

AASHTO PRACTITIONER'S HANDBOOK

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COMPLYING WITH SECTION 4(f) OF THE U.S. DOT ACT

This handbook is intended to assist practitioners in managing all aspects of compliance with Section 4(f) of the U.S. Department of Transportation Act. Section 4(f) is a Federal law that protects public parks, recreation areas, wildlife and waterfowl refuges, and significant historic sites.

Issues covered in this handbook include:

- Considering Section 4(f) before the NEPA process begins;
- Scoping potential Section 4(f) issues;
- Identifying and evaluating Section 4(f) properties;
- Making determinations of *de minimis* impact;
- Determining whether there is a "use" of Section 4(f) properties;
- Developing and evaluating avoidance alternatives under the "feasible and prudent" standard;
- Choosing among alternatives that use Section 4(f) properties;
- Incorporating "all possible planning" to minimize harm to Section 4(f) properties;
- Using Section 4(f) programmatic evaluations;
- Coordinating with other agencies and stakeholders; and
- Documenting Section 4(f) analysis and conclusions.

The Center for Environmental Excellence by AASHTO produces the Practitioners Handbooks. The handbooks provide practical advice on a range of environmental issues that arise during the planning, development, and operation of transportation projects.

Each handbook is developed by the Center in cooperation with an advisory group that includes representatives of the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), State departments of transportation, and other agencies as appropriate.

The handbooks are primarily intended for use by project managers and others who are responsible for coordinating compliance with a wide range of regulatory requirements. With their needs in mind, each handbook includes:

- A background briefing;
- Key issues to consider; and
- Practical tips for achieving compliance.

In addition, key regulations, guidance materials, and sample documents for each Handbook are posted on the Center's web site at <http://environment.transportation.org>



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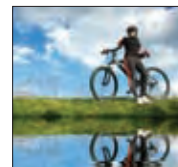
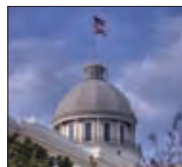
Documents

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Overview



Section 4(f) was enacted in 1966 as part of the U.S. Department of Transportation (U.S. DOT) Act, which established the U.S. DOT. It is now codified in 49 U.S.C. § 303(c); essentially identical language also appears in 23 C.F.R. § 138. Section 4(f) applies to all agencies within U.S. DOT.

Section 4(f) protects significant publicly owned public parks, recreation areas, and wildlife and waterfowl refuges, as well as significant historic sites, whether they are publicly or privately owned. Section 4(f) is a key safeguard for these resources, but compliance is often difficult and can become a cause of delay in the environmental review process. It has been described by courts as one of the nation's most stringent environmental laws.

Under Section 4(f), the term “use” has a specific meaning. A use occurs when a project permanently incorporates land from a Section 4(f) property, even if the amount of land used is very small. In addition, a use can result from a temporary occupancy of land within a Section 4(f) property, if that temporary occupancy meets certain criteria. A use also can result from proximity effects—noise, visual, etc.—that substantially impair the protected features of the property. A use that results from proximity effects is known as a “constructive use.”

Historically, Section 4(f) has prohibited the U.S. DOT from approving the “use” of Section 4(f) properties unless U.S. DOT makes two findings: 1) that there is no feasible and prudent alternative that avoids the use of Section 4(f) properties, and 2) that the project incorporates all possible planning to minimize the harm that results from the use of those resources. Section 4(f) requires the U.S. DOT to seek comments from the U.S. Department of the Interior (and in some cases other agencies) before making these findings.

In 2005, as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Congress amended Section 4(f) to provide an alternative method of approving the use of protected resources where the impact is *de minimis*. The *de minimis* impact determination provides the basis for U.S. DOT to approve the minor use of a Section 4(f) property without identifying and evaluating avoidance alternatives—thus streamlining the approval process.

In SAFETEA-LU, Congress also directed U.S. DOT to revise its Section 4(f) regulations to clarify the application of the “feasible and prudent” standard. In March 2008, FHWA and FTA complied with this requirement by issuing new Section 4(f) regulations. The revised regulations clarified the “feasible and prudent” standard and also updated many other aspects of the regulations, including the standards for choosing among alternatives that all use Section 4(f) properties—commonly known as the “least overall harm” test. The new regulations were also codified, for the first time, in a stand-alone section of the regulations—23 C.F.R. Part 774.

These recent legislative and regulatory changes present new opportunities to streamline the Section 4(f) decision-making process. But they also contain new definitions and new legal standards that must be carefully considered when preparing Section 4(f) documentation.

