

(Draft) Resources Evaluated Relative to the Requirements of Section 4(f) and a De Minimis Determination

September 9, 2015

1.1 INTRODUCTION

Responsibility for compliance with Section 4(f) has been assigned to the California Department of Transportation (Caltrans) pursuant to 23 United States Code [USC] 326 and 327, including determinations and approval of Section 4(f) evaluations, as well as coordination with those agencies that have jurisdiction over a Section 4(f) resource and may be affected by a project action.

Section 4(f) specifies that “the Secretary [of Transportation] may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the federal, state, or local officials having jurisdiction over the park, area, refuge, or site) only if:

- there is no prudent and feasible alternative to using that land, and
- the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.”

Section 4(f) further requires consultation with the Department of Interior and, as appropriate, the involved offices of the Department of Agriculture and the Department of Housing and Urban Development, and relevant state and local officials, in developing transportation projects and programs that use lands protected by Section 4(f). If historical sites are involved, then coordination with the State Historic Preservation Officer (SHPO) is required.

The proposed project is a transportation project that may receive federal funding and/or discretionary approvals through the U.S Department of Transportation, Federal Highway Administration (FHWA); therefore, documentation of compliance with Section 4(f) is required.

This Section 4(f) evaluation has been prepared in accordance with the FHWA regulations as codified at 23 Code of Federal Regulations (CFR) Section 774.

1.2 SECTION 4(f) “USE”

The regulations interpreting Section 4(f) state that “the potential use of land from a Section 4(f) property shall be evaluated as early as practicable in the development of the action when alternatives to the proposed action are under study (23 Code of Federal Regulations [CFR] 774.9(a)).” The use of Section 4(f) resources occurs when:

- Land is permanently incorporated into a transportation facility through partial or full acquisition (i.e. “actual use”);
- There is a temporary occupancy of land that is adverse in terms of the preservation purposes of 4(f) (i.e. “temporary use”); or
- There is no permanent incorporation of land, but the proximity of a transportation facility results in impacts so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired (i.e. “constructive use”)

1.2.1 DIRECT USE

A direct use of a Section 4(f) resource occurs when the property is permanently incorporated into a proposed transportation project (23 CFR Section 774.17). This may occur as a result of partial or full acquisition of a fee simple interest, permanent easements, or temporary easements that exceed regulatory limits noted below.

1.2.2 TEMPORARY USE

A temporary use of a Section 4(f) resource occurs when there is a temporary occupancy of property that is considered adverse in terms of the preservation purposes of the Section 4(f) statute. Under the FHWA regulations (23 CFR Section 774.13(d)), a temporary occupancy of property does not constitute a use of Section 4(f) resource when the following conditions are satisfied:

- The occupancy must be of a temporary duration (i.e., shorter than the period of construction) and not involve a change in ownership of the property;
- The scope of work must be minor, with only minimal changes to the protected resource;
- There is no direct adverse physical effects on the protected resource, and there will be no temporary or permanent interference with the activities or purposes of the resource;
- The property being used must be fully restored to a condition that is at least as good as that which existed prior to the proposed project;
- There must be documented agreement of the appropriate officials having jurisdiction over the resource regarding the above requirements.

1.2.3 CONSTRUCTIVE USE

A constructive use of a Section 4(f) resource occurs when a transportation project does not permanently incorporate land from the resource, but the proximity of the project results in impacts (e.g., noise, vibration, visual, and/or ecological) so severe that the protected activities, features, or attributes that qualify the resource for protection under Section 4(f) are substantially diminished (23 CFR Section 774.15(a)).

1.3 *DE MINIMUS* IMPACT

A *de minimis impact* to a Section 4(f) resource is a nominal impact that would not be adverse. *De minimis* impacts to historic resources under Section 4(f) would be either no impact to the property or a “no adverse effect” finding under 36 CFR Part 800. For other Section 4(f) protected resources, including publicly owned parks, recreation areas, and wildlife and waterfowl refuges, *de minimis* impacts would be defined as those that do not adversely affect the activities, features, or attributes of the Section 4(f) resource. To reach a *de minimis* finding, the officials(s) with jurisdiction over the Section 4(f) resource must provide written concurrence that the project would not adversely affect the activities, features, or attributes that qualify the property for protection under Section 4(f). The public must be afforded the opportunity to review and comment on the effects of the project on the identified Section 4(f) resource(s).

