

**BEFORE THE SURFACE
TRANSPORTATION BOARD**

233872

FD: 35672

ENTERED
Office of Proceedings
March 1, 2013
Part of
Public Record

RSL RAILROAD, LLC

AND

**TRANSPORT HANDLING
SPECIALISTS, INC.**

**CONTINUANCE IN CONTROL
EXEMPTION**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (2)**

Submitted By:

Andy A. Ginella, Esq.
4096 Holiday Street NW
Canton, Ohio 44718
Phone: (330) 649-9600
Fax: (330) 649-9601
E-Mail: andy@ginellalaw.com
Ohio Supreme Court #: 0064377

Counsel for Petitioner

Dated: March 1, 2013

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RSL RAILROAD, LLC

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UNDER 49 CFR § 1180.2(d) (2)**

Now comes RSL Railroad, LLC (“RSL”), an Ohio Limited Liability Company, by and through its attorney, Andy A. Ginella and Transport Handling Specialists, Inc. (“THS”), located in West Chester, Pennsylvania, and states as follows:

1. Pursuant to the provisions of Section 1180 of the Board’s Railroad Consolidation Rules (49 C.F.R. §1180), Applicant hereby give notice of a request which qualifies for exemption under Section 1180.2(d) (2) of those rules.
2. As relevant here, THS is a noncarrier and currently operates a short line railroad service over a line of railroad located in Big Spring, Texas, Howard County. THS is a member of a short line railroad company, known as RSL, for the purpose of restoring common carrier freight railroad service over a line of railroad located in the City of Massillon, County of Stark, State of Ohio (“The Line”).

3. On May 9, 2012, RSL acquired the ownership interest and the right to restore and reestablish The Line. See Exhibit "1" attached hereto and made part of the Exemption.
4. The Line of railroad is owned by PSR Development, Ltd. and is leased to First Street Development, LLC and then assigned to Massillon Energy & Technology Park, LLC, which in turn assigned operating rights on The Line to RSL. See Exhibit "1" attached hereto and made part of the Exemption.
5. RSL now plans to restore common carrier freight service over The Line and will provide that service using the name RSL.
6. THS is a separately owned corporation, which its shareholders are not more than 50% of the RSL members, and is currently operating as a single track of railroad, approximately 2.4 miles long which interchanges with the Union Pacific Railroad once a week with one crew. In addition, RSL has recently filed Verified Notice of Exemption under FD 35672 with the Board to operate a common carrier in Stark County, Ohio, which is located in the City of Massillon, which will serve as a bridge connecting with the Norfolk Southern Railroad. RSL will control The Line which THS is only a member of RSL.
7. The Line currently owned and operated by RSL will not connect with The Line which is operated by THS as they are located hundreds, if not thousands, of miles apart and there are no plans to connect these lines.
8. Under Section 1180.2(d) (2) of the Board's consolidation rules, certain transactions are automatically exempt from the prior approval requirements for common control. Specifically, Section 1180.2(d) (2) exempts the acquisition of nonconnecting carriers where (i) the railroads will not connect with each other or any railroad in their corporate family; (ii) the acquisition is not part of a series of anticipated transactions that would

connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a class I carrier.

9. In order to claim the Section 1180.2(d) (2) exemption, Section 1180.4(g) requires the filing of a Verified Notice of Exemption furnishing the information requested in Sections 1180.6(a)(1)(i) – (iii), 1180.6(a)(5) – (6), and 1180.6(a)(7)(ii) of those rules. That information is provided as follows:

A. Summary of exemption request: **49 CFR §1180.6(a) (1) (i)**

As noted above, THS is separately owned and its shareholders are not more than 50% of the RSL members, which separately operates their own common carrier freight service in Big Spring, Texas and is not associated with RSL. RSL plans to restore common carrier freight service over The Line and will provide that service using the name RSL. The Line currently owned and operated by RSL will not connect with the Line in which is operated by THS.

B. Applicants Name, address, and telephone number:

RSL Railroad, LLC
4096 Holiday Street NW
Canton, Ohio 44718
Telephone: 330-649-9600

C. Legal counsel to whom questions should be addressed:

Andy A. Ginella, Esq.
4096 Holiday Street NW
Canton, Ohio 44718
Phone: (330) 649-9600
Fax: (330) 649-9601
E-Mail: andy@ginellalaw.com
Ohio Supreme Court #: 0064377

D. Schedule for consummation: **49 CFR §1180.6(a) (1) (ii)**

The parties intend to operate the proposed Line upon board approval.

