

APPENDIX I

BNSF RAILROAD CORRESPONDENCE

- 1) 1/20/07 Letter from HDR to BNSF
- 2) 1/25/07 E-mail from BNSF to HDR
- 3) 2/12/07 E-mail from BNSF to HDR
- 4) 2/20/07 Letter from HDR to BNSF
- 5) 6/12/07 Meeting notes from SDDOT, Watertown, FHWA, BNSF meeting
- 6) 11/29/07 Watertown Public Opinion article regarding rail crossing closure
- 7) 1/7/08 Watertown City Council Proceedings regarding rail crossing closure
- 8) 6/10/08 Railroad Highway Grade Crossing Closure Agreement between BNSF and City of Watertown
- 9) 10/2/09 Letter from BNSF to City of Watertown regarding new crossing at South Connector

January 25, 2007

Lynn Leibfried, P.E.
BNSF Manager Public Projects
80-44th Ave. NE
Minneapolis, MN 55421

Re: Watertown South Connector Roadway Project

Dear Ms. Leibfried:

The South Dakota Department of Transportation (SDDOT), with the support of the City of Watertown, is proposing to construct a high volume roadway around the south side of Watertown. The roadway is called the South Connector. Forecast year 2030 traffic volume is 7100 vehicles per day. HDR is providing design and environmental assessment services for the project. Enclosed, please find the following items regarding the project:

- August 2006 Informational Brochure
- Figure 2-2a – Roadway Layout near US 212
- Figure 2-6 – Railroad Considerations

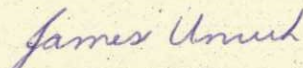
The proposed South Connector roadway would entail a new at-grade crossing of the BNSF rail line in the vicinity of Pelican Lake. It is anticipated that the existing Fish Road at-grade crossing of the BNSF rail line could be eliminated by relocating Fish Road to the west side of the tracks as part of the South Connector project as illustrated on Figure 2-6. Relocated Fish Road would be within the Pelican Lake Game Production Area. Fish Road would continue to provide public access to Pelican Lake and the Pelican Lake Game Production Area.

We are currently preparing an Environmental Assessment on Segment 2A of the South Connector project. Your initial review of and comments regarding the project as related to BNSF would be appreciated.

Please address your response to me and feel free to contact me if you have any questions.

Sincerely,

HDR ENGINEERING, INC.



James Unruh, P.E.
Project Manager

Enclosures

Copies to: Terry Keller, SDDOT
Rick Laughlin, SDDOT
Herb Blomquist, City of Watertown

From: Unruh, James
Sent: Monday, February 12, 2007 10:34 AM
To: 'Leibfried, Lynn M'
Subject: RE: Watertown

Follow Up Flag: Follow up
Flag Status: Purple

Lynn,

We will send you a 300 scale preliminary design layout that will help you more thoroughly review the proposed and existing crossings. A cover letter will also be included that will address the items noted.

James Unruh

From: Leibfried, Lynn M [mailto:Lynn.Leibfried@BNSF.com]
Sent: Friday, February 09, 2007 4:53 PM
To: Unruh, James
Subject: Watertown

James,

I received the documents you mailed to me. Where is the existing crossing in relation to the color coded options on the layout? We don't want to cross more than one track, and also need to cross at a 90 degree if at all possible. Medians will be required also. I see that the City wants to signalize. Have you contacted Susan Tracy to get this on her program for funding?

Thanks,
Lynn

Lynn Leibfried, P.E.
BNSF Manager Public Projects
80-44th Ave. NE
Mpls, MN 55421
763.782.3492 Office
763.782.3061 FAX
612.770.6062 Cell

From: Unruh, James
Sent: Thursday, January 25, 2007 4:33 PM
To: 'Leibfried, Lynn M'
Cc: 'Terry.Keller@state.sd.us'; 'hblomquist@watertownsd.us'; 'Rick.Laughlin@state.sd.us'; 'Jeff.Senst@state.sd.us'; 'Ron.Sherman@state.sd.us'
Subject: RE: Watertown (SD) South Connector Project
Follow Up Flag: Follow up
Flag Status: Purple

Lynn,
Attached, please find a letter and attachments regarding the project. A hard copy of the letter and attachments will be sent via regular mail.
James U.

From: Leibfried, Lynn M [mailto:Lynn.Leibfried@BNSF.com]
Sent: Monday, January 22, 2007 3:28 PM
To: Unruh, James
Subject: RE: Watertown (SD) South Connector Project

James,
I will have to take another look at this, but my initial comment based on your email, is that BNSF does not allow new at-grade crossings. Does the City have a near by crossing that will be closed? I am the correct contact.
Thanks,
Lynn

-----Original Message-----

From: Unruh, James [mailto:James.Unruh@hdrinc.com]
Sent: Friday, January 19, 2007 11:46 AM
To: Leibfried, Lynn M
Cc: Banks, Rebecca
Subject: Watertown (SD) South Connector Project

Lynn,
HDR is the design consultant for a South Dakota Department of Transportation project in Watertown, South Dakota. The project consists of a new roadway along the south side of Watertown. A new at-grade crossing of a BNSF rail line near Pelican Lake is part of the project. Attached to this e-mail, please find an informational brochure for the project.

