

ORIGINAL

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ENTERED
Office of Proceedings

MAR 28 2008

Part of
Public Record



March 28, 2008

Hon. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423
Attn: Recordations

221946

HAND DELIVERED

Re: STB Docket No. AB-882
Minnesota Commercial Railway Company-Adverse
Discontinuance- Ramsey County, MN

221945

Re: STB Docket No. AB-884
M T Properties, Inc.- Adverse Abandonment -
Ramsey County, MN

Dear Madam Secretary:

Enclosed herewith are the original and eleven (11) copies of the Adverse Discontinuance and Abandonment Application being filed by the City of New Brighton, MN. Kindly acknowledge receipt and filing of the enclosed papers by date stamping the eleventh copy of this letter and application; and returning them to the undersigned.

By its Decision dated January 25, 2008, the Board granted in part, a Petition for Waiver and Exemption filed by the Applicant on November 9, 2007 and Supplemental Petition for Waiver and Exemption filed by the Applicant on November 21, 2007. The enclosed Application conforms in all respects to the Board's regulations as modified by the waivers.

Pursuant to 49 CFR 1002.2(e), by letter dated October 21, 2004, a copy of which is attached hereto, the Board granted the request of the City of New Brighton, a political subdivision of the State of Minnesota, for a waiver of the filing fee.

FILING FEE WAIVED

Also enclosed is an Affidavit of Compliance with 49 CFR 1152.20 and a disk containing a copy of those portions of the application that are available as computer files.

We thank the Board for its time and consideration.

Respectfully submitted,


James H. M. Savage

JHMS:rhc
Enclosure

cc: Grant Fernelius (w/enc.)
John Gohmann (w/enc.)
Lee Larson (w/enc.)



Office of the Secretary

Surface Transportation Board
Washington, D.C. 20423-0001

October 21, 2004

Mr. John D. Heffner, PLLC
Suite 800
1920 N Street, N.W.
Washington, DC 20036-1601

RE: STB Docket No. AB-882, City of New Brighton - Adverse Abandonment - Line of Railroad
Of MT Properties, Inc., City of New Brighton - Adverse Discon-
tinuance - Minnesota Commercial Railway Company

Dear Mr. Heffner:

I have reviewed your October 14, 2004, request for a waiver of the filing fees in connection with the adverse abandonment application to be filed by the City of new Brighton, MN (New Brighton) You indicate that New Brighton will file its adverse abandonment application to facilitate a commercial land development project, which you argue is in the best interest of the public. Further, you argue that New Brighton is a local governmental entity and has no intention of becoming a railroad. You contend that the circumstances warrant the waiver of the filing fees in question.

As a filing fee does not appear necessary under the circumstances as you present them, your request for a waiver will be granted, and the agency will promptly move the matter forward

Sincerely,

Vernon A. Williams
Secretary

AFFIDAVIT OF COMPLIANCE WITH 49 C.F.R. 1152.20

I, James H. M. Savage, of full age, being duly sworn, upon my oath depose and say:

1. I am an attorney at law of the District of Columbia, maintaining an office for the practice of law at 1750 K Street, N.W., Suite 350, Washington, DC 20006.

2. I am assisting John D. Heffner, PLLC with the subject application for adverse discontinuance and abandonment authority.

3. I make this affidavit based upon personal knowledge as well as upon information made available to me in the course of my assisting with this matter.

4. On February 26, 2008, the pre-filing notice requirements of 49 C.F.R. 1152.20(a)(1), and 1152.20(b)(1) (as modified by the Surface Transportation Board's Decision of January 25, 2008, in STB Docket Nos. AB-882 and AB-884) were met by serving copies of the Notice of Intent to file an adverse discontinuance and abandonment application on required parties by first class mail (or else by certified mail as otherwise specified in 1152.20(a)(2)(ii)).

5. On February 14, 2008 the pre-filing posting requirements of 49 C.F.R. 1152.20(a)(3) were met by posting a copy of the Notice of Intent to file an adverse discontinuance and abandonment application at an agency station of the Minnesota Commercial Railway at St. Paul, MN.

6. On March 5, 2008, March 12, 2008 and March 19, 2008 the pre-filing publication requirements of 49 C.F.R. 1152.20(a)(4) were met by publishing the Notice of Intent to file an adverse discontinuance and abandonment application in the NEW BRIGHTON BULLITIN.

7. A true copy of the Affidavit of Publication is attached hereto and made a part hereof as Exhibit A.

(Signature) James H M Savage

Subscribed and sworn to before me in the District of Columbia, this 26th day of March, 2008.

(Notary Public) Larry E. Jefferson

Larry E. Jefferson
Notary Public, District of Columbia
My Commission Expires 1/14/2012

My Commission expires:



Exhibit A

AFFIDAVIT OF PUBLICATION

Affidavit of Publication

State of Minnesota }
County of Ramsey } SS

WES COHEN, being duly sworn, on oath, says that he/she is the publisher or authorized agent and employee of the publisher of the newspaper known as NEW BRIGHTON BULLETIN, and has full knowledge of the facts which are stated below

(A) The newspaper has complied with all of the requirements constituting qualification as a qualified newspaper, as provided by Minnesota Statute 331A 02, 331A 07, and other applicable laws, as amended

(B) The printed NOTICE OF INTENT TO ABANDON AND DISCONTINUE SERVICE which is attached was cut from the columns of said newspaper, and was printed and published once each week, for 3 successive weeks, it was first published on WEDNESDAY, the 5TH day of MARCH 20 08, and was thereafter printed and published on every WEDNESDAY to and including WEDNESDAY, the 19TH day of MARCH, 20 08, and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice

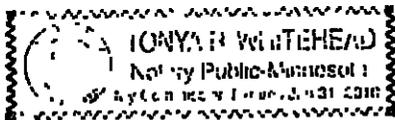
*ABCDEFGHIJKLMNPOQRSTUVWXYZ
*ABCDEFGHIJKLMNPOQRSTUVWXYZ
*abcdefghijklnopqrstuvwxyz

BY *lu*
TITLE ACCOUNTING CONTROLLER

Subscribed and sworn to before me on this 19TH day of MARCH, 20 08

 Tonya R Whitehead
Notary Public

*Alphabet should be in the same size and kind of type as the notice



RATE INFORMATION

- (1) Lowest classified rate paid by commercial users for comparable space \$24 00 per col inch
- (2) Maximum rate allowed by law for the above matter \$23 25 per col inch
- (3) Rate actually charged for the above matter \$ per col inch

SURFACE TRANSPORTATION BOARD

**STB Docket No. AB-882
MINNESOTA COMMERCIAL
RAILWAY COMPANY**

—ADVERSE DISCONTINUANCE—

IN RAMSEY COUNTY, MN

STB Docket No. AB-884

MT PROPERTIES, INC

—ADVERSE ABANDONMENT—

IN RAMSEY COUNTY, MN

**NOTICE OF INTENT TO
ABANDON AND DISCONTINUE
SERVICE**

The City of New Brighton, MN ("the City") gives notice that on or before March 30, 2008, it intends to file with the Surface Transportation Board, Washington, D.C. 20423, an application for permission to discontinue service on and abandon a line of railroad known as the Butcher's Spur that is owned by MT Properties, Inc and operated by the Minnesota Commercial Railway Company ("MCRC"). The Butcher's Spur is located in the City of New Brighton. It commences in New Brighton from a turnout on MCRC's main line and runs southeast approximately 3.664 feet to the western right-of-way line of Interstate Highway 35W. The line has no mileposts. It traverses through United States Postal Service ZIP Code 55112 and extends a distance of approximately 0.7 miles. There are no stations on the affected line.

The reason for the proposed discontinuance and abandonment is that the City wishes to acquire this portion of the right-of-way for a public purpose. That purpose is to redevelop this "Brownfield" property into a mixed-use development, including residential, office and commercial activities. Based on information in our possession, the line does not contain federally granted rights-of-way.

This line of railroad has not appeared on any system diagram map or narrative and the Board has granted a waiver of certain regulatory filing requirements relating to the preparation and filing of a system diagram map.

The City believes that there are no rail employees on the affected rail line. In any event, any affected railroad employees will be protected by the conditions imposed in Oregon Short Line R. Co. Abandonment-Goshen, 360 I.C.C. 81 (1979).

The application will include the applicant's entire case for discontinuance and abandonment (case in chief). Any interested person, after the application is filed on or before February 29, 2008, may file with the Surface Transportation Board written comments concerning the proposed

discontinuance and abandonment or protests to it. These filings are due 45 days from the date of filing of the application.

All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (§1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (§1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application.

Persons who may oppose the discontinuance or abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

Protests must contain that party's entire case in opposition (case in chief) including the following:

- (1) Protestant's name, address and business;
- (2) A statement describing protestant's interest in the proceeding including:
 - (i) A description of protestant's use of the line;
 - (ii) If protestant does not use the line, information concerning the group or public interest it represents;
 - (iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably including an appropriate return on its investment for those operations;
 - (3) Specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service. [This information must be supported by affidavits of persons with personal knowledge of the fact(s)].
 - (4) Any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

- (i) Intent to offer financial assistance pursuant to 49 U.S.C. 10904;
 - (ii) Environmental impact; and
 - (iii) Impact on rural and community development.
 - (iv) Recommended provisions for protection of the interests of employees;
 - (v) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905 and
 - (vi) Prospective use(s) of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and §1152.29.
- A protest may demonstrate that (1) the protestant filed a feeder line application

Public Notices

Continued on Page 13

Bulletin

Public Notices

Continued from Page 11

under 49 U.S.C. 10907, (2) the leader line application involves any portion of the rail line involved in the abandonment or discontinuance application (3) the leader line application was filed prior to the date the abandonment or discontinuance application was filed and (4) the leader line application is pending before the Board.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed discontinuance and abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests including all requests for public use and trail use conditions, should include the proceeding designation STB Nos. AB 882 and 884 and must be filed with the Secretary, Surface Transportation Board, Washington, D.C. 20423, no later than May 15, 2008. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance and abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant, John D. Helfner, 1750 K Street, N.W., Suite 350, Washington, D.C. 20006, (202) 296-3334. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in par. 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR

1104.12(a)

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(i)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The applicant's representative to whom inquiries may be made concerning sale or subsidy terms is John D. Helfner, 1750 K Street, N.W., Suite 350, Washington, D.C. 20006, (202) 296-3334.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

A copy of the application will be available for public inspection on or after March 30, 2008 at the offices of Mr. Grant Fernalis, Community Development Director, City of New Brighton, 803 Old Highway A NW, New Brighton, MN 55112, and at the offices of the Minnesota Commercial Railway, 508 Cleveland Avenue North, St. Paul, MN 55114 during normal business hours of 9AM and 5PM. The City shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of

comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.
(Bulletin Mar 5, 12, 19 2008)

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No. AB-882

221946



MINNESOTA COMMERCIAL RAILWAY
COMPANY—ADVERSE DISCONTINUANCE—IN RAMSEY COUNTY, MN

STB Docket No. AB-884

221945

ENTERED
Office of Proceedings

MAR 28 2008

Part of
Public Record

M T PROPERTIES, INC – ADVERSE ABANDONMENT –
IN RAMSEY COUNTY, MN

ADVERSE APPLICATION FOR DISCONTINUANCE AND
ABANDONMENT OF RAIL LINE

Respectfully submitted,
The City of New Brighton, MN

By its attorneys,

John D. Heffner
John D. Heffner, PLLC
1750 K Street, NW
Suite 350
Washington, D.C. 20006
(202) 296-3334

James H. M. Savage
1750 K Street, NW
Suite 350
Washington, D.C. 20006
(202) 296-3335

Dated: March 28, 2008

FILING FEE WAIVED

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No AB-882

MINNESOTA COMMERCIAL RAILWAY
COMPANY—ADVERSE DISCONTINUANCE —IN RAMSEY COUNTY, MN

STB Docket No AB-884

M T PROPERTIES, INC - ADVERSE ABANDONMENT –
IN RAMSEY COUNTY, MN

ADVERSE APPLICATION FOR DISCONTINUANCE AND
ABANDONMENT OF RAIL LINE

The City of New Brighton, MN (“the City” or “Applicant”) hereby files its verified application pursuant to 49 U.S.C. 10903 and 49 CFR, Part 1152 for a certificate of public convenience and necessity permitting adverse discontinuance of service on and adverse abandonment of a line of railroad known as the Butchers Spur (“The Line”) which is owned by M T Properties, Inc (“M T Properties”) and operated by the Minnesota Commercial Railway (“MNR”). The Line is located in the City of New Brighton, County of Ramsey, State of Minnesota. The Line commences at a junction switch near Milepost 10.5 on MNR’s main industrial lead track and from thence runs southeast a distance of 3,664 feet (approximately 0.69 miles), terminating at the western right-of-way of Interstate Highway 35W (“I-35W”). The land under the railroad right-of-

way varies in width from 50 to 100 feet. The Line, being a stub track, has no mileposts. Because the Line is stub ended, there is no overhead traffic. There are no stations on the Line. To the best of Applicant's knowledge, information and belief, the Line does not include any federally granted rights-of-way. There are no existing or potential railroad customers located along the Line.

The Line was constructed circa 1890 by the Minnesota Transfer Railway Company ("MTRC"). MTRC conducted freight operations on the Line from the 1890s to 1987. In 1987 ownership of the Line was transferred to M T Properties, as successor to MTRC. M T Properties leased the Line to MNRR. Between 1987 and 2007 MNRR provided freight service on the Line. Over time, use of the Line by shippers diminished significantly, as did the revenue generated from the Line's remaining in service.

Beginning in 2003 the City sought to obtain the consent of M T Properties and MNRR to the discontinuance and abandonment of the Line for a public purpose, to redevelop a Brownfield site as a non-industrial commercial property. In October 2008, the City reached agreement with M T Properties and MNRR, pursuant to the terms of which the property owner and rail operator support this Application. On November 9, 2007, the City filed a Petition for Waiver and Exemption of Certain Abandonment Application Requirements ("Petition"). By Decision served January 25, 2008 ("January 25th Decision"), the Board granted the Petition in part and denied it in part.

In support of this Application, the City submits the following information, as required by 49 C.F.R. 1152.22:

- (a) General
 - (1) Exact name of the applicant

The exact name of the applicant is the City of New Brighton, Minnesota.

- (2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

Applicant is not a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105. The Line is owned by MT Properties and operated by MNNR, a Class III rail common carrier.

- (3) Relief sought (abandonment of line or discontinuance of service)

The City seeks the adverse discontinuance by MNNR and abandonment by MT Properties of a line of railroad (the Butcher's Spur).

- (4) Detailed map of the subject line.

A detailed map of the subject line annexed hereto as Exhibit A.

- (5) Reference to inclusion of the rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map or narrative.

Not applicable as the Board granted the City's request for a waiver of this provision. See January 25th Decision.

- (6) Detailed statement of reasons for filing application.

The City seeks adverse abandonment and discontinuance authority here in order to facilitate the acquisition of the Line and right-of-way for a public purpose. That purpose is to redevelop the former 100 acre industrial property known as the Northwest Quadrant, encompassing 15 properties including the Line and right-of-way, into a mixed-use development, including residential, office and commercial activities. The plans for the use of this land would significantly contribute to the City's economic growth and development. See Verified Statement of City of New Brighton Director of Community Development Grant Fernelius ("Fernelius VS"), annexed hereto as Exhibit B. The City

also includes with the Environmental and Historic Report identified as Exhibit D the Verified Statement of MNNR Chairman and President John Gohmann describing the rail line's history, MNNR's operations over it, and the events that led up to the sale to the City

See also the Legal Argument set forth at the end of this Application

(7) Name, title, and address of representative of applicant to whom correspondence should be sent

Applicant's representative in this proceeding is

John D. Heffner
John D. Heffner, PLLC
1750 K Street, NW - Suite 350
Washington, DC 20006
Tel (202) 296-3334

(8) List of all United States Postal Service ZIP Codes that the line proposed for abandonment traverses

The line traverses United States Postal Service ZIP Code 55112.

(b) Condition of Properties. The present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs. The bases for the estimates shall be stated with particularity, and work papers shall be filed with the application

The City's application is not predicated upon the physical condition of the Line.

Rather, the City contends the public convenience and necessity would be furthered by putting the property to alternative non-rail use

Nevertheless, the following information was provided by MNNR. The Line was maintained to spui grade, FRA Class I standards through September 1, 2006, after which time maintenance was suspended in contemplation of the proposed discontinuance and abandonment. The estimated cost of restoring the Line to an FRA Class I standard is

S97.700 See the verified statement of Applicant's economic consultant Robert C. Finley ("Finley VS"), annexed hereto as Exhibit C.

(c) Services provided Description of the services performed on the line during the Base Year

The City's application is not predicated upon the quantity or quality of the services performed on the Line. Rather, the City contends the public convenience and necessity would be furthered by putting the property to alternative non-rail use.

Nevertheless, the following information was provided by MNNR: The Line handled a total of 165 cars during the Base Year (September 1, 2006 through August 31, 2007). During the Base Year, service was provided at a frequency of once to twice per week, during the months of March through October. MNNR provided local switching service via a train designated as the "Belt Line assignment" operating on MNNR's main industrial lead track between Fridley and St. Paul, MN. No service has been provided on the Line in 2008. MNNR does not anticipate providing any future service on the Line.

