

## CHAPTER 7. SECTION 4(f) RESOURCES

## 1. INTRODUCTION.

a. **49 USC Section 303(c).** Section 4(f) of the Department of Transportation Act of 1966 is currently codified as 49 USC Section 303(c). Consistent with FAA Order 1050.1E, Appendix 1, paragraph 6.1a, this Desk Reference refers to Section 303(c) as "Section 4(f)."

b. **Section 4(f) requirements.** Section 4(f) states that, subject to exceptions for *de minimis* impacts, the Secretary of Transportation (Secretary) may approve a transportation program or project requiring the use of publicly-owned land of a park, recreational area, or wildlife and waterfowl refuge of national, state, or local significance or land of a historic site of national, state, or local significance as determined by the official having jurisdiction over those resources only if:

(1) there is no prudent and feasible alternative that would avoid using those resources, and

(2) the program or project includes all possible planning to minimize harm resulting from the use.

c. ***De minimis* requirements relating to Section 4(f).**<sup>1</sup> Section 4(f) is considered satisfied with respect to historic sites and parks, recreation areas, and wildlife and waterfowl refuges if the Secretary makes a *de minimis* impact finding. These requirements apply only to actual physical impacts, *not* constructive use.

(1) ***De minimis* findings for historic sites.** FAA may make this finding on behalf of the Secretary if:

(a) under Section 106 of the National Historic Preservation Act (NHPA), it has determined the project will not adversely affect or not affect historic properties;

(b) the Section 106 finding has received written concurrences from the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO) (and the Advisory Council on Historic Preservation (ACHP), if the ACHP is participating); and

(c) the Section 106 finding was developed in consultation with parties consulting in the Section 106 process.

(2) ***De minimis* findings for parks, recreation areas, and wildlife or waterfowl refuges.** FAA may make this finding on behalf of the Secretary if:

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<sup>1</sup> <http://www.fhwa.dot.gov/HEP/qasdeminimus.htm>

(a) it has determined, after public notice and opportunity for public review and comment, that the project will not adversely affect the activities, features, and attributes of the eligible Section 4(f) property; and

(b) the officials with jurisdiction over the Section 4(f) property have concurred with FAA’s determination.

**2. APPLICABLE STATUTES AND IMPLEMENTING REGULATIONS.**

a. The chart provides information on the law and regulations pertaining to Section 4(f) resources.

APPLICABLE STATUTES AND IMPLEMENTING REGULATIONS	SUMMARY DESCRIPTION	OVERSIGHT AGENCY
DOT Act of 1966 [Title 49, USC Section 1653 (f); amended and recodified in 49 USC Section 303]	Describes Congress’ intent to preserve publicly-owned parks and recreation lands, wildlife and waterfowl refuges of national, state, or local significance, or any historic site of national, state, or local significance. The section defines the conditions needed for the DOT Secretary to approve use of these resources for transportation projects.	DOT and FAA
DOT Order 5610.1C, Attachment 2, paragraph 4. FAA also uses as guidance the FHWA/FTA 4(f) procedures for determining constructive use under 23 CFR 771.135. FAA similarly intends to use the final FHWA/FTA procedures for granting approvals and determining use under Section 4(f) that will be included in 23 CFR Parts 771 and 774. See, 71 Federal Register (FR) 42611, dated July 27, 2006.	Provide Departmental procedures for meeting Section 4(f) requirements and FHWA/FTA Section 4(f) Regulations Implementing Section 4(f).	DOT and FAA
Section 6(f) of the Land and Water Conservation Fund Act (L&WCFA) [16 USC, Section 4601 <i>et. seq.</i> ]; 36 Code of Federal Regulations (CFR) Part 59.	Section 6(f) provides funds for buying or developing public use recreational lands through grants to local and state governments. Section 6(f)(3) prevents conversion of lands purchased or developed with L&CWFA funds to non-recreation uses, unless the Secretary of the Department of the Interior (DOI), through the National Park Service (NPS), approves the conversion. Conversion may only be approved if the conversion is consistent with the	Department of the Interior (DOI) and National Park Service (NPS)

APPLICABLE STATUTES AND IMPLEMENTING REGULATIONS	SUMMARY DESCRIPTION	OVERSIGHT AGENCY
	comprehensive statewide outdoor recreation plan in force when the approval occurs, and the converted property is replaced with other recreation property of reasonably equivalent usefulness and location and at least equal fair market value.	

