

STATE OF INDIANA)
)
DUBOIS COUNTY) IN THE DUBOIS _____ COURT
)
) CAUSE NO.: 19C01-2503-PL-000170

INDIANA DEPARTMENT OF)
TRANSPORTATION,)

Plaintiff,)

v.)

LC BAR LLC, MARK SEGER,)
JUDY SEGER, RING FARMS LLC,)
THE DAVID R. RING TRUST, DAVID)
RING, KATHY RING, ROGER PUND,)
PAMELA PUND, MARILYN FRANCIS,)
RUTH GAESSER, CAROL BUECHLER,)
ROBERT PFISTER, KATHY PFISTER,)
CLINTON WININGER, BRANDY)
WININGER, GEORGE HETTINGER,)
GAIL HETTINGER, BENJAMIN PUND,)
BRADLEY PUND, MEGAN WEHR,)
DAVID PUND , SHEILA PUND,)
MATTHEW EGG, GARY HANSELMAN,)
DONNA HANSELMAN, TAMMY)
VOGLER, FRANCIS VOGLER, RAY)
BYRD, THOMAS BARTELT, CHAD)
BRINKMAN, GEORGE MEHRINGER,)
CLARA MEHRINGER, JOSEPH SENG,)
DONOVAN BRUNSMAN, MICHAEL)
BRAUN, LORI BRAUN, TTC FARMS)
LLC, LARRY CARPENTER,)
GINGER UNDERWOOD, PHILLIP)
MICHEL, LORETTA MICHEL,)
GREGORY MATHEIS, STAN FLECK,)
MARA FLECK, KURT NEUKAM,)
DONALD NEUKAM, KURT NEUKAM,)
MATTHEW DIPPEL, DOUG LAMPERT,)
CHERYL LAMPERT, ELIZABETH)
HANSELMAN, KURT OTTO, JILL)
OTTO, MARTHA LANGE, EDWARD)
MERKLEY, MARY MERKLEY, PERRY)
UEBELHOR, EDGAR OEDING,)
MILDRED OEDING, PAUL)
BINKLEY, MARGARET BINKLEY,)

**IMMEDIATE RELIEF
REQUESTED**

JAMES BINKLEY, H. THOMAS POE,)
 CONSTANCE POE, CAMERON)
 BUECHLER, DAVID BUECHLER,)
 CAROL BUECHLER, JUNIOR POPP,)
 MARGIE POPP, SAMUEL MEHRINGER,)
 LINDA MEHRINGER, L & A)
 KERSTEINS LLC, JACK MAXEY,)
 PAULA MAXEY, SAM NEUKAM,)
 MARCIA GRAVES, EVAN DORSAM,)
 ERIN WITTE, GRASSY CREEK)
 LANDHOLDINGS LLC, GRASSY)
 CREEK DESIGN LLC, KENT)
 HASENOUR, GERALD HASENOUR,)
 NATHAN KEUSCH, JEFFREY JERGER,)
 KERRY JERGER, FRAN JERGER, RON)
 JERGER, BRADLEY JERGER, DAN)
 DURCHOLZ, DURCHOLZ BROS. LLC,)
 LORI TANNER, DUBOIS COUNTY LP)
 GAS, INC., HOCHGESANG FARMS,)
 R & MJ THYEN ASSOCIATES, RON)
 THYEN, MARY JANE THYEN, JOE)
 NORD, MARGARET NORD, JEREMY)
 HASENOUR, J&S HASENOUR FARMS)
 LLC, STAN HASENOUR, TIM)
 MESSMER, MESSMER LAND LLC,)
 NANCY KNIES, CAMM KNIES)
 PROPERTIES, JASON KNIES, ROBERT)
 DAUNHAUER, VALERIE DAUNHAUER,))
 ANGELA TROXLER, BRADLEY)
 WALKER, COURTNEY FEGAN, TRAVIS)
 BORDEN, MARILYN BORDEN, MYRA)
 RAHNON, DEBBIE SCHNELL,)
 MICHAEL KOCHER, NEUHOFF)
 FARMS, DEREK NEUHOFF, JOSEPH)
 HOCHGESANG, and)
 SARA HOCHGESANG,)
)
 Defendants.)