(d) Revenue and cost data

(1) Computation of the revenues attributable and avoidable costs for the line to be abandoned for the Base Year (as defined by §1152.2(c) and to the extent such branch level data are available), in accordance with the methodology prescribed in §§1152.31 through 1152.33, as applicable, and submitted in the form called for in §1152.36, as Exhibit 1.

(2) The carrier shall compute an estimate of the future revenues attributable, avoidable costs and reasonable return on the value for the line to be abandoned, for the Forecast Year (as defined in §1152.2(h)) in the form called for in Exhibit 1. The carrier shall fully support and document all dollar amounts shown in the Forecast Year column including an explanation of the rationale and key assumptions used to determine the Forecast Year amounts.

(3) The carrier shall also compute an "Estimated Subsidy Payment" for the Base Year in the form called for in Exhibit 1 and an alternate payment to reflect:

(i) Increases or decreases in attributable revenues and avoidable costs projected for the subsidy year, and

(ii) An estimate, in reasonable detail, of the cash income tax reductions, Federal and state, to be realized in the subsidy year. The bases for the adjustment, e.g., rate increase, changes in traffic level, necessary maintenance to comply with minimum Federal Railroad Administration class 1 safety standards, shall be stated with particularity.

The City's application is not predicated on a cost/revenue analysis. Rather, the City contends that the interests of public convenience and necessity would be furthered by putting the property to alternative non-rail use.

Nevertheless, the following information is provided by MNNR:

<u>Year</u>	<u>Cars</u>	<u>Revenue</u>	<u>Costs</u>	<u>Profit/(Loss)</u>
Base	165	\$ 33,000	\$ 55,193	\$ (22,193)
Forecast	0	0	\$ 6,369	\$ (6,369)
Subsidy	0	0	\$104,069	\$ (104,069)

See Revenue and cost information required by 49 CFR 1152.36 and annexed hereto as Exhibit 1.

See also Finley VS substantiating the foregoing revenue and cost information, annexed hereto as Exhibit C.

(e) Rural and community impact

(1) The name and population of each community in which a station on the line is located.

No stations exist on the affected line. The 2000 U S Census lists the population of New Brighton, MN as 22,206 persons and Ramsey County, MN as 511,035 persons.

(2) Identification of significant users as defined in §1152.2(1), by name, address, principal commodity, and by tonnage or carloads for each of the 2 calendar years immediately preceding the filing of the abandonment or discontinuance application, for that part of the current year for which information is available, and for the Base Year. In addition, the total tonnage and carloads for each commodity group originating and/or terminating on the line segment shall also be shown for the same time periods as those of the significant users.

The City's application is not predicated upon the quantity or quality of the services performed on the Line. Rather, the City contends the public convenience and necessity would be furthered by putting the property to alternative non-rail use.

Nevertheless, the following information was provided by MNNR:

Boulder Images

14555 South Robert Trail, Suite 11

Rosemount, MN 55068

Principal commodity, Stone

Annual Carloads, 2008 – 0; 2007 - 62, 2006 – 93

Annual Tonnage 2008 – 0, 2007 – 6,200 (est.), 2006 – 9,300 (est.).

Midwest Asphalt

P O. Box 5477

Hopkins, MN 55343

Principal commodity: Sand and gravel

Annual Carloads: 2008 – 0; 2007 – 0, 2006 – 279.

Annual Tonnage 2008 – 0; 2007 – 0, 2006 27,900 (est).

(3) General description of the alternate sources of transportation service available (rail, water, motor, and air) and the highway network in the proximate area.

A wide range of alternate sources of transportation services are available in the proximate area. The City is located in Ramsey County, MN and is approximately 10 miles northeast of Minneapolis, MN and approximately an equal distance northwest of St. Paul, MN (the "Twin Cities"). Alternate sources of transportation services in the proximate area include railroads, the Mississippi River, several interstate highways, and

the Minneapolis-St. Paul International Airport. Each alternate source of transportation service is described below.

In addition to MNR, which will continue to serve its customers after the proposed discontinuance and abandonment takes effect, the following railroads also serve the Twin Cities. National Railroad Passenger Corporation (Amtrak), BNSF Railway Company (BNSF), Union Pacific (UP), Canadian Pacific (CP), Canadian National (CN), Dakota, Minnesota & Eastern (DM&E), Twin Cities & Western (TCWR), and Progressive Rail

The Great Western Dock & Terminal Co. of St. Paul, MN operates a facility for the loading and unloading of waterborne freight arriving via the Mississippi River.

The Twin Cities are served by several major interstate highways. The junction of I-35, running north and south, with I-94, running east and west, occurs in the Twin Cities, providing direct highway links to the East, West and Gulf Coasts. I-35E passes through Saint Paul I-35W passes through Minneapolis I-394, I-494 and I-694 serve as a beltway system encircling the Twin Cities. The City is situated above the northwest junction of I-35W and I-694.

The following carriers are representative of interstate motor freight providers serving the Twin Cities:

MIDWEST CARRIER INC
2910 Pillsbury Ave S Suite 210a
Minneapolis, MN 55408

TCBX
1912 Broadway St N.E
Minneapolis, MN 55413

TRIPLE CROWN SERVICES
525 Kasota Ave. S.E.

Minneapolis, MN 55414

**USA TRANSPORTERS
5295 Saint Imier Dr.
Minneapolis, MN 55421**

**PACER TRANSPORTATION
7800 Metro Pkwy.
Minneapolis, MN 55425**

**FREIGHTMASTERS
3703 Kennebec Dr.
Saint Paul, MN 55122**

**CENTRAL FREIGHT LINES
2750 Lexington Ave. S.
Eagan, MN 55121**

**TRX
3300 North Fifth St
Minneapolis, MN 55418**

**CON-WAY FREIGHT
51 81st Ave. N.E
Minneapolis, MN 55432**

**KTI TRANSPORTATION
2401 West 66th St
New Richfield, MN 55423**

The following air carriers serve the Twin Cities Air Canada, Air Tran Airways, American, Comair, Continental, Delta, Frontier, Icelandair, KLM, Mesaba, Midwest, Northwest, SkyWest, Sun Country, United, US Airways and numerous charter and cargo carriers including Airborne Express, DHL, Fed Ex and UPS.

(4) Statement of whether the properties proposed to be abandoned are appropriate for use for other public purposes.

Yes. The City believes that the right of way is appropriate for other public purposes, including recreational trail use

(f) Environmental impact. The applicant shall submit information regarding the environmental impact of the proposed abandonment or discontinuance in compliance with §§ 1105 7 and 1105 8. If certain information required by the *environmental regulations duplicates information required elsewhere in the application*, the environmental information requirement may be met by a specific reference to the location of the information elsewhere in the application.

The City's environmental and historic report is attached hereto as Exhibit D.

(g) Passenger service: If passenger service is provided on the line, the applicant shall state whether appropriate steps have been taken for discontinuance pursuant to the Rail Passenger Service Act.

No passenger service is provided on the Line.

(h) Additional information

The applicant shall submit such additional information to support its application as the Board may require.

(i) Draft Federal Register Notice The applicant shall submit a draft notice of its application to be published by the Board.

See the City's draft Federal Register Notice attached hereto as Exhibit E.

(j) Verification: The original application shall be executed and verified by an officer of the carrier having knowledge of the facts and matters relied upon.

This requirement was waived pursuant to the Board's January 25, 2008 Decision.

LEGAL ARGUMENT

The City maintains that this proposed adverse abandonment and discontinuance of service application meets the public convenience and necessity test of 49 U.S.C. 10903. The statutory standard governing any application to abandon or discontinue service over a line is whether the present or future public convenience and necessity require or permit such an action. 49 U.S.C. 10903(c). As the Board has stated in previous adverse abandonment cases, "[I]n the case of an "adverse" abandonment proceeding - one brought

by a party other than the carrier whose operating authority is at issue - our finding that the public convenience and necessity do not require or permit continued operation of the track by the carrier in question removes our exclusive and plenary jurisdiction as a regulatory obstacle to abandonment, thereby enabling the parties to undertake other legal remedies to effectively remove the carrier from that line See Modern Handcraft, Inc - Abandonment, 363 I.C.C. 969 (1981) And the Board has also said, "Congress left it to us. in implementing this standard, to balance the competing benefits and burdens of abandonment on all interested parties, including the railroad, the shippers who have used the line, the community involved, and interstate commerce generally. See City of Cherokee v ICC, 727 F.2d 748 (8th Cir 1984) If we grant an adverse abandonment, our exclusive and plenary jurisdiction is removed, thereby enabling the parties to undertake other legal remedies that are otherwise barred to seek to eject the carrier and allow the property to be used for other purposes....we will not allow our jurisdiction to be used to shield a carrier from the legitimate processes of state law where no overriding Federal interest exists " CSX Corp. and CSX Transportation Inc. - Adverse Abandonment Application-Canadian National Railway Company and Grand Trunk Western Railroad, Inc., STB Docket No AB-31 (Sub-No. 38) (served Feb 1, 2002) ("CSX"), cited in New York City Economic Development Corporation – Adverse Abandonment – New York Cross Harbor Railroad in Brooklyn, NY, STB Docket No. AB-596 (slip op served May 15, 2003) at 6.

This application differs from most adverse abandonment requests filed with the Board because the City does not anticipate opposition Both the operating railroad (MNR) and the owner of the Line (M T Properties) support the abandonment. See

January 25th Decision No service has been provided over the Line for the better part of a year. The shippers who last used the Line have relocated and no longer use it to meet their transportation needs See Fernelius VS. The only community involved, New Brighton, MN, is the adverse abandonment applicant Applicant does not anticipate any opposition from any other potential party, be it a railroad, a shipper, a political subdivision, or a concerned citizen. Moreover, the public purpose to be served by the abandonment and reuse of the land – the redevelopment of a “Brownfield” property encompassing this right-of-way within a planned non-industrial commercial development – is clearly within the class for which the Board has previously granted adverse abandonment requests See Norfolk & Western Railway Company - Abandonment Exemption – In Cincinnati, Hamilton County, OH, 3 S T.B 110, 112 (1998) (redevelopment and revitalization of downtown Cincinnati waterfront) Paraphrasing the Board’s ruling in CSX, there is no overriding federal interest in MNNR’s continued use of the line and, as a result, the Board’s primary jurisdiction should be removed as an obstacle to abandonment and the instant abandonment application granted

EXPEDITED CONSIDERATION REQUESTED

For the reasons stated in the attached statement of Grant Fernelius the City desires to close the acquisition of the right of way during the Summer of 2008 Accordingly, the City requests that the Board adhere to the schedule contained in the Board’s regulations at 49 CFR 1152.26 with a decision on the merits rendered on July 16, 2008

CONCLUSION

For the foregoing reasons and based upon the above cited authority, the City respectfully requests the Board grant this application for a certificate of public convenience and necessity for permission to discontinue service on and abandon the line of railroad known as the Butchers Spur within 110 days of the filing date of this application, effective upon service.

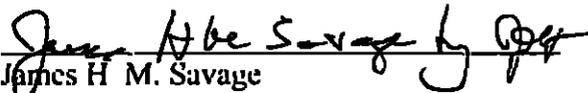
Respectfully submitted,

The City of New Brighton, MN

By its attorneys,



John D. Heffner
John D. Heffner, PLLC
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Suite 350
Washington, DC 20006
(202) 296-3334



James H. M. Savage
1750 K Street, NW
Suite 350
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(202) 296-3335

Dated: March 28, 2008

CERTIFICATE OF SERVICE

I, John D Heffner, hereby certify this 28th day of March, 2008, that a copy of the foregoing Application for Adverse Discontinuance and Abandonment of Rail Line was sent, postage prepaid, by first class mail to the following parties:

John W Gohmann
Minnesota Commercial Railway
14047 Petronella Drive, Suite 201
Libertyville, IL 60048

Lee Larson
M T Properties, Inc
475 Cleveland Ave. North
Suite 305
St. Paul, MN 55104



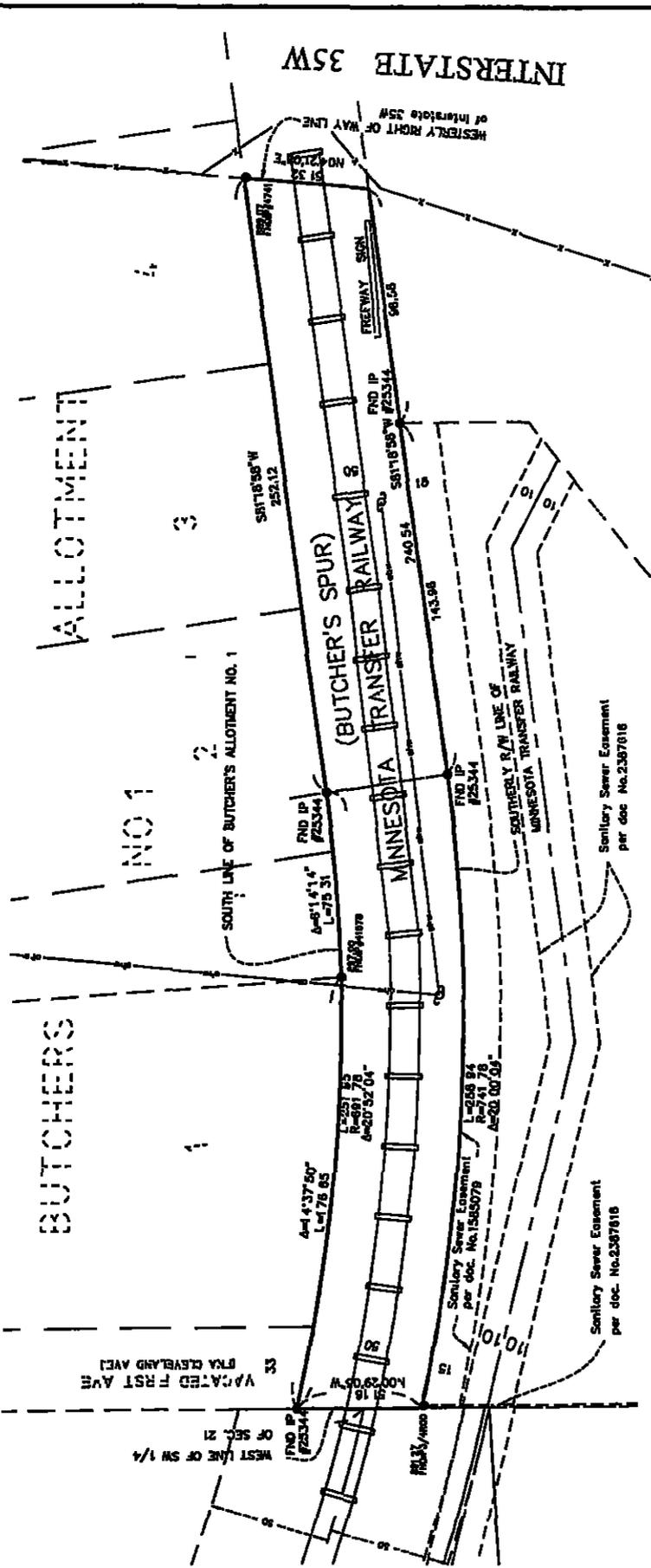
John D. Heffner

EXHIBIT A

MAP

SKETCH AND DESCRIPTION

for CITY OF NEW BRIGHTON



PROPOSED PROPERTY DESCRIPTION

That part of the 50.00 foot Minnesota Transfer Railway Company right of way known as Butcher's Spur in the Southwest Quarter of Section 21, Township 30, Range 23, Ramsey County, Minnesota which lies westerly of the westerly right of way line of Interstate Highway No. 35W.

Area of proposed property = 25.089 sq. ft. = 0.58 acres.

Scale 1" = 40'	Drawn By: RLO	Project Manager: JAR	Job No: 07295
<ul style="list-style-type: none"> ○ Denotes Iron Set ● Denotes Iron Found 		Bearings shown are on an assumed datum.	
<p>I hereby certify that this plan, survey or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota. Dated this <u>15th</u> day of <u>June</u>, 2007</p>			
<p><i>John A. Reig</i></p>		<p>License No <u>25344</u></p>	
<p>W. G. RUD & SONS, INC. Professional Land Surveyors 6776 Lake Drive NE, Suite 110 Lino Lakes, MN 55014 Tel: (612) 261-4300 Fax: (612) 261-4301</p>			

EXHIBIT B

FERNELIUS VERIFIED STATEMENT

**VERIFIED STATEMENT OF
GRANT FERNELIUS**

Grant Fernelius, being duly sworn, deposes and states as follows:

My name is Grant Fernelius. My business address is City of New Brighton, 803 Old Highway 8 NW, New Brighton, MN 55112. I serve as the *Community Development Director for the City of New Brighton* (“the City”), a post I have held since August of 2004. In that position, I am responsible for City activities involving or devoted to economic development including commercial and industrial projects. As relevant here, since 2004 I have been involved with the planning, commercial negotiations, and execution of a major redevelopment project known as the Northwest Quadrant Redevelopment Project. My responsibilities include the acquisition and redevelopment of the railroad right-of-way known as the “Butcher’s Spur” that traverses the project site.

The City is a political subdivision of the State of Minnesota and a suburb of the Twin Cities (Minneapolis-St. Paul). It is located in Ramsey County, approximately 10 miles due north of St. Paul along US Interstate Highway 35W (I-35W). The City’s Northwest Quadrant Redevelopment Project dates back to 1997 and is consistent with the City’s long-term *Comprehensive Land Use Plan*. Historically, the subject area located northwest of the I-35W/I-694 interchange was industrial Land uses

included a petroleum refinery, a solvent recycling facility, landfills, stock yards, rendering plants, and a gasoline station. The Butcher's Spur, aptly named to serve the stock yards, provided rail access to this area.

