

SECTION 4(f) De MINIMIS DETERMINATION PROCESS

For parks, recreation areas, wildlife or waterfowl refuges

1. Local Public Agency (LPA) contacts the State Aid Federal Project Development staff to discuss the applicability of the De minimis Section 4(f). Each 4(f) property is evaluated individually. State Aid staff may consult with the FHWA.
2. LPA proposer does some initial research and then coordinates with the Official with Jurisdiction (OWJ) to:
 - Identify Section 4(f) property activities, attributes, characteristics.
 - Explore and implement, as appropriate, measures to minimize impacts to the resource.
 - Informally cover preliminary assessment of effects to the OWJ's resource.
 - Identify mitigation, if appropriate, for the anticipated impacts + any property enhancements to maximize likelihood of a de minimis level of impact (i.e., a low net impact.)
3. LPA proposer:
 - Writes up overview of coordination with OWJ.
 - Attaches this overview to draft of [De Minimis Determination Notice of Intent Request](#) form.
 - Submits 'De Minimis Determination Notice of Intent Request' form to DSAE.
4. DSAE reviews/recommends and submits **e-copy** to State Aid for Local Transportation (SALT).
5. SALT reviews/recommends and submits **e-copy** to Federal Highway Administration (FHWA) requesting preliminary determination.
6. FHWA reviews and if approves, sends signed determination to SALT. SALT transmits to LPA, OWJ, and DSAE.
7. LPA includes De Minimis write-up in the environmental document.
8. LPA advertises an opportunity for the public to review and comment on the effects of the project **on the protected activities, features, and attributes of the resource**. If the project will be publishing an Ad for Opportunity for Public Hearing or Ad for Public Hearing for the project, the de minimis ad can be included in that, or if not, a separate ad can be published with a **14 day comment period**: see [De Minimis Public Notice Sample](#).
9. Any comments received should be discussed with SALT staff and included in the environmental document. If any comments or concerns disagree with the intent to make a De Minimis determination further discussion with OWJ and FHWA is required.
10. **Following the comment period**, LPA prepares a **draft** [Request for Concurrence on Effects to Section 4\(f\) Resource Letter](#).

11. This concurrence letter is forwarded to the FHWA through the DSAE and SALT.
12. FHWA finalizes the letter signs and forwards to the OWJ for signature.
13. If OWJ concurs, they sign and return the form to FHWA. This letter becomes the FHWA issuance of a Section 4(f) De Minimis Determination and is attached with all other De Minimis correspondence to the NEPA document.
14. If OWJ does not concur, all parties coordinate to find a 4(f) path that is acceptable to all parties.

BACKGROUND

De minimis, in a more formal legal sense, means something which is unworthy of the law's attention. In [risk assessment](#), *de minimis* refers to a level of risk which is too small to be concerned with.

23 CFR 774.3 Section 4(f) approvals.

The Administration may not approve the use, as defined in §774.17, of Section 4(f) property unless a determination is made under paragraph (a) or **(b)** of this section.

23 CFR 774.3 (b) The Administration determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) committed to by the applicant, will have a *de minimis* impact, as defined in §774.17, on the property.

23 CFR 774.17

De minimis impact.

(1) For historic sites, *de minimis* impact means that the Administration has determined, in accordance with 36 CFR part 800 that **no historic property is affected** by the project or that the project will have **"no adverse effect"** on the historic property in question.

(2) 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).

FHWA Guidance for Determining De Minimis Impacts to Section 4(f) Resources
www.environment.fhwa.dot.gov/legislation/section4f/4fpolicy.aspx.

See attachment for:

FHWA Questions and Answers on the Application of the Section 4(f) De Minimis Impact Criteria

www.environment.fhwa.dot.gov/legislation/section4f/4fpolicy.aspx.



23 CFR 774 Project proposer:

- Writes up overview of coordination with OWJ
- Attaches overview to draft of 'De Minimis Determination Notice of Intent Request' form
- Submits 'De Minimis Determination Notice of Intent Request' form to OES or SALT, as appropriate Section 4(f) Regulations
<https://www.law.cornell.edu/cfr/text/23/part-774>

FHWA Newsletter March 2008—

https://www.environment.fhwa.dot.gov/pubs_resources_tools/publications/newsletters/mar08nl.aspx