

**OFFICE OF THE COMMISSIONER OF RAILROADS****STATE OF WISCONSIN**

Petition of the Wisconsin Department of Transportation for the  
Establishment of a Public Pathway Crossing of the Wisconsin Central  
Ltd. Tracks with the Great River State Trail in the Town of Buffalo,  
Buffalo County

9164-RX-945

**FINAL DECISION**

This is the Final Decision in the Class 1 proceeding by the Office of the Commissioner of Railroads (Office) on the October 16, 2023, petition by the Wisconsin Department of Transportation (WisDOT) to establish a new pedestrian public crossing of the Wisconsin Central Ltd. (WCL) tracks with the Great River State Trail in the town of Buffalo.<sup>1</sup>

The WisDOT petition, under [Wis. Stat. §§ 195.28](#) and [195.29](#) (2021-22)<sup>2</sup>, is DENIED without prejudice.

**Introduction**

Buffalo County will be constructing a segment of the Great River State Trail along STH 35 in the town of Buffalo to connect to the Flyway Trail, Winona Connector, Phase I, at the Town of Buffalo Community Park trailhead to the Great River State Trail, Marshland Access trailhead, in the Trempealeau National Wildlife Refuge. The proposed pathway is a new 10-foot-wide crushed limestone shared-use path with asphalt approaches to cross the WCL's Whitehall Subdivision approximately 105 track feet southwest of the STH 35 crossing (No. 281844K / MP 209.240) at a 90-degree angle with a minimum crossing surface length of 12 feet. The estimated bicycle / pedestrian count per day is 50 to 100 when open. WisDOT proposes the

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<sup>1</sup> WisDOT Petition, [PSC REF#: 482201](#).

<sup>2</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

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surface work to be funded 100 percent by the project, which, is proposed to be LET on May 14, 2024, with construction during the 2024 construction season.

The Office held a telephonic public hearing<sup>3</sup> on this matter on January 25, 2024, where witnesses offered testimony and exhibits on behalf of the parties. No members of the public provided oral or written comments at the hearing nor filed written comments through the Office's website during the open comment period through January 24, 2024. The parties, for the purposes of review under Wis. Stat. §§ 227.47 and 227.53, are listed in Appendix A.

The WCL objected at the public hearing that the WisDOT had not consulted with the railroad prior to filing the petition and that the WisDOT failed to provide any alternatives. On February 16, 2024, the WisDOT filed Ex.-WisDOT-Brunmeier-8, -9 and -10 as alternatives considered.<sup>4</sup> The WCL filed a response on February 26, 2024, which, has been labeled as Ex.-WCL-Turner-5 for inclusion in the record.<sup>5</sup>

### **Findings of Fact**

1. The WCL operates no train traffic over the nearby mainline STH 35 crossing.
2. STH 35 is 24 ft. wide with 10 ft.-wide crushed aggregate shoulders in the vicinity of the crossing and intersects the railroad tracks at an angle of 30 degrees, left-hand forward skew.
3. CTH P intersects STH 35 at an angle of 60 degrees, left-hand forward skew, immediately northwest of the crossing controlled by a stop sign at the T-intersection.

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<sup>3</sup> Notice of Hearing, [PSC REF#: 488302](#).

<sup>4</sup> [PSC REF#: 491496](#), [PSC REF#: 491497](#), [PSC REF#: 491498](#).

<sup>5</sup> [PSC REF#: 492035](#).

4. STH 35 carries 5,400 ADT (average daily traffic) according to WisDOT records at a posted speed limit of 55 mph. Highway traffic volume is projected to increase to 6,400 ADT by 2029.

5. Just one train-vehicle accident has occurred at this crossing in 1978.

### **Conclusions of Law**

1. The WCL is a railroad as defined in Wis. Stat. § 195.02(1).

2. The Office has authority under Wis. Stat. § 189.02; Wis. Stat. §§ 195.03, 195.04, 195.06, 195.28, 195.285, 195.29, 195.30; Wis. Stat. § 227.47(1); and Wis. Admin. Code § RR 1.15 to issue this final decision denying the proposed project.

### **Discussion**

#### **Establishing New Crossings**

Wisconsin Stat. § 195.29(1) requires that in establishing a new crossing, the Office must find by a preponderance of evidence that the proposed crossing promotes public safety before considering the advisability of allowing the crossing to be established and the manner of establishing it.<sup>6</sup> *Green Bay & Western Railroad Company v Public Service Commission*, 269 Wis. 178, 183, 68 N.W.2d 828, 830 (1955). In considering the advisability of allowing the crossing, the Crossing Handbook provides some guiding principles.<sup>7</sup>

The Crossing Handbook provides that, generally, new grade crossings, particularly on mainline tracks, should only be permitted where there is a clear and compelling public need

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<sup>6</sup> The findings of an administrative agency, however, do not need to reflect a preponderance of the evidence as long as the agency's conclusions are reasonable. *Kitten v. State Dep't of Workforce Dev.*, 2002 WI 54, ¶ 5, 252 Wis. 2d 561, 569, 644 N.W.2d 649, 652.

<sup>7</sup> RAILROAD-HIGHWAY GRADE CROSSING HANDBOOK 3rd Ed (FHWA 2019) at 126 (Crossing Handbook) - available at [Highway-Rail Crossing Handbook \(3rd Edition\) \(dot.gov\)](https://www.fhwa.dot.gov/crossings/handbook/).

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(other than enhancing the value or development potential of the adjoining property).<sup>8</sup> The Crossing Handbook also states that a new crossing should not be permitted unless no other viable alternatives exist. In doing so, consideration should be given to closing one or more existing crossings.<sup>9</sup>

While the railroad has discontinued rail service on this line, the railroad has not yet abandoned the line.<sup>10</sup> Thus, for purposes of the instant proceeding, the Commissioner will treat WCL's trackage as Class 3 track using the last recorded maximum timetable speed of 35 mph.

