

Section 4(f)
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Section 4(f) Nebraska Program

»» Melissa Maiefski, FHWA

Fall 2015 Environmental Program Training

Nebraska Section 4(f) Process

FHWA and NDOR have worked to create a process that is:



Auburn, NE

- ❖ Compliant
- ❖ Standardized
- ❖ Streamlined

What's Changed

Guidance for Completing the
Section 4(f) Review
Process in Nebraska
For Federal-Aid Projects

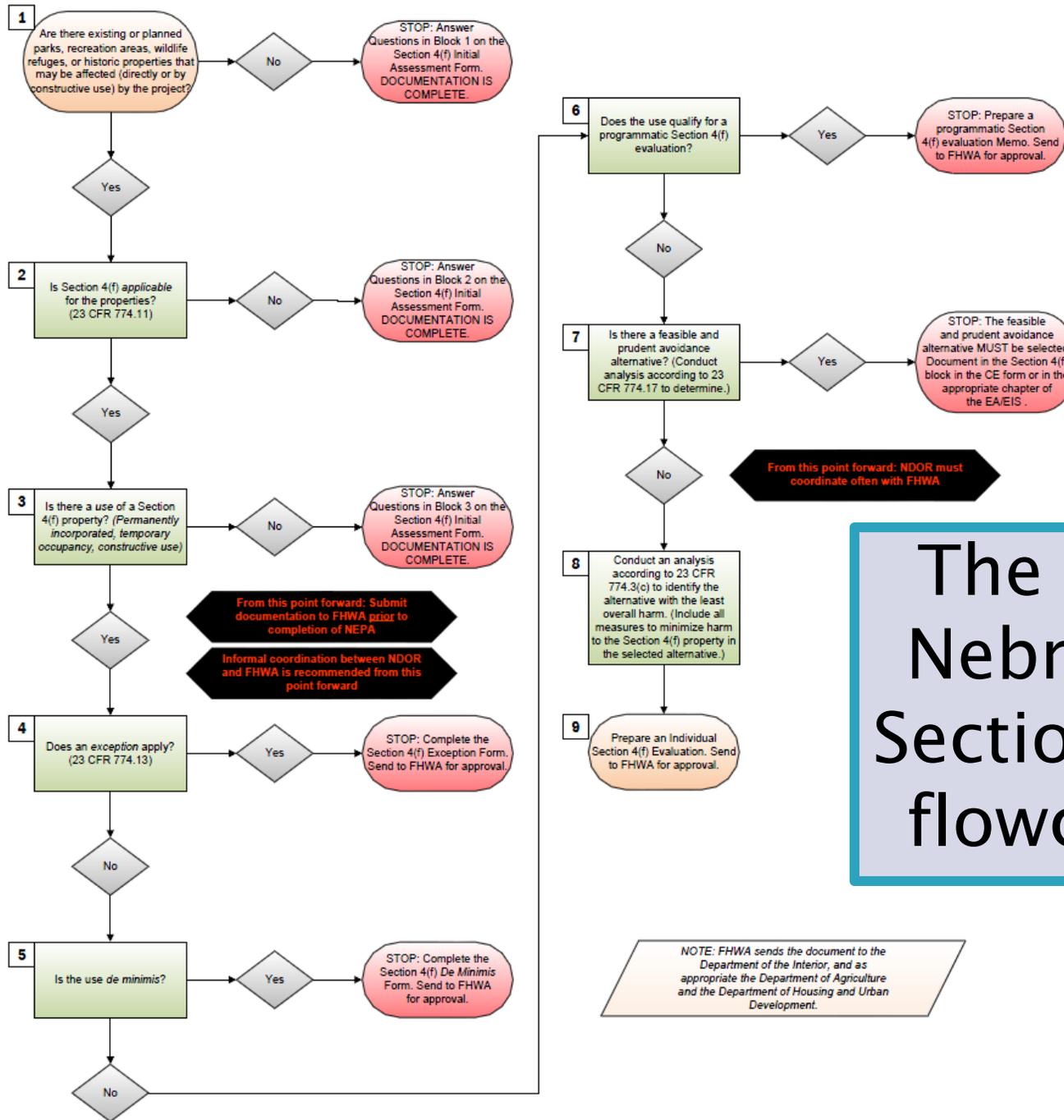


5/2015

- Guidance that establishes a standardized process for Section 4(f) evaluation
- Section 4(f) Initial Assessment Form (for each project)
- Section 4(f) Exceptions Form
- Section 4(f) *de minimis* Form



Prescott Elementary, Lincoln, NE



The New Nebraska Section 4(f) flowchart

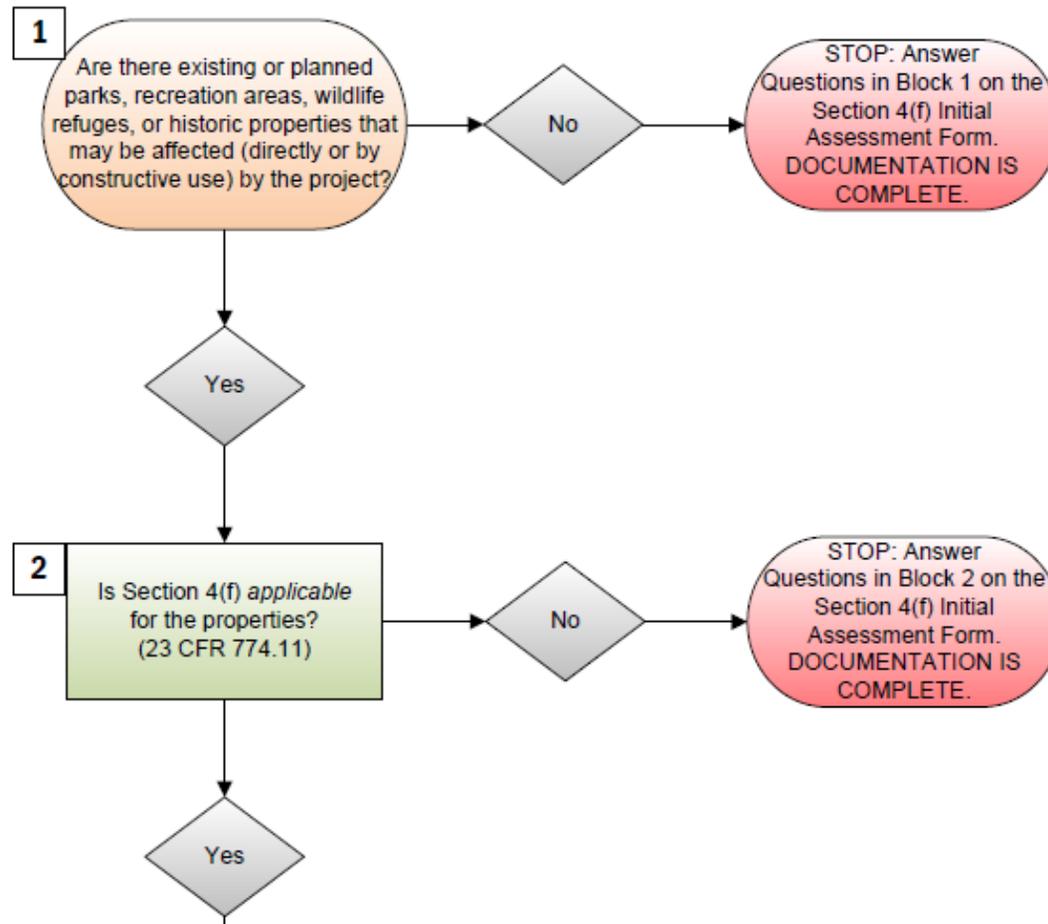
NOTE: FHWA sends the document to the Department of the Interior, and as appropriate the Department of Agriculture and the Department of Housing and Urban Development.

