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September 13, 2011

Cynthia Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
SEP 13 2011
Part of
Public Record

Re: AB-290 (Sub-No. 286)-Norfolk Southern Railway Company—
Adverse Abandonment—St. Joseph County, IN

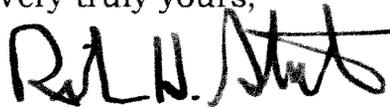
Dear Ms. Brown:

Enclosed herewith are the Original and eleven copies of the Joint Petition for Reopening filed on behalf of the City of South Bend, IN, the Brothers of Holy Cross, Inc., the Sisters of the Holy Cross, Inc. and Holy Cross Village at Notre Dame. Please file stamp a copy this letter and one copy of the Joint Petition and return them to me.

Because the City of South Bend is a local government entity, I hereby request a waiver of the filing fee pursuant to the provisions of 49 CFR § 1002.2(e). In order not to delay the processing of the Joint Petition, I have enclosed my check in the amount of \$250 to cover the filing fee if one is required along with the request that the check be returned to me should the request for a waiver be granted.

I have also enclosed a copy of a disk that includes all materials being filed. If you have any questions, please give me a call at 202-363-2011.

Very truly yours,



Richard H. Streeter

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RHS:rs
Enclosures
cc: All Parties of Record

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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

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Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY—
ADVERSE ABANDONMENT—
ST. JOSEPH COUNTY, IN

JOINT PETITION TO REOPEN

ENTERED
Office of Proceedings
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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY—
ADVERSE ABANDONMENT—
ST. JOSEPH COUNTY, IN

JOINT PETITION TO REOPEN

Come now the City of South Bend, Indiana (“City”), the Brothers of Holy Cross, Inc. (“Brothers”), Holy Cross Village at Notre Dame (“Village”) and Sisters of the Holy Cross, Inc. (“Sisters”) (collectively referred to as “Petitioners”) and file this Joint Petition to Reopen the above-captioned proceeding. Reopening is sought pursuant to the Board’s authorization in its Decisions in this proceeding served February 14, 2008, slip op. at 7 (*February 2008 Decision*), and August 27, 2008, slip op. at 4 (*August 2008 Decision*).

BACKGROUND

On November 21, 2006, Petitioners filed an application seeking a finding that the public convenience and necessity require or permit abandonment of two interconnecting branch lines (“the Lines”) that measure approximately 3.7 miles in length. The Lines extend from a point in the City through the campuses of Brothers and Sisters. The Lines, which are owned by Norfolk Southern Railway Company (“NSR”), have not been utilized for any rail service since 1994 or 1995, when they were owned by Conrail.

The application was *not* opposed by NSR or by any past, current or potential future shipper. Nevertheless, by its *February 2008 Decision*, the Board denied the application when it found that The Chicago Lake Shore & South Bend Railway Co., LLC (CLS&SB”), a newly formed short line railroad, wished to acquire the Lines and reinstate service by transporting coal to the University of Notre Dame du Lac (“Notre Dame”).

Notre Dame did not participate in the original proceeding to support CLS&SB. However, following service of the Board’s decision denying abandonment, Notre Dame forwarded a letter to the Board, dated March 26, 2008, in which it stated it did not have a need for future direct rail service over the Lines and did not intend to contract with any rail operator along this line.

Based on Notre Dame’s unequivocal repudiation of any future need for direct rail service, Petitioners requested the Board to reopen the proceeding. By split Decision, the Board denied the petition to reopen. Vice-Chairman Mulvey dissented and filed a separate expression. In denying reopening, the Board stated (*August 2008 Decision*, Slip Op. at 4) as follows:

By denying this adverse abandonment, we will have safeguarded the potential for the University [of Notre Dame du Lac] to reevaluate its shipping needs and for some future shipper(s) to benefit from rail service.* And as we also stated in the February 2008 Decision, should the transfer, rehabilitation, and restoration of operations *not occur within a reasonable period of time*, or should traffic fail to develop, Applicants may then seek to reopen the proceeding or file a new abandonment application. (*Note omitted, emphasis added).

Vice Chairman Mulvey dissented on the grounds that the Board's *February 2008 Decision* was based on material error. He reasoned (*id.* at 6) that:

[t]here is no reasonable potential for future rail use of the lines at issue. A decade of non-use is a reasonable period of time under the circumstances in this case on which to base a finding that there is no present or future public need for rail service that is not outweighed by other interests.

Petitioners respectfully submit that the passage of time has proven Commissioner Mulvey to be correct. More than five years have passed since Notre Dame announced in June 2006 that it would not use CLS&SB's services. Given both the absence of any demonstrated need for future service, as well as NSR's decision not to sell or restore the Lines, it would be material error for the Board to deny abandonment authority at this time.

SUMMARY OF ARGUMENT

Petitioners respectfully submit that a reasonable period of time has now passed since the Board issued its *February 2008 Decision*.¹ Because no evidence of any future need has ever materialized and because the Lines have not been sold or restored, abandonment authority should be summarily granted.

¹ In his concurring opinion on judicial review, Judge Kavanaugh stated that "[i]n my judgment, if sale of this inactive line does not occur by the end of 2010, the 'reasonable period of time' allotted by the Board likely will have expired." *City of South Bend, IN v. Surface Transp. Bd.*, 566 F.3d 1166, 1172 (D.C.Cir. 2009).

First, Notre Dame has once again concluded that it has *no need* for direct rail service to its campus and that it will continue to receive its coal shipments from NSR via trucking from a transload facility in the City and that it opposes CLS&SB's attempt to acquire the Lines in order to resume direct rail service to Notre Dame. *See Verified Statement of John Affleck-Graves.*

Second, based on a recent survey of businesses and other entities that are located along the dormant lines, there is no legitimate basis to suggest that there is any other current or future need for freight rail service. *See Verified Statement of William Schalliol, Economic Development Planner, Community and Economic Development, City of South Bend and Norfolk Southern Railway Company Abandonment Study prepared by the City of South Bend Department of Community & Economic Development, dated September 2011.*

Third, NSR has advised the Board that it will not sell the Lines to any would-be purchaser because there is no demonstrated need for future rail service. *See Reply Comments Norfolk Southern Railway at 8, n6.* Moreover, because there is no demonstrated need for future rail service, NSR has no intention to rehabilitate the Lines or restore rail service over them. *Id.* Nothing has changed in more than four years since NSR filed its Reply Comments.

Fourth, although the Board held open the possibility that CLS&SB might continue its efforts to acquire the Lines and reinstate rail service; that has not happened. Instead, a state of limbo exists that will not be broken until abandonment is authorized.

Given the failure of any traffic to develop, the absence of any known shipper that would require rail service over the Lines, NSR's unwillingness to sell or rehabilitate the Lines due to the lack of need for rail service, and CLS&SB's obvious inability to change Notre Dame's position, there is no rational basis for a finding that the present or future public convenience and necessity require the Lines be kept within the national rail system. Because the dormant right-of-way can be put to use in several ways that will better serve the public interest, the Board should now conclude that its jurisdiction may no longer be used as a shield to protect these dormant Lines from the legitimate processes of state law. Simply put, no overriding Federal interest exists that warrants retention of the Lines.

Abandonment of the Lines and the permanent removal of the remaining tracks will permit the revitalization and full development of the former right-of-way and facilitate the use, development and enjoyment of the underlying real properties. Although the Board downplayed the several public and private benefits that will be realized upon abandonment of the long-dormant tracks when it first considered this matter, there is no compelling reason to continue to do so.

A proper balancing of interests compels the conclusion that the public interest in abandonment far outweighs any interest associated with the further retention of these long-dormant lines of railroad. As Vice Chairman Mulvey recognized in his dissenting opinion, "[e]nough is enough." *August 2008*

Decision, slip op. at 6. Authority to abandon the Lines should be granted without further ado.

ARGUMENT

The several factors identified by the Board that warrant reopening of the proceeding unequivocally support a finding that abandonment of the Lines should now be authorized.² Since this matter was previously before the Board, no effort has been made to reinstate rail service; no present or future rail traffic has materialized; and ownership of the Lines has not been, and will not be, transferred.³ In addition, the Lines have not been rehabilitated so that

² It does not matter whether an abandonment application is filed by the operating rail carrier or another person. As the Supreme Court noted in *Thompson v. Texas-Mexican Ry. Co.*, 328 U.S. 135, 145 (1946), “[t]here is no requirement that the application be made by the carrier whose operations are sought to be abandoned. It has been recognized that persons other than carriers ‘who have a proper interest in the subject matter’ may take the initiative [citation omitted].” Although the wording of the statutory language governing abandonments was slightly modified in the ICC Termination Act, there is no indication that Congress intended to overrule the Supreme Court’s interpretation.

³ Although CLS&SB filed a verified notice of exemption to acquire the Lines in November 2006, which the Board allowed to become effective on February 14, 2008, NSR continues to refuse to sell the Lines to CLS&SB. Given its inability to secure an agreement with NSR, CLS&SB cannot begin service, even if there were shippers who were willing to use its proposed services. See *San Francisco Bay Railroad—Mare Island Petition for Emergency Service Order and Petition for Declaratory Order—Lennar Mare Island, LLC*, FD 35360, slip op. at 4 (STB served December 6, 2010), citing *Iowa, Chi. & E. R.R.—Acquis. & Operation Exemption—Lines of L&M Rail Link, LLC*, FD 34177, slip op. at 15 (STB served July 22, 2002); *Lackawanna Cnty R.R. Auth.—Acquis. Exemption—F&I Realty, Inc.*, slip op. at 6 (STB served Oct. 22, 2001). Because there is no possibility that CLS&SB will be able to acquire the Lines from NSR, the Board should revoke the notice of exemption in *The Chicago Lake Shore and South Bend Railway Company—Acquisition and Operation Exemption—Norfolk Sothern*

operations could be restored. Instead, NSR has recently removed additional safety equipment from the Lines. In the meanwhile, public and private projects that are consistent with the public interest have been adversely impacted.

I. Notre Dame Has Made It Clear That It Has No Current Or Future Need For Direct Rail Service For The Delivery Of Coal Or Any Other Product And That It Supports Abandonment Of The Lines.

As a review of the Board's *February and August Decisions* confirms, abandonment was denied based on the Board's interpretation of comments published in a newspaper article that left the erroneous impression that Notre Dame "*might* be interested in again receiving coal shipments by rail directly to its power plant." *February 2008 Decision*, slip op. at 5 (emphasis added). Even after the University's Executive Vice President emphatically disclaimed any such interest in his March 26, 2008 letter to the Board, two members of the Board announced that they were "not persuaded" by that disclaimer and opted to give the University the opportunity "to reevaluate its shipping needs" while simultaneously providing CLS&SB an opportunity to acquire the lines. *August 2008 Decision*, slip op. at 4.

At the outset, there is no basis to second-guess Notre Dame's studied assessment of its shipping needs. As Vice Chairman Mulvey recognized, "[t]he University is not an unsophisticated organization without business sense. It

Railway Company, STB Finance Docket No. 34960, which the Board permitted to become effective on February 13, 2008.

does not want and will not take rail service.” *August 2008 Decision*, slip op. at 6.

Commissioner Mulvey’s comments remain on target. Over five full years have now passed since the University announced in June 2006 that it would not support CLS&SB’s efforts to reinstate direct rail service. There is no basis for refusing to accept Notre Dame’s consistent evaluation of its interests. Nor is there any justifiable reason to second-guess Notre Dame’s determination to continue to receive coal via the transloading arrangement with NSR that has worked for approximately 17 years.

In a Verified Statement submitted herewith on behalf the University, John Affleck-Graves has unequivocally stated (V.S. Affleck-Graves at ¶ 4) that:

As of this date, the University continues to receive its coal shipments either from NSR, via trucking from the transloading facility or through other means. These arrangements satisfy Notre Dame’s transportation needs and will continue to do so in the future. While some have suggested that the arrangement should be replaced by renewed rail service in order to eliminate the movement of trucks through the City of South Bend, it is Notre Dame’s position that renewed rail operations would have a far greater adverse impact on the community than continued trucking operations over public streets.

He has also made it crystal clear that no other entity has been authorized to disclose any information regarding Notre Dame’s needs or its intent. As he has stated (*id.* at ¶ 5):

I must also emphasize that neither Rosebud Mining Co., with which Notre Dame has a contract to supply coal, nor The Chicago, Lake Shore & South Bend Railway Company (“CLS&SB”) has been authorized to take a

position regarding Notre Dame's current or future transportation needs or to provide the Board with any information regarding any projected use of coal.

Given Notre Dame's position, any hearsay testimony regarding the University's future transportation needs must be disregarded as being unsubstantiated, unauthorized and unreliable. As Affleck-Graves has also explained (*id.*):

Notre Dame does not in any fashion support CLS&SB's purported plans to reinstate rail service to Notre Dame if it were able acquire the rail lines from NSR. Instead, it opposes any such sale on the grounds that it is contrary to the public interest.

The Board should also note that there are no other potential shippers located north and east of the St. Joseph River. While Sisters previously received shipments of coal by rail, they decided more than eight years ago to discontinue the use of coal and to remove the tracks that were used to deliver coal to their power plant. See Supplemental Verified Statement, Sister Geraldine Hoyler at ¶ 2. Neither the Brothers nor the Village use coal.

II. No Other Shipper Has Requested Rail Service Or Given Any Indication That It May Require Future Rail Service.

In the original proceeding, Applicants introduced a survey conducted by the City's Economic Development Specialist that indicated that there was no shipper interest in rail service over the Lines. In an attempt to counter City's 2006 survey, CLS&SB's President claimed there were two steel service centers, Steel Storage & Supply and Steel Warehouse Company, Inc., that represented

potential customers to CLS&SB. However, neither of the alleged “potential shippers” entered an appearance to confirm CLS&SB’s claims.

In July 2011, a further survey was initiated under the direction of William Schalliol, City’s current Economic Development Specialist. This survey involved all seven businesses that are located adjacent to the Lines: Steel Storage & Supply, Waggoner Oil, Martin’s Supermarket & Shopping Plaza, Monarch Linen & Uniform Rental, D&M Auto Repair Service, Inc., Manufacturing Technologies, Inc. and Steel Warehouse Company, Inc. The foregoing businesses were asked whether they have any present or future need for direct rail service.⁴ Every business, including the two businesses that CL&SB claimed were potential customers, disclaimed any need for present or future rail service over the Lines. Furthermore, the businesses “unanimously favor abandonment of the lines due to various impacts of the rail line either crossing through or adjacent to their property.” V.S. Schalliol at ¶ 6. Hence, there are no potential shippers located between the St. Joseph River and the connection with the NSR mainline who have identified any need for future rail service over these long dormant lines. In fact, they have advised City that they would not use rail service even if were available at this time.

The lack of any need is also supported by NSR’s Reply Comments where it noted that it has not received or solicited any request for service over the Lines since it acquired them in June 1999. See NSR Reply Comments at 6.

⁴ See generally, V.S. Schalliol.

Thus, there is not a shred of probative evidence of any actual need for current or future rail service over the Lines.

III. The Lines Have Not Been Transferred Or Rehabilitated, Nor Have Rail Operations Been Restored.

Over five years have passed since the collapse of negotiations between NSR and CLS&SB that would have perhaps allowed CLS&SB to resume rail operations of some nature over the Lines. During that time, nothing has happened to motivate NSR to resume negotiations with CLS&SB, especially now that Notre Dame has made it crystal clear that it will not deal with CLS&SB. As Affleck-Graves has explained at paragraph 6 of his Verified Statement:

While CLS&SB met with certain Notre Dame employees about four or five years ago in an attempt to receive their support for renewed, direct rail service to the Notre Dame campus, no agreement was ever proffered or reached between Notre Dame and CLS&SB that would have resulted in Notre Dame supporting CLS&SB's proposed activities. Nor will Notre Dame entertain any such proposal in the future. In short, contrary to the statement at page 5 of the Board's Decision of February 13, 2008, Notre Dame has no interest in again receiving coal shipments by rail directly to its power plant.

Furthermore, no other shipper has materialized. As a result, NSR has adhered to its consistent position that it would not rehabilitate the Lines or sell them to CLS&SB in the absence of a demonstrated need for future service.

Since the talks with CLS&SB collapsed five years ago, NSR has continued the process of dismantling the Lines. As Carl Littrell, City Engineer for the City, has explained, there are twenty-two (22) rail crossings over City

streets and alleys within the City limits. V.S. Carl Littrell at ¶ 4. With NSR's permission "all of the at grade rail crossings, except for 'rubberized' surfaces, have been paved over." *Id.* at ¶ 5. At most of those locations, NSR "has removed the rail to facilitate the removal of the crossing." *Id.* Moreover, NSR "has removed the crossbucks at each of the crossings" described in ¶ 5 of Littrell's Verified Statement. *Id.* at ¶ 6.

In addition to its past action of removing the switch to its main line, NSR within the past year removed the flashing light and bell cantilever safety equipment that was installed at the Orange Street crossing during the 1980's as a federal aid project. *See*, V.S. Littrell at ¶ 7 and Photograph RR010.jpg, which reflects the former safety equipment.

Petitioners are mindful of the Board's prior reasoning that tracks and crossbucks could be restored and the switch reinstated in order to make the Lines operational. *See February 2008 Decision*, slip op. at 5. However, the continuing dismantling of the Lines would further add to the estimated cost of rehabilitation and is yet another clear indication that NSR management does not see a real possibility that rail services will ever be resumed and that the continued upkeep of the safety equipment at the Orange Street crossing is a waste of its assets.

Because no final sales agreement was ever reached between NSR and CLS&SB, and because the Board lacks any jurisdiction to force NSR to sell the Lines to CLS&SB, the matter is moot. *See Letter to Board from James R.*

Paschall, dated August 15, 2006, filed in STB Finance Docket No. 34893.

Given the insurmountable obstacles to the sale of the Lines to CLS&SB, there is no reason to delay abandonment any further.

IV. Abandonment Of The Dormant Tracks Is Consistent With The Public Interest And With Future Economic Development Of The Private Property That Is Adjacent To The Right Of Way.

