



## 1.1 Overview

Section 4(f) of the Department of Transportation Act provides that the U.S. Secretary of Transportation shall not approve any program or project which involves the use of any publicly owned land from a public park, recreation area, historic site, or waterfowl or wildlife refuge of national, state, or local significance, as determined by the officials having jurisdiction therefore, unless there is no feasible and prudent alternative to the use of such land and such project includes all possible planning to minimize harm. Section 4(f) Evaluations are required for all federally funded transportation related actions.

Note that 4(f) applies to both public and private historic sites, but only to recreational areas that are publicly owned. The Federal Highway Administration (FHWA) has defined an historic site as on or eligible for the National Register of Historic Places (see [Chapter 26](#)). FHWA has also determined that in addition to "taking" or "purchase," "use" can also include the results of adverse impacts. In some circumstances, 4(f) might apply where the land affected by a project functions as a Section 4(f) resource even though it is not a designated public park, recreation area, historic site, or waterfowl or wildlife refuge.

Because Section 4(f) requirements state that there shall be "no prudent and feasible alternative" to the taking of the specified lands, the project must include a discussion demonstrating that there are no feasible and prudent alternatives which avoid 4(f) lands, based on the high cost, in terms of money, environmental impacts, including impacts on minority populations and low-income populations, or community disruption. The 4(f) Evaluation should also include a discussion demonstrating that all possible planning to minimize harm has been done. Consideration of both aspects should begin early in project development.

Another factor affecting Section 4(f) applicability is the significance of the land as determined by the federal, state, or local official having jurisdiction. To accomplish this determination, early consultation with the local official is required.

Whenever any of the previously described lands are involved, an early letter to the local official requesting a determination of the significance of the property as a public park recreation area, historic site, or waterfowl or wildlife refuge is required. The letter should not ask the official with jurisdiction over the resource whether the property is a Section 4(f) property. The determination of whether any property is a Section 4(f) property is the sole responsibility of FHWA. The letter to the official having jurisdiction over the resource and its resulting response should be included in the appendix of the environmental document.

The FHWA shall decide if Section 4(f) applies. Generally, Section 4(f) is applicable when a proposed project involves:

1. Acquisition from publicly owned lands of the types described in the first paragraph of this Procedure; and
2. Acquiring land from a publicly owned parcel that is not officially designated as a park, recreation area, or wildlife refuge, but that is being used for this purpose on a permanent basis if the official having jurisdiction believes its use is significant.

The FHWA Division Administrator shall review the local official's non-significance determination for concurrence. In the absence of such a statement, the 4(f) land will be considered significant.

## 1.2 Determination of 4(f) Lands

The following information provides some guidance in determining which lands are most likely considered Section 4(f) lands and which lands are not:

1. School Property - If the school playgrounds and recreational and sports fields are used only for the students during school hours and are not open to the public for their use, the area is generally not considered Section 4(f). However, if the school property serves as a community recreational facility, it could be considered a Section 4(f) designation.
2. Fairgrounds and Exposition Centers - Generally, these areas are closed to the public except during the periods or seasons the fairs are in operation. At other times, scheduled and controlled public events are in effect. These conditions do not constitute a Section 4(f) designation.

3. National, State, County, Town and City Parks - These public areas are included under Section 4(f) designation. However, land which is not a significant park, recreational area, or refuge, as determined by the official having jurisdiction over the land and concurred with by FHWA will be exempt from 4(f). (Note that the entire park, recreational area, or refuge must be determined to be not significant.)
4. Public Play Areas - Many communities establish community playgrounds, athletic fields, and totlots. It is advisable to write to the local agency or group responsible for maintaining these areas and request a determination of significance. In many cases, the federal or state lead agency will be required to determine if these areas are under Section 4(f) designation.
5. National and State Forests - Because the majority of forest land is not under Section 4(f) designation, a statement should be solicited from the Forest Service that addresses the following situations:
  - The project will not encroach upon lands having Section 4(f) usage.
  - The project will encroach upon lands having Section 4(f) usage.
  - The project will encroach upon lands that are not now designated for Section 4(f) usage, but for which such usage is planned.

Because large public land holdings, such as national or state forests, are administered under statutes for multiple use management, Section 4(f) applies only to portions of such lands that are being used for or are designated in the plans of the land management agency for park, recreation, wildlife or waterfowl refuges, or historic purposes. The official having jurisdiction over the land will determine its use and its significance.

If the proposed project encroaches upon any lands either currently having or expecting to have Section 4(f) usage, a determination of significance must be obtained from the Forest Service. Once the area has been determined to be significant, the FHWA will then provide substantiating documentation that must be included in the environmental documentation. If the U.S. Forest Service statement is not adequate to support a determination that a 4(f) Evaluation is not required, the case should be submitted to the FHWA Division Office, where an independent judgment will be made on the present and planned use before accepting the statement as a determination.

6. Wild and Scenic Rivers - Projects involving the acquisition of lands that have been purchased by the National Park Service as scenic easements along designated Wild and Scenic Rivers necessitate the consideration of Section 4(f) applicability (see [FDM 20-5-10](#) and [FDM 21-15-1](#)).
7. Conservancy Lands - Local units of government often set aside, through zoning, lands designated as "conservancy" lands. This is usually done to preserve fish spawning areas, wildlife habitat, and natural plant and animal communities. These lands are usually purchased by public agencies and are called recreational or wildlife areas regardless of their function. A decision as to the actual use and status of these lands is made on a case-by-case basis.
8. Wetland and Stream Easements - Publicly owned wetlands set aside by easements for waterfowl use are 4(f) lands. Generally, such easements are granted by owners to the U.S. Fish and Wildlife Service and the DNR.
9. Properties Reclassified Since 1966 from 4(f) Usage - In certain instances, local officials have, in anticipation of the use of certain lands for a transportation project, rezoned 4(f) lands to a public right of way usage. In some cases, this has occurred even though the actual usage remains recreational. Where this occurs, 4(f) requirements cannot be avoided.

