



# INDIANA DEPARTMENT OF TRANSPORTATION

*Driving Indiana's Economic Growth*

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**Mitchell E. Daniels, Jr., Governor**  
**Karl B. Browning, Commissioner**

January 26, 2007

Mr. Robert F. Tally, Jr., P.E.  
Division Administrator, Indiana  
Federal Highway Administration  
575 N. Pennsylvania St., Room 254  
Indianapolis, Indiana 46204

Dear Mr. Tally:

On November 22, 2006, former INDOT Commissioner, Thomas Sharp, informed you of Governor Mitch Daniels' decision to discontinue consideration of tolling options for the I-69 Evansville-to-Indianapolis project. The decision to withdraw the tolling option proposal took into account a review of the data, analysis and conclusions in the Reevaluation, together with the public comments received on the Reevaluation. With the withdrawal of the toll options, INDOT recommended that the Tier 1 Reevaluation report not be finalized, and that the Tier 2 studies continue as previously contemplated under the Tier 1 Record of Decision (the "ROD"). In your December 1, 2006, response to INDOT, you accepted the conclusion that there was no longer a need to finalize the Tier 1 Reevaluation or to issue an amended ROD to address the tolling issues. However, you did ask INDOT to consider all comments received on the Tier 1 Reevaluation report and to respond to those comments as appropriate.

In the attached Report, INDOT has completed a review of all comments submitted on the Tier 1 Reevaluation, several of which requested preparation of a Tier 1 Supplemental Environmental Impact Statement (SEIS). We also have reviewed any other comments submitted since the Tier 1 ROD was issued in which commenter's have requested a Tier 1 SEIS. We have addressed all of these comments in the enclosed Report. The Report serves two purposes: (1) it reviews and addresses all comments on the Reevaluation, and (2) it reviews and addresses all requests for a Tier 1 SEIS. Copies of the comments addressed in the Report are contained in a CD attached to the Report.

As the Report demonstrates, a majority of the requests for a Tier 1 SEIS are based on the previously contemplated use of tolls to fund construction of the project. Because there is no longer any plan to impose a toll on the use of the highway to fund construction, the Report concludes that requests to supplement the Tier 1 FEIS based on impacts likely to result from the imposition of a toll are now moot and require no further discussion. Other requests for supplementation, particularly requests based on additional information gathered, as part of the Tier 2 studies, about the presence of the Indiana Bat in the project area and the newly designated

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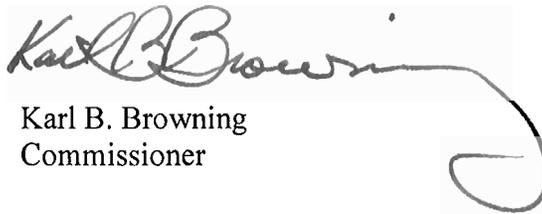
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Patoka Bridges Historic District, are summarized, discussed, and evaluated to determine if the information triggers a requirement to supplement the Tier 1 EIS.

Based on our analysis of the comments received, when tested against FHWA's NEPA regulations governing supplementation of an EIS (23 C.F.R. § 771.130), INDOT recommends that FHWA issue a determination that no supplementation of the Tier 1 EIS is required. We also have provided recommendations for addressing various issues raised in the Reevaluation comments as part of the ongoing Tier 2 studies for the I-69 project. We are seeking your concurrence in all recommendations contained in the enclosed Report.

My staff and project consultants stand ready to discuss the content of the comments and the analysis in the Report that supports this recommended course of action. Again, I deeply appreciate all of effort put forth by you, our Federal partner, in this important transportation project. We look forward to continuing progress on making I-69 between Evansville and Indianapolis a reality.

Sincerely,

A handwritten signature in black ink, reading "Karl B. Browning". The signature is written in a cursive style with a long, sweeping tail that loops back under the name.

Karl B. Browning  
Commissioner

# **Responses to Comments on the Tier 1 Reevaluation for the I-69 Evansville to Indianapolis Project**

**and**

## **Response to Requests for Preparation of a Tier 1 Supplemental EIS**

### **I. Introduction**

In June 2006, FHWA and INDOT issued a Tier 1 Reevaluation Report for the I-69 Evansville-to-Indianapolis project. The main purpose of the Reevaluation was to address the potential significance of INDOT's proposal to consider tolling I-69. In addition to tolling, the Reevaluation also addressed three "other issues" that involved potential clarifications to, or changes in, the Tier 1 decision. These issues were discussed in Chapter 7 of the Reevaluation.

The majority of the agency and public comments on the Reevaluation raised concerns related to tolling I-69. Some of the comments on the Reevaluation addressed the three "other issues" that had been covered in Chapter 7 of the Reevaluation. In addition, there were many comments that addressed issues beyond the scope of the Reevaluation; many of these comments raised concerns that had previously been addressed in the Tier 1 study, or raised issues that are currently being considered as part of the ongoing Tier 2 studies.

