

Appendix I

Department of Transportation Section 4(f) *De Minimis* Impact Determination

**Draft Environmental Assessment and Draft Section 4(f) Determination
Proposed Improvements 2016-2020 at BWI Marshall Airport**

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**Draft Environmental Assessment and Draft Section 4(f) Determination
Proposed Improvements 2016-2020 at BWI Marshall Airport**

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ATTACHMENTS

Attachment 1: Concurrence Letter on *De Minimis* Impact to Andover Park from Anne Arundel County Department of Recreation and Parks (Dated 3/24/17).

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APPENDIX I:

Department of Transportation Section 4(f) *De Minimis* Impact Determination

This appendix includes documentation to support the Federal Aviation Administration's (FAA) *de minimis* impact determination with respect to a physical use of a Section 4(f) property, Andover Park. This *de minimis* impact determination has been made after considering measures to minimize harm, and determining that the project would not adversely affect the activities, features, or attributes qualifying Andover Park for protection under Section 4(f).¹

I.1 Overview

Section 4(f) of the U.S. Department of Transportation (DOT) Act of 1966 (now codified at 49 U.S.C. § 303) protects significant publicly owned parks, recreational areas, wildlife and waterfowl refuges, and public and private historic sites. As stated in the 1050.1F Desk Reference, "Section 4(f) provides that the Secretary of Transportation may approve a transportation program or project requiring the use of publicly owned land off a public park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance, or land of an historic site of national, State, or local significance, only if there is no feasible and prudent alternative to the using that land and the program or project includes all possible planning to minimize harm resulting from the use."²

"Use" in the context of Section 4(f) encompasses both physical use as well as constructive use. Physical use involves a physical taking of the Section 4(f) property. This could include purchase of land or a permanent easement, physical occupation, or alteration of structures or facilities on the property.³ As stated in the FAA Order 1050.1F Desk Reference, "The concept of constructive use is that a project that does not physically use land in a park, for example, may still, by means of noise, air pollution, water pollution, or other impacts, dissipate its aesthetic value, harm its wildlife, restrict its access, and take it in every practical sense."⁴

As explained in Federal Highway Administration's *Section 4(f) Policy Paper*, a *de minimis* impact determination is a finding. The Policy Paper states further that "It is not an evaluation of alternatives and no avoidance or feasible and prudent avoidance alternative analysis is required.

¹ The *de minimis* impact determination will not be finalized until after public input has been received and considered during the public comment period.

² Federal Aviation Administration (FAA), *Order 1050.1F Desk Reference*, July 2015, p. 5-1.

³ FAA, Order 1050.1F Desk Reference (July 2015), p. 5-6.

⁴ FAA, Order 1050.1F Desk Reference (July 2015), p. 5-6.

The definition of all possible planning in 23 CFR 774.17 explains that a *de minimis* impact determination does not require the traditional second step of including all possible planning to minimize harm because avoidance, minimization, mitigation, or enhancement measures are included as part of the determination.”⁵

I.2 Proposed Action

The Maryland Department of Transportation’s Maryland Aviation Administration (MAA), owner and operator of BWI Marshall Airport, is proposing improvements at the Airport including obstruction removal on and off airport property as defined by the (Federal Aviation Administration) FAA’s *Safe, Efficient Use and Preservation of the Navigable Airspace* (14 Code of Federal Regulations Part 77). “Part 77” defines the standards used to determine if an object is an obstruction to air navigation. Any object that exceeds the height of the Part 77 defined imaginary surfaces is considered an obstruction. Objects that are determined to be obstructions are presumed to be hazards to air navigation unless further aeronautical study concludes that the objects are not a hazard. The FAA strives to keep their navigable airspace clear of any objects that could interfere with the safety or efficiency of aircraft navigation. Obstructions to the primary surface for Runways 15R-33L and 15L-33R include vegetation and man-made obstructions, including NAVAIDs.

The MAA is preparing an Environmental Assessment (EA) to identify and disclose the potential environmental impacts of the proposed improvements necessary to meet FAA criteria, enhance airfield safety and efficiency, meet existing and forecast demand and improve customer service through the year 2020. The Proposed Action for the EA includes removal of obstructions, including vegetation (trees) that have been determined to be Part 77 Obstructions.

I.3 Section 4(f) Resources

Section 4(f) resources include public parks, recreation areas, wildlife and waterfowl refuges and historic sites. The Section 4(f) resources within the Study Area of the Proposed Action for the EA include two parks, Friendship Park – Thomas A. Dixon Observation Area and Andover Park; two recreation areas, the BWI Trail and Lindale Middle School; and one historic site, the Benson-Hammond House, are within or adjacent to the Physical Development Study Area. Refer to Figure 4.6-1 of the EA for the locations and photographs of these Section 4(f) resources. A complete discussion of the visual and temporary impacts of all the Section 4(f) resources due to the project alternatives is included in *Section 5.5, Department of Transportation Act: Section 4(f) Resources*, of the EA.

