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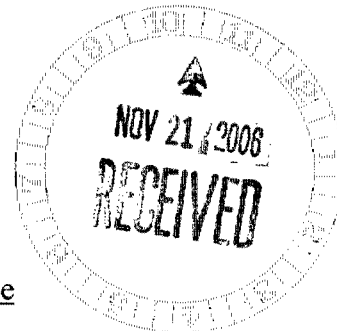
Via Hand Delivery

November 17, 2006

Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D.C. 20423

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SURFACE
TRANSPORTATION BOARD

218117



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

Dear Secretary Williams:

Enclosed herewith are the Original and eleven copies of the Adverse Abandonment Application filed on behalf of the City of South Bend, Indiana, the Brothers of Holy Cross, Inc. and The Sisters of the Holy Cross, Inc. Please acknowledge receipt and filing of the enclosed by stamping the eleventh copy of this letter and the application and returning them to the individual making this filing for return to me.

By its Decision dated October 26, 2006, the Board granted, in part, a Petition for Waiver and Exemption filed by the Applicants on September 6, 2006. The attached Application conforms in all respects to the Board's regulations as augmented by the waivers. By letter filed September 6, 2006, the City of South Bend, which is a local government entity, sought a determination that it was entitled to a waiver of fees pursuant to the provisions of 49 CFR § 1002.2(e). By letter dated September 13, a copy of which is attached hereto, you advised that the Board would make its final determination regarding the waiver after Board staff had reviewed the Application. This letter seeks confirmation that the City of South Bend is entitled to a waiver of filing fees pursuant to the provisions of 49 CFR § 1002.2(e) for the filing of the abandonment application. Your immediate attention to this matter is respectfully requested.

Also enclosed is a disk containing a copy of those portions of the application that are available as computer files. If you have any questions, please give me a call at 202-408-6933. Thank you for your consideration.

Very truly yours,

Richard H. Streeter

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RHS:rs
Enclosure

District of Columbia: SS

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

On this 17th day of November, 2006, in the District of Columbia before me personally appeared Richard H. Streeter, to me personally known, who being by me duly sworn, says that 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 October 26, 2006, in STB Docket No. AB 290 (Sub-No. 286)) were met by serving copies of the Notice of Intent to file an adverse abandonment application on required parties on October 30, 2006, by first-class mail and by serving copies of the adverse abandonment application as specified in said Decision by first class mail or expedited delivery service on November 17, 2006, as shown on the certificate of service included in said application.



Richard H. Streeter

Subscribed and Sworn to before me this 17th day of November 2006.



Cathy Rodriguez
D.C. Notary

CATHERINE M. K. RODRIGUEZ
Notary Public, District of Columbia
My Commission Expires July 14, 2011

My Commission Expires: July 14, 2011

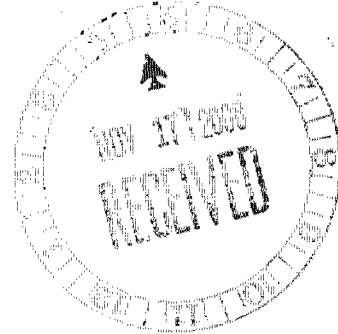


Office of the Secretary

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

September 13, 2006

Richard H. Streeter
Barnes & Thornburg LLP
750 17th Street, N.W.
Suite 900
Washington, D.C. 20006



RE: STB Docket No. AB (Sub-No. 286), Norfolk Southern Railway Company – Adverse Abandonment in St. Joseph County, IN

Dear Mr. Streeter:

I have reviewed your September 6, 2006 request for a waiver of the filing fees in connection with the Petition for Waiver and Exemption filed September 6, 2006 and the adverse abandonment application to be filed October 2, 2006, by The City of South Bend Indiana, the Brothers of Holy Cross, Inc. and the Sisters of Holy Cross (The City et al). The fee waiver request is based upon the status of The City as "a local governmental entity".

As a filing fee does not appear necessary under the circumstances as you present them, your request for a waiver will be granted. The Board will move the Petition for Waiver and Exemption forward. Since the adverse abandonment application will not be filed until October 2, 2006, the Board will not grant the fee waiver request on that document until it has been filed and reviewed by Board staff.

As an administrative matter, the Board will assign these matters the new docket number of AB-290 (Sub-No. 286).

Sincerely,

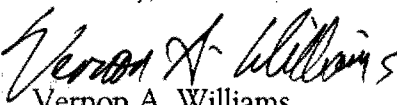

Vernon A. Williams
Secretary

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Exhibits/Attachments

Attachment A - Draft Federal Register Notice

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Attachment D - Letter from Jane E. Hardisty, United States Department
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Attachment E - Combined Environmental and Historic Report

Attachment F - Verified Statement of Andrew R. Laurent

Attachment G - Verified Statement of Curtis C. Coffey

Attachment H - Verified Statement of Geraldine M. Hoyler

Attachment I - Verified Statement of Stephanie R. Achterberg

Verification

Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Docket No. AB 290 (Sub-No. 286)

NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN

ADVERSE ABANDONMENT APPLICATION OF THE
CITY OF SOUTH BEND, THE BROTHERS OF HOLY CROSS, INC. AND THE
SISTERS OF THE HOLY CROSS, INC.

In accordance with the requirements of 49 C.F.R. § 1152.22 and the Board's Decision, served October 26, 2006, which granted, in part, the Petition for Waiver and Exemption filed by the City of South Bend, the Brothers of Holy Cross, Inc. and Sisters of the Holy Cross, Inc. (hereinafter collectively referred to as "Applicants"), Applicants seek a finding that the public convenience and necessity require or permit the abandonment of approximately 3.7 miles of railroad located in St. Joseph County, Indiana. Specifically, Applicants seek approval from the Board for the adverse abandonment of two lines of railroad owned by Norfolk Southern Railway Company ("NSR"). The subject lines extend from Milepost UV 0.0, which is located in a semi-industrial area in the western portion of the City, to Milepost UV 2.8 and from MP ZO 9.6 to Milepost ZO 10.5 ("the Lines"). As reflected by the attached maps, the individual lines connect with one another at MP UV2.8, which is located on the Brothers' campus, and thereafter terminate on the Sisters' campus. Should the Board authorize the

abandonment of the Lines, an industrial spur located on the Sisters' campus will also be abandoned.¹

NSR acquired the Lines from Conrail in 1998 pursuant to authority granted by the Board in STB F.D. No. 33388. *See, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreement--Conrail Inc. and Consolidated Rail Corporation*, 3 S.T.B. 196 (1998). Based on information and belief, since it acquired the Lines, NSR has not conducted any rail operations over them. Moreover, Conrail had not conducted any rail operations over the Lines for approximately four or five years before they were acquired by NSR. *See, Attachment F, Verified Statement of Andrew R. Laurent*, at ¶ 3; *Attachment G, Verified Statement of Curtis A. Coffey*, at ¶ 11; and *Attachment H, Verified Statement of Geraldine M. Hoyler*, at ¶ 3.

In addition, Applicants are not aware of any effort by NSR to solicit traffic or reinstitute freight rail service over the Lines. NSR's failure to solicit traffic reflects the fact, which has been confirmed by a recent survey conducted by City's Planning Office, that there is no demonstrable need for future freight service over the Lines. As the Economic Specialist for the City has explained:

As an Economic Development Specialist for the City, between September 25, 2006 and October 27, 2006 I contacted the industries located along this line to gauge their desire for freight service. None gave any indication of a need or desire for freight rail service. According to

¹ The Board has no statutory authority over the abandonment of a spur line. *See*, 49 U.S.C. § 10906. The easements that underlie the industrial spur, which are rooted in an agreement, dated October 27, 1903, have expired as a matter of contract law. The 1903 agreement specifically provides, as herein pertinent, that "[i]f the use of said premises for the purposes herein specified should be discontinued [the premises] shall thereby be discharged and freed from such easement, and revert without reconveyance ... as fully and unreservedly as though said easement never existed." Because railroad operations were discontinued several years ago, the underlying real property has been freed from such easement.

public statements made by the University of Notre Dame, it has no intention of receiving coal by rail. The claim to have customers that desire to ship or receive freight over the lines has no merit. *V.S. Laurent*, at ¶ 7.

See also, V.S. Coffey, at ¶ 12; *V.S. Hoyler*, at ¶ 8.

Due to several authorized abandonments,² as well as the removal of the switch to the NSR mainline at MP 0.0, the Lines have been severed from the national general system of rail transportation. In addition, the Lines have been truncated and paved over at numerous locations. Hence, the Lines are literally an archipelago of islands of railroad tracks that have not been officially abandoned.

The remaining islands of track and track materials are public nuisances. *See, V.S. Laurent*, at ¶¶ 3, 9, and 10. In many areas the right-of-way is overgrown with weeds and small trees. *See, Photograph Nos RR02, 5, 6, 6a, 6b, 9, 10, 10b, 10d, 12, 13, 15a, 15b, 16a, 16c, 17, 19a, 19b, 20a, 20b, 20c, 20d, 21, 26, 27c, 28a, 28b, 28c, 28d, 28e, 28h, 29a, 29b, 38, 39 and 40.* At other spots, track and crossties, after being removed from road crossings, have been stacked in an unsightly fashion next to commercial buildings. *See, Photographs RR016d through RR016f.* In addition, the unused track interferes with the natural beauty, landscape and use of the campuses of the Brothers and Sisters. *See generally, V.S. Coffey and V.S. Hoyler.*

(a) General

(1) Exact name of applicants:

City of South Bend, Indiana ("City"); Brothers of Holy Cross, Inc. ("BOHC" or "Brothers"), and Sisters of the Holy Cross, Inc. ("Sisters").

² *See, Conrail Abandonment In South Bend Between Milepost 10.5 and Milepost 11.8, St. Joseph County, IN, Docket No. AB-167 (Sub-No. 407N) (ICC served Apr. 22, 1982) and Conrail Abandonment in Berrien County, MI and St. Joseph County, IN, Docket No. AB-167 (Sub-No. 672N) (ICC served Aug. 31, 1984).*

(2) Whether applicants are common carriers by railroad subject to 49

U.S.C. Subtitle IV, chapter 105:

Applicants are not common carriers by railroad subject to 49 U.S.C. Subtitle IV, chapter 105. NSR, which owns the Lines, is a common carrier by rail and is subject to the Board's jurisdiction. However, as evidenced by the attached photographs, no recognizable rail track maintenance has taken place for a number of years. Indeed, given the current condition of the remaining track, it would be impossible to reinstate rail freight service without incurring substantial costs associated with the rebuilding of the Lines. Because there are no shippers along the Lines that desire, much less require, future rail freight, there is no reason for NSR to rehabilitate the line in order to hold out service to any shipper. Under these circumstances, the public convenience and necessity permit or require the abandonment of these unneeded and deteriorated tracks.

City is a local governmental entity organized under the laws of the State of Indiana. City plans to acquire the right-of-way from NSR for public use in the form of a sewer system. *See, V.S. Laurent*, at ¶ 12. Following its acquisition of the assembled corridor, City also plans to construct a trail along a portion of the right-of-way. *See, id.*

BOHC is an Indiana non-profit corporation and a 501(c)(3) tax exempt entity. BOHC is an adjacent landowner with a legitimate claim under Indiana law to a reversionary interest in abandoned rail property. BOHC intends to acquire any right-of-way from NSR that may be owned by NSR in fee. It will also clear title to all property over which the Lines extend by way of an easement. Most importantly, the portion of track that is located on the BOHC campus, which has not been connected with the national rail system for a number of years, is interfering with the development of the

campus and the current expansion of Holy Cross Village, which is located on the land owned by the Brothers. *See generally, V.S. Coffey.*

Sisters is an Indiana non-profit corporation and a 501(c)(3) tax exempt entity. Sisters is an adjacent landowner with a legitimate claim under Indiana law to a reversionary interest in abandoned rail property. Sisters own and operate the motherhouse and international headquarters of the Congregation of the Sisters of the Holy Cross and own the land on which the Inn at Saint Mary's is located (which is located a few hundred feet north of the industrial spur) and have an interest in the partnership which owns and operates the Inn. In addition, Sisters sponsors Saint Mary's College, which is located on the immediately adjacent land at the northern end of the Lines and the industrial spur. Following abandonment, Sisters will immediately clear title to all property that is presently encumbered by easements that appear to have expired due to the failure of the owning railroad to maintain the track and conduct rail operations for over a decade.³ *See generally, V.S. Hoyler.*

NSR does not own a fee interest in the 60 foot right-of-way between mileposts ZO 9.6 and ZO 10.5, all of which is located on the campuses of BOHC and Sisters. The 60 foot right-of-way was the subject of a corporate resolution and appropriation by the St. Joseph Valley Railroad Company dated March 8, 1870. The appropriation was part of a larger effort to obtain an easement and install rail service between Niles, Michigan and South Bend, Indiana. Pursuant to the terms of the 1870 appropriation by which it acquired its easement, St. Joseph Valley Railroad Company's right to the 60 foot right-

³ See n.1.

of-way was to last only during such period as "said Company shall maintain its road thereon."⁴

Subsequently, the St. Joseph Valley Railroad Company merged with the Michigan Air Line Railroad in October 1870. After its completion in 1871, the line was operated and maintained by the Michigan Central Railroad Company ("Michigan Central"), which was itself later controlled by the New York Central Railroad Company ("NYC"). In 1929, NYC was authorized to lease the property of the Michigan Central upon agreeing to "maintain the leased properties, to assume and perform during the term of the lease obligations of the lessor under existing leases, mortgages, and other contracts relating to the premises." *New York Central Unification*, 150 I.C.C. 278, 290 (1929).

Because the line has not been maintained for well over a decade by Michigan Central, Conrail or NSR, the 60 foot right-of-way has expired by its very terms and the sole ownership of all rights to such land and the right-of-way now lie with BOHC and Sisters. As recognized in *Modern Handcraft, Inc.--Abandonment in Jackson County, MO*, 363 I.C.C. 969, 971 (1981), a legitimate claim to a reversionary interest in abandoned rail property will establish a proper interest in securing adverse abandonment authorization.

The *Modern Handcraft* decision also recognizes that the City's development plans for future use of the right-of-way to install a sewer line will also establish a proper interest in securing adverse abandonment authority. City's interest is also demonstrated by the fact that one of the Lines crosses 17 streets in the City, including Lincoln Way West, which carries over 23,000 vehicles per day, and Indiana 933, which carries over

⁴ That line has already been removed both north and south of the Campus.

28,000 vehicles per day.⁵ *V.S. Laurent* at ¶ 11. In addition, abandonment will permit removal of the unsightly unused rail, much of which is littered with trash and overgrown with weeds and small trees.⁶ *Id.* at ¶ 9. Removal of the unused track will allow the City to repave all of the highways, streets and sidewalks over which the track crosses that have not already been repaved. This will improve the roadways and facilitate snow removal in the winter months. *Id.* at ¶ 11.

Upon receiving authority to abandon the Lines, Applicants will work with NSR to have the track and track materials removed. In addition, they will acquire all of NSR's ownership interests in the right-of-way and clear title to their land.

(3) Relief sought.

Applicants seek an order holding that the present and future public convenience and necessity require or permit abandonment of the following sections of the NSR Lines in St. Joseph County, IN: Milepost UV 0.0 to Milepost UV 2.8 and from MP ZO 9.6 to Milepost ZO 10.5. Applicants will use that order to support their acquisition or condemnation of the land that lies within the right of way. As noted above, the easement granted in 1870 to the St. Joseph Valley Railroad Company related to the track between MP ZO 9.6 and Milepost ZO 10.5 has expired due to the failure to maintain the track. The same is true with regard to the industrial spur easement which expired due to the discontinuance of rail operations.

⁵ See Photograph Nos. RR016b, 16c, 16d. Also, as reflected by Photograph Nos. RR016e and 16f, the Lincoln Way West crossing was previously removed and paved over, with the track materials being piled up on the north side of the crossing.

