

Chapter 15

SECTION 4(f) EVALUATIONS

MDT ENVIRONMENTAL MANUAL

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Chapter 15

SECTION 4(F) EVALUATIONS

15.1 OVERVIEW

Section 4(f) is a Federal requirement that only applies to projects or programs involving funding or approvals from an agency of the US Department of Transportation (USDOT). Section 4(f) was originally enacted as part of the *US Department of Transportation (DOT) Act* of 1966 (49 USC 1653(f)). It provided that the Secretary of USDOT may approve a transportation program or project requiring use of publicly owned land of a public park, recreation area or wildlife and waterfowl refuge of national, State or local significance, or land of an historic site of national, State or local significance (as determined by officials having jurisdiction over the park, area, refuge or site) only if:

- there is no feasible and prudent alternative to using that land; and
- the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge or historic site resulting from the use.

A similar provision with somewhat different wording was codified in 23 UCS 138 and applies only to the Federal-aid highway program. The *Federal-Aid Highway Act* of 1968 amended the wording in both sections to make them consistent. In 1983, 49 USC 1653(f) was re-codified in 49 USC 303 without substantive revision. As a result of that action, the original provision from the 1966 *DOT Act* no longer exists; however, the requirement is still commonly referred to as Section 4(f).

In 2005, the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) enacted the first substantive change in the Section 4(f) provisions since the 1966 *DOT Act*. Section 6009(a) of SAFETEA-LU amended 49 USC 303 and 23 USC 138 to address *de minimis* impacts on Section 4(f) properties. *De minimis* impacts are effects that are so minor there is no need for a Section 4(f) evaluation. Under the revised provisions, when USDOT determines a transportation use of Section 4(f) property results in a *de minimis* impact, analysis of avoidance alternatives is not required and the Section 4(f) process is complete.

Section 6007 of SAFETEA-LU amended 23 USC 103(c) to exempt the Interstate System from consideration as a historic site under Section 4(f) except for individual elements identified by the Secretary of USDOT that possess national or exceptional historic significance (e.g., a historic bridge or a highly significant engineering feature). The “Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System,” accessible via the Federal Highway Administration (FHWA) webpage, includes no items for the Interstate System in Montana.

Section 4(f) typically is addressed as a part of the process for compliance with the *National Environmental Policy Act* (NEPA) (42 USC 4321, et seq.) and the analyses and conclusions generally are included in the NEPA documentation.

This Chapter provides guidance and procedures for identifying resources subject to Section 4(f), for determining if a project involves “use” of a Section 4(f) resource and for accomplishing the

necessary analyses, coordination, documentation and processing for compliance with Section 4(f) requirements.

15.2 LAWS, REGULATIONS AND GUIDANCE

15.2.1 49 USC 303 “Policy on Lands, Wildlife and Waterfowl Refuges and Historic Sites” and 23 USC 138 “Preservation of Parklands”

These sections of the *United States Code* (USC) contain the declaration of policy that allows the Secretary of USDOT to approve a program or project (other than any project for a park road or parkway under 23 USC 204 “Federal Lands Highways Program”) requiring the use of publicly owned land of a public park, recreation area or wildlife and waterfowl refuge of national, State or local significance or land of an historic site of national, State or local significance (as determined by the officials having jurisdiction over the park, area, refuge or site) only if:

- there is no prudent and feasible alternative to using that land; and
- the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge or historic site resulting from the use.

These sections also contain provisions addressing “*De minimis* Impacts” and include clarification regarding the *de minimis* impact requirements as they apply to historic sites and parks, recreation areas and wildlife or waterfowl refuges.

15.2.2 23 USC 103(c) “Interstate System”

Section 6007 of SAFETEA-LU amended this part of the USC by adding language exempting the Interstate System from consideration as a historic site under Section 4(f), regardless of whether the Interstate System or portions or elements of the Interstate System are listed on, or eligible for listing on, the National Register of Historic Places (NRHP). The added language also provides that the Secretary of USDOT will determine, through the administrative process established for exempting the Interstate System from Section 106 of the *National Historic Preservation Act* (16 USC 470f), those individual elements of the Interstate System that possess national or exceptional historic significance (e.g., a historic bridge or a highly significant engineering feature). These elements are considered to be a historic site under Section 4(f). The added language clarifies that designation of an individual element of the Interstate System as being subject to Section 4(f) does not prohibit a State from carrying out construction, maintenance, restoration or rehabilitation activities for that individual element of the Interstate System upon compliance with Section 4(f) and Section 106 of the *National Historic Preservation Act*.

15.2.3 23 CFR 774 “Parks, Recreation Areas, Wildlife and Waterfowl Refuges and Historic Sites”

This Part of the *Code of Federal Regulations* (CFR) contains revised Section 4(f) regulations that USDOT issued in response to a requirement contained in Section 6009(b) of SAFETEA-LU. Section 6009(b) of SAFETEA-LU requires promulgation of new regulations to clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under 23 USC 138 and 49 USC 303.

Section 6009(b) of SAFETEA-LU also requires the regulations to clarify the application of Section 4(f) legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case. The section also provides that the revised regulations could include, as appropriate, examples to facilitate clear and consistent interpretation by agency decision-makers.

The revised regulations in 23 CFR 774 replace the provisions that were contained in 23 CFR 771.135 "Section 4(f) (49 USC 303)."

15.2.4 "FHWA Section 4(f) Policy Paper"

This March 1, 2005, paper includes guidance on Section 4(f) Evaluation format, content and approval. It provides guidance on how Section 4(f) applies generally and to specific situations where resources meeting the Section 4(f) criteria may be involved. It is based on court decisions, experience and policies developed by FHWA and USDOT. The paper serves as a guide for determining the applicability of Section 4(f) for common project situations often encountered by FHWA Division Offices, State Departments of Transportation and other transportation project sponsors. Applicability topics addressed in the paper include the following:

- use of resources;
- public parks, recreation areas and wildlife and waterfowl refuges;
- historic sites;
- historic bridges, highways and other transportation facilities;
- archeological resources;
- public multiple-use land holdings;
- late designation of 4(f) resources;
- wild and scenic rivers;
- fairgrounds;
- school playgrounds;
- golf courses;
- user or entrance fees;
- bodies of water;
- trails;
- bikeways;
- joint development (park with highway corridor);
- planned 4(f) resources;
- temporary recreational occupancy or uses of highway rights-of-way;
- tunneling;
- wildlife and waterfowl refuges;
- air rights;
- non-transportation use of 4(f) resources;
- scenic byways;
- transportation enhancement projects;
- museums, aquariums and zoos;
- Tribal lands and Indian reservations;
- traditional cultural properties;

- cemeteries;
- Section 4(f) evaluations in tiered NEPA documents; and
- Department of the Interior, *Handbook on Departmental Review of Section 4(f) Evaluations* (2002).

