

U.S. DEPARTMENT OF TRANSPORTATION
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STATEMENT OF JOHN A. VOLPE, SECRETARY OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION OF THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES, REGARDING THE DEPARTMENT OF TRANSPORTATION'S EXPERIENCE WITH THE IMPLEMENTATION OF THE POLICIES SET FORTH IN THE NATIONAL ENVIRONMENTAL POLICY ACT, TUESDAY, DECEMBER 8, 1970.

Mr. Chairman and members of the Committee:

I am pleased to have this opportunity to appear before you to discuss how the Department of Transportation is implementing the policies and procedures of the National Environmental Policy Act of 1969.

At the outset I wish to state my firm belief that there need be no inconsistency between the dual goals of progress in our Nation's transportation systems and the preservation and enhancement of the quality of the environment. Undoubtedly, the scope of the Department of Transportation's activities, which include Federal aid grant programs for highways, airports, and urban transit facilities located in nearly all parts of our country, will provide a critical test for my convictions. But, I feel that with proper planning, our transportation systems can be developed in a manner which meets both our need for transportation services and our need to improve the quality of our environment.

As you are fully aware, Mr. Chairman, in addition to the National Environmental Policy Act, the Department of Transportation has very specific environmental responsibilities arising from section 4(f) of the Department of Transportation Act of 1966, section 16 of the Airport and Airways Development Act of 1970, and section 14 of the Urban Mass Transportation

Assistance Act of 1970. The Office of the Assistant Secretary for Environment and Urban Systems is responsible for coordinating the Department's actions in the environmental area including, of course, the responsibility for overseeing the implementation of the National Environmental Policy Act within the Department.

The Department began implementing the National Environmental Policy Act immediately after its enactment. In January, I called a meeting for the Office of the Secretary and our operating Administrators, at which time we discussed the application of the Act to the Department, and I emphasized the importance which I personally attached to the Act and to its effect on the Department's programs. In late February a memorandum was distributed to each of our operating administrations requesting that they provide my office with a statement of their tentative plans for compliance with the Act. In April, I requested their formal submission of proposed procedures for implementing section 102(2)(C). In close consultation with the CEQ staff, the Office of Environment and Urban Systems prepared a draft Departmental Order which was officially submitted to CEQ on June 1. The draft order was reviewed and rewritten during the summer, and I signed into effect a final DOT Order implementing section 102(2)(C) on October 7, 1970. As you recall, Mr. Chairman, you were sent a copy of that Order as soon as it became effective.

Under the terms of that Order, each Administration is directed to draft implementing instructions to be cleared with the Assistant Secretary for Environment and Urban Systems. The Federal Aviation Administration

has already cleared and implemented such instructions for its airport development program, and the Federal Highway Administration completed last week its implementing instructions and has sent them to its regional offices for implementation. My staff is currently working with the Federal Railway Administration, the Urban Mass Transportation Administration and the Coast Guard on the preparation of their instructions.

I will now briefly describe certain key provisions of the Order relating to the implementation of section 102(2)(C). This section, which requires that an environmental impact statement be prepared for each legislative proposal and other major Federal action significantly affecting the quality of the human environment, gives teeth to the Act. Firstly, the preparation of these statements will assure that consideration of environmental factors will be an integral part of the planning and decision-making process on Federal projects. Secondly, the circulation of those statements among all interested Federal, State and local agencies and their availability to the public, will provide an early warning of potentially adverse environmental consequences arising from specific Federal actions so that alternate approaches to a particular action may be considered.

The DOT Order actually sets forth in one document a single procedure facilitating compliance with all of our environmental legislation (section 102(2)(C), section 4(f) of the DOT Act, and portions of section 16 of the Airport and Airway Development Act of 1970). This procedure consolidates into one statement all of the required environmental findings for any one particular project.

