



SLOVER & LOFTUS LLP

ATTORNEYS AT LAW

KATHERINE F. WARING

kfw@sloverandloftus.com

August 26, 2020

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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: Docket No. FD 36432, Independence Rail Works Ltd. – Petition for
Acquisition and Operation Exemption - The Byesville Scenic Trails, LLC

Dear Ms. Brown:

Attached for filing in the above referenced docket is the Petition for Exemption of the Independence Rail Works Ltd. ("IRW"). The filing fee has been paid electronically via pay.gov.

Please contact the undersigned if there are any questions regarding this filing. Thank you for your attention to this matter.

Respectfully submitted,


Katherine Waring

An Attorney for Independence Rail Works Ltd.

Enclosure

FILED
August 26, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
August 26, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

INDEPENDENCE RAIL WORKS LTD. –)	
Petition for Acquisition and Operation)	Finance Docket No. 36432
Exemption – Byesville Scenic Trails, LLC)	
)	

PETITION FOR RETROACTIVE EXEMPTION

INDEPENDENCE RAIL WORKS LTD.

Kelvin J. Dowd
Katherine F. Waring
SLOVER & LOFTUS LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
Phone: (202)-347-7170

Dated: August 26, 2020

Its Attorneys

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

INDEPENDENCE RAIL WORKS LTD. –)	
Petition for Acquisition and Operation)	Finance Docket No. 36432
Exemption – Byesville Scenic Trails, LLC)	
)	

PETITION FOR RETROACTIVE EXEMPTION

Independence Rail Works Ltd. (“IRW”), respectfully petitions the Surface Transportation Board (“STB” or “Board”) for an exemption pursuant to 49 U.S.C. §10502 and 49 C.F.R. §§ 1121.1 *et seq.* from the provisions of 49 U.S.C. §10901, to authorize retroactively the acquisition and operation of a 3.6 mile track segment in Guernsey County, Ohio, which IRW purchased from the Byesville Scenic Trails, LLC. The requested relief will enable IRW to correct an inadvertent regulatory omission, and will not have an adverse impact on any affected party.

The subject track connects with the Columbus and Ohio River Railroad (“CUOH”) at Byesville, Ohio at MP 4.9, and extends to MP 8.5. Additional track runs south-southwest to MP 18.23, where the track terminates near Cumberland, Ohio. IRW is seeking retroactive authorization for acquisition and operation of the line from MP 4.9 to MP 8.5. The track from MP 8.5 to MP 18.23 was abandoned and in disrepair when IRW acquired it, and remains in that condition. Maps of the entire line and of the northern segment that IRW is seeking acquisition authority for are attached hereto in Exhibit A.

Presently, CUOH operates over the MP 4.9 to MP 8.5 track to deliver approximately thirty cars of aggregate and sand per week to Mar-Zane, Inc., the one shipper located on IRW's track at MP 8.0.¹ Mar-Zane, Inc. leases property from IRW's affiliate, Cambridge Southern Industrial Parkway LLC ("Cambridge Southern"). However, IRW has never intended to provide common carrier service, and so provided the STB grants the requested exemption, IRW plans to file a petition for discontinuance of service.² This Petition and plan is supported by the one shipper located at the end of the line, Mar Zane, Inc.

In support of its request for a retroactive exemption, IRW represents as follows:

I. BACKGROUND

IRW was founded in 2013 to provide support for Zemba Bros., Inc.'s Commercial Services. IRW purchased a total of 13.3 miles of track in Guernsey and Noble Counties, Ohio, from the Byesville Scenic Trails, LLC by quit-claim deed in 2013. The IRW track connects with the CUOH at Byesville, Ohio at Mile Post ("MP") 4.9, and runs south-southwest 13.3 miles to MP 18.23, where the track terminates near Cumberland, Ohio. A map is attached hereto at Exhibit A.

¹ Copies of this Petition are being provided to Mar-Zane, Inc. and the CUOH.

² The CUOH will continue to use IRW's track to serve the one customer located at the end of the line, which leases property from IRW's affiliate, Cambridge Southern. IRW will also convey an easement to Cambridge Southern for use of the track.

The track at issue was originally owned by CSX Transportation, Inc. (“CSXT”). The STB approved an exemption request by CSXT to abandon its line from MP 4.9 to MP 18.23 in June 1999. However, in a subsequent decision served in August 1999, the agency approved the Cambridge-Guernsey County Community Improvement Corporation’s (“CIC’s”) purchase of the “3.6 miles of the line between milepost 4.9 and milepost 8.5 in Derwent” and dismissed the petition for exemption for this segment of the line. *CSX Transp., Inc. – Abandonment Exemption – in Guernsey & Noble Cntys., OH*, AB-55 (Sub-No. 569X) (STB served Aug. 6, 1999). CSXT then filed its consummation notice for abandonment of the line between MP 8.5 and MP 18.23 with the Board. *CSX Transp., Inc. – Abandonment Exemption – in Guernsey & Noble Cntys., OH*, AB-55 (Sub-No. 569X) (filed Sept. 1, 2000). Therefore, the portion of track from MP 4.9 to MP 8.5 remained a line of railroad. However, when IRW purchased the track, it was represented by the seller that the entire property was private track, and that IRW could acquire it without taking any action before the STB or other federal agencies. IRW did not consult with transportation counsel at the time, and had a good faith belief that the track was private. Had it been aware of the actual status of the segment, the acquisition and operation would have qualified for a class exemption under 49 C.F.R. Part 1150.31 *et seq.*, as IRW at this time was a noncarrier.³

³ IRW previously has advertised its commercial services in a manner that could imply a “holding out” of rail service to the public. IRW was unaware that its actions could be viewed as inconsistent with its assumption that its track was private, and no other shipper has requested service over the line.

Since purchasing the track in 2013, IRW has only maintained the northernmost 3.6 miles of track in Guernsey County, Ohio, from MP 4.9 to MP 8.5, and the only rail operations on the segment are CUOH's delivery of approximately thirty cars of aggregate and sand per week to Mar-Zane, Inc. at MP 8.0. Mar-Zane, Inc. leases property from an IRW affiliate, Cambridge Southern. *See* Exhibit A. The track from MP 8.5 to MP 18.23 was approved for abandonment prior to IRW's acquisition, and is not in working condition. A map of all track IRW purchased as part of the sale in 2013 is attached hereto at Exhibit A.

IRW recently evaluated opportunities to expand its business and use of the subject track segment, and as part of this process sought the advice of experienced transportation counsel. It was only then that IRW became aware that the northernmost portion of the line was never abandoned. However, it was unclear from the property records what IRW's specific ownership interest was in the track. For example, STB records indicated that the CUOH was leasing a portion of the track at issue from CSXT.⁴ IRW had to review all the underlying property records with the assistance of local counsel to determine precisely what property interest it had in the line.

Based on this review of county property records and STB records, it was determined that IRW's property interest starts at MP 4.9 and extends to MP 8.5, then runs

⁴ STB records indicated that in 2004, CSXT entered into a lease agreement with CUOH for the track running from MP 0.00 to MP 5.14, which would overlap with IRW's interest in the segment from MP 4.9 to MP 5.14. *CUOH – Acquisition & Operation Exemption – Rail Lines of CSX Transp., Inc.*, FD 34540 (STB served Dec. 20, 2004) at 2. However, it appears that this lease erroneously described the subject property.

an additional 10.1 miles, where it dead ends. The ownership and status of IRW's line is as follows:

- MP 4.9 to MP 5.14: Line of railroad. STB records in 2004 and online maps indicate that this is CSXT track. Based on a title search and review of records, this is an error, and IRW owns this segment of the track.
- MP 5.14 to MP 8.5: Line of railroad.
- MP 8.5 to MP 18.23: Abandoned track.

IRW never intended to assume the responsibilities of a Class III railroad,⁵ and in good faith did not believe that it was acquiring an active line of railroad in 2013. IRW's owners are willing to be responsible for maintaining the portion of the line from MP 4.9 to MP 8.5 so that rail deliveries can continue to Mar Zane, Inc., the one shipper located at the end of the line. Therefore, once the STB grants this exemption, IRW plans to submit a petition to discontinue service over this track. Upon receipt of discontinuance authority, IRW will convey an easement to Cambridge Southern for the track and underlying property, which will continue to allow CUOH to use it to deliver freight to Mar Zane, Inc.

Through this Petition, IRW seeks by exemption to confirm its authority under 49 U.S.C. § 10901 to acquire and operate the subject track, so that it can then file to discontinue service and extinguish any residual common carrier obligations that it may have with respect to the line. IRW is making these corrective filings to as much as

⁵ IRW's annual projected revenues are significantly less than \$2 million, which would qualify it as a Class III rail carrier under 49 C.F.R. § 1201.

possible preserve the positions of Mar Zane, Inc., IRW, and CUOH, which until quite recently all understood the track to be private track.

II.

REQUEST FOR EXEMPTION

When it purchased the subject track in 2013, IRW believed that it was acquiring private track that was not subject to STB jurisdiction. While erroneous, IRW held this belief in good faith based on the information available to it at the time. When CUOH began using the track in 2016, IRW likewise did not believe that this would subject it to STB jurisdiction, as CUOH was providing rail service over what was thought to be private track to a single customer leasing property from an IRW affiliate, Cambridge Southern.

If IRW had been aware at the time that it was acquiring an active line of track, it would have been eligible for securing Board authority through the filing of a timely Notice of Exemption for the acquisition, pursuant to 49 C.F.R. Parts 1150.31-34. Unfortunately, the unintended delay makes it so the acquisition of this approximately 3.6 miles of track requires authorization pursuant to 49 U.S.C. § 10901, unless the Board grants the requested exemption. As explained below, the Board should grant IRW's request because the transaction clearly meets the standards for an exemption pursuant to 49 U.S.C. § 10502(a) from the prior approval requirements of 49 U.S.C. § 10901.

Under 49 U.S.C. § 10502(a), the STB is required to exempt a transaction from regulatory requirements under Subtitle IV of Title 49 of the United States Code (49 U.S.C. §§ 10101-16102) if the STB finds that the application of those requirements (1) is

not necessary to carry out the transportation policy of 49 U.S.C. § 10101, and (2) either (a) the transaction or service is of limited scope or (b) the application of the requirement is not needed to protect shippers from the abuse of market power.

Here, detailed scrutiny of this transaction is not warranted because it is consistent with the transportation policy of 49 U.S.C. § 10101. Specifically, an exemption from the 49 U.S.C. § 10901 regulatory requirements will “minimize the need for Federal regulatory control” (49 U.S.C. 10101(2)); “ensure the development and continuation of a sound rail transportation system” (49 U.S.C. 10101(4)); “foster sound economic conditions in transportation” (49 U.S.C. 10101(5)); “reduce regulatory barriers to entry into and exit from the industry” (49 U.S.C. 10101(7)); and “encourage honest and efficient management of railroads” (49 U.S.C. 10101(9)). Notably, with the exception of 49 U.S.C. § 10101(4), the Board quoted and cited the same provisions of § 10101 in support of granting a retroactive exemption in *Horsehead Corporation - Petition for Acquisition and Operation Exemption - Chestnut Ridge Railway Company*, FD 34481 (STB served Mar. 12, 2004) at 2.

Likewise, this transaction is of a very limited scope. IRW’s exemption request is for the acquisition and operation of only 3.6 miles of track that is at the end of a line, which presently serves only one shipper.⁶ IRW intends to maintain the track so that

⁶ See *Escanaba & Lake Superior R.R. - Acquisition & Operation Exemption - Line of Chi. & Nw. Ry. Co.*, 1995 WL 73573, at *2 (transaction determined to be of limited scope when it involved acquisition of “only a 5.45-mile line segment” and when service was going to be maintained for the one shipper on the line).

CUOH can continue to provide service to the one shipper located on the line, which leases property from an IRW affiliate. This transaction also seeks to preserve the arrangement that IRW, CUOH, and the one shipper located on the line thought was in place since 2016, which was limited rail operations over a private track.⁷

Board oversight also is not needed to protect shippers from the abuse of market power. Here, Mar-Zane, Inc. is the only shipper located on the line, and it supports this Petition. A copy of Mar-Zane, Inc.'s letter of support is attached hereto as Exhibit C. As a result of this transaction there will be no loss of rail competition and no change in the level of rail service to the one shipper located on the line.

While IRW failed to timely file a Notice pursuant to 49 C.F.R. § 1150.32 when it originally acquired the track from MP 4.9 to MP 8.5, there was no bad faith on the part of IRW, and this unintentional delay did not prejudice any shipper or other party. CUOH has provided continuous rail service to the one shipper located on the line, which is a tenant of an IRW affiliate. IRW intends to maintain the track so that rail service to this shipper can continue. The Board previously has granted exemptions under similar circumstances, when parties are not prejudiced and the failure to seek approval was

⁷ IRW entered into an operating agreement with CUOH on April 29, 2016, and it states that IRW “operates a private railroad not in common carrier service, which connects to CUOH’s rail line at Byesville, Ohio.” A redacted copy of the operating agreement is attached hereto as Exhibit B. A copy of the confidential and unredacted operating agreement is being filed contemporaneously under seal subject to a Motion for Protective Order pursuant to 49 C.F.R. § 1104.14(b).

unintentional or inadvertent, or the result of a mistaken belief that approval of the transaction was not required.⁸ The same relief should be granted here.

III. ADDITIONAL INFORMATION

Because IRW did not timely file a Notice with the Board when it acquired the subject track, this transaction is subject to 49 U.S.C. § 10901. However, IRW hereby provides the following additional information required by 49 C.F.R. § 1150.33 for transactions involving the creation of Class III carriers, to further confirm its eligibility for an exemption.