Several of the comments on the Reevaluation contended that a Tier 1 Supplemental Environmental Impact Statement (SEIS) should be prepared, or that the Tier 1 study should in some way be "re-opened," in order to address changes associated with tolling or other issues. In addition, comments have been submitted at various times during the Tier 2 studies (in addition to comments on the Reevaluation) urging FHWA and INDOT to prepare a Tier 1 SEIS.

This report summarizes and respond to issues raised in comments on the Reevaluation. This report also addresses comments (regardless of when they were received) that have called for preparation of a Tier 1 SEIS, and concludes that there has been no new information, changed circumstances, or changes in the project that would require preparation of a Tier 1 SEIS. Copies of the comments addressed in this Report are contained in the attached CD.

### **II. Background**

The Tier 1 Reevaluation Report was issued in June 2006. While regulations do not require an opportunity for review and comments, FHWA and INDOT provided a 30-day comment period on the report and held three public information meetings.

Approximately 92 comments on the Tier 1 Reevaluation Report were received during the comment period, which extended from the availability of the Reevaluation on June 23, 2006 through July 24, 2006. Agencies and other government entities submitting comments included: the U.S. Environmental Protection Agency (USEPA), the U.S. Fish and Wildlife Service (USFWS), and the Monroe County Board of Supervisors. Organizations and groups submitting

comments included: the Environmental Law and Policy Center of the Midwest (on behalf of several organizations). In addition, numerous individuals also submitted comments.

### **III. Responses to Comments on Tier 1 Reevaluation**

The comments on the Reevaluation will be addressed in 4 categories, as follows:

- a) tolling;
- b) “other issues” (non-toll-related) presented in Chapter 7 of the Reevaluation;
- c) the public involvement process for the Reevaluation; and
- d) issues not addressed in the Reevaluation.

#### **A. Tolling Issues**

The large majority of the comments received on the Reevaluation address the analysis of toll financing for I-69. Principal topics cited in these comments included:

- Toll rate and toll technology assumptions
- Project transportation and economic benefits
- Traffic impacts
- Traffic modeling

Public comments on tolling also were received outside of the comment period for the Reevaluation. At least two of these (letter from Indiana State Representative Ralph Foley, dated December 20, 2005, forwarding an analysis by constituents; e-mail from John Smith to FHWA, dated March 2, 2006) suggested that the consideration of tolled alternatives for the I-69 project would require reopening the Tier 1 study.

As documented in then-INDOT Commissioner Thomas Sharp’s letter of November 22, 2006 to FHWA Division Administrator Robert Tally, Governor Daniels has announced that I-69 will be developed as a non-toll interstate between Evansville and Indianapolis. Toll financing no longer will be considered as part of the I-69 funding package. Since tolled alternatives no longer are being considered for the I-69 project, any comments on tolling-related issues are now moot. Accordingly, no further response is needed for these comments.

#### **B. “Other Issues” in Chapter 7 of the Reevaluation**

Three issues unrelated to tolling were presented in Chapter 7 (*Other Issues*) of the Reevaluation. These issues all involved some potential clarification of, or change to, the decision issued in the Tier 1 ROD. These issues were:

- Interchanges and access roads located outside the approved corridor;
- Consideration of an interchange at the Greene/Monroe County line; and
- Consideration of a potential reduction in the length of the crossing of the Patoka River floodplain.

An assumption underlying the Reevaluation was that any consideration of toll-funding options in the Tier 2 studies would first require approval in an Amended Tier 1 ROD. The Reevaluation indicated the “other issues” discussed in Chapter 7 of the Reevaluation would also be addressed in any Amended Tier 1 ROD issued on the toll funding issue. It should be noted that none of these “other” non-toll related issues themselves required the issuance of an Amended Tier 1 ROD. Rather, it was assumed that these issues would have been addressed as points of clarification in a document that was being issued for other reasons. As discussed below, these issues now can be addressed by including appropriate documentation in the FHWA project file.

### ***1. Interchanges and Access Roads Located Beyond the Tier 1 Corridor***

The Tier 1 ROD approved a corridor of varying width (generally 2,000 feet wide), and stated that alignments would be developed within the approved corridor in Tier 2 studies. The Tier 1 ROD also reserved the flexibility to consider alignments outside the approved corridor during Tier 2, if necessary in order to avoid impacts within the corridor. (Tier 1 ROD at § 2.3.5). The Tier 1 ROD did not specifically address the issue of whether ancillary facilities, such as access roads or interchange ramps, might extend beyond the reserved corridor.

