

SECTION 4(f) PROCESS

1. Purpose

This work instruction describes the process for ensuring MDT highway projects involving funding or approvals from the Federal Highway Administration (FHWA) comply with the requirements of Section 4(f) of the Department of Transportation Act of 1966 (23 USC 138 and 49 USC 303) and associated implementing regulations at 23 CFR Part 774.

2. Scope

The MDT process for Section 4(f) compliance is administered by the Project Development Engineers (PDE) within the MDT Environmental Services Bureau, in cooperation with the Design Team (DT), MDT Historian and MDT Archeologist, the MDT Legal Services Unit (LSU) and FHWA. For Consultant projects, the PDE is involved in facilitating coordination with the Consultant and the DT, the Historian and Archeologist, the LSU and FHWA. The process begins with the Preliminary Field Review (PFR) and is completed with the implementation of all measures to minimize harm to Section 4(f) resources as documented in the approved Section 4(f) Evaluation and Scope of Work Report.

For significant historic sites that are subject to Section 4(f), compliance also is required with Section 106 of the *National Historic Preservation Act* and associated implementing regulations in 36 CFR 800. Analysis of alternatives and measures to minimize harm under Section 4(f) is coordinated with the evaluation of effects and measures to avoid and minimize adverse effects on the site(s) pursuant to Section 106 to ensure project decisions that satisfy both requirements. See the Cultural Resource Process Map for information on MDT procedures for compliance with Section 106 requirements.

3. Process

[Figure 1](#) presents a flowchart that illustrates the MDT process for ensuring compliance with the requirements of Section 4(f). Following the Figure is a description of each process task included within the flowchart.

