

N. Section 4(f)—Parks and Recreational Lands, and Historic Properties

N.1

[1]

The U.S. Department of Interior (DOI) concurs that there is no feasible and prudent alternative to the Modified Selected Alternative, which would result in use of Section 4(f) properties; however, until the Memorandum of Agreement (MOA) is completed, the Department cannot concur that all possible planning to minimize harm has been completed.

***Response** This SFEIS documents the recommendation of the Modified Selected Alternative as the preferred alternative and includes documentation of the Section 106 process.*

SFEIS Chapter 6 contains a completed Final Section 4(f) Evaluation. Since the publication of the SDEIS, the First Amended Section 106 MOA has been executed, and it is included in SFEIS Appendix D.9..

Supplemental Final EIS 7-102 Chapter 7—

Public Involvement and Agency Coordination

N.2

[1]

Reduction of the scope of the project eliminates the excess right-of-way that was to be donated to the Louisville Waterfront Development Corporation (WDC) as mitigation for impacts to the park. If temporary right-of-way is required for project construction, WDC would like to consult for possible transfer of said parcels to the park; such surplus property transferred to the park should contain no use limitations. If excess land is not available for use as mitigation, WDC requested coordination to negotiate cash compensation for the required right-of-way.

***Response** SEIS Section 6.2.2, "Parks, Wildlife Refuges, and Recreational Section 4(f) Properties" (see Table 6.2-2), notes that Modified Selected Alternative would require the use of 4.55 acres of Waterfront Park, which is less than the amount of use by the FEIS Selected Alternative (6.86 acres). The overall reduction is associated with the elimination of the widening of I-64 over the Great Lawn from River Road to the western edge of the park, which was proposed as part of the FEIS Selected Alternative but has been omitted from the Modified Selected Alternative.*

At this time, it is not known if temporary right-of-way in the vicinity of the park would be available for donation as mitigation. As noted in SFEIS Section 7.2.11, "Coordination with Waterfront Development Corporation," extensive coordination with WDC has occurred during the course of this project. Negotiations with WDC would be undertaken, as requested, prior to the acquisition of any park property. The acquisition of property from the park would be completed in accordance with the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs Act (49 CFR Part 24).

N.3

[3]

This project will negatively affect Waterfront Park.

***Response** Impacts to Waterfront Park that would result from construction of the Modified Selected Alternative have been minimized to the extent possible. The Kennedy Interchange modifications would be reconstructed on the existing footprint and the Modified Selected Alternative reduces the length of roadway improvements along the I-64 approach compared to the FEIS Selected Alternative.*

The area of the park below the new bridge would remain accessible to the public, and there would not be any restrictions on pedestrian access between portions of the park

to the east and west of the new bridge. Coordination has occurred among project planners, WDC representatives, USACE, and Louisville Metro. The design of the Modified Selected Alternative would take into account the recreational facilities in order to minimize potential adverse effects. Coordination with the appropriate agencies will continue.

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[2]

The significance of the North Field and Nuttall House should be re-evaluated for the historic eligibility determination.

Response *Please see Response to Comments E.5. and E.6.*

N.5

[1]

Objections were raised to the determination that no constructive use will occur, based on noise and visual impacts, for properties located on Transylvania Beach Road. All constructive use determinations should be reevaluated.

Response *The conclusion in the 2003 FEIS that there would be no constructive use of any Supplemental Final EIS 7-103 Chapter 7—*

Public Involvement and Agency Coordination

Section 4(f) historic resource remains valid for this SFEIS. This updated evaluation of potential constructive uses includes an updated assessment of direct highway noise impacts, visual impacts, vibration impacts, and indirect impacts from differences in traffic patterns between the FEIS Selected Alternative and the Modified Selected Alternative, all of which are presented in Chapter 5 of this SFEIS. While adverse effect findings have been made for these historic properties through the on-going Section 106 process (see SFEIS Section 5.3), they would not substantially impair the protected activities, features, or attributes of the historic resources under Section 4(f); therefore, they would not result in a constructive use for any historic property or district, include the eligible properties located on Transylvania Beach Road.

N.6

[1]

The Section 106 consultation process should be used to develop alternatives and modifications to the project design that would embody “all possible planning to minimize harm” to the quarries and their associated kilns, including the potential for avoidance. Also, the Section 4(f) exemption for archaeological resources should not be invoked. The Utica Lime Kilns are eligible under Criterion A in addition to Criterion D. The eligibility under Criterion A makes it inappropriate to apply the archaeological exemption under Section 4(f).

Response *The effects on the kilns were identified in the Section 106 process and were addressed by the mitigation included in the 2003 MOA and in the First Amended MOA (see SFEIS Appendix D.9). A historic preservation plan (HPP) has been developed for the Utica Lime Kilns as required in the 2003 MOA. The HPP will be updated to reflect the expanded boundaries of the kiln districts.*

Regarding the Section 4(f) exemption: Coordination (email) from the Indiana SHPO, dated October 25, 2011, states: “Preservation in place is not necessary for the quarry walls or the open spaces within and around the quarries, as long as additional documentation is performed on those quarry walls, floors, and other spaces” (see Appendix I-4). The exception in section 23 CFR 774.13(c) applies to archeological resources that FHWA determines are not valuable for preservation in place. That exception can be applied to any archeological resource; it is not limited to

archeological resources that are eligible only under Criterion D. In their March 1, 2005 Section 4(f) Policy Paper, FHWA stated in Q&A 5, Archeological Resources: "Section 4(f) does not apply if FHWA, after consultation with the SHPO... determines that the archaeological resource is important chiefly because of what can be learned by data recovery (even if it is agreed not to recover the resource) and has minimal value for preservation in place (23 CFR 774.13(b))."

In this case, FHWA has determined and the Indiana SHPO has concurred that the quarries are an archeological resource and are not valuable for preservation in place, even though it is agreed that the quarries are eligible under both criteria A and D. Therefore, the exception in 774.13(b) applies to the quarries. Commitments to document the quarries can be found in the Section 106 MOA, Stipulation III.H.4.



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Custom House, Room 244
200 Chestnut Street
Philadelphia, Pennsylvania 19106-2904



January 5, 2012

9043.1
ER 11/1069

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

Dear Mr. Tally:

The Department of the Interior (Department) has reviewed the Supplemental Draft Environmental Impact Statement (EIS) and Section 4(f) Evaluation for the Louisville-Southern Indiana Ohio River Bridges Project, Jefferson County, Kentucky and Clark County, Indiana. The Department offers the following comments and recommendations for your consideration:

Section 4(f) Evaluation Comments

The original Louisville-Southern Indiana Ohio Bridges Project was the result of years of study on how to improve mobility across the Ohio River between Jefferson County, Kentucky and Clark County, Indiana. That project considered a wide range of transportation alternatives, including build options, transportation management options, and a no build alternative. A total of nine alternatives, grouped into three geographic areas, were considered fully in the analysis. Of those alternatives, 3 were selected to be part of the preferred alternative, which became the selected alternative in the Record of Decision (ROD) in 2003. The preferred alternative would impact properties eligible to be considered under Section 4(f) of the Department of Transportation Act of 1966 (48 U.S.C. 1653(f)), including 5 historic properties (Swartz Farm and Historic District [Indiana], Old Jeffersonville Historic District [Kentucky], Phoenix Hill Historic District [Kentucky], Butchertown Historic District [Kentucky] and The George Rogers Clark Memorial Bridge). In addition, three park/recreational facilities would be impacted: the Greenway Corridor [Indiana], Waterfront Park [Kentucky], and the Extreme Sports Complex [Kentucky].

Looking back at this project and the Department's letter with comments on the original project, the Department did not offer an opinion on the original section 4(f) evaluation, other than to mention that we thought the analysis may have left out some resources. Based on a review of the original evaluation as part of the overall review of the supplemental analysis, the Department should have concurred with the Federal Highway Administration (FHWA), the Kentucky Transportation Cabinet (KYTC) and the Indiana Department of Transportation (INDOT) that

there are no feasible and prudent alternatives to the preferred alternative presented, which results in impacts to section 4(f) properties.

N.1

The supplemental analysis, the focus of the current review, essentially modifies portions of the preferred alternative identified in the 2003 Final EIS and ROD; the supplement considers tolling and modification to the design to reduce the need for tolling revenue, and addresses changes in the project since the ROD was signed. Also, in the intervening years, the condition of one of the 4(f) resources has changed. One of the properties (Swartz Farm and Historic District in Indiana) was razed by its owner; the property has lost its integrity and is no longer eligible for listing in the National Register of Historic Places and is no longer a 4(f) property. Modifications made to the selected alternative have also reduced the amount of impact to two of the park/recreational resources by reducing the amount of property needed for transportation uses at these locations. The Department would again concur that the changes to the selected alternative result in no feasible and prudent alternatives to the preferred alternative presented, which results in impacts to section 4(f) properties.

It would appear that mitigation of impacts to the historic properties for the original 2003 selected alternatives were developed in consultation with the Indiana and Kentucky State Historic Preservation Officers (SHPOs) and other consulting parties. A modified Memorandum of Agreement (MOA) between the FHWA, SHPOs, KYTC, and InDOT is proposed to be completed following the completion of the consultation process for the supplemental analysis. Therefore, the Department cannot concur that all possible planning needed to minimize harm to 4(f) resources has been employed. We would likely concur once the modified MOA is agreed to by all parties.

General Comments

It is the U.S. Fish and Wildlife Service's (Service) opinion that the design changes considered under the supplemental analysis would likely have fewer impacts to trust resources than the other alternatives that were considered in the Final EIS, because the footprint of the project would either be reduced and/or modified to occur within an already developed area. Therefore, we support the choice of considering these alternatives in the Supplemental Draft EIS for the proposed project.

C.1

Early informal consultation regarding the proposed project was conducted with the Service's Kentucky and Indiana Field Offices in order to identify federally listed species that may occur in the proposed project area. Surveys were later completed for these species which resulted in the capture of one endangered Indiana bat within the Kentucky portion of the proposed project. The FHWA recently reevaluated the proposed project and provided the Service with a final Biological Assessment for the proposed project. The final Biological Assessment considered the preferred alternative as well as the proposed project modifications that would occur as a result of the Supplemental Draft EIS. The FHWA also requested Service concurrence with a determination of effect for listed species that may occur within the project area. The Service reviewed the final Biological Assessment and provided collated comments to the FHWA on November 22, 2011. Informal consultation for the proposed project is ongoing as the Service awaits FHWA's response to our comments and requests for additional information associated with the final Biological Assessment.

O.4

Specific Comments

1) Page S-2 states that a major component of the project is enhanced cross-river bus service; however, Page S-16 states that future options for enhanced bus service will be coordinated with the Transit Authority of River City (TARC). The Service recommends that the Final Supplemental EIS be more specific about what bus service enhancements would be implemented, especially if it's a "major project component". We believe and support the use of mass transit in metro areas as a method of reducing traffic impacts to natural resources.

C.2

2) Page 4-134: In the first sentence on the page, the word "habitat" should be replaced by "species."

J.2

3) Page 5-172: The bullet items 3 through 5 refer to wildlife crossings on the Indiana side of the proposed project. If wildlife crossings are included, the Final Supplemental EIS should provide language about constructing flat shelves for wildlife in culverts and bridges. Further coordination with the Service's Indiana Field Office may be necessary to ensure adequate design.

J.3

The Department has a continuing interest in working with the FHWA, KYTC, and InDOT to ensure impacts to resources of concern to the Department are adequately addressed. For continued consultation and coordination with the issues concerning the section 4(f) resources, please contact Regional Environmental Coordinator Nick Chevance, Midwest Regional Office, National Park Service, 601 Riverfront Drive, Omaha, Nebraska 68102-4226, telephone 402-661-1844. For questions or comments concerning wildlife or the Biological Assessment, please contact Phil DeGarmo, U.S. Fish and Wildlife Service, Kentucky Field Office, 330 West Broadway, Suite 265, Frankfort, Kentucky 40601, telephone 502-695-0468, x110.

C.1

We appreciate the opportunity to provide these comments.

Sincerely,



Dave Sire
Natural Resources Management
Team Leader

cc:
SHPO KY (Lindy.Casebier@ky.gov)
SHPO IN (jglass@dnr.in.gov)
KYTC (Gary.Valentine@ky.gov)
InDOT (pboone@indot.in.gov)



December 9, 2011

John Sacksteder, PE
Project Manager
Community Transportation Solutions –
General Engineering Consultant
The Ohio River Bridges
Forum Office park 111
305 N Hurstbourne Parkway
Suite 100
Louisville, KY 40222

Dear John:

Please consider this letter both a response to your letter of December 1, 2011 and as a response to the Supplemental Draft Environmental Impact Statement from the Waterfront Development Corporation [a public agency managing a 4(f)/6(f) resource].

Your letter indicated two major departures from the original final downtown bridge EIS, that will impact Waterfront Park.

First, a reduction in the overall scope of the project will also reduce or eliminate excess property that was to be given to WDC both directly and through the DDC. While we agree that the new design warrants less compensation, there remains major impacts to both the park and to income producing commercial property owned by the WDC.

If the project will be purchasing property for temporary use (e.g. staging areas, lay-down sites), WDC would be interested in looking at those sites to determine, should they become available, if acquisition might be favorable for WDC. Of course, if compensation is handled through surplus property being transferred to WDC, we would require that no use limitations be placed on the parcels. If land is not available as the basis for negotiated mitigation, we can negotiate cash compensation for the takings.

Second, the decision to reduce costs by replacing tub girders with a "traditional" girder system not only provides a roosting space for birds but also requires considerably more time and energy to maintain (rust removal and painting). An unfortunate result will often be an unsightly view of the bridge's belly from one painting to another. Conversely, the tub girders have simple lines, are more attractive, easier to maintain and better match the bridge design above the deck. As project cost reduction was

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calculated, was long-term maintenance considered? We cannot overstate the importance of the tub girder image as opposed that of traditional girders.

Best regards,

A handwritten signature in black ink, appearing to read "David K. Karem". The signature is fluid and cursive, with the first name "David" being the most prominent.

David K. Karem
President/ Executive Director

c: Gary Valentine
Mike Kimmel



Entry ID	Name1	Comment	Web ID	
39	AccuGen DNA Service (Jim Rippy)	Tolls on the bridges will have an adverse impact on my business in which I have to cross over to Indiana several times a day. As a small business I cannot afford this. Why are you missing an obvious simpler cheaper solution of only building an East end bridge to take the load off the existing bridges? We do not need the downtown bridge...	D.19 C.24	6
135	Albrink, Frederick	As you consider the environmental impact of this project please be sure to account for pedestrians and bicyclists. Crosswalks are dangerous for people on foot and impractical for cyclists. You mention the European aspect of the proposals, however in Europe there are separate bridges and tunnels for people not in motorized vehicles. I strongly urge that you incorporate safe means for cyclists and pedestrians to get past the highways and the interchanges of this project.	D.27	71
40	Anderson, Cheryl	I am against tolling. I live in Southern Indiana and work in Louisville. I am taxed enough by my own county of residence, and Jefferson county. I do not make enough money to survive yet ANOTHER tax. I love living and working in the Louisville metro area, but why would you ever want to add another impediment for me to get to and from work? I am a taxpayer here, I spend money here. I can not afford to live and work in this community if I have to pay a toll just to travel to and from work every day! That is ludicrous. Bridge tolls will harm the local economy that we have worked so hard to build. I can't believe that this is still the best idea anyone has. No one I have spoken to is in favor of tolls. Not one person. Our voices must be heard.	D.19	7
17	Ballew, Teresa	I want the East End Bridge built WITHOUT TOLLING. REPEAT--EAST END BRIDGE, NO TOLLS!	C.11	23
141	Barzee, Edward	Please do not expand I-64 and ruin the beautiful riverfront!	N.3	77
151	Baugh, Christina	I do not feel that a toll should be on all 4 bridges. It is a huge burden for Indiana businesses. I don't like the idea of a toll at all, but if a toll is the answer for KY, to fund the bridges project, then they should stick a toll on the new downtown bridge only (as Indiana is already paying for the East End Bridge)... The other bridges have already been paid for! We should not have to pay for them again!!! People will ultimately use which ever bridge is more convenient!	C.12	86

January 9, 2012

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Mr. John Sacksteder
Project Manager
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RE: Comments on the Supplemental Draft Environmental Impact Study Louisville-
Southern Indiana Ohio River Bridges Project

Dear Ms. Osadczuk and Mr. Sacksteder:

This response to the Supplemental Draft Environmental Impact Study is submitted on behalf of River Fields and its members from throughout the Kentucky and Indiana areas. These comments support the scaled-down version of the rebuild of the Kennedy Interchange and the reduction in lanes for the Eastern Bridge outlined in the SEIS. Based on the data presented in the SEIS, however, River Fields remains certain that there is no proven need for an Eastern Bridge. Indeed, the new data demonstrates that the Eastern Bridge is not viable and should be removed from the project.

Responding to this much information in a manner appropriate to the importance and size of this Project is a daunting task for a small non-profit river conservancy, especially with the accelerated schedule and additional tasks required from the parallel Section 106 process. We have nonetheless done our best. Throughout the SFEIS comment period, however, River Fields will likely have a number of requests for additional information.

I. Introduction and summary:

River Fields is a private, charitable, not-for-profit corporation organized under the laws of the Commonwealth of Kentucky with over 2,100 members from both Kentucky and Indiana. Its office is located at 643 West Main Street in downtown Louisville, Kentucky. Founded in 1959, River Fields is the largest land and river conservancy organization on the Ohio River and is one of the oldest river conservation organizations in the United States. River Fields protects, preserves, and enhances natural and cultural

resources in Indiana and Kentucky on both sides of the Ohio River Corridor between Westport and West Point, Kentucky, for the benefit of the public. As a land trust, River Fields owns almost 63 acres in key river corridor properties outright and holds 23 conservation easements on real estate bordering the Ohio River in Oldham and Jefferson Counties, Kentucky and on tributaries of the Ohio River in Shelby, Oldham, and Jefferson Counties, Kentucky.

The announcement by our region’s political leaders for the need for scaling the Project back came as no surprise to River Fields which has pointed out repeatedly since well before 2001, and certainly in our DEIS and FEIS comments, that the grandiose two bridges Project did not have its funding in place. Local and State officials and business leaders ignored this reality and certainly endangered the Project.

Now, the SDEIS, confirms that the funding situation has not changed in any notable, practical way. Finally, all leaders agree with what River Fields has been saying for years-- that the Project has no realistic source of funding at this time. Although the creation of the Bridges Authority is progress toward a more realistic funding plan, the funding realities are unchanged. As Mike Hancock, the Secretary of the Kentucky Transportation Cabinet stated at the January 5, 2012, Bridges Authority meeting , (we are) *“still working on how to fully fund the Project.”* Earlier in that speech, he commented to the Authority, the Cabinet is still considering *“how it **might** come together in terms of funding.”* (Emphasis added.)

A.2

River Fields supports the reduction in size of the scaled back Kennedy Interchange which will reduce the impact on Great Lawn, Butchertown and Phoenix Hill neighborhoods. During the Section 106 process in 2002-2003, River Fields repeatedly advocated for further mitigation of those important historic urban neighborhoods. Also in the last DEIS/FEIS process, River Fields suggested that the choice of six lanes for the eastern project was over-reaching. Although we remain completely unconvinced that the Eastern Bridge is needed, we certainly support the fact that the Project consultants have finally faced the fact that the original, six-lane vision for the project was vastly over-designed, as the Project consultants have now recognized in recommending that only four lanes are needed, at the most. if at all.

C.9

However, having now reviewed the SDEIS, we must express our growing concern about the viability of the entire Project and its impact on all citizens of the region. In summary, instead of creating a convincing case for the need to construct both bridges and rebuild the Kennedy Interchange, the SDEIS demonstrates even further that the proposed eastern bridge is a redundant and expensive luxury.

Additionally, the funding mechanism for the project -- tolling -- would unfairly impact environmental justice populations. As the study points out, almost 40% of low-income persons and almost 60% of minority citizens cross the Downtown bridge every day or several times a day. According to the data in the SDEIS, the currently proposed toll of \$1.50 a trip would increase the transportation burden of these populations by adding a cost equal to a 9% increase in expenses.

D.23

Further, the document demonstrates that, in fact, the funds generated by the downtown Project tolls are essential to prop up the non-viable eastern portion of the Project . The eastern bridge is not self-funding, even with tolls, because it satisfies so little traffic demand. The result is that it must be supported by the downtown project, which is in high demand.

C.32

The addition of tolls for low income and minority citizens, already a hardship for them, helps to fund the under-utilized and redundant Eastern Bridge. The facts concerning this tax on our underprivileged regional citizens should be taken into account by decision-makers. The weaker, dependant and luxurious project should be eliminated; the transportation project for which there is an increasing need, the downtown portion of the Project should be built as soon as possible. Certainly, the weaker project should not be sequenced first. That decision makes no economic sense.

D.24

Additionally, the eastern bridges does not generate one single new job for Jefferson County or, in fact the region. The Project loses 76 jobs accordins to the SDEIS data.

D.25

As mentioned above, River Fields is more convinced than ever, that a Downtown Bridge is needed and an Eastern Bridge is not. Clearly the Eastern Bridge is a financial albatross for Project's financial success. Its daily trips are 20% lower20% lowerat a minimum and the realistic tolls cannot support it. The eastern Project is not-self-sustaining, the downtown Project.

II. Purpose and Need Statement and Study Process

As River Fields explained in its comments on the scope of the SEIS, the draft white paper purported to show that “the original purpose and need are still valid.” River Fields therefore refers to its comments to the DEIS submitted on February 25, 2002, and incorporates them in these comments. River Fields original position on the purpose and need for the project are summarized as follows.

A. Defining Need: Two Separate Projects are Combined in this Study

The current purpose and need statement for this project states that its scope is about regional cross-river mobility needs, current and future. In reality, this Project has always been and continues to be two separate projects: (1) a downtown project to address current traffic safety and congestion–problems; and (2) an eastern project which its proponents assume without any factual support will satisfy economic development objectives for Southern Indiana and Eastern Jefferson County. In evaluating proposed traffic projects, traffic safety projects and economic development projects—even ones that can be demonstrated to have economic benefits—should not be placed on an equal footing and given equal priority. More importantly, a project that is solely for economic development purposes should not be characterized as a safety project in order to increase the project's priority status or to skew its cost/benefit analysis.

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B. Analyzing Need

1. The only current traffic safety-related need identified in the data supporting the SEIS is rebuilding the Kennedy Interchange.

B.7

It is not a surprise that the SDEIS data only demonstrated one need related to current traffic safety, i.e. the need for a rebuild of Spaghetti Junction. The computer freeway operations simulation model (CORSIM) used for the FEIS confirmed conclusions formed in previous studies that recognized that substandard design geometrics (merges and weaves) result in both peak period congestion and safety problems within Spaghetti Junction. These results were verified by River Fields' transportation consulting firm, Smart Mobility, Inc. ("Smart Mobility") in its work on the DEIS.

The FEIS further claimed, however, that the Kennedy Bridge traffic demand resulted in the bridge being "over capacity," specifically, that it is currently at 106% of its design capacity (DEIS, pg. 2-24).[this needs to be checked against the new data] This conclusion was misleading because the definition of "capacity" in this context is incorrect and at odds with generally accepted traffic-flow conditions in similar urban areas. Moreover, the congestion problems were, and remain , peak period/peak direction only (rush hour), the problems are experienced by less than 10% of all daily vehicle trips, and they are attributable to the poor design of Spaghetti Junction which causes traffic to back up onto the Kennedy Bridge. In 2002, the Kennedy Bridge itself, however, was not currently a congestion problem except as it related to Spaghetti Junction. Does this fact in 2002 really matter?

2. **There was no current traffic-related need for an eastern interstate bridge and highway.**

B.8

The FEIS stated that travelers currently incur "additional travel times and distance when traveling between the eastern portions of the metropolitan area" but presented no data on congested travel, travel time, and traveler delay for people or trucks with these origins and destinations. As a basis for making decisions, FHWA might conclude from this "problem statement" that 20 bridges are needed, not just one or two. In fact, data existed which refuted any real current traffic-related need for an Eastern Bridge: 1) a regional travel origin and destination survey that was conducted by KIPDA in 2000 of almost 5,000 households in the 5-county transportation planning area; and 2) a corridor analysis conducted by KIPDA in 1999 of the 8-mile Indiana State Route (SR) 62. Inexplicably, the FEIS did not use these studies. The household travel survey showed that less than 5% of the trips made by the 5-county residents surveyed required a river crossing; when disaggregated into trips by state of residence, the survey showed that 2% of trips made by the Kentucky residents surveyed were cross-river trips and 15% of the trips made by the Indiana residents surveyed were cross-river trips. The Indiana SR 62 Plan showed that, except for a 1-mile segment within Jeffersonville, corridor capacity and levels of service, including eastern Clark County, Indiana, were adequate.

Now the SDEIS states that there are currently 20,000 trips that take place between the two eastern counties of Clark and Jefferson. One can reasonably assume that these are generally about 10,000 cross-river commuters. Does this number of current users justify a billion dollar project?

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No analysis of current productivity needs was made in the FEIS. However, using the document's own data on the percentage of through trucks with origins and destinations that might lead a trucker to take the eastern project as a "bypass" shows such diversions would represent about 1% of all Kennedy Bridge traffic. In fact, since the publication of the FEIS, CTS's project manager admitted in an article which appeared in February 24, 2002's *Courier-Journal* that the Eastern Bridge cannot be justified as a truck bypass.

Representatives of the FHWA, KYTC, and INDOT heard repeatedly that an eastern interstate beltway is currently "needed" to route hazardous materials, particularly away from the I-65 curve adjacent to the Louisville medical complex. The FEIS is silent on this point, from either a safety or productivity standpoint. This is undoubtedly because the volume of hazardous materials transported by trucks within the entire metropolitan area, much less those that could bypass and in this particular portion of a bypass, do not warrant a billion dollar expenditure on an Eastern Bridge for this sole purpose. Further, the FEIS would have needed to analyze the impacts of hazardous materials truck routing on the Ohio River alluvial aquifer used in the eastern corridor as a public drinking water source, which it did not do.

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3. The FEIS's analysis of future need for an Eastern Bridge was based solely on a faulty socioeconomic premise.

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The underlying premise of the FEIS's future need analysis was a socioeconomic one: that the Eastern Bridge was needed to "accommodate" traffic associated with projected growth in eastern Clark and Jefferson Counties. However, there were and are many flaws in and problems with this premise, such as:

The premise is inconsistent with the study consultant's own observations that the Eastern Bridge and interstate highway are needed to *develop* eastern Clark County, not to accommodate inevitable future growth:

- "A sizeable wedge, in this area of Indiana, can develop if appropriate transportation is provided." al Chalabi Report at 2.
- One of the needs for the Eastern Bridge is to "enhance the opportunities for industrial/business growth and job development in Indiana." al Chalabi Report at 47.
- The premise is inconsistent with the "no build" jobs forecast which show Clark County with a current and projected jobs deficit.

Projected growth is predicated on socioeconomic forecasts that were aggressively inflated in expectation that the Eastern Bridge would be built. See related comments later in this letter by Mr. Norm Marshall (Smart Mobility, Inc.).

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The FEIS itself acknowledged that highways will not add to this region's net new job growth (in other words, no net new regional job growth can be demonstrated by providing new capacity), but that it can influence the distribution of growth, sometimes substantially within a region if the local climate is encouraging it.

In this case, the FEIS says that the socioeconomic projections developed by the study consultant for the year 2025 were based on locally adopted land use plans and transportation plans which assume two bridges will be built. The forecast updating for this Project was based on flawed methodology and unsupported and biased input. This is not just a process problem, since the forecast affects the projected traffic numbers and the socioeconomic impacts analysis.

Key examples of the problems and errors in the forecasting process include:

- The study consultant solicited input from individual jurisdictions in a letter and email writing campaign. As a result, it compiled a conglomeration of individual wishes (including a number for the southern third of the Indiana Army Ammunition Plant that was based on "soul searching" by one planner) and biases (growth in Louisville and Jefferson County was determined to be capped). Additionally, the forecast is based on linear extrapolations of arithmetic projections, ignoring births, deaths, longevity, and migratory patterns within the region.
- Despite questioning the input, the study consultant initially accepted erroneous assumptions that Louisville and Jefferson County are built out. This error was repeatedly brought to the attention of the study consultant, but neither the socioeconomic or traffic forecasts, nor the impacts analyses, were changed.
- A more defensible way to adopt a socioeconomic forecast would have been a Delphi method where everyone works together on a realistic evaluation that equally emphasizes the local land use plans and revitalization efforts of the entire region. The study consultant actually convened an "expert panel" of local planners from the region in late August 2001 to review the study assumptions and findings and were told by those local planners that they were erroneous, including the development assumptions for eastern Clark County. Inexplicably, however, the FEIS did not use any of this information.

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There are several major problems with the FEIS's traffic projection methodology. First, a significant mathematical error was made in the computer modeling process: the total employment numbers that were input into the model are overstated by almost 20,000 jobs compared to the sum of retail and non-retail. (Have they really come to terms with

the post-recessionary job numbers versus the previous FEIS jobs numbers?) employment in the forecast tables and the computer model files themselves. Further, even with the inflated and unsupported socioeconomic projections and the math error, the traffic projections that are outputs of the computer model were not used by the study consultant. Rather, the consultant added “off model adjustments” to inflate future bridge crossings by 16%. Finally, the most significant traffic benefit shown in the entire Project—reduction in Vehicle Hours of Delay—from the Eastern Bridge was not a performance metric used by FHWA anymore because it is inaccurate. River Fields' analysis shows why it is inaccurate and misleading—future congestion improvements claimed in the FEIS from the Eastern Bridge result from the FEIS's arbitrary reallocation of projected jobs rather than remediation of traffic system inadequacies.

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The "purpose and need" chapter states the general need as being increased cross-river mobility, but identifies four "need factors" against which the general need for cross-river mobility is to be measured. Two of those need factors relate to traffic safety and traffic congestion in the downtown Kennedy Bridge/Kennedy Interchange area. Those two factors are legitimately related to traffic conditions that should be considered in evaluating a highway project. Those two factors are also capable of being objectively evaluated using quantifiable data. The other two factors (accommodating growth and realizing land use plans calling for completion of the interstate loop), however, are not related to traffic problems and cannot be objectively evaluated using quantifiable data. The result is that the FEIS attempts to justify the Eastern Bridge on the grounds that it will help solve the current downtown traffic problems and that it will accommodate planned growth and improve accessibility in the east end. These justifications are totally without merit. In fact, all reliable data developed over the last 23 years indicate the opposite. First, there is no reliable data presented that demonstrates that the downtown problems would not be solved by a rebuild of the Kennedy Interchange and a new downtown bridge only. Second, the growth and accessibility assumptions underlying the purported need for an Eastern Bridge are based on forecasts and modeling that are so flawed and biased that they cannot be used to support the supposed need for an Eastern Bridge.

B.3
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III. Comments on capacity and land use assumptions and employment forecasts:

Traffic problems overstated due to incorrect capacity assumptions

In our February 25, 2002 comments on the DEIS, we documented how the DEIS assumed capacity values which were too low when calculating volume-to-capacity ratios:

- The “design capacity” assumed in the DEIS for the Kennedy Bridge is about 1,600 vehicles per lane per hour. In contrast, as shown below, the ultimate capacity for freeway segments is 2,200 – 2,400 vehicles per lane per hour, or 38% to 50% percent greater. (p. 2-4).

B.4
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The SDEIS repeats this error. If this assumption were corrected, all but one of the apparently over capacity conditions shown in Table 3.3-3 in the 2030 No Action scenario would be eliminated. Using the midpoint ultimate capacity value of 2,300 vehicles per lane per hour (and 1,200 vehicles per lane per hour for the Clark Memorial Bridge), the correct volume-to-capacity ratios for the 2030 No Action scenario are shown in the table below:

Corrected 2030 No Action Scenario Bridge Volume-to-Capacity Ratios

Kennedy		Sherman Minton		Clark Memorial	
NB	SB	NB	SB	NB	SB
47%	107%	43%	85%	13%	48%
51%	75%	48%	49%	19%	37%
91%	93%	91%	60%	59%	41%
22%	28%	18%	15%	13%	8%

Furthermore, as discussed below, the 2030 No Action bridge crossing values are overestimated so the true volume-to-capacity ratios will be even lower.

Invalid and biased land use assumptions

No Action employment forecast assumes construction of Eastern Bridge

Introducing a new bridge crossing would not only change travel patterns; it also would change the locations of future housing and employment. Areas on both sides of the new bridge would become more accessible to the region’s population, and these areas would become more attractive for development. In the SDEIS, the “No Action” forecast assumes that especially high rates of development would occur on both sides of the river in the proximity of the proposed east end bridge even if the east end bridge were not constructed:

- The socioeconomic forecasts for 2007–2030 also show that rapid population and employment growth is occurring, and will continue to occur, in the eastern portion of the LMPA. In Indiana, such growth is apparent in the area of southeastern Clark County between I-65 and the Ohio River (extending north to about Charlestown, Indiana). As indicated by the dark red shaded areas on Figure 2.2-3, large employment gains are predicted in the vicinity of the Port of Indiana-Jeffersonville (formally Clark Maritime Center) and the River Ridge Commerce Center (formerly the Indiana Army Ammunition Plant [INAAP]). Major growth in population is also anticipated in this area of southeastern Clark County, including the areas near S.R. 265, as well as the area just to the west of S.R. 62 across from the River Ridge Commerce Center. Areas of dark red shading on Figure 2.2-2 indicate high rates of population growth in southeastern Clark County, between I-65 and the Ohio River. (SDEIS, p. 2-14)

No methodology is given in the main body of the SDEIS as to how these forecasts were developed. Appendix H.3 describing the transportation modeling attributes the future land use forecasts to KIPDA:

B.6
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- Socioeconomic data were obtained from the Kentuckiana Regional Planning & Development Agency based on the 10PlanA data. Table 6.2 shows the growth in 10PlanA socioeconomic data between year 2007 and 2030. (SDEIS, Appendix H.3, p. 92)

KIPDA’s forecasting methodology is described in Chapter 3 of *Horizon 2030* (adopted in October 2010). The process is described as one strongly influenced by the aspirations of economic development officials:

- Prepared 2030 forecasts of socioeconomic characteristics from local comprehensive planning efforts and municipal and economic development entities were utilized when available. For areas without such prepared information, the 2030 socioeconomic forecasts from *Horizon 2030* (2005) provided a starting point for review and update activities with local partners and agencies...
KIPDA staff provided basic information and technical assistance to the forecast participants as necessary. The local land use and economic development entities, in turn, provided completed forecasts or additional information to be used in the forecast update process. (*Horizon 2030*, Chapter 3 Land Use, p. 14).

There is no discussion in *Horizon 2030* of whether or not the eastern bridge or other new transportation infrastructure was assumed when developing the land use forecasts. However, as the east end bridge is in the adopted regional transportation plan, it is virtually certain that the construction of the east end bridge was assumed in the development of the land use forecasts. It is even more probable that the “local land use and economic development entities” representing the areas proximate to the east end bridge would have assumed the bridge would be built when making their forecasts. Therefore, the KIPDA 2030 forecast is a “Build” forecast and not a “No Action” forecast.

B.6
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The FEIS used separate No Build and Build land use forecasts. This is appropriate. In contrast, the SDEIS is ambiguous as to whether separate No Build and Build land use forecasts were done or not. This is a critical issue that was central in the FEIS so it is inexcusable that greater clarity on this issue is not provided.

None of the modeling appendices – H1, H2, or H3 describe multiple 2030 land use scenarios. This suggests that only a single land use scenario was modeled. Appendix H-3 presents a single forecast in Table 6.2 If only a single future land use forecast was modeling, the alternatives analyses are invalid.

On the other hand, SDEIS Chapter 5 includes figures and tables that show differences between 2030 No Action and Build scenarios for population and employment. The

B.3
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methodology for developing these numbers is never described, and the SDEIS also does not say whether these numbers were used in the transportation modeling. It is very important that the methodology be disclosed. In our February 25, 2011 comments on the DEIS (p. 3-4 – 3-7), we documented how the methodology employed at that time was deeply flawed and resulted in invalid results. If the same methodology was employed again, it is still invalid and invalidates the alternative analyses.

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In any case, the numbers shown don't make sense. In order to explain this, we will first consider the issue of transportation capacity and land use changes more generally. The National Cooperative Highway Research Program (NCHRP) has published a *Desk Reference for Estimating the Indirect Effects of Proposed Transportation Projects* (Special Report 466, 2002). This reference describes several methods for evaluating land use changes from a major transportation project. The most sophisticated of these methods is integration transportation and land use modeling. When the Portland, Oregon Metropolitan Planning Organization, Metro, does integrated land use/transportation modeling, the modelers report:

D.31

- Under conditions of increasing congestion, nonresidential land uses increase their decentralization in order to take advantage of attracting labor and customers traveling in the off-peak direction. Over a period of time, this leads to equivalent travel times over a link in both directions of travel. As a result, the capacity of the transportation system is much greater than traditional modeling procedures indicate.¹

They report that under congested conditions such as those forecast in the SDEIS in the No Action scenario, the degree of directional traffic decreases as jobs and housing become more balanced at a subregional level. This would be accomplished by stronger job growth on the Indiana side of the river which would be attraction to Indiana residents that could avoid the congested river crossing and stronger housing growth on the Kentucky side of the river so people could live on the same side of the river as their jobs. These forecasts would improve the jobs/housing balance on both sides of the river and the traffic flow would become more balanced. In contrast, the DFEIS shows both jobs and housing shifting to Indiana from Kentucky in the Build scenario relative to the No Action scenario. (SDEIS, Figures 5.1.1 and 5.1.2, p. 5.4) This doesn't make sense and is not supported by any evidence or description of methodology. The numbers are simply attributed to the developer of the SDEIS.

Too much employment growth assumed

The SDEIS states: The 2030 regional forecasts indicate the changes that are expected to take place on an LMPA-wide basis. Population is now predicted to increase by 15% between 2007 and 2030, while employment is predicted to increase by 42% in the same

1 Conder, Sonny and Keith Lawton. Alternative Futures for Transportation and Land Use – Integrated Models Contrasted with “Trend-Delphi” Methods: The Portland Metro Results. Metro: Portland, OR, July 2001.

period. (p. 2-6) This is nonsense, as people are needed to fill the jobs. Employment cannot increase by almost three times as much as population without massive increases in in-commuting from outside the region, a massive increase in the labor force participation rate, or both. The population forecast is real in that it is based on demographic analysis. The employment forecast is a fantasy designed to satisfy the economic development officials discussed in the previous section. It allows them to pretend that there can be strong job growth in both existing downtown areas and planned suburban areas. This cannot happen in a relatively low-growth region.

The reality is that the labor force participation rate (the percentage of population employed) has been falling with the aging population and will continue to fall. For the U.S. as a whole, the labor force participation rate peaked in the late 1990s at 67.1 percent of the population and had declined to 64.7 percent in 2010. (This is not because of the poor employment situation in 2010 which is a separate indicator; the employed population in 2010 was only 58.5 percent.) The U.S. Bureau of Labor Statistics projects that the labor force participation rate will decline to 64.5 percent in 2018.² By 2030, everyone born in the “baby boom” period between 1945 and 1955 will be at least 75, and the great majority of these people will be out of the labor market.

Actual employment growth between now and 2030 in the region will be lower than the rate of population growth. Assuming otherwise leads to overestimates of traffic growth, particularly for the proposed east end bridge where a large share of the modeled traffic is to and from hypothetical and speculative jobs that do not exist today.

•
IV. Analysis of *Future* Transportation Nee

Mr. Marshall continues his analysis of gthe tranportation information:

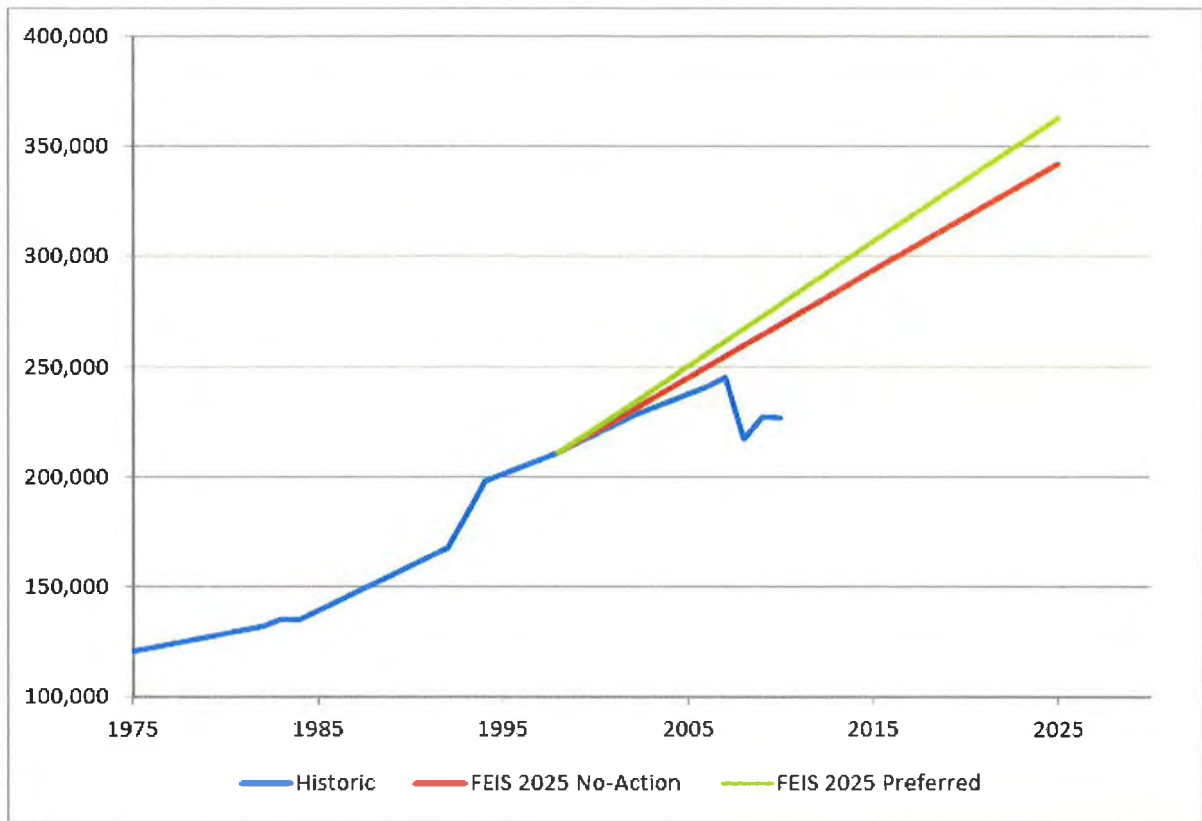
Too Much Traffic Growth Forecast

The SDEIS documents how badly the FEIS estimated traffic growth.

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² *Statistical Abstract of the United States 2012*, Tables 586 and 587.

Figure 3-2: Original FEIS Daily Traffic Volumes on Ohio River Bridges



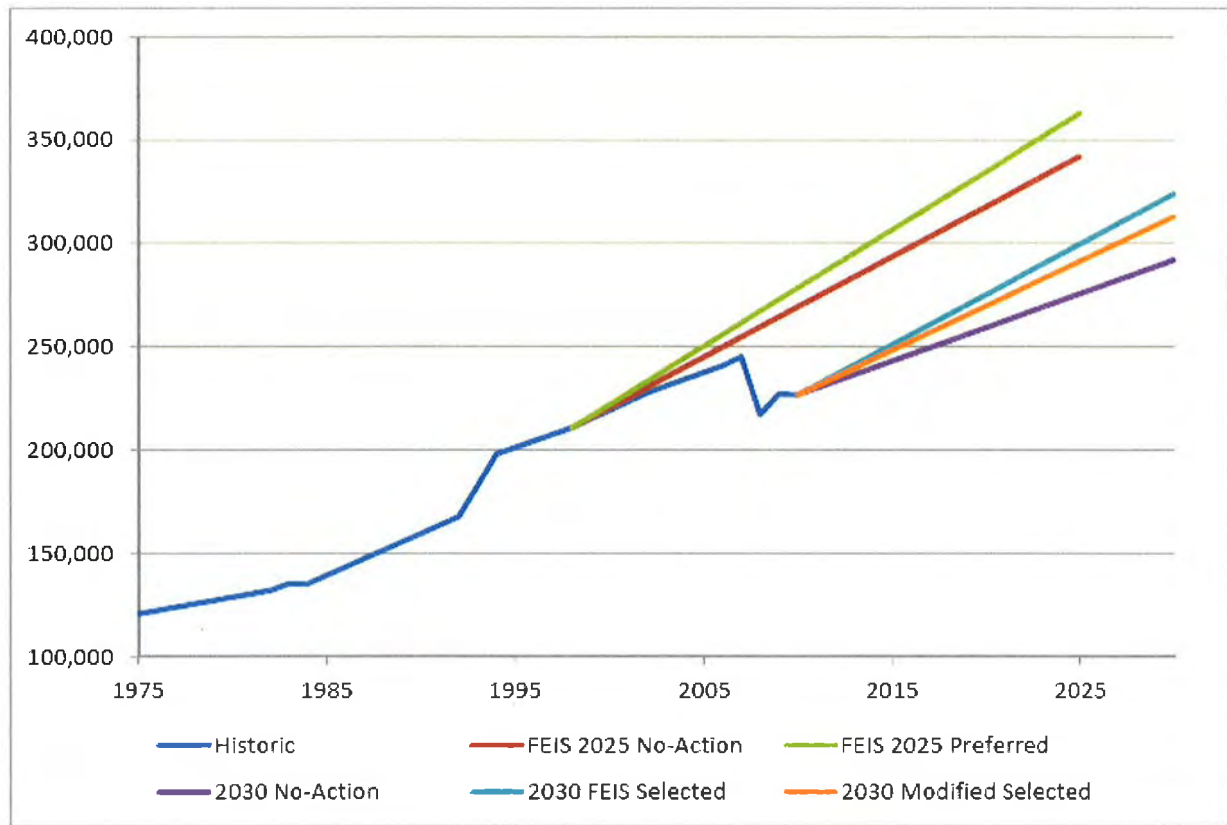
B.4

SDEIS, Appendix H.1, p. 7

Despite the complete failure of the old way of thinking in understanding what is going on today regarding traffic volumes, the SDEIS simply resets the base downward and repeats the

same prediction.

Figure 6-1: Projected Daily Traffic Volumes on Ohio River Bridges in Louisville Metropolitan Area

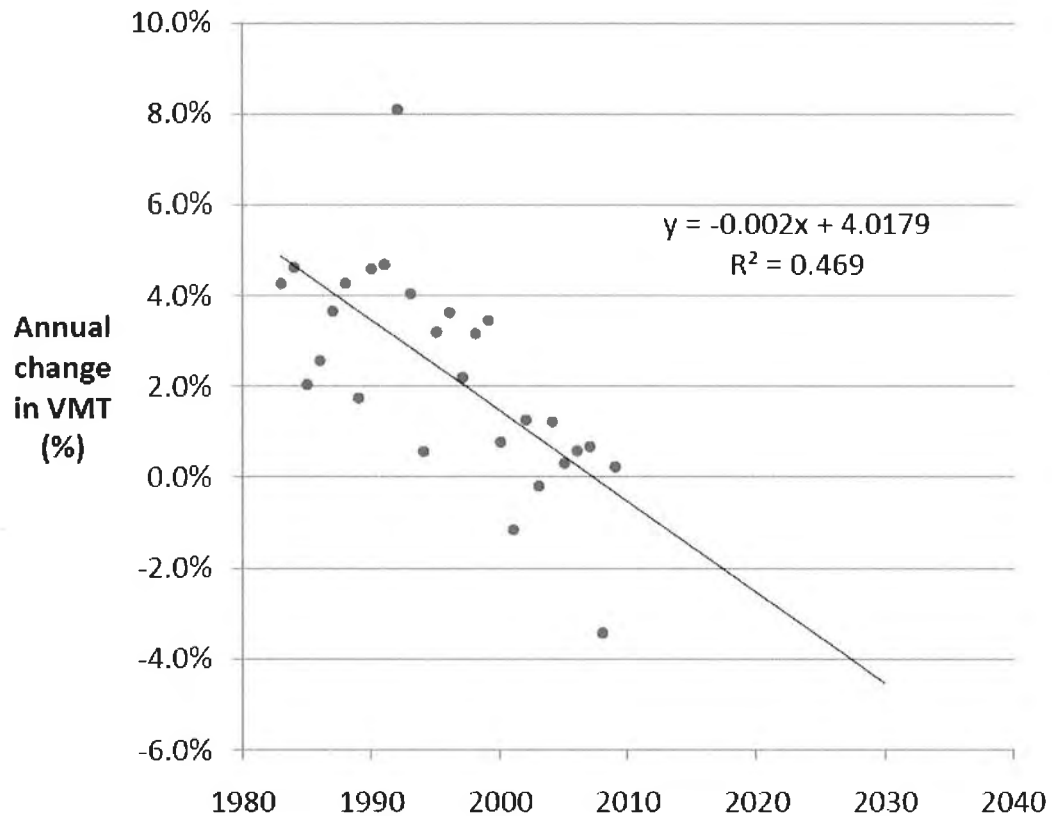


SDEIS, Appendix H.1, p. 14

This graph is not so much a set of forecasts as it is an admission that the preparers of the SDEIS do not know how to model the recent past, and certainly not to model the future. The difference between the two sets of lines is almost as much traffic as the eastern bridge is forecast to carry in 2030 and this was achieved without any cost at all. It is very important to understand how this occurred and to incorporate these forces into the future modeling.

The DSEIS apparently attributes the recent decline solely to current economic issues (Appendix H.1, p. 6), but the actual story is much richer and longer lasting than that. As shown in the figure below created by Michael Bomford, PhD of Kentucky State University, the rate of VMT growth in Kentucky has been dropping for at least 20 years now.

Annual change in KY VMT (1983-2009), with linear regression projected to 2030 (used to calculate 'business as usual' scenario #4)



Source: Michael Bomford, Ph.D., Kentucky State University, "A range of 'business as usual' projections for KY Vehicle Miles Traveled to 2030"³

The trend line suggests that VMT growth in Kentucky would actually be negative between now and 2030. Future growth may or may not be negative, but will be considerably lower than that forecast in the DSEIS. The DSEIS overestimates future growth in bridge crossings in the 2030 No Action scenario for at ten least different reasons. Some of these have been introduced already above. These include:

- 1) The decentralized land use growth assumed in the east will not be fully realized without the construction of the east end bridge
- 2) The employment forecast fails to consider that congestion on river crossings will lead to better a better balance of jobs and housing on both sides of the river.
- 3) Future employment is overestimated.

³ <http://www.postcarbon.org/blog-post/104360-from-growth-to-decline-vehicle-miles>

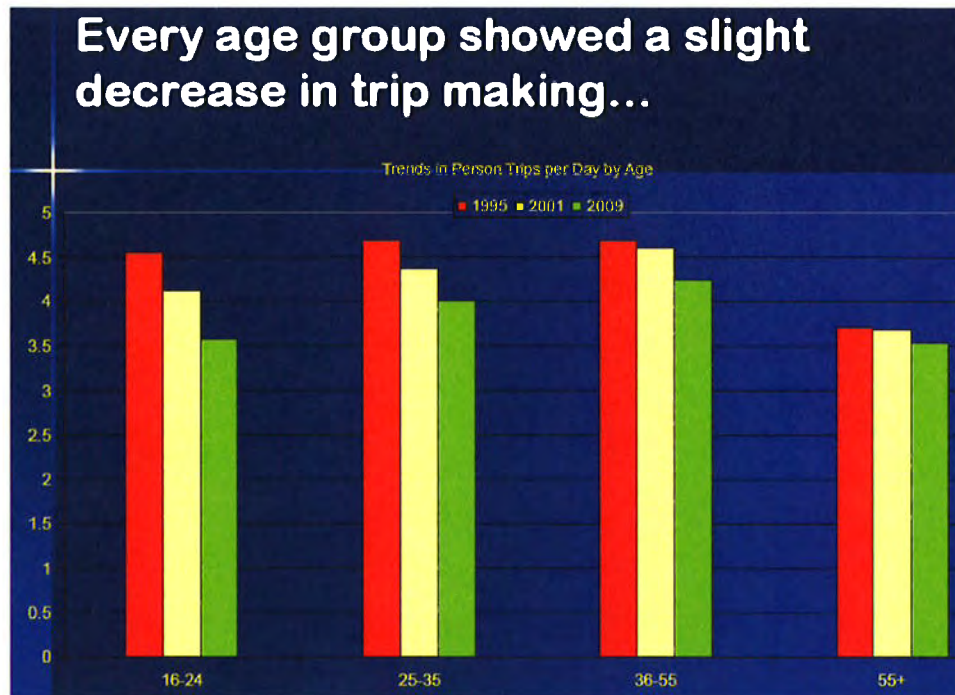
- 4) The aging population leads to fewer workers per capita.

The other reasons are:

- 5) The aging population also causes less travel per capita, particularly for peak period/peak direction travel which is the important issue for bridge capacity.
- 6) Other demographic changes. In 2006 (before the economic downturn) in work done for U.S. D.O.T., Dr. Steven Polzin identified four other demographic shifts:
 - a. stabilizing average household size following decades of declines,
 - b. stabilizing female labor force participation rates following decades of increases,
 - c. stabilizing female share of licensed drivers following decades of increases, and
 - d. stabilizing share of zero-vehicle households following decades of decreases.⁴
- 7) Dr. Polzin also identified a simultaneous shift in trends in the transportation sector:
 - a. stabilizing or declining average travel speed following years of increases,
 - b. a change from declining to modest increases in vehicle travel cost,
 - c. stabilizing public transit mode shares following decades of declines, and
 - d. stabilizing auto occupancies following decades of declines.
- 8) Trip making is down since 1995, especially by young adults, as documented in the National Household Travel Survey (NHTS)⁵

⁴ Polzin, Steven E. "The Case for Moderate Growth in Vehicle Miles of Travel: A Critical Juncture in U.S. Travel Behavior Trends, p. vii. University of South Florida, Center for Urban Transportation Research for U.S. Department of Transportation, April 2006.

⁵ Nancy McGuckin, Travel Behavior Analyst, Transportation Research Board. "Sustainable Mobility: New Findings from the NHTS.



- 9) New technology supporting more telecommuting, internet shopping, and other changes that are eliminating trips.
- 10) Real estate trends for a number of years now have favored downtown infill locations over suburban jobs sites, and the apartment market also is much stronger than the single family housing market (responding to demographic changes and not just the housing bubble). These development types result in less VMT growth than the suburban types. The Urban Land Institute/PwC *Emerging Real Estate Trends 2012* found:

Among property sectors for 2012, the survey finds that investment and development prospects continue to advance across all major property sectors, led by apartments. Besides apartments, interviewees prefer downtown office buildings in 24-hour cities, warehouse properties producing cash flow in prominent port and airport gateways; full-service hotels in the major markets; limited-service hotels without food and beverage; and neighborhood shopping centers serving stable infill suburban communities. Sentiment diminishes for power centers and malls: owners will not sell the best fortress, and most other regional centers face a shaky future. Suburban offices score the lowest investment marks; commodity buildings in campus settings isolated from urban amenities receive a big thumbs down.

6 <http://www.uli.org/News/PressReleases/Archives/2011/2011PressReleases/EmergingTrendsUS.aspx>

The traffic forecasts are based on assumptions in the socioeconomic forecasts and assumptions in the travel demand model. The socioeconomic forecasts and the travel demand model do not account for any of the ten factors described above. Therefore, the model is very simplistic and significantly overestimates growth in bridge crossings. The road building community including consultants, engineers, Department of Transportation employees, and the economic development officials are all highly invested in the historic approach of always forecasting the need for more capacity and then building that capacity. They all are having trouble recognizing that this approach is outdated.

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"It is difficult to get a man to understand something, when his salary depends upon his not understanding it." Upton Sinclair

Vehicle Hours of Delay (VHD)

B.10

Very poor performance indicator

In our February 25, 2002 comments on the DEIS, we documented how beginning with the 2000 performance plan, FHWA abandoned VHD as a meaningful measure of performance because: "... as a system-wide measure ... it does not effectively reflect actual performance of the highway system in places where congestion regularly happens ... and the measure is difficult to interpret by the general public.

VHD compounds all of the other errors

Even if VHD were an effective measure, the DSEIS calculations of VHD cannot avoid compounding errors into exaggerated differences between the scenarios. In our February 25, 2002 comments on the DEIS, we documented how large and spurious VHD differences resulted from placing large amounts of employment in areas without adequate roadway infrastructure in the No Action scenario and then moving them out in the Build scenario. The apparent VHD had nothing to do with the absence or presence of any bridges. If the same process was followed this time, it is probable that similar errors are present which could not be detected without examining the model files (which we are requesting).

The other problems described above have outsized effects on the VHD calculations because VHD increases exponentially with VMT. That's why the DSEIS shows that a 26 percent increase in VMT between 2007 and 2030 would result in a 161% increase in VHD. (Table 2.2-1, p. 2-6) The problems discussed above result in overestimated VMT, which translate into much bigger increases in VHD. Given all of the problems in the model, and the inherent uncertainty in making 2030 traffic volumes even if the model were more complete and accurate, it is misleading to focus on an indicator that amplifies small errors into bigger errors – which is what VHD does.

V. Land Use and Socioeconomic Impacts

Economic Impacts (See section 5.1.6) Pg.5-18 “By the year 2030, a shift of almost 12,000 employees from Kentucky into Indiana could potentially occur as a result of the project. It is anticipated that these employees would shift away from Jefferson and Oldham counties and move to Clark and Floyd counties.” SDEIS, page 5-21:

Relative Employment Impacts—Year 2030 Build vs. No Build:

<i>Jefferson County</i>	<i>(6,187)</i>
<i>Bullitt County</i>	<i>0</i>
<i>Oldham County</i>	<i>(5,800)</i>
<i>Clark County</i>	<i>8,790</i>
<i>Floyd County</i>	<i>3,119</i>

The summary is that Kentucky is projected to lose 11,987 jobs and Indiana to gain 11,909 jobs. Not one net new job is projected to be created. In fact, according to the data above, the region actually loses 76 jobs! Please explain how this is economic development?

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There is no meaningful explanation or research on social impacts with the introduction of tolls and tolling. Little or no reference to traffic diversion, which has been discussed in detail on the Section 106 Process. Why is the impact of traffic diversion omitted in the SDEIS when it is so fully discussed in the Section 106 Process?

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Additionally, River Fields finds it to be quite startling that the SDEIS has NO reference to dramatic collapse of the land development bubble and number of homes and businesses currently for sale in the region. There is universal agreement among regional real estate leaders who report that the region has ten years of housing stock to sell without any additional construction.

In relations to these trends and realities it is disappointing and surprising to review the FHWA Strategic Plan and consider the goal below set for, as a first priority: **See FHWA Strategic Plan and Goals: <http://www.fhwa.dot.gov/policy/fhplan.html#leadership>: FHWA goals include the following top objectives: of innovative solutions that address current and emerging transportation issues.**

(First point) Systematically identify emerging issues and needs that could impact transportation.

At no point in this SDEIS, does the reader see documentation that indicates there has been a true re-evaluation of the changes in trends and emerging issues that have dramatically changed both land use and traffic since the hey-days of the early 2000s, the years when the DEIS and FEIS were constructed based on those now-changed realities. See SDEIS: Page 2-6:/Table 2.2-1: “Weekday travel Summaries for the LMPA (2007 and 2030):” All of the 2025 weekday traffic volumes are lower than the 2025 (FEIS) projections... in stead of confronting and discussing this obvious change, the SDEIS

makes no effort to change its assumptions which are based on outdated projections based on outdated American behavior,

The flaws outlined above demonstrate that the first strategic goal in the FHWA's Strategic Plan has been completely ignored in this SDEIS.

VI. Eastern Bridge—Other Impacts

River Fields has submitted its comment on this subject both in this comment letter and in our 2002 DEIS and FEIS comments Please refer to those comments which are in the administrative record.

Potential additional 4-f issues:

Additionally, River Fields continues to be concerned about the 4-f evaluation of resources and potentially eligible resources. To that end, we are submitting in this SDEIS comment letter our requests, also shared by the National Trust for Historic Preservation concerning important potentially eligible properties that should be referred to the Keeper in order to potentially save the Project from future interruptions.

Unresolved National Register Eligibility Issues Should be Referred to the Keeper of the National Register.

River Fields continues to strongly disagree with the decisions concerning the Nuttall House and the north field of the Bellevue property (both would be directly impacted and destroyed in the alignment of the project and potentially 4-f issues). As part of the SDEIS process, the Federal Highway Administration should formally refer these disputed issues to the Keeper of the National Register for resolution. Considering the continuing long delay in this Project due to lack of funding, we question why this referral has not taken place. "The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible." 36 C.F.R. § 800.4(c)(1).

Nuttall House.

Criterion B. River Fields concurs with the National Trust in its letter of December 2011, that the Eligibility Determinations document contains weak and incorrect positions taken concerning the eligibility of this property. As the National Trust states, "In response to the new information presented regarding the significance of the home's association with W.L. Lyons, the agencies contend that Mr. Lyons' ownership of the house from 1961-1968 is supposedly too short to be considered a significant association. (Identification

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and
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Findings Report at p. 2-88.) This proposed rationale is not supported by the National Register guidance. For example, Bulletin 15 emphasizes that the relevant consideration under Criterion B should be an association with a key period in the person's productive professional life, rather than the length of time the person was connected to the property: "Properties eligible under Criterion B are usually those associated with a person's productive life, reflecting the time period when he or she achieved significance." National Park Service, *National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation*, at p.15 (River Fields emphasis). The National Register guidance makes it clear that, even if the person is associated with the property for a relatively "brief" time period, that will by no means disqualify the property for National Register eligibility, as long as the association corresponds with the significant period in the life of the person: "A property can also be eligible if it has *brief but consequential* associations with an important individual." *Id.* (emphasis added). In this case, the seven-year period during which W.L. Lyons owned the Nuttall House corresponds precisely, not only with the now-fifty-year-old alterations to the house, but also with the very time when Mr. Lyons merged his investment firm with J.J.B. Hilliard to create the Hilliard Lyons firm (1965)."

The National Trust continues:

"Criterion C. The 1961 architectural alterations to the house (carried out by Mr. Lyons himself), which previously disqualified this property from National Register eligibility, have now reached fifty years of age, and therefore, are no longer required to meet the standard of "exceptional importance." The agencies dismiss this new information on the grounds that (1) "there are better examples of intact American Foursquare houses in Louisville and Jefferson County," and (2) "it is difficult for the average individual to discern the original 1923 structure from the 1962 additions." (Identification Findings Report at pp. 2-88.) Neither of these arguments is an appropriate basis for concluding that the property lacks eligibility under Criterion C. The National Register is not limited to the "best" single example of each architectural style, and the mere fact that "better" examples may exist does not in any way preclude a property from eligibility. Nor does the National Register rely on whether the "average individual" (who would know little about architectural history) could discern the specific decade when a particular element of a house was designed."

River Fields, which has directly quoted the National Trust above, also wishes to emphasize an additional point: In the previous Section 106 review (in 2002-2003), Consulting Parties were told that, if there were delays in the Project, a genuine review of eligibility would take place for properties and landscapes that had reached the fifty-year standard. We believe a genuine review for this property should include a referral to the Keeper, as was done a decade ago, because the stakes are very high, and the historical facts strongly, if inconveniently, point to eligibility.

North Field of Belleview.

The Project's Responses to the Identification Determinations state that "[n]o new

information has been found or provided that would illustrate a need to submit [this issue] to the Keeper *again*.” (Responses, ¶ 21, emphasis added.) To River Fields’ knowledge, this eligibility question has never been sent to the Keeper. The National Trust notes that “a review of the background documentation shows that the Keeper’s review of Belleview occurred almost twenty years ago, when the property was nominated and listed on the National Register in 1992. At the time, the Keeper determined that the period of significance should end at 1930. However, the issue regarding the significance of the north field was never presented to the Keeper, contrary to the suggestion in the Responses.”

River Fields completely agrees with the National Trust’s position that, because this pasture was part of the Rosewell estate, it should also be considered and reviewed in that historic context in addition to the Belleview context. The agencies have failed to evaluate this rural field in the context of its original ownership, the Rosewell owners. There is a very strong cultural landscape connection between Rosewell this last remnant of the Rosewell plantation. The National Register nomination for Rosewell was prepared more than thirty years ago. An update is warranted in order to evaluate this issue. Instead, the Agencies are playing a “shell game” with this pasture, arguing that the 1964 conveyance precludes its consideration with *either* the historic property that owned it in 1930 or the adjacent historic property that owned it at the time of the National Register nomination. In any event, its historical use has remained unchanged. To quote the National Trust’s comment letter of December 12, 2011: “The historical use for agriculture and pasture land has never changed, despite its change in ownership. Nor has the integrity of its visual relationships or its setting been compromised. Changes in ownership are not a proper basis for negating the National Register eligibility of a property if the use and character of the property do not change. Therefore, the north field parcel should specifically be evaluated in the context of its pre-1964 relationship to Rosewell.” River Fields notes here that this pastoral field is directly contiguous with Rosewell and visually uninterrupted from Rosewell. There is no new development between the structure and the field. The contiguity of the fields with the front landscape of that historic site is unquestionable.

River Fields also agrees with the following position of the National Trust: “... as the agencies acknowledge, the Jefferson County Survey Update recommends expanding the period of significance for the agricultural context in Jefferson County to 1970, rather than 1930. The agencies’ response—that the period of significance for Belleview should remain fixed as ending at 1930 because that’s what the National Register documentation says (Identification Findings Report at pp. 2-97)—is unpersuasive, and fails to address the mandate that “the passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible.” 36 C.F.R. §800.4(c)(1).” River Fields asks for further documentation concerning the reasons for refusing to follow the recommendation of the Jefferson County Survey update on this property, when the period of significance has been changed for other resources. Why do the Agencies ignore the Survey recommendation in this single case?

River Fields strongly encourages the Project to address the serious National Register eligibility issues above and refer these issues to the Keeper immediately so as to save any precious time in the Agencies' desire to keep this Project moving forward.

VII. Downtown Bridge—Other Impacts

River Fields has submitted comments on this subject in this comment letter and in our 2002 DEIS and FEIS comments. Please refer to those comments which are in the administrative record..

See 2003
FEIS for
responses to
comments.
The 2003
responses
remain valid

VIII. Construction Impacts:

The National Environmental Policy Act (NEPA) and implementing regulations of the council on Environmental Quality require that for large infrastructure projects, such as this project, that the types and impacts and magnitude from construction are quite substantial and must be treated on a "hard look/full disclosure" basis. A complete list of these impacts includes construction prioritization and funding, economic impacts etc.

The SDEIS must address funding and construction prioritization of these two separate projects. The DEIS did not meet this standard; in light of that omission, a discussion of project sequencing is even more vital, especially now that the projects are to be supported by tolling and now that the project leaders readily **and publicly** admit that the Eastern Bridge must be supported by tolling revenue from the downtown project. River Fields has found no rationale in the SDEIS for the construction of the revenue losing project to be constructed first. At a minimum, the public deserves, and NEPA requires that the construction sequencing and the financial impact of such sequencing should be reported to the public.

A.1

Omission of construction sequencing:

Although the SDEIS suggests that the bridge construction project will be phased, it fails to provide any alternative scenarios for phasing bridge construction or meaningful information about the significant environmental, social and economic impacts of likely scenarios for phasing construction.

What is clear is that financing is not in place to permit the simultaneous construction of both bridges. The SDEIS suggests that construction will begin on the Eastern Bridge. However, the financial data provided in the DSEIS provides convincing support for sequencing the project so as to construct the downtown project first, a sequence made crucial by the fragility of the economy and of Kentucky's road funding. As the DSEIS makes clear, the downtown project is the Project's only real revenue generator based on projected toll revenues.

A.2

-Construction plan according to SDEIS: Pg.5-18 *“Over the course of the 10-year project, it is assumed that the first three years would be devoted to planning and engineering, with the last seven years devoted to actual construction activities.”* Starting with the downtown bridge as the first phase of the project is a key alternative that should be considered in the SDEIS,

However, if the plan is to proceed initially with the Eastern Bridge, there are major environmental impacts associated with constructing this Project without also providing the transportation improvements of the Downtown Bridge. These impacts include traffic diversion that will increase the noise and air quality impacts on historic properties and residential neighbors. It is imperative that the SDEIS disclose and compare the environmental impacts of different alternative scenarios for constructing only one bridge until funding is secured for the second bridge. *See Davis v. Mineta*, 302 F.3d 1104, 1124 (10th Cir. 2001) (holding that the FHWA violated NEPA by failing to take a hard look at the potentially significant impacts of phased construction.)

- Project Financing: **Financial evaluation of costs are preliminary** (pg. S-8). *“These cost and funding estimates are preliminary and are being presented at this time solely as a basis for evaluating the reasonableness of alternatives.”* How many years do they need to get the finances correct? ...Page S-9: *“...Based on these findings, the FEIS Selected Alternative is not financially feasible...The FEIS Selected alternative cannot be constructed with currently available or reasonably anticipated funds...”*

Project Financing and supposed "Demonstration"

In light of the past failures of Project leaders to evaluate funding realistically, the need for cost-saving modifications should have informed the current SDEIS report on funding. To the contrary, the September, 2011 report, “Financial Demonstration for the Ohio River Bridges Project, In Support of the Louisville (KY-IN) Metropolitan Transportation Plan” make assumptions which could be called irresponsible and irrational, in light of the current dearth of federal funding for roads and bridges, the national competition for the same and the bleak outlook for future funding for these infra-structure needs. Instead that document speaks in the same rosy terms as past unsuccessful financial plans and reports as if these past failures document a reason for future success. If the implications of this perspective of looking at funding through “rose-colored glasses” were not so serious, the repeat of such behavior would be laughable. Below are such a few of the quotes found in the document:

*“...this document provides a synopsis of the **potential** (emphasis added) sources of funding...and finance mechanisms (that) are reasonably expected to be available in the amounts and times to complete the Project.*

-Concerning Federal Discretionary Funds: The author of the “Financial Demonstration...” reminds the reader that *“During the past 25 years, Kentucky and Indiana have secured discretionary funding from the federal Highway Trust Fund and the General Appropriations for bridges over the Ohio River, specifically including the*

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*Project, for which 24 million has been received in direct federal appropriations to date. In addition, the Project has received 92 million through a High Priority Project funding designation under TEA-21 (“Transportation Equity Act for the 21st Century”) * and SAFETEA-LU**... Based on the states’ history and knowledge of current and potential federal discretionary funding opportunities, as well as the importance of this project to national freight movements and the general economy, it is estimated that the federal discretionary funds of approximately \$400 million -\$600 million **could** (emphasis added) be reasonably expected to be available to the Project... ”says these funds are reasonably expected.*

**TEA-21 ended in 2003.*

***SAFETEA-LU funding ended over two years ago in 2009.*

Simply put, the assumption that \$400 million in new federal funds will be available to states which were only able to acquire \$116 million in federal discretionary funds in the last 25 years, is irrational, especially in today's economy. The reality concerning federal funding is that the outlook is grim at best. This is not new information but has been completely ignored, as if there is no national crises about infrastructure funding whatsoever. Just last week at the Bridges Authority meeting, the Executive Director of the Authority, Steve Schultz, spent his entire Executive Director’s Report on two items, neither with positive news, that related to federal funding. He reminded those present that the Authority had yet another Tiger III grant request rejected. Explaining the context of the pressure for these federal funds, he stated that there were over 800 applications for the 46 grants that were made. Is this a funding reality that is documented in the SDEIS? To the contrary, the September 2011 Report....(QUOTE)

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-Environmental Justice issues: Quote EPA letter...Also see SDEIS Section 5.1 for potential impacts to social groups, particularly minority and low income groups.

- Also reference pg. 5-29 that demonstrates that “*Minority group members are crossing the bridge more frequently than those not in the minority category.*” and (pg 5-30) “*36% of low-income populations and 57% of minority populations cross the Ohio River by car every day or several times per week.*”

The SDEIS reports that (Pg. 5-31) *(If the toll is set at \$1.50 one way), “This would equate to approximately 9% of a low-income person’s annual income ...the toll costs would only constitute approximately 2% of the annual median income.*

IX. Air Quality Impacts

- River Fields adopts the air pollution and drinking water pollution analysis as stated by Mr. Bud Hixson in his SDEIS Comment letter submitted for this deadline.

F.17

In closing, River Fields has a request for further information. We request **any and all documentation, reports, spreadsheets and other information documenting the TAZ-**

level housing and employment adjustments between the 2030 scenarios described in Chapter 5 of the DSEIS.

We also request travel demand model files and documentation including:

- 1) All TransCAD input files, intermediate files, and output files for 2010 base year and every future year for which transportation networks have been developed and modeled – including the 2040 constrained long-range plan and no build scenarios;
- 2) All TransCAD script files needed to generate model outputs;
- 3) Any compiled non-TransCAD executable files that are called by TransCAD;
- 4) TAZ layer used for vehicle trip tables in TransCAD format;
- 5) Any and all model documentation.

Additionally, we request these model files for all of the following scenarios

- a) DSEIS scenarios including Base scenario
- b) Toll sensitivity test scenarios (Appendix H.1, Table 8-1)
- c) High revenue scenarios (Appendix G.4)
- d) One bridge scenarios (Appendix A.5)

This information can be provided via ftp, or on CD or DVD. If there are technical questions, please contact our consultant: Norman Marshall, Smart Mobility, Inc., nmarshall@smartmobility.com, (802) 649-5422.

Thank you for the opportunity to comment and for your consideration of our concerns and requests.

Sincerely,

Meme Sweets Runyon
Executive Director

c: River Fields Board of Trustees

January 9, 2012

Ms. Janice Osadczuk
Engineering Service Team Leader
Federal Highway Administration Indiana Division
Room 254, Federal Office Building
575 North Pennsylvania Street
Indianapolis, IN 46204

John Sacksteder, PE,
Project Manager
Community Transportation Solutions
Louisville - Southern Indiana Ohio River Bridges Project
305 N. Hurstbourne Lane, Suite 100
Louisville, KY 40223

Re: Comments on Draft Supplemental Environmental Impact Statement (Draft SEIS) for the Ohio River Bridges Project

Dear Ms. Osadczuk and Mr. Sacksteder:

On behalf of the National Trust for Historic Preservation, we submit the following comments on the Draft Supplemental Environmental Impact Statement (Draft SEIS) for the Ohio River Bridges Project, pursuant to the National Environmental Policy Act (NEPA). At the outset, we note that the Environmental Protection Agency (EPA) has rated the Draft SEIS as "Environmental Concerns, Insufficient Information." We agree with the EPA's concerns.

In general, the data in the Draft SEIS show that the East End Bridge is unneeded, and is difficult to justify on a cost-benefit basis. Only a small fraction of the cross-river trips would use the East End Bridge (less than 17%), whereas the Kennedy Bridge would carry twice as much traffic—one-third of all cross-river trips in the metro area, even taking into account the traffic diversion caused by toll-avoidance. (DSEIS, p. 3-22). Yet the cost of both bridges would be the same. Furthermore, notwithstanding all the public hype about economic growth, the data in the Draft SEIS shows that the construction of the project would generate no increase in permanent employment whatsoever (not counting temporary construction jobs). Indeed, the current proposal to build both bridges with tolls would result in a decline in long-term employment, according to this data.

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As recognized in the Public Comments Report prepared by CTS (Aug. 31, 2011), there is a substantial segment of local public opinion (reflected in early scoping comments) that supports construction of an East End Bridge prior to, or instead of, a Downtown Bridge. (Public Comments Report, p.14.) While the Draft SEIS and Appendices have provided numerous reasons for rejecting the East End *Only* alternative, the Draft SEIS fails to address the impacts of phasing or sequencing the construction of the two bridges. (This was an issue raised in the National Trust's own scoping comments.) This is crucial, because of the fact that the East End Bridge will not attract sufficient traffic or generate sufficient toll revenue to pay for itself. Net toll

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revenue is projected to increase six-fold once the new Downtown Bridge opens, as opposed to the projected toll revenue from the East End Bridge alone. DSEIS, Appendix G.5. at p.4, Table 2 (\$19.02 million to \$112.91 million).

If the East End Bridge is built first, the result could be to make financing for the Downtown project more tenuous, and may jeopardize the ability to fund the Downtown project—already highly uncertain—or delay it for many years or even decades. The result would be the *de facto* construction of a project (East End Only) that has been rejected in both the 2003 FEIS and the current Draft SEIS as failing to satisfy a legitimate transportation purpose and need.

It is imperative that the SEIS disclose any plans for phased construction and phased financing of the bridges, and evaluate the specific impacts of constructing only one bridge prior to securing funding for the second bridge. The EPA comments emphasized this issue as well, and specifically recommended that the agencies

provide a construction sequence outline and rationale based on *actual available funding* identified in the Bridge Authority's future recommended financial plan, in order to *clarify the priority for constructing each segment* of the project. We understand that there are demonstrated existing safety and traffic issues with the downtown bridge and the Kennedy Interchange, which serve the majority of existing and projected vehicle traffic

EPA Comments at p.4 (Jan. 9, 2012) (emphasis added). This detailed information regarding construction sequence and phasing, and its implications for the viability of financing the project, must be disclosed *during* the NEPA process, in order to allow for public comment, not afterwards, as the states apparently intend. See "*Financial Plan for Bridges Project Expected in Spring*," Louisville Courier-Journal, Jan. 5, 2012. Even Tyler Allen of "8664" is saying: "I don't seem to hear that they know yet where the money is going to come from." *Id.*

Failure to disclose this information immediately, with opportunity for public comment, violates NEPA and thus endangers the project. See *Davis v. Mineta*, 302 F.3d 1104, 1123-24 & n.13 (10th Cir. 2001) (FHWA violated NEPA by failing to take a hard look at the potentially significant impacts of phased construction.) As in this case, the "phase two" project in *Davis v. Mineta* would have been delayed by three to eight years, or perhaps indefinitely. Similarly, "Kentucky is *'some years away'* from [even] hiring additional lawyers to represent the state when it sells toll-backed bonds, said Chuck Wolfe, a Kentucky Transportation Cabinet spokesman." "*Indiana Seeks Law Firm for Ohio River Bridges Project*," Louisville Courier-Journal, Jan. 6, 2012.

CHAPTER 2: PURPOSE & NEED

2.2.1 Regional Context

Page 2-6: The base assumption in the Draft SEIS is that from 2007 to 2030, population will increase by 15% and employment will increase by 42%. (These statistics are repeated on p. 2-10.) These projections are fundamentally inconsistent. Moreover, the employment projection defies credibility. Employment growth would inherently be *less* than population growth, because some segments of the population are not employed (such as children and elderly people).¹ If employment grew at more than three times the population, additional workers would need to be brought in from other locations in order to fill the available jobs; otherwise, they wouldn't be filled and employment would not increase after all. In any event, the assumption that employment in the Louisville area will grow by 42% in such a short time span is a fantasy. This obvious error casts doubt on the validity of all of the other assumptions, and the models on which these false assumptions were built.

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Page 2-7: Table 2.2-3 projects that, under the 2030 No-Action scenario, the Sherman Minton Bridge would be at 119% of its capacity during the AM rush hour, and 126% of its capacity during the PM rush hour. See *also* DSEIS, pp. 2-18 and 3-23, Table 3.3-3. If this were the case *without* the new toll bridges, it is difficult to imagine how the Sherman Minton Bridge would be able to accommodate the additional diversion traffic caused by construction of the project. These data suggest that mobility on the Sherman Minton Bridge would be significantly degraded as a result of the project. In other words, one congestion problem would be resolved by displacing the traffic and creating another congestion problem of a similar magnitude, which calls into question the cost-benefit justification for the project as a whole.

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2.2.2 Population & Employment Growth & Land Use Plans

Page 2-10: If "planners in both Jefferson and Clark counties have indicated a desire to slow or reverse the rate of population decline in the downtown areas," this project will have the opposite effect.

2.2.3 Traffic Congestion

Page 2-21: Table 2.2-5 shows dramatic discrepancies that quantify how wrong the assumptions and projections were in the 2003 FEIS. In addition the data in the chart seems internally inconsistent. Even though the projection date in the FEIS was five

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¹ The U.S. Bureau of Labor Statistics projects that the labor force participation rate will decline to 64.5 percent in 2018. (*Statistical Abstract of the United States 2012*, Tables 586 and 587.)

years earlier (2025 vs. 2030), the FEIS predicted a degree of gridlock and delay in the Spaghetti Junction area (slow speeds & high VHD) that is now shown to be grossly exaggerated in light of the newly modeled projections (2030 No-Action). Even waiting five more years for the No-Action scenario to get worse (i.e., from 2025 to 2030), average speeds will be about double (i.e., better than) what was assumed in the FEIS, and hours of delay in the AM, for example, will be only *one-quarter* of the delays assumed in the FEIS for 2025.

- In light of these significant differences, it is highly implausible that the projected “Throughput as Percent of Demand” would be *exactly the same* for the AM under both the FEIS and 2030 No-Action (i.e., 84% in both cases).
- Even more inexplicable is the projection that the “Throughput” for the PM is much *worse* for 2030 vs. the FEIS (i.e., 76% vs. 91%), when all the statistics are so much better (i.e., much higher average speeds and far fewer hours of delay).
- Furthermore, the 91% PM “Throughput” projection for the FEIS seems utterly inconsistent with the 2010 data. If actual PM “Throughput” in 2010 was 92%, it is impossible that “Throughput” would only be reduced to 91% when speeds would be cut in half (31 mph to 16 mph), and hours of delay would almost triple (636 hrs to 1841 hrs).

All of these inconsistencies cast serious doubt on the validity of the projections regarding traffic congestion.

2.3 Performance Measures

Page 2-24: We have already raised objections to the proposal to measure “Cross-River Mobility” solely in terms of Vehicle Hours of Delay (VHD), rather than the additional two metrics that were used in the 2003 NEPA process—Vehicles Miles of Travel (VMT) and Vehicle Hours of Travel (VHT). (NTHP comments on Draft Range of Alternatives, pp. 1-2 (Aug. 31, 2011).) Eliminating two out of three metrics that were used in the 2003 EIS would undermine the analysis, preventing “apples-to-apples” comparisons, and resulting in an overly simplistic reliance on a single metric. Furthermore, it is a metric that appears less objective than VMT and VHT, because it inherently requires a comparison to a hypothetical baseline (i.e., vehicle hours that would have been traveled *without* the delay), which is subject to error or manipulation. VHD has been criticized by at least one state transportation official as a metric that does “not adequately describe mobility performance.”² As pointed out

² See <http://cospl.coalition.org/fez/eserv/co:5247/tra2100813internet.pdf> (Jeremy Klop & Erik Guderian, “Linking of Mobility Performance Measures to Resource Allocation: Survey of State DOTs and MPOs” at 23 (Dec. 2008) (Colo. Dep’t of Transp., DTD Applied Research & Innovation Branch) (Report No. CDOT-2008-13)).

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in the report from Smart Mobility, Inc.,³ VHD is based in part on VMT, but amplifies exponentially any errors in input, further increasing its unreliability.⁴ We continue to strongly recommend that the original three-metric analysis be retained. The clear impression has been created that the primary reason for dropping the use of the VMT and VHT metrics is that they confirm that the East End Bridge would not significantly improve cross-river mobility.

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CHAPTER 3: ALTERNATIVES

3.2.1 No-Action Alternative

Pages 3-10 to 3-13: The list of 26 projects already currently planned in the vicinity of the Bridges Project includes a huge percentage (20 out of 26, or 77%) that were not included in the Metropolitan Transportation Plan in 2003. Another 4 from 2003 have already been completed. Together, these projects will improve capacity and mobility in the No-Action scenario. When combined with future traffic projections that have been significantly reduced since the 2003 projections, (see discussion above regarding p. 2-21, Table 2.2-5), the need for the East End Bridge is further called into question, because the No Action scenario includes greater capacity and less traffic demand than previously assumed. The report from Smart Mobility, Inc. also points out that assumptions about design capacity (vehicles per lane per hour) were substantially understated, and that actual design capacity is 38% to 50% greater than the assumptions. If these assumptions are corrected, virtually all volume-to-capacity problems are eliminated under the 2030 No-Action scenario. (Smart Mobility, Inc. Report, p.2 (Jan. 9, 2012).) These substantial discrepancies in the assumptions also undermine the ability to make apples-to-apples comparisons about future capacity under the No-Action scenario.

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3.2.3 Modified Selected Alternative

Page 3-19: The Draft SEIS states that doubling tolls from \$1 to \$2 would produce only a 1% increase in diversion traffic. This assumption lacks credibility, and is inconsistent with the conclusion in the 2003 FEIS that a \$3 toll would divert virtually all of the traffic. (See Smart Mobility, Inc. Report, p.11 (Jan. 9, 2012).)

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³ Smart Mobility, Inc. Report, p.12 (citing DSEIS p.2-6, Table 2.2-1) (Jan. 9, 2012). The Smart Mobility Report, which is cited throughout this comment letter, was attached to the comments on the Draft SEIS submitted by River Fields.

⁴ For example, the Smart Mobility, Inc. Report points out that a 26% increase in VMT between 2007 and 2030 would translate into a 161% increase in VHD. (Smart Mobility, Inc. Report, p.12 (citing DSEIS p.2-6, Table 2.2-1) (Jan. 9, 2012).)

3.3.2.1 Bridge Demand as Percent of Capacity

Page 3-22: Table 3.3-2 suggests that current capacity and congestion problems on the Kennedy Bridge would be resolved essentially by shifting the capacity and congestion problems to the Sherman Minton and Clark Bridges, and further calls into question the need for the East End Bridge.

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- The row in Table 3.3-2 labeled "2030 Modified" shows that ***only 17% of all cross-river trips (52K/313K) would use the East End Bridge; yet the East End Bridge represents approximately 50% of the total project cost.*** It is difficult to defend the East End Bridge from a cost-benefit perspective in light of this data, especially when the data also show that the project would not generate a single permanent job (DSEIS, p.5-6, Table 5.1-3), and when a substantial portion of cross-river trips that would use the East End Bridge are discretionary trips that would not otherwise occur at all (see next bullet). Furthermore, the disparity between the high cost and low traffic utilization means that the bridge would not be self-sustaining in terms of toll funding, and thus, a substantial amount of the toll revenue from the Kennedy Bridge would need to be diverted to subsidize the East End Bridge, which otherwise would not be financially feasible. In other words, Indiana would not only be taking thousands of jobs and households from Kentucky (see discussion below regarding pp. 5-4 through 5-7), but would then add insult to injury by taking Kentucky's toll revenues as well in order to fund the very highway that would carry away those jobs and households across the river.
- The Total River Crossings column projects a 29% increase in the number of cross-river trips in the 20-year period from 2010-2030 under the No-Action scenario (226.2K to 292K). This assumption is over-inflated, as described in detail in the report from Smart Mobility, Inc., since population is only projected to increase by 15%, and VMT growth in Kentucky is declining. (Smart Mobility, Inc. Report, pp. 6-11 (Jan. 9, 2012).) Furthermore, it is impossible to reconcile this inflated projection with the fact that the actual number of cross-river trips declined by 7% in the 10-year period from 2000 to 2010. (*Compare* 2003 FEIS, p. 2-10, Table 2.2-2 (242K in 2000) *with* DSEIS p.3-22, Table 3.3-2 (226.2K in 2010).) There is no credible basis for suggesting that a 7% decline in the past 10 years will be followed miraculously by a 29% increase in the next 20 years. Any projections that are based on this implausible assumption must be reevaluated.
- Table 3.3-2 projects even more spectacular increases in traffic under the two "build" scenarios: a 43% increase in the number of cross-river trips from 2010-2030 if the full FEIS project were built (226.2K to 324K); and a 38% increase in the number of cross-river trips during the same time period under the Modified proposal (226.2K to 313K). According to this data, building the Modified project would induce 21,000 cross-river trips *per day* (10,500 round-trips), which would otherwise not occur. Building the full FEIS project would

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induce an extra 32,000 trips per day (16,000 round-trips).⁵ Again, these projections seem over-inflated in light of the reality that cross-river trips declined by 7% from 2000-2010.

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- For the Sherman Minton and Clark Bridges, the use of average daily capacity data (113% and 117%) in Table 3.3-2 downplays the fact that these bridges will be even more over-capacity during rush hour. This table should disclose and be based on the worst-case scenario.

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Page 3-23 (Table 3.3-3): Table 3.3-3 is filled with errors and inconsistencies, which call into question the validity of all the data and assumptions used in the Draft SEIS.

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- For the Clark Bridge, the data in Table 3.3-3 (p. 3-23) flatly contradicts the data in Table 3.3-2 (p. 3-22), and the data appears internally inconsistent as well. For example, p. 3-22 shows that daily demand for the Clark Bridge would be at an average of 117% of capacity (which would mean that rush hour would be *more* over-capacity, and other times of day would be less congested). However, the detailed breakdown on p. 3-23 suggests that, even during rush hour, demand for the Clark Bridge would be operating at only 78% to 80% of capacity. This is not only mathematically impossible, if average daily demand for the Clark Bridge in 2030 would be 117%, but highly implausible in light of the fact that current (2010) demand for the Clark Bridge during rush hour is 73% to 84%. By contrast, the FEIS projections for the Clark Bridge during rush hour, with no tolls on the new bridges, are 82% to 91%. The capacity of the Clark Bridge would not increase, and the Clark Bridge would be a major magnet for toll-avoiders in light of its close downtown proximity to the tolled Kennedy Bridge. The Traffic Forecasting Report (Appendix H.1) states that the Clark Bridge would experience disproportionate increases in traffic as a result of increases in tolls. (DSEIS, App. H.1, p.26.) Therefore, the assumption that congestion (demand-to-capacity ratio) on the Clark Bridge would decrease, as compared to the non-tolled FEIS plan (82% vs. 78% in the AM; 91% vs. 80% in the PM), is ludicrous. Even more absurd is the assumption that congestion during evening rush hour on the Clark Bridge would be lower than it is today (80% in 2030 vs. 84% today)!
- The 2030 Modified projection data for the Clark Bridge are also suspect because the patterns are dramatically different than for all of the other categories (2010, 2030 No-Action, and 2030 FEIS). Most of the bridges show a relatively small number of “reverse commuters”—except, inexplicably, the Clark Bridge under the 2030 Modified scenario. For example, the number of AM reverse commuters on the Clark Bridge (i.e., northbound) is currently 20%

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⁵ The text fails to explain why would there be 11,000 fewer cross-river trips per day (5,500 round-trips) with the Modified proposal as opposed to the full FEIS project. Presumably, the assumption is that these 11,000 trips per day would be deterred by the introduction of tolls.

of capacity, and is only projected to rise to 22% under the 2030 FEIS scenario. Why would the introduction of tolls cause the number of AM reverse commuters on the Clark Bridge to spike to 71% of capacity under the 2030 Modified scenario? In addition, the number of PM reverse commuters on the Clark Bridge (i.e., southbound) is estimated to be 76% of capacity—just 4% less than the number of primary-direction commuters (80% northbound). This seems inconsistent with AM commuting patterns, which reflect a dramatically lower percentage of reverse commuters.

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- The 2030 capacity projections for the Sherman Minton Bridge on p. 3-23 show virtually identical rush-hour congestion levels for 2030, regardless of whether the two new bridges are built (119% AM/126% PM for No-Action, and 119% AM/125% PM for the Modified project with tolls). This appears inconsistent with Table 3.3-2 on the previous page, which shows 10,000 more trips per day (a 9% increase) on the Sherman Minton Bridge in 2030 if the new toll bridges are built, as compared with No-Action.

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3.3.2.2 Bridge Levels of Service

Page 3-24: The data in Table 3.3-4 appears inconsistent with the demand-to-capacity data on p. 3-22 (Table 3.3-2).

- While we understand that LOS does not correspond precisely with demand-to-capacity ratio, it is implausible to conclude, under the Modified Selected project, that the Kennedy Bridge and East End Bridge would both operate at LOS **D** (when they would be at only 48% and 72% of their capacity, respectively), while at the same time concluding that the Clark Bridge would operate at LOS **C**, when it would be at 117% of its capacity.
- As another example of these inconsistencies, the Sherman Minton and Clark Bridges are both projected to operate at 93% capacity in 2030 under the FEIS scenario (Table 3.3-2). Given that data, it is difficult to imagine how Table 3.3-4 could conclude that the Clark Bridge would operate at LOS **C**, when the Sherman Minton Bridge would operate at LOS **E** under the same scenario.
- These discrepancies are also reflected in Table S.2-3 at p. S-19, and Table 3.3-7 at p. 3-31.

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3.3.4 Inadequate Cross-River System Linkage

Page 3-30:

- Table 3.3-6 projects a shocking 49% increase in the number of cross-river trips with east-to-east origins and destinations (an additional 20,000 car trips per day) as a result of building the East End Bridge. In other words, a total of 38% of the trips on the East End Bridge (20K/52K) would not even occur if the

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bridge were not built. The purpose and need for the eastern bridge is thus a classic example of “If you build it, they will come” – a self-fulfilling prophecy.

- Table 3.3-6 is also completely implausible (and inconsistent with other data in the Draft SEIS) by showing virtually no difference in the number of east-to-east daily trips in 2030, regardless of whether or not tolls are charged.
 - Table 3.3-2 on p. 3-22 projects 11,000 fewer cross-river trips per day in 2030 under the Modified plan, as compared to the FEIS plan. This table makes the preposterous assumption that not a single one of those 11,000 foregone trips would have had an east-to-east origin/destination (because the estimate of 61,000 east-to-east daily trips remains identical under both the FEIS and Modified scenarios).
 - At the same time, Table 3.3-6 shows that, for east-to-east trips in 2030, VHT would be identical (and VMT would increase a miniscule 0.07%) if tolls are added to the new bridges. Since the total number of trips on the East End Bridge in 2030 would be only 52,000 per day, that means 9,000 of the 61,000 east-to-east trips would be taking one of the downtown bridges, either because it’s more direct, or because the drivers want to avoid paying tolls. Table 3.3-6 appears to assume either that there would be no diversion to avoid tolls (because VMT and VHT are assumed to be virtually identical with or without tolls), or that the extra miles and hours required for the toll-avoiding diversion would magically be exactly equal to the miles and hours saved by the 52,000 cross-river trips that would be shorter because they would use the new East End bridge, which is not currently an option.

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CHAPTER 4: AFFECTED ENVIRONMENT

4.3 Historic and Archaeological Resources

In general, we intend to use the Section 106 process to raise our comments regarding historic properties. Some of the information in the Draft SEIS is outdated because it was prepared prior to the last consultation meeting on November 18, 2011. However, we note a few comments that should be corrected in the process of revising these sections of the SEIS.

4.3.1 Above-Ground Resources

Page 4-32: The description of the Section 106 process to date is inadequate and inaccurate.

- The Draft SEIS states that the SHPOs concurred in the proposed APEs (Areas of Potential Effects) “[a]s a result of [the Sept. 29, 2011 Section 106] meeting and further consultation” (p.4-32) (emphasis added). On the contrary, the

E.7

proposed Extensions to the APEs were first presented to the SHPOs in secret, two and a half months *before* the Sept. 29 meeting, and concurrences were obtained behind closed doors three to seven weeks *before* the meeting, not “as a result of” it. The consulting parties have lodged multiple objections to the APEs, as well as to many of the effect determinations. Those objections remain unresolved.

- The summary of the themes raised in the Section 106 comments on the APEs is a distorted and incomplete summary. One of the major themes raised by the preservation groups participating as consulting parties has been that the APE is not expansive enough to cover all secondary and cumulative effects. The summary in the Draft SEIS mentions the issue of how effects on historic districts will be considered when only part of the district falls within the APE, and the gap along River Road (both relatively technical issues), but fails to mention consulting parties’ major objections regarding the omission of West Louisville, Portland, and sections of downtown Louisville, which will be subject to secondary and cumulative effects.

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CHAPTER 5: ENVIRONMENTAL CONSEQUENCES

5.1 Social and Economic

Pages 5-4 and 5-5: The maps in Figures 5.1-1 and 5.1-2 show that *Kentucky would be the big loser in terms of jobs and population as a result of this project.* Not a single gain is shown for any location on the Kentucky side of the Ohio River. Indiana, on the other hand, would be the beneficiary of *all* the employment and population that would be transferred across the river; Indiana’s gains would be almost entirely at Kentucky’s expense. (See *also* p.5-18: 12,000 jobs would shift from Kentucky to Indiana.) In addition, since the East End Bridge would not attract enough traffic to generate adequate toll revenue, Kentucky would be forced to use the downtown toll revenue to pay for Indiana’s bridge. It is difficult to understand why Kentucky would support this project that would generate nothing but losses for Kentucky in the long-term.

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Pages 5-6 and 5-7: The projections regarding future jobs and population trends in Tables 5.1-1 through 5.1-7 appear inconsistent with other assumptions in the Draft SEIS. At the same time, these data appear to demonstrate that building the bridges would result in no net long-term economic growth in the Louisville region.

- For example, Table 5.1-3 shows that in the long-term (2030), not a single additional job would be created as a result of the bridges project, and not a single additional household would be drawn to the Louisville metro area. (The 2030 estimates for “No-Action” and “Build” are identical.) Indeed, p. 5-18 and Table 5.1-11 show that there would be a net *loss* of 78 jobs as a result of the project being built.

D.16

- Instead, Tables 5.1-1 and 5.1-2 show that, as a result of the bridges project, 2% of the jobs (6,201/231,563) and 0.7% of the households (1,554/211,411) that would otherwise be located more than 10 miles from downtown, would shift closer in to be located less than 10 miles from downtown. This projection seems squarely inconsistent with Table 3.3-6 on p. 3-30, which projects that cross-river trips with an east-to-east origin/destination would increase by 49% as a result of building the bridges. It is difficult to understand how eastern-oriented trips across the river could increase by 49% without generating enough economic activity to create a single new job. Furthermore, Table 5.1-4 shows a significant trend for households to shift more than 10 miles away from downtown Louisville by 2030 (a 29% increase beyond 10 miles, as opposed to only a 5% increase downtown). It is difficult to believe that this strong trend would be virtually unaffected by the construction of an eastern beltway. (It may be that the use of a 10-mile radius is not refined enough to measure trends relating to sprawl, since the East End Bridge itself would be well within the 10-mile radius.)
- Finally, the data in the last two tables (5.1-6 and 5.1-7) show significant inconsistencies with the data relied on in the 2003 FEIS, and confirm that many of the assumptions on which the project was originally approved were erroneous. Although these tables are comparing 2025 projections from the FEIS with more recently developed 2030 projections for the Modified project, the projections show dramatic discrepancies. For the area *beyond* 10 miles from downtown, the number of jobs is projected to be 30% higher in 2030 than was projected for 2025 (231,563 vs. 178,228), and the number of households is projected to be 23% higher (211,411 vs. 172,500). For the area *less than* 10 miles from downtown, the number of jobs is projected to be 16% lower in 2030 than was projected in 2025, while the number of households is projected to be 7% lower. It makes no sense that these strong trends would be halted or reversed by the construction of the eastern bridge, rather than exacerbated.

