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

Re: Alloy Property Company, LLC – Adverse Abandonment – Chicago Terminal
Railroad In Chicago, IL, Docket No. AB-1258

Dear Ms. Brown:

Please find enclosed an original plus 10 copies of a Petition for Partial Waiver of Abandonment Regulations and for Exemption in the above-referenced case. Also enclosed is a check in the amount of \$2000 to cover the filing fee. Please date stamp the extra copy and return it to the messenger.

If you have any questions, please contact the undersigned.

Sincerely,

Hanna M. Chouest

HMC:mld

Enclosure

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB Docket No. AB-1258

**ALLOY PROPERTY COMPANY, LLC – ADVERSE ABANDONMENT –
CHICAGO TERMINAL RAILROAD IN CHICAGO, IL**

**PETITION FOR PARTIAL WAIVER OF ABANDONMENT REGULATIONS
AND FOR EXEMPTION**

Pursuant to 49 C.F.R. § 1152.24(e)(5) and 49 U.S.C. § 10502(a), Alloy Property Company, LLC (“Alloy”) hereby seeks partial waiver of regulations governing railroad abandonments at 49 C.F.R. § 1152, Subpart C, and exemption from certain provisions of 49 U.S.C. §§ 10903 and 10904. That waiver and exemption are sought in conjunction with an application that Alloy intends to file for adverse abandonment (the “Application”) of the authority of Chicago Terminal Railroad (“CTR”) to operate over the remaining portions of the “C&E” and “Bloomington” lines in Chicago, Illinois originating at Union Pacific’s North Avenue Yard and proceeding east and south to Goose Island, a distance of approximately 2.875 miles in Chicago, Cook County, Illinois to a terminus near the intersection of Chicago Avenue and Halsted Street in the “Goose Island” district of Chicago (the “Line”). A map of the Line is attached to this Petition as Appendix A.¹

¹ Appendix A’s map of the Line was created from the system map that CTR has published on its website at <http://www.iowapacific.com/wp-content/uploads/2016/02/ChicagoTerminalRailroadNorthAveArea.pdf>. The map is for demonstrative purposes only and some details have been omitted. CTR’s website

As the Board has recognized, several of the regulatory requirements for ordinary railroad-initiated abandonments are “inapplicable or unneeded” for an adverse abandonment initiated by a third party, and Alloy respectfully requests that the Board waive those requirements so that an adverse application may subsequently be filed. *City of Chicago, Ill – Adverse Abandonment – Chicago Terminal R.R. In Chicago, Ill*, STB Docket No. AB-1036, at 3 (served July 8, 2009) (“*Chicago Terminal*”).

BACKGROUND

Alloy recently purchased vacant, former industrial property in the North Branch area of Chicago and has been actively developing a proposal to the City of Chicago for the redevelopment of this property for potential nonindustrial uses. Currently portions of Alloy’s property are traversed by CTR’s unused rail line, which significantly constrains Alloy’s ability to redevelop its vacant property in a manner consistent with the City’s planning and zoning policies and guidelines. An application for adverse abandonment of any portion of the Line remaining on the north side of Chicago, Illinois is subsequently intended.² The Line is concentrated in a small area lying east of Union Pacific’s North Avenue Yard, running generally along the eastern bank of the North Branch of the Chicago River, through portions

map does not reflect portions of its former Line that were abandoned in STB Docket No. AB-1036; Appendix A marks those abandoned lines with Xs. Appendix A also identifies key features of the Line discussed in this Petition, including areas where tracks have been removed, a stop sign in the middle of unused rail tracks, and the two bridges on the Line.

² The application will not affect any of CTR’s tracks and operations in Elk Grove Village, Illinois, or in Bensonville, Illinois.

of Alloy's vacant property (formerly occupied by a steel manufacturer), in small portions of other private property and in public streets terminating in a sub-district known as "Goose Island." The Line was acquired by CTR through CTR's parent company (Iowa Pacific Holdings, LLC) from Soo Line Railroad Company, d.b.a. Canadian Pacific Railway ("Soo") in December 2006. *See Chicago Terminal Ry. – Acq. & Oper. Exemption – Soo Line R.R. Co., d.b.a. Canadian Pac. Ry.*, STB Docket No. 34968 (served Dec. 22, 2006). CTR was authorized to operate the Line. *Id.* at 1.³

The Line has shrunk dramatically since this acquisition. In 2010, the Board approved an adverse abandonment of the "Lakewood" and "Diversey" branches of the Line, shrinking the Line's mileage from approximately 4.5 miles to its current approximate 2.875 miles. *See City of Chicago, Ill – Adverse Abandonment – Chicago Terminal R.R. In Chicago, Ill*, STB Docket No. AB-1036, at 3 (served June 16, 2010). And as demonstrated below, CTR is no longer providing rail service to shippers on the remaining portion and in fact has removed or has authorized the removal of some of its tracks.

Alloy plans to submit an application that will demonstrate conclusively that there is no present or future need for rail service on the Line and that abandonment

³ At one point, Soo operated over portions of the Line pursuant to a trackage rights agreement with CMC Heartland Partners (the corporate successor of the Chicago, Milwaukee, St. Paul and Pacific Railroad). *See Soo Line Railroad Co.—Trackage Rights Exemption—CMC Heartland Partners*, ICC Finance Docket No. 32847 (served Mar. 7, 1997). It is not entirely clear whether CMC or its successors have any remaining common carrier interest in the Line that survived CTR's acquisition of the Line from Soo (and indeed even in 1997, the ICC observed that CMC's common carrier status "is not altogether clear"). Regardless, the Application will seek abandonment of the Line as to any carrier that has any remaining authorization to operate on it.

of the Line is in the public interest. While Alloy will not attempt to present its full evidence on these points in this Petition (which only seeks waiver and exemption of certain requirements so that Alloy can file an application), Alloy below presents a brief summary of some of the reasons why the Line should be abandoned. First, there is no need for rail transportation service, and the Line has not been used for freight transportation for well over a year (and likely longer than that). Second, CTR's actions demonstrate that it has no current or future prospects of restoring consistent and ongoing service to the Line. Third, the unused rail line is interfering with the City's land use policies and with other uses of property in the area, and abandonment is therefore in the public interest.

The Line Is No Longer Being Used for Rail Transportation, and There Is No Future Need For Rail Service.

Alloy's abandonment application will show that abandonment of this unused Line is in the public interest because there is no current need for rail service. Since CTR's acquisition of the Line, freight service on the Line has rapidly declined to the point where no freight has moved over the Line since at least September 2015 and likely longer than that. CTR itself admitted in a recent court filing that as of September 2016 no traffic had moved over the Line for more than one year.⁴ In addition, vegetation growth around a key swing bridge that would have to be used to access the Line suggests that the bridge may not have been capable of swinging into a position to accommodate rail operations for some time (and thus that the Line

⁴ See Email from D. Michaud to G. Bellas re: Burgoyne LLC dated September 9, 2016 (noting an "absence of a car load for over a year"), attached as Appendix D.

had not been used during that time).⁵ Photographic evidence shows that in August 2015 there was substantial vegetation growth obstructing the area in which the swing bridge would have to turn to allow for rail movement.⁶ CTR also has represented in a legal filing that the bridge was damaged by vandalism and inoperable sometime before November 9, 2015 and that it had not yet been repaired as of May 8, 2017.⁷ In the wake of recent litigation raising questions about CTR's nonuse of the Line,⁸ it appears that CTR has engaged in some maintenance efforts on the bridge, including trimming the vegetation, and the bridge was opened recently by a CTR maintenance crew. But it is not clear that the bridge has yet been fully restored to a state that could accommodate safe, ongoing regular operations.

There is no prospect of freight traffic being restored, since CTR's legacy freight customers on the Line have disappeared through company closures and property redevelopment. Since the Board's prior adverse abandonment of a portion of the Line in 2010, former shipper Finkl Steel relocated its steel plant to a different part of Chicago and its land is vacant. Alloy now owns this property, and is readying plans for non-industrial development. Former shipper Big Bay Lumber

⁵See Report of Daniel Runyon (Feb. 14, 2017) (showing evidence of trees with five to six years growth in vicinity of swing bridge), attached as Appendix E.

⁶ See Photos, attached as Appendix F.

⁷ See Defendants' Emergency Petition for Temporary Restraining Order at ¶¶ 15-21, *Burgoyne, LLC v. Chicago Term. R.R. Co.*, No. 2017 CH 06199 (Circuit Court of Cook County, Illinois) (filed May 8, 2017).

⁸ Specifically, the *Burgoyne* litigation described below at page 8.

has closed and its owners, together with a developer, are reportedly planning an office building on this parcel.⁹

Any potential customers remaining on the Line have multiple competitive options. For example, CTR has stated that General Iron, a one-time CTR rail customer, has not moved freight by rail since at least September 2015¹⁰ and has relied on barge transportation for its bulk transportation needs.¹¹ In fact, CTR has admitted that it “struggles for business as a result of customers having recently left Goose Island and also because of competition with truck and barge carriers, both of which uniquely serve the Goose Island area.”¹²

In short, over time the businesses that once relied on freight transportation on the Line have closed or relocated. While the Line once served an area of “classic” industrial facilities with a need for freight rail transportation, it now runs through an area that is increasingly characterized by high-tech/research and development,

⁹ See “Wooden office building planned on Goose Island,” Crain’s Chicago Business, February 6, 2017.

¹⁰ See Email from D. Michaud to G. Bellas re: Burgoyne LLC, dated September 2, 2016 (noting that “12 months has passed since we’ve loaded a General Iron car”), attached as Appendix G.

¹¹ See Appendix D (noting that “General Iron has been sending out scrap loads via barge”). CTR recently represented in the *Burgoyne* litigation that it was planning to position cars for General Iron’s future use, but no freight shipments are believed to have actually occurred. See Defendants’ Emergency Petition for Temporary Restraining Order, McConville Affidavit ¶ 18, *Burgoyne, LLC v. Chicago Term. R.R. Co.*, No. 2017 CH 06199 (Circuit Court of Cook County, Illinois) (filed May 8, 2017). In any event, token shipments arranged in the midst of CTR’s litigation with Burgoyne would not change the fact that General Iron has a barge alternative to CTR rail service.

¹² Memorandum in Support of Plaintiff’s Motion for Preliminary Injunction at 9, *Chicago Terminal R.R. Co. v. Burgoyne, LLC*, Case No. 16-10606, N.D. Ill (filed Nov. 15, 2016).

office, and retail/residential land use. In fact, data from the City of Chicago's Department of Planning and Development showed that land near the Line dedicated to industrial and manufacturing uses shrunk from 73% in 1990 to 20% in 2016.¹³ The combination of the changing character of new property use along the Line and the loss of legacy rail shippers along the Line (or their reliance on non-rail shipping options) negates any likelihood that freight rail service will be needed in the future.

CTR's Actions Are Not Consistent With Restoring Service on the Line.

Not only is the Line not being used for rail service, CTR has acted in ways that suggest that it recognizes its dim prospects of restoring rail service. For example, CTR has agreed to the removal of tracks on portions of the Line and has not objected to the erection of traffic signs in the middle of its tracks. In fall 2013, CTR entered into an agreement allowing a property owner to remove tracks comprising a portion of the Line for improvement of a parking lot for a retail shopping center. *See Agreement for Removal of Trackage dated October 18, 2013 (recorded in the official records of Cook County, Illinois as Document No. 1335444052)*, attached as Appendix H. A stop sign has been installed in the middle of the Line for some time and has not been removed, thus rendering inoperable nearly all of the Line's southern terminus (just under one-quarter mile).¹⁴

¹³ See Mayor Emanuel's *Industrial Corridor Modernization: North Branch*, August 10, 2016 Presentation at 15 & 18.

¹⁴ See Appendix I.

Indeed, CTR's absence of freight activity over a sustained period has jeopardized its real estate rights to cross private property. In 2016, as one prominent example, a property owner secured its property using metal fences once the property owner determined that CTR's easement rights expired from non-use. Presuming CTR's easement has expired on this land, this would effectively render inoperable over 40% of the remaining portion of the Line (approximately 1 mile of its remaining 2.875 miles). Although CTR asked a federal court to issue an order requiring removal of the private owner's newly installed fencing, that court declined to issue an injunction in CTR's favor and dismissed CTR's complaint.¹⁵ Although the fences appear to have been removed for the time being, the landowner is now seeking a state court confirmation that CTR's easement rights are invalid.¹⁶ In short, there are growing questions about the continuing validity of CTR's underlying real estate rights for the Line's operation.

Moreover, there are indications that the Line is not being maintained in a usable condition. The Line is only able to connect to the national rail system at Union Pacific's North Avenue Yard through use of a 118-year-old swing bridge over

¹⁵ See *Chicago Terminal R.R. Co. v. Burgoyne, LLC*, Case No. 16-10606, N.D. Ill (Mar 22, 2017).

¹⁶ See *Burgoyne LLC v. Chicago Terminal Railroad*, Case No. 2017-CH-06199, Circuit Court of Cook County, Illinois (Apr. 28, 2017). The landowner Burgoyne has alleged that, after CTR failed to prevail in the federal court litigation, it nevertheless tore down the fences on Burgoyne's property and moved two empty cars onto the property that have not yet been removed; Burgoyne has asked the state court to enjoin CTR from future unauthorized entries or attempts to remove fencing. See Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction at 5-6, 9-10, *Burgoyne LLC v. Chicago Terminal Railroad*, Case No. 2017-CH-06199, Circuit Court of Cook County, Illinois (filed May 26, 2017).

the Chicago River. (The location of this bridge is indicated on the map attached as Appendix A.) As described earlier, CTR itself admitted that the bridge was inoperable for at least 18 months, and there is evidence that it may have been out of use for much longer.¹⁷ While the bridge was opened recently by a CTR maintenance crew, it is not clear that its mechanisms currently are in an ongoing, workable condition such that the bridge can be routinely operated absent complex, special advance arrangements needed each time bridge movement is desired. In addition, CTR has rejected funding to upgrade the grade crossing on North Avenue because “they did not have any more customers south of there.”¹⁸ In short, CTR’s actions on the Line suggest that there is no current or future need for rail service.

The Unused Line Is Interfering With Other Land Uses and City Land Use Policy, and Abandonment of the Line Is in the Public Interest.

Alloy’s application also will show that abandonment of the Line is in the public interest because the unused Line is interfering with other uses of area property. The Line runs through city streets, which impedes traffic, increases public costs of maintaining the streets, and creates greater risk of injury and property damage to motorists, bicyclists, and pedestrians. A recent proceeding before the Illinois Commerce Commission discussed the disrepair of certain grade crossings,

¹⁷ See *supra* at 4-5. The former owner of the land where the swing bridge is located stated in a November 2016 affidavit that to his knowledge there has been no recent user of the swing bridge and no rail traffic has operated over the bridge for more than one year. See Appendix J, Affidavit of AFS Northside, LLC.

¹⁸ *Illinois Commerce Commission v. Iowa Pacific Holdings – Chicago Terminal Railway*, Ill. Comm. Comm’n No. T-16-0076, Administrative hearing Oct. 4, 2016, Tr. at 46. Attached as Appendix K.

which CTR objects to fixing because of a lack of rail customers along the Line.¹⁹ As the City of Chicago testified in that proceeding, the disrepair of the grade crossings has caused traffic safety concerns, in part due to motorists seeking to avoid driving over traffic lanes containing unused rail tracks.²⁰

The abandonment application will show that this unused Line interferes with the redevelopment of properties in the area in accordance with the City's plans. The City last month concluded a year-long comprehensive review of land use policies in the area of the Line designed to promote economic growth in this and other areas where traditional industry is no longer the main focus by pursuing land use policies that accommodate technology, commercial, residential, and retail development.²¹

Consistent with Mayor Emanuel's goal, the Chicago Plan Commission adopted the North Branch Framework Plan on May 18, 2017. This conceptual framework suggests that a key new publicly accessible open space could be developed at the bend in the Chicago River currently occupied by the Line's deteriorated river swing bridge. The Line's abandonment in this area would facilitate establishment of a key community amenity along with effective integration of riverfront access with the mixed-use neighborhood, which is targeted

¹⁹ *Ill. Comm. Comm'n v. CTR*, Oct 4, 2016 hearing, Tr. at 46, attached as Appendix K.

²⁰ *Id.* at 14-15 (noting that "vehicles as they travel northbound, they will swerve into the center median area or turn area to avoid these northbound lanes").

²¹ Press Release, *Mayor Emanuel Announces Plan to Modernize Industrial Corridors* (Apr. 4, 2016), available at https://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2016/march/Mayor-Announces-Modernize-Industrial-Corridors.html.

for construction on Alloy's now-vacant parcel of over 20 acres. Elsewhere in the area, the Line's occupation of key streets prevents these streets from being upgraded to serve as effective transportation infrastructure for the coming growth in residents and workers who will newly occupy the planned mixed-use communities in the area.

* * *

Where there is a legitimate nonrail need for property devoted to rail use and there is no overriding need for rail service over such property, adverse abandonment of the rail carrier's operating authority is appropriate. *See, e.g., Norfolk & W. Ry. Co. – Aban. Exem. – Cinn., Hamilton Cty., OH*, 3 S.T.B. 110, 119 (1998). There has been no rail service on this Line for more than a year and there are no active rail customers along the Line. In short, Alloy's application will show that there is no legitimate need for rail transportation that would defeat an adverse abandonment application of a long-unused rail line.

WAIVERS REQUESTED

The Board has found that much of the information required by the Board's abandonment proceeding regulations is inapplicable or irrelevant to an application for adverse discontinuance or abandonment. *See Chicago Terminal; see also Seminole Gulf Railway, L.P. – Adverse Abandonment – in Lee County, FL*, STB Docket No. AB-400 (Sub-No. 4) (served June 9, 2004) ("*Seminole Gulf*") (citing *Napa Valley Wine Train, Inc. – Adverse Abandonment – in Napa Valley, CA*, STB Docket No. AB-582, served Mar 30, 2001 ("*Napa Valley*"); *Chelsea Property Owners*

Abandonment – Portion of Consolidated Rail Corp’s West 30th Street Secondary Track in New York, NY, Docket No. AB-167 (Sub-No. 1094) (served July 19, 1989).

Consistent with that precedent, Alloy requests waivers from the following provisions:

System Diagram Map (49 C.F.R. §§ 1152.10 to 1152.14 and

§ 1152.24(e)(1): Alloy seeks a waiver of all requirements in 49 C.F.R. §§ 1152.10 to 1152.14 and 49 C.F.R. § 1152.24(e)(1) as well as exemption from the underlying statutory provisions of 49 U.S.C. § 10903(c)(2). These provisions require the carrier to maintain, file, and publish a System Diagram Map and require a line to appear on the System Diagram Map for at least 60 days before an abandonment application can be filed for the specific line. Waiver of this requirement is appropriate because Alloy does not own the Line and cannot amend, file, or publish the System Diagram Map. The waiver of this requirement is consistent with the Board’s practice in adverse abandonment cases. *See Chicago Terminal* at 5; *Norfolk S. Ry. Co. – Adverse Abandonment – St. Joseph Cty., IN.*, STB Docket No. AB-290 (Sub-No. 286) at 4 (served Oct. 26, 2006) (“*St. Joseph County*”).

Notice of Intent (49 C.F.R. § 1152.20): Alloy intends to file and publish a notice of the proposed adverse abandonment, as required by 49 C.F.R. § 1152.20. Alloy requests a waiver of several of the service and posting requirements for the notice that are not appropriate for this proceeding.

Significant Users of the Line: Alloy requests a waiver of 49 C.F.R. § 1152.20(a)(2)(i) and exemption from the statutory provisions of 49 U.S.C.

§ 10903(a)(3)(D), which require service of the notice upon all significant users of the Line. Because there are no users of the Line, significant or otherwise, these provisions are inapplicable. Petitioner will serve the notice on CTR.

Labor Organizations: Alloy also requests a waiver of 49 C.F.R.

§ 1152.20(a)(2)(xii), which requires service of the notice upon the headquarters of all duly certified labor organizations that represent employees on the affected rail lines. Ongoing rail service is not provided on the Line, and therefore there are no railroad employees who would be affected by an adverse abandonment of the Line. Furthermore, Alloy has no information on whether any of CTR's employees are represented by a union, as this information is entirely within the railroad's control. The Board has waived this requirement in similar past cases. *See Chicago Terminal* at 4-5.

Stations and Terminals: Alloy requests a waiver of 49 C.F.R. § 1152.20(a)(3) and exemption from the underlying statutory provision at 49 U.S.C.

§ 10903(a)(3)(B), which require the notice to be posted at each station and terminal along the lines. There are no stations or terminals along the affected rail Line.

Form of Notice of Intent (49 C.F.R. § 1152.21): As the Board has recognized, the form of the notice set forth in § 1152.21 is inappropriate for use in an adverse abandonment proceeding. Therefore, Alloy requests a waiver of the prescribed form for the notice, and proposes instead to use the form of notice set forth in Appendix B. This waiver and Alloy's proposed form is consistent with the

Board's decisions in *Chicago Terminal* and in *Seminole Gulf*. See *Chicago Terminal* at 3; *Seminole Gulf* at 2-3.

Contents of Application (49 C.F.R. § 1152.22): Alloy also requests a waiver of provisions of 49 C.F.R. § 1152.22 that require an application to include information that is outside Petitioner's control or that is otherwise inconsistent with an adverse application. These provisions are detailed below.

System Diagram Map Information (49 C.F.R. § 1152.22(a)(5)): Alloy requests a waiver of the requirements of 49 C.F.R. § 1152.22(a)(5), which requires information on whether the subject lines are included on the carrier's System Diagram Map, the date upon which the lines were first listed on the System Diagram Map, and a copy of the line descriptions which accompanies the carrier's System Diagram Map. For the reasons detailed above, waiver of these requirements is appropriate because Alloy, as a third party applicant, does not have access to CTR's current System Diagram Map and has no ability to control the inclusion of the Line on that map. The Board has granted waivers of these requirements in prior cases. See *Chicago Terminal* at 5; *Yakima Interurban Lines Assocs. – Adverse Abandonment – in Yakima Cty., WA.*, STB Docket No. AB-600 at 3 (served Feb. 6, 2004).

Condition of Property (49 C.F.R. § 1152.22(b)): Alloy requests a waiver of the § 1152.22(b) requirement to describe "[t]he present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need

replacing and/or new ballast, bridge repairs or replacement needed, and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration class 1 safety standards.” The Board has recognized that “this information generally is not available to a third-party abandonment applicant” and that this requirement should be waived in adverse abandonment cases. *Chicago Terminal* at 5-6; *see St. Joseph County* at 5.

Service provided (49 C.F.R. § 1152.22(c)): Alloy also requests waiver of the § 1152.22(c) requirement to describe service being provided on the Line. No service is being provided on the Line, and as an adverse applicant Alloy is not in a position to describe any past service patterns on the Line. Waiver of this requirement is consistent with prior Board decisions in adverse abandonment cases. *See Chicago Terminal* at 5-6; *St. Joseph County* at 5.

Revenue and cost data (49 C.F.R. § 1152.22(d)): Alloy does not have access to any of the revenue and cost data requested by § 1152.22(d), and the Board has regularly waived this provision for third-party applicants. *See Chicago Terminal* at 5-6; *St. Joseph County* at 5.

Federal Register Notice (49 C.F.R. § 1152.22(i)): Alloy further requests that the form of the draft Federal Register notice, as required by 49 C.F.R. § 1152.22(i), be modified as appropriate for an adverse abandonment case. Alloy proposes to utilize the form of draft Federal Register notice set forth in Appendix C.

Notice of Consummation (49 C.F.R. § 1152.29(e)(2)): Alloy requests a waiver of the one-year authorization limit in 49 C.F.R. § 1152.29(e)(2). As the Board

has previously held, it is not appropriate to place a time limit on an applicant to consummate an adverse abandonment, because the third party petitioner does not have control over the timing of consummation until it obtains control of the property from the railroad, which can involve proceedings under state law. *Chicago Terminal* at 6.

EXEMPTION REQUESTED

Offers of Financial Assistance: Alloy seeks an exemption from the requirements of 49 U.S.C. § 10904 and a related waiver of the provisions for offers of financial assistance (“OFA”) set forth in 49 C.F.R. § 1152.27. As the Board has recognized in past cases, the OFA provisions serve no useful purpose in an adverse abandonment case. *See, e.g., Chicago Terminal* at 6-7. If the Board were to grant Alloy’s application for adverse abandonment, the Board would be withdrawing its exclusive jurisdiction over the right-of-way to permit the application of state, local, or other federal laws because there is no overriding federal interest in interstate commerce. It would be “fundamentally inconsistent” with such a ruling for the Board to then permit OFAs to subsidize or replace CTR’s rail service. *Id.* at 7. This exemption thus meets the 49 U.S.C. § 10502 criteria for an exemption: (1) application of OFA provisions is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) OFA provisions are not needed to protect shippers from the abuse of market power.

Failure to exempt this case from section 10904 “could provide a vehicle for someone to invoke agency processes that the Board has determined are not

necessary or appropriate.” *St. Joseph County*, at 6 (citing *Kansas City Pub. Ser. Frtg. Ops. – Abandonment Exemption*, 7 I.C.C.2d 216, 225 (1990)). For these reasons, the Board should exempt this case from OFA requirements and waive the related OFA regulations.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Matthew J. Warren', is written over a horizontal line.

Matthew J. Warren
Hanna M. Chouest
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Counsel to Alloy Property
Company, LLC

Dated: June 1, 2017

CERTIFICATE OF SERVICE

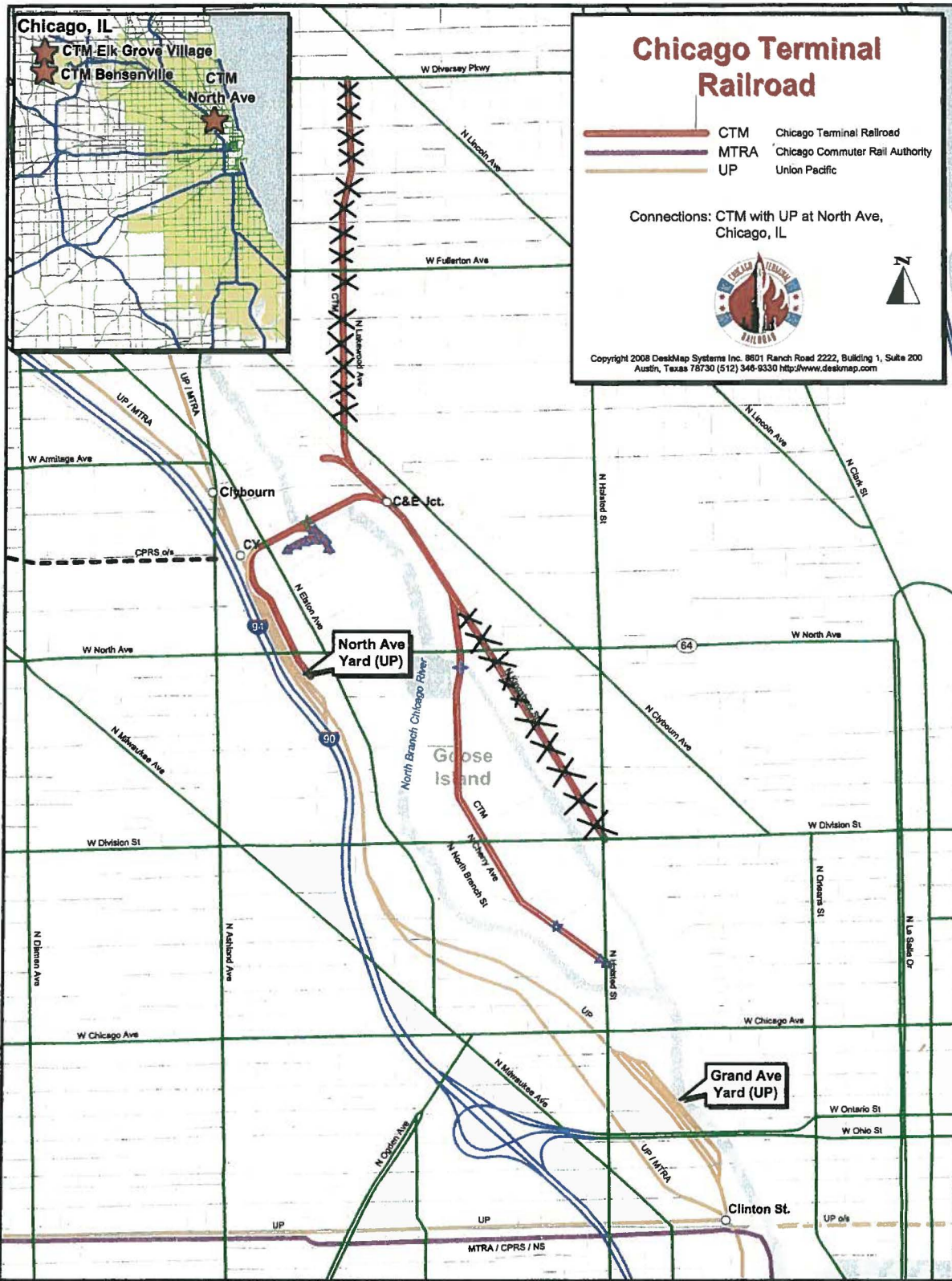
I hereby certify that on June 1, 2017, I caused the foregoing Petition for Partial Waiver of Abandonment Regulations and for Exemption to be served by first class mail or more expedient method upon the following:

Chicago Terminal Railroad
118 South Clinton St., Suite 400
Chicago, IL 60661



Alec Weingart

APPENDIX A
MAP OF SUBJECT LINE



Tracks crossed out with black Xs were abandoned in AB 1036 (June 15, 2010)

✧ Cherry Avenue Bridge
✧ Swing Bridge

△ Tracks have been removed
☆ Stop sign in middle of tracks

* This map of the Line was created from the system map that CTR has published on its website at <http://www.iowapacific.com/wp-content/uploads/2016/02/ChicagoTerminalRailroadNorthAveArea.pdf>. The map is for demonstrative purposes only and some details have been omitted.

APPENDIX B
DRAFT FORM OF NOTICE OF INTENT

DRAFT NOTICE OF INTENT
BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1258

**ALLOY PROPERTY COMPANY, LLC – ADVERSE ABANDONMENT –
CHICAGO TERMINAL RAILROAD IN CHICAGO, IL**

Alloy Property Company, LLC (“Applicant”) gives notice that on or about August 31, 2017, it intends to file with the Surface Transportation Board (“the Board”), Washington, D.C. 20423, an application seeking adverse abandonment of the authority of the Chicago Terminal Railroad (“CTR”) to operate over unused rail lines in Chicago, Cook County, Illinois, *i.e.*: the remaining portions of the “C&E” and “Bloomington” lines in Chicago, Illinois originating at Union Pacific’s North Avenue Yard and proceeding east and south to Goose Island, a distance of approximately 2.875 miles in Chicago, Cook County, Illinois to a terminus near the intersection of Chicago Avenue and Halsted Street in the “Goose Island” district of Chicago (the “Line”). The affected railroad Line is situated in U.S. Postal Zip Codes 60614 and 60642. The Line does not have stations. The reasons for the proposed abandonment include (i) the absence of current use of the Line; (ii) the lack of any reasonably foreseeable future need for rail service on the Line; and (iii) the prospect for beneficial nonrail use of the property. In addition, there are significant safety concerns with the current condition of the property.

There are no documents in Applicant's possession that indicate that the Line contains federally granted rights-of-way. Any such documentation that might come into Applicant's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham & Bonneville Counties, ID*, 360 I.C.C. 91 (1979). The application, when filed, can be viewed following its filing on the Board's webpage, www.stb.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. The application will include Applicant's entire case for abandonment. Any interested person, after the application is filed on or about August 31, 2017, may file with the Board its protest of, or written comments concerning, the proposed abandonment identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§ 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons interested only in seeking public use or trail use conditions should also file

comments. Persons opposing the proposed abandonment 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. In addition, a commenting party or protestant may provide a statement of position and evidence regarding: (i) environmental impact; (ii) impact on rural and community development; (iii) recommended provisions for protection of the interests of employees; (iv) suitability of the properties for other public purposes pursuant to 49 U.S.C. § 10905; and (v) prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and § 1152.29. 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 395 E. St S.W., Suite 100, Washington D.C. 20423, together with a certificate of service attesting that copies of the comments or protests have been served on Applicant's counsel in this matter, Matthew J. Warren, Sidley Austin LLP, 1501 K St NW, Washington, D.C. 20005, phone: (202) 736-8000; fax: (202) 736-8711; email: mjwarren@sidley.com. 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 interest 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 that 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 the abandonment procedures may contact the Surface Transportation Board or refer to the text of the abandonment regulations at 49 C.F.R. § 1152.1, *et seq.*

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.

APPENDIX C
DRAFT FORM OF FEDERAL REGISTER NOTICE

DRAFT FEDERAL REGISTER NOTICE

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-1258

**ALLOY PROPERTY COMPANY, LLC – ADVERSE ABANDONMENT –
CHICAGO TERMINAL RAILROAD IN CHICAGO, IL**

Alloy Property Company, LLC (“Applicant”) gives notice that on August 31, 2017, it filed with the Surface Transportation Board (“the Board”), Washington, D.C. 20423, an application seeking adverse abandonment of the authority of Chicago Terminal Railroad (“CTR”) to operate over unused rail lines in Chicago, Cook County, Illinois, *i.e.*: the remaining portions of the “C&E” and “Bloomington” lines in Chicago, Illinois originating at Union Pacific’s North Avenue Yard and proceeding east and south to Goose Island, a distance of approximately 2.875 miles in Chicago, Cook County, Illinois to a terminus near the intersection of Chicago Avenue and Halsted Street in the “Goose Island” district of Chicago (the “Line”). The affected railroad Line is situated in U.S. Postal Zip Codes 60614 and 60642. The Line does not have stations.

There is no documentation in the Applicant’s possession that indicates that the Line contains federally granted rights-of-way. Any such documentation relating to this abandonment in the Applicant’s possession will be made available promptly to those requesting it. The application can be viewed on the Board’s webpage,

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

The interest of railroad employees will be protected by *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham & Bonneville Counties, ID*, 360 I.C.C. 91 (1979).

Any interested person may file with the Board its protest of, or written comments concerning, the proposed abandonment identifying it by the proceeding's docket number. 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, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. § 10905 (§ 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. § 1247(d) (§ 1152.29 of the Board's rules) must be filed within 45 days after the application is filed. 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 interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide: (i) Recommended provisions for protection of the interests of employees; (ii) A request for a public use

condition under 49 U.S.C. 10905; and (iii) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and § 1152.29.

Persons seeking information concerning the filing of protests should refer to § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB-1258 and should be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, D.C. 20423,. Interested persons may file a written comment or protest with the Board to become a party to this abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant Matthew J. Warren, Sidley Austin LLP, 1501 K St NW, Washington, D.C. 20005, phone: (202) 736-8000; fax: (202) 736-8711; email: mjwarren@sidley.com. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service.

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the abandonment proceeding.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the text of the abandonment regulations at 49 C.F.R. § 1152.1, *et seq.* Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

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

David Michaud

From: David Michaud
Sent: Friday, September 09, 2016 2:24 PM
To: George Bellas
Cc: Jasmina De La Torre
Subject: RE: Burgoyne LLC
Attachments: notice of exemption for CTM.PDF

George,

Here is another case for your review and a relevant excerpt from the second to last paragraph in the decision. So there isn't any doubt, IPH/Chicago terminal railroad provide services as a common carrier on other portions of its line and have continued to hold itself out to the public as providing common carrier services on all portions of its lines, including the one at issue.

To give you an example, General Iron has been sending out scrap loads via barge. If barge prices went up so that rail was more cost effective, we'd be there to service them. If other shippers wanted to start receiving or shipping via rail, we'd be there for them too. We have never had any intent of abandoning operations on this line or any part of our line. The absence of a carload for over a year is not determinative of whether the line has been abandoned under STB law, and the STB has exclusive jurisdiction over whether this line is abandoned. Attached is our STB exemption filing, which includes a map on page 7 that shows the area in question being part of the active railroad line on file at the STB.

<https://www.stb.dot.gov/Decisions/readingroom.nsf/WEBUNID/E714B2E21FB049FC85257E4D004F836B?OpenDocument>

"Finally, a finding that the tracks are excepted tracks under §10906, as suggested by CSXT, would make the tracks subject to the Board's jurisdiction, but would not preempt the state court's determination that valid easements exist under state law for the same reasons. Moreover, if the tracks are excepted tracks under § 10906, there would be no inconsistency with the state court's findings because, based on the information that has been presented to us, we conclude that the tracks have not been abandoned under our statute. The key consideration in making this determination is whether the carrier has continued to exhibit a fixed and continuing intent to hold out to provide common carrier rail service to the public. See Pinelawn Cemetery—Pet. for Declaratory Order, FD 35468, slip op. at 10 (STB served Apr. 21, 2015). Here, Ironwood has been soliciting tenants for its property, and CSXT has a written agreement with Ironwood to provide rail service should the track removed by JGB be replaced.^[22] JGB cannot successfully claim that the tracks have been abandoned by non-use when Ironwood has been blocked from restoring and rehabilitating the tracks by JGB's actions and litigation. The record also demonstrates that there is a desire to rehabilitate the track once matters with JGB are settled."

If you another proposed solution, feel free to give me a call. We're not in the business of abandoning track but if your client wants to make an offer, I will relay it to our board.

David Michaud, General Counsel
Iowa Pacific Holdings, LLC
118 S. Clinton, suite 400
Chicago, IL 60661
312-667-0377 (work)



Since 1930



912 Pitner Avenue • Evanston, IL 60202 • ph: 847.475.1877 • fx: 847.475.0037 • nelsjohnsontree.com

February 14, 2017

Mr. Todd Rusche
Sterling Bay
1040 West Randolph Street
Chicago, Illinois 60607

Dear Mr. Rusche,

On February 9th I did a site inspection at the old Finkl Steel property at 2011 N. Southport in Chicago. The area I looked at is located on the southwest corner of the property between an old railroad bridge and the Chicago River. In this area, there were approximately 30-40 small trees that have been recently cut down and the debris has been left onsite.