**b. Section 4(f) policies and procedures.** DOT and FAA policies and procedures for preparing Section 4(f) evaluations and determinations and for consulting with other agencies are stated in DOT Order 5610.1C, Attachment 2, paragraph 4, and in Section 4(b)(1), below. As noted in the chart above, FAA uses Federal Highway Administration (FHWA)/Federal Transit Administration (FTA) Section 4(f) regulations as guidance to the extent relevant to FAA programs. FAA also uses FHWA’s Section 4(f) Policy Paper of March 1, 2005, as an aid in implementing Section 4(f).

**c. Section 6(f) of the Land and Water Conservation Fund Act (L&WCFA).** Replacement satisfactory to the Secretary of the Interior is specifically required as a measure to minimize harm to recreational areas and facilities purchased or developed using funds under the L&WCFA. To meet Section 6(f) requirements, FAA must:

(1) comply with Section 4(f);

(2) provide the information DOI requires to make findings required under 36 CFR Part 59 (see chart in section 2.a. of this chapter); and

(3) coordinate with NPS and the State agency responsible for the Section 6(f) resource.

**d. Housing and Urban Development funded lands.** Federal grant money may be used to buy the land the proposed airport action would involve (for example, open space under Housing and Urban Development (HUD) conservation programs). Therefore, if appropriate, FAA’s environmental document should include evidence of or reference to consultation with HUD.

**3. APPLICABILITY TO AIRPORT DEVELOPMENT ACTIONS.**

**a. General.** As a modal administration within the U.S. DOT, FAA is responsible for Section 4(f) determinations for airport actions. When FAA is considering an action described in section 3.b. of this chapter, the responsible FAA official must ensure the environmental analysis discusses the potential use of Section 4(f) resources. If the action also involves

Section 6(f) L&WCFA resources, the responsible FAA official must ensure the analysis also addresses applicable requirements under that statute (see section 2.c. of this chapter).

**b. Actions.** Typical airport actions that may cause Section 4(f) and/or Section 6(f) impacts include: airside/landside expansion (new or expanded terminal and hangar facilities, new or extended runways and taxiways, navigational aids [NAVAIDS], etc.); land acquisition for aviation-related use, new or relocated access roadways, remote parking facilities, and rental car lots; significant amounts of construction or demolition activity; and a significant change in aircraft operations that results in new or changed flight tracks and accompanying noise impacts.

**c. Presumption of Significance.** Section 4(f) resources are presumed to be significant, unless the official having jurisdiction over the site concludes that the *entire* site is not significant. FAA must review any statement of insignificance.

**d. Multi-use areas.** Where Federal lands are managed for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the subject lands are being used for park, recreational, wildlife or waterfowl refuge, or historic purposes. FAA considers a national wilderness area providing purposes similar to a park, refuge, or historic site to be subject to Section 4(f), unless the controlling agency specifically determines the area is not being used for Section 4(f) purposes.

