



## FDM 20-45-1 Introduction

March 16, 2018

Other documents may be required in some circumstances to fulfill legal requirements of the environmental process. This section discusses the circumstances when other documents are necessary and completion requirements.

## FDM 20-45-5 Section 4(f) of the Department of Transportation Act of 1966

November 17, 2020

### 5.1 Introduction

Section 4(f) of the Department of Transportation Act of 1966 (Section 4(f)) has been codified in 23 USC 138 and 49 USC 303. Section 4(f) regulations specific to FHWA are found in 23 CFR 774. 23 CFR 774 can be found at:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr774\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title23/23cfr774_main_02.tpl)

Section 4(f) applies to any agency operating within USDOT. For purposes of this section, FHWA will be referenced as the agency with decision making authority over Section 4(f). If your project involves another agency operating within USDOT contact the Region Environmental Coordinator (REC) or Bureau of Technical Services (BTS) - Environmental Process and Document Section (EPDS), as applicable.

To assist the document preparer in understanding and complying with Section 4(f), FHWA has developed the following documents;

- "Section 4(f) Policy Paper", July 20, 2012
- FHWA Technical Advisory T 6640.8a, "Guidance for Preparing and Processing Environmental and Section 4(f) Documents", October 30, 1987 (Technical Advisory)

The Section 4(f) Policy Paper supplements FHWA regulations governing the use of land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for Federal highway projects. While the *Section 4(f) Policy Paper* was written primarily to aid FHWA personnel with administering Section 4(f) in a consistent manner, it is also intended to help State DOTs and other project sponsors to plan projects that minimize harm to Section 4(f) properties.

<http://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

The purpose of the Technical Advisory is to provide guidance to FHWA field offices and to project applicants on the preparation and processing of environmental and Section 4(f) documents. The Technical Advisory can be downloaded at:

<http://environment.fhwa.dot.gov/projdev/impta6640.asp>

### 5.2 Section 4(f) Purpose

Section 4(f) states that the U.S. Secretary of Transportation shall not approve any project or program which involves the use of any publicly owned land from a public park, recreation area, historic site (public or privately owned), or waterfowl or wildlife refuge of national, state, or local significance (as determined by the officials having jurisdiction) unless;

- there is no feasible and prudent alternative to the use of such land, and,
- project design includes all possible planning to minimize harm, or
- Secretary determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) will have a de minimis impact on the property.

Any approval of the use of Section 4(f) property is subject to a legal sufficiency review by the Federal Highway Administration (FHWA) Office of Chief Council with exception of the following;

- A use with a de minimis impact determination
- A use processed with an existing programmatic Section 4(f) evaluation

Projects not receiving any funding from USDOT or requiring USDOT approval are not subject to Section 4(f).

### 5.3 Section 4(f) Applicability

FHWA has final determination authority on Section 4(f) applicability. Coordination with your REC, LRMC or BTS - EPDS, as applicable, is required due to the complex nature of making Section 4(f) applicability determinations. See Section 4(f) Policy Paper for more discussion.

<https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

Section 4(f) properties requiring consideration per the regulation include:

- Parks and recreational areas of national, state, or local significance that are publicly owned and open to the public
- Publicly owned wildlife and waterfowl refuges of national, state, or local significance which are open to the public to the extent that public access does not interfere with the primary purpose of the refuge
- Historic properties which are listed in or determined eligible for inclusion in the National Register of Historic Places (NRHP) in public or private ownership, regardless of whether they are open to the public

Section 4(f) generally does not apply to parks, recreational areas or wildlife and waterfowl refuges when owned by private institutions, organizations or individuals even if they are open to the public. However, there are exceptions. For example, if a government body has a permanent proprietary interest on the property, including a permanent easement, and the property functions as a Section 4(f) protected property, it may be determined that Section 4(f) applies. FHWA will determine on a case-by-case basis whether the property should be considered publicly owned, thereby making Section 4(f) applicable.

Properties which meet the definition of Section 4(f) are presumed to be significant unless the jurisdictional authority over the property concludes the entire property is not significant. FHWA makes an independent evaluation to assure the jurisdictional authority's finding is reasonable. In a situation where FHWA's determination disagrees and overrides the jurisdictional authority, the reason for FHWA's determination should be documented in the project file and discussed in the environmental document.