In seeking reopening, Petitioners note the STB's comment that their "own statements and actions indicate that they see a real possibility that rail service could resume if the Lines remained in the rail system." *February 2008 Decision*, slip op. at 5. Unfortunately, that comment fails to acknowledge a primary motivation for the South Bend community's opposition to CLS&SB. By the time that the original application was filed in November 2006, Applicants, as well as NSR, realized that Notre Dame did not support the restoration of direct rail service. They were also aware that if Notre Dame did not support restoration of the Lines, the likelihood of future freight rail service subject to the Board's jurisdiction was nil.

There was, however, an underlying concern that CLS&SB's proposal to operate coal trains was nothing more than a subterfuge to use Board approval of its acquisition of the Lines as a shield against local regulation of its proposed trolley service. In Applicants' view, that service, while not being subject to the Board's jurisdiction, would be as disruptive to the community as the proposed coal shipments. Not only would it disrupt the college campuses, it would disturb the lives of disadvantaged, low and moderate income residents in the

City whose homes are located along the route between Washington Street and Woodward Avenue where the tracks have been removed or paved over and where cross-bucks have been removed. See V.S. Littrell at ¶¶ 4-8.

The underlying concern with trolley operations was previously explained at paragraphs 4-6 of the Verified Statement of Andrew R. Laurent, the former Economic Development Specialist for the City. As he testified (V.S. Laurent at ¶ 4), during the course of multiple presentations made to City representatives, CLS&SB's:

primary focus [...] was to develop the tracks into an electrified passenger trolley system. The presentation materials provided in those meetings referred mainly to the interurban-style operation of restored South Shore trolley cars from the west side of South Bend to the Notre Dame campus, for use primarily on weekends by students.

However, city officials determined that the trolley operation would have little or no benefit to the City, primarily because there is no need for an interurban community trolley to shuttle passengers from South Bend's west side to the campus of Notre Dame. As Laurent noted, there is very little relationship between those residents who live near the track and Notre Dame. See V.S. Laurent at ¶ 5. He also explained (*id.*) that:

[t]he line does not pass closer than seventeen blocks to South Bend's central business district, so the typical urban "trolley model" of commuter operations does not apply to this rail line. The residents in the neighborhoods where this line passes have expressed their dissatisfaction with any plan whatsoever to revitalize this dormant track. They spoke out at a City Council Meeting in June, 2006 to voice their opinions against the reactivation of this line.

No resident voiced any desire to personally use said rail line.

As Laurent also explained (V.S. Laurent at ¶ 6), it was only after CLS&SB became aware that the proposed trolley operations faced significant opposition that it shifted its focus and claimed:

it wanted to provide freight service to the industries located the line and to haul coal to The University of Notre Dame for use by its power plant. Throughout these meetings, the freight aspect of CLS&SB's operations was never shown as a primary reason for reactivating the line.

Because local trolley operations would not further any local interest, and because the City was, and continues to be, concerned about the potential viability of the project and the financial implications to the City if CLS&SB's projections are faulty, the City had no choice but to express its concerns to the Board. Simply stated, the City is concerned that if the tracks were reinstalled,⁵ it will ultimately have to pay for the maintenance and/or ultimate removal of at-grade street crossings and signaling equipment when the proposed trolley operations fail. In the interim, the City must bear the increased cost of snow removal from the reinstalled tracks during the winters. V.S. Littrell at ¶ 8.

Given the established federal and state policies governing a railroad's share of the cost of eliminating hazards at grade crossings, the City would be forced to cover the overwhelming majority of any such costs. See 23 U.S.C. § 130; 23 C.F.R. § 646.210. Because the City could not justify any such

⁵ All of the at-grade crossings, except two with "rubberized" surface have been paved over with NSR's permission. At most locations, NSR removed the rail to facilitate the paving. See, V.S. Littrell at ¶ 5.

expenditure when there was no real need for renewed freight rail service over the Lines and where an alternative means of transportation had long satisfied any demonstrated need for service and will continue to do so in the future, the decision was made to seek authority to abandon the Lines in order to avoid the necessity of dealing with an unneeded trolley service.

Those are very realistic considerations. Dealing with NSR, which is a well-financed Class 1 railroad, is one thing. Dealing with an undercapitalized and ultimately defunct trolley operator is yet another. Of course, because the Board has no jurisdiction over local trolley operations, there can be no Federal interest in preserving the Lines for such operations in the absence of any discernible need for interstate rail freight operations.

Similar concerns underlie the Religious Orders' opposition to restoration of the dormant tracks. Although they believed the possibility of resumed freight operations was highly unlikely following Notre Dame's public announcement in June 2006 that it had no intention of receiving coal over the Lines, a subsequent meeting with CLS&SB on October 13, 2006, caused them to realize that if the Lines were not abandoned, CLS&SB might actually seek to operate vintage trolley operations through their campuses. As the spokesperson for Sisters has explained, Supplemental V.S. Hoyle at ¶ 6:

Even if trolley operations might not pose the same dangers as a full-fledged freight operation, unneeded local trolley operations through the college would constitute a public nuisance and would not further any overriding Federal interest, or involve railroad operations in interstate commerce. Furthermore, it is Sister's position that trolley

operations are not authorized under the limited easements granted to predecessors of Norfolk Southern and, therefore, could not be performed in any event without Sisters' consent. Moreover, it is possible that trolley operations could block access to emergency vehicles traveling to the college and retirement facilities located west of the track.

The same is equally true for the Village. See V.S. John Mauch at ¶12:

Although trolley operations might not pose the same dangers as a full-fledged freight operation, the tracks and operations would continue to interfere with and endanger the operations of the retirement village and constitute a public nuisance.

Over a century had passed since multiple railroads laid tracks through the Brothers' and Sisters' property. While rail service was then needed for both passenger and freight traffic, things have changed. Today, instead of offering any benefits, the dormant tracks are nothing other than a liability.

This is plainly evidenced by their adverse impact on the construction and operation of Andre Place, which is a new independent living facility located on Village's property. Unfortunately, the confluence of several events, including the authorized abandonments of portions of the Lines, the voluntary removal of tracks, cross ties and cross bucks at multiple grade crossing, as well as NSR's removal of the switch to the its mainline at MP 0.0, created the erroneous impression that the Lines had been abandoned. It was only after construction had commenced that Brothers learned that the Lines had not been abandoned, but were merely dormant. As John Mauch has explained at ¶4 of his Verified Statement, substantial unanticipated costs were encountered because the new

building had to be redesigned and reconfigured after construction was well under way. In particular, the basement, which houses an underground parking garage, had to be modified. In addition, the garage exit ramp had to be completely reconfigured. Not only was this expensive, but the final layout is not as efficient as it would have been had Brothers been able to use the original design.⁶

In addition to disrupting construction of Andre Place, the dormant tracks continue literally to split the retirement village in half. As the plat of Brothers' campus reveals, there are only two paved, at-grade crossings that connect the two segments of the retirement village and allow vehicular traffic, including ambulances, to reach the facilities located on the west side of the tracks.⁷ Not only do the tracks adversely impact vehicular traffic, but they interfere on a daily basis with the ability of the elderly residents to freely access the new facility, even in the absence of any rail operations. For residents who are confined to wheelchairs, or whose mobility is limited, the tracks create a hostile environment, especially in the winter as it causes them to be exposed to a greater extent to the cold weather than would be the case if the tracks were to

⁶ Unnecessary additional costs have been incurred in the process of installing utilities in the buildings located on the west side of the tracks. In order to install conduit under the tracks, Brothers had to satisfy highly restrictive requirements imposed by the owning railroad, even though the tracks had not been used in several years. For example, instead of being able to utilize inexpensive PCV/HDPE pipes under the railroad crossing, it was necessary to use much more expensive galvanized steel pipe. That one change order increased the cost of the project by over \$20,000. *Id.* at ¶ 7.

⁷ See Exhibit 1 to V.S. Mauch.

be removed so that permanent sidewalks could be installed between the various buildings that are now separated by the tracks.

The same is true on Sisters' campus where it is necessary to cross over the dilapidated tracks to enter the buildings that are located on the campus. As such, the tracks impact the students who attend St. Mary's College, as well as the approximate 200 plus Sisters, 150 of whom are aged and infirm, who live on the campus.

Renewed rail operations at any level would only increase the danger to elderly residents who are disoriented and incapable of quickly moving themselves to safety. In the highly unlikely event that rail operations would ever be resumed, the possibility of derailments associated with movements of heavily loaded railcars over light-weight rail that was laid over a hundred years ago cannot be discounted.

In addition, because of the at-grade crossings, any future rail operations would require whistles to be blown at each crossing, thereby further disrupting the tranquility of the campuses. The noise would have a detrimental impact on the Retirement Village by making it a far less desirable location for elderly residents who do not want to be upset and disturbed by whistles being blown by trains moving a few feet from their retirement homes. Of course, by causing the retirement village to be a far less attractive option for would-be retirees, retention of the Lines hinders Brothers from carrying out its mission.

In order eliminate the whistles at the road and pedestrian crossings, the Orders, in conjunction with the City, would be required to comply with FRA quiet zone requirements.⁸ It is estimated that the cost of compliance for the Orders could be several hundred thousand dollars or more depending on the extent of the safety equipment that might be required.

In short, the dormant tracks are preventing Brothers from making full use of its remaining property. That will continue to be the case until such time as the unneeded tracks are removed. See Verified Statement Mauch at ¶¶ 3-8. The same impact would be felt by Sisters.

Although the continued existence of the dormant tracks would not have the same impact as renewed operations, the very presence of the dilapidated tracks adversely impacts operations and planning. Hence, even if it has been possible in the past for the Orders to conduct their educational and other beneficial activities, notwithstanding the presence of the tracks, the time has come to recognize the inequity of preventing one party from enforcing the terms and conditions of a negotiated contract, while allowing the other party to avoid the consequences of its actions (or more accurately, its inaction).⁹

As Sister Geraldine has explained, the industrial spur that extends to the Notre Dame campus is the subject of multiple written agreements.

⁸ Even if the street crossings were to be considered private highway-rail grade crossings, they would have to be included in any quiet zone established in conjunction with City. 49 C.F.R. § 222.25.

⁹ This should not be taken as a criticism of NSR. By the time it acquired the Lines from Conrail, there was no need for rail service over the Lines.

Supplemental V.S. Hoyler at ¶ 4. Such agreements include a November 1902 reversionary indenture between St. Mary's Academy, as Sisters were formerly known, and Arthur Kennedy and an easement that was granted to Notre Dame in October 1903. Those easements, which permitted the construction of the spur that was formerly used to deliver coal to Notre Dame, specifically provide that the real property underlying the right-of-way reverts to Sisters when rail operations cease.

The spur is also subject to a further Agreement, dated November 1903, between the Michigan Air Line Railroad and Notre Dame. That Agreement states that the railroad may use the spur so long as "Railroad Company shall give satisfactory service or as long as the interests of [Notre Dame] would be subserved." Given Notre Dame's unequivocal positions that it will no longer receive coal by direct rail shipment to its power plant, coupled with a 17-year lapse of rail service, the time has come to honor the original terms and conditions of the contractual agreements between Sisters, Notre Dame and NSR's predecessors so that Sisters will be able to clear its title and freely move forward in whatever direction they may choose. The same principle applies with equal force to Brothers and its property.¹⁰

As Sister Geraldine previously stated, V.S. Hoyler at ¶3, "because the easement to the right-of-way located on Sisters' campus has expired,

¹⁰ Contrary to the suggestion at p. 7 of the February 2008 Decision, this is not a situation where an adjacent landowner is trying to annex a right-of-way. Instead, it involves an attempt to enforce the terms of written agreements that were freely entered into by NSR's predecessors over a century ago.

abandonment will permit the title to the underlying real property to be cleared, which would allow future development of the property on which the dormant track is now situated.” The Board should carefully note that the industrial spur, which is located at the north end of Sisters’ property, runs parallel to Douglas Street at a distance of 200 hundred feet to the south. As a result, the continuing presence of the dilapidated spur track unquestionably interferes with any plans to fully develop the northeast corner of Sisters’ property.

Because the continued presence of long dormant tracks on the campuses of Brothers and Sisters do not further any overriding Federal interest in preserving interstate commerce, the Board should now find that its protective jurisdiction over the Lines should be withdrawn. Given the lack of any showing of present or future need for rail service, there can be no legitimate Federal interest in preserving the Lines. Furthermore, if it were to deny abandonment authority when there is no hint of any future need for rail service over the Lines and where the Lines have not been maintained for over 17 years, the Board would sanction the violation of multiple contractual agreements that were voluntarily entered into by NSR’s predecessors. Although that result would not promote any beneficial interest, it would harm Brothers’ and Sisters’ meritorious efforts to develop their properties in ways that are beneficial to the overall public interest.

V. The Continued Presence of the Tracks Is Adversely Affecting Revitalization of Adjoining Areas.

The Abandonment Study attached to William Schalliol's Verified Statement demonstrates that the presence of the dilapidated and unused rail line, even in its current vacant state, is a detrimental and blighting factor to neighborhood revitalization. "Because of the uncertainty of the fate of the dilapidated and unused rail line, it is a detrimental and blighting factor to neighborhood revitalization."¹¹ In addition, "[e]conomic development has been hampered by the location of the rail corridor and the ambiguity and uncertainty of the Line's status. Although no rail activity has occurred for approximately seventeen years, no rational plans can be made regarding development due to the uncertainty of whether rail operations may be restarted at some point in the indefinite future."¹²

This highlights a major difference between unused rail lines that are located in a rural area where they are "out of sight, out of mind" and unused lines located in an urban setting where they are a barricade to development and contribute to urban blight. This is an intolerable situation that is contrary to the public interest, especially when the industries and businesses along the line have made it crystal clear that they have no need for future rail service and support abandonment of the Lines in order to encourage local development and the revitalization of the part of South Bend that is adjacent to the Lines.

¹¹ See Norfolk Southern Railway Company Abandonment Study at 8.

¹² Id. at 9.

Support for the abandonment is not limited to the Petitioners whose properties are degraded by the adjacent tracks. The Board's attention is invited to the Verified Statement of James D. Conley, Past President of The Point at North Shore Woods Association, Inc. ("NSWA"). NSWA is a condominium association comprised of the owners of thirty-one townhouses located on land north of the St. Joseph River that is immediately adjacent to the NSR right-of-way. As Mr. Conley has explained, the quality of life enjoyed by the members of the Association would be shattered by the introduction of noisy vintage trolleys when no real need has been demonstrated for the resumption of freight rail service.

VI. The Transload Operation Is In The Public Interest.

Although CLS&SB has previously claimed that the use of trucks to deliver coal from the transload facility is having and will continue to have an adverse environmental impact, that claim must be rejected.¹³ The 14 truckloads a day that CLS&SB asserted, without authorization from Notre Dame, might be used for future deliveries of coal would constitute an insignificant percentage of the 28,000 vehicles that daily traverse the rail crossing over Indiana Highway 933. Moreover, because trucks have been used for approximately 17 years without complaints being lodged, it is evident that

¹³ The Board's Section of Environmental Analysis, after discussing CLS&SB's desire to replace the truck transload service with rail service, concluded that "abandonment of the lines will not significantly affect the quality of the human environment." Environmental Assessment, served December 22, 2006, slip op. at 4.

the community has become accustomed to them and has not been adversely impacted by them in any quantifiable sense. As Notre Dame has testified, “renewed rail operations would have a far greater adverse impact on the community than continued trucking operations over public streets.” V.S. Affleck-Graves at ¶ 4; Supplemental V.S. Hoyler at ¶ 7.

In sum, Petitioners respectfully submit that any adverse impact caused by the continuing use of trucks will not hold a candle to the adverse impact of renewed rail service over the Lines. The noise that would result from having to continuously blow whistles and ring bells as trains and trolleys traverse the numerous at-grade crossings will adversely affect the South Bend and Notre Dame communities far more than the continued movement of 14 trucks transporting coal to Notre Dame.

Conclusion

For all the above-stated reasons, there is no hope of attracting current or future traffic to move over the long dormant, dead-end tracks that are involved in this case. Therefore, their prolonged retention as part of the nation’s rail transportation system serves no useful purpose. This is particularly true when alternative transportation services are available to meet all demonstrated need. In instances involving lines that are located in residential neighborhoods and not in remote rural settings where dormant lines are literally “out of sight, out of mind,” the Board should give greater weight to the community’ needs and beneficial alternative uses for the right-of-way. This is particularly important

when the owning railroad is not opposed to abandonment and recognizes the futility of attempting to compel shippers to use a service they do not need or want.

Respectfully submitted,



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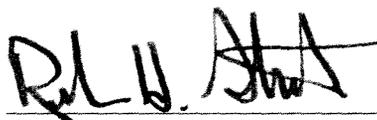
Dated: September 9, 2011

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Respectfully submitted,



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Dated: September 9, 2011

1

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY—
ADVERSE ABANDONMENT—
ST. JOSEPH COUNTY, IN

VERIFIED STATEMENT OF JOHN AFFLECK-GRAVES,
EXECUTIVE VICE PRESIDENT, UNIVERSITY OF NOTRE DAME DU LAC,
IN SUPPORT OF ADVERSE ABANDONMENT OF LINES OF RAILROAD

1. My name is John Affleck-Graves. I am the Executive Vice President of the University of Notre Dame du Lac ("Notre Dame"), which is located in St. Joseph County, Indiana. My business address is 400 Main Building, Notre Dame, IN 46556-5602. I have personal knowledge of the facts that I am presenting and have been duly authorized to present this Verified Statement in support of the pending Application to abandon certain lines of railroad, including the industrial spur line that extends to the Notre Dame campus.

2. On March 26, 2008, I forwarded a letter addressed to the Surface Transportation Board in which I advised the Board that I was aware that Notre Dame had been addressed as a "potential" shipper and user of the railway line that was the subject of the adverse abandonment application that had been jointly filed by the City of South Bend, Indiana, the Brothers of Holy Cross and the Sisters of the Holy Cross.

3. In that letter, I stated that the University of Notre Dame does not currently ship using this line and did not intend in the future to utilize this rail line for any shipping purposes, whether to receive or deliver goods to or from the University. I also stated that the University may receive its coal shipments off of the Norfolk Southern Railway via trucking from a transload facility located in South Bend or through some other means and that these arrangements have and will continue to serve the needs of the University very well. I also emphasized that there is no need for rail delivery of any other commodity to the university. I further stated the University's position is that it does not believe that renewed rail service along the line proposed to be abandoned is in the best interests of the University nor the community at large. Last, I stated that the University has no contract with any proposed rail operator of the line and that it has no intent to contract with any proposed rail operator along this line.

