

RECORD OF DECISION

Federal Highway Administration

In Cooperation with the Tennessee Department of Transportation, the Mississippi Department of Transportation, the Tennessee Valley Authority, the U.S. Army Corps of Engineers, and the U.S. Department of Interior, Fish and Wildlife Service

FHWA-TN-EIS-04-01-ROD

Interstate 69, Section of Independent Utility #9

Shelby and Fayette Counties, Tennessee, and Desoto and Marshall Counties, Mississippi

January 29, 2007

Decision

The project is for the construction of a limited access expressway. The Systems Alternative with sub-alternatives A-1 and B-1 is the selected alternative. Interstate 69 is a north/south route designated by Congress to connect Mexico with Canada. Section of Independent Utility (SIU) #9, previously approved as an independent section, is the portion of Interstate 69 that goes through and around Memphis, Tennessee. It connects to the north with SIU #8 near Millington, Tennessee and to the South with SIU 10 near Hernando, Mississippi. The length of the project is approximately 100 miles. The project will be a multi-lane divided, interstate highway located in Shelby and Fayette Counties, Tennessee, and in Desoto and Marshall Counties, Mississippi.

Alternatives Considered

The early phases of project development for SIU #9 considered two routes. Each had a common beginning point at the Interstate 55 Interchange in Hernando, Mississippi, and a common ending point at the intersection of US Highway 51 and State Route 385 in Millington, Tennessee. One corridor passed through Memphis on the alignment of existing Interstates 55, 240 and 40 and the other bypassed Memphis to the south and east.

As the study progressed, and after evaluating traffic patterns and growth patterns in the surrounding area, it became apparent that neither a single route through Memphis, nor a single route bypassing Memphis to the south and east, would accommodate projected traffic and meet the purpose and need for this segment of Interstate 69. Thus, a systems approach was developed.

The Systems Approach has Interstate 69 following Interstates 55, 240 and 40 through Memphis and provides a bypass around Memphis to the south and east. The bypass will probably be signed Interstate 269. This transportation system will accommodate projected traffic and provide good connections to the City of Memphis, to Interstate 55 North, to Interstate 40 east and west, and to state highways 51, 14, 70, 64, 72 and 78. This results in good intermodal connections to trucking terminals in Memphis, to the

Memphis International Airport, to the Memphis Federal Express Hub, to the Port of Memphis, and to developing areas in Desoto and Marshall Counties, Mississippi.

Approximately fifty-five miles of the proposed Systems Approach Alternative utilizes existing Interstates and State Highways built to Interstate standards and already in place. State Route 385 from Millington, Tennessee, to Collierville, Tennessee, is either open to traffic or in the right of way and construction phases. Interstate 55 from Hernando, Mississippi, to Interstate 40 in northern Memphis, Tennessee, is open to traffic and being improved to add capacity. Both of these existing sections are covered by other completed environmental studies.

Interstate 69, SIU #9, will result in the construction of approximately forty-five miles of new interstate. This would consist of a new fifteen mile section north of Memphis, and a new thirty mile section south and east of Memphis.

Since so much of the project would use existing highways, there are only two sections of the proposed interstate segment where consideration of location alternatives is viable. To the northwest of Memphis between Interstate 40 and Millington, alternatives A-1 and A-3 were considered. To the southeast of Memphis, between Hernando, Mississippi, and Collierville, Tennessee, alternatives B-1, B-2, and B-3 were considered.

Alternative Selection and the Environmentally Preferred Alternative

The selected alternative for the northwestern section of the Systems Approach Alternative, Alternative A-1, is also the environmentally preferred alternative. When compared to Alternative A-3, it has the least effect on the natural environment. Alternative A-1, when compared to A-3, displaces fewer residences and businesses, has the fewest number of noise receptors, will result in less wetland impacts, and has the lowest cost. It was preferred by local residents and received the most support at the corridor public hearings.

