

# **MEMORANDUM OF AGREEMENT**

**BETWEEN THE**

**MILITARY DEPARTMENT OF INDIANA**

**THE**

**INDIANA DEPARTMENT OF NATURAL RESOURCES**

**THE**

**U.S. FISH AND WILDLIFE SERVICE**

**AND THE**

**U.S. NATIONAL PARK SERVICE**

**1. SUBJECT.** This Memorandum of Agreement (MOA) is made and entered into between the Military Department of Indiana (MDI); the Indiana Department of Natural Resources (IDNR); the US Fish and Wildlife Service (USFWS); and the US National Park Service (USNPS), as pertains to the US Government owned railroad Right-of-Way (ROW) traversing IDNR owned property at the Atterbury Fish and Wildlife Area (AFWA). Specifically, this MOA addresses mutually defined ROW bounds and physical constraints; ROW and railroad access and maintenance; railroad usage frequency and duration; rail car parking and storage; access to land adjacent to railroad ROW; and malicious damage and vandalism.

**2. REFERENCES.** References for this MOA include Quitclaim Deed executed between the US Government and the State of Indiana (hereinafter State) on March 17, 1969, and preceding and subsequent support documentation, wherein 5,500+/- acres of original Camp Atterbury land was transferred to the State, with specified exceptions, for monetary and other considerations. Among the various provisions, conditions, and exceptions was the exception of the railroad spur track and associated easements, with the requisite right of ingress and egress, which was retained by the US Government, without defined meets and bounds.

**3. BACKGROUND.** This MOA is precipitated by the transfer of property interest in 1,250+/- acres, of the original 5,500+/- acre conveyance, by the State from the jurisdiction of the IDNR to the jurisdiction of the MDI. Additionally, parties to the property transfer action are determined to provide clarity to various aspects of the railroad ROW, and its planned future usage within the remaining IDNR 4,250+/- acre parcel at the AFWA.

**4. OPERATIONAL CONSIDERATIONS.** Clarification of the operational intent of the military, through the auspices of the MDI, will provide all parties to this MOA with a baseline of information from which to plan concurrent and joint future activities. Any reference made hereinafter to IDNR property will be the 4,250+/- acres remaining at the AFWA following the land transfer action.

**A. Railroad Bounds and Constraints.**

Whereas the original Deed and supporting documentation failed to establish defined metes and bounds for the railroad track spur ROW; and

Whereas the Deed indicated that the Government retained “railroad spur tracks”; and

Whereas the Deed further stipulated that the Government retained “easements, with the rights of ingress and egress for the purposes of operating, maintaining, replacing, repairing, relocating, and constructing the above-mentioned railroad spur tracks”; and

Whereas the Government, through the auspices of the US Army, has used, maintained, and upgraded the retained railroad track spur traversing the IDNR property over the years; and

Whereas the Government, again through the auspices of the US Army, plans to use, maintain, and upgrade the retained railroad track spur traversing the IDNR property in the future; and

Whereas the land exchange process, providing for the 1,250+/- acre parcel, determined the exchange parcels to be equal in appraised value, wildlife value, and recreational value as long as the remaining AFWA is unaffected by MDI activities on the exchange parcel and the use of the railroad ROW; and that the MDI and the IDNR must demonstrate the ability to provide management control for fish and wildlife management and recreation to the USFWS and USNPS.

**B. Railroad Access and Maintenance.**

Whereas provisions in the original Deed retained for the Government “easements, with the rights of ingress and egress for the purposes of operating, maintaining, replacing, repairing, relocating, and constructing the above-mentioned railroad spur tracks”; and

Whereas periodic and routine maintenance of the railroad track and ROW is required to insure normal train movement and safe rail operations; and

Whereas said maintenance is not limited to rails, ties, ballast, or rail bed; but also includes adjacent and overhead foliage and tree canopy; water flow at river, stream, and causeway crossings; as well as bridge maintenance and repair, and restoration of effects to the AFWA property and recreational uses outside the railroad ROW as result from maintenance activities or acts of nature.

**C. Railroad Usage Frequency and Duration.**

Whereas the US Army has designated Camp Atterbury, operated under the auspices of the MDI, a Power Generation Platform (PGP), a major construct of national military strategy; and

Whereas said designation requires Camp Atterbury to support up to 10 Brigade Combat Team training events/rotations per year, including the capability of receiving and shipping each rotation's impedimenta by truck and/or rail over a period of 3 days or less in duration; and

Whereas the Government has, through the auspices of the US Army, committed funds to upgrade and expand the rail shipping and receiving capacity at Camp Atterbury; and

Whereas military rail operations, to include rail car parking and/or storage, will be limited to the terminus area within the bounds of the transferred parcel except for normal train movements to and from the main line, over Government owned railroad track traversing the remaining IDNR property; and

Whereas the crossing at Mauxferry Road is not to be blocked by rail cars for any duration beyond that associated with normal train movement between the mainline and the terminus area.

