

OUR MISSION

Connecting people, products and places safely and efficiently with customer focus, accountability and environmental sensitivity to enhance the economy and vitality of North Carolina





NORTH CAROLINA
Department of Transportation

What are 4(f) and 6(f)?

John Jamison, NCDOT Environmental Policy

October 4, 2023 @ High Point's City Lake Park

Connecting people, products and places safely and efficiently with customer focus, accountability and environmental sensitivity to enhance the economy and vitality of North Carolina

And, who is this guy?

John Jamison, CPM, PWS, Manager of the NCDOT Environmental Policy Unit

- EPU: *“Ensures transportation projects comply with environmental policies and regulations by writing guidance, creating policies, providing training opportunities, maintaining regulatory relationships, and day-to-day project involvement.”*
- Oversee NEPA/SEPA compliance
- Regulatory coordination
- Train internal staff and external partners
- Know enough to be dangerous on most environmental issues
- Past as an Environmental Consultant
 - Natural resources fieldwork
 - GIS analysis
 - Wetlands permitting
 - NEPA documentation
 - Other random environmental tasks

What is 4(f)?

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A USDOT-specific law

4(f) is governed by a **substantive** law – it requires a particular outcome

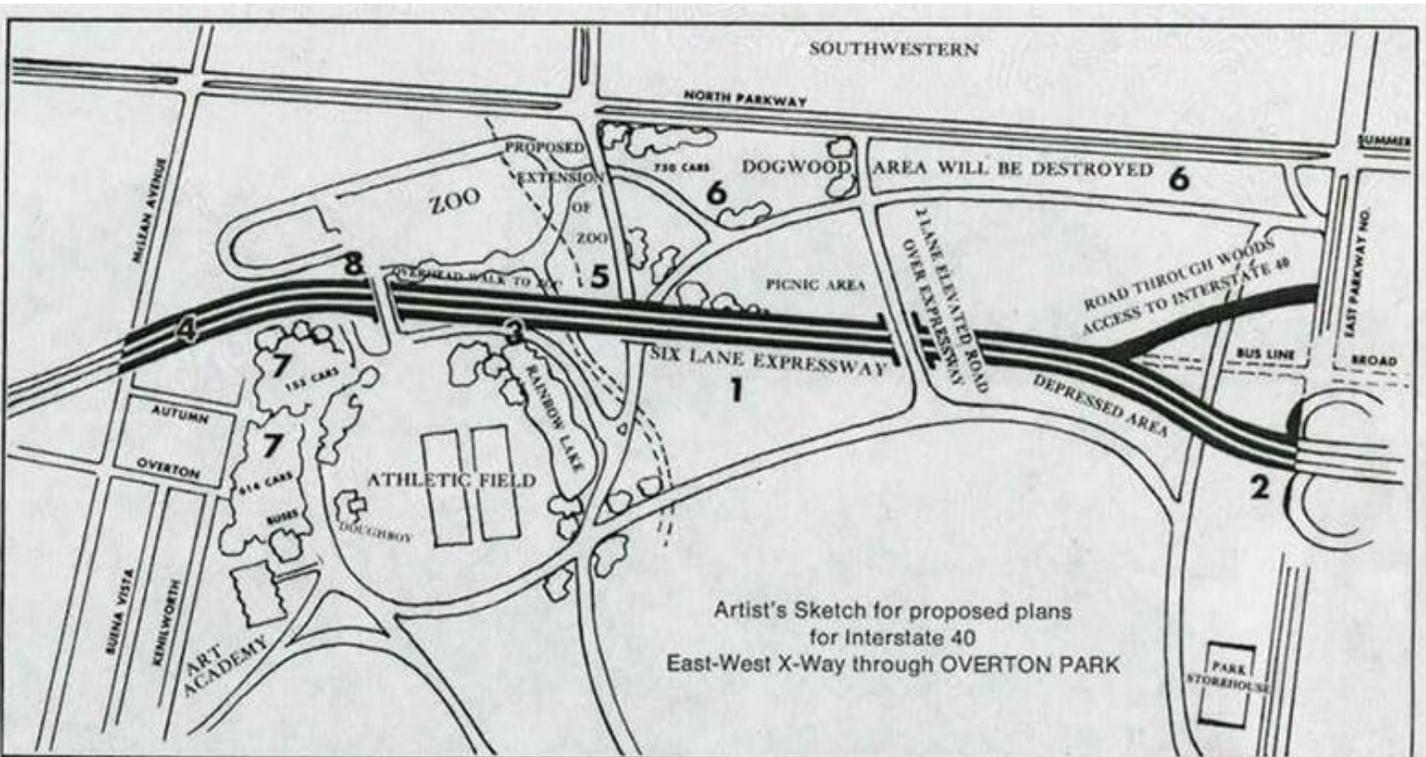
- U.S. Dept. of Transportation Act (1966)
- Statute: 49 USC 303 & 23 USC 138 (1983)
- Modified by SAFETEA-LU in 2005

