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92-21 AMEND THE DEPARTMENT OF TRANSPORTATION ACT

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BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 728

AMEND THE DEPARTMENT OF TRANSPORTATION ACT IN
ORDER TO MODIFY THE NATIONAL POLICY WITH RESPECT
TO THE PROTECTION OF LANDS TRAVERSED IN DEVELOP-
ING TRANSPORTATION PLANS

MAY 3, 1971

Serial No. 92-21

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AMEND THE DOT ACT IN ORDER TO MODIFY THE
NATIONAL POLICY WITH RESPECT TO THE PRO-
TECTION OF LANDS TRAVERSED IN DEVELOPING
TRANSPORTATION PLANS

MONDAY, MAY 3, 1971

U.S. SENATE,
SUBCOMMITTEE ON SURFACE TRANSPORTATION
OF THE COMMITTEE ON COMMERCE,
Washington, D.C.

The subcommittee met at 10:05 o'clock a.m. in Room 457, Old Senate Office Building, Hon. Vance Hartke (chairman of the subcommittee) presiding.

Present: Senator Hartke.

OPENING STATEMENT BY THE CHAIRMAN

Senator HARTKE. Good morning, everyone. I am pleased to welcome you to our opening hearings on S. 728, a bill to amend the Department of Transportation Act in order to modify the national policy with respect to the protection of lands traversed in developing transportation plans.

On December 3, 1970, I submitted similar legislation. While the bill before us today contains several changes in wording from that legislation, its purpose remains the same: To provide better insurance that federally supported transportation plans do not cause unnecessary damage to our environment.

S. 728 would broaden the application of section 4(f) in three ways: first, by withholding approval from federally financed transportation plans which have an "adverse effect on the environment" rather than just those projects which would directly "use" public parklands. This modification of section 4(f) is meant to strengthen its declaration of policy so "that special effort should be made to preserve the natural beauty of our countryside." Clearly, transportation projects may destroy natural beauty and impair recreational activities even if they do not "use" the land or water areas so affected. An interstate highway, for example, which is built immediately adjacent to a wildlife refuge may have the effect of frightening wildlife from their sanctuary without actual "use" being made of the land.

Second, S. 728 would delete the requirement that parkland, recreation areas, wildlife waterfowl refuges and historic sites be publicly owned in order to qualify for the protection of section 4(f), and would recognize that private groups over the years have purchased large amounts of land in order to protect them from commercial exploita-

tion. The Isaak Walton League, the Audubon Society and the Nature Conservancy have frequently purchased large quantities of land in order to preserve these tracts as wildlife or waterfowl refuges.

Third, S. 728 would broaden the protection of section 4(f) to include all "water resource areas." Clearly, it lacks logic to safeguard our countryside from environmental misuse but not our waterways. Yet, this is the effect of section 4(f) as it is presently written. The term "water resource areas" is intended to include waterways, navigable waters, estuarine areas, planned and authorized reservoir projects, and public water supply reservoirs, and thereby broaden the extent of protection provided under the section. The Federal Government already has far-reaching programs to control water pollution under the Water Quality Act and the Water Resources Planning Act. It makes little sense to undertake such costly efforts to insure clean, pure rivers and not to undertake the corollary task of, protecting the ecology and natural beauty of these waters. Extending the protection of section 4(f) to include water resource areas would be an essential first step toward achieving this goal.

(The bill and agency comments follow :)

[S. 728, 92d Cong., first sess.]

A BILL To amend the Department of Transportation Act in order to modify the national policy with respect to the protection of land traversed in developing transportation plans

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(f) of the Department of Transportation Act (49 U.S.C. 1653) is amended to read as follows:

"(b) It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside, including parks, recreation lands, water resource areas, wildlife and waterfowl areas, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After August 23, 1968, the Secretary shall not approve any program or project which has an adverse effect on the environment in or requires the use of lands from any park, recreation, wildlife and waterfowl, or water resource area, or any historic site unless (1) there is no feasible and prudent alternative to the use of such lands, and (2) such program includes all possible measures to minimize harm to such park, recreational area, water resource area, wildlife and waterfowl area, or historic site resulting from such use."

WASHINGTON, D.C., March 31, 1971.

XXXXXXX

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your letter of March 5, 1971, requesting our comments on S. 728.

The bill would amend section 4(f) of the Department of Transportation Act, as amended, 49 U.S.C. 1653(f), and broaden its application in order to modify the national policy with respect to the protection of lands traversed in developing transportation plans. The proposed modification would make clear the duty of the Secretary of Transportation to consider environmental factors in the exercise of his authority in developing such plans and make explicit the duty imposed on the Secretary by the National Environmental Policy Act of 1969, Pub. L. 91-190, 83 Stat. 852.

Your committee may wish to consider whether the Administrator of the Environmental Protection Agency, which agency was established by Reorganization Plan No. 3 of 1970, should not be added to the several heads of Government Agencies with whom the Secretary of Transportation is directed, in line 1, page 2 through line 3, page 2 of the bill, to cooperate and consult. Also, your committee

may wish to consider changing the date in line 6 page 2 of the bill to make its provisions apply prospectively only. This could be done by changing the words "after August 23, 1968" in line 6, page 2 to, "after the enactment of this Act" or "Hereafter." Moreover, on page 1, line 5 of the bill, paragraph "(b)" apparently should be changed to refer to paragraph "(f)."

The enactment of S. 728 would not directly affect the functions and operations of our Office. However, the proposed legislation appears to be in the public interest and, subject to the above comments and suggestion, we have no objection to its favorable consideration by your committee.

Sincerely yours,

R. F. KELLER,
Assistant Comptroller General of the United States.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 1, 1971.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on S. 728, a bill "to amend the Department of Transportation Act in order to modify the national policy with respect to the protection of lands traversed in developing transportation plans."

We recommend that the bill be enacted, if amended as suggested below.

