

14.0 SECTION 4(f) INVOLVEMENT

14.1 Applicable Legal Authority

Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. Section 303, declares that it is national policy to make a special effort to preserve the natural beauty of the countryside, publicly owned parks, recreation areas, wildlife or waterfowl refuges, or any historic sites of national, state, or local significance. A Section 4(f) statement is prepared when a transportation project has the potential to use land from a publicly-owned park, recreation area, wildlife or waterfowl refuge, or any historic site that is listed on or eligible for the National Register of Historic Places. Section 4(f) permits the use of such land for a transportation project only when the Federal Transit Administration (FTA) has determined that there is no reasonable or prudent alternative to such use and the project includes all possible planning to minimize harm to the resource resulting from such use.

14.1.1 Definitions

A. Use

Use of Section 4(f) land occurs when land is permanently incorporated into a transportation facility, when there is a temporary occupancy of Section 4(f) land that is adverse, and when there is a "constructive use" of Section 4(f) land. Land that is permanently incorporated into a transportation facility can be done by fee simple purchase of the land or through permanent right-of-way acquisition. In order for a temporary occupancy of Section 4(f) land to be not considered adverse, it must meet the following conditions:

- The duration of the occupancy must be less than the time needed for the construction of the project and there must not be a change in ownership;
- Both the nature and magnitude of the changes to the Section 4(f) resources are minimal;
- There are no anticipated permanent adverse physical changes nor interference with activities or purposes of the resource on a temporary or permanent basis;
- The land is restored to the same or better condition; and
- There is a documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

A constructive use of land occurs when the project does not require permanent or temporary use of land, but due to its proximity, impacts the Section 4(f) land by substantially impairing the activities, features or attributes of the resource. Section 23 CFR Sec 771.135 of the Section 4(f) regulation states that a constructive use of land occurs when:

- The projected noise level increase from the project substantially interferes with the use and enjoyment of a resource, i.e., hearing performances at an outdoor amphitheater or interrupting a quiet setting when the setting is a recognizable feature of the resource;
- The proximity of the proposed project impairs the aesthetic quality of a resource where these aesthetic qualities are considered important contributing elements to the value of a resource, i.e., obstructing or eliminating the primary views of an architecturally significant building;
- A restriction on access diminishes the utility of a resource;
- A vibration impact from the operation of a project impairs the use of a section 4(f) resource or alters the structural integrity of a historic building or impairs its utility;
- The project results in an intrusion into an ecological setting, which diminishes the value of a wildlife habitat in a wildlife or waterfowl refuge adjacent to a project.

B. "Feasible and Prudent"

The determination of "feasible and prudent" alternatives must include supporting information that demonstrates unique problems or unusual factors involved in the use of alternatives which would avoid the use of Section 4(f) resources, or that the cost, social, economic, and environmental impacts or community disruption resulting from such alternatives reach extraordinary magnitudes. An alternative may be rejected as not being feasible and prudent if it:

- Does not meet the project purpose and need
- Has excessive cost of construction of extraordinary magnitude; or,
- Results in severe operational or safety problems, unacceptable adverse social, economic or environmental impacts, serious community disruption, or, accumulation of the aforementioned impacts that combined, reach an unacceptable level.

C. Section 6(f) Statement

A Section 6(f) statement would be required if the proposed project impacts any parkland and/or other recreational resource that has received funding under Section 6(f) of the U.S. Land and Water Conservation Fund Act. The Preferred Alternative would not impact such parklands or other recreational resources funded under Section 6(f); therefore, no Section 6(f) Statement is required.

14.2 Identification & Evaluation of Section 4(f) Resources

All historic properties and parklands resources identified were evaluated to determine if a "use" of a protected resource would occur under Section 4(f) of the U.S. Department of Transportation Act of 1966. The following discusses the potential impact of the proposed Preferred Alternative on Section 4(f) resources.

In compliance with Section 106 of the National Historic Preservation Act of 1966, the *Phase I Cultural Resources Survey of the Proposed Norfolk LRT Project*, Gray and Pape, September 2001, was submitted to the Virginia Department of Historic Resources (VDHR). This report identified all architectural and archaeological resources listed on the National Register, eligible for listing in the Register, and potentially eligible for listing within the Area of Potential Effect (APE). A discussion of Section 106 of the National Historic Preservation Act, and the protection of historic and archaeological resources identified within the project study area is included in Chapter 12.0 of this FEIS. A description of coordination efforts between HRT and the Virginia Department of Historic Resources is included in Chapter 12.0. Parklands within the study area are discussed in Chapter 13.0 of this FEIS.