(Federal Regulation: 23 CFR 774 (amended 2018))

“...shall not approve any ... project which requires the use of any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site unless (1) **there is no feasible and prudent alternative** to the use of such land, and (2) such program includes **all possible planning to minimize harm** to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.”



What resources are protected?



- 1 X-Way will cut Park into 2 separate areas
- 2 Much of Wooded Picnic Area destroyed
- 3 End of Rainbow Lake at edge of expressway if bus lane right of way is used
- 4 Present Parking and Play Area will be absorbed

- 5 Proposed extension of Zoo
- 6 Dogwood area will be destroyed
- 7 Parking Lots will extend almost to Doughboy
- 8 Children will walk to Zoo on foot bridge elevated over expressway

Parks, Recreation Areas, & Refuges

- Publicly owned and open to the public
- Major purpose
- Significant

Historic Sites

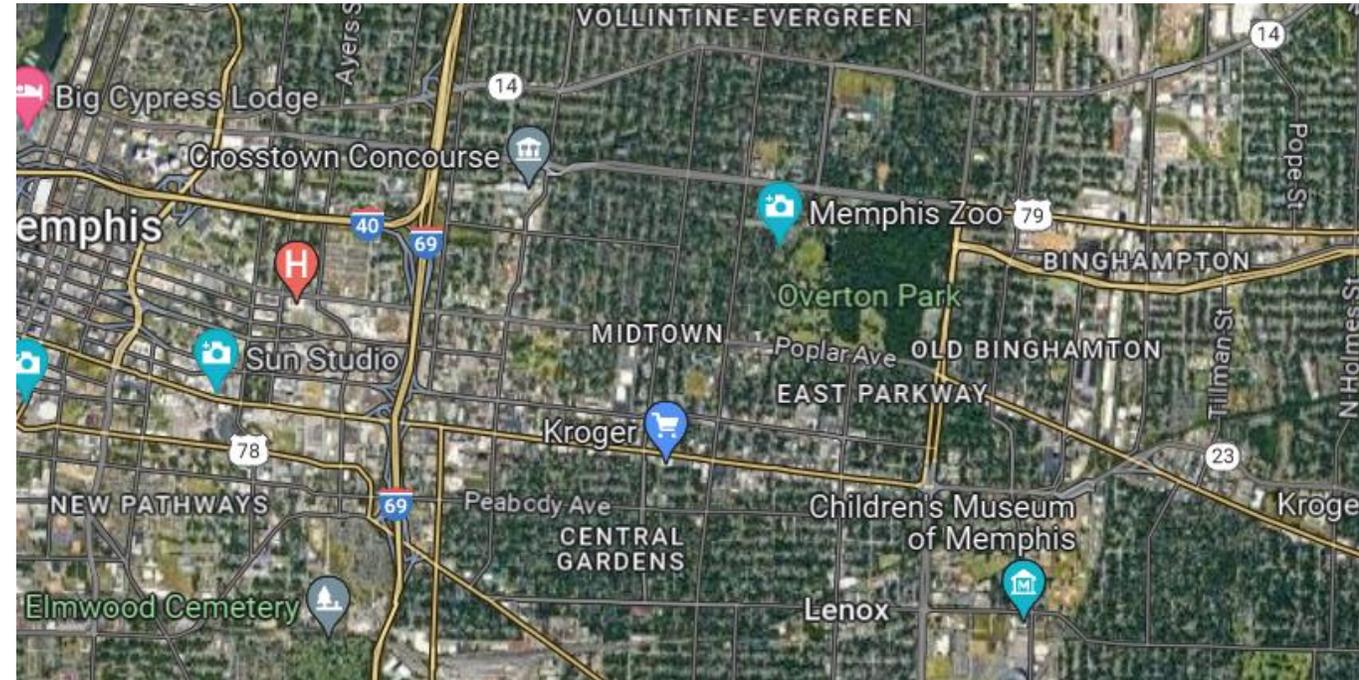
- On or eligible for the National Register of Historic Places
- Includes archaeological resources
- (There are other nuances as well)

FHWA Responsibilities

NCDOT works with FHWA to...

