

Section 4(f) Applicability and Evaluation Process Guide – May 2020

Section 4(f) of the Department of Transportation Act of 1966 is a federal law intended to prevent conversion of certain parks, wildlife and waterfowl refuges, recreation areas or historic properties to transportation use, unless the U.S. Department of Transportation (USDOT) determines that the use of the property will have a de minimis effect or that there is no feasible and prudent alternative and all possible planning has been done to minimize harm to properties covered by Section 4(f).

Generally, the guidance in this document is for highway projects where the Federal Highway Administration (FHWA) is the U.S. DOT agency involved. However, Section 4(f) could apply, with somewhat different processes, to projects where the Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), or other USDOT agency is involved.

The steps below are intended to guide the user through the applicability of Section 4(f) to a project and the evaluation process and documentation required if Section 4(f) does apply. Also see the HPDP Section 4(f) guidance.

However, note that Section 4(f) rules are complex. The steps included here do not include all potential Section 4(f) considerations (e.g.; joint development, air rights, wetland mitigation, tunneling, boat access ramps, among others.) Additional guidance is available in the current (2012) [FHWA Section 4\(f\) Policy Paper](#).

If in doubt about Section 4(f) involvement, contact OES. FHWA has final responsibility for determining if Section 4(f) applies to a property, if the project impacts constitute a use of Section 4(f) property, if a use meets the criteria for a de minimis impact, a programmatic evaluation applies, or an individual evaluation is required.

If a project has potential for Section 4(f) use, regardless of evaluation type, it is important to recognize and document the full costs of Section 4(f) mitigation, and to start this **early** in project development. Mitigation costs may include costs incurred to avoid Section 4(f) property, costs of minimizing impacts, and costs of other measures to compensate for impacts that cannot be avoided.

Section 4(f): 10 Steps

1. Is there USDOT (FHWA, FTA, FRA, FAA) involvement? <ul style="list-style-type: none"> Federal transportation funds are used on the project, or A permit or approval by a USDOT agency is requiredⁱ. 	
Answer	
Yes. There is USDOT involvement. ↓	No. There is no USDOT involvement. ↓
Continue to Step 2.	Section 4(f) does not apply. Complete the Section 4(f) Applicability Checklist for the Project File.

2. Are there Section 4(f) properties in the project area?			
Publicly owned Parks or recreation areas with these characteristics:	Publicly owned Wildlife or waterfowl refuges with these characteristics:	Publicly or privately owned Historic resources with these characteristics:	Publicly or privately owned Archeological sites with these characteristics:
Open to the public AND Major purpose of property is park and recreational activities AND Significant in meeting park or recreation objectives (as determined by official with jurisdiction [OWJ] over the property).	Major purpose of property is protection of wildlife AND Significant in meeting refuge objectives (as determined by the OWJ).	Listed on – or eligible for listing on – the National Register of Historic Places (NRHP) OR Has local historical significance (even if not NRHP-listed or eligible)	On or eligible for listing on the NRHP AND Warrants preservation in place
Category also includes recreational trails or bikeways, public golf courses, school playgrounds, fairgrounds, and wild and scenic rivers, among others.	Category also includes wildlife management areas.	Category also includes traditional cultural properties.	Category also includes sites discovered during construction.
For parks, recreation areas, and wildlife or waterfowl refuges, important to consult with OWJ to understand: <ul style="list-style-type: none"> • Ownership, including leasing arrangements, and boundaries of the property • Openness to the public • Main purposes of the property • Significance of the property in the context of local or regional resources and objectives. 		For historic, archeologic or other cultural resources, the actual determinations of NRHP eligibility must be done by the MnDOT Cultural Resources Unit (CRU) through the Section 106 review. CRU should also be consulted for information regarding local historical significance.	

Answer	
Yes. There are Section 4(f) properties in the project area. ↓	No. There are no Section 4(f) properties in the project area. ↓
Continue to Step 3.	Section 4(f) does not apply. Complete the Section 4(f) Applicability Checklist for the Project File.