15.2.5 FHWA “Questions and Answers on the Application of the Section 4(f) De minimis Impact Criteria”

This document, accessible via the FHWA webpage, provides information and guidance on the process for determining *de minimis* impacts of highway and transit projects that propose use of Section 4(f) property. It includes a diagram of the determination process for parks, recreation areas and wildlife and waterfowl refuges.

15.2.6 FHWA “SAFETEA-LU: Section 6007 Questions and Answers on the Exemption of the Interstate System”

This document, accessible via the FHWA webpage, provides information and guidance on the exemption of the Interstate System under Section 4(f) and the criteria for identifying exceptional elements of the Interstate System that are subject to Section 4(f) upon designation by the Secretary of USDOT. The “Final List of Nationally and Exceptionally Significant Features of the Federal Interstate Highway System” includes no items for the Interstate System in Montana.

15.2.7 36 CFR 800 “Protection of Historic Properties”

This Part of the CFR contains regulations for implementing Section 106 of the *National Historic Preservation Act* (16 USC 470f). Section 106 requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The procedures in 36 CFR 800 define how Federal agencies meet these statutory responsibilities.

The provisions of these regulations must be addressed wherever a project involves use of land from an historic site that is subject to Section 4(f).

15.2.8 36 CFR 60.4 “Criteria for Evaluation”

This Part of the CFR describes the criteria used for evaluating the eligibility of sites for the National Register of Historic Places.

15.2.9 FHWA Technical Advisory T 6640.8A

Section IX of the Technical Advisory provides guidance on “Section 4(f) Evaluations – Format and Content.” In addition to general guidance, the section provides suggested format and content guidance addressing the following specific topics:

- Draft Section 4(f) Evaluation:
 - + proposed action,
 - + Section 4(f) property,
 - + impacts on the Section 4(f) property(ies),
 - + avoidance alternatives,
 - + measures to minimize harm, and
 - + coordination; and
- Final Section 4(f) Evaluation.

15.2.10 23 CFR 771 “Environmental Impact and Related Procedures”

This Part of the CFR contains the NEPA compliance regulations for projects funded or approved by FHWA or the Federal Transit Administration. For projects involving use of property subject to Section 4(f), the actions and documentation for compliance with the Section 4(f) regulations in 23 CFR 774 are coordinated with the NEPA regulations.

15.2.11 AASHTO Practitioner’s Handbook 11 Complying with Section 4(f) of the USDOT Act

This May 2009 Handbook provides guidance to assist practitioners in managing all aspects of compliance with Section 4(f). Issues covered in the Handbook include:

- considering Section 4(f) before the NEPA process begins,
- scoping potential Section 4(f) issues,
- identifying and evaluating Section 4(f) properties,
- making determinations of *de minimis* impact,
- determining whether there is a “use” of Section 4(f) properties,
- developing and evaluating avoidance alternatives under the “feasible and prudent” standard,
- choosing among alternatives that use Section 4(f) properties,
- incorporating “all possible planning” to minimize harm to Section 4(f) properties,
- using Section 4(f) programmatic evaluations,
- coordinating with other agencies and stakeholders, and
- documenting Section 4(f) analysis and conclusions.

15.3 PROCEDURES

15.3.1 Section 4(f) Applicability Criteria and Considerations

FHWA is responsible for the final determination of Section 4(f) applicability for resources affected by projects or programs it funds or approves. Applicability of Section 4(f) is determined based on the following criteria:

- whether the project involves a resource that is subject to Section 4(f), and
- whether the involvement constitutes a “use” of the resource for purposes of the Section 4(f) requirements.

Application of these criteria must include consideration in 23 CFR 774.17 “Definitions,” the provisions of 23 CFR 774.11 “Applicability,” 23 CFR 774.13 “Exceptions,” 23 CFR 774.15 “Constructive Use Determinations” and the guidance in the March 5, 2005, FHWA “Section 4(f) Policy Paper” regarding specific resource categories and uses.

15.3.1.1 Definitions

In evaluating Section 4(f) applicability, the following definitions taken from 23 CFR 774.17 must be considered:

1. Section 4(f) Property. Section 4(f) property means publicly owned land of a public park, recreation area or wildlife and waterfowl refuge of national, State or local significance, or land of an historic site of national, State or local significance.
2. Historic Site. For purposes of 23 CFR 774, the term historic site includes any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the NRHP. 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 NRHP.
3. Use. Except as set forth in 23 CFR 774.11 and 23 CFR 774.13, a “use” of Section 4(f) property occurs:
 - where land is permanently incorporated into a transportation facility,
 - where there is a temporary occupancy of land that is adverse in terms of the preservation purposes of Section 4(f) as determined by the criteria in 23 CFR 774.13(d), or
 - where there is a constructive use of a Section 4(f) property as determined by the criteria in 23 CFR 774.15.

15.3.1.2 Applicability Considerations

As discussed in the “FHWA Section 4(f) Policy Paper,” Section 4(f) applies to significant publicly owned public parks and recreation areas that are open to the public. It also applies to

significant publicly owned wildlife and waterfowl refuges, irrespective of whether these areas are open to the public, because the major purpose of a refuge may make it necessary for the resource manager to limit public access. Where private institutions, organizations or individuals own parks, recreation areas or wildlife and waterfowl refuges, Section 4(f) does not apply to these properties, even if the areas are open to the public. If a governmental body has a permanent proprietary interest in the land (i.e., fee ownership or easement), it is considered publicly owned and may be applicable to Section 4(f). Section 4(f) also applies to all historic sites of national, State or local significance, whether or not these sites are publicly owned or open to the public. A good example of a privately owned property that would be protected under Section 4(f) is the Great Falls Portage National Historic Landmark. Except in unusual circumstances, only historic properties on or eligible for inclusion on the NRHP are protected under Section 4(f).

As reflected in the definition of “use” in 23 CFR 774.17, evaluations of Section 4(f) applicability must consider the provisions in 23 CFR 774.11, 23 CFR 774.13 and 23 CFR 774.15. The following sections provide an overview of these provisions.