Section 4(f) Process

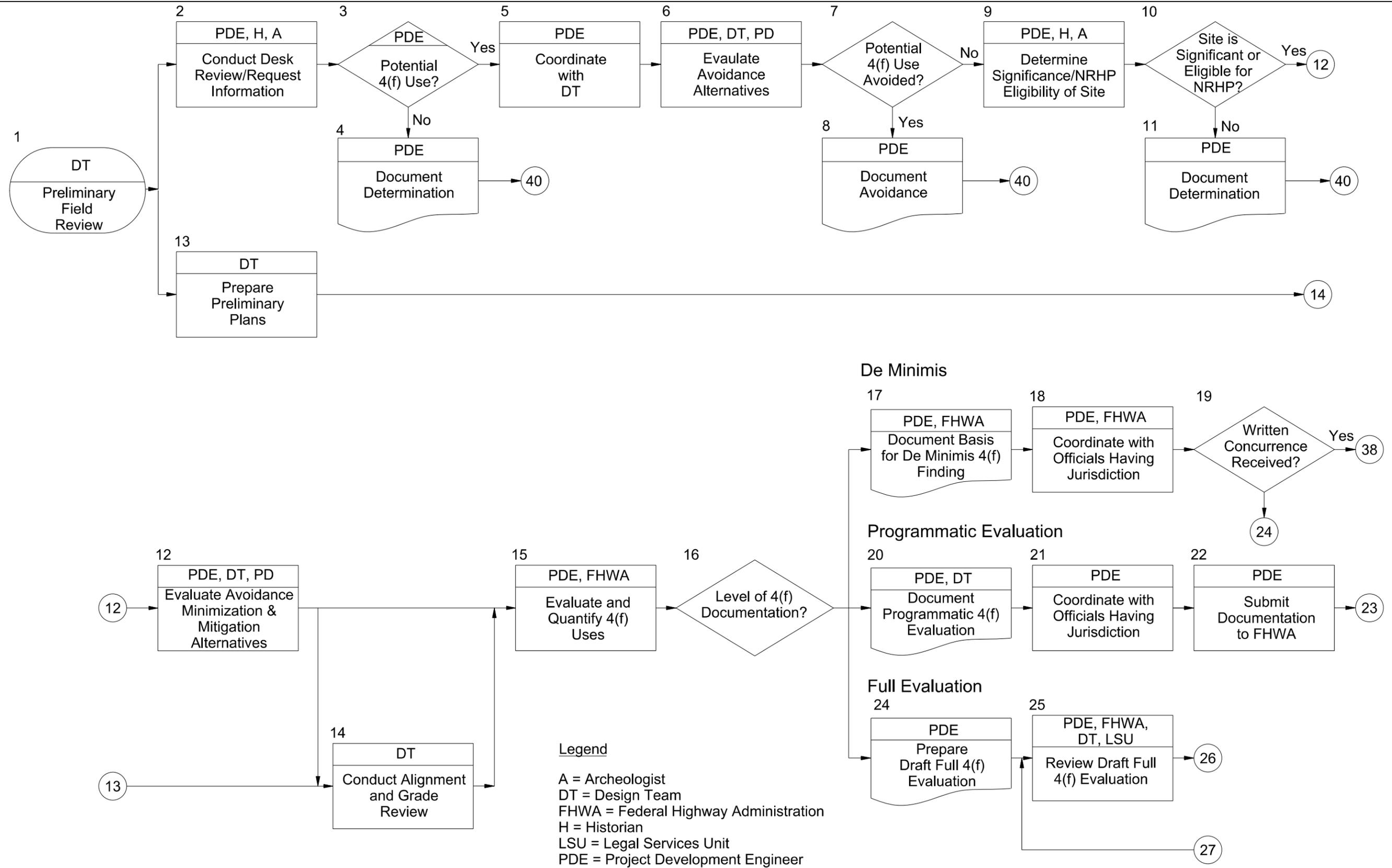
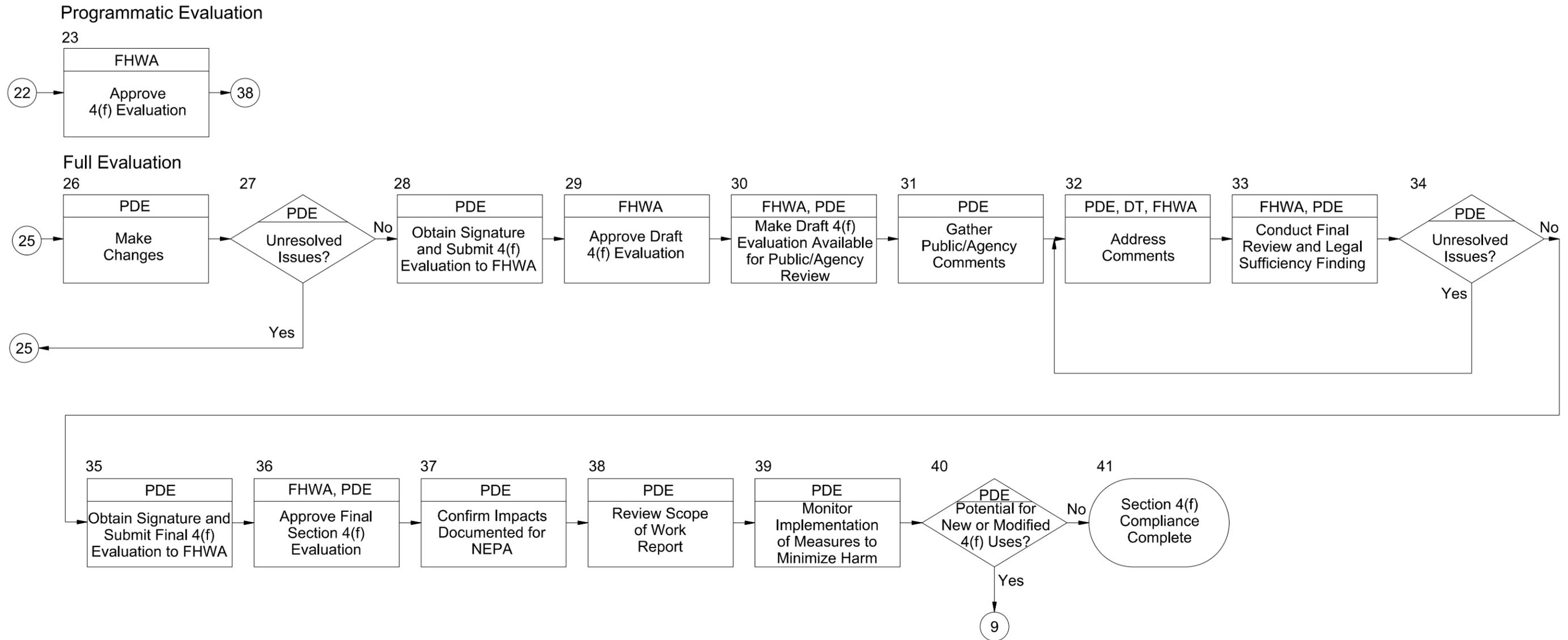


