

National Association of Reversionary

Property Owners (NARPO) 247803
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TRANSPORTATION BOARD
Surface Transportation Board, Cynthia Brown, Administrator

**RE: AB 1107X West Michigan Railroad Co. (WMI) Abandonment
Exemption in Van Buren County, Michigan**

NARPO's Petition for Reconsideration of the STB May 9, 2019 Decision

49 CFR 1115.3 allows Petitions for Reconsideration if filed within 20 days of a STB decision if the Petition shows (1) "The prior action will be affected materially because of new evidence or changed circumstances" or (2) The prior action involves material error.

NARPO is paying the \$300.00 filing fee through our account at Pay.gov. NARPO is asking for a waiver of the filing fee per 49 CFR 1002.2(e)(2). NARPO will explain its request for a fee waiver in the later part of the Petition for Reconsideration.

New Evidence or Changed Circumstances

NARPO had previously asked the STB to invalidate the NITU from MP 25.1 to MP 30.55 as WMI had filed for consummation for MP 25.1 to MP 26.5 on January 31, 2014 and February 4, 2014 which severed that portion of the rail line from the National Rail System. Michigan Dept. of Natural Resources (MDR) responded that WMI had sold the right of way between MP 25.1 and MP 26.5, and WMI had gotten agreements in the sales agreements from the property owners along that consummated stretch of abandoned rail line that would allow WMI to restore rail service in the future.

What MDR did not tell the STB is that not all property owners along the stretch of rail line between MP 25.1 and MP 26.5 had signed agreements to allow the return

of rail service in the future. In fact WMI in their December 10, 2018 response to NARPOs filings did not even offer up one copy of the Sales Agreement with this language attached. NARPO has attached as **Exhibit 1** a copy of page 1 of a corporate Quit Claim Deed filed with Van Buren County on 4/29/2015 between West Michigan Railroad Co. and Ken W. Schafer and Lynn M. Schafer. The deed describes property in Section 18, Town 3 South, Range 14 West, and this property lies at MP 25.7 when measured out on the Paw Paw Topographical Map attached as **Exhibit 2**.

Other NARPO members along the section of rail line from MP 25.1 to MP 26.5 have said they never signed agreements like this one in **Exhibit 1**. NARPO suggests that if WMI actually got all the property owners along the line from MP 25.1 to MP 26.5, WMI should show the STB copies of every one of these alleged agreements to show continuous agreements to restore future rail service.

The STB might be interested in some of the other language WMI inserted in the Corporate Quit Claim Deeds. In the second from the bottom paragraph of **Exhibit 1**, WMI inserted the language “Said option to repurchase the easement if rail service is ever restored on a portion of the rail line that becomes a public trail shall expire on the day which is the twenty-second (22nd) year anniversary from the date of the deed”. So what WMI has said is after 22 years the property owners don’t have to worry about restoration of rail service. But under 16 USC 1247(d), the restoration of rail service can happen at any time. Nothing in 1247(d) or 49 CFR 1152 et., seq., allow for any time limit for the restoration of rail service. This language in **Exhibit 1** should be enough to invalidate the NITU from MP 25.1 to MP 26.5 and also the portion of the rail line beyond MP 26.5 as that portion is not connected to the National Rail System, see **RLTD Railway Corp. v STB**, 6th Circuit, 166 F.3d 808.

The prior action involves material error

The material error the STB neglected to explore in the May 9, 2019 decision was the fact that WMI or their railroad predecessors never acquired fee title to most if not all of the right of way between MP 19.88 in Lawrence and MP 30.55 in Paw Paw. So when the consummation took effect on January 31, 2014 and February 4, 2014, under Michigan property law, all the properties with easements from MP 25.1 to MP 26.5 and MP 30.2 and MP 30.55 automatically reverted to the abutting property owners without any further action by these property owners. So the Corporate Quit Claim Deeds are worthless as the deeds say they sell what interest **if any** in the described property. Obviously WMI had no interest.

Even WMI acknowledges that these were easements when they wrote the Corporate Quit Claim Deeds as you will notice in the second to last paragraph of **Exhibit 1** NARPO quoted above “Said option to repurchase the easement . . .”.

WMI wrote this language as they knew that only easements were granted in the 1870s to the predecessor railroad Toledo and South Haven Railroad. If WMI had owned the right of way, why would they call it an easement they might repurchase in the future. If WMI continues to say that they own fee title to all of the right of way, then let WMI or their proxy MDR come forth with the valuation maps for this rail line.

