

5.	Department of Transportation Act, Section 4(f)	
5.1.	Regulatory Setting	5-2
5.1.1.	Consultations, Permits, and Other Approvals	5-3
5.2.	Affected Environment	5-4
5.3.	Environmental Consequences.....	5-5
5.3.1.	Physical Use of Section 4(f) Property	5-6
5.3.2.	Constructive Use of Section 4(f) Property	5-6
5.3.3.	<i>De Minimis</i> Impact Determination.....	5-8
5.3.4.	Section 4(f) Evaluation.....	5-8
5.3.5.	Section 4(f) Finding.....	5-10
5.3.6.	Requirements under Section 6(f) of the Land and Water Conservation Fund Act	5-10
5.3.7.	Section 4(f) Significance Determination.....	5-11
5.4.	Mitigation.....	5-11

Section 4(f) of the U.S. DOT Act of 1966 (now codified at 49 U.S.C. § 303) protects significant publicly owned parks, recreational areas, wildlife and waterfowl refuges, and public and private historic sites. Section 4(f) provides that the Secretary of Transportation may approve a transportation program or project requiring the use of publicly owned land off a public park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance, or land of an historic site of national, State, or local significance, only if there is no feasible and prudent alternative to the using that land and the program or project includes all possible planning to minimize harm resulting from the use.

Section 4(f) applies only to agencies within the U.S. DOT. If more than one DOT agency is involved in a proposed project that involves Section 4(f), the agency acting as the NEPA lead normally takes the lead on Section 4(f). If the FAA is engaged with a non-DOT agency on the NEPA review of a proposed project involving Section 4(f), the FAA must take the lead on Section 4(f) compliance.¹

¹ Special Use Airspace actions are exempt from the requirements of Section 4(f).

5.1. Regulatory Setting

Exhibit 5-1 lists the primary statutes and regulations related to Section 4(f) impacts.

Exhibit 5-1. Statutes and Regulations Related to Section 4(f) Properties

Statute	Location in U.S. Code or Public Law Citation	Implementing Regulation	Oversight Agency ^a	Summary ^a
Land and Water Conservation Fund Act of 1965	16 U.S.C. §§ 4601-4 et seq.	36 CFR part 59 et seq.	DOI	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 Land and Water Conservation Fund Act funds to non-recreation uses, unless the Secretary of the DOI, through the NPS, approves the conversion.
U.S. Department of Transportation Act – Section 4(f)	49 U.S.C. § 303	23 CFR part 774 et seq. ²	DOT	Protects certain properties from use for DOT projects unless the relevant DOT agency (e.g., the FAA) determines there is no feasible and prudent alternative and a project includes all possible planning to minimize harm.
Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) – Section 6009	49 U.S.C. § 303	23 CFR part 774 et seq.	DOT	Amended Section 4(f) to simplify the process and approval of projects that have only <i>de minimis</i> impacts on 4(f) properties.
U.S. Department of Defense Reauthorization	P.L. 105-85, Div. A, Title X, Section 1079, Nov. 18, 1997, 111 Stat. 1916	Not applicable	DOD	Exempts military flight operations and designation of airspace for such operations from Section 4(f).

^a CFR = Code of Federal Regulations; DOD = U.S. Department of Defense; DOI = U.S. Department of the Interior; DOT = U.S. Department of Transportation; NPS = National Park Service; U.S.C. = United States Code.

Procedural requirements for complying with Section 4(f) are set forth in DOT Order 5610.1C. The FAA also uses Federal Highway Administration/Federal Transit Administration (FHWA/FTA) regulations in 23 CFR part 774 (73 *Federal Register* 13368 [March 12, 2008] and 73 *Federal Register* 31609 [June 3, 2008]) and FHWA guidance (e.g., Section 4(f) Policy

² These regulations were issued by the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), and are not binding on the FAA. However, they may be used as guidance to the extent relevant to aviation.

Paper,³ 77 *Federal Register* 42802 [July 20, 2012]). These requirements are not binding on the FAA; however, the FAA may use them as guidance to the extent relevant to aviation projects. See the FHWA website for further information at:

<https://www.environment.fhwa.dot.gov/legislation/section4f.aspx>.

5.1.1. Consultations, Permits, and Other Approvals

The FAA is responsible for soliciting and considering the comments of the DOI and, where appropriate, U.S. Department of Agriculture (USDA), or Housing and Urban Development (HUD), as well as the appropriate official(s) with jurisdiction over the Section 4(f) property. Evaluations and determinations under Section 4(f) must reflect consultation with these Departments and officials. However, the ultimate decisionmaker for Section 4(f) determinations is the FAA.

