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December 16, 2024

Via E-Filing

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

Re: ***SMS Rail Service, Inc.***
Petition for Declaratory Order of Township of Pilesgrove, Salem County, NJ; &
Petition for Leave to Intervene of Township of Mannington, Salem County, NJ
STB Finance Docket No. 36770

Dear Ms. Brown:

SMS Rail Service, Inc. hereby provides its Reply Evidence and Argument to Pilesgrove Township's and Mannington Township's Petitions for Declaratory Order and Supplemental Evidence and Argument, with exhibits, in the above-referenced proceeding.

Please note that the verification required is contained in Exhibit C to the Reply.

If there are any questions about this matter, please contact me by phone (215-880-6913) or email (rak@berklein.com).

Thank you.

Respectfully,

/s/ Robert A. Klein
Robert A. Klein

cc: All parties shown on the attached service list

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BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWNSHIP OF PILESGROVE, N.J.	)	FINANCE DOCKET
PETITION FOR DECLARATORY ORDER	)	NO. 36770

REPLY EVIDENCE AND ARGUMENT OF SMS RAIL SERVICE, INC. TO PILESGROVE TOWNSHIP'S AND MANNINGTON TOWNSHIP'S PETITIONS FOR DECLARATORY ORDER AND SUPPLEMENTAL EVIDENCE AND ARGUMENT

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To Honorable Board Chairman Primus, and Board Members Fuchs, Schultz, and Hedlund:

On behalf of SMS Rail Service, Inc. ("SMS"), the undersigned counsel for SMS submits this reply evidence and argument to Pilesgrove Township's ("Pilesgrove") and Mannington Township's ("Mannington") (together, the "Townships") petitions for declaratory order and intervention, respectively, and supplemental evidence and argument in support of their petitions filed with the Surface Transportation Board ("STB" or "Board") regarding the rail line in Salem County, New Jersey ("Salem County"). The rail line is long known as and referred to in the land or tax records of Salem County as the Salem County Railroad (herein referred to as the "Salem Branch").

This case exemplifies why interference by state and local municipalities through land use permitting and zoning requirements must be avoided. As a federal district court has stated, such requirements "can interfere with Congress' attempt to 'ensure the development and continuation of a sound rail transportation system' and to 'reduce regulatory barriers to entry into … the industry."[1] In this case, as shown by Pilesgrove and Mannington Townships' concerted refusal to inspect the subject rail facilities on or along the Salem Branch despite SMS's invitations and willingness to have such inspections, and litigation that is a charade, the Townships are intent on frustrating "Congress' policy of deregulating and rejuvenating the railroad industry," at least in Salem County.[2]

I. PROCEDURAL HISTORY

Pilesgrove's petition, dated April 22, 2024, docketed with the STB on May 1, 2024, seeks a determination regarding the extent to which certain facilities constructed and operated by SMS

[1] *Norfolk Southern Railway v. City of Austell*, 1997 WL 1113647 *7 (N.D. Ga. 1997), citing 49 U.S.C. § 10101.

[2] *Id*.

along the Salem Branch on land owned by SMS within Pilesgrove Township, shown on Salem County Tax Map Block 73, Lots 1 and 3 ("SMS's Property"), are covered by the federal preemption provisions under 49 U.S.C. § 10501(b). *See* Deed as filed with the Salem County Clerk's Office, delivered on March 11, 2022, for the subject property owned by SMS Rail Service, Inc. (attached as **Exhibit A**). Thereafter, on June 10, 2024, Pilesgrove's neighboring municipality, Mannington, filed with the Board a petition to intervene in Pilesgrove's petition for the same determination regarding facilities constructed and operated by SMS on portions of land owned by the Salem County Railroad, c/o the Salem County Freeholders within Mannington Township. Mannington refers to this property, known as the "wye", as being shown on Salem County Tax Map Block 67, Lots 14.01, 14.02 and 18. ("Salem County Railroad's Property"). However, as discussed below, the wye is actually located within Block 67, Lot 14.01.

By its Decision served September 13, 2024, in response to Pilesgrove's petition, the Board instituted this declaratory proceeding to determine the above issues, and granted Mannington's petition to intervene. Subsequently, the Board adopted a procedural schedule.[3]

On November 7 and 8, 2024, respectively, Pilesgrove and Mannington filed supplemental evidence and argument. The instant reply of SMS to the Townships' submissions is timely.[4]

[3] By its Decision served on October 24, 2024, the Board adopted a procedural schedule, allowing Pilesgrove and Mannington to file supplemental evidence and argument by November 8, 2024, SMS to file reply evidence and argument and other interested persons to file submissions by December 9, 2024, and Pilesgrove and Mannington to file rebuttal statements, and SMS to file a response to submissions by other interested persons by January 7, 2025.

[4] By Decision served on December 6, 2024, upon request of SMS, the procedural schedule was modified to allow SMS to file reply evidence and argument and other interested persons to file submissions by December 16, 2024, and Pilesgrove and Mannington to file rebuttal statements, and SMS to file a response to submissions by other interested persons by January 14, 2025.

II. PRELIMINARY STATEMENT

In 2021-22, having been "underutilized for decades, with rail traffic of only approximately two to three railcars per year over the [previous] five to six years," the Salem Branch received an infusion of hope due to the foresight of the Salem County Commissioners (nee "Freeholders"), through whom the County entered into an agreement with a new operator, the Class III common carrier, SMS.[5] At the time SMS became its operator in 2022, the Salem Branch was "out of service due to lack of maintenance, including significant washouts and undermining of track bed[,] requir[ing] considerable investment in repairs and improvements in order to attract active and robust commerce in the County along and on the [Salem Branch]." May 9, 2022 letter from Salem County to the STB, at p. 1 (Appx. 2 to Notice attached as **Ex. B**).

As discussed below, over the last two years, a substantial portion of the 19.4 mile rail line of the Salem Branch has been made passable and brought into compliance with Federal Railroad Administration ("FRA") Class 2 standards. As a result, SMS has been able to bring freight traffic back to the Salem Branch, and it is continuing to pursue additional freight business for the line. Since 2021-22, freight service on the Salem Branch has increased from 0 to 148 freight train miles in 2023, and 548 freight train miles as of October 2024. *See* Verified Statement of James R. Pfeiffer, Chief Operating Officer of SMS ("J. Pfeiffer Stmt.") (attached as **Exhibit C**). Additional substantial freight cars of upwards of more than 100 per year carrying lumber from outside of New Jersey is anticipated beginning in early 2025, for a new customer scheduled to begin manufacturing operations in a previously dormant part of the Mannington Mills plant in

[5] Correspondence from Salem County to Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings of the STB, dated May 9, 2022 ("May 9, 2022 letter"), at p. 1, attached as Appendix 2 to SMS's Verified Notice of Exemption Under 49 C.F.R. § 1150.41 ("Notice") (attached hereto as **Exhibit B**).

Mannington Township, New Jersey. *See* SMS's notice to Mannington Township, dated October 21, 2024 (attached as **Exhibit D**). Other freight business from the nearby Pureland Industrial Complex, the east coast's largest industrial park,[6] which is approaching its rail capacity and serviced by SMS, is anticipated to utilize the Salem Branch as well.

In light of these facts, among others discussed below, SMS's operations and facilities on or along the Salem Branch are inarguably transportation by rail carrier covered by the federal preemption provisions contained in 49 U.S.C. § 10501, as broadened by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, 807 (1995) ("ICCTA"). But despite the clear and unambiguous legal precedent set down by the Board's decisions applying those provisions, Pilesgrove and Mannington argue that SMS's operations and facilities are not federally preempted because SMS also has conducted over the last two years certain seasonal rail passenger excursions on the Salem Branch. Under well-settled law set forth in the Board's prior decisions, the Townships are wrong.

III. BACKGROUND

A. The Salem County Railroad, a/k/a Salem Branch

The Salem Branch and its current rail lines have existed for more than a century and have long been part of the national rail system subject to the Board's jurisdiction. *See* Salem Branch – Right of Way and Track Maps, dated June 30, 1916, last revised 1956, together with Tax Records for Block 67, Lots 14.01, 14.02 and 18 owned by Salem County Railroad (attached as **Exhibit E**). The original construction of the Branch dates back to about 1850. J.W. Burlage, Jr., "The Salem Branch – A Concise History" at p. 1 (copyright 2021) (attached as **Exhibit F**). It has a long and complicated history, plagued by funding shortages that presented challenges to

[6] *See* https://pureland.com/ (last visited December 13, 2024).

maintain the line and the freight service needed by Salem County's employers. *Id*. at pp. 1-6. The rail line is now owned by the Salem County Railroad c/o the Salem County Freeholders, and has a long history of serving shippers and being used by other carriers in interstate and common carrier service. *Id*. *See also,* for example, Tax Maps and Records (**Ex. E**). However, passenger service on the Branch had been non-existent since December 31, 1950 (**Ex. F** at p. 6). And, even after several changes in operators since the mid-1990s (*id*.), by about 2021, the Salem Branch had ***no*** freight traffic. Salem County's May 9, 2022 letter to STB (Appx. 2 to **Ex. B**).

B. <u>Salem County's Desire to Increase Commerce By Restoring the Railroad</u>

Salem County, the owner of the property, right-of-way, and rail line comprising the Salem Branch, aimed to attract and add "active and robust commerce in the County along and on the [Salem Branch]," and it determined that having SMS, a Class III rail carrier, operate the Branch would enable the County to achieve its goal. May 9, 2022 letter from Salem County to STB, at p. 2 (Appx. 2 to Notice attached as **Ex. B**). SMS has a proven track record as a common carrier in several states[7] and, even more, since 1994, has been the common carrier of the rail line in the highly successful Pureland Industrial Complex in neighboring Logan Township, Gloucester County ("Pureland"),[8] located only few miles from the northerly portion of the Salem Branch, and where, in the last four years, an average of 6,000 freight cars have been serviced annually. *See* J. Pfeiffer Stmt. (**<u>Ex. C</u>**). In fact, Pureland and the Salem Branch are connected in Gloucester County by a line owned by Conrail, and the proximity of Pureland to the Salem

[7] SMS operates as a Class III Common Carrier in New Jersey, Pennsylvania, and New York. *See* J. Pfeiffer Stmt. (**<u>Ex. C</u>**).

[8] In 1994, SMS was first authorized to become a rail carrier providing common carrier railroad carriage by authority of the Interstate Commerce Commission (predecessor of the STB) Finance Docket No. 32494, *SMS Rail Service, Inc. – Lease and Operate Exemption – Pureland Associates*, 59 Fed. Reg. 27298 (May 26, 1994).

Branch presents opportunity for freight on the Branch. Because Salem County determined that SMS is "capable of improving, maintaining, and providing service on the [Salem Branch]," it awarded to SMS a contract to be the new operator of the Branch. Salem County's May 9, 2022 letter at p. 2 (**Ex. B**). Specifically, SMS and Salem County entered into a Rail Line Service Agreement, as of March 30, 2021 ("RLSA"), whereby SMS acquired the Salem Branch by lease in order to operate and provide exclusive rail service on the Salem Branch. *Id*. at p. 2; a copy of the RLSA is attached as **Exhibit G**.

C. SMS Rail Service, Inc., is a Well-Established Class III Rail Carrier

On June 10, 2022, pursuant to 49 C.F.R. § 1150.41 *et seq*., SMS, a Class III rail carrier since 1994,[9] filed with the Board notice of its class exemption from 49 U.S.C. § 10902 for its acquisition of the Salem Branch by lease from Salem County, to replace two prior operators of the Branch. The Branch, as has existed for decades, comprises approximately 19.4 linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks, and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by Salem County known as the Salem County Railroad located primarily in Salem County and in part in Gloucester County, New Jersey, between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey. *See* SMS's Verified Notice of Exemption Under 49 C.F.R. § 1150.41 ("Notice") (**Ex. B**), and the map of the Salem Branch (attached to the Notice as Appendix 1); *see also* SMS's supplement to its Notice, filed June 29, 2022 (attached as **Exhibit H**).

[9] *See supra* n.8.

On July 15, 2022, rail carrier authority to operate the Salem Branch was granted to SMS by the STB in its Decision in STB Finance Docket No. 36529, *SMS Rail Service, Inc. – Change in Operator Exemption Including Acquisition by Lease – Salem Branch Line in Salem and Gloucester Counties, N.J.*, 87 Fed. Reg. 42536 (July 15, 2022).

D. Growth in Freight Service on the Salem Branch

Economic development and revitalization of long inutile rail lines takes time. Pursuant to the New Jersey Department of Transportation's Rail Freight Assistance Program, as well as Salem County's and SMS's own funds, substantial funding has been utilized, obtained, and/or is in process for the Salem Branch's preservation, rehabilitation, and enhancement. *See, e.g.*, NJDOT Rail Freight Assistance Program 2022 Grant Application Proposed Project(s) List, attached as **Exhibit I**. To date, a substantial portion of the 19.4 mile Branch has been made passable and brought into compliance with FRA Class 2 standards. As a result, SMS has been able to bring freight traffic back to the Salem Branch, and it is continuing to pursue additional freight business for the line. Since 2021-22, freight service on the Salem Branch has increased from 0 to 148 freight train miles in 2023, and to 548 freight train miles as of October 2024. *See* J. Pfeiffer Stmt. ¶ 2 (**Ex. C**). After years of no freight cars on the Branch, in 2023 and 2024, the number of freight cars serviced increased, including by reinstating service to the South Jersey Farmers Exchange,[10] as follows:

[10] The South Jersey Farmers Exchange provided a letter of support of SMS to become operator of the Salem Branch. *See* letter from Lee Williams, Owner of the South Jersey Farmers Exchange, to Benjamin H. Laury, Salem County Commissioner Director, dated February 11, 2021, attached as Exhibit C to the Supplemental Verification of Jeffrey L. Sutch in Support of Verified Notice of Exemption of SMS Rail Service, Inc. (**Ex. H**).

2023:	
South Jersey Farmers Exchange	3 cars in/3 cars out
Toys for Tots	1car in/1car out [11]
2024:	
South Jersey Farmers Exchange	14 cars in/14 cars out
Environmental Rail Solutions (ERS) (SMS rebuilds intermodal boxes for ERS at a shop along the Salem Branch. When the boxes are rebuilt, the flatcars with empty, rebuilt boxes are stored until called for service by the customer)	27 cars in/4 cars out

See J. Pfeiffer Stmt. ¶ 5 **(Ex. C)**.

In support of freight services on the Salem Branch, in March and April 2023, SMS established stations with Norfolk Southern Railway ("NS") and CSX Transportation ("CSX"). *See* Junction Interchange Update Forms between SMS and NS, and SMS and CSX, respectively (together attached as **Exhibit J**).

While the seasonal passenger excursions are not SMS's primary goal for the Salem Branch, they have served to put a positive light on the previously inutile rail line. The excursions have grown from 0 passenger train miles in 2022, to 4,204 passenger train miles in 2023 and 3,951 passenger train miles as of October 2024. *See* J. Pfeiffer Stmt. ¶ 2 (**Ex. C).**[12]

[11] As a matter of goodwill, each year SMS operates a train on the Branch for Toys for Tots, stopping at select (published) locations along the line where toys are collected for underprivileged children.

[12] Using refurbished rail cars labeled Woodstown Central Railroad (a fictious name owned by SMS), seasonal excursions are run by SMS every other Saturday/Sunday from Easter weekend to September, every weekend in October (foliage/pumpkins), every other weekend in November (foliage), and on weekends from Thanksgiving to Christmas (Santa). Motive power is provided by SMS locomotives used in both freight and passenger service, operated by T&E employees paid by SMS, who are qualified under relevant FRA regulations to perform Hours of Service functions on the Branch. *See* Verified Statement of Paul C. Harland, Director of Passenger Operations for SMS ("P. Harland Stmt.") (**Exhibit K**).

IV. SMS's ARGUMENT

A. Applicable Law

In relevant part, 49 U.S.C. § 10501 states:

> (a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is –
>
> (A) only by railroad …
>
> (2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—
>
> (A) a State and a place in the same or another State as part of the interstate rail network; …
>
> (b) The jurisdiction of the Board over—
>
> (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
>
> (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,
>
> **is exclusive**. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation **are exclusive and preempt the remedies provided under Federal or State law**. …

49 U.S.C. § 10501(a) (emphasis added).

In the Board's Decisions in the matter of *Denver & Rio Grande Railway Historical Foundation d/b/a Denver & Rio Grande Railroad, L.L.C.—Petition for Declaratory Order*, Docket FD 35496 ("*Denver & Rio Grande Railway*"),[13] a case factually distinguishable from this instant case, the Board addressed 49 U.S.C. § 10501 and set forth the standard applicable to deciding a case such as this where a common carrier operates freight traffic and passenger excursions on the same rail line. In the Decision, served February 23, 2012, the Board stated:

> In 49 U.S.C. § 10501(a), Congress has given the Board jurisdiction over 'transportation by rail carrier.' As modified by the ICC Termination Act of 1995, [Pub. L. No. 104-88, 109 Stat. 803 (1995) ("ICCTA")], 49 U.S.C. § 10501(b), expressly provides that, where the Board has such jurisdiction, that jurisdiction is 'exclusive,' and therefore **certain state and local laws—including local zoning**

[13] *See* Decisions of the Board in *Denver & Rio Grande Railway*, FD 35496 (served February 23, 2012, August 18, 2014, and March 24, 2015).

> **and permitting laws and laws that have the effect of managing or governing rail transportation—are generally preempted**. [(footnote and citations omitted)]. To be within the Board's jurisdiction and thus covered by § 10501(b) preemption, an activity (1) must constitute 'transportation,' and (2) must be performed by, or under the auspices of, a 'rail carrier.'"

Denver & Rio Grande Railway, at 3-4 (STB served February 23, 2012) (emphasis added).

A "rail carrier" is "a person [such as SMS] providing common carrier railroad transportation for compensation." 49 U.S.C. § 10102(5). SMS is providing such "transportation," which Congress and courts have "defined broadly to include **property and facilities related to the movement of passengers or property by rail**." *Denver & Rio Grande Railway,* at 4 (STB served February 23, 2012) (emphasis added) (citing 49 U.S.C. § 10102(9)(A); *Green Mountain Railroad v. Vermont*, 404 F.3d 638, 642 (2d Cir. 2005)).

The key legal principle in *Denver & Rio Grande Railway* applicable to SMS in this case was stated therein as follows:

> [T]he Board's jurisdiction does extend to rail carriers operating intrastate passenger excursion service, even if they earn the bulk of their revenue from that service, **as long as they are performing more than 'minimal' freight operation in interstate commerce**.

Denver & Rio Grande Railway, at 7 (STB served March 24, 2015) (emphasis added). The Board's Decisions in *Denver & Rio Grande Railway* show that this declaratory order proceeding is to be "fact-intensive." *Id.* at 3 (STB served February 22, 2012). *See also Texas Central Business Lines Corp. v. City of Midlothian*, 669 F.3d 525, 530 (5th Cir. 2012) ("Whether a particular activity constitutes transportation *by rail carrier* under section 10501(b) is a case-by-case, fact-specific determination." (emphasis in original)); *Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp.*, 163 N.J. 446, 457, 750 A.2d 57, 63 (2000) ("manner in which land-use restrictions interfere with interstate commerce is a 'fact-bound question'"), quoting *Borough of Riverdale Petition for Declaratory Order, The New York*

Susquehanna and Western Railway Corporation, FD 33466, 4 S.T.B. 380, 1999 WL 715272 (STB served September 10, 1999). The above principle will be applied below to the facts of this case.

B. The Salem Branch is a Line of Railroad Subject to the Board's Exclusive Jurisdiction

The *Denver & Rio Grande Railway* case is factually inapposite to the instant case, but the above-referenced legal principle set forth in the Board's Decisions in that case, as applied to the facts in this case, direct a finding by the Board that SMS's activities on the Salem Branch are part of "transportation" by a "rail carrier" under the Board's exclusive jurisdiction.

In contrast to Denver & Rio Grande Railway ("DRGHG"), SMS conducts freight operations aside from its intrastate seasonal passenger excursions. And SMS's freight operations on the Salem Branch are "more than 'minimal freight' operation in interstate commerce." *Denver & Rio Grande Railway*, at 7 (STB served March 24, 2015).[14] In fact, SMS's evidence set forth above demonstrates substantially more freight traffic in barely two years' time than the sketchy averments of "less-than-[one-]carload" related to movement of rafts in over a decade alleged by DRGHG. Unlike SMS's evidence, DRGHG put forth "vague and speculative" plans to support its position, which the Board found unsubstantiated. *Id*. at 9. Nothing in *Denver & Rio Grande Railway*, or in *Napa Valley Wine Train, Inc.* (one freight carload in six years, and freight operations that "are and will continue to be very minimal") on which Mannington also relies (Mannington's Supp., filed November 8, 2024, at 21-23), compares factually to SMS and the Salem Branch where the improvements SMS has made to the Branch for the intended "rail

[14] Although the Board has stated it is not determinative, it is worth pointing out that all of SMS's employees receive benefits pursuant to the Railroad Retirement Act, 45 U.S.C. § 231 *et seq*. and the Railroad Unemployment Insurance Act, 45 U.S.C. § 351 *et seq*. *See* P. Harland Stmt. ¶ 6 (**Ex. K**); *Denver & Rio Grande Railway*, at 8 (STB served March 24, 2015).

freight service" have produced results and realistic promise for substantially more freight service. *See* J. Pfeiffer Stmt. ¶¶ 2, 5 (**Ex. C);** Notice to Mannington Township **(Ex. D)**.

The facts in this case prove beyond peradventure that freight service on the Salem Branch is back, growing, and trending towards the "active and robust commerce" Salem County desired when it hired SMS to be the operator of the Branch. *See* the Salem County Commissioner Director, Benjamin Laury's, letter appended to SMS's Verified Notice of Exemption (**Ex. B**). It is why substantial funding is being granted and spent to help preserve, rehabilitate, and enhance the Branch. *See* NJDOT Rail Freight Assistance Program Agreement dated September 9, 2022 (**Exhibit L**). With the new business expected from the arrival of lumber products via rail at the Mannington Mills plant and the referral of business from Pureland, freight train miles on the Branch should outgrow excursion train miles in the not-too-distant future.

It must be emphasized that Mannington has no cognizable argument based on *Denver & Rio Grande Railway* to except SMS and the Salem Branch from federal preemption under 49 U.S.C. § 10501. Mannington's Supp. (filed November 8, 2024) at 23. That case is factually distinguishable because the Board found that the activity of the rail operator DRGHF — "considered to be a Class III railroad only because it bought a to-be-abandoned rail line pursuant to an offer of financial assistance under 49 U.S.C. § 10904" (which has no application to SMS or the Salem Branch) — was "***only*** intrastate passenger excursion service and related to movement of rafts" that were part of the recreational activity involved. *Denver & Rio Grande Railway,* at 5 (STB served March 24, 2015) (emphasis added). The Board found that the excursion or recreational activity and the railroad's alleged supporting activities on a "Parcel approximately 30 miles east of the Line" (allegedly "used to store rail cars, rail car parts, and other railroad related equipment and materials and to restore, maintain, renovate and otherwise perform work

on rail cars for use or anticipated use on the Line and [allegedly] for transportation-related purposes by other rail carriers"), was not transportation under the Board's jurisdiction. *Id*. at p. 3. "[L]imited, wholly intrastate excursion passenger and related raft operations [(i.e., movement of rafts)] that DRGHF has conducted over the Line to date [were held] not [to be] transportation under the Board's jurisdiction under § 10501." *Id*. at pp. 3, 5. By contrast, SMS is a well-established and highly reputable common carrier, with a proven track record of producing and maintaining freight service, "operat[ing] a total of 8 branches; 4 in New Jersey, 1 in Pennsylvania (Standard Carrier Alpha Code ("SCAC") SLRS)), and 3 in New York (SCAC SNY), and interchang[ing] 12,000 to 14,000 freight cars per year, systemwide." J. Pfeiffer Stmt. at ¶ 4 (**Ex. C**). It's investment in the Salem Branch has inarguably restored freight service to the Branch that currently exceeds and will continue to exceed "minimal freight in interstate commerce" requiring that its acquisition, construction, and operation of facilities on and along the Branch are federally preempted under 49 U.S.C. § 10501(a).

SMS submits that the key legal principle in *Denver & Rio Grande Railway* set forth above may place the Board's Decisions therein in historical context, as they are the guidepost for determining Board-regulated railroad track, operations, and facilities. Clearly, consistent with the statutory mandates that underlie federal preemption of our nation's railroads that are part of the national railroad network, the Board should continue to maintain its exclusive jurisdiction over the Salem Branch, which, consistent with the ICCTA's mandate, will allow the worthwhile effort of SMS and Salem County to preserve, rehabilitate, and enhance the Branch unhindered by local and state regulation. *See DesertXpress Enterprises, LLC—Petition for Declaratory Order*, FD 34914 at 9-10 (STB served May 7, 2010) (noting in 1995, in the ICCTA, Congress provided a "new, explicit statutory grant of jurisdiction to the [Board] over intrastate rail transportation").

Notably, nowhere in Mannington's and Pilesgrove's submissions is the key principle in *Denver & Rio Grande* specifically addressed.[15] It is a significant and determinative omission, requiring that the relief the Townships request be denied. The current freight service on the Salem Branch is open and obvious, but the Townships simply refuse to acknowledge it due to an apparent dislike of the railroad and/or changes in local commerce the railroad may bring, or other undisclosed reasons not relevant under the law.

The following sections will address the allegations of the Townships in their petitions. They reveal a pattern of deliberate attacks against SMS for the Townships' ill-conceived purpose of undermining and hindering the railroad, and which serves no governmental policy.

C. The Townships' Use of Legal Proceedings Against the Railroad And Failure to Carry Out Their Limited Police Powers and Conduct Inspections

SMS's railroad facilities that are the subject of the Townships' petitions are located on SMS's Property in Pilesgrove (as noted above, Block 73, Lots 1 and 3) and on the Salem County

[15] Pilesgrove's supplemental argument at page 5 (filed November 7, 2024) incorrectly states, referencing photographs allegedly taken by an undisclosed "construction official" on November 6, 2024 (Exhibit T to Pilesgrove's supplement), that "it would appear that there are no freight operations taking place in and out of Pilesgrove." That is untrue. All of the freight traffic on the Branch to date has run through Pilesgrove. J. Pfeiffer Stmt. ¶ 5 (**Ex. C**). *See also infra* n.30. Also, the facilities that SMS has constructed to support its common carrier freight operations are located in Pilesgrove. *See* J. Pfeiffer Stmt. ¶¶ 6, 7 (**Ex. C**).

In its petition at page 3, Mannington refers only to "any freight operations on SMS's rail line through Mannington Township that might be interstate." In its supplement at page 25, Mannington comes closer to acknowledging that there is freight on the Branch, even enough to support the Board's jurisdiction, stating SMS's "interstate freight service ['including the wye'] . . . is likely preempted." But Mannington's argument would have the Board rule that the seasonal passenger excursion service is not preempted, even though SMS's freight service is "more than 'minimal' freight operation in interstate commerce" and supports preemption. Mannington's Supp. at 25. There is no support in the law for an argument bifurcating jurisdiction. In fact, in light of the above-referenced principle in *Denver & Rio Grande*, the argument put forth by Mannington must be deemed rejected because the principle makes clear that the Board's jurisdiction "does extend to rail carriers operating intrastate passenger excursion service, even if they earn the bulk of their revenue from that service, **as long as they are performing more than 'minimal' freight operation in interstate commerce**." *Denver & Rio Grande Railway,* at 7 (STB served March 24, 2015) (emphasis added).

Railroad's Property in Mannington (as noted above, the wye within Block 67, Lot 14.01, and covered by the RLSA between Salem County and SMS).

The facilities at issue on SMS's Property are two prefabricated sheds and an engine house that have been erected or constructed along the Salem Branch,[16] and the electrical service required for each of those structures **that has been blocked for over a year by Pilesgrove**.[17] J. Pfeiffer Stmt. ¶ 6 (**Ex. C**). The sheds are multifunctional structures, the main shed serving as a crew office,[18] ticket office, and gift shop, and the second, smaller shed serving as a storage location for gift shop and station supplies, as well as basic track materials such as spikes, bolts, switch brooms, etc. *Id*. ¶ 7. The engine house is used as a locomotive storage and maintenance facility and includes a pit, over which FRA-required 92-day inspections will be performed. *Id*. It houses tools, machinery, lube oils, and other such parts and equipment necessary to maintain SMS's locomotive fleet on the Salem Branch. *Id*. ¶ 7.

According to Mannington's petition and supplemental argument, the facilities at issue on the Salem County Railroad's Property (covered by the RLSA) are a certain part of track of the

[16] *See* photographs of the two prefabricated sheds (Block 73, Lot 1) and the engine house (Block 73, Lot 3) on SMS's Property in Pilesgrove (together attached as **Exhibit M**).

[17] *See* a photograph of the electrical service poles and lines erected by Atlantic City Electric on SMS's Property (Block 73, Lot 3) in Pilesgrove (attached as **Exhibit N**). These lines are intended to connect electrical service to the two prefabricated sheds and the engine house on SMS's Property (Block 73, Lots 1 and 3) in Pilesgrove, and for transloading of freight.

[18] The lack of a permanent electrical connection has prevented SMS from fully utilizing the structures for their intended purposes. Although the main shed does contain the bulletin board, where the requisite General Order, Bulletin Order, On-Track Safety Sheets, etc. are posted, the use of generators to power the sheds does not allow for radio and crew phone charging banks to be used, thus limiting the building's functionality. As such, crews must first report to Pureland to retrieve these items prior to performing service. Track inspection reports are completed and filed in the main shed, as well. A permanent electrical connection is vital to the use of the engine house, as heaters, lighting, and electrical outlets will be installed for the operation of tools and machinery, as well as junctions and disconnects to power diesel locomotive block heater systems. J. Pfeiffer Stmt. ¶ 6 (**Ex. C**).

wye and a new shed that replaced a pre-existing rail tool shed situated on the grounds within the wye.[19] The track at issue "is an approximately 1,350-foot (0.25 mile) section in two parts; one leg of the wye diverging from the running track in a southerly direction, the other diverging from the running track in a northerly direction, converging at the northwestern point of the wye, which , for more than a century, has existed and been part of the Salem Branch."[20] J. Pfeiffer Stmt. ¶ 8 (**Ex. C**), referencing Tax Maps (**Ex. E**). This track had been mostly covered by overgrown vegetation when SMS received its operating authority from the STB as the common carrier on the Salem Branch.[21] *See* photographs (**Ex. O**). All these facilities were constructed and, in the case of the subject track of the wye, the track was upgraded by SMS with funds from the New Jersey Department of Transportation Rail Freight Assistance Program, as well as Salem County's and SMS's own funds. NJDOT Rail Freight Assistance Program Agreement, 2022 (**Ex. L**); J. Pfeiffer Stmt. ¶ 12 (**Ex. C**).

SMS has provided notice of planned facilities together with construction drawings prepared by a professional engineer to the respective Townships. *See Village of Ridgefield Park,* 163 N.J. at 460, 750 A.2d at 66 (holding that "the Railroad may not deny the Village access for reasonable inspection of its maintenance facility [and] that although the Village may not require permits of the Railroad, the Railroad must **notify** the Village when it is undertaking an activity for which another entity would require a permit." (emphasis added)), citing *Borough of Riverdale Petition for Declaratory Order, The New York Susquehanna and Western Railway*

[19] *See* photographs depicting the wye, the grounds within the wye, the pre-existing rail tool shed, and the new prefabricated shed, as well as freight operations at the wye on the Salem County Railroad's Property in Mannington (Block 67, Lot 14.01, covered by the RLSA) (together attached as **Exhibit O**).

[20] *See* Right of Way Track Maps at p. 18 (**Ex. E**).

[21] *See* photographs of the subject portion of the wye track before (covered by overgrown vegetation prior to the track being upgraded) and after it was upgraded (contained in **Ex. O**).

Corporation, FD 33466, 4 S.T.B. 380, 1999 WL 715272 (STB served September 10, 1999); State of New Jersey, Dept. of Community Affairs, Bulletin 01-0, issued May 2001 (copy attached as **Exhibit P**) (noting that in light of New Jersey Supreme Court's decision in *Village of Ridgefield Park*, the railroad's obligation is only to "**notify** the municipality when it is undertaking an activity that would require another entity to obtain a permit" and "**upon request**, the railroad must provide construction documents and must also provide access for inspections." (emphasis added)). *See also*, for example, email from J. Pfeiffer to Pilesgrove's Solicitor, dated September 5, 2024 (attached as **Exhibit Q**); SMS's undersigned counsel's letter to Pilesgrove's Solicitor, dated October 4, 2024 (attached as **Exhibit R**); emails from SMS's undersigned counsel and J. Pfeiffer to Pilesgrove's Solicitor, both dated October 25, 2024 (attached together as **Exhibit S**); Notice to Mannington with engineering plans regarding a transloading operation at the site of the Mannington Mills plant, dated October 21, 2024 (**Ex. D**).

As will be shown below, **instead of inspecting these facilities as the law allows the Townships to do, and as SMS has invited and made itself available** (*see* Pilesgrove's Petition, dated April 22, 2024, at p. 5: "it is anticipated that an inspection will be forthcoming"; Pilesgrove's Supplement, filed November 7, 2024, at p. 8: "Pilesgrove is in the process of reviewing the documentation and setting up inspections"; *see also* letter to Pilesgrove's Solicitor from SMS's undersigned counsel, dated October 4, 2024 (**Ex. R**); J. Pfeiffer Stmt. ¶ 9 (**Ex. C**)), **the Townships have hindered, interfered with, and played games over the subject facilities and SMS's operations by insisting SMS must make applications and appear before their planning boards** (*see, e.g.*, letter from Pilesgrove's Solicitor to SMS's counsel, dated October 26, 2024 (**Exhibit T**); Pilesgrove's Supplement at p. 7).

Furthermore, the Townships have issued or initiated against SMS, and in some cases Salem County, **a stop work order and notices of permitting and zoning violations** (Re: Pilesgrove – Zoning Notice dated October 11, 2023, attached as **Exhibit U**; Notice and Order of Penalty dated December 11, 2023, attached as **Exhibit V**; Notice and Order of Penalty dated January 29, 2024, attached as **Exhibit W**; Stop Construction Orders and Notices of Violation and Orders to Terminate dated October 10, 2024 and October 29, 2024, attached as **Exhibit X**; Verified Statement of Isaac King and the stop work order posted by Pilesgrove attached thereto as Exhibit A, attached hereto as **Exhibit Y**). (Re: Mannington – Notices of Violation and Orders to Cease, dated April 18, 2024, and Municipal Summonses, dated April 30, 2024, together attached as **Exhibit Z**). In concert, they have pursued and are continuing to threaten to pursue, through the State of New Jersey, **prosecution of criminal charges against SMS and Salem County** (**Ex. Z**) (discussed below). Further, Pilesgrove commenced **civil litigation against SMS and its COO, Mr. Pfeiffer, individually**. *See* Pilesgrove's Verified Complaint in Support of Order to Show Cause with Temporary Restraints, filed October 31, 2024, attached as **Exhibit AA**.[22] The record demonstrates these actions are ill-conceived and brought with assistance of politically appointed counsel acting as Solicitors.[23] Clearly, the actions are for improper, self-serving purposes.

[22] Incredibly, on October 31, 2024, Pilesgrove's Solicitor sought ***ex parte*** an Order of New Jersey Superior Court for injunctive relief and other restraints against SMS and Mr. Pfeiffer – without any notice to SMS, Mr. Pfeiffer, or the undersigned counsel for SMS. Despite all the legal proceedings pending in which the undersigned's appearance is entered, Pilesgrove's Solicitor failed to extend the professional courtesy of notice to the undersigned of the suit or the application for emergent injunctive relief. Rather, **six days later**, on November 5, 2024, Pilesgrove's Solicitor sent a letter to SMS and Mr. Pfeiffer (without copying the undersigned), via email, along with a copy of the Verified Complaint and the Court's Order dated November 1, 2024 denying Pilesgrove's request for injunctive relief (attached as **Exhibit BB**).

[23] On September 26, 2024, the criminal charges (pursued by Mannington's Solicitor via Pilesgrove's Solicitor as the State's prosecutor) were dismissed by Order of the Mid-Salem County Municipal Court (**Exhibit CC**).

(*continued on next page*)

In fact, Pilesgrove's Solicitor, who is counsel for Pilesgrove in this matter, prosecuted as State prosecutor criminal charges against SMS and Salem County arising from complaints and summons issued *by Mannington*. The respective Solicitors for Pilesgrove and Mannington, both counsel of record for the respective Townships in this matter, aggressively filed papers and argued at two hearings in state court in support of the criminal charges against SMS and Salem County. *See, e.g.,* Transcripts of State Court Hearings, 7/25/24 and 9/26/24 (attached as **Exhibits GG and HH**, respectively) ("State Court Tr."); three emails from Mannington's Solicitor to the State Court, dated July 25, 2024 (together attached as **Exhibit II**). And, when after she represented to the State Court at the July 25, 2024 hearing that she believes she has a conflict of interest in light of her representation of Pilesgrove against SMS in other matters that are a subject herein and therefore should withdraw her appearance for the State, Pilesgrove's Solicitor failed to withdraw before the second hearing on September 26, 2024, served discovery in the criminal case at the eleventh hour the night before the second hearing (*see* email from the Pilesgrove Solicitor in her capacity as State prosecutor sent at 9:38 p.m., on September 25, 2024, attached as **Exhibit JJ**), and then withdrew *during* the second hearing but did not leave the counsel table before the court and attempted to continue arguing alongside Mannington's Solicitor (also seated

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On November 14, 2024, the civil litigation filed in the New Jersey Superior Court by Pilesgrove against SMS and Mr. Pfeiffer was withdrawn (*see* Voluntary Dismissal Without Prejudice, attached as **Exhibit DD**) following the Order of the New Jersey Superior Court, entered November 1, 2024, that scheduled a show cause hearing. The November 1 Order states:

> The Temporary Injunctive Relief is **denied**. No evidence before the Court that Defendants were placed on notice as required. Further, while the Plaintiff does state an appropriate claim, **there is no clear and convincing evidence that there is a probability of success on the merits as the Federal Preemption issue is uncertain in light of the holding in Ridgefield Park v. New York Susquehanna, 163 NJ 446 (1999)**.

(**Ex. BB**) (emphasis added). *Notably the quoted language is on the fourth page of the Order which is omitted from Exhibit P of Pilesgrove's Supplemental Evidence, filed November 7, 2024.*

Appeals recently filed by SMS from notices of violations of zoning and permitting ordinances issued by Pilesgrove (attached as **Exhibit EE**), were stayed pending these STB proceedings. *See* letter from the Gloucester County Construction Board of Appeals, dated November 27, 2024 (attached as **Exhibit FF**).

at the same counsel table) in support of the charges against SMS and Salem County. *See* State Court Tr., 9/26/24, at 4:2-5, 8:1-9:10, 25:17-26:19 (**Ex. HH**).[24] Fortunately, after Pilesgrove's Solicitor in her capacity as State prosecutor earlier refused to withdraw the charges and even communicated with the Board about the charges in a letter in July that was not sent to the undersigned counsel for SMS,[25] following briefing and two hearings before the State Court, SMS prevailed upon the State Court to dismiss the charges against SMS and Salem County. *See* Order Granting Motions of SMS Rail Service, Inc. to Dismiss, *without prejudice*, dated September 26, 2024 (attached as **Ex. CC**); SMS's letter-motion to the State Court, dated July 18, 2024 (attached as **Exhibit OO**); and SMS's Notice of Motion to Dismiss Pursuant to N.J. Rule 7:8-5 and supporting Brief, dated September 20, 2024 (attached as **Exhibit PP**).

Pilesgrove and Mannington now request that the Board rule that federal preemption does not apply to the SMS in order for these Townships to be able to pursue unimpeded alleged zoning and permitting violations and a stop work order against SMS before their local planning boards and in the state courts, litigation of claims against SMS and Mr. Pfeiffer in state court, and the criminal charges brought by the State.

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[24] More recently, the Pilesgrove Solicitor in her capacity as State prosecutor, again demonstrating her conflict of interest with SMS, delayed and jeopardized prosecution of *State of New Jersey v. Edward Wentz*, Complaint No. 24-000201, a matter involving a crime committed against SMS that was set for trial on various dates this year and continued by the prosecutor, and ultimately rescheduled to proceed on December 11, 2024. *See* email from Pilesgrove's Solicitor acting as State prosecutor, dated December 10, 2024 (attached as **Exhibit KK**); and letter from Frank J. Hoerst, III, Esq. to the Salem County Prosecutor's Office, dated December 12, 2024 (attached as **Exhibit LL**). The charges stem from a local Pilesgrove resident's theft of approximately $33,000 worth of SMS's track materials. As a result of steps taken by SMS's counsel, Pilesgrove's Solicitor is being removed from prosecuting that criminal matter and the trial is being rescheduled. *Id*.

[25] Pilesgrove's Solicitor's aggressive position against SMS was demonstrated by, *inter alia*, the fact that after she received a letter from the undersigned counsel for SMS, dated July 16, 2024 (attached as **Exhibit MM**), requesting that she withdraw the criminal charges, in a transparent attempt to sway the Board against SMS, she responded to the undersigned's letter by writing an *ex parte* letter to the Board on July 18, 2024 (attached as **Exhibit NN**). Her letter to the Board was not sent to the undersigned counsel for SMS.

Pilesgrove and Mannington, respectively, contend that SMS's rail facilities and the certain part of the track of the wye in Mannington, should not be covered by the federal preemption provisions under 49 U.S.C. § 10501(b) due to SMS's seasonal passenger excursions on parts of the Salem Branch. It cannot be disputed in good faith that these same facilities, including the structures and track of the wye, are used by SMS to support transportation subject to the Board's jurisdiction. The Townships' arguments regarding these parcels and against federal preemption will be discussed in section 2. below, following the discussion of the limited powers the Townships retain (but have chosen not to exercise) in section 1.

1. The Townships Retain Limited Police Powers Regarding the Railroad That They Have Chosen <u>Not</u> to Exercise.

Federal preemption under the ICCTA "categorically prevents states or localities from intruding into [the above-referenced] matters that are directly regulated by the Board," including construction and operation of facilities. *Denver & Rio Grande Railway,* at 8 (STB served August 18, 2014) (citations omitted). "It also prevents states and localities from imposing requirements that, by their nature, could be used to deny a rail carrier's ability to conduct rail operations." *Id*. at 9 (citations omitted). "Thus, state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements, are categorically preempted as to any facilities that are an integral part of rail transportation." *Id*. As discussed above, SMS is providing "rail transportation," which is "defined broadly to include **property and facilities related to the movement of passengers or property by rail**." *Denver & Rio Grande Railway,* at 4 (STB served February 23, 2012) (emphasis added) (citations omitted). SMS's property and facilities on and along the Salem Branch are all related to its rail operations and therefore are subject to federal preemption. J. Pfeiffer Stmt. ¶ 7 (**Ex. C**).

However, localities do retain police powers but only to protect public health and safety and only so long as their actions do not unreasonably burden interstate commerce. *Denver & Rio Grande Railway,* at 9 (STB served August 18, 2014) (citation omitted). "For example, electrical, plumbing, and fire codes generally may be applied" to the railroad, provided that they do "not have the effect of foreclosing or unduly restricting the rail carrier's ability to conduct its operations or otherwise unreasonably burden interstate commerce." *Id*. (citation omitted). Thus, if, **as here**, the rail carrier "is using [a] [p]arcel [of land] to support transportation subject to the Board's jurisdiction, a [local] ordinance prohibiting or unreasonably interfering with that use would be preempted as applied to the [p]arcel. On the other hand, if [the rail carrier's] use of the [p]arcel is not in furtherance of transportation over which the Board has jurisdiction, then the [local] ordinance would not be preempted with respect to the [p]arcel." *Id*. (citing *Joint Petition for Declaratory Order—Boston & Maine Corp. & Town of Ayer,* 5 S.T.B. 500, 507 (2001) (holding "zoning ordinances and local and land use permit requirements are preempted where the facilities are an integral part of the railroad's interstate operations")). *See also Village of Ridgefield Park*, 163 N.J. at 459-63, 750 A.2d at 65-67; State of New Jersey, Dept. of Community Affairs, Bulletin 01-0 (**Ex. P**) (emphasizing that local administrative delays, permits, fees, and stop-work orders "are not permitted.").

As discussed in the next section, the Townships have chosen by their own volition not to exercise the police powers they retain.

2. The Townships Have No Cognizable Argument Against Federal Preemption

(a) Response to Pilesgrove's Petition and Supplemental Evidence/Argument

1. *Rail Bikes*

Without prejudice to SMS, Pilesgrove well knows that SMS has been attempting resolve with Pilesgrove's planning board issues regarding the possibility of a rail bike tour facility. However, the financial benefits from a rail bike facility to SMS's freight operations would support preemption of rail bike activities and facilities, and SMS reserves to raise this issue with STB at an appropriate time after further consideration and/or discussion with Pilesgrove. The Township has already issued two use variances for the rail bike facility, as indicated in Pilesgrove's submissions.

The area currently used for parking (Block 73, Lot 1) that is integral to the common carrier operations, where employees of SMS who operate the trains and/or work on the railroad will park and report to work (once the electricity to the structures at Block 73 is connected—discussed below) and is also to be used for transloading,[26] was constructed under federal preemption. The fact that in the future a rail bike facility, if pursued, may use a portion of Lot 1 from time to time should not change the fact that the property is currently part of the railroad and thus federally preempted. Again, SMS reserves to raise rail bike issues with the Board separately as it is still reviewing the possibility of such an opportunity.

2. *Block 73, Lots 1 and 3 are owned by SMS*

While the terms of the RLSA requiring SMS to comply with applicable laws are being met, Block 73, Lots 1 and 3, through which the Salem Branch runs, are separately deeded to

[26] Transloading by rail is subject to federal preemption. *See, e.g., Grafton & Upton Railroad Company—Petition for Declaratory Order*, FD 35752 (STB served September 19, 2014).

SMS. *See* Deed to SMS (**Ex. A**). Thus, the property about which Pilesgrove complains is owned by SMS and the RLSA governs no part of it.

3. *Pilesgrove has had the plans for the two prefabricated sheds on Block 73, Lot 1 since before an appeal hearing on March 13, 2024, when Pilesgrove withdrew its permit violation notices and agreed to inspect the sheds, yet to this day has failed to do so*

The October 11, 2023 Notice of Zoning Non-Compliance and/or Violation issued by Pilesgrove to SMS regarding the prefabricated sheds on Block 73, Lot 1, followed Pilesgrove's unilateral issuing of a zoning permit which "authorized" use of the property for freight operations only. The zoning permit was issued when, in order to obtain a postal address for the property, SMS was requested by Pilesgrove to complete a Zoning Office Information form. In an exchange of several communications between SMS and Pilesgrove, the Clerk/Administrator of Pilesgrove explained in an email to SMS dated October 31, 2022 (attached as **Exhibit QQ**), as follows:

> After our conversation last week I discussed it with our Zoning Officer and Solicitor to be sure we were following the correct process for SMS to get their street address. All forms/applications/projects need to have a signature from the owner and owner information. I know SMS doesn't want to fill out an application, so for the request of a street address we have amended our Zoning Application and tailored it to SMS to change words, this way the Township is covered as well as accommodating SMS on this request.
>
> Please note that the Township will still have to issue a permit for our files, you will be given a copy as well. This document "Permit" will still have permit written on it because this is how these forms come, but there is a section for the Zoning Officer to add a comment. This comment section will note "Preliminarily Exempt".
>
> I hope that this help move along the process in SMS receiving their street address.
>
> Thank you,
> Melissa Fackler
> Clerk/Administrator
> Pilesgrove Township

On November 7, 2022, SMS submitted the form (attached as **Exhibit RR**) providing "Railroad terminal facility(ies), as necessary, in support of common carrier rail operations. Current improvements include a driveway and parking/material lay-down area (see attached drawing)." On November 9, 2022, Pilesgrove advised SMS by email (attached as **Exhibit SS**) that it has "given the railway the address of 650 Alloway Woodstown Road, Pilesgrove, NJ 08098." Thereafter, Pilesgrove unilaterally issued a zoning permit to SMS (attached as **Exhibit TT**), which SMS did not apply for, stating "Driveway and parking areas for +/- 150 vehicles for transportation of freight purposes only., (sic) which is a use permitted by ordinance[.] Comments on Decision: Preliminarily Exempt. …"

The October 11, 2023 Notice of Zoning Non-Compliance and/or Violation was accompanied by an email from Pilesgrove (**Ex. U**) stating that the zoning permit was issued for a parking lot and freight purposes only, and advised that the seasonal passenger excursion violated local land use laws. SMS was forced to file an appeal of the alleged zoning violation to the Construction Board of Appeals. The Assistant Gloucester County Counsel assigned to the Construction Board of Appeals ("CBA") advised the parties by email dated March 11, 2024 (attached as **Exhibit UU**), that in light of the facts and that Pilesgrove and SMS agree with the applicable law, Pilesgrove cannot force SMS to obtain permits, issue stop work orders, or delay construction, but reasonable inspection of the facility is allowed. Therefore, the CBA's Counsel advised that Pilesgrove "may want to consider dismissing the Violation on the condition that the RR allow access for inspection." (**Ex. UU**). Thereafter, SMS, through its counsel in the CBA matter, provided plans for the two sheds and also requested Pilesgrove to send a letter to Atlantic City Electric ("ACE") to let ACE know that Pilesgrove is without jurisdiction over the electric connection to the property and thus a permit for the connection is not required. At a subsequent

hearing before the CBA on March 13, 2024, Pilesgrove agreed to withdraw the code violations for various permitting, zoning, and construction in recognition that SMS's activities are under federal jurisdiction and Pilesgrove cannot require permits. Pilesgrove's agreement was confirmed by the March 15, 2024 email attached to its petition as Exhibit H. As a result, SMS withdrew its appeal. It should be noted, the SMS has *at all times* been willing to allow Pilesgrove to inspect the structures. Pilesgrove's petition states under section II., at page 5: "While there is no inspection that has been made to date[,] it is anticipated that an inspection will be forthcoming." As shown above, SMS has invited Pilesgrove to inspect on many occasions, but it still has not done so.

During a conference call with the undersigned counsel for SMS on October 1, 2024, Pilesgrove's Solicitor herein advised that the Township insists that its permitting process be followed. Pilesgrove's Solicitor further indicated during the call that she was unwilling to provide confirmation to ACE that the railroad operations are outside of local jurisdiction so that the electric service connection can be made by SMS's electrician. That confirmation is all that ACE requires from Pilesgrove to allow the electrical connection to be made, which SMS had explained in email correspondence to Pilesgrove's Solicitor, dated September 5, 2024 (attached as **Exhibit Q**). The foregoing was confirmed by letter from the undersigned to Pilesgrove's Solicitor, dated October 4, 2024 (attached as **Exhibit R**), and request was made to Pilesgrove's Solicitor that she provide confirmation to the undersigned immediately that Pilesgrove "is on notice of SMS's request for such electric service connection, that the municipality is without jurisdiction over the service connection, and that [her] reply by email [to the undersigned counsel for SMS] is in lieu of a cut-in card." A copy of the undersigned's October 4, 2024 letter was sent to representatives of ACE and SMS's electrical contractor, Krise Electric. Pilesgrove's Solicitor,

however, failed to respond to the October 4, 2024 letter, or to a subsequent letter from Mr. Pfeiffer of SMS to Pilesgrove's Construction Official, Richard Saunders, dated October 24, 2024, a copy of which was sent to Pilesgrove's Solicitor (attached as **Exhibit VV**). But, as Pilesgrove's Supplemental Evidence/Argument points out, in light of its Solicitor's failure to respond, ACE did respond and advised SMS that it is undertaking a review of the matter and has indicated that it will take other steps to provide the electrical connection to SMS at Block 73, Lots 1 and 3. *See* two emails, dated October 25, 2024, from the undersigned and Mr. Pfeiffer sent to Pilesgrove and its Solicitor, attached as Exhibit N to Pilesgrove's Supplemental Evidence/Argument. SMS has been without the electrical connection it requires for far too long due to Pilesgrove's delays and flip flopping since it withdrew its violation notices on March 15, 2024, demanding that SMS go through the permitting process for connection of this utility. The expense of tens of thousands of dollars paid by SMS to erect electrical poles and lines to the site is now exacerbated by alternative action SMS has been required to take to keep its locomotives warm this fall and winter, pending the connection of electrical service.[27] The electrical connection to the two sheds on Lot 1 and the more recently constructed engine house on Lot 3 is necessary for SMS's railroad operations (both for freight traffic and the seasonal excursions), including for locomotive maintenance and storage. J. Pfeiffer Stmt. ¶ 6 (**Ex. C**).

4. *SMS notified Pilesgrove of plans for the erection of the engine house on Block 73, Lot 3 and proactively provided certified engineering drawings, yet Pilesgrove has rejected SMS's invitations to inspect the structure*

On September 5, 2024, SMS proactively provided certified engineering drawings for the engine house to Pilesgrove's Solicitor by email of that same date, together with a preliminary construction schedule (**Ex. Q**). Several invitations to inspect the engine house, including

[27] *See supra* n.16 and n.17, and photographs of the electrical service poles and lines erected by Atlantic City Electric on SMS's Property (Block 73, Lot 3) in Pilesgrove (**Ex. N**).

providing additional copies of the engineering drawings, were extended by SMS to Pilesgrove but to date an inspection has not occurred. *See* letter from Mr. Pfeiffer of SMS to Pilesgrove's Construction Official, Richard Saunders, dated October 24, 2024, a copy of which was also sent to Pilesgrove's Solicitor (**Ex. VV**); emails from SMS's undersigned counsel and Mr. Pfeiffer to Pilesgrove's Solicitor, both dated October 25, 2024 (**Ex. S**); and Mr. Pfeiffer's letter to Mr. Saunders, dated November 8, 2024, letter to Pilesgrove Clerk/Administrator Melissa Fackler, dated November 13, 2024, and email to Pilesgrove's Construction Office's Technical Assistant, Jenna Seeney, dated November 13, 2024, all of which were simultaneously sent to Pilesgrove's Solicitor as well (together attached as **Exhibit WW**).

On October 10, 2024, Pilesgrove's Construction Official, Mr. Saunders (according to Pilesgrove's Supplemental Evidence/Argument), came to the SMS Property in Pilesgrove (Block 73, Lot 3, which is directly across the railroad track from Block 73, Lot 1, on which the two prefabricated sheds are located) and posted a **stop work order** on the engine house. Isaac King, the Construction Foreman for Lancaster Pole Buildings, Inc., which was hired to construct the engine house for SMS, was on site working at the structure when he was approached by Mr. Saunders. *See* Verified Statement of Isaac King (**Ex. Y**). Mr. Saunders "represented to [Mr. King] that he was from Pilesgrove Township and said that he needed to put a stop work order on the job (the engine house) [(see photograph of the order posted attached as Exhibit A to Mr. King's Statement)], but [Mr. Saunders] went on to mention that [Mr. King's] workers should continue working." *Id*. Mr. Saunders also told Mr. King that "if [his] workers followed the plans for the engine house that were submitted by SMS to Pilesgrove Township, when he had to return to inspect the engine house, everything would "'be okay.'" *Id*. Mr. King states that Mr. Saunders "went on to mention to [him] that he [(Mr. Saunders)] liked what the railroad is doing on the site,

and he was only doing what he was instructed to do." *Id*. Mr. King's "encounter with [Mr. Saunders] lasted about 5 minutes." *Id*. According to Mr. King, Mr. Saunders "didn't enter the engine house or inspect anything; he only delivered the stop work order, attaching it to the structure, and left." *Id*.

Pilesgrove cannot actually believe the prefabricated sheds and engine house present an imminent danger to the public, as it has rejected SMS's invitations to inspect those structures and voluntarily withdrawn its lawsuit requesting, *inter alia*, injunctive relief against SMS and Mr. Pfeiffer. *See supra* n.22 & 23, and November 14, 2024 Voluntary Dismissal Without Prejudice (**Ex. DD)**. Mr. Saunders, Pilesgrove's Construction Official, wouldn't even inspect the sheds and engine house when he was at the property on October 10, 2024.

In fact, on October 17, 2024, Pilesgrove's Construction Code Office issued a Stop Construction Order, Notice of Violation and Order to Terminate, and Notice and Order of Penalty, each signed by Mr. Saunders and dated October 10, 2024 (served upon SMS on October 22, 2024), requiring SMS to pay fines of approximately $7,500 per week, allegedly based on an "inspection" by Mr. Saunders conducted on October 10, 2024, for "Failure to Obtain Permits", "Failure to Obey Stop Work Order", and violation of "General District Regulations." *See* Notices attached to SMS's appeal of these violations, filed November 6, 2024, attached as **Exhibit X**. But as noted above, Mr. Saunders did not conduct an inspection when he was at SMS's Property on October 10, 2024.

Moreover, on the day before the Stop Construction Order and Notices were issued, on October 16, 2024, at about 11:20 hours, George Sutch, Roadmaster and Vice President of SMS, observed a person who represented to him to be "a contractor sent by Pilesgrove Township" at SMS's Property in Pilesgrove. *See* Verified Statement of George Sutch ("G. Sutch Stmt.")

(attached as **Exhibit XX**). The individual took measurements, "measur[ing] from the centerline of the main track (on the Salem County Railroad) to the centerline of the new engine house lead (on SMS's Property), as well as from the centerline of the main track (on Salem County Railroad) to the southwest (timetable direction) corner of the new building." *Id*. Mr. Sutch's encounter with the individual "lasted less than 5 minutes." The individual "only took measurements mentioned above, and **did not enter the building or inspect anything on the site**." *Id*. (emphasis added). Mr. Sutch "gave the individual [his] business card and advised that he should call [Mr. Sutch] if he needs anything else. The individual said thank you and remarked [(similar as Mr. Saunders did to Mr. King)] "that he loves what is happening with the railroad. He mentioned that 90% of the county is supportive of what SMS is doing." *Id*.

The foregoing Stop Construction Order and Notices were corrected, re-signed by Mr. Saunders, and reissued on October 29, 2024 (**Ex. X**). The original and corrected Notices also state the following additional violation:

> **If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super 385, 724 A.2d 267 (App. Div. 1999), <u>in failing to submit all construction documents to the construction office and request inspections</u>.**

(**Ex. X**).

Clearly, the above additional violation is improper and based on false information as well, as Pilesgrove was provided the "construction documents" for the prefabricated sheds on or about March 13, 2024, before it withdrew the same notices on March 15, 2024 (shown above), and for the engine house on September 5, 2024 and October 24, 2024 (also shown above). J. Pfeiffer Stmt. ¶ 10 (**Ex. C**). In fact, not only did Mr. Saunders refuse to inspect the structures on October 10, 2024, thus the notices indicating that he did inspect are false, but he also told Mr.

King, as set forth above, that "if [Mr. King's] workers followed the plans for the engine house that were submitted by SMS to Pilesgrove Township, when he [(i.e., Mr. Saunders)] had to return to inspect the engine house, everything would "'be okay.'" Mr. Saunders' statement to Mr. King shows that even he knows that Pilesgrove has received the construction documents from SMS. And, inarguably, Pilesgrove's Solicitor knows this as well. *See* Mr. Pfeiffer's email dated September 5, 2024 email (**Ex. Q**), and letters dated October 24, 2024 (**Ex. VV**), November 8, 2024, and November 13, 2024 (**Ex. WW**), on all of which the Pilesgrove Solicitor was copied; and the undersigned's communications to the Pilesgrove Solicitor, by letter dated October 4, 2024 (**Ex. R**) and email dated October 25, 2024 (**Ex. S**). Undisputedly, Pilesgrove is playing games to interfere with and hinder the railroad.

As set forth above at page 18, SMS's obligation is to "**notify** the municipality when it is undertaking an activity that would require another entity to obtain a permit" and "**upon request**," provide construction documents and access for inspections. *Village of Ridgefield Park*, 163 N.J. at 460, 750 A.2d at 66 (emphasis added), citing *Borough of Riverdale*, FD 33466, 4 S.T.B. 380, 1999 WL 715272 (STB served September 10, 1999); State of New Jersey, Dept. of Community Affairs, Bulletin 01-0 (**Ex. P**).[28] The record submitted herewith aptly demonstrates

[28] Pilesgrove's position is contrary to law and distorts the factual record of SMS's compliance with the requirements set forth in the New Jersey Supreme Court's opinion in *Village of Ridgefield Park*, the Board's decision in *Borough of Riverdale*, and direction in the State of New Jersey, Dept. of Community Affairs, Bulletin 01-0. In its Supplemental Evidence/Argument at page 7, Pilesgrove contends that "[p]ending a Declaratory Order from the STB regarding the scope of which activities are federally preempted, Pilesgrove offered SMS the opportunity to provide the documentation requested that relate to the structures and has requested that they directly communicate with the construction office and follow the process that any other entity would have to follow with the construction office including scheduling inspections as provided by the framework set forth in *Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp.*, 163 N.J. 446, 750 A.2d 57 (N.J. 2000)." In fact, Pilesgrove has not requested SMS to provide construction documents or access for inspections, but rather SMS has notified Pilesgrove of its construction plans, proactively provided certified engineering drawings, and invited Pilesgrove to inspect. And in response, Pilesgrove has improperly issued a Stop Work Order and Stop Construction Order, Notice of Violation and Order to Terminate, (*continued on next page*)

that SMS has exceeded its responsibility under the law by proactively providing plans and drawings prior to a request by Pilesgrove Township for the same. In fact, Pilesgrove has never requested plans or inspections, and only maintains that notices, plans, drawings, preliminary construction timelines, and offers to inspect served upon the Township Solicitor did not constitute proper notice to the Township because those communications were not made directly to the Construction Office. Even the latter point is blatantly false, as the Construction Office has been provided and acknowledged receiving SMS's communications and drawings, as shown by the numerous exhibits cited above and Construction Official Saunders' comments to Mr. King.

In sum, Pilesgrove's position is legally and factually incorrect. The evidence of record shows that Pilesgrove, through its Solicitor, Clerk/Administrator, and Construction Office, have received notice of SMS's construction plans and the certified engineering drawings and invitations to inspect. Pilesgrove's failure to admit these inarguable facts is testament to the fact its current political administration objects to the rejuvenation of the Salem Branch and/or is in conflict with the Salem County Commissioners over the Branch. The Townships in this matter must recognize that they are unreasonably hindering SMS's efforts to restore the railroad and enhance commerce in the County. The Board's use of its statutory power over the rail properties and facilities is intended to prevent this sort of unreasonable interference by local and state government.

5. *Contrary to Pilesgrove's assertion, rail freight traffic exists and is increasing on the Salem Branch, including on that portion of the Branch running through Pilesgrove*

SMS has shown above that freight traffic exists on the Salem Branch. In fact, virtually all of the freight traffic on the line to date has run through Pilesgrove. J. Pfeiffer Stmt. ¶ 5 (**Ex. C**).

Notice and Order of Penalty for failing to obtain Permits, obey the Stop Work Order and allegedly violating unspecified General District Regulations."

Also, the fact that some of the facilities along the Branch have dual purposes – for freight and the seasonal excursions – does not change the fact that the facilities are integral to interstate commerce. The two prefabricated sheds serve as offices and storage for both purposes, and at times one is used for excursion ticket sales. The engine house is used for maintenance and storage of locomotives used for all trains on the Branch. *See* J. Pfeiffer Stmt. ¶ 7 (**Ex. C**).

6. *There are no violations on the Inter-Agency Request Form issued by the Department of Community Affairs on or about December 6, 2023*

In response to a request by the New Jersey Department of Community Affairs, Division of Fire Safety, SMS willfully organized and permitted a fire inspection on its property in Pilesgrove within the same week of their request. The Inter-Agency Request Form (Exhibit B to Pilesgrove's petition), that Pilesgrove asserts contains violations, only serves to bring to Pilesgrove's attention that at the time of the Department of Community Affairs' fire inspection, the SMS Safety Manager was unaware whether a tent erected on the property was permitted with the Pilesgrove Construction Office. Subsequently, SMS received a Certificate of Inspection from that Department (attached as **Exhibit YY**).

7. *Pilesgrove's reliance on pre-ICCTA STB decisions, as well as on the STB's decisions in Fun Trains and Denver & Rio Grande Railway, in arguing for exceptions to federal preemption, is misplaced.*

Pilesgrove, as well as Mannington, have admittedly issued permit and zoning violation notices, fines, and penalties even though they indicate in their petitions and supplements that it is unclear to them whether federal preemption applies. The open and obvious freight traffic on the Salem Branch should have been reason for these municipalities to pump the brakes before issuing such notices, fines, and penalties, before and after their petitions were filed.

Moreover, the criminal charges against SMS and Salem County that the Township Solicitors pursued in regard to Mannington, and the numerous permit and zoning violation

notices, fines, and penalties issued by both Townships against SMS, cannot escape federal preemption simply because the Townships claim they represent an exercise of their police power. Such actions against SMS allegedly in the interest of public safety lack credibility in light of the facts in this record.

The cases Pilesgrove raises (and Mannington too) are distinguishable as well. Their positions are premised as if there is no freight traffic on the Salem Branch, which is untrue. Thus, their reliance on cases, even those after the ICCTA went into effect, provide no support for their positions.

Beginning with *Napa Valley Wine Train, Inc.—Petition for Declaratory Order*, FD 31156, 7 I.C.C.2d 954 (1991), the Townships overlook the facts in this case that compel the application of federal preemption to the operations, property and facilities on and along the Salem Branch. In contrast to SMS' freight operations set forth above, Wine Train's freight operations of less than one carload per month (*id*. at 955 n.7) in over about six years' time did not constitute more than "minimal freight operation" in interstate commerce to provide a sufficient "nexus with interstate commerce." *Id*. at 966-68. Simply put, Wine Train did not demonstrate any growth in its freight operations. SMS already has more than minimal freight operation in interstate commerce in barely two years' time and has plans for considerably more freight traffic in the not-too-distant future, as discussed above.

The post-ICCTA decisions of *Fun Trains, Inc.—Operation Exemption Lines of CSX Transportation Inc. and Florida Department of Transportation*, FD 33472 (STB served March 5, 1998) and *All Aboard Florida—Operations LLC and All Aboard Florida—Stations—Construction and Operation Exemption—in Miami, Fla. And Orlando, Fla*., FD 35680 (STB served December 21, 2012), provide no support here to the Townships' side. In both cases, the

railroads operated solely intrastate passenger rail lines and requested the Board to find that they are outside of the Board's jurisdiction. There was no opposition filed to All Aboard Florida's request, which was granted although Vice Chairman Mulvey wrote a dissenting opinion in favor of federal preemption—that supports SMS's position under the facts here. *All Aboard Florida,* at 5-7 (discussing *DesertXpress, supra,* favoring statutory expansion under ICCTA limiting state and local regulation over intrastate operations). Indeed, in contrast to SMS's freight and interstate connections, All Aboard Florida was not intended to be a part of the national rail network and did not plan to be involved in freight traffic or interstate commerce of any sort. *Id.* at 3.

Fun Trains, a noncarrier, was authorized by the Board to operate an intrastate rail passenger service. Like All Aboard Florida, Fun Trains "ha[d] no plans to provide interstate rail freight service on this or any other rail line." *Fun Trains, Inc.*, at 2. Fun Trains was opposed by the United Transportation Union, which advocated for Fun Trains' crews receiving benefits not applicable to noncarriers' employees.

Denver & Rio Grande Railway also is distinguishable, as the DRGHF was conducting <u>*only*</u> "intrastate passenger excursion service and related movement of [recreational] rafts." *Id.* at 7 (STB served March 24, 2015). As noted above, SMS has substantially more freight traffic on the Salem Branch in barely two years' time than the sketchy averments of "less-than-[one-]carload" related to movement of rafts in over a decade alleged by DRGHG. *Id.*

Significantly, the Board concluded in *Denver & Rio Grande Railway* that its "jurisdiction <u>*does*</u> extend to rail carriers operating intrastate passenger excursion service, even if they earn the bulk of their revenue from that service, as long as they are performing more than 'minimal' freight operation in interstate commerce." *Id.* And that principle applies here in favor

of federal preemption, as shown by SMS's investment in the Salem Branch that has already inarguably restored freight service to the Branch that currently exceeds and will continue to exceed "'minimal' freight operation in interstate commerce." This requires that SMS's acquisition, construction, and operation of facilities on and along the Branch be federally preempted under 49 U.S.C. § 10501(a).

(b) Response to Mannington's Petition and Supplemental Evidence/Argument

Mannington's position boils down to its Solicitor's opinion that SMS "was not allowing its attorney," Frank J. Hoerst, III, to "fully" disclose its operations, particularly the "Easter Bunny" on an old, restored passenger train car, at the wye located on a 1.47 acre parcel owned for over a century by the Salem County Railroad (Block 67, Lot 14.01)[29] in Mannington Township ("wye"). Unfortunately, Mr. Hoerst's offer to meet with the Solicitor to discuss SMS's operations and any other questions the Solicitor may have, was not accepted. The undersigned counsel for SMS received a similar response when, accompanied by Mr. Pfieffer, he attempted to introduce himself to the Solicitor and Mannington Mayor Donald C. Asay at the Mid-Salem County Municipal Courthouse on July 25, 2026. The Solicitor walked away. Mayor Asay responded to the undersigned's invitation to Mannington to inspect SMS's facilities and meet to go over its questions concerning the railroad. That idea was rejected by Mayor Asay, and he advised the undersigned and Mr. Pfeiffer that he would consider nothing short of SMS going through the permitting, zoning, and site plan approval process and participating in a hearing

[29] *See* Tax Record (**Ex. E**) showing that Block 67, Lot 14.01 consists of 1.47 acres and is owned by the Salem County Railroad.

Mannington's Petition also refers to Block 67, Lot 14.02 (1.10 acres) and 18 (the running track's right of way) also owned by the Salem County Railroad. The activities Mannington raises in its petition are primarily within the wye in Block 67, Lot 14.01, although some overgrown vegetation was cleaned up in a small area of Lot 14.02 near the railroad right of way. Passengers who disembark and reboard the passenger excursions in Mannington do so within the running track's right of way.

before Mannington's planning board. *See also* J. Pfeiffer Stmt. ¶ 9 (**Ex. C**). The morass shown by the record followed.

Notably, more than a month before it filed its petition, on April 30, 2024, Mannington pursued quasi-criminal charges against SMS and Salem regarding SMS's operations at the wye. Mannington's petition states that it did so based on the recommendation of its Solicitor who concluded that SMS is "not entitled to ICCTA preemption." Mannington's Pet. at 3, and Exhibit B attached thereto (filed June 10, 2024). The charges were prosecuted by Pilesgrove's Solicitor, in her capacity as State prosecutor for the State of New Jersey, in concert with Mannington's Solicitor. *See, e.g.*, State Court Tr., 7/25/25 and 9/26/25 (**Exs. GG** and **HH**, respectively). In its petition and supplemental evidence/argument (filed November 8, 2024), Mannington requests that the Board find that SMS's seasonal passenger excursion operations "at the subject Mannington property" (i.e., the wye) "are not entitled to federal preemption under the ICCTA," so that Mannington can resume pursuit of the criminal charges against SMS. Mannington's Pet. at 7. Mannington states that its "objectives" are "essentially the same as Pilesgrove's." *Id*. at 8.

As pointed out above, upon SMS's motion to dismiss, the State of New Jersey's criminal case regarding Mannington, prosecuted by Pilesgrove's Solicitor, **was dismissed** by Order dated September 26, 2024 (**Ex. CC**).

At the core, Mannington's position is that SMS's operations at the wye involving seasonal passenger rail excursions and alleged "additional sections of track," which Mannington claims were added at the northwestern portion of the wye near Route 45 and adjacent to a residential property, require a permit, and use variance and site plan approvals. Mannington Pet. at 2-3, and Ex. B thereto at p. 3 (item 11). Pending the Board's decision, Mannington argues that "SMS must remove all violative structures, facilities, improvements, and installations" from the

wye, which includes the railroad track at the northwestern portion of the wye. Mannington's Pet. at 2-3. In support of this, Mannington argues that SMS's seasonal excursions do not entitle them to federal preemption and thus it has a right to enforce its local permitting, zoning, and site plan requirements. The Township argues that 1) the seasonal excursions "are not connected in any way to the nation's interstate passenger rail system" or "'integrally related to' the provision of interstate rail transportation service or otherwise 'inherently transportation'", and 2) SMS's "freight operations" on the Salem Branch "through Mannington Township that might be 'interstate' . . . are not sufficient to bring SMS's wholly intrastate passenger rail service," including at the wye, "within STB jurisdiction and ICCTA preemption."[30] *Id*. at 4-5. For the same reasons stated above regarding Pilesgrove, Mannington has failed to make a cognizable argument to support its position.

1. *Mannington Relies on the Same Decisions as Pilesgrove, Which Do Not Support Either Township's Position Regarding Preemption*

SMS incorporates its discussion above regarding the decisions cited by the Townships.

SMS and the Salem Branch are fundamentally different than the rail lines and operators in *Wine Train*, *Fun Trains*, *All Aboard Florida*, and *Denver & Rio Grande Railway*. SMS is a Class III common carrier with substantial experience developing and transporting freight by rail. It currently exceeds and will continue to exceed "'minimal' freight operation in interstate commerce" on the Salem Branch, the standard by which the Board determines to maintain its

[30] Pilesgrove and Mannington appear to suggest that freight on the Salem Branch that does not run through their respective municipalities should not count in determining whether their ordinances are preempted. This is a nonsensical argument, as it would suggest that the Board's jurisdiction might apply to some but not all of the Branch. That argument should be rejected. But for the sake of argument, it should be noted that the freight traffic involving ERS runs through both Townships, as will the rail cars transporting lumber to Mannington Mills, discussed above. The freight traffic involving South Jersey Farmers Exchange runs through Pilesgrove. J. Pfeiffer Stmt. ¶ 5 (**Ex. C**).

jurisdiction under the facts presented here.[31] The Board must maintain its jurisdiction over the Salem Branch and SMS in accordance with the ICCTA and consistent with its purpose.

2. *The Wye is Used for Freight Operations, As Well As for Seasonal Passenger Excursion Service*

There are incorrect statements about the wye in Mannington's submission.

First, the wye has existed for over a century. *See* Tax Maps (**Ex. E**); *see also* photographs of the wye, dated February 19, 1994 (contained in **Ex. O**). While existing track has been rehabilitated and upgraded, the wye has not been expanded.

The track at the wye, particularly at the northwestern portion near Route 45 and adjacent to a residential property, had been mostly covered by overgrown vegetation when SMS received its operating authority from the STB as the common carrier on the Salem Branch. *See supra* n.19-21, and photographs of the subject wye track when it was covered by overgrown vegetation prior to the track being upgraded, and after the track was upgraded (collectively included in **Ex. O**).

As noted above, the track of the wye was rehabilitated and upgraded by SMS with funds from the New Jersey Department of Transportation Rail Freight Assistance Program, as well as Salem County's and SMS's own funds.

Second, the wye serves as a storage location for freight cars, a turnaround for the seasonal passenger excursion trains, and is also used as a location to transload freight, to date containers from rail cars, as shown in photographs contained in **Exhibit O**.

[31] As noted above, in the not-too-distant future, there is also significant freight anticipated to be added to existing freight traffic on the Branch, including at the Mannington Mills plant in Mannington. *See* Notice to Mannington with engineering plans regarding a transloading operation at the site of the Mannington Mills plant, dated October 21, 2024 (**Ex. D**).

Third, the firepits, picnic tables and other facilities within the wye are used by SMS employees whether working on rail transportation of freight or the seasonal passenger excursion trains. J. Pfeiffer Stmt. ¶ 11 (**Ex. C**). They also serve to comfort passengers on their brief visit to the wye such as when the pumpkin patch excursion is run in the fall. The pumpkins were placed at the wye for the pumpkin patch excursion. The corn-hole game boards are simply for light recreation, used by passengers and employees alike. *Id*.

Likewise, the prefabricated shed on the wye simply replaced an old tool shed that existed at the wye which was dilapidated and in a bad state of repair, creating a safety hazard for employees and trespassers alike. *See supra* n.18, and photographs of old rail tool shed and the new tool shed at the wye (**Ex. O**).

In light of the foregoing, consistent with the ICCTA's "new, explicit statutory grant of jurisdiction to the [Board] over intrastate rail transportation," *DesertXpress Enterprises,* FD 34914 at 9-10 (STB served May 7, 2010), the Board's jurisdiction must apply to the Salem Branch and SMS which is "performing more than 'minimal' freight operation in interstate commerce" on the Branch. *Denver & Rio Grande Railway,* FD 35496 at 7 (STB served March 24, 2015).

V. CONCLUSION

The Salem County Railroad has existed exactly where it is today for over a century, and notwithstanding local and state law, there is nothing that prohibits the track from being restored and the railroad and all of its property and facilities from being operated by SMS under the Board's jurisdiction. As a rail line that is part of the national railroad network, consistent with the statutory mandates that underlie federal preemption, the Salem Branch and SMS must remain under the Board's exclusive jurisdiction.

Respectfully submitted,

/s/ Robert A. Klein_____
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Attorney for Respondent SMS Rail Service, Inc.

DATE FILED: December 16, 2024

APPENDIX A

LIST OF EXHIBITS

EXHIBIT REF.	EXHIBIT DESCRIPTION
A	Deed to SMS (Bl. 73, Lots 1 and 3 in Pilesgrove)
B	SMS's Verified Notice of Exemption Under 49 C.F.R. § 1150.41, filed June 10, 2022
C	Verified Statement of James R. Pfeiffer, Chief Operating Officer of SMS
D	SMS's Notice to Mannington with plans re: transloading operation at Mannington Mills plant, dated October 21, 2024
E	Salem Branch – Right of Way and Track Maps, dated June 30, 1916, last revised 1956, together with Tax Records for Block 67, Lots 14.01, 14.02 and 18 owned by Salem County Railroad
F	Article: J.W. Burlage, Jr., "The Salem Branch – A Concise History" at p. 1 (copyright 2021)
G	Rail Line Service Agreement, as of March 30, 2021
H	Supplemental Verification of Jeffrey L. Sutch in Support of Verified Notice of Exemption of SMS Rail Service, Inc., filed June 29, 2022
I	NJDOT Rail Freight Assistance Program 2022 Grant Application Proposed Project(s) List
J	Junction Interchange Update Forms between SMS and NS, and SMS and CSX
K	Verified Statement of Paul C. Harland, Director of Passenger Operations for SMS
L	NJDOT Rail Freight Assistance Program Agreement, dated September 9, 2022
M	Photographs of the two prefabricated sheds (Block 73, Lot 1) and the engine house (Block 73, Lot 3) on SMS's Property in Pilesgrove
N	Photograph of the electrical service poles and lines erected by Atlantic City Electric on SMS's Property (Block 73, Lot 3) in Pilesgrove
O	Photographs depicting the wye, including track covered by overgrown vegetation prior to being upgraded and after it was upgraded, the pre-existing rail tool shed, and the new prefabricated shed, as well as freight

	operations at the wye on the Salem County Railroad's Property in Mannington (Block 67, Lot 14.01, covered by the RLSA)
P	State of New Jersey, Dept. of Community Affairs, Bulletin 01-0, issued May 2001
Q	Email from J. Pfeiffer to Pilesgrove's Solicitor, dated September 5, 2024
R	SMS's counsel's letter to Pilesgrove's Solicitor, dated October 4, 2024
S	Emails from SMS's counsel and J. Pfeiffer to Pilesgrove's Solicitor, both dated October 25, 2024
T	Letter from Pilesgrove's Solicitor to SMS's counsel, dated October 26, 2024
U	Pilesgrove Zoning Notice, dated October 11, 2023, with cover email
V	Pilesgrove Notice and Order of Penalty dated December 11, 2023
W	Pilesgrove Notice and Order of Penalty dated January 29, 2024
X	Pilesgrove Stop Construction Orders and Notices of Violation and Orders to Terminate dated October 10, 2024 and October 29, 2024, and Appeal filed November 6, 2024
Y	Verified Statement of Isaac King and the stop work order posted by Pilesgrove attached thereto as Exhibit A
Z	Mannington Notices of Violation and Orders to Cease, dated April 18, 2024, and Municipal Summonses, dated April 30, 2024
AA	Pilesgrove's Verified Complaint against SMS and Mr. Pfeiffer in Support of Order to Show Cause with Temporary Restraints, filed October 31, 2024
BB	Pilesgrove's Solicitor's November 5, 2024 letter to SMS and Mr. Pfeiffer (without copying SMS's counsel) enclosing copy of the Verified Complaint, with the Court's Order dated November 1, 2024 denying Pilesgrove's request for injunctive relief
CC	Order of the Mid-Salem County Municipal Court dismissing criminal charges against SMS and Salem County, without prejudice, dated September 26, 2024
DD	Voluntary Dismissal of Pilesgrove's Complaint against SMS and Mr. Pfeifer, Without Prejudice, dated November 14, 2024
EE	Appeals of SMS from Notices of Violations of Zoning and Permitting Ordinances issued by Pilesgrove, filed November 6, 2024

FF	Letter from Gloucester County Construction Board of Appeals, Staying SMS's Appeals, dated November 27, 2024,
GG	Transcript of State Court Hearing on July 25, 2024, re criminal charges against SMS
HH	Transcript of State Court Hearing on September 26, 2024, re criminal charges against SMS
II	Three emails from Mannington's Solicitor to the State Court, dated July 25, 2024
JJ	Email from the Pilesgrove Solicitor in her capacity as State prosecutor sent 9:38 p.m., September 25, 2024
KK	Email to SMS from Pilesgrove's Solicitor acting as State prosecutor, dated December 10, 2024
LL	Letter from Frank J. Hoerst, III, Esq. to the Salem County Prosecutor's Office, dated December 12, 2024
MM	Letter from SMS's counsel, Robert A. Klein, Esq., to Pilesgrove's Solicitor acting as State Prosecutor, dated July 16, 2024
NN	Pilesgrove's Solicitor's *ex parte* letter to the Board, dated July 18, 2024, enclosing SMS's counsel, Robert A. Klein, Esq.'s July 16, 2024 letter
OO	SMS's initial letter-motion to the State Court re: criminal charges, dated July 18, 2024
PP	SMS's Notice of Motion to Dismiss Pursuant to N.J. Rule 7:8-5 and supporting Brief, dated September 20, 2024, re criminal charges
QQ	Email to SMS from Melissa Fackler, Pilesgrove Clerk/Administrator, dated October 31, 2022
RR	Zoning Office Information form, dated November 7, 2022
SS	Email to SMS from Pilesgrove re: address assignment, dated November 9, 2022
TT	Zoning Permit unilaterally issued by Pilesgrove to SMS (Preliminarily Exempt)
UU	Email from Assistant Gloucester County Counsel assigned to the Construction Board of Appeals, dated March 11, 2024
VV	Letter from Mr. Pfeiffer of SMS to Pilesgrove's Construction Official, Richard Saunders, dated October 24, 2024

WW	Mr. Pfeiffer's letter to Mr. Saunders, dated November 8, 2024, letter to Pilesgrove Clerk/Administrator Melissa Fackler, dated November 13, 2024, and email to Pilesgrove's Construction Office's Technical Assistant, Jenna Seeney, dated November 13, 2024, all copied to Pilesgrove's Solicitor
XX	Verified Statement of George Sutch, Roadmaster and Vice President of SMS
YY	Certificate of Inspection from New Jersey Department of Community Affairs, Division of Fire Safety, received by SMS

EXHIBIT A

SALEM COUNTY CLERK'S

DOCUMENT SUMMARY SHEET

INSTR # 2022002978
BK 4624 PG 1292
Pgs 1292 - 1298; (7pgs)
RECORDED 03/11/2022 12:10:01 PM
DALE A. CROSS, COUNTY CLERK
SALEM COUNTY, NEW JERSEY
RECORDING FEES: $100.00
RTF TOTAL: $7,299.70
CONSIDERATION: $799,220.00
RECORDED BY: K_SHEFFIELD

All information is to be typed or legibly Printed

Salem County Clerk's Office **Dale A. Cross, Clerk** **110 Fifth Street, Suite 200** **Salem, NJ 08079-1073** **856-935-7510 | salemcountyclerk.org**	**Return Name and Address:** Michael Bailey 11 Eves Drive, Suite 150 Marlton, NJ 08053

FOR OFFICIAL USE

Submitting Company	Surety Title Company
Document Date (mm/dd/yyyy)	03/11/2022
Document Type	DEED (DEED)
No. of pages of the original Signed Document *(include the Document Summary Sheet)*	7
Consideration Amount *(if applicable)*	[redacted]

	Name (s) *(Last Name First Name M.I Suffix) (Company Name as written)*	**Address** *(Required for Deeds)*
First Party (Grantor or Mortgagor or Assignor or Defendants) *(Enter up to five names)*	LAM Services, LLC	911Tatnall Street Wilmington , DE 19801
Second Party (Grantee or Mortgagee or Assignee or Plaintiff) *(Enter up to five names)*	SMS Rail Service, Inc.	P.O. Box 711 Bridgeport , NJ 08014

	Municipality	**Block**	**Lot**	**Party Address**
Deed Parcel Information *(Enter up to three entries)*	PILESGROVE	73 73	1 QFARM 3 QFARM	

	Book Type	**Original Book No.**	**Original Beginning Page**	**Instrument No.**	**Recorded/File Date**
Reference Information *(Enter up to three entries) (If applicable)*					

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Disclaimer: This Sheet was Prepared by the Submitter

NJ Deed-Corporation (Bargain and Sale, Covenants as to Grantor's Acts)

Prepared by:
133629WB.01
George Piperno, Esquire
Preparer signature no longer required per NJSA 46:26A-3

Deed

This Deed is made on 3/2/22 (Delivered 3-11-2022)

BETWEEN

LAM Services, LLC, a DE LLC authorized to do business in NJ

having its principal office at 911 Tatnall Street, Wilmington, DE 19801

referred to as the **Grantor**,

AND

SMS Rail Service, Inc.

whose post office address is P.O. Box 711, Bridgeport, NJ 08014

referred to as the **Grantee**.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

Transfer of Ownership. The Grantor grants and conveys (transfers ownership of) the property (called the "Property") described below to the Grantee.

Consideration. This transfer of ownership is made for the sum and consideration of [redacted]

The Grantor acknowledges receipt of this money.

Tax Map Reference. The property is located in the Municipality of Pilesgrove Township

1 QFarm and

Block No. 73 Lot No. 3 QFARM Account No.

☐ No property tax identification number is available on the date of this Deed. (Check box if applicable.)

Property. The Property consists of the land and all the buildings and structures on the land in Pilesgrove Township, Salem County, State of New Jersey. The legal description is:

(X) Please see attached Legal Description annexed hereto and made a part hereof. (Check box if applicable.)

Commonly known as: East Lake Road

GIT/REP-3
(2-21)
(Print or Type)

State of New Jersey
Seller's Residency Certification/Exemption

SELLER'S INFORMATION

Name(s)
LAM Services, LLC, a DE LLC authorized to do business in NJ

Current Street Address
911 Tatnall Street

City, Town, Post Office	State	Zip Code
Wilmington	**DE**	**19801**

PROPERTY INFORMATION

Block(s)	Lot(s)	Qualifier
73	**1 and 3 QFARM**	

Street Address
East Lake Road

City, Town, Post Office	State	Zip Code
Pilesgrove Township	**NJ**	**08098**

Seller's Percentage of Ownership	Total Consideration	Owner's Share of Consideration	Closing Date
100%	[redacted]	[redacted]	3/11/2022

SELLER'S ASSURANCES (Check the Appropriate Box) (Boxes 2 through 16 Apply to Residents and Nonresidents)

1. ☐ Seller is a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to the New Jersey Gross Income Tax Act, will file a resident Gross Income Tax return, and will pay any applicable taxes on any gain or income from the disposition of this property.
2. ☐ The real property sold or transferred is used exclusively as a principal residence as defined in 26 U.S. Code section 121.
3. ☐ Seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor, or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☑ Seller is not an individual, estate, or trust and is not required to make an estimated Gross Income Tax payment.
6. ☐ The total consideration for the property is $1,000 or less so the seller is not required to make an estimated Income Tax payment
7. ☐ The gain from the sale is not recognized for federal income tax purposes under 26 U.S. Code section 721, 1031, or 1033 (CIRCLE THE APPLICABLE SECTION). If the indicated section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey Income Tax return for the year of the sale and report the recognized gain.
   ☐ Seller did not receive non-like kind property.
8. ☐ The real property is being transferred by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent 's estate in accordance with the provisions of the decedent's will or the intestate laws of this State.
9. ☐ The real property being sold is subject to a short sale instituted by the mortgagee, whereby the seller agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10. ☐ The deed is dated prior to August 1, 2004, and was not previously recorded.
11. ☐ The real property is being transferred under a relocation company transaction where a trustee of the relocation company buys the property from the seller and then sells the house to a third party buyer for the same price.
12. ☐ The real property is being transferred between spouses or incident to a divorce decree or property settlement agreement under 26 U.S. Code section 1041.
13. ☐ The property transferred is a cemetery plot.
14. ☐ The seller is not receiving net proceeds from the sale. Net proceeds from the sale means the net amount due to the seller on the settlement sheet.
15. ☐ The seller is a retirement trust that received an acknowledgment letter from the Internal Revenue Service that the seller is a retirement trust, and is therefore not required to make the estimated Gross Income Tax payment.
16. ☐ The seller (and/or spouse/civil union partner) originally purchased the property while a resident of New Jersey as a member of the U.S. Armed Forces and is now selling the property as a result of being deployed on active duty outside of New Jersey. (Only check this box if applicable and neither boxes 1 nor 2 apply.)

SELLER'S DECLARATION

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein may be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box ☐ I certify that a Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

Date	Signature (Seller)	Indicate if Power of Attorney or Attorney in Fact
March 2, 2022		
Date	Signature (Seller)	Indicate if Power of Attorney or Attorney in Fact

BEING part of the same land and premises which became vested in LAM Services, LLC, by deed from John B. Cooksey, Sheriff of the County of Salem, dated 4/21/2006, recorded 6/26/2006, in the Salem County Clerk/Register's Office in Deed Book 1244, Page 46. (Premises in question with other lands)

Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the Property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the Property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

Signatures. This deed is signed by the Grantor's proper authorized member(s) manager(s) as of the date at the top of the first page. Its corporate seal is affixed.

Witnessed or Attested by:

T. Navasova

LAM Services, LLC, a DE LLC authorized to do business in NJ

By John Hynansky, Managing Member

STATE OF DELAWARE, COUNTY OF NEW CASTLE SS.:

I CERTIFY that on MARCH 3rd, 2022

John Hynansky

personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

(a) was the maker of the attached deed;

(b) was authorized to and did execute this Deed as Member of the entity named in this Deed;

(c) made this Deed for [redacted] as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5.)

(d) executed this Deed as the act of the entity.

Christopher Edward Saberton

Christopher Edward Saberton
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires August 9, 2023

RECORD AND RETURN TO:

EXHIBIT "A"
(REVISED)

LEGAL DESCRIPTION

File No.: **133629WB-01**

REVISED

ALL THAT CERTAIN tract or parcel of land and premises lying, being and situate in Pilesgrove Township, Salem County, and State of New Jersey being more particularly described as follows:

TRACT 1

BEGINNING AT A POINT where the easterly right-of-way line of Alloway-Woodstown Road (C.R #603-49.5' wide) is intersected by the northerly right-of-way line of East Lake Road (41.25' wide), said point being evidenced by a rebar with cap set, as illustrated on a plan entitled "Survey of Property, Lands N/F Lam Services, LLC, Block 73 Lots 1 & 3, Pilesgrove Township, Salem County, New Jersey" Prepared by Taylor Wiseman & Taylor, Dated 2/28/2022, Drawing No. 2022-07171-SUR, and from said beginning point runs; thence,

1. **Along said line of Alloway-Woodstown Road, N 10°03'41" E a distance of 2,005.47' to a point where the same is intersected by the southerly line of Lot 1.01, evidenced by a rebar with cap set; thence,**

2. **Along said line of Lot 1.01, and continuing further along Lot 1.04, S 80°00'51" E a distance of 406.23' to a point corner to said Lot 1.04, evidenced by a concrete monument found; thence,**

3. **Along the easterly line of the same, N 09°59'09" E, passing over a found concrete monument 0.4' northwest of said easterly line and 252.39' more or less from the end of this course, a distance of 541.88' more or less to a point where the same intersects the centerline of Nichomus Run; thence,**

4. **Along said centerline of Nichomus Run in a southeasterly direction, said course also being along the southwesterly line of Lot 1.03, the various courses thereof, a distance of 593' more or less (said course having a tie line of S 43°01'42" E 566.59') to a point where the same intersects the northwesterly line of Lot 2; thence,**

5. **Along said line of Lot 2, passing over a rebar with cap set on-line 50.00' more or less from the preceding corner, S 24°52'43" W a distance of 2,303.45' more or less to a point where the same intersects the aforementioned northerly right-of-way line of East Lake Road, evidenced by a rebar and cap found; thence,**

6. **Along said line of East Lake Road, N 75°51'22" W a distance of 270.16' to the POINT AND PLACE OF BEGINNING.**

The foregoing description has been drawn in accordance with a survey made by Taylor Wiseman & Taylor - Edward J,. Constantine, Jr., NJ Licensed Land Surveyor, dated February 25, 2022.

FOR INFORMATIONAL PURPOSES ONLY:
BEING premises No. Alloway-Woodstown Road.

BEING Tax Block: 73, Tax Lot: 1 QFARM

TRACT 2

BEGINNING AT A POINT where the northerly right-of-way line of East Lake Road (41.25 ' wide) is intersected by the southeasterly line of Block 73 Lot 2, said point being evidence by a rebar with cap found, as illustrated on a plan entitled "Survey of Property, Lands N/F Lam Services, LLC, Block 73 Lots 1 & 3, Pilesgrove Township, Salem County, New Jersey" Prepared by Taylor Wiseman & Taylor, Dated 2/28/2022, Drawing No. 2022-07171-SUR, and from said beginning point runs; thence,

1. Along said line of Block 73 Lot 2, N 24°52'43" E a distance of 3,116.76' to a point where the same intersects the municipal division line between the Township of Pilesgrove and the Borough of Woodstown, evidenced by a rebar with cap set; thence,

2. Along said municipal division line, S 86°27'16" E a distance of 487.97' to a point where the same is intersected by the westerly line of Lot 4, evidenced by a rebar with cap set; thence,

Along said Lot 4 the following seven (7) courses:

3. S 55° 50' 54" W a distance of 160.89' to a point within a tree, witnessed by a rebar with cap found N 55°50'54" E 5.00' from corner; thence,

4. S 02° 38' 36" E a distance of 444.25' to a point evidenced by a rebar with cap found; thence,

5. S 14° 31' 56" W a distance of 373.10' to a point witnessed by a rebar with cap found S 51°32'16" E 0.48' from corner; thence,

6. S 52° 05' 06" W a distance of 372.32' to a point evidenced by a rebar with cap found; thence,

7. S 60° 42' 21" E a distance of 383.89' to a point evidenced by a rebar with cap found; thence,

8. S 57° 07' 21" E a distance of 345.00' to a point witnessed by a rebar with cap found S 14°15'23" E 0.38' from corner; thence,

9. S 15° 45' 21" E a distance of 167.87' to a point within a brush pile, witnessed by rebar with cap found N 15°45'21" W 5.00' from corner; thence,

10. Still along said Lot 4, and continuing further along the northwesterly line of Lots 11 & 11.02, S 38° 03' 50" W a distance of 1,731.91' to a point in the aforementioned northerly right-of-way line of East Lake Road, evidenced by a rebar with cap found; thence,

11. Along said line of East Lake Road, N 75° 51' 22" W a distance of 928.73' to the POINT AND PLACE OF BEGINNING.

The foregoing description has been drawn in accordance with a survey made by Taylor Wiseman & Taylor - Edward J,. Constantine, Jr., NJ Licensed Land Surveyor, dated February 25, 2022.

FOR INFORMATIONAL PURPOSES ONLY:
BEING premises No. East Lake Road.

BEING Tax Block: 73, Tax Lot: 3 QFARM

EXHIBIT B

BERKOWITZ · KLEIN LLP
ATTORNEYS AT LAW
629 B SWEDESFORD ROAD
SWEDESFORD CORPORATE CENTER
MALVERN, PENNSYLVANIA 19355-1530

Robert A. Klein rak@berklein.com

Telephone 610-889-3200
Mobile 215-880-6913

304750

ENTERED
Office of Proceedings
June 10, 2022
Part of
Public Record

June 10, 2022

Via E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: SMS Rail Service, Inc. – Change in Operator Exemption Including Acquisition by Lease – Salem Branch Line in Salem and Gloucester Counties, New Jersey, STB Docket No. FD-36529

Dear Ms. Brown:

Enclosed is the Verified Notice of Exemption Under 49 C.F.R. § 1150.41 for SMS Rail Service, Inc. ("SMS") to replace Class III rail carriers as operators of 19.4 linear miles of rail lines owned by Salem County, New Jersey, located primarily in Salem County, New Jersey and in part in Gloucester County, New Jersey, and known as the "Salem Branch Line".

Thank you for your assistance in this regard. If you have any questions, please contact me at my mobile number 215-880-6913.

Respectfully,

BERKOWITZ KLEIN, LLP

/s/ Robert A. Klein

Robert A. Klein
Attorney for SMS Rail Service, Inc.

Encl.

F I L E D
June 10, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
June 10, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

SMS RAIL SERVICE, INC.	)	
ACQUISITION AND OPERATION	)	FINANCE DOCKET
EXEMPTION – RAIL LINE OF THE	)	
COUNTY OF SALEM, NEW JERSEY	)	NO. 36529
IN SALEM COUNTY, NJ	)	

NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1150.41

SMS RAIL SERVICE, INC.
513 Sharptown Road
Logan Township, NJ 08085

Applicant

ROBERT A. KLEIN, ESQUIRE
BERKOWITZ KLEIN, LLP
629 B Swedesford Road
Swedesford Corporate Center
Malvern, PA 19355-1530
O: (610) 889-3200, ext. 2
C: (215) 880-6913
E: rak@berklein.com

Attorney for Applicant

DATE FILED: June 10, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

SMS RAIL SERVICE, INC.	)	
ACQUISITION AND OPERATION	)	FINANCE DOCKET
EXEMPTION – RAIL LINE OF THE	)	
COUNTY OF SALEM, NEW JERSEY	)	NO. 36529
IN SALEM COUNTY, NJ	)	

VERIFIED NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1150.41

Pursuant to 49 C.F.R. § 1150.41 *et seq*., SMS RAIL SERVICE, INC. ("SMS"), a Class III rail carrier, hereby provides notice of its class exemption from 49 U.S.C. § 10902 for its acquisition by lease from THE COUNTY OF SALEM, NEW JERSEY, a political subdivision of the State of New Jersey ("SALEM COUNTY"), to replace Class III rail carriers, U S Rail Corporation ("U S Rail") and J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail"), as operators of a rail line which comprises approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks, and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by SALEM COUNTY known as the Salem Branch Line located primarily in SALEM COUNTY and in part in Gloucester County, New Jersey, between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey (the "Rail Line"). The transaction will not yield five million dollars or more of revenue, and as a result of the transaction, SMS will not become a Class I or Class II rail carrier. A map of the Rail Line is attached to this Notice as **Appendix 1**.

BACKGROUND

SALEM COUNTY is the owner of the property and right-of-way comprising the Salem Branch Line and the Rail Line thereon. "The Rail Line has been underutilized for decades, with rail traffic of only approximately two to three railcars per year over the last five to six years" and "is presently out of service due to lack of maintenance, including significant washouts and undermining of track bed[,] requir[ing] considerable investment in repairs and improvements in order to attract active and robust commerce in the County along and on the Line." Correspondence from SALEM COUNTY to Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings, Surface Transportation Board ("Board" or "STB"), dated May 9, 2022 ("County's May 9th letter") at p. 1, attached to this Notice as **Appendix 2**. *See also* Declaration of Robert A. Klein, Esquire ("Klein Decl.") ¶¶ 3-4, attached to this Notice as **Appendix 3**. SALEM COUNTY "is desirous of adding [such] commerce," which it intends to do by, among other things, "a proposed change in operators" from U S Rail and J.P. Rail to an established operator, the Applicant SMS, which SALEM COUNTY has determined to be "capable of improving, maintaining, and providing service on the Rail Line." County's May 9th letter (**Appx. 2**) at p. 2.

SMS is in the business of operating and servicing a short line railroad and desires to provide rail service as a common carrier on the Salem Branch Line. SALEM COUNTY and SMS have entered into a Rail Line Service Agreement whereby SMS has acquired the Rail Line by lease and will operate the Rail Line, providing exclusive rail service on and along the Salem Branch Line pursuant to such Agreement. SALEM COUNTY, through its Board of County Commissioners ("Commissioners"), supports the proposed change in operators from U S Rail and J.P. Rail to SMS.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.43

(a) The full name and address of the Class III rail carrier applicant:

Applicant is SMS Rail Service, Inc., 513 Sharptown Road, Logan Township, NJ 08085.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence:

Applicant's attorney is Robert A. Klein, Esquire, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355-1530, Off. (610) 889-3200, ext. 2, and Cell (215) 880-6913.