With the cessation of industrial activity in this area, the City desires to see this property converted to mixed-unit residential and office use. To date, two companies have started construction on Class A office buildings in the project area. The City is in preliminary talks with a hotel developer, among other parties that have expressed interest in developing housing or other commercial uses.

Towards this end, the City has been proceeding with a revitalization plan that involves one of the most ambitious and complex brownfield redevelopment efforts in the State. A major component of this effort has involved persuading the few remaining manufacturing or industrial concerns to move their facilities and activities on the project site to other locations and to persuade the Minnesota Commercial Railway Company ("MNNR") to terminate the rail service it provides to those customers located on the site.

The genesis of this abandonment request actually goes back several years to around 2003. At that time there were three remaining railroad customers located along the Butcher's Spur and on the property that is the subject of the city's redevelopment efforts: Boulder Images, Midwest

Asphalt, and Ferrelgas d/b/a Suburban Gas. Of these, Boulder Images had made minimal use of the Butcher Spur in 2006 and 2007 and no use since then. Midwest Asphalt last used the Butcher's Spur in 2006. Ferrelgas last shipped or received traffic by rail in 2005. MNNR continued to use the track for storing unused rail cars. The subject rail line was and still is owned by an entity known as M T Properties, Inc. ("M T Properties"), which is the corporate successor to the Minnesota Transfer Railway, a short line railroad that formerly owned and operated the Butcher Spur and other lines in the Twin Cities Area. The subject rail line was and is still operated by MNNR, a short line railroad that operates lines formerly operated by the Minnesota Transfer Railway as well as well other lines in our area.

In late 2004 and early 2005, the City approached M T Properties and MCRC about buying the portion of the Butcher's Spur that traverses the proposed redevelopment site and relocating the operations of the railroad and its remaining customers. The City had originally hoped to seek abandonment of the Butcher's Spur in 2005; however, the railroad and a couple of its customers were opposed to the City's redevelopment and threatened to fight the abandonment as well. Nevertheless, the affected parties continued to meet and talk. Ultimately, the City, MNNR, and M T Properties reached a resolution embodied in a Letter of Understanding dated

October 8, 2007. The essence of that understanding is that the City would acquire the railroad right-of-way from M T Properties, the City would acquire another parcel suitable for MNNR's construction of an equivalent team track (called a "functional replacement"), the City would pay MNNR to relocate its rail operations elsewhere in New Brighton, and both M T Properties and MNNR would cooperate with the City on the prosecution of the adverse abandonment application submitted here. Each of the three rail customers identified above has relocated its operations elsewhere or, in the case of Ferrelgas, distributes their product through hardware stores.

While these negotiations took the better part of three years to accomplish, they are now behind us. The resulting agreement allows the City to move ahead with the abandonment without any likely opposition and allows the Board to grant its request expeditiously. As relevant to the Board's abandonment process, the Letter of Understanding directs the City to initiate the abandonment proceedings upon execution of the letter and sets a Closing date for purchase of the railroad right-of-way no later than 30 days after the functional replacement has been constructed and the Board has granted final approval for the abandonment. The letter agreement also directs MNNR and M T Properties to cease all railroad activities including rail car storage once the City has acquired the replacement site and the

railroad has completed a new team track to replace the Butcher's Spur. The City requests that the Board expeditiously consider and grant its application so that it may be able to acquire the subject right-of-way by Summer 2008.

The City has retained Barr Engineering ("Barr") as its environmental consultant for this project. I have reviewed Barr's project reports, which the City has submitted to the Minnesota Pollution Control Agency ("MPCA")

I have also reviewed the comments set forth in MPCA's March 4, 2008 letter concerning this abandonment. By way of response, I have personal knowledge that disposal of solid waste resulting from this abandonment, including railroad ties, will be performed by a licensed contractor retained by the City as part of this project. I am further aware from my review of John Gohmann's verified statement that MNNR will salvage the rails. To the best of my knowledge, information and belief, the balance of MPCA's comments concern issues that have been or are being addressed by Barr in connection with their environmental assessment of the NW Quadrant redevelopment project.

VERIFICATION

STATE OF Minnesota)
CITY OF Ramsey) SS

Garret E. Fennelius, being duly sworn according to law, hereby deposes and states that (s)he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her)his knowledge, information and belief.

Garret E. Fennelius

Subscribed and sworn to before me, a Notary Public, in and for the City of New Brighton in the State of Minnesota, this 25th day of February.

Kathleen Sharon Bruno

Notary Public

My Commission expires:

January 31, 2012



EXHIBIT C

FINLEY VERIFIED STATEMENT

VERIFIED STATEMENT OF

ROBERT C. FINLEY

Robert C. Finley, being duly sworn, deposes and states as follows:

1. My name is Robert C. Finley. My business address is 2 Olde Barn Way, Acton, MA 01720. I appear here on behalf of City of New Brighton, MN, Applicant in this adverse abandonment proceeding. I have reviewed the economics associated with the operations of the Minnesota Commercial Railway Company (MNNR) operation of a line of railroad commonly known as the Butcher's Spur and have prepared Applicant's Exhibit 1 [Revenue and Cost Data]. I submit this statement to assist the Board and the public with a proper understanding of the methodology and assumptions used in preparing Exhibit 1.

2. I am attaching to this statement a copy of my curriculum vitae. My railroad career began in 1974 with the Southern Railway System where I was a management trainee and assistant economist. I then joined the United States Railway Association where my duties included management of a portion of the litigation regarding the value of the Penn Central assets and oversight of the marketing and sales activities of Conrail. In

1982 I joined the Southern Pacific Transportation Company. My duties at SP encompassed the line sale and abandonment program (including filing applications and submission of verified statements), tariff route restructuring, and merger related traffic analysis. Following my tenure at SP I worked for the Chicago West Pullman Transportation Company, a short line railroad holding company, where my duties included line acquisitions and sales efforts at selected properties. Part of my responsibility in potential shortline purchases from Class I railroads was to ascertain the costs of operations. This was a skill that was invaluable to me in my next position as Chief Financial Officer at the Iowa Interstate Railroad. My responsibilities there included all administrative aspects of the railroad's operations in addition to financial and budgeting oversight. Since Iowa Interstate was undercapitalized, we focused carefully on the on-branch operating costs. I developed models for specific carload costing used by our marketing people to set prices. In addition, Iowa Interstate's budgeting process placed considerable emphasis on the costs of each segment of rail operations. I used the experience gained at Chicago West Pullman and Iowa Interstate as a transportation

consultant at PHB Hagler Bailly, an international economic and management consulting firm. Included in my assignments was assistance to the Wheeling & Lake Erie Railway concerning the traffic impact of the Conrail break-up and advising the state of Victoria, Australia, about the value of the state owned railroad in a privatized market. Since October of 2001, I have been the Vice President Finance for the Housatonic Railroad, a shortline operating in western Connecticut and Massachusetts. I also do independent consultant providing services to the short line freight railroad and passenger rail transit industries.

3. At the Applicant's request, I have prepared Exhibit 1 providing revenue and cost data for the Butcher's Spur in the 19 line format required by the Board's abandonment costing regulations at 49 CFR 1152.32. Most data for this analysis was provided to me by MNNR's president John Gohmann. I have also reviewed the verified statements of John Gohmann and Grant Fernelius submitted in support of this application

The first step of this process entails computing the total revenues attributable to the Line, including revenue for the Base Year (September, 2006, through August, 2007). the

Forecast Year (calendar year 2008), and the Projected Subsidy Year. Beginning with line 1, Exhibit 1 indicates that MNNR had revenues for freight originated or terminated on-branch of \$33,000, \$0 and \$0 for the Base Year, Forecast, and Projected Subsidy Years, respectively. The Base year traffic includes 165 carloads of stone to two receivers. The Forecast Year and Projected Subsidy Year freight revenues declines to \$0 as all shippers have been accommodated on alternative MNNR lines. Regarding other revenues, the Butcher's Spur is a stub-ended line of railroad and therefore handles no bridge traffic [line 2]. All other revenue and income [line 3] consists of income derived from repairing foreign-owned freight cars under AAR car repair rules, demurrage revenue, and lease and easement income. The data I was provided showed no other revenue for the Base Year and with the departure of all shippers no other revenue for the Forecast Year and the Projected Subsidy Year. Exhibit 2 details the base year traffic.

Turning to the expense side of Exhibit 1, MNNR incurred total on-branch costs [line 5] of \$24,856 (Base), \$910 (Forecast), and \$910 (Subsidy) for each of these time periods. On-branch costs consist of the following components: maintenance of way and

structures [line 5a], maintenance of equipment [line 5b], transportation [line 5c], general administrative [line 5d], and property taxes [line 5k]. MNNR did not incur any charges in any other cost category of line 5 and does not claim any return on value-locomotives because its engines are used elsewhere.

Shortlines typically spend from \$5,000 to \$10,000 per mile to maintain track at FRA Class I standards. The Board has accepted a range of expenses from \$4,300 to \$6,000 in a recent decision.² For this analysis a mid-range number of \$5,000 per mile was selected. The spur is 7 miles. MoW expenses of \$3,500 for the Base Year is calculated by multiplying \$5,000 times .7.

The second maintenance category -- maintenance of equipment -- [line 5b] refers to maintenance of locomotives and freight cars. In this simplified analysis the current Blue Book rate for an EMD GP9 model is used. Primedia Corporation publishes the Blue Book of Equipment rates used by highway and railroad contractors to determine the maintenance cost of operating various types of equipment. Primedia will also provide Blue Book rates upon special request. As Vice President of Finance for Housatonic Railroad I have asked

in the past for the cost to operate a GP9 locomotive. Primedia's rate is \$42.79 per hour.³ According to John Gohmann when MNNR operated the line a train worked the spur for one half hour a day, five days a week. Multiplying the Primedia rate times half an hour per day times 260 days (5 days per week times 52 weeks per year) yields a MoE cost of \$5,563.

MNNR incurred \$10,892 in Base Year transportation costs [line 5c] operating this line, including \$4,940 in wages, \$3,222 in fringes and benefits, and \$2,730 in locomotive fuel. As to labor, MNNR employed a two-person train crew at a wage rate of \$19 per hour. Butcher's Spur labor cost would be \$19 (two crewmen for half an hour) times 260 (number of working days per year) or \$4,940. According to Mr. Gohmann payroll taxes are 29.8% of payroll. Payroll tax would be 29.8% of \$4,940 or \$1,472. The average healthcare cost of a MNNR employee is \$14,000 per year. If an employee worked the Butcher's Spur thirty minutes a day for a year, total time spent on the spur would be 6.25% of the year [.5 times 260 (working days per year) divided by 2080 (working hours per year)]. Healthcare cost would be 6.25% of \$14,000 times two for the crew

size or \$1,680. A GP9 locomotive consumes approximately seven gallons of fuel per hour. Assuming the price of fuel is \$3 per gallon, the math of multiplying cost per gallon times half an hour times 260 days yields total cost of \$2,730. For this simplified analysis no expense was applied to freight cars as they are now used on other parts of the MNNR.

General and Administrative costs for a shortline typically range from 20% to 30% of the sum of MoW, MoE and Transportation. For this conservative analysis, the low number of 20% was used, yielding an estimated G&A cost of \$3,991 for the Base Year. Since there are no operations for the Forecast and Subsidy years there are no general and administrative expenses.

Mr. Gohmann indicated MNNR paid property taxes of \$65,000 for the entire 50 owned miles. The seven tenths of a mile of the Butcher's Spur is 1.4% of total mileage.

Multiplying the tax bill by percentage mileage yields a spur property tax of \$910. This is the only expense included in the Base, Forecast and Subsidy years.

Exhibit 3 details the on branch expenses and other cost items concerning Butcher's Spur.

Finally, it is estimated that \$30,337 in total off-branch costs [line 6a] for the Base Year and \$0 in total off-branch costs for the Forecast Year and the Projected Subsidy Year, representing the costs of moving traffic to and from Butcher's Spur over MNNR's "mainline" for five miles between the class I railroad interchanges. I have computed these costs in accordance with the STB's methodology prescribed by 49 CFR 1152.32(n)(4).⁴ Exhibit 4 details the off branch costs.

MNNR incurred a total of \$55,193 in total avoidable costs for the Base Year and \$910 in total avoidable costs for the Forecast Year and the Subsidy Year [line 7] in connection with operation of the Butcher's Spur. Subtracting the total avoidable costs from the revenues attributable [line 4] produces avoidable losses from operations of \$22,193 for the Base Year and \$910 [line 17] for the Forecast Year and the Subsidy Year.

MNNR's estimated Forecast Year Avoidable Loss [\$6,369, line 18] is the sum of the total return on value [\$5,459, line 16] plus the avoidable losses from operations [\$910, line 17].⁵ To determine its total return on value, I added working capital [\$37, line 12a], the income taxes consequences associated with the abandonment [(\$51,288), (Line

12b)], and the net liquidated value of the property [\$134,970 (line 12c)], multiplied that sum by its nominal rate of return [18.7%, line 13] and subtracted that figure [\$15,692, line 14] from MNNR's holding gain.¹⁰ MNNR computed its holding gain by multiplying the property's net liquidated value by its holding gain deflator [7.58].¹² Finally, MNNR computed the Estimated Subsidy for the line by taking the Estimated Forecast Year Avoidable Loss [\$910] and adding Administrative Costs [1% of total revenues] or \$0 and Rehabilitation cost [\$97,700] for a total of \$104,069. Exhibit 5 details the rate of return calculations.

² *Wisconsin Central Ltd – Abandonment in Ozaukee, Sheboygan and Manitowoc Counties, WI*, STB Docket No AB-303 (Sub 27), served October 18, 2004 at 8, *Minnesota Northern Railroad, Inc – Abandonment Exemption-in Polk and Norman Counties, MN*, STB Docket No AB-497 (Sub 3x), served December 4, 2006 at 2

⁴ Primedia Corporation, *Equipment Watch*, David C Murray in response to request for operating costs for GP9 locomotive, 6/3/02

⁴ At the time of this analysis I did not have the most recent URCS data using instead 2003 data

⁵ Working capital consists of 15 days of on branch avoidable costs less depreciation [\$0], return on value-locomotives [\$0], and return on value-freight cars [\$0] 49 CFR 1152.34(c)(1)(i)

¹⁰ Determined in Ex Parte No 558 (Sub-No 9), Railroad Cost of Capital-2005 (served September 15, 2006).

¹² The railroad's holding gain deflator is obtained by subtracting its nominal cost of capital [18.74%] from its real cost of capital [11.16%] $18.74\% - 11.16\% = 7.58\%$.

REVENUE AND COST DATA

	Base Year (Note 1)	Forecast Year (Note 2)	Projected Subsidy Year (Note 2)
REVENUES ATTRIBUTABLE FOR			
1 Freight Originated &/or Terminated On-branch	33,000	-	-
2 Bridge Traffic	-	-	-
3 All Other Revenue & Income	-	-	-
4 Total Revenues Attributable (Lines 1 Through 3)	\$ 33,000	\$ -	\$ -
AVOIDABLE COSTS FOR			
5 On-branch Costs (Line 5a Through 5k)			
a Maintenance of Way and Structures	3,500	-	-
b Maintenance of Equipment	5,563	-	-
c Transportation	10,892	-	-
d General Administrative	3,991	-	-
e Doadheading, Taxi and Hotel	-	-	-
f Overhead Movement	-	-	-
g Freight Car Costs (other than return on freight cars)	-	-	-
h Return on Value - Locomotive	-	-	-
i Return on Value - Freight Cars	-	-	-
j Revenue Taxes	-	-	-
k Property Taxes	910	910	910
Total On-branch Cost (Line 5)	\$ 24,856	\$ 910	\$ 910
6 Off-branch Costs (Lines 6a and 6b)			
a Off-branch Costs (other than return on freight cars)	30,337	-	-
b Off-branch Freight Car ROI Costs	-	-	-
Total Off-Branch Cost (Line 6)	\$ 30,337	\$ -	\$ -
7 Total Avoidable Costs (Line 5 Plus Line 6)	\$ 55,193	\$ 910	\$ 910
SUBSIDIZATION COST FOR			
8 Rehabilitation (Note 3)	xxxx	xxxx	97,700
9 Administrative Costs (1% of Line 4)	xxxx	xxxx	-
10 Casualty Reserve Account (Note 4)	xxxx	xxxx	-
11 Total Subsidization Cost (Lines 8 Through 10)	xxxx	xxxx	97,700
RETURN OF VALUE FOR			
12 Valuation of Road Properties (Lines 12a Through 12c)			
a Working Capital (Page 2)	xxxx	37	37
b Income Tax Consequences (Page 2)	xxxx	(51,288)	(51,288)
c Net Liquidation Value (Page 2)	xxxx	134,970	134,970
d Total (Lines 12a Through 12c)	xxxx	83,720	83,720
13 Nominal Rate of Return (Exhibit 5)	xxxx	18.7%	18.7%
14 Nominal Return on Value (Lines 12 Times Line 13)	xxxx	15,692	15,692
15 Holding Gain (Loss) (Page 2)	xxxx	10,233	10,233
16 Total Return On Value (Line 14 Minus Line 15)	xxxx	5,459	5,459
17 Avoidable Loss From Operations (Line 4 Minus Line 7)	\$ (22,193)	\$ (910)	\$ (910)
18 Estimated Forecast Year Avoidable Loss (Line 4 Minus Lines 7 and 16)		(6,369)	
19 Estimated Subsidy (Line 4 Minus Lines 7, 11 and 16)			(104,069)