We are now analyzing the portion of the project in the vicinity of the BNSF rail line. We would like to submit to BNSF additional information regarding the project and receive feedback. Please provide us with the proper BNSF contact person for this project.

James Unruh, P.E.

HDR ONE COMPANY | *Many Solutions*

6300 South Old Village Place, Suite 100 | Sioux Falls, SD | 57108

Phone Direct: 605.977.7766 | Phone Main: 605.977.7740 | Fax: 605.977.7747 | Email: james.unruh@hdrinc.com

February 20, 2007

Lynn Leibfried, P.E.
BNSF Manager Public Projects
80-44th Ave. NE
Minneapolis, MN 55421

Re: Watertown South Connector Roadway Project

Dear Ms. Leibfried:

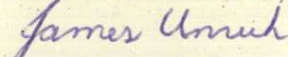
Thank you for your initial review of the letter and graphics that we submitted to you on January 25, 2007.

To assist in your review of the project, a 300 scale preliminary design layout for Segment 2A of the South Connector is enclosed with this letter. Following are comments/questions related to your e-mail response to the January 25 submittal:

- The existing at-grade Fish Road/BNSF crossing is located approximately 2700 feet south of U.S. Highway 212. The South Dakota Department of Game, Fish, and Parks expressed concern about relocating Fish Road to the west side of the BNSF tracks since the relocated Fish Road would infringe on a game production area. However, we do see relocation of Fish Road as a viable way to eliminate an existing at-grade crossing of the BNSF tracks and thereby allow the new South Connector Roadway crossing.
- What jurisdiction does BNSF have over the spur tracks (one going north to the Agriliance site and the other going southeast to the ethanol plant)? Broadway Avenue currently crosses the spur line to the ethanol plant. We assume that Roadway Options 1 and 2 be considered relocations of that existing crossing.
- Your e-mail mentioned Susan Tracy (SDDOT railroad crossing funding). She is aware of the South Connector project and is involved in the design review.
- Your e-mail noted median requirements. Please provide specific design requirements.
- We are in the process of eliminating undesirable options. Railroad crossing angles could be a factor in determining which options to eliminate. Your comments in this regard would be appreciated.

Thank you for your consideration of this project.

Sincerely,
HDR ENGINEERING, INC.



James Unruh, P.E.
Project Manager

Enclosure

Copies to: Terry Keller, SDDOT
Rick Laughlin, SDDOT
Herb Blomquist, City of Watertown

Subject: Segment 2A and Segment 1 Process Team Meeting	
Client: South Dakota Department of Transportation	
Project: Watertown South Connector	Project No: 39319
Meeting Date: 06/12/07; 1:00 p.m. to 3:30 p.m.	Meeting Location: Watertown City Hall
Notes by: HDR, revisions per City of Watertown comments	Notes to: attendees

Attendees:

<u>HDR</u>	<u>SDDOT</u>	<u>FHWA</u>	<u>City of Watertown</u>	<u>Focus Watertown</u>	<u>BNSF</u>	<u>Glacial Lakes</u>
James Unruh	Rich Phillips	Mark Clausen	Dave Petersen	Craig Atkins	Lynn Leibfried	<u>Ethanol</u>
Rebecca Banks	Terry Keller		Herb Blomquist			Tom Branhan
	Mike Behm		Geoff Heig			
	Susan Tracy		Steve Lehner			
	Scott Rabern		Michael Rye			
	Matt Brey					

The meeting began with attendee introductions.

Terry Keller updated the group regarding the project schedule as follows:

- Segment 1: Fall 2008 bid letting with construction in 2009.
- Segment 2A: Early 2009 bid letting with construction in 2009. It was noted that access will need to be maintained to Glacial Lakes Ethanol either from the east or from the west during construction.
- Terry had discussed the project at an agency coordination meeting the week of June 4. No major concerns were raised by any agencies about the project.

A. Segment 2A EA Railroad Considerations: (Topic: Discussion/conclusions, follow-up, post meeting follow-up)

1. Train traffic volumes: Existing train volume on BNSF tracks = 2 to 3 trains per day average throughout the year with a peak volume of 4 to 5 trains per day. Existing train volume on WCRRA rail spur = 3 trains per week with 10 cars per train; after expansion of the ethanol plant, each train will consist of 20 to 30 cars.
2. BNSF/South Connector at-grade rail crossing:
 - BNSF policy of no new at-grade rail/roadway crossings remains in effect.
 - There was discussion of a grade separated crossing. This has not been analyzed in detail and is likely not a cost-effective option. Environmental impacts of a grade-separated crossing would likely be significant. It was noted that if an existing 'at grade crossing' can't be identified for closure, the BNSF may require an overpass. The feasibility of an overpass is undetermined but would have significant financial impact to the project.
 - The suggested closure of the existing at-grade crossing at Fish Road (average of 5 vehicles per day) in exchange for the South Connector crossing (projected 7100 vehicles per day) is not considered an equitable exchange. It was noted that relocation of Fish Road to the west side of the BNSF tracks to eliminate the at-grade crossing would result in wetland impacts within the Pelican Lake Game Production Area.
 - After field review of the BNSF line and existing roadway crossings by Susan Tracy and Lynn Leibfried, the group examined the potential closure of several crossings including the crossing at 1st Avenue NE. This crossing is close to the 3rd Avenue NE crossing and it appeared that the 1st Avenue NE crossing may be closed without disrupting traffic

significantly. *Follow-up: Herb Blomquist will discuss this option with city staff and council members. Lynn Leibfried will discuss the South Connector project with BNSF staff in Minneapolis. Post-meeting follow-up: Herb has discussed the closure of 1st Avenue N crossing with City Staff and elected officials. Closure is seen as difficult. The City of Watertown, the State of South Dakota, and BNSF need to have continued discussion on this issue.*