The selected alternative for the bypass around Memphis to the south and east is Alternative B-1. Alternative B-1 is not the environmentally preferred alternative. It will impact more wetlands and streams, it crosses the Coldwater River, it is longer than Alternative B-3, and it will cost more than Alternative B-3 but less than B-2. However, it will potentially displace fewer families and will not divide any existing communities. It has greater support from the public and from local governments.

Alternative B-1 has been endorsed by the Northern Mississippi Industrial Development Association, Marshall County Industrial Development Authority, Marshall County Board of Supervisors, the Byhalia Chamber of Commerce, and the town of Byhalia. It will provide much needed economic incentives to the area and will provide better traffic service to existing industrial and residential developments.

Alternative Alignment B-2 is the longest of the three alignments studied and has the highest estimated cost. Alternative B-2 has the potential to adversely impact new residential development in the project area. It passes through the corner of a new

subdivision estimated to be 100+ lots currently under construction on Getwell Road. It also passes just south of another new subdivision estimated to be 50+ lots on Fairview Road. These new housing developments will be completed before the construction of this segment of I-69. Alternative B-2 will displace many of these new homes and subject those left adjacent to the highway to traffic noise impacts. Alternative Alignment B-2 was not selected because of these potential impacts.

Alternative Alignment B-3 is the environmentally preferred alternative. B-3 is the shortest route and does not cross the Coldwater River. It follows the edge of the Coldwater River floodplain and impacts the fewest number of wetland acres. Because the land along the Alternative B-3 alignment is above the Coldwater River floodplain, it is the most desirable land for residential development in the southeastern portion of the project area. It is undergoing rapid change.

Since the beginning of the study, a 1,600 lot planned residential community has developed within the alternative B-3 corridor. A new elementary school and fire station have been constructed. Projections are that, before SIU #9 could be constructed, the ongoing rapid development of this planned community would place several hundred new homes in the path of the B-3 alignment. Shifting the alignment further south would impact other planned subdivisions and have a greater impact on the Coldwater River floodplain. Shifting the alignment further north would have a greater impact on existing residential development. B-3 was opposed by a large majority of the public attending the Corridor Public Hearing and by most local elected officials in the area. For these reasons B-3 was not selected.

Alternatives B-1, B-2, and B-3 have similar social, economic, environmental, and land use impacts. All were field located to avoid as many existing houses, businesses, churches, and other environmentally, socially, and economically sensitive areas as possible. The project area is undergoing strong residential and commercial development, and the alignments were shifted during the course of the study to avoid new development as it occurred.

The Systems Approach with the A-1/B-1 alternatives is found to provide the best solution to the identified project needs in comparison to the other build alternatives, as well as to the "no-build" alternative.

Section 4(f)

No lands described in 49 USC 303 (publicly owned parks, wildlife refuges, etc.) will be affected by the proposed project. The provisions of 26 CFR 800 (Protection of Historic Properties) have been fulfilled.

Endangered Species

The preferred alternative will have no effect on any federally protected species. However, if unanticipated threatened or endangered species are encountered, if the proposed project is modified, or if new species are listed in the area, FHWA will enter into appropriate consultations with the U.S. Fish and Wildlife Service.

Environmental Justice

This project will not have an adverse or disproportionate effect on minority or low income populations

Agency and Public Coordination

The development of this project was coordinated closely with the general public through a series of public meetings and a formal public hearing. The Final Environmental Impact Statement (FEIS) was coordinated with appropriate local, state, and Federal agencies and has also been made available for public comment. The Tennessee Valley Authority, the U.S. Army Corps of Engineers, and the U.S. Department of Interior, Fish and Wildlife Service, are formal cooperating agencies in the environmental studies and were closely involved in the development of the FEIS. They played important roles in the decision making process. The comments received from agencies and from the public have been adequately addressed in the FEIS.

When The Systems Alternative with sub-alternatives A-1/B-1 is compared to the other alternatives studied, the proposal appears to be well accepted, without significant opposition from the general public; and, therefore, is not considered controversial.

