

**Fixing America’s Surface Transportation (FAST) Act:
Questions and Answers Related to
Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites**

**Federal Highway Administration, Federal Railroad Administration,
and Federal Transit Administration**

March 30, 2016

DIVISION A – SURFACE TRANSPORTATION

TITLE I – FEDERAL-AID HIGHWAYS

Subtitle C – Acceleration of Project Delivery

Section 1301 - Satisfaction of requirements for certain historic sites.

Section 1302 - Clarification of transportation environmental authorities.

Section 1303 - Treatment of certain bridges under preservation requirements.

Question 1: When may the agencies rely on these sections?

Answer 1: The Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA) (collectively, the “agencies”)¹ may rely upon the provisions in these sections of the FAST Act (Pub. L. 114-94) for any final agency action taken on or after the date of enactment (December 4, 2015).

Question 2: How do sections 1301, 1302, and 1303 of the FAST Act affect Section 4(f) analysis for highway, transit, and rail projects?

Answer 2: Section 1301 (23 U.S.C. 138(c)/49 U.S.C. 303(e)) requires the Secretary of Transportation to align, to the maximum extent practicable, Section 4(f) with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108). The agencies will review their Section 4(f) procedures to satisfy this requirement and will announce any changes that result in future guidance.

Section 1301 (23 U.S.C. 138(c)/49 U.S.C. 303(e)) also creates an alternative process for the agencies to comply with Section 4(f) for historic sites when the FHWA, FRA, or FTA determines there is no feasible and prudent alternative to avoid use of a historic site. The alternative process is optional and if used, would require additional concurrence points with other Federal or State entities. However, the agencies may continue to rely upon their current procedures to comply with Section 4(f).

¹ Although Section 4(f) applies to all agencies within the U.S. Department of Transportation, these Qs and As are focused on their applicability to FHWA, FRA, and FTA, specifically.

Section 1302 (23 U.S.C. 138(d)/49 U.S.C. 303(f)) clarifies that “Section 4(f)” is an acceptable reference for 23 U.S.C. 138 and 49 U.S.C. 303; and that “Section 106” is an acceptable reference for 54 U.S.C. 306108.

Section 1303 (23 U.S.C. 138(e)/49 U.S.C. 303(g)) exempts from Section 4(f) review the use of those historic, common post-1945 concrete or steel bridges and culverts that are exempt from individual review under Section 106 under the Advisory Council on Historic Preservation (ACHP) Program Comment published at 77 Fed. Reg. 68790 (Nov. 16, 2012).

TITLE XI – RAIL

Subtitle E – Project Delivery

Section 11502 – Treatment of improvements to rail and transit under preservation requirements.

Question 3: When may the agencies apply this section?

Answer 3: The agencies may apply the section 11502 exemption to proposed uses of Section 4(f) property by projects for which the environmental review process was initiated after December 3, 2015. However, this exemption will not apply to any project, regardless of when it was initiated, for which the Secretary of Transportation approved the funding arrangement under title 49, United States Code, before December 4, 2015. [FAST Act § 11503(a), 49 U.S.C. 24201(e)]

Question 4: What does section 11502 exempt?

Answer 4: Section 11502 (23 U.S.C. 138(f)/49 U.S.C. 303(h)) exempts from Section 4(f) review the use of railroad and rail transit lines, or elements thereof, that are in use or that were historically used for the transportation of goods or passengers. The exemption applies regardless of whether the railroad or rail transit line, or element thereof, is listed on or is eligible for listing on the National Register of Historic Places. The exemption has two important exceptions:

- First, the exemption does not apply to rail stations or transit stations; and
- Second, the exemption does not apply to bridges or tunnels located on a rail line that has been abandoned under the process described in 49 U.S.C. 10903 or a transit line that is not in use.

For purposes of applying this exemption, the following resource types are not considered abandoned or not in use, and thus the exemption applies:

- Railroad and transit lines over which service has been discontinued under the process described in 49 U.S.C. 10903;
- Railroad and transit lines that have been railbanked (a voluntary agreement between a railroad company and a trail agency to use an out-of-service rail corridor as a trail until a railroad might need the corridor again for rail service as described in 16 U.S.C. 1247(d)); and
- Railroad and transit lines that have been otherwise reserved for the future transportation of goods or passengers.

Question 5: Does the Section 4(f) exemption described in section 11502 satisfy the requirement for Section 106 consultation?

Answer 5: No. Section 11502 of the FAST Act does not satisfy the requirements for consultation under Section 106 for undertakings that affect historic properties.

Section 11504 – Railroad rights-of-way

Question 6: When does the Section 106 exemption of railroad rights-of-way take effect?

Answer 6: Section 11504 (49 U.S.C. 24202) directs the Secretary of Transportation, within one year of enactment, to provide the ACHP with a proposed exemption of railroad rights-of-way consistent with the existing exemption for the Interstate Highway System (70 Fed. Reg. 11928 (Mar. 10, 2005)). The agencies cannot use this exemption until the ACHP has taken action on the proposed exemption.