15.3.1.2.1 23 CFR 774.11 “Applicability”

This section of the Section 4(f) regulations provides direction on the applicability of Section 4(f) for certain resource types and circumstances. It addresses the following determinations:

- Parks, recreation areas or wildlife and waterfowl refuges are not subject to Section 4(f) when the official(s) with jurisdiction determines the property, considered in its entirety, is not significant and FHWA agrees that the determination is reasonable.
- Where Federal lands or other public land holdings are managed for multiple uses Section 4(f) applies only to those portions of the lands that function for, or are designated in the administering agency’s management plans as being for, significant park, recreation or wildlife and waterfowl purposes.
- Section 4(f) requirements apply to historic sites on or eligible for the NRHP unless FHWA determines an exception under 23 CFR 774.13 applies; see [Section 15.3.1.2.2](#). Section 4(f) only applies to historic sites on or eligible for the NRHP unless FHWA determines application of Section 4(f) is otherwise appropriate. The Interstate System is not subject to Section 4(f) except for individual elements formally identified for Section 4(f) protection.
- Archaeological sites on or eligible for the NRHP are subject to Section 4(f) except when FHWA concludes the resource is important because of what can be learned by data recovery and has minimal value for preservation in place. This exception also requires that the official(s) with jurisdiction must be consulted and must not object to the finding by FHWA.
- Section 4(f) applies to 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.

- Section 4(f) does not apply to property formally reserved for a future transportation facility that temporarily functions for park, recreation or wildlife and waterfowl refuge purposes in the interim, regardless of the duration of the temporary function.
- When 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, any resulting impacts of the transportation facility will not be considered a use under Section 4(f).

Review the regulations for additional details.

15.3.1.2.2 23 CFR 774.13 “Exceptions”

This section of the regulations provides direction on exceptions to the requirement for Section 4(f) approval. The exceptions address actions and resource categories including, but not limited to, the following:

1. Transportation Facilities. Restoration, rehabilitation or maintenance of transportation facilities that are on or eligible for the NRHP, when:
 - FHWA concludes, as a result of consultation under 36 CFR 800, that the work will not adversely affect the historic qualities that caused the facility to be on or eligible for the NRHP; and
 - the official(s) with jurisdiction do not object to the FHWA conclusion.
2. Archaeological Sites. Archaeological sites that are on or eligible for the NRHP when:
 - FHWA concludes the archaeological resource is important because of what can be learned by data recovery and has minimal value for preservation in place; and
 - the official(s) with jurisdiction are consulted and do not object to the FHWA conclusion.
3. Parks and Recreation, Wildlife and Waterfowl Refuges, Historic Sites. 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 when:
 - the property interest in the Section 4(f) land was acquired for transportation purposes prior to the designation or change in determination of significance, and
 - an adequate effort was made to identify properties protected by Section 4(f) prior to acquisition.

If it is reasonably foreseeable that a property would qualify for the NRHP prior to the start of construction, then treat the property as a historic site for purposes of the Section 4(f) requirements.

4. Temporary Occupancy. Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f), are subject to the following conditions:
 - 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;
 - 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);
 - 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;
 - the land being used must be returned to a condition at least as good as that which existed prior to the project; and
 - there must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.
5. Park Roads and Parkways. Park road or parkway projects identified in 23 USC 204 "Federal Lands Highways Program."
6. Trails, Paths, Bikeways, Sidewalks. Certain trails, paths, bikeways and sidewalks may be exempt in the following circumstances:
 - trail-related projects funded under the Recreational Trails Program, 23 USC 206(h)(2);
 - National Historic Trails and the Continental Divide National Scenic Trail, designated under the *National Trails System Act*, 16 USC 1241-1251, with the exception of those trail segments that are historic sites for purposes of Section 4(f);
 - 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
 - trails, paths, bikeways and sidewalks that are part of the local transportation system and that function primarily for transportation.
7. Enhancement Projects. 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 over the Section 4(f) resource agrees in writing with the above determination regarding the purpose of the use.

Review the regulations for additional details.

15.3.1.2.3 23 CFR 774.15 “Constructive Use Determinations”

This section of the regulations clarifies that 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 property are substantially diminished.

The section also provides direction on situations FHWA has reviewed and determined where a constructive use occurs and where a constructive use does not occur.

FHWA has determined that a constructive use occurs when:

- the projected noise level increase attributable to a transportation project substantially interferes with the use and enjoyment of a noise-sensitive facility of a property protected by Section 4(f);
- the proximity of a proposed project substantially impairs aesthetic features or attributes of a property protected by Section 4(f), where these features or attributes are considered important contributing elements to the value of the property;
- a project results in a restriction of access that substantially diminishes the utility of a significant publicly owned park, recreation area or a historic site;
- the vibration impact from construction or operation of a project substantially impairs the use of a Section 4(f) property; or
- the ecological intrusion of a project substantially diminishes the value of wildlife habitat in a wildlife and waterfowl refuge adjacent to the project, substantially interferes with the access to a wildlife and waterfowl refuge where the access is necessary for established wildlife migration or critical life cycle processes or substantially reduces the wildlife use of a wildlife and waterfowl refuge.

FHWA has determined that a constructive use does not occur when:

- compliance with the requirements of 36 CFR 800.5 for proximity impacts of a proposed action on a site listed on or eligible for the NRHP results in an agreement of “no historic properties affected” or “no adverse effect”;
- the impact of projected traffic noise levels of a proposed highway project on a noise-sensitive activity do not exceed the FHWA noise abatement criteria (see [Chapter 43 “Noise Impacts”](#));
- the projected noise levels exceed the relevant threshold in the FHWA noise abatement criteria because of high existing noise, but the increase in projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (i.e., 3 dBA or less);

- 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 FHWA approval of a final environmental document, established the location for the proposed transportation project before designation, establishment or change in the significance of the property (unless it is reasonably foreseeable that a property would qualify as eligible for the NRHP prior to the start of construction; in which case it should be treated as a historic site for purposes of determining constructive use);
- 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);
- proximity impacts will be mitigated to a condition equivalent to, or better than, that would occur if the project were not built, as determined after consultation with the official(s) with jurisdiction;
- change in accessibility will not substantially diminish the use of the Section 4(f) property; or
- 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) property.

Review the regulations for information on more specific examples of the various situations described as involving, and not involving, a constructive use.

