

Sound Transit/WSDOT Re-Alignment Issue Paper No. 41

TOPIC:	Section 4(f) and 6(f) Compliance
ACTION SPONSOR TEAM:	Environmental Action Team
PRIMARY AUTHOR(S):	Steve Kennedy, Sound Transit
APPLICABLE PROJECTS:	Co-Lead FTA/FHWA for Regional Express Projects.
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ISSUE:	Guidance about Section 4(f) and 6(f) Compliance
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BACKGROUND:

Section 4(f):

Section 4(f) of the Department of Transportation Act of 1966, codified at 49 U.S.C. 303, declares that as a matter of national policy, a special effort should be made to preserve the natural beauty of the countryside public park and recreational lands, wildlife and waterfowl refuges, and historic sites. Transportation projects that adversely affect such resources may not be approved by the Secretary of Transportation unless a determination is made that there is no feasible and prudent alternative, and that all possible planning has been done to minimize harm.

Section 4(f) regulations are contained in the joint FHWA and FTA environmental procedures (23 CFR Part 771.135) for the federal Department of Transportation (DOT). Section 4(f) only applies when federal DOT funds are used or anticipated.

For parks, recreation areas, and wildlife refuges, the following must apply for the resource to be considered a qualified Section 4(f) resource: publicly owned (fee simple, easement, lease); accessible to the general public (note that refuges which are closed to the general public are still protected); and determined to be a “significant” resource as determined by the officials with jurisdiction. Significance is usually interpreted conservatively such that most any public parks or recreation areas are considered Section 4(f) resources.



Section 106 as it applies to Section 4(f):

Section 106 of the National Historic Preservation Act of 1966, as amended, requires that federal agencies identify and assess the effects of federally assisted undertakings on historic properties. These regulations (contained in 36 CFR Part 800) encourage maximum coordination during the National Environmental Policy Act (NEPA) environmental review process, including Section 4(f). Section 4(f) resources can also be Section 106 resources in the case of historic sites. Under DOT regulations (23 CFR Part 771.135), historic sites qualify as Section 4(f) resources if they are on or eligible for listing on the National Register of Historic Places.

Section 6(f):

Special procedures are required when development would affect lands purchased or developed using Land and Water Conservation (LWCF) funds. The Land and Water Conservation Fund Act of 1965 (Public Law 88-578), 16 USC 601-8(f)(3), commonly known as Section 6(f), requires the following:

"No property acquired or developed with assistance under this section shall, without the approval of the Secretary of the Department of the Interior (DOI) be converted to other than outdoor recreational uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreational properties of at least equal fair market value and of reasonable equivalent usefulness and location."

In Washington these funds are administered by the Washington State Interagency Committee for Outdoor Recreation (IAC). If LWCF funds were used to purchase a parcel, and a project would change the use of that parcel, replacement recreational lands of equal value would need to be provided. The DOI will likely need to get involved and approve the "conversion" of the parcel to a non-recreational use. This would typically involve a multi-month process.

Section 4(f) Programmatic Evaluations:

Instead of preparing a formal Section 4(f) evaluation, there is also provision in federal guidance (FHWA) that a programmatic Section 4(f) evaluation may be prepared for qualifying projects. A programmatic Section 4(f) Evaluation may be prepared if no EIS is being prepared and the specific requirements below are met. A programmatic Section 4(f) Evaluation does not require DOI review and approval, as does an individual Section 4(f) evaluation. However, the format and data requirements for both types of evaluations are the same.

FHWA Programmatic 4(f) Categories:

The full text of the FHWA programmatic 4(f) evaluations are available on the FHWA website at <http://www.fhwa.dot.gov/environment/>. The following is a brief summary of the criteria for each.

1. Minor involvement with public parks, recreation lands, and wildlife and waterfowl refuges
Criteria:
 - ?? If size is less than 10 acres, can use 10% of area (1 acre max).
 - ?? If size is 10-100 acres, can use one acre.
 - ?? If greater than 100 acres, can use 1 percent.
 - ?? Documentation of agreement reached with those who have jurisdiction over the resource.