This handbook is intended to help practitioners take advantage of the flexibility afforded by the recent changes to Section 4(f) while ensuring that all requirements are met. It addresses the full range of Section 4(f) compliance options, including individual Section 4(f) evaluations, *de minimis* impact determinations, and programmatic Section 4(f) evaluations.

Background Briefing

Applies Only to U.S. DOT. Section 4(f) applies to all agencies within the U.S. DOT, including FHWA and FTA. Transportation projects that do not require the approval of a U.S. DOT agency are not subject to the requirements of Section 4(f). For example, many highway projects are implemented with state or local funds and do not involve changes to Interstate access points or other approval or involvement sufficient to constitute FHWA or FTA “control” over the project. Section 4(f) does not apply to these projects.

Protects Parks, Recreation Areas, Refuges, and Historic Sites. Section 4(f) applies to two categories of resources: 1) publicly owned public parks, recreation areas, and wildlife or waterfowl refuges; and 2) significant historic sites, regardless of whether they are publicly or privately owned. The Section 4(f) regulations have clarified several key points regarding the types of resources that are protected by Section 4(f), such as their application to “multiple-use” lands and archeological sites. The FHWA’s Section 4(f) Policy Paper, which FTA also follows, provides additional direction regarding a long list of specific resource types, including historic roads, recreational trails, school playgrounds, fairgrounds, golf courses, water bodies, bikeways, cemeteries, zoos, and tribal lands.

Substantive Protection, Not Just Procedural. Many environmental laws, including the National Environmental Policy Act (NEPA), are procedural: that is, they establish procedures that must be followed before a decision is made. Section 4(f) is different: it actually prohibits certain types of decisions from being made at all. This type of law is known as a substantive requirement because it focuses on the substance of an agency’s decision and includes an obligation to make a specific finding or determination. Substantive laws can block an agency from taking an action, regardless of how thoroughly the action has been studied.

Four Paths to Compliance. In general, there are four possible paths to compliance with Section 4(f) for a transportation project that requires FHWA or FTA approval:

- **Finding of No Use.** FHWA or FTA can determine that the project will not use any Section 4(f) properties. In some cases, this finding is straightforward and requires little if any documentation. In others, a finding of “no use” requires detailed analysis to determine whether Section 4(f) applies to a property and/or whether the project will use that property. This analysis should be included in the project file and summarized in the NEPA document.
- **De Minimis Impact Determination.** FHWA or FTA can determine that the project’s impacts on one or more Section 4(f) properties will be *de minimis*. A *de minimis* impact determination is not an exemption from Section 4(f); it is an authorization for a minor use of a Section 4(f) property, without having to make a finding that there are no feasible and prudent avoidance alternatives. A *de minimis* impact determination is made on a property-by-property basis, not for a project as a whole. Therefore, several separate *de minimis* impact determinations could be made for a single project.
- **Reliance on a Programmatic Evaluation.** FHWA has issued five programmatic evaluations under Section 4(f); FTA has issued none. In general, programmatic evaluations are intended to be used for projects with relatively minor impacts to Section 4(f) properties. FHWA can apply a programmatic evaluation to an individual project without some of the process steps required for an individual Section 4(f) evaluation: a legal sufficiency review is not required, nor is there a need for 45-day review by the U.S. Department of the Interior. Therefore, the Section 4(f) approval usually can be granted more quickly with a programmatic evaluation than with an individual evaluation.
- **Individual Section 4(f) Evaluation.** FHWA and FTA can complete an individual Section 4(f) evaluation, which authorizes the use of one or more Section 4(f) properties. A Section 4(f) evaluation requires legal sufficiency review by the agency’s legal counsel, and generally is included as a separate chapter or appendix in the project’s NEPA document. It must include two findings: 1) that there is no feasible and prudent alternative that completely avoids the use of Section 4(f) property; and 2) that the project includes all possible planning to minimize harm to the Section 4(f) property resulting from the use.

Legal Resources. Compliance with Section 4(f) for highway and transit projects requires familiarity with the statute, regulations, key guidance documents, and programmatic evaluations. These include:

- **Statute.** Section 4(f) was enacted as part of the U.S. Department of Transportation Act of 1966, which established the U.S. DOT. The text of that section is now included, as amended, in 49 U.S.C. § 303(c); nearly identical language is included 23 U.S.C. § 138. There is no significant difference in wording between these sections. The term “Section 4(f)” is commonly used to refer to both 49 U.S.C. § 303(c) and 23 U.S.C. § 138.

