DEPARTMENT OF TRANSPORTATION

ADMINISTRATION OF DOT, PART III

Reel #101

Inter-American Freight Conference

The Department's involvement in the Inter-American Freight Conference problem stemmed from its effort to devise some method of resolving a conflict between Brazilian policy and United States law with respect to allocation of freight shipments to individual companies. Involved in the issue were the Department of Transportation, the Department of State and the Federal Maritime Commission. The process of deciding the action of the Department is a good illustration of the methods and techniques the Department employs in intervening to protect the public interest.

Though the Department of State wished to arrive at an agreement that would satisfy both third-flag carriers and Brazilian maritime ambitions, the Department of Transportation took the position that regardless of the precise allocation of freight carriage among the shipping lines, the United States should object to the Inter-American Conference agreement because it involved monopoly, waiver of right to object, and acquiescence in the dominant power of Brazil.[1]

The matter was discussed at several inter-departmental meetings in Washington without success in defining a clear position for the United States. The General Counsel, Mr. Robson, summarized the facts for the Secretary on December 21, 1967 since the Department's brief would have to be filed with the Federal Maritime Commission by December 27 if it chose to intervene in the case. He stated that the Department's original position had been based upon the fact that the Brazilian decrees would establish a situation not in accord with the U. S. Shipping Act of 1917. The essence of the problem was that the shipping conference established under the

Brazilian rules would allow for no competition from outside the conference, and that the cargo pooling arrangements established by the Brazilians were based on "national flag allocations having no relationship to historical carriage." After considerable delay following the protest, the parties had concluded a new conference agreement that included allocations for Scandinavian lines. The conference was approved by the Maritime Commission's examiner over the objection of both DOT and Federal Maritime Administration counsel. Mr. Robson listed the options that the Department had, including; 1) an appeal of the Examiner's decision to the Maritime Commission, 2) a policy of doing nothing, and 3) a policy of doing nothing about the conference agreement, but waiting until the new pooling arrangements were made; thereafter an appeal could be taken. Within the Secretary's office there was considerable difference of opinion as to the appropriate procedure for the Department, ranging from the Assistant Secretary for Public Affairs' view that no objection should be raised if the shipping lines involved were satisfied, to the Assistant Secretary for International Affairs' and the Assistant Secretary for Policy Development's position that the Department should appeal the Examiner's ruling and seek Commission disapproval of the agreement. The Secretary approved the latter position.[2]

Some weeks later the Department of State decided that it would attempt to dissuade the Secretary from asking the Department of Justice for permission to appeal the Maritime Commission order approving the shipping conference agreement. The Department of State favored some sort of agreement that would divide cargoes in a manner agreeable to both Brazil and the United States flag carriers. It was influenced by the putative conviction of Senator Russell B. Long who, it was thought, would oppose the Senate's approval of the new

Coffee Agreement unless Delta Steamship Lines was satisfied that it was getting a fair allocation of cargoes. According to Mr. Craig of the General Counsel's office, the Department of State thought the Delta Lines would be appeased if the U. S. were to accede to Brazil's desire to bar non-conference lines in the trade, to make all of the commercial cargoes subject to pooling, and to discriminate against third-flag lines in the cargo allocation. To accomplish all this, Brazil would have to renounce its agreement with third-flag lines, and negotiate a new pooling agreement; the Maritime Commission would then have to approve the pooling agreements without a hearing in order to prevent the expression of opposition to the arrangements.[3]

Since the Maritime Commission upheld the Inter-American Freight Conference without a hearing, the Department was again confronted with the problem whether it should seek to intervene in the case; again Mr. Robson argued that the Department should ask the Department of Justice to appeal the decision; the Assistant Secretary for International Affairs and the Assistant Secretary for Public Affairs favored dropping the issue, as did the Department of State.[4]

The General Counsel's view was strongly challenged by Donald G. Agger, the Assistant Secretary for International Affairs and Special Problems. He argued that DOT's relations with the regulatory agencies should be friendly and mutually respectful. Interventions should be rare and employed only in most important cases. As to the actual operations of the conference, the pooling arrangements would be fair to practically all possible lines. The State Department also opposed the intervention on the grounds that; 1) chaos in the shipping industry would result during the course of the rather lengthy legal process, 2) the Brazilians would be unwilling to negotiate on issues

while the court had the case under review; 3) Brazilian intransigeance would irritate the Delta Lines which would then seek assistance from Senator Long and endanger the Coffee Agreement. Since it considered the latter agreement so important, the Department of State was willing to appeal to the White House to prevent an appeal by the DOT.[5]

The Secretary indicated the next day that he was unwilling to battle the State Department at the White House, since he thought he might lose the fight, but was willing to continue the discussion at the Assistant Secretary level. Mr. Craig undertook to determine the actual views of the Delta Lines; he was informed that the steamship company not only did not oppose any appeal by the DOT, but thought it might be helpful to the Lines. The Company agreed with the Department that there should be a hearing before the Maritime Commission approved the conference agreement.[6]

On March 15 protagonists of both sides of the argument sent memoranda to the Secretary. Mr. Agger argued again that the Department should not file an appeal in this case and should confine its interventions to cases of overriding importance. Mr. Robson again argued for intervening, basing his argument in part upon a decision of the Supreme Court on March 6 in the Svenska-Amerika Linien Case. The Secretary refused permission for the appeal to be filed.[7]

The operational consequence of this lengthy discussion in the Department was a recommendation signed by Deputy Under Secretary Sitton that Assistant Secretary Agger prepare an issue paper for internal discussion to define a suitable course of action to be taken in similar cases in the future. He based the recommendation on the Secretary's view that the Department should intervene in a proceeding before a regulatory body only if it can offer a constructive

alternative to the situation objected to. He reasoned that the Department's best hope would be a situation of balance between U. S. domestic precepts of competition and the cartel proclivities of internation shipping. "Departmental leadership", he said, "in a cooperative effort involving State, the Federal Maritime Commission and Commerce to develop such a balance is clearly needed to protect the public interest." He explicitly recognized that unilateral regulation could not determine rate structures in international shipping, but that the executive function of international negotiation rather than the quasi-judicial function characteristic of normal regulation will determine the level of charges. The Department of Transportation is the executive agency properly charged with such international negotiation as is required for rate regulation.[8]

1. Elroy H. Wolf, memorandum to file, September 29, 1967.
2. John Robson to Alan Boyd, memorandum, December 21, 1967.
3. Peter S. Craig to John Robson, memorandum, February 28, 1968.
4. John Robson to Alan Boyd, memorandum, February 29, 1968.
5. Donald G. Agger to Alan Boyd, memorandum, March 4, 1968.
6. Peter S. Craig, memorandum to file, March 5, 1968.
7. John Robson to Alan Boyd, memorandum, March 15, 1968.
8. Paul Sitton to Donald G. Agger, memorandum, April 3, 1968.

File # 6000
6000-4

APR 3 1968

Inter-American Freight Conference

Deputy Under Secretary

Donald G. Agger
Assistant Secretary for International Affairs
and Special Programs.

The Secretary has decided against filing a petition before the Federal Maritime Commission (FMC) for reconsideration of the Inter-American Freight Case. As I understand his action, it is not an abandonment of the position taken by DOT in its initial intervention in this case. Instead, it reflects the Secretary's attitude that our involvement in problems of this nature can only be constructive and successful if we are prepared to offer reasonable alternatives.

Viewed in this light, the Department should develop a framework in which our domestic economic system of free competition, operating under the constraints of a national anti-trust policy expressed through the regulatory process can remain viable in a hostile international climate. Because of the complexities of the ocean freight rate structure and its close tie-in with international political affairs, a final resolution of this problem may not be possible. On the other hand, the integrity of domestic economic principles must be protected from the erosive pressures of international accommodations. Since the situation will never be static, our best hope is a condition of balance between our precepts of competition and the cartel proclivities of international shipping.

Departmental leadership in a cooperative effort involving State, FMC and Commerce to develop such a balance is clearly needed to protect the public interest.

Background of Our Problems in International Regulation

The need for regulation in this field arises from the existence of shipping conferences -- organizations of common carriers established primarily to work out rate agreements. Despite our distrust of cartels, the

conclusion has been reached (reluctantly) that shipping conferences are a necessary evil and that for want of a better alternative they provide the only framework available at this time within which rate-making can be "stabilized." The opportunity for constant abuse clearly exists (as in any cartel) and it is reasonable that the Government continually guard against such potential abuse. At the same time, it is clear that unilateral actions cannot be effectively and successfully exercised by a single Government. As has been indicated in the Inter-American Freight Case, any international voyage involves at least two Governments, and frequently more, thus any regulatory action on our part can obviously be countered by an opposing regulatory action of another Government -- leading to stalemate or chaos.

At this point, it is useful to contrast the ocean shipping and aviation regulatory situations that face the U.S. Government. While there are many analogies between the CAB's responsibilities in relationship to IATA and the FMC's control over shipping conferences, there are substantial differences that permit greater CAB leverage than in the case of the FMC.

(1) The CAB's affirmative approval is required before any specific IATA rate agreement becomes effective. In the case of FMC, once the underlying conferences framework has been approved, individual rate agreements thereafter take effect automatically, and the FMC then has the more difficult task of disapproving rates based on the record of a formal hearing.

(2) Air traffic rights are exchanged in bilateral agreements which expressly provide for suspension of landing rights in the event of rate disagreement. In contrast, shipping rights have for centuries been founded on the "freedom of the seas" concept. Treaties of "friendship, commerce and navigation," relating to shipping, make no provision for withholding traffic rights because of rate disagreement.

(3) The airline industry has developed within the framework of regulation, and is accustomed to compliance. In contrast, economic regulation is virtually non-existent in ocean commerce, and there is traditional resistance to it on the part of foreign Governments, as well as the industry itself.

(4) The principal rate issues in air service have thus far related to passenger fares. In contrast with the complexity of ocean freight rates, air passenger fares are comparatively simple to analyze, discuss and negotiate.

(5) U.S. flag carriers in the past have been dominant in aviation, but have been subordinate in shipping. This means that the U.S. flag spokesman for our Government's position can be far more effective in airline conferences than in shipping conferences -- this does not imply that they are.

(6) IATA acts only by unanimous agreement; many shipping conferences act on the basis of majority or two-thirds vote. This means that any single U.S. flag airline can prevent IATA agreement if that is necessary to conform to U.S. Governmental policy. In shipping, on the other hand, the U.S. flag lines can frequently be outvoted.

Despite this advantageous position, the CAB also has encountered practical limitations on its ability to control international rates.

Thus, the essential point is that regulation (as we normally think of it) is not fully possible in an international framework where more than one Government can potentially assert regulatory jurisdiction. We cannot be sureof ending up with a given rate level merely because a regulatory proceeding leads up to a quasi-judicial determination that such rate is proper.

In the final analysis, the executive function of international negotiation, rather than the quasi-judicial function of normal regulation, may well determine what the outcome of such broad issues might be. It is in this executive role that the Department of Transportation can exert its positive leadership and prosecute our economic policies in the protection of the public interest.

These comments are not meant to suggest that the Government is helpless to guard the public against unreasonable or discriminatory rates. After all, if it comes down to international negotiation, this Government is not

without leverage and bargaining power in this area. However, we must develop an affirmative and constructive basis for protecting our policies against expedient accommodations so that a decision; if it is a political one, is made consciously in that framework and not by default.

The clarification of these issues is ultimately a matter of broad policy, requiring the attention of not only DOT, State and FMC, but of the President, other executive agencies, the Congress and the various affected segments of industry.

Possible Approach Toward Regulatory Control in This Field

One approach is to recognize that the power of formal regulatory rate control should be relied upon as a matter of last resort -- limited where possible to issues of a clearcut and broad importance, and used only after other, less formal efforts, have been unsuccessful.

The formal regulatory approach should be supplemented by increased emphasis in other areas which can help to round out the protection of the public interest. First, more adequate means are needed for informing the public regarding: (a) conferences and their practices, and (b) the costs and profitability of the shipping companies. Part of the suspicion that attaches to shipping conferences stems from the relative secrecy which surrounds them. It is not unreasonable to require more complete public disclosure in exchange for the Government's willingness to grant exemptions from normal application of the anti-trust laws. The FMC has worked in this direction and as a result has had its right to have this information affirmed by a Supreme Court decision.

Public knowledge alone, if well circulated, could go a long way toward safe-guarding against the abuses which regulation is normally designed to prevent. For example, one of the traditional economic concerns about any cartel is that it will use its monopolistic powers to force rates to unreasonably high levels, with resulting exhorbitant profits. In the case of airline rate conferences, this element of possible suspicion is reduced by the fact that U.S. flag airlines must file detailed financial reports with the CAB, and this information is freely available to the public. In the case of shipping conferences, the lack of comparable information leaves the activity under a cloud of suspicion that normally goes with the term "cartel."

It is important that DOT keep as fully informed as possible of the basic characteristics of conference practices, and of the shipping industry's costs and profits. This requires special analytical studies.

Secondly, increased emphasis is needed on the executive function of resolving rate adjustment problems, as a supplement to the more formal process of attempting to regulate them.

At present, the FMC frequently takes informal steps with the conferences, bringing to their attention specific shipper complaints, and asking for conference review and suitable action. However, there is a limit to how forcefully FMC can urge a particular rate adjustment in these informal circumstances. The issues might subsequently come before the FMC in a formal proceeding, requiring a full hearing. To the extent that the FMC itself, in the informal stages, had exercised a strong advocacy of a particular rate adjustment, it would not retain its standing to subsequently hear the case impartially on its merits as a quasi-judicial body.

This leads to the conclusion that an Executive Department (such as DOT) should be charged with the role of advocating rate adjustments which appear desirable, leaving the FMC free to act impartially as a quasi-judicial body if the informal discussions are fruitless, and if the matter becomes one requiring formal proceedings. It was under this principle that DOT intervened in the Inter-American Freight Case.

One thing seems clear to me -- we should avoid any trend towards bi-lateralism inherent in the direction taken by Brazil in the Inter-American Freight Case. Other countries will undoubtedly look to this precedent as a desirable means of underwriting the promotion and expansion of their national flag fleets without regard for the economic principles of comparative advantage -- the basic precept of our international trade philosophy.

Conclusion

My own view is that no issue in the field of international transportation is more important. Thus, any resources which you can devote to the development of guidelines for directing further Departmental efforts to promote the more efficient and economic movement of our foreign commerce would be well directed.

Without such an effort, your promotional goals in such areas as facilitation can be thwarted. After giving some thought to this subject, you may wish to prepare an issue paper for internal Departmental discussion and Secretarial concurrence in a course of action to develop a Departmental program which meets the problems and issues raised by the frustration of our efforts in the Inter-American Freight Case.

We should not await the development of a new crisis and be forced back to a position of inaction, as in the current instance, because we have no desirable alternative for handling the problem.

S/
Paul L. Sitton

PLSitton:akm 4/2/68
cc: Mr. Sitton
Executive Secretariat-1
Mr. Mackey
Mr. Sweeney
Mr. Robson

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DATE: September 29, 1967

In reply refer to:

SUBJECT: Inter-American Freight Conference
FMC Dockets 67-47 and 67-48

FROM : Elroy H. Wolff

TO : File

Following is a summary of a meeting held Monday, September 25, 1967 attended by Messrs. Robson, Craig, Wolff, Barber, Vigderman, Lister and Schwartz of DOT and Loy and Miller of Department of State.

The purpose of the meeting was for the Department of Transportation to explore the possibility of recommending to the Department of State a method of solving the apparent conflict between Brazilian maritime policy and United States law in the context of the present controversy over the so-called coffee pool. Department of Transportation representatives pointed out to the State Department that the draft brief for Ambassador Tuthill contained nothing objectionable to DOT but that paragraphs 2(a) and 2(b) of part E of that memorandum were susceptible to a variety of interpretations. In particular, the State Department's representatives were told that a different, and perhaps more equitable, division of traffic among the carriers in the Brazil-United States trade would not satisfy the legal objections which DOT has with respect to the Inter-American Conference Agreement since it would leave unchanged the monopoly, waiver of right to object, and dominant power of Brazil features of the Inter-American Conference Agreement.

State's representatives stated that they had been told by Moore-McCormack and Delta that Lloyd Brasileiro has been carrying the bulk of the coffee traffic in recent weeks and that Mooremac and Delta had received very little of the trade. It was alleged that Lloyd's dominant position was achieved through rebating, either directly or through the use of a dual coffee pricing system.

The representatives of the Department of State indicated that it was their preference to arrive at some arrangement which would satisfy the third-flag carriers and Brazilian maritime ambitions, thus avoiding a direct clash between American law and Brazilian policy. DOT representatives stated that they would endeavor to develop a satisfactory solution but doubted the ability to make a recommendation that would comply with U. S. law and be consonant with present Brazilian policy.

Elroy H. Wolff

Form DOT F 1320.1 (1-67)

Mr. Sitton, S-5

UNITED STATES GOVERNMENT

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Memorandum

DATE: December 21, 1967

In reply refer to:

SUBJECT: Inter-American Freight Conference

FROM : General Counsel, TGC-1

TO : The Secretary

We must decide whether to continue DOT objection to the Inter-American Freight Conference Agreement. Our brief and exceptions must be filed by December 27, 1967, so we have to make up our minds immediately.

DOT's original protest attacked the conference agreement and related pooling arrangements as violating the Shipping Act of 1916.

-- Brazilian decrees designated this conference as the sole instrument for carriage of the principal commodities in the Brazil-United States trade. The heart of the situation is that there is no opportunity for competition from outside the conference and no opportunity for competition inside the conference which will allocate 100 percent of the trade. (Our argument being that the legality of the conference agreement must be tested in the light of those Government decrees.)

-- The pooling arrangements were based on national flag allocations having no relationship to historical carriage.

After much waffling around, the parties have entered a new conference agreement which includes the third flag Scandinavian lines who were out in the cold under the prior deal. The prior agreement and pooling arrangements have been withdrawn. Moore-McCormack has agreed to new North Atlantic trade pooling arrangements which were filed December 11 but Delta has rejected Brazil's proposals for the Gulf trade.

The new conference has been approved by the FMC Examiner, objection being made only by DOT and FMC hearing counsel. The shippers and carriers in the trade do not oppose the conference.

In our judgment the same legal objections initially raised by DOT are present with respect to the new conference agreement.

We have the following options:

1. Appeal the Examiner's decision to the FMC.

2. Do nothing further with respect to the new conference agreement but protest the new pooling arrangements (probably in January) and attempt in that proceeding to raise issues related to the conference agreement as well as issues related to the pooling arrangements.

3. Take no further action at all. (Encourage State to work through diplomatic channels to conform the arrangements to U.S. law, an unlikely possibility.)

The views of the OST offices concerned, other Departments and the carriers are as follows:

1. State -- They oppose taking further action in the conference agreement case and will probably do likewise if the carriers and shippers are all on board on the pooling arrangements. Probably this reflects their desire not to ruffle the Brazilians or the U.S. flag carriers any further, and a feelin g that the U.S. doesn't have entirely clean hands in the cargo preference area.

2. Moore-McCormack -- Will probably object to our opposing the conference agreement. MooreMac believes that a conference is badly needed in the trade and is satisfied with the pooling arrangements it has entered into.

Delta -- Has not been able to work out a satisfactory deal with the Brazilians and has said informally that it plans to do nothing in support of the conference agreement but will take a neutral position. Delta has indicated that, at this time, it will not be distressed if DOT files exceptions to the Examiner's approval of the conference (for purely selfish reasons). This, however, is Delta's private position an d we cannot be sure that it will not publicly be critical of DOT's opposition to the conference agreement.

3. Justice -- Heretofore Justice has been sympathetic to DOT's opposition but has not been following developments of recent months closely enough to have any definite recommendation.

4. Commerce and Marad -- According to Joe Bartlett, General Counsel, Commerce privately is in sympathy with DOT pressing its objections but officially has no comment and stands indifferent. Within Commerce, Marad (reflecting U.S. lines' views) always has favored FMC approval, although McQuade, Assistant Secretary for Domestic and International Business, supported DOT's protest against interim approval.

5. OST --

a. TIA -- Agrees that DOT should reiterate position it expressed before Examiner that FMC may approve agreement only on condition that Brazil does not implement the restrictive decrees or otherwise act to preclude or restrict the carrying of cargo by non-conference lines.

b. TPD -- States that it "Joins in the position of TGC and also emphasizes the serious long-term consequences to the free trade position of the U.S. If we acquiesce in the Brazilian Inter-American Freight Conference, we will establish a precedent that is likely to be pursued by many other countries, particularly those in the lesser developed category. In many respects this is a case of first impression; if it is allowed to stand it will work at cross-purposes with our declared Kennedy Round objectives of encouraging competition."

c. TPA -- Opposes pressing objections if the lines involved are satisfied.

d. TGC -- The General Counsel recommends that the Department appeal the Examiner's decision and seek Commission disapproval of the agreement, so long as the Brazilian decrees remain as they are.

John E. Robson

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

DATE: February 28, 1968

In reply refer to:

SUBJECT: Inter-American Freight Conference

FROM : Assistant General Counsel, Litigation

TO : General Counsel

Supplementing my prior memorandum of the same date, Donald Macleay called this afternoon to state emphatically that Delta is not a bit happy with the conference agreement as approved by the FMC and would welcome anything DOT might do to overturn it or block its effectiveness. He adds that Delta would welcome either the Department of Transportation or the Department of Justice or both going to court to test the agreement's lawfulness.

Peter S. Craig

cc: Paul L. Sitton
M. Cecil Mackey
Donald G. Agger
Alfred G. Vigderman
Richard J. Barber
David M. Schwartz
Ray W. Bronez
Robert J. Blackwell

Subject

February 29, 1968

ACTION - Inter-American Freight Conference

General Counsel

The Secretary

The FMC, without a hearing, upheld the Inter-American Freight Conference. We now must decide whether to urge Justice to appeal the FMC decision to the Court of Appeals.

1. In my judgment, this case presents the following questions:

-- Whether there is a per se violation of U. S. shipping laws by a conference which, because of the interaction with Brazilian decrees, excludes any competition with conference members by outsiders and is also competitively inflexible within the conference. (We think the answer is yes.)

-- Whether the FMC may, without a hearing, approve a conference having the anti-competitive aspects which this one does. (We think they can't.)

2. DOT has the following options:

(a) Ask Justice to seek judicial review (this would be accompanied by a petition to FMC to stay the effectiveness of its approval of the Conference). If DOT does not appeal it is unlikely that anyone else will. Justice, of course, has the final say-so on whether an appeal is taken.

(b) File a petition for reconsideration with FMC. We have nothing new to add to our previous arguments and see little chance of getting FMC to change its view.

(c) Do nothing with respect to the FMC decision on the conference agreement. We would plan, however, to challenge the pooling agreements which have been set down for hearing. It is our judgment that attack of the pooling agreements alone does not meet some of the significant issues present in the case.

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The Line-Up:

TPD and TGC recommend asking Justice to appeal the decision.

TIA and TPA favor dropping the matter.

-- TIA wishes to express fully its reasons for opposition to appeal in a separate memo.

-- TPA believes that we should bow out now because of industry relationship and political considerations.

State Department apparently favors dropping the case. Although there is internal difference of opinion at State, the latest official word is that an appeal may jeopardize Senate passage of the International Coffee Agreement. However, State also says that Delta is pressuring Senator Long to fight to Coffee Agreement until the Brazil-U.S. shipping problem is worked out. State suggests that Delta will be satisfied with a bigger piece of the pie. However, Delta's additional piece of pie would have to come from Brazil or the Scandinavians, neither of which seem disposed at this time to relinquish what they now have. In fact, a successful appeal of the case may be the only device which the parties and Brazil could use in order to change the present agreement without losing face. We were orally informed that Tony Solomon plans to call on you personally.

Industry. Mooremac is happy with the deal and would be much against an appeal. Delta is unhappy with the FMC decision, plans to file a petition for reconsideration, and advises us that a DOT appeal would be welcome.

We would appreciate an indication of your decision, and I urge that it be given as soon as possible.

SIGNED:
JOHN E. ROBSON

John E. Robson

_____ Drop the appeal but participate in the pooling hearings.

_____ Ask Justice to appeal the decision (advising State before the request is made in order that they have a "last clear chance" to register their dissent).

_____ See me.

cc: TIA
TPD
TPA
S-S

DRAFT

SUBJECT: Inter-American Freight Conference

FROM: General Counsel

TO: The Secretary

The FMC, without a hearing, upheld the Inter-American Freight Conference ~~which we have been challenging as illegal under the Shipping Act of 1916~~. We now must decide whether to urge Justice to appeal the FMC decision to the Court of Appeals. ~~This~~ In my judgment the following case presents the questions ~~of whether:~~ there is a per se violation of U.S. shipping laws!

1. --Whether a conference which, because of the interaction with Brazilian decrees, excludes any competition with conference members by ~~independents~~ outsiders and is also competitively inflexible within the conference, ~~violates U. S. law, per se~~ (We think the answer is yes).

2. --Whether the FMC may, without a hearing, approve a conference having the anti-competitive aspects which ~~we believe~~ this one does. (we think they can)

P 2. DOT has the following options:

(a) Ask Justice to seek judicial review (this would be accompanied by a petition ~~with~~ to FMC to stay the effectiveness of its approval of the Conference). If DOT does not appeal it is unlikely that anyone else will. Justice, of course, has the final say-so on ~~of~~ whether an appeal is taken.

(b.) File a petition for reconsideration with FMC. We have nothing new to add to our previous arguments and see little chance of getting FMC to change its view.

(c.) Do nothing with respect to the FMC decision on the conference agreement. We would plan, however, to challenge the pooling agreements which have been set down for hearing. It is our judgment that attack of the pooling agreements alone does not meet some of the significant issues present in the case.

The Line-Up:

TPD and TGC recommend asking Justice to appeal the decision.

TIA and TPA favor dropping the matter.

-- TIA ~~believes that our entry in the case is unrelated to any~~ not a part of an ~~DOT~~ DOT overall pattern of intervention and that our presence ~~in the case has made our relationship with the~~ Maritime ~~industry more difficult.~~

-- TPA believes that we should bow out now because of industry relationship and political considerations.

wishes to fully express reasons for opposition to appeal in a separate memo.

State Department apparently favors dropping the case. ~~They reason~~ Although there is internal difference of opinion at State, the latest official word that an appeal may jeopardize Senate passage of the International Coffee Agreement.