3. Does the project potentially impact (result in “transportation use of”) any of the Section 4(f) properties? <i>Could the project result in any of the following:</i>		
Permanent right-of way acquisition from the Section 4(f) property?	Temporary Easement / Temporary Occupancy of the Section 4(f) property?	Constructive Use of the Section 4(f) property?
Acquiring a real property interest of all or part of the property (e.g.; permanent easement).	Temporary easement/ occupancy becomes “use” under Section 4(f) if it will cause temporary or permanent adverse changes to the property. No longer refer to the situation as “temporary easement/ occupancy” if there is a use.	Constructive use is when a project does not incorporate any Section 4(f) resource land, but its proximity impacts substantially impair activities, features, or attributes of the resource that qualify it for Section 4(f).
	Temporary occupancy is <u>not</u> “use” if ALL of the following are true: <ul style="list-style-type: none"> • Duration is temporary (less than needed for project construction) • No change in land ownership • Scope of work is minor • No anticipated permanent adverse physical impacts • No temporary or permanent interference with the activities or purpose of the resource • The land used will be fully restored (to a condition at least as good as before the project) • There is documented agreement from the OWJ regarding the above conditions 	See 23 CFR 774.15 for the regulations regarding constructive use determination. Consult with OES regarding constructive use. Note that the threshold for “substantial impairment” of the Section 4(f) resource is high. OES will then consult with the FHWA Division, as appropriate.

Answer	
Yes. The project has the potential to use Section 4(f) property. ↓	No. The project clearly will not use Section 4(f) property. ↓
Continue to Step 4.	Section 4(f) does not apply. Complete the Section 4(f) Applicability Checklist for the Project File. If there is a temporary occupancy that is not a use, describe in the environmental document and include the documented OWJ agreement. See example OWJ temporary occupancy letter . OES should approve letter before it is sent to the OWJ.

4. Is the use a de minimis impact?²	
Parks, Recreation Areas, Waterfowl and Wildlife Refuges	Historic and Archeological Sites
Impacts to parks, recreation areas, or refuges are de minimis if, considering mitigation, the impacts do not adversely affect the activities, features and attributes of the resource.	Impacts to historic or archeological sites are de minimis if the project has a Section 106 determination of either “no historic properties affected” or “no adverse effect” with which the SHPO and THPO (and ACHP if participating) concurs. ^{3,4}
The de minimis impact determination considers mitigation and enhancement measures. It is necessary to work with the OWJ to identify ways to reduce the impact to result in a de minimis impact determination, if possible.	
FHWA (or other relevant USDOT agency) makes the de minimis impact determination and the OWJ must concur.	FHWA informs the SHPO/ THPO (and ACHP, if participating) of the intent to make a de minimis impact determination based upon their concurrence with the Section 106 determination.

Answer	
Yes. The use is a de minimis impact ⁵ . ↓	No. The use is not a de minimis impact. ↓
Continue to Step 5 .	De minimis does not apply. The Section 4(f) evaluation process must be followed to determine whether there is a feasible and prudent avoidance alternative, and, if not and the project will result in a use, that all possible planning has been done to minimize harm to the Section 4(f) property. The Section 4(f) evaluation process involves either applying a Programmatic Evaluation or conducting an Individual Evaluation, depending on project specifics. Continue to Step 6 .