- **Regulations.** FHWA and FTA have issued joint regulations implementing Section 4(f). For many years, the regulations were included in 23 C.F.R. Part 771, along with policies and procedures for implementing NEPA during the development of transportation projects. In March 2008, the Section 4(f) regulations were updated and moved to a stand-alone section. They are now codified at 23 C.F.R. Part 774.
- **Policy Paper.** FHWA has issued a Section 4(f) Policy Paper, which provides additional guidance on implementing Section 4(f) requirements. The policy paper was last updated in March 2005, before SAFETEA-LU was enacted. The policy paper is issued solely by FHWA. FTA has not adopted the policy paper, but does consider it when special situations arise (such as fairgrounds or school yards). The other U.S. DOT modal administrations (e.g., Federal Aviation Administration) have not adopted the FHWA/FTA regulations or the policy paper, but they may consider them as guidance in appropriate situations.
- **De Minimis Impacts Guidance.** In December 2005, FHWA and FTA issued a joint memorandum, “Guidance for Determining *De Minimis* Impacts to Section 4(f) Resources.” This memorandum contained a series of questions and answers on the application of *de minimis* impact criteria (“*De minimis* FAQs”). Although it was issued prior to the March 2008 regulations, this 2005 guidance memorandum remains in effect.
- **Programmatic Evaluations.** FHWA has issued five programmatic evaluations under Section 4(f). These apply to: 1) use of historic bridges, 2) minor involvement with parks, recreation areas, or refuges, 3) minor involvement with historic sites, 4) independent walkway or bikeway construction, and 5) net benefit to the Section 4(f) property. FTA has not issued any Section 4(f) programmatic evaluations.

Links to all of these legal resource documents are available on the Center’s web site, <http://environment.transportation.org> in the Practitioner’s Handbook section under the “Reference Materials” for this handbook.

Key Issues to Consider

This section lists a series of issues to consider at each stage of preparing the environmental review process for a highway or transit project. This section can be used as a quick reference tool throughout the process, to make sure the right questions are being asked at the right time.

The headings in this section correspond to the headings in “Practical Tips” section below. The Practical Tips section contains more in-depth information on each of these topics. Some readers may wish to proceed directly to Practical Tips, and then scan this section afterwards as needed.

1. Before the NEPA Process Begins

- If a transportation planning study is being undertaken, what information is available about Section 4(f) properties in the study area? How will this information be considered?
- If a new park, recreation area, or refuge is being planned, is there an opportunity to reserve a transportation corridor through that property through “joint planning”?

2. Project Initiation and Scoping

- What is the scope of the proposed project? Does the project scope satisfy FHWA and FTA requirements, including logical termini, independent utility, and not limiting consideration of alternatives?
- Does Section 4(f) apply to the project? For example, will the project be funded by FHWA or FTA? If not, is any other “approval” from FHWA or FTA required to construct or operate the facility?
- What are the known Section 4(f) properties in the study area? Have you checked with the Federal, state, and local parks agencies; the State Historic Preservation Office (SHPO); tribal governments and, if applicable, tribal historic preservation officers (THPO); and the local public school system?
- Do you have good mapping or electronic databases showing the boundaries of the Section 4(f) properties identified?

- What are the major unknowns regarding Section 4(f) properties? What information do you need to begin developing a reasonably complete picture of the Section 4(f) properties in the study area? For example, are there any unknowns regarding the significance, ownership status, or major purposes of this property?
- If Section 4(f) properties are present, how will that affect your range of alternatives? For example, will you need to expand your study area to include a broad enough range of avoidance and minimization alternatives?
- Has the project schedule taken into account the time needed to identify and evaluate Section 4(f) properties?
- What information about Section 4(f) properties will you have available during the initial development and screening of alternatives? Are there any specific Section 4(f) issues that need to be resolved *before* screening decisions are made?
- Within the project team, how will Section 4(f) issues be handled? For example, if the project involves complex Section 4(f) issues, will you be setting up a Section 4(f) team? Will you need the assistance of FHWA or FTA legal counsel, a Headquarters technical specialist, or the FHWA Resource Center?
- Does this project present good opportunities for mitigation and enhancement of Section 4(f) properties? Are there ways to leave the 4(f) properties “better than before” the project?