However, State also says that Delta is pressuring Senator Long to fight the Coffee Agreement until the Brazil-U.S. shipping problem is worked out. State suggests that Delta will be satisfied with a bigger piece of the pie. However, ~~this seems unlikely in the present circumstances since~~ Delta's additional piece of pie would have to come from Brazil or the Scandinavians, neither of which seem disposed at this time to relinquish what they now have. In fact, an successful appeal of the case may be the only device which the parties and Brazil could use in order to change their present agreement without losing face. ~~State apparently feels strongly about this and~~ We were orally informed that Tony Solomon plans to call on you personally.

Industry. Mooremac is happy with the deal and would be much against an appeal. Delta is unhappy with the FMC decision, plans to file a petition for reconsideration, and advises us that a DOT appeal would be welcome.

We would appreciate an indication of your decision, and I urge that it be given as soon as possible.

John E. Robson

_____ Drop the appeal but participate in the pooling hearings

_____ Ask Justice to appeal the decision (advising State before the request is made in order that they have a "last clear chance" to register their dissent.).

_____ See me.

cc TIA
TPD
IPA

If Braz out - now is the

Furthermore, Justice will not seek review if they are not convinced that we are legally correct.

TPD - Strongly supports the recommendation that Justice be asked to file an appeal for the reasons stated above.

TIA -

TPA -

State Department - State has orally advised that it is opposed to DOT asking Justice to appeal on ground that it might jeopardize the recently negotiated international coffee agreement with Brazil. But State has also said that Delta, which is cut out at present, will fight the coffee agreement, via ~~its powerful congressional friends~~ Senator Long, if the coffee trade stands as it is now. State also suggests that an appeal might upset chances for a (pooling agreement) "solution" to the controversy but offers no blueprint for such a solution except to suggest that Delta get a bigger share; of course, Delta's share would have to come from Brazil (Braz.) or ~~the~~ Scandinavians (Scandinavian line), neither of which will give up without a fight.

Industry - Mooremac is pleased with the deal it made and would be distressed if it were overturned on appeal.

Delta is very unhappy with the FMC's decision and is going to file a petition for reopening urging the FMC to set the conference down for hearing and include an independent action clause. Delta's counsel informed us that it welcomes and encourages an appeal by DOT.

ACTION - Inter-American Freight Conference TIA-30

Assistant Secretary for International Affairs and
Special Programs

The Secretary

In his memorandum of February 29 on this subject the General Counsel recommends that DOT proceed through the Department of Justic to appeal the recent FMC approval of the Inter-American Freight Conference Agreement. My own view is that, although the FMC decision is not free from question, we would on balance be better advised not to seek appeal. The following considerations are primary, as I see it.

1. Relations with independent regulatory agencies. We are currently studying the question of guidelines for DOT intervention before regulatory agencies. Assistant secretaries and modal administrators will obviously have different perspectives on this problem. For my part, I hope we can evolve a constructive working relationship with the regulatory agencies, marked by mutual respect and not by suspicion or squabbles. This would not exclude intervention in specific cases, by any means. I think it would require, however, that our interventions be made on a highly selective basis, where sound reasons for intervention arise from DOT's legislative mandate or other direct and clear responsibilities, where practical consequences of positive value will follow, and where any disturbing ramifications in foreign relations, DOT-industry relations, etc., will not be out of proportion to the objectives sought. I do not know whether, if such guidelines were brought to more concrete definition, they would support the original DOT intervention in this case. To take the further step, however, of appealing a decision reached by FMC within its area of statutory responsibility seems to me to require an even more compelling case on the merits.

2. Looking at the merits, several points ought to be kept in mind.

   a. The problem does not boil down to a significant issue, sharply drawn, between DOT and FMC. General Counsel believes that the Conference Agreement (although on its face not objectionable) is illegal because the conference so established would further operate under "anti-competitive" pooling arrangements reflecting Brazilian law. The FMC argues that a conference is needed in the trade, that the Conference Agreement itself is free of quotas or allocations, and that the "anti-competitive" aspects can be examined when (as they must) the pooling agreements come up for approval.

(They are before FMC now). In effect, we seem to be arguing over the form in which FMC chose to handle the array of issues before it. That strikes me as a rather narrow point on which to take the FMC into court.

b. As to the operation of the conference, not only must the prospective pools be submitted for approval, but the FMC has provided a further check against abuse. The approval of the Conference Agreement is limited to 18 months, at which time continuation must be requested by the parties, and during which time the parties can demonstrate that the arrangement "will operate to the benefit of the shipping public."

c. As to the practical effect of the prospective pools, obviously they cannot exactly reflect historical carryings, because the whole problem originates with Brazil's determination to put more of her exports into her national flag ships, and this cargo must come from somewhere. However, except for Delta (which wants a bigger share, not free competition) all parties are in agreement on the pools. The practical effects upon "outside competition" also appear to be minimal; I understand that the Conference members include all the lines which have been engaged in the trade in any significant degree since World War I.

3. Foreign relations: State Department strongly opposes a DOT appeal on two general grounds:

(a) As they see it, the crux of this problem is really in the recent cargo perference arrangements of Brazilian law, and adjustments should be sought through diplomatic channels, not through U. S. courts. If we go to court at this point, we become exposed to judicial decisions we cannot fully control. These could make diplomatic settlement much more difficult. State's strong preference is to press Brazil hard in diplomatic representations to make some adjustment favoring Delta (at the expense of Loide Brazileiro), and to create some structural device for including new lines, should they ever appear, in the pools.

(b) State is particularly concerned that overturning the FMC decision, or even leaving it under a cloud, will leave the trade in chaos for a substantial period and destroy the chances of negotiating a settlement on the foregoing basis, since the Brazilians can be expected to refuse to negotiate while the attitude of the United States remains obscure. This in State's view would (given Senator Long's position) jeopardize favorable Senate action on the International Coffee Agreement.

Largely on the basis of the latter point, Tony Solomon has made clear to me that State will go to the White House in an effort to stop a DOT appeal.

I recommend that we not appeal the FMC decision approving the Inter-American Freight Conference Agreement.

Ray Bronez
for Donald G. Agger

RWBronez/mem/TIA-30/3-4-68

cc: TIA-4 Reading File
TIA-30 Reading File (2)
S-10 Reading File (3)
Mr. Agger (3)
Mr. Mackey
Mr. Robson
Mr. Sitton
Mr. Sweeney

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

DATE: March 5, 1968

In reply refer to:

SUBJECT: Inter-American Freight Conference

FROM : Assistant General Counsel, Litigation

TO : File

At the request of John Robson, I called Don Macleay on March 4 to inquire whether Delta had given State Department officials its opinion that the FMC order should be appealed.

Mr. Macleay advised me as follows:

Last week, after my initial inquiry on Delta's position, Mr. Macleay had spoken to J. Clark who told Macleay he would call Tony Solomon personally to report Delta's support of an appeal. Macleay assumes this was done but will check to make sure.

Mr. Macleay added that if DOT appeals, Delta would consider intervening in support of DOT on the issue of the necessity of a prior hearing.

Peter S. Craig

cc: John E. Robson

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DATE: March 5, 1968

In reply refer to:

SUBJECT: Inter-American Freight Conference

FROM: Assistant General Counsel, Litigation

TO: File

At a meeting with the Secretary, attended by Sitton, Bond, Agger, Sweeney, Barber (for Mackey), Robson, Craig and Wolff, the Secretary indicated reluctance to seek an appeal from the FMC order in the face of any opposition by State of a degree that would take the issue to the White House, where he thought State would win.

Principal opposition to seeking an appeal was by Agger who had sent a separate memo to the Secretary (not seen by anyone else with possible exception of Sweeney), supported by Sweeney.

No conclusive decision was reached. At suggestion of Robson, Secretary asked Sweeney to determine what Senator Long's views are and, on the basis of this, that a meeting be held with Tony Solomon to see if the present differences could be ironed out.

Late in the evening, I sounded out Donald Macleay on the views, if any, of Senator Long. Macleay cited Long's February letter to the FMC and further reported that Jay Clark would be speaking to Long's AA (Hunter) early Wednesday morning to brief him on Delta's views, as follows:

1. Delta does <u>not</u> have the slightest objection to DOT appealing FMC approval of conference agreement;

2. Such an appeal would result in no injury to Delta and would probably help Delta.

3. On the merits of such an appeal, while Delta may not be in full agreement with DOT on all issues, it is in full agreement with DOT on (a) necessity for a prior hearing before approval, and (b) necessity for an independent action clause in the circumstances of this trade.

Macleay further reported that Bob Best, an international economist on the staff of the Senate Finance Committee with office in the sub-basement of Old Senate Office Building, has been the primary staff man on the Coffee Agreement and has shown some interest in the Brazil shipping question. It is known that Jacobs (or Jacobson) of State has been conferring with Best on the Coffee Agreement.

P S Craig

Peter S. Craig

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

I think it is time DOT joined the dissent Question.

DATE: March 15, 1968

3/14/68

SUBJECT: ACTION - Inter-American Freight Conference

In reply refer to:

FROM : General Counsel

TO : The Secretary

This will recommend filing a petition for reconsideration in the Inter-American Freight case. It must be filed by Monday, March 18.

I see these as reasons for filing:

1. We have a basis for filing as a result of the Supreme Court's decision of March 6 in the Svenska Amerika Linien case (i.e., we won't just be repeating what we already said).

2. It defers the necessity of a White House confrontation with State.

-- If we file for reconsideration, the question of an appeal to the courts need not be resolved until after FMC has acted on the reconsideration request.

-- State will have time to see if they can make a diplomatic deal that will satisfy our objections to the conference agreement.

-- If we do get to a crunch with State, DOT looks much better if the matter is terminated by a denial by FMC of the reconsideration request rather than by a dismissal of an appeal to the courts.

3. It preserves to the maximum our options after we see what diplomatic negoations accomplish.

I think we should advise Tony Solomon that we are going to file and give him the specifics of what feature of the agreement we would like amended in diplomatic negotiations.

Sitton and Mackey agree to this essentially time-buying steps. John Sweeney thinks we ought to quit now. Don Agger does not agree with this approach and will communicate his reasons in a separate memorandum.

John E. Robson

Approved: _____

Disapproved: _____ 3/18/68

See me: _____

TBC-1 informed early of decision on 11:55 on 3/18/68.

Form DOT F 1320.1 (1-67)

TGC-1

UNITED STATES GOVERNMENT

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Memorandum

DATE: APR 3 1968

In reply refer to:

SUBJECT: Inter-American Freight Conference

FROM : Deputy Under Secretary

TO : Donald G. Agger
Assistant Secretary for International Affairs
and Special Programs

The Secretary has decided against filing a petition before the Federal Maritime Commission (FMC) for reconsideration of the Inter-American Freight Case. As I understand his action, it is not an abandonment of the position taken by DOT in its initial intervention in this case. Instead, it reflects the Secretary's attitude that our involvement in problems of this nature can only be constructive and successful if we are prepared to offer reasonable alternatives.

Viewed in this light, the Department should develop a framework in which our domestic economic system of free competition, operating under the constraints of a national anti-trust policy expressed through the regulatory process can remain viable in a hostile international climate. Because of the complexities of the ocean freight rate structure and its close tie-in with international political affairs, a final resolution of this problem may not be possible. On the other hand, the integrity of domestic economic principles must be protected from the erosive pressures of international accommodations. Since the situation will never be static, our best hope is a condition of balance between our precepts of competition and the cartel proclivities of international shipping.

Departmental leadership in a cooperative effort involving State, FMC and Commerce to develop such a balance is clearly needed to protect the public interest.

Background of Our Problems in International Regulation

The need for regulation in this field arises from the existence of shipping conferences -- organizations of common carriers established primarily to work out rate agreements. Despite our distrust of cartels, the

conclusion has been reached (reluctantly) that shipping conferences are a necessary evil and that for want of a better alternative they provide the only framework available at this time within which rate-making can be "stabilized." The opportunity for constant abuse clearly exists (as in any cartel) and it is reasonable that the Government continually guard against such potential abuse. At the same time, it is clear that unilateral actions cannot be effectively and successfully exercised by a single Government. As has been indicated in the Inter-American Freight Case, any international voyage involves at least two Governments, and frequently more, thus any regulatory action on our part can obviously be countered by an opposing regulatory action of another Government -- leading to stalemate or chaos.

At this point, it is useful to contrast the ocean shipping and aviation regulatory situations that face the U. S. Government. While there are many analogies between the CAB's responsibilities in relationship to IATA and the FMC's control over shipping conferences, there are substantial differences that permit greater CAB leverage than in the case of the FMC.

(1) The CAB's affirmative approval is required before any specific IATA rate agreement becomes effective. In the case of FMC, once the underlying conferences framework has been approved, individual rate agreements thereafter take effect automatically, and the FMC then has the more difficult task of disapproving rates based on the record of a formal hearing.

(2) Air traffic rights are exchanged in bilateral agreements which expressly provide for suspension of landing rights in the event of rate disagreement. In contrast, shipping rights have for centuries been founded on the "freedom of the seas" concept. Treaties of "friendship, commerce and navigation," relating to shipping, make no provision for withholding traffic rights because of rate disagreement.

(3) The airline industry has developed within the framework of regulation, and is accustomed to compliance. In contrast, economic regulation is virtually non-existent in ocean commerce, and there is traditional resistance to it on the part of foreign Governments, as well as the industry itself.

(4) The principal rate issues in air service have thus far related to passenger fares. In contrast with the complexity of ocean freight rates, air passenger fares are comparatively simple to analyze, discuss and negotiate.

(5) U.S. flag carriers in the past have been dominant in aviation, but have been subordinate in shipping. This means that the U.S. flag spokesmen for our Government's position can be far more effective in airline conferences than in shipping conferences -- this does not imply that they are.

(6) IATA acts only by unanimous agreement; many shipping conferences act on the basis of majority or two-thirds vote. This means that any single U.S. flag airline can prevent IATA agreement if that is necessary to conform to U.S. Governmental policy. In shipping, on the other hand, the U.S. flag lines can frequently be outvoted.

Despite this advantageous position, the CAB also has encountered practical limitations on its ability to control international rates.

Thus, the essential point is that regulation (as we normally think of it) is not fully possible in an international framework where more than one Government can potentially assert regulatory jurisdiction. We cannot be sureof ending up with a given rate level merely because a regulatory proceeding leads up to a quasi-judicial determination that such rate is proper.

In the final analysis, the executive function of international negotiation, rather than the quasi-judicial function of normal regulation, may well determine what the outcome of such broad issues might be. It is in this executive role that the Department of Transportation can exert its positive leadership and prosecute our economic policies in the protection of the public interest.

These comments are not meant to suggest that the Government is helpless to guard the public against unreasonable or discriminatory rates. After all, if it comes down to international negotiation, this Government is not

without leverage and bargaining power in this area. However, we must develop an affirmative and constructive basis for protecting our policies against expedient accommodations so that a decision, if it is a political one, is made consciously in that framework and not by default.

The clarification of these issues is ultimately a matter of broad policy, requiring the attention of not only DOT, State and FMC, but of the President, other executive agencies, the Congress and the various affected segments of industry.

Possible Approach Toward Regulatory Control in This Field

One approach is to recognize that the power of formal regulatory rate control should be relied upon as a matter of last resort -- limited where possible to issues of a clearcut and broad importance, and used only after other, less formal efforts, have been unsuccessful.

The formal regulatory approach should be supplemented by increased emphasis in other areas which can help to round out the protection of the public interest. First, more adequate means are needed for informing the public regarding: (a) conferences and their practices, and (b) the costs and profitability of the shipping companies. Part of the suspicion that attaches to shipping conferences stems from the relative secrecy which surrounds them. It is not unreasonable to require more complete public disclosure in exchange for the Government's willingness to grant exemptions from normal application of the anti-trust laws. The FMC has worked in this direction and as a result has had its right to have this information affirmed by a Supreme Court decision.

Public knowledge alone, if well circulated, could go a long way toward safe-guarding against the abuses which regulation is normally designed to prevent. For example, one of the traditional economic concerns about any cartel is that it will use its monopolistic powers to force rates to unreasonably high levels, with resulting exhorbitant profits. In the case of airline-rate conferences, this element of possible suspicion is reduced by the fact that U.S. flag airlines must file detailed financial reports with the CAB, and this information is freely available to the public. In the case of shipping conferences, the lack of comparable information leaves the activity under a cloud of suspicion that normally goes with the term "cartel."

It is important that DOT keep as fully informed as possible of the basic characteristics of conference practices, and of the shipping industry's costs and profits. This requires special analytical studies.

Secondly, increased emphasis is needed on the executive function of resolving rate adjustment problems, as a supplement to the more formal process of attempting to regulate them.

At present, the FMC frequently takes informal steps with the conferences, bringing to their attention specific shipper complaints, and asking for conference rev iew and suitable action. However, there is a limit to how forcefully FMC can urge a particular rate adjustment in these informal circumstances. The issues might subsequently come before the FMC in a formal proceeding, requiring a full hearing. To the extent that the FMC itself, in the informal stages, had exercised a strong advocacy of a particular rate adjustment, it would not retain its standing to subsequently hear the case impartially on its merits as a quasi-judicial body.

This leads to the conclusion that an Executive Department (such as DOT) should be charged with the role of advocating rate adjustments which appear desirable, leaving the FMC free to act impartially as a quasi-judicial body if the informal discussions are fruitless, and if the matter becomes one requiring formal proceedings. It was under this principle that DOT intervened in the Inter-American Freight Case.

One thing seems clear to me -- we should avoid any trend towards bi-lateralism inherent inthe direction taken by Brazil in the Inter-American Freight Case. Other countries will undoubtedly look to this precedent as a desirable means of underwriting the promotion and expansion of their national flag fleets without regard for the economic principles of comparative advantage -- the basic precept of our international trade philosophy.

Conclusion

My own view is that no issue in the field of international transportation is more important. Thus, any resources which you can devote to the development of guidelines for directing further Departmental efforts to promote the more efficient and economic movement of our foreign commerce would be well directed.

Without such an effort, your promotional goals in such areas as facilitation can be thwarted. After giving some thought to this subject, you may wish to prepare an issue paper for internal Departmental discussion and Secretarial concurrence in a course of action to develop a Departmental program which meets the problems and issues raised by the frustration of our efforts in the Inter-American Freight Case.

We should not await the development of a new crisis and be forced back to a position of inaction, as in the current instance, because we have no desirable alternative for handling the problem.

Paul L. Sitton

cc: Mr. Mackey
Mr. Sweeney
Mr. Robson

The Washington and Old Dominion Railroad

836

Typical of the Department's intervention in cases before regulatory commissions to protect the public interest is the issue whether the Washington and Old Dominion Railroad of Northern Virginia should be permitted to abandon its operations and sell its real estate holdings for alternate purposes. On July 31, 1967, Mr. Bridwell raised the issue with the Secretary because the completion of two interstate highways, I-66 and I-95 depended upon the resolution of the problem of the abandonment of the railroad and the availability of parts of the real estate for highway construction.[1]

The Department had taken a position supporting that of the Washington Metropolitan Transit Authority (WMATA) which was opposing the abandonment until the Transit Authority had firm agreements with Virginia Electric Power Company, which had contracted to purchase part of the right-of-way in the railroad corridor for a rapid transit line, either in the median of a divided highway, or at one side of it. It had been engaged in considering the problems relating to the abandonment of the railroad for some months. On June 20, 1967 the Secretary appointed a task force to re-examine the issues. That group agreed: 1) that the railroad corporation should be allowed to abandon its operations, but not the right-of-way of the railroad; 2) efforts should be made to obtain an agreement between the Virginia Department of Highways and the Washington Metropolitan Transit Authority to resolve their disagreements in order that the railroad could be abandoned. Since its conditions were met the Department filed a pleading with the ICC that supported the Transit Authority's request for an extension to November 1, 1967 to work out its plans.[2]

On October 9, 1967 a meeting at the Bureau of Public Roads discussed the feasibility of the rapid transit line being built in the same corridor with the highway (I-66) either in a median strip or beside the highway. Francis C. Turner of the Bureau of Public Roads stated his opposition to a rapid transit rail system in the median strip, while the Rapid Transit representatives discouraged the idea of running the highway and the rail transit in parallel, because in that case the railroad would have to be built on elevated structures in order to allow access to the highway.[3]

Mr. Turner's negative attitude on that occasion persuaded officers of the Rapid Transit authority that the Department did not favor any agreement, until Mr. Craig* assured Mr. Cody Pfahnstiehl of the Transit Authority that Mr. Turner did not speak from the Department in this matter.[4]

A further meeting was held on October 20 by the Transit Authority, at which the plan for the Washington Rapid Transit System was adopted. The adopted plan included provision for rapid transit facilities in the median strip of the interstate highway. This plan would involve two grade separation structures to permit access to and egress from the rapid transit facilities.[5]

Since Mr. Bridwell opposed the use of $3 million in Highway Trust Funds to assist in re-locating the railway roadbed to the median strip of I-66, Mr. Robson, then General Counsel, put the problem to Mr. Boyd for his decision. Both Mr. Mackey and Mr. Robson recommended that the Department assent to allocation of Highway Trust Funds, indicating that in the absence of such support, development of a rapid transit system in the Washington area would become a more remote possibility. The course recommended to the Secretary would, its proponents claimed, represent opportunity for savings for both rapid transit and

* Peter S. Craig, Assistant General Counsel for Litigation

the Federal interstate highway, the latter because another grade separation at Shirlington would become unnecessary.[6]

On the same day Mr. Bridwell advised the General Counsel that he had no further objection to the plan for the use of the median strip in I-66 for rapid transit. He did not, however, assent to use of Highway Funds for the grade separation structures. At a meeting held on the same day of all interested parties in the Department, the Secretary sided with Mr. Bridwell, deciding that Highway Funds should not be used for constructing the grade separation structures.[7]

The Department continued its interest in the case, however, particularly because the ICC had not issued an order allowing the Washington and Old Dominion to abandon its operations and thus free the roadbed for other transportation uses. On January 24, 1968, the order was issued by the ICC. Mr. Schwartz so advised Assistant Secretary Sweeney, adding that the DOT could "point with pride" to its efforts in the proceeding since it had actively worked with the Washington Metropolitan Transit Authority, the Virginia Highway Department, and other interested parties to help bring about a favorable resolution of the issue. "It is our belief," he said, "that the Department's efforts in furthering the concept of multi-use development (which also includes the activities of the Virginia Electric Power Company) in transportation corridors has been in the public interest."[8]

Even though it appeared that the issue had been settled with the interests of all parties protected, the Department had not actually accomplished its purpose, because other interests soon intervened to cause a stay of execution to be issued against the Interstate Commerce Commission's judgment. In

turn, the stay caused the execution of the order to be delayed so long that the agreement of the Virginia Highway Department to purchase the W & OD right-of-way was nullified by a limiting clause in the contract of sale. The intervening interests were the W & OD Users Association and the Northern Virginia Transportation Commission who maintained that public convenience and necessity would require the rail line to remain in operation. One of the judges in the hearing appeared to believe that the ICC ruling was unjustified, according to a Department observer, and indeed that the Department of Highways, Virginia Electric and Power Company, and the Metropolitan Transit Authority had entered into secret, collusive arrangements to get the rail line abandoned at the expense of the plaintiffs.

The Court's decision has not been rendered at the time of this study, with the result that neither plans for the Interstate Route 66 nor plans for the Virginia line of the rapid transit system can go forward.[9]

Footnotes

1. Lowell Bridwell to Alan Boyd, memorandum, July 31, 1967. "Old Dominion Railroad."

2. Peter Craig to files, memorandum, September 26, 1967. Subject: "Washington and Old Dominion Railroad Abandonment."

3. Peter Craig to files, memorandum, October 9, 1967. "Washington and Old Dominion Abandonment Case."

4. Peter Craig to file, memorandum, October 12, 1967, "Washington and Old Dominion Abandonment Case."

5. Craig to file, memorandum, October 24, 1967. "Washington and Old Dominion Abandonment Case."

6. Robson to Boyd, memorandum, October 27, 1967. "Washington and Old Dominion I-66" with attached memorandum, "Cost Sharing of Grade Separation..."

7. Craig to file, memorandum, October 30, 1967. "Washington and Old Dominion Abandonment Case."

8. Schwartz to Sweeney, memorandum, January 25, 1968. Subject: "Washington and Old Dominion Railroad. Abandonment of Entire Line in Virginia."

9. James Lawrence Smith to files, memorandum, May 14, 1968.

Form FH-121 (4-67)

UNITED STATES GOVERNMENT

Memorandum

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF PUBLIC ROADS

DATE: JUL 2 7 1967

In reply refer to: 49-01

TO : Mr. Lowell K. Bridwell
Federal Highway Administrator

FROM : F. C. Turner
Director, Bureau of Public Roads

SUBJECT: Virginia Interstate Routes 66 and 95

The Virginia Department of Highways is rapidly moving ahead with the reconstruction of the section of Interstate 95 that is best known as the Shirley Highway. Construction has reached Arlington County and is approaching the Shirlington Circle from the south. Unless a decision is soon reached as to the future use of the Washington and Old Dominion Railroad right-of-way, construction will have to come to a halt through this area. While the State has prepared preliminary studies in great detail for alternate designs for the removal or retention of the railroad they still need to prepare contract plans for this work.

The situation is equally critical with Interstate Route 66. The State has acquired the right-of-way for the continuation of Interstate 66 eastward from the Capitol Beltway but has not been able to proceed with this work until determination is made as to the future of the Washington and Old Dominion Railroad through Arlington and Fairfax Counties. The Virginia Department of Highways is ready to proceed with the construction of this section of Interstate Highway 66 as soon as they are advised regarding the proposed abandonment of the railroad.

The Virginia Department of Highways and the National Capital Transportation Agency have worked very closely together in the design of both Interstate Route 66 and the rapid transit facilities.

The presently approved rapid transit system does not include provisions for an extension of the system through Arlington and Fairfax Counties along the area occupied by the W&OD Railroad. The National Capital Transportation Agency which will soon become the Washington-Metropolitan Area Transit Authority is currently studying the extension of the system into Arlington, Falls Church and Fairfax areas. Their studies are complete and will be considered by the authority at meetings this weekend.

You were furnished a copy of Jimmie Shotwell's memorandum of June 23 reporting his meeting with Mr. Schwartz and others. As pointed out in

his memorandum we believe that there would be a savings of a little over $6 million in public funds if the railroad can be abandoned.

It is urgent that an early determination be made on the abandonment of the railroad to permit the Virginia Department of Highways to proceed with the construction of these two important Interstate routes.

