



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

October 25, 2013

Najah Duvall-Gabriel, Historic Preservation Specialist
Advisory Council on Historic Preservation
Federal Permitting, Licensing and Assistance Section
1100 Pennsylvania Avenue, NW, Suite 803
Washington, DC 20004

Re: STB Docket No. AB 1068 (Sub-No. 1X) – Missouri Central Railroad Company – Abandonment and Discontinuance of Service Exemption – In Cass, Henry, Johnson, and Pettis Counties, Mo.

Docket No. AB 1070 (Sub-No. 1X) – Central Midland Railway Company – Discontinuance of Service and Operating Rights Exemption – In Cass, Henry, Johnson, and Pettis Counties, Mo

Dear Ms. Duvall-Gabriel:

On May 20, 2013, the Missouri Central Railroad Company (MCRR) and Central Midland Railway Company (CMR) filed a notice under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 for MCRR to abandon and for MCRR and CMR to discontinue service over, an approximately 42-mile rail line in Cass, Henry, Johnson, and Pettis Counties, Missouri. The rail line is part of the former Rock Island Line and extends from milepost 257.283 near Wingate in Cass County, to milepost 215.325 near Windsor in Pettis County. The Surface Transportation Board's (Board) approval of this abandonment and discontinuance of service is considered an undertaking under Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f) (NHPA) and is thus covered under its provisions. The Board's Office of Environmental Analysis (OEA) is responsible for ensuring the agency's compliance with the National Environmental Policy Act (NEPA) and NHPA.

I am writing to notify you that OEA has executed a Memorandum of Agreement (MOA) with the Missouri State Historic Preservation Office and the Missouri Central Railroad Company to resolve any adverse effects to historic properties for the proposed undertaking, pursuant to 36 C.F.R. § 800.6(b)(i)(iv). The Missouri Department of Natural Resources' Division of State Parks

also signed the MOA as an invited signatory, and the City of Windsor signed the MOA as a concurring party. The signed and executed document is included for your files. The filing of this document with the Advisory Council on Historic Preservation completes our compliance responsibilities under section 106 of the NHPA.

If you have any questions, require additional information regarding this proceeding, or have any concerns, please do not hesitate to contact Diana Wood of my staff at 202-245-0302.

Sincerely,



Victoria Rutson
Director
Office of Environmental Analysis

Attachment

cc: Judith Deel, Missouri SHPO
LaShavio Johnson, ACHP
Sandra Brown, Thompson Hine LLP

MEMORANDUM OF AGREEMENT

Among

**THE SURFACE TRANSPORTATION BOARD,
MISSOURI CENTRAL RAILROAD COMPANY,
MISSOURI STATE HISTORIC PRESERVATION OFFICE, and
MISSOURI DEPARTMENT OF NATURAL RESOURCES,
DIVISION OF STATE PARKS
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

Regarding

**STB DOCKET NO. AB 1068 (Sub-No. 1X)
MISSOURI CENTRAL RAILROAD COMPANY – ABANDONMENT AND
DISCONTINUANCE OF SERVICE EXEMPTION – IN CASS, HENRY, JOHNSON, AND
PETTIS COUNTIES, MISSOURI**

Whereas, on May 20, 2013, Missouri Central Railroad Company (MCRR) and Central Midland Railway Company (CMR) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the requirements of 49 U.S.C. § 10903 for MCRR to abandon, and for MCRR and CMR to discontinue service over, an approximately 42-mile rail line in Cass, Henry, Johnson, and Pettis Counties, Missouri. The rail line extends from milepost 257.283 near Wingate in Cass County, to milepost 215.325 near Windsor in Pettis County; and,

Whereas, the rail line abandonment and discontinuance of service constitutes an Undertaking, as defined in 36 C.F.R. § 800.3(a); and,

Whereas, in a decision served on July 8, 2013, the Surface Transportation Board (Board) imposed a condition for the proposed abandonment and discontinuance of service that requires MCRR to retain its interest in and take no further steps to alter the historic integrity of all historic properties within the project right-of-way (the Area of Potential Effects)¹ that are eligible for listing or are listed in the National Register of Historic Places (NRHP) until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA) has been completed and the Board has removed this condition; and,