Section 4(f) of the Department of Transportation Act currently provides that the Secretary of Transportation shall not approve any transportation plan or program which requires the use of any publicly-owned park, recreation area, wildlife refuge of national, state or local significance or requires the use of any historic site of similar significance unless (1) there is no feasible and prudent alternative, and (2) the program includes all possible planning to minimize harm to such areas.

S. 728 would expand the scope of environmental protection provided in section 4(f) in five ways:

- (1) It extends protection to nonpublicly-owned park, recreation and wildlife areas.
- (2) It extends protection to "water resource areas."
- (3) It prohibits approval of projects which "have an adverse effect upon the environment in" the protected areas, as well as those requiring "the use of" such areas.
- (4) It eliminates the requirement that the protected area be of "national, state or local significance."
- (5) It requires that all possible "measures" be included to minimize harm as opposed simply to all possible "planning."

The elimination of the requirement that the park, recreation area or wildlife be publicly owned, and the addition of water resource area will extend the protection of the Act enormously. In fact, it is difficult to imagine any land that would not fall into one of these categories broadly construed.

We support the extension of the Act's protection since natural beauty and environmental importance are not confined to publicly-owned lands. We question, however, the advisability of removing the requirement that the area be of national, State or local significance. To do so could subject the Secretary of Transportation to litigation by any landowner who wished to prevent a projected highway from crossing his land when the Secretary of Transportation had failed to explore every feasible and prudent alternative or had failed to include all possible planning to minimize harm to a particular back yard or vacant lot. We recommend retaining the requirement of significance.

Public officials at the Federal, State or local levels all have a potential interest in determining the significance of particular areas. Therefore, we feel that the Federal role in determining environmental significance is very important, and should be so reflected in the legislation. We do not at this time have a recommendation as to specific language but would be happy to work with the committee in drafting such language after the views of other interested parties have been recorded.

We believe that all of the other extensions in protection are imminently desirable to protect the natural resources and beauty of this Nation.

We suggest three technical amendments for clarification:

- (1) On page 1, line 5, "(b)" should be "(f)".
- (2) On page 2, line 6, "After August 23, 1968" should be "After the date of enactment of this amendment".
- (3) On page 2, line 6, "Secretary" should be "Secretary of Transportation".

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JAMES R. SMITH,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., May 6, 1971.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate.*

DEAR MR. CHAIRMAN: As you requested, here is our report on S. 728, a bill. "To amend the Department of Transportation Act in order to modify the national policy with respect to the protection of lands traversed in developing transportation plans."

This Department would have no objection to enactment of this bill.

S. 728 would direct the Secretary of Transportation to cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. It would provide that the Secretary of Transportation shall not approve any program or project which has an adverse effect on the environment in or requires the use of lands from any park, recreation, wildlife and waterfowl, or water resource area, or any historic site unless there is no feasible and prudent alternative to the use of such land, and such program includes all possible measures to minimize harm to such areas resulting from such use.

This Department concurs with the expressed need to protect the land and environment of such special areas from encroachment to the extent feasible. Our Multiple Use Plan for the National Forest System lands outline coordination requirements which must be taken to protect such special areas within the National Forests and National Grasslands.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL, *Under Secretary.*

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., June 3, 1971.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Environmental Protection Agency on S. 728, a bill "to amend the Department of Transportation Act in order to modify the national policy with respect to the protection of lands traversed in developing transportation plans."

S. 728 would amend section 4(f) of the Department of Transportation Act. In its present form, that section requires the Secretary of Transportation to consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs. The Secretary of Transportation is also precluded from approving any program or project requiring the use of publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the appropriate official, unless (1) there is no feasible and prudent alternative to such use, and (2) the program includes all possible planning to avoid damage to the area involved.

The bill would delete the requirement of designation by the appropriate official of the area's national, State, or local significance, and would require the two listed determinations to be made wherever a program or project would have an adverse effect upon the environment in the listed public lands, regardless of whether or not use of such lands would be required. In addition, the Secretary would be required to determine that all possible measures, rather than simply planning, to minimize harm to the area are included in the program.

If amended in accordance with the following suggestions, we would recommend the enactment of S. 728.

Aside from the direct impact of activities carried on during construction, which includes erosion and siltation resulting from the stripping of natural land cover, highways can increase significantly the air pollution in a given area as a result of emissions from motor vehicles which travel over them. These factors should be considered both in the approval of specific projects and in the formulation of transportation plans. Since EPA is responsible for several important areas of environmental protection, including air and water quality, we should be consulted with respect to the formulation of transportation plans. Accordingly, we recommend the following amendment:

Page 2, line 3, after "and Agriculture," add "with the Administrator of the Environmental Protection Agency,"

We note that this section in no way supersedes section 102(2)(C) of the National Environmental Policy Act, which requires an environmental impact statement with respect to "major Federal actions significantly affecting the quality of the human environment." According to guidelines issued by the Council on Environmental Quality, such actions include those supported in whole or in part through Federal contracts, grants, subsidies, loans, or other forms of funding assistance. Where applicable to programs or projects of the Department of Transportation, these requirements will continue in force.

The Office of Management and Budget has advised that the presentation of this report is consistent with the program of the President.

Sincerely,

WILLIAM D. RUCKELSHAUS, *Administrator.*

Senator HARTKE. The first witness this morning we will have is the Honorable Herbert DeSimone, Assistant Secretary of Transportation for Environment and Urban Systems from the Department of Transportation.

I welcome you here this morning.

STATEMENT OF HON. HERBERT DE SIMONE, ASSISTANT SECRETARY OF TRANSPORTATION FOR ENVIRONMENT AND URBAN SYSTEMS, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY FREDERIC SCHWARTZ, JR., LEGISLATIVE COUNSEL

Mr. DeSIMONE. Good morning, Senator.

I would like to say, before I start with my formal testimony, that I recall very well before my confirmation, stopping at your office and your graciousness that day.

