

Section 4(f) Compliance

Changes after Decades

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Recent Major changes to the 4(f) process

1. FHWA Section 4(f) Policy Paper
March 1, 2005
2. Nationwide Programmatic Agreement
Net Benefit to a Section 4(f) Property
April 20, 2005
3. SAFETEA-LU Section 6009(a)
De Minimis Impact Finding
FHWA Guidance December 13, 2005

SAFETEA-LU 2005

4(f) Provisions

- **Exemption of the Interstate System from Section 4(f) [Section 6007]**
- **Clarification of feasible and prudent standard [Section 6009(b)]**
- **De minimis impacts to historic sites, parks, recreation areas, and refuges [Section 6009(a)]**

Interstate Exemption

applicable to FHWA only

- **Interstate system is not to be considered as historic site under Section 4(f) regardless of National Register status**
- **Individual elements possessing national or exceptional historic significance shall be considered historic sites under Section 4(f)**
- **Examples – historic bridge or highly significant engineering feature**

Clarification of Feasible & Prudent **applicable to FHWA and FTA**

- **Regulations to be issued to clarify the factors to be considered and the standards to be applied when determining whether avoidance alternatives are feasible & prudent**
- **Due within one year of SAFETEA-LU enactment**
- **Implementation study and separate independent review required to evaluate various elements**

De Minimis Regulation

- Applies to parks, recreation areas, refuges, and historic sites
- All classes of action (CE, EA, EIS)
- Individual 4(f) resource not project basis
- Impact after mitigation / enhancement
- Section 4(f) process complete upon Division Administrator's finding (or proposed finding)

De Minimis for Historic Sites

applicable to FHWA and FTA

- **Section 4(f) requirements are satisfied if:**
 - **Either no historic properties affected, or ...**
 - **Transportation program or project has no adverse effect on historic sites**
- **Section 106 (National Historic Preservation Act) consultation process to be utilized**
- **Written concurrence necessary from SHPO or THPO (and ACHP if participating)**

SAFETEA-LU Section 6009

De Minimis for Parks, etc.

applicable to FHWA and FTA

- **Section 4(f) requirements are satisfied if transportation program or project has de minimis impact on the park, recreation area, or wildlife/waterfowl refuge**
- **De minimis means no adverse effect to the activities, features, and attributes of the resource**

SAFETEA-LU Section 6009

De Minimis Requirements

Criteria

- **Concurrence from officials with jurisdiction over the park, recreation area, or refuge is required**
- **Public notice and opportunity for public review & comment also is required**

De Minimis for Parks, etc.

- **No traditional analysis of avoidance alternatives is required**

De Minimis Determination

De Minimis finding

- applies to 4(f) resource and not the whole project
- does NOT apply to 4(f) Constructive use situations
- can be used for multiple 4(f) resources at one location if applicable
- only satisfies the 4(f) requirement

De Minimis Consideration

Finding

- **“In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented ...**

De Minimis Evaluation

Implementation evaluation

- After first 3 years of Section 6009 implementation
- Independent review by TRB
- Processes and resulting efficiencies
- Number, location, size, and cost of projects with De Minimis finding
- Post-construction effectiveness of mitigation

De Minimis Reporting

Data to Date

- 18 States have used De Minimis
- 47 Projects
- 84 De Minimis impact findings
- Actions consist of
 - 75 Historic Sites
 - 8 Parks
 - 1 Historic Park

Approved Programmatic Evaluations

- 1. Independent Bikeway or Walkway Construction Projects (5/23/77)
(Negative Declaration)**
- 2. Use of Historic Bridges (7/5/83)**
- 3. Minor Involvement with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges (12/23/86)**
- 4. Minor Involvement with Historic Sites (12/23/86)**

Programmatic Section 4(f)

Net Benefit to a Section 4(f) Property

- Applies to all 4(f) Resources
- Applies to projects that will result in a net benefit to the 4(f) Resource
- Projects may be on existing or new alignments
- Applies to any project regardless of class of action under NEPA

“Net Benefit”

- 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 to 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,...

“Net Benefit”

- ...considering the activities, features and attributes that qualify the property for Section 4(f) protection.

Applicability

- The project uses a Section 4(f) resource
- The project includes all measures to minimize harm and subsequent mitigation
- Historic properties remain eligible for the NRHP and the SHPO is in agreement
- The officials with jurisdiction over the resource agree in writing to the proposed actions and mitigation

Alternatives

- Do Nothing
- Improve the transportation facility in a manner that addresses the project purpose and need without a use of the Section 4(f) property
- Build the transportation facility at a new location that does not require use of the Section 4(f) property

Findings

- There must be a finding that the three all inclusive Alternatives addressed are not feasible and prudent
- Flexibility in the use of applicable design standards is encouraged during the analysis of feasible and prudent alternatives

Mitigation and Measures to minimize Harm

- The administration must ensure that the proposed action includes all possible planning to minimize harm, includes appropriate mitigation measures, and that the officials with jurisdiction agree in writing

Coordination

- In early stages of project development each project will require coordination with the Federal, State, and/or local agency official(s) with jurisdiction over the Section 4(f) property
- Copies of the final written report required under this programmatic valuation shall be offered to officials and interested parties

Public Involvement

- There shall be early public involvement activities on the project
- Where one or more public meetings or hearings are held, information on the proposed use of the Section 4(f) property shall be communicated at the public meeting(s) or hearing(s)

Approval Procedure

- The FHWA Division Administrator may approve the Programmatic Section 4(f) after he has determined the appropriate findings have been made, the appropriate measures to minimize harm and mitigation have been taken, coordination with the public has been successfully completed, and written agreements with the appropriate parties have been obtained

Reminder



- Optional
- Analysis and findings are required
- Public involvement and coordination is necessary
- Agreement is essential
- Time savings is possible

FOR FURTHER INFORMATION

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