(c) A statement that an agreement has been reached or details about when an agreement will be reached:

An agreement has been entered into between SMS and SALEM COUNTY by which SMS has acquired the Rail Line by lease and will operate the Rail Line exclusively. Previously, J.P. Rail had an operating agreement with SALEM COUNTY for these operations and had been granted the rights to operate the Rail Line. *See JP Rail, Inc. d/b/a Southern R.R. Co. of N.J.—Notice of Exemption—Operation of Salem Branch Rail Line in Salem County, N.J.*, FD 32700 (ICC served Oct. 10, 1995). However, operator issues hindered development of commerce on the Rail Line." County's May 9th letter (**Appx. 2**) at p. 2. In 2009, "[t]his led to an assignment of J.P. Rail's rights and obligations to U S Rail." *Id. See also U S Rail Corp. of N.J.—Lease Exemption—County of Salem, N.J.*, FD 35310 (STB served Nov. 27, 2009), and *U S Rail Corp.—Operation Exemption—U.S. Rail Corp. of N.J.*, FD 35317 (STB served Nov. 27, 2009). Nevertheless, "these issues were not rectified" and "[a]s a result [SALEM COUNTY] terminated its relationship with U S Rail on January 10, 2012 and reassigned the contract to operate the Rail Line [back] to J.P. Rail on February 1, 2012." *Id. See also JP Rail, Inc. d/b/a Southern Railroad Company of New Jersey—*

Operation Exemption—Rail Line in Salem County, N.J., FD 35596 (STB served Feb. 29, 2012). The issues still continued to not be rectified and J.P. Rail's contract with SALEM COUNTY has since terminated. *See* County's May 9th letter (**Appx. 2**) at pp. 1-2. As set forth below, J.P. Rail has consented to the proposed change in operators and discontinuance of its operating authority. *Id*. at p. 2.

SALEM COUNTY, as owner of record of the Rail Line, agrees to this change in operators from U S Rail and J.P. Rail to SMS, and for SMS to have sole and exclusive rights to operate on the Rail Line. County's May 9th letter (**Appx. 2**) at pp. 1-2.

Regarding J.P. Rail, the Commissioners, on behalf of SALEM COUNTY, have entered a stipulation with J.P. Rail by which J.P. Rail has consented to the discontinuance of its operator authority on the Line and the change in operators to SMS, effective immediately. *See* correspondence from SALEM COUNTY to J.P. Rail, dated April 19, 2022, containing such stipulation executed by J.P. Rail, attached to the correspondence from SALEM COUNTY to the Board (**Appendix 2**); Klein Decl. (**Appx. 3**) **¶¶** 3-5.

Regarding U S Rail, after exhaustive and extensive efforts, the company has been unreachable. The undersigned counsel for SMS has undertaken a reasonable investigation regarding U S Rail, including reviewing past decisions of the Board regarding U S Rail in matters involving the Rail Line, and having had several conversations with the company's counsel of record in those matters regarding the status of U S Rail, as well as reviewing U S Rail's filings with the Secretary of State of the State of Ohio (its state of incorporation), conferring with a representative of the Office of the Ohio Secretary of State ("OSOS"), searching the internet using the company's name, and unsuccessful efforts to reach the company by phone at its listed number in Toledo, Ohio (419-720-7588), and through its web address (www.usrailcorp.com). Klein Decl.

(**Appx. 3**) ¶ 6.a.-e. SMS's undersigned counsel has confirmed that U S Rail's owner and president, Gabriel D. Hall, passed away in 2018, and that the afore-mentioned counsel for U S Rail has had no contact with the company since at least that time, previously had no active matters with the company for some years, and has no current contact information for the company. *Id*. ¶ 7.a.-b.

The records of the OSOS show that U S Rail was incorporated on November 17, 1993 in Ohio and is assigned Ohio entity number 857501. Klein Decl. (**Appx. 3**) ¶ 7.c. and Exhibit A thereto. The last filing by U S Rail with the OSOS was a Certificate of Amendment by Directors, filed April 22, 2011, noting a resolution had been adopted by the company's directors pursuant to Ohio Revised Code § 1701.70(B)(6), changing the company name to U S Rail Corporation of Ohio with a registered address at 7846 W. Central Avenue, Toledo, Ohio 43617. *Id*. ¶ 7.d. and Exhibit B thereto. Moreover, the Office of the OSOS has informed the undersigned counsel for SMS that Ohio requires no annual filing or annual fees for "for profit" corporations such as U S Rail, and no filing of any kind in order for the company to continue to be listed as active on the OSOS's records. *Id*. ¶ 7.e. Therefore, unless U S Rail had filed with the OSOS a record indicating it is not active or the OSOS received a similar notification, the OSOS would have no notice of the company's change in status. *Id*. There have been no filings of any kind by U S Rail with the Office of the OSOS since April 22, 2011, and no change of address or registered agent for the company since 2007. *Id*.; Resolution of U S Rail, dated March 24, 2007, attached to the Certificate of Amendment by Directors (Klein Decl. (**Appx. 3**) Ex. B).

In addition, a search of the STB record yielded no filings with the STB on behalf of U S Rail Corporation of Ohio. *Id*. ¶ 7.f. An internet search of the company name, U S Rail Corporation of Ohio, yielded the same address for the company as its registered address (7846 W. Central Avenue, Toledo, Ohio 43617), which is shown to be "permanently closed", and the company's

web address (www.usrailcorp.com), which appears is no longer accessible. *Id*. ¶ 7.g.-h. and Exhibits C and D thereto.

Further, SMS has been unable to confirm that U S Rail presently has any operations in the region. Klein Decl. (**Appx. 3**) ¶ 8. SALEM COUNTY, through its Commissioners, states in its correspondence to the Board that "[t]o the best of [its Commissioners'] knowledge, U S Rail maintains no operations, equipment, locomotives, or employees in [SALEM COUNTY]." County's May 9th letter (**Appx. 2**) at p. 2. Therefore, it appears that there are no railroad employees of U S Rail that will be affected by the proposed discontinuance and change of operators. Klein Decl. (**Appx. 3**) ¶ 8. Nevertheless, out of an abundance of caution, the Caption Summary, referred to below and attached hereto as **Appendix 5**, contains notice advising the employees of U S Rail, as well as J.P. Rail, of the proposed change in railroad operators.

(d) The operator of the property:

SMS will operate the Rail Line.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant:

The lessor of the Rail Line to SMS is SALEM COUNTY, 110 Fifth Street, Suite 400, Salem, NJ 08079.

(2) The proposed time schedule for consummation of the transaction:

The transaction provides for SMS to acquire the Rail Line by lease. SMS will commence service and operation of the Rail Line upon the effective date of this Notice of Exemption.

(3) The mileposts of the subject property, including any branch lines:

The Rail Line includes approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks,

and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by SALEM COUNTY known as the Salem Branch Line located primarily in SALEM COUNTY and in part in Gloucester County, New Jersey between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey.

(4) The total route miles being acquired.

Approximately nineteen and four-tenths (19.4) linear miles of rail lines.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states:

The required map is attached to this Notice as **Appendix 1**.

(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under Sec. 1150.45.

The required certificate is contained in the Verification of Mr. Jeffrey L. Sutch, President of SMS, which is attached to this Notice as **Appendix 4**.

(h) Interchange Commitments. (1) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment").

The proposed acquisition and operation of the Rail Line does not involve any provision or agreement that may limit future interchange commitments.

CAPTION SUMMARY

The caption summary required by 49 C.F.R. § 1150.44 is attached to this Notice as **Appendix 5**.

ENVIRONMENTAL AND HISTORIC MATTERS

By virtue of 49 C.F.R. § 1105.6(c)(1), no environmental assessment is required in conjunction with the proposed acquisition and operation. Also, by virtue of 49 C.F.R. § 1105.8(b)(1), no historic reporting is required.

LABOR PROTECTION

By virtue of 49 U.S.C. § 10902, no labor protective conditions are to be imposed in conjunction with this Notice.

ANNUAL REVENUES

The certificate required by 49 C.F.R. § 1150.43(g) (SMS's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C.F.R. § 1150.45), is contained in **Appendix 4** attached to this Notice.

VERIFICATION

A general verification of all factual assertions in this Notice is contained in **Appendix 4**.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 16 days after the filing of this Notice, the Director of the Board's Office of Proceedings should arrange for publication of notice of the filing of this Notice in the Federal Register.

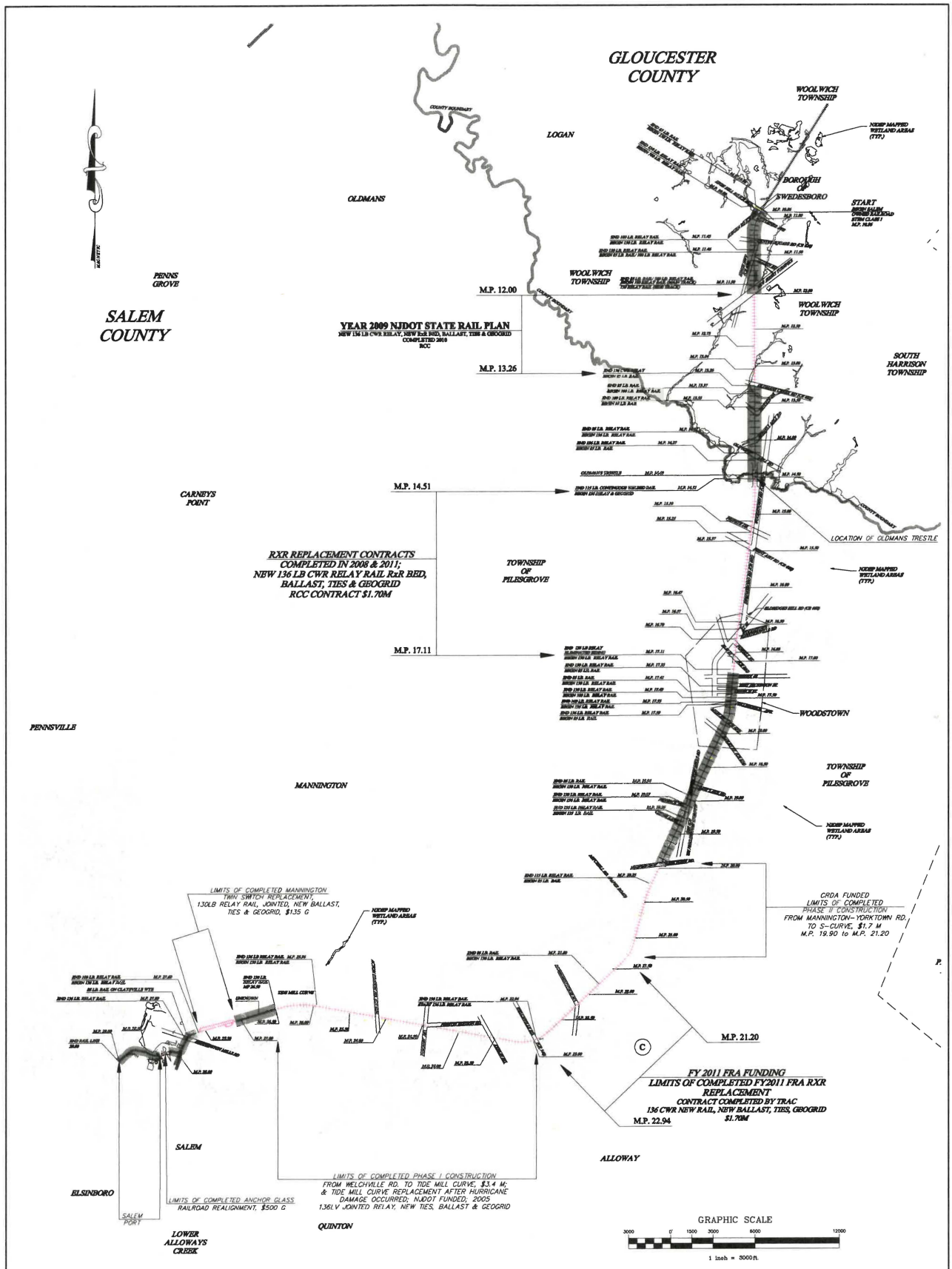
Respectfully submitted,

SMS RAIL SERVICE, INC.
513 Sharptown Road
Logan Township, NJ 08085
Applicant

ROBERT A. KLEIN, ESQUIRE
Berkowitz Klein, LLP
629 B Swedesford Road
Swedesford Corporate Center
Malvern, PA 19355-1530
O: (610) 889-3200, ext. 2
C: (215) 880-6913
E: rak@berklein.com
Attorney for Applicant

DATE FILED: June 10, 2022

APPENDIX 1



LEGEND

- PROPOSED RAIL REPLACEMENT AREAS
- EXISTING NEW RAIL
- EXISTING OLD RAIL

RXR STATUS REPORT 2012

COUNTY OF SALEM NEW JERSEY

COUNTY OF SALEM
OFFICE OF THE COUNTY ENGINEER

DESIGNED BY: TW	DRAWN BY: DLB	CHECKED BY: TW
APPROVED BY:		REVISIONS NO. DATE

THEODORE WILKINSON
PROFESSIONAL ENGINEER
N.J. LICENSE NO. 39607
DATE
NEW JERSEY PROFESSIONAL ENGINEER

SALEM BRANCH RAILROAD

MAP OF RAILROAD MAINTENANCE & REPAIRS

SALEM BRANCH STEM CLASS I
M.P. 10.86 TO M.P. 29.00
RAILROAD MAINTENANCE & REPAIRS
GLOUCESTER & SALEM COUNTIES, NEW JERSEY

SCALE	DATE	DRAWING NO.	SHEET NO.
1"=3000'	2/27/12	10003	1 OF 1

APPENDIX 2

Salem County New Jersey

Board of County Commissioners

BEN H. LAURY, P.E.
Commissioner Director

FIFTH STREET OFFICE COMPLEX
110 FIFTH STREET, SUITE 400
SALEM, NEW JERSEY 08079

Office: 856-935-7510, Ext. 8204
Fax: 856-935-9102

May 9, 2022

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

Re: SMS Rail Service, Inc.—Change in Operator Exemption Including Acquisition by Lease—SMS Rail Service, Inc., STB Docket No. FD 36529

Dear Ms. Brown:

The Salem County Board of Chosen Commissioners hereby provides this letter of support in favor of SMS Rail Service, Inc.'s ("SMS") Verified Notice of Exemption Under 49 C.F.R. § 1150.41 *et seq*. ("Notice"), regarding a proposed change in railroad operators to SMS of the rail line comprising 19.4 linear miles of rail on property known as the Salem Branch Line located in Salem County, New Jersey ("Rail Line" or "Line").

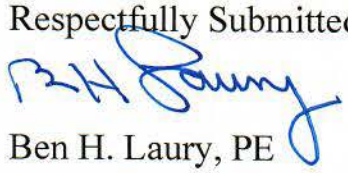
Salem County (the "County") is the owner of the property and right-of-way comprising the Salem Branch Line and the Rail Line thereon. The Rail Line has been underutilized for decades, with rail traffic of only approximately two to three railcars per year over the last five to six years. The Line is presently out of service due to lack of maintenance, including significant washouts and undermining track bed. As a result, the Line requires considerable investment in repairs and improvements in order to attract active and robust commerce in the County along and on the Line.

The County is desirous of adding commerce, which it intends to do by a proposed change in railroad operators, from J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail") and U S Rail Corporation ("U S Rail") to an established operator, who we have determined should be SMS. We believe SMS is capable of improving, maintaining, and providing service on the Rail Line that will help attract and develop the active and robust commerce the County desires. To do so, the County has agreed to terms of a Rail Line Service Agreement with SMS, whereby SMS will operate the Rail Line once its operating authority is received from the Surface Transportation Board ("STB"), consistent with the Notice. In conjunction with this Agreement, the County has also agreed to provide this support for the proposed change in operators from J.P. Rail and U S Rail and to SMS. The background leading to this transaction is summarized below.

From about October 2009 to about January 2012, operator issues hindered development of commerce on the Rail Line. This led to an assignment of J.P. Rail's rights and obligations to U S Rail. However, these issues were not rectified. In particular, U S Rail failed to meet its obligations to shippers and the County and to make an investment in the Rail Line to maintain it in accordance with requisite safety standards. This led to significant impairment of the Line and created a burden on the public. Effectively, there was barely any commerce on the Line during this period. As a result, the County terminated its relationship with U S Rail on January 10, 2012 and reassigned the contract to operate the Rail Line to J.P. Rail on February 1, 2012. Since February 1, 2012, U S Rail has had no presence in or around the County and the Rail Line. To the best of our knowledge, U S Rail maintains no operations, equipment, locomotives, or employees in the County. The County is unaware of whether U S Rail is active elsewhere.
In conjunction with the current transaction, the County has entered into the attached Stipulation with J.P. Rail by which J.P. Rail consents to discontinuance of its operating authority on the Rail Line and to the change in operators to SMS.
We respectfully request that the Board approve the change of operators on the Rail Line to SMS.

If you have any questions concerning this matter, please contact us at the address in the above letterhead.

Respectfully Submitted,



Ben H. Laury, PE
Salem County Commissioner Director

Salem County New Jersey

Board of County Commissioners

BEN H. LAURY, P.E.
Commissioner Director

FIFTH STREET OFFICE COMPLEX
110 FIFTH STREET, SUITE 400
SALEM, NEW JERSEY 08079

Office: 856-935-7510, Ext. 8204
Fax: 856-935-9102

April 19, 2022

Mr. Michael Foglietta
President and CEO
J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey
212 Spring Road
Hammonton, NJ 08037

Re: SMS Rail Service, Inc.—Change in Operator Exemption Including Acquisition by Lease—SMS Rail Service, Inc., STB Docket No. FD 36529

Dear Mr. Foglietta:

The Salem County Board of Chosen Commissioners is writing to request and confirm that J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail") consents and stipulates to 1) the discontinuance of its operator authority on the rail line known as the Salem Branch Line located in Salem County and Gloucester County, New Jersey comprising of approximately 18.38 linear miles from approximately MP 10.86 (Auburn Road) in Swedesboro, NJ to approximately MP 28.4 in the City of Salem, NJ and the Port Industrial Track of approximately .84 miles in the City of Salem, ("Rail Line" or "Line"), and 2) a change in railroad operators of the Rail Line to SMS Rail Service, Inc. ('SMS").

Please confirm that J.P. Rail consents and stipulates to the discontinuance of its operator authority on the Rail Line and the change in railroad operators to SMS, and that Salem County may so represent to the Surface Transportation Board ("STB"), including that a copy of this letter may be provided to the STB in support of the discontinuance of J.P. Rail's operator authority and the change in operators to SMS, by signing on the signature line below.

Thank you for your cooperation.

Respectfully,

Ben H. Laury: Salem County Commissioner Director

Stipulated and Agreed by:

Michael Foglietta
President and CEO
J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey

Salem County
DISCOVER THE POSSIBILITIES

APPENDIX 3

BEFORE THE
SURFACE TRANSPORTATION BOARD

SMS RAIL SERVICE, INC.	)	
ACQUISITION AND OPERATION	)	FINANCE DOCKET
EXEMPTION – RAIL LINE OF THE	)	
COUNTY OF SALEM, NEW JERSEY	)	NO. 36529
IN SALEM COUNTY, NJ	)	

DECLARATION OF ROBERT A. KLEIN, ESQUIRE

I, Robert A. Klein, under the pains and penalties of perjury, state as follows:

1. I am a lawyer in good standing in the District of Columbia, the State of New Jersey, the Commonwealth of Massachusetts, and the Commonwealth of Pennsylvania. I represent SMS Rail Service, Inc. ("SMS"), a Class III rail carrier in the above matter before the Surface Transportation Board ("Board"), filed under Finance Docket No. 36529.

2. I make this declaration in support of the Verified Notice of Exemption, pursuant to 49 C.F.R. § 1150.41, of SMS's class exemption from 49 U.S.C. § 10902 for its acquisition by lease from the County of Salem, New Jersey, a political subdivision of the State of New Jersey ("Salem County"), to replace Class III rail carriers, U S Rail Corporation ("U S Rail") and J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail") (the "Verified Notice"), as operators of the rail line described in the Verified Notice (the "Rail Line").

3. Attached to the Verified Notice as **Appendix 2** is a true and correct copy of a letter from the Board of County Commissioners of Salem County, New Jersey ("Commissioners"), addressed to Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, dated May 9, 2022, together with an attached separate letter from the Commissioners to Michael Foglietta, President and CEO of J.P. Rail, dated April 19, 2022. These

letters were provided to my client, SMS, for submission to Ms. Brown and the Surface Transportation Board ("Board" or "STB") regarding SMS's Verified Notice.

4. The Commissioners' letter to Ms. Brown indicates that a history of operator issues hindering development of commerce on the Rail Line and the Line's maintenance led to multiple assignments of rights back and forth between J.P. Rail and U S Rail over a decade ago. The Commissioners state in their letter to Ms. Brown that, dating back to "February 1, 2012, U S Rail has had no presence in or around the County and the Rail Line." It has been more than a decade since Salem County's relationship with U S Rail was terminated on January 10, 2012. As set forth below, after exhaustive and extensive efforts, U S Rail has been unreachable.

5. More recently, as confirmed by the above-referenced April 19, 2022 letter executed by J.P. Rail and the Commissioners, J.P. Rail has "consent[ed] and stipulate[d] to the discontinuance of its operator authority on the Rail Line and the change in railroad operators to SMS."

6. In regard to U S Rail, based on a reasonable investigation, I have found that the company is unreachable. My investigation included:

a. Reviewing past decisions of the Board regarding U S Rail in matters involving the Rail Line, and having had several conversations regarding the status of U S Rail with U S Rail's counsel of record in those matters, Eric M. Hocky, Esquire of the law firm Clark Hill PLC in Philadelphia, Pennsylvania, the most recent of which occurred on June 7, 2022. *See JP Rail, Inc. d/b/a Southern Railroad Company of New Jersey—Operation Exemption—Rail Line in Salem County, N.J.*, FD 35596 (STB served Feb. 29, 2012); *U S Rail Corp.—Operation Exemption—U.S. Rail Corp. of N.J.*, FD 35317 (STB

served Nov. 27, 2009); *U S Rail Corp. of N.J.—Lease Exemption—County of Salem, N.J.*, FD 35310 (STB served Nov. 27, 2009);

b. Reviewing U S Rail's filings with the Secretary of State of the State of Ohio (U S Rail's state of incorporation);

c. A telephone conversation on June 9, 2022, with a representative of the Office of the Secretary of State of Ohio regarding U S Rail's status and filings with that Office;

d. Searching the internet using the company's name; and

e. Unsuccessful efforts to reach the company by phone at its listed number in Toledo, Ohio, 419-720-7588, and through its web address, www.usrailcorp.com.

7. The following are the results of my investigation:

a. Mr. Hocky confirmed that U S Rail's owner and president, Gabriel D. Hall, passed away in 2018, that he has had no contact with the company since at least that time, previously had no active matters with the company for some years, and has no current contact information for the company;

b. Attorney Hocky confirmed his last involvement on behalf of U S Rail was in regard to the Rail Line, in the matters before the Board cited in paragraph 6.a. above;

c. The records of the Ohio Secretary of State show that U S Rail was incorporated on November 17, 1993 in Ohio and is assigned Ohio entity number 857501. *See* results of a business name search on the website of the Ohio Secretary of State, a true and correct copy of which is attached hereto as Exhibit A;

d. The last filing by U S Rail with the Ohio Secretary of State was a Certificate of Amendment by Directors, filed April 22, 2011 (*see* Ex. A), noting a resolution had been

adopted by the company's directors pursuant to Ohio Revised Code § 1701.70(B)(6), changing the company name to U S Rail Corporation of Ohio with a registered address at 7846 W. Central Avenue, Toledo, Ohio 43617. *See* the Certificate of Amendment by Directors, a true and correct copy of which is attached hereto as Exhibit B;

e. I was informed during a conversation with a representative of the Office of the Ohio Secretary of State ("OSOS") on June 9, 2022, that Ohio requires no annual filing or annual fees for "for profit" corporations such as U S Rail, and no filing of any kind in order for the company to continue to be listed as active on the OSOS's records. According to the OSOS representative, unless U S Rail had filed with the OSOS a record indicating it is not active or the OSOS received a similar notification, the OSOS would have no notice of the company's change in status. The representative confirmed that there have been no filings of any kind by U S Rail with the Office of the OSOS since April 22, 2011, and no change of address or registered agent for the company since 2007. *See* the Resolution of U S Rail, dated March 24, 2007, attached to the Certificate of Amendment by Directors (Ex. B).

f. A search of the STB record yielded no filings with the STB on behalf of U S Rail Corporation of Ohio;

g. An internet search of the company name, U S Rail Corporation of Ohio, yielded the same address for the company as its registered address referenced above, 7846 W. Central Avenue, Toledo, Ohio 43617, which is shown to be "permanently closed", and the company's web address, www.usrailcorp.com. *See, e.g.,* results of internet search of the company name, a true and correct copy of which is attached hereto as Exhibit C; and

h. An internet search of the company's web address, www.usrailcorp.com, yielded a message indicating that the website is no longer accessible. *See* results of the search of the web address, www.usrailcorp.com, a true and correct copy of which is attached as Exhibit D.

8. Further, it does not appear that U S Rail presently has any operations in the region where the Rail Line is located. The Commissioners state in their letter to Ms. Brown, dated May 9, 2022 (attached to the Verified Notice as **Appendix 2**), that "[t]o the best of [their] knowledge, U S Rail maintains no operations, equipment, locomotives, or employees in [Salem] County." Therefore, it appears that there are no railroad employees of U S Rail that will be affected by the proposed discontinuance and change of operators.

Signed under the pains and penalties of perjury this 10th day of June, 2022.

/s/ Robert A. Klein_____
Robert A. Klein, Esq.

EXHIBIT A

Frank LaRose
Ohio Secretary of State

Thu Jun 09 2022

Entity#: 857501

Filing Type: CORPORATION FOR PROFIT

Original Filing Date: 11/17/1993

Location: TOLEDO

Business Name: U S RAIL CORPORATION OF OHIO

Status: Active

Exp. Date: -

Agent/Registrant Information

DANIELLE HALL
7846 W, CENTRAL AVENUE
TOLEDO OH 43617
10/12/2007
Active

Filings

Filing Type	Date of Filing	Document ID
DOMESTIC ARTICLES/FOR PROFIT	11/17/1993	9310_0107
AGENT NAME/ADDRESS TAX UPDATE	01/08/1999	AGNTUPDT
AGENT NAME/ADDRESS TAX UPDATE	02/01/1999	AGNTUPDT
AGENT NAME/ADDRESS TAX UPDATE	04/07/1999	AGNTUPDT
DOMESTIC/AMENDMENT TO ARTICLES	07/03/2007	200718602006
DOMESTIC AGENT SUBSEQUENT APPOINTMENT	10/12/2007	200728502046
CANCELLED BY TAX DEPT W/NOTIFICATION	04/21/2009	200911174994
DOMESTIC/REINSTATEMENT	04/02/2010	201009700764
DOMESTIC/AMENDMENT TO ARTICLES	04/22/2011	201111500838

Prior Business Names

Frank LaRose
Ohio Secretary of State

Thu Jun 09 2022

Prior Business Name	Effective Date
THE GREAT MIAMI & SCIOTO RAILWAY COMPANY	07/03/2007
US RAIL CORPORATION	04/22/2011

UNITED STATES OF AMERICA
STATE OF OHIO
OFFICE OF SECRETARY OF STATE

I, Frank LaRose, Secretary of State of the State of Ohio, do hereby certify that this is a list of all records approved on this business entity and in the custody of the Secretary of State.

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 9th of June, A.D. 2022

Ohio Secretary of State

EXHIBIT B

DOC ID ----> 201111500838

DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
04/26/2011	201111500838	DOMESTIC/AMENDMENT TO ARTICLES (AMD)	50.00	.00		.00	.00

Receipt

This is not a bill. Please do not remit payment.

U.S. RAIL CORPORATION
7846 W CENTRAL AVE
TOLEDO, OH 43617

STATE OF OHIO
CERTIFICATE
Ohio Secretary of State, Jon Husted

857501

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

U S RAIL CORPORATION OF OHIO

and, that said business records show the filing and recording of:

Document(s)	Document No(s):
DOMESTIC/AMENDMENT TO ARTICLES	**201111500838**

United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 22nd day of April, A.D. 2011.

Jon Husted

Ohio Secretary of State

DOC ID ----> 201111500838

Prescribed by:

The Ohio Secretary of State
Central Ohio: (614) 466-3910
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

www.sos.state.oh.us
e-mail: busserv@sos.state.oh.us

Expedite this Form: (Select One)	
Mail Form to one of the Following:	
○ Yes	PO Box 1390 Columbus, OH 43216 *** Requires an additional fee of $100 ***
◉ No	PO Box 1329 Columbus, OH 43216

Certificate of Amendment by Directors or Incorporators to Articles

(Domestic)

Filing Fee $50.00

(CHECK ONLY ONE (1) BOX)

(1) ☐ Amendment by Directors	(2) ☐ Amendment by Incorporators
☑ Amended by Directors (123-AMDD)	☐ Amended by Incorporators (124-AMDI)

Complete the general information in this section for the box checked above.

Name of Corporation: U S RAIL Corporation

Charter Number: 857501

☐ Please check if additional provisions attached hereto are incorporated herein and made a part of these articles of organization.

Complete the information in this section if box (1) is checked.

Name and Title of Officer: Gabriel D. Hall (name) — President (title)

(CHECK ONLY ONE (1) BOX)

☑ A meeting of the directors was duly called and held on March 24, 2007 (Date)

☐ In an writing signed by all the Directors pursuant to section 1701.54 of the ORC

The following resolution was adopted pursuant to section 1701.70(B) (6) (Insert proper paragraph number) of the ORC:

that the current name of the Corporation- U S RAIL Corporation is hereby changed to U S RAIL Corporation of Ohio; And, be it further RESOLVED, that the principal place of business is hereby changed to 7846 W. Central Avenue, Toledo, Ohio 43617. This resolution shall be effective immediately. The Secretary is directed to give notice of the Name Change to all affected persons.

DOC ID ----> 201111500838

Complete the information in this section if box (2) is checked.

WE, the undersigned, being all of the incorporators of the above named corporation, do certify that the subscriptions to shares have not been received and the initial directors are not named in the articles. We hereby have elected to amend the articles as follows:

REQUIRED
Must be authenticated **(signed)** by an authorized representative **(See Instructions)**

Authorized Representative — Date

(Print Name)

Authorized Representative — Date

(Print Name)

Authorized Representative — Date

(Print Name)

DOC ID ----> 201111500838

Shareholders Meeting
March 24, 2007

RESOLUTION

At a meeting held on March 24, 2007, all Shareholders being present, motion by D. hall, supported by K. Hall and by unanimous vote the following Resolution is adopted:

RESOLVED that the current name of the Corporation- Great Miami and Scioto Railway Co. is hereby changed to U S RAIL Corporation of Ohio; And, be it further RESOLVED, that the principal place of business in hereby changed to 7846 W. Central Avenue, Toledo, Ohio 43617. This resolution shall be effective immediately. The Secretary is directed to give notice of the Name Change to all affected persons.

Secretary- Danielle M. Hall

The foregoing resolution is a true rendition of the meeting of the Shareholders on the above date.

EXHIBIT C

48,600,000 Results Any time Open links in new tab

U.S. Rail Corporation - Wikipedia

https://en.wikipedia.org/wiki/U.S._Rail_Corporation

U S Rail Corporation; Overview; Headquarters: **Toledo, Ohio:** Reporting mark: USRC: Locale: Indiana, **Ohio:** Technical; Track gauge: 4 ft 8 + 1 ⁄ 2 in (1,435 mm) standard gauge ...See more

Overview

U S Rail Corporation (reporting mark USRC) is a family-owned short-line railroad operating the Winamac Southern Railway in Indiana. ...See more

Operation

Kokomo
The Kokomo division, in Kokomo, Indiana, operates a line for the Kokomo Grain Company and ...See more

See all on Wikipedia

Wikipedia text under CC-BY-SA license

U S RAIL CORPORATION OF OHIO :: Ohio (US) :: ...

https://opencorporates.com/companies/us_oh/857501

Nov 17, 1993 · Free and open company data on **Ohio** (**US**) company **U S RAIL CORPORATION** OF **OHIO** (company number 857501), LUCAS, TOLEDO, **OH** ... **US RAIL CORPORATION**; Agent Name...

U S RAIL CORPORATION OF OHIO - Ohio Company

https://ohio-corp.com/co/u-s-rail-corporation-of-ohio

Nov 17, 1993 · U S RAIL CORPORATION OF OHIO. U S RAIL CORPORATION OF OHIO (Entity Number: 857501) was incorporated on 11/17/1993 in Ohio. Their business is recorded as...

U S Rail Corporation of Ohio - Toledo , OH - Company ...

https://www.dandb.com/businessdirectory/usrail...

U S Rail Corporation Of Ohio was founded in 2004. **U S Rail Corporation Of Ohio** specializes in Switching And Terminal Services. Our similar businesses nearby shows similar businesses in the...

Location: 7846 W Central Ave, Toledo, 4361... **Phone:** (419) 720-7588

US Rail Corporation Of Ohio Toledo OH, 43617 – Manta.com

https://www.manta.com/c/mm88jg7/u-s-rail-corporation-of-ohio

US Rail Corporation Of **Ohio Toledo OH,** 43617 – Manta.com. **U.S. Toledo, OH** Transportation Services Railroads, Line-haul Operating Railroads.

Email: null **Employees:** 17
Occupation: President & Chief Executive Offi... **Location:** 7846 West Central Avenue, Toledo, 4...

U S RAIL Corporation | LinkedIn

https://www.linkedin.com/company/u-s-rail-corporation

Hamilton, **Ohio** 45013, **US** Get directions - Jackson, **Ohio** 45634, **US** Get directions Show ... **U S RAIL Corporation** | 109 followers on LinkedIn. We are a ...

US Rail Corporation of Ohio - Yellow Pages

https://www.yellowpages.com/toledo-oh/mip/us-rail...

US Rail Corporation of Ohio. (419) 720-7588 Visit Website Map & Directions 7846 **W Central AveToledo, OH** 43617 Write a Review.

U S RAIL Corporation in Toledo, OH 43617 - (419) 720-7588

https://www.chamberofcommerce.com/united-states/...

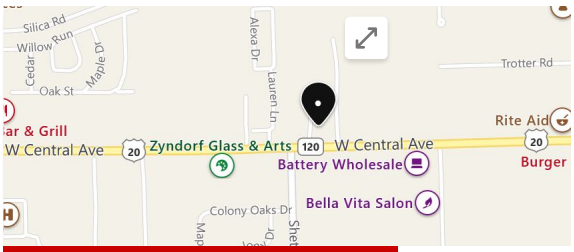
U S RAIL Corporation is located at 7846 Central Ave in Toledo, Ohio 43617. **U S RAIL Corporation** can be contacted via phone at (419) 720-7588 for pricing, hours and directions. Contact Info

U.S. Rail Corporation

Family-Owned Short-Line Railroad

U S Rail Corporation is a family-owned short-line railroad operating the Winamac Southern Railway in Indiana.

Wikipedia



Permanently closed

U S Rail

Business to business

Website Directions

Contact us

7846 W Central Ave, Toledo, OH 43617

(419) 720-7588

Suggest an edit · Your business? Claim now

Social profiles

Facebook Twitter

Rail Development Commission - Ohio

https://rail.ohio.gov/wps/portal/gov/ordc/home

The ORDC's mission is to plan, promote, and implement the improved movement of goods and people faster and safer on a **rail transportation** network connecting **Ohio** to the nation and the…

US Rail Corporation of Ohio | Better Business Bureau® …

https://www.bbb.org/us/oh/toledo/profile/railroad...

This organization is not BBB accredited. **Railroad** Contractors in Toledo, **OH**. See BBB rating, reviews, complaints, & more.

1 2 3 4 5 >

EXHIBIT D

Forbidden

You don't have permission to access this resource.

Apache/2.4.51 Server at www.usrailcorp.com Port 80

APPENDIX 4

Finance Docket No. 36529

APPENDIX 4

VERIFICATION

JEFFREY L. SUTCH, being duly sworn, states that he is President of SMS Rail Service, Inc. ("SMS"); that he has read the foregoing Notice of Exemption under 49 C.F.R. § 1150.41 being filed by SMS; that the projected annual revenue of the rail line being acquired by lease and operated by SMS as a result of the transaction will not be five million dollars or more; that SMS's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C.F.R. § 1150.45; that the proposed acquisition and operation of the rail line does not involve any provision or agreement that may limit future interchange commitments as defined in 49 C.F.R. § 1150.43(h); and that all allegations of fact contained in SMS's Notice of Exemption are true and correct.

Jeffrey L. Sutch

STATE OF NEW JERSEY)
) SS:
COUNTY OF GLOUCESTER)

SUBSCRIBED and SWORN to before me
this 10th day of June, 2022.

Notary Public

My Commission expires: 10/2/2025

APPENDIX 5

Finance Docket No. 36529

APPENDIX 5

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 36529

SMS RAIL SERVICE, INC. –
ACQUISITION AND OPERATION EXEMPTION –
RAIL LINE OF SALEM COUNTY, NEW JERSEY, IN SALEM COUNTY, NJ

SMS Rail Service, Inc. ("SMS"), a Class III rail carrier, has filed a Notice of Exemption to acquire by lease from Salem County, New Jersey, and operate a rail line which comprises approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks, and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by SALEM COUNTY known as the Salem Branch Line located primarily in SALEM COUNTY and in part in Gloucester County, New Jersey between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey. Comments must be filed with the Board and be served on SMS's attorney, Robert A. Klein, Esquire, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355-1530, Tel. 610-889-3200, ext. 2, Cell 215-880-6913, Email: rak@berklein.com.

The Notice proposes a change in railroad operators on the Rail Line from U S Rail Corporation ("U S Rail") and J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail"), to SMS, as to which J.P. Rail has agreed and stipulated. U S Rail reportedly has not maintained operations, equipment, locomotives, or employees on the Rail Line or in Salem County since in or about January 2012. Employees of U S Rail and J.P. Rail are hereby advised of the proposed change in railroad operators.

The Notice is filed under 49 C.F.R. § 1150.41. If the Notice contains false or misleading information, the exemption is *void ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Board

Dated:
(SEAL)

Cynthia T. Brown
Chief, Section of Administration

EXHIBIT C

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWNSHIP OF PILESGROVE, N.J.	)	FINANCE DOCKET
PETITION FOR DECLARATORY ORDER	)	NO. 36770

VERIFIED STATEMENT OF JAMES R. PFEIFFER

Commonwealth of Pennsylvania)
) SS:
County of Montgomery)

I, James R. Pfeiffer, Chief Operating Officer of SMS Rail Service, Inc., declare as follows:

1. I am the Chief Operating Officer of SMS Rail Service, Inc., which maintains its business address at 513 Sharptown Road, Logan Township, NJ 08085. The following facts are based on my personal knowledge.

2. Examination of the records of SMS Rail Service, Inc., from March 30, 2021, through October 31, 2024, the period of time from the inception of the Rail Line Service Agreement ("RLSA") for operation and maintenance of the Salem Branch (the "Branch")(operatorship of the Branch by SMS was granted by STB Decision served July 15, 2022 – FD 36529), reveals the following:

Year	Freight Train Miles	Passenger Train Miles
2021	0	0
2022	0	236
2023	148	4,204
2024 (through October)	548	3,951

3. Examination of the records of SMS Rail Service, Inc., specifically for its West Jersey Division, Pureland Branch, reveal that an average of 6,000 freight cars have been serviced on the Pureland Branch over the period from 2001 to the present.

4. SMS, a Class III rail carrier, operates a total of 8 branches; 4 in New Jersey, 1 in Pennsylvania (Standard Carrier Alpha Code ("SCAC") SLRS)), and 3 in New York (SCAC SNY), and interchanges 12,000 to 14,000 freight cars per year, systemwide.

5. From the date of the inception of the RLSA, freight carload numbers upon the Branch are as follows:

Year	Customer	Carloads
2021	N/A	0
2022	N/A	0
2023	South Jersey Farmers Exchange	3 in/3 out
	Toys for Tots	1 in/1 out
2024	South Jersey Farmers Exchange	14 in/14out
	Environmental Rail Solutions	27 in/4 out

It should be noted that, geographically, *all* freight that has been serviced on the Branch to date must travel through Pilesgrove Township in order to reach its destination. ERS's freight movements are made through both Pilesgrove and Mannington Townships.

6. On November 20, 2023, in support of its common carrier operations on Block 73, Lots 1 & 3, SMS caused Atlantic City Electric to install 5 utility poles with main electrical service lines on SMS-owned property located on Block 73, Lot 3. Since the time of the installation of those poles and electrical transmission lines, I have corresponded with the Solicitor for Pilesgrove Township in an attempt to acquire documentation from the Township regarding their lack of jurisdiction over the electrical connection. To date, that documentation has been withheld, and the electrical connection has not been made. The lack of a permanent electrical connection to Lots 1 and 3 has prevented SMS from fully utilizing the structures for their intended purposes. The use of generators to power the sheds does not allow for radio and crew phone charging banks to be used, thus limiting the building's functionality. As such, crews must first report to Pureland to retrieve these items prior to performing service. A permanent

electrical connection is also vital to the use of the engine house, as heaters, lighting, and electrical outlets will be installed for the operation of tools and machinery, as well as junctions and disconnects to power diesel locomotive block heater systems.

7. Also, in connection with SMS's common carrier activities on the Branch, SMS has situated upon the property (Lot 1) two prefabricated sheds (a main shed and a smaller storage shed) and (on Lot 3) erected a locomotive storage and maintenance building ("Engine House"). The main shed on Lot 1 contains the bulletin board, where the requisite General Order, Bulletin Order, On-Track Safety Sheets, etc. are posted, and also serves as a ticket office and gift shop for the seasonal passenger excursions offered on the Branch. This shed is also where track inspection reports are completed and filed. The second, smaller shed serves as a storage location for gift shop and station supplies, as well as basic track materials such as spikes, bolts, switch brooms, etc. The Engine House is used as a locomotive storage and maintenance facility and includes a pit over which FRA-required 92-day inspections will be performed. It houses tools, machinery, lube oils, and other such parts and equipment necessary to maintain the SMS's locomotive fleet on the Salem Branch, such fleet being used in both freight and passenger service.

8. The valuation or tax maps provided to the Board and appended to SMS's *Reply Evidence and Argument* are true and correct copies of the valuation or tax maps provided to SMS via email on November 14, 2022, by Jonathan Rishel of the Salem County Engineer's Office. According to the legend notations on the maps, they were created on June 30, 1916, for the West Jersey & Seashore Railroad, and depict surveys of and infrastructure revisions to the Branch through about 1956. At issue in this case is an approximately 1,350-foot (0.25 mile) section in two parts; one leg of the wye diverging from the running track in a southerly direction, the other

diverging from the running track in a northerly direction, converging at the northwestern point of the wye, which, for more than a century, has existed and been part of the Salem Branch.

9. On July 25, 2024, at the Mid-Salem County Municipal Courthouse, upon leaving the courtroom after a hearing on criminal charges filed against SMS by the State of New Jersey in relation to alleged violations of local ordinances of Mannington Township, SMS's counsel, Robert A. Klein, and I met Mayor Asay of Mannington Township and William Horner, Solicitor for Mannington Township in the hallway. Mr. Klein attempted to introduce himself to Messrs. Asay and Horner. Mr. Horner left the hallway and entered an adjoining room. Mr. Klein introduced himself to Mr. Asay, adding that he did not want to have any conversations with Mr. Asay without the Township Solicitor present. Mr. Asay confirmed that he was not concerned with the Township's Solicitor no longer being present and spoke further to Mr. Klein and me. In the conversation, Mr. Asay stated that the Township's arguments are correct, that SMS's operations do not enjoy federal preemption, and that SMS must submit to the full zoning and permitting processes of Mannington Township.

10. On multiple occasions including, but not limited to, September 5, 2024, October 24, 2024, and November 13, 2024, I transmitted to various representatives of the Township of Pilesgrove, via a combination of hand delivery and email, construction drawings (certified by an engineer licensed in the State of New Jersey) and a map which depict the methods of construction and location of the Engine House.

11. During their breaktime, train- and Transload-crews, working in both freight and passenger service, as well as passengers who have disembarked the seasonal excursion trains that visit the wye (to date, during pumpkin and Easter train excursions) have utilized the picnic tables and firepits at the wye.

12. I am an officer of SMS, duly designated and qualified to verify the facts as stated above and in the *Reply Evidence and Argument of SMS Rail Service, Inc. to Pilesgrove Township's and Mannington Township's Petitions for Declaratory Order and Supplemental Evidence and Argument*, which I have reviewed. The records attached to such *Reply* are true and correct copies of those records. The facts stated herein and in such *Reply* with respect to SMS are true and correct to the best of my knowledge, information, and belief.

I declare that the foregoing statements are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: December 16, 2024

James R. Pfeiffer

Commonwealth of Pennsylvania)
) SS:
County of Montgomery)

Subscribed and Sworn to before me
this 16th day of December, 2024.

Notary Public

My Commission expires: 9-16-2028

Commonwealth of Pennsylvania - Notary Seal
DANIEL LAWRENCE SCARBORO - Notary Public
Montgomery County
My Commission Expires September 16, 2028
Commission Number 1451016

EXHIBIT D

From: Jim Pfeiffer
To: townshipclerk@manningtontwp.com
Subject: Notice from SMS Rail Service, Inc.
Date: Monday, October 21, 2024 5:12:00 PM
Attachments: Development Plan_10212024.pdf
image001.png

Good Afternoon, Ms. Ayars:

Please see the attached Development Plan for the yard that is to be used by SMS Rail Service, Inc., a Class III rail carrier, in connection with transportation by rail of inbound lumber. The subject yard includes a portion of Block 60, Lot 5, and the area within Block 60, Lots 4 and 6 denoted by the "Property Limit of Gravel" (referred to in the Legend) and will be prepared in accordance with the drawing. Federal preemption applies to the foregoing.

Kind regards,
Jim Pfeiffer
SMS Rail Service, Inc.
Office: (856) 467-4800, ext. 303
Mobile: (610) 739-3729

NEW JERSEY STATE PLANE COORDINATE SYSTEM (NAD83)

BLOCK 60 LOT 6
N/F MANNINGTON MILLS INC.

BLOCK 60 LOT 5
N/F SALEM CO. RAILROAD

BLOCK 60 LOT 4
N/F MANNINGTON MILLS INC.

BLOCK 60 LOT 10
N/F MANNINGTON MILLS INC.

SALEM BRANCH RAILROAD

UNIMPROVED ROAD

FLOOD ZONE LINE

ZONE "AE" (EL 5)'

ZONE "X" (DOTTED)

ZONE "X" (UNSHADED)

50' TRANSITION AREA

LIMIT OF PROPOSED COMPACTED STONE (TYP.)

PROPOSED 3,584 SF COVERED STRUCTURE 28' X 128'. STONE SURFACE WITHIN STRUCTURE

PROPOSED INFILTRATION BASIN

EXISTING GRAVEL AND STONE SURFACE TO REMAIN

EXISTING LIGHT POLES TO REMAIN

EXISTING CONCRETE CURBING, SIDEWALK, AND TREES TO BE REMOVED

EXISTING ASPHALT TO REMAIN AND BE INCORPORATED INTO IMPROVED AREAS

FIRE HYDRANTS TO REMAIN WITH BOLLARD PROTECTION

UTILITY POLES AND OVERHEAD WIRES TO REMAIN AND RESET PROPOSED GRADE AS NEEDED

EXISTING RAILROAD TRACKS TO REMAIN

UTILITY POLES AND OVERHEAD WIRES TO BE REMOVED

PROPOSED RAILROAD CROSSING

EXISTING COVERED STRUCTURE (ROLL-OFFS) TO BE RELOCATED

EXISTING FENCE TO BE MODIFIED OR REMOVED

LIMIT OF PROPOSED COMPACTED STONE (TYP.)

ADDITIONAL COVERED STRUCTURE OUTSIDE GRADING AND DRAINAGE AREA. EXISTING PAVED/IMPERVIOUS SURFACE

EXISTING TOPSOIL AND GRASS TO BE REMOVED AND GRADED. IMPROVED WITH APPROXIMATELY 6 TO 8 INCH LAYER COMPACTED 2RC MODIFIED STONE. NO SUBBASE

APPROXIMATE END LINE FOR DEVELOPED, LEVEL FINISHED PRODUCT LAYDOWN AREA ~ 5.1 ACRES

PROPOSED INFILTRATION BASIN

PROPOSED INFILTRATION BASIN

"MANNINGTON MILLS NJPDES PERMIT NO# NJ0088315/ NJDEP HOTLINE 1-877-WARN-DEP OUTFALL 001"

BENCHMARK A
N: 274659.20
E: 225090.09
5/8" PIN AND CAP SET

SCALE IN FEET
40 0 10 25 40

PROJECT LOCATION MAP

NOT TO SCALE

SOURCE: BING MAPS

LEGEND – PROPOSED AND EXISTING FEATURES (NOT SHOWN TO SCALE)

SITE SYMBOLS

- PROPERTY LINE
- PROPERTY LIMIT OF GRAVEL
- PROPERTY BOLLARD
- EXISTING SIGN
- EXISTING TREE LINE
- EXISTING SHRUB
- EXISTING TREE
- EXISTING FENCE
- EXISTING WETLAND LINE
- EXISTING WETLAND FLAG & NUMBER
- EXISTING RAILROAD TRACKS
- EXISTING DOOR
- EXISTING DOUBLE DOOR
- EXISTING OVERHEAD DOOR
- BENCHMARK

GRADING SYMBOLS

- EXISTING CONTOUR
- PROPOSED CONTOUR
- PROPOSED SLOPE
- PROPOSED SPOT ELEVATION
- EXISTING SPOT ELEVATION

UTILITY SYMBOLS

- EXISTING FIRE HYDRANT
- EXISTING WATER VALVE
- EXISTING GAS VALVE
- EXISTING METAL COVER
- EXISTING ELECTRIC BOX
- EXISTING UTILITY POLE AND GUY WIRE
- EXISTING OVERHEAD ELECTRIC
- EXISTING LIGHT
- EXISTING MANHOLE
- EXISTING CATCH BASIN
- EXISTING STORM SEWER
- EXISTING ROOF DRAIN
- EXISTING CLEAN OUT

No.	Description	Date
	REVISIONS	

DRAFT

LANGAN
Langan Engineering and Environmental Services, LLC
Stone Manor Corporate Center, 2700 Kelly Road, Suite 200
Warrington, PA 18976
T: 215.491.6500 F: 215.491.6501 www.langan.com
NJ CERTIFICATE OF AUTHORIZATION No. 24GA27996400

Project

MANNINGTON MILLS INC.

MANNINGTON TOWNSHIP
SALEM COUNTY NEW JERSEY

DEVELOPMENT PLAN

Project No. 3534402	Drawing No.
Date 10-21-2024	
Drawn By ALM	
Checked By GME	Sheet 1 of 1

PROJECT NO. 3534402

© 2019 Langan

Filename: \\langan.com\data\DYL\data\3534402\Cadd Data - 3534402\Sheetfiles\SMS VCT Area\3534402-CG101-I101.dwg Date: 10/1/2024 Time: 17:01 User: amichini Style Table: Langan.stb Layout: CG-101

EXHIBIT E

W. J. & S. R. R.

CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 529+79 TO STATION 582+59

SCALE 1" = 100'

JUNE 30, 1926

OFFICE OF VALUATION ENGINEER

PHILADELPHIA, PA.

Correct as of Dec. 31, 1927	No Revision		
Correct as of June 30, 1927	No Revision		
Corrected as of June 30, 1925	New Revision		
Correct as of June 30, 1924	New Revision		
Correct as of June 30, 1923	No Revision		
Correct as of June 30, 1922	No Revision		
Correct as of June 30, 1921	No Revision		
Correct as of June 30, 1920	No Revision		
Correct as of June 30, 1919	No Revision		
Correct as of June 30, 1918	No Revision		
Correct as of June 30, 1917	New Revision		

Correct as of Dec. 31, 1916	No	Map	ion
Corrected as of Dec. 31, 1915	Map	Revised	ed
Corrected as of Dec. 31, 1914	No	Revision	on
Corrected as of Dec. 31, 1913	Map	Revised	ed
Corrected as of Dec. 31, 1912	No	Revision	ion
Corrected as of Dec. 31, 1911	Map	Revised	ed
Corrected as of Dec. 31, 1910	No	Revision	ion
Corrected as of Dec. 31, 1909	Map	Revised	ed
Corrected as of Dec. 31, 1908	No	Revision	ion
Corrected as of Dec. 31, 1907	Map	Revised	ed
Corrected as of Dec. 31, 1906	No	Revision	ion
Corrected as of Dec. 31, 1905	Map	Revised	ed
Corrected as of Dec. 31, 1904	No	Revision	ion
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Corrected as of Dec. 31, 1902	No	Revision	ion
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Corrected as of Dec. 31, 1897	Map	Revised	ed
Corrected as of Dec. 31, 1896	No	Revision	ion
Corrected as of Dec. 31, 1895	No	Revision	ion
Corrected as of Dec. 31, 1894	No	Revision	ion
Corrected as of Dec. 31, 1893	Map	Revised	ed
Corrected as of Dec. 31, 1892	No	Revision	ion
Corrected as of Dec. 31, 1891	No	Revision	ion
Corrected as of Dec. 31, 1890	Map	Revised	ed
Corrected as of Dec. 31, 1889	Map	Revised	ed
Corrected as of Dec. 31, 1888	Map	Revised	ed

CORRECTED AS OF	YES	NO
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Correct as of Dec. 31, 1916 No Revision
Corrected as of Dec. 31, 1915 Map Revised
Corrected as of Dec. 31, 1914 No Revision
Corrected as of Dec. 31, 1913 Map Revised
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Corrected as of Dec. 31, 1901 Map Revised
Corrected as of Dec. 31, 1900 No Revision
Corrected as of Dec. 31, 1899 Map Revised
Corrected as of Dec. 31, 1898 Map Revised

AUBURN ROAD

BACK ST

SWEDESBORO

RAILROAD

GRANT AVE.

BROAD ST

CHURCH

RACCOON CREEK

MERRY CANNING COMPANY

WOOLWICH TOWNSHIP, GLOUCESTER CO.

VA-5
11

VA-5
11

W. J. & S. R. R.
CAPE MAY DIV.
RIGHT OF WAY AND TRACK MAP
WEST JERSEY & SEASHORE R. R.
SALEM BRANCH
STATION 562+59 TO STATION 635+39
SCALE 1" = 100'
JUNE 30, 1915.
OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.
Correct as of Dec. 31,1927 No Revisions
Correct as of June 30,1927 No Revisions
Corrected as of Dec. 31,1926 No Revisions
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Corrected as of Dec. 31st, 1831 No Revision
Corrected as of Dec. 31st, 1830 No Revision
Corrected as of Dec. 31st, 1829 No Revision
Corrected as of Dec. 31st, 1828 No Revision
PLAN NOT REVISED AS OF DEC. 31st, YES NO
1927
1926
1925
1924
1923
1922
1921
1920
1919
1918
STATION SHOWN IN THIS FIGURE & STATION 562+59
SCALE 1" = 100'
NOTE
DATA - DIST. LAND MAP BOOK Atlas 180
MATCH MARK FROM SHEET No. 13
MATCH MARK FROM SHEET No. 11
OLD SALEM ROAD (formerly IVYSIDE)
AUBURN ROAD
36" C.I. Pipe 24"
30" C.I. Pipe 48"
N
WOOLWICH TOWNSHIP, GLOUCESTER CO.
V-303
12
V-303
12

V 303
13

W. J. & S. R. R.

CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 635+39 TO STATION 688+19

SCALE 1" = 100'

OFFICE OF VALUATION ENGINEER
PHILADELPHIA, PA.

JUNE 30, 1916.

Correct as of Dec. 31st, 1917 No Revisions
Correct as of June 30, 1918 No Revisions
Correct as of June 30, 1919 No Revisions
Correct as of June 30, 1920 No Revisions
Correct as of June 30, 1921 No Revisions
Correct as of June 30, 1922 No Revisions
Correct as of June 30, 1923 No Revisions
Correct as of June 30, 1924 No Revisions
Correct as of June 30, 1925 No Revisions
Correct as of June 30, 1926 No Revisions
Correct as of June 30, 1927 No Revisions

Correct as of Dec. 31st, 1928 No Revision
Correct as of Dec. 31st, 1929 No Revision
Correct as of Dec. 31st, 1930 No Revision
Correct as of Dec. 31st, 1931 No Revision
Correct as of Dec. 31st, 1932 No Revision
Correct as of Dec. 31st, 1933 No Revision
Correct as of Dec. 31st, 1934 No Revision
Correct as of Dec. 31st, 1935 No Revision
Correct as of Dec. 31st, 1936 No Revision
Correct as of Dec. 31st, 1937 No Revision
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Correct as of Dec. 31st, 1942 No Revision
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Correct as of Dec. 31st, 1946 No Revision
Correct as of Dec. 31st, 1947 No Revision
Correct as of Dec. 31st, 1948 No Revision
Correct as of Dec. 31st, 1949 No Revision
Correct as of Dec. 31st, 1950 No Revision
Correct as of Dec. 31st, 1951 No Revision
Correct as of Dec. 31st, 1952 No Revision
Correct as of Dec. 31st, 1953 No Revision
Correct as of Dec. 31st, 1954 No Revision

AS OF DEC. 31.	REVISED
	YES / NO
1917	
1918	
1919	
1920	
1921	
1922	
1923	
1924	
1925	
1926	
1927	

NOTE
STATION 638+36 = 114.89' SOUTH STATION 638+06
OF W. J. & S. R. R. MAIN LINE

N

MATCH MARK FOR SHEET No. 13

MATCH MARK FOR SHEET No. 12

12" C.I. Pipe 36"

12" C.I. Pipe 12"

G.H.B. No. 20.89

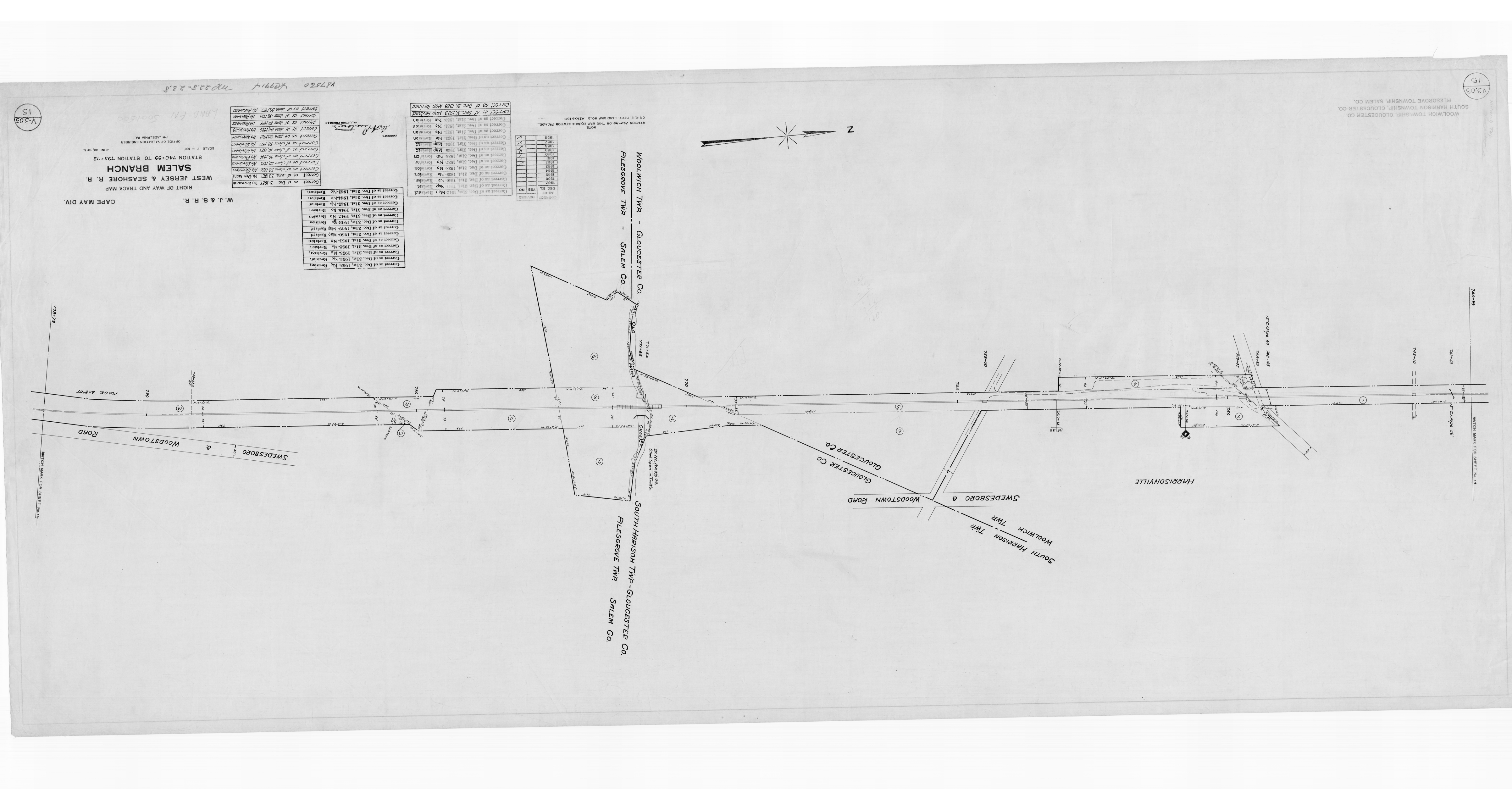
S. NEW JERSEY R.R.

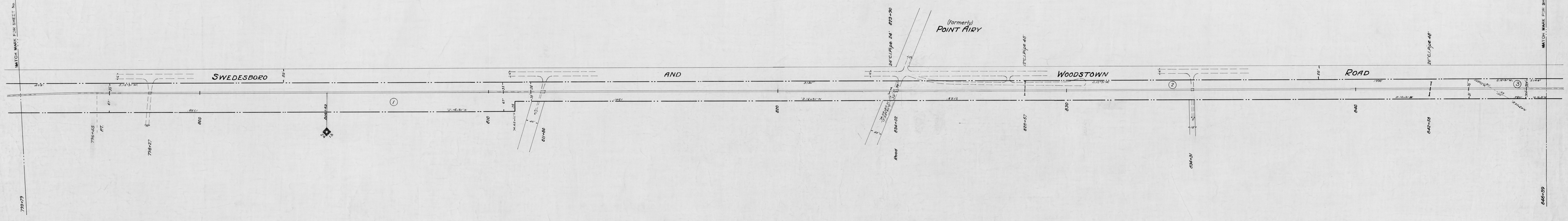
WOOLWICH TOWNSHIP, GLOUCESTER CO.

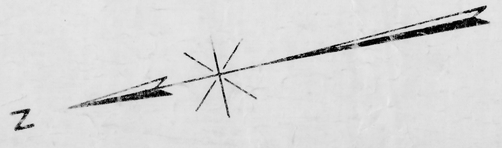
Woolwich Twp.
Gloucester Co.

V 303
13

MATCH MARK FOR SHEET No. 13
680+79
690
700
710
720
730
740
740+39
MATCH MARK FOR SHEET No. 15
693-82
3-20"C.I.Pipe 72'
704-42
12"C.I.Pipe 24'
707+42
12"C.I.Pipe 24'
708-23
ROAD
RUBURN
714+13
30"C.I.Pipe 160'
728-56
BASIN
N 21°-15' W
N 21°-15' W
N 21°-15' W


W. J. & S. R. R.
CAPE MAY DIV.
RIGHT OF WAY AND TRACK MAP
WEST JERSEY & SEASHORE R. R.
SALEM BRANCH
STATION 740+99 TO STATION 793+79
SCALE 1" = 100'
JUNE 30, 1916.
OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.
Corrected 05 of Dec. 31st. 1927 No Revisions
Corrected as of June 30. 1927 No Revisions
Corrected as of June 30. 1926 No Revisions
Corrected as of June 30. 1925 No Revisions
Corrected as of June 30. 1924 No Revisions
Corrected as of June 30. 1923 No Revisions
Corrected as of June 30.





CORRECT AS OF DEC. 31,	REVISED YES	REVISED NO
1957		
1958		
1959		
1964		
1963		
1962		✓
1961		✓
1960		✓
1959		✓
1958		✓
1957		✓
1956		✓

Correct as of Dec. 31st, 1955- No	Revision
Correct as of Dec. 31st, 1954- No	Revision
Correct as of Dec. 31st, 1953- No	Revision
Correct as of Dec. 31st, 1952- No	Revision
Correct as of Dec. 31st, 1951- No	Revision
Correct as of Dec. 31st, 1950- No	Revision
Correct as of Dec. 31st, 1949- No	Revision
Correct as of Dec. 31st, 1948- No	Revision
Correct as of Dec. 31st, 1947- No	Revision
Correct as of Dec. 31st, 1946- No	Revision
Correct as of Dec. 31st, 1945- No	Revision
Correct as of Dec. 31st, 1944- No	Revision
Correct as of Dec. 31st, 1943- No	Revision

NOTE
STATION 793+79 ON THIS MAP EQUALS STATION 793+67
ON R. E. DEPT. LAND MAP No. 33 AT 10.5 151

Correct as of Dec. 31st, 1942- No	Revision
Correct as of Dec. 31st, 1941- No	Revision
Correct as of Dec. 31st, 1940- No	Revision
Correct as of Dec. 31st, 1939- No	Revision
Correct as of Dec. 31st, 1938- No	Revision
Correct as of Dec. 31st, 1937- No	Revision
Correct as of Dec. 31st, 1936- No	Revision
Correct as of Dec. 31st, 1935- No	Revision
Correct as of Dec. 31st, 1934- No	Revision
Correct as of Dec. 31st, 1933- No	Revision
Correct as of Dec. 31st, 1932- No	Revision
Correct as of Dec. 31st, 1931- No	Revision
Correct as of Dec. 31st, 1930- No	Revision
Correct as of Dec. 31, 1929 Map Revised	
Correct as of Dec. 31, 1928 No Revision	

Correct as of Dec. 31, 1927 No Revisions	
Correct as of June 30, 1927 No Revisions	
Correct as of June 30, 1926 No Revisions	
Correct as of June 30, 1925 No Revisions	
Correct as of June 30, 1924 No Revisions	
Correct as of June 30, 1923 No Revisions	
Correct as of June 30, 1922 No Revisions	
Correct as of June 30, 1921 No Revisions	
Correct as of June 30, 1920 No Revisions	
Correct as of June 30, 1919 No Revisions	
Correct as of June 30, 1918 No Revisions	
Correct as of June 30, 1917 No Revisions	

DRAWN BY
C. A. Pinton
VALUATION ENGINEER

W. J. & S. R. R. CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 793+79 TO STATION 846+59

SCALE 1" = 100' JUNE 30, 1916

OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.

PILESGROVE TOWNSHIP, SALEM CO.

V3.03
16

V-3.03
16

VA 7560 XC 9914 mp 23.8-24.8

V-303
17

W. J. & S. R. R.

CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 846+59 TO STATION 899+39

SCALE, 1" = 100'

OFFICE OF VALUATION ENGINEER
PHILADELPHIA, PA.

JUNE 30, 1916

Correct as of Dec. 31st, 1907 No Revision
Correct as of June 30 1907 No Revision
Correct as of June 30 1914 No Revision
Correct as of June 30 1916 No Revision
Correct as of June 30 1924 No Revision
Correct as of June 30 1927 No Revision
Correct as of June 30 1928 No Revision
Correct as of June 30 1929 No Revision
Correct as of June 30 1930 No Revision
Correct as of June 30 1931 No Revision
Correct as of June 30 1932 No Revision
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Correct as of June 30 1941 No Revision
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Correct as of June 30 1956 No Revision
Correct as of June 30 1957 No Revision
Correct as of June 30 1958 No Revision
Correct as of June 30 1959 No Revision
Correct as of June 30 1960 No Revision
Correct as of June 30 1961 No Revision
Correct as of June 30 1962 No Revision
Correct as of June 30 1963 No Revision
Correct as of June 30 1964 No Revision
Correct as of June 30 1965 No Revision

	USE OF	DISCONTINUANCE
	DEC. 31,	YES / NO
1912		
1913		
1914		
1915		
1916	✓	
1917	✓	
1918	✓	
1919	✓	
1920	✓	
1921	✓	
1922	✓	
1923	✓	
1924	✓	

NOTE
STATION 846+59 ON THIS MAP EQUALS STATION 846+45
IN W. E. DEPT. LAND MAP NO. 56 FROM 911

MAIN ST.

HARRISONVILLE ROAD

MULLICA HILL ROAD

MATCH MARK FOR SHEET No. 18

MATCH MARK FOR SHEET No. 16

PILESGROVE TOWNSHIP, SALEM CO.

V-303
17

W. J. & S. R. R.
CAPE MAY DIV.
RIGHT OF WAY AND TRACK MAP
WEST JERSEY & SEASHORE R. R.
SALEM BRANCH
STATION 899+39 TO STATION 352+19
SCALE 1" = 100'
JUNE 30, 1915.
OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.
Correct as of Dec. 31, 1839 Map Revised
Correct as of Dec. 31, 1839 Map Revised
Correct as of Jan. 31, 1947 No Revisions
Correct as of Jan. 31, 1947 No Revisions
Correct as of June 30, 1915 No Revision
Correct as of June 30, 1924 No Revision
Correct as of June 30, 1922 No Revision
Correct as of June 30, 1922 Map Revised
Correct as of June 30, 1922 No Revision
Correct as of June 30, 1922 As Above
Correct as of June 30, 1922 Plan Revised
Correct as of June 30, 1922 No Revision
Correct as of Dec. 31st, 1938 Map Revised
Correct as of Dec. 31st, 1939 Map Revised
Correct as of Dec. 31st, 1940 Map Revised
Correct as of Dec. 31st, 1941 Map Revised
Correct as of Dec. 31st, 1946 No Revision
Correct as of Dec. 31st, 1947 No Revision
Correct as of Dec. 31st, 1948 No Revision
Correct as of Dec. 31st, 1949 No Revision
Correct as of Dec. 31st, 1950 Map Revised
Correct as of Dec. 31st, 1951 No Revision
Correct as of Dec. 31st, 1952 No Revision
Correct as of Dec. 31st, 1953 No Revision
Correct as of Dec. 31st, 1954 No Revision
Correct as of Dec. 31st, 1955 No Revision
SOUTH WOODSTOWN
WOODSTOWN
MILL ST.
CHURCH ST.
DICKINSON ST.
EAST ST.
ELM
MATCH MARK FOR SHEET No. 18
MATCH MARK FOR SHEET No. 17
Drive Branch
Gravelly Run
Creek
Pedestrian Path
Frame Shanty
Frame Shed
Frame Dwelling
Frame Garage
Frame Store
Frame Barn
Brick Dwelling
Brick Store
Brick Garage
Brick Barn
Brick Shed
Brick Church
Brick Factory
Brick Warehouse
Brick Power House
Brick Pump House
Brick Transformer House
Brick Substation
Brick Tool House
Brick Signal Tower
Brick Freight Station
Brick Passenger Station
Brick Express Office
Brick Ticket Office
Brick Waiting Room
Brick Toilet
Brick Coal Pocket
Brick Water Tank
Brick Water Tower
Brick Oil House
Brick Oil Tank
Brick Oil Tower
Brick Oil Pump
Brick Oil Pump House
Brick Oil Pump Tower
Brick Oil Pump Shed
Brick Oil Pump Barn
Brick Oil Pump Garage
Brick Oil Pump Store
Brick Oil Pump Dwelling
Brick Oil Pump Church
Brick Oil Pump Factory
Brick Oil Pump Warehouse
Brick Oil Pump Power House
Brick Oil Pump Pump House
Brick Oil Pump Transformer House
Brick Oil Pump Substation
Brick Oil Pump Tool House
Brick Oil Pump Signal Tower
Brick Oil Pump Freight Station
Brick Oil Pump Passenger Station
Brick Oil Pump Express Office
Brick Oil Pump Ticket Office
Brick Oil Pump Waiting Room
Brick Oil Pump Toilet
Brick Oil Pump Coal Pocket
Brick Oil Pump Water Tank
Brick Oil Pump Water Tower
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Brick Oil Pump Oil Pump Warehouse
Brick Oil Pump Oil Pump Power House
Brick Oil Pump Oil Pump Pump House
Brick Oil Pump Oil Pump Transformer House
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Brick Oil Pump Oil Pump Tool House
Brick Oil Pump Oil Pump Signal Tower
Brick Oil Pump Oil Pump Freight Station
Brick Oil Pump Oil Pump Passenger Station
Brick Oil Pump Oil Pump Express Office
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Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Express Office
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Ticket Office
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Waiting Room
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Toilet
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Coal Pocket
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Water Tank
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Water Tower
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil House
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Tank
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Tower
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump House
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Tower
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Shed
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Barn
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Garage
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Store
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Dwelling
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Church
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Factory
Brick Oil Pump Oil Pump Oil Pump Oil Pump Oil Pump Oil

W. J. & S. R. R. CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 952+19 TO STATION 1004+99

SCALE 1" = 100' JUNE 30, 1916

OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.

Correct as of Dec. 31st, 1965= No	Revision
Correct as of Dec. 31st, 1954= No	Revision
Correct as of Dec. 31st, 1953= No	Revision
Correct as of Dec. 31st, 1951= No	Revision
Correct as of Dec. 31st, 1950= No	Revision
Correct as of Dec. 31st, 1949= No	Revision
Correct as of Dec. 31st, 1948= No	Revision
Correct as of Dec. 31st, 1947= No	Revision
Correct as of Dec. 31st, 1946= No	Revision
Correct as of Dec. 31st, 1945= No	Revision
Correct as of Dec. 31st, 1944= No	Revision
Correct as of Dec. 31st, 1943= No	Revision

CORRECT as of 31 DEC.	RECORD YES	NO
1967		
1965		
1954		
1953		
1951		
1950		
1949		
1948		
1947		

NOTE
STATION 352+19 ON THIS MAP EQUALS STATION 352+05 ON N. J. DEPT. LAND MAP No. 3-9 AND 3-51

Correct as of Dec. 31st, 1942= No	Revision
Correct as of Dec. 31st, 1941= No	Revision
Correct as of Dec. 31st, 1940= No	Revision
Correct as of Dec. 31st, 1939= No	Revision
Correct as of Dec. 31st, 1938= No	Revision
Correct as of Dec. 31st, 1937= No	Revision
Correct as of Dec. 31st, 1936= No	Revision
Correct as of Dec. 31st, 1935= No	Revision
Correct as of Dec. 31st, 1934= No	Revision
Correct as of Dec. 31st, 1933= No	Revision
Correct as of Dec. 31st, 1932= No	Revision
Correct as of Dec. 31st, 1931= No	Revision
Correct as of Dec. 31st, 1930= No	Revision
Correct as of Dec. 31st, 1929= No	Revision
Correct as of Dec. 31st, 1928= No	Revision

Correct as of Dec. 31st, 1927= No	Revision
Correct as of June 30, 1927= No	Revision
Correct as of June 30, 1926= No Revisions
Correct as of June 30, 1925= No Revisions
Correct as of June 30, 1924= No Revisions
Correct as of June 30, 1923= No Revisions
Correct as of June 30, 1922= No Revisions
Correct as of June 30, 1921= No Revisions
Correct as of June 30, 1920= No Revisions
Correct as of June 30, 1919= No Revisions
Correct as of June 30, 1918= No Revisions
Correct as of June 30, 1917= No Revisions
Correct as of June 30, 1916= No Revisions
Correct as of Dec. 31, 1915= No Revisions
Correct as of Dec. 31, 1914= No Revisions
Correct as of Dec. 31, 1913= No Revisions
Correct as of Dec. 31, 1912= No Revisions
Correct as of Dec. 31, 1911= No Revisions
Correct as of Dec. 31, 1910= No Revisions
Correct as of Dec. 31, 1909= No Revisions
Correct as of Dec. 31, 1908= No Revisions
Correct as of Dec. 31, 1907= No Revisions
Correct as of Dec. 31, 1906= No Revisions
Correct as of Dec. 31, 1905= No Revisions
Correct as of Dec. 31, 1904= No Revisions
Correct as of Dec. 31, 1903= No Revisions
Correct as of Dec. 31, 1902= No Revisions
Correct as of Dec. 31, 1901= No Revisions
Correct as of Dec. 31, 1900= No Revisions
Correct as of Dec. 31, 1899= No Revisions
Correct as of Dec. 31, 1898= No Revisions
Correct as of Dec. 31, 1897= No Revisions
Correct as of Dec. 31, 1896= No Revisions
Correct as of Dec. 31, 1895= No Revisions
Correct as of Dec. 31, 1894= No Revisions
Correct as of Dec. 31, 1893= No Revisions
Correct as of Dec. 31, 1892= No Revisions
Correct as of Dec. 31, 1891= No Revisions
Correct as of Dec. 31, 1890= No Revisions
Correct as of Dec. 31, 1889= No Revisions
Correct as of Dec. 31, 1888= No Revisions
Correct as of Dec. 31, 1887= No Revisions
Correct as of Dec. 31, 1886= No Revisions
Correct as of Dec. 31, 1885= No Revisions
Correct as of Dec. 31, 1884= No Revisions
Correct as of Dec. 31, 1883= No Revisions
Correct as of Dec. 31, 1882= No Revisions
Correct as of Dec. 31, 1881= No Revisions
Correct as of Dec. 31, 1880= No Revisions
Correct as of Dec. 31, 1879= No Revisions
Correct as of Dec. 31, 1878= No Revisions
Correct as of Dec. 31, 1877= No Revisions
Correct as of Dec. 31, 1876= No Revisions
Correct as of Dec. 31, 1875= No Revisions
Correct as of Dec. 31, 1874= No Revisions
Correct as of Dec. 31, 1873= No Revisions
Correct as of Dec. 31, 1872= No Revisions
Correct as of Dec. 31, 1871= No Revisions
Correct as of Dec. 31, 1870= No Revisions
Correct as of Dec. 31, 1869= No Revisions
Correct as of Dec. 31, 1868= No Revisions
Correct as of Dec. 31, 1867= No Revisions

LOCATED

CHIEF ENGINEER

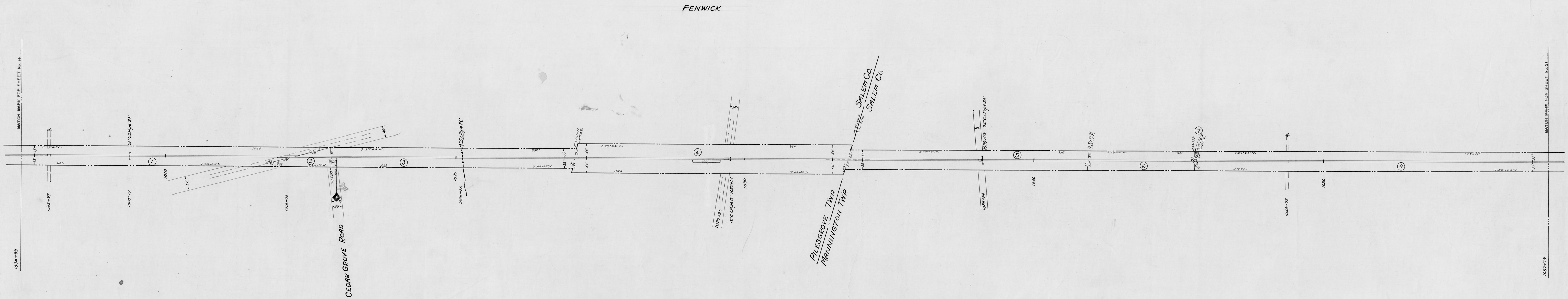
N

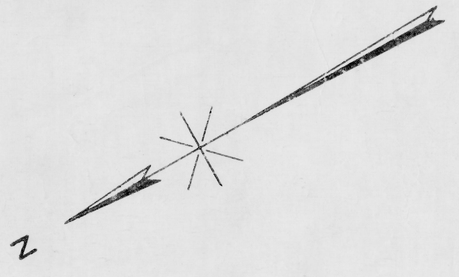
PILESGROVE TOWNSHIP, SALEM CO.

1-303
19

1-303
19

WS 7830 Sheppard Dwg 268-278





CORRECT AS OF DEC. 31,	REVISED YES	REVISED NO
1957		
1958		
1959		
1960		
1961		
1962		
1963		
1964		
1965		
1966		
1967		
1968		
1969		

Correct as of Dec. 31st, 1955-No	Revision
Correct as of Dec. 31st, 1954-No	Revision
Correct as of Dec. 31st, 1953-No	Revision
Correct as of Dec. 31st, 1952-No	Revision
Correct as of Dec. 31st, 1951-No	Revision
Correct as of Dec. 31st, 1950-Map	Revised
Correct as of Dec. 31st, 1949-No	Revision
Correct as of Dec. 31st, 1948-No	Revision
Correct as of Dec. 31st, 1947-No	Revision
Correct as of Dec. 31st, 1946-No	Revision
Correct as of Dec. 31st, 1945-No	Revision
Correct as of Dec. 31st, 1944-No	Revision
Correct as of Dec. 31st, 1943-No	Revision

Correct as of Dec. 31st, 1942-No	Revision
Correct as of Dec. 31st, 1941-No	Revision
Correct as of Dec. 31st, 1940-No	Revision
Correct as of Dec. 31st, 1939-No	Revision
Correct as of Dec. 31st, 1938-No	Revision
Correct as of Dec. 31st, 1937-No	Revision
Correct as of Dec. 31st, 1936-No	Revision
Correct as of Dec. 31st, 1935-No	Revision
Correct as of Dec. 31st, 1934-Map	Revised
Correct as of Dec. 31st, 1933-No	Revision
Correct as of Dec. 31st, 1932-No	Revision
Correct as of Dec. 31st, 1931-No	Revision
Correct as of Dec. 31st, 1930-No	Revision
Correct as of Dec. 31, 1929	Map Revised
Correct as of Dec. 31, 1928	No Revision

NOTE
STATION 1004+99 ON THIS MAP EQUALS STATION 1004+64
ON R. E. DEPT. LAND MAP NO. 41 Atlas 151

CORRECT:
C. A. Pinton
VALUATION ENGINEER

Correct as of Dec. 31, 1927	No Revisions
Correct as of June 30, 1927	No Revisions
Correct as of June 30, 1926	No Revisions
Correct as of June 30, 1925	No Revisions
Correct as of June 30, 1924	No Revisions
Correct as of June 30, 1923	No Revisions
Correct as of June 30, 1922	No Revisions
Correct as of June 30, 1921	No Revisions
Correct as of June 30, 1920	No Revisions
Correct as of June 30, 1919	No Revisions
Correct as of June 30, 1918	No Revisions
Correct as of June 30, 1917	Map Revised

W. J. & S. R. R. CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 1004+99 TO STATION 1057+79

SCALE 1" = 100' JUNE 30, 1916.

OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.

PILESGROVE TOWNSHIP, SALEM CO.
MANNINGTON TOWNSHIP, SALEM CO.

V3.03
20

V3.03
20

VS 7560 LC 9914 MP 228-28.8

V-3.03
21

W. J. & S. R. R.

CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 1057+79 TO STATION 1110+59

SCALE 1" = 100'

JUNE 30, 1926.

OFFICE OF VALUATION ENGINEER
PHILADELPHIA, PA.

Correct as of Dec. 31 1927	No Revision
Correct as of June 30 1927	No Revision
Corrected as of June 30 1926	No Revision
Corrected as of June 30 1925	No Revision
Corrected as of June 30 1924	No Revision
Corrected as of June 30 1923	No Revision
Corrected as of June 30 1922	No Revision
Corrected as of June 30 1921	No Revision
Corrected as of June 30 1920	No Revision
Corrected as of June 30 1919	No Revision
Corrected as of June 30 1918	No Revision
Corrected as of June 30 1917	No Revision

Correct as of Dec. 31st, 1965	No Revision
Correct as of Dec. 31st, 1964	No Revision
Correct as of Dec. 31st, 1963	No Revision
Correct as of Dec. 31st, 1962	No Revision
Correct as of Dec. 31st, 1961	No Revision
Correct as of Dec. 31st, 1960	No Revision
Correct as of Dec. 31st, 1959	No Revision
Correct as of Dec. 31st, 1948	No Revision
Correct as of Dec. 31st, 1947	No Revision
Correct as of Dec. 31st, 1946	No Revision
Correct as of Dec. 31st, 1945	No Revision
Correct as of Dec. 31st, 1944	No Revision
Correct as of Dec. 31st, 1943	No Revision

Correct as of Dec. 31st, 1942	No Revision
Correct as of Dec. 31st, 1941	No Revision
Correct as of Dec. 31st, 1940	No Revision
Correct as of Dec. 31st, 1939	No Revision
Correct as of Dec. 31st, 1938	No Revision
Correct as of Dec. 31st, 1937	No Revision
Correct as of Dec. 31st, 1936	No Revision
Correct as of Dec. 31st, 1935	No Revision
Corrected as of Dec. 31st, 1934	No Revision
Correct as of Dec. 31st, 1933	No Revision
Corrected as of June 30, 1932	No Revision
Corrected as of June 30, 1931	No Revision
Corrected as of June 30, 1930	No Revision
Corrected as of June 30, 1929	No Revision

Formerly 48 of 1912	Rec'd	No
1938		
1941		
1942		
1943		
1944		
1945		
1946		
1947		
1948		
1949		
1950		
1951		
1952		
1953		
1954		
1955		
1956		
1957		
1958		
1959		
1960		
1961		
1962		
1963		
1964		
1965		

NOTE
STATION 1057+79 ON THIS MAP EQUALS STATION 1057+69
ON W. J. & S. VALUATION MAP SHEET No. 21

MATCH MARK FROM SHEET No. 22

MATCH MARK FROM SHEET No. 20

MANNINGTON TWP.

ALLOWAY TWP.

SALEM CO.

SALEM CO.

2-12" C.I. PIPE 12'

2-48" C.I. PIPE 24'

1092+03.3 P.T.

Δ=10°02'

T.S. 1100

1082+07 P.C.

JESSE BOND ROAD

1064+81

1064+55

INLET

1110+79

1110+69

1110

1100+00

1090

1080

1070

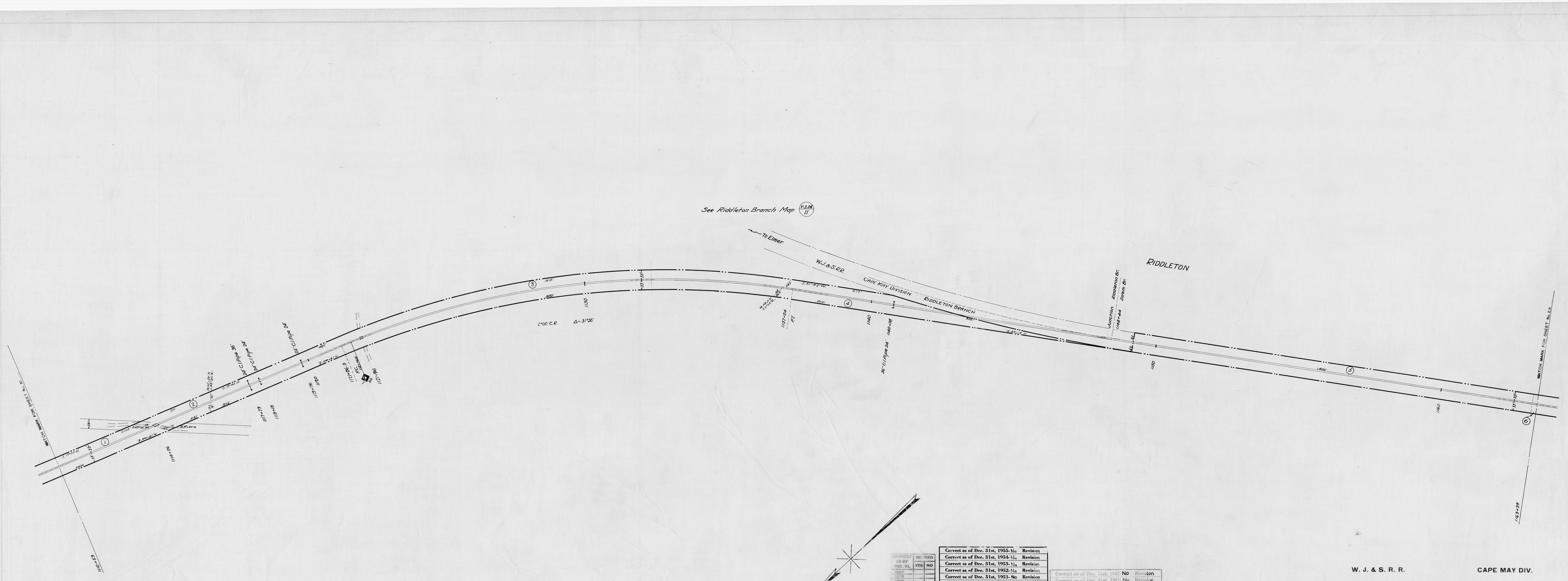
1060

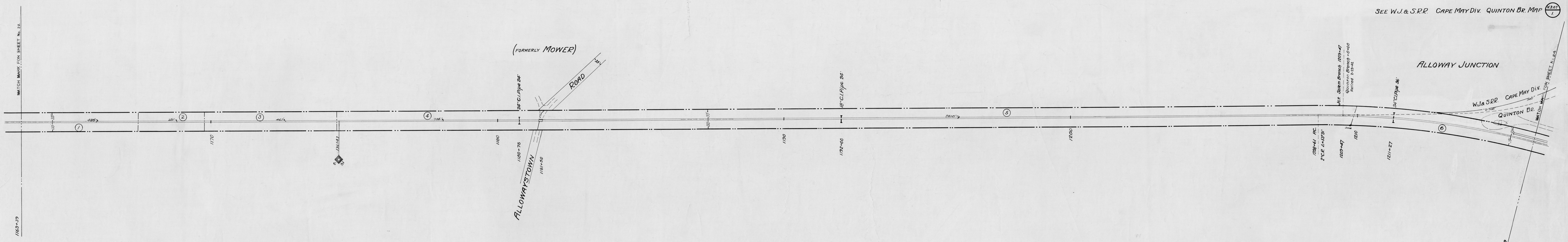
1057+79

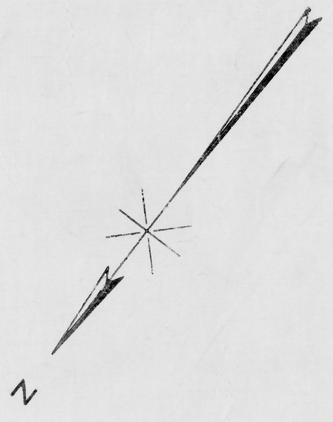
N

MANNINGTON TOWNSHIP, SALEM CO.
ALLOWAY TOWNSHIP, SALEM CO.

V3.03
21


See Riddleton Branch Map V-3.08 11
To Elmer
W.J.&S.R.R.
CAPE MAY DIVISION
RIDDLETON BRANCH
RIDDLETON
Junction Riddleton Br. 1149+44
Station Riddleton
MATCH MARK FOR SHEET No. 23
1163+39
2°00' C.R. Δ = 31°56'
1137+04 P.T.
1140+38
36" C.I. Pipe Sd.
36" C.I. Pipe Sd.
36" C.I. Pipe Sd.





CORRECT AS OF DEC. 31	REVISED YES	REVISED NO
1957		
1956		
1955		
1954		
1953		
1952		
1951		
1950		
1949		
1948		

Correct as of Dec. 31st, 1955- No	Revision
Correct as of Dec. 31st, 1954- No	Revision
Correct as of Dec. 31st, 1953- No	Revision
Correct as of Dec. 31st, 1952- No	Revision
Correct as of Dec. 31st, 1951- No	Revision
Correct as of Dec. 31st, 1950- No	Revision
Correct as of Dec. 31st, 1949- No	Revision
Correct as of Dec. 31st, 1948- No	Revision
Correct as of Dec. 31st, 1947- No	Revision
Correct as of Dec. 31st, 1946- No	Revision
Correct as of Dec. 31st, 1945- No	Revision
Correct as of Dec. 31st, 1944- No	Revision
Correct as of Dec. 31st, 1943- No	Revision

NOTE
STATION 1163+39 ON THIS MAP EQUALS STATION 1163+16
ON U. S. DEPT. LAND MAP NO. 40 Atlas 131

Correct as of Dec. 31st, 1943- Map	Revised
Correct as of Dec. 31st, 1941- No	Revision
Correct as of Dec. 31st, 1940- No	Revision
Correct as of Dec. 31st, 1939- No	Revision
Correct as of Dec. 31st, 1938- No	Revision
Correct as of Dec. 31st, 1937- No	Revision
Correct as of Dec. 31st, 1936- No	Revision
Correct as of Dec. 31st, 1935- No	Revision
Correct as of Dec. 31st, 1934- Map	Revised
Correct as of Dec. 31st, 1933- No	Revision
Correct as of Dec. 31st, 1932- No	Revision
Correct as of Dec. 31st, 1931- No	Revision
Correct as of Dec. 31st, 1930- No	Revision
Correct as of Dec. 31, 1929 Map Revised	
Correct as of Dec. 31, 1928 Map Revised	

CORRECT
[signature]
VALUATION ENGINEER

Correct as of Dec. 31, 1927	No Revisions
Correct as of June 30, 1927	No Revisions
Correct as of June 30, 1926	Map Revised
Correct as of June 30, 1925	No Revisions
Correct as of June 30, 1924	No Revisions
Correct as of June 30, 1923	No Revisions
Correct as of June 30, 1922	No Revisions
Correct as of June 30, 1921	No Revisions
Correct as of June 30, 1920	No Revisions
Correct as of June 30, 1919	No Revisions
Correct as of June 30, 1918	No Revisions
Correct as of June 30, 1917	No Revisions

W. J. & S. R. R. CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 1163+39 TO STATION 1216+19

SCALE 1" = 100' JUNE 30, 1916.

OFFICE OF VALUATION ENGINEER
PHILADELPHIA, PA.

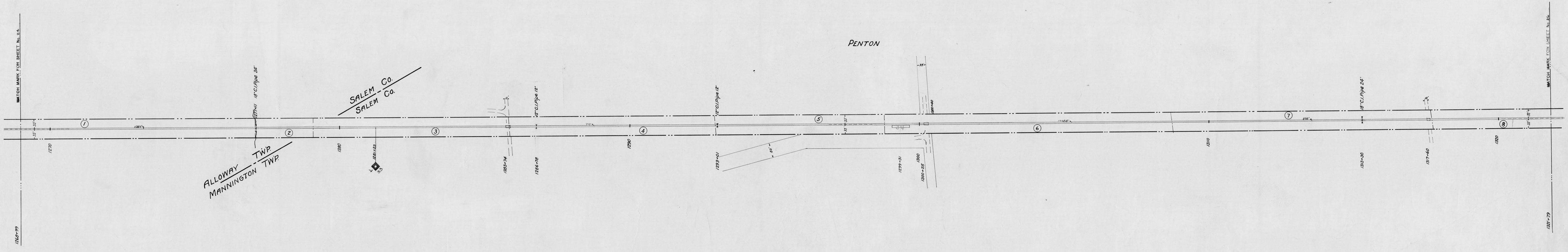
ALLOWAY TOWNSHIP, SALEM CO.

V3.03
23

V-303
23

VB 7560 VR 9914 MP 30.8 - 31.8

W. J. & S. R. R.
CAPE MAY DIV.
RIGHT OF WAY AND TRACK MAP
WEST JERSEY & SEASHORE R. R.
SALEM BRANCH
STATION 1216+19 TO STATION 1268+99
SCALE 1" = 100'
JUNE 30, 1918
OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.
ALLOWAY JUNCTION
MATCH MARK FOR SHEET No. 25
1268+99
1260
1250
1240
1230
1220
1216+19
1252+49
1233+32.8 P.T.
2°00' C.E.-A-S.P.
1227+85
12"-CI.PIPE 24"
1229+26
WEST VILLE - F.D.
ROUTE 540
TO SALEM
R.R. CROSSING
R.R. CROSSING
R.R. CROSSING



ALLOWAY TOWNSHIP, SALEM CO.
MANNINGTON TOWNSHIP, SALEM CO.

V303
25

CORRECT AS OF DEC. 31,	REVISED YES	REVISED NO
1937		
1936		
1935		
1934		
1933		
1932		
1931		
1930		
1929		
1928		
1927		
1926		

Correct as of Dec. 31st, 1955- No Revision
Correct as of Dec. 31st, 1954- No Revision
Correct as of Dec. 31st, 1953- No Revision
Correct as of Dec. 31st, 1952- No Revision
Correct as of Dec. 31st, 1951- No Revision
Correct as of Dec. 31st, 1950- No Revision
Correct as of Dec. 31st, 1949- No Revision
Correct as of Dec. 31st, 1948- No Revision
Correct as of Dec. 31st, 1947- No Revision
Correct as of Dec. 31st, 1946- No Revision
Correct as of Dec. 31st, 1945- No Revision
Correct as of Dec. 31st, 1944- No Revision
Correct as of Dec. 31st, 1943- No Revision

NOTE
STATION 1268+99 ON THIS MAP EQUALS STATION 1265+50 ON N. E. DEPT. LAND MAP NO. 52 ATLAS 151

Correct as of Dec. 31st, 1942- No Revision
Correct as of Dec. 31st, 1941- No Revision
Correct as of Dec. 31st, 1940- No Revision
Correct as of Dec. 31st, 1939- No Revision
Correct as of Dec. 31st, 1938- No Revision
Correct as of Dec. 31st, 1937- No Revision
Correct as of Dec. 31st, 1936- No Revision
Correct as of Dec. 31st, 1935- No Revision
Correct as of Dec. 31st, 1934- No Revision
Correct as of Dec. 31st, 1933- No Revision
Correct as of Dec. 31st, 1932- No Revision
Correct as of Dec. 31st, 1931- No Revision
Correct as of Dec. 31st, 1930- No Revision
Correct as of Dec. 31, 1929 No Revision
Correct as of Dec. 31, 1928 Map Revised

CORRECT:
VALUATION ENGINEER

Correct as of Dec. 31, 1927 No Revisions
Correct as of June 30, 1927 No Revisions
Correct as of June 30, 1926 No Revisions
Correct as of June 30, 1925 Map Covered
Correct as of June 30, 1924 No Revision
Correct as of June 30, 1923 No Revision
Correct as of June 30, 1922 No Revision
Correct as of June 30, 1921 No Revisions
Correct as of June 30, 1920 No Revisions
Correct as of June 30, 1919 No Revisions
Correct as of June 30, 1918 No Revisions
Correct as of June 30, 1917 No Revisions

W. J. & S. R. R. CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 1268+99 TO STATION 1321+79

SCALE 1" = 100' JUNE 30, 1915.

OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.

V-303
2.5

V87560 A89914 MP32.8-33.8

V303
2.0

W. J. & S. R. R.

CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 1321+79 TO STATION 1374+59

SCALE 1" = 100'

JUNE 30, 1916

OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.

CHIEF ENGINEER

Correct as of Dec. 31st, 1965-No Revision.
Correct as of Dec. 31st, 1964-No Revision.
Correct as of Dec. 31st, 1963-No Revision.
Correct as of Dec. 31st, 1962-No Revision.
Correct as of Dec. 31st, 1961-No Revision.
Correct as of Dec. 31st, 1950-No Revision.
Correct as of Dec. 31st, 1949-No Revision.
Correct as of Dec. 31st, 1948-No Revision.
Correct as of Dec. 31st, 1947-May Revised
Correct as of Dec. 31st, 1946-No Revision.
Correct as of Dec. 31st, 1945-No Revision.
Correct as of Dec. 31st, 1944-No Revision.
Correct as of Dec. 31st, 1943-No Revision.