Figure 1 — SECTION 4(f) PROCESS



Legend

- A = Archeologist
- DT = Design Team
- FHWA = Federal Highway Administration
- H = Historian
- LSU = Legal Services Unit
- PDE = Project Development Engineer

Figure 1 — SECTION 4(f) PROCESS
(Continued)

PROCESS TASK

Task Title: Preliminary Field Review

Task No.: 1

Task Description

The PFR is the initial step that begins the MDT Section 4(f) compliance process for a proposed project. The PFR includes preliminary evaluation of the scope of work and the potential for social, economic, and environmental impacts. The Design Team (DT) ensures that appropriate MDT personnel are notified of the field review and invited to participate. The PDE reviews the list of Environmental Services Bureau (ESB) attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance.

Prior to the PFR, the PDE obtains and reviews information (e.g., maps, plats) indicating property ownership in the project area to identify publicly owned lands that could be subject to Section 4(f) (i.e., parks, recreation areas, wildlife and waterfowl refuges). The PDE then participates in the PFR to make a preliminary evaluation of the potential for the project to involve use of land from Section 4(f) property.

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

Regulations and Guidance

MDT Road Design Manual, Chapter One, "Road Design Process"
23 CFR 774.17 "Definitions," definition of "*Section 4(f) Property*"

PROCESS TASK

Task Title: Conduct Desk Review/Request Information

Task No.: 2

Task Description

After the PFR and receipt of the PFR Report, the PDE conducts a desk review of available information sources for potential Section 4(f) properties commensurate with the project's need for acquiring additional right-of-way. The PDE also may send Request for Environmental Information letters to the Montana Department of Fish, Wildlife and Parks, cities, counties and/or other entities that may have information related to Section 4(f) properties in the project area.

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) to identify historic and/or archaeological resources that may be Section 4(f) properties.

Regulations and Guidance

MDT Environmental-Environmental Documents, "Activity 710 Prepare/Review Enviro Info Requests"
23 CFR 774.11 "Applicability"
23 CFR 774.13 "Exceptions"

PROCESS TASK

Task Title: Potential 4(f) Use?

Task No.: 3

Task Description

After completion of the desk review, receipt of information in response to the request for information letters and completion of research, field surveys and coordination with the Historian and Archeologist, the PDE reviews the project to determine the potential for a “use” of Section 4(f) properties.

If the project has no potential for use of Section 4(f) properties or if any potential use is covered by an exception discussed in 23 CFR 774.13, the PDE proceeds to [Task 4](#).

If the project has potential for use of Section 4(f) properties not covered by the exceptions in 23 CFR 774.13, the PDE proceeds to [Task 5](#).

Regulations and Guidance

- 23 CFR 774.11 “Applicability”
- 23 CFR 774.13 “Exceptions”
- 23 CFR 774.17 “Definitions,” definition of “Use”

PROCESS TASK

Task Title: Document Determination

Task No.: 4

Task Description

If the PDE determines the project has no potential for use of Section 4(f) properties or that any potential use is covered by an exception in 23 CFR 774.13, the PDE documents the basis for this determination in the project files and provide a copy of the documentation to the DT.

The PDE proceeds to [Task 40](#) when project construction is under way.

Regulations and Guidance

23 CFR 774.11 "Applicability"
23 CFR 774.13 "Exceptions"
23 CFR 774.17 "Definitions," definition of "Use"

PROCESS TASK

Task Title: Coordinate with DT

Task No.: 5

Task Description

If the project has potential for use of properties subject to Section 4(f), the PDE coordinates with the DT to provide information (e.g., location, boundaries, type, ownership) for each known or potential Section 4(f) property the project may affect.

PROCESS TASK

Task Title: Evaluate Avoidance Alternatives

Task No.: 6

Task Description

The PDE coordinates with the DT to evaluate project location and design alternatives to determine the availability of feasible and prudent avoidance alternatives that could eliminate any potential use of Section 4(f) properties.

Regulations and Guidance

23 CFR 774.117 "Definitions," definition of "*Feasible and prudent avoidance alternative*"

PROCESS TASK

Task Title: Potential 4(f) Use Avoided?

Task No.: 7

Task Description

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 Section 4(f) property. The PDE and DT coordinate with FHWA in making the determination on feasible and prudent avoidance alternatives.