Consultation with agencies having jurisdiction over any public parks, recreation areas, waterfowl or wildlife refuges, or historic sites assists in identifying Section 4(f) properties. When a draft Section 4(f) evaluation is prepared, it must be provided to the official(s) with jurisdiction over the Section 4(f) resource, DOI, and as appropriate, to the USDA and HUD. The FAA normally allows a minimum 45-day review period. For DOI, Section 4(f) evaluations should be sent to:

Director, Office of Environmental Policy and Compliance
U.S. Department of the Interior
1849 C Street, N.W. (MS 2462)
Washington, DC 20240

DOI requests one copy of the draft Section 4(f) evaluation in electronic format (CD/DVD, or any other widely used electronic storage media) and the URL for review documents available on the Internet. If no electronic version is available, provide 12 to 18 copies of the draft document depending on the proposed action's geographic location and scope. For the review of final Section 4(f) evaluations, DOI requests one copy in electronic format (CD/DVD, or any other widely used electronic storage media) and the URL for review documents available on the Internet. If no electronic version is available, provide 6 to 9 copies of the final document depending on the proposed action's geographic location and scope (see DOI Environmental Review Distribution Requirements dated June 6, 2012, available at:

http://www.doi.gov/pmb/oepc/nrm/upload/Environmental_Review_Process.pdf). DOI has published a handbook to provide guidance in the review of and the preparation of DOI comments on Section 4(f) evaluations that is available at:

https://www.doi.gov/sites/doi.gov/files/migrated/pmb/oepc/nrm/upload/4f_handbook.pdf.

Many national forests under the jurisdiction of the U.S. Forest Service (USFS) of the USDA serve as multiple-use land holdings. If the proposed project uses land of a national forest, coordination with the USDA as the official with jurisdiction over the resource would be appropriate in determining the purposes served by the land holding and the resulting extent of Section 4(f) applicability to the land holding. HUD would be involved only in cases where HUD has an interest in a Section 4(f) property.

³ <https://www.environment.fhwa.dot.gov/legislation/section4f/4fpolicy.pdf>

In the case of public parks, recreation areas, and wildlife and waterfowl refuges, the officials with jurisdiction are the officials of the agency or agencies that own or administer the property in question, and have authority to represent the agency on matters related to the property. In the case of historic sites, the official with jurisdiction is the State Historic Preservation Officer (SHPO), or the Tribal Historic Preservation Officer (THPO) if the property is located on tribal land. If the property is on tribal land, but the tribe has not assumed the responsibilities of the SHPO, a representative designated by the tribe should be recognized as an official with jurisdiction in addition to the SHPO. When the Advisory Council on Historic Preservation (ACHP) is involved under Section 106, the Council is also an official with jurisdiction for purposes of Section 4(f). If a Section 4(f) property is a National Historic Landmark, the NPS is also an official with jurisdiction for purposes of Section 4(f) (see Chapter 8).

If Federal grant money was used to acquire the land involved (e.g., open space under HUD and various conservation programs under DOI), the Section 4(f) documentation must include evidence of, or reference to, appropriate communication with the grantor agency. Requests for conversion of recreation lands aided by DOI's Land and Water Conservation Fund (i.e., Section 6(f) lands) should be submitted to the State Liaison Officer, who in turn submits it to the Regional Director of the NPS for approval. Replacement, satisfactory to the Secretary of the Interior, by lands of equal value, location, and recreation usefulness is specifically required for Section 6(f) lands and for certain other lands falling under the jurisdiction of DOI.

Evidence of concurrence or a description of efforts to obtain concurrence of Federal, state, or local officials having jurisdiction over the Section 4(f) property regarding the proposed action and/or alternative(s) that require the use of the Section 4(f) property and the measures planned to minimize harm must be part of the Section 4(f) documentation.

5.2. Affected Environment

The FAA should identify as early as practicable in the planning process section 4(f) properties that implementation of the proposed action and alternative(s) could affect.

Section 4(f) properties include:

- parks and recreational areas of national, state, or local significance that are both publicly owned and open to the public;
- publicly owned wildlife and waterfowl refuges of national, state, or local significance that are open to the public; and
- historic sites of national, state, or local significance in public or private ownership regardless of whether they are open to the public.

