



# Environmental Documentation for Local Government Projects

Prepared by the  
Maryland State Highway Administration

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## I. Introduction

All Local Government (LG) projects using federal funds must comply with the requirements of federal and state laws to ensure that the environment is protected. The major laws that must be complied with are:

- National Environmental Policy Act (NEPA)
- Section 106 of the National Historic Preservation Act
- Section 4(f) of the Department of Transportation Act
- Section 404 of the Clean Water Act
- Section 7 of the Endangered Species Act
- Section 6(f) of the Land and Water Conservation Fund Act (LWCFA)
- Chesapeake Bay Critical Area and Atlantic Coastal Bays Critical Area Protection Program
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)
- Title VI of the Civil Rights Act and Executive Order 12898, Environmental Justice

This listing is in no way inclusive, as other federal and state laws and regulations may require compliance. The LG must provide evidence of compliance with these laws and regulations before federal funds will be authorized for a project.

The LG must provide evidence of compliance if they are using federal funds for:

- Preliminary Engineering (PE) or Planning Phase:  
Evidence of compliance consists of obtaining an approved environmental document from the Maryland State Highway Administration (SHA) if the PE phase will be federally funded. The approved document is valid only for PE, which is generally defined as the level of design necessary to determine environmental impacts, minimization or mitigation of impacts, or to complete the environmental document required for the final design, right-of-way or construction phase.
- Final Design, Right-Of-Way, or Construction Phase:  
Evidence of compliance consists of coordinating with the appropriate environmental agencies regarding the impacts of the project, or lack thereof, and obtaining an approved environmental document.

The approved environmental document is required before the final design, right-of-way (property negotiation or acquisition), or construction phases of a project can begin. This document is separate from the document that is approved for the PE phase of a project. *Failure to obtain an approved document before starting any of these phases could result in the loss of federal funds.* **In order for final design to continue without interruption, the work required to obtain the approved document must be completed as early as possible in the design process.** This is generally when enough work has been completed to determine the environmental impacts of a project.

If LGs intend to use federal funds for right-of-way activities, these activities (property negotiation or acquisition) cannot proceed until the environmental document has been approved (**Appendix A**). However, exceptions can be permitted for situations that involve hardships and protective buys. It is acceptable for right-of-way activities such as title searches, preliminary map preparation and appraisals to be done concurrently with the NEPA process, per the Federal Highway Administration (FHWA).

The FHWA has requested that:

- LGs develop their projects in accordance with federal regulations and procedures on federal aid projects
- LGs do not contact FHWA directly
- SHA acts as a liaison between the LG and FHWA
- SHA review all documentation to be submitted to FHWA to ensure that the documentation is accurate and complete

Therefore, the Environmental Manager (EM) will be the LG's point of contact for all submissions, questions, guidance and reviews concerning the environmental coordination, laws and regulations, and documentation process to be followed.

The following items are useful resources that the LG can use to assist them in completing the environmental documentation process:

- Environmental Documentation Process Checklist (**Appendix B**)
- Environmental Documentation Flowchart (**Appendix C**)
- Useful Internet Resources (**Appendix D**)
- Agency Contact Information (**Appendix E**)

## **II. Environmental Laws and Regulations**

### **A. National Environmental Policy Act (NEPA)**

NEPA requires projects receiving federal funds to consider natural and socio-economic factors using a systematic, interdisciplinary approach before committing to a project. This process requires coordination with various environmental agencies to obtain information on cultural, socio-economic, and natural resources within the project area, documentation of any impacts upon those resources, and consideration of ways to avoid or minimize impacts as appropriate. See **Appendix F** for a copy of the NEPA Regulations.

### **B. Section 106 of the National Historic Preservation Act (NHPA)**

Section 106 requires projects receiving federal funds to consider the effect of the activity on significant historic structures and archeological resources.

### **C. Section 4(f) of the Department of Transportation Act**

Section 4(f) provides special protection for publicly-owned public parks, recreation areas, and wildlife and waterfowl refuges, or significant historic sites.

**D. Section 404 of the Clean Water Act**

Section 404 prohibits discharge of dredged or fill material into wetlands and waterways unless proven that steps have been taken to avoid and minimize wetland impacts where practicable, and unavoidable impacts are compensated through activities provided to restore or create wetlands.

**E. Section 7 of the Endangered Species Act**

Section 7 requires that federally assisted actions do not jeopardize the continued existence of any threatened or endangered (RTE) species or adversely modify the habitat of such species.

**F. Section 6(f) of the Land and Water Conservation Fund Act (LWCFA)**

Section 6(f) requires that federally assisted actions that propose impacts, or the permanent conversion, of outdoor recreation property that was acquired or developed with LWCFA grant assistance be approved by the Department of the Interior's National Park Service. Impacts to Section 6(f) lands must be mitigated through replacement lands of equal value, location, and usefulness.

**G. Chesapeake Bay Critical Area and Atlantic Coastal Bays Critical Area Protection Program**

The Chesapeake Bay Critical Area and Atlantic Coastal Bays Critical Area Protection Program establishes land use policies for development in the Critical Area which accommodate growth, minimize adverse impacts on water quality, and conserve fish, wildlife and plant habitat. The Critical Area is defined as any area within 1,000 feet of tidal influence.

**H. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)**

SAFETEA-LU was signed into law by President Bush on August 10, 2005. Among its many features are steps to protect the environment and provide efficiency in the environmental review process. Most of these efforts are not related to projects that are typically completed by LGs, but there are changes that affect compliance with Section 4(f) under certain circumstances. Section 6001 and Section 6009 are most relevant to LG projects.

**I. Title VI of the Civil Rights Act and Executive Order 12898, Environmental Justice**

Title VI ensures that no person on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal funds. Executive Order 12898 requires agencies to identify and address, as appropriate, any disproportionately high and adverse human health or environmental effects of the project on minority populations and low-income populations.

### **III. Environmental Documents**

This section provides a summary of the different types of environmental documents that can be required for federally funded projects. It is anticipated that most LG projects will be classified as either a CE or PCE, and some will also require the preparation of a Section 4(f) Evaluation. The EM will assist the LG in determining what type of environmental document is applicable to a project.

#### **A. Categorical Exclusion (CE)**

CEs are defined as projects that do not result in significant environmental effects, and are therefore excluded from the requirement to prepare an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS). A project qualifies for a CE only if the proposed actions do not:

- Induce significant impacts to planned growth or land use for the area
- Require the relocation of significant numbers of people
- Have significant impact on any natural, cultural, recreational, historic or other resource
- Involve significant air, noise or water quality impacts
- Have significant impacts on travel patterns
- Either individually or cumulatively, have any significant environmental impacts

A typical CE is three to five pages in length, plus the required attachments (**Appendix G**). Refer to Section V for the evidence of coordination required for a CE.

All CEs, including those with a Section 4(f) Evaluation, will be forwarded by SHA to FHWA for comments and approval.

#### **B. Programmatic Categorical Exclusion (PCE)**

PCEs are a type of CE, however, they generally apply to projects that almost always have little or no environmental impact. They are a streamlined way of completing CEs under an agreement between the SHA and FHWA. It is at the discretion of SHA and FHWA to determine the applicability of a PCE for a project. The EM will assist the LG in determining if a PCE can apply to a project.

A PCE is a five page checklist form that includes all the required attachments (**Appendix H**). Refer to Section V for the evidence of coordination required for a PCE.

PCEs will be approved by SHA's Division Chief or Assistant Division Chief of the Environmental Planning Division.



### **C. Final Review Reevaluation (FRR)**

FRRs are used if there are changes to either the project scope or the environmental impacts of the project from what was approved in the original environmental document.

A FRR includes a standard form letter and the required attachments (**Appendix I**).

FRRs, for CEs and PCEs, will be approved by SHA's Division Chief of the Environmental Planning Division.

### **D. Section 4(f) Evaluation**

Section 4(f) Evaluations are used if a federally funded project "uses" a Section 4(f) resource such as publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges, or historic sites. Generally there are two types of Section 4(f) uses which require the preparation of a Section 4(f) Evaluation:

- Fee-simple right-of-way
- Permanent and perpetual easements

The EM will assist the LG in determining when a Section 4(f) use occurs and what the appropriate level of Section 4(f) documentation is. Early identification of Section 4(f) uses will help the project stay on schedule, as Section 4(f) Evaluations can add several months to the approval process.

Section 4(f) Evaluations, which are submitted concurrently with a CE, will be forwarded to FHWA for comments and approval. SHA is responsible for forwarding the document to FHWA.

Refer to Section VI for detailed information about the Section 4(f) documentation process.

### **E. Other Documents**

- Environmental Assessment (EA)
- Environmental Impact Statement (EIS)

The LG should coordinate with the EM for further information regarding any projects that require an EA or an EIS.

#### **IV. How to complete the environmental documentation process for projects using federal funds for the preliminary engineering or planning phase**

##### **A. Project initiation with the SHA Environmental Manager**

The EM maintains a database of all LG projects that are using federal funds. In order for a project to be added to the LG Database, the project must be initiated by the LG. To initiate a project the LG must notify the Federal Aid Programming Section (FAPS) of their intent to use federal funds by submitting the following to the FAPS:

- Form 25c
- Location map
- Contact information of the person completing the environmental documentation (name, phone, and email) for the LG

The project information submitted to the FAPS will be forwarded to the EM. Upon receipt, the EM will add the project information to the LG Database. No other action is required on the part of the LG.

##### **B. Approval Process**

The EM will prepare and submit a PCE for approval on behalf of the LG.

PCEs will be approved by SHA's Assistant Division Chief of the Environmental Planning Division and copies will be distributed to all appropriate people. The approval process will generally be completed within one to two weeks.

These PCEs are valid only for PE, which is generally defined as the level of design which is necessary to determine environmental impacts, minimization or mitigation of impacts, or to complete the environmental document required for the final design, right-of-way or construction phase.

#### **V. How to complete the environmental documentation process for projects using federal funds for the final design, right-of-way, or construction phases**

**Appendix B** contains the Environmental Documentation Process Checklist that LGs should use to keep track of a project and to ensure that all requirements are met.

Additionally, **Appendix C** contains a flowchart to assist LGs in understanding and following the steps of the environmental documentation process.

##### **A. Project initiation with the SHA Environmental Manager**

The EM maintains a database of all LG projects that are using federal funds. In order for a project to be added to the LG Database, the project must be initiated by the LG.

To initiate a project the LG must notify the FAPS of their intent to use federal funds by submitting the following to the FAPS:

- Form 25c
- Location map
- All environmental documentation completed to date
- Contact information of the person completing the environmental documentation (name, phone, and email) for the LG

The project information submitted to the FAPS will be forwarded to the EM. Upon receipt, the EM will:

- Add the project information to the LG Database
- Contact the LG to discuss coordination requirements specific to the project
- Help the LG to determine what type of environmental document is applicable for the project

## **B. Coordination requirements<sup>1</sup>**

As part of the environmental documentation process, LGs are required to coordinate with several federal and state agencies regarding the environmental impacts of a project. This coordination must occur whether impacts regulated by that agency occur or not. See **Appendix E** for agency contact information.

At the LG's request, the EM will review any draft coordination letters to the agencies. In addition, when the LG obtains an agency response, the response should immediately be forwarded to the EM for review and determination of whether or not coordination with the responding agency is complete. Forwarding of the agency responses also allows the EM to maintain an accurate record of the project status.

### *1. Maryland Historical Trust (MHT)*

The MHT is the approving authority for purposes of compliance with Section 106 of the NHPA. In this regard, the LG must:

- Define the area of potential effects (APE) for the project, taking into account direct and indirect impacts, including physical, visual intrusions, noise, and property acquisition
- Determine if any significant historic structures or districts, or archeological resources are present in the APE
- Assess the effects (no properties affected, no adverse effect, or adverse effect) of the project on any historic resources eligible for or listed on the National Register of Historic Places (NRHP)
- Provide all information to the MHT

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<sup>1</sup> It is anticipated that all LG projects will be classified as either a CE or PCE, and some will also require the preparation of a Section 4(f) Evaluation. The information presented in this section applies only to CEs and PCEs. See Section VI for information regarding Section 4(f) documentation.

A copy of the letter to and the response/concurrence on the project's effects from the MHT must be provided as evidence of compliance with Section 106.

If the MHT determines that the project will have an adverse effect on a historic resource the LG must consult with the MHT on ways to avoid, minimize, or mitigate these effects and to develop a Memorandum of Agreement (MOA) with the MHT and FHWA. Refer to Section VI for information regarding additional Section 4(f) documentation.

2. Trilogy Letters: US Fish and Wildlife Service (USFWS), Maryland Department of Natural Resources (DNR) – Wildlife and Heritage Service, and DNR-Environmental Review Unit

The LG must prepare letters requesting information regarding the presence of:

- RTE species or habitat
- Anadromous finfish species
- Time of year restrictions for instream work in the project area

These letters typically include a map of the project area and a description of the project.

Before a request letter is sent to the USFWS, LGs should consult the USFWS's Chesapeake Bay Field Office official website (<http://www.fws.gov/chesapeakebay/EndSppWeb/ELEMENTS/listreq.html>) to determine if the project is located within a USGS topographic quad without federal threatened or endangered species. If the project is located within a USGS topographic quad without federal threatened or endangered species, the LG should complete the online self-certification form. A formal request letter to USFWS is not required for those projects that can be self-certified.

If there are documented species present within the immediate vicinity of the project area that are RTE or of special concern and could be affected by the project, the LG may be required to conduct a habitat assessment or species survey. Avoidance or mitigation may also be required. Copies of responses from the USFWS, DNR – Wildlife and Heritage Service, and DNR – Environmental Review Unit, and any survey reports, must be provided as evidence of compliance. In addition, if the agencies request a survey, the results must be addressed as evidence of compliance.