If the determination is that there are feasible and prudent avoidance alternatives for all known or potential Section 4(f) properties in the project area, the PDE and DT proceed to [Task 8](#).

If the determination is that there are not feasible and prudent avoidance alternatives for all known or potential Section 4(f) properties in the project area, the PDE proceeds to [Task 9](#).

Regulations and Guidance

23 CFR 774.117 "Definitions," definition of "*Feasible and prudent avoidance alternative*"

PROCESS TASK

Task Title: Document Avoidance

Task No.: 8

Task Description

If the PDE, DT and, as appropriate, FHWA reach agreement on project location and/or design alternatives that avoid all potential use of Section 4(f) properties, the PDE documents the decision on the project alternatives in the project files. The DT ensures that the decision on avoidance alternatives is reflected in appropriate changes to the project's preliminary design plans.

The PDE proceeds to [Task 40](#) when project construction is under way.

PROCESS TASK

Task Title: Determine Significance/NRHP Eligibility of Site

Task No.: 9

Task Description

For any unavoidable use of publicly owned public parks, recreation areas or wildlife and waterfowl refuges, the PDE coordinates with the official(s) with 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 or THPO as necessary to determine if the historic sites affected are eligible for inclusion on the National Register of Historic Places (NRHP). The Section 4(f) requirements apply only to historic sites on or eligible for the NRHP unless FHWA determines that the application of Section 4(f) is otherwise appropriate.

Regulations and Guidance

- 23 CFR 774.11 "Applicability"
- 23 CFR 774.17 "Definitions," definition of "*Historic site*"
- 23 CFR 774.17 "Definitions," definition of "*Official(s) with jurisdiction*"

PROCESS TASK

Task Title: Site is Significant or Eligible for NRHP?

Task No.: 10

Task Description

Coordination with the official(s) having jurisdiction over publicly owned public parks, recreation areas or wildlife and waterfowl refuges the project would affect may result in the determination that each site, considered in its entirety, is not of national, State or local significance. If this occurs, the PDE coordinates the determination with FHWA for review to ensure its reasonableness. If FHWA finds the determination to be reasonable, the PDE proceeds to [Task 11](#).

If the official(s) with jurisdiction determine the site(s), the project would affect are of national, State or local significance or if FHWA finds a determination of non-significance to be unreasonable, the PDE proceeds to [Task 12](#).

If the coordination with the SHPO and/or THPO, or THPO representative, results in the determination that historic sites the project would affect are not eligible for the NRHP and FHWA does not determine that application of Section 4(f) is otherwise appropriate, the PDE proceeds to [Task 11](#).

If the SHPO and/or THPO, or THPO representative, determine that historic sites the project would affect are eligible for the NRHP or if FHWA determines that application of Section 4(f) is otherwise appropriate, the PDE proceeds to [Task 12](#).

Regulations and Guidance

23 CFR 774.11 "Applicability"

PROCESS TASK

Task Title: Document Determination

Task No.: 11

Task Description

For publicly owned public parks, recreation areas and wildlife and waterfowl refuges determined not to be significant and for historic sites determined not to be eligible for the NRHP and not otherwise subject to Section 4(f), the PDE documents in the project files the determination that Section 4(f) does not apply to those properties/sites and provides a copy of the documentation to the DT.

The PDE proceeds to [Task 40](#) when project construction is under way.

PROCESS TASK

Task Title: Evaluate Avoidance, Minimization and Mitigation Alternatives

Task No.: 12

Task Description

For site(s) subject to Section 4(f), the PDE coordinates with the DT to evaluate avoidance alternatives. The evaluation supports the basis for determining whether the alternative(s) are feasible and/or prudent. The evaluation includes all reasonable alternatives and measures to minimize harm and/or mitigate for unavoidable adverse impacts and effects to Section 4(f) properties. The PDE and DT coordinate with FHWA in the evaluation of avoidance alternatives and measures to minimize harm and/or mitigate for unavoidable adverse impacts and effects.

Regulations and Guidance

23 CFR 774.17 "Definitions," definition of "*All possible planning*"
23 CFR 774.17 "Definitions," definition of "*Feasible and prudent avoidance alternative*"

PROCESS TASK

Task Title: Prepare Preliminary Plans

Task No.: 13

Task Description

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 plans to ensure the avoidance and minimization measures are accurately reflected.