5. Follow the relevant de minimis impact determination process steps. (Additional process detail in Step 10.)	
Parks, Recreation Areas, Waterfowl and Wildlife Refuges	Historic or Archeological Sites
Prepare a Request for FHWA Preliminary De Minimis Determination for Parks ; which includes supporting information describing the level of impacts and documentation in the form of a summary of coordination with the OWJ. At this point the OWJ should be in general agreement that the proposed action, including consideration of mitigation, will not adversely affect the activities, features and attributes that are important to the resource.	Prepare a Request for FHWA De Minimis Determination for Historic Sites , which includes supporting information developed through the Section 106 process and attaches OWJ (SHPO, THPO and/or ACHP) concurrence with the Section 106 “no adverse effect” determination (or cites the current Section 106 PA waiver of SHPO concurrence for “no historic properties affected” determinations). Consultation with the OWJ is done by MnDOT CRU through the Section 106 process.
	Prepare a draft FHWA OWJ De Minimis Notice for Historic Sites cover letter.
Submit the prepared Request for FHWA De Minimis Determination for Parks to OES who will submit the request to FHWA for preliminary determination (“intent to make a de minimis impact determination”).	Submit the prepared Request for FHWA De Minimis Determination for Historic Sites, including OWJ concurrence, and the draft FHWA OWJ De Minimis Notice for Historic Sites cover letter to OES who will submit the materials to FHWA for preliminary determination (“intent to make a de minimis impact determination”) and OWJ notice.
MnDOT, on the behalf of FHWA, sends the preliminary de minimis impact determination (notice of intent to make a de minimis impact determination) to the OWJ in the form of the FHWA-signed Request. Include notice of FHWA’s preliminary de minimis impact determination in the public hearing notice for the EA or EIS or by publishing a de minimis public notice for CE projects .	FHWA sends its preliminary de minimis impact determination (notice of intent to make a de minimis impact determination) to OWJ with the FHWA De Minimis Notice for Historic Sites cover letter.
Following the comment period, prepare a draft FHWA OWJ De Minimis Concurrence for Parks letter, which summarizes the public comment. Submit the draft FHWA letter to OES who will submit it to FHWA for its use in securing final request for OWJ concurrence with de minimis determination. Note: OWJ has 30 days after receipt to respond.	There is not typically a general public comment on FHWA intent to make a de minimis determination for historic sites. Only OWJ comment is required. There are possible, but limited circumstances when general public comment period might be appropriate. Consult with OES if the impacts to a historic property might have substantial interest beyond the Section 106 consulting parties.
After FHWA has provided its final de minimis determination, include information about the public review and all correspondence relevant to the de minimis finding in the final federal environmental document (CE, FONSI or ROD).	After FHWA has provided its final de minimis determination, include information about the OWJ review and all correspondence relevant to the de minimis finding in the final federal environmental document (CE, FONSI or ROD).
This concludes the documentation required to comply with Section 4(f).	This concludes the documentation required to comply with Section 4(f).

6. Does a Programmatic Section 4(f) Evaluation apply? ^{6, 5A}					
FHWA has issued 5 nationwide programmatic Section 4(f) evaluations based on experience with many projects with a common fact pattern. A particular project may rely upon an approved programmatic Section 4(f) evaluation <u>only if the project meets the specific conditions in that programmatic evaluation</u> . FHWA may use its discretion to execute an individual Section 4(f) evaluation in the context of the situation but intends to first explore de minimis and the programmatic as the Section 4(f) paths for a project.					
Independent Bikeway or Walkway Projects	Use of Historic Bridges	Minor Involvement with Parks, Recreation Lands, Waterfowl or Wildlife Refuges	Minor Involvement with Historic Sites	Projects that have a Net Benefit to a Section 4(f) property	
Parks or recreation areas	Historic bridge that is not a National Historic Landmark	Parks, recreation lands, and waterfowl or wildlife refuges adjacent to an existing [road] facility	Historic sites adjacent to an existing [road] facility	All Section 4(f) resources	
Independent bikeway or walkway project, not incidental activities of a highway project.	Rehabilitation or replacement of historic bridges.	Improvement of operating characteristics, safety, and/or physical condition of an existing highway on essentially the same alignment.	Improvement of operating characteristics, safety, and/or physical condition of an existing highway on essentially the same alignment.	Any project	
Cannot be used for EIS projects.	Can be used with any process (EIS, EA, CE).	Cannot be used for EIS projects.	Cannot be used for EIS projects.	Can be used with any process (EIS, EA, CE).	
No significant SEE impacts	If bridge can be rehabilitated without affecting the historic integrity, Section 4(f) does not apply. If bridge is to be demolished and/or replaced, or rehabbed but with an adverse effect, Section 4(f) applies. If replacement is proposed, existing bridge must be made available for an alternative use.	The amount of property that may be acquired/used limited to:	Project may not remove or alter historic building, structures or objects, or archeological resources important for preservation in place. Project must result in a determination of no effect or no adverse effect via the Section 106 process.	No impact limits, but project results in an overall enhancement to the resource. For historic resources the project does not necessarily require a no effect or no adverse effect determination, but property must remain eligible for NRHP.	
		<i>Total size of Section 4(f) Site</i>			<i>Maximum to be Acquired / Used</i>
		<10 ac.			10% of site
		10 – 100 ac.			1 ac.
>100 ac.	1% of site				
OWJ concurs in writing that the project is acceptable and consistent with designated use of the property.	SHPO/THPO concurs in writing with assessment of impacts and proposed mitigation.	No public involvement required, outside of normal public process for Class I (EIS) and Class III (EA) documents.	SHPO/THPO concurs in writing with assessment of impacts and proposed mitigation.	OWJ or SHPO/THPO concurs in writing with assessment of impacts and proposed mitigation. Notice of public meeting(s) / hearing(s), must include information on the proposed Section 4(f) use.	