Whereas, the rail corridor is part of the former Rock Island Line, which became the first rail line to connect Chicago with the Mississippi River in 1854, and it is significant in Missouri railroad history because, in 1901, the Rock Island acquired a local line – the St. Louis, Kansas City & Colorado RR line – as part of a plan to connect Kansas City with St. Louis. Accordingly, based on consultation with the Missouri State Historic Preservation Office (SHPO) pursuant to 36

¹ For abandonments, the railroad right-of-way is the Area of Potential Effects or APE, defined at 36 C.F.R. § 800.16(d) as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.”

C.F.R. Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA), the Board's Office of Environmental Analysis (OEA) determined that the rail corridor and the 7 bridges and approximately 81 culverts on the line are eligible for listing in the NRHP under Criterion A, for their association with events that have made a significant contribution to the broad patterns of our history. In addition, the bridges and culverts are possibly eligible for listing in the NRHP under Criterion C, as objects that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; and,

Whereas, the rail corridor passes through the communities of Chilhowee and Leeton and the City of Windsor, and the sites of the former towns of Wingate, Hadsell, Medford, Post Oak, New Castle, and Bowen; and,

Whereas, a historic architectural and structural survey has been conducted of the bridges and culverts in the Area of Potential Effect (APE) (See Exhibit 7 of the railroads' Combined Environmental and Historic Report, dated March 21, 2013); and,

Whereas, based on consultation with the SHPO, OEA has determined that the proposed abandonment and discontinuance of service will have an adverse effect on the above mentioned historic resources; and,

Whereas, in a letter dated August 8, 2013, the Board notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect in accordance with 36 C.F.R. § 800.12; and,

Whereas, in a letter dated August 22, 2013, the ACHP declined to participate in the Section 106 process for this rail line abandonment, including the preparation of this MOA; and,

Whereas, pursuant to 36 C.F.R. § 800.3, the Board sent letters on June 14, 2013 inviting the Iowa Tribe of Kansas and Nebraska; the Iowa Tribe of Oklahoma; the Omaha Tribe of Nebraska; the Osage Nation; the Otoe-Missouria Tribe of Indians; the Peoria Tribe of Indians of Oklahoma; the Sac and Fox Nation of Missouri in Kansas and Nebraska; the Sac and Fox Nation of Oklahoma; and the Sac and Fox Tribe of the Mississippi in Iowa to participate as consulting parties in the preparation of this MOA; and has received no indications of interest; and,

Whereas, based on currently available information, the proposed abandonment and discontinuance of service will not affect any locations known to include Native American burial sites, funerary objects, sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 *et seq.*); and,

Whereas, MCRR owns the historic property that will be adversely affected by the proposed Undertaking and has participated in the consultation process and, pursuant to 36 C.F.R. § 800.6(c)(2)(iii), the Board has invited MCRR to be a signatory party in this MOA, which will guide the process for taking such effects into account; and,

Whereas, MCRR has accepted the invitation to be a signatory to this MOA; and,

Whereas, Missouri Department of Natural Resources, Division of State Parks (DNR/DSP), is an interested party, and has participated in the consultation process, and pursuant to 36 C.F.R. § 800.6(c)(2)(iii), the Board has invited DNR/DSP to be a signatory party in this MOA; and

Whereas, DNR/DSP has accepted the invitation to be a signatory party to this MOA; and,

Whereas, the communities of Chilhowee and Leeton and the City of Windsor, are located adjacent to a portion of the rail corridor and the Board has consulted with these locales and invited them to sign this MOA as a concurring party; and

Whereas, the City of Windsor has accepted the invitation to be a concurring party to this MOA; and,

Whereas, pursuant to 36 C.F.R. § 800.6, the Board has consulted with the SHPO, MCRR, DNR/DSP, and the City of Windsor regarding ways to avoid, minimize, or mitigate potential effects to the historic resources as a result of abandonment and the Board, SHPO, MCRR, DNR/DSP, and the City of Windsor have all agreed upon the measures described below under “Stipulations;” and

Whereas, the definitions listed in 36 C.F.R. § 800.16 are applicable throughout this MOA.