**VERIFIED COMPLAINT FOR
 DECLARATORY RELIEF AND PRELIMINARY INJUNCTION**

Plaintiff Indiana Department of Transportation (“INDOT”), by its undersigned attorneys,
 for its Verified Complaint for Declaratory Relief and Preliminary Injunction (the “Complaint”)

against the numerous above-captioned Defendants (collectively, “Defendants” or “LC Bar LLC, et al.”), states as follows:

PARTIES, VENUE AND JURISDICTION

1. This case centers on an INDOT project to construct a major intrastate highway (the “Project”) to improve highway access to southern Indiana. Defendants each own parcels – mainly farmland with some residential – which are contained within, or run alongside, the corridor (the “Properties”) that must be surveyed for environmental impact stemming from the Project. However, Defendants have wrongfully denied INDOT, and its initial surveyors, access to these Properties, in contravention of Indiana law.

2. Indiana law tasks INDOT with oversight of Indiana’s “state highway system,” defined as “the system of highways and streets that are of general economic importance to Indiana as a whole. . . .” Ind. Code § 8-23-1-40.

3. INDOT has been tasked with overseeing this Project and ensuring its timely and taxpayer-efficient completion. As an initial step of this project, INDOT must work with the Indiana Department of Environmental Management (“IDEM”) and other agencies to assess the lands that fall in and adjacent to this corridor.

4. Defendants own several parcels which fall within the corridor and adjacent area designated for assessment in the initial phases of this Project. Several Defendants use these parcels, in part, as a primary residence.

5. These Properties sit in Dubois County, Indiana.

6. Venue is proper in Dubois County pursuant to Indiana Trial Rule 75(A), as Dubois County is the site of one or more subject properties and, independently, because Dubois County is

the resident county of one or more Defendants. Defendants, and their relevant Properties, continuing between pages as necessary, are listed below, with Parcel Numbers included for clarity:

| Names | Address | City | State | ZIP | Parcel Nos. |
|--|--------------------------|-------------|-------|-------|--|
| Mark A. Seger and Judy A. Seger | 10098 S 200 W | Huntingburg | IN | 47542 | 19-14-11-300-009.000-019, 19-14-14-200-005.000-004 |
| Ring Farms LLC | 4584 W 900 S | Huntingburg | IN | 47542 | 19-14-16-200-006.000-004 |
| The David R. Ring Trust, David R. Ring, and Kathy R. Ring | 9486 S 500 W | Huntingburg | IN | 47542 | 19-14-16-300-010.000-004, 19-14-16-300-011.000-004, 19-14-16-400-012.000-004, 19-14-16-300-011.001-004 |
| Roger W. Pund and Pamela S. Pund | 7116 S Ferdinand Road Nw | Huntingburg | IN | 47542 | 19-14-02-300-013.000-019, 19-14-11-200-004.000-019 |
| Marilyn L. Francis, Ruth Gaesser, and Carol Buechler | 204 E 22nd St | Huntingburg | IN | 47542 | 19-11-24-200-009.000-019, 19-11-23-800-014.000-019 |
| Robert S. Pfister and Kathy M. Pfister (Fuhs) | 570 Giesler Rd | Jasper | IN | 47546 | 19-07-32-300-033.002-017, 19-07-32-300-033.004-017, 19-10-05-200-019.000-017 |
| Clinton L. Wininger and Brandy Wininger | 1143 E 190 N | Jasper | IN | 47546 | 19-07-29-300-020.000-018, 19-07-29-300-021.000-018, 19-07-29-300-022.000-018 |
| George Douglas Hettinger and Gail G Hettinger | 890 E 190 N | Jasper | IN | 47546 | 19-07-30-100-007.000-001, 19-07-30-100-004.006-001 |
| Benjamin J Pund; Bradley D Pund, and Megan M Wehr, Life Estate to David R Pund and Sheila A Pund | 9060 S 375 W | Huntingburg | IN | 47542 | 19-14-21-100-003.000-004, 19-14-21-500-005.000-004 |
| Matthew R Egg | 1133 W 375 S | Huntingburg | IN | 47542 | 19-11-23-800-014.004-019 |
| Gary and Donna Hanselman | 886 E 190 N | Jasper | IN | 47546 | 19-07-30-100-005.000-001 |
| Francis R Vogler and Tammy A Vogler | 495 W 350 S | Huntingburg | IN | 47542 | 19-11-24-100-004.000-019, 19-11-24-100-005.000-019, 19-11-13-400-031.000-001, 19-11-24-200-007.000-019, |
| Francis R Vogler, Life Estate to Ray Byrd | 497 W 350 S | Huntingburg | IN | 47542 | 19-11-24-200-006.000-019 |
| LC Bar LLC | 8166 S US Highway 231 | Huntingburg | IN | 47542 | 19-14-10-300-034.000-019, 19-14-15-200-005.000-004, 19-14-16-100-001.000-004, 19-14-15-200-006.000-004, 19-14-15-300-007.000-004, 19-14-16-800-019.000-004, 19-14-16-800-020.001-004, 19-14-16-100-021.000-004, 19-14-16-400-017.000-004 |
| Thomas L Bartelt | 8166 S US 231 | Huntingburg | IN | 47542 | 19-14-16-100-001.001-004 |
| Chad Brinkman | 5870 N US 231 | Jasper | IN | 47546 | 19-06-01-200-006.000-011, 19-06-01-200-004.000-011 |

