

ORDINANCE NO. 2008 - 1

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF GIBSON COUNTY,
INDIANA ESTABLISHING POLICY AND PROCEDURES REGARDING ROAD CROSSINGS AND
TEMPORARY ROAD CLOSURES

WHEREAS, the Board of County Commissioners of Gibson County, Indiana has determined it is in the best interests of Gibson County that it have a written policy and procedure concerning requests for road crossings and temporary road closures and to provide a penalty for non-compliance;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF GIBSON COUNTY, INDIANA as follows:

1. All road crossings and temporary road closings in Gibson County, Indiana shall be initiated by the filing of a verified petition executed by the entity or person requesting such temporary closing or crossing. Accompanying such petition shall be a proposed agreement granting the temporary closing or crossing. If the temporary closing is to be for a mining operation, a letter of intent shall be filed with the Gibson County Auditor when the mine first contemplates the need to mine through or cross a County road.
2. The applicant for the road crossing or temporary road closing shall submit copies of the petition to the County Highway Superintendent and the County Attorney at least two (2) weeks prior to any public hearing. It shall be the obligation of the applicant to contact the County Highway Superintendent and the County Attorney at least one (1) week prior to any public hearing in which such matter is heard, to discuss revisions to be made, if any.
3. The applicant shall, at applicant's cost and expenses, cause an advertisement of the hearing on such road crossing or road closure to be published at least two (2) times one week apart in a Princeton newspaper on a form approved by the Gibson County Commissioners. At least two (2) weeks prior to the public meeting, the applicant shall also post a notice at each end of the proposed road closure or road crossing.
4. All agreements on road crossings and temporary road closures shall provide:
 - a. A bond, letter of credit, or other suitable security that is approved and accepted by the Commissioners in the amount of Twenty Five Thousand Dollars (\$25,000.00) if the road in question is a gravel road and Three Hundred Thousand Dollars (\$300,000.00) if the road in question is hard surfaced, said amount to be paid pro-rata per mile; provided, however, the amount required for a road crossing shall be Twenty Five Thousand Dollars (\$25,000.00).
 - b. Contain an indemnity clause.
 - c. Require the applicant to maintain a comprehensive liability policy covering Gibson County and the applicant with limits of not less than One Million Dollars (\$1,000,000.00) per incident. At the discretion of the Commissioners, a self-insurance proposal may be accepted from the applicant.

- d. Provide for the applicant to pay all costs arising as a result of the agreement including suits initiated by Gibson County against the applicant to compel compliance, suits in the form of administrative actions by any governmental agency and any suit by a third party seeking damages against Gibson County.
 - e. The applicant shall pay to Gibson County Highway Department Fund 0702 General and Undistributed at the time of the execution of the agreement the sum of Ten Thousand Dollars (\$10,000.00) per mile (pro-rata per mile) and pro-rata per remainder of calendar year. Thereafter, the applicant shall pay to the Gibson County Highway Department Fund 0702 General and Undistributed the sum of Ten Thousand Dollars (\$10,000.00) per pro-rata mile each year the road is closed, to be paid the first week of January of each year until said road is open for use by the public.
 - f. The application shall show on the preliminary plans submitted to the County Highway Superintendent/Engineer any utilities located in the County right-of-way.
 - g. Agreements pertaining to road crossings shall include a cross section plan of the proposed road crossing. All road crossing agreements shall contain a provision that the applicant shall keep the crossing of the Gibson County road clean and free of trash, mud, debris, fluids, oils, etc. and must also include a provision to keep the crossing free of dust. Failure to keep the crossings clean shall lead to a warning from Gibson County to the company. If the crossing is not cleaned within twenty-four (24) hours after the warning, Gibson County will have the right to close the crossing. All requests for road crossings shall contain a description of all traffic control signs pertaining to such crossing.
 - h. All requests for temporary road closing shall contain a profile clearly depicting how such road presently exists. The profile shall also indicate the existing surface thickness and type.
5. All temporary road closings and crossings of roads will require the holding of a public hearing to be held at a regular Gibson County Commissioner meeting. A request for temporary closure of a road or a road crossing will not be granted at the same meeting in which it is submitted. Road crossings and temporary road closures will be granted at the discretion of the County Commissioners. It is the intent of the County Commissioners to act on these matters in an expeditious fashion. At the discretion of the Gibson County Commissioners any hearing may be continued until the County's concerns are addressed satisfactorily or the petition is denied.
 6. The applicant shall restore any road temporarily closed and shall provide to the County Commissioners a plan showing: (a) The approximate grade of the restored road (b) the width of the restored road; and (c) the proposed drainage of said restored road. The surface of the restored road shall be either rock or hard surface as agreed upon in the road closing agreement. If the applicant is the owner of the real estate on both sides of which the closed road is located, the right-of-way of any new road shall be fifty (50) feet.