The majority of the trees that were removed were Siberian Elms (*Ulmus pumila*) but there were also several Northern Catalpa (*Catalpa speciosa*) and Mulberry (*Morus alba*) trees in that area. The trees that were cut down ranged from 1-6" in diameter and were approximately 2-15' tall at the time of removal.

Sincerely,

Nels J. Johnson Tree Experts, Inc.

A handwritten signature in dark ink, appearing to read "DR" followed by a stylized flourish.

Daniel Runyon
Certified Arborist
IL-5107A

DR/kn

The largest Siberian Elm that I found measured 5" in diameter and had been growing in that area for approximately 5 years based on the diameter and amount of annual growth rings. Typically, this species of tree will put on 3/4-1" of diameter every growing season and will grow 8-12' tall during this time period.

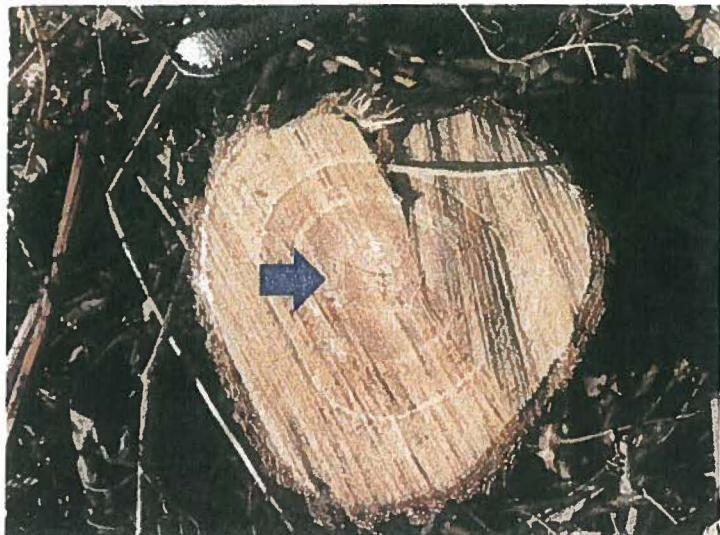


Figure 1: This arrow highlights an annual growth ring that the tree produces every growing season. This specific Elm tree has 5 years of growth.

The largest Catalpa that I found measured 5.5" in diameter and had been growing in that area for approximately 6 years based on the diameter and amount of annual growth rings. Typically, this species of tree will put on 1/2-1" of diameter every growing season and will grow 10-12' tall during this time period.



Figure 2: This arrow highlights an annual growth ring that the tree produces every growing season. This specific Catalpa has 6 years of growth.

The largest Mulberry that I found measured 6" in diameter and had been growing in that area for 5-6 years based on diameter and amount of annual growth rings. Typically, this species of tree will put on $\frac{3}{4}$ -1" of diameter every growing season and will grow 12-15' tall during this time period.

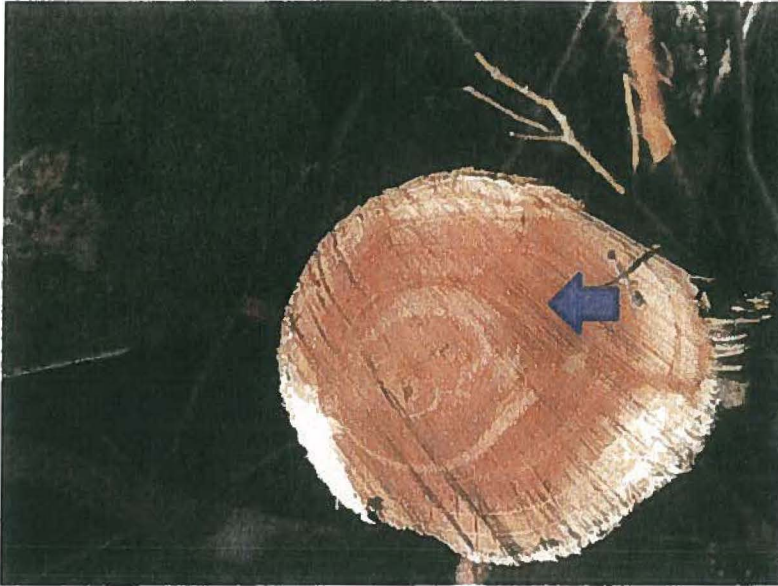
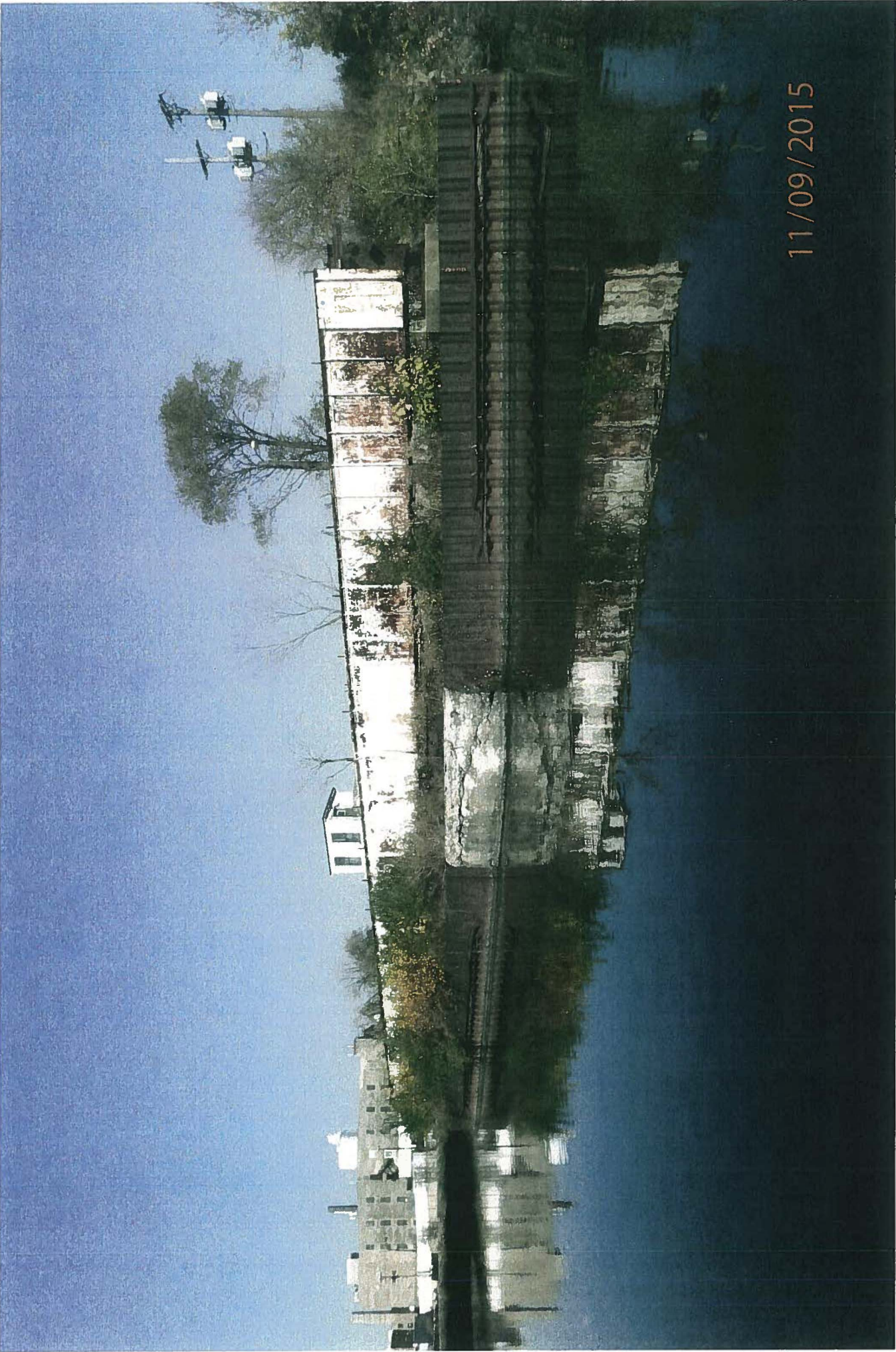


Figure 3: This arrow highlights an annual growth ring that the tree produces every growing season. This specific Mulberry has 5-6 years of growth.

Based on my site visit, I have concluded that the smaller trees, 1-3" in diameter had been growing on the site before they were removed for 1-3 years. The larger trees, 3-6" in diameter had been growing on the site before they were removed for 3-6 years. I used the diameter of the trees, annual growth rate and estimated height to come to this conclusion.



APPENDIX F



11/09/2015





11/09/2015



11/09/2015



David Michaud

From: David Michaud
Sent: Friday, September 02, 2016 1:20 PM
To: 'George Bellas'
Cc: Ken Skolnik; Jasmina De La Torre; Melissa J. Cariato
Subject: RE: Burgoyne LLC

George,

Thanks for your email. It is noted that you are counsel for Burgoyne, LLC.

Contrary to your assertion, the facts are clear to anyone who deals in STB law that Burgoyne had no business erecting a permanent metal fence over railroad tracks based on some 1987 corrective deed that they stumbled across. As I tried to explain Ken Skolnick yesterday, once the railroad obtained STB authority to operate as a common carrier, it makes no difference whether the corrective deed has any merit.

Quite frankly, In 14 years of operating short line railroads around the country, our company has never seen such an asinine maneuver in putting up a permanent metal fence across our railroad tracks. If our locomotive came down the tracks at any time during your client's fence-building—and we periodically do run locomotives over the underused portions of our track—it would likely not be able to stop in time, end up demolishing the fence, or derailling, and possibly killing somebody. Your client would be liable. Thus, the fence your client has erected poses a serious safety hazard for our train crews and the public at large.

I can't say that I'm totally surprised at your client's brazenness, given the explosive temperament of the elder Mr. Skolnick ("Get the fuck off my property" were his words after I introduced myself as the railroad's attorney). Contrary to your assertion, his behavior was the only thing that was unwarranted and I have every right to visit our railroad tracks to see the extent of the damage your clients have caused and are continuing to cause.

More to the point, General Iron is a shipper/customer of ours. If they were to call on us to deliver a railcar to them, we have common carrier obligations under the ICCTA to provide them with that car. To refuse service on account of your client's fence would put us in default of our common carrier obligations and subject us to sanctions by the STB. I suggest you review 49 USC 11101 <https://www.law.cornell.edu/uscode/text/49/11101>. That 12 months has passed since we've loaded a General Iron car is inapposite to whether the line is an active rail line and part of the national rail network.

Beyond that, Burgoyne's fence improperly suggests that the railroad is out of service, thereby inhibiting future business developments for the railroad and hurting its value. Hence, there is an immediate need to remove the fence and stop whatever other construction activities that are going on, which would support any relief we seek in federal court

You can respond on September 9 but I will be drafting a Complaint on Tuesday September 6 if I don't receive notice before then that efforts have begun to remove the fence.

David Michaud, General Counsel
Iowa Pacific Holdings, LLC
118 S. Clinton, suite 400
Chicago, IL 60661

312-667-0377 (work)
773-255-3375 (cell)
312-509-4030 (fax)

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From: George Bellas [mailto:george@bellas-wachowski.com]
Sent: Friday, September 02, 2016 11:18 AM
To: David Michaud <MichaudD@IowaPacific.com>
Cc: Ken Skolnik <kskolnik@ameritech.net>; Jasmina De La Torre <jasmina@bellas-wachowski.com>; Melissa J. Cariato <melissa@bellas-wachowski.com>
Subject: Burgoyne LLC
Importance: High

Mr. Michaud –

This office represents Burgoyne, LLC.

Your recent correspondence with Kenneth Skolnik has been forwarded to me for review and response. My firm is reviewing the information you provided and the purported authorities. Our initial analysis indicates that the issue is not as clear as you assert.

We will respond to your demand by Friday, September 9. Your demand to respond by September 5 is not reasonable given the fact that September 5 is a legal holiday. Moreover, since this line has not been used in over a year, we do not understand the urgency placed on your demands.

Also, we would suggest that you refrain from any further personal contact with any employee of Burgoyne. Your visit to the site and interaction with the people on the site was not warranted and unprofessional.

All future correspondence should be directed to the undersigned.