UNITED STATES GOVERNMENT

Memorandum

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

TO : Secretary Boyd
Department of Transportation

DATE: JUL 31 1967

In reply refer to:

FROM : Lowell K. Bridwell
Federal Highway Administrator

SUBJECT: Old Dominion Railroad

I am attaching a copy of a status report on the construction of Interstate Routes 66 and 95 in Virginia as they are affected by the delay in the decision on the abandonment of the Washington and Old Dominion Railroad. It was produced at my request.

The status report is self-explanatory. In view of the fact that Assistant Secretary Mackey has been assigned the responsibility for dealing with this problem, I urgently request that it be brought to a conclusion as rapidly as possible. The planning and design of the two highways has proceeded on the assumption that the Railroad would be abandoned. I believe this was a proper assumption based upon the stated policies of all affected parties during the entire planning and design period.

It now appears that there is some reluctance to press for abandonment on the theory that the old Railroad right-of-way might, at some future time, be used for some kind of railroad transit facility. Fine. If someone can come up with a workable plan, we will make whatever adjustment is necessary. NCTA, which has the responsibility for rapid transit planning until it is taken over by the Washington Metropolitan Transit Authority specifically looked at the possibilities of utilizing the W&OD right-of-way and rejected it.

I recommend action to bring this problem to a conclusion as soon as possible one way or the other.

Attachment

cc: Assistant Secretary Mackey

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DATE: September 26, 1967

In reply refer to:

SUBJECT: Washington & Old Dominion Railroad Abandonment

FROM : Assistant General Counsel, Litigation

TO : File

At John Robson's request, Messrs. David Schwartz and Peter Craig met with Lowell Bridwell on Saturday morning, September 23, 1967, for the purpose of suggesting orally what had been proposed as a memorandum from the Secretary. The draft memorandum (not signed or sent) is attached.

Also attending the meeting were Ray Abernathy and Howard Heffron of the Federal Highway Administration staff and Frank Turner and Ed Swick of BPR.

The proposal was that the Federal Highway Administration make a commitment that if the Virginia Department of Highways, in consideration for the Washington Metropolitan Area Transit Authority withdrawing objections to the railroad's abandonment, agreed to preserve a continuous right-of-way for railroad (rapid transit) use, either on the W&OD right-of-way or in a relocated right-of-way in the median strip of I-66, that up to three million dollars would be reimbursed from the Federal Aid Highway Trust Fund for necessary grade separations if, within five years, the Authority exercised its option to use this right-of-way.

At the conclusion of the meeting, Lowell Bridwell stated that the FHWA would look into the two questions presented: first, the legal question as to whether 23 U.S.C. 130 permitted such a commitment (our view is that such a commitment is proper) and second, whether, as a matter of policy, it was engineeringly feasible to accommodate rapid transit to the plans for I-66 which would utilize key portions of the W&OD right-of-way. The first problem was assigned to Howard Heffron, Chief Counsel. The second to Frank Turner. On the question of engineering feasibility, it should be noted that the Virginia Department of Highways' current plans would provide for a 54 foot median for I-66, that this wide median initially was acquired for the purpose of future rapid transit use, and that such plans previously had been found feasible and safe by both highway and transit engineers.

It was the impression of both Schwartz and Craig, on leaving the meeting, that Turner and Swick (and possibly Bridwell) were not particularly disposed to an accommodation for rapid transit; that they took the view that the W&OD belonged to highways, although presently by law committed to railroad use; that they would find any joint use of the right-of-way for both I-66 and rapid transit "too costly" and "impracticable"; that for policy reasons, if not legal reasons, the Federal Aid Highway Trust Fund should not share in the joint grade separation costs for I-66 and rapid transit; and that, in view of these considerations, the Virginia Department of Highways might be contacted and perhaps encouraged to avoid reaching any agreement with the Transit Authority for joint use of the W&OD right-of-way.

If these impressions are correct, the painstaking efforts of the last two months to implement the recommendations of the task force set up by the Secretary under Mr. Mackey's supervision will have come to naught. The Transit Authority and the Virginia Department of Highways are now in active negotiation for an agreement that would accommodate their mutual interests and permit the ICC to authorize the final abandonment of the W&OD. The extremes of complete retention of the line for railroad commuter uses and of complete abandonment thus far have been avoided, and the interested parties are close to an agreement, which depends primarily on the availability of federal aid to reimburse the Virginia Department of Highways for its contingent financial obligation. If negotiations break off, we shall be back to the polar extremes existing several months ago, to the detriment of both the interest of highways (I-66 and I-95) and rapid transit. Highway considerations would be obstructed by reason of the fact that the Virginia Department of Highways' option to buy the W&OD expires on February 1, 1968, if there is no "final order" permitting abandonment by that time and the Transit Authority is committed to opposing any such abandonment that might unnecessarily increase the costs of construction of a rapid transit line in the W&OD-Dulles Airport corridor. The probability is that if present negotiations break down, the ICC will either deny abandonment, or if abandonment is permitted, it will be tied up in court far beyond the February 1, 1968, expiration date on the Virginia Department of Highways' option. In either event, the Railroad has already served notice that its price for sale of the right-of-way will go up substantially.

Aside from what might be described as the philosophical objections to rapid transit manifested by this meeting, the objection was raised, particularly by Mr. Bridwell, of the "lack of coordination" by the Office of the Secretary with the Federal Highway Administration on the Department's handling of the W&OD abandonment.

It is believed that these objections are without foundation. First, contrary to the expressed assumptions of Messrs. Bridwell, Turner and Swick, the abandonment of the W&OD is not exclusively a highway matter. The railroad is presently in railroad use and legally must continue in this use until the ICC permits otherwise. Second, numerous proposals have been advanced, of which WMATA's is only one, for the continued use of parts or all of this facility for rail use. For example, one group, with the support of Lehman Brothers, has proposed the refurbishment of the railroad as a freight line with its extension to Point of Rocks, Md.

On June 20, the Secretary directed Cecil Mackey to convene a task force that included representatives of each of the three modal administrations for the purpose of reexamining the issues surrounding the proposed abandonment of the W&OD. Mr. Bridwell assigned James Shotwell to this task force. The group met on June 23 and by memo approved June 27 agreed to a course of action which involved: (1) the decision that the W&OD should be allowed to abandon operations but not the line of railroad; (2) the decision that every effort should be made to obtain an agreement between the Virginia Department of Highways and the Washington Metropolitan Transit Authority for the mutual accommodation of their respective plans for I-66 and rapid transit, thereby permitting the final abandonment of the railroad. A copy of the memorandum is attached, together with the comments of Messrs. Shotwell and Saunders which do not change its basic approach.

Further efforts were then undertaken. Mr. Shotwell was requested on July 10th to secure copies of all relative agreements affecting the W&OD right-of-way. These included the agreements between the W&OD and the Virginia Department of Highways and an agreement between the Virginia Department of Highways and VEPCO. Mr. Shotwell obtained the former but not the latter since there appears to be a condition that the agreement will not be released until it is consummated. Consideration was also given to a proposal advanced by Fred Koumanoff of General Schriever's Transportation Workshop regarding the use of the W&OD right-of-way as a test bed for a system to break the airport ground congestion problem. Frank Turner and numerous other DOT personnel attended this presentation.

On July 31, 1967, Mr. Bridwell forwarded a memo to Mr. Mackey urging the latter to bring the W&OD problem to a conclusion as rapidly as possible, pledging that if a workable plan was evolved to use the W&OD right-of-way for a railroad rapid transit facility "we will make whatever adjustment is necessary" to accommodate plans for I-66 and I-95.

Thereafter, when the Transit Authority divided on the question of whether the entire W&OD right-of-way or only the Bluemont Junction-Herndon section should be preserved for rapid transit use, a letter was drafted and cleared by telephone by Mr. Mackey with Mr. Bridwell urging the Authority to return to its previous consensus that only the more limited Bluemont Junction-Herndon section was required and that if this were agreed upon the Department would support the Authority in its representations before the ICC.

This letter, sent September 7, 1967, obtained its objective, and on September 19, 1967, the Department filed with the ICC a pleading that supported the Transit Authority's request for an extension to November 1, 1967, to work out its plans, proposing in the alternative that if there was no such extension, any abandonment order should not include the Bluemont Junction-Herndon segment of interest to the Transit Authority. It was this pleading that prompted Mr. Bridwell's complaint of lack of coordination, despite the fact that it was entirely consistent with the report of the task force, on which he was represented, with Mr. Bridwell's memo of July 31, and with the September 7th letter which had been personally cleared with him by Mr. Mackey before transmission.

P. S. Craig

Peter S. Craig

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DATE: September 26, 1967
(Dictated Oct. 10, 1967)

In reply refer to:

SUBJECT: W&OD Abandonment Case

FROM: Assistant General Counsel, Litigation

TO: File

I called Jack Kennedy, General Counsel of WMATA, this morning to inquire about the progress of WMATA and VDH's contract negotiations. I was surprised to be informed that WMATA had had a session with Mr. Owen on September 18th, but had not progressed any further. Kennedy said that the VDH was agreeable in providing ingress and egress to and from the median strip of I-66 provided it cost Virginia nothing.

The WMATA staff definitely favors use of the median strip probably from Wilson Boulevard all the way to Gallows Road, but a question arises as to whether a refund would be necessary on the 90 percent federal aid apportionable to the median area occupied by rapid transit.

Subsequently, in conversation with Mr. Alper, he indicated that General Graham was somewhat skittish about proceeding with negotiations with VDH. Alper prevailed upon him, however, to interpret Board action as authorizing at least preparation of a contract to be presented to the Authority at the October 21 meeting.

Peter S. Craig

P.S.C.

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DATE: October 9, 1967
(Dictated Oct. 10, 1967)

In reply refer to:

SUBJECT: W&OD Abandonment Case

FROM : Assistant General Counsel, Litigation

TO : File

On returning to the office after lunch, I found the following message:

> "Mr. Craig 2:05
>
> Mr. Quenstedt called and left this message: Washington Metro Area Transit Authority meeting today at Bureau of Public Roads, room 800 at 2:30 concerning the W&OD and transit in the median of 66. Frank Turner, Jimmy Shotwell and Virginia Highway authorities will be there.
>
> Mr. Q. said he intended to call you this morning."

There had been no prior word whatsoever from the Federal Highway Administration about this meeting, despite Bridwell's complaint of "DOT lack of coordination."

I immediately took a taxi to the Matomic Building and attended the meeting in question, which lasted two hours.

Attending the meeting were Frank Turner and Jim Shotwell of BPR, General Graham, Jack Kennedy, Howard Lyon, Bill Herman, Jerome Alper and one other person from WMATA and Doug Fugate and two others (not including Mr. Owen) from the Virginia Department of Highways.

Mr. Shotwell took extensive notes on what was said, but Mr. Turner did most of the talking.

Mr. Turner chaired the meeting and immediately pointed out that changes in horizontal clearance regulations by the BPR could well preclude or at least present problems for rapid transit on the same right-of-way as I-66. He alluded to changes in the shoulders on the

left side of the highway as another factor. He asserted that I-66 as presently designed cannot accommodate all future traffic; neither could rapid transit; he was trying to reconcile the needs for both kinds of transportation.

Mr. Fugate reviewed the fact that VPH had worked with NCTA in 1963 to reserve a median for transit for the entire distance from the intersection of Fairfax Drive with I-66 to the Capital Beltway, that the VDH had held up the right-of-way acquisition pending NCTA appropriations but when there was no such appropriation, had come up with an alternate plan that contemplated two additional highway lanes for this entire distance that would displace rapid transit with reserved lanes for bus transit if rapid transit did not in fact develop. In these previous plans, he said design standards of BPR were somewhat lower and perhaps there was not now the space that was considered desirable under present BPR regulations.

Mr. Turner recalled that he personally had gone to the Bureau of the Budget (Paul Sitton) suggesting that NCTA appropriations be used to buy the residual of the W&OD and that the NCTA bargain "for all of us" in securing this right-of-way. Turner recalled that Mr. Quenstedt had said that the W&OD did not fit into NCTA's engineering plans. Turner further recalled that part of the NCTA's unused appropriations were turned back and the remainder were used for administrative expenses.

Mr. Quenstedt corrected Mr. Turner to point out that there had been no NCTA decision not to use the W&OD or the median of I-66, but rather it was Congressman Kirwan who had insisted that the NCTA not spend appropriated funds absent prior congressional authorization of a basic subway system. (It was at this time that Congress recommitted the subway bill to the House Committee.)

Mr. Turner asserted flatly that the 1963 highway-transit plans were now obsolete and asserted that the use of the median of I-66 for rapid transit was, so far as he was concerned, a solution of last resort. He then asked what WMATA's current plans were.

General Graham briefly outlined the four alternate plans being studied and then Mr. Fugate's assistant reviewed the history of I-66 planning. He pointed out that "originally" I-66 had contemplated six lanes between the Beltway and the Dulles access road, eight lanes for the section between the access road and the turnoff for Three Sisters Bridge and six lanes through Rosslyn to Theodore Roosevelt Bridge. Subsequent to the congressional setback of rapid transit in 1963, VDH revised its plans to add two lanes between the Beltway and Glebe Road so as to make the totals eight lanes from the Beltway to the Dulles access road and ten lanes from that point to Glebe Road. Current plans involve initial construction of eight lanes from the Beltway to Dulles access road, eight lanes from Dulles access road to the Three Sisters Bridge turnoff and six lanes through Rosslyn. Thus, part of the contemplated 54 ft.

median for rapid transit between the Beltway and Dulles access road would be pre-empted by highways. Construction of the ninth and tenth lanes between Dulles access road and Glebe Road would be deferred for a later date.

Mr. Fugate's assistant showed cross sections of the 1963 plans which provided for the entire distance between the Beltway and approximately Fairfax Drive, a 54 ft. median that included two eight foot shoulders, two foot curbs for chain link fences, eight and a half foot clearance to the center line of the rapid transit track and another eight feet from that point to the center piers which were approximately three feet wide. Mr. Lyon had identical cross sections with him.

Turner pointed out that the former requirement of eight foot shoulders had now been expanded to ten foot shoulders for disabled vehicles on the left side of the freeway lane.

Fugate's assistant pointed out that if they were to return to a median strip plan of 54 foot median, VDH would have to return to six lanes in the section of I-66 between Dulles access road and the Beltway.

Mr. Turner inquired as to whether 54 feet, even under the 1963 plans, was sufficient for station platforms. He was advised by Mr. Lyon's assistant that previous plans had contemplated transit stations at both Patrick Henry Drive and Lee Highway (East Falls Church) and that 76 foot medians would be required in this section.

Mr. Fugate's assistant said that if there were such an additional median width requirement in this section, another one or two rows of houses (approximately 70 houses) would have to be condemned. Furthermore, such a 76 foot width to accommodate these two stations would add costs for the highway structures.

Mr. Turner asserted that the entire 54 feet previously deemed adequate for the median strip use of rapid transit would now be needed for the freeway because of the new horizontal clearance requirements. He said we are going to need all of this 54 feet to accommodate the highway designed, recognizing that east of Fairfax Drive and Glebe Road the highway was being planned by undesirable standards right now. Mr. Turner asked whether rapid transit might better go alongside I-66 rather than in the median. He said "We now feel, on the basis of national experience, that railroads in the medians of highways are not desirable."

Both the WMATA and VDH representatives threw cold water on rapid transit going alongside I-66 rather than in the median. Mr. Lyon said it would cost substantially more to construct such a rapid transit line since practically all of it would have to be built on structures. Mr. Fugate said that this presented complications of access and egress for highway users.

Mr. Fugate said that if the W&OD were to remain as is, highway construction costs would go up to $5 to $6 million. There was some discussion of the feasibility or lack of feasibility of rapid transit in the Dulles access road. Both Mr. Turner and Mr. Quenstedt questioned whether there would ever be sufficient demand for rapid transit to Dulles to justify extension to that point. Mr. Quenstedt further offered the view that such limited travel as existed between Dulles and National would best be handled by bus.

Mr. Fugate inquired what BPR's present position was as to the desirable width of the median to accommodate rapid transit. Mr. Shotwell replied 70 feet, including 40 feet between fences and 15 feet on either side to allow for ten foot shoulders. Mr. Lyon pointed out that this compared with the 1963 plan calling for 36 feet between fences with 9 feet on either side for shoulders.

Mr. Turner showed considerable interest about the lesser vertical clearance requirements for rapid transit. Mr. Lyon pointed out that 12 foot vertical clearance from top of rail was all that was required compared with 22 feet for conventional railroads.

Mr. Turner pressed both sides to agree with his assertion that there was no problem in WMATA and VDH jointly using the W&OD and therefore it could be promptly abandoned. Mr. Lyon replied that there would not be under the 1963 plan, if agreed upon. Mr. Fugate cited potential problems of the cost of additional right-of-way and structures in station areas. In this connection, Mr. Lyon pointed out that the 1963 plan had also contemplated a station at the intersection of Route 7 (Leesburg Pike), but that the highway flared in the area of the Dulles access road interchange so that sufficient space existed for a station facility. Mr. Turner asserted that there appeared to be only problems of detail in engineering design to be worked out.

Mr. Kennedy said that the question had arisen as to whether the BPR would require reimbursement of its 90 percent share in the right-of-way costs for the wider median. Virginia law required reimbursement of Virginia's department of highways for its 10 percent. Mr. Turner stated "We are in the same box as Virginia" and that he did not want to go to Levenworth for violating federal highway laws. Mr. Turner clearly indicated his personal legal opinion that BPR would require such reimbursement. Mr. Kennedy pointed out that the median would be used for highways if no rapid transit system were built. Mr. Turner reiterated that if there were rapid transit "we would be getting an inferior highway." He said, however, we might have to compromise highway design to get something satisfactory for both highways and rapid transit.

Mr. Turner then inquired as to whether there was any other section of the W&OD of interest to WMATA. General Graham stated that present plans did contemplate a Tooneville trolley type of operation for ten miles between Gallows Road and Herndon. He also said that while some of the plans contemplated use of the W&OD between Lee Highway and the Beltway, the staff-preferred plan was to use the median strip of I-66.

Mr. Turner raised the question as to how much time would be required before WMATA put up the money required for its share of construction costs. General Graham said two years would be required.

Mr. Fugate's assistant said that VDH is now ready to proceed to construction between the Beltway and Lee Highway (except for the crossing of W&OD). In this section, VDH has all right-of-way acquisition completed. VDH is not far along, however, on the section from Lee Highway to Glebe Road where only a few parcels have been acquired.

Mr. Turner stated flatly that he was unwilling to free the use of any highway trust fund monies for contribution to rapid transit under any subterfuge. He said he could not appropriately sink money into projects that are not in fact a necessity for the highway alone.

Mr. Fugate stated that there should be a time limit in any agreement between WMATA and VDH, for if a decision is made to go into the median with stations at Patrick Henry Drive and Lee Highway, VDH must hold up final plans for this section and must also know what its share will be in the cost.

It was asserted that a two-year option would be desired by VDH.

Mr. Turner wanted reassurance that WMATA was the only agency with responsibility in the planning and construction of a rapid transit system. He was assured by Mr. Alper that this was the case with the caveat that WMATA's two directors from Virginia are also on the NVTC and that concurrence of at least one of them was required for the adoption of any plan.

Mr. Turner, in conclusion, inquired of Mr. Craig if the DOT had anything to add. Mr. Craig stated that the Department's principal concern was to get a satisfactory agreement between WMATA and VDH as soon as possible, and hoped that the draft agreement would be ready by the time of the October 20 meeting at the Statler for approval at that time by the WMATA directors.

Mr. Turner said that Mr. Shotwell would work with Mr. Owen and General Graham in working out an agreement.

Subsequent to the meeting, Mr. Alper and Mr. Quenstedt expressed grave concern over Turner's attitudes that were not only negative to use of the median for rapid transit, but also totally negative to the idea that the highway trust fund bear any costs of grade separation or rail right-of-way relocation. It was Turner's apparent attitude that the highway trust fund was entitled to pocket all savings that might arise from the abandonment of the railroad without paying any of the cost of relocating or grade separating that railroad to accommodate rapid transit.

After the meeting, Mr. Kennedy gave me two copies of a draft agreement that WMATA had prepared but, in light of the course of the meeting this afternoon had not been distributed.

Also after the meeting, Mr. Quenstedt confided that he had alerted me about the meeting this afternoon expecting (as was true) that neither BPR nor the Federal Highway Administration had informed the Department of this meeting.

P.S.C.,

Peter S. Craig

cc: John E. Robson
Schwartz

TGC-1

October 12, 1967

W&OD Abandonment Case

Assistant General Counsel,
Litigation

File

I conferred at lunch today with Mr. Cody Pfanstiehl, Public Relations Director of WMATA, and discussed various ramifications of the current impasse in reaching agreement with the Virginia Department of Highways caused, at one extreme, by the role of Frank Turner and, at the other extreme, by the role of Fred Babson.

Efforts to secure an agreement, which were well underway one month ago, are presently derailed by reason of the cold water thrown on the operation by Frank Turner. Whether or not Mr. Turner in fact desires to foreclose an agreement, his actions are being interpreted by at least the Transit Authority representatives as being entirely negative to reaching any solution. I explained to Mr. Pfanstiehl that I had sought to persuade the Transit Authority negotiators that Mr. Turner did not speak for the Department of Transportation and was not in a position to be asserting many of the things he has, particularly with respect to the unavailability of federal aid reimbursement for joint project costs.

The situation with Fred Babson is entirely a political one. As a candidate for reelection this November, Mr. Babson feels vulnerable to attacks by his opponent, who charges that Babson's actions supporting the Airlie II plan deprived Fairfax County residents of an immediate chance for improved transit service involving commuter railroad operations on the W&OD. Babson had been misled in previous years by the NVTC staff, had made promises that there could be rail commuter service within a few months, and while he probably now realizes such an operation is impractical, he feels he cannot consent -- or appear to consent -- to the loss of any part of the W&OD.

The extremes personified by Mr. Babson on the one hand and Mr. Turner's image on the other, tend to impede advancement of both rapid transit plans and highway plans, to the ultimate benefit only of the W&OD.

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It was Mr. Pfanstiehl's feeling that every effort should be made at the forthcoming October 20-21 WMATA meeting to sell the Airlie II plan as a sole hope for saving that part of the W&OD useful for rapid transit. He felt that if this could be stated affirmatively, Mr. Babson might go along. He did not discount the problem presented by the fact that the ICC has deferred its decision only to November 1 and the election will not be held until November 7.

Mr. Pfanstiehl supplied me with a copy of the various rapid transit plans that will be reviewed at the October 20-21 meeting. This map is attached to this memorandum.

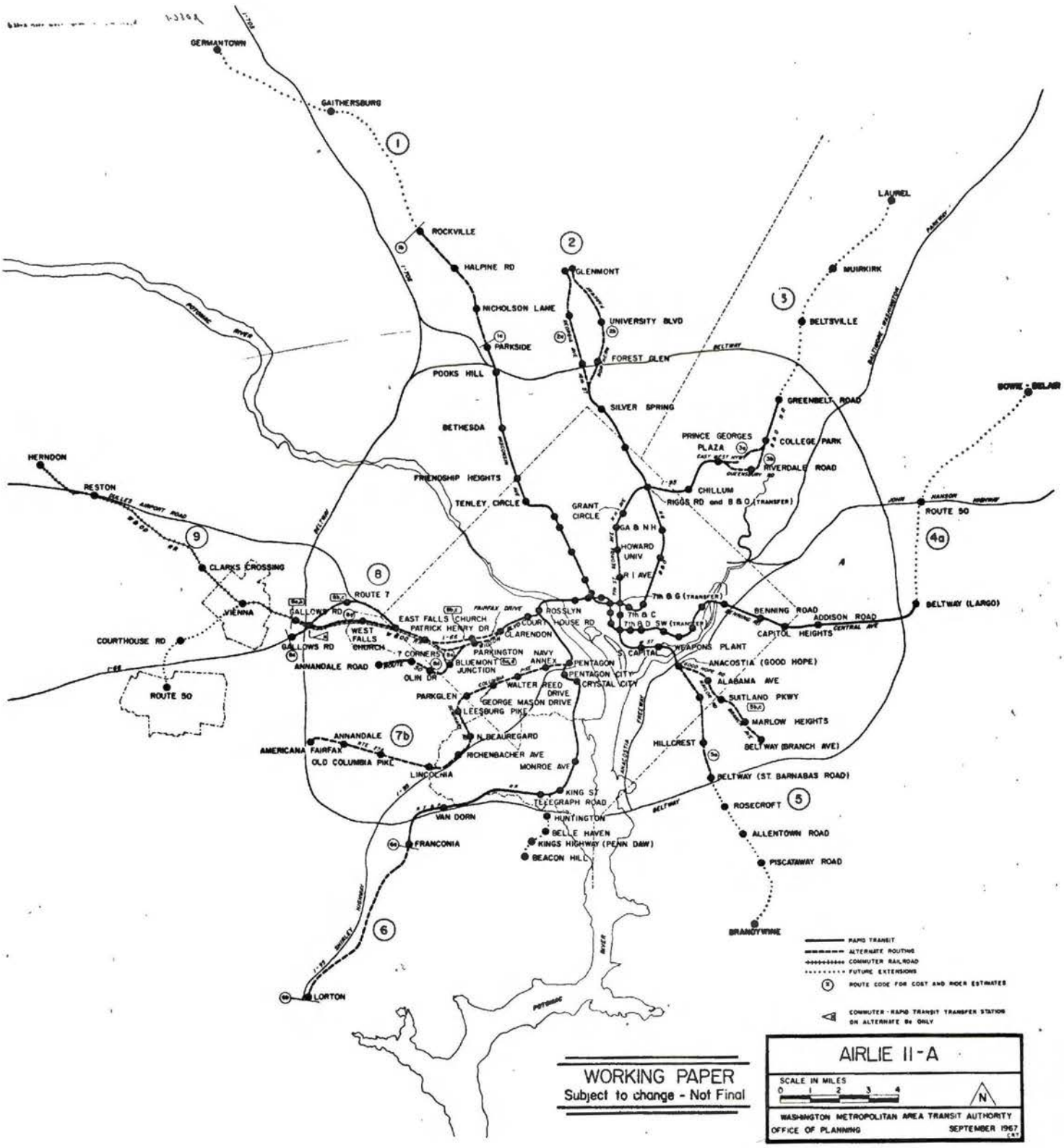
/S/ PETER S. CRAIG

Peter S. Craig

Attachment.

cc: David M. Schwartz

PSCraig:he:TGC-30:10/12/67:28761


GERMANTOWN
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SILVER SPRING
BETHESDA
FRIENDSHIP HEIGHTS
TENLEY CIRCLE
GRANT CIRCLE
LAUREL
MUIRKIRK
BELTSVILLE
GREENBELT ROAD
PRINCE GEORGES PLAZA
COLLEGE PARK
RIVERDALE ROAD
CHILLUM
RIGGS RD and B & O (TRANSFER)
BOWIE - BELAIR
ROUTE 50
HERNDON
RESTON
CLARKS CROSSING
VIENNA
COURTHOUSE RD
ROUTE 50
ROUTE 7
GALLOWS RD
WEST FALLS CHURCH
EAST FALLS CHURCH
PATRICK HENRY DR
ROSSLYN
COURT HOUSE RD
CLARENDON
7 CORNERS
PARKINGTON
NAVY ANNEX
ANNANDALE ROAD
BLUEMONT JUNCTION
OLIN DR
WALTER REED
PENTAGON
PENTAGON CITY
CRYSTAL CITY
GA & NH
HOWARD UNIV
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7th & G (TRANSFER)
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BENNING ROAD
ADDISON ROAD
CAPITOL HEIGHTS
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ANACOSTIA (GOOD HOPE)
ALABAMA AVE
SUITLAND PKWY
MARLOW HEIGHTS
BELTWAY (BRANCH AVE)
HILLCREST
BELTWAY (ST BARNABAS ROAD)
ROSECROFT
ALLENTOWN ROAD
PISCATAWAY ROAD
BRANDYWINE
DRIVE
GEORGE MASON DRIVE
LEESBURG PIKE
PARKGLEN
ANNANDALE
AMERICANA FAIRFAX
OLD COLUMBIA PIKE
N BEAUREGARD
RICHENBACHER AVE
MONROE AVE
LINCOLNIA
KING ST
TELEGRAPH ROAD
VAN DORN
FRANCONIA
HUNTINGTON
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KINGS HIGHWAY (PENN DAW)
BEACON HILL
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WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
OFFICE OF PLANNING
SEPTEMBER 1967

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DATE: October 24, 1967

In reply refer to:

SUBJECT: W&OD Abandonment Case

FROM : Assistant General Counsel, Litigation

TO : File

At the request of Peter Craig, a meeting was held today from noon to 2:30 P.M. on legal questions relating to the proposed WMATA use of the W&OD and I-66 median strip for rapid transit.

