

CHAPTER VI

Executive Order Findings and Other Agreements

A. Wetlands – Only Practicable Alternative Finding

Implementation of the proposed action will result in the loss of approximately 26.9 acres (10.9 hectares) of jurisdictional wetlands. The evaluation of these losses is contained in Chapter IV of the DEA. In accordance with Executive Order 11990, avoidance and minimization of wetland impacts have been considered during project development and design adjustments made where feasible. Because of geometric design considerations associated with widening of the existing highway, there are no practicable alternatives to the wetland impacts shown. A permit required by Section 404 of the Clean Water Act will be obtained from the U.S. Army Corps of Engineers prior to construction and wetland replacement will be provided for through this permit process. Based on these considerations, it is determined that there is no practicable alternative to the proposed construction in wetlands and the proposed action includes all measures to minimize harm to wetlands which may result from such use.

B. Floodplain – Only Practicable Alternative Finding

In order to provide new travel lanes on the SIU 2 portion of I-70, it is necessary to locate additional travel lanes within and through the following floodplains:

- Davis Creek and its tributaries
- Lamine River
- Choteau Creek
- Martin Branch
- Blackwater River
- Long Branch
- Coppers Creek
- Harpers Branch
- Mulkey Creek
- Dry Creek

The Preferred Alternative will affect a total of 98 acres (40 hectares) of floodplains in SIU 2. The Preferred Alternative was determined to provide the best solution for existing roadway deficiencies and future traffic volumes and other study corridor needs.

Because of geometric design considerations associated with widening of the existing highway, there are no practicable alternatives to the floodplain impacts shown. In accordance with Executive Order 11988 and 23 CFR 650, Subpart A, avoidance and minimization of floodplain impacts have been considered during project development and design adjustments made where feasible. The proposed action will conform to all applicable State and local floodplain protection standards. A hydraulic design study that addresses various structure size alternatives will be completed during final design.

C. Other Agreements

The following agreements have been reached regarding the I-70 Improvement Study. Copies of these agreements may be found in the appendices of the DEA.

- Cooperating Agency Agreement Between FHWA And EPA;
- Missouri I-70 Corridor Interagency Cooperative Agreement Agricultural Lands;
- Missouri I-70 Corridor Interagency Partnering Agreement;
- Historic I-70 Memorandum Of Understanding;
- MoDot General NPDES Permit
- Programmatic Agreement Between The FHWA and Missouri State Historic Preservation Officer, and The Advisory Council On Historic Preservation.

D. Cultural Resources Programmatic Agreement

PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION, THE MISSOURI STATE HISTORIC PRESERVATION OFFICER, AND THE MISSOURI DEPARTMENT OF TRANSPORTATION

Regarding the Interstate 70 Corridor,
Extending from Interstate 470 in Jackson County to
Lake St. Louis in St. Charles, Missouri,

Jackson, Lafayette, Saline, Cooper, Boone, Callaway,
Montgomery, Warren, and St. Charles Counties, Missouri

Missouri Department of Transportation Job No. J4I1341B

Whereas, the Federal Highway Administration (FHWA) and the Missouri Department of Transportation (MoDOT) propose improving the Interstate 70 (I-70) Corridor in Missouri, between the metropolitan areas of Kansas City and St. Louis, to meet the current and future needs of the traveling public; and

Whereas, the First Tier Environmental Impact Statement (First Tier EIS) was completed, with a Record of Decision, in the fall of 2001 (as documented by *Interstate 70 Corridor, Kansas City to St. Louis, Missouri, Draft First Tier Environmental Impact Statement*, FHWA-MO-EIS-01-02-D, MoDOT Project No. J4I1341, 2001, and *Interstate 70 Corridor, Kansas City to St. Louis, Missouri, Final First Tier Environmental Impact Statement*, FHWA-MO-EIS-01-02-F, MoDOT Project No. J4I1341, 2001), and upon its completion, the Second Tier environmental decision-making process (Improve I-70, MoDOT Job No. J4I1341B) began immediately; and

Whereas, following preparation of the First Tier EIS, the FHWA, MoDOT, and the State Historic Preservation Office, Missouri Department of Natural Resources (MoDNR) executed a Memorandum of Understanding on April 3, 2003, addressing Interstate 70 and the question of its eligibility for listing on the National Register of Historic Places (NRHP) with three stipulations requiring: 1) the FHWA to identify the eligibility of the structure when the interstate is fifty years old or whenever the national task force has reached an opinion regarding eligibility of the interstate system; 2) the FHWA and MoDOT to proceed gathering information on the history and development of I-70; and 3) consultation between the three agencies and the Advisory Council on Historic Preservation (Council) should I-70 or any part thereof be determined eligible for the NRHP at a later date; and

