

PART 2, CHAPTER 7

SECTION 4(f) RESOURCES

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PART 2, CHAPTER 7

SECTION 4(f) RESOURCES

7.1 OVERVIEW

7.1.1 Background and Guidance

Pursuant to **23 United States Code (U.S.C.) § 327** and the implementing Memorandum of Understanding (MOU) executed on December 14, 2016, the Florida Department of Transportation (FDOT) has assumed and the Federal Highway Administration (FHWA) has assigned its responsibilities under the **National Environmental Policy Act (NEPA)** for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS (**NEPA** Assignment). In general, FDOT's assumption includes all highway projects in Florida which source of federal funding comes from FHWA, or which constitute a federal action through FHWA. **NEPA** Assignment includes responsibility for environmental review, interagency consultation and other activities pertaining to the review or approval of **NEPA** actions. Consistent with law and the MOU, FDOT will be the Lead Federal Agency for highway projects with approval authority resting in the Office of Environmental Management (OEM).

This chapter outlines FDOT's procedures governing the use of land from publicly owned parks and recreation areas, wildlife and waterfowl refuges, and publicly or privately owned historic sites by Federal Aid Highway projects in the State of Florida. These requirements are currently codified at **23 U.S.C. § 138** and **49 U.S.C. § 303**. They originated in **Section 4(f)** of the **Department of Transportation Act of 1966 (Pub. L. 89-670, 80 Stat. 931)** and, as a result, practitioners commonly refer to this subject matter as **Section 4(f)**. The resource types listed in the law are referred to as **Section 4(f)** protected properties and the use of land from any one of these resources by a transportation project is referred to as a **Section 4(f)** use. **Section 4(f)** regulations only apply to the U.S. Department of Transportation (USDOT) and its agencies, i.e., FHWA, Federal Aviation Administration (FAA), Federal Transit Administration (FTA), and Federal Railroad Administration (FRA). FHWA and FTA adopted rules under **23 Code of Federal Regulations (CFR) Part 774** to implement the requirements of the federal statutes.

Section 4(f) requires USDOT agencies to make specific findings when a USDOT funded or approved transportation project requires the use of land from a **Section 4(f)** protected property. During the planning and development of transportation facilities being funded by FHWA, FDOT can only approve transportation uses of land from publicly owned public parks, recreation areas, or wildlife and waterfowl refuges of national, state, or local significance, or land of an historic or archeological site of national, state, or local significance when the following conditions are met:

- There are no feasible and prudent avoidance alternatives to the use of land; and

- The program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the proposed use.

Or

- The use of the property will have a *de minimis* impact as defined in the statutes and regulations.

This chapter focuses on the processes associated with the development of highway projects funded by the FHWA and having the potential to use any portions of lands or features associated with the characteristics and purposes qualifying a resource or property for protection under **Section 4(f)** (see [Figure 7-1](#)). Also, this chapter addresses the conversion of park and recreational properties funded wholly or in part under **Section 6(f)** of the **Land and Water Conservation Fund Act (LWCFRA) (16 U.S.C. § 4601-4 et seq., 36 CFR § 59)**, as well as other federal and state encumbrances and requirements which may overlap with **Section 4(f)**.

FDOT is the Lead Agency for environmental review of FHWA funded highway projects in Florida. For transportation projects funded by the Office of Federal Lands Highway, FTA, FRA, or FAA, these agencies will act as the Lead Agency for **Section 4(f)** analysis. In these situations, the District will contact the OEM Project Delivery Coordinator (PDC) and work with the officials of the lead transportation agency. **Section 4(f)** processes, evaluations, and alternative analyses vary depending upon on the type of transportation project being developed. In addition, certain approval options are not available for projects which are not FHWA funded transportation projects. For example, the nationwide programmatic evaluations discussed in this chapter are not available to other agencies within the USDOT.

Regardless of which USDOT agency is the Lead Agency, the basic requirements set forth in the statutes for the approval of a project using **Section 4(f)** protected lands are the same.

7.1.2 Definitions

de minimis Impact (23 CFR § 774.17) - For parks, recreation areas, and wildlife and waterfowl refuges, a *de minimis* impact is one that is minimal, and the use of the protected property is one that will not adversely affect the features, attributes, or activities qualifying the property for protection under **Section 4(f)**. For historic sites, *de minimis* impact means that no historic property is affected by the project or that the project will have "no adverse effect" on the historic property being used within the meaning of **Section 4(f)** in accordance with **36 CFR Part 800**.

Feasible and prudent avoidance alternative (23 CFR § 774.17) - An alternative that avoids using the **Section 4(f)** property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the **Section 4(f)** property.

Officials with Jurisdiction (OWJ) (23 CFR § 774.17) - The entities and individuals who own and/or administer the property are considered the OWJ.

- In the case of public parks, recreation areas, and wildlife and waterfowl refuges, the OWJs are the officials of the agency or agencies that own or administer the property in question and who are empowered to represent the agency on matters related to the property.
- In the case of historic sites (including archaeological sites), the OWJ are the State Historic Preservation Officer (SHPO), or, if the property is located on tribal land, the Tribal Historic Preservation Officer (THPO).
 - If the property is located on tribal land but the relevant Indian tribe has not assumed the responsibilities of the SHPO, then a representative designated by the tribe shall be recognized as an OWJ in addition to the SHPO.
 - When the Advisory Council on Historic Preservation (ACHP) is participating in consultation concerning a property under **Sections 110 or 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470)**, the ACHP is considered a consulting party.
 - When the historic property is also a public park, recreation area, wildlife or waterfowl refuge or is located within the boundaries of such lands, the OWJ for the historic site is the SHPO/THPO or, if participating, the ACHP. If the project uses land from both protected properties, coordination with the officials of the agencies that own or administer the property in question is required.
- When the **Section 4(f)** property is also a National Historic Landmark (NHL), the designated official of the National Park Service (NPS) is an OWJ over that resource for the purposes of **Section 4(f)**.

Proximity Impacts - Proximity impacts are those impacts which result from the proposed project that affect the functions of a **Section 4(f)** protected property without any direct use of the protected property. It is important to consider proximity impacts when a project is not acquiring land from a nearby **Section 4(f)** resource because when there are cases of substantial proximity impacts, the inclusion of appropriate minimization of harm measures to lessen such impacts into the proposed project will normally suffice to avoid complicating and delaying project delivery.

Significance -

- For public park, recreation area, or wildlife and waterfowl refuge properties, **Section 4(f)** applies only to those properties determined to be a significant public park, recreation area, or wildlife and waterfowl refuge. For these properties, significance means that in comparing the availability and function of the property in question to similar properties in the area, the resource in question plays an important role in meeting the park, recreational or refuge objective of the community it serves. Except for certain multiple use land holdings, significance

determinations apply to the entire property not just to the specific locations required for transportation acquisition. Significance determinations of these types of publicly owned land are made by the OWJ(s) with jurisdiction over the property. In the absence of a determination by the OWJ, the property will be presumed to be significant for the purposes of **Section 4(f)** [see **23 CFR § 774.11** and **FHWA Section 4(f) Policy Paper**, Question 1A].

- For historic properties, significance normally means that the historic resource is either listed in or eligible for listing in the National Register of Historic Places (NRHP) in accordance with **36 CFR § 800.4** (regulations implementing **Section 106 of the NHPA** or NRHP) or is otherwise determined significant by the lead federal agency during the consultation process required under **36 CFR Part 800** [see definition of historic site in **23 CFR § 774.17** and **FHWA Section 4(f) Policy Paper**, Question 2A].

Use (23 CFR § 774.17) - The “use” of a **Section 4(f)** resource occurs when a project:

- permanently incorporates land from a **Section 4(f)** property into a transportation facility; or
- requires a temporary occupancy of land within a **Section 4(f)** property that is adverse in terms of the statute’s preservation purpose [see criteria in **23 CFR § 774.13(d)** or the [FHWA Section 4\(f\) Policy Paper](#) Question 7]; or
- has proximity impacts that, while not incorporating land from a protected property and which includes all possible measure to minimize harm, still results in a substantial impairment of the activities, features, and attributes which qualify the property for protection under **Section 4(f)**. [i.e., constructive use (**23 CFR § 774.15**)].

7.2 SECTION 4(f) PROPERTIES AND EVALUATIONS

7.2.1 Substantive Requirements of Section 4(f)

Section 4(f) requires agencies of the USDOT to perform a substantive review as part of its decision making process whenever approving a proposed project’s use of a protected property. The intent of Congress is made clear in the **Section 4(f)** statutes. This intent is to avoid the use of protected property unless such use is necessary to provide required transportation services or unless the use of the property is so negligible as to represent a *de minimis* impact to the protected resource. As a result, if the **Section 4(f)** resources cannot be avoided, the agency’s goal is to reduce the project impacts to a level where the impacts are *de minimis*. If the impacts cannot be reduced to the level of *de minimis*, OEM may only approve the use of protected land by the project following an evaluation of all prudent and feasible alternatives which require no use of **Section 4(f)** protected lands and, when there are none, only when the chosen alternative using protected lands includes all possible planning to minimize harm to the **Section 4(f)** property.

In situations where there are no feasible and prudent avoidance alternatives and there are two or more alternatives requiring the use of **Section 4(f)** property, OEM may approve only the alternative which results in the least overall harm.

7.2.2 Applicable Projects

Section 4(f) applies to all FDOT transportation projects that utilize federal aid funds or require the approval of a USDOT agency, and involve the “use” of a **Section 4(f)** property or resource. For the **Section 4(f)** statute to apply, the project must meet the following criteria:

1. Must require an approval from USDOT in order to proceed;
2. Must be a transportation project;
3. Require the use of land from property protected under **Section 4(f)** [see **23 U.S.C. § 138(a)** and **49 U.S.C. § 303(a)**]; and
4. Qualifies for an exclusion, exception, or rule set forth in the statutes, regulations, or USDOT policies which relieve the requirements of **Section 4(f)** as it applies to the project or the property (see the FDOT [Section 4\(f\) References and Guides](#) web page or [Section 7.2.3.1](#) and [Section 7.3.3](#)).

Examples of situations where **Section 4(f)** would not apply include, but are not limited to:

1. A transportation project constructed solely using state or local funds, and not requiring OEM approval;
2. A project intended to address a purpose that is unrelated to the movement of people, goods, and services from one place to another (i.e., not a transportation purpose);
3. A project to be located adjacent to a **Section 4(f)** property, causing only minor proximity impacts to the **Section 4(f)** property (i.e., no constructive use); and
4. A project that will take land from a privately-owned park, recreation area, or refuge.

7.2.3 Section 4(f) Protected Resources

For clarity in determinations and approvals, it is best to divide **Section 4(f)** resources into two categories: (1) publicly owned parks, recreation areas, and wildlife or waterfowl refuges, and (2) historic and archaeological sites of national, state, or local significance in public or private ownership. **Section 4(f)** only applies to publicly owned parks, recreation areas, and wildlife and waterfowl refuges that have been determined to be significant. **Section 4(f)** does not apply to privately owned parks, recreation areas, and wildlife or waterfowl refuges even if such areas are open to the general public. **Section 4(f)** applies to historic and archeological sites regardless of whether it is publicly or privately owned.

Except in cases of certain multiple use land holdings, **Section 4(f)** applies to the entire parcel of the designated or functioning and significant resource, not just the portion being used by the proposed project.

In order to be considered a **Section 4(f)** protected resource, a property must meet the following criteria:

- **For Public Parks and Recreation Areas**

- Must be publicly owned which refers to ownership by local, state or federal government (this can also include permanent easements and long-term leases or other public proprietary interests)
- Must be open to the public during normal hours of operation
- The major purpose must be for park or recreation activities
- Must be designated or function as a significant park or recreational area

- **For Wildlife and Waterfowl Refuge**

- Must be publicly owned which refers to ownership by local, state or federal government (this can also include permanent easements and long term-term leases or other public proprietary interests)
- Must be open to the public unless public access is restricted **for the protection of refuge habitat, function, or species**
- The major purpose must be for wildlife or waterfowl refuge functions
- Must be designated or functioning as a significant wildlife or waterfowl refuge where the primary purpose of such land is the conservation, restoration, or management of wildlife and waterfowl resources including, but not limited to, endangered species and their habitat

- **For Historic Sites**

- Includes historic structures, buildings, transportation facilities, archeological sites, traditional cultural places, historic & archeological districts and historic trails regardless of ownership type
- Must be eligible for listing or is listed in the NRHP; or
- When determined not to be eligible, OEM may determine that the application of **Section 4(f)** is otherwise appropriate when an official (such as the Mayor, president of a local historic society) provides information to support that the historic site is of local importance

7.2.3.1 Additional Considerations when Identifying Section 4(f) Properties

The ***FHWA Section 4(f) Policy Paper*** provides guidance regarding the applicability of **Section 4(f)** to a variety of property types. This is not an all-inclusive list. If the practitioner believes there is a property that is also protected under **Section 4(f)** not listed here, please refer to the ***FHWA Policy Paper*** or contact the PDC. See [Section 7.6](#) for a link to the ***FHWA Policy Paper***.

- **Historic Districts** - When a project uses land from an individually eligible property within a historic district, or a property that is a contributing element to the historic district, **Section 4(f)** is applicable. Consultation with the SHPO/THPO on the historic attributes of the district and potential impacts, should occur to establish whether the property or its elements are contributing or non-contributing to the district. All elements within historic districts are presumed to be contributing resources to the district unless FDOT, in consultation with the SHPO/THPO, determines that it is not contributing. When a project requires land from a non-historic or non-contributing property lying within a historic district and does not use other land within the historic district that is considered contributing to its historic significance, there is no direct **Section 4(f)** use of the historic district.
- **Wild and Scenic Rivers** – Certain portions of designated Wild and Scenic Rivers may be protected under **Section 4(f)**. However, designation as a Wild and Scenic River, Study River, or listing on the Nationwide Rivers Inventory does not in itself confer **Section 4(f)** protections. Only those portions of the river or the river corridor which function as, or are designated as being significant publicly owned park or recreational areas, significant wildlife or waterfowl refuge areas, or which are significant historic sites are protected under **Section 4(f)**. In certain cases, the river may be designated under the ***Wild and Scenic Rivers Act (WSRA) (16 U.S.C. § 1271 et seq. and 36 CFR 297.3)*** as a recreational river or is identified as a recreational resource in the river management plan. If a river meets either of those two conditions and it is publicly owned, then the river is protected under **Section 4(f)** as well as under the ***WSRA***. When determining the applicability of **Section 4(f)** to portions of designated Wild and Scenic Rivers or Study Rivers, contact the PDC to discuss **Section 4(f)** applicability, see [Part 2 Chapter 12, Wild and Scenic Rivers](#) and the ***Overview of the Wild and Scenic Rivers System*** on the FDOT [Section 4\(f\) References and Guides](#) web page.
- **School Playgrounds** - Publicly owned school playgrounds, running tracks, ball fields that provide recreational opportunities for the surrounding community during non-school hours may qualify as **Section 4(f)** properties.
- **Trails and Shared Use Paths** - **Section 4(f)** applies to publicly owned, shared use trails, paths, bikeways or sidewalks (or portions thereof) designated or functioning primarily for recreation, unless the OWJ determines that it is not significant for such purpose [***FHWA Section 4(f) Policy Paper***, Question 15] or an exception applies under **23 CFR § 774.13(f)**.

- **Golf Courses - Section 4(f)** applies to golf courses that are owned, operated or managed by a public agency for the primary purpose of public recreation and determined to be significant by the OWJ. Golf courses that are owned by a public agency but are managed and operated by a private entity may still be subject to **Section 4(f)** requirements depending on the operating agreement. Golf courses listed in the NRHP are treated as other historic sites as described above.
- **Museums, Aquariums, and Zoos** - Publicly owned museums, aquariums and zoos are not subject to **Section 4(f)** unless they are significant historic sites. These facilities will need to be evaluated on a case by case basis to determine if they provide additional park and recreational opportunities and if that is their primary purpose, which would make them subject to **Section 4(f)**.
- **Fairgrounds** - When fairgrounds are open to the public and function primarily for public recreation rather than an annual fair, **Section 4(f)** applies to those portions of the land determined significant for park or recreational purposes (see the Public Multiple Use Land Holdings discussion below). A fairground may also qualify as a historic site which would require consideration under **Section 4(f)**.
- **Bodies of Water - Section 4(f)** applies to lakes and rivers, or portions thereof, which are contained within the boundaries of a park, recreation area, refuge, historic site or adjacent to publicly owned lands to which **Section 4(f)** otherwise applies.
- **Public Multiple Use Land Holdings** - Public multiple use land holdings, by definition, are comprised of multiple areas that serve different purposes. Generally, these properties are large in size and are usually established by legislation to serve a variety of functions some of which are protected by **Section 4(f)** and some of which are not. For these kinds of properties (frequently these are State or National Forests large tracts of conservation lands or Water Management District properties), **Section 4(f)** does not apply to those areas within a multiple-use public property that function primarily for any purpose other than significant park, recreation or refuge purposes or which are significant historic sites. For example, within a National Forest, there can be areas that qualify as **Section 4(f)** resources (e.g., campgrounds, trails, picnic areas) while other areas of the property function primarily for purposes other than park, recreation or a refuge such as timber sales or mineral extraction. Coordination with the official(s) with jurisdiction and examination of the management plan for the area will be necessary to determine if **Section 4(f)** should apply to an area of a multiple-use property that would be used by a transportation project.
- **Planned Facilities - Section 4(f)** applies to a planned facility when a public entity owns the property and has formally designated and determined it to be significant for park, recreation area or wildlife and waterfowl refuge purposes. Evidence of formal designation could be the inclusion of the planned facility in an approved City or County Master plan. The key is whether the planned facility is presently publicly owned, presently formally-designated for **Section 4(f)** purposes, and presently significant. A simple expression of an interest in developing an enumerated

property type or a plan to purchase privately held land and develop a 4(f)-type property does not suffice to consider the property to be a planned facility.

- **Jointly Planned Rails to Trails Projects** - A *January 1996 MOU between the Florida Department of Environmental Protection (FDEP) and FDOT and Concurred in by FHWA* established an automatic joint planning provision for planned Rails to Trails project corridors which may intersect or exist alongside a highway corridor. In accordance with this MOU, FDEP and FDOT will jointly plan Rail to Trail projects which may coincide with a planned transportation project to accommodate the recreational and highway objectives of both agencies. When such planning occurs, the requirements of **Section 4(f)** are satisfied.

7.2.3.2 Leases and Easements

A property may be considered ‘publicly owned’ for **Section 4(f)** purposes if the land is being managed for a significant recreational or refuge purposes under a long-term lease or easement. The following should be considered when examining the applicability of **Section 4(f)** to a property subject to lease or easement: the purpose, terms, property management, parties involved, termination clauses, and other restrictions.

