

# SECTION 4(F) & CHAPTER 26

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TxDOT Environmental Conference 2017

# Table of Contents

1 What's the Difference?

2 Section 4(f)

3 Section 4(f) Exceptions

4 Section 4(f) *De Minimis*

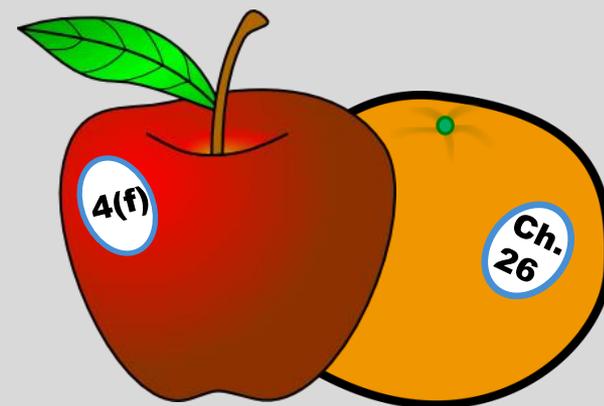
5 Section 4(f) Documentation

6 Chapter 26

7 Chapter 26 Documentation

# What's the Difference?

Section 4(f)	Chapter 26
23 CFR §774	Texas Parks & Wildlife Code
Federal Regulation	State Regulation
Applies to all Federal projects	Applies to all projects
Multiple Processing Options	Single Processing Option
Public Notice in some instances	Public Hearing always required with specific advertising requirement
Documentation - ENV Approval	Documentation - ENV Approval



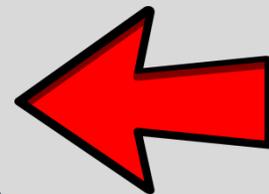


**Exception:** The property is not permanently incorporated into a transportation facility, or may be an improvement or enhancement to the facility.

**De Minimis:** The transportation use of the Section 4(f) property, including incorporation of any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures), does not adversely affect the activities, features, or attributes that qualify the resource for protection under Section 4(f).

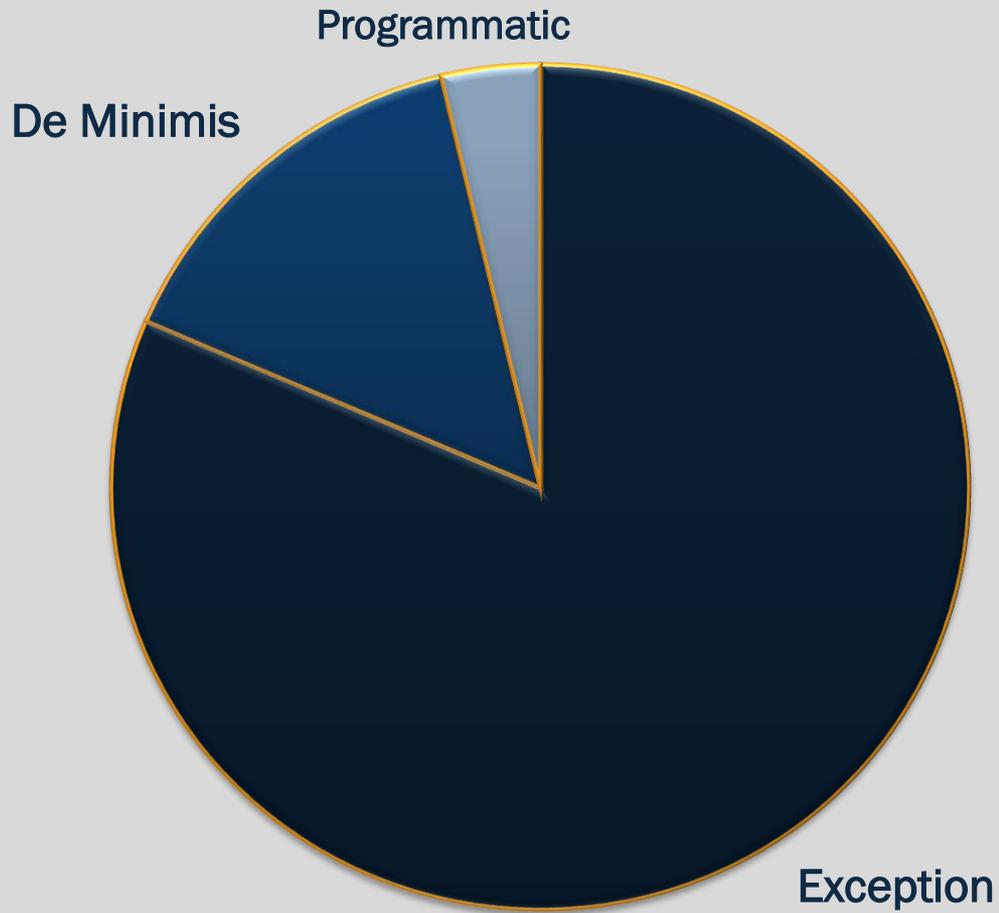
**Programmatic:** Time-saving procedural option for preparing individual Section 4(f) evaluations for certain minor uses of Section 4(f) property. Must meet programmatic criteria for the appropriate nationwide programmatic Section 4(f) evaluation.

