



Florida Department of Transportation

**RICK SCOTT
GOVERNOR**

605 Suwannee Street
Tallahassee, FL 32399-0450

**JIM BOXOLD
SECRETARY**

January 9, 2015

Mr. James Christian, P.E.
Florida Division Administrator
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Attn: Mr. Buddy Cunill

Subject: Interim Guidance for *de minimis* process/Section 4(f) *de minimis* Findings (Approvals)

Dear Mr. Christian:

Enclosed is the final version of the Section 4(f) *de minimis* guidance paper for Florida. This paper serves as interim guidance for processing and reaching Section 4(f) *de minimis* findings and approvals from FHWA. The SEMO has developed this guidance in coordination with Florida Division of FHWA. This guide will also be included in the updated Part 2, Chapter 13 Chapter of the FDOT's PD&E Manual.

For your agency's final review and concurrence.

Sincerely,

Roy Jackson
State Cultural Resources Coordinator
Phone: (850) 414-5323
roy.jackson@dot.state.fl.us
FAX: (850) 414-4443

Buddy Cunill 1-13-15
FHWA Concurrence

cc: Karen Brunelle, FHWA
Cathy Kendall, FHWA
Marjorie Kirby, FDOT
Xavier Pagan, FDOT
James M. Wood, FDOT
Christie Pritchard, Pritchard Environmental

Section 4(f) *de minimis* process for Section 4(f) *de minimis* Findings (Approvals)

Part A: Section 4(f) *de minimis* process overview

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Part A: Section 4(f) *de minimis* process overview:

In 2005, Congress authorized the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU). This Act included the first major reform to the provisions of Section 4(f) in over a decade. In this Act, Congress amended existing Section 4(f) legislation to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). In 23 CFR Part 774, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) established a process for making and documenting *de minimis* impact determinations for minor uses of Section 4(f) properties by proposed transportation projects.

The analytical detail, coordination requirements, and associated research and review times of Individual and Programmatic 4(f) Evaluations greatly exceed those of *de minimis* findings. *De minimis* approvals require neither the prudent and feasible avoidance alternative analysis of the other approval options nor does it require meeting the “all possible planning to minimize harm” standard. This means that the *de minimis* approval option represents a key opportunity to expedite project delivery and better serve the interests of the public, the transportation agencies, and the government entities which manage or own the protected properties.

In order to utilize the *de minimis* provision, the law and the regulations require FHWA to determine that the land being acquired represents a relatively small portion of the protected property and that the proposed acquisition of land from the property does not result in adverse effects to the activities, features, and attributes (AFAs) or to the character defining elements which qualify the resource for protection under Section 4(f). In reaching this determination, FHWA considers the mitigation and minimization measures incorporated into the project as well as any proposed enhancements to the property. As a result, FHWA must have documentation showing that: (1) FHWA has assessed the net harm of the proposed action on the property in question and concluded that the resulting impacts are *de minimis*, (2) the public has been offered the opportunity to comment on the effects of the proposed acquisition and net impacts on the AFAs of the protected property, and (3) the Official With Jurisdiction (OWJ) has agreed with this assessment and is aware of the public opinions. Once this has occurred, the FHWA may determine that the use of Section 4(f) property involves only a *de minimis* impact on the property and can approve the 4(f) use of the property when it approves the proposed undertaking.

As an applicant for federal transportation assistance, FDOT collects and provides FHWA with the documentation necessary to substantiate a *de minimis* approval for any proposed undertaking which should qualify for one. In addition, FDOT coordinates with FHWA for the approval of a *de minimis*. Therefore, FDOT's State Environmental Management Office (SEMO) has consulted with the Florida Division of FHWA to develop a standardized *de minimis* process for FDOT projects. This process is provided below and is based upon the regulations provided in 23 CFR 774 and in the guidance outlined in the FHWA July 2012 Policy Paper. Both of these sources are very flexible in some areas of decision-making and very strict in others. This process also differs in some important ways when applying *de minimis* to a historic property from when applying it to one of the other protected resource types. Keeping these things in mind, FDOT and FHWA developed a stepped approach to provide a reliable framework for reaching and documenting *de minimis* determinations. As a part of this, we have established a standard format for the cover page, a cover check list for the submission to FHWA, and a sample cover letter for the OWJ of non-historic properties.