Additionally, FDOT has easements, such as Right of Way (ROW) easements, for transportation facilities that cross through property protected under **Section 4(f)**. If there is an existing ROW easement, the property is already part of the transportation facility due to the easement encumbrance, and is not subject to **Section 4(f)** protection.

If a project is proposing a new easement across an existing **Section 4(f)** property, then it could constitute a “use” within the meaning of **Section 4(f)** and require a **Section 4(f)** determination. For historic properties, existing property lines may be irrelevant because historic property boundaries are established based upon historical records, settings, and characteristics of the historic or archaeological site. As a result, even within existing right of way or easement, a **Section 4(f)** approval may be required for transportation improvements which involve historic properties.

Any questions on **Section 4(f)** applicability to a lease or easement should be referred to OEM and the Office of General Counsel (OGC).

7.2.3.3 Tribal Properties and Section 4(f)

Federally recognized Indian Tribes are sovereign nations and the lands owned by them are not considered publicly owned within the meaning of **Section 4(f)**. If a potential **Section 4(f)** resource is identified on tribal lands that serves a public function, the property will need to be evaluated for **Section 4(f)** applicability. In cases involving tribal trust lands, the Bureau of Indian Affairs (BIA) should be contacted to determine if they should participate in any required consultations.

Also, Traditional Cultural Places (TCPs) may be subject to the provisions of **Section 4(f)** if the TCP is eligible for listing in or is listed in the NRHP because of its association with cultural practices or beliefs of a living community [see **FHWA Section 4(f) Policy Paper**,

Question 6]. SHPO will also comment on TCP involvement. For the requirements related to TCPs under **Section 106**, see [Part 2 Chapter 8, Archaeological and Historical Resources](#).

Questions regarding whether tribally owned property is protected under **Section 4(f)** and how to proceed should be referred to the PDC and the OGC.

7.2.4 Overview of Section 4(f) Analysis

Section 4(f) analysis includes the following:

1. Identification of properties which may represent **Section 4(f)** resources.
2. Initial consultations and determinations of the significance of potential **Section 4(f)** properties between the FDOT District and the appropriate OWJ.
3. Identification and documentation of the findings of “use” or “no use” of **Section 4(f)** resources. When there is no use of lands protected by **Section 4(f)**, then the project does not require an approval under **Section 4(f)**.
4. Documentation of the appropriate **Section 4(f)** approval option when an approval under **Section 4(f)** is required.

FDOT recognizes the following types of documentation for **Section 4(f)** applicability and approval (see [Section 7.3](#)):

- No **Section 4(f)** Involvement - means that there are no existing or formally planned **Section 4(f)** properties within or adjacent to the project area, or in cases where there are no temporary or permanent acquisition of property from a potentially protected resource and no meaningful proximity impacts to the property.
- No Use determinations - include all situations in which the proposed project has no use of a **Section 4(f)** protected property as set forth in the Statutes. This may arise because either there are no protected properties present or because protected properties are present, but the proposed project does not use any protected property within the meaning of **Section 4(f)** (see [Section 7.3.2](#), [Section 7.3.4](#), and [Section 7.3.5.4](#)).
- Exception, Exemptions, and Exclusion - are situations and circumstances with regard to specific actions or properties that are not subject to the requirements of **Section 4(f)** when meeting the conditions enumerated or identified in the Statutes, regulations, or policies as discussed in [Section 7.3.3](#).
- *de minimis* – is a determination or approval of a **Section 4(f)** use when the use of the protected property is so inconsequential that it will have no adverse effects on the attributes, features, or activities of the **Section 4(f)** property.
- Programmatic Evaluations – are a time-saving, procedural option that allows transportation officials to approve certain minor uses of **Section 4(f)** properties for

projects meeting specific conditions without completing an individual **Section 4(f)** evaluation.

- Individual Evaluation - is the standard, full **Section 4(f)** evaluation and approval prepared when the “use” of a **Section 4(f)** property does not meet the Programmatic Evaluation criteria and exceeds the definition of a *de minimis* impact.
- Constructive Use - occurs when the transportation project does not incorporate land from a **Section 4(f)** property, but the project’s proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under **Section 4(f)** are substantially impaired. Pursuant to the **NEPA Assignment MOU**, if a determination of Constructive Use is anticipated on a project then the District will notify OEM to initiate consultation with FHWA. Both the applicability and approval for a Constructive Use can only be made in consultation with FHWA Headquarters in Washington D.C. For more detail on Constructive Use, see [Section 7.3.5.4](#).

7.2.5 Coordination with the Officials with Jurisdiction

The **Federal-Aid Highway Act of 1968** requires consultation with the OWJ over the **Section 4(f)** property when the use of a protected property is anticipated and/or more information is needed regarding the purpose and function of a property. The OWJ is the federal, state, or local agency official that owns or administers a **Section 4(f)** property or represents an agency on matters related to the property.

For public parks, recreation areas, and wildlife and waterfowl refuges, the OWJ(s) are the official(s) of an agency or agencies that own and/or administer the property in question and who are empowered to represent the agency on matters related to the property.

The OWJ for historic sites is the SHPO/THPO (in some cases the NPS and the ACHP may also serve as OWJs) and significance for historic sites is based upon listing in, or eligibility for listing in the NRHP. Most coordination with the OWJ for historic sites (including archaeological sites) within the **Section 4(f)** process takes place parallel to the coordination required by **Section 106**. **Sections 106 and 4(f)** are different laws which require different findings and include different considerations. However, decisions and findings made while following one of these processes often serve to guide the decisions and findings of the other.

When coordinating with the OWJ(s) regarding a project and its impacts, FDOT must have a clear understanding of the property, its designated purpose, and its management plan. Coordination with the OWJ(s) will confirm the purpose of the property and its significance to the community, and whether the property is protected under **Section 4(f)**. If the property is determined to meet the criteria for protection under **Section 4(f)**, additional coordination with the OWJ will follow as appropriate.

When requesting a determination of significance from the OWJ over the property, FDOT must define the term significance for the purposes of **Section 4(f)**. Therefore, when

providing the coordination letter to the OWJ for parks, recreation areas, and wildlife and waterfowl refuges, the FDOT District must include the following statement of significance:

Significance means that in comparing the availability and function of the [name of the recreation area, park or wildlife and waterfowl refuge area] with the [appropriate function of the recreational, park and refuge] objectives of that community, the land in question plays an important role in meeting those objectives.

In the absence of a determination of significance from the OWJ, FDOT presumes the property to be significant and the District continues the **Section 4(f)** process [**23 CFR § 774.11(c)**]. All determinations of significance, whether stated or presumed, are subject to review by OEM for reasonableness pursuant to **23 CFR § 774.11**. When OEM changes a determination of significance, the basis for this change will be included in the project file and discussed in the environmental documentation for the proposed action.

For historic and archaeological sites, the determinations of significance for historic properties generally occurs when the OWJ, FDOT, and other appropriate consulting parties agree with the findings contained in the **Cultural Resources Assessment Survey (CRAS) Report** completed pursuant to the requirements of **Section 106** of the **NHPA**. If the OWJ does not respond within 30 days of the receipt of this report, FDOT may presume that the OWJ has concurred with the findings made in the report [**36 CFR § 800.3(c)(4)**]. The report identifies the historic resources which are either listed or found to be eligible for listing and are, therefore considered significant under **Section 4(f)**.

Once FDOT has determined there is a use of land protected by **Section 4(f)** by the proposed transportation project, the District can work with the OWJ over the property to identify measures to avoid using land from the property or to minimize harm to the protected resource resulting from the “use” of the property. The District will prepare and send a letter (on FDOT letterhead) to the OWJ for concurrence. This letter includes a description of the property and its significance, anticipated impacts resulting from the project’s use of the protected property, the FDOT’s determination that **Section 4(f)** applies to the use of the property, and any measures to minimize harm to the protected resource. The agreed upon minimization/mitigation measures will be incorporated as environmental commitments in the **NEPA** document (see [Part 2, Chapter 22, Commitments](#)). After the OWJ has been notified of the “use”, the District must continue coordination to identify measures to minimize/mitigate harm to the property and to determine which of the available approval options is the most appropriate analysis for the action. OEM is available to review draft OWJ correspondence prepared by the District or LAP agencies. Drafts may be sent to the PDC for review.

7.2.6 Standard Statement for NEPA Assignment and Section 4(f) Documentation

Technical memorandums, reports or other documents prepared for a project in which OEM serves as the Lead Agency under the **NEPA** Assignment Program must include the following statement:

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated December 14, 2016 and executed by FHWA and FDOT.

7.3 PROCEDURE

The procedural and documentation requirements outlined below are to be used for **Section 4(f)** analysis and file documentation.

7.3.1 Determination of Applicability Process and Documentation

7.3.1.1 Initial Section 4(f) Review

To initiate the examination of potential **Section 4(f)** involvements, District environmental staff should gather preliminary information to examine the following questions:

- Will the transportation project require funds, approvals, or permits from any agency of the USDOT (primarily FHWA, FRA, FTA, and FAA)?
- Are there any **Section 4(f)** properties as defined in **23 CFR § 774.11** within or adjacent to the project area that have been determined to be significant?
- Is it anticipated that the project will require any temporary occupancy or permanent incorporation of a **Section 4(f)** property during the project?
- Is it anticipated that the project's proximity impacts, as defined in **23 CFR § 774.15**, could substantially impair the protected activities, features, or attributes that qualify the property for protection under **Section 4(f)** in a way that would meaningfully reduce or eliminate the value of the property in terms of its **Section 4(f)** purpose and significance?

When there are no **Section 4(f)** properties present, within, or adjacent to the project area or when a protected property is adjacent to the proposed project and a determination of "No Section 4(f) Involvement" is made by the District, the basis for this determination must be noted in the file and summarized in the Environmental Document.

As appropriate, this record must include: (1) the determination that there will be no acquisition of land from the protected property on either a temporary or permanent basis, (2) that there will be no meaningful proximity impacts to protected properties, (3) no impacts to the access and usage of protected properties, and (4) no temporary occupations of the protected properties.

Prior to making this determination, the evaluation of other issues that could impact the **Section 4(f)** resources should be completed. If the determination of no involvement becomes complex, the District will utilize the **Section 4(f) No Use Determination, Form No. 650-050-49** to support a "No Involvement" determination for projects being

documented as Type 1 Categorical Exclusions (CEs). In these cases, indicate No Involvement on the **Type 1 Categorical Exclusion Checklist, Form No. 650-050-12** and attach the appropriate **Section 4(f) Determination of Applicability Form, Form No. 650-050-45 (Figure 7-2)** with the finding of non-applicability of **Section 4(f)** from OEM, or after the submission and OEM concurrence with a **Section 4(f) No Use Determination, Form No. 650-050-49 (Figure 7-3)** or, if appropriate, a **Section 4(f) Exceptions/Exemptions Determination, Form No. 650-050-48 (Figure 7-4)**.

If the status of a property in terms of **Section 4(f)** changes or if a permanent acquisition or a temporary occupation of a protected property is found to be necessary subsequent to the original No **Section 4(f)** Involvement or No **Section 4(f)** Use determination, the District must notify the PDC and develop the proper documentation for the approval of the project. Similarly, if subsequent analysis indicates that there may be meaningful proximity impacts to the property resulting from the project, the District must notify the PDC.

7.3.1.2 ETDM Screening and Section 4(f) Determination of Applicability

Within FDOT's Efficient Transportation Decision Making (ETDM) process, certain projects qualify for screening through the Environmental Screening Tool (EST). For projects not qualifying for screening through EST, FDOT environmental staff has the option to review the project against the geographic information contained in the Area of Interest (AOI) Tool in order to determine if the proposed project may impact potential **Section 4(f)** protected properties. For more information on ETDM and qualifying projects for screening, see FDOT's [ETDM Manual, Topic No. 650-000-002](#).

Often, it is not difficult to determine if a property is protected by **Section 4(f)**. The proposed "use" and level of **Section 4(f)** evaluation may likewise be obvious. In these cases, a **Section 4(f)** Determination of Applicability (DOA) is not necessary. A **Section 4(f)** DOA is used if the criteria that qualify a property for protection under **Section 4(f)**, or the proposed "use" of the property are in question. When determining the **Section 4(f)** applicability, FDOT may complete a **Section 4(f) Determination of Applicability Form, Form No. 650-050-45** (see [Figure 7-2](#)) to assist in determining the appropriate level of **Section 4(f)** evaluation or in order to document the applicability or inapplicability of **Section 4(f)** for certain alternatives or locations. The form directs the District to provide information about the relationship of the project to the resource, including a description of the property, the characteristics and functions of the property and potential "uses" of the resource. The form is signed by the form preparer and the District Environmental Manager prior to submission to OEM. OEM will then concur with the District determination, request additional information, or provide a determination.

7.3.1.3 Resource Mapping for Section 4(f) Determinations of Applicability and Approvals

Separate from the ETDM Screening, the boundaries and attributes of a **Section 4(f)** property must be mapped. As it is crucial to clearly depict the relationship between the project and the potential **Section 4(f)** resource, a map of each resource must be created

regardless of the level of **Section 4(f)** documentation. The map should be at an appropriate scale to clearly depict the relationship between the resource and the project. When preparing a resource map, the following items should be shown and clearly labeled:

- Boundaries of any potential **Section 4(f)** properties in or adjacent to the project area (when identifying the historic boundaries, the **Section 4(f)** resource's boundaries, the current ownership boundaries may differ);
- Location of elements (activities, features, and attributes) contributing to the significance of each potential **Section 4(f)** property;
- Locations, types of use, and the area of the potential **Section 4(f)** property that will be impacted [existing and proposed ROW lines, removal of **Section 4(f)** protected features, and so forth], measured and depicted in acres if known.

7.3.2 Section 4(f) Applicability and Section 4(f) No Use Determinations

Districts must include the determination as to whether **Section 4(f)** does or does not apply in the project files and in the appropriate Environmental Document. The record of this determination must include sufficient documentation to support it. The complexity and detail necessary to achieve this varies based upon the complexity of the project, the resources involved, and the relationships between the two.

As with the discussion above ([Section 7.3.1.1](#)) on findings of no **Section 4(f)** involvement, the supporting documentation may be simple to present, or it may be more complex requiring detailed maps or the citing of passages from the regulations. In all cases, the supporting documentation must be clear and must present sufficient information to show that **Section 4(f)** does or does not apply.

A “No **Section 4(f)** Use” determination is one where a project has no permanent acquisition of land from a **Section 4(f)** property; no temporary occupancies of land that are adverse in terms of the statute's preservation purpose; and no proximity impacts which significantly impair the protected functions of the property. This determination is not dissimilar to the determination of no **Section 4(f)** involvement, but it usually requires more detailed or nuanced supporting information and documentation.

The determination required for this finding is documented by:

1. Completing the **Section 4(f) No Use Determination, Form No. 650-050-49** (see [Figure 7-3](#)) or receipt of a finding of the non-applicability of **Section 4(f)** from OEM after the submission of a completed **Section 4(f) Determination of Applicability Form, Form No. 650-050-45** (see [Figure 7-2](#)) to the PDC.
2. Including all related communication with the OWJ.
3. An explanation as to why **Section 4(f)** does not apply to the project or the property involved. This will require, at a minimum:

- a. the inclusion of a map or maps of sufficient scale to show the relationship of the proposed action and existing facility including the important activity areas, contributing features, and the intrinsic attributes of the protected property including the proposed and existing right of way and the existing boundaries of the property in question; if there are none, then provide that information;
 - b. a clear discussion of the planned project activities (both temporary and permanent) and necessary structural characteristics (bridges, retaining walls, silt fences, etc.) in relation to the important activity areas and facilities on the property, including placing project activities and structural characteristics on the maps as appropriate;
 - c. a discussion of the property as it functions currently and as it will function once the project is completed, including discussions of ownership and any leases, covenants, restrictions, conveyances, encumbrances, and so forth, which may impact the property and its function, any terrain or other factors which limit or enhance all, or certain areas of the property, and differentiate between the primary functions of the property and any secondary functions, as appropriate and characterize the general or specific setting of the property.
4. If applicable, provide and cite the appropriate policy or guidance associated with the proposed activity or the property in question which was considered in recommending a “No Use” determination (note: most of these policies can be found in the **FHWA Section 4(f) Policy Paper** and other documents which can be accessed through the FDOT [Section 4\(f\) References and Guides](#) web page; an example would be citing and quoting Question 28A of the **FHWA Section 4(f) Policy Paper** when bridging a recreational area). Then, provide sufficient supporting documents as to how the identified policy or guidance statement referenced applies to the action and property in question. When required, provide any appropriate coordination and concurrence documents from the OWJ.
 5. Include the identification of any additional **Section 4(f)** approvals or determinations for the proposed project.

The **Section 4(f) No Use Determination, Form No. 650-050-49** ([Figure 7-3](#)) or the **Section 4(f) Determination of Applicability Form, Form No. 650-050-45** ([Figure 7-2](#)) and supporting documentation are sent to OEM for concurrence or for OEM’s finding. Once completed, the appropriate form must be saved in the StateWide Environmental Project Tracker (SWEPT) project file. When completing the **Type 1 Categorical Exclusion Checklist, Form No. 650-050-12** check the “No Use” option for **Section 4(f)** and follow the instructions provided in the associated form. For Type 2 CEs, Environmental Assessments (EAs), and Environmental Impact Statements (EISs) the determination is also included in the **Section 4(f)** section of the Environmental Document.

7.3.3 Exceptions, Exemptions, and Exclusions to Section 4(f) Approval

There are multiple exceptions, exemptions, and exclusions to the requirement for a **Section 4(f)** approval. Most of these are included in the regulations implementing **Section 4(f)** at **23 CFR Part 774** (revised November 2018). In addition, many exceptions and exemptions are a matter of FHWA policy as reflected in the **FHWA Section 4(f) Policy Paper**. For the purposes of documenting the applicability or inapplicability of **Section 4(f)** for FDOT projects under these exemptions and conditions, the appropriate legislative, regulatory, or procedural provision or provisions, must be referenced on the **Section 4(f) Exceptions/Exemptions Determination, Form No. 650-050-48** ([Figure 7-4](#)) or the **No Section 4(f) No Use Determination, Form No. 650-050-49** ([Figure 7-3](#)), as appropriate.