Measures to Minimize Harm

All practicable measures to minimize environmental harm were incorporated in the planning of the proposed action. Measures to minimize harm are as follows.

Specific Environmental Commitments: Specific environmental commitments are outlined starting on page xxvii near the beginning of the FEIS on green sheets entitled *Special Environmental Commitments*. These commitments are binding on the Tennessee Department of Transportation, on the Mississippi Department of Transportation, and on the Federal Highway Administration. They are incorporated into this Record of Decision by reference. There are two pages of these commitments.

Relocation Assistance: The acquisition and relocation assistance program will be conducted in accordance with the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended, and relocation resources will be available to all residential and business relocatees without discrimination.

Water Quality: Water quality standards will be adhered to by individual contractors. The Mississippi Department of Transportation's and the Tennessee Department of Transportation's standard specifications and plans contain provisions for preventing and abating the pollution of streams and water bodies.

Any additional requirements placed by Federal or State agencies will be included in the Plans and Specifications for the project. Compliance with the Best Management Practices, permits, and other requirements will insure that project activities do not contribute to a significant deterioration of water quality.

Wetlands: The FEIS commits to avoid wetland effects where practicable and to minimize wetland effects in all locations. Wetlands mitigation will be coordinated with the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. Wetland mitigation will be offered from established or new wetland banks. Onsite mitigation will be used when the use of wetland banks is not appropriate.

Wildlife Habitat: No adverse effect on any threatened or endangered species is anticipated. Surveys for such species will be conducted again prior to construction and coordinated with the U.S. Fish and Wildlife Service. Significant degradation of wildlife habitat is not anticipated.

Visual and Aesthetic Consequences: In order to lessen visual effects, attempts will be made to blend the proposed project into the surrounding area in a pleasing and compatible way. Aesthetics will be a consideration in project design.

Effects related to Construction: The contractor will be required to control erosion on all projects to the fullest extent practicable. The contractor will be required to submit a project erosion control plan for approval prior to beginning work. Waste, loose soil, or other materials removed from the roadway or other areas will not be deposited into wetlands. The contractor will not be allowed to obstruct or pollute streams.

Disposal of land clearing waste, construction debris, excavation materials, and residue from any permitted controlled burning of solid waste will be disposed of in accordance with Standard Specifications and state and local solid waste regulations.

Two independent archaeological studies were performed along the proposed corridor, and no sites within the proposed right of way were found eligible to be listed on the *National Register of Historic Places*. Some sites were found near, but outside of the right of way limits. Construction contracts will have provisions to assure that these sites are not used as staging areas or otherwise disturbed. Construction activities will be carefully monitored to detect the presence of any other archaeological resources. If resources are encountered, the appropriate State and Tribal Historic Preservation Officers, as well as other appropriate American Indian officials will be consulted. The provisions of Section 106 of the National Historic Preservation Act will be complied with.

During construction, there is potential for noise impacts to be greater than those resulting from normal traffic operations. Contractors will be required to comply with all state, federal, and local laws and regulations controlling noise and other pollution of the environment.

Monitoring and Enforcement Program

A determination of the need for and the extent of a formal monitoring program for wetlands mitigation will be made during the U.S. Army Corps of Engineers permitting phase. Normal coordination during design, right-of-way acquisition, and construction will ensure that environmental commitments found in the FEIS are met. The Tennessee Department of Transportation and The Mississippi Department of Transportation will enforce all pertinent specifications and contract provisions to assure conformity with the intent of the FEIS.

Comments on the Final Environmental Impact Statement

Comments on the FEIS were received from United States Senator Trent Lott; the Tennessee Department of Environment and Conservation, Division of Air Pollution Control; the Tennessee Wildlife Resources Agency; The United States Army Corps of Engineers; and the Sierra Club.

The comments are summarized and addressed below. The actual correspondence is being added to the FEIS as an attachment.

