigned projects) or the DOT&PF Statewide NEPA Manager for 6004 (assigned CE projects) determines that the project facts match those set forth in the Applicability, Alternatives, Findings, Mitigation and Measures to Minimize Harm, Coordination and Public Involvement sections of this programmatic evaluation.

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

- b. Alternatives and Findings. The alternatives and findings guidance provided for the programmatic Section 4(f) concerning minor involvement with public parks, recreation areas and wildlife and waterfowl refuges can be used as guidance in the evaluation of the programmatic Section 4(f) for projects that have a net benefit to a Section 4(f) property.
- c. Measures to Minimize Harm. This programmatic evaluation and approval may only be used for projects where the FHWA Division Office or DOT&PF Statewide NEPA Manager for 6004, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm, includes appropriate mitigation measures and that the official(s) with jurisdiction agree in writing.

6.10. Individual Section 4(f) Evaluation

An Individual Section 4(f) Evaluation must be prepared (to include a Draft and Final Section 4(f) Evaluation) when the use of the Section 4(f) resource does not meet the *de minimis* or Programmatic Section 4(f) Evaluation criteria. FHWA may also determine that an Individual Section 4(f) Evaluation is required if multiple Section 4(f) properties are being evaluated and one or more properties do not meet the criteria of a programmatic evaluation. When possible (i.e., unless discovered after environmental document approval or you are preparing a CE), the Draft Section 4(f) Evaluation should be processed with the EA or DEIS. The Final Section 4(f) Evaluation should be included with the Revised EA/FONSI or the FEIS. An Individual Section 4(f) Evaluation excludes a project from 6004 assignment.

The FHWA Alaska Division Administrator or the FHWA Environmental Program Manager approves all Individual Section 4(f) Evaluations. Normally, this approval is concurrent with the approval of the environmental document for EA and EIS documents. For CE projects, the Individual Section 4(f) Evaluation is circulated separately and prior to approval of the CE.

Numerous legal Section 4(f) decisions have resulted in a USDOT policy that conclusions of no feasible and prudent alternatives and of measures to minimize harm must be well documented and supported. The U.S. Supreme Court, in the Overton Park case (*Citizens to Preserve Overton Park v. Volpe*, 401 US 402 (1971)), ruled that determinations on no feasible and prudent alternatives 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.

An Individual Section 4(f) Evaluation must be prepared before the use of Section 4(f) land can be approved (23 CFR 774.3 and 774.7). The evaluation may be submitted as a chapter or appendix in the environmental document, or as a separate document:

1. Separate Chapter or Appendix. For projects processed with an EIS or an EA/FONSI, the Individual Section 4(f) Evaluation must be included as a separate chapter or appendix of the larger document.
2. Separate Document. For projects processed as a CE or if a Section 4(f) resource is discovered after NEPA approval, the evaluation must be prepared as a separate document.

The evaluation should summarize and reference pertinent information from various sections of the EIS or EA/FONSI to reduce repetition. DOT&PF in cooperation with FHWA will develop the evaluations of alternatives to avoid the use of Section 4(f) land and of possible measures to minimize harm to such lands.

With the exception of CE projects or when a Section 4(f) resource is discovered after the original NEPA document is approved, the Draft Section 4(f) Evaluation is circulated for review with the EA or DEIS.

The Draft Section 4(f) Evaluation must be provided to the official(s) with jurisdiction over the Section 4(f) property and DOI (and USDA and HUD as appropriate) for review and comment. USDA has the opportunity to comment when the project uses land from the National Forest System. Coordination with HUD should occur when a project uses land for which or on which HUD funding has been used, except for funding under the Neighborhood Facilities Program or the Open Space Program. There is a minimum of 45 days for receipt of comments. If comments are not received within 15 days after the comment deadline, FHWA may assume a lack of objection and proceed with the action [23 CFR 774.5(a)].

