



Public Service Commission

State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Kevin Cramer
Tony Clark

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April 23, 2008

Pat Yauney, Roadmaster
BNSF Railway
Car Shop Building
300 1st Street S.W.
Mandan, ND 58554

Re: Ten day Notice to Construct a Railroad Crossing Pursuant to Section 49-11-17 of the North Dakota Century Code.

Dear Mr. Yauney:

On March 24, 2008, the North Dakota Public Service Commission ("Commission") received an application from David Wisdom ("Applicant") for a railroad crossing pursuant to the provisions of N.D.C.C. § 49-11-17. The law provides:

49-11-17. Railroad crossing over land owned on both sides by one person - Penalty for failure to provide. When any person owns land on both sides of any railroad and contiguous to the railway, the corporation or individual owning or operating such railway shall make and keep in good repair a proper cattle guard and causeway or other adequate means of crossing such railway at such reasonable place as may be designated by the landowner or the landowner's agent, upon at least ten days' written notice by the commission to the railroad corporation provided an adequate crossing is not otherwise accessible. The type of all cattle guards required by law to be constructed in this state before being installed shall be approved by the commission. The owner or person in possession of the land through which the railroad passes may recover twenty-five dollars for every thirty days of default on the part of the person or corporation operating the railroad after at least a ten-day notice served on an officer, roadmaster, or section foreman of the operating company has designated the place for the erection of the cattle-guarded crossings or the road crossing, requested and a like penalty for failure to keep such cattle guards or road crossings in good repair after at least a ten-day written notice has been served upon the operating company that such repairs are necessary.

The Applicant states that he owns land on both sides of and contiguous to the BNSF Railway ("BNSF") right-of-way in Sections 1 and 2, Township 138 North, Range 83 West, Morton County, North Dakota. Applicant states that the railroad right-of-way separates the lands owned by the Applicant with the result that Applicant does not have access to an adequate crossing across the railroad right-of-way between his land

6 **RR-08-131** Filed: 4/23/2008 Pages: 9
Mailing of Ten Day Notice to Construct Railroad Crossing

Public Service Commission

Bill Binek

located south of the right-of-way and his land located north of the right-of-way. Applicant states that the nearest crossing lies to the east of his properties, but that crossing is not accessible to him either by public road or by recorded easement.

Applicant states that he has communicated with BNSF personnel regarding his request for placement of an adequate railroad crossing, and that he has designated a reasonable place for the crossing. He has indicated his willingness to accept an alternate location for the crossing as suggest by a BNSF representative. Applicant further states that he has expressed a willingness to help with his own equipment in the construction of a railroad crossing.

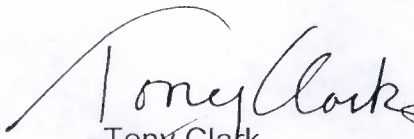
Applicant states that he has been unable to secure a commitment from BNSF for placement of a railroad crossing as designated by the Applicant or an alternative location as suggested by a BNSF representative.

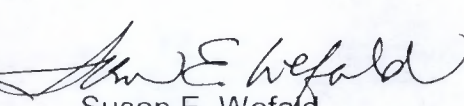
On April 11, 2008, the Applicant filed additional information including maps showing the location of the applicable land, the location of the railroad right-of-way and suggestions for location of a crossing.

Information provided by the Applicant confirms that there is no adequate crossing across BNSF's right-of-way for the Applicant to access his lands on either side of BNSF's .

YOU ARE HEREBY NOTIFIED, that this letter constitutes a ten (10) day notice under N.D.C.C. § 49-11-17 to BNSF Railway to construct a railroad crossing in Sections 1 and 2, Township 138 North, Range 83 West, Morton County, North Dakota at the location designated by the Applicant or an acceptable alternative location to provide the Applicant, David Wisdom, an adequate railroad crossing between his lands described herein.

Enclosed is a copy of the Application filed by David Wisdom together with subsequent information including maps provided by the Applicant. Please contact our office if you have any questions.


