



DEPARTMENT OF
TRANSPORTATION

NEWS

OFFICE OF THE SECRETARY

WASHINGTON, D. C. 20590

11-DOT-71

REMARKS BY HERBERT F. DeSIMONE, ASSISTANT SECRETARY FOR ENVIRONMENT AND URBAN SYSTEMS, AT THE THOMAS ALVIN BOYD LECTURE SERIES IN ENGINEERING, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, ON WEDNESDAY, APRIL 21, 1971

TRANSPORTATION AND THE HUMAN ENVIRONMENT

I appreciate the opportunity to speak here tonight on the subject of "Transportation and the Human Environment".

The makeup of the audience, I think, clearly illustrates the great importance and interest in the subject matter, and is reflective of the national interest in this, one of our great concerns.

I am gratified to see such a turnout of students. It is my personal view that you students, with your personal concern, your personal commitment, and your great ingenuity offer significant promise for continued progress and enhancement of this great Nation.

NATIONAL TRANSPORTATION WEEK / MAY 16-22
Transportation: Filling the Needs of a Growing America...

A year ago tomorrow was Earth Day across the country and the critics were saying that environmentalism was just another "instant cause", which would soon flicker out.

It never happened. The country is becoming more and more concerned. A generation of young environmental activists -- and some not so young -- is on the move. We in Government are on the move, too.

If there is one idea that characterizes policy thinking in Washington today, it is that in a world of rapidly increasing population, explosive technological advance, and urban growth, we can no longer view the activities of man in isolation from each other. We cannot make a better world without treating housing, education, urban design, recreation, pollution control, population planning, and conservation as parts of the same problem.

We are living on a planet, so we must begin to think in terms of the whole earth and its human and material resources. We must never forget that the balance of nature is always delicate and that we tamper with it only at great risk. And, that means a complete break with some cherished habits.

We must practice a new form of earth management -- to control pollution, recycle wastes, monitor toxic metals, and limit the widespread use of untested compounds. We must develop systematic programs to replant forests, restore the topsoil, and counter the effects of strip mining. We must set aside reserves for future park use and enlarge wildlife enclaves. We must control suburban leapfrogging and put a stop to the random development of urban land resources.

Furthermore, over the next few years, I am certain there will be vast changes in the way we plan, deploy, and use our transportation investments.

One look at the growth which has occurred wherever major highways or airports have been built will tell you that transportation is a great shaper of our urban areas. How good a shaper it is depends entirely on whether we put it to work for us or whether we let it enslave us.

A new urban system was authorized by the Federal Aid Highway Act of 1970 -- Federal-aid construction moneys for highways are now available for fringe area parking and for exclusive buslanes -- this is something new. It is something which promises to help relieve the congestion which automobiles cause in downtown areas.

Also new is careful monitoring of Federal-aid transportation plans and projects. Within the Department, my office reviews highway plans, mass transit plans, and airport plans -- to make certain that transportation projects reflect environmental concerns and broader social concerns as well.

In one case, an airport planned for the Everglades was stopped in deference to the unique ecology of that area.

In the case of a highway planned in New Orleans' French Quarter, consideration for the social value of that historic area prevailed, and the highway was stopped. Other Federal-aid projects planned around the country are also under close scrutiny. In many cases, they are subject to scrutiny because they threaten public parks and scenic areas. My office advocates a re-examination of plans and the development of alternatives wherever such areas are threatened. The Department of Transportation wants to protect parks, and it does. The Department also wants to protect persons and businesses threatened by transportation projects, and it does. The Department has a strong relocation policy for persons adversely affected by transportation projects because it realizes that the most serious problem of all is the displacement of housing and the destruction of neighborhoods, which cause severe emotional and material hardship.

Federal moneys for transportation have long favored highway construction. Experts estimate that with the opening of each new eight-lane urban highway, 15,000 additional inner-city parking spaces are required downtown. This increases pollution and consumes valuable land. Today, as much as 60 percent of many central business districts is devoted to automobile-related services -- parking lots, garages, cloverleaves, streets, and so on.

Thus, reliance on highways and automobiles exclusively has promoted the deterioration of our central cities. It has caused the relocation of families, businesses and in many cases paved over with concrete, invaluable green acres. In fact, this single-mode mania has caused public transit to decline as urban highways were built. We are determined to change that.

Legislation enacted last year makes money available for urban mass transit, and for exclusive bus lanes as earlier noted, and many other things which would decrease our dependence on the automobile in our central cities. We are determined to use new funds for urban highways, for mass transit and for airports in a complementary way. Then, we will not be so reliant on automobiles and we will have achieved balanced transportation.

This I believe is absolutely essential if we are to move people and protect our physical and social environment as well.

Within a few years, rapid rail to our airports must be the rule, not the exception. People-movers will make their appearance in shopping centers, airport terminals, and business districts. The Tracked Air Cushion Vehicle -- or, as we call it, TAC-VEE -- will dominate the inner-city movement of passengers on trips of between 50 and 300 miles. We will see new subway systems as in San Francisco and in Washington, D.C., where BART and the METRO are underway. The automobile will remain a choice -- not a necessity -- for much inter-city travel.

All these improvements and new modes will require careful planning.

Transportation, as I said before, is a major shaper of urban areas. And here lies one of our greatest problems -- we lack the kind of institutions needed to plan at the metropolitan scale. Nearly every city and town, regardless of its size, thinks only of itself when it comes to planning. A few metropolitan areas have regional planning agencies. The Federal role must be to foster the growth of these agencies and to encourage regional scale planning all over our Nation.

To move from the institutional problem to a smaller-scale problem which requires not social engineering, but technical engineering, let's consider the automobile.

The automobile, of course, is due for redesigning from top to bottom. We must develop an efficient, low-emission power plant if we are ever to get clean air in the cities, simply because the internal-combustion engine now produces up to 85 percent of all urban air pollution. We also need a safe car that will permit people to survive head-on crashes at 50 mph and roll-overs at 70 mph without significant injury.

To put the role of the Department of Transportation in perspective, I would remind you that we are not, as one might expect, responsible for establishing motor vehicle or aircraft emission standards -- that authority belongs by statute to the Environmental Protection Agency. And, although we have sponsored research and development of low-pollution buses, the direction of the program to develop a pollution-free automobile rests with the Council on Environmental Quality. This is not to say that we are not active in this area -- but our role here is one of cooperating and encouraging, rather than directing.

The safety and pollution problems associated with conventional cars are well known. What is not so commonly understood is that cars and trucks are principal causes of the noise epidemic that has swept industrial nations in recent years. Noise is a word of dubious origin, but two claimants to paternity are the Latin *nausea* (sickness) and *noxa* (harm) -- both convey the condition of cities and suburbs today.

City dwellers start to show a hearing loss at 25, whereas primitive tribes do not show one until 70. And well-informed scientists figure that if noise continues to rise at its present rate of increase, one decibel a year, city residents could be stone, or at least tone, deaf by the year 2000.

The Surgeon General has recently announced that between six and sixteen million Americans are also exposed to possible hearing damage from occupational noise. In the last 30 years, overall noise levels have increased 3000 percent.

The Department of Transportation is studying plane and truck noise through studies funded by the Federal Aviation Administration and the Federal Highway Administration. These studies will lead to standards to control noise.

Water pollution is another serious environmental disorder and here, too, transportation must share the blame. The more than eight million watercraft (both commercial and recreational) that navigate U.S. waters discharge a variety of pollutants, including sanitary wastes, litter, bilge waters, and oil.

Although not necessarily the most damaging of the water pollutants, oil is certainly the most dramatic and indicates the magnitude of the problem. Not only is our oil consumption increasing dramatically (from 11 million tons daily to 14.1 million in the past five years), but more and more of it is being spilled along coastal and inland waters. The damage already runs into billions of dollars a year and that figure may increase as our oil requirements grow and supertankers become common.

