

Section 4(f)

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Forms

[Section 4\(f\) Applicability and Evaluation Process Guide](#)
[Section 4\(f\) Applicability Checklist](#)
[Request for OWJ Temporary Occupancy Concurrence for Parks letter](#)
[Request for OWJ Temporary Occupancy Concurrence for Historic Sites letter](#)
[Section 4\(f\) analysis for Type I Noise Projects where quiet is important.](#)
[Request for FHWA De Minimis Determination for Parks letter](#)
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[Programmatic and De Minimis Documentation Matrix](#)
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Introduction

Section 4(f) of the Department of Transportation Act of 1966 is a federal law. It's intention is 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 (U.S. DOT) determines there is no feasible and prudent alternative, and all possible planning has been done to minimize harm to properties Section 4(f) cover.

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

Does Section 4(f) Apply?

FHWA has the final determination regarding Section 4(f) impacts and applicability. Since Section 4(f) issues can be complex, if in doubt about Section 4(f) applicability consult with OES.

Section 4(f) applies if the answer is “yes” to all of the following questions:

- Is there US DOT involvement?
- Are there Section 4(f) properties in the project area?
- Are there potential impacts to Section 4(f) properties?

Is there U.S. DOT involvement?

Any action by FHWA (or any other U.S. DOT agency) constitutes U.S. DOT involvement. Such actions include:

- Using federal transportation funds on the project, or
- Needing permit or approval from a U.S. DOT agency (including any that the USDOT agency has delegated to MnDOT).

If there is no U.S. DOT involvement, Section 4(f) does not apply.

Complete the [Section 4\(f\) Applicability Checklist](#) for the Project File.

If there is U.S. DOT involvement, continue.

Are there Section 4(f) properties in the project area?

1. Identify potential Section 4(f) properties within the project area (the project area includes potential construction staging areas and stormwater ponds).

Possible Section 4(f) resources include:

- Parks and recreation areas;
- Wildlife or waterfowl refuges;
- Cultural resources;
 - Historic sites;
 - Historic bridges and highways;
 - Archeological resources;
 - Historic or archeological districts;
 - Historic trails;
 - Landscapes;
 - Traditional cultural properties;
- Wildlife management areas;
- School playgrounds;
- Fairgrounds;
- Public multiple-use land holdings;
- Wild and scenic rivers;
- Planned facilities;
- Bikeways (recreational);
- Trails;
- Public golf courses;

2. Determine if any of the identified properties meet Section 4(f) criteria:

- A Section 4(f) property:
 - Is publicly owned²
 - Is open to the public

²“Publicly owned” includes situations where the facility/land is privately owned, but a public agency has a long-term interest (lease, permit) as determined by FHWA. For complicated situations, provide the following materials to assist FHWA in making a determination: description/visual of the resource; breakdown of who owns what portion in fee title; copies of the actual leases/permits/easements for any remaining portion; description of which portion(s), if any, of facility are not owned in fee title and are thought to be there by easement (or similar instrument) when there is no record of any easement (or similar instrument).

- Has park and recreational activities as the major purpose of the property.
- Is significant in meeting park or recreation objectives (according to the opinion of the Official With Jurisdiction [OWJ] over the property, although USDOT agency makes the final determination)
- Wildlife or waterfowl refuges: If all of the following are true, the property is Section 4(f).
 - Publicly owned³
 - Major purpose of property is protection of wildlife
 - Significant in meeting refuge objectives (opinion of the Official With Jurisdiction [OWJ] over the property, although final determination is by the US DOT agency).
- Historic sites and other cultural resources:
 - May be Section 4(f) properties whether publicly or privately owned
 - May be Section 4(f) if ANY of the following are true.
 - Listed on – or eligible for listing on – the National Register of Historic Places (NRHP) (36 CFR 800.16)
 - Has local historical significance (even if not NRHP-listed or eligible)
 - FHWA makes the determination whether or not the application of Section 4(f) is appropriate when an official (such as the Mayor, president of the local historic society, etc.) formally provides information to indicate that a historic site (that is not NRHP-listed or eligible) is of local significance. If the local official provides such information, contact OES who will coordinate with MnDOT CRU and FHWA regarding potential Section 4(f) applicability and subsequent steps.
 - Archeological sites (including sites discovered during construction) if both of the following are true.
 - On or eligible for listing on the NRHP
 - Warrant preservation in place
 - The actual determination of historic properties or other cultural resources listed or eligible for listing on the NRHP must be done by the MnDOT Cultural Resources

³“Publicly owned” includes situations where the facility/land is privately owned, but a public agency has a long-term interest (lease, permit) as determined by FHWA. For complicated situations, provide the following materials to assist FHWA in making a determination: description/visual of the resource; breakdown of who owns what portion in fee title; copies of the actual leases/permits/easements for any remaining portion; description of which portion(s), if any, of facility are not owned in fee title and are thought to be there by easement (or similar instrument) when there is no record of any easement (or similar instrument).

Unit (CRU) (under the Section 106 review) per the terms of the 2015 Section 106 [General Agreement](#). (See HPDP – Historical, Archeological and Cultural Reviews.)

If in doubt regarding Section 4(f) applicability of any property, consult with OES.

3. Coordinate with the official with jurisdiction (OWJ) over the property (parks, recreation areas, or wildlife/waterfowl refuges) to gather information relevant to whether or not the property is subject to Section 4(f), specifically information about :

- 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 and regional recreational or refuge resources and objectives.⁴

Note that multiple OWJs or terms of permit/lease/ownership among a single Section 4f resource require greater consultation with OES and FHWA to ensure Section 4f is not “over-applied”.

Information that may be helpful:

- Management plan for the property
- Any Section 6(f) involvement (See HPDP – Section 6(f))

For historic properties, the MnDOT Cultural Resources Unit coordinates with the Minnesota State Historical Preservation Office (SHPO) and/or the appropriate Tribal Historic Preservation Officer(s) (THPO). At present, the OWJ for historic properties is as shown in the table on the following page.

If there are no Section 4(f) properties in the vicinity of the project, no further information is required. (Complete the [Section 4\(f\) Applicability Checklist](#) for the Project File). If there is Section 4(f) property on or near the project, continue.

⁴ FHWA will presume the property to be significant unless the OWJ finds that the entire property is not significant. The FHWA will make an independent evaluation of the reasonableness of an OWJ finding regarding significance.