**e. Temporary lease or agreement permitting interim use of airport property for Section 4(f) purposes.** Through a lease or other agreement, an airport sponsor owning property designated for transportation purposes may allow an entity to temporarily use the property as a park or recreation area on an interim basis during the period the property is not needed for transportation purposes (i.e., a temporary Section 4(f) resource). However, when making such arrangements, the airport sponsor should exercise caution. The sponsor should ensure the lease or agreement includes specific terms clarifying that the use of the property for Section 4(f) purposes is temporary. Although Federal Highway Administration (FHWA), Federal Transit (FTA) and FAA policies indicate that a Section 4(f) determination is not ordinarily required in such circumstances, at least one Federal circuit court has reached a contrary conclusion. See, 71 Federal Register (FR) 42611, dated July 27, 2006.<sup>2</sup>

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<sup>2</sup> In *Stewart Park & Reserve Coalition v. Slater*, 352 F.3d 545 (2nd Cir. 2003), the court held that Section 4(f) does not require the permanent designation of a public parkland for the parkland to receive protection under Section 4(f). The court ruled that Section 4(f) applied to the temporary parkland, even though the public lands a proposed highway project would use were originally acquired for transportation purposes (airport expansion and access). The court determined that although the land was never permanently designated as a parkland, it was available and used as a public park and recreational area for almost 30 years. The court stated that 30 years of uninterrupted use could not be “characterized as interim.” See Appendix A, question 18 of FHWA’s Section 4(f) guidance dated March 1, 2005, for additional information.

f. **Deliberate change in Section 4(f) classification.** Section 4(f) will apply when a State or local agency changes the use of a property from a Section 4(f)-type use to a transportation use in anticipation of a request for FAA approval. In this case, Section 4(f) will apply, even though the change in use may have occurred before a sponsor requested FAA approval. This is especially true where the change in use appears to have occurred to avoid Section 4(f) requirements.

g. **Determining if an action would use a Section 4(f) resource.** The responsible FAA official must decide if an action FAA is considering would physically or constructively use 4(f) resources.

(1) **Physical use.** When a project would require the physical taking of lands being used for park or other Section 4(f) purposes, there is generally no latitude for judgment regarding Section 4(f) applicability, unless the *de minimis* provisions of 49 USC Section 303(d) apply. This is because a physical use would eliminate or substantially hinder the intended use of the Section 4(f) property. A physical use would occur:

(a) when the proposed project or a reasonable alternative would physically occupy a portion of or all of a Section 4(f) resource;

(b) when the proposed project permanently incorporates the resource for project purposes through acquisition or easement;

(c) if alteration of structures or facilities located on Section 4(f) properties is necessary, even though the action does not require buying the property; or

(d) if temporary occupancy meets one of the following conditions:

(1) the duration of project occupancy is greater than the duration needed to build a project and there is a change in ownership of the land;

(2) the project's work scope is major in the nature and magnitude of changes to the Section 4(f) resource;

(3) anticipated permanent adverse physical impacts would occur and a temporary or permanent interference with Section 4(f) activities or purposes would occur;

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Although this case involved an unusual circumstance (i.e., an interim 4(f) use exceeding 30 years), the responsible FAA official should use caution when evaluating a project involving a temporary 4(f) resource. The official should contact Regional Counsel, the Office of the Chief Counsel, Airports and Environmental Law Division, AGC-600, or the Airport Planning and Environmental Division, APP-400.

(4) the land use is not fully restored (i.e., it is not returned to a condition that is at least as good as that existing before the project); or

(5) there is no documented agreement with the appropriate Federal, state, or local official having jurisdiction over the resources with regard to the conditions noted in section 3.g.1(d)(1)-(4) of this chapter.

**2. Constructive use.** Unlike physical use, a constructive use does not physically occupy or require purchase of the Section 4(f) resource. A constructive use would occur when an action would substantially impair that resource. Substantial impairment occurs only when the activities, features, or attributes of the resource that *contribute* to the resource's significance or enjoyment are substantially diminished. Potential causes of constructive use include shifts in user population because of direct use of bordering properties, and/or non-physical intrusions such as noise, air pollution, or other effects that would substantially impair the resource's use. For example, noise from new nighttime cargo operations could cause sleep disturbance and substantially impair a park campground's use as an overnight camping area.

**(a) Constructive use and the use of Part 150 guidelines.** FAA experience shows that noise impacts are most often the major cause of airport-related constructive use of Section 4(f) resources.