Now, therefore, the Board, SHPO, MCRR, and DNR/DSP agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties, and further agree that these stipulations shall govern the Undertaking, and all of its parts until this MOA expires or is terminated. Additionally, the Board, SHPO, MCRR, DNR/DSP, and the City of Windsor agree that the execution of this MOA and its subsequent submission to ACHP in accordance with 36 C.F.R. § 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. § 800.6(c), be considered to be an agreement with ACHP for purposes of the NHPA. Execution and submission of the MOA and implementation of its terms, evidences that the Board has afforded the ACHP an opportunity to comment on the proposed action relating to the line, and that the Board has taken into account the effects of the abandonment on historic properties and is satisfying the requirements of Section 106 of the NHPA.

STIPULATIONS

The Board will ensure that the following stipulations are carried out prior to taking any action that could adversely affect a NRHP eligible property:

I. STANDARDS

- A. Professional Qualifications: All historic preservation activities, research, evaluations, and reports implemented pursuant to this MOA shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, *Archeology and Historic Preservation: Secretary of the Interior's Standards and*

Guidelines for Professional Qualifications Standards (48 Fed. Reg. 44738-44739) in the appropriate disciplines.

II. IDENTIFICATION

- A. The Board and MCRR have consulted with the SHPO, DNR/DSP, Tribes, and the City of Windsor; reviewed existing information on cultural resources within the APE; and sought appropriate information from consulting parties and other interested parties, organizations, or federally recognized Tribes likely to have knowledge of, or concerns regarding, cultural resources within the APE.
- B. A historic architectural/structural and archaeological survey has been conducted by SCI Engineering, Inc. to identify NRHP eligible properties within the APE.

III. EVALUATION OF EFFECTS

- A. The Board and MCRR have consulted with the SHPO, DNR/DSP, Tribes, and the City of Windsor regarding the evaluation of the Undertaking's adverse effects on the following properties identified in the APE: the rail corridor, bridges and culverts, and communities along the rail corridor.

IV. RECORDATION OF HISTORIC AND CULTURAL PROPERTIES

Prior to the alteration of any NRHP-eligible properties, the following recordation measures will be carried out in consultation with the SHPO.

A. Bridges and Culverts

- 1. MCRR will provide 5 x 7 and 8 x 10 inch black and white digital photographs printed on archival paper sufficient to document overall views and details of the bridges and culverts. Digital copies will be provided.
 - a. The photographs should be taken with a high resolution digital camera or a 35-mm camera, printed on archival quality paper, and labeled on the back in accordance with NRHP Bulletin #16A. A minimum number of photographs will be determined in consultation with the SHPO and will be provided for each bridge and culvert.
- 2. If available, MCRR will prepare appropriate written documentation including but not limited to: bridge measurements, engineering, history, and biographical information on the fabricator.

B. Rail Corridor, Infrastructure, Tracks, and Ties

- 1. MCRR will provide 5 x 7 and 8 x 10 inch black and white digital photographs printed on archival paper sufficient to document overall views and details of the

approximately 42-mile line, including representative photos of the rail corridor and associated properties. Digital copies will also be provided.

- a. The photographs will be taken with a high resolution digital camera or a 35-mm camera, printed on archival quality paper, and labeled on the back in accordance with NRHP Bulletin #16A. A minimum number of photographs will be determined in consultation with the SHPO and will be provided for each resource.
- b. MCRR will submit a draft contextual history of the rail line and the small communities along the 42-mile corridor, focusing on the importance of the railroad to the economy and development of the communities.
- c. If available, MCRR will submit copies of the original construction plans and historic photographs of associated historic properties, including but not limited to depots, water towers, granaries, etc.
- d. Interpretive exhibits for the trail head locations at Medford, Chilhowee, Leeton and Windsor will be prepared by MCRR in conjunction with SHPO, DNR/DSP, and the individual communities.

V. REPORTING REQUIREMENTS

- A. Draft Report: MCRR shall complete historic research, photo documentation, and a written report within 3 months of the execution of this MOA.
 1. Comment Period. Following receipt of the Draft Report, the SHPO, DNR/DSP, and the City of Windsor will have 30 days to comment on the Draft Report. After considering all comments submitted during the 30-day comment period, OEA will determine whether any additional information or revisions are appropriate, and MCRR shall modify the Draft Report in accordance with OEA's determination. Failure of SHPO, DNR/DSP, or the City of Windsor to comment within the specified period shall be deemed by the Board to constitute approval of the Draft Report.
- B. Distribution of Final Report. A copy of the Final Report identified in Section V will be sent by MCRR to: the Board, SHPO, DNR/DSP, and the City of Windsor and to other appropriate archives or recipients designated by the Board and SHPO.

VI. UNANTICIPATED DISCOVERIES

- A. Procedures for Unanticipated Discoveries of Cultural Resources and Historic Properties.

1. There are no known (check with SCI survey) archaeological sites located within the 42-mile right-of-way. However, in the event that any unreported or unanticipated archaeological sites or cultural resources are discovered during salvage² activities, MCRR shall:
 - a. immediately cease all work;
 - b. clearly mark the area of discovery;
 - c. implement interim measures to protect the discovery from looting and vandalism; and
 - d. notify OEA, federally recognized Tribes, and the SHPO pursuant to 36 C.F.R. § 800.13(b)
2. Upon notification of the discovery, OEA shall consult with the SHPO, DNR/DSP, federally-recognized Tribes, MCRR, and other consulting parties, if any, to determine the NRHP eligibility of the discovery and whether appropriate mitigations measures, such as protection in place or archaeological data recovery plans, are necessary.
 - a. OEA, in consultation with the SHPO and appropriate federally recognized Tribes, will have 30 calendar days following notification to determine the NRHP eligibility. OEA may assume the newly discovered property to be eligible for the NRHP.
 - b. If the find is determined to be potentially significant, OEA will consult with the SHPO and appropriate federally recognized tribes regarding appropriate measures for site treatment pursuant to 36 C.F.R. § 800.6(a). Once presented, the SHPO and the federally recognized Tribes will have 30 calendar days to provide their objections or concurrence on the proposed actions. Mitigation measures may include:
 - a. formal archaeological evaluation of the site;
 - b. visits to the site by the SHPO and/or appropriate tribes; and/or
 - c. preparation and implementation of a mitigation plan by OEA in consultation with federally recognized Tribes for approval by the SHPO.

² For abandonment proceedings, salvage activities may include removal of tracks and ties, removal of ballast, dismantling of any structures that may be present on the right-of-way, and regrading the right-of-way. Salvage may be performed within the right-of-way or, if necessary, via the construction of new access points to the right-of-way.

3. In the event that any human remains (other than from a crime scene) are discovered or excavated, they are subject to the immediate control, possession, custody, and jurisdiction of the SHPO, pursuant to the Missouri Unmarked Human Burials Sites Act (RSMo. 194.400-194.410). The excavation of human remains will follow guidance obtained through DNR/DSP, SHPO, and federally-recognized Tribes. The excavation, handling, and processing of any such human remains and associated funerary objects, sacred objects, or objects of cultural patrimony shall be in accordance with the SHPO instructions and pursuant to any provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) applicable to such remains and artifacts found in the APE.³
- B. In the event of any unanticipated discoveries, MCRR shall ensure that a report on the archaeological investigations conducted pursuant to this "Unanticipated Discoveries" section is provided to the SHPO and OEA, and upon request to other interested parties.
- C. Any report on unanticipated discoveries shall follow (1) procedures for the processing, analysis, and curation of collected materials as described in the Advisory Council's Handbook Treatment of Archaeological Properties, Part 111 of the Secretary of the Interior's Guidelines, and (2) currently accepted standards for the analysis and curation of archaeological remains. (DNR/DSP shall curate at Rock Bridge).