Attending the meeting were Jack Kennedy (General Counsel of WMATA), Jerome Alper (Special Counsel, WMATA), Vernon Garrett (Engineer, WMATA), Fletcher Krause (Chief, Land Use Division, Chief Counsel's Office, FHWA) and Messrs. Wolff and Craig of DOT.

The plan approved by the WMATA directors last Friday contemplates use of the I-66 median strip with portals near Fairfax Drive to the east and at the intersection of W&OD to the west. This section would be covered by an agreement with the VDH as a relocation of the W&OD right-of-way. It is hoped that WMATA can have free use of a 54 ft. median by an easement terminable if and when the mass transit line is abandoned. WMATA would require a 76 ft. median in a section involving stations at Patrick Henry Drive and east Falls Church and is agreeable to paying 100% of the additional cost for such right-of-way. WMATA is also agreeable to paying 100% of the costs of all fencing and rapid transit facilities, as well as any additional structural costs in the area having a 76 ft. median.

WMATA hopes that at least part of the costs for the two grade separation structures necessary to reach and leave the median will be paid by VDH and BPR.

Mr. Kennedy had no difficulty in agreeing that no reimbursement to the federal government was required for the use of the 54 ft. median strip. However, he expressed uncertainty about the degree to which the federal-aid trust fund could be used to help defray cost of the two grade separation structures.

WMATA's counsel are of the opinion that what is proposed is a railroad relocation and that Section 130(a) is applicable, so that the federal government can reimburse up to the amount it would pay for grade separation structures in the event there were no railroad relocation.

It is the desire of WMATA to have a five-year option for this proposal.

It is recognized by WMATA that a separate agreement will be necessary with Vepco covering the W&OD right-of-way between Gallows Road and Herndon.

While hope has not been abandoned of having these two agreements made by November 1, Mr. Alper pointed out that there was some doubt as to whether WMATA would even have a quorum at its only remaining meeting at that date. Mr. Alper points out that the present District members will be out of office on the date when six of the new council members are approved by the Senate. Presently it is expected that such confirmation will occur on October 26th.

The draft agreement previously supplied to Mr. Heffron and our office was also mailed to Mr. Owen of the VDH. Thus far, WMATA has received no response.

Mr. Craig pointed out to WMATA's counsel that insofar as this draft agreement implied the possibility of federal aid reimbursement for construction costs of two reversible bus lanes that are not to be built, there was no legal basis for federal contribution. Mr. Craig stressed that only the railroad relocation provisions of Section 130(a) could be invoked and that pending final legal opinion on this issue, WMATA and VDH should negotiate on such assumptions as they desire.

Mr. Alper stressed the difficulty of proceeding to an agreement without a firm legal opinion on the Section 130(a) issue. Messrs. Craig and Krause assured Mr. Alper that they would make every effort to have an opinion ready by the end of the next day, October 25th.

Mr. Alper inquired about the prospect of receiving another 15 days from the ICC, pointing out that Mr. Hanifin had already assured Jack Kennedy that the W&OD would have no objections.

* * *

Subsequent to the meeting, I received a telephone call from Bob Calhoun of Chairman Tucker's Office at the ICC inquiring of the status of our negotiations. Noting that Senator Spong was considerably interested in the preservation of a rapid transit right-of-way, he asked that he or the Chairman receive a copy of any request for more time.

He further stated that Commissioner Tuggle, Chairman of Division 3, had considerable personal interest in doing what might be helpful and would be ruling on any request for more time. He suggested that Mr. Alper address a letter to Commissioner Tuggle or the Secretary of the ICC (who would forward the letter to Tuggle for action), with copies to all parties of record. He further anticipated that Commissioner Tuggle would agree to such a limited extension provided that it was clearly understood that it was the last.

P. S. Craig

Peter S. Craig

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DATE: October 27, 1967

In reply refer to:

SUBJECT: W&OD -- I-66

FROM: General Counsel

TO: The Secretary

We seem to be in disagreement with Lowell Bridwell on the question of whether the Highway Trust Fund will participate in the relocation of the W&OD right-of-way to the median strip of proposed I-66 for rapid transit use.

We, and the FHWA lawyers, agree that such participation is legal. If the I-66 median strip is devoted to rapid transit, up to $3 million in Highway Trust Funds could be spent toward grade separation structures necessary to reach and leave the median strip, representing the cost that would be incurred if I-66 were to be built over and around the existing W&OD right-of-way.

DOT has supported WMATA's position before the ICC, opposing abandonment of the W&OD right-of-way until satisfactory arrangements are reached with the Virginia Department of Highways and VEPCO preserving WMATA's option to utilize certain portions of the W&OD right-of-way, or its equivalent, for transit purposes.

Lowell Bridwell's opposition to Highway Trust Fund participation seems to be on the grounds that it would divert highway money to non-highway purposes and will be politically undesirable.

Cecil Mackey and I believe that DOT's assent to Highway Trust Fund participation is consistent with its prior commitments to support plans of WMATA to preserve the portions of the W&OD right-of-way which are vital for rapid transit. If the abandonment of the W&OD line goes through without WMATA preserving an option for a continuous right-of-way for transit purposes it would obviate the use of any Highway Trust Fund money but would, in all likelihood, make the development of rapid transit in the area very remote.

Attached is a memorandum dealing in greater detail with this matter.

SIGNED:
JOHN E. ROBSON

John E. Robson

cc: [illegible]
[illegible] Bridwell

COST SHARING OF GRADE SEPARATION STRUCTURES NECESSARY FOR JOINT RAPID TRANSIT AND HIGHWAY USE OF W&OD RIGHT-OF-WAY

We face the question whether the Highway Trust Fund should, as a matter of policy, pay for part of two grade separation structures necessary to relocate the W&OD right-of-way to the median strip of I-66 for rapid transit use.

It is our legal opinion, in which the Federal Highway Administration concurs, that 23 U.S.C. §130(a) authorizes the use of Federal-aid Highway money for the proposed relocation up to the amount that would have been spent for grade separation structures, etc., had the railroad right-of-way remained in place. In this instance, this ceiling is approximately $3 million.

Consistent with prior commitments made by the Department to support plans of the Washington Transit Authority to preserve those portions of the W&OD that are useful for rapid transit, Cecil Mackey and I believe the Department should approve reimbursement of the costs of relocation of the rail right-of-way authorized by 23 U.S.C. §130(a).

The Transit Authority has opposed abandonment of the W&OD in order to preserve the presently existing rail right-of-way from the vicinity of Parkington (Arlington County) to Herndon (Fairfax County). The Transit Authority opposition has been supported by DOT, which has urged the ICC to refrain from allowing abandonment until the Transit Authority has firm agreements with Vepco and the Virginia Department of Highways "providing for preservation of a right-of-way for rapid rail transit with sufficient provision for grade separation for subsequent highway construction to ensure the continuous railroad right-of-way to accommodate the extension of a Washington metropolitan area rapid transit system in or adjacent to the W&OD right-of-way."

The Transit Authority is willing to withdraw its protest to the abandonment of the W&OD if it can secure agreements with both Vepco and the Virginia Department of Highways reserving a suitable rapid transit right-of-way. The Transit Authority and VDH are both agreeable to the relocation of the rail right-of-way inside the Capital Beltway to the median

strip of I-66, but the key to their completing an agreement is the willingness of DOT to pick up the tab of the two necessary grade separation structures to the extent authorized by 23 U.S.C. §130(a). All remaining costs of such grade separations plus the cost of the transit facilities and stations in the median would be paid for 100 per cent by the Transit Authority.

Furthermore, the agreement would be in the form of an option extending no further than five years so that if, for any reason, the Transit Authority does not carry through its plans and obtain necessary financing by that time, the Federal-aid commitment would expire.

FHWA's apparent concern is that if the W&OD is abandoned, it would be possible to save the Federal-aid Highway Trust Fund this $3 million. This overlooks the fact that the very reason the Transit Authority has opposed abandonment (with our support) is that abandonment would foreclose any cost sharing and give I-66 a free ride at the expense of rapid transit.

The course we suggest permits savings for both. Abandonment of the W&OD with the kind of agreement sought by the Transit Authority would save about $2 million worth of highway construction costs otherwise necessary for grade separation on I-95 at Shirlington, plus approximately $1 million in other grade separation structures not on the Interstate System. In return, the Virginia Department of Highways would "pass on" the savings otherwise realizable for I-66 in order to help pay for the relocation of the rail right-of-way to the mutual advantage of both highways and rapid transit.

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

DATE: October 30, 1967

In reply refer to:

SUBJECT: W&OD Abandonment Case

FROM : Assistant General Counsel, Litigation

TO : File

On Friday morning, October 27, 1967, Lowell Bridwell advised Mr. Robson that the Federal Highway Administration had no objections to the geometrics of rapid transit use of the median of I-66, and that the Transit Authority was free to plan for use of the median without reimbursement to the Highway Trust Fund.

At the same time, however, Bridwell advised that he opposed, on policy grounds, any contribution of the Highway Trust Fund toward the cost of the two grade separation structures necessary for rapid transit to reach and leave the I-66 median as part of the proposed relocation of the existing (W&OD) right-of-way, which would be broken and partially pre-empted by the freeway. Bridwell acknowledged that 23 U.S.C. 130(a) authorized contribution of up to $3 million for such grade separation structures, but felt that the entire cost should be borne by the Transit Authority.

Availability of Highway Trust funds to help pay for the proposed relocation has been a major key to accomplishing the DOT's objectives of an agreement between the Transit Authority and the Virginia Department of Highways; such an agreement has been the key to the Transit Authority's willingness to withdraw its objections to abandonment; and the DOT has been on record, with Bridwell's consent, for several months in its support of the Transit Authority's desire to preserve those portions of the W&OD (or its substitute) useful for rapid transit as a continuous right-of-way.

Because of this difference between Bridwell and the Department (TPD and TGC), John Robson asked for a meeting with the Secretary Friday afternoon.

At this meeting, attended by Bridwell, Heffron, Robson, Craig, Mackey, Schwartz and Sweeney, the Secretary agreed with Mr. Bridwell. It therefore was agreed that the Transit Authority would be advised that although use of the I-66 median was agreeable with the Department, there would be no cost sharing by the Highway Trust Fund on the two grade separation structures necessary to reach and leave the median.

Subsequent to the meeting, I inquired with both Robson and Sweeney as to whether this decision should be attributed to the Secretary or to Bridwell in my future contacts with the Transit Authority. Both agreed that the decision should be attributed to the Federal Highway Administrator.

P. S. Craig

Peter S. Craig

TPD 20

January 25, 1968

Washington & Old Dominion Railroad
Abandonment of Entire Line in Virginia

Director, Office of Policy Review

Assistant Secretary for Public Affairs

As you know, the ICC has at long last permitted the W&OD to abandon its entire line of railroad in Arlington, Fairfax, and Loudoun Counties, Virginia. The decision was unanimous.

I think the Department can point with some pride to its efforts in this proceeding. DOT successfully urged the Commission to permit abandonment subject to prior arrangements having been made with the responsible local transportation authorities (in this instance, the Washington Metropolitan Area Transit Authority and the Virginia Department of Highways) for the preservation of those portions of the right-of-way of potential use for their rapid transit and highway plans. The Department also actively worked with these agencies and with the W&OD helping them develop agreements which they found satisfactory and have signed.

In supporting the efforts of WMATA and the Virginia Department of Highways, the Department also carefully analyzed many other proposals regarding future use of the W&OD right-of-way, including the possibility of high-speed ground transportation between National and Dulles Airports. The Department found no justification for questioning the judgment of WMATA and that agency's engineers that such a facility would not fit into the region's rapid transit plans. However, because the entire right-of-way will be preserved against private development, in any event, the door will be left open for such a project in the future should this ever become feasible.

It is our belief that the Department's efforts in furthering the concept of multi-use development (which also includes the activities of the Virginia Electric Power Company) in transportation corridors has been in the public interest.

David M. Schwartz

David M. Schwartz

DMSchwartz:myh 1/25/68

cc: Mr. Radler
Mr. Schwartz
Mr. Barber
Mr. Craig

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DATE: May 14, 1968

In reply refer to:

SUBJECT: Washington & Old Dominion Abandonment, F.D. 23492

FROM : James Lawrence Smith

TO : File

Argument in the subject proceeding was held today in the U.S. District Court for the Eastern District of Virginia (Judges Lewis, Butzner, and Merhige presiding). C. A. Prichard and Gerald J. O'Rourke, Jr., appeared for the plaintiffs -- W&OD Users Association and the Northern Virginia Transportation Commission. Nahum Litt appeared for the I.C.C., Milton Farley for VEPCO, Edward D. Gasson for VDH, and John W. Hanifin for the W&OD Railroad. At an earlier stage of this proceeding, the plaintiffs were successful in securing an injunction against the enforcement of the ICC order authorizing abandonment and now seek to have the order set aside, principally on the ground that the record is devoid of evidence on the question of "feeder value" of the W&OD or the revenue divisions between the W&OD on one hand and the C&O and B&O on the other, and that the question of profitability cannot be validly determined without consideration of such evidence. Additionally, it is contended by the NVTC that the Commission erred in failing to establish a salvage value for the W&OD and providing for its acquisition by any interested party on that basis.

At today's argument the parties reiterated substantially the same arguments as contained in their pleadings, with the court manifesting its greatest interest in the questions of whether the PC&N required authorization of the abandonment without reference to any public benefits which might accrue from the proposed future use of the right-of-way and whether a salvage value should have been determined by the I.C.C.

Judge Lewis made a number of statements and propounded questions which tended to reflect a feeling on his part that the Virginia Department of Highways, VEPCO, and WMATA had entered into "secret" collusive arrangements which were detrimental to the interests of the present plaintiffs.

There was also considerable discussion between Judge Lewis and Litt as to the applicability of the Purcell Doctrine to the present case. In this connection, Judge Lewis stated that had the I.C.C. found that because of non-use the W&OD should be permitted to abandon its operations the present hearing would not have been necessary but, because the I.C.C.

included in its findings the benefits expected to accrue from the proposed future uses, it was not clear whether the abandonment finding was based on pure PC&N grounds as relates to the operation of the W&OD Railroad or whether it was in part based on the claim of future public benefits.

Despite the fact that Judge Lewis appeared to have been playing "Devil's Advocate" on the side of the plaintiffs in this proceeding, I have the feeling that the order of the I.C.C. will be sustained because the "profitability" argument was not too persuasive. There is a possibility, however, that the court may elect to remand this matter to the I.C.C. for appropriate action on the "salvage clause" question and could conceivably condition its approval on the inclusion of such a provision in the final order. This would be as a direct result of Judge Lewis' belief that the various contracts, options and understandings involving VDH, VEPCO, WMATA, DOT, etc. were somehow designed to benefit the particular entity involved without due regard to the overall public interest.

Smith

James Lawrence Smith

cc: Howard Heffron, FHWA
Lee Corcoran, FRA
David Schwartz, TPD-20

The Investigation of Automobile Insurance

On May 22, 1968 PL 90-313 was approved. This authorized the Department of Transportation to conduct a comprehensive study and investigation of the existing compensation system for motor vehicle accident losses. The joint resolution had been preceded by hearings in both houses of Congress: in the Senate, the Consumer Subcommittee of the Committee on Commerce had conducted the hearing; and, in the House, the Committee on Interstate and Foreign Commerce performed the same function.

Representative John E. Moss (Democrat, California) indicated that the legislation had been prepared by Senator Magnuson and himself after they had exchanged correspondence with Secretary Boyd during the summer of 1967. In their first letter the legislators said that their concern arose from a series of insurance problems for car owners that had become increasingly troublesome, including insolvencies among "high risk insurers" and the attendant losses to policy holders; arbitrary cancellations and failures to renew policies; geographical, racial and economic "blackouts" in insurance coverage; and discriminatory and escalating premium rates. They enclosed with their letter an outline for a comprehensive study to deal with the aspects of the problem they considered significant.[1] In his reply Secretary Boyd first agreed that the requested study appeared to be desirable, and at the same time indicated the extent of the resources needed to undertake the study. He noted that the indicated investigation would touch on questions within the jurisdiction of other Federal agencies, and probably also of State and local governments. The investigation would probably also involve the financial community, the Treasury Department, the Securities and Exchange Commission

the Federal Trade Commission, and the Post Office Department. That being the case, Mr. Boyd said that the Department of Transportation would have to depend upon a clear Congressional mandate for it to provide leadership within the Government for the conduct of the study. The authorization to the Department should also include power to subpoena information and provide sufficient funds for the work. If he could get the appropriate assurances, Mr. Boyd said he would be willing to have the Department pursue the study.[2]

Preliminary conversations with the legislators and others outlined the nature of the task sufficiently so that Mr. Boyd was able to suggest as a basis for the inquiry a series of questions to which his Department would seek answers. He requested that Congress decide on the basis of the suggested questions whether the Department should undertake the investigation. The questions included the following:

1. What are the limits of such a study?
2. Are there data of public record which will provide answers to the many questions within the limits?
3. What are the sources of data that are not part of the public record?
4. What additional authority will the Department need in order to get the data?
5. What are the time limits for the study?
6. What are the requirements in staffing and funds for the Department to complete the study?

Mr. Boyd said he would need additional staff to accomplish the work under discussion.[3]

Congressman Moss, in initiating the House Hearing on March 19, 1968 outlined a proposed resolution under which the Secretary would be given 18 months to pursue the investigation and would be allowed an additional two million dollars to pay for the work.

The Bill, House Joint Resolution 958, directed the Secretary to study and investigate all relevant aspects of the existing motor vehicle accident compensation systems, including inadequacies of such existing systems, the public policy objectives that should be realized by such a system, including a cost-benefit analysis, and the most effective means for realizing the objectives.

The Resolution directed the Secretary to file his report with the Congress within 18 months, but in the meantime, he was to submit interim reports of his findings. He was also to submit his recommendations for legislation or other action to accomplish the objectives he outlined.

For purposes of the investigation the Secretary was authorized additional powers, such as the power to appoint personnel outside the ordinary Civil Service regulations, appoint consultants at up to $100 per day, enter into research contracts, appoint committees and set up rules and regulations for the investigation. Other Federal agencies were instructed to cooperate with the investigation, including detailing personnel to the Department if the Secretary requested it. The legislation specified that the President should appoint an Interagency Advisory Committee on Compensation for Motor Vehicle Accident Losses to be made up of persons having special competence in the field from the Departments of Commerce; Justice; Health, Education and Welfare; and Housing and Urban Development. Personnel from the Federal Trade Commission,

the Interstate Commerce Commission, and other agencies as designated by the President might also serve.

The Secretary or his designated employee could hold hearings, subpoena records, administer oaths, require the production of records, and take other action to assure the success of the inquiry. The authority thus granted the Secretary would continue until 90 days after he had submitted his final report to the Congress. The Resolution carried an appropriation authorization of up to two million dollars.

The record also indicated that other Government agencies that might have a concern with the range of questions concerning automobile insurance that were under discussion had all responded favorably to a query by Chairman Harley Staggers of the Committee on Interstate and Foreign Commerce concerning their views of the proposed investigation.

Secretary Boyd appeared as the first witness to support the legislation under discussion. In outlining the problem he quoted President Johnson who on February 6 had summarized his conclusions as follows: "Every motorist, every passenger, and every pedestrian is affected by auto insurance--yet the system is overburdened and unsatisfactory." Mr. Boyd stated the case succinctly: "Auto insurance clearly has become a major national problem." To show the scale of the problem, he quoted the statistics on damage from auto accidents: 145 people dead and 5,000 left with some permanent disablement each day. Accident-caused medical expense runs to 600 million dollars a year; wage losses were 2.6 billion; property losses aggregated 3.3 billion dollars a year. Both insurance premiums paid and the companies' payments to the injured had risen to astonishing levels. Mr. Boyd outlined numerous criticisms of the systems including the charges:

1) that the victims of accidents received their compensation late if at all; 2) that insurance policies are arbitrarily cancelled; 3) that whole groups of citizens are excluded from purchasing insurance policies; 4) worst of all, from 14 to 23% of those injured do not receive compensation for their injuries. The legal system requiring proof of negligence to assure payments to an injured party and lengthy suits that clogged the courts also contributed to the general dissatisfaction with the system of auto insurance. Mr. Boyd outlined the stages of the investigation mentioned above and told the Congressmen his estimate of the costs that would be involved; he suggested that if the fund allocation could be open-ended rather than limited to 2 million dollars, the work could be facilitated. His best estimate of costs included: salaries, $575,000; field staff salaries, $600,000; research contracting, $700,000; consultants, $150,000; administrative costs, $150,000; the total of these figures was $2,175,000.[4]

In addition to Mr. Boyd a total of 20 witnesses appeared before the House Committee and 18 appeared before the Consumer Subcommittee of the Senate Committee on Commerce when it conducted its hearings on March 12, 13, and 14, 1968. Even though most of the witnesses represented one part or another of the insurance industry, almost all of then indicated that they favored having the investigation conducted in the proposed manner.

Perhaps the most interesting testimony was given by Professor Jeffrey O'Connell of the University of Illinois Law School: With Professor Robert Keeton

1) that the victims of accidents received their compensation late if at all; 2) that insurance policies are arbitrarily cancelled; 3) that whole groups of citizens are excluded from purchasing insurance policies; 4) worst of all, from 14 to 23% of those injured do not receive compensation for their injuries. The legal system requiring proof of negligence to assure payments to an injured party and lengthy suits that clogged the courts also contributed to the general dissatisfaction with the system of auto insurance. Mr. Boyd outlined the stages of the investigation mentioned above and told the Congressmen his estimate of the costs that would be involved; he suggested that if the fund allocation could be open-ended rather than limited to 2 million dollars, the work could be facilitated. His best estimate of costs included: salaries, $575,000; field staff salaries, $600,000; research contracting, $700,000; consultants, $150,000; administrative costs, $150,000; the total of these figures was $2,175,000.[4]

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of the Harvard Law School he had worked out what he called a Basic Protection Plan under which a traffic victim would be reimbursed for actual losses by his own insurance company rather than having to collect tort damages from the insurance company of the other party to the accident. The system would operate in a manner analogous to that of workmen's compensation insurance. He summarized the real issue as follows: Once an accident has occurred, why should it be so difficult and so expensive for an injured party to be compensated for his loss?[5]

On May 22, the President signed PL 90-313 that authorized the Secretary of Transportation to conduct the study just discussed. The law resembled H.J. Res. 958, mentioned above, except that in the operating clause it listed more of the inequities charged to the compensation system and directed that the investigation take account of following matters in addition to those specified in the initial resolution:

1. The arbitrary and capricious cancellation of policies or refusal of a company to renew automotive insurance policies, or refusal to issue policies without stating the reason for refusing.
2. Constant and costly increases of premiums for auto insurance.
3. Disparity between amounts paid as premiums and amounts returned to policy holders.
4. Frequent insolvencies of insurance companies engaged in insuring against automobile liability.
5. Delays in processing and paying claims.
6. The efficiency and adequacy of present State insurance regulatory institutions.[6]

A few days later Secretary Boyd established the nucleus of the Department's organization to undertake the investigation, even before the funds were appropriated. To head the Department's staff the Secretary appointed Dr. Lee W. Huff,

Deputy Director of the Office of Policy Review, and a former Department of Defense research coordinator in the behavioral sciences. As special counsel for the study he appointed Mr. John G. Day who had come to the Department from the Federal Power Commission where he was special assistant to the Vice Chairman.[7] Since they were instructed to undertake the study, the officers mentioned have been making investigations related to the issues posed in the legislation.

1. Investigation of Auto Insurance, "Hearings before the Consumer Subcommittee of the Committee on Commerce, United States Senate, Ninetieth Congress, Second Session", March 12-14, 1968, U. S. Government Printing Office, Washington, 1968, pp. 2-5.

2. Ibid., pp. 5-6.

3. Ibid., p. 7.

4. Authorizing a Study of the Motor Vehicle Accident Compensation System, "Hearings before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives, Ninetieth Congress, Second Session", March 19 and 20, 1968, U. S. Government Printing Office, Washington, 1968, pp. 21 ff.