The Order specifically sets forth its applicability to the whole range of Departmental activities, including the grant and loan programs, contracts, construction, research and development, rule making and regulatory actions, certifications, plans, formal approvals of non-Federal work plans, legislative proposals, program or budget proposals (except for continuation of existing programs at approximately current levels, i.e., plus or minus 25 percent), and any renewals or reapprovals of any of the foregoing. The following departmental activities are exempted from the Order:

- administrative procurements and contracts for personal services;
- normal personnel actions;
- project amendments (for example, increases in costs) which do not alter the environmental impact of the action; and
- legislative proposals not originating in the Department relating to matters not the primary responsibility of the Department.

The Order instructs that all Departmental actions applicable thereunder must include a statement in conformance with section 102(2)(C) or a "negative declaration" that the proposed action will not have a significant impact on the environment. The Order indicates that if there is doubt whether or not a statement should be prepared, one should be prepared. Section 102(2)(C) provides that a detailed statement be prepared for, among other things, "major Federal actions significantly affecting the

quality of the human environment." With respect to the foregoing language the following definitional guidelines are found in the Order: The Order states that any Federal action which significantly affects the environment is deemed to be "major Federal action" within the meaning of the Act and a statement shall be prepared. In so doing, we elected not to place an arbitrary dollar limit on actions requiring 102(2)(C) statements. It was our judgment that a statement should be prepared for any Departmental activity which significantly affects the environment regardless of its dollar cost.

The term "Federal actions" is defined to include the entire range of Departmental activity, including direct Departmental action and the administration of our grant programs. Undoubtedly our grant programs will raise most of the environmental issues which will confront the Department. The Order requires that an environmental statement be prepared for each grant that may have a significant environmental impact.

The phrase "significantly affecting the environment" is defined to include any action which is highly controversial on environmental grounds and any matter falling within section 4(f) of the DOT Act of 1966, or key parts of section 16 of the Airport and Airway Development Act of 1970. Additionally, the Order sets forth a number of effects which, if produced by a Federal action, would be likely to result in a significant effect on the environment, including the following:

- a noticeable change in the ambient noise level for a substantial number of people;
- the displacement of significant numbers of people;

- the division or disruption of an established community;
- adverse aesthetic or visual effects;
- adverse affects on areas of unique interest or scenic beauty;
- alteration of the behavior of species or interference with important breeding, resting or feeding grounds;
- an increase of air or water pollution levels, or an adverse affect on the water table or water supply of an area; and
- disruption of the ecological balance of a land or water area.

It is intended that these general definitions will be supplemented in further detail as appropriate by the internal instructions drawn up by each Administration with regard to their specific programs and requirements.

The Order directs that draft statements shall be prepared at the earliest practicable point in time so that analysis of the environmental effects and the exploration of alternatives are significant items for consideration in the ultimate decision-making process. The implementing instructions prepared by the Administrations will also specify the precise time when a statement shall be prepared.

For the Department's grant programs, such as the Federal-aid Highway Program, the FAA's Airport Development Program, or the Urban Mass Transportation Program, the applicant for Federal aid will be required to submit

along with his application a draft 102(2)(C) statement, or a "negative declaration" stating that the project will have no significant effect on the environment. This material will be reviewed in the regional office of the Administration and may be returned to the applicant if more information is needed.

In addition, the Order requires that all draft statements whether prepared by the Department, an Administration, or by an applicant for Federal aid, be coordinated with appropriate Federal, State and local agencies at the regional level, with a copy of the draft being submitted to the Department's Assistant Secretary for Environment and Urban Systems and to CEQ. The Order provides a list of agencies with expertise in various areas with whom coordination should take place when appropriate. The draft statements and all of the comments received from such other agencies and sources shall accompany the project through the Departmental review process.

It is Departmental policy that all 102(2)(C) draft statements be made available to the public with respect to any Departmental action affecting them. In those cases where a public hearing will be held on a proposed Federal action, it is my intention generally to ensure that the environmental impact statement is made available to members of the public prior to the hearing so that interested persons can be fully informed of the issues. Hopefully, the availability of the draft environmental impact statements prior to public hearing will afford the opportunity for significant dialogue between the various governmental agencies and interested private parties. In this way, the concerns and viewpoints of

the public regarding a particular Federal action may be expressed and become part of the relevant matters for consideration in the making of the final decision regarding such action.

