

Prepared For:



Finding of No Significant Impact

## Construction of the Caldwell Connector, a New Roadway from KY 91 to KY 293 Princeton, Caldwell County KY

KYTC Item Number: 2-153.00

October 13, 2014

# Finding of No Significant Impact

## Construction of the Caldwell Connector, A New Roadway from KY 91 to KY 293 Caldwell County, Kentucky

State Item # 2-153.00

Submitted pursuant to 42 U.S.C. 4332 (2)(c) by the U.S. Department of Transportation,  
Federal Highway Administration and the Kentucky Transportation Cabinet,  
Division of Environmental Analysis

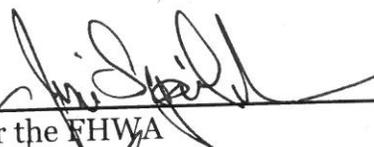
U.S. Department of Transportation  
Federal Highway Administration  
And  
Kentucky Transportation Cabinet  
Division of Environmental Analysis

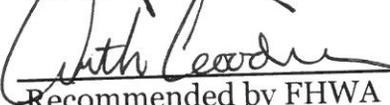
This document is submitted pursuant to 42 U.S.C. 4332 (2)(c) by the U.S. Department of Transportation, Federal Highway Administration and the Kentucky Transportation Cabinet, Division of Environmental Analysis. The FHWA has determined that Alternative F will have no significant impact on the human or natural environment. This Finding of No Significant Impact (FONSI) is based on the attached Environmental Assessment prepared for this project, which has been independently evaluated by the FHWA and determined to adequately and accurately discuss the needs, environmental issues, and impacts of the proposed project. It provides sufficient evidence and analysis for determining that an Environmental Impact Statement is not required. The FHWA takes responsibility for the accuracy, scope, and content of the attached Environmental Assessment.

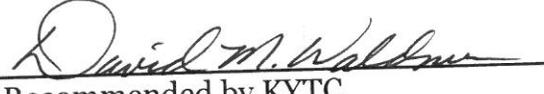
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Date

  
For the FHWA

  
Recommended by FHWA

  
Recommended by KYTC

The following persons may be contacted for additional information concerning this project:

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- Appendix C – Memorandum of Agreement between FHWA and SHPO

## **Included on CD-ROM**

2-153.00\_Caldwell Connector\_Environmental Assessment.pdf

## **Project Description and Setting**

The proposed project involves the construction of approximately 2.0 miles of two lane roadway on new alignment, between KY 91 and KY 293, in Caldwell County, and east of Princeton, KY. An interstate highway, I-69, runs through Caldwell County just north of Princeton, but would not be involved in this project.

A quarry is south of Princeton on KY 91 and produces 200-400 truckloads of gravel per week. There is a signed truck route in Princeton which directs trucks away from the downtown and Princeton Historic District. Many trucks ignore that route and travel to and from the quarry to I-69 through the most direct route - downtown. This creates a loud, congested, and potentially dangerous environment. These trucks also damage downtown roads, resulting in increased maintenance costs.

The Kentucky Transportation Cabinet (KYTC) proposed this project in order to remedy this situation, and three alternatives were identified and studied in an Environmental Assessment (EA) prepared for the project. Two of the alternatives involved building a connector road between KY 91 and KY 293 (Figure 1), and the other alternative studied was the No Build Alternative. The project's KYTC item number is 2-153.00. Technical studies, agency coordination, and public involvement have all been incorporated into that EA, which is included in digital format on a CD-ROM included in the back of this document.

This Finding of No Significant Impact (FONSI) is intended to briefly describe the project, identify the alternatives analyzed during the project development process, identify Alternate F (as described in the EA prepared for this project) as the Recommended Alternative, and to serve as the final environmental decision-making document. An exhibit showing Alternate F is included as Appendix A at the end of this document.

## **Purpose and Need**

This project proposes to provide heavy commercial trucks with a safer, shorter, and more efficient route to access I-69, allowing them to avoid the Princeton downtown and Princeton Historic District while removing the negative effects of their travel on the downtown community. As well, residents of eastern Caldwell County would be provided with a more efficient route for local and regional travel, and emergency response personnel would have a quicker response time.

Within the context of the National Environmental Policy Act (NEPA), the purposes of a project are the end results that any action must achieve for it to be considered in great detail as an alternative. Purposes are different from the goals and objectives of a project, which are end results or benefits that would ideally also be realized by a project. Goals and objectives can help to identify a preferred alternative, while purposes must be satisfied for an action to be considered a viable alternative.

There are two purposes of this project, *Construction of the Caldwell Connector, a New Roadway from KY91 to KY293*. They were established using the 2008 Environmental Overview, input from the public and local officials, and input from KYTC. They are:

- Relieve Truck Traffic through downtown Princeton
- Improve Efficiency for Local and Regional Travel

There is one goal for this project, established during conversations with local officials, emergency response personnel, and with the public. It is:

- Improve Emergency Responder travel time

## **Alternatives Considered**

A reasonable range of build alternatives was developed and evaluated in accordance with NEPA. The following sections discuss the No Build Alternative and the build alternatives evaluated in the EA prepared for this project.

The alternatives evaluated for this project reflect a multistage development process. Six alternatives (Alternatives A-F) were initially developed to address the project's purpose and need. These alternatives were presented to the public at an informal public meeting in 2012. Input from the public, as well as coordination with local officials and agencies identified several areas and features to avoid (shown in Figure 1 as shaded areas). While all of the original alternatives met the project's purpose and need, five of them (Alternatives A, B, C, D, and E) were found to potentially impact those areas identified for avoidance and were dismissed from consideration without further analysis.

The remaining original alternative (Alternative F) and a new alternative made by combining portions of Alternatives E and F (Alternative E-F) both satisfy the purpose and need of this project while avoiding the concerns for which other alternatives were eliminated (Fig 1).

## **No Build Alternative**

The No Build Alternative would have maintained current roadways on their present alignments and would not have provided a new connector road to remove truck traffic from downtown Princeton. The No Build Alternative would not have impacted any environmental resources and would not have required any residential or commercial relocations. It would have involved previously planned spot maintenance of currently existing roadway within the project area as needed. The No Build Alternative would not have satisfied the project's purpose and need, and was therefore not recommended.