5. Investigation of Auto Insurance, op. cit., pp. 105-115.

6. Public Law 90-313

7. Department of Transportation, Office of the Secretary, news release, May 31, 1968.

INTERCOM

DEPARTMENT OF TRANSPORTATION / FEDERAL AVIATION ADMINISTRATION

District of Columbia Highway Dispute

Even before the Department of Transportation officially came into existence, Secretary of the Interior Udall formally brought the question of the District's highway network to Secretary Boyd's attention by requesting that the new Department conduct a study of the relative merits of a bridge or tunnel crossing the Potomac at Three Sisters Island.[1] Shortly thereafter in May of 1967, the National Capital Planning Commission, through its Chairman, Mrs. James H. Rowe, Jr., asked Mr. Boyd to determine whether a bridge or tunnel at the Three Sisters site would be more advisable.[2]

The Secretary agreed to review the proposed projects, not only because of the substantial Federal interest in the Potomac River and its shoreline and to avoid further delay when the District requested formal approval of its highway plans, but also because of Section 4 (f) of the Department of Transportation Act of 1966.[3] The Section stated, "After the effective date of this Act, the Secretary shall not approve any program or project which requires the use of any land from a public park, recreation area, wildlife and waterfowl refuge or historic site unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreation area, wildlife and waterfowl refuge or historic site resulting from such use". A similar provision had been enacted as part of the Federal Aid Highway Act of 1966. Since the Three Sisters Potomac crossing would involve the construction of Interstate 266 through parklands in Arlington County, Virginia,

through recreation areas in the District, and through the Georgetown waterfront, which is part of what the Department of the Interior has designated as a historic landmark, it seemed to the Secretary that it would be wise to investigate the implications of Section 4 (f) relating to the Three Sisters crossing and Interstate 266.

Members of Secretary Boyd's staff soon began to see this initial investigation as involving far broader questions. Deputy Under Secretary Paul Sitton and his assistant, Mr. Charles Carroll, later summarized the reaction of the staff to the question of the Three Sisters crossing:[4]

> On its surface the issue presented to the Secretary of Transportation for review appears to be a narrow one limited to consideration of the need for an Interstate System bridge crossing at the Three Sisters Island site. However, on closer examination, much broader questions concerning the traffic service features of Interstate expressway corridors in the Washington Metropolitan Region are evident. One such (and even greater) concern is the question of whether the planning process for transportation development in the Washington region has given appropriate consideration to the impact which the planned highway development program, involving financial commitments of over $750 million during the next five years, will have upon the historical, cultural, social and economic characteristics of the Nation's Capital. Without question, the transportation system profoundly influences the behavior patterns of an urban region and a city's developing form and organization -- more so probably than any other series of urban public policies and development programs.

The clear implication is that the Department must devise some sort of pattern for balancing the needs of highway transportation with the community's need to preserve its recreational, cultural, and historical areas. Mr. Sitton recommended very early that the problem of Interstate 266 be considered in the context of the entire Interstate route system for the Washington area.[5]

When the Department began its review of the Three Sisters controversy, it did not confine itself to the narrow question of a bridge versus a tunnel. At a staff meeting on the subject held on July 27, Assistant Secretary Mackey said that Secretary Boyd "did not intend to pass judgment on the question of bridge or no bridge" when he accepted the NCPC* request to review the Three Sisters project.[6] Indeed, at that same staff meeting, it was recommended to the Secretary that Interstate 266 be removed entirely from the Interstate system.[7] This recommendation stemmed largely from the belief that there had not been a full exploration of the "feasible and prudent alternatives" to the Three Sisters crossing. The report on the District's highway program submitted in March 1966 by A. D. Little, Inc.[8] concluded that plans for freeway extension in the District were based on insufficient data and on questionable assumptions and forecasting techniques, so the report advised a deferral of further freeway extension until the entire highway plan had been re-examined.[9] An earlier study by the District and Virginia Highway Departments had concluded that a dramatic increase in the number of motorists crossing the Potomac would occur between 1964 and 1985, justifying two or more new bridges across the river,[10] but the House District Committee found in 1965 that "the projection and forecasts of future needs made by highway officials show trends contrary to actual experience and do not seem to justify some of the proposed program. Accordingly, a careful objective review and reappraisal is desirable."[11]

In keeping with the policy of considering Interstate 266 and its Potomac crossing in the context of the entire metropolitan highway system, the participants of the July 27 meeting also recommended: 1) that I-70S

* National Capital Planning Commission

be removed from the Baltimore and Ohio Railroad corridor in north-central Washington and be rerouted along the north bank of the Potomac River between I-495 at the Cabin John Bridge and I-66 at the Theodore Roosevelt Bridge; 2) that I-695 from I-66 at the Roosevelt Bridge to I-95 near the 14th Street Bridges be removed from the Interstate System; 3) that I-66 be retained as a connection from the Roosevelt Bridge to some point on I-95 between K Street and V Street to the north, with the exact routing subject to the results of studies then underway by the District government; and 4) that the remainder of the existing Interstate system in the District be retained as then designated.[12]

The Federal Highway Administrator, Mr. Lowell Bridwell, who was also present at the July 27 meeting, strongly dissented from the recommendations of that group. His objections were based on what he believed would be the result of following the staff recommendations on the District highway program: it would deny Washington the needed highway facilities without any alternatives; it would be setting a precedent to opponents of urban limited access highways in cities throughout the country; and it would deny Washington and other cities the opportunity of using major highway investments as catalysts for aesthetic, recreational, cultural and other forms of social improvement.[12] Because of these conclusions, and because of certain legal objections which he enumerated, Mr. Bridwell told Secretary Boyd that "It was my strong position and recommendation that we go forward as diligently as possible to construct the entire Interstate System as designated in the metropolitan area."[13]

The Deputy General Counsel, R. Tenney Johnson, responded to the Bridwell memorandum by dismissing the legal objections raised by the Administrator. Mr. Johnson stated that he did not believe that the sections of the U. S. Code cited by Mr. Bridwell demonstrated any illegality in the recommendations of the Department's staff.[14]

Later in 1967 Mr. Boyd asked the General Counsel if the Transportation Secretary had the authority to deny Federal participation in the Three Sisters Bridge project.* The General Counsel, Mr. Robson, replied that on the basis of Section 109 (a) of Title 23, U.S.C., and of Section 4 (f) of the Department of Transportation Act, he would advise that "unless and until evidence is adduced to demonstrate that alternatives are not, in fact, feasible and prudent, the Secretary is obliged not to approve the proposal."[16] Thus, the General Counsel advised that the burden of proof was on those advocating the placing of the bridge at the Three Sisters site, for they must demonstrate that the alternatives are not acceptable before the Secretary can approve the disputed site.

On December 5, 1967, Mr. Boyd testified before a House subcommittee on the District of Columbia highway program. The Secretary told the committee that the original plan had proposed that the Three Sisters Bridge traffic feed into an intermediate loop and a radial flow artery, but since the Glover Archbold Parkway had been abandoned and the North Leg had not yet been placed, approval for the Three Sisters Bridge could not be given until appropriate routes to absorb the bridge traffic had been planned. Other problems with the highway program had appeared in the

* It had been determined earlier that a tunnel under the Potomac at that site would be impractical because of problems involving steep slopes at the entrances of any proposed tunnel.

Department's study of the network, Mr. Boyd said. Interstate 70S had been relocated several times because of local opposition to each site, and with each move, the highway moved further north and east. The Secretary also pointed out several congestion problems arising out of the intersection of the proposed freeways with one another at various points in the District. Secretary Boyd told the Congressmen that the highway program had numerous flaws in it, and that he could not approve the program until these were worked out.

In the meantime, the argument had been raised by those favoring the construction of a Three Sisters Bridge that such a Potomac crossing would greatly facilitate speedy access to Dulles Airport. In fact, they said, officials who had planned Dulles Airport had done so with the assumption that a bridge would soon be constructed in the Three Sisters vicinity. Mr. Sitton's staff examined the joint hearings of the Civil Aeronautics Administration and the Bureau of Public Roads on the location of the access roads to serve the planned Dulles field. These hearings, held on August 14, 1958, Mr. Sitton concluded, contained no suggestion or reference to "any relationship of the (airport) access road to a crossing of the Potomac at or near the Three Sisters Island."[17]

Early in 1968 Mr. Sitton and Mr. Carroll prepared a memorandum for Secretary Boyd which reported on the Department's fulfillment of Section 4 (f)'s requirement that the alternatives to I-266 be considered to

determine if they were feasible and prudent. The Sitton-Carrol report also informed the Secretary of the Department's findings concerning various portions of the District's highway plan. The major findings and recommendations of the memorandum involved the proposed Three Sisters Bridge and the North-Central Expressway. Concerning the Three Sisters Bridge, the Staff offered several objections. The first involved the reliability of reports indicating the need for another Potomac crossing at that site and the contradiction of those reports by later surveys. The staff stated that it was unwise to construct a new expensive bridge when a clear need for such a bridge in the immediate future had not been demonstrated.[18] Second, the report noted that the study done by Alan M. Voorhees in 1967 for the Washington Metropolitan Area Transit Authority had concluded that 20% of the peak hour traffic inbound across the Potomac in 1990 would not have its origin or destination in the District. This raised the question of whether the Department should support a construction project which would require the District to use its meager tax income to facilitate suburb-to-suburb traffic.[19] The recommendation of Messrs. Sitton and Carroll regarding the Three Sisters Bridge, therefore, was a re-affirmation of the recommendation of the July 27, 1967 meeting of Mr. Boyd's staff. The memorandum summarized the issue by stating:[20]

> Disapproval of the Three Sisters Bridge as part of the Interstate System will certainly neither destroy nor damage irreparably other components of the highway program or the underlying planning assumptions which have led to their adoption, nor does disapproval today rule it out for consideration at some future time when needs become more pressing. On the other hand, approval of this project, in large measure, on the basis of projections of traffic demand, postulated for a 30-year period, without a clear understanding of the project's wide-

> ranging and irrevocable consequences for both the future of transportation in the Central City and the achievement of other community goals, is unthinkable. Decision makers are often required to take significant steps of which the long-range consequences are unknown; this is an unpleasant reality of the public decision process. To take such a step when it is clearly not required would be foolhardy.

On the question of the North Central Freeway, the memorandum noted six factors that appeared to be relevant to any decision the Secretary might make regarding this segment of the District's highway network: 1) the proposed freeway will serve the corridor in which the first subway service is expected, thus reducing potential transit ridership; 2) the amount of relocation of individuals and businesses and elimination of jobs would be extremely serious; 3) the North Central corridor's local street system is already quite efficient and could easily be made more so through improved traffic operations; 4) the North Central Freeway would serve many traffic generators which could alternatively be served by the Northeast Freeway; 5) substantial congestion could result at the junction of I-70S and I-95 where two 6-lane freeways are merged into one 8-lane road, and 6) the high cost of the freeway does not seem to be balanced by the services provided by such a facility.[21] The report of the North Central Freeway concluded, "The Department staff believes that, in view of the prospects of early subway completion and the high social cost of construction, the North Central Freeway should not be built at this time".[22] Instead, it was recommended that the planned Palisades Parkway and Potomac River Expressway be constructed.[23] These two facilities would handle the traffic intended for the North Central Expressway. In a memorandum to

Presidential Staff Assistant Frederick M. Bohen, Mr. Sitton, speaking for the Department of Transportation, reiterated previously expressed Departmental objection to the District Highway program, adding that the Department has serious reservations about the whole concept of expanding freeway radials to the downtown area. Such a highway pattern, he wrote, adds to the growing traffic congestion of the central city while purporting to relieve congestion.[24]

While the Department was solidifying its opposition to major portions of the District of Columbia highway program and to the Three Sisters Bridge in particular, two suits were brought in Federal court by the Arlington County Board and the D. C. Federation of Civic Associations, Inc. in an attempt to prohibit the highway departments involved from proceeding with the District highway plans. On February 15, 1968, the United States Court of Appeals for the District of Columbia Circuit handed down a decision in the suit brought by the D. C. Federation of Civic Associations. The Court reversed the District Court, which had upheld the highway program and held that the District highway officials had not observed the requirement for adequate public hearings in the planning process. The Circuit Court therefore ordered work on four links in the proposed District of Columbia freeway system be halted until the proper hearing procedures had been implemented.[25] Thus, the program was completely stalemated during the spring of 1968.

Secretary Boyd brought the matter to public attention once more during the budgetary hearings in May of 1968. Regarding the Three Sisters Bridge controversy, the Secretary said, ". . . there is no point of

building the Three Sisters Bridge until you have somewhere for the traffic to go other than running into an interchange which does not go anywhere."[26] The North Central Expressway, one of the outlets for the Three Sisters Bridge traffic, was placed in its proposed position, Mr. Boyd testified, "because it was the closest they could get to where it ought to be, and where politically it could be located. My feeling was that if we are going to build highways to move automobiles, we ought to build them where they are needed, so I said, "Hold the phone", and about that time the roof fell in."[27] The Secretary also questioned the economic benefits of radial freeways to downtown business and the fairness of ordering the District to bear the cost of a bridge and freeway system for the benefit of suburbanites going to other suburbs.

Secretary Boyd's testimony did not satisfy those in Congress who were impatient at the extended delays in implementing the program proposed by the Maryland, Virginia, and District Highway Departments. The House Subcommittee on Roads, under the chairmanship of Representative John C. Kluczynski of Chicago reported H. R. 16000, the Federal-Aid Highway Act of 1968, which among other things, would order the District of Columbia to start work on the entire proposed highway program. Although an effort by Representative Richard McCarthy of New York to delete the section of the House bill ordering the District to proceed with the program failed to receive House approval, the Senate version of the measure contained no such provision. With Congressman Kluczynski as chairman of the House conferees and Senator Randolph, chairman of the Seante Public Works Committee, leading the Senate conferees, a compromise bill was developed. Senator Cooper, a member of the conference committee said that with regard

to the District of Columbia section of the highway bill, "It was evident that if there was anything in this bill the House conferees were not going to yield on, it was this section."[28] The Senatorial half of the committee, however, did manage to amend the House version to the extent that only four sections of the District highway plan were ordered constructed by the Congress -- the Three Sisters Bridge, the Potomac Freeway along the Georgetown waterfront, the center leg of the Inner Loop from the Southwest Freeway north to New York Avenue, and the east leg along the Anacostia River. The District was given eighteen months to develop plans for the North Central Freeway, the south leg of the Inner Loop beneath the Lincoln Memorial and the Tidal Basin, and the north leg under K Street. The exact location of these latter sections was not specified by the conference bill.

Because of Senate concern with the effect of the Three Sisters Bridge on Glover Archbold Park, the following provision was inserted into the bill:

> Immediately upon completion of construction of the bridge, the District of Columbia shall relinquish to the National Park Service the right-of-way through Glover Archbold Park that it presently holds. The design of the bridge does not require intrusion on the park and the Congress directs that no intrusion of the park take place.

Section 4(f) of the Department of Transportation Act, which had provided the impetus for Departmental intervention in the District highway dispute, was amended by the conference in order to conform to the policy declaration of Section 138 of Title 23 of the United States Code. The newly amended Section 4(f) prohibits the Secretary of Transportation from using public parklands or wildlife refuges for highway or airport use if

such lands have been declared "of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof. . ." (emphasis added). Therefore, if the officials in charge of the parklands in question do not declare them to be of national, State, or local "significance", the Secretary is powerless to prevent their use for transportation facilities. Senator Randolph assured the Senate, however, that if an area is declared to be of significance, "the Secretary of Transportation does not have to accept the local approval of use of parklands. He has authority under the provisions of Title 23 to exercise his independent judgment and oppose the use of parklands."[29]

To prevent what Congress considers overzealous use of Section 4(f), however, the two sets of conferees agreed to the following provision:

> The amendment of both relevant sections of law is intended to make it unmistakably clear that neither section constitutes a mandatory prohibition against the use of the enumerated lands, but rather, is a discretionary authority which must be used with both wisdom and reason. The Congress does not believe, for example, that substantial numbers of people should be required to move in order to preserve these lands, or that clearly enunciated local preferences should be overruled on the basis of this authority.

The last clause was inserted after several members of Congress took exception to Secretary Boyd's decision to veto the use of Brackenridge Park in San Antonio, Texas for a freeway, despite the fact that the San Antonio City Council and the voters of San Antonio in a local referendum indicated that the use of the park for highway purposes was desired.[30]

On July 26, 1968 the House of Representatives voted against recommitting the conference report by 167-166, and then proceeded to adopt

the report by a voice vote. On July 29, the Senate also accepted the conference report by a vote of 66-6. Representative William H. Natcher, chairman of the House District Appropriations Subcommitte, announced that he would not approve any appropriations for a District mass transit system until the freeway system "goes underway beyond recall."[31] At the urging of Representative Natcher, Congress denied all but administrative funds to the Washington Rapid Transit program for FY 1969.

FOOTNOTES

1. Stuart Udall to Alan Boyd, letter, March 28, 1967.
2. "Motion Approved by the National Capital Planning Commission," May 5, 1967.
3. Alan S. Boyd, "Testimony of...Prepared for Delivery before the Subcommittee on Roads of the House Public Works Committee," December 5, 1967.
4. "Interstate Route 266 (Three Sisters Island Bridge): Review and Evaluation of Feasible and Prudent Alternative," no date, p. 2.
5. Paul L. Sitton to Alan Boyd, memorandum, April 21, 1967.
6. Lowell K. Bridwell to Alan Boyd, memorandum, August 3, 1967.
7. Cecil Mackey, departmental memorandum, August, 1967.
8. "Interstate Route 266...," op. cit., p. 8.
9. Ibid.
10. Ibid., p. 7.
11. Ibid., p. 8.
12. Lowell K. Bridwell to Alan Boyd, August 3, 1967, op. cit., p. 6.
13. Ibid., p. 2.
14. R. Tenney Johnson to Cecil Mackey, memorandum, August 8, 1967.
16. John Robson to Alan Boyd, memorandum, December 4, 1967.
17. Paul L. Sitton to Alan Boyd, memorandum, December 18, 1967.
18. "Interstate Route 266...," op. cit., p. 10.
19. Ibid., p. 11.
20. Ibid., p. 24.

21. Ibid., p. 14.

22. Ibid., p. 15.

23. Ibid.

24. Ibid., pp. 4-6.

25. 391 F. 2nd 478, February 15, 1968.

26. *Department of Transportation Appropriations for 1969: Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, Ninetieth Congress, Second Session*, U.S. Government Printing Office, Washington, 1968, pp. 1053-1055.

27. Ibid.

28. Congressional Record, "Federal-Aid Highway Act of 1968--Conference Report," July 29, 1968, p. S9675.

29. Ibid., p. S9676.

30. Congressional Record, "Federal-Aid Highway Act of 1968," July 3, 1968, p. H5961.

31. Elsie Carper, The Washington Post, "Senate Sends Roads Bill to White House," July 30, 1968, p. 1.

Mr. Bridwell: Action. Prepare reply
Secretary's signature. (1)

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Due date: 4/6/67

cc: Secretary Boyd

MAR 2 3 1967

Dear Mr. Secretary:

The agreement of May 25, 1966, executed by the Director of the National Park Service of this Department, the Commissioner of the Virginia Department of Highways, and the Engineer Commissioner of the District of Columbia, provides, among other things, that: "The National Park Service agrees to a new Potomac crossing between Virginia and the District of Columbia at Spout Run."

I am impressed by the thoughtful bridge design recently proposed by the Engineer Commissioner of the District of Columbia for this crossing.

Since the agreement was signed last year, some significant new authorities have been granted in connection with the Interstate system. I know that you share my concern that our highways, and especially our urban highways, contribute to the maximum extent possible to the esthetic, social, and cultural values of our nation.

I am informed that some preliminary studies have been made of a possible tunnel crossing of the Potomac at this location. It is my understanding, further, however, that these preliminary tunnel studies have not been explored to the point where meaningful costs (economic, social, esthetic, and cultural) and engineering feasibility can be weighed in comparison to similar costs and engineering feasibility involving a bridge crossing. I believe, in the light of the intervening authorities since the date of the above-mentioned agreement, that the preliminary tunnel study should be completed to the point where such meaningful comparisons can be made.

I am advised that funds to initiate construction of the river crossing have been made available to the District of Columbia. It is, therefore, not my desire to delay the highway program in the District. I believe that the additional study I suggest

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1793

can be completed in not more than 60 days on the basis of the preliminary information already developed.

I hope you concur in my thoughts on this matter and that you will initiate the necessary action to have such studies completed.

With kindest personal regards and best wishes, I am

Sincerely yours,

Secretary of the Interior

Hon. Alan S. Boyd
Secretary of the
Department of Transportation
Washington, D. C. 20235

Copy

(2)

Motion Approved by the National Capital Planning Commission May 5, 1967

The Secretary of Transportation is requested to complete at the earliest practicable date his review of the necessity for additional laneage in the interstate system now designated I-266.

Should the Secretary conclude that such additional laneage in the interstate system is needed, the Secretary is requested to study at the earliest practicable date alternate locations and proposals for such laneage, including especially the up-grading of the Jefferson Davis Highway to interstate standards to accommodate this need.

That in the event the Secretary concludes that (a) the additional laneage is needed and (b) there is no feasible and prudent alternative to the route north of Lee Highway in the vicinity of Three Sisters Islands, the Commission approves the geometric design (stage 3) of the interstate route 266 Potomac River crossing between stations 35 and 54 as shown on plan and profile on NCPC map file #48.15/100 -- 24801; provided the District of Columbia connections between the bridge and the interstate route east of Wisconsin Avenue are placed in cut and tunnel to be approved by the Commission.

Approved unanimously May 5, 1967

INTERSTATE ROUTE 266 (Three Sisters Island Bridge)

Review and Evaluation of Feasible and Prudent Alternative

4 of 25 pp.

SUMMARY OF ISSUES

In May 1967, the National Capital Planning Commission authorized the preparation of plans and specifications for construction of a proposed Three Sisters Bridge as part of Interstate Route 266. This authorization was made contingent upon findings by the Secretary of Transportation that the I-266 corridor, including the bridge, is needed and, if so, that no feasible alternative for handling traffic in that corridor is available.

As currently planned, I-266 would extend from an interchange with I-66 in Arlington County, Virginia, follow the Spout Run Parkway, cross the Potomac into the District of Columbia in the vicinity of the Three Sisters Island, and extend along the Georgetown waterfront to the West Leg of the Inner Loop (I-66) in the vicinity of K Street, N. W.

The total Interstate mileage involved is .6 miles in Virginia and 1.4 miles in the District of Columbia. Construction of this Interstate route at a total cost of $20.0 million has been completed between 26th Street, N. W., and 31st Street, N. W., in the District. Preliminary engineering for the bridge for the remainder of the route has been authorized but has been delayed pending final decision by the Planning Commission and the Secretary of Transportation as to the necessity of the facility.

The Secretary of Transportation in earlier correspondence to the Commission had indicated that project review by the Department would be undertaken at a later date when the proposal was submitted for approval by the District Highway Department. Thus, at this time, the project is not before either the Department of Transportation or the Bureau of Public Roads for formal approval.

BASIS FOR DEPARTMENTAL REVIEW

A review at this time was initiated by the Department because of the substantial Federal interest involved in the planning and development of a major transportation facility along the Potomac River shoreline, the general impact of

transportation development upon the National Capital; and the responsibility which Section 4(f) of the Department of Transportation Act placed upon the Department for giving full recognition to environmental concerns in its considerations and approval of transportation projects.

On its surface the issue presented to the Secretary of Transportation for review appears to be a narrow one limited to consideration of the need for an Interstate System bridge crossing at the Three Sisters Island site. However, on closer examination, much broader questions concerning the traffic service features of Interstate expressway corridors in the Washington Metropolitan Region are evident. One such (and even greater) concern is the question of whether the planning process for transportation development in the Washington region has given appropriate consideration to the impact which the planned highway development program, involving financial commitments of over $750 million during the next five years, will have upon the historical, cultural, social and economic characteristics of the Nation's Capital. Without question, the transportation system profoundly influences the behavior patterns of an urban region and a city's developing form and organization -- moreso probably than any other series of urban public policies and development programs.

In its simplest terms this means that decisions made with respect to the location, size, and design of transportation facilities -- in this case highway development and construction -- are essentially decisions on the region's future comprehensive social and economic development. Therefore, transportation development decisions must be concerned with more than the facilitation of movement of goods and people. The effects of the transportation system which is developed will impinge on almost every activity carried on within the Nation's Capital -- in structuring land use to meet demands for public facilities, housing, open space, and commercial intercourse; in the recreational and cultural opportunities provided for its citizens and all Americans who visit their National City; and in its impact on the conduct of the Nation's Government. If it is not to have wholly random effects on these activities, the transportation development program must be sensitive to its implications with respect to the total environment.

No persuasive case has been made to show that the formulation of transportation plans for the Washington Metropolitan Region reflects more than a cursory consideration of these issues. We are thus faced with a dilemma: there is a transportation problem in the metropolitan area but in meeting this problem, we should not acquiesce in regional developmental programs without a clearer picture of the extent to which they may radically diminish

Interstate Route 266 2 pp missing
Reviews & Evaluating Feasible & Prudent alternatives

the quality of the environment which we seek to maintain and foster in the National Capital Region.

The Department is responsible for assuring that due account has been taken of these considerations in its review and approval of transportation programs involving the expenditures of Federal grant programs. The Department of Transportation Act of 1966 (P. L. 89-670) provides in Section 4(f) that:

> After the effective date of this Act, the Secretary shall not approve any program or project which requires the use of any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

The Federal-Aid Highway Act of 1966 provides under Section 138, Preservation of Parklands:

> It is hereby declared to be the national policy that in carrying out the provision of this title, the Secretary shall use maximum effort to preserve Federal, State and local government parklands and historic sites and the beauty and historic value of such lands and sites. The Secretary shall cooperate with the States in developing highway plans and programs which carry out such policy. After July 1, 1968, the Secretary shall not approve under section 105 of this title any program for a project which requires the use for such project of any land from a Federal, State, or local government park or historic site unless such program includes all possible planning, including consideration of alternatives to the use of such land, to minimize any harm to such park or site resulting from such use.

The concern of the Congress (by actions taken at its own initiative) to promote and foster environmental values that may be affected by programs of the Department is made evident by these provisions of law. The Department of Transportation is bound by this statutory mandate in the administration of the Federal highway program.

The standards and criteria by which these provisions of law are administered are in the formative state and procedures for their implementation have not been issued. Until these regulations become operative, projects must be reviewed on an individual basis to assure conformance with the law. These laws have particular relevance for highway projects currently under development in the National Capital due to their substantial impact upon the monumental and historic character of the area. In fact, the very nature of this historic environment necessitates a most particular and vigorous effort by all Federal, State and District government agencies to see that the beauty and dignity of the National Capital is protected for future generations.