| | | | | | |
|---|-------------------------|-------------|----|-------|--|
| George and Clara Mehringer | 435 E 190 N | Jasper | IN | 47546 | 19-07-30-100-013.000-001, 19-07-30-200-024.000-001, 19-07-19-700-022.000-001 |
| Joseph G. Seng | 2750 Meridian Rd | Huntingburg | IN | 47542 | 19-11-13-300-024.006-001 |
| Donovan Brunsman | 7991 S 200 W | Huntingburg | IN | 47542 | 19-14-10-400-037.000-019, 19-14-11-300-008.000-019, 19-14-10-400-036.000-019, 19-14-15-100-002.000-004 |
| Michael R. and Lori A. Braun | 894 E 190 N | Jasper | IN | 47546 | 19-07-30-100-004.008-001, 19-07-30-100-004.001-001, 19-07-30-100-004.008-001 |
| TTC Farms LLC | S 200 W | Huntingburg | IN | 47542 | 19-14-15-100-020.000-004, 19-14-16-400-016.000-004, 19-14-16-400-020.000-004 |
| Larry W Carpenter | 588 E 190 N | Jasper | IN | 47546 | 19-07-30-100-009.001-001 |
| Ginger L Underwood | 10945 S US 231 | Huntingburg | IN | 47542 | 19-14-28-300-023.000-004 |
| Phillip W Michel and Loretta L Michel | 9099 S 375 W | Huntingburg | IN | 47542 | 19-14-21-200-007.000-004 |
| Gregory E Matheis | 1163 E Jasper-Dubois Rd | Jasper | IN | 47546 | 19-07-29-300-031.005-018 |
| Stan and Mara Fleck | 1543 E 230 S | Huntingburg | IN | 47542 | 19-10-07-400-048.001-001, 19-10-07-400-049.000-001, 19-10-07-400-048.000-001 |
| Kurt Neukam | 7241 N 150 W | Jasper | IN | 47546 | 19-03-25-100-002.000-011, 19-03-25-100-003.001-011 |
| Donald Neukam and Kurt Neukam | 945 S Edgewood Dr | Huntingburg | IN | 47542 | 19-03-25-100-008.000-011 |
| Matthew Dippel | 11230 S US 231 | Huntingburg | IN | 47542 | 19-14-33-200-003.000-004, 19-14-33-200-005.000-004 |
| Doug and Cheryl Lampert | 1414 E SR 164 | Jasper | IN | 47546 | 19-07-32-200-045.000-017 |
| Elizabeth Hanselman | 672 E 190 E | Jasper | IN | 47546 | 19-07-30-100-004.003-001, 19-07-30-100-002.000-001, 19-07-30-100-004.000-001 |
| Kurt and Jill Otto | 700 E 190 N | Jasper | In | 47546 | 19-07-30-100-004.004-001, 19-07-30-100-004.005-001, 19-07-30-100-004.007-001 |
| Martha Lange | 10235 S 231 | Huntingburg | IN | 47542 | 19-14-28-500-014.000-004 |
| Edward L Merkley and Mary E Merkley | 1368 E Jasper-Dubois Rd | Jasper | IN | 47546 | 19-07-29-300-046.000-018, 19-07-29-300-043.002-018 |
| Perry Uebelhor | 1145 E 190 | Jasper | IN | 47546 | 19-07-29-300-024.000-018 |
| The Edgar Lawrence Oeding and Mildred Louise Oeding Revocable Living Trust, Edgar Lawrence and Mildred Louise Oeding Co-Trustees Life | 1138 West 500 North | Jasper | IN | 47546 | 19-06-12-200-010.000-011 |