As the Tier 2 studies have proceeded, it has become evident that the some features of the alternatives (such as interchanges, access roads, and frontage roads) would need to extend beyond the approved corridor, in order to allow the flexibility to shift the mainline of I-69 within the corridor. Requiring all features to be contained entirely within the corridor, as was done in the Tier 1 EIS in order to develop a “working alignment” the corridor, would effectively restrict the mainline footprint to the very middle of the approved corridor, thereby eliminating the flexibility needed to minimize environmental impacts. In addition, it would be impossible to include all of the necessary access roads and other ancillary improvements entirely within the corridor. Therefore, for purposes of the Tier 2 studies, an alternative has been considered to be “within” the approved corridor as long as the mainline of the alternative is located within the corridor; access roads, interchange ramps, and other elements have been allowed to extend beyond the corridor. In turn, each of these features will be further analyzed in detail within the Tier 2 study itself.

To address this issue, Chapter 7.1 of the Tier 1 Reevaluation stated that:

Accordingly, as part of the Amended Tier 1 ROD, a clarification will be provided which states that the requirement to remain within the corridor selected in Tier 1 applies to the mainline of alternatives studied in Tier 2. All impacts associated with interchanges, grade separations, and frontage/access roads will be calculated and considered as an impact of that alternative, but the Tier 1 Amended ROD would clarify that these facilities could extend beyond the corridor. In addition, the flexibility will continue to exist to consider mainline alternatives outside the selected corridor to avoid significant impacts within the selected corridor.

Reevaluation, p. 104.

The approach proposed in the Reevaluation is consistent with the intent of the Tier 1 ROD. As stated in the Tier 1 ROD, the alternatives analysis in Tier 2 will continue to focus on alternatives within the selected corridor; and it will include a range of alternatives for the mainline within that corridor. The very nature of such an analysis includes consideration of alternatives located close to the edge of the corridor, which in turn involves consideration of alternatives with some design elements that extend beyond the corridor. Allowing the flexibility to consider elements that extend beyond the corridor actually helps fulfill the Tier 1 commitment to undertake a robust analysis of alternative routes for the project within the approved corridor.

Moreover, the environmental analysis in the Tier 1 study was not confined to the approved corridor. Rather, the Tier 1 study area (known as a “study band”) was 2 miles wide and included not only the selected corridor, but also areas along each side of the corridor. Thus, the areas potentially impacted by access roads and other features were fully studied and considered as part of the Tier 1 EIS. The “study band” for each Tier 1 alternative, including the selected alternative, is shown in the Tier 1 FEIS, Volume III, *Environmental Atlas*.

Lastly, the Tier 1 ROD allows the entire alignment to be shifted outside the approved corridor, which obviously would involve a much greater change than simply allowing some elements to be located outside the corridor (while the mainline remains within the corridor.) By allowing the entire alignment to be shifted outside the corridor, the Tier 1 ROD by implication allowed features associated with the mainline alternative to be placed outside the corridor in connection with the project.

None of the comments on the Tier 1 Reevaluation addressed this issue, nor has INDOT received any other comments on this issue.

*Based on the foregoing, INDOT is seeking FHWA’s written concurrence that Tier 2 alternatives can be considered “within” the approved corridor as long as the mainline of the alternative is located within the corridor.* This clarification would confirm that interchange ramps, access roads, and other features associated with a mainline alternative can be located outside the corridor.

## **2. *New Terrain Interchanges in Southwest Monroe County***

The Tier 1 FEIS included a commitment that “[n]o interchange will be provided [on I-69] in Monroe County where I-69 is on new alignment.” (FEIS, Sec. 7.3.14). This commitment was included in the Tier 1 FEIS as a measure to minimize impacts on water resources in karst terrain, by limiting access to I-69 and thereby discouraging induced development. This commitment was made in response to comments by the United States Environmental Protection Agency (USEPA) on the Tier 1 DEIS, expressing concern about the effects of secondary development in regions with high numbers of karst features. The Tier 1 ROD did not specifically re-state this commitment, but incorporated by reference commitments made in the Tier 1 FEIS. (Tier 1 ROD at § 2.2).

During the on-going Tier 2 study for Section 4, several local officials and stakeholders requested consideration of an interchange at I-69 and SR 45 near the Monroe/Greene County line. In

response to those comments, INDOT initiated discussions with environmental agencies about possibly considering such an interchange in the Tier 2 EIS for Section 4. The U.S. Fish and Wildlife Service has expressed concerns about such an interchange, noting that – by providing better access – it could have the effect of spurring additional development in karst terrain, which in turn could have impacts on the endangered Indiana bat.

To address this issue, Chapter 7.2 of the Reevaluation stated that:

Accordingly, it is FHWA’s intention, as part of an Amended Tier 1 ROD, to insert a clarification. This clarification will provide that an interchange may be situated near the Monroe/Greene County line which may have part of its footprint within Monroe County. However, such an interchange would provide access only to and from Greene County, and would not provide access directly to the local road system in Monroe County. If this County Line interchange were built, as least one of the Tier 1 proposed interchanges in southeast Greene County (at SR 45 and/or SR 58) would *not* be built.