Whereas, on March 10, 2005, after considering recommendations of the national task force and public comments, the Council released Federal agencies from Section 106 requirements of the National Historic Preservation Act (NHPA) to consider the effects of their undertakings on the U.S. Interstate Highway System, except for a limited number of individual, associated elements that are part of the system, and requires FHWA to identify interstate elements of national significance by June 30, 2006, and unless exempted by the terms of the exemption, non-significant elements are excluded from Section 106 requirements; and

Whereas, MoDOT and FHWA have been collecting data and documenting the history and development of Interstate 70 in Missouri that will have a role in the FHWA consideration, with other parties, of individual interstate elements in Missouri that have national significance, thereby enabling these resources, like other historic properties affected by proposed undertakings, to be appropriately identified and addressed; and

Whereas, the 200-mile long Improve I-70 corridor was broken into seven different Sections of Independent Utility (SIU) with corresponding project numbers, roughly divided as follows: SIU 1, I-470 at Independence to MO Rt. 131 at Odessa (MoDOT Job No. J4I1341D); SIU 2, MO. Rt. 131 at Odessa to MO. Rt. 5 at Boonville (MoDOT Job No. J4I1341E); SIU 3, MO. Rt. 5 at Boonville to MO Rt. BB west of Columbia (MoDOT Job No. J4I1341F); SIU 4, MO Rt. BB to MO Rt. ZZ east of Columbia (MoDOT Job No. J4I1341G); SIU 5, MO Rt. Z to U.S. Rt. 54 at Kingdom City (MoDOT Job No. J4I1341H); SIU 6, U.S. Rt. 54 at Kingdom City to MO Rt. 19 at New Florence (MoDOT Job No. J4I1341J); and SIU 7, MO Rt. 19 at New Florence to Lake St. Louis Boulevard in St. Charles County (MoDOT Job No. J4I1341K), with each SIU ranging in length from 14 to 64 miles; and

Whereas, the FHWA has determined that improvements to Interstate 70 may have effects upon properties included in or eligible for the NRHP, and has consulted with the Council, and the Missouri State Historic Preservation Office (SHPO), pursuant to 36 CFR 800, *Protection of Historic Properties*, implementing Section 106 of the NHPA; and Section 110 of the same act; and

Whereas, the Council has reviewed and commented on the draft agreement document and, in accordance with 36 CFR 800.14(b)(1)(ii) and 36 CFR 800.14(b)(4) regarding prototype programmatic agreements, the agreement shall become final without need for Council participation in consultation or Council signature, and therefore the Council has declined FHWA's invitation to participate in the execution of this Programmatic Agreement; and

Whereas, the MoDOT has participated in consultation and has been invited to be a signatory in this Programmatic Agreement; and

Whereas, cultural resources investigations have been conducted for the First Tier EIS, are in progress for the Second Tier environmental documents, and will continue in the distant future when the project design advances to the final design stage; the project is not presently programmed to proceed to the final design stage nor is project construction anticipated for numerous years; thus, the full impacts of this project and its effects to cultural resources cannot be specifically determined until the final design has been completed; and

Whereas, a long time period is expected to lapse following the approval of the separate environmental documents for each SIU (i.e., Finding of No Significant Impact and Record of Decision) and before project construction, historic properties and effects are expected to change over this period, and sufficient information about the undertaking and affected historic properties is not presently available, subsequent Section 106 review is anticipated; and

Whereas, the FHWA has held a number of public meetings regarding the proposed project and, as advised in 36 CFR 800.14(2)(i)-(ii), will continue to seek the involvement of other parties, including but not limited to, Indian tribes, representatives of local governments, and certain individuals and organizations with a demonstrated interest in the project who have a consultative role in the section 106 process, and shall further consider the views of the public.

Now therefore, the FHWA, the SHPO, and the MoDOT agree that the project shall be administered in accordance with 36 CFR 800 and the following stipulations to satisfy the FHWA's section 106 responsibilities for its undertakings that may affect historic properties in SIUs 1-7, Interstate 70.

Stipulations

The agency official, FHWA, through the assistance of its agent MoDOT, shall ensure that it complies with all relevant cultural resources regulations and legislation related to this project. The following measures shall be carried out and specific treatments for historic properties shall be developed in consultation with the appropriate consulting parties pursuant to 36 CFR 800.2:

