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### **457.01 Introduction**

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).

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.

Section 4(f) prohibits the incorporation of land from a Section 4(f) resource into a transportation facility unless there is no feasible and prudent alternative to the use of that land. 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 use land from the resource. FHWA requires a Section 4(f) Evaluation be completed for proximity impacts when they substantially impair the activities and attributes that qualified the Section 4(f) property for protection. Such impacts may include:

- Noise
- Vibrations
- Aesthetics
- Access

See the [FHWA Section 4\(f\)](#) webpage and WSDOT [Land use](#) webpage for additional guidance, templates and resources.

**User note:** Section 4(f) is sometimes confused with Section 6(f) of the Federal Land and Water Conservation Fund Act (LWCF). WSDOT’s compliance with Section 6(f) of LWCF is defined in [Chapter 455](#), Land Use.

### **457.01(1) Identifying a Section 4(f) Property**

Section 4(f) applies to historic sites of significance, significant publicly owned parks and recreation areas, wildlife and waterfowl refuges.

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

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 facilities such as 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.

If the publicly owned facility is primarily used for transportation and is an integral part of the local transportation system, the requirements of Section 4(f) would not apply since it is not solely serving a transportation purpose and not solely a recreational purpose. See [FHWA's Section 4\(f\) Policy Paper for more detailed guidance](#).

The Wild and Scenic Rivers Act (WSRA) designates certain rivers (or river segments) for special protection to preserve them in a free-flowing condition for the benefit and enjoyment of present and future generations. The act also identifies various "study rivers" for possible inclusion in the Wild and Scenic Rivers System. Currently, all designated Wild and Scenic Rivers in Washington State are administered by the United States Forest Service (USFS) in accordance with [36 CFR 297](#).

A comprehensive management plan is in place for all WSRA-designated rivers. The plan describes the use and type of construction allowed in each segment of the river. River segments designated for recreational use, segments in publicly owned public parks, recreation areas, or wildlife and waterfowl refuges, and segments with historic or archeological sites, are subject to Section 4(f). Segments that are privately owned (except for historic and archeological sites on private land) and segments on publicly owned lands closed to the general public (e.g., military bases, Indian Reservations, etc.) and whose primary purpose is not a Section 4(f) use, are not subject to Section 4(f). If the management plan does not identify a specific function for the river segment, then Section 4(f) does not apply.

For projects led by FRA, see their [Additional Information on Section 4\(f\) and Programmatic Evaluations](#).

For projects led by FTA, see their [standard operating procedure](#) for guidance on the recommended timing of the Section 4(f) processes to improve understanding in the transit context.

## 457.02 Applicable statutes, regulations, executive orders, and agreements

### 457.02(1) *Federal*

- 42 United States Code (USC) 4321 National Environmental Policy Act of 1969 (NEPA)
- 23 CFR 774
- 23 U.S.C 138 Preservation of Parkland
- 49 U.S.C. 303 Policy on lands, wildlife and waterfowl refuges, and historic sites
- 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](#)

### 457.02(2) *State*

- Not applicable

### 457.02(3) *Local*

- Not applicable

## 457.03 Considerations during project development

### 457.03(1) *Planning*

Identify Section 4(f) properties in and near the proposed project area.

### 457.03(2) *Scoping*

Identify Section 4(f) properties in and near the proposed project area.

### 457.03(3) *Design*

Document Section 4(f) properties in and near the project area consistent with the types of use. Document the research and explain where the resources are and why we made the call. Include surrounding properties to ensure they aren't impacted.

### 457.03(4) *Construction*

Ensure that staging areas and the project activities do not affect surrounding Section 4(f) properties that were identified near the project area.

### 457.03(5) *Maintenance and Operations*

There are no requirements for Section 4(f).

## 457.04 Analysis and documentation requirements

This section describes analysis and documentation requirements based on regulatory requirements for USDOT agencies (FHWA, FTA, FRA, and FAA). Determine level of detail based on complexity/size of project, expected severity of impacts, and potential for public controversy.

## 457.04(1) Analysis and documentation for NEPA

WSDOT policy requires Section 4(f) consideration in any NEPA document. However, not all NEPA actions require a full Section 4(f) evaluation. The NEPA document needs to identify if any Section 4(f) resources exist in the project area. If the project will involve more than minor ROW acquisition or involve any relocations, the NEPA document should include information about what research was done to determine if any Section 4(f) resources were present. If there are Section 4(f) properties, there should be documentation attached to address use of those resources (e.g. *De minimis* or Individual Evaluation), or information about why such documentation is not necessary (e.g. the resource is not acquired, or an exemption applies such as Temporary Occupancy).

Right size your document to fit your project. Four approaches typically used include Exceptions, *De minimis* impacts, Programmatic Section 4(f) evaluation, and Individual Section 4(f) evaluation; they are described below.

### Exceptions

Refer to 23 CFR 774, [FHWA Section 4\(f\) Tutorial](#) and [Section 4\(f\) Policy Paper](#) for background, fundamental definitions and requirements of Section 4(f). Review the list of [Other Considerations](#) to identify properties that do not fit neatly into the Section 4(f) definition.

[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.

### Railroads and rail transit line exemption

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.