6.10.1 Draft Section 4(f) Evaluation

The following describes the format and content of the Draft Section 4(f) Evaluation:

1. **Content and Format.** Include the following information in the Section 4(f) Evaluation, as applicable.
 - a. **Proposed Action.** When a separate Draft Section 4(f) Evaluation Document is prepared, describe the proposed project and explain the purpose and need for the project. When the Draft Section 4(f) Evaluation is in the EA or DEIS, reference the appropriate section of the NEPA document and briefly summarize the proposed action and purpose and need for the project in the Draft 4(f) Evaluation.
 - b. **Section 4(f) Property.** Describe each Section 4(f) resource that would be used by any alternative under consideration. Provide the following information:
 - **Map or Drawing.** Provide a detailed map or drawing of sufficient scale to identify the relationship of the alternatives to the Section 4(f) property.
 - **Size and Location.** Provide the size (acres or square feet) and location (e.g., maps or other exhibits such as photographs, sketches) of the affected Section 4(f) property.
 - **Ownership.** Indicate the owner (e.g., city, village, borough, historic society) and type of Section 4(f) property (e.g., park, recreation, historic).
 - **Function.** Describe the function or available activities on the property (e.g., baseball, swimming, golf).
 - **Description and Location.** Provide a description of the location of all existing and planned facilities (e.g., baseball diamonds, tennis courts).
 - **Access and Usage.** Describe the access (pedestrian, vehicular) and usage (e.g., approximate number of users, visitors) of the resource.
 - **Relationship.** Describe the relationship of the resource to similarly used lands in the vicinity.
 - **Applicable Clauses.** Indicate any applicable clauses affecting the ownership (e.g., lease, easement, covenants, restrictions, conditions, including forfeiture).
 - **Unusual Characteristics.** Describe any unusual characteristics of the Section 4(f) property (e.g., flooding problems, terrain conditions or other features) that either reduce or enhance the value of all or part of the property.
 - c. **Impacts on the Section 4(f) Property.** 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). Where an alternative uses land from more than one Section 4(f) property, consider including a summary

table as a useful tool for comparing the various impacts of the alternatives. Quantify any impacts that can be quantified (e.g., facilities and functions affected, noise levels). Describe other impacts (e.g., visual intrusion) that cannot be quantified.

Avoidance Alternatives. Identify and evaluate location and design alternatives on either side of the property. Do not repeat detailed discussions of alternatives from a DEIS or EA in the Section 4(f) portion of the document. Reference and summarize this information instead. The Section 4(f) analysis may require more detailed analysis of alternatives that have been eliminated from detailed study in the environmental document, in order to determine if the alternatives may be prudent and feasible avoidance alternatives. The analysis in the Draft 4(f) Evaluation should only provide the reader with the resulting impacts associated with avoidance alternatives and should not reach a “prudent and feasible” conclusion for any alternative.

If the analysis indicates that there may be no feasible and prudent avoidance alternative that would avoid Section 4(f) properties then a least overall harm analysis must be developed. See 23 CFR 774.3(c)(1) and the FHWA Section 4(f) Policy Paper for more discussion. The least overall harm is determined by balancing the following factors:

- the ability to mitigate adverse impacts to each Section 4(f) property (including any measures that result in benefits to the property);
 - the relative severity of the remaining harm, after mitigation, to the protected activities, attributes or features that qualify each Section 4(f) property for protection;
 - the relative significance of each Section 4(f) property;
 - the views of the official(s) with jurisdiction over each Section 4(f) property;
 - the degree to which each alternative meets the purpose and need for the project;
 - after reasonable mitigation, the magnitude of any adverse impacts to resources not protected by Section 4(f); and
 - substantial differences in costs among the alternatives.
- d. Measures to Minimize Harm. Discuss all possible measures available to minimize the impacts of the proposed action on the Section 4(f) property. Reference and summarize detailed discussions of mitigation measures from the DEIS or EA, rather than repeating them in the Section 4(f) evaluation.
- e. Coordination. Discuss the results of preliminary coordination with the official(s) 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 official(s) having jurisdiction should include, where necessary, a discussion of significance and primary use of property. Such discussion should include coordination efforts resulting from any concurrent requirements such as Section 106 of the NHPA and Section 6(f) of the *Land and Water Conservation Fund Act*.
2. Processing. Forward six copies of the Draft Section 4(f) Evaluation to the FHWA Division Office for review and approval. If the Section 4(f) evaluation is included in a DEIS, the DOI Headquarters does not need additional copies of the DEIS/Section 4(f) Evaluation. If the Draft Section 4(f) Evaluation is processed separately or as part of an EA, submit 16 copies of the Draft Section 4(f) Evaluation to the DOI for coordination. If the Draft Section 4(f) Evaluation is available on the Internet, provide the URL, along with one paper copy to DOI in lieu of submitting 16 paper copies. If the Draft Section 4(f) Evaluation is available on CD-ROM, provide 15 copies of the CD-ROM, along with one paper copy to DOI in lieu of submitting 16 paper copies.

