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April 22, 2024

308282

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
U.S. Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
May 1, 2024
Part of
Public Record

Re: Petition for Declaratory Order
Docket No.: FD 36770
Township of Pilesgrove in re SMS Rail Service, Inc.

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a Petition for a Declaratory Order filed by the Township of Pilesgrove.

As this filing is being instituted by the Township of Pilesgrove, a public/government entity, for the purpose of direction, guidance and clarification we are asking that the Board kindly waive the customary filing fee.

If you have any questions regarding this filing, please feel free to contact me.

Thank you for your kind attention and assistance in this regard.

Respectfully,

Ekaterine N. Eleftheriou
Attorney for the Township of Pilesgrove

Enclosures

cc: Frank Hoerst, Esq. (Attorney for SMS Rail Line, Inc.)
David Avedissian, Esq. (Attorney for SMS Rail Line, Inc.)

FILING FEE WAIVED

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET: FD 36770

TOWNSHIP OF PILESGROVE, COUNTY OF SALEM, NEW JERSEY

PETITION FOR DECLARATORY ORDER

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Attorney for the Township of Pilesgrove

April 22, 2024

BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET: FD 36770
TOWNSHIP OF PILESGROVE, COUNTY OF SALEM, STATE OF NEW JERSEY
PETITION FOR DECLARATORY ORDER
PETITION

I. INTRODUCTION

Township of Pilesgrove hereby respectfully petitions the Surface Transportation Board to issue a declaratory order, pursuant to 5 U.S.C. §554(e) and 49 U.S.C.1321, regarding whether the Board maintains jurisdiction over SMS Rail Service, Inc., and, if so, over which of its actions and activities as SMS Rail Service, Inc., has expanded beyond its initial scope as a freight rail service line and has commenced operation as a fun rail/entertainment line.

II. FACTUAL AND PROCEDURAL BACKGROUND

SMS Rail Service, Inc., (hereinafter SMS), a freight rail line, was awarded a lease for the maintenance and operation of the Salem County Railroad. *See Exhibit A, Resolution 2021-111, dated February 17, 2021, Resolution Awarding A Lease for the Maintenance and Operation of the Salem County Railroad.* The terms as memorialized by the Resolution provided that the lease would be a ten (10) year agreement and shall commence on April 1, 2021, and terminate on March 31, 2031, with one ten-year renewal option available with mutual consent of both parties and which shall be completed in full accordance with the terms and conditions of the contract. *Id.*

The Rail Line Service Agreement (herein after “Agreement”) sets forth the terms and agreement between the parties and provided, to wit, that SMS would “maintain, market, and operate the rail line and to provide exclusive rail service at the property.” Further, the County authorized SMS to seek from the Surface Transportation Board common carrier authority to operate as a common carrier on the Rail Line. The Rail Line in question comprises of approximately nineteen and four tenths (19.4) linear miles of rail lines (inclusive of the one and two tenths (1.2) mile spur known as the Glass House Branch) and is further described within attachment *Exhibit A* of the *Agreement*. *Id.*

Among other terms and conditions, the “*Agreement*” at paragraph 10, Compliance with Legal Requirements, provides, “the Operator covenants throughout the Term of this Service Agreement, at Operator’s sole cost and expense, promptly to comply with all laws and ordinances and notices, orders, rules, regulations and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards and officers thereof and notices, orders rules and regulations of the Federal Railroad Administration, National Board of Fire Underwriters, or any other body now or hereafter constituted exercising similar functions

that governs the operation, ownership, maintenance and servicing of the Rail Line, including without limitation, all laws relating to interstate commerce, railroads, health and safety, and environmental matters, whether foreseen or unforeseen, ordinary as well as extraordinary, structural as well as nonstructural. Operator shall likewise observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to this Service Agreement, the Rail Line and the equipment thereon.” *(emphasis added)*.

At some time in or about 2023, SMS began operating various fun rides and tours, inviting the general public upon its property. These rides are intra state, for a fee and are for purposes of a fun excursion rather than anything to do with interstate commerce. These tours include wine tasting tours, Santa/North Pole, Easter Bunny, etc. Furthermore, to service these fun rides there have been structures placed upon the property including but not limited to a ticketing booth and a gift shop. It is unclear to the Township whether structures and improvements upon the property for purposes of these fun rides are within the Surface Transportation Board’s jurisdiction as they are solely for purposes of entertainment. No permits have been pulled by SMS Rail Line for purposes of these pre-fabricated shed structures that house the ticketing booth, gift shop, etc. *See Exhibit I, various advertisements as to the excursion rides.*

On or about December 6, 2023, the Department of Community Affairs, Department of Public Safety, issued an Inter-Agency Request Form, notating that an inspection of the SMS premises revealed violations within the jurisdiction of UCC- Construction Official, specifically, “during initial fire inspection of the Railroad Station, large assembly space tent used for customers was noted. Safety manager advised unknown if permitted by construction.” *Exhibit B, Inter Agency Request Form.*

On or about October 11, 2023, a Notice of Zoning Non-Compliance and/or Violation was issued to SMS Rail Service, Inc., notifying SMS that that they would have to submit a use variance and site plan to void further enforcement and violations per the Pilesgrove Township Land Use Ordinance, Section 145-67, as their current use is freight railroad operations; however, they have been using and plan to continue to use the railroad for commercial purposes including passenger train rides, group and private charters, events, etc. *Exhibit C, Correspondence dated October 11, 2023, from Township of Pilesgrove to SMS Rail Service, Inc.* In response to this Notice, SMS through its representative, Jim Pfeiffer, by letter dated October 12, 2023, **alleged, “SMS’s abundant freight operations provide a sufficient nexus to interstate commerce to permit Federal regulation of its intrastate operations,” thereby claiming that the local zoning and land use regulations are pre-empted by Federal law and not applicable to SMS.** *Exhibit D, Correspondence dated October 12, 2024, from Jim Pfeiffer to Tanya Timmerman.* This is among the issues which the Township of Pilesgrove would like the Surface Transportation Board to address.

Additionally, and for a complete factual background, an application was filed by SMS Rail Service, Inc., in or about December 2023, for a Use Variance for the operation of a rail bike tour facility along with accessory structures and a Use Variance for multiple principle uses on one lot located on property known as Block 73, Lots 1. Prior to the presentation of the Application on January 17, 2024, SMS requested that the application be bifurcated and that the Board only

consider the Use variance for multiple principle uses on one lot. Applicant claimed federal preemption prohibited the Board for rendering a zoning decision regarding that specific use nor the site operation of that portion of the property. To be certain, this property is zoned rural residential and it has become clear that SMS would like a third-party operator to be permitted to operate a rail bike tour facility which would possibly require various structures upon the property. *Exhibit E, Public Notice of Planning Board Application as submitted by SMS Rail Service, Inc., through its attorney representative and unexecuted proposed Resolution No. 2024- of the Pilesgrove Township Planning Board Memorializing the Grant of Variances Subject to Certain Conditions to Application 2023-019, SMS Rail Services, Inc., (Block 73, Lots 1).*

As indicated, on or about December 7, 2023, SMS submitted a minor site plan application in connection to Block 74, Lot 1, which application set forth the request for a use variance along with bulk variance to permit the construction of structures for a portion of the property proposed to be used as a reception area for railbike tours, a non-common carrier activity. Applicant further requested a use variance for the operation of the facility for the railbike tours which would be a proposed second use on Block 73, Lot 1. This property is located within the RR -Restricted Residential Zoning District and also falls within what applicant claims is a pre-empted zone pursuant to 49 CFR §10501, et seq. While the Board agreed to the second use there remains questions as to whether this non-common carrier activity would fall under Federal preemption.

On or about December 11, 2023, Construction official John Holroyd on behalf of the Township of Pilesgrove issued a Notice and Order of Penalty to SMS Rail Service, Inc., in connection to the “installation of out building without zoning and/or construction permits. *Exhibit F, Township of Pilesgrove Construction Notice to SMS Rail Service, Inc.* Electrical work done without permits.” SMS Rail Lines, Inc, argued that the Township of Pilesgrove did not have jurisdiction over the subject matter due to federal preemption over state and local law. They claimed, “specifically, pursuant to 49 U.S.C. 10501(b), the jurisdiction of the Board over ---(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services and facilities of such carriers; and (2) the construction, acquisition, operation, abandonment or discontinuance of spur, industrial, team, switching or side tracks or facilities even if the tracks are located or intended to be located entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” *Exhibit G, Correspondence dated December 27, 2023, from SMS Rail Service, Inc., to Salem County Construction Board of Appeals.*

Upon review and on the date of the hearing, the Township of Pilesgrove withdrew the initial violation notice because the violation notice cited “permits” which, if the activities being undertaken by the rail line are found to be in accordance with its interstate commerce,” then would not be required. The withdrawal of the violation negated the necessity of continuing with the hearing as both parties agreed that the current state of the law, i.e., *Village of Ridgefield Park vs. New York Susquehanna & Western Ry. Corp.*, 163 NJ 446 (2000), provides that while there is no requirement of obtaining a permit that the applicant / railroad has to comply with inspection and the municipality can enforce fire, health, plumbing, safety, and construction regulations that are applicable to the facility. *See Exhibit H, Confirmation via email that the Township of*

Pilesgrove withdrew its Notice of Violation. On the date of the appeal, the parties agreed to move forward in an inspection of the property. While there is no inspection that has been made to date it is anticipated that an inspection will be forthcoming.

III. LEGAL STANDARD - A DECLARATORY ORDER IS APPROPRIATE

The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 1321 to issue a declaratory order to eliminate controversy and remove uncertainty in a matter related to the Board's subject matter jurisdiction. The Township of Pilesgrove has legitimate concerns as it relates to the health, safety and welfare of its citizens as it is not clear whether the operations being conducted and further proposed by SMS Rail Service, Inc., fall under the protected preemption umbrella cited by SMS Rail Service, Inc., as their services have expanded from initial use as a freight rail line to an entertainment train. Therefore, is an actual controversy between the Township of Pilesgrove and SMS Rail Service, Inc., concerning which activities and actions undertaken by SMS Rail Service, Inc., fall under the Board's jurisdiction and authority and, therefore, which matters and activities are covered under federal preemption.

IV. ARGUMENT

While the ICCTA preempts State and Local Law attempts to regulate a railroad's construction and maintenance of its rail facilities, there is a question whether the structures upon the railroad property are related to the railroad's interstate commerce activities as a freight rail train versus entertainment. The Township of Pilesgrove seeks a declaratory ruling regarding which activities undertaken by SMS Rail Service, Inc., are federally preempted.

A. SMS RAIL SERVICE, INC.'S OPERATIONS AS THEY RELATE TO ENTERTAINMENT PURPOSE DO NOT FORM A SUFFICIENT NEXXUS TO THEIR INTERSTATE COMMERCE AND THEREFORE ARE NOT ENTITLED TO FEDERAL PREEMPTION

Initially, SMS Rail Lines, Inc., agreed by virtue of its contract with the County to follow and abide by all local, state and federal regulations as it relates to the conduct of activities on the subject premises by the freight rail line. SMS Rail Lines, Inc., after their award of the contract by the County, has remained steadfast in conveying to the Township that all of its activities are regulated under the Interstate Commerce Commission's (ICC) Act even though SMS Rail Lines, Inc., has expanded its use from a freight rail line to offering fun/entertainment rides intrastate with no direct connection to interstate commerce. It is unclear and in controversy whether the rail line maintains its preemption status as to all activities upon which it is undertaking on its premises. Most recently, a third-party operator has indicated that it would be coming in and operating rail cars and this would serve in an entertainment/fun ride capacity. It is further unclear how much of their business is dedicated to fun rides versus those of rail freight transport and the degree of rail freight service is sufficient to allow for preemption as to all of the activities it is seeking to undertake. It is the Township of Pilesgrove position that SMS Rail Lines, Inc., through their contract with the County had agreed to comply with all local, state and federal regulations and that they should be held to that standard. Alternatively, if preemption is to apply

then it would only apply as to SMS Rail's freight activities which are entirely different and separate from any fun/entertainment rail services.

In previous decisions the Board has determined that the STB does not have jurisdiction over fun/entertainment/excursion rides. *See Napa Valley Wine Train, Inc., - Petition for Declaratory Order*, 7 I.C.C. 2d 954, 960-965 (1991) and *Magner O'Hara Scenic Railway – Operation – In the State of Michigan*, Finance Docket No. 29161 (ICC served May 12, 1981), *aff'd sub nom., Magner-Ohara Scenic Ry. v I.C.C.*, 692 F2d 441 (6th Cir. 1982). However, here it is within STB's jurisdiction to make the determination which activities are covered under the federal preemption laws and to distinguish and clarify those areas which may not be under STB's jurisdiction and, therefore, not protected by those same federal preemption laws.

B. SMS RAIL LINES, INC., HAS TO ABIDE BY LOCAL GOVERNMENT ORDINANCES, LAW AND REGULATIONS WHERE IT CONCERNS ACTIVITIES UNDERTAKEN BY A THIRD-PARTY OPERATOR

Pilesgrove is requesting that the Board hears this matter on an expedited basis in order to provide the Township and its acting officials with guidance as to what is within the Township's purview and control as SMS Rail, Inc., is expected to be bringing in a third-party to operate rail cars. It is anticipated that SMS Rail will be moving forward with additional ventures and it is uncertain whether they will be seeking approval through the zoning board or if they will once again rely on federal preemption where federal preemption may not necessarily be appropriate.

SMS Rail's desire to bring in a third party to operate rail cars on the property for purely entertainment purposes and not in connection to SMS's interstate rail freight service should require SMS Rail to go through any and all requirements any other entity desiring to do same would have to oblige. There needs to be clarification as to what the Township of Pilesgrove can and/or cannot regulate and require in terms of compliance with local ordinances and regulations including zoning and/or planning requirements and where federal preemption applies.

V. CONCLUSION

For the foregoing reasons, Pilesgrove Township requests that the Board issue a declaratory order regarding whether all activities and undertakings of SMS Rail Lines, Inc., fall under the umbrella of federal preemption.

Respectfully Submitted,

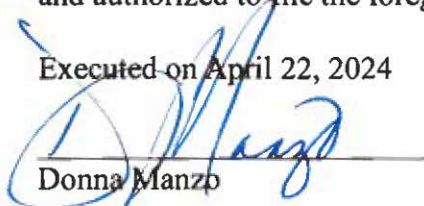
/s/ Ekaterine N. Eleftheriou, Esq.

Ekaterine N. Eleftheriou, Esq.
The Vigilante Law Firm
99 North Main Street
Mullica Hill, NJ 08062 Tel. (856) 223-9990
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Dated: April 22, 2024

VERIFICATION

I, Nancy Merritt, paralegal with The Vigilante Law Firm, verify under penalty of perjury that the foregoing Petition for Declaratory Order is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on April 22, 2024


Donna Manzo

CERTIFICATE OF SERVICE

I hereby certify on this 22nd day of April, 2024, a copy of the foregoing Petition for Declaratory Order was served by email and U.S. First Class Mail, postage prepaid upon the following persons:

Frank Hoerst, Esq.
Counsel for SMS Rail Line Services, Inc.

David Avedissian, Esq.
Counsel for SMS Rail Line Services, Inc.