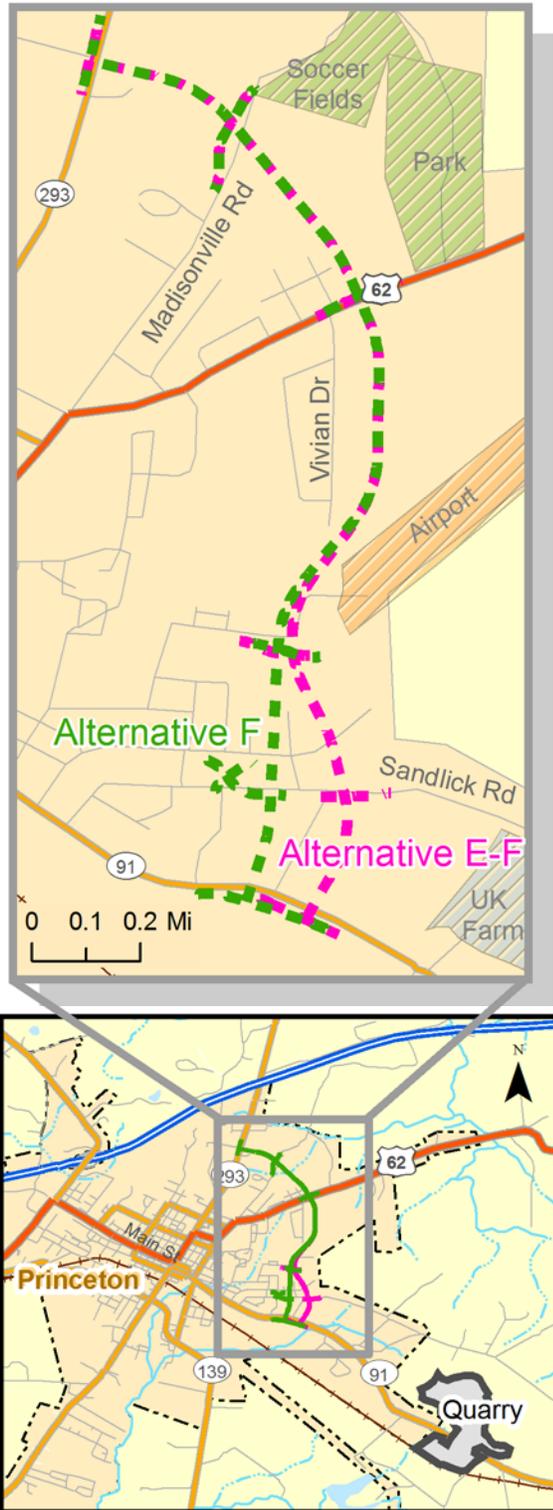


Figure 1: Alternatives E and E-F.

## Alternative F

Alternative F consists of the construction of approximately 2.0 miles of new roadway, as well as at grade intersections with existing roadways. It begins on KY 91 approximately 600 feet east of Masonic Drive and proceeds north to KY 278/Sandlick Road. It then continues north towards Cooper Street and Noble Avenue, before turning northeast, west of the Princeton/Caldwell County Airport. It then turns north to parallel Vivian Drive, before intersecting US 62. From US 62 to KY 293, it runs southeast of the City/County Park and public soccer fields, crosses Old Madisonville Road, and ends with an improved intersection at KY 293.

## Alternative E-F

Alternative E-F consists of the construction of approximately 1.9 miles of new roadway, as well as at grade intersections with existing roadways. It begins on KY 91, approximately 1300 feet east of Masonic Drive, travels north and crosses KY 278/Sandlick Road approximately 600 feet east of Brennan Drive. It runs northwest across Noble Avenue and then northeast to pass west of the Princeton/Caldwell County Airport. It then continues along the same route described for Alternative F for the rest of the project corridor.

Both Alternatives F and E-F would be two lane roadways, with turning lanes at intersections. Lanes would be twelve feet wide, and would have ten foot wide shoulders (Figure 2). They would have a design speed of 55 miles per hour, and would have controlled access. They would maintain existing access points, but establish an access spacing of 1,200 feet for new access points. One design exception could be required, because a required entry near the soccer fields is less than the 1,200 feet spacing.

A detailed description of the alternatives considered, their potential impacts, other alternatives considered but not carried forward, and the project development process can be found in the EA prepared for this project. An electronic copy of the EA is attached to this document on a CD-ROM, included inside the back cover of this document.

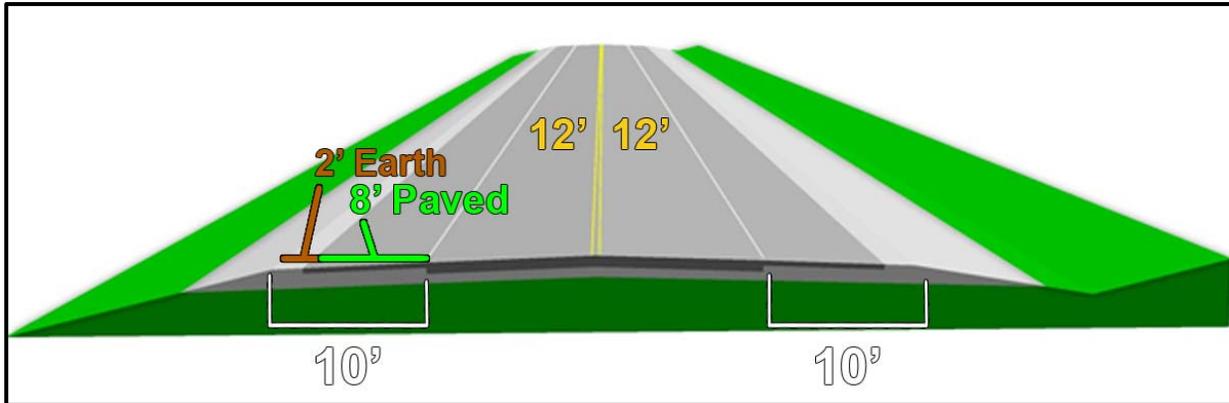


Figure 2: Typical Section of both Alternative F and Alternative E-F

## Public Involvement

Input from the public has been gathered from several public informational meetings, a Public Hearing, and from local and city officials, including the mayor of Princeton, the Princeton Downtown Manager, the Princeton City Police Chief, and the Princeton Director of Planning. Initial designs were presented, input solicited, and then revised throughout this process to develop the analyzed alternatives.