REVENUE AND COST DATA

	Forecast Year	Projected Subsidy Year
Calculation of Working Capital For Line 12a		
On-branch Avoidable Costs (Line 5 Total)	\$ 910	\$ 910
Less		
Depreciation - Locomotives	-	-
Return on Value - Locomotives (Line 5h)	-	-
Return on Value - Freight Cars (Line 5i)	-	-
Annual Cash Costs	\$ 910	\$ 910
Working Capital (Cash Costs X 15/365)	\$ 37	\$ 37

Calculation of Income Tax Consequences For Line 12b

Track Material to Be Sold (Note 5)	13,100	13,100
Net Liquidation Value of Land (Exhibit 3)	121,870	121,870
Less Net Book Value - Land (Exhibits 3)	(2)	(2)
Net Liquidation Value of Freight Cars	-	-
Less Net Book Value - Freight Cars	-	-
Gain On Sale (Loss)	134,968	134,968
Income Tax Rate (Note 6)	38%	38%
Income Tax Consequences	\$ (51,288)	\$ (51,288)

Calculation of Holding Gain For Line 15

Net Liquidation Value	134,970	134,970
Holding Gain % (Exhibit 5)	7.58%	7.58%
Holding Gain (Loss)	\$ 10,233	\$ 10,233

REVENUE AND COST DATA

Notes

- 1 Base Year data reflects September 2006 through August 2007 operations
- 2 Forecast and Projected Subsidy Year data is projected for the twelve months starting January 1, 2008
- 3 Line needs rehabilitation if returned to service
- 4 No Casualty Reserve Account has been calculated because the subsidizer shall be required to hold Minnesota Commercial Railway Company harmless from any damage injury or death resulting from operations of this line, and shall be required to obtain insurance for an amount equal to MNRR's self-insured retention
- 5 Taxes were calculated assuming all material and land will be sold
- 6 A combined federal and state statutory income tax rate of 38% is used

MINNESOTA COMMERCIAL RAILWAY COMPANY
Butcher's Spur

AB-884
 Exhibit 2

Station	Customer	Traffic Class	STCC	Base Year			Forecast Year		
				Car	Tons #	Revenue	Car	Tons #	Revenue
Butcher's Spur	Boulder Images	Terminating	14	100	7,000	20,000	-	-	-
	Midwest Asphalt	Terminating	14	65	4,550	13,000	-	-	-
	Total			165	11,550	33,000	-	-	-
Boulder Images	Rev/Car - Stone	\$	200 00						
Midwest Asphalt	Rev/Car - Sand	\$	200 00						
Boulder Images	Ton/Car - Stone		70						
Midwest Asphalt	Ton/Car - Sand		70						

ON-BRANCH AVOIDABLE COSTS

	<u>Base Year</u>	<u>Forecast Year</u>
Carloads	165	-
Freight Revenue - Line 1	33,000	-
Land leases, easements	-	-
Other revenue	-	-
Total Non-Freight - Line 3	<u>-</u>	<u>-</u>
Total Revenue Attributable to Line - Line 4	33,000	-

Maintenance of Way Avoidable Costs

Capital/Rehab Cost		97,700
Normalized Track Maintenance	3,500	-
Total Maintenance of Way - Line 5a	3,500	97,700

Maintenance of Equipment Avoidable Costs

Locomotive

Locomotive Lease		
Locomotive Expense		
Locomotive Maintenance	5,563	-
Total Maintenance of Equip - Line 5b	5,563	-

Transportation Avoidable Costs

Wages	4,940	-
Fringe	1,750	-
Payroll Taxes	1,472	-
Locomotive Fuel	2,730	-
Automobile Expenses	-	-
Car Accounting	-	-
Total Transportation - Line 5c	<u>10,892</u>	<u>-</u>

ON-BRANCH AVOIDABLE COSTS
General & Administrative Avoidable Costs

Insurance

Sales Tax

Total General Administrative - Line 5d

3,991

-

Deadheading, Taxi and Hotel

Labor

-

-

Fringe

-

Payroll Taxes

-

-

Total Deadheading, Taxi & Hotel - Line 5e

-

-

Car Hire

Freight Car Costs - Line 5g

0

0

Return on Value

Return on Value - Freight Cars - Line 5i

0

0

Property Tax

Property tax - Line 5k

910

910

OFF-BRANCH COST CALCULATION

Station	URCS Traffic Class	STCC	Operating Miles per Car	Average Tons per Car	Car Type	Ownership	Base Year			Forecast Year		
							Cost Per Car ¹	Cars	Cost	Cars	Cost	
Butcher's Spur	RT	14	5.0	95	Hopper, Open	RR	183.86	100	\$ 18,386	0	\$ -	
Boulder Images	RT	14	5.0	95	Hopper, Open	RR	183.86	65	\$ 11,951	0	\$ -	
Midwest Asphalt								165	\$ 30,337	-	\$ -	
Total Off-Branch Costs												

¹ URCS 2003 version

COST OF CAPITAL/HOLDING GAIN CALCULATION

Source: Ex parte No 558 (Sub-No 9) service date 9/20/06

NOMINAL COST OF CAPITAL CALCULATION - 2005

	COST	GDP DEFLATOR ¹	AFTER-TAX COST	TAX ADJUST ²	PRE-TAX COST	CAPITAL STRUCTURE	WEIGHTED COSTS
Debt	1 0536	N/A	5 36%	62 0%	5 36%	30 41%	1 63%
Common Equity	1 1518	N/A	15 18%	62 0%	24 59%	69 59%	17 11%
Preferred Equity	0	N/A		62 0%	0 00%	0 00%	0 00%
Composite Nominal Pre-Tax Cost of Capital - 2005							18 74%

REAL COST OF CAPITAL CALCULATION - 2005

	COST	GDP DEFLATOR ¹	AFTER-TAX COST	TAX ADJUST ²	PRE-TAX COST	CAPITAL STRUCTURE	WEIGHTED COSTS
Debt	1 0536	1 049	0 43%	62 0%	0 43%	30 41%	0 13%
Common Equity	1 1518	1 049	9 79%	62 0%	15 85%	69 59%	11 03%
Preferred Equity	0	1 049	100 00%	62 0%	162 00%	0 00%	0 00%
Composite Nominal Pre-Tax Cost of Capital - 2005							11 16%
2005 Holding Gain Deflator (Nominal minus Real)							7 58%

¹ GDP Implicit Price Deflator from Bureau of Economic Analysis, National Income and Products Accounts

Gross domestic product in current dollars <http://www.bea.gov/national/inpaweb/TableView.asp#Mid>

2006 13,194 70
2007 13,843 00

1 049 GDP Deflator (2007 divided by 2006)

² A combined federal and state statutory income tax rate of 38% is used

EXHIBIT D

ENVIRONMENTAL & HISTORIC REPORT

SUBMITTED SEPARATELY

EXHIBIT E
APPLICATION NOTICE

SURFACE TRANSPORTATION BOARD

STB Docket No AB-882

**MINNESOTA COMMERCIAL RAILWAY COMPANY
—ADVERSE DISCONTINUANCE—IN RAMSEY COUNTY, MN**

STB Docket No. AB-884

**MT PROPLRTIES, INC.-ADVFIRSE
ABANDONMENT - IN RAMSEY COUNTY, MN**

NOTICE OF APPLICATION TO ABANDON AND DISCONTINUE SLRVICE

On March 28, 2008 the City of New Brighton, MN ("the City"), filed with the Surface Transportation Board, Washington, D.C 20423, an application for permission to discontinue service on and abandon a line of railroad known as the Butcher's Spur that is owned by MT Properties, Inc. and operated by the Minnesota Commercial Railway Company ("MNNR"). The Butcher's Spur is located in the City of New Brighton, County of Ramsey, State of Minnesota. It commences in New Brighton from a turnout at Milepost 10.5 on MCRC's main industrial lead track and runs southeast approximately 3,664 feet to the western right-of-way line of Interstate Highway 35W. The line has no mileposts. It traverses through United States Postal Service ZIP Code 55112, and extends a distance of approximately 0.69 miles. There are no stations on the affected line.

The line does not contain federally granted rights-of-way. Any documentation in the City's possession will be made available promptly to those requesting it. The Applicant's entire case for abandonment and discontinuance (case in chief) was filed with the application.

This line of railroad has not appeared on any system diagram map or narrative and the Board has granted a waiver of certain regulatory filing requirements relating to the preparation and filing of a system diagram map.

There are no rail employees on the affected rail line. In any event, the interests of any affected railroad employees will be protected by the conditions imposed in Oregon Short Line R Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

Any interested person may file with the Surface Transportation Board written comments concerning the proposed discontinuance and abandonment or protests to it. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49

U S C 10905 (§1152.28 of the Board's rules) and any request for a trail use condition under 16 U S C 1247(d) (§1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the discontinuance or abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide

- (i) An offer of financial assistance pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner,
- (ii) Recommended provisions for protection of the interests of employees;
- (iii) A request for public use condition under 49 U.S.C. 10905; and
- (iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and §1152.29.

Those parties filing protests to the proposed discontinuance and abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to §1152.25.

Written comments and protests including all requests for public use and trail use conditions, should indicate the proceeding designation STB Nos. AB-882 and 884 and must be filed with the Secretary, Surface Transportation Board, Washington, D.C. 20423, no later than May 12, 2008. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance and abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant, John D. Hefner, 1750 K Street, N.W., Suite 350, Washington, D.C. 20006, (202) 296-3334. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned (or discontinued) will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The applicant's representative to whom inquiries may be made concerning sale or subsidy terms is John D. Hefner, 1750 K Street, N.W., Suite 350, Washington, D.C. 20006, (202) 296-3334.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

ORIGINAL



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MAR 28 2008

**Part of
Public Record**

EXHIBIT D

ENVIRONMENTAL & HISTORIC REPORT

COMBINED ENVIRONMENTAL AND HISTORIC REPORT

Environmental Issues

The following information is provided in accordance with 49 C.F.R. § 1105.7:

(1) Proposed Action and Alternatives: 1105.7(e)(1)

Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

The City of New Brighton (hereafter "the City" or "the Applicant") proposes to file an application with the Board for the "adverse" abandonment of a line of railroad known as the Butcher's Spur ("the Line") owned by M T Properties, Inc. ("MTP") and for the "adverse" discontinuance of rail service currently provided over the Line by the Minnesota Commercial Railway Company ("MNCR"). The portion of the Line sought to be abandoned is located entirely within the City of New Brighton, County of Ramsey, State of Minnesota. It commences at a turnout located near MP 10.5 on MNCR's main industrial lead track and from thence runs southeast a distance of 3,664 feet to the western right-of-way boundary line of Interstate Highway 35-W

("I-35W").¹ See Map annexed to Application for Adverse Discontinuance and Abandonment ("Abandonment Application") as Exhibit A. The Line has no mileposts. The Line's right-of-way varies from 50 to 100 feet in width. The Line serves ZIP Code 55112, and extends a distance of approximately 0.69 miles. There are no stations on the Line.

The City seeks adverse abandonment and discontinuance authority in order to facilitate the acquisition of the Line and right-of-way for a public purpose. That purpose is to redevelop the former 100 acre industrial property known as the Northwest Quadrant Commercial Redevelopment Project ("NW Quadrant"), encompassing 15 properties including the Line and right-of-way, into a mixed-use development, including residential, office and commercial activities. The plans for the use of this land would significantly contribute to the City's economic growth and development. See Verified Statement of City of New Brighton Director of Community Development Grant Fernellus ("Fernellus VS"), annexed to the Abandonment Application as Exhibit B.

Under a three way agreement executed between the City, MTP, and MNRR, the railroad has agreed to terminate operations on the Line and serve its customers at a new rail facility being

¹ A contiguous terminal section of the Line beginning at the western right-of-way boundary of I-35W and thence running eastward a distance of 1,000 feet and extending into the adjoining municipality of Arden Hills, MN is not the subject of this Application.

constructed slightly to the south along its main line; additionally, MTP agrees to sell the track and right-of-way to the City.

Based on information in our possession, the Line does not contain federally granted rights-of-way.

The alternative to this action would involve the City foregoing redevelopment of the Northwest Quadrant, leaving a short, unused, and stub ended line of rail amidst abandoned industrial properties, the railroad and its customers having already been accommodated with a new facility elsewhere on the MNR main line in the Twin Cities metropolitan area.

(2) Transportation System

Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

The railroad and its customers having already been accommodated with a new facility elsewhere in the Twin Cities metropolitan area. Accordingly, Applicant anticipates that the proposed action will have no effect on regional or local transportation systems or patterns and will not result in any diversion of traffic to other transportation modes or systems.

(3) Land Use

(1) Based on consultation with local and/or regional planning agencies and/or review of the official planning documents prepared by such agencies, state whether the

proposed action is consistent with existing land use plans. Describe any inconsistencies.

Applicant believes that the proposed action will not be inconsistent with local land use plans, including the City's Northwest Quadrant redevelopment plan. On February 8, 2008, Applicant's counsel transmitted notice of this application by ordinary mail addressed to the Ramsey County Board of Commissioners seeking their comments. See Attachment 1. More than 30 days have since elapsed without Applicant's counsel receiving a response.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

On February 8, 2008, Applicant's counsel transmitted notice of this application by ordinary mail addressed to the National Resource Conservation Service seeking their comments.² See Attachment 2. A copy of the Service's response dated February 22, 2008, is appended as Attachment 2-A. The agency found that this abandonment does not implicate any of its programs or responsibilities.

(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9.

² Formerly the U.S. Soil Conservation Service. Applicant is advised that the correct agency name is the Natural Resource Conservation Service.

Because the subject Line does not adjoin or encroach upon any waterways, Applicant does not believe that the action will affect any coastal zone. The foregoing notwithstanding, on February 8, 2008, Applicant's counsel transmitted notice of this application by ordinary mail addressed to the Division of Waters of the Minnesota Department of Natural Resources seeking their comments. See Attachment 3. More than 30 days have since elapsed without Applicant's counsel receiving a response.

(1v) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10906 and explain why.

Applicant believes that the subject line's right-of-way is suitable for the above stated alternative public use, namely, to redevelop a former industrial property as a mixed-use office, residential and commercial development. Due to the proximity of this site to a major interstate highway junction (I-35W and I-694), Applicant believes the proposed alternate public use of the right-of-way will significantly enhance local interests as well as integrating smoothly into the Twin Cities metropolitan transportation matrix.

(4) Energy

(i) Describe the effect of the proposed action on transportation of energy resources. (ii) Describe the effect of the proposed action on recyclable commodities. (iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why. (1v) If the proposed action will cause diversions from rail to motor carriage of more than: (A)

1,000 rail carloads a year; or (B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the date and methodology used to arrive at the figure given.

The proposed abandonment will have little effect on the transportation of energy resources because Applicant believes that only a limited amount of traffic has moved over the subject line during the past two years. There will be no effect on the transportation of recyclables because it does not believe that any recyclables moved over the subject line. The proposed action will increase overall energy efficiency by saving the energy that would otherwise be needed to maintain the unused subject line. Applicant does not believe that the proposed action will cause any diversion from rail to motor carriage.

(5) Air

Will the proposed action result in (A) a minimum increase in rail traffic of 100 percent (measured in gross tons annually) or eight trains per day on an affected rail line, (B) an increase in rail yard activity of 100 percent as measured in carload activity or (C) an increase in motor carrier traffic of either 50 vehicles per day or an increase in truck traffic exceeding 10 percent of the average daily traffic on a given highway segment? If any of the enumerated thresholds is exceeded, quantify the anticipated increase in air emissions. If a Class I or nonattainment area is affected, are increased emissions within parameters of the affected State Implementation Plan?

The above thresholds will not be exceeded. See (2) above.

(6) Noise

If any of the thresholds identified in item (5) is surpassed, state whether the proposed action will cause an increase in noise levels exceeding either (1) a three decibel Ldn incremental increase or (11) 65 decibels?

The above thresholds will not be exceeded.

(7) Safety

(1) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

Applicant believes that the proposed action will result in improvement to public safety by removing two (2) public crossings. The Line has no private crossings.

(11) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

The proposed action is a discontinuance and abandonment, therefore, no hazardous materials shall be transported over the subject line.

(111) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

The Line to be abandoned is part of the approximate 100 acre Northwest Quadrant redevelopment project ("NW Quadrant" or "the project") being undertaken by the City. The City has retained Barr Engineering ("Barr") as its environmental

consultant for this project. Barr has extensively investigated and evaluated environmental conditions within the entire NW Quadrant, encompassing the Line. As part of this ongoing review, Barr has prepared environmental assessment reports and response action plans, which have been submitted to the Minnesota Pollution Control Agency ("MPCA") to address environmental concerns regarding the project.

On February 8, 2008 Applicant's counsel transmitted notice of this application by ordinary mail addressed to the Minnesota Department of Natural Resources seeking their comments. See Attachment 4A. On March 4, 2008 the MPCA responded to the notice sent by Applicant's Counsel to their "sister agency". See Attachment 4B. MPCA identifies two Superfund sites [Northwest Refinery and Trio Solvent], two Voluntary Investigation and Cleanup ("VIC") sites [the NW Quadrant and Midwest Asphalt], four Brownfield sites [Northwest Refinery, Midwest Asphalt, and the Eastern NW Quadrant], as well as one off-site Impaired Waterway [Long Lake].