Section 4(f) properties need to be identified as early as possible in the planning and project development process to ensure the Section 4(f) property is given full and fair consideration and to allow adequate time for all required procedural steps to complete a Section 4(f) evaluation. Historic properties need to be identified and evaluated to determine if they are listed on or eligible for inclusion in the NRHP. This needs to occur early enough in project development to determine if Section 4(f) is applicable and to allow adequate time for all required procedural steps to complete a Section 4(f) evaluation ([FDM 26-25-5](#)).

### 5.4 Assessing Use of Section 4(f) Properties

23 CFR 774 identifies impacts to Section 4(f) properties as a "use" of the Section 4(f) property. Impacts to properties are referred to as a use throughout this section.

The most common type of use occurs when land from a Section 4(f) property is permanently incorporated into a transportation facility whether it is purchased outright as right of way or acquired through a permanent easement for permanent access onto the property. Temporary occupancy is the second form of use and occurs when a Section 4(f) property is required for project construction related activities, in part or in whole. There are conditions under which temporary occupancy is so minimal as not to constitute a use as defined per 23 CFR 774.13(d). Work closely with your REC or BTS-EPDS as appropriate, to determine if these criteria are met. Written concurrence on use is required in certain circumstances. See Section 4(f) Policy Paper 1.2.2 for additional information.

The third and final type of use is called constructive use. A constructive use involves no actual physical use of the Section 4(f) property via permanent incorporation of land or a temporary occupancy of land into a transportation facility. A constructive use occurs when the proximity impacts of a proposed project adjacent to, or nearby, a Section 4(f) property result in substantial impairment to the property's activities, features, or attributes that qualify the property for protection under Section 4(f). As a general matter, this means that the value of the resource, in terms of its Section 4(f) purpose and significance, will be meaningfully reduced or lost. Coordination with the REC or BTS-EPDS, as applicable, is required if the project team believes a Section 4(f) constructive use may occur. Constructive use is extremely rare and would require a determination by FHWA Headquarters.

### 5.5 Role of Jurisdictional Authority

Coordination with the officials having jurisdiction over a potential Section 4(f) property is required to assist FHWA in making a Section 4(f) applicability determination and assessing the use of the property if Section 4(f) is determined applicable. The regulations identify the entities that are considered the officials with jurisdiction for various types of Section 4(f) properties (23 CFR 774.17). For a full discussion of this topic see Section 4(f)

Policy Paper Section 1.2.2:

<https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

### 5.5.1 Historic Properties

For a full discussion of historic properties see [FDM Chapter 26](#) Historic Preservation. For historic properties, the officials with jurisdiction are the SHPO or Tribal Historic Preservation Officer (THPO). When the ACHP is involved in consultation concerning a Section 106 eligible property for review pursuant to 36 CFR 800, the ACHP is also an official with jurisdiction for the purposes of Section 4(f). If the property is owned by another federal entity, such as the US Post Office, their Historic Preservation Officer would also be an official with jurisdiction. In addition, if the property under consideration is a National Historic Landmark (NHL), the designated official of the NPS is also considered an official with jurisdiction over the property for the purposes of Section 4(f) in addition to what has been described above.

### 5.5.2 Parks, Recreation Areas and Wildlife and Waterfowl Refuges

With regards to public parks, recreation areas, and wildlife and waterfowl refuges, the officials with jurisdiction are the official of the agency or agencies that own or administer the property under consideration and represent the agency on matters related to the property.

### 5.5.3 General Coordination

The regulations require coordination with the jurisdictional officials for the following situations:

- Prior to making approvals (23 CFR 774.3(a))
- Determining least overall harm (23 CFR 774.3(c))
- Applying certain programmatic Section 4(f) evaluations (23 CFR 774.5)
- Applying Section 4(f) to properties that are subject to federal encumbrances (23 CFR 774.5(d))
- Applying Section 4(f) to archaeological sites discovered during construction (23 CFR 774.9(e))
- Determining if a property is significant (23 CFR 774.11(c))
- Determining application to multiple-use properties (23 CFR 774.11(d))
- Determining applicability of Section 4(f) to historic properties (23 CFR 774.11(e))
- Determining constructive use (23 CFR 774.15(d))
- Determining if proximity impacts will be mitigated to equivalent or better conditions (23 CFR 774.15(f)(6))
- Evaluating the reasonableness of measures to minimize harm (23 CFR 774.3(a)(2) and 774.17).