15.3.2 Identification of Section 4(f) Properties

The Preliminary Field Review (PFR) is the initial step in the MDT Section 4(f) compliance process for a proposed project. The PFR includes preliminary evaluation of the scope of work and potential for social, economic and environmental impacts, including impacts to Section 4(f) resources. The Design Team (DT) notifies and invites appropriate MDT personnel, including the Project Development Engineer (PDE) within the MDT Environmental Services Bureau (ESB), to the field review. The PDE reviews the list of ESB attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance.

After being notified of the PFR, and before it occurs, the PDE may conduct a search of available maps and other documentation to identify ownership information for properties in the project area that may indicate potential Section 4(f) properties. The PDE participates in the PFR to make a preliminary evaluation of the potential for the project to involve use of land from any Section 4(f) property. In conducting the preliminary evaluation, the PDE considers the definitions in [Section 15.3.1.1](#), the applicability considerations in [Section 15.3.1.2](#) and the guidance in the "FHWA Section 4(f) Policy Paper."

Following the field review, the DT prepares a PFR Report summarizing the issues discussed during the review. The final PFR Report is distributed for review and comment. Within ESB, the PDE serves as the document champion to coordinate and collect comments from the other ESB Sections. The PDE compiles the comments into a PFR review memorandum for signature by the Environmental Services Bureau Chief.

After the PFR and receipt of the PFR Report, the PDE conducts a desk review of available information sources to identify potential Section 4(f) properties. The scope of the review is commensurate with the project's need for acquiring additional right-of-way. The PDE also may send Request for Environmental Information letters to the Department of Fish, Wildlife and Parks (FWP), cities, counties and/or other entities that may have information related to Section 4(f) properties in the project area. If the significance of a publicly-owned public park or recreation area needs to be determined, the PDE generally sends a letter to the official(s) with jurisdiction to verify the determination of significance for Section 4(f) purposes. The letter explains the Section 4(f) applicability criteria and requirements, outlines MDT's initial conclusion regarding significance of the property and explains the basis for the conclusion. It also requests the official's concurrence in the determination of the property's significance and whether or not it is subject to Section 4(f). See [Section 15.3.3.4](#) "Section 4(f) Use Is Not Avoided – Determine Significance of Properties."

Concurrent with these actions by the PDE, the Historian and Archeologist conduct research, field surveys and coordination with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), or THPO representative, to identify historic and/or archaeological resources that may be Section 4(f) properties.

After completion of the desk review, receipt of information in response to Request for Environmental Information letters and completion of research, field surveys and coordination by the Historian and Archeologist, the PDE evaluates the information obtained against the Section 4(f) applicability considerations discussed in [Section 15.3.1.2](#) and the guidance in the "FHWA Section 4(f) Policy Paper."

The PDE coordinates with FHWA to address questions regarding applicability of Section 4(f) to specific resources and documents the identified known and potential Section 4(f) properties in the project file. While FHWA ultimately determines applicability of Section 4(f) to specific properties, FHWA relies heavily on the written opinion of the official(s) with jurisdiction.

15.3.3 Determination of Section 4(f) Use

Using the information on the identified known and potential Section 4(f) properties in the project area, the PDE reviews the project scope to evaluate the potential for use of Section 4(f) properties. In conducting this evaluation, the PDE considers the definition of use in [Section 15.3.1.1](#), the Section 4(f) applicability considerations discussed in [Section 15.3.1.2](#) and, as applicable, guidance in the "FHWA Section 4(f) Policy Paper."

15.3.3.1 No Section 4(f) Use – Document Determination

If the PDE determines the project has no potential for any use of Section 4(f) properties or that any potential use is covered by an exception discussed in [Section 15.3.1.2.2](#) and 23 CFR 774.13, the PDE coordinates this determination with FHWA, documents the basis for the determination in the project files and provides a copy of the documentation to the DT. The PDE ensures the determination is reflected in the environmental documentation for the project; see [Chapters 11 "Preparing Environmental Documentation," 12 "Categorical Exclusion," 13 "Environmental Assessment/FONSI" and 14 "Environmental Impact Statement/ROD."](#)

15.3.3.2 Potential Section 4(f) Use – Evaluate Avoidance Alternatives

If the PDE and/or FHWA determines the project has potential for use of Section 4(f) properties and the potential use is not covered by an exception discussed in [Section 15.3.1.2.2](#) and 23 CFR 774.13, the PDE coordinates with the DT to provide information (e.g., location, boundaries, type, ownership) for each known or potential affected Section 4(f) property. The PDE coordinates with the DT to evaluate project location and design alternatives to determine if feasible and prudent avoidance alternatives could eliminate any potential use of Section 4(f) properties.

In conducting the evaluation, the PDE and DT apply the following definition of Feasible and Prudent Avoidance Alternative provided in 23 CFR 774.17:

1. **Avoidance.** A feasible and prudent avoidance alternative avoids using Section 4(f) property and does not cause other severe problems that substantially outweigh the importance of protecting the Section 4(f) property. 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 purpose of the Section 4(f) statute.
2. **Feasible.** An alternative is not feasible if it cannot be built as a matter of sound engineering judgment.
3. **Prudent.** An alternative is not prudent if:
 - it compromises the project to a degree that it is unreasonable to proceed with the project in light of its stated purpose and need;
 - it results in unacceptable safety or operational problems;
 - 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;
 - it results in additional construction, maintenance or operational costs of an extraordinary magnitude;
 - it causes other unique problems or unusual factors; or
 - it involves multiple factors in the listing above, that while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.

After the PDE and DT complete the evaluations of the project location and design alternatives, they determine if there are feasible and prudent alternatives to avoid use of any Section 4(f)

property. The PDE and DT coordinate with FHWA in making the determination on feasible and prudent avoidance alternatives.

15.3.3.3 Section 4(f) Use Is Avoided – Document Decision

If the PDE and DT, in consultation with FHWA, reach agreement on feasible and prudent design alternatives that avoid all potential use of known or potential Section 4(f) properties in the project area, the PDE documents the decision on the project alternatives in the project file. The PDE ensures the decision is reflected in the environmental documentation for the project; see [Chapters 11, 12, 13 and 14](#). The DT ensures the decision on avoidance alternatives is appropriately reflected in the project's design plans and/or contract documents.

15.3.3.4 Section 4(f) Use Is Not Avoided – Determine Significance of Properties

For any unavoidable use of publicly owned public parks, recreation areas or wildlife and waterfowl refuges, the PDE coordinates with the official(s) having jurisdiction to obtain their determination on whether the park, recreation area or wildlife and waterfowl refuge the project would affect is of national, State or local significance.