**(1)** Analysts may rely upon land use compatibility guidelines in 14 CFR Part 150 to determine if a project would constructively use a Section 4(f) resource, where land uses specified in Part 150 guidelines are relevant to the value, significance, and enjoyment of the Section 4(f) resources in question. As a result, these guidelines apply in evaluating noise impacts on lands used for traditional recreational activities. Reliance on the day-night average sound level (DNL) is appropriate because DNL is the best measure of significant impact on the quality of the human environment.

Note: DNL is the only noise metric with a substantial body of scientific data on the reaction of people to noise, and has been systematically related to Federal land use compatibility guidelines (see Chapter 5 of this Desk Reference for more information).

**(2) Historic sites.** FAA may also rely on Part 150 guidelines when evaluating effects on historic properties used as residences. However, as noted above, those guidelines may not be appropriate for nationally-significant historic resources where a quiet setting is a generally recognized purpose and attribute. An example is a historic village preserved specifically to convey a rural life atmosphere of an earlier era or a Native American traditional cultural property (See Chapter 14). Responsible FAA officials should note that if a historic neighborhood is historically significant due to architectural characteristics, then project-related noise increases would not constitute a constructive use. Such noise increases would not substantially impair the characteristics that make the

neighborhood eligible for the National Register of Historic Places. See section 3.k. of this chapter for more information.

**(3) Section 4(f) resources when a quiet setting is a recognized feature or attribute.** When evaluating use of Section 4(f) resources in this situation, analysts should carefully evaluate how the uses of the 4(f) resources compare to the land use categories under 14 CFR Part 150 guidelines. The Part 150 Land Use Compatibility Table may be used as a guideline to the extent the normal activities and aesthetic values associated with land uses specified in the Table are comparable and relevant to the Section 4(f) resource's value, significance, and enjoyment. For example, the Table does not adequately address the effects of increased aircraft noise on expectations and purposes of those who visit a wildlife refuge to watch birds.

**k. Applicability and coordination between Section 4(f) and Section 106 of the National Historic Preservation Act (NHPA).** Section 4(f) applies to all historic sites of national state, or local significance, whether or not these sites are publicly owned or open to the public. However, except in unusual circumstances (see note below), Section 4(f) protects *only* historic or archeological properties on or eligible for inclusion on the National Register of Historic Places (NRHP). Therefore, the responsible FAA official should review the following information to ensure proper coordination between these laws when necessary.

Note: For purposes of Section 4(f), an historic site is significant only if it is on or eligible for the National Register, unless FAA determines that the application of Section 4(f) is appropriate. For example, if a historic site is determined not to be NRHP-listed or eligible, but an official (such as the Mayor, President of the local historic society, etc.) formally provides information to indicate that the historic site is locally significant, the responsible FAA official may determine it is appropriate to apply Section 4(f). If the FAA official finds Section 4(f) does not apply, the environmental document should include the basis for not applying Section 4(f). That basis may include the reasons why the historic site was not eligible for the NRHP. See FHWA Policy Paper dated March 1, 2005, **3. Historic Sites** for more information.

**(1) Effects on NRHP-listed or eligible properties.** When determining Section 4(f) applicability to an action's effects on historic properties, the responsible FAA official should complete the process and analysis Section 106 of the NHPA requires (see Chapter 14 of this Desk Reference). Using the results of the Section 106 process, the official should consider the following information when deciding if DOT Section 4(f) would apply to historic properties.

**(a) Projects incorporating or occupying a historic site.** If a project would permanently incorporate or occupy land of an historic site, Section 4(f) would apply. Section 4(f) applicability does not depend on FAA's finding of No Properties Affected, No Adverse Effect, or Adverse Effect.

**(b) Projects not incorporating or occupying a historic site.** If a project would not permanently incorporate or occupy land of an historic site, Section 4(f) may still apply. To determine if Section 4(f) applies, examine the proximity of impacts in terms of

constructive use. Do so in consultation with the State Historic Preservation Officer (SHPO), or Tribal Historic Preservation Officer (THPO) when appropriate.