By way of response, the City avers that in March 2007, Barr submitted a NW Quadrant Environmental Assessment to MPCA concerning these hazardous waste sites and identifying hazardous materials located upon the project site, including the Line and right-of-way.

MPCA requires the Applicant investigate and document the types and distribution of on-site soil and water contamination. MPCA further requires Applicant to develop and implement an erosion control plan/system for this abandonment.

By way of response, the City avers that in May 2006, Barr prepared and submitted to MPCA a Storm Water Pollution Prevention Plan for the NW Quadrant, including erosion and runoff controls. The City further avers that it has obtained an NPDES permit for the project.

MPCA seeks information regarding the scope of proposed salvage and solid waste disposal operations in connection with this abandonment.

By way of response, the City avers that salvage operations will be performed by MNDR. See verified statement of John Gohmann, annexed hereto as Attachment 5. The City further avers that solid waste disposal operations will be undertaken by a licensed contractor retained by the City as part of the project. See verified statement of Grant Fernellius, annexed to the Abandonment Application as Exhibit B.

MPCA seeks information regarding the potential impacts of this proposed abandonment upon involved wetlands and flood plains.

By way of response, the City avers that in September 2005, Barr prepared a Wetlands Delineation Report for the NW Quadrant,

including the Line. Two natural wetlands (Class 3/1 [PEMC/FOA] were identified adjacent to the Line west of Old Highway 8 (corresponding with the flood plains identified in Attachment 6). No wetlands disturbance or filling is planned or contemplated as part of the abandonment, cleanup or ultimate site redevelopment.

By way of further response, the City avers that the National Flood Insurance Program flood plain map depicts the Line and its right-of-way as being located outside any 100 year flood plain. See Attachment 6.

(8) Biological Resources

(1) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

Applicant does not believe that the abandonment will affect any endangered or threatened species or critical habitats. The foregoing notwithstanding, on February 8, 2008, Applicant's counsel transmitted notice of this application by ordinary mail addressed to the U.S. Fish and Wildlife Service seeking their comments. See Attachment 7. On February 14, the Service responded stating that it does not have any concerns regarding the real estate matters in this abandonment. A copy of its letter is submitted as Attachment 7-A.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected and describe any effects.

Applicant does not anticipate that the abandonment will affect any wildlife sanctuaries or refuges, or National or State parks or forests. The foregoing notwithstanding, on February 8, 2008 Applicant's counsel transmitted notice of this Application by ordinary mail addressed to the National Park Service ("NPS"). See Attachment 8. More than 30 days have since elapsed without Applicant's counsel receiving a response.

(9) Water

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistency.

Applicant anticipates that no in-stream salvage operations will be required. No action known to be inconsistent with federal, state, and/or local water quality standards is contemplated. The foregoing notwithstanding, on February 8, 2008 Applicant's counsel transmitted notice of this application by ordinary mail addressed to the Minnesota Department of Natural Resources seeking their comments. See Attachment 4A. On March 4, 2008 the MPCA responded to the notice sent by Applicant's Counsel to their "sister agency". See Attachment 4B.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action

and whether any designated wetlands or 100-year flood plains will be affected. Describe the affects.

Applicant does not anticipate that any permits under Section 404 will be required or that any designated wetlands or 100-year flood plains will be affected. The foregoing notwithstanding, on February 8, 2008, Applicant's counsel transmitted notice of this application by ordinary mail addressed to the U.S. Army Corps of Engineers seeking their comments. See Attachment 9A. On February 28, 2008 Applicant's counsel received a letter response from the Department of the Army stating that this proposed rail line abandonment will not require a Department of the Army permit because it will not involve the discharge of dredged or fill materials into any waters of the United States, including wetlands. See Attachment 9B.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.

Applicant does not anticipate that any permits under Section 402 will be required. The foregoing notwithstanding, on February 8, 2008, Applicant's counsel transmitted notice of this application by ordinary mail addressed to the U.S. Environmental Protection Agency ("EPA") seeking their comments. See Attachment 10. More than 30 days have since elapsed without Applicant's counsel receiving a response. Additionally, on February 8, 2008

Applicant's counsel transmitted notice of this application by ordinary mail addressed to the Minnesota Department of Natural Resources seeking their comments. See Attachment 4A. On March 4, 2008 the MPCA responded to the notice sent by Applicant's Counsel to their "sister agency". See Attachment 4B. The MPCA instructs Applicant to confer with the Army Corps of Engineers to determine whether a Clean Water Act permit is needed. Applicant has done so and the Corps has advised that no Section 402 permit is necessary. See Attachments 9A and 9B.

(10) Proposed Mitigation

Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Applicant does not expect any adverse impact, therefore it is not proposing any mitigation measures.

Historic Issues

The following information is provided in accordance with 49 CFR 1105.8(d).

(1) Map

A copy of a map of the subject line is attached to this Abandonment Application as Exhibit A.

(2) Description of the subject line

The subject line is a short segment of railroad known as the Butcher's Spur. It commences in New Brighton, MN at a

turnout located near MP 10.5 on MNNR's mainline and from thence runs southeast a distance of 3,664 feet to the western right-of-way boundary line of Interstate Highway 35-W ("I-35W"). The right of way is level and varies from 50 to 100 feet in width.

(3) Photographs of structures at least 50 years old

There are no buildings or structures along the Line which are at least 50 years old. See Attachment 11 consisting of photographs of the Line.

(4) Dates of construction/alteration of structures

The Line was constructed in the 1890s by the Minnesota Transfer Railway Company ("MTRC").

(5) History of carrier operations

MTRC conducted freight operations on the Line from the 1890s to 1987. In 1987 ownership of the Line was transferred to MT Properties, which leased the Line to MNNR.

(6) Documents in carrier's possession re: historic structures

Applicant possesses no such documents.

(7) Eligibility for National Register; archeological resources

Applicant is unaware of any structures on the right-of-way that are eligible for listing in the National Register. The foregoing notwithstanding, on February 8, 2008, Applicant's counsel transmitted notice of this application by ordinary mail

addressed to the Minnesota Historical Society³ seeking their comments. See Attachment 12A. On or about March 12, 2008, Applicant's counsel received a letter from the Minnesota Historical Society deferring comment pending evaluation of the site by a qualified historical consultant. See Attachment 12B. Applicant is willing to comply with this request.

(8) Description of ground disturbance or fill

The Line was built in the traditional construction manner for the time. There are no additional deep cuts or fill.

Certification

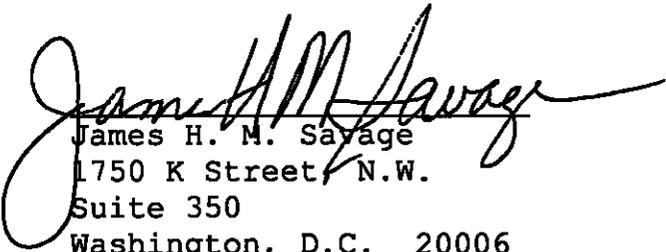
In accordance with the requirement at 49 CFR 1105.7(c), the City of New Brighton certifies that it has sent a copy of the Environmental and Historic Report to all agencies listed at 1105.7(b) and to the State Historic Preservation Officer and that it has consulted with these agencies in preparing this report.

Respectfully submitted,



John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
Telephone: (202)296-3334

³ The Historical Society serves as the State Historic Preservation Office in Minnesota.



James H. M. Savage
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
Telephone: (202)296-3335

Counsel for the City of
New Brighton, MN

Dated: March 28, 2008

ATTACHMENT 1

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 350
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

February 8, 2008

Ramsey County Board of Commissioners
220 Court House
15 West Kellogg Blvd.
St. Paul, MN 55101

Re: STB Docket No. AB-882
Minnesota Commercial Railway Company-Adverse
Discontinuance- Ramsey County, MN

Re: STB Docket No. AB-884
MT Properties, Inc.- Adverse Abandonment - Ramsey
County, MN

To Whom It May Concern:

This letter is to advise you that the City of New Brighton, MN ("Applicant") proposes to abandon and discontinue service on a rail line known as the Butcher's Spur. The line is owned by MT Properties, Inc. and operated by the Minnesota Commercial Railway Company ("MCRC"). It commences in the City of New Brighton from a turnout on the MCRC's main line and runs southeast for approximately 2,600 feet to the western right-of-way of Interstate Highway 35, a distance of approximately 0.5 miles. On or about **February 29, 2008**, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed adverse abandonment by filing an individual application for adverse abandonment under 49 U.S.C. 10502. The line traverses US Postal Service zip code 55112.

Enclosed is a draft Environmental and Historic Report ("EHR"), a document which Applicant must complete and file with the STB as a component of its abandonment filing. The draft EHR explains in greater detail the scope of the proposed rail line abandonment, including a more particular description of the rail line in question. We have also enclosed a map of the affected

February 8, 2008
Page 2

area which should assist in your review of the environmental and/or historic impacts (if any) that may arise as a consequence of the abandonment or salvage of the rail structure on this line.

We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to local land use plans - particular issues for which we seek your comment. See Item 3 of the HER at pages 3-4. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which as we have mentioned, will be delivered to the STB.

Applicant has not yet filed their adverse abandonment application at the STB. However, at such time as Applicants submit their request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis (SEA), as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Heffner", followed by a horizontal line.

John D. Heffner

Attorney for Petitioner
City of New Brighton

JDH/mhd

ATTACHMENT 2

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 350
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

February 8, 2008

Natural Resources Conservation Service
USDA
375 Jackson Street
St. Paul, MN 55101-1854

Re: STB Docket No. AB-882
Minnesota Commercial Railway Company-Adverse
Discontinuance- Ramsey County, MN

Re: STB Docket No. AB-884
MT Properties, Inc.- Adverse Abandonment - Ramsey
County, MN

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February 8, 2008

Page 2

abandonment, including a more particular description of the rail line in question. We have also enclosed a map of the affected area which should assist in your review of the environmental and/or historic impacts (if any) that may arise as a consequence of the abandonment or salvage of the rail structure on this line.

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Very truly yours,



John D. Heffner

Attorney for Petitioner
City of New Brighton

JDH/mhd

ATTACHMENT 2-A

United States Department of Agriculture



Natural Resources Conservation Service
375 Jackson Street, Suite 600
St Paul, MN 55101-1854

Phone (651) 602-7900
FAX (651) 602-7914

February 22, 2008

File Code: 190-15-13

IN REPLY

REFER TO: STB Docket No. AB-882, Minnesota Commercial Railway Company - Adverse
Discontinuance – Ramsey County, MN

John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, DC 20006

Dear Mr. Heffner:

In reference to the subject "Butcher's Spur" – what a colorful name I might add - the Natural Resources Conservation Service (NRCS) has reviewed the above referenced project. The project sponsors are not USDA program benefit recipients, thus the wetland conservation provisions of the 1985 Food Security act, as amended are not applicable. It should be noted, however, that actions by a non-USDA participant third party (project sponsor) which impact agricultural wetlands owned or operated by USDA participants, may jeopardize the owner/operators USDA eligibility. If such impacts are anticipated, the owner/operator should contact the county Farm Service Agency (FSA) office to consider an application for a third party exemption.

Finally, because of the location and type of activity proposed this project does not appear to impact agricultural lands, and a Federal Farmland Policy Protection Act (FPPA) site assessment/land evaluation will not be required. The FPPA Compliance is the only issue which is subject to our review in the subject project EHR at this time and we have no further comments nor concerns

In reference to the second page of your letter in which you direct me to Item 3 of the EHR, pages 3-4, our agency is now the Natural (not National) Resources Conservation Service (NRCS). Our agency was formerly the Soil Conservation Service (SCS), but our Agency name was changed to the NRCS in 1994 to better reflect its expanded role of helping to protect natural resources such as water, air, plants, and animals on private and tribal lands. However, in item (ii), page 3 of the HER, reference is made to the SCS, even though you footnote that we were formerly the SCS. Item (ii) page 3 of the EHR reads as though it was a recent consultation with the SCS.

Thank you for the opportunity to review the subject project EHR. We look forward to continued involvement in the project review process, if necessary. As the project continues towards development, please feel free to contact us concerning any additional and unique, or prime farmland protection concerns which may arise.

Sincerely,

A handwritten signature in black ink, appearing to read 'William E. Lorenzen', written in a cursive style.

WILLIAM E. LORENZEN
Environmental Review/Justice Coordinator

ATTACHMENT 3

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 350
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

February 8, 2008

State Coastal Zone Management
Minnesota Department of Natural Resources
Division of Waters
1568 Highway 2
Two Harbors, MN 55616

Re: STB Docket No. AB-882
Minnesota Commercial Railway Company-Adverse
Discontinuance- Ramsey County, MN

Re: STB Docket No. AB-884
MT Properties, Inc.- Adverse Abandonment - Ramsey
County, MN

To Whom It May Concern:

This letter is to advise you that the City of New Brighton, MN ("Applicant") proposes to abandon and discontinue service on a rail line known as the Butcher's Spur. The line is owned by MT Properties, Inc. and operated by the Minnesota Commercial Railway Company ("MCRC"). It commences in the City of New Brighton from a turnout on the MCRC's main line and runs southeast for approximately 2,600 feet to the western right-of-way of Interstate Highway 35, a distance of approximately 0.5 miles. On or about **February 29, 2008**, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed adverse abandonment by filing an individual application for adverse abandonment under 49 U.S.C. 10502. The line traverses US Postal Service zip code 55112.

Enclosed is a draft Environmental and Historic Report ("EHR"), a document which Applicant must complete and file with the STB as a component of its abandonment filing. The draft EHR explains in greater detail the scope of the proposed rail line abandonment, including a more particular description of the rail

February 8, 2008
Page 2

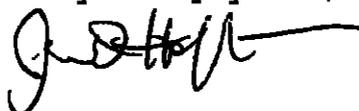
line in question. We have also enclosed a map of the affected area which should assist in your review of the environmental and/or historic impacts (if any) that may arise as a consequence of the abandonment or salvage of the rail structure on this line.

We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to coastal zone impacts - particular issues for which we seek your comment. See Item 3 of the HER at pages 3-4. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which as we have mentioned, will be delivered to the STB.

Applicant has not yet filed their adverse abandonment application at the STB. However, at such time as Applicants submit their request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis (SEA), as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Very truly yours,



John D. Heffner

Attorney for Petitioner
City of New Brighton

JDH/mhd

ATTACHMENT 4-A

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 350
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

February 8, 2008

Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155

Re: STB Docket No. AB-882
Minnesota Commercial Railway Company-Adverse
Discontinuance- Ramsey County, MN

Re: STB Docket No. AB-884
MT Properties, Inc.- Adverse Abandonment - Ramsey
County, MN

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February 8, 2008
Page 2

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We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to air quality, flood plains, water quality and wetlands - particular issues for which we seek your comment. See Items 5 and 9 of the HER at pages 5, 7-9. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which as we have mentioned, will be delivered to the STB.

Applicant has not yet filed their adverse abandonment application at the STB. However, at such time as Applicants submit their request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis (SEA), as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Very truly yours,



John D. Heffner

Attorney for Petitioner
City of New Brighton

JDH/mhd

ATTACHMENT 4-B



Minnesota Pollution Control Agency

520 Lafayette Road North | St Paul, MN 55155-4194 | 651-296-6300 | 800-657-3864 | 651-282-5332 TTY | www.pca.state.mn.us

March 4, 2008

Mr. John D Heffner, PLLC
Law Office
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006

RE: Rail Road Abandonment
STB Docket No. AB-882 - Minnesota Commercial Railway Company
STB Docket No. AB-884 - MT. Properties, Inc.
City of New Brighton, MN -- Applicant
Draft Environmental and Historical Report Review

Dear Mr Heffner:

Your February 8, 2008 letter of advisement of the proposed Rail Road Abandonment referenced above requesting review of the Draft Environmental and Historical Report (EHR) regarding the issues of air quality, flood plains, water quality and wetlands, had been addressed to our sister agency, the Minnesota Department of Natural Resources (DNR). In Minnesota, our agency, the Minnesota Pollution Control Agency (MPCA), is the environmental protection agency and the DNR copied this letter to us for our response. Thank you for the opportunity to review the draft EHR for this activity

The draft EHR was not specific regarding what efforts of demolition, salvage, construction, or other actions of physical alteration of the site that would be undertaken to effect this abandonment. The specific description of what demolition, salvage, construction, or other actions of physical alteration of the site should be provided in the EHR in order to assess the potential for environmental impact or other impact of contaminated soils and any need for mitigation for those impacts.

The EHR should identify Long Lake, which is located just to the west of Butcher's Spur, is listed on the 2006 MPCA 303d Impaired Waters list for excess nutrients and Mercury. The Total Maximum Load (TMDL) study calculates the maximum amount of a pollutant a water body can receive (known as the "loading capacity") without violating water quality standards. The TMDL process identifies all sources of pollutants causing impairments and allocates reductions necessary to meet the water quality standard. The TMDL for Long Lake is scheduled for completion in 2011. When the TMDL is complete and implemented, it may contain restrictions or conditions regarding construction activities for this area. Projects that may discharge to impaired water must not cause or contribute to a violation of a water quality standard.

