



Chapter 7: Section 4(f) Evaluation

7.1 Introduction

Section 4(f) of the Department of Transportation Act of 1966, 49 USC §303(c), requires that, prior to the use of any of the land types listed below, it must be determined that there are no prudent and feasible alternatives which avoid such use and that the project includes all possible planning to minimize harm to such resources.

- A publicly owned park
- A publicly owned recreation area
- A publicly owned wildlife or waterfowl refuge
- Land from an historic property that is on or eligible for inclusion in the National Register of Historic Places (NRHP or National Register)
- Archaeological sites that will be preserved in place

According to FHWA regulations, a “use” can be either (1) direct, (2) constructive, or (3) temporary. See 23 C.F.R. § 771.135(p).

- A direct use occurs when land from a Section 4(f) resource is permanently incorporated into a transportation project.
- A constructive use occurs when the proximity impacts of the project are so severe that they substantially impair the protected activities, features, or attributes that qualify the resource for Section 4(f) protection.
- A temporary use occurs when there is a temporary occupancy of the Section 4(f) property that is adverse in terms of the statute’s preservationist purposes.

In order for a park, recreation area, or wildlife/waterfowl refuge to qualify for protection under Section 4(f), it must be publicly owned. When these areas are owned by private institutions and individuals, even if such areas are open to the public, Section 4(f) does not apply.

Historic resources that are listed in, or are eligible for listing in, the National Register are not required to be publicly owned in order to be protected under Section 4(f). Archaeological sites must also be on or eligible for the National Register and important for ‘preservation in place’ in order to be considered a Section 4(f) resource.