**Individual:** An individual Section 4(f) evaluation must be completed when approving a project that requires the use of Section 4(f) property if the use results in a greater than *de minimis* impact and a programmatic Section 4(f) evaluation cannot be applied to the situation (23 CFR 774.3).





## FY 2017





### When is an Exception required?

- If a project impacts a public park, recreational land, wildlife or waterfowl refuge.
  - Any work within a public park.
  - Adjacent to a school recreational facility.
  - Work within a wildlife or waterfowl refuge
- \* No ROW or permanent easements – change of ownership





There are four exceptions:

### ① Temporary Occupancy

Must meet following conditions:

- The duration of use will be less than the time needed for construction of the project and there will be no change of ownership.
- The scope of the work would be minor resulting in minimal changes to the property.
- No significant features of the property would be adversely affected.
- The occupied segments of the property would be returned to their as-found condition or better.
- The Official with Jurisdiction (OWJ) has agreed that the property is significant and that the proposed project meet all conditions above.



### 2 Trail, Path, Bikeway, or Sidewalk

Must meet either of the following conditions:

- The trail, path, bikeway, or sidewalk is part of a local transportation system and functions primarily for transportation purposes.
- The trail, path, bikeway, or sidewalk is part of a transportation facility ROW and continuity of the trail, path, bikeway, or sidewalk is maintained.
- The OWJ over the property agrees in writing.





### 3 Transportation Enhancement or Mitigation Activities

Must meet the following conditions:

- The use of the property is solely for the purposes of preserving or enhancing an activity, feature, or attribute that qualifies the property for Section 4(f) protection.
- The OWJ over the property agrees in writing that the use is preserving or enhancing the property.





### **4** 23 U.S.C. 204 Park Road or Parkway Project

Must meet the following conditions:

- The Section 4(f) protected resource has been verified as falling under the Federal Lands Access Program (23 U.S.C. 204).





## Use within a Public Park

- Hike & Bike Trails
- Sidewalks
- Road construction – temporary easement





# Section 4(f) Exceptions

## Recreational Facilities

- School facilities such as playgrounds or athletic fields
- Public recreational facilities
- Public golf courses
- Facilities must be open to the public