### **Railroad and WisDOT Positions**

The railroad states that there was no collaboration, outreach, or an opportunity to review the proposed crossing design prior to submittal to the Office as has been typical of WisDOT. The WCL had been generally aware of WisDOT's desire to connect the Flyway Trail to the Great River State Trail in the town of Buffalo and the need to cross over the WCL's tracks. In the limited discussions with the WCL, however, WCL states that it did specifically inform WisDOT that the appropriate type of crossing to install near STH 35 would be a grade separation as WisDOT has done at different portions of the Great River State Trail where it crosses other railroad tracks. If grade separation was not possible, WCL suggests closure of one or two other crossings or a trail designed to cross the tracks at the STH 35 crossing.

The WisDOT proposes the trail commence opposite the parking area moving west, then northwest to cross the tracks at 90-degrees and turn southwest running along the south of STH 35. The accompanying testimony was limited to two pages in length devoid of necessary

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *See Wisconsin Central Ltd. - Discontinuance of Service Exemption – In Trempealeau and Buffalo Counties, Wis.*, Docket No. AB-303 (Sub.-No. 51X) (Served Aug. 14, 2019).

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analytical detail such as sight distances. The WisDOT provided more detail as part of its response to the WCL comments at hearing.

As part of the filing, the WisDOT proffers a second alternative that moves the start of the trail north of the parking area and follows STH 35 to the west, crossing at the existing STH 35 railroad crossing at an angle of 23-degrees, left-hand forward skew.<sup>11</sup> This second alternative is neither a reasonable nor serious alternative given the WisDOT's own guidelines for pathway crossings providing that "[c]rossing angles of 30 degrees or less are considered exceptionally hazardous, particularly when wet."<sup>12</sup> "The objective of the design should be to provide bicyclists with adequate width and distance to travel across the tracks at no less than a 60 degree angle to the tracks."<sup>13</sup>

### **Alternatives**

The WCL presents two alternatives neither of which appear feasible. In terms of a grade separation, there is no evidence in this record of any proposal as to cost or how a bridge would fit within the confines of the available land, much less be permitted by the U.S. Fish and Wildlife Service east of the tracks. Land southwest of the proposed crossing and south of STH 35 is private property. The proposed crossing is very near the east-west crossing of the old Chicago and North Western Railroad tracks that intersected the old north-south Green Bay and Western Railroad tracks (now owned by WCL) at an angle of 45 degrees measured in the northeast quadrant and 40 degrees in the southeast quadrant.

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<sup>11</sup> [PSC REF#: 491498](#); Transcript (Tr.) at 4 ([PSC REF#: 499788](#)).

<sup>12</sup> WISCONSIN BICYCLE FACILITY DESIGN HANDBOOK (Ed.)(2018) at 2-23 (available at <http://wisconsindot.gov/Documents/projects/multimodal/bike/facility.pdf>).

<sup>13</sup> *Id.* at 2-25

An at-grade crossing at the current STH 35 railroad crossing, at least based on the WisDOT submittal, is not feasible because as presented, violates the WisDOT's own bicycle design standards of a minimum path-rail intersection of 60 degrees. A pathway designed to such minimum standards may not fit between the roadway and the bungalow, and no other proposed design is in the record except WisDOT's original design.

The original design provides no sight distances for eastbound users nor remedial measures where distances are lacking. The stopping sight distance does not appear met due to the trail's right turn west of the tracks. The turn also makes it difficult to see northbound trains should the line be reactivated because those trains would be coming from behind the pedestrian / bicyclist. There does not appear to be clearing sight distance in any of the northern quadrants due to the highway, track curvature and wooded areas. The abrupt turns seems intended to avoid the private property owner.

The land at issue is bisected by the WCL's tracks and a crossing would be needed somewhere south of the railroad crossing that does provide a safe place to cross with satisfactory sight distance triangles regardless of the status of discontinued train service, unless proposed abandoned. The WisDOT is not relieved of its responsibility because there is currently no train service, nor can the Commissioner ignore that train service could resume. It behooves both parties to work toward a reasonably mutual solution.

### **Order**

1. The WisDOT's petition is denied without prejudice.
2. The WisDOT is to coordinate with the WCL to provide reasonable alternatives should it still want to install the crossing.

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3. This Final Decision is effective upon/one day after service.
4. Jurisdiction is retained.

A handwritten signature in black ink that reads "Don Vruwink". The signature is written in a cursive style with a large initial "D" and a stylized "V".

Don Vruwink  
Commissioner of Railroads

DA/ss:DL:02010395

See attached Notice of Rights

OFFICE OF THE COMMISSIONER OF RAILROADS  
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**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE TIMES  
ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE PARTY TO BE  
NAMED AS RESPONDENT**

The following notice is served on you as part of the Commissioner's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Office of the Commissioner of Railroads (Office) for rehearing within 20 days of the date of service of this decision. Wis. Stat. § 227.49. The date of service is shown on the first page. The petition for rehearing must be filed with the Office and served on the parties. The filing of a petition for rehearing does not suspend or delay the order's effective date. Wis. Stat. § 227.49(2). An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed in circuit court and served upon the Commissioner by personal service or certified mail within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Office serves its original decision.<sup>14</sup> The Office must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2018

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<sup>14</sup> See *Currier v. Wisconsin Dept. of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.



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## Appendix A

### **OFFICE OF THE COMMISSIONER OF RAILROADS**

(Not a party but must be served per Wis. Stat. § 227.53)

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