4. As of this date, the University continues to receive its coal shipments either from NSR, via trucking from the transloading facility or through other means. These arrangements satisfy Notre Dame's transportation needs and will continue to do so in the future. While some have suggested that the arrangement should be replaced by renewed rail service in order to eliminate the movement of trucks through the City of South Bend, it is Notre Dame's position that renewed rail operations would have a far greater adverse impact on the community than continued trucking operations over public streets.

5. I must also emphasize that neither Rosebud Mining Co., with which Notre Dame has a contract to supply coal, nor The Chicago, Lake Shore & South Bend Railway Company ("CLS&SB") has been authorized to take a position regarding Notre Dame's current or future transportation needs or to provide the Board with any information regarding any projected use of coal. Furthermore, the Board should carefully note that Notre Dame does not in any fashion support CLS&SB's purported plans to reinstate rail service to Notre Dame if it were able to acquire the rail lines from NSR. Instead, it opposes any such sale on the grounds that it is contrary to the public interest.

6. While CLS&SB met with certain Notre Dame employees about four or five years ago in an attempt to receive their support for renewed, direct rail service to the Notre Dame campus, no agreement was ever proffered or reached between Notre Dame and CLS&SB that would have resulted in Notre Dame supporting CLS&SB's proposed activities. Nor will Notre Dame entertain any such proposal in the future. In short, contrary to the statement at page 5 of the Board's Decision of February 13, 2008, Notre Dame has no interest in again receiving coal shipments by rail directly to its power plant.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, John Affleck-Graves, hereby declare under penalty of perjury that the foregoing is true and correct. Executed on March 25, 2011.



John Affleck-Graves
Executive Vice President

2

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC20423

Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY—
ADVERSE ABANDONMENT—
ST. JOSEPH COUNTY, IN

VERIFIED STATEMENT OF
WILLIAM S. SCHALLIOL IN SUPPORT OF
ADVERSE ABANDONMENT APPLICATION OF THE
CITY OF SOUTH BEND, THE BROTHERS OF HOLY CROSS, INC.
AND SISTERS OF THE HOLY CROSS, INC.

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

William S. Schalliol, being first duly sworn, upon his oath alleges and says:

1. Affiant is the Assistant Director of Community & Economic Development for the City of South Bend, Indiana ("City"). My business address is 1200 West Jefferson Blvd., South Bend, IN46601. I have personal knowledge of the facts that I am presenting in support of the pending application to abandon certain lines of railroad, including the industrial spur line that extends to the Notre Dame campus on behalf of City. The facts that I am presenting supplement, as well as modify, the comments of Andrew R. Laurent, the City's former Economic Development Specialist.

2. I have been asked to determine whether any industry or business located on the portion of the line of railroad that is located within the city limits

has any present or future need for rail service and whether they support the abandonment of the line of railroad that is the subject of the instant application. The "UV Line", which is the primary focus of my study, is a branch line that previously connected with the Norfolk Southern Railway Company's ("NSR") Chicago main line and extended from milepost UV 0.0 to milepost 2.8 ("the Line"), where it connects with NSR's "ZO Line". NSR's previously filed Reply Comments confirm that the switch to the main line was removed at some point after June 1, 2004. See NSR Reply Comments at 7, n5. NSR's Reply Comments also confirm that no traffic has moved over the Line since approximately 1994 or 1995 (or as much as 17 years), which would be four or five years prior to NSR's acquisition of the Line on June 1, 1999. *Id.* at 5. NSR's Reply Comments also reveal that it "has located no written record that confirms that its representatives ever solicited traffic for movement over the Line to the University [of Notre Dame] or any other party" since it acquired the Line from Conrail. *Id.* at 6. My survey of the businesses that are located on the Line has confirmed the lack of effort to solicit traffic, as well as the lack of any current or anticipated future need for rail service over the Line.

3. The UV Line terminates on the campus of Brothers of Holy Cross at milepost 2.8, which is outside the city limits of South Bend. Although a short segment of the Line is located within the city limits on the east side of the St. Joseph River, that area is zoned residential. As a result, there are no industries within the city limits east of the river that would require future rail service.

4. The only "commercial" entities located east of the St. Joseph River that perhaps could utilize rail service are the University of Notre Dame du Lac, Sisters of the Holy Cross, Inc., Brothers of Holy Cross and Holy Cross Village at Notre Dame. I am aware that each of these entities has filed a Verified Statement disclaiming any future need for rail freight service and supporting the immediate abandonment of the branch and spur lines.

5. I have focused my study on all businesses and industries located to the west and south of the river. The businesses located along the Line are Steel Storage & Supply, Steel Warehouse, Waggoner Oil, Martin's Supermarket & Shopping Plaza, Monarch Linen & Uniform Rental, D&M Auto Salvage and Manufacturing Technologies, Inc. For information regarding these businesses, the Board's attention is invited to a study compiled by the City of South Bend Department of Community & Economic Development under my direction entitled *Norfolk Southern Railway Company Abandonment Study* ("*Abandonment Study*"), dated September 2011. A copy of the *Abandonment Study* is attached hereto and made part of my sworn testimony.

6. In order to determine whether any of the above businesses and industries have a current or future need for rail service over the Line, my office requested information from each one regarding its current transportation needs and whether it would use rail service over the Line in the event it were not abandoned. I also asked whether they would support abandonment of the Line. None indicated an interest or need for any present or future rail use.

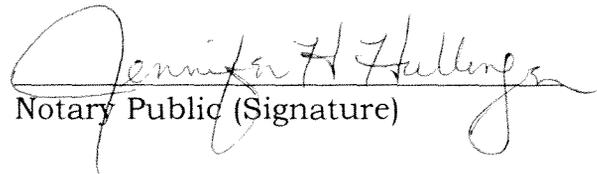
Moreover, they unanimously favor abandonment of the lines due to various impacts of the rail line either crossing through or adjacent to their property.

7. In order to demonstrate the adverse impact of the Lines on adjacent residential neighborhoods, the Abandonment Study has developed various statistics that document the immediate and urgent need to try to revitalize those neighborhoods. Based on my experience as an economic development specialist, I have concluded that no development or revitalization can be expected until such time as the Lines are removed.


William S. Schalliol

Subscribed and Sworn to before me, the undersigned, a Notary Public in and for said County and State this 7th day of September, 2011.




Notary Public (Signature)

Notary Public (Printed Name)

My Commission expires _____

My County of Residence is _____

William (Bill) S. Schalliol

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Mishawaka, IN 46544
(574) 255-3214 (Home) / (574) 235-5842 (Work)
bschalli@southbendin.gov

WORK EXPERIENCE

City of South Bend - Assistant Director of Community & Economic Development January 2001 - Present

- Serve as development coordinator for development, redevelopment, and business related activities
- Coordinate real estate acquisition, disposition, and site preparation for properties purchased by various City entities and facilitate redevelopment and development activities
- Serve as project manager and team leader for development projects of all scales from basic transactions to mega-scale projects like TJX/AJ Wright Distribution Center Development Project (\$60 million dollar), Erskine Hills Commercial Corridor Redevelopment Project (\$150 million dollar to date) and Coveleski Park Redevelopment Project (2007/08 to present project effort with multi-million dollar budget)
- Facilitate development of various public works improvement projects including street construction and rehabilitation, pedestrian pathway projects, and various environmental remediation projects
- Facilitated adoption of both an economic development district and a redevelopment district, designation of a sales tax increment finance district (first in State of Indiana), and designation of a residential project residential TIF district (first in State of Indiana outside of Marion County)

Burkhart Advertising, Inc. – Real Estate Manager September 2000 – January 2001

- Private Sector Internship with Burkhart Advertising, Outdoor Advertising Division
- Served as Real Estate Manager and Leasing Agent within seven county South Bend Media Market securing and renewing outdoor advertising site leases, property acquisition and customer service functions
- Developed guideline system for zoning ordinance and municipal code review related to outdoor advertising and off-premise signage requirements

City of Mishawaka – Assistant City Planner March 1996 – September 2000

- During career held various positions in Planning Department including Staff Planner, Assistant City Planner, Zoning Administrator and Interim City Planner (served for 18 months) and also Director of Geographic Information Services (GIS) within Information Technology Department
- Responsible for subdivision and plan review and approval coordination with Plan Commission and Board of Zoning Appeals, ordinance and code interpretation, enforcement and updates, and various comprehensive and strategic planning activities
- Coordinated City's efforts in a multi-governmental enterprise GIS system and served as City's first Director of GIS

John Frick & Associates – Lobbyist Internship (Indiana General Assembly) 1994 & 1995 Legislative Sessions
City of South Bend – Redevelopment Internship Summers 1994 & 1995
Project Future – Economic Development Internship Summer 1993

EDUCATION

Valparaiso University School of Law, Valparaiso, IN
J.D. Degree, expected December 2012 graduation

Purdue University, School of Liberal Arts, West Lafayette, IN
Bachelor of Arts Degree in Political Science and History
Bachelor of Arts Minor Degree in Organization Leader and Supervision
Graduated December 1995
GPA: 3.24/4.0 *Semester Honors – three semesters

CURRENT PROFESSIONAL MEMBERSHIPS

- > Indiana Planning Association (IPA) - Member
- > International Council of Shopping Centers (ICSC) - Government Member
- Graduate of the *University of Shopping Centers*, 2005 (The Wharton School of the University of Pennsylvania)
- > Leadership South Bend/Mishawaka, Program Graduate - Class 26, Alumni Member
- > Mishawaka High School Alumni Association, Alumni Member
- > Eagle Scout, Class of 1991, Lifetime Member of National Eagle Scout Association

Norfolk Southern Railway Company Abandonment Study

General Information

**Information Compiled By
City of South Bend Department of Community & Economic Development**

September 2011

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EXECUTIVE SUMMARY

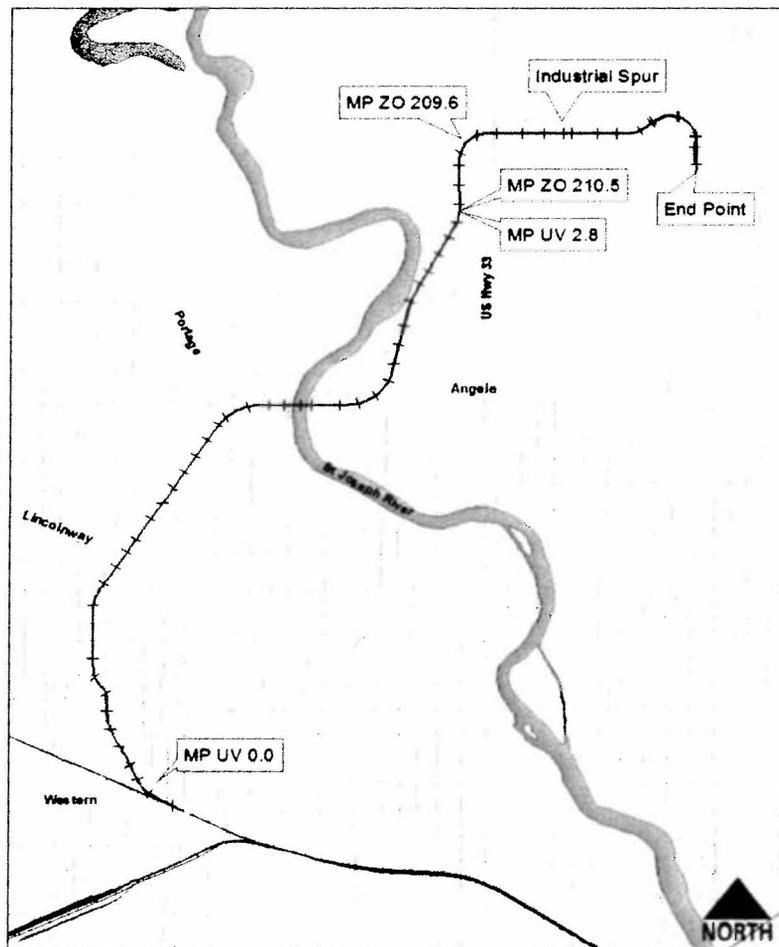
The City of South Bend Department of Community & Economic Development was asked by the City of South Bend Legal Department to compile information about the neighborhoods and businesses located along the 3.7 mile Norfolk Southern Railway Company ("NSR") dead-end branch line and an industrial spur line that runs from the terminus of the branch lines at MP ZO 209.6 to the campus of the University of Notre Dame. The branch line consists of two contiguous segments between milepost MP UV 0.0 and MP UV 2.8 and between MP ZO 210.5 and MP ZO 209.6. As part of the study, staff examined the impact of the unused rail line as it relates to economic development and neighborhood conditions as well as the impacts on adjacent businesses, parks, neighborhoods, and infrastructure.

The subject Line has not had rail traffic for approximately seventeen years and because of its unused status, the corridor and the adjacent areas are in substantial disrepair and have seen negligible development in that period of time. The seven businesses located adjacent to the rail corridor have worked around the line but none of the businesses use rail service or would use rail service if the line was active. In fact, all seven businesses, as well as many of the neighborhood groups, support the abandonment efforts of the rail corridor.

In conclusion, the City of South Bend and many of its partners support the abandonment of this rail corridor. The opportunity to have local control of the rail corridor and to have certainty of the status of the corridor would allow for proactive planning and development throughout many parts of the City along the corridor.

PROJECT OVERVIEW

The City of South Bend Department of Community & Economic Development was asked by the City of South Bend Legal Department to compile information about the neighborhoods and businesses located along the 3.7 mile Norfolk Southern Railway Company ("NSR") dead-end branch line and an industrial spur line that runs from the terminus of the branch lines at MP ZO 209.6 to the campus of the University of Notre Dame. The branch line consists of two contiguous segments between milepost MP UV 0.0 and MP UV 2.8 and between MP ZO 210.5 and MP ZO 209.6. The switch that connected the branch line to NSR's main line was removed some time after June 1, 2004. There has been no reason to restore the switch since that time. The purpose of the study is to determine the level of support for the City of South Bend and other stakeholder's interest in requesting the Surface Transportation Board ("STB") to abandon the line. A map of the branch and spur line is shown below and attached as *Exhibit A* in the appendix.



Norfolk Southern Railroad Dead-end Branch and Spur Line

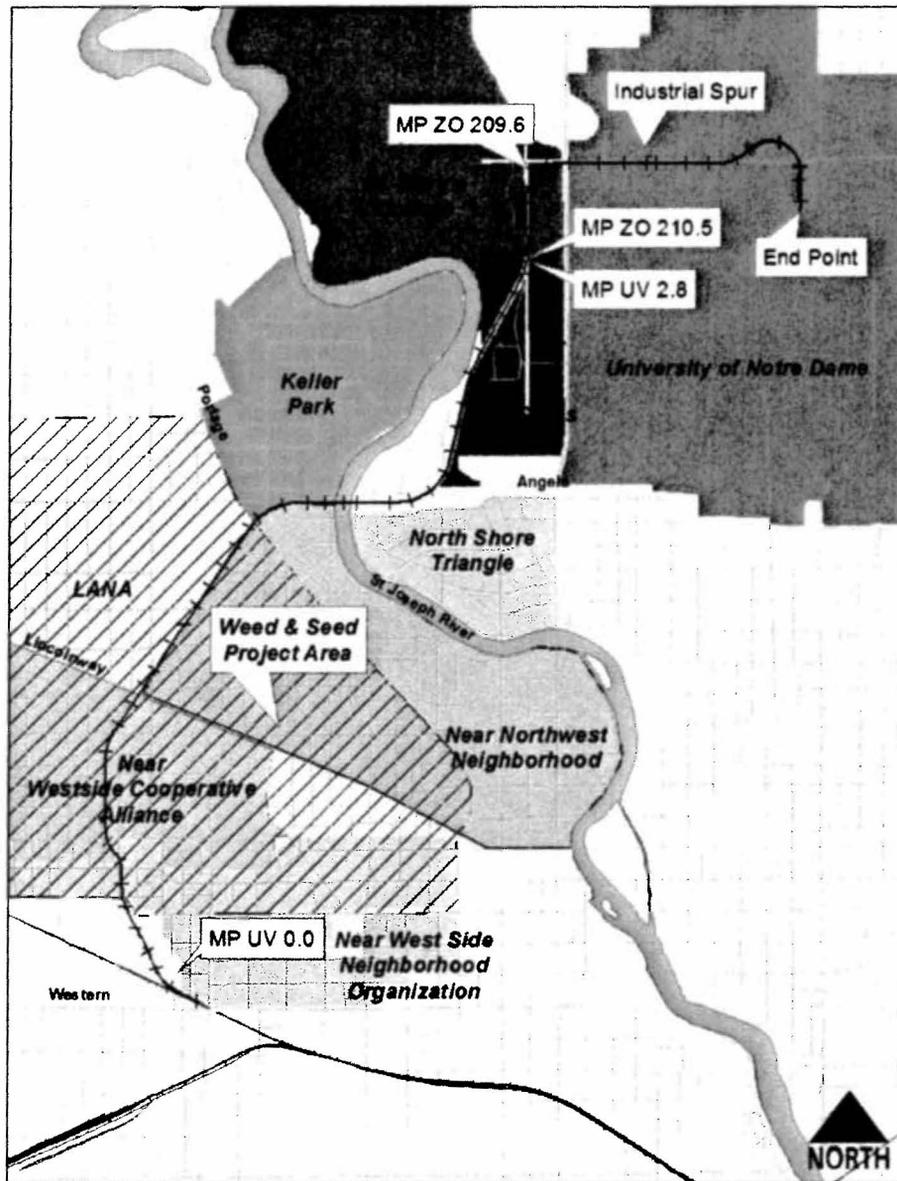
GENERAL RAIL LINE INFORMATION

From the point of beginning at MP UV 0.0 to the St. Joseph River, there are approximately 18 at-grade rail crossings and from the river to the terminus point there are a minimum of 4 at-grade rail crossings. The rail line has been inactive since approximately 1994 (a period of approximately 17 years) and many sections of the line have been removed or covered over at intersection crossings. Additionally, the trestle bridge crossing the river is in a state of disrepair and would require massive reinvestment or replacement before the bridge could be safely crossed. When an abandonment was sought in 2006, NSR did not oppose the abandonment. However, the STB denied the request at that time without prejudice to seek reopening if no rail traffic materialized within a reasonable period of time. As the recently concluded survey demonstrates, not only has no rail traffic developed, but there is no ascertainable need for future rail service.

