

Appendix K

SUPPORTING DOCUMENTATION

FHWA Early Acquisition Response

This page left blank intentionally



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

Indiana Division

575 North Pennsylvania Street, Room 254
Indianapolis, Indiana 46204

March 10, 2011

In Reply Refer To:
HDA-IN

Mr. Gary Pence
Project Manager, Indiana Department of Transportation
100 North Senate Avenue, IGCN 655
Indianapolis, Indiana 46204

Dear Mr. Pence:

The Federal Highway Administration (FHWA) is writing to you in response to a letter from the Indiana Department of Transportation (INDOT), dated February 22, 2011, regarding your proposal for early land acquisition prior to approval of the Environmental Assessment, Finding of No Significant Impact (FONSI), for the new roadway alignment connecting US 50 to SR 3 on the northwest side of North Vernon (DES 0401402, Contract IR-33030). The new road is an approximately 5.1 mile section that starts from the United States Route 52 near Jennings County Road 450 and terminates at State Route 3, between County Road 300 and 350.

In reviewing the memo, we note that:

1. INDOT is considering the early acquisition of right-of-way along the entire length of the new alignment project;
2. The project includes 64 parcels, and 19 potential relocations;
3. Construction Cost Estimate is \$21,600,000 (twenty one million six hundred thousand dollars); and
4. Construction Contract letting date is February 2012.

In addition, INDOT indicated (during a discussion on this subject between Ms. Eryn Fletcher from FHWA and Mr. Gary Pence from INDOT) that only state funds will be used for the proposed early land acquisition. In accordance with the provision of 23 CFR 710.501(a), the State has the authority to do so. This provision states: "The State may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The State may undertake early acquisition for corridor preservation, access management, or other purposes."

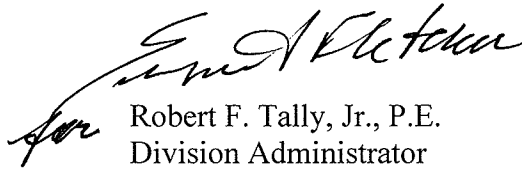
Consequently, INDOT may proceed with the proposal without further involvement of our office. However, we wish to notify you that this action is at the discretion of INDOT and we consider such actions "at risk" with respect to the project as defined as follows:



- Federal funds cannot be used for the acquisition of any properties before the completion of the applicable FONSI except as stated in the following paragraph. Further, the decision on the specific alignment of the highway and its related design elements such as frontage roads and access roads will not be affected by the early acquisition of these properties. State ownership of property will not be used to “pre-determine” the location of the highway. These acquisitions are considered “at risk”. If it is determined that the property is not necessary for the construction of the approved project or committed mitigation, the State will not be able to claim any credit towards the project for that acquisition. Also, if incorporated into the project to be considered for credit, the properties must have been acquired in accordance with applicable Federal laws and regulations. Additionally, only the Fair Market Value (FMV) of property incorporated in the project is eligible for credit. The specific regulations for eligible costs can be found in 23 CFR 710.501(b).
- This restriction on the use of Federal funds does not apply to properties that are acquired due to a determination of hardship or imminent development in accordance with 23 CFR 710.503. Such acquisition which follows INDOT’s established policy which has been approved by FHWA may be eligible for Federal funds but will not be considered in the selection of a final alignment of the project. Also in accordance with the Tier 1 ROD Section 2.1.8, acquisition of property for use as mitigation may also proceed with the use of Federal funds.

Should you have any questions or need additional information, please contact Ms. Eryn Fletcher of this office at (317) 226-7489 or via email at eryn.fletcher@dot.gov.

Sincerely,



Robert F. Tally, Jr., P.E.
Division Administrator

Enclosure

cc:

Karen Hicks, INDOT

Jim Stark, INDOT

Greg Kicinski, INDOT

Kenneth Woodruff, FHWA