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5 November 2003



Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

Re: City of Lincoln -- Petition for a ~~DECLARATORY~~ Order, F.D. 34425
fee waiver applicable

Dear Mr. Williams:

Enclosed for filing please find an original and ten copies of a Petition for a Declaratory Order on behalf of City of Lincoln to initiate Finance Docket 34425. In essence, the Petition seeks a declaratory order permitting City of Lincoln to employ state and local eminent domain remedies to acquire limited portions of a railroad corridor necessary for a commuter trail project and a storm sewer project.

Since City of Lincoln is a "state or local government entity," this filing is subject to a fee waiver per 49 C.F.R. § 1002.2(e)(1).

Appendix M constitutes a certificate of service. City of Lincoln has mailed copies of this Petition to the adjoining commercial landowners and tenants as indicated in the certificate.

In the Petition, City of Lincoln also seeks an order pursuant to 49 C.F.R. § 1112.2 requiring Replies to be filed by December 19, 2003, if this Board determines Replies are necessary. As indicated in the Petition, City of Lincoln needs to acquire the property before the end of March, and a prompt briefing/decision schedule is required for that purpose.

Please return the extra copy of this letter after date-stamping, so I may verify receipt for my records. A stamped, self-addressed envelope is enclosed for that purpose.

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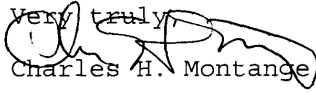
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**SURFACE
TRANSPORTATION BOARD**

Very truly,

Charles H. Montange

Encls.
cc. City of Lincoln (Mr. Pedersen) (w/encl.)
Other potential parties per Appendix M (w/encl.)

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BEFORE THE SURFACE TRANSPORTATION BOARD

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Finance Docket 34425



CITY OF LINCOLN

PETITION FOR A DECLARATORY ORDER

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TRANSPORTATION BOARD

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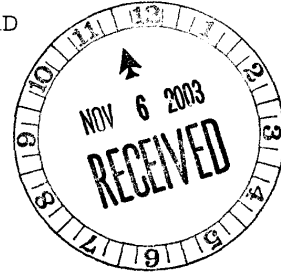
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BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket 34425

CITY OF LINCOLN

PETITION FOR A DECLARATORY ORDER



The City of Lincoln (NE) (hereinafter referred to as "Lincoln" or "City") hereby petitions this Board, pursuant to 49 U.S.C. § 721, 5 U.S.C. § 554(3), 49 C.F.R. Part 1117 and other applicable authority, for a declaratory order determining that the acquisition of certain limited portions of a railroad corridor owned by Lincoln Lumber Company (hereinafter referred to as "LLC") does not constitute either an acquisition or an abandonment/discontinuance of operations for which prior Board approval is required under 49 U.S.C. §§ 10901-03.

More specifically, City of Lincoln wishes to acquire limited portions of a five block railroad corridor (between 19th Street and 24th Street) owned by Lincoln Lumber Company for (a) construction and operation of a vital pedestrian and bicycle commuter trail (the "Husker Link Trail") in the City, and (b) for storm drainage system improvements. LLC originally acquired the five block line of railroad pursuant to an "offer of financial assistance" ("OFA") in 1998, ostensibly for continued rail use. The City needs certain limited portions of the rail corridor for trail purposes, and certain additional underground portions for a storm sewer, in order to complete

both a vital trail linkage, and an important storm sewer project.

Neither project will interfere with continued rail use of the line. Moreover, the City will bear all relevant costs. Nonetheless, LLC refuses cooperation, and has indicated that it will invoke federal railroad preemption under 49 U.S.C. § 10501(b) against any state law eminent domain proceeding.

A map showing the location of the railroad track, the proposed underground storm sewer, and trail is attached as Appendix A ("overview of routes for trail and storm sewer").

Pursuant to the procedures and substantive holdings in State of Texas, Department of Transportation -- Petition for Declaratory Order Regarding Highway Construction in Tarrant County, TX, ICC Finance Dkt. 32589, served Feb. 7, 1995 (copy attached as Appendix B), City of Lincoln seeks a declaratory order sufficient to allow eminent domain of the rights necessary for Lincoln to proceed with the two public projects (storm sewer and trail) for which use of portions of the railroad corridor between 19th and 24th Streets in Lincoln is required.

Motion for Briefing Schedule

The City also moves this Board to order a prompt briefing schedule on this Petition, pursuant to 49 C.F.R. § 1112.2 (modified procedures) and other applicable authority. Inasmuch as the City has served this Petition on all adjoining commercial property owners and tenants (i.e., those parties potentially interested in rail service), including Lincoln Lumber, between

19th Street and 24th Street (see certificate of service annexed as Appendix M), City moves this Board to issue an order requiring all Replies to this Petition to be filed (and to be served upon the City) within forty (40) days, plus three days for service, of the filing of this Petition. By our calculation, the due date for service and filing of Replies under this schedule would be Friday, December 19, 2003.

The City further moves that all Rebuttals be filed within twenty one (21) days of the due date for Replies. City requests that this Board issue a ruling within sixty (60) days of completion of briefing.

There are two reasons for a need for a prompt decision and thus the above schedule. First, as explained at paragraph 3 of the Verified Statement of Brian A. Kramer, Engineering Coordinator, City of Lincoln Public Works Department (hereinafter "Kramer V.S.," attached as Appendix C), the City of Lincoln is under financial, engineering and construction constraints such that it must secure clear title for the storm sewer project by March 2004. The end of March 2004 is only five months away. Second, delay in eminent domain proceedings beyond March of 2004 will jeopardize funding not only for the trail project directly involved here (the Husker Link Trail) but for related commuter trail projects in the City of Lincoln, for which the Husker Link Trail is a vital connector. Verified Statement of Terry Genrich, Natural Resources and Greenways Director, City of Lincoln Parks and Recreation Department

("Genrich V.S.") at ¶5 (Appendix D).

The end of March 2004 is now only five months off. This requires a schedule permitting a decision by that time.

"The City of Lincoln requests prompt action on this declaratory petition to permit both the trail and storm sewer projects to proceed next spring in order to avoid loss of funds." Verified Statement of Joel Pedersen, Assistant City Attorney, City of Lincoln ("Pedersen V.S.") at ¶ 14 (Appendix E). The University of Nebraska has likewise provided a letter supporting prompt action to avoid loss of funding. Letter, Vice Chancellor C. Jackson to Hon. V. Williams, Oct. 23, 2003 (Appendix F). Mayor Coleen Seng of Lincoln similarly explains that Lincoln is

"constrained by time, and the restrictions on the use of bond proceeds for the storm sewer and grant funding for the trails make these property acquisitions time critical. The City of Lincoln needs to complete acquisition of the property by March 2004."

Letter, Mayor Seng to Hon. V. Williams, Nov. 4, 2003 (attached as Appendix L).

This case is straightforward. On the one hand, the City is not seeking to acquire property for common carrier purposes. On the other hand, the City's proposed acquisition is aimed at property obviously surplus to actual rail needs, and the City's acquisition will have no effect on rail service. Under the circumstances, no prior approval from this Board for this acquisition would have been required had LLC cooperated with the City by making a sale of the property on a voluntary basis. See

Sacramento Regional Transit District -- Petition for Declaratory Order Regarding Common Carrier Status, F.D. 33796, served July 5, 2000). The same result should apply even if eminent domain procedures must now be employed given the absence of cooperation by LLC. Accord, State of Texas, supra. Indeed, this proceeding could be foreshortened if this Board determined that "there is no need for a proceeding to examine the matters raised by the petitioner," because (a) the law is clear that the use of eminent domain by City of Lincoln for the acquisition in question does not trigger common carrier obligations on the part of City of Lincoln, (b) the facts are clear that the acquisition does not interfere with rail service, and (c) therefore the City's use of eminent domain authority is not preempted. Compare Sacramento Regional Transit District, supra, with State of Texas, supra.

Factual Background

The City of Lincoln, which is home to University of Nebraska, has long fostered the development of an integrated bicycle and pedestrian transportation system.¹ The purpose of the system is to provide "for safe bicycle commuting and for relief of congestion on city streets."² A key link in that system is a connection between University of Nebraska's main campus and the so-called "East Campus."³ In addition, this link

¹ Genrich V.S. ¶2.

² Letter, Mayor Seng to Hon. V. Williams, Nov. 4, 2003 (Appendix L).

³ Id. ¶¶ 2 & 3(a).

would serve to connect downtown Lincoln to the Mo-Pac East Trail, which in turn links the outskirts of Lincoln to Omaha.⁴ The letter in support of this Petition filed by University of Nebraska confirms the importance of the Husker Link Trail:

"The Husker Link Trail is important to the University of Nebraska, Lincoln, for two reasons: first, it would provide a much needed off street bike path between our downtown and east campus areas. Many of our students, by necessity, are bicycle commuters, and a dedicated path on this corridor would enhance not only their safety but also the efficiency of their commute. Second, the Husker Link Trail is a connector for other trails, including the Mo Pac East Trail, and will enhance commuting to and from the University generally by faculty, staff, and students. The trail connection has long been part of our plans. We urge all parties to facilitate it as a much needed improvement in the public interest."

Letter, Vice Chancellor C. Jackson to Hon. V. Williams, Oct. 23, 2003, Appendix F.

The Husker Link Trail follows what is called the "X Street" corridor. X Street exists as a street in some parts of Lincoln, but in other parts, as at 18th to 24th Street, is represented only by the old Missouri Pacific Railroad right of way.⁵ After lengthy study, the City "concluded that the only plausible alternative [route] -- taking into account safety and continuity -- is to construct a trail in the old Missouri Pacific rail corridor from 30th Street on the east side to 18th Street on the west side." Genrich V.S. ¶ 4(a). This encompasses the five block portion of the old Missouri Pacific corridor acquired by LLC pursuant to an OFA in Union Pacific

⁴ Id. ¶ 3(b).

⁵ Genrich V.S. ¶4(a).

Railroad Company -- Abandonment Exemption -- Lancaster County, NE, AB-33 (Sub-no. 112X), served Jan. 16, 1998 (setting terms and conditions for LLC to acquire the five blocks), pet. to reopen denied, id. served March 2, 1998 (denying LLC petition to reduce price). More specifically, under the OFA, LLC acquired the entire corridor occupied by the old Missouri Pacific between 19th Street and 24th Street in Lincoln, which STB in its decision described as endpoints MP 494.166 to MP 492.88, respectively.

By a decision served September 24, 1997, this Board also issued a Notice of Interim Trail Use (NITU) covering the rail line from 18th Street to end of line at 33d Street. The time for negotiating a railbanking agreement under the NITU was extended several times for the portion of the corridor from 18th to 19th Street, and from 24th Street to 33d Street. E.g., decision served March 15, 2001. Pursuant to the NITU, as extended, Lincoln acquired all the portion of the right of way from 18th Street to end of line at 33d Street, except for the portion in the middle acquired by Lincoln Lumber pursuant to the OFA. Union Pacific donated the remainder of the line covered in AB 33 (Sub-no. 112X), namely 10th Street to 18th Street, to the University of Nebraska. See Genrich V.S. ¶4(d).

Representatives of the City of Lincoln approached Mr. Don Hamill, the owner of LLC, to negotiate acquisition of rights necessary for the Husker Link Trail and the storm sewer project, including a right of entry for survey purposes. See Pedersen

V.S. ¶¶ 5-8; Genrich V.S. at ¶4(f). Mr. Hamill declined to cooperate and refused entry. Id. Indeed, LLC's attorney has indicated to Mr. Pedersen, the Assistant City Attorney for Lincoln handling these projects, that LLC's purpose in pursuing the OFA on the line from 19th Street to 24th Street was to block the trail. Pedersen V.S. ¶ 8. This has been confirmed by subsequent events. LLC's owner has declined to negotiate any location or arrangement for the trail, has refused to allow the sewer project to move forward unless the City abandons the trail project, and has indicated that LLC will assert federal preemption as a defense to state-law eminent domain proceedings which the City wishes to bring in order to move the trail and sewer projects forward. Pedersen V.S. ¶8 and especially Letter, T. McFarland to J. Pedersen, Feb. 11, 2003, stating that LLC will seek a federal injunction against any eminent domain proceeding initiated by the City, attached as exhibit C to Pedersen V.S.

Textron owned most of the land on both sides of the rail corridor at issue here (i.e., 18th to 24th Streets) during the abandonment proceeding. The property was employed by Textron's subsidiary Cushman, Inc. for industrial purposes. Textron leased portions of the corridor from the prior owner Union Pacific. See Pedersen V.S. at ¶ 12(a)-(b). Upon acquisition of the five block corridor, however, LLC revised the lease greatly to increase the amount of rent, as well as the amount of space leased to Textron. See id. ¶ 12(d) et seq. In essence,

LLC leased to Textron all those portions of the rail corridor adjacent to its industrial facility (i.e., both sides of the track between approximately 22d Street and 18th Street, and the north side of the track between 23d Street and 22d Street) except for a twelve foot width encompassing the track itself.⁶ Textron enjoyed a right to employ the corridor for vehicular and pedestrian transportation purposes, storage, and parking, and was obligated simply to keep ground open on both sides to allow passage of emergency vehicles.⁷ Basically Textron acquired all rights to use the surface for non-rail purposes, except for limited rights on the part of Lincoln Lumber to operate a rail line along the centerline of the track.⁸

Subsequent both to LLC's OFA and LLC's entry into the revised lease with Textron, Textron closed its Cushman operations on the rail corridor and sold all its holdings.⁹ Textron has now left the City of Lincoln entirely. The

⁶ See exhibit E to Pedersen V.S. at section 4, ¶ G. Even as to the 12 foot width retained by LLC for rail purposes, Textron enjoyed an unrestricted right to cross at its own risk. Id. section 10, ¶C. In other words, LLC did not retain exclusive use of any portion of its right of way adjoining the former Textron properties.

⁷ Id. section 5.

⁸ In addition, about 16,492 feet of the corridor was leased by LLC to Commonwealth Electric, which has a corporate and warehouse operation next to the LLC property. See Letter, G. Moss to Hon. V. Williams, Nov. 3, 2003 (attached as Appendix K). Commonwealth Electric indicates that the proposed trail project does not interfere with continued rail use, and supports the trail project. Id.

⁹ Pedersen V.S. at ¶12(g).

University of Nebraska acquired all Textron's holdings south of the rail corridor. B&J Partnership acquired the property on the north side between blocks owned by the University of Nebraska property and Lincoln Housing Authority.¹⁰ The ownership of the land is indicated in the aerial map in Appendix A entitled "property owners." Neither the University of Nebraska nor B&J Partnership employ the line for rail purposes, or any purpose; that is, neither the University nor B&J acquired any interest in the lease.¹¹ Thus, the only shipper is Lincoln Lumber Company.¹² Lincoln Lumber Company's use is 50 carloads or fewer per year.¹³ The City of Lincoln monitored use for one week and ascertained no use at all for that entire week.¹⁴

The Lincoln Lumber/Textron lease remains extant and runs until 2015.¹⁵ It does not contain a clause permitting early termination.¹⁶ Lincoln Lumber has thus ceded use of most of the rail corridor to a third party (Textron) for pedestrian,

¹⁰ Pedersen V.S. ¶12(g) & (h), and Exhibit F.

¹¹ Pedersen V.S. ¶ 12(g).

¹² Compare Genrich V.S. at ¶6(c) (LLC only shipper) with Letter, C. Jackson to Hon. V. Williams, Oct. 23, 2003 (UN "has no current plans for rail use of this property, and we do not foresee any real need on our part at this location in the future").

¹³ Schuchmann V.S. (Appendix G) at ¶5.

¹⁴ Genrich V.S. at ¶ 6(c).

¹⁵ Exhibit B, §2, to Pedersen V.S.; see Genrich V.S. at ¶6(c).

¹⁶ Pedersen V.S. at ¶12(f).

vehicular, storage, and parking purposes until well into the next decade.¹⁷

In the remaining portion of the corridor, LLC has stacked pallets of lumber where the City wishes to construct the Husker Link Trail. Schuchmann V.S. at ¶11, ¶¶ 15-21 & photos 3 & 4 attached to V.S.; Genrich V.S. ¶ 6(b) (pallets in general cover the entire 20 foot width). The storage use indicates that use of the property for non-rail purposes does not interfere with rail use "either in LLC's judgment or in reality." Schuchmann V.S. at ¶8.

In sum, LLC has either leased out for non-rail purposes (including pedestrian access) all portions of the corridor desired by City of Lincoln for the Husker Link Trail, or has put those portions to non-rail use itself. Under the circumstances, the proposed trail simply cannot be deemed to interfere with rail use, and it most certainly will not displace or interfere with any rail facilities or uses. No one has ever contended that the storm sewer project will interfere with rail use; LLC

¹⁷ Since Textron has leased the bulk of the corridor at issue for non-rail purposes, but has since left the City of Lincoln, obviously the City's proposed projects are not interfering with any rail use -- or other use -- by Textron of the corridor. The lease in theory should not pose an obstacle; it only amounts to evidence that the trail and storm sewer are fully consistent with rail use. However, it may be that the LLC/Textron lease for non-rail purposes is an obstacle in the sense that it causes LLC to lack motivation to negotiate a sale of property to the City, and Textron which has left may be indifferent to the situation. But these possible dynamics simply underscore the importance of allowing state law eminent domain to proceed in order to sort out the respective interests of Textron and LLC, if those are an obstacle.

is simply holding the storm sewer improvement hostage to the trail project.¹⁸

Petition

This matter raises essentially the same issues as those presented in State of Texas, supra. In State of Texas, the Texas Department of Transportation sought to employ portions of a rail line (including portions of a rail yard) for highway improvements and (as here) a storm sewer project evidently being held hostage to the transportation project. In the State of Texas proceeding, at least some rail facilities required relocation to permit the construction to go forward. The short line railroad either refused to negotiate or demanded excessive compensation; Texas filed an eminent domain proceeding; and the railroad asserted preemption due to federal rail regulation. The eminent domain proceedings were stayed pending a referral of the matter to this Board's predecessor, the Interstate Commerce Commission, for a declaratory order establishing whether the Commission would assert jurisdiction (and thus preemption). In view of the fact that the Texas Department of Transportation was picking up all costs for new railroad facilities to replace those displaced for the public projects, ICC essentially found no unreasonable interference with continued rail operation, and declined to assert

¹⁸ Indeed, the LLC/Textron lease revision specifically retains in LLC the authority to grant a storm sewer easement (Pedersen V.S., Ex. E, §4, ¶A), which is tantamount to an admission that a storm sewer does not interfere with anything anyone intends on the premises, rail or otherwise.

jurisdiction.

The situation before the agency in this case is much easier than in State of Texas. In this case, City of Lincoln proposes no relocation of any rail facilities. Indeed, LLC is making no rail use of the properties which City of Lincoln seeks for its storm sewer and trail projects.¹⁹ Insofar as the properties Lincoln seeks for a trail are adjacent to LLC's lumber operations, the properties are remote from the railroad tracks and are unusable for rail purposes anyway because they are covered with large piles of lumber.²⁰

The City retained Mr. Walter Schuchmann of the R.L. Banks firm in Washington, D.C. as an expert to evaluate impact of the City's projects on rail operations in the corridor. Mr. Schuchmann is Director of Rail Operations at R.L. Banks, and prior to his position there was an operating and safety officer for Norfolk Southern.²¹ After a site visit, examination of relevant documents, and an interview with an officer of the operating railroad (OL&B), Mr. Schuchmann states as follows:

"I conclude that trail operations will be the same after (unaffected by) construction of the trail and storm sewer as at present. ... Based on LLC's leasing out of all but 12 feet of the right-of-way, its storage of materials where the trail would be located, the existing physical obstructions

¹⁹ Schuchmann V.S. ¶¶ 15-21 and especially ¶¶ 16-17.

²⁰ Schuchmann V.S. ¶ 17; Genrich V.S. ¶6(b).

²¹ Schuchmann V.S. ¶ 1.

located on the right-of-way, my experience in other locations and the AREMA standards, it is certain that ... neither the trail no[r] the underground storm sewer will interfere with the ability of OLB or any other carrier to conduct freight operations on the [Lincoln Lumber] line."

Schuchmann V.S. ¶¶ 21 & 26.

Since City of Lincoln proposes no displacement at all of any rail facilities, and since they can remain exactly where they are, the potential for interference with rail service is a fortiori negligible. In any event, only one rail customer is served by the line: Lincoln Lumber itself. Schuchmann V.S. ¶¶ 5 & 8. OL&B, the operating railroad for the line, has indicated to the City that it does not foresee that the Husker Link Trail will interfere with rail operations. Genrich V.S. ¶ 6(d). The City has not only prepared a design that does not interfere with rail use, but also a design that minimizes impact on Lincoln Lumber's other operations. The City's design avoids bifurcating the LLC lumber facility at all between 23d and 24th Streets where LLC occupies both sides of the right of way. The City's design places the trail on the extreme north edge of the right of way, immediately adjacent to Lincoln Housing Authority property, on the block in which LLC occupies some of the south side of the right of way (22d to 23d Streets). Genrich V.S. ¶4 and attachments; see also Schuchmann V.S. ¶12 (summary). As already noted, the entire 20 foot width desired by the City at

this location²² is being used by LLC not for rail purposes but to stack large piles of lumber. The obstructions are illustrated in photographs 3 and 4 attached to Mr. Schuchmann's Verified Statement.

The trail otherwise follows existing sidewalks or other roadways designated for 24 hour pedestrian access in the LLC/Textron lease.²³ The trail will cross the rail line at an existing public crossing. The City will install reasonable fencing. See generally Genrich V.S. ¶6(e). The basic locations are set out in the aerial maps included in Appendix A. Under the circumstances, it is simply not possible rationally to contend that the Husker Link Trail poses any meaningful "interference" with continued rail use of the five block rail line.

The only possible "interference" is when the underground storm sewer improvement is installed. That will require a side

²² AASHTO standards for urban multi-use trails call for a 12 foot minimum width with additional shoulders. In order to permit room for construction activities and for snow removal, Lincoln requires a 20 foot width. Genrich V.S. at 4(d); Schuchmann V.S. at ¶ 12.

²³ The lease expressly provides that "Textron, its employees, agents and invitees can use the Premises without restriction 24 hours a day" and that "[t]he Premises can be used for pedestrian travel and for the movement of materials and supplies by motor vehicle and other powered machinery." Pedersen V.S. at ¶13, referencing Pedersen V.S. Exhibit E (Lease Amendment) at Section 5. This lease constitutes an admission that the proposed trail (which will employ far less of the right of way than the LLC/Textron lease) is compatible with rail service. As Mr. Pedersen explains, "[t]he Husker Link Trail Project and the Storm Sewer Project are obviously fully consistent with the uses LLC has contracted to permit through the Textron Lease." Pedersen V.S. at ¶13.

or spur track which LLC may use to be temporarily disrupted, but the City has committed to limiting that disruption to no more than a week (see Kramer V.S. at ¶5). But this is hardly "interference" since in the City's recent survey, the City found no use of any of the line for rail purposes for that period of time. See Genrich V.S. ¶6(a). And in any event, LLC has indicated that it does not oppose the sewer improvement; it is simply refusing cooperation in order to pressure the City to drop the trail.²⁴

As already noted, the City of Lincoln has retained Mr. Walter Schuchmann of R.L. Banks and Associates, a rail consulting firm, to evaluate the impact of the trail and sewer project on rail operations. After an appropriate investigation, Mr. Schuchmann concluded that "it is certain" that neither the trail nor the storm sewer "will interfere with the ability of ... any ... carrier to conduct freight operations on the [Lincoln Lumber] line." Schuchmann V.S. at ¶ 26.

Finally, in meetings with executives of the short line railroad (OL&B) which provides rail service to LLC, OL&B indicated that it did not foresee any interference between

²⁴ See Pedersen V.S. at ¶ 8 (Mr. Hamill -- the owner of Lincoln Lumber -- "made it clear that he supported the storm sewer project and noted 'that it would help a lot of people,' but he linked his approval of the storm sewer acquisition to keeping the trail off his property. A later conversation with Mr. Hamill's attorney made it clear that LLC's interest in pursuing the OFA [by which LLC acquired this property] in the first place involved a deliberate attempt to block any trail use in the corridor regardless of any actual impact to [his] business." See also Kramer V.S. at ¶6.

either the Husker Link Trail project and rail operations, or between the storm sewer project and rail operations. Genrich V.S. at ¶6(d) (meeting held Oct. 9).

Although LLC allowed some initial survey work for the storm sewer, LLC has not permitted entry on the premises for any surveys for the trail, or for completion of survey work for the storm sewer. Thus, construction plans for the storm sewer and trail projects are not entirely final. Preliminary designs are attached as exhibits to the Kramer V.S. (storm sewer plans) and Genrich V.S. (trail plans) so the Board may verify that the uses Lincoln intends to make are as represented herein.

The Husker Link Trail and the storm sewer project enjoy broad support University of Nebraska, which is now the major adjacent landowner on the corridor in question. See Appendix A (aerial maps showing property ownership). Indeed, the University states that

"[a]s adjacent landowners, we would welcome the trail and storm sewer improvements which the City seeks to implement and we share the City's concern that the improvements be implemented as soon as possible in order to avoid loss of funds or incurring any financial penalties."

Letter, Vice Chancellor C. Jackson to Hon. V. Williams, Oct. 23, 2003. Similarly, Commonwealth Electric, whose corporate office and warehouse is adjacent to the rail corridor, and which leases 16,492 feet from LLC, states that it "views this [trail] link as vital for safe and reliable non-motorized trail purposes" and supports the use of eminent domain to secure the property interests in question. Letter, G. Moss (CEC

Secretary/Treasurer/CFO) to Hon. V. Williams, Nov. 3, 2003 (attached as Appendix H). The Husker Link Trail is also supported by the relevant local neighborhood associations. See Letter, P. Struwe (Hawley Area Nbd Ass'n) to Hon. V. Williams, Oct. 27, 2003 (attached as Appendix I) and Letter, R. Malone (Clinton Nbd Ass'n) to Hon. V. Williams, Oct. 27, 2003 (attached as Appendix J); Letter, J. Brinkman (East Campus Community Organization) to Hon. Vernon Williams, Oct. 27, 2003 (attached as Appendix K).

In his verified statement, Assistant City Attorney Pedersen explains that the City is prepared to employ state and local eminent domain procedures to acquire the property. Pedersen V.S. at ¶2-8; see also Genrich V.S. at ¶ 4(f); Kramer V.S. at ¶ 6. However, LLC through its legal counsel has indicated that it will assert federal preemption of state and local eminent domain. See Pedersen V.S. ¶ 8 and Pedersen V.S. Exhibit C (letter from Mr. McFarland representing LLC). This juxtaposition of events necessitates this petition for a declaratory order.

The relief sought herein is certainly consistent with federal rail transportation policy. In particular, granting the declaratory order sought herein will serve the goal of fostering "fair and expeditious" regulatory decisions as well as minimizing the "need" for Federal regulatory control. 49 U.S.C. § 10101(2). It reduces barriers to exit (§ 10101(7)), encourages honest and efficient management (§ 10101(8)), and

encourages and promotes energy conservation by allowing Lincoln to proceed with its non-motorized transportation system. 49 U.S.C. § 10101(14).

This Board, following the precedent of its predecessor, the ICC, has explained that it has "never asserted jurisdiction over the ability of railroads to allow non-carriers to conduct non-jurisdictional activities ... on their excess real estate when regulated rail service will not be affected thereby." Sacramento Regional Transit District, supra, quoting Souther Pac. Transp. Co. -- Abandonment -- L.A. County, CA, 9 ICC2d 385, 390 (1993). This same rule applies to permit use of eminent domain in appropriate circumstances, such as the case now before this Board. See State of Texas, supra. There is no federal policy or interest justifying preemption of the eminent domain remedy here.²⁵

Conclusion

This Board has stated that it will not allow its jurisdiction to be employed merely to defeat legitimate processes of local and state law. That, indeed, was a central message of the State of Texas proceeding. As in State of Texas, this is a situation where the Board's policy not to impede legitimate state and local projects is appropriately applied. The City of Lincoln does not seek common carrier status, and is not acquiring property for that purpose. Moreover, the property

²⁵ See Letter, Mayor Seng to Hon. V. Williams, Nov. 4, 2003.

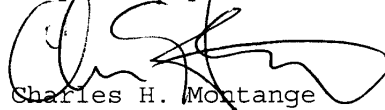
which the City seeks to acquire is excess to rail needs (it is obviously not in rail use and most of it is leased for other uses) and in any event the acquisition will not interfere with rail service. But this compels the conclusion that this Board should determine that its jurisdiction does not apply, thus allowing eminent domain to go forward. State of Texas, supra; see also Sacramento Regional Transit District, supra.

In short, it makes no sense to permit LLC to assert federal rail regulatory authority to interfere with the normal processes of state law in connection with the Husker Link Trail Project or the storm sewer project. In order to lift federal preemption so as to permit state and local eminent domain to be available, City of Lincoln hereby petitions for a declaratory order finding that the proposed acquisitions do not constitute acquisition or abandonment/discontinuance for purposes of 49 U.S.C. §§ 10901-03. See State of Texas, supra, ICC Finance Dkt. 32589, served Feb. 7, 1995 (granting similar petition). Alternatively, this Board may issue an order denying the petition on the ground that the law is clear that eminent domain under the circumstances here is permitted without triggering STB authority. See Sacramento Regional Transit District, supra, STB F.D. 33796, served July 5, 2000.

Should this Board require further briefing, the City of Lincoln requests expeditious treatment of this Petition and has proposed a schedule calling for Replies no later than forty (40) days, plus three days service, from the filing of this

petition (i.e., for a filing of all Replies by December 19, 2003), with any Rebuttals due twenty one (21) days after the due date for Replies. City of Lincoln has requested a decision sixty days after the conclusion of briefing. This would permit a decision to be issued in March of 2004. City of Lincoln is required to initiate eminent domain proceedings by that date so that it can secure the property interests required in time to permit construction of the storm sewer improvement to be completed during the 2004 construction season.

Respectfully submitted,

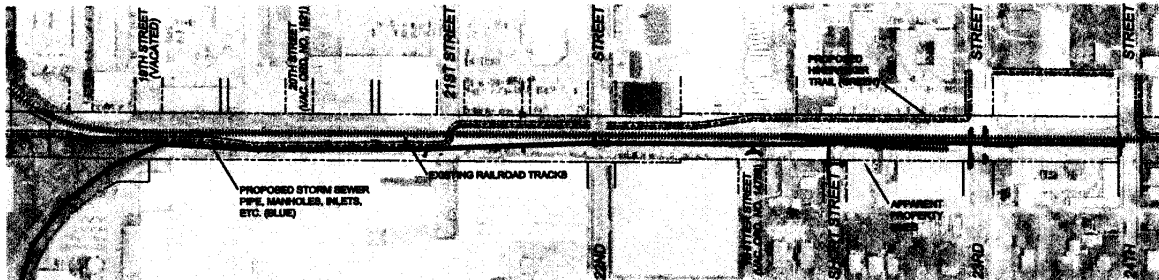


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Counsel for City of Lincoln

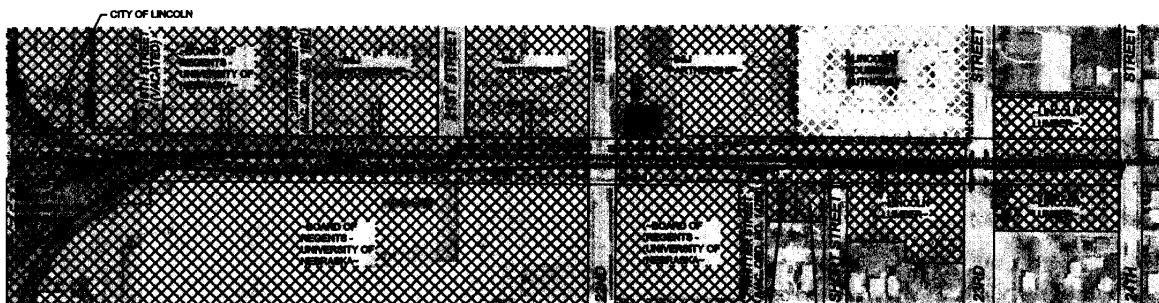
Supporting Documents

Appendices	Description
A	aerial maps
B	<u>State of Texas</u> decision
	<u>Sacramento Regional Transit</u> decision
C	Kramer Verified Statement
D	Genrich Verified Statement
E	Pedersen Verified Statement
F	University of Nebraska letter
G	Schuchmann Verified Statement
H	Commonwealth Electric Company
I	Hawley Area Nbd. Association
J	Clinton Nbd. Association
K	East Campus Nbd. Association
L	Mayoral Letter
M	Certificate of Service

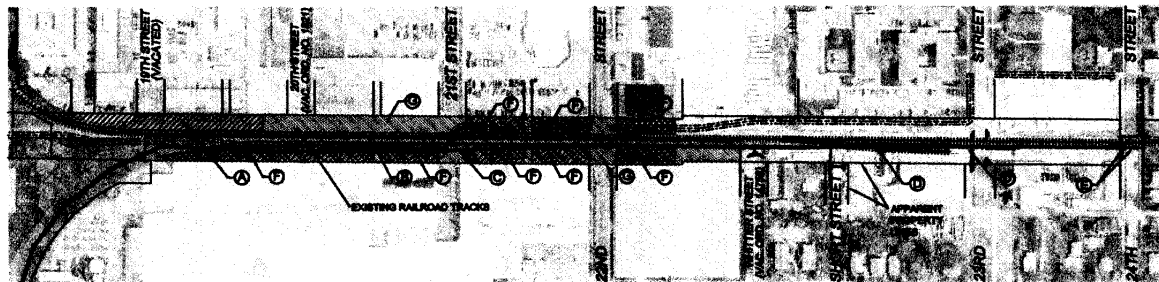
Appendix A



OVERVIEW OF ROUTES FOR TRAIL AND STORM SEWER



PROPERTY OWNERS



RIGHT-OF-WAY ENCROACHMENTS

INDEX OF ENCROACHMENTS	
A	PROPERTY LEASED BY COMMONWEALTH ELECTRIC CO. OF THE MIDWEST
B	FORMER COAL HOUSE
C	EXISTING 30" RCP
D	EXISTING 24" CMP
E	FORMER PIPES UNDERNEATH 24TH STREET
F	*PROPERTY FORMERLY LEASED BY TEXTRON FROM UNION PACIFIC
G	**PROPERTY FORMERLY LEASED BY TEXTRON FROM LINCOLN LUMBER (BLUE)

* THE AREA OF PROPERTY FORMERLY LEASED BY TEXTRON FROM UNION PACIFIC WAS 48,127 SQ. FT.

** AFTER LINCOLN LUMBER COMPANY'S PURCHASE OF THE RAILROAD CORRIDOR, THE AREA OF PROPERTY FORMERLY LEASED BY TEXTRON FROM LINCOLN LUMBER INCLUDED 92,115 SQ. FT. THE LEASE DOCUMENTATION STATES THAT LINCOLN LUMBER WAS TO MAINTAIN A 12-FOOT TRACK RIGHT OF WAY.



Appendix B

THE STATE OF TEXAS, DEPARTMENT OF TRANSPORTATION --
PETITION FOR DECLARATORY ORDER REGARDING HIGHWAY
CONSTRUCTION IN TARRANT COUNTY, TX

Finance Docket No. 32589

INTERSTATE COMMERCE COMMISSION

1995 ICC LEXIS 14

SERVICE DATE: February 7, 1995

February 1, 1995

CORE TERMS: track, parcel, replacement, acquisition, highway, relocation, railroad, abandonment, acquire, proceeding, common carrier, easement, transportation, construct, carrier, find, declaratory order, interfere, connecting, facility, streets, replacement property, constructed, overpass, shippers, ramps, timely fashion, condemnation, interchange, territory

PANEL: [*1]

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

OPINION:

This declaratory order proceeding was instituted at the request of the State of Texas Department of Transportation (TXDOT) to determine whether the acquisition of certain properties and the relocation of certain track of the Fort Worth & Western Railroad Company (FWWR) constitutes either an acquisition or an abandonment/discontinuance of operations for which prior Commission approval is required under 49 U.S.C. 10901 or 10903, respectively. The proceeding was instituted under 5 U.S.C. 554(e) and 49 U.S.C. 10321, which authorizes us in our sound discretion to issue declaratory and interpretive orders to terminate a controversy or remove uncertainty. On October 21, 1994, a procedural schedule was issued. In accordance with that schedule, FWWR replied on November 14, 1994, and TXDOT filed a rebuttal on November 21, 1994. We find the proposed acquisitions and relocations not subject to our jurisdictions.

BACKGROUND

This proceeding arises from TXDOT's plans to modernize and expand Interstate Highways 30 and 35W. These main highway arteries are located near downtown Fort Worth, TX, and [*2] serve the Dallas/Fort Worth area. They were constructed in the late 1950s and early 1960s. Since that time, the Dallas/Fort Worth metropolitan area's population has grown from 1.85 million to over 4 million, and the highways now experience severe traffic congestion. The condition of the highways has also deteriorated significantly, and the highways' interchanges do not include modern safety features. TXDOT's plan is designed to accommodate the increased traffic and improve safety.

TXDOT states that, since the early 1970s, it has recognized the need for these highway improvements. The current plan has taken years to prepare and has been the subject of public input, court proceedings, and an environmental impact statement. TXDOT has successfully negotiated with hundreds of landowners to acquire the many rights-of-way needed to complete the project. The dispute with FWWR is the only remaining obstacle to implementing the plan.

The disagreement with FWWR relates to two parcels TXDOT seeks to acquire from FWWR. n1 The first, a 1.289-acre parcel (identified as Parcel 34A, Part 1), contains two parallel tracks that FWWR uses for storage and for interchange with the Union and Pacific [*3] Railroad Company (UP). TXDOT plans to acquire fee simple title to the property and will use it to bring the highway to grade level in this area. To permit this improvement, the plan

requires FWWR to relocate its track. TXDOT proposes that FWWR acquire an adjacent 4.7-acre parcel for this purpose. This would result in relocating FWWR's entry to its storage track from its main track approximately 250 feet to the southwest of its current location. TXDOT's proposal allows 1 year from the service date of this decision for FWWR to acquire the replacement parcel and to design and construct replacement track. TXDOT has offered FWWR \$1.4 million in compensation.

n1 FWWR does not appear to oppose the temporary, 5-year easement TXDOT seeks over a 0.028-acre parcel for construction of storm drains. In any event, it has not alleged that the proposed easement would interfere with the railroad's ability to carry out its common carrier obligations.

