

SECTION 4(F) PROGRAMMATIC EVALUATIONS

SECTION 4(F) STATEMENT AND DETERMINATION FOR
INDEPENDENT BIKEWAY OR WALKWAY CONSTRUCTION PROJECTS

Section 4(f)

Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects

MEMORANDUM

Background

There is a growing interest in bicycling and walking for commuting, for recreation, and for other trip purposes. Where this activity occurs on high-speed roadways, both safety and efficiency can be impaired because of the mixture of motorized and nonmotorized modes of travel. Construction of bikeways or pedestrian walkways can promote safety and will assist in retaining the motor vehicle carrying capacity of the highway while enhancing bicycle capacity.

The United States Congress recognized the importance of bicycle and pedestrian travel by including special provisions for these modes in the Federal-Aid Highway Act of 1973, Public Law 93-87. Section 124 of this Act (amended Title 23, U.S. Code, by adding Section 217) contained the following principal provisions:

(1) Federal funds available for the construction of preferential facilities to serve pedestrians and bicyclists are those apportioned in accordance with paragraphs (1), (2), (3), and (6) of Section 104(b), 23 U.S.C., and those authorized for Forest highways, Forest development roads and trails, public land development roads and trails, park roads and trails, parkways, Indian reservation roads, and public land highways.

(2) Not more than \$40 million (amended to \$45 million by Section 134 of the Federal-Aid Highway Act of 1976) apportioned in any fiscal year for purposes described in the preceding paragraph may be obligated for bicycle projects and pedestrian walkways.

(3) No State shall obligate more than \$2 million (amended to \$2.5 million by Section 134 of the Federal-Aid Highway Act of 1976) of Federal-aid funds for such projects in any fiscal year.

(4) Such projects shall be located and designed pursuant to an overall plan which will provide due consideration for safety and contiguous routes.

The funding limitations described in (2) and (3) above are applicable only to independent bikeway or walkway construction projects.

Project Description

Independent bikeway or walkway construction projects are those highway construction projects which provide bicycle or pedestrian facilities in contrast to a project whose primary purpose is to serve motorized vehicles. The requirements for qualification of proposed bikeway or walkway facilities as independent bikeway or walkway construction projects are contained in Volume 6, Chapter 1, Section 1, Subsection 1, of the Federal-Aid Highway Program Manual * (*the Federal -aid Highway Program Manuals were replaced by the Federal-aid Program Guide which includes selected verbatim sections of the CFR*), codified as Part 652 of Chapter 1 of Title 23 of the Code of Federal Regulations (CFR).

The bikeways and walkways will be designed and constructed in a manner suitable to the site conditions and the anticipated extent of usage. In general, a bikeway will be designed with an alignment and profile suitable for bicycle use with a surface that will be reasonably durable that incorporates drainage as necessary, and that is of a width appropriate for the planned one-way or two-way use.

The facilities will be accessible to the users or will form a segment located and designed pursuant to an overall plan.

Projects may include the acquisition of land outside the right-of-way, provided the facility will accommodate traffic which would have normally used a Federal-aid highway route, disregarding any legal prohibitions on the use of the route by cyclists or pedestrians.

It is required that a public agency be responsible for maintenance of the federally funded bikeway or walkway. No motorized vehicles will be permitted on the facilities except those for maintenance purposes and snowmobiles where state or local regulations permit.

Application

This negative declaration/preliminary Section 4(f) document is only applicable for independent bikeway or walkway construction projects which require the use of recreation and park areas established and maintained primarily for active recreation, open space, and similar purposes. Additionally, this document is applicable only when the official having specific jurisdiction over the Section 4(f) property has given his approval in writing that the project is acceptable and consistent with the designated use of the property and that all possible planning to minimize harm has been accomplished in the location and design of the bikeway or walkway facility. This document does not apply if the project would require the use of critical habitat of endangered species.

This document does not cover the use of any land from a publicly owned wildlife or waterfowl refuge or any land from a historic site of national, State, or local significance. It also does not cover those projects where there are unusual circumstances (major impacts, adverse effects, or controversy). A separate Section 4(f) statement and environmental document must be prepared in these categories.

This document does not cover bicycle or pedestrian facilities that are incidental items of construction in conjunction with highway improvements having the primary purpose of serving motor vehicular traffic.

Summary

The primary purpose for the development of independent bikeway and walkway projects is to provide a facility for traffic which would have normally used a Federal-aid highway route. In some cases, the bikeway and walkway projects can serve a dual function by also providing for recreational use. Where this situation occurs, artificially routing a bikeway or walkway around a compatible park area is not a prudent alternative because it would decrease the recreational value of the bikeway or walkway.

The written approval of the official having specific jurisdiction over the Section 4(f) property and construction authorization by FHWA will confirm that all possible planning to minimize harm has been accomplished in the location and design of the bikeway or walkway facility.

Noise and air quality will not be affected by bicycles. There would be increase in the noise level if snowmobiles are permitted. However, this would likely occur at a time when other uses of the recreational facilities will be minimal.

Temporary impacts on water quality will be minimal. Erosion control measures will be used through the construction period. A certain amount of land will be removed from other uses. The type of land and uses will vary from project to project. However, due to the narrow crosssection of the bikeways and walkways, a minimal amount of land will be required for the individual projects. The projects will be blended into the existing terrain to reduce any visual impacts.

Displacement of families and businesses will not be required.

No significant adverse social or economic impacts are anticipated. There will be beneficial impacts such as the enhancement of the recreational potential of the parks and the provision of an alternate mode of transportation for the commuter.

Comments and Coordination

A draft of this negative declaration/Section 4(f) statement was published in the *Federal Register* (42 F.R. 15394), March 21, 1977, inviting interested persons to comment. The majority of the letters received were favorable and recommended approval of the document.

The document was also circulated to the Departments of the Interior (DOI), Housing and Urban Development (HUD), and Agriculture. Comments were received from DOI and HUD and are included in the appendix along with our responses.

Individual projects will be coordinated at the earliest feasible time with all responsible local officials, including the State Outdoor Recreation Liaison Officer. The use of properties acquired or developed with Federal monies from the Land and Water Conservation Fund will also be coordinated with the Bureau of Outdoor Recreation of DOI.

If HUD Community Development Block Grant Funds are used in conjunction with Federal Highway Administration Funds, HUD environmental review procedures set forth in 24 CFR, Section 58, are applicable.

Determination

Based on the above and on the scope of these bikeway and walkway projects, it is determined that they will not have a significant effect upon the quality of the human environment. It is also our determination that (1) there is no feasible and prudent alternative to the use of Section 4(f) lands, and (2) the conditions for approval will insure that the bikeway proposals will include all possible planning to minimize harm resulting from such use.

Date: May 23, 1977 /Original signed by/ Les Lamm For William M. Cox Federal Highway Administrator

APPENDIX

(Letter)United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

In reply refer to: (ER-77/105)

MAR 21, 1977

Dear Mr. Lash:

This is in response to your February, 1977 request for the Department of the Interior comments on the proposed Negative Declaration/Section 4(f) statement for Independent Bikeway or Walkway Construction Projects.

We are pleased that the proposed document responds to a number of the comments made in our letter of June 25, 1976, on the Bikeway Demonstration Program. We note that the present document is not applicable to the use of land from a publicly owned wildlife or waterfowl refuge or any land from a historic site, nor is it applicable if the project would require the use of critical habitat of endangered species. We note further that the document applies only to the use of recreation and park areas established and maintained primarily for active recreation, open space, and similar purposes.

We concur with these limitations on the application of the proposed Negative Declaration/Section 4(f) statement. However, we wish to again express our opinion that the proposed document not be applicable to: (1)

1. Significant wetlands;
2. Unique ecological areas set aside for the preservation, interpretation, or scientific study of plant and animal communities, e.g., Registered Natural Landmarks and Registered Environmental Education Landmarks.
3. Play areas for small children (tot lots, etc.); and
4. Small park areas where the bikeway or walkway may use a significant portion of the available space (vest-pocket parks, etc.).

We are also pleased that the document makes provision for early coordination with all responsible local officials, including the State Outdoor Recreation Liaison Officer, and the Bureau of Outdoor Recreation (BOR) when Land and Water Conservation Fund grants are involved. We suggest, however, that you may wish to coordinate all projects of this type with the appropriate Regional Office of BOR for the technical assistance they can provide on bikeways and walkways. (2)

According to our calculations, a funding level of \$45,000,000 for these bikeways and walkways would amount to somewhere between 1,800 and 4,500 miles of trail per year. This would directly remove from all other use (including use by flora and fauna) roughly 1,000 to 6,800 acres per year. This impact should be addressed in the proposed negative declaration. (3)

Thank you for the opportunity to review this proposed document.

Sincerely yours, /original signed by/ (unknown) Deputy Assistant Secretary of the Interior (at the time)

Mr. Michael Lash
Director of Environmental Policy
U.S. Department of Transportation
Federal Highway Administration
Washington, D. C. 20590

Responses to the Department of the Interior
Letter of March 21, 1977

(1) We believe the Application section is adequate to cover those cases where there are unusual circumstances such as major impacts or adverse effects. The key point is that the official having specific jurisdiction over the Section 4(f) property has to agree that the project is acceptable and consistent with the designated use of the property, and that the location and design have been accomplished in a manner that will not cause harm to the property.

(2) The FHWA Division Administrator and the local officials will have the option of requesting additional coordination with the Bureau of Outdoor Recreation on all bikeway and walkway projects.

(3) The use of land for the bikeways and walkways has been addressed in the Summary section. However, it should be understood that this document is for individual projects and was not prepared to address the impacts of the entire bikeway program.

(Letter) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

FEB 15 1977

Office of the Assistant Secretary
For community Planning and Development (CSR)

Mr. Michael Lash
Director of Environmental Policy
Department of Transportation
Federal Highway Administration
Nassif Building - Room 3234
Washington, D. C. 20590

Dear Mr. Lash:

Thank you for providing this Office with the opportunity to review and comment on the proposed draft negative declaration/Section 4(f) for the construction of independent bikeways and pedestrian walkways. While your negative declaration proposal will reduce processing time, we propose for your consideration the following recommendations:

1. Under the caption **Application** insert the following before the last sentence in the first paragraph: The project must be in accord with a unified and officially coordinated program for the development of open space land as part of local and area wide comprehensive planning. (1)
2. Under the caption **Application** add the following to the second paragraph: If unusual natural or manmade conditions exist in the proposed project area which might be deleteriously affected by the proposed bikeway or pedestrian walkway, then a Section 4(f) and an environmental impact statement shall be prepared for the project. (2)
3. Under the caption **Coordination**, second paragraph add the following: If HUD Community Development Block Grant (CDBG) funds are used by applicants in conjunction with Section 124 funds, HUD environmental review procedures set forth in 24 CFR Section 58 are, applicable. The CDBG program permits the use of funds for the construction of certain public works in conjunction with recreational purposes. (3)

Sincerely yours, /Original signed by/ Richard H. Brown Director, Office of Environmental Quality

**Responses to the Department of Housing
and Urban Development Letter of February 15, 1977**

- (1) We do not believe it is necessary to add this sentence to the Application section since this is already a Federal-aid qualification requirement. (See 23 CFR, Part 652.)
- (2) This provision has been added to the Application section.
- (3) The Coordination section has been expanded to include this situation.

