

TESTIMONY OF JOSEPH F. CANNY
DEPUTY ASSISTANT SECRETARY FOR POLICY
AND INTERNATIONAL AFFAIRS
DEPARTMENT OF TRANSPORTATION
BEFORE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE
ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON WATER RESOURCES
OCTOBER 22, 1991

Good Morning Mr. Chairman and Members of the Committee. I am pleased to have this opportunity to discuss with you wetlands protection and its relationship to the programs of the Department of Transportation. I particularly welcome the opportunity to present the perspective of a development oriented agency which is a regulated under and a "user" of the section 404 permit process. This is a viewpoint somewhat different from those of the agencies such as EPA and Corps of Engineers which are primarily involved in the administration of the section 404 program.

The Department of Transportation has long recognized the importance of wetlands to the Nation's environment. Since 1975 we have had a detailed wetlands protection order governing the planning of transportation facilities projects in all of our operating agencies. (I should note, at the outset, that the Department of Transportation generally does not construct transportation facilities. State and local airport authorities, transit agencies and highway departments do the actual planning and construction, subject to DOT regulations, including our environmental procedures.) In its current form, our wetlands order provides that it is DOT policy to assure the protection,

preservation and enhancement of the nation's wetlands to the fullest extent practicable during the planning, construction and operation of transportation facilities and projects.

For many years we have worked closely with the Corps of Engineers, EPA and other agencies involved in wetlands protection. One result of our joint effort is the so called "Redbook" which was developed by the Federal Highway Administration and the other agencies to serve as an operating guide for implementation of the section 404 program in the Federal-aid Highway Program. I am happy to be able to submit a copy of the Redbook for the record to illustrate how the highway planning and permitting process works.

More recently, the importance of wetlands protection was specifically recognized in the Statement of National Transportation Policy that was released by Secretary Skinner in early 1990 and in the Federal Highway Administrator's statement of environmental policy, also published in 1990.

Your invitation asked that we discuss the effects on Department of Transportation activities of the wetlands policy initiatives announced by President Bush on August 9. We support the President's goal of no net loss of wetlands. We believe that the new policy direction will have significant benefits for our programs and for wetlands. For example, the application of the best currently available techniques to identify wetlands and track

gains and losses in wetlands acreage will be an important resource for transportation planners in protecting wetlands.

There are three other specific aspects of the President's program which will offer particular benefits. These are the improvements to the wetlands delineation manual; the categorization of wetlands by function and value; and the additional flexibility that will be provided in project planning and execution.

With respect to the delineation manual, we have noted the significant controversy surrounding the manual, particularly from the agricultural and real estate sectors.

Notwithstanding the relatively good experience transportation planners have had, we have noted substantial variation among different agencies and different field offices in how the manual was interpreted and applied. We anticipate that the proposed revisions to the manual will provide additional clarity and greater consistency in delineation decisions. Perhaps more important, the final revised manual will be followed with a wetland delineation training program for private consultants and public agency field staff. Such training is vitally needed to eliminate inconsistencies and uncertainties in the delineation process.

The two aspects of the new policy which will be of greatest benefit to transportation agencies, are the classification of

wetlands by function and value and the change in the application of the so-called "sequencing" process.

In order to explain the significance of these changes, I should note that the existing section 404 regulatory program presents three challenges for transportation project planners. First, it appears to over emphasize wetlands protection, in comparison to other environmental and economic factors. The EPA section 404(b)(1) guidelines, which set the environmental standards for this permit process, indicate that filling of wetlands "shall not be permitted if there is a practicable alternative...which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." The term " practicable" is defined as "available and capable of being done after taking into consideration cost, technology and logistics, in light of overall project purposes." Depending upon how that test is applied in a particular field office of EPA or the Corps of Engineers, it can be an extraordinarily difficult standard to meet.

Some who argue that wetlands are an exceptionally valuable environmental resource would suggest that avoidance of wetlands, even low-grade wetlands, must take precedence over virtually any other environmental or community impact. We do not believe that is necessarily the best public policy judgment in every instance. Consequently, we sometimes encounter difficulties when agencies involved in the permitting process insist upon an alternative that

avoids wetlands, even though the alternatives would, in our view, cause even greater adverse impacts, such as displacement of families and businesses, destruction of historic sites, or major increases in project cost.

A related concern is that under the existing program, wetlands are not explicitly and consistently recognized as having widely varying functions and values. Some wetlands--for example, pristine coastal marshes--are of exceptionally high value and we need to take extraordinary measures to protect them. Other wetlands may be of only a transient nature or may be particularly abundant in an area so that the wildlife, habitat, flood protection or other functions served by the wetlands can be substantially preserved without protecting every acre of the wetlands. Thus, a prudent choice may be to fill in the those wetlands when balanced against the impact on other resources if the decision were to avoid the wetlands. From our perspective, the need for flexibility in weighing wetlands impacts and values, and balancing wetland protection against other environmental, community and economic impacts has not always been recognized under the present program. By formally recognizing these differences "up-front", we expect to experience more reasonable regulatory decisionmaking.

