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457.01 Section 4(f) Requirements

Section 4(f) of the Department of Transportation Act of 1966 declares a national policy to “preserve the natural beauty of the countryside, public park and recreation land, wildlife and waterfowl refuges, and historic sites.” It is one of the most stringent and complex environmental laws related to transportation. As a result, Section 4(f) is also one of the most frequently litigated environmental statutes and the most common cause of court injunctions delaying projects (FHWA [Success in Stewardship](#) Newsletter, March 2008).

Fixing Americans Surface Transportation Act (FAST Act) was passed in 2015. Section 1301 of the FAST Act (23 U.S.C. 138(c) and 49 U.S. C. 3030(e)) creates an optional alternative process for compliance with Section 4(f). The optional process requires additional concurrence points with other Federal agencies and does not appear to provide a streamlining benefit. Therefore, WSDOT will continue to follow current standard practices for Section 4(f) compliance.

See the [FHWA Section 4\(f\)](#) webpage and WSDOT [Section 4\(f\)](#) webpage for guidance.

Section 4(f) is a federal requirement and must be considered in any NEPA document involving a USDOT agency (FHWA, FTA, FRA, and FAA). This work may be:

- Included in the NEPA document, and supported by appropriate documentation.
- Evaluated separately and documented in an Individual Section 4(f) Evaluation.

FHWA and other USDOT agencies may not approve a transportation program or project that uses such properties unless:

- The use will have no more than *de minimis* impact.
- There is no feasible and prudent alternative and all possible planning has been done to minimize harm.

To secure federal approval and funding for transportation projects that use Section 4(f) properties, WSDOT must demonstrate that:

- There are unique problems or unusual factors that prohibit use of alternatives that avoid these properties.
- The cost of alternatives that avoid these properties is extraordinary.
- The social, economic, and environmental impacts or community disruption resulting from an alternative that avoids Section 4(f) properties reach an extraordinary magnitude.

The law also protects Section 4(f) properties from proximity impacts that substantially diminish the use or value of the resource. Substantial proximity impacts are considered to be a “Constructive Use” even though the project does not actually intrude into the protected area. FHWA requires a Section 4(f) Evaluation be completed for proximity impacts. Such impacts may include:

- Noise
- Vibrations
- Aesthetics
- Access

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457.02 Identifying a Section 4(f) Property

Section 4(f) applies to significant publicly owned parks and recreation areas, wildlife and waterfowl refuges, and historic sites of significance. Parks and recreation areas must be open to the public to qualify, but wildlife and waterfowl refuges may restrict access to preserve quality habitat. Privately owned recreational properties may qualify for consideration under Section 4(f) if a government agency has a permanent interest in the land (such as an easement).

Publicly owned parks, recreation areas and wildlife and waterfowl refuges are assumed to be significant unless the public Official with Jurisdiction concludes that the entire site is not significant. FHWA must conduct an independent evaluation of the property and concur with the Official's decision.

Historic sites of national, state, or local significance qualify as Section 4(f) properties regardless of ownership or public access. Historic sites must be on or eligible for inclusion on the National Register of Historic Places to be protected.

457.03 Section 4(f) Compliance

WSDOT policy requires Section 4(f) consideration in any NEPA document. However, not all NEPA actions require a full Section 4(f) evaluation. If the proposed project will not use Section 4(f) property, the NEPA document needs to document the research and explain that Section 4(f) does not apply. Right size your document to fit your project. Four approaches are typically used:

- Exceptions listed in [23 CFR 774.13](#) such as temporary occupancy.
- A determination is made that the project has *de minimis* impacts and Officials with Jurisdiction concur in writing.
- A programmatic Section 4(f) Evaluation.
- An individual Section 4(f) Evaluation.

Step by step guidance for how to complete this process is provided on the [WSDOT Section 4\(f\) Guidance](#) webpage.

457.03(1) Section 4(f) Exceptions

[23 CFR 774.13](#) lists seven exceptions to the requirements for Section 4(f) approval. The most common exceptions that WSDOTs uses are (a) for historic bridges and (b) temporary occupancy.