PROGRAMMATIC SECTION 4(F) EVALUATION AND APPROVAL FOR
FHWA PROJECTS THAT NECESSITATE THE USE OF HISTORIC BRIDGES

Section 4(f)

Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges

This statement sets forth the basis for a programmatic Section 4(f) 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 such use. This approval is made Pursuant to Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303, and Section 18(a) of the Federal-Aid Highway Act of 1968 23 U.S.C. 138.

Use

The historic bridges covered by this programmatic Section 4(f) evaluation are unique because they are historic, yet also part of either a Federal-aid highway system or a state or local highway system that has continued to evolve over the years. Even though these structures are on or eligible for inclusion on the National Register of Historic Places, they must perform as an integral part of a modern transportation system. When they do not or cannot, they must be rehabilitated or replaced in order to assure public safety while maintaining system continuity and integrity. 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 National Register of Historic Places 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 (FHWA), is not subject to Section 4(f).

Applicability

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

1. The bridge is to be replaced or rehabilitated with Federal funds.
2. The project will require the use of a historic bridge structure which is on or is eligible for listing on the National Register of Historic Places.
3. The bridge is not a National Historic Landmark.
4. The FHWA Division Administrator determines that the facts of the project match those set forth in the sections of this document labeled Alternatives, Findings, and Mitigation.
5. Agreement among the FHWA, the State Historic Preservation Officer (SHPO), and the Advisory Council on Historic Preservation (ACHP) has been reached through procedures pursuant to Section 106 of the NHPA.

Alternatives

The following alternatives avoid any use of the historic bridge:

1. Do nothing.
2. Build a new structure at a different location without affecting the historic integrity of the old bridge, as determined by procedures implementing the NHPA.
3. 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**. The programmatic Section 4(f) evaluation does not apply if a reasonable alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated and it must further demonstrate that all applicability criteria listed above were met before the FHWA Division Administrator concluded that the programmatic Section 4(f) evaluation applied to the project.

Findings

In order for this programmatic Section 4(f) evaluation to be applied to a project, each of the following findings must be supported by the circumstances, studies, and consultations on the project:

1. **Do Nothing.** The do nothing alternative has been studied. The do nothing alternative ignores the basic transportation need. For the following reasons this alternative is not feasible and prudent:
 - a. Maintenance - The do nothing alternative does not correct the situation that causes the bridge to be considered structurally deficient or deteriorated. These deficiencies can lead to sudden collapse and potential injury or loss of life. Normal maintenance is not considered adequate to cope with the situation.
 - b. Safety - The do nothing alternative does not correct the situation that causes the bridge to be considered deficient.

Because of these deficiencies the bridge poses serious and unacceptable safety hazards to the traveling public or places intolerable restriction on transport and travel.

2. **Build on New Location Without Using the Old Bridge.** Investigations have been conducted to construct a bridge on a new location or parallel to the old bridge (allowing for a one- way couplet), but, for one or more of the following reasons, this alternative is not feasible and prudent:

a. **Terrain** - The present bridge structure has already been located at the only feasible and prudent site, i.e., a gap in the land form, the narrowest point of the river canyon, etc. To build a new bridge at another site will result in extraordinary bridge and approach engineering and construction difficulty or costs or extraordinary disruption to established traffic patterns.

b. **Adverse Social , Economic, or Environmental Effects** - Building a new bridge away from the present site would result in social, economic, or environmental impact of extraordinary magnitude. Such impacts as extensive severing of productive farmlands, displacement of a significant number of families or businesses, serious disruption of established travel patterns, and access and damage to wetlands may individually or cumulatively weigh heavily against relocation to a new site.

c. **Engineering and Economy** - Where difficulty associated with the new location is less extreme than those encountered above, a new site would not be feasible and prudent where cost and engineering difficulties reach extraordinary magnitude. Factors supporting this conclusion include significantly increased roadway and structure costs, serious foundation problems, or extreme difficulty in reaching the new site with construction equipment. Additional design and safety factors to be considered include an ability to achieve minimum design standards or to meet requirements of various permitting agencies such as those involved with navigation, pollution, and the environment.

d. **Preservation of Old Bridge** - It is not feasible and prudent to preserve the existing bridge, even if a new bridge were to be built at a new location. This could occur when the historic bridge is beyond rehabilitation for a transportation or an alternative use, when no responsible party can be located to maintain and preserve the bridge, or when a permitting authority, such as the Coast Guard requires removal or demolition of the old bridge.

3. **Rehabilitation Without Affecting the Historic Integrity of the Bridge.** Studies have been conducted of rehabilitation measures, but, for one or more of the following reasons, this alternative is not feasible and prudent:

a. The bridge is so structurally deficient that it cannot be rehabilitated to meet minimum acceptable load requirements without affecting the historic integrity of the bridge.

b. The bridge is seriously deficient geometrically and cannot be widened to meet the minimum required capacity of the highway system on which it is located without affecting the historic integrity of the bridge. Flexibility in the application of the American Association of State Highway and Transportation Officials geometric standards should be exercised as permitted in 23 CFR Part 625 during the analysis of this alternative.