PROCESS TASK

Task Title: Conduct Alignment and Grade Review

Task No.: 14

Task Description

When the DT completes preparation of preliminary plans for the proposed project, the DT coordinates with appropriate MDT personnel to schedule an Alignment and Grade Review (AGR). The PDE reviews the list of ESB attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance.

The AGR involves establishing the horizontal and vertical alignments. The AGR should address key design issues, including means to minimize harm to Section 4(f) properties. The AGR process entails extensive coordination among the DT, including the PDE.

After incorporating changes from the AGR in the design, the DT prepares the AGR Report documenting the issues discussed during the field review, including Section 4(f) aspects, as applicable, and incorporates any necessary changes into the design. The DT distributes the final AGR Report for review and comment. Within ESB, the PDE serves as the document champion to collect and coordinate comments from the other sections. The PDE compiles the comments into an AGR review memorandum for signature by the Environmental Services Bureau Chief.

Regulations and Guidance

MDT Road Design Manual, Chapter One, "Road Design Process"
23 CFR 774.17 "Definitions," definition of "*All possible planning*"

PROCESS TASK

Task Title: Evaluate and Quantify 4(f) Uses

Task No.: 15

Task Description

The PDE coordinates with the DT to obtain information (prepared by the MDT Right-of-Way Bureau) on the estimated amounts 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 Section 4(f) requirement for including all possible planning to minimize harm.

Regulations and Guidance

- 23 CFR 774.3(d) "Section 4(f) approvals" (Programmatic Section 4(f) Evaluations)
- 23 CFR 774.15 "Constructive use determinations"
- 23 CFR 774.17 "Definitions," definition of "Use"

PROCESS TASK

Task Title: Level of 4(f) Documentation?

Task No.: 16

Task Description

For each unavoidable use of Section 4(f) property, including constructive uses, 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 determination is accomplished in accordance with the following alternatives:

De Minimis Impact Finding. The PDE evaluates the proposed Section 4(f) use against the *de minimis* impact definition in 23 CFR 774.17. If the proposed Section 4(f) use appears to meet the *de minimis* impact definition, the PDE consults with FHWA to confirm that determination. Upon obtaining confirmation, the PDE proceeds to [Task 17](#). If the proposed Section 4(f) use does not initially meet the *de minimis* impact definition, the PDE evaluates practicable measures to minimize or mitigate the use of the resource and utilize the *de minimis* process. If it is determined the *de minimis* process is not feasible, the PDE considers other documentation alternatives.

Programmatic Section 4(f) Evaluation. The PDE compares the specifics of the proposed project, the affected Section 4(f) property and the proposed Section 4(f) use with the conditions stipulated in each of the five current Programmatic Section 4(f) Evaluations. If the specifics of the project, the affected Section 4(f) property and the proposed Section 4(f) use meet the conditions of a Programmatic Section 4(f) Evaluation, the PDE consults with FHWA and proceeds to [Task 20](#).

Full Section 4(f) Evaluation. If the proposed Section 4(f) use does not meet the criteria for a *de minimis* impact finding or Programmatic Section 4(f) Evaluation, proceed to [Task 24](#).

Regulations and Guidance

23 CFR 774.3 "Section 4(f) approvals"
 23 CFR 774.15 "Constructive use determinations"
 23 CFR 774.17 "Definitions," definition of "*De minimis impact*"
 23 CFR 774.17 "Definitions," definition of "*Section 4(f) evaluation*"

PROCESS TASK

Task Title: Document Basis for *De Minimis* Impact Section 4(f) Finding

Task No.: 17

Task Description

The PDE prepares sufficient supporting documentation to demonstrate that the project's impacts to the Section 4(f) property, after avoidance, minimization, mitigation and/or enhancement measures taken into account, are *de minimis*. For historic sites, either no historic property is affected by the project (i.e. "no effect") or the project has "no adverse effect" on the historic property in question. For parks, recreation areas and wildlife and waterfowl refuges, the project will not adversely affect the features, attributes or activities qualifying the property for protection under Section 4(f).

Regulations and Guidance

23 CFR 774.7(b) "Documentation," (for a *de minimis* impact finding)

PROCESS TASK

Task Title: Coordinate with Officials Having Jurisdiction

Task No.: 18

Task Description

For historic properties, the PDE, with FHWA, consults with parties identified in accordance with 36 CFR 800 (106 Process). As a part of this consultation, FHWA informs the SHPO or THPO, or THPO representative, and the Advisory Council on Historical Preservation (ACHP), if participating in the Section 106 consultation process, of FHWA's intent to make a *de minimis* finding based on their concurrence in a finding of "no effect" or "no adverse effect" in accordance with 36 CFR 800. The PDE ensures the appropriate exhibits and documentation are prepared for FHWA to submit. Public notice and comment beyond that required by 36 CFR 800 is not necessary.