(a) Full name and Address of the Applicant

Independence Rail Works Ltd.
P.O. Box 1270
Zanesville, OH 43702
(740) 452-1880

(b) Name and Address of Representatives to Receive Correspondence

Katherine F. Waring
SLOVER & LOFTUS LLP
1224 Seventeenth Street NW
Washington, D.C. 20036
Phone: (202) 347-7170
Fax: (202) 347-3619

⁸ *Ark.-Okla. R.R. – Acquisition & Operation Exemption – State of Okla.*, FD 36323 (STB served Sept. 19, 2019), *R.J. Corman R.R. Prop., LLC - Acquisition Exemption - NC R.R.*, FD 35363 (STB served June 29, 2011) at 5; *Horsehead Corp. - Petition for Acquisition & Operation Exemption - Chestnut Ridge Ry. Co.*, FD 34481 (STB served Mar. 12, 2004) at 2; *Brotherhood of Maintenance of Way Employees v. Soo Line R.R.*, FD 32964 (STB served Dec. 22, 1998) at 6 n. 15.

(c) Statement Regarding Agreement

IRW purchased the track from the Byesville Scenic Trails, LLC by quit-claim deed on May 31, 2013. Copies of the deeds are attached hereto as Exhibit D. IRW entered into an operating agreement with CUOH on April 29, 2016. A redacted copy of the operating agreement is attached hereto as Exhibit B. A copy of the confidential and unredacted operating agreement is being filed contemporaneously under seal subject to a Motion for Protective Order pursuant to 49 C.F.R. § 1104.14(b).

(d) The Operator of the Property

CUOH is the only carrier operating over the track.⁹

(e) Brief Summary of the Transaction

(1) Name and Address of the Railroad Transferring the Subject Property:

Byesville Scenic Trails, LLC
P.O. Box 427
Sugar Creek, OH 44681

(2) Proposed Timetable

The original transfer of the line occurred on May 31, 2013.

(3) Mile-posts of the Property

The property extends from Byesville, Ohio at MP 4.9, and runs south-southwest to MP 8.5.

⁹ Notably, the operating agreement between IRW and CUOH states that IRW “operates a private railroad not in common carrier service, which connects to CUOH’s rail line at Byesville, Ohio.”

(4) Total Route Miles

The line is approximately 3.6 miles long.

(f) Map

A map depicting the line and immediate vicinity is attached as Exhibit A.

(g) Certificate of Projected Revenues

IRW certifies that its actual and projected annual revenues have never exceeded \$2 million, and therefore it would have qualified as a Class III carrier.

(h) Interchange Commitments

IRW certifies that the acquisition does not impose or include an interchange commitment.

Labor Notice Certification

The STB's regulations at 49 C.F.R. Part 1121.4(h) require only Class II carriers seeking an exemption for acquisition of rail lines certify that a notice has been posted at the workplace to notify employees working on the rail line. IRW would have been a Class III carrier, and is therefore not required to comply with this provision.¹⁰ Additionally, IRW's projected revenues are below the \$5 million threshold that would have required advance notice pursuant to 49 C.F.R. § 1150.32.

¹⁰ CUOH serves the one shipper located on IRW's line and IRW has significantly less revenue than what would qualify it as a Class II railroad. There will also be no operational changes and because IRW does not have any employees, none will be affected by the Board issuing the exemption requested herein.

Labor Protection

This transaction is subject to 49 U.S.C. § 10901 regulations because IRW became a Class III rail carrier when it acquired the line. As such, approval of this transaction is not subject to labor protection conditions.¹¹

Environmental and Historical Reports

This Petition relates to an acquisition of a rail line for continued operation, and will not result in changes in carrier operations that will exceed the environmental reporting thresholds established in 49 C.F.R. §1105.7(e) (4) or (5). CUOH service over the line likewise will be preserved if IRW's intended, subsequent petition for discontinuance is granted. Additionally, IRW does not intend to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required.¹²

¹¹ 49 U.S.C. § 10901(c); *Horsehead Corp. - Petition for Acquisition & Operation Exemption - Chestnut Ridge Ry. Co.*, FD 34481 (STB served Mar. 12, 2004) at 2.

¹² See 49 C.F.R. §1105.6(c)(1); 49 C.F.R. §1105.8(b)(l).

IV. CONCLUSION

Pursuant to 49 U.S.C. §10502, IRW respectfully requests that the Board exempt its acquisition and operation of the subject line from regulation under 49 U.S.C. §10901, retroactively to IRW's acquisition of the line on May 31, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kelvin J. Dowd", is written over a horizontal line.

Kelvin J. Dowd
Katherine F. Waring
SLOVER & LOFTUS LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

Dated: August 26, 2020

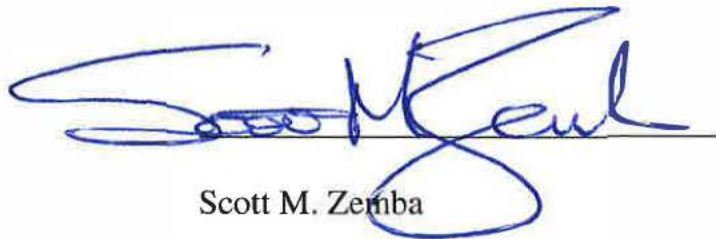
Attorneys for
Independence Rail Works Ltd.

CERTIFICATION AND VERIFICATION

I, Scott M. Zemba, hereby certify and verify under penalty of perjury the following:

1. I am the General Manager of Independence Rail Works Ltd. ("IRW"), and am therefore qualified and authorized to make the subject "Certification and Verification" on behalf of IRW.
2. IRW's actual and projected annual operating revenues are significantly less than and have never exceeded \$2 million, qualifying it as a Class III rail carrier under 49 C.F.R. § 1201.
3. I have read the foregoing document and verify that the facts stated therein are true and correct.

Executed on August 24, 2020.



Scott M. Zemba

EXHIBIT A



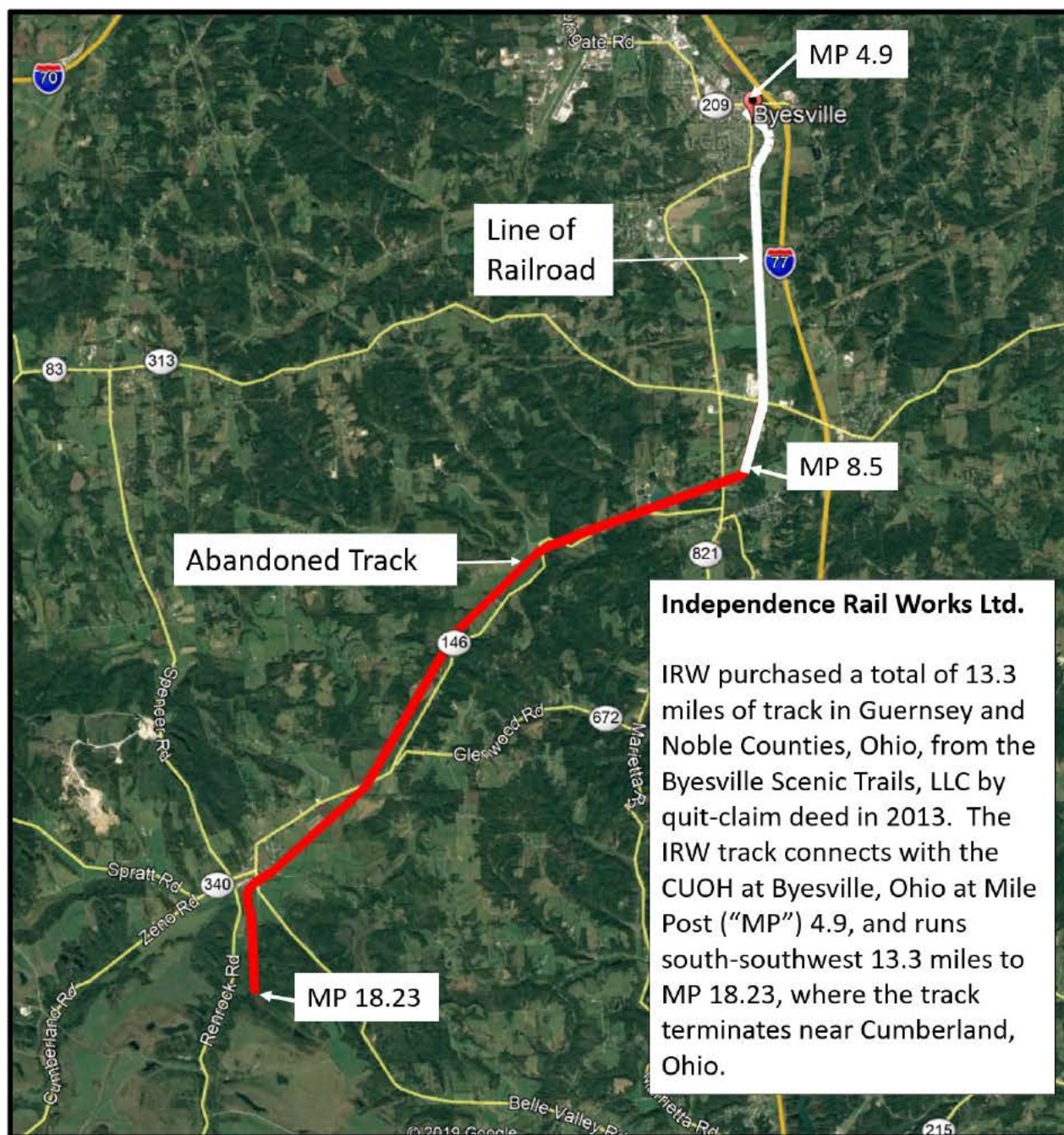


EXHIBIT B
REDACTED

OPERATING RIGHTS AGREEMENT

This Operating Rights Agreement, made and entered into as of this 29th day of April, 2016 (this "Agreement"), by and between INDEPENDENCE RAILWORKS LTD., an Ohio limited liability company ("IRL"), and THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY, an Ohio corporation ("CUOH").

WITNESSETH

WHEREAS, CUOH operates a railroad in common carrier service;

WHEREAS, IRL operates a private railroad not in common carrier service, which connects to CUOH's rail line at Byesville, Ohio;

WHEREAS, CUOH may need to deliver railcars to one or more of its customers located on IRL's private rail line;

WHEREAS, CUOH desires to operate over a portion of IRL's rail line so that CUOH can deliver railcars to such customer(s); and

WHEREAS, IRL and CUOH desire to enter into this Agreement to permit CUOH's operation over the Subject Trackage (as defined herein).

NOW THEREFORE, the parties hereto agree as follows:

Section 1. Use of Subject Trackage

(a) IRL hereby grants to CUOH exclusive rights (other than to IRL) to operate its trains, locomotives, cars and equipment with its own crews (the "Operating Rights") over IRL's trackage beginning at the Point of Division of Ownership and Maintenance at MP 4.85 on CUOH's East Ohio Branch in Byesville, Ohio (the "Subject Trackage") solely for the purpose of delivering or picking up railcars from CUOH's customers located on the Subject Trackage.

(b) CUOH shall not use any part of the Subject Trackage for the purpose of switching, storage of cars, or the making or breaking up of trains, except as directed by IRL's employee in charge of the Subject Trackage.

(c) IRL's and CUOH's use of the Subject Trackage shall be in common with each other and neither party's right to use the Subject Trackage shall be diminished by this Agreement.

(d) CUOH will provide IRL's employee in charge of the Subject Trackage with notice before entering the Subject Trackage.

Section 2. Condition of Subject Trackage

IRL, at its sole cost and expense, shall be responsible for all track maintenance and maintenance capital and shall maintain in a safe and satisfactory condition, in compliance with applicable laws, statutes or regulations (including, without limitation, applicable Federal Railroad Administration regulations) and in accordance with other CUOH requirements related to the use and operation of applicable trackage communicated in writing to IRL, the Subject Trackage. The Subject Trackage shall be maintained at Class 1 track standards. If the use of the Subject Trackage shall at any time be interrupted or traffic thereon is delayed for any cause, IRL shall with reasonable diligence restore the Subject Trackage so that CUOH can utilize the Operating Rights.

Section 3. Management and Operations

(a) Each party shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. Each party shall indemnify, protect, defend, and save harmless the other party and its directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon any of such indemnitees by any public authority or court having jurisdiction in the premises, when attributable to the failure of the using party to comply with its obligations in this regard.

(b) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train, locomotive or equipment of CUOH operating on the Subject Trackage becomes stalled or unable to proceed under its own power or if in emergencies, crippled or otherwise defective cars are set out of CUOH's trains on the Subject Trackage, CUOH shall move the disabled equipment off the Subject Trackage.

(c) If it becomes necessary to make repairs to or adjust or transfer the lading of crippled or defective cars in CUOH's trains in order to move them off the Subject Trackage, such work shall be done by CUOH.

(d) In the event that the parties agree that one party should provide additional employees for the sole benefit of the other party, the parties shall enter into a separate agreement under which the requesting party shall bear all costs and expenses for any such additional employees, including, without limitation, all costs and expenses associated with labor protective payments which are made by the other party and which would not have been incurred had the additional employees not been provided.

Section 4. Clearing of Wrecks

Whenever CUOH's use of the Subject Trackage requires rerailling, wrecking service, or wrecking train service, CUOH shall perform such service, including the repair and restoration of roadbed, track and structures. The cost and expense thereof, including without limitation loss of,

damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be borne and apportioned in accordance with Section 5 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by either party at the time of such wreck shall be promptly delivered to the controlling party.