Your great challenge over this next generation will be to discover ways for us to have our cake and eat it, too. We must expand our productivity and at the same time protect life on earth.

We cannot ask the rest of the world to postpone its entry into the industrial age in order to suit our convenience. Our highly technological society has made today's environmental problems; now we must show the world how

to keep the advantages of our technology without sacrificing our human environment.

I must say that I envy you, for you will be builders and creators in the broadest sense. These days people are better educated and they demand that modern engineering enhance their total surroundings, and that ideally the engineer should be a participant in an overall process of social and environmental planning and design. Today, our investments in housing, job opportunities, education, recreation, land use and transportation must be integrated at the planning stages. We can't afford to wait for tomorrow.

We, in the Department of Transportation, believe that creative transportation planning and engineering and management are the keys to making these other investments pay off. We waste far too much time in commuting, and in going back and forth to school or work -- and shipping goods from one city to another can often be a nightmare of delay, loss, confusion, aggravation and unnecessary expense.

If I can command some modern technology for a few minutes, I would like to wind this speech up with a few slides showing our commitment to balanced transportation and enhancement of our environment.

Can anyone doubt that we have the resources, the brains, and the guts to face these problems? I say we have. I look forward to the day when transportation in this country will be safe, clean, fast, comfortable, and convenient -- an instrument of social and urban design, and a means for the continuous renewal and beneficence of our shrinking world.

Thank you.

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DEPARTMENT OF TRANSPORTATION

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NEWS

OFFICE OF THE SECRETARY

WASHINGTON, D. C. 20590

15-DOT-71

REMARKS BY HERBERT F. DeSIMONE, ASSISTANT SECRETARY FOR ENVIRONMENT AND URBAN SYSTEMS, DEPARTMENT OF TRANSPORTATION, AT THE NATIONAL TRUST FOR HISTORIC PRESERVATION CONFERENCE ON LEGAL TECHNIQUES IN HISTORIC PRESERVATION, WASHINGTON, D.C., MAY 1, 1971

THE RESPONSE OF FEDERAL TRANSPORTATION LEGISLATION AND POLICIES TO HISTORIC PRESERVATION

Mr. Chairman, ladies and gentlemen, I appreciate the opportunity to be here this morning to discuss the transportation response to the call for historic preservation.

As some of you may know, prior to becoming Assistant Secretary of Transportation, I was the Attorney General of Rhode Island. My offices were located in Providence on Benefit Street, which is part of an historic district and, in my opinion, a model for historic renewal. All along this backbone of College Hill, a deteriorating neighborhood has been restored to its eighteenth and nineteenth century elegance.

The legal profession, perhaps more than any other, appreciates the need for tradition in society. And, as I walked along Benefit Street to my office, I felt what I suppose could only be described as a

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sympathetic resonance with the past -- an appreciation of those values which have been our legacy from prior generations.

Now, I don't mean this to be a plug for Rhode Island or the Providence Preservation Society, which was the prime mover of the project. It is just that I believe that historic preservation is not merely a matter of sentimentality or nostalgia, it is a way of maintaining our link with the past. It is a way of reminding us that we must build for the future as those in the past built for us. This is why I refuse to accept the notion that destroying our historic districts is progress. This is why I believe, and the Department believes, that preservation is progress.

One of Secretary Volpe's first acts on assuming direction of the U. S. Department of Transportation was to create what is now my office, the Office of the Assistant Secretary for Environment and Urban Systems. He has given the office his wholehearted and enthusiastic support and we believe that the Department's record, both as to intent and as to action in this area, is a good one.

The Congress has long been concerned about ways to provide maximum transportation efficiency and convenience and, at the same time, to reflect appropriate concern for the impact of that efficient and convenient transportation system on the physical environment. We in the Department share their concern. We must serve transportation needs and, at the same time, we must be certain that we give full consideration to questions relating to the environment and to the retention of those historic and natural resources which give quality to that environment.

Within the Department we have attempted to respond to this need. In our decision making we are guided, aided, abetted and supported by five pieces of legislation. Chronologically, they are:

1. National Historic Preservation Act of 1966
2. Federal-Aid Highway Act of 1968
3. Section 4(f) of the Department of Transportation Act of 1968
4. Intergovernmental Cooperation Act of 1968
5. National Environmental Policy Act of 1969

In addition, the Urban Mass Transportation Assistance Act and the Airport Airways Development Act, both passed by the Congress during the last session, have environmental provisions which also affect the way the Urban Mass Transportation Administration and the Federal Aviation Administration do business within the Department of Transportation and in communities across the Nation.

In the appendix to my statement, I have included all the pertinent legislation. I will review them briefly, but I know as a lawyer that primary sources are essential. Also, rather than merely reviewing what the law is, I would like to focus on a hypothetical case.

Section 4(f) of the Department of Transportation Act of 1966 and the National Environmental Policy Act of 1969 are by far the most important of the pieces of legislation cited.

Section 4(f) of the Department of Transportation Act is also identical to Section 138 of Title 23, U.S.C. In essence, it prohibits, among other things, the use of recognized historic sites for transportation projects unless no feasible prudent alternative exists, and, in that case, requires all possible planning to minimize harm.

The legislation applies to all projects which require approval of the Secretary of Transportation or his authorized representative, including State highway officials, acting for the Secretary under the provisions of Title 23, U.S.C., Section 117 (Secondary Road Responsibility). The projects include, Federal-aid, forest highway, Indian reservation roads, public lands highways and defense access roads.

Similarly, the provision of Section 102(2)(c) of the National Environmental Policy Act applies to all projects which require an approval by the Secretary of Transportation or his authorized representative and requires an environmental statement for major Federal actions significantly affecting the quality of the human environment.

Within the context of responsibility for promoting transportation programs and activities and, at the same time, within the context of the specific legislation which I have cited, the Department of

Transportation has worked to satisfy both the letter and the spirit of the law as it relates to environmental protection and, specifically, to historic preservation.

Oscar Gray has recited for you (and Jacob Morrison deals with this matter in his work, "Historic Preservation Law") the complex legal framework of preservation law at the Federal, State and local levels.

Let me discuss, however, a hypothetical case in terms of the Federal law. Assume that a highway is built from point A to point B. Preliminary planning has established its need on the basis of engineering and traffic factors. Objections to the proposed highway route centers around the proposed demolition of properties on the National Register. Further, assume that the State highway department maintains that there are no satisfactory alternatives to this demolition of historic properties. Let us forget for a moment that an improved cooperative transportation planning process might have avoided this conflict altogether.

The first Federal provision to come into play is the National Environmental Policy Act of 1969. This Act provides that "all agencies of the Federal Government shall utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences in planning and decision making which may have an impact on man's environment."

This provision has been construed in the recent case of Environmental Defense Fund vs. the U.S. Corps of Engineers. This case held legally inadequate a planning process which did not include an interdisciplinary approach. The Court was troubled at trial that the Plaintiff was in a position to raise environmental issues that were not raised in the environmental impact statement as submitted by Defendant, the Corps of Engineers. In this case, the Court found that although the planning for this project had begun in 1958 and construction on portions of the project had begun in 1963, planning undertaken after the adoption of the National Environmental Policy Act must use an interdisciplinary approach at least in the compiling of the information for inclusion in the environmental impact statement. That information could be taken into consideration in

determining whether to go forward with the project, to modify the project, or to reconsider the whole matter. The Court did not specify what is meant by an "interdisciplinary approach", nor do cases or administrative regulations of which we are aware interpret the meaning of this provision. I should like to add, however, that the Office of the Assistant Secretary for Environment and Urban Systems recently completed a research project which developed guidelines in this respect. These guidelines will soon be published. However, the principal point here is that the Court was troubled that Plaintiff witnesses raised issues which had not been taken into account in Defendant's planning.