SHPO vs THPO: Who is the Section 4f OWJ for Historic Properties Within Federally-Recognized Reservation Boundaries or Exterior Trust Lands?		
Federally-Recognized Tribe	Architectural Historic Property	Archaeological Historic Property
Bois Forte	THPO	THPO
Fond du Lac	THPO	THPO
Grand Portage	THPO	THPO
Leech Lake	SHPO	THPO
Lower Sioux	THPO	THPO
Mille Lacs	SHPO	THPO
Prairie Island	THPO	THPO
Red Lake	THPO	THPO
Shakopee Mdewakanton Sioux	SHPO	SHPO
Upper Sioux	THPO	THPO
White Earth	SHPO	THPO
<p>Background: Minnesota has 11 federally-recognized tribes. All but one have acquired THPO status from the NPS per Section 101(d) of the NHPA. Three of the 11 have only partially assumed the duties of the SHPO. This is sometimes informally referred to as a "split review." Leech Lake, Mille Lacs, and White Earth have only assumed the duties of the SHPO for archaeological resources within federally-recognized reservation boundaries and exterior trust lands. The SHPO still has the formal Section 106 concurrence action on non-archaeological historic properties within those three reservations and any associated exterior trust lands. Therefore, the SHPO will still be the OWJ for architectural historic properties within Leech Lake, Mille Lacs, and White Earth lands.</p> <p>Note: This table assumes a scenario where the resource has at-most two OWJs consisting of the SHPO and/or THPO. It does not reflect the situation where the Advisory Council on Historic Preservation (ACHP) and/or the National Park Service (NPS) might be OWJs in addition to the SHPO/THPO.</p>		

Are there potential impacts to the Section 4(f) properties?

The term “use” is often used in Section 4(f) instead of “impact.” Transportation uses of Section 4(f) properties include:

- 1. Permanent real property interest acquisition.** This includes acquisition of all or part of the property as right of way, permanent easement, long-term lease or similar permanent conversion. It also includes permanent conversion of Section 4(f) land into a transportation facility even though ownership of property rights does not change hands, such as when a City or County is both the owner of the Section 4(f) land and the proposer of the federally-funded road project for which the land conversion is proposed.
- 2. Temporary Easement / Temporary Occupancy.** This is “use” if the temporary occupancy is adverse in terms of the Section 4(f) statute’s preservationist purposes, i.e., if the temporary occupancy does not meet the conditions of 23 CFR 774.13(d) as specified below:

- Temporary easements/occupancy is not “use” if ALL of the following are true:
 - 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) over the resource regarding the above conditions
- Always consult OES if you anticipate that your project will involve temporary occupancy of a Section 4(f) resource.
- The [Request for OWJ Temporary Occupancy Concurrence letter](#) in Forms section above is used to solicit agreement from the OWJ for projects that do not constitute use because the 23 CFR 774.13(d) conditions are met. OES will coordinate FHWA review of the draft correspondence.
- OES can provide additional correspondence examples if needed, [e.g., for temporary occupancy of “water trails”, i.e. designated canoe routes.] If the OWJ is the MnDNR, use the process outlined at [MnDNR/MnDOT Coordination for Section 4\(f\) Concurrence](#).
- The “non-use” temporary occupancy is documented in the environmental document, including detail of how 23 CFR 774.13(d) conditions are met and the relevant correspondence.

Temporary easements/occupancy is “use” if any of the above conditions is not met. In other words, the NEPA documentation will not refer to the situation as ‘temporary easement/temporary occupancy’ if any of the above conditions are not met.

- 3. Constructive Use.** Constructive use is when a project does not incorporate any Section 4(f) resource land, but proximity impacts of the project substantially impair activities, features, or attributes of the resource that qualify it for Section 4(f). Potential constructive use scenarios include, but are not limited to, noise impacts to a subset of Section 4(f) resources. See 23 CFR 774.15 for the regulations regarding constructive use determination and MnDOT’s [Noise Impact Analysis Guidance for Section 4\(f\) Properties Where Quiet is Important](#). Consult with OES if you have questions about constructive use. FHWA makes the determination regarding constructive use; therefore early consultation with FHWA is important.

Other “Use” (Impact) Considerations include:

- Joint development
- Air rights
- Late discovery
- Late designation
- Wetland mitigation
- Tunneling
- Boat access ramps
- Transportation enhancement activities

Conclusion

If all of the following are true, Section 4(f) applies:

- There is US DOT involvement.
- There are Section 4(f) properties in the project area.
- There are potential impacts to Section 4(f) properties.

If in doubt about Section 4(f) involvement, contact OES. Remember, FHWA has final responsibility for determining if Section 4(f) applies to a property and if there are impacts.

If Section 4(f) does not apply (there is no Section 4(f) involvement):

- Fully document your findings (See [Section 4\(f\) Applicability Checklist](#)) for the Project File.
- Include statement in environmental document, for example: “This project has been reviewed to determine the potential for Section 4(f) involvement and a determination has been made that the project would not result in use of Section 4(f) property, including constructive use.”

If Section 4(f) applies, continue.

If Section 4(f) Applies

Summary

If a Section 4(f) “use” as defined in 23 CFR 774.17 applies to a project, FHWA cannot approve the use unless a determination is made based on either 1 or 2 below:

1. FHWA determines that the use of the property will have a *de minimis* impact on the property (see 23 CFR 774.3(b)).

If FHWA makes a *de minimis* determination of a project's Section 4(f) impacts, the Section 4(f) process is completed and no further analysis is needed. The process and documentation requirements are detailed further below.

OR

2. For impacts to Section 4(f) property, that are not *de minimis*, FHWA determines that:
 - There is no feasible and prudent alternative that avoids use of a Section 4(f) resource, and
 - All possible planning has been done to minimize harm to the Section 4(f) property

“Feasible” means the project can be built as a matter of sound engineering judgment. (See 23 CFR 774.17.)

“Prudent”: An alternative *may not be prudent* if it does any of the following:

- 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 does not address the purpose and need of the project);
- It results in additional construction costs of extraordinary magnitude;
- It involves extraordinary operational or safety problems;
- It causes severe social, economic, or environmental impacts (after reasonable mitigation);
- It causes severe disruption to established communities (after reasonable mitigation);
- It causes severe or disproportionate impacts to minority or low-income populations (after reasonable mitigation);
- It causes severe impacts to environmental resources protected under other Federal statutes (after reasonable mitigation);
- There are unique problems or truly unusual factors present with it; or

- There is an accumulation of factors that collectively, rather than individually, have adverse impacts that present unique problems or reach extraordinary magnitude.