ADMINISTRATIVE PROVISIONS

The Board shall ensure that a determination, finding, or agreement is supported by sufficient documentation to enable any reviewing parties to understand its basis.

A. **Dispute Resolution:** Should any signatory party to this MOA object at any time to the manner in which the terms of the MOA are implemented, the Board shall consult with the objecting party to resolve the objection. If the Board determines, within 15 days after consultation begins, that such objection cannot be resolved, the Board will either:

1. Render a decision regarding the dispute within 30 days after it has determined that the dispute could not otherwise be resolved. The Board will notify all parties of its decision in writing within this time frame. In reaching its decision, the Board will take all comments from the objecting party regarding the dispute into account. The Board's decision will be final; or

2. Forward all documentation relevant to the dispute to the ACHP in accordance with 36 C.F.R. § 800.2(b)(2). Any ACHP comments, and all comments from either party to this MOA, will be taken into account by the Board in reaching a final decision regarding the dispute. The Board's decision will be final.

³ This excludes any cemetery human remains that may be discovered or excavated in the APE. These finds would be regulated by local government and law enforcement agencies, pursuant to Chapter 214, Cemeteries.

B. Amendments, Non-Compliance and Termination: If any signatory party believes that the terms of this MOA cannot be carried out or that an amendment to its terms should be made, that party shall immediately consult with the other parties to develop amendments to this MOA pursuant to 36 C.F.R. §§ 800.6(c)(7) and 800.6(c)(8). No amendments shall take effect without the unanimous consent of the signatory parties. If this MOA is not amended as provided for in this stipulation, any signatory party may terminate it, whereupon the Board shall proceed in accordance with 36 C.F.R. § 800.6(c)(8).

C. Duration of the MOA: Unless terminated, this MOA will be in effect until the Board, in consultation with the other signatory parties, determines that all of its terms have been satisfactorily fulfilled. Upon a determination by the Board that all terms of this MOA have been satisfactorily fulfilled, this MOA will terminate and have no further force or effect. The Board will promptly provide the other signatory parties with written notice of its determination and of termination of the MOA.

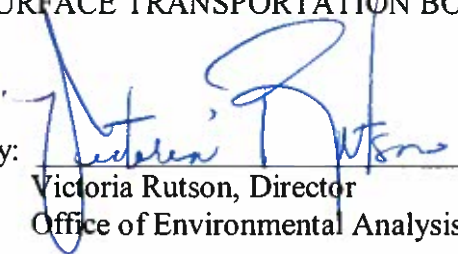
D. Effective Date: This MOA will take effect on the date it is executed by the Board, SHPO, MCRR, and DNR/DSP.

E. Designated Point of Contact: OEA, MCRR, SHPO, DNR/DSP, and the City of Windsor. Each party is responsible for providing current phone numbers, e-mail address, and mailing addresses for their designated point of contact. (Contact information is included in the Appendix).

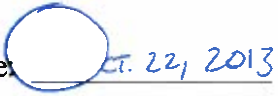
Execution of this MOA by the Board, SHPO, MCRR, and DNR/DSP; its transmittal to ACHP; and subsequent implementation of its terms, evidences that the Board has afforded ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties, and that the Board has satisfied its responsibilities under Section 106 of the NRHP and applicable implementing regulations.

