Section 4(f) of the DOT Act
A Primer on Section 4(f) History & Compliance

foster the people

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Overview

• Section 4(f):
  1. A Primer on its history
  2. What you need to know 4(f)
During Office Hours

• Section 4(f) law nitty-gritty.

• *De Minimis* 101.

• 4(f) Documentation made easy.
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Federal Highway Act
1956
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CROSS MANHATTAN ARTERIALS
AND RELATED IMPROVEMENTS

LOWER MANHATTAN EXPRESSWAY
MID MANHATTAN EXPRESSWAY
DOWNTOWN REDEVELOPMENT
THE CENTRAL CITY
POST OFFICE
THE NEW EAST SIDE
Interstate highways are cutting “... great swaths through urban communities and demolishing the intricate, closely woven texture of the city’s tapestry.”

-Senator Ralph Yarborough (Texas)
The highway program is “...being operated by barbarians. We ought to have some civilized understanding of just what we do to spots of historic interest an great beauty by building eight-lane highways through the middle of our cities.”

- Senator Joseph Sill Clark (Penn)
Led by Senator Yarborough, Senator Clark, Senator Randolph.

Section 4(f) of the... 

DOT Act of 1966

signed

October 15, 1966.

Said...
“Avoid Parks, Recreation Areas, Wildlife & Waterfowl Refuges and Historic Sites unless there is no Prudent & Feasible Alternative.”
While the Interstate still led to this...
THE LATENT POTENTIAL OF HIGHWAY ARCHITECTURE

Los Angeles is a city exemplified by the vast sprawl of architecture – a city built and exploited by car and concrete, its malls and parking. A city constructed of dreams and aspirations, a city of images, an idealized life that is produced and consumed every day.

As LA densifies, and cemeteries and baseball stadiums become the only public space for the disembarked driver, the interstate becomes not a pathway of a modern life; a nostalgic notion of the freedom on the open road but a tourniquet, defining and controlling boundaries and use. This project aims to expose and exploit latent potentials of interstate architecture whether temporal, transitional or fixed and suggest that these spaces can and in time will have to be used in different manners.

By deconstructing a redundant form of highway architecture; the Drive-In Cinema and using its tectonic elements then a different type of space can be articulated within the highway network: For the Evangelist or housewife, Veteran or Hipster – the concrete sprawl of the interstate becomes a blurred space that provides a malleable framework of use, life and function, projecting and capturing accurate images of a car-driven culture.
There was more of this..
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“[T]he few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes.”
• Section 4(f):
  1. A Primer on its history
  2. What you need to know 4(f)
• True origins: a highway project in San Antonio, TX through Brackenridge Park
• A law separate from NEPA, NHPA...
• Applies ONLY to the actions of DOT agencies when there is a **USE**
• Goal is total avoidance and preservation
• Controversial and often challenged part of FHWA’s project development process
Next to NEPA, Section 4(f) has been the most frequently litigated environmental statute in the Federal Highway program.

And since it is substantive, it is the primary cause of court injunctions halting highway projects.
Procedural vs. Substantive

NEPA (+ NHPA) are procedural

- Courts will consider the process used to make the decision.
- No specific outcome required. In theory, any alternative can be selected.

Section 4(f) is substantive

- More than a process
- Requires a certain outcome
What Lawsuits Tell Us:

- Nature & quality of Section 4(f) resources may be considered - not all are equal.

- Effect of project on Section 4(f) resources may be considered - not all are equal.

- Consider the net effect on Section 4(f) resources after factoring in mitigation.

- Do not rely solely on costs.
4(f) Resource Types.
Parks
Recreation Areas
Wildlife & Waterfowl Refuges
** (Must be publicly-owned)

Historic Sites
** (Public or private ownership)
Parks+

- Publicly owned
- Public park
- Major purpose
- Significant
Wildlife and Waterfowl Refuges

- Publicly owned
- Major Purpose
  conservation, restoration, or management of endangered species, their habitat, and other wildlife and waterfowl resources
Historic Sites

- Land of National, State or Local Significance
  - public ownership not required
  - listed in or eligible for the National Register, or
  - locally significant
    - determined by FHWA when an Official provides adequate information to show a property is of local significance
Interstate Exemption

- **Interstate system** is not to be considered to be a historic site subject to Section 4(f), with the exception of those individual elements of the Interstate system formally identified by FHWA on the basis of national or exceptional historic significance.

- **Examples** – historic bridge or highly significant engineering feature
Post-1945 Bridge Exemption

- Common steel and concrete bridges, and culverts, built after 1945, are not to be subject to Section 4(f), with the exception of those called out by states as part of exception.

- Examples – historic bridge or highly significant engineering feature of a bridge or culvert post-1945.
Other Eligibility Issues

- Multiple use properties
- Planned facilities
- Joint development
- School playgrounds
- Trails and bikeways
- Archaeological sites
- Air rights
- Golf courses
- Entrance fees
- Mitigation sites
- Transportation Resources
Keys to 4(f) Use.
Use of Land

- Fee simple
- Permanent Easement
- Temporary Easement
- Constructive Use
- De minimis Impact (Use
FEE SIMPLE USE

Highway
R-O-W

Park
Permanent & Temporary Easements

ROUTE 52

PARK

Culvert

Highway ROW Line AND Park Boundary

Easement
Constructive Use

- No actual incorporation of land

- Proximity impacts substantially impair the activities, features, or attributes that qualify a resource for Section 4(f)
De Minimis Impact (Use)

- May be applied to any project
- De minimis impact findings are based on the degree of impact including any avoidance, minimization, and mitigation or enhancement measures included in the project
- Have different criteria / impact thresholds for Parks+ and historic sites
De Minimis for Parks+

Section 4(f) requirements are satisfied if:

- Project does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f)
- Written concurrence from officials with jurisdiction
- Public has been afforded an opportunity to review and comment
De Minimis for Historic Sites

Section 4(f) requirements are satisfied if:

Section 106 consultation process results in a determination of:

- No effect, or
- No adverse effect

Written concurrence necessary from SHPO (must be made aware of FHWA’s intent)

Lead agency has considered views of any consulting parties
Other De Minimis Issues

- Applied to each individual Section 4(f) resource
- May be applied to temporary occupancy situations
- May not be applied to Section 4(f) Constructive use situations
- Lead agency makes de minimis finding
- Only satisfies the Section 4(f) requirement
Programmatic Section 4(f) Evaluations
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Historic Bridge & Net Benefit Programmatic

- Bridge: if adverse (i.e. removal), then this is the best/fastest route. Requires extensive design analysis – see me if you want to talk further (talk next week).

- Net Benefit: a case when the ultimate work will be a benefit, even if the impacts are more than de minimis
Final Take Away

For Project Development
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Size.

Location.

Severity.

Function.

Least Harm.
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Size of Take
Park

Location of Take
Severity of Take

Historic Site
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Least Harm

Park Boundary
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