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|--|-----------------------------|---------------|----|-------|---|
| Estate to Edgar Lawrence and Mildred Louise Oeding | | | | | |
| Paul D Binkley; Margaret Binkley and James Binkley Revocable Trust, James K Binkley Trustee Life Estate to James K Binkley | 487 W 400 N | Jasper | IN | 47546 | 19-06-12-700-023.003-011, 19-06-12-700-023.002-011 |
| H Thomas Poe and Constance J Poe | 2715 S Meridian St | Huntingburg | IN | 47542 | 19-11-13-400-028.001-001, 19-11-13-400-028.000-001 |
| Cameron Buechler | 1140 W 375 S | Huntingburg | IN | 47542 | 19-11-23-800-014.003-019 |
| David W Buechler and Carol S Buechler | 1082 W 375 S | Huntingburg | IN | 47542 | 19-11-23-400-014.001-019 |
| Junior C Popp and Margie Popp | 7685 N US 231 | Jasper | IN | 47546 | 19-03-25-200-026.000-011, 19-03-25-200-027.003-011, 19-03-25-200-027.004-011 |
| Samuel and Linda Mehringer | 430 N Trainer Lane | Jasper | IN | 47546 | 19-07-32-300-025.000-017, 19-07-32-300-026.000-017 |
| L & A Kersteins LLC | 352 W 100 S | Ferdinand | IN | 47532 | 19-14-11-600-006.000-019, 19-14-11-300-007.000-019 |
| Jack and Paula Maxey | 3638 W Holland Rd E | Huntingburg | | 47542 | 19-14-28-200-013.000-004 |
| Sam Neukam | 5908 W Kessner Bridge Rd | Huntingburg | | 47542 | 19-14-11-500-002.000-019, 19-14-11-500-002.000-019 |
| Marcia Graves (Same as Martha Lange) | 10235 S US 231 | Huntingburg | | 47542 | x |
| Evan Dorsam | 4475 N Kellerville Rd | | | | 19-07-07-300-009.000-011 |
| Erin Witte | 3424 W 1100 S | Huntingburg | IN | 47542 | 19-14-28-400-035.000-004 |
| Grassy Creek Landholdings LLC | 3450 S 700 E | Saint Anthony | IN | 47546 | 19-10-06-400-044.000-001, 19-10-07-300-031.000-001, 19-10-07-700-033.000-001, 19-10-07-400-034.000-001 |
| Grassy Creek (Design LLC) | 523 E Schnellville Rd | Jasper | | | 19-10-06-400-040.000-001, 19-10-06-400-039.000-001 |
| Kent G Hasenour | E 1st St | Huntingburg | | | 19-14-02-500-003.001-019 |
| Gerald Hasenour | 750 W | Huntingburg | | | 19-14-02-500-003.001-019, 19-11-35-700-034.001-019 |
| Nathan Keusch | 7742 N US 231/6619 N US 231 | Jasper | | | 19-03-25-100-011.000-011, 19-03-25-100-010.000-011 |
| Jeffrey, Kerry , Fran, Ron and Bradley Jerger | 3424 W 1100 S | Huntingburg | | | 19-14-28-400-035.000-004 |
| Dan Durcholz, Durcholz Bros. LLC | S Cherry St, S 200 W, | Huntingburg | IN | 47542 | 19-14-11-300-011.000-019, 19-14-14-200-004.002-004, 19-14-02-900-009.000-019 |
| Lori Tanner | 3424 W 1100 S | Huntingburg | | | 19-14-28-400-035.000-004 |
| Dubois County LP Gas, Inc | 1205 S SR 162 | Jasper | IN | | x Just outside corridor across from Co Garage, 19-10-07100-.014.000-001 |

