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**RECEIVED**

SEP 21 2010

**PUBLIC SERVICE COMMISSION**

September 20, 2010

Illona A. Jeffcoat-Sacco  
Attorney at Law  
Public Service Commission  
State Capitol  
Bismarck, ND 58505-0480

Re: Fraine Barracks Crossing  
Gates and fencing  
LS 38, MP 196.09, DOT #087680P

Dear Ms. Jeffcoat-Sacco:

Enclosed herewith is a copy of the letter agreement the National Guard made with BNSF, including the attachments. My understanding is that the National Guard and the City will now be making the changes at the Fraine Barracks crossing. I expect the PSC will probably want to review the changes once they are completed to make sure the changes conform to what the PSC proposed and that the PSC will then direct the railroad to quiet the train whistles. If you have any questions, please give me a call.

Sincerely,



Stephen W. Plambeck

SWP/bjb  
Enc.

52 RR-10-26 Filed: 9/21/2010 Pages: 9  
Letter agreement amending 1944 private crossing  
permit

BNSF Railway Company

Stephen Plambeck, Nilles Law Firm



Lynn Leibfried, P.E.  
Manager Public Projects

BNSF Railway Company

80 - 44<sup>TH</sup> Avenue N.E.  
Minneapolis, MN 55421  
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Telephone: 763-782-3492  
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September 6, 2010

Colonel Steve Tabor, AIA  
Director of Facilities Engineering  
North Dakota National Guard  
P.O. Box 5511  
Bismarck, ND 58506

RECEIVED SEP 20 2010

Re: Fraine Barracks crossing  
Gates and fencing  
LS 38, MP 196.09, DOT# 087680P

Dear Col. Tabor:

In accordance with the Order the North Dakota Public Service Commission issued on May 18, 2010, in Case No. RR-10-26, it is agreed by and between BNSF Railway Company and the North Dakota National Guard as follows:

1. This letter agreement serves as an amendment to the existing 1944 private road crossing permit between the Northern Pacific Railway Company and the North Dakota National Guard, (attached). Except as otherwise provided herein the 1944 agreement remains in full force and effect.
2. As per order of the North Dakota Public Service Commission, (PSC), the National Guard is taking additional safety measures at the above referenced railroad crossing in order for the PSC to direct BNSF to stop the routine sounding of the train horn at this crossing.
3. The National Guard and the City of Bismarck have developed a safety improvement plan in accordance with the attached letter and exhibits dated May 5, 2010. The National Guard will be responsible for items 4, 5, 6, and 7 of the suggested improvements. (attached as Exhibit A)
4. In accordance with number 6 on Exhibit A, the locked gates and fencing will be installed, owned and maintained by the National Guard. Any time work is necessary within 25 feet of the tracks to install or maintain said gates and fencing, the National Guard must contact the local BNSF Roadmaster to request a flagman be on-site while work is being performed.

The gates will be equipped with a unique BNSF lock. BNSF will be the only entity given access through these gates. If the National Guard requires access through these gates they must be accompanied by a BNSF representative. Fencing plan and gate details are attached as Exhibit B.

By signature below the National Guard and BNSF Railway agree to the terms set forth in this letter agreement.

Approved and accepted this 6 day of September, the year 2010.

By:   
Lynn Leibfried, Manager Public Projects, BNSF Railway

By: 

David A. Sprynczynatyk  
MG, NDARNG  
The Adjutant General

cc: Doug Werner, BNSF  
Lyn Hartley, BNSF  
Doug Perry, BNSF  
Steve Plambeck, Nilles Law Firm

**NORTHERN PACIFIC RAILWAY COMPANY**, a corporation under the laws of Wisconsin, in consideration of the agreements herein contained grants unto

North Dakota National Guard

hereinafter called the grantee, the right to establish a private road crossing over its right of way at the location described as follows, to-wit:

Crossing the Railway Company's Main Line right of way in Section 31, Township 139 North, Range 80 West, Fifth Principal Meridian, Burleigh County, North Dakota, at Bismarek station, the center line of said road intersecting the center line of the Railway Company's main track as now constructed at a point therein distant 508 feet northwesterly, measured along said track center line, from Mile Post 196 (which mile post is located 260.7 feet southeasterly, measured along said track center line, from the east line of said Section).

The privilege hereby granted is effective from the 1st day of February 19 44, until terminated as provided in this agreement, or otherwise.

