

pealed by Pub. L. 112-141, div. A, title I, § 1519(b)(2), July 6, 2012, 126 Stat. 575.

### § 138. Preservation of parklands

#### (a) DECLARATION OF POLICY.—

(1) IN GENERAL.—It is the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

#### (2) COOPERATION AND CONSULTATION.—

(A) IN GENERAL.—The Secretary shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed.

#### (B) TIMELINE FOR APPROVALS.—

##### (i) IN GENERAL.—The Secretary shall—

(I) provide an evaluation under this section to the Secretaries described in subparagraph (A); and

(II) provide a period of 30 days for receipt of comments.

(ii) ASSUMED ACCEPTANCE.—If the Secretary does not receive comments by 15 days after the deadline under clause (i)(II), the Secretary shall assume a lack of objection and proceed with the action.

#### (C) EFFECT.—Nothing in subparagraph (B) affects—

##### (i) the requirements under—

(I) subsections (b) through (f); or

(II) the consultation process under section 306108 of title 54; or

(ii) programmatic section 4(f) evaluations, as described in regulations issued by the Secretary.

(3) REQUIREMENT.—After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project (other than any project for a Federal lands transportation facility) which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless—

(A) there is no feasible and prudent alternative to the use of the land; and

(B) the program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

(4) STUDIES.—In carrying out the national policy declared in this section the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, is authorized to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

#### (b) DE MINIMIS IMPACTS.—

##### (1) REQUIREMENTS.—

(A) REQUIREMENTS FOR HISTORIC SITES.—The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (a)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (a)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, in accordance with the consultation process required under section 306108 of title 54, that—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).

(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.

## (c) SATISFACTION OF REQUIREMENTS FOR CERTAIN HISTORIC SITES.—

## (1) IN GENERAL.—The Secretary shall—

(A) align, to the maximum extent practicable, with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 306108 of title 54, including implementing regulations; and

(B) not later than 90 days after the date of enactment of this subsection, coordinate with the Secretary of the Interior and the Executive Director of the Advisory Council on Historic Preservation (referred to in this subsection as the “Council”) to establish procedures to satisfy the requirements described in subparagraph (A) (including regulations).

## (2) AVOIDANCE ALTERNATIVE ANALYSIS.—

(A) IN GENERAL.—If, in an analysis required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Secretary determines that there is no feasible or prudent alternative to avoid use of a historic site, the Secretary may—

(i) include the determination of the Secretary in the analysis required under that Act;

(ii) provide a notice of the determination to—

(I) each applicable State historic preservation officer and tribal historic preservation officer;

(II) the Council, if the Council is participating in the consultation process under section 306108 of title 54; and

(III) the Secretary of the Interior; and

(iii) request from the applicable preservation officer, the Council, and the Secretary of the Interior a concurrence that the determination is sufficient to satisfy subsection (a)(1).

(B) CONCURRENCE.—If the applicable preservation officer, the Council, and the Secretary of the Interior each provide a concurrence requested under subparagraph (A)(iii), no further analysis under subsection (a)(1) shall be required.

(C) PUBLICATION.—A notice of a determination, together with each relevant concurrence to that determination, under subparagraph (A) shall—

(i) be included in the record of decision or finding of no significant impact of the Secretary; and

(ii) be posted on an appropriate Federal website by not later than 3 days after the date of receipt by the Secretary of all concurrences requested under subparagraph (A)(iii).

## (3) ALIGNING HISTORICAL REVIEWS.—

(A) IN GENERAL.—If the Secretary, the applicable preservation officer, the Council, and the Secretary of the Interior concur that no feasible and prudent alternative exists as described in paragraph (2), the Secretary may provide to the applicable preservation officer, the Council, and the Secretary of the Interior notice of the intent of the Secretary to satisfy subsection (a)(2)

through the consultation requirements of section 306108 of title 54.

(B) SATISFACTION OF CONDITIONS.—To satisfy subsection (a)(2), each individual described in paragraph (2)(A)(ii) shall concur in the treatment of the applicable historic site described in the memorandum of agreement or programmatic agreement developed under section 306108 of title 54.