Correct as of Dec. 31st, 1942-No Revision.
Correct as of Dec. 31st, 1941-No Revision.
Correct as of Dec. 31st, 1940-No Revision.
Correct as of Dec. 31st, 1939-No Revision.
Correct as of Dec. 31st, 1938-No Revision.
Correct as of Dec. 31st, 1937-No Revision.
Correct as of Dec. 31st, 1936-No Revision.
Correct as of Dec. 31st, 1935-No Revision.
Correct as of Dec. 31st, 1934-May Revised
Correct as of Dec. 31st, 1933-No Revision.
Correct as of Dec. 31st, 1932-No Revision.
Correct as of Dec. 31st, 1931-May Revised
Correct as of Dec. 31, 1929 No Revision
Correct as of Dec. 31st, 1928 No Revision

Correct as of Dec. 31, 1927 No Revision
Correct as of June 30, 1927 No Revisions
Corrected as of June 30, 1925 No Revisions
Corrected as of June 30, 1922 No Revisions
Corrected as of June 30, 1919 No Revisions
Corrected as of Dec. 31, 1918 No Revisions
Corrected as of June 30, 1917 No Revisions
Correct as of June 30, 1917 No Revisions
Correct as of June 30, 1920 No Revisions
Correct as of Dec. 31st, 1917 No Revisions
Correct as of June 30, 1917 No Revisions

CONVEYANCE RECORDED AS OF DEC. 31st,	YES	NO
1967		
1966		
1965		
1964		
1963		
1962	✓	
1961	✓	
1960	✓	
1959	✓	
1958	✓	
1957	✓	

NOTE
STATION 1320+29 ON THIS SHEET EQUALS STATION 1321+59
ON W. J. & S. (SEA ISLE) MAP AS PA ATLAS 531

STATION 1320+29 ON THIS SHEET EQUALS STATION 1321+59
ON W. J. & S. (OCEAN CITY) MAP AS PA ATLAS 531

MATCH MARK FOR SHEET No. 21

MATCH MARK FOR SHEET No. 23

1374+59

1373+18

1369+85

1366+84

1360

1343+66

1330

1326+16

1340

1330

1320+29

24" C.I. Pipe 24'

24" T.C. Pipe 33'

20" Steel Pipe 34'

6" C.I. Pipe 15'-1334+72
6" T.C. Pipe 34'-1334+07

ROAD

MANNINGTON HILL

ACTON

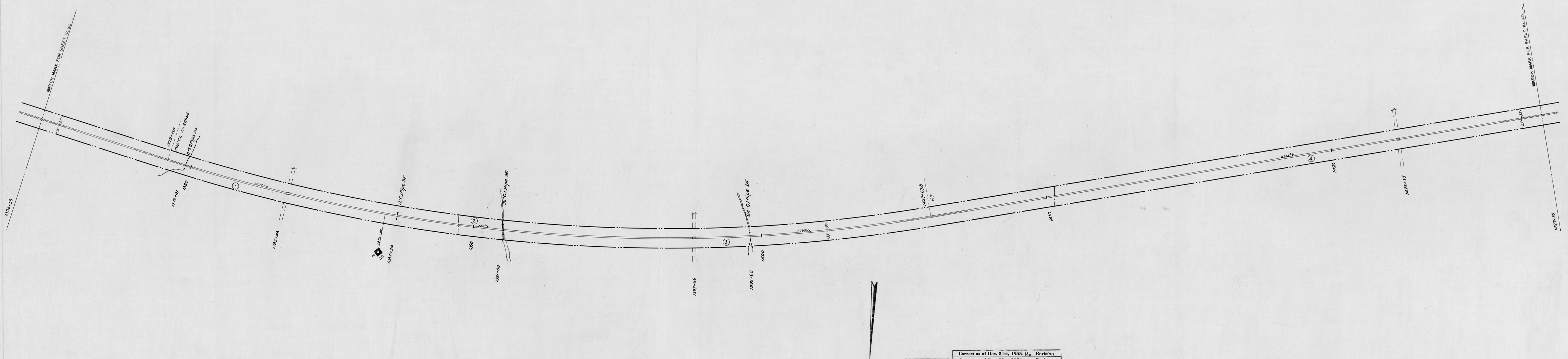
N

MANNINGTON TOWNSHIP, SALEM CO.

V303
2.0

W 7560 Y68914 mp1332-34.8

LAND PN 500600



N

CORRECT AS OF DEC. 31,	REVISED YES	REVISED NO
1957		
1956		
1955		
1954		
1953		
1952		
1951		
1950		
1949		
1948		
1947		
1946		
1945		
1944		
1943		

Correct as of Dec. 31st, 1955- No	Revision
Correct as of Dec. 31st, 1954- No	Revision
Correct as of Dec. 31st, 1953- No	Revision
Correct as of Dec. 31st, 1952- No	Revision
Correct as of Dec. 31st, 1951- No	Revision
Correct as of Dec. 31st, 1950- No	Revision
Correct as of Dec. 31st, 1949- No	Revision
Correct as of Dec. 31st, 1948- No	Revision
Correct as of Dec. 31st, 1947- No	Revision
Correct as of Dec. 31st, 1946- No	Revision
Correct as of Dec. 31st, 1945- No	Revision
Correct as of Dec. 31st, 1944- No	Revision
Correct as of Dec. 31st, 1943- No	Revision

NOTE
STATION 1374+59 ON THIS MAP EQUALS STATION 1374+35
ON R. E. DEPT. LAND MAP NO. 56 ATlas 151

Correct as of Dec. 31st, 1942- No	Revision
Correct as of Dec. 31st, 1941- No	Revision
Correct as of Dec. 31st, 1940- No	Revision
Correct as of Dec. 31st, 1939- No	Revision
Correct as of Dec. 31st, 1938- No	Revision
Correct as of Dec. 31st, 1937- No	Revision
Correct as of Dec. 31st, 1936- No	Revision
Correct as of Dec. 31st, 1935- No	Revision
Correct as of Dec. 31st, 1934- No	Revision
Correct as of Dec. 31st, 1933- No	Revision
Correct as of Dec. 31st, 1932- No	Revision
Correct as of Dec. 31st, 1931- No	Revision
Correct as of Dec. 31st, 1930- No	Revision
Correct as of Dec. 31, 1929 No Revision	
Correct as of Dec. 31, 1928 No Revision	

CORRECT:
L. A. Pinton
VALUATION ENGINEER

Correct as of Dec. 31, 1927	No Revisions
Correct as of June 30, 1927	No Revisions
Correct as of June 30, 1926	No Revisions
Correct as of June 30, 1925	No Revisions
Correct as of June 30, 1924	No Revisions
Correct as of June 30, 1923	No Revisions
Correct as of June 30, 1922	No Revisions
Correct as of June 30, 1921	No Revisions
Correct as of June 30, 1920	No Revisions
Correct as of June 30, 1919	No Revisions
Correct as of June 30, 1918	No Revisions
Correct as of June 30, 1917	No Revision

W. J. & S. R. R. CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 1374+59 TO STATION 1427+39

SCALE 1" = 100' JUNE 30, 1916.

OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.

Mannington Twp
Salem Co.

MANNINGTON TOWNSHIP, SALEM CO.

V3.03
27

V-303
27

V8 7560 DC 9914 MP 34.8-35.8

V-303
28

W. J. & S. R. R. — CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 1427+39 TO STATION 1450+19

SCALE 1" = 100'

JUNE 30, 1916

OFFICE OF VALUATION ENGINEER
PHILADELPHIA, PA.

Correct as of Dec. 31st, 1927 No Revisions
Correct as of June 30, 1927 No Revisions
Correct as of Dec. 31st, 1926 No Revisions
Correct as of June 30, 1926 No Revisions
Corrected as of June 30, 1925 No Revisions
Corrected as of June 30, 1924 Map Revised
Corrected as of June 30, 1923 No Revisions
Corrected as of June 30, 1922 No Revisions
Corrected as of June 30, 1921 No Revisions
Correct as of June 30, 1920 No Revisions
Correct as of June 30, 1919 No Revisions
Correct as of June 30, 1918 Map Revised
Correct as of June 30, 1917 No Revisions
Correct as of June 30, 1916 No Revisions

Correct as of Dec. 31st, 1915	No	Revision
Correct as of Dec. 31st, 1914	No	Revision
Correct as of Dec. 31st, 1913	No	Revision
Correct as of Dec. 31st, 1912	No	Revision
Correct as of Dec. 31st, 1911	No	Revision
Correct as of Dec. 31st, 1910	No	Revision
Correct as of Dec. 31st, 1909	No	Revision
Correct as of Dec. 31st, 1908	No	Revision
Correct as of Dec. 31st, 1907	No	Revision
Correct as of Dec. 31st, 1906	No	Revision
Correct as of Dec. 31st, 1905	No	Revision
Correct as of Dec. 31st, 1904	No	Revision
Correct as of Dec. 31st, 1903	No	Revision
Correct as of Dec. 31st, 1902	No	Revision
Correct as of Dec. 31st, 1901	No	Revision
Correct as of Dec. 31st, 1900	No	Revision
Correct as of Dec. 31st, 1899	No	Revision
Correct as of Dec. 31st, 1898	No	Revision

Correct as of Dec. 31st, 1955	No	Revision
Correct as of Dec. 31st, 1954	No	Revision
Correct as of Dec. 31st, 1953	No	Revision
Correct as of Dec. 31st, 1952	No	Revision
Correct as of Dec. 31st, 1951	No	Revision
Correct as of Dec. 31st, 1950	No	Revision
Correct as of Dec. 31st, 1949	Map	Revised
Correct as of Dec. 31st, 1948	No	Revision
Correct as of Dec. 31st, 1947	No	Revised
Correct as of Dec. 31st, 1946	No	Revision
Correct as of Dec. 31st, 1945	No	Revision
Correct as of Dec. 31st, 1944	No	Revision
Correct as of Dec. 31st, 1943	No	Revision

AS OF DEC. 31	YES	NO
1917	✓	
1918		✓
1919		✓
1920		✓
1921		✓
1922		✓
1923	✓	
1924	✓	
1925	✓	
1926		✓

NOTE
STATION 1427+39 OR THEREABOUTS IS STATION 1427+18 ON L.E. DEPT. LAND MAP NO. 68 ATLANTIC

Correct as of Dec. 31, 1929 No Revision
Correct as of Dec. 31st, 1930 No Revision
Correct as of Dec. 31st, 1931 No Revision
Correct as of Dec. 31st, 1932 No Revision
Correct as of Dec. 31st, 1933 Map Revised
Correct as of Dec. 31st, 1934 No Revision
Correct as of Dec. 31st, 1935 No Revision
Correct as of Dec. 31st, 1936 No Revision
Correct as of Dec. 31st, 1937 No Revision
Correct as of Dec. 31st, 1938 No Revision
Correct as of Dec. 31st, 1939 No Revision
Correct as of Dec. 31st, 1940 No Revision
Correct as of Dec. 31st, 1941 No Revision
Correct as of Dec. 31st, 1942 No Revision

MATCH MARK FOR SHEET No. 29

MATCH MARK FROM SHEET No. 27

MARKET ST.

1427+39

1430

1432+16 — 42" C.I. Pipe 36"

1438+00

1440 — 1438.78

1443+90

P.I. 1447+48

1450

1453+18

1460

1467+27 = 040

1466+83

1466+14 — 48" C.I. Pipe 24"

1466+32

1470

1472+85

1473+83 — 5°30' C.C.

1476+19

1480

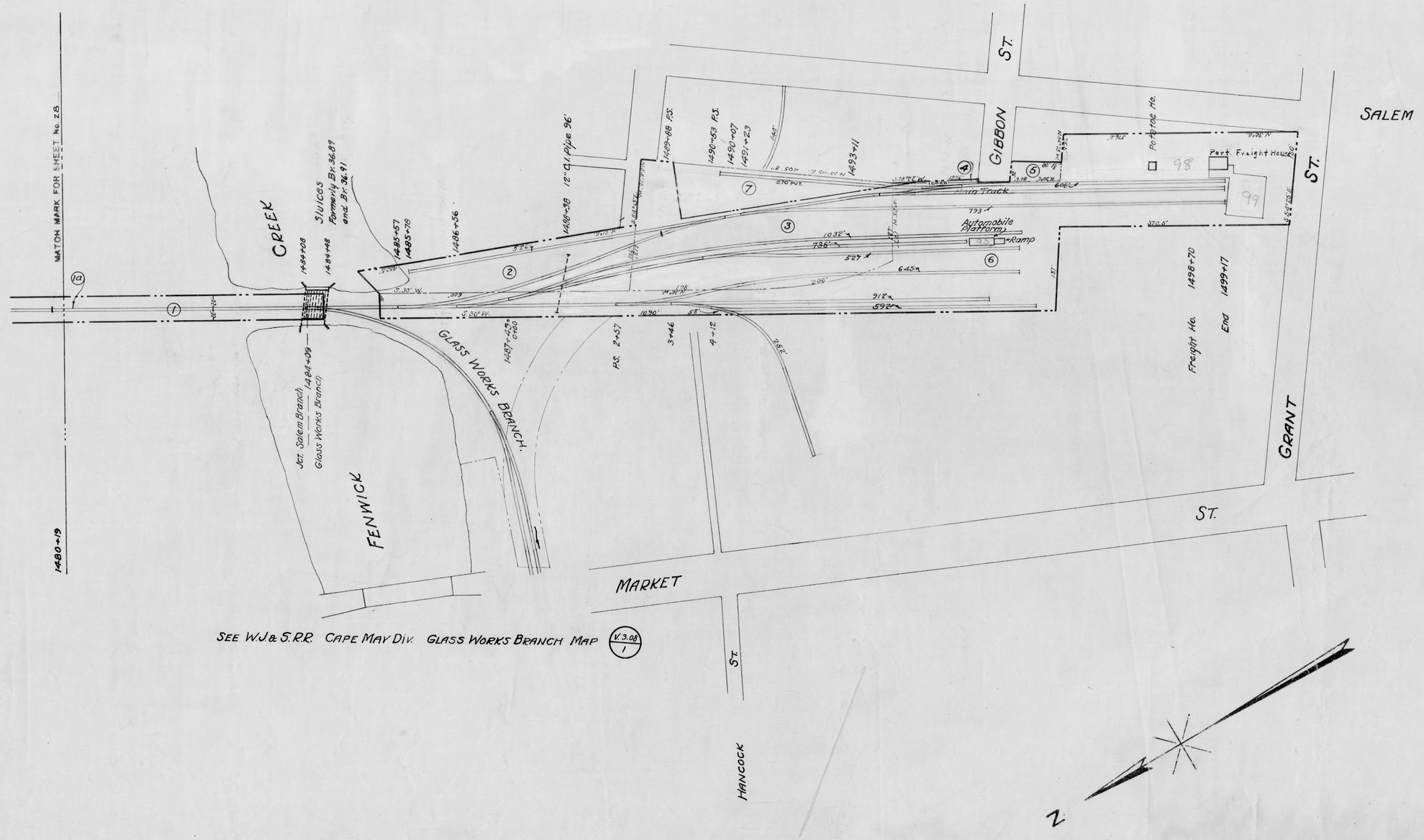
1480+19

MATCH MARK FROM SHEET No. 29

MANNINGTON TOWNSHIP, SALEM CO.

V3.09
28

W 9560 — X@ 9914 — Dwg 3518 - 36.8



CORRECT AS OF DEC. 31,	REVISED YES	REVISED NO
1957		
1956		
1955	✓	
1954		
1953		
1952	✓	
1951		✓
1950		✓
1949		✓
1948		✓
1947		✓
1946		✓
1945		✓
1944		✓
1943		✓

Correct as of Dec. 31st, 1955-	No	Revision
Correct as of Dec. 31st, 1954-	No	Revision
Correct as of Dec. 31st, 1953-	No	Revision
Correct as of Dec. 31st, 1952-	No	Revision
Correct as of Dec. 31st, 1951-	No	Revision
Correct as of Dec. 31st, 1950-	No	Revision
Correct as of Dec. 31st, 1949-	Map	Revised
Correct as of Dec. 31st, 1948-	No	Revision
Correct as of Dec. 31st, 1947-	Map	Revised
Correct as of Dec. 31st, 1946-	No	Revision
Correct as of Dec. 31st, 1945-	Map	Revised
Correct as of Dec. 31st, 1944-	No	Revision
Correct as of Dec. 31st, 1943-	No	Revision

NOTE
STATION 1480+13 ON THIS MAP EQUALS STATION 1479+34
ON R. E. DEPT. LAND MAP NO. 60 Atlas 151

Correct as of Dec. 31st, 1942-	No	Revision
Correct as of Dec. 31st, 1941-	No	Revision
Correct as of Dec. 31st, 1940-	No	Revision
Correct as of Dec. 31st, 1939-	Map	Revised
Correct as of Dec. 31st, 1938-	No	Revision
Correct as of Dec. 31st, 1937-	No	Revision
Correct as of Dec. 31st, 1936-	Map	Revised
Correct as of Dec. 31st, 1935-	No	Revision
Correct as of Dec. 31st, 1934-	Map	Revised
Correct as of Dec. 31st, 1933-	No	Revision
Correct as of Dec. 31st, 1932-	No	Revision
Correct as of Dec. 31st, 1931-	No	Revision
Correct as of Dec. 31st, 1930-	No	Revision
Correct as of Dec. 31, 1929	Map	Revised
Correct as of Dec. 31, 1928	Map	Revised

CORRECT.
[signature]
VALUATION ENGINEER

Correct as of Dec. 31, 1927	No	Revisions
Correct as of June 30, 1927	No	Revisions
Correct as of June 30, 1926	No	Revisions
Correct as of June 30, 1925	No	Revisions
Correct as of June 30, 1924	No	Revisions
Correct as of June 30, 1923	Map	Revised
Correct as of June 30, 1922	No	Revision
Correct as of June 30, 1921	No	Revisions
Correct as of June 30, 1920	No	Revisions
Correct as of June 30, 1919	Map	Revised
Correct as of June 30, 1918	No	Revisions
Correct as of June 30, 1917	No	Revisions

W. J. & S. R. R. CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

SALEM BRANCH

STATION 1480+19 TO STATION 1499+17

SCALE 1" = 100' JUNE 30, 1916.

OFFICE OF VALUATION ENGINEER
PHILADELPHIA PA.

MANNINGTON TOWNSHIP, SALEM CO.

V3.03
29

V3.03
29

V.S 7560 RC 9914 MP 36.8 - 37.2

V3.08

W. J. & S. R. R. CAPE MAY DIV.

RIGHT OF WAY AND TRACK MAP

WEST JERSEY & SEASHORE R. R.

GLASS WORKS BRANCH

STATION 0+00 TO STATION 65+93

SCALE 1" = 100' JUNE 20, 1910.

OFFICE OF CHIEF ENGINEER PHILADELPHIA, PA.

Correct as of Dec. 31st, 1934- Map Revised	
Correct as of Dec. 31st, 1935- No Revision	
Correct as of Dec. 31st, 1936- No Revision	
Correct as of Dec. 31st, 1937- No Revision	
Correct as of Dec. 31st, 1938- Map Revised	
Correct as of Dec. 31st, 1939- No Revision	
Correct as of Dec. 31st, 1940- No Revision	
Correct as of Dec. 31st, 1941- No Revision	
Correct as of Dec. 31st, 1942- No Revision	
Correct as of Dec. 31st, 1943- No Revision	
Correct as of Dec. 31st, 1944- Map Revised	
Correct as of Dec. 31st, 1945- No Revision	
Correct as of Dec. 31st, 1946- No Revision	
Correct as of Dec. 31st, 1947- No Revision	
Correct as of Dec. 31st, 1948- Map Revised	
Correct as of Dec. 31st, 1949- No Revision	

Correct as of Dec. 31st, 1955- No Revision	
Correct as of Dec. 31st, 1956- No Revision	
Correct as of Dec. 31st, 1957- No Revision	
Correct as of Dec. 31st, 1958- No Revision	
Correct as of Dec. 31st, 1959- Map Revised	
Correct as of Dec. 31st, 1960- No Revision	
Correct as of Dec. 31st, 1961- No Revision	
Correct as of Dec. 31st, 1962- No Revision	
Correct as of Dec. 31st, 1963- No Revision	
Correct as of Dec. 31st, 1964- Map Revised	

Correct as of Dec. 31st, 1965- No Revision	
Correct as of Dec. 31st, 1966- No Revision	
Correct as of Dec. 31st, 1967- No Revision	
Correct as of Dec. 31st, 1968- Map Revised	
Correct as of Dec. 31st, 1969- No Revision	
Correct as of Dec. 31st, 1970- No Revision	
Correct as of Dec. 31st, 1971- No Revision	
Correct as of Dec. 31st, 1972- No Revision	
Correct as of Dec. 31st, 1973- No Revision	
Correct as of Dec. 31st, 1974- Map Revised	

Correct as of Dec. 31st, 1975- No Revision	
Correct as of Dec. 31st, 1976- No Revision	
Correct as of Dec. 31st, 1977- No Revision	
Correct as of Dec. 31st, 1978- No Revision	
Correct as of Dec. 31st, 1979- Map Revised	
Correct as of Dec. 31st, 1980- No Revision	
Correct as of Dec. 31st, 1981- No Revision	
Correct as of Dec. 31st, 1982- No Revision	
Correct as of Dec. 31st, 1983- No Revision	
Correct as of Dec. 31st, 1984- Map Revised	

Correct as of Dec. 31st, 1985- No Revision	
Correct as of Dec. 31st, 1986- No Revision	
Correct as of Dec. 31st, 1987- No Revision	
Correct as of Dec. 31st, 1988- No Revision	
Correct as of Dec. 31st, 1989- Map Revised	
Correct as of Dec. 31st, 1990- No Revision	
Correct as of Dec. 31st, 1991- No Revision	
Correct as of Dec. 31st, 1992- No Revision	
Correct as of Dec. 31st, 1993- No Revision	
Correct as of Dec. 31st, 1994- Map Revised	

Correct as of Dec. 31st, 1995- No Revision	
Correct as of Dec. 31st, 1996- No Revision	
Correct as of Dec. 31st, 1997- No Revision	
Correct as of Dec. 31st, 1998- No Revision	
Correct as of Dec. 31st, 1999- Map Revised	
Correct as of Dec. 31st, 2000- No Revision	
Correct as of Dec. 31st, 2001- No Revision	
Correct as of Dec. 31st, 2002- No Revision	
Correct as of Dec. 31st, 2003- No Revision	
Correct as of Dec. 31st, 2004- Map Revised	

Correct as of Dec. 31st, 2005- No Revision	
Correct as of Dec. 31st, 2006- No Revision	
Correct as of Dec. 31st, 2007- No Revision	
Correct as of Dec. 31st, 2008- No Revision	
Correct as of Dec. 31st, 2009- Map Revised	
Correct as of Dec. 31st, 2010- No Revision	
Correct as of Dec. 31st, 2011- No Revision	
Correct as of Dec. 31st, 2012- No Revision	
Correct as of Dec. 31st, 2013- No Revision	
Correct as of Dec. 31st, 2014- Map Revised	

Correct as of Dec. 31st, 2015- No Revision	
Correct as of Dec. 31st, 2016- No Revision	
Correct as of Dec. 31st, 2017- No Revision	
Correct as of Dec. 31st, 2018- No Revision	
Correct as of Dec. 31st, 2019- Map Revised	
Correct as of Dec. 31st, 2020- No Revision	
Correct as of Dec. 31st, 2021- No Revision	
Correct as of Dec. 31st, 2022- No Revision	
Correct as of Dec. 31st, 2023- No Revision	
Correct as of Dec. 31st, 2024- Map Revised	

Correct as of Dec. 31st, 2025- No Revision	
Correct as of Dec. 31st, 2026- No Revision	
Correct as of Dec. 31st, 2027- No Revision	
Correct as of Dec. 31st, 2028- No Revision	
Correct as of Dec. 31st, 2029- Map Revised	
Correct as of Dec. 31st, 2030- No Revision	
Correct as of Dec. 31st, 2031- No Revision	
Correct as of Dec. 31st, 2032- No Revision	
Correct as of Dec. 31st, 2033- No Revision	
Correct as of Dec. 31st, 2034- Map Revised	

Correct as of Dec. 31st, 2035- No Revision	
Correct as of Dec. 31st, 2036- No Revision	
Correct as of Dec. 31st, 2037- No Revision	
Correct as of Dec. 31st, 2038- No Revision	
Correct as of Dec. 31st, 2039- Map Revised	
Correct as of Dec. 31st, 2040- No Revision	
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Correct as of Dec. 31st, 2044- Map Revised	

Correct as of Dec. 31st, 2045- No Revision	
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Correct as of Dec. 31st, 2049- Map Revised	
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Correct as of Dec. 31st, 2051- No Revision	
Correct as of Dec. 31st, 2052- No Revision	
Correct as of Dec. 31st, 2053- No Revision	
Correct as of Dec. 31st, 2054- Map Revised	

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Correct as of Dec. 31st, 2056- No Revision	
Correct as of Dec. 31st, 2057- No Revision	
Correct as of Dec. 31st, 2058- No Revision	
Correct as of Dec. 31st, 2059- Map Revised	
Correct as of Dec. 31st, 2060- No Revision	
Correct as of Dec. 31st, 2061- No Revision	
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Correct as of Dec. 31st, 2063- No Revision	
Correct as of Dec. 31st, 2064- Map Revised	

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Correct as of Dec. 31st, 2066- No Revision	
Correct as of Dec. 31st, 2067- No Revision	
Correct as of Dec. 31st, 2068- No Revision	
Correct as of Dec. 31st, 2069- Map Revised	
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Correct as of Dec. 31st, 2071- No Revision	
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Correct as of Dec. 31st, 2074- Map Revised	

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Correct as of Dec. 31st, 2079- Map Revised	
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Correct as of Dec. 31st, 2099- Map Revised	
Correct as of Dec. 31st, 2100- No Revision	
Correct as of Dec. 31st, 2101- No Revision	
Correct as of Dec. 31st, 2102- No Revision	
Correct as of Dec. 31st, 2103- No Revision	
Correct as of Dec. 31st, 2104- Map Revised	

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Correct as of Dec. 31st, 2106- No Revision	
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Correct as of Dec. 31st, 2109- Map Revised	
Correct as of Dec. 31st, 2110- No Revision	
Correct as of Dec. 31st, 2111- No Revision	
Correct as of Dec. 31st, 2112- No Revision	
Correct as of Dec. 31st, 2113- No Revision	
Correct as of Dec. 31st, 2114- Map Revised	

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Correct as of Dec. 31st, 2119- Map Revised	
Correct as of Dec. 31st, 2120- No Revision	
Correct as of Dec. 31st, 2121- No Revision	
Correct as of Dec. 31st, 2122- No Revision	
Correct as of Dec. 31st, 2123- No Revision	
Correct as of Dec. 31st, 2124- Map Revised	

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Correct as of Dec. 31st, 2164- Map Revised	

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Correct as of Dec. 31st, 2169- Map Revised	
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Correct as of Dec. 31st, 2199- Map Revised	
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Correct as of Dec. 31st, 2201- No Revision	
Correct as of Dec. 31st, 2202- No Revision	
Correct as of Dec. 31st, 2203- No Revision	
Correct as of Dec. 31st, 2204- Map Revised	

Correct as of Dec. 31st, 2205- No Revision	
Correct as of Dec. 31st, 2206- No Revision	
Correct as of Dec. 31st, 2207- No Revision	
Correct as of Dec. 31st, 2208- No Revision	
Correct as of Dec. 31st, 2209- Map Revised	
Correct as of Dec. 31st, 2210- No Revision	
Correct as of Dec. 31st, 2211- No Revision	
Correct as of Dec. 31st, 2212- No Revision	
Correct as of Dec. 31st, 2213- No Revision	
Correct as of Dec. 31st, 2214- Map Revised	

Correct as of Dec. 31st, 2215- No Revision	
Correct as of Dec. 31st, 2216- No Revision	
Correct as of Dec. 31st, 2217- No Revision	
Correct as of Dec. 31st, 2218- No Revision	
Correct as of Dec. 31st, 2219- Map Revised	
Correct as of Dec. 31st, 2220- No Revision	
Correct as of Dec. 31st, 2221- No Revision	
Correct as of Dec. 31st, 2222- No Revision	
Correct as of Dec. 31st, 2223- No Revision	
Correct as of Dec. 31st, 2224- Map Revised	

Correct as of Dec. 31st, 2225- No Revision	
Correct as of Dec. 31st, 2226- No Revision	
Correct as of Dec. 31st, 2227- No Revision	
Correct as of Dec. 31st, 2228- No Revision	
Correct as of Dec. 31st, 2229- Map Revised	
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New Search | Assessment Postcard

Block:	67	Prop Loc:	MANNINGTON MILLS RD	Owner:	SALEM CO RAILROAD % FREEHOLDERS	Square Ft:	0
Lot:	14.01	District:	1706 MANNINGTON	Street:	94 MARKET ST	Year Built:	
Qual:		Class:	5A	City State:	SALEM NJ 08079	Style:	

Additional Information

Prior Block:		Acct Num:		Addl Lots:		EPL Code:	0 0 0
Prior Lot:		Mtg Acct:		Land Desc:	1.47 AC	Statute:	
Prior Qual:		Bank Code:	0	Bldg Desc:		Initial:	000000 Further: 00000
Updated:	05/14/04	Tax Codes:		Class4Cd:	0	Desc:	
Zone:	CON	Map Page:	35	Acreage:	1.47	Taxes:	0.00 / 0.00

Sale Information

Sale Date:	00/00/00	Book:		Page:		Price:	0 NU#: 0

Sr1a	Date	Book	Page	Price	NU#	Ratio	Grantee

TAX-LIST-HISTORY

Year	Property Location	Land/Imp/Tot	Exemption	Assessed	Property Class
2023	MANNINGTON MILLS RD	700 0 700	0	700	5A
2022	MANNINGTON MILLS RD	700 0 700	0	700	5A
2021	MANNINGTON MILLS RD	700 0 700	0	700	5A
2020	MANNINGTON MILLS RD	700 0 700	0	700	5A
2019	MANNINGTON MILLS RD	700 0 700	0	700	5A
2018	MANNINGTON MILLS RD	700 0 700	0	700	5A
2017	MANNINGTON MILLS RD	700 0 700	0	700	5A
2016	MANNINGTON MILLS RD	700 0 700	0	700	5A

*Click on Underlined Year for Tax List Page

New Search | Assessment Postcard

Block:	67	Prop Loc:	MANNINGTON MILLS RD	Owner:	SALEM CO RAILROAD % FREEHOLDERS	Square Ft:	0
Lot:	14.02	District:	1706 MANNINGTON	Street:	94 MARKET ST	Year Built:	
Qual:		Class:	5A	City State:	SALEM NJ 08079	Style:	

Additional Information

Prior Block:		Acct Num:		Addl Lots:		EPL Code:	0 0 0
Prior Lot:		Mtg Acct:		Land Desc:	1.1 AC	Statute:	
Prior Qual:		Bank Code:	0	Bldg Desc:		Initial:	000000 Further: 00000
Updated:	05/14/04	Tax Codes:		Class4Cd:	0	Desc:	
Zone:	CON	Map Page:	35	Acreage:	1.1	Taxes:	0.00 / 0.00

Sale Information

Sale Date:	00/00/00	Book:		Page:		Price:	0 NU#: 0

Sr1a	Date	Book	Page	Price	NU#	Ratio	Grantee

TAX-LIST-HISTORY

Year	Property Location	Land/Imp/Tot	Exemption	Assessed	Property Class
2023	MANNINGTON MILLS RD	400 0 400	0	400	5A
2022	MANNINGTON MILLS RD	400 0 400	0	400	5A
2021	MANNINGTON MILLS RD	400 0 400	0	400	5A
2020	MANNINGTON MILLS RD	400 0 400	0	400	5A
2019	MANNINGTON MILLS RD	400 0 400	0	400	5A
2018	MANNINGTON MILLS RD	400 0 400	0	400	5A
2017	MANNINGTON MILLS RD	400 0 400	0	400	5A
2016	MANNINGTON MILLS RD	400 0 400	0	400	5A

*Click on Underlined Year for Tax List Page

New Search | Assessment Postcard

Block:	67	Prop Loc:	MANNINGTON TOWNSHIP	Owner:	SALEM CO RAILROAD %FREEHOLDERS	Square Ft:	0
Lot:	18	District:	1706 MANNINGTON	Street:	94 MARKET STREET	Year Built:	
Qual:		Class:	5A	City State:	SALEM NJ 08079	Style:	

Additional Information

Prior Block:		Acct Num:		Addl Lots:		EPL Code:	0 0 0
Prior Lot:		Mtg Acct:		Land Desc:		Statute:	
Prior Qual:		Bank Code:	32767	Bldg Desc:	RR RIGHT OF WAY	Initial:	000000 Further: 0000
Updated:	12/09/19	Tax Codes:		Class4Cd:	0	Desc:	
Zone:	CON	Map Page:	35	Acreage:	0	Taxes:	0.00 / 0.00

Sale Information

Sale Date:	00/00/00	Book:		Page:		Price:	0 NU#: 0

Sr1a	Date	Book	Page	Price	NU#	Ratio	Grantee

TAX-LIST-HISTORY

Year	Property Location	Land/Imp/Tot	Exemption	Assessed	Property Class
2023	MANNINGTON TOWNSHIP	0 0 0	0	0	5A
2022	MANNINGTON TOWNSHIP	0 0 0	0	0	5A
2021	MANNINGTON TOWNSHIP	0 0 0	0	0	5A
2020	MANNINGTON TOWNSHIP	0 0 0	0	0	5A
2019	MANNINGTON TOWNSHIP	0 0 0	0	0	5A
2018	MANNINGTON TOWNSHIP	0 0 0	0	0	5A
2017	MANNINGTON TOWNSHIP	0 0 0	0	0	5A
2016	MANNINGTON TOWNSHIP	0 0 0	0	0	5A

*Click on Underlined Year for Tax List Page

EXHIBIT F

The Salem Branch – A Concise History

by John W. Burlage, Jr.

The prosperity and growth of the larger towns and cities of South Jersey has always been linked to reliable transportation. Up through the mid-nineteenth century (and beyond) this meant water transportation on the Delaware River and its navigable tributaries. Such was the case with the city of Salem, which was located on the Salem Creek (later River). During this period traveling by boat was the accepted norm, both for freight and passengers. Because of this reliability, the roads remained deplorable – there was no impetus to improve them, and thoughts of Salem being served by a railroad were few. This notion was shattered with the severe winter of 1851-52: with the Salem Creek frozen, shipping via water ceased and transportation costs soared, affecting the price of nearly everything. Out of this crisis, however, people began to think of transportation in terms other than on the water.

Early Attempts.

The first attempt to link Salem to the outside world via rail was in 1850 with the chartering of the **Salem & Delaware River Railroad & Transportation Company.** This railroad was projected to run between Salem and Pennsville, where freight and passengers would be transferred to steamboats for the trip across the river to New Castle, Delaware. This road was never built, probably owing to the company's inability to secure the requisite stock subscriptions to formally incorporate.

The next attempt to reach Salem by rail came in 1853 with the chartering of the **West Jersey Railroad Company**, which eventually became the dominant railroad in South Jersey. The company was empowered to construct a railroad from Camden to Cape May, and its charter provided for branches to Bridgeton and Salem. The latter branch would have diverged from the main stem at Glassboro, running 21 miles to Salem. This branch was never built.

The West Jersey Railroad, in common with almost all other early railroad companies in South Jersey, had difficulty selling stock subscriptions to enable it to formally incorporate. The subscription books were opened in Camden on March 29, 1853, and over the next seven days subscriptions were solicited in Salem, Bridgeton, Millville, Cape May Court House, and Cape Island (Cape May). The results were disappointing: only 1,005 shares had been subscribed, well short of the 5,000 shares needed to organize. At this juncture, the company made overtures to the principals of the Camden & Amboy Rail Road Company that it was in their best interests to support the West Jersey project. Convinced of the railroad's value, Commodore Robert F. Stockton stepped in and purchased 4,000 shares of West Jersey stock, assuring that the company could now formally organize.

Stockton was now firmly in control of the West Jersey Railroad, but his motives were hardly altruistic. The West Jersey was seen as a valuable feeder for traffic to and from the Camden & Amboy, but more importantly, it was a critical pawn in maintaining political support for the C&A from the southern counties. The West Jersey Railroad was built – albeit slowly – but never reached its intended destination of Cape May; that goal would be filled by two other railroad companies. Upon reaching Glassboro, the West Jersey Railroad instead built south to Bridgeton, an important manufacturing center. The line from Glassboro to Bridgeton would become the railroad's Bridgeton Branch.

Components of the Salem Branch.

On the map the Salem Branch is a continuous line from Woodbury to Salem, but it wasn't built that way. The Salem Branch was constructed in segments by three separate railroad companies in four distinct construction phases. There were also two branch lines constructed off the Salem Branch, one of which is still in existence. These railroads will be discussed starting with the oldest component.

The Salem Railroad.

When the West Jersey Railroad bypassed Salem in favor of Bridgeton (driven by a greater return on investment), the citizens of Salem realized that if they wanted a railroad they would have to build it themselves. A bill to incorporate the **Salem and Camden Railroad Company** was introduced in the Senate by Charles Perrin Smith of Salem on Tuesday, Feb. 26, 1856. Smith tweaked several sections of the bill, including changing the name to the **Salem Railroad Company**, which was done on March 5.

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Later that day the bill was passed by the Senate unanimously. It was also passed by the General Assembly unanimously on March 13, and signed into law by the Governor the following day.

The Salem Railroad Company was empowered to construct a railroad *"from a point in the town of Salem, or within one mile thereof, to any point on the West Jersey Railroad at Woodbury, or south thereof."* Capital stock was set at $400,000, with liberty to increase it to $800,000. The company could formally organize when $100,000 of stock had been subscribed. Unfortunately, the company's organizers had difficulty getting the necessary stock subscriptions, so the charter was amended by the state legislature on March 9, 1859, to decrease the amount needed to organize to $75,000.

The charter gave the company great flexibility in determining the route of their railroad, with the railroad being routed through the places which provided financial support. On May 21, 1860, the books were opened in Woodstown, but there was little interest and the sale of stock was quite limited. By September 1, 1860, only 1,508 shares had been subscribed, but this was enough to permit formal organization.

The lack of financial support from Woodstown guaranteed that the railroad would not pass through that town, but rather be built on the route which required the least grading and bridging. On November 11, 1860, Gen. William Cook started surveying the route between Salem and Pittstown (later Elmer), the junction point on the West Jersey Railroad. Grading began August 31, 1861, and the first rail was laid September 27, 1862.

One of the stipulations of the charter required the railroad be completed and in use by June 4, 1863, or the charter would become null and void. Realizing this deadline might not be met, the company went back to the legislature to have the charter amended again, this time extending the time of completion by seven years. This extension was approved on February 17, 1862.

With the charter's expiration no longer a concern, the company focused on completing the railroad. The first passenger train between Yorketown and Pittstown ran on January 14, 1863, and between Claysville and Pittstown on July 31, 1863. The Salem Railroad owned two locomotives but no rolling stock, the latter being leased from the West Jersey Railroad.

The completed railroad didn't actually enter Salem; rather, its western terminus was at the hamlet of Claysville in Mannington Township, across Fenwick Creek from Salem. (An 1872 map of Salem County shows the railroad terminating on Salem-Woodstown Road (NJ Route 45) just south of Mannington Mills Road.) This was considered a temporary terminus, as the company at that time lacked the financial resources to bridge Fenwick Creek or acquire real estate in Salem. Facilities were constructed at Claysville for handling freight and passengers, and for servicing equipment. An enginehouse was also constructed at Pittstown. The Salem Railroad was leased to the West Jersey Railroad on June 1, 1868, and thereafter operated as part of its system.

Of the original construction of the Salem Railroad, the portion from Riddleton to Claysville is now part of today's Salem Branch.

The Swedesboro Railroad.

The northernmost part of the Salem Branch was constructed by the **Swedesboro Railroad Company,** between its namesake town and its connection with the West Jersey Railroad at Woodbury. Joseph L. Reeves, the Senator from Gloucester County (and also an incorporator listed in the charter) introduced the bill on January 18, 1866. The bill was unanimously passed by both the Senate and the General Assembly, and was approved by the governor on February 21, 1866.

The charter authorized the company to *"construct a railroad from some suitable point at or near the village of Swedesboro, in the county of Gloucester, to intersect the West Jersey railroad, at or near Woodbury or Carpenter's Landing in said county."* Capital stock was set at $150,000, with liberty to increase the same to $300,000, with shares being $25 each. The company could formally organize as soon as $50,000 of capital stock had been subscribed. Construction of the road had to be commenced within five years, and completed within ten years, of the passage of the act. A supplement to the charter, passed March 14, 1867, set the railroad's terminus within one mile of the West Jersey Railroad's Woodbury depot.

The Swedesboro Railroad was allied with the West Jersey Railroad from the beginning, and the former company was leased to the latter. The railroad's charter authorized the West Jersey Railroad to endorse

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the Swedesboro Railroad's bonds and capital stock. Opened for traffic on October 2, 1869, the Swedesboro Railroad had no locomotives or rolling stock, and was operated as part of the West Jersey Railroad system.

The entire Swedesboro Railroad, from Woodbury to Swedesboro, is the northern portion of today's Salem Branch.

The Woodstown & Swedesboro Railroad.

By the summer of 1868, the West Jersey Railroad's goal of a mainline from Camden to Cape May was achieved, when that company leased the Millville & Glassboro Railroad Company and the Cape May & Millville Railroad Company. The line to Bridgeton was now a branch, and the Salem Railroad was essentially a branch off the Bridgeton Branch.

Meanwhile, Woodstown, the most populated town in the interior of Salem County, continued its isolation, connected to the outside world only by mediocre roads. Several attempts to link Woodstown with the outside world by rail or water had failed. Further, as late as 1880, Woodstown had the ignominious distinction of being the only place of considerable importance in New Jersey without telegraphic communication.

To the north, Swedesboro was the end of the line of a branch from Woodbury, and local businessmen contemplated increased business if the line were extended south to Woodstown and Salem. Businessmen in Woodstown were also agitating for a railroad. Their common interests resulted in Assemblyman John W. Dickinson, of Pilesgrove Township, introducing a bill to charter the **Woodstown & Swedesboro Railroad Company,** on January 30, 1871. Dickinson was also an incorporator listed in the charter. The bill faced no opposition in either the General Assembly or the Senate, and became law on March 21, 1871.

The capital stock of the company was set at $100,000, with liberty to increase the same to $200,000, divided into shares of $25 each. As soon as $50,000 of the capital stock had been subscribed the company could formally organize by choosing a board of nine directors and electing a president.

Unfortunately, the same malaise that affected all earlier attempts – the lack of stock subscriptions – also affected the Woodstown & Swedesboro company. However, the West Jersey Railroad was also interested in the railroad, as it would provide a shorter and more direct route to Salem. In April, 1875, the West Jersey offered that if the citizens of Woodstown subscribed to $50,000 of the capital stock, they would build the road, put on the rolling stock, operate it, continue the road to Salem, and share the profits *pro rata* with the Woodstown stockholders. Still, stock sales languished.

By late 1880, the promoters of the railroad were facing two serious issues that put the value of their charter in jeopardy. First, Section 18 of the charter provided, *"That if the said railroad shall not be commenced within five years, and be completed at the expiration of ten years from the passage of this act, that then and in that case this act shall be void."* That date, March 21, 1881, was fast approaching. Second, Section 6 authorized the company to construct *"a railroad from some suitable point at or near the village of Woodstown ... to connect with the Swedesboro' railroad, at or near Swedesboro',"* so by law the company could not extend its tracks south of Woodstown to a connection with the Salem Railroad.

The first problem was addressed by the legislature in a bill approved February 14, 1881, which extended the charter's expiration by two years for any railroad set to expire in 1881 which had already expended money on surveys, location of the route, acquiring rights of way, or construction. As it turned out, this act would only apply to the Woodstown & Swedesboro Railroad Company.

Likewise, the second problem was addressed by an act approved March 23, 1881, which authorized any railroad to extend its road to any point of connection with any other railroad within five miles of either of its present termini, which applied to any railroad charter set to expire in 1881 and which had expended money on surveys or construction. Again, although generically written, the act would apply only to the Woodstown & Swedesboro Railroad Company. The projected junction with the Salem Railroad was at Riddleton, 4.3 miles south of Woodstown.

With the expiration date of the charter extended two years, stock subscriptions were solicited by the incorporators. The *West Jersey Press* of May 18, 1881, reported $15,000 of stock had been subscribed. The same newspaper reported on November 9 that only $2,000 more of stock needed to be subscribed

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before the company could formally incorporate. Meanwhile, the incorporators were negotiating with landowners for a right of way through their property, some holding out for a higher price. Finally, enough stock was subscribed, and the Woodstown & Swedesboro Railroad Company was formally organized on Saturday, January 21, 1882. At this meeting William J. Sewell was elected President.

The Woodstown & Swedesboro Railroad Company was controlled by the West Jersey Railroad Company from the start, as it subscribed to $60,000 of the capital stock, with the other $40,000 held by citizens of Salem County. It was estimated that the road would cost $200,000 to build, with the remaining $100,000 to be raised by the issuance of bonds secured by a mortgage of the road.

Construction of the railroad was soon underway, and grading was reported completed on November 29, 1882. By mid-December the tracks were in place, and the ballasting was nearly finished. On February 1, 1883, the new railroad was put into operation, and soon thereafter business for Salem was routed over this line.

The entire Woodstown & Swedesboro Railroad, from Swedesboro to Riddleton, is the middle portion of today's Salem Branch.

Entry into Salem.

Commensurate with the organizational activity on the Woodstown & Swedesboro Railroad driven by the West Jersey Railroad, the latter extended the Salem Railroad across Fenwick Creek into the city of Salem, where new terminal facilities were constructed. As the charter for the Salem Railroad authorized the company to construct a railroad *"from a point in the town of Salem, or within one mile thereof,"* no further authorization to build was needed from the state legislature. When this extension was completed is uncertain, but the *West Jersey Press* (November 9, 1881) noted: *"Work on the new depot in Salem is progressing and the railroad extension is completed to the creek. The entire work will be finished by the first of January, 1882."*

The trackage from Claysville into the city of Salem, terminating above Grant Street, is the southernmost portion of today's Salem Branch.

A Shorter Route.

With the completion of the new line from Woodbury to Salem via Woodstown, this line was designated the **Salem Branch.** The original Salem Branch between Elmer and Riddleton became the **Elmer Branch.** The old route between Camden and Salem via Elmer was 43.3 miles long, as opposed to the new route via Woodstown, at 37.5 miles, a savings of 5.8 miles.

The Salem Branch Railroad Company.

The charter for the Salem Railroad Company did not provide for additional trackage in the city of Salem, other than terminal trackage, so to reach other sections of the city, a new company would be needed. No charter would be necessary, as the state's general railroad law was passed by the legislature, and approved by the governor on April 2, 1873. The law provided a framework for the incorporation of railroad companies. Articles of Association for the **Salem Branch Railroad Company** were filed with the secretary of state on December 3, 1886. The capital stock was set at $50,000 in shares of $50 each. William J. Sewell subscribed to 970 shares, while the balance of 30 shares was split evenly amongst the six other incorporators.

The Salem Branch Railroad was about one mile long, running entirely within the city of Salem. Specifically, the route was given as *"its beginning point situate on the main line of the Salem Railroad about nine hundred and fifty-five feet more or less north of the terminus of the Salem Railroad, within the limits of the City of Salem ..., and its termination point in the said City of Salem in the northerly side of Broadway, west of Front Street and east of Salem Creek, with such sidings, turnouts and extensions as may be necessary for the maintenance of said railroad and the transaction of its business."*

The Salem Branch Railroad is usually referred to as the **Glass Works Branch,** an apt name. In 1923, the branch had seven private sidings for the Salem Glass Works, the most of any company. (The H. J. Heinz Co. was next with four.)

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The Glass Works Branch currently extends from a connection with the Salem Branch, just south of Fenwick Creek, to the Salem River waterfront, west of Front Street, and terminates near West Broadway. There are no active customers on this branch.

Merger.

In order to simplify its corporate structure, the **West Jersey Railroad Company** (the second corporation by that name, incorporated September 1, 1885), was merged with the Salem Railroad Company, the Swedesboro Railroad Company, the Woodstown & Swedesboro Railroad Company, the Salem Branch Railroad Company, and two other railroad companies to form the third **West Jersey Railroad Company** on December 31, 1887.

The Alloway & Quinton Railroad.

The second branch off of the Salem Branch, known as the **Quinton Branch,** was incorporated as the **Alloway & Quinton Railroad Company,** on July 13, 1891. It was organized to reach the Quinton Glass Works, which had up to that time made its shipments by boat on the Alloway Creek. Quinton also had three canneries. The West Jersey Railroad (of 1887) owned its entire stock. The 4.22-mile branch was opened on December 21, 1891. As a new station was built in the village of Alloway, Alloway station on the Salem Branch was renamed Alloway Junction. As there was no turning facility for locomotives in Quinton, trains returning to Alloway Junction ran tender-first.

Another Merger.

To further simplify the corporate structure of its South Jersey lines, the Pennsylvania Railroad incorporated the **West Jersey & Seashore Railroad Company** on May 4, 1896. The merged lines included the West Jersey Railroad Company (of 1887), the Alloway & Quinton Railroad Company, and four other lines. As part of a system-wide reorganization of the Pennsylvania Railroad, the West Jersey & Seashore Railroad became the **Atlantic Division** of the New Jersey Division of the Eastern Region of the PRR, effective June 20, 1920. (The terminal trackage in and around Camden became the Camden Terminal Division.)

Abandonment of Passenger Service.

Passenger service ended on the Elmer and Quinton branches effective Sunday, April 29, 1928, with the last two trains operating the previous day. For several years prior, passenger trains operated from Elmer to Quinton, and *vice versa,* covering both branches. These trains traversed a short segment of the Salem Branch between Riddleton and Alloway Junction. After withdrawal of passenger service both branches were operated as yard tracks.

Consolidation.

In South Jersey an intense rivalry for seashore-bound passenger traffic existed between the West Jersey & Seashore Railroad and the Atlantic City Railroad, the Philadelphia & Reading's South Jersey subsidiary. By the 1920s, however, New Jersey was paving state highways, making automobile travel much more convenient, and drawing passengers away from the trains. The opening of the Delaware River Bridge (now Ben Franklin Bridge) on July 1, 1926, only exacerbated the situation. The Great Depression also negatively affected passenger counts.

Seeing that the competition for passengers was no longer between the railroads, but rather between the railroads and highways, the WJ&S and ACRR were consolidated effective June 25, 1933, as the **Pennsylvania-Reading Seashore Lines.** Duplicative trackage, mainly to seashore points, was abandoned. WJ&S branch lines west of that railroad's Cape May mainline, including the Salem Branch, were not affected.

Abandonments and Retrenchment.

On September 10, 1936, the trackage between Daretown and Yorketown on the Elmer Branch was taken out of service, but not removed. The western end was renamed the **Riddleton Branch.** However, on Sept. 11, 1940, this trackage was returned to service, due to massive flood damage on the Salem Branch

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from the Labor Day storm. Once the damage was repaired, the trackage between Daretown and Yorketown was once again taken out of service on October 31.

The Labor Day storm also devastated the Quinton Branch: the underpinnings of the Alloway Creek trestle were demolished, and the Alloway station was lifted off its foundation and deposited it on the right-of-way. With the demise of the Quinton Glass Company in the 1930s, coupled with the storm damage, there was no reason to repair the branch, so in April, 1941, PRSL petitioned for abandonment. The branch was officially taken out of service on June 2, 1941. The petition was quickly approved, and the trackage was removed later that year.

Further retrenchment took place. On October 10, 1942, the Riddleton Branch was taken out of service, and on December 8, 1950, the Elmer Branch was taken out of service. The remaining 1,700 feet in Elmer became an industrial track.

The last scheduled passenger service on the Salem Branch operated on Saturday, December 30, 1950, with service officially withdrawn the following day. Effective with General Order No. 304, on December 15, 1952, the Salem Branch was renamed the **Salem Secondary Track,** with train movements controlled by the operator at **Redoak** tower in Woodbury.

Penn Central.

On February 1, 1968, the Pennsylvania Railroad and New York Central Railroad merged to form the Penn Central Transportation Company, which became a new parent for PRSL, replacing PRR. On June 21, 1970, the Penn Central entered bankruptcy, which caused five other regional carriers to subsequently declare bankruptcy. The United States Railway Association was formed out of the Regional Rail Reorganization Act of 1973 to put forth a plan to save the railroads in the Northeast. As part of this plan, marginal rail lines were analyzed to determine whether they should be retained, sold, or abandoned. PRSL was included in this analysis even though the railroad was not bankrupt. Its parents, Penn Central and Reading, however, were. The Preliminary System Plan (PSP) of February, 1975, did not identify the Salem Branch as potentially excess, nor did the Final System Plan (FSP) issued that July.

Conrail and Beyond.

The **Consolidated Rail Corporation,** or **Conrail,** was formed out of the six bankrupt railroads and numerous other railroads owned or controlled by these companies, including PRSL, on April 1, 1976. Operations on the former PRSL branches continued as before. In June, 1984, it was reported that points south of Swedesboro was being serviced by an extra freight running one or two days a week.

In November, 1984, Conrail gave official notice of its intention to abandon the Salem Branch south of Swedesboro. Fearing loss of freight service might have a negative impact on several of the county's major employers, Salem County acted. The June 21, 1985, issue of *Today's Sunbeam* reported that Salem County had purchased the railroad south of Swedesboro from Conrail for $267,000 in May. The 18-mile line was named the **Salem County Railroad**.

After several months of negotiations the county awarded the **West Jersey Short Line** the contract to operate the railroad, effective May 23, 1985. On October 1, 1988, LTK Management Services, of Philadelphia, sold West Jersey Short Line to Pioneer Railroad Company, of Peoria, Ill., and its name was changed to the **West Jersey Railroad Company** (the fourth company by this name).

Conrail continued to operate the northern portion of the branch, but by September, 1992, the line to Swedesboro was being operated on an as needed basis. On May 1, 1995, operation of the line south of Swedesboro was awarded to the **Southern Railroad of New Jersey (SRNJ).** The operator of this portion of the branch changed again on December 11, 2009, to **U. S. Rail Corporation.** On January 14, 2012, the **Southern Railroad of New Jersey** once again became the operator of the Salem County Railroad. **Conrail Shared Assets Operations (CSAO),** formed June 1, 1999, leased the Woodbury-Swedesboro segment to SRNJ effective May 1, 2018. On April 1, 2021, **SMS Rail Lines,** of Bridgeport, took over operation and maintenance of the Salem County Railroad, while SRNJ continued to operate the northern segment of the Salem Branch.

Acknowledgement: I would like to thank William J. Coxey for his help with this article.

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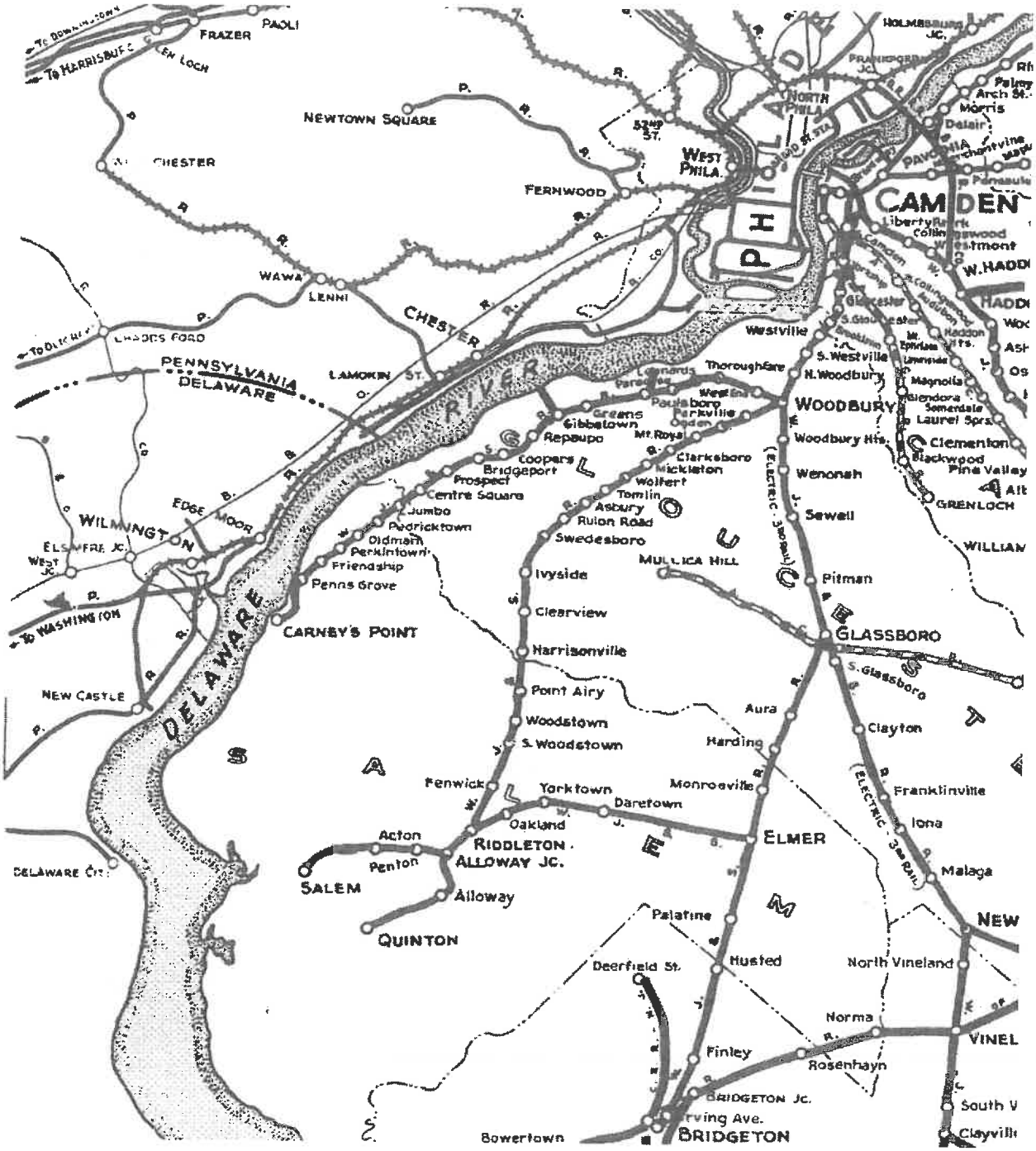

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EXHIBIT G

RAIL LINE SERVICE AGREEMENT

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

THE BACKGROUND OF THIS AGREEMENT IS AS FOLLOWS:

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

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

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

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

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

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

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

3. **Term.**

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

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

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

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

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

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

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

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

6. **Operator's Covenants.**

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

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

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

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

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

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

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

9. **Insurance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notices to Owner shall be addressed to:

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

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

21. **Definitions.**

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

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

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

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

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

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

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

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

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

25. **Miscellaneous.**

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

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

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

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

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

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

(g) **Integration.** This Service Agreement supersedes and renders null and void all previous understandings, promises, covenants and conditions, whether written or verbal, with respect to Owner's entering into this Service Agreement with Operator.

26. **No Recordation.** Operator shall not record or file with any recording clerk's office, either this Service Agreement or any other notice or memorandum of this Service Agreement without the express written consent of Owner, which consent may be withheld in Owner's sole discretion and which consent, if given, may be conditioned upon Operator placing in escrow with Owner's attorney a document discharging of record any such recorded or filed document. If Operator shall record or file this Service Agreement or any notice or memorandum thereof without first receiving Owner's written consent thereto, Owner may discharge of record any such recordation or filing at Operator's expense, and Operator hereby irrevocably appoints Owner its agent in order to accomplish such discharge. The provisions of this Paragraph 26 shall survive the expiration or sooner termination of this Service Agreement.

27. **Counterparts.** This Service Agreement may be executed in any number of counterparts, each of which, when taken together, shall be a full enforceable agreement for all purposes.

IN WITNESS WHEREOF, the undersigned have hereby executed this Second Amended and Restated Service Agreement as of the date and year first above written.

COUNTY OF SALEM

BY: _____

SMS RAIL SERVICE, INC.

BY: _____
Jeffrey L. Sutch, President

STATE OF NEW JERSEY)
SS:
COUNTY OF Salem)

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

Megan Layfield
Notary Public

MEGAN L. LAYFIELD
NOTARY PUBLIC OF NEW JERSEY
Commission # 50101325
My Commission Expires 3/20/2024

STATE OF NEW JERSEY)
SS:
COUNTY OF Gloucester)

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

Tiffany Lahr
Notary Public

TIFFANY L. LAHR
NOTARY PUBLIC OF NEW JERSEY
Commission # 50139250
My Commission Expires 10/2/2025

EXHIBIT A – PROPERTY DESCRIPTION

SALEM BRANCH LINE DESCRIPTION

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

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

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

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

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

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

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

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

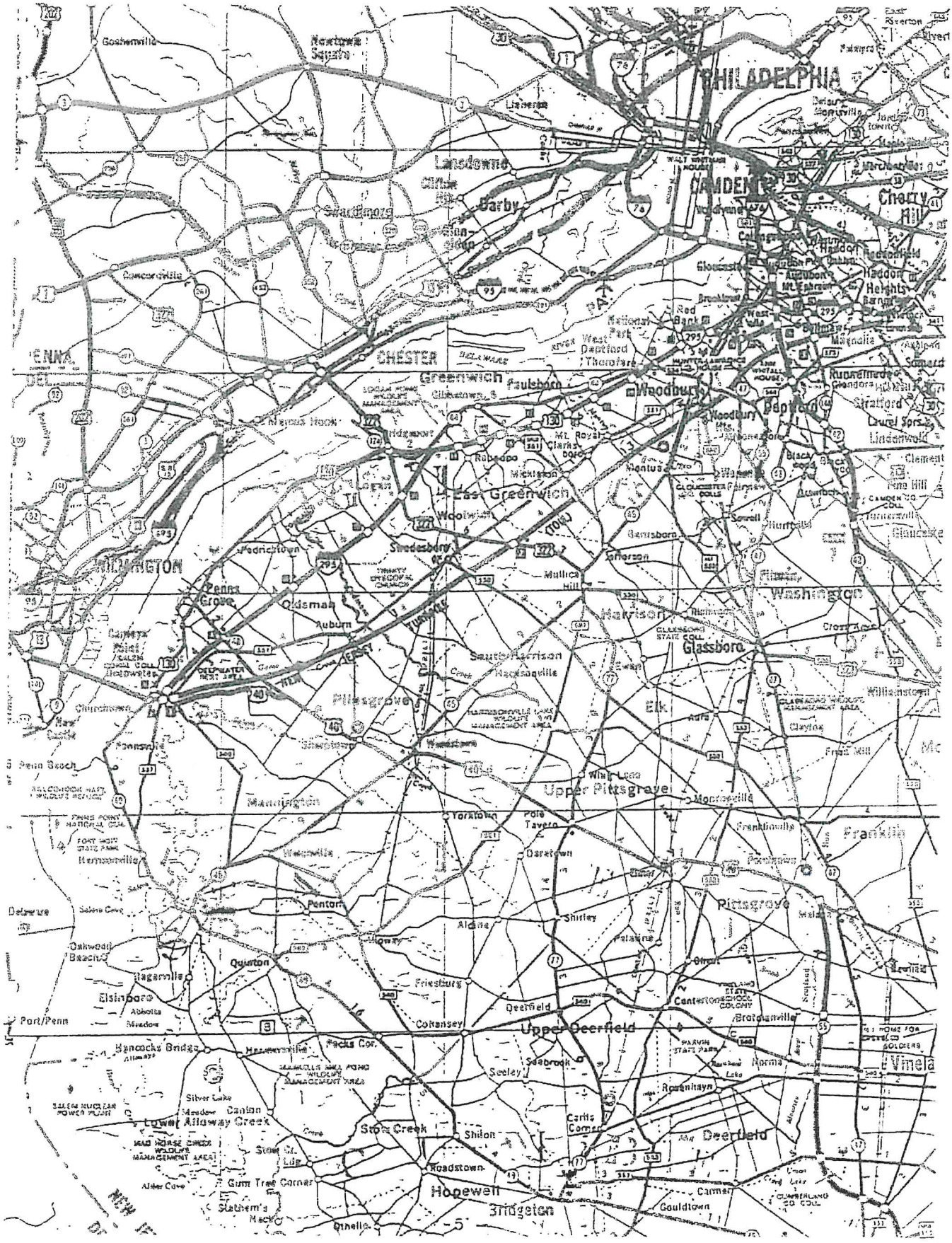
After crossing the creek, the line splits with the Glass House Branch going to the west. The main branch line enters the Salem rail yard which encompasses 5.4 acres, consisting of nine tracks, a small freight office, and is bordered by two existing warehouses with rail access. The yard is accessible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

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

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

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

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


PHILADELPHIA
CAMDEN
Cherry Hill
Haddon Heights
Lansdowne
Darby
Swarthmore
Concordville
CHESTER
Greenwich
Paulsboro
Woodbury
Deptford
Mt. Royal
Mantua
East Greenwich
Woolwich
Swedesboro
Pedricktown
WILMINGTON
Penns Grove
Oldsman
Auburn
Harrison
Glassboro
South Harrison
Pilesgrove
Elk
Upper Pittsgrove
Mannington
Franklin
Pittsgrove
Pennsville
Penton
Quinton
Elsinboro
Port/Penn
Friesburg
Deerfield
Upper Deerfield
Cohansey
Hancocks Bridge
Lower Alloway Creek
Stow Creek
Shiloh
Roadstown
Hopewell
Bridgeton
Deerfield
Vineland
Rosenhayn
Gouldtown
Carmel
Othello
Gum Tree Corner
Statham's Neck
Silver Lake
Canton
Alloway Creek
Salem Nuclear Power Plant
Mad Horse Creek Wildlife Management Area
Alder Cove
Port/Penn
Elsinboro
Abbotts Meadow
Oakwood Beach
Hagerville
Salem Cove
Delaware
Penn Beach
Pennsville
Churchtown
Harrisonville
Fort Mott State Park
Fort Mott Historical Site
Salem Co. Vo-Tech Coll.
Delaware Water Gap National Recreation Area
Camden Point
Deepwater
Mercus Hook
Ridgeport
Logan
Mickleton
Clarksboro
Rubinsburg
Sewell
Gloucester
Williamstown
Clayton
Franklin
Pittsgrove
Malaga
Norma
Newfield
Brotmanville
Centerton
Shirley
Alcine
Howey
Quinton
Pole Tavern
Daretown
Monroeville
Frankville
Pennsville
Salem Co. Vo-Tech Coll.
Salem Nuclear Power Plant
Mad Horse Creek Wildlife Management Area
Hancocks Bridge Wildlife Management Area
Mannington Mill Pond Wildlife Management Area
Harrisonville Lake Wildlife Management Area
Clayton Wildlife Management Area
Glassboro State Coll.
Rutgers Camden Coll.
Camden Co. Coll.
Gloucester Coll.
Cumberland Co. Coll.
Rowan Coll.
Cherry Hill
Haddonfield
Haddon Heights
Audubon
Mt. Ephraim
Gloucester
Woodbury
Deptford
Runnemede
Glendora
Stratford
Laurel Springs
Lindenwold
Clementon
Blackwood
Turnersville
Gloucester
Washington
Williamstown
Clayton
Franklin
Pittsgrove
Malaga
Norma
Newfield
Brotmanville
Centerton
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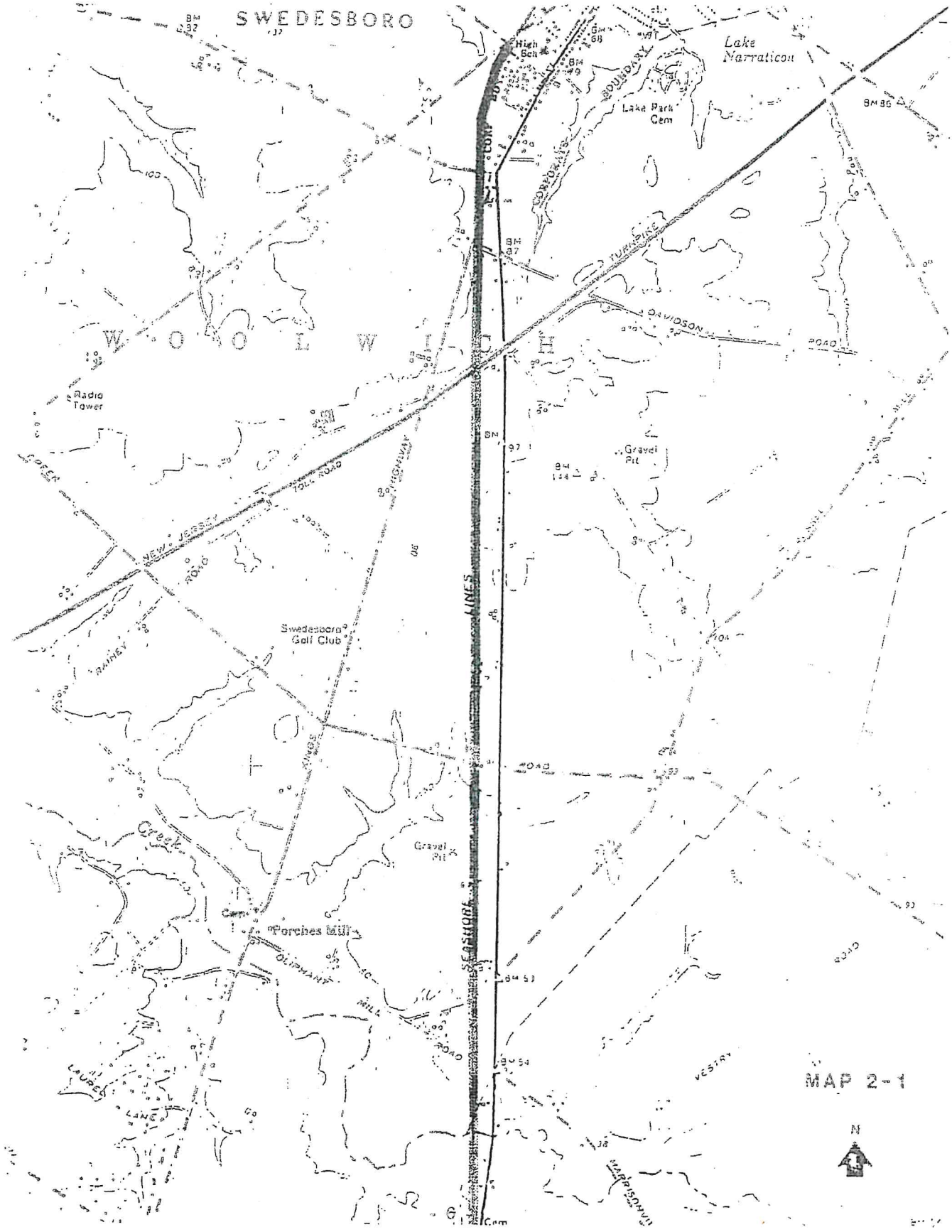
Rutgers Camden Coll.
Camden Co. Coll.
Gloucester Coll.
Cumberland Co. Coll.
Rowan Coll.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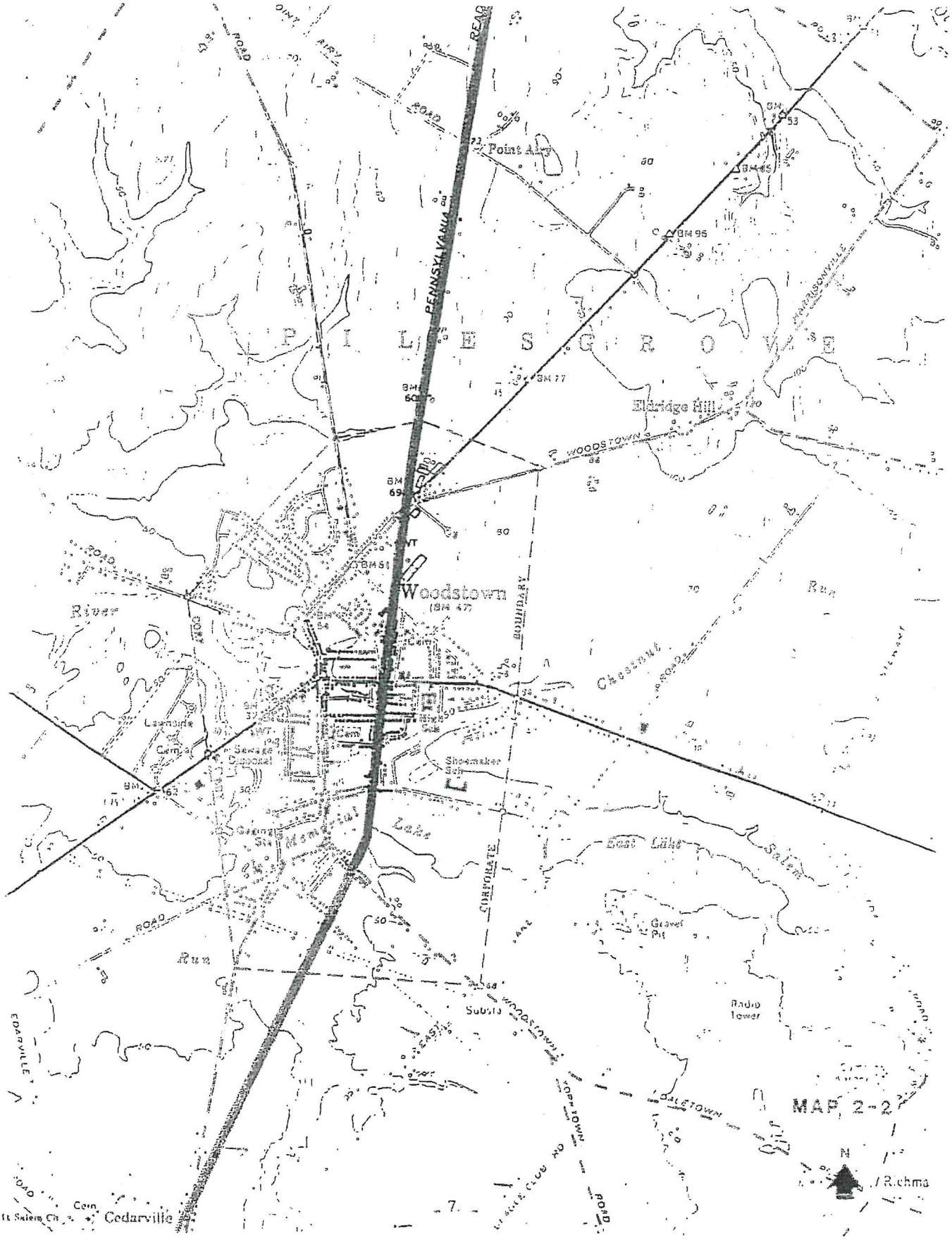
Lake Park Cem
High Sch
CORPORATE BOUNDARY
TURNPIKE
DAVIDSON ROAD
W O O L W I C H
Radio Tower
Gravel Pit
NEW JERSEY TOLL ROAD
HIGHWAY
Swedesboro Golf Club
RAINEY ROAD
KINGS ROAD
Creek
Gravel Pit
Cem
Porches Mill
OLIPHANT MILL ROAD
SEASHORE LINES
LAUREL LANE
VESTRY ROAD
MARRISONVILLE
N

MAP 2-1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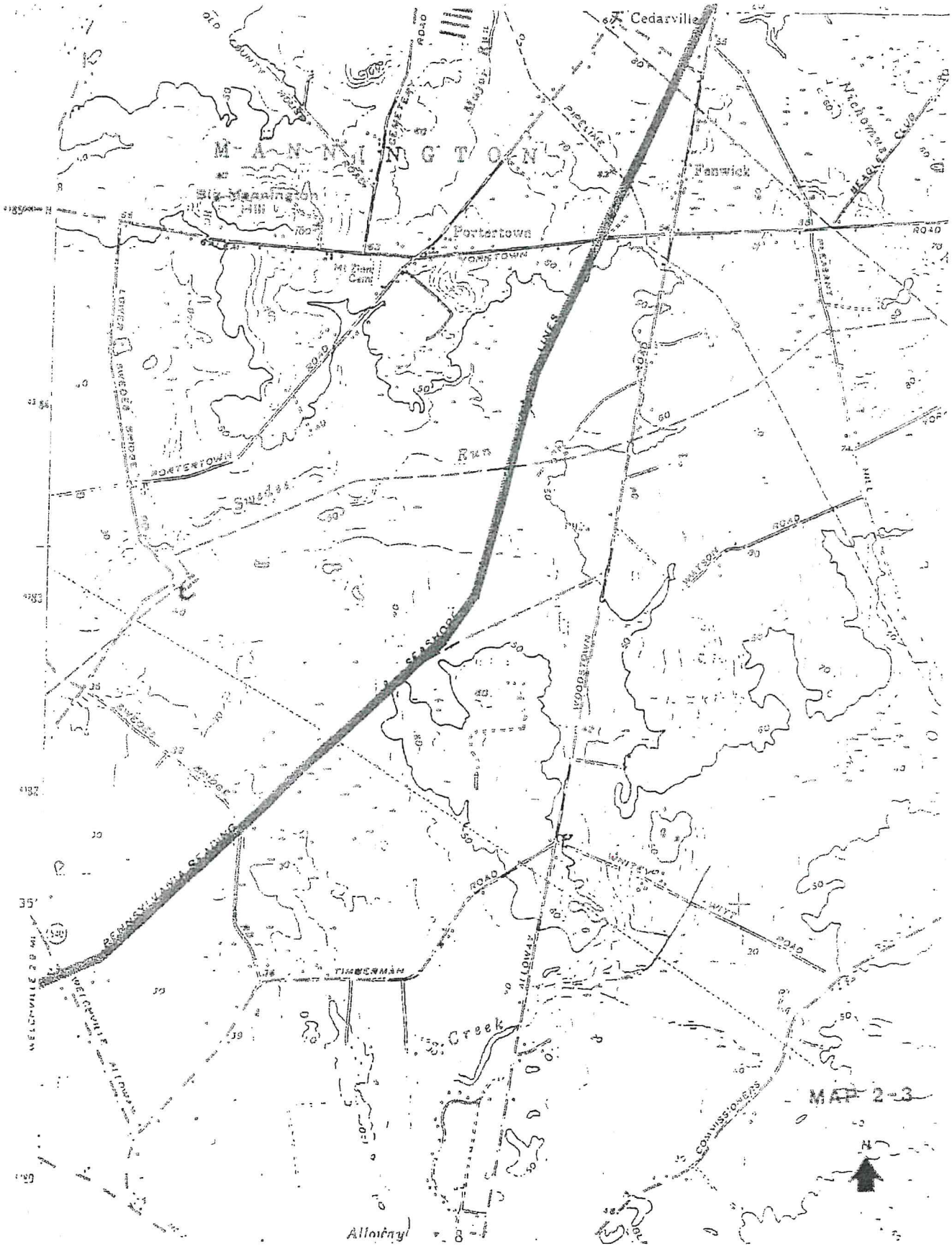
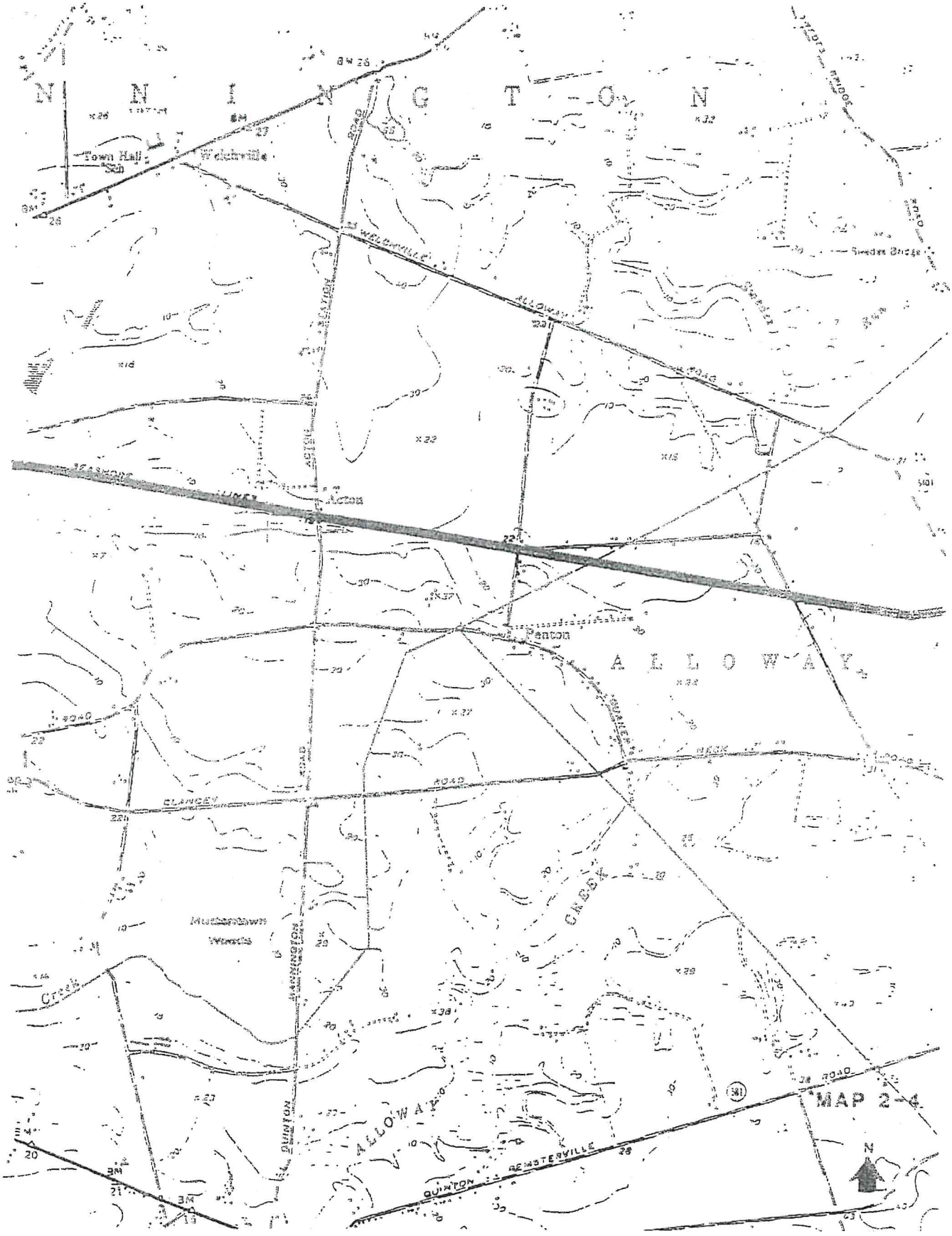
Point Airy
P I L E S G R O V E
Eldridge Hill
WOODSTOWN
Woodstown
(BM 47)
River
Run
Chestnut
Lake
East Lake
Salem
Gravel Pit
Radio Tower
Substa
Cedarville
Richma
N

MAP 2-2


Cedarville
MANNINGTON
Big Mannington Hill
Portertown
Fenwick
Mt Zion Cem
PORTERTOWN
Swedes Run
SEASHORE
LINES
WOODSTOWN
WHITSON ROAD
WHITEY
WITT ROAD
ALLOWAY
TIMBERMAN
Creek
PENNSYLVANIA READING
WELCHVILLE
COMMISSIONERS
Alloway
MAP 2-3
N


N N I N G T O N
Town Hall Sch
Welchville
WELCHVILLE
ALLOWAY
ROAD
Swedes Bridge
SEASHORE
LINES
Acton
Penton
A L L O W A Y
CLANCEY
ROAD
NECK
ROAD
Mutlantown Woods
CREEK
Creek
WANNINGTON
QUINTON
ALLOWAY
QUINTON
REMSTERVILLE
ROAD
MAP 2-4
N

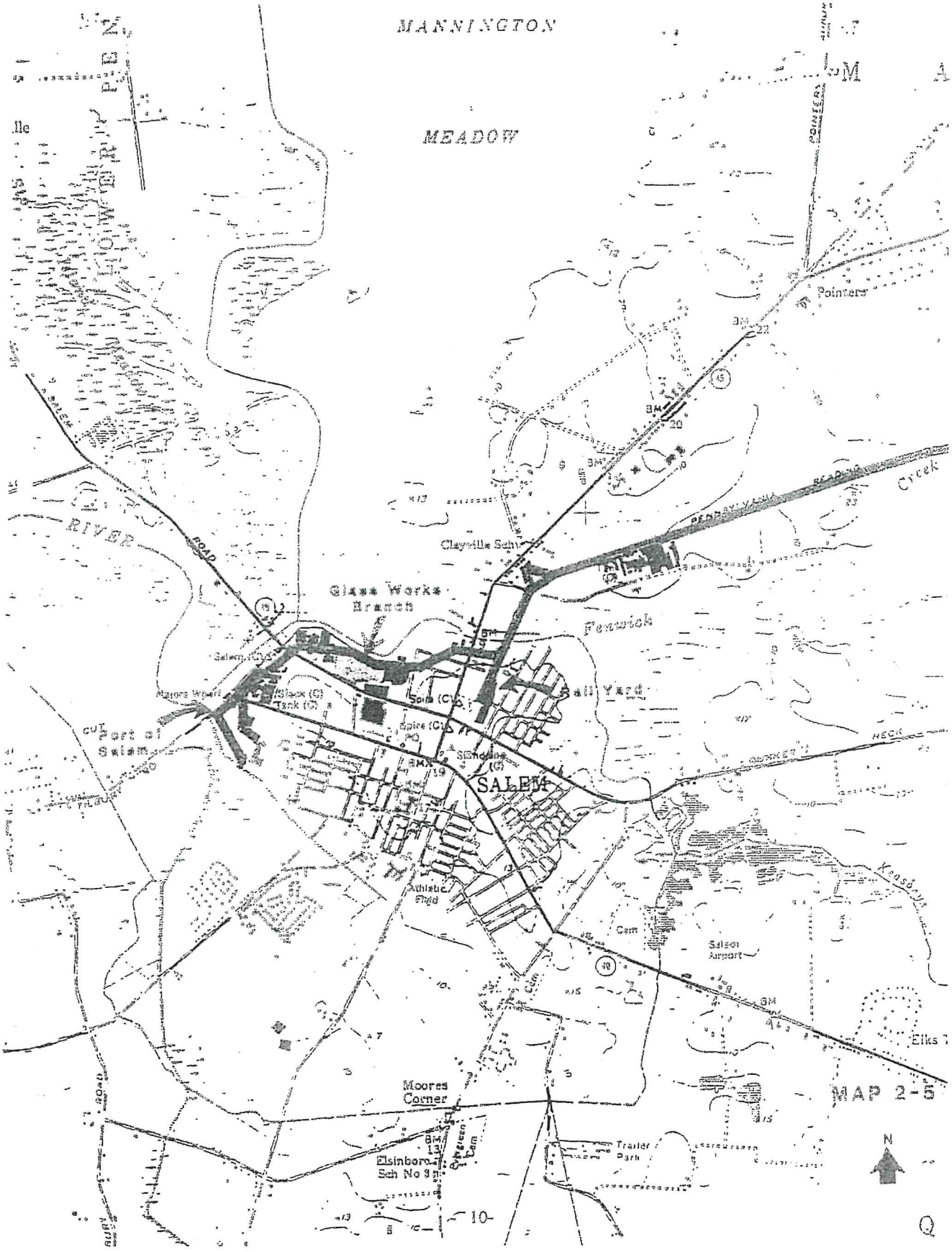

MANNINGTON
MEADOW
Pointers
Creek
RIVER
ROAD
Clayville Sch
Glass Works Branch
Fenwick
Rail Yard
Port of Salem
SALEM
Athletic Field
Cem
Salem Airport
Elks
Moores Corner
Elsinboro Sch No 3
Trailer Park
MAP 2-5
N

EXHIBIT H

304877
ENTERED
Office of Proceedings
June 29, 2022
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

SMS RAIL SERVICE, INC. ACQUISITION AND OPERATION EXEMPTION – RAIL LINE OF THE COUNTY OF SALEM, NEW JERSEY IN SALEM COUNTY, NJ	)))))	FINANCE DOCKET NO. 36529

SUPPLEMENTAL VERIFICATION OF JEFFREY L. SUTCH IN SUPPORT OF VERIFIED NOTICE OF EXEMPTION OF SMS RAIL SERVICE, INC.

I, JEFFREY L. SUTCH, President of SMS Rail Service, Inc. ("SMS"), declare under penalty of perjury, under the laws of the United States of America, that I am qualified and authorized to submit this Supplement Verification on behalf of SMS in further support of SMS's Verified Notice of Exemption under 49 C.F.R. § 1150.41, filed June 10, 2022 under Finance Docket No. 36529 (the "Verified Notice").

As stated in the Verified Notice, presently and since August 2020, the subject Rail Line (as defined in the Verified Notice, and hereinafter referred to as the "Rail Line" or the "Line") has been out of service. *See also* correspondence from Salem County ("County") to Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings, Surface Transportation Board ("Board" or "STB"), dated May 9, 2022 ("County's May 9th letter"), at p. 1, attached to the Verified Notice as **Appendix 2**. As such, for approximately the last two years there has been no rail traffic, employees or shippers on the Rail Line, and thus no revenue on the Line.

I hereby certify that the projected annual revenue of the Rail Line being acquired or operated, together with SMS's projected annual revenue, will exceed $5 million. As I certified in my original Verification submitted with the Verified Notice, SMS's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require

processing under 49 C.F.R. § 1150.45. Also, as certified in my original Verification, the proposed acquisition and operation of the Rail Line does not involve any provision or agreement that may limit future interchange commitments as defined in 49 C.F.R. § 1150.43(h).

Accordingly, notwithstanding that there have been no employees on the Rail Line for approximately two years, out of an abundance of caution and consistent with 49 C.F.R. § 1150.42(e), I also certify that on June 29, 2022, SMS posted a Notice to Employees of SMS's intent to undertake acquisition and operation of the Line at the workplace of the employees who previously were on the Line ("Notice to Employees"). A true and correct copy of the Notice to Employees is attached hereto as Exhibit A. *See also* email and correspondence from James Pfeiffer of SMS to Mr. Michael Foglietta of the previous operator, dated June 29, 2022 (a true and correct copy of which is attached hereto as Exhibit B), confirming that the Notice to Employees was prepared and posted to comply with 49 C.F.R. § 1150.42(e), and must be posted at the workplace of the employees on the affected line at least 60 days before the exemption becomes effective. As Mr. Pfeiffer's correspondence also confirmed, there have been no union employees on the Line. Ex. B.

For several years prior to August 2020, the sole (and the last) shipper on the Rail Line was Lee Williams, owner of the South Jersey Farmers Exchange, located at 101 East Avenue, Woodstown, New Jersey 08098. On February 11, 2021, Mr. Williams wrote a letter to the County in support of SMS's proposal to operate and maintain the Rail Line, stating that he is "excited to explore with [SMS] the potential to reinstate rail service to the South Jersey Farmers Exchange." A true and correct copy of Mr. Williams' letter to the County, dated February 11, 2021, is attached hereto as Exhibit C. *See also* County's May 9th letter, at p. 1 (**Appendix 2** to the Verified Notice).

Pursuant to 49 C.F.R. § 1150.42(b), I hereby certify that SMS has provided notice of the filing of the Verified Notice to Mr. Williams of the South Jersey Farmers Exchange by letter from me, dated June 29, 2022, enclosing a copy of the Verified Notice. A true and correct copy of my letter to Mr. Williams, dated June 29, 2022, is attached hereto as Exhibit D.

The above statements are true and correct to the best of my knowledge, information and belief.

Signed under the pains and penalties of perjury this 29th day of June, 2022.

Jeffrey L. Sutch

STATE OF NEW JERSEY)
) SS:
COUNTY OF GLOUCESTER)

SUBSCRIBED and SWORN to before me
this 29th day of June, 2022.

Notary Public

My Commission expires: 10/2/2025

EXHIBIT A

June 29, 2022

SMS RAIL SERVICE, INC.

NOTICE TO EMPLOYEES OF J.P. RAIL, INC. d/b/a SOUTHERN RAILROAD COMPANY OF NEW JERSEY

Pursuant to Surface Transportation Board regulations at 49 C.F.R. § 1150.42(e), SMS Rail Service, Inc. ("SMS"), hereby provides notice that it intends to acquire by lease from Salem County, New Jersey, and effective on or about 60 days from the date of this notice, operate the rail line which comprises approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks, and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by Salem County known as the Salem Branch Line located primarily in Salem County and in part in Gloucester County, New Jersey between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey.

At this time, as the Line has been out of service for about two years, there are no jobs presently expected to be available. Future employment opportunities may become available consistent with at-will employment and, if so, will be posted on SMS's website referred to below. In such event, candidates are selected on the basis of skills, aptitudes and experience required for each position at prevailing wages and benefits, and in accordance with federal, state and local equal opportunity laws. Successful candidates must have a stable work record and demonstrate a commitment to safety and customer service, and will be required to pass a pre-employment drug and alcohol screening and physical examination.

Those wishing to apply for employment with SMS can do so by visiting SMS' website at www.smsrail.com. From the homepage, navigate to the "Contact" page and scroll down to the "Employment Application" hyperlink at the bottom thereof.

EXHIBIT B

Jim Pfeiffer

From: Jim Pfeiffer
Sent: Wednesday, June 29, 2022 5:33 PM
To: mfoglietta@srnj.us
Subject: Notice to Employees
Attachments: Letter to M Foglietta 6.29.22 JRP.pdf

Mike:

Thanks for the call today. Attached please find a confirming letter, which encloses a copy of the Notice about which we spoke.

Thanks, again.

Kind regards,
Jim Pfeiffer
SMS Rail Service, Inc.
Office: (856) 467-4800, ext. 303
Mobile: (610-739-3729

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

June 29, 2022

Via Email & First-Class Mail

Michael Foglietta, President & CEO
J.P. Rail, Inc. (d/b/a Southern Railroad Company of New Jersey)
212 Spring Road
Hammonton, New Jersey 08037
Email: mfoglietta@srnj.us

Re: SMS Rail Service, Inc. – Change in Operator Exemption Including Acquisition by Lease – Salem Branch Line in Salem and Gloucester Counties, New Jersey, STB Docket No. FD-36529

Dear Mike:

It was a pleasure to speak with you this afternoon. Per our conversation, enclosed please find a copy of the Notice to Employees that we prepared relating to the proposed change in operators on the Salem Branch Line to SMS Rail Service, Inc. I have, with your permission, posted this Notice today at your crew trailer in Winslow Junction.

As we discussed, this notice was prepared to comply with 49 C.F.R. § 1150.42(e), and must be posted at the workplace of the last employees on the affected line at least 60 days before the change in operators becomes effective.

This shall also confirm our conversation wherein you advised that there have been no union employees on the Salem Branch Line in all of the years of your operation of the Line dating back to the 1990s.

Thanks, again. Please do not hesitate to contact me if you have any questions.

Kind regards,

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

/JRP
Enclosure

June 29, 2022

SMS RAIL SERVICE, INC.

NOTICE TO EMPLOYEES OF J.P. RAIL, INC. d/b/a SOUTHERN RAILROAD COMPANY OF NEW JERSEY

Pursuant to Surface Transportation Board regulations at 49 C.F.R. § 1150.42(e), SMS Rail Service, Inc. ("SMS"), hereby provides notice that it intends to acquire by lease from Salem County, New Jersey, and effective on or about 60 days from the date of this notice, operate the rail line which comprises approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks, and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by Salem County known as the Salem Branch Line located primarily in Salem County and in part in Gloucester County, New Jersey between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey.

At this time, as the Line has been out of service for about two years, there are no jobs presently expected to be available. Future employment opportunities may become available consistent with at-will employment and, if so, will be posted on SMS's website referred to below. In such event, candidates are selected on the basis of skills, aptitudes and experience required for each position at prevailing wages and benefits, and in accordance with federal, state and local equal opportunity laws. Successful candidates must have a stable work record and demonstrate a commitment to safety and customer service, and will be required to pass a pre-employment drug and alcohol screening and physical examination.

Those wishing to apply for employment with SMS can do so by visiting SMS' website at www.smsrail.com. From the homepage, navigate to the "Contact" page and scroll down to the "Employment Application" hyperlink at the bottom thereof.

EXHIBIT C

Lee Williams, Owner
South Jersey Farmers Exchange
101 East Avenue
Woodstown, NJ 08098

February 11, 2021

Benjamin H. Laury, County Commissioner Director
County of Salem Board of Commissioners
110 Fifth Street
Salem, NJ 08079

RE: Letter of Support for SMS Rail Service, Inc.

Dear Commissioner Director Laury:

This letter is being sent to you in support of SMS Rail Service, Inc.'s proposal to operate and maintain the Salem County Railroad Branch Line.

I have had the opportunity to discuss with representatives of SMS their potential operation of the line, and I am confident in their capabilities and impressed with their knowledge of the needs of Salem County. I am excited to explore with them the potential to reinstate rail service to the South Jersey Farmers Exchange.

Thank you for your time and attention. Please feel free to contact me if you wish to discuss this letter of support in greater detail.

Sincerely,

Lee Williams
(856) 769-0062

EXHIBIT D

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

June 29, 2022

Via Hand Delivery

Mr. Lee Williams, Owner
South Jersey Farmers Exchange
101 East Avenue
Woodstown, New Jersey 08098

Re: SMS Rail Service, Inc. – Change in Operator Exemption Including Acquisition by Lease – Salem Branch Line in Salem and Gloucester Counties, New Jersey, STB Docket No. FD-36529

Dear Mr. Williams:

Enclosed for your file and information please find a copy of the Verified Notice of Exemption Under 49 C.F.R. § 1150.41 for SMS Rail Service, Inc. ("SMS") to replace Class III rail carriers as operators of 19.4 linear miles of rail lines owned by Salem County, New Jersey, located primarily in Salem County, New Jersey and in part in Gloucester County, New Jersey, and known as the "Salem Branch Line." This Notice has been filed with the Surface Transportation Board.

Thank you for your support regarding the Salem Branch Line. We look forward to providing rail service to you on the Line upon receiving the STB's approval of our Notice.

Kind regards,

Jeffrey L. Sutch, President
(856) 467-4800, ext. 303
jsutch@smsrail.com

jrp/JLS
Enclosure

BERKOWITZ · KLEIN LLP
ATTORNEYS AT LAW
629 B SWEDESFORD ROAD
SWEDESFORD CORPORATE CENTER
MALVERN, PENNSYLVANIA 19355-1530

Robert A. Klein

rak@berklein.com

Telephone 610-889-3200
Mobile 215-880-6913

304750

June 10, 2022

ENTERED
Office of Proceedings
June 10, 2022
Part of
Public Record

Via E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: SMS Rail Service, Inc. – Change in Operator Exemption Including Acquisition by Lease – Salem Branch Line in Salem and Gloucester Counties, New Jersey, STB Docket No. FD-36529

Dear Ms. Brown:

Enclosed is the Verified Notice of Exemption Under 49 C.F.R. § 1150.41 for SMS Rail Service, Inc. ("SMS") to replace Class III rail carriers as operators of 19.4 linear miles of rail lines owned by Salem County, New Jersey, located primarily in Salem County, New Jersey and in part in Gloucester County, New Jersey, and known as the "Salem Branch Line".

Thank you for your assistance in this regard. If you have any questions, please contact me at my mobile number 215-880-6913.

Respectfully,

BERKOWITZ KLEIN, LLP

/s/ Robert A. Klein

Robert A. Klein
Attorney for SMS Rail Service, Inc.

Encl.

FILED
June 10, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
June 10, 2022
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

SMS RAIL SERVICE, INC. ACQUISITION AND OPERATION EXEMPTION – RAIL LINE OF THE COUNTY OF SALEM, NEW JERSEY IN SALEM COUNTY, NJ	)))))	FINANCE DOCKET NO. 36529

NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1150.41

SMS RAIL SERVICE, INC.
513 Sharptown Road
Logan Township, NJ 08085

Applicant

ROBERT A. KLEIN, ESQUIRE
BERKOWITZ KLEIN, LLP
629 B Swedesford Road
Swedesford Corporate Center
Malvern, PA 19355-1530
O: (610) 889-3200, ext. 2
C: (215) 880-6913
E: rak@berklein.com

Attorney for Applicant

DATE FILED: June 10, 2022

BEFORE THE
SURFACE TRANSPORTATION BOARD

SMS RAIL SERVICE, INC.	)	
ACQUISITION AND OPERATION	)	FINANCE DOCKET
EXEMPTION – RAIL LINE OF THE	)	
COUNTY OF SALEM, NEW JERSEY	)	NO. 36529
IN SALEM COUNTY, NJ	)	

VERIFIED NOTICE OF EXEMPTION UNDER 49 C.F.R. § 1150.41

Pursuant to 49 C.F.R. § 1150.41 *et seq.*, SMS RAIL SERVICE, INC. ("SMS"), a Class III rail carrier, hereby provides notice of its class exemption from 49 U.S.C. § 10902 for its acquisition by lease from THE COUNTY OF SALEM, NEW JERSEY, a political subdivision of the State of New Jersey ("SALEM COUNTY"), to replace Class III rail carriers, U S Rail Corporation ("U S Rail") and J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail"), as operators of a rail line which comprises approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks, and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by SALEM COUNTY known as the Salem Branch Line located primarily in SALEM COUNTY and in part in Gloucester County, New Jersey, between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey (the "Rail Line"). The transaction will not yield five million dollars or more of revenue, and as a result of the transaction, SMS will not become a Class I or Class II rail carrier. A map of the Rail Line is attached to this Notice as **Appendix 1**.