After the draft statement has been fully coordinated, a final environmental impact statement will be prepared incorporating, where appropriate, changes or additional information received through the coordinating procedure. These final statements will include a presentation of the problems and objections raised by various Federal, State and local agencies and by private citizens and the disposition of the issues involved. The final environmental impact statement will be submitted to the Assistant Secretary for Environment and Urban Systems for his concurrence. If he finds the statement acceptable, it will be transmitted to CEQ and other interested parties in accordance with CEQ guidelines.

I now will briefly focus on the Department's review under section 103 of the Act. This section requires that the Department review its statutory authority, regulations, and current policies and procedures to determine whether deficiencies or inconsistencies exist which would prohibit our full compliance with the Act.

An initial review indicates that there is no conflict or inconsistency which prevents full Department of Transportation compliance with the provisions of the Act. Clearly, however, more can be done to further the broad purposes of the Act, and we have initiated many programs directed toward this end. The Act directs agencies to develop alternatives to recommended courses of action, to utilize a systematic interdisciplinary approach, and to give environmental amenities appropriate consideration in decision making.

I will mention just a few examples of the kinds of activities which the Department has undertaken to indicate our efforts in this regard:

- Implementation of the Urban Mass Transportation Assistance Act of 1970, the Rail Passenger Service Act of 1970, and the Airport and Airway Development Act of 1970 to encourage the development of alternative modes of transportation;
- A study of the current urban transportation planning process in an effort to integrate into the process factors such as a broader assessment of transportation alternatives, how an interdisciplinary team approach which ties comprehensive planning to project design can be used in planning, consideration of the environmental impacts of the transportation alternatives, the role of citizen participation, and making the process more responsive to metropolitan needs. I want to make special mention of the significance of the Act to the urban transportation planning process. Consideration of the environmental implications of transportation decisions must become an integral part of the planning process. We are attempting to define a way by which the Department's planning money can be used to stimulate a process at the metropolitan level which would best produce sound environmental analysis. This may imply a stronger role for metropolitan, areawide planning agencies.
- Support of legislation to expand significantly the highway beautification program;
- Support of legislation to provide more flexible authority with respect to relocation of persons displaced by highways;

- Expansion of efforts to prevent, detect, and clean up oil spills;
- Specific research projects, including, "Environmental Factors in Airport Site Location", "Environmental, Social and Aesthetic Factors in Urban Transportation Planning", and "Interdisciplinary Approach to Transportation Planning", "Reserved Freeway Lanes for Buses and Car Pools" and "DOT Policy and Procedures on the Environmental Policy Act" which study is including interviews with 57 private interest groups seeking their advice and comments as to the Department's response to the Act;
- Rule making activities in areas such as sonic boom, aircraft smoke emission, noise retrofit, and noise standards for supersonic commercial aircraft; and
- Examination by the Coast Guard of the environmental implications of bridge permit applications.

I wish to emphasize that this list is not exhaustive, but merely suggests our extensive effort to better fulfill the broad mandate found in the National Environmental Policy Act to encourage productive and enjoyable harmony between man and his environment.

Although the Department's Order implementing the National Environmental Policy Act has only been in effect since this October, the Department has been operating to some extent under the draft guidelines submitted to CEQ in June. With the preparation of the implementing instructions by the Administrations, which should be completed in the near future, this Department will have its entire procedural response to section 102(2)(C) basically completed.

Our experience with the Act has surfaced the following problems:

- The delay in implementing the full thrust of the Act's policies and procedures due to the size of our grant programs, and the fact that the administration of these programs is delegated to our field offices.
- The problem in making the applicants for Federal-aid appreciate the significance of the Act so that the environmental statements prepared pursuant to 102(2)(C) reflect a meaningful change in procedure and not just a new level of meaningless paperwork.
- The added project review time that will result from the coordination procedures.