In order for a project and/or resource to be eligible for a **Section 4(f)** Exception, the project and/or resource must meet the criteria defined within the regulation or the Statutes. The Administration [FDOT] has identified various exceptions under **23 CFR § 774.13** to the requirement for **Section 4(f)** approval. These exceptions include, but are not limited to:

- a. The use of historic transportation facilities in certain circumstances:
 1. Common post-1945 concrete or steel bridges and culverts that are exempt from individual review under **54 U.S.C. § 306108** (see [Part 2 Chapter 7, Archaeological and Historic Resources](#) for specific information on the Program Comment related to the Post 1945 common historic bridges), and
 2. Improvement of railroad or rail transit lines that are in use or were historically used for the transportation of goods or passengers, including, but not limited to, maintenance, preservation, rehabilitation, operation, modernization, reconstruction, and replacement of railroad or rail transit line elements, except for
 - i. Stations;
 - ii. Bridges or tunnels on railroad lines that have been abandoned, or transit lines not in use, over which regular service has never operated, and that have not been railbanked or otherwise reserved for the transportation of goods or passengers; and
 - iii. Historic sites unrelated to the railroad or rail transit lines.
 3. Maintenance, preservation, rehabilitation, operation, modernization, reconstruction, or replacement of historic transportation facilities, if the Administration concludes, as a result of the consultation under **36 CFR§ 800.5**, that:

- i. Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the NRHP, or this work achieves compliance with **Section 106** through a program alternative under **36 CFR § 800.14**; and
 - ii. The OWJs over the **Section 4(f)** resource have not objected to the Administration conclusion that the proposed work does not adversely affect the historic qualities of the facility that caused it to be on or eligible for the NRHP, or the Administration concludes this work achieves compliance with **54 U.S.C. § 306108 (Section 106)** through a program alternative under **36 CFR § 800.14**.
- b. Archeological sites that are on or eligible for the NRHP when:
 1. The Administration [FDOT] concludes that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken and where the Administration [FDOT] decides, with agreement of the official(s) with jurisdiction, not to recover the resource; and
 2. The SHPO/THPO or appropriate Tribes over the **Section 4(f)** resource have been consulted and have not objected to the Administration [FDOT] finding in paragraph (b)(1) of this section.
- c. Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. With the exception of the treatment of archeological resources in **23 CFR § 774.9(e)**, the Administration [FDOT] may permit a project to proceed without consideration under **Section 4(f)** if the property interest in the **Section 4(f)** land was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by **Section 4(f)** prior to acquisition. However, if it is reasonably foreseeable that a property would qualify as eligible for the NRHP prior to the start of construction, then the property should be treated as a historic site and does not qualify for the **Section 4(f)** exception.
- d. Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of **Section 4(f)**. The following conditions must be satisfied:
 1. Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

2. Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the **Section 4(f)** property are minimal;
 3. There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;
 4. The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and
 5. There must be documented agreement of the OWJ over the **Section 4(f)** resource regarding the above conditions.
- e. Projects for the Federal lands transportation facilities described in **23 U.S.C. § 101(a)(8)**.
- f. Certain trails, paths, bikeways, and sidewalks, in the following circumstances:
1. Trail-related projects funded under the Recreational Trails Program, **23 U.S.C. § 206(h)(2)**;
 2. National Historic Trails and the Continental Divide National Scenic Trail, designated under the **National Trails System Act, 16 U.S.C. §§ 1241-1251**, with the exception of those trail segments that are historic sites any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the NRHP. The term includes properties of traditional religious and cultural importance to an Indian tribe that are included in, or are eligible for inclusion in the NRHP (**23 CFR § 774.17**);
 3. Trails, paths, bikeways, and sidewalks that occupy a transportation facility ROW without limitation to any specific location within that ROW, so long as the continuity of the trail, path, bikeway, or sidewalk is maintained; and
 4. Trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation.
- g. Transportation enhancement activities, transportation alternatives projects, and mitigation activities, where:
1. The use of the **Section 4(f)** property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for **Section 4(f)** protection; and

2. The OWJ over the **Section 4(f)** resource agrees in writing to paragraph (g)(1) of this section.

Exemptions from **Section 4(f)** approval are identified within **23 CFR § 774.11** and in **Sections 1303 and 11502 of the Fixing America's Surface Transportation (FAST) Act of 2015**.

Exemptions under the regulations and the **FAST Act**, as well as those resources which are exceptions (that is, excluded) from the exemptions are identified below:

1. **23 CFR § 774.11(e)(2)** - The interstate highway system is exempt from being treated as a historic resource under **Section 4(f)** with the exception of those individual elements of the Interstate System formally identified for **Section 4(f)** protection on the basis of national or exceptional historic significance.
 - a. Interstate highway-related facilities in Florida determined historically significant and therefore not exempt under **Section 4(f)** are:
 - i. I-275 Bob Graham/Sunshine Skyway Bridge
 - ii. I-75 Alligator Alley- Milepost range 19.6-49.3
 - iii. I-75 Snake Wall
 - iv. I-95 Myrtle Avenue Overpass
2. **23 CFR § 774.11(h)** - When a property formally reserved for a future transportation facility temporarily functions for park, recreation, or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of duration, will not subject the property to **Section 4(f)**.
3. **23 CFR § 774.11 (i)** - When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area, or wildlife and waterfowl refuge is established, and concurrent or joint planning or development of the transportation facility and the **Section 4(f)** resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in **23 CFR § 774.17**.

(1) Formal reservation of a property for a future transportation use can be demonstrated by a document of public record created prior to or contemporaneously with the establishment of the park, recreation area, or wildlife and waterfowl refuge. Examples of an adequate document to formally reserve a future transportation use include:

- (i) A map of public record that depicts a transportation facility on the property;

(ii) A land use or zoning plan depicting a transportation facility on the property; or

(iii) A fully executed real estate instrument that references a future transportation facility on the property.

(2) Concurrent or joint planning or development can be demonstrated by a document of public record created after, contemporaneously with, or prior to the establishment of the **Section 4(f)** property. Examples of an adequate document to demonstrate concurrent or joint planning or development include:

(i) A document of public record that describes or depicts the designation or donation of the property for both the potential transportation facility and the **Section 4(f)** property; or

(ii) A map of public record, memorandum, planning document, report, or correspondence that describes or depicts action taken with respect to the property by two or more governmental agencies with jurisdiction for the potential transportation facility and the **Section 4(f)** property, in consultation with each other.

7.3.3.1 Documentation and Coordination

An Exception/Exemption or a No Use determination by the District requires OWJ concurrence or no objection, as appropriate. The District must provide all Exception/Exemption determinations and all No Use determinations to OEM for concurrence.

If a project is eligible for a **Section 4(f)** Exception/Exemption, the District completes the **Section 4(f) Exceptions/Exemptions Determination, Form No. 650-050-48** ([Figure 7-4](#)) or the **No Section 4(f) No Use Determination, Form No. 650-050-49** ([Figure 7-3](#)), and, if required by the specific exception, exemption, or exclusion must include a letter from the OWJ concurring with the conditions and actions that qualify the project for the associated exception as well as the appropriate finding from the District.

The complete **Section 4(f) Exceptions/Exemptions Determination, Form No. 650-050-48** or the **No Section 4(f) No Use Determination, Form No. 650-050-49** and documentation will be sent to OEM for concurrence. Once complete the **Section 4(f) Exceptions/Exemptions Determination, Form No. 650-050-48** or the **No Section 4(f) No Use Determination, Form No. 650-050-49** and documentation must be saved in the SWEPT project file. When completing the **Type 1 Categorical Exclusion Checklist, Form No. 650-050-12** check the Exception/Exemption option for **Section 4(f)** and follow the instructions provided in the form. For a Type 2 CE, check the appropriate option for **Section 4(f)** and follow the instructions provided in the **Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11**. For EAs and EISs, the determination is also included in the **Section 4(f)** section of the Environmental Document.

7.3.4 “Use” under Section 4(f)

Once the District has determined the resource is protected under **Section 4(f)**, the District, in consultation with OEM, must determine whether the project will require a transportation “use” of the protected resource.

The following sections describe “uses” within the meaning of **Section 4(f)**.

7.3.4.1 Permanent Incorporation

The most common type of use occurs when land from a **Section 4(f)** protected resource is permanently incorporated into a transportation facility, e.g. fee simple purchase. It can include the acquisition of an easement for the maintenance or operation of a transportation facility or a transportation-related facility.

7.3.4.2 Temporary Occupancy

Temporary occupancy is when there is a temporary occupancy for the purpose of project construction-related activities that is adverse in terms of the statute’s preservation purpose. When temporary occupancies meet the conditions listed in **23 CFR § 774.13(d)** the “use” of the resource does not constitute a “use” within the meaning of **Section 4(f)**. If the temporary occupancy does not meet the conditions, there is a **Section 4(f)** use and the appropriate **Section 4(f)** approval process must be followed.

7.3.4.3 Constructive Use

Constructive use occurs when a transportation project does not incorporate land from **Section 4(f)** property but when the project’s proximity impacts are so severe that the protected activities, features, attributes that qualify the protected resource are substantially impaired (**23 CFR § 774.15**; see [Section 7.3.5.4](#)).

7.3.5 Section 4(f) Approvals

Once FDOT has determined that **Section 4(f)** applies to a project, the District must prepare a *de minimis* finding or a **Section 4(f)** evaluation for submittal to OEM. When coordinating with the OWJ, external agencies or the public, the Districts should copy the PDC on outgoing correspondence.

As set forth in **23 CFR § 774.3**, FDOT may not approve the “use” of land from a significant publicly owned public park, recreation area, wildlife or waterfowl refuge, or any significant historic site unless it determines that:

1. There is no feasible and prudent alternative to the use of land from the property; and
2. The action includes all possible planning to minimize harm (as defined in **23 CFR § 774.17**) to the property resulting from such use; or

3. The use of the property, including any measures to minimize harm (such as avoidance, minimization, mitigation or enhancement), will have a *de minimis* impact on the property.

To receive approval for the use of a property protected by **Section 4(f)**, the District needs to submit one of the following documents to OEM:

1. A *de minimis* impact determination;
2. A programmatic **Section 4(f)** evaluation; or
3. An individual **Section 4(f)** evaluation.

Analyses of the “no prudent and feasible alternative” and the “all possible planning to minimize harm” standards are only required for approval of the individual and programmatic evaluations; it is not required for a *de minimis*.

7.3.5.1 The *de minimis* Section 4(f) Analysis

A *de minimis* impact is one that, after taking into account any measures to minimize harm (such as avoidance, minimization, mitigation, or enhancement measures), results in either:

1. A determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under **Section 4(f)**; or
2. A finding under **36 CFR § 800**, that no historic property is affected by the project or that the project will have “no adverse effect” on the historic property in question.

The impacts of a transportation project on a park, recreation area, or wildlife or waterfowl refuge that qualifies for **Section 4(f)** protection may be determined to be *de minimis* if the transportation use of the **Section 4(f)** property, together with any measures to minimize harm, such as impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, do not adversely affect the activities, features, or attributes that qualify the resource for protection under **Section 4(f)**.

In reaching an approval of the use of a **Section 4(f)** protected property, the project record must reflect that the following steps were completed in the order set forth in **23 CFR § 774.5(b)** and as outlined below:

1. The OWJ must be notified of the intent to pursue a *de minimis* and consulted on measures to minimize harm. For non-historic properties, the OWJ will also be informed that there will be an opportunity for the public comment on the project in relation to the protected resource.
2. For parks, recreation areas, or wildlife and waterfowl refuges, an opportunity for public review and comment must be provided [**23 CFR § 771.111(h)(2)(viii) and 774.5(b)(2)(i), (ii)**]. For a *de minimis* determination no additional public

involvement outside the regular **NEPA** process is required ([Part 1, Chapter 11, Public Involvement](#)). If a proposed action does not normally require public involvement, such as for certain minor projects covered by a Type 1 CE, an opportunity for the public to review and comment on the proposed *de minimis* impact determination must be provided as appropriate to the resource:

- A. For historic and archaeological properties, the opportunity for the public to review and comment on the effects of the project on the protected activities, features, or attributes of the **Section 4(f)** property occurs within the **Section 106** process, as appropriate, or
 - B. For non-historic properties the opportunity for public comment should be appropriate to the nature of the resource and the public it serves. For most projects, this will be completed through the **NEPA** public involvement process. In cases where such opportunities do not exist or where a different method of notifying the public would be more appropriate (such as efforts directed to local bicycling groups for a project involving a bike trail); and
3. The OWJ, after being informed of the public comments and FDOT's intent to make a *de minimis* impact finding, must concur in writing that the project (including all measures to mitigate and minimize harm) will not adversely affect the activities, features, or attributes that qualify the property for protection under **Section 4(f)** [**23 CFR § 774.5(b)(2)** and **23 CFR § 774.17**].

In the case of historic properties, the SHPO/THPO must concur in writing to an FDOT finding of “no affects to historic properties” or “no adverse effects” to the property in question. FDOT includes its intent to pursue a *de minimis* approval in the signature block of the effects finding letter provided to the SHPO/THPO and in **Stipulation VIII of the Section 106 Programmatic Agreement (Section 106 PA)** executed between the ACHP, FHWA, SHPO, and FDOT on March 16, 2017.

4. Once these steps are completed, the District can submit the **Section 4(f) de minimis Determination for Historic Sites, Form No. 650-050-46** ([Figure 7-5](#)) or, as appropriate, the **Section 4(f) de minimis Determination for Parks, Recreation Areas and Wildlife or Waterfowl Refuges, Form No. 650-050-47** ([Figure 7-6](#)).

Since a *de minimis* approval is an approval of the use of a **Section 4(f)** property, FDOT can only finalize the approval when it provides its approval of the project. However, OEM will inform the District of the appropriateness of a *de minimis* approval for the proposed project.

7.3.5.1.1 *de minimis* Consultation

To comply with the requirements for a *de minimis* approval for a project, follow the 4 steps outlined in [Section 7.3.5.1](#).

For parks, recreation areas, and wildlife and waterfowl refuges, the District must notify the OWJ that the activities, features, and attributes qualifying the property for **Section**

4(f) protection will be the basis for a *de minimis* impact determination [**23 CFR § 774.5(b)**]. The OWJ must concur that the project will not adversely affect the activities, features, or attributes that make the property eligible for **Section 4(f)** protection prior to the District seeking OEM concurrence with the *de minimis* finding.

The OWJ concurrence **must be in writing** [**23 CFR § 774.5(b)(2)(ii)**]. This concurrence can be in the form of a signed letter on agency letterhead, signatures in concurrence blocks on transportation agency documents or agreements provided via e-mail, or by other methods deemed acceptable by OEM.

For historic sites, the consulting parties identified in **36 CFR Part 800** must be afforded the opportunity to comment on the effects of the proposed project on historic resources. The OWJ over the historic property (usually the SHPO or THPO) must be informed of the intent to make a *de minimis* impact determination and must concur with a finding of “no historic properties affected” or “no adverse effect” to the property in question in accordance with **36 CFR Part 800**.

The **Section 106 PA** referenced above, programmatically informs the SHPO and the ACHP that such a finding may result in FDOT approving the use of the property as *de minimis*. In addition, the signature block provided for SHPO concurrence on effect findings, also provides this statement (see [Part 2, Chapter 8, Archaeological and Historic Resources](#)).

Because neither the tribes nor the NPS are signatories to the **Section 106 PA**, in cases where either a THPO or a tribal **Section 106** official is acting as an OWJ (or in cases where the NPS is acting as an OWJ) the District and OEM, if participating, must ensure that those officials are informed in writing that a concurrence with either a “no affects to historic properties” or a “no adverse effects” to the historic property in question means that FDOT may pursue a *de minimis* approval for the use of those properties. As with other *de minimis* approvals, the concurrence of these officials to those findings must be in writing.

7.3.5.1.2 Public Involvement Requirements

For parks, recreation areas, or wildlife and waterfowl refuges, an opportunity for public review and comment must be provided [**23 CFR §774.5(b)(2)(i), (ii)**]. For a *de minimis* determination no additional public involvement outside the regular **NEPA** process is required ([Part 1, Chapter 11, Public Involvement](#)). If a proposed action does not normally require public involvement, such as for certain minor projects covered by a Type 1 CE, an opportunity for the public to review and comment on the proposed *de minimis* impact determination must be provided as appropriate to the resource and prior to the *de minimis* and Type 1 CE approvals.

Compliance with **36 CFR Part 800** satisfies the public involvement and agency coordination requirements for *de minimis* impact findings for historic and archeological properties. To document the public involvement activities for **36 CFR Part 800** the *de minimis* determination will not occur until after the public hearing and comment period for Type 2 CEs, EAs, and EISs. For lower level Type 1 CEs that involve *de minimis* approvals

for historic properties, the **Section 106** process must be completed in order to make the *de minimis* determination and the *de minimis* approval coincides with the Type 1 CE approval.

7.3.5.1.3 Documenting the *de minimis* determination

Once it has been determined that the project is eligible for a **Section 4(f) *de minimis*** finding, the District completes the **Section 4(f) *de minimis* Determination for Historic Sites, Form No. 650-050-46** ([Figure 7-5](#)) or the **Section 4(f) *de minimis* Determination for Parks, Recreation Areas and Wildlife or Waterfowl Refuges, Form No. 650-050-47** ([Figure 7-6](#)) and submits it to OEM for concurrence.

7.3.5.1.4 Approval and Documentation Process

The District submits the *de minimis* Determination form and documentation to OEM for concurrence. Once OEM concurs and signs the determination, the final **Section 4(f) *de minimis* Determination for Historic Sites, Form No. 650-050-46** ([Figure 7-5](#)) or **Section 4(f) *de minimis* Determination for Parks, Recreation Areas and Wildlife or Waterfowl Refuges, Form No. 650-050-47** ([Figure 7-6](#)) and its attachments must be uploaded to the SWEPT project file.

When completing the **Type 1 Categorical Exclusion Checklist, Form No. 650-050-12**, check the *de minimis* option for **Section 4(f)** and follow the instructions provided in the form. When completing the **Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11** check the appropriate option for **Section 4(f)** and follow the instructions provided in the form. For EAs and EISs, the determination is also included in the **Section 4(f)** portion of the Environmental Document. In addition, any mitigation measures that were relied upon to reach a *de minimis* determination will be documented as commitments in the Environmental Document.

7.3.5.2 Programmatic Section 4(f) Evaluations

Programmatic **Section 4(f)** evaluations are administrative alternatives to completing an Individual **Section 4(f)** evaluation but which still require appropriate findings using supporting studies and consultation. Programmatic evaluations are prepared for certain uses of **Section 4(f)** property that meet specific criteria as set forth in the conditions and findings sections of the specific programmatic evaluation.

The benefit of using a Programmatic **Section 4(f)** is that the conditions set forth for each of these have already received legal sufficiency review and have already been coordinated with the appropriate federal agencies. Therefore, these evaluations normally do not require an individual legal sufficiency review or coordination with the U.S. Department of the Interior (DOI), the U.S. Department of Agriculture (DOA), or the U.S. Department of Housing and Urban Development (HUD). However, if a federal agency has to take specific action under a different federal law such as a DOI approval under **Section 6(f) of the LWCFA**, that federal approval will still be required (see Concurrent Requirements in [Section 7.5](#); also see the discussion of Wild and Scenic Rivers in [Section 7.2.3.1](#)).