E. Purpose to be accomplished: **49 CFR §1180.6(a) (1) (iii)**

The purpose of this request is to allow THS as a member of RSL to restore and reestablish a common carrier freight railroad service on The Line that is located in the City of Massillon, County of Stark, State of Ohio. RSL will provide the freight service and believes that this trackage has potential for generating freight traffic. RSL plans to work closely with the Rail Authority, the local community, and the UP to develop the freight potential of The Line.

F. State(s) in which the property of each carrier is situated: **49 CFR §1180.6(a) (5)**

THS Big Spring, Texas

RSL Massillon, Ohio

G. Map: **49 CFR §1180.6(a) (6)**

See Exhibit “2” attached hereto and made part of the Exemption.

H. Copy of Agreement: **49 CFR §1180.6(a) (7) (ii)**

See Exhibit “1” attached hereto and made part of the Exemption.

I. Related request:

Concurrently with this filing, RSL has submitted a Verified Notice of Exemption for its operation of The Line. That notice has been assigned docket number FD 35672.

J. Other information/certification:

Applicants hereby certify that (1) The Line to be operated by the rail carrier RSL and to be controlled pursuant to this Notice of Exemption does not connect with those of any other carriers controlled by THS; (2) the subject control proceeding is not a part of a series of anticipated transactions that would connect these railroads with each other; and (3) the transaction does not involve a class I carrier.

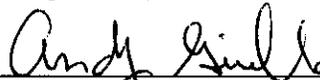
K. Environmental and historical considerations:

This continuance-in-control proceeding is exempt from environmental review under 49 CFR §1105.6(c) (2) (i) because the proposed action will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5). In addition, this proceeding is exempt from historic review under 49 CFR §1105.8(b) (1) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are at least 50 years old. Accordingly, no historic report is required.

L. Labor protection to be imposed:

No labor protection applies on transactions involving only class III railroads. See 49 U.S.C. §11326(c).

Respectfully Submitted,



Andy A. Ginella, Esq.
4096 Holiday Street NW
Canton, Ohio 44718
Phone: (330) 649-9600
Fax: (330) 649-9601
E-Mail: andy@ginellalaw.com
Ohio Supreme Court #: 0064377

Counsel for Petitioner

Dated: March 1, 2013

EXHIBIT 1

ASSIGNMENT OF MEMORANDUM OF UNDERSTANDING

This ASSIGNMENT is made and entered into on this 9TH day of MAY 2012 by and between **Massillon Energy & Technology Park, LLC**, an Ohio Limited Liability Company, by and through Steven DiPietro, the duly authorized managing member ("ME&TP") (hereinafter "Assignor") and **RSL RAILROAD LLC**, an Ohio Limited Liability Company, by and through David DiPietro, the duly authorized managing member ("RSL") (hereinafter "Assignee")

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, Title and interest in and to the Memorandum of Understanding (MOU) which is marked as "Exhibit A" and Assignment of Memorandum of Understanding which is marked as "Exhibit B" attached hereto and incorporated herein by this reference (MOU) and (AMOU).

BACKGROUND

A. Assignor is a developer and is legally entitled to develop certain real property which is more particularly described in the Memorandum of Understanding (MOU) which is attached hereto and marked as "Exhibit A" and Assignment of Memorandum of Understanding which is marked as "Exhibit B" attached hereto and incorporated herein by this reference (MOU) and (AMOU).

B. In connection with this ASSIGNMENT, Assignor desires to assign and warrants to Assignee, all of Assignor's right, title and interest, to the extent assignable, in and to all property pertaining to and used in connection with the construction, use and operation of the Property as identified in the attached "Exhibit A" and "Exhibit B", including, without limitation, all guaranties, warranties, permits, approvals, licenses, plans and specifications and Assignee desires to accept said assignment and assume the obligations of Assignor under said leases upon the terms, covenants and conditions set forth in this instrument.