The Tier 1 Amended ROD would not actually make the decision to provide an interchange at the Greene/Monroe County line or to eliminate one of the proposed Tier 1 interchanges in eastern Greene County. It would simply allow for consideration in Tier 2 of an alternative that includes the interchange at the Greene/Monroe County line and eliminates one of the proposed interchanges in eastern Greene County. The decision about whether to select this interchange alternative would be made in the Tier 2 study for Section 4.

Reevaluation, p. 105.

Several comments on the Reevaluation addressed this proposed clarification. They included the following:

- The *U.S. Department of the Interior (US Fish and Wildlife Service)* objected to this interchange and asked that it be withdrawn from further consideration. These comments were made due to the potential of such an interchange to have impacts to caves in this area which are “very important” to the survival and recovery of the Indiana bat.
- The *U.S. Environmental Protection Agency (USEPA)* asked that FHWA and INDOT fully evaluate interchange options in southwestern Monroe County and eastern Greene County that avoid or minimize impacts to sensitive karst geology, associated water resources, and protected species habitat. It did not either support or object to the specific proposal for an interchange at the Monroe/Greene County Line.
- The *Monroe County Board of Commissioners* expressed its support for an interchange in this location, citing improved accessibility and emergency response concerns. It

regarded an interchange at this location as consistent with previous commitments regarding construction in karst areas.

- The *Environmental Law and Policy Center of the Midwest (ELPC)* filed comments on behalf of several groups stating that this proposed interchange (along with a proposed modification to the commitment regarding the Patoka floodplain – see following topic) would require INDOT and FHWA to undertake a supplemental Tier 1 EIS. It stated “These two changes are likely to cause significant environmental impacts, and INODT should measure and report on them during Tier I before alternative corridors are eliminated from further consideration. Simply mentioning them in the context of a Reevaluation is insufficient to meet NEPA requirements to perform a supplemental EIS.”

After the comment period on the Reevaluation, the USFWS issued a Revised Programmatic Biological Opinion (Revised BO), dated August 24, 2006, for the I-69 Evansville to Indianapolis project. The Revised BO acknowledges that an interchange is being considered on SR 45 at the Greene/Monroe county line, as an alternative to an interchange in Greene County at SR 54:

INDOT is considering an interchange in far eastern Green County along the Greene and Monroe County line in Section 4. This interchange would include a 1-mile long connector road to SR 45, which would be developed with limited-access right-of-way to preclude development along it. In the original Tier 1 studies, there was no interchange proposed at this location. Rather, one was proposed at SR 54 to the south in Greene County. According to INDOT, traffic volumes and community interest have prompted the investigation of an interchange location change north and east towards Monroe County. This location is in a karst area as was the original SR 54 interchange location. A Conservation Measure included in the original Tier 1 BA [Biological Assessment] stated “Efforts have been made to limit interchanges in karst areas, thereby limited access and discouraging secondary growth and impacts. In Tier 2, further consideration will be given to limiting the location and number of interchanges in karst areas.” Information on the potential impacts and changes in traffic in the vicinity of hibernacula as a result of this newly proposed interchange are discussed in further detail on page 88 of the BA Addendum [which was submitted by FHWA to USFWS prior to issuance of the Revised BO]. If an interchange is built along the County line, then an interchange would not be built at SR 54.

Revised BO, p. 29.

Based on this information, the USFWS assumed for purposes of its analysis in the Revised BO that the project may include an interchange on SR 45 at the Greene/Monroe County line. (See Revised BO, pp. 36, 85). In part because of this information, the Revised BO concluded that the I-69 project would increase the risk of development in the vicinity of Indiana bat hibernacula, which in turn could result in an increased risk of vandalism of Indiana bat hibernacula (caves).

However, the USFWS concluded that “it is extremely unlikely (i.e., discountable) that I-69 would cause an increased risk of someone physically altering or vandalizing unprotected caves to the degree that they would no longer remain suitable habitat.” (Revised BO, p. 85). The USFWS then concluded that “it is still the Service’s biological opinion that Alternative 3C of I-69 from Evansville to Indianapolis, as proposed, is not likely to jeopardize the continued existence of the Indiana bat, and is not likely to destroy or adversely modify its designated Critical Habitat.” (Revised BO, p. 98)

As the USFWS notes in its Revised BO, both of these interchanges are located in karst terrain. These interchange locations are being considered in Tier 2 in close coordination with environmental resource agencies, including the USFWS. The potential impacts of such an interchange will be further examined in a Tier 2 Biological Assessment (BA), which will be submitted to the USFWS pursuant to the Revised BO. An interchange at the Greene/Monroe County line will be selected in Tier 2 only if USFWS re-affirms its finding in the Revised BO that the project, with this interchange, would not jeopardize the Indiana bat and would not adversely modify or destroy its designated critical habitat.

