

such Indian tribe shall be recognized as an official with jurisdiction in addition to the SHPO. When the ACHP is involved in a consultation concerning a property under Section 106 of the NHPA, the ACHP is also an official with jurisdiction over that resource for purposes of this part. When the Section 4(f) property is a National Historic Landmark, the National Park Service is also an official with jurisdiction over that resource for purposes of this part.

(2) In the case of public parks, recreation areas, and wildlife and waterfowl refuges, the official(s) with jurisdiction are the official(s) of the agency or agencies that own or administer the property in question and who are empowered to represent the agency on matters related to the property.

(3) In the case of portions of Wild and Scenic Rivers to which Section 4(f) applies, the official(s) with jurisdiction are the official(s) of the Federal agency or agencies that own or administer the affected portion of the river corridor in question. For State administered, federally designated rivers (section 2(a)(ii) of the Wild and Scenic Rivers Act, 16 U.S.C. 1273(a)(ii)), the officials with jurisdiction include both the State agency designated by the respective Governor and the Secretary of the Interior.

**ROD.** Refers to a Record of Decision prepared pursuant to 40 CFR 1505.2 and §771.127 of this chapter.

**Section 4(f) evaluation.** Refers to the documentation prepared to support the granting of a Section 4(f) approval under §774.3(a), unless preceded by the word “programmatic.” A “programmatic Section 4(f) evaluation” is the documentation prepared pursuant to §774.3(d) that authorizes subsequent project-level Section 4(f) approvals as described therein.

**Section 4(f) Property.** Section 4(f) property means publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance.

**Use.** Except as set forth in §§774.11 and 774.13, a “use” of Section 4(f) property occurs:

(1) When land is permanently incorporated into a transportation facility;

(2) When there is a temporary occupancy of land that is adverse in terms of the statute’s preservation purpose as determined by the criteria in §774.13(d); or

(3) When there is a constructive use of a Section 4(f) property as determined by the criteria in §774.15.

## PART 777—MITIGATION OF IMPACTS TO WETLANDS AND NATURAL HABITAT

Sec.

777.1 Purpose.

777.2 Definitions.

777.3 Background.

777.5 Federal participation.

777.7 Evaluation of impacts.

777.9 Mitigation of impacts.

777.11 Other considerations.

**AUTHORITY:** 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303; 23 U.S.C. 101(a), 103, 109(h), 133(b)(1), (b)(11), and (d)(2), 138, 315; E.O. 11990; DOT Order 5660.1A; 49 CFR 1.48(b).

**SOURCE:** 65 FR 82924, Dec. 29, 2000, unless otherwise noted.

### §777.1 Purpose.

To provide policy and procedures for the evaluation and mitigation of adverse environmental impacts to wetlands and natural habitat resulting from Federal-aid projects funded pursuant to provisions of title 23, U.S. Code. These policies and procedures shall be applied by the Federal Highway Administration (FHWA) to projects under the Federal Lands Highway Program to the extent such application is deemed appropriate by the FHWA.

### §777.2 Definitions.

In addition to those contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this part:

**Biogeochemical transformations** means those changes in chemical compounds and substances which naturally occur in ecosystems. Examples are the carbon, nitrogen, and phosphorus cycles in nature, in which these elements are incorporated from inorganic substances into organic matter and recycled on a continuing basis.

**Compensatory mitigation** means restoration, enhancement, creation, and