TXDOT also plans to acquire title in fee simple to a second, 2.125-acre parcel (identified as Parcel 34A, Part 2). FWWR would retain an easement to conduct rail operations on the parcel. This arrangement would allow TXDOT to replace and [*4] overpass connecting city streets north and south of Interstate 30, construct two ramps connecting city streets to Interstate 30, and elevate a portion of Interstate 30 over FWWR's tracks.

FWWR is a class III switching and terminal railroad. It operates about 10 miles of track, acquired from the Burlington Northern Railroad Company in 1988, and serves 16 shippers in the Fort Worth area. FWWR argues that under the proposed relocation plan TXDOT could compel it to vacate its existing track before the replacement track is completed. Thus, it argues that TXDOT will be empowered to close its interchange with UP and that this creates the potential for an unlawful abandonment. As to the second parcel, FWWR argues that TXDOT has not submitted enough information concerning the retained easement for us to find that the proposal is not subject to our jurisdiction.

Following their failure to reach an agreement, TXDOT on August 4, 1993, began a condemnation proceeding against FWWR in the 48th Judicial District Court of Tarrant County, TX. FWWR then moved to dismiss that proceeding, arguing that the property is subject to our jurisdiction and that our prior approval is required for both the [*5] proposed acquisition and abandonment. The court placed the condemnations proceeding in abeyance to give us the opportunity to rule on whether we have jurisdiction over the proposed acquisition and relocation.

TXDOT seeks expedited action because the seven involved construction contracts are sequenced and delays in awarding them will be costly and will postpone the project's completion. Two contracts have already been awarded, but four cannot be awarded until this declaratory order is served. TXDOT asserts that further delay in awarding contracts for the segments owned by FWWR could cost motorists approximately \$14,000 a day. Citing safety concerns with regard to existing highways, it also argues that prompt construction is necessary to improve highway safety and thus to protect the public interest.

DISCUSSION AND CONCLUSIONS

Relocation: Parcel 34A, Part 1. In the past, we have held that carrier actions replacing existing track with substitute track constructed nearby is not within the reach of 49 U.S.C. 10901 and 10903 if there is no effect on: (1) service to shippers; (2) the carrier's territory or traffic; (3) competition; or (4) the carrier's revenue or operating expenses. [*6] See *Denver & R.G.W.R. Co. -- Jt. Proj. -- Relocation over BN*, 4 I.C.C.2d 95, 97-99 (1987) (Denver Relocation). Thus, we have found an absence of jurisdiction where the proposed relocation is to operate in the same manner as the existing line, no shippers are involved, and no new competitive territory is reached.

In *City of Detroit v. Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208, 1218 (1993), pet. for review pending sub nom. *Detroit/Wayne County Port Authority v. ICC*, No. 94-1068 (D.C. Cir. filed Feb. 1, 1994), we expressed concern that the approach suggested in Denver Relocation may have construed our jurisdiction too broadly to the extent that it focused on anything more than whether a railroad project extended into new territory not previously served by the carrier. See *Texas & P. Ry. Co. v. Gulf, C. & S.F. Ry. Co.*, 270 U.S. 266 (1925) (T&P). Nevertheless, the parties have addressed this case under the framework set up in Denver Relocation. FWWR argues that the Denver Relocation exception to our jurisdiction does not apply here (presumably, FWWR would also argue that this project does not fall within T&P) because TXDOT has not shown with certainty that the replacement [*7] track will be constructed. Under TXDOT's plan, FWWR asserts that it must acquire the replacement property on its own using eminent domain powers and construct the replacement track. The plan gives TXDOT the right to force FWWR off the existing track if the relocation is not completed after what is characterized as a "reasonable time." FWWR argues that

this power to force it off the track would cause a cessation of common carrier service and would constitute an adverse abandonment.

In addition, FWWR contends that this proposal cannot be characterized as a relocation because the replacement property has not yet been acquired. FWWR argues that even though it may have the statutory power to condemn the adjacent property, TXDOT cannot compel it to exercise that power. Thus, FWWR argues, it cannot be shown with certainty that the replacement property will be acquired. Finally, FWWR contends that TXDOT has not demonstrated that use of the replacement parcel is feasible or that the State is actually committed to pay \$1.4 million compensation.

We disagree. We find that TXDOT has shown with reasonable certainty that the replacement track will be available in a timely fashion and that [*8] its plan will not result in an abandonment. The TXDOT proposal allows FWWR 1 year from the date we issue this declaratory order in which to replace its existing track. TXDOT submitted unrefuted evidence to show that the condemnation proceedings should be completed within 60 to 90 days (see petitioner's rebuttal, Naylor V.S. at 2) and that the land should be cleared and replacement track laid in another 60 to 90 days (see petitioner's rebuttal Richards V.S.). TXDOT's proposal gives FWWR 6 additional months to complete construction of the replacement track. This appears reasonable to us. FWWR has not demonstrated otherwise, except to argue that it does not own the replacement parcel and cannot be compelled to acquire it. Thus, we find that as to this first land parcel, TXDOT's plan constitutes a reasonable approach to assuring that the existing track may be replaced without disrupting FWWR's common carrier service.

In support of the feasibility of constructing the replacement track, TXDOT submitted the statement of Mr. Hoy Richards, an independent railroad construction consultant. Based on an on-site inspection of FWWR's existing facility and a review of the construction specifications, [*9] Mr. Richards concluded that construction of the replacement track is feasible. Also, TXDOT retained an independent real estate appraiser who calculated that \$1.4 million would fully compensate FWWR for the cost of obtaining the land and constructing the replacement track. The Executive Director of TXDOT, William Burnett, testified that the compensation had been offered to FWWR. FWWR submitted evidence of such discussions on compensation in its reply (see exhibits I and J).

FWWR does not argue or demonstrate that the proposed project, if completed in a timely fashion, would interrupt or even hinder the performance of its common carrier service. It has presented no evidence of harm that would result from the plan if the replacement track is completed as proposed.

This highway renovation is intended to alleviate major congestion and safety concerns in the Dallas/Fort Worth area. Thus, it will promote public health and safety. These goals are consistent with the objectives of the rail transportation policy (RTP) of 49 U.S.C. 10101a. Under the RTP, transportation facilities are to be operated without detriment to public health and safety and we must cooperate with the States [*10] on transportation matters. 49 U.S.C. 10101a(8) and (9). We conclude that the project involving Parcel 34A, Part 1, as contemplated by TXDOT--although proposed by an entity other than the railroad--does not involve an extension of rail line or construction of an additional line, and, accordingly, that it is not at this time subject to our jurisdiction. If in fact the project cannot be completed in a timely fashion and TXDOT takes action that would have the effect of forcing an abandonment, FWWR may seek relief by protesting the abandonment at the Commission. At this time, however, FWWR's concerns are entirely speculative.

This agency's primary jurisdiction over railroads preempts state laws that could operate to unreasonably burden interstate commerce. State laws that could operate to unreasonably burden interstate commerce. State laws that do not impose such a burden are not preempted. TXDOT's proposal, which serves an important public interest, would not adversely affect the rail service offered by FWWR or otherwise unreasonably interfere with the carrier, inasmuch as service will not be interrupted and no costs will be imposed on FWWR. As long as that is the situation, [*11] we see no basis upon which to preempt TXDOT's exercise of its condemnation authority.

Acquisition: Parcel 34A, Part 2. TXDOT seeks to acquire Parcel 34A, Part 2, for three basic reasons: (1) to replace an overpass connecting city streets north and south to Interstate 30; (2) to construct two ramps connecting city streets to Interstate 30; and (3) to elevate a portion of Interstate 30 over FWWR's tracks. The acquisition is limited to the land and does not include the track or any other rail property. FWWR will retain an easement "to operate, construct and maintain railroad facilities" on the property, so long as it "is used for railroad facilities." (Petition for Condemnation, exhibit H to Petition for Declaratory Order).

TXDOT contends that the acquisitions comes under the exception to our jurisdiction set forth in *Maine, DOT -- Acq. Exemption, Me. Central R. Co., 2 I.C.C. 2d 835 (1991)* (State of Maine). n2 TXDOT presented a verified statement from Mr. John Terry, its design engineer responsible for supervising work on highway projects including the one at issue. Mr. Terry described in detail the proposed construction of the overpass, ramps and elevated highway over portions of [*12] FWWR track, and he explained how these structures will not interfere with FWWR's operations. TXDOT's Executive Director Burnett also describes the project and the State's mandate to ensure the best possible transportation system.

n2 In State of Maine and the line of cases that follow it, we recognized an exception to our jurisdiction over acquisitions under 49 U.S.C. 10901. In that decision, we determined that the sale of rail track and underlying right-of-way, in and of itself, would neither impose common carrier status on the acquiring entity nor make the acquisition subject to our jurisdiction.

In response, FWWR argues that we do not have enough information about the acquisition of Parcel 34A, Part 2, to make State of Maine findings. It contends that evidence presented by TXDOT's experts cannot be relied upon, and thus, the plan presents a significant possibility that the transaction could interfere with FWWR's ability to meet its common carrier obligation.

This transaction does not implicate State of Maine. It involves only the sale of underlying real estate (including right-of-way) and the retention of an easement providing FWWR permanent, unconditional, unrestricted [*13] access to the line along with the right to operate and maintain it. The TXDOT proposal relates only to highway renovation. It has nothing to do with rail trackage or rail service, and it will not affect FWWR's track or its operations. Thus, under the circumstances as described by TXDOT, this transaction is not subject to our jurisdiction.

In summary, we find that the plan proposed by TXDOT appears reasonable and, if followed with reasonable diligence, should not result in an abandonment, discontinuance, or other action for which our approval is required.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. The petition for issuance of a declaratory order is granted, and this proceeding is discontinued.
2. This decision is effective on its service date.
3. A copy of this decision will be mailed to the court:

Judge Hollman, 48th District Court of Tarrant County, Fort Worth, TX 76102.

SACRAMENTO REGIONAL TRANSIT DISTRICT--PETITION FOR
DECLARATORY ORDER REGARDING CARRIER STATUS

STB Finance Docket No. 33796

SURFACE TRANSPORTATION BOARD

2000 STB LEXIS 369

SERVICE DATE: July 5, 2000

June 29, 2000

CORE TERMS: track, right-of-way, prior approval, carrier, declaratory order, relocation, passenger service, contract rights, common carrier, west side, dispatching, proceeding, construct, commuter, milepost, acquire, freight, shippers

OPINIONBY: [*1]

KONSCHNIK

OPINION:

DECISION

By petition filed on February 11, 2000, the Sacramento Regional Transit District (RT) requests a declaratory order to determine whether its purchase of a portion of Union Pacific Railroad Company's (UP) right-of-way between R Street and Meadowview Road in Sacramento, CA, required Board approval and whether RT thereby became a carrier subject to the Board's jurisdiction. n1 Although, under 5 U.S.C. 554(e) and 49 U.S.C. 721, the Board may issue a declaratory order to terminate a controversy or remove an uncertainty, the petition will be denied because it is well established that the described transaction does not require Board approval.

n1 On March 22, 2000, UP filed a statement in support of RT's petition.

BACKGROUND

RT, a noncarrier, is a public corporation formed under the laws of the State of California. It entered into a series of agreements n2 with UP to acquire a portion of UP's 6.15-mile right-of-way in order to construct the South Sacramento Corridor Light Rail Project (the LRT Project), and operate light rail passenger service in Sacramento. Pursuant to the Purchase Agreement, [*2] RT acquired all of UP's right, title, and interest in the west side of the right-of-way, extending from milepost 138.03 on the north to milepost 131.88 on the south. UP specifically retained its common carrier obligation to provide service to shippers on both sides of the right-of-way along with the right to construct, maintain, and operate industrial or spur tracks across RT's property to serve customers located on the west side. RT did not acquire the right or obligation to conduct rail freight service, and will operate light rail passenger service exclusively on its own track on the west side.

n2 The agreements are: the Purchase and Sale Agreement (Purchase Agreement); the Railroad Relocation and Construction Agreement (Construction Agreement); and the Operations and Maintenance Agreement (Maintenance Agreement).

Under the Construction Agreement, RT will build the new light transit line on the acquired right-of-way and UP will relocate its tracks to the east side of the right-of-way. The agreement contains mutual promises and protections against any unreasonable interference with the parties' respective operations. Under the Maintenance Agreement, RT will

have exclusive [*3] control over dispatching and operations on its property, and UP will continue to be responsible for its own dispatching, operations, and maintenance. n3

n3 RT does not have the right to enter or use UP's property, except for limited purposes related to the construction and maintenance of the buffer walls between the properties, and the maintenance of the Broadway Signal House.

DISCUSSION AND CONCLUSIONS

The petition will be denied because RT's acquisition of UP's excess portion of the subject right-of-way for the sole purpose of providing commuter passenger service does not require Board approval or otherwise make it a carrier subject to the Board's jurisdiction. In *Southern Pac. Transp. Co.--Aban.--L.A. County, CA*, 9 I.C.C.2d 385, 390 (1993), the Board's predecessor, the Interstate Commerce Commission (ICC), stated: "we have never asserted jurisdiction over the ability of railroads to allow non-carriers to conduct non-jurisdictional activities, such as rail commuter service, on their excess real estate when regulated rail service will not be affected thereby." Nothing has been presented here to suggest that a different result is warranted in [*4] this case. The three agreements between RT and UP give RT the property and contract rights it requires to construct and operate the LRT Project, but preserve for UP the property and contract rights it requires to provide rail common carrier service. The agreements show that RT will not conduct freight operations, or hold itself out to the public as being willing or able to do so, and that RT's construction project will not unreasonably interfere with UP's operations. Under these circumstances, prior approval from the Board is not required.

UP's relocation of its tracks is also a project that does not trigger the need for our prior approval. The replacement of an existing track with a substituted track constructed nearby is not subject to the prior approval requirements of 49 U.S.C. 10901, if there is no effect on: (1) service to shippers; (2) the carrier's territory or traffic; (3) competition; or (4) the carrier's revenue or operating expenses. See *Denver & R.G.W.R. Co.--Jt. Proj.--Relocation Over BN*, 4 I.C.C.2d 95, 97-99 (1987). The transaction here will not affect any of these factors and is similar to the situation [*5] that the ICC addressed in *The State of Texas, Department of Transportation--Petition for Declaratory Order Regarding Highway Construction in Tarrant County, TX*, Finance Docket No. 32589 (ICC served Feb. 7, 1995), where it found no need for the prior approval of a similar track relocation project by a single carrier. Accordingly, no prior approval by the Board is required for UP's track relocation project along the corridor.

As a result, there is no need for a proceeding to examine the matters raised by petitioner. Therefore, the petition for institution of a declaratory order proceeding will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for declaratory order is denied.
2. This decision is effective on its date of service.

Appendix C

BEFORE THE SURFACE TRANSPORTATION BOARD

City of Lincoln, Nebraska)
)
Petition for a Declaratory Order) F.D. 34425

I, Brian A. Kramer, make this Verified Statement for use on behalf of the City of Lincoln in the above captioned proceeding based on personal knowledge and reliable facts reported to me.

1. Introduction. I am employed by the City of Lincoln Public Works Department in the Engineering Services, Design Construction Division, as an Engineering Coordinator for the past 1 1/2 years. Prior to my current position, I worked for seven years for the City of Minneapolis, Minnesota as a Registered Engineer for the Minneapolis Public Works Department. I am responsible for construction and design engineering for the City's storm sewer project in the former MoPac right of way between 18th and 27th streets in Lincoln, Nebraska near the planned Husker Link Trail. My involvement with the project includes overseeing the design, bidding, and construction of the Project. I am personally acquainted with plans for, and negotiations with Lincoln Lumber Company (LLC) concerning, the Storm Sewer Project on Lincoln Lumber Company's property which is the subject of this proceeding. The information provided herein is based on my personal knowledge, or on information provided to me by staff or contractors assembling information in the discharge of their responsibilities, and is true and accurate to the best of my knowledge, information and belief.

2. The purpose of the storm sewer project is to install/improve the storm water system down the former MoPac corridor. Currently, the existing system is undersized, antiquated or non- existent. Once finished the system will move storm water more efficiently and help to eliminate localized flooding on the corridor and adjacent properties.

3. This project is a bond issue project in which voters approved in 2001 (CIP #701321). The bond money needs to be spent by May 2005 or the City will incur a penalty. The typical good weather construction season for Lincoln, Nebraska is April - September. With these two issues coupled, the latest allowable construction schedule is below. As a result of these time requirements the City needs clear title for the needed property by March of 2004.

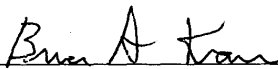
Latest allowable proposed 2004 construction schedule
Construction - 90 Days - July - September
Contract routing - 30 days - June
Bid letting - 30 days - May

Final Engineering Design - 30 days - April
Easement clearing if necessary - 30 days - April
Final Survey and ROW - 30 days - March or prior

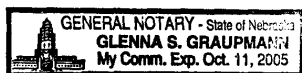
4. The City intends to work with Lincoln Lumber to minimize any disruption to the business during construction. There is a piece of spur track, which is required to be removed and re-laid. The City will require the Contractor to hire a sub-contractor who specializes in rail work.

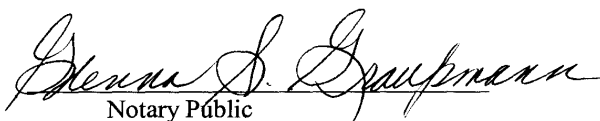
5. The City is familiar with and has done work in railroad right of way, and all necessary precautions will be observed and the City will undertake every reasonable effort to minimize impact on rail operations. The storm sewer will be compatible with rail operations. That is, we will specify designs, materials, and methods that will allow continued rail operation. I attach hereto (Exhibit 1) our current plans as they relate to this project. Construction activity directly impacting the area where the main line rails are placed will be minimized and it is anticipated that any direct impact would be confined to a window of not more than seven days of possible impact that could be further minimized with advanced planning and coordination.

6. It is my understanding that the owner of Lincoln Lumber Company supports the storm sewer project. However, he has refused to allow us to proceed with surveys or property acquisition for the project unless the City agrees not to construct the Husker Link Trail Project. The City, accordingly, must use eminent domain remedies to secure the necessary property interests. An attorney for Lincoln Lumber Company has indicated that Lincoln Lumber Company will assert federal preemption if the City seeks to use eminent domain. In response the City is initiating this proceeding for a declaratory order to clarify that federal preemption does not apply to the projects in question.


Brian A. Kramer

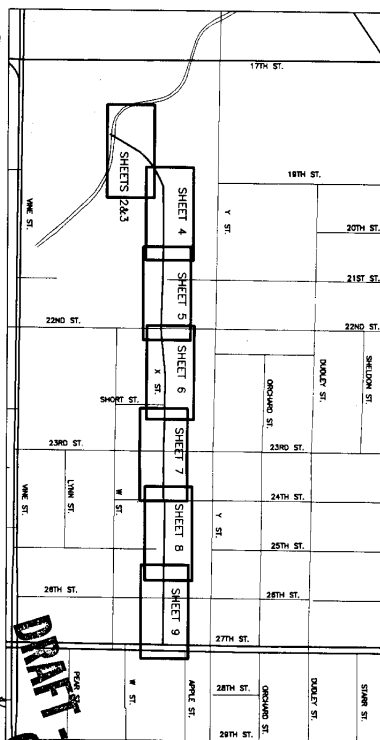
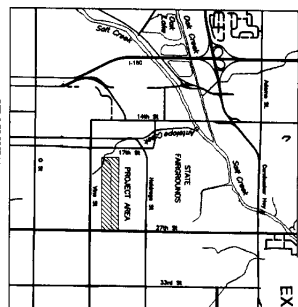
Subscribed and sworn to before me this 28th day of October, 2003.




Notary Public

STORM SEWER PROJECT 701321
IN 'X' ST., 19TH TO 26TH ST.

IN 'X' ST., 19TH TO 26TH ST.



SITE LOCATION MAP

CAUTION !
BEFORE YOU DIG CALL
1-800-331-5666
FOR OFFICIAL INFORMATION
ON ALL LINES
BEFORE YOU DIG

- | DRAWING NO. | | TITLE | |
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| 78 | SP-178 | 78 | STORY |
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| 96 | SP-196 | 96 | STORY |
| 97 | | | |

THE FOLLOWING STANDARD DRAWINGS APPLY TO THE CONSTRUCTION OF THIS PROJECT:

NOTES:

- ALL CURB INLETS SHALL BE 72".
- SEE DETAIL SHEET "FOR AREA, INLET DETAILS."
- ALL EXISTING SIDEWALKS SHALL BE RECONSTRUCTED SHALL BE PLACED ON A 4" FIBER REINFORCED POLYMER CONCRETE PAVEMENT SHALL BE CLASS 1 AND 1000'.
- ALL ASPHALTIC CONCRETE PAVEMENT SHALL BE CLASS 1.
- ALL CONCRETE (13500) BASE SHALL BE 5" THICK ON RESIDENTIAL STREETS.
- ALL STREETS CONDUCTED BY THESE ENGINEERING CONSULTANTS OF HIGHWAY INTERSECTION IN RECONSTRUCTION SHALL BE RECONSTRUCTED WITH HOT MIX ASPHALTIC CONCRETE PAVEMENT SHALL BE CLASS 1 UNLESS OTHERWISE NOTED.
- LOCATIONS OF EXISTING UTILITIES WERE BASED ON SURVEY AND RECORD DRAWINGS.
- THE LOCATION OF EXISTING UTILITIES, CONTRACTOR MUST FIELD VERIFY AND SIZE.

* "ABANDONING" EXISTING STORM SEWER PIPES SHALL CONSIST OF FILLING THE EXISTING PIPES WITH KILN DRIED SAND CONFORMING TO THE MATERIAL SPECIFICATIONS IN THE SPECIAL PROVISIONS.

I HEREBY CERTIFY THAT THESE PLANS WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A REGISTERED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF KANSAS. THESE PLANS MEET THE REQUIREMENTS OF THE CIVIL ENGINEER'S OFFICE DESIGN REQUIREMENTS.

APPROVED FOR CONSTRUCTION

CITY ENGINEER'S OFFICE DATE _____

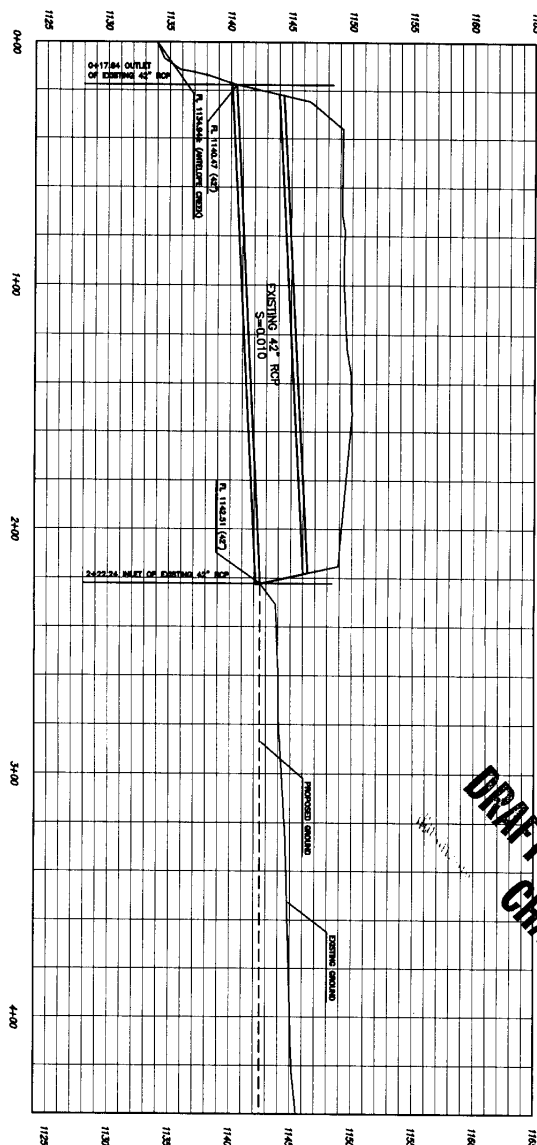
SCHEDULE OF APPROXIMATE QUANTITIES

PIPE 3" STAINLESS	L.F.	2245
PIPE 3" STAINLESS	L.F.	245
PIPE 3" STAINLESS	L.F.	16
STANDARD MANHOLE & REINFORCING	S.F.	262
CONCRETE MANHOLE RINGS & REINFORCING	S.F.	189
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CONCRETE BASE 5" THICK	S.F.	81
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**STORM SEWER PROJECT 701321
IN 'X' ST., 19TH TO 26TH ST.
LINCOLN, NEBRASKA**

CITY OF LINCOLN, NEBRASKA
OFFICE OF THE CITY ENGINEER





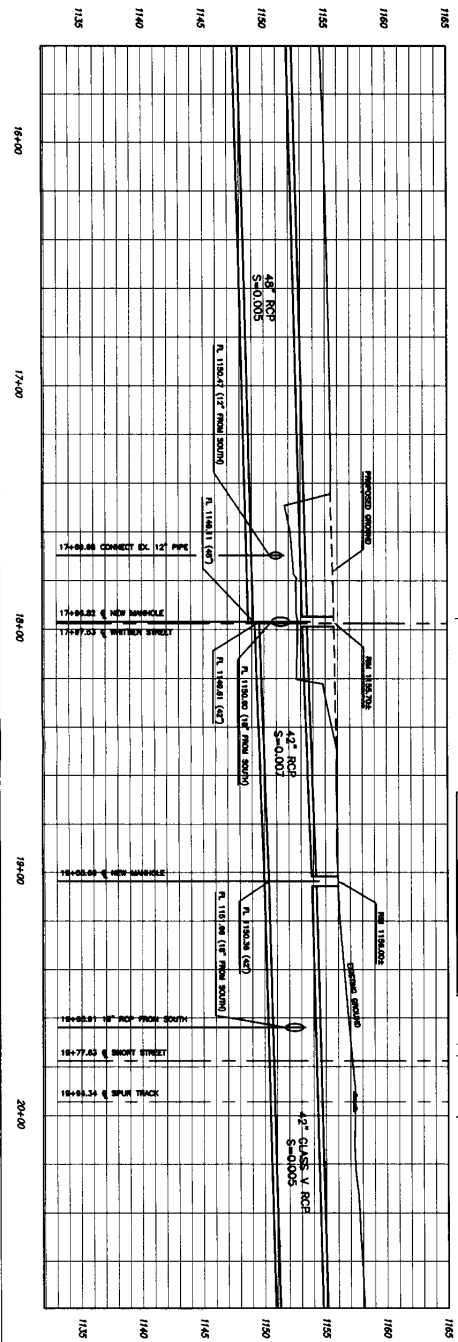
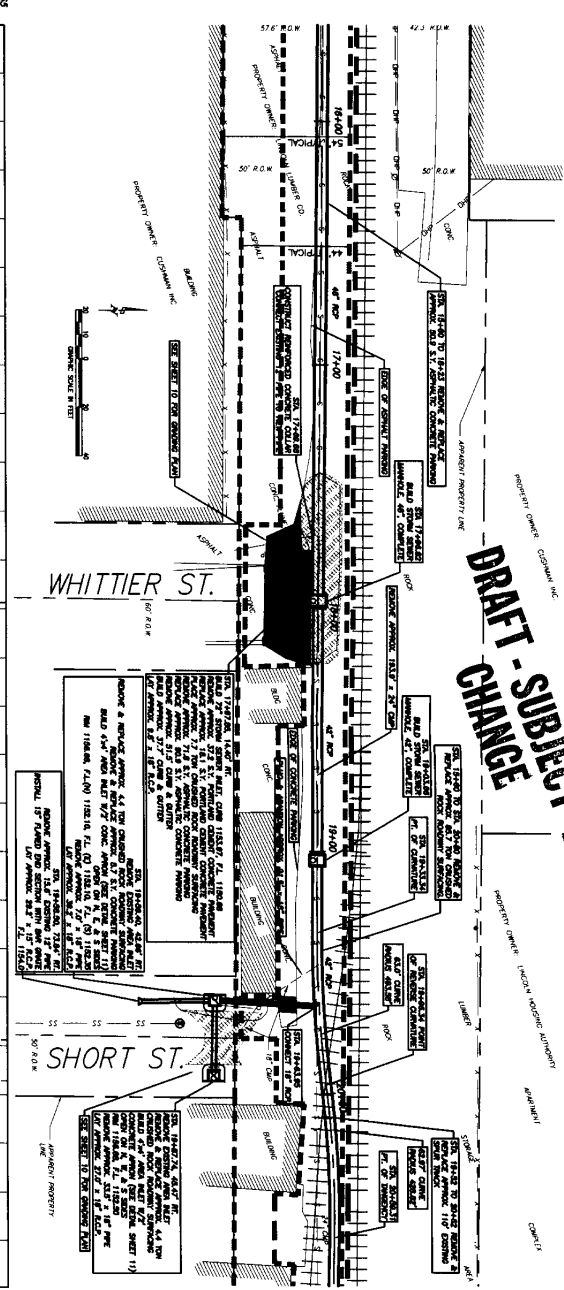
**DRAFT - SUBJECT TO
CHANGE**

STORM SEWER PROJECT NO. 701-321 X STREET - FROM 28TH ST. TO 19TH ST. LINCOLN, NEBRASKA PROFILE STA. 0+00 TO 4+00		REVISIONS NO. DATE BY DESCRIPTION	
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117-B-1		117-B-1	





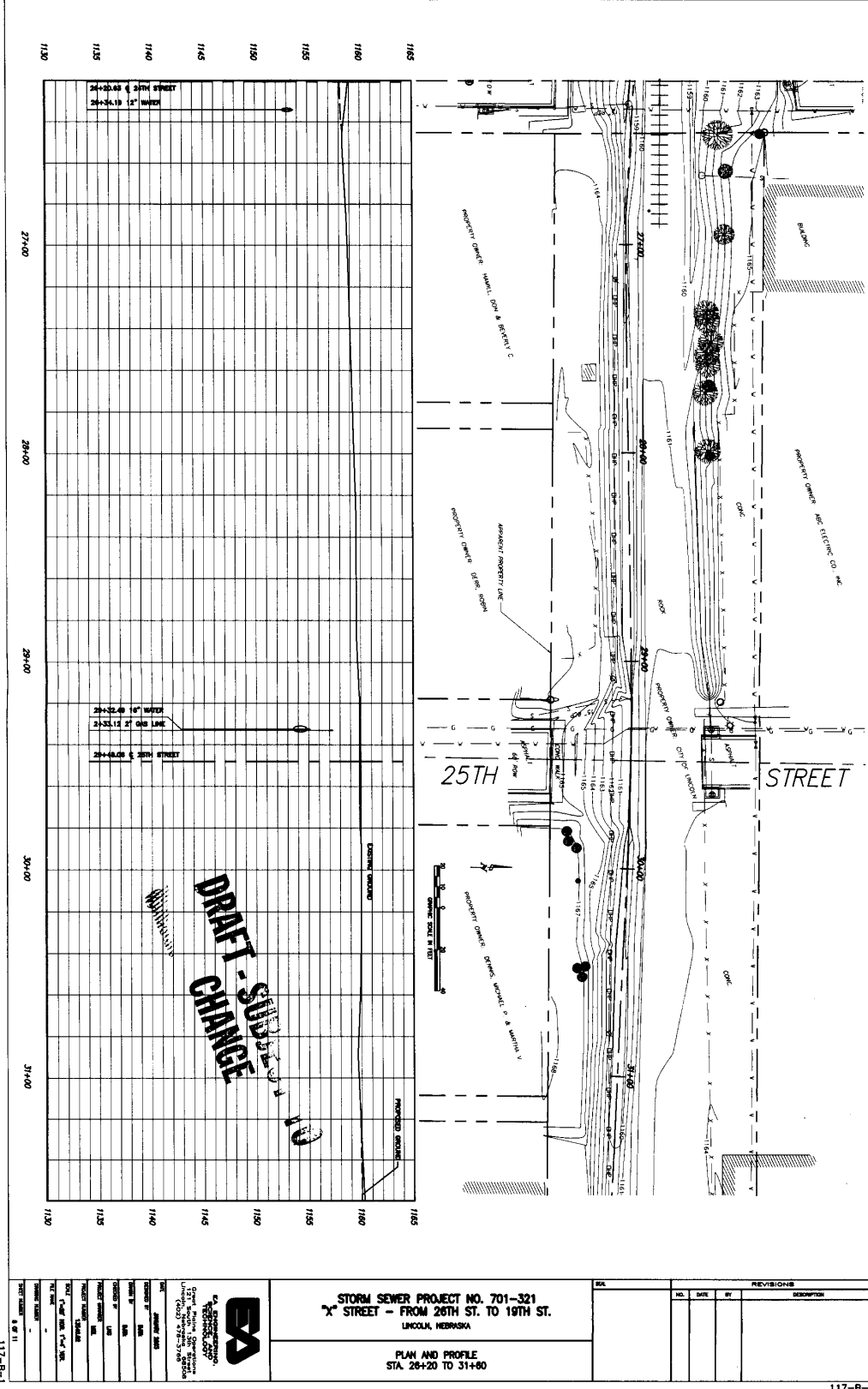
DRAFT - SUBJECT TO CHANGE



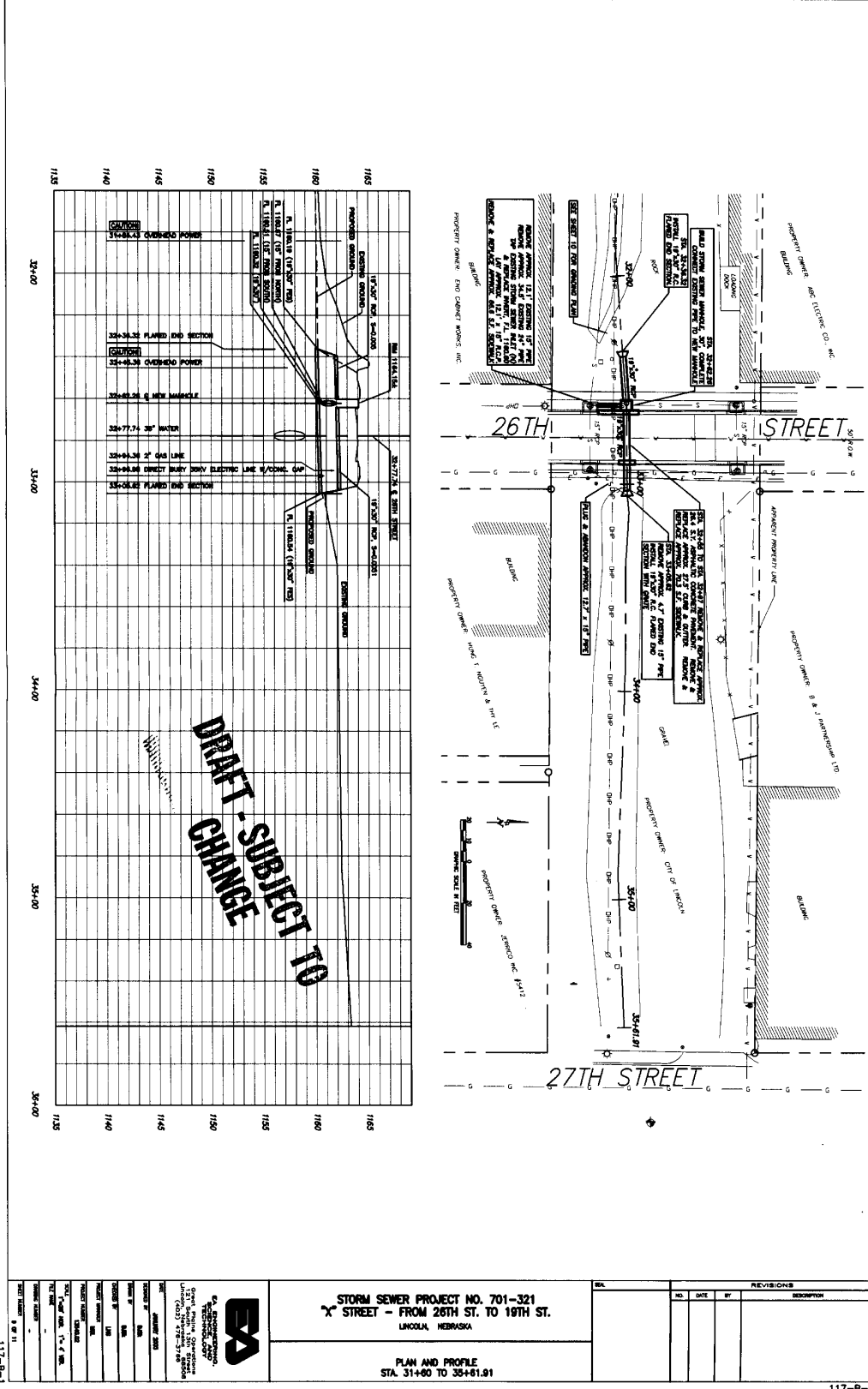
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STORM SEWER PROJECT NO. 701-321 X STREET - FROM 26TH ST. TO 19TH ST. LINCOLN, NEBRASKA PLAN AND PROFILE STA. 15+00 TO 20+00	
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117-B-1



Project: 717-Storm & Sewer Project No. 701-321
 Date: 11/11/11
 Sheet: 117-B-1



Appendix D

BEFORE THE SURFACE TRANSPORTATION BOARD

City of Lincoln, Nebraska)
)
Petition for a Declaratory Order) F.D. 34425

I, Terry Genrich, make this Verified Statement for use on behalf of the City of Lincoln in the above captioned proceeding based on personal knowledge and reliable facts reported to me.

1. Introduction. I am employed by the City of Lincoln Parks and Recreation Department, for which I have worked for 28 years. For the past three years, I have been Natural Resources and Greenways Manager for that Department. I am responsible for planning and coordinating trails, trail connections and improvements, including design, bidding, construction, and funding through grant applications and contributions. I have assisted in and been heavily involved with many of the trails serving Lincoln, and in connecting trails to public amenities in Lincoln. I am personally acquainted with plans for, and negotiations with Lincoln Lumber Company (LLC) concerning, the "Husker Link Trail," which is the subject of this proceeding. The information provided herein is based on my personal knowledge, or on information provided to me by staff or contractors assembling information in the discharge of their responsibilities, and is true and accurate to the best of my knowledge, information and belief.