2. Minor involvement with historic sites

Criteria:

- ?? Minor involvement with significant historic sites with a “no effect” or “no adverse effect” determination under section 106.
- ?? Documentation of agreement reached among FHWA, SHPO and ACHP under section 106.

3. Use of historic bridges (demolish or replacement)

Criteria:

- ?? The bridge is not a National Historic Landmark.
- ?? Must have considered the following other alternatives and rejected them as unreasonable: no build; building a new structure at new location without affecting old bridge; and rehabilitating the old bridge without affecting its historic integrity.
- ?? Documentation of agreement reached among FHWA, SHPO and ACHP under section 106.

4. Bikeway or Pedestrian Walkway Negative Declaration

Criteria:

- ?? Independent project needs land from an established recreation/park. Not applicable if endangered species, historic sites or wildlife/waterfowl refuge exists in area.
- ?? Documentation of agreement reached with those who have jurisdiction over the resource.

These programmatic evaluations should be used only if the improvements are essentially on the same location and the section 4(f) resource is adjacent to the existing transportation corridor. The use of the programmatic saves coordination time with the DOI and review time since no legal sufficiency review required.

Temporary Occupancy under Section 4(f):

Section 4(f) does not apply and a Section 4(f) Evaluation does not need to be prepared when temporary occupancy of land is so minimal that it does not constitute a “use” (acquisition for use in a transportation project or substantial impairment). Examples could include temporary disruption of a bicycle/pedestrian trail due to construction and minor mitigation site work. As described in the federal DOT environmental regulations (23 CFR 771.135), the following conditions must be met for temporary occupancy:

- ?? 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;
- ?? Scope of work must be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) resource would be minimal;
- ?? There are no anticipated permanent adverse impacts, nor will there be interference with the activities or purposes of the resource on either a temporary or permanent basis;
- ?? The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and
- ?? There must be a documented agreement of the agency with jurisdiction over the resource regarding the above conditions.

DECISIONS:

Section 4(f) and 6(f) Compliance guidance in this Issue Paper was designed primarily for clarification as it applies to co-Lead FTA/FHWA for Regional Express Projects.

- ?? 23 CFR 771.135 (FHWA and FTA regulations pertaining to Section 4(f) lands and resources), and any other applicable federal guidance will be followed
- ?? If appropriate, the Findings section of the Finding of No Significant Impact (FONSI) or Record of Decision (ROD) needs to document that the proposed project will not use or significantly impact any resources protected by Section 4(f) of the DOT Act of 1966, or Section 6(f) of the Land and Water Conservation Fund Act of 1965. This will support the conclusion that a Section 4(f) Evaluation is not required. Section 6(f) impacts are often addressed in the Recreation text discussion of the environmental document if a Section 4(f) Evaluation is not required.
- ?? If the proposed project will use or significantly impact any resource protected by Section 4(f) or Section 6(f), and a 4(f) evaluation was prepared and a letter received from the US DOI, the FONSI or ROD should include the findings of the 4(f) evaluation and reference the letter from DOI, if received.
- ?? If specific mitigation is proposed related to any Section 4(f) or 6(f) resources, this should be summarized in the List of Project Mitigation Commitments for a FONSI or ROD. As necessary, a letter from the agency with jurisdiction over the Section 4(f) or 6(f) resource indicating agreement with the project and mitigation as proposed will be obtained. This letter and agreement should be referenced in the NEPA determination (CE, FONSI or ROD) but the letter does not need to be part of the FONSI or ROD.
- ?? For co-lead projects, any applicable programmatic Section 4(f) evaluations can be used.
- ?? Prior to the temporary occupancy or permanent use of any 4(f) property, Sound Transit must obtain a letter documenting the official with jurisdiction's agreement with the agency action before the NEPA environmental determination (e.g. Categorical Exclusion, FONSI, or ROD) is signed.

**ENVIRONMENTAL ACTION TEAM DECISION ON ISSUE PAPER NO. 41:
Section 4(f) and 6(f) Compliance**

AGREED TO ON February 6, 2003 BY:



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