

Chapter 8
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Chapter 8

SECTION 4(f)

8.1 SECTION 4(f) PROCESS

Section 4(f) regulations govern the use of land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for Federal highway projects. A Section 4(f) evaluation must be prepared for each Section 4(f) property within a proposed project before the use of the Section 4(f) property is approved (23 CFR 774).

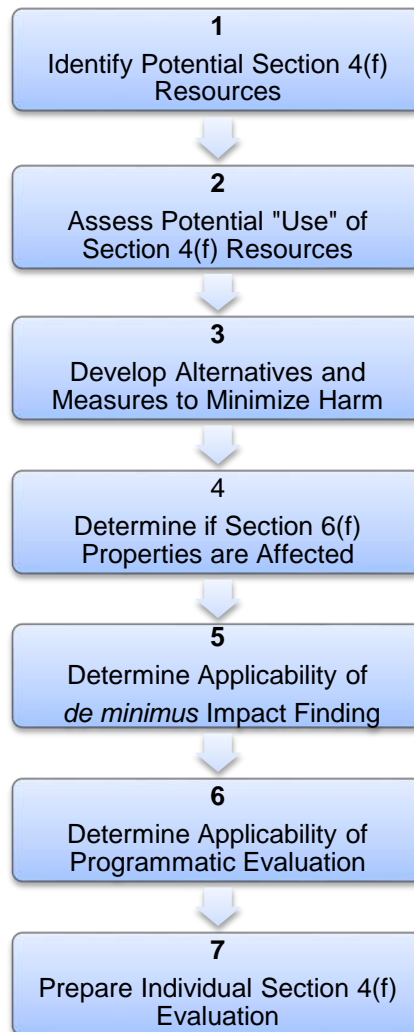


Figure 8-A — SECTION 4(f) PROCESS

ACTIVITY NO. 1:	IDENTIFY POTENTIAL SECTION 4(f) RESOURCES
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Section 4(f) requires consideration of:

- parks and recreational areas of national, state, or local significance that are both publicly owned and open to the public; and
- publicly owned wildlife and waterfowl refuges of national, state, or local significance that are open to the public to the extent that public access does not interfere with the primary purpose of the refuge.

The Environmental Services Division will identify potential Section 4(f) properties and coordinate Section 4(f) applicability with the FHWA.

The FHWA will determine the applicability of Section 4(f) to specific resources. (See [23 CFR 774.11](#) and the [FHWA Section 4\(f\) Policy Paper \(July 20, 2012\)](#) for further specific guidance on Section 4(f) applicability, addressing various resource types, and Transportation Enhancement Projects).

Regulations and Guidance

[23 CFR 774 – Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites \(Section 4\(f\)\)](#)

FHWA Section 4(f) Policy Paper, July 20, 2012, [3.1 Identification of Section 4\(f\) Properties](#)

[23 USC 103\(c\)\(5\)](#) “Exemption of Interstate System”

FHWA SAFETEA-LU: 6007 “Q and A on the Exemption of the Interstate System”

FHWA Fundamental Requirement of 4(f) [FHWA Section 4\(f\) Tutorial](#)

ACTIVITY NO. 2:	ASSESS POTENTIAL “USE” OF SECTION 4(f) RESOURCES
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The Environmental Services Division will evaluate the project’s effects to identify use of land from a Section 4(f) resource. The Environmental Services Division will coordinate with the official(s) with jurisdiction over the Section 4(f) resources and with the FHWA. For historic sites, the Environmental Services Division will coordinate with the State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO), the FHWA, and, as applicable, the Advisory Council on Historic Preservation. See Chapter 7 for more information on the Section 106 compliance process.

Where an issue of potential constructive use of a Section 4(f) property arises and FHWA decides that Section 4(f) does not apply, the environmental document should contain sufficient analysis and information to demonstrate that the resource(s) is not substantially impaired.

Regulations and Guidance

23 CFR 774.15 [Constructive use determinations](#)

FHWA Section 4(f) Policy Paper, July 20, 2012, "[3.2 Assessing Use of Section 4\(f\) Properties](#)"
36 CFR Part 800 "Protection of Historic Properties"

ACTIVITY NO. 3: DEVELOP ALTERNATIVES AND MEASURES TO MINIMIZE HARM

The Environmental Services Division, in cooperation with the FHWA and the Project Management Team (PMT), will develop alternatives that would avoid use of land from Section 4(f) properties, if possible, and develop measures to minimize harm if there are no feasible and prudent alternatives that would avoid use of Section 4(f) properties.

