

1. Key Guidance

LEJV consulted two key resources for guidance in preparing this memorandum. These documents are the current FHWA and AASHTO guidance regarding alternatives analysis and their relationship to the Purpose and Need. Their guidance, along with analyses and policy decisions described in this memorandum, show that FHWA and IDOT have the latitude to proceed with the Study while not considering alternatives within Kentucky.

1.1. FHWA Alternatives Analyses White Paper (2010)

FHWA's Office of the Chief Legal Counsel published the "Alternatives Analysis White Paper" in September, 2010¹. This is the current official FHWA guidance on conducting alternatives analyses in NEPA projects, emphasizing EISs. Its overall purpose is to summarize "...how FHWA can be most efficient in this area while still adhering to the goals and legal requirements of NEPA ..." (p.1). It also states, "This white paper discusses strategies to minimize the number of alternatives that must be evaluated in detail ..." (p. 1). Key guidance it provides includes:

- "The number of alternatives studied in detail in an EIS may be reduced through a screening process conducted during scoping." (p. 1);
- "Alternatives eliminated during the transportation planning process, because they are not reasonable or feasible, as those terms are defined in the context of NEPA, or do not meet the proposed project's statement of P&N, can be omitted from the detailed analysis of alternatives in the NEPA document as long as the rationale for elimination is briefly explained in the NEPA document." (p. 3)
- "The number of alternatives studied in detail in an EIS may be reduced through a screening process conducted during scoping." (p. 3)
- That alternatives screened during scoping can include "...those that are not technically or economically feasible (as contrasted to simply not desirable); ..." (p. 4)

Subsequent sections of this document demonstrate that applying such criteria as P & N and economic feasibility allow alternatives in Kentucky to be excluded at this time, without being analyzed in detail in the EIS. The rationale for this decision must be documented in the project EIS (p. 5).

1.2. AASHTO Practitioner's Handbook – Purpose & Need/Range of Alternatives (2007)

This document is the seventh in a series of Practitioner's Handbooks published by the Center for Environmental Excellence of American Association of State Highway and Transportation Officials (AASHTO). These Handbooks are a standard reference for NEPA project managers and practitioners who are responsible for coordinating compliance with regulatory requirements. In the practice areas, addressed by each handbook, it provides the following:

- Key issues to consider;
- A background briefing; and
- Practical tips for achieving compliance

¹ http://www.fhwa.dot.gov/everydaycounts/pdfs/altsanalysespaperhccwhitepaperwebversion9_22_10.pdf

The Purpose & Need/Range of Alternatives Handbook offers the following guidance relevant to consideration of alternatives in Kentucky by the 66 Corridor Study.

Two of the key issues it identifies (p. 1) is to determine whether there is any legislation (Federal, state or local) that should be considered in defining the project purpose, and identifying the “true drivers” of the project (primary purposes) as opposed to secondary purposes. Additional guidance that it provides in these areas includes:

- “Specifically, the purpose and need limits the range of alternatives because an agency can dismiss, without detailed study, any alternative that fails to meet the project’s purpose and need.” (p. 3)
- “Courts have specifically recognized that Federal agencies can and should consider legislative direction when determining a project’s purpose.” (p. 6)
- It distinguishes “primary” and “secondary” purposes for a project. It states regarding a primary project purpose, “A primary purpose is a “driver” of the project. In other words, it is a goal that reflects the fundamental reason why the project is being pursued. An alternative that does not achieve a primary purpose would be eliminated as unreasonable.” (p. 9)

This guidance reinforces the statements in the FHWA *White Paper* that alternatives which fail to satisfy the P & N can be dismissed without detailed study. It also elaborates on the topic of “primary” vs. “secondary” project purposes, stating that alternatives that cannot address primary project purposes should be dismissed as unreasonable. The P & N for the 66 Corridor Study has established the primary project purpose as improved transportation linkage/connectivity between Paducah and I-55 in Missouri. This linkage/connectivity has two key aspects – accessibility between Paducah and I-55, and regional accessibility to Urban Areas, Medical Care and Higher Education. See pp. 9 – 10 of the 66 Corridor P & N statement.

