Joint TRB Summer Meeting
Santa Fe, New Mexico
September 12, 2005
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Objectives of Presentation

- Recent developments
- SAFETEA-LU provisions
- Questions, comments, and maybe some answers
History Lesson
Section 4(f) 101
Background of Section 4(f)

- Inspired in part by Brackenridge Park in San Antonio, Texas
- Part of the U.S. Dept. of Transportation Act of 1966
- Signed by President Lyndon Johnson on October 15, 1966
- The law applies only to U.S. DOT agencies (49 USC 303)
- The regulation 23 CFR 771.135 applies only to FHWA and FTA
LBJ signs US DOT Act of 1966
What They Said Then …

• The highway program is “…being operated by barbarians. We ought to have some civilized understanding of just what we do to spots of historic interest and great beauty by building eight-lane highways through the middle of our cities.”

Senator Joseph Sill Clark (PA) – 1966
More of What They Said …

- Interstate highways are cutting “… great swaths through urban communities and (demolishing) the intricate, closely woven texture of the city’s tapestry.”

Senator Ralph Yarborough (TX) – 1966
Brackenridge Park – San Antonio, Texas
(c) The Secretary may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or site), only if –

49 USC 303
Letter of the Law (continued)

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

49 USC 303
Fast Forward, but not too fast
So what happened in the ensuing 30-plus years?
Recent Developments

- **FHWA Section 4(f) Policy Paper** updated and revised in March 2005
  http://environment.fhwa.dot.gov/projdev/4fpolicy.htm

- **Nationwide Programmatic Section 4(f) Evaluation & Determination for Federal-Aid Transportation Projects That Have a Net Benefit to a Section 4(f) Property** issued in April 2005
  http://environment.fhwa.dot.gov/projdev/4fnetbenefits.htm
SAFETEA-LU Provisions

- Exemption of the Interstate System from Section 4(f) [Section 6007]
- De minimis impacts to historic sites [Section 6009(a)]
- De minimis impacts to parks, recreation areas, and refuges [Section 6009(a)]
- Clarification of feasible and prudent standard [Section 6009(b)]

http://www.fhwa.dot.gov/safetealu/legis.htm
Interstate Exemption
applicable to FHWA only

- Interstate system is not to be considered as historic site under Section 4(f) regardless of National Register status
- Individual elements possessing national or exceptional historic significance shall be considered historic sites under Section 4(f)
- Examples – historic bridge or highly significant engineering feature
De Minimis for Historic Sites
applicable to FHWA and FTA

• Section 4(f) requirements are satisfied if:
  – Either no historic properties affected, or …
  – Transportation program or project has no adverse effect on historic sites

• Section 106 (National Historic Preservation Act) consultation process to be utilized

• Written concurrence necessary from SHPO or THPO (and ACHP if participating)

SAFETEA-LU Section 6009
De Minimis for Parks, etc.
applicable to FHWA and FTA

• Section 4(f) requirements are satisfied if transportation program or project has de minimis impact on the park, recreation area, or wildlife/waterfowl refuge

• De minimis means no adverse effect to the activities, features, and attributes of the resource

SAFETEA-LU Section 6009
De Minimis for Parks, etc.
applicable to FHWA and FTA

• No traditional analysis of avoidance alternatives is required

SAFETEA-LU Section 6009
De Minimis for Parks, etc. (cont’d)

Coordination Requirements

• Concurrence from officials with jurisdiction over the park, recreation area, or refuge required
• Public notice and opportunity for public review & comment also required

SAFETEA-LU Section 6009
De Minimis Requirements

Criteria

• “In making any determination under this subsection, the Secretary shall consider to be 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.”

SAFETEA-LU Section 6009
Clarification of Feasible & Prudent applicable to FHWA and FTA

• Regulations to be issued to clarify the factors to be considered and the standards to be applied when determining whether avoidance alternatives are feasible & prudent

• Due within one year of SAFETEA-LU enactment

• Implementation study and separate independent review required to evaluate various elements

SAFETEA-LU Section 6009
What They Said Recently …

• These changes will “not alter or weaken the Overton Park standards for determining what constitutes prudent and feasible alternatives.”

• “… it is our clear intention that Overton Park will continue to serve as the lodestar – the fundamental legal standard – for defining and evaluating feasible and prudent alternatives.”

Senator George Voinovich (OH) – 2004
More from Sen. Voinovich

• “Are we dealing with … the famous Overton Park in Memphis, Tennessee? Or are we dealing with an easily replaceable ball field in an area where a replacement can be located without detriment to the interests of the affected users?”

• “The result will be greater consistency in the application of the standard throughout the country.”

Senator George Voinovich (OH) – 2004
Where Do We Go From Here?

• De minimis provision for historic sites may be applied immediately for projects where a draft Section 4(f) has not been distributed

• DOT Teams have been assembled to prepare guidance and/or take necessary steps to address de minimis for parks et al, Interstate exemption from 4(f), and clarification of feasible & prudent
Questions and/or Comments?