In determining what lands are to be considered 4(f) properties, actual usage must be considered. If a property is owned by a transportation agency and is used on an interim basis for park or recreational purposes, this would not be construed as a 4(f) property. However, if the recreation or other 4(f) use is of longer duration and the land is considered significant for these purposes, 4(f) requirements are applicable. Therefore, if a property is rezoned from 4(f) use to transportation use in anticipation of federal funding, 4(f) requirements still apply, even if the change occurred prior to the request for federal funds.

10. Historical and Archaeological Sites - Section 4(f) applies to all archaeological and historical sites either on or eligible for inclusion on the National Register of Historic Places. This includes any archaeological and cultural sites discovered during construction. The exception to this rule involves those archaeological sites that are important for the information they contain. Many archaeological sites can and should be excavated to learn from them. Others such as mound and burials are considered to be important in situ, i.e., left in place. With the concurrence of the SHPO and the Advisory Council on Historic Preservation, the former may qualify for treatment under a Determination of No Adverse Effect (see [Chapter 26](#)).

Historic bridges that are rehabilitated or repaired may be exempt where the rehabilitation or repair does not impair the historic integrity of the bridge. A discussion of the programmatic 4(f) Evaluation prepared for historically significant bridges is discussed later in this procedure.

11. Privately Owned Properties - The question frequently arises as to whether privately owned properties used for recreational purposes constitute 4(f) involvement. Generally, the answer is that they do not. For example, privately owned golf courses that are occasionally used by the general public are not 4(f). If the property is still in private ownership at the time of Plans, Specifications and Estimates (P.S.&E.) approval, it is not considered 4(f). Note that the careful listing of protected properties in the regulations means that significant historic sites are 4(f) regardless of whether they are publicly or privately owned.
12. Specially Funded Lands - Lands purchased with special funds that may be 4(f) are:
  - Land and Water Conservation (LAWCON) lands. Although these lands are funded under the LAWCON Act, they are usually 4(f) because they are public use recreational areas or wildlife refuges; they are also 6(f) (see [FDM 21-25-5](#)). If a highway project requires the acquisition of 6(f) lands, the law requires that the lands acquired be replaced with other property of at least equal fair market value and of reasonably equivalent usefulness and location. Note that 6(f) lands are often 4(f) lands and should be recognized and addressed as such.
  - Dingell-Johnson Act lands are primarily used for fishery conservation programs and are usually public recreational areas. Capital improvements can be substituted for replacement (see [FDM 21-25-5](#)).
  - Pittman-Robertson Act lands are used for wildlife programs that might include public use recreational uses. Capital improvements can be substituted for replacement (see [FDM 21-25-5](#)).

Coordination with the U.S. Fish and Wildlife Service is required whenever lands will be acquired that have received Pittman-Robertson or Dingell-Johnson funds. Where appropriate, the replacement of acquired lands with property of equal value at current market prices may be required. However, replacement of lands indicated under these acts is not mandatory as it is under Section 6(f) of LAWCON. These acts provide for the option of replacing funds in lieu of land, if the Wisconsin DNR, the WisDOT and the U.S. Department of Interior (DOI) agree.

13. Functional Replacement of Lands - The most important step is to determine that functional replacement is necessary to preserve and protect the public's interest. If it is not a 4(f) matter, a replacement can be resolved quickly through the FHWA. If it is 4(f), relevant materials should be included in the transmittal letter for the 4(f) Evaluation. Some reference to the functional replacement should also be included in the environmental document. A special concept regarding functional replacement in the acquisition of public lands is contained in FAPG Part 712F "Functional Replacement of Real Property in Public Ownership." It permits the FHWA to participate in the cost of purchasing a substitute site and/or constructing a replacement facility to duplicate the function of the public land acquired. It applies to all public land whether or not it is 4(f).

### 1.3 Programmatic Section 4(f) Evaluations

There are four nationwide programmatic Section 4(f) evaluations that cover the following types of projects.

1. Projects that use historic bridges. (see [Attachment 1.1](#))
2. Projects that use minor amounts of land from public parks, recreation areas and wildlife and waterfowl refuges. (see [Attachment 1.2](#))
3. Projects that use minor amounts of land from historic sites. (see [Attachment 1.3](#))
4. Bikeway projects.

The fact that the Nationwide programmatic Section 4(f) evaluations are approved does not mean that these types of projects are exempt from or have advance compliance with the requirements of Section 4(f). Section 4(f) does, in fact, apply to each of the types of projects addressed by the programmatic evaluations.

Furthermore, the programmatic Section 4(f) does not relax the Section 4(f) standards; i.e., it is just as difficult to justify using Section 4(f) land with the programmatic Section 4(f) evaluation as it is with an individual Section 4(f) evaluation.