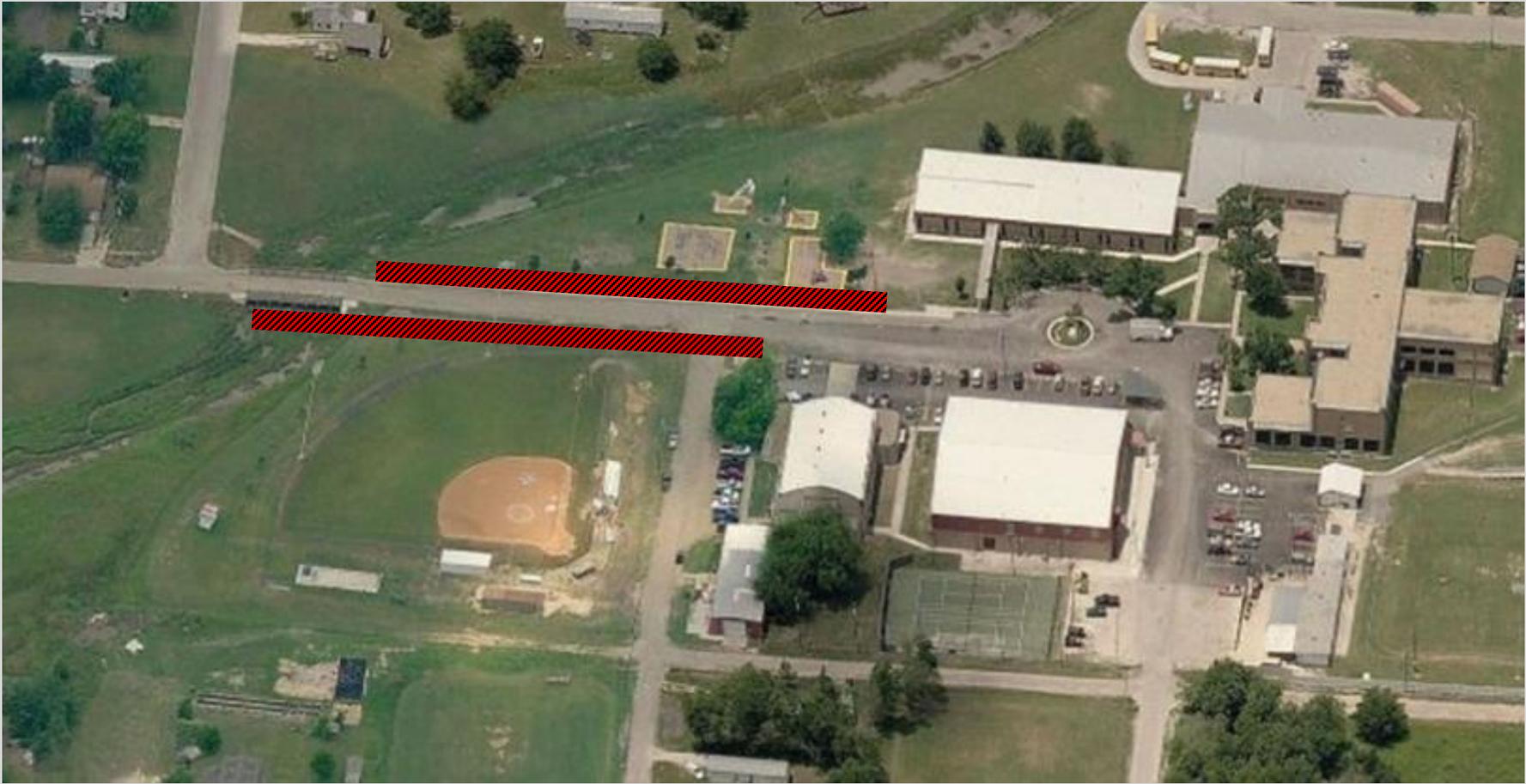


## School Facilities





## School Facilities





## Section 4(f) *De Minimis*

Section 4(f) *De Minimis* applies when the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection.





## Section 4(f) *De Minimis*

- ROW or permanent easements are required from 4(f) protected property
- Public notice requirement
- Owner with Jurisdiction (OWJ) concurs that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection
- No threshold for the amount of ROW





## School Facilities





## Section 4(f) De Minimis

- 1 • Consult with OWJ
- 2 • Public Notice
- 3 • Concurrence Letter to OWJ
- 4 • Complete Checklist
- 5 • Submit to ENV for Approval



## Section 4(f) Documentation

- Checklist must be completed and submitted to ENV-PDM for all Section 4(f) documentation.
- Checklist are completed by project sponsor and submitted to ENV-PDM for review.
- ENV-PD reviews checklist to ensure project meets requirements for exception or De Minimis and that all required documentation has been provided.





## Section 4(f) Documentation

- The checklist must include the following attachments:
  - Brief project description
  - Explanation of how the property will be used
  - A detailed map of the Section 4(f) property including:
    - Current and proposed ROW
    - Property boundaries
    - Existing and planned facilities
  - Ground-level photo of impact location
  - Concurrence letter from OWJ



# Section 4(f) Documentation

## Example

Checklist for Section 4(f) Exceptions for Public Parks, Recreation Lands, Wildlife & Waterfowl Refuges, and Historic Properties

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**Main CSJ:** 0914-04-300  
**District(s):** Austin  
**County(ies):** Travis  
**Property ID:**  
**Property Name:** Boggy Creek Greenbelt

Project is not assigned to TxDOT under the NEPA Assignment MOU

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 16, 2014, and executed by FHWA and TxDOT.

The following checklist was developed as a tool to assist in streamlining the Section 4(f) Exception process and to ensure that all necessary information is documented in the File of Record (ECOS).

### What Type of Property is Being Evaluated?

A park, recreation land, or wildlife/waterfowl refuge  
 A historic property

### Section 4(f) Defining Criteria for Parks, Recreation, and Refuge Properties

- Yes   Is the property publicly owned?
- Yes   Is the property open to the public (except in certain cases for refuges)?
- Yes   Is the property's major purpose for park, recreation, or refuge activities?
- Yes   Is the property significant?