⁶ See Photograph Nos. RR002, 5, 6, 6a, 6b, 9, 10, 10b, 10d, 12, 13, 15b, 16a, 16c, 17, 19a, 19b, 20a, 20b, 20c, 20d, 21, 26, 27c, 28a, 28c, 28d, 28e, 29a, 29b, 37, 38, 39, and 40.

BOHC has delayed a major component of a construction project because an arguable issue exists regarding the current viability of the easement, which limits the number of crossings within the BOHC campus. Should the track be removed, BOHC would be able to avoid additional construction costs and the future inconvenience associated with having to reroute an on-campus road so as to avoid crossing the track. *See, V.S. Coffer* at ¶¶ 9 and 10. The unused track and underlying easements also cast a pall on the future development of the Sisters' property.

Similar concerns confront the City. As Laurent, the City's Economic Development Specialist, has explained at ¶ 12 of his Verified Statement:

City is currently in the planning stages of a massive storm sewer development effort that will meet the Federal Government's mandate for separated storm and sanitary sewer systems., which is already in the process of expanding its sewer system. Part of the current plan calls for a large storm sewer to run from the southwest part of the City to the St. Joseph River near the Angela Street area, almost precisely following the route of this line. Cost estimates show that using the rail line alignment, instead of laying the sewer under city streets, would allow for a multi-million dollar savings. At the same time, the City has begun construction of a series of pedestrian trails, the most recent of which begins just north of the tracks and proceeds north along the west bank of the St. Joseph River. A pedestrian trail that continues both east and west from the river along the rail line would be a perfect compliment and an ideal component of the county-wide recreational trail system.

If necessary, City will take legal action to condemn the property if it cannot reach an agreement with NSR to acquire the right-of-way following abandonment. As the D.C. Circuit recognized in *Consolidated Rail Corp. v. Interstate Commerce Commission*, 29 F.3d 706, 708-09 (D.C. Cir. 1994), "an abandonment certificate can be used in state court to establish that the line is not required for rail service in interstate commerce and

therefore is not exempt from local or state condemnation.” Because NSR had not conducted any freight service over the Lines since it acquired them some eight years ago, the City effectively treated the Line as abandoned and did not pursue condemnation proceedings against NSR. Now that it is aware of the potential adverse consequences of not seeking the formal abandonment of the dormant Lines, City will take prompt action to acquire the right-of-way following the Board’s approval of this application.

(4) Detailed map of the subject line.

See Attachment B (map) and E (Combined Environmental and Historic Report).

(6) Detailed statement of reasons for filing application.

This past summer, CLS&SB filed a notice of exemption claiming that it intended to purchase the Lines from NSR and reinstate rail freight service so as to transport coal to the University. As the Board is well aware, there was wide spread public opposition to any reinstatement of rail service over the Lines. The opposition included not only the Applicants, but also the residents of the communities through which the Lines cross who do not wish to be disturbed by rail operations that are conducted only a few feet from their properties. While Applicants recognize that public opposition may be discounted by the Board when there is valid evidence of a current or future need for rail service, that is not the case in situations such as this where there are no affected shippers and where there is no demonstrable need for potential, future rail service. As a practical matter, it would be economically infeasible to attempt to reinstate service over the line under the conditions that now exist.

Recognizing that renewed freight rail service over the Lines would not be consistent with their own plans and the best interests of the community, Applicants herein

filed protests with the Board challenging the need for such service. After the University gave notice that it would not utilize rail service for delivery of coal to its facilities, NSR decided that it would not sell the Lines.

Although CLS&SB's subsequent withdrawal of its Notice of Exemption resulted in the termination of the proceeding, the process alerted Applicants to the possibility that some other entity might attempt to acquire the Lines and further disrupt expansion and other developmental plans. As a result, Applicants advised NSR and the Board that they intended to seek the abandonment of the Lines so as to avoid future controversy and clear title to their properties. By obtaining authority to abandon the Lines, Applicants can make better use of their real estate, which is subdivided by the remaining track. On September 6, 2006, Applicants filed their Petition for Waiver and Exemption, which the Board subsequently granted, in part, by Decision served October 26, 2006.

(7) Name, title, and address of applicants' representatives:

Jeffrey M. Jankowski, Deputy City Attorney
1400 County-City Building
227 W. Jefferson Boulevard
South Bend, IN, 46601-1830

Counsel for the City of South Bend

and

Richard H. Streeter
Richard L. Mintz
Richard J. Deahl
Barnes & Thornburg LLP
Suite 900, 750 17th Street, N.W.
Washington, D.C. 20006

Counsel for Brothers of Holy Cross, Inc. and
Sisters of the Holy Cross, Inc.

(8) List of all Postal Service ZIP Codes that the line traverses:

The Lines traverse U.S. Postal Service Zip Codes 46601, 46616, 46617, 46628, 46629 and 46556

(e) Rural and community impact.

Abandonment of the Lines would have no rural impact.⁷ As the Board is well aware from CLS&SB's earlier attempt to acquire the Lines, the local communities in South Bend are adamantly opposed to any resumption of rail operations over the Lines. The newspaper articles that were written reflect a host of safety and environmental concerns that are attributed to running a freight train through residential neighborhoods. The safety concerns involve unprotected sections of track that cross numerous city streets and run past parks, schools and recreational centers. Environmental concerns include the excessive train whistles that would sound as trains would pass over the multiple crossings at slow speed, as well as the lack of maintenance around the tracks, which have standing water in some areas as well as overgrown weeds that harbor pests. In addition, the unattended right-of-way has become a illegal trash dumping site. As Laurent explains in his Verified Statement, these multiple concerns, which have been repeatedly voiced by citizens, would be eliminated by the abandonment of the Lines.

(f) Environmental impact.

A copy of Applicants' Combined Environmental and Historic Report and a Supplemental Letter forwarded to the Indiana Department of Natural Resources, Division of Historic Preservation on October 31, 2006 are attached hereto as Attachment E.

⁷ See, Attachment D, Letter from Jane Hardisty, United States Department of Agriculture, dated October 18, 2006.

(h) Additional information.

In reaching its decision on the merits of this application, the Board will be required to weigh the relative burdens that continuing or ceasing rail service would have on all interested parties, including the railroad, the owners of the property (if different from the carrier), the shippers who have used the line, the community involved, and interstate commerce generally. As the Board explained in *Seminole Gulf Railway, L.P.--Adverse Abandonment--In Lee County, FL*, STB Docket No. AB-400 (Sub-No. 4) (STB served Nov. 18, 2004), slip op. at 4:

We have exclusive and plenary jurisdiction over abandonments, including adverse abandonments, in order to protect the public from an unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. [Citation omitted]. Accordingly, we preserve and promote continued rail service where the carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic. [Citation omitted].

It is respectfully submitted that abandonment will not have any adverse impact on NSR. Based on information and belief, no local or overhead traffic has moved over the Lines for at least twelve years. Furthermore, there is no indication that NSR has any reason, much less any plans, to rehabilitate the Lines in order to reinstate rail freight service over them.⁸ Simply put, there is no potential for continued operations. There are no potential shippers and no potential traffic that would warrant the estimated expenditure of \$350,000 to make the Lines operational!⁹ In addition, if the Lines are abandoned and the track and track materials are removed, NSR would be relieved of any

⁸ In its August 15, 2006 letter addressed to the Board in F.D. 34893, *The Chicago, Lake Shore and South Bend Railway Company--Acquisition and Operation Exemption--Norfolk Southern Railway Company*, NSR advised the Board that it had decided it would not sell the Lines to the Chicago, Lake Shore & South Bend Railway Company ("CLS&SB"). That decision no doubt reflects the fact that there is no current or future demand or need for rail freight service on the part of any shipper that is located along the Lines.

⁹ See, V.S. Laurent at ¶ 7.

potential liability for claims attributed to its failure to maintain the remaining track, much of which is covered by vegetation that provides habitat for various rodents and other undesirable pests.

Abandonment would not have any adverse impact on any shipper. Given the absence of rail service on the Lines for over a decade, no active shipper will lose rail service as a result of the abandonment of the Lines. In addition, there is no probative evidence whatsoever that there is any potential for new rail freight service. By way of background, the City's Economic Development Specialist recently conducted a survey of known potential shippers on this line.¹⁰ No shipper indicated any future intent or need to ship via rail over the Lines. Therefore, there is no basis for the Board to find that there is any overriding Federal interest in interstate commerce that would bar abandonment of the Lines.

Granting the instant application would be consistent with precedents in which the ICC and the Board have concluded that an adverse abandonment is appropriate when tracks have been out of service for at least ten years and there was essentially no possibility of restoring service. *See, Chelsea Prop. Owners--Abandonment*, 8 I.C.C.2d 773 (1992), *aff'd sub nom. Consolidated Rail Corp. v. ICC*, 29 F.3d 706 (D.C.Cir. 1994); *Modern Handcraft, Inc.--Abandonment in Jackson County, MO.*, 363 I.C.C. 969 (1981). *Accord, Norfolk & Western Railway Company--Abandonment Exemption--In Cincinnati, Hamilton County, OH*, 3 S.T.B. 110, 118 (1998) ("*Norfolk & Western*").

Abandonment would benefit the community. Not only would abandonment prevent the wasteful expenditure of public funds to cover the cost of reinstalling crossing

¹⁰ *See*, V.S. Laurent at ¶ 7.

gates and signals, but the noise associated with blowing a horn or ringing a bell at each of the nineteen crossings would be avoided. In addition, abandonment would favorably address the environmental concerns that have been voiced by citizens regarding the overgrown portions of track, standing water and the obvious dangers of freight operations through residential areas where the track is located less than 100 feet from housing. *See, V.S. Laurent* at ¶ 3. From an aesthetic viewpoint, the community as a whole would also benefit if the remaining track segments were taken up and properly salvaged, rather than being stacked along the right-of-way. *See* Photographs RR016d through RR016f, RR028d, and RR029c and RR029d.

As the City has also demonstrated, the right-of-way is needed for a valid public purpose, namely the construction of a new sewer line. *V.S. Laurent* at ¶ 12. Also, removal of all remaining track will facilitate clearing snow from the roadways in the Winter months. *Id.* at ¶ 11.

The owners of the underlying real estate will benefit by being able to use that real estate in a manner that is most productive. The dormant track and track materials that remain on its campus are not compatible with plans to expand Holy Cross Village, which is located on the BOHC campus. Holy Cross Village is a senior living continuing care retirement community consisting of 40 independent living cottages, 26 independent living apartments, 16 assisted living apartments and 36 skilled nursing beds (the "Existing Community"). It is planning to expand its senior living facilities with approximately 96 independent living apartments, 30 assisted living apartments and 12 nursing memory support beds (the "Project" and collectively with the Existing Community, the "Community"). *See, V.S. Coffey* at ¶¶ 5 through 10.

The Community is located on approximately 46 acres of land which is owned by BOHC. The assisted living apartment building (Schubert Villa) houses the kitchen, dining room and commons areas for the apartments and the villas. The Skilled Nursing Units building (Dujarie House) has administrative space, a serving kitchen and a separate dining room for nursing residents. The villas are located on the eastern part of the campus bordering State Road 933 North in a residential neighborhood layout, surrounded by lawns and green spaces. The villas were constructed in 1998 through 2003. Twenty-four of the villas are stand-alone homes, while twelve others are duplexes and there is one quadplex unit which houses two one-bedroom units and two two-bedroom units. The independent living apartments are occupied predominantly by members of the Congregation of Holy Cross. Twenty-one of the units are two-bedroom units and five are one-bedroom units. There are 22 underground parking spaces in the structure. The existing apartments (referred to as Riverside Place) were constructed in 1998.

Dujarie House, Schubert Villa and Riverside place are all located between the dormant railroad track and the St. Joseph River and are only accessible by crossing the track. These buildings, along with the new independent living apartment building and several of the independent living cottages, are located quite close to the railroad track. The close proximity is reflected by Photograph RR032. This forces residents and staff to cross the tracks in order to travel between buildings for meals, social activities, religious services and for other reasons.

The potential adverse impact of the right-of-way and the current easement on the construction of the new independent living apartments for senior citizens should also be considered. As previously noted, if the Lines are not abandoned, it will be necessary to

reroute an on-campus road so as to avoid crossing the track. If that were to be done, it would create a traffic safety and congestion problem at the point where the new road would join existing on-campus roads.

Because the planned expansion will further conflict with the existing right-of-way, BOHC wishes to acquire the underlying real estate from NSR that is not covered by the St. Joseph Valley Railroad Company's 1870 appropriation. Abandonment would also allow BOHC and Sisters to quiet title to the remaining real estate on their respective properties. In any event, the remaining track is nothing more than a public nuisance.

It is anticipated that CLS&SB may oppose the instant application and continue to speculate that "it would return to rail transportation coal that currently moves by highway over city streets."¹¹ The Board should pay no heed to such baseless speculation given the demonstrated lack of need for rail freight service and the University's public statements that it will no longer accept shipments of coal by rail. The conclusion must be drawn that there is no overriding need for rail service over the Lines.

Last, in various meetings with City officials and representatives of the Brothers and Sisters, CLS&SB has indicated that if the line is not abandoned and if it were allowed to acquire the lines, it would electrify the line so as to operate a vintage trolley service. There is no overriding Federal interest in the operation of an intra-city electric railway that is not operated as part of the general system of rail transportation. Indeed, the statutory definition of a "rail carrier" in § 10102(5) "does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation."

¹¹ Reply of Chicago, Lake Shore & South Bend

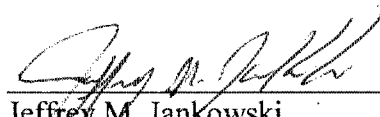
Moreover, the plan to operate vintage trolley cars is fundamentally flawed and infeasible. In the first place, it would be impossible to operate an electrified system under the current configuration of the Portage Avenue underpass. In order to do so, it would be necessary to install electric catenary. As Laurent has explained, “[i]t is unknown if this is feasible, as overhead clearance at the Portage Avenue viaduct over the line is significantly less than the required 29 feet mandated by the National Electrical Safety Code.” *V.S. Laurent* at ¶ 6.

Second, because the southernmost terminus of the Lines is located in an industrial area that is removed from downtown portion of South Bend, it would not provide a convenient means of moving riders from the campuses of the colleges or university to the downtown area. *Id.* at ¶ 5.

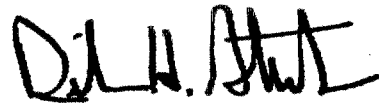
(i) Draft Federal Register notice.

See Attachment A hereto.

Respectfully submitted,



Jeffrey M. Jankowski
Deputy City Attorney
227 West Jefferson Blvd.
South Bend, IN 46601
Counsel to the
City of South Bend, IN
tele: (574) 235-9241
fax: (574) 235-9892



Richard H. Streeter
Richard L. Mintz
Richard J. Deahl
Barnes & Thornburg LLP
750 17th Street, N.W., Suite 900
Washington, D.C. 20006
Counsel to the Brothers of Holy
Cross, Inc. and
Sisters of the Holy Cross, Inc.
tele: (202) 408-6933
fax: (202) 289-1330

Dated: November 17, 2006

DOCKET NO. AB 290 (Sub-No. 286)

**NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN**

ATTACHMENT A

DRAFT FEDERAL REGISTER NOTICE

FEDERAL REGISTER NOTICE
BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Docket No. AB 290 (Sub-No. 286)

NORFOLK SOUTHERN RAILWAY COMPANY
ADVERSE ABANDONMENT
ST. JOSEPH COUNTY, IN

The City of South Bend, Indiana, the Brothers of Holy Cross, Inc. and The Sisters of the Holy Cross, Inc. give notice that on November 17, 2006, they filed with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking the adverse abandonment of approximately 3.7 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP Z09.6 and MP Z010.5, including an industrial spur line that extends from MP Z09.6 in an easterly direction, all of which is located in St. Joseph County, IN. 3.7 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP Z09.6 and MP Z010.5, including an industrial spur line that extends from MP Z09.6 in an easterly direction, all of which is located in St. Joseph County, IN. The affected railroad lines are situated in U.S. Postal Service Zip Codes 46601, 46616, 46617, 46628, 46629 and 46556; they traverse no other U.S. Postal Zip Codes and the lines include no stations.