In the event the road is to be restored as a hard surface road, the road shall be first constructed as a gravel road and maintained as such for two (2) years prior to the

application of the hard surface road so that subsidence and compaction can take place before the restoration as a hard surface road.

The coal company shall prime oil the road two (2) times a year until it is hard-surfaced.

The bond shall remain in twenty percent (20%) of full force and effect for five (5) years following the return of the road to the County; i.e. after it has been hard surfaced. No continuation of bond shall be required for a gravel road.

7. Temporary road closure may be granted for up to five (5) years and extended for additional two (2) year terms. Such extensions shall be granted provided the applicant submits the request in writing for the extension three (3) months prior to the expiration of the present period of closure and the Gibson County Commissioners find that there is no compelling public interest in the immediate reopening of said road and there would be significant harm to the applicant, if the requested extension is denied.
8. The applicant shall pay the sum of Fifty Dollars (\$50.00) per day as liquidated damages to Gibson County Highway Fund 0702 General and Undistributed for every day the road is not reopened following the one (1) year period after the expiration of the road closure agreement. The applicant shall also be required to pay the County's reasonable attorney's fees, court costs and reasonable expenses of litigation brought by Gibson County to compel compliance with the reopening of County roads.
9. It shall be the general policy of the County that, except for good cause shown and with the agreement of the Gibson County Commissioners, no more than two (2) adjacent and parallel roads will be closed at the same time. All entities that have two (2) or more temporary road closures shall arrange their road closure program so that there are a minimum number of miles closed at the same time. The Commissioners in granting or denying a temporary road closure may consider whether there will be a net loss in road mileage available to the general public and the length of the detour the traveling public will have to make. The effect of these closures on the transportation system in the County will be considered.
10. The granting of a temporary road closure or crossing by the Gibson County Commissioners is a privilege and not a right to the private entities. It is the responsibility of the applicant to initiate consultations with the County, utility companies, the Department of Natural Resources or other state agencies. Early coordination will help in avoiding delays at a later date.
11. The minimum standards for re-establishing a road are included in Exhibit A to this document.
12. The Gibson County Commissioners specifically reserve the right to amend these policies and procedures and to grant variances from these policies and procedures if the Commissioners decide it is in the best interest of the County.

13. Any person, firm, company or other entity who violates the terms of this Ordinance shall be subject to a penalty imposed by Gibson County in an amount not exceeding One Hundred Dollars (\$100.00) for each day of violation of this Ordinance. In the event Gibson County is required to take legal action by means of injunctive relief or otherwise to enforce this Ordinance, and Gibson County should prevail in such legal action, then the person, firm, company or other entity violating this Ordinance shall be liable to Gibson County for all Court costs and attorney fees incurred.

14. This Ordinance shall be in full force and effect from and after its publication.

THIS ORDINANCE ADOPTED THIS 15th day of January, 2008.

BOARD OF COMMISSIONERS OF
GIBSON COUNTY, Indiana


N. SHERRELL MARGINET, President


DON L. WHITEHEAD


ROBERT D. TOWNSEND

ATTEST:


