

UNITED STATES GOVERNMENT

*Memorandum*DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: FEB 23 1978

SUBJECT: Commitments in Environmental Impact Statements
and Section 4(f) Statements and FHWA Responsibility

In reply
refer to: HEV-11

FROM : Federal Highway Administrator

TO : Regional Federal Highway Administrators,
Regions 1-10, and
Regional Engineer, Region 15

We recently received a series of questions from one Regional Office regarding the status of commitments in environmental impact statements and Section 4(f) documents. Because of the nature of the inquiry and its nationwide application, we are making distribution of the questions and our responses to each of our Regional Offices.

William M. Cox

Attachment:

Commitments in EIS and Section 4(f)
Documents and FHWA Responsibility

COMMITMENTS IN EIS AND SECTION 4(f)
DOCUMENTS AND FHWA RESPONSIBILITY

QUESTION 1: Does FHWA have a responsibility to fund a commitment to minimize harm solely because it is stated in our environmental impact statement or Section 4(f) document?

Response: FHWA does not have a responsibility to fund commitments solely because they are stated in our EIS or Section 4(f) document. The State and the FHWA Division Office, during project development, are required to resolve the responsibility for funding the various mitigation commitments. It is important that these funding decisions be resolved prior to the EIS or Section 4(f) document being forwarded from the FHWA Division Office to facilitate environmental and engineering reviews of the document. The documentation for the determinations of participating and nonparticipating items is to be completed and retained in the FHWA Division Office files. It should not be included in the EIS. The participation/nonparticipation decision is usually founded on statutory requirements which permit limited flexibility.

In most instances, the decisions about proposed mitigation and the source of funding must be made before the final EIS or Section 4(f) document can be prepared. It would be a poor practice to issue a document with a note saying that a proposed mitigation measure will be included in the project only if the final decision by FHWA is to participate in its cost.

The review of the EIS or Section 4(f) document by Headquarters assumes that FHWA and the State have resolved any differences about Federal funding participation for the mitigation measures included in the document.

In those few instances where a funding agreement cannot be reached before the final document is submitted, and the State insists on including the mitigation commitment in the final document, the State should be made fully aware and agree that the commitment will be accomplished even if a subsequent decision is made that the item in question is not eligible for Federal funding.

QUESTION 2: Should an EIS or Section 4(f) statement contain commitments to minimize harm that will not be paid for by FHWA but could be paid for by State or local funds?

Response: Yes. All commitments to minimize harm must be included in the EIS or Section 4(f) statement. It is essential that the State understand that commitments to minimize harm, regardless of the funding source, are a project responsibility and will be required before the FHWA acceptance of the project unless the commitments relate exclusively to maintenance or operation.

QUESTION 3: Should the EIS or Section 4(f) document identify who will pay for the various mitigation measures?

Response: No. However, definite agreement should be reached on this issue as discussed under Question 1.

QUESTION 4: Should procedures be developed to ensure that EIS or Section 4(f) commitments are carried through construction?

Response: Highway-related mitigation measures covered in the EIS or Section 4(f) document must subsequently be addressed in the design and construction of the project.

We recognize that serious problems could result if commitments are not carried through construction which could be several years away. Extant procedures in most States and FHWA Division Offices are satisfactory in that the designers and construction engineers as well as FHWA personnel are aware of the commitments previously made and their responsibility to follow through. Therefore, we see no need to require that new followup procedures be established except where such procedures do not presently exist, and we recommend that our field offices periodically evaluate the adequacy of the followup practices. Depending on the findings of such evaluations, it may be necessary to modify existing practices to ensure accomplishment of mitigation measure commitments on a timely basis.

QUESTION 5: Is FHWA responsible for carrying out those commitments made in an EIS or Section 4(f) document that will not be paid for by FHWA?

Response: The EIS and Section 4(f) determination are Federal documents. In its processing of the documents, the FHWA has assured the public that the project will be implemented as proposed in the document and the project plans will include all the measures in the document to mitigate harm. The FHWA personnel making plan-in-hand reviews and PS&E reviews should be knowledgeable of the EIS and Section 4(f) documents and assure that the project development is consistent with the environmental document. As indicated under Question 1, nonparticipating items must be included or provided for before the FHWA can approve a project.