

INDIANA DEPARTMENT OF TRANSPORTATION

Multimodal

Rail Programs Office

September 29, 2023

DOCKET NO: DOT-RR-2494

PETITION OF BROWN COUNTY, INDIANA FOR THE)	CAUSE NO.
FOR THE APPROVAL OF THE ESTABLISHMENT OF)	DOT-RR-2494
A NEW GRADE CROSSING ON PROPOSED INDIAN HILL)	
ROAD, OVER THE MAINLINE TRACK OWNED BY THE)	
INDIANA RAIL ROAD COMPANY IN BROWN COUNTY, IN.)	
)	
PETITIONER)	
AND)	
)	
THE INDIANA RAIL ROAD COMPANY AND THE UTILITY)	
CONSUMER COUNSELOR FOR THE STATE OF INDIANA,)	
)	
RESPONDENTS,)	

RAIL PROGRAMS OFFICE ORDER

Whereas:

1. Pursuant to Indiana Code § 8-6-1-7, if a party seeks to establish or extend a highway at grade over a railroad, that party is required to first petition the Indiana Department of Transportation (INDOT) for approval.
2. Pursuant to Ind. Code § 8-6-7.7-3.1, INDOT is to consider various criteria when determining whether to open a new grade crossing. If these criteria are met, or another compelling reason has been shown for the crossing to exist, pursuant to Ind. Code § 8-6-7.7-3.4, INDOT can issue an order approving the petition.
3. INDOT has outlined procedures for obtaining INDOT's approval of a grade crossing in 105 IAC 5-8. INDOT has outlined additional factors it considers for a new grade crossing in 105 IAC 5-10-1.
4. On June 1, 2023, Brown County, Indiana, (Petitioner) respectfully petitioned the Indiana Department of Transportation ("INDOT") Rail Programs Office (RPO) for the approval of the establishment of a new public road at-grade crossing at the junction of Indian Hill Road and the railway tracks of The Indiana Rail Road Company (INRD) located in Brown County.

5. On June 14, 2023, INDOT's Rail Programs Office notified the parties of record that the petition had been filed and assigned Docket Number DOT-RR-2494; the notification also advised an onsite meeting was scheduled for 10:00AM Eastern Daylight Time on Wednesday June 28, 2023.
6. On June 20, 2023, INRD submitted a Verified Objection to the Petition submitted by Brown County on June 1st.
7. On June 28, 2023, an onsite meeting was conducted to obtain general information from those present at the meeting. (The attendees sign-in sheet is in the project file.)
8. On July 31, 2023, INDOT received additional submittals from Petitioner and the Knobstone Hiking Trail Association (KHTA) in response to the Objection submitted by INRD and the discussions during the on-site visit on June 28, 2023. Petitioner filed a new set of proposed plans with INDOT, attached as **Exhibit A**.
9. In addition to Petitioner, INRD, and KHTA, the following individuals have requested notice of this proceeding: Randall Pflueger, (KHTA), Tim J Clark, (resident), Nina Andrew, (property owner), and Brian Holzhausen, (DINO, LLC) have asserted they have personal interests in this proceeding.
10. A grade crossing was previously located at the junction of Indian Hill Road and INRD's railway tracks. That crossing was assigned United States Department of Transportation (USDOT) Crossing Number 292193F (DOT #292193F).
11. This former crossing, DOT #292193F, was closed more than three (3) years ago in April 2020. Based on information provided to INDOT, INRD had petitioned Brown County, asking it to close the crossing on May 20, 2019, and on April 21, 2020, the Petitioner and INRD entered into an agreement to close that crossing.
12. INDOT was made aware of the plan to close the crossing in September 2020, as the Petitioner had sought financial assistance from INDOT to pay for the costs of closing DOT #292193F. INDOT and Petitioner entered into a grant agreement on April 12, 2021 and INDOT provided Petitioner \$10,000.00 to assist with the closure of the crossing.
13. State law outlines no procedures specifically for the re-opening of a closed crossing; however, pursuant to Ind. Code § 8-6-1-7, a crossing at this location can be approved. Petitioner states it desires to open a new crossing on Indian Hill Road to provide residents, farmers, local business owners, public safety personnel, and pedestrians with a feasible means of traveling north and south of the railroad in a safe, and efficient manner. Petitioner states that, all things considered, local area property values, daily activities, and safety have been negatively impacted because of the closure of this crossing, and Petitioner would like to ease this burden by reinstating this railroad crossing for public use. Eighteen letters of support, advocating for the opening of this crossing, were included with the Petition.
14. Some of the factors that are to be considered by INDOT pursuant to Ind. Code § 8-6-7.7-3.1 are in dispute by the parties. The facts in dispute include:
 - a. The speed of the trains.