MARY KEY, Gibson County Auditor

EXHIBIT A

GIBSON COUNTY ROADS

MINIMUM ACCEPTANCE STANDARDS FOR ROAD REPLACEMENT AFTER TEMPORARY COUNTY ROAD CLOSURE DUE TO SURFACE MINING OF MINERALS

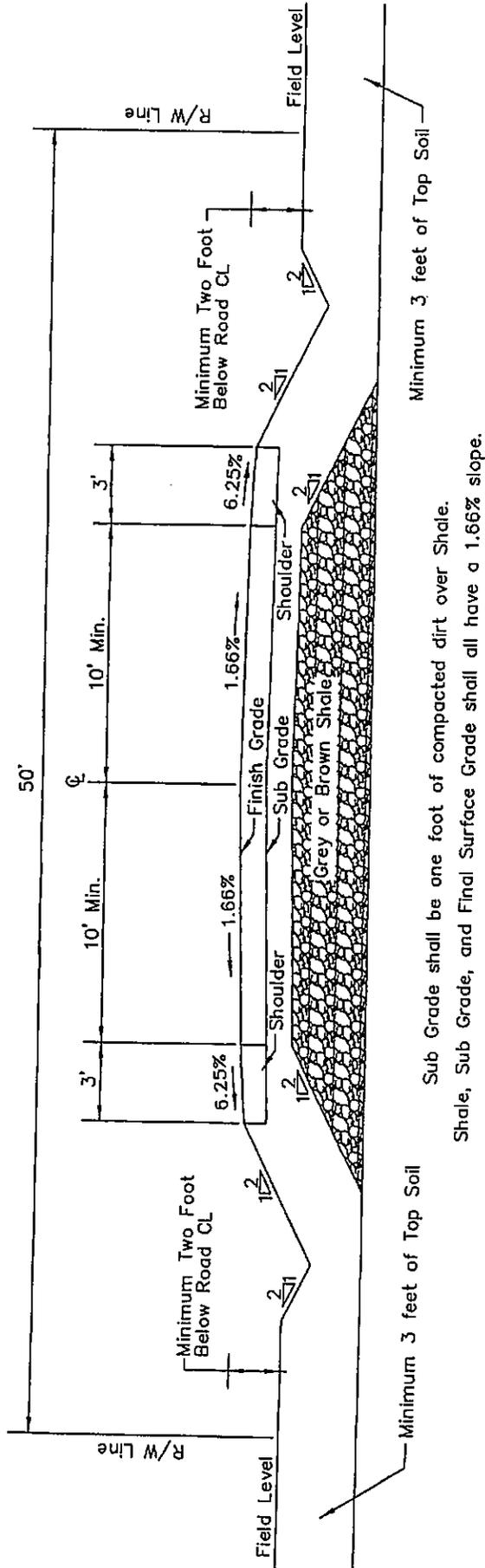
County road replacement after mining shall meet or exceed the following minimum standards and dimensions, unless specifically approved in writing by the Commissioners or stated in the Road Closure Agreement.

1. The roads will be constructed according to Exhibit "B" or "C", depending on the width of the right of way.
2. The roadway shoulders shall be grass on each side of rock roads and aggregate shoulder on each side of hard surface roads. See Exhibits "B" and "C" to this document for typical cross section of reconstructed roads.
3. Roadway surface material shall be as specified in the road closure agreement.
4. All stone/gravel roads shall have a minimum four inch thick compacted stone roadway at time of release back to county. A four inch thick lift of compacted # 53 stone base shall be placed on top of the subsoil/hardpan or fragmented rock sub-base, followed by a layer of road gravel.
5. Hot asphalt road surfaces shall have a minimum four inch thick layer over compacted six inch # 53 stone base. A prime coat of hot bituminous material shall be applied to finish graded # 53 sub-base before hot asphalt binder is laid. The closed road surfaces will be reconstructed to rock/gravel on or before the expiration date of the closure agreement. The closed road shall remain a rock/gravel surface for a minimum period of two (2) years following the expiration date of the Closure Agreement or an approved term as specific by the agreement. This minimum two year period is to allow for settlement of the mine spoiled rock.
6. All graded right-of-way areas shall first be covered with top soil and then shall be seeded with a mixture of seed that shall include fescue. Vegetation shall be established on slopes and grass shoulders before final release back to the county.
7. All ditches over 4% gradient shall have riprap to prevent erosion. Ditches with gradients less than 4% shall be stabilized with vegetation and/or riprap check dams if needed. Road ditches running down slopes shall not discharge into field terraces at the time when the road and its subject ditches are released back to the County.
8. The draining structures (culverts, drop structures & etc.) shall be designed and sized to handle a ten (10) year six (6) hour storm (3.4 inch of rain in a 6 hour period). Sixteen (16) inch diameter pipes will be the minimum acceptable size culvert pipe that can be used under a county road. The minimum length of driveway pipe shall be 24 ft. long. All culverts shall be made from aluminized metal.
9. These Standards will be applicable for Road Closure Agreements executed after adoption of this Resolution. These Standards shall not be retroactively applied to agreements executed prior to adoption of this Ordinance.

Exhibit "B"

(For roads with 40' or greater right-of-way)

Scale: 1" = 6'



Sub Grade shall be one foot of compacted dirt over Shale.
Shale, Sub Grade, and Final Surface Grade shall all have a 1.66% slope.

Refer to Exhibit "A", paragraphs 4 and 5, for Finish Surface Material Specifications.