I am very pleased to be here this morning, Senator, 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 especially pleased that it is before the same committee that confirmed my nomination. At that confirmation hearing, I explained to Senator Hart, who was sitting that morning, 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 you and to this 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, its 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 my home State of Rhode Island for the past 4 years, 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—in fact, our objective—enhancing the quality of life in this Nation.

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 area of the protection of our environment. 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), Secretary Volpe 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 in order to minimize any possible adverse impact, or upon that particular land.

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 Department of Transportation Act. This proposal will 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, this bill will 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 has no objection whatsoever to broad-

ening 4(f) protection beyond "use." The word "use" is subject to an extremely narrow reading, we believe, 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 actual taking of land from it. It would be consistent with the philosophy of section 4(f), we believe, to provide protection in such situations. The Department, in fact, had 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 very 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 purposes. 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 in the Department of Transportation 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 implementation 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 backyard—which serve in fact no bona fide public purpose. I do not believe that this is what should be or what really is 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 quite 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, Mr. Chairman, would be pleased to work with the committee staff in developing what we consider to be necessary 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 right now considering this problem and will report back to the committee very 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 that it has served or will serve 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 the 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 do not 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 personally 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, and I would now be happy to answer any questions that the committee may have.

Senator HARTKE. Thank you, Mr. DeSimone, for your fine testimony this morning. And may I also say it is a real pleasure for us to have you make your first testimony in front of this committee.

I am looking forward to your offer to work with us, and we anticipate a fine cooperative spirit, which I am sure we will have.

I am also pleased to note that the Department has already adopted the position that section 4(f) of the present law extends beyond the direct taking of land and that the word "use" relates to interference in the intended use of the land affected.

I want to make it very clear, so far as I am concerned, that I did not intend by introducing this bill, or in any statements I have made regarding it, to indicate that we object to that utilization of the word "use." Nor do we mean that it is not now proper. I just wanted to make sure that if we adopt legislation of this kind, that such scope will be provided for explicitly in this bill.

In your statement you mention and use the qualifying adjective "significant," saying it should be placed before the phrase "adverse effect." Your general theory there is that minimal adverse effect could be interpreted in accordance with the wording of the bill the way it is written. Have you had any bad experience with interpreting or litigating the phrase "adverse effect" without any qualifying adjectives? For example, you take the Airport-Airways Act, section 16(c) (4), and also the Urban Mass Transit Act, section 6, of the last Congress—they have the phrase "adverse effect." Thus, I wonder why it should be qualified in the bill before us? Have you had any occasion where it has been unworkable because of the unqualified reference to the term "adverse effect"?

Mr. DESIMONE. While our Department was the major supporter of that legislation, Senator, I believe the legislative history will show that we did not comment with relation to that specific language. There have been, to my knowledge, no court decisions with relation to this point. However, any transportation project, be it an airway project, an urban mass transportation project, or any other project, must have some adverse effect upon the environment in which all of us live, whether it be the physical or social environment. Rather than find ourselves in a legal straitjacket when some of these matters get to court, it would be well now, while we are deliberating over the legislation, to say just what we mean. And it seems to us that the use of the word "significant" is really what is needed to clarify the intent of this amendment.

As I pointed out in my testimony, the building of a highway anyplace, the construction of a subway anyplace, the building of an airport anyplace, just have automatically some adverse effect. It is just impossible in the society in which we live to take any kind of physical action which does not, in some way, in our opinion, have some kind of an adverse effect. To add the word "significant," we believe, would define much more clearly the kind of act that we want to see proscribed.

Senator HARTKE. Then you will have to define "significant." What does "significant" mean, in your opinion?

Mr. DESIMONE. Harmful to the extent that it would affect the use to which that land is being presently used, or to which it may be used in the future.

Senator HARTKE. Would that not imply that you would have various degrees of adverse effects? What other degree besides "significant"? "Very significant"?

I have often heard that the worst word in the English language is the word "very." It means absolutely nothing. People say it is "very

important." It is either important or not important. It could not be any more important—it is sort of like being naked. You cannot be very naked. But sometimes people do that.

Mr. DESIMONE. From our point of view, it would either be "significant" or, "insignificant."

Senator HARTKE. "Insignificant" would be no different than "significant," all right?

Mr. DESIMONE. Let me put it this way. It would be so adverse as to affect the use or intended use of that land or that area.

Senator HARTKE. Well, let us try that out for size once. You go into intended use for a land. What if you had an area—let us just take a case that I know something about for the example. We had next to my home city of Evansville 400 acres of property which was still virgin timber. It was technically within the area which would have been within the city limits, although it was outside the city limits. Now, then, that land basically was just there. It is true that animals were there, and everyone recognized that this was an unusually large-sized piece of property with virgin timber to be found even east of the Mississippi, let alone practically within the whole area of the city.

Now how would you say what its intended purpose was? How would you describe that? Where would you use the words "significant adverse effect" in relation to that property? Would you say that the fact that there were birds in that area that you just could not find anyplace else—how would you use that? Can you use that in the actual application?

Mr. DESIMONE. I think we would have to know what that land was being used for at that time.

Senator HARTKE. It was not being used for anything. But everyone recognized that it was extremely valuable and unique. But it was not being used.

The fact of the matter is, one of the things that we did during the time I was mayor was try to make sure that this land, in addition to being just a reserve for its uniqueness, would also have some type of utilization, and that immediately came up. Some people wanted to make it into a great big parkland.

Mr. DESIMONE. Of course, if that land, Senator, were privately owned and not dedicated to any public use, it would not receive protection under this act as presently proposed.

Senator HARTKE. The bill we have would do just that. That is the point I am getting at. Do you see exactly what you are coming to? If you could come on through and build a superhighway around that territory there, you would probably destroy its uniqueness and its value. And it is privately owned. Under the bill it would be protected.

Can you not see when we come into public ownership that you come into an after-the-fact judgment later, and judgment based on environment? I think this is what so many people are talking about today. Everyone has such a narrow view of what "environment" means.

