Federal Highway Administration, DOT

§ 774.3

Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403
Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931
TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11)
Flood Disaster Protection Act, 42 U.S.C. 4001–4128

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PART 774—PARKS, RECREATION AREAS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES (SECTION 4(F))

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Source: 73 FR 13395, Mar. 12, 2008, unless otherwise noted.

§ 774.1 Purpose.

The purpose of this part is to implement 23 U.S.C. 138 and 49 U.S.C. 303, which were originally enacted as Section 4(f) of the Department of Trans-
resources not protected by Section 4(f); and
(vii) Substantial differences in costs among the alternatives.
(2) The alternative selected must include all possible planning, as defined in §774.17, to minimize harm to Section 4(f) property.
(d) Programmatic Section 4(f) evaluations are a time-saving procedural alternative to preparing individual Section 4(f) evaluations under paragraph (a) of this section for certain minor uses of Section 4(f) property. Programmatic Section 4(f) evaluations are developed by the Administration based on experience with a specific set of conditions that includes project type, degree of use and impact, and evaluation of avoidance alternatives. An approved programmatic Section 4(f) evaluation may be relied upon to cover a particular project only if the specific conditions in the programmatic evaluation are met.
(1) The determination whether a programmatic Section 4(f) evaluation applies to the use of a specific Section 4(f) property shall be documented as specified in the applicable programmatic Section 4(f) evaluation.
(2) The Administration may develop additional programmatic Section 4(f) evaluations. Proposed new or revised programmatic Section 4(f) evaluations will be coordinated with the Department of the Interior, Department of Agriculture, and Department of Housing and Urban Development, and published in the FEDERAL REGISTER for comment prior to being finalized. New or revised programmatic Section 4(f) evaluations shall be reviewed for legal sufficiency and approved by the Headquarters Office of the Administration.
(3) The Administration may make Section 4(f) approvals under this section. Requirements for the documentation and timing of Section 4(f) approvals are located in §§774.7 and 774.9, respectively.
(4) Historic Bridges; Programmatic Section 4(f) Evaluation and Approval; and (5) Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects.
§774.5 Coordination.
(a) Prior to making Section 4(f) approvals under §774.3(a), the Section 4(f) evaluation shall be provided for coordination and comment to the official(s) with jurisdiction over the Section 4(f) resource and to the Department of the Interior, and as appropriate to the Department of Agriculture and the Department of Housing and Urban Development. The Administration shall provide a minimum of 45 days for receipt of comments. If comments are not received within 15 days after the comment deadline, the Administration may assume a lack of objection and proceed with the action.
(b) Prior to making de minimis impact determinations under §774.3(b), the following coordination shall be undertaken:
(1) For historic properties:
(i) The consulting parties identified in accordance with 36 CFR part 800 must be consulted; and
(ii) The Administration must receive written concurrence from the pertinent State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), and from the Advisory Council on Historic Preservation (ACHP) if participating in the consultation process, in a finding of “no adverse effect” or “no historic properties affected” in accordance with 36 CFR part 800. The Administration shall inform these officials of its intent to make a de minimis impact determination based on their concurrence in the finding of “no adverse effect” or “no historic properties affected.”
(iii) Public notice and comment, beyond that required by 36 CFR part 800, is not required.
(2) For parks, recreation areas, and wildlife and waterfowl refuges: