ATTACHMENT

3.1.G.3  High Priority Projects - Type II Noise Walls, FHWA Memorandum, Edward V. A. Kussy, July 2, 1999;
Memorandum

U.S. Department of Transportation
Federal Highway Administration

Subject: High Priority Projects — Type II Noise Walls in Georgia

From: Deputy Chief Counsel

To: Mr. Larry Dreihaupt
Division Administrator (HDA-GA)
Atlanta, Georgia

Date: JUL 2, 1999

This is in response to your June 25, question concerning the funding of certain type II noise barriers, that were authorized as high priority projects number 540 and 967 in section 1602 of TEA-21.

Section 339(b) of Public Law 104-59 (the NHS Designation Act of 1995) provided that "No funds made available out of the Highway Trust Fund may be used to construct type II noise barriers" unless their construction was approved by FHWA before November 28, 1995, or they are proposed along lands on which development or substantial construction predated approval of right-of-way acquisition or construction of a highway. Section 339(b) was incorporated in FHWA's noise regulations as 23 C.F.R. 772.13(b).

After considering both section 1602 of TEA-21 and section 339(b) of the NHS Designation Act, we conclude that in section 1602 of TEA-21 Congress carved out a narrow exception to the general prohibition contained in section 339(b) (and our implementing regulations), so as to allow the funds described in sections 1601 and 1602 of TEA-21 to be used for the two noise barriers specified in section 1602 in Georgia (as well as for other specified noise barriers in New York and Pennsylvania).

Accordingly, neither section 339(b) nor FHWA's noise regulations would prohibit the use of high priority project funds for those noise barriers. All other federal requirements would continue to apply to their development.
In view of the specific authorizations provided in section 1602, and the general prohibition against use of highway trust funds in section 339(b), we do not believe that other Federal-aid, beyond that provided pursuant to the high priority projects program, may be used to fund the noise barriers described in section 1602, unless those barriers would be otherwise eligible for funding under section 339(b)(2) and our noise regulations.

Edward V.A. Kussy