Mr. DESIMONE. In my testimony I have recommended that in order to receive protection, even if it is privately owned or it is owned by a corporation, that it ought to be reserved for preservation as a protected area. Otherwise we are going to find ourselves in a situation with such broad language that we are going to have extreme difficulty in carrying through existing plans.

Senator HARTKE. Let me go to something which has been in the public eye, the question of the SST. The environmental arguments on the SST were not made on the fact that it would adversely affect publicly owned property or public concerns. It was a question of whether it was going to affect the environment.

Let me give an example of something that is coming up right away, the Alaska pipeline. The question there is not whether or not it is going to adversely affect environmental conditions which are publicly owned just on the public property, of which there is a lot in Alaska; but the question is whether or not it is going to affect the ecology, whether it is going to upset the balance of nature, whether it is going to have an adverse effect on the total of man's planet, the thing we live on. In other words, are we really going to preserve an opportunity for man to have a wholesome life, or are we just going to have such a narrow interpretation?

Do you see why I think that we should not be pushing ourselves back into this "public" and "private" concept?

Mr. DESIMONE. We have no quarrel with that, and, we support that general concept. But what we are saying, and I think this follows very closely to what you just said, Senator, is that if the action will significantly affect the ecology or significantly affect the use to which the land is presently being used or intended to be used, we want to stop it. And we want the support of this Congress in stopping it.

But I think our difficulty is in just the use of the phrase, "adverse effect."

Senator HARTKE. Maybe I can make it more easily digestible for you. I think the difference in interpretation is that you are looking at the final decision; that if there is any adverse effect, then you cannot proceed. But this is the triggering device in the bill. That is the difference.

It is not the mere fact that you cannot construct and proceed on any project if there is an adverse effect. It is a triggering device; that if there is an adverse effect found, then you are forced to go ahead and consider the alternative and make the choice. Would that not be fair, if you are really concerned with the environment.

If somebody points up the fact that this would have an adverse effect on the environment, rather than to say the triggering device has to have a significant adverse effect simply to say that it must have an adverse effect? I would think in the decision that ultimately the balance of the equities and the question of whether or not there was a proper decision could be open to differences of opinion. But as to the question of whether or not there is a triggering of a selection of—a choice of procedures, do you not feel that should be left in broad terms and not narrowed?

Mr. DESIMONE. There already is a trigger, and that is the requirement that before any of these projects goes forward, we have an environmental impact statement as required by the Environmental Protection Act. So there is a trigger. There will be no Federal action of any consequence to construct any transportation facility unless prior to the approval of the Federal funds being used there is an environmental impact statement which originates at the local level and then comes up to the Federal level and, is distributed to HUD, to Interior, to Agriculture, to these Federal agencies, and then back to us. And unless we approve that environmental impact statement, there are no Federal funds utilized in that project.

So there is a built-in triggering device already.

What we are trying to say, Senator, is that the rigid constraints of section 4 (f) ought to allow, by the use of the word "significant," sufficient latitude to allow us to operate properly, effectively, and with a clearcut congressional mandate.

Senator HARTKE. But there is just a little bit of difference there. You must make those studies and have the reports on the impact, but it does not say you have to consider them after you have had the reports. I would imagine you would assume that you must, but it does not say so. Do you understand the difference?

This is the same old story. "I will listen to what you have to say, and I will immediately discard it. I will give you every right to have your say."

It reminds me somewhat of the present approach to the war. "I will listen to the protesters, of course; I won't be influenced by them." But, I do not want you to get into that argument. I will save that one for myself.

But anyway, what you would have if you put the word "significant" in there, you would have to make two choices then. You would have to define "significant." and second, you would have to say there would be degrees of adverse effects. And I personally feel that that type of a decisionmaking process immediately puts you into a category in which you are trying to make an objective decision on a subjective question.

Mr. DESIMONE. We believe that the environmental impact statement will allow us to determine if the effect is significant or not significant.

Senator HARTKE. I think I understand what you are saying.

Let me ask you again now: Have you had any difficulty with the Airport-Airways Act or the Mass Transit Act in interpretation of the words "adverse effect"? Has it been involved in the courts?

Mr. DESIMONE. No, sir; not to the best of my knowledge.

Senator HARTKE. In other words, we do have historical and legislative background for the utilization of such words, and to that extent it does not, at this moment, present an obvious problem that it is going to have some legal difficulties in interpretation?

Mr. DESIMONE. I think one of the reasons is that those acts were passed last session and are just being implemented. We do not have a history of years, such as we have with 4 (f).

Senator HARTKE. We always have the authority to change things.

Mr. DESIMONE. That authority is also there.

Senator HARTKE. You mention the "all possible" standard does not serve the public well. Can you give me some background on that? What experience have you had? Can you tell me whether you have any experience with the States or in the courts?

Mr. DESIMONE. Everything is possible.

Senator HARTKE. I know. Have you had any experience of difficulty with that?

Mr. DESIMONE. I cannot point out any specific legal definitions, but I can say that I think it is a matter of general knowledge that, while many things are possible, only some of those possible things are prudent and feasible.

And I might add that earlier in section 4(f) there is the use of the words "feasible and prudent," and we feel that "prudent" would

carry over very effectively in the section rather than "all possible."

Senator HARTKE. What does "all prudent" mean?

Mr. DESIMONE. This has just been defined by the U.S. Supreme Court in the *Overton* case, where it said, basically, that "prudent and feasible" as used in 4(f) means that only unique circumstances would allow the Secretary to go ahead and authorize the use of protected lands.

Senator HARTKE. Do you interpret the words "all prudent"—or do you think it is being interpreted to mean "all reasonable" or practically the same?

Mr. DESIMONE. We do have in the *Overton Park* case the definition of what the court says it means. So we do have clearly defined the meaning of that language as it affects the actions of the Secretary in the administration of this act.

