Raymond Hess <hessr@bloomington.in.gov>

# RE: I-69 Questions from the BMCMPO Policy Committee

1 message

**Robert.Tally@dot.gov <Robert.Tally@dot.gov>** **Wed, Oct 5, 2011 at 7:58 PM**
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Raymond,

Michelle and I reviewed the 109 questions and identified those that we felt were appropriate for FHWA to respond to. In all, we have provided responses to 30 questions in the attached response. We believe that the remainder of the questions are best answered by INDOT. If you feel otherwise or need additional clarifications, please don't hesitate to contact me or Michelle Allen.

Respectfully,

Robert Tally

Division Administrator

Federal Highway Administration

Indiana Division

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**From:** Raymond Hess [mailto:hessr@bloomington.in.gov]
**Sent:** Wednesday, September 21, 2011 11:29 AM
**To:** Tally, Robert (FHWA)
**Cc:** Mark Kruzan; markastoops@yahoo.com; mstoops@co.monroe.in.us; Baker, Andrew J; Coyne, Lynn H; McDaniel, Kent Edward; DuMontelle, Jay (FHWA); Allen, Michelle (FHWA); Sarvis, Samuel; Stark, Jim; Flum, Sandra; Josh Desmond; Richard Martin
**Subject:** I-69 Questions from the BMCMPO Policy Committee

Mr. Tally,

Please find attached to this email the questions submitted by Policy Committee members concerning I-69.

Please contact BMCMPO staff if additional information is needed.

Thank you,

Raymond Hess

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**RESPONSE I69 BMCMPO Questions (Tally).docx**
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1) Of the projected job increases due to I-69, what percent of those will be new jobs as opposed to transfers from other regions of the state and country? *Andy Ruff*

2) Please provide an official document from the Dept. of Defense that indicates that I-69 is crucial to the survival of Crane. *Andy Ruff*

3) What is the net economic impact (subtracting out any economic activity shifted from other parts of the state) compared with the net economic impact of repairing the aforementioned bridges along with the over 400 bridges that currently have the same structural rating that the bridge in Minnesota had before its collapse? *Andy Ruff*

4) How much more will it cost to upgrade IN-37 to an interstate from Bloomington to Indianapolis than constructing I-69 along the least expensive alternative route from the Section 3 terminus to I-70? How much quicker could an interstate connection from Evansville to Indianapolis be completed due to these cost savings *Andy Ruff*

5) What rule allows fiscal constraint to be determined for the MPO portion of I69 in the MPO jurisdiction when construction funds are not included in the TIP? *Richard Martin*

Several regulations are used to determine fiscal constraint on the STIP (23 CFR 450.216), TIPs (23 CFR 450.324), and Metropolitan Transportation Plans (23 CFR 450.322). FHWA utilizes the financial demonstrations shown in these documents when determining whether fiscal constraint requirements have been met. Currently, the federally approved 2012-2015 Indiana STIP includes Preliminary Engineering (PE) and Right-of-Way (ROW) for the I-69 Section 4 project both outside and within the MPO boundary and Construction outside the MPO boundary. In addition, the 2007 INDOT Long Range Plan was administratively modified on August 9, 2010 to move the I-69 Section 4 project from the 2016-2020 time period using innovative finance to the 2011-2015 time period using traditional funding. Through these documents, FHWA has determined that full funding can reasonably be anticipated to be available for the entire I-69 Section 4 project (including construction) within the time period estimated for completion.

6) Does INDOT, according to Federal guidelines, have proper fiscal constraint to construct I-69 section 4? *Richard Martin*

The Federal Highway Administration (FHWA) approved the State's STIP, which contained a fiscal constraint determination. Section 4 of I-69 was included in the STIP for the portion outside of the BMCMPO's boundary and by referencing BMCMPO's current 2010 – 2013 TIP, the portion inside the BMCMPO's boundary is included as well. By taking this action, FHWA has determined that this project is contained in a fiscally constrained STIP and TIP. Phases of the project that are identified in the STIP and TIP may be advanced. However, until construction costs for the project are included in the TIP, FHWA can only approve construction for areas of I-69 outside the MPO's planning area boundary.

Please see INDOT's website for the STIP document at http://www.in.gov/indot/files/STIP2012-2015Final.pdf.

7) Does failure of the MPO to add the portion of I69 inside the BMCMPO's boundary to its TIP for construction, mean the determination of fiscal constraint for Section 4 is no longer valid and must be revisited? *Richard Martin*

From FHWA perspective, this is not a fiscal constraint issue, it is an issue of a project (or the portion of a project) within the BMCMPO boundary being included in approved transportation plans and transportation improvement programs and therefore able to receive a Federal Authorization for construction. If the portion of the project within the BMCMPO were not to be added to the TIP for construction, then FHWA would not be able to authorize federal funds to construct that portion. However, portions of the project outside of the BMCMPO boundary would be able to be authorized and approved for construction using federal funds because they would be contained in the approved STIP.