BACKGROUND

SALEM COUNTY is the owner of the property and right-of-way comprising the Salem Branch Line and the Rail Line thereon. "The Rail Line has been underutilized for decades, with rail traffic of only approximately two to three railcars per year over the last five to six years" and "is presently out of service due to lack of maintenance, including significant washouts and undermining of track bed[,] requir[ing] considerable investment in repairs and improvements in order to attract active and robust commerce in the County along and on the Line." Correspondence from SALEM COUNTY to Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings, Surface Transportation Board ("Board" or "STB"), dated May 9, 2022 ("County's May 9th letter") at p. 1, attached to this Notice as **Appendix 2**. *See also* Declaration of Robert A. Klein, Esquire ("Klein Decl.") ¶¶ 3-4, attached to this Notice as **Appendix 3**. SALEM COUNTY "is desirous of adding [such] commerce," which it intends to do by, among other things, "a proposed change in operators" from U S Rail and J.P. Rail to an established operator, the Applicant SMS, which SALEM COUNTY has determined to be "capable of improving, maintaining, and providing service on the Rail Line." County's May 9th letter (**Appx. 2**) at p. 2.

SMS is in the business of operating and servicing a short line railroad and desires to provide rail service as a common carrier on the Salem Branch Line. SALEM COUNTY and SMS have entered into a Rail Line Service Agreement whereby SMS has acquired the Rail Line by lease and will operate the Rail Line, providing exclusive rail service on and along the Salem Branch Line pursuant to such Agreement. SALEM COUNTY, through its Board of County Commissioners ("Commissioners"), supports the proposed change in operators from U S Rail and J.P. Rail to SMS.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.43

(a) The full name and address of the Class III rail carrier applicant:

Applicant is SMS Rail Service, Inc., 513 Sharptown Road, Logan Township, NJ 08085.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence:

Applicant's attorney is Robert A. Klein, Esquire, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355-1530, Off. (610) 889-3200, ext. 2, and Cell (215) 880-6913.

(c) A statement that an agreement has been reached or details about when an agreement will be reached:

An agreement has been entered into between SMS and SALEM COUNTY by which SMS has acquired the Rail Line by lease and will operate the Rail Line exclusively. Previously, J.P. Rail had an operating agreement with SALEM COUNTY for these operations and had been granted the rights to operate the Rail Line. *See JP Rail, Inc. d/b/a Southern R.R. Co. of N.J.—Notice of Exemption—Operation of Salem Branch Rail Line in Salem County, N.J.*, FD 32700 (ICC served Oct. 10, 1995). However, operator issues hindered development of commerce on the Rail Line." County's May 9th letter (**Appx. 2**) at p. 2. In 2009, "[t]his led to an assignment of J.P. Rail's rights and obligations to U S Rail." *Id. See also U S Rail Corp. of N.J.—Lease Exemption—County of Salem, N.J.*, FD 35310 (STB served Nov. 27, 2009), and *U S Rail Corp.—Operation Exemption—U.S. Rail Corp. of N.J.*, FD 35317 (STB served Nov. 27, 2009). Nevertheless, "these issues were not rectified" and "[a]s a result [SALEM COUNTY] terminated its relationship with U S Rail on January 10, 2012 and reassigned the contract to operate the Rail Line [back] to J.P. Rail on February 1, 2012." *Id. See also JP Rail, Inc. d/b/a Southern Railroad Company of New Jersey—*

Operation Exemption—Rail Line in Salem County, N.J., FD 35596 (STB served Feb. 29, 2012). The issues still continued to not be rectified and J.P. Rail's contract with SALEM COUNTY has since terminated. *See* County's May 9th letter (**Appx. 2**) at pp. 1-2. As set forth below, J.P. Rail has consented to the proposed change in operators and discontinuance of its operating authority. *Id.* at p. 2.

SALEM COUNTY, as owner of record of the Rail Line, agrees to this change in operators from U S Rail and J.P. Rail to SMS, and for SMS to have sole and exclusive rights to operate on the Rail Line. County's May 9th letter (**Appx. 2**) at pp. 1-2.

Regarding J.P. Rail, the Commissioners, on behalf of SALEM COUNTY, have entered a stipulation with J.P. Rail by which J.P. Rail has consented to the discontinuance of its operator authority on the Line and the change in operators to SMS, effective immediately. *See* correspondence from SALEM COUNTY to J.P. Rail, dated April 19, 2022, containing such stipulation executed by J.P. Rail, attached to the correspondence from SALEM COUNTY to the Board (**Appendix 2**); Klein Decl. (**Appx. 3**) ¶¶ 3-5.

Regarding U S Rail, after exhaustive and extensive efforts, the company has been unreachable. The undersigned counsel for SMS has undertaken a reasonable investigation regarding U S Rail, including reviewing past decisions of the Board regarding U S Rail in matters involving the Rail Line, and having had several conversations with the company's counsel of record in those matters regarding the status of U S Rail, as well as reviewing U S Rail's filings with the Secretary of State of the State of Ohio (its state of incorporation), conferring with a representative of the Office of the Ohio Secretary of State ("OSOS"), searching the internet using the company's name, and unsuccessful efforts to reach the company by phone at its listed number in Toledo, Ohio (419-720-7588), and through its web address (www.usrailcorp.com). Klein Decl.

(**Appx. 3**) ¶ 6.a.-e. SMS's undersigned counsel has confirmed that U S Rail's owner and president, Gabriel D. Hall, passed away in 2018, and that the afore-mentioned counsel for U S Rail has had no contact with the company since at least that time, previously had no active matters with the company for some years, and has no current contact information for the company. *Id.* ¶ 7.a.-b.

The records of the OSOS show that U S Rail was incorporated on November 17, 1993 in Ohio and is assigned Ohio entity number 857501. Klein Decl. (**Appx. 3**) ¶ 7.c. and Exhibit A thereto. The last filing by U S Rail with the OSOS was a Certificate of Amendment by Directors, filed April 22, 2011, noting a resolution had been adopted by the company's directors pursuant to Ohio Revised Code § 1701.70(B)(6), changing the company name to U S Rail Corporation of Ohio with a registered address at 7846 W. Central Avenue, Toledo, Ohio 43617. *Id.* ¶ 7.d. and Exhibit B thereto. Moreover, the Office of the OSOS has informed the undersigned counsel for SMS that Ohio requires no annual filing or annual fees for "for profit" corporations such as U S Rail, and no filing of any kind in order for the company to continue to be listed as active on the OSOS's records. *Id.* ¶ 7.e. Therefore, unless U S Rail had filed with the OSOS a record indicating it is not active or the OSOS received a similar notification, the OSOS would have no notice of the company's change in status. *Id.* There have been no filings of any kind by U S Rail with the Office of the OSOS since April 22, 2011, and no change of address or registered agent for the company since 2007. *Id.*; Resolution of U S Rail, dated March 24, 2007, attached to the Certificate of Amendment by Directors (Klein Decl. (**Appx. 3**) Ex. B).

In addition, a search of the STB record yielded no filings with the STB on behalf of U S Rail Corporation of Ohio. *Id.* ¶ 7.f. An internet search of the company name, U S Rail Corporation of Ohio, yielded the same address for the company as its registered address (7846 W. Central Avenue, Toledo, Ohio 43617), which is shown to be "permanently closed", and the company's

web address (www.usrailcorp.com), which appears is no longer accessible. *Id.* ¶ 7.g.-h. and Exhibits C and D thereto.

Further, SMS has been unable to confirm that U S Rail presently has any operations in the region. Klein Decl. (**Appx. 3**) ¶ 8. SALEM COUNTY, through its Commissioners, states in its correspondence to the Board that "[t]o the best of [its Commissioners'] knowledge, U S Rail maintains no operations, equipment, locomotives, or employees in [SALEM COUNTY]." County's May 9th letter (**Appx. 2**) at p. 2. Therefore, it appears that there are no railroad employees of U S Rail that will be affected by the proposed discontinuance and change of operators. Klein Decl. (**Appx. 3**) ¶ 8. Nevertheless, out of an abundance of caution, the Caption Summary, referred to below and attached hereto as **Appendix 5**, contains notice advising the employees of U S Rail, as well as J.P. Rail, of the proposed change in railroad operators.

(d) The operator of the property:

SMS will operate the Rail Line.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant:

The lessor of the Rail Line to SMS is SALEM COUNTY, 110 Fifth Street, Suite 400, Salem, NJ 08079.

(2) The proposed time schedule for consummation of the transaction:

The transaction provides for SMS to acquire the Rail Line by lease. SMS will commence service and operation of the Rail Line upon the effective date of this Notice of Exemption.

(3) The mileposts of the subject property, including any branch lines:

The Rail Line includes approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks,

and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by SALEM COUNTY known as the Salem Branch Line located primarily in SALEM COUNTY and in part in Gloucester County, New Jersey between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey.

(4) The total route miles being acquired.

Approximately nineteen and four-tenths (19.4) linear miles of rail lines.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states:

The required map is attached to this Notice as **Appendix 1**.

(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under Sec. 1150.45.

The required certificate is contained in the Verification of Mr. Jeffrey L. Sutch, President of SMS, which is attached to this Notice as **Appendix 4**.

(h) Interchange Commitments. (1) The filing party must certify whether or not a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment").

The proposed acquisition and operation of the Rail Line does not involve any provision or agreement that may limit future interchange commitments.

CAPTION SUMMARY

The caption summary required by 49 C.F.R. § 1150.44 is attached to this Notice as **Appendix 5**.

ENVIRONMENTAL AND HISTORIC MATTERS

By virtue of 49 C.F.R. § 1105.6(c)(1), no environmental assessment is required in conjunction with the proposed acquisition and operation. Also, by virtue of 49 C.F.R. § 1105.8(b)(1), no historic reporting is required.

LABOR PROTECTION

By virtue of 49 U.S.C. § 10902, no labor protective conditions are to be imposed in conjunction with this Notice.

ANNUAL REVENUES

The certificate required by 49 C.F.R. § 1150.43(g) (SMS's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C.F.R. § 1150.45), is contained in **Appendix 4** attached to this Notice.

VERIFICATION

A general verification of all factual assertions in this Notice is contained in **Appendix 4**.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 16 days after the filing of this Notice, the Director of the Board's Office of Proceedings should arrange for publication of notice of the filing of this Notice in the Federal Register.

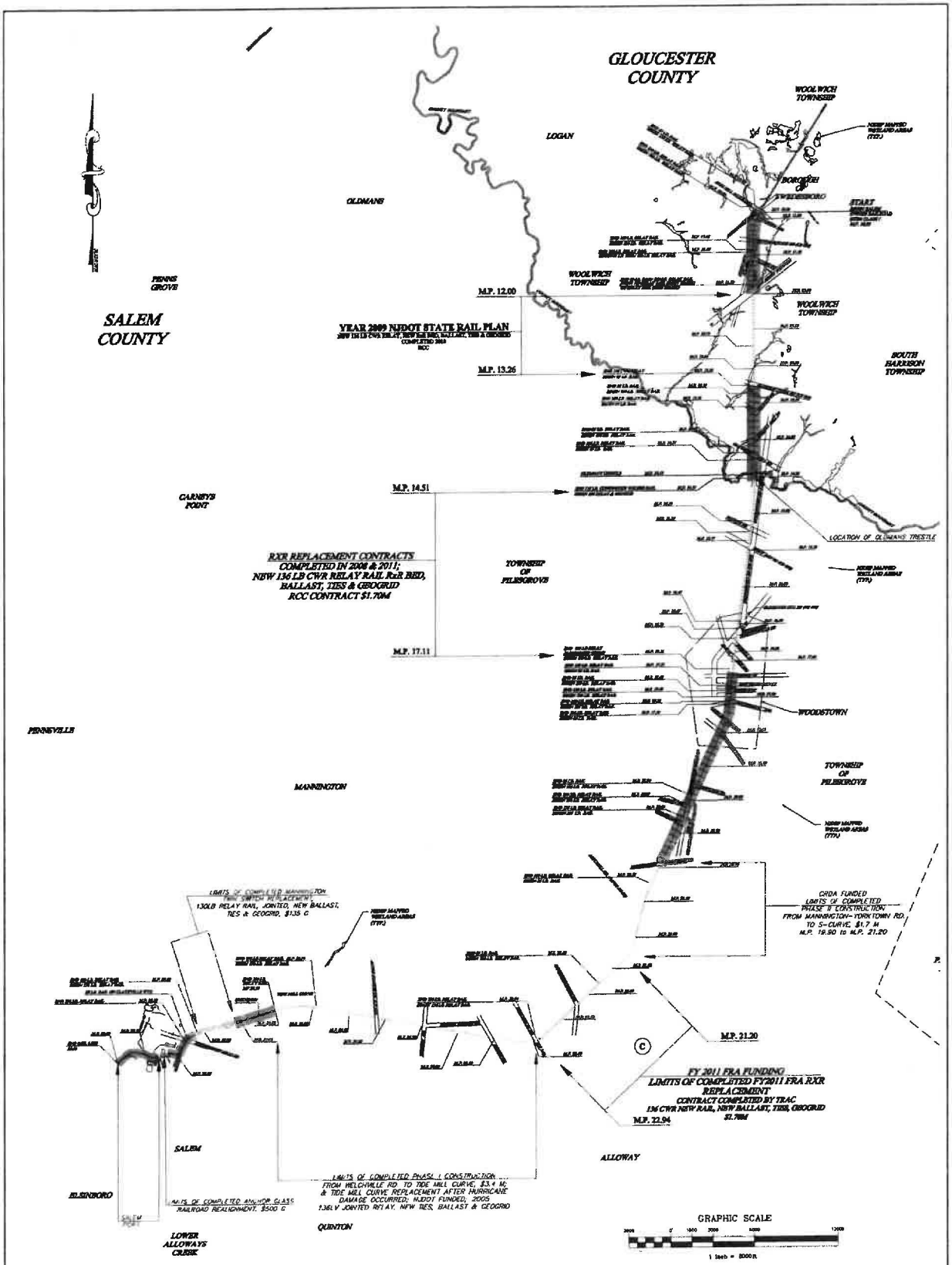
Respectfully submitted,

SMS RAIL SERVICE, INC.
513 Sharptown Road
Logan Township, NJ 08085
Applicant

ROBERT A. KLEIN, ESQUIRE
Berkowitz Klein, LLP
629 B Swedesford Road
Swedesford Corporate Center
Malvern, PA 19355-1530
O: (610) 889-3200, ext. 2
C: (215) 880-6913
E: rak@berklein.com
Attorney for Applicant

DATE FILED: June 10, 2022

APPENDIX 1



LEGEND

- PROPOSED RAIL REPLACEMENT AREAS
- EXISTING NEW RAIL
- EXISTING OLD RAIL

RXR STATUS REPORT 2012

COUNTY OF SALEM NEW JERSEY

COUNTY OF SALEM
OFFICE OF THE COUNTY ENGINEER

THEODORE WILKINSON
PROFESSIONAL ENGINEER
N.J. LICENSE NO. 38407

SALEM BRANCH RAILROAD

MAP OF RAILROAD
MAINTENANCE & REPAIRS

SALEM BRANCH STEM CLASS I
M.P. 10.86 TO M.P. 29.00
RAILROAD MAINTENANCE & REPAIRS
GLOUCESTER & SALEM COUNTIES, NEW JERSEY

SCALE 1"=3000' | DATE 1/27/12 | DRAWING NO. 10003 | SHEET NO. 1 OF 1

APPENDIX 2

Salem County New Jersey

Board of County Commissioners

BEN H. LAURY, P.E.
Commissioner Director

FIFTH STREET OFFICE COMPLEX
110 FIFTH STREET, SUITE 400
SALEM, NEW JERSEY 08079

Office: 856-935-7510, Ext. 8204
Fax: 856-935-9102

May 9, 2022

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

Re: SMS Rail Service, Inc.—Change in Operator Exemption Including Acquisition by Lease—SMS Rail Service, Inc., STB Docket No. FD 36529

Dear Ms. Brown:

The Salem County Board of Chosen Commissioners hereby provides this letter of support in favor of SMS Rail Service, Inc.'s ("SMS") Verified Notice of Exemption Under 49 C.F.R. § 1150.41 *et seq.* ("Notice"), regarding a proposed change in railroad operators to SMS of the rail line comprising 19.4 linear miles of rail on property known as the Salem Branch Line located in Salem County, New Jersey ("Rail Line" or "Line").

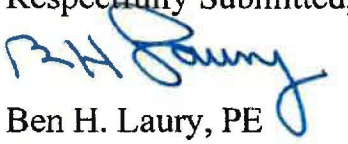
Salem County (the "County") is the owner of the property and right-of-way comprising the Salem Branch Line and the Rail Line thereon. The Rail Line has been underutilized for decades, with rail traffic of only approximately two to three railcars per year over the last five to six years. The Line is presently out of service due to lack of maintenance, including significant washouts and undermining track bed. As a result, the Line requires considerable investment in repairs and improvements in order to attract active and robust commerce in the County along and on the Line.

The County is desirous of adding commerce, which it intends to do by a proposed change in railroad operators, from J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail") and U S Rail Corporation ("U S Rail") to an established operator, who we have determined should be SMS. We believe SMS is capable of improving, maintaining, and providing service on the Rail Line that will help attract and develop the active and robust commerce the County desires.
To do so, the County has agreed to terms of a Rail Line Service Agreement with SMS, whereby SMS will operate the Rail Line once its operating authority is received from the Surface Transportation Board ("STB"), consistent with the Notice. In conjunction with this Agreement, the County has also agreed to provide this support for the proposed change in operators from J.P. Rail and U S Rail and to SMS. The background leading to this transaction is summarized below.

From about October 2009 to about January 2012, operator issues hindered development of commerce on the Rail Line. This led to an assignment of J.P. Rail's rights and obligations to U S Rail. However, these issues were not rectified. In particular, U S Rail failed to meet its obligations to shippers and the County and to make an investment in the Rail Line to maintain it in accordance with requisite safety standards. This led to significant impairment of the Line and created a burden on the public. Effectively, there was barely any commerce on the Line during this period. As a result, the County terminated its relationship with U S Rail on January 10, 2012 and reassigned the contract to operate the Rail Line to J.P. Rail on February 1, 2012. Since February 1, 2012, U S Rail has had no presence in or around the County and the Rail Line. To the best of our knowledge, U S Rail maintains no operations, equipment, locomotives, or employees in the County. The County is unaware of whether U S Rail is active elsewhere.
In conjunction with the current transaction, the County has entered into the attached Stipulation with J.P. Rail by which J.P. Rail consents to discontinuance of its operating authority on the Rail Line and to the change in operators to SMS.
We respectfully request that the Board approve the change of operators on the Rail Line to SMS.

If you have any questions concerning this matter, please contact us at the address in the above letterhead.

Respectfully Submitted,



Ben H. Laury, PE
Salem County Commissioner Director

Salem County New Jersey

Board of County Commissioners

BEN H. LAURY, P.E.
Commissioner Director

FIFTH STREET OFFICE COMPLEX
110 FIFTH STREET, SUITE 400
SALEM, NEW JERSEY 08079

Office: 856-935-7510, Ext. 8204
Fax: 856-935-9102

April 19, 2022

Mr. Michael Foglietta
President and CEO
J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey
212 Spring Road
Hammonton, NJ 08037

Re: SMS Rail Service, Inc.—Change in Operator Exemption Including Acquisition by Lease—SMS Rail Service, Inc., STB Docket No. FD 36529

Dear Mr. Foglietta:

The Salem County Board of Chosen Commissioners is writing to request and confirm that J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail") consents and stipulates to 1) the discontinuance of its operator authority on the rail line known as the Salem Branch Line located in Salem County and Gloucester County, New Jersey comprising of approximately 18.38 linear miles from approximately MP 10.86 (Auburn Road) in Swedesboro, NJ to approximately MP 28.4 in the City of Salem, NJ and the Port Industrial Track of approximately .84 miles in the City of Salem, ("Rail Line" or "Line"), and 2) a change in railroad operators of the Rail Line to SMS Rail Service, Inc. ('SMS").

Please confirm that J.P. Rail consents and stipulates to the discontinuance of its operator authority on the Rail Line and the change in railroad operators to SMS, and that Salem County may so represent to the Surface Transportation Board ("STB"), including that a copy of this letter may be provided to the STB in support of the discontinuance of J.P. Rail's operator authority and the change in operators to SMS, by signing on the signature line below.

Thank you for your cooperation.

Respectfully,

Ben H. Laury: Salem County Commissioner Director

Stipulated and Agreed by:

Michael Foglietta
President and CEO
J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey

Salem County
DISCOVER THE POSSIBILITIES

APPENDIX 3

BEFORE THE
SURFACE TRANSPORTATION BOARD

SMS RAIL SERVICE, INC.	)	
ACQUISITION AND OPERATION	)	FINANCE DOCKET
EXEMPTION – RAIL LINE OF THE	)	
COUNTY OF SALEM, NEW JERSEY	)	NO. 36529
IN SALEM COUNTY, NJ	)	

DECLARATION OF ROBERT A. KLEIN, ESQUIRE

I, Robert A. Klein, under the pains and penalties of perjury, state as follows:

1. I am a lawyer in good standing in the District of Columbia, the State of New Jersey, the Commonwealth of Massachusetts, and the Commonwealth of Pennsylvania. I represent SMS Rail Service, Inc. ("SMS"), a Class III rail carrier in the above matter before the Surface Transportation Board ("Board"), filed under Finance Docket No. 36529.

2. I make this declaration in support of the Verified Notice of Exemption, pursuant to 49 C.F.R. § 1150.41, of SMS's class exemption from 49 U.S.C. § 10902 for its acquisition by lease from the County of Salem, New Jersey, a political subdivision of the State of New Jersey ("Salem County"), to replace Class III rail carriers, U S Rail Corporation ("U S Rail") and J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail") (the "Verified Notice"), as operators of the rail line described in the Verified Notice (the "Rail Line").

3. Attached to the Verified Notice as **Appendix 2** is a true and correct copy of a letter from the Board of County Commissioners of Salem County, New Jersey ("Commissioners"), addressed to Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, dated May 9, 2022, together with an attached separate letter from the Commissioners to Michael Foglietta, President and CEO of J.P. Rail, dated April 19, 2022. These

letters were provided to my client, SMS, for submission to Ms. Brown and the Surface Transportation Board ("Board" or "STB") regarding SMS's Verified Notice.

4. The Commissioners' letter to Ms. Brown indicates that a history of operator issues hindering development of commerce on the Rail Line and the Line's maintenance led to multiple assignments of rights back and forth between J.P. Rail and U S Rail over a decade ago. The Commissioners state in their letter to Ms. Brown that, dating back to "February 1, 2012, U S Rail has had no presence in or around the County and the Rail Line." It has been more than a decade since Salem County's relationship with U S Rail was terminated on January 10, 2012. As set forth below, after exhaustive and extensive efforts, U S Rail has been unreachable.

5. More recently, as confirmed by the above-referenced April 19, 2022 letter executed by J.P. Rail and the Commissioners, J.P. Rail has "consent[ed] and stipulate[d] to the discontinuance of its operator authority on the Rail Line and the change in railroad operators to SMS."

6. In regard to U S Rail, based on a reasonable investigation, I have found that the company is unreachable. My investigation included:

a. Reviewing past decisions of the Board regarding U S Rail in matters involving the Rail Line, and having had several conversations regarding the status of U S Rail with U S Rail's counsel of record in those matters, Eric M. Hocky, Esquire of the law firm Clark Hill PLC in Philadelphia, Pennsylvania, the most recent of which occurred on June 7, 2022. *See JP Rail, Inc. d/b/a Southern Railroad Company of New Jersey—Operation Exemption—Rail Line in Salem County, N.J.*, FD 35596 (STB served Feb. 29, 2012); *U S Rail Corp.—Operation Exemption—U.S. Rail Corp. of N.J.*, FD 35317 (STB

served Nov. 27, 2009); *U S Rail Corp. of N.J.—Lease Exemption—County of Salem, N.J.*, FD 35310 (STB served Nov. 27, 2009);

b. Reviewing U S Rail's filings with the Secretary of State of the State of Ohio (U S Rail's state of incorporation);

c. A telephone conversation on June 9, 2022, with a representative of the Office of the Secretary of State of Ohio regarding U S Rail's status and filings with that Office;

d. Searching the internet using the company's name; and

e. Unsuccessful efforts to reach the company by phone at its listed number in Toledo, Ohio, 419-720-7588, and through its web address, www.usrailcorp.com.

7. The following are the results of my investigation:

a. Mr. Hocky confirmed that U S Rail's owner and president, Gabriel D. Hall, passed away in 2018, that he has had no contact with the company since at least that time, previously had no active matters with the company for some years, and has no current contact information for the company;

b. Attorney Hocky confirmed his last involvement on behalf of U S Rail was in regard to the Rail Line, in the matters before the Board cited in paragraph 6.a. above;

c. The records of the Ohio Secretary of State show that U S Rail was incorporated on November 17, 1993 in Ohio and is assigned Ohio entity number 857501. *See* results of a business name search on the website of the Ohio Secretary of State, a true and correct copy of which is attached hereto as Exhibit A;

d. The last filing by U S Rail with the Ohio Secretary of State was a Certificate of Amendment by Directors, filed April 22, 2011 (*see* Ex. A), noting a resolution had been

adopted by the company's directors pursuant to Ohio Revised Code § 1701.70(B)(6), changing the company name to U S Rail Corporation of Ohio with a registered address at 7846 W. Central Avenue, Toledo, Ohio 43617. *See* the Certificate of Amendment by Directors, a true and correct copy of which is attached hereto as Exhibit B;

e. I was informed during a conversation with a representative of the Office of the Ohio Secretary of State ("OSOS") on June 9, 2022, that Ohio requires no annual filing or annual fees for "for profit" corporations such as U S Rail, and no filing of any kind in order for the company to continue to be listed as active on the OSOS's records. According to the OSOS representative, unless U S Rail had filed with the OSOS a record indicating it is not active or the OSOS received a similar notification, the OSOS would have no notice of the company's change in status. The representative confirmed that there have been no filings of any kind by U S Rail with the Office of the OSOS since April 22, 2011, and no change of address or registered agent for the company since 2007. *See* the Resolution of U S Rail, dated March 24, 2007, attached to the Certificate of Amendment by Directors (Ex. B).

f. A search of the STB record yielded no filings with the STB on behalf of U S Rail Corporation of Ohio;

g. An internet search of the company name, U S Rail Corporation of Ohio, yielded the same address for the company as its registered address referenced above, 7846 W. Central Avenue, Toledo, Ohio 43617, which is shown to be "permanently closed", and the company's web address, www.usrailcorp.com. *See, e.g.,* results of internet search of the company name, a true and correct copy of which is attached hereto as Exhibit C; and

h. An internet search of the company's web address, www.usrailcorp.com, yielded a message indicating that the website is no longer accessible. *See* results of the search of the web address, www.usrailcorp.com, a true and correct copy of which is attached as Exhibit D.

8. Further, it does not appear that U S Rail presently has any operations in the region where the Rail Line is located. The Commissioners state in their letter to Ms. Brown, dated May 9, 2022 (attached to the Verified Notice as **Appendix 2**), that "[t]o the best of [their] knowledge, U S Rail maintains no operations, equipment, locomotives, or employees in [Salem] County." Therefore, it appears that there are no railroad employees of U S Rail that will be affected by the proposed discontinuance and change of operators.

Signed under the pains and penalties of perjury this 10th day of June, 2022.

/s/ Robert A. Klein
Robert A. Klein, Esq.

EXHIBIT A

Frank LaRose
Ohio Secretary of State

Thu Jun 09 2022

Entity#: 857501

Filing Type: CORPORATION FOR PROFIT

Original Filing Date: 11/17/1993

Location: TOLEDO

Business Name: U S RAIL CORPORATION OF OHIO

Status: Active

Exp. Date: -

Agent/Registrant Information

DANIELLE HALL
7846 W, CENTRAL AVENUE
TOLEDO OH 43617
10/12/2007
Active

Filings

Filing Type	Date of Filing	Document ID
DOMESTIC ARTICLES/FOR PROFIT	11/17/1993	9310_0107
AGENT NAME/ADDRESS TAX UPDATE	01/08/1999	AGNTUPDT
AGENT NAME/ADDRESS TAX UPDATE	02/01/1999	AGNTUPDT
AGENT NAME/ADDRESS TAX UPDATE	04/07/1999	AGNTUPDT
DOMESTIC/AMENDMENT TO ARTICLES	07/03/2007	200718602006
DOMESTIC AGENT SUBSEQUENT APPOINTMENT	10/12/2007	200728502046
CANCELLED BY TAX DEPT W/NOTIFICATION	04/21/2009	200911174994
DOMESTIC/REINSTATEMENT	04/02/2010	201009700764
DOMESTIC/AMENDMENT TO ARTICLES	04/22/2011	201111500838

Prior Business Names

Frank LaRose
Ohio Secretary of State

Thu Jun 09 2022

Prior Business Name	Effective Date
THE GREAT MIAMI & SCIOTO RAILWAY COMPANY	07/03/2007
US RAIL CORPORATION	04/22/2011

UNITED STATES OF AMERICA
STATE OF OHIO
OFFICE OF SECRETARY OF STATE

I, Frank LaRose, Secretary of State of the State of Ohio, do hereby certify that this is a list of all records approved on this business entity and in the custody of the Secretary of State.

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 9th of June, A.D. 2022

Ohio Secretary of State

EXHIBIT B

DOC ID ----> 201111500838

DATE:	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
04/26/2011	201111500838	DOMESTIC/AMENDMENT TO ARTICLES (AMD)	50.00	.00		.00	.00

Receipt

This is not a bill. Please do not remit payment.

U.S. RAIL CORPORATION
7846 W CENTRAL AVE
TOLEDO, OH 43617

STATE OF OHIO
CERTIFICATE
Ohio Secretary of State, Jon Husted

857501

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

U S RAIL CORPORATION OF OHIO

and, that said business records show the filing and recording of:

Document(s)	Document No(s):
DOMESTIC/AMENDMENT TO ARTICLES	**201111500838**

United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 22nd day of April, A.D. 2011.

Jon Husted

Ohio Secretary of State

DOC ID ----> 201111500838

Prescribed by:

The Ohio Secretary of State
Central Ohio: (614) 466-3910
Toll Free: 1-877-SOS-FILE (1-877-767-3453)

www.sos.state.oh.us
e-mail: busserv@sos.state.oh.us

Expedite this Form: (Select One)	
Mail Form to one of the Following:	
O Yes	PO Box 1390 Columbus, OH 43216 *** Requires an additional fee of $100 ***
⊙ No	PO Box 1329 Columbus, OH 43216

Certificate of Amendment by Directors or Incorporators to Articles

(Domestic)

Filing Fee $50.00

(CHECK ONLY ONE (1) BOX)

(1) ☐ Amendment by Directors		(2) ☐ Amendment by Incorporators	
☑ Amended by Directors	(123-AMDD)	☐ Amended by Incorporators	(124-AMDI)

Complete the general information in this section for the box checked above.

Name of Corporation: U S RAIL Corporation

Charter Number: 857501

☐ Please check if additional provisions attached hereto are incorporated herein and made a part of these articles of organization.

Complete the information in this section if box (1) is checked.

Name and Title of Officer: Gabriel D. Hall (name) — President (title)

(CHECK ONLY ONE (1) BOX)

☑ A meeting of the directors was duly called and held on March 24, 2007 (Date)

☐ In an writing signed by all the Directors pursuant to section 1701.54 of the ORC

The following resolution was adopted pursuant to section 1701.70(B) (6) (insert proper paragraph number) of the ORC:

that the current name of the Corporation- U S RAIL Corporation is hereby changed to U S RAIL Corporation of Ohio; And, be it further RESOLVED, that the principal place of business is hereby changed to 7846 W. Central Avenue, Toledo, Ohio 43617. This resolution shall be effective immediately. The Secretary is directed to give notice of the Name Change to all affected persons.

Complete the information in this section if box (2) is checked.

WE, the undersigned, being all of the incorporators of the above named corporation, do certify that the subscriptions to shares have not been received and the initial directors are not named in the articles. We hereby have elected to amend the articles as follows:

REQUIRED
Must be authenticated **(signed)** by an authorized representative **(See Instructions)**

Authorized Representative — Date

(Print Name) Gabriel Hall

Authorized Representative — Date

(Print Name)

Authorized Representative — Date

(Print Name)

DOC ID ----> 201111500838

Shareholders Meeting
March 24, 2007

RESOLUTION

At a meeting held on March 24, 2007, all Shareholders being present, motion by D. hall, supported by K. Hall and by unanimous vote the following Resolution is adopted:

RESOLVED that the current name of the Corporation- Great Miami and Scioto Railway Co. is hereby changed to U S RAIL Corporation of Ohio; And, be it further RESOLVED, that the principal place of business in hereby changed to 7846 W. Central Avenue, Toledo, Ohio 43617. This resolution shall be effective immediately. The Secretary is directed to give notice of the Name Change to all affected persons.

Secretary- Danielle M. Hall

The foregoing resolution is a true rendition of the meeting of the Shareholders on the above date.

EXHIBIT C

48,600,000 Results Any time Open links in new tab

U.S. Rail Corporation - Wikipedia

https://en.wikipedia.org/wiki/U.S._Rail_Corporation

U S Rail Corporation; Overview; Headquarters: **Toledo, Ohio:** Reporting mark: USRC: Locale: Indiana, **Ohio:** Technical; Track gauge: 4 ft 8 + 1 ⁄ 2 in (1,435 mm) standard gauge ...See more

Overview

U S Rail Corporation (reporting mark USRC) is a family-owned short-line railroad operating the Winamac Southern Railway in Indiana ...See more

Operation

Kokomo
The Kokomo division, in Kokomo, Indiana, operates a line for the Kokomo Grain Company and ..See more

See all on Wikipedia >

Wikipedia text under CC-BY-SA license

U S RAIL CORPORATION OF OHIO :: Ohio (US) :: ...

https://opencorporates.com/companies/us_oh/857501

Nov 17, 1993 · Free and open company data on **Ohio** (**US**) company **U S RAIL CORPORATION** OF **OHIO** (company number 857501), LUCAS, TOLEDO, **OH** ... **US RAIL CORPORATION**; Agent Name...

U S RAIL CORPORATION OF OHIO - Ohio Company

https://ohio-corp.com/co/u-s-rail-corporation-of-ohio

Nov 17, 1993 · U S RAIL CORPORATION OF OHIO. U S RAIL CORPORATION OF OHIO (Entity Number: 857501) was incorporated on 11/17/1993 in Ohio. Their business is recorded as...

U S Rail Corporation of Ohio - Toledo , OH - Company ...

https://www.dandb.com/businessdirectory/usrail...

U S Rail Corporation Of Ohio was founded in 2004. **U S Rail Corporation Of Ohio** specializes in Switching And Terminal Services. Our similar businesses nearby shows similar businesses in the...

Location: 7846 W Central Ave, Toledo, 4361... **Phone:** (419) 720-7588

US Rail Corporation Of Ohio Toledo OH, 43617 – Manta.com

https://www.manta.com/c/mm88jg7/u-s-rail-corporation-of-ohio

US Rail Corporation Of **Ohio Toledo OH**, 43617 – Manta.com. **U.S. Toledo, OH** Transportation Services Railroads, Line-haul Operating Railroads.

Email: null **Employees:** 17
Occupation: President & Chief Executive Offi... **Location:** 7846 West Central Avenue, Toledo, 4...

U S RAIL Corporation | LinkedIn

https://www.linkedin.com/company/u-s-rail-corporation

Hamilton, **Ohio** 45013, **US** Get directions - Jackson, **Ohio** 45634, **US** Get directions Show ... **U S RAIL Corporation** | 109 followers on LinkedIn. We are a ...

US Rail Corporation of Ohio - Yellow Pages

https://www.yellowpages.com/toledo-oh/mip/us-rail...

US Rail Corporation of Ohio. (419) 720-7588 Visit Website Map & Directions 7846 **W Central AveToledo, OH** 43617 Write a Review.

U S RAIL Corporation in Toledo, OH 43617 - (419) 720-7588

https://www.chamberofcommerce.com/united-states/...

U S RAIL Corporation is located at 7846 Central Ave in Toledo, Ohio 43617. **U S RAIL Corporation** can be contacted via phone at (419) 720-7588 for pricing, hours and directions. Contact Info

U.S. Rail Corporation

Family-Owned Short-Line Railroad

U S Rail Corporation is a family-owned short-line railroad operating the Winamac Southern Railway in Indiana.

Wikipedia



Permanently closed

U S Rail

Business to business

Website Directions

Contact us

7846 W Central Ave, Toledo, OH 43617

(419) 720-7588

Suggest an edit · Your business? Claim now

Social profiles

Facebook Twitter

Rail Development Commission - Ohio

https://rail.ohio.gov/wps/portal/gov/ordc/home

The ORDC's mission is to plan, promote, and implement the improved movement of goods and people faster and safer on a **rail transportation** network connecting **Ohio** to the nation and the...

US Rail Corporation of Ohio | Better Business Bureau® ...

https://www.bbb.org/us/oh/toledo/profile/railroad...

This organization is not BBB accredited. **Railroad** Contractors in Toledo, **OH**. See BBB rating, reviews, complaints, & more.

1 2 3 4 5 >

EXHIBIT D

Forbidden

You don't have permission to access this resource.

Apache/2.4.51 Server at www.usrailcorp.com Port 80

APPENDIX 4

Finance Docket No. 36529

APPENDIX 4

VERIFICATION

JEFFREY L. SUTCH, being duly sworn, states that he is President of SMS Rail Service, Inc. ("SMS"); that he has read the foregoing Notice of Exemption under 49 C.F.R. § 1150.41 being filed by SMS; that the projected annual revenue of the rail line being acquired by lease and operated by SMS as a result of the transaction will not be five million dollars or more; that SMS's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C.F.R. § 1150.45; that the proposed acquisition and operation of the rail line does not involve any provision or agreement that may limit future interchange commitments as defined in 49 C.F.R. § 1150.43(h); and that all allegations of fact contained in SMS's Notice of Exemption are true and correct.

Jeffrey L. Sutch

STATE OF NEW JERSEY)
) SS:
COUNTY OF GLOUCESTER)

SUBSCRIBED and SWORN to before me
this 10th day of June, 2022.

Notary Public

My Commission expires: 10/2/2025

APPENDIX 5

Finance Docket No. 36529

APPENDIX 5

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 36529

SMS RAIL SERVICE, INC. –
ACQUISITION AND OPERATION EXEMPTION –
RAIL LINE OF SALEM COUNTY, NEW JERSEY, IN SALEM COUNTY, NJ

SMS Rail Service, Inc. ("SMS"), a Class III rail carrier, has filed a Notice of Exemption to acquire by lease from Salem County, New Jersey, and operate a rail line which comprises approximately nineteen and four-tenths (19.4) linear miles of rail lines (inclusive of approximately the eight-tenths (0.8) mile of sidings, passing and yard tracks, and the one and two-tenths (1.2) mile spur known as the Glass House Branch between milepost 0.0 and milepost 1.2 in Salem City, New Jersey), on property owned by SALEM COUNTY known as the Salem Branch Line located primarily in SALEM COUNTY and in part in Gloucester County, New Jersey between approximately milepost 11.0 in Swedesboro, New Jersey and approximately milepost 28.4 in the Salem Rail Yard in Salem City, New Jersey. Comments must be filed with the Board and be served on SMS's attorney, Robert A. Klein, Esquire, Berkowitz Klein, LLP, 629 B Swedesford Road, Swedesford Corporate Center, Malvern, PA 19355-1530, Tel. 610-889-3200, ext. 2, Cell 215-880-6913, Email: rak@berklein.com.

The Notice proposes a change in railroad operators on the Rail Line from U S Rail Corporation ("U S Rail") and J.P. Rail, Inc. d/b/a Southern Railroad Company of New Jersey ("J.P. Rail"), to SMS, as to which J.P. Rail has agreed and stipulated. U S Rail reportedly has not maintained operations, equipment, locomotives, or employees on the Rail Line or in Salem County since in or about January 2012. Employees of U S Rail and J.P. Rail are hereby advised of the proposed change in railroad operators.

The Notice is filed under 49 C.F.R. § 1150.41. If the Notice contains false or misleading information, the exemption is *void ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Board

Dated:
(SEAL)

Cynthia T. Brown
Chief, Section of Administration

EXHIBIT I

NJDOT Rail Freight Assistance Program
2022 Grant Application Proposed Project(s) List

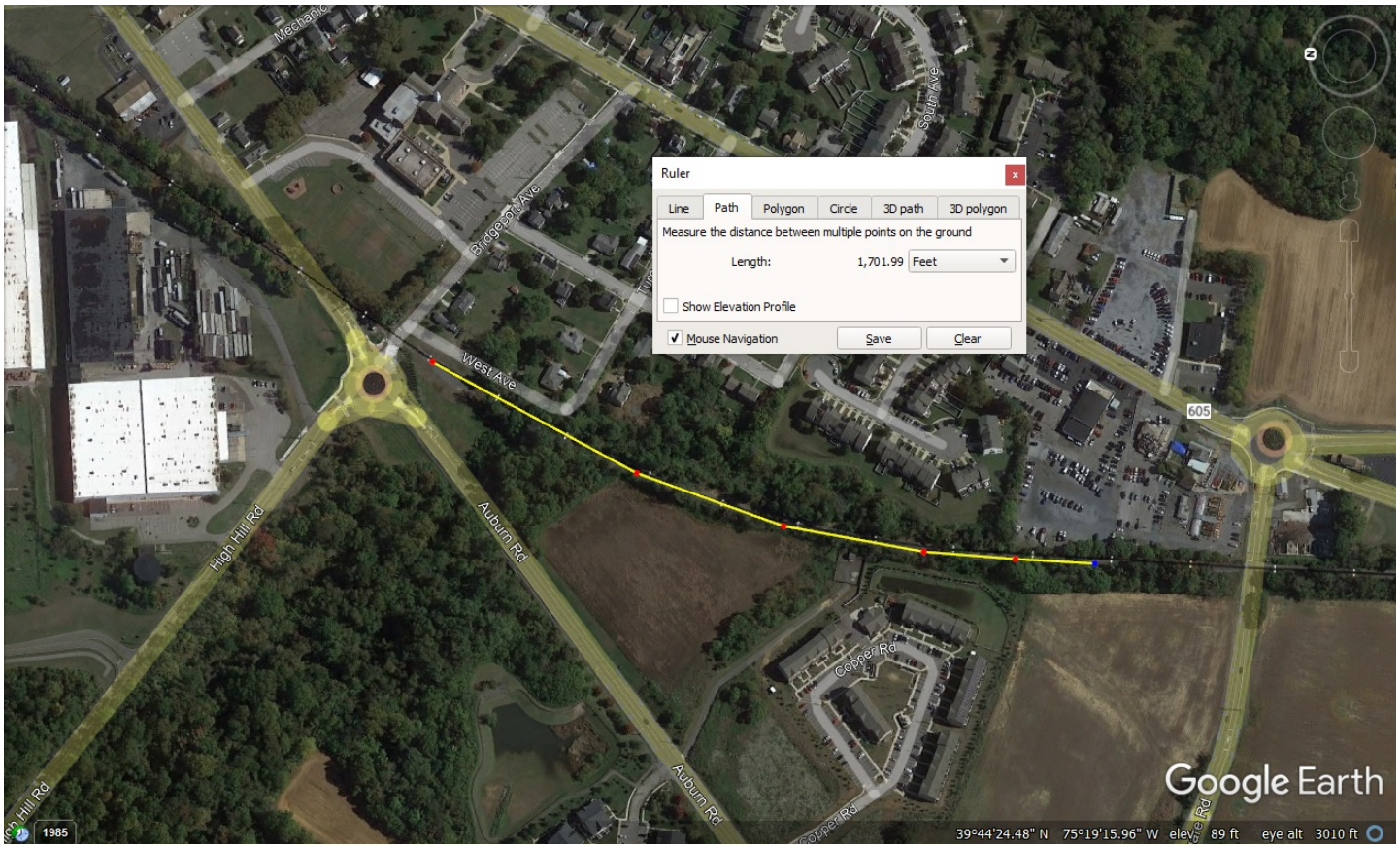
TO THE BOARD OF COUTNY COMMISSIONERS:

On Wednesday, September 15, 2021, representatives from SMS Rail met with representatives from the County of Salem to discuss the New Jersey Department of Transportation's recent solicitation for applications for grant monies pursuant to that agency's Rail Freight Assistance Program. In that meeting is was agreed that it made sense for the County to apply for infrastructure improvements and additions that would be made on County property. SMS will, of course, assist with the application process and, pursuant to the contractual relationship between it and the County of Salem, perform the work on "force account."

We further discussed certain items that would be on our mutual "Wish List," and SMS agreed to provide details and pricing on those items, which follows.

From North to South, the projects for which SMS and the County would like to apply are:

SWEDESBORO TRAFFIC CIRCLE



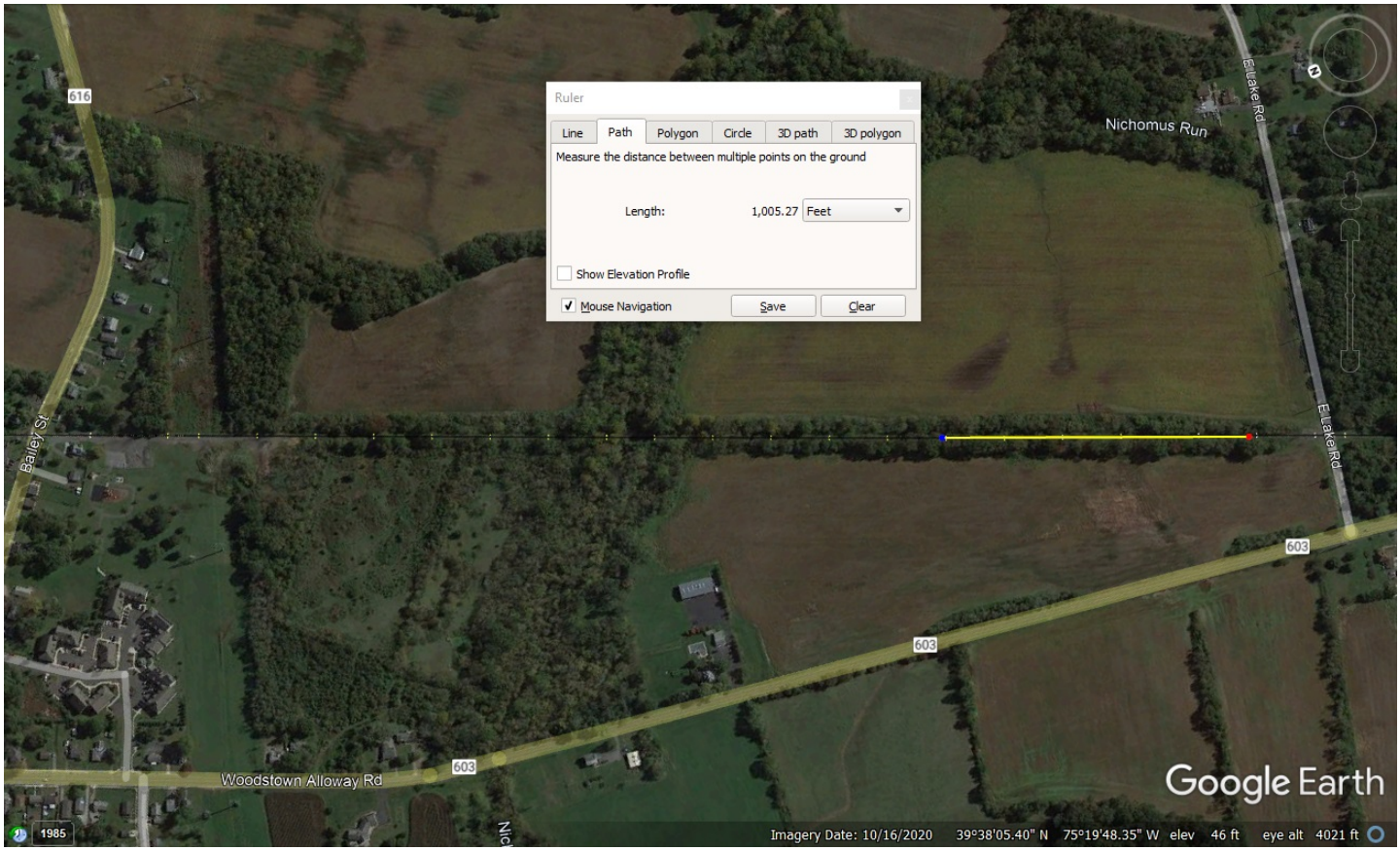
Installation of a 1,700' runaround track starting near the High Hill/Auburn Road traffic circle in Swedesboro. This would facilitate interchanges between SRNJ and SMS. This would be built utilizing 1,700' of 115# rail and 2 new, #10 switches. Surfacing and tamping will be required.

MEMORIAL LAKE BRIDGE - WOODSTOWN



The bridge over Memorial Lake in Woodstown needs to be re-decked. This would require 75 ties for the approaches, 25 bridge timbers, and tamping and surfacing. This work will enhance the safe passage of trains on the rail line.

EAST LAKE ROAD RUNAROUND



As you may recall, SMS is in the process of purchasing a total of 92 acres straddling the railroad just south of Woodstown at East Lake and Woodstown Alloway Roads. Once the purchase is consummated, it is SMS' plan to develop the property into a railroad facility, a small portion of which will be utilized for the proposed passenger operations. We foresee the remainder of the property being developed into a railcar storage yard and transload facility. Installing a runaround on County property adjacent to the rail line will serve multiple purposes. Initially, the track will be used for railcar storage. In the future, it can be used as a place for trains to pass one another and as a lead for SMS to access the 30acres on the west-side of the railroad.

This additional track will utilize 1,000' of 115# rail and 2 new, #10 switches, together with surfacing and tamping.

LIGHT REHABILITATION – WELCHVILLE ROAD TO 1 MILSE SOUTH OF ACTON STATION ROAD



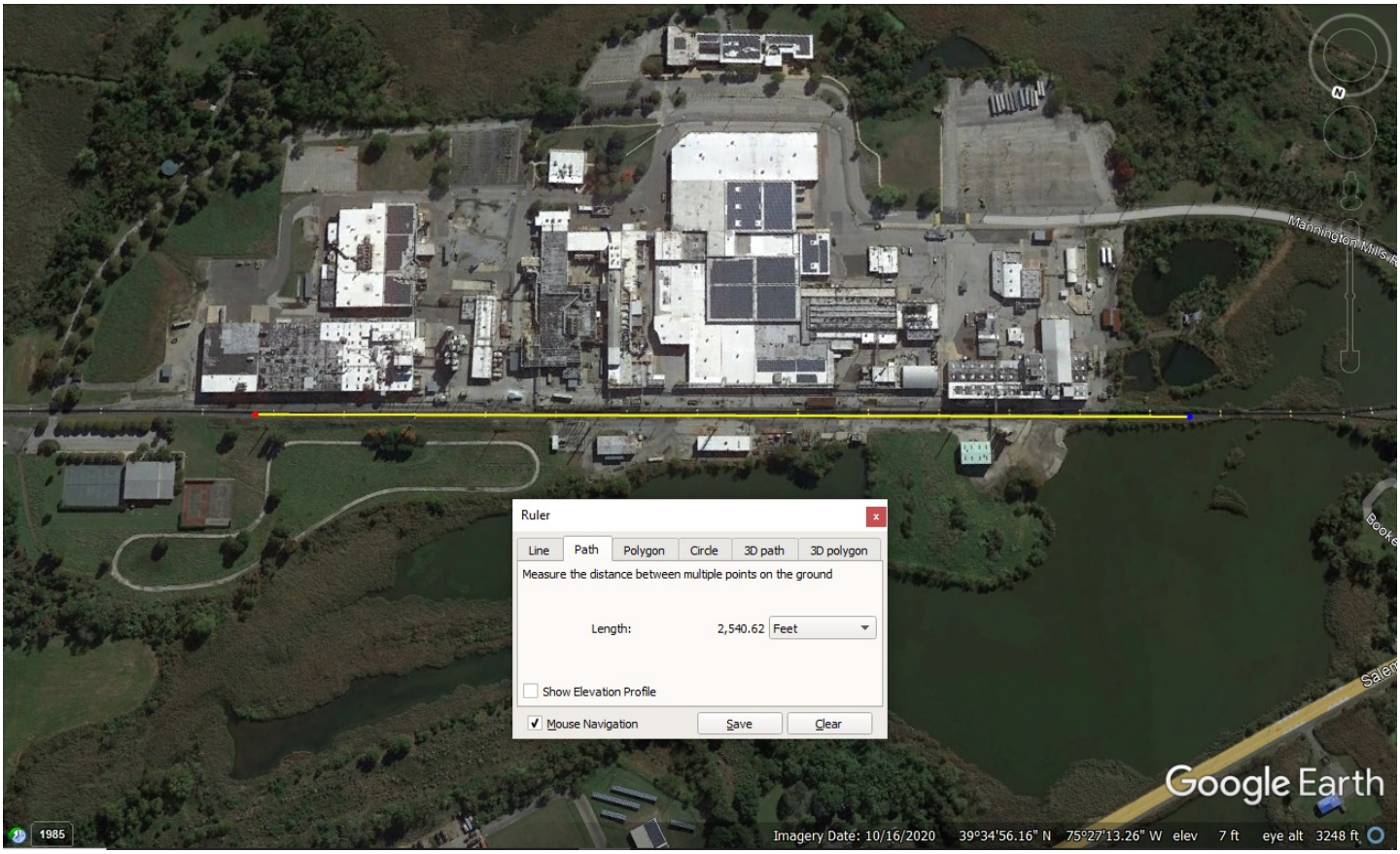
The line south of Welchville Road to 1 mile south of Acton Station Road could use 1,500 ties, surfacing and tamping. This area is currently jointed rail. Giving this area a refresh will enhance safety, improve drainage and diminish wear-and-tear on equipment and infrastructure.

MANNINGTON MILLS – SHORT RUNAROUND



At Mannington Mills, the switch on the north-end of the short runaround track was already rebuilt, but the south switch requires rehabilitation. SMS would like to replace this switch utilizing a #8 switch package, which, after installation, will require surfacing and tamping. This improvement will also enhance the safe passage of trains along the line.

MANNINGTON MILLS – LONG RUNAROUND



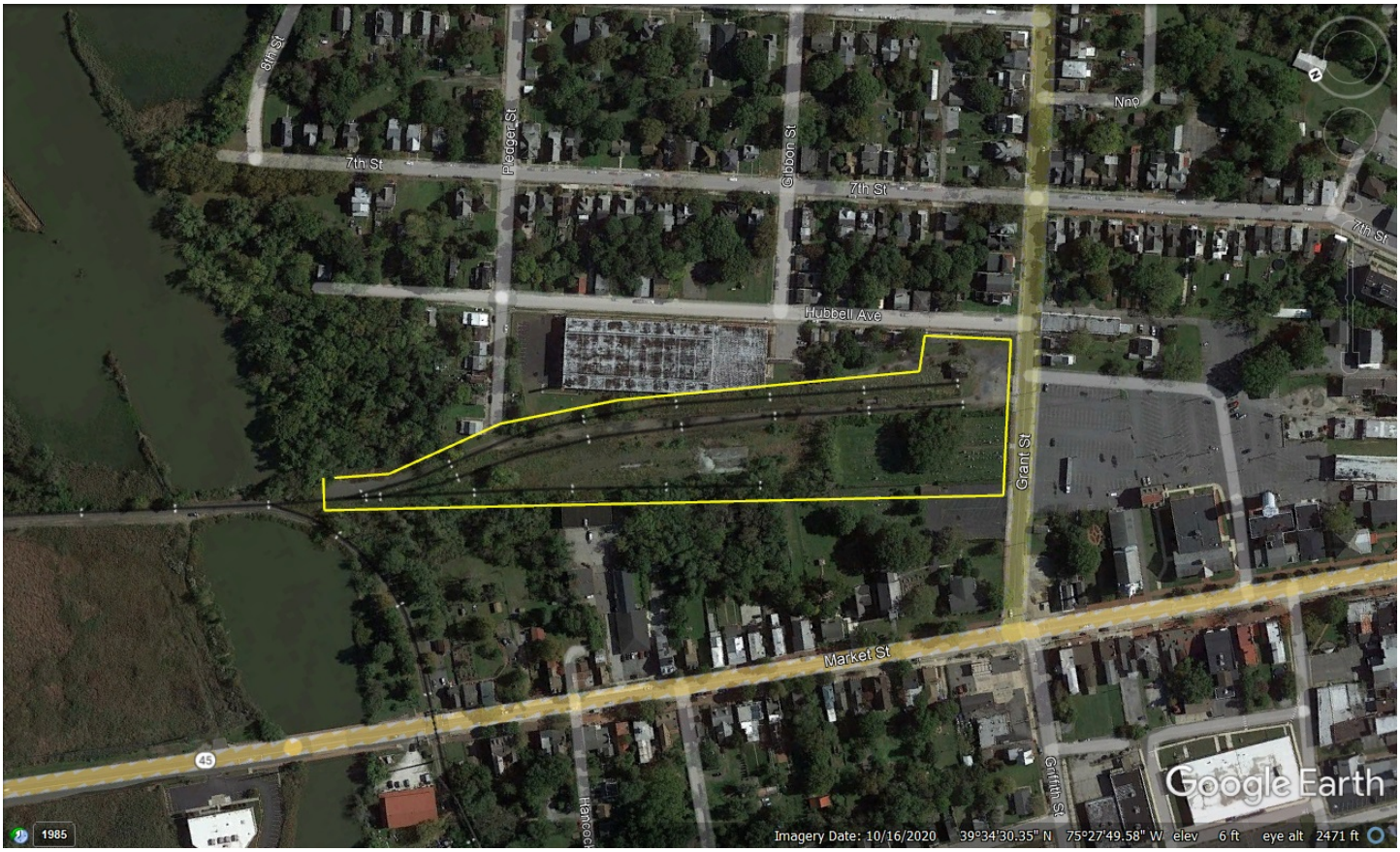
The 2,540’ runaround track at Mannington Mills is currently in an unpassable condition. SMS would like to rebuild this track. The switches were already replaced with the rehabilitation of the main track. However, ties, and 2,540’ feet of 115# rail will be installed, with the required surfacing and tamping in order to bring this track into useable condition. Rehabilitation of this track will provide SMS an area to store cars, as well as a place for trains to be assembled for transportation to Swedesboro for interchange.

WYE TRACK REHABILITATION



Just south of Mannington Mills is a Wye track, which is used to turn railcars and locomotives in the course of normal railroad operations. It is currently in an unpassable state. Rehabilitation of this track will allow the use of the Wye, as designed, and require 1 new, #8 switch, ties, and 1,400 feet of 115# rail.

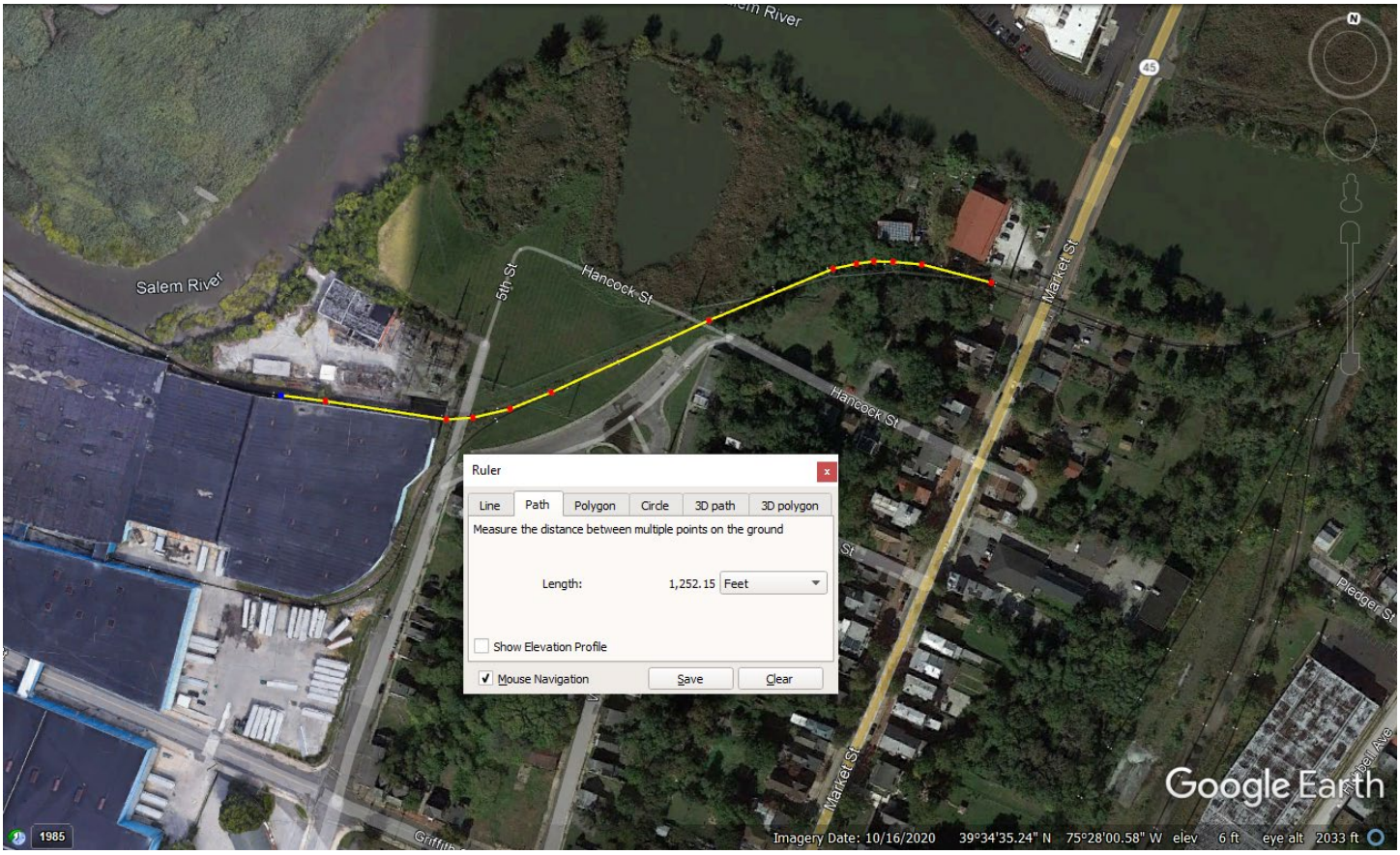
SALEM YARD REHABILITATION



The main rail yard in Salem City is in need of rehabilitation. SMS proposes to remove the existing infrastructure and install 8 new tracks utilizing approximately 4,000' of 115# rail and 4 #8 switch packages. This portion of the project should also include security fencing and lighting. *SMS does not have the ability to install fencing and lighting. Thus, the County would need to price out this portion of the project, and an RFP would have to be circulated for completion of this portion of the work.*

This rail yard is an important piece of infrastructure at the southern end of the railroad. It would be used for car storage, constructive placement of railcars for on-line customers, assembly of trains for further transportation, and could even serve as a transload facility.

REHABILITATION SOUTH OF ROUTE 45



South of Route 45 in Salem City, the railroad disappears into a severely overgrown area, which, for a length of about 1,500 feet, is in need of rehabilitation in order to access the Port of Salem. To rehab this area, we will use 115# rail, new ties, where needed and finish it off with the typical tamping and surfacing.

SALEM LINE GRANT MATERIALS INFO/QUANTITIES

MATERIALS

RAIL – 26,480' @ $24.00 per foot.	$ 635,520.00
TIES – 9,465 @ $74.00 per tie	$ 700,410.00
TIMBERS – 10 sets @ $7,500.00 per set	$ 75,000.00
PLATES – 14,140 @ $12.00 per plate	$ 169,680.00
BARS – 780 pairs @ $110.00 per pair	$ 85,800.00
SPIKES – 536 kegs @ $100.00 per keg	$ 53,600.00
BOLTS – 54 kegs @ $450.00 per keg	$ 24,300.00
ANCHORS – 16,000 @ $3.00 per anchor	$ 48,000.00
STONE – 13,000 tons @ $30.00 per ton	$ 390,000.00
#8 SWITCH PACKAGE – 6 @ $24,000.00 per package	$ 144,000.00
#10 SWITCH PACKAGE – 4 @ $27,000.00 per package	$ 108,000.00
BRIDGE TIMBERS – 25 @ $191.00 per timber	$ 4,775.00

TOTAL OF ALL MATERIALS $2,439,085.00

LABOR

SWITCHES – 2,000 Manhours
BUILDING TRACK – 6,620.00 Manhours
TEAR OUTS, GRADING, CLEARING, ETC. – 2,000 Manhours

TOTAL OF ALL LABOR ..... $ 949,600.00

EQUIPMENT TOTAL ..... $ 350,000.00

EQUIPMENT TOTAL (SMS PORTION) $3,738,685.00

NOTE: The above is a total estimate for the work the SMS would perform for the County pursuant to a grant Agreement. Bids will need to be solicited for the materials, tamping and surfacing, and security lighting and fencing. The remainder of the project items will be completed by SMS on a "force account," pursuant to the contractual relationship between SMS Rail Service, Inc., and the County of Salem.

EXHIBIT J

FORM AD 103
JUNCTION INTERCHANGE UPDATE FORM
Junction Industry Reference File

FAX completed form to the
RAILINC at **(919) 651-5191**

JUNCTION—unique identification of the LOCATION of an **INTERCHANGE**

JUNCTION ABBREVIATION: SWDSB

STANDARD POINT LOCATION CODE (SPLC): 1985590 (000)

JUNCTION LOCATION NAME: SWEDESBORO

JUNCTION STATE / PROVINCE: NJ

INTERCHANGE—description of ACTIVITIES between two transportation entities at a **JUNCTION**

ACTION REQUESTED: A (A = add, C = change, E = expire)

INTERCHANGE TYPE: O

Double-Click for form Instructions

FORM AD-103_Instr.doc

	INTERCHANGING CARRIER	REPORTING CARRIER	CSM STATION FSAC (when required, 5-digit)
MARK / SCAC 1:	CSXT	CSXT	39845
MARK / SCAC 2:	SLRS	SLRS	01020

DELIVERY ONLY FLAG: N (Y = yes, N = no)

INHIBIT JUNCTION ADVICES: N (Y = yes, N = no)

EFFECTIVE DATE OF ACTION: 2023 04 12 (CCYY-MM-DD)

AGREEMENT—signatures of transportation entity representatives (as required by Interchange TYPE)

	MARK / SCAC 1	MARK / SCAC 2
SIGNATURE:	Stuart C. Sweat	
CONDITIONAL AGREEMENT?:	N — Y = yes, N = no ; If yes, form MUST be accompanied by a complete description of the conditions of agreement	N — Y = yes, N = no ; If yes, form MUST be accompanied by a complete description of the conditions of agreement
NAME: (please print)	Stuart Sweat	Brian Murray
COMPANY:	CSX Transportation	SMS Rail
E-MAIL:	Stuart_Sweat@csx.com	bmurray@smsrail.com
PHONE NUMBER:	(904) 359-2497	(856) 467-4800
FAX NUMBER:	( ) -	( ) -

SUBMISSION—FAX completed form to RAILINC at (919) 651-5191 (or email to AAR_PS@railinc.com)

Last modified: July 27, 2012

FORM AD 103
JUNCTION INTERCHANGE UPDATE FORM
Junction Industry Reference File

FAX completed form to the
RAILINC at (919) 651-5191

JUNCTION—unique identification of the LOCATION of an **INTERCHANGE**

JUNCTION ABBREVIATION: S W D S B

STANDARD POINT LOCATION CODE (SPLC): 1 9 8 5 5 9 ( )

JUNCTION LOCATION NAME: Swedesboro

JUNCTION STATE / PROVINCE: N J

INTERCHANGE—description of ACTIVITIES between two transportation entities at a **JUNCTION**

ACTION REQUESTED: A (A = add, C = change, E = expire)

INTERCHANGE TYPE: O

Double-Click for form Instructions

FORM AD-103_Instr.doc

	INTERCHANGING CARRIER	REPORTING CARRIER	CSM STATION FSAC (when required, 5-digit)
MARK / SCAC 1:	N S		6 7 3 3 8
MARK / SCAC 2:	S L R S		1 0 2 0

DELIVERY ONLY FLAG: N (Y = yes, N = no)

INHIBIT JUNCTION ADVICES: N (Y = yes, N = no)

EFFECTIVE DATE OF ACTION: 2023 03 17 (CCYY-MM-DD)

AGREEMENT—signatures of transportation entity representatives (as required by Interchange TYPE)

	MARK / SCAC 1	MARK / SCAC 2
SIGNATURE:		
CONDITIONAL AGREEMENT?:	N — Y = yes, N = no ; If yes, form MUST be accompanied by a complete description of the conditions of agreement	N — Y = yes, N = no ; If yes, form MUST be accompanied by a complete description of the conditions of agreement
NAME: (please print)	Lyric Harbin	Brian Murray
COMPANY:	Norfolk Southern Railway	SMS Rail
E-MAIL:	Lyric.Harbin@nscorp.com	bmurray@smsrail.com
PHONE NUMBER:	(470) 463 – 7440	(856) 467 – 4800
FAX NUMBER:	( ) –	( ) –

SUBMISSION—FAX completed form to RAILINC at (919) 651-5191 (or email to AAR_PS@railinc.com)

Last modified: July 27, 2012

EXHIBIT K

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWNSHIP OF PILESGROVE, N.J.	)	FINANCE DOCKET
PETITION FOR DECLARATORY ORDER	)	NO. 36770

VERIFIED STATEMENT OF PAUL C. HARLAND

State of New Jersey)
) SS:
County of Gloucester)

I, Paul C. Harland, Director of Passenger Operations for SMS Rail Service, Inc., declare under penalty of perjury, under the laws of the United States of America, as follows:

1. I am the Director of Passenger Operations for SMS Rail Service, Inc., which maintains its business address at 513 Sharptown Road, Logan Township, NJ 08085.

2. SMS, under the fictitious name "Woodstown Central Railroad," operates seasonal passenger excursions on its Salem Branch.

3. These excursions are offered, as a rule of thumb, as follows: every other Saturday/Sunday from Easter weekend to September, every weekend in October (foliage/pumpkins), every other weekend in November (foliage), and on weekends from Thanksgiving to Christmas (Santa).

4. Motive power for the above excursions is provided by SMS locomotives used in both freight and passenger service.

5. Excursion trains are operated by T&E employees paid by SMS, who are qualified under relevant FRA regulations to perform Hours of Service functions on the Branch, including both freight and passenger service.

6. All employees of SMS receive benefits pursuant to the Railroad Retirement Act, 45 U.S.C. § 231 *et seq*. and the Railroad Unemployment Insurance Act, 45 U.S.C. § 351 *et seq*.

The above statements are true and correct to the best of my knowledge, information and belief.

Signed under the pains and penalties of perjury this day of December, 2024.

Paul C. Harland

State of New Jersey)
) SS:
County of Gloucester)

Subscribed and Sworn to before me
this 16 day of December, 2024.

Notary Public

My Commission expires: 10/2/2025

EXHIBIT L

State of New Jersey

DEPARTMENT OF TRANSPORTATION
P.O. Box 600
Trenton, New Jersey 08625-0600

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

DIANE GUTIERREZ-SCACCETTI
Commissioner

RECEIVED
SEP 22 2022
SALEM COUNTY
ENGINEERING OFFICE

September 16, 2022

Ms. Diana D. Ford
Chief of Administrative Services
County of Salem
110 Fifth Street
Salem, NJ 08054

RE: Transmittal of Executed Grant Agreement for the "FY 2022 Railroad Improvements" Project to The County of Salem
NJDOT Job Number: 7106311

Dear Ms. Ford:

Enclosed is the executed agreement for the "Point-No-Point Bridge Replacement" Project. The NJDOT Agreement Number for this grant is **"7106311"**. Please refer to this Agreement Number in all future correspondence and billings associated with this grant submitted to this Office.

Ensure that you and your staff are familiar with the dates, terms and conditions set forth in the agreement, and that they are adhered to by your employees, as well as by any contractors or subcontractors who perform work under this grant. Invoices should be submitted on a monthly basis as expenses are incurred. Each invoice must be submitted with a State of New Jersey Payment Voucher and proof of payment must be attached.

The POC for this project is Mr. Nabil Saad and he may be reached at 609-963-1437. Please inform him when construction begins, as well as of major key events (Pre-con, progress meetings, etc.) as the work progresses. Staff from the Office of Grants Management will arrange for field and/or record reviews once construction activities begin. **This letter serves as your Notice to Proceed as of September 9, 2022.**

Sincerely,

Bishoy Abdallah
Principal Engineer
Office of Grants Management

Project: **FY2022 Railroad Improvements**
Recipient: **County of Salem**
Agreement No.: **7106311**
Contract ID: **22-35316**

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
RAIL FREIGHT ASSISTANCE PROGRAM (RFAP) AGREEMENT

This Agreement made as of the 9th day of September, 20 22, by and between the State of New Jersey, acting by and through the **New Jersey Department of Transportation** (hereinafter the "State" or the "Department"), and the **County of Salem, (Vendor ID #216001147-99)** with general offices at **110 Fifth Street Salem, NJ 08079** (hereinafter the "**RECIPIENT**").

RECITALS

WHEREAS, in accordance with N.J.S.A. 27:1A-5(i) and N.J.S.A. 27:1A-5.1, the Commissioner is authorized and empowered to develop and promote programs for the preservation, improvement and expansion of freight railroads; and

WHEREAS, in accordance with the Department of Transportation's Rail Freight Assistance Program, N.J.A.C. 16:53C-1.1 et seq., the State of New Jersey has funds available to support an efficient and effective rail freight system; and

WHEREAS, the Recipient has submitted a Project Proposal dated **October 21, 2021** seeking State assistance in carrying out **FY2022 Railroad Improvements** (the Project), estimated to cost **$2,777,777.77**; and

WHEREAS, the Project has been reviewed and found to meet the requirements of the RFAP; and

WHEREAS, the Recipient offers assurance, as required by the State, that rail freight services will continue to be available on the railroad line for, at minimum, a period of five years after completion of the Project; and

WHEREAS, the parties hereto desire to enter into an agreement, referred to as **Agreement No. 7106311,** to provide funding for the Project;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto covenant and agree as follows:

SUBMISSIONS:

The Applicant shall submit for review and approval to the Office of Grants Management (OGM):

a. Notification of proposed administrative dates of advertisement, pre-bid meeting, bid and construction start.

b. A project schedule that outlines project milestones and estimated dates of critical work, for both design and/or construction.

c. Final Plans, Specifications & Engineering documents (PS&E) in digital format.

d. Proposed construction contracting methods and approach e.g.. in-house labor, third-party contractors, direct suppliers, etc.

e. Evidence of insurance as outlined in Section 10 of this Agreement.

f. **Corporate** Recipients shall submit a duly adopted corporate resolution designating the person(s) authorized to execute this Agreement and bind the corporation. The corporate Secretary shall affirm that such resolution is in full force and effect as of the date executed and shall attest to the execution of and affix the corporate seal to this Agreement. **Partnership** Recipients shall have all partners sign the Agreement or have the Agreement signed by one partner, provided documents are attached which authorize that one partner to bind all partners; all signatures shall be witnessed. For **Sole Proprietorship** Recipients, the sole proprietor shall execute this Agreement with the execution notarized with such notarization attached. **Joint Venture** Recipients shall follow the execution procedure applicable to each of the joint ventures.

g. Proof that the Recipient has notified, in writing, the governing body of each affected municipality.

h. An Applicant Submission Certification signed and on file with OGM.

i. All other submissions as requested herein or by the State.

1. PROJECT FUNDING

a. The Recipient shall execute and return this Agreement within 60 days of receipt. Failure to return three copies of this fully executed Agreement within 60 days may result in the loss of project funding, close-out of the grant award and termination of this Agreement.

b. The State will provide **90%** of the eligible costs up to **$2,500,000.00** for the Project, as more fully set forth in the Recipient's Project Application dated **October 21, 2021** attached to and made part of this agreement as **Exhibit A**.

c. The Recipient shall provide **10%** in matching funds for the Project up to **$277,777.77**. The Recipient additionally agrees to pay all ineligible project costs.

d. The cost to the State, in State funds, for the completion of the entire Project as described and set forth in Exhibit A shall not exceed **$2,500,000.00**.

e. If the cost of the Project exceeds the dollar amount of this Agreement, the Recipient may apply, in writing, to justify additional funds to complete the project. The State makes no guarantee that additional funds will be made available, in which case the Recipient shall be responsible for paying the additional costs to complete the Project.

2. PERFORMANCE OF WORK

a. Upon execution of this Agreement, the Recipient agrees to promptly arrange for the performance of the work specified in Exhibit A, and to commence such work before the end of the sixth full month following receipt of a Notice to Proceed from the STATE.

b. The Recipient is responsible for the timely completion of the Project as outlined in the approved project schedule. Changes to the duration of the overall Project or significant adjustments to the approved schedule shall be coordinated with OGM staff. Significant project delays may result in the loss of project funding, close-out of the grant award and termination of this Agreement.

c. The Recipient is responsible for the timely completion of the Project within the approved Scope of Work and associated budget, inclusive of funding approved by the State plus the Recipient's matching funds and any additional ineligible costs.

d. The Recipient further agrees to complete the work specified in Exhibit A within **two years** from the date of execution of this Agreement.

e. The State may consider an extension of time for completion of the work in Exhibit A in response to a written request from the Recipient. Such a request shall include a substantial and detailed justification for the extension. An extension should only be requested for justifiable circumstamces outside of the control of the Applicant and not foreseeable at the initiation of the project. Coordination with OGM staff should occur in advance of an extension request. There should be no expectation that a time extension request will be considered or approved.

f. The Recipient shall dispose of any materials replaced during or as a part of the construction of the Project in accordance with all applicable laws and regulations. The Recipient shall retain records proving proper disposal and make them available to the State upon request.

3. USE OF THIRD PARTY CONTRACTORS AND CONSULTANTS

a. Professional services, project management services, design and/or technical services, construction management and/or related subject matter expertise may be provided by a competitively procured consultant. The Recipient shall provide detailed procurement, terms of contract and other consultant selection and retention documentation to the State upon request.

b. Construction oversight and inspection services must be independent from other project-related professional services providers. Under no circumstances should a design and/or technical consultant, its employees or subcontractors be the same as the firm, person or personnel providing construction oversight and inspection services.

c. At the Recipient's discretion, the work outlined in Exhibit A may be performed by third party contractors and/or with in-house labor.

d. The Recipient agrees to publicly advertise the Project for a period of three weeks in typical and publicly available locations such as a local and regional newspaper and a web-based periodical.

e. The Recipient agrees to competitively procure all materials, equipment rentals and/or contractors performing work funded by this Agreement, and will provide copies of said advertisements and / or procurement documents, including confidential documents which will be held as confidential, to the State as requested.

f. Materials in inventory may be used provided acceptable supporting documents, incuding unit prices, associated costs and/or bid documents are provided. Approval for the use of inventory or existing matierals on-hand is subject to the review and discretion of OGM.

g. The Recipient shall prepare a bid report analyzing the bids received, identifying the lowest responsible bidder, and requesting the approval of the State for the award of the Project to the lowest responsible bidder. The Recipient shall produce any additional documents required by the State. "Lowest price" means the least possible amount that meets all requirements of the request for bids. "Lowest responsible bidder or vendor" means the bidder or vendor: (a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible. "Responsible" means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability. "Responsive" means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request.

h. The Recipient must first receive approval in writing from the State prior to awarding the Project, or any aspects thereof, to a third party contractor, or procuring materials and/or leasing or renting equipment from a supplier.

i. The Recipient shall only hire consultants and contractors or subcontractors who have valid and current business licenses issued by the State of New Jersey. The Recipient shall not hire any of the above who are listed on Consolidated Debarment Report https://www.state.nj.us/treasury/revenue/debarment.

j. The Recipient is entirely responsible for the quality and performance of all work, labor and materials associated with the Project, including third party contractors, suppliers and consultants, all of whom or which shall conform to the provisions of this Agreement.

k. If any or all of the work is to be accomplished by third party contractors, the Recipient shall obtain a performance and payment bond in an amount equal to the value of the contracts with the third party contractors.

l. The Recipient shall not withhold retainage from consultants and contractors.

m. Prohibited Interests: The Recipient shall insert in all third party contracts, and shall require its third party contractors to insert in their subcontracts, the following statement:

> "No member, officer, or employee of the Recipient during his/her tenure with the Recipient or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof."

4. EXTRA WORK

In the event that new conditions develop or differing conditions are found to exist and it becomes necessary or desirable to perform extra work, or to modify the scope of work eligible for State funding as defined in Exhibit A, the Recipient shall immediately advise the State of the necessity or desirability of performing such extra work or of making a modification to the scope of work. Such extra work may only be performed with State funding participation after the State has determined that such extra work is an eligible Project cost, has identified additional funding, and has authorized the performance of such extra work in a fully executed

Department of Transportation Change Order. There should be no expectation that a request to perform Extra Work will be considered or approved.

5. PAYMENT TO THE RECIPIENT

a. The State will reimburse the Recipient for the work specified in Exhibit A, not to exceed the agreed upon dollar amount.

b. On a monthly basis, the Recipient shall submit to the State payment vouchers with proof of payment and sufficient supporting documentation acceptable in form by the State for the work completed during the period covered by the voucher. Confidential information should be marked as "Confidential/Business Competitive." The State will reimburse the Recipient **90%** of the eligible cost of the work identified in the voucher. The State will pay approved vouchers, less any disapproved amounts, as promptly as possible thereafter.

c. Projects with three consecutive months of non-submission of payment vouchers require coordination with OGM staff, submission of a written explanation and may result in the loss of project funding, close-out of the grant award and termination of this Agreement.

d. The Recipient shall enclose with the payment voucher supporting documentation that includes the following:

   i. A detailed description of the work effort covered by the specific voucher, including rail line mileposts for project start and end points.

   ii. A detailed summary of materials utilized and equipment rentals used on the Project during the voucher period.

   iii. A copy of any vouchers or invoices received by the Recipient from either a third party contractor or vendor.

   iv. All supporting documents will clearly indicate the State's Agreement Identifier and Project Name. The following shall be included at the bottom of each page of the supporting documentation and signed by an authorized Representative of the Recipient, unless directed otherwise by the Office of Grants Management:

" This page has been reviewed by _____ Date _____".
(Name)
(Title / Position)

   v. Any additional supporting documentation required by the State to verify contract compliance, including the validity of any Recipient payment request.

e. All costs submitted by the Recipient shall be subject to the approval and audit of the State, which will verify the accuracy of the description of all materials supplied and work performed as part of this Agreement, and that installation of materials and work performed were done in compliance with the terms of this Agreement and are therefore eligible for reimbursement by the State.

6. AVAILABILITY OF FUNDS

The Recipient recognizes and agrees that both the initial provision of funding and the continuation of such funding under the Agreement is expressly dependent upon the

availability to the Department of funds appropriated by the State Legislature from State revenue or such other funding sources as may be applicable. A failure of the Department to make any payment under this Agreement or to observe and perform any condition on its part to be performed under the Agreement as a result of the failure of the Legislature to appropriate shall not in any manner constitute a breach of the Agreement by the Department or an event of default under the Agreement and the Department shall not be held liable for any breach of the Agreement because of the absence of available funding appropriations. In addition, future funding shall not be anticipated from the Department beyond the duration of the grant award period set forth in the Grant Agreement and in no event shall the Agreement be construed as a commitment by the Department to expend funds beyond the termination date set in the Grant Agreement.

7. LICENSES, PERMITS AND ENVIRONMENTAL PROTECTION

a. The Recipient shall be responsible for obtaining, having on file, and making available for review, all necessary licenses and permits and for complying with all Federal, State, and municipal laws, codes and regulations applicable to the performance of work under this Agreement.

b. The Department advises all Recipients to have applied for, if not received, all required local, State and/or Federal permits in advance of execution of this Agreement.

c. The Recipient shall be responsible to pay any and all fines levied by the New Jersey Department of Environmental Protection or other state or Federal regulatory agency for failure to obtain and/or adhere to the terms and conditions of any permits issued by such agencies.

d. The Sponsor shall not solicit any bids until all necessary licenses and permits are approved in accordance with paragraph 7a and 7b above.

e. For a Project, as defined in Exhibit A (Scope of Work) of this Agreement, that is funded by this Agreement and that involves a facility used for the transfer of containerized solid waste materials to or from rail cars, the Recipient agrees that operation of that facility shall comply with all Federal, State and local public health and environmental laws and regulations, including all requirements specified in N.J.A.C. 7:26-2D.1 et seq., Requirements on Rail Carriers That Transfer Containerized Solid Waste to or From Rail Cars.

8. INSPECTORS AND INSPECTIONS

a. The State shall have the right to inspect all work done and all materials furnished, and to assign to and station at the work site inspectors or other authorized representatives of the State (hereinafter referred to collectively as "State inspectors") for this purpose. The Recipient shall provide such information and assistance as may be required by the State to make complete and detailed inspections. The State inspectors shall have the right to do all things deemed by the State to be necessary for the purpose of determining if the materials used and the work performed are in accordance with this Agreement. If a difference of opinion arises between the State inspectors and the Recipient relating to the material furnished or the performance of the work, the State inspectors will notify the Recipient that

further work will not be authorized until the issue can be referred to and decided by the State. The State shall have no obligation to pay the Recipient for suspended work following such notification.

b. When the State inspectors are in and about the premises of the Recipient in the course of their employment, they shall be deemed conclusively to be invitees of the Recipient. Except as provided below, the Recipient shall be responsible for the payment of all claims for injuries to, or death of, State inspectors or damage to their property, due to the acts or omissions, whether negligent or not, of the Recipient or its third party contractors. The cost of providing the necessary facilities, information, assistance, and protection of the State Inspectors in the performance of their duties shall be borne by the Recipient.

c. The State inspectors will promptly notify the Recipient of their presence on the work site prior to commencing any inspection. The Recipient shall provide copies and/or a briefing of its safety rules to the State inspectors. The State inspectors will acknowledge receipt of and familiarize themselves with the safety rules. At all times while on the work site or elsewhere on the Recipient's property, the State inspectors will comply with the Recipient's safety rules.

d. The State inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of, or to issue instructions contrary to, this Agreement. Under no circumstances shall any act or failure to act of a State inspector relieve the Recipient of its obligations under this Agreement. Nothing in this Subsection shall be construed to restrict or in any way modify the authority of the State to issue change orders or otherwise carry out contract management responsibilities.

9. INSURANCE

a. The Recipient agrees to furnish and maintain during the period of this Agreement, self-insurance and/or policies of insurance as set forth below:

i. Workers' Compensation (including Occupational Diseases) covering its employees engaged in the work in accordance with the statutory requirements of the laws of the State. The Workers' Compensation Insurance Policy shall contain an Employer's Liability endorsement providing limit of not less than statutory requirements. (railroad employees are covered under the Federal Employers Liability Act).

ii. General Public Liability (including loss, or damage resulting from the performance of this Agreement), with a limit of not less than:

Bodily Injury Liability

Each Occurrence	Aggregate
$1,000,000	$2,000,000

Property Damage Liability

Each Occurrence	Aggregate
$1,000,000	$2,000,000

The coverage to be provided under this policy shall be at least as broad as the standard, basic un-amended and unendorsed comprehensive general liability

policy and shall include contractual liability coverage. The aggregate limits may be increased by the State, in its sole discretion, in order to provide adequate protection to the State.

iii. Comprehensive Automobile Liability policy covering owned, non-owned and hired vehicles with minimum limits as follows:

Bodily Injury Liability

Each Person	Each Occurrence
$500,000	$1,000,000

Property Damage Liability

Each Occurrence
$250,000

b. If any of the work is performed by third-party contractors, the Recipient shall require each of its third party contractors to take out and carry the aforesaid forms of insurance in the amount stated, or each third party contractor shall be named as an insured on the Recipient's policy.Prior to Project commencement, the Recipient shall furnish to the State a copy of a certificate from each insurance company evidencing the above insurance, or proof of self-insurance, and naming the State as an additional insured party. Any such certificate shall provide that the insurance company shall give the State ten days prior notice of any changes or cancellation in terms of such policies during the periods of coverage.

c. The Recipient's maintenance of insurance under this Section shall not limit its liabilities to the State as set forth in Section 10 of this Agreement.

10. INDEMNIFICATION

a. The Recipient shall defend, indemnify, protect, and save harmless the State, its agents, servants and employees from and against any and all suits, claims, losses, demands or damages of whatever kind or nature, including, but not limited to, personal injury claims, wrongful death claims, property damage claims, and contractual liability claims, arising out of or claimed to arise out of the performance of this Agreement or of any actions or operations in connection with this Agreement. The Recipient shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith. If any judgment shall be rendered against the State for which indemnification is provided under this Section, the Recipient shall at its own expense satisfy and discharge the same. The State will, as soon as practicable after a claim has been made against it, give written notice thereof to the Recipient along with full and complete particulars of the claim. If suit is brought against the State or any of its agents, servants and employees, the State will expeditiously forward or have forwarded to the Recipient every demand, complaint, notice, summons, pleading, or other process received by the State or its representatives.

b. It is expressly agreed and understood that any approval by the State of the services performed and/or reports, plans or specifications provided by the Recipient shall not operate to limit the obligations of the Recipient assumed in this Section or in any other provisions of this Agreement. It is further understood and agreed that the State assumes no obligation to indemnify or save harmless the Recipient, its agents, servants, employees, or

third party contractors for any claim which may arise out of their performance of this Agreement. Furthermore, the Recipient expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Recipient's obligations assumed in this Agreement, nor shall they be construed to relieve the Recipient from any liability, nor to preclude the State from taking any other actions as are available to it under any other provisions of this Agreement or otherwise at law.

c. The Recipients obligations in this paragraph "10. INDEMNIFICATION" shall survive the term of this Agreement.

11. AUDITS AND INSPECTION OF RECORDS

a. This grant is covered by the audit requirements of the Department of the Treasury Circular Letter 15-08-OMB, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid.

b. During regular business hours, the Recipient shall make available to the auditors of the State the records of the Project which is the subject of this Agreement.

c. The Recipient shall keep all records for a period not less than ten (10) years following the Recipient's notification of Project close-out from the State. Any records which are the subject of an auditing dispute shall be kept by the Recipient until the dispute of this grant agreement is resolved or the expiration of ten (10) years from the State's close-out, whichever is later.

12. TERMINATION OF PROJECT

a. If the Recipient terminates the Project at any time prior to completion of all work specified in Exhibit A, the State will only be liable for the State's share **90%** of the eligible cost actually expended as of the date of notification by the Recipient of Project termination.

b. The State shall have the right to terminate the Project and this Agreement for any material breach of this Agreement and to cancel the assistance provided, in whole or in part, at any time prior to the date of completion of the Project. The State shall have the right to request the balance of State funds not yet expended and/or seek reimbursement for State funds expended that were not in compliance with the terms and conditions of this Agreement.

13. ENFORCEMENT

a. Remedies for Noncompliance

If the Recipient fails to comply with any term or condition of this Agreement the State may take one or more of the following actions:

i. Temporarily withhold cash payments pending correction of the deficiency by the Sponsor.
ii. Disallow all or part of the cost of the activity or action not in compliance.
iii. Wholly or partly suspend or terminate the current grant award.
iv. Withhold further grant awards for the program or apply more stringent terms to future grant awards.
v. Require the return of grant funds paid to Recipient.

vi. Take other remedies that may be legally available.

b. Effects of Suspension and Termination

Costs incurred by the Recipient, resulting from obligations incurred by the Recipient during a suspension or after termination of an award, are not allowable to be applied against the grant unless the Department expressly authorizes them in the notice of suspension, termination or subsequently.

c. Relationship to Debarment and Suspension

The enforcement remedies identified in this Section, including suspension and termination, do not preclude the Recipient from being subject to State debarment and suspension procedures.

14. COMPLETION OF PROJECT

a. The State may require a meeting with the Recipient when the Project is between 70% and 90% complete, as determined by the Recipient, in order to review Project status and/or documentation required by this Agreement, in preparation for project close-out.

b. When the Recipient believes the Project is complete it will submit written notice to the State. The State will perform a final inspection of the Project within 45 working receiving notice from the Recipient that the Project has been completed or terminated and within 10 days of any subsequent requests (if any) by the Recipient for additional inspections.

c. The State will deem the Project complete upon:

i. The State's Contract Manager's receipt of a Certification of a Professional Engineer licensed by the State of New Jersey or a Federal Railroad Administration (FRA) certified track inspector that the Project has been completed in accordance with the Scope of Work contained in Exhibit A and applicable industry standards, and/or

ii. Proven completion of work upon Final Inspection.

d. The State will notify the Recipient in writing when it deems the Project to be complete.

15. FINAL PAYMENT

a. A final voucher containing the release clause and certification set forth below shall be sent to the Department within 45 days after the notification of completion referenced in Section 14, Subsection d of this Agreement. The Project will be considered closed and disposition of any remaining monies will be accomplished if the final voucher is not received within the 45 day filing period.

i. The release clause and certification shall be signed by an authorized representative of the Recipient and read as follows:

"In consideration of the requested final payment, the **County of Salem** hereby releases and gives up any and all claims the **County of Salem** may have, now or in the future, against the New Jersey Department of

Transportation and the State of New Jersey, their officers and employees, arising out of any and all obligations assumed and work performed under **Agreement No. 7106311,** including claims for Extra or Additional Work.

The **County of Salem** hereby certifies that its **10%** share of the cost of the Project has been paid to any and all subcontractors or expended on the **County of Salem**'s forces performing work on the Project, and that all State funds which it has received have been paid to any and all third party contractors and/or vendors or expended on the **County of Salem**'s forces performing work on the Project."

b. The scrap value for any rail or other track materials replaced, removed, or recovered as a result of work done under this Agreement shall be identified in writing by the Recipient to the State. The State will reach an accord with the Recipient as to the net value of any such materials, which will then be subtracted from the total cost of the Project. This net Project cost will then be factored in to the payment(s) by the State and reflected in the final voucher set forth in Subsection a. above. If the scrap value exceeds the amount owed to the Recipient at the completion of the Project, the Recipient shall reimburse the State for the difference.

16. FINANCIAL MANAGEMENT SYSTEM

a. The Recipient shall be responsible for maintaining an adequate financial management system and will immediately notify the Department when the Recipient cannot comply with the requirements established in this Section of the grant.

b. The person responsible for the financial management of the Project shall be one in the same as the person identified in the Recipient's Eligibility Assessment.

c. The Recipient's financial management system shall provide for:

1. Financial Reporting: Accurate, current, and complete disclosure of the financial results of each grant in conformity with generally accepted principles of accounting, and reporting in a format that is in accordance with the financial reporting requirements of the grant.

2. Accounting Records: Records that adequately identify the source and application of funds for Department supported activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures and income.

3. Internal Control: Effective internal and accounting controls over all funds, property and other assets. The Recipient shall adequately safeguard all such assets and assure that they are used solely for authorized purposes.

4. Budget Control: Comparison of actual expenditures or outlays with budgeted amounts for each grant. Also, the relationship of the financial information with performance or

productivity data, including the development of unit cost information required by the Department.

5. Allowable Cost: Procedures for determining reasonableness, allowability, and allocability of costs generally consistent with the provisions of State requirements.

6. Source Documentation: Accounting records that are supported by source documentation.

7. Cash Management: Procedures to minimize the time elapsing between the advance of funds from the Department and the disbursement by the Recipient, whenever funds are advanced by the Department.

c. The Department may require the submission of a Statement of Adequacy of the Accounting System.

d. A Department may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-grant award review or at any time subsequent to the grant award. If the Department determines that the Recipient's accounting system does not meet the standards described in paragraph B above, additional information to monitor the grant may be required by the Department upon written notice to the Recipient, until such time as the system meets with Department approval. Failure to comply with any requirements imposed by the Department may result in termination or suspension of this Agreement.

17. CONTINUATION OF RAIL FREIGHT SERVICE

a. The Recipient agrees to provide common carrier rail freight service for a period of no less than ten (10) years utilizing the rail facilities or right-of-way that is the subject of this Agreement. The first day of this ten (10) year period shall be the day that the State provides written notification to the Recipient that the State has accepted the Project as complete under the provisions of this Agreement.

b. In the event that the Recipient files a petition with the United States Surface Transportation Board (STB) or its successor agency for a suspension of service within the limits of the Project within the ten (10) year period, the Recipient shall provide the State written notice of the petition and its STB docket number. The Recipient shall also provide the State written notice of the issuance of the STB's Decision on the petition. If the STB grants the petition, and service is suspended, the State will suspend the timeline of the ten (10) year duration to coincide with the duration of the suspension of service.

c. In the event that the Recipient files a petition with the STB for abandonment of service within the Project limits within the ten (10) year period, the Recipient shall provide the State written notice of the petition and its STB docket number. The Recipient shall also provide the State written notice of the issuance of the STB's Decision on the petition. If the STB grants the petition and service is abandoned, the Recipient shall reimburse the State an amount calculated using the following schedule:

Period During Which	Percent of Project

Cessation of Rail Freight Service Occurs	Cost Funded by State Due for Reimbursement
Day 1 through 365	100%
Day 366 through 730	90%
Day 731 through 1095	80%
Day 1096 through 1460	70%
Day 1461 through 1825	60%
Day 1826 through 2190	50%
Day 2191 through 2555	40%
Day 2556 through 2920	30%
Day 2921 through 3285	20%
Day 3286 through 3650	10%

Reimbursement of any monies defined under this Section shall be payable to the State on or before the 30th day after the cessation of common carrier rail freight services. The Recipient further agrees that the total value of all materials and the railroad improvements (excluding real estate) rehabilitated, reconstructed or constructed as a result of this Agreement, to the extent that such materials and the railroad improvements have been funded or supplied by the State, are pledged as a guarantee to satisfy the payment of the obligations of the Recipient under the terms of this Section.

d. The State may record a lien against the property in the amount of the full value of the improvements made to the property as a guarantee that the Recipient, or owner of the property if other than the Recipient, will cause or use its best efforts to cause common carrier rail freight service to be provided using the rail facilities or right-of-way that is the subject of assistance for a period of no less than ten (10) years from the date the State provides written notification of acceptance of the funded project as complete.

e. The Recipient must assure compliance with applicable State requirements and that performance goals are being achieved. Recipient monitoring must cover each project, function or activity to monitor performance under grant supported activities to assure time schedules and objectives are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved as applicable.

18. ASSURANCE OF CONTINUED MAINTENANCE

a. The Recipient agrees to maintain or cause to be maintained the rail facilities rehabilitated, reconstructed or constructed under this Agreement for at least ten (10) years from the date of the State's acceptance of such work. If the Project is terminated prior to completion of the work specified in Exhibit A, the Recipient agrees to maintain or cause to be maintained the improvements made as a direct result of this Agreement in safe operating condition for a period of ten (10) years from the date of Project termination.

b. In the event the Recipient files a petition with the STB for a suspension of service within the limits of the Project within the ten year period, the timeline of the ten year period shall also be suspended to coincide with the suspension of service, and will resume with the resumption of service.

19. STATE GRANT REQUIREMENTS

The Recipient hereby agrees to comply with all applicable State and Federal laws and regulations and policies which include, but are not limited to the Americans With Disabilities Act and those listed below. In addition, the Recipient, and its staff, contractors and consultants, shall comply with the laws, regulations and policies listed below to the same extent as if the Recipient were a vendor or contractor to the State:

a. New Jersey Department of Transportation Code of Ethics for Vendors (Appendix B)
b. New Jersey Law Against Discrimination (Appendix A)
c. All applicable election and conflict of interest laws and regulations.
d. Prevailing wage rates, as determined by the New Jersey Department of Labor, will apply on this project. When soliciting work to be performed under this Agreement from a consultant or third party contractor, the Recipient shall notify each such consultant or third party contractor of the foregoing provisions and shall include these provisions and copies of Appendices in all agreements with consultants or third party contractors.

Failure to comply with these laws, rules and regulations may be grounds for termination of this grant in the Department's sole discretion.

20. THIRD PARTY BENEFICIARY

It is specifically agreed by the parties hereto that this Agreement is not intended by any of the provisions hereof or of any other document to create in the public, or any person whomsoever, a third party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage or for loss, damage or delay of cargo or shipment by reason of, or under the terms or provisions of, this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain solely as imposed by law.

21. WARRANTY

Recipient and State hereby covenant and warrant to each other that: (i) it has full right, power and authority to execute this Agreement; (ii) the execution and delivery of this Agreement, and the performance of its obligations hereunder, have been duly authorized by all necessary corporate or other actions and do not violate any provision of law or any organization and internal governance documents; and (iii) this Agreement constitutes its legal, valid and binding obligation.