The regulations also require a finding demonstrating that the official(s) with jurisdiction have been consulted and have not objected to the following situations:

- When applying the exception to historic properties for restoration, rehabilitation, or maintenance of transportation facilities (23 CFR 774.13(a))
- When applying the exception for archaeological sites of minimal value for preservation in place (23 CFR 774.13(b)(2))

The regulations require written concurrence of the official(s) with jurisdiction in the following situations:

- A finding of no adverse effect on the involved historic property pursuant to 36 CFR 800 prior to making a de minimis impact determination (23 CFR 774.5(b))
- Applying the exception for temporary occupancy (23 CFR 774.13(d)(5))
- Applying the exception for transportation enhancement activities and mitigation activities (23 CFR 774.13(g))
- Prior to making a de minimis impact determination to public parks, recreation areas, or wildlife and waterfowl refuges

### 5.6 Section 4(f) Approval Methods

There are three methods by which FHWA approves the use of a Section 4(f) property;

- Preparing a de minimis impact determination
- Applying a programmatic Section 4(f) evaluation
- Preparing an individual Section 4(f) evaluation

Each method is discussed in detail in the following sections.

### 5.6.1 Finding of De Minimis Impact Documentation

A finding of de minimis impact may apply when consultation results in:

- A Section 106 finding of no adverse effect or no historic properties affected; or
- A determination that the project would not adversely affect the activities, features or attributes which qualify the resource for protection under Section 4(f).

A Section 4(f) finding of de minimis impact may be demonstrated through preparation of or inclusion in the following documents as appropriate:

- The Section 4(f) chapter of the Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS).
- The Wisconsin-Federal Highway Administration Finding of de minimis Impact on Historic Property
- Section 4(f) Factor Sheet and one of the following two documents are prepared for EAs, ERs, and CECs:
  - The Wisconsin-Federal Highway Administration Finding of de minimis Impact on Parks, Recreation Areas, and Wildlife and Waterfowl Refuges template
  - The Wisconsin-Federal Highway Administration Finding of de minimis Impact on Historic Property

The Section 4(f) Factor Sheet and the Finding of de minimis impact templates and their accompanying guidance documents can be found at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

A separate Factor Sheet and Finding of de minimis impact must be prepared for each Section 4(f) property considered.

A Finding of de minimis impact can be approved by FHWA without the need to develop and evaluate alternatives that avoid using the Section 4(f) property.

A Finding of de minimis impact must be supported with the necessary information included in the project file to demonstrate compliance with 23 CFR 774.7(b).

### 5.6.2 Programmatic Section 4(f) Evaluations

The FHWA Programmatic Section 4(f) Evaluations pre-dated FHWA's ability to make de minimis impact determinations, and for many minor uses of Section 4(f) property, it is possible to address the use of the property through either a Finding of de minimis impact or a Programmatic Evaluation. In many cases, preparing a Finding of de minimis impact may be more straightforward than completing a Programmatic Evaluation. If you believe that using a Programmatic Evaluation is preferable, discuss Section 4(f) compliance and documentation options with the REC and BTS-EPDS Liaison.

Programmatic Section 4(f) evaluations are a time-saving procedure for assessing certain minor uses of specific types of Section 4(f) properties by applying a specified set of criteria including project types, specific avoidance alternatives, degree of use, and effects. It is important to carefully read and understand the criteria for a Programmatic Evaluation before deciding to apply it to your project. An approved programmatic Section 4(f) evaluation may cover a project type if the specific conditions in that programmatic evaluation are met.

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

- Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges
- Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Historic Sites
- Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, Wildlife and Waterfowl Refuges
- Section 4(f) Evaluation and Approval for Transportation Projects That Have a Net Benefit to a Section 4(f) Property
- Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects

The use of Historic Bridges, Minor Involvements with Historic Sites and Minor Takes of Public Parks, Recreational Lands, Wildlife and Waterfowl Refuges and Net Benefit programmatic templates can be found at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

The Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects can

be found at:

<http://www.environment.fhwa.dot.gov/4f/4fbikeways.asp>

Programmatic Section 4(f) Evaluations may be used when an Environmental Assessment (EA), Environmental Report (ER), and Categorical Exclusion Checklist (CEC) is prepared. The Net Benefit programmatic evaluation may also be used when an EIS is prepared.

