

## A Layman's view of our lawsuit, Part I: Section 4(f)

("Section 4(f)," is the original term, now supplanted by [49 United States Code 303](#), but still usually referred to by its original name.)

The statute began as a response to the highly unpopular intrusion of federally funded elevated freeways into the sensitive historic sections of the nation's cities over 60 years ago. Congress responded to the public outcry by passing section 4(f) of the 1966 Transportation Act to ensure that historic properties and other cultural assets were fully taken into account in the planning of transportation projects and to avoid them if at all possible. In short, the Honolulu rail project is the type of project that 4(f) was legislated to prevent.

In its essence, the statute says:

The U.S. Department of Transportation DOT may not approve the use (or even have a significant visual or noise impact) of a historic property or native burial site unless a determination is made that "there is no feasible and prudent avoidance alternative" to such use.

"An alternative is not feasible if it cannot be built as a matter of sound engineering judgment." "An alternative is not prudent if does not meet the stated "purpose and need" of the project.

The "purpose and need" statement should be a statement of the problem, not the solution. The City's Final EIS defines the purpose as "to provide high-capacity rapid transit." The [FTA Directive](#) states, "... too narrow a definition might unduly constrain the range of alternatives. In no case should the need for a project be expressed in modal terms (e.g. need for additional highway lanes; need for a light rail system). Rather, need is a function of the problem at hand (need to improve mobility, need to reduce vehicular traffic through a community; etc.)."

Note that the City cannot avoid the burial sites unless they know their locations, which are presently unknown. That is why an archeological survey of the full corridor is necessary before City can legally make decisions on technology and routes. And the City cannot weigh the possibilities of a possible alternative that could avoid the historic properties if it eliminates all but one alternative.

Therefore our lawsuit will ask the Court to direct the City to "*Rigorously explore and objectively evaluate all reasonable alternatives ... Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits ... Include reasonable alternatives not within the jurisdiction of the [City]*" and to perform an Archeological Inventory Survey to determine the locations of native Hawaiian burial sites in the Corridor.

Only then can the City legally determine the "environmentally preferable alternative."

Rev. 4/1/2011.