



INSPECTOR GENERAL REPORT

2013-01-0016

July 31, 2014

SUBSEQUENT I-69 ALLEGATIONS

Inspector General David O. Thomas, after an investigation by OIG Special Agent Mike Mischler and others, reports as follows:

Summary

The Indiana Office of the Inspector General (OIG) first conducted an investigation in 2010 related to allegations surrounding the sale of property owned by Troy Woodruff, an employee of the Indiana Department of Transportation (INDOT), to INDOT during and for the construction of I-69 in 2010. The results of that investigation found no violations of law. This report addresses the investigation of subsequent allegations related to that case. The Federal Bureau of Investigation (FBI) and Indiana State Police (ISP) have participated in the investigation.

*Prosecution has been declined by both the Marion County Prosecuting Attorney Office and a Special Prosecuting Attorney appointed in Daviess County. Members of the United States Attorney's Office for the Southern District of Indiana have also participated in the review of our findings and have expressed there will be no further review. The FBI has also found no merit to proceed. A separate federal entity has determined that land valuations regarding the I-69 Project were in "substantial compliance with federal requirements."*¹

*While we agree with these dispositions and separately reaffirm the findings of our 2010 investigation, we make the following recommendations:*²

1

That INDOT not permit Troy Woodruff (TW) to profit from INDOT funds through re-employment with the agency or through any form of contracting with the agency for at least one year after leaving state employment due to his failure to follow the advice given by the INDOT Ethics Officer to disclose the eminent domain action to the State Ethics Commission. Following the advice of the INDOT Ethics Officer would have protected not only himself (TW), but the agency, and the failure to do so gave the appearance of wrongdoing and resulted in an investigation involving multiple law enforcement agencies, both state and federal.

2

That the Indiana Eminent Domain Statute³ be amended to include a provision requiring a state agency and a state employee to file a written disclosure with the State Ethics Commission when the state agency is seizing property from that state employee. We likewise recommend that state agencies with condemnation authority adopt a written policy setting forth this

¹ See Exhibit A attached (report by the Federal Highway Administration of the United States Department of Transportation).

² See Exhibit B attached (OIG Report finalized on August 19, 2010, OIG case number 2010-07-0187).

³ IC 32-24-1-1 *et seq.* and/or IC 8-23-7.

disclosure requirement prior to this legislative consideration.

3

That INDOT adopt written policies that institute disclosure and screening requirements/procedures that are even more stringent than those required by current law⁴ when an INDOT project or matter involves an INDOT employee's property and/or the property of their relatives.

4

That INDOT formulate uniform policies addressing the processing and payment of property damage claims to ensure that payments of damages are properly paid.

⁴ E.g. IC 4-2-6-9 (conflicts of interest on decisions and votes).

Acronyms, Abbreviations and Short Forms Used
Throughout this Report

DOT:
United States Department of Transportation

FBI:
Federal Bureau of Investigations

FHWA:
The Federal Highway Administration of the United States Department of
Transportation

INDOT:
Indiana Department of Transportation

ISP:
Indiana State Police

OIG:
Indiana Office of the Inspector General

The Project or I-69 Project:
The Interstate 69 construction project in southwest Indiana

RP:
Reporting Party (person reporting alleged wrongdoing)

MW:
Melissa Woodruff, employee of the Indiana Department of Transportation and
Troy Woodruff's spouse

TW:
Troy Woodruff, employee of the Indiana Department of Transportation and
Melissa Woodruff's spouse

USA:
United States Attorney, Southern District in Indianapolis

Timeline

July 2007

TW purchases with family 33-acre tract in Daviess County, property farmed by Woodruff family for 20+ years

January 2009

INDOT and FHWA publish I-69 project, Tier 2

September 2009

TW joins INDOT

April 2010

Indiana Attorney General prepares deeds for the 2.97-acre tract of land that the State is condemning from the Woodruff's 33-acre property

July 2010

RP 1 and RP2 make complaints to the OIG. An investigation is launched.

August 2010

OIG finalizes and issues Report 2010-07-0187 (Exhibit B) - this Report remained confidential and was not issued to TW or to the public

December 2010

TW (unaware of OIG investigation) sells his interest in the remaining 30-acre tract to family members - As of this report date, title to that property is still in purchasing family members' names

January 2013

TW's counsel contacts OIG requesting information in response to Indianapolis Star inquiries, learns of the 2010 OIG investigation, requests

IG Report 2010-07-0187, and disseminates IG Report to media

January 2013

TW, by counsel, requests investigation by OIG on "any violations by him related to any sales of real property by any of his family members to the State of Indiana"

February 2013

After media accounts, Governor Pence requests full investigation of all related matters

March 2013

Meeting with Assistant USA and FBI – both report to OIG will not investigate further

July 2013

Investigation submitted to Marion County Prosecuting Attorney, Daviess County Prosecuting Attorney (Special Prosecutor appointed), and FBI

July 3, 2014

Marion County Prosecuting Attorney declines prosecution

July 30, 2014

Daviess County Special Prosecutor declines prosecution after his independent review with assistance from the Indiana State Police

July 31, 2014

Publication of this IG Report

Introduction

In July of 2010, the Office of Inspector General (OIG) was contacted by RP1, alleging that RP2 had information about wrongdoing the OIG should review.⁵ The RPs alleged to the OIG misconduct by Troy Woodruff (TW), a former Indiana State Representative⁶ and, at the time of the allegations, a current state employee employed by the Indiana Department of Transportation (INDOT). Melissa Woodruff (MW), TW's spouse, was also a current INDOT employee. Primary among the various allegations raised by the RPs (addressed more specifically later in this report) was that TW had committed wrongdoing by owning and/or selling certain property related to the I-69 Project (Project).

OIG Special Agent Mike Mischler was assigned to investigate the allegations. He conducted an investigation and completed it that same year even though the allegations submitted to the OIG were hearsay and no specific violations of law were reported. The investigation revealed that TW acquired an ownership interest in a thirty-three (33) acre tract in Daviess County prior to his employment with INDOT. The tract was owned by various members of the Woodruff family and TW. They are generational farmers in the area. A tract of 2.97 acres was seized from TW and family members through a state

⁵ Both RP1 and RP2 have waived confidentiality by making public statements regarding this investigation. Although such statements waive their confidentiality, the OIG chooses not to disclose their names in this report. Many of the allegations by RP1 and RP2 have been proven false through our investigation.

⁶ TW was a former member of the Indiana House of Representative. He was elected to office in 2004. Following his failed reelection bid in 2006, TW was hired by the State, first at the Indiana Department of Environmental Management in 2008 and later at INDOT in 2009. TW was the Deputy Commissioner of INDOT's Vincennes District at the time the OIG began investigating allegations of misconduct by TW in 2010.

condemnation proceeding⁷ for use in the Project while TW was an INDOT employee. The deeds prepared by the Indiana Attorney General reflected this single transaction and were recorded on April 6, 2010.⁸

Throughout the course of our investigations, no one ever alleged that this 2.97 tract of land was unnecessary for the Project. Moreover, we did not find evidence to the contrary. In addition, the investigation revealed that the statutory condemnation procedures set forth in the Indiana Code were followed, and all relevant deeds were prepared by the Indiana Attorney General's Office and publicly recorded. Financial disclosure forms filed by TW as required by IC 4-2-6-8 also reflected the sale of the 2.97 acre tract. The legal significance of these acts is addressed below.

Having found no evidence of criminal activity or ethics violations against TW or his relatives in the 2010 investigation, the OIG closed its investigation on August 19, 2010 and reported its investigative findings through IG Report 2010-07-0187 (Report). *Exhibit B, attached.* The Report, required to be a summary report under IC 4-2-7-4(3), remained confidential, consistent with IC 4-2-7-8 since no criminal laws or ethics rules were violated. The Report issued in 2010 specifically concluded with the following language, "should additional evidence be brought forward, this case may be evaluated for further action." *Exhibit B, supra*, page 6. This invitation was eventually accepted almost three years later in 2013.

⁷ See IC 8-23-7. There are various terms for this procedure, including a condemnation, taking, or an eminent domain acquisition. For purposes of this report, we will use the generic term of "condemnation."

⁸ See Exhibit C attached.

Following the closure of the 2010 OIG investigation, TW, who to our knowledge was unaware that the OIG had conducted an investigation related to the sale of the 2.97 acres to the State, sold his interest in the remainder of the 33-acre tract of property to other family members on December 20, 2010.⁹ The State was not a party in this private transaction. A profit was realized by TW as a result of this transaction. Contrary to allegations made by a complainant in 2013, this remaining tract was *not* condemned by and transferred to the State. According to our last research of Daviess County property records as of the date of this report, this tract remains both titled in and farmed by the Woodruff family. It is not titled to TW or the State.

As work on the Project continued over the two years following the close of the 2010 OIG investigation, reports also began to emerge that the State was overpaying landowners for property in its efforts to complete the Project as quickly as possible.¹⁰ By the time these allegations were made, TW had been promoted from his post in INDOT's Vincennes District to the agency's Chief-of-Staff position.

In January of 2013, TW, through his legal counsel, contacted the OIG with information regarding a story that the Indianapolis Star (Star) was pursuing. The story related to the conveyance of the 2.97 acres of land that TW had an ownership interest in to the State for use in the Project. Since the subject of the story appeared to correspond to the prior OIG investigation, the OIG provided a

⁹ See Exhibit C, attached.

¹⁰ The allegations of overpayment were addressed in a report issued by the Federal Highway Administration of the United States Department of Transportation, *Exhibit A, attached*.

copy of the Report (*Exhibit B, attached*) to TW's counsel. TW elected to waive the confidentiality that applies when no probable cause has been determined by providing a copy of the Report to the Star.

The media coverage of these issues sparked interest, and at the request of both Governor Michael Pence and TW himself, the OIG opened a second case on January 23, 2013 to investigate new complaints related to TW with the intent of presenting all additional evidence to prosecuting attorneys for a full and independent evaluation. In sum, Special Agent Mischler probed more than a dozen allegations in this investigation—many more than those alleged in 2010. Each allegation is individually addressed in more detail below.

In July of 2013, the OIG submitted its entire investigation on all matters to the Marion County Prosecuting Attorney. The OIG also met with and presented its investigation to the FBI and an Assistant USA. The OIG also submitted its entire investigation to the Davies County Prosecuting Attorney Office whereupon a Special Prosecutor was appointed.¹¹ Subsequent follow-up investigative requests by some of these authorities were made to the OIG, fulfilled, and ultimately resulted in the final disposition of these independent reviews in July of 2014. All of these authorities independently concluded that there was no merit to prosecute in this case.

We agree with those decisions, reaffirm our findings in the 2010 Report and report now on all issues.

¹¹ The investigation was simultaneously submitted to the Daviess County Prosecuting Attorney because this was the location of the Project.

Findings

This case demonstrates the critical importance of an Ethics Officer to a state agency. It further reveals the dramatic consequences that can result from the failure to follow the advice of an agency Ethics Officer. The public response to the conduct addressed in this report reveals the negative reaction that is certain to occur when a state employee engages in conduct that comes narrowly close to violating criminal and ethical laws. This conduct not only gives rise to the appearance of impropriety, but diminishes public trust even when there is no violation of law. This case also reveals how the actions of one individual can dramatically affect so many fellow workers.

A second initial observation is that when the OIG, as a law enforcement agency, is asked to investigate alleged wrongdoing, it is helpful, although not required, for the reporting parties to provide accurate facts based upon personal knowledge and identify the applicable laws that have been violated. We had neither of these elements throughout the entire course of this investigation, leaving us to decipher the hearsay allegations and deduce the various laws that might apply. In fact, many of the “factual” allegations raised were mistaken,¹² leading to speculation from persons even further removed from the actual evidence and process.¹³

We now address the resulting specific allegations made.

¹² A person who deliberately gives false information to the OIG could be subject to the criminal offense of false reporting (IC 35-44.1-2-3). *See also*: IC 35-44.2-1-3.

¹³ *E.g.* Richard Painter, an often-quoted commentator on ethics, and various Indiana University McKinney School of Law professors, offered their public legal analyses on these issues to the media without the benefit of having all of the evidence related to the allegations of wrongdoing.

It was alleged by the original RPs in 2010 that TW illegally owned property along the I-69 corridor.

As addressed above, TW did have a partial interest in the 33-acre tract abutting the Project. MW, TW's parents, and TW's brother and sister-in-law also had an ownership interest in the tract. However, unlike the RPs' allegation, partial ownership of a tract along the I-69 corridor, alone, is not illegal.

A

Although not alleged by the RPs, the OIG reviewed and considered the application of the crime of official misconduct to these circumstances.¹⁴ This offense prohibits a "public servant"¹⁵ from acquiring or divesting property based upon official information that is otherwise confidential. TW served as a legislator from 2004 through 2006. A legislator is a "public servant."

The 33-acre property was acquired in 2007 by TW and family members three (3) years after the public announcement of Tier 1 of the Project.¹⁶ By the

¹⁴ Formerly IC 35-44-1-2 and now IC 35-44.1-1-1(3).

¹⁵ A public servant was defined in IC 35-41-1-2, and now is cited as IC 35-31.5-2-261 and IC 35-31.5-2-144.