I fear, Senator, that if we go to the "all possible" language, we are going to be involved in court action over the next several years in obtaining a clear definition of what "all possible" means.

Senator HARTKE. We will take a look at that court decision. That may be something that I do not want to raise too much opposition to.

Senator Hart, who cosponsored the bill with me, is the chairman of the Environmental Subcommittee for this full committee. He has made the point that the environment encompasses more than wild-life areas or parks; it includes, he says, the urban environment in which most of us live.

In this connection, would you support the deletion of the phrase in lines 8 to 10 on page 2, which are the words "* * * in or requires the use of lands from any park, recreation, wildlife and waterfowl, or water resource area, or any historic site * * *"? If we had this deletion, that would insure our urban environment is as well protected as parks and wild area, a protection against any adverse effect on the total environment. What would be your opinion?

Mr. DESIMONE. As we in the Department interpret the word "environment," we do not limit it to just our physical environment. We also include, in that term, our social environment. And insofar as innercity projects are concerned, we look at such things as displacement and effect on the neighborhoods which these projects will be going through.

Senator HARTKE. In your opinion, does this language limit your present interpretation of "environment"? Is it limiting language?

Dr. DESIMONE. Within the constraints of 4(f), it sets forth the parameters.

But Senator, with regard to your specific question as to its deletion, that is something we ought to be in touch with the committee on by letter.

Senator HARTKE. All right. Fine.

I want to thank you for your testimony this morning, and thank you for being so cooperative.

Mr. DESIMONE. Thank you.

Senator HARTKE. The next witness is G. Douglas Hofe, Director, Bureau of Outdoor Recreation, Department of the Interior.

STATEMENT OF G. DOUGLAS HOFE, DIRECTOR, BUREAU OF OUTDOOR RECREATION, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY R. L. EASTMAN, ASSISTANT DIRECTOR FOR FEDERAL PROGRAMS AND STATISTICS, BUREAU OF OUTDOOR RECREATION

Mr. HOFE. Good morning, Mr. Chairman.

Mr. Chairman, I have with me today the Assistant Director of the Bureau of Outdoor Recreation, in whose area falls the 4(f) comments that we gave to the Department of Transportation.

This is, as you know, Mr. Chairman, my first appearance before this subcommittee, and I am very pleased to be here this morning.

In the recent *Overton Park* decision of the Supreme Court, Justice Thurgood Marshall stated at the very outset:

The growing public concern about the quality of our natural environment has prompted Congress in recent years to enact legislation designed to curb the accelerating destruction of our country's natural beauty.

The bill being considered by this subcommittee would amend one such recent enactment—section 4(f) of the Department of Transportation Act.

Section 4(f) currently provides that the Secretary of Transportation shall not approve any transportation program or project which requires the use of any publicly owned park, recreation area, wildlife refuge of national, State, or local significance or requires the use of any historic site of similar significance unless (1) there is no feasible and prudent alternative, and (2) the program includes all possible planning to minimize harm to such areas.

As we view it, Mr. Chairman, S. 728 would expand the scope of environmental protection provided in section 4(f) in five ways:

(1) It extends protection to nonpublicly owned park, recreation and wildlife areas.

(2) It extends protection to "water resource areas."

(3) It prohibits approval of projects which "have an adverse effect upon the environment in" the protected areas, as well as those requiring "the use of" such areas.

(4) It eliminates the requirement that the protected area be of "National, State, or local significance."

(5) It requires that all possible "measures" be included to minimize harm as opposed simply to all possible "planning."

We consider the proposal to amend section 4(f) of the Department of Transportation Act a significant advance in expanding the protection afforded by present law to the Nation's environmental resources.

The Department of the Interior is deeply concerned about all programs that may have an adverse impact on the environment. One of its principal concerns relates to the impact of transportation projects on parks, recreation areas, wildlife and waterfowl areas, historic sites, and water resource areas. Under existing section 4(f) the Secretary of Transportation is required to cooperate and consult with the Secretary of the Interior in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. The Secretary of the Interior has delegated the responsibility for such coordination to the Director, Bureau of Out-

door Recreation, with the exception of that relating to historic sites which has been delegated to the Director, National Park Service.

The objectives of the Department's activities under section 4(f) are to improve coordination between transportation and recreation/conservation programs and to insure that transportation programs and projects are located, designed, and executed in a manner consistent with the attainment of national policies and goals.

The language of S. 728 should fill the void that exists between the present language of section 4(f) restricting consideration to publicly owned areas and the national policy expressed in sections 2(b)(2) and 4(f) of the Department of Transportation Act to preserve the natural beauty of the countryside. Moreover, we believe the general purpose of the bill is fully consistent with and reflects the concern expressed by the President for the protection of critical environmental areas in his environmental message to the Congress this year.

Section 4(f) has proved to be beneficial legislation. Significant strides have been made under the present law to preserve the amenities of publicly owned environmental areas of all types. It is not adequate, however, to protect all the areas that are worthy of special consideration in the planning of transportation projects such as highways, airports, bridges, and urban mass transit systems. Equal consideration and treatment is due similar areas not publicly owned, without which this country would be far less capable than it is of meeting its burgeoning leisure-time demands.

This is, perhaps, the primary reason for our wholehearted support of the overall objective of S. 728. The bill would assure equal protection for these nonpublicly owned areas used for public enjoyment and leisure-time pursuits. These additional areas include, but are not limited to, Boy Scout and Girl Scout camps; 4-H Club areas; YMCA facilities; conservation lands held by the Nature Conservancy and Audubon Society; nonprofit, privately operated arboretums and botanical gardens; and other lands which through general usage are considered important for their recreation/conservation values.

In the latter category, it is significant to point out that Secretary Volpe, after consulting with the Department of the Interior, disapproved a transportation project in California that would have taken lands recognized as having significant wildlife and historic values even though it was not a designated recreation/conservation area.