The public record of the Board contains a system diagram map (SDM) for Norfolk Southern Railway Company (NSR). The NSR SDM does not reflect the lines as being potentially subject to abandonment.

Based on information in the possession of the Applicants, the line does not contain federally granted rights-of-way. Any documentation relating to this abandonment in the Applicants' possession will be made available promptly to those requesting it. The

application can be viewed on the Board's webpage, www.stb.dot.gov, or a copy can be secured from Applicants' counsel, whose name and address appear below. The Applicants' entire case for abandonment was filed with the application.

Any interested person may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying them by the proceedings' docket numbers. These filings are due 45 days after the application is filed. All interested persons should be aware that following any abandonment of rail service and salvage of the line, portions of the line may be suitable for interim trail use. 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 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 opposing the proposed abandonment 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 including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 1925 K Street, N.W., Washington, D.C. 20423-0001, together with a certificate of service attesting that copies

of the comments or protests have been served on Applicants' counsel, Jeffrey M. Jankowski, Deputy City Attorney, 1400 County-City Building, 227 W. Jefferson Boulevard, South Bend, IN, 46601-1830 and Richard H. Streeter, Barnes & Thornburg LLP, Suite 900, 750 17th Street, N.W., Washington, D.C. 20006. Written comments and protests must indicate the proceeding designation STB No. AB-290 (Sub-No. 286). Except as otherwise set forth in 49 C.F.R. 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A 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 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 49 C.F.R. 1152.25.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 565-1592 or refer to the text of the abandonment regulations at 49 C.F.R. 1152.1, et seq., which can be viewed at www.gpo.gov/nara.cfr.

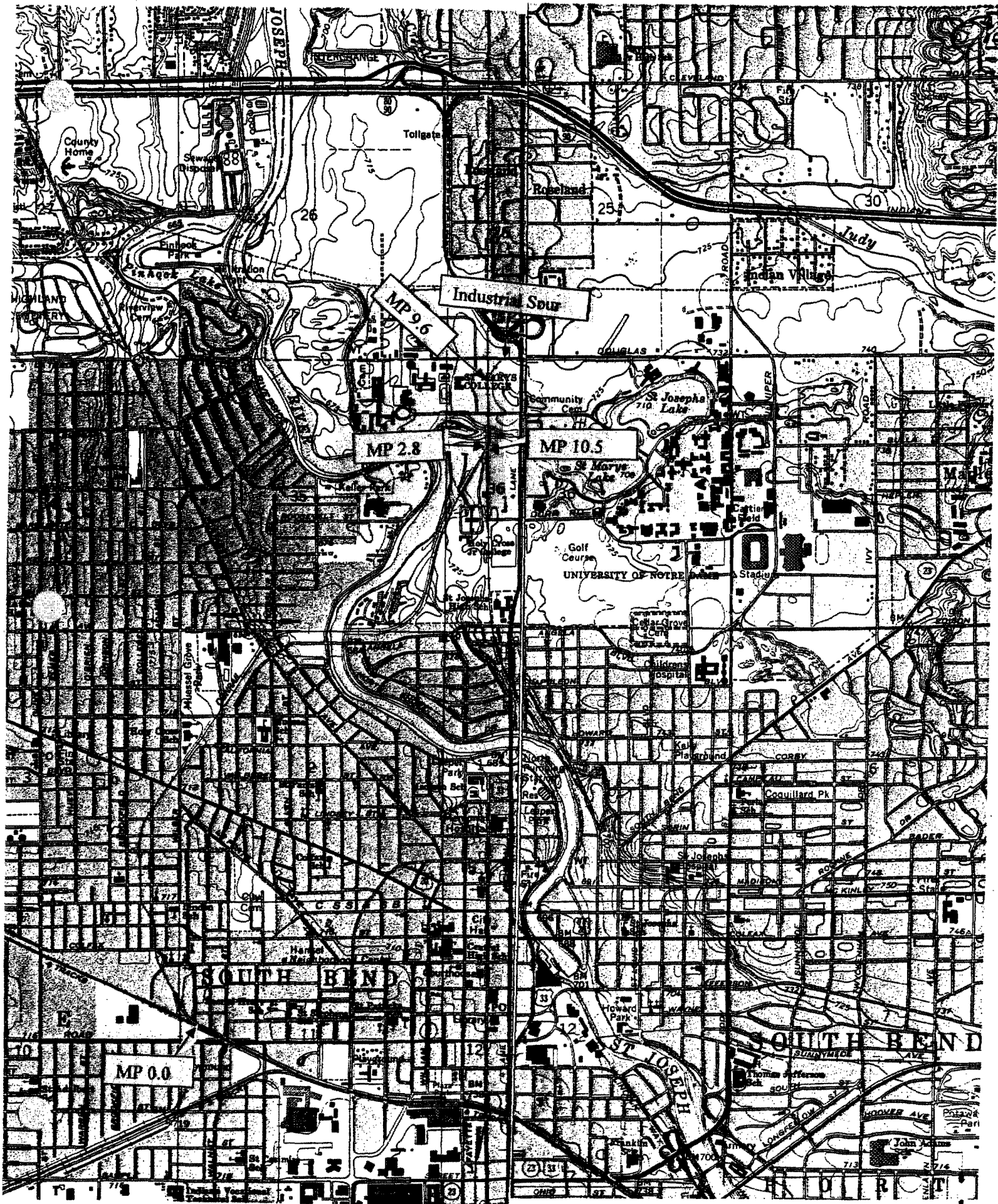
An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain 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.

DOCKET NO. AB 290 (Sub-No. 286)

**NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN**

ATTACHMENT B

MAP



DOCKET NO. AB 290 (Sub-No. 286)

**NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN**

ATTACHMENT C

PHOTOGRAPHS (RR001-RR043)

DOCKET NO. AB 290 (Sub-No. 286)

**NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN**

ATTACHMENT D

**LETTER FROM JANE E. HARDISTY
UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE**

United States Department of Agriculture



Natural Resources Conservation Service
6013 Lakeside Blvd.
Indianapolis, IN 46268

October 18, 2006

Richard H. Streeter
Barnes & Thornburg LLP
750 17th Street, N.W., Suite 900
Washington, D.C. 20006

Dear Mr. Streeter:

The proposed project to abandon approximately 3.2 route miles of railroad in St. Joseph County, Indiana, as referred to in your letter received October 4, 2006, will not cause a conversion of prime farmland.

If you need additional information, please contact Lisa Bolton at 317-290-3200, extension 342.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Hardisty", written over a horizontal line.

ACTING FOR

JANE E. HARDISTY
State Conservationist

DOCKET NO. AB 290 (Sub-No. 286)

**NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN**

ATTACHMENT E

COMBINED ENVIRONMENTAL AND HISTORIC REPORT

October 4, 2006

ALL PARTIES ON THE ATTACHED ENVIRONMENTAL CONTACT LIST

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

Dear Sir / Madam:

On or about October 24, 2006, we expect to be filing with the Surface Transportation Board, on behalf of the City of South Bend, Indiana, along with the Brothers of Holy Cross, Inc., and The Sisters of the Holy Cross, Inc. (collectively "Applicants"), an application to abandon approximately 3.2 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP Z09.6 and MP Z010.5, including an industrial spur line that extends from MP Z09.6 in an easterly direction. The lines are located in St. Joseph County, IN. Attached is a Combined Environmental and Historic Report describing the proposed action and the lack of any expected environmental and historic effects, as well as a map of the affected area.

We are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, NW, Washington, D.C. 20423, telephone 202-565-1545 and refer to the above Docket No. AB 290 (Sub-No. 286). Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to SEA (with a copy to Applicants' representatives) would be appreciated within 3 weeks.

Your comments will be considered by the Board in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact the following representatives directly:

Counsel for the City of South Bend:

Jeffrey M. Jankowski
Deputy City Attorney
227 West Jefferson Blvd.
South Bend, IN 46601
(574) 235-9241

ALL PARTIES ON THE ATTACHED ENVIRONMENTAL CONTACT LIST

October 4, 2006

Page 2

Counsel for the Brothers of Holy Cross, Inc. and The Sisters of the Holy Cross:

Richard H. Streeter
Barnes & Thornburg LLP
750 17th Street, N.W., Suite 900
Washington, D.C. 20006
(202) 408-6933.

Thank you for your consideration in this matter.

Yours truly,



Richard H. Streeter

RHS:rs
Enclosure

DCDS01 RHS 102081v1

BARNES & THORNBURG

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Docket No. AB 290 (Sub-No. 286)

NORFOLK SOUTHERN RAILWAY COMPANY
ADVERSE ABANDONMENT
ST. JOSEPH COUNTY, IN

COMBINED ENVIRONMENTAL AND HISTORIC REPORT OF THE
CITY OF SOUTH BEND, THE BROTHERS OF HOLY CROSS, INC. AND THE SISTERS
OF THE HOLY CROSS, INC.

The City of South Bend, the Brothers of Holy Cross, Inc. and The Sisters of the Holy Cross, Inc. (hereinafter collectively referred to as "Applicants"), in accordance with the reporting requirements of 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), submit this Combined Environmental and Historic Report in connection with the proposed adverse abandonment of lines of railroad in St. Joseph County, IN. In particular, Applicants seek the adverse abandonment of approximately 3.2 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP Z09.6 and MP Z010.5, including an industrial spur line that extends from MP Z09.6 in an easterly direction.

The affected railroad lines, which are owned by the Norfolk Southern Railway Company ("NSR"), are situated in U.S. Postal Service Zip Codes 46601, 46616, 46617, 46628, 46629 and 46556; they traverse no other U.S. Postal Zip Codes. Although the lines include no active stations, there is a dormant station located at Notre Dame, IN.

The Applicants gave notice in their Petition for Waiver and in their Notice of Adverse Abandonment that, on or about October 24, 2006, they intend to file with the Surface Transportation Board ("STB"), Washington, D.C. 20423, an application for adverse

abandonment of those aforementioned lines. A map of the rail lines that will be the subject of the abandonment is attached as Attachment No. 1. A copy of the Applicants' letters notifying Federal, State, and local government agencies of the proposed abandonment and requested comments from them are attached as Attachment No. 2. Responses will be forwarded to the STB as they are received.

All representations made herein are to the best of Applicants' knowledge and information otherwise readily available in Applicants' possession on the date of this Report.

ENVIRONMENTAL REPORT

49 C.F.R. § 1105.7(c)

(1) Proposed action and alternatives.

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.

Response:

The proposed action involves the abandonment of dormant rail lines that are located in the City of South Bend ("City") and on the campuses of the Brothers of Holy Cross, Inc. ("BOHC") and The Sisters of the Holy Cross, Inc. ("Sisters"). Based on information and belief, no rail service has been provided over the subject lines since before 1994. In fact, several segments of rail have been removed and/or paved over. A survey conducted on behalf of the City has confirmed that there is no foreseeable future need for rail service over the lines. Given

the dormant nature of the rail lines, no possible changes in current operations or maintenance practices are anticipated.

Following authorization for the abandonment of the line, Applicants anticipate that the track and track materials that currently remain in place will be removed and salvaged by NSR. There is no intent to remove the bridge over the St. Joseph River, which has been designated as a local historic landmark. If the abandonment is approved, the bridge will be converted to a footbridge for pedestrians. However, the bridge's essential character will be preserved. The City also intends to acquire or condemn the right-of-way that lies within its jurisdictional limits. Following abandonment, the City of South Bend may install a new sewer line under the right-of-way and construct a recreational trail. Removal of the tracks will also assist the City in maintaining its streets and in snow removal in the winter months.

The City, which is the lead applicant, is supported by BOHC and Sisters, whose properties are adversely impacted by the tracks that are located on their private properties. The property owned by BOHC is the site of the campuses of Holy Cross College and Holy Cross Village. Holy Cross Village is northern Indiana's premier continuing care retirement community. Today, Holy Cross Village is in the process of being substantially expanded so that a full continuum of on-site health care can be offered to senior citizens. The property is also the site for other improvements and uses furthering the charitable mission of BOHC (the properties are collectively referred to hereinafter as "the Campus"). Because the remaining tracks are located in the heart of the Campus, they are having an adverse impact on planning for future development.

Sisters own and operate the motherhouse and international headquarters of the Congregation of the Sisters of the Holy Cross and own the land on which the Inn at Saint Mary's

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("INN") is located. In addition, Sisters sponsor Saint Mary's College (the "College"), which is located on the immediately adjacent land. One of the lines of railroad at issue herein runs through land that is owned by Sisters adjacent to the College campus and the Inn. Following abandonment, the Sisters anticipate the further expansion of their facilities.

(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.

Response:

Because no rail operations have been conducted over the lines that are the subject of this proceeding for over 10 years, the abandonment of the lines will not result in any changes in carrier operations. The abandonment will have no impact on local transportation systems and patterns.

(3) Land use.

(i) Based on consultation with local and/or regional planning agencies and/or a 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.

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

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

(iv). 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.

Response:

(i) Abandonment and acquisition of the right-of-way that is within the jurisdictional limits of City is consistent with existing land use plans. The right-of-way, which will either be acquired or condemned, will be used for a new sewer line and for a recreational trail. The right-of-way that is located on the campuses of BOHC and Sisters will be used to expand existing facilities.

(ii) Not applicable as the lines are not located in agricultural land.

(iii) Not applicable as the lines are not located within a designated coastal zone.

(iv). A portion of the land is suitable for other public purposes. As noted above, City intends to acquire or condemn the right-of-way that lies within its jurisdiction and will thereafter locate a new sewer within the right-of-way. City also anticipates creation of a bike and pedestrian trail over that same portion of the right-of-way. The land that is located on the campuses of BOHC and Sisters is not suitable for other public purposes due to the private nature of the properties. However, BOHC and Sisters intend to expand their private facilities once the lines that are located on their campuses are abandoned.

(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.

(iv) 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 data and methodology used to arrive at the figure given.

Response:

- (i) The proposed action will have no effect on transportation of energy resources.**
- (ii) The proposed action will have no effect on transportation of recyclable commodities.**
- (iii) Due to the dormant nature of the line, the proposed action will result in neither an increase or decrease in overall energy efficiency.**
- (iv) The proposed transaction will not cause any diversions from rail to motor.**

(5) Air.

(i) If the proposed action will result in either:

(A) An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal; or

(B) an increase in rail yard activity of at least 100% (measured by carload activity); or

(C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

(ii) If the proposed action affects a class 1 or non-attainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,

(B) An increase in rail yard activity of at least 20% (measured by carload activity); or

(C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. §10901 (or 49 U.S.C. §10505), or a case involving the reinstitution of service over a previously abandoned line, only the three-train-a-day threshold in this item shall apply.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and Freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

Response:

The proposed abandonment will not result in any increase in rail or truck traffic. As a result, it will have no impact on the air. Last, there will be no transportation of ozone depleting materials.

(6) Noise.

If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more; or

(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.

Response:

Because the subject lines are dormant and because there will be no future rail service on the lines, no incremental increases in noise levels are anticipated as a result of the proposed action of abandonment.

(7) Safety.

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

(ii) 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.

(iii) 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.

Response:

(i) There are no anticipated adverse effects on public health and safety, and the abandonment, by removing dormant track and track materials from multiple grade crossings and from college campuses should improve public health and safety.

(ii) No hazardous materials are expected to be transported.

(iii) Applicants are not aware of any hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way.

(8) Biological resources.

(i) 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.

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

Response:

(i) No adverse effects are anticipated on endangered or threatened species, or areas designated as critical habitat as a result of this action.

(ii) No adverse effects are anticipated on wildlife sanctuaries or on National or State parks or forests as a result of this action.

(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 inconsistencies.

(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 effects.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

Response:

(i) There are no anticipated adverse effects on water quality. No bridges over water will be removed as part of the proposed abandonment. Therefore, Applicants believe that the proposed abandonment will not have a significant effect on water quality and is not aware of any inconsistencies with applicable Federal, State and local water quality standards.