For parks, recreation areas and wildlife and waterfowl refuges, the PDE, in cooperation with FHWA and the MDT Public Involvement Officer, provides public notice and an opportunity for review and comment concerning the project's effects on the activities, features or attributes of the property subject to protection under Section 4(f). This requirement can be satisfied in conjunction with other public involvement procedures. The FHWA informs the official(s) with jurisdiction of FHWA's intent to make a *de minimis* impact finding and requests written concurrence of the official(s) in the finding that the project will not adversely affect the activities, features or attributes that make the property eligible for Section 4(f) protection. The PDE ensures the necessary exhibits and documentation are prepared for FHWA to submit.

Regulations and Guidance

23 CFR 774.5(b) "Coordination" (for a *de minimis* impact finding)

PROCESS TASK

Task Title: Written Concurrence Received?

Task No.: 19

Task Description

For historic sites, if written concurrence is received from the SHPO and/or THPO, or THPO representative, and ACHP in a finding of “no effect” or “no adverse effect,” the PDE includes the written concurrence documentation in the project files, provides a copy to the DT and then proceeds to [Task 38](#).

If written concurrence is not received from the SHPO and/or THPO, or THPO representative, and ACHP in the finding of “no effect” or “no adverse effect,” the PDE documents that result in the project files and proceeds to [Task 24](#).

For parks, recreation areas, wildlife and waterfowl refuges, following the opportunity for public review and comment on the *de minimis* impact finding, if written concurrence in the *de minimis* impact finding has been received from the official(s) with jurisdiction over the affected Section 4(f) property, the PDE includes the written concurrence documentation in the project files, provides a copy to the DT and proceeds to [Task 38](#).

Following the opportunity for public review and comment in the *de minimis* impact finding, if the official(s) with jurisdiction will not provide written concurrence in the *de minimis* impact finding, the PDE documents that result in the project files and proceeds to [Task 16](#) to investigate use of a programmatic agreement.

PROCESS TASK

Task Title: Document Programmatic Section 4(f) Evaluation

Task No.: 20

Task Description

For use of a Programmatic Section 4(f) Evaluation, the PDE prepares documentation to verify the basis for determining that the project, affected Section 4(f) property and proposed Section 4(f) use meet all of the criteria and conditions stipulated in the selected programmatic evaluation.

The five current national Programmatic Section 4(f) Evaluations are available on the FHWA website. They include the following:

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

Montana has developed State-level programmatic agreements based upon the national criteria.

Regulations and Guidance

23 CFR 774.3 "Section 4(f) approvals"
FWHA Section 4(f) Policy Paper

PROCESS TASK

Task Title: Coordinate with Officials Having Jurisdiction

Task No.: 21

Task Description

For use of a Programmatic Section 4(f) Evaluation, the PDE coordinates as specified in the selected programmatic evaluation.

The coordination is conducted with the Federal, State and/or local officials having jurisdiction over the Section 4(f) resource involved. For historic sites, this includes the SHPO and/or THPO, or THPO representative, and ACHP, as applicable.

PROCESS TASK

Task Title: Submit Documentation to FHWA

Task No.: 22

Task Description

Based on the results of the coordination, the PDE completes and submits the documentation of applicability of the programmatic evaluation to the FHWA Division Office for approval. The PDE includes copies of correspondence received through the required coordination.

PROCESS TASK

Task Title: Approve Section 4(f) Evaluation

Task No.: 23

Task Description

FHWA reviews the Programmatic Section 4(f) Evaluation documentation to verify that the proposed Section 4(f) use meets the criteria and procedures of the specific Programmatic Section 4(f) Evaluation. FHWA's review also verifies that the documentation reflects a thorough analysis and clearly indicates the items that have been reviewed.

The PDE places the Programmatic Section 4(f) Evaluation documentation and the documentation of FHWA approval in the project files and provides copies to the DT. The PDE and/or FHWA make the Programmatic Section 4(f) Evaluation documentation available to the public upon request.