The proposed application of the provisions of section 4(f) to water resource areas and the inclusion of language therein which would afford special review of transportation plans that affect the environment in the enumerated areas are desirable extensions of existing protection.

We question removing the requirement that the area be of national, State, or local significance. To do so may subject the Secretary of Transportation to litigation by any landowner who wished to prevent a proposed transportation project from taking his backyard or vacant lot. We therefore recommend retaining the requirement of "significance."

We do not at this time have a recommendation as to specific language but would be happy to work with the committee in drafting such language after the views of other interested parties have been recorded.

We strongly support the proposed change in the language of section 4(f) which substitutes "measures" for "planning." This change would

delete a source of ambiguity and provide the desired assurance that specific measures to minimize harm to affected areas are indeed incorporated into transportation plans, programs, and projects.

We also recommend three technical amendments which we feel would clarify the bill. These are set forth in the departmental report which has been given to your staff this morning.

Again, I am pleased to have this opportunity to present the Department's views on this desirable legislation. I shall be happy to answer any questions you may have.

Senator HARTKE. I want to thank you for a fine statement.

I think in view of your statement concerning most of these items and working with the committee, and most of them appear to be somewhat technical, I wish you would work with them for clarification. And I also wish at this time you would take up this question of "significant adverse effect" with them to see if we can come up with a satisfactory conclusion on that.

We would like to ask you the same question that was submitted by Senator Hart, who has made the point that the environment encompasses more than just the wild areas or the parks. It includes also, in his opinion, the urban environment in which most of us live. Therefore, I wonder what your opinion is concerning that section on page 2, lines 8 to 10? Whether or not in your opinion those words that I previously mentioned—" * * * in or requires the use of lands from any park, recreation, wildlife and waterfowl, or water resource area, or any historic site * * *"—whether that is a limiting definition or whether or not it is satisfactory?

Mr. HOFE. Mr. Chairman, I would certainly agree with Senator Hart in the fact that there are urban environmental problems. I believe, however, that a deletion of the phrases mentioned would broaden the act. The words here are limiting in nature, and broadening the language may make this section so broad as to be close to unworkable.

I listened to Assistant Secretary DeSimone, and as he said, any project has an effect on the environment. And this may serve, without this limiting phrase in here, to cause us more problems with less benefit than as it is now written.

Senator HARTKE. I want to thank you, sir, for your statement, and for coming over this morning.

Mr. HOFE. Thank you, Mr. Chairman.

Senator HARTKE. Our next witness is Mrs. Claire Stern, director of the Long Island Environmental Council, Inc.

Good morning. Glad to have you with us this morning and we will be pleased to have your testimony.

STATEMENT OF MRS. CLAIRE STERN, DIRECTOR, LONG ISLAND ENVIRONMENTAL COUNCIL, INC.

Mrs. STERN. It is my pleasure to be here, Senator, and to bring you the greetings from a part of the New York bight which is certainly one of the most beleaguered parts of our country in terms of the subject before us this morning.

I am Claire Stern. I am the executive director of the Long Island Environmental Council. I appear on behalf of the board of directors of the council.

We are a membership organization, chartered under New York State law as a tax-exempt, not-for-profit corporation with individual and organizational memberships. We represent close to 50,000 persons who are directly or indirectly members of the council. The council is a coalition of 68 organizations representing differing individual agendas, and individual memberships, all working together under one administrative structure in defense of the environment, especially the quality of life on Long Island. Our aims are public education and citizen action.

The organizations are based in Nassau and Suffolk Counties, with some membership in Queens, Kings, and the Bronx, and represent conservation, civic interests, religious institutions, school districts, sportsmen's groups, professional groups, garden clubs, students from junior high school through college and university, and such nationally known women's organizations as the League of Women Voters, the American Association of University Women and the Junior League. We also have a communication network around Long Island Sound, called the Long Island Sound Association, stimulated by our desire to support the establishment of a single governmental authority to protect, preserve and develop the sound.

The proposed amendments being offered by this bill are satisfactory in general. For example, we support the omission of the word "public" in the first paragraph as an unnecessary limiting factor. Both public and privately held parks should be given consideration in highway planning.

There are two omissions from the bill which I will comment upon. The first is of limited significance. I believe the act should direct the Secretary of Transportation to confer with the Environmental Protection Agency. According to the Council on Environmental Quality guidelines on 102 statements, EPA will be expected to comment on water quality standards after certification by State or interstate organizations. If direct reference is not to be made to the National Environmental Policy Act, which I will be discussing, then I suggest you add EPA to the stated agencies.

The other omission is to my mind a serious mistake, and really is at the heart of the matter. No mention is now made of the requirement that local officials be consulted on a project. In the summary of the report on Jamaica Bay prepared by the National Academy of Sciences in January of this year, the following statement is made:

Because the environment is a public resource, decisions to control or prevent its degradation must be public decisions, openly arrived at after informed discussion. Individuals, local communities, and public and private agencies at the local, regional, and national level must all declare their interests and assess the consequences of various possible actions. In large measure, the current high intensity of controversy over environmental issues is a consequence of past and present failures of public officials to incorporate adequate and continuing participation of all affected parties, especially local communities, in the decision-making process.

Local officials are expected to participate under CEQ guidelines. Although their outlook may be limited, their information and attitude must be part of the input in the regional planning process. No veto power is vested in the local official or citizen group, but assurance of their participation by statute should be given since the decisions will affect them most directly.

We especially support the addition of the words "water resource areas" throughout the bill. It is just good sense for Congress to man-

date a concern for our water areas because of our total reliance on water as an integral part of our life cycle.

Nassau and Suffolk counties alone boast of 1,000 linear miles of water frontage, with Long Island Sound on the north, Atlantic Ocean on the south and east, as well as streams, lakes, creeks, and bays. Long Island residents are strikingly aware of water quantity and quality since we are not only surrounded by water, we literally sit on it. The source of drinking water for the two counties is from the ground water supply.