Is the use a de minimis impact?

Consult with OES if considering de minimis. De minimis may be used for any class of action and on any project type. A de minimis finding can be made for permanent or temporary impacts but cannot be made for constructive use. FHWA makes the de minimis finding. The Official with Jurisdiction (OWJ) over the affected Section 4(f) property must concur with the information regarding the impacts assessment of the project on the Section 4(f) property that FHWA uses as the basis for the de minimis determination.

De minimis is a two-step process: (1) FHWA declares an intent to make a de minimis determination subject to a review period; and (2) following the review period, FHWA issues its de minimis determination.

There are two types of Section 4(f) de minimis impact findings:

- For Parks, Recreation Areas and Wildlife Refuges. [See De Minimis Workflow for Parks, Recreation and Wildlife flow chart.](#)
- For Historic Sites

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. For each potential use, it is advisable to investigate and engage the officials with jurisdiction (OWJ) in identifying ways to reduce the impact to result in a likely de minimis finding, (i.e., to not adversely affect the activities, features and attributes of the resource.) The de minimis determination considers mitigation and enhancement measures.

Consultation with the OWJ should begin as early in the project environmental review process as possible. Before public involvement, the project team and the OWJ should be in general agreement as to the potential level of impacts to the Section 4(f) resource as well as have general agreement concerning avoidance, minimization, mitigation, and enhancement measures that will be presented to the public for comment. Concurrence from the OWJ takes place after public involvement and requires written documentation of the consultation with the OWJ.

De Minimis Determination Process for Parks, Recreation Areas, Waterfowl and Wildlife Refuges

1. Identify the Section 4(f) property's features, attributes and activities. This should be done in consultation with the OWJ.

2. Work to minimize impacts to the Section 4(f) property and identify proposed mitigation for impacts and any proposed enhancements for the Section 4(f) property. Prepare the [Request for FHWA De Minimis Determination for Parks letter](#).
 - The request letter includes description of the Section 4(f) property, project impacts to the property (activities, features and attributes), and relevant considerations of avoidance, minimization of harm, mitigation and enhancements.
 - The request letter also requires documentation of the coordination meetings and activities with the OWJ. Consultation with the OWJ must begin early in the project environmental review process. The project team and the OWJ should be in general agreement as to the potential level of impacts to the Section 4(f) property as well as have general agreement concerning avoidance, minimization, mitigation, and enhancement measures that could make a de minimis finding more likely. The purpose of this is to inform FHWA's consideration of whether a de minimis finding is appropriate, pending public review.⁵
 - If the OWJ is the MnDNR, use the process outlined at [MnDNR/MnDOT Coordination for Section 4\(f\) Concurrence](#).
 - Submit the Request for FHWA De Minimis Determination for Parks letter to OES. OES will submit to FHWA for its preliminary determination ("Intent to make a de minimis determination").
 - FHWA signature on the Request for FHWA De Minimis Determination for Parks letter will indicate FHWA's intent to make a de minimis determination conditioned on public review and comment. The project team will provide a copy of the signed request to the OWJ, FHWA, and MnDOT OES. Should the de minimis impact involve tribal property, FHWA will transmit all correspondence **This is the first of the two actions that FHWA must take in the de minimis process.**
 - For EAs and EIS, include description of the preliminary determination (FHWA's intent to make a de minimis determination) and relevant correspondence in the document for publication. (CatEx documents cannot be approved until public comment period concludes and final determination and final OWJ concurrence received -- see next steps).

⁵ At this point in the process, it is possible that the OWJ is not in agreement that the impacts are de minimis. FHWA can proceed with the notice of intent to make a de minimis determination and begin the public review period. However, if early coordination with the OWJ indicates that the OWJ is not supportive of the de minimis finding, this information must be provided to FHWA. If it appears likely that the OWJ will not ultimately concur with the FHWA (regardless of public input and/or reasonable mitigation), it is best to be understood/addressed by all parties early rather than lose schedule time pursuing a de minimis course that would likely be unsuccessful.

7. Public Notice and Opportunity for Comment.

- EA and EIS – include intent of de minimis determination in [public hearing notices](#) for EA or EIS
- Categorical Exclusion – Publish de minimis ad in a newspaper of general circulation in the project area for a minimum of 14 days for the comment period; see [De Minimis Public Notice Sample](#). It is also recommended to provide notice of opportunity to comment on the intended de minimis determination at other locations such as the project website, notice boards on the affected park property, at the city hall, etc.
- For public meetings, open houses, or other formal public activities being used to meet the public notice and comment requirements for a de minimis finding, the properties and the impacts and avoidance, minimization, mitigation, and enhancement activities related to the properties must be individually discussed and public comment requested

8. Following the comment period, submit a draft [FHWA OWJ De Minimis Concurrence Request for Parks letter](#) to OES. OES will submit the draft letter to FHWA for its use in securing final concurrence from the OWJ which it needs in order to finalize the de minimis determination. **This is the second of the two actions that FHWA must take in the de minimis process.** FHWA will advise MnDOT when it has secured OWJ concurrence and finalized its de minimis determination. Note that the OWJ has 30 days to respond following receipt of the FHWA letter.

9. Once FHWA has secured OWJ concurrence and finalized its de minimis determination, complete the final environmental document (CatEx, FONSI package or ROD).

- FONSI package or ROD: Include new information about the de minimis process that occurred since the EA or EIS publication, i.e. the public review, the final de minimis determination and final OWJ concurrence. Include all relevant notices and correspondence. The FONSI will be titled “Finding of No Significant Impact and Section 4(f) De Minimis Determination”. The ROD will be titled “Record of Decision and Section 4(f) De Minimis Determination”.
- CatEx: Include information about the entire de minimis process, i.e. the preliminary determination, the public review, the final determination and final OWJ concurrence. Include all relevant notices and correspondence. Title the document: “Categorical Exclusion Determination and Section 4(f) De Minimis Determination”.