Geo

George S. Bellas

Attorney at Law

Bellas & Wachowski

15 North Northwest Highway

Park Ridge, Illinois 60068

Phone: 847-823-9030 x219

Email: george@bellas-wachowski.com

Web: www.bellas-wachowski.com

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AGREEMENT

Prepared by and
Return to:
Lawrence Adelson
Chlco & Nunes, P.C.
333 W. Wacker Dr.
Suite #1800
Chicago, IL 60606



Doc#: 1335444052 Fee: \$52.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/20/2013 12:51 PM Pg: 1 of 8

AGREEMENT FOR REMOVAL OF TRACKAGE

Entered into by and between Foundry Buzz LLC, Foundry Glassberg LLC, Foundry Meyer, LLC, Jacquin Foundry LLC, Urban Financial Foundry LLC, and Foundry Wineman LLC. (collectively "Lakewest"), each an Illinois limited liability company, and Chicago Terminal Railroad Company ("Chicago Terminal"), an Illinois corporation and dated October 18, 2013.

The legal description of the property is set forth on Exhibit A, hereto.

This Agreement relates to the property commonly known as:

2070-2112 N. Clybourn Ave., Chicago, IL. 60614

The PINs for the Property are:

14-32-128-027-0000, 14-32-128-030-0000 and 14-32-132-014-0000.

It affects the Quitclaim Deed dated September 30, 1987 and recorded as Document No. 87660309.

AGREEMENT FOR REMOVAL OF TRACKAGE

This agreement ("Agreement") is entered into by and between Foundry Buzz LLC, Foundry Glassberg LLC, Foundry Meyer, LLC, Jacquín Foundry LLC, Urban Financial Foundry LLC, and Foundry Wineman LLC. (collectively "Lakewest"), each an Illinois limited liability company, and Chicago Terminal Railroad Company ("Chicago Terminal"), an Illinois corporation and is dated effective October 18, 2013.

Whereas:

- A. Lakewest is the owner of the property ("Property") commonly known as 2070-2112 N. Clybourn Avenue in Cook County, Chicago, Illinois. The Property is described on Exhibit A attached hereto and depicted on the survey attached hereto as Exhibit B (the "Survey"). The Property is operated as the Foundry Shopping Center.
- B. The Property is subject to an easement reserved in that certain Quit Claim Deed from CMC Real Estate Corporation to Sheffield Foundry Company, dated September 30, 1987, and recorded December 15, 1987 with the Cook County Recorder of Deeds as Document No. 87660309 ("Easement") for existing railroad tracks ("Rails") within an area of the Property (Easement Area). The Rails end at N. Clybourn Avenue. The Easement is shown on the Survey.
- C. The Chicago Terminal has a common carrier obligation to provide rail service on the Easement, if requested. Chicago Terminal is not required to provide rail service north of the Property.
- D. There is no demand for rail service to, or through, the Property, and none is foreseen.
- E. Lakewest wishes to remove the Rails from the Easement Area and repave the Easement Area in order to improve the safety and efficiency of the Property.
- F. Chicago Terminal is able to provide service to its existing customers without the Rails, and wishes to recover the Rails for reuse.
- G. Chicago Terminal is willing to permit the removal of the Rails and the paving over of the Easement Area on the terms and conditions of this agreement.

Therefore, in consideration of the payment of Ten Dollars (\$10.00) and the mutual promises herein, it is agreed that:

- 1. Lakewest will pay Chicago Terminal Twelve Thousand Five Hundred Dollars (\$12,500.00) on execution of this agreement.

2. Chicago Terminal agrees that Lakewest may remove the Rails and repave the Easement Area. Chicago Terminal will not use the Easement unless required to do so in connection with providing common carrier rail service.
3. Lakewest will remove the Rails from the Easement Area and will place them on Chicago Terminal right-of way adjoining the Property.
4. Lakewest releases any claim it might have to ownership of the Rails.
5. Lakewest agrees that it will not request rail service to the Property.
6. Chicago Terminal agrees that, if it is required to use the Easement to provide common carrier rail service in the future, Chicago Terminal will pay Lakewest Twelve Thousand Five Hundred Dollars (\$12,500) and that any restoration of the rail line in the Easement will be at Chicago Terminal's sole cost.

Signature Page Follows

Agreed:

Chicago Terminal Railroad Company

by: 

Name: Todd N. Cecil

Its:

VP - Real Estate Development

Foundry Buzz LLC

By: Lakewest, Inc., its Manager

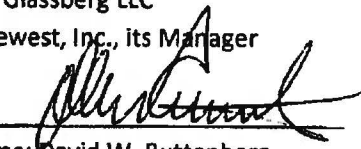
By: 

Name: David W. Ruttenberg

Its: President

Foundry Glassberg LLC

By: Lakewest, Inc., its Manager

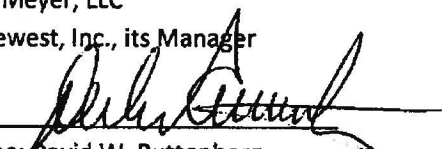
By: 

Name: David W. Ruttenberg

Its: President

Foundry Meyer, LLC

By: Lakewest, Inc., its Manager

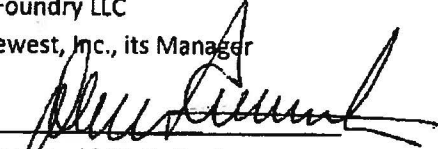
By: 

Name: David W. Ruttenberg

Its: President

Jacquin Foundry LLC

By: Lakewest, Inc., its Manager

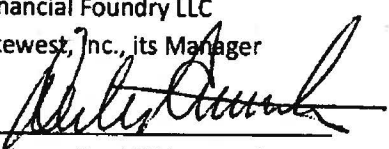
By: 

Name: David W. Ruttenberg

Its: President

Urban Financial Foundry LLC

by Lakewest, Inc., its Manager

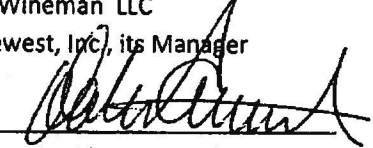
by: 

Name: David W. Ruttenberg

Its: President

Foundry Wineman LLC

By: Lakewest, Inc., its Manager

By: 

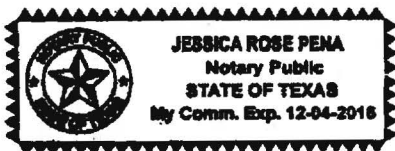
Name: David W. Ruttenberg

Its: President

State of TEXAS)
) ss
 County of BEXAR)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT TODD N. CECIL, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered this instrument as VP- REAL ESTATE of Chicago Terminal Railroad Company, as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 9 day of DECEMBER, 2013.



Jessica R. Pena
 Notary Public

Commission expires: 12-04-2016

State of Illinois)
) ss
 County of Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT David W. Ruttenberg, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered this instrument as President of Lakewest, Inc. the manager of Jacquin Foundry LLC, Foundry Buzz LLC, Urban Financial Foundry LLC, Foundry Glassberg LLC, Foundry Meyer, LLC, Foundry Wineman LLC, as a free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 13th day of November, 2013.

Tammy Culbertson
 Notary Public

Commission expires: August 27, 2015

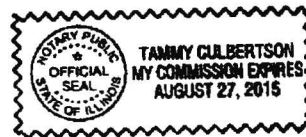


EXHIBIT A

LEGAL DESCRIPTION

Parcel 1:

Lots 14 to 22, inclusive, in Sub-Lot 3 in Sheffield's Nursery Subdivision of Block 13 in Sheffield's Addition to the City of Chicago, Cook County, Illinois.

Excepting therefrom,

All that portion of Lots 14 to 19, both inclusive, of Sub-Lot 3 in Sheffield's Nursery Subdivision of Block 13 in Sheffield's Addition to Chicago, Cook County, Illinois which is described as follows:

Start at the Northeastern corner of said lot 14; Thence Northwest along the Northern line of said lots 14 to 19 which coincides with the Southern line of Clybourn Avenue 147.57 feet to a point in a line which is parallel to and 12.5 feet Easterly, measured at right angles, from the center line of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company's most Easterly track; Thence Southerly along said parallel line which makes an angle of 44° 31' 15" with said Southern line of Clybourn Avenue 143.03 feet to the beginning of a curve to the left with a radius of 469.84 feet; Thence Southerly along said curve 55.66 feet, more or less, to a point in the Easterly line of said lot 14 distant 132 feet Southerly of the Northeastern corner thereof; Thence Northerly along said Lot line 132 feet to the place of beginning, in Cook County, Illinois.

Parcel 2:

Lots 1 to 5, both inclusive in Sub-Block 2 in Subdivision of Block 13 in Sheffield's Addition to Chicago;

Also

All that part of the Northwest 33 feet of that part of Herndon Street Southeast of and adjoining the Southeast line of Lot 1, Block 2 in Sheffield's Nursery Subdivision of Block 13 in Sheffield's Addition to Chicago, in Sections 29, 31, 32 and 33, Township 40 North, Range 14, East of the Third Principal Meridian, said part of said street being further described as the Northwest 33 feet of that part of Herndon Street extending Southwest from the Southwest line of Clybourn Avenue a distance of 135 feet more or less in Cook County, Illinois.

Parcel 3:

That part of the Southeast 33 feet of that part of North Lakewood Avenue (formerly Herndon Street) lying Northwest of the Northwest line of Lot 22 in the Subdivision of Block 3 in the Subdivision of Block 13 of Sheffield's Addition to Chicago in Section 32, Township 40 North, Range 14, East of the Third Principal Meridian, situated in the City of Chicago, County of Cook and State of Illinois.

Parcel 4:

Lots 6 to 14 inclusive, in the Subdivision of Block 2 of Block 13 in Sheffield's Addition to Chicago in Section 32, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Containing a total of 73,059 sq ft or 1.6771 acres, more or less.

Tax Numbers applicable to property: 14-32-128-023-0000
14-32-128-030-0000
14-32-132-014-0000

EXHIBIT B

SURVEY

(SEE ATTACHED)





EXHIBIT
A-3
APPENDIX I

CERTIFICATE

This certification is given to Chicago Title Insurance Company to issue their title policy free and clear of the following recorded declaration of restrictive covenants:

The undersigned hereby certifies and states that to the best of the undersigned's knowledge, with respect to exception DD raised in Chicago Title Insurance Company Commitment Number 1401-008978667-D2 ("Commitment"):

- a) To the undersigned's knowledge, without independent inquiry or investigation, the owner for at least the past five (5) years, and the current owner of the swing bridge, including the physical components thereof, is Chicago Terminal Railroad Company ("Railroad");
- b) To the undersigned's knowledge, without independent inquiry or investigation, there has been no recent user of the swing bridge and for approximately the last one (1) year there has been no user of the swing bridge; and
- c) The swing bridge is used to provide access to and over the land described in the Commitment, to the extent railroad facilities exist on the land.

Date: November 30, 2016

[SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, the undersigned have executed this Certificate on the day and year first above written.

AFS NORTHSIDE, LLC, an Illinois limited liability company

By: 

Name: James B. Finkl

Its: Manager

By: _____

Name: Joseph E. Curci

Its: Manager

By: _____

Name: Bruce C. Liimatainen

Its: Manager

[SIGNATURE PAGE TO CERTIFICATE REGARDING SWING BRIDGE]

APPENDIX J

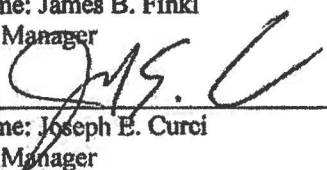
IN WITNESS WHEREOF, the undersigned have executed this Certificate on the day and year first above written.

AFS NORTHSIDE, LLC, an Illinois limited liability company

By: _____

Name: James B. Finkl

Its: Manager

By:  _____

Name: Joseph E. Curci

Its: Manager

By: _____

Name: Bruce C. Liimatainen

Its: Manager

[SIGNATURE PAGE TO CERTIFICATE REGARDING SWING BRIDGE]

APPENDIX J

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AFS NORTHSIDE, LLC, an Illinois limited liability company

By: _____
Name: James B. Finkl
Its: Manager

By: _____
Name: Joseph E. Curci
Its: Manager

By:  _____
Name: Bruce C. Liimatainen
Its: Manager

[SIGNATURE PAGE TO CERTIFICATE REGARDING SWING BRIDGE]

APPENDIX J

IN THE MATTER OF:)
)
Illinois Commerce Commission)
On Its Own Motion,)
)
Petitioner,)
)
v.)
)
Iowa Pacific Holdings - Chicago)
Terminal Railway,)
)
Respondents.)

Citation with respect to Chicago)
Terminal Railway and the failure)
to maintain various highway-rail)
grade crossing surfaces in)
accordance with the requirements)
of 92 Ill. Adm. Code 1535-203.)

Met pursuant to notice at 2:00 p.m.