After the release of the EA prepared for the project, a Public Hearing was held in Princeton, KY. The Public Hearing was held on April 22<sup>nd</sup>, 2014, from 5:00pm to 7:00pm, in the Princeton High School Gymnasium, approximately 1.5 miles from the project corridor. Representatives of KYTC and their consultant team were on hand to answer questions and present the two build alternatives.

Multiple large scale exhibits showing the project alternatives and copies of the EA were available for public observation, and responses / comments from the public were solicited. A stenographer was present to record oral comments, and comment sheets were also distributed to the public.

111 members of the public who attended the Public Hearing, and responses were received from 58 individuals, who identified a build alternative as the preferred option, by a 30 to 28 margin. No preference was indicated, by the vast majority of respondents, as to a preferred alternative between Alternative F and Alternative E-F.

67% of the comments collected from the Public Hearing favored a build alternative. However, a privately funded and published survey collected an additional fifteen responses, which were almost universally opposed to the project (14 to 1), and when those were factored in, the overall public response was 52% in favor of a build alternative, 48% opposed. Those who were in favor of the project tended to emphasize that the project would remove trucks from downtown Princeton / the Princeton Historic District, while those who opposed it typically denied the need for the project and commented it was “too expensive.”

A more in-depth summary of the submitted comments and responses to those comments is attached to this document as Appendix B.

## Recommended Alternative

After careful consideration of the project’s purpose and need, the various environmental impacts associated with each alternative, agency input, and comments from the public, Alternative F has been recommended. A Phase I archaeological survey will be conducted on the Recommended Alternative in accordance with the Memorandum of Agreement between the Federal Highways Administration (FHWA) and the State Historic Preservation Office (SHPO) attached as Appendix C.

## Rationale for Recommendation of Alternative F

Alternative F was recommended because it results in a better facility with fewer horizontal curves, better aligned intersections, and better maintenance of traffic during the construction of intersections with pre-existing facilities. Given that there were few impacts to the natural environment to consider (see *Environmental Impacts*, this document), cost was very similar, and public opinion did not indicate a preference between alternatives,

Alternative F intersects with KY 278/Sandlick Road at a right angle, providing an improved intersection. It also allows for better traffic control when constructing the intersection with KY 91. It has one less horizontal curve than Alternative E-F and also includes an improvement to KY 278/Sandlick Road, west of the proposed intersection which would correct multiple geometric deficiencies.

Based on this evaluation, Alternative F was identified as the Recommended Alternative.

## Environmental Impacts

Impacts which would result from the implementation of the Recommended Alternative were studied and identified in the EA prepared for this project.

No impacts have been identified to:

- Streams in the Project Area
- Historic Structures / Sites
- Commercial/Institutional Relocations
- Air Quality
- Hazardous Materials / Underground Storage Tank Sites
- Environmental Justice Populations
- 4(f), 6(f), or Community Resources

Implementation of the Recommended Alternative will impact the following:

**Table 1: A Summary of Environmental Impacts of Recommended Alternative**

<b>Natural Environment</b>	
Terrestrial Habitat	48.69 acres
<b>Threatened and Endangered Species Habitat</b>	
Gray bat habitat	0 acres
Indiana bat habitat	10.90 acres
<b>Human Environment</b>	
Residential Relocations	9 Conventional / 2 Mobile
Prime and Unique / Total Farmland	19.2 / 22.46 acres
Impacted Noise Receptors	4

## Mitigation Measures / Environmental Commitments

Construction of the Recommended Alternative will require the implementation of the following mitigation measures or commitments:

**Archaeology** – A Phase I Archaeological survey will be carried out on the Recommended Alternative in accordance with the MoA signed between FHWA and the SHPO, which is attached to this document.

**Water Quality** - Best management practices, Federal Highway Administration (FHWA) guidelines, the Kentucky Department of Highways Standard Specifications (KDHSS), and the KYTC Generic Groundwater Protection Plan will be followed to protect ground water. Erosion and sedimentation controls specified in KDHSS Sections 212 and 213 will be required. Erosion control plans will be developed during the final design phase. Best management practices will be employed during the design and construction phases of the project.

**Terrestrial Ecosystems** - In accordance with FHWA and KYTC policy, final Section 7 concurrence will be required prior to construction in the form of a Programmatic Conservation Memorandum of Agreement (PCMoA) for Indiana bats.

**Residential Relocations** – KYTC Relocation agents will conduct all relocations in a way which is in accordance with the Uniform Relocation Act, and will locate comparable housing that meets decent, safe, and sanitary standards.

**Construction** - KYTC will implement erosion and sedimentation controls as specified in KDHSS Sections 212 and 213. KYTC or its contractors will control fugitive dust generation in accordance with KDHSS Section 107.01.04. Excess construction material will be managed in accordance with KDHSS Section 204.

## Costs and Schedules

As listed in the FY2014-2020 KYTC Highway Plan, the project is scheduled and funded for:

Right of Way	2015	\$2,960,000
Utilities Relocations	2017	\$2,060,000
Construction	2018	\$13,470,000

The estimated total cost for the project, as of October 2014, is \$10,658,000.

## Finding of No Significant Impact

The FHWA and the KYTC, based on the best science and information available, have reviewed and considered the EA prepared for this project and determined that the Recommended Alternative will have no significant impact on the human or natural environment. The documentation prepared has been found sufficient to comply with the requirements of the National Environmental Policy Act.

# **Appendix A**

- Exhibit of Recommended Alternative



# **Appendix B**

- Summary of Public Comments and Responses to Public Comments

# Public Hearing Summary

After the release of the Environmental Assessment (EA) prepared for the Caldwell County Connector project (KYTC Item # 2-153.00), a Public Hearing was held in Princeton, KY. The Public Hearing was held in the Princeton High School Gymnasium, approximately 1.5 miles from the project corridor. The Public Hearing was held on April 22<sup>nd</sup>, 2014, from 5:00pm to 7:00pm. Representatives of KYTC and their consultant team were on hand to answer questions and present the two build alternatives resulting from the project development process. All participants were asked to sign in, and copies of the sign in sheets are enclosed as Appendix A. 111 members of the public and 17 members of the project team were present.

