

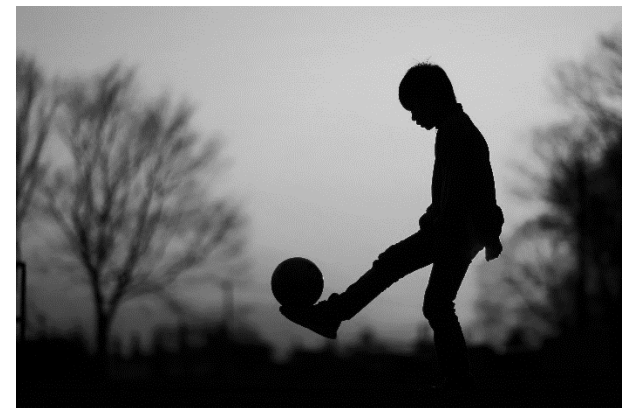
SECTION 4(F) PUBLIC PARKS, RECREATION, REFUGE AREAS

Section 4(F) applies when federally funded projects impact a publicly owned and publicly accessible recreational property such as a park, playground, non-motorized trail, or wildlife sanctuary. There are three forms of use under Section 4(f):

1. **Permanent Use**: Recreational property is permanently incorporated into a transportation facility either through right of way (ROW) acquisition or a permanent easement. An example would be if a road widening project requires the purchase of land from a local park.
2. **Temporary Occupancy**: A recreational property is temporarily impacted in a way determined to be adverse due to a road project. Section 23 CFR 774.13(d) spells out the conditions of temporary occupancy. If a project meets all these conditions, then the impact would be considered so minimal that it would not constitute a “use” of the recreational property, according to the Section 4(f) definition. However, if even one condition is not met, a “use” of the property occurs EVEN if the impacts are still temporary in nature. The list of conditions for a temporary occupancy designation can be found in the next section. An example of a temporary occupancy is closing a section of a park trail temporarily, while providing a reasonable and clearly marked detour route.
3. **Constructive Use**: No physical use of a recreational property occurs, but a road project significantly impairs the features, activities, or attributes that qualify the property for Section 4(f) protection. An example would be if a new road project created a substantial increase in noise levels near a noise sensitive feature such as a campground. This type of use is not common among local agency road projects.

ADDITIONAL RESOURCES

- [FHWA 4\(F\) Policy Paper](#)
- [FHWA Section 4\(f\) Tutorial](#)
- [Section 4\(f\) U.S. Code](#)
- [Center for Environmental Excellence Section 4\(f\) Handbook](#)
- [Appendix A: Sample Letters](#)



De Minimis

If a road project is determined to “use” a Section 4(f) property in one of the ways outlined above, the local agency would likely need to obtain a de minimis impact determination from the Federal Highway Administration (FHWA) before moving forward. De minimis means a use is so insignificant that it’s not of concern. The following items need to be submitted to MDOT for review by FHWA in order for a project to be considered for de minimis:

1. Documentation of public involvement including public notice that informs the public about the proposed use of the park and provides an opportunity for comment.
2. A written explanation why the impact/use is unavoidable.
3. A map of the project area.
4. A letter from the official with jurisdiction (OWJ) stating they concur that the project will not negatively impact the activities, features, or attributes that make the property eligible for protection under Section 4(f).

If a de minimis impact determination cannot be made, FHWA would need to find that no feasible or prudent alternative exists before approving the use of a Section 4(f) property. In that case, you would need to work closely with your MDOT NEPA reviewer.

Section 4(f) Exceptions

There are a few exceptions under Section 4(f), outlined below. In these cases, no use occurs if the project meets all of the conditions under the exception. To qualify as a 4(f) exception, there can be no ROW acquisitions or permanent easements from the 4(f) property.

Temporary Occupancy: No use occurs if all the following conditions apply:

1. There is no change in ownership and the duration of the impact is less than the total time it takes to construct the project.
2. The scope of work is minor.
3. There are no permanent negative impacts and the attributes that qualify the property for Section 4(f) will not be temporarily or permanently impacted. For example, if a baseball field cannot be used as a baseball field, even temporarily, because a road agency is using the space for staging, that would be unallowable interference.
4. The OWJ has agreed in writing to the above conditions.

Trails

Per 23 CFR 774.13 (f), certain trails, paths, bikeways, or sidewalks may be exempt. Common examples include:

1. Trails, paths, bikeways, and sidewalks within the road ROW but that are used primarily for recreational purposes, NOT transportation, and are NOT a part of the local transportation network as long as the continuity of the path is maintained. For example, a trail that intersects with a road is being shifted slightly but the connection to the overall trail system is preserved.
2. Trails, paths, bikeways, and sidewalks outside of the road ROW that ARE a part of the local transportation system and that DO function primarily for transportation. Because these are not “recreational” they do not fall under Section 4(f) rules.

Enhancements

Enhancement projects improve or expand the features that make a property eligible for Section 4(f). In simple terms, these projects enhance aspects of a park that make it a park, making it more enjoyable for those using the property. For example, building a scenic trail to improve access to a pond or playground within a park would be an enhancement. A project would qualify as an enhancement if the following conditions were met:

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.
2. The OWJ agrees to the above in writing.