### Defining the Property's Significance

**Note:** Significance is presumed in the absence of a determination with the official with jurisdiction.

- Yes   Does the property play an important role in meeting the park, recreation, or refuge objectives for the official with jurisdiction?
- Yes   Is the property's major purpose for park, recreation, or refuge activities?

### Establishing Section 4(f) Use of the Property

- No   Does the project require a temporary use (i.e. temporary easement, construction easement, etc.)?

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Standard  
TxDOT Environmental Affairs Division  
Effective Date: September 2015 Version 1  
815.02.CHK  
Page 1 of 3

Checklist for Section 4(f) Exceptions for Public Parks, Recreation Lands, Wildlife & Waterfowl Refuges, and Historic Properties

### Establishing Section 4(f) Exception Eligibility

- Which Type of Exception are You Applying?
  - Temporary Occupancy
  - Trail, Path, Bikeway, or Sidewalk
  - Transportation Enhancement or Mitigation Activities
  - 23 U.S.C. 204 Park Road or Parkway Project
- Yes   Does the trail, path, bikeway, or sidewalk meet either of the following conditions?
  - The trail, path, bikeway, or sidewalk is part of a local transportation system and functions primarily for transportation purposes.
  - The trail, path, bikeway, or sidewalk occupies part of a transportation facility ROW and continuity of the trail, path, bikeway, or sidewalk is maintained.

### Documentation

The following **MUST** be attached to this checklist to ensure proper documentation of the Section 4(f) Exception (Each numbered item is a separate document):

- Brief project description
- Explanation of how the property will be used ("use" as defined by Section 4(f)).
- A detailed map of the Section 4(f) property including:
  - Current and proposed ROW
  - Property boundaries
  - Access points for pedestrians and vehicles
  - Existing and planned facilities
- Concurrence letter with the Official with Jurisdiction

### TxDOT Approval Signatures

#### District Reviewer Certification

I reviewed this checklist and all attached documentation and confirm that the above property and proposed project meet the requirements of 23 CFR 774 for a Section 4(f) Exception finding.

**Hilda Ortiz** Digitally signed by Hilda Ortiz  
DN: cn=Hilda Ortiz, ou=TxDOT, ou=Environmental Affairs Division,  
email=hilda.ortiz@txdot.state.tx.us,  
c=US, o=Texas Department of Transportation July 10, 2017  
Date

District Personnel Name

#### ENV Technical Expert Reviewer Certification

I reviewed this checklist and all attached documentation and confirm that the above property and proposed project meet the requirements of 23 CFR 774 for a Section 4(f) Exception finding.

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Standard  
TxDOT Environmental Affairs Division  
Effective Date: September 2015 Version 1  
815.02.CHK  
Page 2 of 3



## Example

Upper Boggy Creek Trail Phase I (CSJ 0914-04-300)  
Checklist for Section 4(f) Exceptions for Public Parks, Recreation Lands,  
Wildlife & Waterfowl Refuges, and Historic Properties

### Project Description

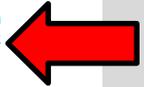
The City of Austin, in partnership with TxDOT, proposes to construct approximately 0.5 miles of a shared-use pedestrian hike and bike path along Upper Boggy Creek and through the Boggy Creek Greenbelt and Downs Mabson Fields Park. The project has a southern terminus with an existing trail and pedestrian bridge south of E. 12th Street and a northern terminus at Alexander Avenue near the Capital Metro-MLK Jr. commuter rail station. The proposed trail system would consist of asphalt bikeways that would vary in width from eight to fourteen feet and would connect existing bike lanes on E. 12th Street to existing bike lanes on Alexander Avenue.

Upper Boggy Creek Trail Phase I (CSJ 0914-04-300)  
Checklist for Section 4(f) Exceptions for Public Parks, Recreation Lands, Wildlife &  
Waterfowl Refuges, and Historic Properties

### Determination of Trail, Path, Bikeway, or Sidewalk Exception under Section 4(f)

The Boggy Creek Greenbelt is a publicly accessible recreation area owned by the City of Austin and maintained by the Parks & Recreation Department. The greenbelt runs along Boggy Creek and offers picnic shelters, picnic tables, volleyball courts and four miles of trails. The proposed project would upgrade a portion of the existing trail from the pedestrian bridge over Boggy Creek to E. 12<sup>th</sup> Street.