Determine applicability

- 23 CFR 774.11 provides the process
- Parks, etc.: not always a clear call; can include properties not titled “park” including school playgrounds & other public spaces
- Historic: buildings, sites, districts, structures, landscapes, objects
- Archeological: considered Section 4(f) only when important for preservation in place

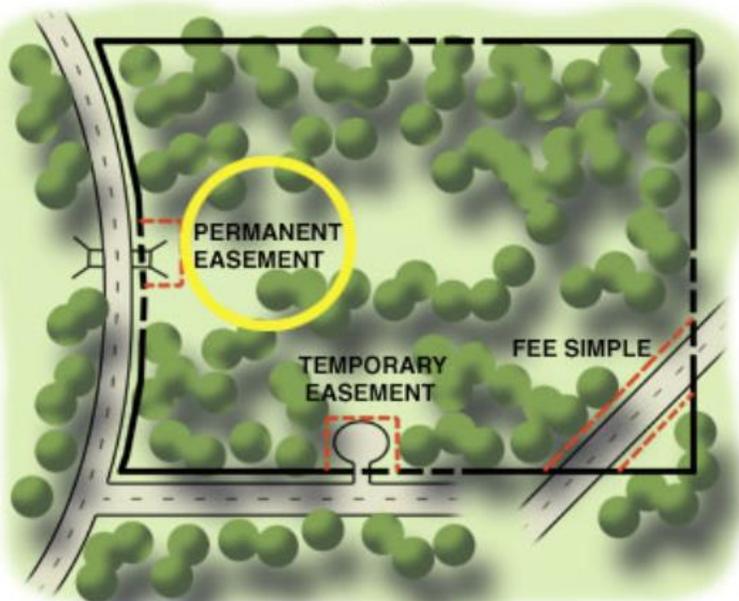


What is a 4(f) Use?

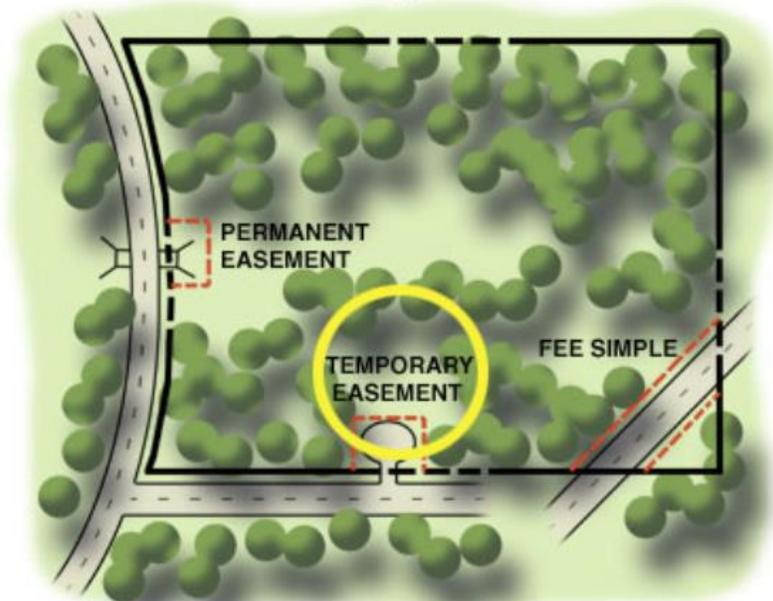
3 categories of "Use"

- Permanent Incorporation/Easement – acquisition of property rights of some sort, loss of 4(f) function
- Temporary Occupancy – short duration but impactful
- Constructive Use (rarely occurs) – vicinity impact that creates "Substantial impairment"