**To The Citizens of  
Caldwell County and the State of Kentucky**

Do you realize that the KY State Transportation Department is planning to spend \$18,490,000 to build a connector road from KY 91 (Hopkinsville Road) to KY 293 (Wilson Warehouse Road)?

Information from the public hearing on April 22, 2014.  
Depending on the route (EF or F) it will be 1.9 miles or 2 miles. The state will acquire 46.9 acres or 48.69 acres of land to build 1.9 miles or 2 miles of road. This will involve 47 property owners and the removal of 10 houses. It will be state maintained but they are not sure if it will be fenced. It is considered a limited access road and the speed limit will be 55 mph.

There is another alternative that is called NO BUILD.  
Consider this: Do you want the state to spend \$18,490,000 for 2 miles of road so that trucks (loaded and unloaded) can travel at 55 mph in the city limits of Princeton? Do you want 48 acres of land removed from the property tax base? Do you think we have truck traffic congestion in downtown Princeton?

Please take the time to let your voice be heard and fill out this form.

Connector Road for KY 91 (Hopkinsville Road) to KY 293 (Wilson Warehouse Road).  
Select one of the following:

I recommend Route EF \_\_\_\_\_

I recommend Route E \_\_\_\_\_

I recommend NO BUILD \_\_\_\_\_

Comments: \_\_\_\_\_

Your Name: \_\_\_\_\_

Address: \_\_\_\_\_

Must be received by May 9, 2014

Mail to: John Rudd  
Project Development Branch Manager  
Transportation Cabinet  
1840 North Main St.  
Madisonville, KY 42431

MY QUESTIONS AND WHAT I WAS TOLD.

**Name or number of new connector road?** -They just refer to it as Princeton or Caldwell County Connector.

**Property owner with largest amount of acreage affected?** -Could not answer.

**How close to: City/County Pool, Airport, Youth Soccer Fields, Animal Shelter?** -Had to avoid these areas because federal funds had been spent on them.

**Who will be awarded contract for rock?** -Well,

**Where will the work start and how many trucks and heavy equipment will be traveling through downtown during construction and for how many years? What damage will be done to existing state roads and city streets and who will be responsible for the repairs and associated expenses?** -Hopefully 2017

Multiple large scale maps showing the project alternatives and copies of the EA were available for public review, and responses/comments from the public were solicited. A stenographer was present to record oral comments, and comment sheets were also distributed to the public. An example copy of the distributed comment sheets is included in Appendix A. Comments were accepted at the hearing, and for a two week period following.

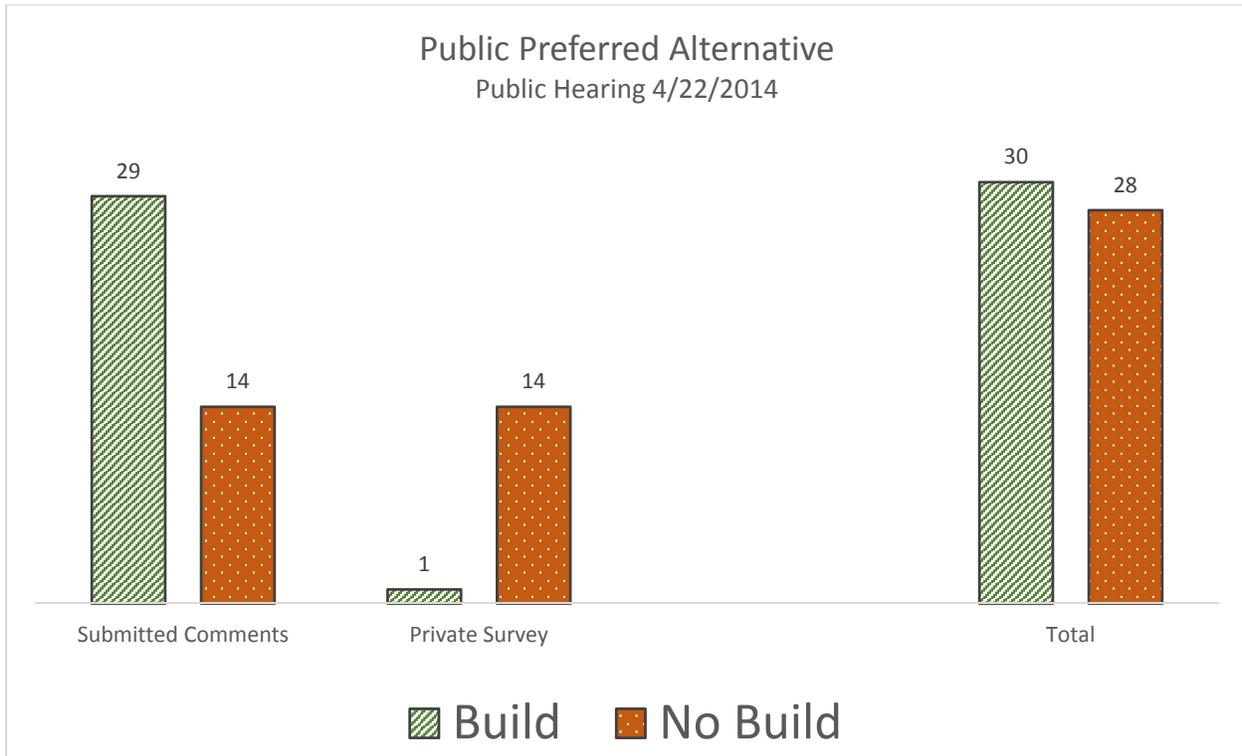
Two sets of responses were received: one set resulting from the comment form distributed at the hearing and a second set of responses received as the result of a survey. This survey was privately funded and published by a citizen in the local newspaper on April 30<sup>th</sup>, eight days after the Public Hearing (Figure 1). All responses received were counted and addressed.

Because some individuals submitted responses on both a KYTC form and on the private survey, responses were cross-referenced to include every received concern and comment. However, each individual is only included once in the figures and tables below.