NEIGHBORHOOD INFORMATION

A. General Information

The Lines travel through six designated city neighborhood areas, one federally funded Weed and Seed project area, three university campuses, and run adjacent to several non-designated residential areas. A map showing the impacted neighborhood areas is shown below and attached as *Exhibit B* in the appendix. Contact information for each of the designated neighborhood areas is attached as *Exhibit C* in the appendix.

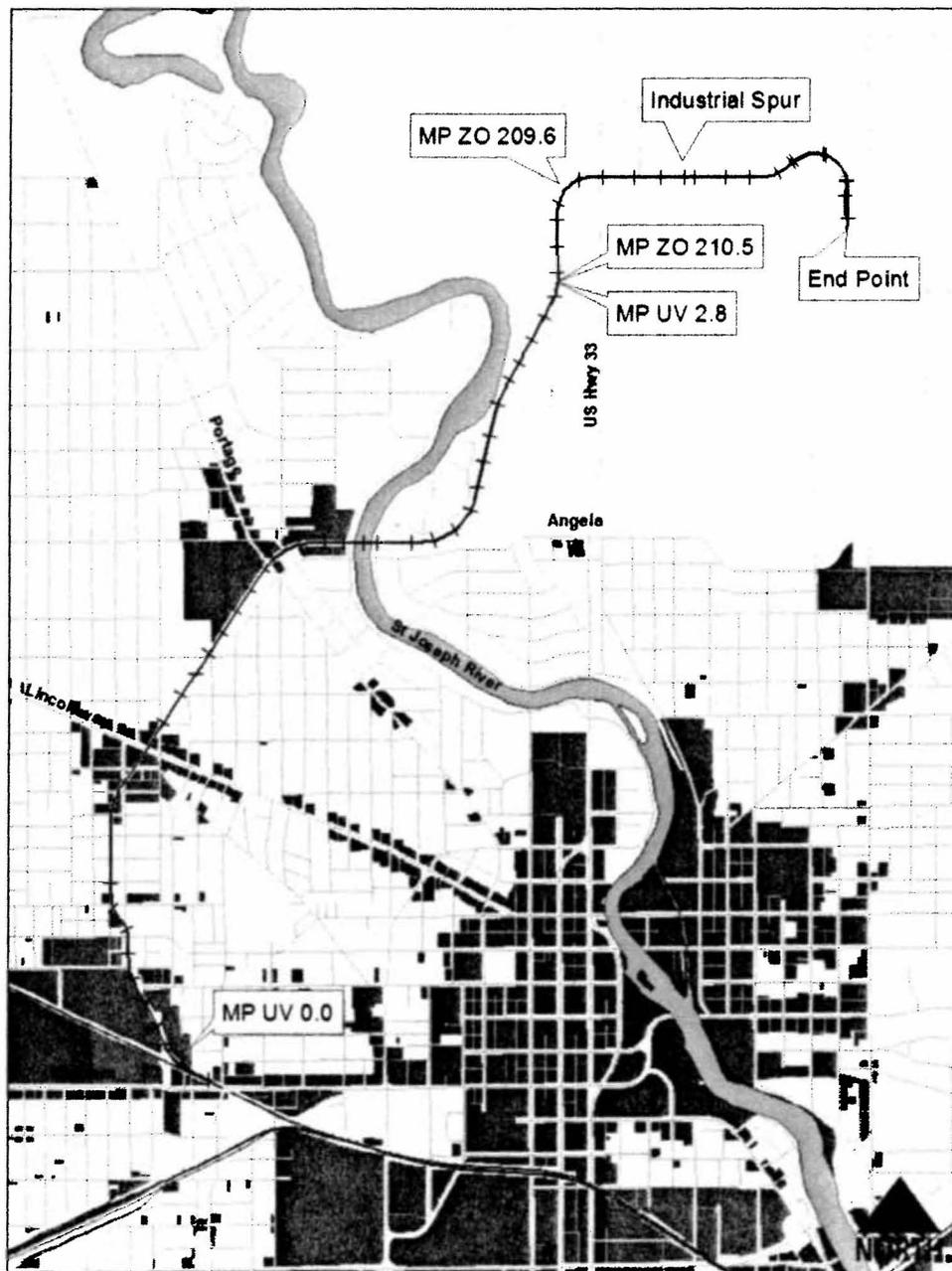


Neighborhood Area Information Map

NEIGHBORHOOD INFORMATION

B. Zoning Information

The development adjacent to the branch line is generally residential in nature. There are pockets of industrial and commercial zoned land along the corridor, but the main adjacent land use is residential. A zoning map is shown below and attached as *Exhibit D* in the appendix. Residential zoning is shown in yellow, commercial zoning is shown in red, and industrial zoning is shown in blue.

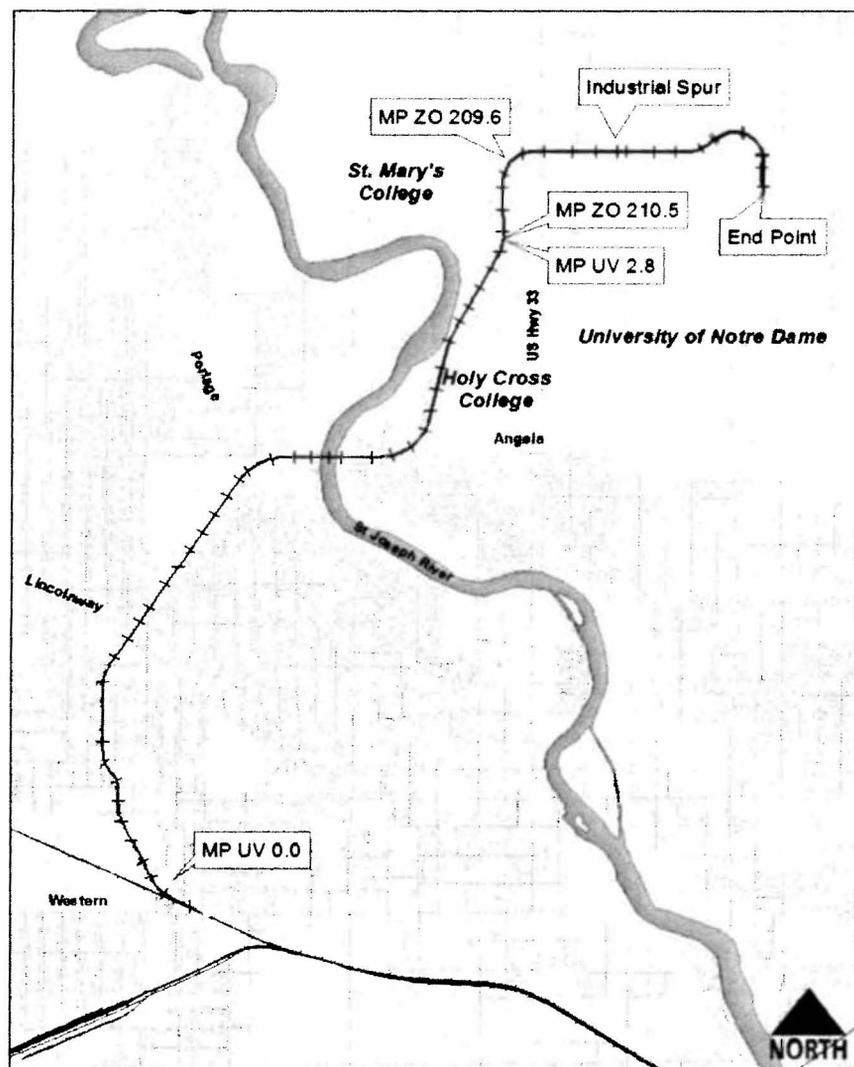


Zoning Map

NEIGHBORHOOD INFORMATION

C. Neighborhood Density

The quality of the residential, commercial and industrial areas adjacent to the Line ranges from very stable to very depressed in nature. The residential areas adjacent to the tracks are very dense with the Line running through the midblock of many city blocks. Between MP UV 0.0 and the St. Joseph River, there are approximately 18 at-grade crossings that split the various neighborhood areas. Structures are generally built right up to the rail right of way and in some cases the Line causes an overgrown barrier to complete blocks and streets. A neighborhood density map showing the density of structures adjacent to the Line is shown below and attached as *Exhibit E* in the appendix.

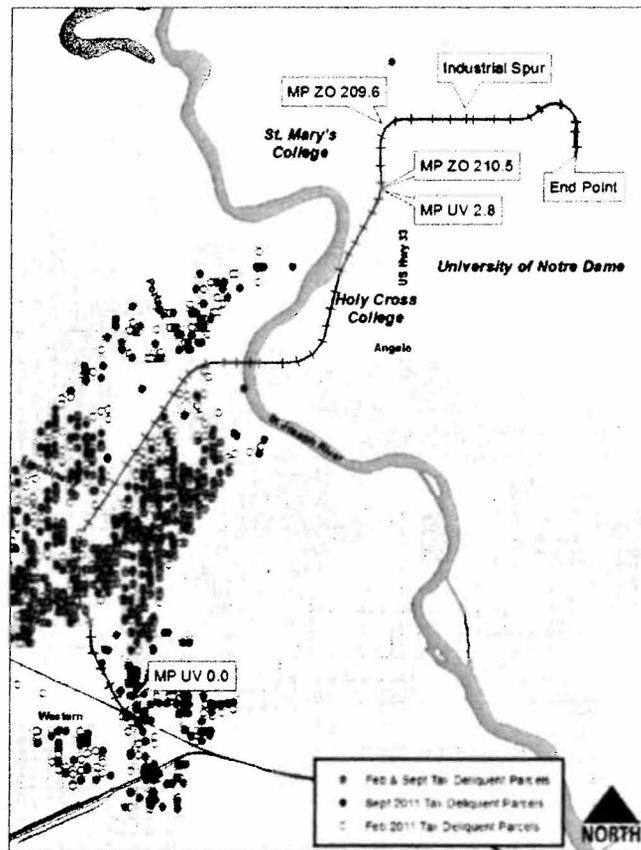


Neighborhood Density Map

NEIGHBORHOOD INFORMATION

D. Current Conditions

Another indicator of the adverse impact of the Line is the current state of decline of a large section of properties and neighborhoods adjacent to the Line. In the area between MP UV 0.0 and the river crossing, many of the properties immediately adjacent to the track are either in foreclosure or in some state of tax delinquency. The problem is so severe in some parts of the corridor that the majority of properties in some blocks are plagued by tax delinquency. In a 2000' corridor on either side of the rail line, there are 5762 parcels and of those, 866 parcels were on the February 2011 tax delinquency list. In September 2011, the tax delinquency list was updated and an additional 244 parcels were added to the tax sale list. A map showing those parcels on the February and September tax delinquency list is shown below. Furthermore, many properties are vacant or abandoned and many of the residential areas are severely blighted. Because of the uncertainty of the fate of the dilapidated and unused rail line, it is a detrimental and blighting factor to neighborhood revitalization. A map showing tax delinquency as of February 2011 is shown below and attached as *Exhibit F* in the appendix.



Tax Delinquent Parcel Map

NEIGHBORHOOD INFORMATION

E. Neighborhood Stakeholders

Churches, schools universities, parks, and commercial centers as well as a mix of residential neighborhoods are the prime stake holders located along and adjacent to this dead-end line. Economic development has been hampered by the location of the rail corridor and the ambiguity and uncertainty of the Line's status. Although no rail activity has occurred for approximately seventeen years, no rational plans can be made regarding development due to the uncertainty of whether rail operations may be restarted at some point in the indefinite future. This highlights a major difference between unused rail lines that are located in rural areas where they are "out of sight, out of mind" and unused lines located in an urban setting where they are a barricade to development and contribute to urban blight.

In some cases like the Village of Holy Cross, development has occurred right to the edge of the rail right-of-way under the erroneous belief that the line had already been abandoned. That mistaken belief has had a financial impact on the development. In other cases, the City was prevented from using the moribund right-of-way to install a required sewer system. In other instances, track has been removed or covered over with the concurrence of the railroad. Until the Line is actually abandoned, any further development must be held in abeyance. That result is contrary to the public convenience and necessity, especially when there is no current or future need for rail service over the Line.

BUSINESS INFORMATION

A. General Information

In order to determine the impact of the abandonment of the Line on the businesses and commercial and industrial areas adjacent to the Line, a survey was conducted in July and August 2011 of the seven active businesses that are located along the rail corridor from MP UV 0.0 to the St. Joseph River.

The seven active businesses are:

- Steel Warehouse
- Waggoner Oil
- Martin's Supermarket & Shopping Plaza
- Steel Storage & Supply
- Monarch Linen & Uniform Rental
- D&M Auto Repair Service, Inc.
- Manufacturing Technologies, Inc.

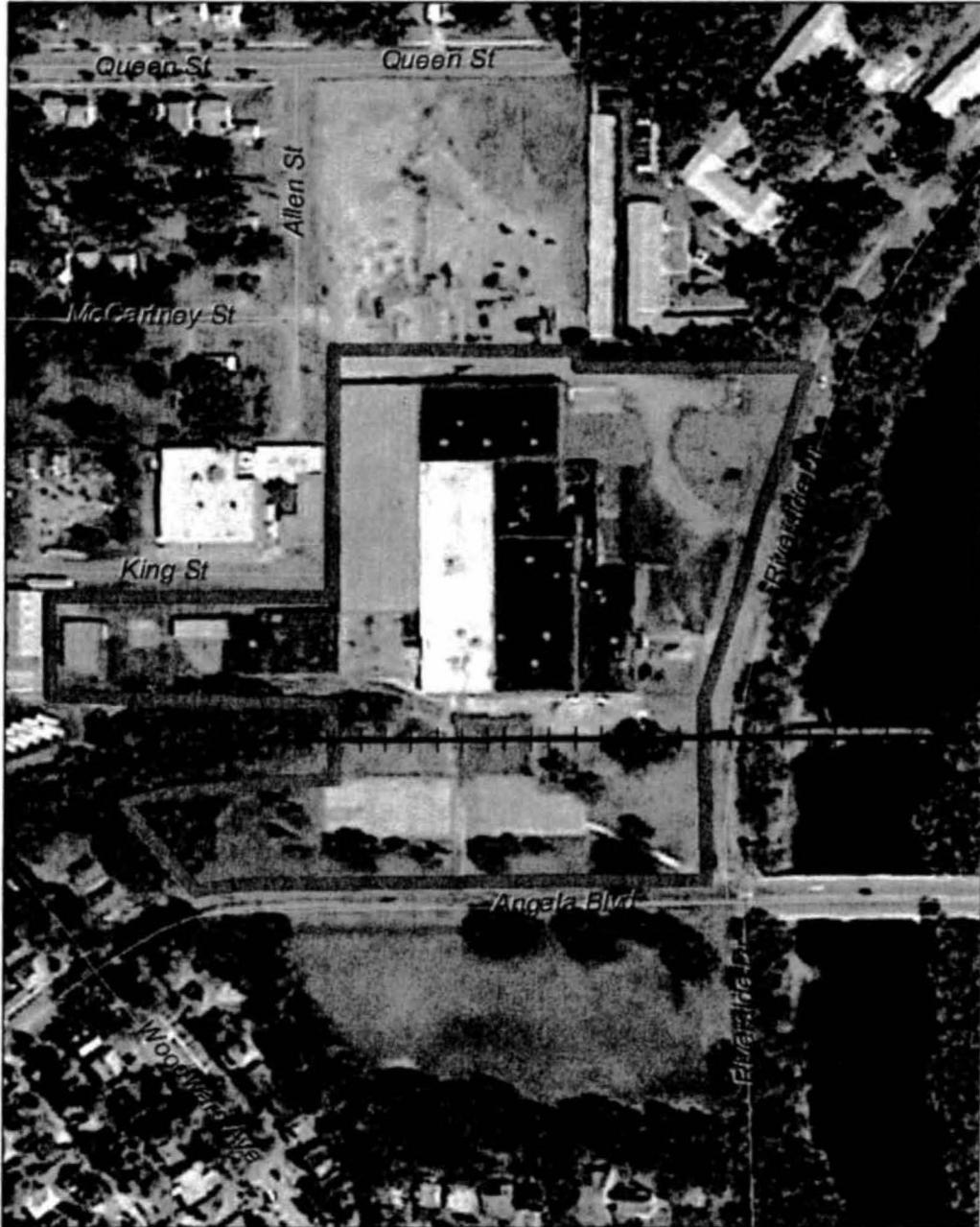
Their completed information forms and any subsequent information are attached. A map showing businesses that participated in this study is attached as ***Exhibit H*** in the appendix.

None of the businesses indicated an interest or need for any present or future rail use. Moreover, they unanimously favor abandonment of the Line due to the adverse impacts of the Line, which crosses through or adjacent to their property. The seven businesses represent a total of 4900 linear feet of track frontage of the total 9550 linear feet of track between MP UV 0.0 to the St. Joseph River. A map showing the location of the businesses is attached as ***Exhibit G*** in the appendix.

The three universities and the retirement village, which are located between the St. Joseph River and the terminus of the branch and industrial spur lines, have filed verified statements supporting abandonment and are not addressed herein for that reason.

BUSINESS INFORMATION

B. Steel Warehouse
1400 Riverside Drive
900' of track adjacency



Name: _____ Edward Berebitsky

Position: __ Corporate Vice President Profiling & Tool Steel

Company: _____ Steel Warehouse Company

Address: _____ 1400 Riverside Drive South Bend, IN 46616

Phone #: _____ 574-876-1191

Type of Business: _____ Steel Profiling & Leveling

Is there presently Rail Access at site?: No

What do you

Ship: _____ Laser cut steel parts & steel sheets

Receive: _____ Steel plates

Presently, how do you

Ship: _____ Truck

Receive: _____ Truck

Frequency: _____ 30 per day

If rail is available, would you use?: _____ No

Have you been contacted by CLS and South Bend since 2007?: __ Not to my knowledge

Would you support abandonment of the rail line?: _____ Yes _____

Would you be able to use the property if abandoned?: _____ Yes _____

Does the lack of abandonment restrict present property use?: _____ Yes _____

Any other comments: _____ We have no interest in rail use at our site. The N-S rail spur does not allow Steel Warehouse to add a building expansion to our immediate south.

