

**Are there examples of federal funds being denied because a road went through historical properties and there were other alternatives?**

No, in practice, it is rare that federal funds get denied on the basis of Section 4(f) resources. As it was intended, the Section 4(f) process typically leads to a more creative project planning process, during which a broad array of alternatives are studied in order to find an alternative that either fully avoids or significantly minimizes harm to Section 4(f) resources while at the same time fulfilling the need and purpose of the project. The Federal Highway Administration (FHWA) is bound by Section 4(f) of the Department of Transportation Act of 1966, which “prohibits the use of land of significant publicly owned public parks, recreation areas, wildlife and waterfowl refuges, and land of a historic site for transportation projects unless the Administration determines that there is no feasible and prudent avoidance alternative and that all possible planning to minimize harm has occurred (Pub. L. 89-670, 80 Stat. 931).

**What does it mean that there are no other routes that are feasible and prudent when talking about 4F properties?**

Over the years since Section 4(f) began applying to transportation projects (1966) there have been many interpretations of the terms “prudent” and “feasible” by both the courts and by individual transportation departments around the country. In 2005 Congress amended Section 4(f) to address the uncertainty surrounding its application. Section 6009(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) directed the Secretary of Transportation to promulgate regulations clarifying “the factors to be considered and the standards to be applied” in determining the prudence and feasibility of alternatives that avoid the use of Section 4(f) property by transportation projects.

In March 2008 the FHWA and the Federal Transit Authority (FTA) published a final rule, modifying the procedures for granting Section 4(f) approvals, including clarification of the factors to be considered and the standards to be applied when determining if an alternative for avoiding the use of Section 4(f) property is feasible and prudent. The rule was published in the Federal Register on March 12, 2008, Volume 73, Number 49 Rules and Regulations Page 13367-13401. A policy paper was issued on March 1, 2005 and can be found online at <http://environment.fhwa.dot.gov/projdev/4fpolicy.asp> The policy paper provides the following discussion of what “prudent and feasible alternatives” means in the Section 4(f) review process.

*The first test under Section 4(f) is to determine which alternatives are feasible and prudent. An alternative is feasible if it is technically possible to design and build that alternative. The second part of the standard involves determining whether an alternative is prudent or not, which is more difficult to define.*

*An alternative may be rejected as not prudent for any of the following reasons:*

- 1. It does not meet the project purpose and need,*

2. *It involves extraordinary operational or safety problems,*
3. *There are unique problems or truly unusual factors present with it,*
4. *It results in unacceptable and severe adverse social, economic or other environmental impacts,*
5. *It would cause extraordinary community disruption,*
6. *It has additional construction costs of an extraordinary magnitude, or*
7. *There is an accumulation of factors that collectively, rather than individually, have adverse impacts that present unique problems or reach extraordinary magnitudes.*

*Where sufficient analysis demonstrates that a particular alternative is not feasible and prudent, the analysis or consideration of that alternative as a viable alternative comes to an end. If all alternatives use land from 4(f) resources, then an analysis must be performed to determine which alternative results in the least overall harm to the 4(f) resources. If the net harm to 4(f) resources in all the alternatives is equal, then FHWA may select any one of them. In other words, if the project proposes to use similar amounts of similar 4(f) resources, there is no alternative that would cause the least overall harm. In either situation, it is essential that the agency having jurisdiction over the 4(f) resource be consulted.*

*It should be noted that the net harm analysis is governed by all the possible mitigation that could be done to minimize harm to the 4(f) resource. The net harm should be determined in consultation with the agency having jurisdiction over the resource or, in the case of historic sites, the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), as appropriate. By including mitigation, impacts on the 4(f) property could be reduced or eliminated. The alternative that results in the least net harm must be selected.*

*Not all uses of 4(f) resources have the same magnitude of impact and not all 4(f) resources have the same quality. A qualitative evaluation is required. For example, evaluation of the net impact should consider whether the use of the 4(f) property involves:*

1. *A large taking or a small taking in relation to the overall size of the resource, or*
2. *Shaving an edge of a property as opposed to cutting through its middle, or*
3. *Altering part of the land surrounding an historic building rather than removing the building itself, or*
4. *Examining the key features of the 4(f) resource, or*
5. *An unused portion of a park rather than a highly used portion.*

*When different alternatives propose to use different 4(f) resources, the importance of the resources must be considered. For example, three marginal acres of a large park may be less important than one acre of a smaller city park. To provide support for these complex evaluations, the officials with jurisdiction over the 4(f) resources should be consulted and their opinions memorialized in the administrative record.*

*As Congress gave 4(f) resources paramount importance, care should be taken to apply consistent standards throughout the length of any given project. For example, it would be inconsistent to accept a restricted roadway cross section in order to reduce the project costs or to gain a minimal safety benefit, when at other locations on the same project this restricted roadway cross section is rejected as unacceptable in order to avoid a park. This same concept should be applied between projects as well.*