10. For Historic Sites, impacts are de minimis under the following conditions:

- The project must have Section 106⁶ determination of “no historic properties affected” (includes “no properties” and “no effect” determinations) or “no adverse effect.”
- The OWJ, i.e., SHPO or THPO (and ACHP and/or NPS, if participating) (or the local agency for locally-significant only properties:
 - must concur with the finding in accordance with 36 CFR Part 800.⁷
 - must be informed of FHWA’s/FTA’s intent to make a de minimis impact determination based upon their concurrence with the Section 106 determination.

De Minimis Determination Process for Historic Sites

1. Assemble required information.

- For properties that are listed or eligible for listing on the NRHP, the information needed for the [Request for FHWA De Minimis Determination for Historic Sites letter](#) will be available in the project’s Section 106 correspondence (MnDOT CRU determination and, in the case of “no adverse effect” determinations, SHPO or THPO concurrence correspondence).
- If FHWA has determined that a locally-designated property that is not subject to Section 106 is however subject to Section 4(f), OES will coordinate with FHWA and MnDOT CRU regarding securing MnDOT CRU’s determination of effect and consultation with the local agency OWJ (SHPO/THPO or local agency).

⁶ Section 106 does not specifically apply to locally-designated only properties; however for purposes of the Section 4(f) review, similar determinations of effect and concurrence actions will be required.

⁷ Under the current (2015) [Section 106 Programmatic Agreement \(PA\)](#) (also referred to as the “General Agreement” to distinguish from project-specific Section 106 PAs), this requirement is satisfied by concurrence correspondence for “no adverse effect” determinations. Under the PA, the SHPO waives its review and concurrence action role for an undertaking where a “No Historic Properties Affected” (i.e. “no properties” or “no effect”) finding is made by MnDOT CRU. As there is no similar agreement with local agencies for locally-designated properties not subject to Section 106, written concurrence would be needed for “No Historic Properties Affected” (i.e. “no properties” or “no effect”) and “No Adverse Effect” determinations.

2. Complete the Request for FHWA De Minimis Determination for Historic Sites letter. The request letter includes descriptions of the Section 4(f) property, project impacts to the property, and coordination with the OWJ.
3. Complete a draft [FHWA OWJ De Minimis Notice cover letter](#). The cover letter briefly explains the de minimis process and offers an opportunity for additional OWJ comment prior to FHWA's final determination regarding the applicability of de minimis.
4. Submit the Request for FHWA De Minimis Determination for Historic Sites letter and draft FHWA OWJ De Minimis Notice cover letter to OES. OES will submit to FHWA for a preliminary determination ("Intent to make a de minimis determination") and notice to the OWJ.
5. FHWA signature on the FHWA De Minimis Determination for Historic Sites letter will indicate FHWA's intent to make a de minimis determination conditioned on results of notice to the OWJ. FHWA will provide a copy of the signed request letter along with the notice cover letter to the OWJ as well as to MnDOT OES and the project proposer.
6. Include de minimis write up in the environmental document
 - EA and EIS – will describe only the preliminary determination (FHWA's intent to make a de minimis determination); the final determination will be included in the FONSI or the ROD. Relevant FHWA and OWJ correspondence is included in the EA and Findings of Fact and Conclusions document or EIS and ROD, as applicable
 - Categorical Exclusion – will only include the final determination; the Categorical Exclusion cannot be approved until final determination received. (See next steps).
7. The de minimis process for historic sites does not require the same public comment on an intent to make a de minimis determination that is required for a non-historic Section 4(f) resource. The minimum "public comment" requirements are met by following the Section 106 process with all relevant consulting parties. OWJ comment is the primary consideration. Therefore the intent is not typically publicly noticed. In certain circumstances, it may be appropriate to see public comment beyond the formal Section 106 consulting parties. This would typically take place through the Section 106 process. Consult with OES regarding notice needs for a historic sites de minimis process.
8. If following the OWJ review of FHWA notice of intent, FHWA finalizes its de minimis determination, include the de minimis determination along with relevant correspondence in Cat Ex, FONSI or ROD. The final CatEx document should be titled, "Categorical Exclusion Determination and Section 4(f) De Minimis Determination."

If de minimis does not apply, the Section 4(f) evaluation process must be followed to determine whether there is a feasible and prudent 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.

Does a Programmatic Section 4(f) Evaluation apply?

For projects with Section 4(f) use that is not de minimis, first determine if a Programmatic Section 4(f) Evaluation likely applies: review the [Documentation Matrix](#), or use the following guidance. If in doubt, consult with OES.

Note: There may be projects where either a Programmatic Section 4(f) Evaluation applies or a de minimis determination is potentially appropriate; for these projects, consult with OES regarding the best path. In addition, consult OES if the project potentially involves multiple Section 4(f) resources and/or alternatives, as a single Individual Section 4(f) Evaluation may be the appropriate path.

Programmatic Section 4(f) evaluations are time-saving alternatives to preparing Individual Section 4(f) evaluations for certain minor uses of Section 4(f) property. (Individual Section 4(f) Evaluations are described further below.) Programmatic Section 4(f) evaluations are developed by the FHWA based on experience with many projects that have a common fact pattern from a Section 4(f) perspective. An approved programmatic Section 4(f) evaluation may be relied upon to cover a particular project only if the specific conditions in that nationwide programmatic evaluation are met. (See Note regarding use of Historic Bridges.)

FHWA has issued Five Nationwide Programmatic Section 4(f) Evaluations:

1. Independent Bikeways/Walkways (“Negative Declaration Statement”)

- Project types allowed: Only on independent Bikeway / Walkway projects, not incidental part of highway project
- Resources allowed: Only for parks / recreation areas (not for wildlife / waterfowl refuges or historic sites)
- Extent of impacts: Only if no use of critical habitat or federally-listed species and if no unusual circumstance (e.g. major impacts, controversy)
- Can be used for Class II (CatEx) or Class III (EA) projects

2. Use of Historic Bridges

- Project types allowed: Rehabilitation or replacement of historic bridges
- Resources allowed: Historic bridges that are not National Historic Landmarks
- Extent of impacts:
 - If there will be a use of (adverse effect to) a historic bridge to be replaced or rehabilitated, Section 4(f) applies and the Alternatives, Findings and Mitigation requirements for application of the programmatic Section 4(f) must be met;
 - Note: In deciding whether or not a proposed use of a historic bridge may be covered by the nationwide programmatic Section 4(f) evaluation, FHWA Minnesota Division may, at its discretion, expand the applicable reasons why an avoidance alternative is not feasible and/or prudent to include the definitions found in 23 CFR 774. Historic bridge projects require early and on-going consultation with OES and FHWA to determine and facilitate whether the programmatic or the individual Section 4(f) evaluation process applies.
 - If bridge is replaced, the existing bridge must be made available for alternative use (contact OES for assistance with this “marketing process” requirement);
 - If bridge can be rehabilitated without affecting historic integrity, Section 4(f) does not apply.
- Can be used for Class I (EIS), Class II (CatEx) or Class III (EA) projects.
- Cannot be used for non-highway bridges (e.g. bridges that only carry rail traffic, bike/pedestrian-only bridges).