Neighborhood Association District: _____

Council District: _____

BUSINESS INFORMATION

C. Waggoner Oil
1402 Kessler Boulevard
700' of track adjacency



Name: GORDON NOEQUIST JR
Position: PRESIDENT
Company: WAGGONERS OIL
Address: 1402 KESSLER BLVD
Phone #: 574 234 2171
Type of Business: PETROLEUM PRODUCTS
Is there presently Rail Access at site?: _____

What do you:
Ship: NO LONGER OPERATING AT THIS
Receive: LOCATION

Presently, how do you:
Ship: NO LONGER OPERATING AT THIS
Receive: LOCATION
Frequency: —
If rail is available, would you use?: —

Have you been contacted by CLS and South Bend since 2007?: NO
Would you support abandonment of the rail line?: YES
Would you be able to use the property if abandoned?: N/A
Does the lack of abandonment restrict present property use?: N/A

Any other comments: PLEASE SEE ABOVE

Neighborhood Association District: _____
Council District: _____

BUSINESS INFORMATION

D. Martin's Supermarket & Elwood Shopping Plaza
SW Corner of Elwood and Portage Avenue
1100' of track adjacency



Name: Gregory L. Freehauf
Position: Vice President Finance, CFO
Company: Martin's Super Markets (Store 1)
Address: 1302 Elwood Street, South Bend, IN 46628
Phone #: 574-239-1818
Type of Business: retail supermarket
Is there presently Rail Access at site?: No

What do you:

Ship: Nothing by rail
Receive: Nothing by rail

Presently, how do you:

Ship: _____
Receive: By Truck
Frequency: Daily
If rail is available, would you use?: No

Have you been contacted by CLS and South Bend since 2007?: No
Would you support abandonment of the rail line?: Yes
Would you be able to use the property if abandoned?: Yes
Does the lack of abandonment restrict present property use?: Yes

Any other comments: See letter

Neighborhood Association District: _____
Council District: _____



Gregory L Freehauf
Vice President Finance, CFO
Direct 574.239.1818
Fax 574.289.5931
gfreehauf@martins-supermarkets.com

Date July 14, 2011

Mr. Bill Schalliol
227 West Jefferson Blvd.
South Bend, IN 46601

Dear Bill:

Re: Desire to Have Norfolk-Southern Railroad Tracks Abandoned

The Norfolk-Southern Railroad Spur runs along the property at the Martin's Super Market on the corner of Portage and Ellwood Avenues in South Bend. The attached drawing shows our store (the Martin's Store) in relation to the tracks. You asked me regarding our perspective and whether we are in favor of these tracks being abandoned.

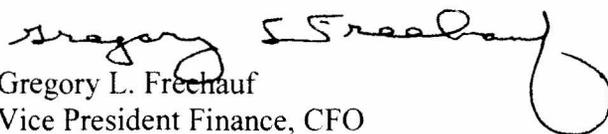
Definitely yes! These tracks are not used by us. We would never use the rail transportation there in any part of our business.

The property is not maintained in a clean and orderly manner. In fact, it is in very deplorable condition and attracts numerous problems, and bad things to the neighborhood. To help readers of this letter understand the extent to which these tracks create problems for us and the entire neighborhood, I've attached to this letter some recent photos.

The area presents many major problems to us in the operations of our grocery store business. Therefore, we are in strong support of the tracks being abandoned and turned over to other ownership for a far better future for this area, for us, and for our neighbors.

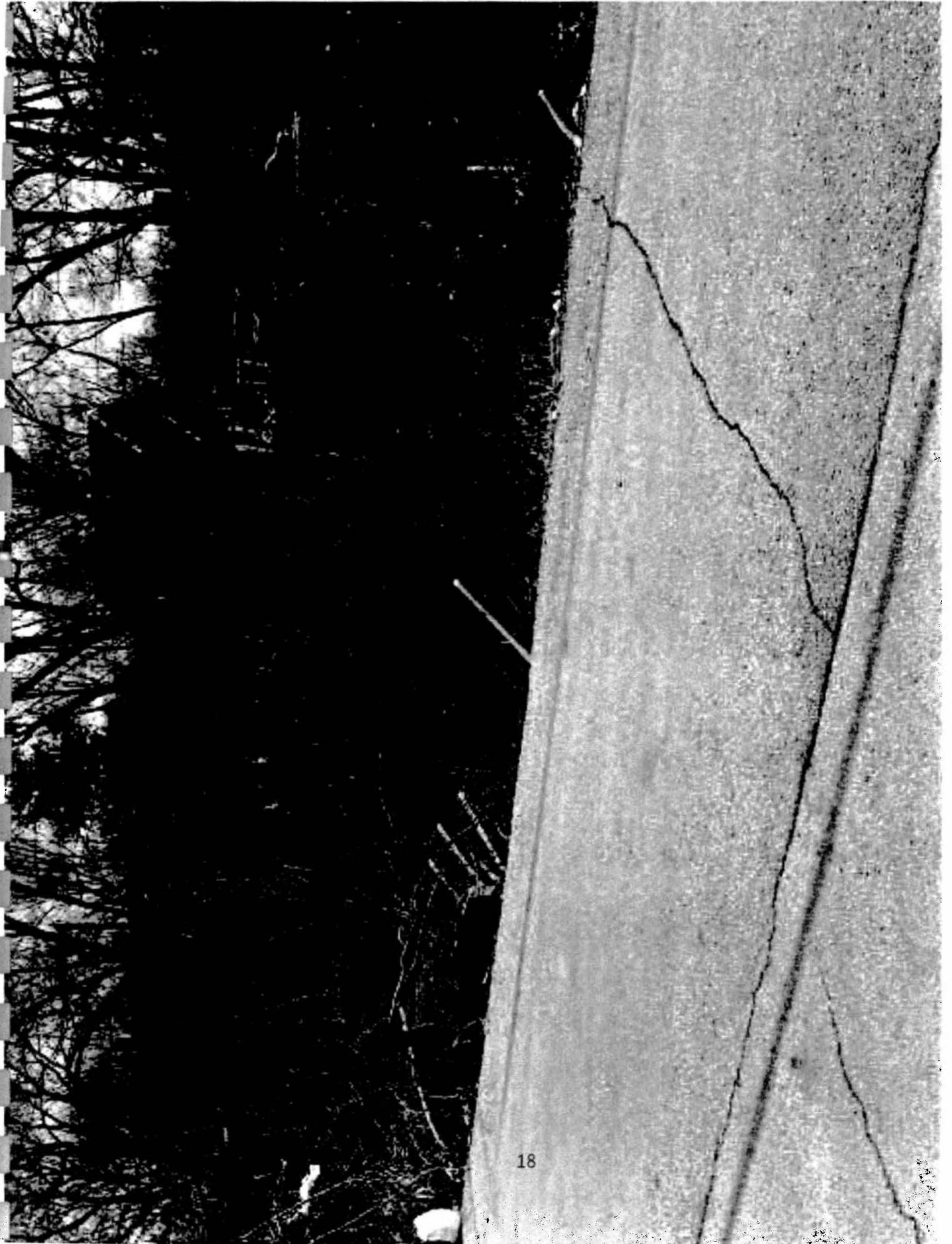
If there is anything I can do to help in this manner, please let me know.

Sincerely,


Gregory L. Freehauf
Vice President Finance, CFO

GLF/sc
Enclosures

17







BUSINESS INFORMATION

E. Steel Storage & Supply

1408 Elwood Avenue #A (Omniplex Facility Tenant)

450' of track adjacency



From: City of South Bend

To: 82822621

08/01/2011 10:30

#348 P.005/005

Name: FRANK PAUSINSKI
 Position: OWNER
 Company: STEEL STORAGE INC
 Address: 1409-A ELWOOD, SOUTH BEND, IN 46628
 Phone #: 282-2018
 Type of Business: STEEL WAREHOUSE
 Is there presently Rail Access at site?: NO - NOT ON MY PROPERTY

What do you:

Ship: STEEL BY TRUCK
 Receive: STEEL BY TRUCK

Presently, how do you:

Ship: TRUCK
 Receive: TRUCK
 Frequency: 4-5 DAILY
 If rail is available, would you use?: NO

Have you been contacted by C.I.S and South Bend since 2007?: NO
 Would you support abandonment of the rail line?: YES
 Would you be able to use the property if abandoned?: PARKING
 Does the lack of abandonment restrict present property use?: NO

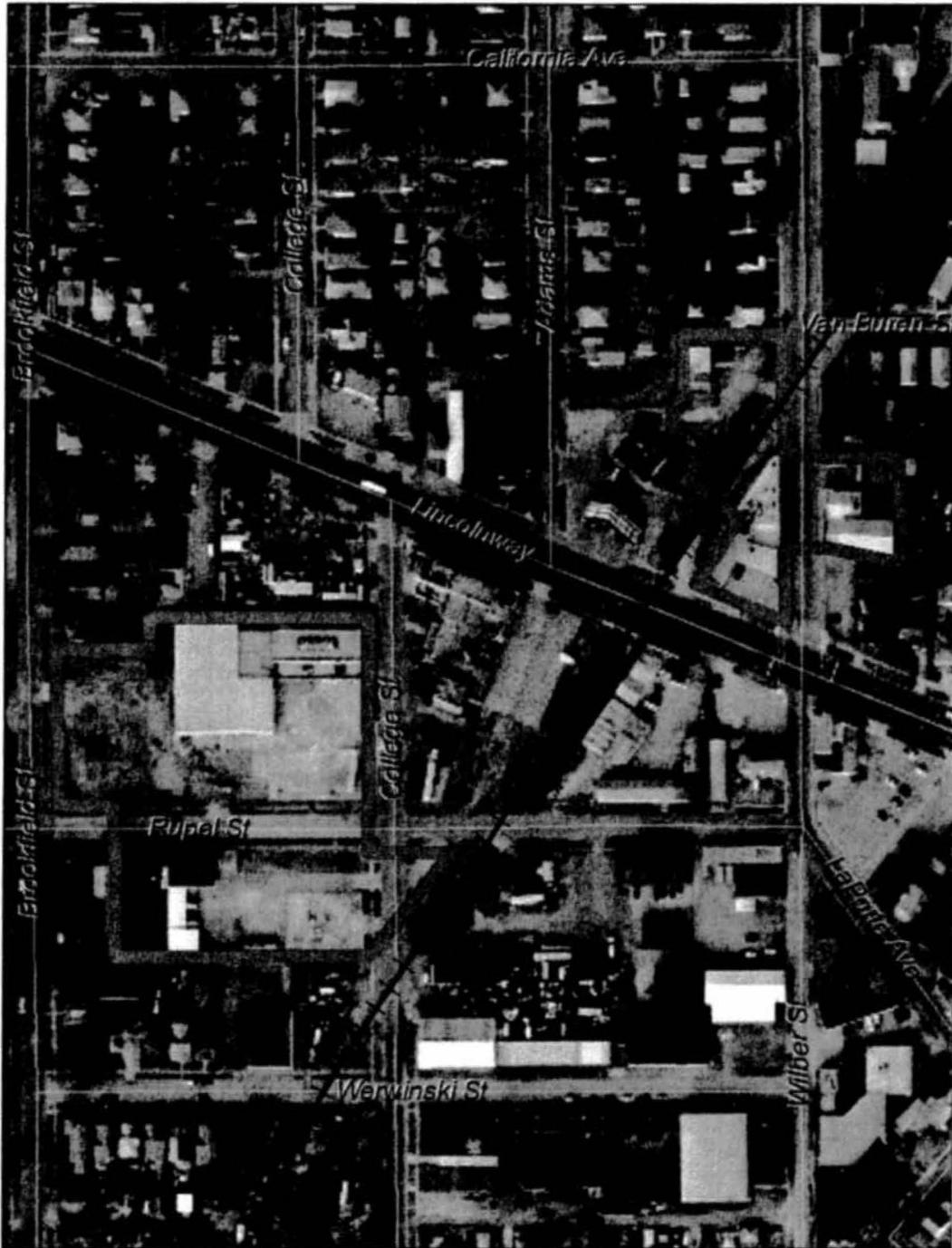
Any other comments: _____

Neighborhood Association District: _____
 Council District: _____

PLEASE COMPLETE + FAX TO 235-9697
 THANK YOU.

BUSINESS INFORMATION

F. Monarch Linen & Uniform Rentals
College Street and Wilber Street
1200' of track adjacency



Name: Robert P. Shulte
Position: President / owner
Company: Monarch Textile Rental Svc / Monarch Textile Rental Svc (a Division of)
Address: 1601 L.W.W. (SITE) 2810 Foundation Blvd (Corp)
Phone #: 574-233-9433
Type of Business: Linens & Uniforms + Towels Rental Services
Is there presently Rail Access at site?: yes

What do you:
Ship: Linens & Uniforms + Mats
Receive: Chemicals - Production Supplies - Scaled Linens

Presently, how do you:
Ship: My own Trucks
Receive: Common Carrier - UPS + My own Trucks
Frequency: Daily
If rail is available, would you use?: No

Have you been contacted by CLS and South Bend since 2007?: Not that I recall
Would you support abandonment of the rail line?: yes
Would you be able to use the property if abandoned?: possibly
Does the lack of abandonment restrict present property use?: yes

Any other comments: If abandoned, would property be for purchase or what would transpire?

Neighborhood Association District: Northwest Side
Council District: First District

BUSINESS INFORMATION

G. D&M Auto Repair Service, Inc.

1801 Longley Avenue

300' of track adjacency



Name: Diamond Williams
Position: Owner
Company: D+M Auto Repair Service Inc.
Address: 1801 Longley Ave
Phone #: 574-233-8252
Type of Business: Auto Repair
Is there presently Rail Access at site?: No

What do you:

Ship: Car parts - semi truck or delivery
Receive: Car parts - semi truck or delivery

Presently, how do you:

Ship: UPS / Freight
Receive: UPS / Freight
Frequency: 1 a week
If rail is available, would you use?: No

Have you been contacted by CLS and South Bend since 2007?: _____

Would you support abandonment of the rail line?: Yes

Would you be able to use the property if abandoned?: Yes

Does the lack of abandonment restrict present property use?: No

Any other comments: I have a written Agreement for Contract to Use because We Clean up.

Neighborhood Association District: _____

Council District: _____

BUSINESS INFORMATION

H. Manufacturing Technology, Inc.

1702 W Washington Street

350' of track adjacency



Name: Robert Adams
Position: President
Company: Manufacturing Technology
Address: 1702 West Washington St South B. IN
Phone #: 574 233-9440
Type of Business: Manufacturing
Is there presently Rail Access at site?: No

What do you:
Ship: Friction Welding Machines
Receive: Weldments, machined parts, electrical & hydraulic components

Presently, how do you:
Ship: Truck
Receive: Truck
Frequency: 2-3 machines per month
If rail is available, would you use?: No

Have you been contacted by CLS and South Bend since 2007?: Yes
Would you support abandonment of the rail line?: Yes
Would you be able to use the property if abandoned?: Yes
Does the lack of abandonment restrict present property use?: No