Step 1:



Are Properties
Present?

Are there Section 4(f) properties present?



Starting at the Beginning: Is there a Section 4(f) property present?

- ❖ Historic sites that are either listed or eligible for listing on the National Register of Historic Places
- ❖ Publicly-owned parks, recreation areas, and wildlife/waterfowl refuges of national, state, or local significance



Valentine National
Wildlife Refuge

A Few Special Circumstances



Trails

NEBRASKA WATER TRAILS



Canoe
Trails



School
Playgrounds

The New Section 4(f) Initial Assessment Form



Section 4(f) Initial Assessment Form

May 29, 2015

Project Name <input type="text"/>	Project Number <input type="text"/>
Control Number <input type="text"/>	Date Completed <input type="text"/>
Project Location (Town, County) <input type="text"/>	Name of Preparer <input type="text"/>

The following form was developed as an initial assessment of potential Section 4(f) properties within a project area. The number of each question block corresponds directly to the NDOR Section 4(f) Guidance section with the same number. **One Initial Assessment Form per PROJECT must be included as an attachment to the CE Form or incorporated into the appropriate chapter in the EAEIS.**

NOTE: At the time the Section 4(f) Initial Assessment Form is filled out, the Section 106 process must be sufficiently complete that historic properties have been identified. A Section 106 Finding of Effect (No Adverse Effect, Adverse Effect) must be completed prior to determining whether the project results in a 'use' of an historic property. All Section 106 determinations and findings must be made and documented by NDOR Professionally Qualified Staff (PQS).

1. Identification of Section 4(f) Properties

A. For historic properties, based on the NDOR Section 106 Tier Review Form, are there properties that are listed or eligible for listing on the National Register of Historic Places?

Yes No N/A (Section 106 Tier I)

If Yes, provide the name, Finding of Effect, and any other pertinent information from the Section 106 review for each identified property.

B. Are there existing or planned parks, recreation areas, or wildlife/waterfowl refuges present within a ¼ mile of the project area?

Yes No

C. In consultation with the online resources identified in the Section 4(f) Guidance, list the resources used to determine if parks, recreation areas, or wildlife/waterfowl refuges are present.

D. Identify all potential Section 4(f) parks, recreation areas, and wildlife/waterfowl refuges (include property name(s), location(s) along project, etc.).

If No parks, recreation areas, or wildlife/waterfowl refuges are present, AND no historic properties need consideration from 1.A., indicate in the box below that no potential Section 4(f) properties are present. DOCUMENTATION IS COMPLETE.

2. Applicability Criteria for Section 4(f) Parks, Recreation Areas, and Wildlife/Waterfowl Refuges (not Historic Properties)

A. List all properties from 1.D. that are (1) NOT publicly owned, or (2) NOT privately owned and leased to a public entity, for a Section 4(f) protected purpose, and how this was determined.

B. List all properties from 1.D. that are NOT open to the public, and how this was determined. (This does NOT apply to wildlife/waterfowl refuges.)

C. List all properties from 1.D. that are considered multiple-use properties, and what those uses are.

D. List all properties from 1.D. that were NOT called-out in 2.A. or 2.B.; these properties will be carried forward in the Section 4(f) process. Also be sure to carry forward any multiple-use properties from 2.C. or historic properties from 1.A. that have temporary or permanent right-of-way acquisition or vibratory effects. If no properties are carried forward, note below and DOCUMENTATION IS COMPLETE.

3. Determination of Section 4(f) Use

Initial Assessment Form, cont.

1. Identification of Section 4(f) Properties

A. For historic properties, based on the NDOR Section 106 Tier Review Form, are there properties that are listed or eligible for listing on the National Register of Historic Places?

Yes No N/A (Section 106 Tier I)

If Yes, provide the name, Finding of Effect, and any other pertinent information from the Section 106 review for each identified property.



B. Are there existing or planned parks, recreation areas, or wildlife/waterfowl refuges present within a ¼ mile of the project area?

Yes No

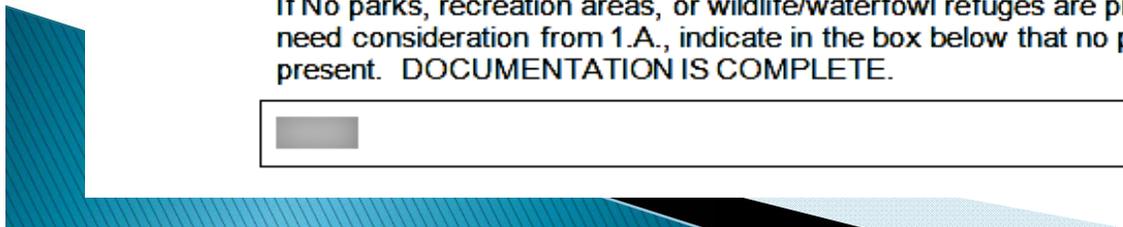
C. In consultation with the online resources identified in the Section 4(f) Guidance, list the **resources** used to determine if parks, recreation areas, or wildlife/waterfowl refuges are present.



D. Identify all potential Section 4(f) parks, recreation areas, and wildlife/waterfowl refuges (*include property name(s), location(s) along project, etc.*).

If No parks, recreation areas, or wildlife/waterfowl refuges are present, AND no historic properties need consideration from 1.A., indicate in the box below that no potential Section 4(f) properties are present. DOCUMENTATION IS COMPLETE.





Initial Assessment Form, cont.

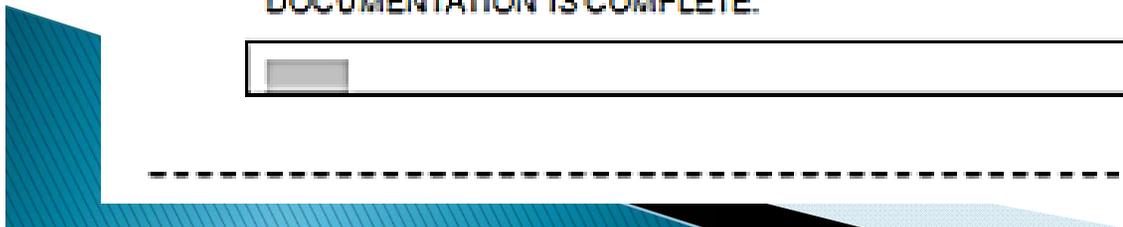
2. Applicability Criteria for Section 4(f) Parks, Recreation Areas, and Wildlife/Waterfowl Refuges (not Historic Properties)

A. List all properties from 1.D. that are (1) NOT publicly owned, or (2) NOT privately owned and leased to a public entity, for a Section 4(f) protected purpose, and how this was determined.

B. List all properties from 1.D. that are NOT open to the public, and how this was determined. (This does NOT apply to wildlife/waterfowl refuges.)