- i. Citing information available from USDOT Crossing Inventory Forms available from the USDOT Federal Railroad Administration (FRA), Petitioner and KHTA argue that the speeds listed on the inventory reports on file with the FRA should be the applicable speeds considered by INDOT, which are 25-30 miles per hour (mph).
 - ii. INRD notified INDOT that its trains' maximum speed is actually 40 mph, and pursuant to the FRA's Class 3 track standard, INRD's trains could operate up to 49 mph.
 - b. The extent to which emergency vehicles will be able to utilize this crossing.
 - i. Located along Indian Hill Road, over the Beanblossom Creek, is a small bridge. INRD has pointed out that this bridge has a 4-ton maximum weight capacity, and that fire trucks (especially when loaded with water) would not be able to use this bridge.
 - ii. The Petitioner, in its response filed on July 21, 2023, referred to other emergency vehicles and public safety vehicles, including ambulance services, Sheriff pickup trucks, and fire department off-road vehicles capable of handling wildfire/brush fires.
15. The Parties also provide conflicting descriptions about obstruction of sight issues at this grade crossing. Although INDOT has considered statements made by all parties, INDOT will rely on its own knowledge of sight issues based on inspections it has performed.
16. The following facts are not in dispute:
- a. This grade crossing is in an agricultural area.
 - b. The average annual daily traffic (AADT) of Indian Hill Road has historically been between 50 to 250 in past years. Parties concur that, if there is significant economic development in the area, as Petitioner is seeking to do, traffic counts could increase, potentially to 500 AADT.
 - c. The distance to the closest alternative grade crossing. The parties agree on the actual distance; however, they disagree on what type of measurement is appropriate to consider.
 - i. INRD has calculated the distance based on railway mileage and directed INDOT to DOT #292192Y being the closest crossing, 0.76 miles away. An additional crossing is located 1.29 rail miles away.
 - ii. Petitioner initially stated that the closest crossing was 1.9 miles away, based on vehicular miles; however Petitioner made a correction in its July 21, 2023 response, describing the closest crossing being 1.1 miles from the subject location. Petitioner has explained that vehicular traffic detouring around this crossing may have roughly fifteen (15) additional minutes of travel time, and that this is impacting farmers, business owners, and residents.

- d. Vehicular traffic, based on the proposed design of the road and the grade crossing, cannot safely travel at thirty (30) mph on Indian Hill Road. Petitioner, in Response to INRD's Objection on July 31, 2023, revised its plans for a posted speed limit to 10 MPH for Indian Hill Road.
 - e. Historically, based on INRD's records and the USDOT Crossing Inventory Forms, an estimated 14 trains or less per week use this track. INRD, however, has stated that the number of trains using this track could increase in the future.
17. Petitioner and KHTA both raised concerns about the impact of this crossing being closed to those using the Tecumseh Trail. Indian Hill Road was being used by hikers as a route between sections of the Yellowwood State Forest. KHTA shared significant information about the impacts the closure on this grade crossing had on hikers, and the lack of alternative safe alternatives for hikers. Since its closure, former users of this route have cited additional hardship from having to take a detour along State Road 45 of Tecumseh Trail. The Department of Natural Resources' (DNR) does not include this section of the trail on their trail map due to concern for safety of pedestrians along SR 45. INDOT has reviewed this section of State Road 45 and concurs that it is not a safe route for pedestrians. Petitioner and KHTA propose that this crossing will be used by hikers in addition to vehicular traffic.
18. INDOT has inspected the proposed location for the grade crossing, as well as the proposed plans, and determined the following:
- a. The proposed crossing would intersect the INRD tracks at a crossing angle of approximately 60 degrees.
 - b. A railroad bridge is located twenty-five feet away from the proposed crossing, when standing on the south side of the rail tracks while facing north. This bridge creates a sight distance issue and would obstruct the ability for drivers to see trains, and for trains to see vehicles.
 - i. Facing northbound, from the southside of the tracks, the bridge is located twenty-five feet away (the west end of the railroad bridge) to 125 feet away (the east end of the railroad bridge).
 - ii. While placing objects on the tracks, to test the actual area of obstruction, it was determined the area of obstruction extends further than the bridge. A driver approaching the track from the south would have difficulty seeing from twenty-five feet from the roadway to 224 feet away from the roadway when looking eastward.
 - iii. Photographs showing an approximate line of sight with the railroad bridge obstruction looking to the east for a vehicle approaching the track from the north and south are in the attached **Exhibit B**.
 - c. Petitioner's plans submitted June 31, 2023 include improving the approaches to the crossing with a revised maximum profile to improve the roadway profile to 9.2% and 9.7% grades, with a 2% grade for approximately 20 feet on either side of the track.

Based on engineering analysis of these plans, and an inspection of the site, this proposed design will create sight issues. Following certain design standards outlined in the Indiana Design Manual for local roads would reduce the sight issues relating to the grade of the proposed roadway.