¹⁶ Special Agent Mischler specifically looked into the Woodruffs' acquisition of the 33-acre tract and found that TW and family had purchased it in 2007 from Mary Ann Hobbs, a resident of Wisconsin. Special Agent Mischler spoke with Carol Redell, Ms. Hobbs' daughter, who served as Ms. Hobbs' guardian, and learned that Ms. Hobbs had inherited the Parcel from Ms. Redell's aunt, Mary Rusher, at the time of Ms. Rusher's death in 2005. Ms. Redell relayed further to Special Agent Mischler that, prior to her death, Ms. Rusher had expressed to Ms. Hobbs her desire that the Parcel should first be offered to Benny Woodruff (TW's father) for purchase since he had long farmed the acreage for Ms. Rusher and had been a good friend to the family. Consistent with Ms. Rusher's wishes, Ms. Hobbs offered to sell the Parcel to Benny Woodruff, and the Woodruffs purchased it at a discounted rate on June 30, 2007 for \$148,500, or \$4,500 per acre due to the underlying friendship between the Rushers and Benny. Benny and Todd Woodruff (TW's brother) expected to farm the land themselves as part of their larger operation but were concerned about their ability to finance the purchase. As a result, they reached out to TW who agreed to

time the Woodruffs purchased the Property, its inclusion in the Corridor had already been public for three years.¹⁷ Consequently, any information related to official action on the Project would already have been made public, and the provision in the rule against Official Misconduct would no longer be implicated.

B

It has also been alleged that the condemnation proceeding where the 2.97 acre tract was transferred through deeds prepared by the Attorney General to the State by TW amounted to a violation of the criminal conflict of interest statute (IC 35-44-1-3)¹⁸ and/or a violation of the mirroring provisions to this crime in the Code of Ethics (42 IAC 1-5-7 / IC 4-2-6-10.5).

We agree with the independent prosecutorial reviews which declined prosecution in both Marion and Daviess Counties and the FBI and USA reviews, all of which included this specific statute. The legal reasoning for these prosecutorial decisions is provided below.¹⁹

jointly own the Parcel in order to facilitate the purchase by the family. In addition, each of their wives was added to the title of the Parcel when it was purchased. By the time the Woodruffs purchased the Property from Ms. Hobbs in 2007, the Corridor had already been identified and made public.

¹⁷ See *Department of Transportation Federal highway Administration, Tier 1 Record of Decision: I-69 Evansville to Indianapolis, Indiana* (2004), cited in our 2010 Report, at page 5-6.

¹⁸ Now cited at IC 35-44.1-1-4.

¹⁹ For this criminal offense to apply, an eminent domain action (aka “condemnation” or “taking”) must be deemed a “contract” or “purchase” within IC 35-44-1-3 (criminal conflict of interest, codified now at IC 35-44.1-1-4). If applicable, a person could be arrested when their government agency condemns and takes their property against their will and the employee then fails to become aware of, affirmatively seek, understand and file the appropriate disclosures outside the condemnation process. The Code of Ethics rule in IC 4-2-6-10.5 addresses the same conduct as the criminal rule in IC 35-44.1-1-4. The following authorities support the declination of prosecution by the independent prosecuting attorneys, state and federal.

First, the statutes and Indiana Attorney General actions suggest this law does not apply to condemnation proceedings. Regarding statutes, IC 4-13-2-14.1 addresses the definition of

“contracts” for purposes of state government. That provision states, “A contract to which a state agency is a party must be approved” in the three-step approval process by the Attorney General, Budget Agency and Department of Administration. *Id.* Here, the Attorney General alternatively issued a deed and did not require the TW property to be treated as a “contract” through this specific statutory approval process. Likewise, the statutory procedure for “purchases” was not instituted. *See e.g.* IC 5-22.

Second, from a legal precedent point of review, two issues seem relevant. Our research does not reveal a case which finds that a condemnation is a contract for purposes of this crime. Moreover, and perhaps a reason for this lack of authority, the fundamental element of a contract is that there must be mutual assent between the parties. *E.g. Troutwine Estates Development Co., LLC v. Comsub Design and Engineering, Inc.*, 854 N.E.2d 890 (Ind.Ct.Apps. 2006). A condemnation proceeding may challenge this fundamental requirement. The Courts recognize that “the power of eminent domain – the right to appropriate for public use the private property of the citizen against his will – has been characterized as a very high and dangerous one.” *State v. Collom*, 720 N.E.2d 737 (Ind.Ct.App. 1999). This is because in condemnation proceedings the “necessity” in taking an individual’s land need not be shown by the State of its “absolute or indispensable needs”, but only for what the State believes is “reasonably proper and useful for the purpose sought.” *Id.* The Courts are not to invade this state agency’s discretion. *Id.* Moreover, the necessity of the taking is presumed. *Id.* The burden of fighting this presumption is on the landowner who must disprove the necessity only by showing fraud, capriciousness, or illegality on the condemning State’s part. *Id.* Because of this potential abuse by the government, a landowner’s right is protected in the Indiana and United States Constitutions. *See:* Indiana Constitution, Article 1, §21 and United States Constitution, Fifth Amendment.

More specifically, the State in a condemnation proceeding may take your land. IC 8-23-7-2. It initiates this by sending you a letter. IC 8-23-7-5. The State may restrict your use of your own land (improvements) after sending you the letter. IC 8-23-7-6. If there is a pending zoning variance, the landowner is mandated to notify the government which may intervene with a remonstrance against the landowner. IC 8-23-7-8. The State may enter your land and “investigate” and survey it. IC 32-24-1-3. This may include “any” work to carry out the investigation, including leveling, boring, trenching, or archaeological digging. The State is authorized to damage your land, with reimbursement to be determined by another government entity. IC 8-23-7-28. The State may sue you if you do not accept the government’s purchase price within 90 days. IC 32-24-1-4. The State may then force you through an expedited litigation, at your own expense. IC 8-23-7-29.

These circumstances might challenge the predicate “mutual assent” of a “contract” or “purchase”.

Third, the legal defense of legal authority may apply. IC 35-41-3-1. Condemnation is a specific statutory procedure. When that procedure (“legal authority”) is followed, as it was here, a prosecution may be prohibited. *Id.* In addition to finding no authority authorizing a prosecution under IC 35-44-1-3 (criminal conflict of interest) when a condemnation action was involved, an Attorney General Opinion appears relevant. It addresses the effect of following a statutory procedure when a criminal conflict of interest is alleged. Although this opinion does not address a condemnation action, it does cite twice to statutory authority as a defense to the same criminal conflict of interest offense. *See: Honorable Paul S. Mannweiler*, 1990 Ind. OAG No. 22 (1990).

Each of these provisions independently could make a formidable defense to a prosecution on an expanded interpretation of the criminal conflict of interest statute.

It must also be remembered that “public servant” as used in the criminal conflict of interest statute has broad application beyond state government agencies. *See* IC 35-31.5-2-261 and IC 35-31.5-2-144. This criminal offense also makes subject to prosecution the contracts and

We also believe, however, that for better transparency in government operations, something more should occur through disclosure when a governmental unit condemns the property of one of its own employees. The OIG is charged by the Indiana Legislature to make recommendations to better promote public integrity laws. IC 4-2-7-3(9).

In interviewing TW about these allegations, Special Agent Mischler learned that TW had contacted INDOT's Ethics Officer, Tiffany Mulligan, when he started working for the agency in 2009 to discuss any potential issues created by his ownership interest in the 2.97 acre parcel. Mulligan reviewed the ethics rules and advised TW that it did not appear as though any of these provisions would apply. However, she did advise TW to complete a disclosure with the State Ethics Commission, particularly once he, his brother, and his father completed the transaction with the State. *See Exhibit D, attached.* TW stated to Special Agent Mischler that he documented the disposition of the 2.97 acre parcel through his Financial Disclosure Statement (FDS) filings in 2009 (33 acres), 2010 (30 acres), and 2011(0 acres) but was concerned about doing anything more and drawing further attention to the matter.

As addressed above, TW was not legally required to file the separate disclosure with the State Ethics Commission. This is because the eminent domain action, something that by law was going to occur whether the landowner liked it

purchases with persons in state universities and city and county governments. If this expanded application is intended for the arrest of all these persons entering contracts with their entities, we respectfully submit that the Legislature should first expressly state this expanded intention. This is also consistent with the rule of lenity. E.g. *Sunday v. State*, 720 N.E.2d 716 (Ind.1999)(ambiguous criminal statutes must be strictly construed against the State and in favor of the accused).

or not, is not a contract under these criminal and ethics rules. *See footnote 19, supra.*

However, TW's failure to adhere to the Ethics Officer's advice has fueled the allegations of wrongdoing alleged in this case. Our findings are consistent with those of the prosecuting authorities that there were no statutory violations. However, had TW made a more public disclosure of the circumstances related to the sale of land that he had an ownership interest in at the beginning stages, the allegations of wrongdoing and resulting public skepticism may have been diminished. It is entirely understandable and plausible that INDOT must condemn and acquire property that, by coincidence, is owned by INDOT employees. In this case, even though TW acted lawfully in not making such a public disclosure under these authorities, we believe there should be a better, more transparent and mandatory disclosure.

The OIG and prosecuting attorney authorities are frequently asked to remedy situations where state workers engage in conduct that is close to, but does not actually violate criminal and/or ethics laws. We believe these types of situations illustrate the reason why the Indiana Legislature authorizes the OIG to recommend potential solutions to these circumstances. IC 4-2-7-3(9).

Pursuant to this authority, we respectfully recommend the following statutory change to the Legislature:

That a state agency condemning the property of one of its employees (and the employee) be given the affirmative duty to file a public, immediate, and detailed disclosure of the "taking" with the State Ethics Commission within no more than fifteen (15) days of the initiation of condemnation action.

We further recommend to all state agencies applying condemnation proceedings that they immediately adopt written policies requiring this same procedure, whether or not subsequently required to do so through legislative action.

2

The RPs additionally claimed that MW (TW's spouse) secretly owned property along the Project in her maiden name.

We investigated and could find no such evidence.²⁰

3

The RPs alleged a particular contractor on the Project owned property along the Project in Daviess County.

We investigated and could find no such evidence.

4

The RPs alleged that another specific INDOT employee owned property along the Project.

We investigated this claim and could find no such evidence.

5

The RPs also claimed that this other specific INDOT employee's spouse secretly owned property along the Project in her maiden name.

²⁰ The OIG hired, at taxpayer expense, an abstractor to research various land transactions alleged to have been committed through the allegations.

We investigated and could find no such evidence.

6

The RPs also alleged a nepotism violation (42 IAC 1-5-15) under the Code of Ethics alleging that TW illegally hired his mother to work in INDOT's Vincennes Office.

The nepotism law that was in effect at that time prohibited TW's mother from being in a direct supervisory-subordinate relationship with TW. We investigated and she was not. His mother was hired by INDOT in April of 2010. At that time, she was assigned to report to another INDOT employee, not TW. This was corroborated by independently reviewing personnel files.

The nepotism law at that time also did not restrict the actual hiring of a relative, but instead only addressed the reporting relationship of relatives after the hiring. IC 4-15-7-1 (2010). In a separate instance unrelated to this case, the OIG published an IG Report on April 7, 2011,²¹ recommending that this hiring restriction be expressly added to the nepotism rule along with other prohibitions. The Legislature responded and adopted a new and stricter nepotism rule that is now found in IC 4-2-6-16.

7

The next accusation²² was that TW unlawfully profited when he and his

²¹ This Inspector General Report with the recommended changes is published on our website at: http://www.in.gov/ig/files/2010.04.0087.Nepotism_Rule.etal_WEB.pdf

²² The sale of the remaining 30.03 acres occurred after the Special Agent Mischler's 2010 investigation and report.

family sold the residual 30.03 acres of the tract to his relatives, Richard Woodruff & Sons, Inc. (RWS).²³

Our investigation showed that the Woodruffs did indeed sell the remaining 30.03 acres to RWS on December 20, 2010 for \$255,000, or roughly \$8,500 per acre. This was a healthy profit from the original purchase price at half that amount. However, contrary to claims made to us, it is untrue that this remaining property was subsequently condemned by the State. As of this report date, Daviess County property records still show this tract as owned by RWS. A visual inspection as of the date of this report also shows it continues to be utilized as farmland.

We and the prosecutorial authorities have found no unlawfulness in this sale among family members, and believe the complaint to perhaps have been misplaced on the mistaken belief that this tract was later acquired by the State for the Project. It was not.

8

It was next alleged that the profit the Woodruffs received from RWS on the sale of the 30.03 acre tract was a kickback to TW for assisting RWS in condemnation proceedings on other property seized by the State for use in the Project.²⁴

²³ Richard Woodruff and Sons, Inc. (RWS) is a corporation operated by TW's uncle, Richard, and cousins, Daniel and Ronald.

²⁴ According to Benny Woodruff, his family members who owned this tract of land, were previously estranged. Although the families report they are past the dispute, their contact has been distant. Daniel Woodruff also stated that he had not talked with TW in seven (7) or eight (8) years.

Initially, no complainant provided any documentation of misconduct by TW in the family transaction between the Woodruffs and RWS where the Woodruffs received a premium of nearly \$4,000 per acre on the price at which the Parcel was purchased in 2007. Rather, the complainants believed that since the Woodruffs profited to such an extent on the sale of the Parcel within three years of its purchase, this was somehow *prima facie* evidence of wrongdoing.

In fact, no complainant provided any evidence—or apparently made any effort to ascertain—whether the \$4,500 per acre price that the Woodruffs purchased the 30-acre parcel represented the fair market value for the land (which the parties admitted was a discounted rate based on the relationship between Benny Woodruff and the Rushers). Also, no witness provided evidence that the \$8,500 per acre price at which the Woodruffs sold the 30-acre parcel to family members RWS was a gross overpayment for the land or whether the fair market value of the Parcel was fairly represented in either transaction.

For comparison purposes, OIG Special Agent Mischler reviewed surrounding property sale prices in the same Township as the Woodruff property.

11.8 acres for \$147,840.00 averages \$12,528.00 per acre (Sipes)
10.73 acres for \$141,771.00 averages \$13,212.00 per acre (Stoll)

Other property purchases in the area included:

31.57 acres for \$270,000 averages \$8,552.42 per acre (Banks)
33.73 acres for \$220,000 averages \$6,522.38 per acre (Hinkle)
49.32 acres for \$383,285 averages \$7,771.39 per acre (Sims)
24.73 acres for \$295,000 averages \$11,928.83 per acre (Smith)

For the sake of completeness on this issue, however, we next investigated through multiple interviews whether TW attempted to influence the land prices

paid by the INDOT condemnations. Although TW did indeed join INDOT in September 2009 as the Deputy Commissioner of the Vincennes District, he was not involved in the valuation and acquisition of property for use in the Project or for overseeing construction of the interstate. The latter of these duties fell within INDOT's I-69 Project Office, a team developed from existing INDOT staff with the exclusive task of overseeing the Project, while the former of these responsibilities were left to the INDOT Real Estate Division which worked with third-party appraisers following specific federal and state statutory requirements in negotiating for or condemning, depending upon the case, the parcels it needed to acquire.

Furthermore as reported earlier, a *Joint Administrative Settlements File and Process Review* report issued by the Federal Highway Administration ("FHWA") specifically reviewed INDOT's practices regarding right-of-way parcels across the State, including those acquired for use in the Project. The report found that INDOT substantially complied with federal regulations in obtaining the properties, even identifying successful practices the FHWA would share with other state departments of transportation as "evidence of innovative project delivery methods that support reasonable and prudent decisions." *See Exhibit A, attached.*

The OIG further obtained abstracts for each of the Woodruff properties along with the INDOT acquisition files and found INDOT complied with the condemnation procedures prescribed in IC 32-24-1-1 *et seq.*, in securing these parcels for use in the Project, finding no deviation that would suggest the process

was improperly influenced.²⁵

In conclusion, the evidence does not show the profit the Woodruffs made in selling the remaining 30 acres of land to family members RWS was illegal. Specifically, there is no evidence that the \$8,500 per acre paid to the Woodruffs by RWS was anything other than what the parties, family members, believed to be a fair price for the land based on their experiences and knowledge of land values in the area.

Accordingly, prosecution by two independent prosecuting attorneys and further federal review was declined.

9

The next allegation was that TW improperly used his position at INDOT

²⁵ In particular, the documents contained in the INDOT files corroborated interview statements by Daniel Woodruff that he, his brother, and their father were actively involved in collecting information from INDOT regarding the takings process and challenging the State's valuation and assessment of damages against their properties. Regarding one parcel in particular, Ronald Woodruff rejected the State's original offer to compensate him \$8,000 for an acre and a half of land since the appraisal failed to account for the fact that the State's taking damaged the remainder of the forty-acre tract by rendering it landlocked and therefore inaccessible to him. After weighing the alternative costs of acquiring the excess land, constructing a new access point to the property, or settling with the property owner administratively for the additional damages, the State settled on compensating Ronald an additional \$100,000 for the damage created by the State's taking in landlocking the residual acreage of the property. Richard, Ronald, and Daniel Woodruff challenged the value assessed by the State on all six of their properties based on their own research of property values and damages in the county.

Furthermore, before selling the Parcel to RWS in December 2010, Benny Woodruff initially reached out to Michael Cornelius and his son, Allen, to purchase the 30.03 acres since they owned the land immediately adjacent. The Corneliuses, however, did not believe they were in a position to acquire the land. Benny then turned to RWS, who also owned property nearby, to purchase the residual acreage of the Parcel. RWS was interested in recouping the acreage it had lost to the State for use in the Project and agreed to purchase the Parcel from the Woodruffs. Special Agent Mischler learned from Daniel that RWS had recently purchased other parcels at a price around \$8,500 per acre and believed this rate to be a fair assessment of the value of the Parcel as well. Daniel provided Special Agent Mischler with the documentation supporting these other purchases to corroborate his statements.

to benefit himself or his relatives through the change-order of a bridge overpass (“Bridge”) along the Project. This Bridge was changed due to complaints about the safety in its design.²⁶ These complaints were made by a variety of persons, including TW’s extended family members residing in the area of the Bridge. These concerns involved the visibility in the approach and the grade or slope of the Bridge roadway.

INDOT Commissioner Michael Cline was contacted by the Project executive manager regarding the safety complaints and visited the Bridge to assess the concerns. Commissioner Cline concluded that although there was nothing otherwise deficient in the construction of the Bridge, further work needed to be done in order to reduce the grade of the Bridge and make the approach safer. As the agency’s Chief-of-Staff, TW assisted Commissioner Cline in the completion of this Bridge project.

²⁶ As part of the design-build contract process for the County Road 1200 North bridge (“Bridge”), the overpass was designed initially at 30% completion, and the designer and contractor worked out the remaining 70% as the project progressed. For the Bridge in particular, a higher grade of 9¼ % was proposed by the contractor as an effort to achieve greater savings on the project. The higher grade still fell within the maximum acceptable grade of 10%, and the design was approved by INDOT. By the time the Bridge was complete, however, multiple parties, including some of TW’s relatives, made complaints about the safety.

INDOT employee Tom Brummett, whose daily construction reports were cited in media accounts on the Bridge project, expressed to Special Agent Mischler that the critical nature of his comments was directed not at TW’s involvement but at the extra cost to redo a soundly constructed Bridge. Namely, Brummett had overseen the construction of the Bridge which was built according to design, approved in its final form, and in use for nearly eight (8) months from August 2011 to April 2012 before the decision to redo the grade was made. Brummett clarified that he felt, from a construction standpoint, the expenditure of money on further work was unnecessary, but that the perspective advanced that the work was done to appease TW’s relatives was inaccurate, as was its allegation that the \$750,000 change order used on the project was done to avoid federal oversight.

The OIG interviews also revealed that none of the complaining parties could articulate how TW’s relatives benefitted from the re-grading of the Bridge any differently than the other residents of Daviess County who were similarly concerned about the safety of the roadway.

A substantial amount of money (\$750,000) was spent in reconstructing the Bridge to remedy these safety concerns.²⁷

Three additional pieces of evidence were revealed through our investigation of this issue. First, this change to the Bridge was made at the request of not only TW's extended family, but also by other residents of Daviess County, the County Commissioners, and even INDOT staff who voiced concerns regarding the safety of the approach. These safety concerns were that there was dangerously limited visibility regarding the traffic of farm machinery, school buses, Amish buggies, and students travelling to school along the roadway.

Second, this Bridge was the first bridge constructed as part of the Project. Because of the design flaw that prompted the change order, the design of the remaining bridges in the Project was also changed.

Third, INDOT Commissioner Cline is a licensed professional engineer with experience in traffic engineering. Based upon his education, experience, and visit to the Bridge, the Commissioner made the decision that, as constructed, the Bridge presented safety concerns and needed to be re-graded.

Although a specific violation of law was not cited in this complaint about TW's involvement in the change order related to the Bridge, the complainant may have intended to suggest that TW had a conflict of interest by being involved in this decision process. If so, the closest violation would be IC 4-2-6-9²⁸ which

²⁷ Change Order IB-32995 reference "Design/build approach grade reconstruction for CR 1200 N." The entry showed it was approved for the amount \$750,000.00.

²⁸ (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

prohibits a state employee from making a decision when the employee or his *immediate* family might financially benefit. In this case, allegation was that his *extended* family benefited. The conflicts of interest law that applies to state employees does not apply if an *extended* family member may have a financial interest in the matter.

However, we agree that the perception of TW being involved in this Bridge change order in any respect would, *and did*, raise concern. As a matter of management and not illegality, we challenge TW's decision to be involved in this matter, but we also challenge the decision of INDOT not to screen TW from any work related to the change order matter related to that specific Bridge.

For these reasons, we make the following recommendation:

That INDOT adopt written policies which institute disclosures and screens even more stringent than those required by current law²⁹ when

-
- (1) The state officer, employee, or special state appointee.
 - (2) A member of the immediate family of the state officer, employee, or special state appointee.
 - (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.
 - (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.
- (b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
- (1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
 - (2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
- (c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

²⁹ E.g. IC 4-2-6-9 (conflicts of interest on decisions and votes).

the INDOT employees and their extended-family members' properties are involved with decisions and votes by INDOT projects.

10

A further complaint regarding the Bridge was the allegation that the Bridge project resulted in a specific benefit to TW or his relatives because one of TW's relatives sold dirt/fill to the contractor for use in the Bridge rebuild.

This allegation was false. The investigation showed the contractor did indeed purchase dirt/fill from nearby property owners. However, neither of them was related to TW.

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The OIG also investigated the claim that TW illegally requested material be removed at INDOT expense in order to erect a billboard on his relative's property.

Special Agent Mischler gathered copies of all billboard permits requested in Daviess County from Randy Archer, the INDOT district permit supervisor, along with the disposition of the request and found that only one relative of TW's, Michael Cornelius, had applied for and received a permit to erect a billboard on his property along the interstate. In doing so, Cornelius had abided by all of the proper procedures and no INDOT employee was unduly influenced by TW to approve the permit request. The related allegation that all the billboards along the interstate in Daviess County belonged to a Woodruff (or were placed on a Woodruff's property) was unfounded.

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Furthermore, INDOT employees Elliott Sturgeon and Chriss Jobe stated that TW had relayed to them a request by Cornelius to remove debris on INDOT property that obstructed the view of the billboard. They indicated, however, that any such work would need to be done by Cornelius, and TW had no further involvement in the matter. Cornelius reduced the debris to the level he desired at his own expense in order to erect the billboard without any obstructions.

We re-emphasize our recommendation to INDOT to adopt a policy requiring recusal and a screen even more stringent than the Code of Ethics.

12

A further complaint alleged TW requested permission from INDOT staff for a relative to plant crops along an INDOT right-of-way. In fact, the request was from Michael Cornelius and pertained to mowing the grass along the right-of-way. The request was, in any case, denied, and no further action was taken or requested by TW.

TW and his predecessors have viewed their role as INDOT's Chief-of-Staff as being the ultimate constituent services position. As a result, to the extent any INDOT personnel saw an issue with the nature of the requests TW was relaying to them, it was not because such a request by TW on behalf of a constituent was unusual but that it was coming from one of his relatives. None of them, however, felt pressure to approve the requests relayed to them by TW, nor did they receive any resistance when they denied the requests.

However, we re-emphasize our recommendation to INDOT to adopt a

policy requiring recusal and a screen even more stringent than the Code of Ethics.

13

Another allegation relayed to the OIG was that TW used his position to improperly influence a drainage project on the property of one of his relatives. The RP who lodged the initial complaint, did not have any documentation to support the allegation, even after originally claiming he did.

However, OIG Special Agent Mischler uncovered evidence of two matters ancillary to the Project that affected property owned by TW's relatives. The first involved the construction of a temporary driveway by INDOT contractors on property owned by Cornelius for use in the Project. Once the Project was completed, the property was restored to its original condition. Cornelius was not otherwise compensated for the temporary driveway.

The second issue was related to a temporary drainage structure on property belonging to Benny Woodruff. Specifically, some of the nearby farmers were concerned about the placement of a culvert on the property and whether it was of sufficient size for the drainage area. Interviews revealed that the contractor inspected the temporary structure and felt it was sufficient to handle a reasonable amount of rainfall but advised it would remove the structure if higher levels of rainfall were predicted in order to restore the free flow of the water. All parties were amenable to this arrangement during construction, and the temporary structure was removed once the project was complete. Benny was not otherwise compensated for this arrangement.

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There was no evidence to show that TW was involved to any extent in either of these projects. There was also no evidence that Cornelius or Benny Woodruff improperly benefitted as a result of the projects.

14

In addition to the allegation that the nepotism rule was violated with regard to TW's mother as addressed previously, an additional complaint was made that the same rule was violated with regard to TW's spouse's (MW) employment.

However, under the nepotism rule in effect at the time,³⁰ TW and MW were not in a direct supervisory-subordinate relationship during their contemporaneous employment in the Vincennes District office. Special Agent Mischler interviewed MW regarding these allegations and learned she was transferred out of the office upon TW's arrival in order to avoid such a violation. Special Agent Mischler also confirmed through multiple interviews that the parties involved were cognizant of the restrictions of the nepotism rule and avoided putting MW in a position in which she would report to TW during the course of their mutual employment at INDOT.

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Complaints were also made against TW's spouse, MW. First, the allegation is that MW filed an incomplete Financial Disclosure Statement (FDS)

³⁰ As addressed previously, the OIG sought and obtained subsequent legislation which strengthened the nepotism rule in IC 4-2-6-15.

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in 2009 and 2010 by failing to identify her ownership interest in the 2.97 acre tract condemned by the State. This fact, alone, is true. TW filed his FDS, and included the condemnation 2.97 acres disclosure.³¹

However, a FDS is required to be filed by those with “final purchasing authority.” It is unclear whether MW ever had “final purchasing authority” during this period of state employment. Furthermore, MW in her interview, indicated she had no authority to unilaterally make any purchases, including office supplies, which needed the approval of her supervisor. It is clear, however, that if MW is required to file a FDS, she should have reported her ownership interest in the land as required in Part 2 of the FDS form (and pursuant to IC 4-2-6-8(c)(2)) since the Woodruffs owned the Parcel from June 2007 to January 2010. MW stated that she did not do so because TW had included this information on his own FDSs along with the fact that she was his spouse.³²

The knowing or intentional filing of a false FDS is a class A infraction under IC 4-2-6-8(e) while the filing of a deficient statement is subject to a possible civil penalty under IC 4-2-6-8(d). Even if MS had “final purchasing authority” and was required to file the FDS, and assuming it was a “knowing or intentional” violation by MW to make this filing knowing her husband was reporting this information, the filing of an infraction (the equivalent of a speeding ticket) is still outside the jurisdiction of the OIG. We agree with the prosecutorial

³¹TW’s FDSs filed during the same time frame reflect an interest in “33 acres of Farmland in Northern Daviess County” (FDS, 10/30/09) and “30 acres of Farm Land in Northern Daviess County” (FDS, 1/29/10).

³² As noted previously, the FDSs filed by TW during the same time frame disclose this transaction as reflected in “33 acres of Farmland in Northern Daviess County” (FDS, 10/30/09) and “30 acres of Farm Land in Northern Daviess County” (FDS, 1/29/10).

decisions not to file this against TW's wife. The OIG could seek a monetary fine against TW's wife with the State Ethics Commission under these circumstances, but seeking a fine as the only penalty in this four-year investigation against the wife of the person who is accused of these many allegations seems misplaced.

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Next, a RP accused MW, TW's spouse, of forging a signature on a personnel document reducing an INDOT employee's pay.

The investigation revealed this to be a false accusation. The RP alleged to Special Agent Mischler that MW was responsible for forging the employee's signature on a personnel document that reduced the employee's pay when he changed job assignments. In investigating the RP's complaint, Special Agent Mischler learned that the employee had received a promotion at INDOT that resulted in a 15% increase in salary. When he returned to his prior position in a relatively short amount of time, however, the agency arranged for only a 9% reduction in pay, allowing him to keep what amounted to a 6% increase for performing the same job he had done previously.

INDOT's practice at the time was to reduce an employee's salary at the time of his demotion to a level commensurate to the lower position. Contrary to the RP's allegation, MW recommended that the pay not be fully reduced, actually assisting the employee rather than harming the employee. Furthermore, MW did not forge the employee's name.

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An RP further accused MW of forging records to falsely reflect an INDOT employee's educational status. The allegation was that this prevented the employee from obtaining a promotion that required a college degree.

Special Agent Mischler investigated. He contacted the Indiana State Personnel Department to review any changes in the PeopleSoft system to this employee's education background. The State Personnel Department employee confirmed that, contrary to the criminal accusation, the employee's profile still reflected his college degree and had never been revised as the RP alleged.

A final issue was self-reported by INDOT while prosecutorial review was occurring. This involved the payment of damages to the Woodruff family for crop damage due to flooding from faulty drainage design on the Project. The payment was in the right amount, but mistakenly paid to Woodruff family members by INDOT under the condemnation statute rather than through a Torts Claim action. The proper payment procedure for damages caused by INDOT depends upon the phase of the project when the damages occur. Here the damages occurred after the survey and investigation phase of the eminent domain action. IC 8-23-7-28. They were paid through that procedure even though the damages were caused at a later phase of the project, which required a Tort Claim procedure through the Attorney General Office.

We verified that the damage had occurred. *See Exhibit E, attached*

(photograph of the flooding). We then reviewed the accompanying letters and a logged entry showing the Attorney General Office closed the Tort Claim procedure on October 9, 2013. *See Exhibit F, attached.*

Disposed of by the Attorney General, there was no further investigative action on our part. We do however make a recommendation to INDOT to ensure uniform application of the proper procedures:

That INDOT formulate uniform policies on the processing and payment of property damage as distinguished in the IC 8-23-7-26 survey and investigation stage as opposed to compensable damage claims to the State after the condemnation has occurred and the project has commenced.

Conclusion

By the time Special Agent Mischler closed the OIG investigation in this second review, he had interviewed two dozen witnesses over the course of six (6) months and collected hundreds of documents from multiple state agencies, county officials, and private parties. In talking with these individuals and reviewing these records, he found no evidence to support the allegations by these specific RPs. As outlined above, the OIG on its own pursued many potential violations, and reviewed multiple additional allegations made by media reports stemming from the RPs' original information. Still, at the conclusion of the investigation Special Agent Mischler reached out again to these RPs, the two original complainants, to obtain any further information they had to support their claims. At that time, both complainants admitted to Special Agent Mischler that neither of

them possessed any evidence to back their assertions of wrongdoing by TW and, further, that neither of them had attempted to substantiate any of their claims before reporting them to the OIG.

For all the above reasons, the OIG will suspend this case in order to pursue other pending investigations. Should any evidence be brought forward, this case may be evaluated for further action. However, any new information must be specific, based upon personal knowledge, and with an articulation as to what specific law is violated.

/s/ David O. Thomas, Inspector General



U.S. Department
of Transportation
**Federal Highway
Administration**

Indiana Division 575 North Pennsylvania Street, Room 254
Indianapolis, IN 46204
May 15, 2013 (317) 226-7475

In Reply Refer To:

HDA-IN

Michael B. Cline
Commissioner
Indiana Department of Transportation
100 North Senate Avenue
Indianapolis, Indiana 46204

Dear Commissioner Cline:

The Federal Highway Administration (FHWA) in conjunction with the Indiana Department of Transportation (INDOT) has completed its review of the INDOT's Administrative Settlement Review Process for right-of-way acquisition. The review team found INDOT to be in substantial compliance with federal requirements and a copy of the final report is enclosed.

The findings of the review team included several unique practices INDOT uses on larger projects, which FHWA would like to share with other State DOTs. There were also areas recommended for improvement. INDOT, to its credit, has already taken steps to address several of them.

This review provided our office with a baseline for the Administrative Settlement Review process. As part of our Stewardship and Oversight for the Federal-aid Highway Program, we will plan to conduct a follow up review in 2015.

Thank you for your cooperation. We look forward to working with INDOT as it moves forward with addressing the recommendations in the review as well as improving its process.

Sincerely,

Karen A. Bobo
Acting Division Administrator

Enclosure

cc: Colleen Smith, FHWA
Jay DuMontelle, FHWA
Christina Currier, FHWA Resource Center
Michele Palicka, FHWA Resource Center
Bruce Bradley – FHWA Headquarters Office of Real Estate Services
Rick Marquis, FHWA
Jay Wasson, INDOT
Scott Adams, INDOT

EXHIBIT A



U.S. Department
of Transportation

**Federal Highway
Administration**

FHWA Indiana
Division

Indiana
Department of
Transportation

Program Review

Joint Administrative Settlements File and Process Review

May 2013

FINAL REPORT



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Executive Summary

The Federal Highway Administration (FHWA) and Indiana Department of Transportation (INDOT) conducted a Joint Administrative Settlements File and Process Review of right-of-way parcels. The purpose was to evaluate INDOT's with reasonable assurance that policies, procedures, practices, and action taken on federally funded projects related to administrative settlements complied with applicable federal requirements and guidelines (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and codified at 42 U.S.C. 4601, et seq. ("Uniform Act"), and regulations codified at 49 CFR Part 24 and 23 CFR Part 710).

A total of 50 parcel files were reviewed. This review did not include any settlements secured through the use of condemnation authority.

The files for parcels acquired through administrative settlements were reviewed jointly and cooperatively by staff of both FHWA and INDOT. The files reviewed were from a variety of federally funded projects across the State.

Observations

The review team found that INDOT records were adequate and sufficient to support administrative settlements, and demonstrated compliance with federal recordkeeping guidelines and policies, but in certain limited instances, some areas of improvement were noted.

The review team found four parcel files didn't include a copy of the written notice of intent to the owner per 49 CFR 24.5 or the written notice included in the file did not include sufficient details per 49 CFR 24.102(b). Four files were missing evidence to verify receipt of the FHWA Acquisition Brochure which should have been included in Buyer's Report per INDOT's Real Estate Buying Manual.

Appropriate documentation was found showing administrative approvals for increased purchase prices, and their basis, but the documentation of working calculations were inconsistent. Similarly, when property owners had provided counteroffers of just compensation, copies of these documents were not always found in the files.

Upon conclusion of the on-site review of the files, INDOT provided FHWA with the necessary documentation missing from the four parcel files that demonstrate compliance with applicable federal guidelines and policies on those settlements identified as missing documentation.



Joint recommendations for improving INDOT documentation for administrative settlements are as follows:

- Closing Files – parcel files should be reviewed before being closed to ensure all required documentation is included and properly executed. A closing checklist that identifies the required documents to be included should be developed.
- Manual Revisions -- INDOT's Office of Real Estate manuals are being revised to improve the use and application of administrative settlements. The manuals will provide adequate guidance regarding the information needed to support how or why an administrative settlement is reasonable, prudent and in the public interest.
- Training -- INDOT should provide training to staff and consultant buyers in the use of administrative settlements, and how to identify and interpret the necessary documentation used to arrive at the administrative settlement amounts.
- Notices to Owners – all required notices, negotiations, settlements and communications with property owners should be well-documented in writing, and included in a standardized Buyer's Report format.

While areas of improvement were identified by the review team, the team recognized several successful right-of-way practices utilized by INDOT that demonstrate consideration for the public interest (i.e. time and cost savings; property owners' rights and continued compliance with applicable state and federal requirements), including:

- Public Outreach - significant public outreach and education efforts to inform property owners about major projects, and the right-of-way acquisition process (i.e., "Kitchen Table" meetings).
- "Every Day Counts" - effective use and implementation of FHWA's "Every Day Counts" Tools for expediting project delivery (i.e., Incentive Payments and Right of Entry), resulting in time and cost savings to the public.
- Expedited Delivery - reducing the right-of-way acquisition schedule by combining staff and consultant resources to deliver right-of-way clear for construction ahead of schedule, resulting in time and cost savings to the public.
- Appraisal Process - thorough and complete documentation of the appraisal and appraisal review reports; offering a good explanation of the entire process; and including the addition of expert advice for extraordinarily complex appraisal problems.

The review team will share these practices with other state DOT's as evidence of innovative project delivery methods that support reasonable and prudent decisions being made in the public interest.



Background

Since 1971, the acquisition of land for a variety of government programs and projects has been subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and codified at 42 U.S.C. 4601, et seq. ("Uniform Act"), and regulations codified at 49 CFR Part 24 and 23 CFR Part 710. The Uniform Act provides for fair and equitable treatment of persons whose property will be acquired or who will be displaced because of programs or projects financed with federal funds. Congress amended and updated the Uniform Act in 1987.

There are many steps in the acquisition process to assure that the property owner is treated fairly and consistently and is offered just compensation in accordance with the Uniform Act and applicable federal regulations and guidelines. The federal-aid right-of-way process begins when a state transportation agency identifies that the acquisition of private property will be necessary for a federally funded state or local public agency highway project. Subsequently, the property owner must be provided a written notice explaining their rights under the law, the real property being acquired must be appraised by a qualified appraiser, and the appraisal must be reviewed by a qualified review appraiser. Then, the Agency must establish and offer just compensation for the real property, and any improvements or damages to any property residue that will be included in the offer. The primary goal during the acquisition process is to acquire the needed property interests through negotiations rather than condemnation and litigation.

Once the offer is made, good faith negotiations will occur to reach an agreement, without coercive action. If necessary, the purchase price may exceed the amount offered as just compensation. When reasonable efforts to negotiate an agreement have not succeeded, an authorized Agency official may approve an administrative settlement as being reasonable, prudent, and in the public interest.

When federal funds pay for or participate in an administrative settlement, federal regulations and guidelines provide that a written justification be prepared supporting the settlement. The Agency shall give full consideration to all pertinent information. This written justification must include all relevant information necessary to support the settlement and to document assurance that the action taken complied with applicable federal regulations and guidelines. This may include items such as value-related evidence justifying the increase and any new market information. It may also include recent court awards, estimated trial costs, an evaluation of trial risks or other valuation problems.

After reaching an administrative settlement, the Agency must pay the agreed upon purchase price to the property owner before taking possession of the property.



Throughout the process, the Agency must maintain adequate records of its acquisition activities in sufficient detail to demonstrate compliance with federal regulations and guidelines.



Purpose and Objective

The purpose of this review was to evaluate the Indiana Department of Transportation's (INDOT) administrative settlements process and its documentation used to demonstrate compliance with federal regulations. This review provided the Federal Highway Administration's (FHWA) and INDOT with reasonable assurance that policies, procedures, practices, and actions taken on federally funded projects related to administrative settlements complied with applicable federal regulations and guidelines.

Administrative settlements are settlements reached before attempting to initiate an eminent domain proceeding, and that are based upon information that supports a purchase price above the initial approved fair market value offer. The settlements are based on an administrative decision with full consideration of all pertinent information, such as new market data and information; an update, revision, error, or oversight in the appraisals; an owner's appraisal or other supported opinion of value; recent court awards; estimated trial cost; and other valuation problems that may support such a settlement.

The administrative settlement definition can be found at 49 CFR 24.102(i)

"The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement."



Scope and Methodology

The review team selected fifty parcels from the total population of parcels that used Administrative Settlements, over the past three calendar years. Parcels were then ranked by the percentage difference between the initial appraisal and the final settlement paid. The parcels with the highest percent difference between the initial appraised value and the final amount paid, were selected for review. The team discovered during its on-site visit that two parcels that were originally selected were not administrative settlements. These were not replaced and so the actual number of parcels reviewed was forty-eight.