## (d) REFERENCES TO PAST TRANSPORTATION ENVIRONMENTAL AUTHORITIES.—

(1) SECTION 4(F) REQUIREMENTS.—The requirements of this section are commonly referred to as section 4(f) requirements (see section 4(f) of the Department of Transportation Act (Public Law 89-670; 80 Stat. 934) as in effect before the repeal of that section).

(2) SECTION 106 REQUIREMENTS.—The requirements of section 306108 of title 54 are commonly referred to as section 106 requirements (see section 106 of the National Historic Preservation Act of 1966 (Public Law 89-665; 80 Stat. 917) as in effect before the repeal of that section).

(e) BRIDGE EXEMPTION FROM CONSIDERATION.—A common post-1945 concrete or steel bridge or culvert (as described in 77 Fed. Reg. 68790) that is exempt from individual review under section 306108 of title 54 shall be exempt from consideration under this section.

## (f) RAIL AND TRANSIT.—

(1) IN GENERAL.—Improvements to, or the maintenance, rehabilitation, or operation of, railroad or rail transit lines or elements thereof that are in use or were historically used for the transportation of goods or passengers shall not be considered a use of a historic site under subsection (a), regardless of whether the railroad or rail transit line or element thereof is listed on, or eligible for listing on, the National Register of Historic Places.

## (2) EXCEPTIONS.—

(A) IN GENERAL.—Paragraph (1) shall not apply to—

(i) stations; or

(ii) bridges or tunnels located on—

(I) railroad lines that have been abandoned; or

(II) transit lines that are not in use.

(B) CLARIFICATION WITH RESPECT TO CERTAIN BRIDGES AND TUNNELS.—The bridges and tunnels referred to in subparagraph (A)(ii) do not include bridges or tunnels located on railroad or transit lines—

(i) over which service has been discontinued; or

(ii) that have been railbanked or otherwise reserved for the transportation of goods or passengers.

(Added Pub. L. 89-574, §15(a), Sept. 13, 1966, 80 Stat. 771; amended Pub. L. 90-495, §18(a), Aug. 23, 1968, 82 Stat. 823; Pub. L. 94-280, title I, §124, May 5, 1976, 90 Stat. 440; Pub. L. 100-17, title I, §133(b)(10), Apr. 2, 1987, 101 Stat. 171; Pub. L. 109-59, title VI, §6009(a)(1), Aug. 10, 2005, 119 Stat. 1874; Pub. L. 112-141, div. A, title I, §1119(c)(2), July 6, 2012, 126 Stat. 492; Pub. L. 113-287, §5(f)(2), Dec. 19, 2014, 128 Stat. 3268; Pub. L. 114-94, div. A, title I, §§1301(a), 1302(a), 1303(a), title XI,

§11502(a), Dec. 4, 2015, 129 Stat. 1375, 1377, 1378, 1690; Pub. L. 117–58, div. A, title I, §11316, Nov. 15, 2021, 135 Stat. 543.)

### Editorial Notes

#### REFERENCES IN TEXT

For the effective date of the Federal-Aid Highway Act of 1968, referred to in subsec. (a)(3), see section 37 of Pub. L. 90–495, as amended, set out as an Effective Date of 1968 Amendment note under section 101 of this title.

The National Environmental Policy Act of 1969, referred to in subsec. (c)(1)(A), (2)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The date of enactment of this subsection, referred to in subsec. (c)(1)(B), is the date of enactment of Pub. L. 114–94, which was approved Dec. 4, 2015.

#### AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117–58, §11316(4), designated first sentence of subsec. (a) as par. (1), inserted heading, and substituted “It is” for “It is declared to be”.

Subsec. (a)(2). Pub. L. 117–58, §11316(3), designated second sentence of subsec. (a) as par. (2)(A), inserted par. and subpar. headings, substituted “The Secretary” for “The Secretary of Transportation”, and added subpars. (B) and (C).

Subsec. (a)(3). Pub. L. 117–58, §11316(2), designated third sentence of subsec. (a) as par. (3) and inserted heading, inserted dash after “unless”, redesignated cls. (1) and (2) within text as subpars. (A) and (B), respectively, and inserted line breaks before each subpar., and substituted “use of the land; and” for “use of such land, and” and “the program includes” for “such program includes”.