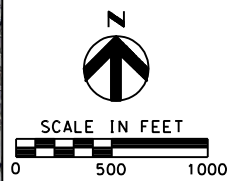
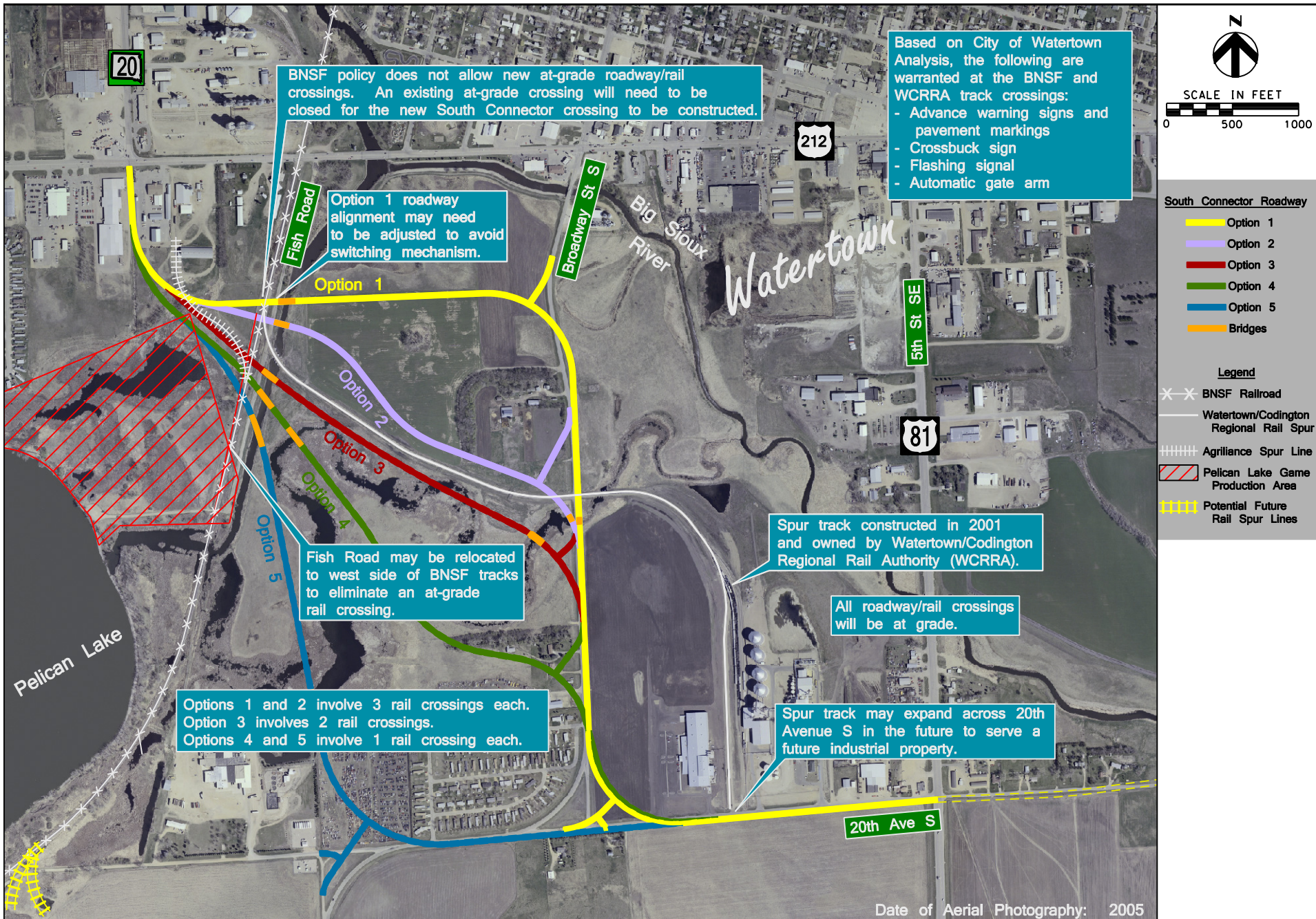
3. Agrilience Rail Spur: A new fertilizer distribution facility is being planned for an area south of 20th Avenue. *The City assumes the Agrilience Rail Spur would be abandoned if a new facility were constructed but that has not been formally agreed to or indicated in writing. Follow-up: Craig Atkins will provide HDR with a concept rail layout for the proposed fertilizer distribution facility. Post meeting follow-up: A revised graphic (Figure 2-6a) has been prepared illustrating the potential future rail layout for the fertilizer distribution facility. Figure 2-6 has also been revised. Both figures are attached to these meeting notes.*
4. Spur track switching mechanism: *There was concern that South Connector options 1 and 2 are located at the switching mechanism for the WCRRRA spur. Follow-up: HDR will examine available survey/as-built information to determine the exact location of the switching mechanism and adjust alignments, if necessary. Post meeting follow-up: Distances from switching mechanisms to options (measured from high-resolution aerial photography):*
 - *Option 1 – North edge of shoulder is 103 feet south of BNSF/WCRRRA switch.*
 - *Option 2 – North edge of shoulder is 225 feet south of BNSF/WCRRRA switch.*
 - *Option 3 – South edge of shoulder is 247 feet north of BNSF/Agrilience switch.*
 - *Option 4 – South edge of shoulder is 126 feet north of BNSF/Agrilience switch.*
 - *Option 5 – Roadway crosses BNSF/Agrilience switch.**All Options except Option 5 cross the tracks where there is some separation between the BNSF and spur track. It is concluded from this analysis that all option alignments can remain as previously shown. Option 5 is not considered a viable option anyway.*