C. List all properties from 1.D. that are considered multiple-use properties, and what those uses are.

D. List all properties from 1.D. that were NOT called-out in 2.A. or 2.B.; these properties will be carried forward in the Section 4(f) process. Also be sure to carry forward any multiple-use properties from 2.C. or historic properties from 1.A. that have temporary or permanent right-of-way acquisition or vibratory effects. If no properties are carried forward, note below and DOCUMENTATION IS COMPLETE.





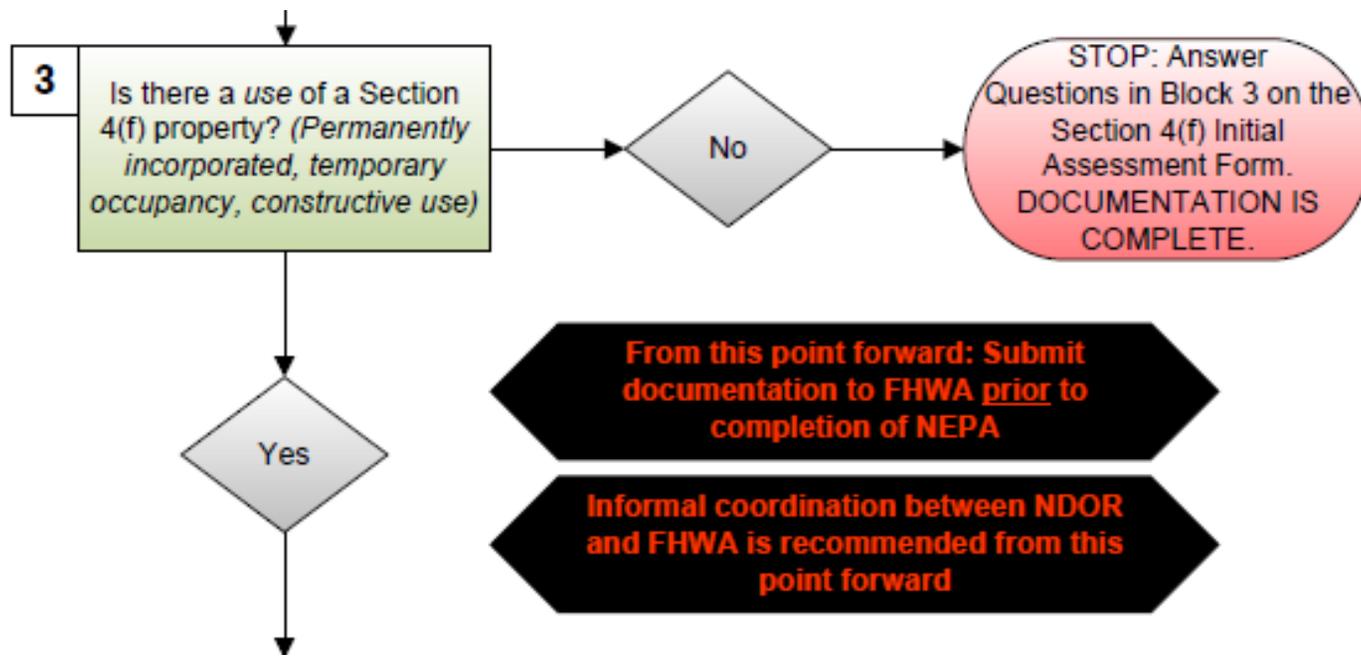
Step 2:



IS THERE A USE?



Is there a “Use” of Section 4(f) properties?



Documentation of Section 4(f) use: The Initial Assessment Form

3. Determination of Section 4(f) Use

A. Is there a potential use of the Section 4(f) applicable properties from 2.D. above? Will the properties be impacted by the project, including access restrictions? (See Guidance Section 3 for definition of use.)

Yes No Is there a potential *permanent* use?

Yes No Is there a potential *temporary* use (including exceptions)?

Yes No Is there a potential *constructive* use?

Any Yes: complete the appropriate Section 4(f) analysis for each impacted property

No: state impact avoidance measures below, then DOCUMENTATION IS COMPLETE

B. List impact avoidance measures (for "No" answer only). If justification is needed to support a "No" answer in 3.A., describe below.



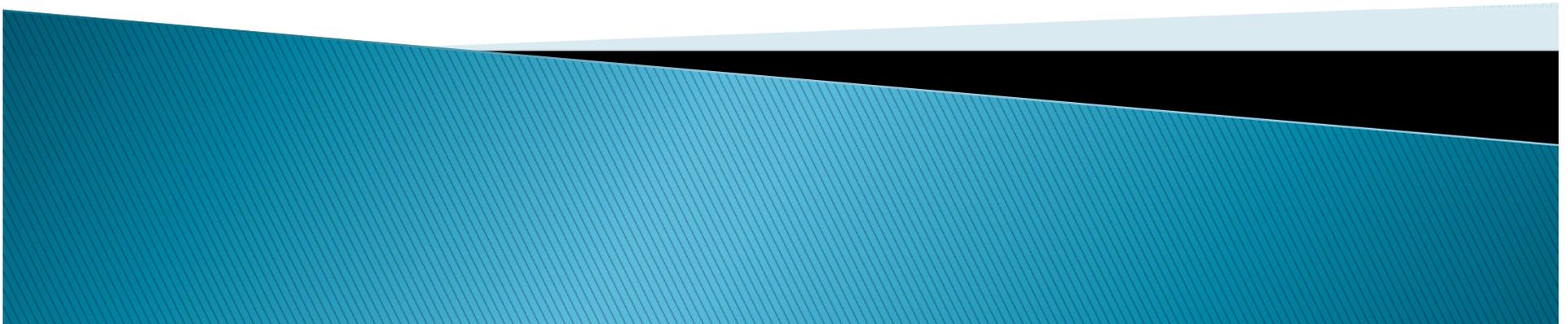
Step 3:

ASSESS USE

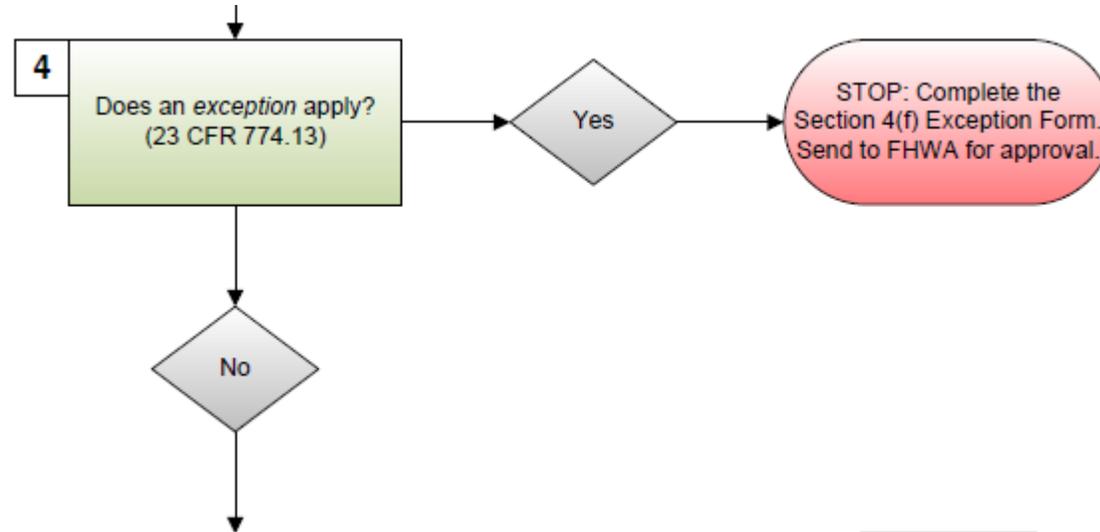


WHERE TO START WHEN ASSESSING USE?