Measures to Minimize Harm

This programmatic Section 4(f) evaluation and approval may be used only for projects where the FHWA Division Administrator, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm. This has occurred when:

1. For bridges that are to be rehabilitated, the historic integrity of the bridge is preserved, to the greatest extent possible, consistent with unavoidable transportation needs, safety, and load requirements;
2. For bridges that are to be rehabilitated to the point that the historic integrity is affected or that are to be moved or demolished, the FHWA ensures that, in accordance with the Historic American Engineering Record (HAER) standards, or other suitable means developed through consultation, fully adequate records are made of the bridge;
3. For bridges that are to be replaced, the existing bridge is made available for an alternative use, provided a responsible party agrees to maintain and preserve the bridge; and
4. For bridges that are adversely affected, agreement among the SHPO, ACHP, and FHWA is reached through the Section 106 process of the NHPA on measures to minimize harm and those measures are incorporated into the project. This programmatic Section 4(f) evaluation does not apply to projects where such an agreement cannot be reached.

Procedures

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

1. Determines that the project meets the applicability criteria set forth above;
2. Determines that all of the alternatives set forth in the Findings section have been fully evaluated;

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3. Determines that use of the findings in this document that there are no feasible and prudent alternatives to the use of the historic bridge is clearly applicable;
4. Determines that the project complies with the Measures to Minimize Harm section of this document;
5. Assures that implementation of the measures to minimize harm is completed; and
6. Documents the project file that the programmatic Section 4(f) evaluation applies to the project on which it is to be used.

Coordination

Pursuant to Section 4(f), this statement has been coordinated with the Departments of the Interior, Agriculture, and Housing and Urban Development.

Issued on: July 5, 1983 Approved: /Original Signed By/ Ali F. Sevin, Director Office of Environmental Policy Federal Highway Administration

FINAL NATIONWIDE SECTION 4(F) EVALUATION
AND APPROVAL FOR FEDERALLY AIDED HIGHWAY PROJECTS
WITH MINOR INVOLVEMENTS WITH HISTORIC SITES

Section 4(f)

Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites

This programmatic Section 4(f) evaluation has been prepared for projects which improve existing highways and use minor amounts of land (including non-historic improvements thereon) from historic sites that are adjacent to existing highways. This programmatic Section 4(f) evaluation satisfies the requirements of Section 4(f) for all projects that meet the applicability criteria listed below. No individual Section 4(f) evaluations need be prepared for such projects. (Note a similar programmatic Section 4(f) evaluation has been prepared for projects which use minor amounts of publicly owned public parks, recreation lands, or wildlife and waterfowl refuges).

The FHWA Division Administrator is responsible for reviewing each individual project to determine that it meets the criteria and procedures of this programmatic Section 4(f) evaluation. The Division Administrator's determinations will be thorough and will clearly document the items that have been reviewed. The written analysis and determinations will be combined in a single document and placed in the project record and will be made available to the public upon request. This programmatic evaluation will not change the existing procedures for project compliance with the National Environmental Policy Act (NEPA) or with public involvement requirements.

Applicability

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

1. The proposed project is designed to improve the operational characteristics, safety, and/or physical condition of existing highway facilities on essentially the same alignment. This includes "4R" work (resurfacing, restoration, rehabilitation and reconstruction); safety improvements, such as shoulder widening and the correction of substandard curves and intersections; traffic operation improvements, such as signalization, channelization, and turning or climbing lanes; bicycle and pedestrian facilities; bridge replacements on essentially the same alignment, and the construction of additional lanes. This programmatic Section 4(f) evaluation does not apply to the construction of a highway on a new location.
2. The historic site involved is located adjacent to the existing highway.
3. The project does not require the removal or alteration of historic buildings, structures or objects on the historic site.
4. The project does not require the disturbance or removal of archeological resources that are important to preserve in place rather than to remove for archeological research. The determination of the importance to preserve in place will be based on consultation with the State Historic Preservation Officer (SHPO) and, if appropriate, the Advisory Council on Historic Preservation (ACHP).
5. The impact on the Section 4(f) site resulting from the use of the land must be considered minor. The word minor is narrowly defined as having either a "no effect" or "no adverse effect" (when applying the requirements of Section 106 of the National Historic Preservation Act and 36 CFR Part 800) on the qualities which qualified the site for listing or eligibility on the National Register of Historic Places. The ACHP must not object to the determination of "no adverse effect."
6. The SHPO must agree, in writing, with the assessment of impacts of the proposed project on and the proposed mitigation for the historic sites.
7. This programmatic evaluation does not apply to projects for which an environmental impact statement (EIS) is prepared, unless the use of Section 4(f) lands is discovered after the approval of the final EIS.

Should any of the above criteria not be met, this programmatic Section 4(f) evaluation cannot be used, and an individual Section 4(f) evaluation must be prepared.

Alternatives

The following alternatives avoid any use of the historic site.

1. Do nothing.
2. Improve the highway without using the adjacent historic site.
3. Build an improved facility on new location without using the historic site.

This list is intended to be all-inclusive. The programmatic Section 4(f) evaluation does not apply if a feasible and prudent alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated before the FHWA Division Administrator concluded that the programmatic Section 4(f) evaluation applied to the project.

Findings

In order for this programmatic Section 4(f) evaluation to be applied to a project, each of the following findings must be supported by the circumstances, studies, and consultations on the project:

1. **Do Nothing Alternative.** The Do Nothing Alternative is not feasible and prudent because: (a) it would not correct existing or projected capacity deficiencies or (b) it would not correct existing safety hazards; or (c) it would not correct existing deteriorated conditions and maintenance problems; **and** (d) not providing such correction would constitute a cost or community impact of extraordinary magnitude, or would result in truly unusual or unique problems, when compared with the proposed use of the Section 4(f) lands.
2. **Improvement without Using the Adjacent Section 4(f) Lands.** It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management techniques (including, but not limited to, minor alignment shifts, changes in geometric design standards, use of retaining walls and/or other structures, and traffic diversions or other traffic management measures) because implementing such measures would result in: (a) substantial adverse community impacts to adjacent homes, businesses or other improved properties; **or** (b) substantially increased roadway or structure cost; **or** (c) unique engineering, traffic, maintenance, or safety problems, **or** (d) substantial adverse social, economic, or environmental impacts; or (e) the project not meeting identified transportation needs; and (f) the impacts, costs, or problems would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of American Association (page 4) of State Highway and Transportation officials (AASHTO) geometric standards should be exercised, as permitted in 23 CFR 625, during the analysis of this alternative.
3. **Alternatives on New Location.** It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because (a) the new location would not solve existing transportation safety or maintenance problems; **or** (b) the new location would result in substantial adverse social, economic, or environmental impacts (including such impacts as extensive severing of productive farmlands, displacement of a substantial number of families or businesses, serious disruption of established travel patterns, substantial damage to wetlands or other sensitive natural areas, or greater impacts to other Section 4(f) lands); or (c) the new location would substantially increase costs or engineering difficulties (such as an inability to achieve minimum design standards, or to meet the requirements of various permitting agencies such as those involved with navigation, pollution, and the environment); **and** (d) such problems, impacts, costs, or difficulties would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of AASHTO geometric standards should be exercised, as permitted in 23 CFR 625, during the analysis of this alternative.

Measures to Minimize Harm

This programmatic Section 4(f) evaluation and approval may be used only for projects where the FHWA Division Administrator, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm. Measures to minimize harm will consist of those measures necessary to preserve the historic integrity of the site and agreed to, in accordance with 36 CFR Part 800 by the FHWA, the SHPO, and as appropriate, the ACHP.

Coordination

The use of this programmatic evaluation and approval is conditioned upon the satisfactory completion of coordination with the SHPO, the ACHP, and interested persons as called for in 36 CFR Part 800. Coordination with interested persons, such as the local government, the property owner, a local historical society, or an Indian tribe, can facilitate in the evaluation of the historic resource values and mitigation proposals and is therefore highly encouraged.

For historic sites encumbered with Federal interests, coordination is required with the Federal agencies responsible for the encumbrances.

Before applying this programmatic evaluation to projects requiring an individual bridge permit, the Division Administrator shall coordinate with the U.S. Coast Guard District Commander.

Approval Procedure

This programmatic Section 4(f) approval applies only after the FHWA Division Administrator has:

1. Determined that the project meets the applicability criteria set forth above;
2. Determined that all of the alternatives set forth in the Findings section have been fully evaluated;
3. Determined that the findings in this document (which conclude that there are no feasible and prudent alternatives to the use of land from or non-historic improvements on the historic site) are clearly applicable to the project;
4. Determined that the project complies with the Measures to Minimize Harm section of this document;
5. Determined that the coordination called for in this programmatic evaluation has been successfully completed;

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6. Assured that the measures to minimize harm will be incorporated in the project; and
7. Documented the project file clearly identifying the basis for the above determinations and assurances.

Issued on: 12/23/1986 Approved: /Original Signed By/ Ali F. Sevin, Director Office of Environmental Policy Federal Highway Administration

FINAL NATIONWIDE SECTION 4(F) EVALUATION AND APPROVAL FOR FEDERALLY
AIDED HIGHWAY PROJECTS WITH MINOR INVOLVEMENTS WITH PUBLIC PARKS,
RECREATION LANDS, AND WILDLIFE AND WATERFOWL REFUGES

Section 4(f)

Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges

This programmatic Section 4(f) evaluation has been prepared for projects which 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. This programmatic Section 4(f) evaluation satisfies the requirements of Section 4(f) for all projects that meet the applicability criteria listed below. No individual Section 4(f) evaluations need be prepared for such projects. (Note: a similar programmatic Section 4(f) evaluation has been prepared for projects which use minor amounts of land from historic sites).

The FHWA Division Administrator is responsible for reviewing each individual project to determine that it meets the criteria and procedures of this programmatic Section 4(f) evaluation. The Division Administrator's determinations will be thorough and will clearly document the items that have been reviewed. The written analysis and determinations will be combined in a single document and placed in the project record and will be made available to the public upon request. This programmatic evaluation will not change the existing procedures for project compliance with the National Environmental Policy Act (NEPA) or with public involvement requirements.

Applicability

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

1. The proposed project is designed to improve the operational characteristics, safety, and/or physical condition of existing highway facilities on essentially the same alignment. This includes "4R" work (resurfacing, restoration, rehabilitation, and reconstruction), safety improvements, such as shoulder widening and the correction of substandard curves and intersections; traffic operation improvements, such as signalization, channelization, and turning or climbing lanes; bicycle and pedestrian facilities; bridge replacements on essentially the same alignment; and the construction of additional lanes. This programmatic Section 4(f) evaluation does not apply to the construction of a highway on a new location.
2. The Section 4(f) lands are publicly owned public parks, recreation lands, or wildlife and waterfowl refuges located adjacent to the existing highway.
3. The amount and location of the land to be used shall not impair the use of the remaining Section 4(f) land, in whole or in part, for its intended purpose. This determination is to be made by the FHWA in concurrence with the officials having jurisdiction over the Section 4(f) lands, and will be documented in relation to the size, use, and/or other characteristics deemed relevant.