Water is important to us for swimming, boating, commercial and sport fishing; for commercial shipping; as cooling water for electric power facilities. Perhaps the deepest cause for alarm is the use of surface waters surrounding the island for receiving waste from industrial plants and municipal sewers. If improved surveillance and enforcement do not replace mechanisms presently at work, namely reorganization of agencies into superagencies and reports issued on water pollution instead of enforcement, Long Island Sound may itself become a sewer.

I wish to include two pertinent illustrations on the need to use every legislative device to protect our irreplaceable waters, and in so doing I am expressing a note of frustration and discouragement. Even the National Environmental Policy Act, a landmark statute, is subject to neglect by the very agencies who have major jurisdiction over the water resources of the country.

Long Island Sound has a water surface of approximately 1,300 square miles. The USGS charts indicate there are 19 dumping sites for dredge spoil and other "permitted" debris, permits granted by the Corps. No regular surveillance of these sites is conducted by the Corps. No environmental impact inquiry is made by the Corps. Contrast this action with the well-written document submitted by the Corps as their response to compliance with NEPA. In fact, at the enforcement conference held in New Haven, Connecticut, on April 13 and 14 this year under the aegis of the Environmental Protection Agency, the 20th dumping site, not designated on the charts, was identified as the special site at the race, at the eastern end of the sound, assigned to the Pfizer Corp. as its own site. No study has ever been made of the immediate or long-term effect of the pharmaceuticals being dumped, yet the permit was renewed automatically every 3 months. And this has been going on for better than 15 years! It would appear that the Corps saw no need to alter its permit procedure to accommodate NEPA until the situation became public.

My second example of the continued threats to water quality is in the testimony of the Department of Commerce, offered before the House Subcommittee on Fisheries and Wildlife Conservation on December 10, 1970. Dr. Steven E. Shanes, special assistant for policy development of the Commerce Department, and members of his staff, identified their responsibilities for funding sewer treatment plants, harbor and dockside loading facilities, marine sewage disposal, and many other marine-oriented developmental programs. No environmental impact statement is obtained by Commerce prior to granting funds for a particular facility. The spokesmen for Commerce said they do not view the Department as the "lead agency" in making the allocations. On a direct question from Mr. Dingell, Mr. James Brennan,

acting assistant general counsel for science and technology, reiterated the Department's attitude that no 102 statement is required by them, nor do they take any responsibility for being assured that the "lead agency" has in fact made such an environmental inquiry.

The statements issued in 1970 in support of placing under Commerce extensive responsibility for marine development praised the Department's ability to conserve as well as protect the marine environment. Clearly Federal dollars continue to be allocated through Commerce with a denial of this very responsibility attributed to them.

Let me now go on from our support of adding water resources to the Transportation Act to comment on the addition of the words "adverse effect upon the environment." The act as it now reads emphasizes aesthetics, restoring the natural beauty of the land being traversed, and this new phrase will reinforce the influence of NEPA. In fact, rather than limiting the change to this phrase, I would suggest the amendment might refer directly to the provisions of the National Environmental Policy Act, and especially of the 102 statements. Such language in the Transportation Act will serve to prevent a possible loophole where compliance with the law would be with the Transportation Act and not with a review of the total environmental impact.

As further justification for providing a clear legislative mandate to directing highway planning under 4(f), I wish to cite a quotation from Secretary John Volpe, when he appeared before the Subcommittee on Fisheries and Wildlife Conservation on Federal Agency compliance with section 102(2)(c) of NEPA on December 8, 1970. In response to a question posed to him by Mr. Dellenback as to whether there were any contradictions or difficulties between various sections of statutory law that needed to be smoothed away, Secretary Volpe responded:

I think that the Section 4(f) provisions are the primary considerations because that statute is the oldest one we are working with . . . But, as a matter of fact, we were doing with only the section 4(f) provisions a great deal of what the NEPA now calls for. So that in a sense the Act really puts down on paper more strongly, more pointedly, the kind of things that the Congress felt needed to be done and ought to be done in carrying out our overall obligations in this environmental field.

So far—

concluded Mr. Volpe,

I have found no contradiction that has come to my attention . . .

A direct reference in 4(f) to the NEPA would give further assurance to the Secretary's decisionmaking process.

However, legislative and administrative procedures are not easily subject to change. In the report by the National Academy of Sciences on Jamaica Bay and Kennedy Airport, the following remark is made:

. . . we are rich in laws and regulations prescribing machinery and guidelines to ensure proper regard for environmental values when decisions for a new airport, the development of an existing one, or any other federally oriented programs are to be made.

Here is a report prepared by outstanding scientists, planners, and other professionals on the precious water resource called Jamaica Bay. In traditional fashion, however, the New York State Legislature proposes to add four truck lanes to Shore Parkway in Brooklyn. A legislative decision is being made and publicly supported or opposed, with battlelines well drawn. Yet, guidelines for making an intelligent de-

cision are now available, but instead the legislature acts, and the battle begins.

We seem to be at the mercy of the same old public works game, played by the same old rules—decide on the project first and seek justification for it later, and give only as much explanation as you are forced into. According to a memorandum of May 29, 1969, from the Associate Solicitor for Parks and Recreation of the Department of the Interior, Bernard R. Meyer, in reviewing the applicability of 4(f) to the proposed jetport in the Everglades, he said:

Section 4(f) was intended by Congress to accomplish a very significant objective—a coordinated approach to all affected federal programs which in the past have not been coordinated. In order to minimize adverse effects and duplication, waste of federal and state funds, and conflicting and incompatible programs and objectives resulting from transportation programs, the Secretary of Transportation was required to undertake a variety of pre-program and pre-grant studies and investigation . . .

Yet, in spite of this Federal legislation, in spite of local community objections, in spite of the opposition of conservationists, Governor Rockefeller has persisted in his whim to build a bridge across Long Island Sound to connect the town of Oyster Bay with Rye, N.Y. No in-depth preprogram studies were ordered by the Governor to make a determination of the effect upon the total human environment of this particular bridge proposal until March of this year, although authorization to construct this bridge is embodied in State statute.