A property must be a significant resource for Section 4(f) to apply. Any part of a Section 4(f) property is presumed to be significant unless there is a statement of insignificance relative to the entire property by the Federal, state, or local official having jurisdiction over the property. Any statement of insignificance is subject to review by the FAA.

Section 4(f) protects only those historic or archeological properties that are listed, or eligible for inclusion, on the National Register of Historic Places (NRHP), except in unusual circumstances. Historic sites are normally identified during the process required under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 300101 et seq., and its implementing

regulations (36 CFR part 800). If an official formally provides information to indicate that a historic site not on or eligible for inclusion on the NRHP is significant, the responsible FAA official may determine that it is appropriate to apply Section 4(f). If the responsible FAA official finds that Section 4(f) does not apply, the NEPA document should include the basis for this finding (which may be based on reasons why the property was not eligible for the NRHP).

Where Federal lands are administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the lands are in fact being used for park, recreation, wildlife, waterfowl, or historic purposes. National wilderness areas may serve similar purposes and shall be considered subject to Section 4(f) unless the controlling agency specifically determines that the lands are not being used for Section 4(f) purposes.

When a property is owned by and currently designated for use by a transportation agency and a park or recreation use of the land is being made only on an interim basis, the property would not ordinarily be considered to be subject to Section 4(f). The responsible FAA official or applicant should ensure that any lease or agreement includes specific terms clarifying that the use of the property for a park or recreational purpose is temporary. A use that extends over a period of years may be sufficiently long that it would no longer be considered to be interim or temporary, if challenged. Where the use of a property is changed by a state or local agency from a Section 4(f) type use to a transportation use in anticipation of a request for FAA approval, Section 4(f) will be considered to apply, even though the change in use may have taken place prior to the request for approval or prior to any FAA action on the matter. This is especially true where the change in use appears to have been undertaken in an effort to avoid the application of Section 4(f).

The Section 4(f) regulations provide that 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 by 23 CFR § 774.17. Examples of such concurrent or joint planning or development include, but are not limited to:

1. designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation facility and the Section 4(f) property; or
2. 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. (23 CFR §§ 774.11(i)(1) and (2)).

5.3. Environmental Consequences

An initial assessment should be made to determine whether the proposed action and alternative(s) would result in the use of any of the properties to which Section 4(f) applies. If physical use or constructive use of a Section 4(f) property is involved, as further described in Sections 5.3.1 and 5.3.2 below, the potential impacts of the proposed action and alternative(s) on the Section 4(f) property must be described in detail. The description of the affected Section 4(f) property should include the location, size, activities, patronage, access, unique or irreplaceable qualities, relationship to similarly used lands in the vicinity, jurisdictional entity, and other factors necessary to understand and convey the extent of the impacts on the resource. Maps,

plans, photos, or drawings may assist in describing the property and understanding the potential use, whether physical taking or constructive use. Any statements regarding the property's significance by officials having jurisdiction should be documented and attached.

5.3.1. Physical Use of Section 4(f) Property

A Section 4(f) use would occur if the proposed action or alternative(s) would involve an actual physical taking of Section 4(f) property through purchase of land or a permanent easement, physical occupation of a portion or all of the property, or alteration of structures or facilities on the property.

A temporary occupancy of a Section 4(f) property for project construction-related activities is usually so minimal that it does not constitute a use within the meaning of Section 4(f). However, a temporary occupancy would be considered a use if:

- The duration of the occupancy of the Section 4(f) property is greater than the time needed to build a project and there is a change in ownership of the land,
- The nature and magnitude of changes to the 4(f) property are more than minimal,
- Anticipated permanent adverse physical impacts would occur and a temporary or permanent interference with Section 4(f) activities or purposes would occur,
- The land use is not fully returned to existing condition, or
- There is no documented agreement with appropriate agencies having jurisdiction over the Section 4(f) property.

If a project would physically occupy an NRHP-listed or eligible property containing archeological resources that warrant preservation in place, there would be a Section 4(f) use. Although there may be some physical taking of land, Section 4(f) does not apply to NRHP-listed or eligible archeological properties where the responsible FAA official, after consultation with the SHPO/THPO, determines that the archeological resource is important chiefly for data recovery and is not important for preservation in place.