| | | | | | |
|---|-----------------------|-------------|----|-------|--|
| Hochgesang Farms, Hochgesang, Joseph L and Sara K | 1213 S SR 162 | Jasper | IN | | 19-10-07-500-011.000-001, 19-10-07-800-050.000-001, 19-10-07-700-032.000-001, 19-10-07-100-002.000-001, 19-03-25-300-038.000-011, 19-10-07-100-012.000-001 |
| R & MJ Thyen Associates, Ron and Mary Jane Thyen | 6965 US 231 N | Jasper | IN | | 19-03-35-100-003.000-011, 19-03-36-200-032.000-011, 19-03-36-200-031.000-011, 19-03-36-600-033.003-011, 19-03-35-800-001.000-011, 19-03-26-400-035.000-011, 19-03-25-300-038.000-011 |
| Joe and Margaret Nord | 10695 S US 231 | Huntingburg | IN | 47542 | 19-14-28-300-031.000-004 |
| Jeremy Hasenour / J&S Hasenour Farms LLC (Appears to be the same as Kent and Gerald Hassenour) | 1142 E 550 S | Huntingburg | IN | 47542 | 19-14-02-500-003.001-019 |
| Stan Hasenour | E 1st St | Huntingburg | | | 19-14-02-500-003.001-019 |
| Tim Messmer / Messmer Land LLC | 3780 S 75 W | Huntingburg | IN | 47542 | 19-11-24-300-011.000-019 |
| Nancy Knies / CAMM Knies Properties | 2750 N Kellerville Rd | Jasper | IN | 47546 | 19-07-19-600-015.002-001 |
| Jason Knies | 2750 N Kellerville Rd | Jasper | IN | 47542 | 19-07-19-600-015.001-001 |
| Robert M Daunhauer and Valerie A Daunhauer | 10663 S US 231 | Huntingburg | IN | 47542 | 19-14-28-300-029.000-004, 19-14-28-300-030.000-004 |
| Angela Troxler; Bradley Walker and Courtney Fegan Life Estate to Travis and Marilyn Borden | 699 W CHARLES St | Jasper | IN | 47542 | 19-03-25-301-107.000-011 |
| Myra Rahnon | 10235 S 231 | Huntingburg | IN | 47542 | 19-14-28-500-014.000-004 |
| Debbie Schnell and Michael Kocher | 429 E 190 N | Jasper | IN | 47546 | 19-07-19-400-019.000-001 |
| Neuhoff Farms, Derek Neuhoff | 1930 W 400 S | Huntingburg | IN | 47546 | 19-11-26-200-003.000-019, 19-11-23-500-003.000-019, 19-11-23-100-003.002-019, 19-11-23-100-002.000-019, 19-11-14-400-016.000-001, 19-11-14-800-004.000-001 |

7. Jurisdiction over Defendants and their parcels, located in Indiana, is proper.

8. Declaratory relief is authorized by Indiana Code § 34-14-1-1, et seq., and Indiana

Rule of Trial Procedure 57.

BACKGROUND

A. INDOT Mid-States Corridor & Notice to Defendants

9. On September 15, 2023, the Federal highway Administration (“FHWA”) approved a 2,000-foot-wide corridor, for further environmental assessment and surveying in advance of further development per the Project. This corridor was divided into five Sections of Independent Utility (“SIU”), each of which would need to be assessed and completed before the Project could continue. The Properties fall within SIU Section 2, which was the first slated further environmental assessment.

10. SIU Section 2 extends from I-64, swings east around Huntingburg and Jasper, and then ends near State Road 56, at Haysville. The Properties fall within SIU Section 2, as described here.

11. To perform the environmental assessment and surveying needed to continue the Project, INDOT, IDEM, and other agencies need to enter the Properties and perform surveying, as is their prerogative as State agencies under Indiana state law. Ind. Code. § 8-23-7-26.

12. To ensure timely completion and prevent any undue alarm, INDOT followed a thorough protocol to ensure Defendants and other property owners were notified.

13. First, on July 23, 2024, INDOT mailed certain Notice of Survey Letters to Defendants and other relevant property owners, serving to give five-days advance notice of such a survey. Ind. Code. § 8-23-7-26. A copy of one such Notice of Survey Letter is attached hereto as **Exhibit A**.

14. Second, beginning in August 2024, INDOT made several attempts to contact relevant property owners by telephone.

15. Third, from August into September 2024, a Customer Service Team conducted door-to-door contact efforts to reach relevant property owners.

