

SECTION 4(F) – PARKS,
RECREATION AREAS, HISTORIC SITES,
WILDLIFE AND WATERFOWL REFUGES



CONTENT

- 22.1 Summary of Key Legislation, Regulations, and Guidance
- 22.2 Agency Roles
- 22.3 General Methodology of Evaluation
- 22.4 Format and Contents of Documentation
- 22.5 Temporary Use
- 22.6 Project Development Process Guidance
- 22.7 Continuation through Design and Construction
- 22.8 Additional Information

SECTION 4(F) – PARKS, RECREATION AREAS, HISTORIC SITES, WILDLIFE AND WATERFOWL REFUGES

This chapter focuses on documentation and regulations that are required by Section 4(f) of the United States Department of Transportation Act. Section 4(f) provides protection for the following types of properties from conversion to a transportation use:

- Publicly owned parks and recreation areas
- Historic sites (regardless of ownership) of national, state, or local significance
- Wildlife or waterfowl refuges

The word “use” has a particular meaning in Section 4(f) in that it includes the direct acquisition of a property or impairment of the vital functions of a 4(f) site because of the proximity of a transportation project.

Public parks and recreational areas in the District of Columbia include all parks and recreational areas owned and operated by National Park Service (NPS), District of Columbia Department of Parks and Recreation (DPR), and some of the public recreational areas (e.g., bathhouses).

Proposed use of Section 4(f) property requires evaluation early in project development when alternatives to the proposed action are under study. NPS and DPR own many small parks near or within District of Columbia Department of Transportation (DDOT) roadways. Alterations and use of these parks can be considered Section 4(f) impacts that have to be evaluated. In addition, a number of parkways within the District of Columbia are historic. Some of these parkways are owned and maintained by NPS while some are maintained by DDOT. Impacts to these historic parkways may also be considered a Section 4(f) use.

Although the legislation has been re-codified for some time, practitioners still commonly refer to these regulations as “Section 4(f)” requirements. Additional regulations and information that relate to some of these resources are provided in Chapter 21, Archaeological, Historical and Paleontological Resources, and Chapter 23, Section 6(f) – Land and Water Conservation Fund Areas.

22.1 Summary of Key Legislation, Regulations, and Guidance

22.1.1 Federal Regulations and Guidance

- Department of Transportation Act of 1966, Section 4(f), (49 United States Code [USC] 303, 23 USC 138, and 23 Code of Federal Regulations [CFR] 771.135). The regulation of impacts to publicly owned recreational areas, historic sites, and wildlife and waterfowl refuges under Section 4(f) is exclusive to transportation projects that are federally funded or require an action (such as an approval) by the United States Department of Transportation (USDOT), including the Federal Highway Administration (FHWA). Projects that are completely locally funded and do not require FHWA or other USDOT approval are exempt from Section 4(f). However, some of these areas may be protected under other regulations, which are not limited to transportation projects (see Section 22.1.2 on related regulations below.)
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (SAFETEA-LU). Section 6009(a) of this act amended the Section 4(f) legislation (23 USC 138) to simplify the processing and approval of projects that have de minimis (minimal) impacts on Section 4(f) properties.
- FHWA Technical Advisory (TA) T6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents issued October 30, 1987, contains a wealth of information about the content and format of environmental documentation on FHWA projects, including Section 4(f) Statements. While FHWA TA T6640.8A is not a regulatory document, it is a critical guidance document for all projects developed under FHWA jurisdiction.

- Department of Interior (DOI) Handbook on Departmental Review of Section 4(f) Evaluations was developed by DOI without coordination with USDOT. It should not be considered the policy of USDOT or FHWA on Section 4(f) issues, but it provides valuable insights into DOI processes and priorities.
- Guidance for Determining De Minimis Impacts to Section 4(f) Resources (December 13, 2005)
- FHWA Section 4(f) Policy Paper (March 1, 2005)

22.1.2 Related Regulations

Other regulations apply to historic and some recreational properties that are protected under Section 4(f). Compliance with the requirements of Section 4(f), primarily in terms of alternatives analysis and providing appropriate mitigation, is often interrelated to compliance with these other regulations.

