

APPENDIX C

SECTION 4(f) DE MINIMIS IMPACT ANALYSIS

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WEST VIRGINIA DEPARTMENT OF TRANSPORTATION HDR Engineering Inc.
Weirton, W VA

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

August 9, 2011

Ms. Ruby A. Greathouse, President
Brooke-Pioneer Trail Association, Inc.
Post Office Box 401
Wellsburg, West Virginia 26070

Dear Ms. Greathouse:

Brooke County, WV and Jefferson County, OH
Proposed Ohio River Bridge
State Project No. S205-2/23-0.00 00
Federal Project No. HPP-0223(003)D
Section 4(f) de minimis Impact Analysis

This letter documents compliance with Section 4(f) of the Department of Transportation Act (49 USC 303) (Section 4(f)) for the temporary closure of the Brooke-Pioneer Trail during the construction of the proposed new bridge over the Ohio River, just south of Wellsburg. The Brooke-Pioneer Trail is protected by Section 4(f) since it is a publicly owned recreational resource. Regulations adopted by the Federal Highway Administration (FHWA) provide for approval of temporary closures like this one where the impacts on the trail are minor or "*de minimis*" when three things occur as detailed in the attachment. They are as follows:

1. The transportation use of the trail, together with any impact avoidance, minimization, and mitigation incorporated into such project, does not adversely affect the activities, features, and attributes that the qualify the trail for protection under Section 4(f).
2. The official with jurisdiction over the trail is informed of FHWA's *de minimis* impact finding and has concurred with such finding in writing.
3. The public has been afforded an opportunity to review and comment on the effects of the transportation project on the protected activities, features, and attributes of the trail.

During the time the bridge is being constructed, the trail will need to be closed. Before any closure occurs, signs will be posted at least 14 days in advance advising the users of the trail that the closure will occur. A buffer area of approximately 25 feet will be established around the American Elm tree canopy that stands adjacent to the trail. No construction or staging activities will be allowed in the buffer area. Any damage to the paved surface of the trail or any other features of the trail will be repaired at the end of construction of the bridge so that all of the uses and activities of the trail will be reestablished when the trail is reopened.

E.E.O./AFFIRMATIVE ACTION EMPLOYER

Ms. Ruby Greathouse, President

August 9, 2011

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Please indicate your agreement with the contents of this letter by signing the letter on the line over your name. By signing, you will be indicating that the temporary closure, together the suggested mitigation, does not affect the activities, features and attributes that qualify the Brooke Pioneer Trail for protection under Section 4(f).

Very truly yours,

Gregory L. Bailey, P.E.
Director
Engineering Division

By: *Ben L. Hark*

Ben L. Hark
Environmental Section Head

ACCEPTED:

Ruby Greathouse, President
Brooke-Pioneer Trail Association, Inc.

DATED:

E.E.O./AFFIRMATIVE ACTION EMPLOYER

**Section 4(f) *De Minimis*
Impact Analysis**

Section 4(f) *de minimis* Impact Analysis

Proposed Ohio River Bridge State Project S205-2/23-0.00 00 Federal Project HPP-0223(003)D Brooke County, West Virginia Jefferson County, Ohio

Section 4(f) Regulations

Under Section 4(f) of the Department of Transportation Act of 1966 (49 USC Section 303 and 23 CFR Part 774), the Federal Highway Administration (FHWA) “may not approve the use of land from a significant publicly-owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

- (i) There is no feasible and prudent alternative to the use of land from the property; and
- (ii) The action includes all possible planning to minimize harm to the property resulting from such use.”

A “use” under Section 4(f) can be any of the following:

- a direct use – property is permanently incorporated into the transportation project;
- a temporary use – property is temporarily occupied in a way that is adverse to the property’s purpose; or
- a constructive use – occurs when “the transportation project does not incorporate land from a Section 4(f) property, but the project’s proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the property are substantially diminished.” (23 CFR Section 774.15(a)).

Federal law (SAFETEA-LU Section 6009(a)) amended Section 4(f) to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). FHWA subsequently issued guidance for making findings of *de minimis* impact and also amended its Section 4(f) regulations to provide for these findings (23 CFR 774.3(b), 774.5(b), 774.17).

An impact to a park, recreation area, or wildlife and waterfowl refuge may be determined to be *de minimis* if:

- (i) The transportation use of the Section 4(f) resource, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f);

- (ii) The official(s) with jurisdiction over the property are informed of FHWA's intent to make the *de minimis* impact finding based on their written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f); and
- (iii) The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource.

Under the new provisions, once the United States Department of Transportation determines that a transportation use of Section 4(f) property results in a *de minimis* impact, analysis of avoidance alternatives is not required and the Section 4(f) evaluation process is complete.

Brooke-Pioneer Trail

The former Panhandle Railroad Company/Penn Central/Conrail Railroad once ran parallel to the Ohio River between WV Route 2 (WV 2) and the river. The segment of the railroad that passes through the project area was developed into a rails-to-trails project and is now known as the Brooke-Pioneer Trail. The West Virginia Department of Transportation is the current owner of the trail facility and issued a permit to the County Commission of Brooke County for use of the trail on May 24, 1989 (Permit #6 89 0200). The trail is maintained by the Brooke-Pioneer Trail Association.

The 3.5 mile paved trail starts near the Wellsburg Sewage Treatment Plant, north of the project area, and extends south to Beech Bottom. This trail now connects with the Yankee Trail to the north in downtown Wellsburg and to the Ohio River Trail to the south, which extends to Wheeling, West Virginia. The trail is used for hiking, biking, and nature observation.