The detail of the materials need to reach a *de minimis* finding can vary greatly from project to project and property to property. There are some things which will be required for all findings and some which are only applicable in particular cases. Most of the written material required for the FHWA finding may be communicated via email, but not always. To be certain of the level of detail needed, careful coordination with FHWA is strongly recommended once FDOT officials have completed some early coordination with the OWJ and believe the proposed project may qualify for a *de minimis* approval.

The cover or signature page and document/materials checklist are attached to this guidance. The five-step process is provided below. Although the general principals of *de minimis* are the same for all Section 4(f) protected resources, the application of *de minimis* to historic properties differs from those for parks, recreational areas, and waterfowl and wildlife refuges in three important ways.

First, the basic criteria used to make these determinations as set forth in the regulations at 23 CFR Part 774 (17) as:

For historic sites, *de minimis* impact means that the Administration has determined, in accordance with 36 CFR part 800 [Regulations implementing Section 106 of the National Historic Preservation Act (NHPA)] that no historic property is affected by the project or that the project will have "no adverse effect" on the historic property in question (see Part 2 Chapter 12 of the Department's Project Development and Environment (PD&E) Manual for more information on department and federal requirements related to compliance with historic preservation laws, rules, executive orders, etc.).

For parks, recreation areas, and wildlife and waterfowl refuges, a *de minimis* impact is one that will not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f).

Second, FHWA must provide a specific opportunity for the public to review and comment on the impacts of the proposed undertaking on the AFAs of Parks, Recreational Areas, Wildlife and Waterfowl Refuges. For historic properties, however, compliance with 36 CFR Part 800 to the

appropriate level of public engagement in the Section 106 process suffices to accomplish this effort. Therefore no specific or independent effort to provide this public opportunity to review and comment is required for historic properties.

Third, the coordination with the OWJs for historic properties, such as the public opportunity to review and comment, occurs within the Section 106 process. However, specific communications with the OWJs must serve this purpose for Park, Recreational Area, and Refuge properties.

Part B: Following is the stepped process for pursuing a *de minimis* determination from FHWA:

1. *Determine applicability of Section 4(f) and assess potential for a *de minimis* approval:*

This step involves determining if Section 4(f) applies to the resource and, if so, making a preliminary assessment of the potential effects of the project to the property as well as identifying possible minimization and mitigation efforts which could eliminate or significantly lessen these impacts.

2. *Initiate coordination with OWJ and FHWA:*

This step involves discussing the project with the OWJ and FHWA to obtain their preliminary opinions regarding the impacts to the protected property expected from the implementation of the proposed undertaking. This should include identifying any mitigation and minimization efforts the OWJ, FDOT, and FHWA determine to be appropriate and reasonable and which diminish the negative impacts of the proposed undertaking to the point where the undertaking does not adversely affecting the AFAs of the property. Once FDOT, FHWA, and the OWJ agree that the project could be implemented in a manner which may not result in adverse effects to the AFAs of the protected property (or result in a no effect or no adverse effect to a historic property as per Section 106 of the 1966 NHPA), FDOT should pursue a *de minimis* finding from FHWA. At this point, FDOT and FHWA must inform the OWJ in writing that FHWA and FDOT intend to pursue a *de minimis* determination for the use of the property in question. For non-historic properties, this notification should inform the OWJ that such a determination will be made following an opportunity for public review and comment. FDOT and FHWA must develop a plan to offer the public an opportunity to review and comment regarding the effects of the proposed undertaking to the AFAs of the Section 4(f) property.

3. *Providing public notice and opportunity for comment:*

As set forth in 23 CFR Part 774.5 (b) (2), the public involvement requirements associated with the specific NEPA document and process will, in most cases, be sufficient to satisfy the public notice and comment requirements for the *de minimis* impact finding. Therefore, the District should incorporate this opportunity for public comment into the department's existing public involvement activities as developed for the project (see Part 1 Chapter 11 of the FDOT's PD&E Manual for the Department's public involvement process).

For those actions that do not routinely require public review and comment (such as certain categorical exclusions and re-evaluations) but which require a *de minimis* impact finding, a separate public notice and opportunity for review and comment will be necessary.

For historic properties, as set forth in 23 CFR Part 774.5 (b) (1) (iii), the public notice and opportunity to comment occurs in compliance with the Section 106 process. Therefore, a public notice and opportunity to comment beyond the requirements of 36 CFR Part 800 is not required. When providing the State or Tribal Historic Preservation Officer (SHPO/THPO) a recommendation for a finding of no effects to historic properties or for no adverse effects to the property being used, make certain to inform these officials that their concurrence with these findings mean that FHWA may choose to pursue a *de minimis* finding for the use of land from the historic property in question. Since the public involvement process for NEPA compliance is often used to meet the Section 106 public participation requirements, be careful when sequencing the Section 4(f) decision with the Section 106 and NEPA decisions.

For public parks, recreation, and wildlife or waterfowl refuge properties, this step involves coordinating with FHWA to determine the most appropriate method for informing the public of the relationship of the proposed action to the protected resource and for soliciting comments from the public, and then carrying out the effort. The Section 4(f) regulations are flexible in regard to providing this public opportunity to comment. Therefore, the District, in consultation with FHWA, should identify and use the most appropriate method for: 1) the type of resource involved and 2) the public groups which would be most concerned about impacts to the property. An example would be residents living near a neighborhood playground or the geographically dispersed users of a disc golf course.

Whatever means or opportunities are utilized, the project record should reflect that the public ***has been provided the relevant information and been asked to comment on the impacts of the proposed project on the protected AFAs of the property.*** For example, when using a public workshop format the participants must be provided the relevant information of the relationship of the project to the protected resource and asked for their opinions on this matter. The term *de minimis* need not be used when seeking the public's opinion. Normally, this should occur as a normal part of the Department's public involvement opportunities as set forth in Part 1, Chapter 11 of the PD&E Manual.

There may be times when a separate effort must be conducted specifically to provide this notice and opportunity to comment, but this should be on relatively few occasions. Depending on the specific situation, the nature of the property and the relationship between the project and the property, the Department may offer the public an opportunity to comment through newspaper announcements, direct mailings, or flyers placed at the property so that users can more easily access them. In order to avoid any confusion, FDOT should keep a record of FHWA agreement on the appropriateness and timing of the method adopted as well as the public comments received.

4. ***Inform OWJ of FHWA findings and obtain OWJ agreement to assessment of impacts:***

This step involves a written notification and written concurrence along with sufficient information to support the finding of no adverse impacts to the AFAs of the property for Parks, Recreational Areas, and Refuges or a finding of no historic properties affected or no adverse effects for historic properties (see Attachment 1 for a sample letter to the OWJ). The supporting material should include a description of the resource and the AFAs which make it a property protected by Section 4(f) or that qualify the resource as a significant historic property, an

assessment of the effects of the action upon the resource, and the minimization, mitigation, and enhancement measures incorporated into the project in order to reduce the impacts of the project to the resource (see Attachment 3 for a list of the materials needed to support the recommended finding).

This letter should include the official statement to the OWJ of FHWA's intent to proceed with a *de minimis* impact finding based upon their concurrence with the determination that the proposed use of the protected property will result in no adverse effects to the AFAs of the property. The signature block for the letter should provide the OWJ to either concur or disagree with the findings communicated in the letter. The current signature block provided to the SHPO for their concurrence under Section 106 for historic properties, for example, includes a statement informing the SHPO of the FHWA intent to pursue a *de minimis* finding in cases where the SHPO concurs with the FHWA finding of either no historic properties affected or no adverse effects to the historic property being used by the project.

For parks, recreational areas, and waterfowl and wildfowl refuges, the notification should also include any comments received from the public in Step 3. For historic properties, this step will be completed within the Section 106 process as the FHWA's no effects or no adverse effects findings and the SHPO/THPO concurrence with the FHWA's finding. In addition, for historic properties, a record of comments from the other Section 106 consulting parties and the public (if any), should also be provided as a part of the supporting materials.

5. Obtain and document FHWA determination of the Section 4(f) use as a *de minimis* use under 23 774.3 (b):

This step involves providing FHWA with appropriate information to support a *de minimis* determination so that FHWA can ensure that a *de minimis* finding is appropriate. Attachment 2 of this document has a sample transmittal letter to FHWA for concurrence with a determination or a finding for a *de minimis* use. Attachment 3 of this guidance and in the attached checklist is the final request for *de minimis* approvals/determinations from FHWA. At this point in the process, most of this material will have been created during the previous 4 steps. In most instances, the actual approval of the Section 4(f) use will not occur until FHWA issues its decision-making document [such as the Record of Decision (ROD), Finding of No Significant Impact (FONSI) or Final Environmental Impact Statement (FEIS)].

Part C: Section 4(f) *De minimis* Documentation Required:

Attached is a list of 11 items or groups of items which normally will be needed when providing materials to the OWJs, FHWA, and the public to illustrate and support a *de minimis* finding for a project's use of a protected property. During the course of the process outlined above in Sections A and B, the District will develop and collect most of the information and decision-making documents needed to submit a request to FHWA for a *de minimis* finding. These will include plans, maps, letters, and property and project descriptions which identify the AFAs of the protected property, the potential impacts to the property, and the mitigation or minimization of harm measures included into the project. Throughout the process this documentation should be maintained as it is being developed. In situations involving historic properties, this collection of descriptions, illustrations, maps, and explanations is generally contained in the Cultural Resources Assessment Survey (CRAS) Report, Section 106 Criteria of

Effects or Case Study Report, and the letters communicating FHWA, SHPO/THPO, and other consulting party findings and opinions.

Because the nature of projects and protected properties vary, the contents and detail of the information presented to FHWA for a *de minimis* approval should be specific to the particular project and property. Not every item listed below may be required for coordination with the OWJ, for presentation to the appropriate members of the public, and for FHWA to make its *de minimis* findings. For comparative purposes and ease of consultation and decision-making, information which can be presented in tables and figures should be included whenever possible. This is especially appropriate for projects with more than one *de minimis* involvement or additional non-*de minimis* Section 4(f) involvements.

For many projects, only a small amount of this information is required for FHWA to apply a *de minimis* finding. The creation of the form letters and signature pages has been done in order to guide the districts through the more involved situations. There may be situations where FHWA and the District only need the written items required by the regulations (that is, the written notification to the OWJ, the written concurrence of the OWJ, the record of the public opportunity to comment, the Section 106 finding from FHWA and the concurrence from the SHPO, etc.). Therefore, there may be many instances, where the District can request a FHWA finding via email including the appropriate documents. However, in other cases, the District and FHWA may need more extensive documentation and analysis. It is for these latter situations where more detailed material will be required. Ultimately, the extent of information needed for the *de minimis* finding should be determined by the District in consultation with FHWA. In situations where it appears unclear as to what extent the *de minimis* finding needs to be documented, the Districts should contact the Section 4(f) Coordinator in FDOT SEMO.

The attached listing is in the format of a checklist which must be included with the request for a *de minimis* determination from FHWA. The checklist is not intended to be all inclusive but to address the primary items which are generally needed for FHWA to determine when a *de minimis* approval option may be appropriate for a use of the protected property. Depending on the complexity and nature of the project, additional project specific information may be needed or some items may not be necessary. The purpose of this checklist is to document which materials are being provided to FHWA for the *de minimis* approval and which materials are not applicable for that particular submission. A sample signature/cover page is also attached to this guidance for District use in appropriate circumstance. The upcoming revision of Part 2 Chapter 13 of the PD&E Manual will also include these materials. Once FHWA signs and returns the signature/cover page it should be retained in the project file with a record of the submission to FHWA and its contents.

For situations in which a stand-alone FHWA *de minimis* approval is appropriate, then this package and the signed cover will serve as the record of the *de minimis* approval. In most cases, this cover/signature page will serve as the FHWA determination that a *de minimis* approval option is the appropriate approval option for the proposed use of the Section 4(f) property. In these later cases, the *de minimis* approval will occur concurrently with the project approval. As a consequence, whenever completing an EA/FONSI or an EIS, the environmental document must include the proposed *de minimis* use of the property in the title of the document and the rationale for this finding should be included in the appropriate sections of the document. In addition, the supporting consultation and coordination letters and findings should be referenced in those same sections and included with the project coordination and communication materials as appropriate.

In addition to the material outlined above, FHWA has developed and has been tracking the application of *de minimis* findings in the format of an Excel Spreadsheet for the State of Florida. This item and the checklist provided with this guidance are required for every *de minimis* finding request regardless of the level of coordination or other documentation needed to reach the *de minimis* finding.

Attachment 1: Concurrence Letter to OWJ

FDOT Letterhead/FHWA Letterhead (as appropriate)
And District (if applicable)
Official, Title
Address

OWJ's Name and Title
Organization
ATTN (if appropriate)

Re: Property Name
Project Designation
Request for opinion on impacts of project on property

Salutation:

Explanation of project and its relationship to the protected property and the surrounding area (and other resources, as appropriate). Reference to earlier discussions concerning the matter. Discuss Section 4(f) very generally and that we are seeking to pursue a *de minimis* approval for the use of the property and what the criteria for this are (make sure to reference net impact). Reference other laws applicable to this resource and, as appropriate, surrounding resources, and related resources in the immediate area.

Description of the AFAs of the property and description of impacts to these specifically and the property in general. Discuss measures taken to minimize and/or mitigate these impacts. Reference portions of property, if any, which have been eliminated from taking or being impacted as a result of earlier discussion or other considerations.

Discuss enhancements and improvements to the property, if any, which have been incorporated into the proposed undertaking and discuss any requests the OWJ has made for particular mitigations or enhancements as applicable.

Provide opinion and rationale for "no adverse effects to the AFA" of the property by the proposed undertaking and request concurrence from the OWJ and state that if they (the OWJ) concurs with this finding, then FHWA may determine the impacts to be *de minimis* as per 23 CFR 774.

Include Signature block for OWJ opinion/concurrence with the offered findings.

Sincerely,

cc: FHWA and SEMO

**Attachment 2: Cover/Signature Page to FHWA for *de minimis* determination/finding/approval
Jurisdiction**

FDOT Letterhead
And District

To: FHWA Division Administrator
Address

Re: Request for a *de minimis* determination/use
FM Number:
FAP Number:
Protected Property:
OWJ over the property:

Attention:

Salutation:

The attached information is being submitted to request a Section 4(f) *de minimis* determination (*change determination to approval for stand-alone de minimis approvals*) for the proposed use of the PROPERTY NAME by the above referenced project. This information is being provided pursuant to 49 U.S.C. 303 and in accordance with the provisions of 23 CFR 774.

THEREFORE:

Based upon considerations contained in the attached documents, it is determined that the use of the above referenced property results in only *de minimis* impacts to the protected resource.

CONCURRENCE:

(Change "Concurrence" to "Approval" for stand-alone de minimis approvals. Also, note standardized language used for de minimis approvals and determinations for when submitting a de minimis recommendation for approval with EAs, DEISs, FONSI, or FEISs)

On: ____/____/____

By: _____
Division Administrator
Federal Highway Administration

Attachment 3:
**Checklist of Required Items for Submission to FHWA Requesting *de minimis* Determinations, Findings,
and Approvals**

This checklist is intended to expedite FHWA review and concurrence with de minimis findings. It should be placed behind the cover of the request and can, as appropriate, be used as the table of contents. Make certain to note any items in the check list which are not included. Please add a check (or page number, if appropriate) in the blank space next to the items included in your submission. For any items that are not included, please provide a Not Applicable (N/A) and include an explanation for why the item is not included in the narrative of the request. Failure to include necessary items in the submittal may cause delays in review time and/or approval by FHWA.

Checklist of Required Items for *De minimis* Request Package

The checklist of items provided below is not meant to be all inclusive. If there are considerations which are needed in order to determine the appropriateness of a *de minimis* make certain to include them in the narrative of the request.

____ 1. Map(s) of sufficient scale to show the relationship of the proposed action to the Section 4(f) property. At minimum, this should include:

- a. Property lines of the resource or historic property boundaries for significant historic and archaeological resources.
- b. Proposed and existing right of way.
- c. Facilities, features, and other functional areas (including access points and types of access) associated with the purpose, use, and character of protected property (both man-made and natural) which qualify the property for protection under Section 4(f).
- d. The relationship between the proposed acquisition from the resource to the protected features and activity areas.
- e. Any proposed areas of temporary occupancy for the purposes of constructing the project or maintaining access for the proposed undertaking (for example, equipment staging areas, haul roads, temporary easements, etc.).
- f. Photographs may be needed to illustrate certain characteristics of the property.
- g. Depending on the size and scale of the property and the undertaking, there may be maps and figures of various scales needed to fully show the relationships.
- h. The location and nature of any other Section 4(f) involvements the project has or may have. Include other important community and environmental considerations and locations which have either influenced or may influence project design. Include a narrative of these involvements as an appendix to the document. Include additional maps as needed. Provide sufficient summaries of these resources to communicate the relationship these other resources have to the proposed actions involving the resource subject to this *de minimis* request. If the resource is described or discussed in another document, also reference that document.

____ 2. The type of property (park, refuge, historic, etc.), ownership, identification of the OWJs over the property, and, if applicable, the number of users. Identification of other laws which apply to the property such as Section 106 of the NHRP, Section 6(f) of the Land and Water Conservation Fund Act, Section 7 of the Wild and Scenic Rivers Act, and so forth.

____ 3. The total acreage of the protected property and the amount of acreage proposed for temporary and/or permanent occupation or acquisition.

____ 4. A listing and description of the protected AFAs which qualify the property for protection under Section 4(f). Use photographs as appropriate to illustrate the AFAs.

- a. For historic properties, this information can be found in the site information material provided in the CRAS Report such as the Florida site file, National Register nomination form or the site narrative in the report. Generally, the AFAs for historic properties are the site characteristics, features, and setting which contribute to its historic significance.

- b. For non-historic properties, the management plan and property map(s) should be reviewed for any attributes, features, and activity areas associated with the protected purpose(s) of the property which may be impacted by the acquisition/occupation of the protected property and its conversion into a transportation facility. With or without a management plan, the OWJ must be included in the identification of the AFAs for the property and the department official should visit the site to review and confirm the status of these AFAs.

____ 5. Unusual characteristics of the property or its features and facilities that either reduce or enhance the value of the portions of the property within or alongside the proposed acquisition/occupation which may have a bearing on evaluating the net impacts of the proposed project on the AFAs of the protected property. For example, ball fields which are subject to frequent flooding, a swing set designed specifically for younger children, a historic property where surrounding landscape features and setting are important aspects of its historical value, or a wildlife refuge where the protected animals frequently migrate to and from the refuge. Photographs may be needed to illustrate some of these.

____ 6. A discussion of all the impacts, both temporary and permanent, which may diminish or enhance the activities, features, and attributes which qualify the property for protection under Section 4(f).

____ 7. Presentation of any proposed minimization, avoidance, enhancement, and/or mitigation measures incorporated into the proposed project lessening the impacts of the project to the protected property as a whole and to the protected AFAs of the property. Photographs and plan sheets may be needed to illustrate the proposal and how the impacts have been minimized or how the property has been enhanced. A statement regarding how the measures included to minimize harm to the property diminish the project impacts sufficiently to meet the *de minimis* threshold of either (1) an impact which will not adversely affect or (2) an impact which will not adversely affect the AFAs which qualify the property for protection under Section 4(f). In cases where the project, as proposed, meets this threshold without any additional minimization or mitigation of harm, this should be stated.

- a. For historic properties, this material will be included in the documents, findings, and commitments contained in the correspondences between FHWA, FDOT and the SHPO/THPO related to compliance with Section 106 of the NHPA. If there are meeting minutes which form part of this determination, ensure that these meeting minutes and the concurrences with these meeting minutes are recorded in the project files. The record should also include the comments (if any) from the other consulting parties identified during the Section 106 process.
- b. For non-historic properties, this information will be contained in the meeting minutes and correspondences as appropriate between FHWA, FDOT, and the OWJs. As above, meeting minutes used to document determinations and decisions should be approved by all participating parties and placed into the project files.

____ 8. Include the notification to the OWJ over the resource that FHWA may pursue a *de minimis* approval option for the use of the protected property under Section 4(f). Please note that in the case of pursuing a *de minimis* approval for Parks and Recreation Areas and Wildlife and Waterfowl Refuges, this notification must be completed prior to providing the public opportunity to comment on the effects of the proposed project on the AFAs of the protected property. In addition, the notification to the OWJ

over these non-historic resources should inform the OWJ that FHWA will be offering the public an opportunity to comment on this matter.

____ 9. Description of efforts to provide the public an opportunity to comment concerning the effects of the proposed project on the AFAs of the Section 4(f) resource along with the related public responses. Include the date and associated correspondence with FHWA's agreement with the approach used. For historic properties, the public opportunity to comment occurs within the Section 106 process and requires no separate actions for the purposes of a *de minimis* approval. However, provide any of the public comments related to Section 106 effects finding for the project, if any. If there were none, state this.

____ 10. A copy of the written communication to the OWJ over the Section 4(f) resource that if they concur with an FHWA finding of either (1) a Section 106 finding of "No Effects on Historic Properties" or "No Adverse Effect" to the historic property in question or (2) that the proposed project will not adversely affect the AFAs qualifying the park, recreation area, or wildlife or waterfowl refuge for protection under Section 4(f) then FHWA may pursue a *de minimis* approval option for the use of the protected property.

**Under normal circumstances, items 10 and 11 should be contained in the same letter.*

____ 11. The communication in which the SHPO/THPO concurs with an FHWA finding of "No Historic Properties Affected" or "No Adverse Effects" to the relevant historic property or in which the OWJ over a non-historic 4(f) property concurs with a finding that the proposed project will not adversely affect the AFAs of the property. The project record must show that the OWJ was provided the public comments, if any, which the public made concerning the effects on the property on the AFAs of the protected property.

Once FHWA has issued a determination that a *de minimis* use approval is the appropriate approval option for the use of the protected property by providing the written determination to the District. This determination should be retained in the project files. If the determination occurs concurrently with the approval, then the signature/cover page (Attachment 2) should be altered appropriately prior to submission to FHWA.

Jackson, Roy

From: Jackson, Roy
Sent: Wednesday, January 21, 2015 1:08 AM
To: Hartmann, William; Williams, April; Young, Richard; Stanger, Brian; Huynh, Dat; Bogen, Kirk; Jung, Rax; Browning, Stephen; FDOT-Environmental Administrators; Marshall, Amanda; Kelley, Peggy; Bruner, Joseph Brandon; Martin, Blair; Henderson, Bill; Newman, Terri; Bogner, Todd; Becky Spain-Schwarz (RSSchwarz@pbsj.com); Braun, Steve; Kelley, Lynn; Owen, Catherine; Culhane, Barbara J; Boucle, Aileen; Varela-Margolles, Aileen; Horwitz, Martin; Hernandez, Hannah; Wood, Jim M. (CO); Brunelle, Karen (FHWA); Benito.Cunill@dot.gov; Cathy.Kendall@dot.gov; Linda.Anderson@dot.gov; Sullivan, Joseph; FDOT-ENVMCO
Cc: Cfprun
Subject: Final Section 4(f) de minimis approval guidance for FDOT/FHWA in Florida
Attachments: Final Interim de minimis Guidance with FHWA sig 1_15_15.pdf

Hello All,

Attached is the finalized guidance for seeking *de minimis* Section 4(f) use approvals on highway projects in Florida for the FDOT and FHWA. As most of you are aware, *de minimis* use approvals are a major time and cost savings option for projects using land from Section 4(f) protected properties because these approvals do not require FHWA and FDOT to prove that there is no feasible and prudent alternative to the proposed action when that action does not adversely affect the protected property. The attached guidance was developed and coordinated with FHWA and should help ensure a streamlined and reliable method of granting these expedited approvals.

The attachment includes the FHWA concurrence with the guidance, two sample cover letters (one for communication with the Officials having Jurisdiction over the property and the other for agreement/approval with FHWA). There is a brief explanation of *de minimis*, an outline of the process set forth in the regulations at 23 CFR Part 774, and a list of the most common types of materials needed to support the determination for most situations. This listing can double as the table of contents or outline for the final submittal.

Please share this guidance with your environmental consulting agents and firms as appropriate.

I hope this is of help to everyone in providing consistency across our state in documenting and reaching these findings. If anyone has any questions, please do not hesitate to contact me. If any of you believe that we need to set up a teleconference or videoconference to go over it, please let me know.

Best Regards and Thanks,

Roy

Roy Jackson
State Cultural and Recreational Resources Coordinator
Florida Department of Transportation
Phone: (850) 414-5323
roy.jackson@dot.state.fl.us
FAX: (850) 414-4443