Honorable Senator Trent Lott, United States Senate:

The Senator appreciated the update and was pleased to hear the project was progressing. He offered his assistance if needed.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control:

The Tennessee Department of Environment and Conservation, Division of Air Pollution Control, responded that they have reviewed the FEIS and have no further comments at this time. They recommended that the Memphis and Shelby County Health Department be given an opportunity to comment on the document.

The FEIS has been made available for public and agency comment. Project sponsors will coordinate with the Memphis and Shelby County Health Department as needed.

Tennessee Wildlife Resources Agency:

The Tennessee Wildlife Resources Agency agrees with the FEIS's conclusion that Alternative B-3 is the environmentally preferred alternative and asks that consideration be given to spanning the Coldwater River wetlands.

The FEIS, on page xxvii, "Special Environmental Commitments," explains that as project design considers river and stream crossings, "...special attention will be given to minimize fill and extend bridge lengths to further avoid or minimize impacts to the floodplains and associated wetlands." Other water related commitments on that page compliment and strengthen this one.

The Tennessee Wildlife Resources Agency continues to be concerned that either of the Alignment A alternatives will encourage secondary development of the Wolf River

floodplain and associated wetlands on the North side of the river, especially if the proposed North Second Street extension in Memphis is approved. They would like TDOT to pursue a plan to protect at least the existing forested and open water wetlands in the Wolf River floodplain lying on the north side of the river between the new Second Avenue to the west and the railroad to the east. They also expressed concerns about farmed wetlands in the area and about mitigation ratios.

The wetlands impacts The Tennessee Wildlife Resources Agency is concerned about are properly attributable to the North Second Street Project. The North Second Street project is an independent project and not a part of Interstate 69. In coordination with the City of Memphis, an independent EIS is being prepared for the North Second Street project. That EIS will address the concerns expressed by The Tennessee Wildlife Resources Agency.

As outlined below, the sponsoring agencies will work with the Corps of Engineers to obtain necessary 404 wetlands permits. Mitigation ratios will be determined at that time and to the satisfaction of the Corps.

Department of the Army, Corps of Engineers:

The Memphis District of the Corps reminded the project sponsors that they should continue to work with the Corps to avoid, minimize, and mitigate wetlands and that the Corps has the final say on determining appropriate mitigation for 404 wetlands permits.

The Corps is correct, and the sponsoring agencies will continue to work closely with the Corps through the 404 permitting process.

The Memphis District of the Corps expressed a concern that the FEIS does not adequately address groundwater quality.

There are no sole source aquifers in the areas where construction is to take place. Normal TDOT and MDOT "best management practices" are designed to protect water quality and should prevent a significant degradation of groundwater quality from resulting from project construction activities.

The Memphis District of the Corps expressed a concern that the data in the EIS for Tennessee State Route 385 does not address the effects of its inclusion as part of I-69/I-269.

While it is true that the original 385 EIS did not anticipate that the route would be incorporated into I-69/I-269, FHWA finds that there is sufficient information in the FEIS for Interstate 69, SIU 9, and its supporting documentation to find that the incorporation of 385 into I-69/I-269 will work well and will not result in additional significant impacts.

The Vicksburg District of the Corps acknowledged receipt of the FEIS, and advised that they were working to provide a timely reply, but did not provide comments on the FEIS.

United States Environmental Protection Agency:

The United States Environmental Protection Agency expressed concerns about the extent of the environmental impacts identified in the FEIS. They are particularly concerned about water related resources and want to continue ongoing discussions about water resources, indirect impacts, and noise impacts.

FHWA agrees that these are valid areas of concern and, with the two states, will continue its ongoing coordination with the United States Environmental Protection Agency and other Federal and State resource agencies.

While it is true that the project area is experiencing a dramatic growth in residential and commercial development, that development is taking place independent of the project. As explained in FHWA's "Announcement of I-69 Status," December 8, 2000, Federal Register, pp. 77064—77065, facilitating economic development is a Congressionally mandated goal for the overall Interstate 69 corridor. However, because the development is already underway and because SIU 9 will be a controlled access interstate, it should only encourage development, beyond what is already in place, approved, under construction, or planned, around a limited number of interchanges.

