

## CHAPTER 9.0 SECTION 4(f) *DE MINIMIS* IMPACT DOCUMENTATION

Section 4(f) was created when the U.S. Department of Transportation (USDOT) was formed in 1966. It was initially codified at Title 49 United States Code (U.S.C.) Section 1653(f) (Section 4(f) of the USDOT Act of 1966).

In 1983, Section 1653(f) was reworded and recodified at Title 49 U.S.C. Section 303. These two statutes have no real practical distinction and are still commonly referred to as "Section 4(f)". Congress amended Section 4(f) in 2005 when it enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59, enacted August 10, 2005)(SAFETEA-LU). Section 6009 of SAFETEA-LU added a new subsection to Section 4(f), which authorizes the FHWA to approve a project that results in a *de minimis* impact to a Section 4(f) resource without the evaluation of avoidance alternatives typically required in a Section 4(f) Evaluation. Section 6009 amended Title 23 U.S.C. Section 138 to state:

"The Secretary shall not approve any program or project (other than any project for a park road or parkway under Section 204 of this title) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge or national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from an historic site of national, state, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. The requirements of this section shall be considered to be satisfied and an alternatives analysis not required if the Secretary determines that a transportation program or project will have a *de minimis* impact on the historic site, parks, recreation areas, and wildlife or waterfowl refuges. In making any determination, the Secretary shall consider to be a part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project. With respect to historic sites, the Secretary may make a finding of *de minimis* impact only if the Secretary has determined in accordance with the consultation process required under Section 106 of the National Historic Preservation Act that the transportation program or project will have no adverse effect on the historic site or there will be no historic properties affected by the transportation program or project; the finding has received written concurrence from the State Historic Preservation Officer

(SHPO); and the finding was developed in consultation with the parties consulted under the Section 106 process.”

As discussed in Chapter 3.0, two properties eligible for the National Register Historic Places (NRHP) – the Burlington Northern Santa Fe Railroad (5EP1003) and the Union Pacific Railroad (5EP2181) – would be impacted by the construction of a new bridge over the railroads.

## **PROJECT EFFECTS**

The project will involve widening SH 16 from two to four lanes. The Burlington Northern Santa Fe Railroad and the Union Pacific Railroad extend beneath SH 16 near the east end of the study area. The railroad tracks run parallel to each other and are about 82 feet apart. The Proposed Action would widen SH 16 from two lanes to four lanes. A new two-lane four-span companion structure over the railroads would be built to the north of the existing bridge to accommodate westbound traffic. The configuration of the new bridge would mirror the existing bridge.

Conceptual plans for the new bridge indicate it would be approximately 424.3 feet long and 45 feet wide. The new bridge would have a 23.5-foot clearance over the tracks and will have three sets of piers with a crash wall between the piers that run along the railroad tracks. The construction of the new bridge would occupy land within the historic boundaries of the NRHP-eligible railroad properties but would not affect the rail grade or alignment of the rail lines. Although the construction of the new bridge would involve the introduction of a new visual element to the railroads it would not diminish the qualities that make these railroads eligible for the NRHP.

## **FINDING OF *DE MINIMIS* IMPACT**

As stated in the *Guidance for Determining De Minimis Impacts to Section 4(f) Resources* (FHWA 2005), SHPO must concur in writing with the Section 106 “no adverse effect” determination and must be informed that FHWA intends to make a *de minimis* finding based on the Section 106 effect determination. Consulting parties under Section 106 must also be informed of the *de minimis* finding. On September 28, 2006, CDOT submitted to SHPO a letter requesting an eligibility and effects determination, and indicated FHWA’s intent to make a *de minimis* finding. SHPO concurred with the “no adverse effect” finding on October 10, 2006. El Paso County was informed of the *de minimis* finding on October 2, 2006. On December 4, 2006 FHWA made a *de minimis* finding.