(1) if project impacts would substantially impair the features or attributes that contribute to the property's National Register eligibility or listing, Section 4(f) would apply.

(2) if the impacts would not substantially impair the features or attributes that contribute to the property's National Register eligibility or listing, Section 4(f) would not apply.

(2) **Effects on NRHP-listed or eligible archeological properties.** When assessing project effects on archeological resources on or eligible for the NRHP, including discoveries that occur during construction, consider the following information after consulting with the SHPO, or THPO when appropriate:

(a) **Resources warranting preservation in place.** If a project would physically occupy a location containing archeological resources and those resources warrant preservation *in place*, Section 4(f) would apply.

(b) **Resources warranting data recovery.** If a project would physically occupy a location containing archeological resources but consultation with the SHPO (or THPO, when appropriate) determines the archeological resources are important chiefly for data recovery and *not* warrant preservation in place, Section 4(f) would not apply.

Note: FAA is responsible for complying with Section 106 of the NHPA regardless of how it addresses Section 4(f) requirements.

#### 4. PERMITS, CERTIFICATIONS, AND APPROVALS.

a. **Permits.** With one exception, there are no permits, certifications, or approvals required to use resources protected under DOT Section 4(f). NPS approval is required to convert Section 4(f) resources acquired or developed using funds under Section 6(f) of the L&WCFA.

b. **Information and reviews from other agencies.** Section 2 of this chapter lists information other agencies may provide.

(1) **Section 4(f) resources.** As noted above, input from agencies having jurisdiction over affected Section 4(f) resources plays an important part in FAA Section 4(f)

evaluations and determinations. As a matter of policy, DOT agencies provide the DOI 45 days to review all Section 4(f) evaluations.<sup>3</sup>

(a) Send the Section 4(f) evaluations to:

Director, Office of Environmental Policy and Compliance  
Department of the Interior  
Main Building, MS 2342  
1849 C Street, S.W.  
Washington, DC 20240.

(b) Do not send copies of the Section 4(f) Evaluation and Determination to any office within DOI. The Director will send copies to the appropriate DOI agency for review. The responsible FAA official should provide copies of FAA's Evaluation and Determination as noted here:

- (i) Alaska: provide 16 copies;
- (ii) For projects in the Eastern U.S., including Arkansas, Iowa, Louisiana, Minnesota, and Missouri: provide 12 copies; or
- (iii) For projects in the Western U.S., (e.g., areas west of the western boundaries of the states listed in section 4.b(1)(b)(ii)), provide 18 copies.

**(2) Section 6(f) resources.** If a proposed airport project would cause a use of a Section 6(f) resource, then FAA must ensure the project sponsor fulfills the Section 6(f) requirements for conversion to another use. According to 36 CFR Section 59.3, the airport sponsor must submit the request for conversion of the 6(f) resource to the State Liaison Officer. That Officer submits the request to the Regional Director of the National Park Service. The Regional Director must approve the conversion. The environmental document should include proof the applicable requirements of 36 CFR Part 59 have been met.

## 5. ENVIRONMENTAL COMPLIANCE PROCEDURES - ENVIRONMENTAL ANALYSIS.

**a. General.** FAA environmental documents must thoroughly discuss Section 4(f) issues. If FAA finds no prudent and feasible alternative to avoid use of the 4(f) resource exists, the documents must provide FAA's rationale for that conclusion.<sup>4</sup> The documents

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<sup>3</sup>Letter from the Dept. of the Interior, Office of the Secretary, dated December 12, 2002, discussing the environmental review process.

<sup>4</sup> FAA Order 5050.4B, paragraph 1007.e(5)(a) provides information on factors used in determining the prudence of an alternative.

must also describe measures needed to minimize unavoidable use of Section 4(f) resources.