Mr John D. Heffner

Page 2

March 4, 2008

We always recommend that a site erosion plan should be developed and incorporated into any construction effort that will prevent sediment runoff by actions such as: 1) keeping exposed soil to a minimum; 2) using sediment barriers such as straw bales and fabric barriers in all drainachannels; 3) constructing a runoff collection ditch and sediment pond if appropriate, 4) mulching and seeding appropriate areas after construction. The erosion control systems must be properly installed, regularly inspected, and sufficiently maintained in order to prevent sediments at the project site from eroding into waters of the state. In addition a Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit (NPDES) would be required for the proposed abandonment activities that will disturb one (1) or more acres of land. In these cases the applicant is required to apply to the MPCA for coverage under a General Construction Storm Water NPDES permit that will specifically require BMPs to control erosion during construction, and a Storm Water Pollution Prevention Plan (SWPPP) to manage pollutants in storm water runoff from the site that will occur after construction is complete. The permit requires that these BMPs be prepared for the project and incorporated into the plans and specifications prior to the start of construction. Depending on what method may be used in the removal of track and ties, an NPDES permit for construction activity may be required. If heavy equipment is used, the potential for disturbing vegetated areas along the rail corridor exists. Additional information and application forms for the Construction Storm Water Permit can be found on this MPCA web site (<http://www.pca.state.mn.us/water/stormwater/stormwater-c.html>).

Any railroad ties and all other demolition debris that are removed from the abandon line must be reused or disposed of in accordance with Minn Rules 7035 for disposal of Solid Waste. We encourage you to explore reuse opportunities for any material removed during the project

In order to determine whether this project will affect any 100 year flood plain, I refer you to the local counties who regulate this activity. We recommend you first check the Federal Emergency Management Agency (FEMA) flood hazard mapping web site at (<http://msc.fema.gov/webapp/wcs/stores/servlet/FemaWelcomeView?storeId=10001&catalogId=10001&langId=-1>) for the availability of flood mapping in the area of concern and also contact the local county authorities http://www.dnr.state.mn.us/permits/water/water_permit_contacts.html for specific regulatory requirements if the flood plan will be affected by your project.

If the project construction includes the placement fill material into any waters including wetlands we recommend you contact the St. Paul District Office of the Army Corps of Engineers at (651) 290-5366 for further information to determine if a Clean Water Act Section 404 permit would be required for this action. Our Agency is responsible for completing a Clean Water Act Section 401 Water Quality Certification on any federal permits such as the section 404 permit. Therefore, if the Corps of Engineers determines a 404 permit is required for this action, only then would a 401 Water Quality Certification from our agency is required. In addition, under the Minnesota State Wetland Conservation Act, if you drain or fill any wetland you should contact the local unit of government for a Wetland Replacement Plan approval. You may find these local contacts at the Minnesota Board of Water and Soil Resources web site at <http://www.bwsr.state.mn.us/directories/WCA.pdf>

At this time we have no additional issues or concerns regarding the air quality items noted in the draft EHR.

The MPCA Voluntary Investigation and Cleanup (VIC) staff and Superfund Program staff have reviewed the referenced document pertaining to the abandonment of a rail road spur (Butcher's Spur) located in the City of New Brighton (City) that borders two VIC projects, and offer the comments listed below:

1.) General Comment – Butcher's Spur is located within and/or adjacent to several projects in the MPCA Superfund Program and projects enrolled in the MPCA VIC and Petroleum Brownfield Programs. The two VIC projects are named the NW Quadrant Commercial Development Site - VP18560, located on the east side of Old Highway 8 in New Brighton, and the NW Quadrant – Midwest Asphalt Site - VP14550, located on the west side of Old Highway 8 (the Sites). In addition to the two MPCA VIC Sites, there are two Superfund sites located on the east side of Old Highway 8. These include the Northwest Refinery Superfund Site (SR70) and the Trio Solvent Superfund Site (SR126). Numerous documents in both the VIC and Superfund Programs that outline the findings of environmental investigations at both of these Sites are located in the MPCA Site Response Section (SRS) files in St. Paul, Minnesota.

There is also petroleum contamination at these Sites, and both Sites are enrolled in the MPCA Petroleum Brownfield Program. Petroleum sites within the redevelopment area that also border Butcher's Spur include Rose Oil, Northwest Refinery, Midwest Asphalt Plant 2 (MPCA Leak #14213), and the Eastern Portion of the NW Quadrant (MPCA Leak #589). Documents that pertain to the petroleum contamination at these Sites are available in the Petroleum Brownfield Program files located in St. Paul, Minnesota.

2.) General Comment – The aforementioned Sites are only briefly mentioned in the *Environmental Issues* section of the Combined Environmental and Historic Report of the reference document. It is recommended that a MPCA file review be conducted to present a more factual description of the various environmental problems that have been identified in the area of the proposed Butcher's Spur redevelopment. The discussion should provide a map that shows the boundaries of the various environmental projects in the area of the Butcher's Spur abandonment, and text which describes the types and distribution of contaminants in soil, ground water and surface water in the Butcher's Spur abandonment area.

3.) General Comment – It is assumed there are at least two components of rail abandonment. One is the administrative and legal process of rail abandonment which includes the legal change of ownership of the right of way. The other component is the physical act of abandoning the rail line or spur that includes removing and properly disposing of the rails, ties, spikes, road bed aggregate, soil and any other appurtenances that make up the physical components of the rail spur, and conducting environmental investigations and possible remedial actions associated with potential contaminants of concern. MPCA VIC staff comments are related more to the physical removal of the rail lines which may be required to redevelop portions of the two VIC Sites.

Mr John D. Heffner

Page 4

March 4, 2008

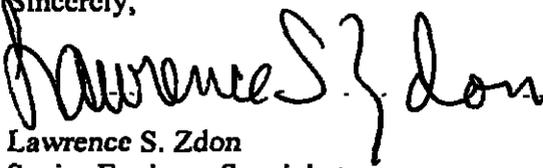
4.) General Comment - Butcher's Spur has not been investigated for potential contaminants of concern, as was proposed in several environmental documents prepared and submitted to the MPCA VIC Program by Barr Engineering on behalf of the City. The City will need to submit a sampling work plan for Butcher's Spur to the MPCA VIC staff for review and approval; the work plan should properly characterize the rail spur materials. Once the materials are properly characterized, a RAP Addendum will need to be submitted to the MPCA for review and approval. The RAP Addendum should outline in detail the physical components of abandoning Butcher's Spur. These requirements should be understood by all parties and included as factual information in the Combined Environmental and Historic Report. At present, MPCA VIC staff have not been presented with any specific plans which include the details for the physical abandonment of Butcher's Spur.

5.) The MPCA Superfund Program staff understands that the City of New Brighton wishes to redevelop the Site after it has been removed from the State Superfund list (Permanent List of Priorities). Based on currently available soil data, it does not appear that the railway abandonment will have an effect on the Superfund Site delisting process. However, it is possible that new data generated as a result of activities required by the VIC or Petroleum Brownfields Programs may in turn require additional remedial actions by the Responsible Parties at the Site and may therefore delay the Superfund Site delisting process

6.) Depending on the outcome of any VIC-required investigations, the section on Proposed Mitigation may need to include actions to prevent possible stormwater- or wetland impacts that may be caused by the railway abandonment activities

If you have any questions regarding our comments, please contact me at (651) 297-8219 or by e-mail at lawrence.zdon@pcastate.mn.us.

Sincerely,



Lawrence S. Zdon
Senior Engineer Specialist
Stormwater Section
Municipal Division

I.Z:ah

ATTACHMENT 5

VERIFIED STATEMENT OF JOHN W. GOHRMANN

My name is John W. Gohrman and I am the Chairman and President of the Minnesota Commercial Railway Company ("MNNR"). My business address is 14047 Petronella Drive, Suite 201, Libertyville, IL 60048. I have 43 years experience in the railroad industry. Since 1980 I have been involved in the formation and operation of Class III railroads. The purpose of this verified statement is to describe MNNR's operations over the rail line known as the Butcher's Spur ("the Line") in New Brighton, MN.

The MNNR operates 150 miles of trackage dedicated to serving the Twin Cities. We serve manufacturers, warehouses, lumber and steel transloads, and grain mills. We operate a transload facility equipped to handle multiple commodities. The MNNR is located in the Midway, between Minneapolis and St. Paul. Daily connections are made with Burlington Northern Santa Fe Railway Corporation ("BNSF"), Canadian Pacific Railway ("CP"), Union Pacific Railroad ("UPRR"), Canadian National Railway ("CN"), Iowa Chicago and Eastern Railroad Corporation ("IC&E") and the Twin Cities and Western Railroad ("TC&W").

The Line commences at a turnout from the MNNR Main Industrial Lead Track near Milepost 10.5 and runs in a

southeasterly direction a distance of 3,664 linear feet (0.69 miles) to the western boundary line of the Interstate Highway 35 West ("I-35 W") right-of-way. There are no stations or mileposts on the Line.

The Line was constructed circa 1890 by the Minnesota Transfer Railway Company ("MTRC"), which conducted freight operations on the line from the 1890s to 1987. MNNR was formed in 1987 to operate the lines formerly operated by MTRC. Also in 1987, M T Properties, Inc. ("M T Properties") succeeded to the ownership of the MTRC lines, including the Butchers Spur.

Between 1987 and 2007 MNNR provided freight service on the Line. Over that time, use of the Line by shippers diminished significantly, as did revenues generated from the Line remaining in service. The number of shipper carloads diminished from 411 in 2005 to 62 in 2007. Line revenues likewise diminished, from \$60,055 in 2005 to \$18,260 in 2007. The Line has no active customers. Shippers who were formerly active customers served on

¹ The Line turns east and runs a distance of 245 linear feet (0.04 miles) to the midpoint of a railroad bridge spanning I-35 W, where it reaches the City's eastern boundary line. The State of Minnesota holds title to this portion of the right-of-way. The Line formerly continued in an easterly direction across the railroad bridge into the adjoining City of Arden Hills, MN a distance of approximately 1,000 linear feet (0.19 miles), terminating in a stub end on the site of the former ATS Steel plant. In or about 2000 the ATS Steel plant shut down. In September 2006 MNNP removed the Arden Hills track segment at the request of the developer who purchased the former ATS Steel property. The portion of the Line extending into Arden Hills was an exempt spur for which no permission to abandon was needed.

the Line have been accommodated with alternate service on a new Team Track constructed for MNRR's use and benefit at the City of New Brighton's ("the City") expense at 400 First Street SW, New Brighton, MN ("the exchange parcel"). There are no labor organizations representing employees on the Line. Being stub ended, there is no revenue from overhead traffic on the Line.

In October 2007 the City entered into an Agreement with MNRR and M T Properties, pursuant to which MNRR and M T Properties agreed, for good and valuable consideration, to support the City's Application for adverse discontinuance and abandonment of the Line.

MNRR intends to salvage the rails for use elsewhere on its system. Pursuant to its agreement with MNRR and M T Properties, the City shall arrange to dispose the ties and otherwise remediate the property in accordance with applicable laws and regulations. In the event the City and/or its contractor were to so request, and at the City's sole cost and expense, MNRR is prepared to arrange for transporting the ties to a State licensed disposal facility in Superior-Duluth, MN.

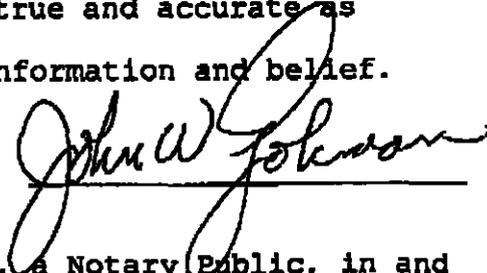
I have reviewed the Verified Statements of Grant Fernelius and Robert C. Finley submitted in support of this Application. To the best of my knowledge, information, and belief the information set forth therein is truthful and accurate.

Accordingly, I respectfully request the Board to grant this Application.

VERIFICATION

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

I, John W. Gohmann, being duly sworn according to law, hereby depose and state that I am authorized to make this Verification, that I have read the foregoing document, and that I know the facts asserted therein are true and accurate as stated, to the best of my knowledge, information and belief.



Subscribed and sworn to before me, a Notary Public, in and for the County of Lake, in the State of Illinois, this 25th day of March, 2008.

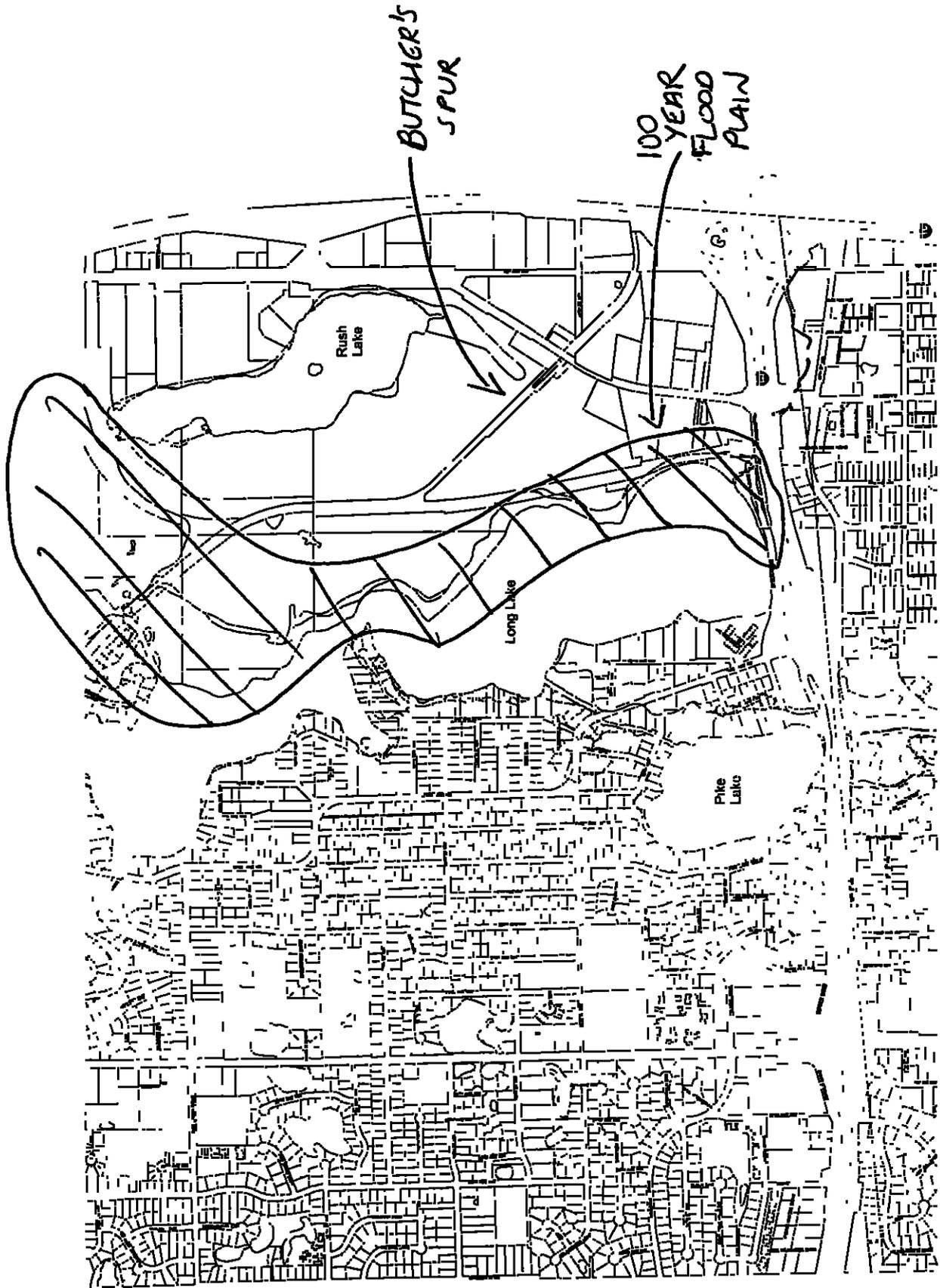


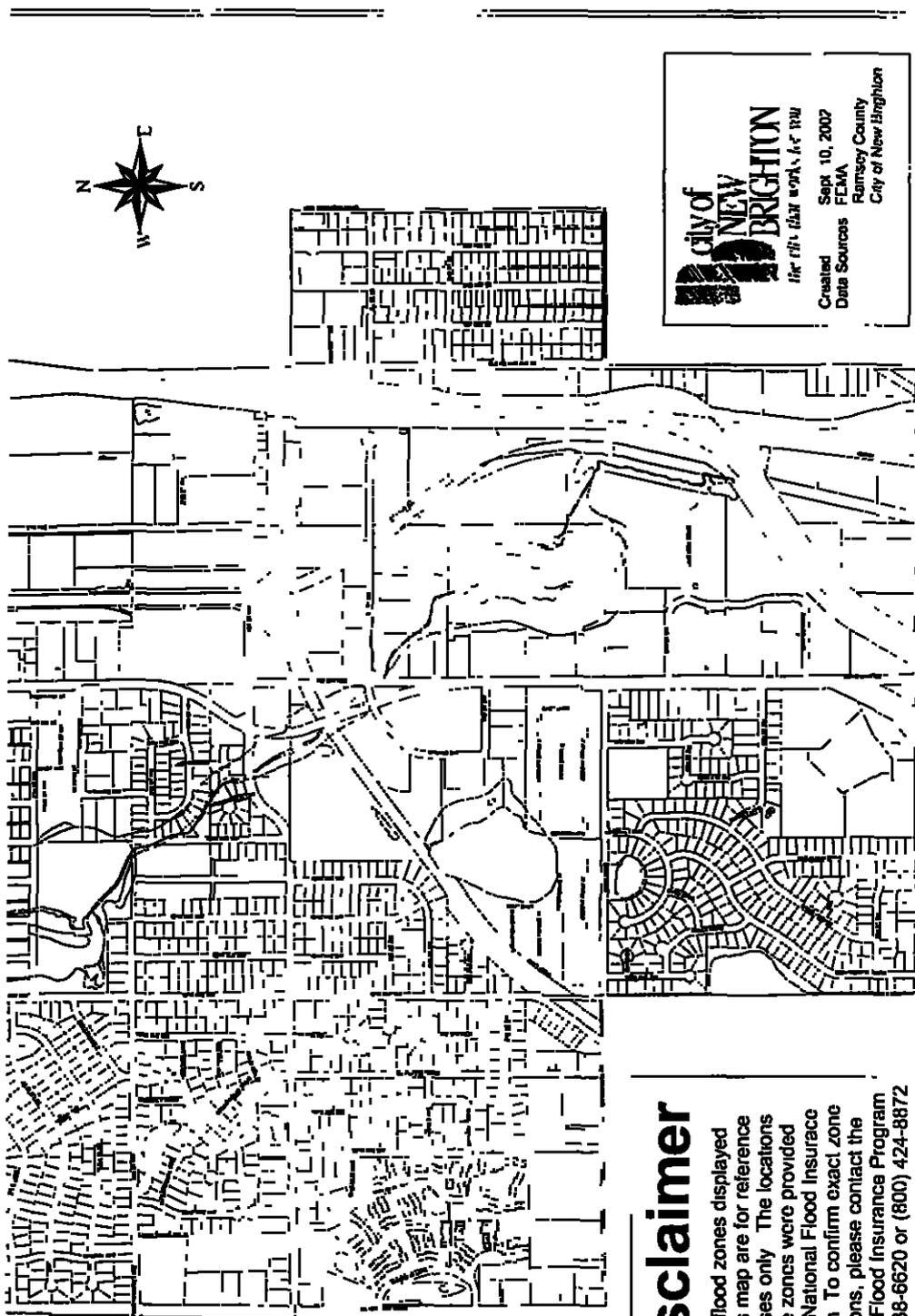
Notary Public

My Commission expires;