Finally, the specific location of interchanges was left to be developed as part of the Tier 2 process. While the final location and number of interchanges established as a result of the Tier 2 studies will be subject to commitments made in the Tier 1 EIS and ROD, the ROD contemplated sufficient flexibility in the process to allow for modifications to commitments. The potential change of the location of an interchange, if supported by sufficient justification and study of environmental impacts at the Tier 2 level, is not, in itself, sufficient reason to cause supplementation of the Tier 1 analysis and decision.

*Based on the foregoing, INDOT is seeking FHWA’s written concurrence that an interchange can be considered in Tier 2 at the Greene/Monroe County line, as an alternative to an interchange on SR 54 farther south in Greene County. This shift in an interchange location would be considered in Tier 2 only insofar as it is permissible under the terms of the USFWS’s Revised BO. Because both possible interchange locations are located in karst terrain, an interchange at the Green/Monroe County line would not result in significant environmental impacts not evaluated in the Tier 1 EIS.*

### **3. *Commitment to Bridge the Patoka River Floodplain***

Section 7.3.8 of the Tier 1 FEIS contained the commitment to bridge the entire Patoka River floodplain. This commitment was made to preserve wildlife habitat along the Patoka River, as well as to avoid wetlands impacts.

Chapter 7.2 of the Reevaluation stated that “it may be possible to achieve the purposes of the Tier 1 mitigation commitment without bridging the entire Patoka River floodplain. Accordingly, FHWA may, as part of any Amended Tier 1 ROD, modify the commitment to bridge the Patoka floodplain to allow for consideration in Tier 2 of a shorter bridge at the Patoka River. FHWA will consult with the USFWS and other regulatory agencies before deciding whether to make this change in the Amended Tier 1 ROD.” (Reevaluation, p. 106).

Several comments on the Reevaluation, including a comment from the USFWS, objected to any change in the commitment to bridge the entire Patoka River floodplain. Based upon those comments, as well as coordination with review agencies, especially the USFWS, INDOT has agreed to maintain the commitment to bridge the entire Patoka River floodplain. No further consideration will be given to modifying this commitment. *Therefore, INDOT is not asking FHWA to take any action at this time regarding the crossing of the Patoka River floodplain.*

### **C. Comments on the Public Involvement Process**

There is no requirement for public dissemination of a Reevaluation. Also, there are no requirements for a formal public comment period or public meetings. However, given the level of public interest in this project, INDOT and FHWA provided a one month public comment period on the Reevaluation, and held three public information meetings shortly after the release of the Reevaluation. Copies of the Reevaluation also were posted on the project web site.

Several comments were received objecting to the length of the comment period, as well as to the location and timing of the public information meetings. These comments expressed the overall point that there would be inadequate opportunities for public input, or that INDOT was discouraging public input.

The public involvement process for the Reevaluation exceeded the applicable legal requirements. In addition, all comments received on the Reevaluation have been reviewed and considered by INDOT and FHWA. As noted above, the majority of the comments addressed the issue of tolling, which has become moot because of INDOT's decision to proceed with I-69 as a non-toll project. The remainder of the comments have been considered and addressed in this document.

### **D. Comments on Issues Not Addressed in the Reevaluation**

A number of comments were received during the comment period on the Reevaluation that were not pertinent to any portion of the Reevaluation. Some of these comments raised issues that had been previously considered and addressed in the Tier 1 NEPA process. Other comments are pertinent to ongoing Tier 2 studies, and will be considered in the Tier 2 EIS documents. These two categories of comments are summarized and addressed below.

#### ***1. Issues Previously Considered in Tier 1 Studies***

A number of comments raised issues which previously were considered in the Tier 1 study. These comments are summarized as follows:

*The highway would unacceptably change the nature of Southwest Indiana. Undesirable changes would include sprawl, loss of farmland, increases in crime, increases in noise, divide communities, change the nature of the countryside, and hurt Amish communities.*

- *Insufficient consideration was given to the No-Build Alternative in Tier 1.*

- *Cost-benefit analysis for the overall I-69 project should have been completed.*
- *The Tier 1 decision did not adequately consider public input.*
- *The Tier 1 Purpose and Need analysis was flawed.* Specifics included freight movements, travel between Evansville and Indianapolis, future fuel prices and availability, economic benefits, and job creation.
- *Other fiscal priorities are higher.* Funding would better be used on public transportation, education, and other state funding priorities.
- *Various environmental impacts should have been given greater weight.* Some commenters expressed concerns about impacts to multiple environmental resources. These included impacts to forests, wildlife, karst, fauna, historic resources, aquifers, and various urban areas.
- *Objections to selection of Alternative 3C.* Some commenters, including the USFWS, reiterated their preference for Alternative 1 (improving US 41 and I-70) over Alternative 3C. The preference for Alternative 1 was based largely on its lower cost and impacts.

For the most part, these comments reiterated concerns that had been raised and addressed in the Tier 1 study. Two specific issues that warrant specific consideration are: (1) the USFWS's Restatement of its preference for Alternative 1, and (2) the ELPC's request for a cost-benefit analysis for the project.