Proposed Project

The proposed project involves the construction of a new bridge over the Ohio River connecting WV 2 and SR 7 between Brooke County, West Virginia and Jefferson County, Ohio. In addition to the construction of a new bridge over the river, roadway improvements will be made to provide new bridge approaches.

Project Impacts to Brooke-Pioneer Trail

The Preferred Alternative, Alternative 8B, crosses over the trail approximately 38 feet above the trail surface. This crossing does not constitute permanent use of the trail since no portion of the trail is permanently occupied and no public uses of the trail are affected. The construction of the bridge would cause temporary use of the trail by requiring that the trail be closed during construction. The trail would need to be closed during construction for safety reasons due to work being done overhead and because the contractors selected for construction may need to use the trail to store construction materials and equipment.

The trail passes near a large American Elm tree approximately 300 feet north of the Preferred Alternative. This tree was planted in approximately 1630 and is believed to be the largest American Elm tree east of the Mississippi River. During construction, a buffer of approximately 25 feet will be established around this tree canopy so that no construction or staging activities will occur inside the buffer area. Also, during construction, signs will notify trail users of the closure. These signs will be erected at least 14 days before closure so users have adequate notice. After construction, the trail will be restored to its previous condition. Any repaving or repairs that are needed will be undertaken. All public uses that are occurring now will be completely restored after the project is constructed.

In a letter dated _____, the Brooke-Pioneer Trail Association, as the officials with responsibility for maintenance of the trail stated that, based on current engineering designs and planned mitigation measures, the project will not adversely affect the activities, features, and attributes that qualify the trail for protection under Section 4(f). This concurrence is included as Attachment A.

Potential Finding of de minimis Impact

The project will not permanently occupy any portion of the trail. All of the impacts associated with the project will occur during construction. The proposed project includes plans for avoiding impacts to the large American Elm tree adjacent to the trail, providing advanced notice of trail closure to trail users, and replacing any facilities of the trail that are damaged as a result of the construction activities. The project will not permanently affect the activities, features, and attributes that qualify the trail for protection under Section 4(f).

FHWA is requesting comments on the proposed finding of *de minimis* impact for the Brooke-Pioneer Trail in conjunction with soliciting comments on the project's Environmental Assessment. Following consideration of public comments, FHWA will issue a final Section 4(f) finding.

Brooke Pioneer Trails

Making Tracks For Better Health

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SEP 01 2011

ENGINEERING DIVISION
WV DOH



Box 401

Wellsburg, WV. 26070

Gregory L. Bailey, P.E., Director
Engineering Division

August 25, 2011

and
Ben L. Hark
Environmental Section Head
West Virginia Department of
Transportation
Division of Highways
1900 Kanawha Boulevard, East
Building Five, Room 110
Charleston, West Virginia
25305-0430

RE: Brooke County, WV and
Jefferson County, OH
Proposed Ohio River Bridge
State Project No. S-205-2/23-0.00 00
Federal Project No. HPP-0223(003)D
Section 4(f) de minimus Impact Analysis

Gentlemen:

The Brooke Pioneer Trail Association, Inc., acknowledges receipt of your August 9, 2011 letter on subject identified above.

We appreciate you officially letting us know of impact, potential and otherwise, the Bridge construction would have to the Trail, plus your intended actions to help us work with you through the project.

I have not yet signed your document, due to the fact that there are some unanswered questions. The County Commissioners, plus our legal counsel, plus Brooke Pioneer Trail members have identified the needs for clarification. Those needs are listed on the enclosed sheet.

Whatever help you could give us on these would be greatly appreciated. As soon as your input is received, we will try to work it through as quickly as possible. Thank you in advance.

Very sincerely,

Ruby A. Greathouse

Ruby A. Greathouse, President
Brooke Pioneer Trail Assn., Inc.
(304-737-0506 or 312-5316)

Encls.

BROOKEPIONEER TRAIL letter from WV DOH concerning OHIO RIVER BRIDGE
(August 9, 2011)

QUESTIONS:

- I. Approximate start?
- II. Distance impact? (full 7 miles? OR?)
- III. Time length impact? (4 years? Solid?)
- IV. Solid closed full time? (Or only when working on East 1/2 of the river/West Virginia end?)
(pages 1 and 5 = "Trail to be closed during construction...")
- V. "Public input, review and comment..." (Pages 1, 5, and 6)
I do not believe this has occurred yet. Correct?
- VI. "...contractor transport on Trail...?"
VI-A. From which end?
"... closed during construction for safety reasons due to work being done overhead and because the contractors selected for construction may need to use the Trail to store construction materials (VI-B) and equipment." (VI-C)
On the Trail surface?
And how is it getting there? By Trail?
- VII. We need to request free access to the full Trail for the Memorial Day weekend. Saturday and Sunday May 26 and 27 of 2012 will be the sixth consecutive year for the Trail Tour of Wheeling's Heritage Trail, our Brooke Pioneer Trail, plus Wellsburg's Yankee Trail. We have had representation from over ten States for this event. 2013 would be for May 25 and 26 (Saturday and Sunday.)
- VIII. If there is no construction work occurring on weekends, (Saturdays and Sundays), could our Trail users have Trail access at that time?
- IX. The Trail Association members are not negative to construction of this bridge. We want to try to work with you for it to happen, but we do have some very dedicated users of the Trail we must represent in their love of the Trail and its access on a daily basis. Elderly, middle aged, and youth.
- X. We do need to be sure you know. Our Local Emergency units - State, County, and City police, plus ambulance Services, plus fire Departments, have all used this Trail when needing an alternative in emergency. Any time Route 2 is closed due to slip, a wreck, or whatever.