In this case, the Court also held as a matter of law that the Corps' environmental impact statement required under Section 102(2)(c) was deficient. And, as I have already said, one deficiency was its failure to adhere to the National Environmental Policy Act requirement that prior to making the environmental impact statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.

The Court also held that the impact statement must consider various alternatives to any proposed project, including the alternative of not building the project at all. These requirements are an integral part of DOT's regulations concerning environmental impact statements. The main lesson from this case is that a detailed statement must deal with all pertinent environmental issues thoroughly. The Court listed issues raised by Plaintiff's witness that were not covered by or included in the impact statement in holding the statement to be legally deficient.

Because our hypothetical case is a highway proposal, it would also be subject to the provisions of the two-hearing process which implemented the 1968 Highway Act. In brief, this Act requires a first hearing on the location of any proposed highway and a second hearing on the design of the highway. The so-called, two-hearing process is designed to give citizens additional access to the transportation decision making process. Under guidelines

promulgated a week ago by the Council on Environmental Quality to implement the National Environmental Policy Act of 1969, the environmental impact statement must be available to the public at least 15 days prior to any public hearing except where the agency prepares a draft statement on the basis of a hearing subject to the Administrative Procedure Act.

Now, let us assume that the project proposal has gone through the local hearing. The State has now chosen to go forward with an application to the Federal Government for aid. At this point, let us assume that there has been an interdisciplinary approach, consideration of alternatives, consultation with citizens and appropriate agencies and the development of a satisfactory environmental impact statement prior to a public hearing.

Prior to the time that the Department can consider the application, the terms of the Intergovernmental Cooperation Act of 1968, implemented by Office of Management and Budget Circular No. A-95, must be met. The law, partly implemented by the so-called A-95 process requires first an early warning of the "anticipated nature and extent of environmental impact" and then the submission for comment of the statement to the agency designated to carry out A-95 reviews. A-95 agencies can and sometimes are an effective checkpoint for consideration of environmental impacts, including impacts on historic properties. Comments of these agencies must accompany an application to the Department for Federal aid.

Note that these laws create a framework for consideration of environmental factors in the State and local planning process which is open to citizen and public access, which addresses all issues and which is environmentally effective. I call this process creating the "environmental matrix". Note also, that all these procedures have been authorized and developed since 1968, most since 1970. We have come a long way, baby.

The next statute that would come into play would be the Historic Preservation Act of 1966.

This Act requires the Secretary of Transportation to take into account the effect of the project on sites, buildings, construction, or objects

on the National Register and give the Advisory Council on Historic Preservation an opportunity to comment.

Notice that the Historic Preservation Act applies not only to historic property that is actually taken by the highway proposal but also that which is affected. The most obvious example of an effect in our experience is increased traffic in and around historic sites. Any applicant highway department is required to apply the "criteria for effect under the procedures for compliance cited in Section 106 of this law". These criteria include "any condition of the undertaking which creates a change in the quality of the historical, architectural, archeological, or cultural character that qualified the property under the National Register". Generally, adverse effects occur under conditions which include, but are not limited to (a) destruction or alteration of all or part of a property, (b) isolation from or alteration of its surrounding environment, (c) or introduction of visual, audible, or atmospheric elements that are out of character with the property and its setting.

To give a recent example, a proposed bridge from James Island to Charleston in South Carolina would not involve the taking of historic properties, but would increase the traffic through the Historic District in that community.

Few of us would argue that traffic has the potential for introducing "visual, audible or atmospheric elements" which too often qualify as an adverse impact, by any definition. Therefore, this bridge proposal led to its consideration under the criteria for effect under Section 106. Under such circumstances, the Department of Transportation guidelines require that the agency representative and the representative of the Office of Archeology and Historic Preservation shall "(a) determine if the project is adverse - if not, the undertaking may proceed; (b) upon finding an adverse effect, select and agree upon a prudent and feasible alternative to remove the adverse effect in which case the undertaking may proceed; (c) failing to find and agree upon an alternative, recommend all possible planning to minimize the adverse effect and delay further processing of the undertaking pending the receipt of comments from the Advisory Council".

In this way, an effect that is less direct than taking of property may still involve Section 106 of the National Historic Preservation Act of 1966.

Going back to our hypothetical example, let us now assume that the Advisory Council has commented and that these comments have been taken into account in the environmental impact statement required under the National Environmental Policy Act of 1969. The final backstop, or hurdle for the project, depending on your point of view, would be Section 4(f) of the Department of Transportation enabling legislation.

Under Section 4(f), the Secretary has discretion to intervene in a situation which is deemed undesirable from the environmental point of view. The most striking application of this principal occurred in the rejection of the proposal to build the Elysian Field Expressway through the Vieux Carre in historic New Orleans. Secretary Volpe stated, "The highway would have serious impact on the historic quality of New Orleans' famed French Quarter. Careful review of the highway proposal and positions of various interests convinced the Department of Transportation that the public benefits from the proposed highway would not be enough to warrant damaging the treasured French Quarter". On that basis, the Secretary refused to authorize the use of Federal funds for this project.

Section 4(f) has been recently construed by the Supreme Court of the U. S. in the case of Citizens to Preserve Overton Park, Inc., et al v. Volpe, Secretary, Department of Transportation, et al. Even though this case involved a park and not an historic site or landmark, the language of the case as well as its tone has implications for any proposal which would utilize an historic site of national, State, or local significance. For instance, the Court said that "the very existence of the statute indicates that the protection of parklands was to be given paramount importance. The few green havens that are public parks are not to be lost unless there were truly unusual factors present in a particular case or the cost of community disruption resulting from alternative routes reached extraordinary magnitudes. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that alternative routes presents unique problems".

Another issue was the scope of judicial review of the Secretary's determination. On this issue, the Court held although de novo review is not required and the Secretary's approval does not have to meet the "substantial evidence" test, the standards of Section 706 of the Administrative Procedure Act 5 U.S.C. 706 (Supplement V) required the reviewing court to engage in a "substantial inquiry". The presumption of regularity of the Secretary's decision is not to be shielded from a "thorough, probing, in-depth review". However, the Court also said that "although the inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The Court is not empowered to substitute its judgment for that of the agency". The case was remanded to the District Court for a full review of the Secretary's determination in light of the standards set forth by the Supreme Court.

One can see from Overton Park that the Courts are going to be taking Section 4(f) seriously. The Supreme Court has made it clear that Section 4(f) means precisely what it says -- that transportation projects assisted by the Federal Government will not be permitted to encroach upon our natural and national heritage except in the case of unique problems. The Department has taken this requirement seriously in the past; we shall continue to do so.

Finally, if all these reviews have not saved the historic site, there is still one saving grace. Under 23 U.S.C. 305 and Policy and Procedure Memorandum 20-7, highway funds would be available to remove the building if the Department of the Interior were to include it in the Historic American Building Survey.

In short, my Department intends to do everything in its powers to preserve these historic sites. They form the warp and woof of our American heritage. This Nation has become too great to allow us to forget how we became that way.

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U.S. DEPARTMENT OF TRANSPORTATION
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WASHINGTON, D. C. 20590

STATEMENT OF HERBERT F. DeSIMONE, ASSISTANT SECRETARY OF TRANSPORTATION FOR ENVIRONMENT AND URBAN SYSTEMS, BEFORE THE SENATE COMMITTEE ON COMMERCE, REGARDING S. 728, MONDAY, MAY 3, 1971.