17
18
19
20
21
22

1 APPEARANCES:

2 ILLINOIS COMMERCE COMMISSION, by
3 MR. BRIAN M. VERCruysse
4 527 East Capitol Avenue
Springfield, Illinois 62701
(312) 636-7760

5 Appearing on behalf of the Staff of
6 the Illinois Commerce Commission;

7 IOWA PACIFIC HOLDINGS LLC, by
8 MR. DAVID LOPEZ MICHAUD
118 South Clinton Street, Suite 400
Chicago, Illinois 60661-5772
(312) 466-0900

9 Appearing on behalf of Iowa Pacific
10 Holdings LLC;

11 CITY OF CHICAGO, ASSISTANT CORPORATION COUNSEL, by
12 MR. JARED W. POLICICCHIO
30 North LaSalle Street, Suite 1400
Chicago, Illinois 60647
13 (312) 744-1438

14 Appearing on behalf of the City of
15 Chicago.

Also Present:
16 Mr. Joe Alonzo

17 SULLIVAN REPORTING COMPANY, by
18 Brad Benjamin, CSR
License No. 084-004805

19

20

21

22

I N D E X

<u>Witnesses:</u>	<u>Examination</u>	<u>By Examiner</u>
Brian M. Vercruysse	8	Judge Duggan
Joe Alonzo	39	Judge Duggan

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
Staff Group Exhibit No. 1	65	23
Staff Exhibit No. 2	65	23
Staff Exhibit No. 3	65	23

1 JUDGE DUGGAN: Pursuant to the authority vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket T16-0076 for a
4 hearing.

5 May I have the appearances, we'll
6 start with the Commission staff.

7 MR. VERCROYSSSE: Thank you, your Honor.

8 Brian Vercruysse, V, as in Victor,
9 E-R-C-R-U-Y-S-S-E, representing the Rail Safety
10 Section of the Illinois Commerce Commission. Phone
11 number, (312) 636-7760; address, 527 East Capitol
12 Avenue, Springfield, Illinois 62701.

13 Thank you.

14 JUDGE DUGGAN: Okay. Thanks again.

15 And Mr. Michaud for Iowa Pacific
16 Holdings?

17 MR. MICHAUD: David Michaud, I hold the title
18 of General Counsel for Iowa Pacific Holdings. Iowa
19 Pacific Holding [sic] is the parent company of
20 Chicago Terminal Railway. My company's address is
21 118 South Clinton, Suite 400, Chicago, 60661; phone
22 number's (312) 667-0377.

1 JUDGE DUGGAN: Very good.

2 And let the record show that also here
3 today is Mr. Joe Alonzo with the City of Chicago
4 Department of Transportation and the City legal
5 department attorney Jared Policicchio.

6 We'll simply note at this point that
7 there's been no formal petition to intervene and --
8 but both Mr. Vercruysse and Mr. Michaud are going to
9 be relatively flexible with the input of the City's
10 legal department. However, I think that we will
11 simply have testimony from Mr. Alonzo and allow the
12 legal department to suggest approaches to help
13 resolve this matter.

14 But that being given, why don't you go
15 ahead and tell us your name, your office address, and
16 who you represent, Mr. Policcichio.

17 MR. POLICICHIO: Sure.

18 Jared, J-A-R-E-D, Policicchio
19 P-O-L-I-C-I-C-C-H-I-O, with the City of Chicago Law
20 Department. Address is 30 North LaSalle Street,
21 Suite 1400, Chicago. And I'm j- --

22 JUDGE DUGGAN: Thank you.

1 Are you done?

2 MR. POLICICHIO: Yes, I'm done. I'm joined by
3 Mr. Joe Alonzo.

4 JUDGE DUGGAN: Thank you.

5 Before we went on the record today, we
6 reviewed the exhibits that Mr. Vercruysse intends to
7 produce. We'll make a note that I'm in Springfield
8 and everyone else is in Chicago, and so it's
9 sometimes hard to see things by exhibits that aren't
10 either directly in front of me or because of the
11 quality of certain photographs. So Mr. Vercruysse
12 was able to explain to me what he hopes to be able to
13 prove with his exhibits in the photographs and the
14 videos.

15 We then discussed part of Iowa Pacific
16 Holdings' positions which they will be restating here
17 on the record today, and what can be done
18 cooperatively to hopefully resolve the issue and how
19 to make it enforceable and the time frames and
20 followups, assuming that, in fact, the evidence
21 establishes a need for repairs in order -- and in
22 order to do so.

1 So, now, Mr. Alonzo and

2 Mr. Vercruysse, please raise your right hands.

3 Do solemnly swear the testimony you'll

4 give today will be the truth, the whole truth, and

5 nothing but the truth?

6 Mr. Vercruysse?

7 MR. VERCROYSSSE: I do.

8 JUDGE DUGGAN: Mr. Alonzo?

9 MR. ALONZO: I do.

10 JUDGE DUGGAN: Thank you very much.

11 We'll note that Commission Staff,

12 Mr. Vercruysse, is going to offer the following

13 exhibits: Exhibit 1, which -- do you have these in

14 front of you, Mr. Michaud?

15 MR. MICHAUD: I have access to them by way a of

16 Brian here. So that's...

17 JUDGE DUGGAN: Okay. Exhibit 1, which --

18 page 1 consists of four maps showing locations of the

19 two crossings at issue; page 2 of Group Exhibit 1,

20 which shows the crossing at North Avenue; page 3 of

21 Group Exhibit 1, which shows repairs to the

22 southbound lanes of York Road, which is simply there

1 to show that these repairs have been made and they
2 are holding up apparently. And then page 4, Exhibit
3 1, which is the northbound lanes of York Road at the
4 same intersection, which will be presented to show a
5 present state of disrepair. And then Video 2 will be
6 a video -- excuse me -- Exhibit 2 will be video of
7 the North Avenue crossing, and Exhibit 3 will be a
8 video of York -- York Road crossing.

9 Is that a correct summary of what the
10 exhibits are that you plan to introduce,
11 Mr. Vercruysse?

12 MR. VERCROYSSSE: Yes, your Honor.

13 JUDGE DUGGAN: Okay.

14 BRIAN M. VERCROYSSSE,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 EXAMINATION

18 BY

19 JUDGE DUGGAN:

20 Q So do you want to proceed with your
21 exhibits in describing them or do you want to proceed
22 with a preliminary on -- a summary of the history of

1 these intersections and why you've been following
2 them and why we're here today instead of having them
3 repaired?

4 A If I could start with the summary, I'd
5 appreciate it, your Honor.

6 Q Very good.

7 A Great. Thank you.

8 Your Honor, the two crossings that
9 Staff would like to present today, the first is
10 Illinois Route 64, North Avenue in the City of
11 Chicago, and then the second is York Road at the
12 Terminal Rail Company in the city of Bensenville.
13 The York Road crossing is the under the jurisdiction
14 of DuPage County.

15 For both of these crossings, we have
16 contacted Mr. Michaud, the City of Chicago, and also
17 DuPage County to try to coordinate repairs that are
18 necessary. It's my understanding, and from this
19 coordination, that it's not a matter of whether the
20 work is needed or that the railroad is not willing to
21 do it, it has been more a matter of finances for the
22 railroad. And we can discuss those further on the

1 record, but at this time I would like to take us
2 through Group Exhibit 1 and then through the videos,
3 Exhibit 2 and 3, to give just a general sense of the
4 condition of the crossings as well as their
5 locations.

6 Is that satisfactory to you?

7 Q That would be, except I think it would be
8 appropriate to let Mr. Michaud respond to the
9 representations made so far, first.

10 A Thank you.

11 MR. MICHAUD: I don't have any objection to
12 Brian's representations.

13 JUDGE DUGGAN: Very good.

14 BY JUDGE DUGGAN:

15 Q Then you want to proceed with your
16 exhibits?

17 A Yes, your Honor, and you've given a
18 description already on the record as far as what the
19 pages are, so I'll be brief.

20 Group Exhibit 1 on page 1 provides the
21 location maps. The upper half with red highlight and
22 circles shows the North Avenue crossing, which is

1 located east of the Kennedy Expressway along
2 North Avenue and just east of the Chicago River.
3 It's highlighted on this exhibit, as I noted, in the
4 red circle highlight on the top.

5 The York Road crossing is along the
6 western perimeter of O'Hare Airport and is a
7 five-lane roadway with two lanes northbound, two
8 lanes southbound, and a flush median. That's
9 identified on page 1 in the location maps with a
10 yellow highlight and circle.

11 Going to page 2 of Group Exhibit 1, it
12 is a photograph of the North Avenue crossing that was
13 taken on June 15th, 2016, and what is shown in this
14 picture towards the center is --

15 Q What is -- was the date?

16 A June 15th, 2016.

17 Q Thank you.

18 A And Staff had visited the crossing after
19 receiving inquiries from the City of Chicago as to
20 some of the repairs that were previously completed by
21 the Chicago Terminal Railway that had not held up.
22 And the exhibit and photographs specifically shows a

1 red arrow pointing to a section of the crossing that
2 is in the eastbound lane and in the inner most lane.

3 It's a rubber crossing surface panel
4 that had remained and was thought to be suitable with
5 the previous repairs, but what had happened is that
6 it had settled to a different elevation with the
7 pavement. And then there was actually asphalt patch
8 that was also put in that created a little bit more
9 of a hump that was of a higher elevation than the
10 other pavement. So Staff's --

11 Q And you identified that asphalt --
12 identified asphalt -- lump in the exhibit?

13 A In the exhibit, from the red arrow that's
14 located in the center of the photograph, it is
15 pointing at the rubber surface panel. The asphalt is
16 then just adjacent to that panel, just to the east,
17 and within the shadow or underneath the back side of
18 the small Sedan in the photograph.

19 Q Okay. And so the rubber panel at that
20 point has settled low and the asphalt is above the --
21 well, the level of the road at that point, correct?

22 A Yes.

1 Q Okay.

2 A And video in Exhibit 2 that I intend on
3 showing will highlight how traffic moves along in the
4 other lanes in a satisfactory manner, but that in
5 this section there is the bump, as I previously
6 mentioned.

7 Are there any further questions on
8 page 2 with the photograph?

9 JUDGE DUGGAN: If we're going to move on to
10 York, then, yeah, let's go ahead and give Mr. Michaud
11 an opportunity on North Avenue in that exhibit.

12 MR. MICHAUD: No objection, your Honor.

13 JUDGE DUGGAN: Do you have anything on that?

14 MR. MICHAUD: No objections.

15 JUDGE DUGGAN: Nothing you say? Okay. Very
16 good.

17 BY JUDGE DUGGAN:

18 Q So, yeah. Go ahead and go on to pages 3
19 and 4 of York.

20 A Thank you, your Honor.

21 Group Exhibit 1, page 3 of 4, shows
22 repairs that were completed to the southbound lanes.

1 Those repairs were completed on April 11th, 2016.
2 That was a coordinated effort with the Chicago
3 Terminal Railway and DuPage County Highway
4 Department. DuPage County Highway assisted with
5 traffic control and other measures so that the
6 Chicago Terminal forces could complete the work.

7 Through this section, the crossing
8 surface was comprised of rubber crossing surface
9 panels. Those were all removed and replaced with
10 asphalt that was compacted, and it has been holding
11 up.

12 Going to page 4 of 4 of Group
13 Exhibit 1, this is the northbound lanes where the
14 rubber crossing surface panels remain and are in a
15 state of disrepair. Where elevations are off, panels
16 have failed in which they're settled or vehicles can
17 compress them creating bumps and jarring, and that is
18 present on both of the northbound lanes through this
19 section.

20 Staff has witnessed that vehicles as
21 they travel northbound, they will swerve into the
22 center median area or turn area to avoid these

1 northbound lanes. The video, as Exhibit 3 that I
2 intend on showing, will show the driver's perspective
3 traveling north on York Road.

4 So I'm open to any questions with
5 these two pictures or any other comments or concerns.
6 Staff has reached out to Mr. Michaud and also with
7 DuPage County identifying that these repairs are now
8 needed to the northbound lanes, similar to what was
9 completed for southbound.

10 Q Okay. Let me ask you this: I'm going to go
11 back to the -- North Avenue and ask you if you have
12 measured the variations from the -- what is the
13 otherwise -- tape at level of the street and measure
14 the variations at the point of the settling of the
15 rubber panel or the raising of the asphalt?

16 A Your Honor, I did not take any
17 measurements.

18 Q Okay. By your -- were you close enough to
19 observe it to estimate the height differences?

20 A Yes, your Honor.

21 Q And what did you observe? What's your
22 estimate of the height differences?

1 A Approximately three inches difference
2 between the bump of asphalt down to the lower section
3 of the rubber crossing surface panel.

4 Q Okay. And when you observed that traffic,
5 did you observe the vehicles taking any special
6 precautions in approaching it or any consequences of
7 failing to take precautions?

8 A Your Honor, I observed the vehicles going
9 over the bump and just hitting it and having a
10 rougher ride. I did not see or recall vehicles
11 swerving at this point.