Programmatic Section 4(f) Evaluations for minor involvements with parks and historic sites may only be used with EA's or Environmental Report (ER) documents. The Unique Area Factor Sheets of the Environmental Screening Worksheets must be completely filled out and included in the environmental document. It is also important to include the letter from the official having jurisdiction over the Section 4(f) property. This letter must agree with the physical impacts and proposed measures to minimize harm for the programmatic Section 4(f)

evaluation to apply.

In order to apply a programmatic Section 4(f) to a specific project, region or consultant staff should complete the documents shown in [Attachment 1.1](#), [Attachment 1.2](#), and [Attachment 1.3](#) of this procedure. Each of these three attachments covers one of the first three types of programmatic Section 4(f) listed above. Each attachment consists of the following parts.

- Description/Location of the project or historic bridge
- Eligibility criteria checklist
- Determination and Approval response letter for FHWA signature.

All three parts are to be completed and included with the project's EA, FONSI or ER. If more than one case applies to a specific project (e.g., project proposes to affect both an historic site and recreation lands) then forms for all applicable cases must be submitted.

Blank copies of these forms are available in either paper or electronic copy from BOE.

Another, more regional, programmatic Section 4(f) evaluation may be used for projects on the Great River Road. Individual projects along the Great River Road often involve consideration of interpretive centers, historical markers, waysides, renovation of historic sites, development of existing park and recreational areas, archaeological sites, scenic easement areas, and access roads. Coordination with state and local officials is still required if a project potentially impacts one of these factors. A letter must be obtained from the official having jurisdiction stating that no adverse impacts will occur and that measures to minimize harm have been included in the project analysis.

#### **1.4 Addressing Section 4(f) Determinations**

If there is a clear determination that a separate Section 4(f) Evaluation will be required based on the certainty of direct impacts, a separate Section 4(f) Evaluation must be prepared and appended to the draft environmental document for public review. If the document is an EIS, it should read, "Draft Environmental Impact Statement/Section 4(f) Evaluation."

In the case of complex Section 4(f) involvement, it is desirable to include the analysis in a separate section of the DEIS or, for projects processed as categorical exclusions, in a separate document. A separate 4(f) is usually prepared before an environmental assessment (EA) may be approved. A Section 4(f) Evaluation should be prepared for each location within the project where the use of Section 4(f) land is being considered.

##### **1.4.1 Section 4(f) Evaluation Content**

The following information should be included in the Section 4(f) Evaluation, as appropriate:

1. A brief description of the project and its location and the purpose and need for the project (when the Section 4(f) Evaluation is circulated separately from the environmental document).
2. A map or drawing of the location of the project and its involvement with the Section 4(f) property. Include permanent and temporary easements.
3. Size of both the total parcel and the portion to be acquired in acres or square feet (followed by corresponding hectares or square meters).
4. Identification of the type of property (recreation, historic, park, etc.).
5. Existing and planned activities and facilities at the property (track, sports field, fishing, swimming, tennis, etc.).
6. Approximate number of users/visitors.
7. Relationship to other similarly used lands in the vicinity.
8. Pedestrian and vehicular access.
9. Ownership (city, county, state, federal, private).
10. Applicable clauses affecting the title, such as covenants, restrictions, or conditions, including forfeiture.
11. Unusual characteristics of the Section 4(f) land (flooding problems, terrain conditions, or other features that either reduce or enhance the value of portions of the area).
12. The probable increase or decrease in environmental impacts (noise, air pollution, visual, etc.), of the project's alternative locations and designs considered, on the Section 4(f) land uses.
13. A description of all reasonable and practicable measures which are available to minimize the impacts of the proposed action on the Section 4(f) property. Discussions of alternatives in the draft EIS or EA

may be referenced rather than repeated.

14. Sufficient information to evaluate all alternatives that would avoid the Section 4(f) property. Discussions of alternatives in the DEIS or EA may be referenced rather than repeated. However, this section should include discussions of design alternatives (to avoid Section 4(f) use) in the immediate area of the Section 4(f) property.
15. The results of preliminary coordination with the public official having jurisdiction over the Section 4(f) property and with regional (or local) offices of Department of Interior and, as appropriate, the regional (or local office of U.S. Department of Agriculture and U.S. Department of Housing and Urban Development).
16. The determination that there are no feasible and prudent alternatives is not normally addressed at the DEIS, EA or preliminary document stage until the results of the formal coordination have been completed.

#### 1.4.2 Section 4(f) Discussion in Final Document

When the selected alternative involves the use of Section 4(f) land, a Section 4(f) Evaluation may be included as a separate section in the FEIS or Finding of No Significant Impact (FONSI). For a project processed as an Environmental Report for a Categorical Exclusion, any required Section 4(f) approval will be prepared as a separate document. The final evaluation should contain:

1. All information required above for a draft evaluation.
2. A discussion of the basis for the determination that there are no feasible and prudent alternatives to the use of the Section 4(f) land. The supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives and that the cost, environmental impact, or community disruption resulting from such alternatives reaches extraordinary magnitudes.
3. A discussion of the basis for the determination that the proposed action includes all possible planning to minimize harm to the Section 4(f) property.
4. A summary of the appropriate formal coordination with the Washington Offices of Department of Interior, and as appropriate, the Washington Offices of U.S. Department of Agriculture and U.S. Department of Housing and Urban Development.
5. Copies of all formal coordination comments received, including an analysis and response to any issues raised.
6. Include the following concluding statement: "Based upon the above considerations, it is determined that there is no feasible and prudent alternative to the use of land from the [name of the Section 4(f) property] and that the proposed action includes all possible planning to minimize harm to the [name of the Section 4(f) property] resulting from such use."