Answer	
Yes. A programmatic evaluation applies. ↓	No. No programmatic evaluation applies. ↓
<p>Projects covered by the Independent Bikeways/ Walkways Programmatic Section 4(f) Evaluation do not consider avoidance alternatives or involve a separate document. Include this statement in the environmental document: <i>The proposed project is an independent bikeway/walkway project covered by the bikeway/walkway Negative Declaration Statement.</i> Attach correspondence OWJ concurring with this determination. This concludes the documentation required to comply with Section 4(f).</p> <p>Projects covered by any other Programmatic Evaluation, continue to Step 7.</p>	<p>Conduct an Individual Section 4(f) Evaluation. Continue to Step 7.</p>

7. Is there a prudent and feasible avoidance alternative?	
Except for de minimis impacts, FHWA cannot approve use of Section 4(f) property unless FHWA determines that: <ul style="list-style-type: none"> • There is no feasible and prudent alternative, and • All possible planning has been done to minimize harm to the Section 4(f) property (Step 9) 	
Feasible means the project can be built as a matter of sound engineering judgment.	
Prudent: An alternative <i>may not be prudent</i> if it does any of the following: <ul style="list-style-type: none"> • It compromises the project to a degree that it is unreasonable to proceed in light of the project's stated purpose and need (i.e., the alternative doesn't address the purpose and need of the project); • It results in extraordinary safety or operational problems; • After reasonable mitigation, it still causes severe social, economic, or environmental impacts; severe disruption to established communities; severe or disproportionate impacts to minority or low-income populations; or severe impacts to environmental resources protected under other Federal statutes • It results in additional construction, costs of extraordinary magnitude; • It causes other unique problems or truly unusual factors; or There is an accumulation of factors that collectively, rather than individually, have adverse impacts that present unique problems or reach extraordinary magnitude.	
Consider Avoidance Alternatives.	
Projects for which any of the 4 programmatic Section 4(f) evaluations other than the Independent Bikeways/ Walkways Programmatic Section 4(f) Evaluation apply	Projects for which an Individual Section 4(f) Evaluation is being conducted
Must consider these 3 avoidance alternatives (this is an all-inclusive list): <ul style="list-style-type: none"> • No Build • Improving the facility without using the Section 4(f) property • Building on a new location Note: For projects covered by the Programmatic Section 4(f) Evaluation for the Use of Historic Bridges, refer to that Programmatic Evaluation for additional detail regarding these 3 avoidance alternatives.	Must consider these avoidance alternatives: <ul style="list-style-type: none"> • No Build • A reasonable range of project alternatives that meet the purpose and need of the project. Depending on the project context these may include location alternatives, alternative actions, alignment shifts, and design changes.
Note: A project alternative that avoids a Section 4(f) property by using another Section 4(f) property is not an avoidance alternative.	

Answer	
Yes. There is a prudent and feasible avoidance alternative. ↓	No. There is no prudent and feasible avoidance alternative. ↓
Select the avoidance alternative. There is no Section 4(f) use. There is no separate Section 4(f) document. The alternative selection process is documented in the environmental document as appropriate. This concludes the Section 4(f) process.	If an Individual Section 4(f) evaluation is being conducted for the project, continue to Step 8 . If the project is covered by a Programmatic Section 4(f) Evaluation, continue to Step 9 .