Federal Regulations

- Section 106 of the Historic Preservation Act (historic/archaeological properties) (see Chapter 21)
- Section 6(f) of the Land and Water Conservation Fund Act (some recreational properties) (see Chapter 23)

District of Columbia Regulations

- District of Columbia Historic Landmark and Historic Protection Act of 1978 (DC Law 2-144, as amended)
- District of Columbia Historic Preservation Regulations (10 District of Columbia Municipal Regulations [DCMR] Title 10A)

22.2 Agency Roles

FHWA

The FHWA Division Office determines if Section 4(f) applies to a property and approves all Section 4(f) evaluations. While several agencies are potentially consulted in Section 4(f) determinations, FHWA bears responsibility for final, formal Section 4(f) decisions and determinations.

Consulting Agencies

Additional local and federal agencies have interest in Section 4(f) properties as the “officials having jurisdiction,” that is, as owners, managers, or regulators. These agencies often will be consulted regarding the primary uses of the properties, the impacts of the proposed project, and adequate mitigation. Other groups may be consulted for information regarding uses and significance of the properties.

- District of Columbia Historic Preservation Office (DCHPO), Office of Planning. The DCHPO (also called State Historical Preservation Office [SHPO]) is the authority on historic and archaeological sites in the District of Columbia and determines their significance and eligibility for listing on the National Register of Historic Places (NRHP). The DCHPO maintains the official list of historic properties protected by the District of Columbia Historic Preservation Law, known as the Inventory of Historic Sites Index.
- Advisory Council on Historic Preservation (ACHP). The ACHP has oversight authority over the DCHPO regarding the eligibility of historic properties for listing on the NRHP.
- National Park Service. Most NPS properties in the District of Columbia are Section 4(f) lands by virtue of being publicly owned parks and recreation areas or by their position as historic sites. A few others, such as Anacostia Park and Rock Creek Park, contain areas that are considered significant as wildlife refuges. A project manager should consider all portions of NPS properties to be Section 4(f) properties unless FHWA determines otherwise.
- District of Columbia Department of Parks and Recreation (DPR). DPR oversees all of the parks in the District of Columbia that are not managed by NPS. These include large parks, triangle parks, and unstaffed parks, as designated by DPR. A project manager should consider all portions of DPR properties to be Section 4(f) properties unless FHWA determines otherwise.
- Local historic preservation or recreational groups. These groups have no regulatory authority but may be able to provide information regarding the sensitivity of a resource to a proposed project, maps of existing or proposed recreational trails and sites, or the amount of use an area receives. Input from these groups should be sought in the National Environmental Policy Act of 1969 (NEPA) public involvement process.
- United States Department of Agriculture (USDA) and United States Department of Housing and Urban Development (HUD). Coordination with these agencies is required by Section 4(f) whenever a project uses land administered or funded by one of these agencies. Because it may be difficult to determine if USDA- and HUD-funded lands are subject to Section 4(f), coordination with FHWA should occur whenever a project uses land owned or financed by USDA or HUD to determine the applicability of Section 4(f).
- United States Department of Interior . Coordination with DOI is required by Section 4(f) whenever a Section 4(f) resource under the DOI jurisdiction is affected

(including NPS properties). Preliminary coordination prior to the circulation of the draft Section 4(f) evaluation should be accomplished with the official(s) of the DOI.

22.3 General Methodology of Evaluation

22.3.1 Determination of Applicability

FHWA determines whether Section 4(f) applies to a property and whether the project constitutes a “use” of that property. The project manager should provide as much information as can be gathered regarding the use of the property and submit it to FHWA for its determination. If FHWA determines that both conditions exist, a Section 4(f) document must be prepared for FHWA approval. If FHWA determines that one or the other conditions are not met for a property, obtain a “determination of no use” document from FHWA for reference in the NEPA document.

Does Section 4(f) apply?