The Secretary of Transportation agreed to review the District Highway Department's proposal for a bridge at the Three Sisters Island site because of this Federal interest. The substantial controversy which has surrounded this proposal is concerned with the very issues on highway development impact which led to Congressional action. If the laws cite above have meaning at all they must be interpreted as requiring careful and considered review of alternative and feasible locations for highways which may affect the natural beauty, parklands and historic sites along the Potomac River shoreline in the National Capital.

DESCRIPTION OF AFFECTED AREAS

The construction of Interstate Route 266 in the proximate proposed corridor at the Three Sisters Island site and along the Georgetown waterfront would necessitate substantial encroachment and taking of public lands and properties in both Virginia and the District of Columbia totalling about 54 acres.1/ These lands include substantial encroachment upon the Spout Run Parkway and the George Washington Memorial Parkway in Virginia, both of which were acquired for park and parkway purposes only. In the District of Columbia substantial encroachment would be required involving the Chesapeake and Ohio Canal, the lower portion of Archbold Glover Park and the Georgetown waterfront. Georgetown is listed on the National Register under the National Historic Sites Act (P. L. 89-665) and has been designated by the Department of the Interior as an historic landmark.

1/ Howard, Needles, Tammen & Bergendoff: Location Studies - Interstate Route 266, September 1964

The visual impact of I-266 would also be substantial on the scenic environment of the Potomac River and the downstream monumental area (Lincoln Memorial, Kennedy Cultural Center and the Theodore Roosevelt Island). In March 1965, President Johnson directed the Secretary of the Interior to review the multiplicity of proposals for the Potomac River Basin and to devise a singular program for a deliberate land use pattern to preserve the natural setting. The President's directive was to "Clean up the river and keep it clean...protect its natural beauties...provide adequate recreational facilities." The President further stated that "The river rich in history and memory which flows by our Nation's Capital should serve as a model of scenic and recreation values for the entire country."

The 1967 report of the Potomac Planning Task Force to the Secretary of the Interior stated that "The Potomac at Washington...is the dynamic central theme of the design of the monumental Capital City. Historically the background of the National Capital, the Potomac is scenically its foreground. Historic, cultural and architectural factors here acquire crucial importance and should guide future development.... We are now at a point of decision. Shall the river be reclaimed to fulfill a vital role as a great urban amenity to be used and enjoyed by all, or shall we let the opportunity dribble away and the river's banks be chewed up by freeways, bridge approach ramps and commercial and industrial enterprises that do not need the river, but use it only because it is easily available."

This study referred to the possibility of a new bridge at Three Sisters Island as a major threat to the scenic value of the lower Palisades and concluded that the construction of the proposed bridge would be completely incompatible with the type of development recommended for this sector of the urban Potomac. It also stated that an appreciation of scenic and urban values has been a part of earlier bridge-planning for this area, and the results have been costly.

Without question an upgraded major highway facility must traverse the Georgetown waterfront to replace the obsolete Whitehurst Freeway and there is general agreement on the necessity for such a facility. Such a facility should be made compatible with the surrounding urban environment and with the long-term redevelopment objectives for the Georgetown waterfront as a part of a total plan for upgrading the quality of this distinctive shoreline stretch of the Potomac River. There is a serious question as to whether a planned Interstate facility, incorporating a bridge crossing at Three Sisters Island

site, can be made compatible with such long-term objectives because of the structural requirements for a major interchange and a major freeway facility of substantial dimensions.

The conclusion is clear from the above considerations that, as a minimum condition to project approval, present plans for Interstate Route 266 require re-evaluation and that, as a maximum, no facility as proposed should be constructed if there is a feasible alternative. Decisions on an Interstate facility in this area will in large measure be critical to the question of the Potomac's future and whether the grand design for its improvement will become a reality.

BACKGROUND OF PROJECT

I-266 Development as a Concept. A bridge crossing at the Three Sisters site is a proposal of long standing. In 1955, this bridge crossing was considered as an alternative to the Theodore Roosevelt Memorial Bridge. In 1958, when the Theodore Roosevelt Memorial Bridge was authorized, agreement was reached that trucks would be prohibited from that facility and a means was sought to provide alternate access for Interstate truck traffic. The report of the Mass Transit Survey (MTS) in 1959 included a Three Sisters bridge as part of an intermediate circumferential parkway loop which extended laterally across the northern part of the District of Columbia. The rationale of this loop in part was the provision of supplementary traffic service to prevent over-congestion on the proposed Inner Loop. The Three Sisters Bridge was to serve as a circumferential facility (not a radial facility) linking the proposed Glover Archbold Parkway in the District with the existing Spout Run Parkway in Arlington. The MTS report proposed a rapid transit system to serve the Center City but showed no additional arterial bridge capacity other than the Theodore Roosevelt Bridge as being needed to serve downtown Washington. At the time of the 1957 decision to deny the Theodore Roosevelt Bridge to truck traffic, the District Highway Department and the Bureau of Public Roads agreed that alternate Interstate service was required for truck traffic. Improvement of the Key Bridge to furnish this alternative was considered and rejected. With the freeze on expressways into the Northwest quadrant (written into the National Capital Transportation Act of 1960) further effort to extend I-70 as a radial into the downtown area through this quadrant was dropped. Prior to that point, several alternate corridors were considered including a Potomac River shoreline route and a Wisconsin Avenue route. The impossibility of including the Potomac River Expressway as part

(10)

of the proposed I-70 corridor made particularly acute the District's problem of finding an alternative means of financing this costly replacement of the Whitehurst Freeway under the Interstate program. Subsequently, in 1960, the District Highway Department announced its plan to extend the Potomac River Freeway beyond its planned terminus at Key Bridge to the Three Sisters Island site and to build a bridge at that location - - all as part of the Interstate program. In 1961, the National Capital Planning Commission approved, in principle, the proposal for a bridge at the Three Sisters Island site as part of a major freeway facility. The Highway Department's request for inclusion of this route on the Interstate System was approved in 1962 by the Bureau of Public Roads. There is no basic study to justify this change in concept of the Three Sisters Bridge from an intermediate loop connection to a supplementary Interstate radial artery connecting to the Inner Loop. Subsequently, the House District Committee raised questions as to the basic justification for this facility. The National Capital Transportation Agency in its 1962 Report to the President stated that, assuming its subway plan, central area bridge capacity across the Potomac River was adequate for the needs of motorists in 1980 without the Three Sisters Bridge.

To further justify the proposal for I-266, in 1964, the District and Virginia Highway Departments undertook a new traffic survey to forecast needs for central Potomac River crossings. The report projected substantial increased peak-hour Virginia-D. C. person trips for 1985 (from 65,000, as estimated in the NCTA report, to 97,000). This report also concluded that not only was a bridge needed at the Three Sisters site, but a third 14th Street Bridge facility was justified. Since that time, the latter project has been approved and is under construction. An additional study on appropriate design and location alternatives for the Three Sisters Bridge was completed in 1964 by an engineering firm which outlined the implications of such alternatives in terms of their environmental impact. During and subsequent to these studies, the controversy over the need for a Three Sisters Bridge has continued unabated and has created substantial confusion in both the Executive Branch and the Congress on the merits of the project.

In April 1965, Secretary of the Interior Udall stated in a letter to the Arlington County Board, "There can be no doubt that any new highway crossing of the River between Chain Bridge and Roosevelt Island will seriously impair the scenic and recreational values along this portion of the River."

In October 1965, the House District Committee which had reviewed all forecast studies stated:

> There are indications of a real need for restudy and re-evaluation of the highway program of the District of Columbia. Your Committee has found that projection for highway needs for 1965 developed as the Mass Transportation Study of 1959, substantially exceeded actual traffic counts. Similarly, the projection of the National Capital Transportation Agency surpasses actual experience. . . . The projection and forecasts of future needs made by highway officials show trends contrary to actual experience and do not seem to justify some of the proposed program. Accordingly, a careful, objective review and reappraisal is desirable.
>
> Such restudy should result in a highway system abundantly adequate for the needs of the Capital City and at the same time preserve as much as possible of the original character and beauty of the City with a minimum of inconvenience and dislocation to its citizens and its businesses.

In March 1966, a report was made by A. D. Little, Inc., to the Policy Advisory Committee to the District Commissioners entitled, "Transportation Planning in the District of Columbia, 1955 to 1965: A Review and Critique." This report concluded that (1) present plans for freeway extension in the District are based on insufficient data, and on questionable assumptions and forecasting techniques, and (2) transportation planning has been carried out with inadequate regard for long-range economic and social impact. On these conclusions, the report recommended the deferral of further freeway extension until the highway plan had been re-examined.

The Policy Advisory Committee, in a statement in which all its members concurred, advised the President that:

> It now appears that the Potomac River Freeway to Rock Creek Parkway, and to the Georgetown waterfront should be tunnelled to the maximum extent permitted by traffic service requirements and fund availability; however, the final design of this freeway will depend upon further study of the most practical way to connect Route 66 and the Palisades Parkway to downtown Washington. This study will include the possibility of utilizing Jefferson Davis Highway in this connection.

This position was endorsed by the Board of Commissioners of the District of Columbia on March 31, 1966.

On May 25, 1966, a statement of agreement which included, "a new Potomac crossing between Virginia and the District of Columbia at Spout Run," relative to implementation of freeway program in the District of Columbia was signed by the Director of the National Park Service, the Commissioner of the Virginia Highway Department and the D. C. Engineer Commissioner. In addition, the Virginia Highway Department agreed to provide access and exit connections between Jefferson Davis Highway and the Theodore Roosevelt Bridge as part of the Interstate System. The District Highway Department agreed to depress new eastbound lanes on the Potomac River Freeway, to eventual elimination of the Whitehurst Freeway, and to substitution of new depressed westbound lanes for the Potomac River Freeway. Appropriate service connections were to be provided by the Palisades Parkway and the Potomac River Freeway at the new Potomac River Bridge crossing to accommodate future Potomac River freeway profile and alignment. This proposal was submitted to and approved by the Policy Advisory Committee and was subsequently submitted to the National Capital Planning Commission where it received general endorsement.

In May 1967, in the final action thus far taken with respect to the bridge, the Planning Commission granted authorization to proceed with preparation of plans for the bridge contingent upon the Secretary of Transportation's finding that the I-266 corridor including the bridge is needed and that there is no feasible alternative.

Review Conclusion on Proposed Project -- The major justification for a Three Sisters Island Bridge is the projected intensive population growth in the suburban areas of Virginia adjacent to the District of Columbia and the prospective demand for additional river crossings to facilitate movement to and from the Central City and to support increasing Interstate traffic converging on the Nation's Capital.

In 1964, the Highway Departments of Virginia and the District prepared a supplementary report entitled, "1985 Traffic Forecast for Central Potomac River Crossing." This study indicated the need for a third 14th Street Bridge and an I-266 bridge crossing plus mass transit improvements of the scope

and magnitude contained in the NCTA report of 1962. It is at odds with the traffic forecasts made by the National Capital Transportation Agency which recommended a transportation system without an additional central area bridge. Subsequent studies indicate that consultants for the District Highway Department have relied upon the lower NCTA/WMATA travel forecast as being more representative for 1985. (Traffic Planning for the North Central Freeway, Wilbur Smith & Associates, April 1966) This did not necessarily indicate District Highway Department concurrence.

Questions have been raised as to the reliability of basic data used by both the NCTA and Highway Departments for projecting travel behavior to serve 1965 traffic requirements. The data used in developing travel forecasting were based on a comprehensive home-interview survey in 1955 and on land use inventory made for the 1959 MTS. Thus, the basic data for economic growth within the region and behaviorial travel pattern was based upon assumptions with respect to how the region is structured which may be dated. For example, in 1955, the impact of the Outer Belt circumferential on economic growth in the region was not known in terms of increasing concentric development in the suburbs and of growing levels of lateral travel around the region. The meaning of this for the Central City is that over the long-term, radial travel to the Central City will relatively diminish as a percent of total regional trend. The Bureau of Public Roads in its research activities, has verified this urban phenomena particularly where outer belt perimeter highways are being constructed. The experience with Route 128 in Boston supports this conclusion.

It is within the context of changing regional growth patterns that the Department questions the certainty of forecasts on the need for a new bridge across the Potomac at the Three Sisters Island crossing. The Department is concerned that absolute reliability on subjective traffic forecasts which are used to justify certain highway projects within the District and the region inhibits appropriate policy considerations by decision makers who may desire to take into account other values in reaching a conclusion. The primary traffic report to support the need of a new bridge, the "1985 Traffic Forecast for Central Potomac River Crossings," dated November 4, 1964, was prepared jointly by the Virginia Department of Highways and the District of Columbia Department of Highways and Traffic. It was relied upon by the District in preparing the 1968 Interstate cost estimate. This report predicts peak-hour person trips -- one directional, weekday demand of 97,000. Of this, 37,000 are assigned to mass transit systems and 60,000 to motor vehicles.

More recent traffic surveys by consultants to the District in connection with the North Central Freeway did not use this forecast study, but relied upon the WMATA/NCTA traffic forecast of 1962 as having greater relevance to future requirements. As late as October 1967, a new traffic forecast for

alternative systems traffic analysis was made by Alan M. Voorhees and Associates for 1990 forecast requirements. While this forecast is not final it was prepared to serve the WMATA in arriving at projected transit usage. It also provides data on highway volume and capacity for 1990 which are relevant to this analysis. This latest report predicts a peak-hour person trip for 1990, one direction weekday demand, of 86,540 persons. Of this 28,000 are assigned to mass transit systems and 57,940 to motor vehicles. Because 1990 auto traffic is forecast at some 4,000 vehicles greater than existing bridge capacity, many have drawn the conclusion that the study proves the need for the Three Sisters Bridge.

The expressed intent of the Voorhees Study was to determine transit ridership under alternative transit system networks. To do this, of course, required some knowledge of what the highway network might be like in the forecast year (1990). The assumed highway network was provided by the Highway Departments of Virginia, Maryland, and the District of Columbia and included a Three Sisters Bridge. The objective of the Voorhees Study was, assuming this highway network, to assign passengers to the transit system out of the total number of individuals moving via all modes in the metropolitan area.

Far from proving the need for the Three Sisters Bridge the study indicated only that if a bridge were built it would be used. DOT staff members have conducted in-depth analysis of the Voorhees report, however, and determined that a number of other possible conclusions are suggested by the report. It is hoped that sensitivity analyses can be performed on the data gathered by Voorhees to validate these conclusions.

The principle finding of the DOT staff analysis — and it is confirmed by Alan Voorhees staff - is that something on the order of 20% of the 34,000 automobiles inbound over Potomac River Bridges during the peak hour in 1990 would not have destination or origin in the District of Columbia. These would be Virginia residents commuting either to Montgomery or Prince Georges County who, because of capacity restraints on Cabin John and Woodrow Wilson Bridge, would be forced to use the central area bridges and to travel through the District, even though they have no interest in going there.

Further analysis will indicate more precisely the dimension of this problem but though apparently the percentage of suburb-to-suburb movement is a sizeable one. It raises a policy issue for Mayor Washington and the City Council as to whether the District wishes to use its scare gasoline tax receipts for building facilities to accommodate commuter automobiles that have neither origin or destination in the District of Columbia. Further this analysis raises the question of whether the outer bridges should be increased in size and whether additional bridges should be provided, perhaps inside the Beltway, to accommodate this suburb-to-suburb movement.

This does not mean that there may never be a need for another central area facility. Depending upon the economic and environmental factors which may later develop, such a need may arise; but at least for the next 10 years, the need is marginal. The changing pattern of economic growth in the region strongly suggests that a more desirable approach for providing bridge crossings of the Potomac is to delay decisions until more precise conclusions can be developed on priority crossings. For example, indications are that additional crossings either upstream or downstream from the Central Business District may better serve longer-term requirements as transportation movement changes within the region. Even beyond this is the more basic assumption as to whether expanded vehicle movement through the Central City areas of the magnitude forecast for 1990 would be a desirable objective, particularly if such trips merely move through the Central Business District and are not destined to stop there.

B. NORTH CENTRAL FREEWAY

(I-70S and I-95)

Description of Project -- The North Central Freeway as proposed would extend from the Capital Beltway near the B&O Line to a junction with the Inner Loop near Rhode Island Avenue and 9th Street, N E. From the Beltway the Freeway is 6 lanes and is designated as I-70S. At the point where it is joined by the Northeast Freeway (I -95), it becomes an 8-lane facility designated as I-95. Despite this change in route designation, the entire 7+ mile segment is known as the North Central Freeway.

Background of Project -- I-70S (that portion from the Beltway to a junction with the Northeast Freeway) was placed on the Interstate System as a result of a 1958 decision to remove I-70S along the north bank of the Potomac from the System. Prior to 1958, it had been assumed that I-70S would run along the route now planned as the Palisades Parkway but that it would not be constructed to parkway standards. Since placement of I-70S in the North Central Corridor, the route has been studied by J. E Griener and reviewed by Alan Voorhees and Wilbur Smith; each of these consultants has concluded that traffic was sufficient to justify the segment.

Despite these findings, the entire North Central Freeway (I-70S and I-95) has provoked vigorous citizens' opposition, principally for two reasons:

(1) Major Relocation Problems -- The North Central route has the most severe relocation impact of any route in the District (with the exception of some of the alternatives considered for the North Leg of the Inner Loop). The North Central Freeway could displace as many as 5,000 individuals, 150 businesses, and 4,000 jobs. Although alternatives now being studied by the D.C Highway Department somewhat reduce these figures, the alignment used in preparing the 1968 cost estimate would have approximately the same displacement effects.

(2) Relationship to Subway Facilities -- It is expected that the North Central Corridor will be the first radial corridor in which subway lines are installed. The line to Silver Spring is now in the design stage and moving along fairly smoothly. Critics of the North Central Freeway maintain that if rapid transit is to become a viable economic service in the metropolitan area, providing additional freeway capacity in the North Central Corridor should not be permitted.

C. ALTERNATIVE LOCATION FOR I-70

(Palisades Parkway and Potomac River Expressway)

Department staff also would suggest removal of I-70S from the North Central Corridor and instead its designation as an Interstate Route with the corridor extending 8 miles from the Capitol Beltway along the Potomac River (Palisades Parkway) to Key Bridge in Georgetown. This route, although built with Interstate funds, would be constructed to four-lane parkway standards.

The original location of I-70 was along this route in the 1950's but it was to be built to Interstate and not to parkway standards. As a result of objections to truck traffic and massive design on this route through an area of great natural beauty, a decision was made in 1958 to remove this segment from the Interstate System and to construct I-70 as a freeway through the North Central Corridor of the Metropolitan Region.

In effect, the proposal is to return to the pre-1958 plans, with one significant exception: Parkway designs would be respected. The Department staff believes that, in view of the prospects of early subway completion and the high social cost of construction, the North Central Freeway should not be built at this time. It is obvious that clear and present needs exist for traffic service from Montgomery County to downtown Washington and that earlier completion of the Palisades Parkway would significantly improve this service. The Department believes that these needs must be met with a facility that provides sufficient traffic service but which is consistent and compatible with the natural environment through which it passes. The proposed Palisades Parkway could serve that function satisfactorily. Five of the eight miles to be placed on the System have already been constructed; the remaining three miles in the District of Columbia could be built at a cost of $10-$20 million.

The remaining portion of I-70 (Potomac River Expressway) would continue from the Palisades Parkway and would connect with the presently completed West Leg of the Inner Loop in the vicinity of K Street, N.W. Some construction of this Freeway from 27th to 31st Street, N.W. has been completed. A major public concern has been the impact of this facility on the long-term development of the Georgetown waterfront. The design of the Potomac River Expressway should consider long-term plans which may be anticipated for

for the Potomac waterfront of historic Georgetown. This area is traversed by the C&O Canal and is a vital element in the aesthetic and visual integrity of the Potomac River shoreline as it relates to the Lincoln Memorial, Kennedy Cultural Center and Roosevelt Island.

Any decision on the design of the Potomac River Expressway should give appropriate consideration to proposed objectives which may be developed for future upgrading of the Georgetown waterfront and to long-term plans for restoring the potential aesthetic quality of this significant segment of the Potomac River.

D. FACILITATION OF TRAFFIC MOVEMENT IN CENTRAL CITY

The review of the routing of I-266 and the movement of traffic across the Potomac River brings into focus another significant issue on which adequate answers have not been provided -- the movement of automobile traffic in, through, and around the Central Business District. While present plans for an Interstate circulatory system in the downtown area provide for an Inner Loop, the location and feasibility of this Loop remain an open and unresolved question.

It is clear from the debates, studies and proposals concerning the Inner Loop that serious questions exist as to the location and design of a North Leg segment. As originally proposed, an alignment which paralled Rock Creek Parkway and then crossed the city on an alignment between T and U Streets, N.W , was incorporated into the Interstate plan. The major dislocation and substantial economic impact which would result from the structure of this section upon the city, has probably created more controversy than any single element of the Interstate program. In response to criticisms of this location and after further study, the National Capital Transportation Agency's 1962 report recommended against this facility and, substituted instead a modified express street connector to the existing West Leg of the Inner Loop. Subsequently, attempts were made to reach agreement on a depressed K Street Freeway connector between the Potomac River Freeway and the Center Leg of the Inner Loop as an acceptable alternative Interstate location. The Planning Commission has authorized a study of this alternative, but there is serious question as to its practicality and feasibility; therefore, the issue of the North Leg and the Inner Loop remains unreconciled.

The D. C. Highway Department and the National Park Service reached agreement on tunnelling the South Leg of the Inner Loop between Constitution Avenue and 14th Street. The cost of this facility including a 5200-foot tunnel is estimated at nearly $100 million. Subsequent to this agreement, the Fine Arts Commission has urged that alternative routing be sought for this facility so that the trees which would be substantially damaged by this proposal can be preserved. Studies are currently underway to find a desirable and acceptable alternative.

In addition, the value of the South Leg as a traffic link has been recently questioned. Probably the South Leg as planned would concentrate congestion to an unacceptable degree at its intersection with the Southwest Expressway, the 14th Street bridges, and Maine and Independence Avenues.

A survey of proposed transportation projects in and through the Central Business District over the next five years indicates that if certain proposed projects proceed (the North and South Legs of the Inner Loop, the Subway alignment along G Street, the Pennsylvania Avenue development plan and continuing construction of the Center Leg of the Inner Loop), substantial disruption in the normal life of the downtown area will result. This could have a severe, though temporary, impact upon the economic viability of the central commercial district of Washington. The extent of such economic hardship upon retail sales and the business community can only be the subject of conjecture; however, without question it will be substantial.

The construction of any downtown transportation facilities will necessitate disruption, but it is not clear whether there has been sufficient consideration of the need for facilities to channel and distribute rerouted automobile traffic in this area and to minimize the severe economic impact resulting from such disruptive development and construction activity. In addition, the serious question of whether certain of these facilities will be approved makes it imperative that an immediate and accelerated review be undertaken to clarify the implications of these development proposals and to seek alternative ways of meeting total requirements with minimal disruption to the viability of the downtown business area.

The proposed Pennsylvania Avenue project provides a feasible and attractive alternative for handling travel to and through the downtown region. This project has been discussed with the Chairman of the Pennsylvania Avenue Commission, the Secretary of the Interior and the Commissioner of the District of Columbia.

The Department of Transportation is prepared to commit its resources to support inter-disciplinary design and engineering efforts in cooperation with the District of Columbia, the Department of Housing and Urban Development, and the Pennsylvania Avenue Commission to take a fresh look at what can and should be done to provide a feasible downtown freeway system.

It is imperative that early resolution of these questions be accomplished so that provision can be made to meet the growing transportation needs as additional radial freeways to the downtown region are completed.

The Department of Transportation is not prepared at this time to approve a specific site location for either the North or South Leg of the Inner Loop. Until certain of these questions have been studied and alternatives carefully considered no final decision is warranted.

WASHINGTON METROPOLITAN REGION TRANSPORTATION PLANNING HISTORY

Responsibility for comprehensive and subordinate planning in the Washington Metropolitan Region is spread among a number of agencies, boards, commissions, and departments which function at the Federal, State, and local levels. Strong central leadership to formulate and guide the execution of regional programs has been non-existent. In large measure this weakness is due to the special Federal interest in the National Capital, the lack of elected representation in the District, and the multi-State jurisdictional split of local government in the metropolitan area. This organizational fragmentation makes the process of goals formulation for the region and implementation of plans to achieve them a difficult, if not impossible, task. When decisions are made they reflect a consensus among interested agencies rather than the results of conclusions derived from an integrated planning process.

In spite of these obstacles and in part because of the leadership of the Congress and the President, regional transportation studies have been completed, which are accepted as milestones for their time in utilizing the latest available techniques of the planning profession. However, even these fail to consider effectively and comprehensively the inter-relationship between community goals and component developmental programs. The results highlight the complexities of developing an area-wide approach to an integrated program of development.

The 1959 Mass Transportation Survey for the National Capital Region was the first of such studies. Undoubtedly, the significant contribution of this study was its attempt to present in comprehensive terms the concept of an integrated approach to transportation with its implications for the future of the region. Its success was limited.

After extensive public hearings and careful evaluation of the MTS study, the Congress and the Administration did not adopt the recommended development plan. Instead, the National Capital Transportation Act of 1960 was enacted which authorized preparation of a new transportation program for the National Capital Region. Among the policy goals established in this charter as Congressional objectives were: a coordinated system of transportation to provide for satisfactory movement of people and goods, alleviation of traffic congestion, economic welfare of the region, effective performance of Government, the orderly development of the region, the comfort and convenience of the residents and visitors to the region, and the preservation of the beauty and dignity of the Nation's Capital.

As early as 1960, substantial concern had begun to develop in the Congress and in the community over the freeway program under development in the District Highway Department which had been adjusted to capitalize on the accelerated and expanded Federal-aid Interstate highway program. In fact, Congress expressly stated its unwillingness to endorse freeway routes through Northwest Washington, and in the 1960 Act included a statutory five-year prohibition on construction of such freeways.

In 1962, the National Capital Transportation Agency submitted its report proposing a new transportation program for the National Capital Region to the President for transmittal to the Congress. In this report, substantial reductions were proposed in the highway program previously recommended by the District Highway Department. The highway proposals of the 1962 report were not adopted and subsequently the District Highway Department proposed a modified freeway plan essentially similar in concept to the earlier recommended system prepared before completion of the 1962 NCTA study.

Controversy continues over the proposed projects in this highway program for the region.

The reasons for the controversy are obvious. The community, within the District of Columbia, believed that its needs for long-term community development had been sacrificed to the regional requirements for an expanded highway system. The credibility of the District Highway Department has been repeatedly questioned.