3. Maryland Department of the Environment (MDE) and US Army Corps of Engineers (USACE)

The LG must determine if any wetlands, waterways, or floodplains are present, and if they will be impacted. If impacts are anticipated, the LG must coordinate with the MDE and the USACE to:

- Confirm field delineations
- Avoid or minimize impacts
- Obtain appropriate permits

- Prepare mitigation plans, if necessary

Issues with these agencies should be resolved before the CE or PCE is approved. A copy of the permit application and/or the issued permit must be provided as evidence of compliance.

If a project requires an individual USACE permit an environmental document may need to be prepared as part of the permit application. If federal funds are being used for the project, the environmental document preparation should be coordinated with SHA, on behalf of FHWA, so that one environmental document is prepared that will satisfy both USACE and FHWA requirements.

4. Critical Area Coordination

If the project impacts the Critical Area, which is defined as any area within 1,000 feet of tidal influence, the LG must coordinate with their local planning and zoning agency as appropriate to obtain necessary approvals. Often times impacts within the Critical Area result in additional mitigation than would normally be required. Copies of letters to and approvals from the local planning and zoning agency must be provided as evidence of compliance.

5. Public Involvement Coordination

The LG must provide proof of public involvement/outreach. While there is no requirement to hold a public hearing on projects processed as CEs or PCEs, there is a requirement to involve the public and to provide an opportunity for the public to comment on projects. There may also be a need to hold a community meeting when roadway detours are planned during construction. The requirements for public involvement/outreach are dependent on the project scope and potential for community impacts.

The LG must consult with the EM early in the concept development stage to determine what is appropriate and reasonable for the project. The EM must approve the public involvement/outreach concept. Some examples of public involvement/outreach include, but are not limited to: informal community meetings, flyers, and newspaper advertisements. Factors that will affect the requirements of the public involvement/outreach include, but are not limited to: project location, average daily traffic, length of the detour, and duration of the detour.

Flexibility is encouraged in determining public involvement strategies that are appropriate to the project and its potential impacts. The goal of involving the public is to assure no surprises to the public when construction begins. Public involvement activities should be documented in the environmental document. Copies of items such as meeting minutes, flyers, newspaper advertisements, etc. must be provided as evidence of compliance.

If the public has any concerns the LG should work to address their concerns.

6. Emergency Services and Public Buses

If a detour is required for the project, the LG must notify appropriate emergency service agencies. Emergency service agencies consist of:

- Fire and rescue (ambulatory) departments
- Police departments
- Public schools

In addition, the appropriate state or local agency (ex. MTA, WMATA, Ride On, etc.) should be notified if the project is located on a public bus route.

Copies of responses from the emergency service agencies must be provided as evidence of compliance.

If the emergency service, school bus, or public bus provider determines that the detour would adversely impact their response time or routes the LG should work to address their issues.

7. Section 6(f) of the LWCFRA

Section 6(f) coordination may be required if there are also Section 4(f) impacts to publicly-owned public parks, recreational areas, or wildlife or waterfowl refugees. This coordination would be required if the impacted area within the resource received LWCFRA funding for acquisition or development. If so, the impacts to the resource are also subject to separate requirements under Section 6(f).

Section 6(f) coordination requires approval from the Department of the Interior's (DOI) National Park Service (NPS) acting through the DNR. Generally, impacts to Section 6(f) lands must be replaced with land of equal value, location and usefulness, and a written agreement with DNR outlining the mitigation must be included as proof of compliance. In some cases DNR may determine that very minor impacts may not require replacement land. Consequently, when dealing with Section 4(f) resources, it is crucial for the LG to identify the resource's funding sources. If park officials are unable to determine which portions of a park were purchased or improved with LWCFRA funds, then the entire park may be subject to the requirements of Section 6(f). This determination is made by park officials. Similar requirements are also applicable if the affected resource was purchased or developed with State (DNR) Program Open Space money.

8. Additional Coordination

Based on the project scope, the LG may be required to coordinate with additional agencies. Some examples of the need for additional coordination are if the scope includes items such as tree removal, hazardous waste removal, the non-applicability of Section 4(f), or the need for a US Coast Guard permit. The LG should contact the EM for information regarding additional coordination requirements specific to their project.

### C. Draft of environmental documentation<sup>2</sup>

A typical CE includes the information stated below. A CE is a written summary of the existing conditions, proposed action, and environmental impacts of the project. See **Appendix G** for a sample CE. A typical PCE also includes the information stated below. However, the information is presented in a different format. See **Appendix H** for a sample PCE.

A draft is prepared after sufficient engineering and design has been completed in order to:

- Determine the level of environmental impacts
- Determine the types of permits and approvals required
- Undertake coordination with appropriate environmental resource agencies and permitting agencies
- Involve and coordinate with the public, as appropriate

#### 1. *Existing Conditions and Purpose/Need*

The existing conditions and purpose/need section of the CE or PCE should provide a summary of the existing conditions of the project area. This section should also provide the purpose and need for the project. Typical information that is found in the existing conditions section includes, but is not limited to:

- Location of the project
- Description of the project area
- Type, length, and width of roadway and/or bridge
- Number and width of traffic lanes, sidewalks, shoulders, and medians
- Geometry of existing roadway and/or bridge and any inadequacies in the geometry
- Speed limit
- Average daily traffic (ADT)
- Year the existing bridge was built and any prior modifications made to the bridge (if applicable)
- Bridge sufficiency rating (BSR) and any structural deficiencies (if applicable)

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<sup>2</sup> It is anticipated that all LG projects will be classified as either a CE or PCE, and some will also require the preparation of a Section 4(f) Evaluation. The information presented in this section applies only to CEs and PCEs. See Section VI for information regarding Section 4(f) documentation.

2. Proposed Action

The proposed action section of the CE or PCE should provide a detailed description of the project scope. The proposed action section should discuss the items listed below. Typical information that is found in the proposed action section includes, but is not limited to:

- Detailed description of the proposed project
- Type, length, and width of proposed roadway and/or bridge
- Number and width of traffic lanes, sidewalks, shoulders, and medians
- Changes to the horizontal and vertical alignments, or lack thereof
- Approach roadway improvements (if applicable)
- Additional work items (ex. traffic barriers, signing, drainage improvements, etc.)
- Detour, or lack thereof
- Emergency service coordination, if required

3. Environmental

The environmental section of the CE or PCE should discuss any environmental impacts, or lack thereof, and also summarize the results of the coordination with the environmental agencies. The following topic areas should be covered:

- Right-of-way requirements (by type: residential, commercial, individual, etc.) and the number of displacements
- Discussion of public involvement
- Impacts to historic or archeological resources
- Impacts to RTE
- Impacts to wetlands, waterways, or floodplains
- Impacts to the Critical Area
- Removal of existing trees
- Removal of hazardous waste
- Conformance with air quality and noise standards
- Conformance with TIP/STIP
- Impacts to publicly-owned public parks, recreation areas, or wildlife or waterfowl refuges
- Conformance with the Smart Growth Priority Funding Areas Act of 1997
- Secondary impacts
- Effects on minority or low-income populations
- Conformance with local and/or regional plans

It is equally important for the LG to note the lack of an environmental impact to a resource to assure SHA/FHWA that the environmental concern was appropriately considered.



#### 4. Attachments

In order to provide evidence of compliance and to present a better overview of the project, the items listed below should be included as attachments to the CE or PCE.

- Location map
- Detour map (if required)
- Responses from the emergency service agencies (if required)
- Proof of public involvement (meeting minutes, flyers, newspaper ads, etc.)
- Response from the MHT providing concurrence of the project's effect
- Response from the USFWS (or online self-certification form)
- Response from the DNR-Wildlife and Heritage Service
- Response from the DNR-Environmental Review Unit
- MDE permit application and/or the issued permit (if required)
- Approvals from the local planning and zoning agency in regards to Critical Area impacts (if required)

#### **D. Review process**

All reviews with the SHA Environmental Planning (EP) staff are completed electronically, unless otherwise requested by the LG. The LG must submit an electronic copy of the draft environmental document and a hard or electronic copy of all attachments to the EM. The EM will review the draft document for content and/or grammar and provide comments, electronically, to the LG. When the draft document is satisfactory, the EM will forward it to the remainder of the appropriate EP staff for a final SHA review, which will be completed within 30 days. The EM will supply the LG with the collective comments of the EP staff. The LG must then submit a final electronic copy to the EM as a check to make sure all comments have been addressed appropriately.

The EM will then give the LG permission to continue into the submittal process. It is the SHA's goal to complete only one review of the environmental document. However, this will depend on the quality of the LG's initial or subsequent submissions. SHA's goal is also to not make any new comments on subsequent revisions unless new information is provided and requires clarification.

Depending on the LG's ability to address the EM's and EP's comments, the total review process could take anywhere from one to six months. The LG can greatly reduce the review process time frame by following the templates that SHA provides as well as working closely with the EM to deal with any questions or problems that may arise. The EM will be available to answer questions and offer assistance as needed to complete the environmental documentation process. Additionally, if there are project issues, SHA will take the lead in informal coordination with FHWA to resolve issues prior to the formal submittal of the environmental document.

## **E. Submission Process**

### *1. PCEs*

Upon completion of the review process, no further action is required by the LG. The EM will submit an official copy of the PCE, including all attachments.

### *2. CEs*

Upon completion of the review process, the LG must submit an official copy of the CE text, including all attachments to the EM.

## **F. Approval Process**

### *1. PCEs*

PCEs will be approved and signed by SHA's Division Chief of the Environmental Planning Division and copies will be distributed to all appropriate people. This process will generally be completed within one to two weeks.

### *2. CEs*

Upon receipt of the CE, the EM will process the document for approval. CEs, including those with a Section 4(f) Evaluation, need to be forwarded to FHWA for comments and approval. SHA will attach a cover letter requesting FHWA's approval of the enclosed document and submit the document to FHWA. SHA is responsible for forwarding the document to FHWA. *LGs should not contact or submit materials to the FHWA directly.*

FHWA generally has 30 days to provide comments or approval. However, depending on the complexity of the project and other priorities that FHWA might have, this period could be extended beyond 30 days.

Upon completion of their review, FHWA will either provide approval or comments. If comments are provided, the LG will need to make the necessary revisions and resubmit to SHA. Oftentimes, revisions will require the LG to resubmit an updated copy of the document. The document is approved when FHWA signs it. At this point the document will be returned to SHA, where the EM will distribute it to all appropriate parties.

Once the CE has been approved by FHWA or the PCE has been approved by SHA, the LG may proceed to the final design, right-of-way negotiation, and construction phases of the project.

## VI. Section 4(f) Documentation

If a federally funded LG project impacts a Section 4(f) resource, a Section 4(f) Evaluation will need to be completed. Impacts to Section 4(f) lands are considered a Section 4(f) use. This document is prepared by the LG, under the guidance of the EM, and must demonstrate that there are no prudent and feasible alternatives to avoid impacting the Section 4(f) resource. If impacts are unavoidable, the impacts must be minimized to the greatest extent possible and mitigation must be developed to offset the effect of the impacts. The types of uses that would require a Section 4(f) evaluation are:

- Fee-simple right-of-way acquisition
- Permanent or perpetual easements
- Temporary occupancy of land that is adverse in terms of its Section 4(f) preservation purposes
- Constructive uses
- Impairing the historic integrity of NRHP eligible bridges

The vast majority of LG projects involving Section 4(f) use will relate to fee-simple acquisition, permanent and perpetual easements or impairments to the historic integrity of NRHP eligible bridges.

The preferred alternative can impact Section 4(f) resources only if there is no feasible and prudent alternative to the use of the resource. If an avoidance alternative is determined to be feasible and prudent it must be selected. An alternative could be determined not feasible and prudent for the following reasons:

- Does not meet purpose and need of the project
- Introduces severe operational or safety problems
- Requires additional unacceptable social, economic or environmental impacts
- Results in serious community disruption
- Adds extraordinary costs to the project
- A combination of the above

Depending on the significance of the impacts and the project scope, there are three ways of complying with the requirements of Section 4(f):

- Individual Section 4(f) Evaluations
- Programmatic Section 4(f) Evaluations
- *De minimis* Determinations

The level of effort and detail varies greatly between the three approaches, but generally, LG projects can be approved through Programmatic Section 4(f) Evaluations and *de minimis* determinations. All Section 4(f) Evaluations and determinations must be approved by FHWA, and are normally approved concurrently with the CE. Coordination with the EM will help the LG determine which Section 4(f) compliance method, if any, is appropriate for the project.

### **A. Individual Section 4(f) Evaluations**

The requirements of individual Section 4(f) Evaluations require the preparation of Draft and Final Section 4(f) Evaluations and include a period (45 days) of selected regulatory and resource agency review between the draft and final documents.

Drafts of the Draft and Final Section 4(f) Evaluations will be reviewed by the EM before being submitted to FHWA for review, comment, and approval.

### **B. Programmatic Section 4(f) Evaluations**

Minor impacts to Section 4(f) resources may qualify under the Programmatic Section 4(f) approach. This approach may be taken for minor impacts to historic sites or park, recreation areas, and wildlife or waterfowl refuges or for the impacts to historic bridges. This approach shortens the approval process by only requiring the preparation of one Section 4(f) document. However, the information and analyses contained therein are the same as in the Draft and Final Section 4(f) approach. EP will assist the LG in determining whether a project can be processed using a programmatic approach as there are certain criteria that FHWA has developed for determining this applicability.