Section 5. Liability

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, for loss of, damage to, or destruction of all other properties (including without limitation the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife and vegetation, occurs with any of the trains, locomotives, cars, or equipment of, or in the account of CUOH being involved, without any of the trains, locomotives, cars, or equipment of, or in the account of IRL being involved, CUOH shall assume all liabilities therefor and bear all costs and expenses in connection therewith, including without limitation all costs and expenses referred to in Section 4 hereof, and shall forever protect, defend, indemnify, and save harmless IRL and its affiliates, directors, officers, agents or employees from and against all liabilities, costs, and expenses, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of any such indemnitees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, for loss of, damage to, or destruction of all other properties (including without limitation the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife and vegetation, occurs with any of the trains, locomotives, cars, or equipment of, or in the account of IRL being involved, without any of the trains, locomotives, cars or equipment of, or in the account of CUOH being involved, IRL shall assume all liabilities therefor and bear all costs and expenses in connection therewith, including without limitation all costs and expenses referred to in Section 4 hereof, and shall forever protect, defend, indemnify, and save harmless CUOH and its affiliates, directors, officers, agents or employees from and against all liabilities, costs, and expenses, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of any such indemnitees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, for loss of, damage to, or destruction of all other properties (including without limitation the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife and vegetation, occurs with any of the trains, locomotives, cars, or equipment of, or in the account of both IRL and CUOH being involved, IRL and CUOH shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars, and equipment of, or in the account of each of them and for injury to and death of each of their respective directors, officers, agents and employees, and persons in each of their care and custody (without regard to which party was negligent or at fault), and IRL and CUOH further agree that all liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including without

limitation the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by IRL and CUOH, including without limitation all cost and expense referred to in Section 4 hereof (without regard to which party was negligent or at fault).

(d) Notwithstanding any provision to the contrary in this Agreement, in the event any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, results or arises in whole or in part as a result of a derailment, collision or other incident directly resulting from Subject Trackage conditions or defects caused by IRL's failure to maintain the Subject Trackage in compliance with the terms of this Agreement (herein after referred to as "Track Caused Derailment"), IRL shall assume all liability therefor and be responsible for all losses in connection therewith and shall defend, indemnify, and save harmless CUOH and its directors, officers, agents, and employees from and against any such liability or losses, regardless of whether caused in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of any of such indemnitees.

(e) IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL OR PUNITIVE DAMAGES.

(f) In every case of death or injury suffered by an employee of IRL or CUOH, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either party under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(g) Notwithstanding the provisions of Section 10(g) of this Agreement, for the purposes of this Section 5 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

(h) For the purpose of this Section 5, equipment of any third party railroad company or companies being detoured or operating over the Subject Trackage pursuant to IRL's consent or authority and all persons other than IRL or CUOH employees engaged in moving such equipment, shall be included within the IRL's duty to indemnify CUOH.

(i) Whenever any liabilities, costs, or expenses are assumed by or apportioned to a party hereto under the foregoing provisions of (a), (b), (c) or (d) of this Section 5, that party shall

forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees, from and against those liabilities, costs, and expenses so assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of any of such indemnitees.

(j) Each party hereby agrees to indemnify and hold harmless the other party against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims, grievances or lawsuits brought by or on behalf of such party's own employees or by any of their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of this Agreement and operations hereunder, or pursuant to a collective bargaining agreement and arising out of its operations hereunder. It is the intention of the parties hereto that each of them shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances or lawsuits filed by its own employees arising under its collective bargaining agreements with its employees.

Section 6. Insurance

(a) Each party shall procure and maintain in effect at its sole cost and expense during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject under Section 5 hereof. Such insurance shall provide minimum limits of {

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(b) If the insurance provided under this Section 6 takes the form of a Claims Made Policy, each party agrees to purchase whatever supplemental coverage may be necessary to provide continuous coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least three (3) years following the termination of this Agreement. Each party further agrees to immediately give written notice to the other party of any claim or notice of incident, or notice of potential claim that is required to be reported to its liability insurance company, related to its use of the Subject Trackage.

(c) The insurance policies obtained by each party pursuant to the requirements of this Section 6 shall be written by a reputable insurance company or companies acceptable to the other party or with a current Best's Insurance Guide Rating of A and Class IX or better. Such insurance company shall be authorized to transact business in the State of Ohio.

(d) Every policy of insurance obtained by each party pursuant to the requirements of this Section 6 shall contain provisions requiring that the insurance carriers use reasonable efforts to give the other party at least thirty (30) days' notice, in writing, of any proposed policy cancellation. Each such policy of insurance shall name the other party as an additional insured, provide a waiver of subrogation against the other party for the liability of such party assumed by it hereunder and be specifically endorsed to cover operations on or within 50 feet of a railroad

right-of-way. Such insurance policies shall be primary, and without right of contribution, for the liability of such party assumed hereunder. The terms and conditions of each policy of insurance obtained by each party to satisfy the requirements of this Section 6 will be subject to the approval of the other party.

(e) Compliance with this Section 6 will not relieve either party from liability under this Agreement in excess of such coverage and will in no way limit or modify such party's obligation to provide the specific insurance coverage required by this Agreement. If any such policy includes any deductible or self-insured retention provision, such party shall provide first dollar defense and coverage to the extent of such provision. Evidence of subsequent renewal of such insurance or of any material change must be furnished to the other party.

Section 7. Investigation

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with Section 5 of this Agreement shall be investigated, adjusted and defended by the party responsible for indemnifying the other party.

(b) In the event a claim or suit is asserted against a party that is the other party's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

(c) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under Section 5 of this Agreement shall be included as costs and expenses in applying the liability provisions set forth in Section 5 of this Agreement.

(d) It is understood that nothing in this Section 7 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Section 5 thereof.

Section 8. Term

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Section 9. Default and Termination

In the event of (a) any failure on the part of either party to perform its obligations under this Agreement and its continuance in such default for a period of fifteen (15) days after written notice thereof from the other party or (b) either party becoming insolvent, filing a voluntary petition in bankruptcy, being adjudicated as bankrupt, having a receiver appointed for the operation of its business or making a material liquidation of assets, the other party shall have the right, at its option, to terminate this Agreement. The exercise of such right by the terminating

party shall not impair its rights under this Agreement or any cause or causes of action it may have against the other party for remedies hereunder.

Section 10. General Provisions

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) This Agreement shall be construed and interpreted under, and all respective rights and duties of the parties shall be governed by, the laws of the State of Ohio.

(c) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(d) This Agreement contains the entire agreement of the parties hereto and supersedes any and all other understandings of the parties with respect to the subject matter hereof.

(e) This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that neither party shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other party.

(f) No term or provision of this Agreement may be amended, modified, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement. Waiver of a breach of any provision of this Agreement shall not constitute a waiver of any other breach of the same provision or any other provision of this Agreement.

(g) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

(h) Nothing in this Agreement shall be deemed to create any partnership, joint venture or similar arrangement. Each party hereto shall be solely responsible for, and shall have sole control over, all work to be performed by it pursuant to this Agreement.

Section 11. Notice

Any notice required or permitted to be given by one party hereto to the other hereto under this Agreement shall be deemed given only upon actual receipt if sent by certified mail, return receipt requested, by express mail service or by hand delivery, or by such other means as the parties may mutually agree, and shall be addressed as follows:

(a) If to CUOH:

The Columbus & Ohio River Rail Road Company
4349 Easton Way, Suite 110
Columbus, OH 43219
Attention: President

(b) If to IRL:

Independence Railworks Ltd.
P.O. Box 1270
Zanesville, OH 43702-1270
Attention: Scott Zemba

Either party may from time to time change its notice address by giving the other party notification thereof in accordance with the methods described above.

Section 12. Arbitration

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[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

INDEPENDENCE RAILWORKS LTD.

By: 
Name: Scott M Zemba
Title: Member

THE COLUMBUS & OHIO RIVER RAIL ROAD
COMPANY

By: 
Name: CHARLES McBRIDE
Title: PRESIDENT

EXHIBIT C

MAR-ZANE, INC.

POST OFFICE BOX 1585
ZANESVILLE, OHIO 43702-1585
(740) 453-0721

August 17, 2020

The Honorable Ann D. Begeman
Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

The Honorable Martin J. Oberman
Vice Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

The Honorable Patrick J. Fuchs
Board Member
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

RE: *Independence Rail Works Ltd. – Petition for Acquisition and Operation Exemption The
Byesville Scenic Trails, LLC*

Dear Chairman Begeman and Board Members Oberman and Fuchs,

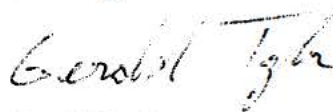
Mar-Zane, Inc. urges the Surface Transportation Board ("STB" or "Board") to approve the Independence Rail Works LTD's ("IRW's") petition for retroactive approval of its acquisition and operation of its line in Guernsey County, Ohio. We also support IRW's plan to file a petition for discontinuance of service. These actions will put the line in a status consistent with Mar-Zane's understanding and expectations.

Mar-Zane, Inc. is dedicated to delivering high quality construction materials. Our service to eight major markets across three states requires Mar-Zane, Inc. to be selective and to have partners, such as IRW and the Columbus & Ohio River Rail Road ("CUOH"), that are equally committed to providing customers with efficient and reliable transportation service.

Until very recently, Mar-Zane, Inc., CUOH and IRW all were operating on the assumption that the IRW line was a private track, with CUOH having rights to operate on it to support service to our facility. It is our understanding that IRW's petitions for acquisition and discontinuance authority would clarify the status of the line, with CUOH continuing to provide rail service. Mar-Zane, Inc. is unaware of any lapses in service under IRW's ownership and CUOH's operation over the line. The Board's approval of IRW's petition will allow for continued service to Mar-Zane and its operations, which will benefit Mar-Zane, Inc., our customers, and the regional public.

Mar-Zane, Inc. appreciates the Board's consideration, and respectfully requests that the Board approve IRW's petitions for exemption.

Sincerely,



Gerald Taylor
Executive Vice President

AN EQUAL OPPORTUNITY EMPLOYER

EXHIBIT D

Tony Brown, Auditor
Transfer Fee \$4.00

MAY 31 2013

Conv. Fee \$492.65

Transferred
Section 319.54 Ohio R.C.

NEW DESCRIPTION NECESSARY FOR FUTURE TAX MAP TRANSFER TONY BROWN GUERNSEY COUNTY AUDITOR DELMAR E. GEORGE GUERNSEY COUNTY ENGINEER DATE: 5-30-13 DEPUTY: B. Hough	NICK V PICK UP
--	-------------------

QUIT-CLAIM DEED

Statutory Form Pursuant to R.C. 5302.11

Byesville Scenic Trails, LLC, an Ohio Limited Liability Company of Tuscarawas County, Ohio, Grantor, for valuable consideration paid, grants to **Independence Rail Works, LTD.**, Grantee, whose tax-mailing address is **3401 East Pike, Zanesville, Ohio, 43701**, the following REAL PROPERTY:

See Exhibit "A" attached hereto and incorporated herein by reference.

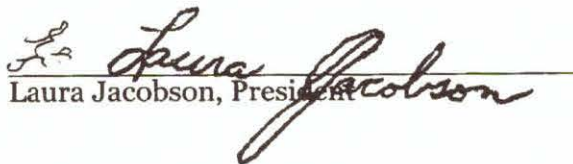
Parcel Numbers: 12-0001704.000
12-0001703.000
12-0001702.001
11-0003507.001
11-0003507.000
11-0003508.000
38-0002725.000
38-0002726.001

Prior Instrument Reference: Volume 458, Page 2309, in the Official Records of Guernsey County Ohio.

Executed this _____ day of _____, 2012.

BYESVILLE SCENIC TRAILS, LLC

By


Laura Jacobson, President

STATE OF OHIO
COUNTY OF TUSCARAWAS

The foregoing instrument was acknowledged before me this 16th day of April, 2012, by Laura Jacobson, President of Byesville Scenic Trails, LLC, the Grantor, and that the same was her free act and deed.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

CORAL DAWN BUTLER
Notary Public-State of Ohio
My Commission Expires 07-11-15


Notary Public

This instrument was prepared by Stephenson, Stephenson & Carrothers, Attorneys at Law, 206 West High Avenue, New Philadelphia, Ohio, 44663.

All right, title and interest of Grantor, if any, in and to that certain tract or parcel of land situate, lying and being between Byesville (MP BPB-4.9, Val Station 2647+60) and Derwent (MP BPB-8.5, Val Station 2834+40), all in Guernsey County, Ohio, hereinafter designated "the Premises," more particularly shown on general location map identified as Exhibit A, described in Exhibit B, and more particularly shown on Exhibits B-1, B-2, C-1, C-2, C-3 and C-4, attached hereto and incorporated herein, and containing 21.44 acres, more or less; SUBJECT TO that certain General Agreement dated February 25, 1958, between the Baltimore and Ohio Railroad Company, a predecessor of Grantor, and Ohio Power Company covering various wire line crossings.