In addition, there is explicit statutory language which describes this project as crossing into Illinois from Paducah. The statutory language is reflected in the project narrative of the USDOT grant funding for this study.

1.3. Factors Considered

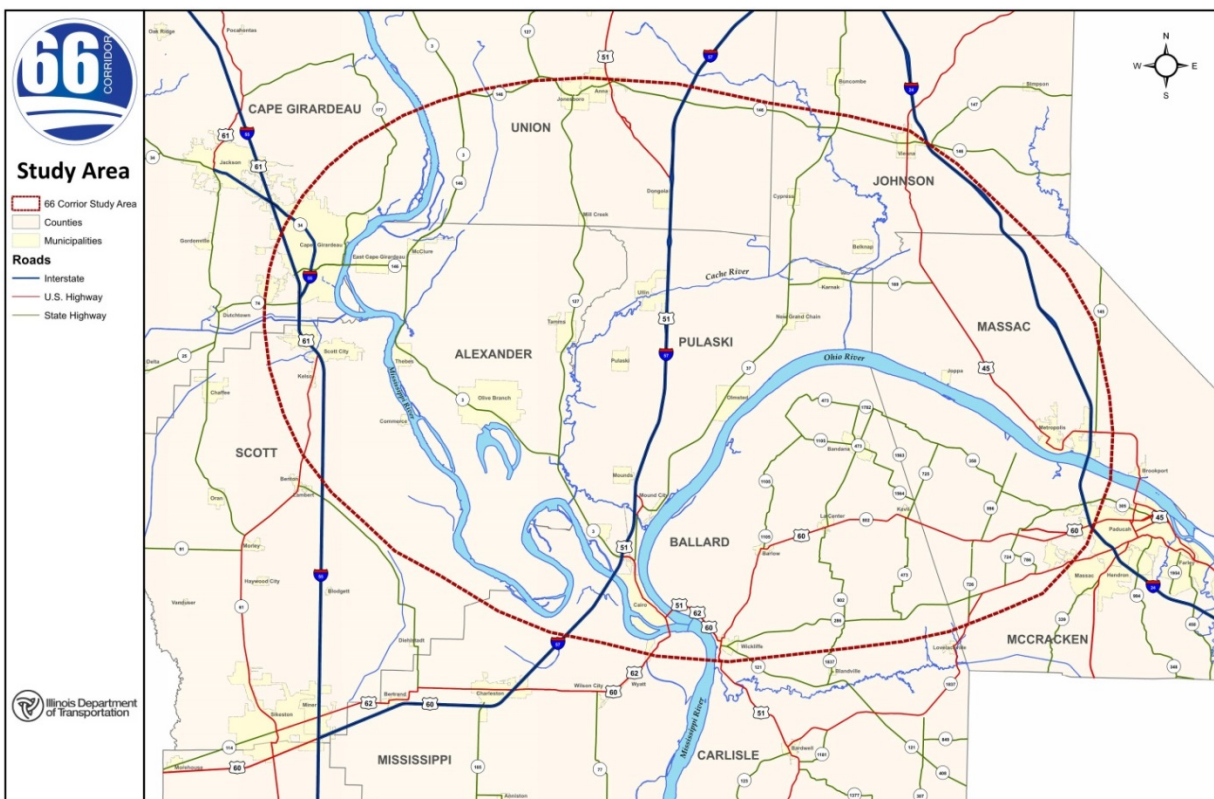
Using the guidance in these two documents, the following sections describe the justification for excluding alternatives in Kentucky at this stage of the Study.