5.3.2. Constructive Use of Section 4(f) Property

Use, within the meaning of Section 4(f), includes not only the physical taking of such property, but also "constructive use." The concept of constructive use is that a project that does not physically use land in a park, for example, may still, by means of noise, air pollution, water pollution, or other impacts, dissipate its aesthetic value, harm its wildlife, restrict its access, and take it in every practical sense. Constructive use occurs when the impacts of a project on a Section 4(f) property are so severe that the activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the Section 4(f) property that contribute to its significance or enjoyment are substantially diminished. This means that the value of the Section 4(f) property, in terms of its prior significance and enjoyment, is substantially reduced or lost. For example, noise would need to be at levels high enough to have negative consequences of a substantial nature that amount to a taking of a park or portion of a park for transportation purposes.

The responsible FAA official must consult all appropriate Federal, state, and local officials having jurisdiction over the affected Section 4(f) properties when determining whether project-related impacts would substantially impair the resources. Following consultation and assessment of potential impacts, the FAA is solely responsible for Section 4(f) applicability and determinations.

The land use compatibility guidelines in 14 CFR part 150 (the part 150 guidelines) may be relied upon by the FAA to determine whether there is a constructive use under Section 4(f) where the land uses specified in the part 150 guidelines are relevant to the value, significance, and enjoyment of the Section 4(f) lands in question. The FAA may rely on the part 150 guidelines in evaluating constructive use of lands devoted to traditional recreational activities. The FAA may primarily rely upon the day night average sound levels (DNL) in part 150 rather than single event noise analysis because DNL:

1. is the best measure of significant impact on the quality of the human environment,
2. is the only noise metric with a substantial body of scientific data on the reaction of people to noise, and
3. has been systematically related to Federal compatible land use guidelines.

The FAA may also rely upon the part 150 guidelines to evaluate impacts on historic properties that are in use as residences. The part 150 guidelines may be insufficient to determine the noise impact on historic properties where a quiet setting is a generally recognized purpose and attribute, such as a historic village preserved specifically to convey the atmosphere of rural life in an earlier era or a traditional cultural property. If architecture is the relevant characteristic of a historic neighborhood, then project-related noise would not substantially impair the characteristics that led to eligibility for or listing on the NRHP. As a result, noise would not constitute a constructive use, and Section 4(f) would not be triggered. A historic property would not be considered to be constructively used for Section 4(f) purposes when the FAA issues a finding of no historic properties affected or no adverse effect under Section 106 of the NHPA, 54 U.S.C. § 300101 et seq. Findings of adverse effects do not automatically trigger Section 4(f) unless the effects would substantially impair the affected resource's historical integrity. The FAA is responsible for complying with Section 106 of the NHPA regardless of the disposition of Section 4(f).

When assessing use of Section 4(f) properties located in a quiet setting and where the setting is a generally recognized feature or attribute of the site's significance, the FAA carefully evaluates reliance on the part 150 guidelines. The FAA must weigh additional factors in determining whether to apply the thresholds listed in the part 150 guidelines to determine the significance of noise impacts on noise sensitive areas within Section 4(f) properties (including, but not limited to, noise sensitive areas within national parks, national wildlife and waterfowl refuges, and historic sites including traditional cultural properties). The FAA may use the part 150 land use compatibility table as a guideline to determine the significance of noise impacts on Section 4(f) properties to the extent that the land uses specified bear relevance to the value, significance, and enjoyment of the lands in question. However, the part 150 guidelines may not be sufficient for all historic sites as described above, and the part 150 guidelines do not adequately address the impacts of noise on the expectations and purposes of people visiting areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.

5.3.3. *De Minimis* Impact Determination

The FAA may make a *de minimis* impact determination with respect to a physical use of Section 4(f) property if, after taking into account any measures to minimize harm, the result is either:

- a determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or wildlife or waterfowl refuge for protection under Section 4(f); or
- a Section 106 finding of no adverse effect or no historic properties affected.

The FAA's NEPA document must include documentation sufficient to support the above results, including the measures to minimize harm that the FAA is relying on to make the *de minimis* impact determination. The FAA must ensure that mitigation measures are implemented. A *de minimis* impact determination is not a full and complete Section 4(f) evaluation. It does not require an analysis and finding that there are no feasible and prudent alternatives or a finding that all possible planning has been done to minimize harm.

A *de minimis* impact determination is not appropriate for constructive use of a Section 4(f) property because constructive use is defined as substantial impairment, and substantial impairment cannot be considered a *de minimis* impact.