In addition to coordination with DOI, coordinate Draft Section 4(f) Evaluations with the official(s) with jurisdiction over the Section 4(f) property, HUD and USDA, where these agencies have an interest in or jurisdiction over the affected Section 4(f) resource (23 CFR 774.5). The point of coordination for HUD is the appropriate Regional Office and for USDA, the Forest Supervisor of the affected National Forest. Provide one copy to the officials with jurisdiction and submit two copies to HUD and USDA when coordination is required.

FHWA will send one copy to their legal department for a formal legal review before the FHWA Division Administrator or FHWA Environmental Program Manager signs the draft document. Upon signing, FHWA will return one copy to the REM. The DOT&PF will reproduce the document and circulate the Draft Section 4(f) Evaluation to the appropriate agencies. After a 45-day comment period, the DOT&PF will prepare the Final Section 4(f) Evaluation.

6.10.2 Final Section 4(f) Evaluation

All Final Section 4(f) Evaluations require a legal sufficiency review by FHWA attorneys before they can be approved. The REM should work closely with the FHWA Environmental Program Manager, as appropriate, to ensure enough time is provided in the project schedule for the legal sufficiency review. The following provides a brief discussion on the format and content of the Final Section 4(f) Evaluation:

1. **Content and Format.** The Final Section 4(f) Evaluation must contain all of the same information as the Draft Section 4(f) Evaluation in addition to the following:
 - a. **Alternatives Discussion.** Provide a discussion on the basis for concluding that there are no prudent and feasible alternatives to the use of the Section 4(f) land.
 - b. **Minimization of Harm Discussion.** Provide a discussion on the basis for concluding that the proposed action includes all possible planning to minimize harm to the Section 4(f) property.
 - c. **Coordination Summary.** Provide a summary of the formal coordination with DOI and appropriate Interior agencies, USDA and HUD.
 - d. **Coordination Comments.** Provide copies of formal coordination comments, a copy of all relevant comments received on the draft evaluation and an analysis of the comments and responses to comments.
 - e. **National Park Service/ADNR Position.** Provide the position of the National Park Service and ADNR on the land conversion when Section 6(f) lands are involved.
 - f. **Concluding Statement.** Provide a concluding statement that reads: “Based upon the analysis contained in this Final Section 4(f) Evaluation, there is no feasible and prudent alternative to the use of land from the (identify the Section 4(f) property) and the proposed action includes all possible planning to minimize harm to the (Section 4(f) property) resulting from the use.”
2. **Processing.** After completion of the circulation period and the public hearing, submit six copies of the approved Final Section 4(f) Evaluation to the FHWA Division Office. If the Final Individual Section 4(f) Evaluation is included in a FEIS, the Office of the Secretary of the DOI does not need additional copies of the FEIS/Final Section 4(f) Evaluation. If the Final Section 4(f) Evaluation is processed separately or as part of an EA, submit eight copies of the Final Section 4(f) for information.

In addition to circulating to DOI, if the Final Section 4(f) Evaluation is not circulated to the official(s) with jurisdiction over the Section 4(f) property as part of an environmental document it should be circulated to them now. It should also be circulated to HUD and USDA either as part of the NEPA document or individually where these agencies have an interest in or jurisdiction over the affected Section 4(f) resource (23 CFR 774.5). The point of contact for HUD is the appropriate Regional Office and for USDA the Forest Supervisor of the affected National Forest. Provide one copy to the official(s) with jurisdiction and submit two copies to HUD and USDA when coordination is required. The FHWA will forward the Final Section 4(f) document to the FHWA Chief Counsel’s office for a legal sufficiency review.

For actions processed with EISs, the FHWA will make the Section 4(f) approval either in its approval of the FEIS or in the ROD. Where the Section 4(f) approval is documented in the FEIS, 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 that will be processed with a FONSI shall not proceed until notified by the FHWA of Section 4(f) approval. For these actions, any required Section 4(f) approval is documented separately. After the approval, the Division Office will return one signed copy to the REM. The REM will distribute copies to the agencies that received the draft.

If the FHWA determines under 23 CFR 774.9 or otherwise, that Section 4(f) is applicable after they have processed the CE, FONSI or ROD, the decision to prepare and circulate a Section 4(f) Evaluation will not necessarily require the preparation of a new or supplemental environmental document. When a separately circulated Section 4(f) Evaluation is prepared, such evaluations do not necessarily:

- prevent the granting of new approvals,
- require the withdrawal of previous approvals, and
- require the suspension of project activities for any activity not affected by the Section 4(f) evaluation.