Based on analysis of the project alternatives, Andover Park is the only Section 4(f) resource that will experience a permanent physical use of the property due to proposed vegetation removal to

⁵ U.S. DOT Federal Highway Administration (FHWA), “Section 4(f) Policy Paper,” July 20, 2012, <https://www.environment.fhwa.dot.gov/4f/4fpolicy.asp#determine> (accessed 3/28/17).

an area of the park where approximately 70 trees penetrate the navigable airspace. Andover Park is located at 605 Andover Road in Linthicum, Maryland, north of BWI Marshall Airport.

I.3.1 Andover Park

Andover Park is located north of the airport at the corner of Andover Road and Main Avenue, and lies within the Part 77 surfaces for the Runway 15L end. The 41-acre park is owned by the Anne Arundel County Department of Recreation and Parks (Department) and includes various sports fields, picnic areas and an equestrian center. Mane Event equestrian center operates out of Andover Park. The equestrian center is situated between the sports fields of Andover Park to the west and Lindale Middle School to the east. Mane Event is a non-profit equestrian education and recreation program. The center has a focus on special needs and physical therapy, allowing riders of all abilities the opportunity for equestrian recreation. Part of Andover Park lies within the Part 77 surfaces for the Runway 15L end.

I.4 Impact on Andover Park

Analysis indicates that vegetative obstruction removal proposed as part of the Proposed Action is expected to be necessary at Andover Park. With the use of aerial photogrammetry from 2012 and field verification of multiple trees in the Fall of 2016, it is estimated that approximately 70 trees penetrate the navigable airspace on part of the Andover Park property, as shown on **Figure I-1**.

I.4.1 ALP Alternative

The ALP Alternative would result in the removal of approximately 70 trees on Andover Park property, as shown on Figure I-1, in order to comply with FAA 14 CFR Part 77 regulations. The proposed vegetative removal is located along the edge of the park property that borders with Andover Recreation Center to the south. The vegetation removal at this property would not alter the use of the park sports fields and picnic areas. The proposed vegetative obstruction removal on the property could result in visual changes to park users.

A review of the project impacts and proposed tree removal show that the impacts to the park would not adversely affect the activities, features, or attributes qualifying Andover Park for protection under Section 4(f).

I.4.2 Sponsor's Preferred Alternative

The Sponsor's Preferred Alternative would result in the same impacts to Andover Park as described for the ALP Alternative and shown on Exhibit I.1. The proposed tree removal is identical for both of the action alternatives in this area of the park that is within navigable airspace.

I.4.3 No Action Alternative

The No Action Alternative would have no physical or visual impacts to Section 4(f) resources.

I.5 Regulatory Requirements

As stated in the Order 1050.1F Desk Reference, procedural requirements for complying with Section 4(f) are set forth in DOT Order 5610.1C. The FAA also uses Federal Highway Administration/ Federal Transit Administration (FHWA/FTA) regulations in 23 CFR part 774 (73 *Federal Register* 13368 (March 12, 2008) and 73 *Federal Register* 31609 (June 3, 2008) and FHWA guidance (e.g., Section 4(f) Policy Paper,⁶ 77 *Federal Register* 42802 (July 20, 2012)). These requirements are not binding on the FAA; however, the FAA may use them as guidance to the extent relevant to aviation projects.⁷

I.5.1 Applicability of the *De Minimis* Impact Determination

The FHWA Section 4(f) Policy Paper specifies that an impact to a public park, recreation area, or wildlife and waterfowl refuge may be determined to be *de minimis* if the transportation use of the Section 4(f) property, including incorporation of any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures), does not adversely affect the activities, features, or attributes that qualify the resource for protection under Section 4(f).⁸

The FAA is making a *de minimis* determination because the impact to Andover Park meets, or will meet, the following guidance, as provided in FHWA's Policy Paper:

“The impacts of a transportation project on a park, recreation area, or wildlife and waterfowl refuge that qualifies for Section 4(f) protection may be determined to be *de minimis* if:

- 1) The transportation use of the Section 4(f) property, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, or attributes that qualify the resource for protection under Section 4(f);
- 2) The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, or attributes of the Section 4(f) property; and
- 3) The official(s) with jurisdiction over the property, after being informed of the public comments and FHWA's intent to make the *de minimis* impact finding, concur in writing that the project will not adversely affect the activities,

⁶ U.S. DOT FHWA, Section 4(f) Policy Paper, July 2012, <https://www.environment.fhwa.dot.gov/4f/4fpolicy.pdf>, p. 44 (accessed 3/28/17).