8. Select the alternative that has the least harm to Section 4(f) resources.

For projects (a) for which there is no feasible and prudent avoidance alternative, and (b) that require an Individual Section 4(f) Evaluation, the alternative that will cause the *least overall harm* to Section 4(f) properties must be selected.

The least harm analysis must consider the following 7 factors identified in 23 CFR 774.3(c):

Net harm that each alternative would cause to Section 4(f) property:

- Ability to mitigate adverse impacts
- Severity of remaining harm after mitigation
- Significance of Section 4(f) property
- Views of officials with jurisdiction

Substantial problems with any of the alternatives (on issues beyond Section 4[f]):

- Degree to which each alternative meets the purpose and need
- Magnitude of adverse impacts after mitigation
- Substantial difference in cost

Assuring a least-harm outcome may include any of or a combination of the following:

Impact reduction, such as

- Reducing impacts size
- Moving location of impacts
- Reducing severity of impacts
- Consideration of the function the impacted part resource, and the function of the remaining Section 4(f) property after use and mitigation.

Compensatory mitigation, such as:

- Replacement of land and facilities (of comparable value and function)
- Monetary compensation (for enhancing remaining property)
- Relocation or replacement of affected facilities
- Restoration and landscaping
- Addition of recreation facilities
- Wildlife habitat enhancement
- Vegetation buffers, other screening measures
- Measures to preserve historical integrity of cultural resources.

If there are impacts to more than one Section 4(f) property, an evaluation of combined impacts is required, and the combination of alternatives that causes the least overall harm must be found by balancing impacts.

- Compare the relative value or significance of the properties through coordination and consultation
- Explore combinations of avoidance alternatives, minimization and other measures
- Compare the relative harm of various combinations of alternatives
- Find the combination of alternatives that causes the least overall harm

Document the least harm analysis. Continue to **Step 9**.

9. Include “All Possible Planning” to Minimize Harm to the Section 4(f) Property

All possible planning, (23 CFR 774.17) means that all reasonable minimization and mitigation measures identified in the Section 4(f) evaluation must be included in the project.

Minimization of harm may entail design modifications that reduce the amount of Section 4(f) property used and mitigation measures that compensate for residual impacts. Minimization and mitigation measures should be determined through consultation with OWJ.

Type of Section 4(f) Evaluation	Measures to Minimize Harm
Independent Bikeways/Walkways Programmatic Section 4(f) Evaluation	This Programmatic Evaluation relies on the agreement from the official with jurisdiction (OWJ) over the Section 4(f) property as the documentation that the project will include all possible planning to minimize harm. No additional minimization or mitigation is required for these projects.
Use of Historic Bridges Programmatic Section 4(f) Evaluation	<p>This Programmatic Evaluation specifies these measures to minimize harm:</p> <ul style="list-style-type: none"> • For bridges 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. • For bridges 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. • For bridges to be replaced, the existing bridge is made available for an alternative use, provided a responsible party agrees to maintain and preserve the bridge. • For bridges that are adversely affected, agreement among the SHPO/THPO, ACHP, and FHWA is reached through the Section 106 process on measures to minimize harm and those measures are incorporated into the project.
Minor Involvement with Parks, Recreation Lands, Waterfowl or Wildlife Refuges Programmatic Section 4(f) Evaluation	<p>This Programmatic Evaluation specifies these measures to minimize harm:</p> <ul style="list-style-type: none"> • OWJ has agreed in writing with the assessment of impacts and the mitigation measures to be provided. • One or more of the following: <ul style="list-style-type: none"> ○ Replacement of lands used with lands of reasonably equivalent usefulness and location and of at least comparable value. ○ Replacement of facilities impacted by the project including sidewalks, paths, benches, lights, trees, and other facilities. ○ Restoration and landscaping of disturbed areas. ○ 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. ○ 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. ○ Such additional or alternative mitigation measures as may be determined necessary based on consultation with, the OWJ.