Thank you very much Mr. Chairman. I am pleased to be here today to present the views of the Department of Transportation on S. 728.

This is my first opportunity to testify for the Department, and I am pleased that it is before the same Committee that confirmed my nomination. At that confirmation hearing, I explained to Senator Hart that my office had S. 728 under review and that I would shortly be able to assess its impact on the Department and our ability to protect the environment. We have completed our review, and I appreciate this opportunity to report to the Committee.

At my confirmation hearing, I said that I intended to be an advocate for the environment. I am here today to state the Department's total commitment to the purposes of this measure. As I shall show, it parallels, in a number of ways, the position we have already developed vis-a-vis environmental protection. As Secretary Volpe has often said, at the Department of Transportation environmental quality is a goal, not a constraint.

I am also an attorney, and as Attorney General of Rhode Island, I had considerable experience in the enforcement of statutes. Therefore, I also bring to you today the Department's recommendations for making this legislation more effective in fulfilling its objective--enhancing the quality of life in this nation.

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Section 4(f) was written into the basic legislation that created the Department of Transportation in 1966. Thus the Department was one of the first agencies with a specific Congressional mandate in the environmental area. As you know, strong environmental protection provisions are now incorporated into other DOT statutes, such as section 16 of the Airport and Airway Development Act of 1970 and section 14 of the Urban Mass Transportation Assistance Act of 1970. In addition, many Departmental activities are subject to the provisions of the National Environmental Policy Act of 1969.

Secretary Volpe has assigned the responsibility of overseeing the Department's response to all of these environmental provisions, including section 4(f), to my office, that of the Assistant Secretary for Environment and Urban Systems. Since section 4(f) was a part of the Department's basic enabling Act and because it provides clear policy direction, the Secretary has always taken a strong personal interest in its application to Departmental programs. The Supreme Court, in its recent Overton Park decision, affirmed the need for a critical review of 4(f) cases by the Department. As an indication of his interest in section 4(f), the Secretary has retained in his office the final determination as to the administration of that section.

Since 1969, Secretary Volpe has decided on environmental grounds to withhold Federal funds or approval from several projects. In addition, in a number of other cases where there was no feasible and prudent

alternative to the taking of land covered by section 4(f), significant modifications were made to the projects to minimize any possible adverse impact.

With regard to S. 728, the Department of Transportation, as I have said, supports the concept of this amendment to section 4(f) of the DOT Act. This proposal would broaden the applicability of the section, but in a manner which is generally consistent with certain aspects of the Department's actual implementation of section 4(f). We do feel, however, that certain provisions of the legislation should be more tightly drawn in order to make them more effective.

Let me discuss, then, the specific changes in section 4(f) which we propose.

First, the bill would extend 4(f) applicability not only to projects which "use" land in protected categories, as at present, but also to any project which "has an adverse effect on the environment in" such protected lands. The Department does not object to broadening 4(f) protection beyond "use". The word "use" is subject to an extremely narrow reading, and may suggest that section 4(f) is intended to apply only to a direct taking of land. Situations can exist, however, where a transportation project does not require an actual taking of land in the physical sense, but would substantially interfere with the use to which that land is

dedicated. Such a situation could occur where a transportation facility is located adjacent to a protected area but does not require the taking of land from it. It would be consistent with the philosophy of section 4(f) to provide protection in such situations. The Department, in fact, has adopted this broader meaning in the past and this change would therefore conform to present Departmental criteria.

On the other hand, it is our view that the application of section 4(f) to projects which have "an adverse effect on the environment in" the protected categories of land is overly broad, and might be counterproductive. Even a slight increase in noise or air pollution can legally be considered an "adverse effect", but neither necessarily diminishes the value of the affected land to its users. Thus, if section 4(f) is to be broadened to cover adverse effects as well as actual use, we believe that it should be made only applicable to projects which have an adverse effect on protected land, significant enough to impair the usefulness of that land for its current or intended purpose. We believe, therefore, that the word "significant" should be placed before the phrase "adverse effect". Without this qualification, it is my judgment that the provision will be simply unworkable. Uncertainty about its proper interpretation could produce serious and costly disruptions in transportation planning, with the public bearing the brunt of the delay and expense. We support the

broadening of section 4(f) and we hope it will be broadened in a way that permits us to implement it effectively and meaningfully.

The bill would also eliminate the need for the protected land to be publicly owned. In your statement in the Congressional Record of February 10, 1971, Mr. Chairman, you point out that private groups have purchased land for preservation as wildlife or waterfowl refuges and that these lands should be protected. The Department agrees wholeheartedly with extending 4(f) to cover privately owned wildlife or waterfowl refuges. However, application of the provision to privately owned parks and recreation areas may lead to difficulties in implementing it unless further definitional guidance is given. If the bill is adopted in its present form, all private facilities of this nature would be protected. These would include private golf courses, private country clubs, and other private recreation facilities--even one's own back yard--which serve no bona fide public purpose. I do not believe that this is what should be intended. We would suggest, therefore, that any park or recreation land protected by 4(f) be publicly owned, or be held by a corporation or individual and dedicated in perpetuity to public use or held in reserve for preservation as a protected area.

The bill would also add "water resource areas" to the protected categories of land. Several examples of such areas are mentioned in your statement about the bill, Mr. Chairman. The Department supports this change since water resource areas used for recreation, waterways, navigable waters,

estuaries, and reservoirs are precious and often irreplaceable resources. A more precise definition of the kinds of water resource areas to be protected is necessary, however, since the category would be quite broad if public ownership were not required. Further, it is not clear what kind of protection should be afforded waterways. Should any use of such areas be prohibited, or just those projects which would endanger or interfere with the water resource area? My staff would be pleased to work with the Committee staff in developing guidelines or further defining the issue.

This legislation would also eliminate the provisions with respect to the determination of "significance" by an appropriate governmental body. The language in the current statute is somewhat ambiguous and we believe it should be altered. Some governmental body must be called upon, however, to pass on the worth of the area to the community. We are now considering this problem and will report back to the Committee shortly.

We would also recommend that the requirement that all "possible measures to minimize harm" be taken, be changed to read "all prudent measures". We believe that the "all-possible" criterion virtually defies meaningful implementation. It quickly becomes purely hortatory, and its actual impact is thereby diminished. Because neither we, nor the States, nor even the courts, have been able to read clear meaning into the "all-possible" standard, I do not believe it has served the public well. I urge the Committee to adopt the language recommended by the Department so that it can be clearly interpreted and firmly implemented and enforced.

Additionally, there are a number of other technical comments that we have regarding the bill. Wildlife and waterfowl "refuges" under the legislation would be changed to wildlife and waterfowl "areas". We have no objection to this change, but again definitional guidance is necessary in implementation because refuge implies an officially designated and identifiable site. Would an official or unofficial designation as a wildlife or waterfowl area be required, or would they include any place that migrating birds generally nest or feed? Again, my staff would be pleased to work with Committee staff in resolving this issue.

The bill also implies that the amended provisions would apply to all projects approved after August 23, 1968. I don't believe this retroactive application of these standards is really what is meant. I am sure we all realize how disruptive they would be of numerous already approved projects.

I also have several additional technical comments which I would like to submit to the Committee by letter for the record.

I would like, Mr. Chairman, to make one additional point. I am convinced that we can--and must--make our transportation projects compatible with our environment. Section 4(f) is one of our primary tools in accomplishing this end, and its amendment in the form I have suggested will make it even more effective in preserving for the people the natural resources and historic sites which mean so much to us all.