The first question to answer is whether Section 4(f) applies or not. It should be noted that Section 4(f) is a USDOT law. Therefore, for DDOT projects, Section 4(f) will apply only when USDOT (FHWA or Federal Transit Administration [FTA]) funds are being used or when an action is required by USDOT. DDOT uses FHWA and FTA funds on a number of projects. Section 4(f) will apply any time FHWA/FTA funds are used; however, it will not apply when local funds are being used without FHWA involvement.

Does Section 4(f) apply to the property?

Determination of the applicability to Section 4(f) can be unclear. The following provides some guidance for determining if Section 4(f) applies to a property. For this initial determination, consider all uses of the property and assume the boundaries of the property to be as shown on

the most recent property maps. The actual limits of area protected under Section 4(f) may vary, but that will be determined by FHWA after all agencies and officials are contacted.

Historical/Architectural or Archaeological Sites

Historic buildings, districts, objects (such as monuments), historic bridges, and sites with significant buried historic/prehistoric artifacts are considered Section 4(f) resources, regardless of ownership. Generally, historical properties must be on or eligible for listing on the NRHP, as determined by the DCHPO and ACHP under the provisions of Section 106 of the Historic Preservation Act. There can be exceptions, where a locally significant site can be considered a Section 4(f) property even if it is not on the NRHP. Section 4(f) does not apply to archaeological sites where FHWA, after consultation with the DCHPO and the ACHP, determines that the archaeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place.

Public Waterfowl and Wildlife Refuges

Publicly owned land is considered to be a wildlife or waterfowl refuge when the land has been officially designated as such or when federal or District of Columbia officials who have jurisdiction over the land determine that one of its major purposes or functions is for refuge purposes. An example would be Kenilworth Marsh, which is a portion of the NPS Anacostia Park.

Public Parks and Recreation Areas

Publicly owned land is considered to be a park or recreation area when the land has been officially designated as such, or when federal or District of Columbia officials who have jurisdiction over the land determine that one of its major purposes or functions is for park or recreation purposes. Only those portions of multiple use public lands that are

designated by statutes or identified in the management plans of the administering agency as being for park, recreation, or wildlife or waterfowl refuge purposes and that are determined to be significant for those purposes are subject to the requirements of Section 4(f). Incidental, secondary, occasional, or dispersed recreational activities do not constitute a major purpose. For example, a public school playground or playfield may be considered a Section 4(f) property if the area is open at times for public use and provides a significant recreational resource, but the remainder of the school property would not be subject to Section 4(f) requirements. A privately owned golf course, whether or not it is open to the public, is not a Section 4(f) property.

Designated recreational trails are Section 4(f) properties, provided they are located on public lands or reside on lands with an easement that allows access to the general public. Trails that follow existing roadway right-of-way are generally not Section 4(f) properties unless they are designated recreational (and not primarily for transportation) and have a specifically designated area within the right-of-way.

Paleontology sites are sites dedicated to studies of the fossil record. These sites are not protected under Section 4(f).

Do the impacts of the project qualify as a “use” of any portion of the property?

The next question to answer is whether the impacts of the project qualify as a “use” of Section 4(f) resource. If the project does not qualify for a use, then the Section 4(f) process can be completed. FHWA/FTA determines whether a “use” has occurred or not.

There are different levels of impact or “use,” as defined by the regulations. Examples of each type follow:

- Permanent Use
 - A permanent incorporation of right-of-way from a Section 4(f) resource into the transportation project
 - A permanent easement is acquired, such as for drainage or bridge maintenance
- Constructive Use
 - The proximity of the roadway project impairs the resource, such as impacts caused by noise, vibration, ecological intrusion, or access restriction
- Temporary Use
 - The project temporarily affects the property during construction, such as minor temporary construction impacts (that can be restored) or temporary access restriction during construction
- De Minimis Use
 - The project incorporates a small portion of a Section 4(f) property but does not affect the uses of the property

Once it is determined that the project will result in a “use” of a Section 4(f) resource then the impacts have to be evaluated, as described in Section 22.3.2.

Does the project qualify for a programmatic evaluation or an individual evaluation?

