

## **MnDNR/MnDOT Coordination for Section 4(f) Concurrence** (for undertakings outside the Federal Recreational Trail Program)

### **Introduction**

The Section 4(f) legislation as established under the Department of Transportation Act of 1966 (49 USC 303, 23 USC 138) provides protection for publicly owned parks, recreation areas, historic sites, wildlife and/or waterfowl refuges from conversion to a transportation use.

The term “use” is often used in Section 4(f) instead of “impact.” Transportation uses of Section 4(f) properties include (but is not limited to): 1) permanent real property interest acquisition, 2) if the temporary occupancy of the resource does not meet the conditions of 23 CFR 774.13(d), as specified below. Duration is temporary (less than needed for project construction)

- No change in ownership of the land
- Scope of work is minor (i.e., the nature and magnitude of the changes to the resource during construction are minimal)
- No anticipated permanent adverse physical impacts
- No interference with the activities or purpose of the resource (either temporary or permanent)
- The land used will be fully restored (to a condition at least as good as before the project), and
- There is documented agreement from the official with jurisdiction (OWJ)<sup>1</sup> over the resource regarding the above conditions. This is documented with a letter of agreement between MnDOT and the owner with jurisdiction (OWJ) that the conditions were met.

If the section 4(f) impacts are exceeding the temporary occupancy conditions, the FHWA may not approve the use of land from a significant publicly owned park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

- the use of the property will have a de minimis impact (23 CFR 774.3 (b)). For Parks, Recreation Areas, Waterfowl and Wildlife Refuges, impacts are de minimis if the impacts do not adversely affect the activities, features and attributes of the resource.

Or that

- There is no feasible and prudent alternative to the use of land from the property; and
- The action includes all possible planning to minimize harm to the property resulting from such use (23 CFR 774.3).

Temporary Occupancy and De Minimis impacts are the most common Section 4(f) actions the occur between MnDOT and the MnDNR.

Additional protection is provided for outdoor recreational lands under the Section 6(f) legislation (16 USC 4602-8(f) (3)) where Land and Water Conservation (LAWCON) funds were used for the planning, acquisition or development of the property. These properties may be converted to a non-outdoor recreational use only if replacement land of at least the same fair market value and reasonably equivalent usefulness and location is assured. Some Section 4(f) resources may also require a Section 6(f) process if LAWCON funds were used. The [DNR website](#) has more information about the LAWCON program. Section 4(f) and Section 6(f) processes are intended to run concurrently and inform one another. Neither process is a substitute for the other.

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<sup>1</sup> The officials with jurisdiction (OWJ) 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 Section 4(f) process for MnDNR/MnDOT Coordination for temporary occupancy, de minimis, or a greater Section 4(f) actions is:**

1. Potential impacts to DNR Section 4(f) resources should be identified by DOT during the Scoping process (if possible) and described in the Early Notification Memo so the **DNR Liaison to the DOT** can assess the impacts, initiate identification of potential mitigation strategies, and identify the appropriate **local DNR manager** responsible for the resource.
2. The **DOT Project Manager** will contact the appropriate **local DNR manager** of the Section 4(f) resource to continue coordination regarding the potential project impacts on the resource. The **DOT Project Manager** should document this coordination. The local DNR manager and/or DNR liaison may be invited to be part of a multi-disciplinary work group for a project when impacts to the DNR resource justify a Section 4(f) programmatic or individual evaluation path.
3. Once the project's preliminary design and impacts to the resource have been established, and the applicable Section 4(f) regulatory path determined, the **DOT Project Manager** will draft the appropriate Section 4(f) correspondence as provided in DOT's Transportation Project Development Process (TPDP). Draft correspondence must be reviewed and signature action taken (as appropriate) by the Office of Environmental Stewardship (OES), and in some cases the Federal Highway Administration (FHWA), before it is sent to the DNR.
4. Information in the Section 4(f) correspondence must include, but not be limited to:
  - Figure(s) displaying the proposed project roadway improvement including temporary construction limits and areas under DNR jurisdiction that will be impacted.
  - Description of coordination with the **local DNR manager(s)** for their impacted resource and the anticipated nature of the impact(s).
  - **DNR Liaison**'s response to the Early Notification Memo (ENM) on the project.
  - Summary of commitments. At a minimum, all will utilize:
    - (a) Use of Native Seed mix and or native tree/shrub species (revegetation plan)
    - (b) Invasive Species prevention measures
    - (c) If rolled erosion control blanket is proposed, use natural net erosion control blanket (erosion control plan)
    - (d) Other designs incorporated per coordination and agreement with the **local DNR manager(s)**.
  - Project schedule including the dates that construction will begin and end.

The level of information required in the correspondence will depend on the resource impacted and the Section 4(f) path appropriate for the context of the situation. For example, commitments will differ for Wildlife Management Areas, State Trails, State Parks, or State Recreation areas, depending on the resources impacted and the intensity of the impact(s). Rare species surveys (plant and/or animal) may also be needed to aid in project design and for a concurrence determination.

5. The **DNR Liaison to DOT** should email temporary occupancy Section 4(f) inquiries to the DNR land administrator who has authority to sign the Section 4(f) documents. For De Minimis actions FHWA will email the Request for De Minimis Concurrence directly to the DNR land administrator who has authority to sign the Section 4(f) document, and copy the district project manager, DNR liaison, and OES.

Below is a list of current individuals with authority to sign the document for state land their division administers.

1. Division of Forestry – Email to Shannon Jensen for signature by Patty Thielen, Deputy Director
2. Division of Ecological and Water Resources – Melissa Kuskie, Deputy Director
3. Division of Parks and Trails – Phil Leversedge, Deputy Director
4. Division of Fish and Wildlife – Pat Rivers, Deputy Director
5. Minerals Section – Pete Clevenstine, Assistant Director
6. DNR listed as land administrator – applicable Region Director

Note: Division directors may also sign the documents for state lands they administer.

The email should also copy the land administering division Area Supervisor, Regional Environmental Assessment Ecologist (REAE) and Division of Lands and Minerals Regional Supervisor or Coordinator ([https://www.dnr.state.mn.us/lands\\_minerals/regionalops.html](https://www.dnr.state.mn.us/lands_minerals/regionalops.html)). The Area Supervisor can provide additional information about the state land to the individual being asked to sign a 4(f) document. The email will also provide early notification to the REAE and Division of Lands and Minerals Regional Supervisor or Coordinator about upcoming DOT projects that may need environmental review, easement application, or transfer of custodial control. Early notification may be important to address potential funding restrictions, archeological sites, listed species, and other issues (e.g., mineral leases, etc.).

6. DNR staff will complete their review and concurrence within 30 days provided that the information contained in the Section 4(f) concurrence letter is complete and provides sufficient information to help them determine the level of impact.