The conditions vary among the programmatic types, and generally relate to:

1. the type of project or **Section 4(f)** property,
2. the degree of use and impact to the **Section 4(f)** property,
3. the evaluation of avoidance alternatives,
4. the establishment of a procedure for minimizing harm to the **Section 4(f)** property, and
5. coordination and agreement with OWJ.

The Districts should coordinate their preparation of any programmatic evaluation with the PDC.

The five Nationwide Programmatic **Section 4(f)** Evaluations provided under **23 CFR § 774.3(d)** are only applicable to FHWA-funded projects. The Programmatic **Section 4(f)** Evaluations are (in order of publication):

1. **Section 4(f) Statement of Determination for Independent Walkways or Bikeway Construction Projects, Form No. 650-050-55** ([Figure 7-7](#))
2. **Programmatic Section 4(f) Evaluation and Approval for FHWA (Federal Aid) Projects that Necessitate the Use of Historic Bridges, Form No. 650-050-50** ([Figure 7-8](#))
3. Final Nationwide **Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites, Form No. 650-050-51** ([Figure 7-9](#))
4. Final Nationwide **Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges, Form No. 650-050-52** ([Figure 7-10](#))
5. **Nationwide Programmatic Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property; Section 4(f) Net Benefit Programmatic for Historic Sites, Form No. 650-050-53** ([Figure 7-11](#)), and **Section 4(f) Net Benefit Programmatic for Public Parks, Recreation Lands, and Wildlife & Waterfowl Refuges, Form No. 650-050-54** ([Figure 7-12](#))

The specific applicability criteria and the required analyses for each of these programmatic evaluations can be reviewed by accessing the corresponding publication in the **Federal Register (FR)**. The references section below provides links to the associated **FR** for each programmatic evaluation. Additional information can be found in the **FHWA Environmental Toolkit** linked at the FDOT [Section 4\(f\) References and](#)

[Guides](#) web page or at the FHWA **Section 4(f)** web page contained in their environmental tool kit. For further information, see [Section 7.6](#) for direct references.

The requirements for each Nationwide programmatic evaluation is also located on the forms associated with the appropriate programmatic evaluation. Should the District have any questions, please contact the PDC.

7.3.5.2.1 Programmatic Section 4(f) Evaluations, Submittals, and Coordination

The Programmatic Evaluation Form and documentation are submitted to OEM by the District via the Electronic Review and Comment System (ERC) for concurrence. OEM must review and concur with all **Section 4(f)** Programmatic Evaluations. Once the document has been finalized, the District uploads the evaluation into SWEPT.

The approval of the Programmatic Evaluation is concurrent with the signing and approval of the **NEPA** Environmental Document. Upon approval, the District will send a signed copy of the Programmatic Evaluation to the OWJ.

When completing the **Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11**, the Programmatic **Section 4(f)** Evaluation is summarized in the **Section 4(f)** section of the document and the Programmatic Evaluation is uploaded into SWEPT and linked to the form. For EAs and EISs, results of the Programmatic Evaluation are summarized in the **Section 4(f)** section of the document and the Programmatic Evaluation is attached to the Finding of No Significant Impact (FONSI) or Final EIS (FEIS). In addition, any mitigation measures or commitments are documented in the Environmental Document and in accordance with [Part 2, Chapter 22, Commitments](#).

7.3.5.3 Individual Section 4(f) Evaluations

An **Individual Section 4(f) Evaluation** must be completed when a project requires a “use” of **Section 4(f)** property resulting in a greater than a *de minimis* impact and does not meet the conditions of a Programmatic **Section 4(f)** Evaluation (**23 CFR § 774.3**). The **Individual Section 4(f) Evaluation** documents the proposed use of **Section 4(f)** property for all alternatives within a project area.

Based on sufficient analysis, the Individual **Section 4(f)** Evaluation must find:

1. There is no feasible and prudent alternative that completely avoids the use of **Section 4(f)** property; and
2. The project includes all possible planning as defined in **§774.17**, to minimize harm to the **Section 4(f)** property resulting from the transportation use [see **23 CFR § 774.3(a)**].

7.3.5.3.1 Outline for Preparing Draft Individual Section 4(f) Evaluations

The ***Draft Individual Section 4(f) Evaluation*** must provide the analysis of project alternatives and the initial discussion and identification of avoidance, minimization, and mitigation opportunities. The Individual ***Section 4(f)*** analysis must provide the data which indicates that there is no feasible and prudent alternative which avoids using properties protected by ***Section 4(f)***. Additionally, when there is no prudent and feasible avoidance alternative and there are two or more alternatives that “use” ***Section 4(f)*** property, the individual evaluation must include a least overall harm analysis.

Draft evaluations should provide a comparative analysis of the various alternatives under consideration and should not include any preferences or recommendations. The draft is used by decision makers to select the preferred alternative. In addition, the evaluation must include an analysis for each project alternative at each ***Section 4(f)*** property location.

Formatting for the ***Individual Section 4(f) Evaluation*** is based on FHWA guidance as reflected in the [FHWA Section 4\(f\) Policy Paper](#).

The *Draft Individual Section 4(f) Evaluation* must include the following information:

1. Appropriate statements concerning the applicability or non-applicability of ***Section 4(f)*** to the resources;
2. An identification and description of the relationships of each alternative to each location of ***Section 4(f)*** protected resources;
3. Activities, features and attributes of each ***Section 4(f)*** property;
4. Analysis of impacts to each ***Section 4(f)*** property by each alternative;
5. Records of public involvement activities;
6. Results of coordination with the OWJ for each protected property;
7. Alternatives considered to avoid using the ***Section 4(f)*** property, including the analysis of the impacts caused by avoiding the ***Section 4(f)*** resource;
8. A least overall harm analysis, if appropriate
9. All measures taken to minimize harm to the resources, including mitigation measures
10. Comments submitted during the coordination procedures as required by **23 CFR § 774.5** and responses to those comments.

The following standard statement is included for the conclusion of the ***Draft Section 4(f) Evaluation***:

Upon final alternative selection the provision of Section 4(f) and 36 CFR Part 800 (if appropriate) will be fully satisfied.

7.3.5.3.2 Feasible and Prudent Alternatives Analysis for Individual Section 4(f) Evaluations

The intent of the **Section 4(f)** statute is to avoid and, where avoidance is not feasible and prudent, to include all possible planning to minimize the harm caused by the use of the protected resource by the transportation project. When assessing the importance of protecting a **Section 4(f)** property, it is important to consider the relative value of its resources to the preservation purpose of the statute (**23 CFR § 774.17**). An avoidance “alternative analysis” [**23 CFR § 774.3(a) and (c)**] must be performed to determine if there is a feasible and prudent avoidance alternative.

7.3.5.3.2.1 Identifying a Range of Alternatives

A project alternative that avoids one **Section 4(f)** property by using another is not an avoidance alternative; true avoidance alternatives avoid the use of all **Section 4(f)** resources. A feasible and prudent avoidance alternative avoids using **Section 4(f)** property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the **Section 4(f)** property.

The alternative analysis identifies a reasonable range of project alternatives, including those that avoid using **Section 4(f)** property [**FHWA Section 4(f) Policy Paper**]. Depending on the project context, the potential alternatives may include the following:

- Location Alternatives - A location alternative refers to the re-routing of the entire project along a different alignment.
- Alternative Actions - An alternative action could be a different mode of transportation, such as rail transit or bus service, or some other action that does not involve construction such as the implementation of transportation management systems or similar measures.
- Alignment Shifts - An alignment shift is the re-routing of a portion of the project to a different alignment to avoid a specific resource.
- Design Changes - a design change is a modification of the proposed design in a manner that would avoid impacts, such as reducing the planned median width, building a retaining wall, or incorporating design exceptions.

For more information on developing and analyzing alternatives see [Part 2, Chapter 3, Engineering Analysis](#).

7.3.5.3.2.2 Feasible and Prudent Avoidance Analysis

The next step is to determine if each of the identified alternatives are feasible and prudent. “A feasible and prudent avoidance alternative avoids using **Section 4(f)** property and

does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the **Section 4(f)** property” (**23 CFR § 774.17**). If it is determined an avoidance alternative is feasible and prudent and meets the purpose and need of the project, this alternative must be selected by FDOT, and the **Section 4(f)** evaluation process is complete.

Under **23 CFR § 774.17** an avoidance alternative is not considered feasible if it cannot be built as a matter of sound engineering judgement.

Under **23 CFR § 774.17** an avoidance alternative is not considered prudent if it results in one of the following situations:

- It compromises the project to a degree that it is unreasonable to proceed with the project in light of its stated purpose and need;
- It results in unacceptable safety or operational problems;
- After reasonable mitigation, it still causes:
 - Severe social, economic, or environmental impacts;
 - Severe disruption to established communities;
 - Severe disproportionate impacts to minority or low-income populations; or
 - Severe impacts to environmental resources protected under other federal statutes;
- It results in additional construction, maintenance, or operational costs of an extraordinary magnitude;
- It causes other unique problems or unusual factors; or
- It involves multiple factors as outlined above that, while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.

For more information on applying the prudent standard, see **Sections 3.3.1 and 3.4** of the **FHWA Section 4(f) Policy Paper** linked to the FDOT [Section 4\(f\) References and Guides](#) web page. If there is more than one alternative that uses **Section 4(f)** property then a Least Overall Harm Analysis of those alternatives is required (see [Section 7.3.5.3.2.4](#)).

7.3.5.3.2.3 All Possible Planning to Minimize Harm

“All possible planning”, as defined under **23 CFR § 774.17**, means all reasonable measures identified in the **Section 4(f)** analysis to minimize harm or mitigate adverse effects to the resource resulting from the “use,” were considered and documented. Impacts to the **Section 4(f)** property should be reduced or eliminated by including

mitigation in the analysis. In addition, the mitigation measures are relied upon as part of the comparison of alternatives.

For public parks, recreation areas, and wildlife and waterfowl refuges, the measures to minimize harm may include, but are not limited to: design modifications or design goals; replacement of land or facilities of comparable value and function; or monetary compensation to enhance the remaining property or to mitigate the adverse impacts of the project in other ways. For historic sites, the measures to minimize harm normally serve to preserve the historic activities, features, or attributes of the site as agreed upon by FDOT and the SHPO/THPO, in accordance with the consultation process under **Section 106 (36 CFR Part 800)**.

In evaluating the “reasonableness of measures to minimize harm” under **23 CFR § 774.3(a)(2)**, FDOT will consider the preservation purpose of the statute and the following as described in **23 CFR § 774.17(3)**:

- The views of the OWJ;
- Whether the cost of the measures is a reasonable public expenditure in light of the adverse impacts of the project on the **Section 4(f)** property and the benefits of the measure to the property, in accordance with **23 CFR § 771.105(d)**;
- Any impacts or benefits of the measures to communities or environmental resources outside of the **Section 4(f)** property.

7.3.5.3.2.4 Least Overall Harm Analysis

Least overall harm analysis is conducted to determine which of the potential feasible and prudent alternatives that “use” a **Section 4(f)** property have the net impact that results in the “least overall harm” in accordance with **23 CFR § 774.3(c)(1)** and “includes all possible planning to minimize harm to **Section 4(f)** property” as required by **23 CFR § 774.3(c)(2)**. Not all uses of **Section 4(f)** property have the same magnitude of impact, and not all **Section 4(f)** properties are of the same quality; therefore, the least overall harm analysis is a qualitative analysis. When preparing and examining the alternatives which impact **Section 4(f)** property it is important to ensure that comparable mitigation measures are included for each alternative. The District is responsible for selecting the alternative that has the least overall harm to a **Section 4(f)** property. If the net harm to the **Section 4(f)** properties in all the feasible and prudent alternatives is equal, the District may select any one of them.

To determine which of the alternatives would cause the least overall harm, FDOT must compare the factors set forth in **23 CFR § 774.3(c)(1)** concerning the alternatives under consideration:

1. The ability to mitigate adverse impacts to each **Section 4(f)** property (including any measures that result in benefits to the property);

2. The relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each **Section 4(f)** property for protection;
3. The relative significance of each **Section 4(f)** property;
4. The views of the OWJ over each **Section 4(f)** property;
5. The degree to which each alternative meets the purpose and need for the project;
6. After reasonable mitigation, the magnitude of any adverse impacts to resources not protected by **Section 4(f)**; and
7. Substantial differences in costs among the alternatives.

7.3.5.3.3 Submission and Coordination of Draft Individual Section 4(f) Evaluations

The District must upload the **Draft Individual Section 4(f) Evaluation** in ERC, assigning the PDC for review and comment. The PDC must add OGC and may add any other relevant reviewers. For Type 2 CEs, the **Draft Individual Section 4(f) Evaluation** is uploaded into ERC as a separate document. For EAs and EISs, the **Draft Individual Section 4(f) Evaluation** is incorporated into the EA or DEIS.

Once OEM has completed its review of the **Draft Individual Section 4(f) Evaluation** and the comments have been addressed by the District, OEM approves it for public availability and the District circulates the document to the OWJ and DOI as well as any other appropriate agency for review and comment, such as the U.S. Forest Service and HUD. FDOT will use electronic media to distribute the draft to agencies, as appropriate.

The District must wait a minimum of 45 days for receipt of comments. If comments are not received within 15 days after the comment deadline, the District may assume a lack of objection and proceed with the action (**23 CFR § 774.5**).

If any of these agencies raise issues during coordination, the District will work with OEM and the agency to resolve the issues.

7.3.5.3.4 Public Involvement Requirements for Draft Individual Section 4(f) Evaluations

There is no specific requirement to provide public notice or a public opportunity to comment on **Individual Section 4(f) Evaluations**. However, for most projects requiring the preparation of an **Individual Section 4(f) Evaluation**, some level of public involvement must occur due to the requirements of **§ 339.155(5)(b), F.S.** and **23 CFR § 771.111**. When public involvement is required for a proposed project which includes an **Individual Section 4(f) Evaluation**, the Draft Evaluation should be provided along with other project information and project documents and the public involvement effort must follow the procedures set forth in [Part 1, Chapter 11, Public Involvement](#).

For those actions that do not require public review and comment under **NEPA** or under **Section 339.155, F.S.**, public involvement may still be required under a concurrent law such as **Section 106** of the **NHPA** when the **Individual Section 4(f) Evaluation** is for the approval of the use of a historic property.

7.3.5.3.5 Final Section 4(f) Individual Evaluation Outline

When the preferred alternative uses **Section 4(f)** land, the **Final Individual Section 4(f) Evaluation** must contain:

1. Information developed in the draft evaluation.
2. A discussion of the basis for concluding that there are no feasible and prudent alternatives to the use of the **Section 4(f)** land. The supporting information must demonstrate that the proposed action “does not cause severe problems of a magnitude that substantially outweighs the importance of protecting the section 4(f) property” (**23 CFR § 774.17**). This language should appear in the document together with the supporting information.
3. A discussion of the basis for concluding that the proposed action includes all possible planning to minimize harm to the **Section 4(f)** property. The **Final Individual Section 4(f) Evaluation** must demonstrate that the preferred alternative is a feasible and prudent alternative with the least harm to the **Section 4(f)** resources after considering mitigation to the **Section 4(f)** resources.
4. When there is more than one alternative which uses **Section 4(f)** resources, a discussion of the reasons for concluding that the selected action is the alternative which results in the least overall harm must be included.
5. A summary of the formal coordination with the OWJs and the Headquarters Office of the DOI and other agencies as appropriate. Copies of all formal coordination comments and a summary of other relevant **Section 4(f)** comments received, and an analysis and response to any questions raised should be included.
6. Where **Section 6(f)** land is involved, documentation of the results of the coordination with the NPS must be included.
7. Final approval **Section 4(f)** language must include the following statement:

*Based upon the above considerations, there is no feasible and prudent alternative to the use of land from the [identify **Section 4(f)** property] and the proposed action includes all possible planning to minimize harm to the [**Section 4(f)** property] resulting from such use.*

7.3.5.3.5.1 Submission of Final Individual Section 4(f) Evaluation and Legal Sufficiency Review [23 CFR § 774.7(d)]

After completion of the circulation and public comment period, the District submits the **Final Individual Section 4(f) Evaluation** to OEM via SWEPT.

SWEPT also provides a copy of the **Final Individual Section 4(f) Evaluation** to OGC for legal sufficiency review. OGC must certify that the evaluation is legally sufficient before the **Section 4(f)** Evaluation can be approved by the Director of OEM as part of the **NEPA** document.

For FDOT processing purposes, the standard approval statement will be included on the cover page of FEIS or FONSI. The name and description of the project and the name(s) of the **Section 4(f)** properties being used by the project must also be included. Where the **Section 4(f)** approval is documented in the FEIS, the basis for the **Section 4(f)** approval must be summarized in the Record of Decision (ROD).

For Type 2 CE documents, the approval of the separate **Final Individual Section 4(f) Evaluation** report should occur with and be referenced in the approval for the **NEPA** Document.

Once approved, the District will electronically distribute copies of the signed document to the agencies that received the **Draft Individual Section 4(f) Evaluation**.

7.3.5.3.5.2 Project File Documentation

When completing the **Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11** with an **Individual Section 4(f) Evaluation**, summarize the results of the evaluation in the **Section 4(f)** section of the form, and upload the **Final Individual Section 4(f) Evaluation** into SWEPT. For EAs the results of the **Final Individual Section 4(f) Evaluation** are summarized in the **Section 4(f)** portion of the FONSI and uploaded into SWEPT. For projects processed as an EIS, the **Final Individual Section 4(f) Evaluation** is included in the FEIS and uploaded into SWEPT. In addition, any mitigation measures or commitments are documented in the Environmental Document.

7.3.5.4 Constructive Use

A “Constructive Use” occurs when the transportation project does not incorporate land from a **Section 4(f)** property, but the proximity impacts of the project are so severe that the protected activities, features, or attributes qualifying the property for protection under **Section 4(f)** are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the property are substantially diminished (**23 CFR § 774.15**).

If the District believes a project may involve a Constructive Use, the District contacts the PDC to verify the potential for a Constructive Use and to assess measures to minimize harm to the resource in order to avoid having a Constructive Use. When the District and OEM believe that a Constructive Use determination may be appropriate, OEM will initiate consultation with FHWA-HQ Office of Project Development and Environmental Review in accordance with the **NEPA Assignment MOU**.

Under **23 CFR § 774.15**, when a Constructive Use determination is made, it is based on the following:

1. Identification of the current activities, or attributes of the property which qualify for protection under **Section 4(f)** and which may be sensitive to proximity impacts;
2. Analysis of the proximity impacts of the proposed project on the **Section 4(f)** resource. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should be not attributed to the proposed project; and
3. Consultation, on the foregoing identification and analysis, with the OWJ over the **Section 4(f)** property.