EXHIBIT 1

1. **Assignment** Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest in and to the (MOU) and (AMOU).
2. **Assumption** Effective as of this date, Assignee hereby accepts said assignment and assumes all agreements, covenants, liabilities, obligations and duties on the part of Assignor under the (MOU) and (AMOU) arising from and after the above date.
3. **Binding Effect** This Assignment will be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.
4. **Successor and Assigns** This Assignment may be assigned in part or all without any express prior written consent; provided further, however, that Assignee may assign its rights and delegate its responsibilities under this Assignment without any express prior written consent.
5. **Assignee Indemnification** Assignee hereby agrees to indemnify, defend and hold harmless Assignor from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignor may incur, sustain or suffer or which may be asserted or assessed against Assignor, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU) and (AMOU).
6. **Assignor Indemnification** Assignor hereby agrees to indemnify, defend and hold harmless Assignee from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignee may incur, sustain or suffer or which may be asserted or assessed against Assignee, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU) and (AMOU).
7. **Governing Law** This Assignment will be governed by the laws of the State of Ohio.
8. **Counterparts** This Assignment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee hereby accept and consent to the above ASSIGNMENT, intending to be legally bound, the parties have executed this Assignment on the day and year first above-written and agree to perform all obligations under said ASSIGNMENT according to its terms and conditions stated herein.

Massillon Energy & Technology Park, LLC,
an Ohio limited liability company

RSL RAILROAD LLC,
an Ohio limited liability company

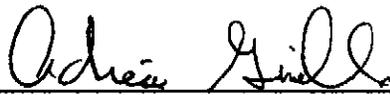
By: 
Steven DiPietro, Member, ASSIGNOR

By: 
David DiPietro, Member, ASSIGNEE

STATE OF OHIO)
) ss:
STARK COUNTY)

Before me, a Notary Public in and for said County and State, personally appeared the above-named, Steven DiPietro Member of **Massillon Energy & Technology Park, LLC, ASSIGNOR** and David DiPietro, Member of **RSL RAILROAD LLC, ASSIGNEE**, who acknowledged that the foregoing instrument was freely signed.

In Testimony Whereof, I have hereunto set my hand and official seal at Canton, Ohio this 9th day of MAY 2012.


Notary Public

This Instrument Prepared By:
ANDY A. GINELLA, ESQ.
4096 Holiday Street NW
Canton, Ohio 44718
Phone: 330.649.9600
Facsimile: 330.649.9601



ANDREA A. GINELLA
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding ("MOU") is dated this ~~March~~ ^{May} 9TH day of 2012 by and between **First Street Development, LLC**, an Ohio Limited Liability Company, by and through David DiPietro, the duly authorized managing member ("First Street") and **PSR Development, LTD**, an Ohio Limited Liability Company, by and through R. Bitzel Holding Company LLC and it's managing Member, Lori Bitzel, the duly authorized managing member ("PSR").

WHEREAS:

1. PSR is the owner of real property located at 410 Oberlin Road SW, Massillon, Ohio 44647, containing approximately 400 acres ("Premises").
2. First Street is a developer doing business in Ohio.
3. The parties have entered into general discussions in order to explore business opportunities related to the Premises.
4. The parties have entered into a certain understanding regarding terms of First Street's' opportunity to develop the Premises.
5. The parties wish to evidence their agreement regarding the understanding in accordance with the terms and conditions hereinafter provided.

NOW THEREFORE, for good and valuable consideration, the parties, intending to be legally bound hereby, agree as follows:

The recitals given herein above form an integral part of this agreement. The parties agree to comply with the terms of this MOU as stated below:

1. CONFIDENTIALITY

The parties hereby confirm that the terms and conditions herein are Confidential. Said confidentiality shall apply to all information provided by or to any of the parties.

2. PREMISES

The Premises is located at 410 Oberlin Road SW, Massillon, Ohio 44647, containing approximately 400 acres.

PSR will Lease to First Street the entire 400 acres without restrictions for the opportunity to develop said land provided the development does not interfere with any existing leases.

First Street acknowledges that the oil, gas, and mineral rights will remain with PSR and not transfer to First Street.

MEMORANDUM OF UNDERSTANDING

3. TERM

This MOU shall commence upon its execution, and for a term of 5 years with Five (5) Five (5) year renewals at ("First Street") options.

4. RENT

After the property is developed and leased to third parties, First Street will pay to R. Bitzel Holding Company, LLC, a Member of PSR, an annual sum of \$500.00 per acre of the leased property due and payable upon mutual agreement of the parties.

5. REAL ESTATE TAXES, INSURANCE, AND UTILITIES

- a. Real Estate Taxes – PSR will be responsible for the real estate taxes of the Premises. However, as a result of the development of the Premises, First Street agrees to be responsible for any increase in real estate taxes from the commencement of this agreement.
- b. Insurance – First Street will be responsible to obtain general policy and a liability, property, fire and casualty insurance on the premises and equipment in an amount of not less than \$1,000,000.
- c. Utilities – First Street will be responsible for any and all costs associated with gas, electric, water, sewer and trash expenses as it relates to the construction and development of the Premises.