12 JUDGE DUGGAN: Okay. And Mr. Michaud, I could
13 keep asking you or you can jump in wherever you need
14 to. Okay?

15 MR. MICHAUD: Okay. I can say --

16 JUDGE DUGGAN: This --

17 MR. MICHAUD: -- we have not received any calls
18 from motorists, directly. Every once in a while we
19 do get calls about crossings, but I don't have any
20 knowledge of getting a call on this particular
21 crossing.

22

1 BY JUDGE DUGGAN:

2 Q Mr. Vercruysse, did you say that you did
3 get calls on this crossing?

4 A I've received calls from the City of
5 Chicago. I've received calls from the Federal
6 Railroad Administration on behalf of a state -- on
7 behalf of a U. S. representative. Forgive me, I do
8 not know which representative that is now. But
9 mainly my contact has been through the alderman's
10 office and then also through the Federal Railroad
11 Administration.

12 Q Very good.

13 And northbound, you said you -- or the
14 York Road, did you say you got calls on that one?

15 A York Road: DuPage County checks in with me
16 at least on a monthly basis, and they have identified
17 that they've received calls from the city of
18 Bensenville.

19 Q And what does the City of Bensenville have
20 to do with this?

21 A This -- the crossing's located within the
22 corporate limits of the city of Bensenville. So it

1 was just another -- you asked as far as other
2 complaints that were provided, but my conduit is
3 through DuPage County.

4 Q Very good.

5 Okay. You want to present your
6 videos?

7 A Yes, your Honor.

8 For a moment, can we go off the record
9 while we try and switch the screens so you can see
10 them? Or if --

11 Q Yes.

12 A -- you don't need to, that's fine.

13 Q Oh, no. No. I want to see them.

14 (A discussion was held off
15 the record.)

16 JUDGE DUGGAN: So, Mr. Benjamin, we're back on.
17 And -- okay.

18 We were off the record for a second to
19 get the audio/visual equipment working, and
20 Mr. Vercruysse is ready to run the video, which is
21 Exhibit 2.

22

1 BY JUDGE DUGGAN:

2 Q So please, go ahead.

3 A Thank you, your Honor.

4 The video that I will run for you in
5 just a minute is 25 seconds long. It's identified as
6 Staff Exhibit 2. It was also filmed on June 15th,
7 2016. And what we see on the screen before us right
8 now is a red car in the lane that's in question; it's
9 the eastbound inner lane. And as I run this, we'll
10 see various motorists and cyclists going over the
11 crossing.

12 I'll let it run through for the first
13 25 seconds, or through the completion, and then I can
14 bring it back to the start and stop it at specific
15 points if anyone needs to see it.

16 Q Okay. One second.

17 Did you say this video was also taken
18 the same day as the photograph?

19 A Yes, it is.

20 Q Okay. Go ahead.

21 MR. MICHAUD: The photograph is dated
22 October 4th -- oh, no. I'm sorry.

1 JUDGE DUGGAN: No. June 15th, 2016.

2 MR. MICHAUD: Yeah, okay.

3 THE WITNESS: I'll roll the video.

4 (Whereupon a video was played.)

5 THE WITNESS: Your Honor, for the 25 seconds
6 through this segment, we've seen that traffic has
7 progressed on the westbound lanes within reason,
8 traveling over the crossing smoothly. Eastbound, in
9 the outside lane, there were bicyclists that were
10 traveling smooth over the crossing.

11 On that middle eastbound lane,
12 vehicles were approaching slower, and then there was
13 the bump that was held through this section due to
14 the settlement and that other asphalt patch that I
15 described.

16 So I can take it to different segments
17 if anyone would like to see, or we could run it
18 again.

19 JUDGE DUGGAN: I'm good with it. I don't need
20 to see it again or have it broken down.

21 Mr. Michaud?

22 MR. MICHAUD: No, I don't need to see it again

1 either.

2 JUDGE DUGGAN: Okay.

3 THE WITNESS: Thank you. So that would be
4 Staff Exhibit 2.

5 I'd like to show video, then, as Staff
6 Exhibit 3 of the York Road crossing. This is driving
7 northbound on York Road, and I'm in the farthest
8 right lane going northbound at this section, and it's
9 a 14-second video.

10 (Whereupon a video was played.)

11 THE WITNESS: Okay. Your Honor, for purposes
12 of the video, of the 14 seconds, at 12 seconds is
13 when the vehicle goes over the crossing, and at that
14 point it drops down into a bump section.

15 As the vehicle's approaching the
16 crossing, we can see the rubber crossing surface
17 panels and the other items that were shown in the
18 pictures in Group Exhibit 1.

19 Again, I'd --

20 BY JUDGE DUGGAN:

21 Q What did -- go ahead.

22 A Again, I'd be able to rewind it and take

1 anyone through the different segments if necessary.

2 Q That's good.

3 What day was that video taken?

4 A This video was taken on September 16th,
5 2016, the same day that Group Exhibit 1, page 4 of 4,
6 that photograph was taken.

7 Q What about -- okay -- page 3 of 4 was what
8 -- what --

9 A Page --

10 Q Is that -- what date was the photo taken?

11 A Page 3 of 4 was the repairs completed.
12 That is actually an older photograph from April 11,
13 2016, when I --

14 Q Okay. So --

15 A -- drove through the crossing, I did not
16 take another picture as the surface was holding at
17 the time.

18 Q That's good.

19 So now -- so the video -- or, excuse
20 me -- the picture for 4 was taken when?

21 A The picture for 4 was taken on
22 September 16th, 2016, the same day as the video that

1 was just shown as Exhibit 3.

2 Q Okay. Anything else, Mr. Vercruysse, on
3 evidence, not for remedy, but for evidence of the
4 need for repair?

5 A Nothing further in the way of evidence,
6 your Honor. Just at the appropriate time, Staff
7 would ask that the Staff Group Exhibit 1, Exhibit 2,
8 and Exhibit 3 be entered into evidence.

9 JUDGE DUGGAN: All right. Mr. Michaud, do you
10 have any objection to Group Exhibit 1 and Exhibits 2
11 and 3 being admitted into evidence?

12 MR. MICHAUD: No.

13 JUDGE DUGGAN: Okay. Then those exhibits are
14 admitted as Staff's Exhibit Group -- Staff's Group 1,
15 Staff's 2, and Staff's 3.

16 Thank you.

17 (Staff's Group Exhibit 1 and
18 Exhibits 2 and 3 were
19 admitted into evidence.)

20 BY JUDGE DUGGAN:

21 Q How are you planning on putting that on
22 e-Docket though?

1 A Your Honor, Group Exhibit 1, I will be able
2 to upload --

3 Q That one's not a problem.

4 What about 2 and 3?

5 A 2 and 3, generally, I would provide, I
6 guess, a physical media, a CD or something else for
7 the main file. I have not seen where we have --

8 Q Have you done that before?

9 A Have I done where we provide the CD or
10 other --

11 Q Have you put a vid -- have you put a video
12 on e-Docket before?

13 A No.

14 Q Okay. Well, I guess -- you know, what did
15 we do last time? You had a video last time too.

16 A I'm -- I believe we may have looked at it
17 for informational purposes, and possibly I did not
18 ask to have it entered into evidence. I would be
19 fine withdrawing it with the understanding that the
20 Chicago Terminal is willing to fix the crossings. I
21 think it was just to give a better reference. For
22 me, it's -- the video is always worth a greater

1 amount of evidence to see whether repairs have been
2 completed or not.

3 Q I don't know, you know, about putting in a
4 video into evidence without it being an exhibit.

5 A Otherwise, in the past -- other cases we
6 have just provided the video in a hard copy format,
7 whether it be a CD or something else.

8 Q You haven't put -- you haven't filed it on
9 e-Docket. That's my concern.

10 A We have not. The space requirements on
11 e-Docket would be difficult.

12 MR. MICHAUD: If it's not -- I don't know that
13 it's necessary for any of our purposes here. We're
14 all --

15 JUDGE DUGGAN: Well, now, it's necessary for
16 appeals and things of this nature, for anybody who
17 has any questions about what exactly the evidence
18 warrants. That's my concern. I don't expect any
19 appeals. I don't expect anything, but...

20 MR. MICHAUD: I think, though, the nature of
21 this proceeding is more that we're sort of entering
22 into an agreed order on what's going to happen.

1 JUDGE DUGGAN: Well, yeah, but then down the
2 road it doesn't mean that -- we're talking about an
3 agreed interim order, compliance and penalties
4 are yet to be resolved.

5 I think that -- why don't you -- hang
6 on. Let me see if I can call Kathy.

7 Off the record.

8 (A discussion was held off
9 the record.)

10 JUDGE DUGGAN: Back on the record.

11 Okay. I just tried to check to see
12 how the clerk's office might handle the filing of a
13 video; couldn't get ahold of them, however. So just
14 now, before we went on the record, we had an
15 agreement that Mr. Vercruysse will go ahead and file
16 a DVD with the two videos, Exhibits 2 and 3 on there,
17 and mark that DVD as Exhibits -- as Staff's
18 Exhibits 2 and 3 in this docket, and provide a copy
19 of that to Mr. Michaud.

20 Is that agreed, Mr. Vercruysse and
21 Mr. Michaud?

22 Mr. Vercruysse?

1 MR. VERCRUYSSSE: Yes, your Honor.

2 MR. MICHAUD: Yes.

3 JUDGE DUGGAN: Mr. Michaud?

4 MR. MICHAUD: Yeah.

5 JUDGE DUGGAN: Very good. Thank you.

6 All right. So the exhibits are
7 admitted into evidence, and that's how we're going to
8 handle that.

9 BY JUDGE DUGGAN:

10 Q Let's go ahead and -- okay. What we --
11 before we go on to Mr. Alonzo and any complaints as
12 to the Department of Transportation and acknowledge
13 it, let me ask you, Mr. Vercruysse, what repairs need
14 to be made -- do you think the Commission should
15 order to Route 64 at the subject crossing?

16 A Your Honor, for that eastbound inside lane,
17 Staff believes that the rubber crossing surface panel
18 that has settled needs to be removed. The asphalt
19 patch or hump that was placed in there needs to be
20 removed, whether by grinding or how -- if it can be
21 just scraped off the top, and hot mix asphalt needs
22 to be placed and compacted into those areas.

1 Q Those areas being both where you're
2 grinding the asphalt down?

3 A Where the settled -- where the settled
4 rubber surface pad was, and then only if additional
5 materials taken off when that bump or hump of asphalt
6 is there. It would depend on how easily that's taken
7 out, your Honor.

8 Q All right. So it's -- so this suggestion's
9 only for the eastbound inside lane, and so if they
10 left the rubber patch in there for the eastbound
11 outside lane, would that be compliance in your mind?

12 A Your Honor, the other -- it would be, yes.
13 And then I can explain further after you have
14 additional questions or if you'd like me to explain
15 further.

16 Q Yeah. Explain that one now.

17 A Okay. The rubber panels that have not
18 settled have provided a suitable surface for the
19 other sections; it's just this inside eastbound lane
20 that we have seen that had failed after the previous
21 repairs.

22 It -- the crossing surface meets our

1 concerns and the Administrative Code for rideability.
2 However, this gets back to the Chicago Terminals's
3 decision if they want to take all of the panels off.
4 They will work with the City of Chicago to get a
5 permit, which will include flaggers and just
6 individual lanes being closed at a time to do the
7 repairs. So --

8 Q Yeah. That's going -- you're going further
9 than my question.

10 A Right.

11 Q Okay. So I think basically where you're
12 going was that it's up to Chicago Terminal whether --
13 while they're at it, they may as well take up that
14 whole rubber panel and fix it?

15 Is that what you were getting at?

16 A Correct. If they feel it will fail in the
17 future.

18 Q Okay. Because, as you point out, they --
19 you have to deal with stopping not one lane, but
20 another lane or whatever logistics of it and the
21 permits of it, but -- okay.

22 What about repairs to the northbound

1 lanes of York Road? How many lanes are we talking
2 about there that need to be repaired?

3 A Your Honor, it should be all of the lanes,
4 and it should be similar to --

5 Q Which is what, two -- two plus median or
6 what?

7 A At least the two northbound outside lanes
8 where the crossing panels have all shown to either
9 have failed or settled. The segment in the median is
10 a little more solid, but Staff's recommendation would
11 be to take all the panels out and replace it with
12 asphalt, similar to the southbound lanes.

13 Q So is that up to the median or including
14 the median, where the rubber panels are?

15 A At this point Staff would just recommend
16 the entire stretch including the median.

17 Q Does that take you to a shoulder past
18 the --

19 A It takes you past --

20 Q You know, the shoulder's often part of the
21 crossing. It may not be the lane, but often people
22 get on the shoulder.