Step 9 is continued on the following page.

9. Include “All Possible Planning” to Minimize Harm to the Section 4(f) Property	
Type of Section 4(f) Evaluation	Measures to Minimize Harm
Minor Involvement with Historic Sites Programmatic Section 4(f) Evaluation	This Programmatic Evaluation relies on those measures necessary to preserve the historic integrity of the site as agreed to by the FHWA, the SHPO/THPO, and as appropriate, the ACHP through the Section 106 review process.
Net Benefit to a Section 4(f) property Programmatic Section 4(f) Evaluation	This Programmatic Evaluation specifies OWJ agreement in writing that the proposed action includes all possible planning to minimize harm and includes appropriate mitigation measures. It does not specify applicable measures.
Individual Section 4(f) Evaluation	<p>Projects with use of Section 4(f) property being addressed through an Individual Section 4(f) Evaluation must demonstrate all possible planning to minimize harm, but there are no specific measures required.</p> <p>Potential measures to minimize harm include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • Ways to Minimize Impacts <ul style="list-style-type: none"> ○ Limit the construction schedule to minimize impacts ○ Use tunneling or cut-and-cover ○ Use innovative stormwater management methods ○ Construct a bicycle and pedestrian overpass or underpass ○ Construct an overpass or underpass for wildlife passage ○ Other alternatives or design features identified during coordination and consultation with official having jurisdiction over the Section 4(f) property ○ Avoid key portions of the property • Ways to Mitigate by Compensation <ul style="list-style-type: none"> ○ Suggestions from the official having jurisdiction ○ Replacement with land and facilities of comparable value and function ○ Monetary compensation used to enhance remaining property ○ Relocation or replacement of affected facilities <ul style="list-style-type: none"> ▪ Playgrounds, ball fields, structures, pools ▪ Sidewalks, paths, roads, driveways, entrances ▪ Benches, lighting, fences, walls ▪ Vegetation ○ Restoration and landscaping of disturbed areas ○ Bicycle, pedestrian or recreation enhancement features ○ Wildlife habitat enhancement features ○ Vegetation buffers or other screening measures ○ Measures to preserve historical integrity of cultural resources
Document the reasonable minimization and mitigation measures to be included in the project. Continue to Step 10 .	

10. Prepare and process the Section 4(f) document(s).

Documentation:

- De minimis impact determinations and the applicability of the Independent Bikeways/Walkways Programmatic Section 4(f) Evaluation Negative Declaration are reported in the environmental document and supported by relevant correspondence.
- Other Programmatic Section 4(f) Evaluations and Individual Section 4(f) Evaluations require specific documents. The format of these documents is generally the same (see Draft/Final (Programmatic Section 4(f) Evaluation templates), except that the Programmatic Evaluation does not include a Least Harm Analysis.⁷

Processing. How evaluations are processed depends on NEPA Class of Action.

De Minimis Process

	Class I Action (EIS)	Class II Action Categorical Exclusion (CE)	Class III Action Environmental Assessment (EA)
FHWA intent to make a de minimis impact determination for the preferred alternative	Included in the Draft or Final EIS (depending on where the preferred alternative is initially identified). Submit the request for preliminary de minimis impact determination no later than FHWA review of the preliminary EIS document.	Process the request for preliminary de minimis impact determination and public notice of FHWA's intent to make a de minimis impact determination in a time frame that allows for public comment and the final de minimis impact determination to be included in the CE document.	Included in the EA. Submit the request for preliminary de minimis impact determination no later than FHWA review of the draft EA.
Minimum 14-day public comment period on de minimis (For parks. No public notice for historic sites)	During the comment period for the Draft or Final EIS (depending on where the preferred alternative is initially identified). The Notice of Availability in the EQB Monitor and Federal Register includes description of the intent to make a de minimis impact determination.	Occurs in a timeframe that allows FHWA's final de minimis impact determination to be included in the CE document. A specific notice of the intent to make a de minimis impact determination and the minimum 14-day opportunity for comment is published.	During the 30-day comment period for the EA. The Notice of Availability in the EQB Monitor includes description of the intent to make a de minimis impact determination.
Final de minimis impact determination	FHWA makes the final de minimis impact determination after the public comment period on the EIS. The final de minimis impact determination is included in the ROD.	FHWA makes the final de minimis impact determination after the public comment period on the intent to make a de minimis impact determination. The final de minimis impact determination is included in the CE.	FHWA makes the final de minimis impact determination after the public comment period on the EA. The final de minimis impact determination is included in the Findings of Fact and Conclusions Document that accompanies the FONSI.