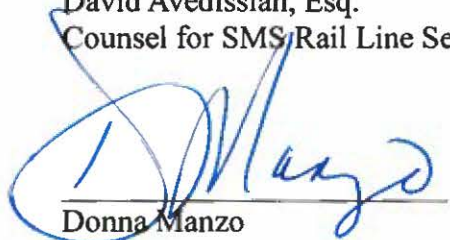

Donna Manzo

EXHIBIT A

RAIL LINE SERVICE AGREEMENT

THIS RAIL LINE SERVICE AGREEMENT (the "Service Agreement") made as of this 30 day of March, 2021 is made by and between SMS RAIL SERVICE, INC, a Pennsylvania corporation, ("SMS" or "Operator") and the COUNTY OF SALEM, NEW JERSEY, a political subdivision of the State of New Jersey ("Owner").

THE BACKGROUND OF THIS AGREEMENT IS AS FOLLOWS:

A. Owner is the owner of such property known as the Salem Branch Line (the "Property"). The Property includes the Rail Line, as hereinafter defined. Owner currently owns the Rail Line, which is serviced by certain connecting carriers including but not limited to Consolidated Rail Corporation (the Interchange Carriers").

B. SMS is in the business of operating, servicing and marketing short line railroads and desires to provide rail and related services at the Property. Owner desires to engage SMS to maintain, market and operate the Rail Line and to provide exclusive rail service at the Property.

C. Owner desires to lease to Operator the Rail Line for the term of this Service Agreement and to authorize Operator to seek from the Surface Transportation Board common carrier authority to operate as a common carrier on the Rail Line.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Service Agreement and intending to be legally bound hereby, SMS and Owner agree as follows:

1. **Grant of Exclusive Service Agreement.** Owner does hereby lease to operator the Rail Line and Operator does hereby agree to acquire and operate, service, maintain and market the Rail Line, for the term of this Service Agreement and any extensions thereof and upon the conditions set forth in this Service Agreement, the exclusive right to service and maintain all that certain railroad track located at the Property, which comprises of approximately nineteen and four-

tenths (19.4) linear miles of rail lines (inclusive of the one and two-tenths (1.2) mile spur known as the Glass House Branch), as shown more precisely on the plan attached hereto and made a part hereof marked as Exhibit A (the "Rail Line"); provided however, that Operator shall not be obligated to maintain any asphalt paving surfaces which are located over portions of the Rail Line. Owner does hereby authorize Operator, at Operator's expense, to seek from the Surface Transportation Board common carrier authority to operate as a common carrier on the Rail Line.

2. **Interchange Tracks.** Segments of the Rail Line shall be designated by Operator as interchange tracks for the receipt from or tender to of cars by the Interchange Carriers.

3. **Term.**

(a) **Initial Term.** The initial term of this Agreement shall commence on the date first above written (the "Commencement Date") and shall terminate on the tenth (10th) anniversary of the Commencement Date.

(b) **Ten Year Renewal Option.** Provided Operator shall not be in default and this Agreement shall be in effect, Operator shall have one option to renew the term of this Agreement for an additional ten (10) years, during which all terms and conditions shall remain as set forth in this Agreement (the "Renewal Term"). Operator's exercise of the Renewal Term shall be made by written notice to Owner at least six (6) months prior to the expiration of the initial term. Upon exercise of this option, the Renewal Term shall commence at 12:01 a.m. local time on the tenth (10th) anniversary of the first day of the first full calendar month during the initial term as aforesaid and shall expire at 12:01 a.m. local time on the tenth (10th) anniversary of the Renewal Term. The initial term and the Renewal Term described in this Paragraph 2, are referred to collectively herein as the "Term".

(c) **Termination of Service Agreement.** Upon the termination of this Service Agreement at the end of the Term or pursuant to Operator's default as defined herein, Owner, at its option and pursuant to written notice to Operator, may require Operator to seek authorization of the Surface Transportation Board to abandon and discontinue rendering service on the Rail Line or, alternatively, to convey its authority to operate as a common carrier on the Rail Line to a successor company designated by Owner.

4. **Exclusive Servicer of Rail Line.** Throughout the Term, Operator shall have the exclusive right to be the Lessee, servicer, and operator of the Rail Line, subject to the rights of Owner as set forth herein. During the Term, Owner shall not engage any other party to service or operate the Rail Line. The servicing functions and duties of Operator shall include service, track maintenance and removal of snow, vegetation, debris, or other obstructions from the railroad. If Operator fails in these duties, Owner has the right on not less than five (5) days prior written notice, to perform said duties and rebill the Operator. All bills sent out on behalf of Operator shall be due within thirty (30) days after they have been sent. Failure to pay any sums so billed within the timeframe described will constitute a default under this Agreement.

5. **Fee.** Operator agrees to pay to Owner, in consideration for the exclusive right to service and operate the Rail Line, a fixed annual fee in the amount of Twelve Thousand Dollars (\$12,000.00). In addition, Operator shall pay Owner a variable fee for all Freight Related Services equal to Ten Percent (10%) of gross revenue plus a variable fee for all Passenger Related Services equal to Five Percent (5%) of the gross ticket sales.

The fees as set forth above shall remain constant throughout the initial and any renewal term of this Agreement. The fixed fee shall be paid on a monthly basis with the first six (6) months' fees being paid contemporaneously with the signing of this Agreement. The variable fee for

freight-related services and passenger-related services shall be paid on a monthly basis for any and all freight-related or passenger-related services that are performed on land owned by the County of Salem.

Operator shall maintain records documenting the number of car service moves during each calendar month during the term of this Service Agreement and shall remit to Owner, not later than fifteen (15) days after the end each calendar month, the amount owed by Operator to Owner without notice, demand, setoff, or deduction in lawful currency of the United States of America, together with reasonable documentation supporting the calculation of said amount. Operator shall maintain, in accurate and complete order, books and records related to expenses related to the maintenance and repair of Property and related to the number of cars moved by Operator for each shipper or receiver each month on the Property. Such books and records shall be open to inspection and/or audit by representatives of Owner during reasonable business hours during the life of this Agreement and for a period of seven (7) years thereafter.

6. **Operator's Covenants.**

(a) In further consideration of Operator's exclusive right to service and operate the Rail Line, Operator hereby covenants to maintain the Rail Line to a minimum FRA Class I standard and maintain in good order and condition the Rail Line and all the area located within the railroad right-of-way in each direction from the center line of the Rail Line (hereinafter referred to as the "Adjoining Area"). Operator shall promptly, at Operator's expense, make all necessary repairs to the Rail Line and the Adjoining Area. When used in this Paragraph, the term "repairs" shall include replacements, and all such repairs made by Operator shall be at least equal in quality to the original improvements and equipment. Operator shall not be obligated to maintain any paving surfaces which are located over portions of the Rail Line.

(b) Operator recognizes that the quality of the rail service provided to the Property and the competitiveness of freight rates are critical to the rail service provided to the Property. Operator agrees to provide all locomotives, maintenance equipment, track, materials, and personnel necessary to operate and market the Rail Line and to provide said service in a professional, high quality manner commensurate with prudent industry standards. Owner and Operator contemplate that Owner will require a high degree of service, and Operator covenants that it will conduct its operations in such a manner in order to provide adequate service to Owner. Operator covenants further that it will expand its operations to accommodate any growth in the Owner's demand for rail service and provide the same level of quality service required under the Service Agreement. Without limiting the foregoing requirements, Operator agrees that: (i) the quality of service and maintenance shall be consistent with at least the equivalent of such rail service available at other first-class, rail served properties or facilities providing rail service in the Northeast Region; and (ii) Operator shall not impose any surcharges or other additional freight rates upon Owner that would render the total freight rates payable by Owner higher than those generally charged for similar service at other facilities and industrial warehouse parks in the Northeast region. Operator shall not have any obligation to install any new track or extend existing track to meet Owner's future needs beyond the Rail Line as it exists as of the date of this Service Agreement, as shown on Exhibit "A."

(c) Operator shall keep, maintain in good order and safe condition, all portions of the Rail Line, constructions, chattels, and the Adjoining Area free of accumulation of dirt, pollution or rubbish. Operator shall have the reasonable right of ingress and egress to the Rail Line by such vehicles, equipment, and materials necessary to maintain and operate the Rail Line in

accordance with the Service Agreement. In performing its obligations hereunder, Operator shall not unduly obstruct or impede Owner's operations at the Property.

(d) All improvements, repairs, alterations and fixtures attached to or used in connection with the Rail Line by or on behalf of Operator shall, subject to the terms and conditions of this Service Agreement, be and become property of Owner immediately upon completion of installation thereof without payment therefor by Owner and shall be surrendered to Owner upon the expiration or earlier termination of the Term of this Service Agreement.

7. **Owner's Covenants.** Owner covenants that throughout the Term it will not take any action to terminate or diminish Operator's rights hereunder unless Operator is in default of the terms of this Service Agreement beyond any grace or cure period, and that it will maintain in effect or cause others to maintain in effect all zoning, wetlands, land-use and similar local and state permits and approvals necessary for the use of the Rail Line and for any upgrades which may be undertaken by Owner. Operator shall be responsible for obtaining and keeping in effect all licenses, permits and approvals required by federal or state law or regulation relating to the operation, rail servicing or maintenance by Operator of the Rail Line.

8. **Net Agreement.** It is understood and agreed that this is a net Agreement. It is the intention of the parties that Owner shall receive all Fees payable hereunder free from expense, taxes, assessments and impositions imposed upon Operator; provided, however, that nothing herein contained shall require Operator to pay any real estate taxes, income taxes, assessment, charges or levies which Owner is required to pay by reason of the income represented by the Fees under this Service Agreement or ownership of the Property.

9. **Insurance.**

(a) Operator, at Operator's sole cost and expense, shall maintain and keep in effect throughout the Term:

(i) A comprehensive railroad liability insurance policy to include Federal Employer's Liability coverage covering loss or liability in connection with bodily injury or death or property damage occurring on and in the vicinity of the Rail Line, or within the Property, naming Owner as an additional insured on a primary and non-contributory basis including a waiver of subrogation in favor of Owner with a minimum policy amount equal to Ten Million Dollars (\$10,000,000.00). These amounts may be adjusted from time to time throughout the Term to amounts carried by prudent operators of similar railroads or required by Owner or Owner's insurance company; and

(ii) Automobile liability insurance endorsed to cover all owned and non-owned and hired vehicles with a limit of not less than One Million Dollars (\$1,000,000.00) combined single limit, bodily injury and/or property damage, per occurrence.

(b) All policies of insurance provided for in this Paragraph 8 shall name Owner and Operator as insured parties.

(c) All policies shall provide that they shall not be cancelable without at least thirty (30) days' prior written notice to Owner and shall be issued by insurers of recognized responsibility accepted to do business in the State of New Jersey and maintain an A.M. Best rating of A- or better. At least five (5) days prior to the Commencement Date, the original insurance certificates evidencing the coverage, required under this Paragraph 9 shall be delivered to Owner directly by the insurance company or broker. Within ten (10) days after each renewal of the insurance provided by Operator, an updated certificate of insurance or policy(ies) shall be delivered to Owner by

Operator's agent. The failure of Operator to provide such certificate of insurance shall not be deemed a waiver by Owner of Operator's obligation to provide the insurance certificate. In addition and in the event of any defect in any certificate of insurance regardless of when such defect may be discovered, the acceptance by Owner of any such certificate of insurance shall not be deemed a satisfaction of the requirement that Operator provide insurance coverage as noted in the Service Agreement. Operator understands and agrees that Operator's employees are in no way employed by Owner and Owner will not provide a Workers' Compensation, Disability or other coverage for said employees.

(d) To the extent Owner or Operator's right of full recovery under its respective insurance policies is not adversely affected or prejudiced thereby, Operator and Owner each hereby waive any and all rights of recovery against the other, or against the principals, officers, agents, employees, and representatives, of the other, for loss or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured against under any policy of insurance in force at the time of such damage.

(e) Owner and/or Owner's insurance company reserve the right to deny an insurance carrier provided by the Operator if Owner and/or Owner's insurance company deem the Operator's insurance company is unacceptable or the coverage is questionable. Owner has included a current list of unacceptable carriers to this Service Agreement. Absence of a list of unacceptable carriers is not a release of Owner's rights under this provision.

10. **Compliance with Legal Requirements.** Operator covenants throughout the Term of this Service Agreement, at Operator's sole cost and expense, promptly to comply with all laws and ordinances and notices, orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof,

and notices, orders rules and regulations of the Federal Railroad Administration, National Board of Fire Underwriters, or any other body now or hereafter constituted exercising similar functions that governs the operation, ownership, maintenance and servicing of the Rail Line, including, without limitation, all laws relating to interstate commerce, railroads, health and safety, and environmental matters, whether foreseen or unforeseen, ordinary as well as extraordinary, structural as well as nonstructural. Operator shall likewise observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to this Service Agreement, the Rail Line and the equipment thereon.

11. **Surrender.** Operator agrees, at the expiration of or earlier termination of the Term hereof, promptly to yield up, clean and neat and in the same condition, order and repair in which it is required to be kept throughout the Term hereof, the Rail Line and to remove Operator's railcars and equipment. All equipment, rolling stock or Operator's fixtures, tools, supplies, buildings and improvements remaining in or on the Rail Line more than thirty (30) days after the expiration or early termination of the Term may be deemed to have been abandoned by Operator and Owner may dispose of them as it sees fit and bill Operator for the reasonable cost of such disposal plus interest at fifteen percent (15%) per annum.

12. **Damage by Fire or Other Casualty.** In case of damage to the Rail Line by any casualty, Operator shall promptly notify Owner, and operator shall repair the damage. For the purposes of performing such repairs, Owner shall make available to Operator the proceeds of any insurance relating to such casualty unless said damages are caused by the acts or omissions of the Operator, in which case no such proceeds shall be made available to Operator. The work shall be commenced promptly and completed with due diligence, taking into account the time required for Owner to effect a settlement with, and procure insurance proceeds from, the insurer and delays

due to governmental regulations, scarcity of or inability to obtain labor or materials, or causes beyond Operator's reasonable control.

13. **Assignment.** Operator may not assign, mortgage pledge or encumber this Service Agreement or any of its rights hereunder.

14. **Eminent Domain.** If the Rail Line or any part thereof is taken or condemned for a public or quasi-public use (a sale in lieu of condemnation to be deemed a taking or condemnation), this Service Agreement shall, as to the part taken, terminate as of the date title shall vest in the condemner, provided that the provisions concerning the payment of awards as provided below shall continue in full force and effect. In any such event, Operator waives all claims against Owner and against the condemning authority or party and Operator covenants and agrees that Operator will make no claim by reason of the complete or partial taking of the Rail Line.

15. **Curing Operator's Default.** If Operator shall be in default in the performance of any of its obligations hereunder, Owner may, but shall not be obliged to, in addition to any other right it may have in law or in equity and after written notice to Operator except in case of emergency, cure such default on behalf of Operator and Operator shall reimburse Owner for any reasonable sums paid or costs incurred by Owner in curing such default, which reasonable sums and costs shall be deemed additional Fees hereunder and shall be payable immediately upon written demand. If Operator fails to cure the event of Default within sixty (60) days of notice, Owner has the right to terminate this Service Agreement.

16. **Responsibility of Operator; Indemnity.**

(a) To the fullest extent permitted by law, Operator agrees to indemnify, defend and hold harmless Owner against any claims, damages or liability for physical injury arising out of or resulting in any way from the use and operation of the Rail Line during the Term, unless such

injury is caused directly by Owner's recklessness or gross negligence. Operator hereby relieves and agrees to indemnify, defend and hold harmless Owner to the fullest extent permitted by law, against all claims, damages or liability arising from the use or operation of the Rail Line by Operator by reason of any injury or damage to the Rail Line, to Operator or to any person or property adjoining the Rail Line or any area within the Property, whether belonging to Operator or to any other person, caused by any fire, breakage, leakage, collapse or other event in any portion of the Rail Line, whether or not such event results in the termination of this Service Agreement by reason of damage to or destruction of the Rail Line that is a direct result of Operator's use or operation of the Rail Line. This indemnification shall survive the termination or expiration of this Agreement for any reason whatsoever. If the foregoing indemnity is made void or otherwise impaired by any law controlling the construction thereof, such indemnity shall be deemed to conform to the fullest indemnity permitted by law.

(b) Without limiting the above, Operator hereby agrees to indemnify, defend and hold harmless Owner from and against any and all expense, damage, loss or liability incurred by Owner arising from the application or claim of application to the Rail Line, including but not limited to the improvements on the Rail Line, of any state or federal oil, toxic, or hazardous substances or waste statute or other law, now or hereafter enacted including, but not limited to, the Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 2nd, as amended by the Superfund Amendments and Reauthorization Act of 1986. Operator's liability hereunder shall survive the termination of this Service Agreement whether terminated by agreement, expiration, judgment, or otherwise, but in no event shall Operator's liability extend to losses resulting directly from affirmative acts of Owner or arising out of any

ground water, soil or other environmental contamination that occurred prior to Operator's commencement of operations at the Property.

17. **Owner's Remedies Upon Operator's Defaults.** If Operator shall fail or omit to pay the Fee or any additional charges due hereunder on the days and time and at the place the same are made payable, and without demand therefor, or if Operator shall in any respect violate any of the terms, conditions or covenants contained in the Service Agreement, or if Operator becomes insolvent, bankrupt or makes an assignment for the benefit of creditors, or is levied upon or sold out by sheriff, Marshall or constable sale, or if a receiver for Operator is appointed, Owner may, subject to the grace period set forth in Section 18 below, re-enter and repossess the Rail Line and Adjoining Area, together with all improvements and additions thereto, or pursue any remedy permitted by law or equity for the enforcement of the provisions hereof, and Operator's agreement regarding the Rail Line shall be extinguished. In the alternative, and at the election of Owner, Owner may give to Operator, at any time after the occurrence of the event of written notice of Owner's election to terminate this Service Agreement on a date to be specified in said notice, not less than thirty (30) days after the giving thereof; and upon the date specific in said notice, this Service Agreement and the Term thereof shall (except for the continued liability of Operator as hereunder provided) expire and come to an end as fully and completely as if the date specified in said notice were the date definitely fixed in this Service Agreement for the expiration of the Term hereof, and Operator shall quit and surrender the Rail Line and Adjoining Area, on or before that date, to Owner, without cost or charge to Owner.

In the event this Service Agreement shall be terminated as herein provided, or in case of termination of Operator's possession by reentry, summary dispossession proceedings or any other

method, Owner may, at Owner's option, as an additional or alternative remedy, bring suit to eject operator.

In the event of termination of this Service Agreement as herein provided, or of termination of Operator's possession by re-entry, summary dispossess proceedings or any other method, whether or not the Rail Line shall be subject to further agreements, Operator shall, until the time when this Service Agreement would have expired but for such prior expiration or for such re-entry, summary dispossess proceedings or termination, continue and remain liable for the performance of duties in the Service Agreement, less the avails of reletting (after deduction of all reasonable expenses or recovery or possession and reletting, including attorneys' fees), if any. Upon such expiration, termination or re-entry as aforesaid, neither Operator, Operator's creditors nor representatives shall thereafter have any right, legal or equitable, in or to the Rail Line or Adjoining Area or any part thereof, or in or to the repossession of same, or in or to this Service Agreement; and Operator hereby waives all right of redemption which is or may hereafter be provided by law. The words "*re-enter*" and "*re-entry*" as used in this Service Agreement are not restricted to their technical legal meaning.

Any action taken by Owner under this Paragraph shall not operate as a waiver of any other claim Owner might have against Operator, and Operator shall remain responsible to Owner for any loss and/or damage suffered by Owner by reason of Operator's default or breach. Such loss or damage encompasses any cost incurred by Owner to have Operator's obligations under this Service Agreement performed by another entity for the remainder of the Term, which includes any excess of the price paid per car by Operator to Owner over the price paid per car by an entity performing similar duties to operator's duties under the Service Agreement after a default by Operator.

Any sums not paid by Operator when due hereunder shall bear interest at a per annum rate equal to the highest prime rate announced from time to time by the Wall Street Journal (the "Default Rate"). All costs incurred by Owner in enforcing its rights hereunder, including attorneys' fees and court costs, shall be payable by Operator as an additional Fee and shall be due immediately upon demand.

18. **Waiver.** The failure of Owner or Operator to insist in any one or more instances upon the performance of any of the covenants or conditions of the Service Agreement or to exercise any right or privilege herein conferred shall not be construed as thereafter waiving or relinquishing any such covenants, conditions, rights or privileges and the same shall continue and remain in full force and effect, and waiver of one default or right shall not constitute waiver of any other default; and the receipt of any rent by Owner from Operator or any assignee of Operator, or of any portion thereof, shall not operate as a waiver of the right of Owner to enforce any of the obligations of the Service Agreement by such remedies as may be appropriate, and shall not waive or avoid the right of Owner at any time thereafter to elect to terminate this Service Agreement, on account of any such assignment, transferring of this Service Agreement or any other breach of any covenant herein, or condition of the Service Agreement, unless evidenced by Owner's written waiver.

19. **Grace Period.** Notwithstanding anything hereinabove stated, it is understood and agreed that neither party hereto will exercise any right or remedy provided for in the Service Agreement or allowed by law because of any default of the other, unless such party shall have first given written notice thereof by certified mail to the other, and the other, within a period of thirty (30) days thereafter, shall have failed to pay the sum or sums due if the default consists of the failure to pay money, or if the default consists of something other than the payment of money, shall have failed within forty-five (45) days thereafter to begin and actively and diligently in good

faith to proceed with the correction of the default until it shall be fully corrected; provided, however, that no such notice from Owner shall be required nor shall Owner be required to allow any part of the said notice period or if Operator shall have removed from or shall be in the course of removing from the Rail Line or if a petition for Bankruptcy or for reorganization or if a Receiver or Trustee is appointed for Operator and such appointment and such Receivership or Trusteeship is not terminated within sixty (60) days or Operator makes an assignment for the benefit of creditors or if operator is levied upon and is about to be sold out from the Rail Line by any judicial process.

20. Notices. All notices required or permitted hereunder from either of the parties to the other shall be in writing and sent by certified mail, return receipt requested, postage prepaid.

Notices to Operator shall be addressed to:

SMS Rail Service, Inc.
Post Office Box 711
Bridgeport, New Jersey 08014
Attn.: Jeffrey L. Sutch, President

Notices to Owner shall be addressed to:

County of Salem
110 Fifth Street, Suite 400
Salem, New Jersey 08079
Attn.: Jeffrey Ridgeway, County Administrator

Either party may, at any time, in the manner set forth for giving notices to the other, set forth a different address to which notice shall be sent.

21. Definitions.

(a) "Owner". "Owner" is used to include the owner of the Property, as well as its successors and assigns, as well as the heirs, personal representatives or successors and assigns of any such subsequent owner, each of whom shall have the same rights, remedies, powers, authorities and privileges as it would have had it originally signed this Service Agreement as

Owner, but any such person or entity, whether or not named herein, shall have no liability hereunder after it ceases to hold a leasehold estate in and to the Rail Line, except for obligations which have heretofore accrued.

(b) **"Operator"**. The word "*Operator*" is used herein to include the Operator named above as well as its successors and assigns, each of which shall be made under the same obligations, liabilities, privileges and powers, as it would have possessed had it originally signed this Service Agreement as Operator. However, no such rights, privileges or powers shall inure to the benefit of any assignee of Operator, immediate or remote, unless the assignment to such assignee has been approved in writing by Owner.

(c) **"Service"**. The word "*Service*" includes, but is not limited to, picking up and delivering railcars from or to the Interchange Carriers from or to a point within the Property, transporting, and performing all maintenance duties necessary to operate the Rail Line in accordance with the terms of the Service Agreement.

(d) **"Rail Line"**. The term "*Rail Line*" shall include all that track described in Section 1, including the approximately nineteen and four-tenths (19.4) linear miles of track and the land within the railroad right-of-way on each side of the centerline of the track as outlined on the attached Exhibit A, and all track, rails, switches ties, beds, equipment, apparatus, buildings and improvements forming a part thereof, located therein or thereon or used in connection therewith. Should any addition, revision or other changes in track configuration be constructed, these shall be included as amendment(s) to this Service Agreement at the time of the change.

22. **Entire Agreement**. It is expressly understood and agreed by and between the parties hereto that this Service Agreement and the exhibits attached hereto set forth all the promises, agreements, conditions and understandings between Owner and Operator with respect

to the Rail Line, and that there are no promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. It is further understood and agreed that no subsequent alteration, amendment, change or addition to this Service Agreement shall be binding upon Owner or Operator unless reduced to writing and signed by them.

23. **Severability.** If any provision of this Service Agreement is found invalid the remainder of this Agreement shall stay in full force and effect.

24. **Captions.** It is agreed that the captions of this Service Agreement are for convenience only and are not part of this Service Agreement and do not in any way limit or amplify the terms and provisions of this Service Agreement.

25. **Miscellaneous.**

(a) **References.** All personal pronouns used in this Service Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. The use herein of the word "including" or "include" when following any general statement, term or matter shall not be construed to limit such statement, term or matters to the specific items or matters set forth immediately following such word or to similar items or matters to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language, such as "without limitation," or "but not limited to," or words of similar import is used with reference thereto. All references, if any, to "mortgage" and "mortgagee" shall include deeds of trust and beneficiaries under deeds of trust, respectively. All exhibits and riders if any referenced and attached to this Service Agreement are incorporated in this Service Agreement by this reference. The captions preceding paragraphs of this Service Agreement have been inserted solely as a matter of convenience, and such captions in no way define or limit the scope or intent of any provision of this Service Agreement.

(b) Successors and Assigns. The terms, covenants and conditions contained in this Service Agreement shall bind and inure to the benefit of Owner and SMS and, except as otherwise provided herein, their respective personal representatives and successors and assigns.

(c) Construction. This Service Agreement shall be governed by and constructed in accordance with the laws of the State of New Jersey, without regard for such State's choice of law requirements.

(d) Operator's Authority. Operator warrants, covenants and represents that it is duly organized and qualified to do business in the State of New Jersey, and it has the power and authority to enter into this Service Agreement and the person executing this Service Agreement on behalf of Operator hereby covenants, warrants and represents that he or she is authorized to enter into this Service Agreement on behalf of Operator.

(e) No Construction Against the Preparer of this Service Agreement. This Service Agreement has been prepared by Operator and its professional advisors and reviewed by Owner and its professional advisors. Owner and their separate advisors agree that this Service Agreement is the product of all of their efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Owner or Operator or against Owner or Operator merely because of their efforts in preparing it.

(f) Personal Jurisdiction. The parties hereto submit to personal jurisdiction in the courts of the State of New Jersey or any Federal Court sitting therein and consent to the nonexclusive jurisdiction of such court and service of process by mail at the address set forth herein in any suit being made.

STATE OF NEW JERSEY

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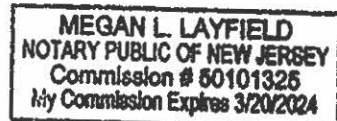
SS:

COUNTY OF Salem

)

On the 6th day of April 2021 before me, the undersigned, a notary public, in and for said state, personally appeared Jeffrey Ridgway, on behalf of Owner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Megan Layfield
Notary Public



STATE OF NEW JERSEY

)

SS:

COUNTY OF Gloucester

)

On the 16th day of April 2021, before me, the undersigned, a notary public, in and for said state, personally appeared Jeffrey L. Sutch, on behalf of Operator and its Guarantor, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Tiffany L. Lahr
Notary Public

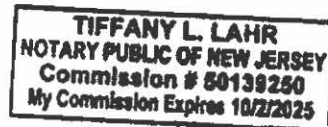


EXHIBIT A – PROPERTY DESCRIPTION

SALEM BRANCH LINE DESCRIPTION

Geographic Description. As map indicates, the Salem branch line consists of 17.41 miles of track between the established cut line in Swedesboro and the terminus at the rail yard in Salem City. A 1.2-mile spur, known as the Glass House branch in Salem, is also included within the subject property. It should be noted that about 11 miles of the Salem branch line north of the cut line is being retained under Conrail ownership to the main junction in Woodbury.

The pertinent segment of the Salem branch line is roughly aligned on a north/south axis until a point three miles south of Woodstown, where it gradually turns to the west toward Salem City. Maps 2-1 to 2-5 more specifically illustrated the location of the railroad right-of-way.

Between Swedesboro and Woodstown, the line passes through an agricultural area consisting of well drained soils of gentle topography (see Map 2-1). The only significant bridge span (200' trestle) is located within this segment where the railroad crosses the Oldmans Creek which is also the County line.

In Woodstown Borough (Map 2-2), the rail line bisects this small community in a north-south direction. There are several warehousing and agricultural supply enterprises located along the right-of-way in the northern part of the Borough.

Erdner's Busy Corners, Inc. and Erdner's Brothers, Inc. have over 3,000,000 square feet of warehouse and cold storage warehousing in several adjacent buildings, one of which has rail access. In addition, South Jersey Farmer's Exchange, a fertilizer production firm, is located immediately adjacent to the line.

About 1 mile south of Woodstown, the railroad enters an expansive area in the central part of the County of poorly drained soils which are generally wooded. For the next seven miles, much of the adjacent land is considered palustrine or tidal wetlands or farmland of marginal value (Maps 2-3 and 2-4). Despite these development limitations, the rail line has a stable base in this area and is not experiencing any foundation or erosion problems.

As the line approaches Salem City from the east (Map 2-5), it passes directly by the Mannington Mills floor covering plant.

The line then crosses Fenwick Creek and enters Salem City. The causeway over the creek contains seven sluice gates to control flooding in the City and surrounding environs.