8) Indiana currently has many bridges in need of upgrades and repairs. Some major bridges, such as the Cline Ave, Bridge, MLK Bridge, and Sherman-Minton Bridge area closed to traffic.How has the need to repair and upgrade these bridges affected INDOT's budget? *Andy Ruff*

9) What is the estimated economic losses state-wide due to bridge closings as well as lane and weight restrictions? *Andy Ruff*

10) Could you please list INDOT's projected total revenues and total expenditures for the years 2012 to 2015. *Andy Ruff*

11) List all I-69 related activities that have taken place in Section 4 and the total amount of money already spent in Section 4. *Andy Ruff*

12) List all I-69 related activities including purpose, dates of activities, specific location, costs, detailed results, contractors that have taken place in Section 4 and the total amount of money already spent in Section 4 *Andy Ruff*

13) INDOT has stated that some of the toll road money budgeted for Sections 1-3 will be left over and used to help build Section 4. How much of the original $700 million budgeted is left over and will be used for Section 4? *Andy Ruff*

14) What is the current total cost estimate for all I-69 related activities for Section 5, including ALL costs not just construction costs? *Andy Ruff*

15) What innovative funding options are being considered for funding Sections 5 and 6? *Andy Ruff*

16) What is the current estimate of lost revenue for Monroe Co.due to the construction of I-69? Please include property tax losses and losses to businesses, especially during construction and any other anticipated losses. *Andy Ruff*

17) Will Indiana receive any additional federal funds to construct I-69 than it's normal share of federal funds that would be received by not building I-69 or building along a less costly route? Since earmarks have been discontinued by Congress, what is the source of any additional funds, and what additional amount beyond Indiana's normal share is projected? What are the projections based on? *Andy Ruff*

18) Is completing I-69 to Indianapolis a higher or lower priority than repairing the structurally deficient bridges around the state? Are priorities set based on net economic impact? If not, on what basis are highway priorities set? *Andy Ruff*

19) What budget line of INDOT will fund construction of I69 in the MPO jurisdiction if the MPO does not include that portion in its TIP? *Richard Martin*

20) By which mechanism will funds be moved to the I69 budget line for construction if the MPO does not approve the use of Federal funds for I69? *Richard Martin*

21) What amount of funding over-run is allowed for the I69 project in Monroe County? *Richard Martin*

22) What is the process for deciding to fund design changes not recommended in the EIS 2 document? *Richard Martin*

23) What process should be employed to fund changes outside Section 4, the need for which arises as a consequence of Section 4 use, and inability to construct as part of Section 5 prior to the opening of Section 4 (specifically the Vernal Pike underpass, signalization of existing 37 intersections, and additional left turn lanes)? *Richard Martin*

24) How will the State fund Section 5 if the MPO does not include Section 5 in its TIP? *Richard Martin*

25) If MPO adopts a resolution committing to not include any portion of I69 Section 5 into its TIP and maintains the effect of that resolution through continued requests from INDOT, does the state have sufficient resources to fund that project? *Richard Martin*

26) If MPO adopts a resolution committing to not include any portion of I69 Section 5 into its TIP and maintains the effect of that resolution through continued requests from INDOT, i.e. no approval for preliminary design, ROW acquisition, or construction, can the state achieve fiscal constraint for Section 5 to receive matching funds from FHWA for that portion outside of the MPO jurisdiction? *Richard Martin*

No. If the MPO does not include I-69 Section 5 into its TIP then any project advanced would not comply with federal requirements for planning. This is the case even if the I-69 project is advanced with no federal funding. Federal planning requirements require that regionally significant projects be included in a metropolitan planning areas TIP, regardless of the source of funding.

FHWA would also not be able to approve a Record of Decision for Section 5 without at least the next phase of the project being included in the BMCMPO TIP. FHWA reminds the MPO and State agencies that Title 23 regulations require a "3C" planning process, which is continuing, cooperative and comprehensive.

27) Would the failure of the state to achieve fiscal constraint for Section 5 resulting from MPO action make the Section 4 ROD untenable as a means to achieve the larger goal of I69 through Indiana? *Richard Martin*

Fiscal constraint for Section 5 does not affect the other five sections of the project. The Tier 1 Record of Decision allowed the I-69 project to move forward with six sections of logical termini and independent utility. These projects are allowed to move forward independently.

28) What limits, in terms of dollars or time, exist for recovery by the State of funds spent At Risk, i.e. without Federal approval for recovery? *Richard Martin*

The Federal Highway Administration cannot dictate what the state can do with its own funds. However, to be eligible for federal reimbursement or used as a match for federal funds, any "at risk" activities must have followed all federal laws and requirements.

29) Is the State required to continue projects already in the TIP and STIP at funding levels and schedule specified or can they unilaterally modify funding or schedule without MPO approval? *Richard Martin*

A state is not required to continue projects included in a TIP or STIP. Projects to be authorized for federal funds by FHWA are requested by the State. At that time, each project must be included in the STIP before it can be authorized. However, there is no requirement that what is contained in a TIP or STIP be required to advance or authorized. In many cases, what is first identified may change either in the dollar amount or year when it occurs. Federal regulations found in 23 CFR 450 also define administrative modifications and amendments to STIP and TIP documents. Page 10 of the Indiana STIP (http://www.in.gov/indot/files/STIP2012-2015Final.pdf) further defines what the state considers administrative modifications and amendments. It is appropriate for the State and MPO to define these processes through bylaws and agreements.