C. Segment 2A Draft EA Resolution of 5/11/07 FHWA Comments

1. *Broadway Street use after South Connector (comment 4): From US 212 to the South Connector, Broadway Street will remain in-place as a local street and will continue to be called Broadway Street. A new name for the South Connector has not yet been determined.*
2. *Sidewalk/bike path considerations (comments 5 and 25): The 2005 Watertown Transportation Plan states that a multi-use trail is proposed within the South Connector Study Area. However, a trail or pedestrian path is not considered in the City's Master Plan within the Study Area. The group agreed that a pedestrian trail or path would not be appropriate along the South Connector.*
3. *Traffic projections for individual South Connector segments (comment 7): The group agreed that the traffic model will need to be re-calibrated and re-run to determine traffic projections for individual South Connector segments. Follow-up: HDR to determine how this can be accomplished. Post meeting follow-up: The traffic model can be re-run without the Segment 1 and Segment 2B links.*
4. *Identification of preferred alternative in EA (comments 13 and 38): The group agreed that a preferred alternative will not be identified until after the Public Information Meeting for Segment 2A.*
5. *Projected truck volumes (comment 15): Follow-up: SDDOT to provide US 212 truck counts to HDR. Post meeting follow-up: SDDOT did provide counts to HDR. The counts verified the truck projections for the South Connector listed in the EA.*
6. *Hanten farmstead (comment 16): The City has had informal discussions with the owners of the Hanten Farmstead related to the future southern connector project. However, no commitments have been made and no further action has been taken.*

7. Archeological survey for Hanten farmstead and Option 4 impacted properties (comment 17): *It was decided to wait until after the Public Information Meeting to pursue any additional archeological work.*
8. Salt from snow removal (comments 20 and 21): *The City of Watertown will likely plow snow into the ditches along the South Connector, thereby minimizing the possibility of salt contaminating the aquifer protection zone.*
9. Pelican Lake Game Production Area (GPA) noise impacts (comments 28 and 44): *Follow-up: FHWA will provide clarification on the proper Noise Area Classification for a game production area and how to analyze the noise impacts for this land use. Post meeting follow-up: FHWA recommended that GPA be analyzed as a recreational land use.*
10. Fish Road relocation (comment 33): *The City of Watertown continues to prefer and to push for the relocation of Fish Road so that the BNSF rail crossing at Fish Road can be closed. Depending on the BNSF ruling on this crossing, the proposed relocation of Fish Road may be dropped as an option.*
11. Wetland mitigation site constructed in 2006 (comment 37): *The site was constructed in 2006 by the City of Watertown as wetland mitigation for an FAA airport construction project.*
12. Option 1 floodway impacts (comment 45): *The City of Watertown and Rich Phillips (SDDOT) consider Option 1 to be non-viable because a portion of the alignment is within the Big Sioux River floodway. It was recommended that Option 1 be eliminated from the discussion in chapter 3 of the EA. A permit from the City of Watertown will be required for any floodplain impacts.*
13. Agency coordination update: *Terry Keller covered this in his introductory remarks.*
14. SHPO request for additional data re: Wickard farmstead: *Follow-up: HDR will take additional photos of the buildings on the Wickard farmstead and submit them to SHPO to satisfy a request made in a comment letter. Post meeting follow-up: Additional photos were taken following the meeting and submitted to SHPO.*
15. Public information meeting date: *Terry Keller anticipates a public information meeting in late June or early July 2007.*

D. Segment 1 EA: *Terry Keller anticipates a public hearing in late June or early July 2007. This will be held in conjunction with the public information meeting for Segment 2A. SDDOT and FHWA will coordinate to determine a date for the public hearing. FHWA is in the process of verifying that their comments have been addressed in the most recent draft of the EA which was submitted to FHWA and SDDOT on May 24, 2007. Craig Atkins requested that a meeting be held in the afternoon on the public hearing date to update Focus Watertown and other civic leaders on the South Connector project.*