2.0 PROJECT DESCRIPTION

The project area is located in Orange County on Pacific Coast Highway (SR-1) in the city of Newport Beach (see figure 1). The California Department of Transportation is proposing the

following corrective measures at the northwest corner of the north arm of the Newport Bay Bridge:

- a) replace the collapsed concrete slope paving (see figure 2),
- b) fill the existing scoured channel bed with rock, and
- c) replace the failed asphalt section of bike path (see figure 3)

The slope paving at the west side of the bridge’s abutment 1 has collapsed in to the bay due to tidal erosion exposing timber piles, soil and reinforced bars. A section of the bike path underneath the bridge has also collapsed. There is a sinkhole between the bike path and the abutment. The purpose of the proposed project is to provide protective revetment for both areas of failure to resist on-going tidal erosion, prevent further deterioration and to preserve public access. Two alternatives are being proposed:

- No Build
- Build Alternative - proposes to replace, 1) the failed concrete slope paving at the west side of abutment 1 with a deeper slope paving key, geo-composite material and a sheet pile to prevent tidal erosion and minimize environmental disturbance and, 2) the failed asphalt concrete bike path with a 3' deep pavement section, geo-composite material and a sheet pile to minimize environmental disturbance and confine the project to within the state right-of-way.

Caltrans is the Lead Agency for compliance with the California Environmental Quality Act (CEQA) and with the National Environmental Policy Act (NEPA). Under CEQA, the proposed project qualifies for a Class 1 (d) categorical exemption. Under NEPA, the project qualifies as a 23 USC 326 categorical exclusion (CE).

3.0 LIST AND DESCRIPTION OF 4(F) PROPERTIES

As recommended by the FHWA Section 4(f) checklist, resources subject to Section 4(f) consideration include publically owned lands within 0.5 miles of the project, (as shown on the tables below) consisting of public park/recreational areas; public wildlife and waterfowl refuges of national, state or local significance; or National Register of Historic Places (NRHP)-eligible historic and archaeological sites with the project area of potential effect (APE), whether publically or privately owned. The path that runs under the bridge is a recreational facility used by bicyclists and pedestrians within the project APE and is subject to Section 4(f) consideration.

Summary of Properties Subject to Section 4(f) Consideration

Type of Property	Geographic Location to Project	Number of Properties Identified
Public Schools	Within 0.5 mile	0
Public Parks and Recreation Areas	Within 0.5 mile	1
Trails	Within 0.5 mile	1
Wildlife and Waterfowl Refuges	Within 0.5 mile	0
NRHP-eligible historic sites	Within the APE	0
NRHP-eligible archaeological sites	Within the APE	0

APE = Area of Potential Effects
 NRHP = National Register of Historic Places

Properties Subject to Section 4(f) within 0.5 mile of the Study Area

Map No.	Property	Address	City	Facilities
Parks				
1	Castaways Park	Dover and 16 th Street	Newport Beach	Pedestrian/Bike trail, benches, Veteran's memorial statute, native plant garden

4.0 EFFECTS ON SECTION 4(f) RESOURCES

Castaways Park is well outside of the limits of the project area, as such, the project will not have any impacts on this 4(f) resource. Only the bike/pedestrian path will be directly impacted by the project. In order to make the repairs to the bridge abutment and bike/pedestrian path, it will be necessary to close the path for the duration of the project (i.e. 3-5 months). A detour route will be implemented during the closure that will allow bicyclists and pedestrians to cross PCH at the crosswalk at Dover Drive and reenter the bike path (see fig. 4). The detour would not take any longer than it currently takes to cross PCH. Hence, this will not be a major inconvenience. The detour plan will be included in the Transportation Management Plan (TMP) for the project. Full use of the bike path will be restored upon completion of the project.

5.0 FINDINGS

After evaluating the proposed project's impacts on the bike path, Caltrans has made a preliminary determination that the temporary use of the bike path is *de minimis* within the meaning of Section 4(f). The temporary use would not adversely affect the activities, features, or attributes that qualify the property for protection under Section 4(f) due to the following:

- The length of time the path will be closed will be minimal (approx. 180 days)
- Pedestrians and bicyclists will be provided with a convenient detour route that will take an equal or less amount of time to cross PCH
- The bike path will be restored to a better condition than prior to the project

6.0 PUBLIC NOTICE PROCESS

As stated above, Section 4(f) is a federal process and must comply with National Environmental Policy Act (NEPA) requirements. The appropriate NEPA approval for this project is a Categorical Exclusion, which does not require public circulation. Typically, for projects that do not require public circulation, a public notice and opportunity for review and comment would be needed. As the bike/pedestrian path is considered to be recreational resource, a Notice of Availability of a preliminary *de minimis* Determination will be posted in the local newspaper, online, and at a local library. Following public circulation of the Preliminary *de minimis* Determination, the PDT will prepare a concurrence letter since Caltrans has jurisdiction over this 4(f) resource. In addition:

- Coordination is on-going with the Project Development Team (PDT)
- Coordination is on-going with the city of Newport Beach
- The 4(f) documentation (De Minimis Findings) will be circulated to the public prior to the final determination and categorical exemption/exclusion approval

7.0 AVOIDANCE AND MINIMIZATION MEASURES

The following measures have been identified for implementation during construction activities and are expected to minimize impacts to the bike path:

- A bike path detour plan will be developed during the Plans, Specifications, and Estimate (PS&E) phase and included in the TMP for implementation by the contractor during construction
- The bike/pedestrian path will be restored to a condition better than prior to the project
- The bike/pedestrian path will only be closed for 180 days