



U. S. DEPARTMENT
OF TRANSPORTATION

Pennsylvania Division

228 Walnut Street, Room 508
Harrisburg, PA 17101-1720

Federal Highway
Administration

In reply refer to:

HPD-PA

De minimis Section 4(f) Impact
23 CFR 774 and FHWA 4(f) Policy Paper
State Historic Preservation Office Notice
and Agreement
3/24/2017

Ms. Andrea MacDonald
PA State Historic Preservation Officer
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120-0093

The Federal Highway Administration Pennsylvania Division (FHWA) is updating its March 1, 2006 letter regarding *de minimis* impact findings under Section 4(f) of the USDOT Act of 1966. As detailed in 23 CFR 774 and the FHWA's Section 4(f) Policy Paper (2012), there is increased flexibility with respect to minor transportation project impacts to properties protected under Section 4(f), including historic properties. It simplifies the processing and approval of federal transportation projects that have a *de minimis* impact on lands protected by Section 4(f). For historic properties, the FHWA may determine that an impact is *de minimis* only after receiving *written* concurrence from the State Historic Preservation Office (SHPO) that the project will result in "no adverse effect" or "no historic properties affected" under Section 106 of the National Historic Preservation Act.

23 CFR 774.5(b)(1) and the FHWA Section 4(f) Policy Paper Questions 12B and 12D clarify the requirements for written concurrence by the SHPO as follows:

Question 12B: How should the concurrence of the SHPO/THPO, and ACHP if participating in the Section 106 determination of effect, be documented when the concurrence will be the basis for a *de minimis* impact finding?

Answer: Section 4(f) requires that the SHPO/THPO, and ACHP if participating, must concur in writing in the Section 106 determination of no adverse effect (See 23 CFR 774.5(b)(1)(ii)). The request for concurrence in the Section 106 determination should include a statement informing the SHPO/THPO, and ACHP if participating, that FHWA or FTA intends to make a *de minimis* impact finding based upon their concurrence in the Section 106 determination.

Under the Section 106 regulation, if a SHPO/THPO does not respond within a specified time frame FHWA may move forward to the next step of the Section 106 process but Section 4(f) explicitly requires their written concurrence (See 23 CFR 774.5(b)(1)(ii)). It is therefore recommended that transportation officials share this guidance with the SHPOs and THPOs in their States so that these

officials fully understand the implication of their concurrence in the Section 106 determinations and the reason for requesting written concurrence.

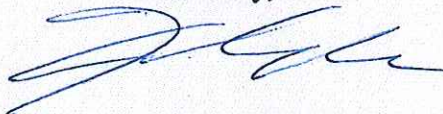
Question 12D: Certain Section 106 programmatic agreements (PAs) allow the lead agency to assume the concurrence of the SHPO/THPO in the determination of *no adverse effect* or *no historic properties affected* if a response to a request for concurrence is not received within the time period specified in the PA. Does such concurrence through non-response, in accordance with a written and signed Section 106 PA, constitute the written concurrence needed to make a *de minimis* impact finding?

Answer: In accordance with the provisions of a formal Section 106 programmatic agreement (PA), if the SHPO/THPO does not respond to a request for concurrence in the Section 106 determination within a specified time frame, the non-response together with the written PA, will be considered written concurrence in the Section 106 determination that will be the basis for the *de minimis* impact finding by FHWA. The FHWA must inform the SHPO/THPO who are parties to such PAs, in writing, that a non-response which is treated as a concurrence in a no adverse effect or no historic properties affected determination will also be treated as the written concurrence for purposes of the FHWA *de minimis* impact finding (see 23 CFR 774.5(b)(1)(ii)). It is recommended that this understanding of the parties be documented via formal correspondence or other written means and appended to the existing PA. There is no need to amend the PA itself.

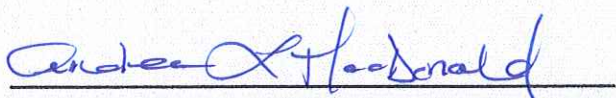
By transmittal of this letter, the FHWA is notifying your office of our intent to determine Section 4(f) *de minimis* use for those projects in which the SHPO has concurred that the project will have no adverse effect or no effect to historic properties or when your office has not replied within the appropriate timeframe with written concurrence. This will also apply to projects that include the replacement of a bridge that contributes to a National Register-eligible or listed Historic District and requires a conversion to transportation use from another contributing property immediately adjacent to the bridge for placement of abutments, wingwalls, or minor roadway realignment. The use of the contributing property, when determined through the Section 106 process to have no adverse effect or no effect to the Historic District with reference to that contributing property separately, will be considered *de minimis* under Section 4(f). With regard to the project's area of potential effect, which includes the bridge and surrounding necessary acquisitions of right-of-way, the project's effect under Section 106 will be considered in totality.

By the following signature, the SHPO acknowledges it has been notified of the intent of the FHWA to make *de minimis* findings for specific use of historic properties in these projects, and agrees that when a no adverse effect or no historic properties affected determination is made the *de minimis* use is appropriate for these historic properties.

Sincerely,



Keith Lynch
Director of Program Development



Representative, State Historic Preservation Office

3/27/2017
Date