Tony Clark
Commissioner


Susan E. Wefald
President


Kevin Cramer
Commissioner

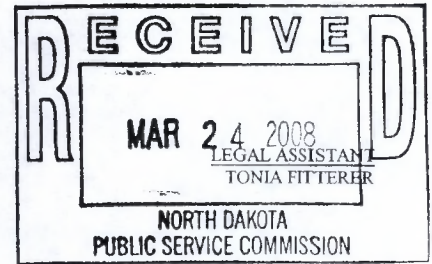
Enclosure:

cc: Brian Sweeney
Steven Plambeck
Casey Chapman

CHAPMAN & CHAPMAN, P.C.

ATTORNEYS AT LAW
103 SOUTH 3RD STREET, 2ND FLOOR
P.O. BOX 1258
BISMARCK, NORTH DAKOTA 58502-1258
701-258-6030
FAX: 701-223-8106
E-MAIL: chapmanlaw@btinet.net

DANIEL J. CHAPMAN (1925-1999)
CHARLES "CASEY" L. CHAPMAN
CHARLES R. ISAKSON



March 21, 2008

William Binek
Public Service Commission
12th Floor, State Capitol
600 East Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

Re: Matter of the Application of David Wisdom For a Railroad Crossing Pursuant to Section 49-11-17, NDCC

Dear Bill:

You and I have talked on a couple occasions regarding an issue with a needed railroad crossing. We have provided information to BNSF and, as of this date, they have taken no action.

Therefore, I enclose an Application under the applicable statute. If you have questions, after you receive this document, please give me a call.

Thanks.

Very truly yours,

CHAPMAN & CHAPMAN, P.C.

A handwritten signature in cursive script that reads "Charles L. Chapman".

By: Charles "Casey" L. Chapman

tf

Enclosure

1 RR-08-131 Filed: 3/24/2008 Pages: 3
Application of David Wisdom for a Railroad Crossing

David Wisdom

Chapman & Chapman, P.C.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

In the Matter of the Application of David Wisdom
For a Railroad Crossing Pursuant to Section 49-11-17, NDCC

David Wisdom, the applicant herein, states on oath, as follows:

1. Applicant owns land on both sides of, and contiguous to, the Burlington Northern and Santa Fe Railway Co (herein "BNSF") railroad right-of-way in Sections 1 and 2, Township 138 North, Range 83 West, Morton County, North Dakota. The railroad right-of-way separates the lands of the applicant, in a generally east-to-west traverse, with the result that the applicant does not have access, across the railroad right-of-way, between his land located south of the right-of-way and his land located north of the right-of-way.
2. Applicant does not have access to an adequate crossing, by which the applicant can cross the railroad right-of-way separating the applicant's lands. The nearest railroad crossing lies to the east of the applicant's land but is not accessible to the applicant, either by public road or by recorded easement.
3. Applicant has communicated with BNSF regarding his request for the placement of an adequate railroad crossing. Initially, the applicant verbally communicated with BNSF and met with BNSF representatives at the site of the requested railroad crossing; at the time of the meeting with the BNSF representatives, the applicant designated a reasonable place for the railroad crossing. The place, which the applicant designated for the railroad crossing, was marked by existing dirtwork, and the applicant, who owns equipment capable of moving dirt, expressed his willingness to help with his equipment in the construction of the railroad crossing. At the time of this meeting between the applicant and the BNSF representatives, the BNSF representatives suggested an alternate location for the railroad crossing, slightly to the west of the applicant's designated place for the crossing; applicant stated no objection to the alternate crossing location.
4. Following these initial communications with BNSF, the applicant continued to seek permission from BNSF for placement of the railroad crossing. The applicant made several verbal contacts with BNSF, in an attempt both to gain BNSF's commitment to a location for the railroad crossing and to confirm the process of placing the railroad crossing. Although the applicant has been able to talk to various representatives of BNSF at various times and has, through his own attorney, communicated with the BNSF attorney on several occasions, the applicant has been unable to secure any commitment from BNSF to a location for the railroad crossing, sufficient to allow the applicant to complete requested BNSF paperwork.
5. Thereafter, the applicant, by and through his attorney, wrote to BNSF and, with plat maps and aerial photographs, pointed out the options for placement of the railroad crossing, as designated


Public Service Commission
State of North Dakota
Application of David Wisdom

by the applicant and alternately as suggested by the BNSF representatives. To date, the applicant has only been told that the BNSF is reviewing the matter; however, no commitment to the railroad crossing has been made by BNSF. The applicant's home is located on the south side of the railroad right-of-way, and the applicant needs to place the railroad crossing, so that the applicant can have an adequate crossing, which will allow the applicant to access his land on the north side of the railroad right-of-way.