3. Identifying and Evaluating Section 4(f) Properties

Historic Properties

- What is the extent of the “area of potential effects” (APE) that will be investigated for potential historic properties? Is the APE large enough to include areas that may need to be considered for potential avoidance alternatives in the Section 4(f) evaluation?
- As part of Section 106 consultation, when will historic properties be identified and evaluated for eligibility for the National Register? How does the schedule for Section 106 consultation relate to the key milestones in the Section 4(f) approval process?
- Is your Section 106 documentation adequate for purposes of your Section 4(f) analysis? For example, does your Section 106 documentation identify the significant activities, features, or attributes of the historic sites in the study area? Do you have boundary determinations for the historic sites? If there are historic districts, are the contributing and non-contributing properties/features identified?
- Are there potential historic sites in the APE that may become eligible pursuant to established National Register criteria before the project is completed? If so, are they protected under Section 4(f)?
- Are there any potentially large-scale historic sites in the study area? For example, rural historic districts or landscapes? Farmsteads with large boundaries? Battlefields? Are there any National Historic Landmarks?
- How and when will potential archeological resources be identified and evaluated to determine whether they are chiefly of value for preservation in place?
- Are there any eligibility or boundary issues that cannot be resolved with the SHPO/THPO and thus may be appropriate for submission to the Keeper of the National Register for a determination of eligibility? If so, when in the process will this occur?
- If the project involves a lengthy corridor or large land area, will you be using a phased approach to identification and evaluation of historic properties in Section 106 consultation? If so, how will the phased approach to Section 106 consultation take your Section 4(f) responsibilities into account?
- Are there any linear historic properties—e.g., canals or railroads—that extend beyond the boundaries of the study area? If so, what work is needed to determine the Section 4(f) status of those properties?
- Do you have good electronic mapping that shows the precise boundaries of historic sites? Is this information being provided to team members who are responsible for developing and evaluating alternatives?
- Have you considered the potential Section 4(f) status of properties that may need to be occupied temporarily during construction in your identification process?

Parks, Recreation Areas, and Refuges

- What geographic area will be investigated for potential parks, recreation areas, and refuges? Is it large enough to include areas that may need to be considered for potential avoidance alternatives in the Section 4(f) evaluation?
- What are the readily identifiable parks, recreation areas, and/or refuges? Are these areas clearly mapped? What additional information is needed about these properties—e.g., regarding their significant features, activities, or attributes? Are they publicly owned and open to the public?
- Are there any significant unresolved issues regarding the Section 4(f) status of known resources in the study area? For example, are there questions concerning the precise boundaries? Private in-holdings that may not be subject to Section 4(f)? Reserved transportation corridors that are not subject to Section 4(f)?
- In addition to known sites, are there other publicly owned lands that need to be evaluated for potential Section 4(f) status? For example, does the study area include national forest lands that are managed for multiple use, including recreation? Does the study area include public school properties with recreational facilities that may have Section 4(f) status?
- To the extent that it can be ascertained, are there any privately owned lands that are subject to easements or other restrictions that could cause them to be considered “publicly owned” for purposes of Section 4(f)?
- Are there properties in the study area that are designated or planned for future parks?
- Have Section 6(f) (Land and Water Conservation Act) funds been used for acquisition of, or improvements to, the Section 4(f) property?
- Are there any recreational trails in the study area, including trails within or adjacent to highway rights-of-way? Do these trails meet the criteria for protection under Section 4(f)?
- Are there other properties in public ownership that the public uses for recreation?
- Are there any federally designated Wild and Scenic Rivers in the study area? Do they meet the criteria for protection under Section 4(f)?
- Do you have good electronic mapping showing all publicly owned lands (Federal, state, local, and tribal) in your study area?
- In your identification process, have you considered properties that may need to be occupied temporarily during construction?

4. Making “*De Minimis* Impact” Determinations

- Are there any uses of Section 4(f) property that might qualify for a *de minimis* impact determination? Can any alternatives be modified so that they might qualify for this finding?
- Are there any avoidance, mitigation, minimization, or enhancement measures that could help to support a *de minimis* impact determination?
- What documentation will be prepared to support *de minimis* impact determinations?
- What steps will be taken to coordinate with officials with jurisdiction regarding any proposed *de minimis* impact determinations? When and how will this be done? Does your state have a programmatic agreement with the SHPO/THPO that addresses *de minimis* consultation?
- Are there specific issues or concerns that might preclude officials with jurisdiction from concurring in a *de minimis* impact determination? How can those concerns be addressed?
- For non-historic properties, how will the public be given an opportunity to comment on any *de minimis* impact determinations?
- What is your fallback plan if a proposed *de minimis* impact determination ultimately is not made? What types of avoidance alternatives would need to be considered and how would this affect the project schedule?