(1) When a proposed action involves Section 6(f) resources, FAA's environmental document should include evidence of consultation with the L&WCFA sponsor and any other State or local officials having jurisdiction over the Section 6(f) land;

(2) The document should also include NPS approval of a L&WCFA State Liaison Officer's request to convert Section 6(f) land to uses other than recreational; and

(3) The documents should also include evidence of concurrence or efforts to obtain concurrence of appropriate officials having jurisdiction over Section 4(f) lands addressing actions proposed to minimize harm. Whether or not Federal agency lands are involved, the documentation shall reflect consultation with DOI and, as pertinent, HUD or USDA.

**b. Preparing a Section 4(f) evaluation.** The responsible FAA official must prepare this evaluation after determining an action would involve a Section 4(f) resource. The evaluation may be issued along with the project's NEPA document or issued separately in a document called a "Section 4(f) Statement."

(1) If FAA presents the evaluation in the NEPA document, clearly list the pages of the document including the evaluation and all pertinent information.

(2) If FAA presents the evaluation in a separate document, clearly label the document as "Section 4(f) Statement" and include a brief project description to inform reviewers who may not examine the EA or EIS prepared for the project.

(3) In either case, the document should include all agency letters on significance of the 4(f) resource and any other correspondence from appropriate jurisdictional agencies.

(4) When appropriate, include Section 6(f) information in the NEPA document or the Section 4(f) Statement.

**c. Section 4(f) evaluation content.** The responsible FAA official must ensure the Section 4(f) evaluation contains the following information:

(1) **Owner.** The name of the owner and type of Section 4(f) property. Include information on property ownership, such as leases, easements, covenants, or restrictions;

(2) **Size.** Provide the acreage and location of the affected Section 4(f) property and any of its unique or irreplaceable qualities;

(3) **Visual information.** Provide detailed maps or drawings of sufficient scale to identify the relationship of the action to the Section 4(f) property;

**(4) Uses.** Describe briefly the Section 4(f) resource's activities, features, or attributes that qualify the resource for protection. Note if the action would result in physical or constructive use of the resource;

**(5) Access.** Describe access to the Section 4(f) property. Note if the project would limit or prohibit that access. Describe patronage and provide an estimate of the number of users or visitors;

**(6) Associated areas.** Describe any relationship the affected resource has to other similarly used, nearby lands;

**(7) Prudent and feasible alternatives.** Determine if a prudent or feasible alternative that avoids the Section 4(f) resource exists. If such an alternative exists and it would meet the project purpose and need, FAA may not select an alternative that would use the Section 4(f) resource. If no such alternative exists, thoroughly explain how the responsible FAA official determined this. For example, explain why a rejected alternative poses unique technical problems requiring extraordinary amounts of money to implement or why innovative engineering or construction techniques are not possible or prudent; and

Note: If needed, see Order 5050.4B, paragraph 1007.e.(5), and 71 Federal Register 42611, dated July 27, 2006, for more information on feasible and prudent alternatives.

**(8) Mitigation.** When no prudent and feasible alternative exists, "all possible planning to minimize harm" to the Section 4(f) resource is required. Consultation with the agency owning or administering the resource or the SHPO (or THPO, when appropriate) for historic resources is recommended. In addition, the DOI and other Federal, State, or local agencies having jurisdiction over the affected resource is important. These efforts help to inform FAA's judgment concerning potential impacts and possible measures to minimize harm due to use of Section 4(f) resources. The responsible FAA official must carefully evaluate comments from such agencies and explain why any recommended mitigation was not adopted. Include evidence of concurrence or efforts to obtain concurrence from appropriate officials having jurisdiction over Section 4(f) resources regarding measures proposed to minimize harm. Whether or not Federal agency lands are involved, the documentation shall reflect consultation with DOI and, as needed, HUD or USDA.