22. APPLICABLE LAW

This Agreement shall be construed in accordance with and shall be governed by the laws of the State of New Jersey.

23. NOTICE

a. All Recipient and Project related personnel shall be maintained and up-to-date in the Recipient's Eligiblity Assessment Form as maintained in the State's System for Administering Grants Electronically (SAGE).

b. Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by the Agreement to be made upon, given or furnished to, or filed with one party by another party shall be in writing and shall be delivered by hand or by deposit in the first class mails of the United States, postage prepaid, in an envelope addressed as follows:

If to the State:

Nicole Minutoli
Director
Division of Multimodal Services
New Jersey Department of Transportation
1035 Parkway Avenue, PO Box 600
Trenton, NJ 08625-0600

If to the Recipient:

Diana D. Ford
Chief of Administrative Services
County of Salem
110 Fifth Street
Salem, NJ 08079

Each party to the Agreement may re-designate the recipient or change the address of the recipient of notifications hereunder by notifying the other party to this Agreement of such change in writing delivered in accordance with the requirements of this Section.

24. EFFECTIVE DATE

This Agreement shall not become binding on either party until it is executed by or on behalf of the Commissioner of Transportation.

25. ENTIRE AGREEMENT

a. This Agreement constitutes the entire agreement between the parties and supersedes all prior Agreements, whether written or oral. Division of the Agreement into Sections is for convenience only and should not be construed to affect construction thereof.

b. This Agreement may not be modified except by the written agreement of both parties.

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Project: FY2022 Railroad Improvements
Recipient: County of Salem
Agreement No.: 7106311
Contract ID: 22-35316

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

WITNESS:

BY _____ 7/20/22
DATE

County of Salem

BY _____ 7/20/22
DATE

Benjamin H. Laury
County Commissioner Director

WITNESS:

BY: _____
Anika James
Secretary
Department of Transportation

DATE: 9/9/22

STATE OF NEW JERSEY,
Department of Transportation

BY: _____
~~**Michael Russo**~~ Elkins Green
Acting Assistant Commissioner
Planning, Multimodal and Grants
Administration

DATE: 9/9/22

This Agreement has been reviewed and approved as to form.

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

BY: _____
David Kahler
Deputy Attorney General

DATE: 7/26/22

APPENDIX A

NONDISCRIMINATION

During the performance of this Agreement, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT"), agrees as follows:

1. Compliance with Regulations: The CONSULTANT will comply with Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49. Code of Federal Regulations, Part 21 through Appendix H, and Title 23CFR Part 710.405(b), hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Agreement.
2. Nondiscrimination: The CONSULTANT, with regard to the work performed by it after award and prior to completion of the work, will not discriminate on the basis of race, color, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or equipment, such potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, age, sex or national origin.
4. Information and Reports: The CONSULTANT will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the State or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the STATE shall impose such sanctions as are appropriate and available under the laws of the STATE.
6. Incorporation of Provisions: The CONSULTANT will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instructions, issued pursuant thereto.
7. This Agreement is subject to all federal, state, and local laws, rules, and regulations, including, but not limited to, those pertaining to non-discrimination in employment and affirmative action for equal employment opportunity.
8. If at any time following the execution of this Agreement, the CONSULTANT intends to sublet any additional portion(s) of the work or intends to purchase materials or lease equipment not contemplated during the original proposal preparation, the CONSULTANT shall:
   a. Notify the project initiator, in writing, of the type and approximate value of the work which the CONSULTANT intends to accomplish by such subcontract, purchase order or lease.
   b. Give DBE firms equal consideration with non-minority firms in negotiations for any such subcontracts, purchase orders or leases.

APPENDIX B

NJDOT CODE OF ETHICS FOR VENDORS

1. No vendor* shall employ any NJDOT officer or employee in the business of the Vendor or professional activity in which the vendor is involved with the Department officer or employee.
2. No vendor shall offer or provide any interest, financial or otherwise, direct or indirect, in the business of the vendor or professional activity in which the vendor is involved with the Department officer or employee.
3. No vendor shall cause or influence, or attempt to cause or influence any NJDOT employee or officer in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that NJDOT officer or employee.
4. No vendor shall cause or influence, or attempt to cause or influence, any NJDOT officer or employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that vendor or for any other person.
5. No vendor shall offer any NJDOT officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonable inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. In addition, employees or officers of NJDOT will not be permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events or any other item which could be construed as having more than nominal value.
   NOTE: This section would permit an NJDOT employee or officer to accept food or refreshments of relatively low monetary value provided during the course of a meeting, conference or other occasion where the employee is properly in attendance (for example—coffee, danish, tea or soda served during a conference break). Acceptance of unsolicited advertising or promotional materials of nominal value (such as inexpensive pens, pencils or calendars) would also be permitted.
   Any questions as to what is or is not acceptable or what constitutes proper conduct for a Departmental employee or officer should be referred to the Department's Ethics Liaison Officer or his or her designee.
6. This code is intended to augment, not to replace, existing administrative orders and the current Departmental Code of Ethics.
7. This code shall take effect immediately upon approval of the N.J. Executive Commission on Ethical Standards and adoption by the NJDOT.

* Vendor is defined as any general contractor, subcontractor, consultant, person, firm, corporation or organization engaging in or seeking to do business with NJDOT.

Rail Freight Assistance Program 2022
RAIL-2022-Salem County-022
Applicant Eligibility Assessment Form

Exhibit A
Application

Instructions:

Download the Sponsor Assessment Form here.
Fill out the form, and save it to your local files.
Then upload the document into the field below.
https://njsage.intelligrants.com/_Upload/2104242_1668275-DOT_Sponsor_Assessment.pdf

Download the document here for instructions on how to fill out your Assessment form.

Additional Documentation:

Organization Chart	https://njsage.intelligrants.com/_Upload/2104242_1668276-2019OrganizationalChart.DOT.RailroadEligibilityAssessment.pdf
Overview map of the owned and /or operated railroad system	https://njsage.intelligrants.com/_Upload/2104242_1668277-SalemRROverallMap-Alaimo01-06-2017.pdf
Number of customers served for each segment of rail line utilized in NJ	https://njsage.intelligrants.com/_Upload/2104242_1668278-OperationsNarrative.pdf
Description of administrative grant management system processes	https://njsage.intelligrants.com/_Upload/2104242_1668279-Descriptionofadministrativegrantmanagementsystemprocesses.pdf
Typical financial oversight and accounting procedures	https://njsage.intelligrants.com/_Upload/2104242_1668280-Descriptionofadministrativegrantmanagementsystemprocesses.pdf
Written financial management & operational oversight procedure	https://njsage.intelligrants.com/_Upload/2104242_1668281-2017-Single-Audit-compressed.pdf
Typical operational/construction oversight procedure	https://njsage.intelligrants.com/_Upload/2104242_1668282-Typicaloperational-constructionoversightprocedure.pdf
How inspection staff are hired and trained?	https://njsage.intelligrants.com/_Upload/2104242_1668283-Howinspectionstaffarehiredandtrained.pdf
How does Project Manager oversee multiple projects at the same time?	https://njsage.intelligrants.com/_Upload/2104242_1668284-HowdoesProjectManageroverseemultipleprojectsatthesametime.pdf
List of projects for which RFAP funding was requested in last 5 yrs	https://njsage.intelligrants.com/_Upload/2104242_1668285-ListofprojectsforwhichRFAPfundingwasrequestedinlast5yrs.pdf

Typical procurement mechanism to formalize the contractual relationship	https://njsage.intelligrants.com/_Upload/2104242_1668286-Typicalprocurementmechanismtoformalizethecontractualrelationship.pdf
How a determination is made to do project with bid vs. in-house forces	https://njsage.intelligrants.com/_Upload/2104242_1668287-Howadeterminationismadetodoprojectwithbidvs.in-houseforces.pdf
Mechanism used to bid and procure construction services	https://njsage.intelligrants.com/_Upload/2104242_1668288-Mechanismusedtobidandprocureconstructionservices.pdf
Salem County Federal Aid Handbook	https://njsage.intelligrants.com/_Upload/2104242_1668290_3-SalemCountyFederalAidHandbook.REVISIONS.2019.doc.pdf

Authorized By:

Name of Authorized Owner/Operator	Diana Ford
Title:	Agency Administrator
Date:	9/6/2019

Office of Grants Management Staff Only

[✓] The submitted Applicant Eligibility Assessment Form is valid and current.

Reviewed By:	Nusrat Jahan
Title:	Grants Manager
Date:	10/18/2019

[✓] The submitted Applicant Eligibility Assessment Form is valid and current.

Approved By:	Bhavin Kapadia
Title:	Grants Manager
Date:	10/21/2019

Program Applicability

Does the project meet the following criteria?

Significant to modal connectivity in the Port of NJ/NY and or Terminals along the Delaware River	(✔) Yes	( ) No
Adds or increases connectivity to provide for system fluency and efficiency	(✔) Yes	( ) No
Upgrades freight carrying/loading capacity	(✔) Yes	( ) No
Provides for projects that support a safe, efficient and effective freight rail system in New Jersey	(✔) Yes	( ) No

Please provide a brief and specific narrative that explains how the project proposal
- ·Is significant to modal connectivity in the Port of NJ/NY and or Terminals along the Delaware River,
- ·Adds or increases connectivity to provide for system fluency and efficiency,
- ·Upgrades freight carrying/loading capacity, and/or
- ·Provides for projects that support a safe, efficient and effective freight rail system in New Jersey

Is significant to modal connectivity in the Port of NJ/NY and/or Terminals along the Delaware River:

Aside from two short runaround tracks in Woodstown and one long siding at Mannington Mills, the Salem County Branch Line Railroad is a single track running from Swedesboro into the Port of Salem. The rehabilitation of the Salem Yard, together with the addition of runaround tracks at strategic locations along the rail line will provide additional infrastructure necessary to store cars for customers utilizing the Port, and enhance operational efficiency of train movements to and from the Port. Furthermore, infrastructure upgrades and security enhancements at the Salem Yard will open up the potential for development of a rail-to-truck, truck-to-rail transload facility in Salem. Although the rail line has received substantial rehabilitation in recent years, there still exist sections that require installation of new crossties and rail, most notably the Salem Yard and a section of the running track south of Route 45 in Salem, which leads directly into the Port of Salem. These sections are currently impassable.

Adds or increases connectivity to provide for system fluency and efficiency:

Fluid and efficient rail operations require more than just one track leading to a desired destination. Additional infrastructure is required for constructive placement of railcars, loading and unloading areas, and trackage that allows train crews to prepare deliveries to customers and make up trains in preparation for interchange with connecting carriers. The current infrastructure along the Salem Branch Line Railroad is substantially single track, which does not afford a rail operator the ability to take advantage of operational efficiencies such as storing railcars close to their final destination, having ample room to classify railcars according to customer and/or commodity, and be able to move a locomotive from one end of a train to the other without the need for extended shoving movements. The proposed projects being applied for in the instant application will provide additional facilities that will yield fluency and efficiency of railroad operations on the Salem line.

Upgrades freight carrying/unloading capacity:

Program Applicability

Rebuilding of the railyard in Salem will not only provide additional capacity for the storage of railcars on the southern end of the rail line, but with the enhanced security and lighting that is proposed with this project, the Salem Yard, or a portion thereof, could be used for the transloading of commodities from railcar to truck or vice versa. With the yard's proximity to the Delaware Memorial Bridge and the Port of Salem, rejuvenation of the rail infrastructure in the City of Salem would make Salem a vital link in the supply chain for commodities coming from or going into southern New Jersey, Delaware and points south.

Provides for projects that support a safe, efficient and effective freight rail system in New Jersey:

The majority of the projects for which funding assistance is requested in this application address the rehabilitation of existing rail infrastructure, which is currently in impassable condition. These areas of attention, together with improvement items such as replacement of ties and surfacing south of Welchville Road and the re-decking of the bridge over Memorial Lake in Woodstown will complete the rehabilitation of the entire line and eliminate the portions of the railroad that have not benefitted from the upkeep and maintenance that ensure that a rail operator has the safest infrastructure upon which to operate.

Applicant Information

Proposed Project Name: FY2022 Railroad Improvements

Applicant's VENDOR ID Number: 216001147-99

If you do not have a Vendor ID, you must apply for one. Form W-9/Vendor Questionnaireis available at http://www.nj.gov/treasury/omb/forms/pdf/W9.pdf. Funds cannot be disbursed/reimbursed unless a Vendor ID Number is on file with the State Treasury Accounting System.

The Applicant is a: County
Other (Specification):

The relationship of the person entering the form data to the property is: Authorized Individual
Other (Specification):

If you are not the registered property owner, please upload a letter from the owner authorizing you to advance this application for this project on their property/properties and/or alignment(s):
If you are not the registered property owner, please upload a letter from the owner authorizing you to advance this application for this project on their property/properties and/or alignment(s):
https://njsage.intelligrants.com/_Upload/2558827_1926971-2022RAILFREIGHTASSISTANCEPROGRAM-lett erauthorizingapp_-10152021090308.pdf

The deed of record is filed as owned by the following corporation/partnership/individual:
County of Salem

Please attach a legal deed or instrument verifying property ownerships including a narrative legal description of the metes and bounds of the property certified as accurate by a New Jersey registered land surveyor or professional engineer.
https://njsage.intelligrants.com/_Upload/2558827_1926972-SalemCountyRailroadDeed.pdf

[✔] I, the authorized person signing the application, has reviewed and verified that all the information supplied on this page is correct.

Rail Freight Assistance Program 2022
RAIL-2022-Salem County-022
Applicable Organization and Personnel Information

Proposed Project Name: FY2022 Railroad Improvements

Project Manager

This individual is responsible to serve as the Recipient's Authorized Contact Person and will be so referenced in the State Grant Agreement if an award is issued?

Organization/Firm: Salem County

	Prefix	First	Middle	Last	Suffix
Project Manager:	Mr.	Jeffrey		Ridgway	
Title:	County Administrator				
Address:	110 Fifth Street				
City:	Salem	State: New Jersey		Zip: 08079	
Phone #:	856-235-7510				
Phone 2 #:					
Cell #:					
Fax #:					
Email Address:	jeffrey.ridgway@salemcountynj.gov				
Website:	www.salemcountynj.gov				

Rail Freight Assistance Program 2022
RAIL-2022-Salem County-022
Project Description

Proposed Project Name: FY2022 Railroad Improvements

Brief Summary of Project:

Swedesboro Traffic Circle, Woolwich: Installation of a 1,700' runaround track.

Memorial Lake Bridge, Woodstown: Bridge redecking.

East Lake Road Runaround, Pilesgrove: Installation of a runaround adjacent to the rail line.

Welchville Road, CR #540 to 1 Mile South of Acton Station Road, CR # 653, Alloway: Light track rehabilitation.

Mannington Mills, Short Runaround: Switch rehabilitation.

Mannington Mills, Long Runaround: Runaround rehabilitation.

Mannington Mills Wye Track: Rehabilitation.

South of Route 45, Salem City: Approx. 1,500 feet of track rehabilitation.

Project Need & Justification:

The rail line runs from Swedesboro to the Port of Salem. Most of the rail line has already been rehabilitated, however portions of the track require rehabilitation, an additional runaround to proposed, and existing runarounds and the existing Salem Yard Area require rehabilitation and upgrades in order to enable the provision of reliable freight services from Swedesboro to the Port of Salem.

Swedesboro Traffic Circle, Woolwich: The installation of a runaround track near the Swedesboro Traffic Circle will facilitate interchanges between the Salem County Railroad Operator, SMS Rail Service, Inc., and Southern Rail of New Jersey.

Memorial Lake Bridge, Woodstown: The re-decking of the railroad bridge over Memorial Lake in Woodstown will enhance the safe passage of trains on the rail line.

East Lake Road Runaround, Pilesgrove:; SMS Rail Service, Inc. is in the process of purchasing a total of 92 acres straddling the railroad just south of Woodstown at East Lake and Woodstown Alloway Roads. It is the plan to develop the property into a railroad facility, a small portion of which will be utilized for the proposed passenger operations. It is anticipated that the remainder of the property will be developed into a railcar storage yard and transload facility. Initially, the runaround track will be used for railcar storage. In the future, it is intended to be used as a place for trains to pass one another.

Welchville Road, CR #540 to approximately 1 Mile West of Acton Station Road, CR # 653: The line in this area requires rehabilitation with 1,500 ties, surfacing and tamping. This area is currently jointed rail. Rehabilitation will enhance safety, improve drainage and diminish wear-and-tear on equipment and infrastructure.

Mannington Mills, Short Runaround: At Mannington Mills, the switch on the north end of the short runaround, the track was already rebuilt, but the south switch requires rehabilitation. SMS Rail Service, Inc. proposes to replace this switch utilizing a #8 switch package, which, after installation, will require surfacing and tamping. This improvement will enhance the safe passage of trains along the line.

Mannington Mills, Long Runaround: The 2,540' runaround track at Mannington Mills is currently in an unpassable condition. SMS Rail Service, Inc. proposes to rebuild this track. The switches were already replaced with the rehabilitation of the main track. However, ties, and 2,540' feet of rail will be installed, with surfacing and tamping in order to bring this track into useable condition. Rehabilitation of this track will provide SMS Rail Service, Inc. an area to store cars, as well as a place for trains to be assembled for transportation to Swedesboro for interchange.

Wye Track Rehabilitation: Just south of Mannington Mills is a Wye track, which is used to turn railcars and locomotives in the course of normal railroad operations. It is currently in an unpassable state. Rehabilitation of this track will allow the use of the Wye, as designed, and require 1 new, #8 switch, ties, and 1,400 feet of rail.

Rehabilitation South of Route 45: South of Route 45 in Salem City, the is in need of rehabilitation for approximately 1,500 feet in order to access the Port of Salem. To rehabilitate this area, SMS Rail Service, Inc. will use replacement rail, new ties where needed, tamping and surfacing.

Specific Locations (If Applicable):

Swedesboro Traffic Circle
Memorial Lake Bridge
East Lake Road Runaround
Welchville Road, CR #540 to aoorox. 1 Mile West of Acton Station Road, CR # 653
Mannington Mills, Short Runaround
Mannington Mills, Long Runaround
Mannington Mills Wye Track
South of Route 45, Salem

Project Background/History:

The Salem Branch Railroad is over 100 years old. The 18 mile rail line runs from Swedesboro to the Port of Salem. The railroad was acquired by Salem County in 1985 from Conrail and was in a state of disrepair and was unreliable to the users. Most of the rail line has been reconstructed through a combination of grants and County financing.

Funding for the various reconstruction projects has been provided by NJDOT, FRA, DRPA, CRDA. Salem County has provided the required matching funds. In addition, a TIGER grant has provided for the replacement of the Oldmans Trestle railroad bridge over Oldmans Creek, plus rehabilitation of additional rail line.

While the South Jersey Farmers Exchange is currently the only active shipper on the Line, Salem County and its rail operator, SMS Rail Service, Inc., are active participants in the South Jersey Port Corporation's ongoing study, which has the ultimate goal of revitalizing the Port in Salem, create connections between road, rail and water, and play a vital role in the development of the State of New Jersey's Clean Energy Program, more specifically as it relates to construction of offshore wind facilities. Additionally, SMS Rail Service, Inc. and the County are aggressively pursuing shippers who will receive railcars of raw materials on the southern end of the rail line, which will be transloaded to trucks for use in nearby manufacturing facilities. SMS Rail Service, Inc. is also purchasing acreage along the railroad right-of-way south of Woodstown, which will ultimately be developed into a railroad operated transload facility, including additional yard trackage for railcar storage.

Detailed Scope of Work:

From North to South, the proposed project includes the following;

Swedesboro Traffic Circle: Installation of a 1,700' runaround track starting near the High Hill/Auburn Road traffic circle in Swedesboro. This would facilitate interchanges between SRNJ and the Salem County Railroad Operator, SMS Rail Service, Inc. This would be built utilizing 1,700' of 115# rail and 2 new, #10 switches. Surfacing and tamping will be required.

Memorial Lake Bridge, Woodstown, NJ: The bridge over Memorial Lake in Woodstown needs to be re-decked. This would require 75 ties for the approaches, 25 bridge timbers, and tamping and surfacing. This work will enhance the safe passage of trains on the rail line.

East Lake Road Runaround: Initially, the new runaround track will be used for railcar storage. In the future, it can be used as a place for trains to pass one another. This additional track will utilize 1,000' of rail and 2 new switches, together with surfacing and tamping.

Welchville Road, CR #540 to approximately 1 Mile West of Acton Station Road, CR # 653: The rail line in this area requires light rehabilitation including 1,500 ties, surfacing and tamping. This area is currently jointed rail. Giving this area a light rehabilitation will enhance safety, improve drainage and diminish wear-and-tear on equipment and infrastructure.

Mannington Mills, Short Runaround: At Mannington Mills, the switch on the north-end of the short runaround track was already rebuilt, but the south switch requires rehabilitation. SMS would like to replace this switch utilizing a #8 switch package, which, after installation, will require surfacing and tamping. This improvement will also enhance the safe passage of trains along the line.

Mannington Mills, Long Runaround: The 2,540' runaround track at Mannington Mills is currently in an unpassable condition. SMS Rail Service, Inc. proposes to rebuild this track. The switches were already replaced with the rehabilitation of the main track. However, ties, and 2,540' feet of 115# rail will be installed, with the required surfacing and tamping in order to bring this track into useable condition. Rehabilitation of this track will provide SMS Rail Service, Inc. an area to store cars, as well as a place for trains to be assembled for transportation to Swedesboro for interchange.

Rail Freight Assistance Program 2022
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Project Description

Wye Track Rehabilitation: Just south of Mannington Mills is a Wye track, which is used to turn railcars and locomotives in the course of normal railroad operations. It is currently in an unpassable state. Rehabilitation of this track will allow the use of the Wye, as designed, and require 1 new, #8 switch, ties, and 1,400 feet of 115# rail.

Rehabilitation South of Route 45: South of Route 45 in Salem City, the railroad requires rehabilitation for approximately 1,500 feet in order to access the Port of Salem. To rehabilitate this area, replacement of rail, replacement of ties, tamping and resurfacing are proposed.

Does this project require any federal/state or local permits?
( ) Yes (✔) No

If yes, what is the status of federal/state or local permits?

Project Duration in Calendar Days:
730

Application Priority:

If you will be submitting more than one application for this program for the current fiscal year, please indicate the priority of the current application, with 1 being the highest and 2 being the lowest:

Project Location

Proposed Project Name: FY2022 Railroad Improvements

Length of the Proposed Project: 23840 (✔) Feet ( ) Miles

Rail Customers Served by the Proposed Project: 1

Name of Proposed Project's Rail Alignment: Salem County Railroad
(e.g. "Port Reading Secondary", "Rahway Valley Line", etc.)

Proposed Project's Begin and End Latitude and Longitude:

[ ] Unknown

	Latitude			Longitude		
	D°	M'	S"	D°	M'	S"
Begin	39	44	32.00	75	19	4.00
End	39	34	35.00	75	28	5.00

North is positive; South is negative; East is positive; West is negative

Proposed Project's Beginning and Ending Mileposts: [ ] N/A Beginning Milepost: 10.88 Ending Milepost: 28.35

Comments:
The project includes various locations along the route of the railroad. Please refer to the Project Location Map and Project Description.

Please check this box if the project is statewide [ ]

County to filter by:
Gloucester County
Salem County

Municipalities, sectioned by above selected County/Counties: Swedesboro Borough

Congressional District #	Congressional Representative
2	Jeff Van Drew

Legislative District #
3

Project Location

To view information about Congressional Districts click here.

Proposed Project Name: FY2022 Railroad Improvements

Municipality:

Block Number:

Lot Number 1:
Lot Number 2:
Lot Number 3:
Lot Number 4:
Lot Number 5:
Lot Number 6:
Lot Number 7:
Lot Number 8:
Lot Number 9:
Lot Number 10:

Additional Site Locations

Is this page applicable? No
If this is not applicable, select **No** and click the **Save/Next** button

Site Name
Address 1
Address 2
City **State** New Jersey
Zip
Phone **Email**

Project Reference Point

Degrees-Minutes-Seconds (DMS) to Decimal Degrees (DD)

Input Latitude in DMS			Output Latitude in DD	Output Longitude in DD			Output Longitude in DD
D°	M'	S"		D°	M'	S"	
			0				0

Decimal Degrees (DD) to Degrees-Minutes-Seconds (DMS)

Input Latitude in DD	Output Latitude in DMS			Input Longitude in DD	Output Longitude in DMS		
	D°	M'	S"		D°	M'	S"
	0	0	0.00		0	0	0.00

Rail Freight Assistance Program 2022
RAIL-2022-Salem County-022
Total Estimated Cost of Improvement

Proposed Project Name: FY2022 Railroad Improvements

Eligible Costs:

Construction Inspection/Supervision	$52,882.60
Construction Management	$52,882.60
Construction Services	$0
Construction Costs	$2,644,129.97
Land Acquisitions/Easments	$0
Design	$52,882.50
Material Testing	$0

Ineligible Costs:

Environmental Remediation	$0
Permitting Fees	$0
Legal Fee	$0
Administrative Expenses	$0
Independent Fee Estimate (IFE)	$0
Travel, Meals and Lodging	$0
Advertisement	$0
Contingency	$0

Salvage Value:

Value of scrap material	$24,999.89

Total Project Cost:	$2,802,777.67
Total Ineligible Project Costs:	$0
Total Eligible Project Costs:	$2,777,777.78
Sponsor Share:	$302,777.67

State Share of Eligible Project Costs: $2,500,000.00

Railroad Class: Class III

Supporting Photographs: Swedesboro Traffic Circle Runaround

NOTE: SAGE allows a maximum of 13MB of files to be uploaded each time you click SAVE. It is advised to SAVE after each file you select to upload.

(Supporting Photographs are to be provided with your submission of this Application to NJDOT Multimodal Grants and Programs. Electronic copies of all Supporting Photographs should be in Portable Document Format (PDF) and attached to below. Please submit a MAXIMUM of ten (10) Supporting Photographs per Application.)

Proposed Project Name: FY2022 Railroad Improvements

1. **Description** Swedesboro Traffic Circle Runaround
https://njsage.intelligrants.com/_Upload/2567941_1927104_1-2022NJDOTRFAPPhoto-SwedesboroRunaround.pdf

2. **Description** Memorial Lake Bridge Rehabilitation
https://njsage.intelligrants.com/_Upload/2567941_1927102-2022NJDOTRFAPPhoto-MemorialLakeBridge.pdf

3. **Description** East Lake Road Runaround
https://njsage.intelligrants.com/_Upload/2567941_1927100-2022NJDOTRFAPPhoto-EastLakeRoadRunaround.pdf

4. **Description** Welchville Road to West of Acton Station Road
https://njsage.intelligrants.com/_Upload/2567941_1927098-2022NJDOTRFAPPhoto-WelchvilleRoadtoWestofActonStationRoad.pdf

5. **Description** Mannington Mills Short Runaround
https://njsage.intelligrants.com/_Upload/2567941_1927096-2022NJDOTRFAPPhoto-ManningtonMillsShortRunaround.pdf

6. **Description** Mannington Mills Long Runaround
https://njsage.intelligrants.com/_Upload/2567941_1927094-2022NJDOTRFAPPhoto-ManningtonMillsLongRunaround.pdf

7. **Description** Mannington Mills Wye Track Rehabilitation
https://njsage.intelligrants.com/_Upload/2567941_1927092-2022NJDOTRFAPPhoto-ManningtonMillsWyeTrackRehabilitation.pdf

8. **Description**

9. **Description** Track Rehabilitation South of Route 45
https://njsage.intelligrants.com/_Upload/2567941_1926968-2022NJDOTRFAPPhoto-SouthofRoute45.pdf

Supporting Photographs: Swedesboro Traffic Circle Runaround

10. **Description**

Proposed Project Name: FY2022 Railroad Improvements

Project Location Map

https://njsage.intelligrants.com/_Upload/2567330_1926981-SalemCountyRailroadProjectLocationMap.pdf

Design Plans (if applicable)

Specifications

Detailed Cost Estimate with Unit Price

https://njsage.intelligrants.com/_Upload/2567330_1926978-FY2022RFAPCostEstimate-6-23-22.pdf

Railroad Class Certification

https://njsage.intelligrants.com/_Upload/2567330_1926976-RailroadClassification.pdf

Project Delivery Schedule

https://njsage.intelligrants.com/_Upload/2567330_1926977-FY2022RFAPSalemCountyProjectSchedule.pdf

Description
https://njsage.intelligrants.com/_Upload/2567330_1926983-AMENDED2022RFAPProposal.pdf
Description Aerial Photo Maps of Project Locations

Government Agency Issue Disclosure: 1

At any time during the past ten (10) years, has the applicant been fined, paid a fine, or otherwise paid to settle allegations made by any agency of government regarding any of the following: environmental laws; laws governing wages, hours or labor standards; laws governing New Jersey's State Grant Programs; state and federal tax laws; and / or any law indicating a lack of business integrity or honesty?

If so, provide an explanation for each instance in the box below (provide as much detail as possible):

No issues to declare: [✓]

Issue Subject:

Issue Summary:

Issue Resolution Date:

Previous Grant Disclosure: 1

At any time, has the applicant received a state grant or any other type of government funding for project work in the same location that the current application covers?

No grants or any other type of government funding to declare: [✔]

Grant / Project Identification:

Detailed Grant / Project Summary:

Project Cost:

Project End Date:

Rail Freight Assistance Program 2022
RAIL-2022-Salem County-022
Grade Crossings within Proposed Projects

Is this page applicable? No
If this is not applicable, select No and click the **Save/Next** button

Railroad	Route Identifier/Highway Name/Roadway Name	Railroad Milepost (MP to MP)	County / Municipality	Last Crossing Surface Upgrade / Update	Comments

Rail Freight Assistance Program 2022
RAIL-2022-Salem County-022
Applicant Submission Certification

Instructions

- This page should not be completed until all work on the Grant Application has been completed.
- Your electronic application is not considered filed until receipt of the following signed documents:
    - Critical Path Method (CPM) Schedule
    - Detailed Cost Estimate signed by a professional engineer licensed to practice engineering in New Jersey must accompany this application as it will be part of the review process. A package containing complete contract documents, comprised of: Final Plans, Specifications and Detailed Cost Estimates will be required prior to execution of agreement.
    - Corporate grantees shall attach a duly adopted corporate resolution designating the person(s) authorized to execute this Agreement and bind the corporation. The corporate Secretary shall affirm that such resolution is in full force and effect as of the date executed and shall attest to the execution of and affix the corporate seal to this Agreement. Partnership grantees shall have all partners sign the Agreement or have the Agreement signed by one partner, provided documents are attached which authorize that one partner to bind all partners; all signatures shall be witnessed. For Sole Proprietorship grantees, the sole proprietor shall execute this Agreement with the execution notarized, notarization to be attached. Joint Venture grantees shall follow the execution procedure applicable to each of the joint ventures.
    - A Design Certification signed by a professional engineer licensed to practice engineering in New Jersey.
    - A current Certificate of Liability Insurance.
    - A signed copy of the Submission Certification Form.

- You may be required to present the details of your proposed project in person to the NJDOT Office of Grants Management.

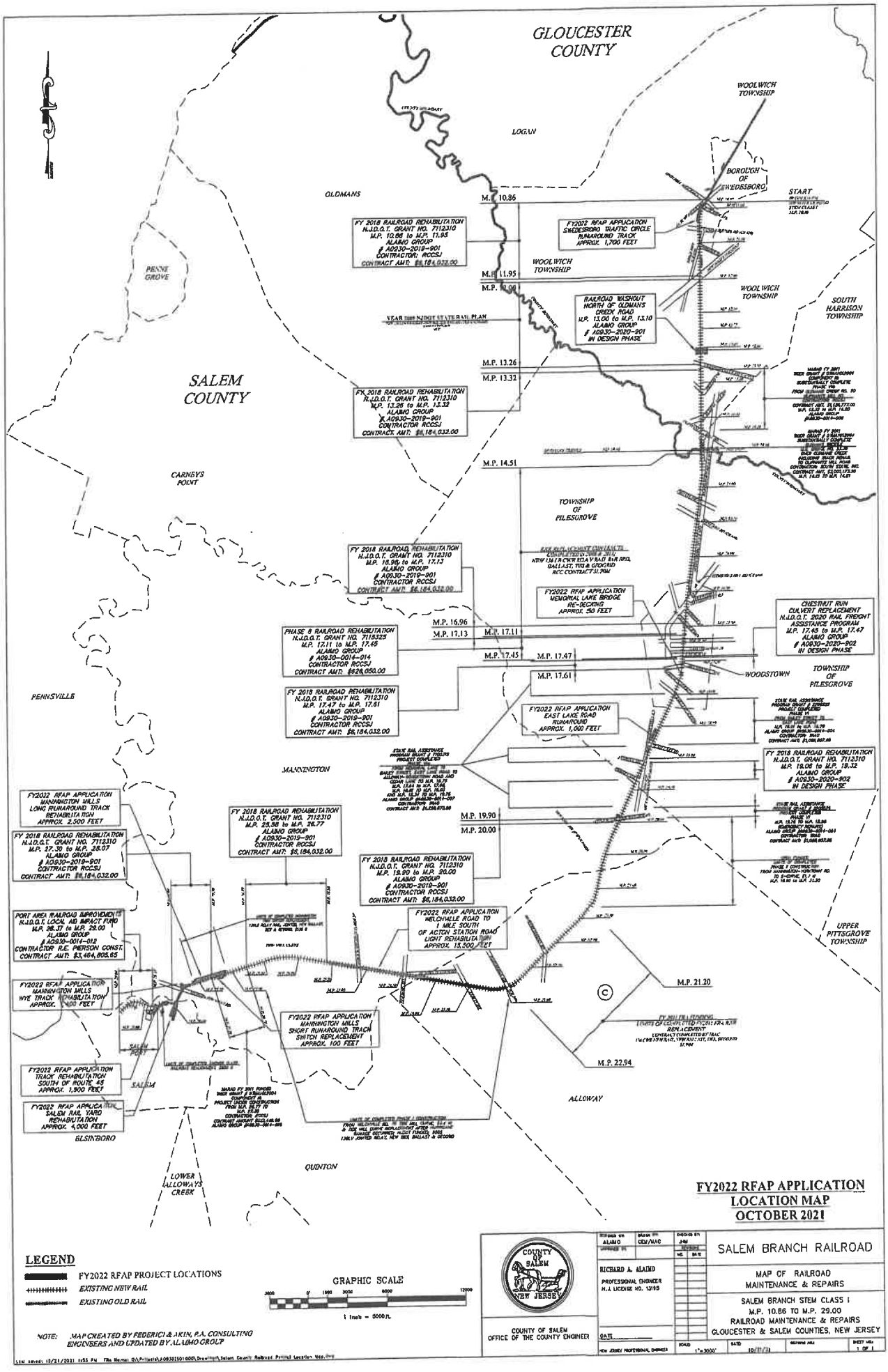
- The Applicant Submission Certification Form must be printed, signed by the applicant's Authorized Representative, within 30 days of your application submission date to:

By mail:
New Jersey Department of Transportation
Division of Multimodal Services
Office of Grants Management
PO Box 600
Trenton, NJ 08625-0600

By commercial carrier:
New Jersey Department of Transportation
Division of Multimodal Services
Office of Grants Management
1035 Parkway Ave.
Trenton, NJ 08618

Rail Freight Assistance Program 2022
RAIL-2022-Salem County-022
Applicant Submission Certification

Applicant	NJDOT	
Date Mailed	Date Received	Date Reviewed


GLOUCESTER COUNTY
SALEM COUNTY
WOOLWICH TOWNSHIP
LOGAN
OLDMANS
BOROUGH OF WOODBURY
START
M.P. 10.86
FY 2018 RAILROAD REHABILITATION N.J.D.O.T. GRANT NO. 7112310 M.P. 10.86 to M.P. 11.95 ALAMO GROUP # A0930-2019-901 CONTRACTOR: RCCSJ CONTRACT AMT: $6,184,032.00
FY2022 RFAP APPLICATION SWEDESBORO TRAFFIC CIRCLE RUNAROUND TRACK APPROX. 1,700 FEET
M.P. 11.95
WOOLWICH TOWNSHIP
M.P. 12.90
RAILROAD WASHOUT NORTH OF OLDMANS CREEK ROAD M.P. 13.00 to M.P. 13.10 ALAMO GROUP # A0930-2020-901 IN DESIGN PHASE
SOUTH HARRISON TOWNSHIP
PENNS GROVE
M.P. 13.26
M.P. 13.32
FY 2018 RAILROAD REHABILITATION N.J.D.O.T. GRANT NO. 7112310 M.P. 13.26 to M.P. 13.32 ALAMO GROUP # A0930-2019-901 CONTRACTOR RCCSJ CONTRACT AMT: $6,184,032.00
CARNEYS POINT
M.P. 14.51
TOWNSHIP OF PILESGROVE
FY 2018 RAILROAD REHABILITATION N.J.D.O.T. GRANT NO. 7112310 M.P. 15.96 to M.P. 17.13 ALAMO GROUP # A0930-2019-901 CONTRACTOR RCCSJ CONTRACT AMT: $6,184,032.00
FY2022 RFAP APPLICATION MEMORIAL LAKE BRIDGE RE-DECKING APPROX. 250 FEET
CHESTNUT RUN CULVERT REPLACEMENT N.J.D.O.T. 2020 RAIL FREIGHT ASSISTANCE PROGRAM M.P. 17.45 to M.P. 17.47 ALAMO GROUP # A0930-2020-902 IN DESIGN PHASE
M.P. 16.96
M.P. 17.13
M.P. 17.11
PHASE 8 RAILROAD REHABILITATION N.J.D.O.T. GRANT NO. 7113325 M.P. 17.11 to M.P. 17.45 ALAMO GROUP # A0930-2014-014 CONTRACTOR RCCSJ CONTRACT AMT: $824,050.00
M.P. 17.45
M.P. 17.47
WOODSTOWN
TOWNSHIP OF PILESGROVE
M.P. 17.61
FY 2018 RAILROAD REHABILITATION N.J.D.O.T. GRANT NO. 7112310 M.P. 17.47 to M.P. 17.61 ALAMO GROUP # A0930-2019-901 CONTRACTOR RCCSJ CONTRACT AMT: $6,184,032.00
PENNSVILLE
FY2022 RFAP APPLICATION EAST LAKE ROAD RUNAROUND APPROX. 1,000 FEET
FY 2018 RAILROAD REHABILITATION N.J.D.O.T. GRANT NO. 7112310 M.P. 19.06 to M.P. 19.32 ALAMO GROUP # A0930-2020-902 IN DESIGN PHASE
MANNINGTON
FY2022 RFAP APPLICATION MANNINGTON MILLS LONG RUNAROUND TRACK REHABILITATION APPROX. 2,500 FEET
FY 2018 RAILROAD REHABILITATION N.J.D.O.T. GRANT NO. 7112310 M.P. 25.98 to M.P. 26.77 ALAMO GROUP # A0930-2019-901 CONTRACTOR RCCSJ CONTRACT AMT: $6,184,032.00
M.P. 19.90
M.P. 20.00
FY 2018 RAILROAD REHABILITATION N.J.D.O.T. GRANT NO. 7112310 M.P. 27.30 to M.P. 28.07 ALAMO GROUP # A0930-2019-901 CONTRACTOR RCCSJ CONTRACT AMT: $6,184,032.00
FY 2018 RAILROAD REHABILITATION N.J.D.O.T. GRANT NO. 7112310 M.P. 19.90 to M.P. 20.00 ALAMO GROUP # A0930-2019-901 CONTRACTOR RCCSJ CONTRACT AMT: $6,184,032.00
PORT AREA RAILROAD IMPROVEMENTS N.J.D.O.T. LOCAL AID IMPACT FUND M.P. 28.37 to M.P. 29.00 ALAMO GROUP # A0930-2014-012 CONTRACTOR R.E. PIERSON CONST. CONTRACT AMT: $3,484,805.85
FY2022 RFAP APPLICATION WELCHVILLE ROAD TO 1 MILE SOUTH OF ACTON STATION ROAD LIGHT REHABILITATION APPROX. 13,300 FEET
UPPER PITTSGROVE TOWNSHIP
FY2022 RFAP APPLICATION MANNINGTON MILLS WYE TRACK REHABILITATION APPROX. 1,100 FEET
FY2022 RFAP APPLICATION MANNINGTON MILLS SHORT RUNAROUND TRACK SWITCH REPLACEMENT APPROX. 100 FEET
M.P. 21.20
M.P. 22.94
SALEM ROAD
SALEM
FY2022 RFAP APPLICATION TRACK REHABILITATION SOUTH OF ROUTE 45 APPROX. 1,500 FEET
FY2022 RFAP APPLICATION SALEM RAIL YARD REHABILITATION APPROX. 4,000 FEET
ELSINBORO
ALLOWAY
QUINTON
LOWER ALLOWAYS CREEK
LEGEND
FY2022 RFAP PROJECT LOCATIONS
EXISTING NEW RAIL
EXISTING OLD RAIL
GRAPHIC SCALE
1 Inch = 6000 Ft.
NOTE: MAP CREATED BY FEDERICI & AKIN, P.A. CONSULTING ENGINEERS AND UPDATED BY ALAMO GROUP
COUNTY OF SALEM NEW JERSEY
COUNTY OF SALEM OFFICE OF THE COUNTY ENGINEER
RICHARD A. ALAIMO
PROFESSIONAL ENGINEER
N.J. LICENSE NO. 13195
DATE
NEW JERSEY PROFESSIONAL ENGINEER
DESIGNED BY ALAIMO
DRAWN BY CEM/MAC
CHECKED BY JMF
SALEM BRANCH RAILROAD
MAP OF RAILROAD MAINTENANCE & REPAIRS
SALEM BRANCH STEM CLASS I
M.P. 10.86 TO M.P. 29.00
RAILROAD MAINTENANCE & REPAIRS
GLOUCESTER & SALEM COUNTIES, NEW JERSEY
SCALE 1"=3000'
DATE 10/21/21
SHEET NO. 1 OF 1
FY2022 RFAP APPLICATION LOCATION MAP OCTOBER 2021

Alaimo Group 200 High Street Mount Holly, NJ 08060	**Cost Estimate**	File No. A-0930-2501-000 Date: 6/23/2022 Contract No.:

Owner:
Salem County Board of Commissioners
110 Fifth Street
Salem, NJ 08079

Project: **FY2022 Rail Freight Assistance Program**
Salem County Railroad Rehabilitation

ITEM	DESCRIPTION	QTY		UNIT PRICE	EXTENDED PRICE
1	**Track Rehabilitation - South of Route 45**				
a.	Clearing and Grubbing	1	LS	$25,000.00	$25,000.00
b.	Demolition and disposal	1,500	LF	$20.00	$30,000.00
c.	Track Rebuild	1,500	LF	$200.00	$300,000.00
	Subtotal				**$355,000.00**
2	**Track Rehabilitation - Mannington Mills Long Runaround**				
a.	Demolition and disposal	2,540	LF	$20.00	$50,800.00
b.	Track Rebuild	2,540	LF	$200.00	$508,000.00
	Subtotal				**$558,800.00**
3	**Track Rehabilitation - Mannington Mills Short Runaround**				
a.	Demolition and disposal	1	LS	$1,000.00	$1,000.00
b.	Track Rebuild	1	LS	$70,000.00	$70,000.00
	Subtotal				**$71,000.00**
4	**Bridge Rehabilitation - Memorial Lake Railroad Bridge**				
a.	Tearout and rebuild of bridge deck timbers, 50 new ties on each	1	LS	$60,000.00	$60,000.00
b.	approach, new relay rail, and about 13 welds.				
	Subtotal				**$60,000.00**
5	**New Runaround Track - Swedesboro Roundabout**				
a.	Clearing and grubbing	1	LS	$50,000.00	$50,000.00
b.	Build new track	1,700	LF	$200.00	$340,000.00
c.	#10 Switches	2	UN	$70,000.00	$140,000.00
d.	Insertion of switches and existing tie disposal	1	LS	$40,000.00	$40,000.00
	Subtotal				**$570,000.00**
6	**New Runaround Track - East Lake Road**				
a.	Clearing and Grubbing	1	LS	$50,000.00	$50,000.00
b.	Build new track	1,000	LF	$200.00	$200,000.00
c.	#10 Switches	2	UN	$70,000.00	$140,000.00
d.	Insertion of switches and existing tie disposal	1	LS	$25,000.00	$25,000.00
	Subtotal				**$415,000.00**
7	**Track Rehabilitation - From Welchville Road to 1 Mile South to Action Station Road**				
a.	Replacement and disposal of 1500 ties	1	LS	$215,000.00	$215,000.00
	Subtotal				**$215,000.00**

Alaimo Group 200 High Street Mount Holly, NJ 08060	**Cost Estimate**	File No. A-0930-2501-000 Date: 6/23/2022 Contract No.:

Owner:
Salem County Board of Commissioners
110 Fifth Street
Salem, NJ 08079

Project: **FY2022 Rail Freight Assistance Program**
Salem County Railroad Rehabilitation

ITEM	DESCRIPTION	QTY		UNIT PRICE	EXTENDED PRICE
8	**Track Rehabilitation - Wye Rehabilitation**				
a.	Clearing and grubbing	1	LS	$24,329.97	$24,329.97
b.	Tearout and tie disposal	1	LS	$25,000.00	$25,000.00
c.	Build new track	1,400	LF	$200.00	$280,000.00
d.	#8 Turnout	1	UN	$70,000.00	$70,000.00
	Subtotal				**$399,329.97**
	Total Construction Costs				**$2,644,129.97**
	Design (2%)				**$52,882.60**
	Construction Management (2%)				**$52,882.60**
	Construction Inspection (2%)				**$52,882.60**
	Total				**$2,802,777.77**
	Note: Assistance with estimate of track materials, labor and equipment provided by SMS Rail Services, Inc.				

EXHIBIT M












NH 7655
NEW HAVEN

EXHIBIT N



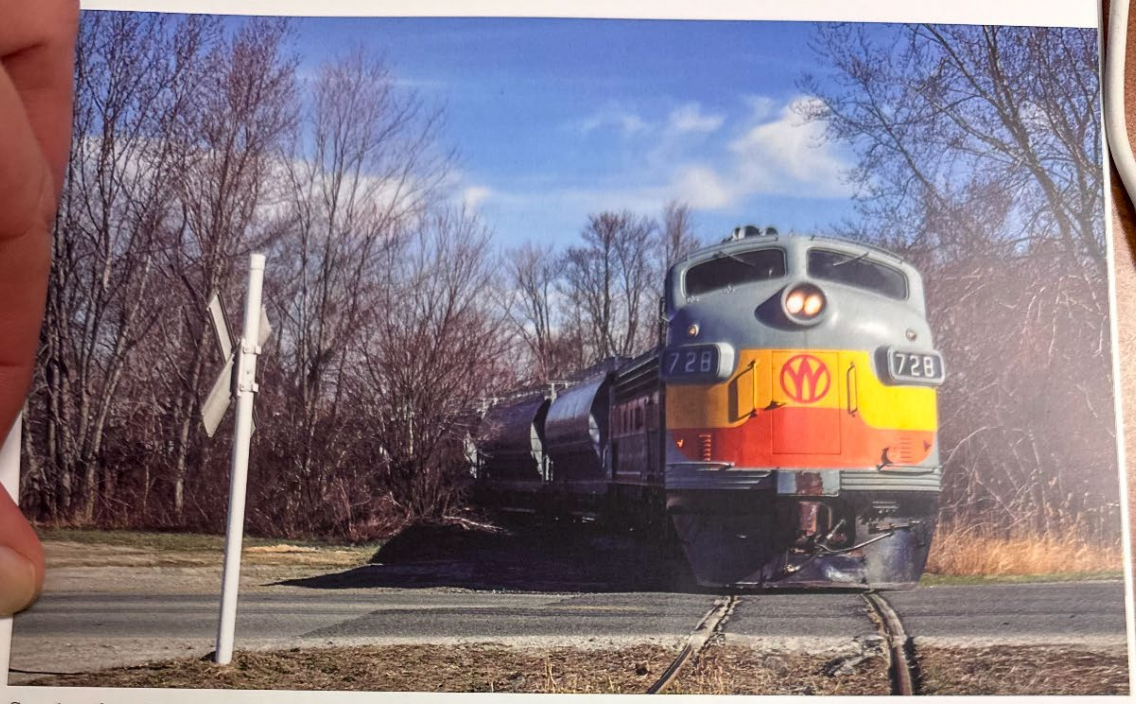
EXHIBIT O




HITACHI
KUBOTA


Tyvek





Crossing the private road to Mannington Mills, Southern Railroad of New Jersey's two F7s lead train out of Salem toward Swedesboro. *February 26, 1998*

West Jersey Railroad RS-3 7803 waits patiently on the wye at Mannington Mills as its sister engine pulls a cut of cars from the mill. *February 19, 1994*





Early 2000s, prior to SMS's Operatorship of the Salem Branch.
Note old storage shed behind locomotive.




SLRS MW
314
LD LMT 171600
LT WT 48000








ERRU
000139
ERRU000276
516173




Environmental Rail Solutions
AWIU000196


ERRU000139



EXHIBIT P

PHILIP D. MURPHY
Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 802
TRENTON, NJ 08625-0802

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

BULLETIN 01-1

Issued: May 2001
Subject: Railroad Facilities and Superfund Sites
Reference: N.J.A.C. 5:23-2.2

Questions have arisen about whether a local enforcing agency has the authority to issue permits and conduct inspections on certain federally regulated facilities and construction projects.

Direction has now been given and a general standard has been set. The local enforcing agency is not able to require permits, fees, and Certificates of Occupancy (COs). However, the local enforcing agency is able to request construction documents and perform inspections. When undertaking an activity that would require a permit when undertaken by another entity, upon request, the railroad must provide construction documents and must also provide access for inspections. The project undertaken by the railroad must also comply with all the technical requirements of the Uniform Construction Code (UCC) and construction documents must be prepared by a design professional licensed in the State of New Jersey. However, administrative delays are not permitted. Therefore, the railroad is allowed to proceed with the construction while the construction documents are being reviewed. Violations, if found, must be handled with notices and penalties; stop-work orders are not permitted.

This direction is a result of a New Jersey Supreme Court decision, *The Village of Ridgefield Park v. New York Susquehanna & Western Railway Corp.*, which reconciled the overlapping jurisdictions of the UCC and the federal railroad. The case decided the extent to which the Federal Interstate Commerce Commission Termination Act preempted State regulation of railroads. In this case, the railroad had begun construction of a train maintenance facility in the Village of Ridgefield Park without seeking zoning or construction permits, or otherwise informing the municipality of its activities.

The Court determined that Ridgefield Park Village is able to enforce fire, health, plumbing, safety, and construction regulations that are applicable to the facility. The Court decided that the railroad may not deny the municipality access for reasonable inspection of the facility. The Court also determined that Ridgefield Park is not permitted to require the railroad to obtain construction permits. On the other hand, the railroad must notify the municipality when it is undertaking an activity that would require another entity to obtain a permit. To a large extent, the Court's decision rested upon the Federal Surface Transportation Board's determination of the limited, preemptive effect of the federal law.

These same rules apply at Superfund sites. There are no permits, fees, or COs issued. The jurisdiction having authority is able to request construction documents and perform inspections. When undertaking an activity that would require another entity to obtain a permit, the entity undertaking the cleanup must provide construction documents and access for inspections upon request. All construction documents must be prepared by a design professional licensed in the State of New Jersey. The Superfund mitigation is allowed to proceed while the construction documents are being reviewed; administrative delays are not allowed. Violations, if found, must be handled with notices and penalties; stop-work orders are not permitted.

For facilities that are federally owned or leased, the Federal Government performs the inspections. See Bulletin No. 93-2, entitled "Leased Structures," as to when a permit is required.

EXHIBIT Q

From: Jim Pfeiffer
To: Kat@thevigilantelawfirm.com
Subject: Block 73, Lot 3 Pilesgrove Township
Date: Thursday, September 5, 2024 8:39:00 AM
Attachments: Engine House Engineer Drawings & Specs.pdf
SMS SOUTH WOODSTOWN 9-4-24.pdf

Good morning, Kat:

Please be advised that SMS will be erecting a locomotive maintenance shop/storage facility on Block 73, Lot 3 in Pilesgrove Township. Attached you will find drawings and specifications for the structure, which are certified by a New Jersey licensed engineer, together with a map depicting the location of the building. Although a construction timeline is not yet available, it is anticipated that erection of the building will begin within the next two weeks and will be completed within about ten days of commencement. Please let me know promptly if you have any questions in this regard.

Also, at this point, it is appropriate to revisit SMS's electrical connection at the subject location. Not only will the productivity of this railroad property and its locomotive maintenance shop/storage facility suffer from a lack of electric, but the winter months are also approaching, and our locomotives need to be kept warm by way of block heater systems consisting of electrically driven pumps and heating elements. It is imperative that the Township stop immediately its "public safety" charade. The Township has been afforded every opportunity to inspect our facilities yet has taken no steps to do so. In fact, in the parking lot after the hearing before the Gloucester County Board of Construction Appeals in March, you told Frank, David, Paul, George, Amber and me that you agreed the electrical connection is of importance and should be provided without delay. It's now six months since you made that statement to us and still the Township is blocking electrical service to the property.

At this juncture, it is clear that Township officials are intentionally interfering with interstate commerce. As a result, with each passing day, SMS's equipment is coming closer to suffering from freeze damage and/or hours of unnecessary wear, tear, and fuel consumption from the need to be left idling when temperatures fall below 40 degrees Fahrenheit. As you know, Atlantic City Electric will not make the connection without notification from the Township that it does not have jurisdiction over the connection process. Please provide such required notification to Atlantic City Electric without further delay to avoid the necessity of SMS having to initiate action against the Township.

I request the courtesy of your prompt response. Thank you.

Kind regards,
Jim Pfeiffer
SMS Rail Service, Inc.
Office: (856) 467-4800, ext. 303
Mobile: (610) 739-3729


SMS
Lines



08/05/2024

NJ COA #24GA28127800

Alpine, an ITW company
155 Harlem Ave.
North Building, 4th Floor
Glenview, IL 60025
Phone: (800)326-4102 (314)344-9121
alpineitw.com

Site Information:	Page 1:
Customer: D. L. Truss	*Job Number:* 34023
Job Description: /34023 /Lanc Pole/SMS Rail Servic	
Address: 650 Alloway Woodstown Rd, Woodstown , NJ 08098	

Job Engineering Criteria:	
Design Code: IBC 2021	*IntelliVIEW Version:* 24.01.00A *JRef #:* 1Y2566970001
Wind Standard: ASCE 7-16 *Wind Speed (mph):* 115 *Building Type:* Closed	*Design Loading (psf):* 40.00

This package contains general notes pages, 2 truss drawing(s) and 0 detail(s).

Item	Drawing Number	Truss
1	218.24.0617.58577	30Ags/Com/50/412-cat2-2021

Item	Drawing Number	Truss
2	218.24.0618.10053	30Ags/Sgab/50/412-cat2-2021

General Notes

Truss Design Engineer Scope of Work, Design Assumptions and Design Responsibilities:
The design responsibilities assumed in the preparation of these design drawings are those specified in ANSI/TPI 1, Chapter 2; and the National Design Standard for Metal Plate Connected Wood Truss Construction, by the Truss Plate Institute. The truss component designs conform to the applicable provisions of ANSI/TPI 1 and NDS, the National Design Specification for Wood Construction by AWC. The truss component designs are based on the specified loading and dimension information furnished by others to the Truss Design Engineer. The Truss Design Engineer has no duty to independently verify the accuracy or completeness of the information provided by others and may rely on that information without liability. The responsibility for verification of that information remains with others neither employed nor controlled by the Truss Design Engineer. The Truss Design Engineer's seal and signature on the attached drawings, or cover page listing these drawings, indicates acceptance of professional engineering responsibility solely for the truss component designs and not for the technical information furnished by others which technical information and consequences thereof remain their sole responsibility.

The suitability and use of these drawings for any particular structure is the responsibility of the Building Designer in accordance with ANSI/TPI 1 Chapter 2. The Building Designer is responsible for determining that the dimensions and loads for each truss component match those required by the plans and by the actual use of the individual component, and for ascertaining that the loads shown on the drawings meet or exceed applicable building code requirements and any additional factors required in the particular application. Truss components using metal connector plates with integral teeth shall not be placed in environments that will cause the moisture content of the wood in which plates are embedded to exceed 19% and/or cause corrosion of connector plates and other metal fasteners.

The Truss Design Engineer shall not be responsible for items beyond the specific scope of the agreed contracted work set forth herein, including but not limited to: verifying the dimensions of the truss component, calculation of any of the truss component design loads, inspection of the truss components before or after installation, the design of temporary or permanent bracing and their attachment required in the roof and/or floor systems, the design of diaphragms or shear walls, the design of load transfer connections to and from diaphragms and shear walls, the design of load transfer to the foundation, the design of connections for truss components to their bearing supports, the design of the bearing supports, installation of the truss components, observation of the truss component installation process, review of truss assembly procedures, sequencing of the truss component installation, construction means and methods, site and/or worker safety in the installation of the truss components and/or its connections.

This document may be a high-quality facsimile of the original engineering document which is a digitally signed electronic file with third party authentication. A wet or embossed seal copy of this engineering document is available upon request.

Temporary Lateral Restraint and Bracing:
Temporary lateral restraint and diagonal bracing shall be installed according to the provisions of BCSI chapters B1, B2, B7 and/or B10 (Building Component Safety Information, by TPI and SBCA), or as specified by the Building Designer or other Registered Design Professional. The required locations for lateral restraint and/or bracing depicted on these drawings are only for the permanent lateral support of the truss members to reduce buckling lengths, and do not apply to and may not be relied upon for the temporary stability of the truss components during their installation.

Permanent Lateral Restraint and Bracing:
The required locations for lateral restraint or bracing depicted on these drawings are for the permanent lateral support of the truss members to reduce buckling lengths. Permanent lateral support shall be installed according to the provisions of BCSI chapters B3, B7 and/or B10, or as specified by the Building Designer or other Registered Design Professional. These drawings do not depict or specify installation/erection bracing, wind bracing, portal bracing or similar building stability bracing which are parts of the overall building design to be specified, designed, and detailed by the Building Designer.

Connector Plate Information:
Alpine connector plates are made of ASTM A653 or ASTM A1063 galvanized steel with the following designations, gauges and grades: W=Wave, 20ga, grade 40; H=High Strength, 20ga, grade 60; S=Super Strength, 18ga, grade 60. Information on model code compliance is contained in the ICC Evaluation Service report ESR-1118, available on-line at www.icc-es.org.

Bearing Information:
The bearing area factor, Cb, is considered for the allowable capacity of solid sawn wood bearings supporting trusses that are located a minimum of 3" from the end of the lumber piece.

General Notes (continued)

Coated Lumber:
Coated lumber must be properly re-dried and maintained below 19% or less moisture level through all stages of construction and usage. Coated lumber has no adjustments to lumber properties. Coated lumber may be more brittle than uncoated lumber. Special handling care must be taken to prevent breakage during all handling activities. Refer to manufacturer literature, specifications, and code evaluation reports for restrictions, details, and requirements.

Fire Retardant Treated Lumber:
Fire retardant treated lumber must be properly re-dried and maintained below 19% or less moisture level through all stages of construction and usage. Fire retardant treated lumber may be more brittle than untreated lumber. Special handling care must be taken to prevent breakage during all handling activities.

Key to Terms:
Information provided on drawings reflects a summary of the pertinent information required for the truss design. Detailed information on load cases, reactions, member lengths, forces and members requiring permanent lateral support may be found in calculation sheets available upon written request.

BCDL = Bottom Chord standard design Dead Load in pounds per square foot.
BCLL = Bottom Chord standard design Live Load in pounds per square foot.
C = Coated lumber.
C-AT = AtTEK coated lumber.
C-FX = FX Lumber Guard coated lumber.
C -TE = TechWood 4400 coated lumber.
CL = Certified lumber.
Des Ld = total of TCLL, TCDL, BCLL and BCDL Design Load in pounds per square foot.
FRT = Fire Retardant Treated lumber.
FRT-BF = Boraflame Fire Retardant Treated lumber
FRT-DB = D-Blaze Fire Retardant Treated lumber.
FRT-DC = Dricon Fire Retardant Treated lumber.
FRT-FP = FirePRO Fire Retardant Treated lumber.
FRT-FL = FlamePRO Fire Retardant Treated lumber.
FRT-FT = FlameTech Fire Retardant Treated lumber.
FRT-ON = OnWood Fire Retardant Treated lumber.
FRT-PG = PYRO-GUARD Fire Retardant Treated lumber.
FRT-PR = ProWood Fire Retardant Treated lumber.
g = green lumber.
HORZ(LL) = maximum Horizontal panel point deflection due to Live Load, in inches.
HORZ(TL) = maximum Horizontal panel point long term deflection in inches, due to Total Load, including creep adjustment.
HPL = additional Horizontal Load added to a truss Piece in pounds per linear foot or pounds.
Ic = Incised lumber.
FJ = Finger Jointed lumber.
L/# = user specified divisor for limiting span/deflection ratio for evaluation of actual L/defl value.
L/defl = ratio of Length between bearings, in inches, divided by the vertical Deflection due to creep, in inches, at the referenced panel point. Reported as 999 if greater than or equal to 999.
Loc = Location, starting location of left end of bearing or panel point (joint) location of deflection.
Max BC CSI = Maximum bending and axial Combined Stress Index for Bottom Chords for all load cases.
Max TC CSI = Maximum bending and axial Combined Stress Index for Top Chords for all load cases.
Max Web CSI= Maximum bending and axial Combined Stress Index for Webs for all load cases.
NCBCLL = Non-Concurrent Bottom Chord design Live Load in pounds per square foot.
PL = additional Load applied at a user specified angle on a truss Piece in pounds per linear foot or pounds.
PLB = additional vertical load added to a Bottom chord Piece of a truss in pounds per linear foot or pounds
PLT = additional vertical load added to a Top chord Piece of a truss in pounds per linear foot or pounds.
PP = Panel Point.
R = maximum downward design Reaction, in pounds, from all specified gravity load cases, at the indicated location (Loc).
-R = maximum upward design Reaction, in pounds, from all specified gravity load cases, at the identified location (Loc).
Rh = maximum horizontal design Reaction in either direction, in pounds, from all specified gravity load cases, at the indicated location (Loc).
RL = maximum horizontal design Reaction in either direction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the indicated location (Loc).

General Notes (continued)

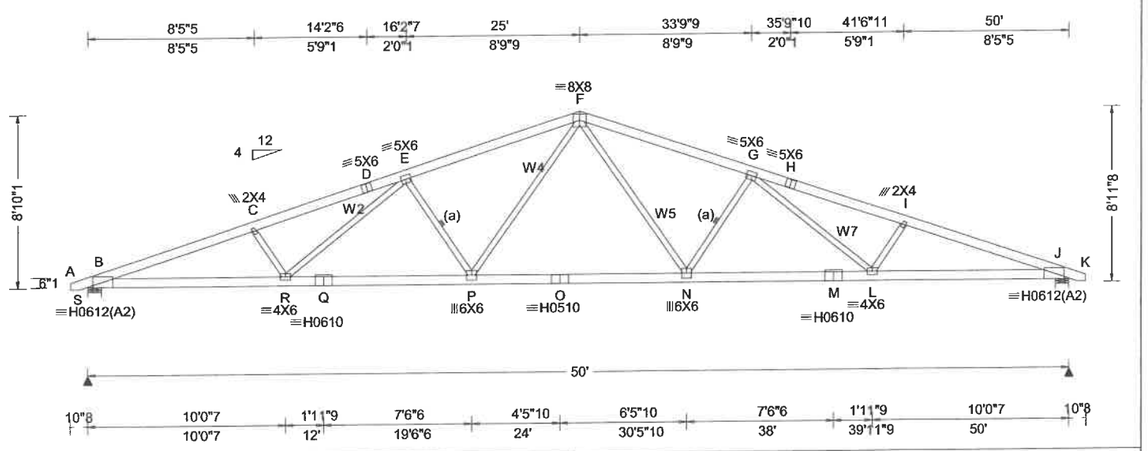
Key to Terms (continued):
Rw = maximum downward design Reaction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the identified location (Loc).
TCDL = Top Chord standard design Dead Load in pounds per square foot.
TCLL = Top Chord standard design Live Load in pounds per square foot.
U = maximum Upward design reaction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the indicated location (Loc).
VERT(CL) = maximum Vertical panel point deflection in inches due to Live Load and Creep Component of Dead Load in inches.
VERT(CTL) = maximum Vertical panel point deflection ratios due to Live Load and Creep Component of Dead Load, and maximum long term Vertical panel point deflection in inches due to Total load, including creep adjustment.
VERT(LL) = maximum Vertical panel point deflection in inches due to Live Load.
VERT(TL) = maximum Vertical panel point long term deflection in inches due to Total load, including creep adjustment.
W = Width of non-hanger bearing, in inches.

Refer to ASCE-7 for Wind and Seismic abbreviations.
Uppercase Acronyms not explained above are as defined in TPI 1.

References:

1. AWC: American Wood Council; 222 Catoctin Circle SE, Suite 201; Leesburg, VA 20175; www.awc.org.
2. ICC: International Code Council; www.iccsafe.org.
3. Alpine, a division of ITW Building Components Group Inc.: 155 Harlem Ave, North Building, 4th Floor, Glenview, IL 60025; www.alpineitw.com.
4. TPI: Truss Plate Institute, 2670 Crain Highway, Suite 203, Waldorf, MD 20601; www.tpinst.org.
5. SBCA: Wood Truss Council of America, 6300 Enterprise Lane, Madison, WI 53719; www. sbcacomponents.com

SEQN: 164997 COMN FROM:	Ply: 1 Qty: 28	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Com/50/412-cat2-2021	Cust: R 6697 JRef:1Y2566970001 T258 DrwNo: 218.24.0617.58577 / FK 08/05/2024



Loading Criteria (psf)

TCLL:	30.00
TCDL:	5.00
BCLL:	0.00
BCDL:	5.00
Des Ld:	40.00
NCBCLL:	10.00
Soffit:	2.00

Load Duration: 1.15
Spacing: 48.0 "

Wind Criteria
Wind Std: ASCE 7-16
Speed: 115 mph
Enclosure: Closed
Risk Category: II
EXP: C Kzt: NA
Mean Height: 28.00 ft
TCDL: 3.0 psf
BCDL: 3.0 psf
MWFRS Parallel Dist: 0 to h/2
C&C Dist a: 5.00 ft
Loc. from endwall: Any
GCpi: 0.18
Wind Duration: 1.60

Snow Criteria (Pg,Pf in PSF)
Pg: 30.0 Ct: 1.2 CAT: II
Pf: 25.2 Ce: 1.0
Lu: - Cs: 0.94
Snow Duration: 1.15

Building Code:
IBC 2021
TPI Std: 2014
Rep Fac: No
FT/RT/PT:2(2)/2(2)/2(0)
Plate Type(s):
HS, WAVE

Defl/CSI Criteria

PP Deflection in	loc	L/defl	L/#
VERT(LL):	0.864 P	690	240
VERT(CL):	1.020 P	584	240
HORZ(LL):	0.266 J	-	-
HORZ(TL):	0.313 J	-	-

Creep Factor: 2.0
Max TC CSI: 0.875
Max BC CSI: 0.996
Max Web CSI: 0.829

VIEW Ver: 24.01.00A.0411.17

▲Maximum Reactions (lbs)

	Gravity			Non-Gravity		
Loc	R+	/ R-	/ Rh	/ Rw	/ U	/ RL
S	4158	/-	/-	/1085	/1040	/258
J	4158	/-	/-	/1085	/1040	/-

Wind reactions based on MWFRS
S Brg Wid = 8.2 Min Req = 4.2 (Truss)
J Brg Wid = 8.2 Min Req = 4.2 (Truss)
Bearings S & J are a rigid surface.
Members not listed have forces less than 375#

Maximum Top Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - C	4233	-10464	F - G	3362	-7761
C - D	4126	-9938	G - H	4134	-9678
D - E	4134	-9678	H - I	4126	-9938
E - F	3361	-7761	I - J	4233	-10464

Maximum Bot Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - R	9782	-3837	O - N	6030	-2118
R - Q	8138	-3056	N - M	8138	-3057
Q - P	8138	-3056	M - L	8138	-3057
P - O	6030	-2118	L - J	9782	-3840

Maximum Web Forces Per Ply (lbs)

Webs	Tens.	Comp.	Webs	Tens.	Comp.
C - R	619	-989	F - N	2099	-850
R - E	1526	-626	N - G	979	-1804
E - P	979	-1804	G - L	1526	-626
P - F	2099	-850	L - I	619	-989

Lumber

Top chord: 2x6 SP 2400f-2.0E;
Bot chord: 2x6 SP SS Dense;
Webs: 2x4 SPF Stud; W2,W7 2x4 SPF #1/#2; W4, W5 2x4 SPF 2100f-1.8E;

Bracing

(a) Continuous lateral restraint, equally spaced on member.

Purlins

In lieu of structural panels or rigid ceiling use purlins to laterally brace chords as follows:

Chord	Spacing(in oc)	Start(ft)	End(ft)
TC	24	-0.88	25.00
TC	24	25.00	50.88
BC	64	0.15	49.85

Apply purlins to any chords above or below fillers at 24" OC unless shown otherwise above.

Loading

Bottom chord checked for 10.00 psf non-concurrent live load.

Truss designed for unbalanced snow loads.
Slope reduction based on Unobstructed Slippery Surface.

Wind

Wind loads based on MWFRS with additional C&C member design.

Wind loading based on both gable and hip roof types.

Bottom chord bracing may be spaced on 120" centers when truss is used in post-frame construction.

Additional Notes

WARNING: Furnish a copy of this DWG to the installation contractor. Special care must be taken during handling, shipping and installation of trusses. See "WARNING" note below.

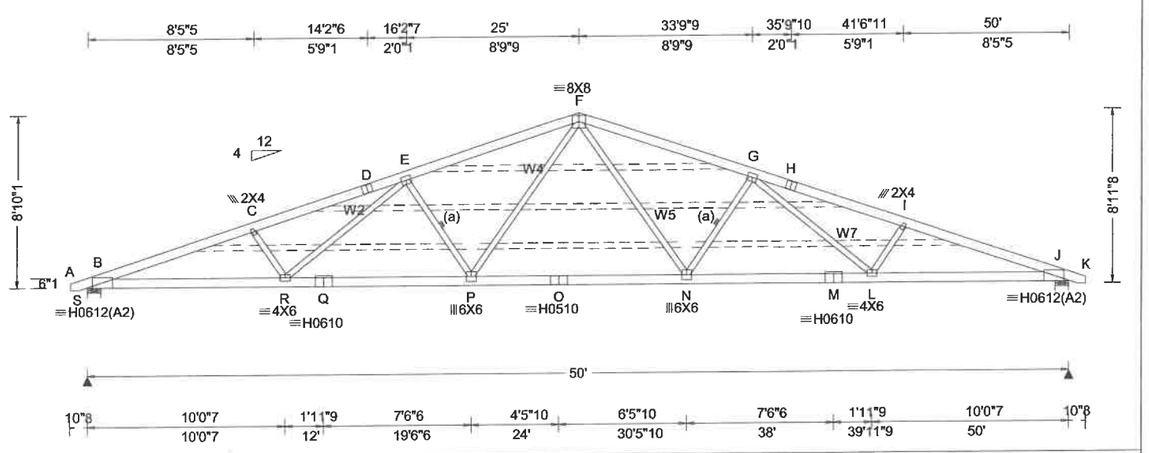
STATE OF NEW JERSEY
FRED KAMPMANN
No.
24GE06100200
LICENSED PROFESSIONAL ENGINEER

08/05/2024 NJ COA #24GA28127800

WARNING READ AND FOLLOW ALL NOTES ON THIS DRAWING!
IMPORTANT FURNISH THIS DRAWING TO ALL CONTRACTORS INCLUDING THE INSTALLERS
Trusses require extreme care in fabricating, handling, shipping, installing and bracing. Refer to and follow the latest edition of BCSI (Building Component Safety Information, by TPI and SBCA) for safety practices prior to performing these functions. Installers shall provide temporary bracing per BCSI. Unless noted otherwise, top chord shall have properly attached structural sheathing and bottom chord shall have a properly attached rigid ceiling. Locations shown for permanent lateral restraint of webs shall have continuous lateral restraint (CLR), installed with diagonal bracing installed on the CLR per BCSI sections B3, B7, or B10, as applicable. Apply plates to each face of truss and position as shown above and on the Joint Details, unless noted otherwise. Refer to drawings 160A-Z for standard plate positions. Refer to job's General Notes page for additional information.
Alpine, a division of ITW Building Components Group Inc. shall not be responsible for any deviation from this drawing, any failure to build the truss in conformance with ANSI/TPI 1, or for handling, shipping, installation and bracing of trusses. A seal on this drawing or cover page listing this drawing, indicates acceptance of professional engineering responsibility solely for the design shown. The suitability and use of this drawing for any structure is the responsibility of the Building Designer per ANSI/TPI 1 Sec.2.
For more information see these web sites: Alpine: alpineitw.com; TPI: tpinst.org; SBCA: sbcacomponents.com; ICC: iccsafe.org; AWC: awc.org

ALPINE AN ITW COMPANY
155 Harlem Ave
North Building, 4th Floor
Glenview, IL 60025

SEQN: 165001 GABL FROM: Page 1 of 2	Ply: 1 Qty: 2	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Sgab/50/412-cat2-2021	Cust: R 6697 JRef: 1Y2566970001 T259 DrwNo: 218.24.0618.10053 / FK 08/05/2024



Loading Criteria (psf)
TCLL: 30.00
TCDL: 5.00
BCLL: 0.00
BCDL: 5.00
Des Ld: 40.00
NCBCLL: 10.00
Soffit: 2.00
Load Duration: 1.15
Spacing: 48.0 "

Wind Criteria
Wind Std: ASCE 7-16
Speed: 115 mph
Enclosure: Closed
Risk Category: II
EXP: C Kzt: NA
Mean Height: 28.00 ft
TCDL: 3.0 psf
BCDL: 3.0 psf
MWFRS Parallel Dist: 0 to h/2
C&C Dist a: 5.00 ft
Loc. from endwall: Any
GCpi: 0.18
Wind Duration: 1.60

Snow Criteria (Pg,Pf in PSF)
Pg: 30.0 Ct: 1.2 CAT: II
Pf: 25.2 Ce: 1.0
Lu: - Cs: 0.94
Snow Duration: 1.15

Building Code:
IBC 2021
TPI Std: 2014
Rep Fac: No
FT/RT/PT:2(2)/2(2)/2(0)
Plate Type(s):
HS, WAVE

Defl/CSI Criteria

PP Deflection in	loc	L/defl	L/#
VERT(LL): 0.762	P	782	240
VERT(CL): 1.020	P	584	240
HORZ(LL): 0.234	J	-	-
HORZ(TL): 0.313	J	-	-

Creep Factor: 2.0
Max TC CSI: 0.875
Max BC CSI: 0.996
Max Web CSI: 0.829

VIEW Ver: 24.01.00A.0411.17

▲ Maximum Reactions (lbs)

Loc	Gravity R+	/ R-	/ Rh	Non-Gravity / Rw	/ U	/ RL
S	4158	/-	/-	/1085	/1040	/258
J	4158	/-	/-	/1085	/1040	/-

Wind reactions based on MWFRS
S Brg Wid = 8.2 Min Req = 4.2 (Truss)
J Brg Wid = 8.2 Min Req = 4.2 (Truss)
Bearings S & J are a rigid surface.
Members not listed have forces less than 375#

Maximum Top Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - C	4233	-10464	F - G	3362	-7761
C - D	4126	-9938	G - H	4134	-9678
D - E	4134	-9678	H - I	4126	-9938
E - F	3361	-7761	I - J	4233	-10464

Maximum Bot Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - R	9782	-3837	O - N	6030	-2118
R - Q	8138	-3056	N - M	8138	-3057
Q - P	8138	-3056	M - L	8138	-3057
P - O	6030	-2118	L - J	9782	-3840

Maximum Web Forces Per Ply (lbs)

Webs	Tens.	Comp.	Webs	Tens.	Comp.
C - R	619	-989	F - N	2099	-850
R - E	1526	-626	N - G	979	-1804
E - P	979	-1804	G - L	1526	-626
P - F	2099	-850	L - I	619	-989

Lumber

Top chord: 2x6 SP 2400f-2.0E;
Bot chord: 2x6 SP SS Dense;
Webs: 2x4 SPF Stud; W2,W7 2x4 SPF #1/#2; W4, W5 2x4 SPF 2100f-1.8E;

Bracing

(a) Continuous lateral restraint, equally spaced on member.

Plating Notes

All plates are 5X6 except as noted.

Purlins

In lieu of structural panels or rigid ceiling use purlins to laterally brace chords as follows:

Chord	Spacing(in oc)	Start(ft)	End(ft)
TC	24	-0.88	25.00
TC	24	25.00	50.88
BC	64	0.15	49.85

Apply purlins to any chords above or below fillers at 24" OC unless shown otherwise above.

Loading

Bottom chord checked for 10.00 psf non-concurrent live load.

Truss designed for unbalanced snow loads.
Slope reduction based on Unobstructed Slippery Surface.

Bottom chord bracing may be spaced on 120" centers when truss is used in post-frame construction.

Wind

Wind loads based on MWFRS with additional C&C member design.

Wind loading based on both gable and hip roof types.

Gable Studs

Dashed pieces are not analyzed and are optional; and may be attached at each end to adjacent pieces and members with connector plates, staples, nails, or other fasteners.

STATE OF NEW JERSEY
FRED KAMPMANN
No.
24GE06100200
LICENSED
PROFESSIONAL ENGINEER

NJ COA #24GA28127800
08/05/2024

****WARNING**** READ AND FOLLOW ALL NOTES ON THIS DRAWING!
****IMPORTANT**** FURNISH THIS DRAWING TO ALL CONTRACTORS INCLUDING THE INSTALLERS

Trusses require extreme care in fabricating, handling, shipping, installing and bracing. Refer to and follow the latest edition of BCSI (Building Component Safety Information, by TPI and SBCA) for safety practices prior to performing these functions. Installers shall provide temporary bracing per BCSI. Unless noted otherwise, top chord shall have properly attached structural sheathing and bottom chord shall have a properly attached rigid ceiling. Locations shown for permanent lateral restraint of webs shall have continuous lateral restraint (CLR), installed with diagonal bracing installed on the CLR per BCSI sections B3, B7, or B10, as applicable. Apply plates to each face of truss and position as shown above and on the Joint Details, unless noted otherwise. Refer to drawings 160A-Z for standard plate positions. Refer to job's General Notes page for additional information.

Alpine, a division of ITW Building Components Group Inc. shall not be responsible for any deviation from this drawing, any failure to build the truss in conformance with ANSI/TPI 1, or for handling, shipping, installation and bracing of trusses. A seal on this drawing or cover page listing this drawing, indicates acceptance of professional engineering responsibility solely for the design shown. The suitability and use of this drawing for any structure is the responsibility of the Building Designer per ANSI/TPI 1 Sec.2.

For more information see these web sites: Alpine: alpineitw.com; TPI: tpinst.org; SBCA: sbcacomponents.com; ICC: iccsafe.org; AWC: awc.org

ALPINE
AN ITW COMPANY
155 Harlem Ave
North Building, 4th Floor
Glenview, IL 60025

SEQN: 165001 GABL FROM: Page 2 of 2	Ply: 1 Qty: 2	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Sgab/50/412-cat2-2021	Cust: R 6697 JRef: 1Y2566970001 T259 DrwNo: 218.24.0618.10053 / FK 08/05/2024

Additional Notes

Truss has been designed for vertical in-plane loads only. Any lateral/horizontal wind loads shall be transferred into the roof and ceiling diaphragms. Connection and design of these systems is the responsibility of the Building Designer in accordance with ANSI/TPI 1.

WARNING: Furnish a copy of this DWG to the installation contractor. Special care must be taken during handling, shipping and installation of trusses. See "WARNING" note below.

STATE OF NEW JERSEY
FRED KAMPMANN
No.
24GE06100200
LICENSED PROFESSIONAL ENGINEER

08/05/2024 NJ COA #24GA28127800

****WARNING**** READ AND FOLLOW ALL NOTES ON THIS DRAWING!
****IMPORTANT**** FURNISH THIS DRAWING TO ALL CONTRACTORS INCLUDING THE INSTALLERS

Trusses require extreme care in fabricating, handling, shipping, installing and bracing. Refer to and follow the latest edition of BCSI (Building Component Safety Information, by TPI and SBCA) for safety practices prior to performing these functions. Installers shall provide temporary bracing per BCSI. Unless noted otherwise, top chord shall have properly attached structural sheathing and bottom chord shall have a properly attached rigid ceiling. Locations shown for permanent lateral restraint of webs shall have continuous lateral restraint (CLR), installed with diagonal bracing installed on the CLR per BCSI sections B3, B7, or B10, as applicable. Apply plates to each face of truss and position as shown above and on the Joint Details, unless noted otherwise. Refer to drawings 160A-Z for standard plate positions. Refer to job's General Notes page for additional information.

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For more information see these web sites: Alpine: alpineitw.com; TPI: tpinst.org; SBCA: sbcacomponents.com; ICC: iccsafe.org; AWC: awc.org

ALPINE
AN ITW COMPANY

155 Harlem Ave
North Building, 4th Floor
Glenview, IL 60025

BUILDING CODE SUMMARY:

1. PROJECT: NEW STORAGE GARAGE FOR SMS RAIL SERVICE
2. LOCATION: 650 ALLOWAY-WOODSTOWN RD
   WOODSTOWN, NJ 08098
3. THE PROJECT IS AN ENGINEERED DESIGN IN ACCORDANCE WITH 2021 IBC NJ STATE BUILDING CODE
4. THIS SUBMISSION IS FOR STRUCTURAL PLANS ONLY
5. PROPOSED USE: STORAGE GARAGE
6. CODES USED: 2021 IBC NEW JERSEY BUILDING CODE
   ACI 318
   ASCE-7
   ANSI STANDARDS
   NATIONAL DESIGN SPECIFICATION FOR WOOD CONSTRUCTION
7. CONSTRUCTION TYPE: VB
8. SPRINKLERS: NO
9. STANDPIPES: NO
10. FIRE DISTRICT: NO
11. FLOOD HAZARD AREA: NO
12. BUILDING HEIGHT: 24' (EAVE) NUMBER OF STORIES = 1 STORY
13. GROSS BUILDING AREA: 5000 S.F.
14. PRIMARY OCCUPANCY: STORAGE S-1 MODERATE HAZARD STORAGE
15. SECONDARY OCCUPANCY: NONE
16. SPECIAL USES: NONE
17. SPECIAL PROVISIONS: NONE
18. MIXED OCCUPANCY: NONE
19. INCIDENTAL USE SEPARATION: NONE
20. ALLOWABLE HEIGHT: 1 STORY
21. ALLOWABLE AREA: 9,000 SQUARE FEET
22. FRONTAGE AREA INCREASES: NOT CONSIDERED
23. SPRINKLER INCREASE: NOT APPLICABLE
24. FIRE PROTECTION REQUIREMENTS: NONE, FIRE AREA IS LESS THAN 12,000 S.F.
25. LIFE SAFETY SYSTEM REQUIREMENTS:
26. EMERGENCY LIGHTING: YES
27. EXIT SIGNS: YES
28. FIRE ALARM: NO
29. SMOKE DETECTION SYSTEMS: NO
30. PANIC HARDWARE: YES

EXIT REQUIREMENTS:

31. NUMBER AND ARRANGEMENT OF EXITS,
32. MINIMUM: 1
33. NUMBER OF EXITS PROVIDED: 3
34. WORST CASE TRAVEL DISTANCE: 70'
35. ALLOWABLE TRAVEL DISTANCE: 200'
36. ACTUAL DISTANCE BETWEEN EXIT DOORS: 56'
37. REQUIRED DISTANCE BETWEEN EXIT DOORS: 56'
38. CORRIDOR DEAD ENDS: NONE
39. EGRESS WIDTH PER OCCUPANT:
    REQUIRED AISLE WIDTH FOR LESS THAN 50 OCCUPANTS IS 36"
    REQUIRED CLEAR OPENING WIDTH OF DOORWAYS IS 32"
    ACTUAL WIDTH: 36" DOOR, 32" CLEAR OPENING (1 Leaf)
40. CALCULATED OCCUPANT LOADS:
    MAXIMUM 10 OCCUPANTS FOR THE BUILDING

BUILDING SUPPLIER

Lancaster Pole Buildings, Inc.
138 Rancks Church Rd
New Holland, PA 17557
P# (717) 572-2266 F# (717) 354-7653
www.lancasterpolebuildings.com

ACCESSIBILITY:

1. DOORWAYS AT GRADE ARE ACCESSIBLE

STRUCTURAL DESIGN CRITERIA:

1. IMPORTANCE FACTORS:
   CATEGORY I BUILDING
2. LIVE LOADS:
   FLOOR: 250 PSF (slab on grade)
   GROUND SNOW LOAD: 20 PSF
3. WIND LOAD: BASIC WIND SPEED 105 MPH (ASCE 7-16)
   EXPOSURE CATEGORY B
3. SEISMIC DESIGN
   ARCHITECTURAL AND MECHANICAL COMPONENTS ARE ANCHORED
   LATERAL DESIGN CONTROL: WIND
4. THIS STRUCTURE IS DESIGNED USING THE ALLOWABLE STRESS DESIGN METHOD AND APPLICABLE LOAD COMBINATIONS

NJ32140
James A. Koppenhaver, P.E
555 Van Reed Road, Wyomissing, PA 19610
(484) 794-9949 koppenhaverpe@gmail.com

WOOD TRUSSES: TOP CHORD LIVE 30 PSF
TOP CHORD DEAD 5 PSF
BOTTOM CHORD LIVE 0 PSF
BOTTOM CHORD DEAD 5 PSF

TRUSSES ARE TO BE DESIGNED AND FABRICATED IN ACCORDANCE WITH THE STANDARDS OF THE NATIONAL FOREST PRODUCTS ASSOCIATION AND THE TRUSS PLATE INSTITUTE'S "DESIGN SPECIFICATIONS FOR LIGHT METAL PLATE CONNECTED WOOD TRUSSES"
TRUSS WEB CONFIGURATION, PLATE SIZES, CHORD SIZES, AND LATERAL BRACING SHALL BE DESIGNED BY A NJ LICENSED PROFESSIONAL ENGINEER.
TRUSSES SHALL BE DESIGNED FOR THE LOADING, SPACING, AND GEOMETRY SHOWN ON THE PLAN.
INSTALL BRACING IN ACCORDANCE WITH THE MANUFACTURER'S DESIGN.

FOOTINGS:
FOOTINGS SHALL BE EXCAVATED TO VIRGIN SUBGRADE WITH A TYPICAL WORST-CASE CLASS OF MATERIAL AT SUBGRADE BEING SANDY GRAVEL, CLASSIFICATION GW
SOIL BEARING CAPACITY. ≈ 3,000 PSF

GENERAL NOTES:

1. STRUCTURAL COMPONENTS SUCH AS POSTS, BEAMS, TRUSSES, OR FASTENERS AND ATTACHMENT BRACKETS SHALL NOT BE MODIFIED, NOTCHED, OR CUT IN ANY MATTER WITHOUT REVIEW AND APPROVAL OF THE BUILDING DESIGN PROFESSIONAL.
2. DO NOT USE THE ATTIC ROOF TRUSSES FOR STORING MATERIAL
3. CONCENTRATED LOADS SHALL NOT BE ATTACHED TO THE ROOF TRUSSES WITHOUT PRIOR REVIEW AND WRITTEN APPROVAL OF THE BUILDING DESIGN PROFESSIONAL.

RIGID DIAPHRAGM DESIGN FOR WALLS:

1. ATTACHMENT OF METAL WALL PANELS TO THE SUBSTRAIGHT IS WITH #9 X 1-1/2" METAL TO WOOD SHARP POINT SCREWS WITH SEALING WASHERS. CARE SHALL BE TAKEN TO PROPERLY SET THE SCREW FASTENER FOR A WEATHERTIGHT FIT AND NOT TO OVERDRIVE THE FASTENER AND STRIP THE THREAD OUT IN THE SUBSTRAIGHT.
2. FASTENER SPACING @ 9"
3. FASTENERS ARE PLACED IN THE BOTTOM FLAT ADJACENT TO EACH RIB AND AT EAVES, LAPS, AND RIDGES, THE FASTENERS ARE PLACED ON BOTH SIDES OF EACH RIB

LUMBER:

1. ALL LUMBER SHALL COMPLY WITH THE REQUIREMENTS OF THE AMERICAN SOCIETY OF TIMBER CONSTRUCTION AND THE NATIONAL FOREST PRODUCTS ASSOCIATION'S "NATIONAL DESIGN SPECIFICATION FOR WOOD CONSTRUCTION".
2. ALL LUMBER SHALL BE #2 OR BETTER FOR LOAD SUPPORTING IDENTIFIED BY THE GRADE MARKS AND COMPLYING WITH DOC PS 20.
3. ALL LUMBER EXPOSED TO GROUND CONTACT OR INSECT INFESTATION SHALL BE TREATED ACCORDING TO THE AMERICAN WOOD PRESERVERS' ASSOCIATION STANDARDS, .60 ACQ MIN



NEW STORAGE GARAGE FOR SMS RAIL SERVICE
650 ALLOWAY-WOODSTOWN RD
WOODSTOWN, NJ 08098

Lancaster Pole Buildings

Construction Maestro® Estimating Software Pole Barns, Garages & Decks

FOR:
Sms Rail Service
650 Alloway-Woodstown Rd
Woodstown, NJ 08098
215-431-9225

CONTACT:
Jason Sensenig
Lancaster Pole Buildings
138 Ranck Church Rd.
New Holland, PA. 17557
717-572-2266

CONSTRUCTION: Post Frame
DIMENSIONS: 50' X 100' X 24'

SPECIFICATIONS FOR 50' X 100' X 24' POST FRAME PACKAGE:

- **MATERIAL PACKAGE**
  - Pre-Engineered Wood Trusses (4/12 Pitch, 4' O/C)
  - 6 x 5.25 Glulam 4 Ply Eave Posts (8' O/C)
  - 6 x 5.25 Glulam 4 Ply Gable Posts (8' O/C)
  - 2 x 8 Treated Skirt Boards (1 Row)
  - 2 x 4 Wall Girts (24" O/C) and Roof Purlins (24" O/C)
  - 2 x 12 MSR Double Top Girt Truss Carriers
  - Lt. Stone 28 Gauge Steel Siding Over Housewrap
  - 42' High Brown Steel Wainscot on All Four Sides
  - Barn Red 26 Gauge Steel Roof
  - 10" x 24" Concrete Footers - 15" Concrete Collars, 3500 psi

- **DOORS & WINDOWS**
  - Three 14 X 16 Insulated Overhead Doors - Chocolate, lift Kit
  - Three 3' Flush Outswing Entry Doors w/ Panic Hardware & Closers, Brown

- **12" OVERHANG ON ALL SIDES W/ VENTED SOFFIT**
- **2 ROWS OF SNOW GUARDS ON BOTH EAVES**
- **5K SEAMLESS GUTTERS W/ 3 DOWNSPOUTS PER EAVE - BROWN**

- **4 - GIRDER TRUSSES FOR STEAMER EXHAUST VENTS-LOCATION TBD**
- **2X6 TREATED INSULATION CAP BETWEEN POSTS AT SKIRT BOARD**

- **R-19 BATT INSULATION IN THE SIDEWALLS W/ WHITE LINER PANEL**
- **R-30 BLOWN INSULATION IN THE CEILING W/ WHITE LINER PANEL**

- **FASTENERS**
- **DETAILED BUILDING PLANS**

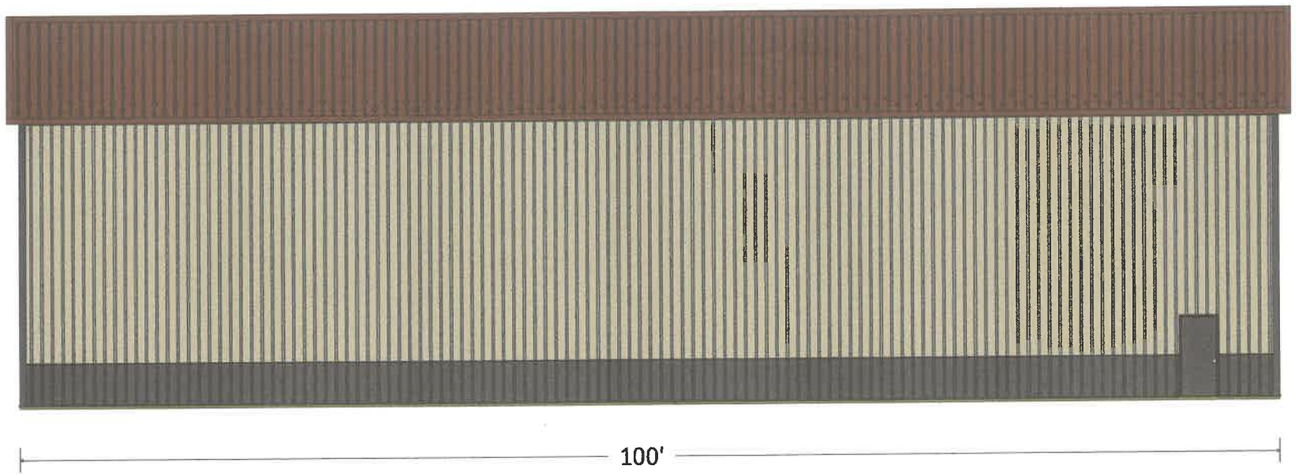




DATE: 8/12/2024

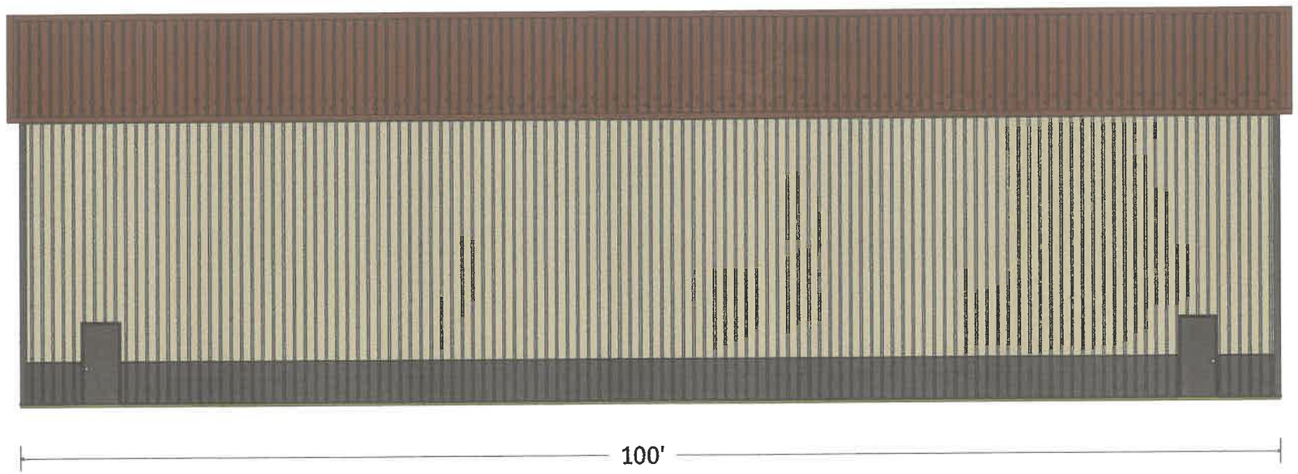
NUMBER: 4402

EAVE SIDE 2 ELEVATION



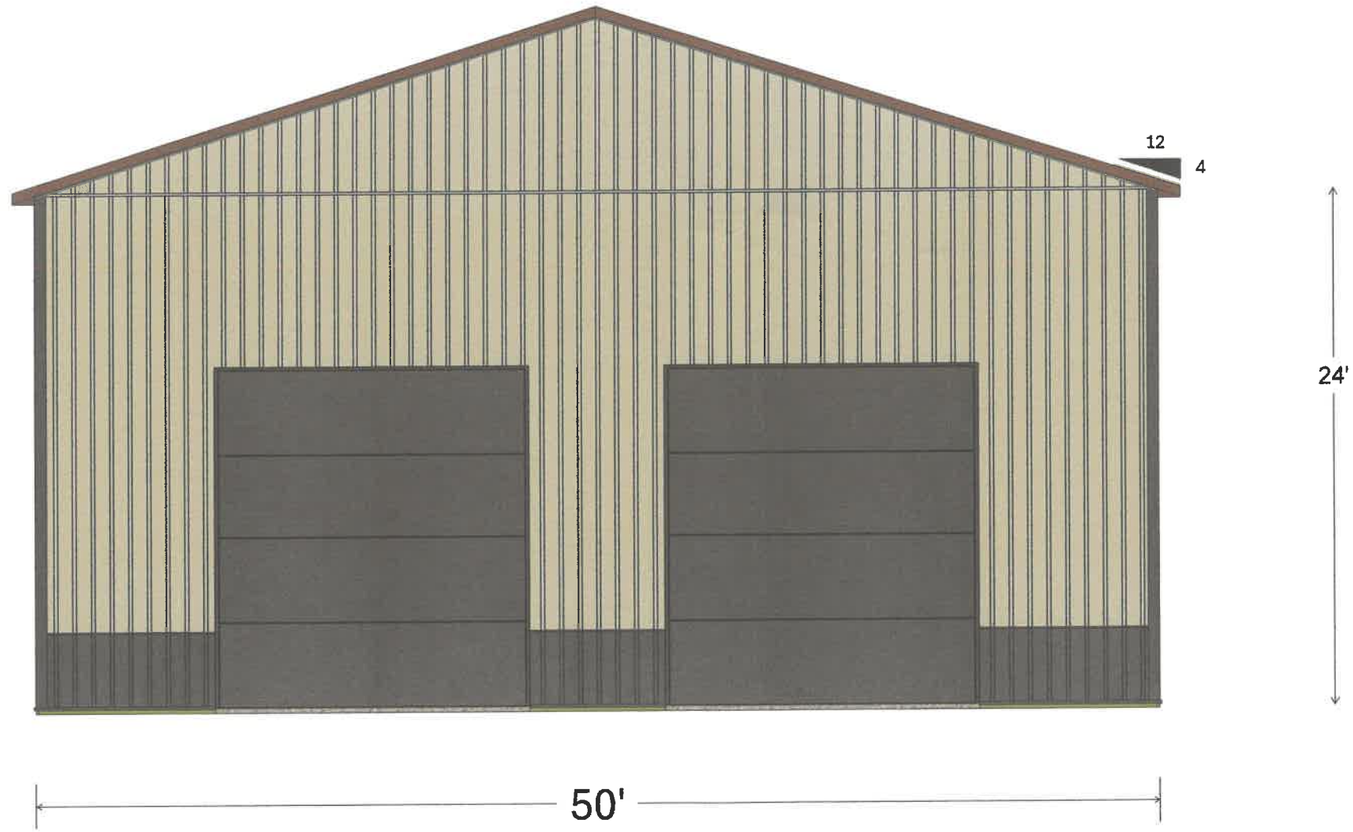
Jims Rail Service
Estimate Number: 4402
8/13/2024

EAVE SIDE 1 ELEVATION



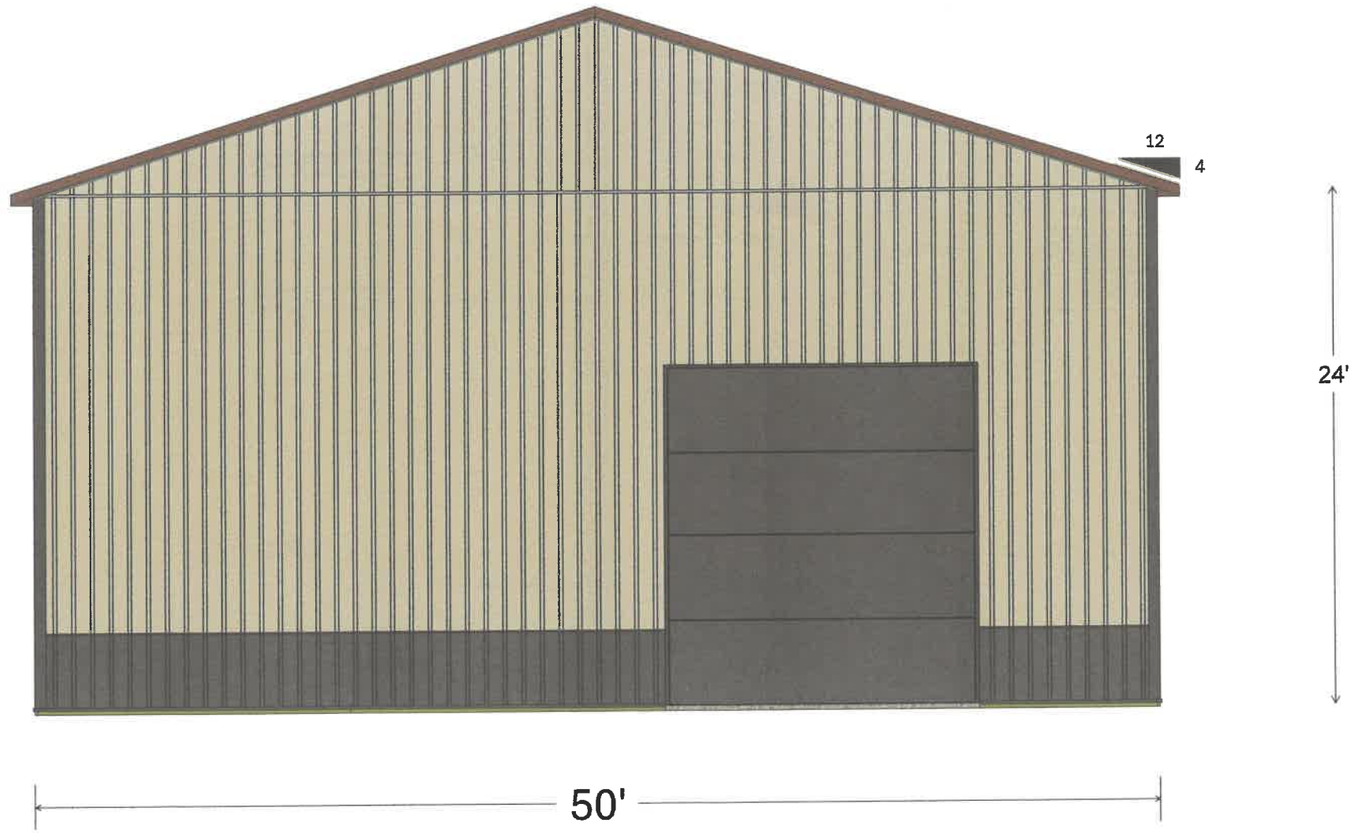
Sms Rail Service
Estimate Number: 4402
8/12/2024

GABLE SIDE 2 ELEVATION



Sms Rail Service
Estimate Number: 4402
8/12/2024

GABLE SIDE 1 ELEVATION



Sms Rail Service
Estimate Number: 4402
8/12/2024

Sma Rail Service
Estimate Number: 4402
5/12/2024

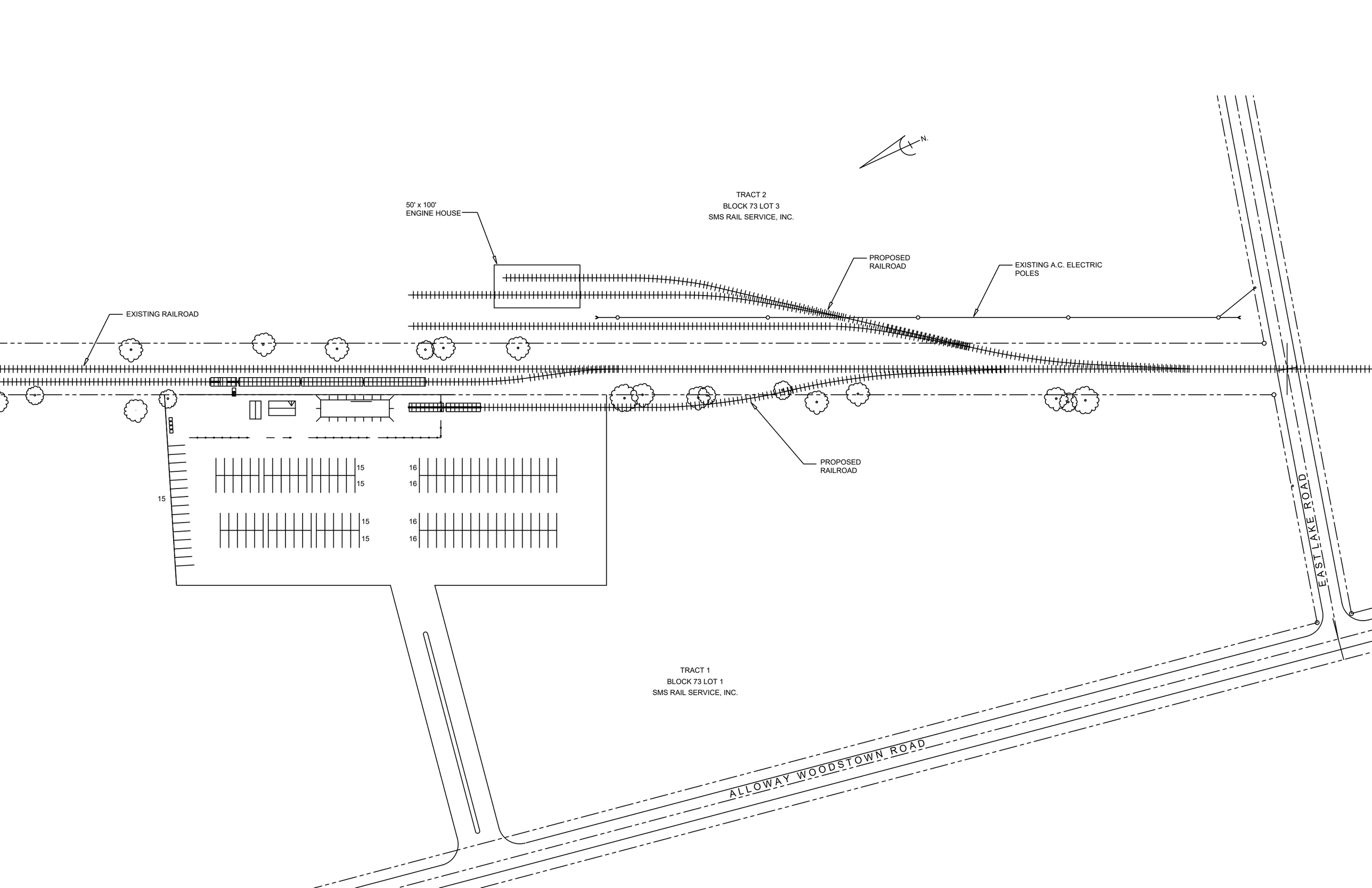

N.
50' x 100'
ENGINE HOUSE
TRACT 2
BLOCK 73 LOT 3
SMS RAIL SERVICE, INC.
PROPOSED
RAILROAD
EXISTING A.C. ELECTRIC
POLES
EXISTING RAILROAD
15
15
16
15
15
16
15
15
16
15
15
16
PROPOSED
RAILROAD
EAST LAKE ROAD
TRACT 1
BLOCK 73 LOT 1
SMS RAIL SERVICE, INC.
ALLOWAY WOODSTOWN ROAD

EXHIBIT R

BERKOWITZ · KLEIN, LLP
ATTORNEYS AT LAW
433 WEST MARKET STREET, SUITE 100
WEST CHESTER, PENNSYLVANIA 19382

Robert A. Klein rak@berklein.com
Telephone 215-880-6913

October 4, 2024

Via Email: kat@thevigilantelawfirm.com
Ekaterine N. Eleftheriou, Esquire
Solicitor of Pilesgrove Township
99 North Main Street
Mullica Hill, New Jersey 08062

Re: ***SMS Rail Service, Inc.***
Townships of Pilesgrove and Mannington, N.J. - Declaratory Order Petitions
STB Finance Docket No. 36770

Dear Ms. Eleftheriou:

Regarding our discussion during the conference call on Tuesday, October 1, 2024, concerning the provision of electricity for the railroad by Atlantic City Electric, you advised that without permits and my client SMS Rail Service, Inc. ("SMS") going through the permitting process, the local municipality lacks knowledge of the existence of the subject railroad facilities, what they are being used for, and why electricity is required. This is untrue. You also mentioned that the amount of electric being requested is a concern to Pilesgrove Township, for which you are Solicitor; however, that question has never previously been posed to SMS. The electric service connection to the railroad has now been blocked for nearly a year over the local jurisdictional claims.