3. Minor Use of Parks, Recreation Areas, Wildlife Refuges

- Project types allowed: Projects that improve the operating characteristics, safety, and/or physical condition of an existing highway on essentially the same alignment.
- Resources allowed: Parks, recreation lands, and waterfowl and wildlife refuges that are adjacent to an **existing** [road] facility
- Extent of impacts: The amount of property to be acquired or used is limited:

Total size of Section 4(f) Site	Maximum to be Acquired / Used
<10 acres	10% of site
10 – 100 acres	1 acre
>100 acres	1% of site

- Can be used for Class II (CatEx) or Class III (EA) projects

4. Minor Use of Historical Properties

- Project types allowed: Improvement of operating characteristics, safety, and/or physical condition of an existing highway on essentially the same alignment.
- Resources allowed: Historic sites adjacent to an **existing** (road) facility
- Impact limits:
 - The project must not remove or alter historic buildings, structures or objects; or archeological resources important for preservation in-place.
 - There must be a determination of “no effect” or “no adverse effect” via the Section 106 process
- Can be used for Class II (CatEx) or Class III (EA) projects

5. Net Benefit to a Section 4(f) Property

- Project types allowed: All project types.
- Resources allowed: All Section 4(f) resources
- Extent of impacts:
 - No impact limits, but project must result in an overall enhancement to the resource, 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 project for Section 4(f) protection. If the resource has a master plan or other documentation of purpose, it will provide context for this enhancement assessment.
 - For historic resources the project doesn't necessarily require a “no effect” or “no adverse effect” determination, but property must remain eligible for National Register of Historic Places.
- Can be used for Class I (EIS), Class II (CatEx) or Class III (EA) projects

Documentation required to apply a programmatic Section 4(f) evaluation must support that the project meets specific programmatic criteria (See 23 CFR 774.3(d)(1)). This includes assessment whether there is a feasible and prudent avoidance alternative and that all possible planning to minimize harm applies.

Consider Avoidance Alternatives:

Projects covered by the Independent Bikeways/Walkways Programmatic Section 4(f) Evaluation do not require project-specific consideration of avoidance alternatives, as the Programmatic Evaluation has already concluded that there is no feasible and prudent alternative to these projects.

Projects covered by any of the other four programmatic Section 4(f) evaluations must consider these three avoidance alternatives (this is an all-inclusive list; see each programmatic evaluation for the specific wording):

- No Build
- Improving the facility without using the Section 4(f) property
- Building on a new location

If there is a feasible and prudent avoidance alternative, it must be selected. (See Glossary for definition of “feasible” and “prudent”. Also See Appendix: Avoidance, Minimization & Mitigation of Sec. 4(f) Properties for list of ways to avoid use).

If there is no feasible and prudent avoidance alternative, document the avoidance strategies considered but not used, and why they were not prudent and/or feasible.

All Possible Planning to Minimize Harm to the Section 4(f) Property:

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. (See Appendix: Avoidance, Minimization & Mitigation of Section 4(f) Properties).

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.

Projects covered by the Independent Bikeways/Walkways Programmatic Section 4(f) Evaluation rely on the required 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.

Projects covered by any of the other four programmatic Section 4(f) evaluations need to demonstrate that the proposed action includes all possible planning to minimize harm as defined by the applicable programmatic evaluation.

OWJ Concurrence:

- Projects proposed to be covered by any of the five programmatic Section 4(f) evaluations require concurrence from the official with jurisdiction (OWJ).
- Letters are provided in Forms section for use in soliciting this concurrence for projects proposed to be covered by the Independent Walkway/Bikeway, Minor Use of Parks, or Net

Benefit programmatic Section 4(f) evaluations. Provide a draft of the letter to OES for coordination of FHWA review prior to submitting to the OWJ.

- Section 106 SHPO/THPO concurrence correspondence fulfills the Section 4(f) OWJ concurrence requirement for projects proposed to be covered by the Historic Bridge or the Minor Use of Historic sites programmatic Section 4(f) evaluations.

Is an Individual Section 4(f) Evaluation required?

For projects with Section 4(f) use that is neither de minimis nor covered by a Programmatic Section 4(f) Evaluation, an Individual Section 4(f) Evaluation must be done. The individual Section 4(f) Evaluation considers avoidance alternatives and, if avoidance is not prudent/feasible, determines which alternative causes the least harm and includes all possible planning to minimize harm.

Consider Avoidance Alternatives: For projects covered by an Individual Section 4(f) Evaluation, avoidance alternatives include the No Build and 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. A project alternative that avoids on Section 4(f) property by using another Section 4(f) property is not an avoidance alternative.

As noted, if there is an alternative that avoids the Section 4(f) property entirely, that alternative must be selected if it is both feasible and prudent. Therefore the evaluation must document why avoidance is not prudent and/or feasible. (See Appendix: Avoidance, Minimization & Mitigation of Section 4(f) Properties).

Select Alternative that Causes the Least Harm

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.

Individual Section 4(f) Evaluation documentation

- Draft Individual Section 4(f) Evaluation – See documenttemplate.
- Final Individual Section 4(f) Evaluation – See documenttemplate.

Processing Evaluations (Programmatic or Individual)

How evaluations are processed depends on NEPA Class (see below). However, specific review times for evaluations are listed in the [FHWA & MnDOT Stewardship Plan](#), as shown in the following:

Programmatic Section 4(f) Evaluations	FHWA Action / Review Time
Preliminary Programmatic Section 4 (f) Evaluation	Review and Comment (30 days)
Programmatic Section 4 (f) Evaluation	Approve (14 days)

Individual Section 4(f) Evaluations	FHWA Action / Review Time
Preliminary Draft Section 4 (f)	Review and Comment (30 days)
Draft Section 4 (f) Evaluation	Review (14 days), and Distribute to Dept. of Interior for Comment (45 days min. – assume 60 days for scheduling purposes)
Preliminary Final Section 4 (f) Evaluation	Review and Comment (30 days)
Final Section 4(f) Evaluation	Acquire Legal Sufficiency (30 days)
Final Section 4 (f) Evaluation	Approve (14 days)

The Stewardship Plan does not address the FHWA Action/Review Time for de minimis determinations (preliminary or final), but a 14-day turnaround upon receipt of a complete package is typical. Consult with OES for schedule.