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



**DEPARTMENT OF
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WASHINGTON, D.C. 20590

DOT-16-71

REMARKS BY HERBERT F. DeSIMONE, ASSISTANT SECRETARY FOR ENVIRONMENT AND URBAN SYSTEMS, DEPARTMENT OF TRANSPORTATION, AT THE CONNECTICUT TRANSPORTATION SYMPOSIUM, HARTFORD, CONNECTICUT, MAY 8, 1971

TRANSPORTATION AND ENVIRONMENTAL QUALITY

It gives me great pleasure to participate in this symposium. I feel that its co-sponsors are an appropriate team in light of today's complex transportation problems. The solution to these problems will depend, to a great extent, on the involvement of organizations such as the American Institute of Aeronautics and Astronautics and the Connecticut Department of Transportation. Also, Connecticut is not just a good neighbor of my home State of Rhode Island, but it also promises to become a proving ground for new approaches to the movement of people and goods.

What I want to say today is broadly related to the themes of the conference and has as its focus the question of transportation and the environment.

NATIONAL TRANSPORTATION WEEK / MAY 16-22
Transportation: Filling the Needs of a Growing America...

It is my deep personal belief and conviction that we can move people and goods over a transportation network and, at the same time, protect the quality of our environment -- in fact -- I am committed to the proposition that, as we make progress in this area, we will have the opportunity and the ability to actually enhance our environment. In order to achieve this goal, however, we need to improve our framework for making plans and decisions. And, we must develop a new awareness of both the immediate environmental effects of transportation projects and the cumulative, but delayed impacts upon the environment and society. In fact, many new laws now require consideration of immediate and long-range environmental impacts.

Best known of all Federal environmental statutes is the National Environmental Policy Act of 1969. Also, legislation regarding transportation contains specific requirements for protection and enhancement of the environment. The act establishing the Department of Transportation was the first Federal legislation to contain explicit requirements for consideration of the environment. Section 4(f) of the Department of Transportation Act states that the Secretary of Transportation shall not approve a transportation project that would use land from a public park, recreation area, wildlife or waterfowl refuge, or historic site, unless he is satisfied that there is no feasible and prudent alternative to the proposed action. In those cases where he approves such projects, he must also be satisfied that there has been sufficient planning to minimize environmental harm.

Most 4(f) situations which come to the attention of my office have involved highways through parks or recreation areas and in cases where construction of the highways has been permitted, because there are no prudent and feasible alternatives, my office and Secretary Volpe have required assurances to minimize harm to the remainder of the park or recreational facility or that new parkland be provided to replace that taken for the project. Most of these cases are satisfactorily resolved by negotiation with State and local officials.

I believe that the States and cities must be given expanded power to make decisions regarding Federally-assisted activities in their areas. Times have changed -- the old way of doing business has changed. We now consider physical and social amenities and environmental values. We can no longer look at new transportation facilities solely

in terms of the least dollar cost. We have to be future oriented and look at the social consequences which cannot be measured in dollars alone. As I see it, the 4(f) provisions must encourage planning at the local level which will minimize the taking of certain kinds of land -- parks, recreation areas and historic sites. For example even though such land may have a low dollar value, it may have a much greater community value.

However, transportation has other environmental significance. It is not just a user of land but it can be one of our most effective, most positive tools for inducing and controlling large scale development. Unfortunately, it has been too rarely used that way. In some areas heavy reliance on a single mode has distorted desirable or efficient urban form. To a large extent the expansion of highway systems has governed the development of cities and suburbs. Such development has sometimes been haphazard and we have not achieved the best results. In the future, good planning will make highway building a tool for promoting the best urban growth.

In passing the Federal Aid Highway Act of 1970, Congress for the first time provided money -- 100 million dollars -- for the design and construction of urban systems. It also includes support for improvements with positive impact on the environment, such as beautification, joint development activities such as air rights projects, and exclusive bus lanes. Most significant, the Urban Mass Transportation Assistance Act of 1970 will fund public transportation capital improvements in the amount of 10 billion dollars over the next 12 years. As a result, cities and communities are becoming better able to develop balanced transportation systems to meet the growing demand for inner-city travel.

Balanced transportation funding was also furthered by passage of the Airport and Airway Development Act of 1970, which created a trust fund for airport systems and master planning. In addition, Section 16 of that Act requires consideration of both the goals and objectives of the affected communities and possible alternatives to the proposed actions.

We are now taking a big step toward correcting the previous imbalance in transportation planning and funding. The environmental benefits of increased support for mass transportation systems will be evident

in reduced pollution and reduced congestion. Such planning and funding is prerequisite to what we call balanced transportation systems -- a frequently stated goal of our Department.

Balanced transportation in the sense of local or regional transportation systems implies reliance on inter-modal systems. It also implies developing relationships between the modes most appropriate to the area served. It is clear that "balance" means different things in different regions. New York City's combination of modes might not work well in Hartford or my city of Providence. What is good for New London would be inappropriate for Cheyenne, Wyoming.

"Balance" also means that transportation serves everyone -- the very young, the handicapped, the poor, and the elderly. We must make a special effort to serve the transportation needs of all our people.

Our commitment to balanced transportation systems is recognition that transportation can serve community objectives beyond the mere movement of people and goods. We want to accentuate the positive effect of transportation facilities on both urban and natural surroundings. We feel that balanced transportation can provide a more rational framework for urban growth and that it will be a major factor in our progress towards an improved environment.

Balance and environmental quality in transportation were given a big boost by legislation which applies to all major Federal actions having a significant effect on the human environment -- not just to transportation programs. I am, of course, referring to the National Environmental Policy Act of 1969. It sets far-reaching goals for the Nation's environment and requires the Federal Government to take certain steps to ensure that environmental values are given appropriate weight in all decisions on Federally funded or licensed programs and projects.

Specifically, Section 102(2)(C) of the National Environmental Policy Act, which is called NEPA, states that each Federal Department or agency must develop a detailed environmental impact statement for proposed actions which could have a major influence on the quality of the man-made and natural surroundings. State and local requests for Federal funds for projects must also be accompanied by environmental impact statements. Such statements must describe:

- (1) the environmental impact of the proposed action;
- (2) any adverse environmental effects which cannot be avoided;
- (3) alternatives to the proposed action;
- (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action, should it be implemented.

My office has overall responsibility for the Department's response to the Environmental Policy Act; thus we review all environmental impact statements submitted with requests for aid under DOT programs. This means highways, bridges, airports, transit systems -- as I have said any transportation activity which is Federally funded or licensed -- even bridges over navigable waterways.

My office and the entire Department are deeply committed to environmental quality and environmental protection. Decisions we make today will leave their imprint on the future. In 1991 we want to have good feelings about decisions we made in 1971. We will have good feelings only if we have really thought about the consequences of our decisions. Our decisions must be made in the context of the future, and this is no easy job.

In our view, the environmental impact statement should be the product of careful studies and planning. There must be changes in the way transportation projects are planned and decisions made if we are to realize NEPA's objectives. Section 102(2)(C) of NEPA addresses this problem. It states that all agencies of the Federal Government shall "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and environmental design arts which may have an impact on man's environment".

In transportation we feel that there must be real changes at the local, metropolitan, and State levels when the first planning effort is initiated. Our ultimate goal is a transportation planning process which brings together a broad range of professions to consider overall plans and specific projects -- which recognizes the relationship between transportation systems and urban development -- which involves the concerned citizens of affected communities. We can no longer afford to regard mobility as an end in itself. Let me state that I am personally

committed to finding ways to address environmental concerns and issues at the inception of planning. We must produce a high quality environment. Planning will determine what kind of environment the future will have.