30) Is there a limit for the amount of funding that is not approved but still allows a project to go forward, i.e. what extent or percent of total budget is considered still within fiscal constraint requirements for Federal funding? *Richard Martin*

STIP fiscal constraint covers the project and phases found within the four year horizon of a STIP document, as well as those incorporated from the MPO's TIPs. However, fiscal constraint for phases beyond the four years is not constrained in the STIP.

Per 23 CFR 450, amendments require a redemonstration of fiscal constraint, whereas administrative modifications do not. Again, please reference the Indiana STIP for further clarification on how the State processes administrative modifications verses amendments. In

situations not clarified through the STIP and MPO bylaws, the project sponsor may consult with FHWA to determine if an amendment or additional coordination is required.

31) With its refusal to accept our new TIP can INDOT withhold our Federal funds and/or redirect those funds for construction of I-69? *Richard Martin*

The State has the ability to refuse to accept the new TIP and the State does have the authority to withhold Federal-aid funds.

23 CFR 450.330 (b) states that: "In metropolitan areas not designated as Transportation Management Agencies (TMAs), projects to be implemented using title 23 USC funds or funds under title 49 USC Chapter 53, shall be selected by the State and/or the public transportation operator(s), in cooperation with the MPO from the approved Metropolitan TIP." The BMCMPO is designated as a non-TMA and therefore, all projects advanced by the MPO are at the discretion of the State. We expect that the 3C planning process will culminate in an agreed upon list of projects to be included in the TIP and STIP for advancement.

32) Since at present the expiration of the current TIP is June 26, 2013, are Federal funds not available for any BMCMPO projects after that date? *Richard Martin*

If the TIP expires and a new TIP has not been approved by the MPO and Governor by that date, then no new federally funded projects could be authorized and approved. All currently funded (authorized) projects would be able to continue, but no new authorizations would occur. All federal funds flow from FHWA through the State. In the unfortunate event that the BMCMPO TIP were to expire, the State would ultimately decide where else in the State they would use any funds that they had previously committed to the BMCMPO area.

33) Are there other ways for the MPO to access Federal funds that do not include INDOT STIP requirements? *Richard Martin*

FHWA is only able to speak for federal funding from our federal agency. FHWA cannot authorize or approve funding for projects within an MPO boundary that are not included in a current STIP. We believe this is also the case for funding from the Federal Transit Administration.

34) Given that 23 CFR 450.330 (b) states that: "In metropolitan areas not designated as Transportation Management Agencies (TMAs), projects to be implemented using title 23 USC funds or funds under title 49 USC Chapter 53, shall be selected by the State and/or the public transportation operator(s), in cooperation with the MPO from the approved Metropolitan TIP.", under which circumstances does the "State or public transportation operator(s)" govern the expenditure process between the MPO and FTA? *Richard Martin*

INDOT is responsible for administering certain FTA funds to the local agencies. FHWA defers to FTA and INDOT for specific details on funding transfers. However, all FTA and FHWA funded projects must be in an approved TIP and STIP. Only expenditures or costs that

occur after federal project authorization can be reimbursed. Costs that occur without federal authorization cannot be reimbursed by either FHWA or FTA. However, some "at risk" costs are eligible to be counted towards the state/local match on projects.

35) Can FTA funds be used as match for interstate construction? *Richard Martin*

No, FTA funds cannot be used to match FHWA interstate construction funds.

36) To what extent are Federal funds directed for public mass transportation support eligible for discretionary allocation by the State? *Richard Martin*

FHWA defers to FTA and INDOT on specific details on fund transfers for transit programs and how they are managed. However, all FTA and FHWA funded projects must be in an approved TIP and STIP before they can be authorized by either federal agency.

37) Which projects in the list of SR37 improvements prior to Section 5 construction have been programmed to be completed concurrent with Section 4 construction? *Richard Martin*

38) Do Federal or State $$ limits exist for elements of INDOT's Interstate programing phases? Would you explain the $$ amounts and how they affect programming? *Jack Baker*

39) Will INDOT and their contractor be following Monroe County regulations for building in karst areas? *Andy Ruff*

40) Does this route alignment for Section 4 meet acceptable criteria for environmental impacts? *Richard Martin*

Per National Environmental Policy Act (NEPA) requirements, ongoing consultation with State and Federal Resource Agencies occurred throughout the project development process for this project. The US Fish and Wildlife Service, US Environmental Protection Agency, Indiana Department of Environmental Management, and Indiana Department of Natural Resources, among others, were consulted throughout the Tier 1 and Tier 2 processes. These agencies were consulted to ensure Federal and State environmental requirements were met, and they also assisted with avoidance, minimization and mitigation decisions. FHWA determined that I-69 Section 4 meets federal requirements and issued a Record of Decision on September 8, 2011.