- **Purpose and Need.** The 66 Corridor Purpose and Need’s primary purpose (improved system linkage and regional accessibility) can be satisfied only by alternatives entering Illinois at Paducah; **they cannot be satisfied by alternatives in Kentucky.**
- **Legislative and Regulatory History.** National High Priority Corridor 3 (East-West Transamerica Corridor) as designated in ISTEA (1991) and amended in the National Highway System Designation Act (1995) provides that this national corridor cross into Illinois at Paducah and continue across Illinois into Missouri. The USDOT grant funding this Study restates these provisions.
- **Economic Feasibility/Funding.** There is no reasonable expectation of funding for any alternative in Kentucky (which would include a new major river crossing, over the Ohio and/or the Mississippi River).

- **Planning History.** Previous planning studies concluded that lack of funding precluded further consideration of alternatives in Kentucky. Further, these studies identified that such further consideration (of Kentucky alternatives) should occur only if the funding circumstances changed. Recent coordination with KYTC (including statements by the Cabinet Secretary) has shown that these earlier funding circumstances are unchanged.

2. 66 Corridor Purpose and Need (April, 2014)

As a reference, the map of the project Study Area included in the Study P & N has been provided. Requests to modify this Study Area were made at the June 19, 2014 NEPA/404 coordination meeting; the Study Area is subject to further modification if the decision is made to not consider alternatives in Kentucky.



66 Corridor Study Area – from April, 2014 Purpose and Need Statement

The 66 Corridor Purpose and Need (p. 9) states:

“The primary need within the 66 Corridor Study Area is an improved transportation linkage/connectivity between Paducah, Kentucky and I-55 in Missouri.

“A. System Linkage/Connectivity – Accessibility Between Paducah and I-55

“B. System Linkage/Connectivity – Regional Accessibility to Urban Areas, Medical Care and Higher Education”

Existing conditions for Part A of this goal were assessed in the Regional Transportation Needs Analysis (Appendix 2 of the 66 Corridor Purpose and Need). This analysis measured existing connectivity between Paducah and both Cape Girardeau and Sikeston, Missouri. **The analysis found (p. 8 of Appendix 2) that there is a “significant need” to improve the accessibility between Paducah and Cape Girardeau,** while there is only a “moderate need” to improve the accessibility between Paducah and Sikeston. A project corridor through Illinois **would address the “significant need”** to improve Paducah-Cape Girardeau accessibility, while a project corridor through Kentucky would address the “moderate need” to improve the accessibility between Paducah and Cape Girardeau.

The following Table 1 as provided in the P & N (p. 10) assesses the existing level of regional accessibility (Part B of this goal) to urban areas, full-service medical facilities and colleges/universities.

Table 1 - Regional Accessibility Measures - Year 2010 No Build						
Part of Study Area	Population with 30 minute access to urban area*		Population with 30 minute access to full-service medical facility		Population with 30 minute access to college or university	
	Number of People	% of Population	Number of People	% of Population	Number of People	% of Population
Illinois Counties	15,794	26.2	16,960	28.2	36,390	60.4
Kentucky Counties	66,574	90.2	67,996	92.1	70,190	95.1
Missouri Counties	113,287	87.8	115,630	89.5	81,463	63.0
Total Study Area	195,655	74.3	200,586	76.2	188,043	71.4
* Defined as %'s of population within 30 minutes of urban cores of Cape Girardeau (Model TAZ 476), Sikeston (Model TAZ 212) or Paducah (Model TAZ 1708)						

The Kentucky portion of the 66 Corridor Study Area (defined in the P & N as Ballard and McCracken counties) currently has a very high level of personal accessibility to a wide range of destinations. These include urban centers (which have employment, shopping, cultural and recreational destinations), full-service medical facilities and institutions of higher education. The need for improved personal accessibility essentially is limited to the five Illinois counties in the Study Area (Alexander, Johnson, Massac, Pulaski and Union). **Alternatives in Kentucky would not provide any improvement in personal accessibility to these Illinois counties, where the identified needs exist.**

This provides an *a priori* basis for determining that any alternative through Kentucky is unreasonable, because it would not satisfy the project’s Purpose and Need. Citing the guidance from the AASHTO Handbook as stated in Section 1.2, “A primary purpose is a “driver” of the project. In other words, it is a goal that reflects the fundamental reason why the project is being pursued. An alternative that does not achieve a primary purpose would be eliminated as unreasonable” (p. 9). Alternatives in Kentucky would not address the significant need for increased accessibility in Illinois counties. By comparison, all but 5 – 10% of residents in the Kentucky portion of the Study Area already enjoy adequate personal accessibility.