NEPA Class and Processing of Evaluations

Class I Action (EIS)

- FHWA's intent to make a de minimis impact determination for the preferred alternative is included in the Draft or Final EIS (depending on where the preferred alternative is initially identified). Therefore the request for preliminary de minimis determination should be submitted no later than FHWA review of the preliminary EIS document. FHWA makes the final de minimis determination after the public comment period on the EIS. The final de minimis determination is included in the ROD.
- Programmatic and Individual Section 4(f) evaluations normally must 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. (In these cases, any available preliminary Section 4(f) documentation would be included with the EIS.)

- The review and approval process for a draft/final Section 4(f) evaluation is the same as that for the draft/final EIS.
- If the EIS contains a Section 4(f) evaluation, additional EIS copies may be required for distribution.
- The FEIS cannot be issued until the final Section 4(f) evaluation is approved.
- Contact OES for more assistance if a combined FEIS/ROD process is being used, as there will be some adjustments in how the Section 4(f) evaluation is coordinated with the combined FEIS/ROD.

Class II Action (Programmatic and Non-programmatic Categorical Exclusion)

- The request for preliminary de minimis impact determination and public notice of FHWA's intent to make a de minimis determination needs to be processed in a time frame that allows for public comment and the final de minimis determination to be included in the Categorical Exclusion Determination document. A 30-day public comment period for the intent to make a de minimis determination is required.
- A programmatic Section 4(f) evaluation is included as part of the Categorical Exclusion Determination document. The final CatEx is titled, "Categorical Exclusion Determination and Section 4(f) Evaluation".
- Programmatic Section 4(f) evaluations have the same FHWA review and approval time periods as the Categorical Exclusion Determination document:
 - 30 days review/comment period for the preliminary document
 - 14 days for approval of the final document
- An individual Section 4(f) evaluation should be processed as a separate document before the Categorical Exclusion Determination document is submitted, due to the review time required to process an individual Section 4(f) evaluation. FHWA typically approves the Final individual Section 4(f) Evaluation and signs the CE at the same time.
- Projects with only de minimis determination always require need OES and FHWA review and approval of the Section 4(f) documentation that becomes part of the Categorical Exclusion document. The intent to make de minimis determination and any final de minimis determination needs to be included in the Categorical Exclusion document.
- See the following guidance documents for how to conduct the appropriate Section 4(f) evaluation for Programmatic Categorical Exclusions
 - [PCE Guidance Document.](#)
 - [Overview of Section 4\(f\) Coordination with FHWA in Programmatic Categorical Exclusions.](#)
 - [Section 4\(f\) Process for PCEs](#)

Class III Action (Environmental Assessment):

- FHWA's intent to make a de minimis impact determination for the preferred alternative is included in the EA. Therefore the request for preliminary de minimis determination should be submitted no later than FHWA review of the draft EA. FHWA makes the final de minimis determination after the public comment period on the EA. The final de minimis determination is included as an attachment to the Findings of Fact and Conclusions Document that accompanies the FONSI request and/or is stated in the FONSI. Consult with OES to determine which path applies for a given project.
- A draft individual Section 4(f) evaluation or a programmatic Section 4(f) evaluation is usually attached as an appendix to the EA, but in rare cases may be a separate document (such as if there is found to be an impact to a newly-discovered Section 4(f) resource after the FONSI has already been approved).
- Review of a programmatic Section 4(f) evaluation follows the same process as the EA.
- 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.
- The final Section 4(f) evaluation is typically sent to FHWA with the FONSI request package, but in some cases OES may send it earlier. (For example, under a tight schedule it may be good to send an individual evaluation due to the time needed for the required legal sufficiency review).
- The FONSI can't be issued until the Section 4(f) evaluation is approved, and FHWA's Section 4(f) approval is separate from the FONSI.
- FHWA approval of the Section 4(f) evaluation/use is provided with, or prior to, the FONSI transmittal letter from FHWA to MnDOT.

Agencies Involved

The Section 4(f) evaluation must include evidence of substantial coordination between MnDOT staff and the agency with ownership or jurisdiction, referred to as the OWJ, over the Section 4(f) resource.

- For parks, recreation area and wildlife or waterfowl refuges, the OWJ this is normally a park board, the city council, MnDNR, US Fish and Wildlife Service or some similar body/agency. If the OWJ is the MnDNR, use the process outlined at [MnDNR/MnDOT Coordination for Section 4\(f\) Concurrence](#). In cases involving Tribal property, FHWA must be involved with all consultation and the transmittal of correspondence.
- For historic properties, this coordination is included in consultation that occurs between the MnDOT Cultural Resources Unit, the State Historic Preservation Office, Tribal Historic Preservation Officer(s), and other parties. The Section 106 Memorandum of Agreement is a part of this coordination.
- The part of the Section 4(f) evaluation called "Measures to Minimize Harm" must be

developed in consultation with the appropriate agency.

- Other federal agencies with legally-mandated review of Section 4(f) evaluations include the U.S. Department of Interior (including National Park Service, US Fish and Wildlife Service, US Geological Survey), and to a lesser extent the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture (including Forest Service and Natural Resources Conservation Service).
- Ultimately, FHWA is the agency responsible for Section 4(f) decisions and determinations.

Legal Basis

Title 49 of U.S. Code, Chapter 303 (49 USC 303), Title 23 of U.S. Code, Chapter 138 (23 USC 138).