41) Could Section 4 be built at acceptable criteria for environmental impacts if it used the full cost project specifications? *Richard Martin*

Chapter 6 of the FEIS provided information regarding the use of variations in design criteria in order to better estimate the possible range of construction costs for Section 4. While a range of both costs and impacts were shown in the FEIS, it would not be correct to treat the initial design criteria and low-cost design criteria for a particular alternative as distinct alternatives for purposes of NEPA evaluation. The use of this approach provided an estimate

of the level of impacts and costs using these two sets of criteria. It is anticipated that the low-cost design elements will be suitable in some portions of the project, but not others. The use of these criteria will be made during final design. It should be pointed out that the selection of the preferred NEPA alternative was made by comparing the range of impacts and costs for alternatives, not specifically using one set of design criteria.

42) What standards will be employed to safe-guard over sensitive karst features in or near the I69 corridor? *Richard Martin*

43) Karst area construction activities / mitigation *Bill Williams*

44) Did INDOT use the latest air quality conformity data and traffic modeling data to determine the impact of increased traffic emissions on Bloomington and Monroe County? *Andy Ruff*

45) What air quality and traffic models were used for these determinations? *Andy Ruff*

46) Were changes in design, such as the deferral of the interchange at SR-37. taken into account in the air quality modeling? If not, please explain why these changes were not addressed. *Andy Ruff*

47) Since Section 5 will not be constructed for some time, was this taken into account when doing the air quality modeling? For example, there are many stop lights on existing SR-37 which means more idling and more emissions as traffic increases. *Andy Ruff*

48) What is the current and projected air quality impact of I69 Sections 4 and 5 over the next 30 years if the low cost alternative is implemented on Section 4 and Section 5 construction is delayed for 10 years? *Richard Martin*

49) Has anyone determined the additional emissions from truck traffic on a 4% versus a 5% grade and the cumulative affect this will have on air quality in the areas of the proposed steeper grades? *Richard Martin*

50) Air quality – 2004 data vs. 2009 data *Bill Williams*

51) What is the expected effect of interstate traffic upon our air quality? Is a study required by State or Federal agencies to determine the effect? If not required will one be done? What is INDOT's current opinion – will Interstate traffic have a significant effect; will it take us over the limit for a non-attainment area? What is INDOT's responsibility if this occurs? *Jack Baker*

In 2005, EPA designated Greene County a "maintenance area" for ozone. Because of the maintenance designation, the I-69 project (Sections 3 and 4) in Greene County is subject to transportation conformity requirements found in 40 CFR Part 93 as amended. A conformity demonstration for Greene County, Indiana's 8-hour ozone maintenance area for the I-69 Tier 2 Section 4 Final Environmental Impact Statement (FEIS) was completed in December 2010. Before it could be approved, the I-69 Section 4 Tier 2 FEIS was required to demonstrate

compliance with the Clean Air Act by demonstrating conformity with the State Implementation Plan budgets. FHWA, IDEM and the US EPA completed their reviews and found that the analyses and documentation meet the criteria outlined in the conformity rule. For more details regarding the analysis and FHWA, IDEM and the USEPA comments see the Tier 2 Section 4 FEIS **Appendix MM**, *Greene County Air Conformity***.**

52) The FEIS indicates that Monroe County's VMT is expected to increase by 22% (p. 5-277) by 2030 as a result of I-69. What assurances is INDOT willing to provide that this will not result in reduced air quality and non-conformity with the Clean Air Act? *Staff*

53) What are the traffic estimates for the stop light at SR-37? *Andy Ruff*

54) What happened to the study done by BLA for App. NN? :How much were they paid? *Andy Ruff*

55) Why was Appendix NN removed from the Section 4 FEIS? How much was BLA paid to do the Appendix NN Study? Who made the decision to remove Appendix NN after the FEIS was issued? Who at the Federal Highway Administration approved the ROD knowing Appendix NN was removed post issuing of the FEIS. If FHA did not know about removal of Appendix NN from the FEIS how was the Record of Decision for Section 4 a valid decision? *Andy Ruff*

This appendix was a placeholder in the I-69 Section 4 FEIS, but it was not used. An analysis of the Munson and IKC alignments was completed, and a summary of that analysis was included in the response to comments section of the Section 4 FEIS.

56) What projections do you have for truck and non-truck traffic increase, in five year increments, over the first 30 years of Section 4 use? *Richard Martin*

57) What local emergency response entities will be held responsible for accidents on I-69? For example, will the Indian Creek Firefighters to responsible for accidents on I-69 through their area of responsibility? *Andy Ruff*

58) What are the anticipated cost to Bloomington/Monroe County due to I-69 induced crime? *Andy Ruff*

59) What specific criteria must be met to allow an emergency access on Burch Road for the purpose of decreasing response time to environmental emergencies unique to the new terrain highway? *Richard Martin*

It is in the national interest to maintain the Interstate System to provide the highest level of service in terms of safety and mobility. Adequate control of access is critical to providing such

service. The type of access being sought on Burch Road is directly related to the FHWA policy regarding Locked Gate Access Points on the Interstate System as follows:

1. Locked gate access points on the Interstate system are used primarily to provide access for fire, medical and other emergency vehicles to reduce travel time, for maintenance activities at remote utility facilities and as part of the right-of-way consideration, to provide land access in remote locations.
2. Any request for locked gate access should be reviewed to ensure that vehicles can enter the Interstate safely, appropriate sight distance is available to and from the access, and the access is located such that the intended function is served (distance to nearest interchange and/or median crossover). Each new locked gate access approval needs to incorporate the following conditions:
    a. The gate shall be locked at all times except when opened for passage of the authorized vehicles. The distribution of keys for the lock should be limited.
    b. The access roadway will be constructed of any inconspicuous natural material to discourage unauthorized use.
    c. The purpose of the access should be specified. This includes demonstrating how this section of I-69 differs from any other similar sections of the Interstate System where emergency responders are required to respond to safety or environmental emergencies.