**d. Section 6(f) evaluation.** As noted in 36 CFR Section 59.3, the State Liaison Officer submits a written request on behalf of the airport sponsor to convert Section 6(f) land to non-recreational use. The evaluation must contain the following information. The responsible FAA official should ensure the environmental document prepared for an action involving a Section 6(f) resource includes this information:

**(1) NPS Statement.** A statement from the Regional NPS Director authorizing the State agency having responsibility over the Section 6(f) resource to convert the resource to non-recreational uses.

**(2) Correspondence.** Letters or other information to or from the airport sponsor, FAA, or the responsible State agency addressing the conversion.

**(3) Analysis.** Requests for conversion submitted to the Regional NPS Director must contain the following information under 36 CFR Part 59.

**(a) Boundaries.** Provide the boundaries of the property to be converted. Boundaries are depicted or otherwise described on the Section 6(f)(3) boundary map and/or as described in other project documentation DOI approved in establishing the Section 6(f) property (36 CFR Section 59.1). Include boundaries of the replacement property (36 CFR Section 59.3(c)). Often, the area of analysis is outside the boundaries of the Section 6(f) tract because more land may be needed to protect the recreational area's integrity. The airport sponsor should work closely with the State agency responsible for the Section 6(f) property. This ensures the analysis includes the tracts not funded under the L&WCFA but essential to the recreational area's function.

**(b) Alternatives.** Thoroughly analyze all practical alternatives that would avoid converting the Section 6(f) resource to aeronautical use. Typically, the analysis of prudent and feasible alternatives done for Section 4(f) purposes is sufficient here.

**(c) Replacement area.** Replacement of the Section 6(f) resource that will be converted is required to satisfy Section 6(f) requirements. Provide the following information to ensure needed information is available.

**(i) Describe the replacement property.** Replacement property use and location characteristics must be reasonably equivalent to those of the converted area or facility, but it need not provide the same recreational experiences (36 CFR Section 59.3(b)(3)).

**(ii) Provide the replacement's fair market value.** Provide proof that the fair market value of the replacement area is at least equal to that of the converted property. The value must be based on an approved appraisal, prepared according to uniform Federal appraisal standards. The fair market value excludes the value of structures or facilities that will not serve a recreation purpose (36 CFR Section 59.3(b)(2)).

**(iii) Political jurisdiction over the replacement area.** Generally, the same political jurisdiction that purchased or developed the property to be converted should administer the replacement property. Provide information addressing this issue (36 CFR Section 59.3(b)(3)).

**(iv) Partial conversion.** Some actions require only partial conversion of a Section 6(f) property. In this instance, assess the effects of the converted area on the remaining unconverted area. If the Regional NPS Director approves the partial conversion,

the unconverted area or facility must remain recreationally viable, or it must be replaced (36 CFR 59.3(b)(5)).

(v) **Coordination.** Provide proof that all necessary coordination has occurred. This includes compliance with Section 4(f) requirements (36 CFR 59.3(b)(6)).

(vi) **Interagency review.** Provide proof that intergovernmental clearinghouse review has occurred for actions involving conversion and substitution significantly changing the original L&WCFA project (36 CFR 59.3(b)(8)).

(vii) **Comprehensive plans.** Provide proof the proposed conversion and substitution will be according to the Statewide Comprehensive Outdoor Recreation Plan and/or an equivalent recreation plan(s) (36 CFR 59.3(b)(9)).

d. **When NPS denies a conversion request.** If the Regional NPS Director denies a conversion request, the responsible FAA official must ensure the evaluation contains the Regional NPS Director's reasons for the denial. Here, FAA must work closely with the state agency responsible for the Section 4(f) property and the regional NPS office to resolve issues preventing the conversion.