PROCESS TASK

Task Title: Prepare Draft Full Section 4(f) Evaluation

Task No.: 24

Task Description

The PDE obtains information needed for preparing the draft Full Section 4(f) evaluation (e.g., from the DT, from the Historian and/or Archeologist). The PDE prepares a draft Full Section 4(f) Evaluation in accordance with the guidance in Section IX of FHWA Technical Advisory T6640.8A. The PDE ensures the draft Full Section 4(f) Evaluation:

- includes sufficient supporting documentation to demonstrate why there is no feasible and prudent avoidance alternative, and
- summarizes the results of all planning to minimize harm to the Section 4(f) property.

Regulations and Guidance

23 CFR 774.7(a) "Documentation" (for a Full Section 4(f) Evaluation)

23 CFR 774.17 "Definitions," definition of "*All possible planning*"

23 CFR 774.17 "Definitions," definition of "*Feasible and prudent avoidance alternative*"

FHWA Technical Advisory T6640.8A

PROCESS TASK

Task Title: Review Draft Full Section 4(f) Evaluation

Task No.: 25

Task Description

The PDE provides copies of the draft Full Section 4(f) Evaluation to FHWA, the DT and the LSU for review and comment. The transmittals to the FHWA, DT and LSU include an agreed upon timeframe for providing comments. Concurrently, FHWA Legal conducts a preliminary legal evaluation.

PROCESS TASK

Task Title: Make Changes

Task No.: 26

Task Description

The PDE incorporates changes in the draft Full Section 4(f) Evaluation to respond to comments from FHWA, the DT and the LSU.

PROCESS TASK

Task Title: Unresolved Issues?

Task No.: 27

Task Description

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

If FHWA, DT or LSU indicate the revised draft Full Section 4(f) Evaluation 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 and returns to [Task 25](#). Resolution of issues may require coordination with the DT for necessary plan modifications and/or additional information.

If FHWA, DT and LSU indicate the revised draft Full Section 4(f) Evaluation satisfactorily resolved all issues identified in comments submitted, the PDE proceeds to [Task 28](#).

PROCESS TASK

Task Title: Obtain Signature and Submit Section 4(f) Evaluation to FHWA

Task No.: 28

Task Description

The PDE provides two copies of the draft Full Section 4(f) Evaluation and correspondence and obtains the appropriate MDT signature. The PDE sends the two copies to the FHWA for signature.

For projects involving preparation of an EIS or EA, the Full Section 4(f) Evaluation is included as a separate section of the NEPA document. For projects being processed as Categorical Exclusions, the Full Section 4(f) Evaluation is prepared as a separate document.

PROCESS TASK

Task Title: FHWA Approves Draft Full Section 4(f) Evaluation

Task No.: 29

Task Description

FHWA approves the draft Full Section 4(f) evaluation by signing and dating the signature page. After signature, FHWA returns one signed copy to the PDE.

PROCESS TASK

Task Title: Make Draft Full Section 4(f) Evaluation Available for Public/Agency Review

Task No.: 30

Task Description

The PDE ensures sufficient copies of the draft Full Section 4(f) Evaluation are available to comply with 23 CFR 774.5 "Coordination."

The PDE coordinates with FHWA to provide the draft Full Section 4(f) Evaluation for coordination and comment to the official(s) with jurisdiction over the Section 4(f) property and to the Department of the Interior (DOI) and, as appropriate, the US Department of Agriculture (USDA) and the Department of Housing and Urban Development (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 Full Section 4(f) Evaluations included in an environmental document, the PDE coordinates with FHWA to make the document available for public and agency review and comment in conjunction with NEPA public review requirements.

Regulations and Guidance

23 CFR 774.5 "Coordination"
23 CFR 771.119 "Environmental assessments"
23 CFR 771.123 "Draft environmental impact statements"

PROCESS TASK

Task Title: Gather Public/Agency Comments

Task No.: 31

Task Description

The PDE gathers all public and agency comments submitted with respect to the draft Full Section 4(f) Evaluation.

Regulations and Guidance

23 CFR 774.5 "Coordination"

PROCESS TASK

Task Title: Address Comments

Task No.: 32

Task Description

The PDE coordinates with the DT and FHWA to review all comments received and determine how to address each comment.

The PDE incorporates any changes in the Full Section 4(f) Evaluation required to address comments received.

