

Section 4(f) Exceptions

Project Development Division Form 041

**Section 4(f) Exceptions (23 CFR 774.13):**

**Public Parks, Recreation Lands, Wildlife & Waterfowl Refuges, and Historic Properties**

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Project Name Project Number

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Control Number Project Location *(Road, Town, County)*

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Project Description

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Section 4(f) Property Name

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Official(s) with Jurisdiction

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Property Description

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

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

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Establishing Section 4(f) Exception Relevancy

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

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

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

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

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

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

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

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

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

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

Describe project impacts, how the project qualifies for the selected Exception, completed coordination, and any other pertinent information.

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

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**Exception Documentation**

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

Yes   No

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

Yes   No, not required

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Approval Signatures

I reviewed this checklist and all attached documentation and confirm that the above property and proposed project meet the requirements of 23 CFR 774.13 for a Section 4(f) Exception finding.

**Preparer Date**

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**NDOT Reviewer Date**

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**NDOT Approval Date:**

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The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by NDOT pursuant to 23 USC 326 and the Memorandum of Understanding dated September 5, 2018, and executed by FHWA and NDOT. CEs not assigned to NDOT under the CE Assignment MOU continue to be processed in accordance with the processes contained in the *Environmental Procedures Manual*, with the exception that review and approval are retained by the Federal Highway Administration.

**Federal Highway Administration Date:**

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