I feel that with time these problems are fully capable of being resolved favorably.

The Committee has also expressed an interest in any staff changes necessitated by the Department's implementation of the National Environmental Policy Act. I mentioned earlier that the Assistant Secretary for Environment and Urban Systems has the main responsibility in the Department for overseeing the implementation of the Act. His staff will be increased significantly from 35 positions in January 1, 1970, when the Act was signed into law to 62 positions requested for fiscal year 1971. (The Department's Appropriation Bill has not been approved as yet).

At the present time, there have been no additions to the staffs of the Administrations as a direct result of the Act, but it is anticipated that they will require staff increases during the next fiscal year when the full impact of the Act will be realized at their level. However, within the Administrations there has been a redeployment of personnel to offices directly involved with environmental matters. Several administrations have also made organizational changes to account for the increased emphasis on environmental considerations. For example, the Federal Highway Administration has recently reorganized and created a new position of Associate Administrator for Right of Way and Environment and has upgraded their division of Environmental Policy to an Office of Environmental Policy. The Federal Aviation Administration has reorganized its Office of Noise Abatement to the Office of Environmental Quality, which includes responsibility for the entire environmental field. In addition, each Administration has designated a specific office as the focal point for coordinating and overseeing the responsibilities of the particular Administration in environmental matters.

In conclusion, Mr. Chairman, I would like to reemphasize my interest and concern with the goals and purposes expressed by the National Environmental Policy Act of 1969, and my confidence that our transportation needs can be met in a manner fully consistent with the Act.

At this time, I request to submit for the record, Mr. Chairman, as an appendix to my remarks, a detailed statement which sets forth some of the other actions taken by the Department of Transportation in furtherance of the broad purposes of the National Environmental Policy Act and in response to our other **environmental** responsibilities.

This concludes my prepared statement, Mr. Chairman, I shall be happy to answer any questions the Committee may have.

APPENDIX TO STATEMENT OF JOHN A. VOLPE, SECRETARY OF TRANSPORTATION, IN CONNECTION WITH TESTIMONY GIVEN BEFORE THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION OF THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES, ON TUESDAY, DECEMBER 8, 1970.

I. Environmental Responsibilities of the Department of Transportation Beyond the NEPA

The Department of Transportation has been actively concerned with the need for environmental quality for several years before the National Environmental Policy Act of 1969 became law.

Sections 2(b)(2) and 4(f) of the Department of Transportation Act of 1966, the enabling legislation that created the Department of Transportation, direct that Departmental operations promote and preserve environmental quality. Section 2(b)(2) states:

"It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges and historic sites. . ."

. . . Section 4(f) prohibits the Secretary from approving any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state, or local significance as so determined by such officials 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."

Additionally, section 106 of the Historic Preservation Act of 1966 requires that the head of any Federal agency with jurisdiction over a proposed Federal or federally assisted undertaking shall, prior to the

approval of the expenditure of any Federal funds on the undertaking, take into account its effect on any district, site, building, structure, or object that is included in the National Historic Register.

Legislation relating to the Federal-aid Highway program has been broadened over the years so that environmental factors can be taken into account. Policies and procedures established by the Federal Highway Administration have required full consideration of construction procedures and elements to prevent, control, and abate water pollution, and to minimize soil erosion in the course of the construction of Federal-aid highways. Landscaping and roadside development along highways are eligible for Federal funding and are actively promoted by the Highway Administration. The Highway Beautification Act of 1965 which authorized and appropriated funds for the acquisition and enhancement of areas of scenic beauty adjacent to Federal-aid highways, gave the Department greater authority in this area. Although this program has been handicapped by lack of full funding, the Department is hopeful that this year the funding levels will be increased so the program can be fully implemented.