Subsec. (a)(4). Pub. L. 117–58, §11316(1), designated fourth sentence of subsec. (a) as par. (4) and inserted heading.

2015—Subsec. (c). Pub. L. 114–94, §1301(a), added subsec. (c).

Subsec. (d). Pub. L. 114–94, §1302(a), added subsec. (d).  
Subsec. (e). Pub. L. 114–94, §1303(a), added subsec. (e).  
Subsec. (f). Pub. L. 114–94, §11502(a), added subsec. (f).

2014—Subsec. (b)(2)(A). Pub. L. 113–287 substituted “section 306108 of title 54” for “section 106 of the National Historic Preservation Act (16 U.S.C. 470f)” in introductory provisions.

2012—Subsec. (a). Pub. L. 112–141 substituted “Federal lands transportation facility” for “park road or parkway under section 204 of this title”.

2005—Pub. L. 109–59, §6009(a)(1)(A), which directed substitution of “(a) DECLARATION OF POLICY.—It is” for “it is hereby”, was executed by making the substitution for “It is hereby” to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 109–59, §6009(a)(1)(B), added subsec. (b).

1987—Pub. L. 100–17 inserted “(other than any project for a park road or parkway under section 204 of this title)” before “which requires” in third sentence.

1976—Pub. L. 94–280 authorized the Secretary, in cooperation with the Secretary of the Interior and appropriate State and local officials, to conduct studies as to the most feasible Federal-aid routes for the movement of motor vehicular traffic through or around national parks so as to best serve the needs of the traveling public while preserving the natural beauty of these areas.

1968—Pub. L. 90–495 amended section generally so as to render it identical to section 1653(f) of Title 49, Transportation, governing all programs and projects subject to the jurisdiction of the Secretary of Transportation.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117–58 effective Oct. 1, 2021, see section 10003 of Pub. L. 117–58, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–94 effective Oct. 1, 2015, see section 1003 of Pub. L. 114–94, set out as a note under section 5313 of Title 5, Government Organization and Employees.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 101 of this title.

#### CLARIFICATION OF EXISTING STANDARDS

Pub. L. 109–59, title VI, §6009(b), Aug. 10, 2005, 119 Stat. 1876, provided that:

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Aug. 10, 2005], the Secretary [of Transportation] shall (in consultation with affected agencies and interested parties) promulgate regulations that clarify the factors to be considered and the standards to be applied in determining the prudence and feasibility of alternatives under section 138 of title 23 and section 303 of title 49, United States Code.

“(2) REQUIREMENTS.—The regulations—

“(A) shall clarify the application of the legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case; and

“(B) may include, as appropriate, examples to facilitate clear and consistent interpretation by agency decisionmakers.”

#### STUDY OF TRANSIT NEEDS IN NATIONAL PARKS AND RELATED PUBLIC LANDS

Pub. L. 105–178, title III, §3039, June 9, 1998, 112 Stat. 393, as amended by Pub. L. 105–206, title IX, §9009(y), July 22, 1998, 112 Stat. 862, provided that:

“(a) PURPOSES.—The purposes of this section are to encourage and promote the development of transportation systems for the betterment of the national parks and other units of the National Park System, national wildlife refuges, recreational areas, and other public lands in order to conserve natural, historical, and cultural resources and prevent adverse impact, relieve congestion, minimize transportation fuel consumption, reduce pollution (including noise and visual pollution), and enhance visitor mobility and accessibility and the visitor experience.

“(b) STUDY.—

“(1) IN GENERAL.—The Secretary, in coordination with the Secretary of the Interior, shall undertake a comprehensive study of alternative transportation needs in national parks and related public lands managed by Federal land management agencies [to] assist in carrying out the purposes described in subsection (a). The study shall be submitted to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than January 1, 2000.

“(2) STUDY ELEMENTS.—The study required by paragraph (1) shall—

“(A) identify transportation strategies that improve the management of the national parks and related public lands;

“(B) identify national parks and related public lands with existing and potential problems of ad-

verse impact, high congestion, and pollution, or which can benefit from alternative transportation modes;

“(C) assess the feasibility of alternative transportation modes; and

“(D) identify and estimate the costs of alternative transportation modes for each of the national parks and related public lands referred to in paragraph (1).