The Section 4(f) approval will be incorporated into either the FEIS or the Record of Decision (ROD). When the Section 4(f) approval is contained in the ROD, the information noted in Items 1 through 5 above may be incorporated by reference to the EIS.

#### 1.4.3 Distribution

The Section 4(f) Evaluation is submitted by the region and the Bureau of Environment (BOE) with a DEIS or EA. If an environmental report is prepared, the 4(f) Evaluation is submitted separately, BOE transmits the Section 4(f) Evaluation to the FHWA for approval.

#### **LIST OF ATTACHMENTS**

- |                                |   |
|--------------------------------|---|
| <a href="#">Attachment 1.1</a> | Programmatic Section 4 (f) Determination and Approval - Historic Bridges            |
| <a href="#">Attachment 1.2</a> | Programmatic Section 4 (f) Determination and Approval - Minor Takes of Public Parks |
| <a href="#">Attachment 1.3</a> | Programmatic Section 4 (f) Determination and Approval - Historic Sites              |

#### **FDM 21-25-5 Section 6(F) Requirements**

*March 15, 1996*

#### **5.1 Land and Water Conservation Fund Lands**

Section 6(f)(3) of the Land and Water Conservation Fund Act of 1965 (LAWCON) requires that property acquired or developed with LAWCON funds shall not be converted to uses other than for public outdoor recreation uses. Acquisition of any land for which LAWCON funds have been used for prior acquisition or

improvements invokes the strictures of Section 6(f)(3). Coordination with the Wisconsin Department of Natural Resources (DNR) is necessary as the DNR is the state agency responsible for administering LAWCON funds. The federal agencies responsible for the management of LAWCON funds and affected lands at the national level are under the auspices of the U.S. Department of the Interior and the U.S. Department of Agriculture. These agencies are the U.S. Fish and Wildlife Service, the National Park Service, and the U.S. Forest Service.

If a highway project requires the acquisition of Section 6(f) lands, the lands acquired for right of way purposes must be replaced with other property of at least equal fair market value and of reasonably equivalent usefulness and location. Note that Section 6(f) lands are often Section 4(f) lands and should be addressed as such. In evaluating the impacts of the acquisition on these lands, a recommendation of replacement lands should be included, indicating the areas under consideration for replacement.

Section 6(f) requirements do not apply to easements acquired under the National Wild & Scenic Rivers Act of 1968. The Department of Interior administers its own funds for purchasing easements along these rivers.

### 5.1.1 Small Conversion Policy

Projects which affect a small part of a resource protected by LAWCON may use a streamlined procedure to satisfy the requirements of Section 6(f). The Wisconsin Department of Natural Resources Region Environmental Impact Coordinator and the LAWCON Program Coordinator in the DNR Madison office must be included in consultations seeking to address small conversion of 6(f) lands.

The Department of the Interior defines a small conversion as: "... the conversion to other than public outdoor recreation use of an area which is no more than 5% of the total project area (that area within the approved 6(f)(3) boundaries) and which is no more than two acres (2.0 acres or less) in size." This definition does not apply if the acquisition from the 6(f) property would significantly impact recreation use at the site.

Whenever a project meets the small conversion criteria, consultation with DNR requires that WisDOT provide a signed and dated map depicting the amended 6(f) boundaries. Other graphics which convey and clarify the effects of the project on the resource should also be provided to DNR. The discussion of the small conversion must address the issue of replacement lands. It must be decided, in consultation with DNR whether replacement lands of at least equal value and use will be provided as part of the project or will be deferred to a time and location of DNR's choice. In either case, WisDOT shall pay the fair market value for lands it acquires from a 6(f) resource.

Refer to [Chapter 5](#) for coordination procedures with the DNR, U.S. Fish and Wildlife Service, National Park Service, and U.S. Forest Service.

### 5.2 Pittman-Robertson (P-R) Act and Dingell-Johnson (D-J) Act Lands

The P-R lands have been funded for wildlife conservation programs and the D-J lands have been funded for fishery conservation programs. Most often, these lands are also under Section 4(f) designation and have received LAWCON funding. Consequently, they must be addressed in a Section 4(f) Evaluation. However, if Section 4(f) does not apply, the replacement of acquired lands with property of equal value at current market prices may be required. Replacement of lands indicated under these acts is not mandatory as it is under Section 6(f) of LAWCON. These laws provide for the option of replacing funds in lieu of land, if the DNR, WisDOT, and the U.S. Department of Interior agree.

#### FDM 21-25-10 Section 106 Report

March 15, 1996

Section 106 of the National Historic Preservation Act of 1966 (33 CFR 800) declares a national policy of historic preservation: "The protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology or culture." Projects that involve (or potentially involve) effects on such historic properties, require consultation with the State Historic Preservation Office and discussion of potential impacts in the environmental document.

Specific information on the format, content, and processing of this documentation is presented in [Chapter 26](#).

#### FDM 21-25-15 Noise Analysis Documentation

March 15, 1996

A noise study analysis in accordance with FAPG Part 772 must be prepared for any project where a noise impact or impacts (change in noise levels) is expected to occur as a result of the project.

The content and format of noise analysis documentation can vary greatly, depending on the scope and complexity of particular projects. They can vary from completion of the appropriate Factor Sheets of the screening worksheet series to a separate chapter of an environmental impact statement (EIS). There may be times, however, when the noise analysis will be continuous throughout a project's development process, usually

on large, complex projects employing noise abatement measures. In any event, the noise analysis documentation must be concluded and approved prior to PS&E approval.