(ii) and (iii) Applicants do not anticipate the need to request permits under section 402 or 404 of the Clean Water Act. A review of the maps maintained by the Area Plan Commission -- St. Joseph County, IN indicates that there are no designated wetlands or 100-year flood plains that would be impacted by the proposed action.

(10) Proposed Mitigation.

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

Response:

Not applicable. Applicants do not anticipate any adverse environmental impacts from the proposed abandonment and therefore no mitigation measures are contemplated.

HISTORIC REPORT

49 C.F.R. § 1105.8(d)

(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action.

Response:

Attachment No. 1 is a map that reflects the location of the proposed action. Applicants are without knowledge regarding any railroad-owned structure, other than the railroad bridge that crosses the St. Joseph River, that is 50 years or older. Applicants are informed that the bridge is designated as a local historic landmark. The abandonment of the line will have no impact on this structure. Any improvements that may be made to the bridge that would permit it to be used as a pedestrian walkway will not change its essential character.

(2) A written description of the right-of-way (including approximate widths to the extent known), and the topography and urban and/or rural characteristics of the surrounding area.

Response:

The lines of railroad extend between UV0.0 (which is located in downtown South Bend, IN at the point of interchange with the Norfolk Southern Railway) and MP UV2.8 (located on BOHC's campus) and between MP Z09.6 (located on Sisters' campus) and MP Z010.5 (located on BOHC's campus), including an industrial spur line (also located on the Sisters' campus) that

extends from MP Z09.6 approximately 576 feet to the intersection of U.S. Highway 31 in St. Joseph County, IN. The total distance of the lines is approximately 3.2 miles.

Upon information and belief, between MP UV0.0 and MP UV2.8, the railroad right-of-way is 100 feet wide. The right-of-way between MP Z09.6 and MPZ10.5 consists of a railroad easement that is 60 feet wide. The right-of-way for the industrial spur, which is also based on an easement, is 50 feet.

The applicable lines are located in both industrial and residential areas, as well as on the campuses of BOHC and Sisters. The topography is generally flat. As noted above, the line between MP UV0.0 and MP UV2.8 crosses the St. Joseph River in the vicinity of MP UV 2.4.

(3) Good quality photographs (actual photographs prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area.

Response:

A photograph of the only railroad structure on the lines is attached as Attachment 3.

(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known.

Applicants do not own the subject lines and are without knowledge relating to past operations. Applicants believe that the line that extends from MP UV0.0 to MP UV2.8 may have been completed in 1871 by the Michigan Air Line Railroad Company. For an abbreviated account of the historic background of the subject lines, see, *History of the Michigan Central Railroad Company and its predecessors from the 1913 Annual Report of the New York Central Railroad System*. A relevant portion of the 1913 Annual Report is reproduced at:
<http://web.archive.org/web/20011115074648/www.railroad.net/nyc/mc/html>.

Applicants believe that the segment of track that extends between MP Z09.6 and MPZ10.5 was constructed in the 1870s and was part of the line of the St. Joseph Railroad Company that extended between Niles, Michigan and South Bend, IN. That line was ultimately acquired by Conrail prior to its sale to NSR. By its Certificate and Decision in AB 167 (Sub-No. 672N), *Conrail Abandonment in Berrien County, MI and St. Joseph County, IN*, served August 31, 1984, the Interstate Commerce Commission ("ICC") authorized Conrail to abandon that portion of the line north of Milepost ZO 9.6 between Milepost 3.1 and 9.6. Furthermore, the line south of Milepost ZO 10.5, between Milepost 10.5 and Milepost 11.8 was previously authorized to be abandoned in AB 167 (Sub-No. 407N). The ICC's Certificate and Decision authorizing this abandonment was served April 15, 1982.

Applicants also believe that the industrial spur that extends to the University of Notre Dame from the former mainline between Niles and South Bend was constructed in late 1902 or early 1903 by the Michigan Air Line Railroad. By that point in time, the St. Joseph Railroad Company had been merged into the Michigan Central Railroad.

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action:

Response:

Based on information and belief, no rail service has been offered over the subject lines for over a decade. As a result, any freight service that may have been offered over this line was diverted to truck or to other rail carriers more than 10 years ago. No operational changes are contemplated as a result of the proposed action. Upon obtaining Board authority, Applicants intend to request NSR to remove the rail and other track materials from the lines and to perform related clean-up. Applicants do not know whether NSR intends to recycle materials, where

possible, by using them on other parts of its systems. Applicants will request NSR to not remove any bridges or culverts on the lines.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic:

Response:

Applicants, who do not own the lines, have no such documents in their possession.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities).

Response:

Based on information in their possession regarding the site and railroad structures, Applicants do not believe that they meet the criteria for listing on the National Register of Historic Places. Although the railroad bridge across the St. Joseph River has been designated as a local historic landmark, there is nothing unique about it. As reflected by the attached photograph, it is an ordinary steel girder bridge resting on concrete pilings. Please refer to photographs of bridge included with Appendix 1. In any event, the structure will not be affected as a result of the abandonment.

Applicants also believe that no culturally significant locations, archaeological sites or unique land forms will be affected by the proposed abandonment. Applicants are requesting

comments regarding this abandonment from the Indiana Department of Natural Resources, Division of Historic Preservation and Archeology in its capacity as SHPO.

(8) A description (based on readily available information in the railroad's possession) of any known prior sub-surface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

Response:

Based on readily available information in their possession, Applicants are not aware of any prior subsurface ground disturbance or fill or environmental conditions (naturally occurring or man-made) that might affect the archeological recovery of resources.

ATTACHMENT 1



ATTACHMENT 2

September 28, 2006

ALL PARTIES ON THE ATTACHED ENVIRONMENTAL CONTACT LIST

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

Dear Sir / Madam:

The City of South Bend, Indiana, along with the Brothers of Holy Cross, Inc., The Sisters of the Holy Cross, Inc. (collectively "Applicants"), expect shortly to file with the Surface Transportation Board ("Board") an application to abandon approximately 3.2 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP Z09.6 and MP Z010.5, including an industrial spur line that extends several hundred feet from MP Z09.6 in an easterly direction. The lines are located in St. Joseph County, IN. A map showing the location of the lines is attached for your reference.

In accordance with the Board's environmental regulations, 49 C.F.R. § 1105, we are advising you of the proposed abandonment so that you may assist us in identifying any potential effects it may have on the following:

1. Regional or local land use plans;
2. Regional or local transportation systems and patterns, including alternative transportation modes;
3. Energy consumption and efficiency
4. Air emissions and noise levels
5. Bodies of water and overall water quality under applicable federal, state or local standards;
6. Designated wetlands and 100-year flood plains;
7. Endangered or threatened species and critical habitats;
8. Wildlife sanctuaries or refuges and national or state parks or forests;
9. Existing or potential safety hazards; or
10. Coastal Zone Management Areas.

Please also advise us if permits under Section 402 or 404 of the Clean Water Act (33 U.S.C. §§ 1342, 1344) are required for the proposed abandonment.

We would appreciate your review of the proposed action and provision of any comments you may have in a written response as soon as possible. Any written comments should reference Docket No. AB-290 (Sub-No. 286) and be sent to:

ALL PARTIES ON THE ATTACHED ENVIRONMENTAL CONTACT LIST

September 28, 2006

Page 2

Jeffrey M. Jankowski
Deputy City Attorney
227 West Jefferson Blvd.
South Bend, IN 46601

and

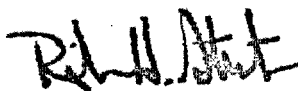
Richard H. Streeter
Barnes & Thornburg LLP
750 17th Street, N.W., Suite 900
Washington, D.C. 20006

with a copy to:

Surface Transportation Board
Section of Environmental Analysis
Room 500
1925 K Street, N.W.
Washington, D.C. 20423-0001

In accordance with the Board's regulations, a copy of the Environmental Report prepared in connection with this abandonment will be forwarded to you at least twenty days before the petition for exemption is filed at the Board. If you have any questions or need additional information in the meantime, please feel free to contact Jeffrey M. Jankowski at 574-235-9241 or Richard H. Streeter at 202-408-6933.

Yours truly,



Richard H. Streeter

RHS:rs
Enclosure

DCDS01 RHS 102081v1

BARNES & THORNBURG

ATTACHMENT 3



ENVIRONMENTAL CONTACT LIST

The City of South Bend, IN, Brothers of the Holy Cross, Inc., The Sisters of the Holy Cross, Inc.

State Clearinghouse

Indiana Department of Transportation
Railroad Section
100 N. Senate Avenue
1GC-N, Room N901
Indianapolis, IN 46204

State Environmental Protection Agency

Indiana Department of Environmental Management
Indiana Government Center
100 N. Senate Avenue
Indianapolis, IN 46205

State Coastal Management Agency

Indiana Department of Natural Resources
Division of Water
402 West Washington Street, Room W2615
Indianapolis, IN 46204

Head of Each County

Mark Dobson
South Bend County Commissioner - District 1
227 W. Jefferson Blvd., 7th Floor
South Bend, IN 46601

Steven Ross
South Bend County Commissioner - District 2
227 W. Jefferson Blvd., 7th Floor
South Bend, IN 46601

Cynthia Bodle
South Bend County Commissioner - District 3
227 W. Jefferson Blvd., 7th Floor
South Bend, IN 46601

Environmental Protection Agency - Regional Office for Indiana

US EPA Region 5
Office of Strategic Environmental Analysis
77 W. Jackson Blvd.
Chicago, IL 60604

U.S. Fish and Wildlife Service

H. Dale Hall, Director
U.S. Fish and Wildlife Service
1849 C Street, NW
#3256
Washington, DC 20240

Region 3 Office
One Federal Drive
BHW Federal Building
Fort Snelling, MN 55111-4056

U.S. Army Corps of Engineers

Headquarters
441 G Street, NW
Washington, DC 20314

U.S. Army Engineer District, Detroit
McNamara Federal Building
477 Michigan Avenue
Detroit, MI 48226-2575

National Park Service - Department of Interior

Fran P. Mainella, Director
National Park Service
1849 C Street, NW
Washington, DC 20240

National Resource Conservation Service (formerly U.S. Soil Conservation Service)

Arlen Lancaster, Chief
1400 Independence Ave., SW
Room 5105-A
Washington, DC 20520

National Geodetic Survey

NGS Information Services
NOAA, N/NGS12
National Geodetic Survey SSMC-3, #9202
1315 East West Highway
Silver Spring, MD 20910-3282

Professor Boudewijn H. W. vanGelder
State Geodetic Coordinator
Geomatics Engineering
School of Civil Engineering, Purdue University
550 Stadium Mall Drive
West Lafayette, IN 47907-2051

State Historic Preservation Office

Indiana Department of Natural Resources
Division of Historic Preservation and Archeology
402 West Washington Street
Indiana Government Center South, Room W256
Indianapolis, IN 46204

Natural Resources Conservation Service

Natural Resources Conservation Service
USDA
6013 Lakeside Boulevard
Indianapolis, IN 46278



Indiana Department of Natural Resources

Division of Historic Preservation & Archaeology • 402 W. Washington Street, W274 • Indianapolis, IN 46204-2739
Phone 317-232-1646 • Fax 317-232-0693 • dhpa@dnr.IN.gov

Mitchell E. Daniels, Jr., Governor
Kyle J. Hupfer, Director



October 6, 2006

Richard Streeter
Barnes & Thornburg, LLP
750 17th Street N.W., Suite 900
Washington, D.C. 20006-4675

Federal Agency: Surface Transportation Board

Re: Information regarding abandonment of 3.2 miles of railroad between MP UV 0.0 and MP UV2.8 and between MP Z09.6 and MP Z010.5 (AB-290 (Sub-No. 286))

Dear Mr. Streeter:

Pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) and 36 C.F.R. Part 800, the staff of the Indiana State Historic Preservation Officer ("Indiana SHPO") has conducted an analysis of the materials dated September 28, 2006 and received on October 2, 2006 for the above indicated project in St. Joseph County, Indiana.

In accordance with 36 C.F.R. 800.4(b)(1), the Federal agency official shall make a reasonable and good faith effort to carry out appropriate identification and evaluation efforts and take into account past planning, research and studies, the magnitude and nature of the undertaking as well as the extent of potential effects the identified undertaking may have on historic properties. The Indiana SHPO respectfully cites this regulation to remind the Federal agency official(s) that it is their responsibility to identify not only the undertaking but what (if any) effects said undertaking may have on historic properties.

A complete analysis of the submitted project is not possible, as the information provided is incomplete. Please provide the indicated information to facilitate the identification and analysis of historic properties in the project area:

- 1) Provide an overall description of the project and its location.
 - Include address, city, and township.
 - Detail any construction, demolition, and earthmoving activities.
- 2) Define the area of potential effects¹ and provide a map or a good quality photocopy of a map containing the following:
 - The boundaries of the area of potential effects and the precise location of the project area within those boundaries clearly outlined in dark ink on a copy of the relevant portion of a town, city, county, or U.S. Geological Survey quadrangle map.
 - The names of nearby landmarks clearly labeled (e.g., major streets, roads, highways, railroads, rivers, lakes).
- 3) Give the precise location of any buildings, structures, and objects *within the area of potential effects* (e.g., addresses and a site map with properties keyed to it).

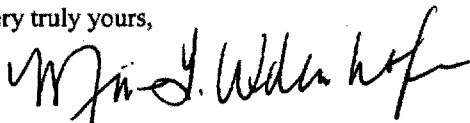
¹ Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (see 36 C.F.R. § 800.16[d]).

- 4) Give the known or approximate date of construction for buildings, structures, objects, and districts *within the area of potential effects*.
- 5) Submit historical documentation for buildings, structures, objects, and districts *within the area of potential effects*. The Indiana SHPO recommends consulting the 2000 St. Joseph County Interim Report for this information.
- 6) List all sources checked for your historical research of the *area of potential effects*.
- 7) Provide recent, clear photographs or good quality computer-generated images (not photocopies or aerial photographs), keyed to a site plan, showing the exterior of any buildings, structures, objects, or land *that could be affected in any way by the project*.

In accordance with 36 C.F.R. 800.2(c)(ii)(F)(4), the Federal agency official shall notify the SHPO/THPO when an applicant or group of applicants is authorized to initiate consultation with the SHPO/THPO and others. Therefore, the Indiana SHPO requests that Barnes & Thornburg provide a letter or copy of a letter from the STB indicating the authorized representatives who may act on its behalf. Once this information is received, the Indiana SHPO will resume identification and evaluation procedures for this project. Please keep in mind that additional information may be requested in the future.

A copy of the revised 36 C.F.R. Part 800 that went into effect on August 5, 2004, may be found on the Internet at www.achp.gov for your reference. If you have questions, please contact Miriam Widenhofer of our office at (317) 232-1646 or consult our website located at <http://www.in.gov/dnr/historic/106process.html>.

Very truly yours,



Miriam L. Widenhofer
Structures Review Assistant

MLW:mlw

cc: Elaine K. Kaiser, Surface Transportation Board

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

October 12, 2006

Kyle J. Hupfer
State Historic Preservation Officer
Indiana Department of Natural Resources
Division of Historic Preservation and Archeology
402 W. Washington Street, W274
Indianapolis, IN 46204-2739

Re: Authorization of Applicant Consultation for Railroad
Abandonment Proceedings, Pursuant to 36 CFR 800.2(c)(4)

Dear Director Hupfer:

The Surface Transportation Board (Board) is the agency charged with overseeing common carrier railroad abandonment proceedings. The Board's Section of Environmental Analysis (SEA) is the office within the Board responsible for conducting the environmental review of railroad abandonment proceedings, pursuant to the National Environmental Policy Act, the National Historic Preservation Act (NHPA), and related environmental laws.

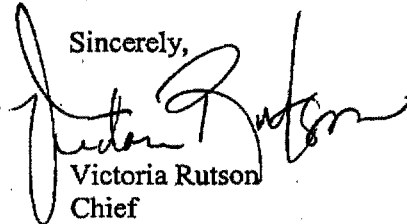
The Board's environmental rules at 49 CFR Part 1105 require applicants in railroad abandonment proceedings to prepare environmental and historic reports in consultation with appropriate Federal, state and local agencies and to submit these reports to the appropriate agencies for review at least 20 days before seeking authority from the Board to abandon a line of railroad. In particular, the regulations regarding historic reports specify that applicants must submit the historic report to the appropriate State Historic Preservation Officer (see 49 CFR 1105.8).