Any other comments: _____

Neighborhood Association District: _____
Council District: _____

Exhibit A

Norfolk Southern Railroad Dead-end Branch and Spur Line

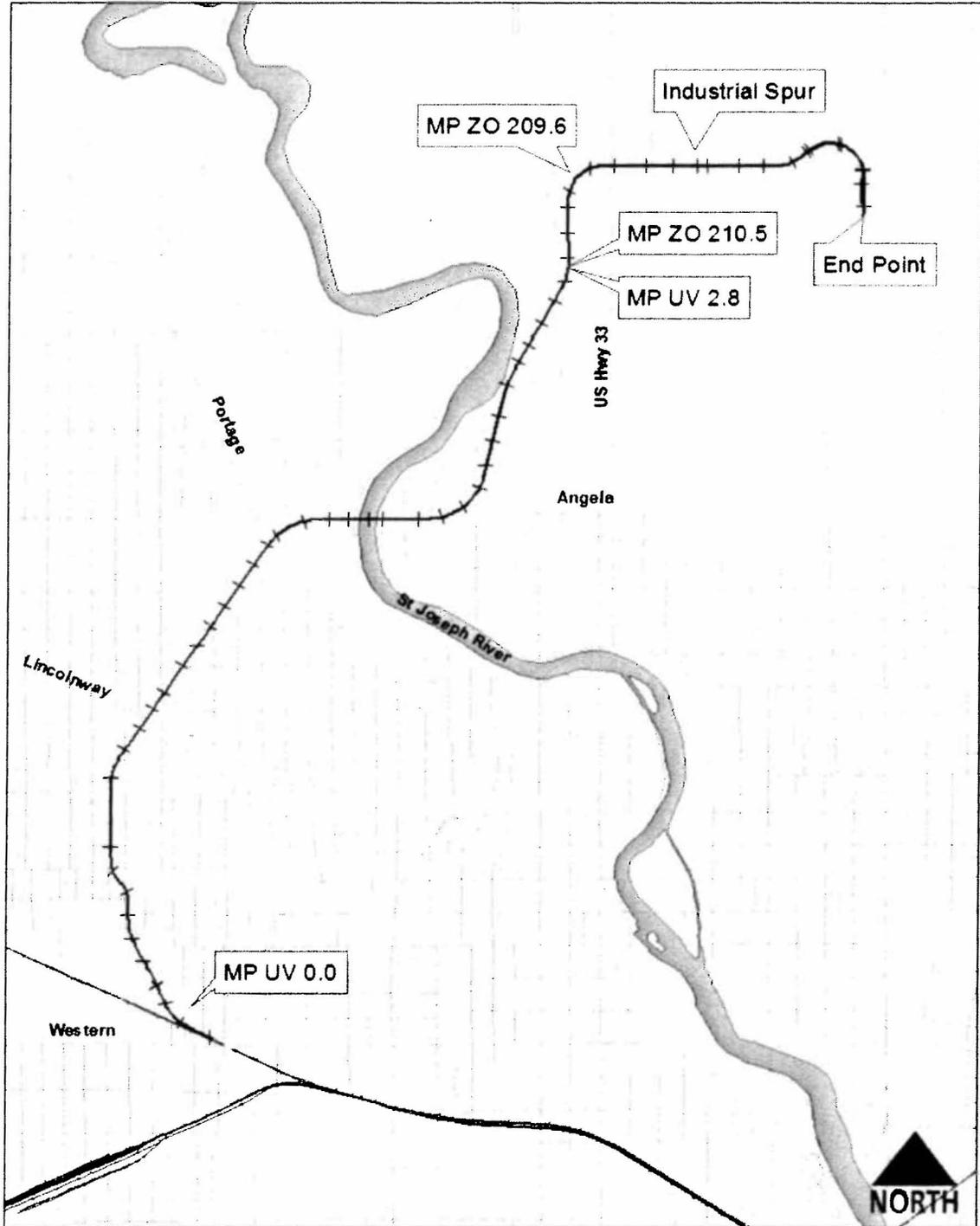


Exhibit B
Neighborhood Area Information Map

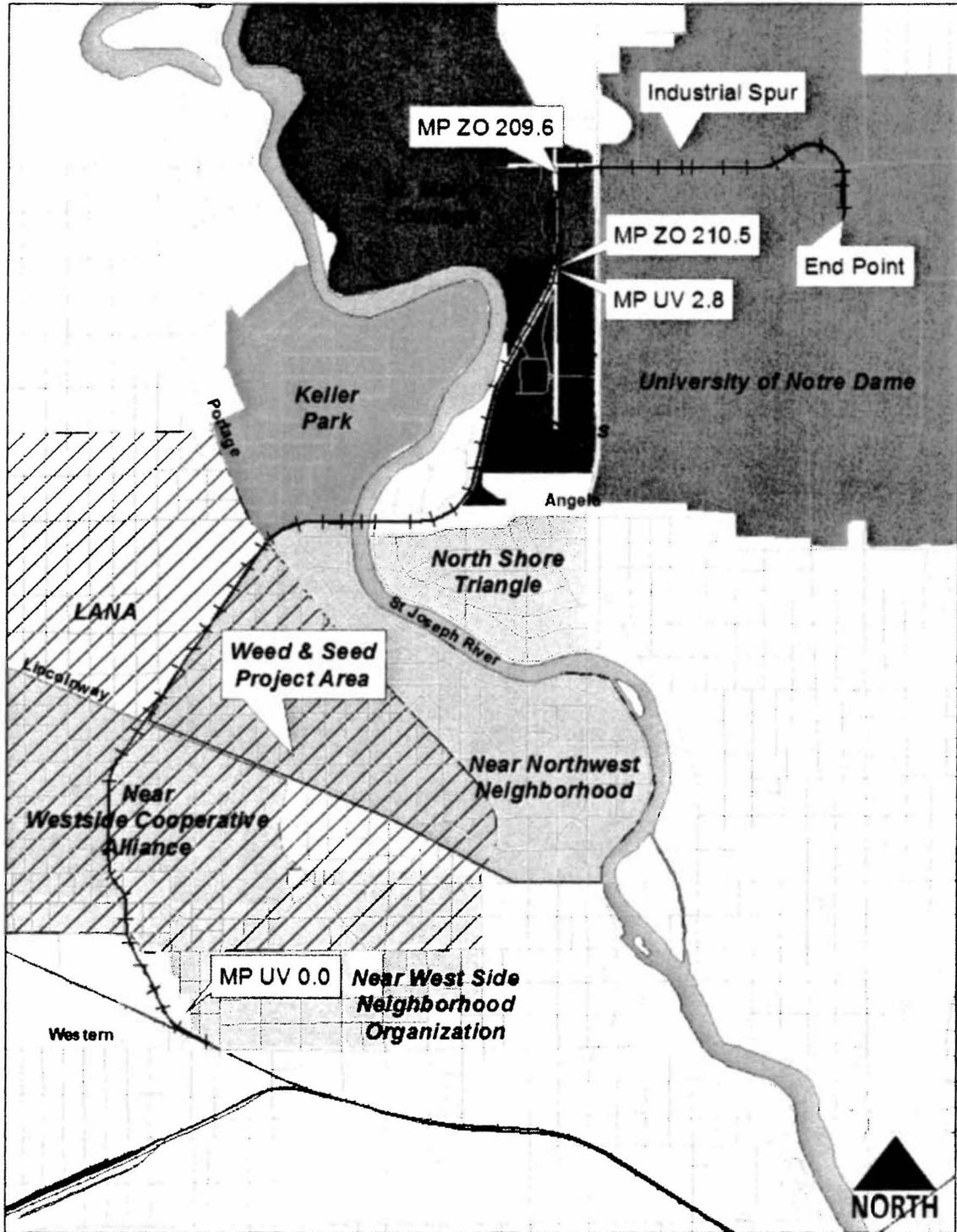


Exhibit C

Neighborhood Area Contact Information

Near West Side Neighborhood Organization

Noreen Deane-Moran - ndeanemo@nd.edu

Near Westside Cooperative Alliance

Viola Sims - violatsims@aol.com

Valeria Daniels-Huston - valjeand1st@yahoo.com

Near Northwest Neighborhood, Inc.

Karen Ainsley - nnndirector@sbcglobal.net

LaSalle Area Neighborhood Association (LANA)

Donna Ring - dring42@gmail.com

Weed & Seed Alliance

Becky Kaiser - ktntoby@aol.com

Keller Park

Carol Johnson - (no e-mail)

934 Roosevelt St.

(574) 233-5927

Ryan Yazel - RedA115@aol.com

North Shore Triangle

Chris & Steve Michael - (no e-mail)

205 Wakewa

(574) 232-8502

Neighborhood Resources Corporation (NRC)

Diana Hess, Executive Director

nrcneighbors@gmail.com

Exhibit E
Neighborhood Density Map

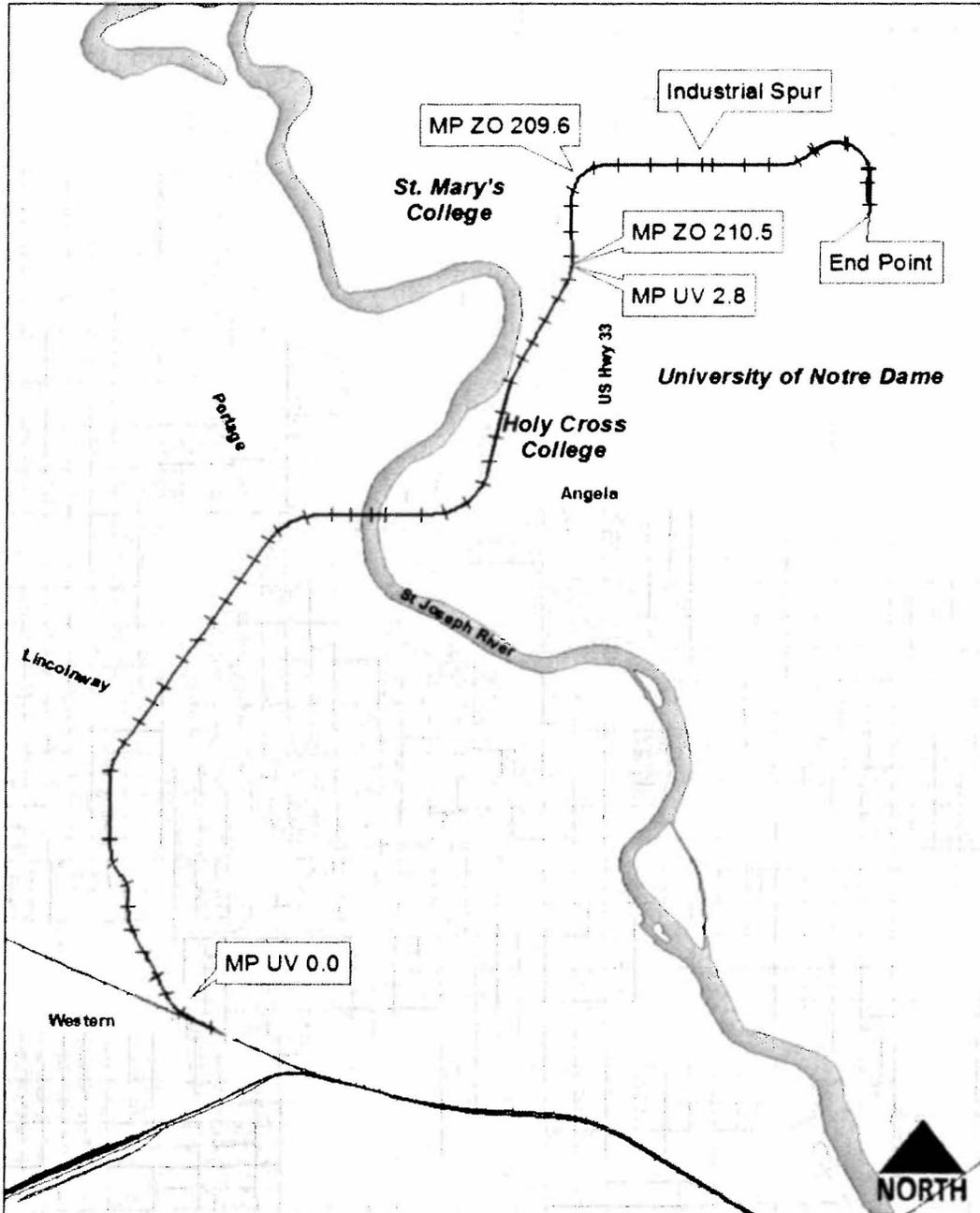


Exhibit F

Tax Delinquent Parcels (February and September 2011)

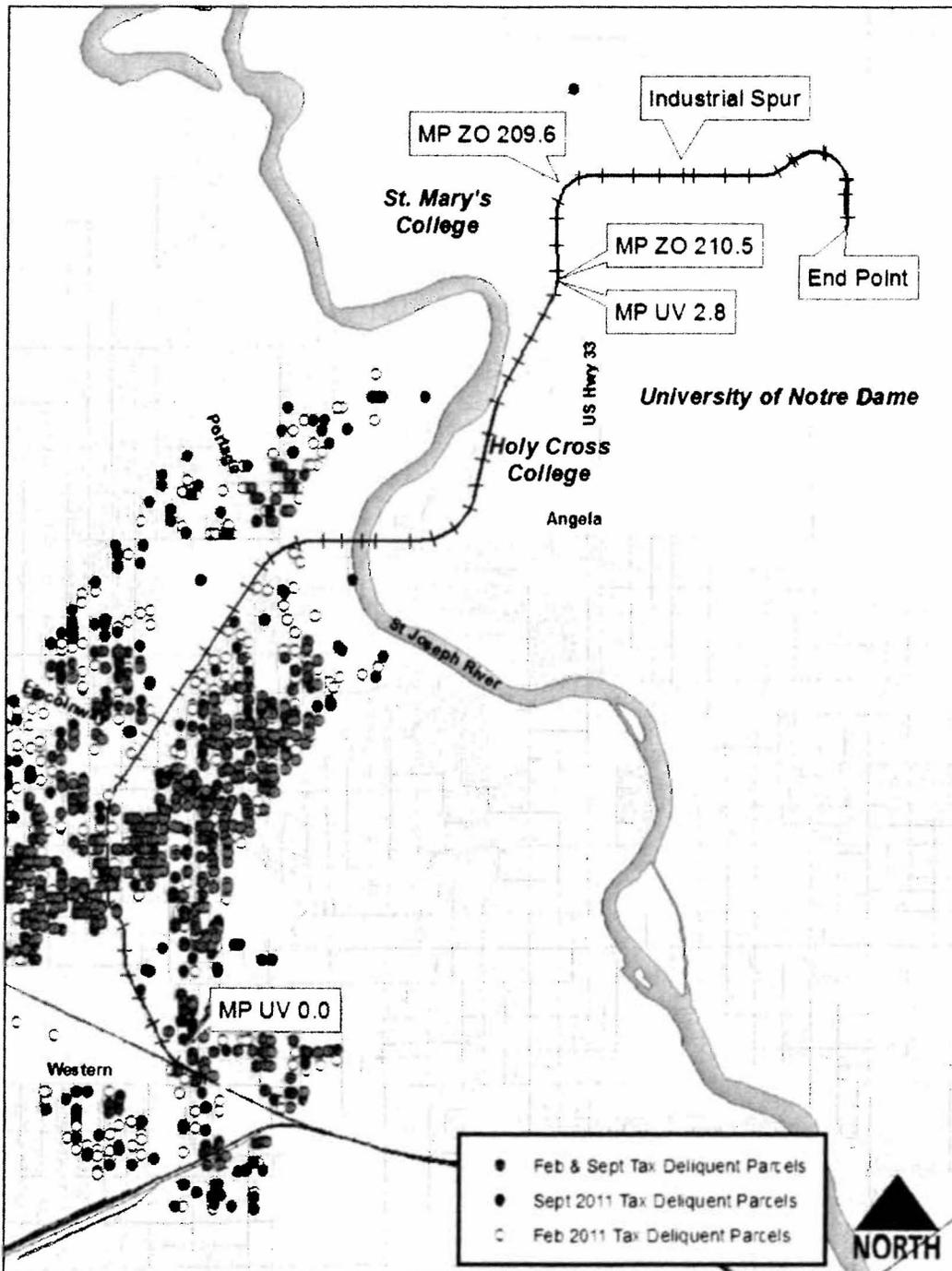
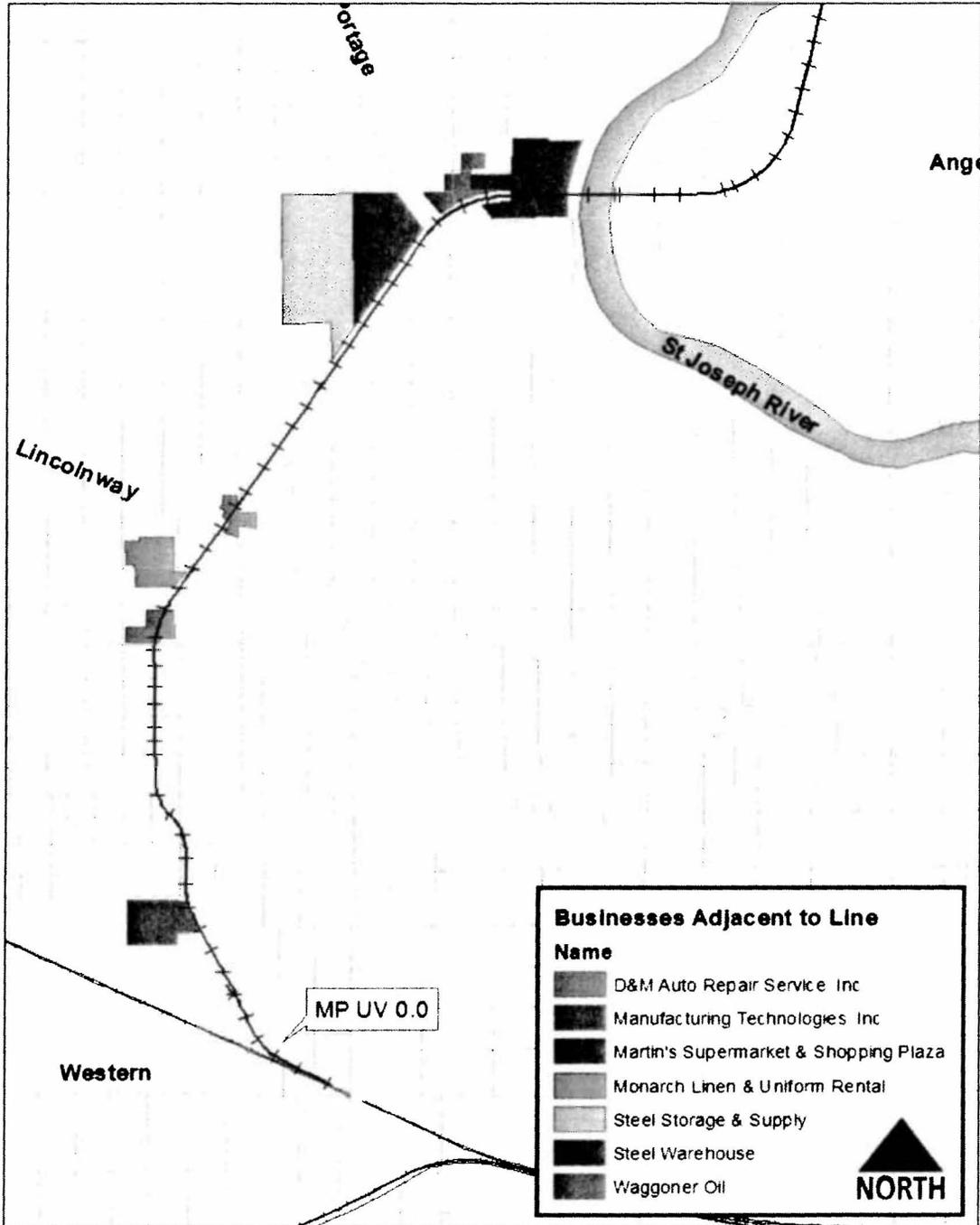


Exhibit G Business Map



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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY—
ADVERSE ABANDONMENT—
ST. JOSEPH COUNTY, IN

VERIFIED STATEMENT OF CARL LITTRELL,
CITY ENGINEER FOR THE CITY OF SOUTH BEND, INDIANA
IN SUPPORT OF ADVERSE ABANDONMENT OF LINES OF
RAILROAD

Carl Littrell, under the penalties of perjury, states the following:

1. I am the City Engineer for the City of South Bend, Indiana and have served in that position since 1997.
2. The responsibilities of my position include the following:
preservation and expansion of South Bend's infrastructure, including streets, roads, alleys and utilities.
3. In my capacity as City Engineer I am familiar with the Norfolk Southern Railway Company Spur Line of approximately 3.7 miles in length extending from a point in the City of South Bend through the campuses of the Brothers and Sisters of the Holy Cross to the campus of the University of Notre Dame. My primary familiarity has to do with that portion of the lines within the City limits of the City of South Bend.

4. Based on my observation of that rail line, there are twenty-two (22) rail crossings over City streets and alleys within the City limits of the City of South Bend.

5. With the permission of Norfolk Southern, all of the at grade rail crossings, except for "rubberized" surfaces, have been paved over. At most of those locations, Norfolk Southern has removed the rail to facilitate the removal of the crossing.