Guidelines / Regulations

FHWA

- 23 CFR 774
- [Section 4\(f\) Policy Paper](#)
- [Programmatic Section 4\(f\) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges, \(July 5, 1983\)](#)
- [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, \(December 23, 1986\)](#)
- [Final Nationwide Section 4\(f\) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites, \(December 23, 1986\)](#)
- [Negative Declaration/ Section 4\(f\) Statement for Independent Bikeway or Walkway Construction Projects, \(May 23, 1977\)](#)
- [Net Benefits 4\(f\) Programmatic](#)
- [Historic Bridges, FHWA Guidance \(Memo, July 22, 1987\)](#)
- Related Topics:
 - [Section 6\(f\) of the Land and Water Conservation Fund Act \(LAWCON\)](#)
 - Section 106 of the National Historic Preservation Act

Glossary

Advisory Council on Historic Preservation (ACHP) – An independent federal agency charged with advising the President and Congress on historic preservation matters and administering the provisions of Section 106 of the National Historic Preservation Act. The various duties of the council are defined by regulations at 36 CFR 800. Under revised

regulations that became effective 01/11/01, the ACHP becomes involved in individual Section 106 reviews only under certain circumstances (outlined in 36 CFR 800, Appendix A).

Adverse Effect – Adverse effect may apply to properties on or eligible for the National Register of Historic Places. It refers to the diminishment of a property's integrity with respect to its location, design, setting, materials, workmanship, feeling, or association. The term is applied by federal agency officials, in consultation with the State (or Tribal) Historic Preservation Officer, as part of the Section 106 process.

Constructive Use – A type of indirect use in which a transportation project's proximity impacts (as opposed to direct impacts) are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. Examples include excessive noise level increases, diminished aesthetic features, or ecological intrusions.

Cultural Resources – Any historic (or prehistoric) district, site, building, structure, or object that is either listed or eligible for listing on the National Register of Historic Places. Examples include such items as artifacts, records, structures and remains.

Department of Transportation (US DOT) – The US DOT is the Federal steward of the nation's transportation system. It houses agencies that provide transportation services to the American public, including the Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration. Section 4(f) of the DOT Act of 1966 stipulates that agencies within the DOT cannot approve the use of land from a significant publicly owned public park, recreation area, wildlife or waterfowl refuge, or any significant historic site unless there is no feasible and prudent alternative to the use of land.

De Minimis Impacts Determination – SAFETEA-LU allows FHWA to determine that certain uses of Section 4(f) land will have no adverse effect on the protected resource. When this is the case, and the responsible officials with jurisdiction over the resources agree in writing, compliance with Section 4(f) is greatly simplified. The de minimis impact criteria and associated determination requirements are different for historic sites than for parks, recreation areas, and wildlife and waterfowl refuges.

Eligible – Refers to properties that meet the National Park Service Criteria for eligibility for listing on the National Register of Historic Places.

Extraordinary Magnitude – A reference to exceedingly high costs or other objectionable factors associated with a project alternative. Extraordinary magnitude characterizes the impacts to Section 4(f) or non-Section 4(f) resources as beyond the boundaries of feasible and prudent.

Feasible and Prudent – A term that is integral to the Section 4(f) process, “feasible and prudent” refers to the viability of an alternative that avoids use of a Section 4(f) resource. If there is an avoidance alternative that is both feasible and prudent, that alternative must be selected (unless there is another feasible and prudent avoidance alternative). By contrast, an alternative may be rejected based on not being feasible and prudent.

- **Feasible** -- The term "feasible" refers to the constructability of a project — whether or not it can be built as a matter of sound engineering judgment, using current construction methods technologies and practices.
- **Prudent**⁸ -- The term "prudent" refers to how reasonable the alternative is – in essence whether or not it makes sense. An alternative may be considered not prudent for any of the following reasons:
 - 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 does not address the purpose and need of the project);
 - It results in additional construction costs of extraordinary magnitude;
 - It involves extraordinary operational or safety problems;
 - It causes severe social, economic, or environmental impacts;
 - It causes severe disruption to established communities;
 - It causes severe or disproportionate impacts to minority or low-income populations;
 - It causes severe impacts to environmental resources protected under other Federal statutes;
 - There are unique problems or truly unusual factors present with it; or
 - There is an accumulation of factors that collectively, rather than individually, have adverse impacts that present unique problems or reach extraordinary magnitude.

Indirect (Secondary) Effects – Impacts caused by direct effects (direct impacts) but that occur usually after project construction and often may be outside the project boundaries. (For more information, see 40 CFR 1508.8[b].)

⁸ FHWA Minnesota Division has refined the 23 CFR 774.17 definition of “prudent” in the following ways:

- Omits “maintenance or operational costs” from the costs of extraordinary magnitude to be considered in the prudence analysis until MnDOT and FHWA agree upon how to define life-cycle costs. Maintenance and operation costs are considered part of life-cycle costs.
- Changes the term “unacceptable” to “extraordinary” with regard to operational or safety problems to be considered in the prudence analysis because “extraordinary” better captures the regulation’s intent and “unacceptable” was easily misunderstood to mean “unacceptable to the project proposer” regardless of the magnitude of the problem.
- Restates the definitions regarding unique problems/unusual factors and multiple factors in easier-to-understand terms.

Incidental, secondary, occasional and dispersed – Minor or casual activities that may occur on publicly owned land that is open to the public but not managed as, or planned to be, a park or recreation area. An example would be property acquired as open space where people may picnic or walk their dogs, but that public officials do not consider significant as a park.

Land and Water Conservation Fund Act (LAWCON) – Passed by Congress in 1965, the act established the Land and Water Conservation Fund, a matching assistance program that provides grants which pay half the acquisition and development cost of outdoor recreation sites and facilities.

Section 6(f) of LAWCON prohibits the conversion of property acquired or developed with these grants to a non-recreational purpose without the approval of the Department of Interior's (DOI's) National Park Service. The DOI must ensure that replacement lands of equal value, location and usefulness are provided as a condition of such conversions. Consequently, where conversions of Section 6(f) lands are proposed for highway projects, replacement lands are required.

Late Discovery – A circumstance in which a previously unknown Section 4(f) resource is found after a project is already underway. A late discovery can occur during the construction phase of a project or during the preparation of the Final Environmental Impact Statement (FEIS).

Legal Sufficiency Review – A review that is required by the Federal Highway Administration for final environmental impact statements (FEISs) and final Individual Section 4(f) evaluations. The purpose of the review is to ensure that Section 4(f) and NEPA requirements have been met and are legally defensible. It is not a technical review, but a review of Section 4(f) and NEPA documentation and compliance efforts, and an attempt to make sure that these efforts correspond with the law.