Under the changes announced by the President in August, we believe that these two problems will be remedied. First, a system of categorization of wetlands based on function, value and relative

abundance will enable transportation planners to recognize those wetland areas or types of wetlands which require special efforts to avoid and protect, while allowing us to apply a more balanced approach involving compensatory mitigation of impacts to other categories.

The second major improvement, from our perspective, in the President's program is that the so-called "sequencing" process will be required only for high-value wetlands. Sequencing is an integral part of the existing section 404 permit process. Under sequencing, a determination must first be made that potential wetlands impacts have been avoided to the maximum extent practicable; that remaining unavoidable impacts will be minimized; and, only as a last resort compensation will be provided for any lost aquatic resource values. We have found that the rigid application of the sequencing process can sometimes make it difficult to develop a total project solution which might rely relatively heavily on compensation--that is, replacement of wetlands functions--rather than avoidance, to best serve the public interest. Since the rigid sequencing process will no longer apply to wetlands of lower and moderate value, we will be able to take a more balanced approach to project development affecting those wetlands. In many cases, we believe we can actually achieve substantial net benefits for the environment by determining that while it might be technically possible to avoid a particular wetlands site, it would be preferable to route a transportation project through the wetlands and create new

wetlands or restore existing wetlands in a manner that would result in a net gain of wetlands values.

To illustrate the significance of these changes, I would like to briefly describe two highway projects where sequencing was not applied vigorously. As a result, the state transportation departments were able to select alignments that had significant wetland impacts, but ultimately led to an enhancement of aquatic resource values. Similar opportunities are available in other Department of Transportation programs such as mass transit projects and airport development. The projects are:

Madison, Wisconsin, South Beltline:

The Madison South Beltline project is a six-lane freeway project. The route selection was based on a balancing of environmental, traffic, socioeconomic and fiscal considerations. All alternatives would impact a 1,000 acre wetland along the Yahara River. Although the selected freeway route impacted more wetlands than widening the existing highway, community impacts were much more severe for the widening alternative, and mitigation opportunities were possible for the new alignment. The selected route would displace fewer businesses and fewer residences, have substantially less noise impact, avoid conflicts with parks and archeological sites, and reduce community impacts by separating through traffic from local traffic.

The alternative of widening the existing highway would have affected only 4 acres of wetlands. The selected alternative uses 22 acres of wetland. A strict application of the sequencing requirement to avoid or minimize wetland intrusion would have required selection of the widening alternative. However, the 22 acre loss for the new alignment alternative was more than mitigated through a plan developed in close consultation with wildlife agencies. It included re-creation of 20 acres of wetlands, enhancement of five acres of wetland, and transfer of over 100 acres of existing wetlands to public ownership to assure their long-term preservation.

The second highway is US65, Pine Bluff, Arkansas.

The U.S. 65 bypass project in Pine Bluff, Arkansas, would provide a four-lane interstate-type highway. Widening of the existing U.S. 65 highway through Pine Bluff would have been disruptive to residences and businesses along the highway but would have avoided wetlands impacts. With the selected route, approximately 26 acres of wetland would be filled, and 4 acres would be temporarily disturbed for highway construction. But the mitigation plan created or restored over 100 acres of wetland, and 158 acres of bottomland hardwoods and wetlands would be purchased and preserved in public ownership. The final project alignment was selected to minimize encroachment on the floodplain of Bayou Bartholomew, and the new highway will serve as a barrier to preclude development in the floodplain. Acquisition of adjacent parcels of land in the floodplain that would be deprived of highway access further

protected the floodplain and was far less costly than construction of frontage roads to serve the properties.

These projects illustrate the need for a careful weighing and balancing of a variety of factors in reaching a decision on a public works project as to the approach and the detailed solutions that best serve the public interest. Our decisions need to recognize the basic objectives of the proposal, which are to provide improved transportation service, improved economic development potential, better accessibility, congestion relief, and so on. We must also be cognizant, of course, of financial considerations. And we need to be fully aware of potential environmental impacts and to identify ways in which those impacts can be avoided, or mitigated. We are aware of the need to ensure that wetlands are restored and created using the best available scientific information, that it is sometimes difficult to predict even then whether such a project will actually succeed, and that therefore sometimes need to build in a margin for error.

With respect to the environmental considerations, a public works project can entail the application of more than thirty sets of statutes and regulations and permits. We consider, for example, relocation of families and businesses; impacts on prime farmlands; air quality; historic and archaeological sites; endangered species protection; parkland preservation; fish and wildlife conservation;

safe treatment for sites that may have involved hazardous waste disposal; noise impacts; and many other concerns. Wetlands protection is an essential part of this process, but only a part. We use the environmental review process established under the National Environmental Policy Act to document our analysis of environmental impacts and evaluation of alternatives. This process entails broad consultation with other agencies -- state, federal and local -- and the public. Through this process we are able to achieve the difficult balancing of many disparate and often conflicting concerns and reach project decisions that serve the overall public interest.

The existing section 404 permit process has sometimes made it difficult to achieve a balanced public interest decision. We believe that the changes incorporated in the President's recent wetlands policy will correct those difficulties and we look forward to working with the other agencies involved and with the Congress to implement the new policy.