3. Legislative/Regulatory History

The current Study is part of the East-West Transamerica Corridor that has been designated and refined in congressional legislation over approximately a quarter century. The national project's history is documented in detail in the Purpose and Need Statement. Appendix 1 of the P & N is the "Project History Statement" and states the following (p. 1):

"Beginning with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), corridors have been designated in Federal transportation legislation as high priority corridors on the National Highway System (NHS) for inclusion in the NHS as specific routes or general corridors."

"The 66 Corridor project corresponds to part of Corridor 3, which was originally identified in ISTEA (P.L. 102-240 Section 1105). This original designation of Congressional High Priority Corridors has been amended 12 times, most recently by Moving Ahead for Progress in the 21st Century Act (MAP-21), (P.L. 112-141, Section 1104).

"The current definition of Corridor 3 is as follows:

"East-West Transamerica Corridor commencing on the Atlantic Coast in the Hampton Roads area going westward across Virginia to the vicinity of Lynchburg, Virginia, continuing west to serve Roanoke and then to a West Virginia corridor centered around Beckley to Welch as part of the Coalfields Expressway described in section 1069(v), then to Williamson sharing a common corridor with the I-73/74 Corridor (referred to in item 12 of the table contained in subsection (f)), then to a Kentucky Corridor centered on the cities of Pikeville, Jenkins, Hazard, London, Somerset; then generally following the Louie B. Nunn Parkway corridor [I-66] from Somerset to Columbia, to I-65; then to Bowling Green, Hopkinsville, Benton, and Paducah, into Illinois, and into Missouri and exiting western Missouri and moving westward across southern Kansas."

The highlighted text indicates that Congress specified that the project would cross into southern Illinois to connect Paducah with I-55 in Missouri.

The Congressional intent is reflected in the "Notice of Grant Award" by the Office of the USDOT Secretary. This Notice is attached to this document. The Notice lists the five Illinois counties in the project area as the location of the project (p.1) and lists the "project location" as including I-24 in Paducah and the ILL 146 Bridge to Cape Girardeau (p. 2). This combination of locations presumes the project is routed through Illinois. The Notice also cites high unemployment and low income levels in three Illinois counties, noting that improved highway access would support economic development and job creation in these counties (p. 2).

Congressional intent is appropriate to cite in determining the Purpose and Need and range of alternatives for a project. An example is the I-69, Evansville-to-Indianapolis Project in neighboring Indiana. Similar Congressional legislation specified that Congressional High Priority Corridor 18 (of which this project is a part) would be constructed as an Interstate Highway, I-69. This legislation alone was used as the basis for stating as one of the performance measures of the project's Purpose and Need was "a freeway constructed to Interstate design standards" (I-69 Evansville-to-Indianapolis Tier 1 FEIS, p. 2-49). The rationale for using Congressional legislation to specify that all alternatives considered would be Interstate highways is provided on p. 2-6 of the FEIS.

The Congressional intent in specifying the routing of the Transamerica Corridor west of Paducah supports the Study's Purpose and Need analysis. That analysis shows that alternatives in Kentucky would not satisfy the primary goal of improved personal accessibility in the Study Area.

4. Economic Feasibility/Funding

At the June 19, 2014 NEPA/404 Coordination meeting, the KYTC representative, David Waldner, stated Kentucky's view that any project alternatives should use the existing I-24 bridge at Paducah over the Ohio River and continue through Illinois. The key rationale stated is that Kentucky could not fund what was termed a "mega project" that would include a new structure over the Mississippi or Ohio rivers. A subsequent meeting was held among IDOT, KYTC and LEJV staff at KYTC's headquarters in Frankfort, Kentucky on November 5, 2014. KYTC Secretary Michael Hancock was an attendee. Secretary Hancock elaborated on the economic feasibility of project alternatives in Kentucky. The meeting summary quotes him as describing an alternative in Kentucky as "an unfeasible mega project they do not have the ability to fund nor the intentions to pursue." Secretary Hancock also stated that, "... the Kentucky General Assembly has not authorized KYTC staff to participate in the 66 Corridor Study."