SIGNATORY PARTIES

SURFACE TRANSPORTATION BOARD

By: 

Victoria Rutson, Director
Office of Environmental Analysis

Date: 

MISSOURI STATE HISTORIC PRESERVATION OFFICE

By: _____

Mark A. Miles, Deputy State Historic Preservation Officer
Missouri Department of Natural Resources

Date: _____

MISSOURI CENTRAL RAILROAD COMPANY

By: _____

Robert K. Neff, President
Missouri Central Railroad Company

Date: _____

INVITED SIGNATORY PARTY

MISSOURI DEPARTMENT OF NATURAL RESOURCES DIVISION OF STATE PARKS

By: _____

William J. Bryan, Director of the Division of State Parks
Missouri Department of Natural Resources

Date: _____

SIGNATORY PARTIES

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____
Victoria Rutson, Director
Office of Environmental Analysis

MISSOURI STATE HISTORIC PRESERVATION OFFICE

By: Mark A. Miles Date: Oct. 17, 2013
Mark A. Miles, Deputy State Historic Preservation Officer
Missouri Department of Natural Resources

MISSOURI CENTRAL RAILROAD COMPANY

By: _____ Date: _____
Robert K. Neff, President
Missouri Central Railroad Company

INVITED SIGNATORY PARTY

MISSOURI DEPARTMENT OF NATURAL RESOURCES DIVISION OF STATE PARKS

By: _____ Date: _____
William J. Bryan, Director of the Division of State Parks
Missouri Department of Natural Resources

SIGNATORY PARTIES

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____
Victoria Rutson, Director
Office of Environmental Analysis

MISSOURI STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
Mark A. Miles, Deputy State Historic Preservation Officer
Missouri Department of Natural Resources

MISSOURI CENTRAL RAILROAD COMPANY

By: Robert K. Neff Date: 10/17/13
Robert K. Neff, President
Missouri Central Railroad Company

INVITED SIGNATORY PARTY

MISSOURI DEPARTMENT OF NATURAL RESOURCES DIVISION OF STATE PARKS

By: _____ Date: _____
William J. Bryan, Director of the Division of State Parks
Missouri Department of Natural Resources

SIGNATORY PARTIES

SURFACE TRANSPORTATION BOARD

By: _____ Date: _____
Victoria Rutson, Director
Office of Environmental Analysis

MISSOURI STATE HISTORIC PRESERVATION OFFICE

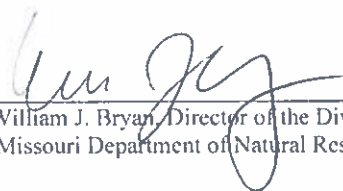
By: _____ Date: _____
Mark A. Miles, Deputy State Historic Preservation Officer
Missouri Department of Natural Resources

MISSOURI CENTRAL RAILROAD COMPANY

By: _____ Date: _____
Robert K. Neff, President
Missouri Central Railroad Company

INVITED SIGNATORY PARTY

MISSOURI DEPARTMENT OF NATURAL RESOURCES DIVISION OF STATE PARKS

By:  _____ Date: 10/18/13
William J. Bryan, Director of the Division of State Parks
Missouri Department of Natural Resources

CONCURRING PARTY

CITY OF WINDSOR

By: Sandra Underwood Date: 10-1-13
Sandra Underwood, City Administrator
City of Windsor

APPENDIX

SURFACE TRANSPORTATION BOARD

Diana Wood	Email: woodd@stb.dot.gov Phone: (202) 245-0302 Fax: (202) 245-0454 Surface Transportation Board Office of Environmental Analysis 395 E Street S.W., Room 1110 Washington, DC 20243
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MISSOURI STATE HISTORIC PRESERVATION OFFICE

Judith Deel	Email: Judith.deel@dnr.mo.gov Phone: (573) 751-7862 P.O. Box 176 Jefferson City, Missouri 65102
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MISSOURI CENTRAL RAILROAD COMPANY

Sandra Brown David Benz	Email: Sandra.Brown@thompsonhine.com David.Benz@thompsonhine.com Phone: (202) 331-8800 1919 M Street N.W. Suite 700 Washington, DC 20036-1600
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MISSOURI DEPARTMENT OF NATURAL RESOURCES DIVISION OF STATE PARKS

Chris Crocker, Planning and Development
Acting Program Director

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P.O. Box 176
Jefferson City, Missouri 65102

CITY OF WINDSOR

Sandra Underwood

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