457.03(2) **De Minimis Section 4(f) Evaluations**

In 2005, Section 6009(a) of the SAFETEA-LU Act allowed FHWA to streamline the Section 4(f) evaluation process for projects that have *de minimis* impacts. *De minimis* impacts are defined as impacts that will not adversely affect the features, attributes or activities that qualify the parks, recreation areas, or refuges for protection.

Measures to avoid, minimize, or mitigate impacts or enhance the resource should be considered before the *de minimis* determination is made. FHWA makes the *de minimis* determination based on a review of the project documentation. Detail the work that was done to reach the *de minimis* determination in the NEPA document. Written concurrence from the Officials with Jurisdiction must be included in the document.

The public must be informed of the *de minimis* determination and given an opportunity to comment on the decision. This may be done as part of the NEPA public notice process for an EA or EIS. If your project is a CE, it can be accomplished in a newsletter, city council meeting, or project open house. Standard language must be included in the notice.

457.03(3) **Programmatic Section 4(f) Evaluations**

FHWA developed five Programmatic Section 4(f) Evaluations that can be used to streamline the evaluation process. Using a programmatic saves time by eliminating circulation of the draft, legal sufficiency review, and coordination with other federal agencies (DOI, USDA, and HUD). Coordination with the Official with Jurisdiction is still required. FHWA provides more detailed explanation of each of the [Nationwide Section 4\(f\) Programmatic Evaluation](#) categories on their webpage. If the project impacts a Section 4(f) property and it does not qualify for a programmatic evaluation, exception, or *de minimis*, then an individual Section 4(f) Evaluation must be completed.

The description and criteria for the five Programmatic Section 4(f) Evaluations are:

1. **Independent Walkway and Bikeways** – Only applies to independent bikeway or walkway projects that impact recreation and park areas for active recreation and open space. The Official with Jurisdiction over the Section 4(f) property must give his/her approval in writing that the project is acceptable and consistent with the designated use and that all possible planning to minimize harm has been done.

This programmatic cannot be used if the project would require the use of:

- Critical habitat of endangered species.
- Land from a publicly owned wildlife or waterfowl refuge.
- Land from a historical site of local, state or national significance.
- Unusual circumstances such as major impacts, adverse effects or controversy.

2. **Historic Bridges** – Applies to bridges to be replaced or rehabilitated with federal funds. The bridge must be on, or eligible for, the National Register of Historic Places (NRHP). The FHWA Division Administrator concurs with the facts presented in the alternatives, findings and mitigation.

The FAST Act exempts common post 1945 bridges from Section 4(f) to align with requirement of Section 106 of the National Historic Preservation Act (Sec 1303, 23 USC 138(e)).

3. **Minor Involvement with Historic Sites** – Applies when the project improves the operational characteristics, safety, and/or physical condition of the highway on the existing alignment. The historic site must be located adjacent to the existing highway to qualify for the programmatic. Such projects include:
 - “4 R” work (resurfacing, restoration, rehabilitation and reconstruction).
 - Safety improvements (shoulder widening and correction of substandard curves or intersections).
 - Traffic operation improvements (signalization, channelization, turning and climbing lanes).
 - Bicycle and pedestrian facilities as part of a larger project.
 - Bridge replacements on the same alignment.
 - Construction of additional lanes.

This programmatic **cannot** be used:

- For a project including removal or alteration of historic buildings, structures, or objects on the historic site.
- For a project requiring an EIS, unless the Section 4(f) impact is discovered after approval of the EIS.
- For a project that requires disturbance or removal of archaeological resources that are important to preserve in place. The State Historic Preservation Office (SHPO) and/or the Advisory Council on Historic Preservation (ACHP) must concur in the determination.
- The impacts on the historic attributes of the property must be minor. Minor is narrowly defined as “no effect” or “no adverse effect” under Section 106 of the National Historic Preservation Act and [36 CFR 800](#). The ACHP must concur with the “no effect” determination.

The SHPO must agree, in writing, with the impact assessment and the proposed mitigation.