FREQUENTLY ASKED QUESTIONS

Q: Are trails protected under Section 4(f)?

A: It depends. A trail, path, bikeway, or sidewalk may be exempt from Section 4(f) if it is within the road ROW, but its primary function is purely recreational, and it is being relocated within the road ROW. An example would be a project that shifts part of a park walking trail within the existing road ROW to allow for road widening. It could also be exempt if the trail, path, bikeway, or sidewalk is *outside* of the road ROW but is a part of the local transportation network and functions primarily as a means of transportation (e.g. connects a trip generator, such as a residential subdivision, with a destination, such as a commercial complex,

and is used primarily by people to get from point A to point B). Another example would be a sidewalk used by commuters going to/from school or work. Because it is not serving a recreational purpose, it is not bound by Section 4(f) guidelines. Trails could also be exempt as an enhancement to another recreational property. See the exceptions section above.

Q: Are school playgrounds protected under Section 4(f)?

A: School grounds are considered multiuse properties. School grounds may be considered a Section 4(f) property if the area being impacted serves a recreational purpose AND is open to the public. Documentation should be obtained from the officials with jurisdiction stating whether the property is considered a recreational space.



A sidewalk will be installed and requires a permanent easement on a section of land that serves as a school athletic field and is open to the public for games and practices. This would be considered a Section 4(f) use.



A small section of ROW will be acquired from the corner of a school property in order to allow for a roundabout to be built. There are no recreational facilities near the section of land being acquired.

Q: What if I can't provide a detour to maintain access to a park or trail due to safety concerns?

A: If trail connectivity cannot be maintained, it will be considered a Section 4(f) use and the project will have to seek approval as de minimis. In some cases, a project may "shift" a trail rather than providing a full detour. For example, using plywood the trail would be shifted 20 feet in either direction for a section. If the closure is for a very brief period (30 minutes or less), a detour may not be necessary.

Q: Is a privately owned golf course subject to 4(f) regulations if it is open to the public?

A: No, only publicly owned and publicly accessible properties fall under Section 4(f) regulations.

Q: Who is the official with jurisdiction (OWJ)?

A: the OWJ is the entity that owns the property or that has legal power to represent the agency when it comes to the Section 4(f) property.

Q: When do I need to get concurrence from the OWJ?

A: Concurrence from the OWJ is needed whenever a Section 4(f) property may be impacted, whether it be a situation where the impact meets one of the exceptions or if the project is seeking de minimis approval.

Q: What if the OWJ does not concur?

A: If the OWJ does not concur in writing to any part of the conditions needed for an exception, the project is not considered exempt and the property must move to the next level of 4(f) analysis.

Q: What if my property received Land and Water Conservation Funding (LWCF)?

A: If a property was purchased or developed with LWCF then it falls under Section 6(f), which requires some additional documentation if it is being impacted. Additionally, properties that used DNR trust funds may be subject to additional regulations. In that case, an agency should reach out to DNR for further guidance.

APPENDIX A: SAMPLE LETTERS

SAMPLE LETTER
from
officials having jurisdiction
over protected resources
for
De Minimis Section 4(f)

(Date)

Mr./Ms. XYZ
Local Agency Program
Bureau of Development
Michigan Department of Transportation
425 W. Ottawa Street
P.O. BOX 30050
Lansing, Michigan 48909

Dear Mr./Ms. XYZ:

The (Official w/Jurisdiction) supports the efforts of MDOT to (summarize proposed project).

(Official w/Jurisdiction) has corresponded with (staff) from your department regarding the proposed construction of (describe project/type of work) in (city, county). The proposed work will involve the minor, or de minimis, use of (name site), which has been determined to qualify as Section 4(f) property. (Official w/Jurisdiction) agrees this project will have no significant impact to the resource and the amount and location of the land to be used does not impair the use of the remaining Section 4(f) property for its intended purpose.

The (Official w/Jurisdiction) understands and agrees that as a result of this project, that the proposed work will not result in any temporary or permanent adverse change to the current activities, features, or attributes which are important to the purposes or functions that qualify (the site) for protection under Section 4(f), and that it will include a permanent easement on only a minor amount of (the sites) property. (Official w/Jurisdiction) has also reviewed and agrees to the assessment of the impacts of the proposed project as well as the proposed mitigation for this project on (the site).

(Official w/Jurisdiction) appreciates the coordination efforts made on behalf of your department. If I can be of further assistance, please feel free to contact me at (address, phone number).

Sincerely,

Official w/Jurisdiction

Press release:

The *Local Agency* is planning to modernize the traffic signal at the intersection of Elm Street and Jackson St.

As part of the project, *Local Agency* will need to acquire approximately 628 square foot right-of-way parcel from the Linear Park and a 814 square foot parcel from XYZ Company. As part of the construction process, a short-term closure with a detour of the Linear Park Trail will be implemented. These small parcels and trail closure are necessary to accommodate traffic signal safety improvements.

A public meeting will be held on November, 16, 2017 from 5:00 to 7:00 p.m. to provide project details and an opportunity for comments. Interested residents, business and community representatives are invited to stop by anytime during this open house-style meeting to learn more and provide input. *Local Agency* staff members will be available to answer questions.