⁷ FAA, Order 1050.1F Desk Reference, p. 5-3.

⁸ U.S. DOT FHWA, Section 4(f) Policy Paper, July 2012, <https://www.environment.fhwa.dot.gov/4f/4fpolicy.pdf>, p. 44 (accessed 3/28/17).

features, or attributes that qualify the property for protection under Section 4(f).”⁹

A review of the project impacts and proposed tree removal show that the impacts to the park would not adversely affect the activities, features, or attributes qualifying Andover Park for protection under Section 4(f). Because the trees proposed for removal are not essential to the recreational value of Andover Park, the project would not adversely affect the activities, features, or attributes that qualify the park for protection under Section 4(f).

The public will be afforded an opportunity to review and comment on the effects of the project on Andover Park during the Draft EA comment period and at the Public Meeting that will be held during the Draft EA comment period. Notice of the *de minimis* impact determination will be included as part of the advertisement for the publication of the Draft EA and the public meeting.

Finally, the official with jurisdiction over Andover Park, Anne Arundel County Department of Recreation and Parks, was informed and concurred in writing that the project will not adversely affect the activities, features, or attributes that qualify the property for protection under Section 4(f). A “Request for Concurrence on De Minimis Impact to Andover Park was submitted to the Department on March 17, 2017. Signed concurrence from the Director of the Department was received on March 24, 2017.

Note: The *de minimis* impact determination will not be finalized until after public input has been received and considered during the public comment period.

I.6 Mitigation

Specific mitigation measures during and after removal of the trees will be determined between the MAA and the Department once final tree survey has been conducted to confirm the specific trees to be removed. Tree removal would be conducted in a manner that minimize impacts, and would be coordinated thoroughly with the Department to ensure that the Department’s needs are accommodated in terms of schedule, safety, and maintenance of park access.

I.7 Coordination

Agency coordination and public involvement must occur before a *de minimis* impact determination can be finalized.

I.7.1 Agency Coordination

The Anne Arundel County Department of Recreation and Parks received scoping information in July 2016 regarding the EA underway for the proposed improvements. Members of the Department’s staff attended the Agency Scoping Meeting for the EA on August 25, 2016. Additionally, the MAA requested and received entrance from the Department to the Andover Park

⁹ U.S. DOT FHWA, Section 4(f) Policy Paper, July 2012, <https://www.environment.fhwa.dot.gov/4f/4fpolicy.pdf>, p. 44 (accessed 3/28/17).

property to verify the species and estimated location of the trees proposed for removal in September 2016.

As noted in Section I.5, following an analysis of the impacts to Andover Park due to the proposed tree removal, the Department was informed of the project's impacts, and concurred in writing that the Proposed Action will not adversely affect the activities, features, or attributes that qualify the property for protection under Section 4(f). See **Attachment 1** for correspondence between the MAA and the Department, including the concurrence letter.

I.7.2 Public Involvement

In accordance with 23 CFR 774.5(b)(2), the public will be afforded the opportunity to review and comment on the effects of the Proposed Action on Andover Park during the Draft EA comment period and at the Public Meeting that will be held during the Draft EA comment period. Notice of the *de minimis* impact determination will be included as part of the advertisement for the publication of the Draft EA and the public meeting. This section will be updated once the Draft EA comment period has closed. All comments received will be documented and responded to in the same manner as other comments on the Proposed Action. Documentation of the comments and responses will be incorporated into the project file.

I.8 Conclusion

In accordance with guidance specified in 23 CFR §§ 774.3 and 774.17 and the FAA Order 1050.1F Desk Reference on *de minimis* impact determinations, after considering any measures to minimize harm, the FAA has determined that the Proposed Action would not adversely affect the activities, features, or attributes qualifying Andover Park for protection under Section 4(f). Additionally, the official with jurisdiction over the property was informed of the FAA's intent to make a *de minimis* impact determination, and concurrence with the determination was received. Following consideration of public comments during the public review process for the Draft EA and *de minimis* determination, the FAA may finalize this determination that the impact to Andover Park is considered *de minimis*.