If applicable, complete the Section 4(f) factor sheet and the appropriate programmatic template. Include these completed sheets in the environmental document.

Include the letter from the official having jurisdiction over the Section 4(f) property. The letter must agree with the physical impacts, temporary impacts and the proposed measures to minimize harm for the programmatic Section 4(f) evaluation to apply.

Completed separate programmatic forms if multiple Section 4(f) property types are impacted by a project (e.g., project proposes to affect both an historic site and recreation lands) and a programmatic Section 4(f) applies.

### 5.6.3 Individual Section 4(f) Evaluations

Contact the REC or BTS-EPDS to assist in making a determination that an individual Section 4(f) evaluation is required. The REC or BTS-EPDS as appropriate will coordinate with FHWA to determine if an individual Section 4(f) evaluation is appropriate for the project.

The individual Section 4(f) evaluation requires two findings:

1. That there is no feasible and prudent alternative that completely avoids the use of Section 4(f) property; and
2. That the project includes all possible planning to minimize harm to the Section 4(f) property resulting from the transportation use.

Preparation requirements of individual Section 4(f) individual evaluations are more complex than what can be captured in this discussion. For a complete explanation of individual Section 4(f) evaluations, the preparer should refer to Section 4(f) Policy Paper and Technical Advisory;

<https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp>

<https://www.environment.fhwa.dot.gov/projdev/impTA6640.asp#f4>

For additional guidance contact the REC or BTS-EPDS liaison.

When a Section 4(f) individual evaluation is prepared for impacts to a protected resource the Department of Interior, National Park Service (DOI - NPS) is provided opportunity to review. DOI-NPS is provided 60-days to complete their review and provide comments. Following the DOI-NPS review, a FHWA legal sufficiency review is required. FHWA legal counsel is provided 30-days for review. The FHWA-WI division office may not approve a Section 4(f) individual evaluation without approval from FHWA legal counsel.

### 5.7 Document Distribution and Approval

If an EIS is prepared, and a Section 4(f) individual or programmatic evaluation is required, draft Section 4(f) evaluation(s) are submitted by the REC to the BTS-EPDS liaison as a chapter of the DEIS. If an individual evaluation is required and prepared the Section 4(f) chapter of the DEIS is used for the required coordination with DOI-NPS, FHWA legal counsel, and other agencies. The final Section 4(f) evaluation is submitted as a chapter of the FEIS. Signature of the DEIS and FEIS serves as FHWA approval of the draft and final Section 4(f) evaluations.

If an EA is prepared, and a Section 4(f) evaluation is required, the draft Section 4(f) evaluation is typically submitted by the region office to BTS-EPDS and FHWA as an appendix item to the EA for review. Final Section 4(f) evaluations are typically submitted by the region office to BTS-EPDS and FHWA as an appendix item to the EA following the EA availability period and public hearing if one is held. Approval occurs just before a FONSI is issued.

If an ER is prepared, and a Section 4(f) evaluation is required, the draft and final Section 4(f) evaluations are typically submitted by the region office and the BTS-EPDS as an appendix item within the ER.

If a CEC is prepared that includes a finding of de minimis impact, programmatic or individual evaluation for a Section 4(f) property, the Section 4(f) documentation must be submitted to BTS-EPDS for review and FHWA for approval of the finding of de minimis impact, or programmatic or individual evaluation prior to WisDOT approval of the CEC. Projects processed under 23 CFR 771.117(c)(26-28) may not include Section 4(f) uses that require programmatic or individual evaluations, they may only include findings of de minimis impact.

If an ER, EA, or EIS is prepared that includes a finding of *de minimis* impact or a programmatic evaluation for a



Section 4(f) property, the Section 4(f) documentation must be submitted to BTS-EPDS for review prior to FHWA review and approval.