The team used a review checklist and settlement spreadsheet to guide their review. The review team reviewed the following documentation from INDOT's Central Office of Real Estate parcel files for each of the administrative settlements:

- Appraisal Reports and Appraisal Review Reports
- Statement of Just Compensation
- Property owner or tenant improvements located within the acquisition
- Right of way Plans
- Title report, plat and legal description
- Buyer's Report
- Negotiation Documents-Uniform Offer Letter, Deed and, Easement Instruments, Incentive Agreement, Right of Entry, and Revised Offers of Acquisition.
- Approved Written Recommendation for Administrative Settlement

These documents were reviewed against the following regulations:

1. Title 42, United State Code (USC) 4651 and 4652
2. Title 49, Code of Federal Regulations (CFR) Part 24
3. Title 23, Code of Federal Regulations (CFR) 1.23
4. Title 23, Code of Federal Regulations (CFR) Part 710
5. INDOT's approved Real Estate Manuals



Team Members

The review team consisted of the following members:

Colleen Smith – FHWA Indiana Realty Specialist
Jay DuMontelle – FHWA Indiana Planning, Environment, Right-of-Way and Civil Rights Program Manager
Christina Currier – FHWA Resource Center and Texas Division Realty Specialist
Michele Palicka – FHWA Resource Center and Georgia Division Realty Officer
Bruce Bradley – FHWA Headquarters Office of Real Estate Services, Realty Specialist
Scott Adams – INDOT Real Estate Director

Additional INDOT staff members that participated in the review process included: Mike Jett, Right-of-way Project Manager, and Steve Penturf, Condemnation Manager.



Observations and Recommendations

The review team made the following observations and recommendations to improve INDOT's policies and practices to assure compliance with the federal requirements identified below:

General Observations:

- The review team found that INDOT records were adequate and sufficient to support administrative settlements, and demonstrated compliance with federal recordkeeping guidelines and policies, but in certain limited instances, some areas of improvement were noted.
- The review team observed that the assembling of INDOT's parcel files could be improved. INDOT is required to maintain adequate records of its acquisition activities in sufficient detail to demonstrate compliance with federal acquisition laws and regulations (49 CFR Part 24 and 23 CFR Part 710). Required documentation was not consistently organized from one file to another.

General Recommendation:

- A parcel file checklist would be useful and could help organize necessary documents in the file, and are easily organized and accessible for future review.

Observation #1: The review team observed four files needed to be supplemented to include additional documentation to support higher settlements being offered to the property owner (49 CFR 24.102(i)).

Recommendation #1: INDOT's Real Estate Buying Manual should be updated to include clearer guidance the use of administrative settlements. This should include examples of written justifications, per federal regulations. Better written justification and supporting documentation would help tell the story of the negotiation process and document the buyer's calculations used to recommend the higher value.

It is noted that since the team's on-site review of the parcel files, INDOT has supplied FHWA with supplemental documentation that supported and justified the settlement values of the four parcel files.

Observation #2: The team observed in a limited number of cases that INDOT's written administrative memorandum should include more detailed information explaining the underlying basis for settlement and demonstrating that the settlement was reasonable, prudent and in the public interest (49 CFR 24.102(i)).



Recommendation #2: INDOT should ensure documentation that reflects all justification used to support an administrative settlement is included in the parcel files. The team recommends that INDOT develop a parcel file checklist be used to ensure documentation is included in files before they are closed.

It is noted that since the team's on-site review of the parcel files, INDOT has supplied FHWA with supplemental documentation that supported and justified the settlement values of the four parcel files.

Observation #3: The review team observed in 19 files that offers to accompany an appraiser on the inspection of the owner's property was documented as having been done by phone call, and then noted in the parcel files.

Recommendation #3: Although INDOT's Real Estate Acquisition Manual allows the offer to be issued by phone, INDOT should more clearly and consistently demonstrate it has notified the property owner by providing a written invitation to accompany the appraiser, rather than extending this invitation by telephone and documenting the call in the parcel files. This would ensure the owner(s) were given their rights to discuss their concerns about the property with the appraiser.

Observation #4: The team observed that four of the parcel files reviewed were missing the "Intent to Acquire" notice sent to the property owner(s) to let them know of INDOT's interest in acquiring their real property and explaining the protections provided by applicable law and regulation.

Recommendation #4: INDOT should continue its practice of having buyer's also send a separate letter including all of the notices contemplated in 49 CFR 24.102(b).

It is noted that since the team's on-site review of the parcel files, INDOT has supplied FHWA with supplemental documentation that supported and justified the settlement values of the four parcel files.

Observation #5: The review team observed that some parcels files did not include documentation from the property owner supporting the basis of their counter-offer (49 CFR 24.102(f)).

Recommendation #5: INDOT should revise its Administrative Settlement procedures to include a review of the owner's evidence of value by a licensed appraiser, and identify the evidence which INDOT believes is most reliable and credible to support the owner's opinion, and that will be acceptable.



Since the on-site review, INDOT has modified its process to include a review of the counter-offer by a licensed appraiser.

Observation #6: The review team observed four files were missing buyer's notes that may have verified receipt of the FHWA Acquisition Brochure which should have been noted in Buyer's Report per INDOT's Real Estate Buying Manual.

Recommendation #6: INDOT's current successful practice of requiring the property owner's signature or initials upon the Buyer's Report should be consistently applied and followed by all staff and consultant buyers. This should be emphasized in Buyer's training.



Successful Practices

The review team also found that INDOT had adopted several innovative practices into its right-of-way acquisition process.

Review Appraisals -- Review appraisals were detailed and offered a good explanation of the entire appraisal process. Several files included a letter addressed to the property owner, from the appraiser, to accompany their inspection of the property, and that included a listing of all the documents in the package sent to the property owner.

“Kitchen Table” Meetings - “Kitchen Table” discussions were held with individual property owners on the Section IV of I-69 project to facilitate improved communications, public education, and awareness of issues regarding the right-of-way process and the project, in general. This extraordinary public outreach effort provided property owners with a list of persons who would be contacting them and for what reasons, and with photos of construction equipment the owners might expect to see during the surveying and pre-construction phases.

Combined Resources – A combined acquisitions and relocation team comprised of INDOT staff and consultants was utilized for the first time to clear right-of-way ahead of schedule for the Ohio River Bridges project. This successful practice reduced the time necessary to acquire, relocate, and clear all right-of-way, resulting in cost savings to the public.

Organization & Documentation – Buyers are encouraged to obtain the signature of property owners on the Buyer’s Report to confirm details and information are shared and understood by the property owner. This best practice helps with the owner’s understanding of the acquisition process and confirms their agreement with details of the transactions.

Problem Resolution - A creative solution to resolve a unique appraisal problem relied upon a specialized Wisconsin DOT appraiser to value a ginseng crop. This successful practice determined the value of the property owner’s unique crop to arrive at a fair and accurate value for compensating the land owner.

Acquisition Incentives – INDOT employs the use of acquisition and relocation incentives to expedite project delivery. This successful practice contributes to a shorter project delivery cycle, lower condemnation rates, as well as time and cost savings.

Right of Entries – INDOT employs the use of an “Irrevocable Right of Entry” process to expedite access, planning, and pre-construction activities on parcels while administrative processes to clear the right-of-way continue. The property owner is



U.S. Department
of Transportation

**Federal Highway
Administration**

compensated to allow INDOT access to their property while the full payment for their property is being processed in the state's financial system. This successful practice contributes to a shorter project delivery cycle, saving time and public tax dollars.



Conclusion

Based upon the on-site visit and review of documentation provided by Indiana Department of Transportation (INDOT), the Federal Highway Administration (FHWA) is able to determine the state's Administrative Settlement process is adequate and sufficient to support administrative settlements as being reasonable, and compliant with federal regulations and guidelines.

During the Joint Administrative Settlements File and Process Review, the management staff of INDOT's Real Estate Division demonstrated a spirit of cooperation and knowledge of the requirements of the federal-aid right-of-way program. INDOT staff had already self-diagnosed several needed improvements prior to the review being conducted and welcomed guidance from the review team for advancement of its program during the review process.

Following the review team's on-site visit, INDOT has taken several steps to address issues identified during the review such as:

- INDOT's Administrative Settlement process was revised to better identify the documentation needed to support settlements;
- INDOT has initiated a full review and update of all of its Real Estate Manuals and intends to combine them into a single manual; and
- INDOT is already planning additional right-of-way education and training for all of its staff and consultants.

The review of documentation in the parcel files along with the planned programmatic improvements will help INDOT to demonstrate its compliance with the requirements to follow the Uniform Act and maximize the rights of property owners, as well as to improve project delivery. To that end, FHWA and INDOT will continue to partner and collaborate on key programmatic elements and processes to ensure ongoing compliance with applicable laws, rules, and regulations.



Action Plan

In response to the review team's observations as outlined in this report, the following action items are provided for the benefit of INDOT to improve the federal-aid right-of-way program:

- **Supplementary Information** – INDOT has provided FHWA with supplementary data, information, and analysis on the four select parcel files to more thoroughly support and justify settlements made. Examples of acceptable supplementary information included evidence and analysis to support overall project cost savings resulting from construction delay claims, permit penalties, expert witness and appraisal fees, and excessive court awards, among others. Additional documentation also included the owner's appraisal, a broker price opinion, sales disclosures, and/or contractor's estimates for cost-to-cure items. This example of supplementary information should be incorporated into INDOT's Real Estate Manual.
- **Documentation** – INDOT should "tell a better story" with the documents generated throughout the transaction process, and include them in the parcel files. The Buyer's Report should be revised to more accurately reflect key agency-owner interactions and decisions. All correspondence, notices, letters, and emails should be accounted for in the file, along with a list of all documents and information provided to the owner. Documents should be dated to show when they were provided, and identify who provided the documents to the owner.
- **Training** – INDOT should provide supplementary training to staff and consultant buyers in the use of administrative settlements. Training should include how to identify and interpret the necessary documentation needed to justify a settlement in the public interest.
- **Administrative Settlements** – INDOT is revising its process to identify specific sources, types, and examples of acceptable evidence that may be used to support and justify an administrative settlement. The criteria and justification used should clearly establish the settlement as reasonable, prudent, and in the public interest. A counter-offer submitted by an owner based on market data should be reviewed by a licensed appraiser.
- **Notices to Owners** – All required notices, negotiations, settlements and communications with property owners should be well-documented in writing, and included in the Buyer's Report that is signed or initialed by the owners.



- **Manuals** – INDOT is reviewing and updating its right-of-way manuals to include additional detail and guidance with respect to the administrative settlement process.
- **Early Right-of-Way Engagement** – Real estate staff should be engaged and included in the early stages of the project development process. The designer may benefit from the perspective of a right-of-way professional to identify and avoid costly and time-consuming acquisitions and relocations.



Appendices

List of Parcels Selected to Review

Land Code	Parcel Number	Route	Work Type	Property Use
4512	26	US-41	Interchange Modification	Resident
5095	727	US-31	New Road Construction	Special Improvement
5219	6	US-150	Road Reconstruction (3R/4R Standards)	Resident
3205	24	US-231	New Interchange Construction	Agriculture
5537	14	I-69	New Road Construction	Resident
4269	65	US-52	Added Travel Lanes	Commercial
5547	65	US-52	Intersection with Added Turn Lanes	Resident
5426	1	I-69	Environmental Mitigation	Special Improvement
4808	7	SR-44	Intersection Improvement, Roundabout	Commercial
5533	12	I-69	New Road Construction	Agriculture
3786	107	SR-23	Auxiliary Lanes, Two-way Left Turn Lanes	Resident
4557	59	I-465	Interchange Modification	Commercial
5398	903	I-69	New Road Construction	Special Improvement
4936	9	SR-25	New Road Construction	Agriculture
5539	1	I-69	New Road Construction	Agriculture
4936	8	SR-25	New Road Construction	Agriculture
5285	37	I-69	New Road Construction	Agriculture
5197	27	SR-25	New Road Construction	Resident
4575	6	US-27	Intersection Improvement	Special Improvement
3786	103	SR-23	Auxiliary Lanes, Two-way Left Turn Lanes	Resident
5426	2	I-69	Environmental Mitigation	Special Improvement
5092	413	US-31	New Road Construction	Agriculture
5537	31	I-69	New Road Construction	Agriculture
5531	16	I-69	New Road Construction	Agriculture
4815	4	SR-61	Sight Distance Improvement	Special Improvement
5092	404	US-31	New Road Construction	Agriculture *
5435	1	I-69	Environmental Mitigation	Agriculture
5536	8	I-69	New Road Construction	Agriculture
5409	1	I-69	Environmental Mitigation	Agriculture
5416	1	I-69	Environmental Mitigation	Agriculture
4936	12	SR-25	New Road Construction	Agriculture
5533	1	I-69	New Road Construction	Agriculture
5537	30	I-69	New Road Construction	Agriculture
5531	39	I-69	New Road Construction	Resident
5412	1	I-69	Environmental Mitigation	Agriculture
5196	23	SR-25	New Road Construction	Resident
5001	25	SR-38	Sight Distance Improvement	Resident
5531	24	I-69	New Road Construction	Agriculture
5537	21	I-69	New Road Construction	Resident
4159	32	I-70	Interchange Modification	Agriculture



Land Code	Parcel Number	Route	Work Type	Property Use
5092	446	US-31	New Road Construction	Agriculture
4747	18	SR-2	Interchange Modification	Agriculture
3786	117	SR-23	Auxiliary Lanes, Two-way Left Turn Lanes	Resident
3879	74	SR-19	Road Reconstruction (3R/4R Standards)	Commercial
5431	1	I-69	Environmental Mitigation	Agriculture
3879	38	SR-19	Road Reconstruction (3R/4R Standards)	Commercial *
3786	142	SR-23	Auxiliary Lanes, Two-way Left Turn Lanes	Resident
5410	1	I-69	Environmental Mitigation	Agriculture
5411	1	I-69	Environmental Mitigation	Agriculture
5420	1	I-69	Environmental Mitigation	Agriculture

An asterisk (*) is used to note the two parcel files selected for this review that were later found to not be administrative settlements.