2. Importance of trails in Lincoln. Pedestrian and bicycle commuter facilities (trails) are very important to the City of Lincoln. For one thing, Lincoln not only is Nebraska's capital, but also is home to the major campus of the University of Nebraska (UN). The large student population represents a heavy, continuous, and year-round demand not only for public transit facilities, but also for safe and efficient pedestrian and bicycle facilities (trails), as many students must walk or bicycle between their apartments or residence halls and classes, or between the UN's main campus and so-called East Campus. Lincoln currently has 80 miles of trails within City limits, ranking our City in the top ten in the nation in non-motorized accessibility. The City has identified another 135 miles of trails to further develop our non-motorized network. I wish to note that many of these facilities exist as a result of the important and diligent contributions of local citizens who have raised significant private funds both for land acquisition and development.

3. Husker Link Trail importance. I attach to my Statement as Exhibit A a map showing the Husker Link Trail and major trail links. The Husker Link Trail is a priority project in City of Lincoln's non-motorized commuter facilities program. I will discuss the importance of the Husker Link Trail from several perspectives below.

- (a) Intra-urban importance. The Husker Link Trail will provide an important link for bicycle and pedestrians journeying between UN's downtown campus and its East Campus. (The nickname for University of Nebraska's teams is "the Cornhuskers" and Nebraska's nickname is the "Cornhusker State", therefore the name "Husker Link Trail"). The City considers the project vital to provide a safe off-street route for non-motorized commuters.

- (b) East-end importance. The Husker Link Trail also will link downtown Lincoln with the Mo Pac East Trail. The Mo Pac East Trail (a former Missouri Pacific railroad corridor) extends from the east side of Lincoln to Omaha. It will eventually extend all the way into Iowa when the new pedestrian and bicycle bridge across the Missouri River is completed at Omaha. In Iowa, it will connect to the Wabash Trace trail (another rail trail) which extends all the way to Missouri.
- (c) West-end importance. The west end of the Husker Link Trail will connect with the Rock Island Trail, which extends into southern Lincoln. With some additional connections, it is hoped that this trail will extend all the way to the Kansas border.
- (d) Antelope Valley Project importance. Finally, the Husker Link Trail is connected to the Antelope Valley Project. The Antelope Valley Project is a major road, urban renewal, and environmental project, drawing support from both the State and federal governments. The Antelope Valley Project would divert traffic out of the UN downtown campus onto what will eventually be a new eight lane roadway. The roadway is adjacent to Antelope Creek, which was buried in culverts (undergrounded) many years ago. As part of the Antelope Valley Project, Antelope Creek will be day-lighted, and a greenway will be constructed with the Creek as its centerpiece. The greenway in combination with the Husker Link Trail will allow non-motorized commuters access to northern and western Lincoln. This will allow non-motorized access to most neighborhoods in Lincoln, connecting schools, shopping centers, commercial centers, parks, and many other private and public facilities. The Antelope Valley Greenway and the Husker Link Trail are the hinge-pin of Lincoln's non-motorized commuter system.

4. Husker Link Trail location and design.

- (a) Basic location. The Husker Link Trail basically follows what is called the "X Street" corridor. X Street is mapped on some City maps and plats. In some parts of the City, it is a street, but in other areas (including 18th to 24th Streets) is represented only by an old Missouri Pacific rail corridor. The City has sought both a link from downtown to the Mo Pac East Trail and a non-motorized commuting corridor from the UN main campus to the UN East Campus for many years. After lengthy study, the City has concluded that the only plausible alternative -- taking into account safety and continuity -- is to construct a trail along the old Missouri Pacific rail corridor from 30th Street (on the east side) to 18th Street (on the west side). The City intends to provide grade separation at busy 27th Street by constructing a pedestrian/bicycle bridge over that road as part of the Husker Link Trail project.
- (b) Original abandonment/railbanking proceeding. Union Pacific, owner of the old rail corridor, instituted a proceeding for abandonment authorization for a line of railroad encompassing the 18th Street to 30th Street segment. The caption of the proceeding is Union Pacific Railroad Company -- Abandonment Exemption -- Lancaster County, NE, AB-33 (Sub-no. 112X). City of Lincoln sought a Notice

of Interim Trail Use (NITU) for this entire segment. Although Union Pacific was agreeable to issuance of a NITU, Lincoln Lumber Company filed an "Offer of Financial Assistance" ("OFA") to acquire the five block segment from 19th Street to 24th Street. Lincoln Lumber acquired this segment pursuant to Union Pacific Railroad Company -- Abandonment Exemption -- Lancaster County, NE, AB-33 (Sub-no. 112X), served Jan. 16, 1998 (setting terms and conditions for Lincoln Lumber Company to acquire the five blocks), pet. to reopen denied, id. served March 2, 1998 (denying Lincoln Lumber petition to reduce price).

- (c) City of Lincoln owns on each end of Lincoln Lumber's corridor. City of Lincoln acquired the remainder of the corridor (18th to 19th Streets, and 24th to 30th Streets) pursuant to the NITU in 2001.
- (d) Basic Design Criteria. According to such maps and title documents as are available to the City, the rail corridor between 19th Street and 24th Street as acquired by Lincoln Lumber is approximately 110 feet in width. City of Lincoln approached Lincoln Lumber to acquire an interest sufficient to construct a trail in the corridor. City of Lincoln's basic guidelines for a trail are as follows: (i) compliance with American Association of State and Highway Transportation Officials (AASHTO) standards and recommendations for non-motorized commuting facilities, Guide for the Development of Bicycle Facilities (1999), (ii) sufficient space for construction and for snow removal in the winter, (iii) safety of users and adjoining property owners and (iv) compliance with applicable Nebraska clear distance requirements (Nebraska Admin Code Title 291 Chapter 4). AASHTO compliance is important in order to obtain "transportation enhancements" funding from the Federal Highway Administration and Nebraska Department of Roads. The importance of space for construction and snow removal and for provision of safety measures is self-evident. Applying these criteria, we have specified a trail that is 12 feet in width. We seek an additional eight feet (for a total corridor width of 20 feet) to accommodate construction, and for a location to push snow in the winter. In addition, a corridor of 20 feet width will permit adequate width for safety fencing and signage. The City is prepared to install a fence at City's cost if requested by Lincoln Lumber between Lincoln Lumber's property and the trail. The City is prepared to construct any new pavement, flangeway, or so on required for safe crossing of any rail tracks by trail users.
- (e) Design. Lincoln Lumber's lumber facility is located on both sides of the rail corridor between 23d and 24th Streets, but only on the south side for a portion of 22d to 23d Street. The north side of 22d to 23d Street is occupied by a low income housing project. In order to minimize impacts on Lincoln Lumber's lumber facility, City of Lincoln proposed, and plans, to construct the trail in a City-owned alley located about ½ block north of the rail corridor on the northern boundary of Lincoln Lumber property between 23d and 24th Streets. This avoids bifurcating Lincoln Lumber's lumber facility. The trail would then cross 23d Street and occupy the northern 20 feet of the railroad corridor (which, as noted, appears to be 110 feet wide in the relevant location) to 22d Street. The Husker

Link Trail could cross to the south side of the track at the public crossing either at 22d Street or 21st Street. Because a sidewalk already exists on the north side between 21st Street and 22d Street, our current design calls for the Trail to be located at the location of the sidewalk, in order to minimize disruption of any leaseholder. (Lincoln Lumber has leased all of this portion of the corridor for parking, motor vehicular and pedestrian use, and storage to a unit of Textron, reserving only 12 feet of the corridor centered on the centerline of the track.) From 22d Street to 19th Street, the trail would be located on the south side of the track adjacent to University of Nebraska property. I attach as Exhibit B drawings showing the currently planned location for the Husker Link Trail in the 24th to 18th Street area.

- (f) Unsuccessful negotiations with Lincoln Lumber and need for state-law eminent domain procedures. The City's proposed design and route is specifically planned to avoid any interference with railroad use of the line. The City's design and route nowhere displaces any track, nor does it interfere with or impinge on use of that track. Even the crossing proposed by the City is planned for an existing public crossing. In addition, the design and route minimizes interference with Lincoln Lumber's private lumber operations. Although the owner of Lincoln Lumber initially indicated that he would work with us to determine a trail location, subsequent to learning of our proposed trail location, he has put piles of lumber in the area which we seek for the Husker Link Trail. He has now declined to permit any access to his property, or to allow us to conduct a survey to develop engineering drawings. The City of Lincoln also plans a storm sewer facility improvement for this rail corridor. Although the owner of Lincoln Lumber says he supports the storm sewer facility, he has told the manager of that project that he will not allow it to be constructed unless the City agrees not to construct the Husker Link Trail. Since negotiations are at an impasse (and time has run out, see next paragraph), the City must employ eminent domain to acquire the property required for the Husker Link Trail and for the storm sewer project. It is my understanding that Lincoln Lumber through its attorney Mr. McFarland has indicated it will assert federal preemption as a defense to any eminent domain proceeding. In order to permit the Trail and the storm sewer project to move forward, the City has directed that this Petition for a Declaratory Order be filed so that there will not be preemption of state-law eminent domain proceedings for the required property.

5. Time constraints. The City has arranged funds to pay for the Husker Line Trail property acquisition and development from three sources: (i) "transportation enhancement funds" ("TE funds") (federal funds made available as grants from the Nebraska Department of Roads), (ii) privately raised donations, and (iii) City funds. I attach hereto as Exhibit C the City's application to the Department of Roads (dated September 20, 2001) for TE funds, Exhibit C also contains letters and resolutions demonstrating broad community support for the Husker Link Trail and also corroborating its importance. The TE funds were initially committed in the fall of 2001, with the expectation that the Husker Link Trail project insofar as relevant here would be under contract by the fall of 2002. This has not happened due to Lincoln Lumber's refusal to sell trail easements or a fee interest for the trail. While the Nebraska Department of Roads has granted

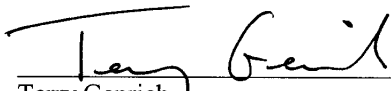
extensions, we have been advised that we will be in jeopardy of losing funds for the Husker Link if we are not under contract for construction by the fall of 2004. (We understand fall of 2004 to mean early October of 2004, which is when the Nebraska Department of Roads allocates or re-allocates TE funds.) A reallocation of funds away from the Husker Link in turn will jeopardize other segments of our non-motorized commuting system because other trail improvements hinge on this vital link. The City has already expended some \$225,000 in City tax dollars as well as \$225,000 in private donations on the Husker Link. These funds will be jeopardized as well should the Link not be constructed. In short, to avoid loss of funds and loss of a vital trail link, it is vital that the City be under contract to construct this portion of the Husker Link Trail by October of 2004. In order to be under contract by that date, we must be able to initiate eminent domain proceedings by the end of March 2004, in order to acquire the property in time to survey it, to complete construction drawings, to advertise for bids, and to award a contract by October 1, 2004; that is, we need a minimum of six months for our Department to complete eminent domain procedures, to complete a survey, to obtain bids, and to let a contract.

6. Rail use.

- (a) Monitoring data. My Department arranged for staff to monitor use of the five block rail corridor owned by Lincoln Lumber from 7 AM to 7 PM from Thursday, October 2 through Wednesday October 8, 2003. Because OL&B Railroad (which picks up and delivers cars for Lincoln Lumber) operates from 6:30 AM until 3:00 PM, this monitoring period is more than adequate to detect levels of rail use. Our monitors saw no trains, locomotives, rail cars, or other rail use on or over the track. There was an occasional truck related to Lincoln Lumber activities at 23d Street. The corridor was mowed on October 4.
- (b) Personal inspection. On personal inspection on October 9, I saw no evidence of rail activity. The mainline between 23d and 24th appeared to have no use whatsoever, being covered to the level of the rail with earth. The mainline between 23d and 22d was also largely covered. It appeared that a spur track running up to 23d Street on the south side of the mainline might be usable for rail, if care were taken. I saw lumber in stacked pallets in most of the 20 foot width of corridor on the north side of the corridor in the area which City of Lincoln wishes to construct the Husker Link Trail between 23d Street and 22d Street. The pallets would preclude use of that area for any rail purpose, including unloading or loading rail cars, especially in connection with the spur track on the south side of the mainline. There is a low-income housing development immediately north of the rail corridor between 22d and 23d Streets. We cannot construct the trail there because it would eliminate parking necessary for the housing development.
- (c) Shippers. Lincoln Lumber is the only shipper on the line. Textron's subsidiary, Cushman, has ceased operations. Textron sold all its property south of the tracks to UN. The former Textron property north of the tracks was sold to a real estate company. Textron leased most of the rail corridor from Lincoln Lumber for parking, storage, and pedestrian and vehicular access purposes. It is our understanding that the lease remains in existence, and runs until 2015. It appears not to have a termination clause. Our trail design is intended to minimize impact

on the lease, and of course is clearly compatible with the uses allowed Textron and its invitees or subtenants under the lease.

- (d) OL&B. The City has consulted with the company which provides rail service to Lincoln Lumber. Representatives of OL&B have indicated that they do not use the rail line in question for any purpose other than serving Lincoln Lumber. In addition, in a meeting on October 9, 2003, representatives of OL&B indicated that they did not foresee any interference with rail operations from the Husker Link Trail.
- (e) Safety. The City of Lincoln plans to address safety concerns both by following all applicable AASHTO standards and recommendations for bikeways, including rail crossings, and by providing reasonable fencing. In addition, it should be noted that the five blocks of track owned by Lincoln Lumber come off a curve and dead-end at Lincoln Lumber. As a result, the speed of trains on the track is substantially less than five miles per hour. The proposed trail crossing points (21st Street or 22d Street) are already public crossings, and are highly visible from all directions. The crossing will be a right angles to the track so as to reduce speeds of bicyclists. Moreover, OL&B has informed us that it operates only between 6:30 AM and 3 PM on all its trackage, which in general is daylight in Lincoln. Finally, the Lincoln Lumber/Textron lease provides for crossing rights to Textron (for pedestrians as well as vehicles) all along the corridor where Textron owned property (roughly from east of 22d Street all the way to 18th Street), and does not restrict crossing to public crossings. A key reason for the Husker Link Trail is to provide a facility safer for pedestrians and bicyclists than current streets employed for non-motorized commuting purposes.


Terry Genrich

Subscribed to and sworn before me this 27th day of October, 2003.

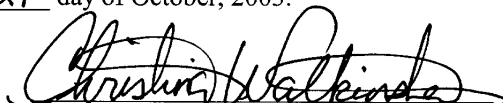

Notary Public

Exhibit A -- map
Exhibit B -- plans
Exhibit C -- TE Fund application





Antelope Valley Projects

Community Revitalization • Stormwater Management • Transportation Improvements

Priority Project Limits and Summary JAVA Construction Schedule

EXHIBIT A

JAVA, the Partners, Design Team and the public need to recognize that the schedule is a dynamic document subject to funding constraints, property acquisitions, tenant relocation, utility relocation, contract bidding and award, and future governmental decisions. The published document defines a sequence of constructible projects and an optimistic schedule for implementation.

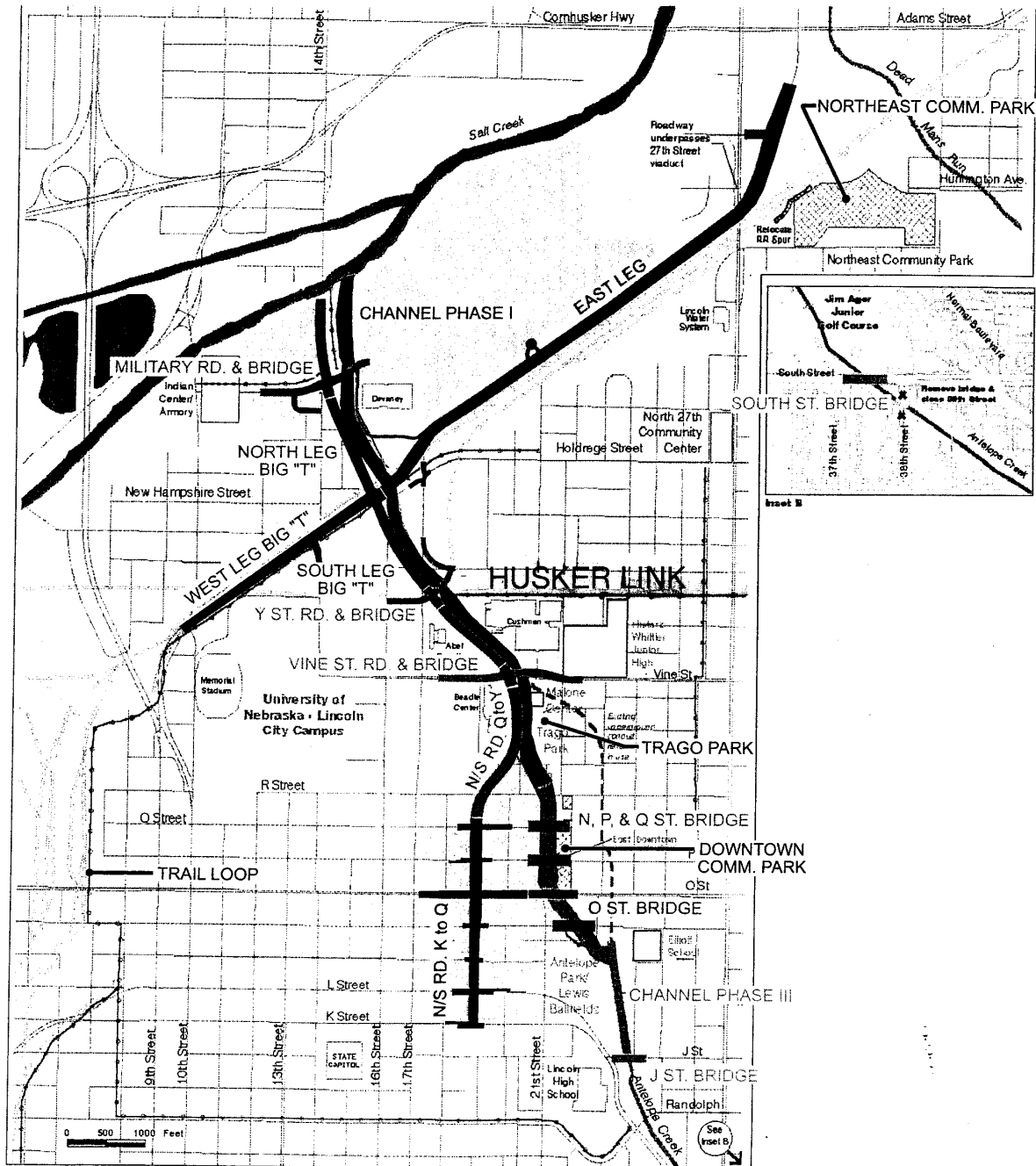


EXHIBIT A-1

PROJECT AREA

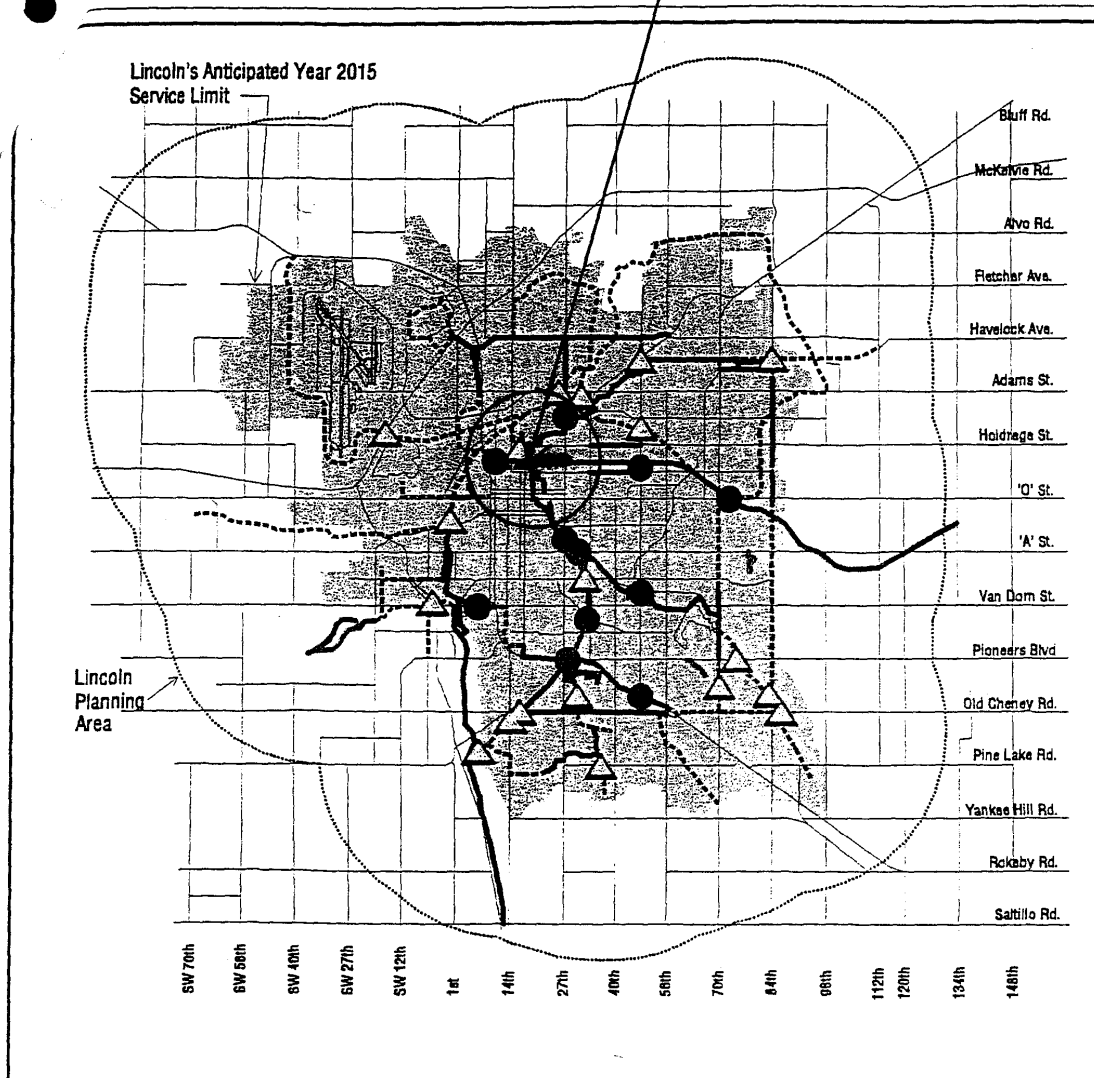


Figure 38

Lincoln Area Current and Future Trails Network (Potential trails in beltway corridors to be determined.)

Miles
0 1 2 3



Lincoln City/Lancaster County Comprehensive Plan

- Current Trails
- - - - - Future Trails
- Existing Grade Separation
- △ Future Grade Separation

NOTE: The Details Of Future Trail Locations Are To Be Determined

MOPAC WEST/HUSKER LINK TRAIL

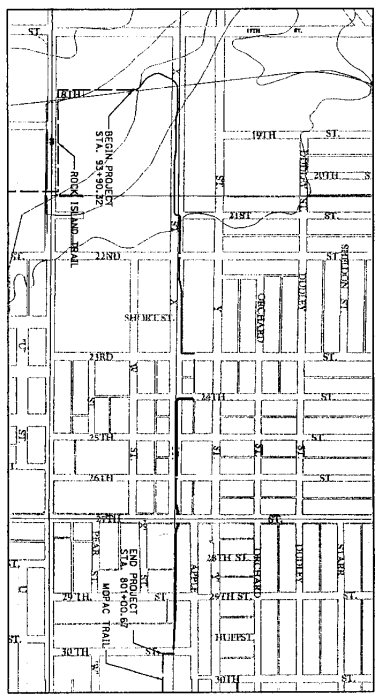
NDOR PROJECT NO. STPB-55(139) C.N. 12637

PARKS & REC. PROJECT NO. 409375

OA PROJECT NO. 2002-0498

INDEX OF SHEETS

SHEET NO. 1	COVER SHEET
SHEET NO. 27	TYPICAL CROSS SECTIONS AND DETAILS
SHEET NO. 27-2	SIGN DETAILS
SHEET NO. 27-3	MODULAR BLOCK WALL PROFILE & DETAILS
SHEET NO. 28	HORIZONTAL CURVE DATA & CONTROL POINTS
SHEET NO. 3-8	REMOVALS
SHEET NO. 7-10	PLAN & PROFILE SHEETS
SHEET NO. 11-21	LANDSCAPING SHEETS
SHEET NO. XS-1 - XS-27	TRAIL CROSS SECTIONS



Location Map

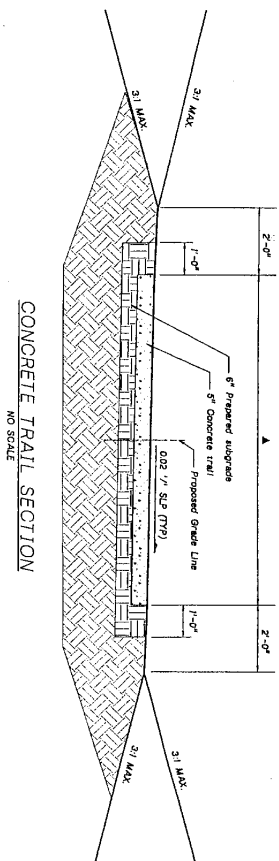
LEGEND

○ MMH	SANITARY SEWER MANHOLE	17	DECIDUOUS TREE	ψ	SPRINKLER CONTROL BOX	17	SPRINKLER
□ TR	TELEPHONE PESTAL	17	SPOT ELEVATION	—	SIGN	17	CONIFEROUS TREE
□ BR	ELECTRIC PESTAL	17	TOP OF CURB ELEVATION	○ CP	CENTER LINE POINT	17	CORNER FOUND
□ TVR	CABLE TV RISER	17	GUTTER ELEVATION	—	PAD MOUNTED TRANSFORMER	17	
○ LTP	LIGHT POLE	17	TREE/BUSS ROW	—	PROPERTY LINE	17	
○ SPRH	SPRINKLER HEAD	17	CONTAIN LINE	—	LIMITS OF CONSTRUCTION	17	

PRELIMINARY INFORMATION

SUMMARY OF QUANTITIES

CLEARING & GRUBBING	10.3 ACRES
TREE REMOVAL (24 INCHES)	3 EACH
TREE REMOVAL (36 INCHES)	1 EACH
TREE REMOVAL (48 INCHES)	501 LIN. FT.
TREE REMOVAL (60 INCHES)	564 LIN. FT.
TREE REMOVAL (72 INCHES)	468 SO. YD.
TREE REMOVAL (84 INCHES)	251 SO. YD.
TREE REMOVAL (96 INCHES)	231 CU. YD.
TREE REMOVAL (108 INCHES)	14 SO. YD.
TREE REMOVAL (120 INCHES)	285 SO. FT.
TREE REMOVAL (132 INCHES)	24 SO. FT.
TREE REMOVAL (144 INCHES)	30 LIN. FT.
TREE REMOVAL (156 INCHES)	368 LIN. FT.
TREE REMOVAL (168 INCHES)	19 LIN. FT.
TREE REMOVAL (180 INCHES)	2 EACH
TREE REMOVAL (192 INCHES)	4,764 SO. YD.
TREE REMOVAL (204 INCHES)	57 SO. YD.
TREE REMOVAL (216 INCHES)	1,470 SO. YD.
TREE REMOVAL (228 INCHES)	244 CU. YD.
TREE REMOVAL (240 INCHES)	5,655 SO. YD.
TREE REMOVAL (252 INCHES)	38 EACH
TREE REMOVAL (264 INCHES)	144 LIN. FT.
CROSS WALK STRIPING, 12" WHITE PREFORMED PLASTIC	
LANEWAY ITEMS	
SHADE TREE	20 EACH
EVERGREEN TREE	25 EACH
ORNAMENTAL TREE	29 EACH
DECIDUOUS SHRUB	204 EACH
PERENNIAL/ORNAMENTAL GRASS	106 EACH
SEEDING	9.0 ACRES

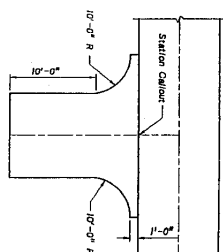


▲ Width Variations

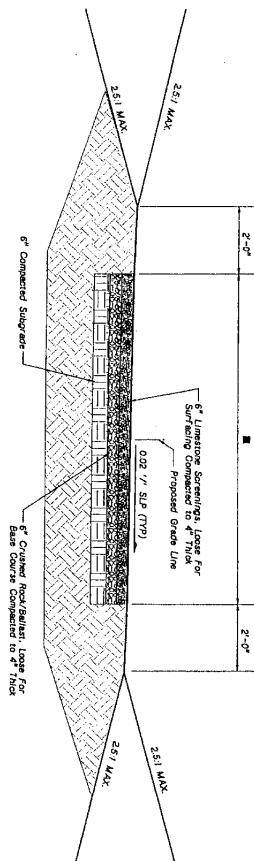
Site 307+14.55 - 308+48.06	12' Wide Trail
Site 307+44.53 - 307+53.53	12' Wide Trail
Site 400+00.00 - 402+53.74	12' Wide Trail
Site 500+00.00 - 501+04.55	12' Wide Trail
Site 100+00.00 - 103+44.00	12' Wide Trail
Site 103+44.00 - 105+17.25	12' Wide Trail
Site 300+00.00 - 307+44.53	12' Wide Trail
Site 501+53.53 - 507+48.25	12' Wide Trail
Site 600+48.25 - 602+53.45	12' Wide Trail
Site 602+53.45 - 604+00.00	12' Wide Trail
Site 704+00.00 - 705+14.22	12' Wide Trail
Site 800+00.00 - 801+00.57	12' Wide Trail

■ 8' Wide Trail

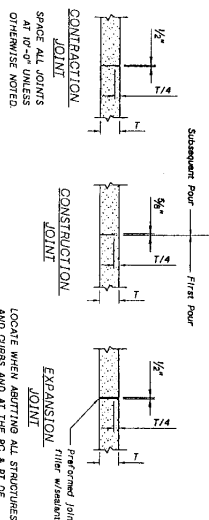
Site 80+40.32 - 101+00.00	8' Wide Trail
Site 101+00.00 - 102+48.45	8' Wide Trail
Site 700+21.00 - 704+50.00	8' Wide Trail



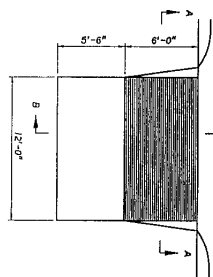
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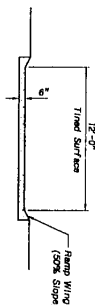
CRUSHED ROCK TRAIL SECTION
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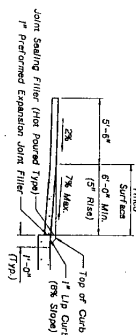
CONCRETE JOINT DETAILS
NO SCALE



TYPICAL RAMP DETAIL
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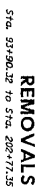
SECTION A-A
NO SCALE



SECTION B-B
NO SCALE

TYPICAL SECTION & JOINT DETAILS

OLSSON ASSOCIATES CONSULTING ENGINEERS 1111 BRIMLEY AVE., LINGWOOD, ON M3B 3K5	PROJECT NO.	REPORT NO.
	3779-65 (1396)	3



MOPAC WEST/HUSKER LINK TRAIL

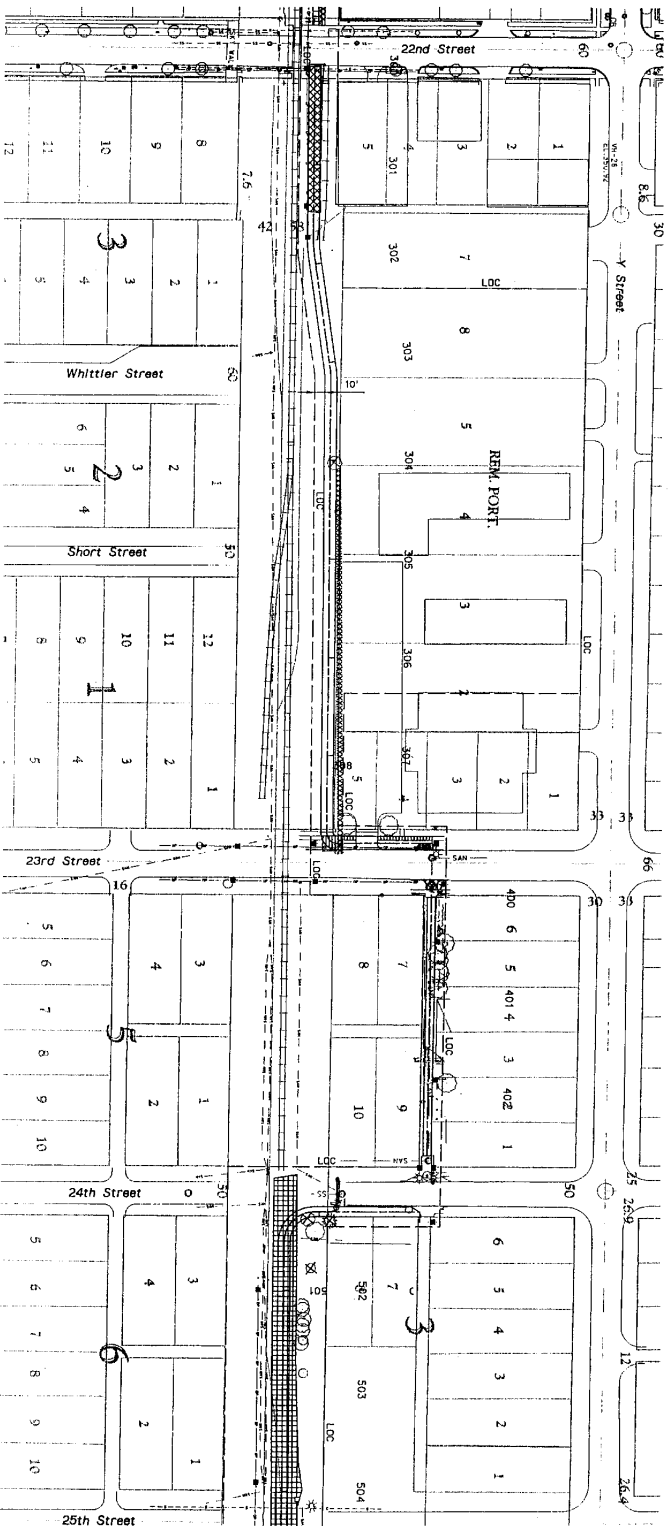
PLAN AND ELEVATION



DATE: 10/1/03
DRAWN BY: J. HARRIS
CHECKED BY: J. HARRIS
APPROVED BY: J. HARRIS

REMOVABLE BRIDGE PLANK RETAINING WALL			
LOCATION	SIDE	LN.	FT.
304+09.30 - 304+55.30	LEFT	46'	

RELOCATE 8' CHAIN LINK FENCE			
LOCATION	SIDE	LN.	FT.
304+09.30 - 307+16.42	LEFT	367	



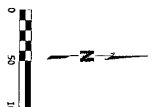
BALLAST REMOVAL		
LOCATION	CL.	YDS.
501+12.25 - 504+00.00	431	

PAVEMENT REMOVAL		
LOCATION	S.D.	YDS.
305+00.00 - 307+05.87	444	
308+01.00 - 309+02.18	14	

TYPE "B" SAWING			
STA. TO STA.	SIDE	LN.	FT.
300+00.00 - 301+06.87	30TH	370	
307+80.53	30TH	28	
308+83.66	30TH	4	

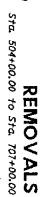
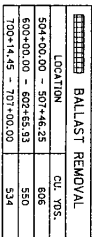
SIDEWALK REMOVAL			
LOCATION	S.D.	YDS.	
307+81.37 - 308+13.56	33		
308+35.36 - 309+03.66	24		

LARGE TREE REMOVAL			
LOCATION	SIDE	SIZE	EACH
304+03	LEFT	24"	1
500+49	LEFT	24"	1
501+13	LEFT	36"	1
501+77	LEFT	24"	1



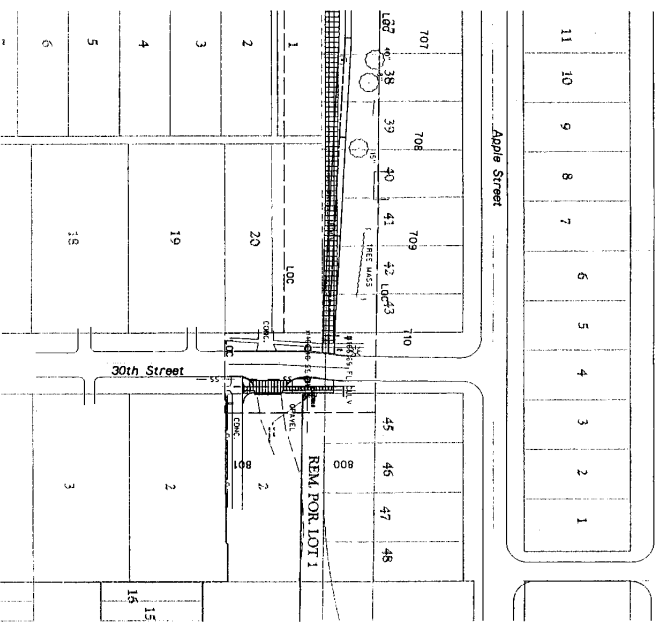
REMOVALS
STA. 300+00.00 TO STA. 504+00.00