This conveyance is hereby made subject to the following:

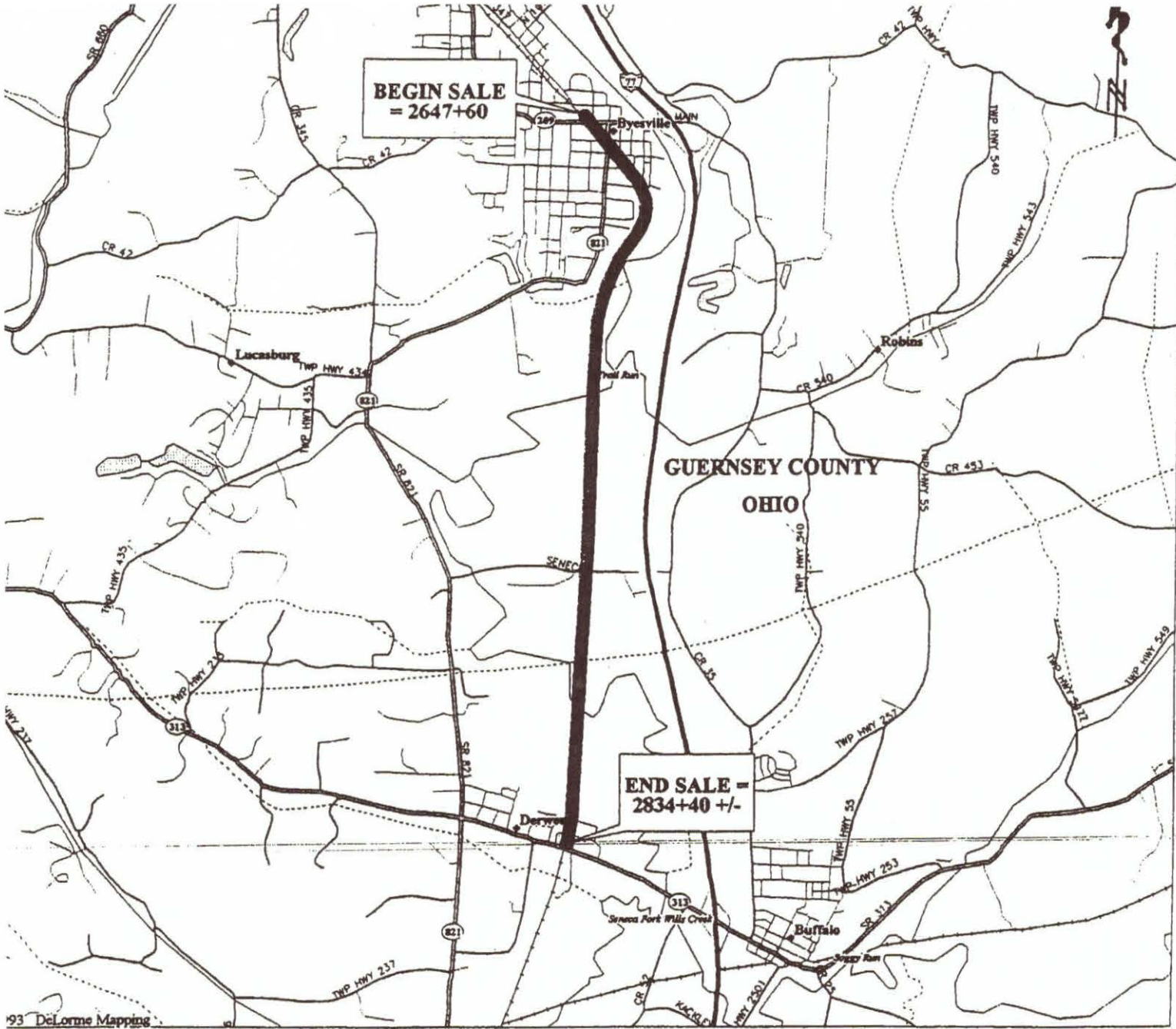
1. Reservations, exceptions and restrictions of record.
2. Building, zoning, subdivision and other applicable federal, state, county, municipal or local laws, ordinances and regulations.
3. Any and all encroachments which might be revealed from an inspection or proper survey of the Line.
4. Any and all existing ways and servitudes, and rights of way, howsoever created, for roads, streets and highways.
5. Any defects in Cambridge-Guernsey County Community Improvement Corporation's title to the property.
6. Any defects in Byesville Scenic Trails, LLC's title to the property.
7. Excepting and reserving to the Grantor all minerals underlying the soil, including without limitation, oil and gas interests and rights, with the right to enter on the property, explore and drill for, and mine, excavate and remove all minerals, and the right to use so much of the surface as may be necessary for mining and storing the minerals, and depositing their refuse, and the right to erect and use machinery, structures, and fixtures as may be necessary, other than houses for miners.
8. Saving, excepting and subject to the rights of Grantor and any of Grantor's related entities owned or controlled by Jerry J. Jacobson and/or Laura Jacobson, their heirs, legatees, personal representatives, successors and assigns to operate its steam and diesel locomotives and railcars on the rail line being conveyed herein. Such operation shall not interfere with the Grantee's tourist trains or commercial freight operations. Grantor must provide Purchaser proof of insurance and any required State or Federal permits to operate said steam and diesel locomotives and railcars.
9. The first right of refusal for passenger operations set forth in the purchase agreement between the Grantor, Byesville Scenic Trails, LLC, and the Grantee, Independence Rail Works, LTD.
10. The first right of refusal for the Grantor to repurchase the Property as set forth in the purchase agreement between the Grantor, Byesville Scenic Trails, LLC, and the Grantee, Independent Rail Works, LTD, within five (5) years of the effective date of said purchase agreement.

The Grantee shall take the Line "AS-IS, WHERE-IS", with all faults and defects in its physical or environmental condition as of the Closing; and Grantee assumes all risks of the condition of the Line, regardless of the cause or date of origin of any environmental condition, and agrees to release all rights and/or claims against Grantor for any such condition or for the costs of the remediation or cure of any such condition.

Parcel No.	✓12-0001704.000	✓12-0001703.000	✓12-0001702.001
	✓11-0003507.001	✓11-0003507.000	✓11-0003508.000
	✓38-0002725.000	✓38-0002725.001	

and all the Estate, Right, Title and Interest of the said grantor in and to said premises;

To have and to hold the same, with all the privileges and appurtenances thereunto belonging, to said



- END
-) State Route
 - Town, Small City
 - 7 Interstate, Turnpike
 - County Boundary
 - Population Center
 - Street, Road
 - Hwy Ramp

- Major Street/Road
- Interstate Highway
- State Route
- ++ Railroad
- River
- Intermittent River
- Airfield

AREA TO BE CONVEYED = 3.54 MILES +/- OR 21.44 ACRES +/-

CSX REAL PROPERTY, INC.

EXHIBIT A

GENERAL LOCATION MAP OF AREA TO BE CONVEYED.
TO
GUERNSEY COUNTY COMMUNITY IMPROVEMENT CORPORATION

GUERNSEY COUNTY
Val. Maps: 125.3 / 3B, 3C, 4A & 4B
GIS: V.12205, 12206, 12208 & 12209

OHIO
Date: 04-17-00
Rv: P.S.

A strip of land fifty ft. (50') in width situate in Sections 11, 20 and 21 in Township 1 North, Range 3 West, and ML 1 and 2 in Section 15 in Township 1 North, Range 2 West, and ML 5 and in Section 5 in Township 8 North, Range 9 West, all in Guernsey County, Ohio, lying twenty-five ft. (25') on either side of the following described centerline:

Commencing at the point of intersection of the centerline of Grantor's railroad track with the centerline of Main Street at Byesville; thence in northwesterly direction along the centerline of the railroad track a distance of 88 ft., more or less, to the TRUE POINT OF BEGINNING at Railroad Valuation Station 2647+60, such BEGINNING POINT being indicated on a fragment print of Grantor's Railroad Valuation Map 125.3, sheet 3B, marked Exhibit B-1, attached hereto; thence extending generally in a southerly direction along the centerline of the railroad track a distance of 3.54 miles, more or less, to the ENDING POINT at the point of intersection of the centerline of the railroad track at or near Railroad Valuation Station 2834+40 with the north line of State Route 313 at Derwent, such ENDING POINT being indicated on a fragment print of Grantor's Railroad Valuation Map 125.3, sheet 4B, marked Exhibit B-2, attached hereto; containing 21.44 acres, more or less, as shown in detail on Grantor's Railroad Valuation Maps 125.3, sheets 3B, 3C, 4A and 4B, inclusive, reduced copies of which are marked Exhibits C-1 through C-4, inclusive, attached hereto.

BEING a portion of the property acquired by The Baltimore and Ohio Railroad Company, a predecessor of Grantor, from The Connecting Railway, by deed dated March 30, 1976, recorded among the Public Land Records of Guernsey County, Ohio, in Book 337, Page 837.

QUEENSBURY COUNTY, OHIO
SALVAGE TRAIL

EXHIBIT C-1

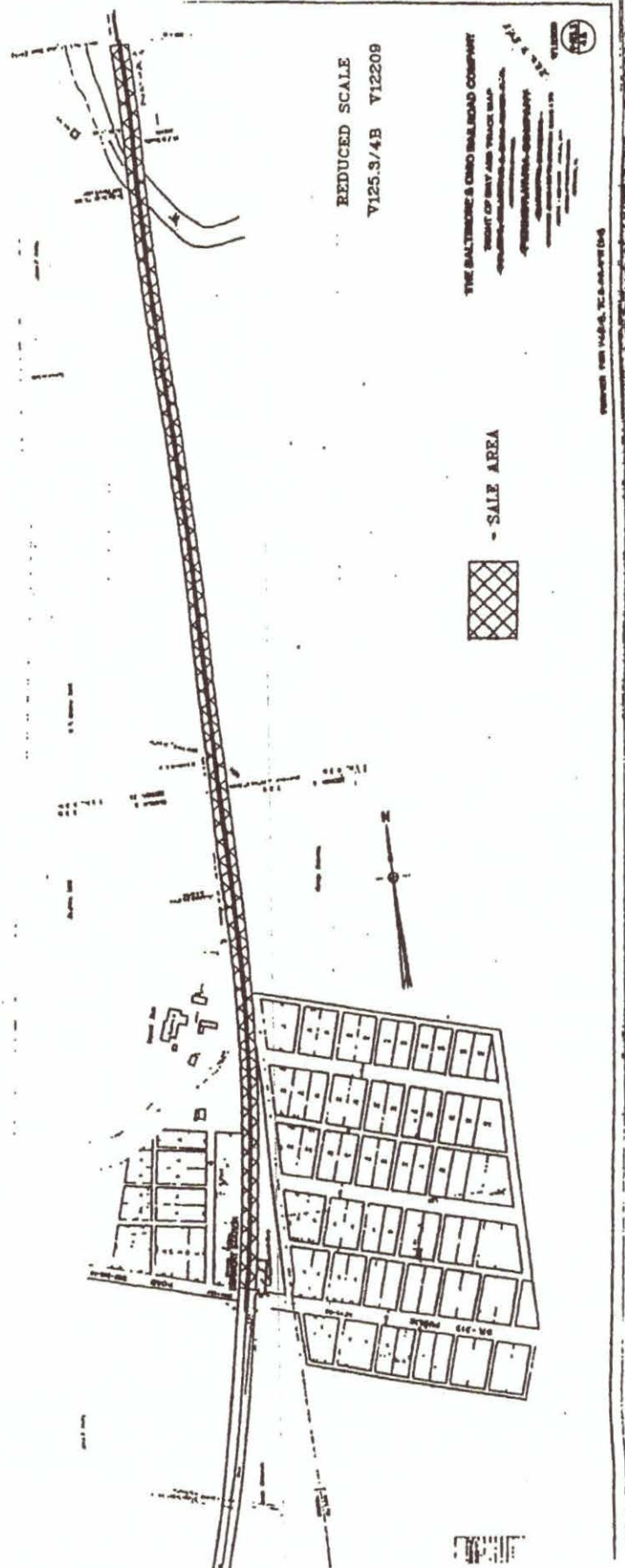
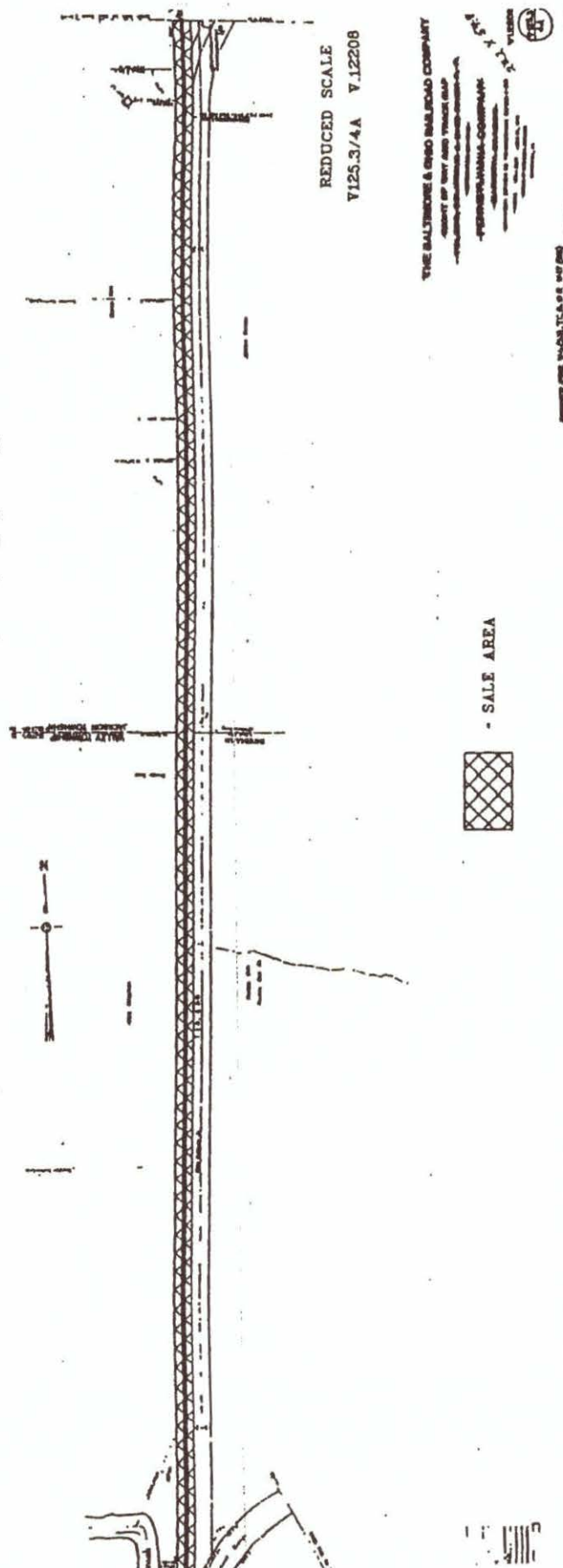
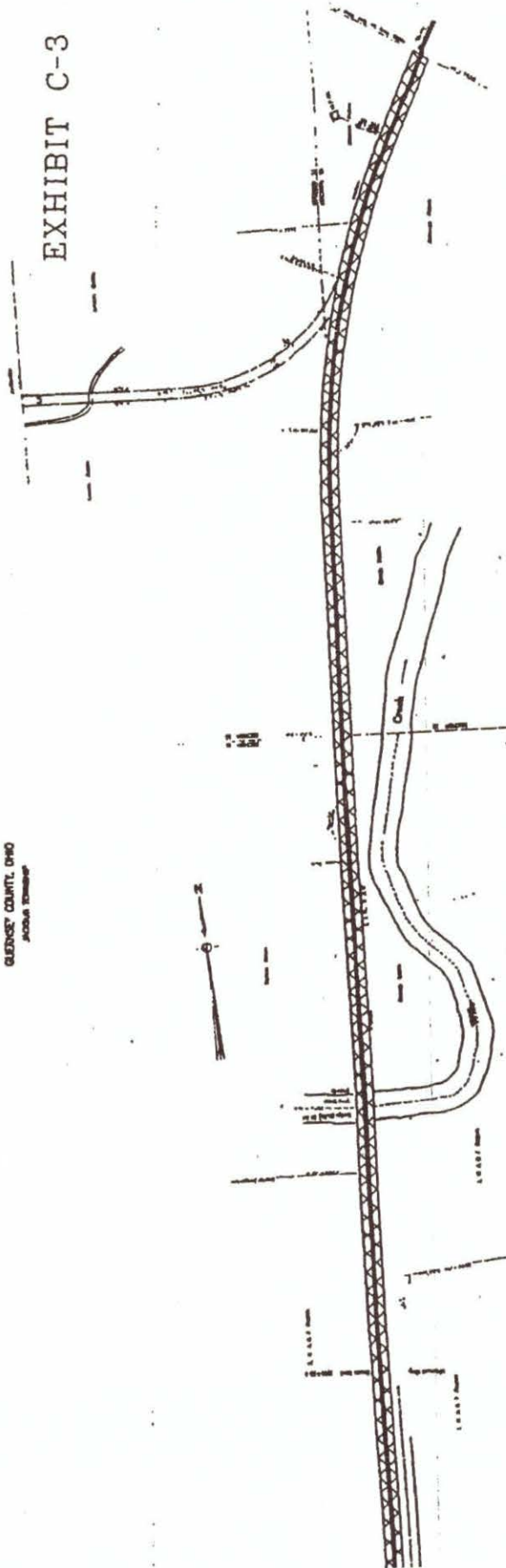