Details of the noise analysis documentation format, content, and processing are found in [Chapter 23](#).

## **FDM 21-25-20 Federal Highway Administration Wetland Reports**

March 15, 1996

This procedure discusses the requirement that the Federal Highway Administration (FHWA) prepare a "Wetland Report" (finding) for projects that involve placing fill in wetlands. In response to Presidential Executive Order 11990, [Protection of Wetlands](#), U.S. DOT Order 5660.1A required the FHWA to issue guidelines requiring that specific information be included in environmental documents that addressed alternatives to wetland encroachment and measures to minimize harm where they cannot be avoided. The FHWA guidelines indicate that the Order is applicable to wetlands located wholly or partially within proposed right of way or easement limits and those wetlands immediately adjacent to the project for which there is evidence that new construction will directly cause long-term damage to, or destruction of, the wetlands.

Although FHWA requirements are separate from those of Section 404 of the Clean Water Act ([FDM 21-30-1](#)), the definition of [wetlands](#) is essentially similar: "Those areas inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances, does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction." Under this definition, and for consistency, all wetlands that are subject to the requirements of Section 404 (except seasonally flooded areas) require documentation according to the FHWA. This includes wetlands that are under the Nationwide Permit Program, are covered by general permits, or require individual permit applications.

### **20.1 Requirements**

For projects to which the wetland policy applies, the FHWA Division Administrator shall make a finding that:

1. There is no practicable alternative to such construction in wetlands.
2. The proposed project includes all practicable measures to minimize harm to the wetlands that may result from such use.

In order to prepare a wetland report, the FHWA Division Administrator must be provided with adequate information concerning the practicability of alternatives that avoid wetlands and measures to minimize harm. It is not the responsibility of the WisDOT to prepare a separate report, but rather to use the existing environmental impact statement (EIS) and/or screening worksheet format to provide this information.

#### **20.1.1 Environmental Impact Statements (EIS's)**

The overall EIS format is discussed in [FDM 21-15-1](#). Using that format, the best place to discuss wetland involvement of one or more alternatives is under "Environmental Consequences."

For viable alternatives presented in the Draft EIS (DEIS) that involve wetland encroachment, discussions should include reasons why it is impractical to avoid the wetland. This discussion could be included under "Environmental Consequences."

A discussion of measures to minimize harm could be included as a subheading under "Environmental Consequences."

#### **20.1.2 Environmental Assessments (EA's)**

The pertinent screening worksheets, when completed, provide the required information for actions that do not require an EIS (see [FDM 21-15 Attachment 5.1](#), Factor Sheet E).

Item 6 (Factor Sheet E) addresses the FHWA Wetland Policy. When it has been determined that there are no practicable alternatives, the FHWA must either prepare an individual wetland finding or determine that the Statewide Wetland Finding applies. The assumption is that the ultimate measure to minimize harm would be avoidance of the wetland altogether, but if that is not practicable, other, lesser mitigation measures would be implemented. Depending upon the scope of the project and whether an individual 404 permit is required (and thus coordination with the U.S. Fish and Wildlife Service), mitigation can range from "normal" WisDOT practices to recommendations by the DNR or the U.S. Fish and Wildlife Service, such as digging ponds, and others.

#### **20.1.3 Environmental Reports (ER's)**

In addition to Basic Sheets 1-4 used for ER's, a completed Factor Sheet E (see [FDM 21-15-5](#)) provides the required wetland information, and should be attached as necessary. For federally funded projects, the FHWA division office's administrative record should document evaluations of alternatives and measures to minimize harm for ER's projects which involve new construction in wetlands. (In addition to [FDM 21-15-5](#), refer also to

[FDM 20-10-10](#) and [FDM 21-15-15](#).)

## 20.2 FHWA Statewide Wetland Finding

In order to reduce review and processing time for projects that involve, but have no significant effects on wetlands, the FHWA has formulated a "Statewide Wetland Finding". This finding states that it includes projects which use wetland banks whenever such use has been determined necessary by WisDOT and DNR in mutual agreement on additional measures to minimize harm to wetlands through their coordination process.

The Statewide Wetland Finding applies only to projects for which there is no practicable alternative and those proposed projects which include all practicable measures to minimize harm to the wetlands.

Federal-aid highway projects which meet all of the following conditions would qualify under the Statewide Wetland Finding:

1. The project is either a bridge replacement project or a highway reconstruction project on the existing location within 0.3 mile (0.5 km).
2. The project requires the use of 7.4 acres (3 hectares) or less of wetlands.
3. The project has been coordinated with the Department of Natural Resources, and the DNR has expressed no significant concerns over the proposed use of the wetlands."

If proposed projects meet the above conditions and there is no practicable alternative to such construction and the proposed project includes all practicable measures to minimize harm to the wetlands which may result from such use, the Statewide Wetland Finding applies. Reasonable measures to minimize harm should be implemented for all projects because of concerns for wetland preservation and other agency mandates. See [FDM 24-5-10](#) for a discussion of wetland impacts.

## FDM 21-25-25 Federal Highway Administration Floodplain Report

June 15, 2001

This procedure describes FHWA requirements for floodplain encroachments and their applicability to transportation actions.