### Interstate Exemption from Section 106 and Section 4(f)

Federal agencies no longer need to consider the vast majority of the Interstate System as historic property under Section 106 and Section 4(f) requirements. However, under Section II of the [ACHP's Section 106 exemption](#), certain elements of the Interstate System, such as bridges, tunnels, and rest stops, shall be excluded from the exemption's provisions if they have national and/or exceptional historic significance. Find the list of significant Interstate Highways elements on FHWA's List of [Nationally Exceptionally Significant Features of the Federal Interstate Highway System](#) webpage.

## **De minimis impacts**

A *de minimis* impact is one that, after taking into account any measures to minimize harm (such as avoidance, minimization, mitigation or enhancement measures), results in either:

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

## **Programmatic Section 4(f) Evaluation**

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 an exception, *de minimis*, or programmatic evaluation, 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 (Pub. L. 114-94) exempts common post 1945 bridges from Section 4(f) to align with the requirements of “Section 106” of the National Historic Preservation Act ([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.

### Individual Section 4(f) evaluation

Identifies and evaluates avoidance alternatives and 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.

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.

If the proposed project has multiple Section 4(f) resources in the vicinity, with varying types of use, document each resource accordingly. If an individual Section 4(f) Evaluation is required, it should include information on all the Section 4(f) resources in the vicinity. If there are no uses that require an Individual Section 4(f) Evaluation, then each resource can be documented separately using the appropriate template (exception, *de minimis*, etc.).

### Analysis and documentation for SEPA only (No federal nexus)

There are no state Section 4(f) requirements as it is a federal requirement and only considered for projects involving a USDOT agency.

### Analysis and documentation for Section 6(f)

Find more detailed guidance for the Section 6(f) process and a comparison between Section 4(f) and Section 6(f) in [Chapter 455](#).

## Analysis and documentation for Section 106

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 avoid the resources and 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 covered by exception [23 CFR 774.13 \(b\)](#) and do not require a Section 4(f) evaluation.

## 457.05 External engagement

### 457.05(1) *De Minimis*

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. The notice should fully describe the impacts to the Section 4(f) resource.

### 457.05(2) *Individual Evaluation*

An Individual Section 4(f) Evaluation must be circulated to the Department of Interior for a 30-day comment period, and if applicable to the Department of Housing and Urban Development, and it should also be incorporated into and circulated with the NEPA document if an EA or EIS is prepared.

### 457.05(3) *Section 106 and 4(f)*

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

WSDOT shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, and the likely interest of the public in the effects on historic properties pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations 36 CFR 800, as amended. Consistent with the intent of 36 CFR Part 800.3(c-f), public involvement in the Section 106

process is based on a demonstrated interest, including any landowner whose land may be affected by an undertaking. Public comment and the release of information pertaining to cultural resources hereunder shall be consistent with [36 CFR 800.2\(d\)](#), [800.3\(e\)](#), and [800.1 l\(c\)](#) (l and 3).

## 457.06 Internal roles and responsibilities

### 457.06(1) **Region/Modal Environmental Manager**

Signs *de minimis* and Individual Section 4(f) documents.

### 457.06(2) **Region Environmental Coordinator**

Works with HQ ESO and FHWA to determine how to document any Section 4(f) uses. FHWA is the decision-maker.

### 457.06(3) **WSDOT HQ ESO**

Supports project offices when identifying and documenting activities that may impact a Section 4(f) property.

## 457.07 Applicable permits and approval process

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.

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.

The FHWA Engineer signs and approves all Section 4(f) use documentation. You must also obtain concurrence with the property's Official with Jurisdiction (OWJ) on all uses and most activities that meet the exceptions listed in [23 CFR 774](#).

Individual Section 4(f) evaluations are processed in two distinct stages: draft and final. Draft evaluations must be circulated to the U.S. DOI and shared with the official(s) with jurisdiction. The public may review and comment on a draft evaluation during the NEPA process. When a project is processed as a CE the Section 4(f) evaluation must be circulated independently to the U.S. DOI. In all cases, final Section 4(f) evaluations are subject to FHWA legal sufficiency review prior to approval (23 CFR 774.5(d)).

There are no permits associated with Section 4(f).

## 457.08 Mitigation

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, including any mitigation, required to support the *de minimis* determination in the NEPA document. Written concurrence from the Officials with Jurisdiction must be included in the document.

If an individual Section 4(f) analysis of avoidance alternatives concludes that there is no feasible and prudent avoidance alternative, then the FHWA may only approve the alternative that causes the least overall harm to the Section 4(f) property. [23 CFR 774.3\(c\)](#) includes a list of factors to consider in making this determination of least overall harm. These factors include the ability to mitigate adverse impacts to Section 4(f) property; the relative severity of remaining harm, after mitigation, to Section 4(f) property; and the relative significance of each Section 4(f) property.

[Chapter 490](#) provides guidance on how to incorporate environmental commitments into project contracts. This is important for NEPA/SEPA commitments as well as regulatory permit commitments.

## 457.09 Abbreviations and acronyms

4(f)	Section 4(f) of the Department of Transportation Act of 1966
6(f)	Section 6(f) of the Federal Land and Water Conservation Fund Act (LWCF)
FAA	Federal Aviation Administration
FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
NRHP	National Register of Historic Places
SAFETEA-LU	Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users
SHPO	State Historic Preservation Officer
THPO	Tribal Historic Preservation Officer
USDOT	United States Department of Transportation

## 457.10 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.

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