All Programmatic Section 4(f) Evaluations will be completed using the streamlined format that has been developed. This format requires the LG to answer a series of questions in which they discuss the avoidance, minimization, mitigation, and enhancement measures taken to reduce the overall environmental impacts of the project.

Programmatic Section 4(f) Evaluations will be broken down into six sections. Each section requires the LG to answer several questions regarding the projects impacts to the Section 4(f) resource. The section format is the same for historic bridges as it is for publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges, or historic sites; however, some of the questions in each section will be slightly different and tailored to the particular resource being impacted. A template of a Programmatic Section 4(f) Evaluation for historic bridges can be found in **Appendix J**, while a template of a Programmatic Section 4(f) Evaluation for publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges, or historic sites can be found in **Appendix K**. Additionally, **Appendix L** provides an example of the appropriate wording that should be included in a CE letter if a Programmatic Section 4(f) Evaluation is required.

### **C. De minimis Findings**

*De minimis* impacts to Section 4(f) lands are minimal (even less than Programmatic impacts) and have no adverse effect on the protected resource. When this is the case, and the responsible officials with jurisdiction over the resource agree in writing, compliance with Section 4(f) is greatly simplified. Once it is determined that the use of the Section 4(f) property results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required and the Section 4(f) evaluation process is complete. While formal avoidance analysis is not required in a *de minimis*

finding, *de minimis* findings can be made after consideration of any impact avoidance, minimization, and mitigation or enhancement measures. It may be to the LG's benefit to produce some preliminary avoidance, minimization and mitigation plans to strengthen the *de minimis* argument.

*De minimis* determinations do not require the preparation of a separate document from the CE. The LG should include language in the CE to indicate their intent to seek a *de minimis* finding. The FHWA will approve the *de minimis* impact finding as part of the CE approval. See **Appendix L** for an example of the appropriate wording for a CE with *de minimis* determination.

The criteria for *de minimis* findings are different for historic sites than for parks, recreation areas, and wildlife or waterfowl refuges. The LG should contact the EM as soon as they establish their intent to seek a *de minimis* finding. Prior to requesting formal *de minimis* approval, the EP will present the project to FHWA to receive preliminary approval to request a *de minimis* determination. If FHWA does not believe the project would qualify for a *de minimis* determination, a Programmatic Section 4(f) Evaluation will need to be prepared.

1. *Historic sites*

In order to seek a *de minimis* finding for historic sites, the LG must receive a “no historic properties affected” or “no adverse effect” determination from the MHT in compliance with Section 106. Once the MHT provides the LG with the effect determination, the LG will need to recoordinate with the MHT and other consulting parties in order to inform them of their intent to seek a *de minimis* impact finding. The letter to MHT must ask MHT to concur with the intent to request a *de minimis* finding from the FHWA. All “adverse effect” determinations must be completed through the Individual or Programmatic Section 4(f) approach.

2. *Publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges*

*De minimis* findings for publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges are defined as those that do not “adversely affect the activities, features and attributes” of the resource. This determination must come from the official with jurisdiction over the resource. To obtain this approval the LG will have to contact the official with jurisdiction, and notify them of the impacts and any proposed mitigation. The LG must receive a written response that the official is aware of the project and concurs with the *de minimis* finding. Additionally, the public must be afforded the opportunity to review and comment on the effects of the project on the protected activities, features and attributes of the Section 4(f) resource. Public involvement should be based on the specifics of the situation and commensurate with the type and location of the Section 4(f) resource, impacts and public interest. All methods of public involvement should be coordinated with the EM.

#### **D. Non-Applicability of Section 4(f)**

Temporary easements on Section 4(f) lands (parks, historic sites, etc.) are not subject to the requirements of Section 4(f) provided that certain criteria are complied with. This must be coordinated with EP and FHWA before a determination is made regarding the non-applicability of Section 4(f). The criteria for non-applicability of Section 4(f) for a temporary occupancy are:

- The duration (of the occupancy) will be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
- The scope of work will be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) resource are minimal;
- There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis;
- The land being used will be fully restored, i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project; and
- There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

See **Appendix L** for an example of the appropriate wording for a CE with the non-applicability of Section 4(f) for temporary easements.

**Appendix A: Right-of-Way Letter from FHWA**



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

Maryland Division  
City Crescent Building  
10 S. Howard Street  
Suite 2450  
Baltimore, Maryland 21201

September 1, 2006

Mr. Neil J. Pedersen  
State Highway Administrator  
Maryland State Highway Administration  
707 North Calvert Street  
Baltimore, Maryland 21202

In Reply Refer To: HDA-MD

Dear Mr. Pedersen:

Re: Acquisition of right-of-way prior to completion of NEPA

Over the past few months our agencies have had discussions about Federal requirements for acquisition of right-of-way (ROW) prior to completion of the NEPA process. In an effort to clearly communicate the Federal requirements, we provide you the following questions & answers:

1. Can FHWA authorize funds for ROW acquisition prior to completion of the NEPA process?

Only under situations defined as protective buying and hardship acquisition as provided in 23 CFR 710.503. Ordinarily, the acquisition of properties for a federally assisted project does not begin before the completion of the National Environmental Policy Act (NEPA) process. However, in extraordinary cases or emergency situations, an acquiring agency may request that FHWA approve Federal participation in acquiring a particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to such completion.

2. Can state and local jurisdictions acquire right-of-way prior to completion of the NEPA process when Federal dollars are not used specifically for property acquisition or relocation activities?





Yes. However, the jurisdiction is doing so at their risk. The NEPA process applies to all federal activities, including project funding, and granting of Interstate access approval. The law provides that agencies must utilize a systematic and scientific approach to project planning and decision-making. Any ROW acquired prior to FHWA authorization, except in the case of FHWA approved protective buying and hardship acquisition as described above, is ineligible for federal participation.

3. What are the risks to a state and local jurisdiction if right of way is purchased prior to conclusion of the NEPA process?

FHWA has the responsibility for assuring that the NEPA decision-making process has been objectively performed. In doing so, it must consider the project and any location decisions without the prejudice of knowing if properties have already been acquired for the project. In reaching a NEPA decision FHWA must also consider the applicability of other Federal laws, including the Clean Water Act, the National Historic Preservation Act, and Section 4(f) of the Department of Transportation Act. These laws protect resources like wetlands, historic properties and publicly owned parks and recreation areas. If a state or local government purchases property without having first considered the presence of these resources and such resources are present, FHWA may have to consider other alternative properties than those acquired. This could result in the jurisdiction having to buy other additional properties in order to assure the eligibility of Federal aid for the project.

4. How can a state or local jurisdiction assure it maximizes the eligibility of Federal funds for its project?

Complete the Federal NEPA process prior to purchasing any right of way for the project. Most projects involving upgrades of existing facilities qualify a Categorical Exclusions, which is the lowest level of NEPA analysis. This involves inventorying environmental resources in the project area and avoiding, minimizing or mitigating the impact on the resources present. Design undertaken to minimize impacts on protected resources is an eligible expense when performed as part of a project's environmental process.

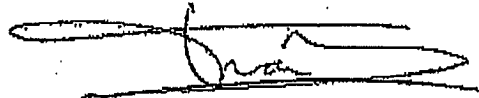
5. Does the Uniform Act apply when there are no federal dollars in the ROW acquisition but there are federal dollars in other phases of the project?


The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) applies when Federal dollars are utilized in any phase of a project, whether it is project planning, environmental assessments, right of way acquisition, design or construction. The Uniform Act also applies to acquisitions by private as well as public entities when the acquisition is for a Federal or federally-assisted project.

County Federal-aid projects usually have ROW acquisition handled by the County without federal funds. This is done as a matter of practice on bridge replacements projects and for cost effectiveness on grading projects. When the County acquires ROW, Uniform Act requirements must be followed. Documentation that the ROW was acquired in compliance with the Uniform Act must be provided before FHWA can authorize funds for design and/or construction of the project.

Please distribute this information throughout SHA as well as to local agency recipients of Federal-aid funds. Any questions on this issue should be directed to Messrs. Dan Johnson (410-779-7154) or Oscar Bedolla (410-779-7148).

Sincerely yours,



 Nelson J. Castellanos  
Division Administrator

cc:

Earl (Jock) Freedman, SHA-OB  
Mark Flack, SHA-OC  
Doug Rose, SHA  
Charlie Adams, SHA-OED  
Gary Gray, SHA-Fed Aid Programming  
Raja Veeramachaneni, SHA-OPPE  
Joe Miklochnik, SHA-ORE

## **Appendix B: Environmental Documentation Process Checklist**



### 3. Environmental Documentation

- PCE for PE: \_\_\_\_\_
- Determine Appropriate Document: CE \_\_\_\_\_ PCE \_\_\_\_\_
- Draft Document

#### Existing Conditions

Location	_____	Purpose and Need	_____
Description of Area	_____	Typical Sections	_____
Average Daily Traffic	_____	Speed Limit	_____
Year Built*	_____	Sufficiency Rating*	_____
Type of Bridge*	_____	Repair History*	_____

#### Proposed Action

Description	_____	Typical Sections	_____
Detour Route	_____	Emergency Services	_____

#### Environmental\*\*

MHT	_____	RTE Species	_____
Wetlands/Waterways	_____	Floodplains	_____
Critical Area	_____	Air & Noise	_____
Smart Growth	_____	Secondary Impacts	_____
Section 4(f)	_____	Public Involvement	_____
Right-of-way	_____	Tree Removal	_____
Hazardous Waste	_____	Low-income/Minority	_____
Local/Regional Plans	_____	TIP/STIP	_____

#### Attachments\*\*\*

Location Map	_____	Detour Map	_____
MHT Coordination	_____	Emergency Services	_____
“Trilogy Letters”	_____	Critical Area Letter	_____
Public Involvement	_____	MDE Permit	_____
Section 4(f)	_____	MOA	_____
Species Survey	_____	Tree Permit	_____

\* For bridge projects only

\*\* Impacts to these resources, or lack of impacts, should be discussed in every document

\*\*\* Not all attachments will be needed for every project

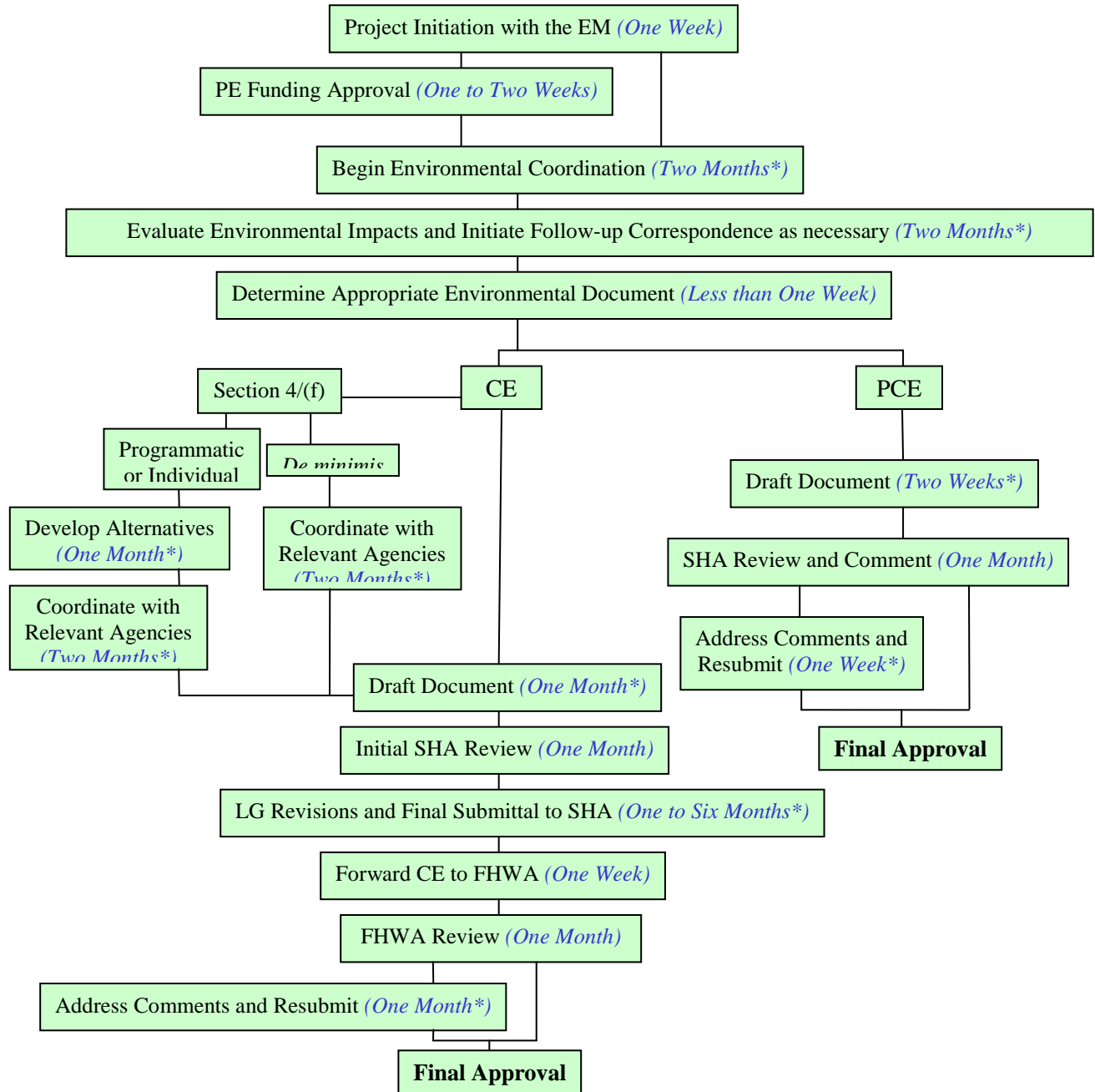
#### **4. Review, Submission and Approval Process**

- Submit Draft Document with Attachments to EP \_\_\_\_\_
- Receive Comments from EP \_\_\_\_\_
- Address Comments and Resubmit \_\_\_\_\_
- Submit Final Copy to FAPS^ \_\_\_\_\_
- Document Submitted to FHWA by SHA^ \_\_\_\_\_
- Address FHWA Comments and Resubmit^ \_\_\_\_\_
- Final Document Approval and Circulation \_\_\_\_\_

^ For CEs only

## **Appendix C: Environmental Documentation Process Flowchart**

## Environmental Documentation Process for Federal Funded LG Projects



\*These times are the responsibility of the LG and agencies other than SHA.

