



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Subject: **ACTION**: Guidance for Determining *De Minimis*
Impacts to Section 4(f) Resources

Date: December 13, 2005

From: Cynthia J. Burbank *Cindy Burbank*
Associate Administrator, Planning, Environment
and Realty, FHWA

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Reply to
Attn. of:
HEPE

To: FHWA Division Administrators
FTA Regional Administrators

Section 6009(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, amended existing Section 4(f) legislation at Section 138 of Title 23 and Section 303 of Title 49, United States Code, to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). This is the first substantive revision of Section 4(f) legislation since passage of the U.S. Department of Transportation Act of 1966. This revision provides that once the U.S. Department of Transportation (DOT) determines that a transportation use of Section 4(f) property, after consideration of any impact avoidance, minimization, and mitigation or enhancement measures, results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required and the Section 4(f) evaluation process is complete.

Section 6009(c) of SAFETEA-LU requires the U.S. DOT to conduct a study and issue a report on the implementation of the new Section 4(f) provisions. The study will include evaluation of: 1) the implementation processes developed and the resulting efficiencies; 2) the post-construction effectiveness of any impact mitigation and avoidance commitments adopted as part of the projects; and 3) the number of projects determined to have *de minimis* impacts, including information on the location, size, and cost of the projects. The initial study and report will address the first three years of implementation. The Federal Highway Administration (FHWA) Division and Federal Transit Administration (FTA) Regional Offices should maintain a record of the projects for which *de minimis* findings were made and track the progress of those projects in order to facilitate the future evaluation of the post construction effectiveness of any commitments of mitigation made as part of the *de minimis* finding. Additional guidance and information regarding the study and report will be provided in the future.



For basic information regarding Section 4(f) applicability and compliance, please consult the March 1, 2005, FHWA Section 4(f) Policy Paper. This guidance will be incorporated in a future revision of the Section 4(f) Policy Paper. Although the Section 4(f) Policy Paper was developed by FHWA, FTA and other modal administrations generally follow the guidance, where appropriate and applicable to transit projects and other proposals. For additional information or assistance please contact Lamar Smith, FHWA at lamar.smith@fhwa.dot.gov or 202-366-8994; or Joseph Ossi, FTA at joseph.ossi@fta.dot.gov or 202-366-1613.

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