We understand that, prior to reviewing historic reports prepared by applicants, your office requires a letter from SEA formally delegating applicants to consult with your agency pursuant to the Section 106 process of NHPA (see 36 CFR 800.2(c)(4)). Thus, we are formally delegating all applicants and potential applicants for railroad abandonment proceedings the authority to consult with your agency pursuant to the Board's environmental regulations at 49 CFR Part 1105. This consultation includes, but is not limited to, the submission of letters seeking information from your agency and the

submission of historic reports prepared to assist your agency in determining whether historic properties would be affected by a potential railroad abandonment proceeding.

If you need additional information or would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson", written over the printed name.

Victoria Rutson
Chief

Section of Environmental Analysis

BARNES & THORNBURG LLP

Richard H. Streeter
(202) 408-6933
Email: richard.streeter@btlaw.com

750 17th Street, N.W.
Suite 900
Washington, D.C. 20006 U.S.A.
(202) 289-1313
(202) 289-1330 - Fax
www.btlaw.com

October 31, 2006

VIA FEDERAL EXPRESS

Miriam L. Widenhofer
Structures Review Assistant
Indiana Department of Natural Resources
Division of Historic Preservation
402 West Washington Street, W274
Indianapolis, IN 46204-2739

RE: STB Docket No. AB 290 (Sub-No. 286), Norfolk Southern Railway
Company--Adverse Abandonment in St. Joseph County, IN

Dear Ms. Widenhofer:

Based upon receipt of a copy of a letter addressed to Kyle J. Hupfer from Victoria Rutson, Chief, Section of Environmental Analysis, Surface Transportation Board ("STB"), dated October 12, 2006, I am advised that the STB has formally delegated authority to the City of South Bend, Indiana, the Brothers of Holy Cross, Inc. ("BOHC") and The Sisters of the Holy Cross, Inc. ("Sisters"), who are the applicants in the above-referenced matter, to consult with your agency. A copy of Ms. Rutson's letter is attached for your file.

In your letter dated October 6, 2006, which is addressed to me, you have raised certain questions and asked the applicants to provide additional information related to the proposed abandonment. In partial answer to your letter, be advised as follows:

- 1) Provide an overall description of the project and its location.
 - Include address, city, and township.

Response: The project involves the removal of what remains of track and track materials that are located within the right-of-way of a line of railroad that is located in South Bend and Notre Dame, Indiana. The line, which has no known street address, has not been operated since it was acquired by Norfolk Southern Railway Company ("NSR") from Conrail several years ago.

Consistent with the STB's past practices, the area of potential effects consists only of the right-of-way corridor. With the exception of the bridge that crosses the St. Joseph River, there are no historic properties that either are located within the right-of-way or that would be impacted either directly or indirectly by the removal of the track and track materials from the right-of-way.

The right-of-way, which spans a distance of 3.7 miles, begins near the interchange with the main line of the NSR, which is designated as Milepost 0.0. As you will see from Photograph RR001 on the disc that is enclosed herewith, there is no street address at the interchange point, which is located on the north side of the NSR mainlines that traverse the City of South Bend in an east/west direction. This point of interchange is categorized as an industrial area. As reflected by Photographs RR002 through RR007b, much of the right-of-way in this area, which extends in a north by north east direction, is overgrown with weeds. Just south of a crossing located at the facilities of Hurwich Iron, a berm has been built over the track. *See*, Photographs RR006 through RR006b.

Immediately north of the crossing Hurich Iron, the line passes a modern building located at the intersection of Washington and Circle Streets. *See*, Photographs RR007b and RR007c. Photograph RR007d reflects neighboring buildings on the other side of Circle Street. Thereafter, the line extends in a northerly direction from near the intersection of Washington and College Streets through the west side of South Building, which appears to be primarily a residential area with some small businesses located therein. *See generally*, Photographs RR008 through RR027g.

Several of the photographs reflect the dense vegetation that currently covers much of the track structure. At other points the right-of-way has been paved over and even barricaded by steel walls that have been erected over the track on Longley Avenue and Werwinski Street. *See*, e.g., photographs RR014a through RR014c (Longley Avenue) and RR014e (Werwinski Street). Photograph RR014f reflects the view to the east from the intersection of College and Werwinski Streets, while Photograph RR015a reflects the view to the north.

Photographs RR016a through RR016f show the crossing at Lincoln Way, which is a major highway that passes through South Bend. Photographs RR016d through RR016f reflect track that was previously removed from the Lincoln Way crossing and is now stacked along side a modern facility.

Photographs RR017 through RR019b reflect the track, much of which is overgrown, that continues from a point immediately north of the Lincoln Way crossing to the Portage Avenue overpass. A residential area is located to the east of the line, while a park and commercial development are located to the west.

Photographs RR020a through Photograph RR021 reflect the track that is located to the east of the Portage Avenue overpass. As the photographs reflect, the track, which is located in an industrial area, is overgrown with vegetation. Moreover, the right-of-way has been littered with old tires and other debris.

Photograph RR022 reflects the location of the right-of-way next to a modern industrial building at a point that is east of the point where the line will cross the St. Joseph River. The temporary fence that has been erected to prevent trespassers from gaining access to the bridge can be seen in Photograph RR022. Photographs RR023 through RR025b are of the bridge, which is the only railroad structure on the entire line, other than the track itself.

Photographs RR026 through RR027g reveal that portion of the track (beginning at the point where the line crosses over North Shore Drive) that lies to the east of the St. Joseph River and that parallels West Angela. Photographs RR026 shows that the line has been cut and paved over at North Shore Drive. Photographs RR027a through RR027g reflect the undeveloped land that lies between residential areas that stretch from the river to the boundary of the BOHC campus.

The remaining portion of the right-of-way is located on the campuses of the Brothers and the Sisters. Photographs RR029 through RR039 were taken on the BOHC campus. As reflected by Photographs RR032, the right-of-way is located adjacent to a portion of a retirement village that is being constructed on that campus.

Photographs RR041 and RR042 reflect MP 2.8, which is the termination point of the line that began at Milepost 0.0. At this point, the line intersects with what remains of a segment of the former line of railroad that extended from Niles, Michigan to South Bend, Indiana. This right of way extends from Milepost ZO 10.5 in a northerly direction from the BOHC campus to the campus of the Sisters. The Sisters' campus begins at a point located in the area captured in Photograph RR040. The mainline terminates at Milepost ZO 9.6, which is also located on the Sisters' campus. See, Photograph RR042. An industrial spur, which is beyond the jurisdiction of the STB, extends from that point in an easterly direction. See, Photographs RR042 and RR043.

- Detail any construction, demolition, and earthmoving activities.

There will be no construction within the right-of-way. The steel track, steel track materials, such as tie bars, bolts, anchors, and wooden crossties will be removed and, when possible, recycled. There may be minimal earthmoving activities associated with the removal of the track.

2) Define the area of potential effects and provide a map or a good quality photocopy of a map containing the following:

- The boundaries of the area of potential effects and the precise location of the project area within those boundaries clearly outlined in dark ink on a copy of the relevant portion of a town, city, county, or U.S. Geological Survey quadrangle map.

The attached maps, which include a photocopy of the latest U.S. Geological Survey quadrangle map for the City of South Bend, identify the boundaries and precise location of the right-of-way. Note that the U.S. Geological Survey map identifies the line of railroad as belonging to Conrail.

- The names of nearby landmarks clearly labeled (e.g., major streets, roads, highways, railroads, rivers, lakes).

See maps.

3) Give the precise location of any buildings, structures, and objects *within the area of potential effects* (e.g., addresses and a site map with properties keyed to it).

There are no buildings or objects located with the area of potential effects. The only structure that is located with the area of potential effects is the railroad bridge that crosses the St. Joseph River.

4) Give the known or approximate date of construction for buildings, structures, objects, and districts *within the area of potential effects*.

Based on information and belief, the railroad bridge that crosses the St. Joseph River was constructed in 1928 or 1929.

5) Submit historical documentation for buildings, structures, objects, and districts *within the area of potential effects*. The Indiana SHPO recommends consulting the 2000 St. Joseph County Interim Report for this information.

The attached letter from Catherine D. Hostetler, Director, Historic Preservation Commission of South Bend & St. Joseph County, concludes that there are no buildings, structures, objects, and districts within the area of potential effects. That conclusion was based on site visits and a review of relevant documents and sources such as the 2006 St. Joseph County Interim Report.

6) List all sources checked for your historical research of the *within the area of potential effects*.

The attached letter from Ms. Hostetler was based on her personal review of the right of way. Other sources maintained by the Historic Preservation Commission of South Bend & St. Joseph County that were reviewed include the St. Joseph Interim Report, dated June 1993; the documentation for the *Proposed Local Landmark, Norfolk & Southern R.R. Bridge, South Bend, Indiana*, dated August 2000; and the *Auto Tour Guide of the Historic Sites and Structures, Saint Joseph County, IN*, 2nd ed., June 1986.

7) Provide recent, clear photographs or good quality computer-generated images (not photocopies or aerial photographs), keyed to a site plan, showing the exterior of any buildings, structures, objects, or land *that could be affected in any way by the project*.

There is no "site plan" that is involved with the removal of the track and track materials from the right-of-way. See the enclosed disk which contains recent photographs of the right-of-way.

Miriam L. Widenhofer
October 31, 2006
Page 5

Should you require additional information, please contact Jeffrey M. Jankowski, Deputy City Attorney, 1400 County-City Building, 227 W. Jefferson Boulevard, South Bend, IN, 46601-1830 and/or Richard H. Streeter, Barnes & Thornburg LLP, Suite 900, 750 17th Street, N.W., Washington, D.C. 20006. Your immediate consideration of this matter would be greatly appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "R.H. Streeter", written over a horizontal line.

Richard H. Streeter

RHS:rs

Enclosures

cc: Jeff Jankowski

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

October 12, 2006

Kyle J. Hupfer
State Historic Preservation Officer
Indiana Department of Natural Resources
Division of Historic Preservation and Archeology
402 W. Washington Street, W274
Indianapolis, IN 46204-2739

Re: Authorization of Applicant Consultation for Railroad
 Abandonment Proceedings, Pursuant to 36 CFR 800.2(c)(4)

Dear Director Hupfer:

The Surface Transportation Board (Board) is the agency charged with overseeing common carrier railroad abandonment proceedings. The Board's Section of Environmental Analysis (SEA) is the office within the Board responsible for conducting the environmental review of railroad abandonment proceedings, pursuant to the National Environmental Policy Act, the National Historic Preservation Act (NHPA), and related environmental laws.

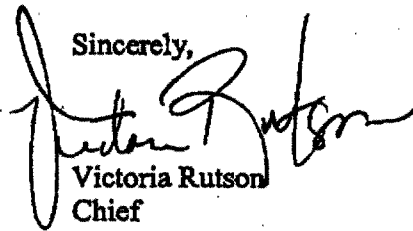
The Board's environmental rules at 49 CFR Part 1105 require applicants in railroad abandonment proceedings to prepare environmental and historic reports in consultation with appropriate Federal, state and local agencies and to submit these reports to the appropriate agencies for review at least 20 days before seeking authority from the Board to abandon a line of railroad. In particular, the regulations regarding historic reports specify that applicants must submit the historic report to the appropriate State Historic Preservation Officer (see 49 CFR 1105.8).

We understand that, prior to reviewing historic reports prepared by applicants, your office requires a letter from SEA formally delegating applicants to consult with your agency pursuant to the Section 106 process of NHPA (see 36 CFR 800.2(c)(4)). Thus, we are formally delegating all applicants and potential applicants for railroad abandonment proceedings the authority to consult with your agency pursuant to the Board's environmental regulations at 49 CFR Part 1105. This consultation includes, but is not limited to, the submission of letters seeking information from your agency and the

submission of historic reports prepared to assist your agency in determining whether historic properties would be affected by a potential railroad abandonment proceeding.

If you need additional information or would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson", written over the printed name.

Victoria Rutson

Chief

Section of Environmental Analysis



South Bend and St. Joseph County
HISTORIC PRESERVATION COMMISSION

227 WEST JEFFERSON BLVD.
SOUTH BEND, IN 46601-1830

Phone: 574-235-9798

Fax: 574-235-9578

e-mail: SBSJCHPC@co.st-joseph.in.us



Lynn A. Patrick, President

A Certified Local Government

Catherine D. Hostetler, Director

October 26, 2006

Mr. Richard H. Streeter
Barnes & Thornburg LLP
Suite 900
750 17th Street N.W.
Washington, D.C. 20006-4675

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

Dear Mr. Streeter,

As the Director of the Historic Preservation Commission of South Bend and St. Joseph County I am responding to the October 20, 2006 letter to Miriam L. Widenhofer concerning the abandonment of about 3.2 miles of railway track owned by Norfolk Southern Railway Company in South Bend and St. Joseph County, Indiana. I have reviewed and inspected the right-of-way corridor outlined in the report and find that other than the landmarked bridge that there are no historic sites or structures within the area of potential effects. The removal of the tracks from the landmarked (Ordinance No. 9234-01) steel girder railroad bridge crossing the St. Joseph River near Angela Boulevard will not have an adverse effect on that structure.

Please contact this office with any changes to the scope of this project for our further review.

Sincerely,

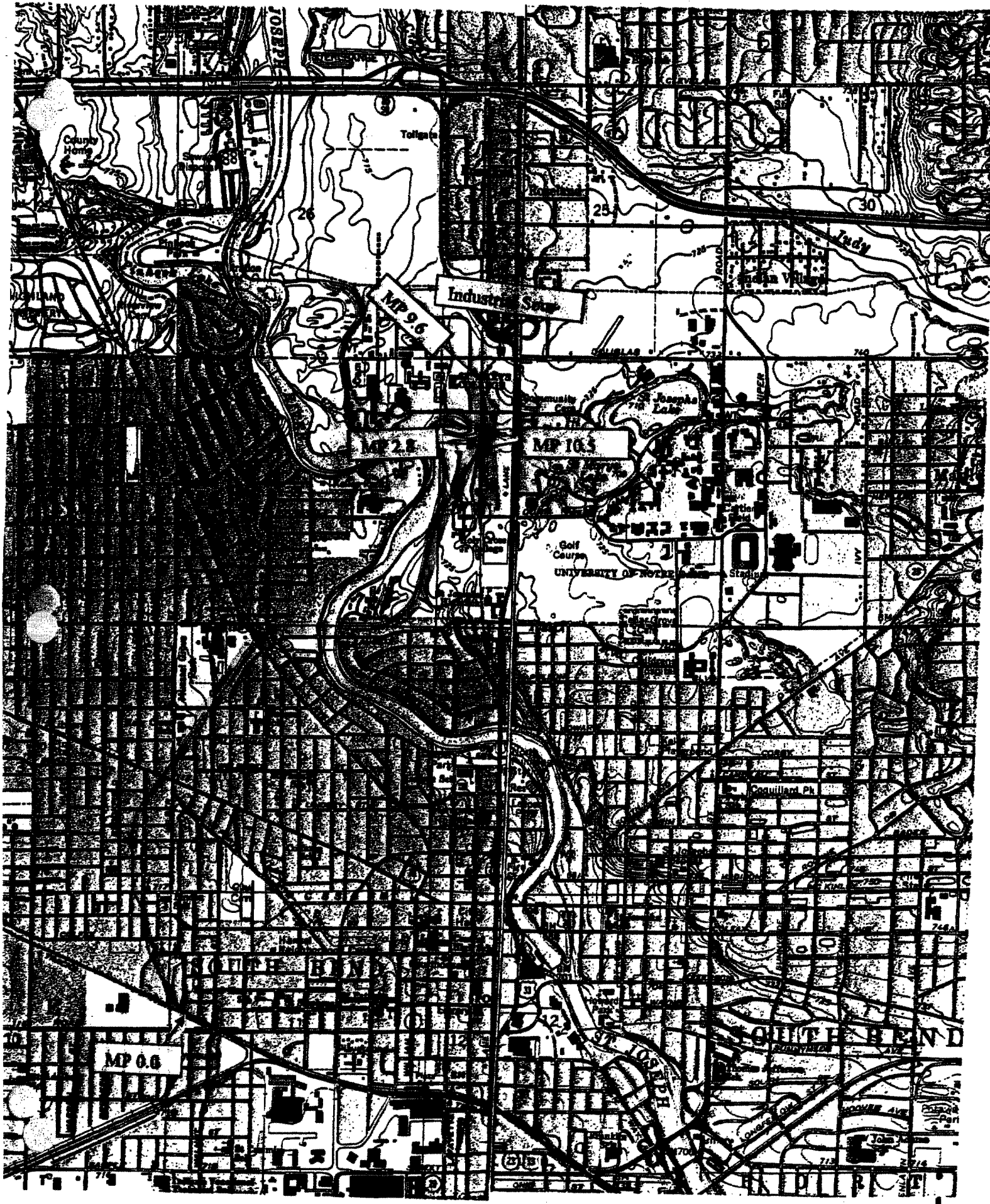
Catherine D. Hostetler,
Director

COMMISSIONERS

Mary Jane Chase (Secretary)
Martha Choitz
Catherine Hostetler

Shawn E. Peterson, Attorney
Timothy S. Kluszczinski (Treasurer)
Joann Sporleder (Architectural Historian)

Gerald Ujdak
Linda Riley
Todd Zeiger (Vice-President)





29 1406 dragon tr.
italianate

31★ 60644 hickory
vernacular (jacobean)

33★ 13271 adams rd.
vernacular (ital.)