6. Pursuant to Section 49-11-17, NDCC, the applicant has designated a reasonable place for the railroad crossing, and the applicant also stands ready to help with his equipment in the construction of the railroad crossing at the applicant's designated location, or at the alternate location, suggested by BNSF representatives.

WHEREFORE, the applicant requests that the Public Service Commission of the State of North Dakota provide ten days' written notice to BNSF, as provided by statute, of the applicant's desire and intention to place a railroad crossing in Section 1 and 2, Township 138 North, Range 83 West, Morton County, North Dakota, in such way that the applicant will have an adequate railroad crossing between his lands, and that such notice further set forth applicant's designation that either location, as originally designated by the applicant or as alternately designated by the BNSF representatives during the site visit to applicant's land, will provide an adequate crossing to the applicant.

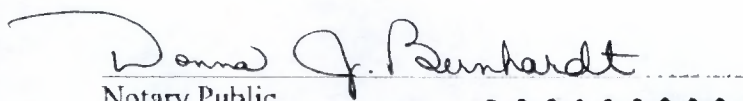
Dated this 21st day of March, 2008.



David Wisdom

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

On this 21st day of March, 2008, before me, personally appeared DAVID WISDOM, known to me to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged that he executed the same as his free act and deed.



Notary Public
Burleigh County, North Dakota
My Commission Expires:

(SEAL)

DONNA J BERNHARDT
Notary Public
State of North Dakota
My Commission Expires June 3, 2009

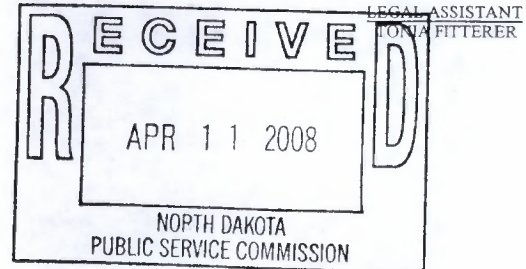
CHAPMAN & CHAPMAN, P.C.

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DANIEL J. CHAPMAN (1925-1999)
CHARLES "CASEY" L. CHAPMAN
CHARLES R. ISAKSON

April 10, 2008

William Binek
Public Service Commission
12th Floor, State Capitol
600 East Boulevard Ave, Dept 408
Bismarck, ND 58505-0480



Re: Matter of the Application of David Wisdom For a Railroad Crossing Pursuant to Section 49-11-17, NDCC

Dear Bill:

Here is information showing the location of the applicable land owned by Dave Wisdom, the location of the railroad tracks, and the suggestions for crossings.

I have provided you with a blowup of the applicable portion of the Morton Plat Book, showing land owned by Dave in Sections 1 and 2, Township 138 North, Range 83 West. Also, on two printed maps, I am showing you the relative location of these crossings to Dave's farmstead, which is designated as "DW" on the printed maps. The plat map clearly shows that Dave owns property on both sides of the railroad track, throughout this area, without appropriate crossing access.

On the plat map, and two printed maps, I have designated two locations as "A" and "B". Point A is the location where Dave would prefer to have his crossing. There is presently dirt work in place at this point, usable in the creation of a crossing, and Dave feels that, with minimal labor and materials, this area could be improved to a usable crossing.

Point B is a location, a little farther from the curve, which representatives from the BNSF office in Dickinson, at the time of their site visit, identified as a potential location for the crossing.

Very truly yours,

CHAPMAN & CHAPMAN, P.C.