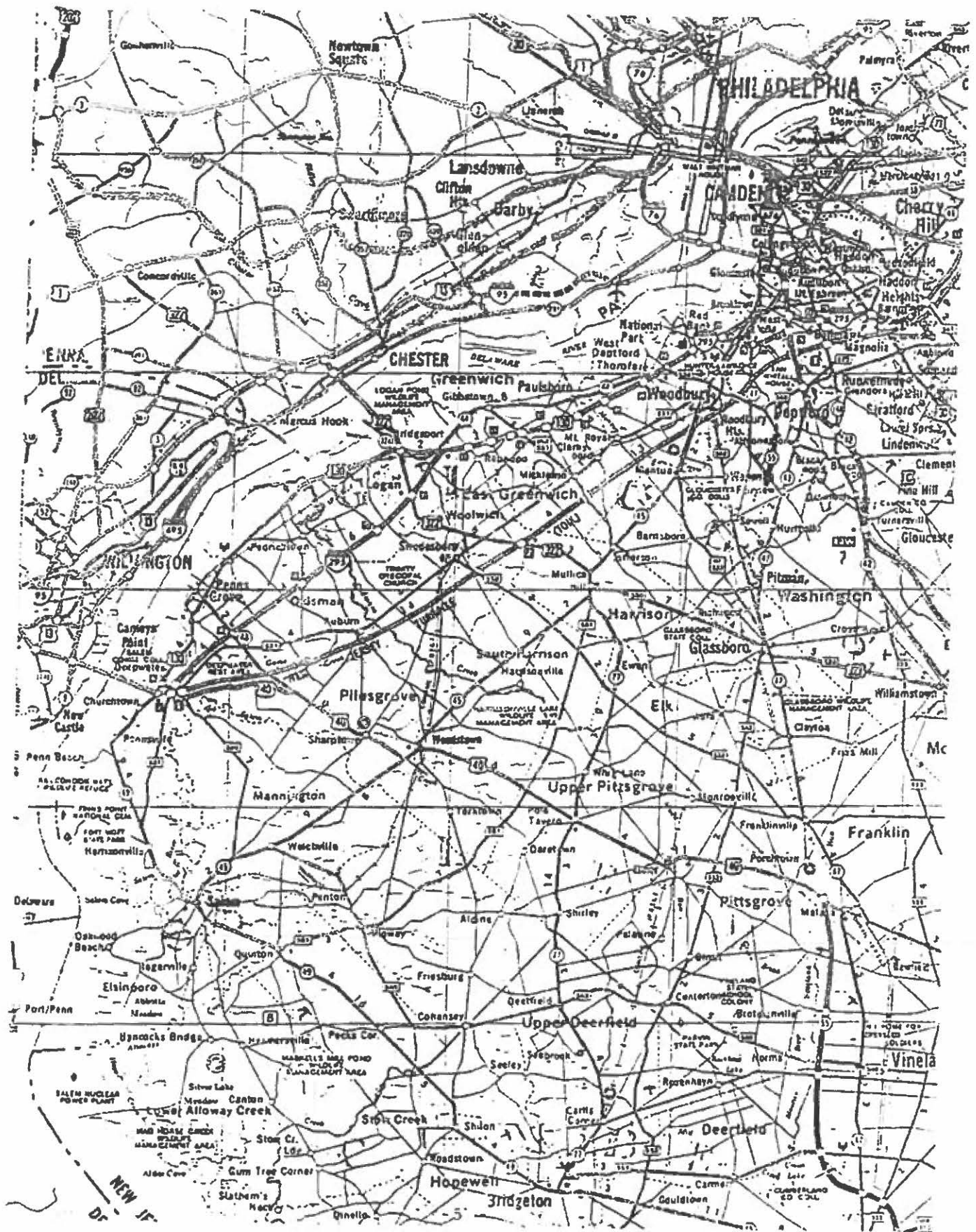
After crossing the creek, the line splits with the Glass House Branch going to the west. The main branch line enters the Salem rail yard which encompasses 5.4 acres, consisting of nine tracks, a small freight office, and is bordered by two existing warehouses with rail access. The yard is accessible by road from Grant Street (County Road #657).

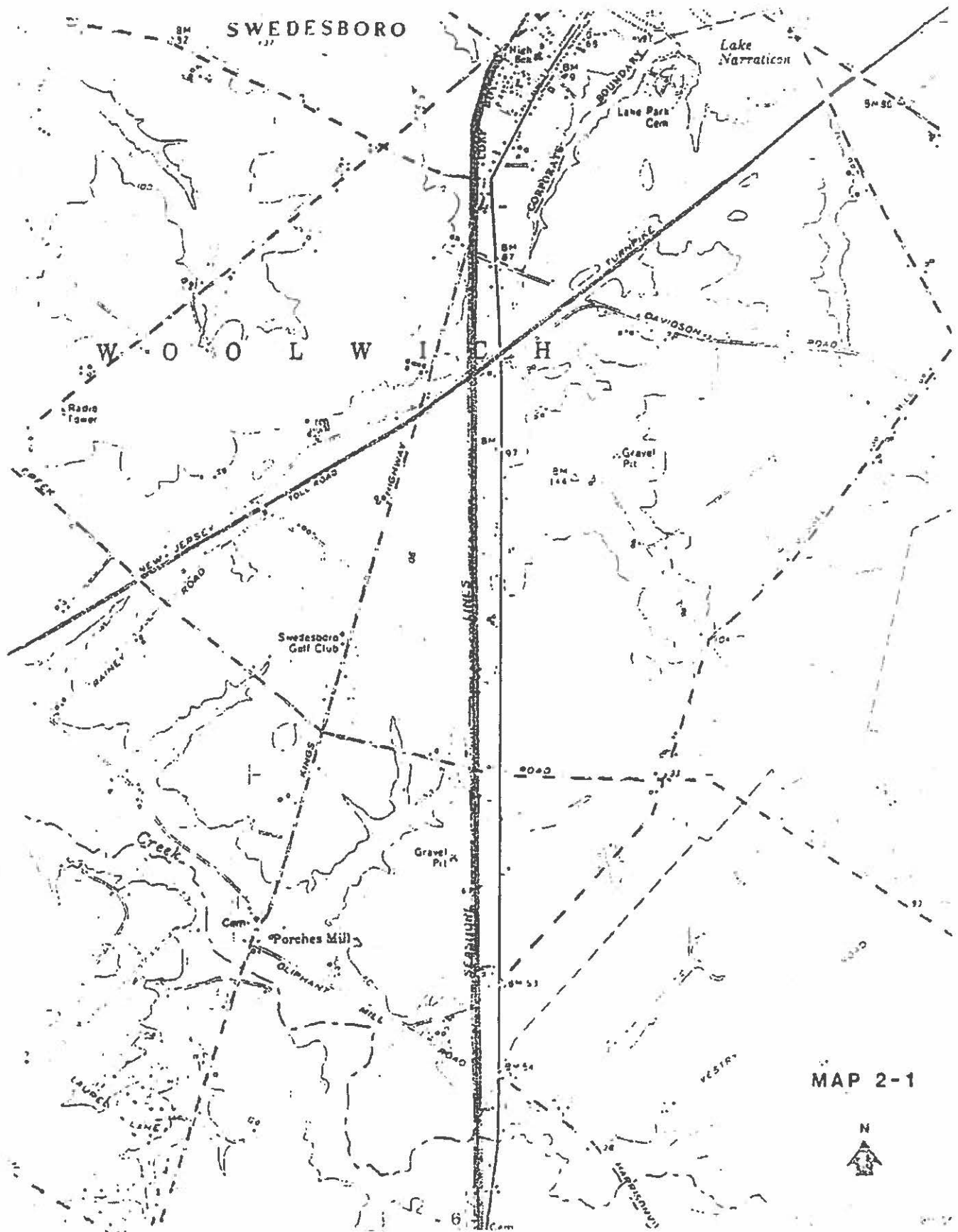
Physical Characteristics. The subject rail line (including the Glass House spur) is basically a single-track railroad. There are limited exceptions to this statement including the Salem rail yard, various run-around tracks (passing sidings) along the line and a Wye track, which is located about ½ mile north of the yard.

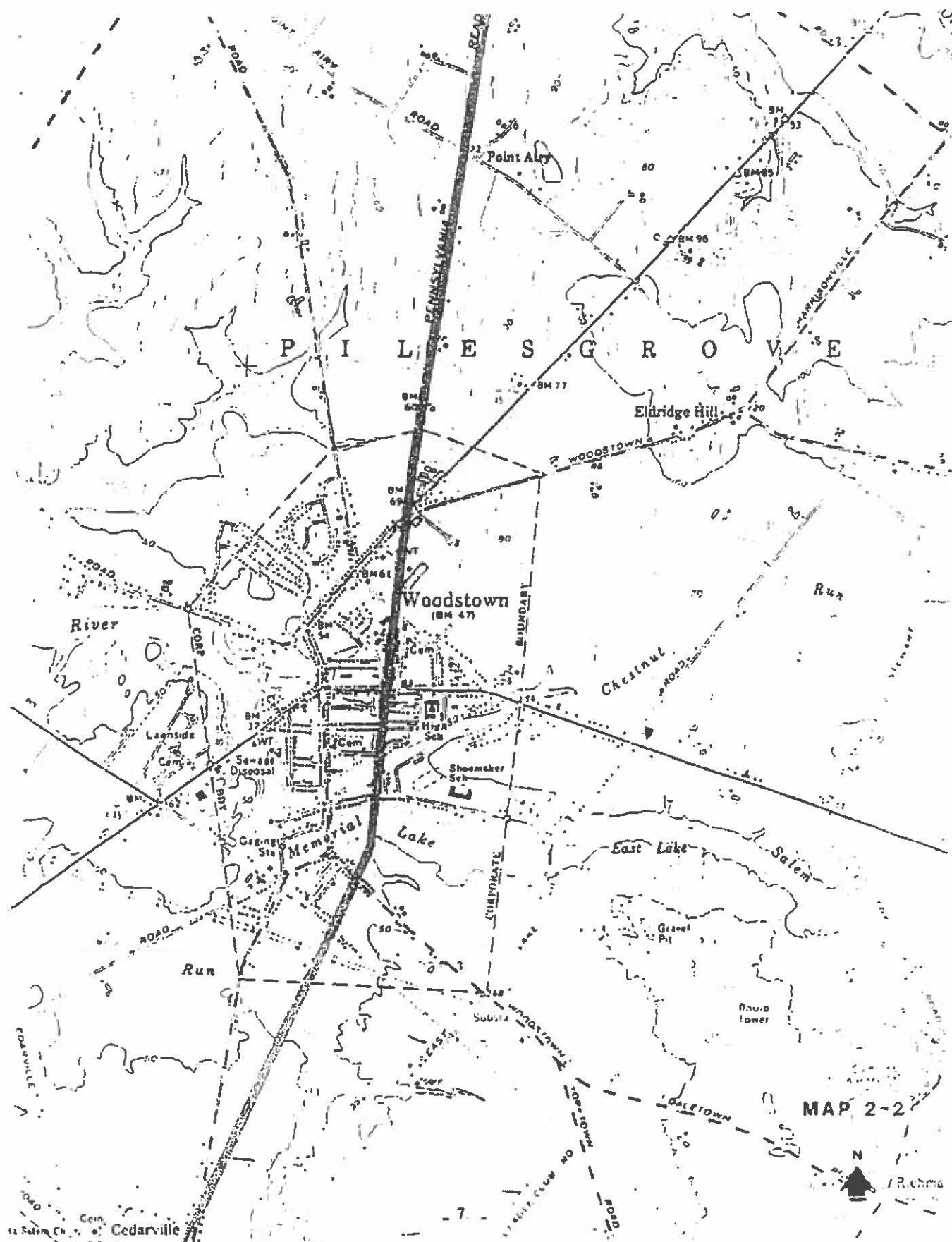
Right-of-Way. The right-of-way purchased by the County consists of approximately 173 acres when streams and grade crossings are deducted. The width of the right-of-way of the Salem branch line is generally 66 feet. There are three short sections where the right-of-way is less than 66 feet (40' and 50') which totals less than ½ mile in length. However, there are numerous short sections where the right-of-way of the Glass House spur varies from 15 to 66 feet.

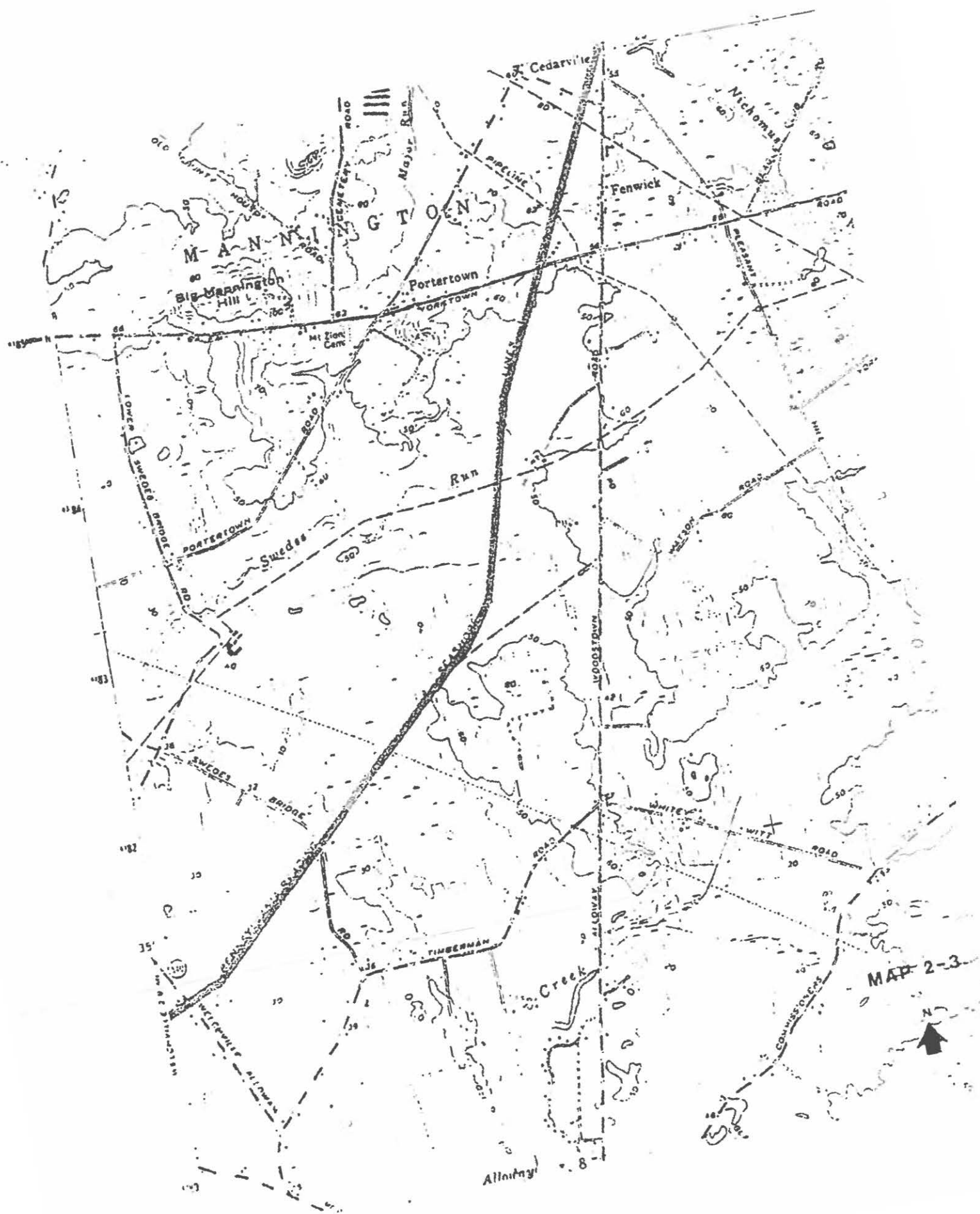
Grade Crossings. The Salem branch line crosses approximately a total of 28 roads at grade, but the only route with heavy traffic volume is U.S. Route 40 in Woodstown. The Glass House spur crosses 7 streets at grade, two of which are State highways within the City of Salem. The only overpasses over the Salem branch line are the New Jersey Turnpike in Woolwich Township and State Route 45 in Woodstown.

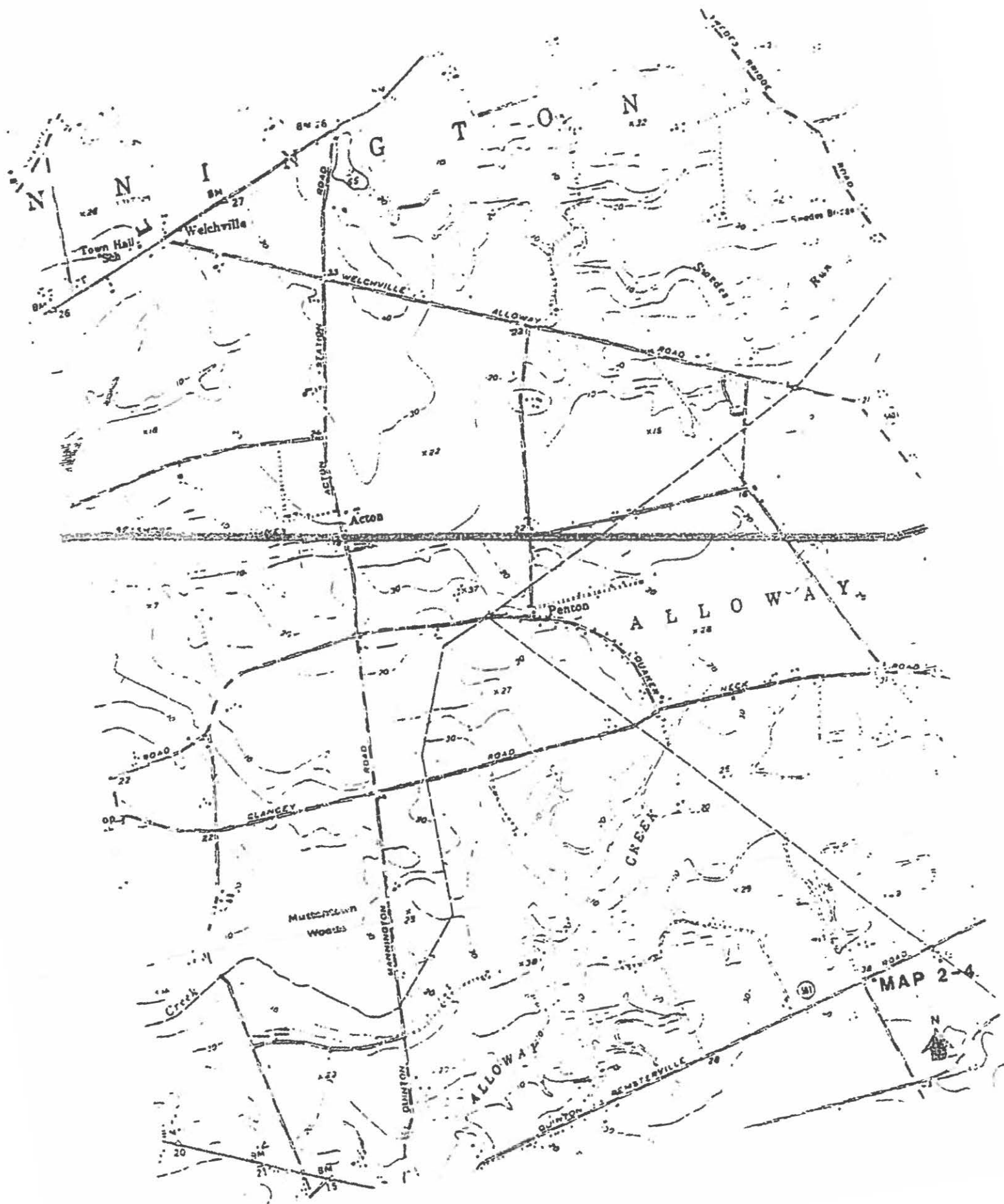
Stream Crossings. There are 12 structures over watercourses within the subject right-of-way. All except three of these structures are drainage culverts. The remaining structures are a 200' trestle over Oldmans Creek, a 450' causeway/trestle over Memorial Lake, and a 250' causeway/trestle over Fenwick Creek.











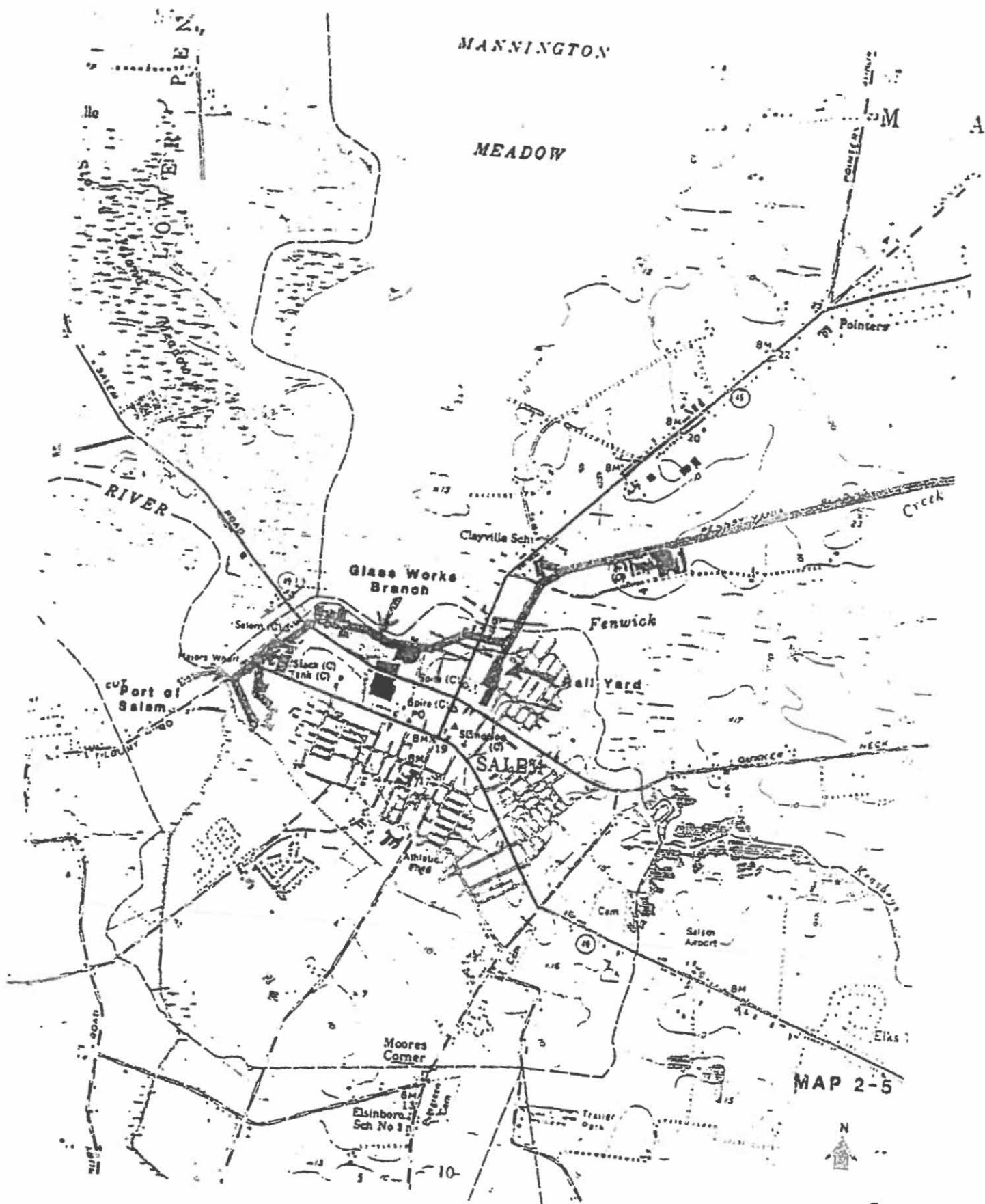


EXHIBIT B

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF FIRE SAFETY
PO BOX 809
TRENTON, NEW JERSEY 08625-0809
609-633-6132
609-633-6330 (FAX)

INTER AGENCY REQUEST FORM



INSPECTOR: Ashley Dowd-DiGirolamo DATE: Dec 6, 2023

REGISTRATION NUMBER: 1 7 0 9 - 2 3 0 0 0 - 5

AS A RESULT OF:

- ☐ COMPLAINT
☐ ROUTINE INSPECTION
☒ REQUESTED INSPECTION
☐ OTHER

THE DIVISION OF FIRE SAFETY CONDUCTED AN INSPECTION OF THE FOLLOWING PREMISES:

Woodstown South Railroad Station

650 Alloway Woodstown Road

Pilesgrove NJ 08098

THE INSPECTION WAS FOUND TO HAVE VIOLATIONS WITHIN THE JURISDICTION OF:

- ☐ BUREAU OF ROOMING & BOARDING HOUSE
☐ BUREAU OF HOUSING INSPECTIONS
☒ UCC - CONSTRUCTION OFFICIAL
☐ DEPARTMENT OF HEALTH
☐ OTHER

AGENCY MAILING ADDRESS: Pilesgrove Construction Office

1180 Route 40 East

Pilesgrove NJ 08098

N.J.A.C. 5:71-3.5(c) REQUIRES REPORTING APPARENT CODE VIOLATIONS NOT WITHIN THE SCOPE OF THE UNIFORM FIRE CODE TO THE OFFICIAL AUTHORIZED TO INITIATE CORRECTIVE MEASURES.

DESCRIPTION OF CONDITION:

During initial fire inspection of the Railroad Station, large assembly space tent used for customers was noted. Safety Manager advised unknown if permitted by construction.

Stephen Speicher
SUPERVISOR OF INSPECTIONS

Ashley T. Dowd-DiGirolamo
INSPECTOR'S SIGNATURE

EXHIBIT C

1180 Route 40
Pilesgrove, New Jersey 08098



Phone: (856) 769-3222
Fax: (856) 769-5490

NOTICE OF ZONING NON-COMPLIANCE(S) AND/OR VIOLATION(S)

October 11, 2023

SMS RAIL SERVICE INC
PO Box 711
Bridgeport, NJ 08014

Re: Block 73, Lot 1
650 Alloway-Woodstown Rd
Change of Zoning Use

Dear SMS Rail Service:

It has been brought to our attention there may be a change of Zoning Use at the SMS Rail Service property located at 650 Alloway-Woodstown Rd, Block 73, Lot 1. The current use is freight railroad operations.

Zoning Permit No. 2643 was issued for the driveway and parking area for ±150 vehicles for transportation of freight purposes only. It has been brought to our attention that this area will potentially be used for commercial use, i.e. passenger train rides, group and private charters, events, etc.

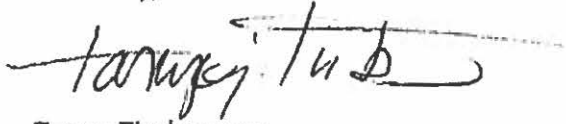
This lot is located in the Restricted Residential (RR) district. In accordance with the Pilesgrove Township ordinance, Section 145-18(B), commercial use is not a permitted use. A use variance and site plan need to be submitted to the Planning Board for review and approval.

You are hereby directed to submit a use variance and site plan by **November 1, 2023**. Failure to submit a use variance and site plan by this date, you will be subject to enforcement and violations as per the Pilesgrove Township Land Use ordinance, Section 145-67. You will be subject to action in Municipal Court for violating Land Use regulations.

Photo attached.

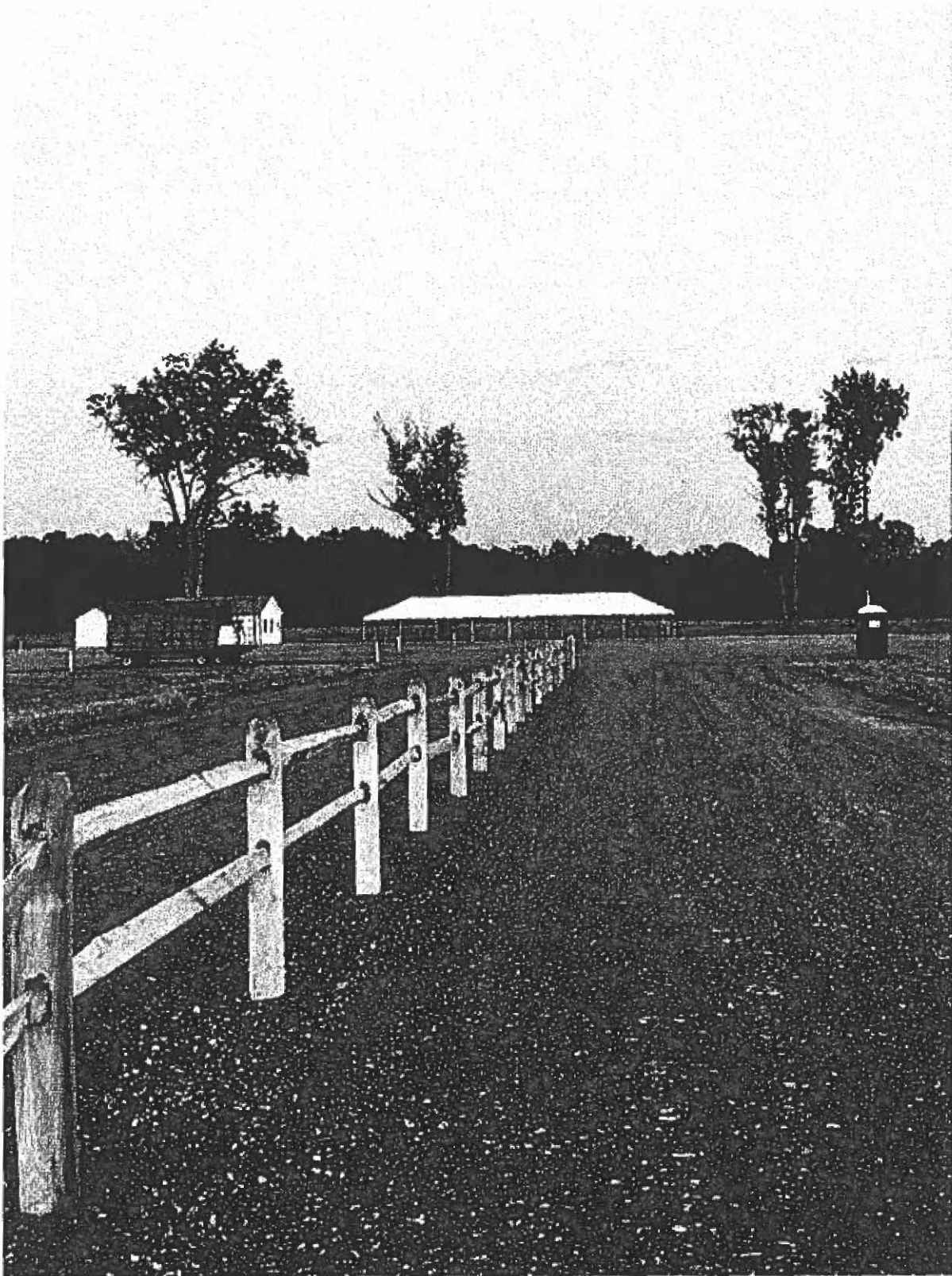
Should you have any questions, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Tanya Timberman", with a horizontal line drawn through the middle of the signature.