As I close, I would like to express the Department's awareness of the numerous innovations and major projects under consideration in the State of Connecticut. I am very pleased to hear that in Connecticut, your legislature is considering the adoption of statutes much like the National Environmental Policy Act. This would seem a positive step and one which other States should follow. In addition, Connecticut may well be the proving ground for some far-reaching proposals and new ideas in transportation. I understand that you are considering a Railbus operating on both road and rail to serve Hartford and Bloomfield and an Urban Corridor Demonstration Project in New Haven. Other possibilities include service to supplement AMTRAK routes and the list could continue. Perhaps most significant is the fact that the Connecticut Department of Transportation now has authority to use 20 percent of the revenues from the public utility taxes for mass transit.

In fact, so much is happening we felt it necessary to steal away Hartford's Mayor to help us keep track of events in Connecticut and to help to keep transportation responsive to consumer needs. As you know, Ann Uccello is now serving as the Department's first Director of Consumer Affairs. Hartford's loss is a gain for the 200 million Americans who depend on transportation. And, Connecticut's example is serving many of the 49 States which welcome innovation.

Thank you.

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21-DOT-71

REMARKS PREPARED FOR DELIVERY BY ASSISTANT SECRETARY OF TRANSPORTATION, HERBERT F. DeSIMONE, BEFORE THE ANNUAL CONFERENCE OF THE AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES, PLAZA HOTEL, DAYTONA BEACH, FLORIDA, MAY 26, 1971, 2:15 p. m.

PLANNING AIRPORTS FOR LOCAL SATISFACTION

I am pleased to be here at this Annual Conference of the American Association of Airport Executives, for we have a common concern: We both want to provide the Nation with enough airports and service without hurting surrounding areas.

In my Senate confirmation hearings I said I intended to be an advocate for the environment, and I am. I believe that we can have aviation growth and better life quality near airports -- and -- at the same time. We do not need to slow or halt airport development, but we do have to change the way we do business. And, that's what I want to discuss today.

The rapid growth of airports and commercial aviation has given us great economic benefits and increased mobility. We are proud of the past, but the future will require some adjustments to new problems and to the public's increased expectations. There is a new climate in which airport planners must operate. As Attorney General for the State of Rhode Island, I watched this new climate develop. I think it is one we all welcome. I cannot find fault with aviation's past growth -- look at the economic and mobility benefits -- but it will not be helpful to pull any punches in describing the present situation as I see it. We must find ways for Government and the aviation community to respond to the need to control community noise and urban sprawl, and the need to take better care of our natural resources.

Airport planning often fails to give local governments and communities a chance to speak out. In fact the sponsor of an airport used to be pretty independent in his moves, especially when surrounding communities had weak zoning or little political strength. This was all right before large jets came along. Then, airports began to generate massive development and conflicts with neighbors. But, the unhappiness which airports sometimes cause for their neighbors can be avoided in some cases and lessened in others. Environmental quality and community acceptance both depend on the participation of citizens in airport planning. By just opening up the deliberations which go into airport planning -- by changing the rules of the game -- we can begin to solve problems.

Court actions underscore the need to invite citizens to speak out about airport planning in their communities. And, provisions in two new Federal laws seek community views -- the laws are the Airport and Airway Development Act of 1970 and the National Environmental Policy Act of 1969.

Let's review the Federal laws which concern us. First Section 16 of the Airport and Airway Development Act. This concerns the air transportation industry and it concerns government. The point here is that the Federal Government will not provide assistance for airport development willy-nilly. First, the airport plans must suit plans for the growth of the areas around them. But proof of a regional plan is not enough -- there must also be shown that the interest of the community has been considered. And, if an airport project is likely to have a bad effect -- with noise or water level changes or have bad effects on wildlife -- then the Secretary of Transportation must be prepared to show that there is no feasible and prudent alternative and that the project applicant's plans include everything that can reduce harm.

Section 16 is very specific about whose views have to be considered, and what subjects have to be covered. Public hearings -- community hearings -- must cover economic, social, and environmental effects, including criteria and procedures for protecting air and water.

I should also mention Section 13 of the Airport Act, which sets up grants for airport systems and master planning. Planning agencies will have to decide the extent, type, nature, location, and timing of airport development needed to establish a nation-wide balanced system of public airports. This is systems planning. Making comprehensive planning agencies responsible here will help airport facilities serve transportation needs and other community goals and environmental objectives too.

Airport master planning refers, as you know, to studies of future development at individual airports. Sometimes grants for master planning can help pay for studies of the environmental effects at current airports, and those being planned.

The new Airport Act, of course, reflects many of the requirements of the National Environmental Policy Act of 1969 -- the requirements for interdisciplinary planning, for example, affirms that a proper planning context considers the whole range of problems that can come up in both urban areas and natural areas.

Section 102(2)(C) of the National Environmental Policy Act is reaffirmed in the Airport Act in Section 16 which requires study of what will result from carrying out certain projects. All of you know that applications for Federal funds for airport projects -- and for other Federally-assisted projects -- must be accompanied by statements about environmental effects.

My office reviews these statements for the entire Department of Transportation -- so your Executive Vice President, Mr. Hoyt was quite correct in his letter to me which says, "...at the moment, we believe, the final decisions with respect to environmental clearance of many airport projects involving Federal money grants will be made in your office."

Since that is a major concern of yours, I want to recite -- and I've been doing this so often that I should know it by heart -- what these statements must cover:

- (1) the environmental impact of the proposed action;
- (2) any adverse effects which cannot be avoided should the proposal be implemented;
- (3) alternatives to the proposed action (a matter also dealt with in the Airport Act);
- (4) the relationship between local, short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Earlier I mentioned that the Airport Act requires discussion of environmental impacts in public hearings. These must also be covered in the 102 statement my office reviews in accordance with the National Environmental Policy Act. You see, we try to use the one statement to comply with as many requirements as we can.

You should not think of these statements as nuisance work. You should think of them as a natural end-product of good planning. The Federal Government really wants to induce good planning where airport development is going to happen. What we want to see is local planning and local satisfaction.

Section 102 states the policy that Federal agencies have to adopt: It has to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and environmental design arts which may have an impact on man's environment."

Our way of doing this where grants are involved -- and also where we undertake projects ourselves -- is to say, "show us you did it." When you can show us that your planning has accounted for community noise, airport access, land use controls, etc., then you have the go ahead.

Some of the issues that interest us are these:

- (1) consistency with regional planning;
- (2) citizen involvement;
- (3) results of other Federally-required reviews;
- (4) how the airport sponsor has tied in with agencies and governments in the area; and
- (5) why other plans were rejected.

I personally believe that thorough planning is the road to a better quality environment -- to you it may appear a rough road, without arrows pointing to dangerous spots -- but that's the way it has to be if we really care about the future.

We have received numerous requests for guidance, which might help airport sponsors and managers anticipate environmental consequences outside their areas of expertise. This is what we hope to be able to do when we have finished the Handbook for Airport Planners which we now have underway. It will provide a checklist of considerations which must be taken into account in planning airports.

I should point out that the checklist approach is one which my office has also used in giving guidance to persons who must prepare 102(2)(C) Statements, statements of environmental impact as required by the National Environmental Policy Act. Our checklist is a list of effects -- consequences -- likely to be environmentally significant. It includes changes in noise level, displacement of persons, disruption of planned development, destruction or alternation of breeding grounds, recreation areas, water table, and so forth.

But in the Handbook which we are developing for your use, we can carry this a bit further. Here, in addition to the checklist of factors we will have proposed countermeasures -- control techniques for dealing with these factors.

At the heart of our contract with CLM Systems are case studies of environmental factors at five airports. Before telling you about how these case studies will serve as the basis for the checklist, I would like to say that this study is going forward with excellent cooperation from Federal agencies, particularly the Federal Aviation Administration, the Department of Housing and Urban Development, and the Council on Environmental Quality.