Note: All times are approximate and may change depending on project scope, environmental impacts, and the project's priority level for the LG.



## **Appendix D: Useful Internet References**

## Internet Resources

### **Legislation:**

42 U.S.C. 4321-4347

National Environmental Policy Act (NEPA)

<http://ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.htm>

23 U.S.C.

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)

<http://www.fhwa.dot.gov/safetealu/reference.htm>

### **Selected SAFETEA-LU Provisions:**

- 1503: Design Build
- 1805: Use of debris from demolished bridges and overpasses
- 1904: Major Projects
- 6001: Transportation Planning
- 6002: Efficient Environmental Reviews for Project Decision-making
- 6004: State Assumption of Responsibility for Categorical Exclusions
- 6005: Surface Transportation Project Delivery and Pilot Program
- 6006: Environmental restoration and pollution abatement; control of noxious weeds and establishment of native species
- 6007: Exemption of Interstate System
- 6009: Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites
- 6010: Environmental Review of Activities that Support Deployment of Intelligent Transportation Systems
- 6011: Transportation Conformity

### **Regulations:**

40 CFR Part 1500-1508

CEQ Regulations for Implementing NEPA

[http://ceq.eh.doe.gov/nepa/regs/ceq/toc\\_ceq.htm](http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm)

23 CFR 771

FHWA- Environmental Impacts and Related Procedures

<http://environment.fhwa.dot.gov/projdev/imp771pream.asp>

### **Policy and Guidance:**

FHWA Environmental Guidebook

<http://environment.fhwa.dot.gov/guidebook/index.asp>

40 Most Asked Questions Concerning CEQ's NEPA Regulations  
<http://ceq.eh.doe.gov/nepa/regs/40/40p3.htm>

CEQ Guidance  
<http://ceq.eh.doe.gov/nepa/regs/guidance.html>

T6640.8A: Technical Advisory  
<http://environment.fhwa.dot.gov/projdev/impTA6640.asp>

Re: NEPA  
<http://nepa.fhwa.dot.gov/ReNepa/ReNepa.nsf/home>

Section 4(f) Policy Paper, 3/1/2005  
<http://environment.fhwa.dot.gov/projdev/4fpolicy.asp>

SAFETEA-LU  
<http://www.fhwa.dot.gov/safetealu/>

FHWA Policy on Permissible Project Related Activities During the NEPA Process  
<http://www.fhwa.dot.gov/legsregs/directives/orders/66401a.htm>

### **Additional Resources:**

FHWA Environmental Guidebook  
<http://environment.fhwa.dot.gov/guidebook/index.asp>

FHWA Environmental Review Toolkit  
<http://environment.fhwa.dot.gov/index.asp>

Environmental Competency Building Program  
<http://environment.fhwa.dot.gov/ecb/index.asp>

### **Agencies:**

Federal Highway Administration (FHWA)  
<http://www.fhwa.dot.gov/environment/index.htm>

Council on Environmental Quality (CEQ)  
<http://www.whitehouse.gov/ceq/>

Environmental Protection Agency (EPA)  
<http://www.epa.gov/>

US Army Corps of Engineers (ACOE)  
<http://www.usace.army.mil/>

US Fish and Wildlife Service (USFWS)

<http://www.fws.gov/>

<http://www.fws.gov/chesapeakebay/EndSppWeb/ELEMENTS/listreq.html>

Advisory Council on Historic Preservation (ACHP)

<http://www.achp.gov/>

National Park Service (NPS)

<http://www.nps.gov/>

US Coast Guard (USCG)

<http://www.uscg.mil/USCG.shtm>

US Forest Service (USFS)

<http://www.fs.fed.us/>

### **Training:**

National Highway Institute (NHI)

<http://www.nhi.fhwa.dot.gov/>

USFWS National Conservation Training Center

<http://training.fws.gov>

CEQ's Compendium of NEPA Training

<http://ceq.eh.doe.gov/nepa/training/NEPAcourselist.pdf>

American Association of State Highway and Transportation Officials (AASHTO):  
Center for Environmental Excellence

<http://environment.transportation.org/>

## **Appendix E: Agency Contact Information**

SHA Contacts:

Mr. Donald Sparklin  
Maryland State Highway Administration  
Environmental Planning Division  
707 North Calvert Street, Mail Stop C-301  
Baltimore, MD 21202  
Phone Number: 410-545-8564

Mr. Steve Pearce  
Maryland State Highway Administration  
Federal Aid Programming Section  
707 North Calvert Street, Mail Stop C-509  
Baltimore, Maryland 21202  
Phone Number: 410-545-5776

Environmental Agency Contacts:

**Maryland Historical Trust**

Attn: Mr. J. Rodney Little  
100 Community Place  
Crownsville, MD 21032  
Phone Number: 410-514-7600

**United States Fish and Wildlife Service**

Attn: Ms. Mary J. Ratnaswamy  
Chesapeake Bay Field Office  
177 Admiral Cochrane Drive  
Annapolis, MD 21401  
Phone Number: 410-573-4541

**Maryland Department of Natural Resources  
Wildlife and Heritage Division**

Attn: Ms. Lori Byrne  
Tawes State Office Building, E-1  
580 Taylor Avenue  
Annapolis, MD 21401  
Phone Number: 410-260-8573

**Maryland Department of Natural Resources  
Environmental Review Unit**

Attn: Mr. Greg Golden  
Tawes State Office Building  
580 Taylor Avenue  
Annapolis, MD 21401  
Phone Number: 410-260-8331

**Appendix F: National Environmental Policy Act of 1969, as amended**

## **The National Environmental Policy Act of 1969**, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "National Environmental Policy Act of 1969."

### **Purpose**

#### **Sec. 2 [42 USC § 4321].**

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

### **TITLE I**

#### **CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY**

##### **Sec. 101 [42 USC § 4331].**

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;



3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

**Sec. 102 [42 USC § 4332].**

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop

and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

**Sec. 103 [42 USC § 4333].**

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any

deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

**Sec. 104 [42 USC § 4334].**

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

**Sec. 105 [42 USC § 4335].**

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

**TITLE II**

**COUNCIL ON ENVIRONMENTAL QUALITY**

**Sec. 201 [42 USC § 4341].**

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

**Sec. 202 [42 USC § 4342].**

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

**Sec. 203 [42 USC § 4343].**

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

**Sec. 204 [42 USC § 4344].**

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;
4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

**Sec. 205 [42 USC § 4345].**

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will

not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

**Sec. 206 [42 USC § 4346].**

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

**Sec. 207 [42 USC § 4346a].**

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

**Sec. 208 [42 USC § 4346b].**

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

**Sec. 209 [42 USC § 4347].**

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

**The Environmental Quality Improvement Act**, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

**42 USC § 4372.**

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no

such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

**42 USC § 4373.** Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

**42 USC § 4374.** There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

- (a) \$2,126,000 for the fiscal year ending September 30, 1979.
- (b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.
- (c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.
- (d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.

**42 USC § 4375.**

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and
2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

## **Appendix G: Sample CE**



**Categorical Exclusion  
Alphabet Road over Number Branch  
Replacement of Bridge No. 123  
Franklin County, Maryland**

This request for environmental classification concerns the proposed replacement of Bridge No. 123 along Alphabet Road over Number Branch in Franklin County. It details that no significant environmental impacts to socioeconomic, natural or cultural resources will occur as a result of this project.

**Existing Conditions**

The proposed scope of work involves the removal and replacement of Bridge No. 123 on Alphabet Road over Number Branch located Franklin County, Maryland (**Attachment 1**). Alphabet Road is a five-mile local minor collector road consisting of two 11-foot lanes and two three-foot shoulders. The road runs northerly from MD 999 to the crossing of Number Branch, which is located near a sharp curve in the roadway, and continues in an easterly direction to the intersection with MD 000. The average daily traffic, recorded in 2006, was 700 vehicles per day, and the posted speed limit along Alphabet Road is 30 miles per hour with a significant reduction in speed required at the bridge.

Bridge No. 123, built in 1948, is an 80-foot single-span, closed spandrel, concrete rib arch bridge. The superstructure consists of two two-inch wide reinforced concrete rib arches that support a ten-inch reinforced concrete deck slab. The structure has an out-to-out width of 24 feet and carries a clear roadway of 22 feet. The bridge is striped for two 11-foot lanes and no shoulders are delineated. The traffic barrier system consists of a one-foot wide concrete parapet on each side of the bridge.

Bridge No. 123 is structurally deficient with a sufficiency rating of 25.4. There is also a weight restriction rating of 14,000 pounds for a single vehicle and 25,000 pounds for a combination vehicle. No major repairs have been made to the existing bridge. The 2005 Bridge Inspection Report recommended replacement of the bridge due to inadequate load carrying capacity and critical distress in the main load carrying members.

**Proposed Action**

The proposed structure will be a simple-span, prestressed concrete girder bridge with a span length of 85 feet. The proposed bridge will carry two 11-foot lanes of traffic and two three-foot shoulders providing a total clear roadway width of 28 feet in compliance with the minimum AASHTO requirements. A one-foot wide concrete parapet will be located on each side of the bridge and the out-to-out width will be 31 feet. The proposed structure will be realigned slightly to the west and raised approximately one foot above the existing elevation to improve the roadway alignment and to ensure that Alphabet Road is passable in a 100-year storm event.

## SAMPLE CE

Approach roadway improvements will also be completed at an approximate distance of 300 feet along the west approach and 150 feet along the east approach to transition the proposed bridge into the existing roadway. This work will include full depth roadway reconstruction, installation of a new traffic barrier that meets current standards, and drainage improvements.

Replacement of the bridge will require the use of a detour. The road will be closed to all through traffic during construction of the bridge for approximately six months. Local traffic may encounter a two-mile detour. The detour includes travel from MD 999, via Alphabet Road, to MD 000 and from MD 000, via Alphabet Road, to MD 999, as shown on the detour plan (**Attachment 2**). Written correspondence with the Franklin County Fire & Rescue Department, Franklin County Sheriff's Office, and Maryland State Police resulted in no negative responses in respect to the proposed bridge closure and detour plan (**Attachment 3**). The Franklin County Board of Education indicated that approximately ten students from both the east and west sides of the bridge will be impacted by the detour. Franklin County has coordinated with two local residents and has received approval from residents to use private driveways as a turnaround for the buses. The Franklin County Board of Education has approved this resolution (**Attachment 4**).

### Environmental

The replacement of the existing bridge and widening of approach roadways will require the acquisition of additional right-of-way by Franklin County. The realignment of the existing roadway will extend outside the existing right-of-way, thus requiring a total of 0.24 acre of fee simple right-of-way. Additionally, 0.16 acre in temporary construction easement is required for the temporary stream diversion layout and contractor access during construction. All areas will be obtained from two private property owners. The limit of right-of-way required for this project was determined by the distance from the centerline of the roadway required to fit the new bridge and roadway reconstruction. Franklin County will acquire all right-of-way and obtain the required right-of-entry agreements following approval of the CE classification request from the Federal Highway Administration and prior to commencing with construction activities.

On June 1, 2006 the County held an informal community meeting to discuss the purpose and need of the project, to explain the proposed road closure, and to receive public comments (**Attachment 4**). Eight residents who live off Alphabet Road attended the meeting; however, notification letters were sent to all of the local property owners and were posted throughout the community and in the County newspaper. At this meeting, the residents did not communicate concern about the proposed detour and upon review of the plans and discussion with the Franklin County, the residents were satisfied with the proposed project. The County will also post a sign at the bridge two weeks in advance of the road closure to notify the public of the construction.

On March 1, 2005, the Maryland Historical Trust (MHT) concurred that no historic properties will be affected by the proposed work (**Attachment 5**). Although the bridge is included on the Maryland Inventory of Historic Bridges, the MHT concurred that the existing bridge is not eligible for listing on the National Register of Historic Places.

## SAMPLE CE

According to the U.S. Department of the Interior, Fish and Wildlife Service, the federally threatened bog turtle (*Clemmys muhlenbergii*) may be present within the project area (**Attachment 6**). They indicated that a survey for bog turtle habitat and bog turtles should be conducted at any location where the Wildlife and Heritage Service of the Maryland Department of Natural Resources (DNR) recommends. On November 1, 2005 the project area was inspected for wetlands and bog turtle habitat determinations. The inspection indicated that the bog turtle habitat does not occur within the project limits (**Attachment 7**). In addition, except for occasional transient individuals, no other federally proposed or listed endangered or threatened species are known to exist within the project area. The Wildlife and Heritage Service of the DNR has no records for federal or state rare, threatened, or endangered species within the project area (**Attachment 8**). However, they indicated that there is a record for the state listed Sessile-leaved Tick-trefoil (*Desmodium sessifolium*) known to occur within the vicinity of the project area. A habitat evaluation was performed for the species of concern. The existing habitat observed indicated poor habitat for the species of concern. The Wildlife and Heritage Service accepted the results of the habitat assessment and have no further concerns (**Attachment 9**).