### **FDM 20-45-10 Land and Water Conservation Act Fund Lands and Section 6(f)**

*November 17, 2020*

Section 6(f) of the Land and Water Conservation Fund Act of 1965 (LWCF) mandates property acquired or developed with LWCF funds shall not be converted to uses other than for public outdoor recreation uses. Acquisition of any land for which LWCF funds have been used for prior acquisition or improvements invokes Section 6(f) protection. Coordination with the WDNR is necessary as the state agency responsible for administering LWCF funds and enforcing the related requirements.

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

#### **10.1 Section 6(f) Conversion Policy**

The DOI, NPS LWCF Section 6(f) Conversion Policy is documented in Chapter 8 of the NPS, DOI, Land and Water Conservation Fund, State Assistance Program, Federal Financial Assistance Manual, which can be found at the link below:

[https://www.nps.gov/subjects/lwcf/upload/lwcf\\_manual.pdf](https://www.nps.gov/subjects/lwcf/upload/lwcf_manual.pdf)

If a highway project requires the acquisition of Section 6(f) lands, the lands acquired must be replaced with other property of at least equal fair market value and of reasonably equivalent utility and location. Section 6(f) lands are often Section 4(f) lands and, in that case, should be addressed as such in environmental documents. Include the areas under consideration for replacement and the recommended replacement land in the evaluation of the impacts of the acquisition of LWCF lands in the environmental document. Coordinate all issues related to Section 6(f) or Section 4(f) with the REC or BTS-EPDS as appropriate. Coordination with DNR needs to occur early if the project may impact a property that may be protected by Section 6(f).

#### **10.2 Section 6(f) Small Conversion Policy**

The Small Conversion Policy, established in 1990, was created to reduce administrative burden for both the National Park Service (NPS) and the States (including the territories and the District of Columbia) when processing these smaller conversions.

The DOI, NPS LWCF Section 6(f) Small Conversion Policy is documented in Chapter 8 of the NPS, DOI, Land and Water Conservation Fund State Assistance Program Federal Financial Assistance Manual, a link is included above in FDM 20-45-10.1. An update memorandum specific to small conversions was distributed to LWCF State Liaison Officers January 3, 2017.

Contact the REC or BTS-EPDS if the project impacts may fall under the small conversion policy.

Coordination with DNR needs to occur early if the project may impact a property that may be protected by Section 6(f).

### **FDM 20-45-15 Specially Funded Properties**

*November 17, 2020*

If a property that has or may have special funds involved needs to be purchased in fee, permanent limited easement or temporary limited easement the deed to the that property and the grant information should be reviewed to the special funds and their requirements. These funds require unique coordination and have processes that must be followed if the property will be impacted. It is not uncommon that these properties are also protected under Section 4(f). These funding sources most frequently include:

- Dingell-Johnson Act funds are primarily used for fishery conservation programs and are usually public recreational areas. Capital improvements can be substituted for replacement (see [FDM 20-5-5.1](#)).
- Pittman-Robertson Act funds are used for wildlife programs that might include public use recreational uses. Capital improvements can be substituted for replacement (see [FDM 20-5-5.1](#)).
- Wetland Reserve Program (WRP), North American Wetlands Conservation Act (NAWCA), Knowles-Nelson Stewardship Program, etc. When these types of funds are encountered, contact the REC or BTS-EPDS as appropriate.
- WDNR Knowles-Nelson Stewardship funds are used to preserve valuable natural areas and wildlife habitat, protect water quality and fisheries, and expand opportunities for outdoor recreation.

Contact the REC or BTS-EPDS if the project may impact a property that has special funding involve.

Coordination with DNR and/or other agencies with jurisdiction over the property and the special funding should

occur as early in the project development process as possible.

### **FDM 20-45-20 Section 106 of the National Historic Preservation Act of 1966**

November 17, 2020

Section 106 of the National Historic Preservation Act of 1966 requires federal agencies to take into account the effects of their undertakings on historic properties and afford the ACHP a reasonable opportunity to comment on such undertakings. The regulations 36 CFR 800 define how federal agencies meet their statutory responsibilities. The Section 106 review process seeks to accommodate historic preservation concerns with the needs of the federal undertaking through the consultation process among the agency official and other parties with an interest in the effects of the undertaking on historic properties.

Specific information regarding the format, content and processing of this documentation is discussed in detail in [FDM Chapter 26](#) Historic Preservation.