The Boggy Creek Greenbelt on which the project will take place has significance under the requirements of 23 CFR 774.11. In addition, it was established through previous coordination with the City that the Upper Boggy Creek Trail is part of the local transportation system and that it functions primarily for transportation. As such, the improvements to the trail proposed as part of the project do not require approval under Section 4(f). The City of Austin concurred with this determination on June 29, 2017.

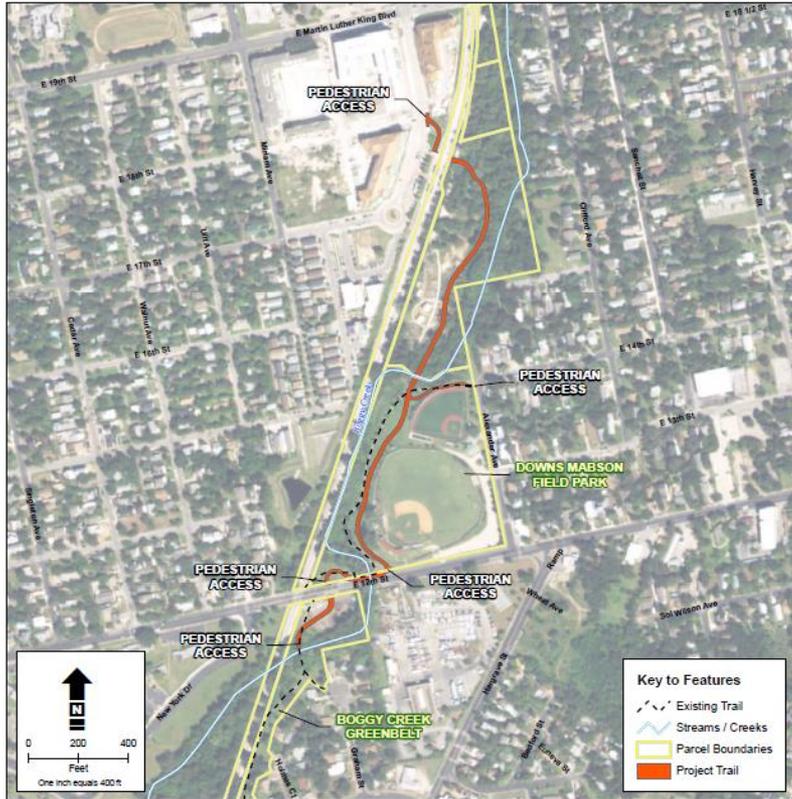


**Describe the property and the  
how it will be used.**

# Section 4(f) Documentation



## Example



Upper Boggy Creek Trail Phase I  
Downs Mabson Field Park & Boggy Creek Greenbelt  
CSJ: 0910-04-300



P.O. Box 15426, AUSTIN, TEXAS 78761-5426 | 512.832.7000 | WWW.TD0T.GOV

May 3, 2017

District: Austin  
County: Travis  
CSJ#: 0910-04-300  
Project Limits: From 200 feet South of E. 12<sup>th</sup> Street to the MLK Train Station  
Section 4(f) Properties: Downs Mabson Fields Park and Boggy Creek Greenbelt

**SUBJECT: NOTIFICATION OF INTENT TO PURSUE EXCEPTION TO SECTION 4(f) OF THE U.S. DOT ACT (23 CFR 774.13)**

Elaine Hart  
Interim City Manager, City of Austin  
P.O. Box 1068  
Austin, TX 78767

Dear Ms. Hart:

In accordance with 23 CFR 774.13, v project, which would be carried out consultation concerning the determinand the Boggy Creek Greenbelt, as v requirement of Section 4(f) review.

The environmental review, consultative environmental laws for this project are 23 U.S.C. 327 and a Memorandum of Understanding by FHWA and TxDOT.

**Introduction**

The City of Austin, in partnership with of a shared-use pedestrian hike and B Creek Greenbelt and Downs Mabson F existing trail and pedestrian bridge Alexander Avenue near the Capital M system would consist of asphalt bikew and would connect existing bike lanes Avenue.

Ms. Elaine Hart 2 May 3, 2017

**Determination of Trail, Path, Bikeway, or Sidewalk Exception under Section 4(f)**  
Both Downs Mabson Fields Park and the Boggy Creek Greenbelt on which the project will take place have significance under the requirements of 23 CFR 774.11. In addition, it was established through previous coordination with the City that the Upper Boggy Creek Trail is part of the local transportation system and that it functions primarily for transportation. As such, the improvements to the trail proposed as part of the project do not require approval under Section 4(f).