EXHIBIT C-2



GLENN COUNTY, OHIO
LOCAL TOWN

EXHIBIT C-3



REDUCED SCALE
V125.3C V.12208

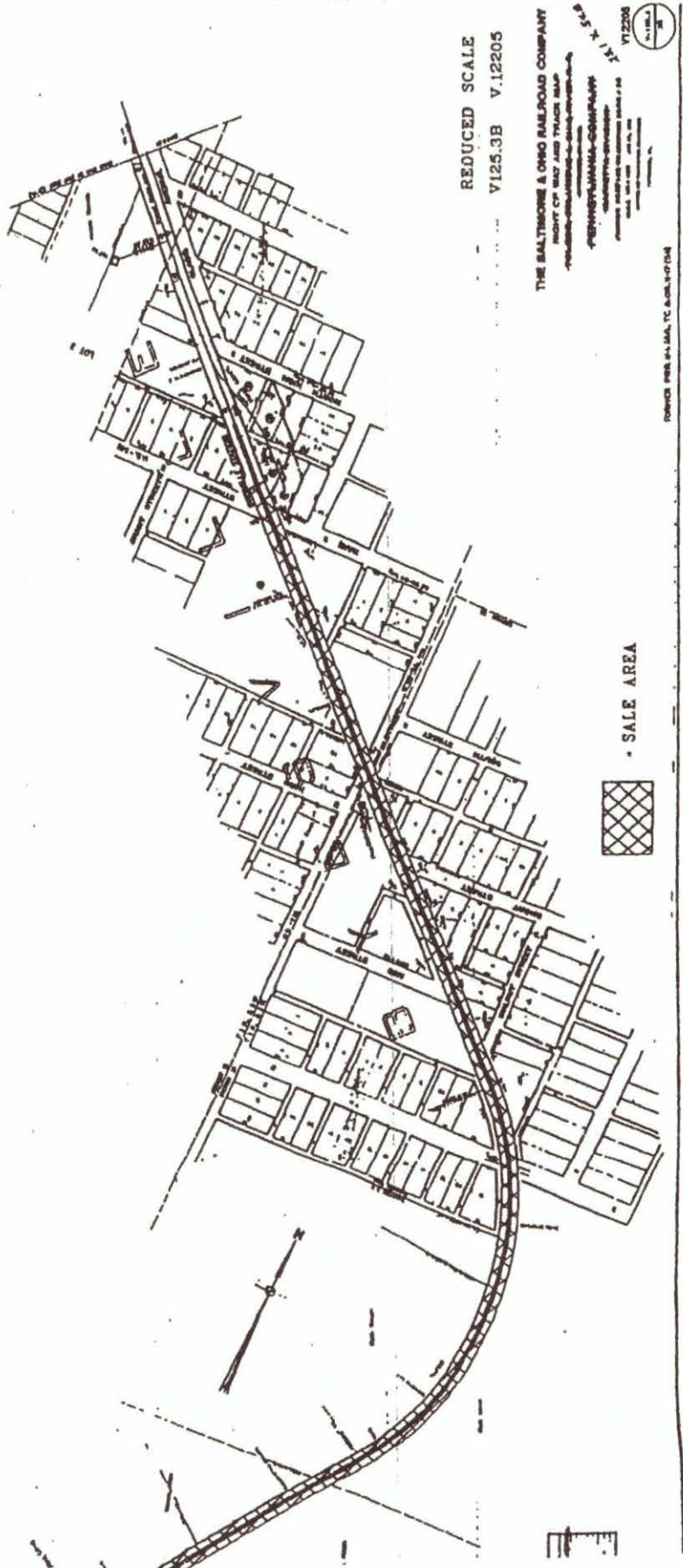
THE BALTIMORE & OHIO RAILROAD COMPANY
RIGHT OF WAY AND TRUCK MAP

PROPERTY OF THE BALTIMORE & OHIO RAILROAD COMPANY
ALL RIGHTS RESERVED
NO PART OF THIS MAP MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM THE BALTIMORE & OHIO RAILROAD COMPANY
V12208

SALE AREA



PRINTED BY THE BALTIMORE & OHIO RAILROAD COMPANY

CLARENDON COUNTY, O-60
JACKSON TOWNSHIP

Complied With
Tony Brown, Auditor
Transfer Fee \$7.00

NEW DESCRIPTION NECESSARY FOR
FUTURE TAILLAP TRANSFER
TONY BROWN
GUERNSEY COUNTY AUDITOR
D. J. HANE, GEORGE
GUERNSEY COUNTY ENGINEER
DATE: 5-30-13
DEPUTY: B. Brown

201300004647
KINCAID TAYLOR GEYER
PICK UP (NV)

MAY 31 2013

Conv. Fee \$492.65
Transferred
Section 319.54 Ohio R.C.

QUIT-CLAIM DEED

Statutory Form Pursuant to R.C. 5302.11

Byesville Scenic Trails, LLC, an Ohio Limited Liability Company of Tuscarawas County, Ohio, Grantor, for valuable consideration paid, grants to **Independence Rail Works, LTD.**, Grantee, whose tax-mailing address is **3401 East Pike, Zanesville, Ohio, 43701**, the following REAL PROPERTY:

See Exhibit "A" attached hereto and incorporated herein by reference.

Parcel Numbers: 38-0002871 38-0002874 36-0000372
38-0002873 36-0000369 36-0000375
38-0002726 36-0000368 37-0000352
38-0002872 36-0000371 37-0000353
38-0002875 36-0000370
03-0021011 (Noble County)

Prior Instrument Reference: Volume 458, Page 2319, in the Official Records of Guernsey County Ohio.

Executed this _____ day of _____, 2012.

BYESVILLE SCENIC TRAILS, LLC

By Laura Jacobson
Laura Jacobson, President

STATE OF OHIO
COUNTY OF TUSCARAWAS

The foregoing instrument was acknowledged before me this 16th day of April, 2013, by Laura Jacobson, President of Byesville Scenic Trails, LLC, the Grantor, and that the same was her free act and deed.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

CORAL DAWN BUTLER
Notary Public-State of Ohio
My Commission Expires 07-11-15

Coral Dawn Butler
Notary Public

This instrument was prepared by Stephenson, Stephenson & Carrothers, Attorneys at Law, 206 West High Avenue, New Philadelphia, Ohio, 44663.

Situated between the Villages of Derwent and Cumberland, Guernsey County, Ohio, being more particularly described as follows:

Approximately 8.94 miles of right-of-way and associated property located between the Villages of Derwent and Cumberland, in Guernsey County, Ohio, as shown entirely on Exhibit "A" described in Exhibit "B" as segment One and individual segments shown as Exhibits "B-1 and B-2" and on Exhibits "C" sheets 1 to 8, attached hereto and made a part hereof, including any and all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, signals, crossing protection devices, communication lines and poles that are affixed to the Real Property between the above described points as of the date of this Deed, hereinafter collectively referred to as the "Line".

Parcel No.	38-0002871	38-0002874	36-0000372
	38-0002873	36-0000369	36-0000375
	38-0002726	36-0000368	37-0000352
	38-0002872	36-0000371	37-0000353
	38-0002875	36-0000370	
	03-0021011 (Noble County)		

Excepting a right of way and easement granted to Ohio Power Company as found in Official Records Volume 453, Page 1339, in the Office of the Recorder of Guernsey County, Ohio.

This conveyance is hereby made subject to the following:

1. Reservations, exceptions and restrictions of record as recorded in a certain Quit Claim Deed from Franklin Real Estate Company to Cambridge-Guernsey County Community Improvement Corporation as recorded in Volume 454, Page 2590 Guernsey County Official Records.
2. Building, zoning, subdivision and other applicable federal, state, county, municipal or local laws, ordinances and regulations.
3. Any and all encroachments which might be revealed from an inspection or proper survey of the Line.
4. Any and all existing ways and servitudes, and rights of way, howsoever created, for roads, streets and highways.
5. Any defects in Cambridge-Guernsey County Community Improvement Corporation's title to the property.
6. Easements for electric distribution and/or transmission and communication lines and/or related facilities and appurtenances granted to Ohio Power Company, its successors and assigns by previous Grantor Franklin Real Estate Company which have been placed of record prior to the date of this deed. Grantee and its successors and assigns shall not hereafter assess a fee against previous Grantor Franklin Real Estate Company or its affiliate Ohio Power Company or any affiliate of Franklin or Ohio Power Company or any successor assign thereof for any wire crossings over the tracks.

EXHIBIT A

8. Excepting and reserving to the Grantor all minerals underlying the soil, including without limitation, oil and gas interests and rights, with the right to enter on the property, explore and drill for, and mine, excavate and remove all minerals, and the right to use so much of the surface as may be necessary for mining and storing the minerals, and depositing their refuse, and the right to erect and use machinery, structures, and fixtures as may be necessary, other than houses for miners.

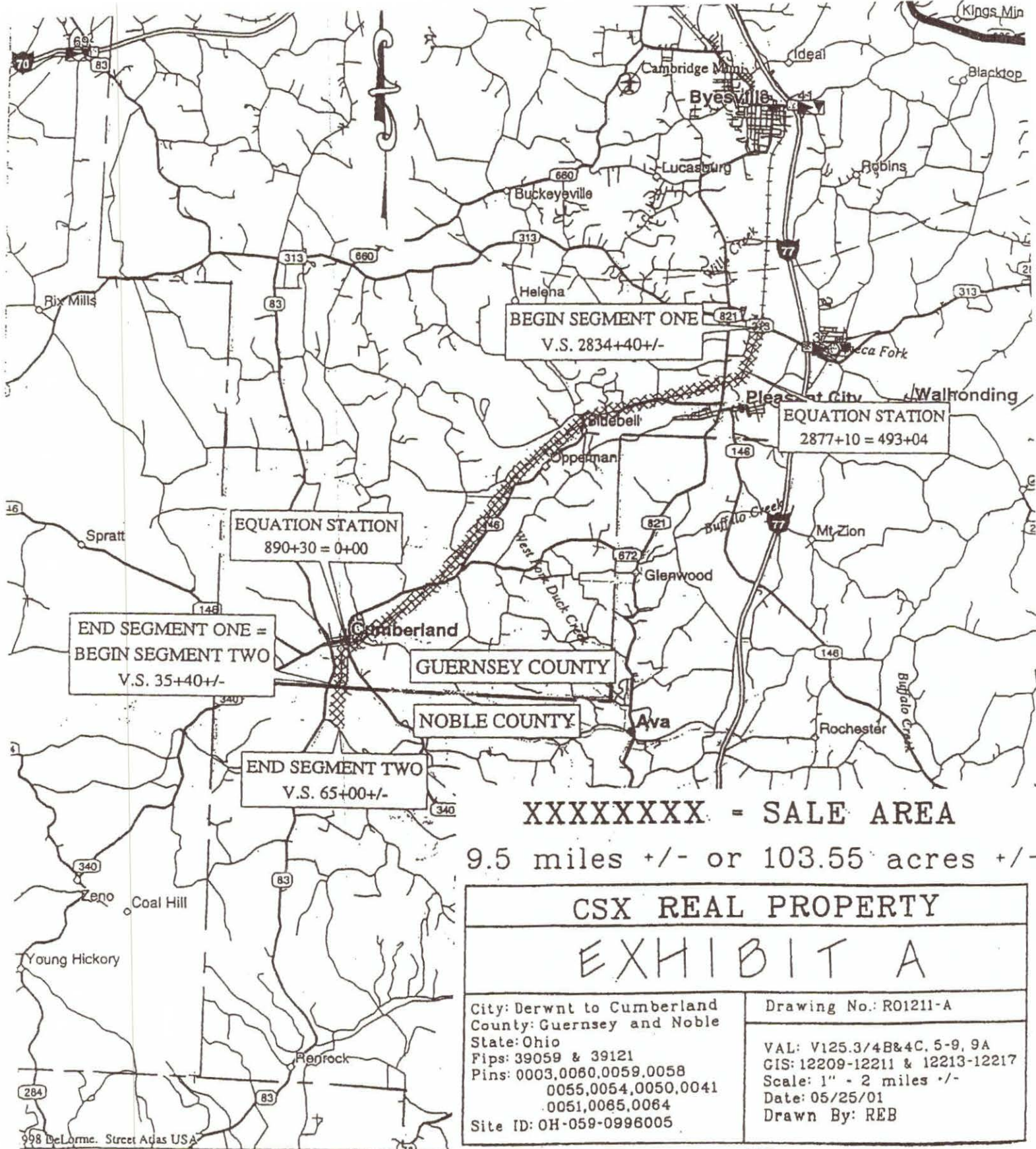
9. Saving, excepting and subject to the rights of Grantor and any of Grantor's related entities owned or controlled by Jerry J. Jacobson and/or Laura Jacobson, their heirs, legatees, personal representatives, successors and assigns to operate its steam and diesel locomotives and railcars on the rail line being conveyed herein. Such operation shall not interfere with the Grantee's tourist trains or commercial freight operations. Grantor must provide Purchaser proof of insurance and any required State or Federal permits to operate said steam and diesel locomotives and railcars.