Tanya Timberman
Zoning Officer

cc: Melissa Fackler, Township Clerk Administrator, Pilesgrove Township
Township Solicitor



B-73, L-1 650 Alloway-Woodstown Rd
Photo date: October 10, 2023

EXHIBIT D



SMS Rail Service, Inc.
Post Office Box 711
Bridgeport, NJ 08014
Phone: (856) 467-4800
Fax: (856) 467-2121
www.smsrail.com

October 12, 2023

Tanya Timmerman, Zoning Officer
Township of Pilesgrove, County of Salem
1180 Route 40
Pilesgrove, NJ 08098

RE: Change of Zoning Use
Block 73, Lot 1

Dear Ms. Timmerman:

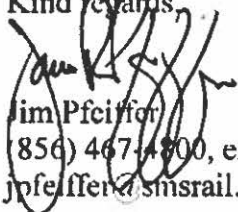
Thank you for your letter dated October 11, 2023, which was, on that date, received via email.

You may recall that local zoning and land use permitting regulations are preempted by Federal law. The zoning permit referenced in your aforementioned letter is a moot document unilaterally produced by your office. SMS did not apply for the permit, as stated on the permit, rather, at the request of your office, provided a Zoning Office Information form, in which the use of the property was described as "[r]ailroad terminal facilities, as necessary, in support of common carrier railroad operations."

While SMS is contemplating to use the property for activities that fall outside the scope of transportation by a common carrier, the "commercial use[s]" referenced in your letter are not those activities, and SMS is seeking approval for those non-preempted operations by submitting the required applications, a Minor Site Plan, related variance requests, etc.

It appears that the Township is attempting to bifurcate SMS's common carrier transportation activities to create a distinction between freight and passenger operations. However, SMS's abundant freight operations provide a sufficient nexus to interstate commerce to permit Federal regulation of its intrastate operations, as discussed in relevant case law. As such, the Township's request for submission of a use variance and site plan is inappropriate and the referenced Township Ordinance is preempted by Federal law.

Kind regards,


Jim Pfeiffer
(856) 467-4800, ext. 303
jpfeiffer@smsrail.com

/JRP

EXHIBIT E

PUBLIC NOTICE
PIESGROVE TOWNSHIP
NOTICE OF HEARING

PLEASE TAKE NOTICE that the Piles Grove Township Planning Board, located at 1180 Route 40, Piles Grove Township Municipal Building, Piles Grove, New Jersey, will conduct a public hearing on Wednesday, January 17, 2024 at 7:00 P.M. on the application ("Application") of SMS Rail Service, Inc. ("Applicant/Owner"), whereby Applicant requests that the Board make a determination of completeness and if so, conduct a hearing whereby Applicant requests preliminary and final site plan approval and grant a use variance along with bulk variance required to permit the construction of requested structures as set forth in Site Plan Cover and Information Plan for Block 73, Lot 1, and to permit a portion of the property which will be used as a reception area for railbike tours which would be a non-common carrier activity, where prefabricated shed-type buildings will be placed. Furthermore, Applicant is requesting the use variance for the operation of the facility for the railbike tours, which would be a second use on Block 73, Lot 1. The property which is the subject of the Application is identified as Block 73, Lot 1 of the Piles Grove Township Tax Map, with a street address of 650 Alloway-Woodstown Road, Piles Grove, New Jersey. The property is located within the RR- Restricted Residential Zoning District and also falls within a preempted zone pursuant to 49CFR §10501, et seq.

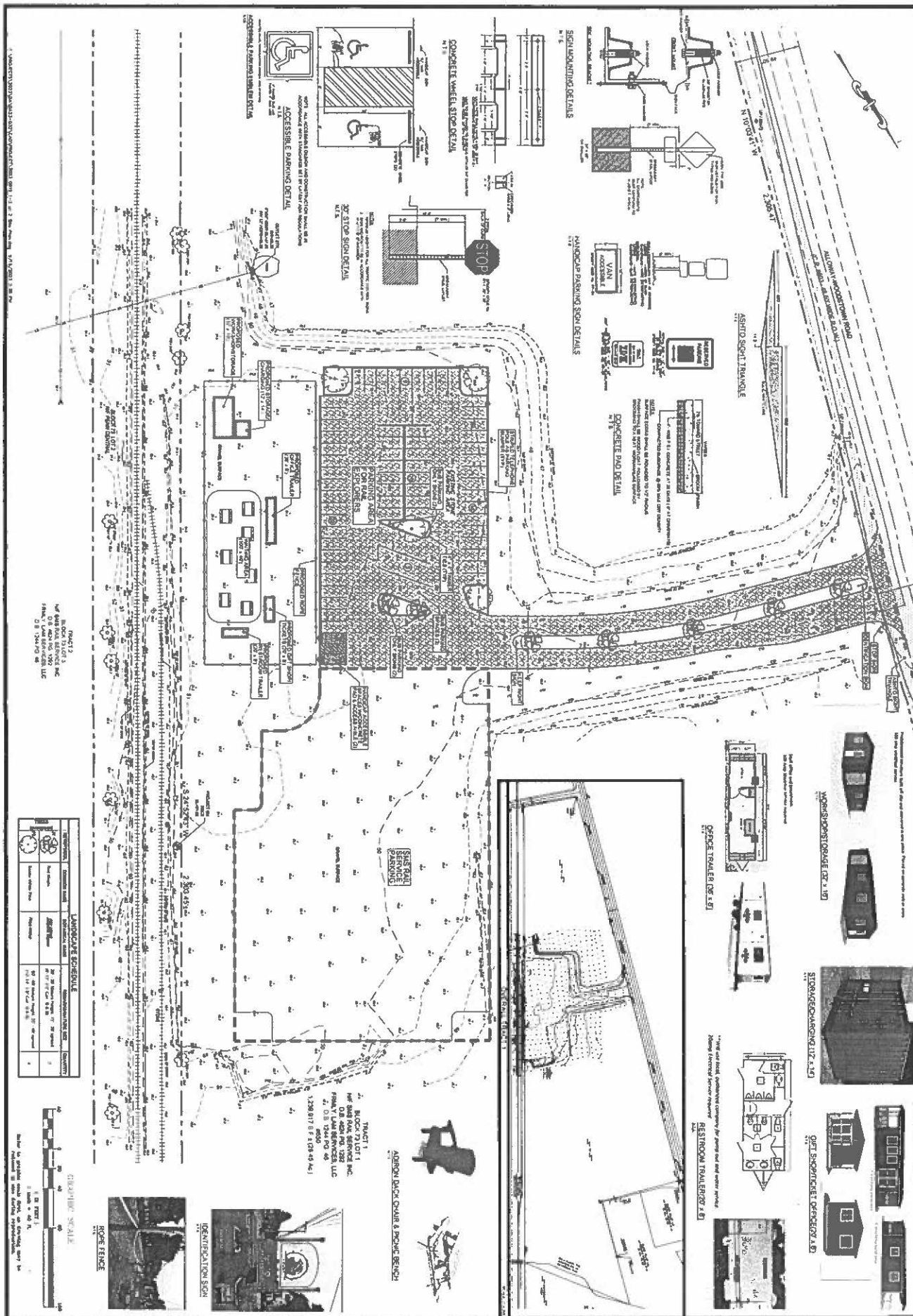
Applicant also seeks any additional submissions waivers exemptions, waivers, deviations, variances, interpretations, de minimis exceptions or other approvals as may be determined to be necessary for approval of Application and reflected on the filed Application and accompanying documents (as same may be further amended or revised from time to time without further notice) and as may be deemed necessary during the review and processing of Application.

When the case is called, interested parties may appear at the hearing or any adjournment thereof either in person or by attorney, ask questions, and present evidence and offer statements or documentation that may be relevant to the Application. The hearing may be continued without further notice on such additional or other dates as the Board may determine. The Application, maps, plans and related supporting materials are available for public inspection in the office of the Planning Board Secretary, located at 1180 Route 40, Piles Grove Township Municipal Building, Piles Grove, New Jersey, who can be reached at (856) 769-3222.

This Notice is provided by the Applicant by order of the Piles Grove Township Planning Board in accordance with the Municipal Land Use Law of the State of New Jersey.

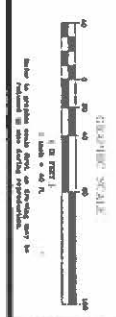
Frank J. Hoerst, III, Esquire
Attorney for Applicant:
SMS Rail Service, Inc.





LANDSCAPE SCHEDULE

SYMBOL	COMMON NAME	QUANTITY	REMARKS
(Tree Symbol)	Red Maple	10	Plant in 10' x 10' grid
(Shrub Symbol)	Boxwood	20	Plant in 5' x 5' grid
(Lawn Symbol)	Grass	1000	Plant in 10' x 10' grid



DIXON ASSOCIATES ENGINEERING, LLC

1000 N. 10TH ST. SUITE 100
ROSELAND, NJ 07068
TEL: 973-261-1234
FAX: 973-261-1235
WWW.DIXON-ENGINEERING.COM

CORMAC MORRISSEY, P.E.

PROFESSIONAL ENGINEER
NJ LIC. NO. 31234

**SITE PLAN
BLOCK 73 LOT 1**

PILES GROVE TOWNSHIP
SALEM COUNTY, NEW JERSEY

**RESOLUTION NO. 2024-
PIESGROVE TOWNSHIP PLANNING BOARD
RESOLUTION MEMORIALIZING THE GRANT
OF USE VARIANCES
SUBJECT TO CERTAIN CONDITIONS, TO
APPLICATION NO. 2023-019
SMS RAIL SERVICES, INC
(BLOCK 73, LOTS 1)**

**Approved: January 17, 2024
Memorialized: February 21, 2024**

WHEREAS, an Application was filed by SMS Rail Service, Inc. (Applicant), whose mailing address is P.O. Box 711, Bridgeport, NJ 08014 by and through its attorney, Frank J. Hoerst, III, Esquire from the firm of Hoerst Law, LLC, with an address of 13 West Avenue, P.O. Box 217, Woodstown, New Jersey 08098 for a Use Variance for the operation of a rail bike tour facility along with accessory structures and a Use Variance for multiple principle uses on one lot located on property known as Block 73, Lots 1 on the Pilesgrove Township Tax Map and more commonly known as 650 Alloway – Woodstown Road (Property) being located in an RR-Rural Residential Zone. The use being depicted on a plan entitled "Rail Explorer Site Plan" dated September 15, 2023 and revised October 10, 2023 prepared by Dixon Associates Engineering, LLC and signed and sealed by Cormac Morrissey, P.E. License No. 38259, said plan consisting of two (2) pages; and,

WHEREAS, Randall Scheule, P.P. AICP, the Pilesgrove Township Planning Board Planner (Board Planner), having reviewed the Application rendered a Planner Report Letter thereon dated January 10, 2024 (Planner Review Letter); and,

WHEREAS, James H. McKelvie, PE, the Pilesgrove Township Planning Board Engineer (Board Engineer), having review the Application rendered an Engineer's Report thereon dated January 15, 2024; and,

WHEREAS, the initial Application requested both the Use Variances and Site Plan Approval; and,

WHEREAS, the Applicant, prior to the presentation of the Application, requested that the Application be bifurcated and that the Board only consider the Use Variance; and,

WHEREAS, the Board granted said request by unanimous motion and the Applicant moved forward with the Use Variance only; and,

WHEREAS, the Application was deemed complete only by the Board on January 17, 2024 but the Pilesgrove Township Planning Board; and,

WHEREAS, notice to the public was required in accordance with the Township Ordinance and the Municipal Land Use Law (MLUL); and,

WHEREAS, notice was provided in accordance with the Township Ordinances and the MLUL; and,

WHEREAS, the Board determined that it had jurisdiction to hear the Application and proceed with a public hearing on the Application on the regular meeting of the Pilesgrove Township Planning Board convened on January 17, 2024; and

WHEREAS, the Applicant produced and the Board Solicitor swore in the following witnesses:

1. Cormac Morrissey, PE – Engineer for the Applicant
2. Tiffany Morrissey, P.P. – Planner for the Applicant
3. James Pfeiffer – Vice President and representative of the Applicant
4. Kevin Elder – Director of Logistics and representative of the Applicant
5. Larry Belka – Director of Operations Rail Explorers USA and the operator of the proposed use

WHEREAS, the Board heard testimony from the proffered witnesses as well as representations from Frank J. Hoerst, III, Esquire, the Applicants attorney; and,

WHEREAS, the Board provided an opportunity for interested members of the public to ask questions or make statements regarding the Application; and,

WHEREAS, two (2) member of the public spoke in support of the Application; and,

WHEREAS, after hearing the above testimony, and representations, and public comment, the Board made the following findings of fact:

1. The Property is located in an RR-Rural Residential Zoning District as designated on the Township Zoning Map.
2. The subject property is located at 650 Alloway-Woodstown Road.
3. The totality of the Property consists of 28.45 acres and is currently utilized for non-industrial common carrier rail services and includes a gravel surface parking area that is utilized for use in the common carrier rail services.

4. The Applicant testified that the current common carrier rail services that is operational on the entirety of the Property is governed and preempted by 49 USC 10501, et seq. as such, the Applicant believes that the Board has no jurisdiction to render a zoning decision regarding that specific use nor the site operation of that portion of the Property.
5. The Applicant further testified that the proposed use concerning this Application is for the operation of a rail bike tour facility.
6. The Applicant acknowledges that the current zoning of the Property is rural residential and therefore the proposed commercial use is not a permitted use in the zone.
7. The Applicant testified that, while the portion of the Property currently being utilized is preempted by the federal statute referenced above, as a result of the proposed use being operated by a third-party, the use would not be preempted and would require the requested use variance.
8. Furthermore, the Applicant testified that because of this additional use, in accordance with Township Ordinance 145-13, which prohibits multiple principle uses on a lot and an additional use variance would be required.
9. The proposed rail bike tour facility consists of 20-24 rail bikes with 20 at use at a time.
10. The portion of the Property being utilized by the third-party operator will include a 12' x 14' storage/charging area, a 32' x 16' workshop/storage area, a 36' x 8' office trailer (which would only be located at the site during operational season) a 20' x 8' gift shop/ticket center, and a 20' x 8' restroom trailer, along with a 100' x 40' waiting area that would consist of picnic tables and Adirondack chairs.

