



U.S. Department  
of Transportation

Federal Highway  
Administration

15

# Memorandum

Subject: State Highway 87 - Chambers and Jefferson  
Counties, Texas - CBRA Exception

Date: JUL 02 1984

From: Director, Office of Environmental Policy  
Washington, D.C. 20590

Reply to  
Attn. of: HEV-20

To: Mr. Wesley S. Mendenhall  
HEP-06 Regional Federal Highway Administrator  
6810 Fort Worth, Texas

This is in response to Mr. Daniel Dake's memorandum of June 1 on this subject.

The Fish and Wildlife Service (FWS), in its letter of May 15 to Federal Highway Division Administrator Conrado, presents arguments as to why it cannot consider State Highway 87 as an "essential link" in a larger network and arguments as to why it considers State Highway 87 is not consistent with the purposes of the Coastal Barrier Resources Act (CBRA). Therefore, the FWS presents its opinion that the project should not be excepted under Section 6 of the CBRA.

We have evaluated these issues and make the following observations:

- (1) The fact that State Highway 87 was closed for 4 years subsequent to its initial damage and that the closing "apparently" did not cause a severe hardship for commuters is not conclusive arguments. The fact that a facility is not rebuilt immediately rests on two interconnected issues; availability of funds and priority of use. In this particular case, it was physically possible to drive on the beach around damaged sections of highway, even though such was not considered desirable. Therefore, the priority to repair was not as high as it would have been if the ability to travel the route were completely severed. This is not a sufficient reason to deny its essentiality. (This was the only reason cited by FWS in its initial reviews of the requested exception.) The second issue, hardship, should consider the differences in traffic use of State Highway 87 before and after the damage occurred. Although no traffic counts were taken after the road was officially closed (for liability purposes), the preclosure traffic volume was 750 ADT. In the FHWA's opinion, these highway users are suffering a hardship, in that they cannot travel on a paved surface. It can also be noted here that future traffic is expected to exceed 750 ADT.
- (2) The fact that State Highway 87 does not deny access to residential areas or roadside business is interesting but not germane. Nothing in CBRA or FWS guidance mentions these factors as determinants of essentiality. Closure of State Highway 87 does inhibit access to commuters, recreational users of the beach, and other users of private lands within Unit T02A. Access and use of State Highway 87 in its present condition are considered unsafe at best.

State Highway 87 provides the only evacuation route to the west from Unit T02A, the wildlife refuge, the State park, and the town of Sabine Pass, if damage were to occur to the east and/or north of any of them. Recreational use of the beach is also significant, and this highway facility is considered essential to the safety of its users.

- (3) Although the FWS states that access to the refuge is not dependent on travelling over an improved road, the FHWA finds this hard to accept in light of the resource preservation goals of the FWS. The annual use of the Refuge is approximately 11,500 visitors. Access by automobile, in these numbers, over an unimproved road would do great damage to the barrier itself and should not be considered consistent with the Act.

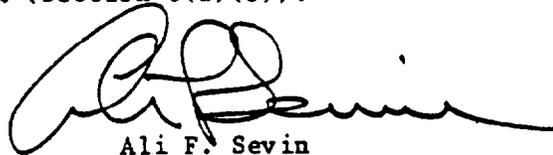
For the above reasons, it is our professional opinion that this link of State Highway 87 is essential. Because of this, it is our conclusion that this project will:

- a) minimize the loss of human life,
- b) not be a wasteful expenditure of Federal revenues, and
- c) will minimize damage to fish, wildlife, and other natural resources associated with this coastal barrier.

Therefore, this project is considered consistent with the purposes of the Act as well as essential.

We do not interpret the CBRA as a vehicle designed to discourage all private development, but to insure that any private development that does occur will be done at its own risk and not be encouraged or directly underwritten by the Federal Government. If it is the contention of the FWS that repair and maintenance of State Highway 87, or any highway on a coastal barrier, would encourage development, and therefore is not consistent with the Act, then there should never have been an exception for maintenance and repair activities. Since an exception for the repair and maintenance of existing roads was specifically provided, we do not feel that this position of the FWS is appropriate and is an attempt to regulate land use to a degree not evident in the legislation or legislative history.

In light of the above information, we conclude that the project fits under either of the two exemptions provided in the CBRA, but is most appropriately identified as an essential link (Section 6(a)(3)).



Ali F. Sevin