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February 28, 2007

## Group wants vote on park excavating for freeway

By J. Craig Anderson  
Tribune



*Attorney Howard Shanker and freeway opponents are trying to stop ADOT from moving forward on the proposed South Mountain Freeway without a public vote to allow the freeway to go through the park preserve.*

*Ralph Freso Tribune*

Transportation officials don't plan to ask voters before leveling a portion of South Mountain to complete Loop 202 in the southwest Valley - despite state and local laws prohibiting freeway construction on mountain preserves without public approval. The reason, Arizona Department of Transportation and Phoenix city attorneys say, is that one decision made in the '80s trumps the preservation law.

ADOT has chosen a path for the planned South Mountain Freeway leg of Loop 202 that would require cutting through mountain ridges at depths of up to 220 feet inside South Mountain Park, west of Ahwatukee Foothills.

But area residents are mounting a legal opposition strategy that could include a no-excavation-without-representation argument, based primarily on Phoenix city code amendments approved by voters in the mid-1980s.

The resident group, called Protecting Arizona's Resources and Children - PARC - says Phoenix is prohibited from turning over any part of the preserve to ADOT for freeway construction unless such action is approved by a majority of city voters.

One section of the ordinance passed by voter initiative in 1986 states that no preserve land "shall be sold, traded, alienated, redesignated, leased, or otherwise deleted or removed from the Mountain Preserve except by approval of a majority of electors voting thereon."

"If the city doesn't (hold an election), it will take an action by the citizens," PARC board member Greta Rogers said. "This is going to be front-page news: 'City screws ordinance; To hell with the people.' "

But Phoenix City Attorney Gary Verburg said the code sections protecting mountain preserves do not preclude a state agency such as ADOT from taking park land for use as a freeway.

"The reality is that the freeway isn't an undertaking by the city; it's an undertaking by the state," Verburg said. "There might be defenses to it, but it's a very problematic lawsuit."

To complete the 22-mile, \$1.7 billion South Mountain Freeway project as planned, ADOT would have to bulldoze and blast through 32 acres on the preserve's southwestern edge. Any other available path would have required an even greater impact on the park, transportation officials say.

Howard Shanker, a Tempe environmental attorney representing PARC, agrees that a Phoenix ordinance would not preclude ADOT from condemning the preserve land. However, Shanker said Phoenix cannot actively convey the land to ADOT without triggering the vote requirement.

"The city can't give ADOT the property without a referendum," he said. "They have to condemn it, or they have to have a vote."

Verburg disagreed, saying that turning over the land under threat of condemnation would merely spare the parties a more difficult but otherwise inevitable eminent-domain action.

"In the final analysis, it would be very difficult for the city to stop ADOT if ADOT wanted to run a freeway through the mountain preserve," he said.

PARC members also pointed out that Arizona law specifically prohibits the use of mountain preserve land for building highways unless approved by popular vote.

"This state or a political subdivision of this state shall not construct, lay out, open or establish a street, road or highway through a designated mountain preserve unless the construction of the street, road or highway is approved by a majority of the electors of a charter city voting on the matter," the 1990 law states.

But the law doesn't apply to South Mountain Freeway, ADOT spokesman Doug Nintzel said, because plans for Loop 202 were under way long before the preserve law passed.

"The state statute covering limitations on parks exempts extensions of existing state highways, so Loop 202 is exempt," Nintzel said.

South Mountain Freeway is also exempt because ADOT chose its planned alignment in 1988, and the preserve statute includes a grandfather clause that applies to freeways planned prior to Aug. 15, 1990.

Shanker said he believes any lawsuit PARC might file against ADOT over the freeway would most likely center on environmental factors such as the legality of ADOT's environmental impact statement, an assessment of the freeway's adverse effects due to be issued this summer.

Still, any action by the city or state in violation of preserve laws could bolster the group's legal argument, he said.

PARC has created a Web site at [www.protectazchildren.org](http://www.protectazchildren.org) and is trying to raise money for what Rogers said is a virtually unavoidable lawsuit.

If Phoenix or ADOT is forced to let city residents vote on the matter, Rogers said she is confident the freeway plan would fail. "They would be dead in the water," she said.

#### South Mountain Freeway timeline

1985 – Voters approve Regional Freeway System Referendum, which includes building South Mountain Freeway

1988 – Arizona Department of Transportation proposes freeway alignment that would pass through Ahwatukee Foothills and South Mountain Park

1990 – Legislature votes to protect mountain preserves from future state highways but exempts proposals that predate Aug. 15, 1990

2001 – Alignment options limited to Phoenix after Gila River Indian Community Tribal Council passes resolution opposing freeway studies on reservation land

2004 – Voters approve Proposition 400, which includes future funding of South Mountain Freeway project

2006 – Protecting Arizona's Resources and Children (PARC), a resident group opposed to the planned freeway alignment, hires environmental lawyer to fight the project as proposed

2007 – PARC demands public vote on freeway alignment because of potential damage to South Mountain Park. ADOT to issue environmental impact statement this summer

2009-2015 – ADOT to build South Mountain Freeway if legal challenges fail



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