By a 30 to 28 margin, respondents identified a build alternative as their preferred alternative overall, but there was a wide disparity between the two sets of responses collected (Figure 2).

*Figure 1 Blank Survey Form. Privately and independently funded/published in The Times Leader, April 30th. 16 responses were received as a result of this survey.*

# Public Responses Summary



**Figure 2** Responses to the request for public comment after the April 22<sup>nd</sup> Public Hearing. Responses were accepted between April 22<sup>nd</sup>, 2014, and May 9<sup>th</sup>, 2014. 53 responses were received, which reflected the comments of 58 individuals.

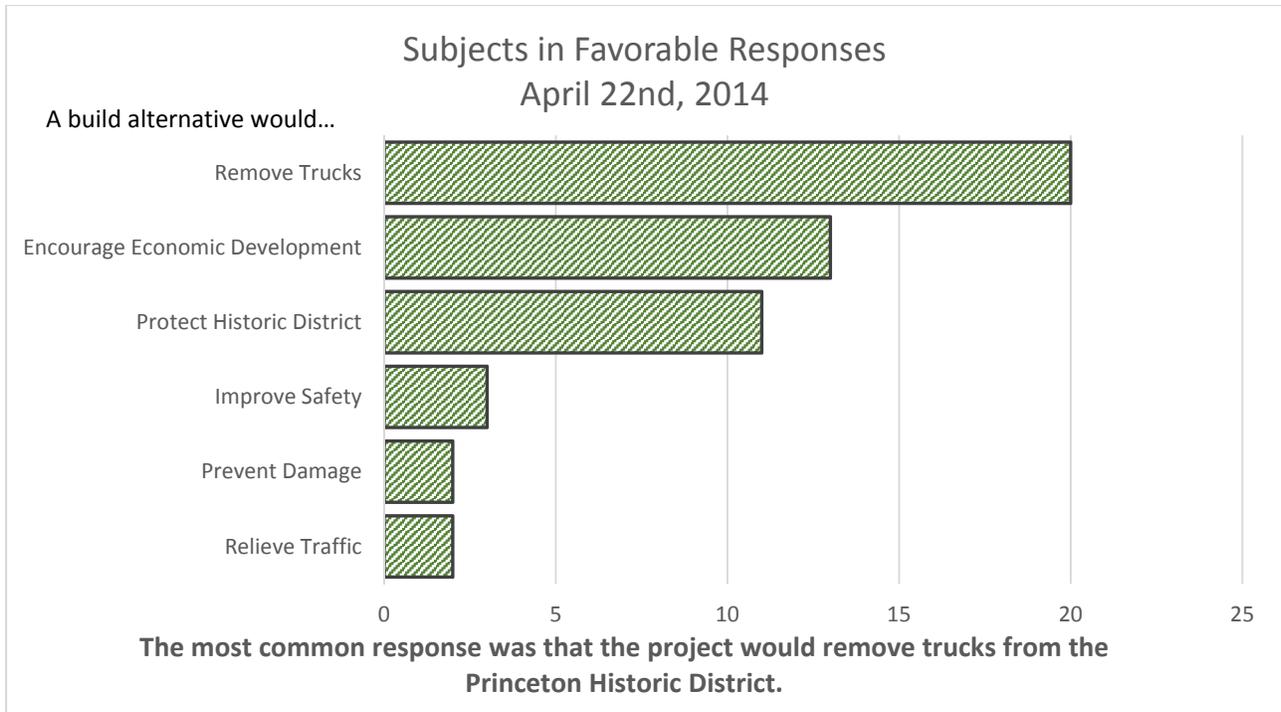
67% of the responses received at or during the Public Hearing were in favor of a build alternative, while 94% of the responses received as a result of the survey were opposed. When combined, 30 out of 58, or 52% of the responses received were in favor of a build alternative. The majority of favorable responses did not identify a preferred alternative between Alternative E-F and Alternative F. However, four responses which oppose the project identified a build alternative that was the least objectionable. Of those four responses, two preferred Alternative E-F and two preferred F.

The responses also included two anonymous comments, which were not counted in the total. One was in favor of a build alternative, and one was opposed.

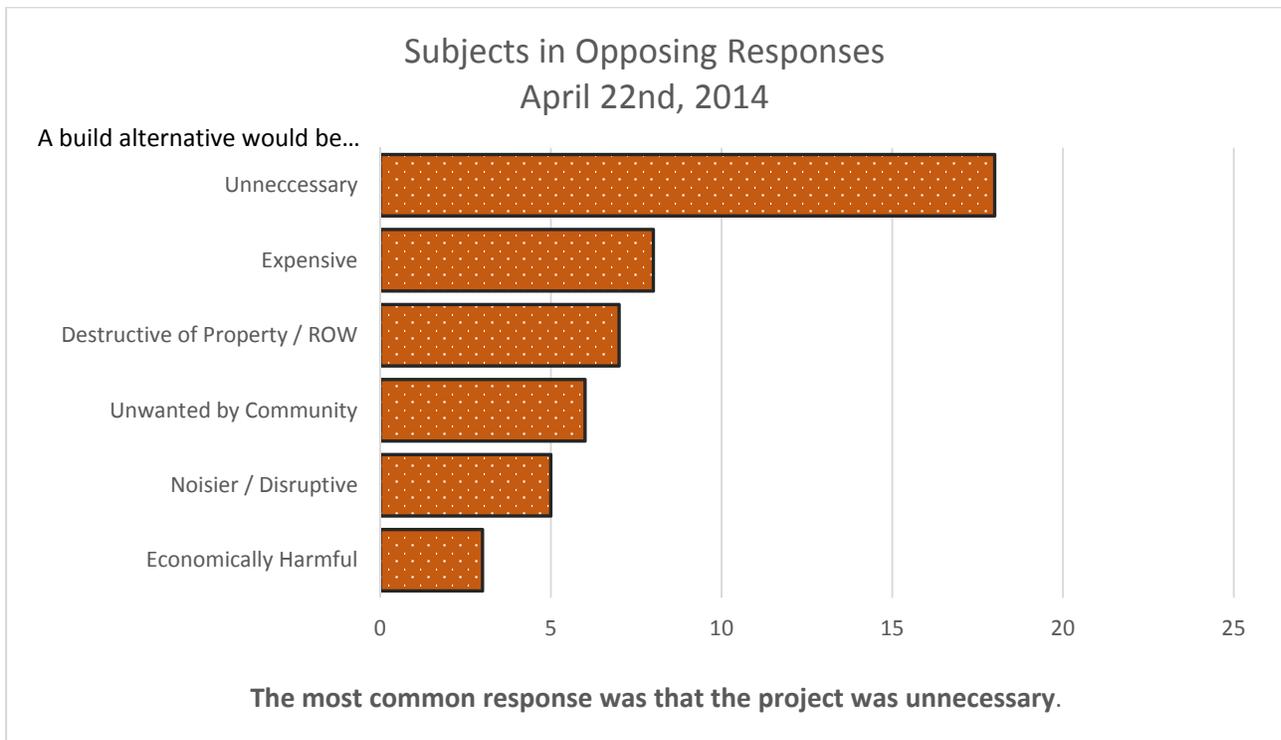
One group, the Princeton Mainstreet Committee, submitted a response in favor of the proposed build alternatives, with five signatory members. Two of those members submitted additional, individual responses, and so were identified to avoid double-counting their responses.