Additional documentation that will be required includes:

1. Map with locations of planned interchanges, Emergency responders and treatment facilities (e.g. hospitals).
2. Distances and run times (estimated since this is a new facility) for incidents at various locations along the interstate for both with and without locked gate.
3. Anticipated number of incidents per year for which gate would be used.
4. Location description of proposed gate and access along with site characteristics (sight distance, curves, grades, etc.). Need assurance that this site will not cause undue traffic safety issues.
5. Description of type of surface for proposed access. (not pavement)
6. List of people (positions) with keys or ability to open gate.
7. Description of operations of gate, including assurance of gate being closed and not used except by emergency vehicle on run.
8. Agreement that if gate is found open or used by other than emergency vehicles on run more than X number of times, gate access will be reneged.

INDOT and FHWA will make the final determination for approval based on the information provided. Additional information on additional access to the interstate system can be found on FHWA's design website located at http://www.fhwa.dot.gov/design/access.cfm.

60) How do we delay the opening of I69 Section 4 until after specific safety concerns for existing SR 37 intersections are addressed with sufficient roadway improvements to meet anticipated traffic flow needs? *Richard Martin*

61) Emergency access – Harmony (ICFD) & Burch (VBFD) *Bill Williams*

62) Commitment to SR 37 improvements prior to Section 5 construction - are the projects listed in the FEIS real projects? I know the INDOT has began design of the intersection improvements at State Road 45 with Harmony / Garrison Chapel Road and with Breeden Road. Progress? Vernal Pike has the highest crash rate in the area and we are extremely concerned with the safety of travelers in this area, as well as the other intersections mentioned in the FEIS. What commitment will INDOT make to assure they become a reality as soon as possible? *Bill Williams*

63) Appendix QQ indicates several intersections along SR37 beyond the project limits of Section 4 have demonstrable safety concerns which will likely be exacerbated by the construction of Section 4. When will INDOT proceed with improvements to SR37/Vernal Pike and SR37/Bloomfield Rd? When can the BMCMPO expect a TIP amendment request for these improvements? Will these improvements be in place by the time I-69 is complete? If each section of I-69 is deemed to have independent utility, how can Section 4 rely on improvements anticipated as part of Section 5 to address these safety concerns, especially in the absence of a schedule or budget for Section 5? *Staff*

64) Does Crane have plans to store nuclear waste on site? If so, will I-69 facilitate that plan? *Andy Ruff*

65) Please list all changes in construction that have and are occurring, after the ROD was issued, in Sections 1-3. *Andy Ruff*

66) Numerous changes in design and construction have occurred, after the ROD was approved, in Section 1-3. Does INDOT anticipate similar changes in Section 4? *Andy Ruff*

67) What is the life expectancy of asphalt versus concrete pavement for a major truck corridor such as I-69? *Andy Ruff*

68) What thickness of pavement will be used for Section 4? *Andy Ruff*

69) As part of the I-69 project, will intelligent traffic systems be installed to monitor traffic? *Andy Ruff*

70) List all areas in Monroe County that will be subject to blasting during the construction of I-69. *Andy Ruff*

71) How can the MPO become more involved in the analysis and decision process related to design trade-off studies to assure that local concerns are given greater priority in a regional context where Bloomington and Monroe County are the dominate economic influence? *Richard Martin*

72) Since the justification of steeper grades on Section 4 seems very weak in terms of risk assessment, what additional studies or data have been collected to support the low cost recommendation in terms of risk to life and prperty? *Richard Martin*

73) What specific mitigation steps will be taken to eliminate the increased soil loss caused by the low cost roadway side slope implementation that was not considered in the FEIS. *Richard Martin*

74) Is it possible to construct Section 4 in the assigned alignment corridor without resorting to low cost construction alternatives and still meet environmental impact criteria? *Richard Martin*

75) Intersection vs. Interchange vs. Roundabout at SR 37 *Bill Williams*

76) Truck Grades - the FEIS references a study conducted in Brazil as it relates to grades for trucks. In reviewing the document and having had correspondence with the author of the study, the referenced study may not be suitable for application to this project. It specifically states that additional data and study should be conducted. We are concerned that this has not been thoroughly reviewed and have concerns with the application of the Brazil study. Also, as it relates to truck grades over the study period of the FEIS, what data or further studies have been conducted to account for additional trucks in the 20 year design period? Has anyone determined the additional emissions from truck traffic on a 4% versus a 5% grade and the cumulative affect this will have on air quality in the areas of the proposed steeper grades? *Bill Williams*