Date of Aerial Photography: 2005

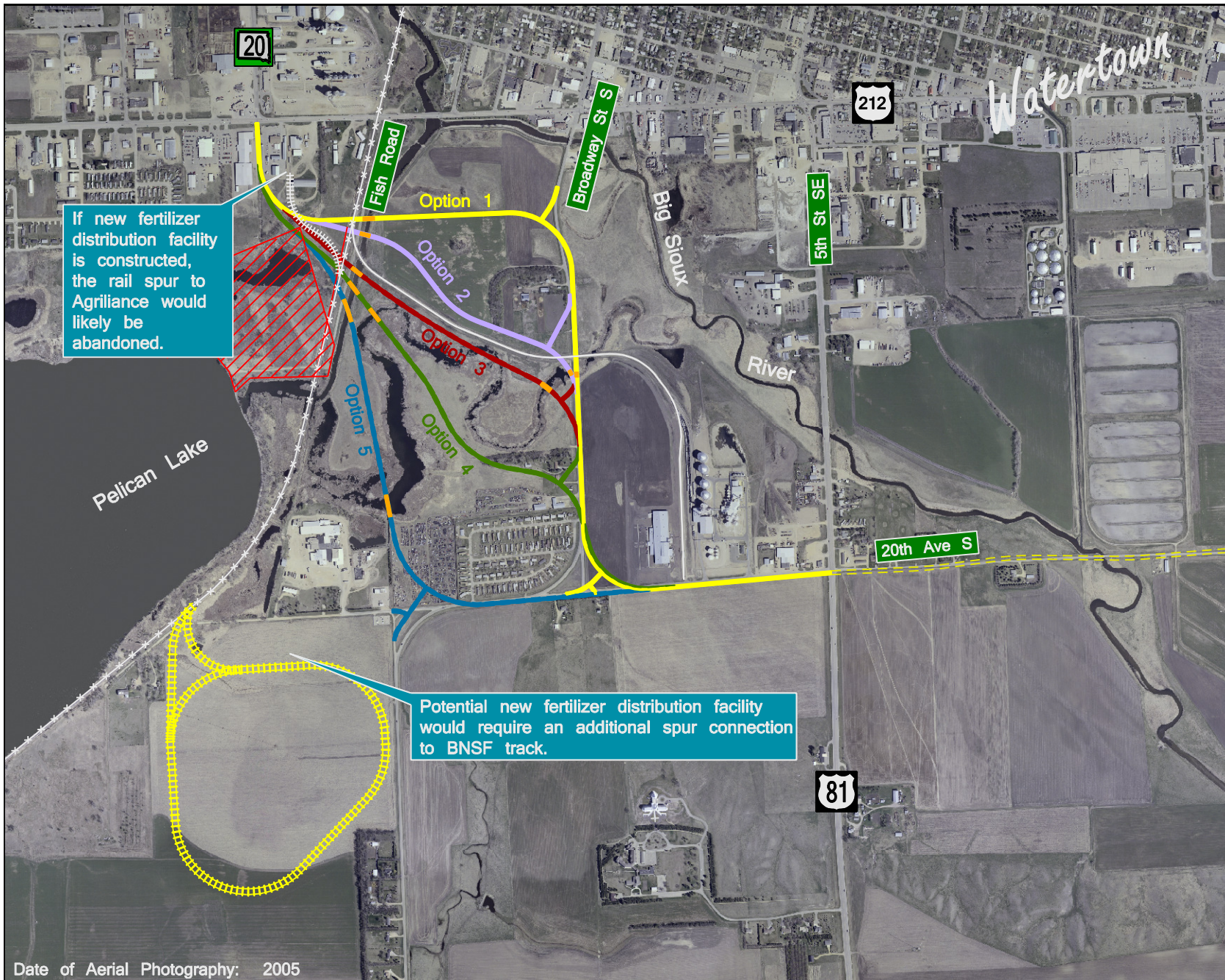
Drawn by: B. Miller
Date: 03/06/07
Checked by: J. Unruh
Date: 03/06/07
Revision Date:
April 2007
June 25, 2007



Railroad Considerations

Watertown South Connector - SD 20 to US 81
Project EM 4020(01) PCN 00RW

Figure 2-6



SCALE IN FEET
0 750 1500

South Connector Roadway

- Option 1
- Option 2
- Option 3
- Option 4
- Option 5
- Bridges

Legend

- BNSF Railroad
- Watertown/Codington Regional Rail Spur
- Agriliance Spur Line
- Pelican Lake Game Production Area
- Potential Future Rail Spur Lines

If new fertilizer distribution facility is constructed, the rail spur to Agriliance would likely be abandoned.

Potential new fertilizer distribution facility would require an additional spur connection to BNSF track.

Date of Aerial Photography: 2005

Drawn by: B. Miller
Date: 06/25/07
Checked by: J. Unruh
Date: 06/25/07
Revision Date:



Railroad Expansion Considerations
Watertown South Connector - SD 20 to US 81
Project EM 4020(01) PCN 00RW

Figure
2-6a

First Avenue likely rail crossing casualty

BY JEREMY FUGLEBERG
Public Opinion Staff Writer

A railroad crossing needs to close, and it looks like the First Avenue Northwest crossing is the best option, a city official told a special meeting of a city board Wednesday.

"We're not out to run someone out of business, but at the same time, we have an issue we have to resolve," said Herb Blomquist, the city's public works director.

Less than a dozen people showed up to learn about the issue.

The city needs to eventually close the crossing so the city's planned south connector route can follow its planned path south of



Blomquist

of Watertown, which includes adding a rail crossing.

Federal rules capped for safety reasons the number of railroad crossings allowed in the country. BNSF railroad representatives told city officials earlier this year they wouldn't approve another crossing point.

City officials appealed to the state, but were told it was a city problem. They then contacted South Dakota's congressional representatives, but were turned away empty-handed, said Mayor Paul Fox.

"They couldn't help us either," he said.