The total amount of land to be acquired from any Section 4(f) site shall not exceed the values in the following Table:

Total Size of Section 4(f) Site Maximum to Be Acquired	
< 10 acres	10 percent of site
10 acres - 100 acres	1 acre
> 100 acres	1 percent of site

4. The proximity impacts of the project on the remaining Section 4(f) land shall not impair the use of such land for its intended purpose. This determination is to be made by the FHWA in concurrence with the officials having jurisdiction over the Section 4(f) lands, and will be documented with regard to noise, air and water pollution, wildlife and habitat effects, aesthetic values, and/or other impacts deemed relevant.
5. The officials having jurisdiction over the Section 4(f) lands must agree, in writing, with the assessment of the impacts of the proposed project on, and the proposed mitigation for, the Section 4(f) lands.
6. For projects using land from a site purchased or improved with funds under the Land and Water Conservation Fund Act, the Federal Aid in Fish Restoration Act (Dingell-Johnson Act), the Federal Aid in Wildlife Act (Pittman-Robertson Act), or similar laws, or the lands are otherwise encumbered with a Federal interest (e.g., former Federal surplus property), coordination with the appropriate Federal agency is required to ascertain the agency's position on the land conversion or transfer. The programmatic Section 4(f) evaluation does not apply if the agency objects to the land conversion or transfer.
7. This programmatic evaluation does not apply to projects for which an environmental impact statement (EIS) is prepared, unless the use of Section 4(f) lands is discovered after the approval of the final EIS. Should any of the above criteria not be met, this programmatic Section 4(f) evaluation cannot be used, and an individual Section 4(f) evaluation must be prepared.

Alternatives

The following alternatives avoid any use of the public park land, recreational area, or wildlife and waterfowl refuge:

1. Do nothing.
2. Improve the highway without using the adjacent public park, recreational land, or wildlife and waterfowl refuge.
3. Build an improved facility on new location without using the public park, recreation land, or wildlife or waterfowl refuge.

This list is intended to be all-inclusive. The programmatic Section 4(f) evaluation does not apply if a feasible and prudent alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated before the FHWA Division Administrator concluded that the programmatic Section 4(f) evaluation applied to the project.

Findings

In order for this programmatic Section 4(f) evaluation to be applied to a project, each of the following findings must be supported by the circumstances, studies, and consultations on the project:

1. **Do Nothing Alternative.** The Do Nothing Alternative is not feasible and prudent because: (a) it would not correct existing or projected capacity deficiencies; or (b) it would not correct existing safety hazards; or (c) it would not correct existing deteriorated conditions and maintenance problems; and (d) not providing such correction would constitute a cost or community impact of extraordinary magnitude, or would result in truly unusual or unique problems, when compared with the proposed use of the Section 4(f) lands.
2. **Improvement without Using the Adjacent Section 4(f) Lands.** It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management techniques (including, but not limited to, minor alignment shifts, changes in geometric design standards, use of retaining walls and/or other structures, and traffic diversions or other traffic management measures) because implementing such measures would result in: (a) substantial adverse community impacts to adjacent homes, businesses or other improved properties; or (b) substantially increased roadway or structure cost; or (c) unique engineering, traffic, maintenance, or safety problems; or (d) substantial adverse social, economic, or environmental impacts; or (e) the project not meeting identified transportation needs; and (f) the impacts, costs, or problems would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of American Association of State Highway and Transportation Officials (AASHTO) geometric standards should be exercised, as permitted in 23 CFR 625, during the analysis of this alternative.
3. **Alternatives on New Location.** It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because (a) the new location would not solve existing transportation, safety, or maintenance problems; or (b) the new location would result in substantial adverse social, economic, or environmental impacts (including such impacts as extensive severing of productive farmlands, displacement of a substantial number of families or businesses, serious disruption of established patterns, substantial damage to wetlands or other sensitive natural areas, or greater impacts to other Section 4(f) lands or (c) the new location would substantially increase costs or engineering difficulties (such as an inability to achieve minimum design standards, or to meet the requirements of various permitting agencies such as those involved with navigation, pollution, and the environment); and (d) such problems, impacts, costs, or difficulties would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of AASHTO geometric standards should be exercised, as permitted in 23 CFR 625, during the analysis of this alternative.

Measures to Minimize Harm

This programmatic Section 4(f) evaluation and approval may be used only for projects where the FHWA Division Administrator, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm. This has occurred when the officials having jurisdiction over the Section 4(f) property have agreed, in writing, with the assessment of impacts resulting from the use of the Section 4(f) property and with the mitigation measures to be provided. Mitigation measures shall include one or more of the following:

1. Replacement of lands used with lands of reasonably equivalent usefulness and location and of at least comparable value.
2. Replacement of facilities impacted by the project including sidewalks, paths, benches, lights, trees, and other facilities.
3. Restoration and landscaping of disturbed areas.
4. Incorporation of design features (e.g., reduction in right-of-way width, modifications to the roadway section, retaining walls, curb and gutter sections, and minor alignment shifts); and habitat features (e.g., construction of new, or

enhancement of existing, wetlands or other special habitat types); where necessary to reduce or minimize impacts to the Section 4(f) property. Such features should be designed in a manner that will not adversely affect the safety of the highway facility. Flexibility in the application of AASHTO geometric standards should be exercised, as permitted in 23 CFR 625, during such design.

5. Payment of the fair market value of the land and improvements taken or improvements to the remaining Section 4(f) site equal to the fair market value of the land and improvements taken.
6. Such additional or alternative mitigation measures as may be determined necessary based on consultation with, the officials having jurisdiction over the parkland, recreation area, or wildlife or waterfowl refuge.

If the project uses Section 4(f) lands that are encumbered with a Federal interest (see **Applicability**), coordination is required with the appropriate agency to ascertain what special measures to minimize harm, or other requirements, may be necessary under that agency's regulations. To the extent possible, commitments to accomplish such special measures and/or requirements shall be included in the project record.

Coordination

Each project will require coordination in the early stages of project development with the Federal, state and/or local agency officials having jurisdiction over the Section 4(f) lands. In the case of non-Federal Section 4(f) lands, the official with jurisdiction will be asked to identify any Federal encumbrances. Where such encumbrances exist coordination will be required with the Federal agency responsible for the encumbrance.