The environmental considerations which are being studied in our five case studies are:

- ground access,
- water pollution,
- air pollution,
- noise pollution,
- hydrology,
- land development,
- community impact, and
- aesthetic considerations.

The control techniques for coping with these factors include site selection, zoning, comprehensive planning, and airport master planning. They also include mass transportation, silting control, waste-water treatment, taxation policies, and insulation of buildings.

The airports under study are Dallas-Fort Worth, John F. Kennedy, Los Angeles International including the proposed Palmdale Intercontinental Airport, Portland, and South Florida Regional. These airports were selected for the constructive considerations they present in development and expansion and for their broad applicability to other metropolitan areas. JFK is, of course, located in an ecologically sensitive tidal area; Los Angeles International is in a low density residential area; and Portland is located in an urban site where expansion into a river and into recreationally and ecologically important areas creates difficult problems.

Our handbook will not just describe factors and control techniques. It will have several perspectives; one chapter will relate environmental factors to the airport master plan, and to the regional or comprehensive planning process. It will also describe procedures for compliance with the National Environmental Policy Act. Another important chapter will discuss the airport planning process, discussing the Airport and Airway Development Act of 1970, statutory procedures for funding and the institutional participants in the process of airport planning.

I have spoken for a long time today about environmental impacts. Now I want to shift away a bit and tell you that a decision to fund or not fund an airport project is also based on other considerations -- social and economic benefits may sometimes outweigh environmental harm.

But, I must say that we take the environment pretty seriously and failure to provide full documentation on environmental effects can hold up a project application.

Full documentation, I want to point out, means presenting both sides of every question, documenting opposition and rebuttals -- revealing who said what and why.

Now, I would like to say a few words about the 102 process -- i. e., the mechanics of developing and submitting environmental impact statements. As you know, the Federal Aviation Administration and the Office of Environment and Urban Systems have decided that these statements must

be prepared by the authority that applies for assistance under the Airport Development Aid Program. In addition, Secretary Volpe has stated that the drafts should be available to the public at least 30 days prior to the public hearing on the project. This means that preparation of these statements is a step-by-step process: a statement must accompany the project application and be available for 30 days before the public hearing. The public hearing may reveal all sorts of objections and information that the sponsor never anticipated -- thus the statement may require redrafting to take new information into account. The statement is likely then to be in its second draft before it is circulated by the Federal Aviation Administration to other Federal agencies and to my office.

After responding to the concerns of Federal, State, and local agencies, the FAA Regional Office forwards a final version to my office for approval and transmittal to the Council on Environmental Quality.

Incidentally, the Council requires a minimum of 90 days between release of the original statement to the public and final project approval by the Federal department or agency involved. It further requires that such approval should not occur under most circumstances until after the final statement has been made available. This timing gives the public and government agencies a chance to evaluate the 102 statement and to respond. Although the National Environmental Policy Act and the Airport Act may cost all of us more time and money, I am convinced that these new requirements are in the best interest of the aviation community and the public. The 102 procedures will not stop the growth of aviation, but will help ensure that needed facilities are properly planned.

Some further clarifications may be useful. First, not all requests for aid under the Airport Development Aid Program need be accompanied by an environmental statement. Where adverse impacts on the environment are not anticipated, a declaration to this effect can be submitted. However, the FAA's instructions do require preparation of a statement for all projects involving new airports, new runways, or runway extensions. Of course, total level of effort in a given case may vary according to the size and nature of the project. Some proposed actions -- such as the development of a Southern Florida Regional Jetport -- may require extensive studies just to decide on an appropriate site. The results of studies can then provide a basis for developing the environmental impact statement. Other construction may require no studies or may be characterized by an almost total absence of significant adverse effects of citizen opposition. The applicant and FAA should then decide together the appropriate level of effort for each impact statement.

In conclusion, although I believe deeply in expanding the discretion of State and localities in decisions involving Federally-assisted activities, it is necessary to recognize that the old way of doing business must be changed to meet new concerns for environmental values. Transportation has great significance because it is not just a user of land, but is potentially one of our most effective tools for inducing and controlling large scale development. This is most certainly the case for airports.

I hope that I have answered some of your questions.

Thank you.

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25-DOT-71

REMARKS BY HERBERT F. DeSIMONE, ASSISTANT SECRETARY OF TRANSPORTATION, BEFORE THE NATIONAL SYMPOSIUM ON TRAILS, QUALITY MOTOR INN, WASHINGTON, D.C., JUNE 4, 1971, 1:00 P.M.

A BETTER CHANCE FOR TWO-WHEELED TRANSPORTATION

I'm very pleased to join you here today to talk about giving bicycles a better chance in our transportation system.

I've found myself on two bicycle rides in the past month, and that isn't what I expected when I took on the job of Assistant Secretary for Environment and Urban Systems. But now it seems to come naturally -- and to be here speaking in favor of trails -- which in the new transportation language I've learned would be guideways -- and bicycles, those old fashioned and practical vehicles that are clean and quiet and which provide good exercise and transportation.

On May 8 I rode with Congressman Halpern's Great Bike Ride here on Capitol Hill. And, on May 16 I rode with Secretary Volpe and D. C. City Council Chairman Gilbert Hahn to celebrate the District's Bicycle Day. It rained both days. Some people like to say that bicycles are impractical because they can't be ridden in the rain -- but ride we did on both days -- I hope we proved something.

Secretary Morton and Secretary Volpe have made a joint decision to promote bicycling. Part of the deal is to divide the responsibilities so that the Department of the Interior works on bicycling for recreation -- and Transportation -- my office in particular -- concentrates on commuting.

In the Department of Transportation we have about 30 regular bicycle commuters. They can stand up pretty well to auto traffic and to weather, but theft and vandalism used to discourage them. We solved that by providing bicycle parking in our garage. With a little more help of that kind, I think a lot of people would, if they could, switch away from cars. A recent survey of 250 Congressmen's offices showed that at least 120 Capitol Hill employees now bicycle to work -- but more than 400 would do so if there were adequate facilities.

In the 1880's and 1890's bicycling was a popular way to get around. Bicyclists got themselves organized and pushed hard for smooth level pavements. In other words, they were the early supporters of better roads. In fact, the parent organization of the American Road Builders Association was a bicycle organization -- The League of American Wheelmen and that still exists today.

At a recent hearing here on bicycles -- Nicholas Johnson, a Federal Communications Commissioner -- called bicycles model citizens. I think that's a good term for them -- they are clean, quiet, serviceable, and cheap. We're beginning to see evidence that people take them as a serious means of transportation. For example, Hertz, the rent-a-car organization is starting to rent bicycles too. Hertz' latest ads say that they're in the bicycle renting business.

People who live outside the city don't think they can use bikes. But Metro's plans and my Department's ideas may change that. On May 6 the Washington Metropolitan Transit Authority announced that Metro

will provide secure bike racks at stations. So people who live a mile or two from stations will be able to bike there. They can trade the big expense of an extra car for a little exercise and fresh air.

In the Department of Transportation we would like to see Washington become a model city for bicycles. We'd like to see safe access to Washington from across the Potomac, and bicycle racks at fringe parking areas and transportation terminals such as bus and train stations. Bikes could then be used to get to a bus or a train -- or more importantly -- to get from the bus or train to work. It is in these latter cases that security would be most important.

In line with the development of these ideas, our Department, through the Federal Highway Administration, is going to write to the heads of State highway departments asking them to do what they can to promote bicycling -- for recreation and for commuting -- especially where people live near their jobs or schools, or where the bike could be a practical link with bus and rapid transit terminals.

The Department of Transportation, through the Federal Highway Administration, where the Highway Trust Fund is administered, can provide funds for trails to be built in conjunction with Federal-aid highway projects. I suppose that in rural areas these trails would be most useful for recreation. But, these paths could become very useful for urban commuting -- for getting people to and from their jobs.