Responses received were grouped by general subjects (Figures 3 and 4), and since one response could comment on multiple subjects, the values present in Figures 3 and 4 do not add up to the total number of responses received.

There was almost no overlap in subjects between favorable and opposing responses. Favorable responses tended to emphasize the subjects described in the projects Purpose and Need, while opposing responses tended to deny the need for the project, and describe it as “expensive.”



**Figure 3** Subjects discussed in favorable responses. Totals reflect responses collected from the Public Hearing on April 22<sup>nd</sup>, 2014 and from the private survey published April 30<sup>th</sup>, 2014. Total favorable responses received: 30



**Figure 4** Subjects discussed in opposing responses. Totals reflect responses collected from the Public Hearing on April 22<sup>nd</sup>, 2014, and from the private survey published April 20<sup>th</sup>, 2014. Total opposing responses collected: 28

The following is a summary of the responses and is presented in order of most to least comments received:

**Twenty (20) responses were received that stated that the project would remove or lessen truck traffic through the Princeton Historic District.**

Interviews with quarry officials confirm that the majority of truck operators would prefer to travel on a roadway which would provide safer, faster, and less expensive travel. Either of the build alternatives would provide such a roadway.

**Eighteen (18) responses were received that stated the project was unnecessary because congestion was not a community-level problem.**

Interviews with local officials revealed that traffic from trucks create issues which require police assistance several times per week, as well as causing nuisance level noise through the Princeton Historic District. Additionally, the increased heavy truck traffic through the Princeton Historic District increases roadway deterioration and increases the need for regular maintenance, and also could present a hazardous situation for pedestrians.

Commuter or personal vehicle traffic congestion is not a project concern, nor is it intended to be remedied as a result of the implementation of any of the build alternatives considered in this project. Heavy truck traffic and other commercial vehicles are part of the project's Purpose and Need.

**Thirteen (13) responses were received that stated that the implementation of either of the proposed build alternatives would result in economic benefits to Princeton.**

No economic studies or analyses have been performed specifically for this project, and economic effects are not included in the project's Purpose and Need.

**Eleven (11) responses were received that stated that the implementation of either of the proposed build alternatives would result in increased preservation of the Princeton Historic District.**

See Sections 1.5 and 3.15 in the attached EA prepared for this project.

**Eight (8) responses were received that stated that the project was too expensive.**

Funding for all phases of the project has been allocated in the KYTC Six Year Plan and will be matched at a ratio of 20:80, State Monies to Federal Monies. Funding has been allocated for this project from funding that has been set aside for transportation projects, and is not part of funding available for other types of projects or concerns. The anticipated project costs are comparable to other projects throughout the state that feature similar terrain and are of similar scale.

**Seven (7) responses were received that expressed concerns about property/right-of-way acquisitions and/or the destruction of a heritage farm.**

Every possible consideration has been given to the design of proposed build alternatives which satisfy the project's stated Purpose and Need while avoiding as many relocations or other impacts as possible. Based on comments given at previous public meetings, proposed build alternatives were designed to avoid local features, neighborhoods, and community resources. However, as with any project of this scale and proximity to communities, some relocations are unavoidable.

Persons being displaced are eligible for financial assistance under the 1970 Uniform Relocation Assistance and Real Property Acquisitions Policy Act. Low-income residents that would be affected by these alternatives would be provided with equivalent Decent, Safe, and Sanitary (DSS) housing, and would be moved to areas that do not provide pressures due to increased travel distances from work and other basic needs.

Archaeological and Cultural Historic surveys and studies were performed during the project development process and identified resources for avoidance based on applicable regulations. These studies are on file with KYTC, and are summarized in the attached EA prepared for this project. Additional cultural resources surveys were performed on the Selected Alternative and the results of the surveys are included in this FONSI. All identified historic resources have been avoided, and the implementation of a build alternative for this project will relieve the Princeton Historic District of heavy truck traffic.

**Six (6) responses were received that stated that the project is unpopular in the community.**

The project has included substantial public involvement throughout the project development process, and has been responsive to individual desires while balancing public needs. Proposed alternatives were presented to the public at a 2012 Public Meeting, revised based on public input, and those revised alternatives are evaluated in the EA prepared for this project.

When public comment was solicited on the project and on the EA prepared for this project, 58 individuals responded, and a majority of those responses were favorable towards the project (Figure 2).

**Five (5) responses were received that stated that the implementation of either of the proposed build alternatives would result in unreasonable increases in noise near the proposed alignments.**

A noise study was conducted as part of the project development process for this project, and is on file with KYTC.

That study found that if Alternative F were implemented, three receptors would receive a substantial increase in noise. The highest predicted future noise level at a project receptor was predicted to be 55 decibels, an increase of 11 decibels from its current level.

If Alternative E-F were implemented, five receptors would receive a substantial increase in noise. The loudest highest predicted future noise level at a project receptor was predicted to be 59 decibels, an increase of 10 decibels from its current level.

No alternative resulted in the predicted increase of noise approaching (within 1 dBA), at or above the FHWA impact threshold for residential areas of 67 decibels. Noise barriers were modeled for impacted receptors, but were not found reasonable or feasible, per KYTC's noise policy, and are not proposed as a part of this project.