12/20/08

ATTACHMENT 6





Flood Zones

- Zone A - 100 Year Flood
- Zone B - 500 Year Flood
- Zone C - No Flood Zone
- Water

Panel Number:
270380 0005 B

Community Number:
270380

Effective Map Date:
Sept. 1, 1978

Disclaimer

The flood zones displayed on this map are for reference purposes only. The locations of the zones were provided by the National Flood Insurance Program. To confirm exact zone locations, please contact the National Flood Insurance Program at (800) 638-6620 or (800) 424-8872.



for info: (516) 339-1111, A.C. 1110
Created Sept. 10, 2002
Data Sources FEMA
Ramsey County
City of New Brighton



ATTACHMENT 7

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 350
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

February 8, 2008

US Fish & Wildlife Service
One Federal Drive
BHW Federal Building
Fort Snelling, MN 55111-4056

Re: STB Docket No. AB-882
Minnesota Commercial Railway Company-Adverse
Discontinuance- Ramsey County, MN

Re: STB Docket No. AB-884
MT Properties, Inc.- Adverse Abandonment - Ramsey
County, MN

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February 8, 2008
Page 2

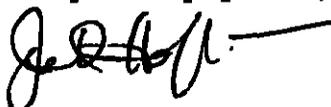
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We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to endangered or threatened species or critical habitats - particular issues for which we seek your comment. See Item 8 of the HER at page 7. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which as we have mentioned, will be delivered to the STB.

Applicant has not yet filed their adverse abandonment application at the STB. However, at such time as Applicants submit their request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis (SEA), as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Very truly yours,

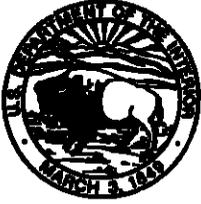


John D. Heffner

Attorney for Petitioner
City of New Brighton

JDH/rhd

ATTACHMENT 7-A



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Bishop Henry Whipple Federal Building
1 Federal Drive
Fort Snelling, MN 55111-4056

IN REPLY REFER TO

FWS/NWRS-RE - General
Railroad Abandonments

February 14, 2008

Mr. John Heffner, PLLC
1750 K Street, NW
Suite 350
Washington, D.C 20006

Dear Mr. Heffner:

Thank you for the opportunity to comment on the proposed abandonment of service on .5 miles of railroad line which commences in the City of New Brighton from a turnout on the Minnesota Commercial Railway Company's main line and runs southeast for approximately 2,600 feet to the western right-of-way of Interstate Highway 35, located in Ramsey County, Minnesota, STB Docket Nos AB-882 and AB-884.

We have researched our ownerships in the vicinity and have determined we do not own any land or interests in land in the vicinity of the proposed rail line abandonments. We do not have any concerns regarding real estate matters in the abandonments.

Sincerely,

for Patrick G Carroll
Senior Realty Officer
Division of Realty

bcc: Twin Cities Field Office, Ecological Services
ARD-ES (HC)

ATTACHMENT 8

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 350
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

February 8, 2008

US National Park Service
601 Riverfront Drive
Omaha, NE 68102-4226

Re: STB Docket No. AB-882
Minnesota Commercial Railway Company-Adverse
Discontinuance- Ramsey County, MN

Re: STB Docket No. AB-884
MT Properties, Inc.- Adverse Abandonment - Ramsey
County, MN

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February 8, 2008

Page 2

line in question. We have also enclosed a map of the affected area which should assist in your review of the environmental and/or historic impacts (if any) that may arise as a consequence of the abandonment or salvage of the rail structure on this line.

We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to wildlife sanctuaries or refuges, or national state parks and forests - particular issues for which we seek your comment. See Item 8 of the EHR at page 7. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which as we have mentioned, will be delivered to the STB.

Applicant has not yet filed their adverse abandonment application at the STB. However, at such time as Applicants submit their request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis (SEA), as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Very truly yours,



John D. Heffner

Attorney for Petitioner
City of New Brighton

JDH/mhd

ATTACHMENT 9-A

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 350
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

February 8, 2008

US Army Corps of Engineers
Sibley Square at Mears Park
190 5th Street East - Suite 401
St. Paul, MN 55101-1638

Re: STB Docket No. AB-882
Minnesota Commercial Railway Company-Adverse
Discontinuance- Ramsey County, MN

Re: STB Docket No. AB-884
MT Properties, Inc.- Adverse Abandonment - Ramsey
County, MN

To Whom It May Concern:

This letter is to advise you that the City of New Brighton, MN ("Applicant") proposes to abandon and discontinue service on a rail line known as the Butcher's Spur. The line is owned by MT Properties, Inc. and operated by the Minnesota Commercial Railway Company ("MCRC"). It commences in the City of New Brighton from a turnout on the MCRC's main line and runs southeast for approximately 2,600 feet to the western right-of-way of Interstate Highway 35, a distance of approximately 0.5 miles. On or about **February 29**, 2008, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed adverse abandonment by filing an individual application for adverse abandonment under 49 U.S.C. 10502. The line traverses US Postal Service zip code 55112.

Enclosed is a draft Environmental and Historic Report ("EHR"), a document which Applicant must complete and file with the STB as a component of its abandonment filing. The draft EHR explains in greater detail the scope of the proposed rail line abandonment, including a more particular description of the rail

February 8, 2008

Page 2

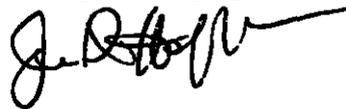
line in question. We have also enclosed a map of the affected area which should assist in your review of the environmental and/or historic impacts (if any) that may arise as a consequence of the abandonment or salvage of the rail structure on this line.

We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to flood plains, water quality and wetlands - particular issues for which we seek your comment. See Item 9 of the HER at pages 7-9. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which as we have mentioned, will be delivered to the STB.

Applicant has not yet filed their adverse abandonment application at the STB. However, at such time as Applicants submit their request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis (SEA), as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Very truly yours,



John D. Heffner

Attorney for Petitioner
City of New Brighton

JDH/mhd

ATTACHMENT 9-B



DEPARTMENT OF THE ARMY
St. Paul District Corps of Engineers
190 Fifth Street East
St Paul, Minnesota 55101-1883

REPLY TO
ATTENTION OF
Operations
Regulatory (2008-00835-TJF)

February 28, 2008

Mr. John D. Heffner
1750 K Street NW
Washington, DC 20006

Dear Mr. Heffner:

We have reviewed the information you provided regarding the abandonment of a segment of rail line in the City of New Brighton. The short line segment, referred to as Butcher's Spur, is operated by the Minnesota Commercial Railway Company. The segment proposed for abandonment is in the E ½ of Section 20, T30N, R23W, Ramsey County, Minnesota.

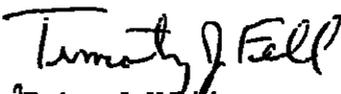
We have determined that this proposed rail line abandonment will not require a Department of the Army permit, because it will not involve the discharge of dredged or fill material into any waters of the United States, including wetlands.

This letter is valid only for the project referenced above. If you believe the project would involve activities in waters or wetlands you should contact our office. PLEASE NOTE THAT THIS CONFIRMATION LETTER DOES NOT ELIMINATE THE NEED FOR STATE, LOCAL, OR OTHER AUTHORIZATIONS, SUCH AS THOSE OF THE DEPARTMENT OF NATURAL RESOURCES OR COUNTY

The decision regarding this action is based on information found in the administrative record that documents the District's decision-making process, the basis for the decision, and the final decision

If you have any questions, contact Mr. Tim Fell at (651) 290-5360. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,


Robert J. Whiting
Chief, Regulatory Branch

ATTACHMENT 10

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 350
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

February 8, 2008

US Environmental Protection Agency
Office of Strategic Environmental Analysis
Metcalf Building
77 West Jackson Boulevard
Mailcode: B-19J
Chicago, IL 60604

Re: STB Docket No. AB-882
Minnesota Commercial Railway Company-Adverse
Discontinuance- Ramsey County, MN

Re: STB Docket No. AB-884
MT Properties, Inc.- Adverse Abandonment - Ramsey
County, MN

To Whom It May Concern:

This letter is to advise you that the City of New Brighton, MN ("Applicant") proposes to abandon and discontinue service on a rail line known as the Butcher's Spur. The line is owned by MT Properties, Inc. and operated by the Minnesota Commercial Railway Company ("MCRC"). It commences in the City of New Brighton from a turnout on the MCRC's main line and runs southeast for approximately 2,600 feet to the western right-of-way of Interstate Highway 35, a distance of approximately 0.5 miles. On or about **February 29**, 2008, Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed adverse abandonment by filing an individual application for adverse abandonment under 49 U.S.C. 10502. The line traverses US Postal Service zip code 55112.

Enclosed is a draft Environmental and Historic Report ("EHR"), a document which Applicant must complete and file with the STB as a component of its abandonment filing. The draft EHR explains in greater detail the scope of the proposed rail line

February 8, 2008
Page 2

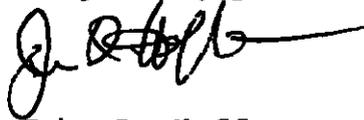
abandonment, including a more particular description of the rail line in question. We have also enclosed a map of the affected area which should assist in your review of the environmental and/or historic impacts (if any) that may arise as a consequence of the abandonment or salvage of the rail structure on this line.

We have contacted you at this time to seek your assistance in completing the EHR. You will note that the EHR addresses issues pertaining to air quality, flood plains, water quality and wetlands - particular issues for which we seek your comment. See Items 5 and 9 of the HER at pages 5, 7-9. We encourage you to review the enclosed draft EHR, and contact me, John D. Heffner, within 30 days of the date of this letter, with any feedback or guidance that you may be able to offer. Your feedback will be incorporated into the final EHR, which as we have mentioned, will be delivered to the STB.

Applicant has not yet filed their adverse abandonment application at the STB. However, at such time as Applicants submit their request to abandon service over the line in question, we will serve you with copies of the request and the final EHR. At that time, if not sooner, we will supply you with information sufficient for you to issue comments directly to the STB's Section of Environmental Analysis (SEA), as well as to us.

We appreciate your cooperation. If you have any questions regarding the enclosed materials, please contact me at the address and phone number at the top of this letter.