The selected alternatives are included in the current 2026 Long Range Transportation Plan for Shelby County. Desoto and Marshall Counties, Mississippi, are not nonattainment areas for air quality. As stated in the FEIS on page 236, "The project will have no substantial impact on the air quality of the four-county area."

Tennessee Chapter, Chickasaw Group, Sierra Club:

The Sierra Club is disappointed that the FEIS does not consider the impacts of global warming.

Global warming is a national and planet-wide issue and is best addressed on those levels. This project is so small a part of the global transportation and energy network that any detrimental or positive effects it might have on global warming are impractical to scientifically quantify. If effects could be accurately predicted, the project might just as well be found to improve air quality by increasing the efficiency of the transportation system and, thereby, reducing global warming.

The Sierra Club believes the project is an unreasonable expenditure of public funds and that it would be better to use barge and rail than a highway to address the identified transportation needs.

This is a Congressionally mandated project, and the sponsoring and cooperating agencies have no control over what Congress mandates. However, the approved National Statement of Purpose and Need for the Interstate 69 concept identified benefits to the Nation that outweigh the costs of the facility. This is explained in FHWA's "Announcement of I-69 Status." That document also demonstrates that the intent of Congress is that Interstate 69 be an interstate highway with good intermodal connectivity. The explanation of the systems approach in the FEIS clearly explains how

the adopted systems approach achieves that goal.

The Sierra Club expressed concern that building Interstate 69 will further deplete the nation's crude petroleum supply and refining capability.

This too is a national rather than a project specific issue. In light of all the initiatives underway or proposed to develop alternative clean fuels and more stringent emissions standards, an attempt to determine if the proposed project would significantly affect the nation's crude petroleum supply would not result in scientifically useful information. Moreover, the project is intended to reduce fuel consumption, or at least any increase in fuel consumption, by increasing the efficiency of operation of vehicles using it. Vehicles use less fuel and pollute less when they operate at relatively constant moderate speeds with a minimum of stops and starts.

The Sierra Club is also concerned about air quality impacts.

The selected alternatives are included in the current 2026 Long Range Transportation Plan for Shelby County. Desoto and Marshall Counties are not nonattainment areas for air quality and this project should not change that.

The Sierra Club was not satisfied with our response to their comments on the DEIS concerning air quality and Mexican trucks.

FHWA stands by its original statements on Mexican trucks: "While EPA has air pollution concerns and studies are underway to determine the level of pollution, the President of the United States opened the borders to Mexican trucks. The Supreme Court has ruled the President has this authority and his actions are not subject to NEPA regulations. . . ." We assume that over time the President or Congress will revisit the issue of Mexican trucks and air pollution. Any attempt to predict how the issues might be addressed by them in the future would be speculation. This is not a project level issue.

Conclusion

This Record of Decision is based on the attached Final Environmental Impact Statement, which has been independently evaluated by the Federal Highway Administration and determined to adequately and accurately discuss the needs, environmental issues, and impacts of the proposed project and mitigation measures. The Federal Highway Administration takes full responsibility for the accuracy, scope, and content of the attached Final Environmental Impact Statement and its attachments. The Final Environmental Statement contains an adequately detailed discussion of the following: Purpose and need for the proposed action, probable impact of the proposed action, alternatives, unavoidable adverse environmental effects, short-term vs. long-term benefits, irreversible and irretrievable commitments of resources, mitigation, and measures to minimize environmental harm. The proposal conforms to the States' air quality implementation plans and to the National Ambient Air Quality Standards. The Final Environmental Impact Statement is in conformance with the applicable provisions of 23 CFR 771. "Environmental Impact and Related Procedures," and it satisfactorily

covers the anticipated environmental impacts, including physiographic and cultural effects.

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Date