4. **Minor Involvement with Parks, Recreation Areas, and Waterfowl and Wildlife Refuges –** Applies when the project improves the operational characteristics, safety, and/or physical condition of the highway on the existing alignment. The public park, recreation lands, or wildlife and waterfowl refuge must be located adjacent to the state highway. Such projects include:

- “4 R” work (resurfacing, restoration, rehabilitation, and reconstruction).
- Safety improvements (shoulder widening and correction of substandard curves or intersections).
- Traffic operation improvements (signalization, channelization, turning an climbing lanes).
- Bicycle and pedestrian facilities as part of a larger project.
- Bridge replacements on the same alignment.
- Construction of additional lanes.

The total amount of land to be acquired from any site shall not exceed:

Total Size of Section 4(f) Site	Maximum to be Acquired
< 10 acres	10 percent of site
10–100 acres	1 acre
>100 acres	1 percent of site

This programmatic **cannot** be used:

- For construction of a highway in a new location.
- For a project that requires an EIS.
- For projects that impair the intended use of the remaining Section 4(f) land. The determination includes proximity impacts and is made by FHWA in concurrence with the Officials with Jurisdiction over the Section 4(f) property.

Impairment shall be documented. Show the size, use, and nature of the impairment.

Document noise, air and water pollution, wildlife and habitat effect, aesthetic values, and other impacts deemed relevant.

Coordinate with the appropriate Federal Agency if the Section 4(f) property is encumbered by a Federal Interest. Ascertain the agency’s position on the land conversion or transfer. The programmatic does not apply if the agency objects. Federal Interest includes:

- Purchase or improvement with federal funds through the Land and Water Conservation Funds Act, Federal Aid in Fish Restoration Act (Dingle-Johnson Act), the Federal Aid in Wildlife Act (Pittman-Robertson Act).
- Former designation as federal surplus property.

The Officials with Jurisdiction over the Section 4(f) lands must agree, in writing, with the impact assessment and the proposed mitigation.

5. **Transportation Projects That Have a Net Benefit to a Section 4(f) Property** – Applies to federally assisted transportation improvement projects on existing or new alignments. The Administration and Officials with Jurisdiction will make the determination.

457.03(4) Individual Section 4(f) Evaluations

An individual Section 4(f) evaluation (1) identifies and evaluates avoidance alternatives and (2) identifies and evaluates measures to minimize harm to the Section 4(f) property. An avoidance alternative must avoid using any Section 4(f) property. An alternative that avoids one Section 4(f) property but uses a different Section 4(f) property instead, is not an avoidance alternative. If the Section 4(f) evaluation concludes that there is no avoidance alternative that is feasible and prudent, and more than one reasonable alternative uses a Section 4(f) property, then the project sponsor must evaluate which alternative would cause the least overall harm to the Section 4(f) property.

An individual Section 4(f) evaluation is processed in two phases – a draft and a final – both of which must be submitted to the FHWA Division Office or Federal Lands Division Office for review and approval. The Section 4(f) evaluation is subject to a legal sufficiency review by FHWA's Office of Chief Counsel. The review is intended to ensure that Section 4(f) requirements have been met.

A Section 4(f) individual evaluation can be submitted as part of an EA or EIS or documented as a separate document. For projects eligible as a CE, the Section 4(f) evaluation should be a separate document.

457.04 Cultural Resources May Be Protected Under Section 4(f)

A property containing significant cultural resources is considered a Section 4(f) property. Section 106 of the National Historic Preservation Act defines the process for determining the significance of a cultural resource. Therefore, completion of a Section 106 evaluation is an integral part of the Section 4(f) evaluation. Both laws mandate consideration of cultural resources, but here are some key differences you should be aware of:

- Section 4(f) requires a special effort be made to avoid the use of cultural resources by documenting that all possible planning was used to minimize harm. Section 106 requires consideration of the project effects on cultural resources.
- Section 4(f) applies only to USDOT agencies. Section 106 applies to any federal agency.
- Section 4(f) applies to actual use or occupancy of the site. Section 106 involves assessment of adverse effect on the property. A direct correlation cannot be made between “use” and “effect.”
- The Section 106 process is integral to the Section 4(f) process when cultural resources are involved. The Section 4(f) process is not integral to the Section 106 process.
- The Section 4(f) process applies a more stringent analysis with respect to totally avoiding cultural resources than the Section 106 process.
- Archeological resources not considered important for preservation in place are not eligible for protection under Section 4(f).

