United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

IN REPLY REFER TO:

FWS/DFPA/BFA

JAN 29 2003

Memorandum

To: Regional Directors, Regions 1-7

From: Director Steve Williams

Subject: Handbook on Departmental Review of Section 4(f) Evaluations

Attached is the Handbook on Departmental Review of Section 4(f) Evaluations (Attachment 1), which was prepared through a joint effort by the Fish and Wildlife Service and National Park Service, and has been approved by the Department. The Handbook provides guidance in the review and preparation of Department of the Interior comments on section 4(f) evaluations prepared by the Department of Transportation and its modal administrations.

Section 4(f) of the Transportation Act of 1966, as amended states (in part):

> The Secretary of Transportation shall cooperate and consult with the Secretaries of Interior, Housing and Urban Development, and Agriculture and with the States in developing transportation plans . . .
>
> . . . the Secretary [Transportation] shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site, of national, State, or local significance as so determined by such officials 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.

This law provides considerable authority to the Department of the Interior (through FWS and NPS) to identify what lands and interests are subject to section 4(f) and to advise the Secretary of Transportation whether the two criteria (listed above) have been met before a transportation project can "use" such lands. This authority of the Secretaries of the Interior, HUD, and Agriculture has been confirmed in several courts including the U.S. Supreme Court decision in Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 411, 91 S. Ct. 814, 28 L. Ed.2nd 136, 150 (1971). Interior's jurisdictional responsibilities under section 4(f) are defined in DOI Environmental Review Memorandum No. ERM 94-4 (Attachment 2).

Regarding Service lands and interests subject to section 4(f) of the Transportation Act of 1966, the Department's long-standing position has been that the use of section 4(f) lands under Interior's jurisdiction (e.g., special use permits for lands administered under the National Wildlife Refuge System), or the approval of the use of section 4(f) lands in which we have an interest because of grant-in-aid terms, cannot occur until (1) the Department has reviewed and commented on the section 4(f) statement, and (2) the Department of Transportation approves the use of lands for transportation purposes in accordance with the two provisos of section 4(f). Final concurrence and approval cannot occur until all other requirements have been satisfied, such as the National Wildlife Refuge System Improvement Act of 1997, refuge compatibility, and Service grant-in-aid requirements.

In furtherance of the President's initiative to advance electronic government to improve access to agencies and the public, we will provide electronic copies of the Handbook to all Regional and Ecological Service Field Offices. Electronic copies will also be available to FWS personnel and the public through the FWS web site.

If you have questions regarding the Handbook, please contact Cathleen Short, Assistant Director - Fisheries and Habitat Conservation at (202) 208-6394.

Attachments

cc: 3012-MIB-FWS/Directorate Reading File
3012-MIB-FWS/CCU File
3245-MIB-FWS/AFHC File
840-ARLSQ-FWS/DFHC File
400-ARLSQ-FWS/DFPA File
400-ARLSQ-FWS/DFPA/BFA File
400-ARLSQ-FWS/DFPA/BFA Staff
140-ARLSQ-FWS/FA File
840-ARLSQ-FWS/FHS File
670-ARLSQ-FWS/DNWR File

FWS/DFPA/BFA/DPeterson:gj:07/25/02:703/358-2183:revised:gj:12/12/02:
S:\DHC\BFA\Petersod\section4(f).mem.wpd