

July 1, 2004

Dear Conferee:

As a unified coalition of national and state organizations representing a diverse cross section of public interests, we request that you give the highest consideration to retaining the current law for to Section 4(f) with respect to park and recreation areas, wildlife areas, and waterfowl refuges as you work in conference committee to reconcile the bills to reauthorize the Transportation Equity Act. While the House bill (H.R. 3550) retains these provisions, the Senate bill (S. 1072) jeopardizes protection of our natural resources and public lands.

We offer the following comments and recommendations on proposed changes to Section 4(f). It should be noted that this letter is not intended to discuss the House and Senate bills insofar as they pertain to historic sites.

- We oppose the creation of a *de minimis* standard for other protected resources, namely park and recreation areas, wildlife areas, and waterfowl refuges. Creation of a new *de minimis* exemption for projects affecting these classes of protected resources, contrary to the view advanced by some proponents of streamlining, will not improve project delivery, but rather, may result in significant new litigation and delays.
- We oppose creation of new rulemaking authority for these protected resources. Current law is proven, time-tested, accepted, and Supreme Court-validated. Current 4(f) regulations have an accepted interpretation in the federal courts consistent with the landmark Supreme Court decision in *Citizens to Preserve Overton Park v. Volpe*. In the proposed Senate legislation, the term “*de minimis*” is substituted for the existing “prudent and feasible” standard as to how this term is to be defined and applied by the Secretary of Transportation. A new rulemaking risks leaving too much to the discretion of the Secretary of Transportation and is likely to spur years of delays and litigation associated with the rulemaking process.
- Aside from anecdotal evidence presented regarding the need for changes to the manner in which the defined classes of resources are protected from damage, there is no objective proof that existing 4(f) protections for parks, wildlife, and waterfowl areas under the “prudent and feasible” standard need to be replaced with an as yet undefined “*de minimis*” standard. On the contrary, in the example of one state, of 800 federally aided transportation projects, 60 or so had potential to trigger a 4(f) review, and of those “only a handful” was reported by state transportation staff to be considered as causing a problem or delay. Other states report comparable statistics. There is no hearing record in Congress establishing valid cause for changing this protective statute of proven merit for four decades, nor has there been adequate opportunity for congressional or public debate of the proposed changes with involvement of relevant committees.
- Current language in the Senate version of the bill, S. 1072, would create unenforceable standards for mitigation projects, limit public participation, and put local park and recreation officials in the unreasonable position of opposing high-profile and politically-charged transportation projects to protect public land or natural resources.

Such changes are not necessary and they would not improve current law which properly protects the resources while allowing construction to proceed in a timely manner without increased expense.

- While the House version of the bill, HR 3550, protects the integrity of Section 4(f) with respect to parks and recreation areas, wildlife areas, and waterfowl refuges, the Senate version unacceptably leaves them largely unprotected and without even the comparable review and consultation process that Section 106 provides for historic sites.

In short, S. 1072 risks compromising important protected resources -- park and recreation areas, wildlife areas, and waterfowl refuges. H.R. 3550 retains the safeguards of current law that protect the resources. We respectfully request that the final conference bill include the House approach to protecting these natural resources and public lands.

Respectfully,

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