U.S. Department
of Transportation
**Federal Highway
Administration**



*Report prepared by:
Joint Administrative Settlements File & Process Team*

*Contact: Colleen Smith, Realty Specialist
Indiana FHWA Division Office
575 N. Pennsylvania St., Rm. 254
Indianapolis, IN 46204
317-226-5234*

For additional copies of this report, contact us.

EXHIBIT B



INSPECTOR GENERAL REPORT

2010-07-0187

August 19, 2010

I-69 CORRIDOR PROPERTY OWNERSHIP

Inspector General Staff Attorney Todd Shumaker, after an investigation by Special Agent Mike Mischler, reports as follows:

On July 29, 2010, a confidential reporting party (RP1)¹ contacted the Office of Inspector General (OIG) regarding the ownership of property along the I-69 Corridor in Daviess County (Corridor) by Indiana Department of Transportation (INDOT) employee Troy Woodruff (Woodruff) and his wife. RP indicated that it had been reported to him that Woodruff, his wife, Melissa (potentially in her maiden name) and a contractor owned parcels of land along the Corridor that were involved in the I-69 expansion project (Project). RP also indicated there were allegations that Woodruff had hired his mother to work for him at INDOT.

The OIG is authorized to conduct investigations of fraud, waste, abuse, mismanagement, and misconduct in state government. IC 4-2-7-3(2). OIG Special Agent Mike Mischler was assigned and began an investigation into potential ethics and criminal violations.

¹ The RPs' identities have been redacted to protect their confidentiality under IC 4-2-7-8.

I

Special Agent Mischler interviewed another witness (RP2) who had originally contacted RP1. RP2 indicated it had been brought to his attention that several parcels of property along the Corridor were owned by “Woodruff,” and there was speculation those parcels were purchased by Woodruff. RP2 noted further that property along the Corridor was owned by another INDOT employee (Other INDOT Employee). Finally, RP2 commented that both Woodruff’s and the Other INDOT Employee’s wives may have used their maiden names to purchase additional property along the Corridor.

Special Agent Mischler researched the ownership of land in Daviess County and found 33 acres (Property) associated with Woodruff, his wife Melissa, and his family (collectively, the Woodruffs), including fifteen parcels along the Corridor.² On April 6, 2010, the Woodruffs transferred 2.97 acres to the State of Indiana for the price of \$13,328 for use in the Project.

Special Agent Mischler discovered further that the Property had been purchased in 2007 from an out-of-state owner who had inherited it in 2005 from her aunt. Special Agent Mischler learned from the former owner’s daughter that the aunt had requested that the woman first offer the Property to Woodruff’s father in the event she decided to sell it. The aunt indicated that Woodruff’s father had farmed the land for many years, and she thought very highly of him. Consistent with her aunt’s wishes, the woman offered the Property for sale to

² Special Agent Mischler’s research returned no results for property ownership along the Corridor in the name of the Other INDOT Employee or the maiden names of the Other INDOT Employee’s or Troy Woodruff’s wives.

Woodruff's father in 2007, and the Woodruffs opted to purchase it.

II

Potential Ethics Violations

According to State employment records, Woodruff served as a member of the Indiana House of Representatives from 2004-2006 but was not hired to work for the executive or administrative branches of Indiana government until 2008. As a result, he would not have qualified as an "employee" until 2008 and would not have been subject to the Code of Ethics (Code) at the time the Property was purchased in 2007. *See* IC 4-2-6-1.

Excess compensation for sale or lease, IC 4-2-6-7

As a state employee in 2010 when the Property was sold, Woodruff would have been bound by the Code, including its provision on receiving excess compensation for the sale or lease of property. *See* IC 4-2-6-7. Pursuant to this rule, a state employee is prohibited from receiving compensation: (a) for the sale or lease of any property which substantially exceeds that which the employee would charge in the ordinary course of business, or (b) from any person whom the employee knows or should know has a business relationship with the agency in which the employee holds a position.

The warranty deeds (Deeds) for each of the parcels the Woodruffs transferred to the State of Indiana indicate the Property was purchased by the State of Indiana. The State of Indiana would not qualify as a person with a business relationship with INDOT under (b) above. Therefore, IC 4-2-6-7 would

not apply to the sale of the Property by the Woodruffs in 2010.

Conflicts of interest; contracts, 42 IAC 1-5-7 (IC 4-2-6-10.5)

In addition to the rule on the sale or lease of property, the ethics rule on “Conflicts of Interest; Contracts” may also have been implicated in the sale of the Property by the Woodruffs. *See* IC 4-2-6-10.5. This rule prohibits a state employee from knowingly have a financial interest in a contract made by an agency, subject to certain exceptions.

The Deeds transferring the Property to the State of Indiana do not appear to be contracts as contemplated by IC 4-2-6-10.5 and would not be subject to the prohibitions in this rule.³

Nepotism, IC 4-15-7-1

State employment records indicate Woodruff’s mother, Carolyn Woodruff, was hired to work in the INDOT office in Vincennes in April 2010. Woodruff served as INDOT’s Vincennes District Deputy Commissioner from September 2009 to August 2010.

The ethics rule on nepotism prohibits a mother from being placed in a direct supervisory-subordinate relationship with her son. The nepotism rule also prohibits a mother from holding a position in any state office, department, or

³ IC 4-13-2-14.1 requires all state contracts to be signed by the vendor and agency and be approved by representatives the Indiana Department of Administration (IDOA), the State Budget Agency (Budget), and the Office of the Attorney General. The warranty deeds used to transfer the Property to the State were signed only by the Woodruffs and two Deputy Attorneys General. That the State forewent signatures by IDOA and Budget in approving the Deeds supports the conclusion that it also did not view these Deeds to be contracts.

institution if her son serves as the head of that state office, department, or institution.

According to human resource records, Carolyn reports to Howard Geck, not Woodruff, and she is not in a direct supervisory-subordinate relationship with her son. In addition, although Woodruff was serving as the INDOT Vincennes District Deputy Commissioner at the time Carolyn was hired, he was not the head of INDOT as required for this rule to apply. Based on this information, it does not appear as though Carolyn's hire at the INDOT Vincennes district was in violation of the rule on nepotism.

III

Criminal Violations

Official misconduct, IC 35-44-1-2

As both a member of the Indiana House of Representatives from 2004-2006 and an employee of the executive branch from 2008 to present, Woodruff qualified as a "public servant." *See* IC 35-41-1-24. As a public servant, he would also have been subject to the prohibitions in the criminal rule against Official Misconduct, namely that he could not knowingly or intentionally acquire, or divest himself of, a pecuniary interest in any property based on information obtained by virtue of his office that official action that was not made public was being contemplated. *See* IC 35-44-1-2. Under this rule, it could have been a criminal violation for Woodruff to purchase or sell the Property if it was based on information on the Project he had obtained by virtue of his positions in the

legislative and executive branches of state government of contemplated official action that had not yet been made available to the public.

According to Special Agent Mischler's findings, the Property was purchased by the Woodruffs in 2007. The I-69 corridor connecting Evansville to Indianapolis via Oakland City, Washington, Crane Naval Surface Warfare Center, Bloomington, and Martinsville was approved in March of 2004. *See: U.S. Department of Transportation Federal Highway Administration, Tier 1 Record of Decision: I-69 Evansville to Indianapolis, Indiana (2004)*. By the time the Woodruffs purchased the Property, its inclusion in the Corridor had already been public for three years. Consequently, any information related to official action on the Project would already have been made public, and the provision in the rule against Official Misconduct would no longer be implicated.

Conclusion

Special Agent Mischler's investigation did not uncover any evidence to support RP1's initial allegations of ethics or criminal violations by Woodruff. As a result, this case will be suspended in order to pursue other pending investigations. Should additional evidence be brought forward, this case may be evaluated for further action. At this time and for these reasons, this case is closed.

Dated this 19th day of August, 2010.

APPROVED BY:



David O. Thomas, Inspector General

EXHIBIT C

DULY ENTERED FOR TAXATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

APR 06 2010

April Doades
AUDITOR, DAVIESS COUNTY

Form WD-1
REV. 7-1-07

WARRANTY DEED

14-02-27-000-020.
000-003

Project: 0901969
Code: 5352
Parcel: 34A
Page: 1 of 4

THIS INDENTURE WITNESSETH, That Benny Woodruff and Carolyn Woodruff, husband and wife; Todd Woodruff and Amanda Woodruff, husband and wife; and Troy Woodruff and Melissa Woodruff, husband and wife, all as joint tenants with rights of survivorship and not as tenants in common, Grantor(s), of the State of Indiana, Convey(s) and Warrant(s) to the STATE OF INDIANA, the Grantee, for and in consideration of the sum of Thirteen Thousand Three Hundred Twenty-seven and No/100 Dollars (\$13,327.00) (of which said sum \$13,327.00 represents land and improvements acquired and \$0.00 represents damages) and other valuable consideration, the receipt of which is hereby acknowledged, certain Real Estate situated in the County of Daviess, State of Indiana, and being more particularly described in the legal description(s) attached hereto as Exhibit "A" and depicted upon the Right of Way Parcel Plat attached hereto as Exhibit "B", both of which exhibits are incorporated herein by reference.

This conveyance is subject to any and all easements, conditions and restrictions of record.

The Grantor(s) hereby specifically acknowledge(s) and agree(s) that the Real Estate conveyed herein is conveyed in fee simple and that no reversionary rights whatsoever shall remain with the Grantor(s), or any successors in title to the abutting lands of the Grantor(s), notwithstanding any subsequent abandonment, vacation, disuse, nonuse, change of use, conveyance, lease and/or transfer by the Grantee or its successors in title, of a portion or all of the said Real Estate or any right of way, roadway or roadway appurtenances established thereupon. This acknowledgment and agreement is a covenant running with the land and shall be binding upon the Grantor(s) and all successors and assigns.

As an inducement for the State of Indiana to close this real estate transaction, the grantor(s) assume(s) and agree(s) to pay the 2009 payable 2010 real estate taxes and assessments on the above described real estate. This obligation to pay shall survive the said closing and shall be enforceable by the State of Indiana in the event of any non-payment.

I.C. 8-23-7-31

INST. NO. 10-1295
RECEIVED FOR RECORD
This 10 day of APRIL 2010
at 1332 Fee. N/C

M. J. [Signature]
RECORDER DAVIESS COUNTY

KEE 3-1-10

Project: 0901969
Code: 5352
Parcel: 34A
Page: 2 of 4

IN WITNESS WHEREOF, the said Grantor(s) have executed this instrument this 18th day of January, 2010.

X Benny Woodruff (Seal)
Benny Woodruff, Husband

X Carolyn Woodruff (Seal)
Carolyn Woodruff, Wife

X Todd Woodruff (Seal)
Todd Woodruff, Husband

X Amanda Woodruff (Seal)
Amanda Woodruff, Wife

X Troy Woodruff (Seal)
Troy Woodruff, Husband

X Melissa Woodruff (Seal)
Melissa Woodruff, Wife

Project: 0901969
Code: 5352
Parcel: 34A
Page: 3 of 4

STATE OF Indiana :
COUNTY OF Knox : SS:

Before me, a Notary Public in and for said State and County, personally appeared Benny Woodruff and Carolyn Woodruff, husband and wife, the Grantor(s) in the above conveyance, and acknowledged the execution of the same on the date aforesaid to be their voluntary act and deed and who, being duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 18th day of January, 2010.
William J. Stuckey
Signature
William J. Stuckey
Printed Name
My Commission expires September 30, 2014
I am a resident of Marion County.



STATE OF Indiana :
COUNTY OF Knox : SS:

Before me, a Notary Public in and for said State and County, personally appeared Todd Woodruff and Amanda Woodruff, husband and wife, the Grantor(s) in the above conveyance, and acknowledged the execution of the same on the date aforesaid to be their voluntary act and deed and who, being duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 18th day of January, 2010.
William J. Stuckey
Signature
William J. Stuckey
Printed Name
My Commission expires September 30, 2014
I am a resident of Marion County.



Project: 0901969
Code: 5352
Parcel: 34A
Page: 4 of 4

STATE OF Indiana :
COUNTY OF Knok : SS:

Before me, a Notary Public in and for said State and County, personally appeared Troy Woodruff and Melissa Woodruff, husband and wife, the Grantor(s) in the above conveyance, and acknowledged the execution of the same on the date aforesaid to be their voluntary act and deed and who, being duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 18th day of January, 2010.

William J. Stuckey
Signature

William J. Stuckey
Printed Name

My Commission expires September 30, 2014.

I am a resident of Marion County.

Interests in land acquired by the Indiana Department of Transportation

This Instrument Prepared By _____

Grantee mailing address:
100 North Senate Avenue
Indianapolis, IN 46204-2219

Attorney at Law

I.C. 8-23-7-31

I affirm, that under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.

Printed Name

Signature

This instrument prepared by and I affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security number in this document, unless required by law.



Kristen E. Edmundson
Deputy Attorney General
Attorney No. 25558-49
Office of the Attorney General
302 W. Washington St., 5th Floor
Indianapolis, IN 46204-2770

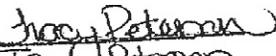
This instrument was prepared and approved as to form by the undersigned Deputy Attorney General who, under penalties of perjury, affirms that he has redacted, to the extent permitted by law, each Social Security number in this document.



