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228695

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**JARED R. MUIR**

**ENTERED**  
**Office of Proceedings**  
**JAN 28 2011**  
**Part of**  
**Public Record**  
**\*LL.M., TAXATION**  
**LICENSED TO PRACTICE IN**  
**KANSAS AND MISSOURI**

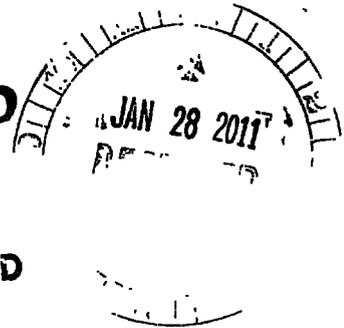
January 28, 2011

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

**FEE RECEIVED**

**JAN 28 2013**

**SURFACE**  
**TRANSPORTATION BOARD**



Re: STB Docket No. AB-1053 (Sub-No. 1X),  
Michigan Air-Line Railway Co.-  
Abandonment Exemption-Line in Oakland County, Michigan

Dear Ms. Brown:

Enclosed for filing in your office is the original and ten copies of a Petition for Exemption from the abandonment requirements of 49 U.S.C. § 10903. A check, payable to the Surface Transportation Board in the amount of \$6,400.00 is enclosed in payment of the filing fee. Also enclosed is a diskette containing a draft of the Federal Register Notice in Word format.

In addition, I have enclosed an extra copy of the Petition, and I request that you date-stamp this copy and return it to the courier who delivers the Petition for Exemption for filing in your office. The courier will then return that date-stamped copy to me.

Thank you for your assistance in this matter. If there are any questions concerning this filing, please contact me by telephone at (785) 232-0753 or by email at the email address shown above.

**FILED**

**JAN 28 2011**

**SURFACE**  
**TRANSPORTATION BOARD**

Very truly yours,

W. Robert Alderson  
ALDERSON, ALDERSON, WEILER,  
CONKLIN, BURGHART & CROW, L.L.C.

WRA:bjb  
Enclosures

cc: R. Robert Butler  
Dirk H. Beckwith, Esq.

228695

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

\_\_\_\_\_  
**STB DOCKET NO. AB-1053 (Sub-No. 1X)**  
\_\_\_\_\_

**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

\_\_\_\_\_  
**PETITION FOR EXEMPTION**  
\_\_\_\_\_

**ENTERED  
Office of Proceedings**

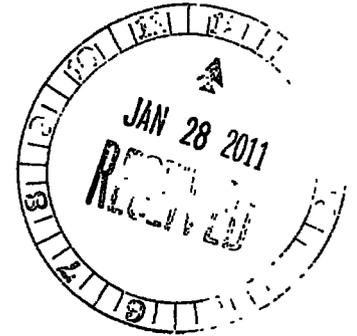
**JAN 28 2011**

**Part of  
Public Record**

**FILED**

**JAN 28 2011**

**SURFACE  
TRANSPORTATION BOARD**



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**JAN 28 2011**

**SURFACE  
TRANSPORTATION BOARD**

W. Robert Alderson  
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Fax: (785) 232-1866  
Counsel for Michigan Air-Line Railway Co.

Dated: January 28, 2011

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-1053 (Sub-No. 1X)**

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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

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**PETITION FOR EXEMPTION**

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The Michigan Air-Line Railway Co. ("MAL Railway") petitions the U.S. Surface Transportation Board ("STB" or "Board") to exempt, pursuant to 49 U.S.C. § 10502, MAL Railway's approximately 5.45 miles of rail line ("Line") located entirely in Oakland County, Michigan from the requirements of 49 U.S.C. § 10903.

There is one shipper on the Line, and the revenues generated by serving this shipper are not adequate to offset the costs of such service. The abandonment of the Line will allow MAL Railway to avoid the costs incurred by ownership of the Line.

## **PROPOSED TRANSACTION**

MAL Railway proposes to abandon approximately 5.45 miles of its Line located entirely in Oakland County, Michigan, extending westerly from the west line of Haggerty Road to the Line's intersection with the right-of-way line of the CSX Railroad. (The Line is more particularly described subsequently in the Background section.) Upon abandonment of the Line, MAL Railway's first priority is to sell the right-of-way to an appropriate governmental entity for use as a recreational trail. Accordingly, after abandonment and prior to such sale, the rails, ties and other track materials (except ballast) will be salvaged, and the roadbed will be graded so that it is suitable for recreational trail use. Various governmental entities in Michigan, including the Commerce, Walled Lake and Wixom Trailway Management Council ("Council"), have expressed interest in acquiring the abandoned right-of-way for use as a recreational trail. This is more fully explained in the Combined Environmental and Historic Report, which is attached to this Petition as Exhibit F.

Based on information in MAL Railway's possession, the Line does not contain federally granted right-of-way. Any documentation in MAL Railway's possession concerning title to the right-of-way will be made available to those requesting it. A depot is located partially on the right-of-way at Walled Lake, Michigan. It will be discussed in the Combined Environmental and Historic Report.

### **Zip Codes Traversed**

The Line lies entirely within U.S. Postal Service zip codes 48390 and 48393.

### **Labor Protection**

The interests of affected railroad employees, if any, will be protected by the conditions discussed in Oregon Short Line Railroad Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

### **Corporate Information**

The Petitioner is a Michigan corporation in good standing, and its full, legal name is Michigan Air-Line Railway Co. The address of its principal place of business is 7160 S. 29<sup>th</sup> Street, Suite 3, Lincoln, Nebraska 68516.

### **MAL Railway's Representative.**

The representative of MAL Railway to whom correspondence regarding this abandonment should be sent is:

W. Robert Alderson  
Alderson, Alderson, Weiler,  
Conklin, Burghart & Crow, L.L.C.  
2101 S.W. 21<sup>st</sup> Street  
Topeka, Kansas 66604  
Tele: (785) 232-0753  
FAX: (785) 232-1866

### **Exhibits**

The exhibits to this Petition for Exemption are as follows:

**Exhibit A** contains a draft Federal Register Notice.

**Exhibit B** contains colored maps of the Line. **Exhibit B-1** is a map which was included in the Acquisition section of the Council's grant application to the Michigan Natural Resources Trust Fund ("MNRTF") as Figure 2. It shows the numerous wetlands adjoining the Line, which is highlighted in pink. **Exhibit B-2** shows the entirety of MAL Railway's rail line in Oakland County, Michigan, highlighted in yellow, and it shows the proximity of the rail line to other recreational trails. This map is contained in the Michigan Air-Line Railway Trailway Master Plan 2009-2014, which was prepared by the Council. This map illustrates the potential future use of the entirety of MAL Railway's railroad right-of-way in Oakland County, Michigan, as a recreational trail. It should be noted that the portion of MAL Railway's rail line contained in West Bloomfield Township was authorized for abandonment in STB Docket No. AB-1053X (Service Date: August 24, 2010). Prior to its abandonment, the West Bloomfield Parks and

Recreation Commission had agreed to purchase from MAL Railway the abandoned line's right-of-way in West Bloomfield Township, for use as a recreational trail, as an extension of the existing West Bloomfield Trail. Closing on that sale and transfer of title to the abandoned right-of-way occurred on December 13, 2010. This map in **Exhibit B-3** shows the Line in relation to other recreational trails, and in relation to the major streets in the communities traversed by the Line.

**Exhibit C** contains Certifications of Service and Publication. Specifically, it contains a Certificate of Service required by 49 CFR § 1152.60(d) and a Certificate of Publication of a "Notice of Intent to Abandon" in compliance with 49 CFR § 1105.12.

**Exhibit D** is the verified statement of R. Robert Butler, President of MAL Railway.

**Exhibit E** contains the verified statement of Martin Ramsey, Chief Financial Officer of MAL Railway.

**Exhibit F** is the Combined Environmental and Historic Report required by 49 CFR §§ 1105.7 and 1105.8. Preceding the Report is a Certificate of Service of the proposed Combined Environmental and Historic Report in compliance with the requirements of 49 CFR §§ 1105.7 and 1105.8.

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## **BACKGROUND**

MAL Railway is a Class III common carrier by railroad subject to 49 U.S.C. Subtitle IV. It has operated over the Line since 2006.<sup>1</sup> Coe Rail, Inc. was organized as a Michigan corporation on January 31, 1984. Its name was changed to Michigan Air-Line Railway Co. on June 28, 2006. At that time, all of the stock in MAL Railway was owned by Railmark Holdings, Inc. On November 11, 2009, Browner Turnout Co. acquired from Railmark Holdings, Inc., all of the issued and outstanding stock in MAL Railway. Said stock was subsequently transferred to RKB Holdings, Inc.

### **A. Description of the Line**

The Line lies entirely in Oakland County, Michigan, and it is a rail corridor, generally 50.0 feet in width, the centerline of which intersects the west line of Haggerty Road at Railroad Milepost 45.26 (Engineer's Profile Station 2389+72), Section 25, Town 2 North, Range 8 East of the 6<sup>th</sup> P.M., and which extends westerly through Sections 25, 26, 35, 34, 33 and 32, Town 2 North, Range 8 East of the 6<sup>th</sup> P.M., to its intersection with the right-of-way line of the CSX Railroad in the City of Wixom, Michigan, at Railroad Milepost 50.65 (Engineer's Profile Station 2677+67), Section 31, Town 2 North, Range 8 East of the 6<sup>th</sup> P.M. Said centerline is approximately 5.45 miles in length.

### **B. Traffic on the Line**

The only shipper on the Line is American Plastic Toys, Inc. ("APT"), located at 799 Ladd Road, Walled Lake, Michigan 48390. APT receives plastic pellets in hopper cars and ships out plastic toys via motor carriers. Over the past several years, traffic volume has decreased substantially. As stated in the Verified Statement of R. Robert Butler, President of MAL Railway (**Exhibit D**) in 2008, APT received 67 carloads from MAL Railway, with no outbound product

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<sup>1</sup> *Michigan Air-Line Railway Co. – Acquisition and Operation Exemption – Rail Line of Coe Rail, Inc.*, STB Finance Docket No. 34902 (Service Date: July 24, 2006).

shipped by rail; in 2009, APT received 52 carloads, with no outbound product shipped by rail; and in 2010, APT received 52 carloads, with no outbound product shipped by rail. During the 90 days prior to the filing of this Petition for Exemption, APT received two carloads from MAL Railway, with no outbound product shipped by rail.

On or about November 12, 2009, Mr. Butler met with officers of APT and advised them of MAL Railway's intent to abandon the Line. There were three other similar meetings in 2010 and, as explained in Mr. Butler's Verified Statement (**Exhibit D**), in each instance Mr. Butler reiterated his previous statements, advising that MAL Railway intended to abandon the Line. Subsequent to these meetings, APT secured multiple bids for the transloading of its traffic.

### **C. Revenues and Expenses**

It is important to note that the entirety of the Line is not required to provide service to APT, the sole shipper on the Line. The Line is 5.45 miles in length; however, the segment of the Line required to serve APT ("Service Line") is 3.65 miles in length. The Service Line is described with more particularity in the Verified Statement of Martin Ramsey, attached hereto as **Exhibit E**.

In his Verified Statement, Mr. Ramsey also explains that MAL Railway has contracted with a third party ("Service Provider") to satisfy MAL Railway's common carrier obligation to provide service to APT. Actual costs of providing such service cannot be verified by MAL Railway, because MAL Railway is not a party to the contract between the Service Provider and APT. All of the operating costs of providing service to APT are incurred by the Service Provider. In addition, MAL Railway does not derive any revenues from the common carrier service provided to APT. All revenues derived from such service are passed through to the Service Provider.

However, MAL Railway will incur costs because of its common carrier obligation to APT. To determine such costs, Mr. Ramsey has used calendar year 2011 as a forecast year

("Forecast Year") to determine these costs. The following expenses have been calculated for the Forecast Year by Mr. Ramsey in his Verified Statement.

1. **Avoidable Costs.** In his Verified Statement (**Exhibit E**), Mr. Ramsey discusses the maintenance and rehabilitation costs that will be incurred by MAL Railway in the Forecast Year with respect to the Service Line to meet its common carrier obligation. Mr. Ramsey characterizes these costs as avoidable costs ("Avoidable Costs"), since they are costs which will not be incurred if the Board authorizes abandonment of the Line. As calculated by Mr. Ramsey, the Avoidable Costs are:

a. **Maintenance Costs.** Using a methodology previously approved by the Board, Mr. Ramsey projects the maintenance costs to be incurred by MAL Railway for the Forecast Year to be in the amount of \$21,900.

b. **Rehabilitation Costs.** Rehabilitation projects on the Service Line in the Forecast Year would include tie replacement (\$149,625), tamping (\$12,175) and grade crossing repairs (\$25,000), which would produce total rehabilitation costs of \$186,800.

c. **Summary of Avoidable Costs.** Over the Forecast Year of 2011, the annual maintenance costs are estimated to be \$21,900, and rehabilitation costs are estimated to be \$186,800, for a total cost of \$208,700.

2. **Net Revenues.** As noted previously, because of its arrangement with the Service Provider, MAL Railway does not contemplate receipt of any revenues in the Forecast Year. Thus, the avoidable costs to be incurred by MAL Railway in the Forecast Year will result in a net loss of \$208,700.

#### **D. Calculation of Opportunity Costs**

Opportunity costs (or total return on value of road property) reflect the economic loss experienced by a carrier from forgoing a more profitable alternative use of its assets. Under *Abandonment Regulations – Costing*, 3 ICC 2d 340 (1987), the opportunity cost of road property is computed on an investment base equal to the sum of (1) allowable working capital, (2) the net liquidation value (NLV) of the Line, and (3) current income tax benefits (if any) resulting from abandonment.

The investment base (or valuation of the road properties) is multiplied by the current nominal rate of return, to yield the nominal return on value. The nominal return is then adjusted by applying a holding gain (or loss) to reflect the increase (or decrease) in value a carrier will expect to realize by holding assets for one additional year.<sup>2</sup>

1. **Calculation of Net Salvage Value (“NSV”).** As noted previously, the segment of MAL Railway’s rail line in West Bloomfield Township has been abandoned pursuant to a Notice of Exemption in STB Docket 1053X (Service Date: August 24, 2010). Upon abandonment, MAL Railway sold to a salvage company the rails, ties and other track materials (except ballast) on the abandoned line. That same company has provided MAL Railway with a bid to conduct salvage operations on the Line upon its abandonment. The bid for the rail, ties and other track materials for the entirety of the Line (5.45 miles) is \$543,500, which constitutes the Net Salvage Value (“NSV”) for the Line.

2. **Calculation of the Value of Real Estate (“VRE”).** The appraised value of the Line is \$5,382,000, which is the Value of Real Estate (“VRE”) for purposes of calculating opportunity costs.

3. **Calculation of Fifteen Days Working Capital.** Working capital is a function of operating and maintenance costs. However, as noted previously, the Service Provider has incurred all of the operating costs, which are not known to MAL Railway. Thus, working capital will necessarily be determined by considering maintenance costs only, which are in the amount of \$21,900 in the Forecast Year. To determine fifteen days working capital, for use in calculating opportunity costs, that amount is divided by 365 and the product is then multiplied by fifteen, which produces the sum of \$900.

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<sup>2</sup> *Wisconsin Central Ltd. – Abandonment – in Ozaukee, Sheboygan and Manitowoc Counties, WI*, STB Docket No. AB-303 (Sub-No. 27) (STB Served October 18, 2004), at 10-11.

4. **Nominal Cost of Capital.** The Board, as recently as 2008, has accepted the nominal cost of capital for a Class III Railroad of 17.24%.<sup>3</sup> Therefore, MAL Railway will use 17.24% as the nominal cost of capital in calculating the opportunity costs of the Line.

5. **Income Tax Consequences.** Under *Abandonment Regulations – Costing* 3 ICC 2d 340 (1987), there would be no current income tax benefit resulting from abandonment.

6. **Holding Gain.** Because of a bona fide bid of \$543,500 for the track assets, and the probability of selling the abandoned right-of-way for its appraised value, MAL Railway estimates that there will be no holding gain or loss by holding the assets for one additional year. The Board has accepted such an analysis.<sup>4</sup>

7. **Calculation of Opportunity Costs.** The following Table shows the opportunity cost calculation:

|                                 |                  |
|---------------------------------|------------------|
| Working Capital                 | \$ 900           |
| NLV (NSV + VRE)                 | \$5,925,500      |
| Taxes                           | \$ -0-           |
| Valuation                       | \$5,926,400      |
| Nominal Rate of Return          | <u>\$ 17.24%</u> |
| Opportunity Costs               | \$1,021,711      |
| Holding Gain or Loss Adjustment | \$ -0-           |

#### **E. Alternate Transportation**

As noted previously, subsequent to the time when MAL Railway advised APT of its intent to abandon the Line, APT has secured multiple bids for the transloading of its inbound material.

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<sup>3</sup> See, *Central Oregon & Pacific Railroad, Inc.—Abandonment and Discontinuance of Service—in Coos, Douglas and Lane Counties, OR*, STB Docket No. AB-515 (Sub-No. 2) (STB Served October 31, 2008) at 6.

<sup>4</sup> *Southwestern Railroad Company, Inc. – Abandonment Exemption – in Ellis County, OK, and Lipscomb, Ochiltree, and Hansford Counties, TX*, STB Docket No. AB-341 (Sub-No. 1X) (STB served November 20, 2007) at 2.

**F. Summary**

Continued ownership and operation of the Line by MAL Railway will continue to be a burden on MAL Railway and interstate commerce. MAL Railway will incur estimated Avoidable Costs of \$208,700 in the Forecast Year, resulting in a net loss of \$208,700. In addition, MAL Railway incurs Opportunity Costs of \$1,021,711, if the Line is not abandoned. MAL Railway contends, in balancing the harm to itself and interstate commerce, against the harm to the sole remaining shipper and local interests, the balance clearly favors abandonment.

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## ARGUMENTS SUPPORTING THE ABANDONMENT

MAL Railway seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903, in order to abandon the Line. Under 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. § 10101 and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency (Interstate Commerce Commission) to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96<sup>th</sup> Cong. 2d Sess. 105 (1980). See, also, *Exemption from Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983) (vacated and remanded on other grounds). *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provision as Section 10502. H.R. Rep. No. 422, 104<sup>th</sup> Cong. 1<sup>st</sup> Sess. 168-69 (1995).

**A. The application of 49 U.S.C. § 10903 is not necessary to carry out the rail transportation policy.**

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption will minimize the unnecessary expenses associated with the preparation and filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. § 10101 (2) and (7).

Subsequent to MAL Railway advising APT that it intended to abandon the Line, APT secured multiple bids to provide APT with alternate transportation services.

MAL Railway will avoid significant costs through an exempt abandonment procedure.

**B. This transaction is of limited scope.**

The proposed transaction is of limited scope. MAL Railway seeks to abandon 5.45 miles of rail line in one county in the State of Michigan.

**C. This transaction will not result in an abuse of market power.**

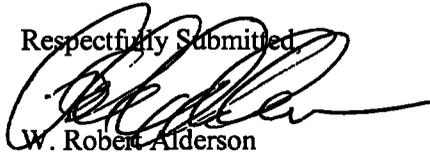
MAL Railway is abandoning the Line. APT, the only shipper on the Line, has secured multiple bids to provide it with alternate transportation service. Even if the alternate transportation service involves a higher cost, it is still less than the rates that MAL Railway would be required to charge to recover maintenance and rehabilitation costs.

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## CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 to the abandonment of the Line proposed by MAL Railway is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously shown. Nor is Board regulation required to protect shippers from the abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, MAL Railway respectfully requests the Board to grant an exemption for the proposed abandonment of the Line.

Respectfully Submitted,



W. Robert Alderson  
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CONKLIN, BURGHART & CROW, L.L.C.  
2101 S.W. 21<sup>st</sup> Street  
Topeka, Kansas 66604  
(785) 232-0753  
[boba@aldersonlaw.com](mailto:boba@aldersonlaw.com)  
Attorney for Michigan Air-Line Railway Co.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-1053 (Sub-No. 1X)**

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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

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**PETITION FOR EXEMPTION**

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**EXHIBIT A**

**FEDERAL REGISTER NOTICE**

MICHIGAN AIR-LINE RAILWAY CO.- ABANDONMENT EXEMPTION-  
IN OAKLAND COUNTY, MI

Notice of Petition for Exemption to Abandonment

On January 28, 2011, Michigan Air-Line Railway Co. ("MAL Railway") filed with the Surface Transportation Board, Washington, DC 20423, a petition for exemption for the abandonment of its rail line ("Line") in Oakland County, Michigan, which consists of a rail corridor, generally 50.0 feet in width, the centerline of which commences at Railroad Milepost 45.26 (Engineer's Profile Station 2389+72) at the west line of Haggerty Road and extends westerly to its intersection with the right-of-way line of the CSX Railroad at Railroad Milepost 50.65 (Engineer's Profile Station 2677+67) in the City of Wixom, Michigan. The Line traverses U.S. Postal Service zip codes 48390 and 48393.

The Line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees, if any, of MAL Railway will be protected by *Oregon Short Line R Co.- Abandonment-Goshen*, 360 I C C 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Section of Environmental Analysis, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EA's in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-1053 (Sub-No. 1X)**

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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION –  
LINE IN OAKLAND COUNTY, MICHIGAN**

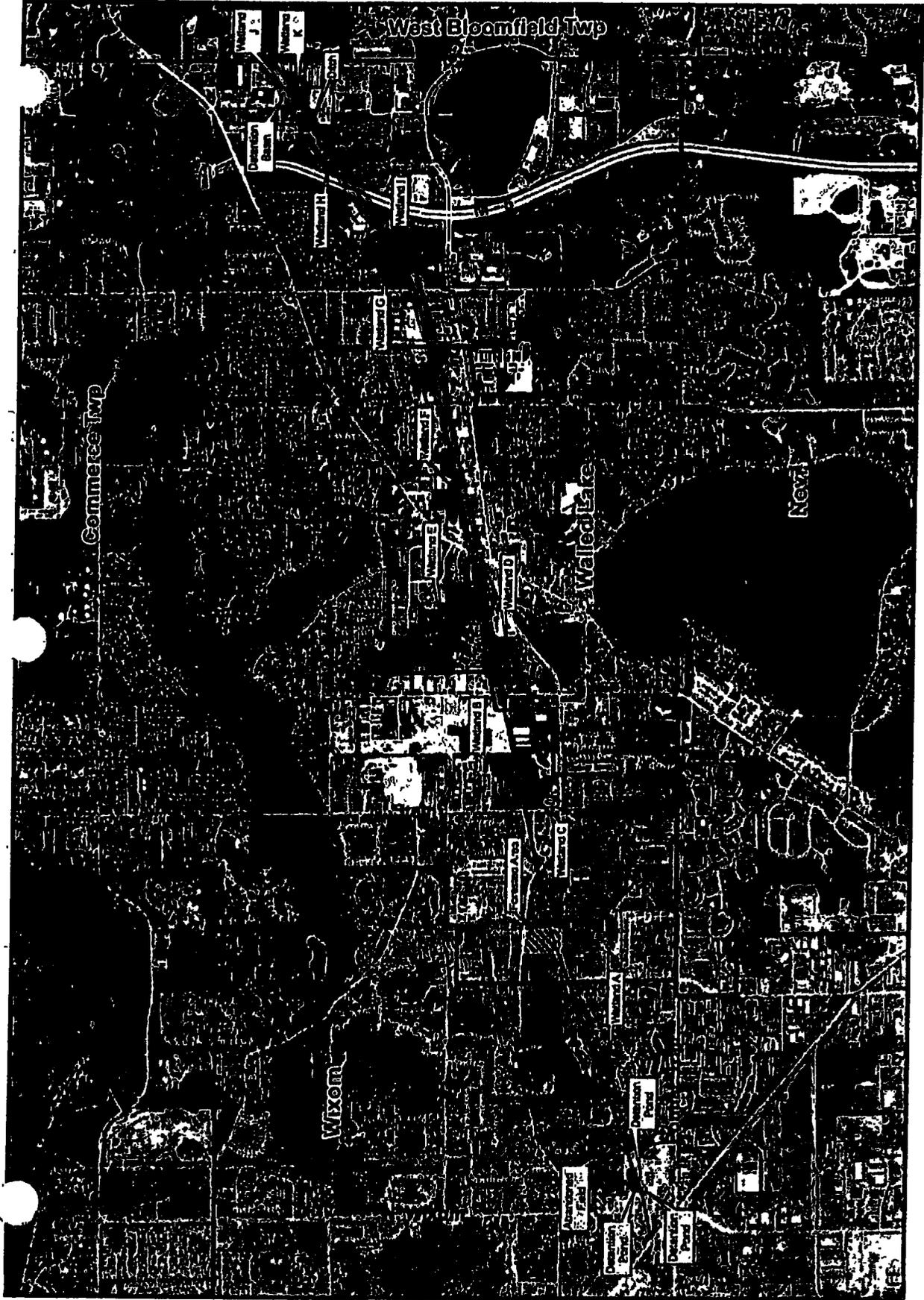
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**PETITION FOR EXEMPTION**

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**EXHIBIT B**

**MAPS**



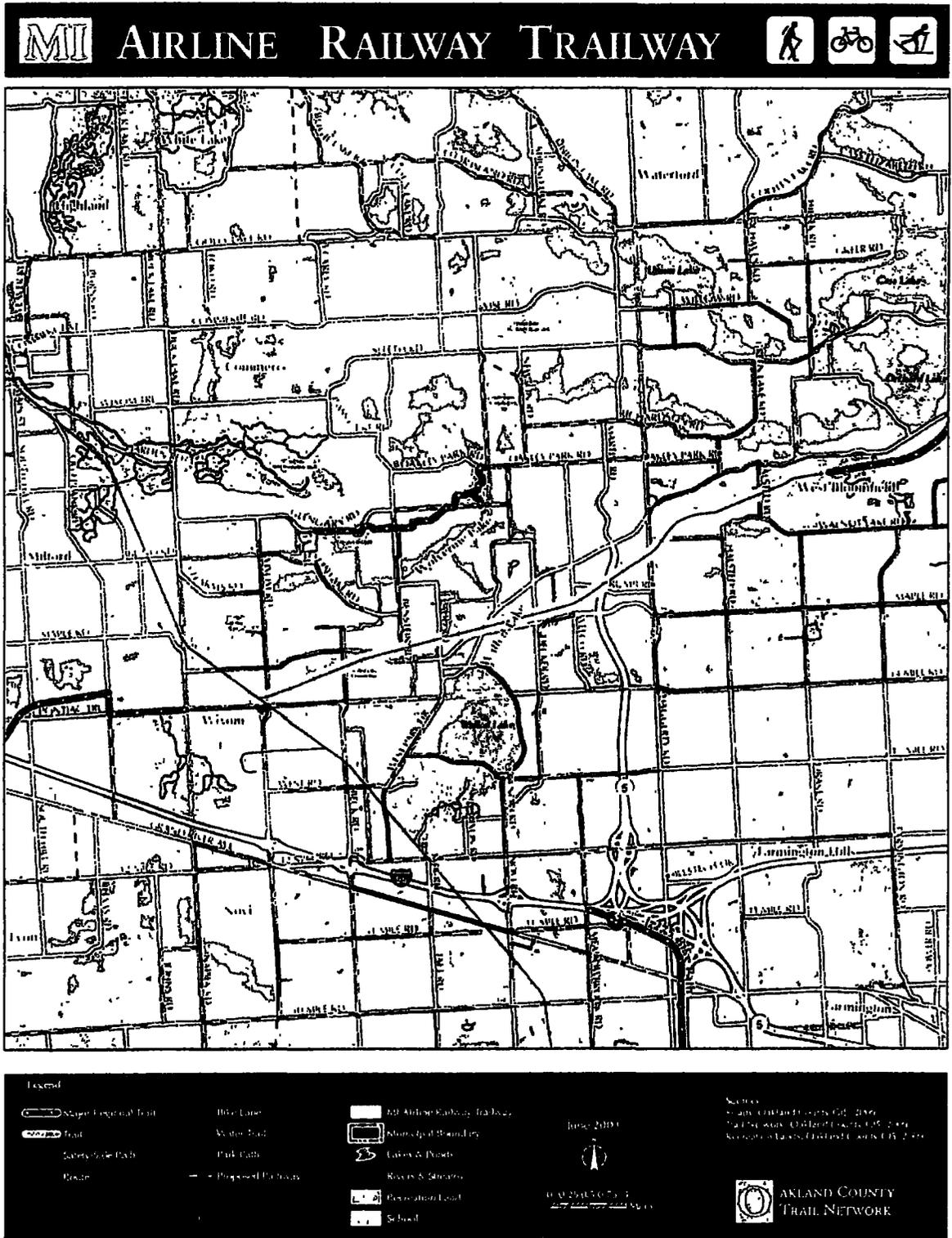
**Coe Railroad**

Oakland County, MI

Created for: City of Walled Lake, City of Wixom, & Charter Township of Commerce  
 Created by: AGS, July 31, 2009, ASTI Project 7075



Figure 2 - Site Features  
 Exhibit B-1



**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-1053 (Sub-No. 1X)**

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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

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**PETITION FOR EXEMPTION**

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**EXHIBIT C**

**CERTIFICATIONS OF  
SERVICE/PUBLICATION**

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, in accordance with the provisions of 49 CFR § 1152.60(d), the Petition for Exemption in STB Docket No. AB-1053 (Sub-No. 1X), *Michigan Air-Line Railway Co. – Abandonment Exemption – Line in Oakland County, Michigan* was mailed via first-class mail, postage prepaid, on January 28, 2011, to the following parties:

### **State Public Service Commission**

Michigan Public Service Commission  
P.O. Box 30221  
Lansing, Michigan 48909

### **Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program)**

SDDC TEA  
Attn: MTT-SA  
Dave Dorfman  
709 Ward Drive, Bldg. 1990  
Scott Airforce Base, Illinois 62225

### **National Park Service**

Charlie Stockman  
Rivers, Trails and Conservation Assistance Program  
National Park Service  
1201 Eye St., NW, Suite 550B  
Washington, DC 20005

### **U.S. Department of Agriculture**

U.S. Forest Service  
1400 Independence Ave., S.W.  
Washington, D.C. 20250-0003

**American Plastic Toys, Inc.**

American Plastic Toys, Inc.  
799 Ladd Road  
Walled Lake, Michigan 48390

January 28, 2011

A handwritten signature in black ink, appearing to read 'W. Robert Alderson', is written over a horizontal line. The signature is fluid and cursive.

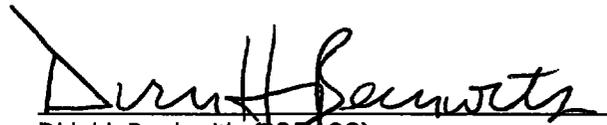
W. Robert Alderson  
ALDERSON, ALDERSON, WEILER,  
CONKLIN, BURGHART & CROW, L.L.C.  
2101 S.W. 21<sup>st</sup> Street  
Topeka, Kansas 66604  
(785) 232-0753  
Attorney for Michigan Air-Line Railway Co.

CERTIFICATE OF PUBLICATION

49 CFR 1105.12 – Newspaper Notice

I certify that a "Notice of Intent to Abandon" was published in the form prescribed by the Board for an abandonment notice of exemption. The notice was published on January 21, 2011 in The Oakland Press, a newspaper of general circulation in Oakland County, Michigan, where the Line is located. (See attached proof of publication.)

Dated: January 24, 2011



Dirk H. Beckwith (P35609)  
Foster Swift Collins & Smith PC  
Attorneys for Michigan Air-Line Railway Co.  
32300 Northwestern Highway, Suite 230  
Farmington Hills, Michigan 4833-1571  
248.539.9900

County of Oakland } ss.  
STATE OF MICHIGAN, }

Debbie Phillips being duly sworn,

deposes and says that I am the legal rep of THE OAKLAND PRESS, a newspaper printed and circulated daily in Oakland County, Michigan and that I held such position during the publication of the notice hereto annexed; that a notice of

Public notice of which the annexed notice is a true copy, was published in the said THE OAKLAND PRESS

ONCE immediately preceding the 22 of Jan that the annexed printed copy of said notice was taken from the said newspaper. That the dates of

publication of said notice were

January 21, 2011  
and further deponent sayeth not  
Debbie Phillips

Subscribed and sworn to before me this 21 day of

January A.D. 2011  
Debbie Phillips  
NOTARY PUBLIC, OAKLAND COUNTY, MICHIGAN

TINA M. CROWN  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF LAPEER  
MY COMMISSION EXPIRES MAR 30, 2014  
ACTING IN COUNTY OF Oakland

**NOTICE OF INTENT TO ABANDON RAIL LINE**

Michigan Air Line Railway Co. hereby gives notice that, on or about January 28, 2011, it intends to file with the Surface Transportation Board ("Board"), 395 E. Street SW, Washington DC 20423, a Petition for Exemption under 49 CFR 1152 Subpart F-Example Abandonments, permitting the abandonment of approximately 5.45 miles of rail line ("Line") located entirely in the Counties of Washtenaw and Washtenaw, generally 50.0 feet in width, the centerline of which intersects the west line of Flagpole Road at Railroad Milepost 45.26 (Engineer's Profile Station 2389+72), Section 25, Town 2 North, Range 8 East of the 6th P.M., and which extends westerly through Sections 25, 26, 35, 34, 33 and 32, Town 2 North, Range 8 East of the 6th P.M., to its intersection with the right-of-way line of the CSX Railroad in the City of Washtenaw, Michigan, at Railroad Milepost 50.65 (Engineer's Profile Station 2677+67), Section 31, Town 2 North, Range 8 East of the 6th P.M. The Line traverses through territory included in United States Postal ZIP Codes 48390 and 48393 in Oakland County, Michigan. The proceeding will be docketed as No. AD-10531Sub-No. 11).

The Board's Section of Environmental Analysis (SEA) will generally prepare an Environmental Assessment (EA), which will normally be available 25 days after the filing of the Petition for Exemption. Comments on environmental and energy matters should be filed no later than 15 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the Section of Environmental Analysis, Surface Transportation Board, 395 E. Street SW, Washington DC 20423 or by calling that office at (202) 245-0805.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions or rail banking/trails use also can be filed with the Board. An original and ten copies of any pleading that raises matters other than environmental issues (such as trails use, public use and offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E. Street SW, Washington DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)(2)] and one copy must be served on applicant's representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance, Section of External Affairs at (202) 245-9238. Copies of any comments or requests for conditions should be served on either of the applicant's representatives: W. Robert Anderson of the law firm of ANDERSON, ANDERSON, WEILER, CONKLIN, BUNGART & CROW, L.L.C., 2101 S.W. 21st Street, Topeka, Kansas 66604; by facsimile at (785) 232-1866; by e-mail at bob@andersonlaw.com; or by telephone at (785) 232-9733; or Dirk H. Beckwith of the law firm of ROSTER, SWIFT, COLLINS & SMITH, P.C., 32300 Northwestern Highway, Suite 230, Farmington Hills, Michigan 48334; by facsimile at (248) 538-3616; by e-mail at dbeckwith@rsmith.com; or by telephone at (248) 539/9918.

Published January 21, 2011

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-1053 (Sub-No. 1X)**

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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

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**PETITION FOR EXEMPTION**

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**EXHIBIT D**

**VERIFIED STATEMENT OF R. ROBERT BUTLER**

STB Docket No. AB-1053 (Sub-No. 1X)

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Michigan Air-Line Railway Co.  
Petition For Exemption – In Oakland County, MI.

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**VERIFIED STATEMENT OF R. ROBERT BUTLER**

My name is R. Robert Butler. I am the President and majority shareholder of the owner of the Michigan Air-Line Railway Co. My business address is 7160 South 29<sup>th</sup> Street, Suite 3, Lincoln, Nebraska 68516. Over the last twenty-five years I have been involved in many aspects of railroading, including railcar ownership, track maintenance, construction and consulting. I also am the of the President and majority shareholder of the owner of the Lahaina, Kaanapali and Pacific Railroad in Hawaii.

In addition to investments in the Railroad Sector, I am a private equity investor in oil and gas production and am Chairman and majority owner of Frontier Holdings, LLC, a Nebraska Bank Holding Company.

I am very familiar with the 5.45 miles of railroad line that exists between Haggerty Road and the interchange point with CSX at Wixom, MI. in Oakland County, MI. That is the Line for which abandonment exemption is sought by the Petition for Exemption to which my Verified Statement is attached.

In the early fall of 2009, I was contacted by one of the owners of Montoff Transportation LLC (“Montoff”) about the Michigan Air-Line Railway Co. (“MAL Railway”). For the eighteen months prior Montoff had endeavored to acquire the railroad from its owners who were in default to their lender, CIT Group of New York. Montoff had not been able to do this. My relationship with the principals of Montoff went back many years to their time at the National Rails to Trails Conservancy. I stepped in to attempt to negotiate the transaction.

I traveled to Michigan and met with the owners of the railroad and with representatives of governmental entities who were interested in seeing the rail line abandoned, thereby providing them with an opportunity to acquire the abandoned right-of-way for use as recreational trails. I also met with the only shipper on the rail line, American Plastic Toys, Inc. (“APT”) in Walled Lake, Michigan. APT is located on the Line just west of Ladd Road which is approximately 2.46 miles east of the interchange with the CSX Railroad. In 2008, APT received 67 carloads from MAL Railway, with no outbound product shipped by rail; in 2009, APT received 52 carloads, again with no outbound product shipped by rail; and finally in 2010, APT received 52 carloads, with no outbound product shipped by rail.

I was candid with APT regarding my intentions of acquiring the railroad, abandoning its rail line in Oakland County, Michigan and conveying the abandoned right-of-way to local units of government who would develop it into a recreational trail.

By November of 2009 I had negotiated a purchase of the note and mortgage that CIT Group held and reached an agreement to purchase the two owners' interests in the Michigan Air-Line Railway Co. Part of the negotiation with the owners was to have them perform MAL Railway's "Common Carrier" obligation to the sole shipper on the line, APT, until such time as an abandonment was granted by the STB for the Railroad.

Subsequent to my purchase of MAL Railway in November of 2009, a Notice of Exemption was filed with the STB for the eastern portion of the rail line in Oakland County, and in Docket No. 1053X (Service Date: August 24, 2010) the STB granted the exemption. Thereafter the abandoned right-of-way was sold to the West Bloomfield Parks and Recreation Commission for extension of their existing trail system.

The Commerce, Walled Lake and Wixom Trailway Management Council ("Council"), which was formed pursuant to an interlocal agreement between Commerce Township and the cities of Wixom and Walled lake, has applied for grant monies to acquire the balance of the railroad real estate (5.45 miles) upon its abandonment, thereby completing the "Pontiac Trail System" across the State of Michigan.

During 2010 I met with APT on three occasions to discuss the Railroad's future. APT built additional storage at its facility and secured bids for transporting their raw materials by truck. APT informed me that because of their declining use of the Railroad, as well as its declining use by other shippers, they did not intend to protest an abandonment. Over the last ten years several shippers on the Railroad have stopped shipping by rail and now only APT remains with their rail use declining each year.

The revenue the Railroad receives for serving APT does not cover the expense incurred to serve them. The railroad cannot generate a profit serving APT. The railroad cannot reasonably invest money in maintenance or rehabilitation because the investment cannot be recovered.

The value of the real estate and track materials, estimated rehabilitation costs and annual maintenance of-way expense have been identified in the Petition for Exemption.

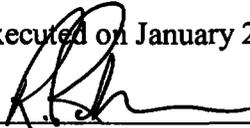
MAL Railway has received a bid to buy the track assets of MAL Railway in the amount of \$543,500. FRA inspections as well as the Railroad's own inspections would indicate that approximately \$186,800 need to be invested in tie and spike replacement and tamping of the Service Line, signal and crossing repairs. Once rehabilitation was complete, a class III railroad rate of \$6000/mile annually for maintenance (as approved by the STB) would be required to maintain the Service Line.

The revenue generated by the railroad does not justify investing in maintenance or rehabilitation at these levels.

**VERIFICATION**

I, R. Robert Butler, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on January 26, 2011



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R. Robert Butler, President  
Michigan Air-Line Railway Co.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-1053 (Sub-No. 1X)**

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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

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**PETITION FOR EXEMPTION**

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**EXHIBIT E**

**VERIFIED STATEMENT OF MARTIN RAMSEY**

Michigan Air-Line Railway Co.  
Petition For Exemption – In Oakland County, MI.

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VERIFIED STATEMENT OF MARTIN RAMSEY

My name is Martin Ramsey and I am the Chief Financial Officer (“CFO”) and Secretary of the Michigan Air-Line Railway Co. (“MAL Railway”). My business address is 7160 South 29<sup>th</sup> Street, Suite 3, Lincoln, NE 68516. The purpose of this Verified Statement is to provide background regarding my position with the railroad and to describe how I developed the costs incurred by MAL Railway in satisfying its common carrier obligation over a forecast year. These expenses relate to maintenance and rehabilitation on MAL Railway’s Line, for which abandonment is sought pursuant to the Petition for Exemption to which my Verified Statement is attached.

In November 2009, Browner Turnout Co. purchased all of the issued and outstanding shares of common stock of MAL Railway, at which time I was elected CFO and Secretary. Subsequently, all of said stock was transferred to RKB Holdings, Inc. I continue to serve as the CFO for Browner Turnout Co., a position I have held for five years. My duties with Browner Turnout Co. and MAL Railway involve planning and budgeting, acquisition modeling, revenue collections, expense reconciliation and profitability analysis.

I previously served as Executive Vice President of the First National Bank and Trust of Syracuse, Nebraska, and my duties at the bank involved commercial and agricultural lending, asset and liability analysis, investment portfolio analysis and bank management.

The following sets forth the methodology which I employed in calculating the expenses incurred by MAL Railway during a forecast year.

1. **Background.** As explained in the Verified Statement of R. Robert Butler (**Exhibit D**), MAL Railway has outsourced the operations of its rail line in Oakland County, Michigan, to a third-party service provider (“Service Provider”) since the railroad was purchased in November 2009, in order to fulfill MAL Railway’s common carrier obligation. Here, it is important to note that the entire Line for which abandonment exemption is sought is not required to provide service to the sole shipper on the Line, American Plastic Toys, Inc. (“APT”). The Line being abandoned is 5.45 miles in length, extending from Railroad Milepost 45.26, at the west line of Haggerty Road, to Railroad Milepost 50.65 at the interchange with CSX Railroad. However, the segment of the Line required to serve APT is 3.65 miles in length. It extends from Railroad Milepost 47.00, which is a short distance from the west line of Decker Road, to Railroad Milepost

50.65 at the CSX interchange. Because of the logistics of picking up the inbound carloads at the CSX interchange and delivering them to APT the Service Provider utilizes track east of the Walled Lake Depot to nearly Decker Road. For clarity, I will reference the segment of the Line needed to serve APT as the "Service Line."

The expenses incurred by the Service Provider to operate the Service Line will ultimately be MAL Railway's expenses; however, the Service Provider has paid for all the expenses it has incurred from the division of revenue generated from interstate shipments and by contracting independently with APT. The Service Provider also has negotiated with MAL Railway for the use of motive power, office space and locomotive shop.

It is important to note, however, that the expenses incurred by the Service Provider do not constitute all of the expenses attributable to the Line. Notably, the Service Provider has not incurred any maintenance of way or rehabilitation costs, which remain the obligation of MAL Railway, and, due to its arrangement with MAL Railway, the Service Provider has not incurred all of the costs normally associated with providing rail common carrier service.

Using data obtained from various sources, I will endeavor in this Verified Statement to present the Board with an accurate analysis of the maintenance and rehabilitation costs MAL Railway will incur over a Forecast Year, if the Line is not abandoned.

2. **Avoidable Costs.** I consider the costs that would be incurred in the Forecast Year as avoidable costs ("Avoidable Costs"), since they are costs which can be avoided if the Board approves abandonment of the Line. In calculating the Avoidable Costs, I have determined the maintenance and rehabilitation costs of the Line, which collectively constitute the Avoidable Costs.

a. **Maintenance of Way Costs.** The projected cost for MAL Railway to maintain the track over the Forecast Year was calculated by using an average maintenance cost of \$6,000 per mile, a cost that the Board has recognized as a reasonable estimate of such cost in other abandonment cases. *See, e.g., Conrail – Aban. – bet. Warsaw & Valp. Counties, IN 9 I.C.C.2d 1299, 1304 (1993).* Therefore, applying that average per mile maintenance cost to the length of the Service Line (3.65 miles) produces a projected maintenance cost of \$21,900 ( $\$6,000 \times 3.65 \text{ miles} = \$21,900$ ).

b. **Rehabilitation Costs.** FRA inspections conducted over the past three years have indicated that, tie replacement, spike installation and tamping of the line would need to be addressed.

In response to the inspections by the FRA, MAL Railway would implement in the Forecast Year a tie replacement program, providing for the replacement of one

tie for every five existing ties on the Service Line. MAL would replace 2,375 ties on this segment at a replacement cost of \$63.00 per tie, for a total cost of \$149,625 in the near term.

Tamping and regulating of the line is another project that the FRA suggested should take place if operations. An estimate was obtained from Denny Dardeen of Railworks, Inc., who projected a cost of \$298 per ½ mile, with mobilization costs of \$5,000 to set up and \$5,000 to take down. The total cost of this project would be \$12,175 over the Forecast Year.

In addition to the FRA directives, MAL Railway received notice from the Michigan Department of Transportation that road crossings at two locations and signals at two other locations on the Line will need to be repaired. The cost to repair the crossings and signals at Benstein Road, Ladd Road and Maple Road is estimated to be a minimum of \$25,000 in the Forecast Year.

The rehabilitation projects that would need to occur during the Forecast Year produce a total cost of \$186,800.

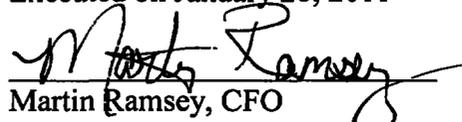
c. Summary of Avoidable Costs. Over the Forecast Year of 2011, the maintenance of way costs are estimated to be \$21,900, and rehabilitation costs are estimated to be \$186,800. Thus, the total Avoidable Costs for the Forecast Year are estimated to be \$208,700.

3. Forecast Year Net Revenue. MAL Railway will not derive any revenues from the performance of its common carrier obligations during the Forecast Year. Annual avoidable costs are \$208,700, resulting in a net loss of \$208,700.

## VERIFICATION

I, Martin Ramsey, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on January 26, 2011

  
Martin Ramsey, CFO  
Michigan Air-Line Railway Company

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-1053 (Sub-No. 1X)**

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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

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**PETITION FOR EXEMPTION**

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**EXHIBIT F**

**COMBINED ENVIRONMENTAL AND HISTORIC  
REPORT**

**Certificate of Compliance with Environmental and Historic Report Service Requirements**

**49 CFR § 1105.11 – Distribution of Environmental and Historic Reports**

The undersigned hereby certifies that Michigan Air-Line Railway Co. has complied with the Environmental and Historic Reports distribution requirements of 49 CFR § 1105.7 and 1105.8, and with the related transmittal letter requirements of 49 CFR § 1105.11. Specifically, on January 5, 2011, I caused a copy of the Combined Environmental and Historic Report (which follows this certification in Exhibit E to the Petition for Exemption), to be distributed to the following under cover of a transmittal letter in the form prescribed at Section 1105.11 (an example of which is attached hereto as Attachment 1):

Greg Johnson, Chief Operations Officer  
Michigan Department of Transportation  
425 W. Ottawa Street  
P.O. Box 30050  
Lansing, Michigan 48909

Kirk T. Steudle, Director  
Michigan Department of Transportation  
2700 Port Lansing Road  
Lansing, Michigan 48906

Rodney Stokes, Director  
Michigan Department of Natural Resources & Environment  
P.O. Box 30473  
Lansing, Michigan 48909

Andrew Hartz  
Land and Water Management Division  
Michigan Department of Natural Resources and Environment  
2770 Donald Court  
Warren, Michigan 48092-2793

L. Brooks Patterson, County Executive  
Oakland County  
Executive Office Building – 41 West  
2100 Pontiac Lake Road  
Waterford, Michigan 48328-0409

Kathleen Jackson, Administrator  
Commerce, Walled Lake and  
Wixom Trailway Management Council  
2009 Township Drive  
Commerce Township, Michigan 48381

The Honorable Brian Calley  
Lieutenant Governor of Michigan  
Romney Building  
111 S. Capitol Avenue, 5<sup>th</sup> Floor  
Lansing, Michigan 48933

Susan Hedman, Regional Administrator  
Region 5 – US Environmental Protection Agency  
77 West Jackson Boulevard, Mailcode: R-19J  
Chicago, Illinois 60604

Robert Kaplan, Director  
Office of Regional Counsel  
Region 5 – US Environmental Protection Agency  
77 West Jackson Boulevard, Mailcode: R-19J  
Chicago, Illinois 60604

Tameka Dandridge  
U.S. Fish and Wildlife Service  
East Lansing Field Office  
2651 Coolidge Road, Suite 101  
East Lansing, Michigan 48823

Charlie Stockman  
Rivers, Trails and Conservation Assistance Program  
National Park Service  
1201 Eye St., NW, Suite 550B  
Washington, DC 20005

Matt Harrington, National Environmental Coordinator  
Ecological Sciences Division  
Natural Resources Conservation Service  
U.S. Department of Agriculture  
P.O. Box 2890  
Washington, DC 20013

Simon Monroe  
National Geodetic Survey  
N/NGS12  
1315 East-West Highway, #9202  
Silver Spring, Maryland 20910-3282

Martha McFarlane-Faes  
Michigan State Historic Preservation Office  
Michigan Historical Center  
702 West Kalamazoo Street  
Lansing, Michigan 48909-8240

January 5, 2011

A handwritten signature in black ink, appearing to read 'W. Robert Alderson', written over a horizontal line.

W. Robert Alderson  
ALDERSON, ALDERSON, WEILER,  
CONKLIN, BURGHART & CROW, L.L.C.  
Attorney for Michigan Air-Line Railway Co.

January 5, 2011

Greg Johnson, Chief Operations Officer  
Michigan Department of Transportation  
425 W. Ottawa Street  
PO Box 30050  
Lansing, Michigan 48909

Re: *Michigan Air-Line Railway Co. – Abandonment Exemption –  
Line In Oakland County, Michigan, STB Docket No. AB-1053 (Sub-No. 1X)*

Dear Mr. Johnson:

On or after January 28, 2011, Michigan Air-Line Railway Co. (“MAL Railway”) expects to file with the U.S. Surface Transportation Board (“STB”) a Petition for Exemption pursuant to 49 CFR § 1152.60, Subpart G, for MAL Railway to abandon approximately 5.45 miles of rail line (“Line”) located entirely in Oakland County, Michigan. The Line extends westerly from Railroad Milepost 45.26 (Engineer’s Profile Station 2389+72) on the west line of Haggerty Road to Railroad Milepost 50.65 (Engineer’s Profile Station 2677+67) on the right-of-way line of the CSX Railroad in the City of Wixom, Michigan. The Line traverses territory included in United States Postal Service Zip Codes 48390 and 48393. Enclosed is a Combined Environmental and Historic Report (“Report”) describing any expected environmental and historic effects of the proposed abandonment. Attached to the Report as Exhibits 1-1, 1-2 and 1-3 are maps which identify the proposed project.

We are providing this Report so that you may review the information that will form the basis for the STB’s independent environmental and historical analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing or if you have any questions about the STB’s environmental review process, please contact the Section of Environmental Analysis (“SEA”), Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001; TEL: (202) 245-0295 and refer to STB Docket No. AB-1053 (Sub-No. 1X).

Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to the SEA (at the address provided above) along with a copy to MAL Railway’s representative (at the address provided below) would be appreciated within three weeks. Your comments will be considered by the STB in evaluating the environmental and/or historic preservation impacts, if any, of the contemplated action.

Greg Johnson  
January 5, 2011

Attachment 1  
Page 2 of 2

If there are any questions concerning this proposal, please contact either W. Robert Alderson of the law firm of ALDERSON, ALDERSON, WEILER, CONKLIN, BURGHART & CROW, L.L.C., 2101 S.W. 21<sup>st</sup> Street, Topeka, Kansas 66604; by facsimile at (785) 232-1866; by e-mail at [boba@aldersonlaw.com](mailto:boba@aldersonlaw.com); or by telephone at (785) 232-0753; or Dirk H. Beckwith of the law firm of FOSTER, SWIFT, COLLINS & SMITH, P.C., 32300 Northwestern Highway, Suite 230, Farmington Hills, Michigan 48334; by facsimile at (248) 538-3618; by e-mail at [dbeckwith@fosterswift.com](mailto:dbeckwith@fosterswift.com); or by telephone at (248) 539-9918.

Very truly yours,

W. Robert Alderson  
ALDERSON, ALDERSON, WEILER,  
CONKLIN, BURGHART & CROW, L.L.C.  
Attorney for Michigan Air-Line Railway Co.

Enclosure

cc: Vicki Rutson, Director  
Section of Environmental Analysis (SEA)  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-1053 (Sub-No. 1X)**

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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

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**COMBINED ENVIRONMENTAL AND HISTORIC REPORT**

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In connection with the above-captioned proceeding, Michigan Air-Line Railway Co. ("MAL Railway") intends to abandon its rail line located entirely in Oakland County, Michigan, pursuant to a Petition for Exemption filed with the U.S. Surface Transportation Board ("STB" or "Board"). In accordance with the requirements of 49 CFR § 1105.7 (Environmental Reports) and § 1105.8 (Historic Reports), which provisions apply to rail line abandonments (including, as is the case here, a rail line abandonment under the petition for exemption procedures at 49 CFR Part 1152, Subpart G), MAL Railway hereby submits its Combined Environmental and Historic Report.

**ENVIRONMENTAL REPORT**  
**49 CFR § 1105.7(e)(1)-(11)**

***49 CFR § 1105.7(e)(1) Proposed Action and Alternatives***

***Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.***

Michigan Air-Line Railway Co. (“MAL Railway”) proposes to abandon 5.45 miles of its rail line (“Line”) located entirely in Oakland County, Michigan, extending westerly from Railroad Milepost 45.26 (Engineer’s Profile Station 2250+20) at the west line of Haggerty Road to Railroad Milepost 50.65 (Engineer’s Profile Station 2677+67) at the right-of-way line of CSX Railroad. MAL Railway anticipates that it will obtain authority to abandon the Line one hundred ten (110) days after MAL Railway’s Petition for Exemption is filed with the Board on or after January 28, 2011.

If the proposed abandonment is approved pursuant to the Petition for Exemption, MAL Railway will remove or cause to be removed the rails, ties and other track materials from the Line’s roadbed. Subject to the respective rights of first refusal of the Michigan Department of Transportation (“MDOT”) and the Michigan Department of Natural Resources and Environment (“MDNRE”) [as explained in § 1105.7(e)(3)(i) below], once abandonment of the Line has been approved by the Board, MAL Railway anticipates the likelihood of selling the abandoned right-of-way to a governmental entity in Michigan, for use as a recreational trail. The recreational trail would adjoin the west end of the existing West Bloomfield Trail, as extended pursuant to MAL Railway’s sale on December 13, 2010, of its abandoned right-of-way in West Bloomfield Township, Michigan, to the West Bloomfield Parks and Recreation Commission (“WBPRC”). The right-of-way acquired by WBPRC was approved for abandonment by the Board in STB Docket No. AB-1053X (Service Date: August 24, 2010), and it adjoins the west end of the

existing West Bloomfield Trail. Thus, MAL Railway's salvage operations on the Line following its abandonment will not remove the ballast, but will cause the roadbed to be graded to a condition suitable for its use as a recreational trail.

Among the potential purchasers of the Line's right-of-way upon abandonment is the Commerce, Walled Lake and Wixom Railway Management Council ("Council"), which was formed pursuant to an interlocal agreement among governmental entities situated in Oakland County, Michigan. Although the discussion between MAL Railway and the Council have not resulted in a definitive agreement between them, the Council has expressed an interest in acquiring the abandoned Line's right-of-way for use as a recreational trail. To facilitate that possibility, the council has submitted grant applications to the Michigan Natural Resources Trust Fund ("MNTRF") and to MDOT, to obtain moneys that will enable the Council to fund such acquisition. The Council's ability to purchase the Line's abandoned right-of-way depends on whether these grant applications are approved.

The only alternative to abandonment of the Line would be to not abandon it, thereby requiring MAL Railway to continue operating on the Line as a rail common carrier, even though to do so would result in a net revenue loss to MAL Railway.

Maps of the Line proposed to be abandoned are attached hereto as **Exhibit 1-1, Exhibit 1-2 and Exhibit 1-3**. The map in **Exhibit 1-1** is a map that was included as Figure 2 in the Acquisition section of the Council's grant application to MNRTF. It shows the Line highlighted in pink, and it identifies the numerous wetlands adjoining the Line.

**Exhibit 1-2** shows the entirety of MAL Railway's rail line in Oakland County, Michigan, highlighted in yellow, and it shows the proximity of the rail line to other recreational trails. As noted above, the segment of the line in West Bloomfield Township was authorized for abandonment by the STB, and the WBPRC purchased the abandoned right-of-way for use as a recreational trail, to serve as an extension of the West Bloomfield Trail.

The map in **Exhibit 1-2** is contained in the Michigan Air-Line-Railway Trailway Master Plan 2009-2014, which was prepared by the Council. This map illustrates the potential future use of the entirety of MAL Railway's railroad right-of-way in Oakland County, Michigan, as a recreational trail.

The map attached as **Exhibit 1-3** shows the Line in relation to other recreational trails, and in relation to the major streets in the communities (Commerce Township and the cities of Walled Lake and Wixom) traversed by the Line.

Also attached as **Exhibit 1-4** is a map showing the location of the Walled Lake Depot, which will be discussed subsequently in the Historic Report.

**§ 1105.7(e)(2) Transportation System**

*Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.*

There is only one shipper on the Line, American Plastic Toys, Inc. ("APT"), located at 799 Ladd Road, Walled Lake, Michigan 48390, and the revenues generated by serving this shipper are not adequate to offset the costs of such service. APT receives plastic pellets in hopper cars and ships out plastic toys via motor carriers. Over the past several years, APT's traffic volume has decreased substantially. On or about November 12, 2009, R. Robert Butler, President of MAL Railway, met with officers of APT and advised them of MAL Railway's intent to abandon the Line. There were three other similar meetings in 2010 and, as explained in R. Robert Butler's Verified Statement (**Exhibit D**) to the Petition for Exemption, in each instance MAL Railway made APT aware of its intent to abandon the Line. Subsequent to these meetings, APT secured multiple bids for the transloading of its material. The abandonment of the Line will allow MAL Railway to avoid the costs incurred by ownership of the Line.

**§ 1105.7(e)(3) Land Use**

***(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.***

MAL Railway believes the proposed abandonment is consistent with existing local land use plans. In particular, it would appear that the proposed abandonment and potential sale of the Line's abandoned right-of-way to an appropriate governmental entity for use as a recreational trail are entirely consistent with the Oakland County Trails Master Plan ("Master Plan") which was adopted by the Oakland County Parks & Recreation Commission on September 3, 2008. The land adjoining the entirety of the Line includes expansive areas of wetlands and woodlands. This is illustrated by the map attached as **Exhibit 1-1**. Attached hereto as **Exhibit 2** are seventeen photographs (**Exhibit 2-1** through **Exhibit 2-17**) taken of selected segments of the Line and the land adjoining the Line. Several of these photographs illustrate the expansive areas of wetlands and woodlands adjoining the Line.

If the abandoned right-of-way is acquired by a governmental entity for use as a recreational trail, such acquisition would be entirely consistent with the land use in the area. Of pertinence is the fact that the entirety of MAL Railway's rail line in Oakland County is in close proximity to other recreational trails. Once the Line is abandoned, if its right-of-way is acquired by the Council or another governmental entity and developed into a recreational trail, it will adjoin the west end of the extended West Bloomfield Trail. This will eliminate the trail "gap" identified in the Master Plan, between the existing West Bloomfield Trail and the City of Wixom, Michigan.

It should be noted, though, that a Michigan statute (M.C.L.A. 474.58) may serve as an impediment to the foregoing scenario. That statute grants MDOT and MDNRE the right of first refusal to purchase, upon the Line's abandonment, the Line's right-of-way. Each of these

agencies has 60 days from the offer of sale in which to submit to MAL Railway a “reasonable offer” to purchase the abandoned right-of-way. An offer to sell the right-of-way upon abandonment, as required by the statute, was submitted by MAL Railway to each of these agencies by a joint letter dated January 5, 2011. Regardless of whether either of these agencies or another governmental agency purchases the Line’s right-of-way upon abandonment, it will be used for a public purpose.

Draft copies of this report have been sent to Oakland County, Michigan, and the Council, along with a request for their review and comment. If the County or the Council responds to MAL Railway’s request for review and comment, MAL Railway promptly will forward relevant information to the Board.

***(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.***

The land surrounding the Line includes commercial/light industrial properties (see photographs attached as **Exhibits 2-7, 2-8 and 2-12**), a suburban residential area (see photographs attached as **Exhibits 2-5, 2-6 and 2-15**), and includes sizable and wide-open expanses of woodlands and wetlands. The wetlands are identified by the map attached as **Exhibit 1-1** and the wetlands and woodlands are shown in the photographs attached as **Exhibits 2-1, 2-2, 2-3, 2-4, 2-14 and 2-17**. MAL Railway submits that, considering these land characteristics, it is highly unlikely that there is any prime agricultural land that would be affected by the proposed abandonment. MAL Railway has reviewed a custom soil survey report for the general project area. There are areas of the associated soils map designated as “Prime Farmland.” However, MAL Railway respectfully submits that the abandonment of the Line will not affect these areas. To the extent that MAL Railway salvages or causes to be salvaged the rails, ties and other track materials on the Line upon abandonment, access to the right-of-way for salvage operations will be over the right-of-way itself and from the various public streets that cross the existing right-of-

way, thereby avoiding obtaining access by crossing areas of Prime Farmland. A draft copy of this report has been sent to the United States Department of Agriculture, Natural Resources Conservation Service (“USDA/NRCS”) along with a request for its review and comment. If the agency responds to MAL Railway’s request for review and comment, MAL Railway promptly will forward relevant information to the Board.

***(iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by 1105.9.***

Based upon a review of a MDNRE Coastal Zone Management Program map<sup>1</sup> and preliminary consultation with MDNRE Coastal Zone Program staff, MAL Railway does not believe the Line passes through a designated coastal zone. A copy of this report has been sent to MDNRE along with a request for its review and comment. If the agency responds to MAL Railway’s request for review and comment, MAL Railway promptly will forward relevant information to the Board.

***(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. 10905 and explain why.***

MAL Railway has very good reason to believe that the subject right-of-way is suitable for other non-transportation purposes, for the reasons set forth in response to Part 3(i) above. If the subject abandonment is authorized by the Board, MAL Railway anticipates the distinct possibility it will sell and convey the Line’s abandoned right-of-way to the Council or another appropriate governmental entity, for use as a recreational trail, subject to MDOT’s and MDNRE’s respective rights of first refusal, as explained in Part3(i) above.

**§ 1105.7(e)(4) Energy**

***(i) Describe the effect of the proposed action on transportation of energy resources.***

The proposed abandonment will have no effect on the transportation of energy resources.

***(ii) Describe the effect of the proposed action on recyclable commodities.***

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<sup>1</sup> Available at [http://www.michigan.gov/documents/deq/deq-ess-clm-CMPSTAFFMAP\\_225160\\_7.pdf](http://www.michigan.gov/documents/deq/deq-ess-clm-CMPSTAFFMAP_225160_7.pdf).

The proposed abandonment will have no effect on the transportation of recyclable commodities.

***(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.***

The proposed abandonment will have no effect on overall energy efficiency.

***(iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.***

The proposed abandonment will not cause any rail-to-motor carrier traffic diversion of this magnitude.

**§ 1105.7(e)(5) Air**

***(i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) an increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in sub-section (5)(i)(A) will apply.***

The above thresholds will not be exceeded as a result of the proposed abandonment.

***(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either: (A) an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line; (B) an increase in rail yard activity of at least 20 percent (measured by carload activity); or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10505), or a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply.***

The above thresholds will not be exceeded as a result of abandonment.

***(iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent***

*available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.*

Not applicable.

**§ 1105.7(e)(6) Noise**

*If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause: (i) an incremental increase in noise levels of three decibels Ldn or more; or (ii) an increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.*

None of the thresholds identified in item (5)(i) of this section will be exceeded.

**§ 1105.7(e)(7) Safety**

*(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).*

The proposed abandonment will have no detrimental effects on public health and safety.

There are at-grade, right-angle crossings of the Line at the M-5 Connector, Welch Road, Decker Road, Pontiac Trail Road, Ladd Road, Benstein Road, W. Maple Road, Beck Road and Wixom Road. If abandonment of the Line is approved by the Board, each of these crossings will be placed in a condition which satisfies the requirements of the public authority having jurisdiction of the crossing. To the extent that the elimination of the rail crossings improves traffic flow and/or road conditions, then it may be said that the proposed abandonment would benefit public safety.

*(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.*

Not applicable.

***(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.***

Not applicable.

**§ 1105.7(e)(8) Biological Resources**

***(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.***

In connection with this issue, MAL Railway sent a copy of this report to the U.S. Fish and Wildlife Service, along with a request for the agency's review and comment. The agency responded to this request, questioning MAL Railway's original response to this issue. As a result of a subsequent consultation with Tameka Dandridge at the U.S. Fish and Wildlife Service, MAL Railway agreed that its response should be modified, to state as follows: MAL Railway does not believe that the proposed abandonment will have any impact on endangered or threatened species or on any area designated as a critical habitat.

***(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.***

MAL Railway has notified the National Park Service of the proposed abandonment and, with that notification, included a request for the agency's review of this report and comment upon it. If the agency responds to MAL Railway's request for review and comment, MAL Railway promptly will forward relevant information to the Board.

**§ 1105.7(e)(9) Water**

***(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.***

MAL Railway is confident that the proposed abandonment will be accomplished in a manner consistent with applicable water quality standards. In connection with this matter, MAL Railway has notified MDNRE and the United States Environmental Protection Agency ("EPA")

of the proposed abandonment, and, with those notifications, included a request for the agencies' review of this report and their comments upon it. If these agencies respond to MAL Railway's request for review and comment, MAL Railway promptly will forward relevant information to the Board.

***(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.***

MAL Railway believes that no permits under section 404 of the Clean Water Act would be required for the proposed abandonment. In connection with this issue, MAL Railway has sent a copy of this report to the MDNRE, along with a request for the agency's input and comment upon the report. MAL Railway's legal counsel received a copy of a letter dated November 19, 2010, from Laura A. Garrett, Regulatory Project Manager, U.S. Army Corps of Engineers Compliance and Enforcement Branch, to Vicki Rutson, Director, STB's Section of Environmental Analysis, and based on that letter, MAL Railway did not send a copy of this report to USACE. In her letter, Ms. Garrett stated, in part: "In 1984 a portion of the Corps' regulatory responsibilities was assumed by the Michigan Department of Natural Resources and Environment (MDNRE). This project site is within the assumed area. Unless otherwise notified, a separate authorization from the Corps is not required; however, Michigan Air-Line Railway Company may need to obtain a permit from the MDNRE." Ms. Garrett suggested that contact be made with Andrew Hartz, Land and Water Management Division, MDNRE, and she copied Mr. Hartz on her letter.

Accordingly, in addition to the report sent to Rodney Stokes, Director of MDNRE, with a request that MDNRE review and comment on it, a separate copy of the report was sent to Andrew Hartz, with a request that he review and comment on the Report in the context of Ms. Garrett's letter. Director Stokes and Vicki Rutson, Director of the Board's SEA, were copied on that letter.

If a response is received from Mr. Hartz, MAL Railway will promptly forward the response to the Board.

***(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. 1342) are required for the proposed action.***

MAL Railway believes that no permits under section 402 of the Clean Water Act would be required for the proposed abandonment. Upon obtaining authority to abandon the Line, any track removal would be accomplished via access over the existing railroad right-of-way, along with existing access from the various public streets that cross the Line. MAL Railway does not intend, to the extent that it will salvage the track, to create any access roads to reach the various sections of the Line. In addition, MAL Railway does not intend to perform any activities that would cause sedimentation or erosion of the soil, and it does not anticipate any dredging or use of fill in removal of the rails, ties and other track materials. No debris will be discarded along the right-of-way as a result of salvage activities, nor will it be placed or deposited into streams or wetlands, or along the banks of such waterways. Any work along the right-of-way will be subject to appropriate measures to prevent or control spills from fuels, lubricants or any other pollutant materials. It is for all of the above reasons that MAL Railway does not believe that any permits under Section 402 of the Clean Water Act will be required.

As indicated in Section (9)(i), above, MAL Railway has sent copies of this report, along with requests for review and comment, to MDNRE and EPA, and it will forward to the Board any responses it receives from these agencies.

***§ 1105.7(e)(10) Proposed Mitigation***

***Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.***

There will be no adverse environmental impact within the subject project area as a result of the proposed rail line abandonment; therefore, mitigation will not be necessary.

***§1105.7(e)(11) Additional Information for Rail Construction***

Not applicable.

**HISTORIC REPORT**  
**49 CFR 1105.8(d)(1)-(9)**

**§ 1105.8(d) Proposed Action and Alternatives**

The Board's rules governing Historic Reports require that such reports contain the same information regarding the "proposed action and alternatives" as is required by Section 1105.7(e)(1) in connection with Environmental Reports. Because this document is a Combined Environmental and Historic Report, detailed information concerning the "proposed action and alternatives" is set forth in the preceding Environmental Report section of this document, and MAL Railway hereby incorporates here by reference the information provided above in response to the requirements of Section 1105.7(e)(1).

**§ 1105.8(d)(1) Map**

*A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action.*

See **Exhibit 1-4**, which is a map of the Line identifying the location of the Walled Lake Depot. This map, along with a copy of the subject report, has been supplied to the Michigan State Historic Preservation Office ("MSHPO") for the agency's review and comment, along with an Application for Section 106 Review. If this agency responds to MAL Railway's request for review and comment and/or to its Application for Section 106 Review, MAL Railway promptly will forward relevant information to the Board.

A copy of the Combined Environmental and Historic Report also was provided to the National Geodetic Survey ("NGS") with a request for that agency's review and comment. In the transmittal letter, MAL Railway advised NGS that it had engaged Thomas M. Smith, PS, a licensed professional land surveyor, to locate and recover geodetic markers (control stations) which are of record along the Line. Mr. Smith filed a report detailing his efforts but he was

unable to locate any of the control stations. A copy of Mr. Smith's report was provided to NGS, and a copy is attached hereto as **Exhibit 4**.

On November 19, 2010, Simon Monroe of the National Geodetic Survey emailed counsel for MAL Railway, advising of two geodetic markers that "may be located in the area" traversed by the Line. Mr. Monroe's email was forwarded by MAL Railway's counsel to Thomas M. Smith, with a request that he indicate whether he had looked for the two geodetic markers identified in Mr. Monroe's email. Mr. Smith responded by email dated November 22, 2010, indicating he had looked for the markers in question, but that "[n]o remains were found." Mr. Smith's response is consistent with his earlier report, which is attached as **Exhibit 4**.

**§ 1105.8(d)(2) Description of Right-of-Way**

*A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area.*

The Line's right-of-way is approximately 5.45 miles in length, and is generally 50 feet in width. The subject right-of-way includes nine (9) at-grade crossings [see response to 1105.7(a)(7)]. The topography around the Line is generally flat, with an occasional hilly area. As noted in the response to Section 1105.7(e)(3)(i), the land adjoining the Line includes commercial/light industrial properties, suburban residential areas, wide-open expanses of woodlands and approximately 73.9 acres of wetlands. The map in **Exhibit 1-1** shows the locations of the numerous wetlands along the Line. The Council, in a grant application to the MNRTF, identified eleven wetlands along the Line. The photographs in **Exhibits 2-1 through 2-8** illustrate the varied characteristics and topography of the area traversed by and surrounding the Line.

**§ 1105.8(d)(3) Photographs**

*Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area*

To the best of MAL Railway's information, the only structure on the Line that is 50 years old or older is the Walled Lake Depot ("Depot"). Photographs of the Depot are included at Exhibits 2-9, 2-10 and 2-11. The photograph in the latter exhibit was taken in the early 1890's.

***§ 1105.8(d)(4) Background Information on Structures of Interest***

***The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known.***

The Depot was constructed in 1877. It was partially destroyed by fire in the 1940's. (The exact date is unknown.) When the Depot was repaired following the fire, an addition was made to the west end of the Depot. The photograph in Exhibit 2-9 shows the addition.

***§ 1105.8(d)(5) History of Carrier Operations in the Area***

***A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action.***

As background information, MAL Railway had its origin shortly after the Civil War. It was a consolidation of the Michigan Air-Line Railroad Company and the Grand Trunk Railway Company of Indiana, with the Articles of Consolidation being dated July 14, 1868. Attached hereto as Exhibit 3 is a Historic Timeline reflecting the various changes in ownership and operations of MAL Railway to the present.

The Michigan Air-Line Railroad Company laid rails from Richmond to Romeo in 1869. In the 1870s, Michigan Air-Line Railroad was operated under agreement with Michigan Central Railroad, which eventually acquired a majority of the capital stock of Michigan Air-Line Railroad. The planned main line from Wiles to Richmond was never completed, due to financial problems and depression. This caused a segment of the line to become an isolated, dead-end branch line. The last part of the line was sold and then leased to a Company that went bankrupt in 1873, which resulted in the sale of the line at foreclosure and the reorganization of the company in 1875 as Michigan Air-Line Railway Co. The Michigan Air-Line Railway Co. was

operated by its stronger shareholder, Grand Trunk Railway, which eventually merged into Canadian National Railroad and renamed as Grand Trunk Western Railway. Today, the only segment of the original Michigan Air-Line Railroad and Michigan Air-Line Railway Co. lines that have not been abandoned is the last segment from Wixom, Michigan to West Bloomfield Township in Oakland County, Michigan. The proposed abandonment pursuant to Petition for Exemption includes the eastern 5.45 miles of that segment.

**§ 1105.8(d)(6) Summary of Documents in MAL Railway's Possession**

*A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic.*

No such documents are available.

**§ 1105.8(d)(7) Opinion Regarding Historic Character of Structures**

*An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities).*

A review of MAL Railway's records does not provide any guidance as to whether the Walled Lake Depot meets the criteria for listing on the National Register of Historic Places. Perhaps the information (if any) provided by the Michigan State Historic Preservation Office, in response to MAL Railway's request for a Section 106 review, will provide an answer. MAL Railway also is unaware of any archeological resources or any other previously unknown historic properties.

**§ 1105.8(d)(8) Known Ground Disturbance or Environmental Conditions**

*A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.*

A portion of the Line was constructed on a series of cuts and fills which appear to date back to the Line's original construction. (MAL Railway has no records to confirm that the subject cuts and fills are original to the Line, but it is MAL Railway's opinion that this is the case.) Over the years, track work and/or construction likely took place on the Line, while it was still fully operational. Original track construction, and subsequent track work and maintenance may have disturbed the potential for recovery of archaeological resources along the Line. MAL Railway is not aware of any environmental conditions that would otherwise affect the archaeological recovery of resources.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB DOCKET NO. AB-1053 (Sub-No. 1X)**

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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

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**COMBINED ENVIRONMENTAL AND HISTORIC REPORT**

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**EXHIBIT 1**

**MAPS**



Oakland County, MI

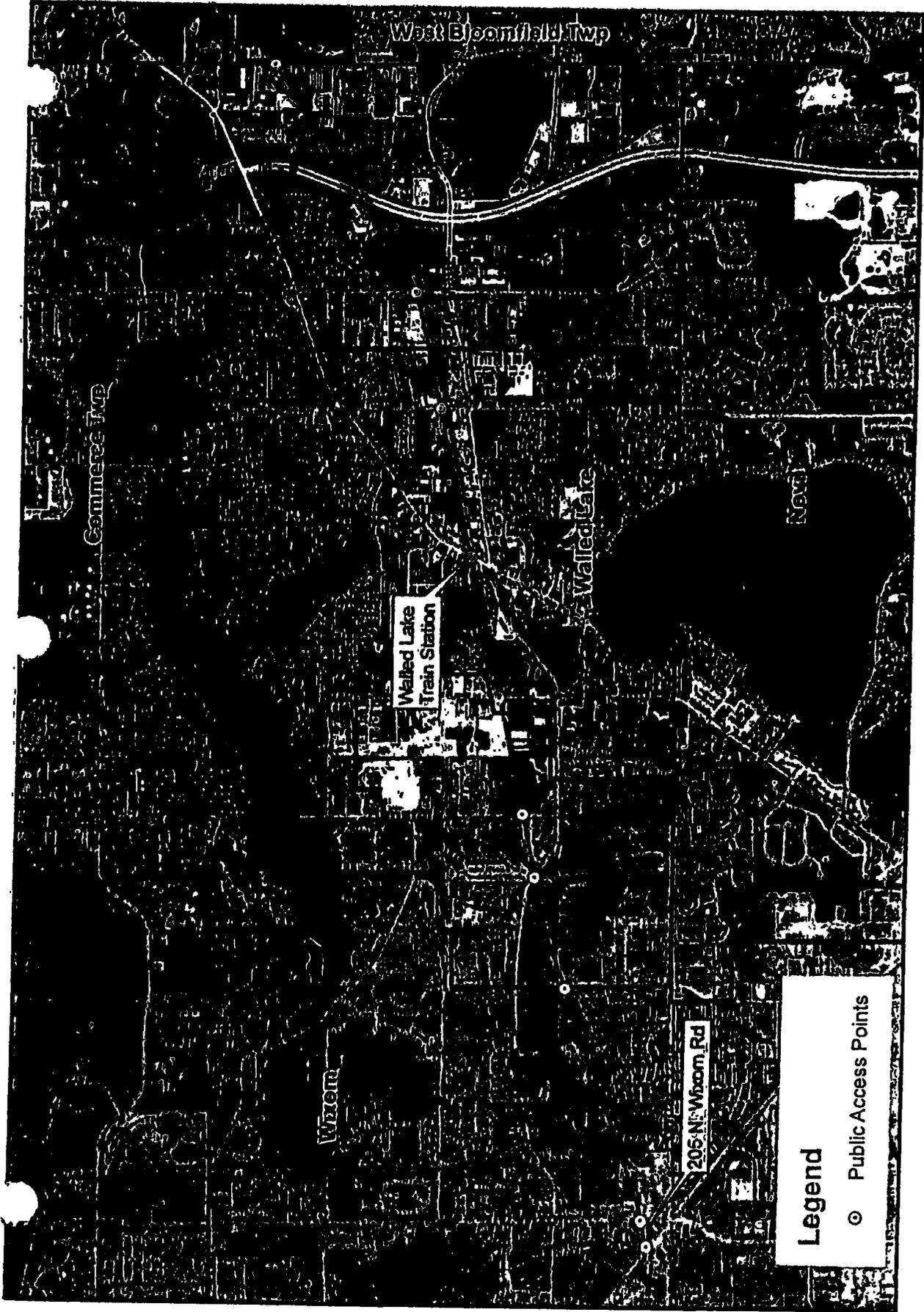
### Coe Railroad

Created for: City of Walled Lake, City of Wixom, & Charter Township of Commerce  
 Created by: AGS, July 31, 2009, ASTI Project 7075

Figure 2 - Site Features  
 Exhibit 1-1







ASTI Environmental

Coe Railroad  
 Oakland County, MI  
 Created for: City of Walled Lake, City of Wixom, & Charter Township of Commerce  
 Created by: AGS, July 31, 2009, ASTI Project 7075

Figure 4 - Public Access Points

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**EXHIBIT 2**

**PHOTOGRAPHS**

EXHIBIT 2-1

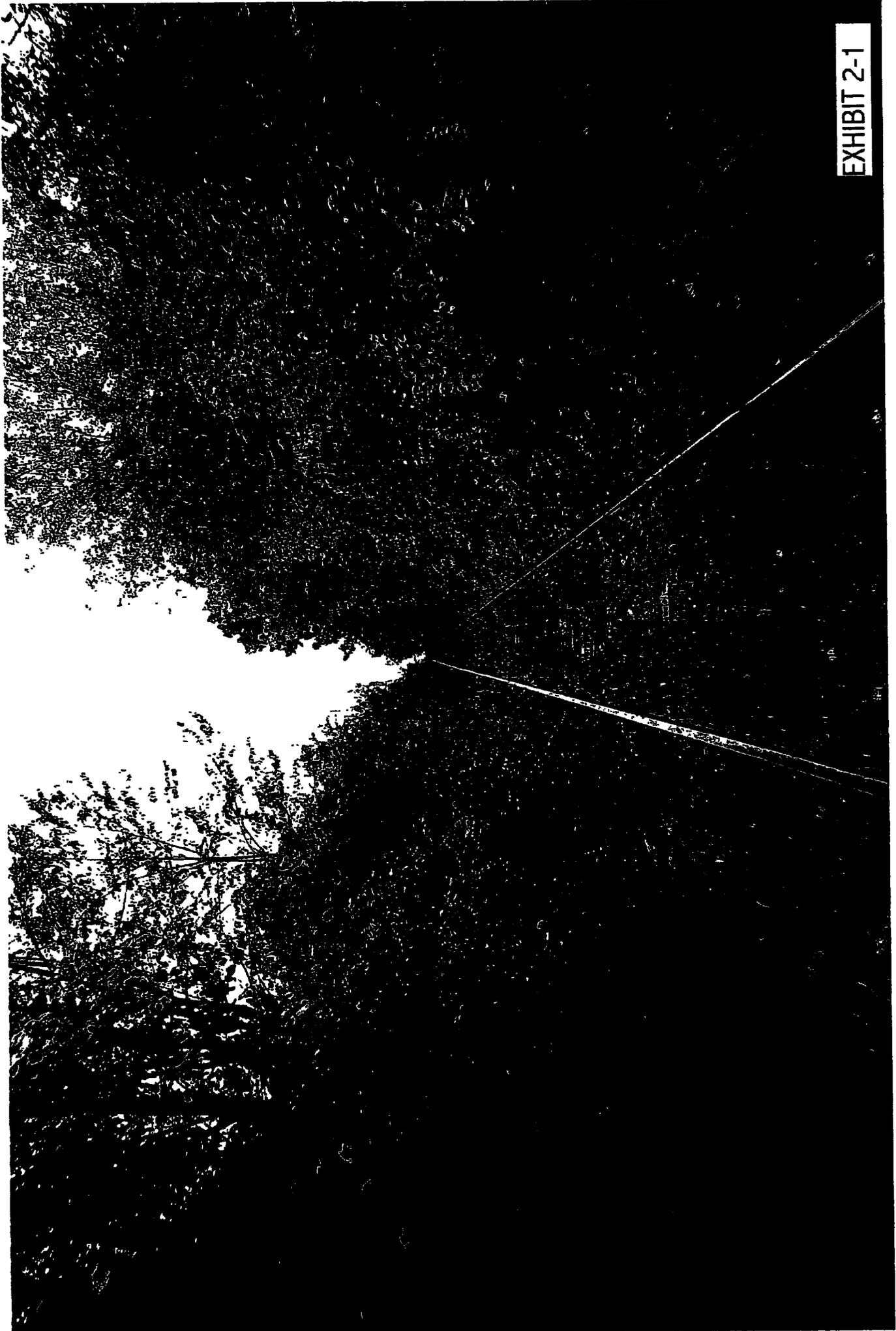




EXHIBIT 2-3

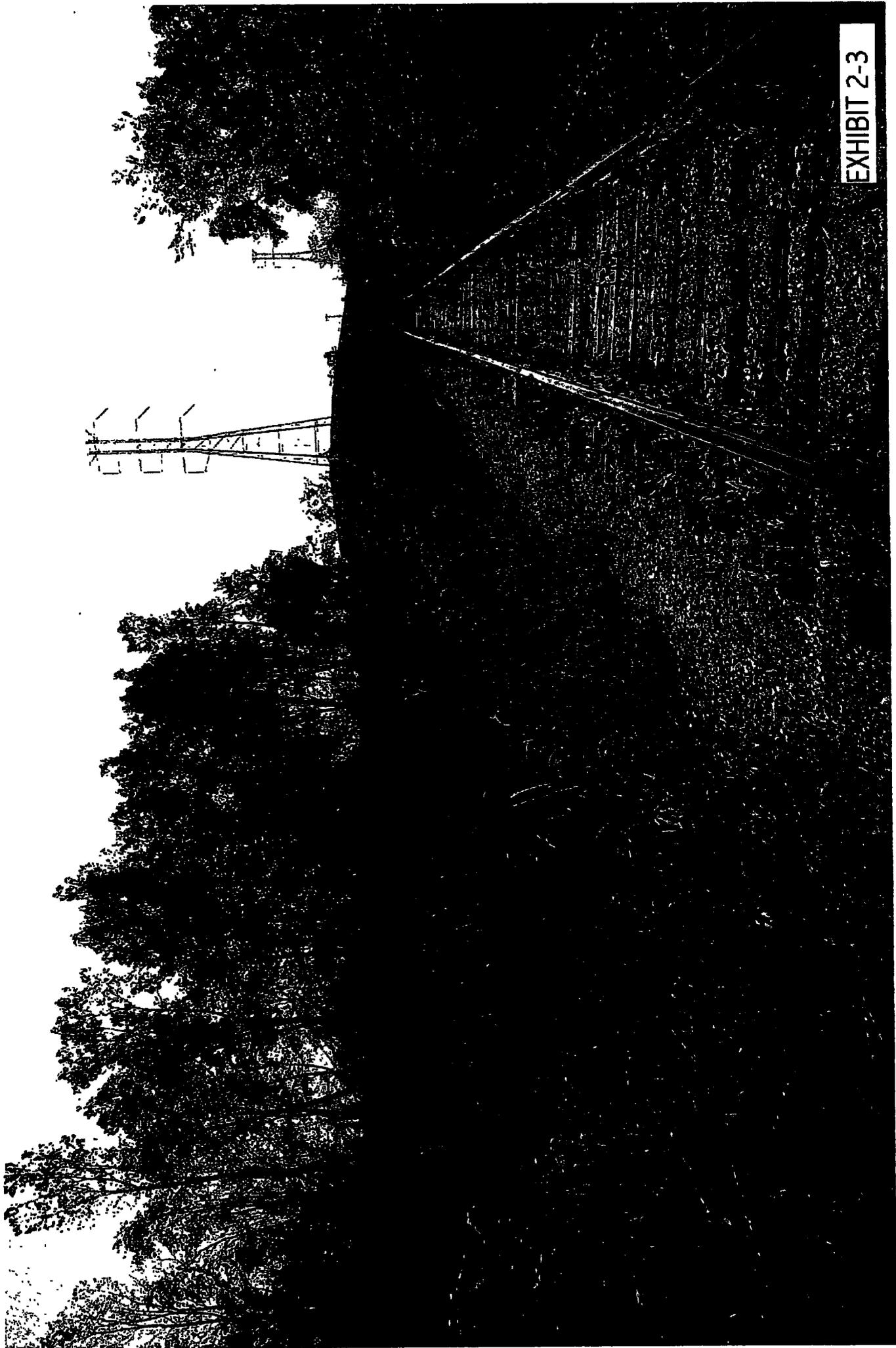
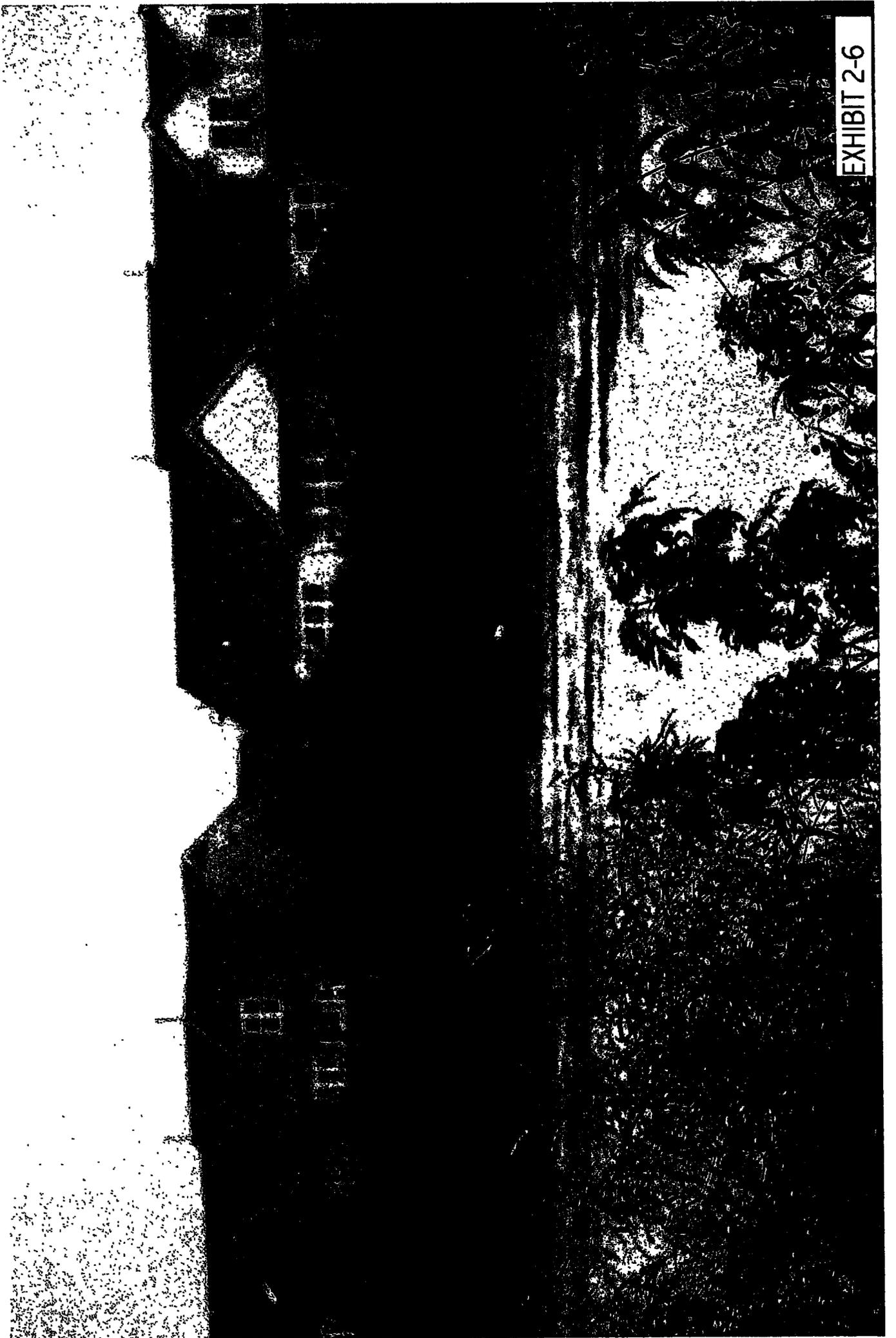




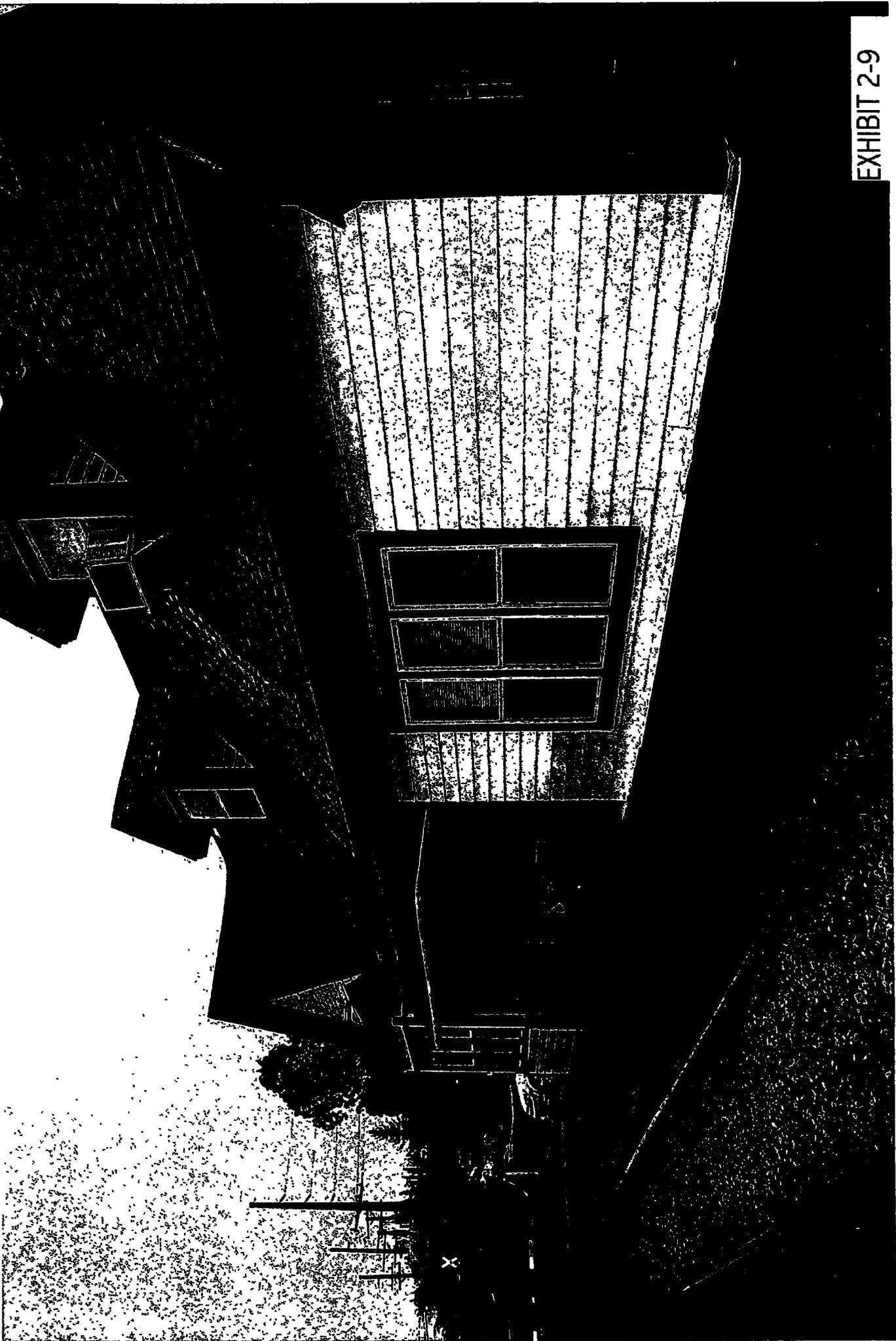


EXHIBIT 2-5











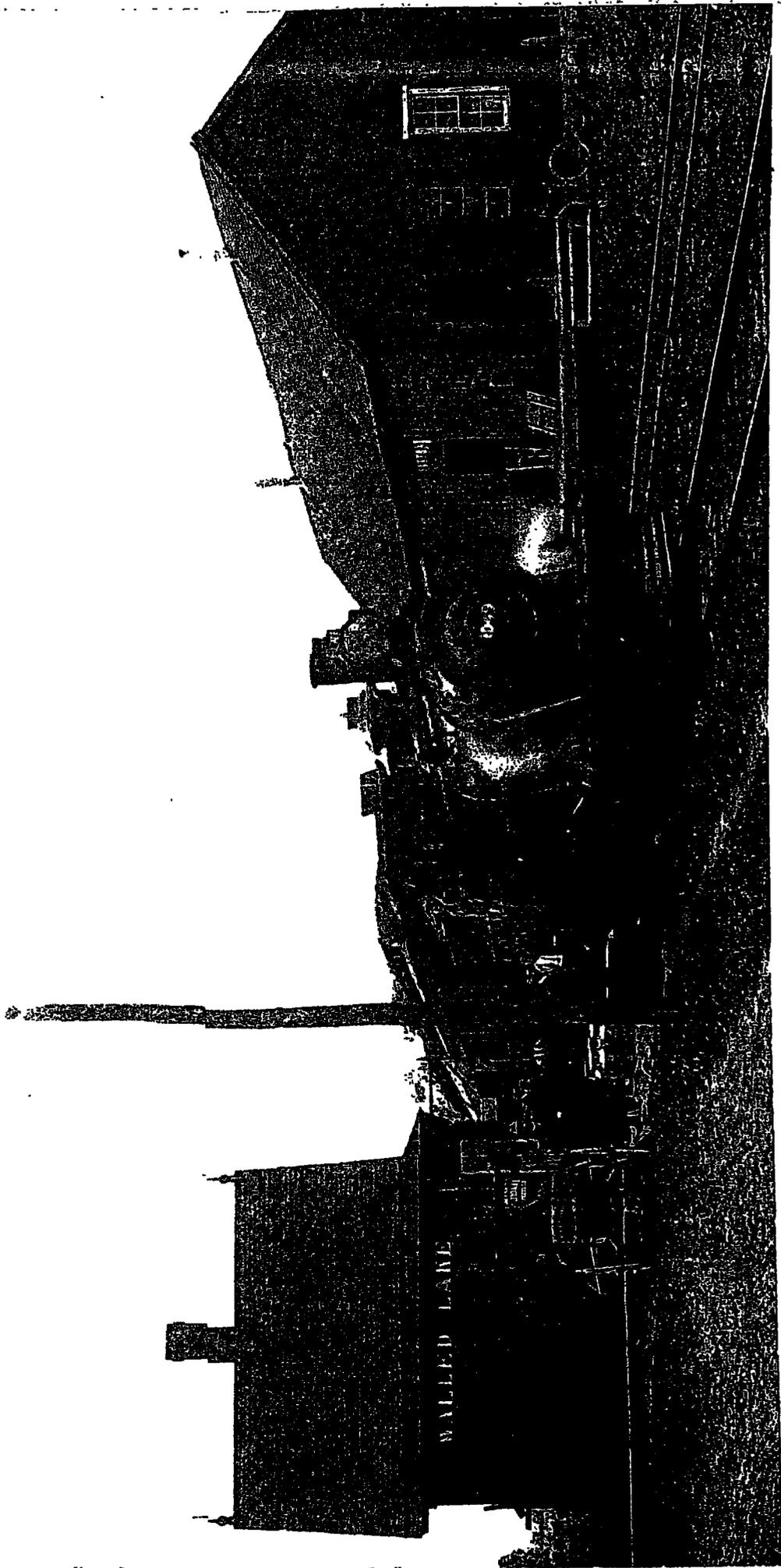


EXHIBIT 2-12



EXHIBIT 2-13

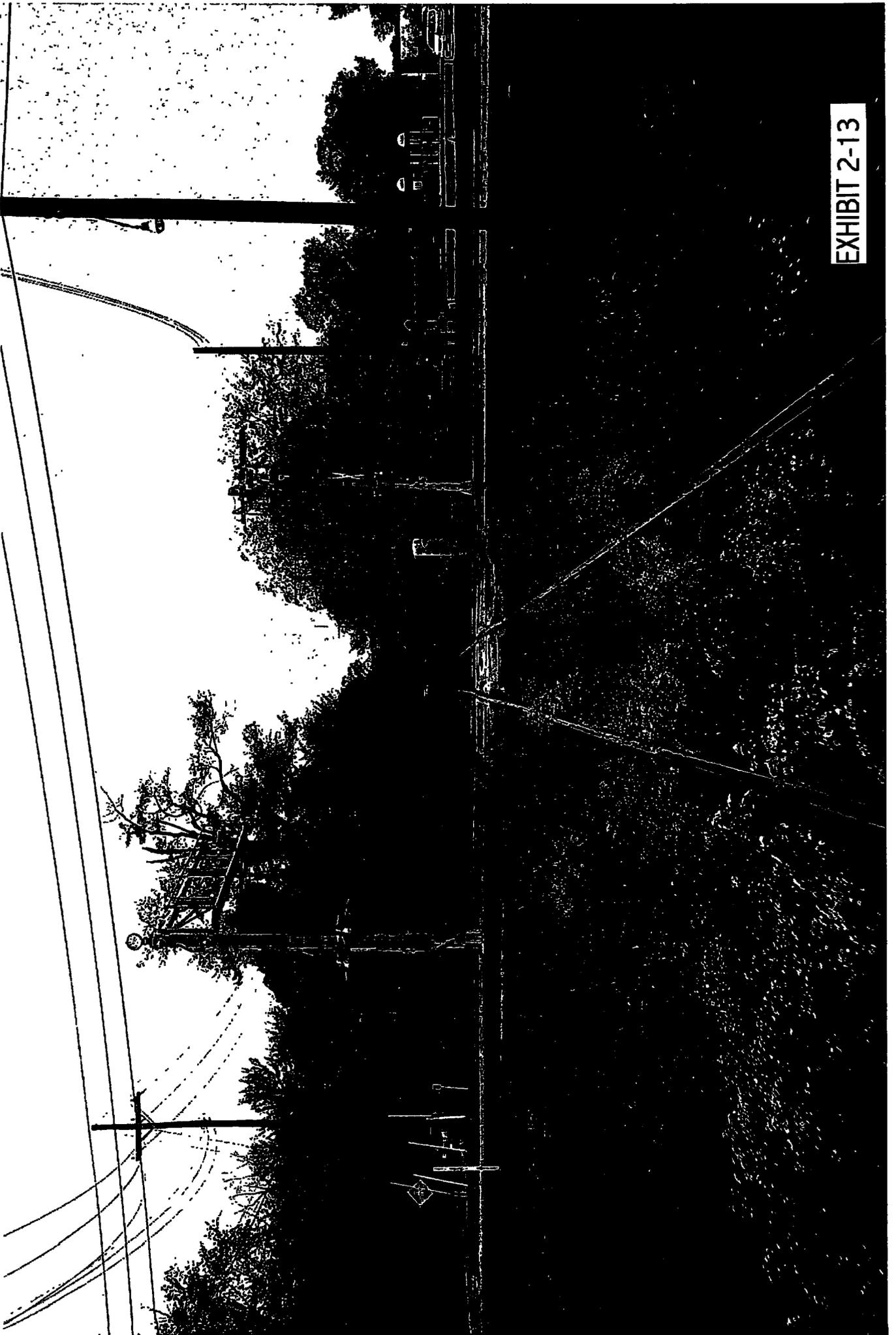


EXHIBIT 2-14



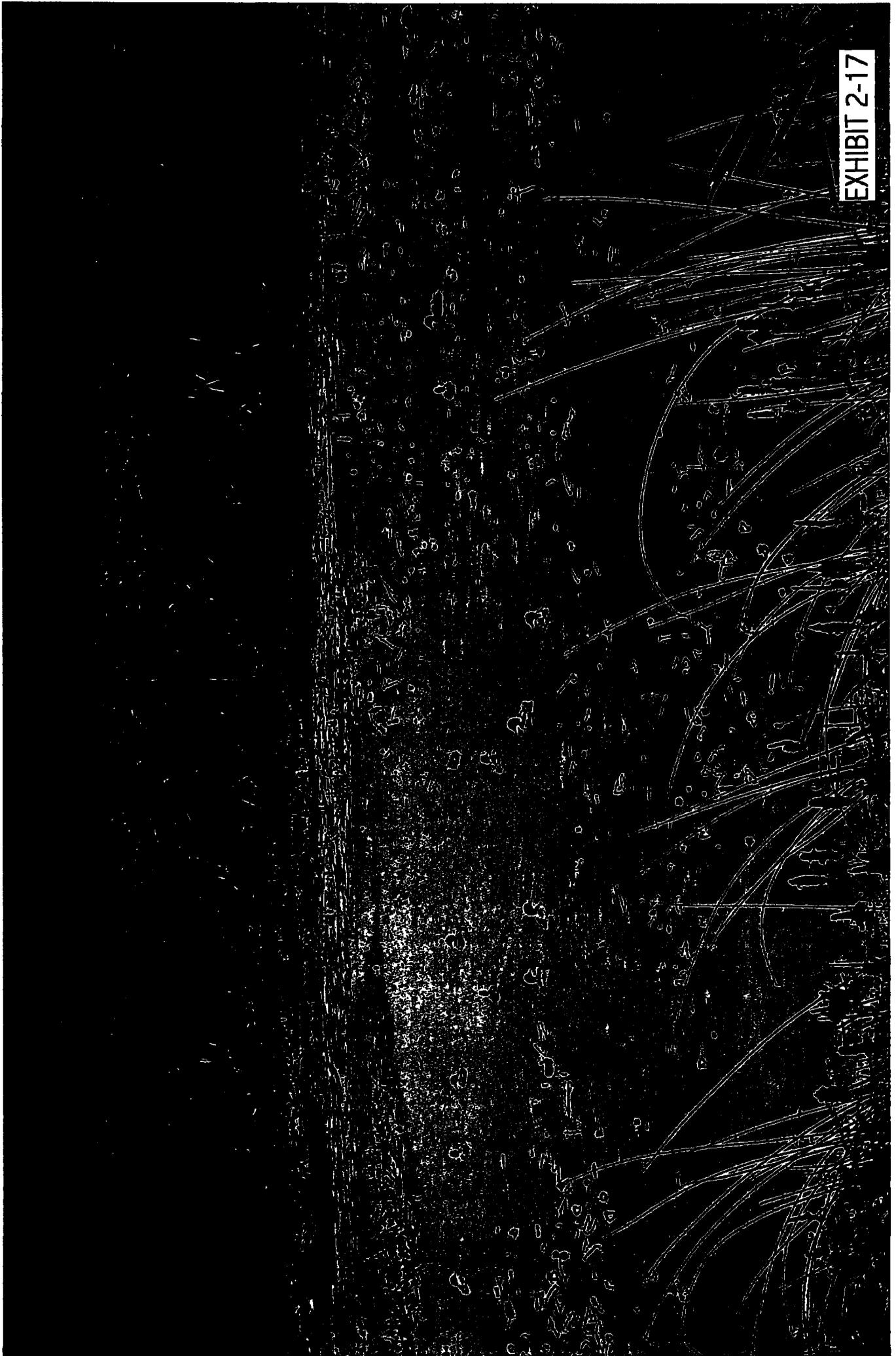
EXHIBIT 2-15



EXHIBIT 2-16



EXHIBIT 2-17



**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

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**COMBINED ENVIRONMENTAL AND HISTORIC REPORT**

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**EXHIBIT 3**

**HISTORIC TIMELINE**

**Historic Timeline of the Michigan Air-Line Railway Co.**

- 1869 – December 9<sup>th</sup>: Michigan Air Line Railroad opens line from Richmond to Romeo Michigan.
- 1870 – Summer: Michigan Air Line Railroad completes line from Jackson to Homer Michigan.
- 1870 – Autumn: Michigan Air Line Railroad extends line from Homer to Three Rivers.
- 1871 – Early Year: Michigan Air Line Railroad completes line north of Jackson between late 1870 and early 1871.
- 1871 – April 17<sup>th</sup>: Michigan legislature enacted a law requiring passenger train conductors to announce the next station in all cars.
- 1872 – 1878: Panic & Depression brings most start-up railroads to their knees.
- 1877: Michigan Air Line Railroad is built from Port Huron to Romeo.
- 1878: Depression ends.
- 1877 – 1883: Michigan Air Line Railroad is slowly built to Jackson.
- 1883: Michigan Air Line Railroad reaches Jackson Michigan from Pontiac. Line is now completed through present day operation which includes Wixom to West Bloomfield.
- 1884 – January 1<sup>st</sup>: Grand Trunk (Michigan Air Line Railway Co.) opens line from Ridgeway to Jackson.
- 1887 – Grand Trunk builds new depot in Walled Lake Michigan. Depot was subsequently used for the offices of Coe Rail Inc.
- 1887 – U.S. Congress creates Interstate Commerce Commission (ICC) to provide for Federal regulation of railroad rates, and ultimately railroads themselves.
- 1923 – Grand Trunk Railway is merged into the Canadian National Railroad (CNR).
- 1928 – CNR consolidates the five railroads that make up the Grand Trunk Railway and renames the company Grand Trunk Western Railway and is the sole US railroad subsidiary of CNR.
- 1984 – Grand Trunk Western Railroad sells the line from Wixom to West Bloomfield to Coe Rail Inc.

- **2006 – June 2, 2006: Coe Rail is acquired by Railmark Holdings, Inc.**
- **June 28, 2006: The name of Coe Rail, Inc., is changed to Michigan Air-Line Railway Co.**
- **2009 – November 11, 2009. Michigan Air-Line Railway Co. is acquired by Browner Turnout Co.**
- **2010 – In STB Docket No. AB-1053X (Service Date: August 24, 2010), Michigan Air-Line Railway Co. was authorized to abandon 2.37 miles of its rail line in West Bloomfield Township, Oakland County, Michigan**

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**STB DOCKET NO. AB-1053 (Sub-No. 1X)**

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**MICHIGAN AIR-LINE RAILWAY CO.  
- ABANDONMENT AND DISCONTINUANCE OF SERVICE EXEMPTION -  
LINE IN OAKLAND COUNTY, MICHIGAN**

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**COMBINED ENVIRONMENTAL AND HISTORIC REPORT**

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**EXHIBIT 4**

**NGS RECOVERY REPORT**

# Thomas M. Smith, PS

Professional Land Surveyor  
Licensed since 1985

## NGS RECOVERY REPORT

EXHIBIT 4  
PAGE 1 of 4

**DESIGNATION: N 106**  
**PID: NE0817**  
**STATE/COUNTY: MI/OAKLAND,**  
**USGS QUAD: WALLED LAKE**

**UNABLE TO RECOVER** control station by using existing witness measurements. The only witness that remains is the intersection of the two railroad tracks. The railway station no longer exists.

**DESIGNATION: M 106**  
**PID: NE0816**  
**STATE/COUNTY: MI/OAKLAND**  
**USGS QUAD: WALLED LAKE**

**UNABLE TO RECOVER** control station by using existing witness measurements. The original station was located in the same general area as N 106. & P 106 .The only witness that remains is the intersection of the two railway lines.

**DESIGNATION: P 106**  
**PID: NE0379**  
**STATE/COUNTY: MI/OAKLAND**  
**USGS QUAD: WALLED LAKE**

**UNABLE TO RECOVER** control station by using existing witness measurements. The station was located near M 106 & N 106. All remaining witnesses might still be in existence. A rail still exists, a small outbuilding remains, although a newer building appears to be erected on the old foundation and the intersection of the two railways exist. I did notice a clump of asphalt, possibly on top of a concrete mound, but I couldn't positively identify this as the control station.

**DESIGNATION: Q 106**  
**PID: NE0378**  
**STATE/COUNTY: MI/OAKLAND**  
**USGS QUAD: WALLED LAKE**

**UNABLE TO RECOVER** control station by using existing witness measurements. The witnesses make no reference to Pontiac Trail so it was difficult to determine what side of the road the station would have been. There are two buildings located on either side of the intersection of the railroad tracks and Pontiac Trail, both could possibly be the original Railway Station as described in the witnesses. However, I couldn't not find any evidence of the station from the witness distance using either building as the Railway Station. The station platform witness no longer remains.

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EXHIBIT 4  
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**DESIGNATION: 48 1/2**  
**PID: NE0377**  
**STATE/COUNTY: MI/OAKLAND**  
**USGS QUAD: WALLED LAKE**

**UNABLE TO RECOVER** control station by using existing witness measurements. The transmission tower 509 still remains. However, the description of the station being 2 feet lower than the rails contradicts the field condition. The ground to the north of the rails at the required distance from the transmission tower is 2 feet **HIGHER** than the rails. The area may have been filled.

I have attached photos for each station.

**DESIGNATION: N 106**  
**PID: NE0817**



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**DESIGNATION: M 106**

PID: NE0816,

EXHIBIT 4

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**DESIGNATION: P 106**



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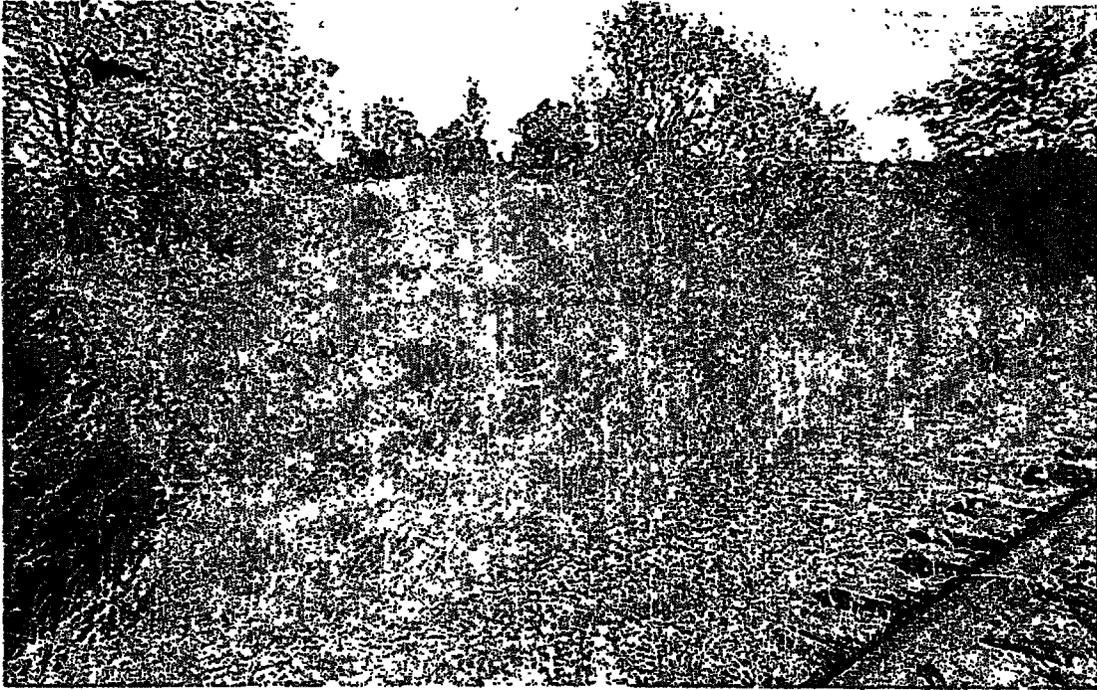
**PID: NE0818**

**DESIGNATION: 48 1/2**

**PID: NE0377**

**EXHIBIT 4**

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**DESIGNATION: Q 106**

**PID: NE0378**