11. The seasonal operation will be from April to June, five (5) days a week from sunrise to sundown, from Memorial Day to Labor Day, seven (7) days a week and from Labor Day to the end of October, five (5) days a week from sunrise to sundown.
12. The Applicant testified that there will be no night tours.
13. There was significant discussion between the Board, the Board professionals, the Applicant and the Applicant's professional regarding federal preemption and what aspects of the Application the Board has oversight on. The Board expressed concern that many of the items regarding site plan oversight would not be addressed as by the Applicant's own testimony, the Applicant feels that those requirements are preempted by federal law. However, the Applicant indicated that it would address all reasonable and practical site plan issues with the Board. As a result of the concern by the Board, the Applicant agreed to provide a legal brief regarding the preemption issue for the Board professionals to review.
14. The Applicant additionally agreed that any approval of the use variance will be conditioned upon the Applicant returning for site plan approval.
15. As it relates to the Use Variance requested the Applicant's Planner provided extensive testimony regarding the Positive and Negative Criteria, in which they justified the following:
 - a. **Positive Criteria:** The Applicant identified special reasons, and testified that the Use would benefit the community and the property is particularly suited for the particular use.
 - b. **Negative Criteria:** The proposed use can be granted without substantial detriment to the public good. Additionally, it will not impair the intent and purpose of the Zoning Ordinance.
16. The Board next reviewed the Planner Review Letter. The Applicant agreed to address all the comments and requirements contained in the letter, which are not preempted by federal statute, subject to the Planner's approval.

BE IT THEREFORE RESOLVED on this ____ day of _____, 2024 by the Pilesgrove Township Planning Board, the Use Variance only, as requested as further depicted on the plan submitted is granted, and is subject to the following conditions:

1. The approval is conditioned upon the Applicant submitting and obtaining Site Plan approval.
2. The Applicant shall submit a legal brief on the preemption issue to satisfy the Board's concern regarding their oversight responsibilities and limitations.
3. Payment of any and all required fees which are due or may become due to the Township within seven (7) day notice thereof, including but not limited to, settlement of any outstanding review escrow accounts.
4. Any and all conditions of approval detailed in the planner's review letter, subject to the planner's approval.

BE IT FURTHER RESOLVED, that in the event the above conditions are not satisfied within two (2) years from the date of the grant of approval, the relief granted herein shall be denied retroactively to said approval date.

BE IT FINALLY RESOLVED that the Applicant is hereby placed on notice that:

1. Applicant shall comply with all representations made during the course of the hearing and in all filed documents.
2. Applicant shall indemnify and hold the Board harmless from any claim of any kind which may be made as a result of any deficiency in the Application, including any challenges to the notice requirements of the MLUL and Township Ordinance as well as any challenges to the stated federal preemption law and the responsibilities and limitations of the Board oversight.

PIESGROVE TOWNSHIP PLANNING BOARD

BY: _____
JEFFREY STRING, Chairperson

ATTEST:

BRENDA SHARP, Secretary

ACKNOWLEDGMENT

I, _____, hereby certify I reviewed the within Resolution, and realize the Board has relied upon my representations as an essential element in granting this approval. I acknowledge I have the absolute right to request the rescission of this approval within 45 days of the adoption of the Resolution, subject to payment of any and all fees associated therewith. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____

Z:\My Documents\CLIENT FILES - PILESGROVE PLANNING BOARD\SMS Rail Service\Use Variance Resolution Final.docxq

EXHIBIT F

CONSTRUCTION CODE OFFICE

1180 Route 40

Pilesgrove, New Jersey 08098



Phone: (856) 769-4814

Fax: (856) 769-5490

January 29, 2024

SMS Rail Service
P.O. Box 711
Bridgeport, NJ 08014

I am writing to update you on the Notice and Order of Penalty that was sent on 12/12/23 from the office of Construction in Pilesgrove Township.

After reviewing this document it was determined that there was missed documentation.

We have now included the correct statute that would apply to these violations. We are voiding the original Penalty/Violation and reissuing a new one that is included in this mailing. Please take notice as to the new Compliance dates.

Sincerely,

Julie Dobbs
Construction Technical Assistant

Pilesgrove Township/Construction Office
1180 Route 40
Pilesgrove, NJ 08098
(856) 769-3222

Forward to:

SMS Rail Service
Frank J. Hoerst, Esquire
David A. Avedissian, Esquire
Salem Construction Board of Appeals, Diane Ford
County of Gloucester Board of Appeals, Kelly DeTurk
Ekaterine Eleftheriou, The Vigilante Law Firm

NOTICE AND ORDER OF PENALTY

(Work Without A Permit, 2.14)

Identification

Work Site ALLOWAY-WOODSTOWN RD Contractor
Block/Lot 73/1//QFARM
Owner SMS RAIL SERVICE INC.
P.O. BOX 711
BRIDGEPORT, NJ 08014

Action

Date of Notice 1/29/24 Compliance Due Date 2/14/24 Date of Inspection 12/11/23

TAKE NOTICE that you have been found to be in violation of the State Uniform Construction Code Act and Regulations promulgated thereunder in that

Installation of out buildings without zoning and/or construction permits.

WORKING WITHOUT THE REQUIRED PERMIT(S) AS PER 5:23-2.31(B)4. ACQUIRE THE NECESSARY PERMIT(S) OR FILE AN APPLICATION AS PER 5:23-2.14(A).

Your are hereby ordered to terminate the said violations on or before 2/14/24
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.
You are hereby ordered to pay a penalty of \$2,000.00 for each violation for a total
penalty of \$2,000.00 Each Week that any of the said violations remain outstanding
after 2/14/24 shall result in an additional penalty of \$500 per Week
If you wish to contest the validity of the above action, you may request a hearing before the Construction Board of Appeals of the County of SALEM within 15 days of the receipt of these Orders. The Application to the Construction Board of Appeals may be used for this purpose.

Your application for appeal must be in writing, setting forth your address and name, the address of the building or site in question, the permit number, the specific sections of the Regulations in question, and the extent and nature of your reliance on the Regulations and, if necessary, a brief statement setting forth your position and the nature of the relief sought by you. You may also append any documents that you consider useful.

The fee for an appeal is \$ 100.00 to be forwarded with your application to the Construction Board of Appeals office at: 110 Fifth Street, Suite 600, Salem, NJ 08079

If you have any questions concerning this matter, please call the construction office, Township of Pilesgrove

Subcode Official

John Holroyd
Construction Official

Date

1-29-24

EXHIBIT G

The Law Offices of
David A. Avedissian, Esquire, LLC
135 Kings Highway East
Haddonfield, New Jersey 08033
Telephone (856) 857-1901
Facsimile (856) 857-1902
E-mail: david@avedissianlaw.com

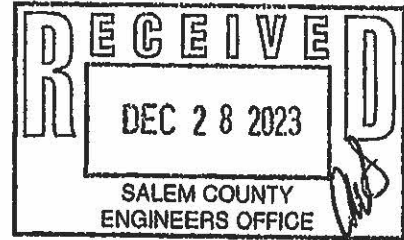
David A. Avedissian, Esquire

Martin W. Whitcraft, Esquire
Of Counsel

December 27, 2023

Via hand delivery

Attn: Diane Ford, Secretary
Salem County Construction Board of Appeals
c/o Salem County Engineer's Office
110 Fifth Street, Suite 600
Salem, NJ 08079



Re: *Our client: SMS Rail Service, Inc.*
Notice of Appeal from Notice and Order of Penalty dated December 11, 2023

Dear Ms. Ford:

Kindly note that Frank Hoerst and I represent SMS Rail Service, Inc. with regard to the attached Notice of Appeal from Order of penalty issued out of Pilesgrove Township, New Jersey.

Please advise as to whether a hearing will be scheduled with regard to this appeal so we may arrange for our witness representatives to be available. Additionally, we note that the County Engineer also serves as engineer to Pilesgrove Township. Also, please note that the County of Salem is lessor of the property owned by our client that is the subject of this appeal. We bring this to your attention for purposes of determining whether the matter should be transferred to another county due to conflict of interest.

We have attached a check from my attorney business account in the amount of \$100.00 which represents the filing fee for the appeal.

Should you have any questions, please feel free to contact my office. Thank you for your kind attention to this matter.

Very truly yours,

David A. Avedissian

DAVID A. AVEDISSIAN

DAA/

cc: Frank J. Hoerst, Esquire
Karin Wood, Esquire (County Solicitor)
The Vigilante Law Firm

Township of Pilesgrove
Municipal Building
Pilesgrove, NJ 08098
(856)769-4814 FAX (856)769-5490

Permit No.
Control No.
Log No. 419

NOTICE AND ORDER OF PENALTY (Penalty)

Identification

Work Site ALLOWAY-WOODSTOWN RD Contractor
Block/Lot 73/1//QFARM
Owner SMS RAIL SERVICE INC.
P.O. BOX 711
BRIDGEPORT, NJ 08014

Action

Date of Notice 12/11/23 Compliance Due Date 1/03/24 Date of Inspection 12/11/23

TAKE NOTICE that you have been found to be in violation of the State Uniform Construction Code Act and Regulations promulgated thereunder in that

Installation of out buildings without zoning and/or construction permits. Electrical work done without permits.

Your are hereby ordered to terminate the said violations on or before 1/03/24

No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.

You are hereby ordered to pay a penalty of \$2,000.00 for each violation for a total penalty of \$2,000.00 Each Week that any of the said violations remain outstanding after 1/03/24 shall result in an additional penalty of \$500 per Week

If you wish to contest the validity of the above action, you may request a hearing before the Construction Board of Appeals of the County of SALEM within 15 days of the receipt of these Orders. The Application to the Construction Board of Appeals may be used for this purpose.

Your application for appeal must be in writing, setting forth your address and name, the address of the building or site in question, the permit number, the specific sections of the Regulations in question, and the extent and nature of your reliance on the Regulations and, if necessary, a brief statement setting forth your position and the nature of the relief sought by you. You may also append any documents that you consider useful.

The fee for an appeal is \$ 100.00 to be forwarded with your application to the Construction Board of Appeals office at: **110 Fifth Street, Suite 600, Salem, NJ 08079**

If you have any questions concerning this matter, please call the construction office, Township of Pilesgrove

Subcode Official

Date

John Holroyd
Construction Official

12-11-23
Date



APPLICATION TO CONSTRUCTION BOARD OF APPEALS

Date Received: _____ Date Issued: _____
Violation #: _____
Permit #: _____

IDENTIFICATION

Work Site Location ALLOWAY-WOODSTOWN RD
Owner In Fee: SMS Rail Service Inc.
Address: 513 Sharptown Road, Logan, NJ 08085
Phone: 856.467.4800
Municipality: Pilesgrove Township

Block 73 Lot 1/QFARM
Agent: James Pfeiffer
Address: 513 Sharptown Road, Logan, NJ 08085
Phone: 610.739.3729

APPLICANT STATEMENT

Specific section(s) of the Regulation in question:

The Notice and Order of Penalty does not cite a specific regulation but does allege as follows. "Installation of out buildings without zoning and/or construction permits. Electrical work done without permits."

Briefly state your position in this matter and explain the nature of the relief you seek. (If more pages required, additional pages may be attached.)

The Township of Pilesgrove does not have jurisdiction over the subject matter due to federal preemption over state and local law. Specifically, pursuant to 49 U.S.C. §10501(b) The jurisdiction of the Board over— (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

The Construction Board of Appeals has 10 business days following the submission of the appeal to make a decision pursuant to N.J.A.C. 5:23-2.37(a)

Fee \$ 100.00 Paid ☒ Check No. 004405
Collected By Diana Ford

(Application will not be considered complete unless accompanied by the appeal fee. Fee shall be waived when appeal is based on failure of agency to act within a specified time frame).

Signed: _____
(APPLICANT/AGENT)

12/27/2023
DATE

*Filing Fee for the Salem County Construction Board of Appeals - \$100.00 per Appeal (pursuant to Res #2021-131 adopted on March 31, 2021).

COMPLETED APPLICATION AND CHECK FOR \$100.00 SHOULD BE MAILED TO:
SALEM COUNTY CONSTRUCTION BOARD OF APPEALS
c/o Salem County Engineer's Office
100 Fifth Street, Suite 600
Salem, New Jersey 08079

EXHIBIT H

SMS Rail Services, Inc. v. Township of Pilesgrove Appeal 2024-5

DeTurk, Kelly <kdeturk@co.gloucester.nj.us>

Fri 3/15/2024 8:33 AM

To: David Avedissian <david@avedissianlaw.com>; Ekaterine Eleftheriou <Kat@thevigilantlawfirm.com>

Cc: Burns, Scott <sburns@co.gloucester.nj.us>; Robert DeAngelo <2diver37@gmail.com>; bheitman1@comcast.net <bheitman1@comcast.net>; chiefphilz@gmail.com <chiefphilz@gmail.com>; chiefphilz@hotmail.com <chiefphilz@hotmail.com>; Theodore Miller <t.g.miller332@comcast.net>; Mark Brunermer <mrb@sickelsassoc.com>; wmcncnk1@comcast.net <wmcncnk1@comcast.net>; Richard Fini <refinisr@gmail.com>; John Bidinger <jbidinger@UANET.ORG>; rholloway307@gmail.com <rholloway307@gmail.com>; 351buck@gmail.com <351buck@gmail.com>; frankfjc56@gmail.com <frankfjc56@gmail.com>; Joe Marino <jpm372@verizon.net>

PRIVILEGED AND CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATIONS FOR ADVISORY, CONSULTATIVE AND DELIBERATIVE PURPOSES ONLY

Mr. Avedissian and Ms. Eleftheriou:

This email confirms the actions of both parties before the Gloucester County Construction Board of Appeals on Wednesday, March 13, 2024. The Township of Pilesgrove stated the Township is rescinding the Notice and Order of Penalty and SMS Rail Services, Inc. is withdrawing the application of appeal.

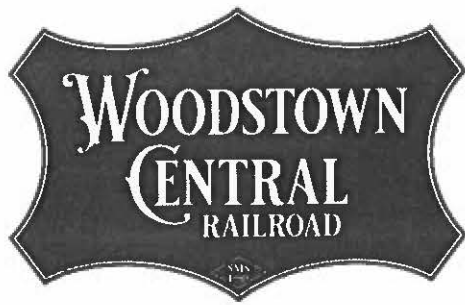
Thank you,

Kelly DeTurk
County of Gloucester
Office of County Counsel
2 South Broad, 2nd Floor
Woodbury, New Jersey 08096
Phone: (856) 384-6943 Fax: (856) 384-6894
email: kdeturk@co.gloucester.nj.us

Go Green! Please do not print this e-mail unless it is completely necessary.

Notice of Confidentiality: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, we apologize for the inconvenience. However, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at (856) 384-6943, and destroy all copies of the original message. Thank you.

EXHIBIT I



WOODSTOWN CENTRAL & EXCURSIONS

SCENIC RAMBLER

Take a grand tour of the Woodstown Central Railroad! This 32-mile roundtrip will take passengers over the entire line from South Woodstown Station to Swedesboro before making our way down to Salem. While our regular trains travel one direction or the other, this is a rare opportunity to see the entire railroad in a single trip! This excursionist's outing is a perfect old school adventure for those who love to travel by rail.