The Wildlife and Heritage Service also indicated that the forested area on or adjacent to the project area contains Forest Interior Dwelling Bird Species (FIDS), which are declining in Maryland and throughout the eastern United States. The DNR strongly encourages the conservation of FIDS habitat by following guidelines such as: avoiding placement of new roads or related construction within the forest interior; avoiding removal or disturbance of forest habitat during the breeding season (May through August); maintaining forest habitat as close as possible to the road; maintaining canopy closure where possible; and maintaining grass height at least ten inches during the breeding season (May through August). FIDS habitat would likely not be affected, as the proposed work only impacts minor forested areas along the edge of the existing roadway.

According to the Environmental Review Unit of the DNR, Number Branch is a Use I Stream (Water Contact Recreation and Protection of Aquatic Life) with no in-stream work permitted between March 1 and June 15, inclusive, during any year. The DNR's Fisheries Service has not documented anadromous fish species in Number Branch. However, the stream could support many resident fish populations documented by the Maryland Biological Stream Survey Program within the Number River Basin. These species will be adequately protected by the instream work prohibition period, proper erosion and sediment control measures and other Best Management Practices typically used for the protection of stream resources (**Attachment 10**).

The proposed project lies entirely within the Chesapeake Bay Critical Area Resource Conservation Area and, therefore, requires mitigation for all permanent impacts to Waters of the U.S., including wetlands. The project will result in an increase in impervious surface and other disturbance within the 100-foot buffer of the Critical Area. Per Critical Area regulations, the new impervious surface and buffer disturbance shall be mitigated by planting trees at a 3:1 ratio for buffer disturbance on the northwest side of the bridge. Additionally, the County proposes to reforest a 15,000 square foot site within the Critical Area adjacent to the Hole in One Golf Course in Franktown, MD. The Franklin County Department of Planning and Zoning has determined that the project is consistent with the local Critical Area program (**Attachment 11**).

## SAMPLE CE

The project crosses the 100-year floodplain of Number Branch. The proposed work will result in permanent impacts to 450 square feet of tidal emergent wetlands and 2,000 square feet of tidal waters. The project will also temporarily impact approximately 1,000 square feet of Waters of the US. The impacts to waters and wetlands are a direct result of the placement of stream diversions and for bridge construction. Measures will be taken during construction to minimize water quality impacts to the existing stream. These measures include restricting the contractor's access to the stream, installing appropriate erosion and sediment controls, and restricting construction during environmentally sensitive times. A Joint Federal/State Application for the Alteration of any Floodplain, Waterway, Tidal or Nontidal Wetland in Maryland has been filed with the Maryland Department of Environment (MDE) (**Attachment 12**).

Approximately five trees over 12 inches in diameter will be removed to accommodate the alignment shift of the existing roadway. Franklin County has submitted an application to the DNR for a Roadside Tree Permit (**Attachment 13**). The permit will be received prior to advertisement of the project.

Air and noise analyses are not warranted since the proposed project does not result in any capacity improvements. This project is identified in the current STIP (STIP A27-4). This project is exempt from the requirement that a conformity determination be made (U.S. EPA Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans, Programs or Projects-Final Rule).

The purpose of this project is to replace Bridge No. 123 in-kind. This project will not result in any meaningful changes in traffic volumes, vehicular mix, location of the existing facility, or any other factor that would cause an increase in emissions impacts relative to the no-build alternative. As such, this project will generate minimal air quality impacts for the Clean Air Act criteria pollutants and has not been linked with any special Mobile Source Air Toxics (MSAT) concern. Consequently, this project is exempt from an analysis for MSATs.

Moreover, EPA regulations for vehicle engines and fuels will cause overall MSATs to decline significantly over the next 20 years. Even after accounting for a 64 percent increase in VMT, FHWA predicts MSATs will decline in the range of 57 percent to 87 percent, from 2000 to 2020, based on regulations now in effect, even with a projects 64 percent increase in VMT. This will both reduce the background level of MSATs as well as the possibility of even minor MSAT emissions from this project.

Projects which are exempt from project level conformity are also exempt from the PM<sub>2.5</sub> project level conformity determination requirements, in accordance with 40 CFR 93.126. Exempt projects are listed in 40 CFR 93.126 in Table 2 and this project is an example of Safety - Reconstructing Bridges (no additional travel lanes) projects in that table. This project will improve traffic safety but will not increase capacity.

No displacements are required and no right-of-way would be required from any publicly-owned public park, recreation area, wildlife or waterfowl refuge or historic resource. The project will not occur within a Priority Funding Area, as defined under the Smart Growth Priority Funding

## **SAMPLE CE**

Areas Act of 1997. However, this project is a system preservation and safety project and, as such, is not subject to the restrictions of the Smart Growth Priority Funding Areas Act.

The proposed project will not provide new access to any new or planned development areas. Therefore, secondary impacts are not anticipated as a result of this project. No disproportionately high or adverse effects on minority or low-income populations will occur as a result of this project. The project is not inconsistent with the Franklin County 2000 Master Plan.

## **Appendix H: PCE Template**



**MEMORANDUM**

**TO:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FROM:** Donald H. Sparklin  
Division Chief  
Environmental Planning Division

**DATE:** \_\_\_\_\_

The project \_\_\_\_\_ listed below qualifies \_\_\_\_\_ as Programmatic Categorical Exclusion (PCE)  
No. \_\_\_\_\_ as approved by the Federal Highway Administration. **Please use the  
concurrence date at the end of this memo for the date of environmental approval for the project.**

**PROGRAMMATIC CATEGORICAL EXCLUSION**

**Project:** \_\_\_\_\_  
\_\_\_\_\_

Click the paperclip icon  in the lower left corner  
or click Document>Attach a File... in the top pull-  
down menu bar to Attach **Location Map**

**Project ID:** \_\_\_\_\_

**Scope of Work:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Project No:** \_\_\_\_\_

**County:**

**Originating Office:**

## Scope of Impacts

### Right-of-Way & Community Effects

- Impacts Section 4(f) Resource?
- More Than 1 Acre of Fee Simple?
- More Than 1 Acre of Perpetual Easement?
- More Than 1 Acre of Perpetual Easement and Fee Simple Combined?
- More Than 1 Acre of Revertible Easement?
- Temporary Construction Easement?
- Right of Entry Required?
- Residential or Commercial Displacements?
- Would the Project Cause Any Disproportionately High or Adverse Impacts to Minorities or Low-income Populations?
- Scenic Byway?
- Consistent with County/Local Master Plan?
  
- Within a Smart Growth PFA?

No additional through traffic capacity will be added. The proposed project will also not induce significant foreseeable land use changes or affect planned growth. The project will not provide new access to any new development areas and there is little potential for indirect impacts. The project is therefore consistent with Maryland's Smart Growth Legislation.

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Air/Noise

- Adds Through Traffic Capacity?
- Conforms to TIP/STIP?
- Air/Noise Analysis Required?
- Exempt from PM2.5?
- MSAT Analysis Required?



Project: \_\_\_\_\_

Air and noise analyses are not warranted since the project would not increase through roadway vehicular capacity. This project is exempt from the requirement that a conformity determination be made (U.S. EPA Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans, Programs or Projects-Final Rule). Projects which are exempt from project level conformity are also exempt from the PM2.5 project level conformity determination requirements, in accordance with 40 CFR 93.126 (exempt projects are listed in Table 2). This project is exempt under the Clean Air Act pursuant to 40 CFR 93.126 (Table 2 -

No analysis of Mobile Source Air Toxins (MSATs) is necessary. This project is not a project of air quality concern for PM2.5 as determined in the Final Rule at 40 CFR 93.123 (b) (1).

**Cultural Resources**

Historic District/Site?

Effect Determination:

Appendix:

Letter

 **Attach Appendix 1/2 or Letter**

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Natural Resources**

Permits Required?  S/EC  SWM  Tidal License  GWCP  MDSPGP

Impacts Floodplain?

Impacts Wetland?

Occurs in Critical Area for CACB?

General Approval  Presentation

Critical Area Commission Approval Date: \_\_\_\_\_

Impacts Streams?

Requires Time of Year Stream Restrictions?

If Yes, Stream Classification: \_\_\_\_\_

DNR-ERU Response Date: \_\_\_\_\_

USFWS Response Date: \_\_\_\_\_

DNR-WHS Response Date: \_\_\_\_\_

Affects Rare, Threatened, or Endangered Species or Habitat?

Affects FIDS Habitat?

 **Attach DNR-ERU Response Letter**

 **Attach DNR-WHS & USFWS Response Letters**

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Public Involvement**

Public Hearing Required or is Held?

Detour Required?

If yes, emergency response and school letters sent?

Public Involvement Type?

Distribution Method:

 **Attach Emergency & School Response Letters**

Location: \_\_\_\_\_

 **Attach Public Meeting Minutes/Letters**

Notes: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Programmatic Categorical Exclusion Classification (No.) - Federal Register Reference**

- 2 - Approval of utility installations along or across a transportation facility. 23CFR771.117 (c)(2)

---

- 3 - Construction of bicycle, pedestrian, and non-motorized lanes, paths, and facilities. 23CFR771.117 (c)(3)

---

- 6 - Installation of noise barriers or other alterations to existing publicly-owned buildings to provide for noise reduction. 23CFR771.117 (c)(6)

---

- 7 Landscaping, streetscaping, scenic beautification, tree and wildflower plantings, and other similar activities. 23CFR771.117 (c)(7)

---

- 8 - Installation of fencing and small passenger shelters where no substantial land acquisition or traffic disruption will occur. 23CFR771.117 (c)(8)

---

- 9 - Emergency repairs under 23 USC 125. 23CFR771.117 (c)(9)

---

- 10 - Acquisition of scenic easements and fee simple right-of-way for scenic or historic preservation purposes (transportation enhancement, national recreational trail, or scenic byways projects). 23CFR771.117 (c)(10)

---

- 12 - Improvements or repairs to existing rest areas, truck weigh stations, traffic management centers, and other similar facilities. 23CFR771.117 (c)(12)

---

- 28 - Modification, upgrading, repair or retrofitting of existing stormwater management facilities, or the retrofit construction of new facilities (i.e. infiltration trenches, ponds) when not done in conjunction with another transportation construction project; and other water quality activities such as stream stabilization and restoration, removal of permanent or fixed obstructions, and fish passage remediation including fish weirs. 23CFR771.117 (d)

---

- 21 - Modernization of an existing highway through restoration, rehabilitation, or reconstruction; widening less than a travel lane width; adding or widening shoulders; adding curbs, gutters, and sidewalks; and adding auxiliary lanes (e.g. parking, weaving, turning, climbing) less than one mile in length. 23CFR771.117 (d)(1)

---

- 25 - Highway safety, traffic operation and incident management improvement projects, such as the installation of guardrails, lighting, ramp metering control devices, and traffic signalization. 23CFR771.117 (d)(1)(2)

---

- 24 - Minor safety related drainage improvements including, but not limited to, culvert and/or headwall installation/removal in place; pipe installation, replacement and extension (in kind and in-place); and adding pipe end sections. 23CFR771.117 (d)(2)

---

- 22 - Correcting substandard roadway geometrics and intersections (i.e. spot improvements). 23CFR771.117 (d)(2)

---

- 29 - Repair or construction of erosion control and slope protection measures such as slope stabilization, slide repairs, rip rap, and retaining walls. 23CFR771.117 (d)(2)

Project: \_\_\_\_\_

- 23, 25 - Minor bridge and structure rehabilitation, bridge re-decking, repairs to bridge rails, or substructure alterations. 23CFR771.117 (d)(3)

---

- 13 - Ridesharing activities, including the expansion of existing carpool lots, park and ride lots, and other similar facilities. 23CFR771.117 (c)(13); (d)(4)

---

- 27 - Disposal of excess right-of-way under 23 CFR 713, Subpart C, where the proposed use does not have significant adverse impacts. 23CFR771.117 (d)(6)

---

- 26 - Approval for the lease/use of federally acquired right-of-way for non-highway purposes. 23CFR771.117 (d)(6)

---

*No significant environmental impacts are expected to occur as a result of this project. This documentation fulfills the requirements of both the National Environmental Policy Act and Maryland Environmental Policy Act; as such, no further environmental documentation is required.*

Concur:

Date: \_\_\_\_\_

Donald H. Sparklin  
Division Chief  
Environmental Planning Division

Revised November 2010

Attachments

- cc: EM, SHA-EPLD (w/Attachments)
- Project Manager "
- Mr. Guy Talerico, SHA-FAPS "
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Print Form

Click the paperclip icon  in the lower left corner or click Document>Attach a File... in the top pull-down menu bar to view and print attachments

## **Appendix I: FRR Template**



**MEMORANDUM**

**TO:** Send to Division Chief of Originating Office  
\_\_\_\_\_  
\_\_\_\_\_


**FROM:** Donald H. Sparklin  
Division Chief  
Environmental Planning Division

**DATE:** \_\_\_\_\_

**SUBJECT:** Project No.  
Project:  
\_\_\_\_\_  
Reevaluation  
\_\_\_\_\_

The following information indicates that the current design plan, when compared to that for which a \_\_\_\_\_ was approved will not result in significantly different environmental impacts for this project.

- A. \_\_\_\_\_
- B. **Are the proposed improvements different than those approved for the \_\_\_\_\_ ?**  
 Yes  No  
If Yes, note differences.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Click the paperclip icon  in the lower left corner or click Document>Attach a File... to attach additional comments.