### **FDM 20-45-25 Federal Highway Administration Wetland Finding**

November 17, 2020

Wetlands are recognized and protected by legislation and Executive Order (Executive Order 11990, Protection of Wetlands and U.S. DOT Order 5660.1A, Preservation of the Nations Wetlands) as critical resources. As such, they should be avoided, where possible ([FDM 24-5-10.3](#) and [FDM 24-5-10.4](#)). The FHWA Technical Advisory T6640.8A. Guidance for Preparing and Processing Environmental and Section 4(f) Documents and 23 CFR 777 should be referenced for the required information that needs to be included in environmental documents which addresses alternatives to wetland encroachment and measures to minimize harm when it is not practicable to avoid them.

Even though FHWA wetland requirements are separate from those of Section 404 of the Clean Water Act ([FDM-20-50](#)), both share a definition of wetlands that is very similar: *"Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas"*. For administrative purposes, all wetlands subject to the requirements of Section 404 (except seasonally flooded areas) require documentation per FHWA guidelines. This includes wetlands subject to the Nationwide Permit Program, general permits, or individual permit applications.

#### **25.1 Requirements**

The FHWA shall make a finding for projects which the wetland policy applies when:

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

To prepare a wetland finding provide the FHWA with accurate information concerning the practicability of alternatives that avoid wetlands and what measures were taken to minimize harm. This information is available in the environmental document and associated wetland impacts documentation.

### **FDM 20-45-30 FHWA Floodplain Finding**

November 17, 2020

FHWA regulations under 23 CFR 650 Subpart A, Location and Hydraulic Design of Encroachments on Floodplains requires transportation actions encroaching on the 100-year floodplain be assessed at a level of detail proportionate to the scope of the proposed undertaking.

The following information is required for floodplain actions:

- Whether the action involves a longitudinal or crossing encroachment.
- Whether the action is significant.
- Minimize Impacts which adversely affect floodplains.
- Whether the action would encourage another floodplain development.
- Whether the action is consistent with the intent of the Standards and Criteria of the National Flood Insurance Program, where appropriate.
- Whether the action is in conformance with state and local floodplain regulations.
- Measures to minimize harm or to enhance natural beneficial floodplain values.

The documentation required for an EA or ER is provided on the Floodplains Factor Sheet. Floodplain information in an EIS is included in the Floodplains and Hydraulics discussion.

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

A significant encroachment is defined by the transportation action itself and any attendant secondary development due to the facility which might involve one or more of the following factors:

- A significant potential for interrupting or terminating a transportation facility needed for emergency vehicles or which provides a community's only evacuation route.
- A significant probability of flooding with a potential for property loss and hazard to life.
- A significant adverse impact on natural floodplain values, such as flood storage, fish and wildlife habitat, open space, agriculture, natural beauty, or scientific areas.

A Proposed Action that includes a significant encroachment on a floodplain require FHWA to prepare a Finding of No Practicable Alternatives (Finding). Although the Finding is prepared by FHWA, the supporting information shall be provided in the environmental document for FHWA to fulfill their statutory obligations in preparing a Finding. The following needs to be included in the environmental document:

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

If a significant floodplain encroachment is identified, include a detailed statement emphasizing there are no practicable alternatives to the undertaking being located within the floodplain in the environmental document.

### **FDM 20-45-35 Facilities Repeatedly Requiring Repair and Reconstruction**

*November 17, 2020*

23 CFR 667, Facilities Repeatedly Requiring Repair and Reconstruction (F4R), requires states to conduct statewide evaluations to determine if there are reasonable alternatives to roads, highways and bridges that have required repair and reconstruction activities on two or more occasions due to emergency events. WisDOT's process for conducting these evaluations is described in [FDM 3-22-10](#).

<https://wisconsin.gov/rdwy/fdm/fd-03-22.pdf#fd3-22>

To supplement information in [FDM 3-22-10](#) additional information has been included on WisDOT's website.

<https://wisconsin.gov/Pages/doing-bus/local-gov/astnce-pgms/highway/f4r.aspx>

If any portion of a project's termini is part of a F4R site the alternatives analysis discussion in the project's environmental document is required to include a discussion of alternatives evaluated that would either eliminate, substantially minimize or substantially reduce recovery efforts from damage if an event occurred at the identified F4R site.

