

Email to MassDOT and FHWA: 11-28-12

Joe, Demaris and Michael,

I believe I am correct in my interpretation of the Programmatic Section 4(f) Evaluation procedure I explained last night that the bridge replacement alternative is not to be considered with the three "all-inclusive" alternatives of the procedure. The EA would have been clearer to me if the bridge replacement alternative had not been included in Chapter 10 at all, but set out in a separate section of the EA. The way I read the procedure is that if none of the three Section 4(f) alternatives is prudent and feasible then the bridge may be "used," i.e., demolished or rehabilitated to the point its historic integrity is compromised. In other words, if the three alternatives are found not prudent and feasible, Section 4(f) is fully satisfied and that's the end of it. Section 106 alone governs the selection of the preferred alternative, in the case of the MRB whether among the 7 alternatives or between Alternatives 1B or 3. Am I not correct in my interpretation?

If the Section 4(f) evaluations are prepared this way, you will always have opponents like the Friends asserting that Section 4(f) governs the choice of the Section 106 alternative. Frankly, I am surprised that the Friends did not harp on the language of 23 CFR 774.3(d) that the Programmatic Section 4(f) Evaluations are "for certain **minor** uses of Section 4(f) property."

I reviewed the Programmatic Section 4(f) Evaluation for the Whittier Bridge prior to last night's meeting and it seems to me that evaluation is confusing in the same way as the MRB evaluation. Section 9.7 of the Whittier Bridge evaluation lists bridge replacement as one of the Section 4(f) alternatives - again I believe incorrectly - and bridge replacement is discussed in Section 9.7.4 as though it was in fact one of the Section 4(f) alternatives. I know this procedure has been around for about 30 years, but unless the lawyers have a good reason for doing evaluations this way, I believe it will continue to haunt FHWA and MassDOT, especially with groups like the Friends. Am I missing something here?

Regards,

George