6. CONSTRUCTION, IMPROVEMENTS, AND MAINTENANCE

First Street is responsible for any and all construction, improvements, and maintenance of the Premises. First Street will be responsible for any and all costs associated with said construction, improvements, and maintenance of said Premises.

7. NOTICES

- a. All notices required to be given under this MOU shall be given in writing and shall be deemed to have been given:
 - i. When hand delivered during normal business hours of the recipient, with an acknowledgement of receipt.

MEMORANDUM OF UNDERSTANDING

- ii. When transmitted by facsimile during normal business hours of the recipient, with a confirmation of receipt. All fax notices shall be followed by a copy sent by registered mail, first class courier, return receipt requested.
 - iii. When mailed by registered mail, first class courier, return receipt requested, within five (5) business days of posting.
 - iv. When emailed, with an acknowledgement of receipt.
 - v. When a copy of all notices are sent in the same manor above to Attorney Andy A. Ginella, Esq.
- b. All notices sent by mail shall be sent to the addresses shown on the signature page, unless a change in address has been previously communicated in writing.

8. TERMINATION

This MOU cannot be amended, modified, or terminated except in writing signed by all of the parties hereto or as otherwise provided in this MOU.

9. MISCELLANEOUS

- a. This MOU shall be governed by, and construed in accordance with, the laws of the State of Ohio (excluding conflicts of laws). Subject to Section 5 above, the parties agree that proper jurisdiction and venue for resolution of any and all disputes hereunder shall be in the Court of Common Pleas for Stark County, Ohio and/or the appropriate United States District Court in the State of Ohio.
- b. If any term or provision of this MOU or the application thereof to any person or circumstance shall to any extent be found by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remainder of this MOU, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.
- c. This MOU shall apply to, inure to the benefit of and bind each of the parties hereto and their respective heirs, personal

MEMORANDUM OF UNDERSTANDING

representatives, devisees, successors and permitted assigns, if any; provided, however, that a party may assign this MOU without the express prior written consent of the other party. PSR will allow First Street to assign or sublease any part or all of the property without their express prior written consent; provided further, however, that PSR may assign its rights and delegate its responsibilities under this MOU.

- d. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- e. Time is of the essence with respect to matters of performance required under this MOU.
- f. This MOU may be executed in multiple counterparts, each of which may contain the signatures of one or more of the parties, all of which, taken together, shall constitute one and the same instrument.
- g. Neither party shall be deemed to have breached this MOU solely as a result of any delay, failure in performance or interruption of service resulting directly or indirectly from any act of God, action of the elements, fire, accident, riot, strike, work stoppage or other labor disturbance, interruption of power or water, act of war, act of terrorism, invasion, civil commotion, enactment of laws or other casualty or cause, whether similar or dissimilar, arising in a manner beyond the reasonable control of the party required to perform and without such party's negligence or willful misconduct.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

MEMORANDUM OF UNDERSTANDING

IN WITNESS WHEREOF the Parties hereto have caused this MOU to be executed by their duly authorized representatives on the day and date indicated below.

On behalf of First Street Development, LLC

4084 Holiday Street NW
Canton, Ohio 44718
Phone:
Fax:
Email:



Signature

MEMBER

Title

DAVID DIPIETRO

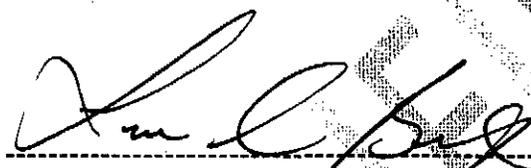
Print

5-9-12

Date

On behalf of PSR Development, LTD

4141 Southway Street SW
Canton, Ohio 44706
Phone:
Fax:
Email:



Signature

Partner

Title

LORIE A. BITZEL

Print

5-9-12

Date

EXHIBIT B

ASSIGNMENT OF MEMORANDUM OF UNDERSTANDING

This **ASSIGNMENT** is made and entered into on this 9TH day of ~~March~~^{MAY} 2012 by and between **First Street Development, LLC**, an Ohio Limited Liability Company, by and through David DiPietro, the duly authorized managing member ("First Street") (hereinafter "Assignor") and **Massillon Energy & Technology Park, LLC**, an Ohio Limited Liability Company, by and through Steven DiPietro, the duly authorized managing member ("ME&TP") (hereinafter "Assignee")

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, Title and interest in and to the Memorandum of Understanding (MOU) which is marked as "Exhibit A" attached hereto and incorporated herein by this reference (MOU).