The Kentucky General Assembly exercises detailed oversight of the Commonwealth's State Transportation Improvement Program (STIP), as well as its six year highway plan. Kentucky's current STIP was published in August, 2014.² Its preface (p. 9 of the referenced web document, which is not assigned a page number) states the following:

"The Kentucky Legislature enacted House Bill 236, House Bill 237 and House Joint Resolution 62 during the 2014 Regular Session of the General Assembly. House Bill 236 is the Biennial Budget for the Kentucky Transportation Cabinet and provides operating funds for FY 2015 and FY 2016. House Bill 237 is the Biennial Highway Construction Plan for FY 2015 and FY 2016 and House Joint Resolution 62 is the Highway Preconstruction Plan for FY 2017 through FY 2020. Collectively, HB 237 and HJR 62 make up the 2014 Highway Plan. The Transportation Cabinet's overall transportation program contained within the FY 2015-2018 STIP is consistent with the state and federal revenue estimates and assumptions and contains projects as identified within the 2014 Highway Plan."

The "mega projects" referenced by Secretary Hancock are enumerated on p. 33 of this document under the heading 12. *Kentucky's "Mega Projects"*. The first paragraph of this section states,

"As the 2014 Highway Plan was developed, strong consideration was given to the funding needs associated with six (6) "Mega Projects" located in Kentucky. The six (6) "Mega Projects" in Kentucky are (1) the Louisville Bridges project, (2) the Interstate 71/75 Brent Spence Bridge congestion relief project in northern Kentucky, (3) the proposed Interstate 66 in southeastern Kentucky, (4) the proposed Interstate 69 in far western Kentucky, (5) proposed I-69 Spur; I-66/I-65 Spur; and I-67 Spur, and (6) the reconstruction of US 68/KY 80 Aurora, Kentucky to Cadiz, Kentucky. Each of these projects would be an expensive, but welcome, addition to Kentucky's highway system."

As Secretary Hancock noted, the Kentucky General Assembly exercises direct oversight of highway planning and construction in the Commonwealth. Large-scale "mega projects" are explicitly authorized by the legislature. Three of the six mega projects cited in the STIP are described as "proposed," illustrating that the General Assembly's oversight extends to funding pre-construction activities.

² http://transportation.ky.gov/program-management/statewide%20improvement%20program%202015%20final/stip_complete.pdf

Absent authorization by the Kentucky General Assembly of the 66 Corridor project for pre-construction studies, it is reasonable to regard this project as economically unsupported within Kentucky.

5. Planning History

The previous study for a project linking Paducah with I-55 in Missouri was conducted by the Kentucky Transportation Cabinet. This study (*I-66 Corridor Study, Western Kentucky to Missouri, Ballard/McCracken County, Item #1-23.00*) concluded in 2005. The Study screened potential alternatives at three levels and concluded with the following major findings:³

- Three alternatives were identified for possible consideration in future studies. Two of these were in Kentucky, and one in Illinois. (ES, p. 5)
- KYTC was not able at the time to further develop this project, given that its Six-Year Highway plan already was “significantly over-programmed.” (ES, p. 4)
- There would need to be a change in the funding circumstances for KYTC to resume project development activities. (ES, p. 4)
- **The Illinois Corridor identified for possible future consideration “would satisfy the Congressional designation of a route” for this project. (ES, p. 4)**

Appendix 1 (*Project History Statement*, p. 10) of the project’s Purpose and Need describes the role of the Delta Commission in enhancing economic development and improved quality of life in the Delta Region. The Commission’s 2008 *Multimodal Transportation Assets, Needs and Recommendations Report* (p. 114) recommended further project development activities for a new highway between Paducah, Kentucky and Cape Girardeau, Missouri. This recommendation was the basis for funding this present Study.