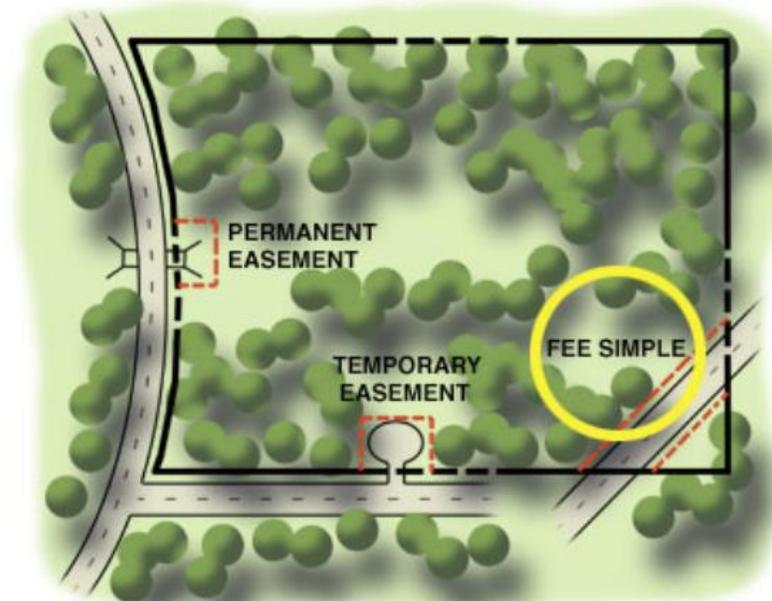
SECTION 4(f) RESOURCE



SECTION 4(f) RESOURCE



SECTION 4(f) RESOURCE



Why does “Use” matter?

De minimis vs. Programmatic vs. Individual

| | Independent Bikeway or Walkway Projects PE | Use of Historic Bridges PE | Minor Involvement with Parks, Recreation Lands, and Wildlife and Waterfowl Refuges PE | Minor Involvement with Historic Sites PE | Transportation Projects that have a Net Benefit to a Section 4(f) Property PE |
|-------------------------------|---|--|---|--|--|
| Date Enacted | 5/23/77 | 7/5/83 | 12/23/86 | 12/23/86 | 4/20/05 |
| Project Type | Independent bikeway or walkway project, not incidental activities of a highway project. | Rehabilitation or replacement of historic bridges. | Improvement of operational characteristics, safety, and or physical condition of an existing highway on essentially the same alignment. | | Any type of project on existing or new alignment. |
| NEPA Level | CEs or EAs only | CE, EA, or EIS | CEs or EAs only | CEs or EAs only | CE, EA, or EIS |
| Resource Applicability | Parks or recreation areas only. | Historic bridges that are not a National Historic Landmark. | Parks, recreation lands, and wildlife and waterfowl refuges adjacent to the existing highway facility. | Historic sites adjacent to the existing highway facility. | All Section 4(f) properties |
| Impact Threshold | No significant impacts (No displacements, historic site impacts, minimal water quality | If bridge can be rehabilitated without affecting the historic integrity, | The amount of property that may be acquired/used: | Project may not remove or alter historic buildings, structures or objects, or archaeological | No impact limits, but project results in an overall enhancement to the property. |

“Use” of the 4(f) property can be “de minimis” (net result after considering minimization measures) if

- Does not adversely affect the features and/or attributes
- Agreement in writing by official with jurisdiction

Another option: programmatic evaluation

- Documentation there is no Prudent & feasible avoidance alternative(s)
- Includes all possible planning to minimize harm to the 4(f) property

Last resort: Individual Evaluation

- Documentation there is no Prudent & Feasible avoidance alternative(s)
- Least Harm analysis resulting in selection of that specific alternative
- DOI & Legal review required

What is 6(f)?

Land and Water Conservation Fund (LWCF)

- LWCF grants from the federal government
- Administered by the National Park Service
- Requires state oversight (NC State Parks)
- Protects parklands funded under LWCF in perpetuity
- Protects the federal taxpayers' investment in parks

Questions that come up:

What are the boundaries of the LWCF protections?

What was the purpose of the grant?

How might DOT impair the property uses?

Who is in charge of this?

Why does it matter?

- Greatly affects the right-of-way acquisition process
- Local or state parks entity is ultimately responsible for LWCF protections (not in NCDOT's control)
- Can require replacement property “mitigation”, which requires NEPA analysis and NPS oversight
- Contingent on several layers of state and federal parks officials to approve
- Governed under federal regulations

How long does this take?

U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

LAND AND WATER CONSERVATION FUND
STATE ASSISTANCE PROGRAM



Tips for LWCF Coordination:

- Early coordination with Parks and RRS staff
- Early coordination with RRS staff
- Get the right people to the table to discuss any effects
- Be flexible
- Understand the implications of decisions
- Allow for extra time in the schedule – NPS coordination is unpredictable

Lots of overlap with 4(f) and NEPA documentation – use that and don't reinvent the wheel!

Thank you!



Contact Us

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innovative transportation solutions