If you concur with our determination and have no additional comments about the project, please endorse this letter and return it to us by June 3, 2017. This endorsement will signify your concurrence that the properties are significant and that the project fits the exception as noted above. If we do not receive a response within 30 days, we will assume that you concur with the findings. Additional information about Section 4(f) requirements can be found at the following website, or you may request additional information from TxDOT:

<http://environment.fhwa.dot.gov/611vop545c3wmhuubovokmm21v4f/index.asp>

Thank you for your assistance with the federal review process. If you need further information, please call Hilda Ortiz, the environmental project manager at (512) 832-7387, or call me at (512) 832-7168.

Sincerely,

Shirley Nichols  
Austin District Environmental Supervisor  
[Shirley.Nichols@tdot.gov](mailto:Shirley.Nichols@tdot.gov)

CONCUR:

NAME: Elaine Hart DATE: 6/29/17

Elaine Hart, Interim City Manager

Approved as to Legal Form: 6-20-17  
Veronica Ocanas  
Veronica Ocanas  
Assistant City Attorney

# Section 4(f) – Multiple Properties

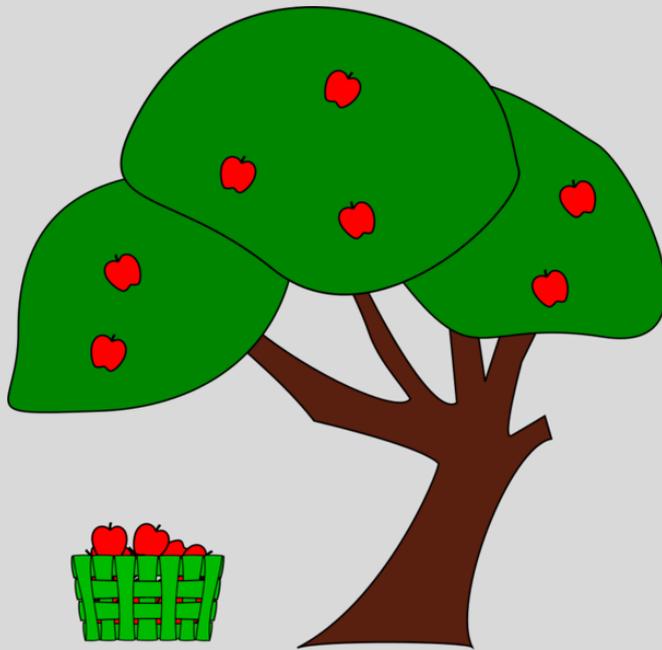




# Section 4(f) Documentation

## Section 4(f) Toolkit:

- Guidance
- Checklists
- Template Letters



### U.S. DOT Section 4(f) Toolkit

[Home](#) > [Inside TxDOT](#) > [Divisions](#) > [Environmental Affairs](#) > [Environmental Compliance Toolkits](#)

Section 4(f) of the U.S. Department of Transportation Act (U.S. DOT ACT) protects publicly owned and accessible parks, recreation areas, and wildlife and waterfowl refuges and historic sites, regardless of ownership and accessibility. Local governments, consultants, and TxDOT staff use these tools to address the requirements of the FHWA regulations promulgated in Code of Federal Regulations (CFR) as Title 23 Part 774.

Questions? For historic resources, contact the Section 4(f) specialist at (512) 416-2619. For parks and recreation areas, contact the Section 4(f) specialist at (512) 416-2644.

Title	Date	Description	Format
Environmental Handbook for Section 4 (f), U.S. Department of Transportation Act	05/15	Describes the TxDOT procedures and standards for complying with Section 4(f) of the U.S. DOT Act	
Section 4(f) Compliance Process Flowchart	05/14	Shows the process for determining if Section 4 (f) applies and the various paths for completing the compliance process	
Use, Impacts and Approval Relationships	03/13	Describes the different types of uses, including constructive use, the possible magnitude of those impacts and the appropriate approval type for each specific magnitude for each type of use	
Section 4(f) and TPWC Chapter 26 Comparison Public Parks, Recreational Lands, and Wildlife and Waterfowl Refuges	04/14	Provides a comparative overview of the Texas Parks and Wildlife Code Chapter 26 requirements and the U.S. DOT Act Section 4(f) requirements	
Review and Approval Process for Parks, Recreation Areas, Wildlife and Waterfowl Refuges	04/14	Illustrates the internal Environmental Affairs Division process for reviewing projects that impact Section 4(f) protected publicly owned and accessible parks, recreation areas, wildlife and waterfowl refuges	
Review and Approval Process for Section 4(f) Historic Properties	04/14	Illustrates the process for reviewing projects that impact a Section 4(f) protected historic property	