- *Alternative 1.* The USFWS stated in its comment letter on the Reevaluation that the Service "believes that selection of Alternative 1 would best fulfill FHWA's responsibility to use its authorities to conserve endangered and threatened species as set forth in Section 7(a)(1) of the Endangered Species Act." Section 7(a)(1) imposes a duty on federal agencies to take actions that promote the conservation of threatened and endangered species; however, agencies have discretion to determine how to carry out this responsibility. Consistent with that obligation, FHWA proposed "Conservation Measures" pursuant to Section 7(a)(1) in its original Biological Assessment (BA) for the I-69 Evansville-to-Indianapolis project, which was submitted in 2003. The FHWA updated those Conservation Measures in its March 2006 Addendum to that BA. In August 2006, after submitting its comment letter on the Reevaluation, the USFWS issued a Revised Tier 1 BO for the entire project. The Revised BO incorporated all of FHWA's proposed Conservation Measures, and expressed no objections to those measures. In fact, the USFWS incorporated those measures into the proposed action and required compliance with those measures as a condition of the Revised BO. Thus, while the USFWS has continued to express its preference for Alternative 1, the USFWS also has made clear its Revised BO that it continues to consider Alternative 3C as acceptable under the terms of the Endangered Species Act.
- *Cost-Benefit Analysis.* In its comment letter on the Reevaluation, ELPC, relying on a federal court decision that predates the Tier 1 ROD, claims that any decision to impose a

toll on I-69 must be subjected to a “complete cost benefit analysis....” Given that ELPC’s request for a complete cost benefit analysis is premised on the now-withdrawn proposal to use toll revenues to fund the construction of the project, no further response to this comment is required. However, even if the toll-funding remained viable, ELPC is incorrect in its assertion that NEPA requires a cost benefit analysis. The Council on Environmental Quality (CEQ) regulations make it clear that a cost-benefit analysis is optional in an environmental impact statement. See 40 CFR 1502.23. (“For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations.”) The court decision cited by ELPC does not contradict this regulation. Nothing in ELPC’s comments provides any basis for requiring a cost-benefit analysis to be conducted for the I-69 Evansville-to-Indianapolis project.

## **2. Issues Being Considered in Tier 2 Studies**

A number of comments on the Reevaluation raised issues that are being considered in the Tier 2 studies. This section summarizes those comments and explains how they are being addressed in the Tier 2 studies.

- *Air Quality.* Many comments related to changes in air quality designations since the Tier 1 ROD was signed in March 2004. The Tier 1 EIS considered Air Quality impacts at the appropriate level of detail. ***As recommended by the U.S. EPA, these issues will be considered in the Tier 2 studies for all applicable sections, particularly Section 1, 2, 4 and 6, which include air quality non-attainment areas.***
- *Bicycle Transportation.* Comments cited the need for consideration of bicycle transportation in the Bloomington area. The Tier 1 EIS considered impacts to bicycle transportation in the Bloomington area at an appropriate level of detail. ***These comments will be considered in Tier 2 Sections 4 and 5, which include Bloomington.***
- *Cost Estimates.* Comments cited the need to update the cost estimates provided in the Tier 1 FEIS. ***These comments will be considered in all Tier 2 sections, which will provided updated cost estimates for all sections.***
- *Design Features.* One specific comment was raised regarding a safety feature (cable barrier separators in freeway medians). ***This comment will be considered, as appropriate, in all Tier 2 sections. A final determination about these features will be made during the design process following the conclusion of NEPA.***
- *Indianapolis Area/Perry Township.* Several comments were raised regarding the effects of I-69 on commercial activities, residential areas and emergency access in the Perry Township area. Concerns also were raised about the issue of state legislation and its requirement for additional legislative concurrence to locate I-69 in Perry Township. ***These issues will be considered in the Tier 2 study for Section 6, which includes Perry Township.***

- *Historic Properties.* One commenter noted that a new historic district has been designated in the Patoka area since the Tier 1 ROD was issued. The commenter mentioned this district as a reason to re-open the Tier 1 study. ***The Patoka Bridges Historic District was recognized as a potential district in the Tier 1 study and was assumed eligible for the National Register in that study. It was formally designated as a historic district during the Tier 2 study. This historic district is being considered as appropriate in the Tier 2 study for Section 2, which includes the Patoka area.***
- *Karst Impacts.* Comments were received about the need to address impacts to karst features, and mitigation costs associated with karst features. Karst features were considered at the appropriate level of detail in the Tier 1 EIS. ***These issues will be considered in greater detail as part of the Tier 2 studies for Sections 4 and 5, which include karst features.***
- *Noise Impacts.* One comment was received regarding noise impacts where I-69 joins the existing SR 37 footprint. Noise impacts were considered at the appropriate level of detail in the Tier 1 EIS. ***This issue will be considered in greater detail in the Tier 2 studies for Sections 4 and 5, which include the section where I-69 joins SR 37.***
- *Tax Base.* Comments were received that land used for I-69 will be removed from the tax roles and adversely affect the local property tax base. ***This issue will be considered as appropriate in the Tier 2 studies for all Sections.***
- *Traffic Impacts.* Comments were received regarding the potential for increased traffic, congestion, and the resulting effects upon public services. Traffic impacts were considered at the appropriate level of detail in the Tier 1 EIS. ***Traffic impacts will be considered in greater detail as part of the Tier 2 studies for all Sections.***
- *Water Quality.* One comment was received about the potential impact of I-69 on groundwater drinking supplies in southern Marion County. Water quality impacts were considered at the appropriate level of detail in the Tier 1 EIS. ***Specific impacts on ground water drinking supplies in southern Marion County will be considered at the appropriate level of detail in the Tier 2 study for Section 6, which includes Marion County.***