This grant is made upon the following terms:

1. ~~As rental the grantee will pay the sum of \_\_\_\_\_ dollars in advance for the full term hereof.~~
2. ~~The crossing shall be constructed and maintained at the expense of the grantee in a good and workmanlike manner and made and kept as safe for travel as possible.~~
3. Should the right of way be fenced at the location described, the grantee shall construct and maintain at his expense farm crossing gates in a manner satisfactory to the Division Superintendent of the Railway Company, and said gates shall be kept closed, excepting when necessary to be opened for travel. ~~The grantee agrees to assume all damages of every kind whatsoever resulting from his failure to keep gates closed as agreed in this paragraph.~~
4. Should the Railway Company at any time deem said crossing a menace to the safety of its operation, or should said crossing interfere with the use of its right of way for railway purposes, it may terminate this grant upon written notice of thirty days, and said notice shall be good if served personally upon the grantee, or posted upon the premises, or deposited in a United States postoffice addressed to the grantee at the following address, viz.: **Bismarek, North Dakota.**
5. The grantee agrees to remove and keep removed at his sole expense any vegetation that will interfere with approaching trains being seen for a distance of not less than five hundred feet in each direction from any point on the road crossing from a distance of not less than 50 feet from the rail on both sides of the track.

IN WITNESS WHEREOF the parties have executed these presents this 15th day of January 19 44.

**NORTHERN PACIFIC RAILWAY COMPANY,**

By \_\_\_\_\_

*J. E. James*  
Industrial Agent.

Witness to signature of grantee:

*Catherine M. Stammers*

*Therese Edwards*  
The Adjutant General  
Lessee.

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May 5, 2010

Public Service Commission  
State of North Dakota  
600 East Boulevard Avenue  
Department 408  
Bismarck, North Dakota  
58505-0480

Dear Public Service Commissioners:

Thank you for your letter of April 8, 2010 inquiring whether or not the City of Bismarck intends to restrict access to the unnamed two lane asphalt trail that is an extension of Schafer Street. You indicated that a restriction on the access to this trail may allow the Commission to revise its tentative decision to find the Fraine Barracks crossing of the Burlington Northern Santa Fe Railroad to be a public crossing.

At its meeting of April 27, 2010 the City of Bismarck Board of City Commissioners discussed a restriction of the access to this crossing. They adopted a plan that will significantly lessen the traffic at that crossing and make it easier to monitor compliance with safety procedures in place at this location.

The North Dakota National Guard uses this crossing and their north gate as secondary access to their Fraine Barracks facility. This access point is essential to their operation from a logistics, security and practical viewpoint. This proposal will ensure that anyone using the Fraine Barracks crossing will be National Guard personnel who have an established safety protocol for the crossing and an electronic surveillance system to monitor violations.

At present casual observation leads us to conclude that there are persons who use this crossing with other destinations in mind. Under the proposed plan they would soon find themselves unable to go outside the fenced area on either side of the Fraine Barracks entrance. The other southbound movements that presently occur would be eliminated. Those who access the present crossing from the south would not be able to pass between the new fence and the rail under this plan.

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The specific detail of the City's proposal is as follows:

1. Post a sign on Schafer Street at the south entrance to the NECE building stating that no public access is allowed south of that point. The actual wording will be provided by the city Traffic Engineer.
2. Post a sign north of the crossing on this trail that says Railroad Crossing; All traffic must stop. The number of tracks is also normally listed. The wording will be provided by the city Traffic Engineer.
3. Upgrade the size of stop signs on the north approach to the crossing and post on both sides of the trail.
4. Focus a security camera in Fraine Barracks on the crossing to record drivers who do not stop at the crossing.
5. Adjutant General will discipline non-compliant drivers by eliminating their gate privileges.
6. Fence the area between the railroad and the existing National Guard fence to insure no access south of the tracks except into Fraine Barracks. A gate will be installed in these new fences north and south of the access road to allow railroad maintenance of the right-of-way.
7. National Guard will continue to perform sanding and snow maintenance on the road north and south of the crossing to promote driver safety.
8. The brush and trees that presently exist near the Fraine Barracks fenceline will be removed or pruned in such a way as to not constitute a sight distance impairment for drivers.
9. If the trees and brush on the north side of the railroad track west of the crossing are determined to be a sight distance impediment they should be ordered removed or pruned. If assistance with the removal or pruning is needed the City of Bismarck will attempt to assist.

Several maps are attached to more clearly illustrate this plan.

This proposal to limit access to the Fraine Barracks crossing is offered with the full agreement of the North Dakota National Guard.

Please feel free to contact me should you have any questions or concerns regarding this proposal to limit the access to the Fraine Barracks crossing.