The relationship between the District's highway plans and the plans outlined in the comprehensive transportation studies is often slight. The impact which such plans have had upon the final configuration of the highway system appears minimal. The basic concepts of the present system, including its circumferential loops and radial routes, were fixed at the time of the MTS study. In spite of the attempt at comprehensive transportation studies, alternative systems which radically deviated from the accepted system have received limited consideration.

The reason for the repetition and recurrence of the same basic concepts is easily identified: he plans have been developed primarily on the basis of traffic forecast demands and assignments derived from a single purpose planning process.

In none of the plans nor in the currently proposed highway system is there convincing evidence that sufficient consideration was given to the profound impact which these proposed long-range development programs would have upon the Washington region in terms of future land use, environmental impact, economic growth, and urban structure on increasing traffic congestion This does not mean that other community goals and purposes were ignored, but it does mean that they were subordinated to the predominant purpose of the transportation planning process.

A number of studies have addressed themselves to methods used to determine future highway investment levels particularly as they related to procedures for predicting future traffic volumes. One report which has particular relevance to these questions is an unpublished paper 1/ written in December 1965, for the National Capital Planning Commission. This report was summary in nature and based on a review of recent literature and an evaluation of trends in expert thinking on the subject. Serious questions were raised as to the validity of the guiding assumption to "provide a quantity of transportation facilities sufficient to carry the peak traffic loads without congestion."

A critique 1/ of the 1959 MTS pointed out that once basic design specifications are based upon equating capacity to the peak-hour flow, a really crucial kind of choice has been foreclosed. The level of service is a fixed part of the system admitting of no discretion. Any choice about how access should be distributed in the region is ruled out by the standard that anyone ought to be able to travel anywhere in the region at any time with a minimum expenditure of time.

The Bain report concludes that this assumption may no longer be suitable for planning of urban highway systems. It further suggests that greater emphasis should be placed on other alternatives for minimizing traffic congestion rather than through the provision of more new highway facilities. The inevitability of congestion and over-capacity utilization resulting from the phenomena of induced traffic, even under a greatly expanded highway

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1/ Bain, Henry M. Jr., Transportation in the Comprehensive Plan, A report to the National Capital Planning Commission, December 21, 1965

2/ Wingo and Perloff, The Washington Transportation Plan: Tecniques or Politics?, Papers and Proceedings of the Regional Science Association, Volume 7 - 1961

program, is highlighted as a critical weakness. The conclusion is stated that decisions to abolish congestion are in reality decisions to change land use and trip lengths. Thus the decision inherent in choosing a highway system is not a decision to provide free flowing traffic systems (which are unlikely to be achieved in the foreseeable future) but decisions on development of residential communities and new commercial activities.

Changes in economic structure of a community growing from freeway construction represent in large measure a shift in economic activity caused by changes in accessibility that result from new or upgraded highway corridor development.

The implications of the Bain report are that it may be time to reconsider the extent to which peak-hour requirements can reasonably be accommodated by urban highway systems. Also whether social and political changes taking place in the region, and particularly in the District, do not persuasively argue for a major overhaul of current thinking and approach to the total planning job considered in this new social-political context.

The District must give serious consideration to changing attitudes on the part of the public if the District Highway Department is to successfully proceed with the development of a highway system that has community acceptance.

Recent technological innovations and thinking with respect to traffic control, now being promoted by the Bureau of Public Roads, offer alternative ways to meet the problems of congestion through improved capacity utilization of existing systems. This alternative has particular relevance in a high density urban area such as the District of Columbia.

A STRATEGY FOR PROJECT SELECTION

Appraisal of the transportation studies that have been made in the National Capital Area points to a consistent weakness and approach to program development -- the failure to assure that narrow objectives of these studies are responsive and, in fact, subservient to broader comprehensive community goals for the region's future development. This is not the fault of the transportation planners. A review of available literature reveals very little beyond general statements of the guiding concepts for development of the Nation's Capital and its surrounding environs as a regional urban complex. For example: is the Center City to be devoted in large measure to the role of Government and the pursuit of commerce and industry; or is it to remain in part a community of homes where people shall live and work? What kinds of people shall these be? Precisely how can the beauty and dignity of the Nation's Capital receive paramount consideration in the context of regional growth and development that anticipates a regional population of about 4 million by 1985?

As the region expands, precise definitions of controlling objectives must be formulated and updated to provide a more intelligent basis for guiding the development of transportation systems -- and for preserving the excellence and the unique quality of the Federal City as an urban environment.

Since the millennium, in the form of precise definitions of goals, has not yet arrived and, practically speaking, is not likely to arrive for a long time, if ever, how are we to face the problem of meeting very real needs for transportation in the meantime?

One way of dealing with this dilemma has been to ignore the problem in its broadest scope and instead, to rely simply upon projections of traffic demands as a decision-making tool for highway development. This is not a very good solution.

As has been stated by consultants to the District Highway Department on traffic planning for the North Central Expressway (Wilbur Smith & Associates and Alan M. Voorhees and Associates): "In themselves, traffic assignments do not demonstrate the 'need' for transportation improvements. Rather, need largely reflects the metropolitan community's attitudes and policies regarding levels of transport service as they relate to other facets of metropolitan growth and development."

The underlying planning assumptions on population, employment and land use are dated and contain many uncertainties. The data base and assumptions with respect to transportation behavior and future community values which underly forecasts of future movement of people and goods contain substantial shortcomings that are characteristic of any attempt to define the functioning of complex urban patterns and projecting their long-term futures. Consequently, the assumptions which underly the planning of highway facilities for the region and the results they produce should be viewed with "exceeding caution." In the absence of explicit community decisions on urban form, we must not be deluded into thinking that the community's decision-making process on transportation project alternatives can be resolved by a narrow evaluation of the validity of traffic forecasts. Decisions must not be made by policy officials on the basis of materials resulting from debates over what should or should not be incorporated into a traffic model. All too often, unfortunately, this is the level of public debate on highway location decisions.

In the real world, where we have not achieved precise formulations of long-range goals but where decisions to meet pressing needs must be made, a strategy for the selection of projects must guide our actions. The strategy must help to meet clearly demonstrated needs but it must not push us beyond hat point. This, then, is the essence of it: it must meet clear and present needs but it must not attempt to meet demands which may arise in a future way of life but which we can anticipate only in dim outlines and projections.

What this strategy means, in terms of the current controversy over the Three Sisters Bridge and I-266, is that decisions cannot be delayed indefinitely while we await the formal expression of community goals, but neither can technical formulae which were established only as guidelines for the policymaker be allowed to dictate the solution. Disapproval of the Three Sisters Bridge as part of the Interstate System will certainly neither destroy nor damage irreparably other components of the highway program or the underlying planning assumptions which have led to their adoption, nor does disapproval today rule it out for consideration at some future time when needs become more pressing. On the other hand, approval of this project, in large measure, on the basis of projections of traffic demand, postulated for a 30-year period, without a clear understanding of the project's wide-ranging and irrevocable consequences for both the future of transportation in the Central City and the achievement of other community goals, is unthinkable. Decision makers are often required to take significant steps of which the long-range consequences are unknown; this is an unpleasant reality of the public decision process. To take such a step when it is clearly not required would be foolhardy.

In reviewing this project, the Department has tried to go beyond evaluating the accuracy of traffic forecasting as justification for additional radial corridors and bridge crossings into the Central District of Washington. The Department's review has recognized that plans and proposals are not static, traffic forecasts made for purposes of highway design are not immutable, and that alternatives to take account of social, environmental, cultural and historical considerations -- which are paramount considerations especially in the Federal City -- demand priority consideration in any decision.

FEDERAL HIGHWAY ADMINISTRATION REDRAFT

April 21, 1967

Attached for your signature are (1) an acknowledgement letter to Secretary Udall concerning the proposed tunnel study for the Potomac River crossing and (2) a memorandum to the Federal Highway Administrator asking that a timely briefing be given you on this study.

Included as an attachment is a redraft of a letter by the Federal Highway Administration acknowledging Udall's letter and reporting on the progress of the study. The letter as prepared by the Federal Highway Administration does not in my view provide a balanced and dispassionate presentation. Its tone reflects a certain amount of irritation and some respects prejudges the results of the study. Therefore the redraft of this letter for your signature is in my view a more balanced response to Udall's request.

The memorandum to Bridwell will provide an opportunity to view the total controversy of I-266 which has been the source of national attention for about 8 or 10 years. I think that it would be difficult to decide on a bridge without deciding on the remainder of that Interstate route which in some respects is similar to the problems faced in other areas on river-highway locations. If the Federal Government plans to provide a constructive program for beautification of the Potomac and preservation of its scenic and historic values I think that you have a right to review this controversy in terms of a total solution.

Paul L. Sitton

UNITED STATES GOVERNMENT — U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

Memorandum

8/67 (1)

TO : Alan S. Boyd
Secretary, Department of Transportation

DATE: Aug 3, '67

In reply refer to:

FROM : Lowell K. Bridwell
Federal Highway Administrator

SUBJECT: Interstate System - Washington Metropolitan Area

This memorandum is to confirm my recommendations and points of view regarding the discussion held July 27 on the Interstate System in the Washington metropolitan area.

The question before us was whether or not Interstate Route 266 is needed as a part of the highway system in the Washington metropolitan area. This question resulted from earlier communications of May 4 to Mrs. James H. Rowe, Jr., Chairman, National Capital Planning Commission, and Stewart L. Udall, Secretary of the Interior. These letters were in response to a request to you to make a feasibility study of a Potomac River tunnel crossing in the Key Bridge - Three Sisters area and compare it with a proposed bridge crossing of the River. The response had the effect of raising the question because the letter to Secretary Udall stated:

> "Within the narrow context of the question posed by your letter (i.e., an evaluation of desirable alternatives for a bridge or tunnel at the selected site), I concur with the conclusions of the feasibility study that a bridge is the better alternative."

The implication of the above quoted portion of the letter was further emphasized during the meeting of the National Capital Planning Commission on May 4. During the course of the discussion, Mr. Mackey said:

> "He (Boyd) addressed himself only to the moral (harms) question of a bridge versus a tunnel and did not intend to pass judgment on the question of bridge or no bridge. I think

that it is probably safe to assume that that is a fair question that would go into the review of a request for a grant of federal money for a proposal of this sort.

"Under the charge which we have, I don't think you can confine our review in such a way that we wouldn't get into that question. That is the intent of the Secretary's letter."

These statements before the National Capital Planning Commission caused considerable confusion because Commission members had not thought the question of crossing versus no crossing was any longer before them in their advisory capacity. They knew that this question already had been settled by the official and positive action of the District of Columbia Commissioners, the State of Virginia, the Bureau of Public Roads, and the Congress.

It should be noted that no official nor responsible unit of Government or organization has presented any evidence which cast doubt on the traffic need for Interstate Route 266.

In the process of considering the need for I-266, we also considered the following additional segments of the Interstate System:

South leg of the inner belt from the District side of the Theodore Roosevelt Bridge to 14th Street.

70-S from its intersection with I-95 in northeast Washington to the outer belt.

The north leg of the inner belt from the 26th Street interchange of I-66 to its interchange with the middle leg (I-95) of the inner loop.

It was my strong position and recommendation that we go forward as diligently as possible to construct the entire Interstate System as designated in the metropolitan area.

The decision to eliminate all but the north leg of the inner loop and add to the system a route from the outer belt along the north edge of the Potomac River to the 26th Street interchange of I-66 did not take into account any analysis of traffic requirements and effect upon systems operation and ignored the several criteria which, as a matter of law or policy, the Department of Transportation requires every State to meet.

In my opinion, the action did not consider the following sections of law:

1. Section 134 of Title 23 which states that the Secretary shall not approve "any program for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing comprehensive transportation planning process carried on cooperatively by States and local communities in conformance with the objectives stated in this section."

2. Section 101 (b) which states that it is the intent of Congress that "local needs, to the extent practicable, suitable, and feasible, shall be given equal consideration with the needs of interstate commerce."

3. Section 103 (d) which states that the routes of the Interstate System "shall be selected by joint action of the State highway departments of each State and the adjoining States, subject to the approval by the Secretary as provided in subsection (e) of this section."

4. Section 109 (b) which says that standards for the Interstate System "shall be adequate to enable such project to accommodate the types and volumes of traffic anticipated for such project for the twenty-year period commencing on the date of approval by the Secretary" and that "the Secretary shall apply such standards uniformly throughout all the States."

Item 4 above has specific application to the decision to approve as a part of the Interstate System a parkway type highway from the outer belt to 26th Street along the north bank of the Potomac River. Any rational assignment of traffic to that corridor would require more than a four lane facility under the 20 year statutory requirement and the decision to build it to parkway type standards such as have been applied to the portion already constructed by the Park Service does not satisfy the Interstate System standards which the law says shall be applied uniformly throughout all the States.

I am sympathetic with the concern over the cost of the south leg of the inner belt from the Theodore Roosevelt Bridge to 14th Street. However, we presently face and will continue to face similar kinds of problems in many urban areas as the Interstate System progresses towards completion. A decision to drop a segment of the System merely because it seems to have a high price tag does not take advantage of the potential of a systematic analysis or evaluation of the cost as compared with community (not highway user) benefits.

I also am sympathetic to the view point that the proposed construction of I-70S on Baltimore & Ohio right-of-way through northeast and northwest Washington would be costly in order to obtain a facility which might have to be four lane in part. Such a finding, however, does not look at other alternatives or other potential solutions.

The decision to leave on the System the north leg of the inner belt as some undefined connection between the 26th Street interchange and I-95 on the ground that this is under study and is subject to analysis is not consistent with the type and degree of analysis which went into the above described decisions.

The entire process by which these conclusions were reached does not square with DOT's stated policies that transportation will be considered as a total system and will be carefully analyzed both from a standpoint of total transportation requirements and in support of other public policy goals and objectives.

You stated at a staff meeting recently that the only things anyone of us brought to the Department of Transportation were our shoes and clothes. That's not accurate.

Some of us, including yourself, brought to the Department, at least a year's hard work, dedicated effort and an enthusiasm for a whole new approach to transportation and its part in society.

I have been trying to apply this concept to the highway program.

For example, we are very close to approval of a contract for the Baltimore Concept Team after our intervention to save it from almost certain failure because of squabbling among the various factions, disciplines and units of government.

We are moving forward towards a solution to the problem in New Orleans which will provide the City with major aesthetic, economic and other social improvements in addition to a highway facility despite the fact we were told by both sides in the controversy that it couldn't be done.

We are moving nicely towards a negotiated solution to the Crystal Springs (Junipero Serra) problem so that both the City and State can agree without losing face in what otherwise had become a complete stalemate and recreational opportunities for the entire area will be enhanced.

The problem of the Inner Belt in Boston, although at an early state, presents an outstanding opportunity for combining improved transportation with community development.

Each of these examples can be used as pilot or demonstration projects which will give substance to the goals I thought you were trying to achieve.

If the decision stands on the Interstate System in Washington, we will be, in my opinion, setting back the whole concept in the following ways:

1. Assuming any of the above pilot projects are successful, we will be denying the opportunity of application of them in Washington.

2. We will be denying to Washington needed highway facilities without offering any alternatives.

3. We will be offering a precedent to opponents of urban limited access highways in cities throughout the country -- again without being able to offer any alternatives or any meaningful understanding of the consequences.

4. We will be denying to Washington and potentially other cities the opportunity of using major investments (for highways) as a catalyst for urban aesthetic, recreational, cultural, and other forms of social improvement.

I hope this in some measure explains my position and my continuing recommendation that the designated segments of the Interstate System not be deleted in the Washington metropolitan area.

(3)

Aug. '67
Prepared by Broadway(?)

The following recommendations were made to Secretary Boyd and his staff July 27, 1967 concerning the Interstate System for the Washington, D. C. area:

(1) Interstate 70S - This routing to be removed from the Baltimore and Ohio Railroad corridor in north-central Washington and to be replaced by a routing on the north bank of the Potomac River between I-495 at the Cabin John Bridge and I-66 at the Theodore Roosevelt Bridge.

(2) Interstate 266 - To be removed in its entirety from the Interstate System at this time.

(3) Interstate 695 - From I-66 at the Theodore Roosevelt Bridge to I-95 near the 14th Street Bridges to be removed from the Interstate System.

(4) Interstate 66 - To be retained as a connection from the Theodore Roosevelt Bridge to some point on I-95 between K Street and V Street to the north, with the exact routing subject to the results of studies now underway by the District Government.

(5) The remainder of the existing Interstate System in the District of Columbia to be retained as presently designated.

These recommendations were premised on the need to break a combination of situations which at present have created an impasse; and these not being likely to be changed in time to permit proceeding with the presently designated system, make it necessary to devise an alternately acceptable system package that will still render needed service, be within the law and financial capability of the program, and probable of execution.

(more)

Accepting this premise, it is extremely important to provide a connection which will utilize the work already completed on the Georgetown waterfront and provide a means by which Federal highway funds can assist in the further redevelopment of the waterfront. This was one of the reasons for recommending inclusion in the System, the north-bank connection from I-495 to I-66 of the relocated route 70S, listed as (1) above, and closely related to and a part of (2). There has been dissatisfaction with the Baltimore and Ohio corridor for I-70S. The only things that can be accomplished there will still be inadequate, and expensive, and will duplicate the corridor service to be provided by the currently planned rail rapid transit project. This makes desirable the abandonment of I-70S in this particular location, which simultaneously will extinguish critical problems related to displacement of many minority families. This was a second factor in recommending the placement of I-70S on the north bank of the Potomac so that some substantial measure of freeway service could still be provided to northwest Washington. A freeway in the northwest area and a mass transit facility in the northeast area of Washington more appropriately conform to the types of user service required in each corridor.

The recommendation for deletion of the I-695 segment reflected the serious concern with both the inordinately high cost of the long tunnel facility and with the inadequacy of a tunnel as a proper traffic connector in this very special area. A tunnel would deprive 100,000 persons daily of one of the most enjoyable and inspirational views in the city - or the world.

While not recommended specifically in the discussion, it is intended that the design for I-70S in the Three Sisters' area and for I-66 in the Spout Run area of Virginia both permit eventual construction of a Potomac River bridge which all available data indicates will be needed - along with additional river crossings - by the time when the Washington area population reaches its predicted four million figure in about 20 years, or sooner.

(more)

These recommendations on the Washington, D. C. Interstate System reflect a continuing effort to adapt Public Roads route location processes to the special situations that exist in large cities while still creating fully acceptable and serviceable transportation systems. Obviously a new bridge across the Potomac River in the Three Sisters' area, a connection through northwest Washington in the Wisconsin Avenue corridor, and a surface connection from the Theodore Roosevelt Bridge (I-66) to I-95 would each provide much needed traffic service. These elements of a system cannot be built at this time and under current realities of the situation. It seems desirable then to make an effort to evolve some other system that is compatible with the realities of the Nation's Capital today, and which will provide a high measure of service and be possible of integration into future growth possibilities.

To accept something other than the typical Interstate standard cross-section for a parkway on the north bank of the Potomac does not of itself make a less perfect solution to the traffic problem for the reason that a properly-designed parkway will be able to carry a heavy rush-hour flow of passenger cars safely and quickly, while providing in addition to simple traffic service, a park-like setting for enjoyment by both rush-hour as well as other than rush-hour users. There is little if any urgent need for a truck corridor down the Potomac in this particular area. The heavy traffic is mostly from residential areas to downtown with little or no industrial or commercial activity to be serviced, once the Georgetown waterfront is rehabilitated as described below. This opportunity to provide a pleasant park-like atmosphere for both commuter and park users is an important intangible benefit and advantage should be taken at this opportunity because it is so seldom available. Continuing this route via the present Georgetown-Whitehurst Freeway on an elevated structure designed to be compatible with the area, will also permit clearing out and developing the riverbank into a needed waterfront park area - using the highway program as the principal catalyst and source of funding.

These revisions conform in all respects to the statutory requirements for a connected Interstate giving equal consideration to the needs of local and Interstate traffic, the types and volumes thereof, and the geometric standards to be followed; while being properly responsive to the several new requirements concerning urban planning, environmental aspects, funding capability, and completion by 1972 or thereabouts.

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

(14)

DATE: August 8, 1967

In reply refer to:

(2)

SUBJECT: Interstate System in Metropolitan Washington

FROM: Deputy General Counsel, TGC-2

TO: Assistant Secretary for Policy Development, TPD-1

You asked for some brief notes on the sections of law cited in Lowell's memorandum of August 3 concerning the recommendations to the Secretary dated July 27. In summary, I do not believe these sections demonstrate any illegality in those recommendations.

23 U.S.C. §134 does not require the Secretary to approve specific highway proposals as part of the Interstate System (e.g., I-266, I-695), even if they are the product of a "continuing comprehensive transportation planning process." It only says that the proposals he does approve for urban areas must meet this requirement. Therefore, 23 U.S.C. §134 is applicable only to the project approved, i.e., 70-S along the north bank of the Potomac River to Georgetown. This highway appears to be consistent with the "continuing comprehensive transportation planning process", having been a part of area highway plans since it was first authorized in 1930 (Capper-Cramton Act) and designated as the George Washington Memorial Parkway in all recent planning. There may be a question under 23 U.S.C. §134 if the highway is an "elevated structure" along the Georgetown waterfront. As far as I know, none of the local planning groups contemplate an elevated highway in this area.

23 U.S.C. §101(b) does state that local needs shall be given equal consideration with interstate commerce needs, but it puts this consideration into the context of a statutory direction to use existing highways along Interstate routes to the extent practicable, suitable, and feasible -- which is a rather different context from the one Lowell implies.

23 U.S.C. 103(d), regarding the selection of Interstate routes by joint action of the States (D.C.) and adjoining States, subject to the approval of the Secretary, must be read in context with §103(c), which empowers the Secretary not only to approve designated portions of the Interstate System

bmitted to him, but also "to require modifications or revisions thereof." This substantial grant of power is basically what is being exercised in this instance.

23 U.S.C. §109(b), regarding the uniform application of geometric and construction standards for the Interstate System, and the basing of those standards on twenty-year traffic forecasts, expressly provides that Interstate standards may contemplate as few as four traffic lanes. In this connection, I assume that projections of future use of the rerouted 70-S connection are based on the assumption that no truck traffic will be permitted on the portions which pass through park land purchased with Federal funds exclusively for parkland use. (There is no reason why an Interstate route could not be a parkway, excluding trucks. The Theodore Roosevelt Bridge is an Interstate route, but carries no trucks.)

The decisions of the Secretary recommended in the meeting of July 27 can be phrased in terms such as "I am prepared to approve . . . "and formal approval would be given only when conforming proposals are cleared with the local agencies and formally submitted. This would take care of any technical objections implicit in the sections of law cited by Lowell regarding criteria to be met before formal approval is given.

Caveat: As you requested, the foregoing is addressed only to the legal provisions cited by Lowell. I am not passing a legal judgment on the recommendations themselves.

R. Tenney Johnson

R. Tenney Johnson

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

(16)

DATE: December 4, 1967

In reply refer to:

SUBJECT: The Authority of the Secretary to Deny a Proposal for the Construction of the Three Sisters Bridge

FROM : General Counsel

TO : The Secretary

You have asked whether the Secretary is legally authorized to deny a proposal seeking participation of Federal funds for the Three Sisters Bridge. Based upon the facts you have related to me, it is my opinion that there are two independent bases for such a denial.

1. Section 109(a) of Title 23, U.S.C. provides that:

> "The Secretary shall not approve plans and specifications for proposed projects on any Federal-aid system if they fail to provide for a facility (1) that will adequately meet the existing and probable future traffic needs and conditions in a manner conducive to safety, durability, and economy of maintenance; (2) that will be designed and constructed in accordance with standards best suited to accomplish the foregoing objectives and to conform to the particular needs of each locality."

It is my understanding that the Three Sisters Bridge Proposal in its present form will not adequately meet existing and probable future needs in that its primary effect at the present time will be to transfer a traffic overload from one side of the Potomac to the other without significant reduction in total origin-to-destination time for the great bulk of the peak-hour traffic. Nor has it been established, moreover, that the proposal will "conform to the particular needs of each locality" concerned.

2. Even were the requirements of Section 109(a) satisfied, as they are not at the present time, the Secretary must still evaluate the proposal under Section 4(f) of the Department of Transportation Act. That section provides:

"* * * After the effective date of this Act, the Secretary shall not approve any program or project which requires the use of any land from a public park . . . unless (1) there is no feasible and prudent alternative to the use of such land . . . ."

Under Section 4(f) the Secretary may not approve a project requiring the use of parkland, as the Three Sisters Bridge proposal does, without first determining that there is no feasible and prudent alternative to the use of parkland. As we understand the proceedings to date, no evidence exists upon which the Secretary could base such a determination. Alternative proposals have been made which would appear to be feasible and prudent and to serve the needs of the communities affected at least as well as would the Bridge proposal. Unless and until evidence is adduced to demonstrate that such alternatives are not, in fact, feasible and prudent, the Secretary is obliged not to approve the proposal.

John E. Robson

12/18/67 (17)

Dulles Access Road and the Three Sisters Bridge

Deputy Under Secretary

Secretary

On 13 December, the Washington Post quoted Pete Quesada as saying that when the site for Dulles Airport was selected ten years ago, officials counted heavily on two new bridges across the Potomac to insure speedy access to it. According to the Post, General Quesada identified these two bridges as the Theodore Roosevelt Bridge and another, then expected to be constructed in the area of the Three Sisters Islands. The Washington Post article is Attachment #1.

I have done some research on the subject of the Dulles Access Road and its links to Washington, which I believe will be of interest to you. On August 14, 1958, the Civil Aeronautics Administration announced that it would hold public hearings on the location of the access road to serve the new Washington international airport at Chantilly, Virginia. These hearings were conducted jointly by Public Roads and CAA to determine the views of public officials and other citizens of the area on alternative access road locations. A copy of a press release announcing these hearings together with a map identifying the alternative routes under consideration is Attachment #2.

My staff have examined the hearing record and summarized discussions on the subject of the Dulles Access Road's connection to bridges leading into the Washington area. That excerpt is Attachment #3. In summary, at no point during the course of those hearings was there any suggestion or reference to any relationship of the access road to a crossing of the Potomac at or near the Three Sisters Islands. There were references, as the attachment points out, to the future need for a second access road which would be serviced by another bridge, one of which mentioned Arizona Avenue, one of which mentioned a "straight line across the river" and others which were even less specific.