First – Does an Exception Apply?



Does a Section 4(f) “Exception” apply?



Exceptions Form



Section 4(f) Exceptions Form

May 20, 2015

Section 4(f) Exceptions (23 CFR 774.13): Public Parks, Recreation Lands, Wildlife & Waterfowl Refuges, and Historic Properties

Project Name	Project Number
<input type="text"/>	<input type="text"/>

Control Number	Project Location (Road, Town, County)
<input type="text"/>	<input type="text"/>

Project Description
<input type="text"/>

Section 4(f) Property Name
<input type="text"/>

Official(s) with Jurisdiction
<input type="text"/>

Property Description
<input type="text"/>

Type of Exception (Note: Choose the primary exception that applies from the drop-down choices below.)

23 CFR 774.13(a)

The following form was developed as a tool to assist in streamlining the Section 4(f) Exception process and to ensure that all necessary information is documented. **A separate Exceptions Form is required for each Section 4(f) property for which an exception applies.**

Establishing Section 4(f) Exception Relevancy

The following questions are taken directly from 23 CFR 774.13 to determine if the project is exempt from the requirement of Section 4(f) approval.

Check only the exceptions that apply for this property. (NOTE: More than one exception may apply.)

- a. 23 CFR 774.13(a): Restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when: 1. [FHWA] concludes...that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and 2. the Officials with Jurisdiction (OWJ) over the Section 4(f) resource have not objected to the [FHWA] conclusion.

- b. 23 CFR 774.13(b): *All archeological sites qualify for the exception to Section 4(f) detailed at 23 CFR 774.13(b) unless the NDOR Professionally Qualified Staff (NDOR PQS) determines that the archeological site has important value for preservation in place and the SHPO/THPO has not objected. This information can be found on page 2 of the NDOR Section 106 Tier Review Form or through coordination with the NDOR PQS. [Agreed upon by FHWA and NDOR]*
[If this exception is applicable to a property, check this box and obtain appropriate NDOR signatures (FHWA approval is not required), and DOCUMENTATION IS COMPLETE.]

- c. 23 CFR 774.13(c): Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. [See 23 CFR 774.13(c) for more parameters.]

- d. 23 CFR 774.13(d): Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f).
The following conditions must be satisfied: 1. duration must be temporary and there should be no change in ownership of the land; 2. scope of the work must be minor; 3. there are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis; 4. the land being used must be fully restored to pre-existing conditions or better; and 5. there must be documented agreement of the OWJ(s) over the Section 4(f) resource regarding the above conditions.

- e. 23 CFR 774.13(e): Federal lands transportation facilities as defined in section 1103(a)(3) MAP-21 (23 U.S.C. 101(a)(8)).

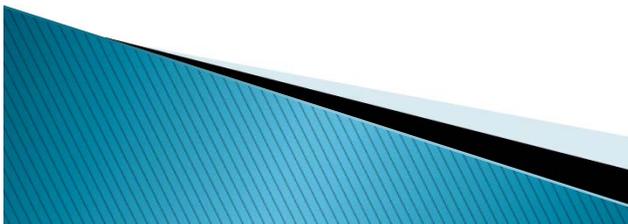
- f. 23 CFR 774.13(f): Certain trails, paths, bikeways, and sidewalks, in the following circumstances: 1. trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2); 2. National

Exceptions, cont.

- a. 23 CFR 774.13(a): Restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when: 1. [FHWA] concludes...that such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and 2. the Officials with Jurisdiction (OWJ) over the Section 4(f) resource have not objected to the [FHWA] conclusion.

- b. 23 CFR 774.13(b): *All archeological sites qualify for the exception to Section 4(f) detailed at 23 CFR 774.13(b) unless the NDOR Professionally Qualified Staff (NDOR PQS) determines that the archeological site has important value for preservation in place and the SHPO/THPO has not objected. This information can be found on page 2 of the NDOR Section 106 Tier Review Form or through coordination with the NDOR PQS. [Agreed upon by FHWA and NDOR]*

[If this exception is applicable to a property, check this box and obtain appropriate NDOR signatures (FHWA approval is not required), and DOCUMENTATION IS COMPLETE.]



Exceptions, cont.

- c. 23 CFR 774.13(c): Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites that are made, or determinations of significance that are changed, late in the development of a proposed action. [See 23 CFR 774.13(c) for more parameters.]



Exceptions, cont.



- d. 23 CFR 774.13(d): Temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f).

The following conditions must be satisfied: 1. duration must be temporary and there should be no change in ownership of the land; 2. scope of the work must be minor; 3. there are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis; 4. the land being used must be fully restored to pre-existing conditions or better; and 5. there must be documented agreement of the OWJ(s) over the Section 4(f) resource regarding the above conditions.



Exceptions, cont.

- e. 23 CFR 774.13(e): Federal lands transportation facilities as defined in section 1103(a)(3) MAP-21 (23 U.S.C. 101(a)(8)).



- f. 23 CFR 774.13(f): Certain trails, paths, bikeways, and sidewalks, in the following circumstances: 1. trail-related projects funded under the Recreational Trails Program, 23 U.S.C. 206(h)(2); 2. National Historic Trails and the Continental Divide National Scenic Trail, designated under the National Trails System Act, 16 U.S.C. 1241-1251, with the exception of those trail segments that are historic sites as defined in 23 CFR 774.17; 3. trails, paths, bikeways, and sidewalks that occupy a transportation facility right-of-way without limitation to any specific location within that right-of-way, so long as the continuity of the trail, path, bikeway, or sidewalk is maintained; and 4. trails, paths, bikeways, and sidewalks that are part of the local transportation system and which function primarily for transportation.



Exceptions, cont.

- g. 23 CFR 774.13(g): Transportation enhancement projects and mitigation activities, where: 1. the use of the Section 4(f) property is solely for the purpose of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection; and 2. the OWJ(s) over the Section 4(f) resource agrees in writing to paragraph (g)(1) of this section.



Exceptions, cont.

If using **Exception d.** for a temporary occupancy, describe below how the five required conditions will be satisfied (also include property size and size of temporary impacts).

If using **Exception f. or g.**, explain the application of the exception below.

Was mitigation necessary to minimize use? If so, explain the impacts and mitigation.



Exceptions, cont.



Exception Documentation

Are detailed maps included, showing current and proposed right-of-way, temporary/construction easements, property boundaries, access points for pedestrians and vehicles (if applicable), and existing and planned property features?