16. At this point, or thereafter, all of the Defendants expressed that INDOT would not be allowed onto their property, and that they would not permit INDOT to access their properties.

17. This refusal caused safety concerns within INDOT, that a confrontation between surveying crews and landowners could result in serious, unlawful injury – as a result, those Defendants’ properties were not cleared for immediate surveying, in the hopes that a peaceable solution could be reached and the law could be made clear to these Defendants.

18. Fourth, on September 17, 2024, another letter was sent to the Defendants, stating that INDOT would be visiting these properties alongside local law enforcement to help explain INDOT’s statutory right of entry.

19. Fifth, in mid-to-late October, INDOT and law enforcement visited Defendants’ properties and explained INDOT’s statutory right to access the properties, whereupon Defendants repeated their refusal. Defendants who did not answer the door received door tag notices. In either case, INDOT indicated that it would be seeking a court order if noncompliance continued.

20. Sixth, and finally, INDOT attempted to find a peaceable and efficient solution through individual phone calls to all Defendants with phone numbers available to INDOT.

21. Defendants still refuse to comply with Indiana state law by denying INDOT access to their Properties.

22. Many of Defendants have sent purported “Cease & Desist” letters to INDOT, refusing access in writing, which contain various recitations and statements unrelated to the authoritative statute at issue. Some exemplar letters are attached hereto as **Exhibit A** (referred to with other Defendants’ like letters, in their entirety, as the “Letters”).

B. The Project Stalls Due to Lack of Access

23. Field crews worked to survey the other, lawfully compliant properties, from late August 2024 through November 2024. Field crews carried high-visibility equipment, State ID cards, copies of the Notice of Survey Letters, and copies of Ind. Code 8-23-7. Field crews also attempted to speak to the relevant homeowners before any survey was conducted near a home.

24. The fields surveys have minimal impact on the land and, at most, require the retrieval of small ground samples.

25. Despite INDOT's efforts, the Project has stalled. INDOT needs to access the Properties in order to complete SIU Section 2, but Defendants have refused this access. INDOT has attempted peaceful resolution but, even when faced with law enforcement, Defendants have refused to comply with Indiana law.

26. As a result, an Order of this Court directing Defendants to allow INDOT's authorized employees and representatives immediate and future access to their property is needed for the purpose of performing all necessary assessment and surveyance required for the Project.

27. The Letters identify "Russell Sipes" of Sipes Law Firm as Defendants' counsel proper counsel for any contact relating to these Letters. As covered in the press¹, Mr. Sipes authored these form Letters and has encouraged Defendants to send the Letters.

28. Mr. Sipes knows that these Letters are legally ineffective, and he knows that Defendants do not have the legal right to refuse INDOT access: he has publicly acknowledged that INDOT will be able to "get a court order" to access Defendants' properties.

¹ One public meeting, in which Mr. Sipes encouraged landowners to send the Letters, was covered in the Dubois County Free Press and is quoted below. The article can be accessed via the following link: <https://duboiscountyfreepress.com/property-rights-alliance-proposes-using-due-process-to-slow-mid-states-corridor-progress/>

29. Nonetheless, Mr. Sipes is actively soliciting additional Defendants to send these Letters, which continue to arrive. Mr. Sipes solicits Defendants to send these Letters because he knows it will cause INDOT to fear for public workers' safety and require INDOT to seek a court order.

30. Mr. Sipes thereby hopes to gum up the works, in violation of the clear letter of the law; lacking any credible legal argument, he instead hopes to cause delay by flooding the docket. As Mr. Sipes put it when asking a crowd to send Letters and hire him as their attorney: "what happens when Judge Verkamp has a hundred hearings to schedule just for people to come in and be ordered to let surveyors on their property, along with his regular schedule?"

31. INDOT therefore has filed this single action in order to facilitate orderly and timely disposition of this case.

COUNT I: DECLARATORY JUDGMENT

32. INDOT incorporates all of the preceding paragraphs as if fully stated, at length, herein.

33. Indiana law permits INDOT, by itself and through its representatives, permission to enter onto properties to conduct surveys and assessments, including but not limited to all those specific purposes identified in Ind. Code § 8-23-7-26.

34. INDOT sent Defendants far more than 5 days' notice in advance of INDOT's attempts to enter the Properties at issue in writing by first class United States mail, which included the information required by Ind. Code § 8-23-7-27(b).