D.30

5.1.6 Economic Impacts

Direct Impacts of FEIS Selected Alternative and Modified Selected Alternative

Page 5-18: The data in Table 5.1-11 shows that almost 12,000 jobs would shift from Kentucky to Indiana, with a net *decrease* in total long-term jobs, as a result of building the bridges (i.e., compared to No-Action). All of Indiana's growth would be at Kentucky's expense. The Draft SEIS goes on to extol the short-term economic boost from construction jobs,⁶ but none of that economic boost would translate into permanent economic growth, according to this data.⁷

D.16

⁶ This portion of the Draft SEIS states that the first three years of project implementation, beginning in 2012, would be devoted to "planning and engineering,"

5.1.7 Environmental Justice

The environmental justice analysis looks at three types of potential impacts on environmental justice communities: direct impacts, monetary impacts of paying tolls, and impacts from diverted cut-through traffic. However, this analysis fails to evaluate the indirect and secondary impacts on environmental justice communities as a result of the massive economic disinvestment represented by the loss of 12,000 jobs and many households as well from Kentucky to Indiana. The EPA comments confirm that “further consideration” is needed regarding the indirect and cumulative impacts of the project on environmental justice communities. EPA Comments at p.13 (Jan. 9, 2012).

D.29

With respect to the monetary impacts of paying tolls, the Draft SEIS estimates that low-income people making a round-trip on one of the toll bridges five days a week would be spending 9% of their annual income on tolls, as compared to just 2% for those with a median income of \$41,994. We agree with the EPA that “[t]his is significant, and suggests a disproportionate and adverse impact to low-income drivers.” EPA Comments at p.6 (Jan. 9, 2012).

D.23

5.3 Historic and Archaeological Resources

We will continue to rely primarily on the Section 106 review process as the venue for our comments regarding historic and archaeological resources, since the material circulated to the consulting parties is more detailed and up-to-date than the information in the Draft SEIS. However, a few comments are noted below, most of which reference comments that have already been raised through Section 106.

DOWNTOWN PROPERTIES—INDIANA

Spring Street Freight House / Train Depot: Table 5.3-2 (p.5-54) correctly notes that the adverse effect determinations in 2003 for this historic property included both visual and vibration adverse effects. The text explains why the visual impacts have been changed to No Adverse Effect (i.e., elimination of the flyover ramp), but

E.8

rather than actual construction (p.5-18). This contradicts the statement elsewhere in the Draft SEIS that construction itself would begin in 2012. (See pp. S-19 and 3-35.)

⁷ The Draft SEIS fails to explain why the estimated number of average annual construction jobs for the FEIS alternative is 64% higher than what was actually projected in the 2003 FEIS itself. *Compare* DSEIS, p.5-19, Table 5.1-12 (3,850 average annual construction jobs for FEIS Selected Alternative) *with* 2003 FEIS, p.5-35, Table 5.1-11 (2,345 average annual construction jobs for FEIS Preferred Alternative). Again, these substantial discrepancies cast doubt on the validity of all the assumptions and projections.

fails to explain why the determination for vibration impacts has been changed from Adverse Effect in 2003 to No Effect currently.

E.8
cont.

Old Jeffersonville Historic District: Table 5.3-3 (p.5-54) states that the project will have No Adverse Effects from construction on the Old Jeffersonville Historic District. We have previously raised an objection to this determination, which remains unresolved.

E.9

EAST END INDIANA PROPERTIES

Utica Lime Kilns: Page 5-56 cites a communication from the Indiana SHPO dated Oct. 23 [sic], 2011 that the quarries would not warrant preservation in place. (DSEIS, App. D.9.) As discussed in more detail below, the DSEIS does not accurately characterize the SHPO's communication, and we disagree with the FHWA determination that preservation in place is not warranted, which was made without any involvement from the consulting parties.

N.6

EAST END RESOURCES--KENTUCKY

Pages 5-85 to 5-87: Objections or questions have been raised regarding the effect determinations for the following properties in Table 5.3-17 (East End Resources Impact Assessment Summary): Harrods Creek Historic District (including but not limited to The Avish); Nitta Yuma Historic District; Ashbourne; Harrods Creek Village Historic District; Cedarbrook Farm; St. Francis in the Fields Church; and Fincastle. In addition, objections have been raised to the No Adverse Effect determination for the Theodore Mueller House & Shady Brook Farm (p. 5-85, Table 5.3-16).

E.10

Furthermore, we have reiterated in earlier comment letters our recommendations that the Nuttall House and the North Field of Belleview (transferred from Rosewell) be referred to the Keeper of the National Register for a formal determination of eligibility.

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N5

HISTORIC PROPERTIES WITHIN THE EXTENSIONS TO THE ORIGINAL APE

Pages 5-88 to 5-89: Through the Section 106 consultation process, we have objected to the inadequate analysis and documentation that provided the basis for the "extensions" to the APE based on traffic diversion. These objections apply to the areas we believe have been improperly excluded from the APE, as well as the determinations of No Adverse Effect within the Extended APE. These objections still need to be resolved.

E.7

5.5.1 Noise Impact and Abatement Criteria

Pages 5-115 to 5-118: In our view, it is inappropriate for the FHWA to allow a double-

standard for noise mitigation in a major federal project such as this one, by allowing the states to set significantly different criteria for noise mitigation depending on which side of the river the affected property happens to sit. Kentucky defines a “substantial increase” in noise as 10 dBA or greater than current noise levels (which represents a doubling in perceived noise levels), while Indiana defines a “substantial increase” as 15 dBA or greater than current levels (p. 5-115). Because of the logarithmic scale of noise measurement, this represents a dramatic difference, and the Indiana threshold would fail to include a number of impacts that in our view would be significant. Certainly with respect to historic properties, it is not appropriate for the Section 106 process to allow this kind of double-standard with regard to the assessment of effects.

G.6

In addition, the two states differ regarding the maximum per-capita cost that will be allowed in evaluating the cost-effectiveness of noise barriers: \$35,000 for Kentucky, and \$25,000 for Indiana (pp. 5-117 to 5-118). For example, the barrier for Noise Sensitive Area 7 in Study Area 4 (Utica-Sellersburg Road, Surry Road, and Boulder Creek Subdivision, in Indiana) is projected to cost \$32,803 per benefitted home (p.5-162). This would qualify for mitigation if it were in Kentucky, but is rejected because Indiana’s rules are different.⁸

5.5.2 Assessment of Impacts and Proposed Mitigation by Study Area

Page 5-150: One issue that the Section 106 analysis has failed to consider so far is the potential visual impact of noise barriers on historic properties. For example, noise barriers are proposed for three noise sensitive areas within Study Area 4: Green Spring/Wolf Creek Subdivisions; Wolf Pen Woods Subdivision; and Harrods Creek (p. 5-150). These have the potential to be visible from nearby historic properties (see map at p. 5-153). This potential adverse effect needs to be addressed through Section 106 consultation.

E.14

5.5.3 Historic Properties Noise Assessment

Page 5-165: The Draft SEIS states that “[a]ll historic properties within 800 feet of a proposed build alternative were evaluated [for noise impacts] in TNM2.5.” This statement is false. As we discussed in our most recent Section 106 comments regarding proposed effect determinations, the agencies failed to evaluate noise impacts for the following historic properties within 800 feet of the projected project:

G.7

⁸ This particular outcome seems especially unfair because the noise barrier proposed for Noise Sensitive Areas 5 and 6 just across the highway would echo and exacerbate noise in Area 7 (see p.5-164). The map on p.5-158 strongly suggests that Noise Sensitive Area 5 would not even qualify for a noise barrier at all if it were not combined with Noise Sensitive Area 6, because the homes are further away from the alignment. Clearly the methodology is subject to manipulation.

Cedarbrook; the Edward L. Strater House; and the Nitta Yuma Historic District.

5.18 Summary of Impacts

Page 5-222: For the reasons discussed in our Section 106 comments, the numbers listed in Table 5.18-1 under “historic sites impacted” and “historic districts impacted” are incomplete, and will need to be updated as a result of Section 106 consultation. The same problem applies to Table S.3-1 on p.S-21.

E.11

CHAPTER 6: SECTION 4(f) EVALUATION

Page 6-4: Transylvania Beach. The Draft SEIS states that the Determan House and the house at 6212 Transylvania Beach Road are the two closest homes to the A-15 alignment. The failure to disclose specific proximities makes it difficult for the consulting parties to comment on this information. However, other Section 106 documents show that the house at 6212 Transylvania Beach Road is 350 feet from Alignment A-15, but the house at 6012 Transylvania Beach Road is even closer—just 250 feet away. The increases in noise levels for these homes will be staggering—more than 18 dBA. Therefore, we object to the determination that no constructive use will occur, based on noise and visual impacts.

N.5

Pages 6-5 to 6-8: Utica Lime Kilns. The project as currently designed would involve the physical taking of 1.06 acres from two of the quarries in the Utica Lime Kiln Multiple Property District (DSEIS, p.6-6). In addition, the kilns would be adversely affected in four different ways—through adverse encroachment, visual, construction, and vibration effects (*id.*). By contrast, the assumption in the 2003 FEIS was that the Lime Kilns would be adversely affected only by vibration impacts. (2003 FEIS, p.5-137, Table 5.3-37.)

We strongly object to the determination that the Utica Lime Kilns⁹ are exempt from the protection of Section 4(f) because they are “archaeological resources that are important chiefly because of what can be learned from data recovery, and therefore have minimal value for preservation in place,” (DSEIS, p.6-7 (citing 23 C.F.R. § 774.13(b)(1))). The e-mail communication from the Indiana SHPO dated Oct. 25, 2011 (DSEIS, App. D.9, p.1) confirms that the National Register eligibility of the Utica Lime Kiln district is not limited to Criterion D (“have yielded, or may be likely to yield, information important in prehistory or history”), but also includes Criterion A (“associated with events that have made a significant contribution to the broad patterns of our history”). 36 C.F.R. § 60.4. This further confirms the inappropriateness of attempting to apply the archaeological exemption under Section 4(f).

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⁹ On p.6-7, a typographical error is used at least five times—Lime Kiln #48004 is erroneously labeled as Kiln #84004.

Quarries and their associated kilns are by their very nature a type of resource whose “place” is determined by geological formations and the physical features of the land. It is precisely in this place-based context that they are best understood and interpreted. It is disingenuous to suggest that a quarry is important “chiefly because of what can be learned from data recovery.” Nor did the Indiana SHPO make such a determination. (See DSEIS, App. D.9.) “Data recovery” from a quarry would make no sense, and would be unlikely to occur at all.¹⁰ In recognition of this inherent place-based significance, as well as the rarity and fragility of these unique resources, there are numerous examples around the country of lime kilns and quarries that are preserved in place for public interpretation.¹¹

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cont.

We recommend that that the Section 106 consultation process be used to develop alternatives and modifications to the project design that would embody “all possible planning to minimize harm” to these historic resources, including the potential for avoidance,¹² and that the Section 4(f) exemption for archaeological resources (which is both inapplicable by its terms and, in our view, unlawful) should not be invoked.

¹⁰ Although the Section 4(f) regulations state that the “exemption” for archaeological resources applies regardless of whether data recovery is actually undertaken or not, 23 C.F.R. § 774.13(b)(1), the National Trust has long taken the position that this regulation is unlawful. The one court case that upheld an earlier version of this regulation was conditioned on a “safeguard” that is no longer included in the regulation—the assumption that the agencies would “develop a ‘resource recovery plan’ that would remove and preserve the significant items.” *Town of Belmont v. Dole*, 766 F.2d 28, 33 (1st Cir. 1985), cert. denied, 474 U.S. 1055 (1986) (quoting 23 C.F.R. § 135(f)(1) (1984)).

¹¹ See, e.g., http://quarriesandbeyond.org/states/ca/quarry_photo/ca-scruz_ixl_gry_photos.html (Fall Creek, CA); http://en.wikipedia.org/wiki/Cowell_Lime_Works (Santa Cruz, CA); http://www.wabashanderiecanal.org/Lime_Kilns.html (Delphi, IN); http://www.westgov.com/recreation/rec_parks_lime.html (Westminster, MD); http://www.boltonconservationtrust.org/index.php?pg=8&id_trail=3 (Bolton, MA); <http://www.townofchelmsford.us/conservation/limequarryinfo.htm> (Chelmsford, MA); <http://www.nps.gov/bica/historyculture/lime-kiln-and-limestone-quarry.htm> (Bighorn Canyon, MT); <http://www.houstoncochamber.com/limekiln-history-cms-102> (Erin, TN); <http://theateratlimekiln.org/support-us/sponsorship-opportunities-2/> (Lexington, VA); <http://www.village.grafton.wi.us/DocumentView.aspx?DID=604> (Grafton, WI); <http://sanjuanislandtrails.org/trailsw/lime-kiln-park/> (San Juan Island, WA).

¹² The nature and magnitude of the adverse effects to these historic resources are greater than was assumed in 2003, and therefore, the measures to avoid, minimize, and mitigate harm should not be limited to those in the 2003 MOA or those described on p.6-8.

Ms. Janice Osadcuk
Mr. John Sacksteder, P.E.
January 9, 2012
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Page 6-8: Potential for Constructive Use

The draft Section 4(f) Evaluation applies an erroneous and unlawful standard in evaluating whether any historic properties would be affected by “constructive use.” The document states that any adverse effects on historic properties “would not impair the use of the properties *to the extent that they would no longer be eligible for NRHP listing*; and therefore, they would not result in a constructive use for any historic property or district.” DSEIS, p.6-8 (emphasis added). Even the FHWA’s own Section 4(f) regulations do not limit “constructive use” to cases where the adverse effect is so severe as to destroy the National Register-eligibility of a historic property. See 23 C.F.R. § 774.15(e). All constructive use determinations need to be reevaluated based on the proper standard.

N.5

Thank you again for the opportunity to comment on the Draft Supplemental EIS for this project. We look forward to reviewing the responses to these and other comments.

Sincerely,



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