**6. DETERMINING IMPACTS.** To determine impacts on Section 4(f) resources, the responsible FAA official should use the information obtained in completing other sections in this chapter. The environmental document or Section 4(f) Statement should present that information along with the following information.

a. **Would a use occur?** Based on the analysis completed to satisfy the various sections of this chapter, the responsible FAA official should state whether the project would use a Section 4(f) property.

b. **How would project use of a Section 4(f) resource affect that resource?** If a project would physically or constructively use a Section 4(f) resource because no prudent and feasible alternative exists, describe:

(1) the uses that the proposed project would eliminate or impair; and

(2) the effects on the Section 4(f) resource due to that use.

c. **Does the project include all possible measures to minimize harm?** Describe all possible mitigation needed to reduce impacts and harm on the Section 4(f) resource due to project use. Include evidence of concurrence or efforts to obtain concurrence of appropriate officials having jurisdiction over Section 4(f) lands regarding the measures proposed to minimize harm. If FAA or the airport sponsor does not adopt a recommended measure, explain why (e.g., mitigation would attract wildlife hazardous to mitigation).

d. **Section 4(f) Determination.** The approving FAA official must sign and date the Section 4(f) Statement or the Section 4(f) evaluation included in the NEPA document.

“Based on the enclosed Section 4(f) analysis, I have determined there is no prudent and feasible alternative that would avoid using (name the area the action would use), a Section 4(f) protected resources. The project includes all possible planning to minimize harm to this resource. FAA will condition its approval of this project to fulfill its Section 4(f) responsibilities.”

Any Section 6(f) documentation should be included as an appendix to the Section 4(f) evaluation included in the NEPA document or Section 4(f) Statement.

**7. DETERMINING IMPACT SIGNIFICANCE.**

**a. General.** To determine the degree of project-related Section 4(f) impact, the responsible FAA official should consider the following factors in consultation with pertinent agencies having jurisdiction or special expertise:

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When the proposed action involves a physical use that would be more than minimal or a constructive use would occur. In either case, mitigation is not enough to sustain the resource’s designated use.	Determine if the proposed action or a reasonable alternative would eliminate or severely degrade the intended use of the Section 4(f) resource. That is, would the proposed action or alternative physically or constructively use (i.e., substantially impair the use of) that resource? The responsible FAA official should determine if mitigation is satisfactory to the agency having jurisdiction over the protected resource, (e.g. by replacement in kind of a neighborhood park). No objection by affected agencies may be construed as agreement for this purpose. If an agency having jurisdiction advises that proposed mitigation is unsatisfactory and will not avoid significant impacts, more detailed impact analysis is likely needed as part of an EIS.

From: Table 7-1, FAA Order 5050.4B.

**b. Mitigation.** During the environmental review process, the public agency having jurisdiction over the Section 4(f) resource normally provides a letter addressing the project’s effects on the resource. The letter may include recommended measures to mitigate those effects. An appendix to the environmental document should include a copy of the letter. The environmental document should summarize the most important information in that letter and accurately cross-reference the appendix and pages in that appendix for further information. If the FAA of the sponsor does not adopt any recommended mitigation, the environmental document should clearly explain why the recommendation was not adopted. Examples of mitigation to minimize harm to the Section 4(f) resource may include:

- (1) changing project design to lessen the impact on the Section 4(f) resource;

(2) replacing lands or facilities to provide lost uses or provide uses the jurisdictional agency supports;

(3) providing monetary compensation to enhance the remaining segments of the affected Section 4(f) resource;

(4) building noise walls or setting up visual or vegetative buffers to lessen adverse visual affects; or

(5) enhancing project access the jurisdictional agency supports (i.e., handicapped access ramps).

## 8. ENVIRONMENTAL IMPACT STATEMENT CONTENT.

a. **General.** FAA must prepare an EIS if mitigation will not reduce impacts below the significance threshold in section 7 of this chapter. The EIS must contain evidence of consultation and concurrence as described in section 5.a. of this chapter. Besides the information discussed in prior sections, the EIS should contain the following information:

(1) a thorough explanation of why no prudent and feasible alternatives that would avoid the use of the Section 4(f) resource exist; and

(2) a detailed discussion of all possible mitigation or planning to minimize harm caused by the use of the Section 4(f) resource included in the project.