Sincerely,

W. C. Wocken  
City Administrator

# Fraine Barracks Rail Crossing



New 6' Fence with Gate

Trim/Remove Trees & Shrubs

Security Camera Location

No Public Access Sign

Railroad Caution Sign

Upgraded Stop Signs



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



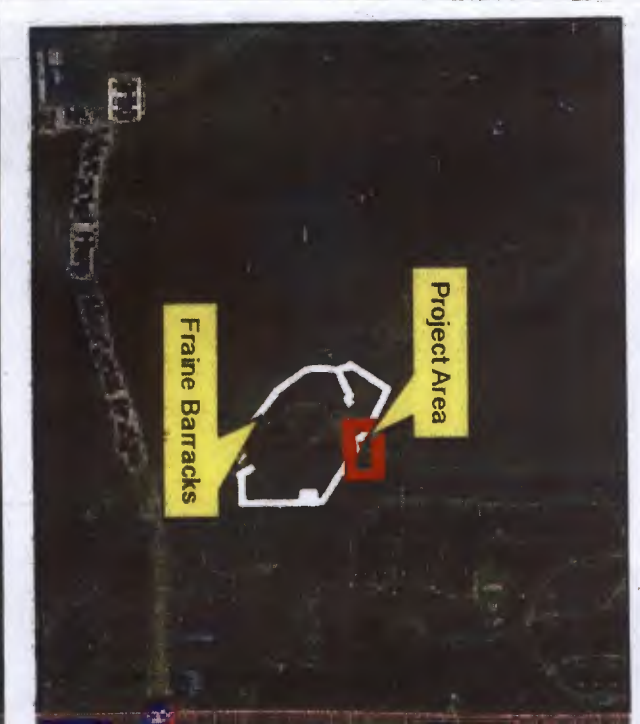
**North Gate Right of Way Fence**  
 North Dakota National Guard  
 Fraire Barracks, Bismarck, ND

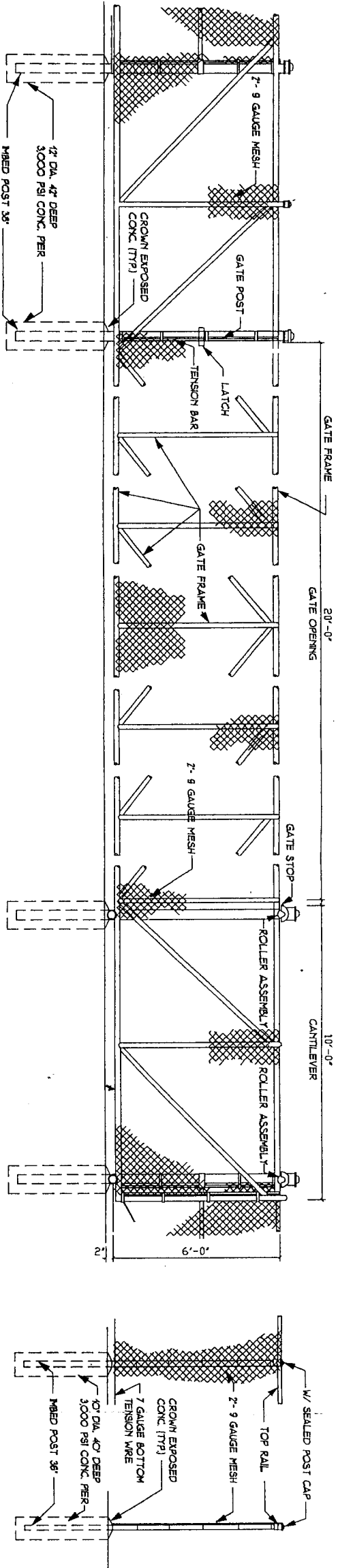
1 inch = 25 feet



**Legend**

● Fence Post	✚ Existing Structure
x-x-x Fence	<b>Contours</b>
— Gate	⋯ Depression
— Existing Fence	— Index
— Rail Road Center Line	— Intermediate
<b>Dimensions</b>	
— Measuring Lines	
↔ Dimension	





SINGLE ALUMINUM 20 FT ROLLING GATE

FENCING DETAILS SCALE: 1/2"=1'-0"

NOTES:

1. FENCE INSTALLER SHALL BE RESPONSIBLE FOR COORDINATING ANY & ALL UNDERGROUND UTILITIES WITH RESPECTIVE UTILITY AND UNDERGROUND CABLE COMPANIES. FENCE INSTALLER WILL BE RESPONSIBLE FOR REPAIR OF ANY DAMAGE INCURRED TO ANY UTILITIES OR UNDERGROUND CABLE DURING INSTALLATION. FENCE INSTALLER SHALL VERIFY FENCE LAYOUT AND
2. NOTIFY OWNER OF ANY DISCREPANCIES PRIOR TO INSTALLATION.

DATE: 26/AUG/10  
 REVISION  
 DRAWN BY S.A.T.

NORTH GATE ROW FENCING

OFFICE OF THE ADJUTANT GENERAL

BISMARCK, ND. 58502

P.O. BOX 5511

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EXHIBIT B