 OLSSON ASSOCIATES CONSULTING ENGINEERS 1111 LEXINGTON AVENUE, LEXINGTON, MA 02168	PROJECT NO.	HEET NO.
	FTB-93-10M	1



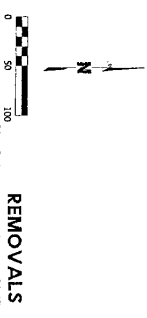
MOPAC WEST/HUSKER LINK TRAIL

	PREPARED BY CITY OF AUSTIN	DATE 1/1/2010
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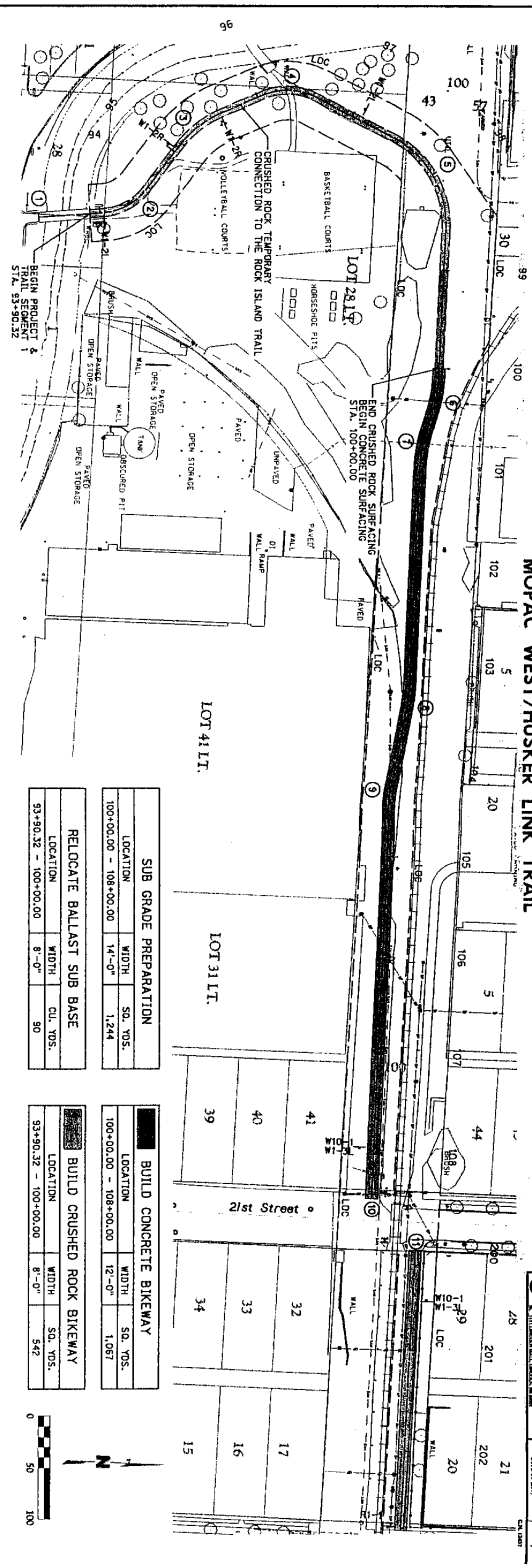
BALAST REMOVAL	LOCATION	SQ. YDS.
	707+00.00 - 707+07.60	210

SIDEWALK REMOVAL	LOCATION	SQ. YDS.
	800+10.00 - 801+00.67	11



REMOVALS

MOPAC WEST/HUSKER LINK TRAIL

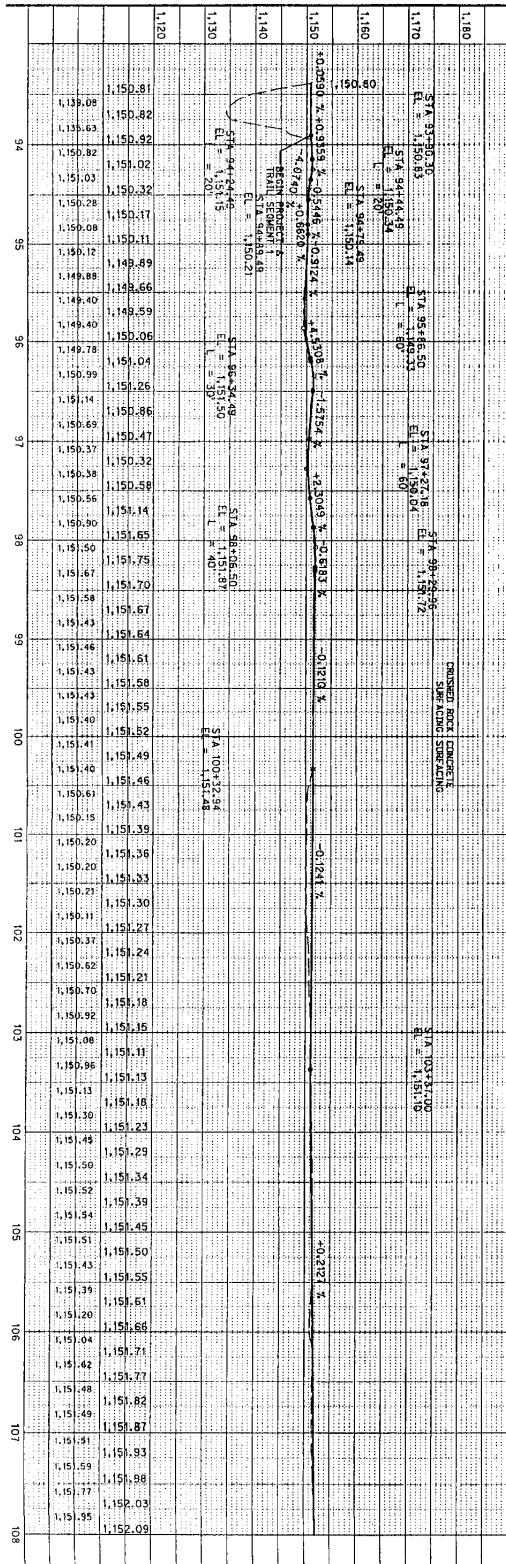


SUB GRADE PREPARATION			
LOCATION	WIDTH	SQ. YDS.	
100+00.00 - 108+00.00	14'-0"	1,244	

BUILD CONCRETE BIKEWAY			
LOCATION	WIDTH	SQ. YDS.	
100+00.00 - 108+00.00	12'-0"	1,087	

RELOCATE BALLAST SUB BASE			
LOCATION	WIDTH	SQ. YDS.	
93+90.32 - 100+00.00	8'-0"	542	

BUILD CRUSHED ROCK BIKEWAY			
LOCATION	WIDTH	SQ. YDS.	
93+90.32 - 100+00.00	8'-0"	542	



MOPAC WEST/HUSKER LINK TRAIL

BUILD CONCRETE DRIVEWAY			
LOCATION	SIZE	SO.	YDS.
308+88.66	4' x 14'		

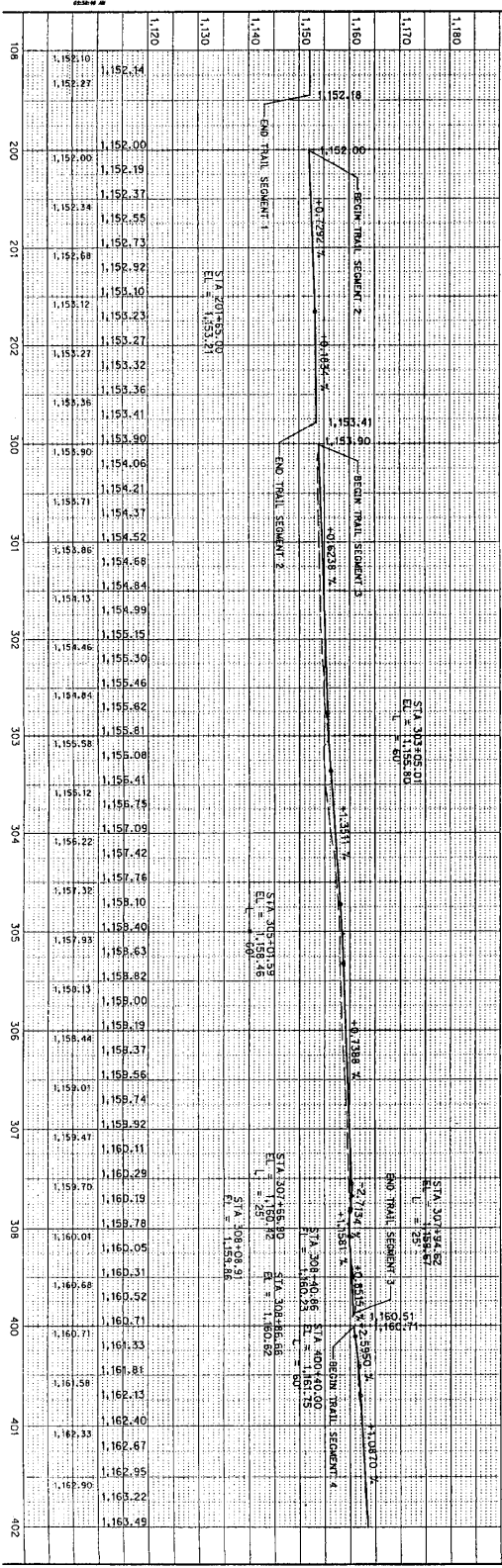
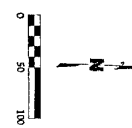
SUBGRADE PREPARATION			
LOCATION	WIDTH	SO.	YDS.
108+00.00 - 108+44.09	14'-0"	69	
200+00.00 - 202+71.35	14'-0"	431	
300+00.00 - 301+78.65	14'-0"	1,212	
307+78.65 - 308+88.66	VARIES	185	
400+00.00 - 402+00.00	10'-0"	222	

RELOCATE 6' CHAIN LINK FENCE			
LOCATION	SIZE	LINK, FT.	YDS.
200+00.00 - 202+71.35	4' L.T.	214	
304+06.25 - 305+01.25	2.5' L.T.	54	

BUILD MODULAR BLOCK RETAINING WALL			
LOCATION	SIZE	SO.	FT.
304+06.25 - 305+01.25	LEFT	285	

MILL CURB			
LOCATION	SIZE	LINK, FT.	YDS.
308+88.66	12'0" RT. - 8'8" L.T.	19'	

BUILD CONCRETE BIKEWAY			
LOCATION	WIDTH	SO.	YDS.
108+00.00 - 108+44.09	12'-0"	58	
200+00.00 - 202+71.35	12'-0"	370	
300+00.00 - 301+78.65	12'-0"	1038	
307+78.65 - 308+88.66	VARIES	161	
400+00.00 - 402+00.00	8'-0"	178	



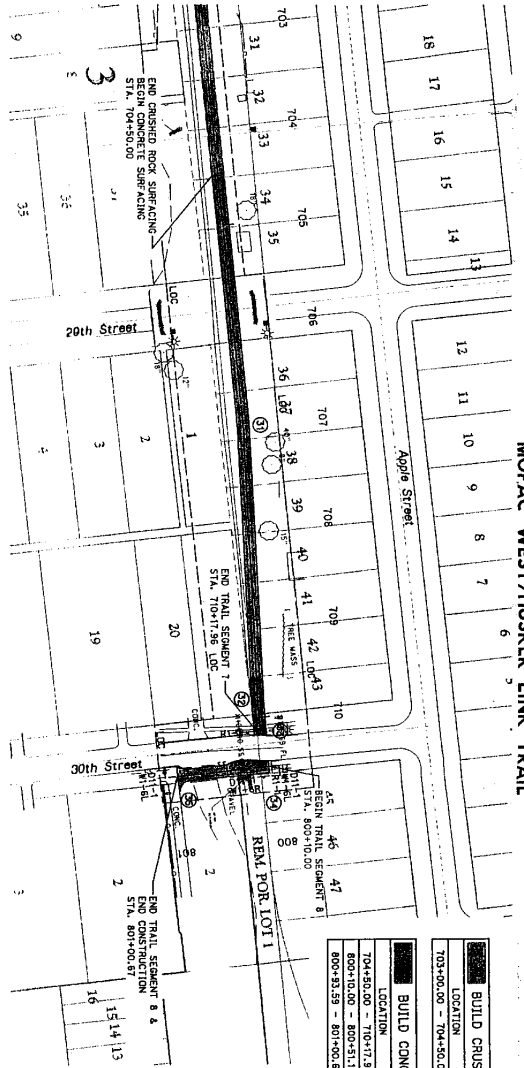
CLUBS ASSOCIATES CONSULTING SERVICES 1111 LEXINGTON AVE, SUITE 2000 NEW YORK, NY 10017	877-65 (1379)	8
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SUB GRADE PREPARATION		
LOCATION	WIDTH	SQ. YDS.
402-00.00 - 402-55.74	10'-0"	66
500-00.00 - 501-04.55	12'-0"	139
501-04.55 - 501-51.63	VARIES	67
501-51.63 - 501-46.25	14'-0"	95
602-65.93 - 602-55.93	14'-0"	31
700-00.00 - 700+20.00	14'-0"	31



STATION	ELEVATION	REMARKS
402	1,163.22	REAR MOUNT CHAIN WHEEL POWER ROLL 1/2 TURN CW IN AREA
403	1,163.49	STREET LIGHT 10' SOUTH OF ROADWAY
404	1,163.76	STREET LIGHT 10' SOUTH OF ROADWAY
405	1,164.03	STREET LIGHT 10' SOUTH OF ROADWAY
406	1,164.30	STREET LIGHT 10' SOUTH OF ROADWAY
407	1,164.57	STREET LIGHT 10' SOUTH OF ROADWAY
408	1,164.84	STREET LIGHT 10' SOUTH OF ROADWAY
409	1,165.11	STREET LIGHT 10' SOUTH OF ROADWAY
410	1,165.38	STREET LIGHT 10' SOUTH OF ROADWAY
411	1,165.65	STREET LIGHT 10' SOUTH OF ROADWAY
412	1,165.92	STREET LIGHT 10' SOUTH OF ROADWAY
413	1,166.19	STREET LIGHT 10' SOUTH OF ROADWAY
414	1,166.46	STREET LIGHT 10' SOUTH OF ROADWAY
415	1,166.73	STREET LIGHT 10' SOUTH OF ROADWAY
416	1,167.00	STREET LIGHT 10' SOUTH OF ROADWAY
417	1,167.27	STREET LIGHT 10' SOUTH OF ROADWAY
418	1,167.54	STREET LIGHT 10' SOUTH OF ROADWAY
419	1,167.81	STREET LIGHT 10' SOUTH OF ROADWAY
420	1,168.08	STREET LIGHT 10' SOUTH OF ROADWAY
421	1,168.35	STREET LIGHT 10' SOUTH OF ROADWAY
422	1,168.62	STREET LIGHT 10' SOUTH OF ROADWAY
423	1,168.89	STREET LIGHT 10' SOUTH OF ROADWAY
424	1,169.16	STREET LIGHT 10' SOUTH OF ROADWAY
425	1,169.43	STREET LIGHT 10' SOUTH OF ROADWAY
426	1,169.70	STREET LIGHT 10' SOUTH OF ROADWAY
427	1,169.97	STREET LIGHT 10' SOUTH OF ROADWAY
428	1,170.24	STREET LIGHT 10' SOUTH OF ROADWAY
429	1,170.51	STREET LIGHT 10' SOUTH OF ROADWAY
430	1,170.78	STREET LIGHT 10' SOUTH OF ROADWAY
431	1,171.05	STREET LIGHT 10' SOUTH OF ROADWAY
432	1,171.32	STREET LIGHT 10' SOUTH OF ROADWAY
433	1,171.59	STREET LIGHT 10' SOUTH OF ROADWAY
434	1,171.86	STREET LIGHT 10' SOUTH OF ROADWAY
435	1,172.13	STREET LIGHT 10' SOUTH OF ROADWAY
436	1,172.40	STREET LIGHT 10' SOUTH OF ROADWAY
437	1,172.67	STREET LIGHT 10' SOUTH OF ROADWAY
438	1,172.94	STREET LIGHT 10' SOUTH OF ROADWAY
439	1,173.21	STREET LIGHT 10' SOUTH OF ROADWAY
440	1,173.48	STREET LIGHT 10' SOUTH OF ROADWAY
441	1,173.75	STREET LIGHT 10' SOUTH OF ROADWAY
442	1,174.02	STREET LIGHT 10' SOUTH OF ROADWAY
443	1,174.29	STREET LIGHT 10' SOUTH OF ROADWAY
444	1,174.56	STREET LIGHT 10' SOUTH OF ROADWAY
445	1,174.83	STREET LIGHT 10' SOUTH OF ROADWAY
446	1,175.10	STREET LIGHT 10' SOUTH OF ROADWAY
447	1,175.37	STREET LIGHT 10' SOUTH OF ROADWAY
448	1,175.64	STREET LIGHT 10' SOUTH OF ROADWAY
449	1,175.91	STREET LIGHT 10' SOUTH OF ROADWAY
450	1,176.18	STREET LIGHT 10' SOUTH OF ROADWAY
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457	1,178.07	STREET LIGHT 10' SOUTH OF ROADWAY
458	1,178.34	STREET LIGHT 10' SOUTH OF ROADWAY
459	1,178.61	STREET LIGHT 10' SOUTH OF ROADWAY
460	1,178.88	STREET LIGHT 10' SOUTH OF ROADWAY
461	1,179.15	STREET LIGHT 10' SOUTH OF ROADWAY
462	1,179.42	STREET LIGHT 10' SOUTH OF ROADWAY
463	1,179.69	STREET LIGHT 10' SOUTH OF ROADWAY
464	1,179.96	STREET LIGHT 10' SOUTH OF ROADWAY
465	1,180.23	STREET LIGHT 10' SOUTH OF ROADWAY
466	1,180.50	STREET LIGHT 10' SOUTH OF ROADWAY
467	1,180.77	STREET LIGHT 10' SOUTH OF ROADWAY
468	1,181.04	STREET LIGHT 10' SOUTH OF ROADWAY
469	1,181.31	STREET LIGHT 10' SOUTH OF ROADWAY
470	1,181.58	STREET LIGHT 10' SOUTH OF ROADWAY
471	1,181.85	STREET LIGHT 10' SOUTH OF ROADWAY
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473	1,182.39	STREET LIGHT 10' SOUTH OF ROADWAY
474	1,182.66	STREET LIGHT 10' SOUTH OF ROADWAY
475	1,182.93	STREET LIGHT 10' SOUTH OF ROADWAY
476	1,183.20	STREET LIGHT 10' SOUTH OF ROADWAY
477	1,183.47	STREET LIGHT 10' SOUTH OF ROADWAY
478	1,183.74	STREET LIGHT 10' SOUTH OF ROADWAY
479	1,184.01	STREET LIGHT 10' SOUTH OF ROADWAY
480	1,184.28	STREET LIGHT 10' SOUTH OF ROADWAY
481	1,184.55	STREET LIGHT 10' SOUTH OF ROADWAY
482	1,184.82	STREET LIGHT 10' SOUTH OF ROADWAY
483	1,185.09	STREET LIGHT 10' SOUTH OF ROADWAY
484	1,185.36	STREET LIGHT 10' SOUTH OF ROADWAY
485	1,185.63	STREET LIGHT 10' SOUTH OF ROADWAY
486	1,185.90	STREET LIGHT 10' SOUTH OF ROADWAY
487	1,186.17	STREET LIGHT 10' SOUTH OF ROADWAY

MOPAC WEST/HUSKER LINK TRAIL

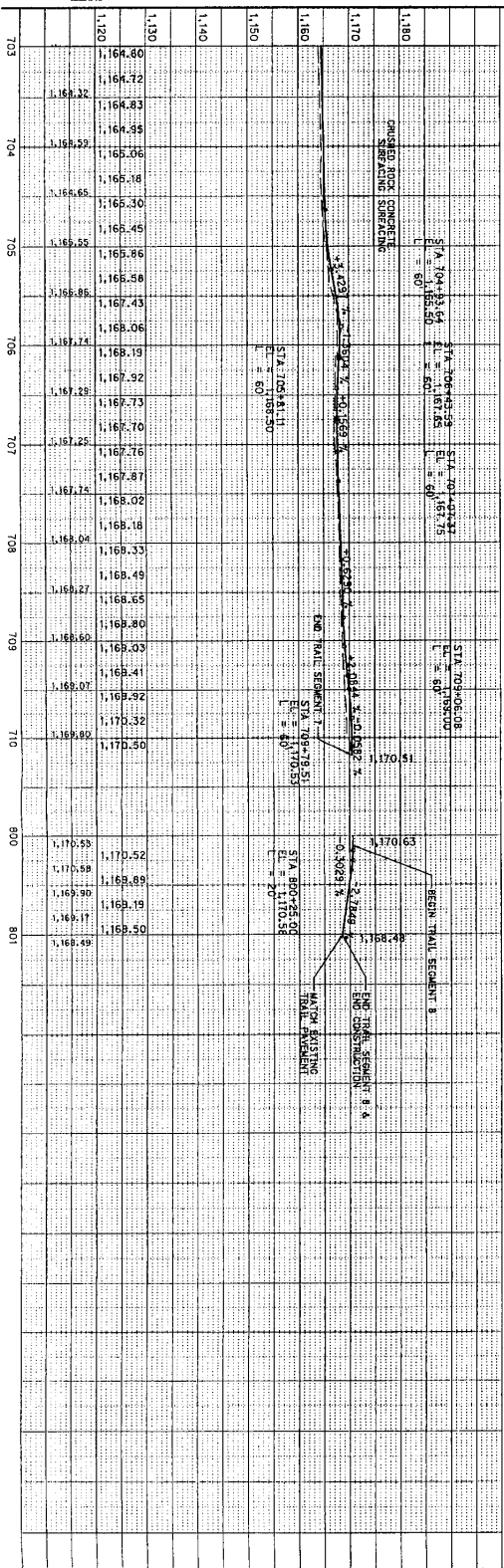


BUILD CRUSHED ROCK BIKEWAY			
LOCATION	WIDTH	SQ. YDS.	
703+00.00 - 704+50.00	12'-0"	200	

BUILD 8" THICK CONCRETE BIKEWAY THROUGH DRIVEWAY			
LOCATION	WIDTH	SQ. YDS.	
800+51.15 - 800+53.59	12'-0"	57	

RELOCATE BALLAST SUB BASE			
LOCATION	WIDTH	SQ. YDS.	
704+50.00 - 705+17.96	12'-0"	757	
705+10.00 - 800+51.15	VARIES	63	
800+53.59 - 801+00.67	VARIES	14	

SUB GRADE PREPARATION			
LOCATION	WIDTH	SQ. YDS.	
704+53.64 - 705+17.96	14'-0"	818	
800+10.00 - 801+00.67	VARIES	125	



**An Application to the
Nebraska Department of Roads**

For

Transportation Enhancement Improvement Funding

Of

The MoPac West Trail

A cooperative project of

The City of Lincoln

And

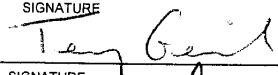
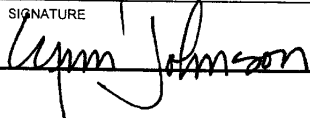
The Great Plains Trails Network

September 17, 2001

State of Nebraska
Department of Roads

Transportation Enhancement Improvement Request (Final)

TO BE COMPLETED BY PROGRAM MANAGEMENT DIVISION	
CONTROL NUMBER:	
PROJECT NUMBER:	
PROJECT NAME:	

1.	GOVERNMENT AGENCY (Check One):		☐ Village	☒ City	☐ County
	AGENCY NAME: City Of Lincoln Parks and Recreation Department		☐ NRD	☐ State	☐ Other
2.	CONTACT PERSON: Terry Genrich			DAYTIME PHONE: (402) 441-7939	
	MAILING ADDRESS: (Street) 2740 A Street			CITY: Lincoln	STATE: NE
	FAX NUMBER: (402) 441-8706		E-MAIL: Tgenrich@ci.lincoln.ne.us		
3.	CONTACT PERSON: (Print Name & Title) Terry Genrich- Natural Resources and Greenways Manager, Lincoln Parks and Recreation		SIGNATURE 		DATE: 9-20-01
4.	GOVERNMENT AGENCY: (Print Name & Title) Lynn Johnson- Director, Lincoln Parks and Recreation		SIGNATURE 		DATE: 9/20/01

5.	PROJECT NAME: (Example: Beatrice Big Blue Trail; Neligh Mill Bridge Renovation) MOPAC WEST (HUSKER LINK)	
6.	PROJECT DESCRIPTION/LOCATION: (Include location, work to be performed, and attach map)	
	PLEASE SEE ATTACHED PURPOSE OF THE PROJECT: PLEASE SEE ATTACHED	
7.	PROJECT COST	
	TOTAL: \$394,349	FEDERAL FUNDS REQUESTED: \$291,818
8.	MATCHING FUNDS PROVIDED BY: City of Lincoln, Great Plains Trails Network	PERCENTAGE OF MATCH: (Minimum 20% of total) 26%
9.	PROJECT TYPE: (Select One Category)	
	☒ Trails ☐ Historic Preservation ☐ Scenic or Historic Byways	

10.	PROJECT QUALITY - NEW AND/OR INNOVATIVE: Quality of life is often a consideration of people and industries thinking about relocation to a community. Recent studies of real estate sales indicate that access to hiker/biker trails is an influential factor in selecting a home for purchase. Lincoln's extensive trail system is often cited as an element contributing positively to quality of life residents of the capitol city enjoy. Continued expansion and enhancements to the trail system, such as the MoPac West Trail project, are therefore a factor in economic development of Lincoln.
11.	PROJECT IMPACT: This trail project has involved a lot of cooperation between many public and private groups including organized trail groups, neighborhood associations, businesses and community leaders. Over \$90,000 in private donations have been raised or are committees to support this part of the project, with additional donations being planned for the next phase of this project. This next phase will include a bridge over 27th Street. Partial funding for the 27th Street bridge will come from Tax Increment Financing as a result of Community revitalization that has taken place over the past 2-3 years. We know that the Urban Development Department has been extremely interested in community revitalization projects in this part of Lincoln and know this trail fits into their plan along with revitalization of neighborhoods and business districts.
12.	TRANSPORTATION/COMMUNITY PLANS: The MoPac West (Husker Link) Trail is identified within the Transportation Element of the Lincoln/Lancaster County Comprehensive Plan. In addition, the adopted City Capital Improvement program identifies construction of the trail as a near term priority.
13.	PUBLIC BENEFITS/ECONOMIC DEVELOPMENT: SEE ATTACHED
14.	ENVIRONMENTAL IMPACTS: (Attach DR Form 275)
15.	THIS PROJECT IS SUPPORTED BY: City of Lincoln, Lincoln Parks and Recreation Advisory Board, City of Lincoln Pedestrian/Bicycle Committee, The Great Plains Trails Network, various neighborhood Associations and University of Nebraska-Lincoln

Attach the following required items:

- Budget
- Map (Maps of some communities may be obtained from the Department of Roads Map Sales at 402-479-4503).
- Resolution
- Environmental Impact Forms (DR275)

6. PROJECT DESCRIPTION/LOCATION

The City of Lincoln Parks & Recreation Department is seeking funding to develop a combination Rail with Trail and Trail only transportation link within the abandoned Union Pacific line commonly known as the X Street corridor. The City recently acquired the railroad ROW between 18th & 19th Streets and between 24th and 30th Streets. A one block section on the west end of the corridor that is needed to connect with the existing Rock Island Trail, is owned by the University of Nebraska. Negotiations are underway with the University for the one block section that is on their property. The remainder of the corridor from 19th to 24th Streets is privately owned and the City is currently negotiating with the owner for an easement for the trail.

The proposed project will start at the west end of the existing MoPac East Trail near 30th and Y Streets. The MoPac West Trail will be constructed on the abandoned railbed between 30th and 24th Streets. Barricades will be placed at each side of 27th Street to prevent users from crossing at grade. A temporary connection is required at 27th Street using City sidewalks to take users north to Y Street to use the pedestrian activated light at that location. The City is scheduled to construct a pedestrian bridge over 27th Street within four years at which time the barricades and temporary trail will be removed.

The trail continues west on the abandoned railbed until just before it reaches a section of railroad that is privately owned at 24th Street. At this location, the trail turns north within public ROW to an alley where the trail then turns west again for one block. At 23rd Street, the trail turns south to enter the privately owned railroad ROW going west where it will occupy a minimum of a 16 foot wide easement on the northern portion of the ROW. The trail stays on the north side of the ROW until it crosses the tracks near 21st Street. Concrete construction continues to a point near 18th Street. A temporary crushed limestone surface will carry the trail from 18th street across University of Nebraska property to the existing Rock Island Trail one block south of the rail corridor. The end of the concrete surfacing will be located at the future connection of the Antelope Valley Trail system scheduled for completion in 2007. The temporary surfacing connecting the MoPac West Trail with the Rock Island will be removed at that time and a permanent surface will be installed. The trail is 5175 feet in length and will be 12 foot wide.

Purpose of the Project:

This project will provide an important link for bicycle commuters going to and from the University of Nebraska downtown campus as well as the East Campus location. It is needed to provide a safe off-street route for commuters. It is also an important final link that will connect with the current MoPac East Trail that continues east of Lincoln and eventually all the way to Iowa. The west end of this corridor will connect with the existing Rock Island Trail. This is the far northern part of the Rock Island that as users go south from this point can travel all the way to the south part of Lincoln. Plans are underway to connect the Rock Island trail on the south with other trails that could eventually take users all the way to the Kansas border. When the Antelope Valley Project is completed, this section of the MoPac West Trail will provide the link to that which will allow commuters access to trails serving the north and west locations of Lincoln.

● Transportation Enhancement Improvement Request: City of Lincoln / MoPac West

13. PUBLIC BENEFITS/ECONOMIC DEVELOPMENT

There are presently 80 miles of trails within Lincoln, ranking the community in the top ten in the nation for non-motorized accessibility. It is important to note that much of the trails system is the result of the diligent efforts of trail supporters within the community who have actively raised private funds and participated in property acquisition.

The focus of future trails plans is two-fold: a) to continue to extend the trail system outward with growth of the community, and b) to interconnect the trail system for greater accessibility. The MoPac West Trail will provide a major connection between two of Lincoln's longest and continuous trails. Those trails are the MoPac East and Rock Island. These two trails will eventually connect with trails that could allow for a non-motorized opportunity through Nebraska from Kansas to Iowa.

The width of this section of trail is two feet wider than most trails we build. This is due to the anticipated heavy use by University of Nebraska students using the trail to commute from their homes as well as between the two University campuses. Bicycle commuters between the two campuses have had to rely on on-street routes through some heavy traffic areas. This new trail will offer a safe off-street route that will encourage additional students to commute to school on bicycles rather than having to drive a vehicle and find a parking place, which has always been difficult.

It is anticipated that increased accessibility to trails such as the MoPac West will benefit retailers providing commuter/recreation trail products and services (e.g., bicycles sales and repair, recreation shoes, in-line skates, recreation clothing).

Husker Link Trail

CONSTRUCTION COSTS				
ITEM	Unit	Unit Cost	No. Reqd.	Total Cost
Clearing & Grubbing	Acre	\$2,500.00	2.4	\$6,000
Remove Existing 6' Chain Link Fence w/Barb Wire @ LHA Parking Lot	Lin. Ft.	\$10.00	250	\$2,500
Remove 12" Diameter Tree @ LHA Parking Lot	Each	\$150.00	1	\$150
Relocate Existing 6' Chain Link Fence @ Textron Pkg Lot (21st to 22nd St)	Lin. Ft.	\$20.00	270	\$5,400
Remove Existing 3' High Timber Retaining Wall @ LHA Parking Lot	Lin. Ft.	\$5.00	250	\$1,250
Remove & Reinstall Existing Guardrail @ LHA Parking	Lin. Ft.	\$25.00	250	\$6,250
Remove Drive & Curb Return @ Alley Between 23rd and 24th Streets	Lump Sum	\$750.00	2	\$1,500
Linear Grading of Railbed	Lin. Ft.	\$5.00	1240	\$6,200
Earthwork Where Trail Leaves Railbed	Cu. Yd.	\$4.50	1000	\$4,500
Three Foot High Modular Block Wall (3.5' high x 200' wall)	Sq. Ft.	\$17.00	700	\$11,900
Build 6 Foot High Chainlink Fence w/Barb Wire	Lin. Ft.	\$25.00	250	\$6,250
Mill Curbs for ADA Ramps	Lin. Ft.	\$14.00	100	\$1,400
Type III Barricades @ 27th Street	Each	\$275.00	2	\$550
6" Thick Concrete Trail 12' Wide	Sq. Yd.	\$27.00	6215	\$167,796
Sub Grade Preparation	Sq. Yd.	\$2.75	7250	\$19,939
Signage	Each	\$250.00	25	\$6,250
Cross Walk Striping, 12" White Preformed Plastic	Lin. Ft.	\$6.00	1030	\$6,180
RR Pedestrian Crossing East of 21st Street	Each	\$20,000.00	1	\$20,000
Wood Bollard & Wire Cable to Separate Vehicle Parking from Trail	Lin. Ft.	\$3.00	700	\$2,100
Landscaping Items				
Shade Tree	2.5" Cal, B&B	\$300.00	25	\$7,500
Evergreen Tree	6', B&B	\$290.00	43	\$12,470
Ornamental Tree	1.5" Cal., B&B	\$250.00	35	\$8,750
Shrub	15" to 18"	\$35.00	202	\$7,070
Perennial/Ornamental Grass	Each	\$10.00	15	\$150
Seeding	Acre	\$2,000.00	2.98	\$5,969
Total Project Cost				\$318,024
CONSTRUCTION COSTS TOTAL				\$318,024
ENGINEERING COSTS				
Preliminary Engineering/Architecture @	10 %			\$31,802
Construction Engineering/Architecture @	14 %			\$44,523
ENGINEERING COSTS TOTAL				\$76,326
ENGINEERING + CONSTRUCTION COSTS				\$394,349
Less In-Kind Contribution				
TOTAL IN-KIND CONTRIBUTION				\$0
SUBTOTAL PROJECT COSTS:				\$394,349
TOTAL PROJECT COSTS:				\$394,349
FUNDING SOURCES				
Applicant Match @	26 %			\$102,531
Federal Funding @	74 %			\$291,818

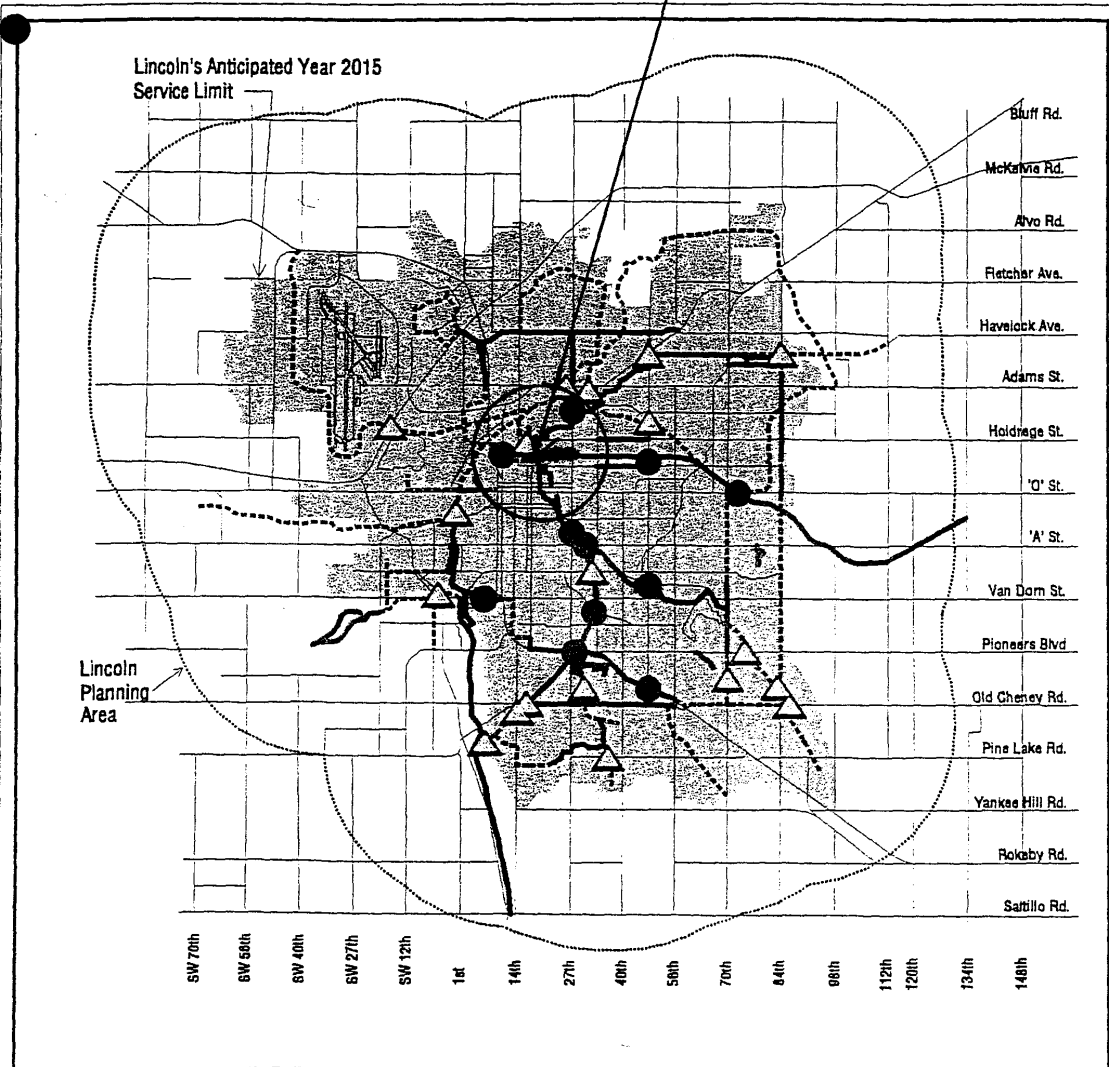


Figure 38

Lincoln Area Current and Future Trails Network (Potential trails in beltway corridors to be determined.)