The office of the Assistant Secretary~~y~~ for Environment and Urban Systems, created with a specific mandate to coordinate the Department's actions in the environmental area, has been active for nearly two years within the Department.

Operating under these earlier mandates, the Assistant Secretary for Environment and Urban Systems has reviewed a number of specific transportation projects, and his recommendations to the Secretary

of Transportation have been instrumental in withholding or withdrawing Federal funds from the following projects:

- Expansion of a training field near the Everglades National Park into a major International Jetport, which would have seriously endangered the Park.
- Extension of an Interstate Freeway link through Franconia Notch in New Hampshire, where such a project would have disrupted the historic "Old Man in the Mountain".
- Construction of a highway in New Orleans which would have adversely impacted the historic French Quarter.

Additionally, significant changes were made to numerous other highway projects to minimize their adverse consequences in instances where there was no alternative to the taking of parkland or no provision for the replacement of parkland.

More than three years of experience in operating under these earlier provisions has given the Department of Transportation a meaningful head-start in taking environmental factors into account in its policies and programs. While the National Environmental Policy Act of 1969 does mandate broad new policies, the Department has been better prepared than many agencies to implement the new directives because of our past environmental responsibilities.

At present, environmental responsibilities are placed on the Department not only by the National Environmental Policy Act and section 4(f) of the DOT Act, but also by section 16 of the Airport and Airway

Development Act of 1970 and section 14 of the Urban Mass Transportation Assistance Act of 1970. The 1970 Highway legislation will also contain broader social and environmental considerations.

II. The National Environmental Policy Act of 1969

As soon as President Nixon signed the National Environmental Policy Act of 1969 into effect in January of 1970, Secretary Volpe made the importance of that Act clear to the employees of the Department of Transportation and he has re-emphasized his dedication to the goals cited in the Act on numerous occasions since that time.

The broad spirit of the Act as it relates to the activities within the Department of Transportation, is contained in requirements that Federal agencies shall:

- utilize a systematic, interdisciplinary approach in decision making.
- insure that environmental amenities and values are given appropriate weight in decision making along with economic and technical considerations.
- study, develop, and describe alternatives to courses of action where a proposal involves unresolved conflicts concerning alternative uses of available resources.

Administratively, it is relatively simple to assure that a procedural requirement, such as the filing of an environmental impact statement, is accomplished. The broader policy statements articulated in the Environmental Policy Act are much more difficult to quantify and integrate into actual Departmental procedure. However, the Department of Transportation is attempting to do just this in an attempt to meet both the letter and the overall spirit of the Act.

The National Environmental Policy Act of 1969 is a potent force in the Department of Transportation, not as a tool to stop all new transportation projects because of environmental considerations, but as a source of broad guidance to encourage fundamental changes in procedure to insure that environmental considerations and a study of alternatives become an integral part of transportation planning at the earliest instance. In this way, transportation growth can be made fully compatible with environmental quality.

The following is a short description of some of the activities undertaken by the Department of Transportation either as a direct attempt to meet the broad directives of the National Environmental Policy Act, or as methods designed to further the goals of a balanced transportation system, which also compliment the policies of the Act.

1. Providing Transportation Alternatives

The Department is implementing the new legislative mandates received in 1970 to provide Federal funds for transportation alternatives. The Urban Mass Transportation Act of 1970, the Rail Passenger Service Act of 1970 and the Airport and Airway Development Act of 1970 improve and expand the Department's authority

to assist all modes. For the first time Federal assistance is available to fund all modes of travel. In implementing each program, an emphasis is being made to provide a choice of transportation alternatives from which local areas can choose. The optimum process would be one by which an urban area would define its own growth goals and land use policies, and then choose the most appropriate transportation mode to implement its defined goals.

