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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-202376

March 18, 1981

Ms. Kay Ahaus
Lake Hefner Open Space Alliance
3024 Lakeside Drive
Oklahoma City, Oklahoma 73120

Do not make available to public reading room

Dear Ms. Ahaus:

Request for Opinion on

You have requested our opinion on matters relating to the construction of the West Bypass, a federally aided state highway in Oklahoma City. Although formal decisions of the Comptroller General are not usually issued to private individuals, we are happy to provide the following informal assistance, which we hope will be both helpful and timely.

As you know, states seeking Federal aid highway funds propose the sites and designs for new highway construction projects to the Secretary of Transportation. "Major actions" must be accompanied by an Environmental Impact Statement (EIS). The EIS must take into account any encroachments on parkland. The part of the EIS which contains a state highway department's finding that use of parkland cannot be avoided, the plans to minimize the harm caused by the project and the documentation supporting those findings is called the "4(f) statement."

While reviewing the EIS and before deciding on Federal funding of the proposed project, the Secretary of Transportation must give prime consideration to the preservation of public parks. By law (Section 4(f) of the Department of Transportation Act), the Secretary may not approve

"any program or project which requires the use of any publicly owned land from a public park * * * 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 * * *."

49 U.S.C. § 1653(f) (1976) (See identical language in 23 U.S.C. § 138 (1976)).

You informed us that the EIS for State Highway 74 and State Highway 3 contained a 4(f) statement on Lake Hefner. You also stated that the Secretary rejected the state's assertion in the 4(f) statement that there were no alternatives to building a freeway through the Lake Hefner park area. In fact, the Secretary's ruling would appear to amount to a decision that the feasible and prudent alternative was not to build the northern



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B-202376

extension of the proposed freeway at all. See, D.C. Federation of Civic Associations v. Volpe, 459 F.2d 1231, 1238 (D.C. Cir. 1972).

You implied in your letter that it was the sole decision of the Oklahoma Department of Transportation to build the West Bypass, and that this decision was contrary to the Secretary's 4(f) determination on the Lake Hefner parkland. You further implied that the decision to build the West Bypass (a small part of the original proposed project) makes it inevitable that the northern, Lake Hefner portion will someday be built whether or not it is environmentally sound.

We have informally checked this with the Department of Transportation, and we were advised that

- (1) the West Bypass construction was approved by the Secretary between 63rd and 39th Streets, although the northern part of the project was rejected at least partially because of the Lake Hefner park issue; and
- (2) any proposed northward extension of the state highways involved would be the subject of a new, separate EIS and another 4(f) statement on Lake Hefner; and
- (3) the proposed "freeway north" would also require an EIS and a 4(f) statement to support any connecting route through parklands; and
- (4) assuming no changes in the relevant statutes, any future proposals and their 4(f) statements will be evaluated by the stringent requirements which led to the rejection of the first proposal.

It is true that the Secretary's decision rejecting the proposal to continue the state highways in question through public parks and to approve the small portion of the original proposal extending to 63rd Street, does not protect Lake Hefner forever, and that the State of Oklahoma can submit new highway proposals at any time. However, it seems to us unlikely that a new proposal involving Lake Hefner would be approved unless the state demonstrated new facts or additional information not considered in the first 4(f) statement.

B-202376

Finally, we are not in a position to offer any opinion on whether the Secretary acted reasonably or on whether the proposed West Bypass may violate the National Environmental Policy Act. We do point out, however, that the Secretary's actions in these matters are subject to judicial review. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1974). The Secretary's decisions, however, are not subject to legal review by the Comptroller General, and we can only suggest that you pursue other options, if you wish to continue your efforts. We hope that the information we have been able to supply here is of help to you.

Sincerely yours,



Robert H. Hunter
Assistant General Counsel