### 25.1 Background

In response to Presidential Executive Order 11988, [Floodplain Management](#), the FHWA has revised its Regulations under FAPG Part 650A, [Location and Hydraulic Design of Encroachments on Floodplains](#). These revisions are also reflected in the Governor's Executive Order 73.

### 25.2 Requirements

The regulations require that transportation actions occurring within the 100 year floodplain be assessed at a level of detail proportionate to the scope of the proposal.

The information required for floodplain actions includes:

1. Whether the action involves a longitudinal or crossing encroachment.
2. Whether the action is significant.
3. Whether the action would encourage other floodplain development.
4. Whether the action is consistent with the intent of the Standards and Criteria of the National Flood Insurance Program, where appropriate.
5. Whether the action is in conformance with state and local floodplain regulations.
6. Measures to minimize harm or to enhance natural beneficial floodplain values.

For EA and ER actions, this information is provided on the Streams and Floodplains Factor Sheet ([FDM 21-15 Attachment 5.9](#)). For actions documented by an Environmental Impact Statement, the appropriate section for this information is within that portion dealing with land and water resources impacts.

Since avoidance of floodplains (except by a no build alternative) is not feasible for most transportation facilities, FHWA policy is directed toward avoiding longitudinal and crossing encroachments that constitute significant encroachments.

A significant encroachment means the transportation action itself and any attendant secondary development due to the facility that would involve one or more of the following:

1. A significant potential for interrupting or terminating a transportation facility needed for emergency vehicles or which provides a community's only evacuation route.

2. A significant probability of flooding with a potential for property loss and hazard to life.
3. A significant adverse impact on natural floodplain values, such as flood storage, fish and wildlife habitat, open space, agriculture, natural beauty, or scientific areas.

Proposals that would have a significant encroachment on a floodplain require the FHWA to prepare a finding of "no practicable alternatives" to the encroachment. Although the Finding is prepared by the FHWA, supporting information is provided in the environmental document for their use. The issues the finding must discuss are:

1. The reason why the project must be located in the floodplain.
2. Alternatives considered and why these were not practicable.
3. A statement as to whether the action is in conformance with state and local floodplain standards.

Therefore, in addition to the specific floodplain information provided in the Environmental Assessment, if significant floodplain encroachments are identified by the Region, include in the environmental document a detailed statement which emphasizes that there are no practicable alternatives to the action being located in the floodplain.

### **FDM 21-25-30 Agricultural Impact Statement**

February 10, 2006

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) must be notified of any project which may involve the acquisition of an interest in land from a farm operation through the use of eminent domain (condemnation). Note that "Town Highway" projects are exempt from the agricultural impact statement (AIS) process by statute. The DATCP should be notified of such a project regardless of whether the WisDOT actually intends to use these powers in the acquisition of rights to proposed project lands.

If a proposed project involves the actual or potential acquisition of more than five acres (two hectares) of land from any one farm operation, the DATCP is required to prepare an AIS which describes and analyzes the potential effects of the project on farm operations and agricultural resources. If a proposed project involves from 1 to 5 acres (0.4 to 2 hectares) from any one farm operation, an AIS may be prepared at the DATCP's discretion.

For the purposes of s. 32.035 Stats, "farm operation" means "any activity conducted solely or primarily for the production of one or more agricultural commodities in sufficient quantity to be capable of contributing materially to the operator's support." Therefore, it includes timber operations, tree farms, and rental operations, as well as other agricultural operations normally associated with the term. Acquisition of easements, fee simple rights, and leasehold interests in a farm may trigger the need for an AIS if the interests are actually or potentially acquired by WisDOT through condemnation.

The DATCP has 60 days within which to prepare an AIS once it has determined that all the information necessary to complete the AIS has been received.

Local or regional units of government that have jurisdiction over the area affected by the project are required to post the AIS in the place normally used for public notices.

The AIS is prepared and published separately and may be appended to the Environmental Impact Statement (EIS), Environmental Assessment (EA) or Environmental Report (ER).

### **30.1 Agricultural Impact Notice**

The WisDOT has developed a series of sheets called Form [DT1999](#), Agricultural Impact Notice (see [Attachment 30.1](#)). The Agricultural Impact Notice shall be used to transmit the required information for all State Trunk Highway (STH) projects that would acquire over five acres (two hectares) from a farm operation. STH projects which would acquire five acres (two hectares) or less, but more than one acre (0.4 hectares) should also use the Agricultural Impact Notice. Those STH projects that would acquire only land defined as non-significant do not need to use the Agricultural Impact Notice. Non-significant acquisitions are defined later in this procedure.

The Agricultural Impact Notice shall consist of the following sheets plus appropriate maps and graphics for all STH projects that would acquire over five acres (two hectares) from a farm operation.

#### **30.1.1 The First Sheet**

This sheet requires a brief description of the existing highway, a description of the highway improvement, a summary of alternatives, and maps and exhibits. The top portion of Sheet 1 should be filled out completely to provide DATCP with necessary bookkeeping information. The proposing agency is WisDOT and the appropriate region office. Type and status of the environmental document requires an indication whether the document has been approved and if it is a draft or final EIS, an EA, a Finding of No Significant Impact (FONSI), or an ER. A check should be made in the appropriate box indicating whether review of a pre-publication draft of an AIS is

requested.

Indicate when an AIS is needed based on the project development schedule and anticipated right-of-way authorization. For projects requiring an EIS, lead time shall be planned such that the AIS will be available for inclusion in the Draft EIS to the extent practicable.