Very truly yours,



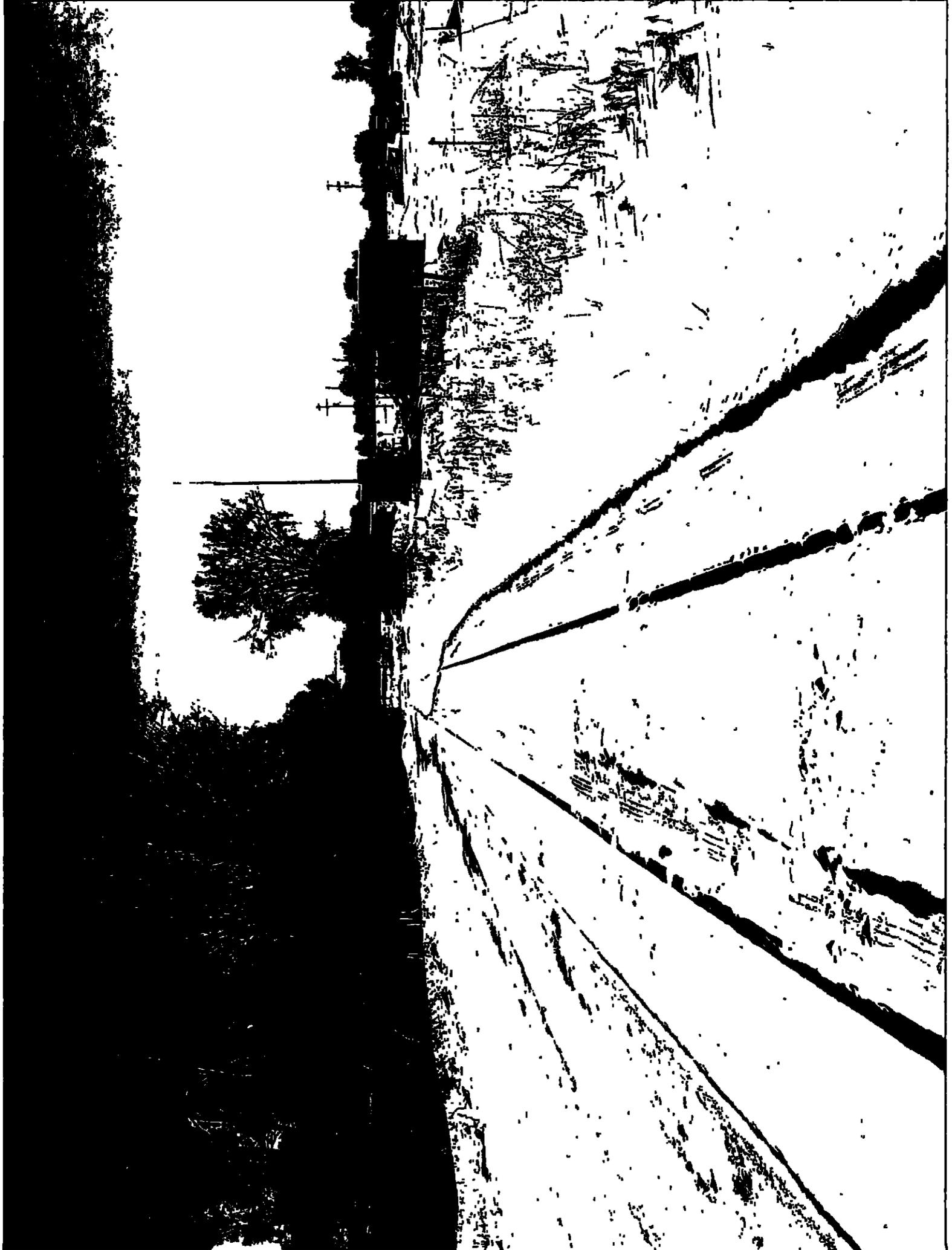
John D. Heffner

Attorney for Petitioner
City of New Brighton

JDH/mhd

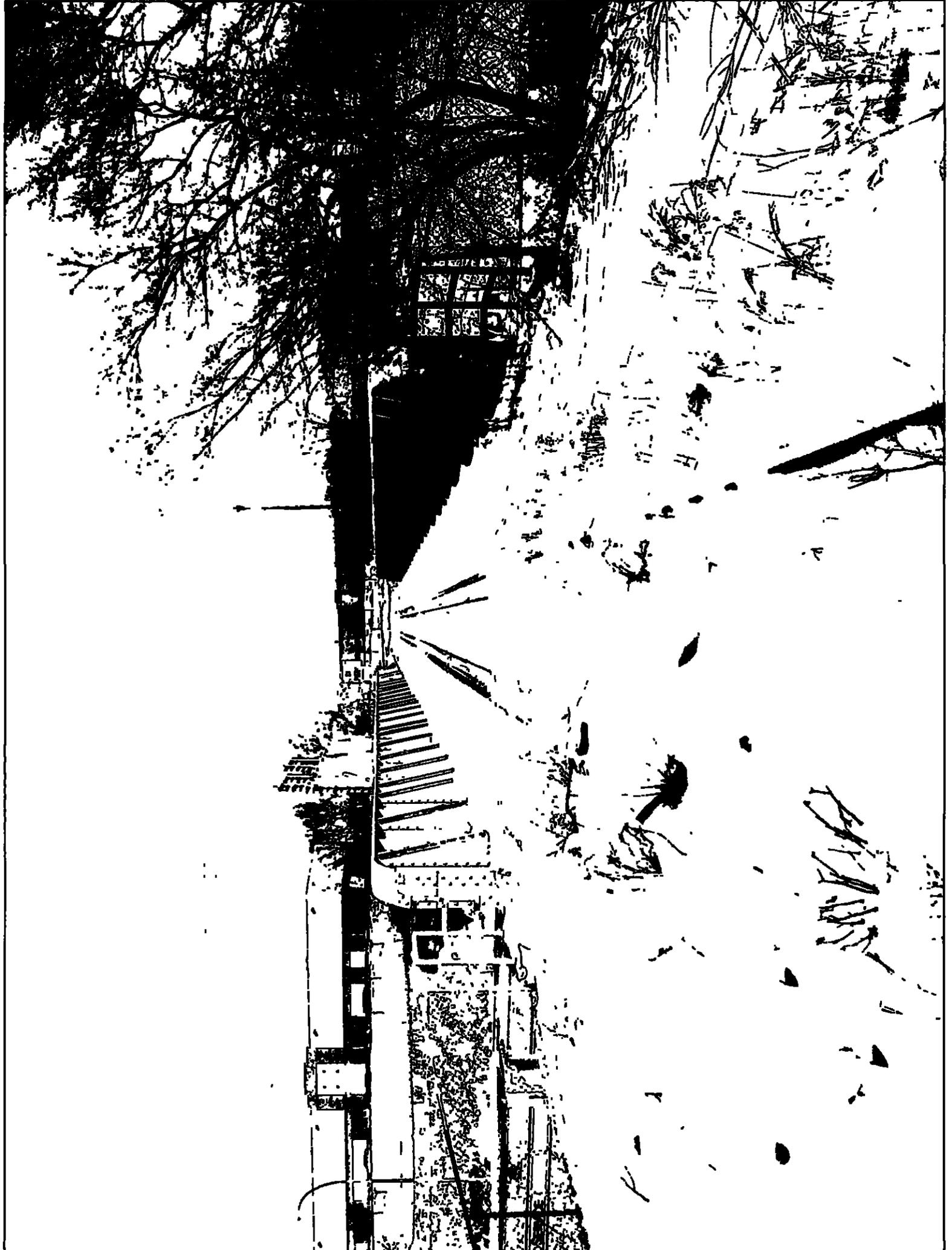
ATTACHMENT 11

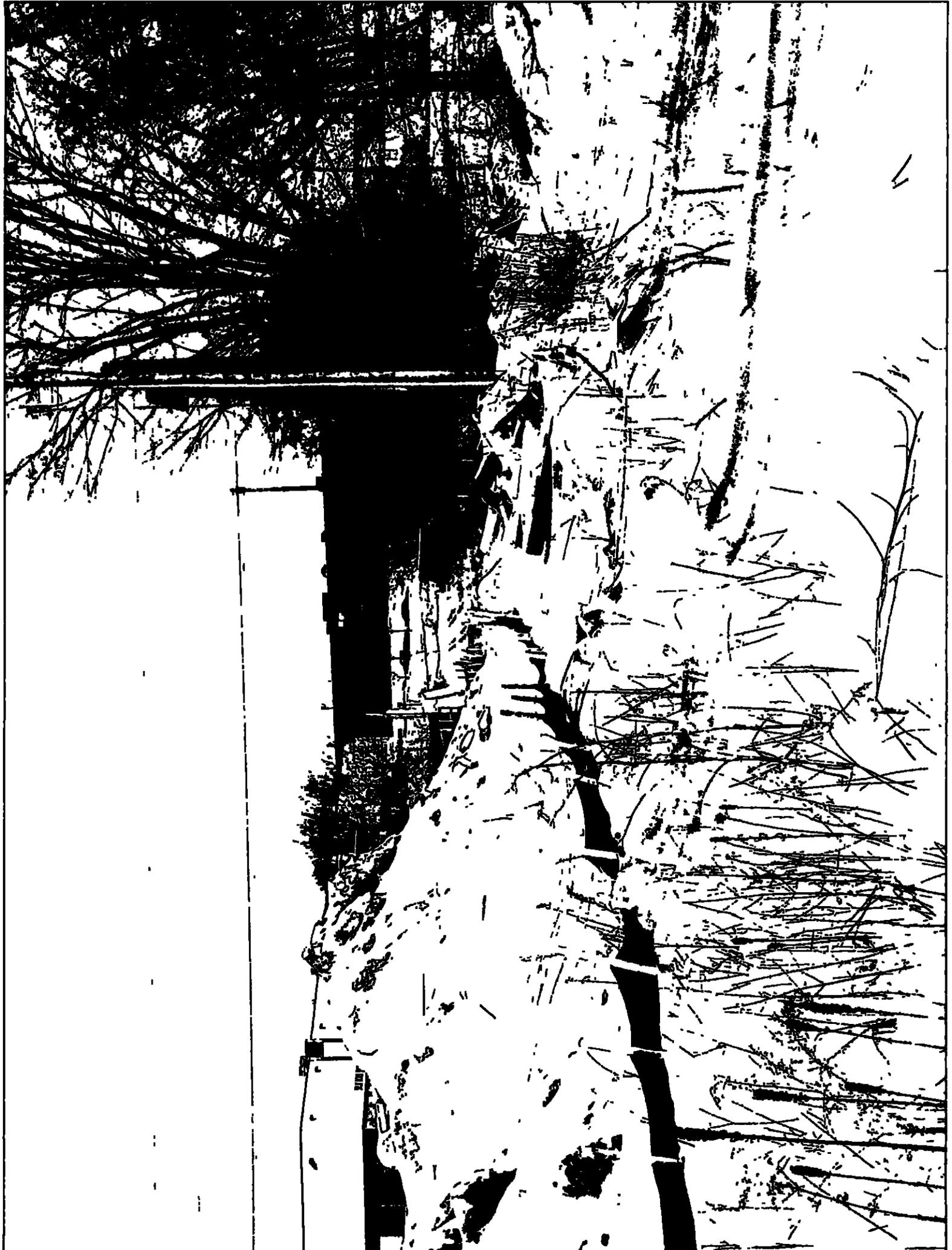


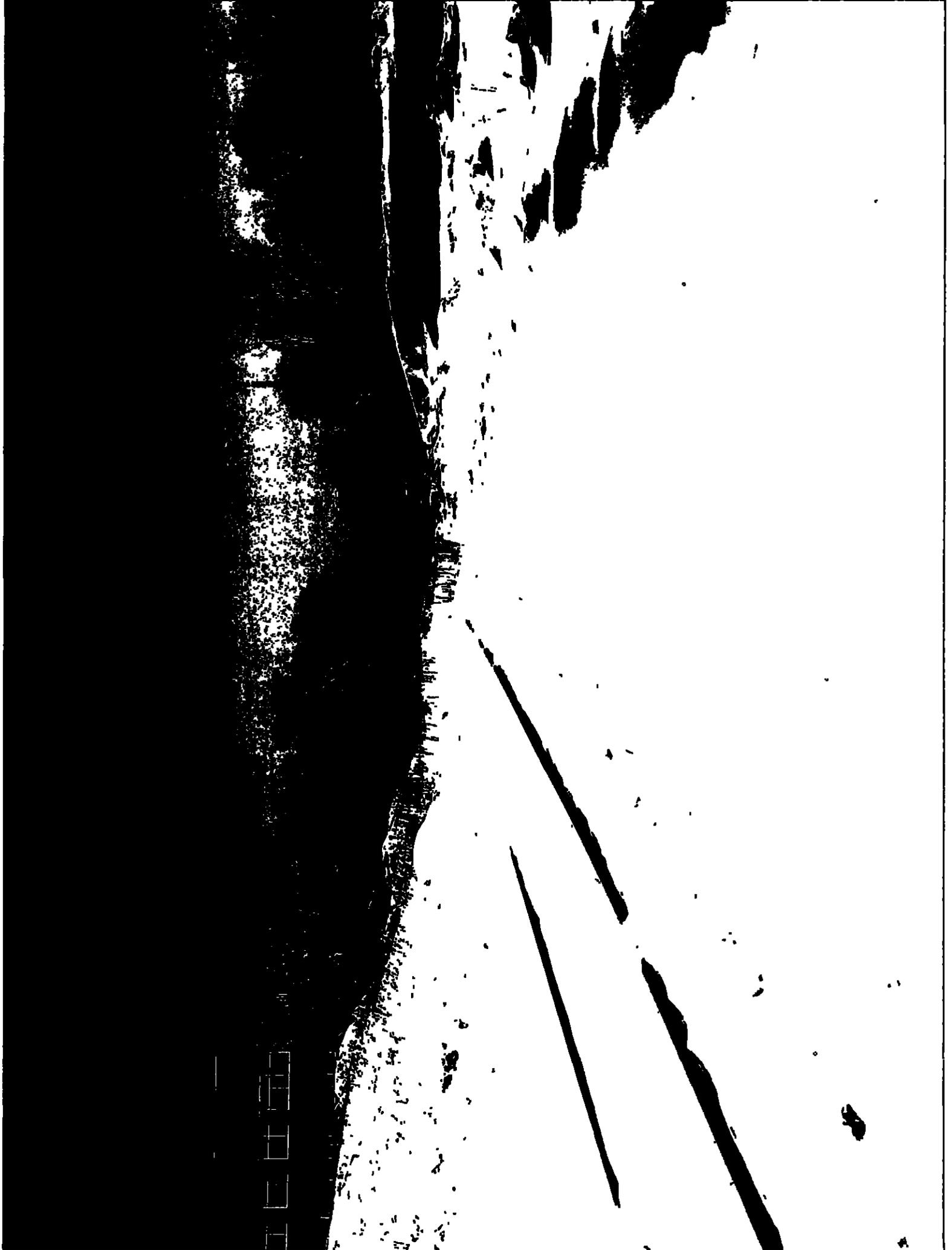


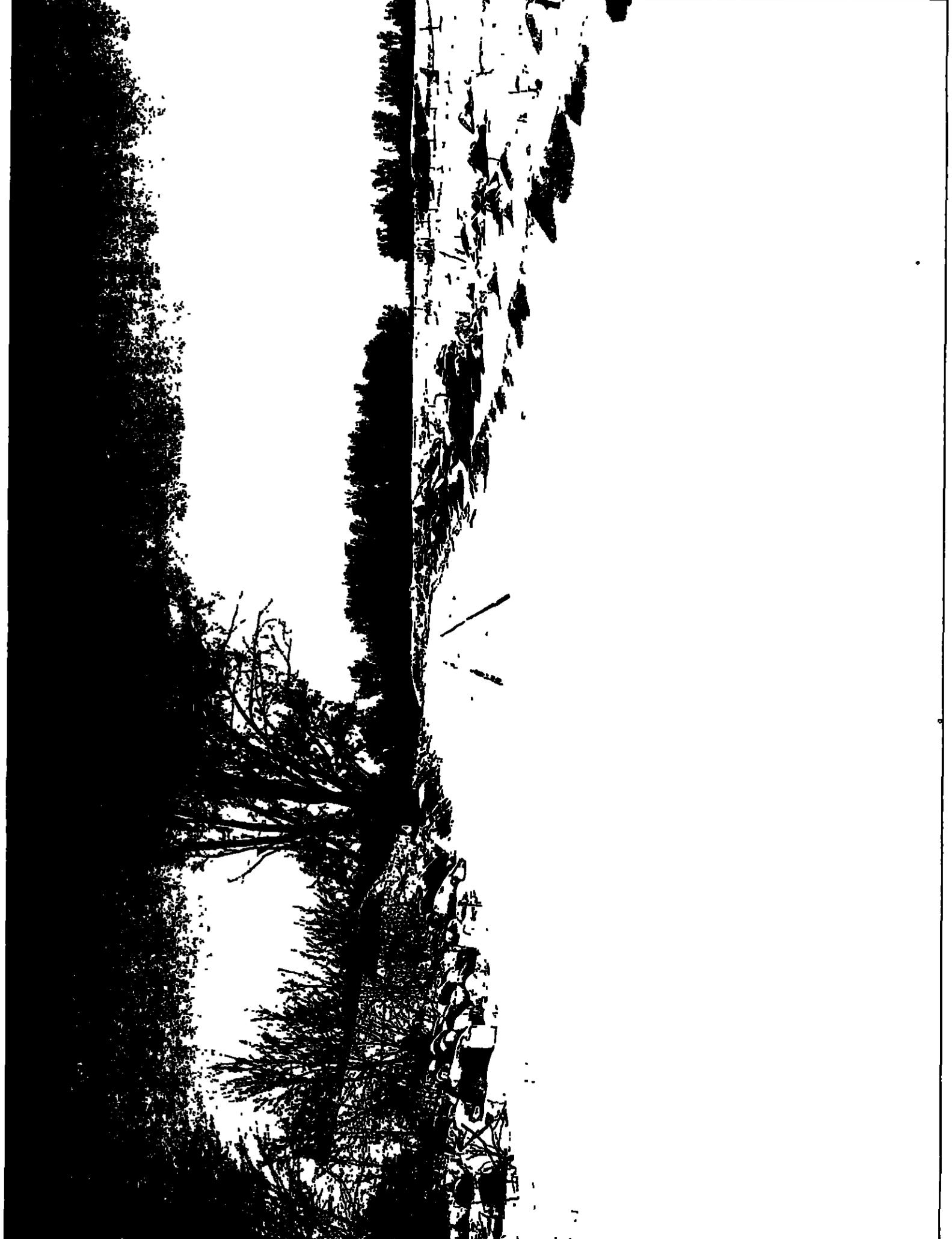












ATTACHMENT 12-A

LAW OFFICE
JOHN D. HEFFNER, PLLC
1750 K STREET, N.W.
SUITE 350
WASHINGTON, D.C. 20006
PH: (202) 296-3333
FAX: (202) 296-3939

February 8, 2008

State Historic Preservation Office
Minnesota Historical Society
345 Kellogg Boulevard West
St. Paul, MN 55101-1906

Re: STB Docket No. AB-882
Minnesota Commercial Railway Company-Adverse
Discontinuance- Ramsey County, MN

Re: STB Docket No. AB-884
MT Properties, Inc.- Adverse Abandonment - Ramsey
County, MN

To Whom It May Concern:

This letter is to advise you that the City of New Brighton, MN ("Applicant") proposes to abandon and discontinue service on a rail line known as the Butcher's Spur. The line is owned by MT Properties, Inc. and operated by the Minnesota Commercial Railway Company ("MCRC"). It commences in the City of New Brighton from a turnout on the MCRC's main line and runs southeast for approximately 2,600 feet to the western right-of-way of Interstate Highway 35, a distance of approximately 0.5 miles. On or about February 29, 2008 Applicant will seek Surface Transportation Board ("STB") authorization to accomplish the proposed abandonment by filing an "adverse" application pursuant to 49 U.S.C. 10903. The line traverses US Postal Service zip code 55112.

Enclosed is a draft Environmental and Historic Report ("EHR"), a document which Applicant must complete and file with the STB as a component of its abandonment filing. The draft EHR explains in greater detail the scope of the proposed rail line abandonment, including a more particular description of the rail

line in question. We have also enclosed a map of the affected area which should assist in your review of the environmental and/or historic impacts (if any) that may arise as a consequence of the abandonment or salvage of the rail structure on this line.

In connection with this abandonment, Applicant is required by the STB's regulations (at 49 C.F.R. 1105.8) to prepare as part of its Application an Environmental and Historic Report addressing the following issues:

- (i) Are sites or structures listed in the National Register of Historic Places affected? If so, describe the effects.

To the best of Applicant's knowledge, no site or structures listed in the National Register of Historic Places will be affected.

- (ii) Will sites or structures 50 years old or older be affected? If so, and such sites or structures are not listed in the National Register of Historic Places, Applicant would submit, at the earliest possible juncture, a description of the line, including a map, as well as photographs and descriptions of such structures to the appropriate State Historic Preservation Office for review and include a copy of the cover letter in the Environmental and Historic Report.

Applicant is compiling a list of all structures on the line that are 50 years old or older and will supplement this report and forward a map of the line depicting the location of the structures and color pictures of said structures as soon as they are available.

- (iii) Will culturally significant locations, archaeological sites, or unique land forms be affected? If so, applicant should consult with the involved State Historic Preservation Office.

To the best of Applicant's knowledge, no culturally significant locations, archaeological sites, or unique land forms will be affected.

ATTACHMENT 12-B



MINNESOTA HISTORICAL SOCIETY

State Historic Preservation Office

March 12, 2008

Mr John Heffner
John D Heffner, PLLC
1750 K Street NW, Suite 350
Washington, D C 20006

Re STB Docket No AB-882
Minnesota Commercial Railway Company, Adverse Continuance
STB Docket No AB-884
MT Properties, Inc – Adverse Abandonment
Ramsey County, MN
SHPO Number 2008-1268

Dear Mr Heffner

Thank you for the opportunity to review and comment on the above project It has been reviewed pursuant to the responsibilities given the State Historic Preservation Officer by the National Historic Preservation Act of 1966 and the Procedures of the Advisory Council on Historic Preservation (36CFR800)

The report indicates that there are no buildings or structures along the line that are at least 50 years old, and that photographs of the line will be submitted as part of the final version of the EHR

However, photographs of the line do not meet the requirements for a Section 106 review The line needs to be evaluated for National Register eligibility by a qualified historical consultant We will not be able to comment on this review for the STB until such evaluation has been completed

Contact us at 651-259-3455 with questions or concerns

Sincerely,

Dennis A Gimmestad
Government Programs & Compliance Officer