

Historic Preservation - Section 106

In the National Historic Preservation Act (NHPA), Congress established a comprehensive program to preserve the historical and cultural foundations of the Nation. Section 106 requires FHWA to consider the effects of the SH 402 project improvements on historic properties.

To meet legal obligations of Section 106 the following questions must be addressed:

- Does Section 106 apply to the project?
- What is the area of potential effect (APE) to historic properties?
- Are there National Register of Historic Places (NRHP) listed or eligible properties in the APE?
- How might these historic properties be affected by the project?
- What are the alternatives to avoid or reduce harm to these properties?

How does Section 106 relate to the SH 402 Project?

The APE for SH 402 generally includes all properties adjacent to the existing SH 402. The corridor includes properties containing structures of historic vintage (over 50 years of age). Some, but not all, were determined eligible to the NRHP. Alternatives to avoid or reduce harm to these properties were examined. Mitigation of adverse effects must be implemented if avoidance is not possible.

Parks, Recreation Areas, Wildlife Refuges and Historic Sites - Section 4(f)

Section 4(f) was created when the US Department of Transportation was formed in 1966. DOT regulations explicitly state that the Secretary of Transportation cannot approve:

- the acquisition of publicly owned land from a park, recreation area, or wildlife refuge,
 - or land from a national, state, or local historic site
- unless no **feasible** and **prudent** alternative exists. These properties are commonly referred to as 4(f) properties.

What is a **feasible alternative**? An alternative is feasible if it is technically possible to design and build.

What is a **prudent alternative**? The definition of a prudent alternative is more difficult. An alternative may not be prudent if it:

- does not meet the project purpose and need
- involves extraordinary operational or safety problems
- results in extraordinary community disruption
- creates unacceptable social, economic, or other environmental impacts
- results in extraordinary construction costs

How does Section 4(f) relate to the SH 402 project?

While no impacts on parks, recreation areas, or wildlife refuges are anticipated for this project, impacts on historic properties will occur. This DOT regulation requires avoidance based on the definitions of feasible and prudent alternatives noted above. This regulation is even more protective than Section 106 with regard to historic properties.

What are de minimis impacts?

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Major provisions of Section 6009 include the first substantive revision of **Section 4(f)** legislation since passage of the US Department of Transportation Act of 1966. This includes the identification of de minimis impacts described as follows.

The requirements of Section 4(f) of the Department of Transportation Act will be considered satisfied with respect to a Section 4(f) resource if it is determined that a transportation project will have only a "**de minimis impact**" on the 4(f) resource. The Agencies with jurisdiction must concur in writing with the determination. For historic properties the *de minimis* criteria are defined as "no adverse effect" or "no historic properties affected" under Section 106 of the National Historic Preservation Act.