Regulations and Guidance

23 CFR 774.7 [Documentation](#)

23 CFR 774.3 [Section 4\(f\) Approvals](#)

FHWA Section 4(f) Policy Paper, July 20, 2012, "[3.3.3.2 Alternative with Least Overall Harm](#)"

ACTIVITY NO. 4: DETERMINE IF SECTION 6(f) PROPERTIES ARE AFFECTED

Section 6(f) of the Land and Water Conservation Fund (LWCF) Act prohibits the conversion of properties purchased or improved with LWCF funds to non-recreation uses without approval by the National Park Service (NPS) or their state designee. The Section 4(f) identification process should also evaluate if the project potentially involves properties purchased or improved with LWCF funds.

While Section 6(f) and Section 4(f) often apply to the same properties they are parts of different laws, with key differences being:

- Section 4(f) applies only to programs and policies undertaken by the US Department of Transportation. Section 6(f) applies to all federal agency programs and policies.
- Section 4(f) allows more flexible mitigation opportunities. Section 6(f) requires that any conversion of 6(f) 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.
- Section 6(f) will still apply even if a Land and Water Conservation Fund (LWCF) property has been determined to be not a significant park resource under Section 4(f)

Additional information on Section 6(f) is in Section 15.1 Recreational Land Conversions Section 6(f).

ACTIVITY NO. 5: DETERMINE APPLICABILITY OF *de minimis* IMPACT FINDING

For unavoidable use of a Section 4(f) property, the Environmental Services Division, in cooperation with the FHWA and the PMT, will evaluate whether the proposed use would result in a *de minimis* impact, and coordinate the findings with the appropriate official(s) with jurisdiction and make available for public review.

Regulations and Guidance

23 CFR 774.17 [De Minimis Impacts](#) as defined

[23 USC 138](#) “*De Minimis* Impacts”

FHWA Section 4(f) Policy Paper, July 20, 2012, [“De Minimis Impact Determinations”](#)

ACTIVITY NO. 6: DETERMINE APPLICABILITY OF PROGRAMMATIC EVALUATION

For each use of a Section 4(f) property that is not subject to a *de minimis* Impact Finding, the Environmental Services Division, in cooperation with the FHWA and the PMT, will determine applicability of a Programmatic Section 4(f) Evaluation.

The conditions for applicability of the Programmatic Section 4(f) Evaluations relate to the type of project, the severity of impacts to a 4(f) property, the evaluation of alternatives, the establishment of a procedure for minimizing harm to the 4(f) resource, adequate coordination with appropriate entities, and the NEPA class of action. There are five approved Nationwide Programmatic Section 4(f) Evaluations, as follows:

1. “Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges”;
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”;
3. “Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites”;
4. “Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects”; and
5. “Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property”.

Documentation requirements and approval procedures are included in each programmatic evaluation.

Regulations and Guidance

FHWA Environmental Guidebook - [Nationwide Section 4\(f\) Programmatic Evaluations](#)
[FHWA Section 4\(f\) Policy Paper, July 20, 2012](#)

ACTIVITY NO. 7:

PREPARE INDIVIDUAL SECTION 4(f) EVALUATION

An Individual Section 4(f) Evaluation will be prepared (including a Draft version and a Final version) when the use of a Section 4(f) resource is not subject to a *de minimis* Impact Finding and does not meet the criteria for use of any of the Programmatic 4(f) evaluations.

The Individual Section 4(f) Evaluation documents the evaluation of the proposed use of Section 4(f) properties in the project area of all alternatives. The individual Section 4(f) evaluation requires discussion of two findings:

- 1) That there is no feasible and prudent alternative that completely avoids the use of Section 4(f) property; and
- 2) That the project includes all possible planning to minimize harm to the Section 4(f) property resulting from the transportation use (See 23 CFR 774.3(a)(1) and (2)).

The Individual Section 4(f) Evaluation will be provided to the officials with jurisdiction over the Section 4(f) property and the US Department of the Interior for review and comment.

The FHWA Nevada Division Administrator approves Final Individual Section 4(f) Evaluations.

For projects processed with an EIS or an EA, the Individual Section 4(f) Evaluation should be included as a separate section of the document. Pertinent information from various sections of the EIS or EA/FONSI may be summarized in the Individual Section 4(f) Evaluation to reduce repetition. For projects processed as Categorical Exclusions, a separate Individual Section 4(f) Evaluation document should be prepared.

See Section 2.3 “Preparing an Administrative Record.”

Regulations and Guidance

23 CFR 774.7 [“Documentation”](#)
[FHWA Section 4\(f\) Policy Paper, July 20, 2012](#)
FHWA Environmental Guidebook [Section 4\(f\) Guidance and Legislation Documents](#)
[FHWA Technical Advisory T6640.8A](#) – October 1987