Project: \_\_\_\_\_

C. **Are the environmental impacts different?**  Yes  No

If Yes, please explain.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. **Are there changes in the project surroundings (new development, etc.)?**  Yes  No

If Yes, please explain.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. **Is the \_\_\_\_\_ classification still valid?**  Yes  No

If no, what additional or supplemental documentation is required?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F. **Are the commitments shown on the plans?**  Yes  No

Identify any prior commitments (including those related to engineering). Discuss how commitments are/will be addressed.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Concur:


Date: \_\_\_\_\_

Donald H. Sparklin  
Division Chief  
Environmental Planning Division

Attachments

cc: EM, SHA-EPLD (w/Attachments)  
Mr. Guy Talerico, SHA-FAPS "  
Project Manager "

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Click the paperclip icon  in the lower left corner or click Document>Attach a File... to attach additional comments.

**Appendix J: Programmatic Section 4(f) Evaluation for Historic Bridges**

## Programmatic Section 4(f) Evaluation for Historic Bridges

- *Project applicability*  
All projects impacting significant historic bridges resulting in an adverse effect determination by the MHT will require a Programmatic Section 4(f) Evaluation. Projects resulting in the replacement or rehabilitation of a historic bridge (that is, on or eligible for the NRHP and where the historic integrity of the bridge is not maintained) are examples of when Section 4(f) would apply.
- *Alternatives*  
LGs are required to develop at least three alternatives under Section 4(f). For bridge projects, the alternatives required include:
  - Do nothing or no build
  - Build a new structure at different location while preserving the historic integrity of the existing bridge
  - Rehabilitate the existing bridge without affecting the historic integrity of the structure

As part of the Section 4(f) alternatives analysis, historic bridges must be marketed for alternative uses, although successful marketing and relocation of a bridge while retaining historic integrity does not require Section 4(f) analyses.

- *Measures to minimize harm*  
“Adverse effect” determinations for historic bridges must be mitigated to comply with Section 106 of the NHPA and these items are documented through a Memorandum of Agreement (MOA) between the FHWA, MHT, and the Advisory Council on Historic Preservation (ACHP), with concurrence by the LG and SHA. The MOA should begin to be circulated as part of the MHT consultation process. The LG, along with SHA and the MHT will propose the method of mitigation and draft the MOA. All three parties will sign the MOA and FHWA will then forward it to ACHP, which will sign the MOA and then return it to FHWA. All MOAs will be fully executed (approved) concurrently with the CE/4(f) by FHWA. Negotiation and execution of the MOA may be used as a possible measure, but may not be the only means to minimize harm.
- *Coordination*  
Coordination with ACHP, MHT and local preservation groups should be provided for proof of compliance.
- *Temporary use (if applicable)*  
If applicable, the LG must demonstrate that temporary easements meet the four criteria for temporary occupancy.
- *Determination and approval*  
If the LG has satisfied the requirements in each of the above sections and demonstrated there is no feasible and prudent alternative that avoids the Section 4(f) impact, FHWA can then approve the use of the Section 4(f) resource.



**US Department of Transportation  
Federal Highway Administration  
Programmatic Section 4(f) Determination and Approval  
Under the  
Nationwide Section 4(f) Evaluation  
and Approval for Federal Aid Highway Projects That  
Necessitate the Use of Historic Bridges**

Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303 (c)] permits the use of land from a publicly-owned public park or recreation area, wildlife or waterfowl refuge, or any significant historic site (as determined by the officials having jurisdiction over the park, recreation area, refuge or historic site) only if there is no feasible and prudent alternative to the use of land, and if the action includes all possible planning to minimize harm to the Section 4(f) property resulting from such use.

The Programmatic Section 4(f) Evaluation is a streamlined approach, applicable only under the particular circumstances prescribed in the following template. Use of this template is confined solely to Federal Highway Administration (FHWA) projects that necessitate the use of historic bridges. It cannot be used for projects requiring an Environmental Impact Statement (EIS), unless there has been a late discovery of Section 4(f) involvement for an approved EIS. For the purpose of this Programmatic Section 4(f) Evaluation, the “use” of a historic bridge that is listed on or eligible for inclusion on the National Register of Historic Places (NRHP) is defined as “impairing the historic integrity of the bridge either by rehabilitation or demolition”.

Rehabilitation that does not impair the historic integrity of the bridge as determined by the procedures implementing Section 106 of the National Historic Preservation Act (NHPA) and 36 CFR 800 is not subject to the requirements of Section 4(f). In addition, if the bridge is to be replaced, an agreement has been reached pursuant to Section 106 of the NHPA and 36 CFR 800, and the marketing of the bridge to a responsible party which will maintain and preserve the historic integrity of the bridge is successful, the requirements of Section 4(f) do not apply.

Coordination with the State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (if applicable) must be completed prior to completing this template. Consult the Final Nationwide Section 4(f) Evaluation, dated July 5, 1983, as it relates to the following items. The Final Nationwide Section 4(f) applicability criteria are included in the Appendix of this document. Complete all items.

**A. Description/Location of the Historic Bridge:**

Provide description of the historic bridge. Include location map.

**B. Proposed Action:**

Include purpose and need statement, along with a description of the selected action.

**C. Project Applicability:**

If a Programmatic Section 4(f) Evaluation is deemed “Not Applicable” for and item on this list, the Programmatic Section 4(f) Evaluation approach cannot be used. Rather, an individual Section 4(f) Evaluation must be prepared.

- |   |                              |                              |
|---|------------------------------|------------------------------|
| <b>1. Is the bridge being replaced or rehabilitated with federal funds?</b> | <b>YES</b>                   | <b>NO</b>                    |
|   | [ <input type="checkbox"/> ] | [ <input type="checkbox"/> ] |

If No, a Programmatic Section 4(f) Evaluation is not applicable.

- |   |                              |                              |
|---|------------------------------|------------------------------|
| <b>2. Will the project require the “use” of a historic bridge that is on or eligible for listing on the NRHP?</b> | <b>YES</b>                   | <b>NO</b>                    |
|   | [ <input type="checkbox"/> ] | [ <input type="checkbox"/> ] |

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Include an explanation stating or describing the “use” of or impacts to the bridge. Attach the NRHP eligibility determination letter and concurrence sheet from the SHPO.

- |   |                              |                              |
|---|------------------------------|------------------------------|
| <b>3. Is the bridge a National Historic Landmark?</b> | <b>YES</b>                   | <b>NO</b>                    |
|   | [ <input type="checkbox"/> ] | [ <input type="checkbox"/> ] |

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

- |  |                              |                              |
|--|------------------------------|------------------------------|
| <b>4. Will the proposed action result in an adverse effect determination pursuant to Section 106 of the NHPA and 36 CFR 800?</b> | <b>YES</b>                   | <b>NO</b>                    |
|  | [ <input type="checkbox"/> ] | [ <input type="checkbox"/> ] |

If No and the effect determination is “no properties affected” or “no adverse effect”, a Programmatic Section 4(f) Evaluation is not required.

- |   |                              |                              |
|---|------------------------------|------------------------------|
| <b>5. Has consultation and subsequent agreement with the SHPO, ACHP (if appropriate) and other interested parties been reached through the procedures pursuant to Section 106 of the NHPA and 36 CFR 800?</b> | <b>YES</b>                   | <b>NO</b>                    |
|   | [ <input type="checkbox"/> ] | [ <input type="checkbox"/> ] |

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Attach coordination letter with SHPO and memorandum of agreement (MOA).

**D. Alternates:**

The following list is intended to be all-inclusive. If a feasible and prudent alternate is identified that is not discussed in this document, the Programmatic Section 4(f) Evaluation does not apply. The project record must clearly demonstrate that each of the following alternates was fully evaluated. Consult the Nationwide Programmatic Section 4(f) Evaluation for the generic reasons that might be addressed regarding each alternate.

1. Do nothing or no build.
2. Build a new structure at a different location without affecting the historic integrity of the existing bridge, as determined by the procedures implementing Section 106 of the NHPA and 36 CFR 800.
3. Rehabilitate the historic bridge without affecting the historic integrity of the structure, as determined by the procedures implementing Section 106 of the NHPA and 36 CFR 800.

**Were each of these alternates fully evaluated?**

**YES NO**  
[ ] [ ]

Summarize or attach a description of the alternates considered, addressing the following findings.

**E. Findings**

This Programmatic Section 4(f) Evaluation can be applied to a project as long as each of the following findings is supported by the circumstances, studies, and consultations on the project (see the Nationwide Programmatic Section 4(f) Evaluation for a generic description of each):

1. **Do Nothing or No Build.** After studying this alternate, has it been proven not to be feasible and prudent based on one or both of the following reasons: **YES NO**  
[ ] [ ]
  - a. Maintenance issues
  - b. Safety issues

Summarize the findings and demonstrate why this alternate is not feasible and prudent, as compared to the proposed action—check yes if this alternate is not feasible and prudent.

**2. Build on New Location Without Using the Existing Bridge.** YES NO  
After studying this alternate, has it been determined not to be [ ] [ ]  
feasible and prudent based on one or more of the following  
reasons:

- a. Terrain issues.
- b. Adverse social, economic, or environmental effects.
- c. Engineering and economy issues of extraordinary magnitude.
- d. Preservation of the old bridge is not feasible and prudent.
- e. Liability/safety issues with the existing structure.

Summarize the findings and demonstrate why this alternate is not feasible and prudent, as compared to the proposed action—check yes if this alternate is not feasible and prudent.

**3. Rehabilitation Without Affecting the Historic Integrity of the Bridge.** YES NO  
After studying this alternate, has it been determined not to [ ] [ ]  
be feasible and prudent based on one or both of the following  
reasons:

- a. Structural deficiency of the bridge.
- b. Geometrical deficiency of the bridge.

Summarize the findings and demonstrate why this alternate is not feasible and prudent, as compared to the proposed action—check yes if this alternate is not feasible and prudent.

**F. Measures to Minimize Harm:**

This Programmatic Section 4(f) Evaluation may only be approved if the proposed action includes all possible planning to minimize harm; and the officials with jurisdiction over the historic bridge (i.e. SHPO) agree, in writing, with these measures. These measures shall include one or more of the items described in the following questions:

- 1. If the historic bridge is to be rehabilitated, will the historic integrity of the rehabilitated bridge be preserved to the greatest extent possible, consistent with unavoidable transportation need, safety, and load requirements?** **YES NO**  
[ ] [ ]

Describe preservation efforts and reference coordination letter with SHPO, documenting its agreement with the rehabilitation plan.

- 2. If the bridge is to be replaced, has the existing bridge been made available or marketed for an alternate use, with a responsible party agreeing to maintain and preserve the bridge?** **YES NO**  
[ ] [ ]

Describe marketing efforts/plan, if marketing is appropriate.

- 3. If the bridge is adversely affected, have all possible measures to minimize harm been incorporated into the project and has an agreement been reached with SHPO, ACHP (if appropriate) and other interested parties, pursuant with Section 106 of the NHPA and 36 CFR 800?** **YES NO**  
[ ] [ ]

Attach coordination letter with SHPO and MOA.

- 4. If the historic integrity of the existing bridge is to be adversely affected through rehabilitation, demolition or moving and mitigation includes recordation of the structure, has adequate recordation been made of the bridge in accordance with Historic American Engineering Record or other suitable standards (i.e. SHPO)?** **YES** **NO**  
[ ] [ ]

Explain what was/will be done or refer to appropriate coordination letter or MOA.

- 5. Have other mitigation measures been agreed upon?** **YES** **NO**  
[ ] [ ]

Summarize or attach coordination letter with SHPO.

**G. Coordination:**

- Has consultation and subsequent agreement with the SHPO, ACHP (if appropriate) and other interested parties occurred?** **YES** **NO**  
[ ] [ ]

Refer to the attached coordination letters.

**H. Temporary Use (if applicable):**

<p><b>If temporary easements, rights of entry or other temporary occupancies are required in a Section 4(f) resource, in addition to the “use” of a historic bridge which is the subject of this Programmatic Section 4(f) Evaluation, have the following conditions been satisfied?:</b></p> <ul style="list-style-type: none"><li>• the duration is temporary (i.e., less than the time needed for construction of the project) and there is no change in the ownership of the land;</li><li>• the scope of the work is minor (i.e., both the nature and magnitude of the changes to the Section 4(f) resource are minimal);</li><li>• there are no anticipated permanent adverse physical impacts nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis;</li><li>• the land being used will be fully restored (i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project); and</li><li>• the state, federal or local official(s) with jurisdiction over the resource has agreed, in writing, with the criteria of temporary use; that is, the above four conditions.</li></ul> <p>Refer to the attached coordination letter attesting to the agreement.</p>	<p><b>YES NO</b> [ ] [ ]</p>
---	----------------------------------

**I. Determination and Approval:**

**Based on this Programmatic Section 4(f) Evaluation, which includes a clear description of the evaluated alternates, measures to minimize harm, and the results of public and agency consultation and coordination, as evidenced herein and by the attachments, the FHWA has determined that:**

- the project meets the applicability criteria set forth in the Nationwide Section 4(f) Evaluation and Approval for Federal-Aid Highway Projects that Necessitate the Use of Historic Bridges, dated July 5, 1983;
- all of the alternates set forth in Section D have been fully evaluated;
- there are no feasible and prudent alternates to the use of \_\_\_\_\_ (name of historic bridge); and
- the project complies with the measures to minimize harm in Section E, and agreement has been reached with the SHPO, ACHP (if appropriate) and all other interested and consulting parties on the effect determination and subsequent mitigation.

Accordingly, the FHWA approves the proposed use of \_\_\_\_\_ (name of historic bridge), under the Nationwide Section 4(f) Evaluation approved on July 5, 1983. If applicable, the FHWA also agrees that any project related temporary uses in Section 4(f) lands/resources are not subject to the requirements of Section 4(f).