For any unavoidable use of historic sites, the Historian and/or Archeologist coordinate with the SHPO and/or THPO, or THPO representative, to determine if the affected historic sites are eligible for inclusion on the NRHP. Section 4(f) requirements apply only to historic sites on or eligible for the NRHP unless FHWA determines application of Section 4(f) is otherwise appropriate.

15.3.3.5 Properties Are Not Significant – Document that Section 4(f) Does Not Apply

If coordination with the official(s) having jurisdiction over a publicly owned public park, recreation area or wildlife and waterfowl refuge results in a determination that the site, considered in its entirety, is not of national, State or local significance, the PDE coordinates the determination with FHWA for evaluation of its reasonableness. If FHWA finds the determination to be reasonable, the PDE documents in the project file that Section 4(f) does not apply to the property and provides a copy of the documentation to the DT.

If coordination with the SHPO and/or THPO, or THPO representative, results in a determination that a historic site is not eligible for the NRHP and FHWA does not determine that application of Section 4(f) to the site is otherwise appropriate, the PDE documents in the project file that Section 4(f) does not apply to the site and provides a copy of the documentation to the DT.

The PDE ensures the basis for determinations that Section 4(f) is not applicable to affected properties is reflected in the environmental documentation for the project; see [Chapters 11, 12, 13 and 14](#).

15.3.3.6 Properties Are Significant – Evaluate Avoidance, Minimization and Mitigation Alternatives

If a publicly owned public park, recreation area or wildlife and waterfowl refuge, or an historic site is determined to be significant, the PDE coordinates with the DT to evaluate feasible and prudent avoidance alternatives, see definition in [Section 15.3.3.2](#), and, if necessary, all reasonable measures to minimize harm and/or mitigate for unavoidable adverse effects to the property.

For a publicly owned public park, recreation area or wildlife and waterfowl refuge, the significance determination would apply if coordination with the official(s) having jurisdiction results in a determination that the site is of national, State or local significance, or if FHWA finds a determination of non-significance to be unreasonable.

For an historic site, the significance determination would apply if coordination with the SHPO and/or THPO, or THPO representative, results in a determination that the historic site is eligible for the NRHP or if FHWA determines application of Section 4(f) is otherwise appropriate.

The PDE and DT coordinate with FHWA in the evaluation of feasible and prudent avoidance alternatives and, if necessary, measures to satisfy the requirement for including all possible planning to minimize harm to Section 4(f) resources resulting from use associated with the project.

If the PDE and DT, in consultation with FHWA, determine there are feasible and prudent avoidance alternatives for all Section 4(f) properties in the project area, the PDE documents the decision on the project alternatives in the project file and provides a copy of the documentation to the DT. The PDE ensures the determination on avoidance alternatives is reflected in the environmental documentation for the project; see [Chapters 11, 12, 13 and 14](#).

If the PDE, DT and FHWA determine there are not feasible and prudent avoidance alternatives for all Section 4(f) properties in the project area, they will consider the following provisions from 23 CFR 774.17 in identifying and evaluating reasonable measures to minimize harm or mitigate for adverse impacts and effects:

1. Public Parks, Recreation Areas and Wildlife and Waterfowl Refuges. The measures may include, but are not limited to:
 - design modifications or design goals,
 - replacement of land or facilities of comparable value and function, or
 - monetary compensation to enhance the remaining property or to mitigate adverse impacts of the project in other ways.
2. Historic Sites. The measures normally serve to preserve the historic activities, features or attributes of the site as agreed to by FHWA and the official(s) with jurisdiction over the Section 4(f) resource in accordance with the consultation process under 36 CFR 800.
3. FHWA Review. In evaluating the reasonableness of measures to minimize harm, FHWA will consider the preservation purposes of Section 4(f) and:

- the views of the official(s) with jurisdiction over the Section 4(f) property,
- whether the cost of the measures is a reasonable public expenditure in light of the adverse impacts of the project on the Section 4(f) property and the benefits of the measures to the property, and
- any impacts or benefits of the measures to communities or environmental resources outside of the Section 4(f) property.

During the preparation of the preliminary plans, the DT ensures that changes necessary to comply with Section 4(f) are accurately reflected in the preliminary plans. The PDE reviews the preliminary plans to ensure that avoidance, minimization and mitigation measures are accurately reflected.

After the Alignment and Grade Review and establishment of the horizontal and vertical alignments for the project, the PDE coordinates with the DT to obtain information; prepared by the MDT Right-of-Way Bureau, on the estimated quantities of land to be acquired from Section 4(f) properties. The PDE evaluates the unavoidable Section 4(f) uses, including potential constructive uses, for compliance with the requirement for including all possible planning to minimize harm.

15.3.4 Section 4(f) Documentation

15.3.4.1 Determination of Documentation Level

For each unavoidable use, including constructive use, of Section 4(f) property, the PDE evaluates the nature and magnitude of the use and makes a preliminary determination of the level of Section 4(f) documentation required. The PDE accomplishes the determination in accordance with the following:

1. De minimis Impact Determination. *De minimis* impact is defined in 23 CFR 744.17 as follows:
 - For historic sites, *de minimis* impact means FHWA 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).

The PDE evaluates the proposed Section 4(f) use against the criteria in the *de minimis* impact definition, coordinating as necessary with the Historian and/or Archeologist in determining the likely effect on historic sites in accordance with 36 CFR 800. The PDE also may consider information and guidance provided in the FHWA "Questions and Answers on the Application of the Section 4(f) *De minimis* Impact Criteria."

If a proposed Section 4(f) use does not initially meet the *de minimis* impact criteria, the PDE may coordinate with the DT to evaluate reasonable measures to minimize or mitigate the use of the resource sufficiently to qualify for a *de minimis* impact

determination. If the proposed Section 4(f) use appears to meet the *de minimis* impact criteria, the PDE consults with FHWA to confirm the determination. Upon obtaining confirmation, the PDE proceeds in accordance with [Section 15.3.4.2](#).

If it is determined the proposed Section 4(f) use cannot meet the *de minimis* impact criteria, the PDE considers the other Section 4(f) documentation alternatives.