It appears that the ICC or the STB has given all the valuation maps in their collection to the National Archives so WMI can come forth with their valuation maps which show how each parcel between MP 19.88 and MP 30.55 was acquired back in the 1870s. If WMI does claim fee title, then they should be able to prove it very simply with the valuation maps.

It might be noted that WMI consummated the abandonment on the only properties that had any real value, that being the land between MP 25.1 and MP 26.5 which lies on the shore of Lake Cora which is visible on NARPO’s **Exhibit 3**. **Exhibit 3** is a current aerial photo of the subject area, and the rail line is the black line in between the two MP markers NARPO has inserted. The WMI went on to exact hundreds of thousands of dollars from property owners who were at that time unaware they owned the reversionary rights to the right of way. WMI also sold off the portion of the right of way from MP 30.2 to MP 30.55 in downtown Paw Paw as that land also had good value.

Regardless of the WMI or MDR’s attempt to try and salvage part of the NITU, the part of the line past MP 25.1 is not available anymore for a NITU. It is hard not to read that the line abandonment was consummated January 31, 2014, and the reversionary rights of the abutting property owners took effect which invalidated the NITU from MP 25.1 to MP 30.55. There is not connection to the National Rail System at MP 30.55.

Any portion of the abandoned line from MP 25.1 to the end at MP 30.55 is now separated from the National Rail System.

NARPO’s request for a fee waiver.

NARPO has been an IRS approved non-profit and tax deductible educational charitable foundation since 1989. NARPO does not have any paid staff and no

officers are paid or get any remuneration. NARPO's sole purpose is to assist property owners throughout the United States retain their property rights to the land underlying railroad rights of ways. At the present, NARPO has members in 49 states with no members in Hawaii. NARPO's average annual income from donations is less than \$5,000. With that small amount of donations, NARPO maintains its website, answers numerous phone calls, searches the STB website daily, travels to give talks to various property owner groups across the United States and of course makes filings on behalf of NARPO members to the STB.

The STB grants many fee waivers to government entities as they are permitted to do, 49 CFR 1002.2. And 49 CFR 1002.2(e)(2) allows the STB to grant fee waivers;

(2) In extraordinary situations the Board will accept requests for waivers or fee reductions in accordance with the following procedure:

NARPO requests the STB to grant NARPO a fee waiver due to our extraordinary circumstances and our non-profit mission of protecting property rights. Besides NARPO is bringing to the Board's attention a mistake the Board allowed in 2014.

Sincerely yours, Richard Welsh, executive director NARPO

All parties of records, Radabaugh, James radabaughj@michigan.gov

Yauk, Paul yorkp@michigan.gov

Lincoln, Mattlin colmm@michigan.gov

Audrey L Brodrick abrodrick@fletcher-sippel.com

Hummel, Lawrence B Friends of Kal Haven Trail no longer a party vbrcr@vbrcr.org

have been notified by email on 5/19/2019

Signed by Richard Welsh—NARPO executive director

MICHIGAN REAL ESTATE TRANSFER TAX
Van Buren County Tax Stamp 055440
04/29/2015 10:04:30 AM
Receipt# 15-3155 L: 1618 P: 571
State Tax: \$75.00 County Tax: \$11.00



I hereby grant up to the lands herein described
 certain privileges for any person to take a tax free
 on said land that is owned by said for the two
 calendar years commencing on the date of this
 instrument. I do hereby certify that I
 checked the
 books for the month of _____ and found the
 amount of tax for the month of _____ for available
 Karen Makay & 4/29/1
 SAN BERN COUNTY TREASURER DATED

L: 1618 P: 571 DQC
04/29/2015 10:04:30 AM Page: 1 of 2 Fee: \$ 15.00
LA-3209913 Register of Deeds - Van Buren County, MI
[Barcode]

THIS INDENTURE WITNESSETH, That West Michigan Railroad Co., an Iowa corporation, whose address is 1318 S. Johanson Rd., Peoria, Illinois 61607 ("Grantor"), in consideration of Ten Thousand Dollars (\$10,000.00) and other good and valuable consideration, receipt of which is hereby acknowledged, hereby QUIT CLAIMS to Ken W. Schafer and Lynn M. Schafer, husband and wife, whose address is 58001 Hill Drive, Paw Paw, Michigan 49079 ("Grantee") all right, title and interest Grantor has (if any) in the following-described real estate located in Paw Paw Township, Van Buren County, Michigan:

The East 160 feet of the West 307 feet of that part of the Southeast fractional quarter of Section 18, Town 3 South, Range 14 West, lying South of the 50 foot right of way of the former Pere Marquette Railroad and North of the Edge of Lake Cora, except the West 30 feet of the above described parcel. Also the South 25 feet of the 50-foot wide railroad right-of-way lying adjacent and to the North of said parcel. Also an easement for a private driveway 10 feet wide from the Northwest corner of said parcel Westerly to the public road across the railway.

The Grantor warrants to the Grantee only that the above-described real estate is free and clear from any and all mortgages, or similar encumbrances of any lender claiming through Grantor. Grantor assigns to the Grantee the benefit of any prior warranties in the chain of title received by Grantor from Grantor's predecessors in title.

The Grantor grants to the Grantee the right to make all available divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967. This property may be located within the vicinity of farm land or farm operation. Generally accepted agricultural and

AM 9:52

USGS Map Name: Paw Paw, MI Map MRC: 42085B8
Map Center: N42.20679° W85.96392° Datum: NAD27 Zoom: 16m/pixel

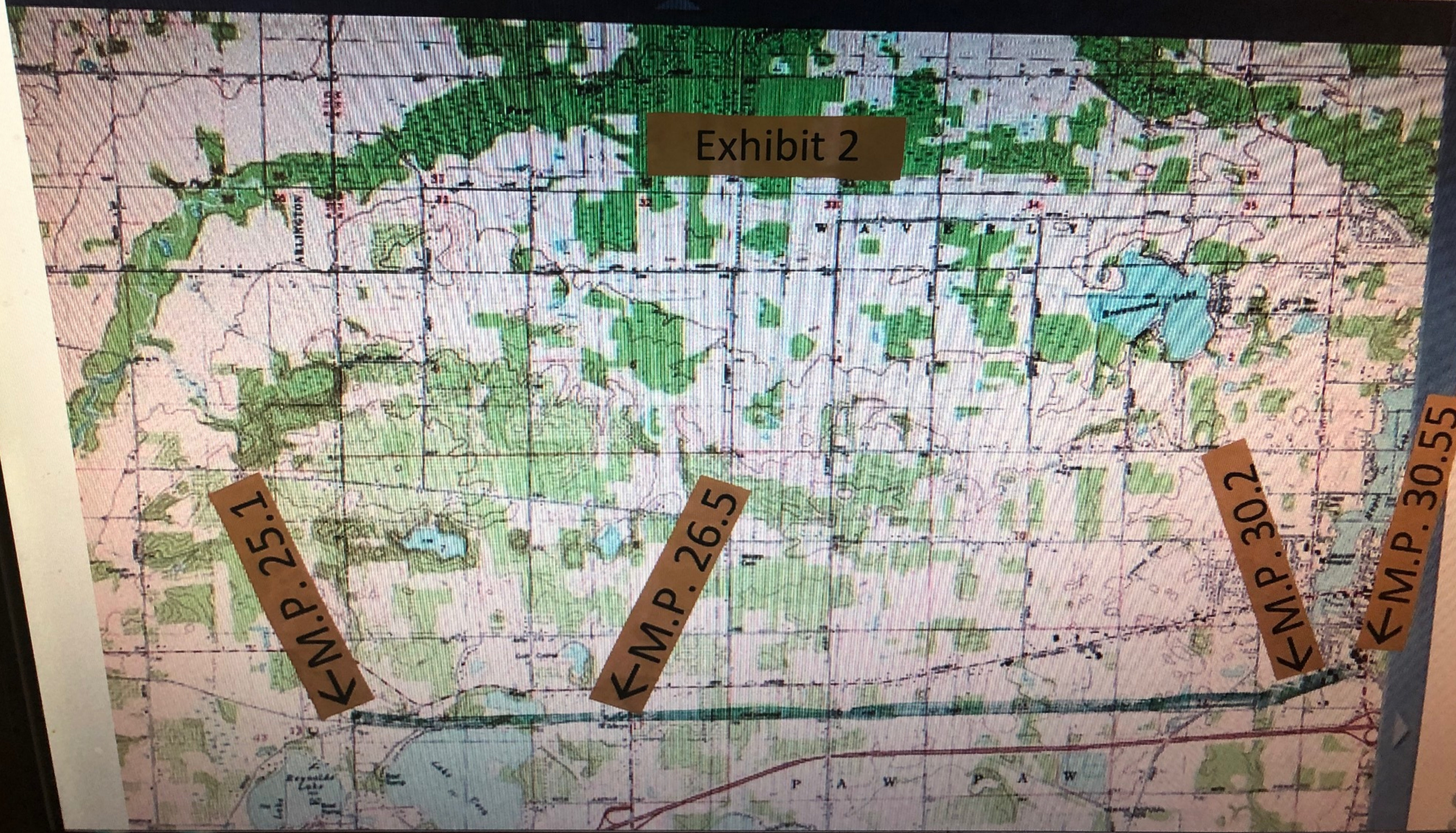
Exhibit 2

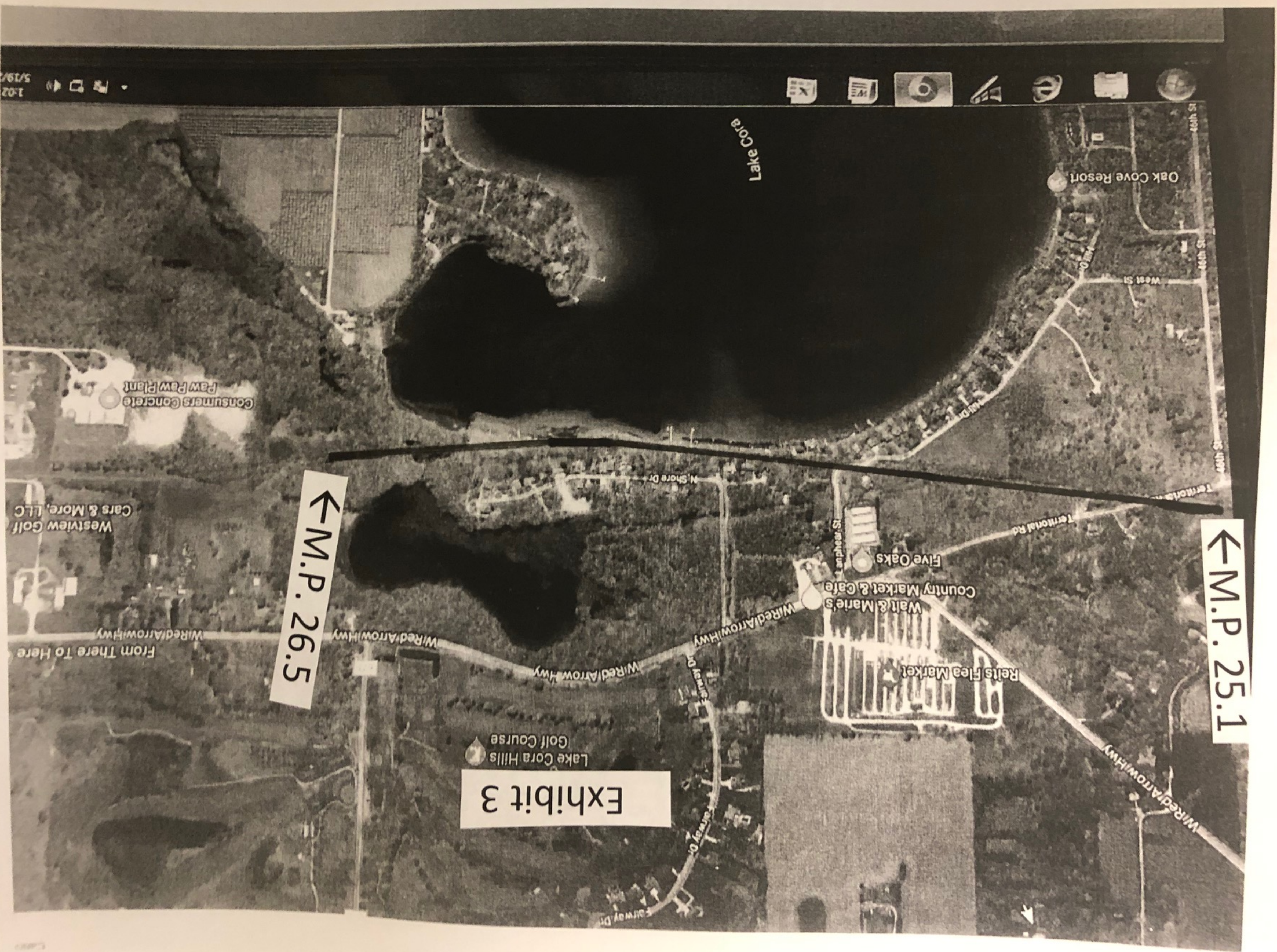
→ M.P. 25.21

← M.P. 26.5

← M.P. 30.2

← M.P. 30.55





← M.P. 25.1

Exhibit 3

← M.P. 26.5