**Appendix K: Programmatic Section 4(f) Evaluation for Publicly-owned Public Parks, Recreation Areas, and Wildlife or Waterfowl Refuges, or Historic Sites**

Programmatic Section 4(f) Evaluation for Publicly-owned Public Parks, Recreation Areas, and Wildlife or Waterfowl Refuges, or Historic Sites

- *Project applicability*

A project impacting parks, recreation areas, and wildlife or waterfowl refuges, or historic sites must meet all the applicable criteria before being considered under the Programmatic approach. Generally this means that the project is not on new alignment and that the amount and location of the impacted land will not impair the remaining portion of the resource from its intended purpose.
- *Alternatives*

LGs will be required to develop at least three additional alternatives that do not impact the Section 4(f) resource to determine if there is a feasible and prudent alternative that does not impact the Section 4(f) resource. The three alternatives include:

  - Do nothing or no build
  - Improve the existing roadway without using the adjacent Section 4(f) land
  - Build an improved facility on new location without using the Section 4(f) land
- *Measures to minimize harm*

Mitigation is the method most often used to minimize harm to Section 4(f) resources. Mitigation frequently takes the form of replacement or restoration of lands or facilities impacted as a result of the project. In some cases, payment of fair market value for the impacted land is used in lieu of providing replacement lands. Depending on the resources funding source, payment may not be an option. Under law, lands funded through Section 6(f) of the LWCFA or Program Open Space (POS) can only be mitigated through replacement land of equal value. LGs are responsibly for obtaining funding information for all projects impacting publicly-owned public parks, recreation areas, and wildlife or waterfowl refuges.
- *Coordination*

Relevant coordination, including consultation and subsequent agreement with the officials with jurisdiction over the Section 4(f) resource must be included as proof of compliance. Projects that impact Section 6(f) lands require coordination and approval from the Department of the Interior's National Park Service. Projects impacting POS lands require coordination and approval from the Secretary of the Department of Natural Resources, the Secretary of the Department of Budget and Fiscal Planning, and the Director of the Department of Planning.
- *Temporary use (if applicable)*

If applicable, the LG must demonstrate that temporary easements meet the four criteria for temporary occupancy.
- *Determination and approval*

If the LG has satisfied the requirements in each of the above sections and demonstrated there is no feasible and prudent alternative that avoids the Section 4(f) impact, FHWA can then approve the use of the Section 4(f) land.

**US Department of Transportation  
Federal Highway Administration  
Programmatic Section 4(f) Determination and Approval  
Under The  
Nationwide Section 4(f) Evaluation  
And Approval for Federal Aid Highway Projects With Minor Involvements With  
Public Parks, Recreational Lands, And Wildlife And Waterfowl Refuges**

Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303(c)] permits the use of land from a publicly-owned public park or recreation area, wildlife or waterfowl refuge, or any significant historic site (as determined by the officials having jurisdiction over the park, recreation area, refuge or historic site) only if there is no feasible and prudent alternative to the use of land and the action includes all possible planning to minimize harm to the Section 4(f) property resulting from such use.

This Programmatic Section 4(f) Evaluation is a streamlined approach, applicable only under the particular circumstances prescribed in the following template. Coordination with the agency(ies) having jurisdiction over the impacted Section 4(f) resource must be completed prior to completing this template. Use of this template is confined solely to Federal Highway Administration (FHWA) projects with **minor** involvements with publicly-owned public parks, recreational lands, and wildlife and waterfowl refuges. It cannot be used for projects requiring an Environmental Impact Statement (EIS), unless there has been a late discovery of Section 4(f) involvement for an approved EIS. Consult the Final Nationwide Section 4(f) Evaluation, dated December 23, 1986, as it relates to the following items. The Final Nationwide Section 4(f) applicability criteria are included in the Appendix of this document. Complete all items.

**A. Description/Location of the Publicly-owned Public Park or Recreation Area, or Wildlife or Waterfowl Refuge:**

Provide description of the publicly-owned public park or recreation area, or wildlife or waterfowl refuge. Include location map.

**B. Proposed Action:**

Include purpose and need statement, along with a description of the selected action.

### **C. Project Applicability:**

If a Programmatic Section 4(f) Evaluation is deemed “Not Applicable” for any item on this list, the Programmatic Section 4(f) Evaluation approach cannot be used. Rather, an individual Section 4(f) Evaluation must be prepared.

- 1. Is the proposed project designed to improve the operational characteristics, safety, and/or physical condition of the existing highway facility on essentially the same alignment?**      **YES    NO**  
[    ] [    ]

This includes "4R" work (resurfacing, restoration, rehabilitation and reconstruction), safety improvements, traffic operation improvements, bicycle and pedestrian facilities, bridge replacements on essentially the same alignment and construction of additional lanes (see the Final Nationwide Section 4(f) Evaluation for examples).

If No, a Programmatic Section 4(f) Evaluation is not applicable.

- 2. Is the publicly-owned public park, recreational area, or wildlife or waterfowl refuge located adjacent to the existing highway?**      **YES    NO**  
[    ] [    ]

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Attach a graphic showing the relationship between the Section 4(f) resource and proposed highway improvements, showing the existing Section 4(f) property and proposed right-of-way lines.

- 3. Will the amount and location of the land to be used impair the use of the remaining Section 4(f) resource, in whole or in part, for its intended purpose?**      **YES    NO**  
[    ] [    ]

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

Attach a coordination letter from the agency with jurisdiction over the Section 4(f) resource indicating its agreement that the project would not impair the use of the remainder of the resource.

- 4. Will the total amount of land to be acquired from the Section 4(f) resource exceed the values in the following table:** YES NO  
[ ] [ ]

<u>Total Size of Section 4(f) Resource:</u>	<u>Maximum to be Acquired:</u>
< 10 acres	10 percent of site
10 acres-100 acres	1 acre
> 100 acres	1 percent of site

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

Provide the acreage of land to be acquired from the Section 4(f) resource and the total acreage of the resource.

- 5. Will any proximity impacts of the project, such as noise and water pollution, wildlife and habitat effects, aesthetic values, etc., impair the remaining Section 4(f) resource for its intended purpose?** YES NO  
[ ] [ ]

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

If no, explain why not, and attach coordination letter indicating the official with jurisdiction's agreement with such.

- 6. Do the officials with jurisdiction over the Section 4(f) resource agree, in writing, with the assessment of impacts of the proposed project and the proposed mitigation for the Section 4(f) resource?** YES NO  
[ ] [ ]

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Attach coordination letter indicating this agreement.

**7. Does the project use land from a resource purchased or improved with funds under the Land and Water Conservation Fund Act, Maryland Program Open Space program, Federal Aid in Fish Restoration Act (Dingell-Johnson Act), Federal Aid in Wildlife Act (Pittman-Robertson Act), or similar laws, or lands otherwise encumbered with a Federal interest?** **YES** **NO**  
[  ] [  ]

If Yes, has coordination been completed with the appropriate federal and/or state agency to ascertain the agency's position on the land conversion or transfer? **YES** **NO**  
[  ] [  ]

**If the federal agency objects to the land conversion or transfer, a Programmatic Section 4(f) Evaluation is not applicable.**

Attach coordination letter, describing the proposed mitigation and agreement with the agency(ies) with jurisdiction.

#### **D. Alternatives**

The following list is intended to be all-inclusive. If a feasible and prudent alternative is identified that is not discussed in this document, the Programmatic Section 4(f) Evaluation does not apply. The project record must clearly demonstrate that each of following alternatives was fully evaluated. Consult the Nationwide Programmatic Section 4(f) Evaluation has the generic reasons that might be addressed regarding each alternative.

1. Do nothing or no build.
2. Improve the existing roadway without using the adjacent public park, recreational land, or wildlife or waterfowl refuge.
3. Build an improved facility on new location without using the public park, recreational land, or wildlife or waterfowl refuge.

**Were each of these alternatives fully evaluated?** **YES** **NO**  
[  ] [  ]

Summarize or attach a description of the alternatives considered, addressing the following findings.

## **E. Findings**

This Programmatic Section 4(f) Evaluation can be applied to a project as long as each of the following findings is supported by the circumstances, studies, and consultations on the project (see the Nationwide Programmatic Section 4(f) Evaluation for a generic description of each):

**1. Do Nothing or No Build.** After studying this alternative, it has been determined not to be feasible and prudent based on one or more of the following reasons: **YES** **NO**  
[  ] [  ]

- a. Would not correct existing or projected capacity deficiencies.
- b. Would not correct existing safety hazards.
- c. Would not correct existing deteriorated conditions and maintenance problems.
- d. Would result in a cost or community impact of extraordinary magnitude, or result in unusual problems by not addressing the need of the project.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.

**2. Improvement without Using the Adjacent Section 4(f) Lands.** After studying this alternative, it has been determined not to be feasible and prudent based on one or more of the following reasons: **YES** **NO**  
[  ] [  ]

- a. Substantial adverse community impacts to adjacent homes, businesses, or other improved properties.
- b. Substantial increase in roadway or structure costs.
- c. Unique engineering, traffic, maintenance, or safety problems.
- d. Substantial adverse social, economic, or environmental impacts.
- e. Identified transportation needs would not be met.
- f. Impacts, costs, or problems are unusual or unique, or of extraordinary magnitude when compared with the proposed use of the Section 4(f) resource.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.

**3. Alternatives on New Location.** After studying this alternative, it has been determined not to be feasible and prudent based on one or more of the following reasons: **YES** **NO**  
[ ] [ ]

- a. Identified transportation needs would not be met.
- b. Substantial adverse social, economic, or environmental impacts.
- c. Substantial increase in cost or inability to achieve minimum design criteria.
- d. Impacts, costs, or problems are unusual or unique, or of extraordinary magnitude when compared with the proposed use of the Section 4(f) resource.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—  
check yes if this alternative is not feasible and prudent.

#### **F. Measures to Minimize Harm**

This Programmatic Section 4(f) Evaluation may only be approved if the proposed action includes all possible planning to minimize harm and the officials with jurisdiction over the Section 4(f) resource agree, in writing, with these measures. These mitigation measures shall include one or more of the following described in the following questions:

**1. Will there be a replacement of lands used with lands of reasonably equivalent usefulness and location and of at least comparable value?** **YES** **NO**  
[ ] [ ]

Explain replacement of existing lands.

**2. Will there be a replacement of facilities impacted by the project, including sidewalks, paths, benches, lights, trees and other facilities?** **YES** **NO**

1.

Explain replacement of existing facilities.



**3. Will there be restoration and landscaping of disturbed areas? YES NO**

Describe efforts.

2.

**4. Will there be an incorporation of design features, where necessary, to reduce or minimize impacts to the Section 4(f) resource? YES NO**  
[ ] [ ]

Describe efforts.

**5. In lieu of providing replacement land or facilities, will there be payment of the fair market value of the land and improvements taken? YES NO**  
[ ] [ ]

Provide estimated cost.

**6. Will there be additional mitigation measures as determined by the officials with jurisdiction over the Section 4(f) resource? YES NO**  
[ ] [ ]

Describe measures.

**G. Coordination**

**Has consultation and subsequent agreement with the official(s) with jurisdiction over the Section 4(f) resource occurred? YES NO**  
[ ] [ ]

Refer to the attached coordination letters.

**H. Temporary Use (if applicable)**

<p><b>If temporary easements, rights of entry or other temporary occupancies are required in a Section 4(f) resource, in addition to the permanent use of land which is the subject of this Programmatic Section 4(f) Evaluation, have the following conditions have been satisfied?:</b></p> <ul style="list-style-type: none"><li>• the duration is temporary (i.e., less than the time needed for construction of the project) and there is no change in the ownership of the land;</li><li>• the scope of the work is minor (i.e., both the nature and magnitude of the changes to the Section 4(f) resource are minimal);</li><li>• there are no anticipated permanent adverse physical impacts nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis;</li><li>• the land being used will be fully restored (i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project); and</li><li>• the state, federal or local official(s) with jurisdiction over the resource has agreed, in writing, with the criteria of temporary use; that is, the above four conditions.</li></ul> <p><b>Refer to the attached coordination letter attesting to the agreement.</b></p>	<p><b>YES NO</b> [   ] [   ]</p>
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## **I. Determination and Approval**

**Based on this Programmatic Section 4(f) Evaluation, which includes a clear description of the evaluated alternatives, measures to minimize harm, and the results of public and agency consultation and coordination, as evidenced herein and by the attachments, the FHWA has determined that:**

- the project meets the applicability criteria set forth in the Nationwide Section 4(f) Evaluation and Approval for Federal-Aid Highway Projects with Minor Involvements with Public Parks, Recreational Lands, and Wildlife and Waterfowl Refuges, dated December 23, 1986;
- all of the alternatives set forth in Section B have been fully evaluated;
- there are no feasible and prudent alternatives to the use of \_\_\_\_\_ (name of the Section 4(f) resource); and
- the project complies with the measures to minimize harm in Section C and agreement has been reached with the official(s) with jurisdiction over the resource regarding the impacts and mitigation.

Accordingly, the FHWA approves the proposed use of the \_\_\_\_\_ (name of the public park, recreational land, or wildlife or waterfowl refuge) under the Nationwide Section 4(f) Evaluation approved on December 23, 1986. If applicable, the FHWA also agrees that any project related temporary uses in Section 4(f) lands/resources are not subject to the requirements of Section 4(f).

**US Department of Transportation  
Federal Highway Administration  
Programmatic Section 4(f) Determination And Approval  
Under The  
Nationwide Section 4(f) Evaluation  
And Approval For Federal Aid Highway Projects With  
Minor Involvements With Historic Sites**

Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303(c)] permits the use of land from a publicly-owned public park or recreation area, wildlife or waterfowl refuge, or any significant historic site (as determined by the officials having jurisdiction over the park, recreation area, refuge or historic site) only if there is no feasible and prudent alternative to the use of land and the action includes all possible planning to minimize harm to the Section 4(f) property resulting from such use.

