

**Memorandum of Understanding**  
**Between**  
**Federal Highway Administration, Colorado Division and Colorado Department of**  
**Transportation**  
**For**  
**Section 4(f) *De Minimis* and Section 4(f) Exceptions Processes**

**Background**

Section 4(f) of the Department of Transportation Act of 1966, codified in federal law at 23 U.S.C. § 138 and 49 U.S.C. § 303, is administered by the Federal Highway Administration (FHWA). FHWA has the responsibility to ensure that Section 4(f) compliance occurs when there is a project using federal transportation money or otherwise requires FHWA approval. In the implementation of the Federal-aid highway program, the Colorado Department of Transportation's (CDOT) current Section 4(f) compliance process uses a large number of *de minimis* findings (23 CFR 774.17) and/or exceptions (23 CFR 774.13) for projects involving minor impacts to parks, recreation areas, wildlife and waterfowl refuges, and historic sites. Prior to this agreement, *de minimis* impact determinations were outlined in correspondence from CDOT to FHWA and FHWA's signature on that correspondence represented approval of the finding. For exceptions, FHWA currently concurs that the exception was applied correctly by responding to an email or by their signature on an environmental document. These processes were sometimes cumbersome and could add time to the project schedule.

At CDOT, responsibility for non-historic Section 4(f) compliance is delegated to the non-historic Section 4(f) specialist at the Environmental Programs Branch (EPB) at CDOT headquarters for impacts to parks, recreational areas, and wildlife and waterfowl refuges. If regional environmental staff include a non-historic Section 4(f) specialist, then that specialist would have the authority to clear projects that involve non-historic Section 4(f) properties for their particular region. For historic Section 4(f) properties, CDOT historians at EPB, Region 1, and Region 4 have the authority to clear projects that impact historic properties. For archaeological sites, CDOT archaeologists at EPB have the authority to clear projects that impact archaeological sites.

**Purpose**

This agreement has been developed to streamline the documentation and coordination required for minor Section 4(f) impacts from CDOT and local agency projects. The agreement will establish a procedure to be used when submitting Section 4(f) *de minimis* findings and/or use of exceptions to FHWA for signature or for informational purposes.

## Process

Generally, *de minimis* findings and application of exceptions will be completed using forms developed by CDOT and FHWA. The clearance forms will standardize the format and delivery of information to FHWA. There are different forms for various analyses which include:

- Historic *de minimis*
- Non-historic *de minimis*
- Historic Transportation Facilities Exception [23 CFR 774.13(a)]
- Archaeological Site Exception [23 CFR 774.13(b)]
- Late Designation Exception [23 CFR 774.13(c)]
- Temporary Occupancy Exception [23 CFR 774.13(d)]
- Trails, Paths, Bikeways, and Sidewalks Exception [23CFR 774.13(f)]
- Enhancement Exception [23 CFR 774.13(g)]

Please note that there is no form for the Park Road and Parkway Exception [23 CFR 774.13(e)].

The use of the *de minimis* or exception forms for certain resources does not preclude the need for other analyses (programmatic or individual Section 4(f) analyses) for other resources, as appropriate.

The CDOT Section 4(f) specialist, historian, or archaeologist will continue to review project impacts and mitigation on Section 4(f) resources as they did prior to this process agreement. They will continue to consult with FHWA if there are questions about Section 4(f) applicability or level of Section 4(f) compliance required.

Once all required documentation is obtained (i.e. project impact and mitigation details, any correspondence or concurrence from the Official(s) with Jurisdiction, public comments, etc.), the appropriate form should be completed and signed by the appropriate CDOT specialist. The form along with supporting documentation will be emailed to the appropriate FHWA Area Engineer and to the FHWA Environmental Program Manager.

If the Section 4(f) resource is being cleared using one of the exceptions (not including the Late Designation Exception), this process will conclude the Section 4(f) compliance process for the subject resources.

For *de minimis* findings or the Late Designation Exception, once the form is sent to FHWA, the Division Administrator or designee signature will be required on the form. The FHWA Area Engineer or Environmental Program Manager will then return the signed form to CDOT in order for the Section 4(f) compliance process to be complete for the subject resources.

## Additional Provisions


FHWA retains full federal authority and responsibility on all federal aid projects. For any Section 4(f) form submitted, FHWA always has the right to request more information about the project or its effects to the Section 4(f) resource. In addition, FHWA can also request to formally concur that an exception is applied correctly, and can, if necessary, determine that an exception is not appropriate.

CDOT will be responsible for tracking the use of the forms for the Section 4(f) exceptions and *de minimis*, and providing an annual report. On an annual basis, both FHWA and CDOT will discuss and assess the functionality of this clearance process at a Section 4(f) Working Group session. FHWA can request an audit of this process at any time. CDOT or FHWA has the right to terminate this agreement by providing thirty (30) days written notice to the other party.

The undersigned agree to work cooperatively to implement and conduct the streamlined Section 4(f) clearance process described above.

  
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John M. Cater, Division Administrator  
FHWA Colorado Division

6/1/15  
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Date

  
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Shailen P. Bhatt, Executive Director  
Colorado Department of Transportation

5/28/2012  
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Date