Minor Use – When applied to parks, recreation lands, and wildlife or waterfowl refuges, minor use signifies that the amount of land acquired by a transportation agency is relatively small. For an acquisition to be considered minor use for purposes of applying the Programmatic Agreement for Minor Use of Parks, Recreation Areas, and Wildlife Refuges, it must meet the following specifications:

Resource Size	Portion Acquired
< 10 acres	10% of the site
10 - 100 acres	1 acre of the site

> 100 acres

1% of the site

With respect to historic sites, an acquisition is considered to be a minor use when there is a determination of "no adverse effect" (or "no effect").

National Historic Preservation Act (NHPA) – A federal law established in 1966, the NHPA requires Federal agencies to consider the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation with an opportunity to comment on such undertakings. Section 106 of the National Historic Preservation Act mandates consideration of a project's effect on historic resources in much the same way as Section 4(f). Because of their similarities, the relationship between Sections 4(f) and 106 is a common source of confusion. The most important connection between the two statutes is that the Section 106 process is generally the method by which a cultural resource's significance is determined for a federal undertaking under Section 4(f).

National Register of Historic Places (NRHP) – The Nation's official list of cultural resources worthy of preservation. Authorized under the National Historic Preservation Act of 1966, the National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources. Properties listed in the Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. The National Park Service administers the National Register, which is part of the U.S. Department of the Interior.

Net Benefits Programmatic Agreement – This nationwide programmatic Section 4(f) evaluation has been prepared for certain projects 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. 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.

Programmatic Evaluation – Programmatic Section 4(f) evaluations can be used in place of individual evaluations for highway projects where uses are considered minor. The primary advantage of a programmatic evaluation is that it saves time. Unlike an individual evaluation, a programmatic evaluation does not require a draft, a comment period, or circulation, because its framework and basic approach has already been circulated and agreed upon by the US

Department of the Interior (DOI). Project specific details are then applied to the programmatic to determine whether or not it can be used. Programmatic evaluations are usually approved much faster than individual evaluations.

Prudent – (See “Feasible and Prudent”)

Public – Public use entails visitation for more than a select group of the public at any time during normal hours of operation.

Publicly Owned – Property that is owned/operated by a public entity. If a governmental body has a proprietary interest in the land (such as fee ownership, drainage easements or wetland easements), it can still be considered publicly owned. Land subject to a public easement in perpetuity can also be considered to be publicly owned land for the purpose which the easement exists.

Section 106 – Under Section 106 of the National Historic Preservation Act of 1966, as amended, federal agencies must identify and evaluate cultural resources and consider the impact of undertakings they fund, license, permit, or assist on historic properties eligible for inclusion in the National Register of Historic Places. The federal agencies must afford the State Historic Preservation Officer and the Advisory Council on Historic Preservation the opportunity to comment on these undertakings.

Section 6(f) (of The Land Water Conservation Fund Act) – See “Land and Water Conservation Fund Act”

Significance – Significance means that in comparing the availability and function of the resource with the recreational, park, and refuge objectives of that community, the resource in question plays an important role in meeting those objectives. If a determination from the official with jurisdiction cannot be obtained, the Section 4(f) land will be presumed to be significant. All determinations (whether stated or presumed) are subject to review by FHWA for reasonableness.

Minnesota State Historic Preservation Officer (SHPO) – A governor-appointed position and, typically, a member of a state historic preservation agency, the SHPO provides project review and compliance of Section 106 of the National Historic Preservation Act. The Department of Transportation generally uses the Section 106 process as a method by which a cultural resource's significance is determined for a federal undertaking under Section 4(f).

Real Property Interest – Real property interest means any interest in land and any improvements thereto, including fee and less-than-fee interests such as temporary and

permanent easement, air or access rights, access control, options and other contractual rights to acquire an interest in land, rights to control use or development, leases and licenses, and any other similar action acquire or preserve right of way for a transportation facility.

Substantially Impaired – Substantial impairment occurs only when the protected activities, features or attributes of the resource are substantially diminished.

Temporary Occupancy – A temporary occupancy of land is so minimal that it does not constitute a use within the meaning of Section 4(f) when the duration is temporary, the scope of work is minor, there are no anticipated permanent adverse physical impacts, and the when land will be fully restored. There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

Transportation Enhancement Activities (TEAs) – Transportation enhancement activities are projects that improve communities' cultural, aesthetic and environmental qualities. Eligible activities include bicycle and pedestrian pathways, historic preservation, acquisition of conservation or scenic easements, rails-to-trails projects, and the mitigation of water pollution due to highway runoff.

Tribal Historic Preservation Officer (THPO) -- Tribal Historic Preservation Officers are officially designated by a federally-recognized Indian tribe to direct a program approved by the National Park Service and the THPO must have assumed some or all of the functions of State Historic Preservation Officers on Tribal lands. This program was made possible by the provisions of Section 101(d)(2) of the National Historic Preservation Act.

Use – Generally, "use" occurs with a DOT approved project or program (1) when land from a Section 4(f) property is acquired for a transportation project, (2) when there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes, or (3) when the proximity impact of the transportation project on the Section 4(f) site, without acquisition of land, are so great that the purposes for which the Section 4(f) site exists are substantially impaired.

Unique Problems – Unique problems are present when there are unusual factors, or when the costs or community disruption reach extraordinary magnitude.

Appendix

Avoidance, Minimization & Mitigation of Section 4(f) Properties

Consult any applicable FHWA Programmatic Section 4(f) Evaluation for any specific avoidance requirements or guidance.

Ways to Avoid Section 4(f) Properties include but are not limited to:

- Change the corridor
- Change the alignment
- Change roadway profile or vertical curvature
- Reduce roadway cross section
- Modify bridge approaches and/or bridge piers
- Use storm sewer instead of ditches
- Modify drainage or stormwater management facilities
- Use guardrails or traffic barriers to decrease clear zone width requirement
- Change location or type of noise walls, utilities, signs or lighting
- Use retaining walls, rock cuts or steeper embankments
- Compare different types of interchanges
- Compare different types of bridges or other structures
- Change location of proposed bridge, intersection or interchange
- Use innovative construction techniques
- Use lower design speed to allow shorter radius curves
- Modify project scope
- Shift system improvements to a nearby parallel road
- Modify construction staging, access roads, bypasses or detours
- Seek approval for design exceptions (refer to HPDP guidance for Design Standards and Geometric Layouts)

Ways to Minimize Impacts include but are not limited to:

- 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 include but are not limited to:

- 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
 - 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