Situations describing when a Constructive Use occurs can be found at **23 CFR § 774.15(e)** and situations describing when a Constructive Use does not occur can be found at **23 CFR § 774.15(f)**, both of which can be accessed via the FDOT [Section 4\(f\) References and Guides](#) web page.

7.4 POST PROJECT DEVELOPMENT AND ENVIRONMENT

7.4.1 Late Designations and Discoveries

After the CE, FONSI, or ROD has been processed, a separate **Section 4(f)** approval will be required, except as provided in **23 CFR § 774.13**, if:

1. A proposed modification of the alignment or design would require the use of **Section 4(f)** property; or
2. The District in consultation with OEM determines that **Section 4(f)** applies to the use of a property; or
3. A proposed modification of the alignment, design, or measures to minimize harm [after the original **Section 4(f)** approval] would result in a substantial increase in the amount of **Section 4(f)** property used, a substantial increase in the adverse impacts to **Section 4(f)** property, or a substantial reduction in the measures to minimize harm [**23 CFR § 774.9(c)(1)-(3)**].

A separate **Section 4(f)** approval required for a CE, FONSI, or ROD will not necessarily require the preparation of a new or supplemental **NEPA** document [**23 CFR § 774.9(d)**]. Coordinate with OEM when there are changes to a project that results in changes to impacts to a **Section 4(f)** property.

There are times when late discoveries, late designations, or determinations of significance of **Section 4(f)** resources are made after the completion of the Environmental Document. When this involves a **Section 4(f)** resource other than an archaeological site, FDOT may allow the project to proceed without consideration under **Section 4(f)** if the property interest in the lands from the site was acquired prior to the change in the designation or the determination of significance as long as an adequate effort was made to identify properties protected by **Section 4(f)** prior to the acquisition. In cases involving

a historic site, if it was reasonably foreseeable that a resource would be determined eligible for the NRHP prior to the start of construction, the resource should be treated as a significant historic site as set forth in **23 CFR § 774.13(c)**.

In judging the adequacy of the effort made to identify properties protected by **Section 4(f)**, FDOT will consider the requirements and standards that existed at the time of the research.

When the post-review discovery is of an archeological site, FDOT will consult with the SHPO/THPO and other appropriate parties in accordance with **Section 106 of the NHPA** to reach resolution regarding the treatment of the site within an expedited time frame. The decision to apply **Section 4(f)** to the site will be based on the outcome of the **Section 106** process. If the archaeological site proves significant for more than the information it contains, this late discovery will also trigger a request for an expedited **Section 4(f)** evaluation [**23 CFR § 774.9(e)**]. Because the DOI has a review responsibility for **Individual Section 4(f) Evaluations** but is not usually a party to the **Section 106** consultation process, the DOI must be notified and requested to provide any comments within a shortened response period (less than the standard 30 days) in regard to the treatment of the archaeological site. [See **FHWA Section 4(f) Policy Paper**, Section II, Questions 26(a) and (b) and **23 CFR § 774.9**]

7.4.2 Commitment Compliance

Commitments must be recorded in the Environmental Document. Project commitments are carried forward into design, ROW and construction phases of project delivery. The commitments and required coordination are updated per [Procedure No. 650-000-003, Project Commitment Tracking, Part 2, Chapter 22, Commitments](#), and documented in the Commitment Status section of the **Re-evaluation Form, Form No. 650-050-29**.

Any changes to an existing commitment relating to **Section 4(f)** protected properties require coordination with the District Environmental Office. The District Environmental Office will inform the appropriate consulting parties and re-initiate consultation as necessary. District staff must review the commitments made to avoid, minimize and mitigate effects to **Section 4(f)** protected properties and ensure compliance.

7.4.3 Re-evaluations

Prior to a project advancing to the next phase or if there are major design changes, the impacts to **Section 4(f)** resources are re-evaluated per [Part 1, Chapter 13, Re-evaluations](#). In addition, design changes could re-initiate consultation with the OWJ. Commitments and coordination should be contained in the Commitment Status section of the **Re-evaluation Form, Form No. 650-050-29** and tracked through [Procedure No. 650-000-003, Project Commitment Tracking](#).

7.5 CONCURRENT REQUIREMENTS

Due to the nature of the resources protected under **Section 4(f)**, there are often concurrent laws requiring separate federal and/or state findings or approvals such as

Section 106 of the NHPA, Section 12(a) of the WSRA, and Section 7 of the Endangered Species Act. The majority of these concurrent requirements overlap as part of the **NEPA** process. There are also certain **Section 4(f)** protected properties encumbered with a federal interest. For projects that propose the use of land from a **Section 4(f)** property purchased or improved with federal grant-in-aid funds under the **LWCFA**, the **Federal Aid in Fish Restoration Act (Dingell-Johnson Act)**, the **Federal Aid in Wildlife Act (Pittman-Robertson Act)**, or other similar laws, coordination with the appropriate federal agency is required to ascertain the agency's position on the land conversion or transfer. Other federal requirements that may apply to the property should be determined through consultation with the OWJ or the appropriate federal land managing agency as outlined in **23 CFR § 774.5(d)**. These federal agencies may have regulatory authority or other requirements for converting land to a different use. These requirements are independent of the **Section 4(f)** requirements and must be satisfied during the project development process. Most of these concurrent requirements also overlap within the **NEPA** process.

7.5.1 Section 6(f)

The most common federal encumbrance encountered when completing a **Section 4(f)** approval is the **LWCFA**. State and local governments often obtain grants through the **LWCFA** to acquire or make improvements to parks and recreational areas. **Section 6(f)** of this **Act** prohibits the conversion of property acquired or developed with these grants to a non-recreational purpose without the approval of the NPS. **Section 6(f)** directs the DOI to assure that replacement lands of equal value, location and usefulness are provided as conditions to such conversions. Consequently, where conversions of **Section 6(f)** lands are proposed for highway projects, replacement lands will be necessary. As with most other federal encumbrances, **Section 6(f) applies to all projects and not just those that are federally funded**. A project can have **Section 6(f)** impacts but **Section 4(f)** may not apply.

To determine whether **LWCFA** funding was involved in the acquisition or improvement of a **Section 4(f)** property, the District should consult with the OWJ or reference the lists of these grants maintained by the NPS and FDEP (see [Section 7.6](#) for a link to the appropriate NPS site). If **LWCFA** funds were used for acquisition or improvement, under **59 CFR § 59.3** the following prerequisites must be met:

- All practical alternatives to the proposed conversion must be evaluated
- The fair market value of the property to be converted must be established by an appraisal meeting the “Uniform Appraisal Standards for Federal Land Acquisitions”
- The replacement property must be of at least equal value
- The replacement property must be of reasonably equivalent usefulness and location to that being converted
- The property proposed for substitution meets the eligibility requirements for **LWCFA** assisted acquisition

- In the case of assisted sites that are partially rather than wholly converted, the impact of the converted portion on the remainder shall be considered. If such a conversion is approved the unconverted area must remain recreationally viable or be replaced as well
- The Regional Office of the NPS is assured that all environmental review requirements related to the project have been met;
- The state procedures including those of the FDEP have been adhered to if the project conversion and substitution constitute any changes to the **LWCFA** property
- The proposed conversion and substitution are in accordance with the recreation plans of the state and the facility

In order to convert **Section 6(f)** properties to non-recreation uses, the OWJ over the **Section 6(f)** property must agree to the conversion in a letter of transmittal recommending the proposal. The conversion must meet the prerequisites and be approved by the appropriate NPS Regional Director in writing. This is accomplished through coordination with the FDEP who, in turn, seeks NPS approval of the conversion and proposed acquisition of replacement property. Regardless of the mitigation proposed, the **Section 4(f)** evaluation and environmental document must include the NPS position relative to **Section 6(f)** conversion and analyze how the converted park land and recreational usefulness will be replaced.

If any **Section 6(f)** properties are identified in the project area, the District should contact the PDC for assistance.

7.5.2 Acquisition and Restoration Council- Concurrent Requirement

During the **Section 4(f)** Evaluation, the use of certain state-owned lands may be identified, which require approval from Florida's Acquisition and Restoration Council (ARC) before they can be converted to a transportation facility. Easements from the Division of State Lands of the FDEP may be required to locate a portion of the project across state owned lands. The District should coordinate with the PDC at the earliest opportunity for further guidance.

7.6 REFERENCES

American Association of State Highway and Transportation Officials (AASHTO), 2011.
Green Book: A Policy on the Geometric Design of Highway and Streets. 6th edition

FHWA. 1977. Negative Declaration / Section 4(f) Statement for Independent Bikeway or Walkway Construction Projects.
<https://www.environment.fhwa.dot.gov/4f/4fbikeways.asp>

FHWA. 1986a. 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.
<https://www.environment.fhwa.dot.gov/4f/4fmparks.asp>
- FHWA. 1986b. Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvement with Historic Sites. December 23, 1986. <https://www.environment.fhwa.dot.gov/4f/4fmhist.asp>
- FHWA. 2012. Guidance on Section 4(f) Exception for Federal Lands Transportation Facilities. <https://www.fhwa.dot.gov/map21/guidance/guidefltpexempt.cfm>
- FHWA. 2012. Section 4(f) Policy Paper. July 20, 2012.
<https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>
- FDOT. Section 4(f) References and Guides web page.
[https://www.fdot.gov/environment/pubs/4\(f\)/Section4f.shtm](https://www.fdot.gov/environment/pubs/4(f)/Section4f.shtm)
- FDOT. Efficient Transportation Decision Making Manual, Topic No. 650-000-002.
<http://www.fdot.gov/environment/pubs/etdm/etdmmanual.shtm>
- FDOT. Standard Specifications for Road and Bridge Construction.
<http://www.dot.state.fl.us/programmanagement/Implemented/SpecBooks/July2015/Files/715eBook.pdf>
- Land and Water Conservation Fund Act (LWCFA) of 1965.
<https://www.nps.gov/subjects/lwcf/lwcf-in-your-neighborhood.htm>
- Memorandum of Understanding Between FDEP and FDOT and Concurred in by FHWA, Concerning the Development of Florida's Rails to Trails Program and Compliance with 49 U.S.C. 303 and 23 CFR 771 for Intersection Transportation Improvements That May Require the Use of Federal Funds. 1996.
https://environment.transportation.org/pal_database/agreement_details.aspx?pal_id=48
- Memorandum of Understanding Between FHWA and FDOT Concerning the State of Florida's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. 327, December 14, 2016.
<http://www.fdot.gov/environment/pubs/Executed-FDOT-NEPA-Assignment-MOU-2016-1214.pdf>
- National Parks Service- LWCF List. <https://www.nps.gov/subjects/lwcf/lwcf-in-your-neighborhood.htm>
- NEPA of 1969, 42 U.S.C. §§ 4321-4347. <https://www.gpo.gov/fdsys/pkg/USCODE-2014-title42/pdf/USCODE-2014-title42-chap55.pdf>
- NHPA of 1966, as amended, 54 U.S.C. § 300101 *et seq.* <https://achp.gov/digital-library-section-106-landing/national-historic-preservation-act>

National Industrial Recovery Act (NIRA) of June 16, 1933

Pittman-Robertson Act of 1937 (Federal-Aid in Wildlife Restoration Act).

<https://www.gpo.gov/fdsys/pkg/USCODE-2014-title16/html/USCODE-2014-title16-chap5B.htm>

Title 23 CFR § 774. Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites [Section 4(f)]. <http://www.ecfr.gov/cgi-bin/text-idx?SID=4f91939fd3bdbfac5337b83a3b2bc4f4&mc=true&node=pt23.1.774&rgn=div5>

Title 36 CFR § 59. Land and Water Conservation Fund Program of Assistance to States; Post-Completion Compliance Responsibilities. http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title36/36cfr59_main_02.tpl

Title 36 CFR § 800. Protection of Historic Properties. <http://www.ecfr.gov/cgi-bin/text-idx?SID=73f131392733d51d9fac5541174d6102&mc=true&node=pt36.3.800&rgn=div5>

U.S. DOI, 2013. Environmental Review Memorandum No. ERM 13-2: Electronic Distribution of Environmental Review Assignments. https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/ERM_13-2.pdf

U.S. Supreme Court, 1971. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402. <https://supreme.justia.com/cases/federal/us/401/402/case.html>

7.7 FORMS

[Programmatic Section 4\(f\) Evaluation and Approval for FDOT Projects that Necessitate the Use of Historic Bridges, Form No. 650-050-50](#)

Re-evaluation Form, Form No. 650-050-29*

[Section 4\(f\) de minimis Determination for Historic Sites, Form No. 650-050-46](#)

[Section 4\(f\) de minimis Determination for Parks, Recreational Areas and Wildlife or Waterfowl Refuges, Form No. 650-050-47](#)

[Section 4\(f\) Determination of Applicability, Form No. 650-050-45](#)

[Section 4\(f\) Exceptions/Exemptions Determination, Form No. 650-050-48](#)

[Section 4\(f\) Net Benefit Programmatic for Historic Sites, Form No. 650-050-53](#)

[Section 4\(f\) Net Benefit Programmatic for Public Parks, Recreation Lands and, Wildlife and Waterfowl Refuge, Form No. 650-050-54](#)

[Section 4\(f\) No Use Determination, Form No. 650-050-49](#)

[Section 4\(f\) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites, Form No. 650-050-51](#)

[Section 4\(f\) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges, Form No. 650-505050-52](#)

[Section 4\(f\) Statement of Determination for Independent Bikeway or Walkway for Construction Projects, Form No. 650-050-55](#)

Type 1 Categorical Exclusion Checklist, Form No. 650-050-12*

Type 2 Categorical Exclusion Determination Form, Form No. 650-050-11*

*To be completed in [SWEPT](#)

7.8 HISTORY

5/22/1998, 9/1/2016, 6/14/2017: NEPA Assignment and re-numbered from Part 2, Chapter 13