**Three (3) responses were received that stated that implementation of either of the proposed build alternatives would improve safety in the Princeton Historic District.**

See Sections 1.1-1.7 in the attached EA prepared for this project.

**Three (3) responses were received that stated that the implementation of either of the proposed build alternatives would result in economic harm to Princeton.**

While no economic studies or analyses have been performed specifically for this project, and economic impacts are not included in the project's Purpose and Need, city officials, business owners, and local residents have confirmed in interviews and submitted comments that truck traffic interferes with their land uses and activities.

Truck traffic, which does not typically stop at or patronize downtown businesses, would be greatly reduced by this project, and the downtown area would be quieter, safer, and more pedestrian friendly as a result of the implementation of either of the proposed build alternatives.

The Princeton Mainstreet Committee, composed of local business leaders and city officials, has commented that the current state of "heavy truck traffic in our downtown is deleterious to...our business climate." The proposed build alternatives would remove that traffic, and, in the words of the Princeton Zoning Administrator "enhance [their] efforts to remain a viable community.

**Two (2) responses were received that stated that the implementation of either of the proposed build alternatives would prevent roadway damage in the Princeton Historic District.**

Interviews with local transportation officials indicate that maintenance requirements in the Princeton Historic District are unusually high, and the increased heavy commercial truck traffic on inadequate roadways is believed to be the cause.

**Two (2) responses were received that stated that the implementation of either of the proposed build alternatives would relieve traffic congestion in the Princeton Historic District.**

See Section 1.6 of the attached EA prepared for this project.

**Two (2) responses were received that proposed additional alignments or new roadways.**

The proposed additional alignments or roadways would constitute actions beyond the scope and scale of the project at hand.

**One (1) response was received that inquired about right-of-way acquisition timing.**

Right-of-way acquisitions cannot begin until a final environmental decision-making document is issued. This phase is currently funded and listed in the KYTC Six Year Plan as scheduled to begin in 2015.

# **Appendix C**

- Memorandum of Agreement between FHWA and SHPO



TRANSPORTATION CABINET

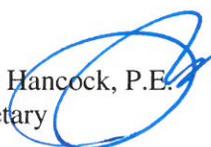
Frankfort, Kentucky 40622  
www.transportation.ky.gov/

OFFICE OF GENERAL COUNSEL

Michael W. Hancock, P.E.  
Secretary

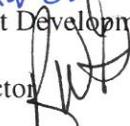
Steven L. Beshear  
Governor

MEMORANDUM

TO: Mike Hancock, P.E.   
Secretary

THROUGH: Steve Waddle, P.E., State Highway Engineer   
State Highway Engineer

THROUGH: Gary Valentine, P.E.   
Executive Advisor, Office of Project Development

THROUGH: Rebecca Goodman, Executive Director   
Office of Legal Services

FROM: David M. Waldner, P.E., Director   
Division of Environmental Analysis

DATE: August 6, 2014

SUBJECT: **Memorandum of Agreement**  
New Connector from KY 91 to KY 293 Northeast of Princeton  
Caldwell County, KY  
KY TC Item No 2-153

Attached for your approval as to form and legality is one copy of the Memorandum of Agreement (MOA) that details the deference of archaeology to allow the FONSI to be signed and move the project into additional phases. This office requests that the Office of Legal Services review and sign approving as to form and content and then forward through the others listed above in routing to Secretary Hancock for approval. Once the MOA is signed, please return the MOA to the Division of Environmental Analysis for coordination with the State Historic Preservation Officer, the Federal Highway Administration, and the Advisory Council on Historic Preservation.

If you have any questions regarding this request, please contact me.

c: J. Rudd (D2) P. Waggoner (D2), T. Foreman, J. Hixon



**KENTUCKY TRANSPORTATION CABINET  
MEMORANDUM OF AGREEMENT  
PURSUANT TO 36 CFR Part 800.6(a)  
DEFER PHASE I ARCHAEOLOGY  
NEW CONNECTOR FROM KY91 (HOPKINSVILLE ROAD) TO KY293 (WILSON  
WAREHOUSE ROAD) NORTHEAST OF PRINCETON  
CALDWELL COUNTY, KENTUCKY  
KENTUCKY TRANSPORTATION ITEM NUMBER: 2-153.00**

**Signatories**

Federal Highway Administration - Kentucky Division  
John C. Watts Federal Building  
330 W. Broadway  
Frankfort, KY 40601

Kentucky State Historic Preservation Office  
300 Washington Street  
Frankfort, Kentucky 40601

**Invited Signatories**

Kentucky Transportation Cabinet  
200 Mero Street  
Frankfort, Kentucky 40622

**WHEREAS**, the Federal Highway Administration (FHWA) and Kentucky Transportation Cabinet (KYTC) have determined that the new connector from KY91 to KY293 in Caldwell, Kentucky (The Project) may have an adverse effect upon archaeological sites eligible for inclusion in the National Register of Historic Places (NHRP); and

**WHEREAS**, the FHWA has consulted with the Kentucky State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470f); and

**WHEREAS**, the KYTC participated in the consultation and has been invited to concur in this Memorandum of Agreement (MOA); and

**WHEREAS**, it is agreed that it is in the public interest to mitigate the adverse effects of The Project on archaeological sites determined eligible for listing in the NRHP; and

**WHEREAS**, the consulting parties agree that federally recognized American Indian Tribes that may attach religious or cultural importance to the affected property have been consulted and have raised no objection to the work proposed; and

**NOW, THEREFORE**, the FHWA and the SHPO agree that The Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties, and further agree that these stipulations shall govern The Project and all of its parts until this MOA expires or is terminated or all stipulations have been implemented.

## Stipulations

The FHWA shall ensure that the following stipulations are carried out:

### I. Archaeology

The KYTC, through consultation with the SHPO, shall ensure that all archaeological work required by this MOA will be carried out by Preservation Professionals meeting, at a minimum, the Secretary of the Interior's Professional Qualification Standards (48 FR 44738-9) (Secretary's Standards).