A *de minimis* impact determination requires agency coordination and public involvement. For parks, recreation areas, and wildlife and waterfowl refuges, the officials with jurisdiction over the property must be informed of the FAA's intent to make a *de minimis* impact determination, after which the FAA must provide an opportunity for public review and comment. After considering any public comments and if the officials with jurisdiction concur in writing that the project would not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection, the FAA may finalize a *de minimis* impact determination. For historic sites, the FAA must consult the consulting parties identified in accordance with 36 CFR part 800, and inform the officials with jurisdiction of the intent to make a *de minimis* impact determination and must concur in a finding of no adverse effect or no historic properties affected. Compliance with 36 CFR part 800 satisfies the public involvement and agency coordination requirement for *de minimis* findings for historic sites.

For more information on *de minimis* impact determinations, please refer to 23 CFR §§ 774.3 and 774.17, the FHWA's Section 4(f) at a Glance at:

<https://www.environment.fhwa.dot.gov/legislation/section4f/4fAtGlance.aspx>, and the FHWA's Section 4(f) policy paper at:

<https://www.environment.fhwa.dot.gov/legislation/section4f/4fpolicy.pdf>.

5.3.4. Section 4(f) Evaluation

When a project would involve the use of a Section 4(f) property and the FAA cannot make a *de minimis* impact determination, the FAA must prepare a Section 4(f) evaluation. The FAA should incorporate the evaluation into the FAA's NEPA review and process to the fullest extent possible, but may prepare a stand-alone Section 4(f) evaluation (referred to as a Section 4(f) statement).

The Section 4(f) evaluation must sufficiently explain the purpose and need for the project, the Section 4(f) evaluation must also include adequate discussion of alternatives to support an FAA

determination regarding the availability of feasible and prudent alternatives to the use of the Section 4(f) property. The no action alternative is one avoidance alternative. An alternative that would involve any use of Section 4(f) property is not an avoidance alternative.

The evaluation must determine if there is a feasible and prudent alternative that would avoid the use of the Section 4(f) property. According to the FHWA/FTA regulation at 23 CFR § 774.17:

(1) A *feasible and prudent* alternative is one that 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. In assessing the importance of protecting the Section 4(f) property, it is appropriate to consider the relative value of the property (i.e., some Section 4(f) properties are worthy of a greater degree of protection than others).

(2) An alternative is not feasible if it cannot be built as a matter of sound engineering judgment.

(3) An alternative is not prudent if it:

- Compromises a project to such a degree that it is unreasonable to proceed with the project in view of its stated purpose and need (i.e., the alternative does not address the purpose and need of the project);
- Results in unacceptable safety or operational problems;
- Causes, after reasonable mitigation:
 - Severe social, economic, or environmental impacts,
 - Severe disruption to established communities,
 - Severe or disproportionate impacts to minority or low-income populations, or
 - Severe impacts to environmental resources protected under other Federal statutes;
- Results in additional construction, maintenance, or operational costs of an extraordinary magnitude;
- Causes other unique problems or unusual factors; or
- Involves multiple factors above that, although individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude.

Supporting documentation is required in the Section 4(f) evaluation for findings of no feasible and prudent alternatives. If the Section 4(f) evaluation identifies a feasible and prudent alternative that avoids Section 4(f) properties, the FAA may not select an alternative that uses a Section 4(f) property. If there is no feasible and prudent alternative that avoids all Section 4(f) property, the FAA may approve only the alternative that meets the purpose and need and causes the least overall harm to Section 4(f) property. The FHWA/FTA regulation at 23 CFR § 774.3(c)(1) identifies the following seven factors to be balanced in determining the alternative that causes the least overall harm:

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 official(s) with jurisdiction 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.

In evaluating the degree of harm to Section 4(f) properties, the FAA will consider the views of officials having jurisdiction over each Section 4(f) property. The Section 4(f) evaluation will describe how the FAA considered the seven factors to determine the least overall harm, including the extent to which each alternative meets the project purpose and need. The final Section 4(f) evaluation must document the analysis and identification of the alternative that has the least overall harm.

If the Section 4(f) evaluation concludes there are no feasible and prudent alternatives to the use of Section 4(f) property, it must also document that the project includes all possible planning to minimize harm to Section 4(f) property. As defined in 23 CFR § 774.17, *all possible planning* means that all reasonable measures to minimize harm or mitigate adverse impacts must be included in the project. Mitigation measures may include those described in Section 5.4 below. In evaluating the reasonableness of measures to minimize harm, the responsible FAA official will consider the preservation purpose of the statute, the views of officials having jurisdiction over the Section 4(f) property, whether the cost of measures is a reasonable public expenditure in view of the adverse impacts on the Section 4(f) property and the benefits of the measures to the property, and impacts or benefits of the measures to communities or environmental resources outside the Section 4(f) property.