RICHARD C. MELFI
DEPUTY ATTORNEY GENERAL

Richard C. Melfi, Attorney No. 23425-29
Deputy Attorney General
State of Indiana
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law."

Signature: 
Printed Name: Tracy Peterson

Grantee Tax Mailing Address
INDOT
100 N. Senate Avenue, Room N642
Indianapolis, IN 46204

EXHIBIT "A"

Project: 0901969
Code: 5352
Form: WD-1
Key No.: 14-02-27-300-020.000-003
Parcel: 34A Fee

Sheet 1 of 1

A part of the Southeast Quarter of the Southwest Quarter of Section 27, Township 5 North, Range 6 West, Daviess County, Indiana, and being that part of the grantors' land lying within the right of way lines depicted on the attached Right of Way Parcel Plat, marked EXHIBIT "B", described as follows: Commencing at the southwest corner of said southwest quarter, designated as point "459" on said plat, and said point being South 88 degrees 06 minutes 06 seconds East 5,338.59 feet from the southwest corner of Section 28, Township 5 North, Range 6 West, designated as point "319" on said plat; thence along the south line of said quarter section South 86 degrees 34 minutes 50 seconds East 1,336.57 feet to the west line of the grantor's land; thence continuing along said south line South 86 degrees 34 minutes 50 seconds East 13.89 feet to the point of beginning of this description; thence North 0 degrees 08 minutes 21 seconds West 13.03 feet to the north boundary of C.R. 1200 N.; thence continuing North 0 degrees 08 minutes 21 seconds West 156.67 feet to point "1265" designated on said plat; thence South 86 degrees 48 minutes 56 seconds East 140.79 feet to point "1266" designated on said plat; thence South 78 degrees 03 minutes 51 seconds East 657.96 feet to point "1267" designated on said plat; thence South 80 degrees 38 minutes 11 seconds East 402.28 feet to point "1268" designated on said plat; thence South 3 degrees 40 minutes 20 seconds West 17.85 feet to the north boundary of C.R. 1200 N., designated as point "1269" on said plat; thence continuing South 3 degrees 40 minutes 20 seconds West 13.00 feet to the south line of said quarter section; thence along said quarter section North 86 degrees 34 minutes 50 seconds West 1,180.94 feet to the point of beginning, and containing 2.813 acres, more or less, inclusive of the presently existing right-of-way which contains 0.353 acres, more or less.

This description was prepared for the Indiana Department of
Transportation by Timothy J. Coomes, Indiana Registered Land Surveyor,
License Number 20600004, on the 18th day of November, 2009.



A handwritten signature in black ink, appearing to read "Timothy J. Coomes", written over the bottom right portion of the seal and the text.

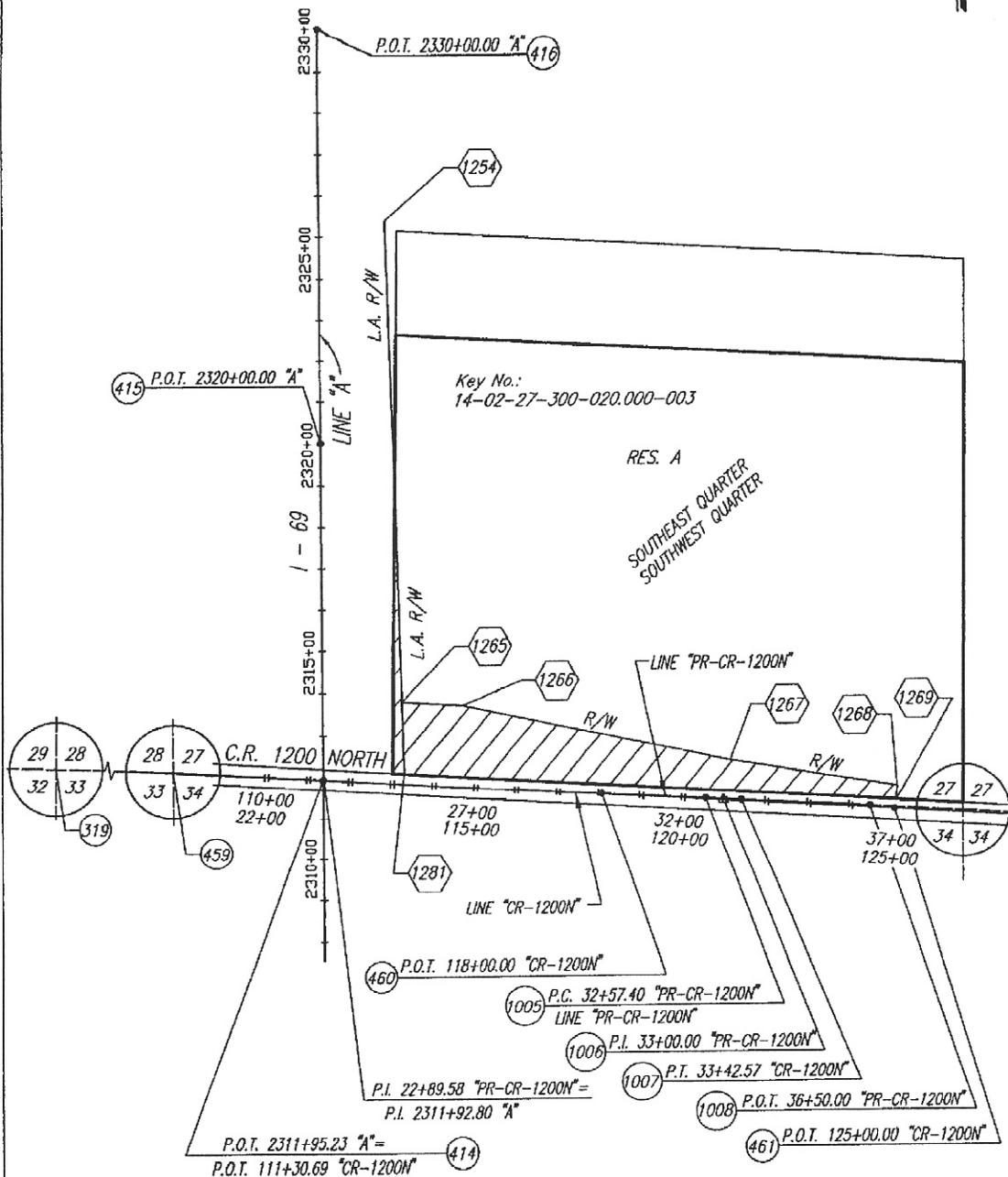
EXHIBIT "B"
RIGHT-OF-WAY PARCEL PLAT

Prepared for the Indiana Department of Transportation
by United Consulting

SHEET 1 OF 2



SCALE: 1" = 300'



NOTE: PROPERTY SUBJECT TO A LEASE AGREEMENT
IN FAVOR OF EL PASO E&P COMPANY, L.P.

REVISED BY: K.I. CARR 11-17-09

OWNER : WOODRUFF, BENNY ET AL
PARCEL : 34
CODE : 5352
PROJECT : 0901969
ROAD : I-69
COUNTY : DAVIESS
SECTION : 27
TOWNSHIP : 5N.
RANGE : 6W.

DRAWN BY: J.A. ROLLINGS 10-04-09
CHECKED BY: T.J. COOMES 10-05-09
DES: 0901969

 HATCHED AREA IS THE
APPROXIMATE TAKING

INSTRUMENT NO. 07-3625, DATED 6-30-2007

Dimensions shown are from the above listed Record Documents.

PARCEL COORDINATE CHART

Point	Line	Station	Offset	NORTH	EAST
*319	N/A	-----	-----	-----	-----
*414	N/A	-----	-----	-----	-----
*415	N/A	-----	-----	-----	-----
*416	N/A	-----	-----	-----	-----
*459	N/A	-----	-----	-----	-----
*460	N/A	-----	-----	-----	-----
*461	N/A	-----	-----	-----	-----
1005	"PR-CR-1200N"	P.C.32+57.40	-----	408441.2889	695461.5806
1006	"PR-CR-1200N"	P.I.33+00.00	-----	408438.9235	695504.0977
1007	"PR-CR-1200N"	P.T.33+42.57	-----	408436.1961	695546.5930
1008	"PR-CR-1200N"	P.O.T.36+50.00	-----	408416.5050	695853.3968
1254	"A"	2325+33.50	184.50' RT.	409833.0340	694721.1250
1265	"PR-CR-1200N"	25+09.21	170.00' LT.	408652.5872	694723.9897
1266	"PR-CR-1200N"	26+50.00	170.00' LT.	408644.7668	694864.5574
1267	"PR-CR-1200N"	33+00.00	69.98' LT.	408508.6911	695508.2905
1268	"PR-CR-1200N"	37+00.00	30.00' LT.	408443.2412	695905.2113
1269	"PR-CR-1200N"	37+00.00	R(12.15 LT.)	408425.4298	695904.0682
1281	"A"	+R(2311+96.39)	179.05 LT.	408495.9165	694724.3699

NOTE: STATIONS & OFFSETS CONTROL OVER BOTH NORTH & EAST COORDINATES AND BEARINGS & DISTANCES.

* SEE LOCATION CONTROL ROUTE SURVEY PLAT.

SURVEYOR'S STATEMENT

To the best of my knowledge and belief, this plat, together with the "Location Control Route Survey" recorded in Instrument No. 09-4676 in the Office of the Recorder of Daviess County, Indiana, (incorporated and made a part hereof by reference) comprise a Route Survey executed in accordance with Indiana Administrative Code 865 IAC 1-12, ("Rule 12").

Given under my hand and seal 11/18/09
Date

[Handwritten Signature]

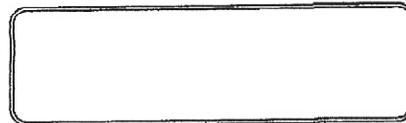
TIMOTHY J. COOMES
Registered Land Surveyor No. 20600004
State of Indiana



REVISED BY: K.I. CARR 11-17-09

OWNER : WOODRUFF, BENNY ET AL.
PARCEL : 34
CODE : 5352
PROJECT : 0901969
ROAD : I-69
COUNTY : DAVIESS
SECTION : 27
TOWNSHIP : 5N.
RANGE : 6W.

DRAWN BY: J.A. ROLLINGS 10-04-09
CHECKED BY: T.J. COOMES 10-05-09
DES: 0901969



RE: Financial Disclosure Statements

EXHIBIT D

Woodruff, Troy (INDOT)

~~Sent: Friday, October 30, 2009 4:30 PM~~

To: Mulligan, Tiffany; Woodruff, Melissa

Thank you Tiffany, you have been extremely helpful in this matter. Troy

From: Mulligan, Tiffany

Sent: Friday, October 30, 2009 4:27 PM

To: Woodruff, Troy (INDOT); Woodruff, Melissa

Subject: RE: Financial Disclosure Statements

Troy and Melissa,

I spoke with Melissa briefly on this – she indicated she does not currently have “final purchasing authority” with INDOT, but she may in the future. If/when she does get such authority, she will need to file a financial disclosure statement with the Inspector General's office and disclose the property interest. She indicated she filed a statement at the beginning of the year but did not include the property interest – I recommend she amend her statement to include the interest if she is given final purchasing authority with the agency. If she does not get final purchasing authority until 2010, she can refile her statement and include the real property interest at that time. I send reminders out every January to all employees so you will both receive reminders at that time.

Once you sell the property for the I-69 project I recommend you make an additional disclosure to the Ethics Commission – this can be a letter to the Commission describing your property interest, the nature of the INDOT transaction acquiring the property, and statements regarding other relevant ethics provisions. I don't believe this is required by the Ethics Code, but it may provide you both with some coverage should anyone ever question the transaction. I can assist you with specifics when you are ready to make such disclosures.

Let me know if you have any questions or concerns –

Tiffany

Tiffany Mulligan

Attorney

Indiana Department of Transportation

100 North Senate Avenue, Room N730

Indianapolis, IN 46204

phone: (317) 233-3428

fax: (317) 233-1481

tmulligan@indot.in.gov

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From: Woodruff, Troy (INDOT)
Sent: Friday, October 30, 2009 3:47 PM
To: Mulligan, Tiffany; Woodruff, Mellssa
Subject: RE: Financial Disclosure Statements

Tiffany,

I filled out the financial disclosure statement today. I put the land on it. Also, sense Mellssa had to be listed on my disclosure form is she ok, or does she need to do one as well? She may have done it already and I didn't know it. Let me know what you think I need to do once we sell the property for the I-69 project.

Thanks,
Troy

From: Mulligan, Tiffany
Sent: Thursday, October 29, 2009 6:02 PM
To: Woodruff, Troy (INDOT)
Subject: RE: Financial Disclosure Statements

Troy,

Along with disclosing any real property you have in your financial disclosure statement, you may want to consider the following statutes and how they might apply to the property INDOT may acquire for I-69: IC 4-2-6-9; IC 4-2-6-7; and IC 4-2-6-10.5.

First, IC 4-2-6-9 prohibits you from participating in a decision if you know that you or a member of your family has a financial interest in the outcome of the decision. Based on our conversation, I understand that you do not think you or your wife would be in a situation to participate in such a decision; however, if you determine that such a situation exists, please let me know and we can discuss how to proceed. The statute requires you to make certain disclosures to the Commissioner and request an advisory opinion from the State Ethics Commission if you identify a potential conflict of interest under this statute.

Second, IC 4-2-6-7 prohibits you from receiving compensation for the sale of any property which substantially exceeds what you would charge in the ordinary course of business. Because any offer INDOT makes for the property will be based on an appraisal, I do not think you will run into problems with this statute, but I want to make you aware of it nonetheless.