The next step is to determine whether the project qualifies for a programmatic evaluation (PE) or not. FHWA has developed five nationwide programmatic evaluations for projects that have minor or beneficial impacts to section 4(f) resources. These PEs are:

- Independent Walkway and Bikeways Construction Projects
- Historic Bridges

- Minor Involvement with Historic Sites
- Minor Involvement with Parks, Recreation Areas, and Waterfowl and Wildlife Refuges
- Net Benefits to a Section 4(f) Property

The details on how to use these PEs are given in Section 22.3.3.

However, if the project does not qualify for a PE then an individual Section 4(f) evaluation has to be completed. Details on how to prepare an individual Section 4(f) evaluation are given in Section 22.4.1.

22.3.2 Evaluation of Impacts

Once FHWA has determined that Section 4(f) is applicable, the following steps must be taken to show that impacts are unavoidable and that all measures have been taken to minimize impacts to the Section 4(f) property before FHWA can approve the project.

Coordination

Once it is determined that Section 4(f) applies, the officials having jurisdiction over the Section 4(f) property must be contacted. This contact will elaborate the purpose and significance of the property, the limits of the Section 4(f) site, and possible measures to minimize harm.

Alternatives Analysis

Section 4(f) requires consideration of avoidance alternatives to show that there are no “feasible and prudent alternatives” that would avoid use of the Section 4(f) property. A feasible alternative is one that is possible to engineer, design, and build. An alternative (that avoids a Section 4(f) resource) is not “prudent” if the cost; social, economic, and

environmental impacts; and/or community disruption are extraordinary.

The alternatives may include a No Action (“do nothing”) Alternative, a modification of the proposed project to avoid the Section 4(f) property, or placing the project at a new location that avoids the Section 4(f) property. Identifying feasible and prudent alternatives will depend on the project and other issues in the project area. If the project qualifies for a PE, the alternatives to be considered are specified (see Section 22.3.3 for more details).

Measures to Minimize Harm

Measures to be included in the project to reduce the impact of the use of the Section 4(f) property must be developed in cooperation with the officials having jurisdiction. These measures can take many forms, depending on the type of the property (such as recreational or historical), the type of “use” by the project, and project area conditions.

22.3.3 Programmatic Evaluations

FHWA has developed five nationwide PEs for projects that have minor or beneficial impacts to Section 4(f) properties. Many DDOT projects can qualify for one of these PEs. The benefit of qualifying for one of these PEs is that they streamline the documentation and approval process, as well as the amount of interagency coordination that is required. They do not require draft and final evaluations to be prepared or an FHWA legal sufficiency review. Unlike an individual PE, which FHWA ultimately approves, the qualification of the project under any of these PEs requires only the concurrence of the officials having jurisdiction over the affected Section 4(f) property.

Independent Walkway and Bikeway Construction Projects

This PE is applicable to independent bikeway or walkway construction projects that require the use of recreation and park areas that are established and maintained primarily for active recreation, open space, and similar purposes, and are consistent with the designated use of the property.

Historic Bridges

This PE applies to the rehabilitation of bridges that are on or eligible for inclusion on the NHRP and are an integral part of a modern transportation system. For the purpose of this programmatic Section 4(f) evaluation, a proposed action will “use” a bridge that is on or eligible for inclusion on the NRHP when the action will impair the historic integrity of the bridge either by rehabilitation or demolition. Rehabilitation that does not impair the historic integrity of the bridge as determined by procedures implementing the National Historic Preservation Act of 1966, as amended (NHPA), is not subject to Section 4(f).

This programmatic Section 4(f) evaluation may be applied by the FHWA to projects that meet the following criteria:

- The bridge is to be replaced or rehabilitated with federal funds.
- The project will require the use of a historic bridge structure that is on or is eligible for listing on the NRHP.
- The bridge is not a National Historic Landmark.
- The FHWA Division Administrator determines that the facts of the project match those set forth in the sections of the PE labeled Alternatives, Findings, and Mitigation.
- Agreement among the FHWA, the SHPO, and the ACHP has been reached through procedures pursuant to Section 106 of the NHPA.

The following alternatives avoid any use of the historic bridge:

- No action (do nothing).
- Build a new structure at a different location without affecting the historic integrity of the old bridge, as determined by procedures implementing the NHPA.
- Rehabilitate the historic bridge without affecting the historic integrity of the structure, as determined by procedures implementing the NHPA.