So the city tapped Aason Engineering to look at all the crossings in town to determine which would be the best option to close, said Blomquist. The study revealed that First Avenue crossing was the cheapest and easiest

Please see RAIL, Back Page

to close, since it didn't require an overpass, or a bridge over the Big Sioux River, just to the west.

Overpasses and new bridges, as well as buying property in the area, meant the price of closing other streets would be pricey. While adding an overpass to US Highway 212 could cost \$3 million, closing the First Avenue crossing would probably only cost \$350,000.

"When you're talking about structures, they get expensive very quickly," said Blomquist.

The cost of the overpass was so high, it would probably kill the south connector project, he said. The hope is that the state

in the future.

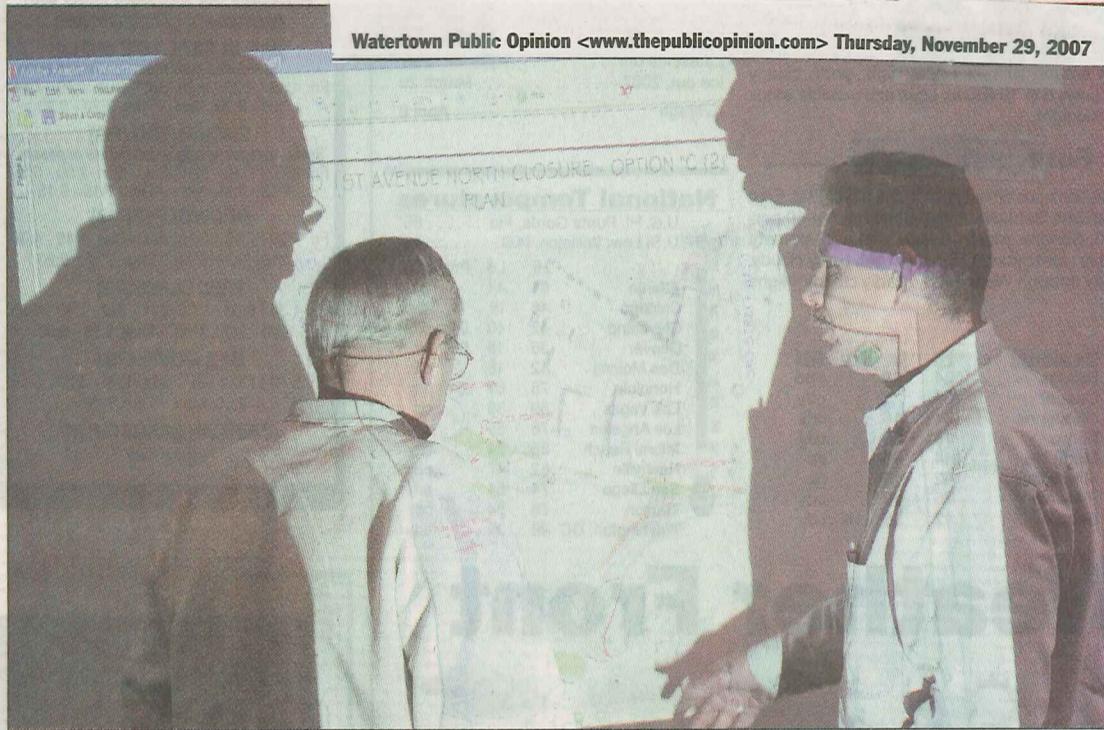
"That's not a project, at this point in time, the city can take care of itself," he said.

In the meantime, city officials must make a decision about which crossing will be closed so the connector project can move forward.

"The longer the decision on this railroad crossing is deferred, the more we jeopardize the south connector project," said Blomquist. "That's a project we don't want to jeopardize."

At the meeting, board members and others at the meeting saw a variety of options for redirecting traffic from First Avenue

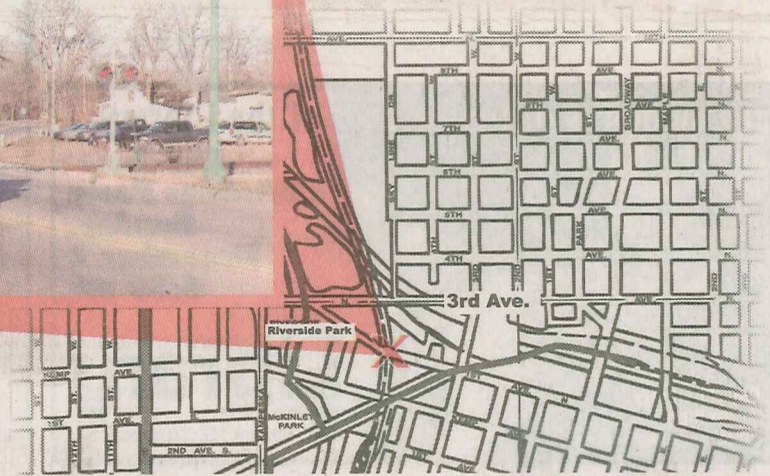
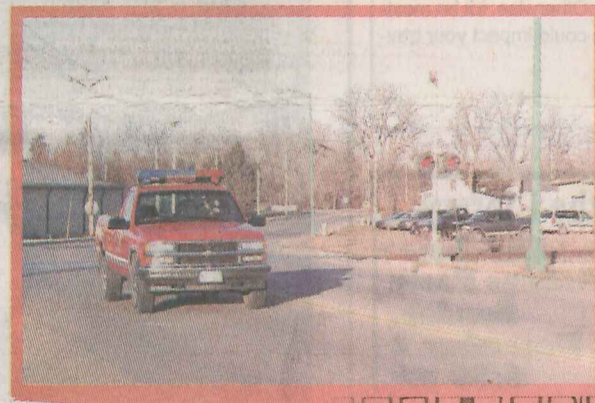
Watertown Public Opinion <www.thepublicopinion.com> Thursday, November 29, 2007