Miles
0 1 2 3



Lincoln City/Lancaster County Comprehensive Plan

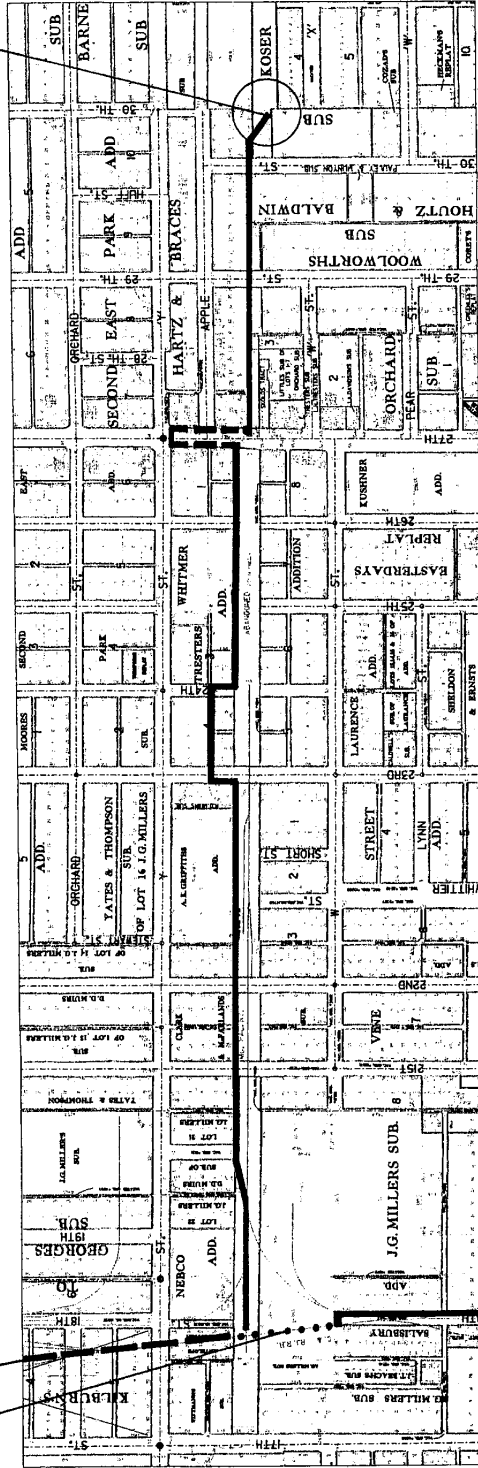
- Current Trails
- - - - - Future Trails
- Existing Grade Separation
- △ Future Grade Separation

NOTE: The Details Of Future Trail Locations Are To Be Determined

New connection to Rock Island trail.

Future new trail to be completed when Antelope Valley Project is done, 2004-05.

Trail connects with existing Mopac trail.



Existing Rock Island trail.



Not to scale



Proposed MoPac West (Husker Link) Trail Parks & Recreation Department City of Lincoln, Nebraska

Environmental Review

Control No.:

Project No.:

Location:

Review Area	Estimated Involvement	Remarks	Reviewed By	
			Initials	Date
1. Project on new alignment	☒ No ☐ Minor ☐ Major ☐ Realignment			
2. Additional right-of-way required	☐ No ☐ Minor ☒ Significant	Adjacent to rail line that is owned by Lincoln Lumber.		
3. Any railroad crossings	☒ No ☐ Yes	The trail crosses a privately owned rail line that hauls in lumber once or twice a month.		
4. Airport within 1/2 mile	☒ No ☐ Yes			
5. Public interest likely to be:	☐ Low ☐ Moderate ☒ High	This project has generated a lot of interest in the five years it has been talked about.		
6. New access control	☐ No ☐ Partial ☒ Full	Vehicular access to trail will be restricted.		
7. Relocation of persons, businesses, etc. required	☐ No ☒ Yes Estimated No.	Some storage area of Lincoln Lumber will have to be relocated.		
8. Any significant stream crossings	☒ No ☐ Yes			
9. Any channel changes required	☒ No ☐ Yes			
10. Section 404 Permit required	☒ No ☐ Possible ☐ Yes			
11. Floodplain Permit required	☒ No ☐ Possible ☐ Yes			
12. Any wetland involvement	☒ No ☐ Possible ☐ Yes			
13.				
14.				
15.				

Review Area	Possible Effect			Remarks	Reviewed By	
	None	Minor	Signif.		Initials	Date
16. Air quality		X		The trail provides an alternative transportation opportunity reducing dependence on motor vehicles.		
17. Noise quality		X		SEE ABOVE		
18. Energy conservation		X		SEE ABOVE		
19. Landscaping		X		New landscaping will be done along much of the trail.		
20. Fish and wildlife	X					
21. Water quality	X					
22. Civil Rights (Minority Involvement)		X		The project has been planned through a community involvement process.		
23. Neighborhood disruption		X		Neighbors are supportive of this project.		
24. Schools, churches, cemeteries or hospitals			X	Route will be a major commute route for university students.		
25. Public health and safety		X		The route is a safe off route replacing an on street route.		
26. Economic activity		X		Enhances quality of life in community encouraging economic development.		
27. Tax base and property values						
28. 4(f) or 6(f) land	X					
29. Historic sites	X					
30. Multiple use of space		X		Will be used by commuters on bicycles as well as recreational trail users making connections to other trails.		
31. Public transportation	X					
32. Prime farmland or irrigation facilities	X					
33.						
34.						
35.						



September 10, 2001

Mr. R. James Pearson
Enhancement Program Coordinator
Nebraska Department of Roads
P. O. Box 94759
Lincoln, NE 68509-4759

Dear Mr. Pearson:

The Lincoln Parks and Recreation Advisory Board voted unanimously in favor of a motion endorsing the MoPac West (Husker Link) Trail Project at their regular meeting on September 6, 2001. The MoPac West Trail is an important project because it provides a major connection with the Rock Island Trail and University of Nebraska Campus on the west and the existing MoPac Trail on the east.

This project is consistent with the Mission Statement of the Parks and Recreation Department, as adopted by this Board, of "providing quality leisure services, facilities and programs for all people of Lincoln". Trails are an important and heavily utilized element of the public recreation opportunities facilitated by the Department and we know it is an important part of what contributes to Lincoln's quality of life. We encourage the Selection Committee look favorably on the Department's application for the MoPac West (Husker Link) Trail.

Sincerely,

A handwritten signature in cursive script that reads "Mary Arth".

Mary Arth, Chair
Lincoln Parks and Recreation Advisory Board



Great Plains
Trails Network

5000 North 7th • Lincoln, NE 68521 • (402) 477-0242

September 11, 2001

To: T-21 Selection Committee
Re: Application for Funding for Husker Link Trail

Dear Committee,

The Great Plains Trails Network (GPTN) is an organization of about 900 families and businesses from in and around Lancaster County. We have been instrumental in supporting the building of trails for about 15 years.

Our top priority has always been to connect Lincoln's existing trails together near the downtown, UNL campus area. The Husker Link has been designated by our group as its top priority.

Many years ago, Lincoln was able to acquire the abandoned MoPac railway from 30th Street east to 84th Street. GPTN raised the funds for the purchase of the East MoPac, another 26 miles of the same railway as it leaves Lincoln to the east. It was given to the Lower Platte South NRD. On the west edge, the rails remained active until just recently. GPTN raised \$125,000 to match a similar commitment from the city, to purchase a large portion of the remainder of the right-of-way between 18th & 30th Streets.

The completion of the MoPac Trail on the west end will finally join Lincoln's two busiest trails, the Rock Island and the MoPac, and at a very high density location, near downtown and UNL campus.

We hope you will help us with this effort. It is our number one priority.

Sincerely,

Rich Rodenburg, President
Great Plains Trails Network



September 9, 2001

Mr. Terry Genrich
Lincoln Parks & Recreation Department
2740 "A" Street
Lincoln, NE 68502

RE: Husker Link Connection

Dear Mr. Genrich:

The East Campus Community Organization is enthusiastic about extending the Mopac trail west into UNL campus and downtown area via the Husker Link Connection. This project has been a vision that the neighborhood identified prior to the Missouri Pacific Railroad discontinuing rail service. We are pleased the City of Lincoln and Parks & Recreation Department is taking steps to move this worthwhile project forward.

Numerous UNL faculty and staff reside in the neighborhood along with an extensive student population comprised of three fraternities and other student housing. This extension will offer safe access to their classes on the Downtown Campus and students who commute to East Campus as well. Easing traffic congestion, reducing pollution, and promoting healthy lifestyles are side benefits to this project.

Those individuals who live adjacent to the Mopac trail have monitored the transition from a sleepy active rail line, thru the abandonment process, and into an active, vibrant recreational trail. This past summer, the East Campus Neighborhood sponsored free refreshments to trail users. It is interesting to note the high number of users coming from other parts of Lincoln and the inquiries about extending the trail past Peter Pan Park at 33rd Street.

~~The East Campus Community Organization is fully behind your efforts and is anxiously awaiting the completion of this exciting project.~~

Sincerely,

Paul A. Smith
East Campus Community Organization – President
4300 "X" Street
Lincoln, NE 68503
402-464-9179

CLINTON NEIGHBORHOOD ORGANIZATION



A 501(c)(3) Corporation

2121 North 27th Street, Lincoln, NE 68503

September 12, 2001

Park & Recreation Department
2740 ' A ' St.
Lincoln, NE 68510
Attention Terry Genrich

To whom it may concern,

The Clinton Neighborhood Organization supports the efforts to complete a bicycle link from 18th to 30th Streets. This link will run through the Clinton Neighborhood and we have consistently supported these efforts in the planning process and financially in the fund raising.

Sincerely

Carl D. Tesch
President

RESOLUTION NO. A-_____

1 WHEREAS, the City of Lincoln through its Parks and Recreation Department intends to
2 apply to the State of Nebraska Department of Roads for financial assistance from the
3 Transportation Enhancement Program for the purpose of constructing the "MoPac West - Husker
4 Link" a one-mile pedestrian/bicycle trail linking the MoPac East Trail with the future Antelope
5 Valley Project, Rock Island Trail, and the UNL Campus in Lancaster County, Nebraska. The
6 project will include the construction of a twelve-foot wide concrete pathway and associated
7 landscape and safety features on publicly owned property along the MoPac Railroad corridor
8 between 18th and "X" streets and 30th and "X" Streets.

9 WHEREAS, the total cost of the project will be \$495,000 which includes \$100,000 for an
10 easement and construction cost of \$395,000. The grant to fund approximately 74% of total
11 construction cost is being requested with at least 26% of the remainder of the cost of construction
12 and acquisition of the easement being matched by the City of Lincoln CIP budget, and \$90,000
13 in donations from the Great Plains Trails Network.

14 WHEREAS, the City of Lincoln wishes to express its support for the project and its
15 willingness to commit to the cost of operation and maintenance of the completed facility in a safe
16 and attractive manner for the public.

17 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln,
18 Nebraska:

19 That the City of Lincoln hereby expresses its support for the application being made by
20 its Parks and Recreation Department to the State of Nebraska Department of Roads for financial

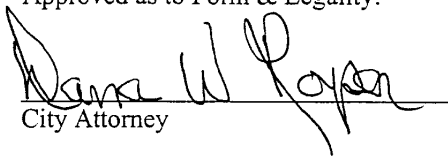
1 assistance from the Transportation Enhancement Program for the purpose of constructing the
2 project described above and known as the "MoPac West - Husker Link." Terry Genrich, Parks
3 and Recreation Department Natural Resources and Greenways Manager, is hereby designated as
4 the Project Liaison Officer to work with the State of Nebraska Department of Roads staff and
5 shall be the principal contact for this project.

6 The City of Lincoln will not discriminate against any person on the basis of race, color,
7 age, religion, handicap, sex, or national origin in the use of the proposed project acquired or
8 developed pursuant to the application for financial assistance. The City of Lincoln certifies that
9 it has the financial capabilities to operate and maintain the completed facility in a safe and
10 attractive manner for public use and further certifies that it will comply, where applicable, with
11 the Americans with Disabilities Act by make the facilities accessible to the handicapped.

12 The City Clerk is directed to transmit a certified copy of this resolution to the Parks and
13 Recreation Department for inclusion with the application to the State of Nebraska Department of
14 Roads.

Introduced by:

Approved as to Form & Legality:


City Attorney

Staff Review Completed:

Administrative Assistant

Approved this ____ day of _____, 2001:

Mayor

JAL FACT SHEET

01R-250

BILL NUMBER

BRIEF TITLE

Transportation Enhancement
Program Grant Application

APPROVAL DEADLINE

REASON

Grant Application for the Mopac West (Husker
Link) Trail Project

DETAILS

POSITIONS/RECOMMENDATIONS

The Lincoln Parks and Recreation Department in cooperation with The Great Plains Trails Network are proposing to submit a grant application for approximately \$395,000 to the Transportation Enhancement Program. A City Council resolution supporting the program application is required by the program administration agency.	Sponsor	Parks and Recreation
	Program Departments, or Groups Affected	All automated departments
	Applicants/Proponents	Applicant City Department Parks and Recreation Department Other Great Plains Trails Network
Discussion (Including Relationship to other Council actions) The Mopac West (Husker Link) Trail is a 1 one) mile pedestrian/bicycle trail connecting the Mopac East Trail with the Rock Island and downtown campus. The project cost for the initial phase is approximately \$495,000. The trail will be located on the recently acquired UP corridor and acquisition of an easement from Lincoln Lumber. Matching funds for the grant application are being raised from the community by the Great Plains Trails Network. Approximately 90,000 has been donated or committed to date. The project is identified within the Capital Improvement (CIP) Program as a near term project and grant funds were identified in recently approved 2001-02 budget.	Opponents	Groups or Individuals unknown Basis of Opposition
	Staff Recommendations	☒ For ☐ Against Reason Against
	Board or Commission Recommendation	BY Parks and Recreation Advisory Board ☒ For ☐ Against ☐ No Action Taken ☐ For with revisions or conditions (See Details column for conditions)
	CITY COUNCIL ACTIONS (For Council Use Only)	☐ Pass ☐ Pass (As Amended) ☐ Council Sub. ☐ Without Recommendation ☐ Hold ☐ Do not Pass

DETAILS

POLICY/PROGRAM IMPACT

POLICY OR PROGRAM CHANGE	☒ NO ☐ YES _____ _____ _____																								
OPERATIONAL IMPACT ASSESSMENT	_____ _____ _____																								
FINANCES																									
COST AND REVENUE PROJECTIONS	<table> <tr> <td>COST of total project:</td><td>\$ 495,000</td></tr> <tr> <td>COST of this Ordinance/ Resolution</td><td>\$ 110,000</td></tr> <tr> <td>RELATED annual operating Costs</td><td>\$ 3,000</td></tr> <tr> <td>INCREASE REVENUE EXPECTED/YEAR</td><td>\$</td></tr> </table>	COST of total project:	\$ 495,000	COST of this Ordinance/ Resolution	\$ 110,000	RELATED annual operating Costs	\$ 3,000	INCREASE REVENUE EXPECTED/YEAR	\$																
COST of total project:	\$ 495,000																								
COST of this Ordinance/ Resolution	\$ 110,000																								
RELATED annual operating Costs	\$ 3,000																								
INCREASE REVENUE EXPECTED/YEAR	\$																								
SOURCE OF FUNDS	<table> <tr> <td colspan="3">CITY [Approximately]</td></tr> <tr> <td>CIP</td><td>\$ 110,000</td><td>% 22</td></tr> <tr> <td>_____</td><td>\$ _____</td><td>% ____</td></tr> <tr> <td>_____</td><td>\$ _____</td><td>% ____</td></tr> <tr> <td colspan="3">NON CITY [Approximately]</td></tr> <tr> <td>TRAIL GRANT</td><td>\$ 295,000</td><td>% 60</td></tr> <tr> <td>GPTN DONATIONS</td><td>\$ 90,000</td><td>% 18</td></tr> <tr> <td>_____</td><td>\$ _____</td><td>% ____</td></tr> </table>	CITY [Approximately]			CIP	\$ 110,000	% 22	_____	\$ _____	% ____	_____	\$ _____	% ____	NON CITY [Approximately]			TRAIL GRANT	\$ 295,000	% 60	GPTN DONATIONS	\$ 90,000	% 18	_____	\$ _____	% ____
CITY [Approximately]																									
CIP	\$ 110,000	% 22																							
_____	\$ _____	% ____																							
_____	\$ _____	% ____																							
NON CITY [Approximately]																									
TRAIL GRANT	\$ 295,000	% 60																							
GPTN DONATIONS	\$ 90,000	% 18																							
_____	\$ _____	% ____																							
BENEFIT COST	☐ Front Foot ☐ Square Foot Average Assessment \$ _____ \$ _____																								

APPLICABLE DATES:

ACT SHEET PREPARED BY: Terry Genrich, Natural Resources and Greenways Manager

VIEW BY: Lynn Johnson, Director Parks and Recreation

REFERENCE NUMBER

File

01R-250

Introduce: 9-17-01

RESOLUTION NO. A- 81111

1 WHEREAS, the City of Lincoln through its Parks and Recreation Department intends to
2 apply to the State of Nebraska Department of Roads for financial assistance from the
3 Transportation Enhancement Program for the purpose of constructing the "MoPac West - Husker
4 Link" a one-mile pedestrian/bicycle trail linking the MoPac East Trail with the future Antelope
5 Valley Project, Rock Island Trail, and the UNL Campus in Lancaster County, Nebraska. The
6 project will include the construction of a twelve-foot wide concrete pathway and associated
7 landscape and safety features on publicly owned property along the MoPac Railroad corridor
8 between 18th and "X" streets and 30th and "X" Streets.

9 WHEREAS, the total cost of the project will be \$495,000 which includes \$100,000 for an
10 easement and construction cost of \$395,000. The grant to fund approximately 74% of total
11 construction cost is being requested with at least 26% of the remainder of the cost of construction
12 and acquisition of the easement being matched by the City of Lincoln CIP budget, and \$90,000
13 in donations from the Great Plains Trails Network.

14 WHEREAS, the City of Lincoln wishes to express its support for the project and its
15 willingness to commit to the cost of operation and maintenance of the completed facility in a safe
16 and attractive manner for the public.

17 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln,
18 Nebraska:

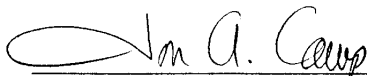
19 That the City of Lincoln hereby expresses its support for the application being made by
20 its Parks and Recreation Department to the State of Nebraska Department of Roads for financial

1 assistance from the Transportation Enhancement Program for the purpose of constructing the
2 project described above and known as the "MoPac West - Husker Link." Terry Genrich, Parks
3 and Recreation Department Natural Resources and Greenways Manager, is hereby designated as
4 the Project Liaison Officer to work with the State of Nebraska Department of Roads staff and
5 shall be the principal contact for this project.

6 The City of Lincoln will not discriminate against any person on the basis of race, color,
7 age, religion, handicap, sex, or national origin in the use of the proposed project acquired or
8 developed pursuant to the application for financial assistance. The City of Lincoln certifies that
9 it has the financial capabilities to operate and maintain the completed facility in a safe and
10 attractive manner for public use and further certifies that it will comply, where applicable, with
11 the Americans with Disabilities Act by make the facilities accessible to the handicapped.

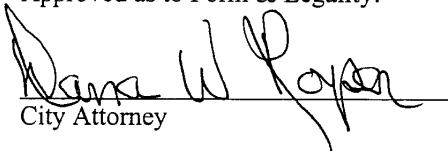
12 The City Clerk is directed to transmit a certified copy of this resolution to the Parks and
13 Recreation Department for inclusion with the application to the State of Nebraska Department of
14 Roads.

Introduced by:

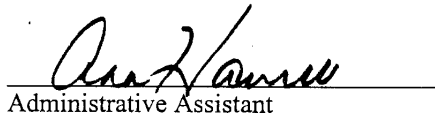


AYES: Camp, Cook, Friendt,
McRoy, Seng, Svoboda;
NAYS: None;
ABSENT: Werner.

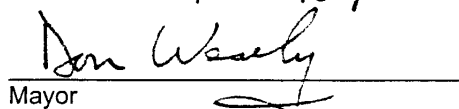
Approved as to Form & Legality:


City Attorney

Staff Review Completed:


Administrative Assistant

Approved this 27 day of Sept, 2001:


Mayor

ADOPTED

SEP 24 2001

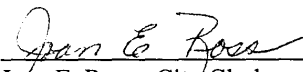
By City Council

C E R T I F I C A T E

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER) ss:
)
CITY OF LINCOLN)

I, Joan E. Ross, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the above and foregoing is a true and correct copy **Resolution No. A-81114 adopted September 24, 2001**, by the Lincoln City Council, as the original appears of record in my said office and is now in my charge remaining as City Clerk aforesaid.

In Witness Whereof, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, this 10th day of September, 2001.


Joan E. Ross, City Clerk

certify.jer

Appendix E

BEFORE THE SURFACE TRANSPORTATION BOARD

City of Lincoln, Nebraska)
) F.D. 34425
Petition for a Declaratory Order)

I, Joel D. Pedersen, make this Verified Statement for use on behalf of the City of Lincoln in the above captioned proceeding based on personal knowledge and reliable facts reported to me.

1. My name is Joel Pedersen and I am an Assistant City Attorney for the City of Lincoln, Nebraska. I have been employed by the City of Lincoln in this capacity for 15 years. As a part of my duties for the City, I have researched title issues and negotiated real estate transactions including several railroad right-of-way purchases from both Union Pacific and Burlington Northern Santa Fe. Two of these actions involved abandonment proceedings and approved railbanking before the Surface Transportation Board. (Jamaica Line UP Docket No. AB-33 (Sub-No. 181X) and former MoPac UP Docket AB-33 (Sub-No. 112X)). This statement is in support of City of Lincoln's Petition for a Declaratory Order relating to the portion of the MoPac right-of-way in AB-33 (Sub-no. 112X) acquired by Lincoln Lumber Company (LLC) pursuant to an OFA. That portion is generally located from 19th Street to 24th Street, Lincoln, Lancaster County Nebraska (The OFA Parcel).

2. I have examined the pertinent title documents related to the OFA Parcel and determined that, but for an assertion of the jurisdiction of the STB and any applicable federal preemption, the City of Lincoln would be able to legally acquire, including by condemnation if necessary, the necessary property interests to complete two public projects impacting the OFA Parcel. My determination includes a finding that the City Council of the City of Lincoln has lawfully approved (by duly enacted resolution of the City Council passed after public hearing and publication as required by law) two capital improvement projects that included a specific finding that acquiring the property to complete the projects was necessary and for a public purpose and authorizing the same to be acquired by condemnation, if need be, as provided by law.

3. The interests involved would be fee title to a limited portion of the OFA Parcel, including 20 feet of surface for a trail connection and a permanent utility easement for storm water improvements.

4. These improvements can be co-located in the same corridor. The current plan provides for the Trail predominantly on the north side of the tracks, at locations designed to avoid any interference with rail use and to minimize any interference with any other business uses of the property. Indeed, the bulk of the location sought is already improved for sidewalk uses and separated from the rail by utility poles and other improvements. The storm sewer is currently planned on the south side of the rail to match best practices and avoid boring under the tracks.

5. On January 10, 2003, Clint Thomas attempted to get a right of entry from Mr. Don Hamill, owner of Lincoln Lumber Co. (see attached call report Exhibit "A").

6. I sent a letter to Mr. Don Hamill of Lincoln Lumber Company, record owner of the OFA Parcel, on February 7, 2003 (copy attached as Exhibit "B"), providing notice under applicable law (Neb. Rev. Stat. § 76-702) that the City intended to enter the OFA Parcel to complete a survey and other non-intrusive examinations (no soil tests) in anticipation of acquiring the property for public purposes.

7. Mr. Hamill strenuously objected to the entry and by letter from his attorney of February 11, 2003 (copy attached as Exhibit "C") asserted that our ability to acquire the property under state condemnation laws was preempted by federal law 49 U.S.C. § 10501(b). He unequivocally refused any offer for the City to voluntarily acquire the necessary property rights for both projects.

8. On February 18, 2003 I personally met with Mr. Hamill to discuss the projects and to make one further attempt to voluntarily acquire the property and clarify his objections or at a minimum, to gain access to the property. The meeting followed several telephone calls with Mr. Hamill. Mr. Hamill stated to me that he believed the trail is not important and is merely "recreational" and should not be allowed on his property regardless of the impact (or lack thereof) on his business. The City does not share Mr. Hamill's view. Mr. Hamill made it clear that he supported the storm sewer project and noted "that would help a lot of people," but he linked his approval of the storm sewer acquisition to keeping the trail off his property. A later conversation with Mr. Hamill's attorney made it clear the LLC's interest in pursuing the OFA in the first place involved a deliberate attempt to block any trail use in the corridor regardless of any actual impact to the business. The City was informed that Mr. Hamill would not agree to any amount of compensation or condition which would allow a trail and any trail use whatsoever was simply unacceptable.

9. As a result of LLC's refusal to cooperate, the City did not enter the property for survey and examination in February. Subsequent efforts to achieve a solution have been unfruitful. Because of the public importance of the two projects, the City is compelled to seek a declaratory order from the Board sufficient to permit the City to employ eminent domain to acquire the trail and stormwater property interest.

10. The two City projects involve completion of the Husker Link Trail and a separate storm sewer improvement project.

11. The City is filing other verified statements and evidence showing the importance and public purposes served by the projects, not the least of which are important connections to the Antelope Valley Project.

12. Since the OFA proceeding on the OFA parcel several important matters pertinent to the title and leasehold interests in the same have developed:

- a. UP previously had a lease with Cushman, Inc. (now Textron, Inc.) the former owner of property on both the north and south side of the OFA Parcel. At the time of the OFA

and prior, Cushman used their adjoining property for manufacturing and other business purposes, making use of the OFA parcel for parking and to provide both pedestrian and vehicular connections between the north and south side. In the UP abandonment proceeding, Cushman also stated that they maintained an interest in preserving rail service, but did not file an OFA.

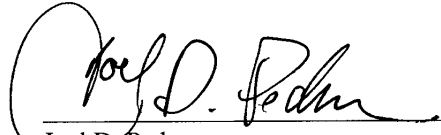
- b. The Cushman lease was dated September 27, 1989 (attached as Exhibit "D") and was originally executed by the MoPac RR, predecessor in interest to the UP.
- c. Prior to LLC's OFA, the lease was modified minimally to increase rent and to make adjustments to administrative provisions.
- d. In what can only be described as a bitter and contentious negotiation, including LLC barring passage across the OFA Parcel for a period of time under threat of trespass, Textron agreed to an amendment to the Cushman lease "the Second Supplemental Agreement" dated March 13, 2001. (see attached Exhibit "E") (The LLC Amendment).
- e. The LLC Amendment:
 - i. Dramatically expanded the scope of uses allowed (see discussion in paragraph 12 below).
 - ii. Significantly increased the square footage leased from 49,127 s.f. to 92,115 s.f. (which may not even correlate to the amount of space actually available for lease); and
 - iii. More than quadrupled the comparable annual rental from approximately \$0.05 per s.f. to over \$0.29 per s.f.
- f. There are several provisions in the LLC Amendment indicating the unequal bargaining position between the parties, including the removal of an annual term of the lease as well as deleting any meaningful termination provisions and including automatic rent increases among the more obvious.
- g. Significantly, Cushman, Inc. has now entirely ceased business operations at the location for which it previously expressed interest in all service. Indeed, Textron, the owner of Cushman, has now sold all of its adjoining property to two separate buyers and has entirely left the City of Lincoln. Textron is still subject to the lease. Neither buyer indicated any interest in acquiring any interests under the lease.
- h. I attach as Exhibit "F" a diagram showing an overview of the planned routes, property ownership and right-of-way encroachments. The north parcel was acquired by B&J

Partnership and the south parcel was acquired by the University of Nebraska for their transportation services facility.

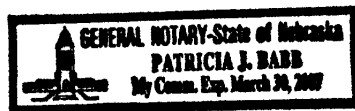
- i. The diagram also shows an area under lease to Commonwealth Electric, dated December 13, 2000, for a stated period of 30 years at an annual rent of \$5,316.61 (\$0.32 per s.f.) for 16,492 s.f. (attached as Exhibit "G").

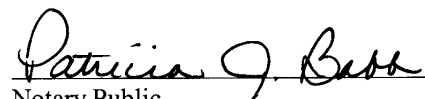
13. The LLC amendment allows almost unfettered use of almost the entire OFA Parcel for non-railroad purposes: "Textron, its employees, agents and invitees can use the Premises without restriction 24 hours a day." In fact, the lease allows the express use the City seeks to accomplish with the Trail Project: "The Premises can be used for pedestrian travel and for the movement of materials and supplies by motor vehicle and other powered machinery." The Husker Link Trail Project and the Storm Sewer Project are obviously fully consistent with the uses LLC has contracted to permit through the Textron lease. The uses do not interfere with rail use of the Premises.

14. The City of Lincoln requests prompt action on this declaratory petition to permit both the trail and storm sewer projects to proceed next spring in order to avoid loss of funds.


Joel D. Pedersen

Subscribed and sworn to before me this 30th day of October, 2003.




Notary Public

CALL REPORT

EXHIBIT "A"

XX NEGOTIATION
RELOCATION ASSISTANCE

DATE	AMOUNT OFFERED	SALVAGE OFFERED	COUNTER OFFER	PERSONS PRESENT	VISIT NO.
1/10/03	\$			Don Hamill	1

Report of Discussion

I contacted Mr. Hamill at his office located in the lumber company on this tract. I explained to him my purpose for being there was to ask his permission to enter the property for the purpose of doing a survey and other non-invasive testing in conjunction with designing the Husker Link Trail and Storm Sewer Projects. Mr. Hamill immediately began a long discussion regarding the Storm Sewer Project. He wanted to know why we needed permission to be surveying since "that company out of Holdrege" had been surveying and designing on the project for several months. I told him I did not know why that had been included, but I knew the primary reason for wanting the survey was to do preliminary survey work on the bike trail; we had been asked by Brian Kramer to include the Storm Sewer Project with the trail. Mr. Hamill seemed quite puzzled by this indicating he had told Brian Kramer several months ago we could have permission to do the work necessary for the storm sewer. In fact in his words the company from Holdrege had been on his property already doing their work and he had obviously given them permission to do that. I told him it was not my decision, but I had been instructed to prepare a Right of Entry to give us permission to come onto his land for the purpose of surveying for both of those projects. I told him it was possible they had done the preliminary design they needed to do from the City land base and aerial photos which were reasonably accurate but not precise and since any work to be done in that area would be done in a rather confined space I told him I thought they wanted to do some field surveying to get precise locations on everything. He indicated they had been doing transit work and field surveys for the last couple of months out there. I told him I had no idea, then, why we were just now getting around to asking permission to do the work.

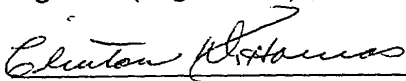
I presented him with the Right of Entry and asked if he would be willing to sign it to give us permission. He wanted to know if I expected him to sign it at that moment. I told him I would be derelict in my duties if I did not ask him to. I said it was his decision if he wanted to sign it or not. He indicated he did not want to sign it right then. As we continued to discuss the situation, it became quite apparent to me Mr. Hamill's objections were to the trail project and not necessarily the storm sewer. He indicated while he did not like the storm sewer going in he understood there needed to be a storm sewer and he was getting tired of the people downstream coming in and complaining about him causing the flooding on their land and he knew something needed to be done. He said he had been willing to work with the City to put the storm sewer in, but he did not want to see the trail go in. He insisted the trail could be placed in a different location and claimed he had been present at public meetings when he thought it was decided the trail would go around his property rather than through the middle of it. Mr. Hamill is of the opinion the trail is being forced down his throat and is not at all pleased with the thought of having the trail run through his lumber yard. I told him I did not make those decisions and had simply been asked to come and ask if we could have permission to enter his land for the purposes stated.

Mr. Hamill claimed he was going to have a meeting with Brian Kramer and other Public Works individuals on Tuesday and after he found out what their intentions were with the storm sewer and what was going on he would tell Brian whether he was going to sign the document or not. He asked me if I understood what his feelings were. I told him it was my understanding if I had brought out two documents -- one Right of Entry for permission to survey for the storm sewer and one for permission to survey for the Husker Link Trail -- he would sign the one for the storm sewer, but not sign the one for the trail. He pointed at me

and said, "You got it." I told him I had gotten the answer I had come for and had no further business there. He wanted to walk outside and show me where he thought the trail should be placed which we did. While we were headed out viewing the trail, as he perceived it, I told him very candidly I thought the City of Lincoln had statutory right to enter the property for survey purposes. I told him if the individuals who made the decisions wanted the project to go at that location, they would probably continue under that statutory right. At that Mr. Hamill got quite agitated and indicated to me he would fight the City to the end in an effort to keep the trail out of that location. He gave me the number of his attorney in Chicago and asked me to give him a call. He said if he had to spend another \$150,000 to stop the trail he would do so. I told him I hoped that would not be necessary, but I would pass his comments along to the parties responsible for making the decisions regarding the location for the trail. I then thanked Mr. Hamill for his time and departed.

Project: Husker Link Trail, 409-375 & Storm Sewer, 701-321
Tract No.:
Property Tenant:
Property Owners: Lincoln Lumber Company

Agent: (Signature)


Clinton W. Thomas

Date: Jan 13, 2003

dge

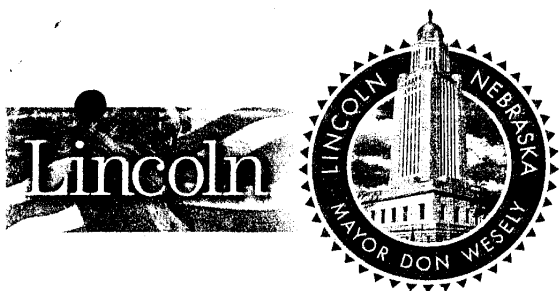


EXHIBIT "B"

Nebraska's Capital City

February 7, 2003

Don Hamill 474-4488
Lincoln Lumber Co.
P. O. Box 30373
Lincoln, NE 68503

Dear Mr. Hamill:

This letter is to inform you that (weather permitting) on February 18th through February 21st between the hours 8:00 AM to 6:00 PM representatives of the City of Lincoln, Nebraska will be entering upon your property generally located at (Property):

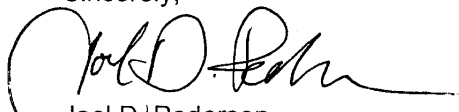
Former MoPac (UP) RR ROW between west line of 24th and the east line of 18th Street in Lincoln, Lancaster County, Nebraska.

for the purpose of examining and surveying the same in contemplation of bringing condemnation proceedings.

The planned activities will require more than 8 hours on-site. Ideally those hours will be on consecutive days. These activities are related to planned public projects and will not involve any excavation, borings or change of grade whatsoever upon your property. The activities and entry upon your property are authorized by law under Neb. Rev. Stat. § 76-702 (Reiss. 1996) a copy of which is attached for your reference. The City representatives will display business card identification and a copy of this letter for verification upon your request.

If you have concerns about the activities or the identification of persons presenting this letter, please contact me directly at 402-441-7232.

Sincerely,


Joel D. Pedersen
Assistant City Attorney

JDP/tb

Law Department / Dana W. Roper, City Attorney / 575 South 10th Street / Suite 4201 / Lincoln, Nebraska 68508
Phone: 402-441-7281, Civil Fax: 402-441-8812, Pros. Fax: 402-441-8813 / Website: www.ci.lincoln.ne.us

Ernest R. (Rick) Peo III, Chief Assistant / John C. McQuinn II, Chief Prosecutor / Richard C. Anderson, Police Legal Advisor
Civil: James D. Faimon / Don W. Taute / Steven J. Huggenberger / Joel D. Pedersen / Connor L. Reuter / Margaret M. Blatchford / Tonya L. Skinner
Prosecution: Patrick C. Campbell / Christine A. Loseke / Rob E. Caples / Marcee A. Shell

76-702 Condemner; enter upon land; inventory; furnish to
condemnee.

After negotiations have failed, any condemner, or his representative, upon proper identification and after informing the condemnee of the contemplated action is authorized to enter upon any land for the purpose of examining and surveying same in contemplation of bringing or during the pendency of condemnation proceedings under sections 76-701 to 76-724; PROVIDED, when an inventory is made of the damage to personal property by reason of examining or surveying the land by the condemner, or his representatives, a copy of the inventory shall be delivered to the condemnee.

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LA SALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1194
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

EXHIBIT "C"

THOMAS F. MCFARLAND

February 11, 2003

By fax to 402-441-8812.
and UPS overnight mail

Joel D. Pedersen
Assistant City Attorney
City of Lincoln, Nebraska
Law Department
575 South 10th Street, Suite 4201
Lincoln, NE 68508

Dear Mr. Pedersen:

This refers to your letter of February 7 to Don Hamill of Lincoln Lumber Co., providing notice that City representatives intend to enter on the Lumber Company's property on February 18-21 for the purpose of examining and surveying the property in contemplation of bringing condemnation proceedings. Your letter cites Neb. Rev. Stat. §76-702 as authority for such entry.

I represent Lincoln Lumber Company. In that capacity, I am advising you that Lincoln Lumber Company is a rail carrier subject to the jurisdiction of the United States Department of Transportation, Surface Transportation Board (STB), as to the property on which the City proposes to enter. In light of that status, the Nebraska law providing for the City's right of entry on that property in contemplation of condemnation, as well as State condemnation law itself, are federally preempted by virtue of 49 U.S.C. § 10501(b).

In *Union Pacific RR Co. - Aband. Exempt. - in Lancaster County, NE*, STB Docket No. AB-33 (Sub-No. 112X), decision issued January 16, 1998, the STB authorized Lincoln Lumber Company to acquire the railroad right-of-way property between 19th Street and 24th Street in Lincoln, NE for continued rail operation. I have attached a copy of that decision to this letter. Pursuant to that authority, Lincoln Lumber acquired that property by virtue of a deed from Union Pacific dated November 8, 2000, copy attached to this letter.

Lincoln Lumber acquired the 19th Street - 24th Street railroad right-of-way property pursuant to the offer-of-financial-assistance provisions (OFA) of 49 U.S.C. § 10904. That acquisition foreclosed railbanking and interim recreational trail use of that property under the National Trails System Act. See *Union Pacific RR Co. - Aband. Exempt. - in Lancaster County, supra*, decision issued September 24, 1997, at 10. It is settled that OFAs for continued rail use

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LAW DEPT.

Joel D. Pedersen
February 11, 2003
Page 2

take priority over railbanking and interim trail use. *Rail Abandonments - Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591, 608 (1986).