This list is intended to be all inclusive.

This programmatic Section 4(f) evaluation applies only when the FHWA Division Administrator:

- Determines that the project meets the applicability criteria set forth above
- Determines that all of the alternatives set forth in the Findings section of the evaluation have been fully considered
- Determines that use of the findings in the PE that there are no feasible and prudent alternatives to the use of the historic bridge is clearly applicable
- Determines that the project complies with the Measures to Minimize Harm section of the PE
- Assures that implementation of the measures to minimize harm is completed
- Documents the project file that the programmatic Section 4(f) evaluation applies to the project for which it is to be used.

Minor Involvements with Historic Sites

This type of PE applies to projects that improve existing highways and use minor amounts of land from historic sites that are adjacent to existing highways.

Minor Involvements with Parks, Recreation Areas, and Waterfowl and Wildlife Refuges

Under this PE, applicable projects would 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.

Net Benefits

Designation under this PE would apply to transportation improvement projects on existing or new alignments that will use a portion of a Section 4(f) property and result in a net benefit to the Section 4(f) property, such as improved access to it.

22.3.4 De Minimis Evaluations

In determining that a project will have a de minimis (minimal) impact, FHWA considers the proposed action, the nature of the property affected, and all measures proposed to minimize harm. Under the de minimis provisions, an analysis of avoidance alternatives is not required. However, the FHWA must obtain concurrence from the officials having jurisdiction that the project will have minimal impact.

If the Section 4(f) property is a recreational area, wildlife refuge, or waterfowl refuge, a public notice of the proposed action and opportunity for public review and comment is also required. This requirement can be satisfied through the publication of the NEPA document. If the NEPA document is not published (such as a categorical exclusion [CE]), a separate public notice may be required for the Section 4(f)

action. The format and method of the public notice should be coordinated with the FHWA District Office.

22.4 Format and Contents of Documentation

The Section 4(f) statute does not require the preparation of any written documents, public involvement, or coordination with any agencies other than DOI, HUD, or USDA. However, USDOT has established a procedure and documentation policy that creates an administrative record and ensures that the regulatory and statutory requirements have been met: there is no feasible and prudent alternative to the use of the Section 4(f) resource and all possible planning and measures to minimize harm have been considered.

For projects processed with an Environmental Impact Statement (EIS), Environmental Assessment (EA), or a Finding of No Significant Impact (FONSI), the individual Section 4(f) evaluation should be included as a separate section of the document, and for projects processed as CEs, as a separate Section 4(f) evaluation document. Pertinent information from various sections of the EIS or EA/FONSI may be referenced and summarized in the Section 4(f) evaluation to reduce repetition.

The use of Section 4(f) land may involve concurrent requirements of other regulations. Examples include compatibility determinations for the use of land in the NPS and approval of land conversions under Section 6(f) of the Land and Water Conservation Fund Act (Chapter 23). The mitigation plan developed for the project should include measures that would satisfy all of the requirements. For example, Section 6(f) requires that lands acquired for the project be replaced with lands of equal value, location, and usefulness. The Section 4(f) evaluation should discuss the coordination and resolution of the other applicable regulations as well.

22.4.1 Individual Evaluations

Individual Section 4(f) evaluations are prepared for any impacts that do not meet the criteria of one of the programmatic evaluations or the de minimis standard. This documentation involves a two-step process. A draft document is prepared following the preliminary coordination, analysis of alternatives, and development of measures to minimize harm. All Section 4(f) evaluations must undergo legal sufficiency review, and it is prudent for FHWA also to perform a legal sufficiency review at this time. The draft Section 4(f) evaluation is then circulated to the officials having jurisdiction, NPS, USDA, DCHPO, and HUD, as appropriate. The document is not specifically published for public review; public review occurs in conjunction with the NEPA document.