BACKGROUND

A. Assignor is a developer and is legally entitled to develop certain real property which is more particularly described in the Memorandum of Understanding (MOU) which is attached hereto and marked as "Exhibit A" and incorporated herein by this reference as (MOU).

B. In connection with this **ASSIGNMENT**, Assignor desires to assign and warrants to Assignee, all of Assignor's right, title and interest, to the extent assignable, in and to all property pertaining to and used in connection with the construction, use and operation of the Property as identified in the attached "Exhibit A", including, without limitation, all guaranties, warranties, permits, approvals, licenses, plans and specifications and Assignee desires to accept said assignment and assume the obligations of Assignor under said leases upon the terms, covenants and conditions set forth in this instrument.

1. Assignment Assignor assigns, transfers and sets over unto Assignee all of Assignor's right, title and interest in and to the (MOU).

2. Assumption Effective as of this date, Assignee hereby accepts said assignment and assumes all agreements, covenants, liabilities, obligations and duties on the part of Assignor under the (MOU) arising from and after the above date.
3. Binding Effect This Assignment will be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.
4. Successor and Assigns This Assignment may be assigned in part or all without any express prior written consent; provided further, however, that Assignee may assign its rights and delegate its responsibilities under this Assignment without any express prior written consent.
5. Assignee Indemnification Assignee hereby agrees to indemnify, defend and hold harmless Assignor from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignor may incur, sustain or suffer or which may be asserted or assessed against Assignor, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU).
6. Assignor Indemnification Assignor hereby agrees to indemnify, defend and hold harmless Assignee from and against any and all liabilities, claims, demands, obligations, assessments, losses, costs, damages and expenses of any nature whatsoever (including, without limiting the generality of the foregoing, reasonable attorneys' fees and court costs) which Assignee may incur, sustain or suffer or which may be asserted or assessed against Assignee, from and after the date hereof, arising out of, pertaining to or in any way connected with the agreements, obligations, duties and liabilities of the Assignor under the (MOU).
7. Governing Law This Assignment will be governed by the laws of the State of Ohio.
8. Counterparts This Assignment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee hereby accept and consent to the above **ASSIGNMENT**, intending to be legally bound, the parties have executed this Assignment on the day and year first above-written and agree to perform all obligations under said **ASSIGNMENT** according to its terms and conditions stated herein.

First Street Development, LLC,
an Ohio limited liability company

Massillon Energy & Technology Park, LLC,
an Ohio limited liability company

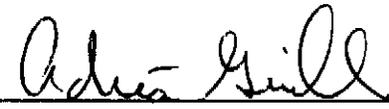
By: 
David DiPietro, Member, ASSIGNOR

By: 
Steven DiPietro, Member, ASSIGNEE

STATE OF OHIO)
) ss:
STARK COUNTY)

Before me, a Notary Public in and for said County and State, personally appeared the above-named David DiPietro, Member of First Street Development, LLC, **ASSIGNOR** and Steven DiPietro, Member of Massillon Energy & Technology Park, LLC, **ASSIGNEE**, who acknowledged that the foregoing instrument was freely signed.

In Testimony Whereof, I have hereunto set my hand and official seal at Canton, Ohio this 9TH day of MAY 2012.



Notary Public

This Instrument Prepared By:
ANDY A. GINELLA, ESQ.
4096 Holiday Street NW
Canton, Ohio 44718
Phone: 330.649.9600
Facsimile: 330.649.9601