This Programmatic Section 4(f) Evaluation is a streamlined approach, applicable only under the particular circumstances prescribed in the following template. Use of this template is confined solely to Federal Highway Administration (FHWA) projects with **minor** involvements with historic sites. Coordination with the appropriate agency(ies) having jurisdiction over the impacted Section 4(f) resource must be completed prior to completing this template. It cannot be used for projects requiring an Environmental Impact Statement (EIS), unless there has been a late discovery of Section 4(f) involvement for an approved EIS. Consult the Final Nationwide Section 4(f) Evaluation, dated December 23, 1986, as it relates to the following items. The Final Nationwide Section 4(f) applicability criteria are included in the Appendix of this document. Complete all items.

**A. Description/Location of the Historic Site:**

Provide description of historic site. Include location map.

**B. Proposed Action:**

Include purpose and need statement, along with a description of the selected action.

**C. Project Applicability:**

If a Programmatic Section 4(f) Evaluation is deemed “Not Applicable” for any item on this list, the Programmatic Section 4(f) Evaluation approach cannot be used. Rather, an individual Section 4(f) Evaluation must be prepared.

- 1. Is the proposed project designed to improve the operational characteristics, safety, and/or physical condition of the existing highway facility on essentially the same alignment?** YES NO  
[ ] [ ]

This includes "4R" work (resurfacing, restoration, rehabilitation, and reconstruction), safety improvements, traffic operation improvements, bicycle and pedestrian facilities, bridge replacements on essentially the same alignment and construction of additional lanes (see the Final Nationwide Section 4(f) Evaluation for examples).

If No, a Programmatic Section 4(f) Evaluation is not applicable.

- 2. Is the historic site(s) located adjacent to the existing highway?** YES NO  
[ ] [ ]

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Attach a graphic showing the relationship between the Section 4(f) resource and the proposed highway improvements, showing the existing historic site boundary and proposed right-of-way lines.

- 3. Does the project require the removal or alteration of historic buildings, structures or objects on the historic site(s) within the historic site boundary?** YES NO  
[ ] [ ]

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

- 4. Does the project require the disturbance or removal of archeological resources that are important to preserve in place rather than to remove for archeological research?** YES NO  
[ ] [ ]

If Yes, a Programmatic Section 4(f) Evaluation is not applicable.

Describe the impacts to any archeological sites and attach the coordination letter from the SHPO, supporting the NO response.

- 5. Is the impact to the historic site(s) resulting from the use of land considered minor (minor is defined as either a "no properties affected" or "no adverse effect" determination, when applying the requirements of Section 106 of the National Historic Preservation Act (NHPA) and 36 CFR 800)?** YES NO  
[ ] [ ]

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Describe the impacts and amount of land affected and attach the MHT's effect determination.

- 6. Has the SHPO agreed, in writing, with the assessment of impacts of the proposed project on and the proposed mitigation for the historic sites(s)?** YES NO  
[ ] [ ]

If No, a Programmatic Section 4(f) Evaluation is not applicable.

Attach the coordination letter or concurrence from the SHPO.

#### **D. Alternatives**

The following list is intended to be all-inclusive. If a feasible and prudent alternative is identified that is not discussed in this document, the Programmatic Section 4(f) Evaluation does not apply. The project record must clearly demonstrate that each of the following alternatives was fully evaluated. Consult the Nationwide Programmatic Section 4(f) Evaluation for the generic reasons that might be addressed regarding each alternative.

1. Do nothing or no build.
2. Improve the existing highway without using the adjacent historic site.
3. Build an improved facility on new location without using the historic site.

**Were each of these alternatives fully evaluated?**

YES NO  
[ ] [ ]

Summarize or attach a description of the alternatives considered, addressing the following findings.

### **E. Findings**

This Programmatic Section 4(f) Evaluation can be applied to a project as long as each of the following findings is supported by the circumstances, studies, and consultations on the project (see the Nationwide Programmatic Section 4(f) Evaluation for a generic description of each):

**1. Do Nothing or No Build.** After studying this alternative, has it been determined not to be feasible and prudent based on one or more of the following reasons: YES NO  
[ ] [ ]

- a. Would not correct existing or projected capacity deficiencies.
- b. Would not correct existing safety hazards.
- c. Would not correct existing deteriorated conditions and maintenance problems.
- d. Would result in a cost or community impact of extraordinary magnitude, or result in unusual problems by not addressing the need of the project.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.

**2. Improvement without Using the Adjacent Section 4(f) Lands.** YES NO  
After studying this alternative, has it been determined not to be [ ] [ ]  
feasible and prudent based on one or more of the following reasons:

- a. Substantial adverse community impacts to adjacent homes, businesses or other improved properties.
- b. Substantial increase in roadway or structure costs.
- c. Unique engineering, traffic, maintenance, or safety problems.
- d. Substantial adverse social, economic, or environmental impacts.
- e. Identified transportation needs would not be met.
- f. Impacts, costs, or problems are unusual or unique, or of extraordinary magnitude when compared with the proposed use of the Section 4(f) resource.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.

**3. Alternative on New Location.** After studying this alternative, has it YES NO  
been determined not to be feasible and prudent based on one or more [ ] [ ]  
of the following reasons:

- a. Identified transportation needs would not be met.
- b. Substantial adverse social, economic, or environmental impacts.
- c. Substantial increase in cost or engineering difficulties.
- d. Impacts, costs or problems of unusual, unique, or extraordinary magnitude when compared with the proposed use of the Section 4(f) resource.

Summarize the findings and demonstrate why this alternative is not feasible and prudent, as compared to the proposed action—check yes if this alternative is not feasible and prudent.



**F. Measures to Minimize Harm**

This Programmatic Section 4(f) Evaluation may only be approved if the proposed action includes all possible planning to minimize harm and the officials with jurisdiction over the Section 4(f) resource agree, in writing, with these measures. These measures shall include one or more of the items described in the following questions:

<b>Have all possible measures to minimize harm (to reduce or minimize impacts to the Section 4(f) resource and consisting of measures to preserve the historic integrity of the site) been incorporated into the project, and agreed to by the SHPO, ACHP (if applicable), and other interested parties consistent with Section 106 of the NHPA and 36 CFR 800?</b>	YES	NO
	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]

Discuss the mitigation agreements and attach the coordination letter(s).

**G. Coordination**

<b>Has consultation and subsequent agreement with the SHPO, ACHP (if applicable, and other interested parties occurred?</b>	YES	NO
	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]

Refer to the attached coordination letters.

**H. Temporary Use (if applicable)**

<p><b>If temporary easements, rights of entry or other temporary occupancies are required in a Section 4(f) resource, in addition to the permanent use of land which is the subject of this Programmatic Section 4(f) Evaluation, have the following conditions have been satisfied?:</b></p> <ul style="list-style-type: none"><li>• the duration is temporary (i.e., less than the time needed for construction of the project) and there is no change in the ownership of the land;</li><li>• the scope of the work is minor (i.e., both the nature and magnitude of the changes to the Section 4(f) resource are minimal);</li><li>• there are no anticipated permanent adverse physical impacts nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis;</li><li>• the land being used will be fully restored (i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project); and</li><li>• the state, federal or local official(s) with jurisdiction over the resource has agreed, in writing, with the criteria of temporary use; that is, the above four conditions.</li></ul> <p>Refer to the attached coordination letter attesting to the agreement.</p>	<p>YES NO [ ] [ ]</p>
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## **I. Determination and Approval**

**Based on this Programmatic Section 4(f) Evaluation, which includes a clear description of the evaluated alternatives, measures to minimize harm, and the results of public and agency consultation and coordination, as evidenced herein and by the attachments, the FHWA has determined that:**

- the project meets the applicability criteria set forth in the Nationwide Section 4(f) Evaluation and Approval for Federal-Aid Highway Projects with Minor Involvements with Historic Sites, dated December 23, 1986;
- all of the alternatives set forth in Section B have been fully evaluated;
- there are no feasible and prudent alternatives to the use of \_\_\_\_\_ (name of historic site(s)); and
- the project complies with the measures to minimize harm in Section C and agreement has been reached with the SHPO, ACHP (if appropriate) and all other interested and consulting parties on the effect determination and subsequent mitigation.

Accordingly, the FHWA approves the proposed use of \_\_\_\_\_ (name of the historic site(s)) under the Nationwide Section 4(f) Evaluation approved on December 23, 1986. If applicable, the FHWA also agrees that any project related temporary uses in Section 4(f) lands/resources are not subject to the requirements of Section 4(f).

**Appendix L: Sample Wording for CEs When Section 4(f) Requirements are  
Applicable**

#### Programmatic Section 4(f) Evaluation for the Use of Historic Bridges

The Maryland Historical Trust (MHT) determined that Bridge No. 123 (MHT Inventory No. F-4567) is eligible for listing in the NRHP and that there does not appear to be any other historic properties within the area of potential effects. The MHT concurred that the proposed replacement will have an adverse effect on the existing bridge. Therefore, a Programmatic Section 4(f) Evaluation is applicable for this project and was prepared in accordance with the Department of Transportation Act of 1966, 49 U.S.C. 303, and Section 18(a) of the Federal-Aid Highway Act of 1956, 23 U.S.C. 138 (**Attachment X**).

Franklin County has entered into a Memorandum of Agreement (MOA) with the MHT and the Federal Highway Administration (FHWA) to mitigate the adverse effects brought about by the replacement of Bridge No. 123. The MOA outlines the stipulations that Franklin County will implement to mitigate the adverse effects of the project. These include preparation of a Maryland Inventory of Historic Properties form, photographic recordation of the structure, and creation of an interpretive display. The MOA was signed by the MHT and Franklin County on October 1, 2005 and September 1, 2005, respectively, and has been forwarded to the FHWA for signature (**Attachment X**).

#### Programmatic Section 4(f) Evaluation for the Use of Publicly-Owned Public Parks, Recreation Areas, or Wildlife or Waterfowl Refuges

A minor amount of right-of-way will be required from the adjacent publicly-owned wildlife refuge. The Alphabet Wildlife Management Area is 85 acres. The project will result in the taking of 0.25 acre of permanent right-of-way, 0.05 acre of revertible slope easement, and 0.15 acre of temporary construction easement. The total disturbed area within the Alphabet Wildlife Management Area is 0.45 acre and would fall into the minor use category. Therefore, a Programmatic Section 4(f) Evaluation is applicable for this project and was prepared in accordance with the Department of Transportation Act of 1966, 49 U.S.C. 303, and Section 18(a) of the Federal-Aid Highway Act of 1956, 23 U.S.C. 138 (**Attachment X**).

#### Programmatic Section 4(f) Evaluation for the Use of Historic Sites

The Maryland Historical Trust (MHT) determined that the replacement of Bridge No. 123 on Alphabet Road over Number Branch will have no adverse effect on the Franklin Historic District (MHT Inventory No. F-7890). However, 0.15 acre of permanent easement is required from the Franklin Historic District for drainage improvements associated with the bridge replacement. Therefore, a Programmatic Section 4(f) Evaluation is applicable for this project and was prepared in accordance with the Department of Transportation Act of 1966, 49 U.S.C. 303, and Section 18(a) of the Federal-Aid Highway Act of 1956, 23 U.S.C. 138 (**Attachment X**).

Franklin County has entered into a Memorandum of Agreement (MOA) with the MHT and the Federal Highway Administration (FHWA) to mitigate the effects brought about by the drainage improvements associated with the replacement of Bridge No. 123. The MOA outlines the stipulations that Franklin County will implement to mitigate the adverse effects of the project. These include preparation of a Maryland Inventory of

Historic Properties form, replacement of an ornamental fence and retaining wall within the Franklin Historic District, and creation of mitigation planting plans. The MOA was signed by the MHT and Franklin County on October 1, 2005 and September 1, 2005, respectively, and has been forwarded to the FHWA for signature (**Attachment X**).

#### De Minimis Finding

The MHT concurred with the *de minimis* determination for the impacts to contributing properties within East and West Franklin historic districts. Pursuant to the regulations set forth in Section 106 of the National Historic Preservation Act, the Franklin County Committee of MHT was notified of the effect of the project on historic properties, invited to participate in the Section 106 process and provided a reasonable opportunity for comment. No comments were received. The majority of the proposed project work occurs directly along the Alphabet Road corridor and will not adversely effect the five National Register of Historic Places eligible properties within the area of potential effects: F-123 (Four Mile House), F-345 (Five Mile House), F-678 (Six Mile House), F-901 (East Franklin Historic District), and F-234 (West Franklin Historic District).

#### Non-Applicability of Section 4(f)

The staging area and construction access for the proposed replacement of Bridge No. 123 on Alphabet Road over Number Branch would temporarily impact approximately 0.16 acre of Franklin State Park. These temporary impacts are consistent with the following five criteria for Section 4(f) non-applicability:

- The duration (of the occupancy) will be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;
- The scope of work will be minor, i.e., both the nature and the magnitude of the changes to the Section 4(f) resource are minimal;
- There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis;
- The land being used will be fully restored, i.e., the resource will be returned to a condition which is at least as good as that which existed prior to the project; and
- There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

The above temporary use criteria were discussed with the Franklin County Department of Recreation and Parks (DRP), the officials with jurisdiction over the Franklin State Park. On June 1, 2006, the DRP concurred with the above temporary use criteria (**Attachment X**). Thus, the 0.16 acre of temporary impacts associated with the staging area and construction access would not be subject to the requirements of Section 4(f).