35★ 18075 roosevelt
vernacular (greek)

37★ 63444 turkey tr.
italianate

3



30★ 668 bremen hwy
towered italianate

32★ 19109 johnson
neo-jacobean

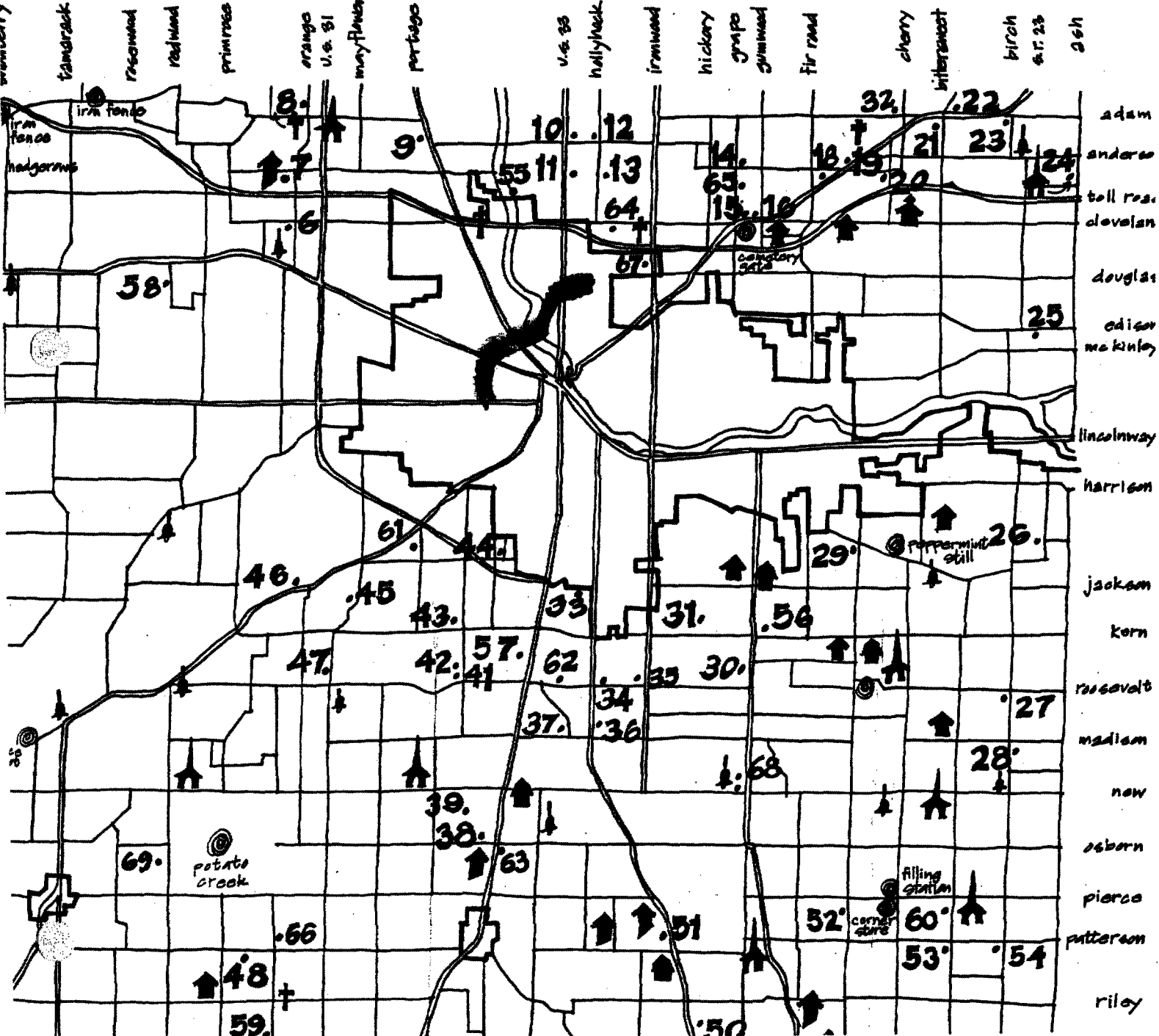
34 18749 roosevelt
neo-jacobean

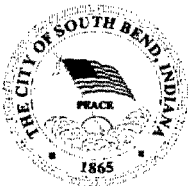
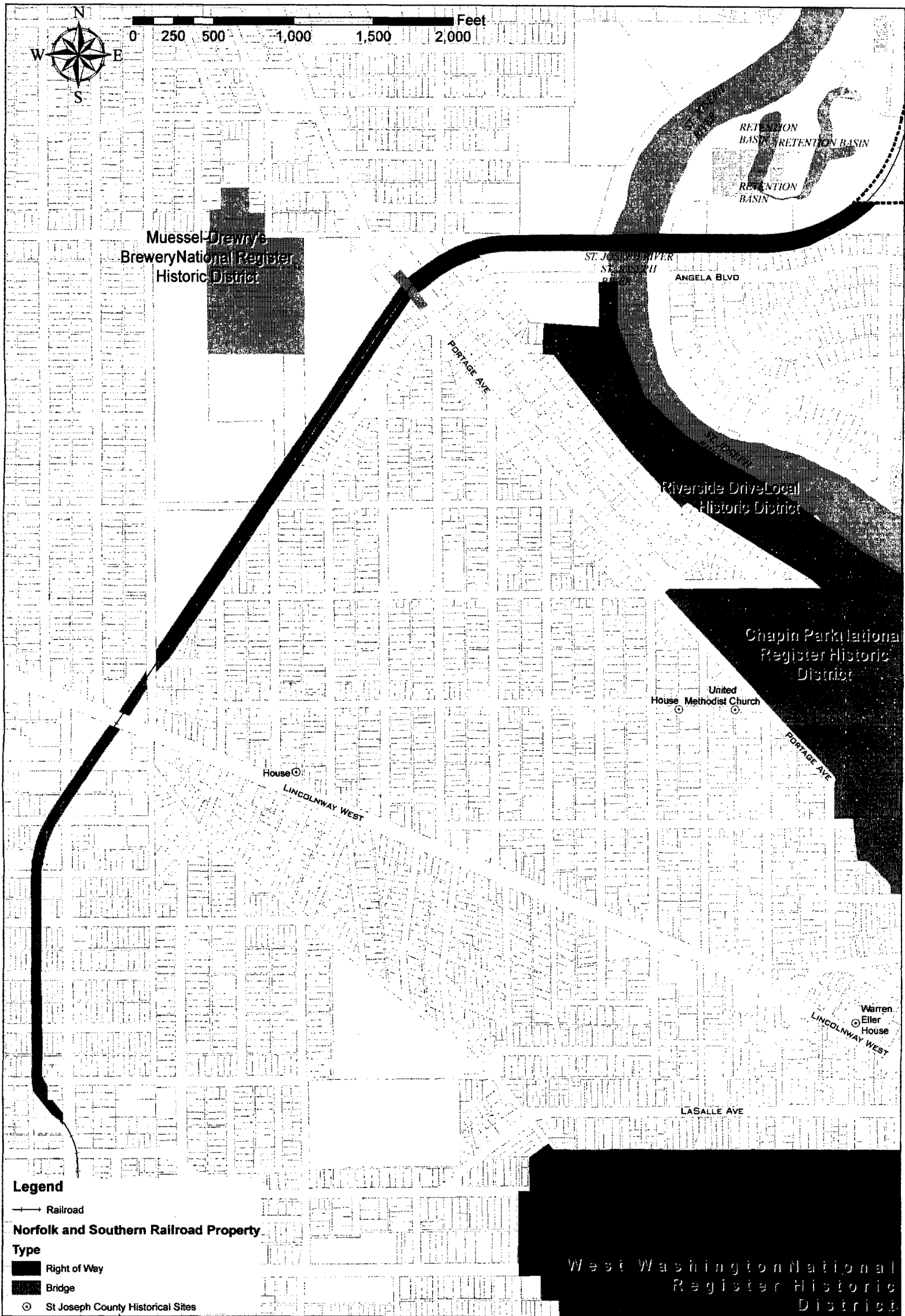
36★ 62290 miami
neo-jacobean

38 21099 osborn
vernacular (quaint)

4

Map of Michigan





Railroad Removal Impact Map

DOCKET NO. AB 290 (Sub-No. 286)

**NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN**

ATTACHMENT F

VERIFIED STATEMENT OF ANDREW R. LAURENT

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Docket No. AB 290 (Sub-No. 286)

NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN

VERIFIED STATEMENT OF ANDREW R. LAURENT, BUPD IN SUPPORT OF
ADVERSE ABANDONMENT APPLICATION OF THE
CITY OF SOUTH BEND, THE BROTHERS OF HOLY CROSS, INC. AND THE
SISTERS OF THE HOLY CROSS, INC.

1. My name is Andrew R. Laurent, BUPD, BS. I am the Economic Development Specialist for The City of South Bend ("the City"). My business address is 227 West Jefferson Boulevard, 12th Floor, South Bend, Indiana, 46601. I hold a Bachelor's degree in Urban Planning from Ball State University and a Bachelor of Science degree in Environmental Design from The Ball State University. I began my professional career in urban planning with the City in 2000 and continued in that position until 2001 when I left to explore another career option. I returned to employment at the City in 2002 as an Economic Development Specialist and have remained in that position through today. I have personal knowledge of the facts that I am presenting and have been duly authorized to present this Verified Statement on behalf of the City of South Bend, a City of the Second Class in Indiana.
2. The City has Filed an Application for Adverse Abandonment of a railroad line located in St. Joseph County, Indiana. The tracks cover approximately 3.7 miles of railroad line. The lines are owned by Norfolk Southern Railway Company ("NSR"). The subject lines extend from milepost UV 0.0, which is located in a semi-industrial area in the western portion of the City, to milepost UV 2.8 and from milepost ZO 9.6 to milepost ZO 10.5 ("the Lines"). The two lines connect with one another on the campus of The Brothers' of Holy Cross at MP UV2.8, which is located on a site off State Road 933 North in St. Joseph County, Indiana adjacent to the campus of Holy Cross College and nearby the campuses of St. Mary's College and the University of Notre Dame.
3. For approximately the past 10 years, the lines have not been used for any purpose. Due to the lack of use, the hazard and blight the lines have caused, and because the line had been physically severed from the national rail transportation system and segmented in several locations along its intended route, the City effectively treated the line as abandoned believing that rail

service would not be reborn. Upon hearing the pronouncement that an entity which came to be known as The Chicago, Lakeshore & South Bend Railway (CLS&SB) intended to acquire the track from NSR and resume rail service, the City began an investigation as to industries along the line and their interest in utilizing the same for freight purposes. The City also contacted the various neighborhood organizations concerning the resurrection of this line. Given the dilapidated condition of the track and the significant health risks and dangers the same posed to South Bend and those that travel and live in the City, the neighbors vehemently opposed such a move..

4. The project envisioned by the CLS&SB has been presented to City representatives on multiple occasions, and each time the same plan has been described. The primary focus of the CLS&SB was to develop the tracks into an electrified passenger trolley system. The presentation materials provided in those meetings referred mainly to the interurban-style operation of restored South Shore trolley cars from the west side of South Bend to the Notre Dame campus, for use primarily on weekends by students.
5. The trolley operation has little or no benefit to the City. Based on my education and experience as an urban planner, there is no need for an interurban commuter trolley to shuttle passengers from South Bend's west side to the campus of Notre Dame. There is very little relationship between those residents who live near the track and Notre Dame. The line does not pass closer than seventeen blocks to South Bend's central business district, so the typical urban "trolley model" of commuter operations does not apply to this rail line. The residents in the neighborhoods where this line passes have expressed their dissatisfaction with any plan whatsoever to revitalize this dormant track. They spoke out at a City Council Meeting in June, 2006 to voice their opinions against the reactivation of this line. No resident voiced any desire to personally use said rail line. Because local trolley operations would not further any overriding Federal interest, or involve interstate commerce, the City respectfully requests the Board, in the event that CLS&SB participates further in the proceeding, to disregard such proposed operations when it reaches its decision herein.
6. At some point in the discussion with The CLS&SB, The CLS&SB advised that it wanted to provide freight service to the industries located on the line and to haul coal to The University of Notre Dame for use by its power plant. Throughout these meetings, the freight aspect of CLS&SB's operations was never shown as a primary reason for reactivating the line. The freight traffic was simply to be used to fund and subsidize the operating cost of the passenger trolley. The driving motivation of the CLS&SB was to install electric catenary, to operate their refurbished South Shore equipment, and cover the costs by hauling occasional coal loads to the University of Notre Dame. It is unknown if this is feasible, as overhead clearance at the Portage Avenue viaduct over the line is significantly less than the required 29 feet mandated by the National Electrical Safety Code.

7. As an Economic Development Specialist for the City, between September 25, 2006 and October 27, 2006, I contacted the industries located along this line to gauge their desire for freight service. None gave any indication of a need or desire for freight rail service. According to public statements made by the University of Notre Dame, it has no intention of receiving coal by rail. The claim to have customers that desire to ship or receive freight over the lines has no merit. That being the case, there is no overriding Federal interest in preserving the tracks and decaying track structures that are located in the City of South Bend.
8. The City has developed, and its Common Council adopted, *City Plan*. *City Plan* is a comprehensive document that has been researched and developed over the past three years with input from residents, community leaders, the university and college professors, city planners and real estate developers. *City Plan* sets the "blueprint" for developers and development of South Bend over the next 20 years. Nowhere in this document does an electrified interurban railroad that cuts directly through the neighborhoods of The City appear. This *City Plan* is void of any scheme to haul coal or any other industrial product via this rail line. This line does not "fit" in the plan for South Bend. Further, this line does not fit into the plans of the State of Indiana, whose Departments of Transportation and Natural Resources have both named this line as a proposed rail trail and not an operating rail line.
9. The City has expressed its desire for this railroad line to be cleaned up by its current owner several times over the past ten years both through official (Code Enforcement) and unofficial (Economic Development) channels. These efforts have produced some short-term tangible benefit, such as a garbage removal operation conducted by City Code Enforcement in March 2005. Currently, the line has become a health hazard. It poses a danger to neighboring residents and eyesore for all who pass this line. It has become overgrown with trees, weeds, vines and brush that have become a haven for wildlife and vermin. Standing and stagnant water has pooled throughout the line and has become a breeding ground for mosquitoes and attraction for vermin. Even the area cleaned by City crews in 2005 has again become overgrown and rife with dumped garbage, discarded auto parts, lawn waste, old appliances and other assorted refuse.
10. Given the condition of the rest of the track, the City had questions concerning the stability of the bridge and tracks over the St. Joseph River. Representatives of the CLS&SB provided to the City a copy of an engineering inspection report that it had Stone Consulting & Design, Incorporated prepare. The report shows that two recommendations were made to alleviate deficiencies of the bridge's condition. The first was that approximately 75 cubic yards of rip rap stone should be placed around pier number 4 to prevent undermining of the pier footer, the bottom of which is only 3 feet below the river bottom in an area of strong current. The second recommendation was that the bridge seats

under the girders be refurbished or replaced. Excessive shimming was noted above two piers, and it was recommended that bridge bearings attached to the piers with anchor bolts be installed to provide a, "...more effective and stable attachment of the bridge to the piers and the dip in the bridge will be removed." However, upon discussions with representatives of the CLS&SB, it was made clear that they had no intentions of following the bridge recommendations contained in the Engineering Report if railroad operations were to be reactivated. This remained a concern to the City.