Following the circulation of the draft and receipt of review comments, a final document is developed that incorporates all of the draft document information, response to comments received, and a conclusion. If any issues are raised by the reviewing agencies, follow-up coordination must be undertaken to resolve the issues. If reasonable efforts to resolve the issues are not successful (such as, if one of these agencies is not satisfied with the way its concerns were addressed), but the issues are disclosed and receive good faith attention from the decision maker, then FHWA has satisfied the procedural obligation under Section 4(f) to consult with and obtain comments from the agency. Section 4(f) does not require concurrence, although that is the goal in most cases.

Draft Section 4(f) Evaluation

DDOT recommends the following format and content for the draft Section 4(f) evaluation. The listed information should be included in the evaluation, as applicable.

- Describe the proposed action.

Much of this section can be referenced and drawn from the NEPA document. At a minimum, include a summary. It is important to summarize the purpose and need for the project to establish the basis for analyzing feasible and prudent alternatives.

- Describe each Section 4(f) property that would be used by any alternative under consideration. Include the following information:
 - A detailed map or drawing of sufficient scale to identify the relationship of the alternatives to the Section 4(f) property
 - Size (acres or square feet) and location (maps or other exhibits such as photographs or sketches) of the affected Section 4(f) property
 - Ownership (such as city, county, or state) and type of Section 4(f) property (such as a park, recreational area, or historic site)
 - Function of or available activities on the property (such as ball playing, swimming, or golfing)
 - Description and location of all existing and planned facilities (ball diamonds or tennis courts, for example)
 - Access (pedestrian or vehicular) and usage (approximate number of users/visitors)
 - Relationship to other similarly used lands in the vicinity
 - Applicable clauses affecting ownership, such as lease, easement, covenants, restrictions, or conditions, including forfeiture
 - Unusual characteristics of the Section 4(f) property (such as flooding problems, terrain conditions, or

other features) that either reduce or enhance the value of all or part of the property

- Review impacts on Section 4(f) resources for each alternative, such as the amount of land to be used, facilities and functions affected, noise, air pollution, visual, and so on. When an alternative would use land from more than one Section 4(f) property, provide a summary table comparing the various impacts of the alternative(s). Quantify such impacts as facilities and functions affected, noise, and so on. Describe other impacts that cannot be quantified, such as visual intrusion, to the extent possible.
- Identify and evaluate alternatives that would avoid the Section 4(f) property. Avoidance alternatives must meet the “feasible and prudent” standard that is laid out in the regulations. Where an alternative would use land from more than one Section 4(f) property, the analysis needs to evaluate alternatives that avoid each and all properties. The design alternatives should be in the immediate area of the property and should consider minor alignment shifts, a reduced facility, retaining structures, and similar measures, either individually or in combination, as appropriate. The document need not repeat detailed discussions of alternatives in an EIS or EA in the Section 4(f) portion, but should reference and summarize them. When alternatives that would avoid the Section 4(f) properties have been eliminated from the detailed study in the NEPA document, the discussion in the Section 4(f) evaluation should explain whether these alternatives are feasible and prudent and, if not, the reasons why.
- Discuss all possible measures available to minimize the impacts of the proposed action on the Section 4(f) property(ies). Detailed discussions of mitigation

measures in the EIS or EA may be referenced and appropriately summarized rather than repeated.

- Discuss the results of preliminary coordination with the officials having jurisdiction over the Section 4(f) property, DCHPO, and with NPS, HUD, and the USDA, as appropriate. Generally, the coordination should include a discussion of significance and primary use of the property, discussion of avoidance alternatives, impacts to the property, and measures to minimize harm.

Note that the draft Section 4(f) evaluation normally does not include a statement concluding that there are no feasible and prudent alternatives. Such a conclusion is made only after the draft Section 4(f) evaluation has been circulated and coordinated, and any identified issues have been adequately evaluated.

Final Section 4(f) Evaluation

The final Section 4(f) evaluation must contain:

- All the information from the draft evaluation.
- A discussion of the basis for concluding that there are no feasible and prudent alternatives for the use of the Section 4(f) land. The supporting information must demonstrate that “there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost; social, economic, and environmental impacts; or community disruption resulting from such alternatives reach extraordinary magnitudes” (23 CFR 771.135[a][2]). This language should appear in the document along with the supporting information.
- 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 alternatives that avoid the use of Section 4(f) land, the final Section 4(f) evaluation must demonstrate that the preferred alternative is a feasible and prudent alternative with the least harm on the Section 4(f) resources after considering mitigation to the Section 4(f) resources.