6.10.3 Other Agency Requirements

There are often requirements of other Federal agencies when Section 4(f) lands are involved in highway projects. Examples include the following:

- 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 US 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*.

In the mitigation plan developed for the project, include measures that would satisfy the requirements for these determinations and for Section 4(f) approval. When Federal lands 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.

6.11. Section 6(f) of the Land and Water Conservation Fund Act

State agencies 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, when DOT&PF proposes conversions of Section 6(f) land 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 used 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). In the Section 4(f) Evaluation or *de minimis* impact finding reflect the coordination and agreements entered into as part of completing Section 6(f) responsibilities. The Alaska DNR Division of Parks and Outdoor Recreation Grants Administrator conducts the Section 6(f) coordination with NPS and state agencies as appropriate.

6.11.1 Section 6(f) for Federal-Aid Transportation Improvements

As a part of the Section 4(f) Evaluation or *de minimis* impact finding, the DOT&PF 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 DOT&PF, in cooperation with the local government landowner, 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 DOT&PF and the local government must develop a written plan as part of the Section 4(f) mitigation, demonstrating 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 ADNR Grants Administrator will occur during the processing of the Section 4(f) Evaluation or *De Minimis* Impact Finding.

The Environmental Impact Analyst will discuss the Section 6(f) property and the replacement plan in the Section 4(f) Evaluation or *De Minimis* Impact Finding and incorporate the Section 6(f) Land Replacement Plan into the appendix of the Section 4(f) Evaluation or finding.

For Programmatic Section 4(f) Evaluations, the Section 6(f) issue is to be resolved before the Programmatic Section 4(f) Evaluation is approved. The REM or designee, would work with the Alaska DNR Grants Administrator to obtain concurrence in the Section 6(f) Land Replacement Plan and document the results of this coordination effort in the Appendix of the Programmatic Section 4(f) Evaluation.

For Individual Section 4(f) Evaluations send the approved Draft Section 4(f) Evaluation to DOI and the Alaska DNR Grants Administrator. The Alaska DNR Grants Administrator will coordinate the review and comment or concur on the Section 6(f) issue as a normal part of the Section 4(f) process. The Environmental Impact Analyst will resolve any Section 6(f) comments received on the Draft Section 4(f) Evaluation with the Alaska DNR 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. The Final Section 4(f) Evaluation must document agreement among all parties before FHWA can approve the evaluation. Send copies of the approved Final Section 4(f) Evaluation to DOI, ADNR and the local government entity for their use during the right-of-way acquisition phase.

6.11.2 Section 6(f) Land Conversion

The conversion of the Section 6(f) land to transportation right-of-way and the acquisition of the replacement land occur during the right-of-way acquisition phase. In subsequent re-evaluations of the Mitigation Status and Commitment Compliance Sections, include the discussions on the implementation of the Section 6(f) Land Replacement Plan. Coordinate with ADNR to ensure their cooperation in the land conversion transaction.

The ADNR will not permit the conversion of Section 6(f) land to occur until DOT&PF has fully acquired the replacement property and it 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 DOT&PF has purchased the replacement land and integrated it into the recreational facility involved. Because the functional replacement must occur before the conversion of the Section 6(f) property, it is imperative that you coordinate with the Right-of-Way Chief 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 before opening the project's right-of-way phase or it may require a use of State funds for the mitigation. It is important to maintain close coordination with the Right-of-Way Chief. Failure to implement the agreed upon Land Replacement Plan will cause delays in subsequent project construction.

6.12. References

1. Federal Highway Administration, March 1, 2005, "Section 4(f) Policy Paper."

2. Federal Highway Administration, Questions and Answers on the Application of the Section 4(f) *De Minimis* Impact Criteria, <http://www.fhwa.dot.gov/hep/qasdemimus.htm>.
3. *Federal Register*, April 20, 2005, FR Vol. 70, No. 75, 20618-20630, "Final Nationwide Programmatic Section 4(f) Evaluation and Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property."
4. Federal Highway Administration, "Nationwide Section 4(f) Programmatic Evaluations," <http://www.environment.fhwa.dot.gov/4f/asp>.
5. 23 CFR 774, *Parks, Recreation Areas, Wildlife and Waterfowl Refuges and Historic Sites*.
6. US 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*.
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