PROCESS TASK

Task Title: Conduct Final Review and Legal Sufficiency Finding

Task No.: 33

Task Description

The PDE coordinates the Full Section 4(f) Evaluation with LSU and FHWA for its final review, including a formal legal sufficiency review/finding as required by 23 CFR 774.7(d).

Regulations and Guidance

23 CFR 774.7 "Documentation"

PROCESS TASK

Task Title: Unresolved Issues?

Task No.: 34

Task Description

If comments identify issues in the Full Section 4(f) Evaluation that need to be addressed, the PDE returns to [Task 32](#).

If review indicates that the Full Section 4(f) Evaluation is satisfactory and legally sufficient, the PDE proceeds to [Task 35](#).

PROCESS TASK

Task Title: Obtain Signature and Submit Final Full Section 4(f) Evaluation to FHWA

Task No.: 35

Task Description

The PDE provides two copies of the final Full Section 4(f) Evaluation and correspondence and obtains the appropriate MDT signature. The PDE sends the two copies to the FHWA for signature.

PROCESS TASK

Task Title: FHWA Approves Final Full Section 4(f) Evaluation

Task No.: 36

Task Description

FHWA provides a signed copy of the document containing the Section 4(f) approval to the PDE. The PDE ensures the Section 4(f) process is coordinated with the NEPA process.

Regulations and Guidance

23 CFR 774.9 "Timing"

PROCESS TASK

Task Title: Confirm Impacts Documented for NEPA

Task No.: 37

Task Description

The PDE ensures that NEPA documentation appropriately reflects the Section 4(f) property impacts and mitigation as documented in the final Full Section 4(f) Evaluation or finding approved by FHWA.

Coordination of NEPA and Section 4(f) is continual throughout the process. During this Task, the PDE also confirms the Section 4(f) information is appropriately included in the NEPA decision document.

PROCESS TASK

Task Title: Review Scope of Work Report

Task No.: 38

Task Description

As soon as appropriate data is available, the DT prepares the Scope of Work (SOW) Report, which identifies the major design features of the project and provides an overview of the project improvements. In addition to information on various engineering aspects of the proposed project, the SOW Report includes discussion of environmental considerations, including Section 4(f) resource issues and associated impact avoidance and minimization measures. The SOW Report cannot be finalized until the environmental document is approved.

The DT distributes the SOW Report for review and comment by affected MDT bureaus. 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 sections. The PDE compiles the comments into an SOW review memorandum for signature by the Environmental Services Bureau Chief. The PDE includes comments related to any Section 4(f) issues in the SOW approval/comment memorandum and coordinates with the DT to accomplish the necessary changes.

PROCESS TASK

Task Title: Monitor Implementation of Measures to Minimize Harm

Task No.: 39

Task Description

The District Environmental Engineering Specialist (DEES) monitors project construction to ensure that all measures to minimize harm to Section 4(f) properties are implemented in accordance with the provisions of the final Full Section 4(f) Evaluation or finding approved by FHWA. The PDE, Historian and Archeologist provide support to the DEES during construction to meet all commitments.

PROCESS TASK

Task Title: Potential for New or Modified 4(f) Uses?

Task No.: 40

Task Description

If potential for new or modified Section 4(f) uses is identified during project construction (e.g., archeological sites are discovered, proposed modification that would involve the use of a potential Section 4(f) property not previously addressed, proposed modification of the alignment or design would result in a substantial increase in the amount of Section 4(f) property used, a substantial increase in the adverse impacts to Section 4(f) property, a substantial reduction in the measures to minimize harm), the DEES notifies the PDE and the process returns to [Task 9](#).

If no potential for new or modified Section 4(f) uses is identified during project construction, proceed to [Task 41](#).

Regulations and Guidance

23 CFR 774.9 "Timing"
23 CFR 774.13 "Exceptions"

PROCESS TASK

Task Title: Section 4(f) Compliance Complete

Task No.: 41

Task Description

For projects determined not to involve any Section 4(f) use prior to the start of construction (see [Tasks 4, 8 and 11](#)), completion of construction with no identification of potential for new Section 4(f) use completes the Section 4(f) compliance process.

For projects involving use of a property or site that is subject to the requirements for FHWA Section 4(f) approval, when all of the measures to minimize harm to the Section 4(f) property documented in the approved Full Section 4(f) Evaluation or finding have been implemented, the Engineering Project Manager completes a final inspection to ensure the project has been constructed as designed and all commitments have been fulfilled.