#### A. **Phase I Archaeological Survey**

Phase I archaeological survey will be conducted for the preferred alternate within the proposed project right-of-way, prior to the initiation of any ground disturbing activities, such as utility relocations or construction, to determine if they contain archaeological sites that are eligible for listing in the NRHP. Upon completion of the survey, a report will be prepared in accordance with the SHPO's most current Specifications for Archaeological Field Work and Assessment Reports (SHPO Specifications) and will be submitted by the FHWA to the SHPO for review and comment.

#### B. **Archaeological Mitigation**

1. If sites are determined to be eligible for the NRHP through Phase II testing and will be impacted by The Project, the KYTC will, in consultation with the SHPO, develop a Research Design and Recovery Plan (Plan) in conformance with the Secretary's Standards. The Plan will be submitted to the SHPO for review and concurrence. Unless the SHPO comments or objects within thirty (30) days of receiving the Plan, the KYTC will implement the plan as soon as possible.
2. Procedures for addressing the treatment of human remains and grave goods shall be guided by the Advisory Council on Historic Preservation's (ACHP) *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* (adopted by the ACHP February 23, 2007), the KYTC's *Right of Way Manual Section 1300*, and other applicable state and local laws. If human remains, associated burial items, sacred items, or items of cultural patrimony are found during Project activities, construction activities in those areas will be halted and the FHWA shall provide written notification and documentation to the SHPO and federally recognized American Indian Tribes that may attach religious or cultural importance to the affected property. The FHWA shall consult with these parties to discuss avoidance, minimization of disturbance, or protocols for disinterment.

### **C. Unanticipated Discoveries**

If, during the implementation of The Project, a previously unidentified historic property is discovered or a previously identified historic property is affected in an unanticipated manner, the KYTC shall ensure that all work within a reasonable area of the discovery shall cease until such time as a treatment plan can be developed and implemented as set forth below.

1. The KYTC shall require the contractor to take all reasonable measures to clearly mark and avoid harm to the property until the FHWA concludes consultation with the SHPO, Indian Tribes, and other parties deemed appropriate by the FHWA (hereafter in this section the “Parties”).
2. Upon being notified of the discovery, the FHWA shall implement procedures set forth in 36 CFR 800.13(b).
3. Within forty-eight (48) hours of notification of the discovery, or at the very earliest opportunity thereafter, the FHWA shall contact the Parties, and provide written details of the discovery.
4. Within forty-eight (48) hours of the discovery, or at the very earliest opportunity thereafter, a qualified professional archaeologist and the KYTC shall conduct an on-site evaluation to consider eligibility, effects, and possible treatment measures. The Parties may participate in the on-site evaluation and shall be notified in advance of the location, date, and time.
5. If, based on the on-site evaluation, the FHWA determines that a historic property is being adversely affected, then the Parties shall consult to determine an appropriate treatment plan, and the FHWA will develop a treatment plan. The plan will be submitted to the Parties for review and comment within seven (7) days of receipt of the proposed plan. The FHWA will take comments received into account in developing and implementing the final plan.
6. If the FHWA, in consultation with the Parties, agree the site is not eligible for the NRHP, then ground-disturbing work may proceed.
7. If the FHWA and the Parties cannot reach agreement regarding eligibility, effects, or treatment, then they shall follow the provisions outlined in the Resolution of Disagreements.

### **II. Resolution of Disagreements**

Should the SHPO object within 30 days to any plans, specifications, reports or other actions submitted or undertaken pursuant to this MOA, the FHWA and the KYTC shall consult with the SHPO to resolve the objection. If the FHWA and the KYTC determine that the objection cannot be resolved, the FHWA shall request the further comments of the ACHP pursuant to 36 CFR 800.6(b). Any ACHP comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR 800.6(c)(2) with reference only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this MOA that are not the subjects of the dispute will remain unchanged.

**III. Terms**

The terms of this agreement shall be completed within five years of its execution. If terms have not been completed the document shall be considered extended for an additional year each anniversary year thereafter until all provisions have been completed.

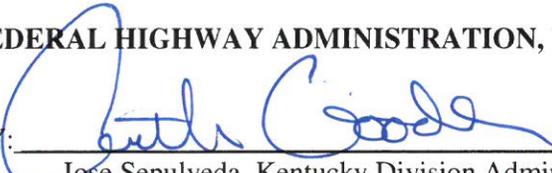
**IV. Opt-Out**

- A. Any modification or amendment of this agreement shall be in writing.
  
- B. Termination of this agreement by any party shall be preceded by written notice delivered to other signatories a minimum of thirty (30) days prior to the anticipated date of termination and shall clearly state the reason for said action.

Execution of this Memorandum of Agreement and implementation of its terms evidence that the FHWA has afforded the Advisory Council an opportunity to comment on The Project and The Project's effect on historic properties, and that the FHWA has taken into account the effects of the undertaking on historic properties.

**SIGNATORIES:**

**FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION**

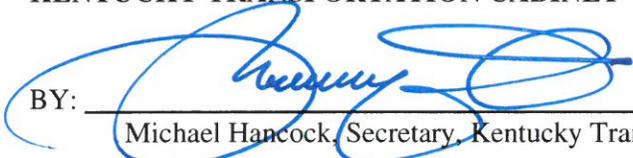
BY:  \_\_\_\_\_  
Jose Sepulveda, Kentucky Division Administrator Date

**KENTUCKY HERITAGE COUNCIL**

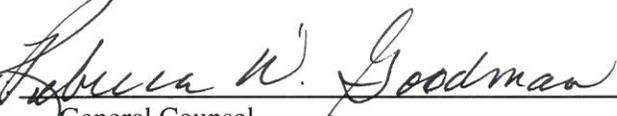
BY:  \_\_\_\_\_ 10-8-14  
Craig Potts, State Historic Preservation Officer Date

**INVITED SIGNATORIES:**

**KENTUCKY TRANSPORTATION CABINET**

BY:  \_\_\_\_\_ 9/15/14  
Michael Hancock, Secretary, Kentucky Transportation Cabinet Date

**APPROVED AS TO FORM AND LEGALITY  
KENTUCKY TRANSPORTATION CABINET**

BY:  \_\_\_\_\_ 09/09/14  
General Counsel Date

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Caldwell County, KY

**ACCEPTED FOR THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION**

BY: \_\_\_\_\_ Date \_\_\_\_\_