By: Charles "Casey" L. Chapman
tf/Enclosures

2 RR-08-131 Filed: 4/11/2008 Pages: 4
Letter with Maps

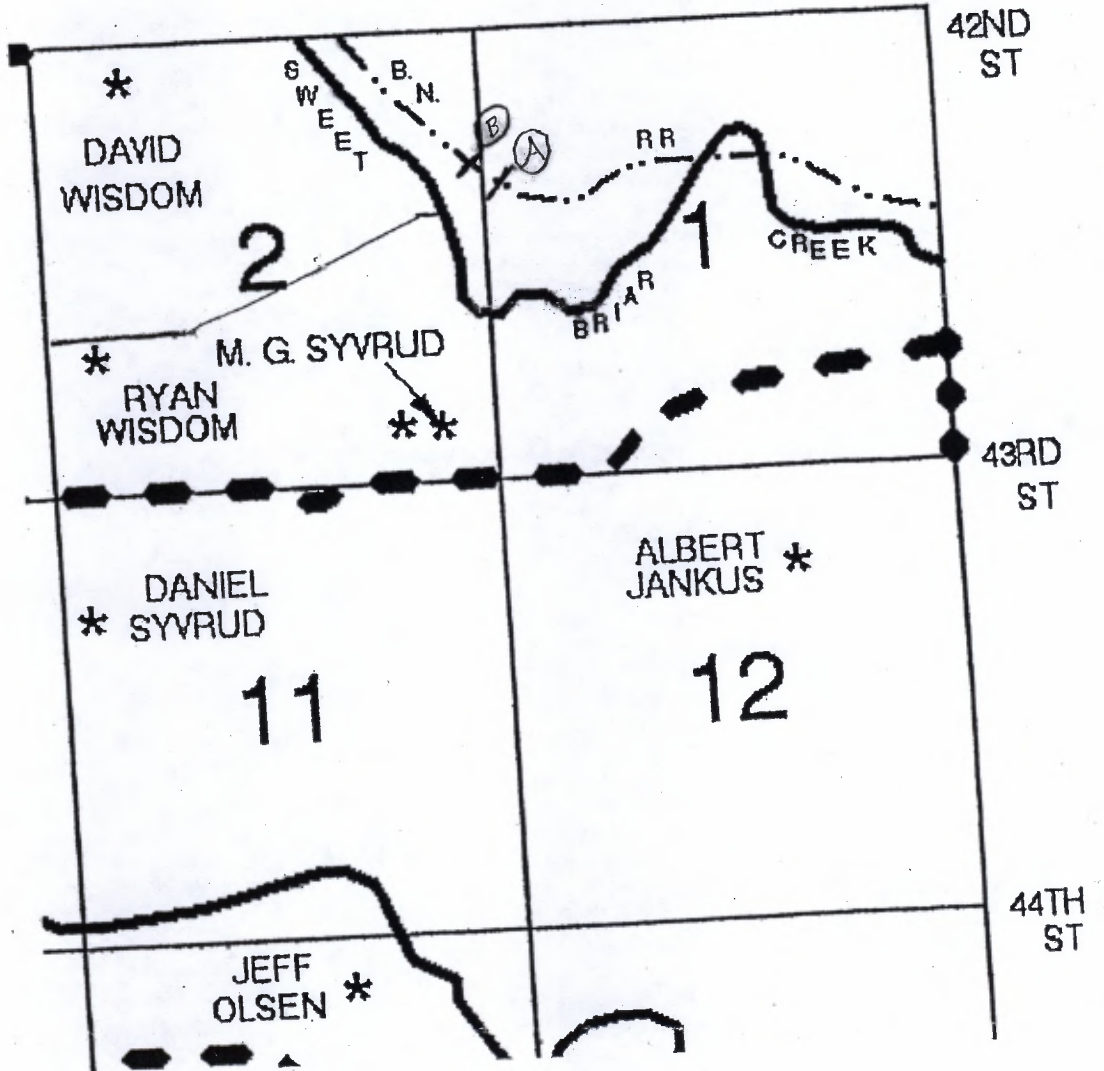
David Wisdom

Chapman & Chapman, P.C.