And now even the New York State Legislature voted almost unanimously to reject this ill-conceived project, and the Governor has used a parliamentary mechanism for delaying his public response to the legislative will.

Too much time, too much money and manpower are wasted in our upside-down decisionmaking process. The Federal Government must now take over the responsibility for the public welfare abandoned by the State, which seems to be admiring our main waterway, the Long Island Sound, not as a resource, but as a liquid highway to be traversed.

We welcome the additional support of the new language proposed by S. 728.

That is the end of my statement, Senator, and I thank you very much for the opportunity to make it before you.

Senator HARTKE. Thank you, Mrs. Stern, for a fine statement.

Let me ask you the same question I have addressed to the others. Senator Hart, as I said, cosponsored the bill, and he is the chairman of the Environment Subcommittee. He made the point that the environment encompasses more than wild areas or parks. He says it includes the urban environment in which most of us live. I wondered what your position was. Do you support the deletion of the phrases in lines 8 to 10 on page 2 of the bill which reads: “* * * in or requires the use of lands from any park, recreation, wildlife and waterfowl, or water resource area, or any historic site * * *”? In your opinion, would the deletion insure that our urban environment is as well protected as parks and wild areas? In other words, would this be a broadening or a limiting effect upon the total approach?

Mrs. STERN. Senator, if I understand Senator Hart's question—and I have before me the proposed amendment; I have the phrase marked “which has an adverse effect on the environment,” and because I live in an urban area. I assume, perhaps, in a parochial sense, that our urban

environment would be considered in a total way as if we were also in a rural environment.

Senator HARTKE. Yes, but you see, that does not say, "including but not necessarily limited to." I mean, the rule of legislative interpretation might result in the interpretation that as a result of the fact that this legislation is written "has an adverse effect on the environment," and then these words added "in or requires the use of lands from any park, recreation, wildlife and waterfowl, or water resource area, or any historic site * * *"—that there is legislative intent which would say that the mere fact that you have not included "urban environment," that therefore it was intended to be excluded.

Senator Hart's question is, very simply, that he would not want to be in favor of any legislation which would in any way limit the term "environment" to just those areas in this field. If you understand what I am saying.

Mrs. STERN. I do understand the question very clearly, Senator. I want you to understand that because I brought with it my own subjective information, I made an assumption which obviously is not assumed in the legislation. Absolutely, if it is necessary to define it, because if it is not defined in statute it would be appropriate for consideration in the future under 4(f), then I think it has to be so written in.

Senator HARTKE. And you support the omission of the word "public" from section 4(f). Do you agree with Assistant Secretary DeSimone's suggestion that there be some limitation on lands held in trust or some other way for the public use; in other words, in order to avoid disputes, for example, over golf courses and things of that kind?

Mrs. STERN. No; I disagree with him, Senator. We have found especially in the urban areas that such recreational facilities as privately held golf clubs, in a sense, provide us with valuable open space, even though we may not individually use it; it is there for part of the total environment. I think it should be so considered.

And also, of course, we know in our own experience on Long Island that if the land is to be taken—the golf courses, of course, are held by private corporations—

Senator HARTKE. I might just take notice of the fact that there is a controversy, or there has been in the past, in the neighboring State of Maryland concerning golf courses specifically, in that the golf courses have been given special tax considerations, and people were complaining about that, due to the fact that they were given that special consideration in order to hold them for open spaces. Some people contend this was giving an undue advantage to the rich.

So, you see, you run into this constant conflict between providing for the total protection of the environment without sometimes giving what appears to be unjust enrichment to some people?

Mrs. STERN. Senator, I would like to comment on that, if I may. In just the two counties of Nassau and Suffolk, there are 2½ million people residing at this time. Everyone who belongs to a golf club is not necessarily rich.

It has been the point of view of the Nassau County Assessment Department to do just what happened in Maryland, which is to have given a reasonable tax assessment in order to encourage the corporate owners to maintain the golf clubs for their recreational purposes.

Obviously, it is of interest for you to know that we went into the scenic easement program, we were approaching some of the golf clubs to say that, "if you will, in fact, sign a negative easement, we would give you further tax considerations." And in Nassau County this was never viewed as a doing for the rich, if you will, at the expense of others.

Senator HARTKE. I do not want to pass judgment on this, but I will say this, that you know some people complain about even providing for a minimum income for people. Maybe it is a step too far to expect that the country would provide minimum golf courses for all the people in it.

Mrs. STERN. I think I won't comment on that.

Senator HARTKE. I will not ask you to.

You do strongly advocate a role for local officials in making the decisions; and do you then support retention in section 4(f) of the power for determination by Federal, State, or local officials? This provision is deleted by S. 728.

Mrs. STERN. Yes; I was recommending that. It is in the original act itself.

Senator, I was making the point that at the risk of creating a new problem in writing the legislation, I simply wanted to express my concern that somehow the National Environmental Policy Act really should supersede and be the main embodying statute and that if, in fact, it would be improper to refer to in that way, for whatever legal reasons or of your own personal attitude, then at least I believe that you have to reinforce the provisions of the National Environmental Policy Act.

We have too often—how should I say it—we have ignored or tried to ride roughshod over the parochial views, if you will, yes, the narrow views, "This is my block, this is my community." We must not allow decisions to be made of this sort which do not embody the attitudes and concerns of the people who live there.

It is not unheard of for hearings to be held in accordance with the law, but not very well advertised and not held in the community.

This is part of what I was trying to avoid.

Senator HARTKE. I want to thank you for your statement.

Mrs. STERN. Thank you.

Senator HARTKE. That concludes the witnesses for this morning.

(Whereupon, at 11:15 a.m., the subcommittee was recessed, subject to the call of the Chair.)