The following sections identify the Section 4(f) resources within the study area that have the potential to be impacted by the Preferred Alternative.

14.2.1 Historic Architectural Resources

A total of seventy-six new architectural resources were surveyed at the Phase I level for this project. None of the new architectural resources were recommended potentially eligible for the National Register of Historic Places. The VDHR concurred with these recommendations.

The Downtown Norfolk Historic District (and individually eligible structures within the district) and the West Freemason Street Historic District (and individually eligible structures within the district) are listed on the NRHP and are within the project APE. While a small portion of the Ghent Historic District is within view of the project corridor, consultation with the VDHR concluded that the project will not impact this resource because it will run on the opposite side of Brambleton Avenue, which currently represents a significant modern visual and auditory alteration to the setting of the district. Additionally, fieldwork revealed that the Chesterfield Heights Historic District will not be visible from the project corridor due to sound barriers and the existing I-264 interstate, so the project would not have an effect on this resource.

14.2.2 Archaeological Resources

The archaeological survey for the proposed Norfolk/Virginia Beach Light Rail project was completed in 1998. That survey identified four locations with the potential to contain significant archaeological resources. These included the Plume Street Station, a section of Plume Street between Bank and Talbot Streets, a small section of Plume Street west of St. Paul Boulevard, the Government Center Station, and Main Street west of I-264. The proposed Plume Street Station is no longer being considered to contain significant archaeological resources, but the additional locations are part of the proposed Preferred Alternative. Additional archaeological survey associated with the proposed Norfolk LRT Project area identified two new potential archaeological resource areas, the Kim Memorial Library location, and a

section along Bute and York Streets that was subsequently removed from consideration due to corridor realignment. The Kirn Library location is within the Downtown Norfolk Historic District (122-265). Because these potential archaeological resource locations are in an urban setting, investigation sufficient to determine whether archaeological resources individually eligible for the NRHP and/or contributing site to historic district were present could not be undertaken. However, profile drawings of the project at 30 percent designed show that excavation for project elements below the surface will not exceed 2 feet, and in the majority of these potential resource locations, construction will be at grade.

14.2.3 Parkland Resources

As discussed in Chapter 13.0, two parks and five community centers and public swimming pools are located in the project study area and are protected by Section 4(f) of the Department of Transportation Act. While the proposed LRT project would increase noise levels and add a visual element to these resources, there will be no “use” of parkland resources.

MacArthur Memorial – This park, owned by the City of Norfolk, is a small 0.37 acre park that is managed and maintained by the MacArthur Memorial Foundation. It is situated just north of Plume Street and is adjacent to the proposed LRT alignment. The centerline of the Preferred Alternative would run approximately 40 feet from the nearest usable space in MacArthur Memorial Park. As a result, the project would not require use of land on which MacArthur Memorial Park, the adjacent plaza or fountain, is situated. Project-related noise would not have an impact on activities that occur at this park. Visual impacts to the park would include the embedded tracks and the overhead catenary wires and support poles adjacent to the park.

14.2.4 Wildlife and Waterfowl Refuges

Agency databases from the US Fish and Wildlife Service, the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries were reviewed to determine the location of wildlife and waterfowl refuges within the project study area. No waterfowl or wildlife refuges are present within or near the LRT project study area.

14.3 Recommended Mitigation and 4(f) Evaluation

14.3.1 Architectural Resources

Two architectural historic properties are within the project APE: the Downtown Norfolk Historic District (122-265) and the West Freemason Historic District (122-60). The LRT project will introduce visual elements to the historic districts that are considered to be indirect. No alteration to the character of these historic districts that constitutes “use” under the definitions given above will occur. No noise impacts will occur in the historic districts. As a result, Section 4(f) does not apply for these resources.

14.3.2 Parkland Resources

MacArthur Memorial Park would not be impacted by project-related noise. The project would introduce a new visual element to park users in the form of embedded tracks overhead catenary wires and support poles adjacent to the park. These visual elements would not impair the aesthetic quality of the park and, as such, would not constitute a constructive “use”. As a result, no Section 4(f) impacts would occur.