#### Exceptions

Title	Date	Description	Format
Checklist for Section 4(f) Exceptions for Public Parks, Recreation Land, Wildlife & Waterfowl Refuges, and Historic Sites	09/15	Used to streamline the Section 4(f) Exception Process and ensure that all necessary information is documented in the Project file	
Letter Template for Official with Jurisdiction (OWJ) Notification of Intent to Pursue an Exception	10/15	Used by project sponsors to prepare a letter notifying the State Historic Preservation Officer (SHPO) or the OWJ of the intent to pursue an exception	



- State requirement – state and federal projects
- Public Hearing is *required* (Chapter 26, Parks & Wildlife Code)
- Notice of the public hearing is required to be published three times (30 days, 20 days and 10 days) before the hearing.
- Chapter 26 Checklist



Chapter 26 is triggered when there is a “use” or “take” from a public land designated and used as a park, recreation area, scientific area, wildlife refuge, or historic site.

→ Use: If the proximity of the undertaking activities causes the property to no longer function for its intended purposes.

→ Take: Conversion of ROW or easement to a transportation use – change in ownership.

→ Designated: Historic site





Under Section 26.002 of the Texas Parks and Wildlife Code when public land is proposed for taking:

- State law requires that public hearing notices for the acquisition of public land be published for **three consecutive weeks** with the last publication not less than one week or more than two weeks before the hearing date.
- When a project affects publicly protected land, a separate written notice must be provided to the owner with jurisdiction over that land. The notice must be sent at least **30** days before the hearing date.





- Public hearing can be conducted solely for compliance with Chapter 26.
  - Not required to follow public hearing requirements, but must comply with advertising requirement in TPWC.
  - Hearing can be conducted by project sponsor.
- If conducted along with planned project public hearing, must follow state rules for conducting the hearing.
- Notice must describe property and reference Chapter 26.

## Chapter 26 Checklist

- Following completion of the public hearing, the Chapter 26 Checklist must be completed and submitted to ENV for approval.



### Checklist

Parks and Wildlife Code, Chapter 26 Compliance

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**I**

**Control Section Job Number (CSJ):** <Enter the Main CSJ Number>

**District and County:** <Enter the District and County Names> <Enter Name of District/County>

**Property ID:** <Enter the Property ID>

**Property Name:** <Enter the Property Name>

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The Texas Department of Transportation (TxDOT) districts and Environmental Affairs Division (ENV) use this checklist and supporting documentation to make recommendations and determinations about compliance with Chapter 26 of the Parks and Wildlife Code (PWC). Once completed, the checklist serves as the record of the determination of compliance with Chapter 26, and both the checklist and attached documentation are retained in the project file maintained in the Environmental Compliance Oversight System (ECOS).

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For each of the following steps and/or items, check the appropriate box in the columns on the left. Check one box **ONLY**.

---

**I. Property Type**

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	A. Is the property publicly owned?
<input type="checkbox"/>	<input type="checkbox"/>	B. Is the property officially designated as a park, recreation area, scientific area, or wildlife refuge?
<input type="checkbox"/>	<input type="checkbox"/>	C. Is the property officially designated a historic site on the federal, state or local level (NRHP, RTHL, SAL, local zoning)?
<input type="checkbox"/>	<input type="checkbox"/>	D. Is the property used for its designated purpose?

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**II. Use and/or Take**

Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	A. Does the project require an acquisition of acreage from the Chapter 26 property? If so, specify the size of the acquisition: <Enter acres> acres
<input type="checkbox"/>	<input type="checkbox"/>	B. Does the project require the placement of an easement on the Chapter 26 property? If so, explain those requirements and/or provide a reference to such an explanation in the environmental review document or other written materials retained in the project file: <Enter the explanation and/or reference>