When there are numerous alternatives being fully addressed in a Draft EIS, the DATCP shall be consulted to determine whether it would be prudent to delay the publication of an AIS until a preferred alternative is identified in the Final EIS. In such cases, the Draft EIS should include data obtained in consultation with DATCP. A Final EIS shall not be approved until an AIS is completed or until DATCP supplies the information required by s. 32.035(2) Stats. and that information is included in the Draft or Final EIS.

Maps and exhibits should provide a clear concise view of the acquisition(s) and be usable to those without an engineering background. The quantity and quality of the maps and exhibits should be commensurate with the size of the project and its effects on farm operations.

### 30.1.2 The Second Sheet

All acquisitions from farm operations which are five acres (two hectares) or less but do not satisfy the criteria for non-significance should be listed on this sheet with additional sheets as necessary. The Present Use/Remarks column should be used to address the type of farmland acquired, such as cropland, pasture or woodland, and the effect the acquisition would have on the farm operation. Non-significant acquisitions should be summarized in the space provided in the lower left corner.

### 30.1.3 The Third Sheet

This sheet shall be provided for each interest greater than five acres (two hectares) acquired from a single farm operation. The description of the farm operation should address the crops raised, livestock, and any other features that distinguish the farm operation. Discussion of the acquisition should include the effects it would have on the farm operation and should include the information requested on Form DT2063, Agricultural Impact Evaluation, though directed specifically at the particular farm operation being addressed.

### 30.1.4 The Fourth Sheet

To the extent possible, the names and addresses of all owners and operators of affected farm operations should be verified. This will save time since DATCP will need to contact the owners during their agricultural evaluation process.

After the notification has been received, the DATCP may request additional, more specific information needed to prepare the AIS. In order to gather information for the AIS, DATCP usually contacts the affected landowners and farm operators.

Projects that would acquire five acres (two hectares) or less but more than one acre (0.4 hectares) would need to complete only the first two sheets of the Agricultural Impact Notice. DATCP may request additional information to determine whether to prepare an AIS.

### 30.1.5 Notification of Non-Significant Acquisitions

When all acquisitions are non-significant, the Agricultural Impact Notice does not need to be sent to DATCP. The following summary information, however, must be sent to DATCP for all projects acquiring only non-significant interests in farm operations. (Note that town road projects are exempt from the AIS process and do not require either an Agricultural Impact Notice or a summary report of non-significant acquisitions.)

1. WisDOT Project ID number
2. Highway number or name
3. County
4. Number of farms affected
5. Total area to be acquired
6. Project location map

## 30.2 Processing

### 30.2.1 When to Prepare Notification

DATCP should be notified as early as possible in the project development process. This is important because s. 32.035 Stats states that DATCP shall prepare an AIS within 60 days of receiving all necessary information and only DATCP determines when it has received all necessary information. **In addition, this law specifies that a condemnor such as WisDOT may not negotiate with an owner or make a jurisdictional offer until 30 days**

**after the AIS is published.** Therefore, early notification of DATCP will prevent these 60- and 30-day periods from interfering with later real estate activities.

Notification is normally done during the investigation phase. Notification timing is also dependent on the type of environmental document being prepared.

### **30.2.2 Environmental Impact Statements**

When an EIS is to be prepared for a project, DATCP shall be notified during the agency coordination process as soon as enough information is available to complete the notification forms. Notification sheets should be prepared for each reasonable alternative under active consideration in the Draft EIS. Where DATCP determines that an AIS is required, that document, if completed, should be added as an appendix to the Draft EIS and the information it contains summarized in the appropriate text portion of the Draft EIS.

If DATCP and WisDOT agree that it is prudent to delay an AIS until the Final EIS, the Draft EIS should include appropriate information developed in consultation with DATCP. The Final EIS shall not be approved without inclusion of the information supplied by DATCP in accordance with s. 32.035 Stats or evidence that an AIS has been completed.

### **30.2.3 Environmental Assessments (EA's)**

On projects for which an EA is prepared, DATCP should be notified during the agency coordination process on the basis of the recommended alternative. The results of DATCP coordination (i.e., either a completed AIS or an indication whether an AIS will be prepared) should be included in the EA. If there clearly is not a recommended alternative and the region and DATCP agree to delay the preparation of the AIS, this should be indicated in Question 7.b. of the Basic Screening Worksheets (Form DT2094). In any event, the results of coordination with DATCP must be included in the revisions to the EA that are transmitted to BEES for processing. The Design Study Report for a project will not be approved until there is evidence that DATCP coordination is complete or the AIS is completed.

### **30.2.4 Environmental Reports (ER's)**

Generally, projects for which ER's are prepared would not involve significant impacts to farm operations. There is the possibility, however, that more than five acres (two hectares) of farmland could be required from one property or that other factors could apply which would result in DATCP's preparation of an AIS.

Since ER's are "one-time" submittals, to the extent practicable, DATCP coordination or the AIS should be complete prior to the transmittal of the ER for review and approval. The status of DATCP coordination or the AIS should be indicated in Question 7.b. of the Basic Screening Worksheets. If there are extenuating circumstances such that the coordination or the AIS cannot be completed prior to transmittal of the ER, the document may be approved with the understanding that it might need to be modified as a result of DATCP coordination or the AIS. The Design Study Report will not be approved until the AIS is completed or evidence of the results of coordination is provided to the Bureau of Project Development.