ANDREA A. GINELLA
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

EXHIBIT 2

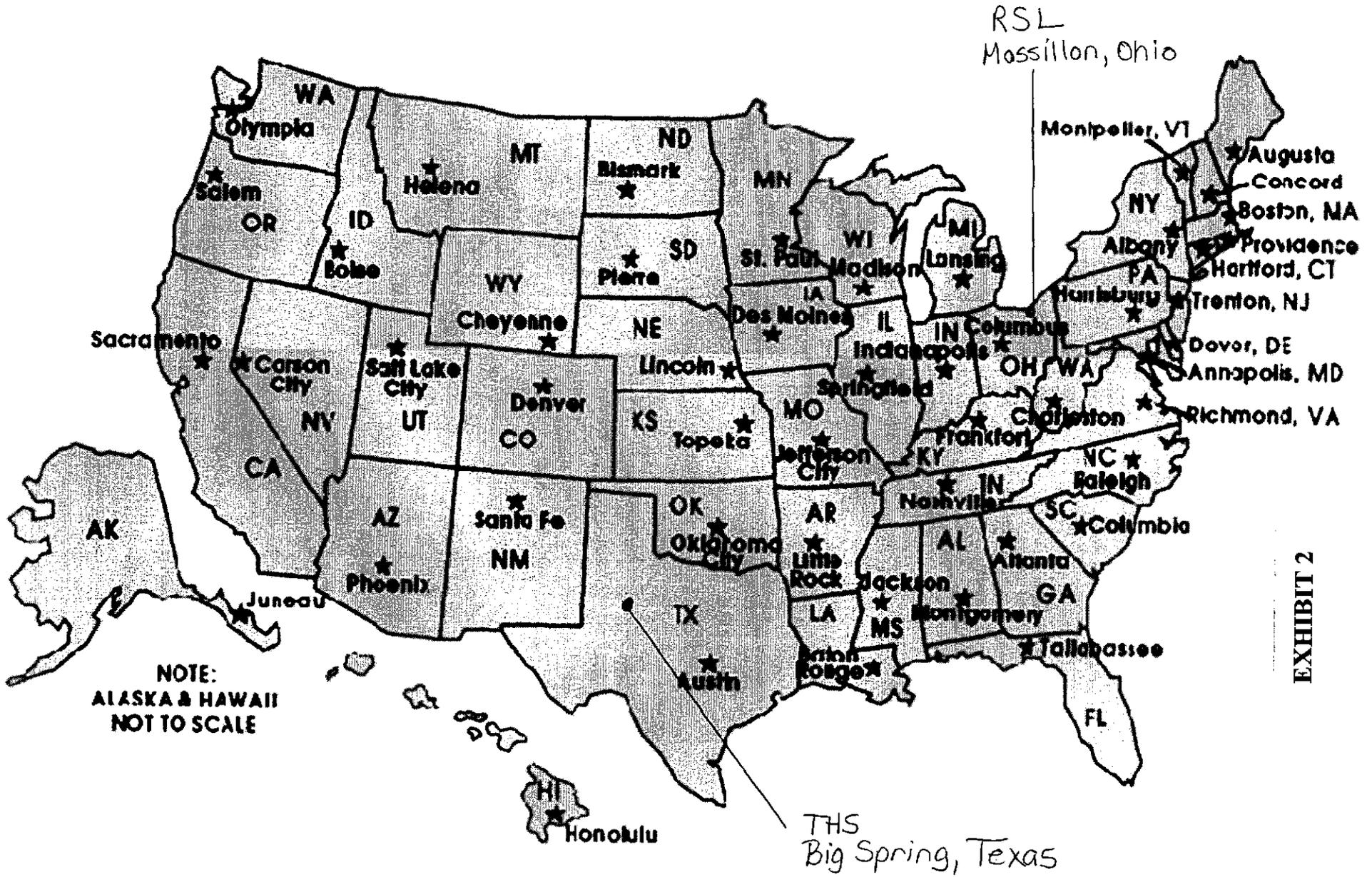
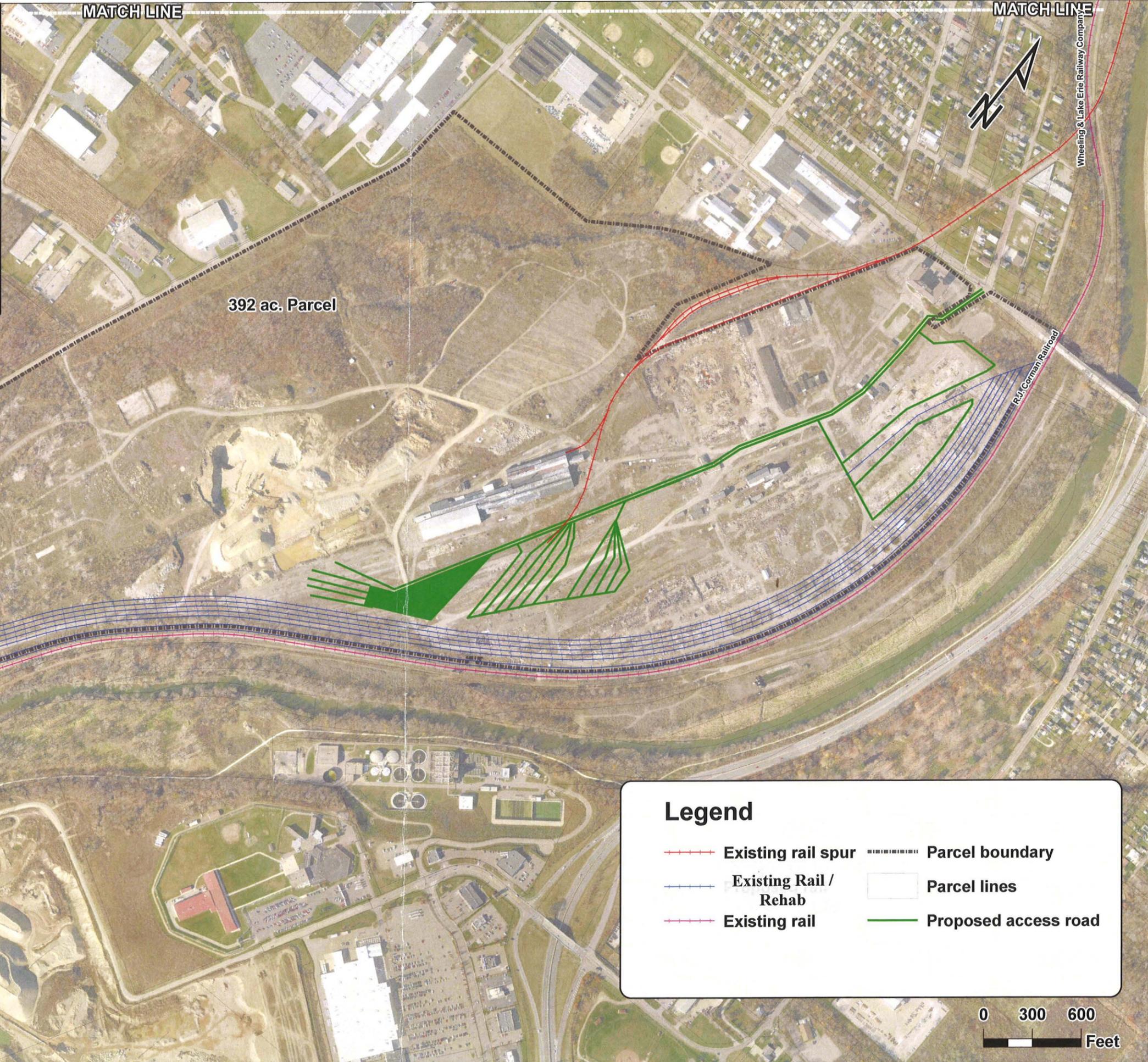
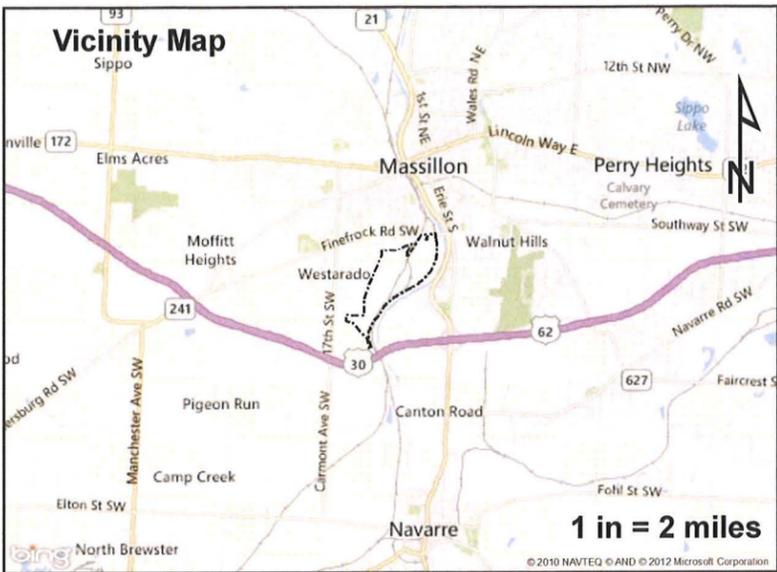