#### **IV. Basis for Preparing Tier 1 Supplemental EIS**

Some of the public comments on the Reevaluation claimed that FHWA is required to prepare a Tier 1 Supplemental EIS. (None of the agencies made this comment.) The public commenters who requested a Tier 1 SEIS included:

- *ELPC.* Comments filed by ELPC on behalf of several groups stated that a Tier 1 SEIS should be prepared because of the consideration of I-69 as a potential toll road. ELPC also claimed an a Tier 1 SEIS was needed in order to address (1) a potential interchange at the Greene/Monroe County line and (2) a potential reduction in the length of the

Patoka River floodplain crossing. The ELPC comments did not mention the Indiana bat issue as a basis for preparing a Tier 1 SEIS.

- *COUNT US!* Comments submitted by COUNT US! cited several reasons to “return to Tier 1,” which could be construed as calling for a Tier 1 SEIS. The group stated that:

“These comments have been directed at the Re Evaluation of Tier 1 for tolling, but in fact the Tier 1 purpose and need section of the Evansville to Indianapolis I-69 or Toll 69 needs to return to Tier 1 for reasons of other major changes too. ... The funding available for infrastructure has been changed, more endangered Indiana bats than expected have been identified along existing SR37, a new historic district has been recognized federally at the Gibson/ Pike County Line, air quality standards have been tightened.”

To determine whether any of these comments warrant preparation of an SEIS, the factors mentioned by these commenters have been individually reviewed. The results of this review are set forth below.

### *Tolling*

Several commenters contended that consideration of I-69 as a toll road fundamentally alters the comparison of alternatives and requires re-opening the Tier 1 study. For example, some of the comments noted that imposition of a toll would change traffic patterns, indirect impacts and affect the air quality. Some comments suggested that because of the decrease in the amount of use, other alternatives could provide greater benefits. Because FHWA and INDOT have discontinued consideration of I-69 as a toll road, consideration of any toll-related changes in impacts, such as traffic patterns, indirect impacts and air quality, is now moot. The existing analysis of these issues as contained in the Tier 1 EIS remains valid.

### *Indiana Bat Maternity Colonies*

One commenter cited the fact that field surveys conducted during Tier 2 identified additional Indiana bat maternity colonies along the selected corridor. The commenter represented that the study needed to “return to Tier 1” to consider this additional information. This information was developed through field surveys that were specifically required under the terms of the original Tier 1 Biological Opinion (BO), dated December 3, 2003, for this project. Those studies, as expected, identify a number of maternity roosting colonies. FHWA and INDOT then prepared an Addendum to the Tier 1 Biological Assessment (Tier 1 BA Addendum), which analyzed in great detail how this new information affects the conclusions reached in the previous Tier 1 analysis of possible impacts to the species. FHWA and INDOT also used the new information to refine the proposed mitigation measures for the Indiana bat.

The USFWS then issued its Revised Tier 1 BO, dated August 24, 2006 for this project. In the Revised BO, the USFWS stated that “it is still the Service’s biological opinion that Alternative 3C of I-69 from Evansville to Indianapolis, as proposed, is not likely to jeopardize the continued

existence of the Indiana bat, and is not likely to destroy or adversely modify its designated Critical Habitat.” (p. 98) Nothing in the comment indicates that the type of impacts to the Indiana Bat is expected to be different from the impacts previously analyzed and considered in the Tier 1 EIS. Also, nothing in the USFWS’s Revised BO indicates that the new information about the number and location of the Indiana bats within the Tier 1 study area for Alternative 3C presents a materially different type of impact than was previously considered in the Tier 1 EIS. In fact, USFWS’s finding in the Revised Tier 1 BO confirms that, while more detailed information has been developed, it has been appropriately addressed, and it does not materially alter the conclusions reached in the Tier 1 EIS regarding the project’s potential impacts on the Indiana bat. Moreover, this new information will be used in the Tier 2 studies of the several sections of the project, and will inform both the decisionmaker and the public of the reasonably foreseeable impacts likely to occur from the project.