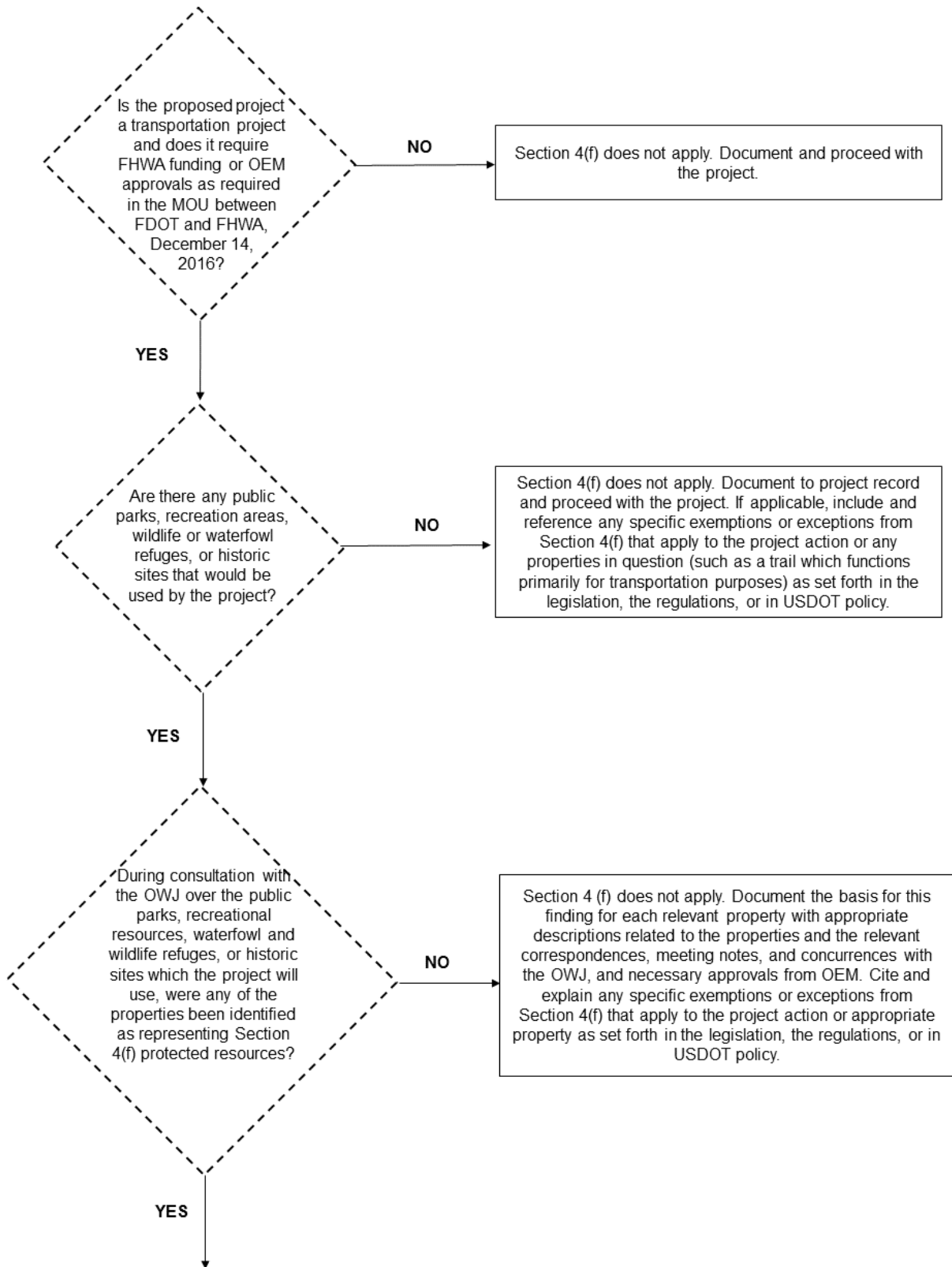


Figure 7-1 Flow Chart

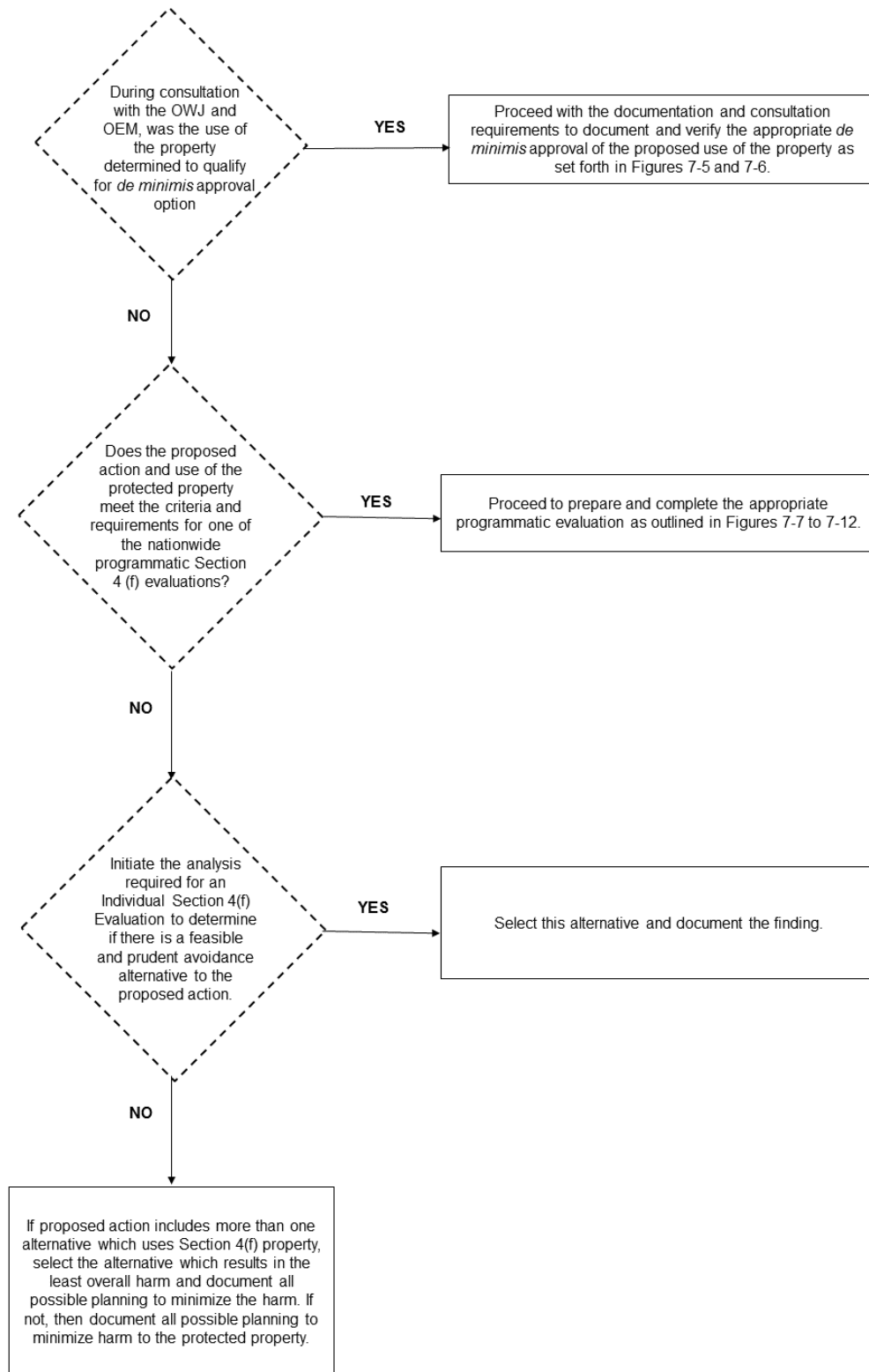


Figure 7-1 Flow Chart (Page 2 of 2)

Section 4(f) Determination of Applicability

Project Name: _____
FM#: _____ ETDM#: _____ FAP#: _____
Project Review Date: _____
FDOT District: _____
County(ies): _____

Project Description including Section 4(f) Specific Information:

Type of Property

Check all that apply:

- Public Parks and Recreation Areas
- Wildlife and Waterfowl Refuges
- Historic Sites

Description of Property:

Criteria of Selected Property Type(s):

Public Parks and Recreation Areas

- Must be publicly owned which refers to ownership by local, state or federal government
 - Ownership can also include permanent easements and long-term lease agreements

Figure 7-2 Section 4(f) Determination of Applicability

- Must be open to the public during normal hours of operation
- The major purpose must be for park or recreation activities
- Must be designated or function as a significant park or recreational area.
 - Applies to the entire park or recreation area not just a specific feature

Wildlife and Waterfowl Refuge

- Must be publicly owned which refers to ownership by local, state or federal government;
 - Ownership can also include permanent easements and long-term lease agreements;
- Must be open to the public but **refuges are able to restrict access for the protection of refuge habitat and species;**
- The major purpose must be for wildlife and waterfowl refuges;
- Must be designated or function as a significant as a wildlife and waterfowl refuges;
 - Applies to the entire wildlife and waterfowl refuges not just a specific feature

Historic Sites- includes historic buildings, historic transportation facilities, archeological sites, traditional cultural places, historic & archeological districts and historic trails.

- Must be of national, state or local significance and it must be eligible for listing or is listed in the National Register of Historic Places (NRHP); or
- If a site is determined not to be eligible OEM may determine that the application of Section 4(f) is otherwise appropriate when an official (such as the Mayor, president of a local historic society) provides information to support that the historic site is of local importance.

Does the identified resource meet all of the criteria for the selected property type?

Yes, continue to complete the form

No, STOP Section 4(f) does not apply

Figure 7-2 Section 4(f) Determination of Applicability (Page 2 of 5)

Identify the Official(s) with Jurisdiction (OWJ) contacted:

Date correspondence sent to the OWJ:

Has the Official(s) with Jurisdiction (OWJ) responded?

Yes No

**Has the 30-day response period passed since the initial OWJ
correspondence was sent?**

Yes No

Please answer the questions below about the resource:

Note: A potential source for this information can include the property management plan, resource website and/or communications with the OWJ (be sure to document these communications in writing).

What is the size and location of the property (include a map of the resource)?

Who/what organization owns/manages the property?

What is the primary function (activities, features and attributes) within the meaning of Section 4(f) of the facility or property?

Please describe the location of available appurtenances and facilities (e.g. tennis courts, pools, shelter houses, sports fields, beaches) on the property:

What is the function of/or the available activities on the property?

Figure 7-2 Section 4(f) Determination of Applicability (Page 3 of 5)

Access and Usage of the property by the Public:

Relationship to other similarly used lands/facilities in the vicinity:

Are there any unusual characteristics of the property that either limit or enhance the value of the resource? If so please explain:

Describe project activities that could potentially “use” the resource:

If applicable, give a general description of the history of the Historic Site, Archaeological Site or Historic District:

Based on the above information the recommended type of documentation for this property is:

Select the appropriate documentation (i.e. No Use, Exception, de minimis approval, etc.):

Reason the selected level is appropriate:

Supporting Documentation

The following items **must** be attached to this form:

1. A map of the resource based on the guidelines in Part 2, Chapter 7 of the PD&E Manual, including the proposed alternative being evaluated.

Figure 7-2 Section 4(f) Determination of Applicability (Page 4 of 5)

2. Statement of Significance from OWJ or FDOT's presumption of significance.
3. Determination of Eligibility or Listing in the National Register of Historic Places, Archaeological Site (include criterion of eligibility) or a Historic District if applicable.

Signatures

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

Signature: _____ Date: _____
Preparer

Signature: _____ Date: _____
Environmental Manager, or designee

**OEM
Concurrence:**

Signature: _____ Date: _____
Director of OEM, or designee

Figure 7-2 Section 4(f) Determination of Applicability (Page 5 of 5)

Section 4(f) No Use Determination

Project Name:	(fillable field with wrap text)
FM#:	(fillable field with wrap text)
ETDM#:	_____
FAP#:	(fillable field)
Project Review Date:	(fillable field with calendar, date selection)
FDOT District:	(fillable field with selection of 1-7 and Turnpike)
County(ies):	(fillable field with wrap text)

Project Description including Section 4(f) Specific Information: (Fillable Field with wrap text)

Type of 4(f) Property:

- Public Parks and Recreation Areas
- Wildlife and Waterfowl Refuges
- Historic Sites

Description of Property:

Establishing Section 4(f) Use of the Property

Will the property be “used” as defined in Section 4(f) Resources chapter of the FDOT PD&E Manual? Examples of a “use” include but are not limited to acquiring right of way, new easements, and temporary occupancy?

- Yes
- No

An explanation of the relationship between the Section 4(f) property and the project:

Documentation

The following items **must** be attached to this form to ensure proper documentation of the No 4(f)

Figure 7-3 Section 4(f) No Use Determination

Use:

1. DOA package (if used)
2. All related communication with the OWJ

Signatures

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

Signature:

Date:

Preparer

Signature:

Date:

Environmental Manager, or designee

OEM Concurrence:

Signature:

Date:

Director of OEM or designee

Figure 7-3 Section 4(f) No Use Determination (Page 2 of 2)

Section 4(f) Exceptions/Exemptions Determination

Project Name:	(fillable field with wrap text)				
FM#:	(fillable field with wrap text)	ETDM#:	_____	FAP#:	(fillable field)
Project Review Date:	(fillable field with calendar, date selection)				
FDOT District:	(fillable field with selection of 1-7 and Turnpike)				
County(ies):	(fillable field with wrap text)				

Project Description including Section 4(f) Specific Information: (Fillable Field with wrap text)

Type of 4(f) Property:

- Public Parks and Recreation Areas
- Wildlife and Waterfowl Refuges
- Historic Sites

Description of Property:

Establishing Section 4(f) Exception Eligibility (from 23 CFR 774.13):

The facts of the case must match the circumstances as described below:

- Restoration, rehabilitation or maintenance of transportation facilities that are on or eligible for the National Register when:
 - (1) The Administration [FDOT] concludes, as a result of the consultation under 36 CFR 800.5, that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and
 - (2) The OWJ over the Section 4(f) resource have not objected to the FDOT conclusion.
- Archaeological sites that are on or eligible for the National Register when:
 - (1) The Administration [FDOT] concludes that the archaeological resource is important chiefly because of what can be learned by data recovery and has

Figure 7-4 Section 4(f) Exceptions/Exemptions Determination

- minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken and where the Administration [FDOT] decides, with agreement of the OWJ, not to recover the resource; and
- (2) The OWJ over the Section 4(f) resource have been consulted and have not objected to the Administration [FDOT] finding.

Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. With the exception of the treatment of archaeological resources in §774.9(e) discovered during construction, the Administration [FDOT] may permit a project to proceed without consideration under Section 4(f) if the property interest in the Section 4(f) land was acquired for transportation purposes prior to the designation or change in the determination of significance, and if an adequate effort was made to identify properties protected by Section 4(f) prior to acquisition. However, if it is reasonably foreseeable that a property would qualify as eligible for the National Register prior to the start of construction, then the property should be treated as a historic site and does not qualify for the Section 4(f) exception.

In applying this exception, the analyst must consider whether:

- (1) The property acquisition was completed prior to the designation or the change in the determination of significance.
- (2) The Cultural Resources Assessment Survey (CRAS) report was considered complete and sufficient at the time of its submittal.
- (3) The CRAS report identified the property in question as a resource that would require re-examination or that would become significant prior to construction.
- (4) The property in question is an archaeological site important primarily for the information it contains.

Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f). The following conditions must be satisfied:

- (1) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
- (2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) property are minimal;
- (3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis;
- (4) The land being used must be fully restored, i.e., the property must be returned to a condition which is at least as good as that which existed prior to the project; and

Figure 7-4 Section 4(f) Exceptions/Exemptions Determination (Page 2 of 6)

(5) There must be documented agreement of the OWJ over the Section 4(f) resource regarding the above conditions.

- Park road or parkway projects under 23 U.S.C. 204 which is the Federal Lands Access Program, providing access to transportation facilities located on or adjacent to, or provide access to Federal Lands.
- Certain trails, paths, bikeways, and sidewalks, in the following circumstances:
 - (1) Trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2);
 - (2) National Historic Trails and the Continental Divide National Scenic Trail, designated under the National Trails System Act, 16 U.S.C. 1241-1251, with the exception of those trail segments that are historic sites as defined in 23 CFR 774.17, such as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the NR. The term includes properties of traditional religious and cultural importance to an Indian tribe that are included in, or are eligible for inclusion in the NR.
 - (3) Trails, paths, bikeways, and sidewalks that occupy a transportation facility right-of-way without limitation to any specific location within that right-of-way, so long as the continuity of the trail, path, bikeway, or sidewalk is maintained; and
 - (4) Trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation unless they are historic.
- Transportation enhancement projects and mitigation activities, where:
 - (1) The use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection; and
 - (2) The OWJ over the Section 4(f) resource agrees in writing to the use described in (1) of this section.

Establishing Section 4(f) Exemption Eligibility (Refer to Chapter 7.3.4 for further information and criteria)

- Section 1303 of the FAST Act incorporates the ACHP Program Comment exemption for common post-1945 concrete and steel bridges and culverts into Section 4(f), eliminating review requirements for these structures under Section 4(f). This exemption applies to specific types of bridges and culverts built after 1945, including various forms of reinforced concrete slab bridges, reinforced concrete beam and

Figure 7-4 Section 4(f) Exceptions/Exemptions Determination (Page 3 of 6)

girder bridges, steel multi-beam bridges or multi-girder bridges, and culverts and reinforced concrete boxes (See Section V Program Comment).

□ (Section 11502 (23 U.S.C. 138(f)/49 U.S.C. 303(h)) exempts from Section 4(f) review the use of rail. The exemption to Section 4(f) applies regardless of whether the railroad or rail transit line, or element thereof, is listed in or is eligible for listing in the National Register of Historic Places.

The exemption applies to the following resource types which might otherwise be considered abandoned or not in use:

- Railroad and transit lines over which service has been discontinued under the process described in 49 U.S.C. 10903;
- Railroad and transit lines that have been railbanked (a voluntary agreement between a railroad company and a trail agency to use an out-of-service rail corridor as a trail until a railroad might need the corridor again for rail service as described in 16 U.S.C. 1247(d)); and
- Railroad and transit lines that have been otherwise reserved for the future transportation of goods or passengers.

□ 23 CFR 774.11(e)(2). The interstate highway system is exempt from being treated as a historic resource under Section 4(f), unless the U.S. Secretary of Transportation determines individual elements possess national or exceptional historic significance and should receive protection.

Interstate highway-related facilities in Florida determined historically significant by the Secretary of Transportation and therefore not exempt under Section 4(f) are:

- I-275 Bob Graham/Sunshine Skyway Bridge
- I-75 Alligator Alley- Milepost range 19.6-49.3
- I-75 Snake Wall
- I-95 Myrtle Avenue Overpass

□ (23 CFR 774.11(h)) When a property formally reserved for a future transportation facility temporarily functions for park, recreation, or wildlife and waterfowl refuge purposes in the interim, the interim activity, regardless of duration, will not subject the property to Section 4(f).

□ 23 CFR 774.11 (i) When a property is formally reserved for a future transportation facility before or at the same time a park, recreation area, or wildlife and waterfowl refuge is established and concurrent or joint planning or development of the transportation facility and the Section 4(f) resource occurs, then any resulting impacts of the transportation facility will not be considered a use as defined in §774.17. Examples of such concurrent or joint planning or development include, but are not limited to:

- Designation or donation of property for the specific purpose of such concurrent

Figure 7-4 Section 4(f) Exceptions/Exemptions Determination (Page 4 of 6)

development by the entity with jurisdiction or ownership of the property for both the potential transportation facility and the Section 4(f) property; or

- Designation, donation, planning, or development of property by two or more governmental agencies with jurisdiction for the potential transportation facility and the Section 4(f) property, in consultation with each other.

Explanation supporting the Section 4(f) property meets all of the criteria of the Exception or Exemption

Documentation

The following items **must** be attached to this checklist to ensure proper documentation of the Section 4(f) Exception:

3. DOA package (if used)
4. Required communications with the OWJ (i.e. concurrence letters) for the Exception/Exemption, as applicable

Signatures:

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

I have reviewed this evaluation and all attached documentation and confirm that the above property and proposed project meet the requirements of 23 CFR 774 for a Section 4(f) Exception or Exemption finding.

Signature: _____ Date: (_____
Preparer

I reviewed this checklist and all attached documentation and confirm that the above property and proposed project meet the requirements of 23 CFR 774 for a Section 4(f) Exception finding.

Figure 7-4 Section 4(f) Exceptions/Exemptions Determination (Page 5 of 6)

Signature: _____ Date: _____
Environmental Manager, or designee

OEM Concurrence:

Signature: _____ Date: _____
Director of OEM or designee

Figure 7-4 Section 4(f) Exceptions/Exemptions Determination (Page 6 of 6)

Section 4(f) *de minimis* Determination for Historic Sites

Project Name:	(fillable field with wrap text)
FM#:	(fillable field with wrap text)
ETDM#:	_____
FAP#:	(fillable field) _____
Project Review Date:	(fillable field with calendar, date selection) _____
FDOT District:	(fillable field with selection of 1-7 and Turnpike)
County(ies):	(fillable field with wrap text)

Project Description including Section 4(f) Specific Information: (Fillable Field with wrap text)

Description of Historic Property:

Section 4(f) Use of the Property

Yes No Will the project involve the “use” of the Section 4(f) resource (e.g., new right of way, intrusions into the historic boundaries, temporary occupancy)?

Explanation of how the Section 4(f) property will be used, including any mitigation or enhancement measures related to activities, features or attributes of the property:

Evaluating Section 4(f) *de minimis* Eligibility

1. Yes No Was there coordination with the OWJ to identify an opportunity for a *de minimis* finding identified?

2. Yes No Was the OWJ informed by the District of FDOT’s intent to pursue a *de minimis* approval option? (Attach the letter to the file)

Yes No Was the Section 106 process, including opportunity for public review and comment, completed?

Figure 7-5 Section 4(f) *de minimis* Determination for Historic Sites

3. Yes No Did the SHPO/THPO concur that the proposed project, including any enhancement, mitigation and minimization of harm measures, will result in no adverse effects to the activities features or attributes of the property?

4. Yes No Identify and describe the avoidance and minimization of harm measures (if any) incorporated into the project in order to obtain a *de minimis* finding:

5. Describe below the basis on which the *de minimis* determination was made for the Project (e.g. consideration on why there is no effects to historic properties or no adverse effects to the property in question under Section 106 of the National Historic Preservation Act).

Documentation

The following items **must** be attached to this form to ensure proper documentation of the Section 4(f) *de minimis*:

1. DOA package (if used)
2. SHPO Concurrence Letter on a finding of “no effects” to historic properties or “no adverse effect” to the historic property in question.
3. Any additional communications with the OWJ and Section 106 Consulting Parties (e.g. concurrence letters, and project commitments)

Signatures

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

Figure 7-5 Section 4(f) *de minimis* Determination for Historic Sites (Page 2 of 3)

Signature: _____ Date: _____
Preparer

Signature: _____ Date: _____
Environmental Manager, or designee

OEM Concurrence:

Signature: _____ Date: _____
Director of OEM or designee

Figure 7-5 Section 4(f) *de minimis* Determination for Historic Sites (Page 3 of 3)

Section 4(f) *de minimis* Determination for Parks, Recreational Areas and Wildlife or Waterfowl Refuges

Project Name:	(fillable field with wrap text)
FM#:	(fillable field with wrap text)
ETDM#:	_____
FAP#:	(fillable field) _____
Project Review Date:	(fillable field with calendar, date selection) _____
FDOT District:	(fillable field with selection of 1-7 and Turnpike)
County(ies):	(fillable field with wrap text)

Project Description including Section 4(f) Specific Information: (Fillable Field with wrap text)

Type of Property

Type of Property:

Description of Property:

Section 4(f) Use of the Property

Yes No Will the project involve the use of the Section 4(f) resource (e.g., new right of way, new easements, temporary occupancy)?