For the interests of the Department of Interior, Federal agency coordination will be initiated with the Regional Directors of the U.S. Fish and Wildlife Service, the National Park Service, and the Bureau of Reclamation; the State Directors of the Bureau of Land Management, and the Area Directors of the Bureau of Indian Affairs. In the case of Indian lands, there will also be coordination with appropriate Indian Tribal officials.

Before applying this programmatic evaluation to projects requiring an individual bridge permit the Division Administrator shall coordinate with the U.S. Coast Guard District Commander.

Copies of the final written analysis and determinations required under this programmatic Section 4(f) evaluation shall be provided to the officials having jurisdiction over the involved Section 4(f) area and to other parties upon request.

Approval Procedure

This programmatic Section 4(f) approval applies only after the FHWA Division Administrator has:

1. Determined that the project meets the applicability criteria set forth above;
2. Determined that all of the alternatives set forth in the Findings section have been fully evaluated;
3. Determined that the findings in this document (which conclude that there are no feasible and prudent alternatives to the use of the publicly owned public park, recreation area, or wildlife or waterfowl refuge) are clearly applicable to the project;
4. Determined that the project complies with the Measures to Minimize Harm section of this document;
5. Determined that the coordination called for in this programmatic evaluation has been successfully completed;
6. Assured that the measures to minimize harm will be incorporated in the project; and
7. Documented the project file clearly identifying the basis for the above determinations and assurances.

Issued on: 12/23/86 Approved: /Original Signed By/ Ali F. Sevin Office of Environmental Policy Federal Highway Administration

SECTION 4(F) EVALUATION AND APPROVAL FOR TRANSPORTATION
PROJECTS THAT HAVE A NET BENEFIT TO A SECTION 4(F) PROPERTY

Section 4(f)

Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property

This nationwide programmatic Section 4(f) evaluation (programmatic evaluation) has been prepared for certain federally assisted transportation improvement projects on existing or new alignments that will use property of a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic property, which in the view of the Administration and official(s) with jurisdiction over the Section 4(f) property, the use of the Section 4(f) property will result in a net benefit to the Section 4(f) property.

Definitions:

"Administration" refers to the Federal Highway Division Administrator or Division Engineer (as appropriate).

"Applicant" refers to a State Highway Agency or State Department of Transportation, local governmental agency acting through the State Highway Agency or State Department of Transportation.

A "net benefit" is achieved when the transportation use, the measures to minimize harm and the mitigation incorporated into the project results in an overall enhancement of the Section 4(f) property when compared to both the future do-nothing or avoidance alternatives and the present condition of the Section 4(f) property, considering the activities, features and attributes that qualify the property for Section 4(f) protection. A project does not achieve a "net benefit" if it will result in a substantial diminishment of the function or value that made the property eligible for Section 4(f) protection.

"Official(s) with jurisdiction" over Section 4(f) property (typically) include: for a park, the Federal, State or local park authorities or agencies that own and/or manage the park; for a refuge, the Federal, State or local wildlife or waterfowl refuge owners and managers; and for historic sites, the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), whichever has jurisdiction under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Applicability

The Administration is responsible for review of each transportation project for which this programmatic evaluation is contemplated to determine that it meets the criteria and procedures of this programmatic evaluation. The information and determination will be included in the applicable National Environmental Policy Act (NEPA) documentation and administrative record. This programmatic evaluation will not change any existing procedures for NEPA compliance, public involvement, or any other applicable Federal environmental requirement.

This programmatic evaluation satisfies the requirements of Section 4(f) for projects meeting the applicability criteria listed below. An individual Section 4(f) evaluation will not need to be prepared for such projects:

1. The proposed transportation project uses a Section 4(f) park, recreation area, wildlife or waterfowl refuge, or historic site.
2. The proposed project includes all appropriate measures to minimize harm and subsequent mitigation necessary to preserve and enhance those features and values of the property that originally qualified the property for Section 4(f) protection.
3. For historic properties, the project does not require the major alteration of the characteristics that qualify the property for the National Register of Historic Places (NRHP) such that the property would no longer retain sufficient integrity to be considered eligible for listing. For archeological properties, the project does not require the disturbance or removal of the archaeological resources that have been determined important for preservation in-place rather than for the information that can be obtained through data recovery. The determination of a major alteration or the importance to preserve in-place will be based on consultation consistent with 36 CFR part 800.
4. For historic properties, consistent with 36 CFR part 800, there must be agreement reached amongst the SHPO and/or THPO, as appropriate, the FHWA and the Applicant on measures to minimize harm when there is a use of Section 4(f) property. Such measures must be incorporated into the project.
5. The official(s) with jurisdiction over the Section 4(f) property agree in writing with the assessment of the impacts; the proposed measures to minimize harm; and the mitigation necessary to preserve, rehabilitate and enhance those features and values of the Section 4(f) property; and that such measures will result in a net benefit to the Section 4(f) property.
6. The Administration determines that the project facts match those set forth in the Applicability, Alternatives, Findings, Mitigation and Measures to Minimize Harm, Coordination, and Public Involvement sections of this programmatic evaluation.

This programmatic evaluation can be applied to any project regardless of class of action under NEPA.

Alternatives

To demonstrate that there are no feasible and prudent alternatives to the use of Section 4(f) property, the programmatic evaluation analysis must address alternatives that avoid the Section 4(f) property. The following alternatives avoid the use of the Section 4(f) property:

1. Do nothing.
2. Improve the transportation facility in a manner that addresses the project's purpose and need without a use of the Section 4(f) property.
3. Build the transportation facility at a location that does not require use of the Section 4(f) property.