**D. Rail Car Parking and Storage.**

Whereas the current and future upgraded and expanded rail receiving and shipping terminus area is located within the bounds of the land parcel, 1,250+/- acres, being transferred to the MDI; and

Whereas the railroad track traversing the parcel being transferred to the MDI approximates 4,000 linear feet, and rail traffic and switching activities will be limited to that 4,000 linear feet of train "work area"; and

Whereas military rail operations of shipping/receiving, to be conducted on the Government owned railroad track, will be limited to the track residing within the bounds of the transferred parcel, at or near the terminus area; and

Whereas standard rail operations will include the normal train movements to and from the main line, over the Government owned railroad track traversing the remaining IDNR property; and

Whereas the terrain and grade of the railroad track spur traversing the remaining IDNR property is not conducive to rail car parking, switching, or storage.

**E. Adjacent Land Access.**

Whereas the purpose of the AFWA is to provide outdoor recreation opportunities and managed wildlife habitat for the public, with oversight by the USFWS and USNPS; and

Whereas the purpose of AFWA will continue unchanged on the remaining 4,250+/- acres following the land transfer; and

Whereas guidelines have been promulgated by the IDNR regarding the use and care of firearms on, and around public thoroughways for the purpose of State-regulated hunting on the AFWA; and

Whereas the railroad track traversing the IDNR property will be treated as a public thoroughway in the AFWA when in use to support the conduct of military rail operations; and

Whereas the public shall not be denied appropriate recreation activities along, or adjacent to the railroad track ROW, nor shall any part of the ROW other than the track and/or appurtenances thereto, be closed except as directly related to the movement of rail cars during periods of military railroad operations, and

Whereas no structure or physical barrier or constraint will be established, installed, or erected which prohibits ingress or egress to, and/or along the ROW by any party to this MOA.

**F. Malicious Damage and Vandalism.**

Whereas the railroad track spur traverses IDNR property in isolated reaches of the remaining land of the AFWA; and

Whereas several of the railroad track components and support structures may be viewed as “targets of opportunity” for damage and/or vandalism by visitors to the AFWA; and

Whereas some forms of damage and/or vandalism may place personal safety or property at risk.

**G. Covenant Formalization and Establishment.**

And, whereas all parties to this MOA seek specificity and clarity to provisions of the original Quitclaim Deed as pertain to ROW metes and bounds and physical constraints; ROW and railroad access and maintenance; railroad usage frequency and duration; rail car parking and storage; access to land adjacent to railroad ROW; and malicious damage and vandalism.

Now therefore, in consideration of the foregoing and the mutual covenants contained herein, the parties hereto agree as follows:

**a.** The aforesaid railroad ROW, with acknowledgment of variations in elevation and geological conditions, consists of a generalized ROW 80+/- feet wide, or 40+/- feet from the railroad track centerline, established along the existing railroad track route for a distance of 10,750+/- linear feet traversing the remaining IDNR property.

**b.** That no structure, temporary or permanent; and no physical barrier or constraint shall be established, installed, or erected which prohibits ingress or egress to, and/or along the said ROW by any party to this MOA.

**c.** That, when not in use to support military railroad operations, the ROW traversing the remaining IDNR property will be accessible for recreation use by the public, pursuant to outdoor recreation opportunities and published guidelines of the AFWA.

**d.** That periodic and routine maintenance of the said ROW will be performed under the supervision of the auspices of the MDI, as required, with notification of the operating agent at the AFWA. Maintenance and repair which exceeds periodic or routine, or will have an effect outside the ROW will be planned and designed with written acknowledgement by all parties to this MOA. Said maintenance is not limited to rails, ties, ballast, or rail bed; but also includes adjacent and overhead foliage and tree canopy; water flow at river, stream, and causeway crossings; as well as bridge maintenance and repair. Applicable permits and/or compliance documents will be secured, with the concurrence of all parties to this MOA, prior to commencing planned maintenance and/or repair.

**e.** That rail traffic on the railroad track traversing remaining IDNR property, consisting of multiple locomotive/switch engine trips between the mainline and the terminus area, should not have a frequency, or level of occurrence, greater than twice monthly; and, that the twice monthly rail traffic switching operations should not exceed 3 days in duration for each occurrence.