11. Although the City lacks specific information regarding the potential cost of rehabilitating the Lines and the bridge and tracks over the St. Joseph River, the rough estimates of the cost of such rehabilitation that were provided by representatives of the CLS&SB provide no assurance that rehabilitation would be economically feasible. CLS&SB has suggested that the estimated cost of rehabilitation would range between \$280,000 and \$350,000, which assumes that no structural defects are encountered with regard to the bridge. Given the lack of any demonstrated need for rail freight service by any shipper on the Lines, the City is concerned that it not be saddled with any debt as a result of a failed attempt to reinstate rail service over the line. In addition, there are several other purely local issues that should be considered. First, the Lines cross no fewer than 17 streets in the City, including Lincoln Way West, which carries over 23,000 vehicles per day, and Indiana 933, which carries over 28,000 vehicles per day. In the absence of any demonstrated need for future rail freight service, it would be irresponsible to rebuild the track across those major thoroughfares. Second, removal of the unused track will allow the City to repave all of the highways, streets and sidewalks over which the track crosses that have not already been repaved. This will improve the roadways and facilitate snow removal in the winter months.
12. The City desires to acquire the line so that this dilapidated eyesore and potential health hazard can be reborn as a community asset to be a corridor for pedestrian recreation and infrastructure development. The City is currently in the planning stages of a massive storm sewer development effort that will meet the Federal Government's mandate for separated storm and sanitary sewer systems. Part of the current plan calls for a large storm sewer to run from the southwest part of the City to the St. Joseph River near the Angela Street area, almost precisely following the route of this line. Cost estimates show that using the rail line alignment, instead of laying the sewer under city streets, would allow for a multi-million dollar savings. At the same time, the City has begun construction of a series of pedestrian trails, the most recent of which begins just north of the tracks and proceeds north along the west bank of the St. Joseph River. A pedestrian trail that continues both east and west from the river along the rail line would be a perfect compliment and an ideal component of the county-wide recreational trail system.

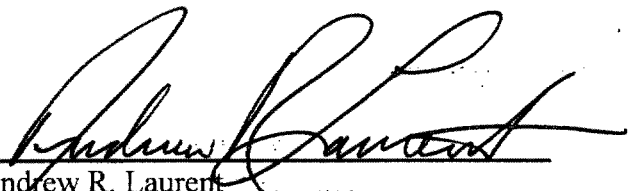
13. Given the lack of any demonstrated need, no overriding Federal interest exists that would justify allowing the Board's jurisdiction to shield a rail carrier from the legitimate processes of State law.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Andrew R. Laurent, hereby declare under penalty of perjury that the above and foregoing statement is true and accurate to the best of my knowledge and belief.

Executed on November 9, 2006.



Andrew R. Laurent

DOCKET NO. AB 290 (Sub-No. 286)

**NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN**

ATTACHMENT G

VERIFIED STATEMENT OF CURTIS C. COFFER

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Docket No. AB 290 (Sub-No. 286)

NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN

VERIFIED STATEMENT OF CURTIS A. COFFER, PHD, CPA IN SUPPORT OF
ADVERSE ABANDONMENT APPLICATION OF THE
CITY OF SOUTH BEND, THE BROTHERS OF HOLY CROSS, INC. AND THE
SISTERS OF THE HOLY CROSS, INC.

1. My name is Curtis A. Coffe, PhD, CPA. I am the Director of Finance and Information Technology for Brothers of Holy Cross, Inc. ("Brothers"). I am also the Treasurer and Chief Financial Officer of Holy Cross Village at Notre Dame, Inc. ("Holy Cross Village"). My business address is 54515 State Road 933 North, Notre Dame, IN 46556-0460. I hold a PhD in Business Administration from the University of Michigan and a Bachelor of Science degree in Accountancy from the University of Illinois at Urbana-Champaign. Prior to joining the Brothers in 2001, I worked as an information systems consultant (1995-2001) and as an Assistant Professor of Accounting at the University of Notre Dame (1991-1996). I began my professional career in public accounting with KPMG. I have personal knowledge of the facts that I am presenting and have been duly authorized to present this Verified Statement on behalf of the Brothers, Holy Cross College and Holy Cross Village, all of which are Indiana non-profit corporations and 501(c)(3) tax exempt entities.

2. The Brothers and their ministries, Holy Cross Village and Holy Cross College, fully support the adverse abandonment application filed by the City of South Bend. The application seeks a finding from the Board that the public convenience and necessity require or permit the adverse abandonment of approximately 3.7 miles of railroad located in St. Joseph County, Indiana. The lines are owned by Norfolk Southern Railway Company ("NSR"). The subject lines extend from milepost UV 0.0, which is located in a semi-industrial area in the western portion of the City, to milepost UV 2.8 and from milepost ZO 9.6 to milepost ZO 10.5 ("the Lines"). The two lines connect with one at MP UV2.8,¹ which is located on an approximate 110 acre site that is owned by the Brothers. Both Holy Cross Village and Holy Cross College are located on the premises, which are located off State Road 933 North in Notre Dame, Indiana adjacent to the campuses of the University of Notre Dame and St. Mary's College. The Brothers support for the adverse abandonment is based on the fact that the continued existence of the dormant railroad tracks is having an adverse impact on the college and the retirement village.

3. The segment of track that lies between milepost ZO 9.6 and milepost ZO 10.5 terminates on the campus of the Sisters of the Holy Cross, Inc. ("Sisters"), which is located immediately north of Brothers' campus. *See* Photograph RR043. This line is located on a 60 foot right-of-way that was the subject of a corporate resolution and appropriation by the St. Joseph Valley Railroad Company dated March 8, 1870. Pursuant to the terms of the 1870 appropriation by which it acquired its easement, St. Joseph Valley Railroad Company's right to the 60 foot right-of-way was to last only during such

¹ *See* Photographs RR037 and RR038.

period as “said Company shall maintain its road thereon.” Because the road has not been maintained for many years by said company or its corporate successors, Brothers contend that the easement has expired. Should the Board grant the instant adverse abandonment, Brothers will exercise its rights under Indiana law to clear title to its land.

4. The 100-foot right-of-way underlying the segment of the line that extends from the southern boundary of Brothers’ campus to its point of termination at milepost UV 2.8 was the subject of a November 26, 1894 conveyance to the Michigan Central Railroad. Following abandonment, the Brothers intend to reacquire the right-of-way from NSR.

5. The Brothers’ interest in obtaining the Board’s authorization to abandon the track is related to the ongoing efforts to expand Holy Cross Village, which is in furtherance of the Brothers’ charitable mission. By way of background, the Brothers was founded in France in 1820 to respond to the needs of the church and society through the ministry of education. In 1841, a group of Brothers and a Holy Cross priest were sent to America as missionaries. In 1842, they founded the University of Notre Dame (“Notre Dame”). In 1966, the Brothers opened Holy Cross Junior College, whose name was changed to Holy Cross College in 1990.

6. Care of the infirm and elder members of the community has always been a priority for Brothers. Today, the physical plant of the retirement community consists of 40 independent living villas, 26 independent living apartments, 16 assisted living apartments and 36 skilled nursing units. To provide for the health care needs of the Brothers, an infirmary was built in 1966 on Brothers’ campus and named Dujarie House. In recent years, the infirmary has been expanded to meet the growing needs of health care

for the Brothers. In addition to the Brothers, lay men and women were welcomed as residents of Dujarie House as programs and facilities expanded. Dujarie House, which houses the Skilled Nursing Units, also has administrative space, a serving kitchen and a separate dining room for nursing residents.

7. In 1997, after the cessation of railroad activities over the Lines, an assisted living building, known as Schubert Villa, consisting of 16 studio apartments, was added to the facilities. Schubert Villa houses the kitchen, dining room and commons areas for the apartments and the villas. The villas are located in a residential neighborhood layout, surrounded by lawns and green spaces. The villas were constructed in 1998 through 2003. Twenty-four of the villas are stand-alone homes, while twelve others are duplexes and there is one quadplex unit which houses two one-bedroom units and two two-bedroom units. The existing apartments (referred to as Riverside Place) were constructed in 1998.

8. Brothers are currently in the process of substantially expanding Holy Cross Village into a continuing care retirement community for lay men and women, as well as elderly Brothers. The expansion project will include two four-story structures for independent living apartments, a one-story structure for the independent living commons, a two-story structure for the assisted living units, a one-story structure for nursing dementia units and a chapel. The assisted living and nursing buildings will additionally include common and support areas. The expansion program consists of approximately 221,800 square feet, not including chapel space of 5,493 square feet. Once development of the expansion is complete, the Community will consist of approximately 382,800 square feet. A copy of the site plan is attached hereto.

9. The site plan shows that the dormant railroad track lies between the new facility and the other Holy Cross Village facilities, including Dujarie House, Schubert Villa and Riverside Place. In fact, all of these facilities are located in close proximity to the railroad track. *See* Photographs RR032 through RR036. As a result, residents and staff who regularly travel between buildings for meals, social activities, religious services and other events must cross over the tracks on a daily basis.

10. Of the three roads shown crossing the tracks, the middle one from the new independent living building to the Dujarie/Schubert parking lot is currently at issue. Without permission to cross at that point, it would be necessary to reroute this road to follow parallel to the right of way and connect to the road at the north end. This will involve additional construction costs, and also creates a traffic safety and congestion problem at the point where the roads would join.

11. For the past 12 years or so, the track has not been used for any purpose. While viewed as a nuisance and an eyesore, it was assumed that because the line had been physically severed from the national rail transportation system, it had been abandoned and that rail service would not be resumed. The erroneous nature of those assumptions was abruptly revealed in early 2006 when NSR announced that it was negotiating with a previously unknown entity, the Chicago, Lake Shore and South Bend Railway Company ("CLS&SB"), that wanted to acquire the track from NSR in order to resume rail service. That announcement caused BOHC to realize that the unused, dormant track posed a significant danger to the community.

12. The Brothers have no current or future need for rail service. Based on conversations with representatives of the Sisters, I am aware that they too have no need

for rail service. I am also aware that Notre Dame has publicly announced that it has no intention to enter into an agreement with CLS&SB to deliver coal. These three institutions are the only entities located east of the St. Joseph River that could have any need for freight rail service over what remains of the lines of railroad that traverse the BOHC campus. Given the lack of any demonstrated need, no overriding Federal interest exists that would justify allowing the Board's jurisdiction to shield a rail carrier from the legitimate processes of State law.

13. On October 18, 2006, I attended a meeting that was requested by CLS&SB. During the course of that meeting, the attendees were told that if they dropped their opposition to its attempt to acquire the Lines, CLS&SB would electrify the Lines in order to operate vintage trolleys over them. The Brothers are opposed to the operations of an electrified trolley operation through the Holy Cross Campus. Although trolley operations might not pose the same dangers as a full-fledged freight operation, the tracks and operations would continue to interfere with and endanger the operations of the college and the retirement village and constitute a public nuisance. Because local trolley operations would not further any overriding Federal interest, or involve interstate commerce, the Brothers respectfully request the Board, in the event that CLS&SB participates further in the proceeding, to disregard such proposed operations when it reaches its decision herein.

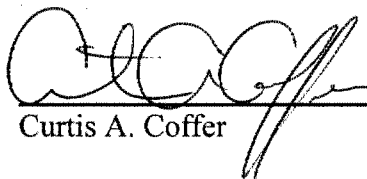
14. CLS&SB's representatives also indicated that they would resume rail delivery of coal to Notre Dame. As noted above, there is no evidence that Notre Dame or any other shipper has any interest in using CLS&SB's rail service. That being the case,

there is no overriding Federal interest in preserving the tracks and decaying track structures that are located on the Brothers' campus.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Curtis A. Coffey, hereby declare under penalty of perjury that the foregoing is true and correct. Executed on November 9th, 2006.



Curtis A. Coffey

DOCKET NO. AB 290 (Sub-No. 286)

**NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN**

ATTACHMENT H

VERIFIED STATEMENT OF GERALDINE M. HOYLER

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Docket No. AB 290 (Sub-No. 286)

NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN

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

1. My name is Geraldine M. Hoyler, C.S.C. I am Secretary and Treasurer of Sisters of the Holy Cross, Inc. ("Sisters"), and General Councilor/General Treasurer of the Congregation of the Sisters of the Holy Cross ("Congregation"). My business address is 309 Bertrand Hall-Saint Mary's, Notre Dame, IN 46556-5000. I hold a Bachelor of Science in Business Administration (Accounting) and a Master of Science Business Administration from the University of Denver. I am a Certified Public Accountant (inactive). A copy of my Curriculum Vitae is attached hereto. I have personal knowledge of the facts that I am presenting and have been duly authorized to present this Verified Statement on behalf of the Congregation, Sisters and the Inn at Saint Mary's (the "Inn"). Sisters is an Indiana non-profit corporation and a 501(c)(3) tax exempt entity.
2. Sisters owns and operates the motherhouse and international headquarters of the Congregation and owns the land on which the Inn is located. In addition, the Congregation sponsors Saint Mary's College, which is located on property adjacent to that owned by Sisters.

The dormant railroad track that traverses Sisters' property adversely impacts the students of the College, as well as the approximate 200 plus Sisters, 150 of whom are aged and infirm, who live on the campus.

3. Sisters fully supports the adverse abandonment application filed by the City of South Bend. The application seeks a finding from the Board that the public convenience and necessity require or permit the adverse abandonment of approximately 3.7 miles of railroad located in St. Joseph County, Indiana. The lines are owned by Norfolk Southern Railway Company ("NSR"). The subject lines extend from milepost UV 0.0, which is located in a semi-industrial area in the western portion of the City, to milepost UV 2.8 and from milepost ZO 9.6 to milepost ZO 10.5 ("the Lines"). The two lines connect with one another at MP UV2.8,¹ which is located on an approximate 110 acre site that is owned by the Brothers of Holy Cross ("Brothers"). Brothers' property is located off State Road 933 North in Notre Dame, Indiana immediately adjacent to and south of Sisters' property. Sisters supports the adverse abandonment of the Lines on the grounds that the dormant railroad tracks, which have not been operated since the early 1990s, are a public nuisance. Sisters further contends that because the easement to the right-of-way located on the Sisters' campus has expired, abandonment will permit the title to the underlying real property to be cleared, which would allow future development of the property on which the dormant track is now situated.

4. The northern end of the segment of track that lies between milepost 9.6 and milepost 10.5 terminates on Sisters' campus at milepost 9.6. *See* Photograph RR043. This line is located on a 60 foot right-of-way that was the subject of a corporate resolution and appropriation by the St. Joseph Valley Railroad Company dated March 8, 1870. Pursuant to

¹ *See* Photographs RR037 and RR038.

the terms of the 1870 appropriation by which it acquired its easement, St. Joseph Valley Railroad Company's right to the 60 foot right-of-way was to last only during such period as "said Company shall maintain its road thereon." Because said company or its corporate successors have not maintained the road for many years, Sisters contends that the easement has expired. Should the Board grant the instant adverse abandonment, Sisters will exercise its rights under Indiana law to clear title to the real property.