Yes No

Is concurrence from the Official(s) with Jurisdiction attached? **(if required)**

Yes No, not required

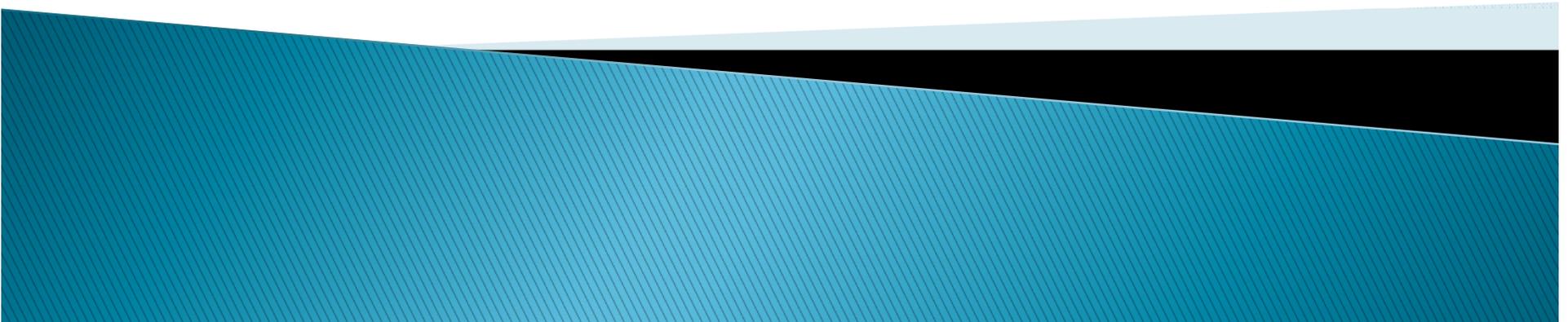


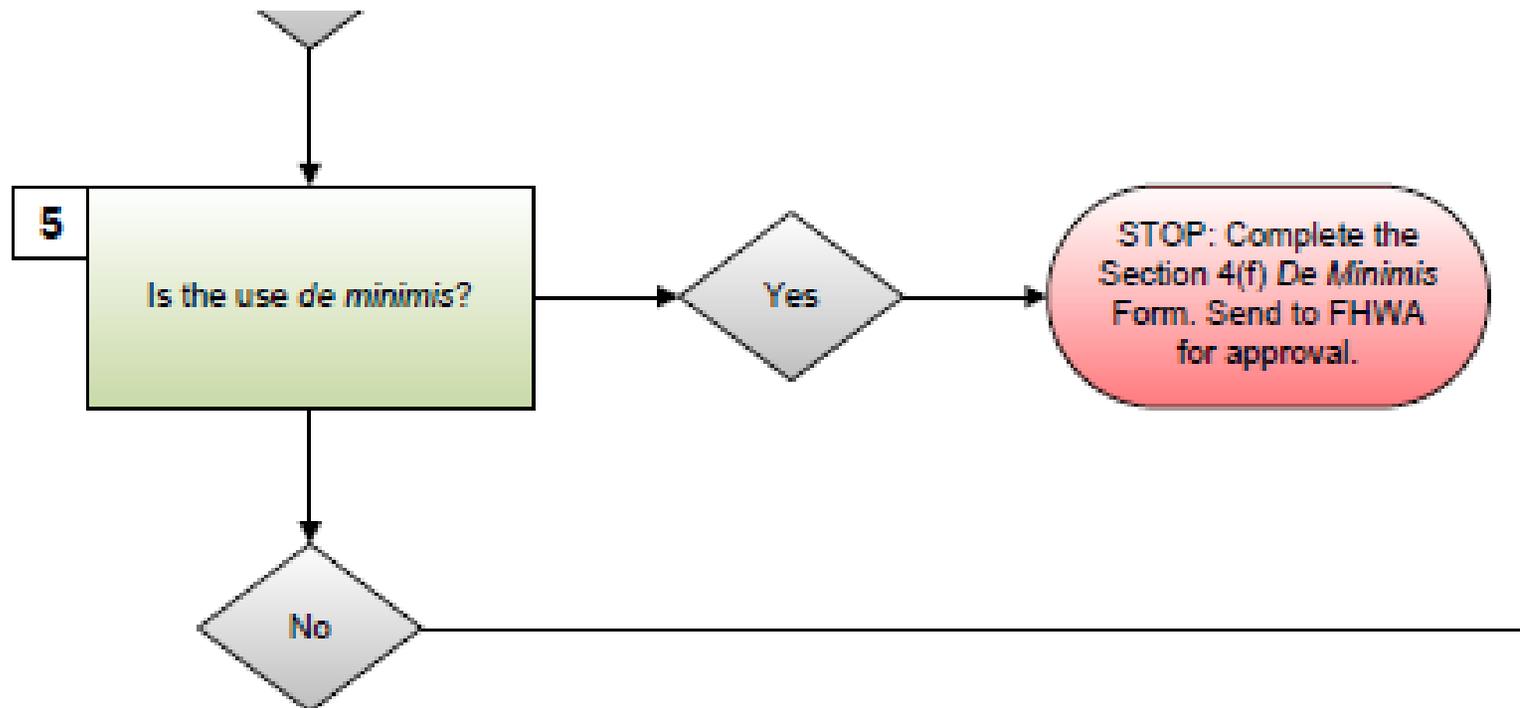
THERE IS A USE AND AN EXCEPTION
DOES NOT APPLY.



NOW WHAT?

Does *de minimis* Apply?

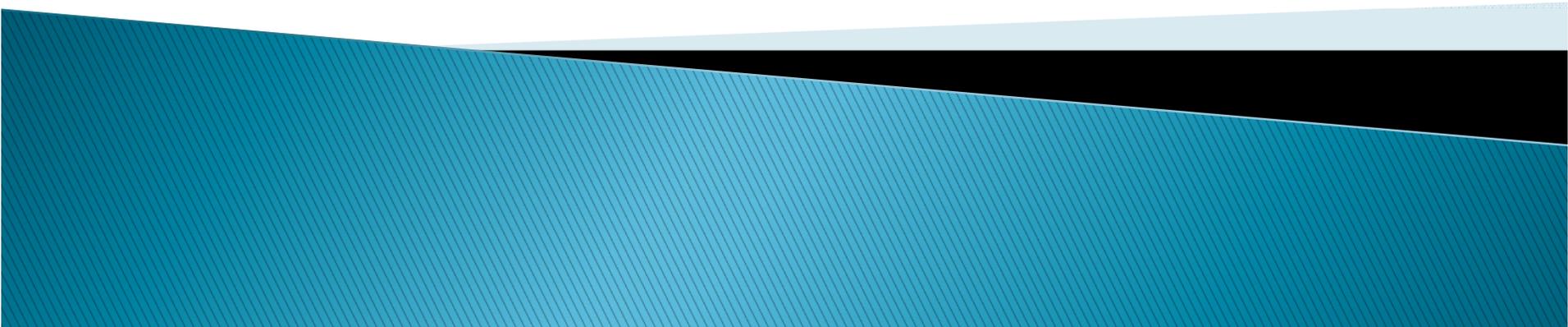




Section 4(f) *De Minimis*

Section 6009(a) of the SAFETEA-LU Act

Impacts that will not adversely affect the features, attributes or activities that qualify the parks, recreation areas, or refuges for protection, or that no historic property is affected or there will be “no adverse effect” on the historic property



Nebraska *De Minimis* Form



Section 4(f) *De Minimis* Form

May 20, 2015

Project Name Project Number

Control No. Project Location (Town, County, Street)

Project Description

Name of Section 4(f) Property (A separate form must be completed for each property with a *de minimis* impact)

Official(s) with Jurisdiction

Total Property Size (in acres) Permanent Impact (in acres) Temporary Impact (in acres)

Property Description

Answer only the questions in the applicable block (A or B). All questions in Block C must be answered.

A. Section 4(f) *De Minimis* Park, Recreation Area, and Refuge Eligibility

If the *de minimis* impact does NOT involve a park, recreation area or refuge, check the N/A below and proceed to Block B.