Public Opinion Photo by Jeremy Fugleberg

Bill Reiffenberger, right, points to a map at a special public meeting of a city Urban Renewal Board Wednesday. The map illustrates an option for redirecting traffic around the First Avenue Northwest rail

crossing to be closed in the future. Reiffenberger chairs the city Urban Renewal Board, which held the meeting to discuss the planned closing of the rail crossing just west of uptown Watertown.



spaced crossings just west of the uptown area. Kemp Avenue West crosses to the south, and Third Avenue Northwest crosses to the north. First Avenue crosses the rail grade and then runs north into a V-shaped intersection with Third Avenue. A traffic survey indicated that between 3,500-4,000 cars use each crossing each day, Blomquist said.

Options were to close the road and:

■ Simply terminate both sides in cul-de-sacs next to the railroad grade;

■ Cut a diagonal route from further east along First Avenue and sweep northwest to Third

Kemp Avenue West, with the roads meeting in a T-shaped junction;

■ S-curve First Avenue south and run the road into Kemp Avenue.

Blomquist said the S-curve option seemed to be the cheapest and easiest way to redirect traffic after the crossing is closed.

"When you look at this, the doesn't seem to be a better alternative," said Bill Reiffenberger who chairs the Urban Renewal Board.

There will be at least two public hearings about the crossing closure, and any property owner affected by the closure and

**OFFICIAL PROCEEDINGS
CITY COUNCIL, CITY OF
WATERTOWN, SOUTH DAKOTA JANUARY 7, 2008**

The City Council met in regular session at 7:00PM in the Council Chambers, City Hall,
23 2nd St

NE. Mayor Paul Fox presiding. Pledge of Allegiance was given. Present upon roll call:
Aldermen Solberg, Garnos, Wilkins, Gisselbeck, Heller, Meisenheimer, Solum, and
Alderwomen Arbogast, Walder, and York.

Motion by Heller, seconded by Garnos, to approve the minutes of the meeting held
December 17, 2007. Motion carried.

This being the time set for public hearing on the proposed closure of railroad highway
grade crossing USDOT No. 075501M at the intersection of Burlington Northern Sante Fe
and 1st Avenue Northwest, the Mayor called for public comment. Hearing no comment
from the public, motion by Gisselbeck, seconded by Meisenheimer, to authorize the
Mayor to sign an agreement providing for the closure of railroad highway grade crossing
USDOT No. 075501M at the intersection of Burlington Northern Sante Fe and 1st Avenue
Northwest and to apply for federal Section 130 funding to assist with the closure. Motion
carried.

From: Herb Blomquist [hblomquist@watertownsd.us]
Sent: Thursday, June 19, 2008 7:59 AM
To: Unruh, James; Terry.Keller@state.sd.us
Subject: RE: Segment 2A Conference Call Meeting Notes
Follow Up Flag: Follow up
Flag Status: Purple
Attachments: Rail Crossing Closure.pdf

Gentlemen:

Please note the attached agreement. The document is only 3 pages even though it indicates 4.

Please call if you have questions.

Herb

From: Unruh, James [mailto:James.Unruh@hdrinc.com]
Sent: Monday, June 16, 2008 10:37 AM
To: hblomquist@watertownsd.us; Terry.Keller@state.sd.us
Cc: Baker, Rebecca; Gundvaldson, Kristen
Subject: Segment 2A Conference Call Meeting Notes

Attached, please find the draft notes for last Wednesday's conference. Please review and let us know if any changes are needed.

Also attached is the transmittal letter for the Segment 2A draft EA that was submitted to SDDOT for review. Terry, you should be receiving the draft EA this morning. Please review.

James Unruh, P.E.

HDR ONE COMPANY | *Many Solutions*

6300 South Old Village Place, Suite 100 | Sioux Falls, SD | 57108

Phone Direct: 605.977.7766 | Phone Main: 605.977.7740 | Fax: 605.977.7747 | Email: james.unruh@hdrinc.com

**RAILROAD HIGHWAY GRADE CROSSING CLOSURE
AGREEMENT**

**GRADE CROSSING USDOT NO. 075501M, 1st AVE. NW
WATERTOWN SUBDIVISION, TWIN CITIES DIVISION
WATERTOWN, SD**

THIS AGREEMENT, made and entered into by and between BNSF RAILWAY COMPANY hereinafter referred to as "RAILROAD", and the City of Watertown, South Dakota, herein referred to as the "CITY" and is subject to the following terms and conditions:

1. RECITALS.

- A. RAILROAD and CITY agree to facilitate the , elimination of a grade crossing by closing the dedicated street right-of-way for vehicular and pedestrian traffic for that portion of 1st Ave. NW depicted on Exhibit A attached hereto and incorporated by this reference; also known as the USDOT 075501M Crossing, hereinafter referred to as the "CROSSING".
- B. RAILROAD and CITY have been authorized to execute this AGREEMENT according to its terms and agree to be bound thereby.
- C. The parties to this AGREEMENT agree and acknowledge that the elimination of the CROSSING described herein shall be deemed perpetual and no attempt to reopen the CROSSING, whether legal or equitable shall be undertaken by either party hereto without written consent and acknowledgement of the other party.
- D. The parties to this AGREEMENT acknowledge that the mutual covenants and obligations contained herein are sufficient consideration.