By virtue of federal preemption of remedies under State law provided in 49 U.S.C. § 10501(b), local interests cannot use State condemnation law to establish railbanking and interim trail use of railroad right-of-way property that was acquired pursuant to 49 U.S.C. § 10904, and thereby accomplish indirectly that which the law directly prohibits. It is provided in 49 U.S.C. § 10501(b) as follows:

- (b) The jurisdiction of the Board (STB) over —
 - (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
 - (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

The term “transportation” is defined broadly in 49 U.S.C. § 10102(9)(A) to include “property . . . of any kind related to the movement of . . . property . . . by rail.” That broad definition encompasses the railroad operating right-of-way property of a rail carrier subject to the jurisdiction of the STB.

It has been held specifically that the provisions of 49 U.S.C. § 10501(b) effect an express federal preemption of State condemnation law as attempted to be applied to property within a rail carrier’s operating right-of-way. See *Wisconsin Central, Ltd. v. The City of Marshfield*, 2000 U.S. Dist. LEXIS 10570 at *16 (W.D., Wisc. 2000), viz.:

... WCL is a ‘common carrier’ and the passing track is ‘transportation’ as both are defined by the ICCTA. In the absence of a genuine dispute the language of the ICCTA and the ‘clear and manifest’ intent evinced by Congress require that plaintiff prevail as a matter of law on its federal preemption claim. Wisconsin’s

THOMAS F. MCFARLAND

Joel D. Pedersen
February 11, 2003
Page 3

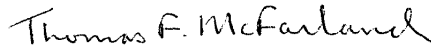
condemnation law, Chapter 32 of the Wisconsin Statutes, as applied to WCL's passing track in Marshfield, Wisconsin is without effect.

Accord: Riverview Trenton Railroad Company v. County of Wayne, E.D., Mich., No. 01-70078, filed April 10, 2001, at 6 (federal law preempted Wayne County, Michigan Uniform Condemnation Procedure Act attempted to be applied to condemn a parcel of land used for rail transportation and other related rail activities).

In view of the foregoing, this is to put the City on notice that Lincoln Lumber will seek an injunction in Federal Court on the basis of federal preemption if the City enters upon Lincoln Lumber's railroad right-of-way property on the purported authority of Neb. Rev. Stat. § 76-702 in contemplation of condemnation of that property for railbanking and interim trail use.

Please advise regarding the City's position after review of this letter.

Very truly yours,



Thomas F. McFarland
Attorney for Lincoln Lumber Company

TMcF:kl:enc:wp8.0\922\ltrjdp1

cc: Don Hamill

~~Text~~ 629

28785
DO

SERVICE DATE - JANUARY 16, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 112X)

UNION PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--
IN LANCASTER COUNTY, NE

Decided: January 13, 1998

By decision and notice of interim trail use or abandonment served September 24, 1997, we granted the Union Pacific Railroad Company (UP) an exemption under 49 U.S.C. 10502 from the prior approval requirement of 49 U.S.C. 10903 to abandon a 1.88-mile segment of its Lincoln Branch between milepost 494.76, near 10th Street, and milepost 492.99, near 33rd Street, in Lincoln, NE, subject to conditions.¹ Before the decision authorizing abandonment became effective, Lincoln Lumber Company (LLC) timely filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase that portion of the line located between 19th Street and 24th Street.

By decision served October 8, 1997, LLC was found financially responsible, and the effective date of the decision authorizing abandonment was postponed for the segment located between 19th Street and 24th Street to permit the OFA process to proceed. Subsequently, LLC filed a request that the Board establish the conditions and the amount of compensation for the sale of the line. Thereafter, in a decision served December 3, 1997, the Board set the purchase price for the line at \$300,947, and established terms for transfer of the line. On December 23, 1997, LLC filed a petition to reopen the December 3, 1997, asserting that the Board had committed material error. LLC's petition will be considered in a subsequent decision.

By letter filed December 8, 1997, LLC indicates that it accepts the Board's terms and conditions and acknowledges that it will be bound by them unless they are modified as a result of its petition to reopen.

¹ The Board's decision also imposed a public use condition under 49 U.S.C. 10905 and a trail use condition under 16 U.S.C. 1247(d) for a portion of the segment between 18th Street (milepost 494.166) and 33rd Street (milepost 492.88). On October 14, 1997, the National Association of Reversionary Property Owners (NARPO) filed a petition to reopen the September 24, 1997 decision to vacate the trail use condition. The portion LLC will acquire here is included in, but does not embrace the entirety of, the portion of the line covered by the interim trail use/rail banking condition. Accordingly, NARPO's petition appears to be moot as to the portion of the line between 19th Street and 24th Street. NARPO's petition as to the other parts of the line will be considered in a subsequent decision.

When a person offering to purchase a line accepts the terms and conditions set by the Board, the offer is binding. See 49 U.S.C. 10904 and 49 CFR 1152.27(h)(7). Accordingly, the sale will be approved and the petition for exemption will be dismissed as to the segment located between 19th Street and 24th Street.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10904, LLC is authorized to acquire the segment located between 19th Street and 24th Street.
2. Under 49 U.S.C. 10904 and 49 CFR 1152.27(h)(7), the petition for exemption is dismissed as to that segment located between 19th Street and 24th Street, effective on the date the sale is consummated.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

1665-57

QUITCLAIM DEED

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, successor in interest by merger to Union Pacific Railroad Company, a Utah corporation and Missouri Pacific Railroad Company ("Grantor") in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto LINCOLN LUMBER COMPANY, a Nebraska corporation, ("Grantee") whose address is P. O. Box 30373, Station A, Lincoln, Nebraska 68503 and unto its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Property") situated in Lincoln, Lancaster County, State of Nebraska, as more particularly described in Exhibit A, hereto attached and hereby made a part hereof.

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging; TO HAVE AND TO HOLD the Property unto the said Grantee and unto its successors and assigns.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed as of the 8th day of November, 2000.

Attest:

UNION PACIFIC RAILROAD COMPANY

C. J. Meyer
Assistant Secretary

By [Signature]
Title: Assistant Vice President

(Seal)

ACKNOWLEDGMENT

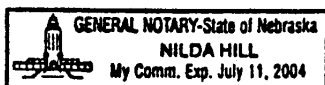
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 8th day of November, 2000, before me, a Notary Public in and for said County and State, personally appeared R. D. Uhrich and C. J. Meyer who are the Assistant Vice President and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Nelda Hill
Notary Public

(Seal)



UNION PACIFIC RAILROAD COMPANY
Lincoln, Lancaster County, Nebraska

EXHIBIT "A"

All that part of the Missouri Pacific Railroad Company, predecessor to Union Pacific Railroad Company main line track known as the Lincoln Branch situate in Section 24, Township 10 North, Range 6 East and Section 19, Township 10 North, Range 7 East of the 6th Principal Meridian in the City of Lincoln, Lancaster County, Nebraska, lying between the West line of 24th Street and a line lying 84.0 feet easterly of the westerly line of Lots 6 and 7 in the Antelope Addition to the City of Lincoln according to the official recorded plat thereof and as referred to in the Deed recorded March 30, 1886 in Book 27 Page 559 and Deed recorded July 23, 1886 in Book 30 Page 99 Official Records Lancaster County, Nebraska, said westerly line of said Lots 6 and 7 also being the easterly line of 18th Street.

Together with that portion of Lot 6 in the Antelope Addition to the City of Lincoln according to the official recorded plat thereof described as follows:

Commencing at the point of intersection of the southwest corner of Lot 5 in said Antelope Addition and the east line of 18th Street as shown on said plat; thence easterly along the south line of said Lot 5 a distance of 64 feet more or less to a point being 15.0 feet southwesterly as measured concentric to the center line of track of an existing spur track, said point being the Point of Beginning. Thence continuing along the south line of said Lot 5 a distance of 20.0 feet more or less to a point being 84.0 feet east of said east line of 18th Street; thence southerly parallel to as measured at right angles and 84.0 feet east of said east line of 18th Street a distance of 11.17 feet more or less to a point being 15.0 feet southwesterly as measured concentric to the center line of track of an existing spur track; thence northwesterly along a line being 15.0 feet southwesterly as measured concentric to the center line of track of an existing spur track to the Point of Beginning.

Containing an area of 5.59 acres, more or less

Office of Real Estate
Omaha, Nebraska
July 24, 2000

Written by: JCO
166557.leg

UNION PACIFIC RAILROAD COMPANY
CONTRACTS & REAL ESTATE DEPARTMENT

R.D. UHRICH
ASSISTANT VICE PRESIDENT

ROOM 1100, 1418 DODGE STREET
OMAHA, NEBRASKA 68179
(402) 271-3753
FAX (402) 271-5493



August 8, 1995

EXHIBIT "D"

J. A. ANTHONY
DIRECTOR-CONTRACTS &
JOINT FACILITIES
D. D. BROWN
DIRECTOR-REAL ESTATE
J. L. HAWKINS
DIRECTOR-OPERATIONS SUPPORT
D. H. LIGHTWINE
DIRECTOR-REAL ESTATE
W. R. ULRICH
DIRECTOR-BUILDINGS

U. S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Cushman, Inc.
P.O. Box 82409
Lincoln, Nebraska 68501-9971

Gentlemen:

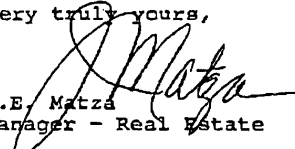
Reference is made to that certain Lease dated September 27, 1989 between Missouri Pacific Railroad Company and Cushman, Inc., covering a portion of the Railroad Company's property at Lincoln, Nebraska for parking. Said Lease is identified in the Railroad Company's records as Audit Number 151544.

Article 3 of this Lease provides for a periodic reevaluation of rental. This letter is to advise you that effective as of September 26, 1995 the rental shall be \$3,193.00 per annum.

Also, attached is a Hazardous Waste and Underground Storage Tank Questionnaire for you to complete and return to me.

You will be billed at the new rate on the next billing date. If you have any questions, please contact me at (402) 271-3194.

Very truly yours,


J.E. Matza
Manager - Real Estate

THIS SUPPLEMENTAL AGREEMENT is made and entered into as of the 9th day of August, 1990, by and between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter the "Lessor"), and CUSHMAN, INC., a Delaware corporation (hereinafter the "Lessee").

RECITALS:

By instrument dated September 27, 1989, the parties hereto or their predecessors in interest (if any), entered into an agreement (hereinafter the "Basic Agreement"), identified as Agreement Number 151544, covering the use of a portion of the Lessor's property at Lincoln, Nebraska.

The parties now desire to modify the Basic Agreement by increasing the lease site.

AGREEMENT:

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

Section 1. SUBSTITUTION OF PRINT.

The print dated June 29, 1990, attached hereto as Exhibit A, shall be and hereby is substituted for the print dated May 25, 1969, revised May 2, 1979 and September 22, 1989, attached to the Basic Agreement, and from and after the effective date herein whenever the term Premises is used in the Basic Agreement, or any amendment or supplement thereto (if any), such reference shall be deemed to refer to the Premises as shown on Exhibit A, hereto attached.

Section 2. INCREASE IN RENTAL.

Effective as of September 22, 1990, the Lessee agrees to pay to the Lessor the sum of \$2,500.00, payable annually, in lieu of the rental heretofore stipulated.

Section 3. ADMINISTRATIVE HANDLING CHARGE.

Upon the execution and delivery of this Supplemental Agreement, the Lessee shall pay to the Lessor an administrative handling charge of One Hundred Dollars (\$100.00).

Section 4. EFFECTIVE DATE.

This Supplemental Agreement shall be effective as of September 22, 1990.

Section 5. AGREEMENT SUPPLEMENTAL.

This agreement is supplemental to the Basic Agreement, as herein and/or heretofore amended (if applicable), and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement to be executed, in duplicate, as of the day and year first herein written.

WITNESS:

MISSOURI PACIFIC RAILROAD COMPANY

Ernestine Burtley

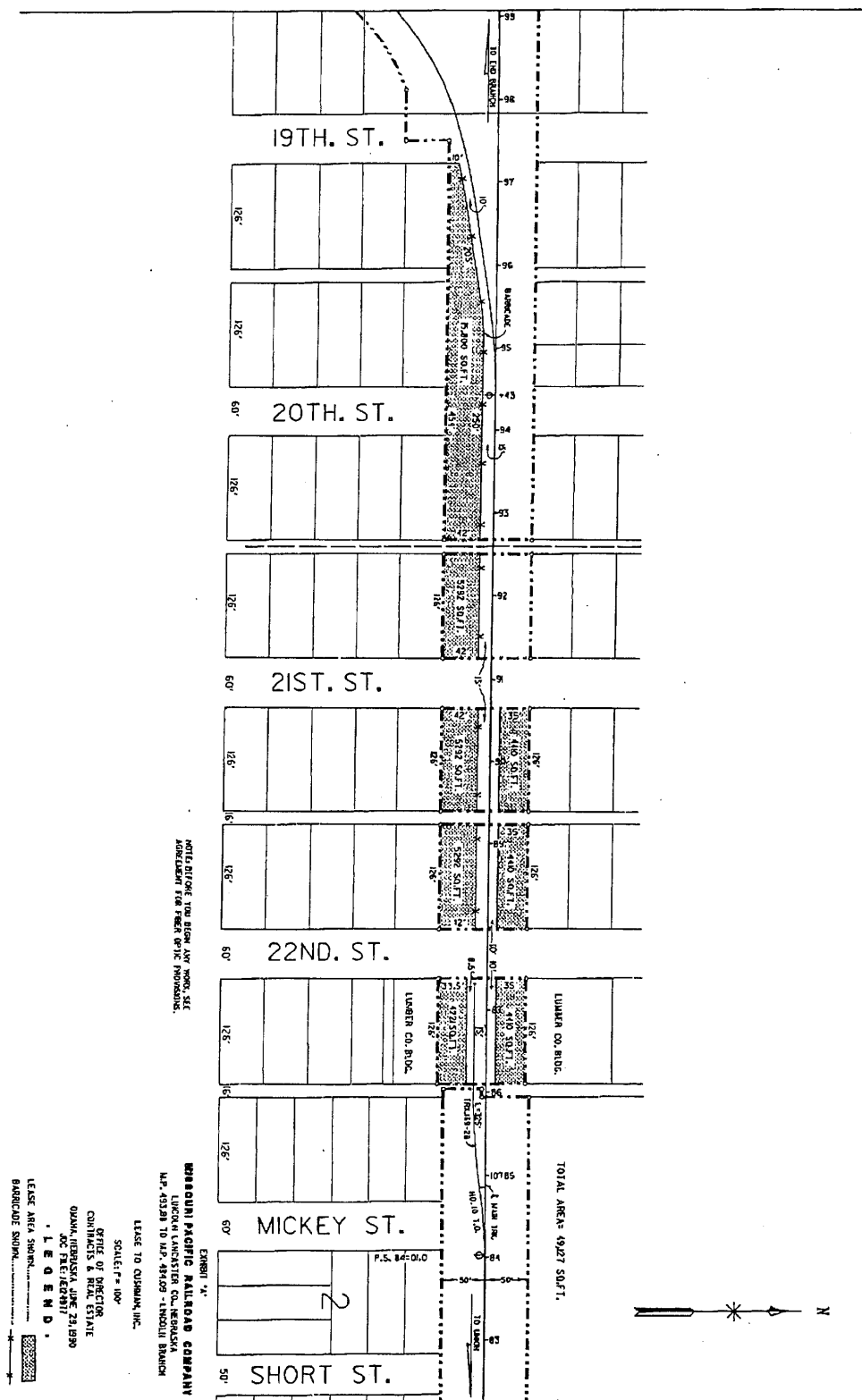
By D. H. [Signature]
Director Field Operations

ATTEST:

CUSHMAN, INC.

Janice Schmeidler
Title: Secretary
(Seal)

By H. C. Ogan
Title: V. P. Operations



LEASE OF INDUSTRIAL
PROPERTY AT LINCOLN, NEBRASKA

THIS AGREEMENT made and entered into this 27 day of September, 1989, by and between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter "Lessor"), and CUSHMAN, INC., a Delaware corporation, to be addressed at 900 North 21st Street, Lincoln, Nebraska 68501 (hereinafter "Lessee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. PREMISES; LOCATION; USE.

A. The Lessor, for and in consideration of the rental to be paid and the covenants and conditions to be performed by the Lessee as hereinafter provided, does hereby lease and let unto the Lessee, for the period and subject to the terms and conditions herein stated, that portion of the premises of the Lessor (hereinafter "Premises"), at or near Lincoln, Lancaster County, Nebraska, shown on the plat dated May 25, 1969, revised May 2, 1979 and September 22, 1989, marked Exhibit A, or described in the description, or both, hereto attached and hereby made a part hereof. The Premises leased under this agreement (hereinafter "Lease") may be used by the Lessee for parking and for other purposes incidental thereto, but shall not be used for any other purpose unless the Lessee has received prior written consent of the Lessor.

B. The grant of right herein made to the Lessee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, hereto attached.

Article 2. TERM.

A. The term of this Lease is for the period of one (1) year, commencing on the Twenty-sixth day of September, 1989, unless sooner terminated as hereinafter provided.

B. Thereafter, so long as neither party is in default, this Lease will renew itself without further documentation from year to year until terminated as provided herein. Each renewal term will be upon the same terms and conditions set forth herein, including, without limitation, the Lessor's right to reevaluate the rental as provided in Article 3B below.

Article 3. RENTAL; RENTAL REEVALUATION.

A. The Lessee covenants and agrees to pay to the Lessor, as rental for the use of the Premises during the leasehold term, or any renewal thereof, rental of One Thousand, Eight Hundred Dollars (\$1,800.00) per annum payable annually in advance for each and every year, subject to reevaluation as provided in Paragraph B below.

B. The Lessor may annually reevaluate the rental based upon which the above rental is computed. In the event the Lessor shall determine that the rental paid is no longer representative of a fair market rental, the Lessor may adjust the rental and shall advise the Lessee by written notice of such change. Such written notice shall be served at least thirty (30) days prior to the effective date of the new rental, it being understood, however, that rental adjustments shall not be made more often than once every twelve (12) months.

Article 4. SPECIAL PROVISIONS.

A. Special Provision entitled "Fence" is attached hereto and made a part hereof.

B. The Lessor hereby grants to the Lessee the license and permission, at its sole cost and responsibility, to pave Parcels "A", "B", "C" and "D", in accordance with the Special Provision entitled "Paving (Concrete, Asphalt or Other Hard Surface)", which is attached hereto and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first herein written.

WITNESS:

MISSOURI PACIFIC RAILROAD COMPANY

Christine Buttery

By: *DA*
General Director -
Contracts & Real Estate

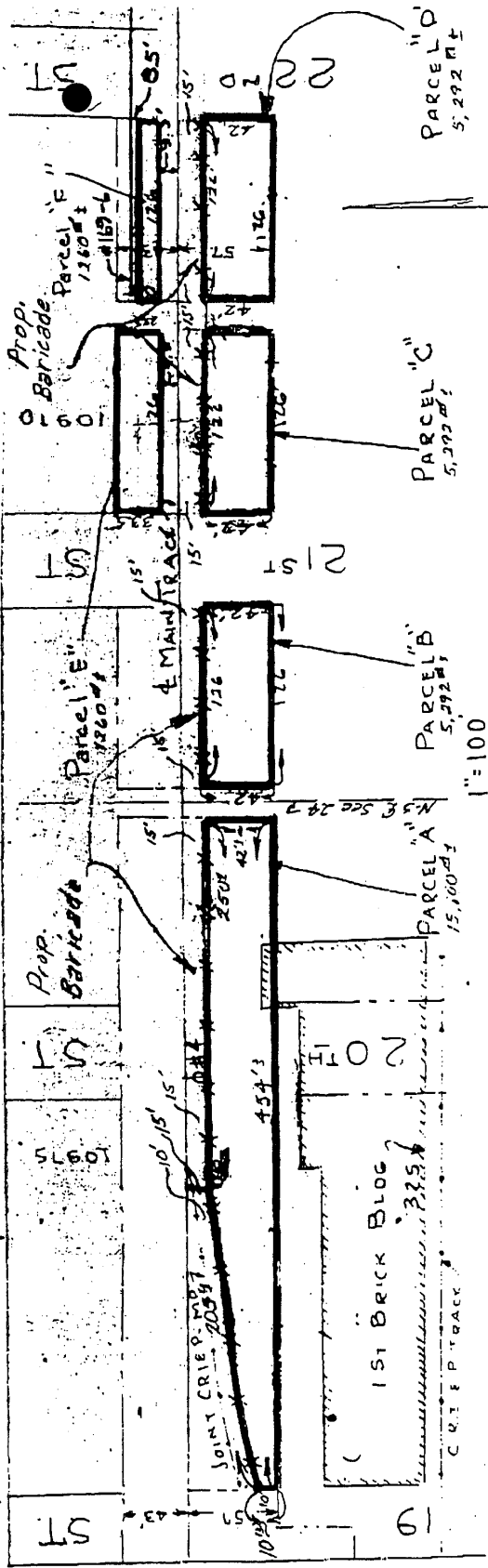
ATTEST:

CUSHMAN, INC.

L. L. Anderson
Secretary

By: *J. C. Ogden*
Title: *VP of Operations*

(Seal)



N 1/2 Section 24, T 10N., R. 6E.
Lancaster County, Nebraska

EXHIBIT A

MISSOURI PACIFIC RAILROAD COMPANY
Lincoln, Lancaster County, Nebraska
M.P. 494 - Weeping Water Branch

Lease to CUSHMAN, INC.

May 25, 1969
rev. 5/2/79, 9/22/89
File No. S-1689

* L E G E N D *

Lease Area Shown
RRCO R/W Outlined

EXHIBIT B

Section 1. IMPROVEMENTS.

It is agreed that no improvements placed upon the Premises by the Lessee shall become a part of the realty.

Section 2. PRIOR RIGHTS.

A. This Lease is made without covenant of title or to give possession or for quiet enjoyment.

B. This Lease is made subject to all outstanding superior rights, including, but not limited to, underground facilities, rights-of-way for highways and for power, fiber optics and other communication lines and facilities, and the right of the Lessor to renew such outstanding rights, to renew the term thereof and to grant such new or additional rights, licenses or easements unto others as the Lessor in its sole discretion should deem necessary, convenient or appropriate. In the Lessee's use and occupancy of the Premises, the Lessee shall not disturb, damage or interfere with any such facilities of the Lessor or nonparties.

Section 3. PAYMENT OF RENTAL; UNPAID RENTAL.

A. All rental shall be paid in lawful money of the United States of America at the office of Union Pacific Railroad Company in Omaha, Nebraska, or at such other place as the Lessor shall designate in writing.

B. In the event that the rental herein specified to be paid has not been received by the Lessor within fifteen (15) days after the date that such rental payment is due, a finance charge of ten (10) percent of each unpaid rental payment shall be assessed against the Lessee and interest, at the rate of thirteen (13) percent per annum, shall be assessed against the unpaid rental and shall accrue until such rental payments are current and all interest payments and finance charges have been paid.

Section 4. TAXES AND ASSESSMENTS.

A. The Lessee further agrees to pay, before the same shall become delinquent, all taxes levied during the life of this Lease upon the Premises and upon any buildings and improvements thereon, or to reimburse the Lessor, either directly or as an amount included in Lessee's rental payment for sums paid by the Lessor for such taxes, except taxes levied upon the Premises as a component part of the railroad property of the Lessor in the state as a whole.

B. If, during the life of this Lease, any street or other improvement shall be made, whether consisting of new construction, maintenance, repairs, renewals, or reconstruction, and the whole or any portion of the cost of which is assessed against or is fairly assignable to the Premises, the Lessee agrees to pay in addition to the other payments herein provided for:

- (1) Ten and one-half per cent (10-1/2%) per annum on the amount so assessed against or assignable to the Premises, when expenditures by the Lessor for such improvements are properly chargeable to capital account under accounting rules of the Interstate Commerce Commission current at the time; and
- (2) the entire amount so assessed against or assignable to the Premises when expenditures for such improvements are not properly chargeable to capital account under said accounting rules.

Section 5. WATER RIGHTS.

This Lease does not grant, convey or transfer any right to the use of water under any water right owned or claimed by the Lessor which may be appurtenant to or otherwise associated with the Premises. All right, title, and interest in and to such water is expressly reserved unto the Lessor, its successors and assigns, and the right to use same or any part thereof may be obtained only by the prior written consent of the Lessor.

Section 6. CARE AND USE OF PREMISES.

A. In the Lessee's use and occupancy of the Premises, the Lessee will observe and exercise reasonable care and caution against damage or destruction to the Premises by fire or otherwise. The Lessee shall not do, suffer or permit anything upon or about the Premises which will or may increase the fire hazard thereon. The Lessee shall not commit or suffer waste thereof or injury thereto and shall not use or permit the use of the Premises for any unlawful purpose nor create or maintain thereon any nuisance or any offensive object, matter or thing. The Lessee, at Lessee's expense, will at all times keep the Premises in a safe, neat, clean and presentable condition including all sidewalks and public ways located on the Premises. The Lessee, at Lessee's expense, shall also keep the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from debris, snow, ice and any other substance which would or might create a hazard thereon.

B. The Lessee shall not install, maintain or permit any sign or advertisement upon the Premises, except signs relating to the Lessee's business; provided such signs are properly installed and maintained by the Lessee and present a neat appearance. The Lessor reserves the right to place and maintain at prominent places on the Premises, signs advertising the name UNION PACIFIC RAILROAD COMPANY.

C. In the event any building or other improvement not belonging to the Lessor on the Premises is damaged or destroyed by fire, storm, or other casualty, the Lessee shall, within thirty days after such happening, remove all debris and rubbish resulting therefrom; and if Lessee fails to do so, the Lessor may enter the Premises and remove such debris and rubbish, and the Lessee agrees to reimburse the Lessor, within thirty days after bill rendered, for all expenses incurred in such cleanup.

D. In the Lessee's occupancy and use of the Premises, the Lessee, at Lessee's expense, shall conform and comply with all applicable laws, ordinances and public regulations now or hereafter in effect, and hold harmless the Lessor from any failure so to do and from any fines, penalties, forfeitures or judgments resulting from Lessee's failure to conform and comply with all such laws, ordinances and public regulations.

E. It is further agreed that no gunpowder, gasoline, dynamite, or other explosive, flammables or hazardous materials shall be stored or kept upon the Premises. Nothing herein contained, however, shall prevent the storage of those hazardous commodities, if any, specified in Article I of the Articles of Agreement, nor the storage of oil or gasoline where same are used by the Lessee for fuel in the business carried on by the Lessee on the Premises, and are stored in quantities reasonable for such purposes; PROVIDED, however, that in all such excepted cases, the Lessee shall not store such commodities within fifty (50) feet from the center line of any main track and strictly comply with all federal, state and municipal laws and regulations relating to the storage of such commodities.

Section 7. HAZARDOUS SUBSTANCES AND WASTES.

A. Lessee shall comply with all federal, state and local environmental laws and regulations in its use of the Premises, including the Resource Conservation and Recovery Act, as amended (RCRA), and the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA). Lessee shall not treat, store or dispose of hazardous wastes on the Premises, as defined in RCRA, without first obtaining the Lessor's written permission. If such permission is granted, the Lessee shall obtain any necessary permits and identification numbers and provide the Lessor the identification numbers and copies of the permits. Lessee shall also assume all responsibility for and costs associated with any closure and/or post-closure care required. In addition, Lessee shall not install any underground storage tanks as defined in RCRA without first obtaining the Lessor's written permission. If such permission is granted, Lessee shall obtain any necessary permits, notify the proper authorities, and provide the Lessor with copies of such permits and notifications. Furthermore, Lessee shall assume all responsibility for and shall indemnify and defend Lessor against all costs and claims associated with a release or leak of any tank contents.

B. Lessee shall use its best efforts and safety practices to prevent the release of oil and hazardous substances as defined in CERCLA on the Premises. Notwithstanding, Lessee assumes all responsibility for the investigation and cleanup of any such release and shall indemnify and defend the Lessor, its officers, agents and employees, for all costs, including environmental consultant and attorney fees, and claims resulting from or associated with any such release. This provision shall continue in full force and effect regardless of whether this Lease is terminated pursuant to any other provision, or the Premises are abandoned and vacated by the Lessee.

Section 8. UTILITIES.

A. The Lessee shall arrange, secure, and be responsible for all water, gas, heat, electricity, power, sewer, telephone, and any and all other utilities and services supplied and/or furnished to the Premises in connection with the use of the Premises by the Lessee as herein provided, together with any and all taxes and/or assessments applicable thereto.

B. It is agreed that all utilities and services outlined above should be separately metered to the Lessee. In the event such utilities and services are not separately metered to Lessee, Lessee shall pay a reasonable proportion of the cost of such utilities and services, to be determined by the Lessor, of all charges jointly metered with other portions of the Lessor's property.

C. It is understood and agreed that none of the above utilities or services may be installed or permitted upon the Premises without first securing the written consent and approval of the Lessor for such installations and services.

Section 9. LIENS.

The Lessee shall pay, when due and before any lien shall attach to the Premises, if the same may lawfully be asserted, all charges for water, gas, light, and power furnished; and for rental or use of sewer facilities serving the Premises, and fully pay for all materials joined or affixed to the Premises, pay for all taxes and assessments, and pay in full all persons who perform labor upon the Premises, and shall not permit or suffer any mechanic's or materialman's or other lien of any kind or nature to be created or enforced against the Premises for

any work done or materials furnished thereon at the instance or request or on behalf of the Lessee; and the Lessee agrees to indemnify, hold harmless, and defend, the Lessor and Lessor's property against and from any and all liens, claims, demands, costs, and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials or other things furnished.

Section 10. LESSOR'S PRIOR CONSENT REQUIRED FOR BUILDINGS, IMPROVEMENTS, STRUCTURES, DEVICES, TRackage; LESSEE NOT TO IMPAIR CLEARANCES.

A. Detailed plans for all buildings, platforms, loading or unloading devices, structures and all alterations, improvements and/or additions thereto, which the Lessee shall desire to make upon the Premises or adjacent property or trackage, shall be presented to Lessor for Lessor's consent prior to installation upon the Premises. If the Lessor shall give its consent, the consent shall be deemed conditioned upon Lessee acquiring a permit to do such work from appropriate governmental agencies, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.

B. All buildings, platforms, loading or unloading devices, structures, and/or material or obstruction of any kind erected, maintained, placed, piled, stacked, or maintained upon the Premises after the commencement of this Lease and any alterations, improvements, and/or additions thereto or to buildings, platforms, loading or unloading devices structures located on the Premises prior to the commencement of this Lease shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Lessee in strict conformity with Lessor's clearance standard entitled "Union Pacific Railroad Company's Standard Minimum Clearances for All New Structures and Facilities Along Industry Tracks," (hereinafter "Clearance Standard") as in effect at the time of the placement, construction, operation, maintenance, repair, renewal, modification or reconstruction.

C. The Lessor consents to Lessee's use of buildings, platforms, loading or unloading devices, structures and/or material or obstructions of any kind located upon the Premises which are in place at the time the Lessee takes possession of the Premises, or which were constructed, placed, piled, stored, stacked, or maintained upon the Premises with the express consent of the Lessor under the terms of a previous lease between Lessor and Lessee, but which are not in conformity with Lessor's current Clearance Standard.

D. Compliance with Lessor's Clearance Standard shall not relieve Lessee from the obligation to fully comply with the requirements of any federal, state, or municipal law or regulation; it being understood and agreed that Lessor's Clearance Standard are in addition to, and supplemental of, any and all requirements imposed by applicable law or regulation and shall be complied with unless to do so would cause Lessee to violate an applicable law or regulation.

E. The Lessee shall not locate or permit the location or erection of any poles upon the Premises, nor any beams, pipes, wires, structure or other obstruction over or under any tracks of the Lessor without the written consent of the Lessor. Lessor shall consider requests of the Lessee to impair clearances which are necessitated by the operational requirements of the Lessee, but Lessor shall not be obligated to consent to any impairment. Any necessary permission to impair clearances to which the Lessor has consented must be secured by the Lessee at its own expense, in advance of any impairment; and Lessee shall comply promptly and strictly with all requirements or orders issued by appropriate state or other public authority relating to such impairments.

F. Lessee assumes the risk of and shall indemnify, hold harmless, and defend the Lessor, its officers, agents, and employees, against and from all injury to or death of persons, or loss of or damage to property of the parties hereto and their employees and agents and to the person or property of any other person or corporation resulting from the Lessee's noncompliance with the provisions of this Section 10, or resulting directly or indirectly from any impairment of the clearances described in this Section 10, whether the Lessor had notice thereof or consented thereto, or whether authorized by applicable state or other public authority pursuant hereto, or existing without compliance with the provisions of this Section 10.

G. Any knowledge on the part of the Lessor of a violation of the clearance requirements of this Lease, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve the Lessee of its obligation to indemnify and defend the Lessor, its officers, agents, and employees, for losses and claims resulting from such violation. However, the terms of this Section shall not apply to losses resulting from impairments or facilities created or constructed by the Lessor that will not benefit the Lessee.

Section 11. ASSUMPTION OF RISK; INDEMNITY.

A. The Lessee accepts the Premises in its present condition and hereby assumes the risk of any injury to and death of persons and damage to or destruction of property resulting from the condition of or any defects anywhere in or upon the Premises, regardless of whether such condition or defects are known or unknown, apparent or latent, and regardless of whether such condition or defects exist at the commencement of this Lease or at some later time.

B. The occupation of and activities upon the Premises by the Lessee will expose the Lessor's property, operations and facilities to additional hazards; and as one of the material considerations for this Lease, the Lessee agrees to assume the risk of and to indemnify and hold harmless the Lessor as follows:

1. The Lessee assumes the risk of and shall indemnify and hold harmless the Lessor, and its affiliates, their officers, agents and employees, against and from any and all liability, loss, damage, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, arising from or growing out of any injury to or death of persons whomsoever or loss of or damage to property whatsoever. The right to indemnify shall accrue when such injury, death, loss or damage occurs from any cause and is associated in whole or in part with, incidental to or caused by the occupation or use of the Premises, or any activity upon the Premises by the Lessee, its employees or agents, or by any person on or near the Premises by reason of any relation, contractual or otherwise, with the Lessee, its officers, employees or agents, or caused by Lessee's breach of this Lease. Except as provided in subparagraph 2 below, the Lessee shall not indemnify the Lessor when any such injury, death, loss or damage is caused by the sole, direct negligence of the Lessor, its officers, employees or agents.

2. The Lessee assumes all risk of and agrees to indemnify and hold harmless the Lessor from and against all demands, liability, claims and actions asserted by any person, including an insurer, arising out of or by reason of loss, damage or destruction of or to any and all improvements or other property (including, without limitation, rail cars and contents) on the Premises or in proximity to the Premises if used in connection with or incidental to the occupation of the Premises by the Lessee, and any and all incidental loss or injury to the business of the Lessee, (1) where occasioned by fire or other casualty, regardless of whether caused or contributed to by operations of the Lessor or any negligence of the Lessor, its officers, agents or employees; excepting only loss, damage or destruction of rail cars resulting from fire caused by the sole negligence of the Lessor, its officers, agents or employees and loss, damage or destruction of shipments in the course of transportation, which shall be governed by the contract of carriage; or (2) where occasioned by water to the Premises or to property located thereon belonging to or in the custody or control of the Lessee, including buildings and contents, regardless of whether such damage is caused or contributed to by the position, location, construction or condition of the roadbed, tracks, bridges, dikes, ditches or other structures of the Lessor.

Section 12. TERMINATION ON DEFAULT.

A. It is further agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by the Lessee, shall, at the option of the Lessor, forthwith work a termination of this Lease, and all rights of the Lessee hereunder; provided, however, that the Lessee shall not be deemed in default under this Lease unless the Lessor has furnished written notice to the Lessee of Lessee's default, and the Lessee has failed to begin to cure that default within seventy-two (72) hours after receipt of Lessor's default notice or after commencing a cure, has failed to proceed diligently with its cure efforts.

B. After a default by the Lessee, the Lessor may at once re-enter upon the Premises and repossess itself thereof and remove all persons therefrom or may resort to an action of forcible/unlawful entry and detainer, or any other action to recover the same. A waiver by the Lessor of the breach by the Lessee of any covenant or condition of this Lease shall not impair the right of the Lessor to avail itself of any subsequent breach thereof.

Section 13. TERMINATION ON NOTICE.

A. This Lease may be terminated by written notice given by either the Lessor or the Lessee to the other party on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date on which such notice shall be given.

B. Upon such termination and vacation of the Premises by the Lessee, the Lessor shall refund to the Lessee, on a pro rata basis, any unearned rental paid in advance.

Section 14. NOTICE.

A. Any notice, demand, request, consent, approval or communication that either party hereto desires or is required to give to the other party under this Lease shall be in writing. Notice shall be deemed to have been given to the Lessee by serving the Lessee personally or by mailing the same, postage prepaid, to the Lessee at the Premises or the last address known to the Lessor. Notice may be given to the Lessor by mailing the same, postage prepaid to the office of the General Director, Contracts & Real Estate, Room 1200, 1416 Dodge Street, Omaha, Nebraska 68179.

B. Postal notices shall be by certified mail, return receipt requested, and such notice shall be deemed given on the date deposited with the United States Postal Service.

Sec. 15. CONSENT.

Wherever the consent, approval, judgment or determination of Lessor is required or permitted under this Lease, Lessor shall exercise good faith and reasonable business judgment in granting or withholding such consent or approval or in making such judgment or determination and shall not unreasonably withhold or delay its consent, approval, judgment or determination.

Section 16. SURRENDER; ABANDONMENT; VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. The Lessee agrees that upon the expiration, abandonment of Premises by Lessee, or sooner termination of this Lease, the Lessee will peaceably and quietly surrender possession of the Premises to the Lessor, or the Lessor's successors and assigns, without Lessor giving any notice to quit or demand for possession. Lessee's non-use of the Premises for the purposes described in Article I of the Articles of Agreement of this Lease continuing for thirty (30) days shall be sufficient and conclusive evidence of such abandonment. No later than the expiration or termination date of this Lease, the Lessee shall (a) remove from the Premises, at the expense of the Lessee, all structures, property and other materials not belonging to the Lessor; and (b) restore the surface of the ground to as good a condition as the same was in before such structures were erected, including, without limiting the generality of the foregoing, the removal of foundations of such structures, the filling in of all excavations and pits and the removal of all debris and rubbish, all of which shall be performed at Lessee's expense. If the Lessee should fail to perform such removal, the Lessor may perform the work and the Lessee shall reimburse the Lessor for the cost thereof within thirty (30) days after bill rendered.