10. The first right of refusal for passenger operations set forth in the purchase agreement between the Grantor, Byesville Scenic Trails, LLC, and the Grantee, Independence Rail Works, LTD.

11. The first right of refusal for the Grantor to repurchase the Property as set forth in the purchase agreement between the Grantor, Byesville Scenic Trails, LLC, and the Grantee, Independent Rail Works, LTD, within five (5) years of the effective date of said purchase agreement.

The Grantee shall take the Line "AS-IS, WHERE-IS", with all faults and defects in its physical or environmental condition as of the Closing; and Grantee assumes all risks of the condition of the Line, regardless of the cause or date of origin of any environmental condition, and agrees to release all rights and/or claims against Grantor for any such condition or for the costs of the remediation or cure of any such condition.

To Have And To Hold the above premises with the appurtenances thereunto belonging to said Grantee, its successors and assigns forever.



XXXXXXXXX - SALE AREA
9.5 miles +/- or 103.55 acres +/-

CSX REAL PROPERTY

EXHIBIT A

City: Derwent to Cumberland
County: Guernsey and Noble
State: Ohio
Fips: 39059 & 39121
Pins: 0003,0060,0059,0058
0055,0054,0050,0041
0051,0065,0064
Site ID: OH-059-0996005

Drawing No.: R01211-A

VAL: V125.3/4B&4C, 5-9, 9A
GIS: 12209-12211 & 12213-12217
Scale: 1" = 2 miles +/-
Date: 05/25/01
Drawn By: REB

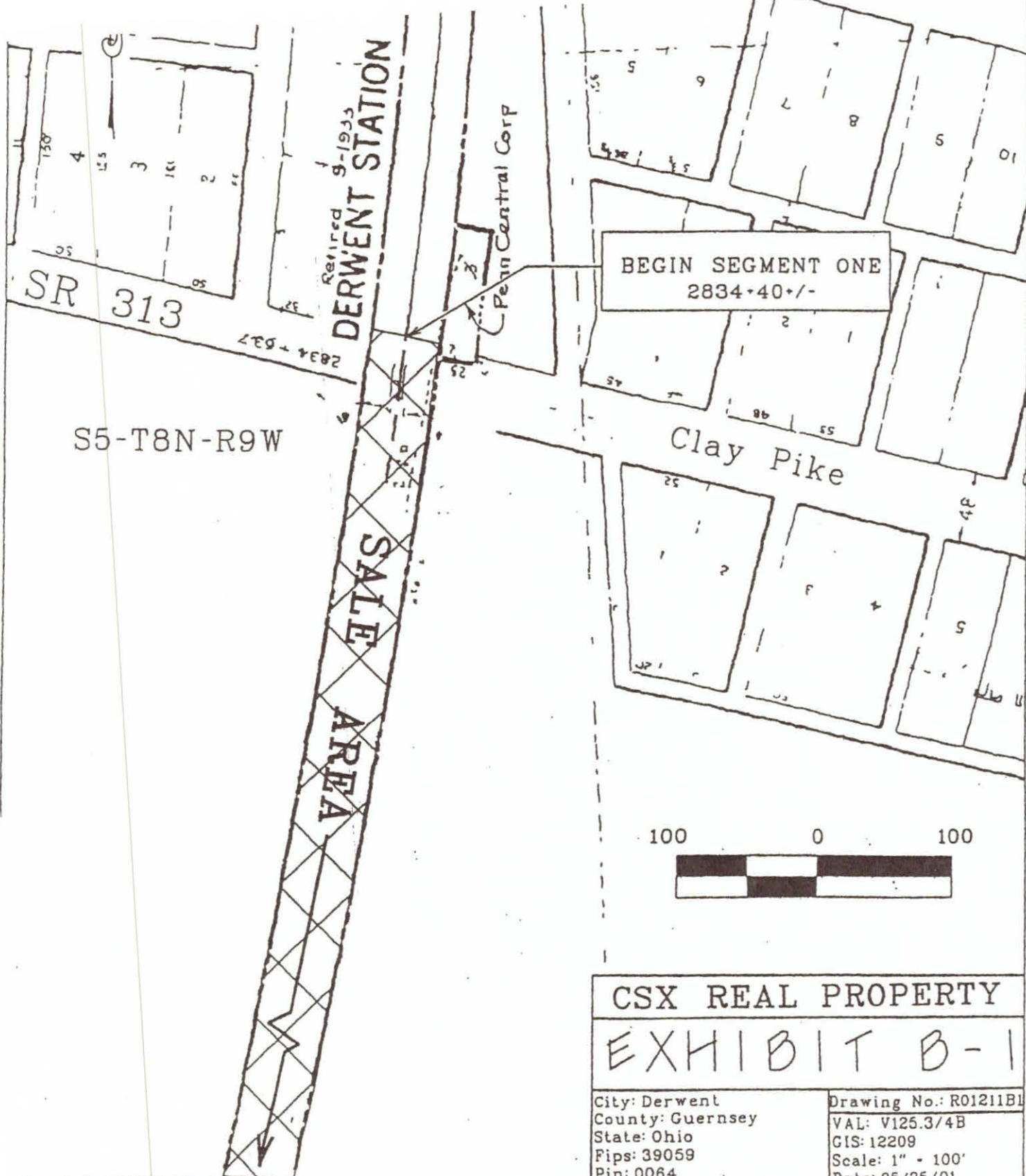
A strip of land of varied width lying and situate in Sections 4, 5, 7 and 8 in Township 8 North, Range 9 West and Sections 12, 13, 14, 22, 23, 27, 28, 32 and 33 in Township 9 North, Range 10 West, all in Guernsey County, Ohio and also in Section 5, Township 8 North, Range 10 West in Noble County, Ohio, lying on each side of the following described centerline:

Segment One

BEGINNING at the point of intersection of the Grantor's railroad track with the north line of State Route 313 (aka Clay Pike) and being the southerly line of the lands conveyed by CSX Transportation to Cambridge-Guernsey County Community Improvement Corporation by deed dated September 18, 2000 and recorded in ORB 256 at Page 95 at or near Railroad Valuation Station 2834+40, such **BEGINNING POINT** being indicated on a fragment print of Grantor's Railroad Valuation Map 125.3 sheet 4B, marked Exhibit B-1, attached hereto; thence extending in a general southwesterly direction along the centerline of the railroad track a distance of 8.94 miles, more or less, to the **ENDING POINT** at the point of intersection of the centerline of the railroad track with the County Line between Guernsey and Noble Counties at or near Railroad Valuation Station 35+40, such **ENDING POINT** being indicated on a fragment print of Grantor's Railroad Valuation Map 125.3, sheet 9A, marked Exhibit B-2, attached hereto; containing 96.49 acres, more or less, as shown in detail on Grantor's Railroad Valuation Maps 125.3, sheets 4B, 4C, 5, 6, 7, 8, 9 and 9A, reduced copies of which are marked Exhibits C-1 through C-8, inclusive, attached hereto.

Segment Two

BEGINNING at the point of intersection of the centerline of the railroad track with the County Line between Guernsey and Noble Counties at or near Railroad Valuation Station 35+40, such **BEGINNING POINT** being the ending point described above for Segment One and being indicated on a fragment print of Grantor's Railroad Valuation Map 125.3, sheet 9A, marked Exhibit B-2, attached hereto; thence in a general southerly direction along the centerline of the railroad track a distance of 0.56 of a mile, more or less, to the **ENDING POINT** at or near Railroad Valuation Station 65+00, such **ENDING POINT** being indicated on a fragment print of Grantor's Railroad Valuation Map 125.3, sheet 9A, marked Exhibit B-3, attached hereto containing 7.06 acres, more or less, as shown in detail on Grantor's Railroad Valuation Map 125.3, sheet 9A, a reduced copy of which is marked Exhibit C-8, attached hereto.



CSX REAL PROPERTY

EXHIBIT B-1

City: Derwent
County: Guernsey
State: Ohio
Fips: 39059
Pin: 0064

Drawing No.: R01211B1
VAL: V125.3/4B
GIS: 12209
Scale: 1" = 100'
Date: 05/25/01
Drawn By: REB

GUERNSEY
COUNTY

END SEGMENT ONE-
BEGIN SEGMENT TWO
35+40/-

SEC. 5 - T. 8N - R. 10W.
SEC. 32 - T. 9N - R. 10W.

SALE AREA

TWP. LINE
COUNTY LINE

NOBLE
COUNTY



600'
1=23037'

45+29 OWD PT
45+04 PF #8
44+37 PS

CSX REAL PROPERTY
EXHIBIT B-2

City: Cumberland
County: Guernsey
State: Ohio
Fips: 39059
Pin: 0060
Site ID: OH-059-0996005

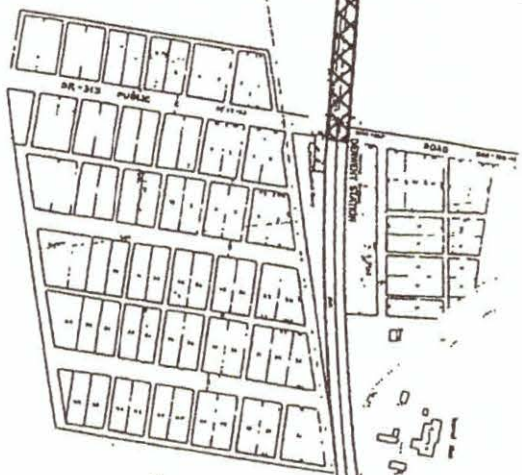
Drawing No: R01211-B2
VAL: V125.3/9A
CIS: 12217
Scale: 1" = 200'
Date: 05/25/01
Drawn By: REB

EXHIBIT C-1

QUEENSLAND COUNTY, OHIO
MILLY TOWNSHIP

Scale: 1" = 400'

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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1" = 400'

THE BALTIMORE & OHIO RAILROAD COMPANY

RIGHT OF WAY AND TRUCK MAP

PENNSYLVANIA COMPANY

VI 2208

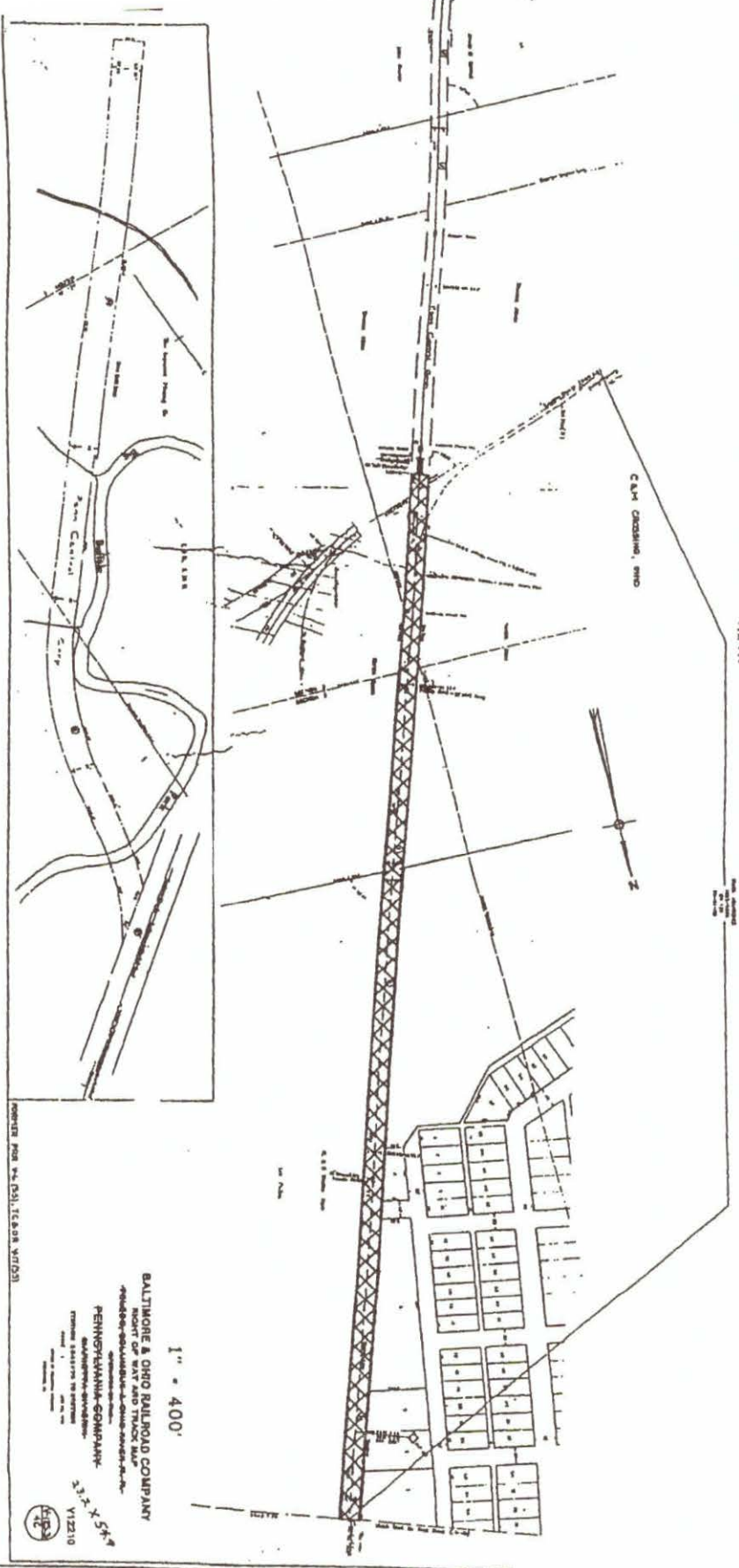


FORNEN, PRO. VALLA, T. & CO. INC.