This list is intended to be all-inclusive. The programmatic evaluation does not apply if a feasible and prudent alternative is identified that is not discussed in this document. The project record must clearly demonstrate that each of the above alternatives was fully evaluated before the Administration can conclude that the programmatic evaluation can be applied to the project.

Findings

For this programmatic evaluation to be utilized on a project there must be a finding, given the present condition of the Section 4(f) property, that the do-nothing and avoidance alternatives described in the Alternatives section above are not feasible and prudent. The findings (1, 2, and 3. below) must be supported by the circumstances, studies, consultations, and other relevant information and included in the administrative record for the project. This supporting information and determination will be documented in the appropriate NEPA document and/or project record consistent with current Section 4(f) policy and guidance.

To support the finding, adverse factors associated with the no-build and avoidance alternatives, such as environmental impacts, safety and geometric problems, decreased transportation service, increased costs, and any other factors may be considered collectively. One or an accumulation of these kinds of factors must be of extraordinary magnitude when compared to the proposed use of the Section 4(f) property to determine that an alternative is not feasible and prudent. The net impact of the do-nothing or build alternatives must also consider the function and value of the Section 4(f) property before and after project implementation as well as the physical and/or functional relationship of the Section 4(f) property to the surrounding area or community.

1. Do-Nothing Alternative.
The Do-Nothing Alternative is not feasible and prudent because it would neither address nor correct the transportation need cited as the NEPA purpose and need, which necessitated the proposed project.
2. Improve the transportation facility in a manner that addresses purpose and need without use of the Section 4(f) property.

It is not feasible and prudent to avoid Section 4(f) property by using engineering design or transportation system management techniques, such as minor location shifts, changes in engineering design standards, use of retaining walls and/or other structures and traffic diversions or other traffic management measures if implementing such measures would result in any of the following:

- Substantial adverse community impacts to adjacent homes, businesses or other improved properties; or
- Substantially increased transportation facility or structure cost; or
- Unique engineering, traffic, maintenance or safety problems; or
- Substantial adverse social, economic or environmental impacts; or
- A substantial missed opportunity to benefit a Section 4(f) property; or
- Identified transportation needs not being met; and
- Impacts, costs or problems would be truly unusual, unique or of extraordinary magnitude when compared with the proposed use of Section 4(f) property after taking into account measures to minimize harm and mitigate for adverse uses, and enhance the functions and value of the Section 4(f) property.

Flexibility in the use of applicable design standards is encouraged during the analysis of these feasible and prudent alternatives.

3. Build a new facility at a new location without a use of the Section 4(f) property. It is not feasible and prudent to avoid Section 4(f) property by constructing at a new location if:
 - The new location would not address or correct the problems cited as the NEPA purpose and need, which necessitated the proposed project; or

- The new location would result in substantial adverse social, economic or environmental impacts (including such impacts as extensive severing of productive farmlands, displacement of a substantial number of families or businesses, serious disruption of community cohesion, jeopardize the continued existence of any endangered or threatened species or resulting in the destruction or adverse modification of their designated critical habitat, substantial damage to wetlands or other sensitive natural areas, or greater impacts to other Section 4(f) properties); or
- The new location would substantially increase costs or cause substantial engineering difficulties (such as an inability to achieve minimum design standards or to meet the requirements of various permitting agencies such as those involved with navigation, pollution, or the environment); and
- Such problems, impacts, costs, or difficulties would be truly unusual or unique or of extraordinary magnitude when compared with the proposed use of the Section 4(f) property after taking into account proposed measures to minimize harm, mitigation for adverse use, and the enhancement of the Section 4(f) property's functions and value.

Flexibility in the use of applicable design standards is encouraged during the analysis of feasible and prudent alternatives.

Mitigation and Measures To Minimize Harm

This programmatic evaluation and approval may be used only for projects where the Administration, in accordance with this evaluation, ensures that the proposed action includes all possible planning to minimize harm, includes appropriate mitigation measures, and that the official(s) with jurisdiction agree in writing.

Coordination

In early stages of project development, each project will require coordination with the Federal, State, and/or local agency official(s) with jurisdiction over the Section 4(f) property. For non-Federal Section 4(f) properties, i.e., State or local properties, the official(s) with jurisdiction will be asked to identify any Federal encumbrances. When encumbrances exist, coordination will be required with the Federal agency responsible for such encumbrances.

Copies of the final written report required under this programmatic evaluation shall be offered to the official(s) with jurisdiction over the Section 4(f) property, to other interested parties as part of the normal NEPA project documentation distribution practices and policies or upon request.

Public Involvement

The project shall include public involvement activities that are consistent with the specific requirements of 23 CFR 771.111, Early coordination, public involvement and project development. For a project where one or more public meetings or hearings are held, information on the proposed use of the Section 4(f) property shall be communicated at the public meeting(s) or hearing(s).

Approval Procedure

This programmatic evaluation approval applies only after the Administration has:

1. Determined that the project meets the applicability criteria set forth in Applicability section;
2. Determined that all of the alternatives set forth in the Findings section have been fully evaluated;
3. Determined that the findings in the programmatic evaluation (which conclude that the alternative recommended is the only feasible and prudent alternative) result in a clear net benefit to the Section 4(f) property;
4. Determined that the project complies with the Mitigation and Measures to Minimize Harm section of this document;
5. Determined that the coordination and public involvement efforts required by this programmatic evaluation have been successfully completed and necessary written agreements have been obtained; and
6. Documented the information that clearly identifies the basis for the above determinations and assurances.

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For additional information, view the Preamble on the Federal Register's website
<http://a257.g.akamaitech.net/7/257/2422/01jan2005/1800/edocket.access.gpo.gov/2005/05-7812.htm>.