B. In the case of the Lessee's failure to remove such structures and other property, the same, at the option of the Lessor, shall upon the expiration of thirty (30) days after the termination of this Lease, become and thereafter remain the property of the Lessor; and if within one (1) year after the expiration of such thirty-day period the Lessor elects to and does remove, or cause to be removed, said structures and other property from the Premises and the market value thereof or of the material therefrom on removal does not equal the cost of such removal plus the cost of restoring the surface of the ground as aforesaid, then the Lessee shall reimburse the Lessor for the deficit within thirty (30) days after bill rendered.

Section 17. PROTECTION OF FIBER OPTICS.

A. Fiber optic cable systems may be buried on the Lessor's property. Lessee shall telephone the Lessor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Premises. If it is, Lessee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Premises.

B. In addition to the liability terms elsewhere in this Lease, the Lessee shall indemnify and hold the Lessor harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the Lessee, its contractor, agents and/or employees, that causes or in any way or degree contributed to (a) any damage to or destruction of any telecommunications system by the Lessee, and/or its contractor, agents and/or employees, on Lessor's property, (b) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Lessor's property, and/or its contractor, agents and/or employees, on Lessor's property, and/or (c) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

Section 18. LESSEE NOT TO SUBLET OR ASSIGN.

The Lessee agrees not to let to sublet the Premises, in whole or in part, or to assign this Lease without the consent in writing of the Lessor, and it is agreed that any transfer or assignment of this Lease, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Lessor, shall terminate this Lease.

Section 19. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 18 hereof, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

SECOND SUPPLEMENTAL AGREEMENT

This Second Supplemental Agreement ("Second Agreement") is made and entered into this 13 day of March, 2001 by and between Lincoln Lumber Company, a Nebraska corporation (LLC) and Cushman's, Inc., dba Textron Turf Care and Special Products (Textron).

This Second Supplemental Agreement amends the following:

- A. Lease of Industrial Property dated September 27, 1989 (Basic Agreement)
- B. Supplemental Agreement dated August 9, 1990 and
- C. First Supplemental Agreement dated August 8, 1995:

all of the above hereinafter referred to as "Lease Documents".

The Basic Agreement and the above supplemental agreements were entered into between Missouri Pacific Railroad Company, a Delaware Corporation (MoPac) and Cushman's, Inc. MoPac was purchased by Union Pacific Railroad (UP) who succeeded to all of MoPac's right, title and interest in said Lease Documents.

LLC purchased the land covered by the Lease Documents from UP pursuant to a deed recorded in the office of the Register of Deeds of Lancaster County, Nebraska recorded as Instrument No. 2001-000995. LLC states that it is the current owner of said land and it has the authority to execute this Second Agreement.

Both parties state that they have copies of all the above Lease Documents and that all of the Lease Documents are incorporated herein by reference as if they were attached hereto as an Exhibit.

Said Lease Documents are amended by the parties as follows:

SECTION 1. PREMISES

The parties acknowledge that prior to the execution of this Second Agreement, Textron was leasing a total of 49,127 sq. ft. of land from Union Pacific as shown on a print dated June 29, 1990 attached as Exhibit A to the Supplemental Agreement dated August 9, 1990. The parties further acknowledge that Textron has been and is now using an additional 42,988 sq. ft. of LLC's land for which no written lease agreement is in existence. The leased premises under this Second Agreement are hereby increased to a total of 92,115 sq. ft. to encompass the additional 42,988 sq. ft. of land that Textron has been using. Therefore, the parties agree as follows:

- A. Effective November 8, 2000, Textron is leasing 92,115 sq. ft. from LLC.
- B. The 92,115 sq. ft. is shown in yellow on the attached Exhibit A. Exhibit A is not effective until it has been initialed by both parties.
- C. Premises as used in the Lease Documents and in this Second Supplemental Agreement shall refer to the 92,115 sq. ft.

SECTION 2. TERM

The term of the lease shall be 15 years from November 8, 2000 to the 7th day of November, 2015. Section 13 of Exhibit B of the Basic Agreement is hereby terminated as of the date that this Second Agreement becomes effective.

SECTION 3. RENTAL

Rental for the premises shall be \$27,000.00 per year for the 10 year period beginning November 8, 2000. At the end of this 10 years, rent shall increase to \$39,500.00 per year for the 5 years beginning November 8, 2010.

A. The first payment is due upon execution of this lease for the term November 8, 2000 thru November 7, 2001.

B. The second yearly payment and all payments thereafter shall be due prior to the beginning of each term year, i.e. November 8, 2001, November 8, 2002 and so forth.

C. All rent shall be made payable to LLC at the following address:
932 N. 23rd St.
Lincoln, Ne. 68503

D. In addition to the basic rent, Textron shall pay all real estate taxes assessed against the Premises during the term of this Second Agreement and shall hold LLC harmless for the same.

SECTION 4. RESERVATION OF EASEMENT RIGHTS

A. LLC hereby reserves the right to grant easements under, over and through the Premises for fiber optic cable, for underground storm sewer that may be constructed by the City of Lincoln, and/or for other uses as may be approved by LLC; provided however, that the use of the Premises pursuant to any such easement shall not unreasonably interfere with Textron's use of the Premises. Any and all revenue derived from the placement of any such easements shall be collected and retained by LLC.

B. LLC reserves the right to move people, vehicles, and equipment across the Premises to maintain and repair railroad tracks and to obtain entrance to the land located west of the Premises, which land is owned by LLC, and is otherwise landlocked.

C. Prior to the commencement of any construction on the Premises by LLC and/or its assigns, Textron will be given written notice of the same, a drawing showing where the construction will take place and a time schedule as to when construction will commence and when it will terminate. The purpose of this is to enable Textron to plan for the movement of material and supplies across the leased land prior to when the construction actually commences.

D. LLC and/or its assigns will be responsible for taking necessary safety measures to protect the employees of Textron and the general public prior to the commencement of any work on the premises.

E. After construction has been completed, LLC and/or its assigns will restore the construction premises to the condition that it was prior to the commencement of the construction.

F. Textron currently has fiber optic line in the leased area. See Exhibit B. Prior to the construction by any third party in the Premises, LLC will furnish said third party with a copy of Exhibit B.

G. The track right-of-way which is retained by LLC is only 12' wide as shown on the map. This only allows for 18" on each side of the railroad ties. Care must be taken when moving snow, equipment, etc. to stay away from the end of the ties. Nor are you to grade or change ground formations along and near the ends of railroad ties on either the north or south side for the entire length of the leased ground that joins LLC railroad trackage. In the event that Textron should damage the track, ties, or any part thereof, they will immediately repair any damage at their expense.

SECTION 5, USE OF THE PREMISES

Textron, its employees, agents and invitees can use the Premises without restriction 24 hours a day. The Premises can be used for pedestrian travel and for the movement of materials and supplies by motor vehicle and other powered machinery.

The parties further agree:

A. Textron can continue to park vehicles on the premises as they have been doing under the Leased Documents.

B. Textron can continue to maintain trash-refuse containers and compactors on the Premises.

C. Textron can place generators and other electric equipment adjacent to their buildings which equipment may extend over and onto the Premises in order to supply electrical power for Textron's facilities.

D. Textron will not block completely the Premises for any period of time as both parties recognize that this area must be kept open for fire and other emergency vehicles. Provision must be made for a traffic lane to be open at all times at least 10' wide on each side of the track.

E. Textron will provide access to the railroad tracks from the Premises if LLC is doing track maintenance or repair. In this regard, LLC will advise Textron in writing as to the date of the work, the area it will be utilizing and the estimated time of completion.

F. Textron will not park any vehicles, i.e. machines or other objects on the premises that may hang over onto the track or which the railroad company indicates would impede the movement of railroad cars on the track.

SECTION 6. NEW CONSTRUCTION

Textron shall not construct any buildings, fences, or other improvements without the expressed written consent of LLC which consent shall not be unreasonable withheld.

SECTION 7. SALE OF LEASE OF TEXTRON PROPERTY.

If Textron sells or leases any or all of its property that it currently owns which is adjacent to the Premises, LLC agrees that Textron may:

A. Sublet that portion of the Premises that is adjacent to the property that is being leased or sold to the third party buyer or lessee; and/or

B. Permit the third party to cross the remaining Premises adjacent to the premises being sublet in subparagraph A so that the third party or lessee has access to the subject premises from public streets,

provided, however, that all rent payments due under this Second Agreement will be the sole responsibility of Textron. Further, Textron will remain liable for all obligations and conditions set forth in the Second Agreement, which benefit either LLC, the city of Lincoln, or the general public, and Textron will see that said obligations and conditions are carried out; provided further that except as authorized in this Section 7, no part of the leased premises may be sublet without the express written approval of LLC.

SECTION 8. NAME CHANGE OR SALE TO A THIRD PARTY

If Textron's name is changed, or if a new entity is created as a result of restructuring, or if the Textron property is hereafter owned by two or more different entities as a result of restructuring, or if all or part of the Textron property is sold to another entity, then the parties agree:

A. That this agreement remains in full force and effect;

B. That if any property is sold or leased under the conditions set forth above, that the adjacent Premises can be used by the new third party buyer or third party lessee, subject to the new buyer or lessee agreeing in writing to assume all duties and obligations set forth in this Second Agreement including the payment of rent, as it pertains to the Premises adjacent to the property being sold or leased.

C. Notwithstanding any other provision of this Second Agreement, LLC shall have the right to review the financial statements of any assignee of Textron to determine whether such assignee would be capable of meeting its obligations under such Agreement, including the payment of rent, and to refuse to consent to an assignment of the lease to such assignee if it reasonably appears to LLC that such assignee would not be capable of doing so.

This provision is intended to cover the situation where Textron agrees to sell all or part of the property located north of the tracks, but Textron maintains its facilities located south of the tracks. If that occurs, Textron is given the flexibility to assign its interest in this lease pertaining to the premises adjacent to that parcel being sold or leased to the buyer or lessee of the property.

SECTION 9 PURCHASE OPTION

If at any time during the term of this lease, LLC receives an offer to sell all or part of the Premises to a third party, then Textron shall have the first right to purchase said property as follows:

A. If at any time during the term of this lease LLC shall receive a bonafide offer other than at public auction, from a third person (which does not have the power of eminent domain) for the purchase of all or part of said Premises, which offer LLC desires to accept, LLC shall promptly deliver to Textron a copy of such offer and Textron may, within ten days thereafter, elect to purchase said property on the same terms as those set forth in such offer. If Textron shall not accept

offer within the ten day period, said right of first refusal shall cease to exist, but this Lease shall continue otherwise on all of the other terms, covenants and conditions in this Lease as set forth herein.

B. This right of first refusal shall be inapplicable to a transfer, by way of sale, gift, devise, including a trust, to or for a party related to LLC, or to any transfer in whole or in part from such related party to another, but shall apply to any subsequent transfer to a third person. A "related party" shall include a partnership of which LLC is a member, joint ownership, or ownership in common which includes the then owner of the Premises, or a corporation, the majority of whose securities is owned by LLC or any one of more of the foregoing parties. If the then owner of said Premises shall be a corporation "related party" shall include an affiliate, subsidiary, or parent corporation, a successor by merger or consolidation, or the holder or holders of the then majority of the securities of such corporation.

C. An offer made by LLC for the sale or other transfer of all or part of the Premises to a third person, other than in lieu of condemnation, shall give Textron the same rights under this Article as if such offer were an acceptable offer made to LLC by a third person.

D. If said property shall be purchased and conveyed to Textron under the terms of this right of first refusal, any prepaid rent shall be apportioned and applied on account of the purchase price.

E. If Textron gives the required notice within the ten day period as specified above, closing shall be 45 days after the notice was given to enable Textron to arrange necessary financing.

SECTION 10. GENERAL

A. Nothing herein prevents Textron from using the Premises in the same manner that it has been using the same in the past under leased documents.

B. Textron will only move machinery, equipment or vehicles over the tracks at North 21st Street. No other crossing of the tracks by machinery, equipment or vehicles will be made without LLC's written consent.

C. LLC has no objection if Textron's employees walk across the track to go from the Premises on the south to the Premises on the north; provided, however, all employees are doing so at their risk and Textron will hold LLC harmless for any injuries that Textron's employees may sustain.

D. The existing power poles on the Premises or adjacent thereto can remain in place. If they need to be replaced, Textron can replace the same without further authorization provided they are placed adjacent to the present location.

E. There currently exists an LES power line which crosses the tracks from power poles located on the premises to the north to power poles located on the premises to the south. This power line can remain in place. If the line needs to be replaced, Textron can replace the same provided the new line remains in the same vicinity as it is now and it remains at the same elevation.

F. Textron will be solely responsible for the following pertaining to the premises:

- * snow removal
- * picking up litter and debris
- * maintaining the current ground cover. If certain asphalt or concrete

needs to be repaired or replaced, Textron will repair or replace the same at its cost.

- * Lighting the premises. LLC is under no obligation to provide any lighting.
- * Security. LLC is under no obligation to provide any security
- * Insurance. LLC will be named as additional insured.

G. Textron hereby indemnifies and agrees to hold LLC harmless for any and all damages to Textron's property on the leased Premises, including without limitation LES power poles, LES power line, fire hydrants, fibre optic cables and related equipment, trash containers, power equipment and other property placed on the premises by Textron, provided LLC does not cause the damage. If the damage is caused by LLC, LLC shall be responsible for all required repairs.

H. Agreement No. 149656 providing for the maintenance of the crossing by Lessor's predecessor is hereby cancelled as of the date of this Supplemental Agreement. Lessor will apply to the appropriate governmental authorities to disconnect and remove the existing electronic warning signal and to cease maintenance of the crossing. If approval is granted, LLC will provide warning and protection for such crossing as required by the State of Nebraska and City of Lincoln. Further LLC will continue to maintain the railroad track thru north 21st Street.

I. It is agreed among the parties that Cushman will be self-insured and as such Cushman will supply coverage for any situation that arises which required liability coverage. LLC will rely on this coverage on all liability claims. It is agreed that if Textron sells their Cushman division, LLC will require adequate insurance coverage from Textron's buyer.

J. As used herein, the word "Premises" and the word "premises" refer to the 92,115 sq. ft. set forth in Section 1C of this Agreement.

SECTION 11. EFFECTIVE DATE

The parties agree that the effective date of this second supplemental agreement is November 8, 2000.

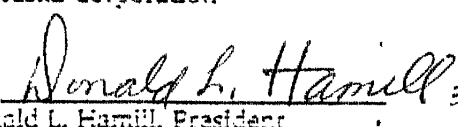
SECTION 12. SUPPLEMENTAL NATURE OF AGREEMENT.

This agreement is supplement to the basic agreement as herein and heretofore amended and nothing herein contained shall be construed as amending or modifying the Lease Documents except as specifically provided for herein.

CUSHMAN INC., A Delaware
Corporation, dba Textron Turf Care &
Specialty Products

LINCOLN LUMBER COMPANY, A
Nebraska Corporation

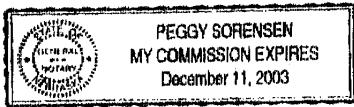
By: 
Jeff Bailey, Vice President, Operations

By:  3/16/2
Donald L. Hamill, President

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

Before me, a notary public qualified for said county, personally came Donald L. Hamill, President of Lincoln Lumber Company, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of Lincoln Lumber Company.

WITNESS my hand and notarial seal this 16 day of March, 2001.

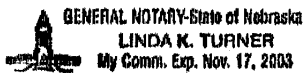


Peggy Sorensen
Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

Before me, a notary public qualified for said county, personally came ^{Jeff Bailey} ~~Jeff Bailey~~, Vice President of Operations of Cushman Inc., dba Textron Turf Care & Specialty Products, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of Cushman Inc., dba Textron Turf Care & Specialty Products.

WITNESS my hand and notarial seal this 16 day of March, 2001.



Linda K. Turner
Notary Public

Wendy Williams

Wendy - These are the ones I know

PLACE ARROW INDICATING NORTH
 DIRECTION RELATIVE TO CROSSING

UNDERGROUND WIRELINE CROSSING
 750 VOLTS OR LESS

NO SCALE

NOTES: ALL AVAILABLE DATA HAS BEEN
 FURNISHED IN TO THE FIELD OFFICE.

1. ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM C. IF OTHER ANGLES AS NOTED.

2. ALL WIRELINES MUST BE CARRIED UNDER TRACKS. NO. OF WIRES.

3. CARRYING MATERIAL: SPECIAL, BEING METALLIC, NONMETALLIC, AND PAPER.

4. MINIMUM OF 30" FROM THE C&N OR ANY RAILROAD CROSSING, OR ANY CONDUIT, OR FROM ANY SWITCHING AREA.

5. SIGNAL DEPRESSANTIVE MUST BE PRESENT DURING INSTALLATION OF RAILROAD SIGNALS AND IN THE VICINITY OF CROSSING.

6. ALL WIRELINE PIPES MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING RAILROAD OPTIC CABLE. ANY EXCAVATION REQUIRING
 2 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

7. FORMULA TO DETERMINE CARRYING LENGTH WITH ANGLE OF CROSSING OTHER THAN 90°

8. DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK.

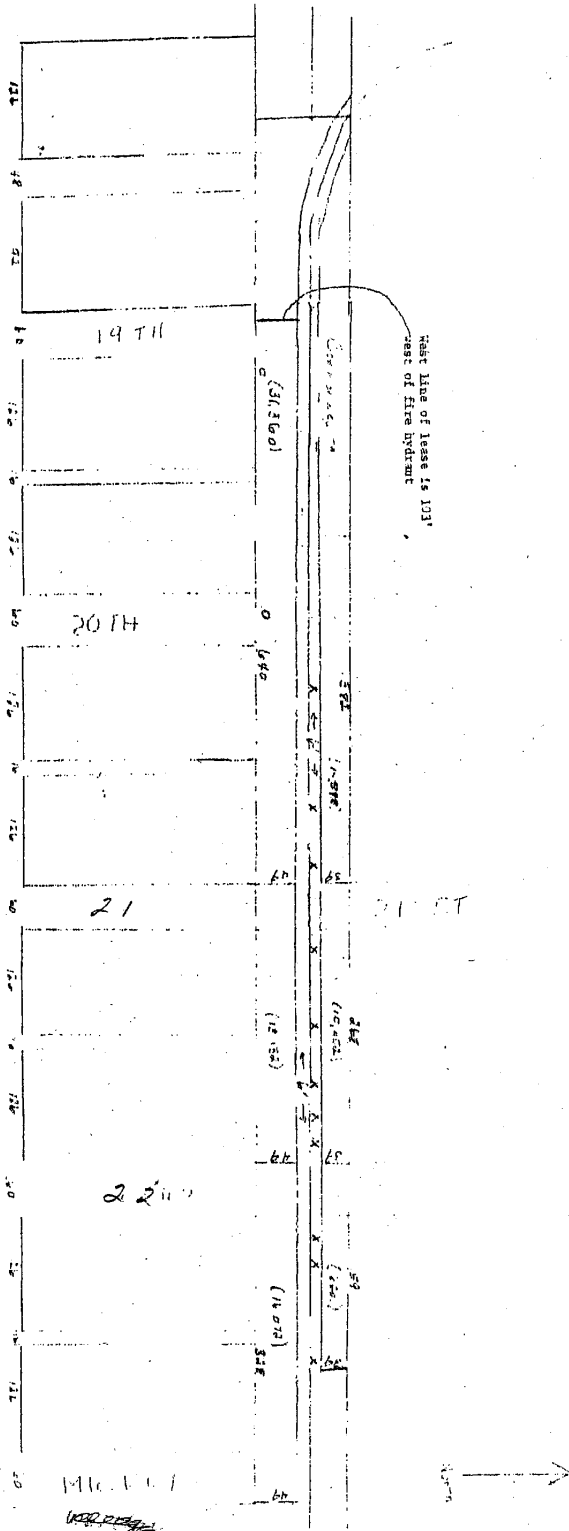
9. DISTANCE TO NEAREST ROAD CROSSING WITH SIGNAL LIGHTS OR GATES
 IF LESS THAN ONE MILE.

10. APPLICANT HAS CONTACTED U.S. DEPARTMENT OF TRANSPORTATION, AND HAS DETERMINED FIBER OPTIC CABLE DOES NOT EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 83474

EXHIBIT "A"
 UNION PACIFIC RAILROAD CO.
 Beatrice
 M.P. 493.97 E.S. 10791.13
 UNDERGROUND WIRELINE CROSSING
 Lincoln
 FOR Cushman Inc.
 RA RIF NO. 1883-41 DATE 9-17-99

Exhibit 'B' - Second Supplemental Agreement

EXHIBIT A
 Lessor - LLC
 Lessee - Textron
 November 8, 2000



C. Hyatt
 LESSEE

INITIALS:

LLC

D.H.

Date 3/10/2001

Textron

Date 3/10/2001

P L 41, 31 NW 1/4 24-10-6 — —

L 41 Clark + McFarland's CLMA

P L 20 D.D. Muirs sub of MUSUL 22 MI

P L 5 JG Miller L 21 MIL

P + 20, 29 Clark + McFarland CLMA

(P + 17, 22 " CLMA

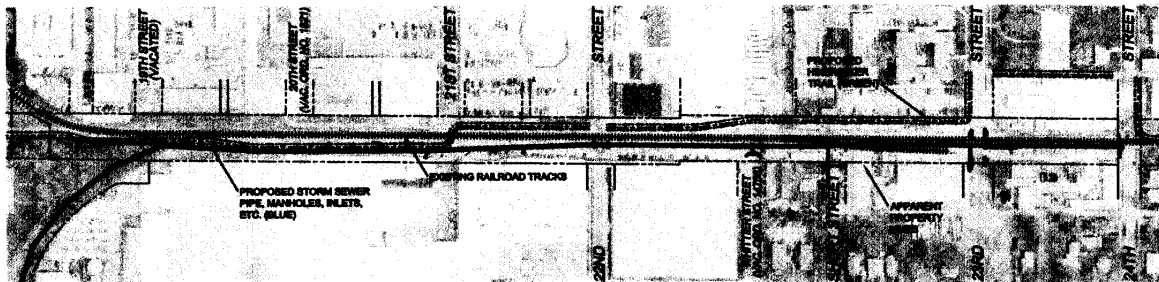
P + L 5 " CLMA

P + L 7 AK Griffiths — Griffiths

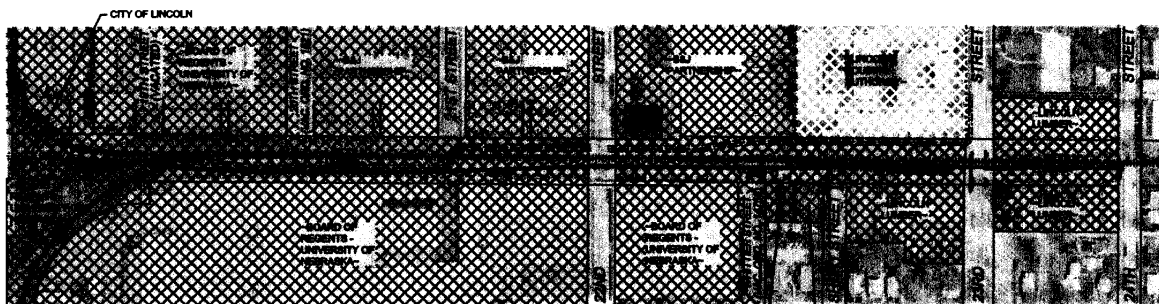
P + L 8 Clark + McFarland CLMA

P + L 1, 2 B 3 Vine St Add VIST

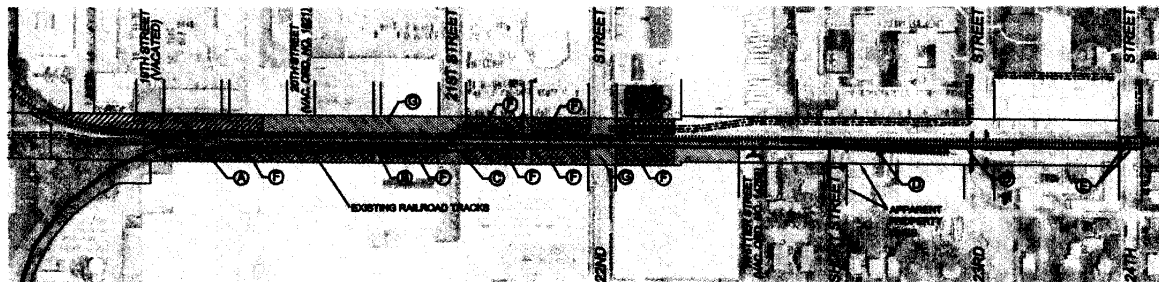
EXHIBIT "F"



OVERVIEW OF ROUTES FOR TRAIL AND STORM SEWER



PROPERTY OWNERS



RIGHT-OF-WAY ENCROACHMENTS

INDEX OF ENCROACHMENTS	
A	PROPERTY LEASED BY COMMONWEALTH ELECTRIC CO. OF THE MIDWEST
B	FORMER COAL HOUSE
C	EXISTING 30" RCP
D	EXISTING 24" CMP
E	FORMER PIPES UNDERNEATH 24TH STREET
F	*PROPERTY FORMERLY LEASED BY TEXTRON FROM UNION PACIFIC
G	**PROPERTY FORMERLY LEASED BY TEXTRON FROM LINCOLN LUMBER (BLUE)

* THE AREA OF PROPERTY FORMERLY LEASED BY TEXTRON FROM UNION PACIFIC WAS 48,127 SQ. FT.

** AFTER LINCOLN LUMBER COMPANY'S PURCHASE OF THE RAILROAD CORRIDOR, THE AREA OF PROPERTY LEASED BY TEXTRON FROM LINCOLN LUMBER INCLUDED 92,115 SQ. FT. THE LEASE DOCUMENTATION STATES THAT LINCOLN LUMBER WAS TO MAINTAIN A 12-FOOT TRACK RIGHT OF WAY.

EXHIBIT "G"

COPY

LEASE AGREEMENT

This Lease Agreement is entered into this 13th day of October, 2000, between Lincoln Lumber Company, a Nebraska Corporation ("LESSOR") and Commonwealth Electric Company of the Midwest, a Nebraska Corporation ("LESSEE").

W I T N E S S E T H:

A. The Board of Regents of the University of Nebraska is the owner of the real estate described in Exhibit "A" attached hereto as a part hereof (the "UNL Property").

B. Lessee leases the UNL Property described in Exhibit "A" from the Board of Regents and thereby possesses a leasehold interest therein.

C. Lessor is the owner of the Union Pacific Railway Company track property located between 18th Street and 24th Street in Lincoln, Lancaster County, Nebraska ("Lincoln Lumber Property").

D. The UNL Property and a portion of the Lincoln Lumber Property have a common north/south boundary line with the north boundary line of the Lincoln Lumber Property, also being the south boundary of the UNL Property.

E. Lessee is desirous of leasing that portion of the Lincoln Lumber Property lying immediately south of the UNL Property as reflected in the Site Plan, a copy of which is attached hereto as Exhibit "B".

F. Lincoln Lumber is willing to lease said property to Lessee for the purposes and upon the terms and provisions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants of the parties, it is agreed as follows:

1. Lease. Lessor warrants and covenants that it is the owner of the property described in Exhibit "C", free of all claims of third parties. Lessor hereby leases to Lessee and Lessee leases from Lessor the Lincoln Lumber Property described in Exhibit "C" attached hereto and reflected in the Site Plan attached hereto as Exhibit "B", the same constituting 16,492 square feet.

2. Term. The term of this Lease shall be for a period of thirty (30) years commencing January 1, 2001 and ending December 31, 2030.

3. Rent. For purposes of this Lease Agreement, a "Lease Year" shall begin on January 1 and extend through the following December 31. Lessee shall pay to Lessor for the leased premises the following amounts:

a. Initial Rent. For the first five (5) years of this Lease (January 1, 2001 through December 31, 2005), Lessee shall pay an annual rental of Five-Thousand Three-Hundred Sixteen and 61/100 Dollars (\$5,316.61), payable on January 1 of each year, beginning January 1, 2001.

b. Rent Adjustment. The annual minimum rent shall be adjusted each five years so that it shall be an amount equal to the rent determined under Section 3(a) above, plus any increase as determined in accordance with the following provisions: D.H.

- (1) C.P.I. (i) As promptly as practicable after the end of the initial five-year lease term and each five (5) years thereafter, Lessor shall compute the increase, if any, and the cost of living for the preceding five (5) years based upon the "Revised Consumers Price Index - Cities (=100)" (the "INDEX") published by the Bureau of Labor Statistics of the United States Department of Labor; (ii) the Index number indicated in the column for U.S. City Average entitled "All Urban Consumers" for the month of December, 2000, shall be the "Base Index Number" and the corresponding index number for the month of December, 2005 (and each five years thereafter) shall be the "Current Index Number"; (iii) the Current Index Number shall be divided by the Base Index Number. From the quotient thereof there shall be subtracted the integer one and any resulting positive number shall be deemed to be the percentage of increase in the cost of living; (iv) the percentage of the annual rental determined under subparagraph a., above, shall be the increase required to be determined under this paragraph; (v) Lessor shall, within a reasonable time after obtaining the appropriate data necessary for computing such increase, give

the Lessee notice of any increase or decrease so determined.

In addition to the rent adjustment described in (1) C.P.I., the base price shall be increased to \$6,566.00 in January of 2010, and to \$7,816.00 on January 1 of 2020. The rent adjustment shall be computed using the described C.P.I. formula with the increases calculated into the adjustment.

(2) Rent Payment. Rental shall be due and payable to Lessor annually on December 1 of each lease year, except that the adjustment to such rental after the end of each five-year period, if any, shall be due and payable seven (7) days after Lessee's receipt of notice of such adjusted amount. A finance charge based on a rate of 10.5 percent per year shall be applied to any rental amount or adjustment amount that is not paid within fifteen (15) days after the due date for such payment.

(3) Substituted Index. If the publication of the Consumers Price Index shall be discontinued, the parties shall accept comparable statistics on the cost of living for the City of Lincoln as they shall be computed and published by an agency of the United States, or by a responsible financial periodical of recognized authority then to be selected by the parties, or, if they cannot agree upon a selection, by arbitration.

4. Use. The leased property shall be used for parking and such other similar purposes as determined from time to time by Lessee. Lessee shall observe and exercise reasonable care against damage or destruction to the property and will not commit or suffer waste thereon or injury thereto. Lessee will at all times keep the property in a safe, neat, clean and presentable condition.

This property may not be used for any other purpose unless the Lessee has received prior written consent of the Lessor.

The Lessee agrees not to sublet the premises, in whole or in part, or to assign this Lease without the consent in writing of the Lessor.

The Lessee accepts the premises in its present condition and hereby assumes the risk of injury or death to persons and damage to property resulting from the present condition of this property.

5. Lessor's Reserved Uses. Lessor reserves the right to grant an easement for fiber optic lines and underground storm sewer to be built by the City of Lincoln, and any other lines, overhead or underground, as approved by Lessor, so long as the same do not interfere with Lessee's intended use of the property. All revenue from such easements will be the sole property of Lessor. Temporary use of land by Lessor, such as crossing with fibre optic, storm sewer lines, etc. will result without cost or charges from Lessee to Lessor.

6. Real Estate Taxes and Assessments. Lessee shall pay, before delinquent, all real estate taxes levied during the term of this Lease upon the property and upon any improvements thereon. In addition, Lessee will be responsible for the payment of all special assessments assessed against the property during the term of this Agreement.

7. Hazardous Substances and Waste.

- a. Lessee shall comply with all applicable federal, state and local environmental laws and regulations in its use of the property. In addition, Lessee shall not install any underground storage tanks without the written permission of lessor.
- b. Lessee shall use its best efforts and safety practices to prevent the release of oil and hazardous substances as defined in CERCLA on the property. Lessee assumes all responsibility for the investigation and clean up of any release caused by Lessee or its agents, and shall indemnify and defend Lessor for all costs associated therewith.

8. Liens. The Lessee shall insure that no liens are placed on the property by reason of work performed for or on behalf of Lessee by third parties.

9. Liability Insurance. During the term of this Lease, Lessee at its expense shall continuously maintain comprehensive general public liability insurance with limits of not less than \$1,000,000 per occurrence with a \$2,000,000 annual aggregate plus a \$5,000,000 umbrella insuring against any and all liability of the insured with respect to the leased premises arising out of the

maintenance, use or occupancy thereof by Lessee. Each policy of such insurance shall be issued by an insurance company acceptable to Lessor and qualified to do business in the State of Nebraska and shall contain a provision reflecting Lessor as a named insured. Upon request from Lessor, Lessee shall furnish Lessor with evidence of such insurance.

10. Repairs and Maintenance. Lessee shall be responsible for making any and all repairs to the leased premises during the term of this Lease.

11. Quiet Enjoyment. So long as Lessee is current in the payment of rent and other sums owing to Lessor pursuant the terms of this Lease and performs in a timely manner all other obligations imposed upon Lessee hereunder, it shall have the right to peaceably and quietly enjoy possession of the leased premises without interference from Lessor; provided, however, Lessor shall have the right at any reasonable time after notice to enter and inspect the leased premises.

12. Default. Each of the following acts and/or omissions shall constitute a default by Lessee under this Lease:

- a. Voluntary or involuntary bankruptcy, assignment for the benefit of creditors or the institution of any reorganization or arrangement of Lessee under any provisions of the Bankruptcy Act.
- b. Failure of Lessee to pay rent or any other sum owing hereunder to Lessor within ten (10) days following receipt of written notice from Lessor of such default.
- c. Failure of Lessee to perform any covenant, condition or agreement required under this Lease within thirty (30) days following receipt of written notice from Lessor that the same requires performance.

13. Remedies Upon Default. Upon a default by Lessee under the terms of this Lease, Lessor shall at its option, in addition to any other remedies which may be available to it in law or in equity, have the immediate right of re-entry and may move all persons or property from the leased premises and store the same at Lessee's cost. Should Lessor elect to re-enter or take possession of the leased premises pursuant to any legal proceedings, it may terminate this Lease and re-let the leased premises or any part thereof for such term and at such rental and upon such other conditions as Lessor may deem advisable with the right to make alterations and repairs to the leased premises. In the event of

such default, Lessee shall have the right to remove from the leased premises any property belonging to Lessee.

14. Partial Invalidity. If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease, and such other provision shall remain in full force and effect. If any provision of this Lease is capable of two constructions, one of which would render the provision void and one of which would render the provision valid, the provision shall be interpreted in a manner which would render it valid.

15. Notices. Any notice to either party hereto may be given by delivering the same in writing to such party in person or by mailing the same by certified mail, return receipt requested, postage prepaid, to the following addresses:

To Lessor:

Don Hamill
Lincoln Lumber Company
932 No. 23rd Street
Lincoln, NE 68503

To Lessee:

Commonwealth Electric Company of the Midwest
Attention: Glen A. Moss
1901 "Y" Street
Lincoln, NE 68503

16. Amendments, Changes and Modifications. This Lease may be amended or any of its terms modified only by written document duly authorized, executed and delivered by Lessor and Lessee.

17. Execution and Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

18. Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of Nebraska.

19. Benefit. The terms and conditions of this Lease shall extend to and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

LINCOLN LUMBER COMPANY, Lessor

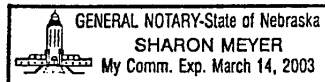
By: Don Hamill
Don Hamill, President

COMMONWEALTH ELECTRIC COMPANY OF THE
MIDWEST, Lessee

By: Thomas M. Price
Thomas M. Price, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

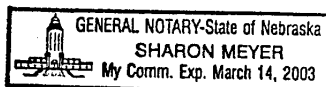
On this 13 day of December, 2000, before me, the undersigned Notary Public, qualified for said County and State, personally appeared Don Hamill, the President of Lincoln Lumber Company, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledge the execution thereof to be his voluntary act and deed and the voluntary act and deed of said corporation for the purposes and considerations therein expressed and in the capacity therein stated.



Sharon Meyer
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

On this 13 day of December, 2000, before me, the undersigned Notary Public, qualified for said County and State, personally appeared Thomas M. Price, the President of Commonwealth Electric Company of the Midwest, known to me to be the person and officer whose name is subscribed to the foregoing instrument and he acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said company for the purposes and considerations therein expressed and in the capacity therein stated.



Sharon Meyer
Notary Public

DRAFT**EXHIBIT A**

All of Lot Five (5); Antelope Addition to Lincoln, Lancaster County, Nebraska, except that portion thereof conveyed to the Chicago, Rock Island and Pacific Railroad Company by Quitclaim Deed recorded in Book 83, Page 230, more particularly described as follows: Commencing at the Southwest corner of said Lot and running thence East on the South line of said Lot 75 feet; thence in a direct line to the Northwest corner of said Lot; thence South 50 feet to the place of beginning.

