

Successes In Stewardship

September 2012

FHWA Updates Section 4(f) Policy Paper

Section 4(f) of the U.S. Department of Transportation (U.S. DOT) Act of 1966 mandated that Departmental Agencies avoid using and minimize harm to significant publicly owned park and recreational lands, wildlife and waterfowl refuges, and publicly or privately owned historic sites in the development of transportation projects. Section 4(f)'s requirements and associated processes are complex and implementation can be difficult. The Federal Highway Administration (FHWA) originally issued a Section 4(f) Policy Paper in 1987 to assist FHWA staff, State Departments of Transportation (DOTs), and others in complying with the requirements of Section 4(f) in an efficient and consistent manner, while minimizing harm to those properties. FHWA revised and reissued the Section 4(f) Policy Paper in 1989 and again in 2005. On July 20, 2012, FHWA published a completely revised and updated version of the [Section 4\(f\) Policy Paper](#) to reflect the statutory and regulatory changes that the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) mandated.

SAFETEA-LU Changes to Section 4(f)

In 2005, SAFETEA-LU established a simplified process for projects that have only *de minimis* impacts (those with no adverse effects) on property protected by Section 4(f). SAFETEA-LU also required the U.S. DOT to issue regulations that clarified the factors to consider and standards to apply when determining whether a "feasible and prudent" alternative exists to using Section 4(f) property. In 2008, FHWA and the Federal Transit Administration issued the [Section 4\(f\) Final Rule](#), which revised the Section 4(f) regulations to reflect the SAFETEA-LU statutory provisions. The new Section 4(f) regulations, 23 Code of Federal Regulations (CFR) 774, clarified the "feasible and prudent" standard, implemented a new procedure for making *de minimis* impact determinations, and updated the regulatory standards for choosing among project alternatives that all use Section 4(f) property. For an overview of the Section 4(f) Final Rule, see the [March 2008](#) issue of *Successes in Stewardship*.

Following the issuance of the 2008 Final Rule, FHWA began updating the Section 4(f) Policy Paper. In early 2012, FHWA published a draft Section 4(f) Policy Paper in the Federal Register. A number of stakeholders provided comments, including transportation agencies, Tribes, and trade associations. After carefully reviewing and considering all comments, FHWA published the final updated Section 4(f) Policy Paper in July 2012.

The Updated Section 4(f) Policy Paper

FHWA designed the Section 4(f) Policy Paper to assist U.S. DOT personnel with administering Section 4(f) regulations and to ensure consistency from State to State. The Section 4(f) Policy Paper is also intended to help State DOTs and other project sponsors plan transportation projects that minimize harm to Section 4(f) properties. The updated Section 4(f) Policy Paper consists of two parts outlined below.



Under Section 4(f) requirements, historic sites, such as the Dalton House in Newburyport, Massachusetts, cannot be used for an FHWA project unless there is no prudent and feasible alternative. (Courtesy of FHWA)

Part I

Part I of the Section 4(f) Policy Paper provides an overview of the Section 4(f) regulations, including the roles and responsibilities of the parties involved, a description of the analysis and process required for compliance, and a discussion of recommended documentation practices in various situations. This part addresses many of the changes made by SAFETEA-LU and the 2008 Section 4(f) regulations, including:

De Minimis Impact Determinations

A *de minimis* impact is one that, after taking avoidance, minimization, mitigation, and enhancement measures into account, results in no adverse effect on the protected resource. If FHWA determines that the use of Section 4(f) property will have a *de minimis* impact, an analysis of avoidance alternatives is not required. The updated Section 4(f) Policy Paper discusses the Agency coordination and public involvement requirements for projects that could potentially impact parks and recreation areas, wildlife and waterfowl refuges, and historic sites. It also includes information on how to document the *de minimis* impact determination.

Feasible and Prudent Avoidance Alternatives

Section 4(f) stipulates that FHWA cannot approve the use of land from a significant publicly owned park, recreation area, wildlife or waterfowl refuge, or any significant historic site unless there is no "feasible and prudent" alternative to the use of land. The 2008 Section 4(f) regulations define a "feasible and prudent" avoidance alternative as one that "avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweigh the importance of protecting the Section 4(f) property." The definition emphasizes that the use of Section 4(f) property should be balanced against competing factors, such as safety, social, and economic impacts. The updated Section 4(f) Policy Paper provides detailed guidance on how to identify, develop, evaluate, eliminate, and document potential "feasible and prudent" avoidance alternatives.

Alternative with Least Overall Harm

In situations where multiple project alternatives use Section 4(f) property and no "feasible and prudent" alternative exists, FHWA may approve only the alternative that causes the least overall harm in light of the statute's preservation purpose. The 2008 Section 4(f) regulations outlined seven factors to determine which alternative causes the least overall harm. The updated Section 4(f) Policy Paper includes guidance on how to balance the seven factors to identify the appropriate alternative as well as how to properly document the least overall harm analysis.

Part II

Part II of the Section 4(f) Policy Paper consists of questions and answers regarding Section 4(f) applicability and compliance. It includes sections on the identification of Section 4(f) properties, coordination and consultation requirements, and the criteria for making *de minimis* impact determinations. Part II also provides examples of how to determine the applicability of Section 4(f) in specific project development situations, such as shared-use paths, temporary uses of highway right-of-way, and mitigation activities, such as the creation of a wetland. Finally, this section outlines how Section 4(f) applies in emergency situations, such as the repair of highways that have suffered serious damage as a result of a natural disaster.

Additional Resources

In addition to the Section 4(f) Policy Paper, FHWA provides other resources to assist Agency staff, and project proponents in understanding and applying this regulation. FHWA's [Section 4\(f\) webpage](#) provides additional resources on the 23 CFR 774 regulation. FHWA is also developing an interactive online tutorial designed to help transportation professionals understand the fundamental requirements of Section 4(f), as well as an in-depth training course that will be offered by the National Highway Institute.

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Look What's New!

- On July 6, 2012, President Obama signed the Moving Ahead for Progress in the 21st Century Act (MAP-21) into law. As the first long-term highway authorization enacted since 2005, MAP-21 funds surface transportation programs at over \$105 billion for fiscal years 2013 and 2014. FHWA's [MAP-21 website](#) contains information about the act, including a summary, questions and answers, fact sheets, presentations, funding tables, and information on legislation and webinars.
- FHWA recently launched the [Federal-aid Essentials for Local Public Agencies website](#), a transportation resource designed to help local agency professionals navigate the Federal-aid Highway Program. The website contains a resource library of informational videos and related materials that provide information on several topics, including civil rights, environment, and project development. The website allows users to indicate areas of interest and receive alerts when material that matches their interests becomes available.

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