35. Despite Indiana law and despite the ample notice provided, the Defendants have refused INDOT access to the Properties.

36. Defendants retain control of the Properties and could permit access if they elected.

37. Defendants are not entitled to interfere with INDOT's lawful access to, surveying of, or assessment of the Properties.

38. INDOT has repeatedly attempted to resolve this issue peaceably and efficiently, but Defendants have refused.

39. Defendants' refusals have caused severe delay to the Project, which cannot continue without INDOT's entry onto the Properties.

40. Defendants have refused to comply with Indiana law and, as a result, INDOT requires declaratory judgment on the scope of its rights described in the preceding paragraphs of Count I.

COUNT II: PRELIMINARY INJUNCTION

41. INDOT incorporates all of the preceding paragraphs as if fully stated, at length, herein.

42. For reasons stated above, INDOT requires, and is entitled to, injunctive relief prohibiting Defendants from interfering with INDOT's rights of access, surveying, and assessment under Indiana law, given INDOT's serious, pending need to timely and efficiently continue the Project without further unnecessary delay.

43. Defendants retain control of the Properties and could permit access if they elected.

44. INDOT is entitled to enter the Properties controlled by Defendants.

45. INDOT is entitled to survey and assess the Properties controlled by Defendants, including for those specific purposes identified in Ind. Code § 8-23-7-26.

46. Defendants are not entitled to interfere with INDOT's lawful entry into Properties.

47. Ind. Code. § 8-23-7-26 (the "Enabling Statute") is not ambiguous: INDOT is authorized to enter, survey, and assess these Properties. As a result, INDOT has a high likelihood of success on the merits of this action.

48. Defendants' unlawful actions threaten to further delay the Project, for which no remedy is available to INDOT. Alternatively, if INDOT were to enter the Properties while Defendants continue to adamantly protest such entry, an altercation could inflict irreparable harm on any INDOT affiliate, agent, or employee who enters the Properties. Under that serious risk of harm, no INDOT affiliate, agent, or employee can enter the Properties and abate further harm while this litigation is pending. Additionally, under Indiana law, statutorily unlawful actions are treated as necessarily causing irreparable harm *per se*. See *Combs v. Daniels*, 853 N.E.2d 156, 160 (Ind. Ct. App. 2006); *L.E. Servs., Inc. v. State Lottery Comm'n*, 646 N.E.2d 334, 349 (Ind. Ct. App. 1995).

49. The threatened injury of delay and expense to INDOT and Indiana's taxpayers necessarily outweighs the Defendants' desire to unlawfully exclude INDOT from the Properties, *per se*. *Id.*

50. The public interest favors INDOT's efficient and lawful actions over Defendants' unlawful refusal and unilateral delay. *Id.*

51. INDOT believes that an Order of this Court will provide INDOT with the clear-cut authorization that would prevent an altercation from occurring and, if deemed necessary, allow INDOT to be escorted by local law enforcement.

52. If no INDOT affiliates are able to enter the Properties, the harm caused by delay to the Project will only continue to accrue.

53. INDOT is not required to post a bond pursuant to Ind. Trial Rule 65(C).

WHEREFORE, Plaintiff Indiana Department of Transportation respectfully requests: (1) that the Court set this matter for a Hearing for this Preliminary Injunction in the next calendar month, and grant INDOT a Preliminary Injunction clarifying that INDOT has the right to enter,

survey, and assess the Properties and enjoining Defendants from interfering in those actions under Indiana law, and further declaring INDOT's right to access properties in and adjoining the Corridor generally, during the pendency of this litigation; (2) declaratory judgment stating that INDOT is entitled to the same, moving forward; (3) INDOT's costs and attorneys' fees; and (4) such other relief as this Court deems just and proper.

Dated: March 6, 2025

Respectfully submitted,

/s/ Edward H. Satchwill III

Edward H. Satchwill III
Deputy Attorney General
Indiana Atty No. 38337-49

*Attorneys for Plaintiff,
Indiana Department of Transportation*

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VERIFICATION

Under penalty of perjury, the undersigned certifies that the statements set forth in this instrument are true and correct.

Date: _____

Jason DuPont, Director of Environmental Services,
Lochmueller Group, authorized representative of
Indiana Department of Transportation.