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## Environment Other Laws and Requirements Section 4(f) of the USDOT Act of 1966

[www.fhwa.dot.gov/federal-aidessentials](http://www.fhwa.dot.gov/federal-aidessentials)

*An overview of the Federal law dealing with protection of parks, recreation areas, wildlife and waterfowl refuges, and historic sites*

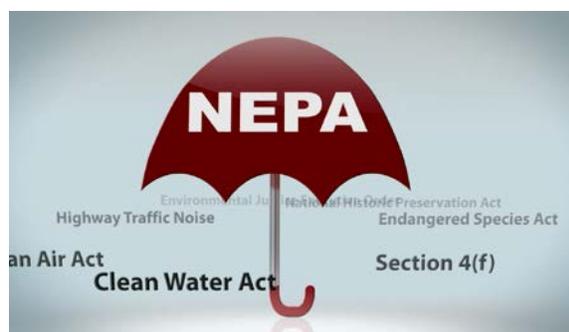


Local public agencies may encounter a variety of environmental laws, regulations, and other requirements on a Federal-aid project. These requirements address a project's effects on the natural and social environment, parks, recreation areas, wildlife and waterfowl refuges, and historic sites.

The natural environment involves such things as air and water quality, wetlands, wildlife or endangered species; while the social environment involves things that affect our quality of life, like the displacement of businesses or homes, particularly related to minority and low-income populations.

The National Environmental Policy Act, also known as NEPA, provides a framework for environmental analyses, reviews, and consultations. Because these various laws may influence project decisions, compliance with these laws should be achieved during the NEPA process. This is often referred to as “working under the NEPA umbrella.”

While NEPA provides a coordinated environmental review process, the related environmental law specifies what project sponsors must do to comply with the law. These requirements can vary widely.



One important law that applies only to projects that require an approval action from the U.S. Department of Transportation is Section 4(f) of the 1966 U.S. Department of Transportation Act.

There are two types of properties that are eligible for Section 4(f) protection:

- Public parks, recreation areas, and wildlife and waterfowl refuges—when they are publically owned, are used by the public for park, recreation, or refuge purposes, and are significant or important properties
- Historic sites listed or eligible for listing on the National Register of Historic Places

If your project necessitates the use of a Section 4(f) property, you must seek approval from the Federal Highway Administration (FHWA). This requirement applies even if the project sponsor owns the property.

If your project is found to have minimal impact or “use” of Section 4(f) properties, FHWA can issue a Section 4(f) *de minimis* impact finding. This finding completes the Section 4(f) compliance process for the project.

However, if the use of Section 4(f) properties cannot be considered minimal, a more detailed evaluation of alternatives that avoid using the properties is required. This is necessary to determine whether avoidance of the Section 4(f) properties is feasible and prudent.



Let's look at the steps that must be taken when a project proposes to use land from a Section 4(f) property.

To begin, when it appears that a Federal-aid transportation project may require land from a Section 4(f) property, the “officials with jurisdiction” must be identified. The officials with jurisdiction are officials of the agency or agencies that own or administer the property and who are empowered to represent the agency on matters related to the property.

The property also needs to be verified as functioning as a public park, recreation area, or wildlife and waterfowl refuge. In most cases, this means that public access is not restricted during normal operating hours.

For historic sites, you need to verify that it is listed or eligible for listing on the National Register of Historic Places.

The second step is to determine if your project will actually use land from the property. Most often, “use” occurs if there is permanent incorporation of land from the property into a transportation facility. However, short-term uses – the temporary occupancy of the land during construction – may also be considered a Section 4(f) use of the land.

Lastly, you need to consider whether the use of the Section 4(f) property can be considered *de minimis* by the FHWA or whether a more detailed evaluation of avoidance alternatives is required.



Now, let's see how these actions look in practice by exploring two examples—one that seeks approval based on *de minimis* impacts and the other based on an evaluation of avoidance alternatives.

In our first example, a left turn lane will be added to an intersection. In order to build the turn lane, a strip of land needs to be taken from a city-owned park.

The project team meets with the city park superintendant to identify ownership and examine how the property is being managed. The team confirms the park is a Section 4(f) property since it is publicly owned, open to the public, and clearly functions as an important resource for the community.

Next, the team determines that the project will actually use land from the park as it will convert the land it acquires from the park into transportation right-of-way.

The project team then meets with the park superintendant to explore design changes and mitigation measures that will minimize impacts to the park. These discussions result in the project being redesigned to reduce the amount of right-of-way taken from the park and to add landscaping to the project.

Following the opportunity for public review and comment on the project, the park superintendant agrees in writing that the impact to the park will be minimal and will not adversely affect the park. The project manager includes the superintendant's written concurrence to support his request for a Section 4(f) *de minimis* impact finding from FHWA.



In our second example, the proposed roadway-widening project is adjacent to one of the oldest buildings in the city.

The historic resource specialist on the project team investigates the old building and learns that it is currently listed on the National Register of Historic Places, making it a Section 4(f) property.

In order to determine whether taking the land from the historic property will have an adverse effect on the property, the project team coordinates with the State Historic Preservation Officer, or SHPO.

The team learns that taking the land will adversely affect the resource, meaning an evaluation of avoidance alternatives and all possible planning to minimize harm is required. The evaluation must study options to avoid use of the property. It will examine reducing the project's footprint or shifting the project's alignment to determine if it is feasible and prudent to avoid impacting the historic property.



Your State department of transportation can help you navigate the requirements and develop approaches that adequately evaluate and address your project's impact to Section 4(f) properties.

Ultimately, FHWA is the final authority when it comes to decisions regarding Section 4(f) applicability and approvals.

### Web Resources

- FHWA's Office of Planning, Environment & Realty provides links to specific environmental topics  
<http://www.fhwa.dot.gov/environment/index.htm>
- FHWA information regarding Section 4(f) compliance for transportation projects  
<http://environment.fhwa.dot.gov/4f/index.asp>
- Link to Section 4(f) interactive training  
<http://www.section4f.com/>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH61-11-D-00025 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.