

Section 4(F)

Series: FHWA Highway History Website Articles

June 2023



U.S. Department of Transportation
Federal Highway Administration
1200 New Jersey Ave, SE
Washington, DC 20590

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Section 4(F)

The Department of Transportation Act of 1966 included an environmental provision that had a major impact on the Interstate System and other Federal-aid highway projects. Under "General Provisions," Section 4(f) called on the Secretary to consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States to maintain or enhance natural beauty. Section 4(f) also stated:

After the effective date of this Act, the Secretary shall not approve any program or project which requires the use of any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

Senator Ralph Yarborough (D-Tx) had introduced this provision in response to a State highway plan for a U.S. 281 freeway linking downtown San Antonio with its international airport. Because highway planners saw the use of parkland as less disruptive than the taking of homes and businesses, they routed the road through Brackenridge-Olmos Basin Parklands as the best of several disruptive alternatives.

Yarborough had tried to get a similar provision into the Federal-Aid Highway Act of 1966, which was approved September 13, 1966, but it included a watered down version as Section 138 of Title 23 ("Highways"), United States Code. New Section 138 called for "cooperation" and "consideration" rather than explicit defense of the resources Senator Yarborough wanted to protect. (The Federal-Aid Highway Act of 1968, approved August 23, 1968, amended Section 138 by substituting the language of Section 4(f).)

The term "feasible and prudent" was subjective enough to encourage highway officials to think they could continue using public lands as a routing of least resistance. The pivotal case involved the routing of I-40 through Overton Park in Memphis, Tennessee. Opponents took the April 1968 Federal approval of the routing to court. On March 3, 1971, the Supreme Court ordered reconsideration of the decision in the District Court.

In the decision, Justice Thurgood Marshall stated that Section 4(f) "is a plain and explicit bar to the use of federal funds for construction of highways through parks-only the most unusual situations are exempted." The court recognized the place of cost, directness of route, and community disruption in highway routing, but the existence of the statute "indicates that protection of parkland was to be given paramount importance." Although Section 4(f) did not require a formal, documented finding of decision to route projects through a protected resource, the Supreme Court ruled that the District Court, in reconsidering the matter, may "require some explanation in order to determine if the Secretary acted within the scope of his authority and if the Secretary's action was justified under the applicable standard."

The Supreme Court ruling has affected all later Section 4(f) determinations. To use a Section 4(f) resource, Federal officials must find that alternatives to doing so present unique problems or unusual factors or that the cost, environmental impacts, or community disruption would reach extraordinary magnitude. Any potential adverse impacts on a Section 4(f) resource, as well as possible uses, are formally documented during review of the project under the National Environmental Policy Act of 1969. (The Overton Park issue was resolved when the park routing was abandoned, with I-40 routed along the northern beltway around Memphis.)

As for the San Antonio dispute, the State's congressional delegation added a provision to the Federal-Aid Highway Act of 1973 to get the freeway built without Federal-aid funds and the strings that come with them. The 1973 Act included

Section 154 ("Termination of Federal-Aid Relationship"), which stated that "the contractual relationship" with the Federal Government for the San Antonio North Expressway between I-35 and Interstate Loop 410 "shall be ended." And if that wasn't clear enough, Section 154 continued: "the expressway shall cease to be a Federal-aid project."

This provision allowed Texas to complete the U.S. 281 freeway in San Antonio without Federal funding. The Walter McAllister Freeway, named after a former Mayor, opened on February 7, 1978.

Section 4(f) of the DOT Act, as amended, is now Section 303 of Title 49, United States Code. As noted, the language is also incorporated into Title 23 as Section 138. However, it is still called Section 4(f) and remains a key component of the Federal Highway Administration's environmental stewardship responsibilities.