N/A

Will the project adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection?

Yes No

Have measures been taken to minimize harm to the property? If Yes, explain in the Avoidance,

Minimization, and Mitigation Measures box below.

Yes No

Have *de minimis* public involvement requirements (notice, review, comments, etc.) been completed? If Yes, describe in the Comments box below.

Yes No

Date(s):

Did the Official(s) with Jurisdiction concur with the determination of no adverse effect?

Yes No

Date(s):

B. Section 4(f) *De Minimis* Historic and Archeological Resource Eligibility

If the *de minimis* impact does NOT involve an historic or archeological resource, check the N/A below and proceed to Block C.

N/A

Have measures been taken to minimize harm to the property? If Yes, explain in the Avoidance, Minimization, and Mitigation Measures box below.

Yes No

Was the effect determination either "no historic properties affected" or "no adverse effect"? *

Yes No

PQS Date SHPO Date THPO Date

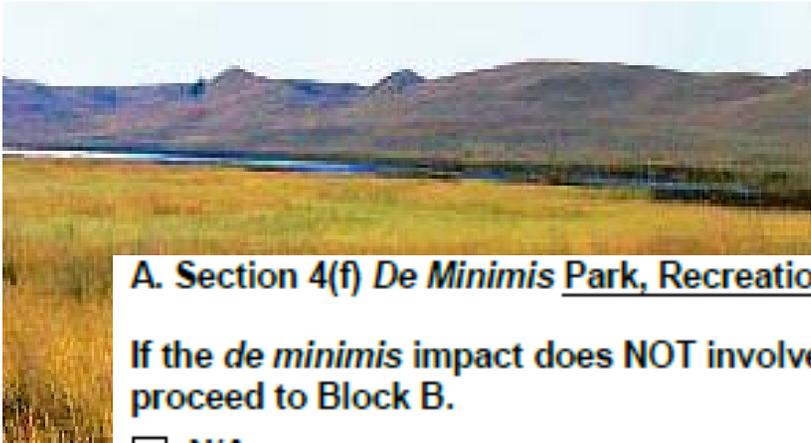
* The PQS field will always be filled out. If there is a date in the SHPO or THPO field, this would indicate the entity is the Official with Jurisdiction and they were informed of FHWA's intent to apply *de minimis* via project-specific correspondence. The date in the field would be the date the entity concurred on the Section 106 effect determination. A notation of "N/A" in the field indicates the entity was not the Official with Jurisdiction. "Programmatic" in the SHPO field indicates that a determination of "no historic properties affected" or "no adverse effect" was made for the project per the Section 106 Programmatic Agreement and the *de minimis* notification was provided via letter agreement with the SHPO.

C. Additional Information

Description of Use (Temporary and/or Permanent)

Avoidance, Minimization, and Mitigation Measures

Comments



De Minimis, Block A

A. Section 4(f) *De Minimis* Park, Recreation Area, and Refuge Eligibility

If the *de minimis* impact does NOT involve a park, recreation area or refuge, check the N/A below and proceed to Block B.

N/A

Will the project adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection?

Yes No

Have measures been taken to minimize harm to the property? If Yes, explain in the Avoidance, Minimization, and Mitigation Measures box below.

Yes No

Have *de minimis* public involvement requirements (notice, review, comments, etc.) been completed? If Yes, describe in the Comments box below.

Yes No

Did the Official(s) with Jurisdiction concur with the determination of no adverse effect?

Yes No

Date(s):

Date(s):

De Minimis, Block B

B. Section 4(f) *De Minimis* Historic and Archeological Resource Eligibility

If the *de minimis* impact does NOT involve an historic or archeological resource, check the N/A below and proceed to Block C.

N/A

Have measures been taken to minimize harm to the property? If Yes, explain in the Avoidance, Minimization, and Mitigation Measures box below.

Yes No

Was the effect determination either "no historic properties affected" or "no adverse effect"? *

Yes No

PQS Date

SHPO Date

THPO Date

* The PQS field will always be filled out. If there is a date in the SHPO or THPO field, this would indicate the entity is the Official with Jurisdiction and they were informed of FHWA's intent to apply *de minimis* via project-specific correspondence. The date in the field would be the date the entity concurred on the Section 106 effect determination. A notation of "N/A" in the field indicates the entity was not the Official with Jurisdiction. "Programmatic" in the SHPO field indicates that a determination of "no historic properties affected" or "no adverse effect" was made for the project per the Section 106 Programmatic Agreement and the *de minimis* notification was provided via letter agreement with the SHPO.

De Minimis, Block C

C. Additional Information

Description of Use (Temporary and/or Permanent)

Avoidance, Minimization, and Mitigation Measures

Comments

De Minimis Documentation

Are detailed maps included, showing current and proposed right-of-way, property boundaries, access, and existing and planned property features?

Yes No

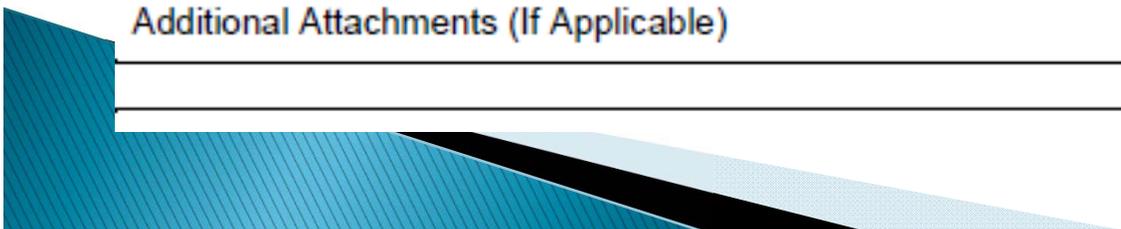
Is documentation of public involvement attached?

Yes No N/A (for historic resources)

Is concurrence from the Official(s) with Jurisdiction (and Consulting Parties, for historic properties) attached?

Yes No

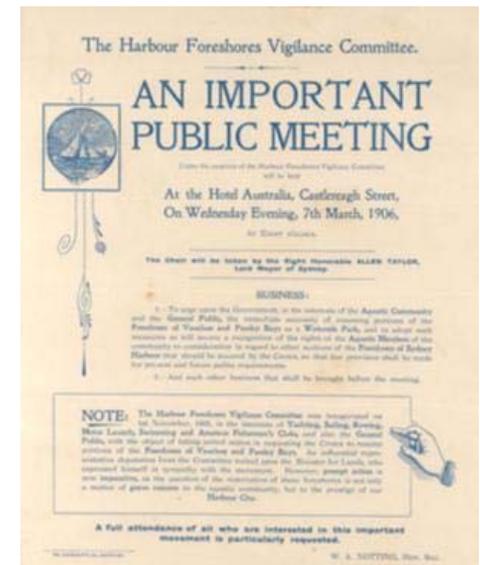
Additional Attachments (If Applicable)



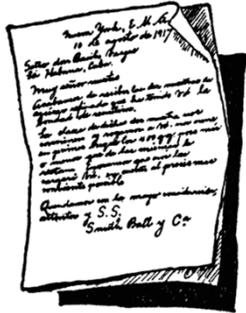
De Minimis and Public Outreach

Historic Properties

- The Section 106 outreach component satisfies *de minimis* coordination requirements for Historic Properties
- Can have no adverse affect under Section 106 for *de minimis* to apply