I. Concerning historic properties in each SIU of Interstate 70:

- A. Pursuant to 36 CFR 800.2 (a)(4), the FHWA shall ensure that the appropriate consulting parties are identified and involved in findings and determinations made during the section 106 process.
- B. The MoDOT will be responsible for identifying and evaluating all historic properties within each SIU's area of potential effects in consultation with SHPO and other consulting parties following the procedures set out in 36 CFR 800.4, including 36 CFR 800.4(a)(3).
- C. MoDOT shall apply the criteria of adverse effects in accordance with 36 CFR 800.5 and, through coordination with FHWA, shall involve appropriate consulting parties to determine the effects of the project on historic properties following the guidance found in 36 CFR 800.4(d) and 36 CFR 800.5(a). If no historic properties are affected, the MoDOT shall notify all consulting parties in accordance with 36 CFR 800.4(d) and 36 CFR 800.5(b) and (c).
- D. If the proposed project will have an adverse effect on any historic property, then the FHWA and MoDOT shall consult with the SHPO, Indian tribes, and other consulting parties to develop and evaluate alternatives or modifications to avoid, minimize, or mitigate adverse effects on historic properties in accordance with 36 CFR 800.6(a).
- E. If historic properties cannot be avoided, the FHWA and MoDOT shall confer with the SHPO and other consulting parties as directed by 36 CFR 800.4(b)(1) to determine appropriate mitigation measures and levels of documentation employing professional

standards and guidelines, such as those published by the Secretary of the Interior (i.e. *Standards for the Treatment of Historic Properties* and *Professional Qualifications Standards*). For archaeological resources, the FHWA and MoDOT shall ensure that procedures to be used for the processing, analysis, and curation of collected materials are in accordance with the Advisory Council's Handbook *Treatment of Archeological Properties, Part III*, the *Secretary of Interior's Guidelines for Archeology and Historic Preservation*, and currently accepted standards for the analysis and curation of archaeological remains.

- F. The FHWA and MoDOT shall ensure that a determination, finding, or agreement is supported by sufficient documentation to enable any reviewing parties to understand its basis per 36 CFR 800.11(a).
 - G. The FHWA and MoDOT will complete the mitigation measures and allow the SHPO and other appropriate parties a thirty (30) day comment period. If the SHPO or other parties has comments, they shall be considered and satisfactorily addressed if possible, prior to the demolition of any historic property.
 - H. The FHWA and MoDOT shall provide copies of the mitigation documentation to the SHPO and appropriate interested parties and repositories.
- II. If previously undiscovered cultural resources are encountered during construction, construction activities in the immediate vicinity of the resource will cease until the FHWA, SHPO, and MoDOT can evaluate the resource, consult with other parties where appropriate, and, if necessary, mitigate impacts to the resource. Evaluation and mitigation will be carried out as expeditiously as possible and in accordance with 36 CFR 800.13(b).
- III. The FHWA recognizes that any human remains (other than from a crime scene) which may be discovered or excavated during archaeological investigations are located on state or private land, and are therefore subject to the immediate control, possession, custody and jurisdiction of the SHPO, pursuant to the Missouri Unmarked Human Burial Sites Act, sections 194.400–194.410, RSMo. The excavation of human remains will follow guidance obtained through consultation among FHWA, SHPO, and any appropriate Indian Tribe(s). The FHWA shall assure that the excavation and handling of any such human remains and associated or unassociated funerary objects, sacred objects or objects of cultural patrimony, are handled, excavated or processed in accordance with the SHPO's instructions pursuant to sections 194.400-194.410, RSMo, and pursuant to any provisions of the Native American Graves Protection and Repatriation Act applicable to such remains and artifacts found on non-federal lands.
- IV. Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories with Council participation if requested.
- V. Any party to this Programmatic Agreement may request that it be amended, whereupon the parties to this Agreement shall consult in accordance with 36 CFR 800.13 to consider such an

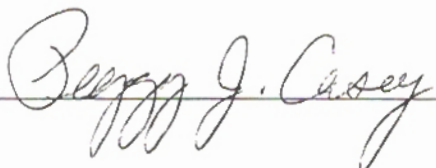
amendment. No amended agreement shall take effect until it has been executed by all parties.

VI. Any signatory to this Programmatic Agreement may terminate by providing thirty (30) days notice to the other parties, provided that the parties will consult during this 30-day period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR 800.4 through 36 CFR 800.6 with regard to this project.


VII. Because of the likelihood that the final design phase of the project will not begin for several years, this umbrella Programmatic Agreement for Interstate 70 shall not expire until the project's construction is completed. Given the project's statewide length, but its limited funding, improvements for one SIU are certain to precede those for another, and because each SIU will involve different resources, additional agreement documents may be necessary. The completion of consultation for each subsequent phase of construction will follow the procedures in accordance with this PA and result in either a finding of "no historic properties affected," "no adverse effect," or execution of a Memorandum of Agreement addressing the specific SIU, affected historic properties, and stipulations regarding historic preservation treatments.

Execution and implementation of this Programmatic Agreement evidence that the FHWA has afforded the SHPO a reasonable opportunity to comment on its proposed improvements to Interstate 70 and that the FHWA has taken into account the effects of improvements to Interstate 70 on historic properties.

Federal Highway Administration:

By:  Date: 5/19/05

Missouri State Historic Preservation Officer:

By:  Date: 5/19/05

Missouri Department of Transportation:

By:  Date: 05/19/05