Address: 650 Alloway-Woodstown Road, Woodstown, NJ

Parking: Free parking at location

Coach Class: \$35 for Adults, \$25 for Children, and \$3 for Toddlers

Table Car & Caboose: \$45 for Adults, \$35 for Children, and \$3 for Toddlers

Duration: 120 mins

Have a question? Check out our [Frequently Asked Questions](#)

BOOK NOW



THE PRINCESS EXPRESS

The Princess Express is a magical journey full of royalty. Embark on a family-fun train ride with some of your favorite princess characters! As you travel down the tracks, take in the elegance of our century-old train. We invite the youngest of royalty to dress up and climb aboard for what will be an unforgettable adventure.

Our Coach Class is our standard seating option. This car features comfortable reversing seats which is great for families with young children or large groups. Coach Class comes with opening windows to provide a fresh breeze, and is heated in the winter.

Our Table Car is one of our premium seating options and gives passengers a true first-class experience. This car features rich mahogany woodwork, brass fixtures,

ambient lighting, and large booth-style tables that can seat up to four (4) people. Soft beverages and snacks are available à la carte through our dedicated First-Class Attendant.

Address: 650 Alloway-Woodstown Road, Woodstown, NJ

Parking: Free parking at location

Coach Class: \$30 for Adults, \$22 for Children, and \$5 for Toddlers

Table Car: \$40 for Adults, \$32 for Children, and \$5 for Toddlers

Duration: 50 mins

Have a question? Check out our [Frequently Asked Questions](#)

BOOK NOW



THE SUPERHERO EXPRESS

The Superhero Express is an epic journey with the heroes of the universe. The youngest of sidekicks will be able to dress up and meet some of their favorite heroes on a train ride full of adventure. Learn what it takes to be a hero and have some family fun on this celebration of all that is super aboard the Woodstown Central Railroad.

Our Coach Class is our standard seating option. This car features comfortable reversing seats which is great for families with young children or large groups. Coach Class comes with opening windows to provide a fresh breeze, and is heated in the winter.

Our Table Car is one of our premium seating options and gives passengers a true first-class experience. This car features rich mahogany woodwork, brass fixtures, ambient lighting, and large booth-style tables that can seat up to four (4) people. Soft beverages and snacks are available à la carte through our dedicated First-Class Attendant.

Address: 650 Alloway-Woodstown Road, Woodstown, NJ

Parking: Free parking at location

Coach Class: \$30 for Adults, \$22 for Children, and \$5 for Toddlers

Table Car: \$40 for Adults, \$32 for Children, and \$5 for Toddlers

Duration: 50 mins

Have a question? Check out our [Frequently Asked Questions](#)

BOOK NOW



THE BYO & CHEESE TRAIN

Embark on a journey of sophistication in true first-class elegance aboard our meticulously restored 1930s-era table car. Revel in the company of your closest companions with your favorite BYOB selection, while you indulge with a charcuterie board featuring an array of assorted meats and cheeses, accompanied by bread and crackers. Immerse yourself in a sensory delight as you traverse through lush forests, farmlands, creeks, and majestic lakes. Gather your cherished friends and immerse yourselves in an experience that transcends ordinary outings. Traverse the landscapes of Salem County in a manner reminiscent of a bygone era. Elevate your journey with an unforgettable blend of elegance, camaraderie, and scenic splendor. Enjoy a celebration of

shared moments and the timeless allure of yesteryear. In cooperation with P City Bakery and Salem Oak Vineyards. Please note, food items may contain nuts.

Address: 650 Alloway-Woodstown Road, Woodstown, NJ

Parking: Free parking at location

Price: \$95 per couple (up to 2 people) and \$180 per table (up to 4 people per table)

Duration: 65-75 mins

Have a question? Check out our [Frequently Asked Questions](#)

BOOK NOW

WHAT'S INCLUDED



THE CONTINENTAL

Indulge in a delectable breakfast feast featuring delightful mini-muffins, sweet scones, savory scones, fresh fruit, and irresistible cinnamon knots—all served with a variety of exquisite beverages on our luxurious 1930s-era table car. Embark on a journey through time on our meticulously restored 1883 rail line, traversing picturesque landscapes of lush forests, expansive farmland, and vibrant wildlife en route to Mannington. Elevate your experience as you revel in the opulence of this first-class excursion, taking in the breathtaking sights of Salem County. Immerse yourself in the magic of a truly unforgettable, family-friendly adventure. Don't miss this chance to make lasting memories in style! In cooperation with P City Bakery and Salem Oak Vineyards. Please note, food items may contain nuts.

Address: 650 Alloway-Woodstown Road, Woodstown, NJ

Parking: Free parking at location

Price: \$95 per couple (up to 2 people) and \$180 per table (up to 4 people per table)

Duration: 65-75 mins

Have a question? Check out our [Frequently Asked Questions](#)

BOOK NOW

WHAT'S INCLUDED



SWEDESBORO LOCAL

Climb aboard for an enriching journey over the tracks of the original Woodstown & Swedesboro Railroad built in 1883. This approximately 50-minute trip will take you across peaceful Memorial Lake, through historic Woodstown, and over the Oldmans Creek Trestle as our Trainmen share what it was like to travel by rail in New Jersey nearly a century ago. This excursion is great for families, friends, and explorers looking to make Woodstown Central a part of their day here in beautiful Salem County.

Address: 650 Alloway-Woodstown Road, Woodstown, NJ

Parking: Free parking at location

Price: \$25 for Adults, \$18 for Children, and \$3 for Toddlers

• **Duration:** 50-55 mins

Have a question? Check out our [Frequently Asked Questions](#)

BOOK NOW

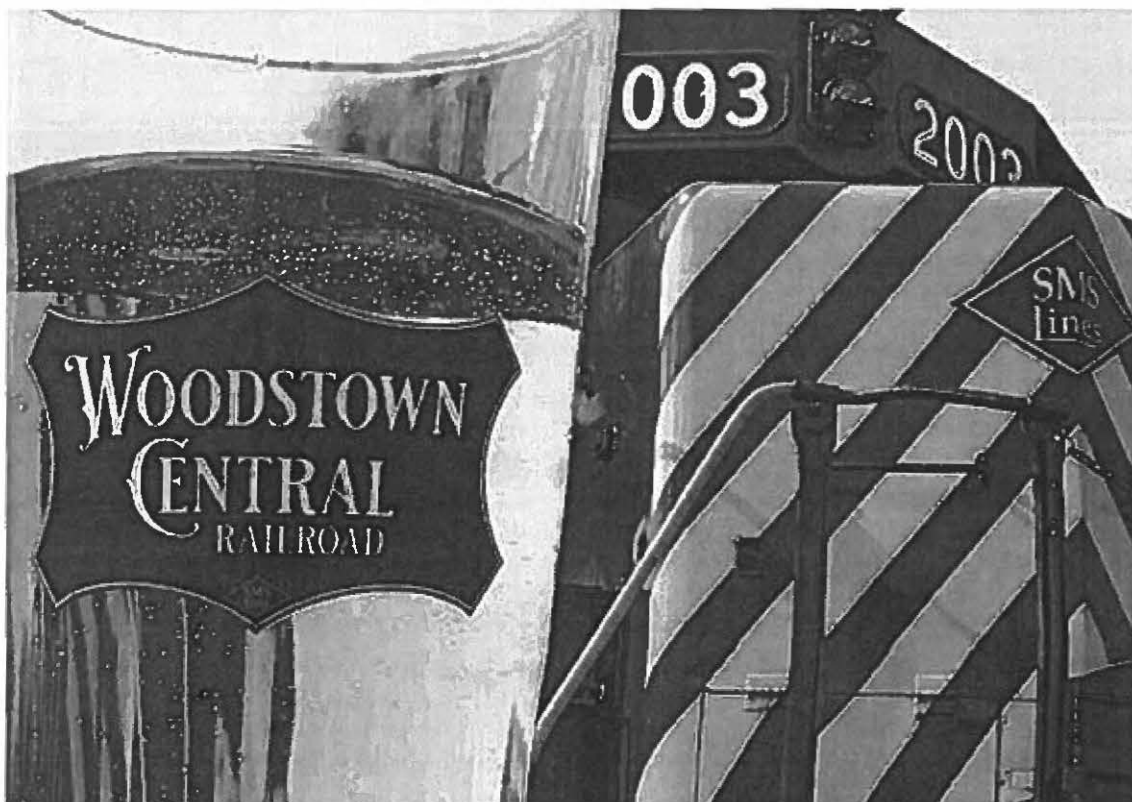


BREW TO BREW

Gather some friends and travel the rails in style aboard our historic 1930s train car. This 11-mile round trip will take you through the countryside of southern New Jersey all while visiting two of our favorite local breweries – Swedesboro Brewing Co. (Swedesboro, NJ) and Farmers & Bankers Brewing (Woodstown, NJ).

This special experience starts with our passengers checking in at either brewery where they will begin sampling a variety of libations (not included). Then, over an hour later, stroll to our boarding location for a 5-1/2 mile jaunt to the other Brewery. After a 75-90 minute visit at this brewery the train will return you to your originating brewery where you can continue your experience should you choose.

Great beer, vintage trains, and good times – Cheers!



Please Note:

- Drink costs are not included with ticket price.
- Food is not available for purchase at NJ breweries; however you are welcome to bring your own snacks (or purchase food from nearby shops).
- Our caboose is restored to vintage specifications and is not ADA Compliant.
- Please drink responsibly. Carry-out beverages are permitted on the train.
- Trip duration: 4 hours
- Trip length: 11-mile roundtrip

Visit our Brewery friends for more information:

Farmers and Bankers Brewing
Swedesboro Brewing Company

Addresses:

Woodstown: 8 N Main St, Woodstown, NJ 08098
Woodstown Parking: 28-30 N Main St, Woodstown, NJ 08098
Swedesboro: 95 Woodstown Rd, Swedesboro, NJ 08085
Swedesboro Parking: On-Site

Have a question? Check out our Frequently Asked Questions

Price: \$45

Duration: 4 hours

BOOK NOW

MANNINGTON LIMITED

The Mannington Limited is a rare-milage trip over the Southern half of our railroad between Woodstown and Mannington. This 17.5-mile roundtrip will take passengers over Salem County's first railroad line, dating back to 1863. Along the way, take in the lush forests and some of New Jersey's most rural and beautiful farmland from our authentically restored 1930s train.

Address: 650 Alloway-Woodstown Road, Woodstown, NJ

Parking: Free parking at location

Price: \$28 for Adults, \$20 for Children, and \$3 for Toddlers

Duration: 65-75 mins

Have a question? Check out our Frequently Asked Questions

BOOK NOW



GROUPS & PRIVATE CHARTERS

The Woodstown Central Railroad is one of the most unique venues in the greater Philadelphia area. With train cars dating back to the 1930s, your trip over this historic rail line (circa 1883) will be an unforgettable experience for you and your guests.

Whether this is accommodating a large group on one of our excursions (10+ people), reserving your own private train car for a round-trip (1 or 2 hours), or

even chartering the entire train for several hours, Woodstown Central Railroad is able to accommodate!

We are excited to help you get the wheels rolling on your special event! If you are interested in booking, please email us with your group/charter's estimated date (or month), number of people attending, and please select from one of our Classes of Service available below.

Have a question? Check out our [Frequently Asked Questions](#)

CONTACT US



CLASSES OF SERVICE AVAILABLE



COACH CLASS

Coach Class is our standard seating option. This 74-seat car features comfortable reversing seats which is great for families with young children or large groups. Coach Class comes with opening windows to provide fresh breeze, and is heated in the winter.



THE CABOOSE

The Caboose is the most unique car on the train. Originally used as the crew office on the back of long freight trains, our historic 1937 caboose has been completely restored with a lush mahogany and maple interior. Our caboose features an upstairs cupola where passengers can sit and look out above the train. During colder months, our authentic coal burning stove keeps passengers warm in this cozy cabin on wheels.

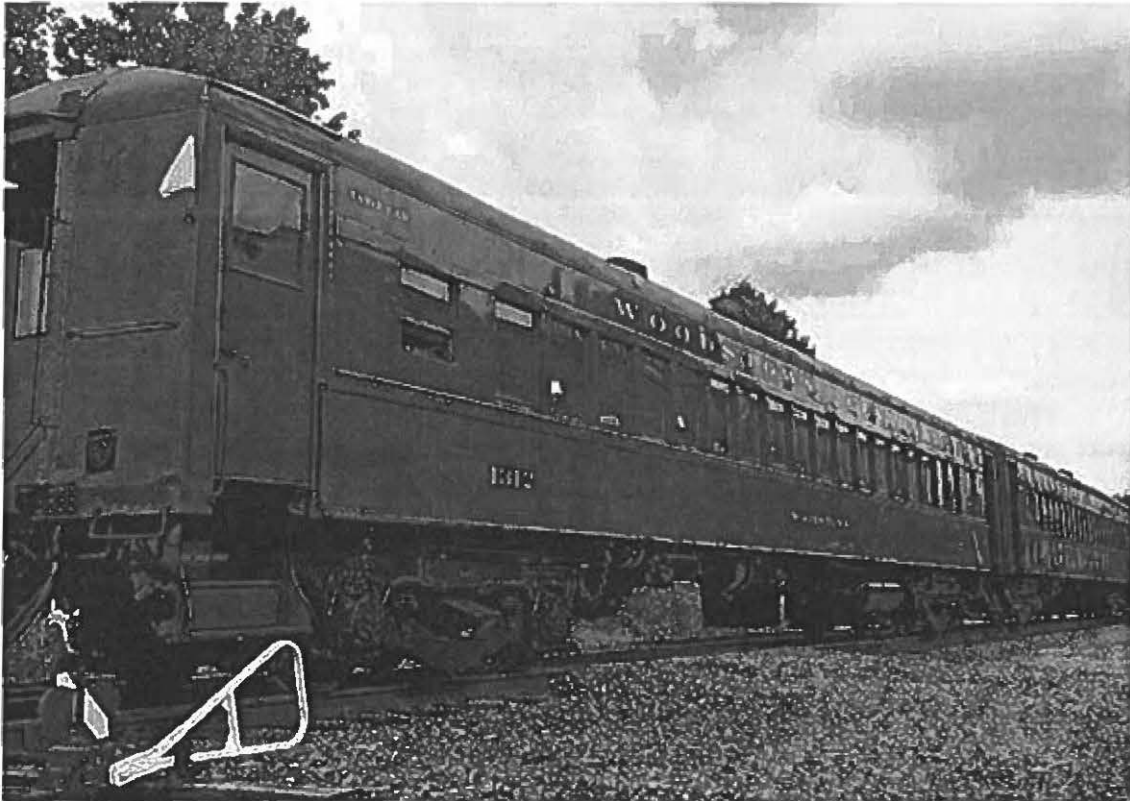


TABLE CAR

Our Table Car is one of our premium seating options and gives passengers a true first-class experience. This car features rich mahogany woodwork, brass fixtures, ambient lighting, and large booth-style tables that can seat up to four (4) people. Soft beverages and snacks are available à la carte through our dedicated First-Class Attendant.

This railcar can seat up to 48 people and can also be reserved for private groups and charters.

CONTACT US

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