2. Improvement of the Urban Transportation Planning Process

The Department, through the Assistant Secretary for Environment and Urban Systems, is studying the urban transportation planning process initiated under section 134 of the 1962 Highway Act, looking toward an improvement of the process. The Department has a significant amount of money available for transportation planning through its Highway, Urban Transportation, and Airport Development programs. The Secretary is interested in using Departmental planning money to implement the broad policy directives of the Environmental Policy Act such as the concepts of a systematic interdisciplinary approach in planning and decision making, a study of alternative courses of action (alternative transportation modes), and giving the environmental amenities appropriate consideration in decision making. Changes at the Departmental level in administering the planning grants, or new requirements concerning the agency at the local level which receives the planning money may be required to accomplish the

above mentioned goals. Centralizing the Department's planning money into a single area-wide planning agency in a metropolitan area that does both land use and overall transportation planning for all modes is one approach that could promote the study of transportation alternatives and their environmental implications. The Department now has Federal grant money available to finance alternative modes of transportation, but changes in the urban planning process in metropolitan areas may be necessary to make sure that the money is best utilized to meet the needs of urban areas in a way that is compatible with the Environmental Policy Act.

3. Single Transportation Trust Fund

The Department of Transportation has under study the concept of a single transportation trust fund to provide Federal grants, without a modal identification, to states and local areas to spend on the transportation mode that best suits the needs of that area. Such a concept would help to encourage the development of alternative transportation systems by eliminating some of the modal biases in Federal-aid that presently exist.

4. Research

A. Departmental Policy and Procedures and the NEPA

The Department has contracted with Arthur D. Little, Inc. for a study of the impact of the National Environmental Policy Act on the Department of Transportation. The contract calls for an analysis of current legislation and policies in light

of the Act, and for
/the contractor to provide a discussion of policy alternatives, a
draft manual on the involvement of public interest groups, and
recommended actions to comply with the Act.

B. Environmental, Social and Aesthetic Factors in Urban Transportation Planning

The Department has contracted with Real Estate Research Corporation for a study of means to incorporate environmental, social and aesthetic factors into the urban transportation planning process. The contractor will conduct on-site studies of four cities and will prepare a manual summarizing pertinent experience and developing recommended procedures to improve the transportation planning process.

C. Environmental Factors in Airport Site Selection

The Department has contracted with CLM Systems, Inc. for a study of the environmental factors which should be considered in airport site planning. The contractor is to prepare a handbook on assessing sites in terms of intermodal planning, pollution, noise, aesthetics, community disruption, and land use and development.

D. Environmental Effects of Miami Jetport

The Department of Transportation and Interior are assisting Miami-Dade County in monitoring the impact of the training strip on the Everglades National Park and in the consideration of alternative jetport sites.

E. Noise Factors

The Department is pursuing through several research projects methods by which transportation noise can be reduced.

F. Environmental Research on Supersonic Flight

The Department has assembled a \$26.68 million 3-year research program plan to provide more precise answers to the environmental aspects of supersonic flight.

G. Interdisciplinary Approach to Transportation Planning

The Department has contracted for an analysis of the use of interdisciplinary design concept teams to do urban transportation planning.

5. Rule-Making Activities

The Department of Transportation, through the Federal Aviation Administration is proceeding with rule-making activities in the following areas:

- Prohibition of supersonic flight over the United States at speeds that would cause a sonic boom.
- Establishment of aircraft noise type certification standards for subsonic and supersonic aircraft.
- Regulation of aircraft engine emissions.
- Civil airplane noise reduction retrofit requirements.

6. Legislation

The Department is actively supporting legislation in the following areas:

- Legislation that would broaden the Federal-aid Highway Act to give the Secretary greater flexibility in the use of money from the Highway Trust Fund for social and environmental purposes.
- Legislation to significantly expand the highway beautification program.
- Legislation to provide more flexible authority with respect to relocation of persons displaced by highways.

7. The Coast Guard

The Department is supporting an expanded role for the Coast Guard in the area of prevention, detection, and cleaning up of oil spills.

The Coast Guard reviews all applications for bridge permits which it receives for the possible environmental impacts that would arise from the issuance of the permit.