Explanation of how the Section 4(f) property will be used, including any mitigation or enhancement measures related to activities, features and attributes of the property:

Evaluating Section 4(f) *de minimis* Eligibility

1. Yes No Was there coordination with the Official(s) with Jurisdiction to identify an opportunity for a *de minimis* finding?

Figure 7-6 Section 4(f) *de minimis* Determination for Parks, Recreational Areas and Wildlife or Waterfowl Refuges

2. Yes No Was the OWJ informed by the District of FDOT's intent to pursue a *de minimis* approval option? (attach letter to the document)

3. Yes No Was the public provided notice and an opportunity to review and comment on the effects of the project on the activities, features and attributes of the property?

4. Yes No Was the OWJ informed in writing that their concurrence with a no adverse effect finding to the activities, features or attributes which qualify the property for protection may result in FDOT making a *de minimis* approval under Section 4(f)?

5. Yes No Did the OWJ concur that the proposed project, including any enhancement, mitigation and minimization of harm measures, will result in no adverse effects to the activities features or attributes of the property?

6. Yes No Identify and describe the avoidance and minimization of harm measures (if any) incorporated into the project to support a *de minimis* finding:

7. Describe below the basis on which the *de minimis* determination was made. (e.g., consideration on why there is no adverse effects to the property and its activities, features and attributes)

Documentation

The following items **must** be attached to this form to ensure proper documentation of the Section 4(f) *de minimis*:

Figure 7-6 Section 4(f) *de minimis* Determination for Parks, Recreational Areas and Wildlife or Waterfowl Refuges (Page 2 of 3)

1. DOA package (if used)
2. Any additional communications with the OWJ (e.g. concurrence letters)

Signatures

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

Signature: _____ Date: _____
Preparer

Signature: _____ Date: _____
Environmental Manager, or designee

OEM Concurrence:

Signature: _____ Date: _____
Director of OEM or designee

Figure 7-6 Section 4(f) *de minimis* Determination for Parks, Recreational Areas and Wildlife or Waterfowl Refuges (Page 3 of 3)

Section 4(f) Statement of Determination for Independent Bikeway or Walkway for Construction Projects

Project Name:	(fillable field with wrap text)
FM#:	(fillable field with wrap text)
ETDM#:	_____
FAP#:	(fillable field) _____
Project Review Date:	(fillable field with calendar, date selection) _____
FDOT District:	(fillable field with selection of 1-7 and Turnpike)
County(ies):	(fillable field with wrap text)

Project Description including Section 4(f) Specific Information: (Fillable Field with wrap text)

I. Description of Project Scope/ Purpose and Need Statement

Enter the projects Purpose and Need Statement and a brief description of the project scope

II. Detailed explanation of how the Section 4(f) property will be used:

III. Applicability Criteria of the Programmatic

All criteria must be met for this programmatic to apply

- Yes No The bikeway or walkway construction project is an independent construction project which requires the **use of recreation and park areas** established and maintained primarily for active recreation, open space, and similar purposes.
- Yes No The OWJ over the Section 4(f) property has given approval in writing that the project is acceptable and consistent with the designated use of the property and that all possible planning to minimize harm has been accomplished in the location and design of the bikeway or walkway facility.
- Yes No The project does not require the use of critical habitat or endangered species, or land from publicly owned wildlife or waterfowl refuge, or any land from a historic site of national, State or local significance.

Figure 7-7 Section 4(f) Statement of Determination for Independent Bikeway or Walkway for Construction Projects

- Yes No There are no unusual circumstances such as major impacts, adverse effects, or controversy.
- Yes No The bicycle or pedestrian facilities are not incidental items of construction in conjunction with highway improvements serving the primary purpose of serving motor vehicular traffic.
- Yes No The project does not include the displacement of homes or businesses.
- Yes No Public agency is responsible for the maintenance of the bikeway/walkway.
-

IV. Identify additional Section 4(f) properties in the project area

Are there any additional Section 4(f) properties in the project area? Yes No

<List additional Section 4(f) properties here>

Comments: <Enter comments on additional Section 4(f) properties including any “uses”>

V. Measures to Minimize Harm

Indicate all that apply, but a minimum of one MUST be selected.

- The proposed action includes all possible planning to minimize harm
- The proposed action includes all possible mitigation measures
-

VI. Documentation

The following MUST be attached to this checklist to ensure proper documentation of the Individual Bikeway and Walkway Programmatic Section 4(f):

1. Brief project description
 2. A detailed map of the Section 4(f) property including:
 - a. Current and proposed ROW
 - b. Property Boundaries
 - c. Access points for pedestrians and vehicles
 - d. Existing and planned facilities
 3. Concurrence letter from OWJ
-

VII. Summary and Approval

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to

Figure 7-7 Section 4(f) Statement of Determination for Independent Bikeway or Walkway for Construction Projects (Page 2 of 3)

23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

The proposed project meets all the applicability criteria set forth by the Federal Highway Administration's (FHWA) Guidance for Programmatic Evaluation for **Section 4(f)** Statement and Determination for Independent Bikeway and Walkway Construction Projects; and

The project includes all possible planning to minimize harm. FDOT will include the measures to minimize harm as environmental commitments as part of the NEPA Document for the proposed project.

VIII. Approval Signatures

District: I have reviewed this form and all attached documentation and confirm that the proposed project meets the requirements of 23 CFR 774 for an Independent Bikeway and Walkway Construction Project Programmatic Section 4(f) finding.

Signature: _____ Date: _____
Preparer

Signature: _____ Date: _____
Environmental Manager, or designee

OEM Concurrence: Based upon the above considerations, this Independent Bikeway and Walkway Construction Project Programmatic Section 4(f) satisfies the requirements of 23 CFR 774.

Signature: _____ Date: _____
Director of OEM or designee

Figure 7-7 Section 4(f) Statement of Determination for Independent Bikeway or Walkway for Construction Projects (Page 3 of 3)

Programmatic Section 4(f) Evaluation and Approval for FDOT Projects that Necessitate the Use of Historic Bridges

Project Name:	(fillable field with wrap text)
FM#:	(fillable field with wrap text)
ETDM#:	_____
FAP#:	(fillable field) _____
Project Review Date:	(fillable field with calendar, date selection) _____
FDOT District:	(fillable field with selection of 1-7 and Turnpike)
County(ies):	(fillable field with wrap text)

Project Description including Section 4(f) Specific Information: (Fillable Field with wrap text)

I. Description of Project Scope/ Purpose and Need Statement

Enter the projects Purpose and Need Statement and a brief description of the project scope

II. Detailed explanation of how the Section 4(f) property will be used:

III. Applicability Criteria of the Programmatic

All criteria must be met for this programmatic to apply.

- Yes No The bridge will be replaced or rehabilitated with Federal Funds.
- Yes No The project will require the “use” of a historic bridge which is on or eligible for listing in the National Register of Historic Places (NRHP).
- Yes No The bridge is NOT a National Historic Landmark (NHL)

IV. Identify additional Section 4(f) properties in the project area

Are there any additional Section 4(f) properties in the project area? Yes No

<List additional Section 4(f) properties here>

Figure 7-8 Programmatic Section 4(f) Evaluation and Approval for FDOT Projects that Necessitate the Use of Historic Bridges

Comments: <Enter comments on additional Section 4(f) properties>

Yes No Are impacts to other protected Section 4(f) resources greater than *de minimis*?

Explain: <Explain greater than *de minimis* Section 4(f) involvements here>

V. Alternatives Considered/Findings

No Build Alternative *(Check all that apply)*

Structural Deficiencies

The No Build Alternative does not correct the situation that causes the bridge to be considered structurally deficient or significantly deteriorated. These deficiencies can lead to eventual structural failure/collapse. Normal maintenance is not considered adequate to address these deficiencies.

Functional/Geometric Deficiencies

The No Build Alternative does not correct the situation that causes the bridge to be considered functionally/geometrically deficient. These deficiencies can lead to safety hazards to the traveling public or place unacceptable restrictions on transport and travel.

Justification *(Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards)*

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

Alternative: Build on New Location (parallel construction/conversion to one-way pair)

Structural Deficiencies

The New Location alternative does not correct the situation that causes the bridge to be considered structurally deficient or significantly deteriorated. These deficiencies can lead to eventual structural failure/collapse. Normal maintenance is not considered adequate to address these deficiencies.

Functional/Geometric Deficiencies

The New Location alternative does not correct the situation that causes the bridge to be

Figure 7-8 Programmatic Section 4(f) Evaluation and Approval for FDOT Projects that Necessitate the Use of Historic Bridges (Page 2 of 6)

considered functionally/geometrically deficient. These deficiencies can lead to safety hazards to the traveling public or place unacceptable restrictions on transport and travel.

- Justification** (*Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards*)

<Enter Justification Summary here>

- Recommendation (Mandatory)**

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

Alternative: Rehabilitation of Historic Bridge without Affecting the Integrity of the Bridge

- Structural Deficiencies**

The Rehabilitation alternative does not correct the situation that causes the bridge to be considered structurally deficient or significantly deteriorated. These deficiencies can lead to eventual structural failure/collapse. Normal maintenance is not considered adequate to address these deficiencies.

- Functional/Geometric Deficiencies**

The Rehabilitation alternative does not correct the situation that causes the bridge to be considered functionally/geometrically deficient. These deficiencies can lead to safety hazards to the traveling public or place unacceptable restrictions on transport and travel.

- Justification** (*Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards*)

<Enter Justification Summary here>

- Recommendation (Mandatory)**

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

Alternative: Replacement

- Structural Deficiencies**

The Replacement alternative corrects the situation that causes the bridge to be considered

Figure 7-8 Programmatic Section 4(f) Evaluation and Approval for FDOT Projects that Necessitate the Use of Historic Bridges (Page 3 of 6)

structurally deficient or significantly deteriorated.

Functional/Geometric Deficiencies

The Replacement alternative corrects the situation that causes the bridge to be considered functionally/geometrically deficient

Justification (*Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards*)

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined to meet the Section 4(f) prudent and feasible standard and **is recommended.**

VI. Measures to Minimize Harm

Verify that the project includes all possible planning to minimize harm.

- For bridges that are to be rehabilitated, the historic integrity of the bridge is preserved, to the greatest extent possible, consistent with unavoidable transportation needs, safety, and load requirements;
- For bridges that are to be rehabilitated to the point that the historic integrity is affected or that are to be moved or demolished, the FDOT ensures that, in accordance with the Historic American Engineering Record (HAER) standards, or other suitable means developed through consultation, fully adequate records are made of the bridge;
- For bridges that are to be replaced, the existing bridge is made available for an alternative use, provided a responsible party agrees to maintain and preserve the bridge; and
- For bridges that are adversely affected, agreement among the SHPO, ACHP (if participating) and FDOT is reached through the Section 106 process of the NHPA on measures to minimize harm and those measures are incorporated into the project. This programmatic Section 4(f) evaluation does not apply to projects where such an agreement cannot be reached.

VII. Mitigation Commitment

Describe and attach the mitigation agreed to in consultation with SHPO and other consulting parties.

<Describe mitigation (see Section 106 Memorandum of Agreement)>

Figure 7-8 Programmatic Section 4(f) Evaluation and Approval for FDOT Projects that Necessitate the Use of Historic Bridges (Page 4 of 6)

VIII. Documentation

The following MUST be attached to this checklist to ensure proper documentation of the Historic Bridge Programmatic Section 4(f):

1. Brief project description
2. Eligibility Determination of Historic Bridge
3. Historic Bridge Report
4. A detailed map of the Section 4(f) property including:
 - a. Current and proposed ROW
 - b. Property Boundaries
5. Photographs of the bridge detailing conditions cited in alternatives analysis
6. Executed Memorandum of Agreement resolving adverse effects or signed concurrence letter from the Florida SHPO
7. Any letters with consulting parties
8. Detour Map (as needed)

IX. Summary and Approval

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

The proposed project meets all the applicable criteria set forth in the Programmatic Section 4(f) Evaluation and Approval requirements for FHWA funded projects which necessitate the use of Historic Bridges (see [Section 4\(f\) Reference Resources Page](#)). All alternatives set forth in the subject programmatic were fully evaluated and the findings made are clearly applicable to this project. There are no feasible and prudent alternatives to the use of the historic bridge; and

The project includes all possible planning to minimize harm to the historic property. FDOT will include the measures to minimize harm as environmental commitments as part of the NEPA Document for the proposed project.

X. Approval Signatures

District: I have reviewed this evaluation and all attached documentation and confirm that the proposed project meets the requirements of 23 CFR 774 for a Historic Bridge Programmatic Section 4(f) finding.

Signature: _____ Date: _____
Preparer

Figure 7-8 Programmatic Section 4(f) Evaluation and Approval for FDOT Projects that Necessitate the Use of Historic Bridges (Page 5 of 6)

Signature: _____ Date: _____
Environmental Manager, or designee

OEM Concurrence: Based upon the above considerations, this a Use of Historic Bridge Programmatic Section 4(f) satisfies the requirements of 23 CFR 774.

Signature: _____ Date: _____
Director of OEM or designee

Figure 7-8 Programmatic Section 4(f) Evaluation and Approval for FDOT Projects that Necessitate the Use of Historic Bridges (Page 6 of 6)

FLORIDA DEPARTMENT OF TRANSPORTATION

Environmental
Management

Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites

Project Name:	(fillable field with wrap text)
FM#:	(fillable field with wrap text)
ETDM#:	_____
FAP#:	(fillable field)
Project Review Date:	(fillable field with calendar, date selection)
FDOT District:	(fillable field with selection of 1-7 and Turnpike)
County(ies):	(fillable field with wrap text)

Project Description including Section 4(f) Specific Information: (Fillable Field with wrap text)

I. Description of Project Scope/ Purpose and Need Statement

Enter the projects Purpose and Need Statement and a brief description of the project scope

II. Detailed explanation of how the Section 4(f) property will be used:

III. Applicability Criteria of the Programmatic

All criteria must be met for this programmatic to apply

- Yes No Does the proposed transportation project improve the operational characteristics, safety, and/or physical condition of existing highway facilities on essentially the same alignment.
- Yes No The historic site involved is located adjacent to the existing highway
- Yes No The project does not require the removal or alteration of historic buildings, structures or objects on the historic site.
- Yes No The project does not require the disturbance or removal of archaeological resources that are important to preserve in place rather than to remove for archeological research.

Figure 7-9 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites

- Yes No The impact on the Section 4(f) site resulting from the use of the land must be considered minor (“no effect” or “no adverse effect”) on the qualities which qualify the site for listing or eligibility in the National Register of Historic Places (NRHP).
- Yes No The SHPO agrees in writing with the assessment of impacts of the proposed project on and the proposed mitigation for the historic sites.
- Yes No The proposed class of action for the project is a CE or EA.

IV. Identify additional Section 4(f) properties in the project area

Are there any additional Section 4(f) properties in the project area? Yes No

<List additional Section 4(f) properties here>

Comments: <Enter comments on additional Section 4(f) properties including any “uses”>

V. Alternatives Considered/Findings

No Build: The No Build Alternative is not feasible and prudent because (*Verify that the following applies*):

- It would not correct existing or projected capacity deficiencies
- It would not correct existing safety hazards
- It would not correct existing or deteriorated conditions and maintenance problems
- Not providing such correction would constitute a cost or community impact of extraordinary magnitude, or would result in truly unusual problems when compared with the proposed use of the Section 4(f) lands.

Justification (*Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards*)

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

Figure 7-9 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites (Page 2 of 5)

Improvement without Using Adjacent Section 4(f) Lands: It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management because implementing such measures would result in *(Indicate all that apply)*:

- Substantial adverse community impacts to adjacent homes, businesses or other improved properties
- Substantially increased engineering, roadway or structure cost
- Unique engineering, traffic, maintenance, or safety problems
- Substantial adverse social, economic, or environmental impacts
- The project not meeting identified transportation needs
- 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.

Justification *(Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards)*

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

Alternative on New Location: It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because *(Indicate all that apply)*:

- The new location would not address or correct the problems cited as the NEPA purpose and need, which necessitated the proposed project.
- The new location would result in substantial adverse social, economic, or environmental impacts.
- The new location would substantially increase costs or engineering difficulties.
- 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.

Justification *(Summary describing constraints posed by terrain; adverse social, economic*

Figure 7-9 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites (Page 3 of 5)

or environmental effects, engineering and economic considerations, and preservation standards)

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

VI. Measures to Minimize Harm

Indicate all that apply, but a minimum of one MUST be selected.

- The proposed action includes all possible planning to minimize harm
- The proposed action includes all possible mitigation measures

VII. Mitigation Commitment

Describe and attach the mitigation agreed to in consultation with the OWJ (if applicable).

<describe details of mitigation agreement>

VIII. Documentation

The following MUST be attached to this checklist to ensure proper documentation of the Minor Involvement of Historic Sites Programmatic Section 4(f):

1. Brief project description
2. A detailed map of the Section 4(f) property including:
 - a. Current and proposed ROW
 - b. Property Boundaries
3. Concurrence letter from OWJ and other agencies as needed

IX. Summary and Approval

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

The proposed project meets all the applicability criteria set forth by the Federal Highway Administration's (FHWA) Guidance for Minor Involvements to Historic Sites Programmatic Section 4(f) Evaluation. All alternatives set forth in the subject programmatic were fully

Figure 7-9 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites (Page 4 of 5)

evaluated and the findings made clearly applicable to this project. There are **no feasible and prudent alternatives** to the use of the historic site; and

The project includes all possible planning to minimize harm to the historic site. FDOT will include the measures to minimize harm as environmental commitments as part of the NEPA Document for the proposed project.

X. Approval Signatures

District: I have reviewed this evaluation and all attached documentation and confirm that the proposed project meets the requirements of 23 CFR 774 for a Minor Involvement with Historic Sites Programmatic Section 4(f) finding.

Signature: _____ Date: _____
Preparer

Signature: _____ Date: _____
Environmental Manager, or designee

OEM Concurrence: Based upon the above considerations, this a Minor Involvement with Historic Sites Programmatic Section 4(f) satisfies the requirements of 23 CFR 774.