The US Department of Transportation *Notice of Grant Award* for this project (FY 2011) states the following regarding the scope of this Study:

- It describes the project area as Alexander, Pulaski, Massac, Union and Johnson counties, all in Illinois. No portions of Kentucky or Missouri are cited.
- **It describes the project location as, “I-24 in Paducah, KY to the ILL 146 Bridge in Cape Girardeau, MO.”**
- It cited one proposed alignment, crossing over the I-24 Bridge in Paducah, crossing Massac, Alexander and Pulaski counties before crossing into Cape Girardeau. It cited high unemployment and low levels of household income in these three counties, and stated that a new highway could “open this area for economic development and create jobs in these Delta Region counties.”

These planning efforts further support considering alternatives within Illinois to the exclusion of those in Kentucky. Kentucky’s previous planning study (2005) deferred further consideration of alternatives within Kentucky until such time as funding became available. These funding circumstances have not changed. The Delta Regional Commission Study (2008) and the subsequent Notice of Grant Award (2011) explicitly cite Paducah and Cape Girardeau as project termini. The Notice of Grant Award further cites the need for economic development in three Illinois counties as part of the project rationale. This planning history further supports limiting project alternatives to those between the I-24 Bridge at Paducah and Cape Girardeau.

³ See Executive Summary (ES), pp. 1 – 5.

6. Conclusion

The current, authoritative guidance from both FHWA and AASHTO regarding the relationship between alternatives and Purpose and Need in EISs show that FHWA and IDOT are justified in proceeding with the 66 Corridor Study without considering alternatives within Kentucky. The FHWA guidance states that it is FHWA's policy to eliminate alternatives during the scoping stage if they do not satisfy the project's Purpose and Need.

The primary project purpose is to increase system linkage and personal accessibility in the project area. This need exists throughout the five counties in the Illinois portion of the project area, where only 25 – 30% of residents have access to urban areas and full-service medical facilities. By comparison, 90 to 95% of residents of the Kentucky counties already enjoy access to these destinations. By definition, alternatives within Kentucky could not satisfy the project's Purpose and Need, because they would not offer improved accessibility to the portions of the project area where it is needed. As the AASHTO guidance cited above clearly states, the inability of project alternatives to satisfy a primary project purpose is sufficient reason to eliminate such alternatives.

Three other factors are cited that add support to the findings of the Purpose and Need. These are:

- **The legislative/regulatory history.** This route of the East-West Transamerica Corridor has been specified as entering Illinois at Paducah and continuing into Missouri;
- **Economic feasibility/funding.** The Kentucky General Assembly exercises detailed oversight of highway funding within the Commonwealth, including pre-construction activities for "mega projects." Absent legislative authority, KYTC lacks a basis on which to proceed with any project development activities; and
- **Planning history of the project.** The most recent planning effort by KYTC made the finding that it could not undertake further project development within the Commonwealth without additional funding being identified. This circumstance had not changed since this previous study was concluded in 2005. The findings of the 2008 Delta Regional Commission report and the 2011 Notice of Grant Award for this project likewise describe a route between Paducah and Cape Girardeau via Illinois.

The consideration of all factors, and how they lead to specifying logical termini for all alternatives, will be documented in the Alternatives Chapter of the EIS.

As pp. 11f of the AASHTO Handbook describes, Section 6002 of SAFETEA-LU states that the lead agencies for an EIS (in this instance, FHWA and IDOT) are responsible to define the range of alternatives for a project. Further, they must be in agreement on the range of alternatives for the project to proceed. This memorandum documents that the project's Purpose and Need, supported by other factors, provide a sound basis for not considering alternatives in Kentucky. **Logical termini for project alternatives would consist of I-24 in Paducah (crossing over into Illinois) and I-55 in Cape Girardeau (via the ILL 146 Bridge at Cape Girardeau).**

Attachments: USDOT Notice of Grant Award dated 2011