6. Norfolk Southern has removed the crossbucks at each of the crossings described in the preceding paragraph.

7. Within the last twelve months, Norfolk Southern has removed the flashing light and bell "cantilever" safety equipment installed at the Orange Street Crossing (AAR# 522721S) during the 1980's as a federal aid project.

8. Most of the crossings between Washington Street (AAR# 522720K) and Woodward Avenue (AAR# 548419C) are elevated above the street at steeper than the prescribed 1:20 grade, leaving a "hump" for traffic to cross. This hump interferes with snow removal, sweeping and drainage at those locations.

9. The humps do not have an effect to calm traffic, but they do occasionally do cause damage to vehicles which cross at those locations.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Carl Littrell, hereby declare under penalty of perjury that the foregoing is true and correct. Executed on September 7, 2011.



Carl Littrell
City Engineer for South Bend, IN

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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY—
ADVERSE ABANDONMENT—
ST. JOSEPH COUNTY, IN

SUPPLEMENTAL VERIFIED STATEMENT OF
GERALDINE M. HOYLER, C.S.C. IN SUPPORT OF
ADVERSE ABANDONMENT APPLICATION OF THE
CITY OF SOUTH BEND, THE BROTHERS OF HOLY CROSS, INC.
AND SISTERS OF THE HOLY CROSS, INC.

1. My name is Geraldine M. Hoyler, C.S.C. I am Secretary and Treasurer of Sisters of the Holy Cross, Inc. ("Sisters"), and General Councilor/General Treasurer of the Congregation of Sisters of the Holy Cross ("Congregation"). My business address is Bertrand Hall-Saint Mary's Notre Dame, IN 46556-5000. I have personal knowledge of the facts that I am presenting and have been duly authorized to present this Verified Statement in support of the pending application to abandon certain lines of railroad, including the industrial spur line that extends to the Notre Dame campus on behalf of the Congregation, Sisters and the Inn at Saint Mary's. I previously submitted a Verified Statement in this proceeding. This Verified Statement supplements my previously submitted comments.

2. I have reviewed the Board's previous decisions in this matter and am in full agreement with the reasoning expressed by Vice Chairman Mulvey in his Dissenting Opinion. I have also reviewed the Verified Statement that John

Affleck-Graves has submitted on behalf of Notre Dame. As he has explicitly confirmed, the University will not use direct rail service. The same is true of Sisters who ceased using coal at least eight years ago. I am personally aware that neither Sisters nor any other entity located north and east of the St. Joseph River have any current or future need for freight rail service. Hence, there is no present or future need for any rail service over the Lines that pass through the various campuses that would have any relationship to interstate commerce. Because abandonment of the Lines would not interfere in any respect with interstate commerce, I urge the Board to find that the only legitimate public interest issue that should be considered concerns the adverse impact of the long dormant tracks on the beneficial activities conducted by Sisters and the other Applicants.

3. I disagree with the reasoning expressed at page 7 of the *February 2008 Decision*. The remnants of the dormant Lines adversely impact the Sisters' every-day operations. More importantly, until such time as the unused track is removed and title to the underlying real property reverts to Sisters, it will not be able to develop the real property on which the tracks are now located.

4. I also disagree with the further statement at page 7 of the *February 2008 Decision* that suggests Sisters are seeking to annex the property within the rights-of-way that are located on Sisters' property. I have personally reviewed the various agreements and easements that allowed the railroads to construct the Lines in the early 1900's. Such agreements include a November

1902 reversionary indenture between St. Mary's Academy, as Sisters were formerly known, and Arthur Kennedy and an October 1903 easement that was granted to Notre Dame in October 1903. Those easements, which permitted the construction of the spur that was formerly used to deliver coal to Notre Dame, specifically provide that the real property underlying the right-of-way reverts to Sisters when rail operations cease. The spur is also subject to a further Agreement, dated November 1903, between Michigan Air Line Railroad and Notre Dame. That Agreement states that the railroad may use the spur so long as the "Railroad Company shall give satisfactory service or as long as the interests of [Notre Dame] would be subserved." Given Notre Dame's unequivocal positions that it will no longer receive coal by direct rail shipment to its power plant, coupled with a 17-year lapse of rail service, the time has come to honor the original terms and conditions of the contractual agreements between Sisters, Notre Dame and NSR's predecessors so that Sisters will be able to clear its title and freely move forward in whatever direction it may choose. Of course, because the various agreements state that title reverts to Sisters without the need for any legal action, no "annexation" of any real property is involved in this case.

5. I further disagree with the comment at page 5 of the *February 2008 Decision* that Sisters' "statements and actions indicate that they see a real possibility that rail service could resume if the Lines remained in the rail system." That comment is wrong. When Sisters agreed to support the Joint Application, it was fully aware that Notre Dame did not support renewed rail

service over the Lines. It also knew that no other entity located north and east of the St. Joseph River had any potential future need for any rail service. Therefore, it saw no possibility that freight rail service involving interstate commerce would ever resume over the Lines.

6. The decision to seek abandonment authority was largely based on CLS&SB's proposal to institute trolley service over the Lines, which was viewed as an unwanted and unneeded nuisance. Even if trolley operations might not pose the same dangers as a full-fledged freight operation, unneeded local trolley operations through the college would constitute a public nuisance and would not further any overriding Federal interest, or involve railroad operations in interstate commerce. Furthermore, it is Sister's position that trolley operations are not authorized under the limited easements granted to predecessors of Norfolk Southern and, therefore, could not be performed in any event without Sisters' consent. Moreover, it is possible that trolley operations could block access to emergency vehicles traveling to the college and retirement facilities located west of the track.

7. At ¶ 4 of his Verified Statement, John Affleck-Graves has responded to the suggestion that Notre Dame's use of trucking "should be replaced by renewed rail service in order to eliminate the movement of trucks through the City of South Bend" by concluding that "it is Notre Dame's position that renewed rail operations would have a far greater adverse impact on the community than continued trucking operations over public streets." I agree. Trucks that carry the coal to Notre Dame have used State Road 933, which is

immediately adjacent to the eastern boundary of Sisters' property. For the past 17 years, the trucks that have traveled along that route have done so without registering any complaints. They certainly have not caused any inconvenience or disruption to Sisters and their operations. The same would not be true of either trolley or renewed freight rail service which, unlike the trucks, would pass through the heart of Sisters' campus accompanied by multiple whistles, bells, vibrations and other irritants. Moreover, such operations would pose a continuous danger to the students, staff and residents who study, work and/or live on campus.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Geraldine M. Hoyler, C.S.C., hereby declare under penalty of perjury that the foregoing is true and correct. Executed on April 26, 2011.



Geraldine M. Hoyler, C.S.C.
Secretary and Treasurer of Sisters of the Holy Cross, Inc., and General Councilor/General Treasurer of the Congregation of Sisters of the Holy Cross

5

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY—
ADVERSE ABANDONMENT—
ST. JOSEPH COUNTY, IN

VERIFIED STATEMENT OF JOHN F. MAUCH
PRESIDENT AND CHIEF EXECUTIVE OFFICER OF
HOLY CROSS VILLAGE AT NOTRE DAME

1. My name is John F. Mauch. I am the President and Chief Executive Officer of Holy Cross Village at Notre Dame ("Village"). My business address is 54515 State Road 933 North, P.O. Box 706, Notre Dame, IN 46637-3364. I have personal knowledge of the facts that I am presenting and have been duly authorized to present this Verified Statement in support of the pending application to abandon certain lines of railroad, including the industrial spur line that extends to the Notre Dame camps. I have reviewed the Verified Statement of Curtis A. Coffey that was previously submitted in this

proceeding on behalf the Village and adopt the comments therein by reference. My statement will supplement those previously submitted comments.

2. I have also reviewed the Board's previous decisions in this matter and agree wholeheartedly with Vice Chairman Mulvey's reasoning expressed in his Dissenting Opinion. As John Affleck-Graves has reconfirmed in the Verified Statement that he has submitted on behalf of Notre Dame, the University will not use direct rail service. Because there is no other entity located north and east of the St. Joseph River that could make any use of freight rail service, there is no present or future need for any rail service over the Lines that pass through the various campuses that would have any relationship to interstate commerce. Because abandonment of the Lines would not interfere in any respect with interstate commerce, the only legitimate issue that remains concerns the adverse impact of the long dormant tracks on the Village, its residents and staff, and its operations.

3. I must respectfully disagree with the reasoning expressed at page 7 of the *February 2008 Decision*. The unused Lines have adversely impacted both the Village's development and every-day operations. As such, the Lines interfere with the Brothers' ability to carry out their mission, which includes developing the Village.

4. In the first place, the track's existence significantly increased the cost of construction of Andre Place, which is a major structure located immediately adjacent to the railroad right-of-way. Unfortunately, this happened because various factors created the erroneous impression that the

Lines had been abandoned. Such factors include the authorized abandonments of portions of the Lines on the Brothers' and Sisters' campuses, the voluntary removal of tracks, cross ties and cross bucks at multiple grade crossing within the City of South Bend, as well as NSR's removal of the switch to the its mainline at MP 0.0. By the time the Brothers belatedly learned that the Lines had not been abandoned, construction of Andrea Place had started. As a consequence, substantial unanticipated costs were encountered because the new building had to be redesigned and reconfigured after construction was well under way. In particular, the basement, which houses an underground parking garage, had to be modified. In addition, the garage exit ramp had to be completely reconfigured. Not only was this expensive, but the final layout is not at efficient as it would have been had the Brothers been able to use the original design.

5. The unused tracks also disrupt every-day operations of the overall facilities and inconveniences the Village's elderly residents and members of its staff who care for the elderly and infirm residents. Because the tracks are located between Andre Place and the majority of the Village's other buildings, they interfere on a daily basis with the ability of elderly residents to freely access it. This is particularly true with regard to residents who are confined to wheelchairs, or whose mobility is limited. If the tracks were removed, it would allow a series of permanent sideways to be installed between all of the buildings that are now separated by the unused tracks.

6. The tracks also interfere with essential vehicular traffic, including ambulances. At present, there are only two paved streets that cross the tracks. While no one can fault a railroad for wanting to minimize at-grade crossings over a busy rail line, the same considerations play no role when a track has not been used for any purpose for seventeen years and where there is no possibility that it will ever be used again for freight rail service.

7. The tracks have also impeded the installation of needed utility lines. Because the tracks split the property, it has been necessary to install conduit under the dormant tracks. Even though the tracks have not been used for years, the Brothers had to satisfy the highly restrictive requirements in order to install conduit under the tracks, including the requirement that steel pipes for a communications duct bank and for electrical power be used instead of less expensive PVC/HDPE pipes. That change order resulted in increased costs of over \$20,000.

8. Last, the tracks are an eyesore. If the unused tracks were located in a rural area where they would be out of sight, out of mind, it likely would not matter if they were left in place. However, when, as here, the tracks are not only visible but also interfere with daily operations and long-range plans, there is no justification for disallowing their removal in the absence of any demonstrated present or future need for freight rail service.

9. All of the above-stated reasons have caused the Village to appear to express its support for abandonment of the Lines. Those reasons have nothing to do with any feeling that a real possibility exists that freight rail will ever be

resumed in the Lines remain in the rail system. Therefore, I must also disagree with the statement at page 5 of the *February 2008 Decision* that the Applicants saw “a real possibility that rail service could resume if the Lines remained in the rail system.” Nor can the Brothers’ opposition to the tracks be viewed as “an implicit concession that the potential for resumed rail service is real.” *Id.* Given Notre Dame’s sworn testimony that it will continue to use the transload operation to receive its coal, the Brothers do not see any potential for resumed rail service.

10. Nevertheless, the Brothers cannot overlook the reality that freight rail operations at any level would increase the danger to elderly residents who may be disoriented and incapable of quickly moving themselves to safety. Furthermore, there is also a possibility that heavily loaded railcars could derail and cause significant damage to property and persons. The Board should note that before Conrail ceased operations, it suffered a major derailment on the Brothers’ campus that was not cleared for several weeks.

11. Renewed operations would also require whistles to be blown at the at-grade crossings, which would disrupt the tranquility of the campus. This would have a detrimental impact on the Retirement Village by making it a far less desirable location for elderly residents who do not want to be upset and disturbed by whistles being blown by trains moving a few feet from their retirement homes. If the trains were to operate at night, it would be even worse. This would cause the Retirement Village to be a far less attractive option for would-be retirees.

12. I have also reviewed the "Holy Cross Village/CCRC Railroad Crossing Approvals Meeting Notes and Issue Summary" for a meeting held on May 30, 2006, at which a spokesperson for the Chicago Lake Shore & South Bend provided an overview of multiple issues that would accompany CLS&SB's acquisition of the Lines. As he explained, because CLS&SB intended to run passenger trains that "will travel the campus at 30+ MPH", it would be necessary to upgrade the crossings that are located on the campus in order to protect the extensive safety measures to protect the residents, their guests, students and staff from the obvious dangers associated with such operations. Safety upgrades would also involve an attempt to avoid the constant whistles that would be blown as the multiple crossing were approached. The only feasible solution to these problems would be to work with the City of South Bend to establish a quiet zone pursuant to the Federal Railroad Administration's governing regulations. Based on several recent cost estimates published on the internet and from other sources, including negotiated settlements in the Canadian National Railroad's acquisition of the EJ&E Railroad, the cost of installing the necessary equipment could be several hundred thousand dollars or more. Any expenditure of that magnitude would have a devastating impact on the Orders' missions.

13. Although the specter of renewed freight operations has seemingly passed due to Notre Dame's explicit renunciation of CLS&SB's coal-hauling proposal, there is one other facet of CLS&SB's previous proposal that would adversely impact the Brothers, namely the unneeded trolley service. Even

though trolley operations may not fall within the Board's jurisdiction, the Brothers are very concerned that the proposed coal operation is a subterfuge that would allow the CLS&SB to commence trolley operations over the campuses. In the first place, the trolleys would not serve a real purpose as the tracks do not go anywhere near the downtown area of South Bend. Second, although trolley operations might not pose the same dangers as a full-fledged freight operation, the tracks and operations would continue to interfere with and endanger the operations of the retirement village and constitute a public nuisance.

14. I must object to the comment that the Brothers are seeking to use this proceeding to "annex the rights-of-way." *February 2008 Decision*, at 7. To the extent that the tracks are located on right-of-way that is subject to a reversionary easement, the Brothers are entitled as a matter of contract to the return of their real property. To the extent that NSR may hold title to the real property in fee, the Brothers are willing to negotiate a fair price for the title. That, however, has no relevance to the ultimate issue of whether there is any future need for rail freight service in interstate commerce.

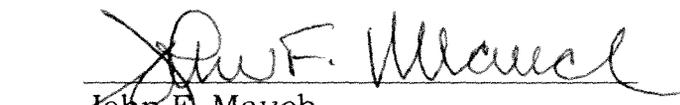
15. Finally, Brothers agree with Notre Dame's position that "renewed rail operations would have a far greater adverse impact on the community than continued trucking operations over public streets." The eastern boundary of Brothers' property is immediately adjacent to State Road 933, which is used by trucks that carry the coal to Notre Dame. At no point since the transload operations were started about 17 years ago have Brothers had any reason to

complaint about the trucks. In the first place, the coal trucks comprise but a tiny fraction of the 28,000 vehicles that use State Route 933 on a daily basis. As a result, they are scarcely noticed. Second, they certainly have not caused any inconvenience or disruption to Brothers and its operations. Indeed, the switch from train to truck deliveries was a blessing as it eliminated the constant danger posed by freight trains moving in close proximity to students, staff and residents who study, work and/or live on campus. Given the absence of any demonstrated need for current or future rail service over the Lines, the time has come to authorize the removal of the dormant tracks whose continued existence serves no useful purpose.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, John F. Mauch, hereby declare under penalty of perjury that the foregoing is true and correct. Executed on April 21, 2011.



John F. Mauch
President & Chief Executive Officer
Holy Cross Village at Notre Dame, Inc.

**HOLY CROSS VILLAGE / CCRC
RAILROAD CROSSING APPROVALS
MEETING NOTES AND ISSUE SUMMARY**



**MAY 30, 2006 / 10:00 – 11:45 AM / Holy Cross Brothers Provincial Offices
First Floor Conference Room / Notre Dame, IN**

ATTENDEES:

Brother John May, CSC, Director of Planning, Brothers of Holy Cross, Midwest Province
Brother Thomas Shaughnessy, CSC, President of Development, HCB, Midwest Province
Brother Richard Gilman, CSC, President, Holy Cross College
Ron Searcy, AIA, The Troyer Group, Mishawaka, IN
Gerry Phipps, P.E., The Troyer Group, Mishawaka, IN
Dick Mintz, Attorney, Barnes & Thornburg, South Bend, IN
Gary Landrio, Stone Consulting (South Bend Rail Company (SBRC)), Warren, PA
Philip Panzica, RA, President, Panzica Building Corporation, South Bend, IN

ITEMS DISCUSSED:

- 1) **SBRC OVERVIEW:** Gary Landrio was introduced to the meeting attendees and gave an overview of SBRC's purchase of the coal line. The purchase and placing the line back into service has numerous goals and issues, including:
 - Historically the line has provided coal service to ND. SBRC will be repairing the tracks and placing the line back into service to deliver coal to Notre Dame. Loading and trucking coal to ND is not environmentally sound and uses substantially more fuel to deliver coal within the City.
 - University currently uses 80,000 tons of coal annually, with the anticipated growth to over 100,000 tons annually in the future. SBRC anticipates 30 carloads weekly, delivered by (2) trains of 15 cars weekly.
 - When the tracks are placed back into service, SBRC sees opportunities to increase the use of the rail with passenger trains to Holy Cross College, St. Mary's and Notre Dame. SBRC envisions a limited Friday/Saturday service schedule to support students at breaks, Christmas and other busy weekends. SBRC also envisions having trains come in on football game days to bring fans to the campus.
 - An affiliate rail organization, the South Shore Heritage Line Foundation, is looking for space along the line to create a working train museum. Consideration is being given to a parcel of land the rail line may control at the north end of St. Mary's campus.
 - The SBRC has signed the Norfolk and Southern purchase agreement and both parties have agreed to a closing on the rail June 21, 2006 in Atlanta, Georgia.
 - SBRC envisions this line becoming a "full line" rail service of both coal cars and passenger cars. HCV needs to consider that coal cars are heavily loaded and require longer distances to start and stop and most likely coal cars will continue to travel the campus at +/- 10 MPH loaded, up to 20 MPH when hauling empty cars out. Passenger train cars are lighter and are able to start and stop quicker; therefore, they will travel the campus at 30+ MPH. Crossings must be given serious consideration for safety.