EXHIBIT C-2

QUEENSBURY COUNTY, OHIO
WALLET TOWNSHIP
T14, 11E

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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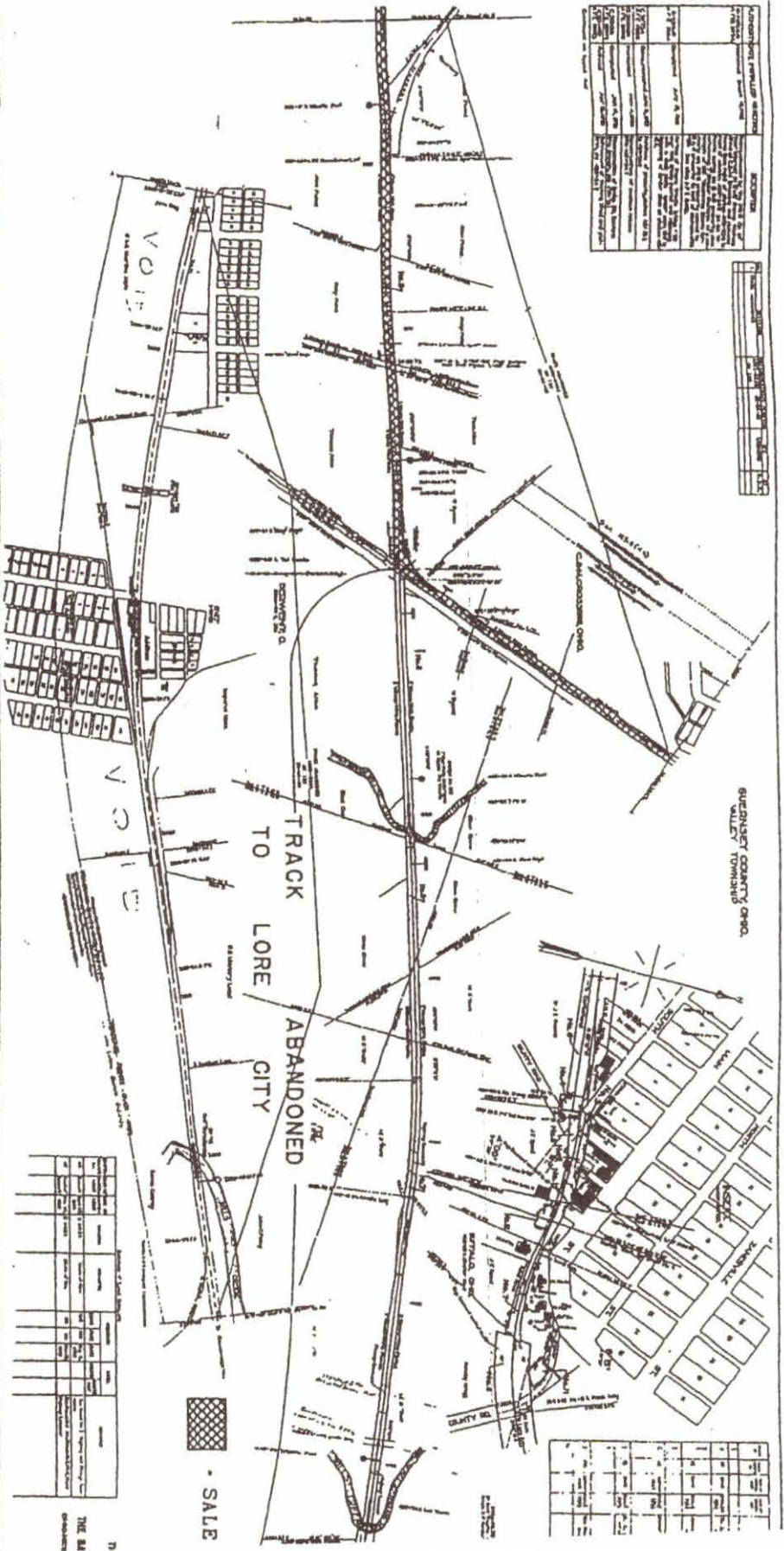
BALTIMORE & OHIO RAILROAD COMPANY
RIGHT OF WAY AND TRACK MAP

PENNSYLVANIA COMPANY

ENGINEER

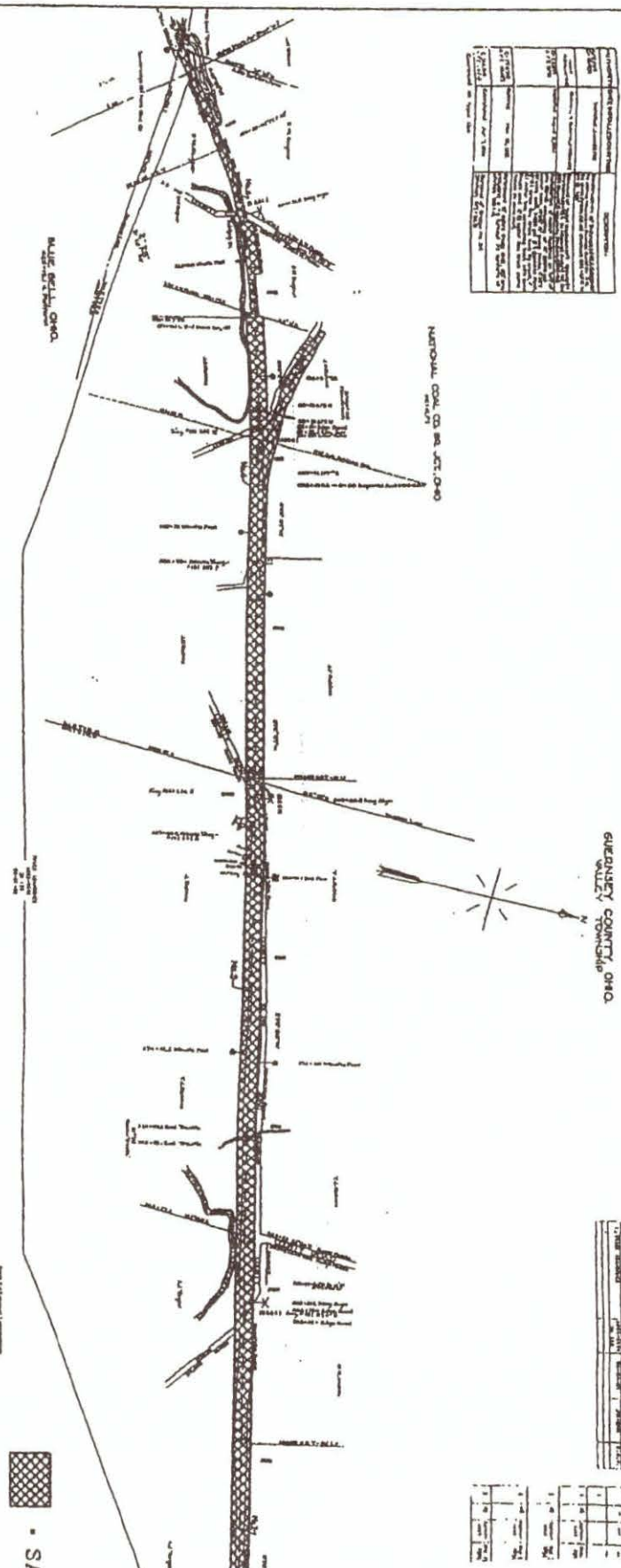


PROVIDED FROM THE RAILROAD RECORDS



NO.	DATE	DESCRIPTION	BY	CHECKED
1	10/1/00	Initial Survey	J. Smith	M. Jones
2	10/15/00	Revised Survey	J. Smith	M. Jones
3	11/1/00	Final Survey	J. Smith	M. Jones

NO.	DATE	DESCRIPTION	BY	CHECKED
1	10/1/00	Initial Survey	J. Smith	M. Jones
2	10/15/00	Revised Survey	J. Smith	M. Jones
3	11/1/00	Final Survey	J. Smith	M. Jones

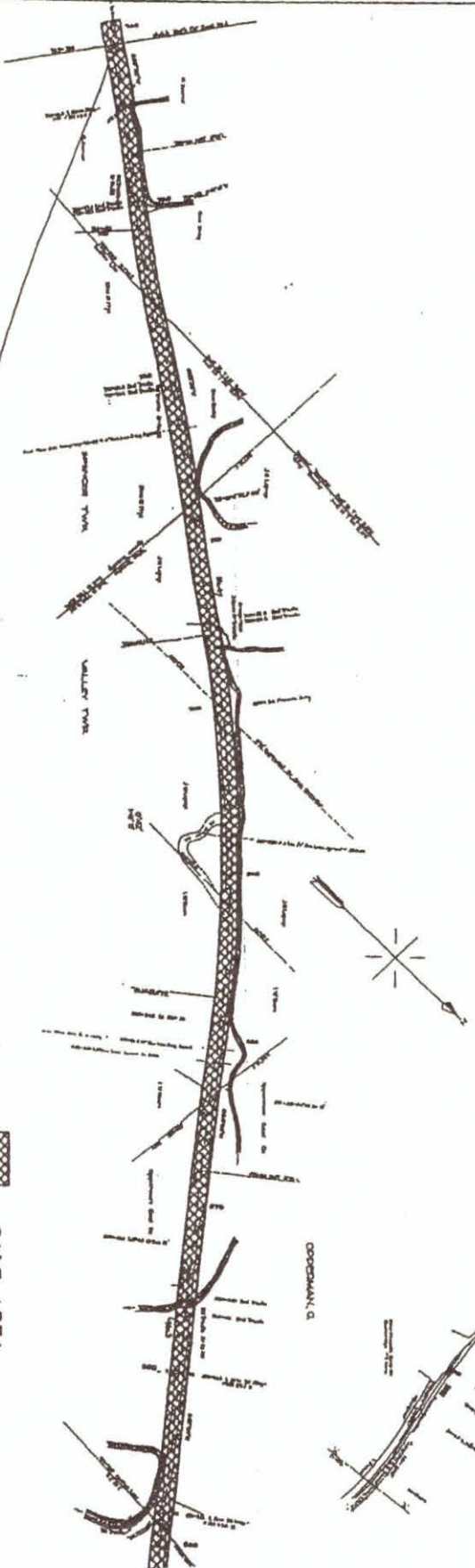
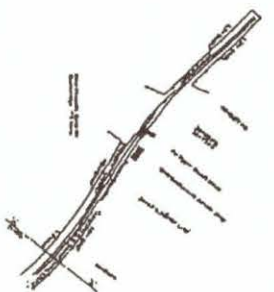


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PROJECT NO.	2001-1528-09
DATE	May 25, 2001
BY	1528-09
CHECKED BY	
APPROVED BY	

PROJECT NO.	2001-1528-09
DATE	May 25, 2001
BY	1528-09
CHECKED BY	
APPROVED BY	

GARFIELD CO., CO.