2. Programmatic Section 4(f) Evaluation. There currently are five nationwide Programmatic Section 4(f) Evaluations; see the FHWA website. They include the following:
 - a. Programmatic Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property. This programmatic evaluation has been prepared for projects that use land from a Section 4(f) resource that include appropriate measures to preserve and enhance the features and values of the property that originally qualified it for Section 4(f) protection, such that the officials with jurisdiction agree in writing that the measures will result in a net benefit to the Section 4(f) property.
 - b. Nationwide Section 4(f) Evaluation and Approval for Federally-aided Highway Projects with Minor Involvement with Public Parks, Recreation Lands and Wildlife and Waterfowl Refuges. This programmatic evaluation has been prepared 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.
 - c. 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.
 - d. Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges. This programmatic 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 the use.
 - e. Section 4(f) Statement and Determination for Independent Bikeway and Walkway Construction Projects. This 1977 negative declaration applies to bikeway and/or walkway projects that require the use of land from Section 4(f) resources.

The PDE compares the specifics of the proposed project, the affected Section 4(f) property and the proposed Section 4(f) use with the provisions in each of the current Programmatic Section 4(f) Evaluations. If the PDE determines the affected Section 4(f) property and proposed Section 4(f) use meet the conditions of a Programmatic Section 4(f) Evaluation, the PDE consults with FHWA regarding the basis for the determination. The PDE then proceeds in accordance with [Section 15.3.4.3](#).

3. Full Section 4(f) Evaluation. If the proposed Section 4(f) use does not meet the *de minimis* impact criteria and the project specifics, affected Section 4(f) property and proposed Section 4(f) use do not meet the conditions for applicability of a Programmatic Section 4(f) Evaluation, the PDE proceeds with preparation of a Full Section 4(f) Evaluation in accordance with [Section 15.3.4.4](#).

15.3.4.2 De minimis Impact Determination

15.3.4.2.1 De minimis Impact for Historic Sites

For a historic site, the PDE coordinates with the Historian and/or Archeologist to prepare documentation to support the determination either that no historic property is affected by the project or that the project has no adverse effect on the historic property in question, in accordance with 36 CFR 800. The PDE coordinates with the Historian and/or Archeologist and FHWA in accomplishing consultation with parties identified in accordance with the Section 106 compliance process in 36 CFR 800. As a part of this consultation, FHWA informs the SHPO and/or THPO, or THPO representative, and the ACHP, if participating in the Section 106 process, of the intent to make a *de minimis* impact determination based on their written concurrence in a finding of no historic properties affected or no adverse effect under 36 CFR 800. Public notice and comment beyond that required by 36 CFR 800 is not necessary.

If the SHPO and/or THPO, or THPO representative, and ACHP, if participating in the Section 106 process, provide written concurrence in a finding of no historic properties affected or no adverse effect, the PDE includes the written concurrence in the *de minimis* impact documentation and coordinates the documentation with FHWA for the formal *de minimis* impact determination. The PDE includes the documentation, including the determination by FHWA, in the project file and provides a copy to the DT. The PDE ensures the documentation is included in the environmental documentation for the project, in accordance with 23 CFR 774.7(f); see [Chapters 11, 12, 13 and 14](#).

If the SHPO and/or THPO, or THPO representative, and ACHP, if participating in the Section 106 process, do not provide written concurrence in a finding of no historic properties affected or no adverse effect, the PDE documents that result in the project file and proceeds with preparation of a Full Section 4(f) Evaluation in accordance with [Section 15.3.4.4](#).

15.3.4.2.2 De minimis Impact for Parks, Recreation Areas and Wildlife and Waterfowl Refuges

For a park, recreation area or wildlife and waterfowl refuge, the PDE prepares documentation to support the determination that the project, including consideration of impact avoidance, minimization or enhancement measures, does not adversely affect the features, attributes or activities qualifying the property for protection under Section 4(f).

The PDE coordinates the supporting documentation for the *de minimis* impact determination with FHWA. FHWA transmits the documentation to the official(s) having jurisdiction over the Section 4(f) property. The transmittal requests written concurrence from the official(s) in the determination that the project will not adversely affect the activities, features or attributes that make the property eligible for protection under Section 4(f). In the transmittal, FHWA also

informs the official(s) of its intent to make a *de minimis* impact determination based on their written concurrence in the no adverse effect finding.

The PDE, in cooperation with FHWA and the MDT Public Information Office, provides public notice and an opportunity for review and comment on the effects of the project on the protected activities, features and attributes of the Section 4(f) resource. The PDE may address this requirement in conjunction with other public involvement activities for the project.

Following the opportunity for public review and comment on the *de minimis* impact determination, if the official(s) with jurisdiction has provided written concurrence, the PDE includes the written concurrence in the *de minimis* impact documentation and coordinates the documentation with FHWA for the formal *de minimis* impact determination. The PDE includes the documentation, including the determination by FHWA, in the project file and provides a copy to the DT. The PDE ensures the documentation is included in the environmental documentation for the project in accordance with 23 CFR 774.7(f); see [Chapter 11, 12, 13 and 14](#).

If, after the opportunity for public review and comment, the official(s) with jurisdiction has not provided written concurrence, the PDE documents that result in the project file and evaluates use of a Programmatic Section 4(f) Evaluation in accordance with [Section 15.3.4.3](#).

15.3.4.3 Programmatic Section 4(f) Evaluation

Programmatic Section 4(f) Evaluations streamline the documentation and approval process and the amount of interagency coordination required as compared to a Full Section 4(f) Evaluation. For a Programmatic Section 4(f) Evaluation, draft and final evaluations do not need to be prepared and FHWA legal sufficiency review is not required. Interagency coordination is required only with official(s) having jurisdiction over the Section 4(f) resource and not with US Department of the Interior (DOI), US Department of Agriculture (USDA) or Department of Housing and Urban Development (HUD), unless the Federal agency has a specific action to take regarding the Section 4(f) land use (e.g., DOI approval for conversion of land acquired or improved with Land and Water Conservation Funds).

The PDE reviews the provisions of the Programmatic Section 4(f) Evaluation selected for use and prepares documentation to verify the basis for determining the project, affected Section 4(f) resource and proposed Section 4(f) use satisfy each of the specific criteria for applicability of the Programmatic Section 4(f) Evaluation.

The PDE coordinates with FHWA, the Historian and/or Archeologist, and officials with jurisdiction over the affected Section 4(f) resource as necessary to address applicability provisions requiring consultation, determinations, agreement and/or concurrence involving FHWA and/or the officials with jurisdiction (including for historic sites, the SHPO and/or THPO, or THPO representative, and, as applicable, the ACHP).

The PDE submits the supporting documentation for applicability of the Programmatic Section 4(f) Evaluation to the FHWA Division Office for approval. The PDE includes copies of correspondence received through coordination and consultation necessary to address specific applicability provisions.