De Minimis and Public Outreach



Parks, Recreation Areas and 'Refuges'

- Coordination with NDOR Public Affairs officer required prior to outreach
- Audience for outreach and method of outreach tailored to reach the users of the Section 4(f) property
- Must specifically disclose impact to Section 4(f) property and make it known the intent to use *de minimis* in the outreach material



Official with Jurisdiction

- ▶ The OWJ is the entity responsible for the management of the resource
- ▶ OWJ must be provided public feedback prior to requesting their concurrence
- ▶ Request OWJ concurrence that.....
the impact will not adversely affect the property
-not-
whether they concur the impact is *de minimis*



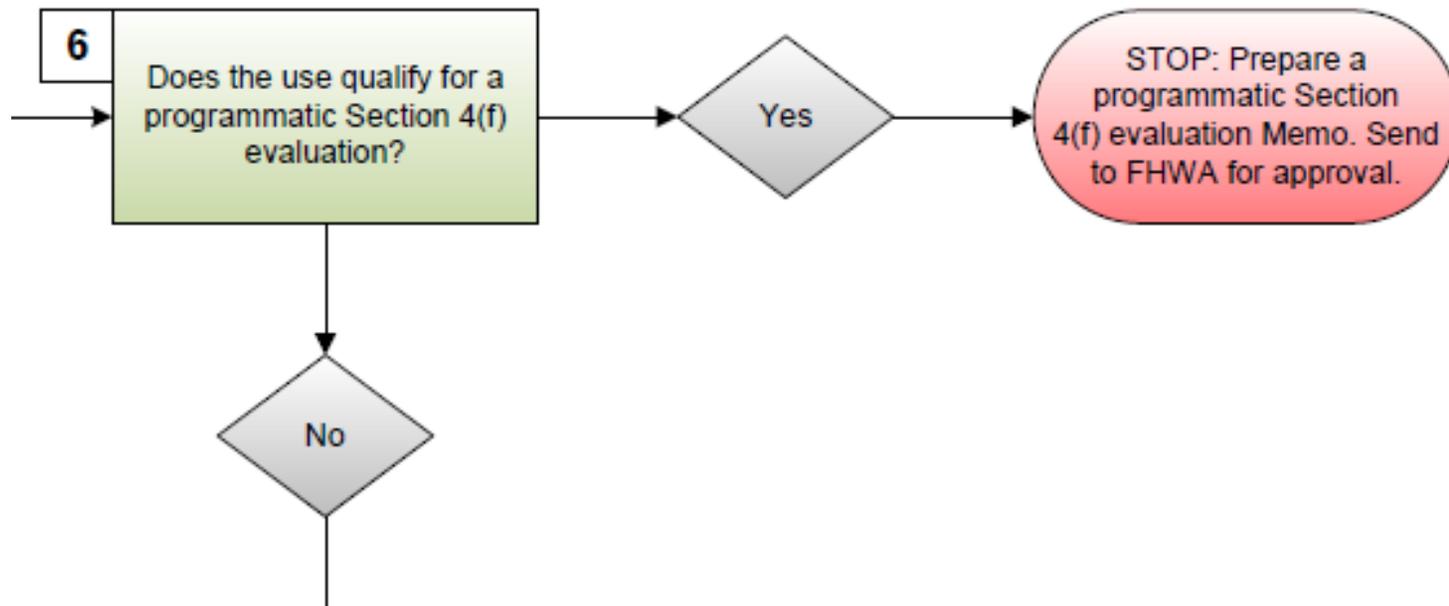
**THERE IS A USE AND EITHER *de minimis*
DOES NOT APPLY, OR I'D LIKE TO
CONSIDER ANOTHER OPTION.**

What then?

Check the Programmatic Evaluations



Does the Project Qualify for a Section 4(f) Programmatic Evaluation?



Nationwide Section 4(f) Programmatic Evaluations Comparison Chart

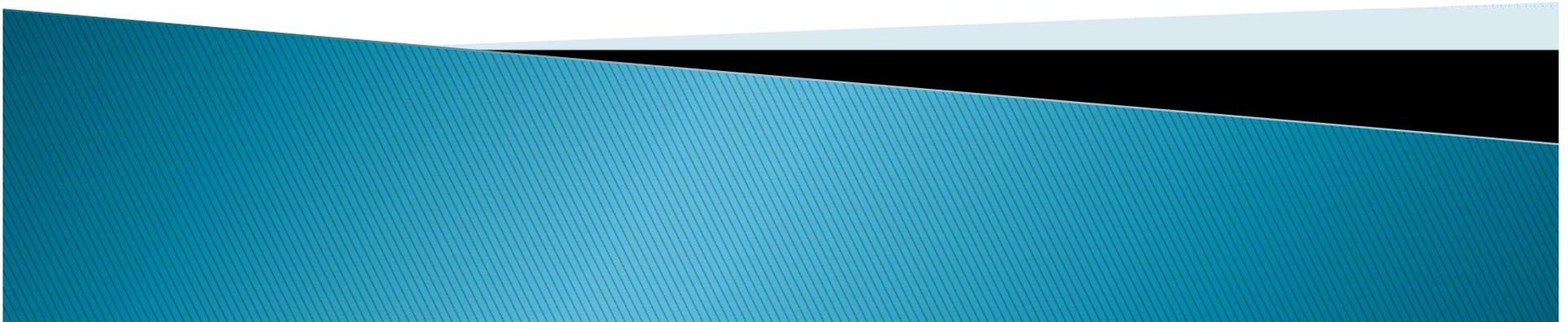
	Independent Bikeway or Walkway Projects	Use of Historic Bridges	Minor Involvement with Parks, Recreation Lands, and Wildlife and Waterfowl Refuges	Minor Involvement with Historic Sites	Transportation Projects that have a Net Benefit to a Section 4(f) Property
Date Enacted	5/23/77	7/5/83	12/23/86	12/23/86	4/20/05
Project Type	Independent bikeway or walkway project, not incidental activities of a highway project.	Rehabilitation or replacement of historic bridges.	Improvement of operational characteristics, safety, and or physical condition of an existing highway on essentially the same alignment.	Improvement of operational characteristics, safety, and or physical condition of an existing highway on essentially the same alignment.	Any type of project on existing or new alignment regardless of NEPA document type.
Resource Applicability	Parks or recreation areas.	Historic bridges that are not a National Historic Landmark.	Parks, recreation lands, and wildlife and waterfowl refuges that are adjacent to the existing facility.	Historic sites that are adjacent to the existing facility.	All Section 4(f) resources.
Impact threshold	No significant impacts (No displacements, minimal water quality impacts, etc.)	If bridge can be rehabilitated without affecting the historic integrity, Section 4(f) does not apply. If the bridge is to be demolished and/or replaced, Section 4(f) applies.	The amount of property that may be acquired / used is limited as specified in the PA. May not be used for projects processed with an EIS.	<ul style="list-style-type: none"> • Project may not remove or alter historic buildings, structures or objects, or archaeological resources important for preservation in place. • Project must result in a no effect or no adverse effect determination via the Section 106 process. • May not be used for projects processed with an EIS. 	<ul style="list-style-type: none"> • No impact limits, but project results in an overall enhancement to the resource. • For historic resources the project doesn't necessarily require a no effect or no adverse effect determination, but property remains eligible for NRHP.
Alternatives Analysis	1. There is no feasible and prudent alternative to the use of Section 4(f) lands.	<ol style="list-style-type: none"> 1. Do nothing. 2. Build a new structure at a different location without affecting the historic integrity of the historic bridge. 3. Rehabilitate the historic bridge without affecting the historic integrity of the historic bridge. 	<ol style="list-style-type: none"> 1. Do nothing. 2. Improve the highway without using the adjacent Section 4(f) resource. 3. Build an improved facility on new location without using the adjacent Section 4(f) resource. 	<ol style="list-style-type: none"> 1. Do nothing. 2. Improve the highway without using the adjacent historic site. 3. Build an improved facility on new location without using the historic site. 	<ol style="list-style-type: none"> 1. Do nothing. 2. Improve the transportation facility in a manner that addresses the project's P&N without using the Section 4(f) property. 3. Build the transportation facility at a location that does not require use of the Section 4(f) property.
Coordination and Concurrence Requirements	Official with jurisdiction concurs in writing that project is acceptable and consistent with designated use of property.	If replacement is proposed, the bridge must be made available for an alternative use. SHPO concurs in writing with assessment of impacts and proposed mitigation.	Official with jurisdiction concurs in writing with assessment of impacts and proposed mitigation.	SHPO concurs in writing with assessment of impacts and proposed mitigation.	Official with jurisdiction or SHPO concurs in writing with assessment of impacts and proposed mitigation For projects with one or more public meetings or hearings, information on the proposed use of the Section 4(f) resources shall be communicated to the public.