The money for trails is available on the same basis as the money for other Federal-aid projects -- that is, 90 percent Federal money to be matched by 10 percent State funds. For the eager beavers in the audience who already have visions of bike paths in their States, let me say that your State highway departments must apply to the Federal Highway Administration for these funds -- so your first job is to persuade your highway department that such paths would be useful -- in your State.

An excellent example of a path that is now planned for what will be an Interstate Highway right-of-way is along Interstate 66 in the Washington area. With proper bridge access this could become an excellent route for bicycle commuters from nearby Virginia.

At our Transportation Systems Center in Boston, we are beginning to investigate the development of new hardware to make bicycle racks and storage facilities vandal-proof. They're also doing a study of how bicycles can fit into the urban transportation system.

I am sure that we are going to find some incompatibilities. The differences in speed and weight between cars and bicycles and the problems of lane changing tend to make bicycles pretty unsafe at the present time. But, since we are more and more concerned about mobility in our center cities and about the quality of the environment in which we all live, and since more and more people are turning to bicycle riding, we will have to overcome some of the incompatibilities -- for example, by providing bicycle paths -- so that bicycles can become an important means of transportation.

Our automobiles and highways -- and our Nation's wealth -- have given us the ability to spread ourselves over a large area and still get to work on time -- mostly by auto. Eighty-one percent of American workers get to work by automobiles. The country with the next highest percentage commuting by car is West Germany -- with a low forty-five percent.

There is no question that automobiles give us wonderful freedom and independence but when they jam our downtown streets to the point that it's really faster to walk, it almost seems that the streets belong to the cars instead of to the people. That wonderful freedom and speed vanishes -- traffic gets clogged, the air gets dirty, and there's no escape. In February Secretary Volpe said, "It must be our plan to restore some sense of humanism to our downtown streets... The city must be a gathering place for people, not vehicles".

Recently, the Environmental Protection Agency suggested that if certain cities expect to meet the 1975 air quality standards, they may have to ban automobiles from their centers.

I hope we never have to face an all-out ban on cars in center cities. I'm all in favor of partial restrictions though -- like auto-free zones and pedestrian malls -- such as in my home city of Providence. And, of course, I'm for better public transportation. In a lot of cases, just reserving a single street or lane for buses can give public transportation a chance to really improve service.

Now you can also look at restricted access from another angle, and call it "special provisions", which brings me to the city of Davis, California. Davis has a population of twenty-four thousand and has eighteen thousand bicycles. It's a unique example of a town that made special provisions for bicycles at the urging of its citizens. Davis is a university town with a flat terrain and a mild climate and on a summer day with students out of town, bicycles represent 40 percent of the traffic on a heavily traveled street.

Many other towns across the country are also trying to accommodate bicycles -- Ann Arbor, Michigan for example. In Chicago, I see that even Mayor Daley has become a bike enthusiast, and, has vowed to cycle "daily" to work on the paths he has set up in his city. This is something I like to see -- cities and citizens responding to current needs, particularly when the needs are for cleaner air and better downtown transportation. And those needs, I scarcely need remind you, are practically universal.

Bicyclists are also working through their State legislatures to get money to develop bikeways. Bills to this effect are pending in California and Colorado, Iowa, Oregon, Massachusetts, and Ohio. They are real issues because young people are talking to their young legislators, their elected representatives.

This is the theme I would like to close on -- the relationship of citizens -- of people -- to our government -- at all levels. It's up to people to make their needs known -- to make their representatives represent them. When it comes to difficult issues like clean air and better transportation, believe me, we're listening to all ideas because we just have to solve those problems. We in this country certainly can't overlook something like the bicycle which has proved itself as a clean and practical means of transportation in some of the world's most advanced countries -- the bicycle -- well -- it is a model citizen -- and I'm determined to lend the assistance of my office to make it a more viable mode of transportation.

Thank you.

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U. S. DEPARTMENT OF TRANSPORTATION
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STATEMENT OF HERBERT F. DeSIMONE, ASSISTANT SECRETARY FOR ENVIRONMENT AND URBAN SYSTEMS, U. S. DEPARTMENT OF TRANSPORTATION, BEFORE THE SENATE COMMERCE COMMITTEE REGARDING S. 2074, WEDNESDAY, SEPTEMBER 22, 1971.

Thank you, Mr. Chairman. I am pleased to be here this morning to present the views of this Department on S. 2074, the Navigable Waters Safety and Environment Quality Act of 1971. With me today is Admiral Chester R. Bender, Commandant of the Coast Guard. Admiral Bender will testify shortly on the specifics of this measure, but I would first like to address myself to the broader question of port and waterway safety.

As you may know, Mr. Chairman, I come from Rhode Island, a state which is singularly blessed with access to the Atlantic and its bays and inlets. Our coastline is studded with beaches of the highest quality only a short distance from any point in the State. In fact, we call ourselves the "Ocean State". I mention this to indicate to the Committee my appreciation and understanding of what a glorious natural and recreational resource our waters can be, bringing enjoyment to literally millions and economic benefit to States such as mine. It is from this experience, as well as that as Assistant Secretary for the Environment and Urban Systems, that I realize how great the need is for action to stop the degradation of our oceans.

Appreciation of our oceans, bays and ports and concern for their environmental protection is a major concern of President Nixon. During the last session of Congress, the President sent a special message concerning off-shore oil pollution. In that message he said:

The development of world commerce and industry and its growing dependence on oil need not result in ... added dangers. The growing threat from oil spills can be contained -- not by stopping industrial progress -- but through a careful combination of international cooperation and national initiative.

The problems we face, Mr. Chairman, is not a new one in the area of transportation. It is the problem of congestion, and we have faced it on our highways and in our skies. It is a problem which calls for common sense, not complexity. We have the technology to solve this problem, what is needed now is the authority to implement that technology.

In his message during the last session, the President proposed the Port and Waterway Safety Act of 1970 to solve this problem of congestion. That legislation has essentially been incorporated into section 3 of S. 2074.

Section 3 is designed to provide general authority to protect vessels, structures, harbors, ports, and waterways from damage or loss resulting from such incidents as vessels grounding or colliding with bridges and other structures, with the attendant risk of release of oil or other harmful substances. This would be accomplished through closer attention to vessel

control and equipment in congested waters, and by establishment of safety zones wherein vessel traffic or other activities could be prohibited or curtailed, usually for only brief periods. For example, a collision or other accident may require that traffic in the surrounding area be restricted.

Through the regulatory provisions of this section we believe that appropriate coordination and uniformity will be assured, and the overall safety of our port facilities will be enhanced. In our opinion, therefore, S. 2074 will provide the basis for a coordinated safety program, and it will enable us to make giant strides in promoting the environmental quality of our ports, harbors, and navigable waters.

S. 2074 also contains added authority for the Department and the Coast Guard in the area of environmental protection. As the committee knows, the Tank Vessel Act is meant to regulate those vessels whose cargo is inflammable or combustible and represents a danger to life or property. S. 2074 would extend the legislation to cargoes which are potentially dangerous to our environment. We welcome this new authority.

We have reached the point, Mr. Chairman, where we cannot and must not allow pollution through negligence. We must insure that affirmative, effective, and, quite frankly, hard-hitting programs stop the danger of oil spills and the discharge of other noxious materials into our waters. During my nomination hearing, I said I intended to be an advocate for the environment. There are few clients I have represented for whom a better

case could be made. The Administration has put out an SOS; this time it calls for Saving Our Seas.

This concludes my statement, Mr. Chairman. After Admiral Bender presents his statement, we will be happy to answer any questions you may have.