FHWA reviews the documentation to verify that the proposed Section 4(f) use meets the applicability criteria in the selected Programmatic Section 4(f) Evaluation. FHWA also reviews the documentation to verify that it reflects a thorough analysis and clearly indicates the items that have been reviewed. FHWA coordinates with the PDE as necessary to address any issues or concerns identified in the review.

After approval by FHWA, the PDE places the Programmatic Section 4(f) Evaluation documentation and the documentation of FHWA approval in the project file and provides copies of each to the DT. The PDE ensures the documentation is included in the environmental documentation for the project in accordance with 23 CFR 774.7(f); see [Chapters 11, 12, 13 and 14](#). The PDE and/or FHWA make the Programmatic Section 4(f) Evaluation documentation available to the public upon request.

15.3.4.4 Full Section 4(f) Evaluation

The PDE initiates 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 preliminary coordination includes discussion of avoidance alternatives, impacts to the property and measures to minimize harm. The preliminary coordination with the official(s) having jurisdiction also includes a discussion of significance and primary use of the property.

The PDE also coordinates within MDT (e.g., DT, Historian and/or Archeologist) to obtain information needed for preparing the draft Full Section 4(f) Evaluation.

The Full Section 4(f) Evaluation may be developed and processed as a stand-alone document, as in the case of a categorical exclusion (CE) determination, or incorporated into an environmental assessment (EA) or environmental impact statement (EIS) as a separate section in accordance with 23 CFR 774.7(f).

15.3.4.4.1 Draft Full Section 4(f) Evaluation

1. **Format and Content.** The PDE prepares the draft Full Section 4(f) Evaluation in accordance with the format and content guidance in Section IX A. of FHWA Technical Advisory T 6640.8A. The PDE ensures the draft Full Section 4(f) Evaluation includes sufficient supporting documentation to demonstrate why there are no feasible and prudent avoidance alternatives. The PDE also ensures the document reflects the results of all possible planning to minimize harm to Section 4(f) property. The draft Full Section 4(f) Evaluation addresses the following topics:
 - a. **Proposed Action.** Describe the proposed project and explain the purpose and need.
 - b. **Section 4(f) Property.** Describe each Section 4(f) resource that would be used by any alternative under consideration and include the following information, as applicable:

- a detailed map or drawing of sufficient scale to identify the relationship of the alternatives to the Section 4(f) property;
 - size (e.g., acres, square meters) and location (e.g., maps, photographs, sketches) of the affected Section 4(f) property;
 - ownership (e.g., city, county, State) and type of Section 4(f) property (e.g., park, recreation, historic);
 - function of, or available activities on, the property (e.g., ball playing, swimming, golfing);
 - description and location of all existing and planned facilities (e.g., ball diamonds, tennis courts);
 - access (e.g., pedestrian, vehicular) and usage (e.g., approximate number of users/visitors);
 - relationship to other similarly used lands in the vicinity;
 - applicable clauses affecting the ownership (e.g., lease, easement, covenants, restrictions or conditions, including forfeiture); and
 - unusual characteristics of the Section 4(f) property (e.g., flooding problems, terrain conditions, other features) that either reduce or enhance the value of all or part of the property.
- c. Impacts on Section 4(f) Property. Discuss the impacts on 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(s) uses land from more than one Section 4(f) property, a summary table is useful in comparing the various impacts of the alternative(s). Impacts that can be quantified (e.g., facilities and functions affected, noise) are quantified. Other impacts that cannot be quantified (e.g., visual intrusion) are described.
- d. Avoidance Alternatives. Identify and evaluate both location and design alternatives that would avoid Section 4(f) property. Where an alternative would use land from more than one Section 4(f) property, show the analysis and evaluate avoidance alternatives for each property. Evaluate design alternatives in the immediate area of the property and consider minor alignment shifts, a reduced facility, retaining structures, etc., individually or in combination, as appropriate. Do not repeat detailed discussions of alternatives in the Section 4(f) portion of an EIS or EA. Instead, provide a summary and a reference. Where alternatives that avoid Section 4(f) resources have been eliminated from detailed study, explain whether these alternatives are feasible and prudent and, if not, the reasons why. See the “FHWA Section 4(f) Policy Paper” for additional guidance on Alternatives Analysis and Feasible and Prudent Standard.
- e. Measures to Minimize Harm. Discuss all possible measures that are available to minimize the impacts of the proposed action on Section 4(f) property. For an EIS

or EA, summarize and reference the detailed discussions of the mitigation measures. See the “FHWA Section 4(f) Policy Paper” for additional guidance on Measures to Minimize Harm and Mitigation.

- f. Coordination. Discuss the results of preliminary coordination with the official(s) having jurisdiction over the Section 4(f) property, regional, or local, offices of DOI and, as appropriate, the Regional Office of HUD and the Forest Supervisor of the affected National Forest. See the “FHWA Section 4(f) Policy Paper” for additional guidance on Coordination.

Note: The conclusion that there are no feasible and prudent alternatives is not normally addressed at the draft Section 4(f) Evaluation stage. This conclusion is made only after the draft Full Section 4(f) Evaluation is circulated and coordinated and any identified issues are adequately evaluated.

2. Review and Approval. The PDE sends copies of the draft Full Section 4(f) Evaluation to FHWA, the DT and the MDT Legal Services Unit (LSU) for review and comment. The transmittals include an agreed upon timeframe for providing comments. As a part of the FHWA review, the FHWA Legal Office conducts a preliminary legal sufficiency review of the document.

The PDE incorporates changes in the draft Full Section 4(f) Evaluation to respond to comments from FHWA, the DT and the LSU. The PDE coordinates the revised document with FHWA, the DT and/or the LSU to determine if the changes resolved all issues identified in the comments.

If FHWA, the DT and/or the LSU indicate the revised document did not satisfactorily resolve all issues identified in comments submitted, the PDE makes additional changes in the draft Full Section 4(f) Evaluation to address the unresolved issues. The PDE coordinates the revised document with FHWA, the DT and/or LSU and makes additional changes as necessary to resolve all identified issues. The PDE also may coordinate with the DT for plan modifications or additional information, if necessary to resolve issues identified.

When FHWA, the DT and the LSU indicate revisions to the draft Full Section 4(f) Evaluation have satisfactorily resolved all issues identified, the PDE prepares two copies of the draft Full Section 4(f) Evaluation for submission to FHWA. For projects involving an EIS or EA, the Full Section 4(f) Evaluation is included as a separate section in the environmental document. For projects processed as a CE, the Full Section 4(f) Evaluation is prepared as a separate document.