### **30.2.5 Miscellaneous**

Should a change in the project occur that results in an acquisition from a farm operation that was not addressed in an initial agricultural notification or AIS, DATCP must be notified of the change. It is recommended, when informing DATCP of the changes that they be provided with information sufficient to evaluate effects and to determine whether additional information or a supplement to the AIS is needed. Such notification is not required if the change results from a request by the landowner who will be affected.

### **30.3 Non-Significant Acquisitions**

Certain farmland acquisitions have been determined to be non-significant. Typically these are strip acquisitions of narrow width paralleling existing right-of-way lines and having all the following characteristics:

1. One acre (0.4 hectares) or less in size.
2. Result in no severance(s).
3. Does not significantly alter or restrict access presently enjoyed by the owner.
4. Does not involve the moving or demolishing of any improvements necessary to the operation of the farm.
5. Does not involve a high value crop.

DATCP must be notified of the total number of farms affected and the aggregate area of these non-significant farmland acquisitions.

### 30.4 How To Transmit Notifications

#### 30.4.1 WisDOT Projects

All Agricultural Impact Notices for projects on the STH system are sent directly to DATCP at the following address:

AIS Program  
 Land Resources Bureau  
 Agricultural Resources Management Division  
 Department of Agriculture, Trade & Consumer Protection  
 PO Box 8911  
 2811 Agricultural Drive  
 Madison, WI 53708-8911

DATCP will determine within 10 days of receiving notification from WisDOT whether an AIS will be prepared. If more information is needed, DATCP may request the needed data within 14 days of receiving the notification. The 10 day and 14 day periods may be extended for a reasonable length by DATCP after advising WisDOT of the need for more time. An AIS will be prepared within 60 days of receiving all the requested information from WisDOT.

For STH projects acquiring five acres (two hectares) or less from a farm operation the region shall send, or cause to have sent, the Agricultural Impact Notice directly to DATCP. The resulting correspondence from DATCP shall be included in the project's environmental documentation.

All STH projects acquiring land defined as non-significant should also be coordinated directly with DATCP. The project's environmental document shall state that DATCP has been notified that all acquisitions are non-significant. Correspondence from DATCP, if any, may be attached to the environmental document.

Questions about the status of an AIS notice should be directed to DATCP at the above address or (608) 224-4650. Questions on the notification process should be directed to BEES.

#### 30.4.2 Other Agency Projects

For WisDOT administered projects off the STH system, county and local units of government or their agents are directly responsible for complying with all applicable provisions of s. 32.035 Stats. They must send the appropriate information directly to DATCP and include the results of this coordination in any environmental documentation that requires WisDOT approval. The information is sent to the same address as a STH project (see above).

Formats, other than that shown for WisDOT projects may be acceptable to DATCP. The format and interpretations in this procedure have been prepared by WisDOT and are designed to facilitate the processing of WisDOT projects.

### **LIST OF ATTACHMENTS**

[Attachment 30.1](#)      Agricultural Impact Notice

### **FDM 21-25-35 Natural Resources Conservation Service Farmland Conservation Impact Rating (Form AD-1006)**

*March 15, 1996*

The Soil Conservation Service (SCS) is now the Natural Resources Conservation Service (NRCS).

In order to comply with the requirements of the federal Farmland Protection Policy Act the NRCS requires all users of federal funds to complete form AD-1006 whenever their project affects farmland. Completion of Form AD-1006 is required for all federally funded highway projects which require the acquisition of prime, unique, statewide or locally important farmland. The NRCS regulations require that a user of federal funds send Form AD-1006 or a copy of Form AD-1006 to NRCS in all cases where a project affects farmland.

The form shall be sent to NRCS regardless of the point score developed in Part VI of the form. The intent of this transmittal to NRCS is to keep them informed of any effects to farmland.

In those cases where the Part VI score is 59 or fewer points, a copy of the partially completed Form AD-1006 (see [Attachment 35.1](#)) and a summary of the various steps of the farmland protection processing, including the final decision, should be forwarded to the NRCS. Another copy of the completed form shall be included with the environmental document.

**Instructions for Completing Form AD-1006 When the Part VI Is Less Than 60 Points**

- Part I - This section will be completed by either the WisDOT region office or its consultant. In completing the "County and State" block, list all the local governments that are responsible for local land use controls where site(s) are evaluated.
- Part II - This section would be completed by the NRCS if the score in Part VI totaled 60 or more points.
- Part III - The consultant or the WisDOT region office will complete this section. In completing item "B" of this part, include the following:
  - Acres (hectares) that will not be directly converted, but which would no longer be capable of being farmed because of restricted access caused by the conversion.
  - Acres (hectares) expected to receive services from an infra-structure project, such as highways, bridges, or utilities which would cause a direct conversion from farmland to nonagricultural use.
- Parts IV and V - These sections would be completed by the NRCS if the score in Part VI totaled 60 or more points.
- Part VI - The WisDOT region office or its consultant will complete this section. (see [Attachment 35.2](#)).
- Part VII - The consultant or the WisDOT region office will complete this part only when the score in Part VI is 60 or more points and after coordination with the NRCS.

For further information refer to 7 CFR 658 as amended. If additional information or clarification is needed, contact OEA or FHWA. Also refer to [FDM 5-5-5](#) for information on projects that score 60 or more points in Part VI.

**LIST OF ATTACHMENTS**

- [Attachment 35.1](#)          Farmland Conversion Impact Rating
- [Attachment 35.2](#)          Part VI Site Assessment Criteria Scaling