- A summary of the appropriate formal coordination with DCHPO, DOI headquarters, NPS and/or other agency under DOI, and, as appropriate, the involved offices of USDA and HUD.
- Copies of all formal agency coordination comments received, a summary of other relevant Section 4(f) comments received (such as public review comments from the draft NEPA document), and an analysis and response to any questions raised. Where new alternatives or modifications to existing alternatives are identified and will not be given further consideration, the document should provide the basis for dismissing these alternatives, supported by factual information. Where Section 6(f) land is involved, the NPS position on the land transfer should be documented.
- Concluding statement as follows: “Based on the above considerations, there is no feasible and prudent alternative to the use of land from the [identify Section 4(f) property here] and the proposed action includes all possible planning to minimize harm to the [Section 4(f) property] resulting from such use.”

22.4.2 Programmatic Evaluations

The content of a programmatic evaluation document varies, depending on which program is applied, but it generally follows this outline:

- Description of the proposed project

- Description of the Section 4(f) property/ properties
- Applicability of the programmatic evaluation
- Avoidance alternatives description (specified for each programmatic evaluation)
- Findings (specific to each programmatic evaluation)
- Measures to minimize harm
- Coordination (documentation of concurrence from the official with jurisdiction)

The information provided in each section is similar to that described for individual evaluations. But for programmatic evaluations, draft and final evaluations do not need to be prepared, and an FHWA legal sufficiency review is not required. Interagency coordination is required only with the official(s) with jurisdiction, and not with DOI, USDA, or HUD—unless the federal agency has a specific action to take, such as an impact to an NPS property or DOI approval under Section 6(f). The applicable programmatic evaluation should be referred to for specific documentation requirements.

22.4.3 De Minimis Evaluations

The documentation necessary for de minimis determinations is not specified in detail. To properly document that the criteria for approval under the de minimis standard have been satisfied, the documentation should generally follow the individual evaluation guidance, but needs only include:

- Description of the proposed project
- Description of the Section 4(f) property/properties
- Measures to minimize harm

- Coordination (documentation of concurrence from the official with jurisdiction)
- Proof of publication of a public notice, if a recreational property, wildlife refuge, or waterfowl refuge is involved. This requirement can be satisfied as part of the NEPA public review requirements. In the case of a CE, a separate public notice may be required.
- There must be documented agreement of the appropriate federal, state, or local officials having jurisdiction over the resource regarding the above conditions.

In the situation where a project does not meet all of the above criteria, the temporary occupancy will be considered a use of the Section 4(f) resource and the appropriate Section 4(f) analysis will be required.

22.5 Temporary Use

In general, Section 4(f) does not apply to temporary occupancy, including those resulting from a right-of-entry, construction, other temporary easements or short-term arrangements, of a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site where temporary occupancy of the land is so minimal that it does not constitute a use within the meaning of Section 4(f).

A temporary occupancy will not constitute a use of Section 4(f) resource when all of the conditions set forth in 23 CFR 771.135(p)(7) are met:

- The duration (of the occupancy) must be temporary (less than the time needed for construction of the project), and there should be no change in ownership of the land.
- The scope of work must be minor (both the nature and the magnitude of the changes to the Section 4(f) resource are to be minimal).
- No permanent adverse physical impacts are expected, nor will there be interference with the activities or purpose of the resource on either a temporary or permanent basis.
- The land being used must be fully restored (i.e., the resource must be returned to a condition that is at least as good as that which existed prior to the project).

22.6 Project Development Process Guidance

It is important to identify potential Section 4(f) issues early in the project development process, so that options to avoid impacts can be considered and, if impacts cannot be avoided, measures to minimize harm can be incorporated early into the design.