The PDE prepares correspondence to transmit the documents to FHWA for approval and obtains the appropriate MDT signature. The PDE then submits the documents to FHWA for signature. FHWA approves the draft Full Section 4(f) Evaluation by signing and dating the signature page and then returns one signed copy to the PDE.

3. Formal Coordination. The PDE ensures sufficient copies of the approved draft Full Section 4(f) Evaluation are available to comply with the requirements of 23 CFR 774.5 “Coordination.”

The PDE coordinates with FHWA to provide the approved draft Full Section 4(f) Evaluation for coordination and comment to the official(s) with jurisdiction over the Section 4(f) property, DOI and, as appropriate, USDA and HUD. FHWA provides 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. For a draft Full Section 4(f) Evaluation included in an EIS or EA, the PDE coordinates with FHWA to make the document available for review and comment by the official(s) with jurisdiction, DOI, USDA and/or HUD, in conjunction with public review requirements in 23 CFR 771.119 "Environmental Assessments" or 23 CFR 771.123 "Draft Environmental Impact Statements."

The PDE gathers all comments received on the draft Full Section 4(f) Evaluation.

15.3.4.4.2 Final Full Section 4(f) Evaluation

1. Format and Content. The PDE coordinates with the DT and FHWA to review all comments received on the draft Full Section 4(f) Evaluation and determines how to address each comment. The PDE incorporates changes in the Full Section 4(f) Evaluation to address comments received.

When the preferred alternative uses Section 4(f) land, the PDE also ensures the final Full Section 4(f) Evaluation addresses the following provisions from Section IX B. of Technical Advisory T 6640.8A:

- All the information required for a draft Full Section 4(f) Evaluation.
- A discussion of the basis for concluding that there are no feasible and prudent avoidance alternatives, as defined in 23 CFR 774.17; see [Section 15.3.3.2](#).
- A discussion of the basis for concluding that the proposed action includes all possible planning to minimize harm to the Section 4(f) property. When there are no feasible and prudent avoidance alternatives, the final Full Section 4(f) Evaluation must demonstrate that the preferred alternative causes the least overall harm in accordance with 23 CFR 774.3(c). As discussed in 23 CFR 774.3(c), 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 alternatives.
- A summary of the appropriate formal coordination with the Headquarters Offices of DOI (and/or appropriate agency under that Department) and, as appropriate, the involved offices of USDA and HUD.
 - Copies of all formal coordination comments and a summary of other relevant Section 4(f) comments received and an analysis and response to any questions. Where new alternatives or modifications to existing alternatives are identified and will not be given further consideration, include the basis for dismissing these alternatives supported by factual information. Where Section 6(f) land is involved, document the National Park Service's position on the land transfer.
 - A concluding statement as follows: *Based upon the above considerations, there is no feasible and prudent alternative to the use of land from the (identify Section 4(f) property) and the proposed action includes all possible planning to minimize harm to the (Section 4(f) property) resulting from such use.*
2. **Review and Approval.** The PDE coordinates the final Full Section 4(f) Evaluation with the LSU and FHWA for review, including a formal FHWA legal sufficiency review/finding as required by 23 CFR 774.7(d). If comments received identify issues that need to be resolved, the PDE coordinates with the DT and FHWA to determine how to address each comment. The PDE incorporates changes in the final Full Section 4(f) Evaluation as necessary to address comments received. The PDE coordinates the revised document with the LSU and FHWA and makes additional changes as necessary to resolve all identified issues.

When the LSU and FHWA indicate revisions to the final Full Section 4(f) Evaluation have satisfactorily resolved all issues identified in comments submitted and that the document is legally sufficient, the PDE has two copies of the Final Full Section 4(f) Evaluation prepared for submission to FHWA. The PDE prepares correspondence to transmit the documents to FHWA for approval and obtains the appropriate MDT signature. The PDE then submits the documents to FHWA for signature. FHWA approves the final Full Section 4(f) Evaluation by signing and dating the signature page and returns one signed copy to the PDE. The PDE ensures the Section 4(f) process is coordinated with the NEPA process.

15.3.5 Coordination with NEPA Compliance

Coordination of Section 4(f) compliance with NEPA compliance is continual throughout the process. The PDE ensures the NEPA documentation, including the final decision document (i.e., Record of Decision, Finding of No Significant Impact, CE approval) appropriately reflects the Section 4(f) property impacts and mitigation as documented in a final Full Section 4(f) Evaluation, Programmatic Section 4(f) Evaluation documentation or *De minimis* Impact Determination approved by FHWA.

15.3.6 Mitigation and Commitments

When the Scope of Work Report is completed, the PDE reviews the Report to ensure Section 4(f) commitments are incorporated in the project design. Within ESB, the PDE serves as the document champion to collect and coordinate comments from the other ESB Sections. The PDE compiles the comments, including those related to Section 4(f) issues, into a Scope of Work review memorandum for signature by the Environmental Services Bureau Chief. The PDE coordinates with the DT to accomplish changes in the SOW Report necessary to address the comments.

The District Environmental Engineering Specialist (DEES) monitors project construction to ensure all measures to minimize harm to Section 4(f) property are implemented in accordance with the provisions of the final Full Section 4(f) Evaluation, Programmatic Section 4(f) Evaluation documentation or *De minimis* Impact Determination approved by FHWA. The PDE, Historian and/or Archeologist provide support to the DEES during construction to meet all Section 4(f) commitments.

When all of the measures to minimize harm to Section 4(f) property documented in the approved final Full Section 4(f) Evaluation, Programmatic Section 4(f) Evaluation documentation or *De minimis* Impact Determination have been implemented, the Engineering Project Manager completes a final inspection to ensure the plans have been constructed as designed and all commitments have been fulfilled.

15.3.7 Potential for New or Modified Section 4(f) Uses Identified During Construction

If potential for new or modified Section 4(f) uses are identified during project construction (e.g., archaeological sites are discovered; modification of the project would involve the use of a potential Section 4(f) resource not previously addressed or proposed modification of the alignment or design would substantially increase the amount of Section 4(f) property used, substantially increase adverse impacts to Section 4(f) property or substantially reduce measures to minimize harm), the DEES notifies the PDE. The PDE then initiates action to determine the significance of the potentially affected Section 4(f) property in accordance with [Section 15.3.3.4](#) and proceeds accordingly, based on the determination.