5.3.5. Section 4(f) Finding

In order for the FAA to approve an action that would use Section 4(f) property, the Section 4(f) evaluation must conclude with the required finding that there is no feasible and prudent alternative that would avoid the use of Section 4(f) property and that the project includes all possible planning to minimize harm resulting from the use. Where a Finding of No Significant Impact (FONSI) is prepared, this finding must be included in the FONSI, if not included in the EA (see FAA Order 1050.1F, paragraph 6-3.b(4)). Where an Environmental Impact Statement (EIS) is prepared, this finding must be included in the final EIS if possible, and in the Record of Decision (ROD) (see FAA Order 1050.1F, paras. 7-1.2.g and 7-2.2.e). When a Categorical Exclusion (CATEX) is used for an action (see FAA Order 1050.1F, Chapter 5), the Section 4(f) finding may either be included in documentation prepared to support the use of the Categorical Exclusion (see FAA Order 1050.1F, Paragraph 5-3) or documented separately.

5.3.6. Requirements under Section 6(f) of the Land and Water Conservation Fund Act

A project that would use Section 4(f) parks or recreation areas must also comply with Section 6(f) of the Land and Water Conservation Fund, 16 U.S.C. § 4601-8(f), if the property was acquired or developed with financial assistance under the Land and Water Conservation Fund State Assistance Program. Section 6(f), administered by the NPS, requires that areas funded

through the program remain for public outdoor recreation use or be replaced by lands of equal value, location, and recreation usefulness.

A request to convert Land and Water Conservation Fund-assisted properties in whole or in part to uses other than public outdoor recreation must be submitted to the appropriate NPS Regional Director in writing. NPS approval is required to convert Section 6(f) lands. The NPS will consider conversion requests if the request complies with Section 4(f), information is provided that is needed to make findings required under Section 6(f), and coordination is carried out with the NPS and the state agency responsible for the Section 6(f) property. The Section 4(f) evaluation should also include evidence that applicable requirements of Section 6(f) have been met.

Refer to the NPS Land and Water Conservation Fund site to help identify Section 6(f) properties in the study area at: <https://www.nps.gov/subjects/lwcf/index.htm> and to the Section 6(f) regulations at 36 CFR § 59.3 for guidance in completing the Section 6(f) evaluation at: <https://www.nps.gov/subjects/lwcf/protection.htm>.

5.3.7. Section 4(f) Significance Determination

Exhibit 4-1 of FAA Order 1050.1F provides the FAA's significance threshold for Section 4(f) properties. A significant impact would occur when: *The action involves more than a minimal physical use of a Section 4(f) resource* (see Section 5.3.1 above) *or constitutes a "constructive use" based on an FAA determination that the aviation project would substantially impair the Section 4(f) resource* (see Section 5.3.2 above).⁴ A significant impact under NEPA would not occur if mitigation measures eliminate or reduce the effects of the use below the threshold of significance. If a project would physically use Section 4(f) property, the FAA is responsible for complying with Section 4(f) even if the impacts are less than significant for NEPA purposes.

5.4. Mitigation

Section 4(f) use requires all possible planning to minimize harm. The NEPA document should provide detailed measures to minimize harm and include evidence of concurrence or efforts to obtain concurrence of appropriate officials having jurisdiction over the affected Section 4(f) property regarding such measures. Some examples of potential measures to mitigate impacts to Section 4(f) properties include:

- Changing project design to lessen the impact on the Section 4(f) property;
- Replacement of land or facilities (e.g., replacement of a neighborhood park);
- Monetary compensation to enhance the remaining segments of the affected Section 4(f) property;
- Building noise walls or installing visual or vegetative buffers to lessen adverse impacts; or
- Enhancing project access the jurisdictional agency supports (i.e., disabled access ramps).

⁴ A "minimal physical use" is part of the FAA's significance threshold that has been continued from FAA Order 1050.1E. It is not the same as a *de minimis* impact determination established in Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETY-LU). A *de minimis* impact determination is described in Appendix B, B-2.2.3.

Mitigation of potential adverse impacts to historic sites usually consists of measures necessary to preserve the historic integrity of the site and agreed to in accordance with 36 CFR part 800 by the FAA, the SHPO/THPO, and other consulting parties (see Chapter 8). Equal replacement of a Section 6(f) property that will be converted is required to satisfy Section 6(f) requirements. The replacement area must be at least equal to that of the converted property, including equal location and usefulness.