### *Patoka Bridges Historic District*

One commenter cited the recently designated Patoka Bridges Historic District near the Gibson-Pike County Line as a basis for requiring a Tier 1 SEIS. In fact, this historic district was formally designated after the Tier 1 study, but its existence was well-recognized and its basic features well-understood at the time of that study. The Tier 1 FEIS specifically assumed that this district was eligible for the National Register. It stated on page 8-115, “For the purposes of this Tier 1 EIS and per consultation with the SHPO, the bridges and the small segment of roadway connecting them will be considered a single potentially eligible historic property.”

Using this information, FHWA and INDOT ensured in Tier 1 that the selected corridor avoided this potential district. Subsequently, the district was formally listed in the National Register of Historic Places. The boundary established for the new district in the National Register is consistent with the general location assumed in Tier 1; it remains outside the selected corridor for the project. Thus, while there has been a change in its legal status, the designation itself does not present any new information that materially affects the development of alternatives in the vicinity of this historic district. Moreover, the designation of this area as an historic district is not “new” information of the type that would require reconsideration of the corridor as a whole. Analysis of this resource as part of the Tier 2 process, will result in a final determination of potential impacts to district and steps needed to avoid or minimize harm to the resource.

### *Air Quality Standards*

One commenter cited the “tightening” of air quality standards as a reason to return to the Tier 1 study. Presumably, this commenter was referring to the adoption of a National Ambient Air Quality Standard (NAAQS) for fine particular matter, which is known as PM 2.5, and the designation of several counties as non-attainment areas for PM 2.5 in southwestern Indiana. The U.S. EPA, which oversees compliance with the Clean Air Act, and also is responsible for reviewing other agencies’ compliance with NEPA, has submitted comments to FHWA stating that the new PM 2.5 standards should be addressed *as part of the Tier 2 studies*.

The approach recommended by EPA is logical and appropriate. Air quality standards and air quality conditions change frequently; the designation of new non-attainment areas frequently

occurs during the NEPA process for highway projects. The appropriate action in such circumstances is to ensure that the project complies with the new, stricter requirements. Because that approach will be followed here, the new air quality requirements provide no basis for preparing an SEIS.

### *Green/Monroe County Line Interchange*

The consideration of a potential interchange at the Greene/Monroe County line was cited by one commenter as a reason to prepare an SEIS. As noted earlier, this interchange is considered sensitive because of its location in a karst area in southwestern Monroe County. The consideration of this interchange location does not significantly alter the impacts associated with the selected corridor as a whole. First, this interchange is being considered as an alternative to another interchange (at SR 54 farther south in Greene County), which is also located in karst topography. Secondly, the impacts of this potential new interchange have been thoroughly analyzed by the USFWS, which has issued a Revised Biological Opinion affirming that the project still meets the required “no jeopardy” standard under the Endangered Species Act even if this interchange is included. This interchange will continue to be studied as an alternative in Tier 2. In fact, preliminary Tier 2 studies indicate that an interchange at this location may reduce traffic on other state routes, thereby eliminating or reducing the need to upgrade those routes, which in turn will reduce impacts to karst features.

FHWA and INDOT would not place an interchange in this location if the USFWS determines (based on Tier 2 level of detail) that this interchange cannot be approved under the terms of the Endangered Species Act. Finally, the Tier 1 ROD specifically noted that interchange locations in Tier 1 were preliminary and could be modified in Tier 2; the alternative now under consideration in the Tier 2 process essentially involves shifting an interchange a few miles, not adding a new interchange. Based on all of these factors, this change does not materially alter the conclusions reached in Tier 1 and no supplementation of the Tier 1 analysis is needed.

### *Crossing of Patoka River Floodplain*

One commenter asserted that a Tier 1 SEIS is needed because of the proposal to consider altering the Tier 1 commitment to bridge the entire Patoka River floodplain. After the Tier 1 Reevaluation was issued, INDOT decided to retain this Tier 1 commitment without modification, based on concerns raised by agencies and the public. Since there is no longer any proposal to modify that commitment, this comment is now moot. The Tier 1 commitment to cross the entire Patoka River floodplain remains fully intact.

In sum, none of the factors cited in these comments warrant preparation of a Tier 1 SEIS. Instead, the factors they cite were already recognized in Tier 1, and simply represent the development of more detailed information in Tier 2, as would be expected in any tiered study. Therefore, no Tier 1 SEIS is required or appropriate here.

## **V. Conclusion**

Most of the comments received on the Reevaluation are with regard to issues which are now moot. These include those related to tolled alternatives on I-69, and the Tier 1 commitment to span the Patoka River floodplain. Comments were received on other issues, most of which were addressed in Tier 1 studies or are being considered in ongoing Tier 2 studies. Some of the commentors stated that the issues identified in their comments necessitated preparation of a Tier 1 Supplemental EIS. None of these comments provided information about new or significantly changed impacts which were not considered or identified in Tier 1.