5. In 1984, the Interstate Commerce Commission authorized abandonment of a total of 6.5 miles of track that extended from a point near milepost 3.1 in the City of Niles, Michigan to MP 9.6, which is located on the Sisters' campus. *See, Conrail Abandonment in Berrien County, MI and St. Joseph County, IN*, ICC Docket No. AB-167 (Sub-No. 672N)(ICC served August 31, 1984). Conrail removed the track between milepost 3.1 and milepost 9.48 in 1990. Consistent with the ICC authority, Sisters subsequently removed the track between milepost 9.48 and milepost 9.6, along with a private industrial spur that extended in a northwesterly direction to the Sisters' power house.

6. Upon information and belief, the track that crosses through the campus has not been used for any purpose for the past 12 years. As of this date, I have no knowledge that any shipper has any need for rail service over this track, which is physically severed from the national rail transportation system.

7. Because the line has been physically severed from the national rail transportation system, Sisters assumed that the line had been abandoned and that rail service would not be resumed. Those assumptions were challenged in June 2006 when the Chicago, Lake Shore and South Bend Railway Company ("CLS&SB"), with no prior notice to Sisters, unexpectedly announced that it was going to purchase the line from NSR and resume rail

freight service over the line. Had CLS&SB spoken to Sisters, it would have learned that Sisters objected to the resumption of rail service. It would have also learned that Sisters contends that the underlying easement had expired by its own terms due to the Conrail's failure to maintain the line.

8. Sisters has no current or future need for rail service. Based on conversations with representatives of the Brothers, I am aware that they too have no need for rail service. I am also aware that Notre Dame has publicly announced that it has no intention to enter into an agreement with CLS&SB to deliver coal. There are no other entities located east of the St. Joseph River that could have any need for freight rail service over what remains of the lines of railroad that traverse the Sisters' and Brothers' campuses. Given the lack of any need for present or future rail service, I cannot see any overriding Federal interest that would justify allowing the Board's jurisdiction to shield a rail carrier from the legitimate processes of State law.

9. On October 18, 2006, I attended a meeting that was requested by CLS&SB. During the course of that meeting, the attendees were told that if they dropped their opposition to its attempt to acquire the Lines, CLS&SB would electrify the Lines in order to operate vintage trolleys over them. In the first place, a new trolley operation is, at best, a local concern and has nothing to do with interstate commerce. Secondly, Sisters is opposed to the operations of an electrified trolley operation through its property. Although trolley operations might not pose the same dangers as a full-fledged freight operation, unneeded trolley operations through the college would constitute a public nuisance. Because local trolley operations would not further any overriding Federal interest, or involve interstate commerce, Sisters respectfully

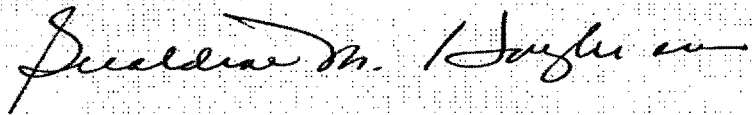
requests the Board, in the event that CLS&SB participates further in the proceeding, to disregard such proposed operations when it reaches its decision herein.

10. CLS&SB's representatives also indicated that they would resume rail delivery of coal to Notre Dame. I am not aware of any evidence that Notre Dame or any other shipper has any interest in using CLS&SB's rail service. In fact, John Affleck-Graves, Notre Dame's executive vice president, has been quoted in the local newspaper as stating "The University has no intention of entering into an agreement with the South Bend short-line railway company to deliver coal." That being the case, there is no overriding Federal interest in preserving the tracks and decaying track structures that are located on Sisters' campus.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Geraldine M. Hoyler, C.S.C., hereby declare under penalty of perjury that the foregoing is true and correct. Executed on November 13, 2006.

A handwritten signature in cursive script, appearing to read "Geraldine M. Hoyler", is written over a dotted grid background.

Geraldine M. Hoyler, C.S.C.

CURRICULUM VITAE

GERALDINE M. HOYLER, C.S.C.

Sisters of the Holy Cross
309 Bertrand Hall – Saint Mary's
Notre Dame, Indiana 46556-5000
574/284-5551

EDUCATION

1970	B.S.B.A.	University of Denver, Accounting
1975	M.S.B.A.	University of Denver, Administrative Sciences

Member of the Congregation of the Sisters of the Holy Cross
Notre Dame, Indiana

EXPERIENCE

2004 -	CONGREGATION OF THE SISTERS OF THE HOLY CROSS, Notre Dame, Indiana General Councilor/General Treasurer
1996 - 2004	CATHOLIC HEALTH INITIATIVES, Denver, Colorado Senior Vice President, Finance and Treasury Chief financial officer of diversified health organization with almost \$8 billion of annual revenue. As the initial finance officer, developed both staff and systems to support the diverse ministry.
1992 - 1996	MERCY SERVICES CORPORATION, Denver, Colorado President Chief executive officer of company providing property management services, resident supportive services, pre-development and development support services, and financing for affordable family housing developments sponsored by Mercy Housing, Inc.
1992 - 1992	MERCY HOUSING, INC., Denver, Colorado Regional Coordinator Acted in capacity of owner and developer for all properties in Colorado under the sponsorship of Mercy Housing.
1990 - 1992	SISTERS OF THE HOLY CROSS, South Bend, Indiana Healthcare Consultant Provided consulting services to hospitals, other providers, religious congregations and health systems.
1978 - 1990	HOLY CROSS HEALTH SYSTEM CORPORATION, South Bend, Indiana Executive Vice President and Chief Financial Officer Initial Chief Financial Officer and one of the original officers of the Corporation, oversaw policy and practice development in all areas of financial management, information systems and legal services for System with annual revenues of \$1 billion in 1990.
1976 - 1978	SISTERS OF THE HOLY CROSS, Saint Mary's, Notre Dame, Indiana Researcher and Secretary, Hospital System Task Force Directed and oversaw evaluation of structure and processes for development of independent hospitals into Holy Cross Health System.

1975 - 1976	MOUNT CARMEL MEDICAL CENTER, Columbus, Ohio Director, Support Services
1975	SISTERS OF THE HOLY CROSS, Saint Mary's, Notre Dame, Indiana Internship - Office of the General Treasurer
1973 - 1974	SAINT MARY'S COLLEGE, Notre Dame, Indiana Director, Financial Management
1973	SAINT MARY'S HOSPITAL, Cairo, Illinois Controller and Treasurer
1970 - 1973	SAINT JOSEPH'S HOSPITAL, South Bend, Indiana Assistant Controller

PROFESSIONAL CREDENTIALS

Certified Public Accountant, Indiana (inactive)
State Certificate No. 4276, 1975

Fellow, Healthcare Financial Management Association, 1976

PROFESSIONAL AFFILIATIONS

Healthcare Financial Management Association
American Institute of Certified Public Accountants

BOARD MEMBERSHIPS

Board of Trustees	Catholic Healthcare Partners	2006-
Board of Managers and Audit Committee	CHAN Healthcare Auditors	2005-
Committee Member	Finance Committee	2005-
	National Association of Catholic Chaplains	
Committee Member	Integrated Finance Committee	2005-
	Saint Joseph Regional Medical Center Board of Trustees	
Board of Directors,	CHRISTUS Health	
	Dallas, Texas	1999-
Finance & Strategy Committee of the Board of Directors,	CHRISTUS Health	
	Dallas, Texas	1999-
Finance Committee, of the Archdiocesan Finance Council,	Archdiocese of Denver	
	Denver, Colorado	1997-2002
Board of Stewardship Trustees,	Catholic Health Initiatives	
	Denver, Colorado	1996/1996
Board of Trustees,	Catholic Health Corporation	
	Omaha, Nebraska	1992/1996
	Chair	1994/1996
Finance Committee of the Board of Directors,	Incarnate Word Health Services	
	San Antonio, Texas	1990/1995
Board of Trustees,	Mount Carmel Health	
	Columbus, Ohio	1983/1989

Board of Trustees, Holy Cross Health Management Services Corporation		
	McCall, Idaho	1984/1985
	Treasurer	1984/1985
Board of Directors,	Holy Cross Health System Corporation	
	South Bend, Indiana	
	Treasurer	1979/1987, 1989/1990
Board of Directors,	Franciscan Health System	
	Aston, Pennsylvania	
		1981/1986
Board of Trustees,	Holy Cross Hospital of Silver Spring, Incorporated	
	Silver Spring, Maryland	
		1973/1979
Board of Trustees,	Saint John's Hickey Memorial Hospital, Incorporated	
	Anderson, Indiana	
		1979/1983
Board of Trustees,	Saint Agnes Hospital	
	Fresno, California	
		1981/1990
Board of Trustees,	Holy Cross Parkview Hospital, Inc.	
	Plymouth, Indiana	
		1984/1990

PROFESSIONAL MEMBERSHIPS AND OTHER SERVICE

Charitable Trust	Sisters of St. Francis of Philadelphia Philadelphia, Pennsylvania	1990/Present
Healthcare Financial Management Association	Chairman	1989-90
	Chairman-Elect	1988-89
	Treasurer	1987-88
	Secretary	1986-87
	Board of Directors	1984/1986
Financial Accounting Standards Advisory Council		1987/1990
Associated Healthcare Systems	Finance Council	1979/1986
	Chairman, Finance Council	1982/1984
American Hospital Association	Council on Finance	1982/1984, 1987
	Various panels, task forces and working groups	
Commission on Catholic Health Care Ministry	Steering Committee's Consulting Network	1987/1989
CHA Working Group on Rationing		1990/1991
CHA Leadership Working Group on Systemic Reform		1990/1993

SPEECHES, PRESENTATIONS, AND PUBLISHED ARTICLES

Available upon request.

DOCKET NO. AB 290 (Sub-No. 286)

**NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN**

ATTACHMENT I

VERIFIED STATEMENT OF STEPHANIE R. ACHTERBERG

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Docket No. AB 290 (Sub-No. 286)

NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN

VERIFIED STATEMENT OF STEPHANIE R. ACHTERBERG

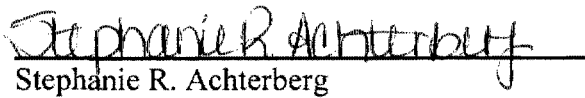
I, Stephanie R. Achterberg, am the Office Manager for the City of South Bend Legal Department. On November 15, 2006 our office received Proof of Publication from the South Bend Tribune, a copy of which is attached hereto, indicating the revised Notice of Adverse Abandonment was published on November 3, 10, and 13, 2006 in the South Bend Tribune.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Stephanie R. Achterberg, hereby declare under penalty of perjury that the above and foregoing statement is true and accurate to the best of my knowledge and belief.

Executed on November 15, 2006.


Stephanie R. Achterberg

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423
STB Docket No. AB-250 (Sub-No. 288)
NORFOLK SOUTHERN RAILWAY COMPANY
ADVERSE ABANDONMENT
ST. JOSEPH COUNTY IN
NOTICE OF ADVERSE ABANDONMENT
OF THE CITY OF SOUTH BEND, THE BROTHERS
OF HOLY CROSS, INC. AND THE SISTERS OF
THE HOLY CROSS, INC.

The City of South Bend, the Brothers of Holy Cross, Inc. and the Sisters of the Holy Cross, Inc. (hereinafter "Applicants") give notice that on or about November 13, 2006, they intend to file with the Surface Transportation Board (the "Board"), Washington, D.C. 20423, an application seeking the adverse abandonment of approximately 3.7 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP 209.6 and MP 2010.5, including an industrial spur line that extends from MP 209.6 in an easterly direction, all of which is located in St. Joseph County, IN. The affected railroad lines are situated in U.S. Postal Service Zip Codes 46601, 46616, 46617, 46628, 46629 and 46656; they traverse no other U.S. Postal Zip Codes. Although the lines include no active stations, there is a dormant station located at Notre Dame, IN.

The reasons for the proposed abandonment include the absence of rail service over the lines for over ten (10) years and the lack of any foreseeable future need for rail service.

The City intends to acquire or condemn the right-of-way that lies within the City for public use. The line between MP UV0.0 and MP UV2.8 crosses 17 streets in the City of South Bend including Lincoln Way West, which carries over 23,000 vehicles per day, and Indiana 933, which carries over 28,000 vehicles per day. A portion of that line and the line between MP 209.6 and MP 2010.5 traverse the properties and campuses of the Sisters of the Holy Cross, Inc. ("Sisters") and the Brothers of the Holy Cross, Inc. ("BOHC"). The lines that traverse their campuses have been dormant for over a decade. Because of the lines' dormant status, the Sisters and Brothers assert a claim under Indiana law to a reversionary interest in portions of the right-of-way.

Based on information in the possession of the Applicants, the lines do not contain federally granted rights-of-way. Any documentation relating to this abandonment in the Applicants' possession will be made available promptly to those requesting it.

The public record of the Board contains a system diagram map for Norfolk Southern Railway Company. However, the lines do not appear on that system diagram map as being potentially subject to abandonment.

The application, when filed, can be viewed following filing on the Board's webpage, www.stb.dot.gov, or a copy can be secured from Applicants' counsel, whose name and address appear below. The application will include Applicants' entire case for abandonment.

Any interested person, after the application is filed on or about September 1, 2006, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying them by the proceedings docket numbers. 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, portions of the line may be available for interim trail use. Any request for a trail use condition under 18 U.S.C. 1247(d) (Section 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 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 opposing the proposed abandonment 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 including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented; (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service; and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 1925 K Street, N.W., Washington, D.C. 20423-0001, together with a certificate of service attesting that copies of the comments or protests have been

State of Indiana

Joseph County ss:

Personally appeared before me, a notary public in and for said county and

the undersigned

Carol Smith

do, being duly sworn says that she is of competent age and is

Advertising Director of The South Bend Tribune, a

daily newspaper which for at least five (5) consecutive years has been published in the City of South Bend, county of St. Joseph, State of Indiana, and which during that time, has been a newspaper of general circulation, having a bona fide paid circulation, printed in the English language and entered, authorized and accepted by the post office department of the United States of America as mailable matter of the second-class as defined by the act of Congress of the United States of March 3, 1879, and that the contents of the matter attached hereto is a true copy, which was duly published in said newspaper.

3 time s, the dates of publication being as follows:

November 3, 10, 13, 2006

Carol Smith

Subscribed and sworn to before me this 13th day

November

2006

Geraldine Dickey

Geraldine Dickey

Notary Public

Resident of St. Joseph County

My commission expires January 28, 2009

Charges \$214.99

Special Spring Projects

South



Verification

District of Columbia: SS

Richard H. Streeter makes oath and says that he is the attorney of the Brothers of Holy Cross, Inc. and the Sisters of the Holy Cross, Inc., applicants herein; that he has been authorized by the applicants, Brothers of Holy Cross, Inc., Sisters of the Holy Cross, Inc. and the City of South Bend, Indiana, to verify and file with the Surface Transportation Board the foregoing application in STB AB-290 (Sub-No. 286); that he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.



Richard H. Streeter

Subscribed and Sworn to before me this 17th day of November 2006.



Cathy Rodriguez
D.C. Notary

CATHERINE M. K. RODRIGUEZ
Notary Public, District of Columbia
My Commission Expires July 14, 2011

My Commission Expires: July 14, 2011

CERTIFICATE OF SERVICE

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Adverse Abandonment Application was served this 17th day of November, 2006, by first-class mail, postage prepaid, and fedex as designated, on the following named individuals:

James R. Paschall (via fedex)
Senior General Attorney
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

The Honorable Mitch Daniels
Office of the Governor
Statehouse
Indianapolis, IN 46204-2797

David W. Hadley, Commissioner
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington Street
Suite E-306
Indianapolis, IN 46204

Thomas Sharp, Commissioner
Indiana Department of Transportation
100 N. Senate Avenue
Room IGCN 755
Indianapolis, IN 46204

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



Richard H. Streeter