STORY

T-138-N

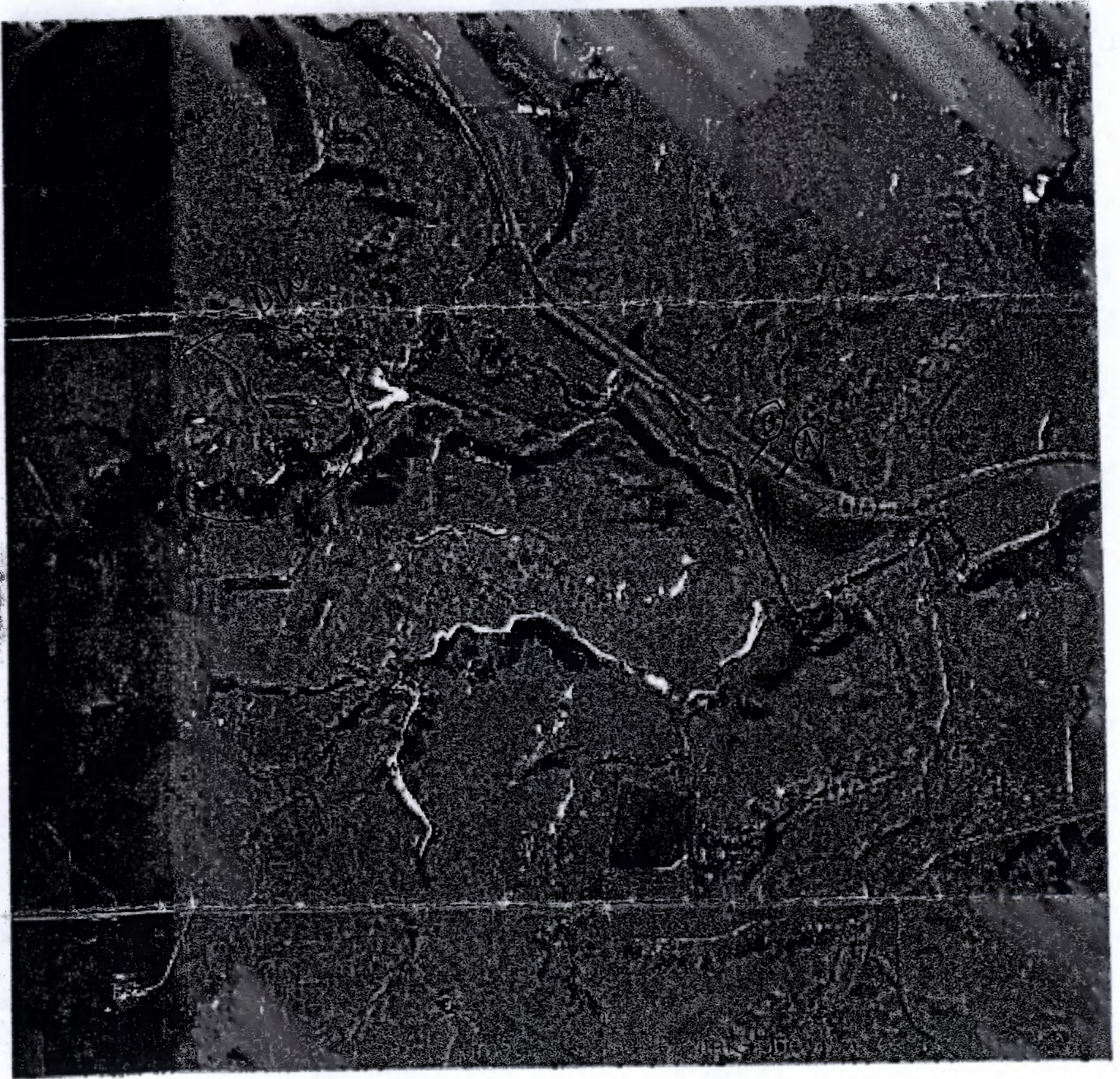
R-83-W

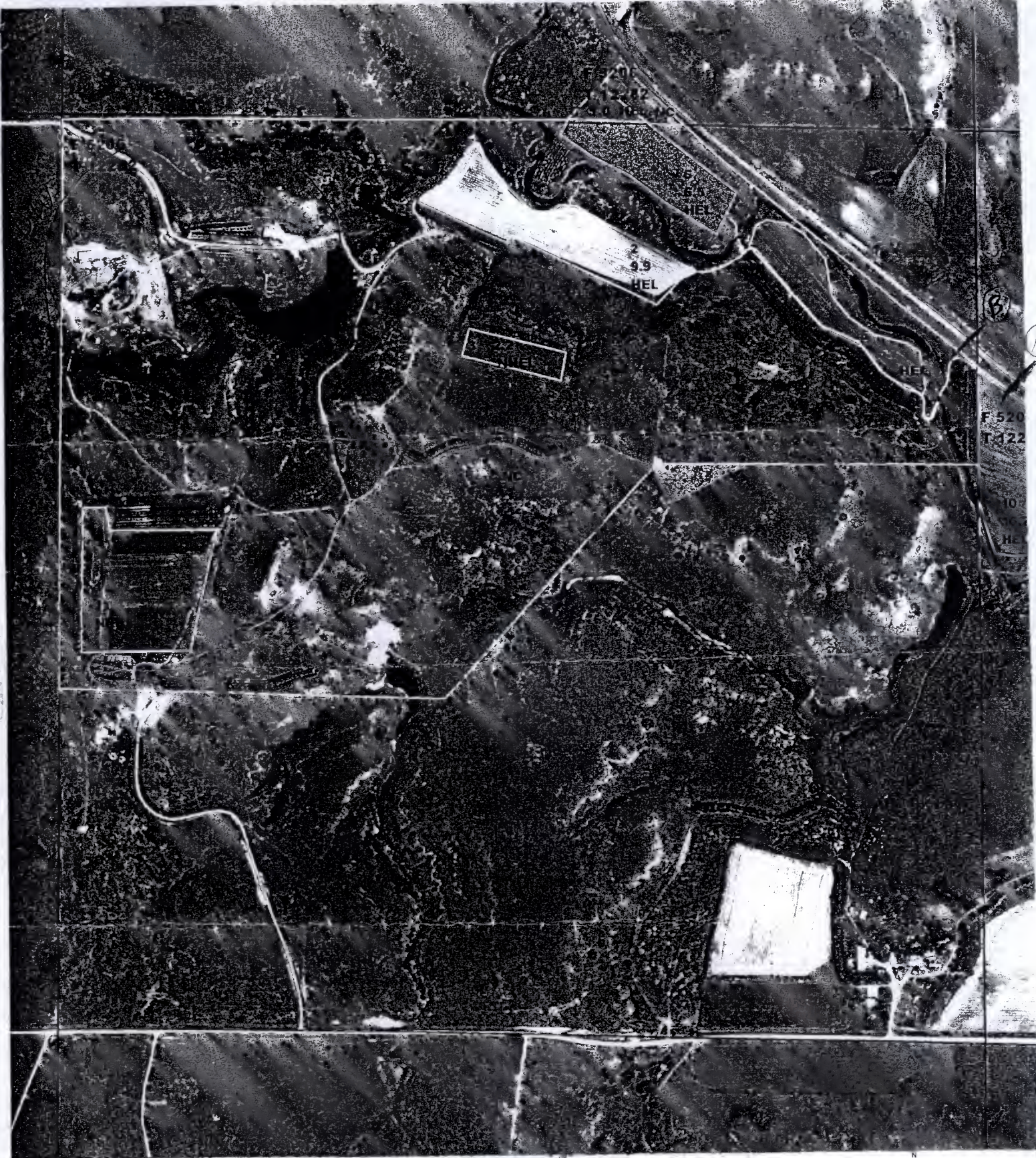


Google
Maps

Address

Mandan, ND





Farm 5206

2-138-83

USDA Farm Service Agency
Morton County, North Dakota



- Field Boundaries
- Wetland Points
- Section Lines



1-8820

Map Created Tuesday, February 27, 2007