THERE IS A USE.

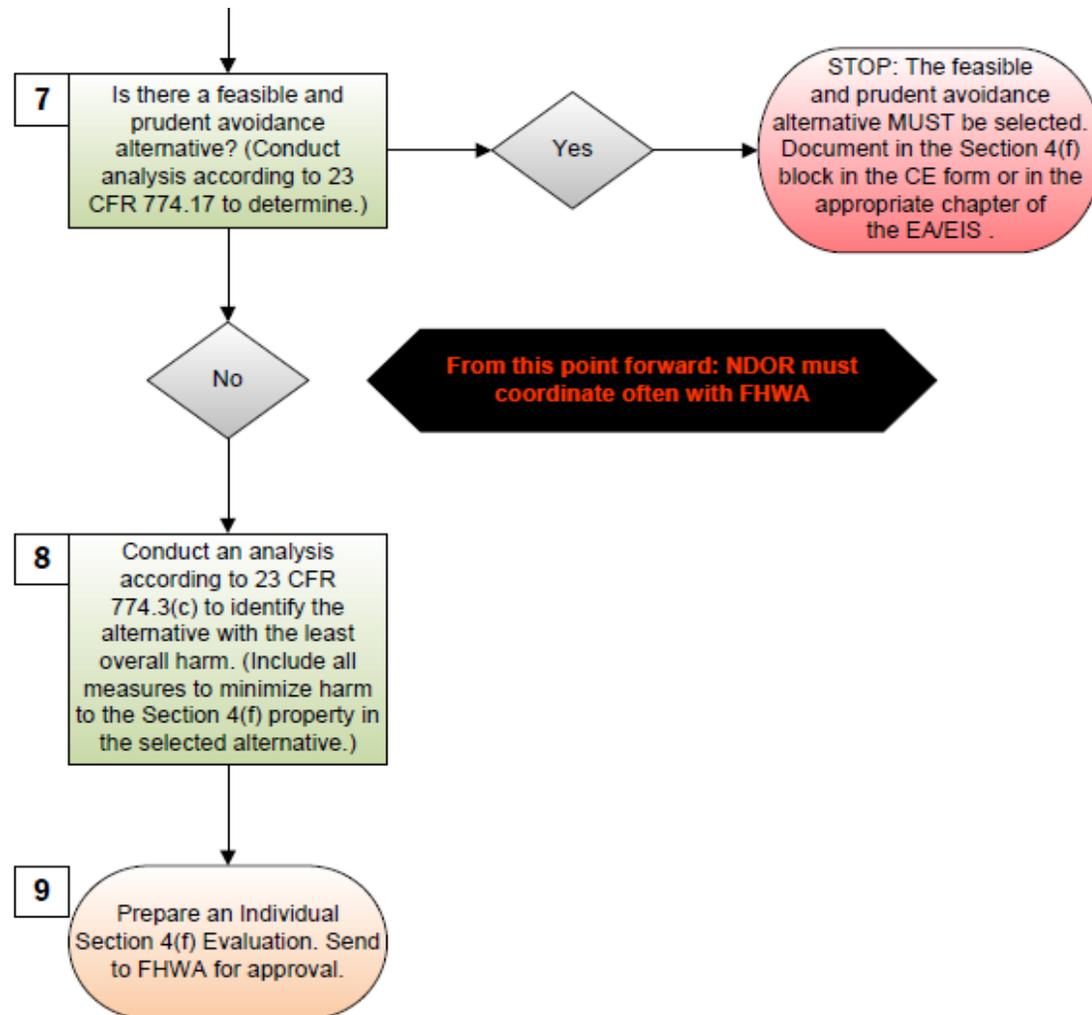
***De Minimis* and none of the Programmatic
Evaluations Apply.**

What do I do?

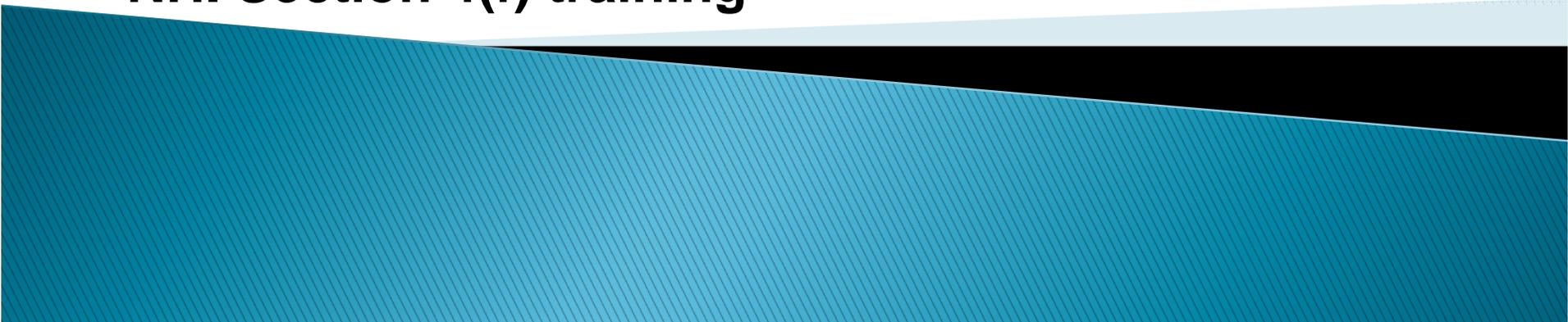
Individual Section 4(f) Evaluation



Is there an avoidance alternative? Is an Individual Section 4(f) assessment required?



Resources

- **23 CFR 774**
 - ***Guidance for Completing the Section 4(f) Review Process in Nebraska for Federal-aid Projects***
 - **FHWA Section 4(f) online tutorial**
 - **FHWA Section 4(f) Policy Paper, including Q&A's**
 - **NHI Section 4(f) training**
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Questions?