SALE AREA

Station	Right of Way	Proposed Road	Existing Road	Notes
1+00	100.00	100.00	100.00	
2+00	100.00	100.00	100.00	
3+00	100.00	100.00	100.00	
4+00	100.00	100.00	100.00	
5+00	100.00	100.00	100.00	
6+00	100.00	100.00	100.00	
7+00	100.00	100.00	100.00	
8+00	100.00	100.00	100.00	
9+00	100.00	100.00	100.00	
10+00	100.00	100.00	100.00	
11+00	100.00	100.00	100.00	
12+00	100.00	100.00	100.00	
13+00	100.00	100.00	100.00	
14+00	100.00	100.00	100.00	
15+00	100.00	100.00	100.00	
16+00	100.00	100.00	100.00	
17+00	100.00	100.00	100.00	
18+00	100.00	100.00	100.00	
19+00	100.00	100.00	100.00	
20+00	100.00	100.00	100.00	
21+00	100.00	100.00	100.00	
22+00	100.00	100.00	100.00	
23+00	100.00	100.00	100.00	
24+00	100.00	100.00	100.00	
25+00	100.00	100.00	100.00	
26+00	100.00	100.00	100.00	
27+00	100.00	100.00	100.00	
28+00	100.00	100.00	100.00	
29+00	100.00	100.00	100.00	
30+00	100.00	100.00	100.00	
31+00	100.00	100.00	100.00	
32+00	100.00	100.00	100.00	
33+00	100.00	100.00	100.00	
34+00	100.00	100.00	100.00	
35+00	100.00	100.00	100.00	
36+00	100.00	100.00	100.00	
37+00	100.00	100.00	100.00	
38+00	100.00	100.00	100.00	
39+00	100.00	100.00	100.00	
40+00	100.00	100.00	100.00	
41+00	100.00	100.00	100.00	
42+00	100.00	100.00	100.00	
43+00	100.00	100.00	100.00	
44+00	100.00	100.00	100.00	
45+00	100.00	100.00	100.00	
46+00	100.00	100.00	100.00	
47+00	100.00	100.00	100.00	
48+00	100.00	100.00	100.00	
49+00	100.00	100.00	100.00	
50+00	100.00	100.00	100.00	
51+00	100.00	100.00	100.00	
52+00	100.00	100.00	100.00	
53+00	100.00	100.00	100.00	
54+00	100.00	100.00	100.00	
55+00	100.00	100.00	100.00	
56+00	100.00	100.00	100.00	
57+00	100.00	100.00	100.00	
58+00	100.00	100.00	100.00	
59+00	100.00	100.00	100.00	
60+00	100.00	100.00	100.00	
61+00	100.00	100.00	100.00	
62+00	100.00	100.00	100.00	
63+00	100.00	100.00	100.00	
64+00	100.00	100.00	100.00	
65+00	100.00	100.00	100.00	
66+00	100.00	100.00	100.00	
67+00	100.00	100.00	100.00	
68+00	100.00	100.00	100.00	
69+00	100.00	100.00	100.00	
70+00	100.00	100.00	100.00	
71+00	100.00	100.00	100.00	
72+00	100.00	100.00	100.00	
73+00	100.00	100.00	100.00	
74+00	100.00	100.00	100.00	
75+00	100.00	100.00	100.00	
76+00	100.00	100.00	100.00	
77+00	100.00	100.00	100.00	
78+00	100.00	100.00	100.00	
79+00	100.00	100.00	100.00	
80+00	100.00	100.00	100.00	
81+00	100.00	100.00	100.00	
82+00	100.00	100.00	100.00	
83+00	100.00	100.00	100.00	
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87+00	100.00	100.00	100.00	
88+00	100.00	100.00	100.00	
89+00	100.00	100.00	100.00	
90+00	100.00	100.00	100.00	
91+00	100.00	100.00	100.00	
92+00	100.00	100.00	100.00	
93+00	100.00	100.00	100.00	
94+00	100.00	100.00	100.00	
95+00	100.00	100.00	100.00	
96+00	100.00	100.00	100.00	
97+00	100.00	100.00	100.00	
98+00	100.00	100.00	100.00	
99+00	100.00	100.00	100.00	
100+00	100.00	100.00	100.00	

1" = 800'

THE STATE OF COLORADO
COUNTY OF GARFIELD

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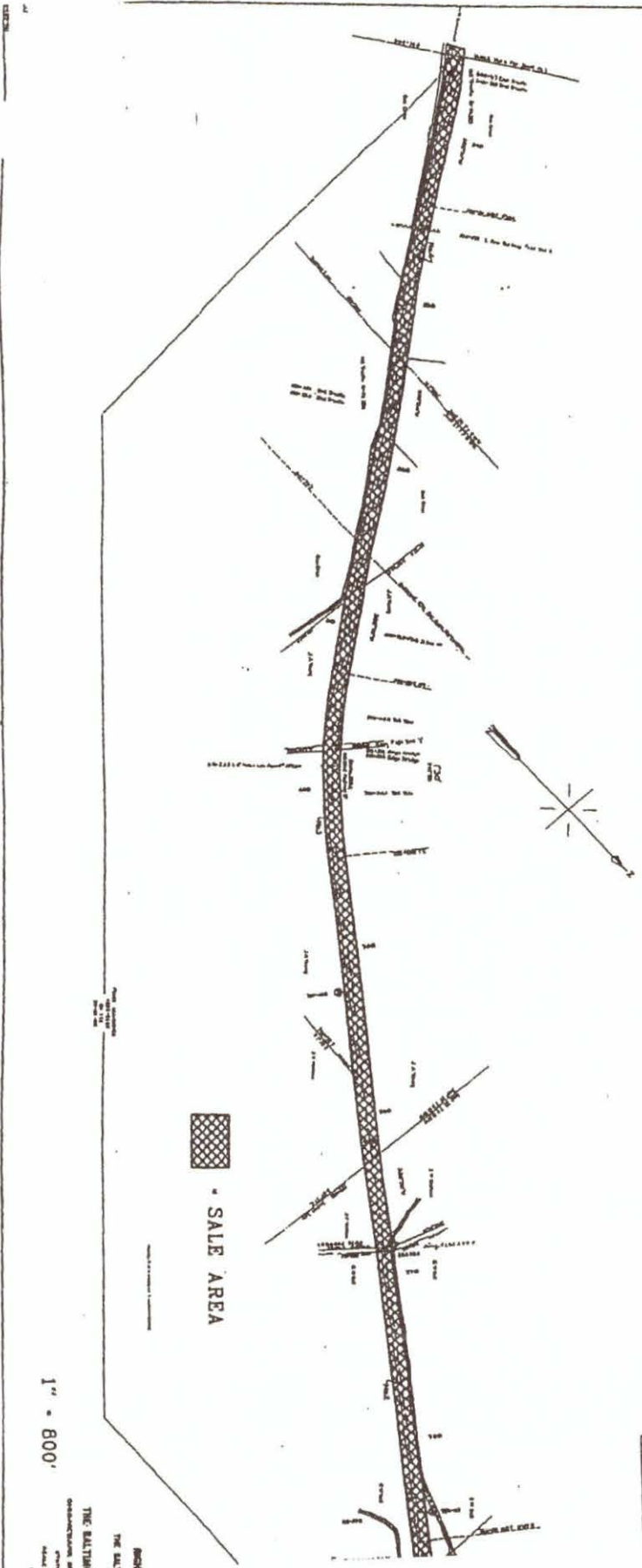
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Sheet	100-100000-0000
Scale	1" = 800'
Date	May 25, 2001

Author	100-100000-0000
Checked	100-100000-0000
Approved	100-100000-0000

ALLEGANY CO. OHIO
SECTION 10

100-100000-0000	100-100000-0000
100-100000-0000	100-100000-0000
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100-100000-0000

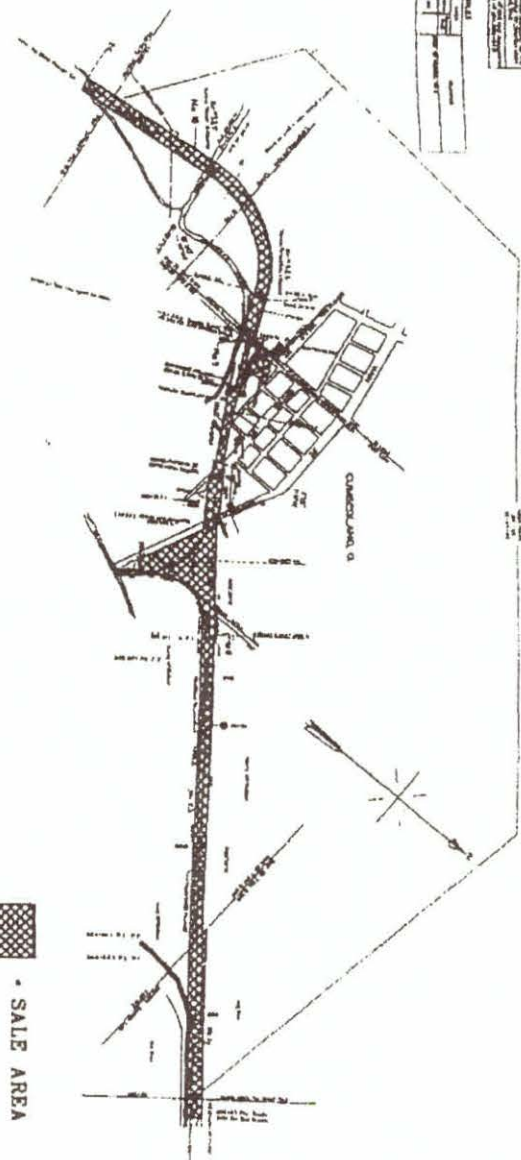
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Instrument Book Page
2002-06394 OR 454 2604

Area	Acres	Owner	Remarks
1	1.00	State of Oregon	Public Lands
2	1.00	State of Oregon	Public Lands
3	1.00	State of Oregon	Public Lands
4	1.00	State of Oregon	Public Lands
5	1.00	State of Oregon	Public Lands
6	1.00	State of Oregon	Public Lands
7	1.00	State of Oregon	Public Lands
8	1.00	State of Oregon	Public Lands
9	1.00	State of Oregon	Public Lands
10	1.00	State of Oregon	Public Lands

Area	Acres	Owner	Remarks
11	1.00	State of Oregon	Public Lands
12	1.00	State of Oregon	Public Lands
13	1.00	State of Oregon	Public Lands
14	1.00	State of Oregon	Public Lands
15	1.00	State of Oregon	Public Lands
16	1.00	State of Oregon	Public Lands
17	1.00	State of Oregon	Public Lands
18	1.00	State of Oregon	Public Lands
19	1.00	State of Oregon	Public Lands
20	1.00	State of Oregon	Public Lands

Area	Acres	Owner	Remarks
21	1.00	State of Oregon	Public Lands
22	1.00	State of Oregon	Public Lands
23	1.00	State of Oregon	Public Lands
24	1.00	State of Oregon	Public Lands
25	1.00	State of Oregon	Public Lands
26	1.00	State of Oregon	Public Lands
27	1.00	State of Oregon	Public Lands
28	1.00	State of Oregon	Public Lands
29	1.00	State of Oregon	Public Lands
30	1.00	State of Oregon	Public Lands



SALE AREA

1" = 800'

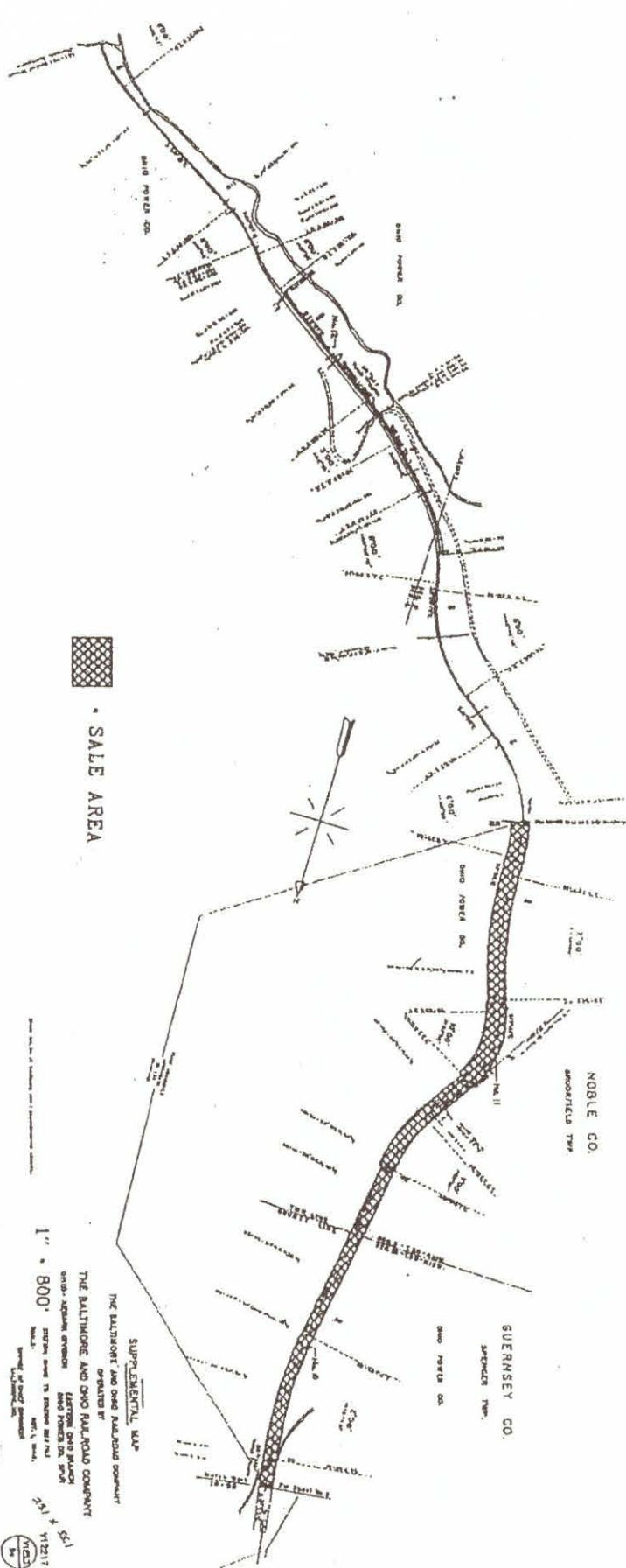
Surveyed by
J. M. MATHIAS
1980

Surveyed by J. M. Mathias, May 29, 2001 07:05:08

EXHIBI

EXHIBIT C-8

O H I O



SALE AREA

1" = 800'

SUPPLEMENTAL MAP
THE BALTIMORE AND OHIO RAILROAD COMPANY
GRANTED BY
THE BALTIMORE AND OHIO RAILROAD COMPANY
GIVEN - ALBANY, OHIO
LETTER OF GRANT
AND POWER OF ATTORNEY

151
11217
11217