Finally, IC 4-2-6-10.5 requires you to make certain disclosures if you have a financial interest in any state contract. Although this statute does not necessarily apply here (this is a land transaction rather than a state contract and you work for the contracting agency), I think disclosure of your interest in the property may provide you some coverage should anyone ever question your interest. I suggest your disclosure include your financial interest in the property, the nature of the state transaction, and a statement asserting that you had no participation in the decision to acquire or appraise the property. You may also want to include a statement addressing IC 4-2-6-7. If you chose to make such a disclosure, we can discuss in more detail,

and I can review a draft statement.

I have pasted a copy of the statutes I have cited below for your reference. If you have additional questions or concerns or if I can provide assistance, please let me know.

Tiffany

IC 4-2-6-9

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

- (1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
- (2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

(Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.9-1990, SEC.8; P.L.15-1992, SEC.5; P.L.22-1995, SEC.2; P.L.222-2005, SEC.7.

IC 4-2-6-10.5

Prohibition against financial interest in contract; exceptions

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to:

- (1) a state officer, an employee, or a special state appointee who does not participate in or have official responsibility for any of the activities of the contracting agency, if:
 - (A) the contract is made after public notice or, where applicable, through competitive bidding;
 - (B) the state officer, employee, or special state appointee files with the commission a statement making full disclosure of all related financial interests in the contract;
 - (C) the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee; and

(D) in the case of a contract for professional services, the appointing authority of the contracting agency makes and files a written certification with the commission that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee; or

(2) a state officer, an employee, or a special state appointee who, acting in good faith, learns of an actual or prospective violation of the prohibition in subsection (a), if, not later than thirty (30) days after learning of the actual or prospective violation, the state officer, employee, or special state appointee:

- (A) makes a full written disclosure of any financial interests to the contracting agency and the commission;

and

- (B) terminates or disposes of the financial interest.

As added by P.L.222-2005, SEC.8.

IC 4-2-6-7

State officers and employees; excess compensation for sale or lease; advisory body member exception

Sec. 7. (a) This section does not apply to a special state appointee who serves only as a member of an advisory body.

(b) A state officer, employee, or special state appointee may not receive compensation:

(1) for the sale or lease of any property or service which substantially exceeds that which the state officer, employee, or special state appointee would charge in the ordinary course of business; and

(2) from any person whom the state officer, employee, or special state appointee knows or, in the exercise of reasonable care and diligence should know, has a business relationship with the agency in which the state officer, employee, or special state appointee holds a position.

(Formerly: Acts 1974, P.L.4, SEC.2.) As amended by P.L.9-1990, SEC.6; P.L.89-2006, SEC.8.

Tiffany Mulligan
Attorney
Indiana Department of Transportation
100 North Senate Avenue, Room N730
Indianapolis, IN 46204
phone: (317) 233-3428
fax: (317) 233-1481
tmulligan@indot.in.gov

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From: Woodruff, Troy (INDOT)
Sent: Thursday, October 29, 2009 1:50 PM
To: Mulligan, Tiffany
Subject: Re: Financial Disclosure Statements

Thanks Tiffany. Nice to meet you yesterday. Currently we have no computers or phones. Hopefully we can get back on tomorrow, than I will fill it out. Let me know on the other issue. Thanks for your help. Troy

From: Mulligan, Tiffany
To: Woodruff, Troy (INDOT)
Sent: Thu Oct 29 13:39:49 2009
Subject: Financial Disclosure Statements

Troy,

It was nice to meet you at yesterday's Senior Management Meeting. Per our discussion, I am sending you some information regarding the requirement for new employees with final purchasing authority to file Financial Disclosure Statements. I will look into your specific ethics

question regarding the land you have an interest in and address it in a separate email.

As a district deputy commissioner, you will likely have final purchasing authority at INDOT and therefore will need to file a Financial Disclosure Statement with the Indiana Inspector General's office. Indiana statute requires you to file within 60 days of starting a position as a state employee with final purchasing authority (and by February 1 of each year thereafter). (Although the statute does not define final purchasing authority, we have interpreted it to mean the ability to purchase items without the approval of a supervisor. This does not include travel cards, which have their own internal controls.)

The statute allows for the Ethics Commission to impose a \$10/day penalty for failure to file a Statement. I've included instructions below on two options for filing your Statement with the Indiana Inspector General's office.

- You can file online at <http://www.in.gov/ig/fds.html> - click on "Click here to file your Financial Disclosure Statement Online" at the middle of the page and follow the instructions. (You may need to scroll down to see the form.) Your email will act as a signature affirming that your statements are correct. After you've submitted your Statement, you should get a screen indicating that you have submitted your statement successfully – please print this out and keep it for your records; or
- You can print out the form attached to this email and mail it to the Inspector General's office. You will need to sign this document on page three and mail it to the address listed on the form.

2

Also, I confirmed that you are up to date on the online state ethics training. Should you have any questions regarding Financial Disclosure Statements, please contact me. Again, I will address your specific question on the land you have an interest in in a separate email. I look forward to working with you.

<<FDS Form (2).pdf>>

Tiffany Mulligan

Attorney

Indiana Department of Transportation

100 North Senate Avenue, Room N730

Indianapolis, IN 46204

phone: (317) 233-3428

fax: (317) 233-1481

tmulligan@indot.in.gov

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EXHIBIT E





INDIANA DEPARTMENT OF TRANSPORTATION
Driving Indiana's Economic Growth

EXHIBIT F

100 North Senate Avenue
Room N755
Indianapolis, Indiana 46204

PHONE: (317) 233-4676
FAX: (317) 232-5118

Michael R. Pence, Governor
Karl B. Browning, Commissioner

September 13, 2013

Mr. Todd Woodruff
10384 N 700 E
Odon, Indiana 47562

Re: Repayment of Funds Relating to Crop Damages

Dear Mr. Woodruff,

I write to you regarding payment that the Indiana Department of Transportation (INDOT) recently made to you for damage that occurred on your land as a result of flooding you claim was caused by a newly constructed portion of Interstate 69 (I-69). It has recently come to our attention that the payment you received was mistakenly paid pursuant to an Indiana statute relating to damage to land or property resulting from surveys or investigations performed by INDOT or its representatives.

Based on the information provided to us, it is our belief that any claim for damages associated with the flooding that occurred on your property may be referred to the Indiana Attorney General to be handled as a tort claim. In addition, you may also choose to contact contractor responsible for construction of the section of I-69 you believe caused the flooding to determine, what, if any, assistance it can provide.

For your convenience, I have enclosed a copy of the Notice of Tort Claim for Property Damage and/or Personal Injury prescribed by the Indiana Attorney General. An electronic copy of the form can be found at <http://www.state.in.us/indot/2351.htm>. The completed form can be sent to Michael Ward at the Indiana Attorney General's Office. I have included Mr. Ward's contact information below:

Michael Ward
Director of Investigations, Indiana Attorney General's Office
302 West Washington Street, IGCS 5th Floor
Indianapolis, Indiana 46204
michael.ward@atg.in.gov

Should the Attorney General's Office require additional documentation of our investigation in this matter, INDOT will according to our normal process, cooperate and provide documentation of our investigation.

Given that the payment was made in error, it is imperative that you return the funds paid to you within thirty (30) days from the date of this letter. A copy of the invoice is enclosed. Please be advised that to the extent that you fail to coordinate payment within the time period specified, we may exercise any and all legal rights it has at its disposal to collect the funds at issue.

We apologize for any inconvenience the error has caused and look forward to your anticipated cooperation.

If you have any questions or would like to discuss the matter further, please contact Danny Williams at (317) 232-5384.

Sincerely,



Danny Williams

Accounts Receivable Supervisor, Indiana Department of Transportation



INDIANA DEPARTMENT OF TRANSPORTATION
Driving Indiana's Economic Growth

INVOICE

100 North Senate Avenue
 Room IGC-N 749
 Indianapolis, Indiana 46204-2216

Michael R. Pence, Governor
Karl B. Browning, Commissioner

Bill To:

Woodruff, Todd A
 10384 N 700 E
 Odon IN 47562

Customer No: CST000016960
 Invoice: 000021691
 Invoice Date: 9/13/2013
 Invoice Type: MSC

AMOUNT DUE: \$38,685.50

***** Payment is Due Upon Receipt of Invoice *****

Line	Description	Quantity	Unit Amt	Net Amount
1	Repymt of crop damage funds	1.00	38,685.50	38,685.50
	Payment for crop damage should have been recovered through the Tort Claim process with the Indiana Attorney General (see attached letter).			
			Subtotal:	38,685.50
			AMOUNT DUE:	\$38,685.50

Please return this portion with your payment,

Department of Transportation
 Attention: Agent Cashier
 N725 IGCN
 100 N. Senate
 Indianapolis, IN 46204

Invoice: 000021691
 Amount Paid: \$ _____

Visa Mastercard Discover Diners Club Check/Money Order

Name on Card _____ Card Number _____
(Name must appear as exactly as on card)

CID (3 or 4 digit security code) _____ Expiration Date _____

Billing Address _____

Signature Required: _____ Date _____

For billing questions, please call: 317-232-5386

Invoice: 000021691

Indiana Department of Transportation, 100 North Senate Avenue, Indianapolis, Indiana 46204-2216



**NOTICE OF TORT CLAIM FOR
PROPERTY DAMAGE AND/OR PERSONAL INJURY**

State Form 54668 (3-11)
Special Investigations Division

OFFICE OF ATTORNEY GENERAL

ATTN: Tort Claim Investigations
Government Center South, 5th floor
302 W. Washington Street
Indianapolis, IN 46204
Telephone: (317) 232-6350

INSTRUCTIONS: Anyone who has a claim for personal injury or property damage against the State of Indiana must either use this form to file a claim or make the claim in writing as prescribed in Indiana Code 34-13-3. Immunities are listed on the back of this form.

1. **If applicable**, include copies of accident/incident report, vehicle registration, paid receipts for repair or two (2) estimates for repair, medical reports, photographs and any additional documentation in reference to this matter.
2. Each person who had a loss should file a separate form.
3. Sign and date this form.
4. State statute requires the claim be delivered in person or be sent via **Certified** or **Registered** mail to the address in the upper right corner above.
5. Do not delay making your claim. Indiana law gives you two hundred seventy (270) days after the loss to make a claim and it must comply with **Indiana Code 34-13-3**.
6. Keep a copy of your claim form, receipts, bills and certified/registered mail receipt.
7. If your claim is properly filed, the Office of the Attorney General will investigate it and will notify you in writing within ninety (90) days of receipt if your claim is approved. A claim is denied if not approved within ninety (90) days.
8. The filing of this claim is part of a legal process. If you have any questions about the right way to file a claim, please contact an attorney of your choice. The state's attorneys are not authorized by law to assist you with filing this claim. For your information a list of actions, or conditions, resulting in non-liability pursuant to Indiana Code 34-13-3 are shown on the back of this form.

CLAIMANT INFORMATION				
Name <i>Todd A Woodruff</i>	Home Telephone <i>812 636-7561</i>	Work Telephone <i>812-636-4532</i>	Cellular Telephone <i>812-444-9878</i>	
Address at Time of Loss (number and street, city, state, and ZIP code) <i>10384 N 700 E Odon IN 47562</i>		Email Address		
Current Address (if different from above)		Driver License Number	Issuing State	
		Vehicle License Plate Number (if involved)	Issuing State	
LOSS INFORMATION				
Date of Loss (m/d/yy) <i>6-19-13</i>	Time of Loss <input type="checkbox"/> AM <input type="checkbox"/> PM	Dollar Amount of Loss <i>38,685.50</i>	State Agency Involved	State Vehicle Commission (if known)
Exact Location of Loss (include town, street & nearest crossroad) <i>CR 1600 N + I 69 STATE ROAD 58 ELVORA IN PARCEL 205</i>				Loss County <i>DAVISS</i>
Names/Addresses of All Persons Involved (if known)				
Alleged Negligence				
Explanation of what happened (use additional sheets if necessary) <i>Flood damage TO CROPS FROM I 69 I Have been PAID For This damage. Here is all PAPERWORK The check was wrote From wrong account This Form is TO FIX your MISTAKE of PAYMENT</i>				

Please read: I swear and affirm under the penalties for perjury that the foregoing information is true and correct to the best of my knowledge and belief.

Todd A Woodruff
Claimant's Signature

10-9-13
Date (m/d/yy)



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 W. WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770
www.AttorneyGeneral.IN.gov

TELEPHONE: 317.232.6201
FAX: 317.232.7979

GREG ZOELLER
INDIANA ATTORNEY GENERAL

October 16, 2013

Mr. Todd Woodruff
10384 N. 700 E.
Oden, Indiana 47562

RE: Tort Claim
Our File Number: 13-09074
Date of Incident: June 19, 2013

Dear Mr. Woodruff:

This letter is to inform you that we received the Tort Claim you submitted on October 9, 2013. We will be collecting the information necessary to make a determination with respect to the claim. If you have additional material you believe should be considered in our review, please mail it to my attention and include the file number specified above.

Pursuant to Indiana Code **34-13-3-11**, we will notify you in writing of the State's position regarding the claim. If the claim is denied, you have two years from the **date of incident** in which to file a lawsuit to have the claim heard in court. If the claim is approved, we will mail you a check for the agreed-upon settlement amount.

If you have any questions in the interim please feel free to contact me.

Sincerely,

Todd V. Vansickle
Investigator
Special Investigations Division

TVV/me

AC