Step 10 is continued on the following page.

10. Prepare and process the Section 4(f) document(s).

Programmatic Section 4(F) Evaluation Document Process			
	Class I Action (EIS)	Class II Action (CE)	Class III Action (EA)
General	A programmatic Section 4(f) evaluations is usually included in the EIS, but may be a separate document under certain circumstances, such as if the Draft or Final EIS has already been approved.	A programmatic Section 4(f) evaluation is attached to the Categorical Exclusion Determination document (and included in the document title) or submitted as a separate document.	A programmatic Section 4(f) evaluation is usually attached as an appendix to the EA, but may sometimes be a separate document (e.g., if the FONSI has already been approved).
Programmatic Section 4(f) Evaluation document process	<p>Programmatic Section 4(f) Evaluation documents are only prepared for the preferred alternative, and therefore should be included in either the DEIS (with a "draft" stamp) or FEIS, depending upon where the preferred alternative is first identified.</p> <p>Preliminary Programmatic Section 4 (f) Evaluation Review and Comment (30 days)</p> <p>Programmatic Section 4(f) Evaluation Approval (14 days)</p>	<p>Programmatic Section 4(f) evaluations have the same FHWA review and approval time periods as the Categorical Exclusion Determination document:</p> <p>30 days review/comment period for the preliminary document</p> <p>14 days for approval of the final document</p>	<p>Review of a programmatic Section 4(f) evaluation follows the same process as the EA.</p> <p>Review of a draft individual Section 4(f) evaluation requires a 45-day DOI review period concurrent with (but with a longer time requirement than) the EA review process.</p>
Individual Section 4(F) Evaluation Document Process			
	Class I Action (EIS)	Class II Action CE)	Class III Action (EA)
General	The individual Section 4(f) evaluation should be included in the EIS, but may be a separate document under certain circumstances, such as if the Draft or Final EIS has already been approved.	The individual Section 4(f) evaluation should be processed as a separate document before the CE document is submitted.	The individual Section 4(f) evaluation is usually attached to the EA (draft) and issued with the FONSI (final), but may sometimes be a separate document (e.g., if the FONSI has already been approved).
Draft Individual Section 4(f) Evaluation process	<p>The Draft Individual Section 4(f) evaluation is normally included in the Draft EIS.</p> <p>The review and approval process for a draft Section 4(f) evaluation is the same as that for the Draft EIS.</p> <p>Preliminary Draft Section 4 (f) Evaluation FHWA Review and Comment (30 days)</p> <p>Draft Section 4(f) Evaluation FHWA Approve (14 days)</p>	<p>The Draft Section 4(f) Evaluation is prepared before and separate from the CE.</p>	<p>The Draft Individual Section 4(f) evaluation is normally included in the EA.</p> <p>The review and approval process for a draft Section 4(f) evaluation is the same as that for the EA.</p> <p>Preliminary Draft Section 4 (f) Evaluation FHWA Review and Comment (30 days)</p> <p>Draft Section 4(f) Evaluation FHWA Approve (14 days)</p>
Step 10 is continued on the following page.			