1 A It takes you out past the shoulder. There
2 is a six-to eight-foot-wide shoulder and those panels
3 are out in that section. I would just assume that
4 all of them would be taken out and that the
5 asphalt -- hot mix asphalt be placed in and
6 compacted.

7 Q Okay. So you recommend that all the
8 remaining rubber panels at this crossing be removed
9 and repaired with either hot asphalt or whatever
10 material the railroad believes will best meet the
11 goals, correct?

12 A Correct.

13 MR. MICHAUD: We're just talking about the
14 northbound lanes, right?

15 BY JUDGE DUGGAN:

16 Q Well, it's my understanding that all the
17 rubber panels left are in the northbound lanes,
18 and -- plus the median, plus the shoulder; is that
19 correct?

20 A Correct.

21 Q So the answer is not just northbound lanes,
22 but including the median and the shoulder and -- but

1 redefine the state that -- all the remaining rubber
2 panels?

3 A And, your Honor, that would be consistent
4 with what was done on the southbound lanes.

5 JUDGE DUGGAN: So we're about to ask
6 Mr. Michaud if he disagrees with those
7 recommendations as the extent of what needs to be
8 repaired.

9 MR. MICHAUD: Your Honor, I have to consult
10 with our contractor as well as our general manager,
11 but my understanding from talking to our general
12 manager prior to this hearing was that we were of the
13 opinion that the rubber panels needed to be pulled
14 out and replaced with new rubber panels. So it's new
15 for me to learn that it should be replaced with
16 asphalt -- or hot mix asphalt.

17 JUDGE DUGGAN: Well, now -- and actually, that
18 was Mr. Vercruysse's recommendation, and I suggested
19 a broader statement, that it be repaired and filled
20 in with whatever material the railroad felt was
21 appropriate for it's -- you know, understanding that,
22 you know, you don't want it to deteriorate. Again,

1 you want something that's going to last. But...

2 THE WITNESS: Your Honor, if I may, my
3 recommendation -- or Staff's recommendation was to
4 get it to the minimum requirements in what
5 southbound -- I guess, Mr. Michaud, did your track
6 department provide a different assessment or a
7 different plan?

8 It's just a recommendation, your
9 Honor. The railroad, as long as they provide a
10 crossing surface that allows for vehicles to travel
11 at the speed limit through the crossing, it's
12 acceptable. But I guess I did -- I was not aware of
13 a plan or discussion to replace these as- -- replace
14 these rubber panels. My assumption was they were
15 going to do what they did southbound.

16 JUDGE DUGGAN: Okay. Well, in any event, the
17 fact is that Mr. Michaud has raised that at this
18 point, but he doesn't really know, and I don't really
19 see a problem with us just telling them to, as you
20 say, fix it. But take up the existing rubber -- fix
21 it by taking up the existing rubber panels and then
22 repair the crossing to a smooth crossing, to an even

1 crossing with whatever materials the railroad
2 believes is appropriate.

3 MR. MICHAUD: We're agreeable to fixing it to
4 meet the -- to satisfy the minimum standards.

5 BY JUDGE DUGGAN:

6 Q Yeah. We don't have to say "asphalt," or
7 "rubber," or "cement" or whatever, right --

8 A Right.

9 Q -- Mr. Vercruysse?

10 A Correct.

11 We do not have that ability to say
12 that. I can say that I'm happy to meet the Chicago
13 Terminal's contractor or their superintendant or road
14 master to go through and review which segments and
15 what their plan is.

16 JUDGE DUGGAN: Well, but I think which segment
17 and how to repair are two different questions. And
18 so far, clarifying that all the existing rubber
19 panels be taken up is -- I was asking if you had a
20 disagreement with that, Mr. Michaud.

21 MR. MICHAUD: The only one that I would be --
22 you're recommending that the shoulder be part -- be

1 included. I'm not sure -- without having gone out
2 there recently, I guess I would defer to
3 Mr. Vercruysse meeting with our superintendent and
4 coming up to an agreeable solution on what will be
5 satisfactory to Staff as far as safety and --

6 JUDGE DUGGAN: Well, hold on.

7 The problem is we're having a hearing
8 today. An order's going to be entered on the
9 evidence today, not upon what Mr. Vercruysse and
10 somebody does weeks later.

11 THE WITNESS: Your Honor, I believe -- Staff
12 believes that it should just be identified that the
13 railroad needs to fix the crossing and make repairs
14 in accordance with the Administrative Code.

15 Not that I see it as being likely, but
16 if they were able to get a certain amount of funding,
17 just to the north of this crossing, they worked with
18 IDOT and did a complete new crossing: new ties, new
19 track, new concrete crossing surface panels.

20 BY JUDGE DUGGAN:

21 Q Okay.

22 A I'd rather give ourselves the option. They

1 can come in in here and put composite panels, timber
2 panels, asphalt, or new rubber --

3 Q Okay.

4 A -- if they showed it worked. Or they can
5 put in new track --

6 Q We're going beyond my point again.

7 A Okay.

8 Q I was addressing the issue of the shoulder
9 and the median, and so I'm going to shoot this at you
10 again, Mr. Vercruysse.

11 A Sure.

12 Q Is it your opinion that the shoulder is
13 sufficiently uneven that it need to be repaired --

14 A Honestly, it's no- --

15 Q -- or can you not do the rest of it
16 without -- reasonably without doing the shoulder?

17 A No. They could address the two northbound
18 lanes, which are main travel lanes, and that's
19 Staff's main concern. Because of how the median had
20 been used in the past, I believe that that would need
21 to have additional repairs completed also.

22 Q Okay.

1 A The shoulder, from the video and different
2 field reviews, I don't know and I could not say that
3 it does require repairs. Looking at it off of the
4 video or pictures, it does not look that bad and it's
5 not the main travel of lanes. So...

6 Q Okay. So you would recommend the two
7 northbound lanes and the median, that that area of
8 the crossing be brought up to Commission standards?

9 A Correct.

10 Q Which is -- I mean, it's -- and I have to
11 go get the exact language, but it's -- you're saying
12 it's just an even surface.

13 A Correct.

14 Q A level surface, right?

15 A Yes.

16 Q All right. And then, yeah, with whatever
17 materials.

18 Do we want to say hot mix at North
19 Street [sic] either? Because your recommendation was
20 pull up the rubber panel there even if it's just the
21 eastbound portion and replace that with hot mix.

22 Is that something we should also limit

1 the method of repair, or just say repair?

2 A I would recommend repair.

3 JUDGE DUGGAN: Okay. Any objection to those
4 recommendations, Mr. Michaud?

5 MR. MICHAUD: No. I have a sort of a question,
6 which is that on the picture showing the northbound
7 lanes, the road itself appears to be pretty damaged
8 and, you know, I want it to be clear that that's not
9 going to be the railroad's responsibility to fix.

10 JUDGE DUGGAN: Yeah. I think -- I guess
11 that's -- but obviously, you're responsible for
12 repairs two feet out from each outer rail, and beyond
13 that -- so that's the crossing. That's the crossing
14 you're responsible for making even. I guess if you
15 had a road that's not even, then you try to figure
16 out how to make it even, I don't know what to do
17 about that.

18 I'm not going to worry about it. How
19 does that sound?

20 MR. MICHAUD: That sounds good.

21 JUDGE DUGGAN: Better? You guys are good?

22 Okay.

1 Now, the next thing I wanted to do was
2 to have Mr. Alonzo testify if we're -- let's put it
3 this way: I'm ready for Mr. Alonzo to testify unless
4 someone else has something other than what we've
5 already discussed. And I understand that
6 Mr. Vercruysse is suggesting that the railroad may
7 want to talk to IDOT to see if they can get any
8 funding. We don't need to deal with that on the
9 record, though.

10 JOE ALONZO,
11 called as a witness herein, having been first duly
12 sworn, was examined and testified as follows:

13 EXAMINATION

14 BY

15 JUDGE DUGGAN:

16 Q Mr. Alonzo, state your name.

17 A Yes. Joe, J-O-E, Alonzo, A-L-O-N-Z-O. And
18 I work with the City of Chicago Department of
19 Transportation. Telephone number is area code (312)
20 744-1731; the mailing address is 30 North LaSalle
21 Street, Chicago, Illinois 60602.

22 Q Okay. Have you been in contact with

1 Mr. Vercruysse regarding the eastbound inside lane at
2 Route 64 and North Avenue --

3 A Yes, I have.

4 Q -- also?

5 A Yes, I have.

6 Q Okay. And what has caused you to be in
7 that contact?

8 A Well, it goes over as stated in previous
9 discussions that it's been ongoing over the last
10 couple of years where we had complaints from the
11 alderman's office residents and internal staff at the
12 City that indicated that it was in disrepair. And so
13 we ended up going into the proceedings that we are
14 currently going through. But it happened about a
15 year and a half ago, and actually had Iowa Pacific go
16 in and make some temporary repairs to crossing on
17 North Avenue.

18 Subsequent to that repair, you know,
19 there'd been some deterioration of the crossing
20 again, where there was, again, correspondence via
21 e-mail, telephone, and in-person discussions on the
22 crossing itself where we actually were discussing

1 trying to actually improve the crossing again.

2 Q But, again, here today, we're -- it appears
3 that Mr. Vercruysse -- even though the citation
4 doesn't limit it accordingly, Mr. Vercruysse has
5 limited it to the eastbound inside lane.

6 Have you communicated with him
7 specifically about the present condition of the
8 eastbound inside lane?

9 A Yes, I have.

10 Q Okay. And what has caused those
11 communications?

12 A Again, it's been through the complaints
13 through the alderman's office and their staff as well
14 as internally. When they get residential complaints,
15 it gets input into the, what we call the CSR 311
16 System, where Chicago residents call into the city
17 system and they report a complaint on the condition
18 in the City of Chicago, in this case being the
19 railroad crossing.

20 And so then that gets funneled through
21 the bureaucracy of the City of Chicago coming to me,
22 and then we actually -- or I actually try to

1 communicate with the railroad to see whether or not
2 they can actually make an improvement or a repair to
3 the crossing, based on the complaint that we get.

4 Q Okay. Have you, yourself -- have you,
5 yourself, had communications with anyone from the
6 railroad?

7 A Yes. There have been --

8 Q And what response did you receive regarding
9 repairs to this crossing?

10 A There've been different responses. One,
11 you know, the initial responses were, you know, I
12 went on site with Superintendent Tim Fuhrer, and we
13 were on site --

14 Q So he's the superintendent for the
15 railroad?

16 A Yes, he is.

17 Q And how do you spell -- I don't suppose you
18 know how to spell his last name, do you?

19 A F --

20 MR. MICHAUD: F-U-H-R-E-R. He was here in
21 previous hearings.

22 JUDGE DUGGAN: I understand, but we need to

1 spell it for the record, so I'm worried about the
2 spelling.

3 MR. MICHAUD: Yeah.

4 JUDGE DUGGAN: So it's F-U-H-R-E-R?

5 MR. MICHAUD: Yes.

6 JUDGE DUGGAN: Very good.

7 BY JUDGE DUGGAN:

8 Q Okay. Mr. Alonzo, you were saying you had
9 communications with Mr. Fuhrer.

10 Did you say you went on site with him
11 regarding the eastbound inside lane?

12 A Yes, twice actually. The first time --

13 Q And number one, when you viewed it, do you
14 believe that it needed repair?

15 A Yes, I did.

16 Q Number two, did Mr. Fuhrer indicate whether
17 he think it needed repair?

18 A Yes, he indicated that as well.

19 Q Did he indicate when and how they would do
20 it or why they couldn't do it yet?

21 A He indicated how, and he actually indicated
22 that he would remove the rubber panels. But in

1 addition to that, he actually did state during that
2 first on-site inspection that to -- actually,
3 thinking forward and doing preventative maintenance,
4 the rubber panels to the westbound lanes, he thought
5 should be replaced as well, knowing that they would
6 not need to be replaced due to condition. But he did
7 indicate that the one that was on the eastbound lane
8 should be replaced more to the immediate effect.

9 Q All right. And did he indicate any
10 immediate plans to take care of it?

11 A ~~He~~ did. He indicated that he would -- he
12 had the intention of replacing it. He just never
13 gave a specific timetable. He said he was going --
14 he would communicate with the permit office and get
15 the permit and actually do the work within a time
16 frame that he said would be in the short-term, but
17 not giving a specific date.

18 Q Do you know -- do you know approximately
19 when you met with him out there?

20 A The first time, it was either late winter
21 or early spring.

22 Q So this is has been a problem since then?

1 I'd mark the record heard and taken. I just think
2 that we're going to continue generally for
3 determination to assess the progress and any
4 penalties that may be advised.

5 So that will conclude the record for
6 today, Mr. Benjamin.

7 Thank you.

8 (Staff Group Exhibit No. 1
9 and Staff Exhibits 2 and 3
10 were marked for
11 identification.)

12 SINE DIE.

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