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Section 4(f) of the U.S. DOT Act

Section 6(f) of the Land and Water Conservation Fund Act

Both Section 4(f) of the U.S. DOT Act and Section 6(f) of the Land and Water Conservation Fund Act deal with land that is utilized as public parks, recreational areas, wildlife and waterfowl refuges, and historical sites. Section 4(f) outlines the approvals needed for these types of lands for use on Federal Highway Administration (FHWA) projects. Section 6(f) deals with the Land and Water Conservation Fund Act (LWCFA), which sets aside federal funds to acquire, plan, or develop recreational parks. Section 6(f) specifically deals with how lands that utilize the funds from the LWCFA are approved and replaced when used for projects. Section 4(f) of the U.S. DOT Act and Section 6(f) of the LWCFA often overlap because of the nature of the lands.

Section 4(f) of the U.S. DOT Act outlines that the FHWA and other State DOT agencies cannot approve the use of publicly used lands for FHWA projects such as: publicly or privately owned parks, recreational areas, wildlife and waterfowl refuges, and public or private historical sites. There are exceptions to the act which are as follows: the above lands cannot be approved unless there is “no feasible and prudent avoidance alternative to the use of land” and includes planning to minimize harm to the property, or it is determined that the use of the property will have a “de minimis: impact. De minimis directly translates from Latin to: about minimal things, but can be applied to the law by meaning: too minor to merit consideration.

Section 4(f) gives authority to the Secretary of the U.S. DOT as the ultimate decision maker when in comes to approving the use of the lands for FHWA projects. The secretary is encouraged and, in most cases, required to consult the secretaries of the Interior, Housing and Development, and Agriculture. Some examples of others that may be consulted are land specific. The State Historical Preservation Officer (SHPO) may be consulted for projects involving historical sites, and the Tribal Historical Preservation Officer (THPO) may be consulted for projects involving tribal land. Under Section 4(f) it is required that officials are consulted, and have not objected when applying the exception for restoration, rehabilitation, or maintenance of historical transportation facilities (23 CFR 774.13(a)) or when applying exception for archeological sites of minimal value for preservation in place (23 CFR 774.13(b)(2)). Written concurrence of officials is required by Section 4(f) for no adverse effects prior to de minimis findings (23 CFR 774.5(b)), applying for exceptions for temporary occupancies (23 CFR 774.13(d)), or applying exceptions for transportation enhancement activities and mitigation activities (23 CFR 774.13(g)).

Section 4(f) applies when the U.S. DOT approves transportation programs or projects using properties outlined in Section 4(f). Currently the FHWA does not approve any transportation programs so only approved projects apply. Four other conditions must be met for Section 4(f) to apply to the proposed land, these conditions are as follows.

1. The project must require approval from the FHWA to proceed. This means that if the FHWA is not required to approve, then Section 4(f) does not apply. Cases like these may involve state roads, not federally regulated.
2. The project must be considered a transportation project. These would be projects involving transportation of automobiles, ATVs or people.
3. The project must require the use of land from protected properties as outlined in Section 4(f). If there are other alternatives for the project to continue without the use of these lands, it is preferred.
4. None of the Regulatory applicability rules or exceptions apply.

In order to apply for approval of the Secretary of the U.S. DOT the project must include either a programmatic evaluation or an individual evaluation. A programmatic evaluation has already been approved by the Secretary of the U.S. DOT and do not require draft, comment, or circulation periods. There are currently five programmatic evaluations: “Independent Bikeway or Walkway Construction Projects” (approved May 23, 1977), “Use of Historic Bridges” (approved July 5, 1983), “Minor Involvement with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges” (approved December 23, 1986), “Minor Involvement with Historic Sites” (approved December 23, 1986), and “Transportation Projects that have a Net Benefit to Section 4(f) Property” (approved April 20, 2005).

If not using a programmatic evaluation, the project must utilize an individual evaluation which is comprised of a draft and a final. All drafts are submitted to the FHWA Division Office or the Federal Lands Division Office and final evaluations are sent to the FHWA’s Office of Chief Counsel for legal sufficiency review. If the project involves an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) then the evaluation should be submitted as a NEPA subsection in the project documents. If the project includes a Categorical Exclusion (CE) or the project has changes that are to be made after processing a CE or a Finding of No Significant Impact (FONSI) then the evaluation should be a separate document. The project sponsor should always submit a draft that both identifies and evaluates avoidance alternatives, and ways to decrease harm to the Section 4(f) property.

Section 6(f) is from the Land and Water Conservation Fund Act (LWCFA), which was established in 1965 to set aside funds for State and Federal agencies to utilize to meet present and future recreational demands of the public. These funds are authorized to be used for planning, acquisition, or development of recreational lands. Section 6(f) of the act specifies that any lands that use the funds set aside in the LWCFA need to be maintained as such. Therefore any projects that need to use these lands have to be approved by the Secretary of the Department of the Interior (DOI) through the request of the National Parks Service (NPS) at the state’s request.

Section 6(f) of the LWFCA directs the DOI to ensure that the proposed replacement lands are equal in: fair market value, location, and usefulness, when a project requires the use of these lands. The replacement property must also meet eligibility requirements outlined in 36 CFR 59.3(b)(4)(i-iv). Because of the overlap between the types of land in Section 4(f) and Section 6(f) projects need to be careful to not only make sure that they meet Section 4(f) requirements, but also that they meet Section 6(f) requirements.