### **FDM 20-45-40 Agricultural Impact Statement**

*August 16, 2022*

Per Wis. Stat. 32.035 and the Cooperative agreement between the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) and the Wisconsin Department of Transportation (WisDOT), DATCP must be notified of any project which may involve the acquisition of an interest in land from a farm operation through eminent domain (condemnation). Please note that while WisDOT System, County Highway projects require DATCP Notification, Town Highway projects (Wis. Stat. 82) are exempt from the Agricultural Impact Statement (AIS) process by statute. The cooperative agreements may be found at:

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/environment/formsandtools.aspx>

By statutory definition, farm operation means any activity conducted solely or primarily to produce one or more agricultural commodities in sufficient quantity to contribute materially to the operator's support. Cropland, pasture, idle or fallow fields, specialty farmland and other agricultural land are all considered farmland. Acquisition of easements, fee simple rights, and leasehold interests in a farm may trigger the need to coordinate with DATCP if the interests are actually or potentially acquired by WisDOT through condemnation.

#### **40.1 Qualified Non-Significant Acquisitions**

**Qualified** non-significant acquisitions are typified as minor amounts of land, the loss of which would not have a significant adverse effect on a farm operation. **To qualify as a non-significant acquisition project, the project must have less than 1.0 acre of impact to any one farm operation and not have any of the impacts listed below:**

1. Removal of a farm residence
2. Removal of a farm operation building



3. Loss of Access to an aspect of a farm operation
4. Loss of livestock related infrastructure such as manure storage, grain/feed storage areas, feedlot or cattle passes

Project teams are not required to notify DATCP AIS program for qualifying non-significant acquisition projects.

If a project has less than 1.0 acre of impact to any one farm operation but results in one or more of the impacts in the above list, DATCP must be notified of the project using a summary format. For projects meeting these criteria, send the following summary information to DATCP:

- WisDOT Project ID number or Airport Layout Plan ID number
- Highway number or name or project name
- Starting and ending points of the project or general description of the project location
- Location (county, town, village, city)
- Number of farms affected
- Acres to be acquired from each affected farm operation
- Project location map with property acquisition areas clearly identified
- Identify who should be billed for the review

Notification should be completed via e-mail sent to [datcpAgImpactStatements@wisconsin.gov](mailto:datcpAgImpactStatements@wisconsin.gov).

Additional information on qualified non-significant acquisitions may be found within the DATCP AIS program Reference Document Regarding Notification of Non-Significant Acquisitions and Summary Agricultural Impact Notifications (AIN):

<https://datcp.wi.gov/Documents2/AINReference.pdf>

#### **40.2 Acquisition of Between One and Five Acres from a Farm Operation**

DATCP must be notified of projects that will acquire between one and five acres from a single farm operation. Project teams should notify DATCP using a summary format that includes the following information as relevant to the project.

- WisDOT Project ID number or Airport Layout Plan ID number
- Highway number or name or project name
- Starting and ending points of the project or general description of the project location
- Location (county, town, village, city)
- Identification of the farm operation affected
- Acres to be acquired from the farm operation
- Project location map with property acquisition areas clearly identified
- Identify who should be billed for the review

Notification should be completed via e-mail sent to [datcpAgImpactStatements@wisconsin.gov](mailto:datcpAgImpactStatements@wisconsin.gov).

DATCP will review the summary information and respond with a determination of whether an AIN will be required for the project.

Additional information on acquisitions between one and five acres may be found within the DATCP AIS program Reference Document Regarding Notification of Non-Significant Acquisitions and Summary Agricultural Impact Notifications (AIN):

<https://datcp.wi.gov/Documents2/AINReference.pdf>

#### **40.3 Agricultural Impact Notice**

WisDOT and DATCP have developed the Agricultural Impact Notice (AIN) for Highway Projects to assist DATCP in determining whether an Agricultural Impact Statement (AIS) needs to be prepared for a project. The AIN can be found at:

[https://datcp.wi.gov/Pages/Programs\\_Services/AISNotificationForms.aspx](https://datcp.wi.gov/Pages/Programs_Services/AISNotificationForms.aspx)

The AIN is used to transmit the required information for all WisDOT projects acquiring over five acres from a

farm operation. The AIN form may also be used for projects acquiring between one and five acres from a farm operation.