You, on behalf of Pilesgrove, and Mannington Township's Solicitor, who participated in our call and is copied on this correspondence, both stated that SMS must come before the planning boards and go through the formal permitting and zoning process. The premise of these municipalities' demands is their incorrect assertion that the facilities are used exclusively for intrastate activities and therefore subject to local permitting and zoning requirements.

As promised and you requested, I have reviewed the email correspondence back and forth between SMS, you and Pilesgrove Township Clerk, Melissa Fackler, on this subject dating back to March of this year. I understand that it has been explained to you and the local officials in face-to-face meetings with SMS representatives and in the email correspondence that SMS has sent to you and the Township Clerk, that the electric service is needed for SMS's railroad operations, which contrary to your and Mannington's Solicitor's claims, are not exclusively intrastate.

Electric service is required but has been blocked by you for two pre-fabricated sheds and an engine house (all of the drawings and specifications for which were provided to you). You have been aware, and in fact SMS raised again in its most recent email correspondence to you dated September 5, 2024, that SMS needs electric service for its railroad operations, including for locomotive maintenance and storage. Yet during our conversation, you stated that you are without knowledge of what these structures are used for since no permits were requested. The structures and

their uses are in plain view to confirm, and numerous invitations by SMS to the municipalities to inspect have been made, and still the municipalities have failed to inspect the structures. Your foregoing assertion stands as the reason why, despite all of the communication and disclosure, you have not provided confirmation to Atlantic City Electric that these railroad operations are outside of local jurisdiction so that the electric service connection can be made by SMS's electrician, Krise Services, who SMS also tried to put in contact with you. That confirmation is all that Atlantic City Electric requires from you to allow the electrical connection to be made.

In addition, last spring, you withdrew the issued code violations for various permitting, zoning, and/or construction violations in recognition that SMS's activities are under federal jurisdiction and the municipality cannot require permits. Atlantic City Electric has already erected as many as five electric poles with transmission lines on SMS's property, yet you are blocking completion of the connection to the railroad operations.

My understanding is that you have been provided the names of John Heritage, Commercial Project Manager of Krise Services, and Ryan Drebes, Field Engineer Technician of Atlantic City Electric, and have failed to communicate with either of them in this regard. Rather, despite recognizing last spring that the local municipality cannot require permits, you are now insisting that the local permitting process be followed as prerequisite to issuance of a cut-in card for electric service to SMS's facilities. SMS has explained to you that Atlantic City Electric does not require a cut-in card, but rather only a letter or email from you as Pilesgrove Township Solicitor indicating that the Township is without jurisdiction over the railroad. You are aware that the Township may inspect the work as it is in process and/or once the connection is completed. By email correspondence from SMS to the Pilesgrove Township Clerk, dated April 1, 2024, on which you and the Township's Construction Department were copied, SMS stated should you need additional information to assist with the inspection of the connection, it would of course be provided through its electrical contractor Krise Services. No response to that correspondence was received by SMS.

I have copied on this letter Mr. Heritage of Krise Services and Mr. Drebes of Atlantic City Electric, as well as an additional contact at Atlantic City Electric, its Senior Public Affairs Manager, Mr. Adalberto "Bert" Lopez. I request your immediate reply to all on this correspondence providing confirmation that your client Pilesgrove Township is on notice of SMS's request for such electric service connection, that the municipality is without jurisdiction over the service connection, and that your reply by email is in lieu of a cut-in card.

Sincerely,

/s/ Robert A. Klein
Robert A. Klein

cc (via email):
Mr. Bert Lopez, Sr. Pub. Affairs Mgr, AC Elec. - Adalberto.Lopez@atlanticcityelectric.com
Mr. Ryan Drebes, Field Engineer Technician, AC Electric - Ryan.Drebes@exeloncorp.com
Mr. John Heritage, Commercial Project Manager, Krise Services - jheritage@kriseservices.com
William L. Horner, Esq., Mannington Twp. Solicitor - wlh@hornerlaw.net
Karin M. Wood, Esq., Salem Solicitor - attorneywood@comcast.net, counsel@salmecountynj.gov

EXHIBIT S

rak berklein.com <rak@berklein.com> 10/25/2024 2:49 PM

SMS Rail Service, Inc. - Salem Rail Line - Declaratory Order Proceedings, STB FD 36770

To kat@thevigilantelawfirm.com

Dear Ms. Eleftheriou,

Regarding the provision of electricity for the railroad by Atlantic City Electric ("ACE") discussed in my October 4, 2024 letter addressed to you, my client SMS Rail Service, Inc. ("SMS") and I have received no response from Pilesgrove Township or you. Also, SMS is advised by ACE and Krise Services that neither you nor Pilesgrove Township has communicated with them in this regard.

Notwithstanding your and Pilesgrove Township's failure to respond, SMS is advised that ACE is undertaking a review of this matter in light of the parties' positions and your failure to respond to SMS's position as set forth in my October 4 letter. You should be aware that your and your client's blocking the electrical connection to the subject railroad facilities, without articulating a cognizable basis for doing so, is a serious matter. This appears may have the attention of ACE as well.

I have given you fair notice of SMS's position. SMS continues to reserve all rights and waives none.

Sincerely,

Bob Klein
215-880-6913

From: Jim Pfeiffer
To: Construction Assistant; Kat@thevigilantelawfirm.com; Melissa Fackler
Subject: Notice of SMS Rail Service, Inc. re: Electric Service
Date: Friday, October 25, 2024 3:53:00 PM
Attachments: image001.png

Good Afternoon:

In response to SMS's attorney's letter dated October 4, 2024 to the Pilesgrove Township Solicitor, on which Atlantic City Electric ("ACE") and Krise Services ("Krise Services"), among others, were copied and to which no response was given by the Township or its Solicitor to SMS, ACE, or Krise Services, ACE has determined and acknowledged to SMS the preemptive effect of federal law over Township regulation of the electrical connection to Block 70, Lots 1 and 3. As such, Krise Services will be installing the service on Monday, October 28, 2024, starting at about 8:00 a.m.

If the Township would like to exercise its right to inspect the electrical service, please contact me to arrange a mutually convenient time.

Kind regards,

Jim Pfeiffer
SMS Rail Service, Inc.
Office: (856) 467-4800, ext. 303
Mobile: (610) 739-3729



EXHIBIT T

THE VIGILANTE LAW FIRM, P.C.

EKATERINE ELEFTHERIOU, ESQUIRE
Phone: 856-223-9990
Email: kat@thevigilantelawfirm.com

October 26, 2024

Robert Klein, Esquire
Berkowitz Klein LLP
433 West Market Street, Suite 100
West Chester PA 19382

Re: SMS Rail Service Inc.
Stop Construction Order - Block 73, Lots 1 & 3
Notice and Order of Penalty (Control No. 457) - Block 73, Lot I
Notice of Violation and Order to Terminate (Control No. 458) - Block 73, Lot 1 and 3

Dear Mr. Klein:

I am writing to you in my capacity as the attorney for Pilesgrove Township. This correspondence is in response to your e-mail to me dated October 24, 2024, as well as in response to the letter submitted by SMS Rail Service, Inc., addressed to Richard Saunders, Pilesgrove Construction Official dated October 24, 2024, regarding the above referenced matters.

As you are fully aware, it is the position of Pilesgrove Township that SMS Rail Service, Inc., is not entitled to federal preemption over state and local regulations. To that end, the Township has petitioned the Surface Transportation Board (STB) to issue a declaratory order pursuant to 5 U.S.C. §554(e) and 49 U.S.C.1321, regarding whether the Board maintains jurisdiction over SMS Rail Service, Inc., and, if so, over which of its actions and activities as it has expanded its scope into an entertainment fun ride. As you are further aware, the STB has accepted the Petition and a briefing schedule has been issued under Decision dated October 24, 2024. The Township has maintained its position with respect to all activities which are not preempted and which are subject to the declaratory order proceeding. This position has consistently been applied to the construction activities on Block 73, Lots 1 and 3. At no time did the Construction Board of Appeals make a decision favorable to SMS. On the contrary, the Township *withdrew* without prejudice before the Board in connection to Block 73, Lot 1, in favor of pursuing a determination by the STB to obtain clarification of the question of whether SMS Rail Service, Inc., and its activities upon the subject property fall under the federal preemption.

SMS now seeks to declare the Stop Construction Order Notice and Order of Penalty and Notice of Violation in Order to Terminate a nullity, and demands withdraw of same on the basis of a clerical error which mistakenly identified the lot as Block 73, Lot 1 versus Lot 3 which is the Lot in question and upon which SMS is entirely aware that there has been a new structure erected. The Township will take steps to correct this clerical error. The Notice of Violation and Order to Terminate are consistent with the

Township's position and will not be withdrawn. SMS has taken the position that the activities on Block 73, Lot 3 are presumptively federally preempted, as a locomotive house. It cites its attempt to provide the undersigned, as the solicitor, drawings and specifications for the structure on or about September 5, 2024 as evidence that it has complied with requirements set forth in the Supreme Court case of The Village of Ridgefield Park v. New York Susquehanna & Western Railway Corp., 365 U.S. 648 (1961). As I made clear at that time, providing me in my capacity as solicitor via e-mail with any architectural engineering drawings does not satisfy the Village of Ridgeway Ridgefield Park and SMS needs to submit the documents and interact directly with the Construction Office as it relates to submitting drawings and plans and requesting inspection. Further, at no time has the Township conceded the preemption issue; however, as you are well aware, the Township has been awaiting action and ultimately a declaration by the STB in connection to the preemption issue. The undersigned as well as the township officials question the veracity of SMS's allegation that an unnamed "township inspector" acknowledged receipt of the project specifications and informed SMS's workers that they could continue construction "if they followed the plans," as no plans had been submitted to the township construction office until October 23, 2024, thirteen (13) days after the October 10, 2024, alleged site visitation by a township construction official. SMS further alleges that another unnamed inspector visited the site on October 18th and "made only positive remarks," but failed to provide any additional basis or background relative to the official's "positive remarks." SMS makes these claims despite its acknowledgement that on October 10, 2024, a stop work order and no permit was posted "apologetically" on the property by the Township inspector. The Township specifically denies that at any point in time any of its inspectors permitted work to move forward.

Finally, SMS' continued reliance on Ridgefield Park is misplaced. The Township has not conceded the issue of preemption as it believes that the train tourism activities are not permitted and are not preempted. In the event that the STB determines that preemption applies to these activities then and only then would Ridgefield Park apply. Until that position is determined by the STB, the Township of Pilesgrove must enforce its construction code in a manner which protects the public safety and promotes the general welfare. The inclusion of Ridgefield Park upon the violation notice was made to emphasize the fact that if SMS is alleging that they fall under Federal Preemption that they have failed to follow not only the typical and regular permitting standards but also those requirements set forth in Ridgefield Park as to those entities which claim preemption.

As to your position that the Atlantic City Electric Company is undertaking a review of this matter and the Township's alleged failure to respond to SMS's position as set forth in your October 4, 2024 letter, ACE is more than welcome to reach out to Township officials to discuss this matter directly. Further, any determination or work performed by ACE or Krise upon the premises is at their own peril and without permit or approval as the Township is awaiting a determination by STB as to preemption.

The Township is required to enforce its zoning laws and construction code and until an exception has been established under Federal Preemption, the Township must enforce the code as it has done in this

case. The Township of Pilesgrove, and its officials are looking forward to a prompt decision by the STB, but will take all necessary and appropriate action in the interim to protect the public.

Please be guided accordingly.

Very truly yours,

THE VIGILANTE LAW FIRM, P.C.

By: Ekaterine Eleftheriou, Esquire

ENE/nm
cc: Melissa Fackler, Clerk

99 North Main Street • Mullica Hill• New Jersey • 08062
Kat@thevigilantelawfirm.com
P. 856-223-9990/F. 856-494-1400

EXHIBIT U

From: Tanya Timberman
To: Jim Pfeiffer; Kevin Elder
Cc: Melissa Fackler; Kat@thevigilantelawfirm.com
Subject: SMS Rail Service Zoning Notice
Date: Wednesday, October 11, 2023 11:52:28 AM
Attachments: SMS Rail Service Zoning Notice.pdf

Good Morning,

Attached is a change use Zoning Notice for SMS Rail Service located at 650 Alloway-Woodstown Rd. The original is being mailed.

I look forward to working with you!

tanya timberman
Zoning & Housing Official
Pilesgrove Township
www.pilesgrovenj.org
(856) 769-3222

Office Hours: Monday & Wednesday, 8:30-12:00 noon
Inspections: Monday & Wednesday, 12:00-2:00pm

1180 Route 40
Pilesgrove, New Jersey 08098

Township of Pilesgrove
PILESGROVE TOWNSHIP 1706
County of Salem

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

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

October 11, 2023

SMS RAIL SERVICE INC
PO Box 711
Bridgeport, NJ 08014

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

Dear SMS Rail Service:

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

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

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

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

Photo attached.

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

Sincerely,

Tanya Timberman
Zoning Officer

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



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

EXHIBIT V

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

Permit No.
Control No.
Log No. 419

NOTICE AND ORDER OF PENALTY

(Penalty)

Identification

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

Action

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

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

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

Your are hereby ordered to terminate the said violations on or before **1/03/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.
You are hereby ordered to pay a penalty of **$2,000.00** for each violation for a total penalty of **$2,000.00** Each **Week** that any of the said violations remain outstanding after **1/03/24** shall result in an additional penalty of **$500 per Week**
If you wish to contest the validity of the above action, you may request a hearing before the Construction Board of Appeals of the County of **SALEM** within 15 days of the receipt of these Orders. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Subcode Official — Date

John Holroyd — Date 12-11-23
Construction Official

U.C.C. F210

EXHIBIT W

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

Permit No.
Control No.
Log No. 419

NOTICE AND ORDER OF PENALTY

(Work Without A Permit, 2.14)

Identification

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

Action

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

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

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

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

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

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

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

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

Subcode Official — Date 1-29-24

John Holroyd
Construction Official — Date

U.C.C. F210

EXHIBIT X

SALEM COUNTY ENGINEER'S OFFICE
James McKelvie, County Engineer
110 Fifth Street, Suite 600, Salem, New Jersey 08079
856-935-7510, Ext. 8549

November 12, 2024

Gloucester County
Office of County Counsel
2 South Broad Street, 2nd Floor
Woodbury, New Jersey 08096

ATTENTION: Kelly DeTurk, Secretary
Gloucester County Construction Board of Appeals

RE: Salem County Construction Board of Appeals
Conflict of Interest

Dear Ms. DeTurk:

As briefly discussed on the phone this morning, the County of Salem received a "Construction Board of Appeals" Application from Robert A. Klein, Esquire, "Berkowitz-Klein, LLP" representing property owner "SMS Rail Service, Inc.". The Application was hand delivered to this Office on November 6, 2024.

As you are aware the "Salem County Construction Board of Appeals" has a conflict with "Hearing" this Appeal. We are requesting that the "Gloucester County Construction Board of Appeals" – "Hear" and "Act" upon this Application.

Attached you will find a copy of the original Appeal documents submitted to this Office.

I have requested that the applicant forward the filing fee directly to the County of Gloucester.

Please feel free to reach out to our Solicitor, Karin Wood (Counsel@salemcountynj.gov) if you have any questions or need additional information. Thank you for your assistance with this issue.

Sincerely,

Diana Ford

Diana Ford, Secretary
Salem County Construction
Board of Appeals

attachments
e-mailed
cc: Karin Wood, Salem County Solicitor
Salem County Construction Board of Appeals Members
Robert Klein, Esq.
"SMS Rail Service, Inc."
Ekaterine N. Eleftheriou, Solicitor, Pilesgrove Township
Richard Saunders, Construction Sub-Code Official, Pilesgrove Township
Melissa Fackler, Clerk, Pilesgrove Township

BERKOWITZ · KLEIN, LLP
ATTORNEYS AT LAW
433 WEST MARKET STREET, SUITE 100
WEST CHESTER, PENNSYLVANIA 19382

Robert A. Klein rak@berklein.com

Telephone 215-880-6913

November 6, 2024

Via Hand Delivery

Salem County Construction Board of Appeals
Attention: Ms. Diane Ford, Secretary
110 Fifth Street, Suite 600
Salem, NJ 08079

Re: ***SMS Rail Service, Inc.***
Notice of Appeal from Stop Construction Orders, Notices of Violation and Orders to Terminate, and Notices and Orders of Penalty, dated October 10, 2024, and corrected October 29, 2024

Dear Ms. Ford:

I represent SMS Rail Service, Inc. ("SMS"), a Class III rail carrier, regarding the enclosed Notice of Appeal from the "corrected" Stop Construction Order issued October 28, 2024, and Notice of Violation and Order to Terminate (Log No. 461), and Notice and Order of Penalty (Log No. 462), dated October 29, 2024 ("Corrected Order"), which corrected a Stop Construction Order issued October 17, 2024, and Notice of Violation and Order to Terminate (Log No. 458), and Notice and Order of Penalty (Log No. 457), dated October 10, 2024 ("Original Order") (also enclosed), from Pilesgrove Township, New Jersey ("this Appeal"). The Original Order was served upon SMS via certified mail on October 22, 2024. The Corrected Order was served upon SMS via certified mail on November 4, 2024. Accordingly, this Appeal is timely.

As stated in the attached Notice of Appeal, the issues presented by this Appeal are presently the subject of a prior pending declaratory order proceeding before the Surface Transportation Board ("STB"), FD 36770, and for that reason alone, this matter should be dismissed.

Also, this Appeal is related to an appeal previously before the Salem County Construction Board of Appeals that was transferred to the Gloucester County Construction Board of Appeals, *SMS Rail Service, Inc. v. Township of Pilesgrove*, Appeal No. 2024-2. Please note that this Appeal, like the prior appeal, should be transferred to the Gloucester County Construction Board of Appeals, in light of the conflict of interest presented by the fact that the Salem County rail line branch ("Salem County Branch") is leased to and operated by SMS under an agreement with the County of Salem, and the property that is the subject of this Appeal is part of the railroad facilities of SMS on the Salem County Branch. Moreover, SMS understands that these Notices and Orders have been sent to the County of Salem.

RECEIVED
NOV - 6 2024
SALEM COUNTY
ENGINEERS OFFICE

As stated above and in the Notice of Appeal, because the issues presented by this Appeal are presently the subject of a prior pending declaratory order proceeding before the STB and in fact have been withdrawn in the Prior Appeal based on the parties' agreement on the preemptive nature of 49 U.S.C. §10501(b), this matter should be dismissed. Alternatively, if this matter proceeds, we request a hearing on this Appeal at which witnesses will be called to testify by SMS. We will be submitting a brief in support of this Appeal before the hearing and subpoenaing or calling witnesses, including from Pilesgrove Township, among others who were involved in the prior appeal. We therefore request that, if this matter proceeds, a hearing date for this Appeal be set for a date not sooner than 60 days from this date in order to permit time for briefing and to subpoena and arrange for witnesses to appear and testify at the hearing.

A check from our attorney business account in the amount of $100.00, representing the filing fee for this Appeal, is enclosed.

Please contact me if you have any questions. Thank you for your assistance.

Respectfully,

/s/ Robert A. Klein
Robert A. Klein

Enclosure
cc (via regular mail and e-mail, w/ encl.):

Ekaterine N. Eleftheriou, Esq.
Solicitor of Pilesgrove Township
99 North Main Street
Mullica Hill, NJ 08062
kat@thevigilantelawfirm.com

Karin M. Wood, Esq.
Solicitor of Salem County
110 Fifth Street, Suite 400
Salem, NJ 08079
attorneywood@comcast.net
counsel@salemcountynj.gov

APPLICATION TO CONSTRUCTION BOARD OF APPEALS

New Jersey Uniform Construction Code

Date Received: 10/22/24 & 11/4/24
Date Issued: 10/10/24 & 10/29/24
Control #: 457, 458, 461, 462
Permit #:

IDENTIFICATION

Work Site Location: East Lake Road | Block: 73 | Lot: 1 & 3

Owner in Fee: SMS Rail Service, Inc. | Agent: Robert A. Klein, Esq.

Address: P.O. Box 711, Bridgeport, NJ 08014 | Address: 433 W. Market Street, Suite 100, West Chester, PA 19382

Phone: (856) 467-4800 | Phone: (215) 880-6913 Email: rak@berklein.com

Municipality: Pilesgrove Township

APPLICANT STATEMENT

Specific section(s) of the Regulations in questions:

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

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

SMS Rail Service, Inc. ("SMS"), a Class III rail carrier, appeals from the attached "corrected" Stop Construction Order issued October 28, 2024, and Notice of Violation and Order to Terminate (Log No. 461), and Notice and Order of Penalty (Log No. 462), dated October 29, 2024 ("Corrected Order"), which corrected a Stop Construction Order issued October 17, 2024, and Notice of Violation and Order to Terminate (Log No. 458), and Notice and Order of Penalty (Log No. 457), dated October 10, 2024 ("Original Order") (also attached), from Pilesgrove Township, New Jersey ("this Appeal"). The Original Order was served upon SMS via certified mail on October 22, 2024. The Corrected Order was served upon SMS via certified mail on November 4, 2024. Accordingly, this Appeal is timely.

Continued on next page:

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

Fee: $ 100.00

Paid [X] Check No. 1382

Collected by: Dena Ford

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

SIGNED: _____ 11/6/2024

APPLICANT DATE

Robert A. Klein, Esq. (N.J. ID. 009731986)
Counsel for SMS Rail Service, Inc.

U.C.C. Form F-330A

RECEIVED
NOV - 6 2024
SALEM COUNTY
ENGINEERS OFFICE

Briefly state your position in this matter and explain the nature of the relief you seek - Continued from previous page:

The Township of Pilesgrove does not have jurisdiction over the subject matter due to federal preemption of state and local law. Specifically, pursuant to 49 U.S.C. §10501{b), "[t]he jurisdiction of the [U.S. Surface Transportation] Board over [...] transportation by rail carriers, and the remedies provided in this part with respect to [...] facilities of such carriers; and the construction, acquisition, operation, abandonment, or discontinuance of [...] facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law."

The issues presented by this Appeal are presently the subject of a prior pending declaratory order proceeding filed by Pilesgrove Township with the U.S. Surface Transportation Board ("STB"), FD 36770, and for that reason alone, this matter should be dismissed. In fact, alleged violations not unlike the instant violations were raised by Pilesgrove's neighbor, Mannington Township, and unsuccessfully prosecuted by Pilesgrove's Solicitor in her capacity as Mid-Salem County Municipal Prosecutor. See attached Order Granting Motions of SMS Rail Service, Inc. To Dismiss, dated September 26, 2024, issued by Hon. Martin Whitcraft, J.M.C., in the action State of New Jersey v. SMS Rail Service, Inc. et al., N.J. Municipal Court, Summons/Complaint Nos. 1715-SC-007161, 007162, 007163, 007164, 007165, 007166, 007167, 007168, 007169.

Also, on January 29, 2024, the Township of Pilesgrove filed against Applicant SMS similar violations, which resulted in Pilesgrove's voluntary withdrawal of the Notices at a hearing of the Construction Board of Appeals (SMS Rail Service, Inc. v. Township of Pilesgrove, Appeal No. 2024-2 ("Prior Appeal")) subsequent to an agreement of the parties on the preemptive nature of 49 U.S.C. §10501(b).

Construction drawings, together with an invitation to inspect, as required by applicable law, have been provided to Pilesgrove Township.

Please also note that this Appeal is related to the above-referenced Prior Appeal before the Salem County Construction Board of Appeals. Like the Prior Appeal, this Appeal should be transferred by the Salem County Construction Board of Appeals to the Gloucester County Construction Board of Appeals, in light of the conflict of interest presented by the fact that the Salem County Branch Line Railroad ("Salem County Branch") is leased to and operated by SMS under an agreement with the County of Salem, and the property that is the subject of this Appeal is part of the railroad facilities of SMS on the Salem County Branch. Moreover, SMS understands that these Notices and Orders have been sent to the County of Salem.

As stated above, because the issues presented by this Appeal are presently the subject of a prior pending declaratory order proceeding before the STB and in fact have been withdrawn in the Prior Appeal based on the parties' agreement on the preemptive nature of 49 U.S.C. §10501(b), this matter should be dismissed.

Alternatively, if this matter proceeds, SMS requests a hearing on this Appeal at which witnesses will be called to testify by SMS. SMS will be submitting a brief in support of this Appeal before the hearing and subpoenaing or calling witnesses, including from Pilesgrove Township, among others who were involved in the prior appeal. SMS therefore requests that, if this matter proceeds, a hearing date for this Appeal be set for a date not sooner than 60 days from this date in order to permit time for briefing and to subpoena and arrange for witnesses to appear and testify at the hearing.

STOP CONSTRUCTION ORDER

Permit #
Date Issued **10/17/24**
-or-
Control #

IDENTIFICATION

Work Site Location **ALLOWAY-WOODSTOWN RD** Block/Lot//Qual **73/1//QFARM**

Owner in fee **SMS RAIL SERVICE**
Address **P.O. BOX 711**
BRIDGEPORT, NJ 08014

Agent
Address

To: ☐ Owner ☐ Other:
☐ Agent/Contractor

DATE OF INSPECTION: **10/10/24** DATE OF THIS NOTICE: **10/10/24**

ACTION

You are hereby ***ORDERED*** to ***STOP***

☑ **Building** ☐ **Electrical** ☐ **Plumbing** ☐ **Fire Protection** ☐ **Mechanical** ☐ **Elevator** ☐ **All CONSTRUCTION**

at the above Location as of **10/10/24** until further notice from this enforcing agency.

This ORDER is entered pursuant to N.J.A.C. 5:23-2.31(d) for violation of **STOP WORK** which provides:

Permission to resume construction may be obtained from this enforcing agency after the following conditions are met:

Submit construction documents and request required inspections

Further, take *NOTICE* that failure to comply with this ***ORDER*** may result in the assessment of penalties of up to $2,000 per day per violation, and a certificate of occupancy will not be issued until such penalty has been paid.

If necessary, the enforcing agency will concurrently seek the Order of a court of competent jurisdiction restraining furtherwork at the above location.

If you wish to contest this ***ORDER***, you may request a hearing before the Construction Board of Appeals of the **County** of **SALEM**, within 15 days of receipt of this ***ORDER*** as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Apeals may be used for this purpose.

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

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

If you have any questions concerning this matter, please call: **Richard Saunders**
Construction Official

By ***ORDER*** of : Richard Saunders Date: 10-10-2024
SubCode Official

Construction Office, Township of Pilesgrove, Pilesgrove, NJ 08098, 8567694814 , FAX 8567695490

U.C.C. F250 (rev. 1/2004)

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

Permit No., If Any
Control No.
Log No. 458

NOTICE OF VIOLATION AND ORDER TO TERMINATE

(Work Without A Permit, 2.14)

Identification

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

Contractor

Action

Date of Inspection **10/10/24** Date of Notice **10/10/24** Compliance Due Date **10/30/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.

Further, take NOTICE that failure to comply with this ORDER may result in the assessment of penalties up to $2,000 per Week per violation, and a certificate of occupancy will NOT be issued until such penalty has been paid.

If you wish to contest thei ORDER, you may request a hearing before the Construction Board of Appeals of the county of **SALEM** within 15 days of receipt of this ORDER as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-10-2024
Subcode Official Date

Richard Saunders 10-10-2024
Richard Saunders Date
Construction Official

U.C.C. F211

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

Permit No.
Control No.
Log No. 457

NOTICE AND ORDER OF PENALTY

(Work Without A Permit, 2.14)

Identification

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

Action

Date of Notice **10/10/24** Compliance Due Date **10/30/24** Date of Inspection **10/10/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.
You are hereby ordered to pay a penalty of **$2,000.00** for each violation for a total penalty of **$2,000.00** Each **Week** that any of the said violations remain outstanding after **10/30/24** shall result in an additional penalty of **$500 per Week**
If you wish to contest the validity of the above action, you may request a hearing before the Construction Board of Appeals of the County of **SALEM** within 15 days of the receipt of these Orders. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-10-2024
Subcode Official Date

Richard Saunders 10-10-2024
Richard Saunders Date
Construction Official

U.C.C. F210

CORRECTED

STOP CONSTRUCTION ORDER

Permit #
Date Issued **10/28/24**
-or-
Control #

IDENTIFICATION

Work Site Location **EAST LAKE RD** Block/Lot//Qual **73/3//QFARM**

Owner in fee **SMS RAIL SERVICE INC.** Agent

Address **P.O. BOX 711** Address

BRIDGEPORT, NJ 08014

To: ☐ **Owner** ☐ **Other:**

Agent/Contractor

DATE OF INSPECTION: **10/10/24** DATE OF THIS NOTICE: **10/10/24**

ACTION

You are hereby ***ORDERED*** to ***STOP***

☑ **Building** ☐ **Electrical** ☐ **Plumbing** ☐ **Fire Protection** ☐ **Mechanical** ☐ **Elevator** ☐ **All CONSTRUCTION**

at the above Location as of _____ until further notice from this enforcing agency.

This ORDER is entered pursuant to N.J.A.C. 5:23-2.31(d) for violation of **STOP WORK** which provides:

Permission to resume construction may be obtained from this enforcing agency after the following conditions are met:

Submit construction documents and request required inspections

Further, take *NOTICE* that failure to comply with this ***ORDER*** may result in the assessment of penalties of up to $2,000 per day per violation, and a certificate of occupancy will not be issued until such penalty has been paid.

If necessary, the enforcing agency will concurrently seek the Order of a court of competent jurisdiction restraining furtherwork at the above location.

If you wish to contest this ***ORDER***, you may request a hearing before the Construction Board of Appeals of the **County** of **SALEM**, within 15 days of receipt of this ***ORDER*** as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Apeals may be used for this purpose.

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

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

If you have any questions concerning this matter, please call: **Richard Saunders**
Construction Official

By ***ORDER*** of : Richard Saunders Date: 10-29-2024
SubCode Official

Construction Office, Township of Pilesgrove, Pilesgrove, NJ 08098, 8567694814 , FAX 8567695490

U.C.C. F250 (rev. 1/2004)

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

CORRECTED

Permit No., If Any
Control No.
Log No. 461

NOTICE OF VIOLATION AND ORDER TO TERMINATE

(Work Without A Permit, 2.14)

Identification

Work Site EAST LAKE RD
Block/Lot 73/3//QFARM Unit

Contractor
SMS RAIL SERVICE INC.
P.O. BOX 711
BRIDGEPORT, NJ 08014

Action

Date of Inspection **10/10/24** Date of Notice **10/10/24** Compliance Due Date **10/30/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.

Further, take NOTICE that failure to comply with this ORDER may result in the assessment of penalties up to $2,000 per Week per violation, and a certificate of occupancy will NOT be issued until such penalty has been paid.

If you wish to contest thei ORDER, you may request a hearing before the Construction Board of Appeals of the county of **SALEM** within 15 days of receipt of this ORDER as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-29-2024
Subcode Official Date

Richard Saunders 10-29-2024
Richard Saunders Date
Construction Official

U.C.C. F211

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

CORRECTED

Permit No.
Control No.
Log No. 462

NOTICE AND ORDER OF PENALTY

(Work Without A Permit, 2.14)

Identification

Work Site EAST LAKE RD
Block/Lot 73/3//QFARM
Owner SMS RAIL SERVICE INC.
P.O. BOX 711
BRIDGEPORT, NJ 08014

Contractor

Action

Date of Notice **10/10/24** Compliance Due Date **10/30/24** Date of Inspection **10/10/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.
You are hereby ordered to pay a penalty of **$2,000.00** for each violation for a total penalty of **$2,000.00** Each **Week** that any of the said violations remain outstanding after shall result in an additional penalty of **$500 per Week**
If you wish to contest the validity of the above action, you may request a hearing before the Construction Board of Appeals of the County of **SALEM** within 15 days of the receipt of these Orders. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-29-2024
Subcode Official Date

Richard Saunders 10-29-2024
Richard Saunders Date
Construction Official

U.C.C. F210

Robert A. Klein, Esquire
NJ Attorney ID No. 009731986
Berkowitz Klein, LLP
433 West Market Street, Suite 100
West Chester, PA 19382
T. 215-880-6913
E. rak@berklein.com
Attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad

THE STATE OF NEW JERSEY vs. SMS RAIL SERVICE, INC. and THE STATE OF NEW JERSEY vs. WOODSTOWN CENTRAL RAILROAD and THE STATE OF NEW JERSEY vs. COUNTY OF SALEM	**MID-SALEM COUNTY MUNICIPAL COURT (Woodstown, NJ; Court ID 1715)** Docket Nos. SC-2024-007161, SC-2024-007162, and SC-2024-007163 Docket Nos. SC-2024-007164, SC 2024-007165, and SC-2024-007166 Docket Nos. SC-2024-007167, SC-2024-007168, SC-2024-007169

ORDER GRANTING MOTIONS OF SMS RAIL SERVICE, INC. TO DISMISS

THIS MATTER coming before the Court on the motions of Defendants SMS Rail Service, Inc. and Woodstown Central Railroad, a fictious name owned by SMS Rail Service, Inc. ("SMS"), by Robert A. Klein, Esquire appearing, to dismiss the above-captioned matters initiated by The State of New Jersey, in the presence of The State of New Jersey, by Municipal Prosecutor of the Township of Mannington, NJ, Ekaterine N. Eleftheriou, Esquire appearing, and the County of Salem, by Karin M. Wood, Esquire appearing, and the Court having considered

the papers in support of and in opposition to the motions and oral argument having been heard, and for good cause having been shown,

IT IS on this 26th day of September, 2024,

ORDERED that the motions of SMS to dismiss are GRANTED and Complaint Nos.: SC-2024-007161, SC-2024-007162, SC-2024-007163, SC-2024-007164, SC 2024-007165, SC-2024-007166, SC-007167, SC-007168, and SC-007169 are DISMISSED, without prejudice.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record within 5 days of the date hereof.

Date: 9/26/24

Hon. Martin Whitcraft, J.M.C.

( ) Opposed

( ) Unopposed

EXHIBIT Y

HORNER & HORNER, L.L.C.
ATTORNEYS AT LAW
67 MARKET STREET
P.O. BOX 66
SALEM, NJ 08079
TEL (856) 935-0958
FAX (856) 935-1708

WILLIAM C. HORNER
(RETIRED)
WILLIAM L. HORNER
wlh@hornerlaw.net

June 10, 2024

Via Electronic Filing

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

Re: Petition of Mannington Township, County of Salem, New Jersey for Leave to Intervene in Proceedings of Petition for Declaratory Order of Township of Pilesgrove, County of Salem, New Jersey (In re SMS Rail Services, Inc.) Docket No.: FD 36770

Dear Ms. Brown:

I represent the Township of Mannington, a New Jersey municipal corporation. Attached for filing is Mannington's Petition for Leave to Intervene in the above referenced proceeding.

The Township of Mannington is a public/governmental entity. It is my understanding that no fee is required for this filing.

Please call or write if you have any questions or concerns.

Cordially yours,

HORNER & HORNER, L.L.C.

By: _____
William L. Horner

WLH:jcc
Cc: Esther A. Mitchell, Clerk (via email only)
Frank J. Hoerst, III, Esq. (via email only)
David A. Avedissian, Esq. (via email only)
Karin M. Wood, Esq. (via email only)
Ekaterine N. Eleftheriou, Esq. (via email only)

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36770

PETITION FOR DECLARATORY ORDER OF TOWNSHIP OF PILESGROVE, COUNTY OF SALEM, NEW JERSEY

PETITION OF TOWNSHIP OF MANNINGTON, COUNTY OF SALEM, NEW JERSEY FOR LEAVE TO INTERVENE

On April 22, 2024, the Township of Pilesgrove, a New Jersey municipal corporation located in Salem County, New Jersey ("Pilesgrove") filed a petition requesting a declaratory order from the Surface Transportation Board ("Board") as to whether and to what extent the Interstate Commerce Commission Termination Act of 1995 ("ICCTA") preempts Pilesgrove's municipal zoning and site plan regulations, and certain requirements of New Jersey's Uniform Construction Code ("UCC"), with regard to the land development and land use activities of SMS Rail Service, Inc. ("SMS") within Pilesgrove Township in connection with SMS's recently commenced entertainment-based intrastate railroad excursions.

The Township of Mannington, a New Jersey municipal corporation also located in Salem County, New Jersey ("Mannington"), which shares a municipal boundary with Pilesgrove, and through which SMS's rail line also extends, hereby petitions the Board for leave to intervene in Pilesgrove's proceeding, and requests that the Board's declaratory order also address SMS's development and use of land within Mannington designated as Tax Map Block 67, Lots 14.01, 14.02 and 18 (the "subject property" or "subject Mannington property") for trackside customer

entertainment and recreation activities in connection with the same railroad excursion services that are the subject of Pilesgrove's petition. Specifically, Mannington seeks confirmation from the Board that SMS's activities at the subject Mannington property, as described in the Mannington Township Solicitor's April 10, 2024, correspondence to the Mannington Township Zoning Officer (attached hereto as EXHIBIT B), are not entitled to ICCTA preemption, and are therefore subject to the New Jersey Municipal Land Use Law, *N.J.S.A.* 40:55D-1, *et seq.* ("MLUL"), and Mannington's land use regulations adopted pursuant thereto.

Mannington's Zoning Officer has issued notices of violation and municipal court complaints/summonses to SMS and its apparent operational affiliate, Woodstown Central Railroad ("WCR"), and also to the County of Salem, New Jersey, a political subdivision of the State of New Jersey (the "County") which owns the subject Mannington property (see copies of notices of violations attached hereto as EXHIBIT C, and copies of complaints/summonses attached hereto as EXHIBIT D).[1] If the Board's declaratory order confirms there is no ICCTA preemption of state and local laws with respect to SMS's land development and land use activities within Mannington as described in attached EXHIBIT B, the municipal court can, in good conscience, determine whether and to what extent such development and use are subject to Mannington's zoning and site plan review regulations pursuant to the MLUL. If the municipal court determines that the MLUL and Mannington's land use regulations are applicable to SMS's excursion-related operations at the subject property as described in attached EXHIBIT B, then SMS cannot conduct those development and use activities without first obtaining use variance and site plan approvals from the Mannington Township Planning Board, meaning that, pending such approvals, SMS's development and use of the subject property for trackside customer entertainment and recreation

[1] Municipal court appearances are currently scheduled for July 25, 2024.

activities in connection with its intrastate railroad excursions must cease, and SMS must remove all violative structures, facilities, improvements, and installations from the subject property.

A certification of the Mannington Zoning Officer is attached hereto as EXHIBIT A to confirm the completeness and accuracy of the factual information set forth in EXHIBIT B, and to confirm that EXHIBITS C and D are true copies of the notices of violations/orders to cease, and the municipal court complaints/summonses, that have been issued to SMS, WCR, and the County.

BACKGROUND AND LEGAL ANALYSIS

NO ICCTA PREEMPTION

Mannington became aware of SMS's activities at the subject property during the fall and early winter of 2023, whereupon the Township Solicitor submitted inquiries to SMS's attorney that resulted in the exchange of correspondence that is included as part of attached EXHIBIT B. The last of SMS's attorney's letters, dated April 9, 2024, made no mention of the "Easter Bunny Express" activities that had just been investigated by the Mannington Zoning Officer on March 30, 2024, which caused the Township Solicitor (1) to conclude that SMS was not allowing its attorney to fully disclose the true nature and extent of SMS's activities at the subject property, and (2) to recommend that the Zoning Officer promptly enforce Mannington's zoning requirements through municipal court action against SMS, WCR, and the County. Mannington's Zoning Officer's observations of SMS's activities at the subject property, as relayed to the Township Solicitor, and the Township Solicitor's enforcement recommendations, are set forth in attached EXHIBIT B, along with the Township Solicitor's analysis of decisions by the Board and the former Interstate Commerce Commission supporting the Township Solicitor's conclusion that SMS's activities are not entitled to ICCTA preemption.

The Township Solicitor's legal analysis, starting on page 6 of attached EXHIBIT B, summarizes the following decisions which involved questions of preemption under 49 U.S.C.A. § 10501:

Napa Valley Wine Train, Inc. – Pet. for Declaratory Order, 7 I.C.C.2d 954 (1991)

Fun Trains, Inc. – Operation Exemption – Lines of CSX Transportation, Inc. and Florida Department of Transportation, FD 33472 (STB served March 5, 1998)

Borough of Riverdale – Pet. for Declaratory Order – The New York Susquehanna and Western Railway Corporation, FD 33466 (STB served September 10, 1999)

Denver & Rio Grande Railway Historical Foundation D/B/A Denver & Rio Grande Railroad, L.L.C. – Pet. for Declaratory Order, FD 35496 (STB served February 23, 2012)

All Aboard Florida – Operations LLC and All Aboard Florida – Stations – Construction and Operations Exemption – In Miami, Fla. and Orlando, Fla., FD 35680 (STB served December 21, 2012)

Denver & Rio Grande Railway Historical Foundation – Pet. for Declaratory Order, FD 35496 (STB served August 18, 2014)

Denver & Rio Grande Railway Historical Foundation – Pet. for Declaratory Order, FD 35496 (STB served March 24, 2015)

The Township Solicitor concluded, based on the Zoning Officer's observations and the aforesaid analysis, that:

1. SMS's excursion operations are conducted entirely within the state of New Jersey and are not connected in any way to the nation's interstate passenger rail system; therefore, SMS's excursion train turnaround and customer debarkation operations at the subject property, and SMS's trackside entertainment and recreation area operations at the subject property, are not entitled to federal preemption under the ICCTA;
2. SMS's excursion train turnaround and customer debarkation operations at the subject property, and SMS's trackside entertainment and recreation facilities and activities at the subject property, are not "integrally related to" the provision of interstate rail

transportation service or otherwise "inherently transportation" for purposes of ICCTA preemption; and

3. any *freight* operations on SMS's rail line through Mannington Township that might be "inter*state*" in nature, whether conducted by SMS or other carriers, and any commonly used dispatching system that might serve such freight carriers as well as SMS's excursion service operations, are not sufficient to bring SMS's wholly intra*state* passenger rail service, or its excursion train turnaround and customer debarkation operations at the subject property, or its trackside entertainment and recreation area operations at the subject property, within STB jurisdiction and ICCTA preemption.

For these reasons, as explained in attached EXHIBIT B, the Township Solicitor advised the Mannington Zoning Officer that SMS's excursion-related operations at the subject property – including its excursion train turnaround, customer debarkation, and trackside entertainment and recreation operations, structures, facilities, improvements, and installations – are subject to all state, county, and municipal laws and regulations, including Mannington's zoning and site plan review requirements, and that the Mannington Zoning Officer should immediately issue notices of violation to SMS, WCR, and the County for the above operations, and immediately initiate enforcement action against these three parties in Mannington's municipal court, which the Zoning Officer has done (see copies of notices and complaints/summonses attached hereto as EXHIBITS C and D, respectively).

As explained above, the County is involved in this matter because the County owns the land comprising the subject Mannington property, and because the subject property is believed to be included in the County's lease of the rail line to SMS. Also, according to Section 5 on page 3 of the County's lease agreement with SMS (copy attached to Pilesgrove's Petition for Declaratory

Order as Exhibit B), the County is entitled to share in gross revenues and gross ticket sales generated by SMS's rail operations, which presumably includes revenue from SMS's excursion ticket sales. Accordingly, and as certified below, Mannington is serving a copy of this Petition for Leave to Intervene on the County and the County Solicitor.

DISCUSSION

MANNINGTON SHOULD BE PERMITTED TO INTERVENE

The governing standard provides that the Board may grant intervention by a party with an interest in the proceeding when intervention "[w]ill not unduly disrupt the schedule" and "[w]ould not unduly broaden the issues." 49 C.F.R. § 1112.4(a). For the following reasons Mannington's proposed intervention clearly meets that standard, and also the attendant requirements of 49 C.F.R. § 1112.4(b):

1. Mannington has a Legitimate Interest in this Proceeding (49 C.F.R. § 1112.4(b)(1)). As explained in attached EXHIBIT B, Mannington's zoning and site plan regulations were duly adopted pursuant to the MLUL to promote public health, safety, and welfare. Congress's enactment of ICCTA did not intend to deprive Mannington's ability to regulate SMS's excursion operations through its zoning and site plan ordinances, according to which SMS is required to submit a complete site plan/variance application to the Mannington Township Planning Board explaining and depicting its existing and proposed development and use of the subject property, and to provide sworn testimony and evidence at a public hearing at which the Planning Board, nearby property owners, and other interested parties can learn about, ask questions, and present any concerns or objections with respect to SMS's existing and proposed operations at the subject

property. Any Mannington Township Planning Board approval of SMS's excursion-related activities would establish a clear benchmark of permitted-versus-non-permitted development and uses at the subject property, with reasonable conditions imposed as necessary to promote the public good and the intent and purposes of Mannington's zone plan and zoning ordinance. Mannington's regulation of SMS's excursion-related operations in this manner would have absolutely no effect on, and thus would not delay, interfere with, frustrate, or defeat the efficiency of, any of SMS's inter*state* railroad operations; nor would it foreclose or restrict SMS's ability to conduct its entertainment excursions or its freight operations (or any potential ICCTA-preempted inter*state* passenger service) through other parts of Mannington Township on its main rail line; nor would it in any way impinge upon interstate commerce or the federal regulation thereof. In short, Mannington's regulation of SMS's excursion-related activities at the subject property would not impose any unreasonable burden on interstate railroading. Also, as explained above, Mannington has already commenced an enforcement action against SMS in municipal court, and a specific determination by the Board as to the non-preemption of Mannington's municipal land use regulations would provide useful guidance for the municipal court in deciding that case.

2. Mannington's Support of Pilesgrove's Petition; Mannington's Request for Similar Relief (49 C.F.R. § 1112.4(b)(2) and (3)). Mannington supports Pilesgrove's petition for all of the reasons stated above, as well as for the reasons stated in Pilesgrove's petition. Mannington asks the Board to confirm, as part of the declaratory order requested by Pilesgrove, that SMS's excursion-related operations at the subject Mannington property, as described in attached EXHIBIT B, are not entitled to federal

preemption under the ICCTA, and are thus subject to Mannington's municipal land use regulations pursuant to the MLUL.

3. Mannington's Participation will not Unduly Broaden the Issues (49 C.F.R. § 1112.4(a)(2)). Mannington's objectives in regulating SMS's operations are essentially the same as Pilesgrove's, and SMS's operations at the subject Mannington property involve similar customer-related activities in connection with the same excursions, and along the same track line, that are at issue in Pilesgrove's petition. This similarity of subject matter and municipal regulatory objectives warrants review of Pilesgrove's and Mannington's concerns in a single proceeding on grounds of administrative efficiency, rather than necessitating two separate, nearly simultaneous, and essentially identical proceedings.

4. Mannington's Participation will not Disrupt the Schedule (49 C.F.R. § 1112.4(a)(1)). Mannington anticipates that its participation in Pilesgrove's proceeding will have no effect whatsoever on the procedural schedule. Mannington received Pilesgrove's petition on May 24, 2024 and is filing this petition with reasonable promptness. The Board has not yet rendered a decision on Pilesgrove's petition; indeed, the Board's online docket information for Pilesgrove's proceeding suggests that SMS has not yet submitted any formal filing to the Board. Mannington has no present plans to serve discovery, file additional pleadings or evidence, or seek any other relief besides a determination in the Board's declaratory order that SMS's activities at the subject Mannington property are not entitled to federal preemption under the ICCTA and are therefore subject to all municipal land use regulations pursuant to the MLUL. Mannington necessarily reserves its right to submit additional evidence or argument,

and would do so in conformance with applicable timeframes following any notification that such additional evidence or argument is necessary or appropriate.

CONCLUSION

For the foregoing reasons Mannington requests that the Board grant Mannington's intervention in this proceeding so as to permit Mannington to participate fully and to receive, contemporaneously with other parties involved, access to all pleadings, discovery, and investigative materials. Mannington also requests the Board to include confirmation in its declaratory order that SMS's operations at the subject Mannington property, as described in attached EXHIBIT B, are not entitled to preemption under the ICCTA.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that, on June 10, 2024, I am filing Mannington's Petition for Leave to Intervene, including all attachments, using the Board's online filing portal, and that I am causing SMS, WCR, and the County to be served with copies of the Petition and attachments by certified mail, return receipt requested, and also by regular mail, at their addresses as set forth on the following Service List, and that I am emailing copies of the Petition and attachments to the parties' attorneys named in the Service List (including Pilesgrove's attorney) at their specified email addresses.

William L. Horner, Esq.
Horner & Horner, L.L.C.
67 Market Street / P.O. Box 66
Salem, New Jersey 08079
Email: wlh@hornerlaw.net
Phone: (856) 935-0958
Fax: (856) 935-1708

SERVICE LIST
(Docket No. FD 36770)

Jeffrey L. Sutch, President
Jim Pfeiffer, COO
SMS Rail Service, Inc.
P.O. Box 711
Bridgeport, NJ 08014

Woodstown Central Railroad
650 Alloway-Woodstown Road
Woodstown, NJ 08098

Frank J. Hoerst, III, Esq. (Attorney for SMS Rail Service, Inc./Woodstown Central Railroad)
13 West Avenue
P.O. Box 217
Woodstown, NJ 08098
Email: fhoerstlaw@comcast.net
Phone: (856) 769-1700

David A. Avedissian, Esq. (Attorney for SMS Rail Service, Inc./Woodstown Central Railroad)
135 Kings Highway East
Haddonfield, NJ 08033
Email: david@avedissianlaw.com
Phone: (856) 857-1901

County of Salem
c/o Stacy L. Pennington
Clerk of the Board of Commissioners
Fifth Street Office Complex
110 Fifth Street, Suite 400
Salem, NJ 08079

Karin M. Wood, Esq. (Attorney for County of Salem)
Salem County Counsel
110 Fifth Street, Suite 400
Salem, NJ 08079
Email: counsel@salemcountynj.gov
Phone: (856) 935-7510, ext. 8109 or 8109

Ekaterine N. Eleftheriou, Esq. (Attorney for Township of Pilesgrove)
The Vigilante Law Firm, P.C.
99 North Main Street
Mullica Hill, NJ 08062
Email: kat@thevigilantelawfirm.com
Phone: (856) 223-9990

EXHIBIT A

(Certification of Zoning Officer)

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36770

PETITION FOR DECLARATORY ORDER OF TOWNSHIP OF PILESGROVE, COUNTY OF SALEM, NEW JERSEY

CERTIFICATION OF

ROBERT L. SCHMID, MANNINGTON TOWNSHIP ZONING OFFICER

IN SUPPORT OF

PETITION OF TOWNSHIP OF MANNINGTON, COUNTY OF SALEM, NEW JERSEY FOR LEAVE TO INTERVENE

I, ROBERT L. SCHMID certify as follows:

1. I am the Mannington Township Zoning Officer and have full knowledge of the matters set forth in this certification.
2. On March 30, 2024, I personally investigated the property located in Mannington Township, Salem County, New Jersey, designated as Tax Map Block 67, Lots 14.01, 14.02, and 18 (the "Property") which is the subject of the above referenced Petition for Leave to Intervene ("Petition"). Mr. Chase Spadavecchi, a representative of SMS Rail Service, Inc./Woodstown Central Railroad, who was present at the Property to oversee the operations I observed, gave me permission to enter upon the Property and conduct my investigation, and he remained at the Property for the duration of my investigation.

3. I reported my observations to Mannington Township Solicitor, William L. Horner, Esq., shortly after completing the investigation, and I provided him with a copy of an online "Facebook Events" advertisement for the "Easter Bunny Express" operations I observed.
4. I have reviewed Mr. Horner's April 10, 2024 letter to me which is attached to the Petition as EXHIBIT B and hereby confirm that it contains a true, complete, and correct description of the operations, activities, site improvements, and facilities I observed during my investigation of the Property, and a complete and correct verbatim recitation of the text of the aforesaid online advertisement.
5. On April 18, 2024, I issued Notices of Violation/Orders to Cease to SMS Rail Service, Inc., Woodstown Central Railroad, and the County of Salem, copies of which are attached to the Petition as EXHIBIT C. My mailings to Woodstown Central Railroad were returned by the post office as undeliverable because there is no mailbox at that entity's specified street address, but I subsequently hand-delivered Woodstown Central Railroad's Notice and Order to representatives of SMS Rail Service, Inc./Woodstown Central Railroad whom I encountered at the specified street address.
6. On April 30, 2024, I issued municipal court complaints/summonses to SMS Rail Service, Inc., Woodstown Central Railroad, and the County of Salem, copies of which are attached to the Petition as EXHIBIT D.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATE: 6/10/24

ROBERT L. SCHMID

EXHIBIT B

(Solicitor Letter Recommending Enforcement)

HORNER & HORNER, L.L.C.
ATTORNEYS AT LAW
67 MARKET STREET
P.O. BOX 66
SALEM, NJ 08079
TEL (856) 935-0958
FAX (856) 935-1708

WILLIAM C. HORNER
(RETIRED)
WILLIAM L. HORNER
wlh@hornerlaw.net

April 10, 2024

Via Email and Regular Mail

Robert L. Schmid, Zoning Officer
Mannington Township
491 Route 45
Salem, NJ 08079

Re: Zoning Violation Enforcement – SMS Rail Service, Inc./County of Salem Railroad-Related Development, Operations, and Activities Block 67, Lots 14.01, 14.02 and 18 (near Mannington Mills Road)

Dear Mr. Schmid:

I am writing to you in my capacity as Mannington Township Solicitor to provide advice, recommendations, and legal support for your enforcement against the ongoing zoning violations at the above referenced property. I recommend that you include a copy of this letter and its attachments with any notice or summons you issue. I will also send you, by separate email, copies of the Interstate Commerce Commission and Surface Transportation Board opinions that are summarized in this letter, so that you can review them if you wish, and provide them to anyone else upon request.

Advertisement/Description of SMS Train Excursion:

On March 30, 2024, the date you inspected the subject property, you discovered the following excursion description in an online advertisement for the Woodstown Central Railroad's March 23-March 30 "Easter Bunny Express":

> *Hop aboard the Woodstown Central for the Easter Bunny Express! Celebrate the holiday with friends and family as you embark on a springtime excursion. Sit back and relax aboard our beautifully decorated vintage train as you take in the changing countryside. During your journey, the Easter Bunny will meet with every child aboard the train!*
>
> *Our train will take you through the blossoming forests and fertile farmland of historic Salem County before reaching the Easter Bunny's home at Fenwick Grove! There, passengers will have the opportunity to disembark the train and go for an egg hunt! Guests will have 30 minutes to look for eggs and take in the scenic creekside views before returning home on the train.*
>
> *This is an enchanting springtime journey you and your family won't soon forget.*

For a more private experience, groups can book our historic 16-seat Caboose car, featuring an all-wooden interior and an authentic coal-burning stove.

Excursion run times are 10am, 12pm, 2pm, and 4pm

Address: 650 Alloway-Woodstown Road, Woodstown NJ
Parking: Free parking at location
Price: Starting at $35 for Adults, $25 for Children, and $5 for toddlers
Table Car: $150 per table (up to 4 people per table)
Private Caboose: $750 (up to 16 people)
Duration: 90-95 mins

The Property:

The subject property consists of about 2.57 acres owned by the County of Salem (hereafter "the County"). Until recently, the property was undeveloped and unused except as the site of existing railroad tracks that are believed to be operated by SMS Rail Service, Inc. (hereafter "SMS"), and which are believed to have been recently repaired and/or upgraded by SMS.

Recent *Improvement and Development* of the Property:

Based on your observations at the property as described to me during our March 30, 2024, telephone conversation and our subsequent conversations, and as explained in your subsequent inspection report and depicted in the photos you took, the property has recently been improved and developed as follows:

1. Trees and vegetation have been removed and woodchips have been spread widely across the property.

2. A wooden platform with steps has been constructed at a location near the railroad tracks.

3. A large storage shed has been constructed/installed.

4. Four port-a-pots have been installed.

5. A hand-washing station has been installed.

6. One or more trash receptacles have been installed.

7. Several picnic tables have been installed.

8. Two firepits have been installed, accompanied by benches.

9. Decorations and signage (relating to the Easter holiday) has been installed.

10. Portions of 8-foot fencing or screening material have been constructed at various points along the boundaries of, or within, the property.

11. Additional sections of track, in a configuration that I believe is called a "wye," has been installed at the property as a turnout or turnaround facility to re-direct trains. A portion of the wye is located within a few feet of a single-family home on an adjoining property.

Recently Commenced *Use* of the Property:

Based on your observations as described to me during our March 30, 2024, telephone conversation and our subsequent conversations, and as explained in your subsequent inspection report and depicted in the photos you took, the property is currently being used as an excursion train turnaround and customer debarkation area, and also as a trackside customer entertainment and recreation area, all in connection with SMS's "Woodstown Central Railroad" operations. More specifically, you have observed that:

1. An excursion train, which transports customers in one or more passenger cars, enters the property from the northeast via the main track and stops within the property where the excursion customers (which you estimated to be approximately fifty in number, including many children) deboard the train via a wooden platform and steps, roam about the property, and enjoy facilities, entertainment and concessions for a specified period of time (believed to be approximately one-half hour as explained in the above cited online advertisement) before reboarding the train and continuing the excursion.

2. During or after the customer debarkation process, the train's engine is detached from the passenger cars and proceeds further southward along the main track to be switched from the main track onto the southern section of the wye, on which it then moves in reverse, in a northwestwardly direction, toward Route 45.

3. After coming to a stop at the terminus of the wye near Route 45 (with the engine being, at that point, just a few feet from the exterior wall of a residential house on adjoining property), the engine proceeds in a forward direction, this time along the northern section of the wye, back to the main track, where it then backs up southward to re-connect to the passenger cars in order for the train to return, by heading northeasterly on the main track with the engine in front and facing forward, to the excursion's point of origination.

4. After the engine has completed the above-described "k-turn" maneuver and has been re-connected to the train, the customers reboard the passenger cars for the return trip.

Zoning Requirements (No Zoning Permit; Prohibited Use):

SMS's activities at the property, specifically: SMS's construction and use of the new sections of the wye at the property as a turnaround for the rail excursions; SMS's use of the property as a point of customer debarkation; SMS's use of the property as a trackside customer

entertainment and recreation area in connection with the excursions; all structures, facilities, improvements, and installations at the property; and all other development and use of the property for such purposes, constitute violations of the following Mannington Township zoning regulations:

1. Section 70-68.C. of the Mannington Township Code entitled "Zoning permits" provides that "[n]o building or other structure shall be erected, moved, added to, or structurally altered and no lot shall be cleared, graded, or otherwise prepared for an open land use without first obtaining a zoning permit therefore from the zoning officer." **It is my understanding that you have received no zoning permit application from SMS, the County, or any other person or entity with respect to the subject property, nor have you issued any zoning permit for any development or use of the subject property.**

2. Section 70-35 entitled "Use regulations" provides that "[n]o use or occupancy of any building, structure or land shall hereafter be changed to a different use or occupancy and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered, unless in conformity with all of the regulations herein specified for the district in which it is located..." The subject property is located in a CONS-Conservation zoning district. The listed "permitted" and "conditionally-permitted" uses in the CONS district, as set forth in 70 Attachment 2 on page 70 Attachment 2:1 of the Mannington Township Land Development Ordinance (Code Chapter 70), do not include "excursion train turnaround and customer debarkation areas" or "trackside entertainment and recreation areas in connection with rail excursions." Further, the preamble set forth in 70 Attachment 7 on page 70 Attachment 7:1 of the Land Development Ordinance provides that "[a]ll uses not expressly permitted in the above lists are prohibited..." **A "prohibited use" can only be developed and conducted if the Mannington Township Planning Board grants variance approval for such use and development pursuant to *N.J.S.A.* 40:55D-70.d., and it is my understanding that, to your knowledge, no variance approval has been granted by the Mannington Township Planning Board for the subject property.**

Site Plan Review Requirements (No Site Plan Approval):

Section 70-70 of the Mannington Township Code (regarding site plan applicability) provides that "[s]ite plan review shall be required for all new or expanded uses except agriculture and single-family residential principal and accessory uses..." **It is my understanding that, to your knowledge, no site plan approval has been granted by the Mannington Township Planning Board for the subject property.**

Enforcement Recommendations:

For the reasons explained in this letter I recommend that you immediately send summonses to the railroad operator's representatives, and also to the County as property owner (and County Counsel), at their addresses listed below, with notices demanding immediate cessation of the following violations based on your inspection report:

1. Illegal *use* of the subject property as a point of train turn-around and debarkation for SMS's "Woodstown Central Railroad" excursions, and as a trackside customer entertainment and recreation area in connection with such excursions, without a zoning permit, and without variance and site plan approval from the Mannington Township Planning Board. Such use must cease immediately unless and until it has been granted variance and site plan approval by the Mannington Township Planning Board.

2. Illegal *development* of the subject property with structures, facilities, improvements, and installations (including installation of any new sections of the "wye" that are used only for excursion purposes) without a zoning permit, and without variance and site plan approval from the Mannington Township Planning Board. All such structures, facilities, improvements, and installations must be removed from the property immediately unless and until they have been granted variance and site plan approval by the Mannington Township Planning Board.

I also recommend that you request the municipal court to impose fines pursuant to the Mannington Township Code for any failure to cease the above violations.

The summonses and notices should be sent to:

Jim Pfeiffer, COO
SMS Rail Service, Inc.
P.O. Box 711
Bridgeport, NJ 08014

Jeffrey L. Sutch, President
SMS Rail Service, Inc.
P.O. Box 711
Bridgeport, NJ 08014

Woodstown Central Railroad
650 Alloway-Woodstown Road
Woodstown, NJ 08098

County of Salem
c/o Stacy L. Pennington
Clerk of the Board of Commissioners
Fifth Street Office Complex
110 Fifth Street, Suite 400
Salem, NJ 08079

Karin M. Wood, Esq.
Salem County Counsel
110 Fifth Street, Suite 400
Salem, NJ 08079

I am recommending the immediate issuance of notices and summonses in this situation rather than any preliminary warnings of the sort you might typically provide to alleged zoning violators because, in this case, the operator and the land owner are sophisticated entities who are well-versed in the law, and also because SMS has already been put on notice of the Township's concerns. Specifically, I have been in communication with the attorney for SMS for the past three months attempting to obtain information from him about the existing and proposed development and use of the subject property. As you can see from the attached copies of our correspondence, SMS's attorney's responses have been slow and, considering what you witnessed at the property on March 30, somewhat evasive and lacking in detail. Accordingly, I believe that any preliminary notice or warning of the sort you might typically provide as a courtesy prior to issuance of summonses would, in this instance, result only in periods of further delay during which the violative uses would continue, and the violative structures, facilities, improvements, and installations would remain in place.

Legal Analysis re: No Federal Preemption:

Railroads in the United States of America enjoy broad federal protections against state, county and municipal ordinances that might impair or impede their interstate operations. These protections are found primarily in the current Interstate Commerce Commission Termination Act (ICCTA), which was enacted in the 1990s to update the prior Interstate Commerce Act (ICA). Both acts were intended to promote interstate commerce in our country by establishing nationwide regulations for railroad operations that preempt state, county, and municipal requirements so that interstate railroad operators are not subjected to a burdensome "patchwork of regulations."

I suspect that, in response to your summonses, the representatives of SMS will claim that its excursion turnaround and customer debarkation operations at the subject property, and its trackside entertainment and recreation area operations at the property, are protected by ICCTA preemption from Mannington Township's zoning and site plan requirements because these developments and uses of the property are "part of" SMS's overall railroading operations. However, as explained in the following case summaries, the ICCTA only establishes federal preemption over state, county and municipal regulations for transportation by rail carriers "between a place in a State and a place in the same or another State *as part of the interstate rail network.*" SMS's excursion turnaround and customer debarkation operations at the subject property, and its trackside entertainment and recreation area operations at the property, are not entitled to ICCTA preemption because these operations do not constitute or involve interstate rail transportation.

1. Napa Valley Wine Train, Inc. – Petition for Declaratory Order, 7 Interstate Commerce Commission Reports 954 (1991), is an important case about excursion railroad non-preemption because, even though it was decided by the prior (now non-existent) Interstate Commerce Commission (ICC), it is still regularly cited as precedential authority in decisions by the Surface Transportation Board (STB) which is the ICC's successor agency under the ICCTA. The Wine Train case involved an 18-mile railroad excursion through Napa Valley that stopped only at towns within the state of California and involved only small amounts of freight service. The ICC explained that federal

preemption only applied to entirely "int*ra*state" railroad operations if such operations were sufficiently "linked to and part of" the nation's interstate rail system to be deemed "interstate commerce." In the Wine Train case the ICC found that the Wine Train did not connect with Amtrak or any other interstate passenger service, either by connecting stations or by "through-ticketing" arrangements, and that the Wine Train was marketed as a tourist excursion and dining experience solely in Napa Valley, and not as an interstate passenger service. The ICC noted that the Wine Train excursions were round-trip only, and thus did not move passengers from different points, but rather picked passengers up and dropped them off at the same point. For these reasons the ICC found that the Wine Train's excursion operations were not entitled to federal preemption because the excursion operations did not have a sufficient *nexus* to interstate commerce. The ICC also found that, although the Wine Train's limited interstate freight operations might enjoy federal preemption, those freight operations did not provide a sufficient nexus to interstate commerce to establish federal regulation and preemption of Wine Train's strictly intra-state passenger operations. The ICC observed that there was no indication that Congress had intended to authorize the ICC to regulate the Wine Train's passenger operations, or to deprive California of the right to do so.

2. Fun Trains, Inc. – Operation Exemption, STB Finance Docket No. 33472 (March 5, 1998), which was decided by the Surface Transportation Board pursuant to the then-recently enacted ICCTA, involved a rail operator that intended to provide one-way and round-trip entertainment train service entirely within the state of Florida, between the towns of Hollywood and Poinciana (241 miles), with deluxe coach accommodations, food and beverage service, and on-board entertainment, for tourists traveling between the Orlando Disney World area and southeastern Florida. Like the Wine Train, the Fun Train did not propose to provide passenger service to intermediate points along the line, nor did the Fun Train intend to enter into joint ticketing or through-ticketing arrangements with Amtrak or any other passenger carrier. The STB analyzed the Fun Train case under the ICCTA preemption language of 49 U.S.C. 10501(a)(2)(A), which gives the STB jurisdiction over "transportation by rail carriers between a place in 'a State and a place in the same or another State as part of the interstate rail network,'" and concluded that "there is no indication that Fun Train's operations will be sufficiently linked to or will be part of interstate commerce," and that Fun Train's operations were therefore not subject to STB jurisdiction or ICCTA preemption.

3. Denver & Rio Grande Railway Historical Foundation (DRGHF) – Petition for Declaratory Order, STB Finance Docket No. 35496 (February 23, 2012; August 18, 2014; and March 24, 2015), involved three STB decisions relating to DRGHF's operation of a tourist-based passenger excursion service on a 21-mile segment of railroad track in Colorado using a self-propelled rail-bus (i.e., a maintenance-of-way vehicle modified for passenger service called the "Silver Streak") to carry passengers to rafting expeditions on the Upper Rio Grande River during summer months (as well as "freight" consisting of the rafts). DRGHF also owned and operated a 1.8-acre parcel of land thirty miles away from the track where it stored and repaired rail cars in violation of a municipal zoning ordinance. DRGHF asserted that its storage and

maintenance of the rail cars on the 1.8-acre parcel qualified as "transportation by rail carrier" over which the STB had exclusive jurisdiction pursuant to 49 U.S.C. 10501(a) of the ICCTA. In deciding the case, the STB reviewed the ICCTA requirement that, to be within the STB's jurisdiction, and thus subject to ICCTA preemption, an activity (1) must constitute "transportation," and (2) must be performed by, or under the auspices of, a "rail carrier." The STB found that storing rail cars on the parcel was not "transportation" and that, although DRGHF may have been a "rail carrier," the ICCTA's preemption did not cover "wholly intra-state tourist excursion service and facilities used solely in providing such service." The STB also cited its earlier decision in Borough of Riverdale – Petition for Declaratory Order, STB Docket No. 33466 (September 10, 1999), a New Jersey case in which the STB noted that "activities and facilities not integrally related to the provision of interstate rail transportation service are not subject to STB jurisdiction or federal preemption"; that, like any non-railroad property or operation, such activities and facilities are subject to applicable state and local regulation; and that STB's jurisdiction, and the ICCTA's preemption, are limited only to those facilities that are part of a railroad's ability to provide transportation services. (In the Riverdale decision the STB explained that "not all of a rail carrier's activities are 'inherently transportation' falling under the STB's jurisdiction and thus covered under 49 U.S.C. § 10501(b).")

4. All Aboard Florida (AAF) – Construction and Operation Exemption, STB Finance Docket No. 35680 (December 21, 2012), involved a railroad company's proposal to construct and operate a 230-mile rail line entirely within the state of Florida that would not be part of the nation's interstate rail network. The STB confirmed non-preemption in the AAF case on the same grounds as discussed in the other cases cited above, but also noted that AAF's use of the same railroad tracks that were used for interstate freight operations by other carriers, and the fact that AAF's trains would be dispatched along with those freight carriers from the same central dispatching facility, were also insufficient factors to bring AAF's excursion service within the STB's jurisdiction and the ICCTA's preemption.

Conclusion:

SMS's "Woodstown Central Railroad" excursion operations are conducted entirely within the state of New Jersey and are not connected in any way to the nation's interstate passenger rail system; therefore, SMS's excursion turnaround and customer debarkation operations at the subject property, and SMS's trackside entertainment and recreation area operations at the property, are not entitled to federal preemption under the ICCTA.

SMS's excursion turnaround and customer debarkation operations at the subject property, and SMS's trackside entertainment and recreation facilities and activities at the property, are not "integrally related to" the provision of interstate rail transportation service or otherwise "inherently transportation" for purposes of ICCTA preemption.

Any freight operations on SMS's rail line through Mannington Township that might be "interstate" in nature, whether conducted by SMS or other carriers, and any commonly used

dispatching system that might serve such freight carriers as well as SMS's excursion service operations, are not sufficient to bring SMS's wholly intra-state passenger rail service, or its excursion turnaround and customer debarkation operations at the subject property, or its trackside entertainment and recreation area operations at the property, within STB jurisdiction and ICCTA preemption.

For these reasons, according to the above ICC/STB decisions, SMS's "Woodstown Central Railroad" operations at the property are subject to all state, county, and municipal laws and regulations, including Mannington Township's zoning and site plan review requirements. At present, Mannington Township's concerns focus only on SMS's excursion turnaround, customer debarkation, and trackside entertainment and recreation operations, structures, facilities, improvements, and installations at the subject property, and not on whatever other excursion or freight operations might be conducted on other portions of SMS's railroad track system within other parts of Mannington Township.

Mannington Township's zoning and site plan regulations were duly adopted pursuant to the Municipal Land Use Law to promote public health, safety, and welfare. Congress's enactment of ICCTA did not intend to deprive Mannington Township's ability to regulate SMS's excursion operations through its zoning and site plan ordinances, according to which SMS is required to submit a complete site plan/variance application to the Mannington Township Planning Board explaining and depicting its proposed development and use of the property, and to provide sworn testimony and evidence at a public hearing at which nearby property owners (including those who own or reside at the house that is within only a few feet of the wye) can learn about, ask questions, and present any concerns or objections to SMS's proposed operations. Any planning board approval of SMS's excursion-related activities would establish a clear benchmark of permitted versus non-permitted development and uses at the property, with reasonable conditions imposed as necessary to promote the public good and the intent and purposes of Mannington Township's zone plan and zoning ordinance. Such conditions might include, for example, prohibiting Woodstown Central Railroad excursion trains from using the section of the wye that is next to the adjoining house, or only allowing such use for excursion purposes during specific limited time periods. Mannington Township's regulation of SMS's excursion-related operations in this manner would have absolutely no effect on, and thus would not delay, interfere with, frustrate, or defeat the efficiency of, any of SMS's interstate railroad operations; nor would it foreclose or restrict SMS's ability to conduct its excursion or its freight operations through other parts of Mannington Township on its main rail line; nor would it in any way impinge upon interstate commerce or the federal regulation thereof. In short, Mannington Township's regulation of SMS's excursion-related activities would not impose any unreasonable burden on interstate railroading.

Cordially yours,

HORNER & HORNER, L.L.C.

By: _____
William L. Horner

WLH:jcc
Cc: Esther A. Mitchell, Clerk (via email only)

HORNER & HORNER, L.L.C.
ATTORNEYS AT LAW
67 MARKET STREET
P.O. BOX 66
SALEM, NJ 08079
TEL (856) 935-0958
FAX (856) 935-1708

WILLIAM C. HORNER
(RETIRED)
WILLIAM L. HORNER
wlh@hornerlaw.net

December 21, 2023

Via Email Only
Frank J. Hoerst, III, Esq.
13 West Avenue / P.O. Box 217
Woodstown, NJ 08098

Re: Railroad-Related Development and Activities in Mannington Township
Tax Map Block 67, Lots 14.01, 14.02 and 18 (near Mannington Mills Road)

Dear Frank:

As we discussed during our recent telephone conversation, the Mannington Township Zoning Officer has observed railroad track installation, maintenance and/or repairs, and what appear to be other development activities, at or in the vicinity of the above referenced Salem County Railroad properties.

The Mannington Township Committee is not concerned about the railroad track installation, maintenance and/or repairs. However, with the understanding that you represent the railroad operator, the Township Committee has asked me to make inquiries to you about:

- the apparent trackside development activities;
- any uses or activities that are intended to occur within the trackside areas; and
- the persons or entities by and for whom any trackside uses and activities will be conducted.

This letter is presented with the understanding that railroad activities are subject to broad federal preemption from local land use regulations, but that municipalities are nonetheless entitled to request and obtain information about railroad development activities and uses, and to conduct reasonable inspections of the properties where such development activities and uses occur.

Please provide the following:

1. The name and address of the business entity that operates the railroad at the above referenced property.

2. The names, titles, and contact information for the officers or owners of the railroad-operating business entity with whom Mannington Township representatives may communicate directly.

3. The Mannington Tax Map Block and Lot designations of all properties (including those referenced above) at which track installation, maintenance and/or repairs, and other

development activities are being, will be, or have recently been commenced or conducted near Mannington Mills Road.

4. The names and addresses of all persons or entities who are responsible for the land development activities that are being, will be, or have recently been commenced or conducted at the properties specified in response to request 3, above.

5. A narrative description/explanation of all development activities that are being, will be, or have recently been commenced or conducted at the properties specified in response to request 3, above, including all new buildings, structures, amenities, and other installations that will be constructed, installed, or placed at those properties, and any stormwater management facilities.

6. Nine (9) copies each of all surveys, site plans, building/architectural plans, and stormwater management information for the properties specified in response to request 3, above, and for the development activities that are being, will be, or have recently been commenced or conducted at those properties.

7. A narrative description/explanation of all uses, activities, events, entertainments, exhibits, or displays that are being, or have recently been commenced or conducted, or that are intended or proposed to be commenced or conducted, at the properties specified in response to request 3, above, including any embarkation/debarkation of passengers; loading/unloading of freight; driveway access and/or parking areas for vehicles; and any concessions such as food, beverage, and souvenir sales, and "rail-bike" rentals.

8. The names and addresses of all persons or entities who are responsible for operating the uses, activities, events, entertainments, exhibits, displays, or concessions that are described or explained in response to request 7, above, and the names, titles, and contact information for the officers or owners with whom Mannington Township representatives may communicate directly.

9. Please provide information in response to requests 1 through 8, above, for any other railroad-related developments or uses that are being, will be, or have recently been commenced or conducted in other areas of Mannington Township.

Please call or write if you have any questions or concerns about this request.

Cordially yours,

HORNER & HORNER, L.L.C.

By: _____
William L. Horner

WLH:jcc
Cc: Esther A. Mitchell, Clerk (via email only)

Of Counsel:
Mati Jarve (NJ, PA, AZ)
Certified by the Supreme Court of New Jersey as a Civil Trial Attorney
Certified by the National Board of Trial Advocates as a Civil Trial Advocate

HOERST LAW, LLC
FRANK J. HOERST, III
ATTORNEY AT LAW
The Glass House
13 West Avenue, Post Office Box 217
Woodstown, New Jersey 08098
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Email: fhoerstlaw@comcast.net

Of Counsel:
Richard F. Klineburger, III
Certified by the Supreme Court of New Jersey as a Criminal Trial Attorney

January 17, 2024

William L. Horner, Esq.
Horner & Horner, L.L.C.
67 Market Street/P.O. Box 66
Salem, New Jersey 08079

Re: Activities Mannington Township

Dear Bill:

First, let me wish you a happy new year and hopefully you are feeling much better and recovering from your episode. My office was closed during the holidays and thus the delay in responding.

After reviewing your letter of December 21, 2023, Jim Pfeiffer, COO, SMS Rail Service, Inc., prepared the requested information. The responses are numbered corresponding to your letter. Also, I made an onsite inspection of the activity taking place, which at this time and with the exception of activity set forth in paragraph 7, is clearly within the category of materials/equipment maintenance, and repair.

1. SMS Rail Service, Inc.
   Physical Address: 513 Sharptown Road
   Logan Township, NJ 08014

   Mailing Address: Post Office Box 711
   Bridgeport, NJ 08014

2. Jim Pfeiffer, COO
   SMS Rail Service, Inc.
   Post Office Box 711
   Bridgeport, NJ 08014
   Phone: (856) 467-4800, ext. 303
   Email: jpfeiffer@smsrail.com

   Jeffrey L. Sutch, President
   SMS Rail Service, Inc.
   Post Office Box 711
   Bridgeport, NJ 08014
   Phone: (856) 467-4800, ext. 302

3. Mannington Township Tax Map: Block 67, Lots 14.01, 14.02 and 18

4. See answer to number 1 above.

5. Rehabilitation of existing rail infrastructure in accordance with the contract between the County of Salem and the New Jersey Department of Transportation, which was entered into between the entities on or about September 9, 2022 and is relevant to NJDOT's Rail Freight Assistance Program. This project has included the installation of one new #8 turnout, crossties, and 1,400 feet of 115# rail, together with a portable shed building.

6. N/A

7. Temporary parking and materials/equipment staging areas have been established during the pendency of the infrastructure rehabilitation project. During three weekends in October of 2023, the area was used as a destination for seasonal passenger excursions, where passengers were allowed to disembark the train and collect a pumpkin while the train crew was preparing the train for the trip northward. No food and/or beverage sales were conducted at the property, although SMS provided free of charge a pumpkin donut and a cup of cider to each of its patrons. No souvenir sales are conducted at the property. There will be no railbike rentals at the property and there are currently no railbike excursions being offered on the rail line.

8. See answers to numbers 1 and 2 above.

9. Although it is impossible to answer this question with any specificity, in addition to the above, constant maintenance activities of varying degrees will be taking place on the rail line in Mannington Township.

Please have my assurance that if any activity may fall outside the exemption, we will make application to the Mannington Township Planning Board. If you or officials of Mannington Township wish to make an onsite inspection, I ask that you please work through my office as this type of activity calls for the engagement of sophisticated rail repair equipment and safety is our primary concern.

Please advise if you have any questions as I will be representing SMS Rail Service, Inc. in Salem County.

Respectfully submitted,

FRANK J. HOERST, III

FJH:ci

HORNER & HORNER, L.L.C.
ATTORNEYS AT LAW
67 MARKET STREET
P.O. BOX 66
SALEM, NJ 08079
TEL (856) 935-0058
FAX (856) 935-1708

WILLIAM C. HORNER
(RETIRED)
WILLIAM L. HORNER
wlh@hornerlaw.net

January 22, 2024

Via Email Only
Frank J. Hoerst, III, Esq.
13 West Avenue / P.O. Box 217
Woodstown, NJ 08098

Re: **Additional Information Requested**
Railroad-Related Development and Activities in Mannington Township
Tax Map Block 67, Lots 14.01, 14.02 and 18 (near Mannington Mills Road)

Dear Frank:

Thank you for your January 17, 2024 response to my December 21, 2023 letter. Please provide responses to the following additional questions:

A. Please provide a complete copy of the September 9, 2022 contract referred to in paragraph 5 of your letter and, any exhibits, plans, documents, or materials that are referenced in the contract.

B. Are any driveways or parking areas being constructed, or proposed to be constructed, that will remain at the above referenced properties after the rail infrastructure rehabilitation is complete?

    1. If so, who will use the driveways and parking areas, and for what purposes?

C. What is the current use of the portable shed building referred to in paragraph 5 of your letter?

D. Is the portable shed building intended to remain at the property after the rail infrastructure rehabilitation is complete?

    1. If so, what is the proposed use of the portable shed building after the rail infrastructure rehabilitation is complete?

E. Will the above referenced properties be used as a destination, or as a point of embarkation or disembarkation for rail excursion passengers?

    1. If so, what activities or uses will be conducted at the properties by or for the passengers?

F. Will railbike excursions be offered on any rail lines within Mannington Township?

1. If so, what activities or uses will be conducted at the above referenced properties by or for the rail-bikers?

2. If so, will SMS Rail Service, Inc. manage the railbike operations in Mannington Township, or will it contract with another person or entity who will manage the railbike operations? (If another person or entity, please provide the business name of the operator, and the names, titles, and contract information for the officers or owners with whom Mannington Township representatives may communicate directly.)

Please call or write if you have any questions or concerns about this request for additional information.

Cordially yours,

HORNER & HORNER, L.L.C.

By: _____
William L. Horner

WLH:jcc
Cc: Esther A. Mitchell, Clerk (via email only)

Of Counsel:
Mati Jarve (NJ, PA, AZ)
Certified by the Supreme Court of New Jersey as a Civil Trial Attorney
Certified by the National Board of Trial Advocates as a Civil Trial Advocate

HOERST LAW, LLC
FRANK J. HOERST, III
ATTORNEY AT LAW
The Open House
13 West Avenue, Post Office Box 217
Woodstown, New Jersey 08098
Office: (856) 769-1700 ~ Fax: (856) 769-0361
Email: fhoerstlaw@comcast.net

Of Counsel:
Richard F. Klineburger, III
Certified by the Supreme Court of New Jersey as a Criminal Trial Attorney

February 27, 2024

William L. Horner, Esq.
Horner & Horner, L.L.C.
67 Market Street/P.O. Box 66
Salem, New Jersey 08079

Re: Activities Mannington Township

Dear Bill:

Regarding your letter of January 22, 2024, my client has answered your questions as follows:

A. Please provide a complete copy of the September 9, 2022, contract referred to in paragraph 5 of your letter and, any exhibits, plans, documents, or materials that are referenced in the contract. SMS is not a party to the contract; thus, it is not at liberty to disclose the particulars of it. The Contract is between the State of New Jersey and the County of Salem. Requests for further information should be directed to the appropriate representative(s) of the County or State.

B. Are any driveways or parking areas being constructed, or proposed to be constructed, that will remain at the above referenced properties after the rail infrastructure rehabilitation is complete? No.

   1. If so, who will use the driveways and parking areas, and for what purposes?

C. What is the current use of the portable shed building referred to in paragraph 5 of your letter? Storage of parts and supplies, as needed to support common carrier rail operations. By way of further answer, the extant shed replaces a shed (a run-down box truck body) that existed on the property at the time of SMS's assumption of common carrier obligations on the rail line. The previous shed was a hazard that was remediated by installation of the new, safer, and more aesthetically pleasing shed.

D. Is the portable shed building intended to remain at the property after the rail infrastructure rehabilitation is complete? Yes.

   1. If so, what is the proposed use of the portable shed building after the rail infrastructure rehabilitation is complete? Storage of parts and supplies, as needed to support common carrier rail operations.

E. Will the above referenced properties be used as a destination, or as a point of embarkation or disembarkation for rail excursion passengers? There exists the potential that the Wye will be used as a stop or terminus, just like any location along the rail line, and that passengers may be allowed to disembark the train, just like any location along the rail line.

   1. If so, what activities or uses will be conducted at the properties by or for the passengers? Activities at the property, if any, will vary depending on the season, excursion, and time availability.

F. Will railbike excursions be offered on any rail lines within Mannington Township? There exists the potential that railbike excursions will, in the future, be offered on the rail line, which could include portions that traverse Mannington Township. At this time, there are no concrete operating plans to expand upon.

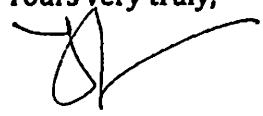
   1. If so, what activities or uses will be conducted at the above referenced properties by or for the rail-bikers?

   2. If so, will SMS Rail Service, Inc. manage the railbike operations in Mannington Township, or will it contract with another person or entity who will manage the railbike operations? (If another person or entity, please provide the business name of the operator, and the names, titles, and contract information for the officers or owners with whom Mannington Township representatives may communicate directly.)

I would like to inquire as to whether or not specific concerns have been raised by either members of the public or your municipal governing body as to the activity that is taking place with regard to my client. In furtherance of that, might I suggest that a meeting be scheduled where the Mayor, you, representatives of SMS and me meet at my office so we can discuss any major concerns that have.

Upon receipt, please give me a call and we can discuss these answers if you like. Thank you.

Yours very truly,



FRANK J. HOERST, III

FJH:ci
c: Jim Pfeiffer, COO

HORNER & HORNER, L.L.C.
ATTORNEYS AT LAW
67 MARKET STREET
P.O. BOX 66
SALEM, NJ 08079
TEL (856) 935-0958
FAX (856) 935-1708

WILLIAM C. HORNER
(RETIRED)
WILLIAM L. HORNER
wlh@hornerlaw.net

March 6, 2024

Via Email Only
Frank J. Hoerst, III, Esq.
13 West Avenue / P.O. Box 217
Woodstown, NJ 08098

Re: Additional Information Requested (2)
Railroad-Related Development and Activities in Mannington Township
Tax Map Block 67, Lots 14.01, 14.02 and 18 (near Mannington Mills Road)

Dear Frank:

Thank you for your February 27, 2024 response to my January 22, 2024 letter. It might be helpful at some point to meet to discuss your client's activities, but for now the goal is to obtain precise written documentation of exactly what is happening and intended to happen at the properties in order to determine whether and to what extent the current and proposed activities and uses are preempted by federal law, or whether they are subject to municipal regulations. Accordingly, I ask that you please provide responses to the following additional questions and requests for information:

A. Please provide complete copy(ies) of the agreement(s) between your client and the county and/or state (or between your client and any other party) by which your client is required or allowed to rehabilitate the existing rail infrastructure as explained in paragraph 5 of your January 17, 2024 letter. Also please provide copies of any exhibits, plans, documents, or other materials that are referenced in the agreement(s).

B. Please provide complete copy(ies) of the agreement(s) between your client and the county and/or state (or between your client and any other party) by which your client has assumed common carrier obligations on the rail line as mentioned in your February 27, 2024 letter. Also please provide copies of any exhibits, plans, documents, or other materials that are referenced in the agreement(s).

C. Please list and describe the "varied" seasonal or other periodic activities or uses that might be conducted at the properties by or for rail excursion passengers as mentioned in Section E.1. of your February 27, 2024 letter.

D. Will railbike excursions or usage be offered during year 2024 on any rail lines within Salem County as to which your client has assumed common carrier obligations?

   1. If so, in which municipalities will the railbike excursions or usage be offered?

2. If so, what structures, improvements, or facilities will be constructed, installed, or placed at or near the rail lines for use in connection the rail-biking operations, and where in Salem County will such structures, improvements, or facilities be located?

3. If so, what activities or uses will be conducted at or near the rail lines by or for the rail-bikers?

4. If so, will SMS Rail Service, Inc. manage the railbike operations in Salem County, or will it contract with another person or entity who will manage the railbike operations? (If another person or entity, please provide the business name of the operator, and the names, titles, and contract information for the officers and owners.)

Please call or write if you have any questions or concerns about this request for additional information.

Cordially yours,

HORNER & HORNER, L.L.C.

By: _____
William L. Horner

WLH:jcc
Cc: Esther A. Mitchell, Clerk (via email only)

Of Counsel:
Mati Jarve (NJ, PA, AZ)
Certified by the Supreme Court of New Jersey as a Civil Trial Attorney
Certified by the National Board of Trial Advocates as a Civil Trial Advocate

HOERST LAW, LLC
FRANK J. HOERST, III
ATTORNEY AT LAW
The Opera House
13 West Avenue, Post Office Box 217
Woodstown, New Jersey 08098
Office: (856) 769-1700 ~ Fax: (856) 769-0361
Email: fhoerstlaw@comcast.net

Of Counsel:
Richard F. Klineburger, III
Certified by the Supreme Court of New Jersey as a Criminal Trial Attorney

April 9, 2024

William L. Horner, Esq.
Horner & Horner, L.L.C.
67 Market Street/P.O. Box 66
Salem, New Jersey 08079

Re: Letter March 6, 2024 - Railroad-Related Development and Activities
Mannington Township Tax Map Block 67, Lots 14.01, 14.02 and 18

Dear Bill:

As a follow-up to our earlier conversation and now upon my return to the office, I have had the opportunity to review your letter of March 6, 2024. As you so readily admit, I have responded to your two prior requests with the thorough and complete information requested.

You have included the Municipal Clerk in your communication, I have done likewise. I have had the great fortune of practicing law in Salem County for fifty years and I have always valued the relationships that I have developed, especially with municipalities and their governing bodies. Please do not be offended, but I must honestly report that I do not see the need or the basis for the detailed request contained in your letter of March 6, 2024.

As I have indicated in prior communications, my client is proud of the reputation that they have developed and the services that they have provided in a unique way to this community that is solely lacking in this type of entertainment. The rides on our cars have been enjoyed by family and a great number of public officials and we have received nothing but favorable reports as to the educational and entertainment value of this venture.

I have asked in prior communications that you provide specific information that would constitute the basis of your request and if so a confirmation that the same inquiry has been made of each and every business entity that is involved in Mannington Township. As I have advised, we have nothing on the books at present time for any altered activity in Mannington Township and I have assured you that if we do, we will advise the appropriate Planning Board Officials and Township Committee, if necessary, of our proposed and intended activity. Also, I have advised that your inquiry regarding what has transpired with Salem County is best directed to Karin Wood, Esquire, Salem County Solicitor.

I have advised that my client and I stand ready, willing and able to meet so that we discuss, but I think it is an overreach in your request and the detailed items A through D1 through 4. If you feel that I am in error, please answer the questions that I have outlined in this letter specifically itemizing your concerns for what may be anticipated future activities of my client. As always, I stand ready, willing and able to meet with you and the Committee or the Mayor or designee.

Respectfully submitted,

FRANK J. HOERST, III

FJH:ci
c: Jim Pfeiffer, COO
Esther A. Mitchell, Clerk

EXHIBIT C

(Notices of Violation/Orders to Cease)

MANNINGTON TOWNSHIP

MUNICIPAL BUILDING
491 Route 45
Mannington, NJ 08079
(856) 935-2359 Ext. 104

NOTICE OF VIOLATION AND ORDER TO CEASE

NAME: SMS RAIL SERVICE, INC.
C/O JEFFREY L. SUTCH, PRESIDENT
STREET: P.O. BOX 711
CITY: BRIDGEPORT STATE: NJ ZIP: 08014

ADDRESS OF SUBJECT PROPERTY:

BLOCK: 67 LOTS: 14.01, 14.02 AND 18

It has been determined that activities and improvements related to the operation of the Woodstown Central Railroad (WCR) on the lots and upon the tracks on the lots referenced above are not a permitted principal, accessory or conditional use in the Conservation District. Those activities and improvements are being conducted in violation of the following township ordinances:

1. Ordinance §70-68.C requires issuance of a zoning permit before any structure may be erected and/or land prepared for open use. No zoning permit has been issued.
2. Ordinance §70-35 prohibits a change of use or occupancy of any building, structure or land, or construction of buildings or structures, unless in conformity with all the regulations specified for the district. Excursion train turnaround and/or customer debarkation areas, and trackside entertainment and recreation areas in connection with rail excursions, are not permitted uses in the district, and no variance approval has been obtained.
3. Ordinance §70-70 requires site plan review for all new or expanded uses. Site plan review/approval has not been obtained.

I am hereby instructing you to immediately cease all operations related to WCR on, and to remove all related improvements from the subject property unless and until such uses and improvements have been granted variance and site plan approval from the Mannington Township Planning Board. A copy of a letter from Mr. William Horner, Township Solicitor to me dated April 10, 2024 is included with this notice to provide you with an understanding of the Township's position in this matter.

Additionally, a court summons has been filed with the Mid Salem County Court. If you have any questions, you may contact me by phone or email at Zoning@ManningtonTwp.org.