10. Prepare and process the Section 4(f) document(s).

	Class I Action (EIS)	Class II Action CE	Class III Action (EA)
45-day Dept. of Interior (DOI) comment period on Draft EIS	Concurrent with the comment period for the Draft EIS.	As a separate document review.	Concurrent with (but longer than) the comment period for the EA.
Final Individual Section 4(f) Evaluation process	<p>The Final Section 4(f) Evaluation is normally included in the Final EIS. The Final Section 4(f) Evaluation addresses only the Preferred Alternative.</p> <p>The review and approval process for a Final Section 4(f) evaluation is the same as that for the Final EIS.</p> <p>Preliminary Final Section 4 (f) Evaluation Review and Comment (30 days)</p> <p>Final Section 4(f) Evaluation Approve (14 days)</p> <p>The Final EIS cannot be issued until the final Section 4(f) evaluation is approved.</p> <p>Final Section 4(f) Evaluation Acquire Legal Sufficiency (30 days)</p> <p>Approve (14 days)</p>	The Final Section 4(f) Evaluation is prepared before and separate from the CE.	<p>The Final individual Section 4(f) evaluation is:</p> <ul style="list-style-type: none"> usually an appendix to the Findings of Fact, but may sometimes be a separate document. typically sent to FHWA with the FONSI request package, but OES may send it earlier if needed to accommodate legal sufficiency review within the project schedule. approved by FHWA separately from and before issuances of the FONSI; this approval is provided with, or prior to, the FONSI transmittal letter from FHWA to MnDOT.
<p>The processing time for a Programmatic Section 4(f) Evaluation is generally quicker than for an Individual Section 4(f) Evaluation. The Individual Section 4(f) Evaluation involves two formal documents – the Draft Section 4(f) Evaluation, which is circulated to the Department of Interior for formal comment, and the Final Section 4(f) Evaluation, which must be reviewed by FHWA for Legal Sufficiency.</p>			

Attachments

- [Section 4\(f\) Applicability Checklist](#)
- [Request for OWJ Temporary Occupancy Concurrence letter](#)
- [Section 4\(f\) analysis for Type I Noise Projects where quiet is important.](#)
- [Request for FHWA De Minimis Determination for Parks letter](#)
- [Request for FHWA De Minimis Determination for Historic Properties letter](#)
- [Draft FHWA OWJ De Minimis Concurrence Request for Parks letter](#)
- [Draft FHWA OWJ De Minimis Notice for Historic Sites cover letter](#)
- [Sample De Minimis Legal Notice for newspaper publication for CEs](#)
- [Sample EIS and EA EQB Monitor notices including intent to make de minimis determination](#)
- [Request for OWJ Independent Bikeway/Walkway Agreement letter](#)
- [Programmatic Section 4\(f\) Evaluation for Projects that Necessitate the Use of Historic Bridges – template](#)
- [Draft Individual Section 4\(f\) Evaluation – template](#)

- [Final Individual Section 4\(f\) Evaluation – template](#)

¹This may include select approvals a State DOT takes on behalf of FHWA.

²There are project circumstances where either a Programmatic Section 4(f) Evaluation could apply (See Step 6) or a de minimis impact determination is potentially appropriate. For these projects, consult with OES regarding the best path.

³Note that under the current Section 106 Programmatic Agreement (PA) SHPO/THPO waives concurrence for MnDOT CRU determinations of “no properties affected” as part of the normal Section 106 review.

⁴ If the Section 4(f) property is a historic site that is of local significance but that is not listed on or eligible for listing on the NRHP, contact OES for special assistance.

⁵ Pending FHWA determination.

⁶ There are project circumstances where either a Programmatic Section 4(f) Evaluation applies (see Step 6) or a de minimis impact determination is potentially appropriate; for these projects, consult with OES regarding the best path. If a project has one or more build alternatives impacting the same or multiple Section 4(f) properties (and all impacts are beyond de minimis level), a single individual section is likely the appropriate course of action instead of multiple programmatic Section 4(f) evaluations.

^{5A}A single resource (typically historic properties) can have multiple OWJs. For example, the ACHP will be an OWJ (in addition to SHPO/THPO) if actively participating in Section 106 consultation. The NPS will be an OWJ (in addition to SHPO/THPO) if the property affected is a National Historic Landmark.

⁷ If a project involves more than one Section 4(f) resource, addressed through separate Programmatic evaluations, a discussion of trade-offs (i.e. a least-harm style analysis) among the uses of this various Section 4(f) resources may be appropriate to include in the environmental document itself, but a formal Least Harm Analysis is not part of the separate Programmatic Section 4(f) Evaluation documents.