5. Determining Whether There Is a “Use” of Section 4(f) Properties

- Are there any alternatives that would result in a direct impact—a “use”—of land within a Section 4(f) property?
- Do you have the necessary information to determine that the use is or is not a *de minimis* impact?
- Are there any alternatives that would have temporary direct impacts on Section 4(f) property? Are the criteria for a “temporary occupancy” exception met?
- Are there any alternatives that would have proximity (audible, visual, atmospheric, access) impacts on a Section 4(f) property? Are the criteria for a “constructive use” met?
- Are there any exceptions that would preclude a finding of Section 4(f) use? For example, late designation? Park road or parkway projects? Certain trail projects? Transportation enhancement projects? (For a complete list, see Appendix B.)

6. Developing and Evaluating Avoidance Alternatives

- Is the purpose and need statement clear enough to provide an adequate basis for evaluating the prudence of avoidance alternatives? What criteria will be used to determine whether an alternative meets the purpose and need? If the purpose and need contains multiple objectives, are the objectives equally important? When will the determination of prudence be made and how will it be documented?
- Do any of the alternatives under consideration completely avoid all Section 4(f) properties? If not, how could they be modified to achieve complete avoidance?
- If complete avoidance alternatives have substantial drawbacks, such as increased cost, impacts on other resources, or engineering challenges, can those drawbacks be reduced through additional engineering work? What can be done to make the avoidance alternatives better?
- What additional environmental data-gathering is needed to assess the potential Section 4(f) avoidance alternatives? For example, if a potential Section 4(f) avoidance alternative would impact wetlands, do you need additional information about the status of those wetlands?
- What additional traffic analysis is needed to assess the potential Section 4(f) avoidance alternatives? For example, to evaluate whether the avoidance alternative can meet the purpose and need, do you need to do an additional model run?
- At what points in the NEPA process will Section 4(f) avoidance alternatives be considered? Is this avoidance analysis being done early, as part of the scoping process? Will you be revisiting and updating this analysis as more detailed information is developed?
- How will the avoidance alternatives be documented? If specific avoidance alternatives are developed, will you be preparing mapping or other visual aids to show the general locations of the avoidance alternatives?
- If cost will be considered in evaluating the potential avoidance alternatives, what is the basis for the cost estimates? Are these cost estimates comparable to the cost estimates for other alternatives considered in the NEPA process? Are the cost estimates documented?
- Are the “feasible and prudent” factors consistently applied to each of the avoidance alternatives, with appropriate citations to the definition of “feasible and prudent avoidance alternative” in the Section 4(f) regulations (23 C.F.R. 774.17)?
- Do avoidance alternatives affect resources protected by other laws, such as Section 404 of the Clean Water Act? If so, how will Section 4(f) and Section 404 requirements be reconciled?
- Do avoidance alternatives affect other resources, such as residential or business properties, that are not protected by a specific law?

7. Choosing Among Alternatives That All Use Section 4(f) Properties

- Have you adequately established that there truly are no feasible and prudent avoidance alternatives?
- Have you incorporated appropriate measures to minimize harm to Section 4(f) properties and to other resources in each of the alternatives that you will be comparing?
- What are the key factors that drive the decision among the alternatives? For example, are you choosing between one alternative that minimizes harm to Section 4(f) properties and another that minimizes harm to wetlands? How will you weigh these competing values?
- If each alternative would use several Section 4(f) properties, how will the least-harm analysis be organized? For example, would it be helpful to first conduct a least-harm analysis for individual resources in a specific location (e.g., alternatives to avoid a historic house) and then conduct a “global” least-harm analysis for two complete alternatives?
- Have the officials with jurisdiction had the opportunity to comment on a draft of this analysis? Are the responses to their comments documented?

8. Incorporating “All Possible Planning” to Minimize Harm to Section 4(f) Properties

- Have appropriate measures to minimize harm been incorporated into the project for each Section 4(f) property that will be used by the selected alternative? Are these measures described in the NEPA document and/or the Section 4(f) evaluation?
- Does the documentation use language that conveys a firm commitment (actions that *will* be taken, or strategies that *will* be investigated) when describing mitigation measures?
- Have the officials with jurisdiction had the opportunity to comment on the proposed measures to minimize harm? Are the responses to their comments documented?

9. Using Programmatic Section 4(f) Evaluations

- Is a programmatic Section 4(f) evaluation applicable? If a programmatic evaluation and a *de minimis* determination are both potentially applicable, which is preferable?