2. OBLIGATIONS OF RAILROAD.

- A. RAILROAD agrees that CITY shall be permitted and is hereby granted a utility easement for the limited and exclusive purpose of the constructing, installing, laying, thereafter using, inspecting, repairing, maintaining, replacing and removing existing and future utilities whether above or below ground.

Any future utility within the said utility easement shall be constructed as per RAILROAD standards and shall be properly permitted through the RAILROAD or its designee. The CITY agrees to pay processing fees but not occupation fees.

- B. RAILROAD agrees that it shall be responsible for elimination or removal of the road surface located adjacent to the CROSSING within the Railroad right-of-way and is solely responsible for all costs associated with such removal.

3. OBLIGATIONS OF CITY.

- A. CITY agrees that on or before SDDOT Project Number EM-P 4020(01), Segment 2 of the South Connector, is complete, it will install, or cause to be installed, barricades or other preventative measure on either side of the CROSSING whose purpose shall be to prevent motor vehicles from further utilizing the CROSSING; and the installation of such barricades or other preventative measure shall be deemed to have the effect of eliminating or closing the CROSSING. Said barricades will not be located on RAILROAD's property. CITY shall be permitted to replace any barricade or preventative measure in the future provided such replacement serves the same purpose as the device originally installed.
- B. CITY agrees that it will remove, or cause to be removed any traffic signs advising motorists of the location of the CROSSING to be eliminated hereunder; which are located outside the railroad right-of-way.
- C. CITY agrees that prior to exercising any of its utility easement rights hereunder it shall attempt to provide RAILROAD written notice prior to the commencement of any activity and agrees to restore RAILROAD's property to the condition that existed prior to the commencement of any activity.
- D. CITY agrees that it shall be its sole responsibility to keep and maintain in good repair and working order any device or structure installed in conjunction with the closing of the CROSSING.

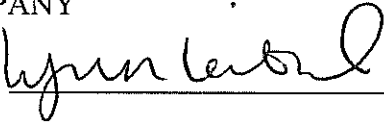
4. MISCELLANEOUS.

- A. This AGREEMENT represents the entire agreement among the parties; and no other agreements or understandings, whether written or oral exist between the parties hereto.
- B. This AGREEMENT shall be construed and governed by the laws of the State of South Dakota.
- C. This AGREEMENT is binding on the successors and assigns of the parties hereto and shall be deemed to run with the land.

RAILROAD HIGHWAY GRADE CROSSING CLOSURE AGREEMENT
GRADE CROSSING USDOT NO. 075501M, 1st AVE. NW, WATERTOWN, SD
WATERTOWN SUBDIVISION, TWIN CITIES DIVISION

EXECUTED this 0th day of June 2008

BNSF RAILWAY COMPANY

By: Signature: 

Printed Name: Lynn Leibfried

Title: Manager, Public Projects

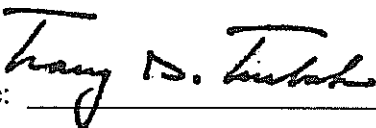
CITY OF WATERTOWN, SOUTH DAKOTA

By: Signature: 

Printed Name: Paul N. Fox

Title: Mayor

ATTEST:

By: Signature: 

Printed Name: Tracy Turbak, CPA

Title: Finance Officer



Lynn Leibfried, P.E.
Manager Public Projects

BNSF Railway Company

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October 2, 2009

Mayor Gary Williams
City of Watertown
23 Second St. NE
Watertown, SD 57201

Re: Railroad Highway Grade Crossing Closure Agreement

Dear Mr. Williams:

In June 2008, the City of Watertown and BNSF Railway Company executed a railroad highway grade crossing closure agreement. The agreement provided for the closure of existing Grade Crossing USDOT No. 075501M at 1st Avenue NW in Watertown.

Paragraph 3A of the agreement referenced the proposed South Connector roadway project in conjunction with the 1st Avenue NW closure. However, neither that paragraph nor any other text in the agreement explicitly obligated BNSF Railway Company to allow the new at-grade crossing of the BNSF tracks that will be a part of the proposed South Connector Roadway project. Therefore, as a clarification to the agreement please note the following:

- It is the intention of BNSF Railway Company to allow a new at-grade crossing approximately 1600 feet south of US Highway 212 as part of the South Connector project in place of the closed crossing at 1st Avenue NW.
- The new crossing shall meet all BNSF design and safety requirements.
- A separate agreement shall be executed for the new crossing prior to approval of the final design and construction of the crossing. This agreement will be developed with SDDOT, sponsor for the South Connector project.

Please contact me if you have any further questions on this subject.

Sincerely,

Lynn Leibfried

Copies to: Terry Keller, SDDOT
Susan Tracy, SDDOT
James Unruh, HDR