ALTA/ACSM LAND TITLE SURVEY

A PART OF THE NORTHEAST & SOUTHEAST QUARTERS OF SECTION 35 &
THE NORTHWEST & SOUTHWEST QUARTERS OF SECTION 36, T. 38 N., R. 2 E.
PORTAGE TOWNSHIP ST. JOSEPH COUNTY, INDIANA

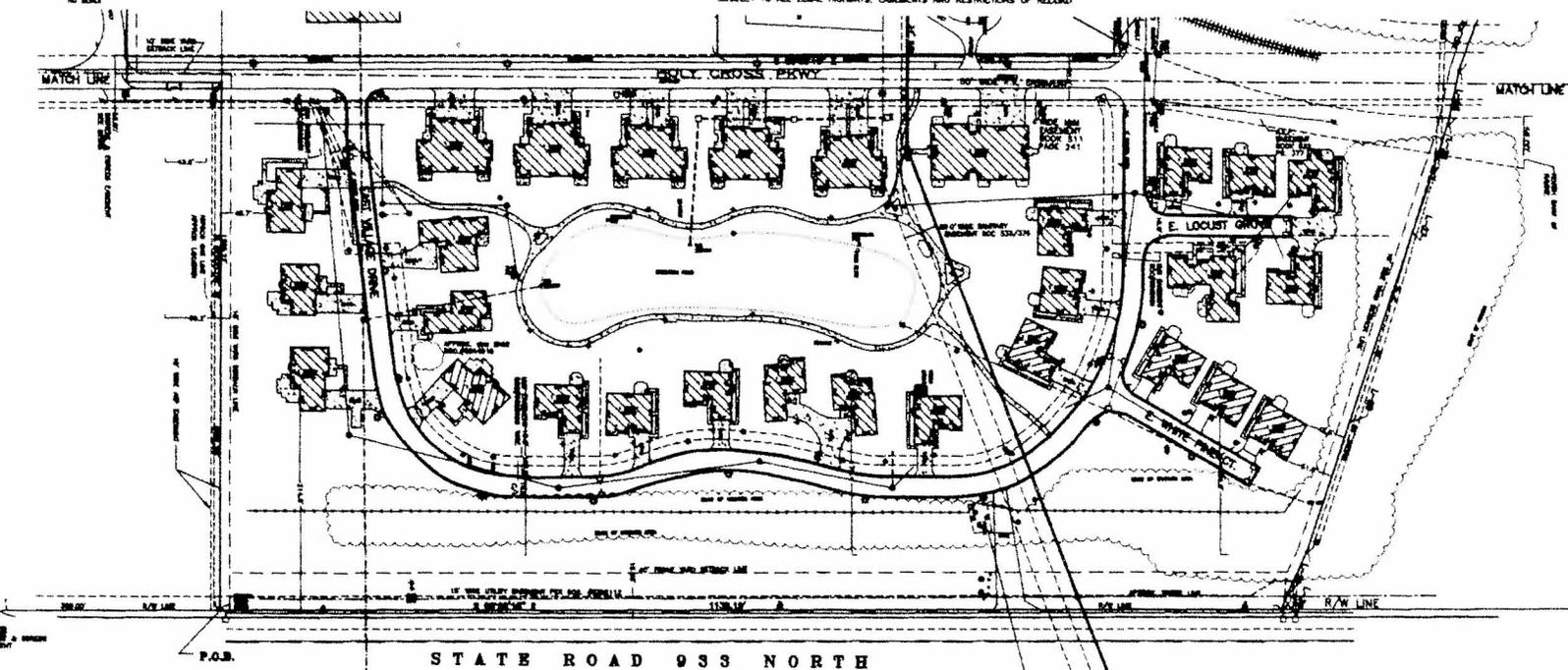
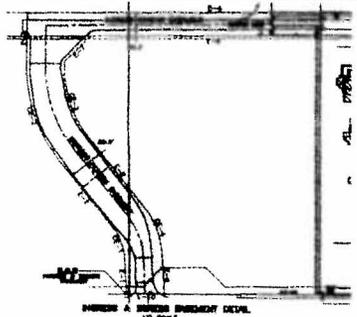
DEEDS, EASEMENTS, EMBLEMENTS, LEGAL DESCRIPTIONS:

THAT PART OF THE NORTHEAST & SOUTHWEST QUARTERS OF SECTION 35 AND THE NORTHWEST & SOUTHWEST QUARTERS OF SECTION 36, BOTH BEING IN TOWNSHIP 38 NORTH, RANGE 2 EAST, PORTAGE TOWNSHIP, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY OF R.R. # 833 NORTH BEING POINT N 14°00'00" E, 1844.04 FT. AND N 02°47'53" W, 2048.41 FT. FROM THE SOUTHWEST CORNER OF SAID SECTION 36, THENCE S 82°35'33" W, 77.78 FT. TO THE POINT OF CURVATURE, THENCE ALONG AN ARC TO THE LEFT WITH A RADIUS OF 110.00 FT. AND A LENGTH OF 87.22 FT., SUBTENDED BY A CHORD BEARING S 89°02'20" W AND CHORD LENGTH OF 86.17 FT.; THENCE S 51°35'07" W, 175.85 FT. TO THE POINT OF CURVATURE, THENCE ALONG AN ARC TO THE RIGHT WITH A RADIUS OF 341.89 FT. AND A LENGTH OF 231.08 FT., SUBTENDED BY A CHORD BEARING S 71°03'19" W AND A CHORD LENGTH OF 228.43 FT.; THENCE N 89°18'59" W, 102.50 FT.; THENCE N 80°35'33" W, 815.11 FT.; THENCE N 80°00'00" E, 50.00 FT.; THENCE S 02°33'33" E, 482.06 FT.; THENCE S 40°38'17" E, 72.84 FT. TO THE POINT OF A NON-TANGENT CURVE, THENCE ALONG AN ARC TO THE LEFT WITH A RADIUS OF 280.00 FT. AND A LENGTH OF 178.70 FT., SUBTENDED BY A CHORD BEARING N 71°03'19" E AND A CHORD LENGTH OF 173.32 FT.; THENCE N 51°30'07" E, 114.31 FT.; THENCE N 89°30'52" E, 81.80 FT. TO THE WEST RIGHT-OF-WAY LINE OF R.R. # 833, THENCE ALONG SAID WEST LINE S 02°18'15" E, 80.10 FT. TO THE POINT OF BEGINNING, CONTAINING 1.85 ACRES MORE OR LESS, SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

LINE	BEARING	DISTANCE	CHORD BEARING	CHORD LENGTH
1	N 14°00'00" E	1844.04		
2	N 02°47'53" W	2048.41		
3	S 82°35'33" W	77.78		
4	S 51°35'07" W	175.85		
5	S 89°02'20" W	86.17		
6	S 71°03'19" W	231.08		
7	N 89°18'59" W	102.50		
8	N 80°35'33" W	815.11		
9	N 80°00'00" E	50.00		
10	S 02°33'33" E	482.06		
11	S 40°38'17" E	72.84		
12	N 71°03'19" E	173.32		
13	N 51°30'07" E	114.31		
14	N 89°30'52" E	81.80		
15	S 02°18'15" E	80.10		

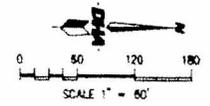
LINE	BEARING	DISTANCE	CHORD BEARING	CHORD LENGTH
16	N 71°03'19" E	178.70		
17	N 51°30'07" E	114.31		
18	N 89°30'52" E	81.80		
19	S 02°18'15" E	80.10		

LINE	BEARING	DISTANCE	CHORD BEARING	CHORD LENGTH
20	N 51°30'07" E	114.31		
21	N 89°30'52" E	81.80		
22	S 02°18'15" E	80.10		
23	N 71°03'19" E	173.32		
24	N 51°30'07" E	114.31		
25	N 89°30'52" E	81.80		
26	S 02°18'15" E	80.10		
27	N 71°03'19" E	173.32		
28	N 51°30'07" E	114.31		
29	N 89°30'52" E	81.80		
30	S 02°18'15" E	80.10		
31	N 71°03'19" E	173.32		
32	N 51°30'07" E	114.31		
33	N 89°30'52" E	81.80		
34	S 02°18'15" E	80.10		
35	N 71°03'19" E	173.32		
36	N 51°30'07" E	114.31		
37	N 89°30'52" E	81.80		
38	S 02°18'15" E	80.10		
39	N 71°03'19" E	173.32		
40	N 51°30'07" E	114.31		
41	N 89°30'52" E	81.80		
42	S 02°18'15" E	80.10		
43	N 71°03'19" E	173.32		
44	N 51°30'07" E	114.31		
45	N 89°30'52" E	81.80		
46	S 02°18'15" E	80.10		
47	N 71°03'19" E	173.32		
48	N 51°30'07" E	114.31		
49	N 89°30'52" E	81.80		
50	S 02°18'15" E	80.10		
51	N 71°03'19" E	173.32		
52	N 51°30'07" E	114.31		
53	N 89°30'52" E	81.80		
54	S 02°18'15" E	80.10		
55	N 71°03'19" E	173.32		
56	N 51°30'07" E	114.31		
57	N 89°30'52" E	81.80		
58	S 02°18'15" E	80.10		
59	N 71°03'19" E	173.32		
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61	N 89°30'52" E	81.80		
62	S 02°18'15" E	80.10		
63	N 71°03'19" E	173.32		
64	N 51°30'07" E	114.31		
65	N 89°30'52" E	81.80		
66	S 02°18'15" E	80.10		
67	N 71°03'19" E	173.32		
68	N 51°30'07" E	114.31		
69	N 89°30'52" E	81.80		
70	S 02°18'15" E	80.10		
71	N 71°03'19" E	173.32		
72	N 51°30'07" E	114.31		
73	N 89°30'52" E	81.80		
74	S 02°18'15" E	80.10		
75	N 71°03'19" E	173.32		
76	N 51°30'07" E	114.31		
77	N 89°30'52" E	81.80		
78	S 02°18'15" E	80.10		
79	N 71°03'19" E	173.32		
80	N 51°30'07" E	114.31		
81	N 89°30'52" E	81.80		
82	S 02°18'15" E	80.10		
83	N 71°03'19" E	173.32		
84	N 51°30'07" E	114.31		
85	N 89°30'52" E	81.80		
86	S 02°18'15" E	80.10		
87	N 71°03'19" E	173.32		
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90	S 02°18'15" E	80.10		
91	N 71°03'19" E	173.32		
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93	N 89°30'52" E	81.80		
94	S 02°18'15" E	80.10		
95	N 71°03'19" E	173.32		
96	N 51°30'07" E	114.31		
97	N 89°30'52" E	81.80		
98	S 02°18'15" E	80.10		
99	N 71°03'19" E	173.32		
100	N 51°30'07" E	114.31		
101	N 89°30'52" E	81.80		
102	S 02°18'15" E	80.10		
103	N 71°03'19" E	173.32		
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105	N 89°30'52" E	81.80		
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107	N 71°03'19" E	173.32		
108	N 51°30'07" E	114.31		
109	N 89°30'52" E	81.80		
110	S 02°18'15" E	80.10		
111	N 71°03'19" E	173.32		
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115	N 71°03'19" E	173.32		
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119	N 71°03'19" E	173.32		
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122	S 02°18'15" E	80.10		
123	N 71°03'19" E	173.32		
124	N 51°30'07" E	114.31		
125	N 89°30'52" E	81.80		
126	S 02°18'15" E	80.10		
127	N 71°03'19" E	173.32		
128	N 51°30'07" E	114.31		
129	N 89°30'52" E	81.80		
130	S 02°18'15" E	80.10		
131	N 71°03'19" E	173.32		
132	N 51°30'07" E	114.31		
133	N 89°30'52" E	81.80		
134	S 02°18'15" E	80.10		
135	N 71°03'19" E	173.32		
136	N 51°30'07" E	114.31		
137	N 89°30'52" E	81.80		
138	S 02°18'15" E	80.10		
139	N 71°03'19" E	173.32		
140	N 51°30'07" E	114.31		
141	N 89°30'52" E	81.80		
142	S 02°18'15" E	80.10		
143	N 71°03'19" E	173.32		
144	N 51°30'07" E	114.31		
145	N 89°30'52" E	81.80		
146	S 02°18'15" E	80.10		
147	N 71°03'19" E	173.32		
148	N 51°30'07" E	114.31		
149	N 89°30'52" E	81.80		
150	S 02°18'15" E	80.10		



EXISTING LEGEND

Symbol	Description
Star	Survey Station
Circle	Property Corner
Square	Right-of-Way Corner
Triangle	Point of Curvature
Dashed Line	Right-of-Way Line
Double Line	Property Boundary
Shaded Area	Residential Zoning
Circle with X	Water Feature
Circle with D	Drainage
Circle with S	Survey Station
Circle with N	North Arrow
Circle with E	East Arrow
Circle with W	West Arrow



DATE	BY	REVISIONS
1/10/06	DLH	1. INITIAL SURVEY
		2. AS SHOWN ON THIS SHEET

Prepared, Measured & Annotated by:
DLH
 Debra L. Hester
 Licensed Professional Land Surveyor
 No. 12345
 State of Indiana
 1/10/06

ALL DIMENSIONS SHOWN MUST BE FIELD MEASUREMENTS BY THE SURVEYOR AND NOT CALCULATED FROM THE PLAN. THE SURVEYOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE FIELD MEASUREMENTS AND THE CORRECTNESS OF THE CALCULATIONS THEREFROM.

6

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY—
ADVERSE ABANDONMENT—
ST. JOSEPH COUNTY, IN

AFFIDAVIT OF JAMES D. CONLEY
IN SUPPORT OF
JOINT VERIFIED PETITION TO REOPEN

1. My name is James D. Conley. I am a member and past President of The Point at North Shore Woods Association, Inc. ("Association"), which is a condominium association comprised of the owners of thirty-one townhouses on land that abuts the Norfolk and Southern Railway Company's ("NSR") right-of-way. My address is 1704 W. North Shore Drive, South Bend, IN 46617. I have been duly authorized to present this Affidavit in Support of the Joint Petition to Reopen filed by the City of South Bend, the Brothers of Holy Cross, Inc., Holy Cross Village at Notre Dame, and the Sisters of the Holy Cross, Inc. (collectively "Petitioners"). It is my understanding that Petitioners are seeking authority to force the adverse abandonment of approximately 3.7 miles of railroad that are owned by NSR and located in St. Joseph County, Indiana ("the Lines"). The Lines are immediately adjacent to the property owned by the members of the Association.

2. The land that is owned by the Association's membership is located on the east side of the St. Joseph River and is bounded by the campuses of the

two religious Orders and a number of single family houses. If the Lines were to be restored and rail service resumed after being dormant for seventeen years, Federal Railroad Administration regulations would require the engineer to blow the locomotive's whistle at least eighteen times on a round-trip movement in less than a mile. Immediately before and after it crosses the St. Joseph River, NSR's right-of-way passes at grade over two major streets, North Riverside Drive and Portage Avenue, as well as West North Shore Drive. Therefore, the engineer on every train would be required to blow a whistle at both crossings, which are located a few hundred feet from the Association's property. The engineer would also have to blow a whistle when passing through the at-grade crossings located on the religious Orders' property and when crossing at grade over State Highway 933 and over Douglas Road. With the exception of the crossing at Douglas Road, all of these at-grade crossings are less than a mile from the Association's property.

3. The noise associated with the series of whistles and the movement of trains would be more than a mere nuisance. Not only would the trains pose a constant danger in terms of collisions with vehicles and small children who do not appreciate the dangers associated with moving and stalled trains, but resumption of rail service over the Lines would have an immediate adverse impact on real estate values. Without question, an abandoned right of way is far more attractive to a potential buyer than an active line of railroad. That is true even if the number of trains per week is relatively small. Of course, if The Chicago, Lake Shore and South Bend Railway were to be believed, the residents

would also be faced with unwanted trolley car operations and the additional noise associated with them. In short, the unneeded and unwanted renewal of rail freight service over the Lines is contrary to the public interest.

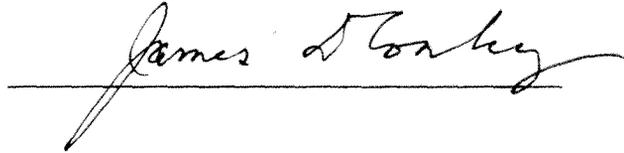
4. As the Board is well aware, there is a much less intrusive alternative means of delivering coal to Notre Dame that has worked without controversy ever since Conrail ceased operating over the Lines in the mid-1990's. Because Notre Dame, which is the only potential shipper that the Board identified in its earlier decisions, has acknowledged that it will not utilize the Lines for any rail service, and that it is in the best interest of the community at large not to restore rail operations over the Lines, what is to be gained by resuming unwanted and unneeded rail service at the expense of the residents who located along what they assumed was a long abandoned line of railroad.

5. When no shipper or receiver testifies that they require and will use rail service over lines of railroad that have not been used for approximately seventeen years, there is no continuing federal interest in preserving dormant lines at the expense of adjoining land owners. In this case, no potential shipper has shown any interest in preserving the Lines. As a result, there is no rational reason to deny abandonment authority. Nor is there any federal interest to be served at the expense of the community at large which supports the immediate abandonment of the Lines.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, James D. Conley, hereby declare under penalty of perjury that the foregoing is true and correct. Executed on September 6, 2011.

A handwritten signature in cursive script, reading "James D. Conley", is written over a solid horizontal line.

CERTIFICATE OF SERVICE

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Joint Petition to Reopen was served this September 13, 2011, by first-class mail, postage prepaid, on the following named parties of record:

John D. Heffner, PLLC
1920 N. Street, N.W.
Suite 800
Washington, D.C. 20036

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General Solicitor
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Norfolk Southern Railway Company
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South Bend, IN 46615



Richard H. Streeter