77) Slopes - There has been a lot of work reviewing the clear zone requirements relative to a 3:1 slope versus a 2:1 slope. It appears the safety issue has been adequately addressed with the 30 foot clear zone requirement. The concern we have with increasing the slope is the erodability of the soils in this area. In reviewing the Universal Soil Loss Equation LS table, it appears that soil loss would almost double given the proposed increase in slope, going from LS factor of 6.5 to LS factor of 13 over a 50' horizontal area. What will be done to mitigate this and how will the slopes be maintained? *Bill Williams*

78) In 2010, INDOT requested a TIP amendment which included construction of I-69 at a cost of $61,693,000. In 2011, the I-69 construction cost within the urbanized area was $32,000,000. Please specify the changes to the project which have resulted in this change to the construction cost in the urbanized area. *Staff*

79) Amenities, such as bicycle and pedestrian paths, etc., have been promised to Bloomington/Monroe County. In light of funding shortfalls and other pressing needs, are these amenities still going to be built? What are the "consequences" for INDOT if they are not? *Andy Ruff*

80) What agreements need to be made now so that in the future as project plans and funding sources are programmed for non-vehicular use of the I69 ROW, as identified in the

Monroe County Alternative Transportation Plan, that use of selected portions of the corridor is made available? *Richard Martin*

81) Why is a parallel multi-use trail not incorporated into the project? Please provide specific rationale. What would have to be done to incorporate such a facility into the I-69

project? *Staff*

a. The inclusion of I-69 in the adopted LRTP has been cited as justification for the I-69 TIP amendment. The LRTP specifically calls for a parallel multi-use trail to be incorporated into the project. How can the LRTP be used to support one aspect of the project (road) and not the other (trail)? *Staff*

b. INDOT's response to the BMCMPO's comment on the inclusion of the trail states, "INDOT will support the efforts of other government agencies who wish to consider (as a separate project) multi-use facilities parallel to I-69." Please identify what "other government agencies" are expected to build the trail. Why would "other government agencies" be expected to build the trail and not the interstate? *Staff*

c. Given the effort required to procure right-way, design, and construct a statewide multi-use trail, why has the State not planned to incorporate a trail in all Sections of the project despite it being identified as a Priority Visionary Trail in the Indiana State Trails, Greenways and Bikeways Plan? *Staff*

d. National Highway System funds can be used for bicycle transportation and pedestrian walkways (23 USC 217(b)). The State has claimed that other sections of I-69 have come in under budget and are ahead of schedule. If this is true, is it correct to assume that funding is available to include a multi-use trail into the project? *Staff*

82) In the July 11, 2011 letter to INDOT approving the FY 2012-2015 STIP, FHWA reminded INDOT that it must take action on the BMCMPO FY 2012-2015 TIP "within a reasonable time." BMCMPO approved the TIP on May 13, 2011, but the state has not submitted it to FHWA/FTA for certification yet.

Several other MPOs around the state have adopted 2012-2015 TIPs around the same time as BMCMPO, all of which have been certified (See below). TIP approval letters indicate that the TIPs were only reviewed for accuracy and compliance with SAFETEA-LU before certification. In light of the quick approval of other TIPs, how does INDOT justify the unreasonable delay in submitting the BMCMPO 2012-2015 TIP to FHWA/FTA for certification?

Indianapolis – May 4, 2011 / Certified May 26, 2011
MCCOG – April 7, 2011 / Certified May 18, 2011
Columbus (2012-2016 TIP) - April 27, 2011 / Certified April 28, 2011
Fort Wayne – April 12, 2011 / Certified May 24, 2011
Tippecanoe County – April 20, 2011 / Certified May 18, 2011
Muncie – April 20, 2011 / Certified May 18, 2011
MACOG – April 13, 2011 / Certified April 25, 2011
Terre Haute – May 10, 2011 / Certified May 18, 2011

OKI – April 14, 2011 / Certified April 28, 2011
*Mark Stoops & Andy Ruff*

83) Given that the 1978 MOU governing relations between BMCMPO and INDOT gives the MPO sole responsibility for "[d]evelopment and endorsement of a Transportation Improvement Programs" (sic), from where does INDOT believe it is given the authority to withhold an adopted TIP from federal certification? *Mark Stoops & Andy Ruff*

84) According to Chapter 1.4 C of the BMCMPO Bylaws, "[r]eports, programs, and plans become official process documents following adoption by resolution of the Metropolitan Planning Organization Policy Committee." Therefore, the 2012-2015 TIP became the official TIP upon adoption by resolution on May 14, 2011. Since the operating agreement currently in place does not grant INDOT the authority to override the decisions of the MPO, where does INDOT attain the authority to continue to recognize the 2010-2013 TIP and to represent to FHWA that the previous TIP remains valid? *Mark Stoops & Andy Ruff*

85) A Record of Decision (ROD) for a federally funded transportation project within an MPO's border can not be issued if the project is not included in that MPO's current TIP. If the 2012-2015 TIP is certified by FHWA/FTA without Section 4 of I-69 included, will the ROD be invalidated? Alternatively, if the 2010-2013 TIP is amended to remove Section 4 of I-69, will the ROD be invalidated? Does INDOT believe that the portion of the project outside the MPO boundary may continue if the project is not included in the TIP? If so, from where does INDOT get its authority to proceed with an unapproved project? *Mark Stoops & Andy Ruff*