Signature: _____ Date: _____
Director of OEM or designee

Figure 7-9 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites (Page 5 of 5)

Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges

Project Name:	(fillable field with wrap text)
FM#:	(fillable field with wrap text)
ETDM#:	_____
FAP#:	(fillable field)
Project Review Date:	(fillable field with calendar, date selection)
FDOT District:	(fillable field with selection of 1-7 and Turnpike)
County(ies):	(fillable field with wrap text)

Project Description including Section 4(f) Specific Information: (Fillable Field with wrap text)

I. Description of Project Scope/ Purpose and Need Statement

Enter the projects Purpose and Need Statement and a brief description of the project scope

II. Detailed explanation of how the Section 4(f) property will be used:

III. Applicability Criteria of the Programmatic

All criteria must be met for this programmatic to apply

- Yes No Does the proposed transportation project improve the operational characteristics, safety, and/or physical condition of existing highway facilities on essentially the same alignment.
- Yes No The Section 4(f) lands are publicly owned public parks, recreation lands, or wildlife and waterfowl refuges located adjacent to the existing highway.
- Yes No The amount and location of the land to be used will not impair the use of the remaining Section 4(f) land, in whole or in part for its intended purpose. *(Is determined by FDOT and concurred with by the OWJ)*

Figure 7-10 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges

Yes No The total amount of land to be acquired from the resource will not exceed the values below:

Size of Section 4(f) Property	Limit of Acreage Acquired
< 10 acres	10 percent of site
10-100 acres	1 acre
> 100 acres	1 percent of site

Yes No 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. *(Is determined by FDOT and concurred with by the OWJ)*

Yes No The OWJ over the Section 4(f) lands has agreed, in writing, with the assessment of the impacts of the proposed project on, and the proposed mitigation for, the Section 4(f) lands.

Yes No Land from a site purchased or improved with funds under the LWCF 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 has ascertained 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)*

Yes No The proposed class of action for the project is a CE or EA.

IV. Identify additional Section 4(f) properties in the project area

Are there any additional Section 4(f) properties in the project area? Yes No

<List additional Section 4(f) properties here>

Comments: <Enter comments on additional Section 4(f) properties including any "uses">

V. Alternatives Considered/Findings

No Build: The No Build Alternative is not feasible and prudent because *(Verify that the following applies)*:

- It would not correct existing or projected capacity deficiencies
- It would not correct existing safety hazards
- It would not correct existing or deteriorated conditions and maintenance problems

Figure 7-10 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges (Page 2 of 6)

Not providing such correction would constitute a cost or community impact of extraordinary magnitude, or would result in truly unusual problems when compared with the proposed use of the Section 4(f) lands.

Justification (*Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards*)

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

Improvement without Using Adjacent Section 4(f) Lands: It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management because implementing such measures would result in (*Indicate all that apply*):

Substantial adverse community impacts to adjacent homes, businesses or other improved properties

Substantially increased engineering, roadway or structure cost

Unique engineering, traffic, maintenance, or safety problems

Substantial adverse social, economic, or environmental impacts

The project not meeting identified transportation needs

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.

Justification (*Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards*)

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

Figure 7-10 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges (Page 3 of 6)

Alternative on New Location: It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because *(Indicate all that apply)*:

- The new location would not address or correct the problems cited as the NEPA purpose and need, which necessitated the proposed project
- The new location would result in substantial adverse social, economic, or environmental impacts.
- The new location would substantially increase costs or engineering difficulties
- 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.

- Justification** *(Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards)*

<Enter Justification Summary here>
- Recommendation (Mandatory)**

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

VI. Measures to Minimize Harm

Indicate all that apply, but a minimum of one MUST be selected.

- Replacement of lands used with lands of reasonably equivalent usefulness and location and of at least comparable value.
- Replacement of facilities impacted by the project including sidewalks, paths, benches, lights, trees, and other facilities.
- Restoration and landscaping of disturbed areas.
- Incorporation of design features (e.g., reduction in right-of-way width, modifications to the roadway section, retaining walls, curb and gutter sections, and minor alignment shifts); and habitat features (e.g., construction of new, or enhancement of existing, wetlands or other special habitat types); where necessary to reduce or minimize impacts to the Section 4(f) property. Such features should be designed in a manner that will not adversely affect the safety of the highway facility.
- Payment of the fair market value of the land and improvements taken or improvements to

Figure 7-10 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges (Page 4 of 6)

the remaining Section 4(f) site equal to the fair market value of the land and improvements taken.

- Such additional or alternative mitigation measures as may be determined necessary based on consultation with, the officials having jurisdiction over the parkland, recreation area, or wildlife or waterfowl refuge.

VII. Mitigation Commitment

Describe and attach the mitigation agreed to in consultation with the OWJ (if applicable).

<describe details of mitigation agreement>

VIII. Documentation

The following MUST be attached to this checklist to ensure proper documentation of the Net Benefit Programmatic Section 4(f):

1. Brief project description
2. A detailed map of the Section 4(f) property including:
 - a. Current and proposed ROW
 - b. Property Boundaries
 - c. Access points for pedestrians and vehicles
 - d. Existing and planned facilities
3. Concurrence letter from OWJ and other agencies as needed

IX. Summary and Approval

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

The proposed project meets all the applicability criteria set forth by the Federal Highway Administration's (FHWA) Guidance for Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges to a Section 4(f) property. All alternatives set forth in the subject programmatic were fully evaluated and the findings made clearly applicable to this project. There are **no feasible and prudent alternatives** to the use or take from the public park, recreation area or wildlife/waterfowl refuge; and

The project includes all possible planning to minimize harm. FDOT will include the measures to minimize harm as environmental commitments as part of the NEPA Document for the proposed project.

Figure 7-10 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges (Page 5 of 6)

X. Approval Signatures

District: I reviewed this evaluation and all attached documentation and confirm that the proposed project meets the requirements of 23 CFR 774 for a Minor Involvement with Public Parks, Recreation Areas or Wildlife or Waterfowl Refuges Programmatic Section 4(f) finding.

Signature: _____ Date: _____
Preparer

Signature: _____ Date: _____
Environmental Manager, or designee

OEM Concurrence: Based upon the above considerations, this Minor Involvement with Public Parks, Recreation Areas or Wildlife or Waterfowl Refuges Programmatic Section 4(f) satisfies the requirements of 23 CFR 774.

Signature: _____ Date: _____
Director of OEM or designee

Figure 7-10 Section 4(f) Programmatic Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges (Page 6 of 6)

Section 4(f) Net Benefit Programmatic for Historic Sites

Project Name:	(fillable field with wrap text)
FM#:	(fillable field with wrap text)
ETDM#:	_____
FAP#:	(fillable field) _____
Project Review Date:	(fillable field with calendar, date selection) _____
FDOT District:	(fillable field with selection of 1-7 and Turnpike)
County(ies):	(fillable field with wrap text)

Project Description including Section 4(f) Specific Information: (Fillable Field with wrap text)

Size of Section 4(f) Property: <Enter # of acres> acres or approximate size if in Historic District

Is the property (Check all that apply):

- Individually Significant
- A Contributing Resource to a Significant Historic District

ROW Required: <Enter # of acres> acres

Easement Required: <Enter # of acres> acres

Incorporation of a Section 4(f) property into a transportation project: <describe>

Describe the Section 4(f) impact: <Describe the impact to the property>

Describe the mitigation and/or enhancement measures which result in an overall benefit to the property: <Describe the mitigation or enhancement measures>

I. Description of Project Scope/ Purpose and Need Statement

Enter the projects Purpose and Need Statement and a brief description of the project scope

Figure 7-11 Section 4(f) Net Benefit Programmatic for Historic Sites

II. Detailed explanation of how the Section 4(f) property will be used:

Applicability Criteria of the Programmatic

All criteria must be met for this programmatic to apply

- Yes No Does the proposed transportation project use a Section 4(f) historic site?
- Yes No Does the proposed project include all appropriate measures to minimize harm and subsequent mitigation necessary to preserve and enhance those features and values of the property that originally qualified the property for Section 4(f) protection?
- Yes No The project does not require major alteration of characteristics that qualify the property for listing under the National Register of Historic Places (NHPR) in consultation consistent with 23 CFR Part 800.
- Yes No Has State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) agreed in writing with the assessment of the impacts; the proposed measures to minimize harm; and the mitigation necessary to preserve, rehabilitate and enhance those features and values of the Section 4(f) property pursuant to Section 106 of the National Historic Preservation Act (NHPA); and that such measures will result in a net benefit to the Section 4(f) property?

III. Identify additional Section 4(f) properties in the project area

Are there any additional Section 4(f) properties in the project area? Yes No

<List additional Section 4(f) properties here>

Comments: <Enter comments on additional Section 4(f) properties including any "uses">

IV. Alternatives Considered/Findings

No Build: The No Build Alternative is not feasible and prudent because *(Verify that the following applies)*:

- The No Build Alternative is not feasible and prudent because it would neither address nor correct the transportation need cited as the NEPA purpose and need, which necessitated the proposed project.
- Justification** *(Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards)*

Figure 7-11 Section 4(f) Net Benefit Programmatic for Historic Sites (Page 2 of 6)

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

Improvement without Using Adjacent Section 4(f) Lands: It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management because implementing such measures would result in *(Indicate all that apply)*:

- Substantial adverse community impacts to adjacent homes, businesses or other improved properties
- Substantially increased roadway or structure cost
- Unique engineering, traffic, maintenance, or safety problems
- Substantial adverse social, economic, or environmental impacts
- A substantial missed opportunity to benefit a Section 4(f) property
- The project not meeting identified transportation needs
- 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.

Justification *(Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards)*

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

Alternative on New Location: It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because *(Indicate all that apply)*:

- The new location would not address or correct the problems cited as the NEPA purpose and need, which necessitated the proposed project
- The new location would result in substantial adverse social, economic, or environmental impacts.

Figure 7-11 Section 4(f) Net Benefit Programmatic for Historic Sites (Page 3 of 6)

- The new location would substantially increase costs or engineering
- 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.

Justification (*Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards*)

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

V. Net Benefit Justification

<Enter Justification of Net Benefit finding>

Measures to Minimize Harm

Indicate all that apply, but a minimum of one MUST be selected.

- The proposed action includes all possible planning to minimize harm
- The proposed action includes all possible mitigation measures

VI. Public Involvement

Public involvement to present the proposed use of the Section 4(f) property has been conducted. Public involvement requirements were fulfilled on: [Click here to enter a date.](#)

VII. Mitigation Commitment

Describe and attach the mitigation agreed to in consultation with the OWJ (if applicable).

<describe details of mitigation>

VIII. Documentation

The following MUST be attached to this checklist to ensure proper documentation of the Net Benefit Programmatic Section 4(f):

1. Brief project description

Figure 7-11 Section 4(f) Net Benefit Programmatic for Historic Sites (Page 4 of 6)

2. Detailed Description of Property Conditions
3. A detailed map of the Section 4(f) property including:
 - a. Current and proposed ROW
 - b. Property Boundaries
4. Concurrence letter from OWJ including Net Benefit

IX. Summary and Approval

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

The proposed project meets all the applicability criteria set forth by the Federal Highway Administration's (FHWA) Guidance for Programmatic Evaluation for Transportation Projects that have a Net Benefit to a Section 4(f) property. All alternatives set forth in the subject programmatic were fully evaluated and the findings made clearly applicable to this project. There are **no feasible and prudent alternatives** to the use or take from the historic site.

The project includes all possible planning to minimize harm. FDOT will include the measures to minimize harm as environmental commitments as part of the NEPA Document for the proposed project.

X. Approval Signatures

District: I have reviewed this evaluation and all attached documentation and confirm that the proposed project meets the requirements of 23 CFR 774 for a Net Benefit Programmatic Section 4(f) finding.

Signature: _____ Date: _____
Preparer

Signature: _____ Date: _____
Environmental Manager, or designee

OEM Concurrence: Based upon the above considerations, this Net Benefit Programmatic Section 4(f) satisfies the requirements of 23 CFR 774.

Figure 7-11 Section 4(f) Net Benefit Programmatic for Historic Sites (Page 5 of 6)

Signature: _____ Date: _____
Director of OEM or designee

Figure 7-11 Section 4(f) Net Benefit Programmatic for Historic Sites (Page 6 of 6)

Section 4(f) Net Benefit Programmatic for Public Parks, Recreation Lands and, Wildlife & Waterfowl Refuges

Project Name:	(fillable field with wrap text)
FM#:	(fillable field with wrap text)
ETDM#:	_____
FAP#:	(fillable field) _____
Project Review Date:	(fillable field with calendar, date selection) _____
FDOT District:	(fillable field with selection of 1-7 and Turnpike)
County(ies):	(fillable field with wrap text)

Project Description including Section 4(f) Specific Information: (Fillable Field with wrap text)

Size of Section 4(f) Property: <Enter # of acres> acres

ROW Required: <Enter # of acres> acres

Easement Required: <Enter # of acres> acres

Describe the Section 4(f) impact

<Describe the impact to the property>

I. Description of Project Scope/ Purpose and Need Statement

Enter the projects Purpose and Need Statement and a brief description of the project scope

II. Detailed explanation of how the Section 4(f) property will be used:

III. Applicability Criteria of the Programmatic

All criteria must be met for this programmatic to apply.

**Figure 7-12 Section 4(f) Net Benefit Programmatic for Public Parks, Recreation
Lands and, Wildlife and Waterfowl Refuge**

- Yes No Does the proposed transportation project use a Section 4(f) park, recreation area, wildlife or waterfowl refuge?
- Yes No Does the proposed project include all appropriate measures to minimize harm and subsequent mitigation necessary to preserve and enhance those features and values of the property that originally qualified the property for Section 4(f) protection?
- Yes No Has the official(s) with jurisdiction (OWJ) over the Section 4(f) property agreed in writing
- with the assessment of the impacts; the proposed measures to minimize harm; and the
- mitigation necessary to preserve, rehabilitate and enhance those features and values of
- the Section 4(f) property; and that such measures will result in a net benefit to the Section 4(f) property?

IV. Identify additional Section 4(f) properties in the project area

Are there any additional Section 4(f) properties in the project area? Yes No

<List additional Section 4(f) properties here>

Comments: <Enter comments on additional Section 4(f) properties including any "uses">

V. Alternatives Considered/Findings

No Action or No Build Alternative (*Check all that apply*)

Yes No This alternative is not feasible and prudent because it would neither address nor correct the transportation need cited as the NEPA purpose and need, which necessitated the proposed project.

Justification (*Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards*)

<Enter Justification Summary here>

Figure 7-12 Section 4(f) Net Benefit Programmatic for Public Parks, Recreation Lands and, Wildlife and Waterfowl Refuge (Page 2 of 6)

Recommendation (Mandatory)

This alternative is determined **<to fail/to meet>** the Section 4(f) prudent and feasible standard and **<is/ is not>** recommended.

Improvement without Using Adjacent Section 4(f) Lands: It is not feasible and prudent to avoid Section 4(f) lands by roadway design or transportation system management because implementing such measures would result in *(Indicate all that apply)*:

- Substantial adverse community impacts to adjacent homes, businesses or other improved properties
- Substantially increased roadway or structure cost
- Unique engineering, traffic maintenance, or safety problems
- Substantial adverse social, economic, or environmental impacts
- A substantial missed opportunity to benefit a Section 4(f) property
- The project not meeting identified transportation needs
- 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.

Justification *(Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards)*

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined **<to fail/to meet>** the Section 4(f) prudent and feasible standard and **<is/ is not>** recommended.

Alternative on New Location: It is not feasible and prudent to avoid Section 4(f) lands by constructing on new alignment because *(Indicate all that apply)*:

- The new location would not address or correct the problems cited as the NEPA purpose and need, which necessitated the proposed project
- The new location would result in substantial adverse social, economic, or environmental impacts.
- The new location would substantially increase costs or engineering

Figure 7-12 Section 4(f) Net Benefit Programmatic for Public Parks, Recreation Lands and, Wildlife and Waterfowl Refuge (Page 3 of 6)

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.

Justification (*Summary describing constraints posed by terrain; adverse social, economic or environmental effects, engineering and economic considerations, and preservation standards*)

<Enter Justification Summary here>

Recommendation (Mandatory)

This alternative is determined <to fail/to meet> the Section 4(f) prudent and feasible standard and <is/ is not> recommended.

VI. Net Benefit Justification

<Enter Justification for a Net Benefit finding here>

VII. Measures to Minimize Harm

Indicate all that apply, but a minimum of one MUST be selected.

- The proposed action includes all possible planning to minimize harm
- The proposed action includes all possible mitigation measures

VIII. Public Involvement

Public involvement to present the proposed “use” of the Section 4(f) property has been conducted. Public involvement requirements were fulfilled on:

IX. Mitigation Commitment

Describe and attach the mitigation agreed to in consultation with the OWJ (if applicable).

<describe details of mitigation agreement>

X. Documentation

The following MUST be attached to this checklist to ensure proper documentation of the Net Benefit Programmatic Section 4(f):

Figure 7-12 Section 4(f) Net Benefit Programmatic for Public Parks, Recreation Lands and, Wildlife and Waterfowl Refuge (Page 4 of 6)

1. Brief project description
2. A detailed map of the Section 4(f) property including:
 - a. Current and proposed ROW
 - b. Property Boundaries
 - c. Access points for pedestrians and vehicles
 - d. Existing and planned facilities
3. Concurrence letter from OWJ including Net Benefit

XI. Summary and Approval

The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being, or have been, carried out by FDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 14, 2016, and executed by FHWA and FDOT.

The proposed project meets all the applicability criteria set forth by the Federal Highway Administration's (FHWA) Guidance for Programmatic Evaluation for Transportation Projects that have a Net Benefit to a Section 4(f) property. All alternatives set forth in the subject programmatic were fully evaluated and the findings made clearly applicable to this project. There are **no feasible and prudent alternatives** to the use or take from the <enter the name and/or address of the Section 4(f) resource>.

The project includes all possible planning to minimize harm. FDOT will include the measures to minimize harm as environmental commitments as part of the NEPA Document for the proposed project.

XII. Approval Signatures

District: I have reviewed this evaluation and all attached documentation and confirm that the proposed project meets the requirements of 23 CFR 774 for a Net Benefit Programmatic Section 4(f) finding.

Signature: _____ Date: _____
Preparer

Signature: _____ Date: _____
Environmental Manager, or designee

Figure 7-12 Section 4(f) Net Benefit Programmatic for Public Parks, Recreation Lands and, Wildlife and Waterfowl Refuge (Page 5 of 6)

OEM Concurrence: Based upon the above considerations, this Net Benefit Programmatic Section 4(f) satisfies the requirements of 23 CFR 774.

Signature: _____ Date: _____
Director of OEM or designee

Figure 7-12 Section 4(f) Net Benefit Programmatic for Public Parks, Recreation Lands and, Wildlife and Waterfowl Refuge (Page 6 of 6)