DATCP will review the AIN and determine within 10 days of receiving a complete notification from WisDOT whether an AIS will be prepared. If more information is needed, DATCP will request additional information in a timely fashion.

Attach appropriate correspondence from DATCP to the environmental document. The REC or BTS-EPDS liaison, as appropriate, can assist in defining appropriate correspondence.

#### **40.4 Processing an AIS**

Notify DATCP as early as possible in the project development process to avoid delays. This is important because Wis. Stat. 32.035 specifies 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, the statute specifies a condemning agency, 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 60- and 30-day periods from interfering with later real estate activities.

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 undertaking on farm operations and agricultural resources. If a proposed undertaking 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.

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 having jurisdictional authority over the area affected by the project are required to post the AIS in the place normally used for public notices.

Although an AIS is prepared and published separately, it may be appended to the environmental document.

##### **40.4.1 Environmental Impact Statements (EIS)**

When an EIS is to be prepared for a project, preliminary discussions should occur with DATCP when the Impact Analysis Methodology Report is under development for the project.

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

##### **40.4.2 Environmental Assessments and Environmental Reports**

DATCP should be notified of the project during the agency coordination process. If impacts to farm operations are possible as a result of any of the alternatives considered during the alternative analysis phase of an ER or EA DATCP should be notified as appropriate. The results of DATCP coordination should be included in the ER or EA.

#### **40.5 Miscellaneous**

DATCP must be notified of any changes to projects which result in changes to impacts to farm operations. If changes occur, it is important to provide DATCP with the information sufficient to evaluate effects and to determine whether additional information or a supplement to the AIS is warranted. Such notification is not required if the change results from a request by the landowner who will be affected.

### **FDM 20-45-45 Natural Resources Conservation Service Farmland Conservation Impact Rating**

*November 17, 2020*

The Federal Farmland Protection Act (FPPA) is intended to minimize the impact Federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. It assures that to the extent possible federal programs are administered to be compatible with state, local units of government, and private programs and policies to protect farmland. The FPPA can be accessed by clicking the link below:

[https://www.nrcs.usda.gov/wps/PA\\_NRCSCConsumption/download?cid=stelprdb1042432&ext=pdf](https://www.nrcs.usda.gov/wps/PA_NRCSCConsumption/download?cid=stelprdb1042432&ext=pdf)

When a federal funds are involved in a project and the project would require acquisition of or may affect prime, unique, statewide or locally important farmland one of the following must be completed:

- Farmland Conversion Impact Rating for Corridor Type Projects (Form NRCS-CPA-106), or,

- Farmland Conversion Impact Rating (Form AD-1006)

Form NRCS-CPA-106 is used for most transportation projects. This form can be downloaded at:

[http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1045395.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045395.pdf)

Form AD-1006 should be used for block of land type impacts. This form can be downloaded at:

[http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1045394.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf)

The NRCS regulations require WisDOT to send a copy of the completed form to NRCS when the project would affect lands protected by the FPPA. The review requirement also applies for any acquisition of farmland which has an NRCS easement or encumbrance on it.

Send the form to NRCS regardless of the point score developed in Part VI of the form. The transmittal of the form serves to keep NRCS informed of any effects to farmland.

#### **45.1 Instructions for Completing Form NRCS-CPA-106 or Form AD-1006 When Part VI Is Less Than 60 Points**

These forms have step by step instructions and can be found here:

[http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1045395.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045395.pdf)

[http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1045394.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045394.pdf)

- 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 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 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.
- 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. See [FDM 5-5-5.3](#) for information on projects that score 60 or more points in Part VI.

#### **FDM 20-45-50 Deed Restrictions and Easements**

*November 17, 2020*

As early in the environmental document process as possible, project teams should identify any properties that may be acquired and determine if any special deed restrictions or protective easements exist. Deed restrictions or special easements may have serious restrictions on what can happen with the land, and if related to a federal program, can restrict purchase or use of the land. In all cases, first identify the origin of the funding behind the restriction or easement; second, if the funding source is a federal or state agency, begin coordination with that agency immediately to identify the restrictions that will apply.