FHWA has approved the ROD for Section 4 of the I69 project. This decision was based on the next phase of Section 4 of the I-69 project being included in the STIP and TIP. This decision will remain valid unless FHWA determines the need for a Supplemental Environmental Impact Statement (SEIS), which is not anticipated at this time. If the 2012-2015 TIP were to be approved by the Governor and amended into the STIP without Section 4 of I-69 included, the ROD will not be invalidated. If the 2010-2013 TIP were to be amended to remove Section 4 of I-69, and that amendment was approved by the Governor and amended into the STIP, it would similarly not invalidate the ROD. In either case, INDOT may continue to advance to construction that portion of the project outside of the MPO boundary at their discretion.

86) Does INDOT consider the construction of Sections 1-4 to have independent utility and a stand alone project? Even if Sections 5-6 are not built? *Andy Ruff*

87) Does the decision regarding the independent utility of I69 Sections 1 thru 6 mean that there is no dependency between the sections with regard to completion of I69 through Indiana? *Richard Martin*

88) Has a Project Management Plan been competed for Section 4? If so, please supply us with a copy of that plan. *Andy Ruff*

FWHA received a Draft Project Management Plan (PMP) from INDOT on September 6, 2011. The PMP was approved by FHWA on September 26, 2011.

89) Please supply with complete plans for the EIS process through construction and completion of Sections 5 and 6. *Andy Ruff*

90) At what date does a vote by the MPO become irrelevant regarding the expenditure of federal funds for that portion of I69 in the MPO jurisdiction, i.e. when does FHWA

eliminate the use of Federal funds for construction in Section 4 within the MPO jurisdiction? *Richard Martin*

Federal funding has currently been approved for preliminary engineering and right-of-way within the MPO's planning area boundary. FHWA has not approved the use of federal funds for construction within the MPO boundary because the MPO TIP has not been amended to include that phase within the boundary. Once construction within the MPO boundary has been amended into the TIP and approved by the Governor, INDOT will send the STIP amendment to FHWA for consideration.

91) Are there any mechanisms by which the State can use Federal funds to construct I69 within the MPO jurisdiction without inclusion of that portion of I69 in the MPO TIP? *Richard Martin*

No, a TIP amendment to include the construction phase of Section 4 within the metropolitan boundary is necessary before a Federal Authorization can be made to use federal funds to construct that portion.

92) Why has the State not engaged with the MPO within a Context Sensitive Solutions process, as recommended by FHWA, as the means to resolve conflicts between State and Local standards to find solutions that work for both the State and the Community? *Richard Martin*

93) Does STIP failure to show I69 Section 5 as a scheduled project for 2012 – 2015 mean that they do not meet the requirements for STIP inclusion or that they expect to not be performing any I69 Section 5 work during 2012 -2015? *Richard Martin*

In order for FHWA to approve an amendment to the STIP showing the use of federal funds for a project within an MPO boundary, that portion of the project must also be listed within the metropolitan TIP.

94) Does the use of Federal funds for highway projects within the MPO jurisdiction always require concurrence in MPO TIP whether or not it is included in STIP? *Richard Martin*

The project must be amended into the STIP before federal funds can be authorized. In order for a project within an MPO boundary to be in the STIP, it must first be included in that MPO's TIP.

95) Can INDOT continue to reject our most recent adopted TIP; for how long? What are Federal requirements regarding State acceptance or rejection of a locally adopted TIP? *Richard Martin*

23 CFR 450.324 provides the Federal requirements for development and content of the Transportation Improvement Program (TIP). Section (a) of this citation requires that a TIP be updated at least every four years, and be approved by the Metropolitan Planning Organization

(MPO) and the Governor. This citation further states that the TIP may be updated more frequently, but the cycle for updating the TIP must be compatible with the Statewide Transportation Improvement Program (STIP) development and approval process. The current TIP for the Bloomington/Monroe County Metropolitan Planning Organization (BMCMPO) is from 2010 to 2013, which remains in effect until it either expires or is replaced by a TIP approved by the MPO and Governor. If either the Governor or the MPO do not approve the TIP, then it is not valid and cannot be included in the STIP. That is why the new Indiana Department of Transportation (INDOT) STIP was approved with the 2010 to 2013 TIP referenced as the BMCMPO's current TIP. The expiration of the current TIP (June 26, 2013) is the critical date after which no further federal actions on projects would be able to be taken unless a new TIP has been approved before then by the MPO and Governor.

96) Was it appropriate for INDOT to ask that I-69 be included in our local TIP prior to the completion of a final EIS? *Richard Martin*

Yes, it was appropriate for INDOT to request that I-69 be included in the TIP prior to the completion of the EIS process. Federal regulations require that before signing a Record of Decision (ROD), that the selected alternative be consistent with the TIP, STIP and Plans for the MPO and State. The Federal Regulations further require that at least the next phase of the project (final design and/or Right-of-Way) be included in the TIP and/or STIP before a ROD is signed.