10. Coordination and Concurrence

- Who are the “officials with jurisdiction” for the Section 4(f) properties that you have identified? How and when will you coordinate with those officials?
- In addition to the officials with jurisdiction, are there any stakeholders that have expressed a strong interest in the Section 4(f) properties? How and when do you intend to engage those stakeholders?
- Do you have a good working relationship with the officials with jurisdiction, such as the SHPO/THPO¹? Do those officials have adequate staff resources to handle the workload associated with this project in a timely manner?

11. Section 4(f) Documentation

- Will a “Section 4(f) evaluation” be needed? If so, where will it be included in the NEPA document?
- If a Section 4(f) evaluation is not prepared, what other documentation if any is needed to demonstrate compliance with Section 4(f)?
- What reviews will be conducted to make sure that your Section 4(f) documentation meets all of the applicable legal requirements?
- How will Section 4(f) compliance be addressed in your NEPA decision document, such as a Record of Decision, Finding of No Significant Impact, or Categorical Exclusion?

¹ For projects on tribal lands, an Indian tribe can assume the functions of the SHPO. In those situations, the functions of a SHPO would be carried out by a THPO. This handbook refers to the SHPO/THPO in order to include those situations where consultation with a THPO is required.

Practical Tips

This section of the handbook provides a more detailed overview of key regulatory requirements and specific suggestions for achieving Section 4(f) compliance. It is organized according to the steps of an environmental study. The headings in this section correspond to the headings in the “Key Issues to Consider” section above.

1 | Before the NEPA Process Begins

Before the NEPA process even begins, there are steps that an agency can take to begin identifying and considering potential Section 4(f) issues. These early steps can reduce the risk of Section 4(f)-related delays later during project development.²

Considering Section 4(f) Properties in the Planning Process. The transportation planning process includes consultation with a wide range of affected agencies and stakeholders. As part of this process, it can be useful to identify known or potential Section 4(f) properties at a scale appropriate for consideration in planning. For example, if there is a large-scale rural historic district, this information could be included in mapping provided to transportation planners, so that it can be taken into account—along with other factors—when identifying potential new transportation corridors.

Reserving Transportation Corridors (Joint Planning). The Section 4(f) regulations recognize that Section 4(f) does not apply to land that is specifically reserved for transportation purposes at the time a park, recreation area, or refuge is initially established. This practice is known as joint planning: if a transportation facility and park are jointly planned, then the transportation facility can be constructed without requiring a Section 4(f) approval. Transportation planners should be alert for opportunities for joint planning. Ideally, the project file should include documentation (preferably mapping) that clearly shows the location of the reserved corridor and confirms that it was established at the time the park was created. It is also desirable to include a broad enough corridor to allow for minor shifts in alignment during the NEPA process.

Early Consideration of Mitigation Opportunities. The transportation planning process requires consideration of potential environmental mitigation opportunities, which can include mitigation for impacts to Section 4(f) properties. In the planning process, these issues are considered on a broad scale, not at the level of detail expected in project development. Early consideration of mitigation (or enhancement) opportunities for Section 4(f) properties does not in any way lessen the need to consider avoidance alternatives; however, it can help to begin a dialogue with the officials with jurisdiction about their goals for the Section 4(f) property, such as land acquisition or facility improvements.

2 | Project Initiation and Scoping

Key Requirements

Applicability of Section 4(f). In general, Section 4(f) requirements apply to any project that requires the approval of a U.S. DOT agency, including FHWA and FTA. An approval is needed if the project uses Federal funding. An approval also may be needed for others reasons, even when Federal funding is not involved—for example, when a project requires FHWA approval for a change in access to the Interstate System. There are a few special circumstances under which Section 4(f) does not apply to a project that requires FHWA or FTA approval. For further information regarding applicability of Section 4(f), refer to the FHWA Section 4(f) Policy Paper.

Project Scope/Segmentation Issues. The principles that govern project scope for purposes of NEPA compliance also apply to Section 4(f): that is, the agency must ensure that the project has logical termini, has independent utility, and does not limit consideration of alternatives for reasonably foreseeable transportation projects. (23 C.F.R. 771.111(f)). If these requirements are not met, the project has been improperly segmented, which can constitute a violation of Section 4(f) as well as NEPA.

² For a more information, refer to the Center's Practitioner's Handbook 10, “Using the Transportation Planning Process to Support the NEPA Process,” available on the Center's web site at <http://environment.transportation.org>.