“(3) DEFINITION.—For purposes of this subsection, the term ‘Federal land management agencies’ means the National Park Service, the United States Fish and Wildlife Service, and the Bureau of Land Management.”

STUDY OF ALTERNATIVE TRANSPORTATION MODES IN NATIONAL PARK SYSTEM

Pub. L. 102-240, title I, §1050, Dec. 18, 1991, 105 Stat. 2000, provided that:

“(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act [Dec. 18, 1991], the Secretary, in consultation with the Secretary of the Interior, shall conduct and transmit to Congress a study of alternative transportation modes for use in the National Park System. In conducting such study, the Secretary shall consider (1) the economic and technical feasibility, environmental effects, projected costs and benefits as compared to the costs and benefits of existing transportation systems, and general suitability of transportation modes that would provide efficient and environmentally sound ingress to and egress from National Park lands; and (2) methods to obtain private capital for the construction of such transportation modes and related infrastructure.

“(b) FUNDING.—From sums authorized to be appropriated for park roads and parkways for fiscal year 1992, \$300,000 shall be available to carry out this section.”

**§ 139. Efficient environmental reviews for project decisionmaking and One Federal Decision**

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) AGENCY.—The term “agency” means any agency, department, or other unit of Federal, State, local, or Indian tribal government.

(2) AUTHORIZATION.—The term “authorization” means any environmental license, permit, approval, finding, or other administrative decision related to the environmental review process that is required under Federal law to site, construct, or reconstruct a project.

(3) ENVIRONMENTAL DOCUMENT.—The term “environmental document” includes an environmental assessment, finding of no significant impact, notice of intent, environmental impact statement, or record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) ENVIRONMENTAL IMPACT STATEMENT.—The term “environmental impact statement” means the detailed statement of environmental impacts required to be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(5) ENVIRONMENTAL REVIEW PROCESS.—

(A) IN GENERAL.—The term “environmental review process” means the process for preparing for a project an environmental impact statement, environmental assessment, categorical exclusion, or other document prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) INCLUSIONS.—The term “environmental review process” includes the process and

schedule, including a timetable for and completion of any environmental permit, approval, review, or study required for a project under any Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(6) LEAD AGENCY.—The term “lead agency” means the Department of Transportation and, if applicable, any State or local governmental entity serving as a joint lead agency pursuant to this section.

(7) MAJOR PROJECT.—

(A) IN GENERAL.—The term “major project” means a project for which—

(i) multiple permits, approvals, reviews, or studies are required under a Federal law other than the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(ii) the project sponsor has identified the reasonable availability of funds sufficient to complete the project;

(iii) the project is not a covered project (as defined in section 41001 of the FAST Act (42 U.S.C. 4370m)); and

(iv)(I) the head of the lead agency has determined that an environmental impact statement is required; or

(II) the head of the lead agency has determined that an environmental assessment is required, and the project sponsor requests that the project be treated as a major project.

(B) CLARIFICATION.—In this section, the term “major project” does not have the same meaning as the term “major project” as described in section 106(h).

(8) MULTIMODAL PROJECT.—The term “multimodal project” means a project that requires the approval of more than 1 Department of Transportation operating administration or secretarial office.

(9) PROJECT.—

(A) IN GENERAL.—The term “project” means any highway project, public transportation capital project, or multimodal project that, if implemented as proposed by the project sponsor, would require approval by any operating administration or secretarial office within the Department of Transportation.

(B) CONSIDERATIONS.—In determining whether a project is a project under subparagraph (A), the Secretary shall take into account, if known, any sources of Federal funding or financing identified by the project sponsor, including any discretionary grant, loan, and loan guarantee programs administered by the Department of Transportation.

(10) PROJECT SPONSOR.—The term “project sponsor” means the agency or other entity, including any private or public-private entity, that seeks approval of the Secretary for a project.

(11) STATE TRANSPORTATION DEPARTMENT.—The term “State transportation department” means any statewide agency of a State with responsibility for one or more modes of transportation.