457.05 Railroads and Rail Transit Lines

Section 11502 of the FAST Act ([23 U.S.C. 138\(f\)](#) and [49 U.S.C. 303\(h\)](#)) exempts rail road and rail transit lines that are in use or that were historically used for transportation of goods or passengers from Section 4(f) review. The exemption applies regardless of whether the railroad or rail transit line is listed on or is eligible for listing on the NRHP. However, the exemption does not apply to:

- Rail stations or transit stations.
- Bridges or tunnels located on a rail line that has been abandoned, lines that have been rail banked, and lines that have been reserved for future transportation of goods or passengers.

457.06 Section 6(f) Conversion May Be Required

Properties purchased or improved with money from the Land and Water Conservation Fund (LWCF) require additional evaluation. Coordination with the appropriate federal agency will be required. Section 6(f) of the LWCF Act prohibits the conversion of such properties to non-recreation uses without approval by the National Park Service (NPS) or their state designee. Therefore, a Section 6(f) analysis is an integral part of the Section 4(f) evaluation if the project must use land purchased or improved from the LWCF.

While Section 6(f) and Section 4(f) often apply to the same resources they are parts of different laws and there are some key differences:

- Section 4(f) applies only to programs and policies undertaken by the USDOT. Section 6(f) applies to programs and policies of any federal agency.
- Section 4(f) allows more flexible mitigation opportunities. Section 6(f) requires that impacted resources be replaced with lands of equal value, location, and usefulness.
- Section 6(f) can apply on fully state funded projects where no federal nexus exists.

More detailed guidance for Section 6(f) conversions may be found in [Chapter 455](#).

457.07 Section 4(f) and Related Statutes

- Section 4(f) of the [Department of Transportation Act 1966](#)
- Section 106 of the [National Historic Preservation Act 1966](#)
- Section 6(f) of the [Land and Water Conservation Fund Act 1965](#)

457.08 Abbreviations and Acronyms

FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
FRA	Federal Railroad Administration
FAA	Federal Aviation Administration
NRHP	National Register of Historic Places
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users
USDOT	United States Department of Transportation
SHPO	State Historic Preservation Officer
THPO	Tribal Historic Preservation Officer

457.09 Glossary

All Possible Planning – All reasonable measures identified in the Section 4(f) evaluation to minimize harm or mitigate for adverse impacts and effects.

Constructive Use – A constructive use occurs when the 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 a property for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the property are substantially diminished.

De minimis Impact – For historic sites, *de minimis* impact means that the appropriate administering agency has determined, in accordance with [36 CFR 800](#), that no historic property is affected by the project or that the project will have “no adverse effect” on the historic property in question. For parks, recreation areas, and wildlife and waterfowl refuges, a *de minimis* impact is one that will not adversely affect the features, attributes or activities qualifying the property for protection under Section 4(f).

Feasible and Prudent Avoidance Alternative – 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.

Historic Site (Section 4(f)) – Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization that are included in, or are eligible for inclusion in, the National Register.

Officials With Jurisdiction – As defined in [23 CFR 774.17](#), officials of the agency that owns or administers the property in question. For historic sites, the SHPO or THPO may serve as the Official with Jurisdiction.

Programmatic Section 4(f) Evaluations – Can be used in place of individual evaluations for highway projects where uses are considered minor. To date there are five programmatic evaluations that have been approved for use nationwide. See [Section 447.03](#) of this chapter for criteria and [FHWA Nationwide Section 4\(f\) Programmatic Evaluation](#) webpage.

Section 4(f) Property – A publicly owned park, recreation area, or wildlife and water fowl refuge of national, state, or local significance. Also includes historic sites of national, state or local significance.

Use – “Use” of a Section 4(f) property occurs:

- When land is permanently incorporated into a transportation facility.
- When a temporary occupancy of land has an adverse impact on the resource that the park, recreation area, refuge or historic site was created to protect.
- When there is a constructive use of the property.