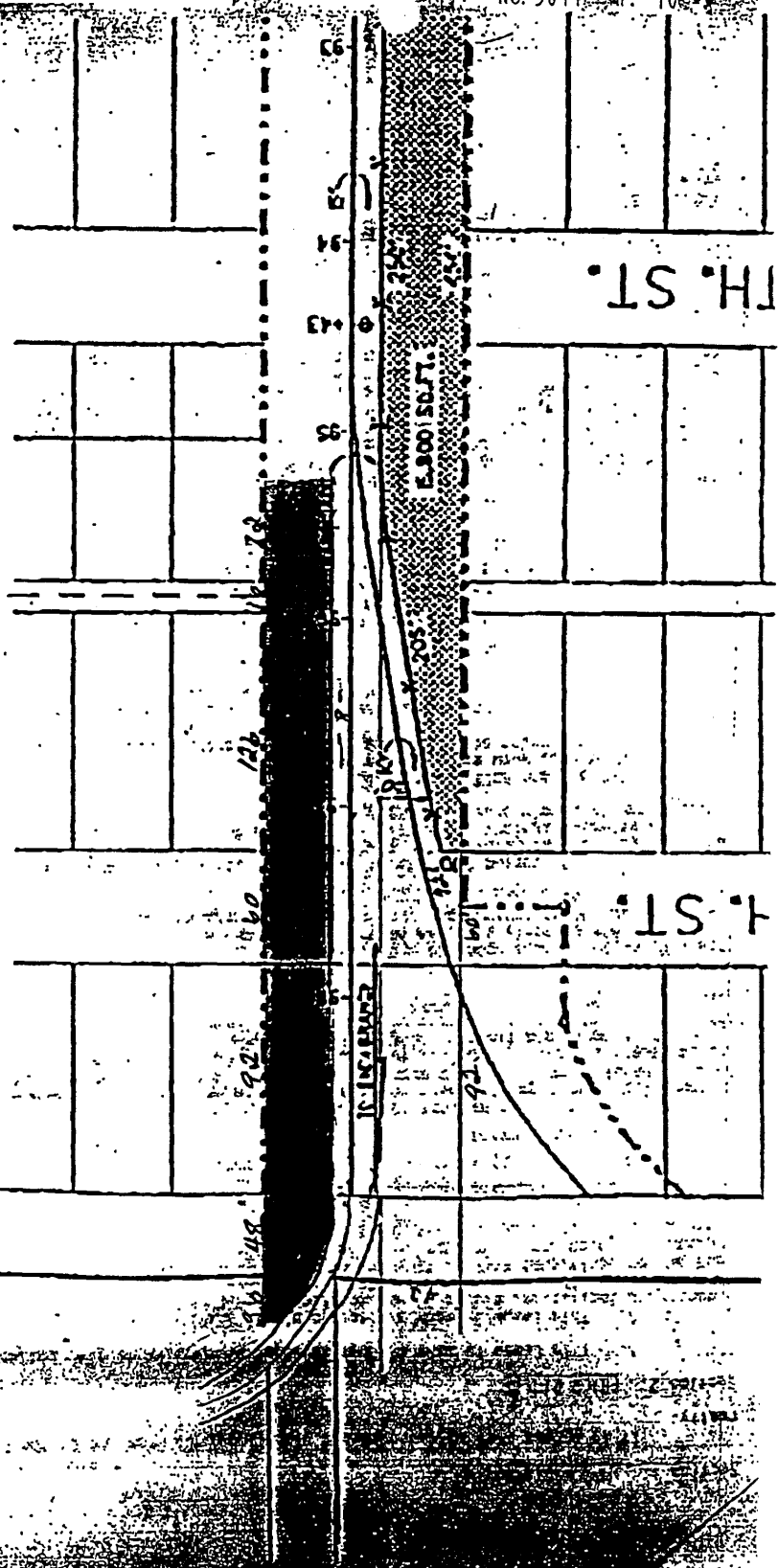
Lots One (1) through Five (5), inclusive, D.D. Muir's Subdivision of Lot Twenty-two (22), J.G. Miller's Subdivision of the West Half of the Northeast Quarter and part of the East Half of the Northwest Quarter of Section 24, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.

The East 92 feet of Lots Twenty (20) through Twenty-four (24), inclusive, and all of the vacated part of 19th Street adjacent thereto on the East, all in D.D. Muir's Subdivision of Lot Twenty-two (22), J.G. Miller's Subdivision of the West Half of the Northeast Quarter and part of the East Half of the Northwest Quarter of Section 24, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.

The West 39 feet of the West one-half of Lots Twenty (20) through Twenty-four (24), inclusive, D.D. Muir's Subdivision of Lot Twenty-one (21), J.G. Miller's Subdivision of the West Half of the Northeast Quarter and part of the East Half of the Northwest Quarter of Section 24, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska.

All of the North-South Alley located immediately East of 19th Street from the South boundary line of "Y" Street to the North boundary line of "X" Street which Alley lies immediately adjacent to the Easterly property lines of Lots One (1) through Five (5), inclusive, D.D. Muir's Subdivision of Lots Twenty-two (22), J.G. Miller's Subdivision located in the North Half of Section 24, Township 10 North, Range 6 East of the 6th P.M., Lincoln, Lancaster County, Nebraska, vacated by Ordinance No. 10972, passed by the City Council on December 3, 1973.

EXHIBIT A
Lincoln Lumber Company, Lessor
Commonwealth Electric Company, Lessee
November 8, 2000
Page 11 of 1.





Commonwealth Electric Company
of the midwest

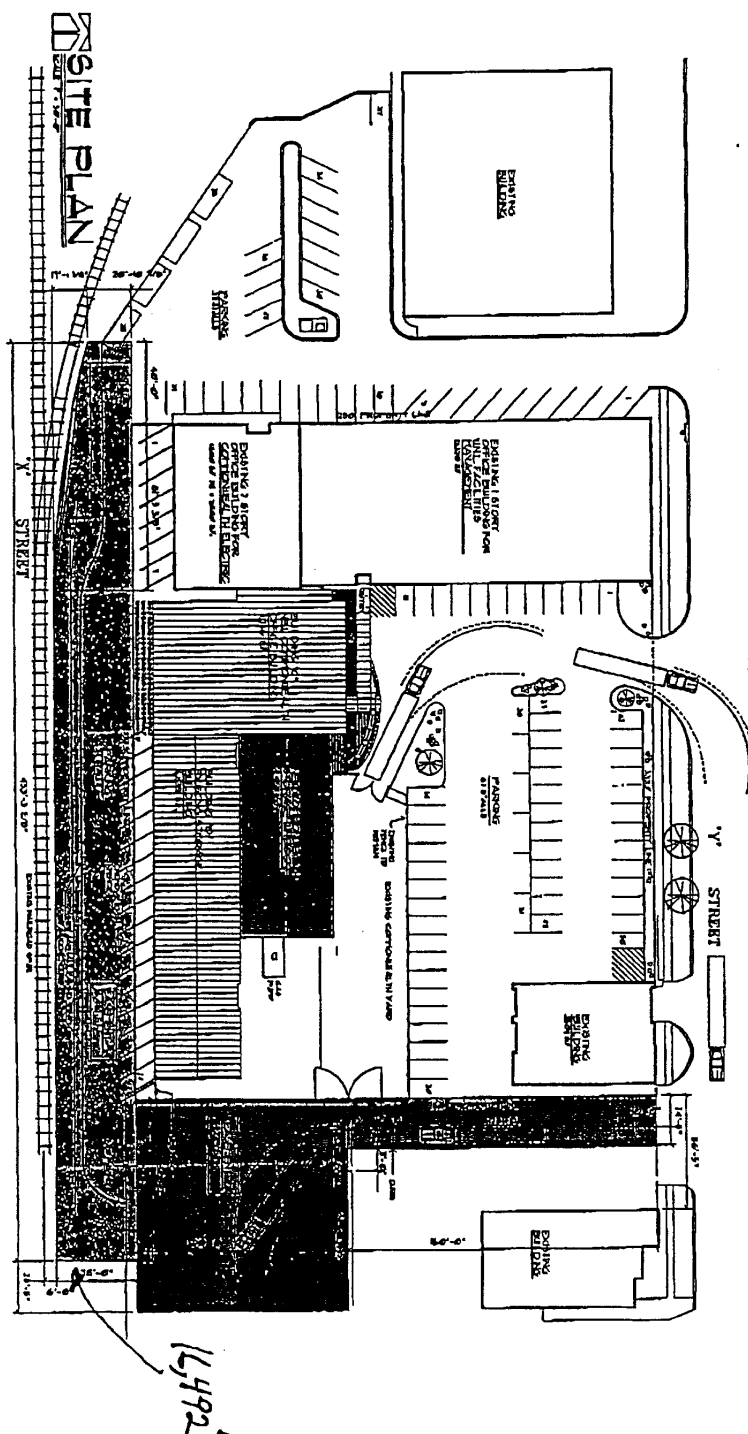
**1901 Y STREET SUITE - 100
LINCOLN, NEBRASKA**

NO. 19th ST.

STREET

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DRAFT



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 3. 2016

STANDARD
TECHNICAL
PRACTICE

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DA Architectural Design Associates P.C.
 Suite 105 2501 1st Street Lincoln NE 68510 Phone (402) 455-3232

Source: 106 350101/01 Bureau / people NE #8610 Phone (402) 488-3232

COMMONWEALTH ELECTRIC / V.I.C. FACILITIES
MANAGEMENT OFFICE BUILDING ADDITION
174 AND Y STREETS LINCOLN, MICHIGAN

APPRAISAL REPORT

MISSOURI PACIFIC RAILROAD COMPANY
(LAND PARCEL)
11TH TO 13TH STREETS,
NORTH OF AVERY, 5.75 ACRES
AND 24TH TO 33RD STREETS,
NORTH OF AVERY, 10.00 ACRES
LINCOLN, NEBRASKA

AS OF:

SEPTEMBER 10, 2000

PREPARED FOR:

MR. LOREN F. LUKINS
SENIOR MANAGER, APPRAISALS
UNION PACIFIC RAILROAD COMPANY
1416 DODGE STREET, ROOM 1100
OMAHA, NEBRASKA 68179

PREPARED BY:

DENNIS J. KNUDSON
KNUDSON APPRAISAL SERVICES
1011 SOUTH 78TH STREET
OMAHA, NEBRASKA 68114

KNUDSON APPRAISAL SERVICES
1011 So 78th Street
Omaha, Nebraska 68114

Telephone (402) 397-2230

September 19, 2000

Mr. Loren F. Lukins
Senior Manager, Appraisals
Union Pacific Railroad Company
1416 Dodge Street, Room 1100
Omaha, Nebraska 68179

RE: Appraisal Report
11th to 18th Street, North of Avery, 5.75 Acres; and
24th to 33rd Street, North of Avery, 10.00 Acres
Lincoln, Nebraska

Dear Mr. Lukins:

In accordance with your request, I have appraised the former railroad right-of-way described above. The subject property is legally described within the body of the attached report.

The purpose of this letter is to set forth my estimate of the subject's market value of the fee simple interest as of the effective date of this appraisal. To the best of my knowledge, this appraisal report has been prepared in conformity with the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). The value as estimated herein is premised upon the Assumptions and Limiting Conditions in the attached report. As requested, I have separated the appraisal into two valuations. The Phase I valuation will consist of a 250,470 square foot/5.75 acre from 18th Street on the east to 11th Street on the west. Phase II consists of a 435,600/10.00 acre tract of land extending from 24th Street on the west to approximately 33rd Street on the east.

As a result of my analysis, it is my opinion that the total value of the subject property land as of September 10, 2000, is:

Parcel I	\$ 900,000
Parcel II	<u>1,050,000</u>
Total Value, Both Parcels	\$1,950,000

DENNIS J. KNUDSON, MAI
MEMBER APPRAISAL INSTITUTE

Mr. Loren F. Lukins

Page -2-

The value is segregated as follows:

Parcel I:	250,470 square feet @ \$3.00/SF = \$751,410, called	\$750,000
	Assemblage Value (1.20 Factor)	<u>x 1.20</u>
	Total Parcel I	\$900,000
Parcel II:	435,600 square feet @ \$2.00/SF =	871,200
	Assemblage Value (1.20 Factor)	<u>x 1.20</u>
	Total Parcel II	\$1,045,440
		Called \$1,050,000
Total Valuation for Both Parcels		\$1,950,000

The attached report sets forth the reasoning and methodology used in making this appraisal.

Respectfully submitted,

Dennis J. Knudson, MAI
Nebraska General Certified Appraiser CG920136

DJK/ms

Appendix F



OFFICE OF THE VICE CHANCELLOR FOR BUSINESS AND FINANCE

October 23, 2003

Honorable Vernon Williams
Secretary Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: City of Lincoln, Petition for a Declaratory Order, F.D. 34425

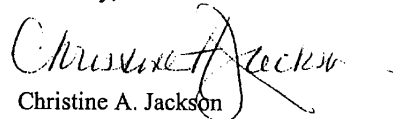
Dear Mr. Williams:

This letter is on behalf of the University of Nebraska-Lincoln, and is for filing in the above proceeding. The University of Nebraska, Lincoln, supports the City's Petition for a Declaratory Order. The University has acquired the former Cushman (Textron) property on the south side of the Lincoln Lumber Company rail corridor. As adjacent landowners, we would welcome the trail and storm sewer improvements which the City seeks to implement, and we share the City's concern that the improvements be implemented as soon as possible in order to avoid loss of funding or incurring any financial penalties.

All the improvements appear to us to be compatible with continued rail use of the property, and certainly will not interfere with any rail use which we see being made of the property. The University of Nebraska has no current plans for rail use of the property, and we do not foresee any rail need on our part at that location in the future. In any event, the planned improvements by the City would not appear to us to interfere with possible rail use in the future.

The Husker Link Trail is important to the University of Nebraska, Lincoln, for two reasons: first, it would provide a much needed off street bike path between our downtown and east campus areas. Many of our students, by necessity, are bicycle commuters, and a dedicated path on this corridor would enhance not only their safety but also the efficiency of their commute. Second, the Husker Link Trail is a connector for other trails, including the Mo Pac East Trail, and will enhance commuting to and from the University generally by faculty, staff, and students. The trail connection has long been part of our plans. We urge all parties to facilitate it as a much needed improvement in the public interest.

Sincerely,


Christine A. Jackson
Vice Chancellor, Business and Finance

CAJ:c

bxc: Joel Pedersen ✓
Rich McDermott
Harvey Perlman
Bill Nunez

301 Canfield Administration Building / P.O. Box 880425 / Lincoln, NE 68588-0425 / (402) 472-4455 / FAX (402) 472-7963

Appendix G

Before The Surface Transportation Board
Finance Docket 34425
City Of Lincoln -- Petition For A Declaratory Order

Verified Statement
of
Walter Schuchmann

Qualifications

1. My name is Walter H. Schuchmann. I am Director, Rail Operations at R.L. Banks & Associates, Inc., a transportation consulting firm headquartered in Washington, DC. In over 15 years with the firm, I have investigated operational and commercial matters related to short line railroads and rail freight service in general in many places around the country. Prior to my present position, I was employed as an operating and safety officer by Norfolk Southern Railway Company where I supervised railroad operations in Chicago, Fort Wayne, IN and other locations over a period of eight years. I am a certified member of the American Society of Transportation and Logistics and a member of the American Association of Railroad Superintendents as well as the National Defense Transportation Association. I have prepared this statement at the request of the City of Lincoln for use in connection with the City's Petition for a Declaratory Order. This statement is based on personal knowledge obtained from a site visit, interviews, and review of documents as summarized herein

The Issue

2. Lincoln Lumber Company (LLC) owns a rail line extending between 19th and 24th Streets parallel to and south of Y Street in Lincoln, NE. (See map presented as Exhibit B in the Verified Statement of Terry Genrich.) Freight operations on the line are conducted by the Omaha, Lincoln and Beatrice Railway Company (OLB). The City of Lincoln wants to install an underground storm sewer within the railroad right-of-way between 19th and 24th Streets and a trail that would use a portion of the right-of-way between 19th and 23rd Streets. Those projects are more fully described in the Verified Statements of Terry Genrich and Bryan Kramer

My Investigation

3. I have reviewed the trail and storm sewer proposals as described in the statements of Messrs. Genrich and Kramer, along with associated maps, photos, drawings and documents. I visited the rail line and surrounding area and took photographs on October 9 and 10, 2003 and interviewed Mr. Robert E. Miller, Chief Financial Officer of OLB on October 10, 2003. I have reviewed other documents including the September 27, 1999 "Lease of Industrial Property at Lincoln, Nebraska" between Missouri Pacific Railroad Company (MP) (lessor) and Cushman, Inc. (lessee) and supplemental agreements including the March 13, 2001 "Second Supplemental Agreement" between LLC (successor to MP interests) and Textron. That lease is included in the Verified Statement of Joel Pedersen, Assistant City Attorney, City of Lincoln.

Existing Situation

4. LLC's rail line consists of a main track between a connection with OLB trackage at 19th Street and 24th Streets, where the line ends just west of the street, and a short, single-ended spur track is located adjacent to LLC's lumberyard

west of 23rd Street. Other than the LLC spur, there are no switches or sidings located on the LLC line.

5. Mr. Miller indicated that OLB does not originate any but delivers about 50 carloads per year to LLC, the only customer on the line. He indicated that deliveries are variable rather than constant. At the time of my inspection, it appeared that there had not been any recent train movements on LLC's main track. I am informed that the City of Lincoln arranged monitoring of the corridor between October 2 and 8, 2003, and observed no rail movements during that period. (See Verified Statement of Terry Genrich.) OLB also serves Ready Mixed Concrete Company near 19th and Y Streets and two grain customers, all located on OLB trackage.

6. LLC's lumberyard occupies property adjacent to both the north and south sides of the rail line between 23rd and 24th Streets, and the south side only between Whittier and 23rd Street. LLC can unload cars from the single-ended spur located between 22nd and 23rd Streets and connected to the main track on the west end, or from the main track adjacent to LLC's facilities.

7. OLB delivers freight cars by shoving them east from the OLB/LLC connection near 19th Street to LLC's facility. The shoving movement is necessitated by the absence of any double-ended siding on the line that would allow a locomotive to run around freight cars and thus be positioned on the desired, leading end during both the inbound and outbound movements. Rail movements are made at a slow speed, about three to four miles per hour according to Mr. Miller. There are public grade crossings on the segment at 21st, 22nd and 23rd Streets. Rail service on the line is generally conducted during daylight hours on weekdays.

8. Maps reviewed indicate that the right-of-way is approximately 110 feet wide. However, LLC has relinquished much of that width to uses other than rail transportation. In the 1990 Second Supplemental Agreement between LLC and Textron, LLC leased to Textron the entire right-of-way width except a 12-foot wide strip under the track over much of length of the corridor. As stated in that instrument, "This only allows for 18" on each side of the railroad ties." That lease term indicates how little right-of-way width LLC deemed necessary to permit continued rail use. The agreement explicitly permitted Textron to park vehicles, maintain trash-refuse containers and compactors and place generators and other electric equipment on the property.

9. During my inspection, I noticed numerous obstructions on the railroad right-of-way. For example, a utility pole line extends through the corridor between approximately 20th Street and 23rd Street. (See Appendix A, Photo 1.) The poles are approximately 12 feet to the north of the centerline of track.

10. Similarly, a post and cable fence is located approximately 12 feet to the south of the centerline of track between 21st and 22nd Streets. (See Appendix A, Photo 2.) I also observed that between 21st and 22nd Streets the area between the fence and the north edge of the right-of-way has been paved for apparent use as a roadway and the area between the pole line and the south edge of the right-of-way has been surfaced for apparent use as a parking area. Along other segments of the line, portions of the right-of-way have been surfaced for vehicular use or are used to store materials.

11. On the days of my inspection, stacks of lumber and building materials were located on both sides of the track, almost at the edge of the ties between 23rd and 24th Streets. In addition, stacks of material were located on top of the LNL spur and fouling the main track west of 23rd Street (see Appendix A, Photo 3) and,

farther west between 22nd and 23rd Streets, on the north side of the tracks from the pole line to the edge of the right-of-way. (See Appendix A, Photo 4.)

Proposed City Improvements

12. The City of Lincoln proposes to construct a trail and an underground storm sewer, both of which would use a portion of the LLC right-of-way. See statements of Messrs. Genrich and Kramer. The trail is planned to be 12 feet wide and an additional eight feet will be sought to accommodate construction and provide space to push snow during winter. The trail would occupy a portion of the right-of-way on the south side of the track between 19th and 21st Streets, crossing over the track at 21st Street and occupying a strip on the north side of the track between 21st and 23rd Streets. At 23rd Street, it would exit the right-of-way and use a public alley along the north edge of Lincoln Lumber's property between 23rd and 24th Streets. Most of the trail would use property leased by LLC to Textron, property that LLC apparently did not feel compelled to control in order to permit continued rail service.

13. Existing obstructions and land uses cause more potential interference with rail service (which has nonetheless been operated) than would the trail. Between 21st and 23rd Streets, the trail would be north of the existing pole line and hence farther away from the track. Thus the poles rather than the trail would represent the closest obstacles to the track. Between 22nd and 23rd Streets, the stacks of lumber and materials north of the pole line are located precisely where a segment of the trail would be constructed. Hence that property already is unavailable to railroad use.

14. The storm sewer would be located south of the track over the entire length of the corridor. It would be underground entirely through the length of the line segment. Temporary construction easements also would be needed south of the

main track and under the LNL spur as well as and crossing the track at 22nd, 23rd and 24th Streets.

No Permanent Impacts Upon the Ability to Operate Rail Freight Service

15. The City's proposed trail and storm sewer would not interfere with the ability of OLB to operate rail freight service on the LLC line. My conclusion is supported by: (1) LLC's own actions with respect to non-transportation uses of portions of the right-of-way, and (2) my experience in supervising and observing rail operations nationwide.

16. LLC repeatedly has demonstrated that it believes it needs only a narrow strip of right-of-way to support rail service, and, indeed, it has continued to receive rail service despite leasing or devoting to other uses much of the land adjacent to the main track. Extremely telling is the lease to Textron of all but 12 feet of right-of-way and Textron's use of that land as a roadway and parking area, as described above in the "Existing Situation" section. Also significant is the presence of the pole line and the cable fence, both within approximately 12 feet of centerline of track. Thus most of the corridor is legally given over to uses other than rail operations and much land adjacent to the track is physically obstructed. However, rail service has continued nonetheless.

17. The most compelling evidence is LLC's own activity in the corridor segment between 22nd and 23rd Streets. In that segment, LLC has placed material right where the trail would be located. The material apparently does not impede rail service, either in LLC's judgement or in reality, and neither would a trail in the same location hinder future rail service.

18. The conditions along LLC's line, including the pole line, fence, roadway, parking lot and stored materials are not at all unusual on an industrial spur line, branch or secondary main line. I have supervised and observed rail service conducted on lines with similar, limited side clearances. Much industrial switching takes place in locations that are more cramped, containing buildings, loading docks, storage bins or tanks, pipelines, conveyors and other industrial equipment.

19. There is only one place on the line where any switching can take place, i.e., the LLC spur located west of 23rd Street. That spur is to the south of the main track and the switch mechanism also is on the south side of the main track, thus most switching activity would take place to the south of the main track. At this location, the trail would be along the extreme north edge of the right-of-way, far enough removed to present no interference with the limited switching that could take place.

20. The trail will cross the LLC rail line at a single location using the existing public crossing at 21st Street. OLB's obligations at a public crossing, whether shoving cars or leading with the engine, will not be altered by the presence of the trail, so no additional interference would result. The LLC-Extron supplemental agreement permits Extron's employees to "...walk across the track to go from the Premises on the south to the Premises on the north...". Thus rail service has been provided in the presence of Extron pedestrian traffic in addition to the public crossings at 21st, 22nd and 23rd Streets.

21. I conclude that rail operations will be the same after (unaffected by) construction of the trail and storm sewer as at present. No additional track or rail-related facilities will be needed to support continued rail service. I further note that LLC's lease to Extron specifically reserved LLC's right to grant easements "...for underground storm sewer that may be constructed by the City of Lincoln..."

indicating LLC's expectation that a storm sewer might be constructed and LLC's recognition of the City's right to construct same.

22. To supplement my observations, I consulted the *2002 Manual for Railway Engineering* published by the American Railway Engineering and Maintenance-of-Way Association (AREMA), which contains clearance standards for tangent track. Figure 28-1-1 (General Outline) specifies nine feet on each side of centerline of track, and Figure 28-1-5 (Railway Side Tracks and Industrial Tracks) indicates the same standard. Trail plans that I have examined show that the planned trail will not impinge on these standard clearances.

23. Finally, the concept of "rails with trails" using active rail corridors has been validated across the country. According to the Marin County Bicycle Coalition web site, "There are currently 62 rails with trails in the United States, with 150 more planned for the future." (<http://www.marinbike.org/Campaigns/Infrastructure/RailsTrails/RailsTrails.htm>, accessed October 28, 2003.)

Construction Impacts Would Not be Significant

24. I have reviewed the trail and storm sewer construction plans presented in the Verified Statements of Messrs. Genrich and Kramer. They indicate that construction would cause minimal interference with rail service and that the construction plan could be coordinated with LLC to reduce impacts further. The LLC main track will be affected only by construction of the trail crossing at 21st Street and by sewer construction on public property at 22nd, 23rd and 24th Streets. (The latter two are east of the LLC spur and thus would not impact freight service.) Construction and maintenance at grade crossings is a common occurrence as railroads, cities and utility companies maintain and improve their facilities. Such construction routinely is managed in ways to minimize impacts on rail operations.

25. Storm sewer construction under the LLC spur could cause the spur to be out of service for approximately one week. (See VS of Kramer.) If necessary, it appears that railcars could be unloaded from the main track during the outage of the spur. Given the low volume of railcars received by LLC, approximately 50 per year, the storm sewer construction impacts upon the spur should not burden rail service. The spur will be reconstructed to existing condition according to Verified Statement of Mr. Kramer.

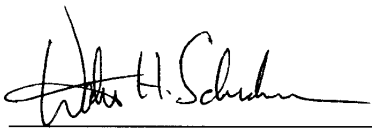
Conclusion

26. Based on LLC's leasing out of all but 12 feet of the right-of-way, its storage of materials where the trail would be located, the existing physical obstructions located on the right-of-way, my experience in other locations and the AREMA standards, it is certain that the neither the trail not the underground storm sewer will interfere with the ability of OLB or any other carrier to conduct freight operations on the LNL line.

Verification

CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

Walter H. Schuchmann, being duly sworn, deposes and says that he is qualified and authorized to submit this Verified Statement, and that he has read it, knows the contents thereof, and that the same is true and correct.



Walter H. Schuchmann

Subscribed and sworn to before this 31st day of October, 2003.


Notary Public

Gwendolyn M. Penn
Notary Public, District of Columbia
My Commission Expires 9-14-04

Appendix A

**Verified Statement
of
Walter H. Schuchmann
Photos Taken October 9 and 10, 2003**



**Photo 1. View from 22nd Street looking west.
Note pole line. Trail would be north (right) of the pole line.**



**Photo 2. View from 21st Street looking east.
Note from north to south (left to right): roadway, pole line, track, fence and paved
area.**

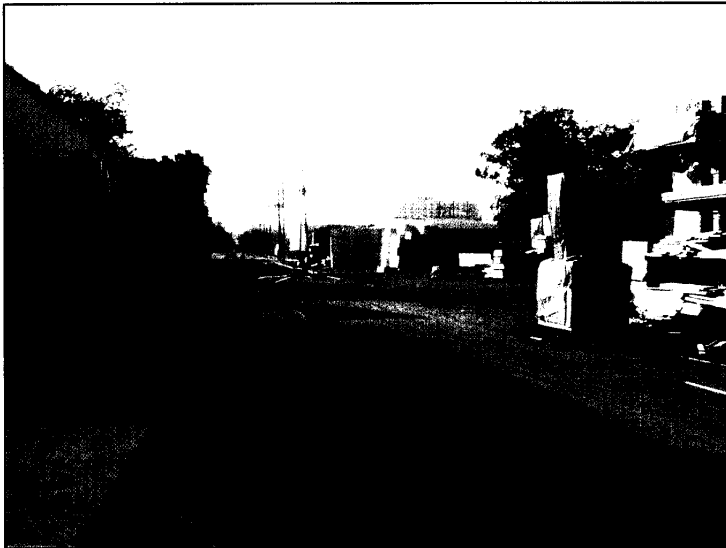
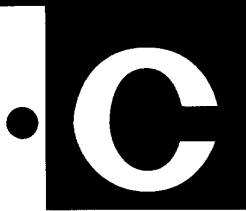


Photo 3. View from 23rd Street looking west.
Note spur (left) with materials placed on track and main track (right) with materials fouling the track. Also note switch (near pole in center) with material placed on proposed trail route along the north (right) side of the track.



Photo 4. View from 22nd looking east.
Note material stacked on proposed trail route north (left) of poles and north (left) of red truck in the distance.

Appendix H



Commonwealth Electric Company of the midwest

1901 Y Street, Suite 100 • P.O. Box 80638 • Lincoln, Nebraska 68501 • (402) 474-1341

November 03, 2003

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: City of Lincoln, Petition for a Declaratory Order, Fin.Dkt. 34425

Dear Mr. Secretary:

On behalf of the employees of Commonwealth Electric Company of the Midwest (CECM), we support the City of Lincoln's petition for a declaratory order. The City of Lincoln's non-motorized transportation system, which focuses on bicycle and pedestrian commuting trails, is a vital component of transportation in the City of Lincoln. The trail system increases in value and in safety to the extent that it is connected and continuous. The City plans an overpass bridge at 27th Street for the Husker Link Trail, leaving the final link between 24th and 19th Streets the only remaining portion to complete.

As a member of the Husker Link Fundraising Committee, I have a personal interest in the successful completion of this particular piece of Lincoln's Trail System. Additionally, my Company's corporate and warehouse operation is adjacent to the north side of Lincoln Lumber Company's railroad property right-of-way, of which approximately 16,492 square feet is being leased by us from Lincoln Lumber Company.

CECM views this link as vital for safe and reliable non-motorized commuting purposes. Since it does not interfere with continued rail use, let alone unreasonably interfere, this Board should allow the City to employ eminent domain to secure the right of way (20 feet in width out of an approximately 100 to 110 foot corridor) necessary for that purpose between 14th Street and 19th Street.

Sincerely,

COMMONWEALTH ELECTRIC COMPANY OF THE MIDWEST

Glen A. Moss
Secretary/Treasurer/CFO

"Committed to Excellence"
Des Moines • Lincoln • Omaha • Phoenix • Tucson

Appendix I

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

RECEIVED JP
OCT 27 2011
LAW DEPT
MO3-05 183

Re: City of Lincoln, Petition for a Declaratory Order, Fin.Dkt. 34425

Dear Mr. Secretary:

This letter is on behalf of Hawley Area Neighborhood Association. We support the City of Lincoln's petition for a declaratory order. The City of Lincoln's non-motorized transportation system, which focuses on bicycle and pedestrian commuting trails, is a vital component of transportation in the City of Lincoln. The trail system increases in value and in safety to the extent that it is connected and continuous. The City plans an overpass bridge at 27th Street for the Husker Link Trail, leaving the final link between 24th and 19th Streets the only remaining portion to complete. Our association views this link as vital for safe and reliable non-motorized commuting purposes. Since it does not interfere with continued rail use, let alone unreasonably interfere, this Board should allow the City to employ eminent domain to secure the right of way (20 feet in width out of an approximately 100 to 110 foot corridor) necessary for that purpose between 14th Street and 19th Street.

Sincerely



Peggy Struwe
President, Hawley Area Neighborhood Association

Appendix J

CLINTON
NEIGHBORHOOD
ORGANIZATION



A 501(c)(3) Corporation

2121 North 27th Street, Lincoln, NE 68503

October 27, 2003

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: City of Lincoln, Petition for a Declaratory Order, Fin.Dkt. 34425

Dear Mr. Secretary:

The Clinton Neighborhood Organization supports the City of Lincoln's petition for a declaratory order. The City of Lincoln's non-motorized transportation system focuses on bicycle and pedestrian commuting trails and is a vital transportation component in the City of Lincoln. The trail system's value and safety is increased when it is connected and continuous. The City plans an overpass bridge at 27th Street for the Husker Link Trail, leaving the final link between 24th and 19th Streets the only remaining portion to complete. This link runs through our neighborhood and is vital in that it will provide safe travel between the two campuses of the University of Nebraska as well as linking to existing trails throughout the city. Our association views this link as vital for safe and reliable non-motorized commuting purposes. Since it does not interfere with continued rail use, let alone unreasonably interfere, this Board should allow the City of Lincoln to employ eminent domain to secure the right of way (20 feet in width out of an approximately 100 to 110 foot corridor) necessary for that purpose between 24th Street and 19th Street.

The Clinton Neighborhood Organization sees this link as a vital addition to the non-motorized commuting trail system and has made a financial contribution to help speed its completion. Without this link, there will only be a continued increase in the number of bicycles and motorized vehicles on a narrow street, thus creating an unsafe commuting situation for both.

Very truly yours,

Renee Malone
President

Appendix K



October 27, 2003

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Dear Mr. Secretary:

On behalf of the East Campus Community Organization Board of Directors, I am writing to express our support for the City of Lincoln's petition for a declaratory order related to the Husker Link Trail. Our association represents nearly 1,000 households in an area of Northeast Lincoln that will directly benefit from the development of this trail by connecting an existing trail that runs through the neighborhood to downtown Lincoln, a business center in the city.

In addition, we believe the City of Lincoln's non-motorized transportation system, which focuses on bicycle and pedestrian commuting trails, is a vital component of transportation in the City of Lincoln. The trail system increases in value and in safety to the extent that it is connected and continuous. The City plans an overpass bridge at 27th Street for the Husker Link Trail, leaving the final link between 24th and 19th Streets the only remaining portion to complete. Our association views this link as vital for safe and reliable non-motorized commuting purposes. Since it does not interfere with continued rail use, let alone unreasonably interfere, this Board should allow the City to employ eminent domain to secure the right of way (20 feet in width out of an approximately 100 to 110 foot corridor) necessary for that purpose between 14th Street and 19th Street.

Thank you for your consideration.

Sincerely,

Jennifer J. Brinkman
President

RECEIVED
OCT 28 2003
LAW DEPT.
M03-05814

ECCO Mailing Address: 1205 N. 45th Street, Lincoln, NE 68503

Appendix L



CITY OF LINCOLN NEBRASKA

MAYOR COLEEN J. SENG

www.ci.lincoln.ne.us

Office of the Mayor
555 South 10th Street
Suite 208
Lincoln, Nebraska 68508
402-441-7511
fax: 402-441-7120
mayor@ci.lincoln.ne.us

November 4, 2003

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: City of Lincoln, Petition for a Declaratory Order, FD. 34425

Dear Mr. Williams:

I write in support of the City of Lincoln's Petition for a Declaratory Order.

The City has two major public projects that require the City to acquire small linear segments of Lincoln Lumber Company's property. Those projects are the Husker Link Trail from 24th Street to 19th Street, and a storm sewer project in the same area.

The storm sewer project is also vital to the City. Voters approved bond financing for storm sewer improvements, and this corridor has been a trouble-spot for localized flooding for many years. As I understand it, the Lincoln Lumber Company owner would benefit from the storm sewer and would not oppose the City's plans for just that project.

The City has developed trail and storm sewer construction plans that do not interfere with any rail use of this railroad corridor and have only a minimal impact on Lincoln Lumber's other operations in the railroad corridor. As a result, there is no federal policy involved. The city has reasonable public interest land use needs, and the federal law should not preclude use of eminent domain if that is necessary to obtain the limited portions of property required for the trail and storm sewer projects.

City staff members have been working on these projects for a long time, and they have done their level best to accommodate the owner's wishes and address any reasonable concerns. As background, the City of Lincoln views its off-street trail system as an important transportation system designed for safe bicycle commuting and for relief of congestion on city streets. We are committed to completion of an integrated off-street trail system, and we do not take this system lightly. Indeed, the City is proud of being a leader in implementation of a bicycle commuting system. The owner of Lincoln Lumber appears not to share the City's view that an integrated and meaningful bicycle commuting system should be developed in and for the City. He has indicated to City staff that he views such facilities as purely recreational and unworthy of public support. While he is entitled to personal views in opposition to trails, those views should not trump the views of the City. On the contrary, the City's plans for trails have recognized not only the integrated transportation value of trails for commuting pedestrians and bicyclists, but also the safety and quality of life enhancements of well-planned and well-connected off-street trails. The owner's objections apparently do not consider these factors, and his purported alternatives are little more than restated 'not on my property' demands that do not realistically meet the needs of an integrated and well-connected trail.


LINCOLN
The Community of Opportunity

Honorable Vernon Williams
November 4, 2003
Page 2

As I understand the current situation, Lincoln Lumber has stated their intention to invoke the jurisdiction of the Surface Transportation Board to preempt Lincoln's use of eminent domain.

Since it appears the owner will not cooperate regarding the trail, and he will only agree to the storm sewer without the trail, this issue needs to be resolved by eminent domain. As a result, it is necessary to resolve the issue of federal jurisdiction in this proceeding in the City's favor, to permit the exercise of eminent domain under state law to secure the property interests necessary to allow the Trail and sewer projects to move forward. We are constrained by time, and the restrictions on the use of bond proceeds for the storm sewer and grant funding for the trails make these property acquisitions very time critical. The City of Lincoln needs to complete acquisition of the property by March 2004. The City of Lincoln will compensate the owner as constitutionally required in any eminent domain proceeding, in addition to bearing the entire costs of both the storm sewer and trail improvements.

I thank you for your consideration.

Copies of this have been delivered to counsel for the City for service upon Lincoln Lumber and other interested parties.

Sincerely,



Coleen J. Seng
Mayor of Lincoln

cc: US Senator Ben Nelson
US Senator Chuck Hagel
US Representative Doug Bereuter
Joel Pedersen, City of Lincoln, Law Department

Appendix M

Certificate of Service

I hereby certify that copies of the foregoing Petition and exhibits were served by US Mail, postage pre-paid, first class or equivalent, this 5th day of November, 2003, upon the following commercial (non-residential) property owners or leaseholders adjacent to the former Missouri Pacific railroad corridor now owned by Lincoln Lumber Company between 19th and 24th Streets in Lincoln, NE:

1. Lincoln Lumber Company (two addressees):

- a. Thomas McFarland, Esq.
208 South LaSalle St., Suite 1890
Chicago, IL 60604-1194
- b. Mr. Don Hamill
Lincoln Lumber Company
932 No. 23d St.
Lincoln, NE 68503

2. B&J Partnership (registered office in NE)

B&J Partnership, Ltd.
Attn: managing partner
340 Victory Lane
Lincoln, NE 68528

3. University of Nebraska

University of Nebraska
Attn: Christine A. Jackson
Vice Chancellor, Business and Finance
301 Canfield Administration Bldg.
P.O. 880425
Lincoln, NE 68588-0425

4. Commonwealth Electric Co. of the Midwest

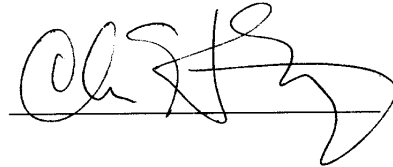
Commonwealth Electric Co. of the Midwest
Attn: Thomas M. Price, President
1901 "Y" Street, Suite 100
Lincoln, NE 68503

5. Textron, Inc. (registered agent in NE)

Textron, Inc.
% CT Corporation System
301 S. 13th St., Suite 500
Lincoln, NE 68508

6. NEBCO

Mr. Robert C. Miller
Chief Financial Officer
NEBCO
1815 Y Street
Lincoln, NE 68508

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