At that time, four alternatives were under consideration for Interstate Highway 66. These alternatives are shown in ink on the attached Map I and would cross the Potomac River at either the Constitution Avenue bridge site (later changed to Theodore Roosevelt Memorial Bridge) or at the Arizona Avenue site. The Arizona Avenue crossing was a possible alternative because I-70S was still on the map as a Potomac River shoreline route from the outer Belt to the CBD. The map does not give any indication of

plans for a Three Sisters Island crossing. The Dulles Access route corridor finally selected (alternative B) was described in the following terms by the engineering consultant engaged to design the airport and its access routes:

> 'While requiring the construction of additional mileage over and above all the other corridors it provides the shortest distance to the Constitution Avenue Bridge and the Washington National Airport while increasing the distance to the Cabin John Bridge. This corridor has in its favor the distribution afforded by the circumferential highway both north and south and can give future distribution to the east when the location of Interstate Highway No. 66 is decided and a connection thereto can be provided."

Ann Wilkins, Chairman of the Fairfax County Board of Supervisors testified at the hearings that an 'Arizona Avenue bridge might be a possibility to serve the second airport access highway when a second route becomes necessary... In addition, she made reference to conclusions by the Under Secretary of Commerce for Transportation and others in Commerce as to the need for two access roads.

The Maryland-National Capital Planning Park Commission statement included the following remark: 'The Cabin John Bridge will be of vital importance to residents of Montgomery County as well as Northwest Washington in reaching any agreed-upon route to the new Chantilly Airport, as well as the new Interstate Route 66.'

These hearings and exhibits make the following conclusions quite clear:

--- I-66 and its potential connection to the proposed Constitution Avenue bridge across the Potomac River was the assumed and critical connection between Dulles and the central city.

--- Maryland and Northwest Washington service to Dulles was to be met by the proposed Cabin John Bridge and the Outer Belt circumferential -- both still on the drawing board.

--- The George Washington Memorial Parkways on both sides of the river were considered as auxiliary service to Dulles (Restriction on truck traffic prevented their use as the primary connector).

--- Reference to an additional Potomac bridge crossing (in addition to the proposed Cabin John and Constitution Avenue bridges) to service Dulles was made only in the context of the need for a future second access road which would possibly parallel I-66 in another corridor and would cross the Potomac at the Arizona Avenue site.

We have also examined the December 1957 Site Selection Study, "Additional Airport for Washington, D. C." prepared for the White House by Greiner-Mattern Associates, sometimes referred to as "The Quesada Report." This report served as the basis for the determination which was made at that time to shift the proposed international airport from Burke, Virginia, which had earlier been selected as its site, to Chantilly, Virginia, which was the site ultimately chosen for the airport. Nowhere in that report is there anything to indicate that the choice of the Chantilly site was predicated upon a bridge to be constructed at or near the site of the Three Sisters Islands.

There is no evidence of any consideration being given to a Three Sisters Island crossing as a critical service route for Dulles. I-266 as presently proposed is merely an adjunct of the I-66 service originally intended at the Constitution Avenue site, and in no way can be considered the second route service referred to in connection with an Arizona Avenue bridge crossing. Those who are justifying the Three Sisters Bridge on this basis are in error and obviously have ignored the systems concepts involved in weighing alternatives. It is this form of generalized and cloudy reference which has created the distrust in the region as to the objectivity with which the highway program has grown and developed over the years.

You may wish to bring this personally to General Quesada's attention. I doubt if the mistakened impression created by the press stories can be corrected.

Paul L. Sitton

Attachments

AWS:jes:12/18/67
cc: Exec. Sec. (3)
Mr. Sitton

(24)

6040.2 (c)

MEMORANDUM FOR

Honorable Frederick M. Bohen
Staff Assistant to the President

SUBJECT: D. C. Highway Controversy

This memorandum summarizes the current status and outstanding issues faced by Mayor Washington in reaching decisions on the District highway program. You have a draft statement from Mr. Fletcher proposed as a joint issuance by Secretaries Boyd and Udall and the Mayor. I have attached a prior draft which the Department submitted to the Mayor for his consideration.

The major differences are as follows:

1. D. C. wants to proceed with construction of I-266 and Three Sisters Bridge with urban design study of how to handle the Georgetown waterfront; whereas, DOT questions the bridge and I-266 as a given factor and believes they should also be re-evaluated.

2. D. C. would proceed with the tunnel (South Leg of the Inner Loop) under the Lincoln Memorial. DOT is opposed at this time to final commitment to a facility in the corridor.

Except with respect to these issues, there are no major points of disagreement.

Background

The current highway controversy is of long standing. As early as 1960 the proposed Interstate program proposed by D. C. Highway Department came under strong local attack by District citizen and organizations

Presidentially-appointed members

concerned with historic character of the Capital City. The major official opposition has been centered in the ~~public membership~~ of the National Capital Planning Commission, however, others within the Administration (including White House) also have been concerned about highway impact on the city. The issue is not just a question of whether the highway system will or will not meet transportation needs for the region. More basic is the question of the future growth and development of the city as conceived by the policy makers. The District has with cause been concerned over inadequacy of revenues to support construction and maintenance of needed highway facilities. The 1956 enactment of the Federal-aid Interstate program with its 90 percent Federal contribution went far towards providing the financing base for capital improvement. As a result, the District has tended to capitalize on utilization of Interstate type facilities to meet future traffic demands. (This is true of other cities.)

The critical projects upon which controversy has primarily focused are the Three Sisters Bridge, the Potomac River Expressway, the North and South Leg of the Inner Loop and the North Central Expressway. Other components of the Interstate program have proceeded with relatively less controversy. Decisions on the above named projects are critical in deciding the kind of highway service into D. C. from Northern Virginia and Montgomery County.

Opponents of the present highway program hold that highway development should be held to the minimum and that rapid transit program should be accelerated. They argue that the burden of proof for need should be upon the highway department and that the availability of Federal-aid is not the principal justifying principle. The proponents of the highway program argue that the present system is a minimal system, that it will be needed as well as the presently proposed mass transportation system being planned for the region and that by law the Interstate components must be designed to 1990 needs. The subjective question of establishing needs is a major area of debate.

Status of Current Controversy

In May 1967, the National Capital Planning Commission requested the Secretary of Transportation to re-evaluate the need for I-266 (including Three Sisters Bridge) in the light of Section 4(f) considerations which

became effective April 1, 1967, with the creation of DOT. Section 4(f) states that projects should not be approved which require the use of any land from a public park, recreation area, wildlife and waterfowl area, or historic site unless (1) there is no feasible and prudent alternative; and (2) necessary actions are taken to minimize harm to such areas. I-266 (including the Three Sisters Bridge) is a classic case of highway use of such areas. This Interstate facility (6-lane bridge -- 8-lane freeway) will encroach upon Spout Run Parkway, the George Washington Parkway, the Chesepeake and Ohio Canal, and the Georgetown waterfront which is an historic site. In addition, it will have a major impact impair on the scenic qualities of the Potomac River gorge and its shoreline extending upstream from the monumental area of the District.

The Secretary of Transportation has indicated by implication that there has been inadequate review of "feasible and prudent alternatives" (4(f) considerations) and that a report is pending before the Secretary of the Interior to do something about the Potomac (the study was made at the initiative of the President) and has questioned planning assumptions for the Three Sisters Bridge, proposal. Attachment 1 is a review of past planning studies concerned with Potomac River crossings which underscore questions raised by the Secretary.

In reviewing this project, the Secretary also raised substantial questions about other components of the Interstate program as indicated in his testimony before the House Public Works Committee -- shown as Attachment 2.

The Secretary's public pronouncements on his position resulted in strong pressures from highway interest groups, and Maryland and Virginia area Congressmen to proceed with the System as proposed by the D.C. Highway Department. Through representations they persuaded the House Public Works Committee to hold hearings last December. The concern of the suburbs is self-motivating. They wish to accelerate highway construction to the central city and real estate developers have concern over location of Interstate freeways.

Chairman Fallon of the Public Works Committee subsequently by letter directed the Secretary of Transportation to approve certain actions which the Committee approved. Note that the House District Committee was

not involved. A copy of Congressman Fallon's letter to the Secretary and the Secretary's reply are included as Attachment 3.

The Secretary has repeatedly stated in the past that the Department relies upon local community decisions to guide allocation of Federal grants to plans and programs for future development of major urban areas. He has stated that the Department will support such locally formulated programs to the extent permitted by law. The Secretary believes that this same procedure must be followed in Washington and he will support the Mayor's decision as the official head of the District Government. However, the Secretary cannot abdicate his statutorily assigned responsibilities in final approval of projects and to the extent that proposals by the Mayor are inconsistent, these inconsistencies must be clearly spelled out before decisions are finally made.

"official" transportation agency of D.C. Government not the Mayor but NCPC!

Department Views on District Highway Program

The Department has taken exception to the proposed highway program for the following reasons:

1. There is substantial opposition in the District to present highway plans of the District Highway Department with particular reference to facilities that pass through low income areas. In addition, the Arlington County Board, conservationist and historic preservation groups also are strongly opposed to present plans for the Three Sisters Bridge and I-266.

2. The progression of events leading to the proposed highway program reflects a patchwork of decisions which DOT believes (see Secretary's attached testimony) from a systems standpoint fails to meet the needs for which specific projects are being designed and developed.

3. Growing nationwide public concern and Federal policy on urban problems have necessitated Administration emphasis on steps to assure that consumer interests, environmental impact and future urban development requirements be viewed in a new light. This is particularly underlined by the statutory mandate included in Section 4(f) and 4(g) of the DOT Act. The DOT is concerned

that the Administration's creditability on its intent to respond to the urban crisis in transportation will suffer if the Federal Government is unwilling to apply the same yardstick in the Capital city. How can the President lecture mayors on meeting more responsive solutions if the same standards are not made to apply in D. C. (See attached articles of New York Times and Washington Post).

4. DOT supports the thesis of substantial need for additional highway development within the District. However, satisfactory solutions that consider all social and environmental values require that adequate time be provided for construction decisions. The problems which the Mayor seeks to resolve in connection with projects in question along the Potomac are just as critical as those which would be resolved through the urban design approach for the Inner Loop and from a logical viewpoint should not be handled separately.

5. A major element of concern is the planning philosophy upon which the District highway program is based. In part, the demand for another Potomac River central city crossing and additional urban freeway laneage in D. C. assumes substantial traffic movement with both origin and destinations in the suburbs. This raises a fundamental question of whether the District Government with limited resources and land area should finance the incremental costs of major highway facilities whose designs are adjusted to service criss-crossing movement of traffic which has neither origin or destination within the District. The latest forecast upon which the District Highway Department bases its justification for an additional Potomac River crossing assumes a substantial traffic load of this nature. Where appropriate this traffic should be handled as circumferential traffic and not through traffic using central city arterial facilities.

6. The Department agrees that the Mayor has substantial displacement problems in the North Central corridor and supports his efforts to resolve this issue.

7. DOT has serious questions on the expansion of freeway radials to the downtown area due to their impact on an already vexing problem -- growing traffic congestion which cannot be resolved by more freeways. In this regard, the Department has suggested that decisions on the Three Sisters Bridge as a central city bridge should await future needs as the region grows. At this time, another central city bridge is not required. It may be required in ten years -- although present forecasts do not support it. It should be remembered that Federal-aid highway funds in substantial amounts will be available to finance future development -- the program does not end with present projects. In other words, we do not need to complete a highway system by 1972 which will serve all of our 1990 needs. In our view, it would be unwise to proceed with construction of a bridge based upon marginal and unsure needs projected today for 1990. On an interim basis and for the foreseeable future, the completion and tie-in of I-66 to the six-lane crossing at Theodore Roosevelt Island can meet traffic service requirements for Northern Virginia.

8. In summary, what we are taling about is the extent to which the highway system should be designed to meet peak hour traffic requirements -- primarily work trips. The Secretary also believes that no decision on I-266 should be final until a clearer picture is developed on whether the North Leg of the Inner Loop can be completed. If a decision is reached on I-266 to proceed, the District has, in effect, made a decision to proceed with a North Leg in some form because the heavy traffic volume generated on I-266 will have to be dispersed or continued through the North segment of the central city. This project will involve substantial disruption and relocation of homes and businesses.

Problems Faced by Mayor Washington in Reaching A Decision

The Mayor is under pressure from the business community (The Metropolitan Board of Trade and the Federal City Council) from area Congressmen, and from highway interest groups to proceed with the

highway development plans which the District Highway Department has been promoting. Heavy pressures also have been exerted on the Department to secure its acquiescence. Also, Congressman Natcher has threatened to veto proposed development funds for the regional transit system unless the highway program is allowed to proceed without further restrictions. The Public Works Committee has also threatened to introduce legislative authority to construct a Three Sisters Bridge unless the District proceeds with the project.

On the other hand, the Mayor also is under heavy pressure from District citizen groups including those in the Northwest and the low income area of Northeast Washington through which the North Central Freeway will pass. They wish a delay in major highway construction until a reappraisal of the total system has been completed. The City Council has also expressed concern over present highway development plans. National conservation groups also have mounted a nationwide campaign against the Three Sisters Bridge and its implications for Section 4(f) considerations. The Arlington County Board also has contacted the Department (and I believe the Mayor) asking that no decision be made which does not consider their interest. They are opposed to I-266. Two court suits also are now pending which, if successful, could substantially delay these components of the District highway program. (one by the Arlington County Board and one by citizen groups)

With respect to the Three Sisters Bridge, the District and the Federal Government have a timely opportunity to accomplish an upgrading of the urban stretches of the Potomac shoreline. Development of its historical commercial and recreational potential has been limited in the past by the presence of a freeway and industry. Reconstruction of the Whitehurst Expressway as an 8-lane freeway at this time could substantially deter desirable development of this area. Future phase out of heavy industry in the area is a foreseeable possibility. The role of Interior is critical in this controversy. However, it is not clear to DOT what the long-term plans of either the District or Interior are for implementation of the "Potomac" Report now before the Secretary of the Interior.

Any decision will be a difficult one. If the approach suggested by Mr. Fletcher's draft is followed, loud protest will be heard by citizens of both the District and Arlington County and national conservationist groups. However, if the Mayor does not proceed as he has proposed but follows the course of action proposed by the Department, there will be a number of unhappy area Congressmen, as well as the House Public Works Committee, which has been pressing for an accelerated District highway program.

PLSITTON:kam:jes:2/7/68
cc: Mr. Sitton
Exec. Sec.

Paul L. Sitton

Form DOT F 1320.1 (1-67)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

DATE: FEB 7 1968

In reply refer to:

SUBJECT: Subsequent Action on D. C. Highway Program

FROM : Deputy Under Secretary

TO : Secretary

The White House has scheduled a meeting on the District highway program involving Cabinet officials and Mayor Washington for Friday at 4 P.M. This memorandum and the following listed attachments are to brief you for this meeting:

1. Fletcher's draft statement.

2. List of major points in support of your position.

3. Review of past planning studies and outline of their findings, recommendations and conclusions with respect to Three Sisters Bridge.

4. An analysis of the 1990 forecasts done by Alan Voorhees and Associates for WMATA as a basis for mass transit planning and their implications for the District highway program. D. C. Highway Department has relied upon them for justification.

5. Report on cast of characters (i.e., who supports and who is against the highway program).

6. Updated briefing book with background material.

Comments on Fletcher's Draft Statement

I have reviewed the draft statement prepared by Tom Fletcher on the D. C. Government's proposal for resolving the highway controversy. He indicates that Airis will buy it. This means that Fletcher is unwilling to go along with any program change in which the District Highway Department will not concur. He also stated that he was keeping the Mayor informed, but I do not know the extent of the Mayor's involvement.

Following are the major points made by Fletcher and a summary analysis of each of them:

--Reference is made to recent studies indicating the need for the bridge.

As you know, the purpose for which the Three Sisters Bridge is being designed is inconsistent with earlier planning studies dealing with Potomac River crossing. As for recent studies, the 1964 Highway Department report has been rejected by at least three consultants, and the 1967 Voorhees Study, neither proves nor disproves a need for a Three Sisters Bridge.

--Reference is made to the role of the bridge in providing better access to Dulles Airport.

This, as you know, is a misleading argument, for the Roosevelt Bridge and I-66 will provide greatly improved access to Dulles. The construction of Three Sisters Bridge would be unlikely to decrease travel time to Dulles significantly below that provided by I-66.

--The assertion is made that Three Sisters Bridge will not displace families and businesses.

While true, this is irrelevant for the Bridge without I-266 is meaningless. I-266 will displace both families and businesses.

--Some mention is made of the probability of connecting the George Washington Memorial Parkway on the Maryland side with Chain Bridge.

The meaning of this is not clear, since it gives no indication of whether the Parkway will be completed below Chain Bridge. Does it mean there would be no further extension below Chain Bridge to tie into the proposed I-266?

--The paper proposes going ahead on the South Leg.

As you know, this proposal finds little favor with the Federal Highway Administration.

--The paper proposes going ahead with the East Leg as far as D. C. Stadium.

This proposal was acceptable as long as construction is made to complement the plans of the Interior

Department for development of a recreational area along the Anacostia River.

--Reference is made to a concept team effort on the North Leg.

Although the meaning of this is unclear, it appears that the need for the North Leg is assumed so that traffic using Three Sisters Bridge may be handled.

--Reference is made to efforts that will be undertaken to reduce the impact of displacement along the route of the North Central Freeway. Also a review will be made of the routing of I-70S and I-95 through D. C. and Maryland.

This is a rather vague promise which is unlikely to satisfy the Northeast community.

Summary of Staff Findings

Earlier you asked that a summary document on past planning studies of a Three Sisters Bridge be prepared. This is included in the package with study conclusions. It is clear that the present system concept of I-266 is foreign to highway development proposals recommended in the overwhelming number of planning studies. In fact, one must conclude that the studies, which recommend no additional central bridge crossing or radial corridors to the CBD, are dramatically inconsistent with the District Highway Department's proposal. In fairness it should be added that studies covered the planning periods up to 1980-85. D. C. Highway Department is now planning for 1990. Your position has been -- not that a bridge should not be built -- but that at this time the need for an additional central city bridge is not justified and that we should await development of future needs after the rail transit system is in place.

Further, the Highway Department has failed to answer questions concerning conclusion by past transportation planning studies on the need to facilitate traffic movement in areas up and downstream from the central city area. The philosophy seemingly espoused by D. C. Highway Department is to build central city facilities so long as there is congestion in the region. The result will be increasing traffic, growing congestion and growing long-term phenomena of suburban traffic traversing the inner city with neither origin nor destination in the District but which because of inadequate circumferential service has to rely upon heavily congested central corridors. Such a policy imposes substantial burdens upon the taxpayers of the District for highways which do not serve their needs.

The recent traffic forecast by WMATA supports this conclusion. It shows that without the 1990 projected traffic which moves across the Potomac and through the central city, on its Virginia to Maryland journey, the present bridge facilities plus improved public transportation should be adequate for the foreseeable future.

Suggested Courses of Action

In view of the Fletcher proposal for a District highway program, I suggest the following courses of action:

1. That prior to the White House meeting you discuss with Udall his long-term plans for the Potomac report and ask him to clarify his intention either to publicly support or oppose the position you have taken with respect to I-266 and the problems of the center city. (Section 4(f) requires his participation.)

2. That Bob Wood in HUD be requested to develop a position for HUD on the long-term consequences of the present highway program proposed by Fletcher in terms of the total impact on external non-highway considerations.

3. That you reaffirm to the Mayor your position and your concern for the future of the District of Columbia as it is portrayed in the Fletcher draft. You should stress your concern with its impact on the stability of the central city and its effects on the monumental, historical and recreational qualities of the District and the effect of the package upon the image that the D. C. Government conveys to the majority of its citizens.

4. That you make it clear to the White House that Arlington County (as represented by their Board of Commissioners) opposes the bridge, and that the Board should be involved in any final decision on I-266. In addition, people (all economic levels) of the District of Columbia as witnessed by communications to you and past history also strongly oppose, not only specific projects in the highway plan, but also the total approach which has been followed in developing them. You should also indicate, for those who are not aware of it, that nationwide concern with environmental impact is growing rapidly and is becoming a potent political rallying point.

5. That you indicate to the Mayor the relationship between the health of the business community and the quality of living conditions in the District. The health of the business community is in part due to the existence of large in-town communities -- Georgetown, Northeast, Southwest, Capital Hill, etc. Any policy which makes these less desirable areas has an effect upon the health of the downtown businesses.

6. That language in the Fletcher draft concerning the restudy highway locations in the North Central Freeway corridor will not

(in your view) assuage the strong emotions of area residents and could lead to further restlessness as we approach the coming summer.

7. That the President's program for this year gives heavy emphasis to urban problems -- including ghettos and improvement in the quality of our environment. The proposed decisions on the D. C. highway program contained in the Fletcher draft run contrary to this philosophy. There is no doubt that these decisions will be evaluated in the context of this Presidential emphasis. As a national issue a wrong decision could undermine public creditability on the willingness of the Administration to deal effectively with the problems of our cities. If we are not willing to start at home (in Washington) how can we lecture other cities on these same problems.

8. That you indicate to the White House staff that inadequate follow through has taken place with respect to the earlier directives of the President for an exhaustive evaluation in the approach in planning the highway program. The issues raised in the A. D. Little Report, the general concern, expressed by the Policy Advisory Committee, and the subsequent Hartzog/Duke/Fugate Agreement does not represent completion of the task assigned by the President.

Paul L. Sitton

Attachment

Transportation News Digest

DEPARTMENT OF TRANSPORTATION / OFFICE OF PUBLIC INFORMATION #148 July 30,1968

Post P.1

Senate Sends Roads Bill to White House

By Elsie Carper
Washington Post Staff Writer

The Senate gave final congressional approval yesterday to legislation extending the Federal interstate highway system and directing the construction of four freeway projects here.

The bill, which now goes to the White House, would require the city to begin work immediately on the Three Sisters Bridge, the Potomac Freeway along the Georgetown waterfront, the center leg of Inner Loop from the uthwest Freeway north to New York Avenue and the east leg along the Anacostia River to Bladensburg Road ne.

The city also is to study and to come up with plans in 18 months for the North Central Freeway, the south leg of the Inner Loop beneath the Lincoln Memorial and the Tidal Basin and the north leg, now proposed as a tunnel under K Street.

The Senate adopted the legislation, worked out in a House-Senate conference, by a roll-call vote of 66 to 6. The House gave its approval last week.

Sen. Jennings Randolph (D-W.Va.), Senate floor manager, called the measure the most significant highway bill considered by Congress since it started the Federal interstate system 12 years ago.

The bill adds 1500 miles to the planned 41,000-mile interstate network of highways and authorizes $21 billion for construction during the next five years.

Senate Majority Leader ce Mansfield (D-Mont.) ed for the conference agreement after receiving assurances from Randolph that the Three Sisters Bridge and its approaches would not now nor in the future encroach on Glover-Archbold Park.

Mansfield said he was concerned that traffic congestion from the bridge would be a temptation for highway builders to construct a road up the wooded park through Northwest Washington at a later date.

Randolph joined Sen. William B. Spong Jr. (D-Va.) in arguing that the bridge was essential to provide quick access to Dulles International Airport.

Sen. John Sherman Cooper (R-Ky.), who cast one of the six votes against the bill, said he opposed it partly because of the directive to city officials to proceed with freeway construction. He said it was a bad precedent for Congress to tell a city what to build and where.

"I oppose the idea of Congress arrogating to itself the wisdom of laying out a road system in the District of Columbia or any state," Cooper said.

Cooper conceded that there was little to be gained by rejecting the highway bill and sending it back to the House-Senate conference. House conferees, he said, "never showed the slightest indication that they would yield."

Much of the Senate debate was on a section of the bill that would give limited authority to the Secretary of Transportation to veto Federal highway projects anywhere in the country that infringe on parks, recreation areas, wildlife refuges or historic sites. Randolph told the Senate that the language of the bill strengthens the hands of the Secretary in protecting these areas.

The passage of the bill by the Senate with the strong directive to the city to proceed with highway construction gave no assurance that Congress will now free funds for subway construction.

The House deleted the subway money at the request of Rep. William H. Natcher (D-Ky.), chairman of the House District Appropriations Subcommittee.

Natcher said yesterday that he will not recommend the subway funds until the freeway system "goes under way beyond recall." He would not be specific as to what "beyond recall" meant, other than to say it meant "beyond any commission, any agency, any individual, any court."

The Three Sisters Bridge, the North Central Freeway and two other highway projects were halted last February when the U.S. Court of Appeals ruled that the plans were invalid because the District government had not held adequate public hearings.

The bill sent to the White House yesterday orders the projects constructed in spite of "any other provision of law, or any court decision or administrative decision to the contrary."

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BILL WOULD SHIFT SHIPS JURISDICTION

By EDWARD A. MORROW

A major change in the Merchant Marine Act that would transfer from the Maritime Administration to the Department of Labor the power to determine what constitutes a "fair and reasonable" labor contract settlement by subsidized lines has been proposed by Senator Warren G. Magnuson, chairman of the Senate Committee on Commerce.

In a strongly worded memorandum accompanying his bill, the Washington Democrat said that over the last four years the Maritime Administration's Maritime Subsidy Board had "by decision and threat" placed the nation's 14 subsidized lines in an "intolerable position."

The Senator declared that "an enormous financial cloud over the industry that is assuming alarming proportions must be dissipated promptly if the one viable portion of our merchant marine is to survive."

Wage Warnings Recalled

Senator Magnuson, who is one of the strongest protagonists on Capitol Hill for a strong merchant marine, noted that since 1964 the Maritime Administration had issued many threats that it would disallow the wage increases and fringe benefits won by maritime labor since that year. Labor costs were said to account for about 75 percent of the approximately $200-million spent on ship-operating subsidies.

Under the 1936 act, steamship operators who agreed to service routes deemed "essential" to the nation's foreign trade and agreed to man their vessels with United States citizens, the Government promised to equalize their crew costs by determing what it would cost foreign competitors to man their vessels. The difference between that amount and the United States crew costs would be paid to the subsidized companies.

In introducing his bill, Senator Magnuson said it now appeared that subsidy payments would fall "substantially short of parity, so much so that the financial integrity of some of these companies may be threatened."

Although the problem could be handled better within the framework of an over-all maritime-revitalization program being considered by Congress, the disallowance problem called for "immediate legislative relief," he added.

Fringes Part of the Cost

The Senator noted that many of the benefits labor was obtaining were not purely wages but were nonetheless part of the real cost of manning a United States-flag vessel.

"Thus, for example," he explained, "the maritime industry has agreed in connection with the automation of its vessels to support training programs to upgrade men to handle these more complex ships." the Labor Department, which