

**U.S. Department of Transportation
Federal Highway Administration**

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

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

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

Applicability

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

1. The proposed project is designed to improve the operational characteristics, safety, and/or physical condition of existing highway facilities on essentially the same alignment. This includes "4R" work (resurfacing, restoration, rehabilitation, and reconstruction), safety improvements, such as shoulder widening and the correction of substandard curves and intersections; traffic operation improvements, such as signalization, channelization, and turning or climbing lanes; bicycle and pedestrian facilities; bridge replacements on essentially the same alignment; and the construction

of additional lanes. This programmatic Section 4(f) evaluation does not apply to the construction of a highway on a new location.

2. The Section 4(f) lands are publicly owned public parks, recreation lands, or wildlife and waterfowl refuges located adjacent to the existing highway.
3. The amount and location of the land to be used shall not impair the use of the remaining Section 4(f) land, in whole or in part, for its intended purpose. This determination is to be made by the FHWA in concurrence with the officials having jurisdiction over the Section 4(f) lands, and will be documented in relation to the size, use, and/or other characteristics deemed relevant.

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

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

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

7. This programmatic evaluation does not apply to projects for which an environmental impact statement (EIS) is prepared, unless the use of Section 4(f) lands is discovered after the approval of the final EIS. Should any of the above criteria not be met, this programmatic Section 4(f) evaluation cannot be used, and an individual Section 4(f) evaluation must be prepared.

Alternatives

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

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

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

Findings

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

1. *Do Nothing Alternative.*

The Do Nothing Alternative is not feasible and prudent because: (a) it would not correct existing or projected capacity deficiencies; or (b) it would not correct existing safety hazards; or (c) it would not correct existing deteriorated conditions and maintenance problems; and (d) not providing such correction would constitute a cost or community impact of extraordinary magnitude, or would result in truly unusual or unique problems, when compared with the proposed use of the Section 4(f) lands.

2. *Improvement without Using the Adjacent Section 4(f) Lands.*

It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management techniques (including, but not limited to, minor alignment shifts, changes in geometric design standards, use of retaining walls and/or other structures, and traffic diversions or other traffic management measures) because implementing such measures would result in: (a) substantial adverse community impacts to adjacent homes, businesses or other improved properties; or (b) substantially increased roadway or structure cost; or (c) unique engineering, traffic, maintenance, or safety problems; or (d) substantial adverse social, economic, or environmental impacts; or (e) the project not meeting identified transportation needs; and (f) the impacts, costs, or problems would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of American Association of State Highway and Transportation Officials (AASHTO) geometric standards should be exercised, as permitted in 23 CFR 625, during the analysis of this alternative.

3. *Alternatives on New Location*

It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because (a) the new location would not solve existing transportation, safety, or maintenance problems; or (b) the new location would result in substantial adverse social, economic, or environmental impacts (including such impacts as extensive severing of productive farmlands, displacement of a substantial number of families or businesses, serious disruption of established patterns, substantial damage to wetlands or other sensitive natural areas, or greater impacts to other Section 4(f) lands or (c) the new location would substantially increase costs or engineering difficulties (such as an inability to achieve minimum design standards, or to meet the requirements of various permitting agencies such as those involved with navigation, pollution, and the environment); and (d) such problems, impacts, costs, or difficulties would be truly unusual or unique, or of extraordinary magnitude when compared with the proposed use of Section 4(f) lands. Flexibility in the application of AASHTO geometric standards should be exercised, as permitted in 23 CFR 625, during the analysis of this alternative.

Measures to Minimize Harm

This programmatic Section 4(f) evaluation and approval may be used only for projects where the FHWA Division Administrator, in accordance with this evaluation, ensures that the

proposed action includes all possible planning to minimize harm. This has occurred when the officials having jurisdiction over the Section 4(f) property have agreed, in writing, with the assessment of impacts resulting from the use of the Section 4(f) property and with the mitigation measures to be provided. Mitigation measures shall include one or more of the following:

1. Replacement of lands used with lands of reasonably equivalent usefulness and location and of at least comparable value.
2. Replacement of facilities impacted by the project including sidewalks, paths, benches, lights, trees, and other facilities.
3. Restoration and landscaping of disturbed areas.
4. Incorporation of design features (e.g., reduction in right-of-way width, modifications to the roadway section, retaining walls, curb and gutter sections, and minor alignment shifts) ; and habitat features (e.g., construction of new, or enhancement of existing, wetlands or other special habitat types) ; where necessary to reduce or minimize impacts to the Section 4(f) property. Such features should be designed in a manner that will not adversely affect the safety of the highway facility. Flexibility in the application of AASHTO geometric standards should be exercised, as permitted in 23 CFR 625, during such design.
5. Payment of the fair market value of the land and improvements taken or improvements to the remaining Section 4(f) site equal to the fair market value of the land and improvements taken.
6. Such additional or alternative mitigation measures as may be determined necessary based on consultation with, the officials having jurisdiction over the parkland, recreation area, or wildlife or waterfowl refuge.