APRIL 18, 2024

ROBERT SCHMID, ZONING OFFICER

MANNINGTON TOWNSHIP

MUNICIPAL BUILDING
491 Route 45
Mannington, NJ 08079
(856) 935-2359 Ext. 104

NOTICE OF VIOLATION AND ORDER TO CEASE

NAME: WOODSTOWN CENTRAL RAILROAD

STREET: 650 ALLOWAY-WOODSTOWN ROAD
CITY: WOODSTOWN STATE: NJ ZIP: 08098

ADDRESS OF SUBJECT PROPERTY:

BLOCK: 67 LOTS: 14.01, 14.02 AND 18

It has been determined that activities and improvements related to the operation of the Woodstown Central Railroad (WCR) on the lots and upon the tracks on the lots referenced above are not a permitted principal, accessory or conditional use in the Conservation District. Those activities and improvements are being conducted in violation of the following township ordinances:

1. Ordinance §70-68.C requires issuance of a zoning permit before any structure may be erected and/or land prepared for open use. No zoning permit has been issued.
2. Ordinance §70-35 prohibits a change of use or occupancy of any building, structure or land, or construction of buildings or structures, unless in conformity with all the regulations specified for the district. Excursion train turnaround and/or customer debarkation areas, and trackside entertainment and recreation areas in connection with rail excursions, are not permitted uses in the district, and no variance approval has been obtained.
3. Ordinance §70-70 requires site plan review for all new or expanded uses. Site plan review/approval has not been obtained.

I am hereby instructing you to immediately cease all operations related to WCR on, and to remove all related improvements from the subject property unless and until such uses and improvements have been granted variance and site plan approval from the Mannington Township Planning Board. A copy of a letter from Mr. William Horner, Township Solicitor to me dated April 10, 2024 is included with this notice to provide you with an understanding of the Township's position in this matter.

Additionally, a court summons has been filed with the Mid Salem County Court. If you have any questions, you may contact me by phone or email at Zoning@ManningtonTwp.org.

APRIL 18, 2024

ROBERT SCHMID, ZONING OFFICER

MANNINGTON TOWNSHIP

MUNICIPAL BUILDING
491 Route 45
Mannington, NJ 08079
(856) 935-2359 Ext. 104

NOTICE OF VIOLATION AND ORDER TO CEASE

NAME: COUNTY OF SALEM
C/O STACY L. PENNINGTON, CLERK OF THE BOARD OF COMMISSIONERS
STREET: 110 FIFTH STREET, SUITE 400
CITY: SALEM STATE: NJ ZIP: 08079

ADDRESS OF SUBJECT PROPERTY:

BLOCK: 67 LOTS: 14.01, 14.02 AND 18

It has been determined that activities and improvements related to the operation of the Woodstown Central Railroad (WCR) on the lots and upon the tracks on the lots referenced above are not a permitted principal, accessory or conditional use in the Conservation District. Those activities and improvements are being conducted in violation of the following township ordinances:

1. Ordinance §70-68.C requires issuance of a zoning permit before any structure may be erected and/or land prepared for open use. No zoning permit has been issued.
2. Ordinance §70-35 prohibits a change of use or occupancy of any building, structure or land, or construction of buildings or structures, unless in conformity with all the regulations specified for the district. Excursion train turnaround and/or customer debarkation areas, and trackside entertainment and recreation areas in connection with rail excursions, are not permitted uses in the district, and no variance approval has been obtained.
3. Ordinance §70-70 requires site plan review for all new or expanded uses. Site plan review/approval has not been obtained.

I am hereby instructing you to immediately cease all operations related to WCR on, and to remove all related improvements from the subject property unless and until such uses and improvements have been granted variance and site plan approval from the Mannington Township Planning Board. A copy of a letter from Mr. William Horner, Township Solicitor to me dated April 10, 2024 is included with this notice to provide you with an understanding of the Township's position in this matter.

Additionally, a court summons has been filed with the Mid Salem County Court. If you have any questions, you may contact me by phone or email at Zoning@ManningtonTwp.org.

APRIL 18, 2024

ROBERT SCHMID, ZONING OFFICER

EXHIBIT D

(Municipal Court Complaints/Summonses)

'15 | SC | 007163

MUNICIPAL COU
25 West Ave
Woodstown, NJ 08

Complaint 2024

The State of New Jersey
vs.

Defendant's Name: First SMS RAIL SERVICE Initial Last

Address PO BOX 711 City BRIDGEPORT

State NJ Zip Code 08014 Telephone: Check if cell phone

Birth Date: Mo. Day Yr. | Sex | Eyes | Weight | Height | Restrictions

Email Address | Ethnicity | Race

Driver's Lic. No. | State | Exp. Date

STATE OF NEW JERSEY
COUNTY OF SALEM

Complaining Witness: ROBERT SCHMID

of MANNINGTON TWP. (Identify Dept./Agency Represented) (Badge No.)

Residing at 491 RT. 45

by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the

4 (Month) 8 (Day) 24 (Year) Time

in MANNINGTON County of SALEM NJ

did commit the following offense:

NO DESCRIPTION OF PROPOSAL

(DESCRIPTION OF OFFENSE)

in violation of (one charge only) 70-76 (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE | 4 | 9 | 0 | 6 | Describe Location MANETO AVE.

OATH: Subscribed and sworn to before me this ____ day of _____, yr.____

(Signature of Complaining Witness) OR

(Signature of Person Administering Oath)

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. 4/30/24 (Date)

(Signature of Complaining Witness)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS:

COURT USE ONLY

Probable cause is found for the issuance of this Complaint-Summons

(Signature of Judicial Officer)

(Signature of Judge)

LAW / CODE ENFORCEMENT USE ONLY

☐ The complaining witness is a law enforcement officer or a code enforcement officer with territorial and subject matter jurisdiction and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED TO APPEAR
RE THIS COURT TO ANSWER THIS COMPLAINT. IF YOU FAIL TO APPEAR
HE DATE AND AT THE TIME STATED. A FINANCIAL SANCTION MAY BE
SED. A WARRANT MAY BE ISSUED FOR YOUR ARREST, OR BOTH.

NOTICE TO APPEAR

COURT APPEARANCE REQUIRED | COURT DATE Month 7 Day 25 Year 24 Time 9:30 AM PM

4/30/24

1715 | SC | 007162

MUNICIPAL COURT
25 West Avenue
Woodstown, NJ 08098

Complaint 2024

The State of New Jersey
vs.

Defendant's Name: First SMS RAIL SERVICE Initial Last

Address PO BOX 711 City BRIDGEPORT

State NJ Zip Code 08014 Telephone: Check if cell phone

Birth Date: Mo. Day Yr. | Sex | Eyes | Weight | Height | Restrictions

Email Address | Ethnicity | Race

Driver's Lic. No. | State | Exp. Date

STATE OF NEW JERSEY
COUNTY OF SALEM

Complaining Witness: ROBERT SCHMID

of MANNINGTON TWP. (Identify Dept./Agency Represented) (Badge No.)

Residing at 491 RT. 45

by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the

4 (Month) 8 (Day) 24 (Year) Time

in MANNINGTON County of SALEM NJ

did commit the following offense:

NO VARIANCE APPROVAL

(DESCRIPTION OF OFFENSE)

in violation of (one charge only) 70-35 (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE | 4 | 9 | 0 | 6 | Describe Location MANETO AVE.

OATH: Subscribed and sworn to before me this ____ day of _____, yr.____

(Signature of Complaining Witness) OR

(Signature of Person Administering Oath)

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment. 4/30/24 (Date)

(Signature of Complaining Witness)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS:

COURT USE ONLY

Probable cause is found for the issuance of this Complaint-Summons

(Signature of Judicial Officer)

(Signature of Judge)

LAW / CODE ENFORCEMENT USE ONLY

☐ The complaining witness is a law enforcement officer or a code enforcement officer with territorial and subject matter jurisdiction and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED TO APPEAR
BEFORE THIS COURT TO ANSWER THIS COMPLAINT. IF YOU FAIL TO APPEAR
ON THE DATE AND AT THE TIME STATED. A FINANCIAL SANCTION MAY BE
IMPOSED. A WARRANT MAY BE ISSUED FOR YOUR ARREST, OR BOTH.

NOTICE TO APPEAR

☑ COURT APPEARANCE REQUIRED | COURT DATE Month 7 Day 25 Year 24 Time 9:30 AM PM

4/30/24

1715 | SC | 007161

MUNICIPAL COU
25 West Ave
Woodstown, NJ 0

Complaint 2024

The State of New Jersey
vs.

Defendant's Name: First SMS RAIL SERVICE Initial Last

Address PO BOX 711 City BRIDGEPORT

State NJ Zip Code 08014 Telephone: Check if cell phon

Birth Date: Mo. Day Yr. | Sex | Eyes | Weight | Height | Restrictions

Email Address | Ethnicity | Race

Driver's Lic. No. | State | Exp. Date

STATE OF NEW JERSEY
COUNTY OF SALEM

Complaining Witness: ROBERT SCHMID

of MANNINGTON TWP. (Identify Dept./Agency Represented) (Badge No.)

Residing at 491 RT 45

by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the

4 (Month) 8 (Day) 24 (Year) Time

in MANNINGTON County of SALEM

did commit the following offense:

NO ZONING PERMIT

(DESCRIPTION OF OFFENSE)

in violation of (one charge only) 70-68:c (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE | 4 | 9 | 0 | 6 | Describe Location MANETO AVE.

OATH: Subscribed and sworn to before me this ____ day of _____, yr.____

(Signature of Complaining Witness) OR

(Signature of Person Administering Oath)

CERTIFICATION: I certify that the foreg statements made by me are true. I aware that if any of the foregoing statem made by me are willfully false, I am sub to punishment. 4/30/24 (Date)

(Signature of Complaining Witness)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS

COURT USE ONLY

Probable cause is found for the issuance of this Complaint-Summons

(Signature of Judicial Officer)

(Signature of Judge)

LAW / CODE ENFORCEMENT USE ON

☐ The complaining witness is a enforcement officer or a c enforcement officer with territorial subject matter jurisdiction and a ju probable cause determination is required prior to the issuance of Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED TO APPEAR
BEFORE THIS COURT TO ANSWER THIS COMPLAINT. IF YOU FAIL TO APPE
ON THE DATE AND AT THE TIME STATED. A FINANCIAL SANCTION MAY
IMPOSED. A WARRANT MAY BE ISSUED FOR YOUR ARREST, OR BOTH.

NOTICE TO APPEAR

☑ COURT APPEARANCE REQUIRED | COURT DATE Month 7 Day 25 Year 24 Time 9:30

4/30/24

15 | SC | 007166

MUNICIPAL COURT
25 West Avenue
Woodstown, NJ 0809

Complaint 2024

The State of New Jersey
(Please Print) vs.

Defendant's Name: First WOODSTOWN CENTRAL RAILROAD Initial Last

Address 650 ALLOWAY/WOODSTOWN City WOODSTOWN

State NJ Zip Code 08098 Telephone: Check if cell phone

Birth Date: Mo. Day Yr. | Sex | Eyes | Weight | Height | Restrictions

Email Address | Ethnicity | Race

Driver's Lic. No. | State | Exp. Date

STATE OF NEW JERSEY
COUNTY OF SALEM

Complaining Witness: ROBERT SCHMID

of MANNINGTON TWP. (Identify Dept./Agency Represented) (Badge No.)

Residing at 491 RT. 45

by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the

4 (Month) 8 (Day) 24 (Year) (Time)

in _____ County of SALEM NJ

did commit the following offense:

NO SITE PLAN APPROVAL

(DESCRIPTION OF OFFENSE)

in violation of (one charge only) 70-70 (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE | CODE | Describe Location MANETO AVE

OATH: Subscribed and sworn to before me this ____ day of _____, yr.____

(Signature of Complaining Witness)

(Signature of Person Administering Oath)

OR

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment. 4/30/24 (Date)

(Signature of Complaining Witness)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS:

COURT USE ONLY

Probable cause is found for the issuance of this Complaint-Summons

Yes BG (Signature of Judicial Officer)

No

Yes

No (Signature of Judge)

LAW / CODE ENFORCEMENT USE ONLY

☐ The complaining witness is a law enforcement officer, or a code enforcement officer with territorial and subject matter jurisdiction and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED TO APPEAR
BEFORE THIS COURT TO ANSWER THIS COMPLAINT. IF YOU FAIL TO APPEAR ON THE DATE AND AT THE TIME STATED, A FINANCIAL SANCTION MAY BE IMPOSED. A WARRANT MAY BE ISSUED FOR YOUR ARREST, OR BOTH.

NOTICE TO APPEAR

COURT APPEARANCE REQUIRED | COURT DATE | Month 7 | Day 25 | Year 24 | Time 9:30 AM PM

4/30/24

COMPLAINT

1715 | SC | 007165

MUNICIPAL COUR
25 West Avenu
Woodstown, NJ 0809

Complaint 2024

The State of New Jersey
(Please Print) vs.

Defendant's Name: First WOODSTOWN CENTRAL RAILROAD Initial Last

Address 650 ALLOWAY/WOODSTOWN City WOODSTOWN

State NJ Zip Code 08098 Telephone: Check if cell phone

Birth Date: Mo. Day Yr. | Sex | Eyes | Weight | Height | Restrictions

Email Address | Ethnicity | Race

Driver's Lic. No. | State | Exp. Date

STATE OF NEW JERSEY
COUNTY OF SALEM

Complaining Witness: ROBERT SCHMID

of MANNINGTON TWP (Identify Dept./Agency Represented) (Badge No.)

Residing at 491 RT. 45

by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the

Month Day Year Time

in _____ County of SALEM NJ

did commit the following offense:

NO VARIANCE APPROVAL

(DESCRIPTION OF OFFENSE)

in violation of (one charge only) 70-35 (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE | CODE | Describe Location MANETO AVE

OATH: Subscribed and sworn to before me this ____ day of _____, yr.____

(Signature of Complaining Witness)

(Signature of Person Administering Oath)

OR

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment. 4/30/24 (Date)

(Signature of Complaining Witness)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS:

COURT USE ONLY

Probable cause is found for the issuance of this Complaint-Summons

Yes BG (Signature of Judicial Officer)

No

Yes

No (Signature of Judge)

LAW / CODE ENFORCEMENT USE ONLY

☐ The complaining witness is a law enforcement officer or a code enforcement officer with territorial and subject matter jurisdiction and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED TO APPEAR
BEFORE THIS COURT TO ANSWER THIS COMPLAINT. IF YOU FAIL TO APPEAR ON THE DATE AND AT THE TIME STATED. A FINANCIAL SANCTION MAY BE IMPOSED. A WARRANT MAY BE ISSUED FOR YOUR ARREST. OR BOTH.

NOTICE TO APPEAR

☑ COURT APPEARANCE REQUIRED | COURT DATE | Month 7 | Day 25 | Year 24 | Time 9:30 AM PM

4/30/24

COMPLAINT

1715 | SC | 007164

MUNICIPAL COU
25 West Ave
Woodstown, NJ 08

Complaint 2024

The State of New Jersey
(Please Print) vs.

Defendant's Name: First WOODSTOWN CENTRAL RAILROAD Initial Last

Address 650 ALLOWAY/WOODSTOWN City WOODSTOWN

State NJ Zip Code 0809 Telephone: Check if cell phone

Birth Date: Mo. Day Yr. | Sex | Eyes | Weight | Height | Restrictions

Email Address | Ethnicity | Race

Driver's Lic. No. | State | Exp. Date

STATE OF NEW JERSEY
COUNTY OF SALEM

Complaining Witness: ROBERT SCHMID

of MANNINGTON TWP. (Identify Dept./Agency Represented) (Badge No.)

Residing at 491 RT. 45

by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the

4 (Month) 8 (Day) 24 (Year) (Time)

in _____ County of SALEM NJ

did commit the following offense:

NO ZONING PERMIT

(DESCRIPTION OF OFFENSE)

in violation of (one charge only) 70-68.C (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE | CODE | Describe Location MANETO AVE

OATH: Subscribed and sworn to before me this ____ day of _____, yr.____

(Signature of Complaining Witness)

(Signature of Person Administering Oath)

OR

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment. 4/30/24 (Date)

(Signature of Complaining Witness)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS:

COURT USE ONLY

Probable cause is found for the issuance of this Complaint-Summons

Yes BG (Signature of Judicial Officer)

No

Yes

No (Signature of Judge)

LAW / CODE ENFORCEMENT USE ONLY

☐ The complaining witness is a law enforcement officer or a code enforcement officer with territorial and subject matter jurisdiction and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

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NOTICE TO APPEAR

☑ COURT APPEARANCE REQUIRED | COURT DATE | Month 7 | Day 25 | Year 24 | Time 9:30 AM PM

4/30/24

COMPLAINT

COURT I.D. 1715 | PREFIX SC | COMPLAINT NUMBER 007169

MID-SALEM COUNTY MUNICIPAL COURT
25 West Avenue
Woodstown, NJ 08098

Complaint 2024

The State of New Jersey
(Please Print) vs.

Defendant's Name: First COUNTY OF Initial Last SALEM

Address 110 FIFTH ST. City SALEM

State NJ Zip Code 08079 Telephone: Check if cell phone ☐

Birth Date: Mo. Day Yr. | Sex | Eyes | Weight | Height | Restrictions

Email Address | Ethnicity | Race

Driver's Lic. No. | State | Exp. Date

STATE OF NEW JERSEY
COUNTY OF SALEM

COMPLAINT

Complaining Witness: ROBERT SCHMID
of MANNINGTON TWP. (Identify Dept./Agency Represented) (Badge No.)
Residing at 491 RT. 45
by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the
4 (Month) 8 (Day) 24 (Year) (Time)
in (Municipality) County of SALEM NJ
did commit the following offense:

NO SITE PLAN APPROVAL
(DESCRIPTION OF OFFENSE)

in violation of (one charge only) 70-70 (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE: C O D E | Describe Location MANETO AVE.

OATH: Subscribed and sworn to before me this ____ day of ____, yr.____

(Signature of Complaining Witness)

(Signature of Person Administering Oath)

OR

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

4/30/24 (Date)

(Signature of Complaining Witness)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS:

COURT USE ONLY

Probable cause is found for the issuance of this Complaint-Summons

BG (Signature of Judicial Officer)

(Signature of Judge)

LAW / CODE ENFORCEMENT USE ONLY

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SUMMONS

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NOTICE TO APPEAR

☒ COURT APPEARANCE REQUIRED | COURT DATE Month 7 Day 25 Year 24 Time 9:30 AM PM

COURT I.D. 1715 | PREFIX SC | COMPLAINT NUMBER 007168

MID-SALEM COUNTY MUNICIPAL COURT
25 West Avenue
Woodstown, NJ 08098

Complaint 2024

The State of New Jersey
(Please Print) vs.

Defendant's Name: First COUNTY OF Initial Last SALEM

Address 110 FIFTH ST. City SALEM

State NJ Zip Code 08079 Telephone: Check if cell phone ☐

Birth Date: Mo. Day Yr. | Sex | Eyes | Weight | Height | Restrictions

Email Address | Ethnicity | Race

Driver's Lic. No. | State | Exp. Date

STATE OF NEW JERSEY
COUNTY OF SALEM

COMPLAINT

Complaining Witness: ROBERT SCHMID
of MANNINGTON TWP. (Identify Dept./Agency Represented) (Badge No.)
Residing at 491 RT. 45
by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the
4 (Month) 8 (Day) 24 (Year) (Time)
in (Municipality) County of SALEM NJ
did commit the following offense:

NO VARIANCE APPROVAL
(DESCRIPTION OF OFFENSE)

in violation of (one charge only) 70-35 (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE: C O D E | Describe Location MANETO AVE

OATH: Subscribed and sworn to before me this ____ day of ____, yr.____

(Signature of Complaining Witness)

(Signature of Person Administering Oath)

OR

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

4/30/24 (Date)

(Signature of Complaining Witness)

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCESS:

COURT USE ONLY

Probable cause is found for the issuance of this Complaint-Summons

Yes BG (Signature of Judicial Officer)

No

Yes

No (Signature of Judge)

LAW / CODE ENFORCEMENT USE ONLY

☐ The complaining witness is a law enforcement officer or a code enforcement officer with territorial and subject matter jurisdiction and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

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NOTICE TO APPEAR

☐ COURT APPEARANCE REQUIRED | COURT DATE Month 7 Day 25 Year 24 Time 9:30 AM PM

COURT I.D. 1715 | PREFIX SC | COMPLAINT NUMBER 007167

K. Wood 458

MID-SALEM CO
MUNICIPAL C
25 West
Woodstown, N

Complaint 2024

The State of New Jersey
(Please Print) vs.

Defendant's Name: First COUNTY OF Initial Last SALEM

Address 110 FIFTH ST. City SALEM

State NJ Zip Code 08079 Telephone: Check if cell p

Birth Date: Mo. Day Yr. | Sex | Eyes | Weight | Height | Restrictio

Email Address | Ethnicity | Race

Driver's Lic. No. | State | Exp. D

STATE OF NEW JERSEY
COUNTY OF SALEM

COMPLAINT

Complaining Witness: ROBERT SCHMID
of MANNINGTON TWP. (Identify Dept./Agency Represented) (Badge No.)
Residing at 491 Rt. 45
by certification or on oath, says that to the best of his/her knowledge or information and belief, the named defendant on or about the
4 (Month) 8 (Day) 24 (Year) (Time)
in (Municipality) County of SALEM
did commit the following offense:

NO ZONING PERMIT
(DESCRIPTION OF OFFENSE)

in violation of (one charge only) 90-68.C (Statute, Regulation or Ordinance Number)

LOCATION OF OFFENSE: C O D E | Describe Location MANETO AVE

OATH: Subscribed and sworn to before me this ____ day of ____, yr.____

(Signature of Complaining Witness)

(Signature of Person Administering Oath)

OR

CERTIFICATION: I certify that the fon statements made by me are true. aware that if any of the foregoing state made by me are willfully false, I am s to punishment.

4/30/24 (Date)

(Signature of Complaining Witness

PROBABLE CAUSE DETERMINATION FOR ISSUANCE OF PROCE

COURT USE ONLY

Probable cause is found for the issuance of this Complaint-Summons

Yes BG (Signature of Judicial Officer)

No

Yes

No (Signature of Judge)

LAW / CODE ENFORCEMENT USE C

☐ The complaining witness is enforcement officer or a enforcement officer with territori subject matter jurisdiction and a j probable cause determination required prior to the issuance Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED TO APPEAR
BEFORE THIS COURT TO ANSWER THIS COMPLAINT. IF YOU FAIL TO APP ON THE DATE AND AT THE TIME STATED, A FINANCIAL SANCTION, MA IMPOSED, A WARRANT MAY BE ISSUED FOR YOUR ARREST, OR BOTH.

NOTICE TO APPEAR

☒ COURT APPEARANCE REQUIRED | COURT DATE Month 7 Day 25 Year 24 Time 9:3

EXHIBIT Z

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWNSHIP OF PILESGROVE, N.J.	)	FINANCE DOCKET
PETITION FOR DECLARATORY ORDER	)	NO. 36770

VERIFIED STATEMENT OF ISAAC KING

Commonwealth of Pennsylvania)
) SS:
County of Lancaster)

I, Isaac King, Construction Foreman for Lancaster Pole Buildings, Inc., declare under penalty of perjury, under the laws of the United States of America, as follows:

1. I am the Construction Foreman for Lancaster Pole Buildings, Inc., which maintains its business address at 138 Ranck Church Road, New Holland, Pennsylvania 17557.

2. On October 10, 2024 in the early afternoon (approximately 13:00 hours) a clean shaved gentleman in his upper 40s approached me while I was working on site of the property of SMS Rail Service, Inc. ("SMS"), located at Block 73, Lot 3 near East Lake Road (and in the vicinity of 650 Woodstown-Alloway Road), Pilesgrove Township, Salem County, New Jersey. Lancaster Pole Buildings, Inc. was hired to construct the engine house building for SMS on that site. I was working at the building when I was approached by the gentleman.

3. The gentleman arrived on the site in a small black car and introduced himself to me, though I cannot remember his name. However, he represented to me that he was from Pilesgrove Township and said that he needed to put a stop work order on the job (the engine house), but he went on to mention that my workers should continue working.

4. A true and correct photo of the stop work order that the gentleman attached on the structure of the engine house we were working on at the time is attached as Exhibit A.

5. The foregoing gentleman further stated to me that if my workers followed the plans for the engine house that were submitted by SMS to Pilesgrove Township, when he had to return to inspect the engine house, everything would "be okay."

6. The gentleman went on to mention to me that he liked what the railroad is doing on the site, and he was only doing what he was instructed to do.

7. My encounter with the foregoing gentleman lasted about 5 minutes. The gentleman didn't enter the engine house or inspect anything; he only delivered the stop work order, attaching it to the structure, and left.

The above statements are true and correct to the best of my knowledge, information and belief.

Signed under the pains and penalties of perjury this 16 day of December, 2024.

Isaac L King Jr
Isaac King

Commonwealth of Pennsylvania)
) SS:
County of Lancaster)

Subscribed and Sworn to before me
this 16 day of December, 2024.

Notary Public

Commonwealth of Pennsylvania - Notary Seal
Mindy Ellen Plank, Notary Public
Lancaster County
My commission expires June 12, 2027
Commission number 1130252
Member, Pennsylvania Association of Notaries

My Commission expires: 06-12-2027

EXHIBIT A


Stop work order
For Information Call
Permit No. 650 wd Alloway Rd
NOT APPROVED
BUILDING
ELECTRICAL
PLUMBING
FIRE
ELEVATOR DEVICES
PROTECTION
OTHER
no permit
Type of Inspection
Date 10-10-24
Inspector RS
Comments
U.C.C. Form F-230B

EXHIBIT AA

THE VIGILANTE LAW FIRM, P.C.
By: Ekaterine Eleftheriou, Esquire
Attorney I.D. No. 01330-2002
99 North Main Street
Mullica Hill, NJ 08062
856-223-9990
Attorneys for Township of Pilesgrove

TOWNSHIP OF PILESGROVE, Plaintiff, v. SMS RAIL SERVICE, INC., JAMES PFEIFFER and JOHN DOES 1-10, joint, severally, or in the alternative. Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION GENERAL EQUITY SALEM COUNTY Civil Action DOCKET NO. **ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS**

THIS MATTER coming before the Court by The Vigilante Law Firm, P.C., attorneys for Plaintiff, seeking relief by way of temporary restraints pursuant to Rule 4:52, *et seq.* based upon the facts set forth in Plaintiff's Verified Complaint and the Certifications filed therewith; and the Court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding; and for other good cause shown;

IT IS on this _____ day of _____, 2024

ORDERED and ADJUDGED that Defendants shall appear and show cause before this Court at 92 Market Street, Salem, New Jersey on this _____ day of _____, 2024 at _____ a.m. / p.m., or as soon thereafter as counsel may be heard, as to why an Order should not be entered as follows:

1. Enjoining and restraining the Defendants from constructing and/or occupying and/or opening to the public structures on the property located at 650 Alloway Woodstown Road,

Pilesgrove, New Jersey also known as Block 73, Lots 1 and 3 on the Pilesgrove Township Tax Map that were not inspected and/or permitted by the Township of Pilesgrove New Jersey, including in any outbuildings or other structures situated on the property, pending a decision by the United States Surface Transportation Board in the matter of Township of Pilesgrove, County of Salem, State of New Jersey Petition For Declaratory Order under Docket No. FD 36770.

2. Granting such other relief as the Court may deem equitable and just.

IT IS FURTHER ORDERED pending the return date set forth herein, Defendants are:

1. Restrained and enjoined from constructing and/or occupying and/or or opening to the public structures built on the property located at 650 Alloway Woodstown Road, Pilesgrove, New Jersey also known as Block 73, Lots 1 and 3 on the Tax Map of Pilesgrove Township that were not inspected and/or permitted by the Township of Pilesgrove New Jersey, including in any outbuildings or other structures situated thereon.

IT IS FURTHER ORDERED as follows:

A. A copy of this Order to Show Cause, Plaintiff's Verified Complaint and any Certifications submitted in support of this application shall be served upon the Defendants within _____ days of the date hereof, in accordance with *R*. 4:4-3 and *R*. 4:4-4, this being original process.

B. Plaintiff must file with the Court a proof of service of the pleadings on the Defendant no later than three (3) days before the return date.

C. Defendant shall file and serve a written response to this Order to Show Cause and the request for entry of any injunctive relief and proof of service by _____, 2024. The original documents must be filed with the Clerk of the Superior Court in the County listed herein. A directory of these offices is available in the Civil Division Management Office in

the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf. You must send a copy of your opposition papers directly to the chambers of Judge _____ whose address is 92 Market Street, Salem, New Jersey 08079. You must also send a copy of your opposition papers to the Plaintiff's attorney whose name and address appears above.

D. Plaintiff must file and serve any written reply to the Defendants' opposition to the Order to Show Cause by _____, 2024. The reply papers must be filed with the Clerk of the Superior Court in the County listed above, and a copy of the reply papers must be sent directly to the chambers of the Judge noted above.

E. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided Plaintiff files a Proof of Service and a proposed form of Order at least three (3) days prior to the return date.

F. If Plaintiff has not already done so, a proposed form of Order addressing the relief sought on the return date must be submitted to the Court no later than three (3) days before the return date.

G. Defendants take notice that Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute the Complaint, you or your attorney must file a written answer, an answering Affidavit or a motion returnable on the return date noted in this Order, and proof of service before the return date of the Order to Show Cause.

These documents must be filed with the Clerk of the Superior Court These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these

offices is available in the Civil Division Management Office in the county listed above and online at www.njcourts.gov.

Include a $_____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer, answering affidavit or motion to Plaintiff's attorney. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion with the fee or judgment may be entered against you by default.

H. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1- 888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at www.njcourts.gov.

I. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

_____

HON.

THE VIGILANTE LAW FIRM, P.C.
By: Ekaterine Eleftheriou, Esquire
Attorney I.D. No. 01330-2002
99 North Main Street
Mullica Hill, NJ 08062
856-223-9990
Attorneys for Township of Pilesgrove

TOWNSHIP OF PILESGROVE, Plaintiff, v. SMS RAIL SERVICE, INC., JAMES PFEIFFER and JOHN DOES 1-10, joint, severally, or in the alternative. Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION GENERAL EQUITY SALEM COUNTY Civil Action DOCKET NO. **FINAL ORDER**

THIS MATTER coming before the Court by The Vigilante Law Firm, P.C., attorneys for Plaintiff, by way of Verified Complaint and Order to Show Cause with Temporary Restraints pursuant to Rule 4:52, *et seq.*; and with the Court having reviewed the pleadings on file; and with the Court having conducting a hearing on the merits and heard the argument of counsel; and for other good cause shown;

IT IS on this _____ day of _____, 2024

ORDERED and ADJUDGED that Defendants are hereby enjoined and restrained from constructing and/or occupying and/or opening to the public structures on the property located at 650 Alloway Woodstown Road, Pilesgrove, New Jersey also known as Block 73, Lots 1 and 3 on the Pilesgrove Township Tax Map that were not inspected and/or permitted by the Township of Pilesgrove New Jersey, including in any outbuildings or other structures situated on the property, pending a decision by the United States Surface Transportation Board in the matter of

Township of Pilesgrove, County of Salem, State of New Jersey Petition For Declaratory Order under Docket No. FD 36770.

The posting of this Order on eCourts shall constitute service upon all counsel of record. If applicable, pursuant to R. 1:5-1(a) a copy of this Order shall be served upon all parties who have not been electronically served through an approved Electronic Court System or pursuant to R. 1:32-2A, nor personally served in court, within seven (7) days of receipt of this Order.

_____

HON.

THE VIGILANTE LAW FIRM, P.C.
By: Ekaterine Eleftheriou, Esquire
Attorney I.D. No. 01330-2002
99 North Main Street
Mullica Hill, NJ 08062
856-223-9990
Attorneys for Township of Pilesgrove

TOWNSHIP OF PILESGROVE, Plaintiff, v. SMS RAIL SERVICE, INC., JAMES PFEIFFER, and JOHN DOES 1-10, jointly, severally or in the alternative, Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION GENERAL EQUITY SALEM COUNTY Civil Action DOCKET NO. **VERIFIED COMPLAINT IN SUPPORT OF ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS**

The Township of Pilesgrove, by way of Verified Complaint against SMS Rail Service, Inc. and John Does 1-10, avers and says:

PARTIES

1. Plaintiff, the Township of Pilesgrove is a municipal corporation and political subdivision of the state of New Jersey with a principal address of 1180 Route 40 East, Pilesgrove, New Jersey, 08098.

2. Defendant SMS Rail Service, Inc. (hereafter, "SMS"), is a corporation operating in and under the laws of the State of New Jersey that at all times pertinent hereto maintains offices at 650 Alloway Woodstown Road, Pilesgrove, New Jersey (hereafter, "the property").

3. Defendant James Pfeiffer (hereafter, "Pfeiffer") is an adult individual residing at 513 Sharptown Road, Logan, New Jersey, who serves as to Chief Operating Officer of SMS and who at all times pertinent hereto acted on its behalf.

4. Defendants John Does 1-10 are fictitious individuals or entities currently unknown to Plaintiff who at all times pertinent hereto were the lessees of the property and/or agents, servants or employees of SMS.

FACTS

5. The property, also known as Block 73, Lots 1 and 3, is located with the RR-Restricted Residential Zoning District of Pilesgrove Township.

6. At all times, Plaintiff has an obligation and responsibility to put in place zoning and construction codes for the purpose of providing for and ensuring the safety of the general public and to enforce those codes uniformly.

7. At all times pertinent hereto, SMS owns and operates a recreational rail line business at the property, known as the Woodstown Central Railroad (hereafter, the "business"), utilizing the former Salem County Railroad.

8. SMS is the "Owner" as defined in the Rail Line Service Agreement entered between SMS and the County of Salem dated March 30, 2021, as to the maintenance and operation of the Salem County Railroad (hereafter, "the lease"), which agreement was awarded by way of Resolution No. 2021-111 of the County of Salem. See Exhibit A.

9. The Salem County Railroad, as defined in Exh. A, consists of 19.4 linear miles of rail lines, certain of which are located on or pass through Block 73, Lots 1 and 3 of Pilesgrove Township.

10. The said Block 73, Lots 1 and 3 fall under the jurisdiction of and are subject to planning and zoning ordinances of Pilesgrove Township.

11. The Salem County Resolution at Exh. A memorializes the terms of the lease with SMS as follows:

a. The lease was for the operation and maintenance of the Salem County Railroad

b. The lease was for a term of ten (10) years beginning on April 1, 2021 and ending on March 31, 2031.

c. A one 10-year renewal option is available to the Owner with mutual consent of both parties to the lease.

Exh. A, p. 1.

12. Under the terms of the lease at Exh. A, SMS is responsible to maintain, market, and operate the rail line and to provide exclusive rail service at the property, and to seek common carrier authority to operate as a common carrier on the rail line from the United State Surface Transportation Board. Id., ¶¶B, C.

13. The lease provides that SMS as Owner is responsible throughout the term of the agreement to "…promptly comply with all laws and ordinances and notices, orders, rules, regulations and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards and officers thereof…" Exh. A, p. 8 of 28, ¶10.

14. In or about 2023, SMS began operating business unrelated to the lease on or out of the property, during which the general public enters and occupies the property (hereafter, "new business").[1] These recreational, for-profit activities are intra-state and unrelated to interstate commerce as contemplated in the lease and Plaintiff Pilesgrove maintains that they are not subject to federal preemption.

[1] The activities are advertised on the Woodstown Central Railroad website at https://woodstowncentral.com/ and include group and private charter rail trips (birthday parties, Boy Scouts, etc.), "bring your own" [wine/beer] rail trips, and Santa and Easter bunny rail trips.

15. In or about 2023, SMS began erecting temporary or permanent structures on the property in relation to the new business, without applying for the required permits and/or approvals under the ordinances of the Township of Pilesgrove as to the property.

16. The aforesaid structures allow for, require and/or invite the presence of SMS employees or members of the general public as part of the new business.

17. On or about October 11, 2023, a Notice of Zoning Non-Compliance was issued to SMS by Plaintiff as to Block 73, Lot 1 of the property. The notice required SMS to submit a use variance and site plan for a change of use from freight railroad operations to commercial-use purposes (i.e., the recreational, for-profit activities referenced herein). See Exhibit B.

18. On October 12, 2023, Defendant Pfeiffer responded to the Notice claiming that the local zoning and land use regulations are not applicable to SMS and are pre-empted by Federal law. See Exhibit C.

19. On or about December 7, 2023, SMS submitted a minor site plan application in connection to Block 73, Lot 1, seeking a use variance and bulk variance to permit (a) the construction of structures on Lot 1 of the property for use in connection with the new business (i.e., a non-common carrier activities), and (b) to operate rail-bike tours. See Exhibit D.

20. SMS subsequently requested the approvals sought in its minor site plan application be bifurcated and that the Board only consider item (a) - its request for a use variance for 'multiple principle uses' on Lot 1. SMS claimed a federal pre-emption prohibited Pilesgrove Township from rendering a zoning decision on the approval sought by it at (b).[2]

[2] SMS claims the approval is for a 'pre-empted zone' pursuant to 49 CFR §10501, *et seq.*, yet submits no proofs the alleged Federal pre-emption applies to the new business conducted by it (a non-common carrier activity).

21. It became apparent to Plaintiff at the time of the bifurcation request that SMS would be seeking a third-party to operate the rail-bike tour facility at the property, allowing for the possibility that more structures may be constructed on the property.

22. On or about December 11, 2023, a Notice and Order of Penalty was issued to SMS by Plaintiff as to the property in connection to the "installation of out building without zoning and/or construction permits." See Exhibit E.

23. On or about December 27, 2023 SMS appealed Notice and Order, again claiming Plaintiff lacks jurisdiction as to the property due to federal pre-emption pursuant to 49 U.S.C. 10501(b), without addressing that the new business is recreational, for-profit activities offered to the public that do not constitute common carrier activities contemplated under the Code. See Exhibit F.

24. On the date of the Planning Board hearing on SMS' application relating to the change-of-use of the property, Plaintiff withdrew the Notice of Violation at Exhibit B in order to apply to the United States Surface Transportation Board to address the issue of local jurisdiction requiring permits, when '*the activities being undertaken by the rail line are found to be in accordance with its interstate commerce.*' The withdrawal of the violation negated the necessity of continuing with the hearing but allowed Pilesgrove to file the declaratory order with the STB.

25. On or about April 22, 2024, Plaintiff filed a Petition for a Declaratory Order with the Surface Transportation Board (hereafter, "STB") to determine whether the new business (common carrier activities) and structures erected in connection therewith, relate to 'interstate commerce activities' as a freight-rail train versus a recreational rail train. See Exhibit G.[3]

[3] The Township of Mannington intervened in the Petition and is proceeding in the application as an intervening party.

26. The contents of the Certification of Richard Saunders is incorporated herein by reference. Mr. Saunders confirms therein that on October 10, 2024 a Stop Construction Order issued to SMS as to the construction of the large structure on Lot 3 of the property. See Exhibit H.

27. On October 10, 2024, a Stop Work Order was posted at the property by Plaintiff. See Exhibit I; see also Saunders' Certification.

28. On October 24, 2024, SMS delivered to Plaintiff plans and information pertaining to the large structure on the property. See Exhibit J.

29. On October 24, 2024 Defendants emailed Plaintiffs that arrangements were made with Atlantic City Electric to install electricity in the large structure being constructed on Lot 3, signifying it intends to use and occupy that structure without inspections or permits from Plaintiff required by Township codes and/or ordinances. See Exhibit K.

30. On October 24, 2024, the STB issued a decision setting the briefing schedule for the pending Declaratory Judgement. The briefing schedule provides for final submissions on January 7, 2025, approximately 2 ½ months from now. See Exhibit L.

31. Plaintiff has maintained the same position regarding the activities conducted on and structures being erected upon the property by Defendants - namely, that Defendants are not entitled to federal preemption status.[4]

32. Plaintiff is now before this Court seeking restraints upon Defendants pending a decision by the STB on Plaintiff's Petition on whether these activities are preempted and if so,

[4] Thus, Plaintiff's Petition to the STB for a declaratory order pursuant to 5 U.S.C. §554(e) and 49 U.S.C.1321, regarding whether the Board maintains jurisdiction over SMS Rail Service, Inc., and, if so, over which of its actions and activities. See also Exhibit M.

inspection is still permitted under The Village of Ridgefield Park vs. New York Susquehanna & Western Railway Corp., 163 N.J. 446 (N.J. 2000).

33. The Township has an obligation to enforce its zoning and construction codes uniformly and for the purpose of public health, welfare and safety. Defendants' intention of inviting the public into these structures presents an imminent danger to the public.

WHEREFORE, Plaintiff respectfully demands judgment against Defendants SMS Rail In Service, Inc., James Pfeiffer and John Does 1-10 as follows:

A. Awarding judgment in favor of Plaintiff and against Defendants on all causes of action asserted herein;

B. Requiring Defendants to immediately cease all uses of the property described herein not permitted by Plaintiff;

C. Enjoining and restraining the Defendants from occupying or opening to the public all buildings or other structures constructed or placed on the property that were not permitted by Plaintiff, including in any outbuildings or other structures situate thereon pending a decision by the United States Surface Transportation Board in the matter of Township of Pilesgrove, County of Salem, State of New Jersey Petition For Declaratory Order, Docket No. FD 36770; and

D. Requiring Defendants to reimburse Plaintiff for all costs incurred in the enforcement of the Township's ordinances and codes as to the property, to include attorneys' fees, lawful interest and costs of suit; and

E. Granting such other relief as the Court may deem equitable and just.

THE VIGILANTE LAW FIRM, P.C.

By: /s/ Ekaterine N. Eleftheriou
Ekaterine N. Eleftheriou, Esquire

Date: October 31, 2024

DEMAND FOR TRIAL BY JURY

Demand is hereby made by Plaintiff for a trial by jury as to all issues on this cause of action.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Ekaterine N. Eleftheriou, Esquire of The Vigilante Law Firm, P.C. is hereby designated as trial counsel on behalf of Plaintiff.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the matter in controversy in this action is not the subject of any other action pending in any other court or of a pending arbitration proceeding and no other action or arbitration proceeding is contemplated. I further certify that I am unaware of any other persons who should be named as parties in this action.

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(b)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

THE VIGILANTE LAW FIRM, P.C.

By: /s/ Ekaterine N. Eleftheriou
Ekaterine N. Eleftheriou, Esquire

Date: October 31, 2024

VERIFICATION

1. I am the Township Clerk of Pilesgrove Township, the Plaintiff in the foregoing Complaint.

2. The allegations of the Complaint are true to the best of my knowledge, information and belief.

3. The Complaint is made in truth and in good faith and without collusion for the causes set forth therein.

4. To the best of my knowledge and belief, this matter in controversy is not subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any such proceeding contemplated at this time.

5. To the best of my knowledge and belief, there are no other parties who must be joined in this action.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

TOWNSHIP OF PILESGROVE

Melissa Fackler, Township Clerk

Date: October 31, 2024

EXHIBIT A

Salem County New Jersey

Board of County Commissioners

Resolution No. 2021 – 111

Administrative Committee

RESOLUTION AWARDING A LEASE FOR THE MAINTENANCE AND OPERATION OF THE SALEM COUNTY RAILROAD

WHEREAS, the Salem County Purchasing Agent as authorized Contracting Agent for the Board of County Commissioners of the County of Salem requested, received, and opened sealed proposals on February 24, 2021 at 11:00 A.M. prevailing time for Proposals to Enter into a Lease for the Maintenance and Operation of the Salem County Railroad; the receipt of which proposals were duly advertised in accordance with the law and in such case made and provided; and

WHEREAS, pursuant to N.J. S. A 40A:1-4.1b (3) the County of Salem may use competitive contracting in lieu of public bidding for procurement of operation, maintenance, or administration of County Assets; and

WHEREAS, all proposal results and recommendations for contract award are on file in the Office of the Purchasing Agent, 110 Fifth Street, Suite 400, Salem, New Jersey, as required by law; and

WHEREAS, the County of Salem compiled a six member proposal evaluation team that has unanimously determined that SMS Lines, substantially met the necessary qualifications for the fulfillment of this contract and most successfully meets the stated criteria and therefor achieving the highest ranking and has further provided the documentation necessary to successfully fulfill the requirements of the County of Salem, with said documents becoming part of the contract; and

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Salem as follows:

1. The Board of County Commissioners of the County of Salem hereby awards a Lease for the Maintenance and Operation of the Salem County Railroad, subject to the review of the County Solicitor, to SMS Lines of Bridgeport, NJ with revenue as outlined in the said vendors proposal.

2. This ten (10) year agreement shall commence on April 1, 2021 and terminate on March 31, 2031 with one ten-year renewal option available with mutual consent of both parties and which shall be completed in full accordance with the terms and conditions of the contract.

3. The Director and the Clerk of the Board shall be authorized to execute said lease upon compliance by the firm with all requirements and specifications.

BENJAMIN H. LAURY, Director of the
Board of County Commissioners

I hereby certify the foregoing to be a true resolution adopted by the Salem County Board of County Commissioners on February 17, 2021.

STACY L. PENNINGTON
Clerk of the Board

RECORD OF VOTE

COMMISSIONER	RESOLUTION MOVED	RESOLUTION SECOND	AYE	NAY	ABSTAIN	ABSENT
G. Ostrum, Jr.			✓			
E. Ramsay			✓			
L. Ware		✓	✓			
R.S. Griscom	✓		✓			
B. Laury			✓			

✓ Indicates Vote

Department Initials KW

RAIL LINE SERVICE AGREEMENT

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

THE BACKGROUND OF THIS AGREEMENT IS AS FOLLOWS:

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

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

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

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

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

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

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

3. **Term.**

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

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

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

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

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

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

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

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

6. **Operator's Covenants.**

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

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

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

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

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

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

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

9. **Insurance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notices to Owner shall be addressed to:

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

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

21. **Definitions.**

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

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

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

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

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

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

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

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

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

25. **Miscellaneous.**

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

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

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

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

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

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

(g) **Integration.** This Service Agreement supersedes and renders null and void all previous understandings, promises, covenants and conditions, whether written or verbal, with respect to Owner's entering into this Service Agreement with Operator.

26. **No Recordation.** Operator shall not record or file with any recording clerk's office, either this Service Agreement or any other notice or memorandum of this Service Agreement without the express written consent of Owner, which consent may be withheld in Owner's sole discretion and which consent, if given, may be conditioned upon Operator placing in escrow with Owner's attorney a document discharging of record any such recorded or filed document. If Operator shall record or file this Service Agreement or any notice or memorandum thereof without first receiving Owner's written consent thereto, Owner may discharge of record any such recordation or filing at Operator's expense, and Operator hereby irrevocably appoints Owner its agent in order to accomplish such discharge. The provisions of this Paragraph 26 shall survive the expiration or sooner termination of this Service Agreement.

27. **Counterparts.** This Service Agreement may be executed in any number of counterparts, each of which, when taken together, shall be a full enforceable agreement for all purposes.

IN WITNESS WHEREOF, the undersigned have hereby executed this Second Amended and Restated Service Agreement as of the date and year first above written.

COUNTY OF SALEM

BY: _____

SMS RAIL SERVICE, INC.

BY: _____
Jeffrey L. Sutch, President

STATE OF NEW JERSEY)
SS:
COUNTY OF Salem)

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

Notary Public

MEGAN L. LAYFIELD
NOTARY PUBLIC OF NEW JERSEY
Commission # 50101325
My Commission Expires 3/20/2024

STATE OF NEW JERSEY)
SS:
COUNTY OF Gloucester)

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

Notary Public

TIFFANY L. LAHR
NOTARY PUBLIC OF NEW JERSEY
Commission # 50139250
My Commission Expires 10/2/2025

EXHIBIT A – PROPERTY DESCRIPTION

SALEM BRANCH LINE DESCRIPTION

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

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

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

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

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

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

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

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

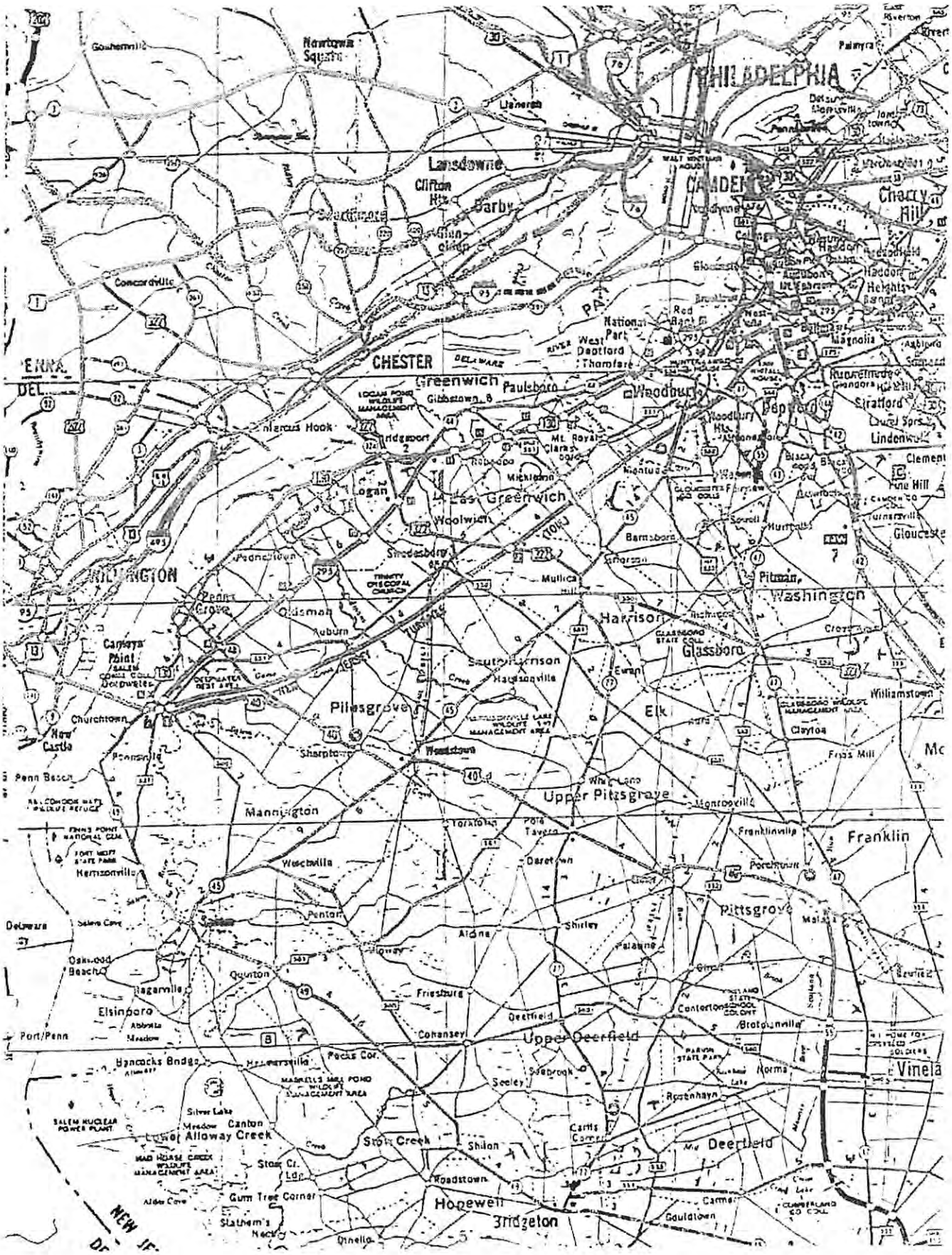
After crossing the creek, the line splits with the Glass House Branch going to the west. The main branch line enters the Salem rail yard which encompasses 5.4 acres, consisting of nine tracks, a small freight office, and is bordered by two existing warehouses with rail access. The yard is accessible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

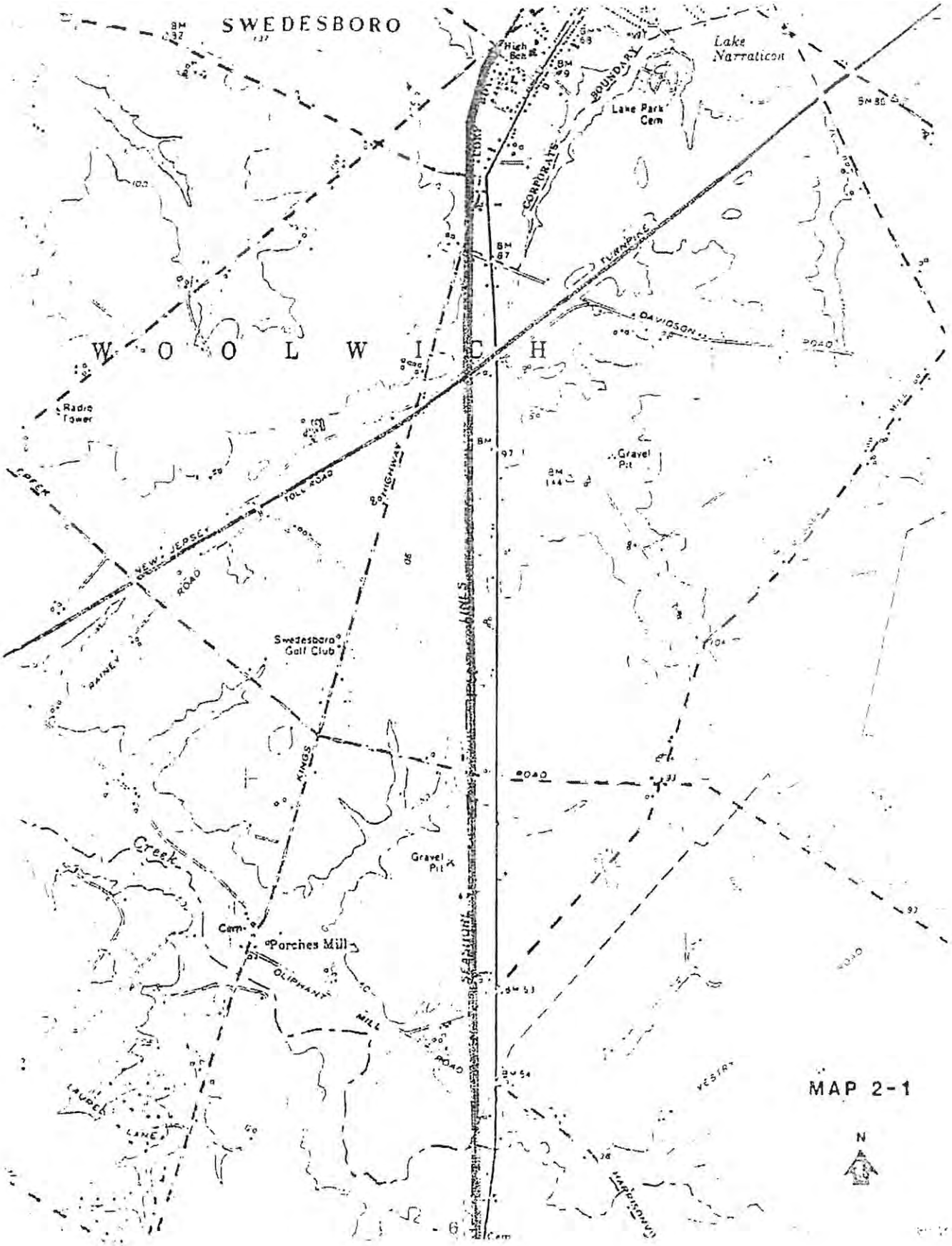
Physical Characteristics. The subject rail line (including the Glass House spur) is basically a single-track railroad. There are limited exceptions to this statement including the Salem rail yard, various run-around tracks (passing sidings) along the line and a Wye track, which is located about ½ mile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

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

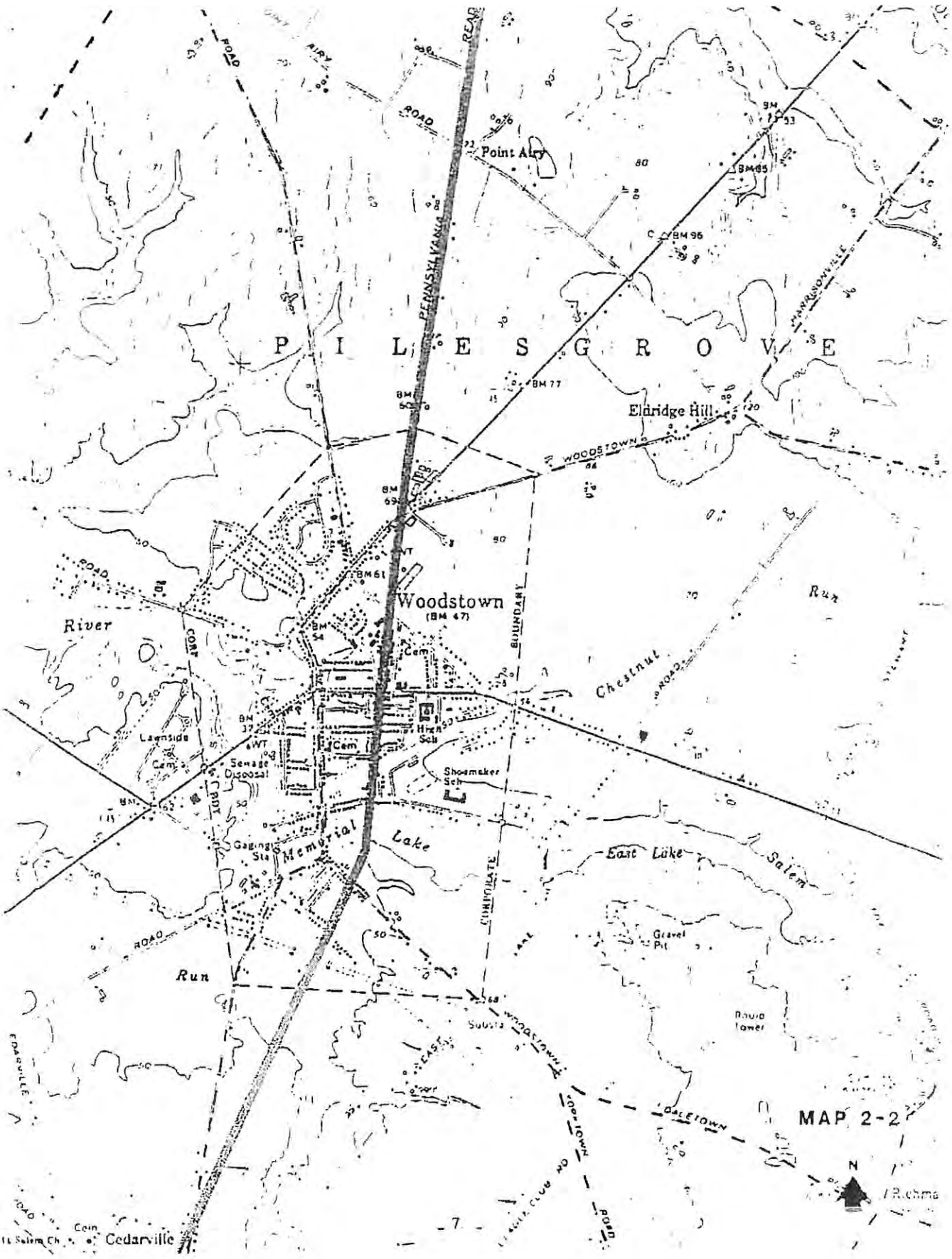
Grade Crossings. The Salem branch line crosses approximately a total of 28 roads at grade, but the only route with heavy traffic volume is U.S. Route 40 in Woodstown. The Glass House spur crosses 7 streets at grade, two of which are State highways within the City of Salem. The only overpasses over the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

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

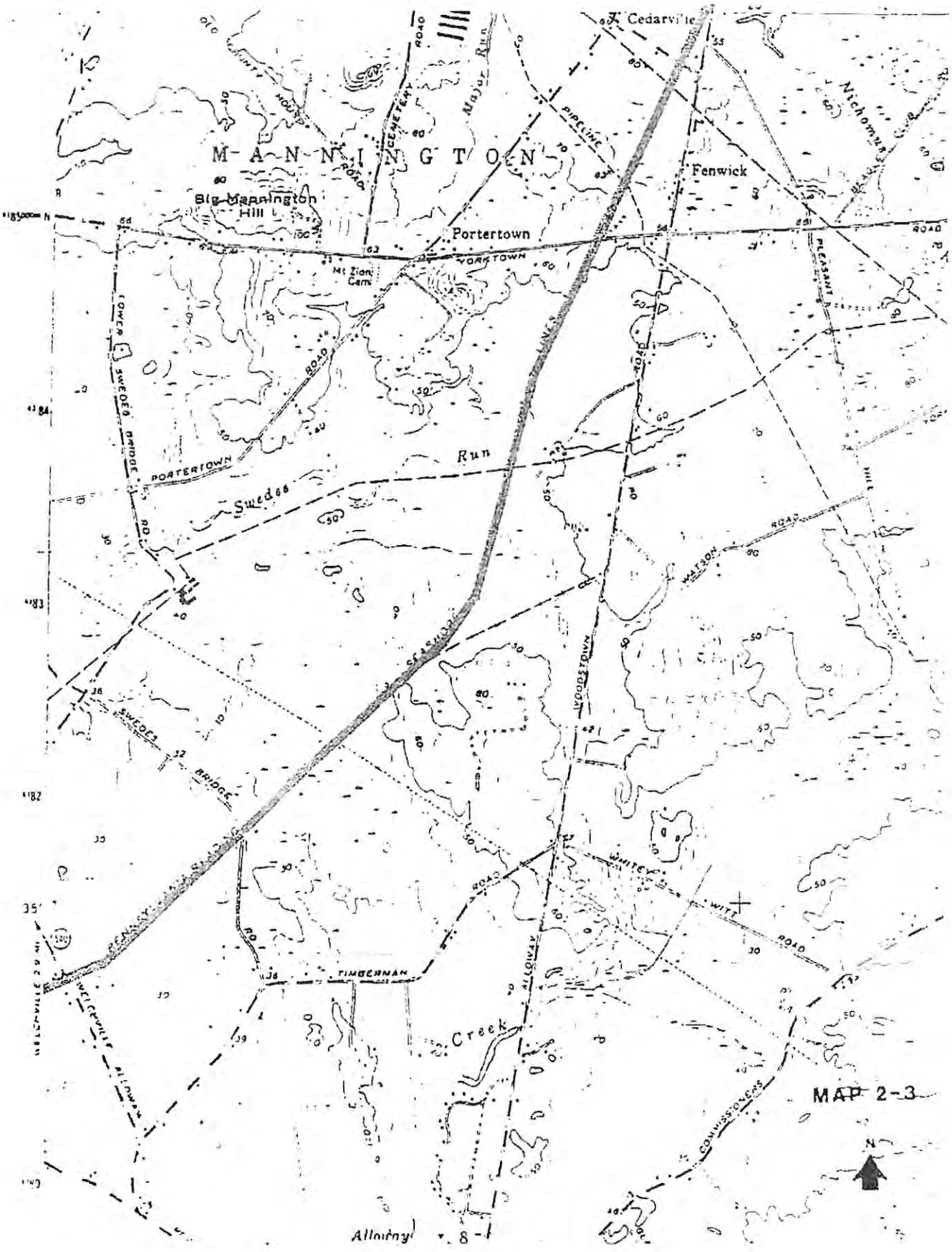

PHILADELPHIA
CAMDEN
Lansdowne
Darby
Clifton Hts
Chester
Greenwich
Paulsboro
Woodbury
Gibbstown
Logan
Woolwich
Swedesboro
Mullica Hill
Washington
Harrison
Glassboro
Pitman
Penns Grove
Carneys Point
Pilesgrove
Elk
Upper Pittsgrove
Franklin
Pittsgrove
Mannington
Salem
Oldmans
Auburn
Churchtown
New Castle
Penns Beach
Elsinboro
Quinton
Alloway
Upper Deerfield
Deerfield
Vineland
Hancocks Bridge
Lower Alloway Creek
Stow Creek
Shiloh
Roadstown
Hopewell
Bridgeton
Gouldtown
Cohansey
Friesburg
Port Penn
Delaware
Newtown Square
Concordville
Media
Chadds Ford
Kennett Square
Oxford
Coatesville
Phoenixville
Pottstown
Reading
Allentown
Bethlehem
Easton
Trenton
Princeton
New Brunswick
Perth Amboy
Camden
Cherry Hill
Haddonfield
Haddon Heights
Audubon
Merchantville
Pennsauken
Palmyra
Riverton
Moorestown
Mount Laurel
Marlton
Medford
Lumberton
Mount Holly
Burlington
Bordentown
Trenton
Hamilton
Lawrenceville
Princeton
New Brunswick
Perth Amboy
Toms River
Lakewood
Jackson
Freehold
Asbury Park
Long Branch
Red Bank
Matawan
Keyport
Middletown
Atlantic City
Absecon
Egg Harbor City
Hammonton
Mays Landing
Somers Point
Ocean City
Cape May
Wildwood
Cape May Court House
Millville
Vineland
Bridgeton
Salem
Penns Grove
Carneys Point
Pedricktown
Swedesboro
Woolwich
Logan
Gibbstown
Paulsboro
Greenwich
Chester
Media
Concordville
Darby
Lansdowne
Clifton Hts
Haddonfield
Cherry Hill
Camden
Philadelphia

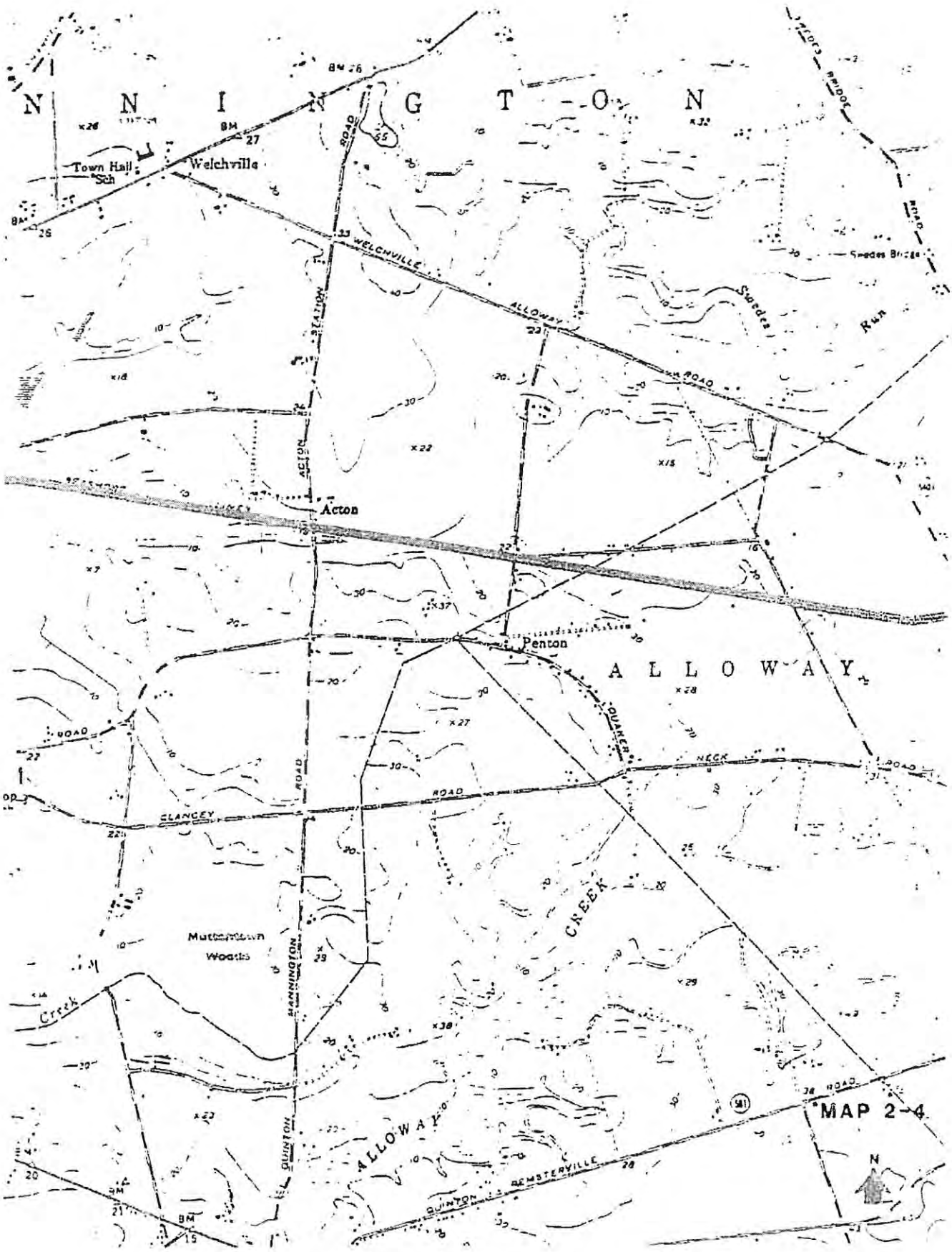

SWEDESBORO
Lake Narraticon
Lake Park Cem
CORPORATE BOUNDARY
TURNPIKE
DAVIDSON ROAD
W O O L W I C H
Radio Tower
Gravel Pit
NEW JERSEY TOLL ROAD
HIGHWAY
LINES
Swedesboro Golf Club
KINGS ROAD
Creek
Gravel Pit
Cem
Porches Mill
OLIPHANT MILL ROAD
LAUREL LANE
N

MAP 2-1


PILESGROVE
Point Airy
Eldridge Hill
Woodstown
(BM 47)
River
Run
Chestnut
Lake
Memorial
East Lake
Salem
Run
Cedarville
Lawnside
Sewage Disposal
High Sch
Shoemaker Sch
Gravel Pit
Radio Tower
Substa
WOODSTOWN
DALETOWN
PENNSYLVANIA
HARRISONVILLE
CORPORATE
BOUNDARY
N

MAP 2-2


Cedarville
Nichomus
M A N N I N G T O N
Big Mannington Hill
Fenwick
Portertown
Mt Zion Cem
YORKTOWN
PIPELINE
CEMETERY ROAD
Major Run
PLEASANT
LOWER SWEDES BRIDGE RD
PORTERTOWN ROAD
Swedes Run
WATSON ROAD
WOODSTOWN
SWEDES BRIDGE
WHITEY WITT ROAD
TIMBERMAN
ALLOWAY
Creek
COMMISSIONERS
WELCHVILLE ALLOWAY
Alloway
MAP 2-3
N


N N I N G T O N
Town Hall Sch
Welchville
WELCHVILLE
ALLOWAY
ROAD
STATION
ACTON
Acton
Penton
A L L O W A Y
QUAKER
NECK
ROAD
CLANCEY
ROAD
Muttontown Woods
MANNINGTON
QUINTON
CREEK
ALLOWAY
QUINTON
REMSTERVILLE
ROAD
Creek
Swedes Bridge
Swedes
Run
MAP 2-4
N

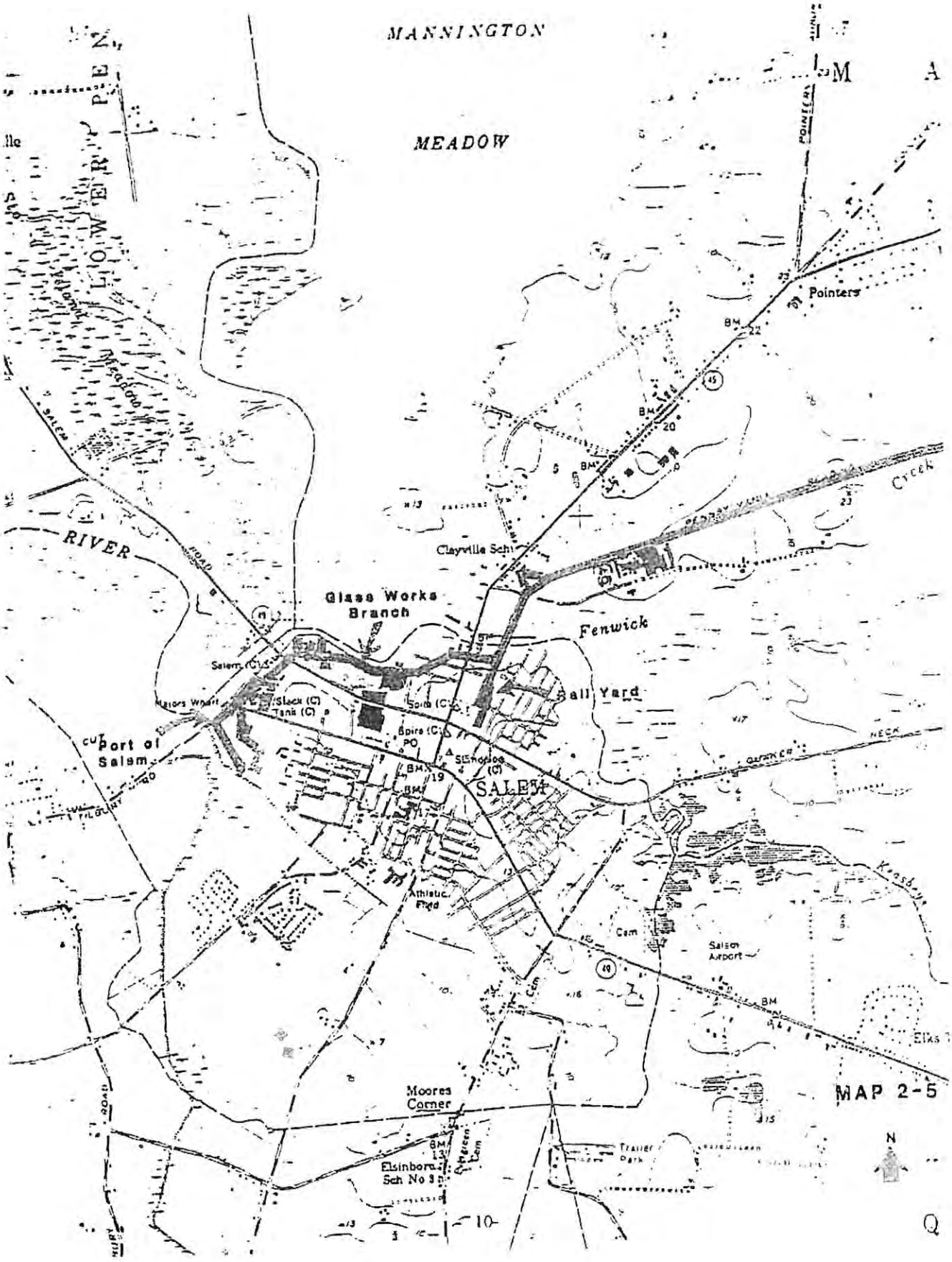

MANNINGTON
MEADOW
LOWER PEN
RIVER
Pointers
Creek
Clayville Sch
Glass Works Branch
Fenwick
Rail Yard
Port of Salem
SALEM
Athletic Field
Salem Airport
Moores Corner
Elsinboro Sch No 3
Trailer Park
MAP 2-5
N

EXHIBIT B

1180 Route 40
Pilesgrove, New Jersey 08098

Township of Pilesgrove
PILESGROVE TOWNSHIP 1706
County of Salem

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

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

October 11, 2023

SMS RAIL SERVICE INC
PO Box 711
Bridgeport, NJ 08014

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

Dear SMS Rail Service:

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

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

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

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

Photo attached.

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

Sincerely,

Tanya Timberman
Zoning Officer

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



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

EXHIBIT C

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

October 12, 2023

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

RE: Change of Zoning Use
Block 73, Lot 1

Dear Ms. Timmerman:

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

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

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

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

Kind regards,

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

/JRP

EXHIBIT D

PUBLIC NOTICE

PILESGROVE TOWNSHIP

NOTICE OF HEARING

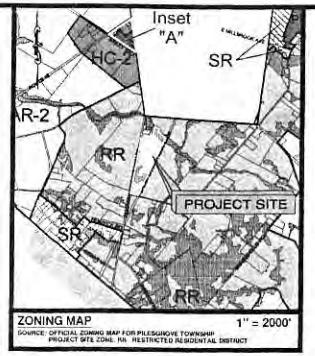
PLEASE TAKE NOTICE that the Pilesgrove Township Planning Board, located at 1180 Route 40, Pilesgrove Township Municipal Building, Pilesgrove, New Jersey, will conduct a public hearing on Wednesday, January 17, 2024 at 7:00 P.M. on the application ("Application") of SMS Rail Service, Inc. ("Applicant/Owner"),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

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

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

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

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



ZONING MAP 1" = 2000'
SOURCE: OFFICIAL ZONING MAP FOR PILESGROVE TOWNSHIP
PROJECT SITE ZONE: RR RESTRICTED RESIDENTIAL DISTRICT



LOCATION MAP 1" = 2000'
SOURCE: UNITED STATES GEOLOGICAL SURVEY
"WOODSTOWN, N.J." QUAD MAP



TAX MAP 1" = 800'
SOURCE: OFFICIAL TAX MAP OF PILESGROVE TOWNSHIP
SHEET No. 24



SOILS MAP 1" = 1000'
SOURCE: SOIL SURVEY OF ATLANTIC COUNTY, NJ

RAIL EXPLORERS

SITE PLAN

BLOCK 73 LOT 1

PILESGROVE TOWNSHIP

SALEM COUNTY, NEW JERSEY

GENERAL NOTES

GENERAL

1. This plan has been prepared for the purposes of obtaining preliminary and final site plan approval from the Pilesgrove Township Planning Board for the Rail Explorers rail bike operation at the SMS Rail Service, Inc. site.
2. Project scope consists of the creation of the improvement of a portion of the existing SMS Rail Service site to facilitate rail bike operations. Improvements include providing a dedicated parking area for visitors in an existing stone parking area with aesthetic enhancements and the creation of a contained operations area within an existing stone area. Structural improvements within the operations area include a 20' x 12' check-in/gift shop, a 10' x 36' office, an 8' x 20' bathroom trailer, 16' x 32' workshop/rail bike storage building, and a 12' x 14' structure for storage and charging.
3. Existing site improvements have been constructed to facilitate the SMS Rail Service operations.
4. Restroom facilities will be provided through use of a portable trailer toilet facility which will pumped out on an as-needed basis.

LOCATION

5. The project site is located along the east side of Allowaystown Road (Salem County Route 603). The property borders East Lake Road to the south.
6. The property is located in the Restricted Residential (RR) zoning district. Rail operations are an exempted use under federal regulations.
7. The project is located approximately at 39.63203° latitude and -75.38259° longitude.
8. Project soils consist of Ostello, Fallington and Toussum soils (OTMA), 0 to 2% slopes and Alloway loam (AFpB), 2 to 5% slopes, as identified on the USDA Soil Survey. The total project area is 1.42 acres.

SURVEY

9. Property is known as Lot 1 of Block 73 on the official tax map of Pilesgrove Township, Plate #24. Total tract area = 28.45 Ac. (1,239,927 sf.)
10. Boundary information taken from plan titled, "Survey of Property, Lands N/F LAM Services, LLC, prepared by Taylor, Wiseman & Taylor, dated February 25, 2022.
11. Existing topographic information taken from survey, titled, "Topographic Survey, Lands N/F SMS Rail Service, Inc., prepared by Taylor, Wiseman & Taylor, dated May 15, 2023.
12. Horizontal coordinates based on NAD '83 (2011). All elevations shown are based on North American Vertical Datum 1988 (NAVD 88).

VARIANCES

13. The applicant is seeking relief from any and all variances that may be deemed required by the Planning Board.

WAIVERS

14. The applicant is seeking a waiver from the requirement of having a paved parking lot and concrete curbing.
15. The applicant is seeking any and all waivers as may be determined to be required by the Planning Board.

DRAINAGE

16. The proposed parking lot will utilize the existing stone parking lot currently used for existing rail services by SMS Rail Service, Inc. and will create no new additional surface.
17. The proposed development of the rail bike operation will create 1,440 s.f. in building coverage. The 0.03 acre increase in impervious surface is less than the 0.25 acre requirement to be considered as "Major Development" as defined in the Pilesgrove Township stormwater rules.

HOURS OF OPERATION

18. Up to 7 days a week during the summer seasonal operation. Facility will operate during daylight hours.

PARKING and LOADING

19. There are 63 designated parking spaces on the site plan which include 2 handicap van-accessible spaces with an adjacent access aisle. Three bus spaces are also provided. Parking is sufficient to meet the anticipated demand of the rail bike operation.

AGENCY APPROVALS

20. The proposed site improvements are subject to the review and approval from the following regulatory agencies:
    a. Pilesgrove Township Planning Board for Preliminary and Final Site Plan approval;
    b. Salem County Planning Board for site plan approval or waiver of site plan review;
    c. Cumberland Salem Conservation District for Certification of the Soil Erosion and Sediment Control Plan;

CONSTRUCTION

21. Land grading activities shall be in accordance with Section 145-28 of the Pilesgrove Land Use Ordinance. No soil shall be removed from or be imported to the project site without prior approval of the Township Engineer or his authorized representative.
22. All dimensions must be verified by Contractor prior to initiating construction. Owner must be notified of any discrepancies before proceeding with the work.
23. Refer to complete set of plans for additional information.
24. This set of plans shall not be utilized for construction until each plan sheet has been marked to indicate "Issued for Construction" and bearing the signature and seal of the Professional Engineer who designed the plans.
25. Contractor shall comply with all conditions of approvals imposed by any and all regulatory agencies having jurisdictional authority as it relates to the construction and maintenance of the proposed improvements.
26. The Owner or his representative shall designate a person responsible for site safety during construction pursuant to N.J.A.C. 5:23-2.1(e) of the Uniform Construction Code and CPH 1926.
27. Contractor shall replace any and all damaged facilities damaged as a result of contractor operations or failure to protect such facilities during construction.
28. All pavement markings and striping and all signage to be in compliance with the Manual on Uniform Traffic Control Devices (M.U.T.C.D.).
29. This plan may not be copied, reused, disclosed, distributed or relied upon for any other purpose without the written consent of Dixon Associates Engineering, LLC.
30. Copyright 2023 Dixon Associates Engineering, LLC, all rights reserved.

POST-CONSTRUCTION

31. As-built drawings shall be prepared in accordance with the Township's Minimum As-Built Requirements.

ZONING SCHEDULE

RESTRICTED RESIDENTIAL DISTRICT- RR

ORDINANCE REFERENCE	REGULATION	APPLICABLE REQUIREMENTS	EXISTING	PROPOSED
SECTION	USE	EQUESTRIAN	VACANT	RAIL EXPLORERS
§ 145-39(B)	Minimum Lot Area	4 Acres	28.45 Ac. (C)	28.45 Ac. (C)
§ 145-39(C)	Minimum Lot Frontage	300'	2,366.47' (C)	2,366.47' (C)
§ 145-39(C)	Minimum Lot Width	300'	2,559' (C)	2,559' (C)
§ 145-39(C)	Minimum Lot Depth	300'	270'/35' (E/W)	270'/35' (E/W)
§ 145-39(F)	(Principal) Front Yard Setback	75'	N/A	(Gift Shop) 444.92' (C)
§ 145-39(F)	(Principal) Side Yard Setback	75'	N/A	(Workshop) 798' (C)
§ 145-39(F)	(Principal) Rear Yard Setback	100'	N/A	(Workshop) 34.96' (C)
§ 145-39(G)	Maximum Lot Coverage	Max. 15%	N/A	3.1% (C)
§ 145-39(H)	Building Coverage	10%	N/A	0.10%

(C) = CONFORMING
(NC) = EXISTING NON-CONFORMITY
(NC) = NON-CONFORMITY
(V) = VARIANCE REQUIRED

APPLICANT/OWNER:
SMS Rail Service, Inc.
P.O. Box 711
Bridgeport, NJ 08014
856-467-4800

INDEX OF SHEETS

Sheet No.	Description	Revision Date
1 of 2	Cover & Information Sheet	10/13/23
2 of 2	Site Plan & Details	

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NOT A FULL
SIZE COPY
NOT TO SCALE

PLANNING BOARD APPROVAL

BOARD CHAIRMAN DATE

BOARD SECRETARY DATE

BOARD ENGINEER DATE

CALL BEFORE YOU DIG
IN NJ, TOLL FREE
1 - 800 - 272 - 1000
FOR FREE MARKOUTS TO LOCATE UNDERGROUND UTILITIES
" IT'S THE LAW "

F:\PROJECTS\2023\DA\DA23-032\CAD\PROJECT\2023 1018 1 - 2 of 2 Site Plan.dwg 10/18/2023 11:27 AM

COVER & INFORMATION PLAN
BLOCK 73 LOT 1
PILESGROVE TOWNSHIP
SALEM COUNTY, NEW JERSEY

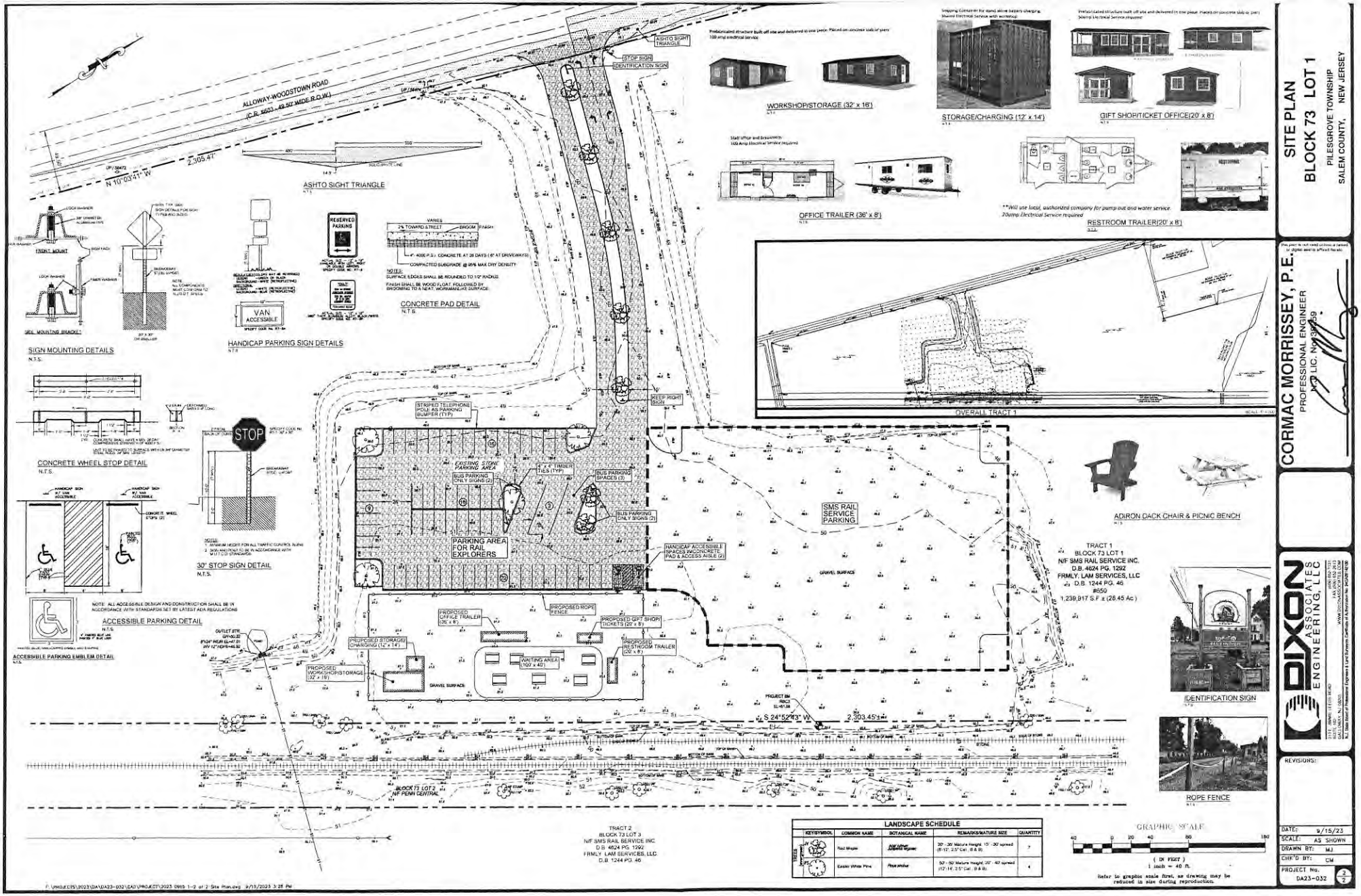
CORMAC MORRISSEY, P.E.
PROFESSIONAL ENGINEER
NJ LIC. No. 38259

DIXON ASSOCIATES ENGINEERING, LLC

REVISIONS:
10/10/23: Zoning Chart

DATE: 9/15/23
SCALE: AS SHOWN
DRAWN BY: MJ
CHK'D BY: CM
PROJECT No. DA23-032
1 / 2

SLM-C-000021-24 10/31/2024 3:52:19 PM Pg 3 of 15 Trans ID: CHC2024335525



LANDSCAPE SCHEDULE				
KEY/SYMBOL	COMMON NAME	BOTANICAL NAME	REMARKS/MATURE SIZE	QUANTITY
TREES	Red Maple	Acer rubrum (Autumn sprayer)	30' - 30' Mature Height, 15' - 30' spread (8-12', 2.5" Cal., B & B)	7
	Eastern White Pine	Pinus strobus	50' - 50' Mature Height, 20' - 40' spread (12'-14', 2.5" Cal., B & B)	4

SITE PLAN
BLOCK 73 LOT 1
PILESGROVE TOWNSHIP
SALEM COUNTY, NEW JERSEY

CORMAC MORRISSEY, P.E.
PROFESSIONAL ENGINEER
N.J. LIC. No. 38759

DIXON ASSOCIATES ENGINEERING, LLC

REVISIONS:

DATE:	9/15/23
SCALE:	AS SHOWN
DRAWN BY:	MJ
CHK'D BY:	CM
PROJECT No.	DA23-032

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

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

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

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

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

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

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

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

Prepared by: Joseph M. DiNicola, Jr., Esquire
Attorney, Pilesgrove Township Planning Board

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The approval is conditioned upon the Applicant submitting and obtaining Site Plan approval.

2. The Applicant shall submit a legal brief on the preemption issue to satisfy the Board's concern regarding their oversight responsibilities and limitations.

3. Payment of any and all required fees which are due or may become due to the Township within seven (7) day notice thereof, including but not limited to, settlement of any outstanding review escrow accounts.

4. Any and all conditions of approval detailed in the planner's review letter, subject to the planner's approval.

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

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

1. Applicant shall comply with all representations made during the course of the hearing and in all filed documents.

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

PILESGROVE TOWNSHIP PLANNING BOARD

BY:_____

JEFFREY STRING, Chairperson

ATTEST:

_____

BRENDA SHARP, Secretary

Prepared by: Joseph M. DiNicola, Jr., Esquire
Attorney, Pilesgrove Township Planning Board

ACKNOWLEDGMENT

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

Dated:_____ _____

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

EXHIBIT E

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

Permit No.
Control No.
Log No. 419

NOTICE AND ORDER OF PENALTY

(Penalty)

Identification

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

Action

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

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

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

Your are hereby ordered to terminate the said violations on or before 1/03/24
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.
You are hereby ordered to pay a penalty of $2,000.00 for each violation for a total penalty of $2,000.00 Each Week that any of the said violations remain outstanding after 1/03/24 shall result in an additional penalty of $500 per Week
If you wish to contest the validity of the above action, you may request a hearing before the Construction Board of Appeals of the County of SALEM within 15 days of the receipt of these Orders. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Subcode Official — Date

John Holroyd — Date 12-11-23
Construction Official

U.C.C. F210

EXHIBIT F

APPLICATION TO CONSTRUCTION BOARD OF APPEALS

New Jersey Uniform Construction Code

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

IDENTIFICATION

Work Site Location ALLOWAY-WOODSTOWN RD Block 73 Lot 1//QFARM
Owner in Fee: SMS Rail Service Inc. Agent: James Pfeiffer
Address: 513 Sharptown Road, Logan, NJ 08085 Address: 513 Sharptown Road, Logan, NJ 08085
Phone: 856.467.4800 Phone: 610.739.3729
Municipality: Pilesgrove Township

APPLICANT STATEMENT

Specific section(s) of the Regulation in question:

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

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

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

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

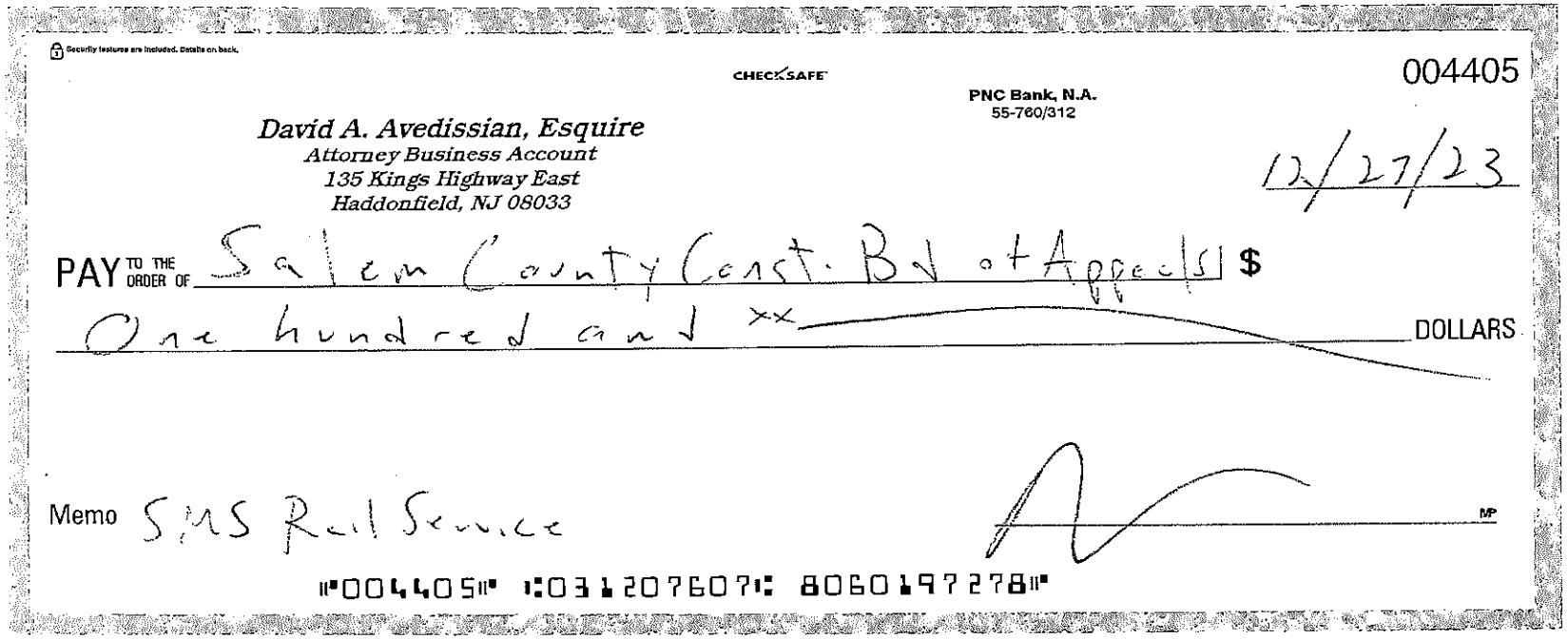
Fee $ 100.00 Paid [✓] Check No. 004405 Collected By Diana Ford

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

Signed: _____ 12/27/2023
(APPLICANT/AGENT) DATE

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

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



Security features are included. Details on back.

CHECKSAFE

004405

PNC Bank, N.A.
55-760/312

David A. Avedissian, Esquire
Attorney Business Account
135 Kings Highway East
Haddonfield, NJ 08033

12/27/23

PAY TO THE ORDER OF Salem County Const. Bd of Appeals $

One hundred and xx/100 DOLLARS

Memo SMS Rail Service

MP

⑈004405⑈ ⑆031207607⑆ 8060197278⑈

SLM-C-000021-24 10/31/2024 3:52:19 PM Pg 14 of 15 Trans ID: CHC2024335525

Thank you and have a great Day,
Julia Dobbs
Technical Assistant
Construction, Zoning and Housing

Pilesgrove Township
1180 Route 40
Pilesgrove, NJ 08098
(856)769-3222
pilesgrovenj.org

-----Original Message-----
From: DeTurk, Kelly <kdeturk@co.gloucester.nj.us>
Sent: Monday, January 22, 2024 8:25 AM
To: Julie Dobbs <constructionta@pilesgrovenj.org>
Subject: ***EXTERNAL***SMS Rail Service, Inc. v. Township of Pilesgrove

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

Mr. Holroyd:

As a follow up to our conversation, I attach a copy of the appeal for SMS Rail Services, Inc. v. Township of Pilesgrove.

Thank you,

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

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

THE VIGILANTE LAW FIRM, P.C.

EKATERINE ELEFTHERIOU, ESQUIRE
PHONE: 856-223-9990
KAT@THEVIGILANTELAWFIRM.COM

April 22, 2024

VIA ELECTRONIC FILING

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

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

Dear Ms. Brown:

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

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

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

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

Respectfully,

Ekaterine N. Eleftheriou
Attorney for the Township of Pilesgrove

Enclosures

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

BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET: FD 36770

TOWNSHIP OF PILESGROVE, COUNTY OF SALEM, NEW JERSEY

PETITION FOR DECLARATORY ORDER

Ekaterine N. Eleftheriou, Esq.
The Vigilante Law Firm
99 North Main Street
Mullica Hill, NJ 08062
(856) 223-9990
kat@thevigilantelawfirm.com

Attorney for the Township of Pilesgrove

April 22, 2024

BEFORE THE

SURFACE TRANSPORTATION BOARD
DOCKET: FD 36770
TOWNSHIP OF PILESGROVE, COUNTY OF SALEM, STATE OF NEW JERSEY

PETITION FOR DECLARATORY ORDER

PETITION

I. INTRODUCTION

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

II. FACTUAL AND PROCEDURAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

III. LEGAL STANDARD - A DECLARATORY ORDER IS APPROPRIATE

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

IV. ARGUMENT

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

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

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

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

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

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

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

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

V. CONCLUSION

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

Respectfully Submitted,

/s/ Ekaterine N. Eleftheriou, Esq.

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

VERIFICATION

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

Executed on April 22, 2024

/s/ Donna Manzo
Donna Manzo

CERTIFICATE OF SERVICE

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

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

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

/s/ Donna Manzo
Donna Manzo

CORRECTED

EXHIBIT H

NEW JERSEY UNIFORM CONSTRUCTION CODE

STOP CONSTRUCTION ORDER

Permit #
Date Issued **10/28/24**
-or-
Control #

IDENTIFICATION

Work Site Location **EAST LAKE RD** Block/Lot//Qual **73/3//QFARM**

Owner in fee **SMS RAIL SERVICE INC.**
Address **P.O. BOX 711**
BRIDGEPORT, NJ 08014

Agent
Address

To: ☐ Owner ☐ Other:
Agent/Contractor

DATE OF INSPECTION: **10/10/24** DATE OF THIS NOTICE: **10/10/24**

ACTION

You are hereby ***ORDERED*** to ***STOP***

☑ **Building** ☐ **Electrical** ☐ **Plumbing** ☐ **Fire Protection** ☐ **Mechanical** ☐ **Elevator** ☐ **All CONSTRUCTION**

at the above Location as of _____ until further notice from this enforcing agency.

This ORDER is entered pursuant to N.J.A.C. 5:23-2.31(d) for violation of **STOP WORK** which provides:

Permission to resume construction may be obtained from this enforcing agency after the following conditions are met:

Submit construction documents and request required inspections

Further, take *NOTICE* that failure to comply with this ***ORDER*** may result in the assessment of penalties of up to $2,000 per day per violation, and a certificate of occupancy will not be issued until such penalty has been paid.

If necessary, the enforcing agency will concurrently seek the Order of a court of competent jurisdiction restraining furtherwork at the above location.

If you wish to contest this ***ORDER***, you may request a hearing before the Construction Board of Appeals of the **County** of **SALEM**, within 15 days of receipt of this ***ORDER*** as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Apeals may be used for this purpose.

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

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

If you have any questions concerning this matter, please call: **Richard Saunders**
Construction Official

By ***ORDER*** of : Richard Saunders
SubCode Official

Date: 10-29-2024

Construction Office, Township of Pilesgrove, Pilesgrove, NJ 08098, 8567694814 , FAX 8567695490

U.C.C. F250 (rev. 1/2004)

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

CORRECTED

Permit No., If Any
Control No.
Log No. 461

NOTICE OF VIOLATION AND ORDER TO TERMINATE

(Work Without A Permit, 2.14)

Identification

Work Site EAST LAKE RD
Block/Lot 73/3//QFARM Unit

Contractor
SMS RAIL SERVICE INC.
P.O. BOX 711
BRIDGEPORT, NJ 08014

Action

Date of Inspection **10/10/24** Date of Notice **10/10/24** Compliance Due Date **10/30/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.

Further, take NOTICE that failure to comply with this ORDER may result in the assessment of penalties up to $2,000 per Week per violation, and a certificate of occupancy will NOT be issued until such penalty has been paid.