INDOT hereby **FINDS**:

- A. Petitioner has responded in detail to the criteria for opening a crossing listed and has provided proper documentation as set forth in the IAC. Although not all criteria in Ind. Code § 8-6-7.7-3.1 and 105 IAC 5-10-1 have been met, INDOT has weighed the various responses, and in addition, has determined that there are compelling reasons raised for the opening of this crossing.
- B. Although there are compelling reasons to open this crossing, there are sightline issues because of two separate issues: 1) the design and grade of the proposed road, and 2) the railroad bridge located twenty-five feet away from the proposed road.
 - 1) Based on INDOT's investigation, this crossing should have active warning signals and devices. INDOT has the authority to require active warning signals and devices pursuant to Ind. Code § 8-6-7.7-2.
 - 2) Also based on INDOT's investigation, Indian Hill Road needs to be designed so that it complies with Indiana Design Manual, including the following section: Geometric Design Criteria for Rural Local Roads.
- C. Although Petitioner has proposed pedestrian use, no pedestrian facilities have been included in the proposed plans provided to INDOT. Based on a review of the proposed plans, the proposed grade crossing would not comply with the Americans with Disabilities Act as amended (ADA) of 1990 (42 U.S.C. §§12101 et seq.), as the design does not comply with the ADA requirements for a pedestrian crossing. Having reviewed the plans, substantial revisions and changes would be required to comply with the ADA. For this reason, INDOT specifically finds that this grade crossing is a vehicular grade crossing, not a pedestrian crossing.

IT IS ORDERED:

The Petition is approved with the following conditions. Until these conditions are met, this crossing will remain closed.

- A. The Petitioner will submit engineering plans to INDOT for approval for improving the Indian Hill Road profile and side slopes in accordance with the Indiana Design Manual Standards for Geometric Design Criteria for Rural Local Roads. Design is to include necessary grading to allow the placement of the train-activated warning devices including the signal house.
- B. The Petitioner will be responsible for all costs associated with the engineering design, materials, and construction of the road improvements.
- C. The Petitioner will be responsible for all costs associated with the engineering design, materials, and installation of the following train-activated warning device improvements. Active warning devices including standard flashers with 12-inch LED lenses, two (2) gates, two (2) bells, and

constant warning time in accordance with final design plans.

- D. INRD or its designee will install standard flashers with 12-inch LED lenses, gates, bells, and constant warning time circuitry. Petitioner will be responsible for the cost of this installation.
- E. INRD or its designee will install a crossing surface composed of asphalt and timber. The paved asphalt surface shall extend 40 feet on both sides of the track. Petitioner will be responsible for cost of installation.
- F. The Petitioner will be responsible for the installation of the stop bar pavement markings and the advanced warning signs including (W10-1), Low Ground Clearance signs (W10-5 and W10-5P) at the crossing. In addition, special signs will be required including "Hikers Share Roadway", "Local Traffic Only", "No Hazardous Materials Across Tracks", "No Buses Across Tracks", and "One Lane Bridge - 4,000 Pound Limit" placed in accordance with the current Indiana Manual on Uniform Traffic Control Devices (MUTCD). INRD will be responsible for all costs associated with future inspections and maintenance of the train activated warning devices as required by state and federal laws and regulations.
- G. The Petitioner will be responsible for the future maintenance of the painted stop bars and the advanced warning signs.
- H. Motorists' sightlines in all four (4) quadrants of the crossing must be maintained in compliance with Indiana Code 8-6-7.6. INRD will provide maintenance of tree growth by trimming along their right-of-way for a minimum of 500 feet in all four quadrants on an annual basis.
- I. The work on the train-activated warning devices will commence within twelve (12) months of the date of this Order unless an extension of time is requested by the Petitioner and approved by the INDOT Rail Programs Office.
- J. The road construction can commence as soon as the road plans are approved by INDOT.
- K. Petitioner and INRD will be responsible for compliance with all applicable state statutes and follow all specifications outlined in the current Indiana MUTCD.
- L. Since this crossing is designed for vehicular traffic, and the design does not include a separate sidewalk for pedestrians, PROWAG minimum standards for ADA compliance do not apply.
- M. All items not addressed specifically in this Order shall be complied with as stated in the petition.
- N. Pursuant to 105 IAC 5-8-6 written notice of compliance - upon fulfillment of the provisions of the Indiana Department of Transportation's (INDOT's) order, the petitioner shall notify INDOT in writing that all conditions have been complied with.

The Order is effective fifteen (15) days after it is served, unless a Petition for Review and a Petition for Stay of effectiveness are filed before the Order becomes effective, as stated in Indiana Code 4-21.5-3-5(f). The Petition for Review must be sent the address below, following the directions below:

Petition for Review

This order is considered an agency action. Should you wish to request review of the agency action, you may do so through the State of Indiana Office of Administrative Law Proceedings:

- 1) go online to www.in.gov/oalp and complete a Petition for Review;
- 2) mail your request to the Office of Administrative Law Proceedings located at
402 W. Washington Street, Room W161, Indianapolis, IN 46204; or
- 3) personally appear at the Office of Administrative Law Proceedings located at
402 W. Washington Street, Room W161, Indianapolis, IN 46204 to file Petition for Review.

You will need this document to complete your request.

Failure to timely file a Petition for Review will result in the order becoming conclusive.

IT IS SO ORDERED,

A handwritten signature in black ink, appearing to read "Venetta Keefe", written over a horizontal line.

Venetta Keefe, Rail Programs Office, Manager
INDOT Multimodal

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