**f.** Further, it is agreed that written advance notification shall be made by Camp Atterbury to the IDNR, through its operating agent at the AFWA, of any planned rail traffic occurrence as soon as reasonably possible, with a standard of not less than two weeks prior to the occurrence being established. Camp Atterbury will prepare an advisory notification for the AFWA to post and distribute.

**g.** That the IDNR, through its operating agent at the AFWA, will advise all users of pending military railroad activity and estimated duration. The AFWA advisory will publicize rules for the public, with emphasis that hunting rules in the vicinity of any public thoroughway, including the railroad ROW will apply during periods of military railroad operations

**h.** That no planned or intentional rail car parking and/or storage will occur on the railroad track traversing the IDNR property at the AFWA.

**i.** That no planned rail car blockage will occur on the grade crossing at Mauxferry Road on IDNR property beyond that associated with normal train movement between the main line and the terminus area within the bounds of the parcel transferred to the MDI.

**j.** If any of the aforesaid blockages are warranted by accident or other uncontrollable action, the IDNR will be notified, through its operating agent at the AFWA, at the earliest opportunity, with incident location and estimated duration.

**k.** That on behalf of the IDNR, AFWA personnel and authorized IDNR law enforcement personnel will, and in conjunction with proper military security, monitor activities of any users that could result in personal injury or property damage.

1. That any damage or acts of vandalism to the railroad track, or any appurtenance thereto, will be reported to the MDI, through its operating agent at Camp Atterbury, as soon as possible. Further, it is agreed that the intent of this provision is to minimize risk to personal safety and property. If perpetrators of malicious damage or vandalism are identified, and/or apprehended by proper authority, then appropriate legal redress will be pursued through the US Army, or its operating agent, the MDI.

**5. AMENDMENT.** Alteration, modification, and/or amendment of this MOA is not permitted, except by written document with the concurrence and signatures of all parties. Each party, therefore, represents that it will not participate in any future agreement or understanding not reduced to writing and incorporated into this MOA as a written amendment prior to execution.

**6. DISPUTE RESOLUTION.** In the event of a dispute between the parties pertaining to a particular practice or activity, other than Wildlife and Sport Fish rule interpretation, the parties shall first attempt to resolve the dispute through informal consultation and communication, or other forms of non-binding, and mutually acceptable, dispute resolution. The parties further agree that, in the event such measures fail to resolve the dispute; they will refer it for resolution to another mutually acceptable entity for arbitration. For disputes or conflicts that arise related to Wildlife and Sport Fish Restoration Program rule interpretation, the USFWS appeal and resolution process will be used.

**7. INTEGRATION.** This MOA, and any document discussed herein, as well as any subsequent amending documents, represent the entire understanding among and between all parties. By signing this MOA, the parties acknowledge that no other oral and/or written agreements regarding the railroad track spur; the railroad ROW; the military directed operations thereon; or associated rights, responsibilities, and liabilities exist; and that if any such oral or written agreements exist, they are hereby superseded.

**8. RESPONSIBILITIES AND LIABILITY.** Parties to this MOA are absent any shared responsibility for maintenance, repair, and enhancement of the railroad spur track and/or ROW; or any military operations thereupon, unless otherwise specified herein. Further, all parties to this MOA are held harmless, both individually and jointly, for any damage to the railroad track spur, ROW, or associated military property resulting from acts of nature, or malicious activity.

**9. DURATION AND TERMINATION.** This MOA will commence upon the signing by all designated party representatives; and will remain in effect, in its present and/or amended form, for so long as the said ROW shall remain in use. However, this MOA may be terminated, with the written consent of all parties, if prevalent conditions change or are negated by unforeseen future circumstances.

Therefore, and with the due diligence afforded them as authorized representatives of the parties to this MOA, as identified herein, the parties, having read and understood the content, do, by their respective signatures dated below, hereby agree to the provisions of this MOA.

**Signatories to the Railroad Track Spur ROW MOA:**

Military Department of Indiana

Indiana Department of Natural Resources

By *Marten Hulse*  
Adjutant General

By *Stacy Anthony*  
Director

Date *1 Oct 2010*

Date *9/30/2010*

US Fish and Wildlife Service

US National Park Service

By *Charles M. Wooley*  
Midwest Regional Director  
*ACTING*

By *Michael R. Ruppel*  
Northeast Regional Director

Date *10/15/10*  
Charles M. Wooley  
Acting Regional Director

Date *10/8/10*

Attachment:  
Figure 1 – Rail Overview Map

Figure 1. Rail Overview Map