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

Coordination

Each project will require coordination in the early stages of project development with the Federal, State and/or local agency officials having jurisdiction over the Section 4(f) lands. In the case of non-Federal Section 4(f) lands, the official with jurisdiction will be asked to identify

any Federal encumbrances. Where such encumbrances exist coordination will be required with the Federal agency responsible for the encumbrance : .

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

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

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

Approval Procedure

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

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

Issued on: 12/23/86

Approved: /Original Signed By/ Ali F. Sevin, Director Office of
Environmental Policy Federal Highway Administration

**PROGRAMMATIC SECTION 4(F) EVALUATION FOR MINOR TAKES OF PUBLIC PARKS,
RECREATION LANDS AND WILDLIFE AND WATERFOWL REFUGES
MARYLAND DIVISION APPLICABILITY CHECKLIST**

Federal Project Number _____ - _____ - _____
Maryland Project Number _____
County _____ Route _____

Description of Project (p.____) _____

Description of Park or Refuge (p.____) _____

Description of Project Taking From and Effect on Park or Refuge (p.____) _____

Area of 4(f) Resource _____ Acres (a.) Area of Taking _____ a.

GENERAL CRITERIA

YES NO

1. Is the 4(f) site adjacent to the existing highway?
2. Do the amount and location of the taking impair the use of the remaining section 4(f) lands for its intended purpose?
3. Is the ratio of Total 4(f) Site Area to Area Taken within prescribed tolerances?
(Circle one)
 - a. Total site < 10 a./Area Taken < 10% of Site area
 - b. Total site = 10-100 a./Area taken < 1 a.
 - c. Total site > 100 a./Area taken < 1% of Site area
4. Are there any proximity impacts which would impair the use of the 4(f) lands for their intended purpose?
5. Have the officials with jurisdiction over the property agreed in writing with the assessment of impacts and proposed mitigation?
6. Have Federal funds been used in the acquisition or improvements of the 4(f) site?

If yes, has the land conversion/transfer been coordinated with the appropriate Federal agency, and are they in agreement?
7. Does the project require the preparation of an EIS?
8. Is the project on new location?
9. The scope of the project is one of the following: (circle one)
 - a. Improved traffic operations b. Safety improvements
 - c. 4R d. Addition of lanes
 - e. Bridge replacement on essentially the same alignment

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ALTERNATIVES CONSIDERED

Indicate where appropriate supporting information is found in the document

1. The do nothing alternative has been evaluated and is considered not to be feasible and prudent (p._____).

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2. An alternative has been evaluated which improves the highway without any 4(f) taking and it is considered not to be feasible and prudent (p._____).

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3. An alternative on new location avoiding 4(f) taking has been evaluated and is considered not to be feasible and prudent (p._____).

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MEASURES TO MINIMIZE HARM

The project includes all possible planning to minimize harm, including the following: (circle those that apply) (p._____).

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- a. Replacement of lands reasonably equivalent in usefulness and location, and of at least comparable value.
- b. Replacement of facilities impacted including sidewalks, paths, benches, lights, trees and other facilities.
- c. Restoration and landscaping of disturbed areas.
- d. Special design features.
- e. Payment of fair market value.
- f. Improvements to the remaining 4(f) lands equal to cost to the fair market value.
- g. Other measures: _____

COORDINATION

1. The proposed

project has been coordinated with the Federal, State and/or local officials having jurisdiction over the 4(f) lands.

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2. In the case of non-Federal 4(f) lands, the official with jurisdiction has been asked to identify any Federal encumbrances and there are none.

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3. For bridge replacement projects coordination with the U.S. Coast Guard has been completed (if Coast Guard bridge permit is required) (p. _____).

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NOTE: Any response in a box precludes applicability, or requires additional information prior to approval. Consult Nationwide 4(f) Evaluation.

The attached document satisfies the criteria of the Nationwide Section 4(f) Evaluation and Approval for Federally Aided Highway Projects with Minor Involvement with Public Parks, Recreation Lands, Wildlife and Water Fowl Refuges, dated December 23, 1986. (Federal Register, Vol. 52, No. 160, August 19, 1987, pp. 31116-8)

Recommended _____ **DATE** _____
Area Engineer/Environmental Specialist

APPROVED _____ **DATE** _____
Environmental Program Manager, Maryland Division