97) Is the MPO obligated to now include construction of this project in our TIP if environmental questions still cannot be answered during the September 9 meeting? *Richard Martin*

The MPO as a policy body may decide what projects are included in their TIP and Plan. The MPO is not "obligated" to act on a sponsor's request, but the Policy Board is to act in accordance with their By-Laws, Planning Agreement and 3C process with the State when voting on such requests.

98) To what extent can a local community standard be over-ridden by state and federal authorities to promote regional objectives? *Richard Martin*

As part of FHWA's oversight of State DOTs, we approve design standards used for Interstate and other State Highways which are to be used for Interstate and National Highway System (NHS) projects regardless of funding source and for all other federally funded highways off of those systems. The use of locally developed standards is up to the State DOT to decide if that is appropriate. We encourage (but not require) the State and Local Agencies to work through and resolve any conflicts between State and Local standards within a Context Sensitive Solutions process to attempt to find solutions that work for both the State and the Community.

99) Since the Governor and the BMCMPO do not agree upon a list of projects at this point, is it the desire of FHWA that the BMCMPO defer to the state policy? *Richard Martin*

This is an issue that remains to be resolved between the State and the MPO. FHWA is neither for nor against any specific project. In this type of situation, FHWA provides technical assistance and makes eligibility determinations regarding project sponsor requests. It is not the role of FHWA to direct either party to take a specific position regarding these types of issues, rather we encourage the State and MPOs to work together to resolve these types of matters in a cooperative manner.

100) Are any local permits needed for activities related to I69? *Richard Martin*

101) Permits needed from other regulatory agencies to proceed to construction *Bill Williams*

102) Staff is of the impression that the comments submitted by the BMCMPO Director on the DEIS were largely dismissed or remain unresolved. What is FHWA's impression of the responses given by INDOT to the BMCMPO's DEIS comments and how this adheres to the 3-C process? *Staff*

FHWA reviewed all comments and responses as part of our approval of the I-69 Section 4 DEIS, FEIS and Record of Decision. The continuing, cooperative, and comprehensive (3-C) planning process specifically pertains to the way that Metropolitan area transportation plans and programs are intended to be developed, not the NEPA process. However, MPO involvement should occur before, during, and after the environmental process as appropriate.

103) It has been suggested that INDOT may proceed with construction of I-69 up to the urbanized boundary absent inclusion of the project in the BMCMPO's TIP. Wouldn't the BMCMPO and INDOT need to come to resolution of the segment within the urbanized boundary before any aspect of the project proceeds with construction? How could Section 4 function without the connection to SR37? *Staff*

If the portion of the project within the BMCMPO were not to be added to the TIP for construction, then FHWA would not be able to authorize federal funds to construct that portion. However, portions of the project outside the BMCMPO boundary would be able to be authorized and approved for construction using federal funds because they would be contained in the approved STIP. However, if construction within the metropolitan boundary were not to be added to the TIP, then FHWA and INDOT would evaluate and decide which portions of the highway between the Green/Monroe County Line interchange and SR-37 would be appropriate to be constructed and opened to traffic.

104) INDOT has threatened "consequences" if this MPO does not include all aspects of I-69 in its TIP. Indeed, some funds were withheld for a period of time. What are the consequences for INDOT if it does not design and build I-69 in Section 4 to its original plans? For example, numerous changes in design and construction have been made after the ROD in Sections 1-3/ If similar changes are made in Section 4 what are the consequences for INDOT? *Andy Ruff*

23 CFR 771.129 (c) states "After approval of the EIS, FONSI or CE designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action." Reevaluation documents are completed on environmental documents in areas where design changes may cause the project to go outside the original footprint of the project. Any reevaluation completed on a federal oversight project (such as I-69) must be approved by FHWA.

105) By what means does the MPO, and its LPA's, maintain productive relationships in terms of project acceptance, funding, scheduling, and completion, if the MPO does not approve the use of Federal funds for I69 construction in Section 4 and/or preliminary design, ROW acquisition, and construction for Section 5? *Richard Martin*

106) Is the rejection on 06/20/2011 of Monroe County funding for Stinesville Bridge #12 of 4/22/11 for $1,132,100, Unionville Rail Trail of 3/11/11 for $532,680, and Kinser Pike Bridge #46 of 4/22/11 for $1,858,400 = $3,523,180 the result of BMCMPO action in May, and if not, what was the reason for rejection? *Richard Martin*

107) Future MPO funding if TIP does not include I-69 *Bill Williams*

108) Project funding losses to date – (applications denied on 6/20/2011 for Stinesville Bridge #12 of 4/22/11 for $1,132,100, Unionville Rail Trail of 3/11/11 for $532,680, and Kinser Pike Bridge #46 of 4/22/11 for $1,858,400 = $3,523,180) *Bill Williams*

109) If the BMCMPO's actions are unacceptable to the State, is the State willing to document this in writing with suggested remedies? Is it fair for the BMCMPO to assume it is in good standing with the State and that projects will not be adversely affected absent any formal written notification to indicate otherwise? *Staff*