Section 4(f)

2011 MnDOT Environmental Stewardship Workshop
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Objective of Session

- Refresher on the overall intent of statute and basic Section 4(f) approval process
- Feasible and Prudent Factors
- Least harm analysis
- Common problem areas
- Ongoing developments
Refresher on Intent of Section 4(f)

- Simply put, 
  preservation, preservation, preservation
- Prohibited use of land unless avoidance is not feasible and prudent
- Early strict interpretations by courts and application by DOT
- Things have changed ... more options, more flexibility, more experiences, but ...
Basics of Section 4(f) Process

- Step 1 – Are there Section 4(f) properties in study area?
- Step 2 – Does the action “use” Section 4(f) properties?
  - Option – Does an “exception” apply instead?
- Step 3 – Choose appropriate approval option
  - de minimis, programmatic, or individual evaluation
- Step 4 – Fulfill compliance, including coordination, documentation, and all possible planning to minimize harm
Approval Options

- Findings of *de minimis* impact
  - Latin for “about minimal things”
  - No evaluation of avoidance alternatives
- Programmatic Section 4(f) Evaluations
  - Standard set of conditions (template)
  - Requires analysis of avoidance alternatives
  - No draft & final required
- Individual Section 4(f) Evaluation
  - More complex & time consuming; draft & final
  - Requires analysis of avoidance alternatives
  - Newly clarified feasible and prudent standards
Feasible and Prudent

“A feasible and prudent avoidance alternative avoids using Section 4(f) property and does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property. It is appropriate to consider the relative value of the resource to the preservation purpose of the statute.” 23 CFR 774.17
This →

← Versus this
Pre-774 Prudence Factors

- Unique problems or unusual factors
- Cost, social, economic, and environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes
Compromises project so that unreasonable to proceed per purpose and need

Unacceptable safety or operational problems

After reasonable mitigation, still causes:
  - Severe social, economic, environmental impacts
  - Severe community disruption
  - Severe disproportionate impacts to minority or low income populations
  - Severe impacts to environmental resources protected by other Federal statutes
Post-774 Prudence Factors (cont’d)

- **Construction, maintenance, or operational costs of extraordinary magnitude**
- Causes other unique problems or unusual factors
- Involves multiple factors that cumulatively cause unique problems or impacts of extraordinary magnitude
Concluding Statement

“Based upon the above considerations, there is no feasible and prudent alternative to the use of land from the (identify Section 4(f) property) and the proposed action includes all possible planning to minimize harm to the (Section 4(f) property) resulting from such use.” FHWA TECHNICAL ADVISORY T6640.8A
Required when individual evaluation concludes avoidance is not feasible and prudent, and all remaining alternatives have a Section 4(f) use

May approve only the alternative that causes the least overall harm in light of the statute’s preservation purpose
Least Harm Factors

- **Section 4(f) related:**
  - Ability to mitigate harm to each Section 4(f) property
  - Relative severity, after mitigation, of harm
  - Relative significance of each Section 4(f) property
  - Views of the officials with jurisdiction

- **Non-Section 4(f) related:**
  - Degree to which each alternative meets purpose and need
  - Magnitude of impacts to resources not protected by Section 4(f)*
  - Substantial differences in cost among alternatives
Both alternatives (on new location) have comparable costs but the Section 4(f) properties are very different. Which one may be selected?

Estate of notable community founder, politician & Revolutionary War hero; historic integrity largely intact; several historic events occurred onsite; listed on National Register of Historic Places; National & local historic organizations oppose this alternative.

Park established in the 1960s to preserve rural character of area & complement nearby historic site; mostly passive recreation.
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Now which one may be selected?
Common Problem Areas

- Improper classification of properties as Section 4(f)
- Overlooking key activities, features or attributes
- Not including all relevant officials with jurisdiction
- Temporary occupancy exception
- Not looking at complete avoidance
- Self-serving statements
- Not identifying mitigation during evaluation
- Is an alternative with only de minimis an avoidance alternative?
- Failing to recognize that Section 4(f) continues through the life of a project (ROW, design, construction)
Section 4(f) Policy Paper Update
- 1987 Original; 1989 Addition; 2005 Update
- 2011 Update is underway
  - Includes de minimis and beneficial uses programmatic
  - Addresses 23 CFR 774
  - Much expanded discussion of feasible and prudent, and least harm analysis
  - New and clarified questions and answers

NHI Section 4(f) Course

Implementation Study update
Questions?