EXHIBIT 2



Legend

Existing rail spur	Parcel boundary
Existing Rail / Rehab	Parcel lines
Existing rail	Proposed access road



HAMMONTREE & ASSOCIATES, LTD.
ENGINEERS - PLANNERS - SURVEYORS

5233 Sineshens Rd.
North Canton, OH 44720
(330) 499-8817 Fax: (330) 499-7274
Toll Free: 1-800-394-8817
www.hammontree-engineers.com

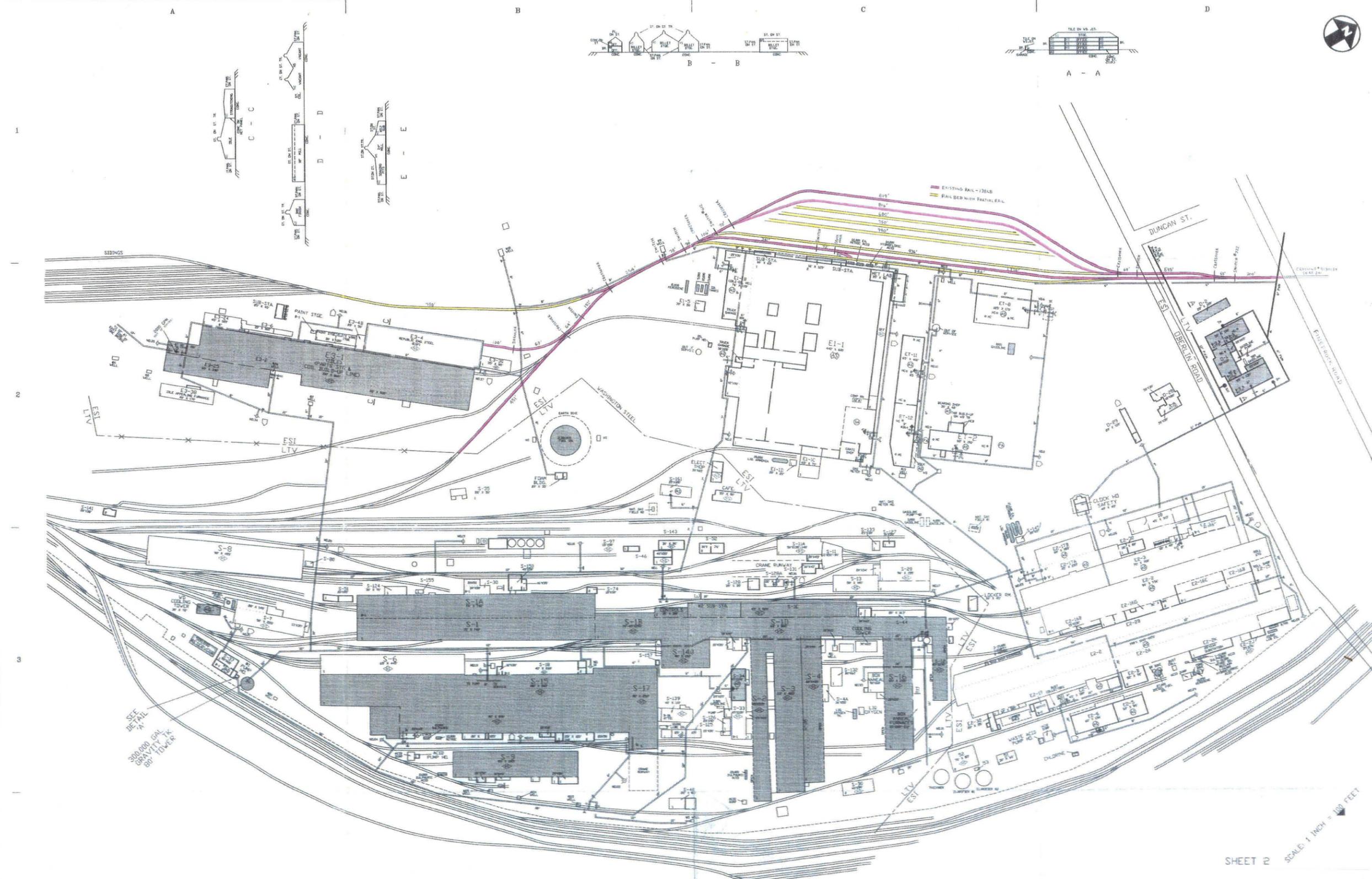
EXHIBIT 2

Notes:

Map Sources:
Aerial photograph (Stark County Engineer, 2009),
Parcel boundary, (Stark County Auditor, 2009)

Scale:
1 inch = 300 feet
Map date: 9/4/12

**PLANNING MAP
MASSILON LAND GROUP
LOCATED IN THE CITY OF MASSILON
STARK COUNTY, OH**



SHEET 2
 SCALE: 1 INCH = 100 FEET
RSL RAILROAD, LLC
SITE MAP
EXHIBIT 2A