Potential Section 4(f) properties should be located early and incorporated into the project base mapping. These properties can be identified through a listing of publicly owned properties in the project area, review of the NRHP and District of Columbia Inventory of Historic Sites, and a tour of the project area to identify current uses of the properties. More-detailed evaluation of potential historic sites that may be eligible for the NRHP will be performed in cooperation with the DCHPO as part of the Section 106 clearance.

Once the properties are identified, potential uses by the proposed project can be identified. It is at this point that officials with jurisdiction (such as DPR, NPS, or DCHPO) should be contacted regarding the significance of the resource and its primary uses. Maps, master plans, and management plans of recreational areas should be obtained, if possible. At this time, measures to minimize harm should be discussed with the officials. All of this coordination should be fully documented for later use in the evaluation document.

If the property cannot be avoided, then the FHWA District Office should be contacted to determine if the project can be authorized under a programmatic evaluation or the de minimis standard. The path forward to approval will depend on this determination.

22.7 Continuation through Design and Construction

To avoid problems or delays, communication must continue throughout project design and construction.

Clearly, it is most important to incorporate all design modifications and measures to minimize harm, as approved by FHWA in the Section 4(f) document and the NEPA document, into the design plans and notes.

Where a land exchange is required (such as Section 6(f) property), then DDOT real estate staff must be informed. The specifics of the land purchase should be incorporated into the right-of-way plans as would any other right-of-way acquisition, including specifics for the final disposition of the title so that the transfer can be completed at the time of acquisition.

It is possible that for unforeseen reasons, changes could occur in the project after the Section 4(f) and NEPA document are complete, such as a change necessitated by conditions found during construction. The project team must continuously monitor impacts to the Section 4(f) properties, as design changes and/or onsite construction considerations may force modification of previously made commitments. The team should coordinate any changes with the FHWA immediately, because it may require revisiting the Section 4(f) process, including coordination with the official(s) having jurisdiction.

22.8 Additional Information

22.8.1 Guidance

- FHWA Section 4(f) regulations:
<http://environment.fhwa.dot.gov/projdev/4fregs.asp>
- 23 CFR 771.135:
<http://www.fhwa.dot.gov/legregs/directives/fapp/cfr0771.htm>
- FHWA Technical Advisory T6640.8A, Guidance for Preparing and Processing Environmental and Section 4(f) Documents:
<http://www.environment.fhwa.dot.gov/projdev/impTA6640.asp>
- FHWA Section 4(f) Policy Paper (revised June 1989):
<http://www.environment.fhwa.dot.gov/projdev/4fpolicy.asp>
- FHWA Section 4(f) Policy Paper (March 1, 2005):
<http://www.environment.fhwa.dot.gov/projdev/4fpolicy.asp>
- FHWA Paper (November 15, 1989), Alternatives Selection Process for Projects Involving Section 4(f) of the DOT Act
- Guidance for Determining De Minimis Impacts to Section 4(f) Resources (December 13, 2005):
<http://www.fhwa.dot.gov/hep/guidedeminimis.htm>
- SAFETEA-LU de Minimis Standard:
<http://www.environment.fhwa.dot.gov/projdev/PD5sec4f.asp>
- Programmatic Evaluations:
<http://www.environment.fhwa.dot.gov/projdev/4fnspeval.asp>
- NPS Section 4(f) Review Guidebook:
<http://www.doi.gov/oepl/handbook.html>

22.8.2 Potential Section 4(f) Properties

- National Park Service, District of Columbia Park Guide:
<http://home.nps.gov/applications/parksearch/state.cfm?st=dc>
- The District of Columbia Department of Parks and Recreation, list of parks:
<http://app.dpr.dc.gov/dprmap/index.asp>
- District of Columbia Inventory of Historic Sites, Index and Maps:
http://planning.dc.gov/planning/cwp/view,a,1284,q,570748,planningNav_GID,1706,planningNav,%7C33515%7C.asp
- District of Columbia Department of Parks and Recreation:
<http://dpr.dc.gov/DC/DPR>
- District of Columbia Public Schools (playgrounds):
<http://www.k12.dc.us/>
- The Capital Crescent Trail:
<http://www.cctrail.org/map6.htm>
- Other recreational (hiking and biking) trails:
<http://bikewashington.org/routes/index.htm>