Attachment 1:

**Concurrence Letter on *De Minimis* Impact to Andover Park
from Anne Arundel County Department of Recreation and Parks**

March 17, 2017



Larry Hogan
Governor

Boyd K. Rutherford
Lt. Governor

Pete K. Rahn
Secretary

Ricky D. Smith, Sr.
Executive Director/CEO

March 17, 2017

Mr. Rick Anthony
Director
Anne Arundel County Department of Recreation and Parks
1 Harry S. Truman Parkway
Annapolis MD 21401

Dear Mr. Anthony:

This letter is regarding the proposed impacts to Andover Park (605 Andover Road) in Linthicum, Maryland, which is owned by the Anne Arundel County Department of Recreation and Parks (Department), and is located north of Baltimore/Washington International Thurgood Marshall (BWI Marshall) Airport. As discussed in information provided previously, the Maryland Department of Transportation's Maryland Aviation Administration (MAA), owner and operator of BWI Marshall Airport, is proposing improvements at the Airport including obstruction removal on and off airport property as defined by the Federal Aviation Administration's (FAA) *Safe, Efficient Use and Preservation of the Navigable Airspace* (14 Code of Federal Regulations Part 77). The FAA strives to keep their navigable airspace clear of any objects that could interfere with the safety or efficiency of aircraft navigation. The MAA is preparing an Environmental Assessment (EA) to identify and disclose the potential environmental impacts of the proposed improvements necessary to meet FAA criteria, enhance airfield safety and efficiency, meet existing and forecast demand and improve customer service through the year 2020.

As you are aware, analysis indicates that vegetative obstruction removal is expected to be necessary at Andover Park. Your Department received scoping information in July 2016 regarding the EA underway for the proposed improvements, and members of your staff attended the Agency Scoping Meeting for the EA on August 25, 2016. Additionally, the MAA requested and received entrance from your Department to the Andover Park property to verify the species and estimated location of the trees proposed for removal in September 2016.

With the use of aerial photogrammetry from 2012 and field verification of multiple trees in the Fall of 2016, it is estimated that approximately 70 trees penetrate the navigable airspace on this property, as shown on the attached exhibit. In order to comply with FAA 14 CFR Part 77 regulations, the MAA proposes to remove these trees. Tree removal would be conducted in a manner that minimize impacts, and would be coordinated thoroughly with the Department to

Mr. Rick Anthony
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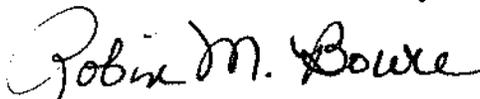
ensure that the Department's needs are accommodated in terms of schedule, safety, and maintenance of park access.

Under Section 4(f) of the U.S. Department of Transportation Act of 1966, Andover Park is considered a Section 4(f) resource. A review of the project impacts and proposed tree removal show that the impacts to the park would not adversely affect the activities, features, or attributes qualifying Andover Park for protection under Section 4(f). Based on the analysis that MAA is currently developing to support the forthcoming Environmental Assessment, MAA believes that the FAA would make a determination that the impact to the park property is considered *de minimis*.

In order to make the Section 4(f) *de minimis* finding, your written concurrence that this project will not adversely affect the activities, features, and attributes of the park property is necessary. To acknowledge that you have been notified of the intent to apply the Section 4(f) *de minimis* finding, and your agreement that the activities, features, and attributes of the park will not be adversely affected, please sign on the page below and return the signed copy to Ms. Robin M. Bowie, Acting Director, Office of Environmental Services at the letterhead address, email to rbowie@bwiairport.com, or fax to 410-859-7082. We request your concurrence by **April 17, 2017**.

Please note that this Section 4(f) *de minimis* concurrence does not indicate permission to remove any vegetation at this time. The MAA must complete the environmental review process (expected to be completed in December 2017) prior to beginning any design or coordination efforts to perform the tree removal. Additionally, the FAA will provide an opportunity for public review and comment on the *de minimis* impact determination at the time the Draft EA is published for comments. To request further information, please contact me by phone at 410-859-7103 or via e-mail at rbowie@bwiairport.com. Your cooperation in this effort is greatly appreciated.

Sincerely,



Robin M. Bowie, Acting Director
Office of Environmental Services

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As the official with jurisdiction over Andover Park, I hereby concur with the recommendation of the project proponents that the use and impacts associated with this project along with the identified avoidance, minimization, and mitigation measures, will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f).



Rick Anthony, Director
Anne Arundel County Department of Recreation and Parks

3/24/12

Date

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bcc: Mr. Marcus Brundage, REM, Environmental Specialist, FAA
Kim Hughes, P.E., Project Manager, HNTB Corporation



EA for Proposed Improvements 2016-2020 at BWI Marshall Airport



LEGEND

- Andover Park Boundary
- BWI Airport Property Boundary
- Off-Airport Tree Obstruction
- Andover Park Tree Obstruction

Andover Park Proposed Tree Removal



Sources: Aerial - USDA NAIP 2015, Anne Arundel County GIS, MAA