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## Chapter 26 Toolkit

- Guidance
- Templates
- Links



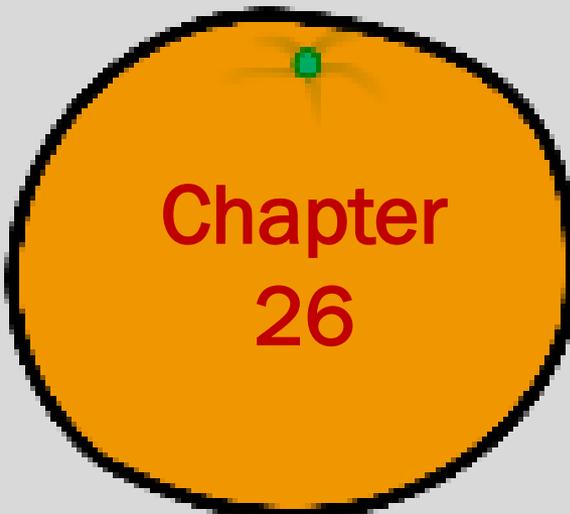
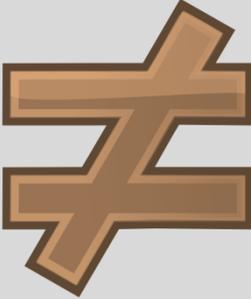
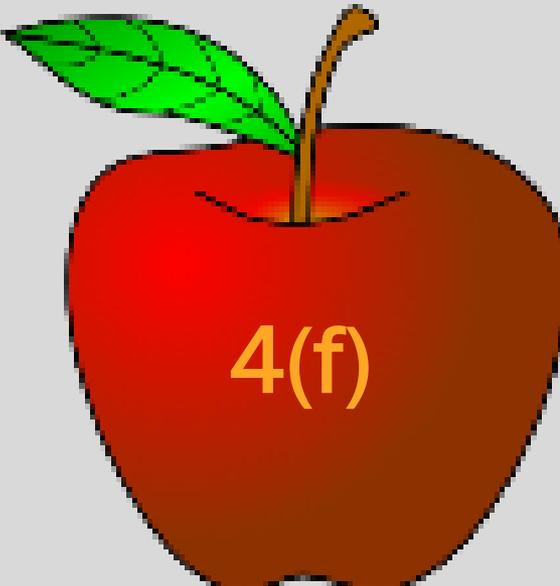
### Chapter 26 Parks and Wildlife Code Toolkit

[Home](#) > [Inside TxDOT](#) > [Divisions](#) > [Environmental Affairs](#) > [Environmental Compliance Toolkits](#)

Chapter 26 of the Texas Parks and Wildlife Code (PWC) protects any public land designated and used as a park, recreation area, scientific area, wildlife refuge, or historic area from use or take from such land. While Chapter 26 is similar to Section 4(f), compliance with Section 4(f) does not equate compliance with Chapter 26, and vice versa. Use the following tools to comply with Chapter 26.

Questions? Contact the Project Delivery Section of the Environmental Affairs Division at 512-416-2763.

Title	Date	Description	Format
Parks and Wildlife Code Chapter 26 Environmental Handbook	05/2016	Describes the applicability and requirements for complying with Parks and Wildlife Code (PWC) Chapter 26, which involves the transportation use of parks, recreation areas, scientific areas, wildlife refuges and historic sites.	
Checklist: Parks and Wildlife Code, Chapter 26 Compliance	05/2016	Records project-level compliance with PWC, Chapter 26 and ensures the preparation of all necessary documentation.	
Standard Operating Procedure for Reviewing, Processing and Approving Chapter 26 of the Texas Parks and Wildlife Code	03/2014	Describes the process used by the Project Delivery Section of the Environmental Affairs Division to evaluate compliance with PWC Chapter 26.	
Section 4(f) and PWC Chapter 26 Comparison Chart	05/2016	Provides a comparative overview of the PWC Chapter 26 requirements and the U.S. DOT Act Section 4(f) requirements.	
Chapter 26, Title 3, Parks and Wildlife Code		Requires TxDOT to make specific findings before approving the use of protected public lands for a transportation project.	





- Section 4(f) and Chapter 26 are two separate regulations with separate and distinct requirements.
- A project with a parks De Minimis and Chapter 26 impact will have two separate public involvement requirements.

Public Notice requirement for Section 4(f) *De Minimis*

Public Hearing required for Chapter 26



## 1. Chapter 26 without Section 4(f)?

**YES.** If the project is state-funded, 4(f) would not apply.

## 2. Section 4(f) without Chapter 26?

**YES.** A project that does not result in a take or use from a public property may require a Section 4(f) Exception, but not result in a Chapter 26 impact.

## 3. If project has a *De Minimis* impact, it may not have a Chapter 26 impact?

**NO.** A *De Minimis* impact results in a take or use of the property, therefore Chapter 26 would apply.

## **Section 4(f) - Parks**

**Contact:**

**Michelle Lueck**

**TxDOT-ENV Project Delivery Manager**

**Michelle.Lueck@txdot.gov**

**(512) 416-2644**