If you wish to contest thei ORDER, you may request a hearing before the Construction Board of Appeals of the county of **SALEM** within 15 days of receipt of this ORDER as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-29-2024
Subcode Official Date

Richard Saunders 10-29-2024
Richard Saunders Date
Construction Official

U.C.C. F211

CORRECTED

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

Permit No.
Control No.
Log No. 462

NOTICE AND ORDER OF PENALTY

(Work Without A Permit, 2.14)

Identification

Work Site EAST LAKE RD
Block/Lot 73/3//QFARM
Owner SMS RAIL SERVICE INC.
P.O. BOX 711
BRIDGEPORT, NJ 08014

Contractor

Action

Date of Notice **10/10/24** Compliance Due Date **10/30/24** Date of Inspection **10/10/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regnlations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.
You are hereby ordered to pay a penalty of **$2,000.00** for each violation for a total penalty of **$2,000.00** Each **Week** that any of the said violations remain outstanding after shall result in an additional penalty of **$500 per Week**
If you wish to contest the validity of the above action, you may request a hearing before the Construction Board of Appeals of the County of **SALEM** within 15 days of the receipt of these Orders. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-29-2024
Subcode Official Date

Richard Saunders 10-29-2024
Richard Saunders Date
Construction Official

U.C.C. F210

CONSTRUCTION CODE OFFICE

1180 Route 40
Pilesgrove, New Jersey 08098

Township of Pilesgrove
PILESGROVE TOWNSHIP 1706
County of Salem

Phone: (856) 769-4814
Fax: (856) 769-5490

October 10, 2024

County of Salem
110 Fifth St., Suite 400
Salem, NJ 08079
Attn: Jeffrey Ridgeway

Re: SMS Rail Service Inc.

To whom it may concern,

This letter is a courtesy to inform you of the attached violations and penalties that have been issued to SMS Rail Service. SMS Rail Service owns Block 73 Lot 1 in Pilesgrove Township. We wanted to make you aware of the current violations as The County of Salem is the owner of the train track that runs through this property.

Thank You,

Jenna Seeney

Construction Technical Assistant
Township of Pilesgrove
1180 Route 40
Pilesgrove, NJ 08098
(856) 769-3222

NEW JERSEY UNIFORM CONSTRUCTION CODE

STOP CONSTRUCTION ORDER

Permit #
Date Issued **10/17/24**
-or-
Control #

IDENTIFICATION

Work Site Location **ALLOWAY-WOODSTOWN RD** Block/Lot//Qual **73/1//QFARM**

Owner in fee **SMS RAIL SERVICE**
Address **P.O. BOX 711**
BRIDGEPORT, NJ 08014

Agent
Address

To: ☐ Owner ☐ Other:
☐ Agent/Contractor

DATE OF INSPECTION: **10/10/24** DATE OF THIS NOTICE: **10/10/24**

ACTION

You are hereby ***ORDERED*** to ***STOP***

☑ **Building** ☐ **Electrical** ☐ **Plumbing** ☐ **Fire Protection** ☐ **Mechanical** ☐ **Elevator** ☐ **All CONSTRUCTION**

at the above Location as of **10/10/24** until further notice from this enforcing agency.

This ORDER is entered pursuant to N.J.A.C. 5:23-2.31(d) for violation of **STOP WORK** which provides:

Permission to resume construction may be obtained from this enforcing agency after the following conditions are met:

Submit construction documents and request required inspections

Further, take *NOTICE* that failure to comply with this ***ORDER*** may result in the assessment of penalties of up to $2,000 per day per violation, and a certificate of occupancy will not be issued until such penalty has been paid.

If necessary, the enforcing agency will concurrently seek the Order of a court of competent jurisdiction restraining furtherwork at the above location.

If you wish to contest this ***ORDER***, you may request a hearing before the Construction Board of Appeals of the **County** of **SALEM**, within 15 days of receipt of this ***ORDER*** as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Apeals may be used for this purpose.

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

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

If you have any questions concerning this matter, please call: **Richard Saunders**
Construction Official

By ***ORDER*** of : Richard Saunders
SubCode Official
Date: 10-10-2024

Construction Office, Township of Pilesgrove, Pilesgrove, NJ 08098, 8567694814 , FAX 8567695490

U.C.C. F250 (rev. 1/2004)

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

Permit No., If Any
Control No.
Log No. 458

NOTICE OF VIOLATION AND ORDER TO TERMINATE

(Work Without A Permit, 2.14)

Identification

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

Contractor

Action

Date of Inspection **10/10/24** Date of Notice **10/10/24** Compliance Due Date **10/30/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failnre to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.

Further, take NOTICE that failure to comply with this ORDER may result in the assessment of penalties up to $2,000 per Week per violation, and a certificate of occupancy will NOT be issued until such penalty has been paid.

If you wish to contest thei ORDER, you may request a hearing before the Construction Board of Appeals of the county of **SALEM** within 15 days of receipt of this ORDER as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-10-2024
Subcode Official Date

Richard Saunders 10-10-2024
Richard Saunders Date
Construction Official

U.C.C. F211

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

Permit No.
Control No.
Log No. 457

NOTICE AND ORDER OF PENALTY

(Work Without A Permit, 2.14)

Identification

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

Action

Date of Notice **10/10/24** Compliance Due Date **10/30/24** Date of Inspection **10/10/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.
You are hereby ordered to pay a penalty of **$2,000.00** for each violation for a total penalty of **$2,000.00** Each **Week** that any of the said violations remain outstanding after **10/30/24** shall result in an additional penalty of **$500 per Week**
If you wish to contest the validity of the above action, you may request a hearing before the Construction Board of Appeals of the County of **SALEM** within 15 days of the receipt of these Orders. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-10-2024
Subcode Official Date

Richard Saunders 10-10-2024
Richard Saunders Date
Construction Official

U.C.C. F210


Stop work order
NOT APPROVED
BUILDING
ELECTRICAL
PLUMBING
FIRE PROTECTION
ELEVATOR DEVICES
OTHER
No permit
10-10-24
RS

EXHIBIT J

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

October 24, 2024

Via Hand Delivery

Mr. Richard Saunders, Construction Official
Pilesgrove Township
1180 Route 40 East
Pilesgrove, NJ 08098

RE: SMS Rail Service, Inc.
Stop Construction Order - Block 73, Lot 1
Notice and Order of Penalty (Control No. 457) - Block 73, Lot 1
Notice of Violation and Order to Terminate (Control No. 458) - Block 73, Lot 1

Dear Mr. Saunders:

SMS Rail Service, Inc. ("SMS") is in receipt of your *Stop Construction Order*, *Notice and Order of Penalty* (Control No. 457), and *Notice of Violation and Order to Terminate* (Control No. 458), all of which have been issued against SMS for alleged construction activities on Block 73, Lot 1 in Pilesgrove Township. Please be advised that there are no ongoing construction activities on said Block and Lot, and proceedings regarding the same were resolved in front of the Construction Board of Appeals last spring. Therefore, such *Order* and *Notices* are a nullity, and we request that Pilesgrove Township acknowledge the same and withdraw them.

Regarding a separate location, by email dated September 5, 2024, I forwarded to Ekaterine Eleftheriou, Pilesgrove Township's Solicitor, notice to the Township of the impending federally preempted construction activities (a locomotive engine house) on Block 73, Lot 3, as required by federal law and confirmed in the Village of Ridgefield Park case that you cite in your above *Notices* against Block 73, Lot 1. SMS's notice for Block 73, Lot 3 included drawings and specifications for the structure, which are certified by a New Jersey licensed engineer, together with a map depicting the location of the building, receipt of which by the Pilesgrove Construction Office was confirmed by the Township inspector upon his visiting the site on October 10, 2024. At that time, the workers were told by the Township inspector that they should continue working on the building and that if they followed the plans that were submitted, when the Township returns to inspect again, everything would "be okay." Another Township inspector visited the site on October 18, 2024, and made only positive remarks.

Notwithstanding the foregoing, when the Township inspector was at the site on October 10, 2024, the inspector posted an orange "Stop Work Order" stating "No permit" and containing an incorrect street address for the property. The inspector apologetically stated when posting the Stop Work Order that he was only doing what he was told to do. It makes no sense that the Township would force the inspector to post such an Order when it knows the law prohibits the

Township from doing so and no permits are required. The Township has acknowledged that local regulation of the property is preempted under federal law, as confirmed in the Ridgefield Park case you cited, and, indeed, its inspector told the workers that they should continue working.

Also, it appears from the above invalid *Notices* that you and the Township mistakenly contend that SMS must "request" inspections of its construction activities. As you should be aware, there is no basis under federal law for this requirement. See also Ridgefield Park, and the State of New Jersey Department of Community Affairs Bulletin 01-1 (May 2001), which Pilesgrove's Solicitor cited in prior pending matters before the Construction Board of Appeals. Rather, as those materials state, SMS is required to give notice to the Township. And, in fact, SMS has given notice to the Township consistently in accordance with federal law.

For ease of your reference, I have enclosed another copy of the above-referenced, previously supplied drawings, specifications and map. Also enclosed is a copy of the above-referenced Bulletin, which notably specifically states that the Township "is not able to require permits, fees, and Certificates of Occupancy" and that "stop-work orders are not permitted."

Both Township inspectors made positive statements about the work on the above properties upon their visits on October 10 and 18. As noted, the inspector who posted the illegal Stop Work Order stated that he was only doing what he was told to do, which is unfortunate.

Again, if you or a representative of your office would like an opportunity to inspect SMS's construction activities, including those being undertaken on Block 70, Lot 3, or the sheds previously placed on Block 70, Lot 1, please simply email me at jpfeiffer@smsrail.com to let us know when you want to inspect. You may also reach me at my office number below, or by mobile phone or text at 610-739-3729.

Kind regards,

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

/JRP
Enclosures
c.c. via email only; with enclosures:
Jenna Seeney, Technical Assistant, Pilesgrove Township Construction Office – (conast@pilesgrovenj.org)
Ekaterine Eleftheriou, Solicitor, Pilesgrove Township – (kat@thevigilantelawfirm.com)
Melissa Fackler, Clerk, Pilesgrove Township – (clerk@pilesgrovenj.org)
Jeffrey Ridgway, Administrator, Salem County – (Jeffrey.Ridgway@salemcountynj.gov)



08/05/2024

NJ COA #24GA28127800

Alpine, an ITW company
155 Harlem Ave.
North Building, 4th Floor
Glenview, IL 60025
Phone: (800)326-4102 (314)344-9121
alpineitw.com

Site Information:	Page 1:
Customer: D. L. Truss	*Job Number:* 34023
Job Description: /34023 /Lanc Pole/SMS Rail Servic	
Address: 650 Alloway Woodstown Rd, Woodstown , NJ 08098	

Job Engineering Criteria:	
Design Code: IBC 2021	*IntelliVIEW Version:* 24.01.00A *JRef #:* 1Y2566970001
Wind Standard: ASCE 7-16 *Wind Speed (mph):* 115 *Building Type:* Closed	*Design Loading (psf):* 40.00

This package contains general notes pages, 2 truss drawing(s) and 0 detail(s).

Item	Drawing Number	Truss
1	218.24.0617.58577	30Ags/Com/50/412-cat2-2021

Item	Drawing Number	Truss
2	218.24.0618.10053	30Ags/Sgab/50/412-cat2-2021

SLM-C-000021-24 10/31/2024 3:52:19 PM Pg 3 of 19 Trans ID: CHC2024335525

General Notes

Truss Design Engineer Scope of Work, Design Assumptions and Design Responsibilities:
The design responsibilities assumed in the preparation of these design drawings are those specified in ANSI/TPI 1, Chapter 2; and the National Design Standard for Metal Plate Connected Wood Truss Construction, by the Truss Plate Institute. The truss component designs conform to the applicable provisions of ANSI/TPI 1 and NDS, the National Design Specification for Wood Construction by AWC. The truss component designs are based on the specified loading and dimension information furnished by others to the Truss Design Engineer. The Truss Design Engineer has no duty to independently verify the accuracy or completeness of the information provided by others and may rely on that information without liability. The responsibility for verification of that information remains with others neither employed nor controlled by the Truss Design Engineer. The Truss Design Engineer's seal and signature on the attached drawings, or cover page listing these drawings, indicates acceptance of professional engineering responsibility solely for the truss component designs and not for the technical information furnished by others which technical information and consequences thereof remain their sole responsibility.

The suitability and use of these drawings for any particular structure is the responsibility of the Building Designer in accordance with ANSI/TPI 1 Chapter 2. The Building Designer is responsible for determining that the dimensions and loads for each truss component match those required by the plans and by the actual use of the individual component, and for ascertaining that the loads shown on the drawings meet or exceed applicable building code requirements and any additional factors required in the particular application. Truss components using metal connector plates with integral teeth shall not be placed in environments that will cause the moisture content of the wood in which plates are embedded to exceed 19% and/or cause corrosion of connector plates and other metal fasteners.

The Truss Design Engineer shall not be responsible for items beyond the specific scope of the agreed contracted work set forth herein, including but not limited to: verifying the dimensions of the truss component, calculation of any of the truss component design loads, inspection of the truss components before or after installation, the design of temporary or permanent bracing and their attachment required in the roof and/or floor systems, the design of diaphragms or shear walls, the design of load transfer connections to and from diaphragms and shear walls, the design of load transfer to the foundation, the design of connections for truss components to their bearing supports, the design of the bearing supports, installation of the truss components, observation of the truss component installation process, review of truss assembly procedures, sequencing of the truss component installation, construction means and methods, site and/or worker safety in the installation of the truss components and/or its connections.

This document may be a high-quality facsimile of the original engineering document which is a digitally signed electronic file with third party authentication. A wet or embossed seal copy of this engineering document is available upon request.

Temporary Lateral Restraint and Bracing:
Temporary lateral restraint and diagonal bracing shall be installed according to the provisions of BCSI chapters B1, B2, B7 and/or B10 (Building Component Safety Information, by TPI and SBCA), or as specified by the Building Designer or other Registered Design Professional. The required locations for lateral restraint and/or bracing depicted on these drawings are only for the permanent lateral support of the truss members to reduce buckling lengths, and do not apply to and may not be relied upon for the temporary stability of the truss components during their installation.

Permanent Lateral Restraint and Bracing:
The required locations for lateral restraint or bracing depicted on these drawings are for the permanent lateral support of the truss members to reduce buckling lengths. Permanent lateral support shall be installed according to the provisions of BCSI chapters B3, B7 and/or B10, or as specified by the Building Designer or other Registered Design Professional. These drawings do not depict or specify installation/erection bracing, wind bracing, portal bracing or similar building stability bracing which are parts of the overall building design to be specified, designed, and detailed by the Building Designer.

Connector Plate Information:
Alpine connector plates are made of ASTM A653 or ASTM A1063 galvanized steel with the following designations, gauges and grades: W=Wave, 20ga, grade 40; H=High Strength, 20ga, grade 60; S=Super Strength, 18ga, grade 60. Information on model code compliance is contained in the ICC Evaluation Service report ESR-1118, available on-line at www.icc-es.org.

Bearing Information:
The bearing area factor, Cb, is considered for the allowable capacity of solid sawn wood bearings supporting trusses that are located a minimum of 3" from the end of the lumber piece.

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General Notes (continued)

Coated Lumber:
Coated lumber must be properly re-dried and maintained below 19% or less moisture level through all stages of construction and usage. Coated lumber has no adjustments to lumber properties. Coated lumber may be more brittle than uncoated lumber. Special handling care must be taken to prevent breakage during all handling activities. Refer to manufacturer literature, specifications, and code evaluation reports for restrictions, details, and requirements.

Fire Retardant Treated Lumber:
Fire retardant treated lumber must be properly re-dried and maintained below 19% or less moisture level through all stages of construction and usage. Fire retardant treated lumber may be more brittle than untreated lumber. Special handling care must be taken to prevent breakage during all handling activities.

Key to Terms:
Information provided on drawings reflects a summary of the pertinent information required for the truss design. Detailed information on load cases, reactions, member lengths, forces and members requiring permanent lateral support may be found in calculation sheets available upon written request.

BCDL = Bottom Chord standard design Dead Load in pounds per square foot.
BCLL = Bottom Chord standard design Live Load in pounds per square foot.
C = Coated lumber.
C-AT = AtTEK coated lumber.
C-FX = FX Lumber Guard coated lumber.
C -TE = TechWood 4400 coated lumber.
CL = Certified lumber.
Des Ld = total of TCLL, TCDL, BCLL and BCDL Design Load in pounds per square foot.
FRT = Fire Retardant Treated lumber.
FRT-BF = Boraflame Fire Retardant Treated lumber
FRT-DB = D-Blaze Fire Retardant Treated lumber.
FRT-DC = Dricon Fire Retardant Treated lumber.
FRT-FP = FirePRO Fire Retardant Treated lumber.
FRT-FL = FlamePRO Fire Retardant Treated lumber.
FRT-FT = FlameTech Fire Retardant Treated lumber.
FRT-ON = OnWood Fire Retardant Treated lumber.
FRT-PG = PYRO-GUARD Fire Retardant Treated lumber.
FRT-PR = ProWood Fire Retardant Treated lumber.
g = green lumber.
HORZ(LL) = maximum Horizontal panel point deflection due to Live Load, in inches.
HORZ(TL) = maximum Horizontal panel point long term deflection in inches, due to Total Load, including creep adjustment.
HPL = additional Horizontal Load added to a truss Piece in pounds per linear foot or pounds.
Ic = Incised lumber.
FJ = Finger Jointed lumber.
L/# = user specified divisor for limiting span/deflection ratio for evaluation of actual L/defl value.
L/defl = ratio of Length between bearings, in inches, divided by the vertical Deflection due to creep, in inches, at the referenced panel point. Reported as 999 if greater than or equal to 999.
Loc = Location, starting location of left end of bearing or panel point (joint) location of deflection.
Max BC CSI = Maximum bending and axial Combined Stress Index for Bottom Chords for all load cases.
Max TC CSI = Maximum bending and axial Combined Stress Index for Top Chords for all load cases.
Max Web CSI= Maximum bending and axial Combined Stress Index for Webs for all load cases.
NCBCLL = Non-Concurrent Bottom Chord design Live Load in pounds per square foot.
PL = additional Load applied at a user specified angle on a truss Piece in pounds per linear foot or pounds.
PLB = additional vertical load added to a Bottom chord Piece of a truss in pounds per linear foot or pounds
PLT = additional vertical load added to a Top chord Piece of a truss in pounds per linear foot or pounds.
PP = Panel Point.
R = maximum downward design Reaction, in pounds, from all specified gravity load cases, at the indicated location (Loc).
-R = maximum upward design Reaction, in pounds, from all specified gravity load cases, at the identified location (Loc).
Rh = maximum horizontal design Reaction in either direction, in pounds, from all specified gravity load cases, at the indicated location (Loc).
RL = maximum horizontal design Reaction in either direction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the indicated location (Loc).

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General Notes (continued)

Key to Terms (continued):
Rw = maximum downward design Reaction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the identified location (Loc).
TCDL = Top Chord standard design Dead Load in pounds per square foot.
TCLL = Top Chord standard design Live Load in pounds per square foot.
U = maximum Upward design reaction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the indicated location (Loc).
VERT(CL) = maximum Vertical panel point deflection in inches due to Live Load and Creep Component of Dead Load in inches.
VERT(CTL) = maximum Vertical panel point deflection ratios due to Live Load and Creep Component of Dead Load, and maximum long term Vertical panel point deflection in inches due to Total load, including creep adjustment.
VERT(LL) = maximum Vertical panel point deflection in inches due to Live Load.
VERT(TL) = maximum Vertical panel point long term deflection in inches due to Total load, including creep adjustment.
W = Width of non-hanger bearing, in inches.

Refer to ASCE-7 for Wind and Seismic abbreviations.
Uppercase Acronyms not explained above are as defined in TPI 1.

References:

1. AWC: American Wood Council; 222 Catoctin Circle SE, Suite 201; Leesburg, VA 20175; www.awc.org.
2. ICC: International Code Council; www.iccsafe.org.
3. Alpine, a division of ITW Building Components Group Inc.: 155 Harlem Ave, North Building, 4th Floor, Glenview, IL 60025; www.alpineitw.com.
4. TPI: Truss Plate Institute, 2670 Crain Highway, Suite 203, Waldorf, MD 20601; www.tpinst.org.
5. SBCA: Wood Truss Council of America, 6300 Enterprise Lane, Madison, WI 53719; www. sbcacomponents.com

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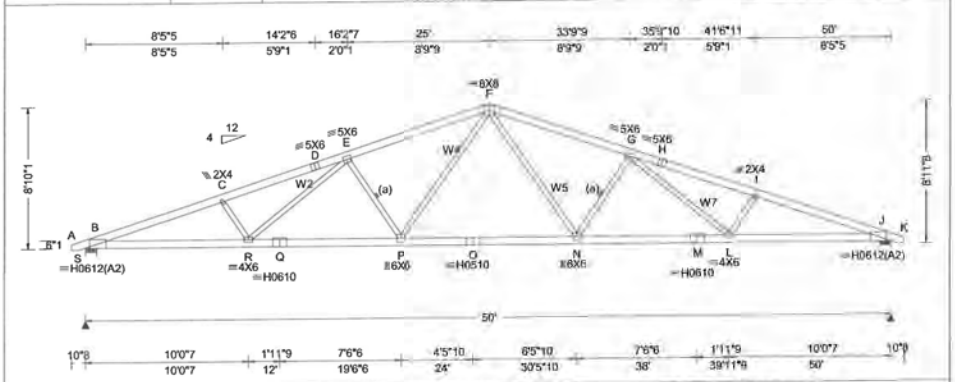
SEQN: 164997 COMN	Ply: 1	Job Number: 34023	Cust: R 6897 JRef: 1Y2566970001 T258
FROM:	Qty: 28	/34023 /Lanc Pole/SMS Rail Servic	DrwNo: 218.24.0617.55577
		Truss Label: 30Ags/Com/50/412-cat2-2021	/ FK 08/05/2024



Loading Criteria (psf)

TCLL:	30.00
TCDL:	5.00
BCLL:	0.00
BCDL:	5.00
Des Ld:	40.00
NCBCLL:	10.00
Soffit:	2.00

Load Duration: 1.15
Spacing: 48.0 "

Wind Criteria
Wind Std: ASCE 7-16
Speed: 115 mph
Enclosure: Closed
Risk Category: II
EXP: C Kzt: NA
Mean Height: 28.00 ft
TCDL: 3.0 psf
BCDL: 3.0 psf
MWFRS Parallel Dist: 0 to h/2
C&C Dist a: 5.00 ft
Loc. from endwall: Any
GCpi: 0.18
Wind Duration: 1.60

Snow Criteria (Pg,Pf in PSF)
Pg: 30.0 Ct: 1.2 CAT: II
Pf: 25.2 Ce: 1.0
Lu: - Cs: 0.94
Snow Duration: 1.15

Building Code:
IBC 2021
TPI Std: 2014
Rep Fac: No
FT/RT/PT:2(2)/2(2)/2(0)
Plate Type(s):
HS, WAVE

Defl/CSI Criteria

PP Deflection in	loc	L/defl	L/#
VERT(LL):	0.864 P	690	240
VERT(CL):	1.020 P	584	240
HORZ(LL):	0.286 J	-	-
HORZ(TL):	0.313 J	-	-

Creep Factor: 2.0
Max TC CSI: 0.875
Max BC CSI: 0.996
Max Web CSI: 0.829

VIEW Ver: 24.01.00A.0411.17

▲Maximum Reactions (lbs)

	Gravity			Non-Gravity		
Loc	R+	/ R-	/ Rh	/ Rw	/ U	/ RL
S	4158	/-	/-	/1085	/1040	/258
J	4158	/-	/-	/1085	/1040	/-

Wind reactions based on MWFRS
S Brg Wid = 8.2 Min Req = 4.2 (Truss)
J Brg Wid = 8.2 Min Req = 4.2 (Truss)
Bearings S & J are a rigid surface.
Members not listed have forces less than 375#

Maximum Top Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - C	4233	-10464	F - G	3362	-7761
C - D	4126	-9938	G - H	4134	-9678
D - E	4134	-9678	H - I	4126	-9938
E - F	3361	-7761	I - J	4233	-10464

Maximum Bot Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - R	9782	-3837	O - N	6030	-2118
R - Q	8138	-3056	N - M	8138	-3057
Q - P	8138	-3056	M - L	8138	-3057
P - O	6030	-2118	L - J	9782	-3840

Maximum Web Forces Per Ply (lbs)

Webs	Tens.	Comp.	Webs	Tens.	Comp.
C - R	619	-989	F - N	2099	-850
R - E	1526	-626	N - G	979	-1804
E - P	979	-1804	G - L	1526	-626
P - F	2099	-850	L - I	619	-989

Lumber

Top chord: 2x6 SP 2400f-2.0E;
Bot chord: 2x6 SP SS Dense;
Webs: 2x4 SPF Stud; W2,W7 2x4 SPF #1/#2; W4, W5 2x4 SPF 2100f-1.8E;

Bracing

(a) Continuous lateral restraint, equally spaced on member.

Purlins

In lieu of structural panels or rigid ceiling use purlins to laterally brace chords as follows:

Chord	Spacing(in oc)	Start(ft)	End(ft)
TC	24	0.88	25.00
TC	24	25.00	50.88
BC	64	0.15	49.85

Apply purlins to any chords above or below fillers at 24" OC unless shown otherwise above.

Loading

Bottom chord checked for 10.00 psf non-concurrent live load.

Truss designed for unbalanced snow loads.
Slope reduction based on Unobstructed Slippery Surface.

Wind

Wind loads based on MWFRS with additional C&C member design.

Wind loading based on both gable and hip roof types.

Bottom chord bracing may be spaced on 120" centers when truss is used in post-frame construction.

Additional Notes

WARNING: Furnish a copy of this DWG to the installation contractor. Special care must be taken during handling, shipping and installation of trusses. See "WARNING" note below.



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Alpine, a division of ITW Building Components Group Inc. shall not be responsible for any deviation from this drawing, any failure to build the truss in conformance with ANSI/TPI 1, or for handling, shipping, installation and bracing of trusses. A seal on this drawing or cover page listing this drawing, indicates acceptance of professional engineering responsibility solely for the design shown. The suitability and use of this drawing for any structure is the responsibility of the Building Designer per ANSI/TPI 1 Sec.2.
For more information see these web sites: Alpine: alpineitw.com; TPI: tpinst.org; SBCA: sbcacomponents.com; ICC: iccsafe.org; AWC: awc.org

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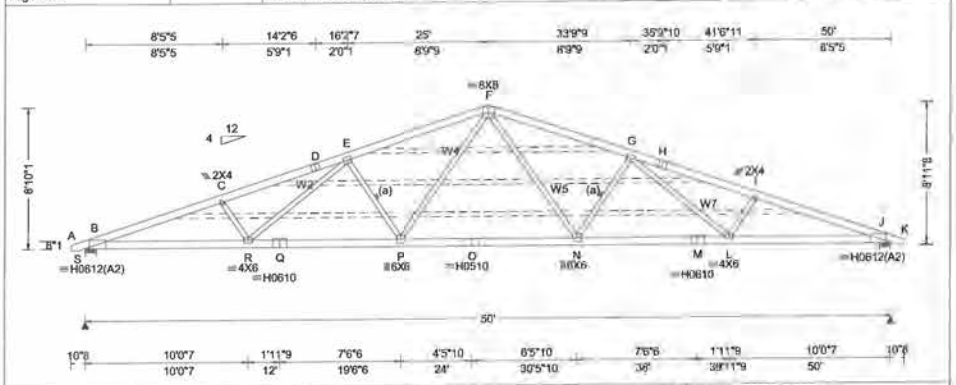
SLM-C-000021-24 10/31/2024 3:52:19 PM Pg 7 of 19 Trans ID: CHC2024335525

SEQN: 165001 GABL FROM: Page 1 of 2	Ply: 1 Qty: 2	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Sgabv5i/412-cat2-2021		Cust: R 6907 JRef: 1Y2586870001 T258 DrwNo: 218.24.0618.10053 / FK 08/05/2024



Loading Criteria (psf)

TCLL:	30.00
TCDL:	5.00
BCLL:	0.00
BCDL:	5.00
Des Ld:	40.00
NCBCLL:	10.00
Soffit:	2.00

Load Duration: 1.15
Spacing: 48.0 "

Wind Criteria
Wind Std: ASCE 7-16
Speed: 115 mph
Enclosure: Closed
Risk Category: II
EXP: C Kzt: NA
Mean Height: 28.00 ft
TCDL: 3.0 psf
BCDL: 3.0 psf
MWFRS Parallel Dist: 0 to h/2
C&C Dist a: 5.00 ft
Loc. from endwall: Any
GCpi: 0.18
Wind Duration: 1.60

Snow Criteria (Pg,Pf in PSF)
Pg: 30.0 Ct: 1.2 CAT: II
Pf: 25.2 Ce: 1.0
Lu: - Cs: 0.94
Snow Duration: 1.15

Building Code:
IBC 2021
TPI Std: 2014
Rep Fac: No
FT/RT/PT:2(2)/2(2)/2(0)
Plate Type(s):
HS, WAVE

Defl/CSI Criteria

PP Deflection in	loc	L/defl	L/#
VERT(LL):	0.782 P	782	240
VERT(CL):	1.020 P	584	240
HORZ(LL):	0.234 J	-	-
HORZ(TL):	0.313 J	-	-

Creep Factor: 2.0
Max TC CSI: 0.875
Max BC CSI: 0.996
Max Web CSI: 0.829

VIEW Ver: 24.01.00A.0411.17

▲Maximum Reactions (lbs)

	Gravity			Non-Gravity		
Loc	R+	/ R-	/ Rh	/ Rw	/ U	/ RL
S	4158	/-	/-	/1085	/1040	/258
J	4158	/-	/-	/1085	/1040	/-

Wind reactions based on MWFRS
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Bearings S & J are a rigid surface.
Members not listed have forces less than 375#

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D - E	4134	-9678	H - I	4126	-9938
E - F	3361	-7761	I - J	4233	-10464

Maximum Bot Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - R	9782	-3837	O - N	8030	-2118
R - Q	8138	-3056	N - M	8138	-3057
Q - P	8138	-3056	M - L	8138	-3057
P - O	8030	-2118	L - J	9782	-3840

Maximum Web Forces Per Ply (lbs)

Webs	Tens.	Comp.	Webs	Tens.	Comp.
C - R	619	-989	F - N	2099	-650
R - E	1526	-626	N - G	979	-1804
E - P	979	-1804	G - L	1526	-626
P - F	2099	-650	L - I	619	-989

Lumber

Top chord: 2x6 SP 2400f-2.0E;
Bot chord: 2x6 SP SS Dense;
Webs: 2x4 SPF Stud; W2,W7 2x4 SPF #1/#2; W4, W5 2x4 SPF 2100f-1.8E;

Bracing

(a) Continuous lateral restraint, equally spaced on member.

Plating Notes

All plates are 5X6 except as noted.

Purlins

In lieu of structural panels or rigid ceiling use purlins to laterally brace chords as follows:

Chord	Spacing(in oc)	Start(ft)	End(ft)
TC	24	-0.88	25.00
TC	24	25.00	50.88
BC	64	0.15	49.85

Apply purlins to any chords above or below fillers at 24" OC unless shown otherwise above.

Loading

Bottom chord checked for 10.00 psf non-concurrent live load.

Truss designed for unbalanced snow loads.
Slope reduction based on Unobstructed Slippery Surface.

Bottom chord bracing may be spaced on 120" centers when truss is used in post-frame construction.

Wind

Wind loads based on MWFRS with additional C&C member design.

Wind loading based on both gable and hip roof types.

Gable Studs

Dashed pieces are not analyzed and are optional; and may be attached at each end to adjacent pieces and members with connector plates, staples, nails, or other fasteners.



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SLM-C-000021-24 10/31/2024 3:52:19 PM Pg 8 of 19 Trans ID: CHC2024335525

SEQN: 165001 GABL FROM: Page 2 of 2	Ply: 1 Qty: 2	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Sgab/60/412-cat2-2021	Cust: R 6867 JRef: 1Y2566970001 T259 DrwNo: 218.24.0618.10053 / FK 08/05/2024

Additional Notes

Truss has been designed for vertical in-plane loads only. Any lateral/horizontal wind loads shall be transferred into the roof and ceiling diaphragms. Connection and design of these systems is the responsibility of the Building Designer in accordance with ANSI/TPI 1.

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For more information see these web sites: Alpine: alpineitw.com; TPI: tpinst.org; SBCA: sbcacomponents.com; ICC: iccsafe.org; AWC: awc.org

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SLM-C-000021-24 10/31/2024 3:52:19 PM Pg 9 of 19 Trans ID: CHC2024335525

BUILDING CODE SUMMARY:

1. PROJECT: NEW STORAGE GARAGE FOR SMS RAIL SERVICE
2. LOCATION: 650 ALLOWAY-WOODSTOWN RD
   WOODSTOWN, NJ 08098
3. THE PROJECT IS AN ENGINEERED DESIGN IN ACCORDANCE WITH 2021 IBC NJ STATE BUILDING CODE
4. THIS SUBMISSION IS FOR STRUCTURAL PLANS ONLY
5. PROPOSED USE: STORAGE GARAGE
6. CODES USED: 2021 IBC NEW JERSEY BUILDING CODE
   ACI 318
   ASCE-7
   ANSI STANDARDS
   NATIONAL DESIGN SPECIFICATION FOR WOOD CONSTRUCTION
7. CONSTRUCTION TYPE: VB
8. SPRINKLERS: NO
9. STANDPIPES: NO
10. FIRE DISTRICT: NO
11. FLOOD HAZARD AREA: NO
12. BUILDING HEIGHT: 24' (EAVE) NUMBER OF STORIES = 1 STORY
13. GROSS BUILDING AREA: 5000 S.F.
14. PRIMARY OCCUPANCY: STORAGE S-1 MODERATE HAZARD STORAGE
15. SECONDARY OCCUPANCY: NONE
16. SPECIAL USES: NONE
17. SPECIAL PROVISIONS: NONE
18. MIXED OCCUPANCY: NONE
19. INCIDENTAL USE SEPARATION: NONE
20. ALLOWABLE HEIGHT: 1 STORY
21. ALLOWABLE AREA: 9,000 SQUARE FEET
22. FRONTAGE AREA INCREASES: NOT CONSIDERED
23. SPRINKLER INCREASE: NOT APPLICABLE
24. FIRE PROTECTION REQUIREMENTS: NONE, FIRE AREA IS LESS THAN 12,000 S.F

25. LIFE SAFETY SYSTEM REQUIREMENTS:
26. EMERGENCY LIGHTING: YES
27. EXIT SIGNS: YES
28. FIRE ALARM: NO
29. SMOKE DETECTION SYSTEMS: NO
30. PANIC HARDWARE: YES

EXIT REQUIREMENTS:

31. NUMBER AND ARRANGEMENT OF EXITS,
32. MINIMUM: 1
33. NUMBER OF EXITS PROVIDED: 3
34. WORST CASE TRAVEL DISTANCE: 70'
35. ALLOWABLE TRAVEL DISTANCE: 200'
36. ACTUAL DISTANCE BETWEEN EXIT DOORS: 56'
37. REQUIRED DISTANCE BETWEEN EXIT DOORS: 56'
38. CORRIDOR DEAD ENDS: NONE
39. EGRESS WIDTH PER OCCUPANT:
    REQUIRED AISLE WIDTH FOR LESS THAN 50 OCCUPANTS IS 36"
    REQUIRED CLEAR OPENING WIDTH OF DOORWAYS IS 32"
    ACTUAL WIDTH: 36" DOOR, 32" CLEAR OPENING (1 Leaf)
40. CALCULATED OCCUPANT LOADS:
    MAXIMUM 10 OCCUPANTS FOR THE BUILDING

ACCESSIBILITY:

1. DOORWAYS AT GRADE ARE ACCESSIBLE

STRUCTURAL DESIGN CRITERIA:

1. IMPORTANCE FACTORS:
   CATEGORY I BUILDING
2. LIVE LOADS:
   FLOOR: 250 PSF (slab on grade)
   GROUND SNOW LOAD: 20 PSF
3. WIND LOAD: BASIC WIND SPEED 105 MPH (ASCE 7-16)
   EXPOSURE CATEGORY B
2. SEISMIC DESIGN
   ARCHITECTURAL AND MECHANICAL COMPONENTS ARE ANCHORED
   LATERAL DESIGN CONTROL: WIND
4. THIS STRUCTURE IS DESIGNED USING THE ALLOWABLE STRESS DESIGN METHOD AND APPLICABLE LOAD COMBINATIONS

WOOD TRUSSES: TOP CHORD LIVE 30 PSF
TOP CHORD DEAD 5 PSF
BOTTOM CHORD LIVE 0 PSF
BOTTOM CHORD DEAD 5 PSF

TRUSSES ARE TO BE DESIGNED AND FABRICATED IN ACCORDANCE WITH THE STANDARDS OF THE NATIONAL FOREST PRODUCTS ASSOCIATION AND THE TRUSS PLATE INSTITUTE'S "DESIGN SPECIFICATIONS FOR LIGHT METAL PLATE CONNECTED WOOD TRUSSES"
TRUSS WEB CONFIGURATION, PLATE SIZES, CHORD SIZES, AND LATERAL BRACING SHALL BE DESIGNED BY A N, LICENSED PROFESSIONAL ENGINEER.
TRUSSES SHALL BE DESIGNED FOR THE LOADING, SPACING, AND GEOMETRY SHOWN ON THE PLAN.
INSTALL BRACING IN ACCORDANCE WITH THE MANUFACTURER'S DESIGN.

FOOTINGS:
FOOTINGS SHALL BE EXCAVATED TO VIRGIN SUBGRADE WITH A TYPICAL WORST-CASE CLASS OF MATERIAL AT SUBGRADE BEING SANDY GRAVEL, CLASSIFICATION GW
SOIL BEARING CAPACITY = 3,000 PSF

GENERAL NOTES:

1. STRUCTURAL COMPONENTS SUCH AS POSTS, BEAMS, TRUSSES, OR FASTENERS AND ATTACHMENT BRACKETS SHALL NOT BE MODIFIED, NOTCHED, OR CUT IN ANY MATTER WITHOUT REVIEW AND APPROVAL OF THE BUILDING DESIGN PROFESSIONAL.
2. DO NOT USE THE ATTIC ROOF TRUSSES FOR STORING MATERIAL
3. CONCENTRATED LOADS SHALL NOT BE ATTACHED TO THE ROOF TRUSSES WITHOUT PRIOR REVIEW AND WRITTEN APPROVAL OF THE BUILDING DESIGN PROFESSIONAL.

RIGID DIAPHRAGM DESIGN FOR WALLS:

1. ATTACHMENT OF METAL WALL PANELS TO THE SUBSTRAIGHT IS WITH #9 X 1-1/2" METAL TO WOOD SHARP POINT SCREWS WITH SEALING WASHERS. CARE SHALL BE TAKEN TO PROPERLY SET THE SCREW FASTENER FOR A WEATHERTIGHT FIT AND NOT TO OVERDRIVE THE FASTENER AND STRIP THE THREAD OUT IN THE SUBSTRAIGHT.
2. FASTENER SPACING @ 9"
3. FASTENERS ARE PLACED IN THE BOTTOM FLAT ADJACENT TO EACH RIB AND AT EAVES, LAPS, AND RIDGES, THE FASTENERS ARE PLACED ON BOTH SIDES OF EACH RIB

LUMBER:

1. ALL LUMBER SHALL COMPLY WITH THE REQUIREMENTS OF THE AMERICAN SOCIETY OF TIMBER CONSTRUCTION AND THE NATIONAL FOREST PRODUCTS ASSOCIATION'S "NATIONAL DESIGN SPECIFICATION FOR WOOD CONSTRUCTION".
2. ALL LUMBER SHALL BE #2 OR BETTER FOR LOAD SUPPORTING IDENTIFIED BY THE GRADE MARKS AND COMPLYING WITH DOC PS 20.
3. ALL LUMBER EXPOSED TO GROUND CONTACT OR INSECT INFESTATION SHALL BE TREATED ACCORDING TO THE AMERICAN WOOD PRESERVERS' ASSOCIATION STANDARDS, .50 ACQ MIN



NEW STORAGE GARAGE FOR SMS RAIL SERVICE
650 ALLOWAY-WOODSTOWN RD
WOODSTOWN, NJ 08098

BUILDING SUPPLIER

Lancaster Pole Buildings, Inc.
138 Rancks Church Rd
New Holland, PA 17557
P# (717) 572-2266 F# (717) 354-7653
www.lancasterpolebuildings.com

NJ32140
James A. Koppenhaver, P.E
555 Van Reed Road, Wyomissing, PA 19610
(484) 794-9949 koppenhaverpe@gmail.com

SLM-C-000021-24 10/31/2024 3:52:19 PM Pg 10 of 19 Trans ID: CHC2024335525

LANCASTER POLE BUILDINGS

Lancaster Pole Buildings

Construction Maestro

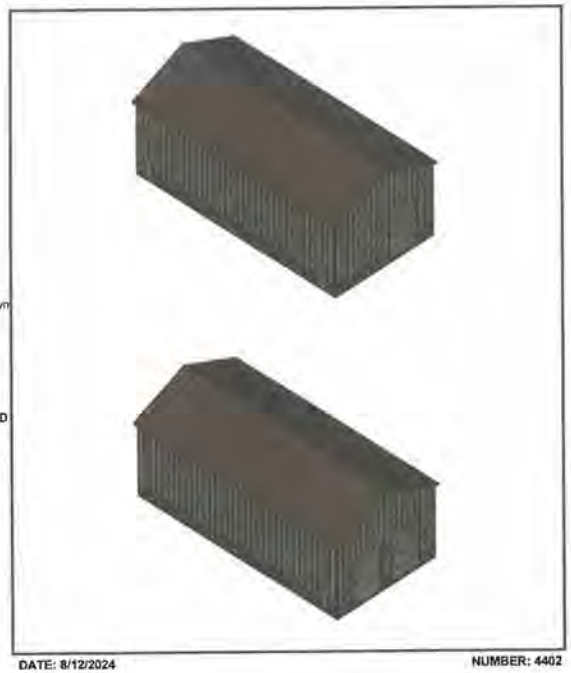
FOR:
Sms Rail Service
650 Alloway-Woodstown Rd
Woodstown, NJ 08098
215-431-9225

CONTACT:
Jason Sensenig
Lancaster Pole Buildings
138 Ranck Church Rd.
New Holland, PA. 17557
717-572-2266

CONSTRUCTION: Post Frame
DIMENSIONS: 50' X 100' X 24'

SPECIFICATIONS FOR 50' X 100' X 24' POST FRAME PACKAGE:

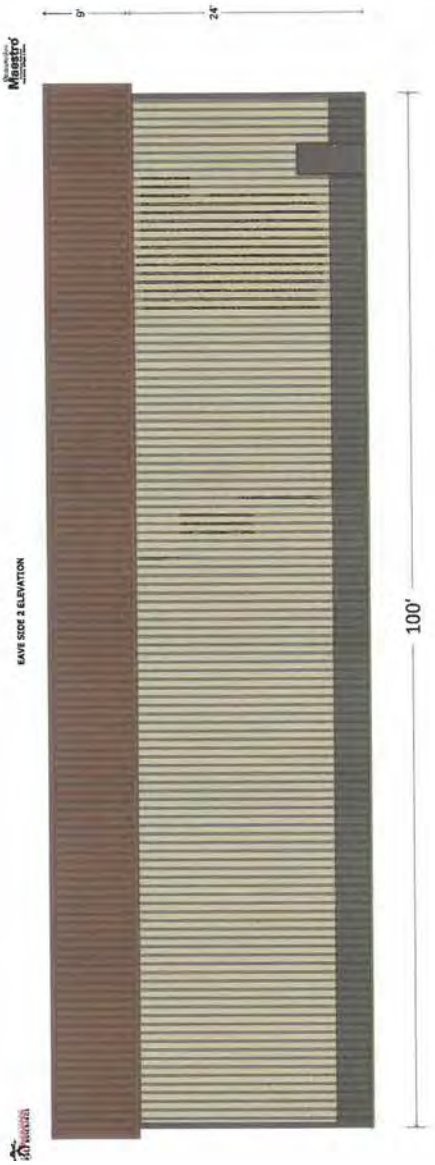
- **MATERIAL PACKAGE**
  - Pre-Engineered Wood Trusses (4/12 Pitch, 4' O/C)
  - 6 x 5.25 Glulam 4 Ply Eave Posts (8' O/C)
  - 6 x 5.25 Glulam 4 Ply Gable Posts (8' O/C)
  - 2 x 8 Treated Skirt Boards (1 Row)
  - 2 x 4 Wall Girts (24" O/C) and Roof Purlins (24" O/C)
  - 2 x 12 MSR Double Top Girt Truss Carriers
  - Lt. Stone 26 Gauge Steel Siding Over Housewrap
  - 42' High Brown Steel Wainscot on All Four Sides
  - Barn Red 26 Gauge Steel Roof
  - 10" x 24" Concrete Footers - 15" Concrete Collars, 3500 psi
- **DOORS & WINDOWS**
  - Three 14 X 16 Insulated Overhead Doors - Chocolate, lift Kit
  - Three 3' Flush Outswing Entry Doors w/ Panic Hardware & Closers, Brown
- **12" OVERHANG ON ALL SIDES W/ VENTED SOFFIT**
- **2 ROWS OF SNOW GUARDS ON BOTH EAVES**
- **5K SEAMLESS GUTTERS W/ 3 DOWNSPOUTS PER EAVE - BROWN**
- **4 - GIRDER TRUSSES FOR STEAMER EXHAUST VENTS-LOCATION TBD**
- **2X6 TREATED INSULATION CAP BETWEEN POSTS AT SKIRT BOARD**
- **R-19 BATT INSULATION IN THE SIDEWALLS W/ WHITE LINER PANEL**
- **R-30 BLOWN INSULATION IN THE CEILING W/ WHITE LINER PANEL**
- **FASTENERS**
- **DETAILED BUILDING PLANS**

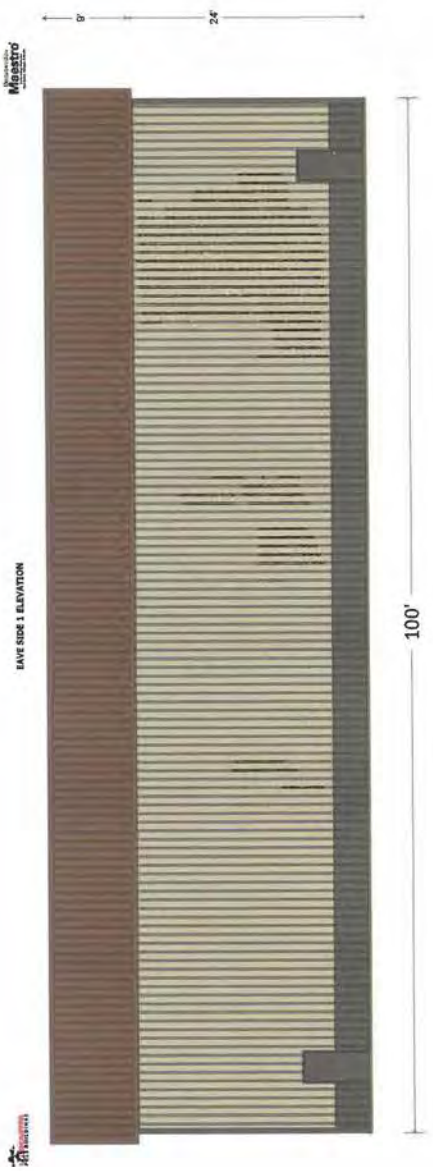


DATE: 8/12/2024

NUMBER: 4402

SLM-C-000021-24 10/31/2024 3:52:19 PM Pg 11 of 19 Trans ID: CHC2024335525

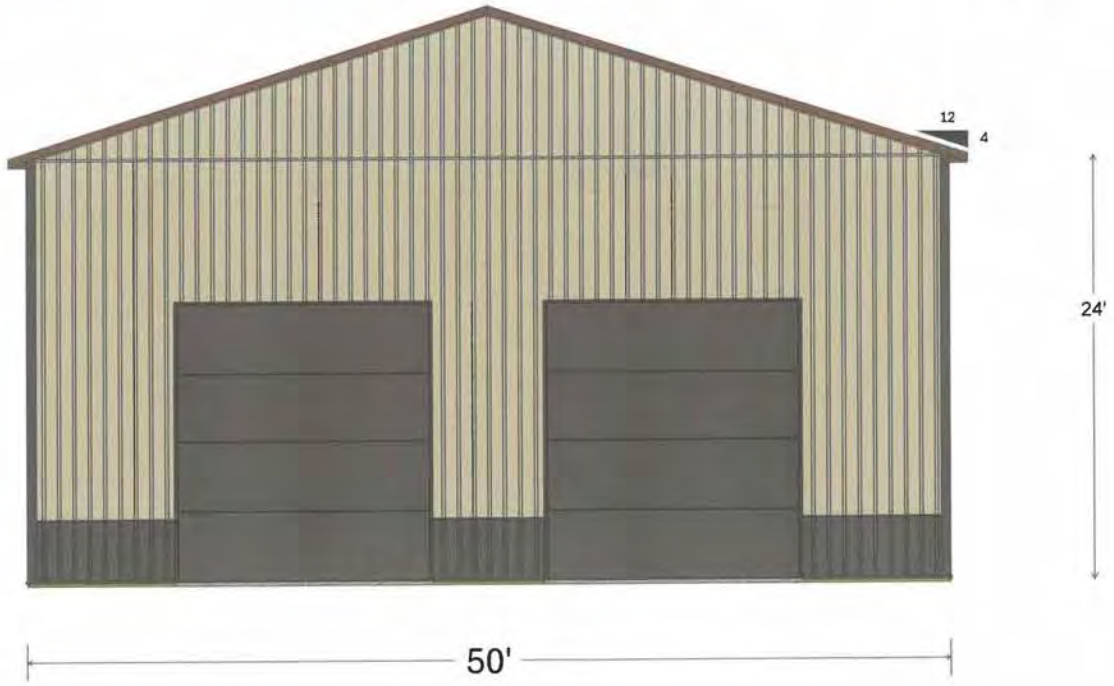

9'
24'
100'
EAVE SIDE 2 ELEVATION


6'
24'
100'
EAVE SIDE 1 ELEVATION

LANCASTER POLE BUILDINGS

GABLE SIDE 2 ELEVATION

Construction Maestro



Sms Rail Service
Estimate Number: 4402
8/12/2024

SLM-C-000021-24 10/31/2024 3:52:19 PM Pg 14 of 19 Trans ID: CHC202433525

LANCASTER POLE BUILDINGS

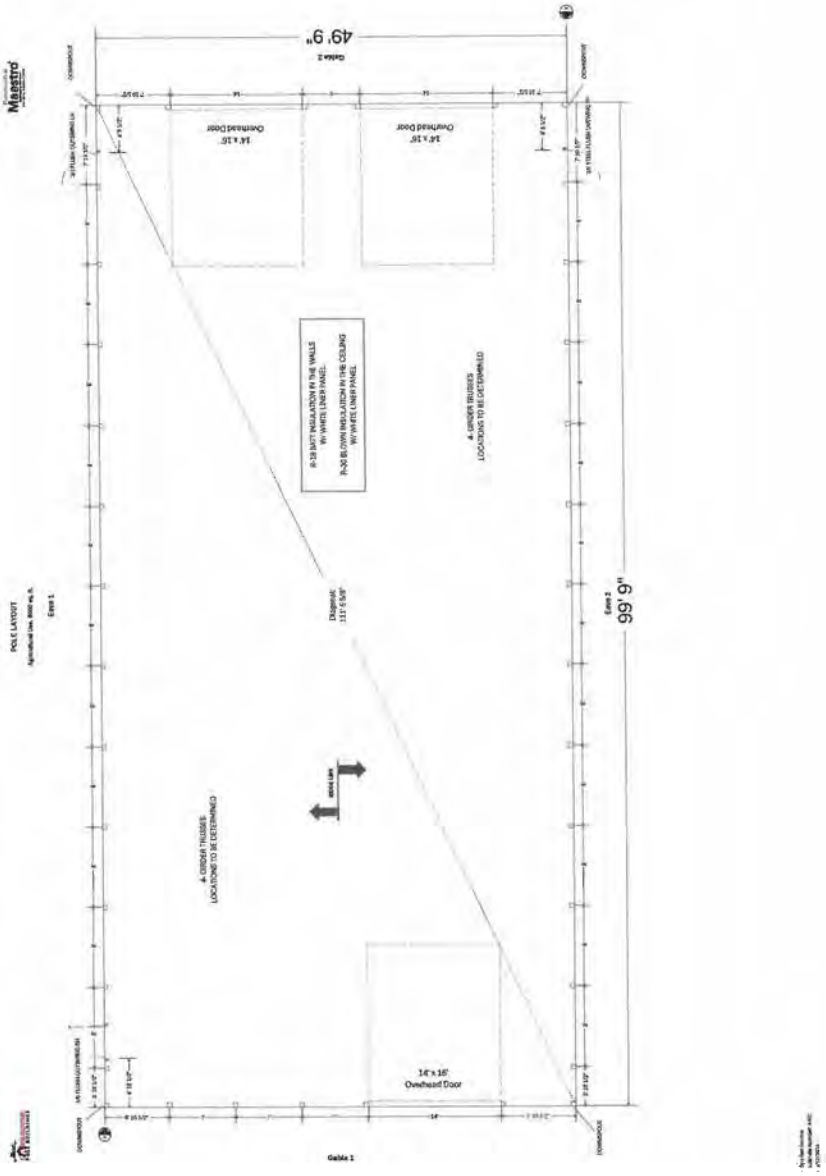
GABLE SIDE 1 ELEVATION

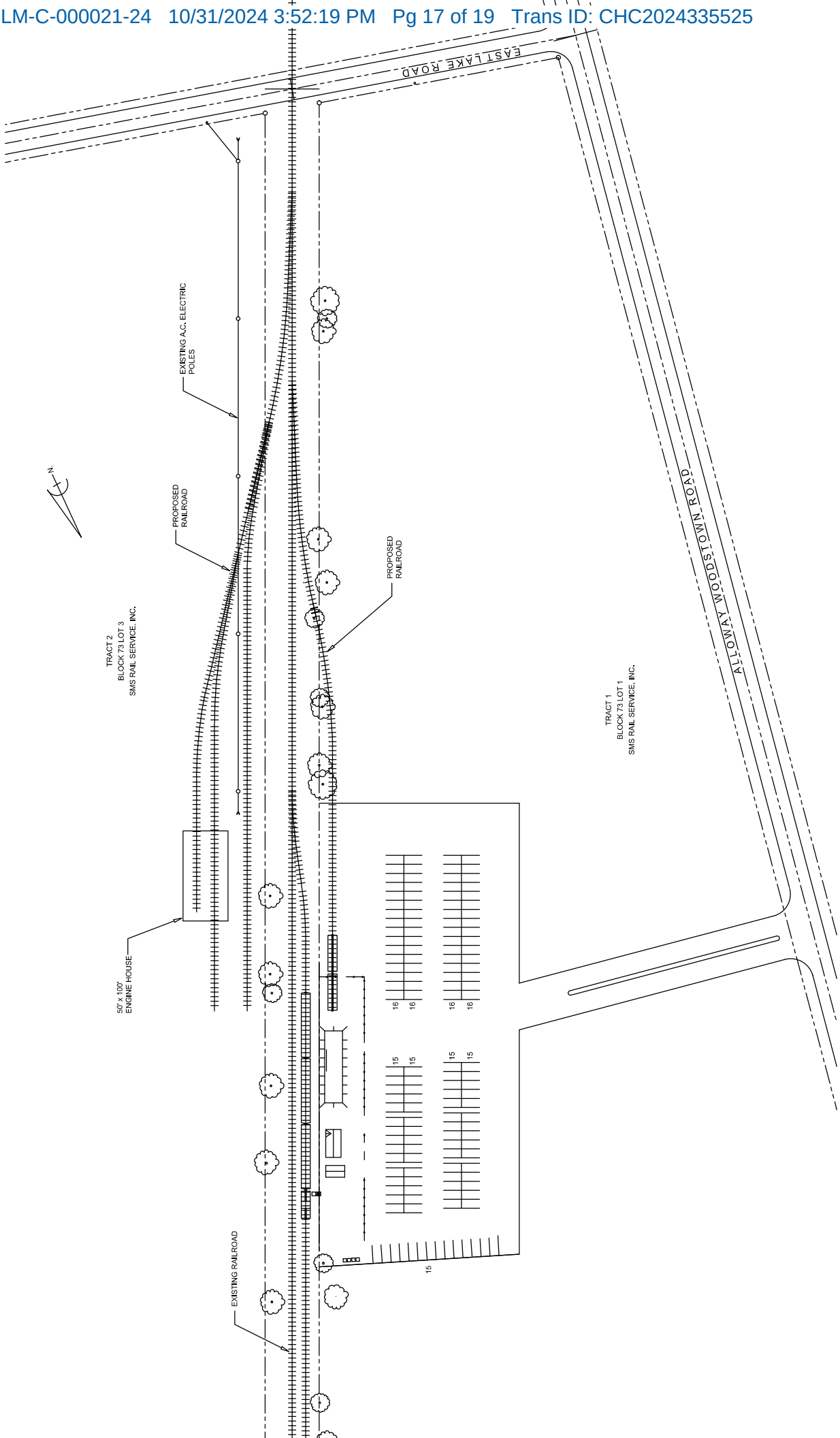
Construction Maestro



Sns Rail Service
Estimate Number: 4402
8/12/2024

SLM-C-000021-24 10/31/2024 3:52:19 PM Pg 15 of 19 Trans ID: CHC2024335525


49' 9"
99' 9"
14' x 16'
Overhead Door
14' x 16'
Overhead Door
14' x 16'
Overhead Door
4- GIRDER TRUSSES
LOCATIONS TO BE DETERMINED
4- GIRDER TRUSSES
LOCATIONS TO BE DETERMINED
Diagonal:
111' 6 5/8"
Gable 1
Gable 2
Maestro


EAST LAKE ROAD
ALLOWAY WOODSTOWN ROAD
EXISTING A.C. ELECTRIC POLES
PROPOSED RAILROAD
PROPOSED RAILROAD
TRACT 2
BLOCK 73 LOT 3
SMS RAIL SERVICE, INC.
TRACT 1
BLOCK 73 LOT 1
SMS RAIL SERVICE, INC.
50' x 100'
ENGINE HOUSE
EXISTING RAILROAD
N
16
15

PHILIP D. MURPHY
Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 802
TRENTON, NJ 08625-0802

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

BULLETIN 01-1

Issued: May 2001
Subject: Railroad Facilities and Superfund Sites
Reference: N.J.A.C. 5:23-2.2

Questions have arisen about whether a local enforcing agency has the authority to issue permits and conduct inspections on certain federally regulated facilities and construction projects.

Direction has now been given and a general standard has been set. The local enforcing agency is not able to require permits, fees, and Certificates of Occupancy (COs). However, the local enforcing agency is able to request construction documents and perform inspections. When undertaking an activity that would require a permit when undertaken by another entity, upon request, the railroad must provide construction documents and must also provide access for inspections. The project undertaken by the railroad must also comply with all the technical requirements of the Uniform Construction Code (UCC) and construction documents must be prepared by a design professional licensed in the State of New Jersey. However, administrative delays are not permitted. Therefore, the railroad is allowed to proceed with the construction while the construction documents are being reviewed. Violations, if found, must be handled with notices and penalties; stop-work orders are not permitted.

This direction is a result of a New Jersey Supreme Court decision, *The Village of Ridgefield Park v. New York Susquehanna & Western Railway Corp.*, which reconciled the overlapping jurisdictions of the UCC and the federal railroad. The case decided the extent to which the Federal Interstate Commerce Commission Termination Act preempted State regulation of railroads. In this case, the railroad had begun construction of a train maintenance facility in the Village of Ridgefield Park without seeking zoning or construction permits, or otherwise informing the municipality of its activities.

The Court determined that Ridgefield Park Village is able to enforce fire, health, plumbing, safety, and construction regulations that are applicable to the facility. The Court decided that the railroad may not deny the municipality access for reasonable inspection of the facility. The Court also determined that Ridgefield Park is not permitted to require the railroad to obtain construction permits. On the other hand, the railroad must notify the municipality when it is undertaking an activity that would require another entity to obtain a permit. To a large extent, the Court's decision rested upon the Federal Surface Transportation Board's determination of the limited, preemptive effect of the federal law.

These same rules apply at Superfund sites. There are no permits, fees, or COs issued. The jurisdiction having authority is able to request construction documents and perform inspections. When undertaking an activity that would require another entity to obtain a permit, the entity undertaking the cleanup must provide construction documents and access for inspections upon request. All construction documents must be prepared by a design professional licensed in the State of New Jersey. The Superfund mitigation is allowed to proceed while the construction documents are being reviewed; administrative delays are not allowed. Violations, if found, must be handled with notices and penalties; stop-work orders are not permitted.

For facilities that are federally owned or leased, the Federal Government performs the inspections. See Bulletin No. 93-2, entitled "Leased Structures," as to when a permit is required.

Outlook

EXHIBIT K

Notice of SMS Rail Service, Inc. re: Electric Service

From Jim Pfeiffer <jpfeiffer@smsrail.com>

Date Fri 10/25/2024 3:53 PM

To Construction Assistant <conast@pilesgrovenj.org>; Ekaterine Eleftheriou <Kat@thevigilantelawfirm.com>; Melissa Fackler <clerk@pilesgrovenj.org>

Good Afternoon:
In response to SMS's attorney's letter dated October 4, 2024 to the Pilesgrove Township Solicitor, on which Atlantic City Electric ("ACE") and Krise Services ("Krise Services"), among others, were copied and to which no response was given by the Township or its Solicitor to SMS, ACE, or Krise Services, ACE has determined and acknowledged to SMS the preemptive effect of federal law over Township regulation of the electrical connection to Block 70, Lots 1 and 3. As such, Krise Services will be installing the service on Monday, October 28, 2024, starting at about 8:00 a.m.
If the Township would like to exercise its right to inspect the electrical service, please contact me to arrange a mutually convenient time.
Kind regards,
Jim Pfeiffer
SMS Rail Service, Inc.
Office: (856) 467-4800, ext. 303
Mobile: (610) 739-3729

Outlook

SMS Rail Service, Inc. - Salem Rail Line - Declaratory Order Proceedings, STB FD 36770

From rak berklein.com <rak@berklein.com>
Date Fri 10/25/2024 2:49 PM
To Ekaterine Eleftheriou <Kat@thevigilantelawfirm.com>

Dear Ms. Eleftheriou,

Regarding the provision of electricity for the railroad by Atlantic City Electric ("ACE") discussed in my October 4, 2024 letter addressed to you, my client SMS Rail Service, Inc. ("SMS") and I have received no response from Pilesgrove Township or you. Also, SMS is advised by ACE and Krise Services that neither you nor Pilesgrove Township has communicated with them in this regard.

Notwithstanding your and Pilesgrove Township's failure to respond, SMS is advised that ACE is undertaking a review of this matter in light of the parties' positions and your failure to respond to SMS's position as set forth in my October 4 letter. You should be aware that your and your client's blocking the electrical connection to the subject railroad facilities, without articulating a cognizable basis for doing so, is a serious matter. This appears may have the attention of ACE as well.

I have given you fair notice of SMS's position. SMS continues to reserve all rights and waives none.

Sincerely,

Bob Klein
215-880-6913

EXHIBIT L

52323
DO

SERVICE DATE – OCTOBER 24, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36770

TOWNSHIP OF PILESGROVE, N.J.—PETITION FOR DECLARATORY ORDER

Decided: October 24, 2024

By decision issued on September 13, 2024, in response to a petition by Township of Pilesgrove, N.J. (Pilesgrove), the Board instituted a declaratory order proceeding to determine whether and to what extent 49 U.S.C. 10501(b) preempts certain local and state laws regarding land use and land development by SMS Rail Service, Inc. (SMS). Twp. of Pilesgrove, N.J.—Pet. for Declaratory Ord., FD 36770 (STB served Sept. 13, 2024). The Board also granted a petition to intervene filed by the Township of Mannington, N.J. (Mannington), and directed Pilesgrove, Mannington, and SMS to confer and jointly submit by October 8, 2024, a proposed procedural schedule to govern this proceeding. Id. at 2, 3. The decision also ordered that, if the parties failed to agree on a procedural schedule, each must file its own proposed schedule by that date. Id.

Counsel for the parties conferred but were unable to reach agreement on a proposed schedule. Consequently, each party submitted its own proposal. On October 4, SMS proposed the following procedural schedule: (1) opening statements by all parties due by November 29, 2024; (2) comments from other interested persons due by December 30, 2024; and (3) replies by all parties due by January 20, 2024. (SMS Req. 4.) SMS asserts that its proposed schedule will ensure a full and complete factual record. (Id. at 3.) According to SMS, there have been developments on the subject rail line since the townships' petitions were filed—including state court proceedings—and there is additional information about the line from the last two years related to preemption that should be provided to the Board. (Id. at 3-4.) SMS also asserts the townships have not adequately supported the allegations in their petitions and expresses concern that both townships may seek to introduce untimely evidence or argument on reply if they are not afforded an opportunity to submit opening statements. (Id. at 3-4, 3 n.2 (citing Mannington Pet. 8-9).)

On October 7, 2024, Pilesgrove and Mannington each submitted a request for the following proposed schedule: (1) SMS's reply brief due by November 15, 2024; (2) Pilesgrove's and Mannington's rebuttal briefs due by December 20, 2024. (Pilesgrove Req. 1; Mannington Req. 2.) Pilesgrove and Mannington each ask the Board to consider its previously filed petition as its opening statement. (Pilesgrove Req. 1; Mannington Req. 2.) Mannington asserts that the facts have been fully described and explained in the townships' petitions and contends that SMS should present any additional facts or clarifications before each of the parties files its legal analyses. (Mannington Req. 1.) In addition, Pilesgrove argues that the procedural schedule

should provide for submissions from Pilesgrove, Mannington, and SMS only. (Pilesgrove Req. 2.)

On October 7, 2024, SMS replied to Pilesgrove's and Mannington's requests. First, counsel for SMS states that his trial/arbitration schedule cannot accommodate the November 15 deadline proposed by Pilesgrove and Mannington. (SMS Reply 2.) SMS also asserts that Salem County (Salem) should be provided an opportunity to participate, noting that Salem may provide support for SMS's positions and reiterating its position that other interested persons should have an opportunity to file comments. (Id. at 2, 4.)[1]

No party requests discovery and Mannington explicitly states it believes discovery in this case would be unnecessary. (Mannington Req. 2.) The Board typically does not provide for discovery in declaratory order proceedings, see, e.g., Metro Council—Pet. for Declaratory Ord., FD 36178, slip op. at 4 (STB served May 22, 2018), and, as no party has requested it, a discovery period will not be included in the procedural schedule adopted here. However, to ensure that the Board has a sufficient record, Pilesgrove and Mannington will be provided an opportunity to supplement the record with additional evidence and argument before SMS's reply is due, and submissions by other interested persons will be accepted, as provided below.

Based on the forgoing considerations, the following procedural schedule will be adopted: Pilesgrove and Mannington may file supplemental evidence and argument by November 8, 2024; SMS's reply evidence and argument, and submissions by other interested persons, will be due by December 9, 2024; rebuttal statements by Pilesgrove and Mannington, and SMS's response to submissions by other interested persons, will be due by January 7, 2025.

It is ordered:

1. The following procedural schedule is adopted:

    - Pilesgrove and Mannington may file supplemental evidence and argument by November 8, 2024;
    - SMS's reply evidence and argument, and submissions by other interested persons, are due by December 9, 2024; and
    - Rebuttal statements by Pilesgrove and Mannington, and SMS's response to submissions by other interested persons, are due by January 7, 2025.

2. Notice of this decision will be published in the Federal Register.

---

[1] SMS asserts that Mannington's petition to intervene "joins" Salem County but notes that Salem County is not on the Board's service list. (Id. at 2.) However, neither Mannington's petition to intervene nor the Board's decision granting it includes Salem County, and Salem County has not itself petitioned to intervene. In any event, the procedural schedule adopted here provides an opportunity for other interested persons to participate.

3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

EXHIBIT M

THE VIGILANTE LAW FIRM, P.C.

EKATERINE ELEFTHERIOU, ESQUIRE
Phone: 856-223-9990
Email: kat@thevigilantelawfirm.com

October 26, 2024

Robert Klein, Esquire
Berkowitz Klein LLP
433 West Market Street, Suite 100
West Chester PA 19382

Re: SMS Rail Service Inc.
Stop Construction Order - Block 73, Lots 1 & 3
Notice and Order of Penalty (Control No. 457) - Block 73, Lot I
Notice of Violation and Order to Terminate (Control No. 458) - Block 73, Lot 1 and 3

Dear Mr. Klein:

I am writing to you in my capacity as the attorney for Pilesgrove Township. This correspondence is in response to your e-mail to me dated October 24, 2024, as well as in response to the letter submitted by SMS Rail Service, Inc., addressed to Richard Saunders, Pilesgrove Construction Official dated October 24, 2024, regarding the above referenced matters.

As you are fully aware, it is the position of Pilesgrove Township that SMS Rail Service, Inc., is not entitled to federal preemption over state and local regulations. To that end, the Township has petitioned the Surface Transportation Board (STB) to issue a declaratory order pursuant to 5 U.S.C. §554(e) and 49 U.S.C.1321, regarding whether the Board maintains jurisdiction over SMS Rail Service, Inc., and, if so, over which of its actions and activities as it has expanded its scope into an entertainment fun ride. As you are further aware, the STB has accepted the Petition and a briefing schedule has been issued under Decision dated October 24, 2024. The Township has maintained its position with respect to all activities which are not preempted and which are subject to the declaratory order proceeding. This position has consistently been applied to the construction activities on Block 73, Lots 1 and 3. At no time did the Construction Board of Appeals make a decision favorable to SMS. On the contrary, the Township *withdrew* without prejudice before the Board in connection to Block 73, Lot 1, in favor of pursuing a determination by the STB to obtain clarification of the question of whether SMS Rail Service, Inc., and its activities upon the subject property fall under the federal preemption.

SMS now seeks to declare the Stop Construction Order Notice and Order of Penalty and Notice of Violation in Order to Terminate a nullity, and demands withdraw of same on the basis of a clerical error which mistakenly identified the lot as Block 73, Lot 1 versus Lot 3 which is the Lot in question and upon which SMS is entirely aware that there has been a new structure erected. The Township will take steps to correct this clerical error. The Notice of Violation and Order to Terminate are consistent with the

Township's position and will not be withdrawn. SMS has taken the position that the activities on Block 73, Lot 3 are presumptively federally preempted, as a locomotive house. It cites its attempt to provide the undersigned, as the solicitor, drawings and specifications for the structure on or about September 5, 2024 as evidence that it has complied with requirements set forth in the Supreme Court case of The Village of Ridgefield Park v. New York Susquehanna & Western Railway Corp., 365 U.S. 648 (1961). As I made clear at that time, providing me in my capacity as solicitor via e-mail with any architectural engineering drawings does not satisfy the Village of Ridgeway Ridgefield Park and SMS needs to submit the documents and interact directly with the Construction Office as it relates to submitting drawings and plans and requesting inspection. Further, at no time has the Township conceded the preemption issue; however, as you are well aware, the Township has been awaiting action and ultimately a declaration by the STB in connection to the preemption issue. The undersigned as well as the township officials question the veracity of SMS's allegation that an unnamed "township inspector" acknowledged receipt of the project specifications and informed SMS's workers that they could continue construction "if they followed the plans," as no plans had been submitted to the township construction office until October 23, 2024, thirteen (13) days after the October 10, 2024, alleged site visitation by a township construction official. SMS further alleges that another unnamed inspector visited the site on October 18th and "made only positive remarks," but failed to provide any additional basis or background relative to the official's "positive remarks." SMS makes these claims despite its acknowledgement that on October 10, 2024, a stop work order and no permit was posted "apologetically" on the property by the Township inspector. The Township specifically denies that at any point in time any of its inspectors permitted work to move forward.

Finally, SMS' continued reliance on Ridgefield Park is misplaced. The Township has not conceded the issue of preemption as it believes that the train tourism activities are not permitted and are not preempted. In the event that the STB determines that preemption applies to these activities then and only then would Ridgefield Park apply. Until that position is determined by the STB, the Township of Pilesgrove must enforce its construction code in a manner which protects the public safety and promotes the general welfare. The inclusion of Ridgefield Park upon the violation notice was made to emphasize the fact that if SMS is alleging that they fall under Federal Preemption that they have failed to follow not only the typical and regular permitting standards but also those requirements set forth in Ridgefield Park as to those entities which claim preemption.

As to your position that the Atlantic City Electric Company is undertaking a review of this matter and the Township's alleged failure to respond to SMS's position as set forth in your October 4, 2024 letter, ACE is more than welcome to reach out to Township officials to discuss this matter directly. Further, any determination or work performed by ACE or Krise upon the premises is at their own peril and without permit or approval as the Township is awaiting a determination by STB as to preemption.

The Township is required to enforce its zoning laws and construction code and until an exception has been established under Federal Preemption, the Township must enforce the code as it has done in this

case. The Township of Pilesgrove, and its officials are looking forward to a prompt decision by the STB, but will take all necessary and appropriate action in the interim to protect the public.

Please be guided accordingly.

Very truly yours,

THE VIGILANTE LAW FIRM, P.C.



By: Ekaterine Eleftheriou, Esquire

ENE/nm
cc: Melissa Fackler, Clerk

99 North Main Street • Mullica Hill• New Jersey • 08062
Kat@thevigilantelawfirm.com
P. 856-223-9990/F. 856-494-1400

EXHIBIT BB

THE VIGILANTE LAW FIRM, P.C.

EKATERINE N. ELEFTHERIOU, ESQUIRE
ASSOCIATE ATTORNEY
Phone: 856-223-9990
Email: kat@thevigilantelawfirm.com

November 5, 2024

Via Email, Regular & Priority Mail
Mr. James Pfeiffer
513 Sharptown Road
Logan, NJ 08085

Via Regular & Priority Mail
SMS Rail Service, Inc.
P.O. Box 711
Bridgeport, NJ 08014

Re: Township of Pilesgrove v. SMS Rail Service, Inc., et al.
Docket No. SLM-C-00021-24

Dear Defendants:

With respect to the above matter in which I serve as the Solicitor for the Township of Pilesgrove, please find attached a copy of the Order to Show Cause entered by the Court on November 1, 2024, along with as-filed copies of all underlying pleadings to include the Verified Complaint and supporting pleadings.

Please note a hearing has been scheduled to proceed on the relief sought by Plaintiff as set forth in the Order to Show Cause on December 10, 2024 at 2:00 p.m. The hearing will take place before the Honorable Robert G. Malestein, J.S.C. in Courtroom 203 at the Courthouse at 1 N. Broad Street, Woodbury, New Jersey. Be guided accordingly.

Very truly yours,
THE VIGILANTE LAW FIRM, P.C.

By: Ekaterine N. Eleftheriou

EE:nlm
/attachments
cc: Client

THE VIGILANTE LAW FIRM, P.C.
By: Ekaterine Eleftheriou, Esquire
Attorney I.D. No. 01330-2002
99 North Main Street
Mullica Hill, NJ 08062
856-223-9990
Attorneys for Township of Pilesgrove

TOWNSHIP OF PILESGROVE, Plaintiff, v. SMS RAIL SERVICE, INC., JAMES PFEIFFER and JOHN DOES 1-10, joint, severally, or in the alternative. Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION GENERAL EQUITY SALEM COUNTY Civil Action DOCKET NO. S-C-21-24 **ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS**

THIS MATTER coming before the Court by The Vigilante Law Firm, P.C., attorneys for Plaintiff, seeking relief by way of temporary restraints pursuant to Rule 4:52, *et seq.* based upon the facts set forth in Plaintiff's Verified Complaint and the Certifications filed therewith; and the Court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding; and for other good cause shown;

IT IS on this 1st day of November, 2024

OREDERED and ADJUDGED that Defendants shall appear and show cause before this Court at Gloucester County Courthouse, 1 N. Broad Street, Woodbury, NJ 08096, Courtroom 203 ~~92 Market Street, Salem~~, New Jersey on this 10th day of December, 2024 at 2:00 ~~xx~~ p.m. / p.m., or as soon thereafter as counsel may be heard, as to why an Order should not be entered as follows:

1. Enjoining and restraining the Defendants from constructing and/or occupying and/or opening to the public structures on the property located at 650 Alloway Woodstown Road,

Pilesgrove, New Jersey also known as Block 73, Lots 1 and 3 on the Pilesgrove Township Tax Map that were not inspected and/or permitted by the Township of Pilesgrove New Jersey, including in any outbuildings or other structures situated on the property, pending a decision by the United States Surface Transportation Board in the matter of Township of Pilesgrove, County of Salem, State of New Jersey Petition For Declaratory Order under Docket No. FD 36770.

2. Granting such other relief as the Court may deem equitable and just.

IT IS FURTHER ORDERED pending the return date set forth herein, Defendants are:

1. Restrained and enjoined from conducting and/or occupying and/or operating in the public structures built on the property located at 650 Auburn Woodstown Road, Pilesgrove, New Jersey also known as Block 73, Lots 1 and 3 on the Tax Map of Pilesgrove Township that were not inspected and/or permitted by the Township of Pilesgrove New Jersey, including in any outbuildings or other structures situated thereon.

IT IS FURTHER ORDERED as follows:

A. A copy of this Order to Show Cause, Plaintiff's Verified Complaint and any Certifications submitted in support of this application shall be served upon the Defendants within 14 days of the date hereof, in accordance with *R*. 4:4-3 and *R*. 4:4-4, this being original process.

B. Plaintiff must file with the Court a proof of service of the pleadings on the Defendant no later than three (3) days before the return date.

C. Defendant shall file and serve a written response to this Order to Show Cause and the request for entry of any injunctive relief and proof of service by December 2, 2024, 2024. The original documents must be filed with the Clerk of the Superior Court in the County listed herein. A directory of these offices is available in the Civil Division Management Office in

the county listed above and online at http://www.njcourts.gov/forms/10153_deptyclerklawref.pdf. You must send a copy of your opposition papers directly to the chambers of Judge Malestein whose address is 92 Market Street, Salem, New Jersey 08079. You must also send a copy of your opposition papers to the Plaintiff's attorney whose name and address appears above.

D. Plaintiff must file and serve any written reply to the Defendants' opposition to the Order to Show Cause by December 6, 2024, 2024. The reply papers must be filed with the Clerk of the Superior Court in the County listed above, and a copy of the reply papers must be sent directly to the chambers of the Judge noted above.

E. If the Defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided Plaintiff files a Proof of Service and a proposed form of Order at least three (3) days prior to the return date.

F. If Plaintiff has not already done so, a proposed form of Order addressing the relief sought on the return date must be submitted to the Court no later than three (3) days before the return date.

G. Defendants take notice that Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute the Complaint, you or your attorney must file a written answer, an answering Affidavit or a motion returnable on the return date noted in this Order, and proof of service before the return date of the Order to Show Cause.

These documents must be filed with the Clerk of the Superior Court These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these

offices is available in the Civil Division Management Office in the county listed above and online at www.njcourts.gov.

Include a $ 175 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer, answering affidavit or motion to Plaintiff's attorney. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion with the fee or judgment may be entered against you by default.

H. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1- 888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at www.njcourts.gov.

I. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than 3 days before the return date.

Robert J. Malestein, P.J.Ch.

HON. Robert Malestein, P.J.Ch.

The Temporary Injunctive Relief is denied. No evidence before the Court that Defendants were placed on notice as required. Further, while the Plaintiff does state an appropriate claim, there is no clear and convincing evidence that there is a probablity of success on the merits as the Federal Preemption issue is uncertain in light of the holding in Ridgefield Park v. New York Susquehanna, 163 NJ 446 (1999).

EXHIBIT CC

Robert A. Klein, Esquire
NJ Attorney ID No. 009731986
Berkowitz Klein, LLP
433 West Market Street, Suite 100
West Chester, PA 19382
T. 215-880-6913
E. rak@berklein.com
Attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad

THE STATE OF NEW JERSEY vs. SMS RAIL SERVICE, INC. and THE STATE OF NEW JERSEY vs. WOODSTOWN CENTRAL RAILROAD and THE STATE OF NEW JERSEY vs. COUNTY OF SALEM	**MID-SALEM COUNTY MUNICIPAL COURT (Woodstown, NJ; Court ID 1715)** Docket Nos. SC-2024-007161, SC-2024-007162, and SC-2024-007163 Docket Nos. SC-2024-007164, SC 2024-007165, and SC-2024-007166 Docket Nos. SC-2024-007167, SC-2024-007168, SC-2024-007169

ORDER GRANTING MOTIONS OF SMS RAIL SERVICE, INC. TO DISMISS

THIS MATTER coming before the Court on the motions of Defendants SMS Rail Service, Inc. and Woodstown Central Railroad, a fictious name owned by SMS Rail Service, Inc. ("SMS"), by Robert A. Klein, Esquire appearing, to dismiss the above-captioned matters initiated by The State of New Jersey, in the presence of The State of New Jersey, by Municipal Prosecutor of the Township of Mannington, NJ, Ekaterine N. Eleftheriou, Esquire appearing, and the County of Salem, by Karin M. Wood, Esquire appearing, and the Court having considered

the papers in support of and in opposition to the motions and oral argument having been heard, and for good cause having been shown,

IT IS on this 26th day of September, 2024,

ORDERED that the motions of SMS to dismiss are GRANTED and Complaint Nos.: SC-2024-007161, SC-2024-007162, SC-2024-007163, SC-2024-007164, SC 2024-007165, SC-2024-007166, SC-007167, SC-007168, and SC-007169 are DISMISSED, without prejudice.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record within 5 days of the date hereof.

Date: 9/26/24

Hon. Martin Whitcraft, J.M.C.

( ) Opposed

( ) Unopposed

EXHIBIT DD

THE VIGILANTE LAW FIRM, P.C.

EKATERINE N. ELEFTHERIOU, ESQUIRE
ASSOCIATE ATTORNEY
Phone: 856-223-9990
Email: kat@thevigilantelawfirm.com

November 14, 2024

Via Email & Regular Mail
Mr. James Pfeiffer
513 Sharptown Road
Logan, NJ 08085

Via Regular Mail
SMS Rail Service, Inc.
P.O. Box 711
Bridgeport, NJ 08014

Re: Township of Pilesgrove v. SMS Rail Service, Inc., et al.
Docket No. SLM-C-00021-24

Dear Defendants:

With respect to the above matter in which I serve as the Solicitor for the Township of Pilesgrove, please find attached an as-filed copy of Plaintiff's Stipulation of Voluntary Dismissal Without Prejudice. The filing of the Stipulation dismisses the matter from the Court's docket and, as such, the hearing before the Honorable Robert G. Malestein on December 10, 2024 at 2:00 p.m. will not occur.

Should you have any questions, please feel free to contact my office or you are free to call the Court.

Very truly yours,
THE VIGILANTE LAW FIRM, P.C.

By: Ekaterine N. Eleftheriou

EE:nlm
/attachment
cc: Client

THE VIGILANTE LAW FIRM, P.C.
By: Ekaterine Eleftheriou, Esquire
Attorney I.D. No. 01330-2002
99 North Main Street
Mullica Hill, NJ 08062
856-223-9990
Attorneys for Township of Pilesgrove

TOWNSHIP OF PILESGROVE, Plaintiff, v. SMS RAIL SERVICE, INC., JAMES PFEIFFER and JOHN DOES 1-10, joint, severally, or in the alternative. Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION GENERAL EQUITY SALEM COUNTY *Civil Action* DOCKET NO. SLM-C-000021-24 **VOLUNTARY STIPULATION OF DISMISSAL WITHOUT PREJUDICE**

IT IS HEREBY STIPULATED by Plaintiff Township of Pilesgrove, by and through its undersigned counsel, that the within matter be and is hereby voluntarily dismissed by Plaintiff as to Defendants SMS Rail Service, Inc., James Pfeiffer and John Does 1-10, without prejudice and without costs as to any party.

THE VIGILANTE LAW FIRM, P.C.

Date: November 14, 2024

By: /s/ Ekaterine N. Eleftheriou
Ekaterine N. Eleftheriou, Esquire

EXHIBIT EE

SALEM COUNTY ENGINEER'S OFFICE
James McKelvie, County Engineer
110 Fifth Street, Suite 600, Salem, New Jersey 08079
856-935-7510, Ext. 8549

November 12, 2024

Gloucester County
Office of County Counsel
2 South Broad Street, 2nd Floor
Woodbury, New Jersey 08096

ATTENTION: Kelly DeTurk, Secretary
Gloucester County Construction Board of Appeals

RE: Salem County Construction Board of Appeals
Conflict of Interest

Dear Ms. DeTurk:

As briefly discussed on the phone this morning, the County of Salem received a "Construction Board of Appeals" Application from Robert A. Klein, Esquire, "Berkowitz-Klein, LLP" representing property owner "SMS Rail Service, Inc.". The Application was hand delivered to this Office on November 6, 2024.

As you are aware the "Salem County Construction Board of Appeals" has a conflict with "Hearing" this Appeal. We are requesting that the "Gloucester County Construction Board of Appeals" – "Hear" and "Act" upon this Application.

Attached you will find a copy of the original Appeal documents submitted to this Office.

I have requested that the applicant forward the filing fee directly to the County of Gloucester.

Please feel free to reach out to our Solicitor, Karin Wood (Counsel@salemcountynj.gov) if you have any questions or need additional information. Thank you for your assistance with this issue.

Sincerely,

Diana Ford

Diana Ford, Secretary
Salem County Construction
Board of Appeals

attachments
e-mailed
cc: Karin Wood, Salem County Solicitor
Salem County Construction Board of Appeals Members
Robert Klein, Esq.
"SMS Rail Service, Inc."
Ekaterine N. Eleftheriou, Solicitor, Pilesgrove Township
Richard Saunders, Construction Sub-Code Official, Pilesgrove Township
Melissa Fackler, Clerk, Pilesgrove Township

BERKOWITZ · KLEIN, LLP
ATTORNEYS AT LAW
433 WEST MARKET STREET, SUITE 100
WEST CHESTER, PENNSYLVANIA 19382

Robert A. Klein rak@berklein.com

Telephone 215-880-6913

November 6, 2024

Via Hand Delivery

Salem County Construction Board of Appeals
Attention: Ms. Diane Ford, Secretary
110 Fifth Street, Suite 600
Salem, NJ 08079

Re: ***SMS Rail Service, Inc.***
Notice of Appeal from Stop Construction Orders, Notices of Violation and Orders to Terminate, and Notices and Orders of Penalty, dated October 10, 2024, and corrected October 29, 2024

Dear Ms. Ford:

I represent SMS Rail Service, Inc. ("SMS"), a Class III rail carrier, regarding the enclosed Notice of Appeal from the "corrected" Stop Construction Order issued October 28, 2024, and Notice of Violation and Order to Terminate (Log No. 461), and Notice and Order of Penalty (Log No. 462), dated October 29, 2024 ("Corrected Order"), which corrected a Stop Construction Order issued October 17, 2024, and Notice of Violation and Order to Terminate (Log No. 458), and Notice and Order of Penalty (Log No. 457), dated October 10, 2024 ("Original Order") (also enclosed), from Pilesgrove Township, New Jersey ("this Appeal"). The Original Order was served upon SMS via certified mail on October 22, 2024. The Corrected Order was served upon SMS via certified mail on November 4, 2024. Accordingly, this Appeal is timely.

As stated in the attached Notice of Appeal, the issues presented by this Appeal are presently the subject of a prior pending declaratory order proceeding before the Surface Transportation Board ("STB"), FD 36770, and for that reason alone, this matter should be dismissed.

Also, this Appeal is related to an appeal previously before the Salem County Construction Board of Appeals that was transferred to the Gloucester County Construction Board of Appeals, *SMS Rail Service, Inc. v. Township of Pilesgrove*, Appeal No. 2024-2. Please note that this Appeal, like the prior appeal, should be transferred to the Gloucester County Construction Board of Appeals, in light of the conflict of interest presented by the fact that the Salem County rail line branch ("Salem County Branch") is leased to and operated by SMS under an agreement with the County of Salem, and the property that is the subject of this Appeal is part of the railroad facilities of SMS on the Salem County Branch. Moreover, SMS understands that these Notices and Orders have been sent to the County of Salem.

RECEIVED
NOV - 6 2024
SALEM COUNTY
ENGINEERS OFFICE

As stated above and in the Notice of Appeal, because the issues presented by this Appeal are presently the subject of a prior pending declaratory order proceeding before the STB and in fact have been withdrawn in the Prior Appeal based on the parties' agreement on the preemptive nature of 49 U.S.C. §10501(b), this matter should be dismissed. Alternatively, if this matter proceeds, we request a hearing on this Appeal at which witnesses will be called to testify by SMS. We will be submitting a brief in support of this Appeal before the hearing and subpoenaing or calling witnesses, including from Pilesgrove Township, among others who were involved in the prior appeal. We therefore request that, if this matter proceeds, a hearing date for this Appeal be set for a date not sooner than 60 days from this date in order to permit time for briefing and to subpoena and arrange for witnesses to appear and testify at the hearing.

A check from our attorney business account in the amount of $100.00, representing the filing fee for this Appeal, is enclosed.

Please contact me if you have any questions. Thank you for your assistance.

Respectfully,

/s/ Robert A. Klein
Robert A. Klein

Enclosure
cc (via regular mail and e-mail, w/ encl.):

Ekaterine N. Eleftheriou, Esq.
Solicitor of Pilesgrove Township
99 North Main Street
Mullica Hill, NJ 08062
kat@thevigilantelawfirm.com

Karin M. Wood, Esq.
Solicitor of Salem County
110 Fifth Street, Suite 400
Salem, NJ 08079
attorneywood@comcast.net
counsel@salemcountynj.gov

APPLICATION TO CONSTRUCTION BOARD OF APPEALS

New Jersey Uniform Construction Code

Date Received: 10/22/24 & 11/4/24
Date Issued: 10/10/24 & 10/29/24
Control #: 457, 458, 461, 462
Permit #:

IDENTIFICATION

Work Site Location: East Lake Road | Block: 73 | Lot: 1 & 3

Owner in Fee: SMS Rail Service, Inc. | Agent: Robert A. Klein, Esq.

Address: P.O. Box 711, Bridgeport, NJ 08014 | Address: 433 W. Market Street, Suite 100, West Chester, PA 19382

Phone: (856) 467-4800 | Phone: (215) 880-6913 Email: rak@berklein.com

Municipality: Pilesgrove Township

APPLICANT STATEMENT

Specific section(s) of the Regulations in questions:

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

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

SMS Rail Service, Inc. ("SMS"), a Class III rail carrier, appeals from the attached "corrected" Stop Construction Order issued October 28, 2024, and Notice of Violation and Order to Terminate (Log No. 461), and Notice and Order of Penalty (Log No. 462), dated October 29, 2024 ("Corrected Order"), which corrected a Stop Construction Order issued October 17, 2024, and Notice of Violation and Order to Terminate (Log No. 458), and Notice and Order of Penalty (Log No. 457), dated October 10, 2024 ("Original Order") (also attached), from Pilesgrove Township, New Jersey ("this Appeal"). The Original Order was served upon SMS via certified mail on October 22, 2024. The Corrected Order was served upon SMS via certified mail on November 4, 2024. Accordingly, this Appeal is timely.

Continued on next page:

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

Fee: $ 100.00

Paid [X] Check No. 1382

Collected by: Dena Ford

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

SIGNED: _____ 11/6/2024

APPLICANT DATE

Robert A. Klein, Esq. (N.J. ID. 009731986)
Counsel for SMS Rail Service, Inc.

U.C.C. Form F-330A

RECEIVED
NOV - 6 2024
SALEM COUNTY
ENGINEERS OFFICE

Briefly state your position in this matter and explain the nature of the relief you seek - Continued from previous page:

The Township of Pilesgrove does not have jurisdiction over the subject matter due to federal preemption of state and local law. Specifically, pursuant to 49 U.S.C. §10501{b), "[t]he jurisdiction of the [U.S. Surface Transportation] Board over [...] transportation by rail carriers, and the remedies provided in this part with respect to [...] facilities of such carriers; and the construction, acquisition, operation, abandonment, or discontinuance of [...] facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law."

The issues presented by this Appeal are presently the subject of a prior pending declaratory order proceeding filed by Pilesgrove Township with the U.S. Surface Transportation Board ("STB"), FD 36770, and for that reason alone, this matter should be dismissed. In fact, alleged violations not unlike the instant violations were raised by Pilesgrove's neighbor, Mannington Township, and unsuccessfully prosecuted by Pilesgrove's Solicitor in her capacity as Mid-Salem County Municipal Prosecutor. See attached Order Granting Motions of SMS Rail Service, Inc. To Dismiss, dated September 26, 2024, issued by Hon. Martin Whitcraft, J.M.C., in the action State of New Jersey v. SMS Rail Service, Inc. et al., N.J. Municipal Court, Summons/Complaint Nos. 1715-SC-007161, 007162, 007163, 007164, 007165, 007166, 007167, 007168, 007169.

Also, on January 29, 2024, the Township of Pilesgrove filed against Applicant SMS similar violations, which resulted in Pilesgrove's voluntary withdrawal of the Notices at a hearing of the Construction Board of Appeals (SMS Rail Service, Inc. v. Township of Pilesgrove, Appeal No. 2024-2 ("Prior Appeal")) subsequent to an agreement of the parties on the preemptive nature of 49 U.S.C. §10501(b).

Construction drawings, together with an invitation to inspect, as required by applicable law, have been provided to Pilesgrove Township.

Please also note that this Appeal is related to the above-referenced Prior Appeal before the Salem County Construction Board of Appeals. Like the Prior Appeal, this Appeal should be transferred by the Salem County Construction Board of Appeals to the Gloucester County Construction Board of Appeals, in light of the conflict of interest presented by the fact that the Salem County Branch Line Railroad ("Salem County Branch") is leased to and operated by SMS under an agreement with the County of Salem, and the property that is the subject of this Appeal is part of the railroad facilities of SMS on the Salem County Branch. Moreover, SMS understands that these Notices and Orders have been sent to the County of Salem.

As stated above, because the issues presented by this Appeal are presently the subject of a prior pending declaratory order proceeding before the STB and in fact have been withdrawn in the Prior Appeal based on the parties' agreement on the preemptive nature of 49 U.S.C. §10501(b), this matter should be dismissed.

Alternatively, if this matter proceeds, SMS requests a hearing on this Appeal at which witnesses will be called to testify by SMS. SMS will be submitting a brief in support of this Appeal before the hearing and subpoenaing or calling witnesses, including from Pilesgrove Township, among others who were involved in the prior appeal. SMS therefore requests that, if this matter proceeds, a hearing date for this Appeal be set for a date not sooner than 60 days from this date in order to permit time for briefing and to subpoena and arrange for witnesses to appear and testify at the hearing.

STOP CONSTRUCTION ORDER

Permit #
Date Issued **10/17/24**
-or-
Control #

IDENTIFICATION

Work Site Location **ALLOWAY-WOODSTOWN RD** Block/Lot//Qual **73/1//QFARM**

Owner in fee **SMS RAIL SERVICE**
Address **P.O. BOX 711**
BRIDGEPORT, NJ 08014

Agent
Address

To: ☐ Owner ☐ Other:
☐ Agent/Contractor

DATE OF INSPECTION: **10/10/24** DATE OF THIS NOTICE: **10/10/24**

ACTION

You are hereby ***ORDERED*** to ***STOP***

☑ **Building** ☐ **Electrical** ☐ **Plumbing** ☐ **Fire Protection** ☐ **Mechanical** ☐ **Elevator** ☐ **All CONSTRUCTION**

at the above Location as of **10/10/24** until further notice from this enforcing agency.

This ORDER is entered pursuant to N.J.A.C. 5:23-2.31(d) for violation of **STOP WORK** which provides:

Permission to resume construction may be obtained from this enforcing agency after the following conditions are met:

Submit construction documents and request required inspections

Further, take *NOTICE* that failure to comply with this ***ORDER*** may result in the assessment of penalties of up to $2,000 per day per violation, and a certificate of occupancy will not be issued until such penalty has been paid.

If necessary, the enforcing agency will concurrently seek the Order of a court of competent jurisdiction restraining furtherwork at the above location.

If you wish to contest this ***ORDER***, you may request a hearing before the Construction Board of Appeals of the **County** of **SALEM**, within 15 days of receipt of this ***ORDER*** as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Apeals may be used for this purpose.

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

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

If you have any questions concerning this matter, please call: **Richard Saunders**
Construction Official

By ***ORDER*** of : Richard Saunders Date: 10-10-2024
SubCode Official

Construction Office, Township of Pilesgrove, Pilesgrove, NJ 08098, 8567694814 , FAX 8567695490

U.C.C. F250 (rev. 1/2004)

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

Permit No., If Any
Control No.
Log No. 458

NOTICE OF VIOLATION AND ORDER TO TERMINATE

(Work Without A Permit, 2.14)

Identification

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

Contractor

Action

Date of Inspection **10/10/24** Date of Notice **10/10/24** Compliance Due Date **10/30/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.

Further, take NOTICE that failure to comply with this ORDER may result in the assessment of penalties up to $2,000 per Week per violation, and a certificate of occupancy will NOT be issued until such penalty has been paid.

If you wish to contest thei ORDER, you may request a hearing before the Construction Board of Appeals of the county of **SALEM** within 15 days of receipt of this ORDER as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-10-2024
Subcode Official Date

Richard Saunders 10-10-2024
Richard Saunders Date
Construction Official

U.C.C. F211

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

Permit No.
Control No.
Log No. 457

NOTICE AND ORDER OF PENALTY

(Work Without A Permit, 2.14)

Identification

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

Action

Date of Notice **10/10/24** Compliance Due Date **10/30/24** Date of Inspection **10/10/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.
You are hereby ordered to pay a penalty of **$2,000.00** for each violation for a total penalty of **$2,000.00** Each **Week** that any of the said violations remain outstanding after **10/30/24** shall result in an additional penalty of **$500 per Week**
If you wish to contest the validity of the above action, you may request a hearing before the Construction Board of Appeals of the County of **SALEM** within 15 days of the receipt of these Orders. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-10-2024
Subcode Official Date

Richard Saunders 10-10-2024
Richard Saunders Date
Construction Official

U.C.C. F210

CORRECTED

STOP CONSTRUCTION ORDER

Permit #
Date Issued **10/28/24**
-or-
Control #

IDENTIFICATION

Work Site Location **EAST LAKE RD** Block/Lot//Qual **73/3//QFARM**

Owner in fee **SMS RAIL SERVICE INC.** Agent

Address **P.O. BOX 711** Address

BRIDGEPORT, NJ 08014

To: ☐ **Owner** ☐ **Other:**

Agent/Contractor

DATE OF INSPECTION: **10/10/24** DATE OF THIS NOTICE: **10/10/24**

ACTION

You are hereby ***ORDERED*** to ***STOP***

☑ **Building** ☐ **Electrical** ☐ **Plumbing** ☐ **Fire Protection** ☐ **Mechanical** ☐ **Elevator** ☐ **All CONSTRUCTION**

at the above Location as of _____ until further notice from this enforcing agency.

This ORDER is entered pursuant to N.J.A.C. 5:23-2.31(d) for violation of **STOP WORK** which provides:

Permission to resume construction may be obtained from this enforcing agency after the following conditions are met:

Submit construction documents and request required inspections

Further, take *NOTICE* that failure to comply with this ***ORDER*** may result in the assessment of penalties of up to $2,000 per day per violation, and a certificate of occupancy will not be issued until such penalty has been paid.

If necessary, the enforcing agency will concurrently seek the Order of a court of competent jurisdiction restraining furtherwork at the above location.

If you wish to contest this ***ORDER***, you may request a hearing before the Construction Board of Appeals of the **County** of **SALEM**, within 15 days of receipt of this ***ORDER*** as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Apeals may be used for this purpose.

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

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

If you have any questions concerning this matter, please call: **Richard Saunders**
Construction Official

By ***ORDER*** of : Richard Saunders Date: 10-29-2024
SubCode Official

Construction Office, Township of Pilesgrove, Pilesgrove, NJ 08098, 8567694814 , FAX 8567695490

U.C.C. F250 (rev. 1/2004)

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

CORRECTED

Permit No., If Any
Control No.
Log No. 461

NOTICE OF VIOLATION AND ORDER TO TERMINATE

(Work Without A Permit, 2.14)

Identification

Work Site EAST LAKE RD
Block/Lot 73/3//QFARM Unit

Contractor
SMS RAIL SERVICE INC.
P.O. BOX 711
BRIDGEPORT, NJ 08014

Action

Date of Inspection **10/10/24** Date of Notice **10/10/24** Compliance Due Date **10/30/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.

Further, take NOTICE that failure to comply with this ORDER may result in the assessment of penalties up to $2,000 per Week per violation, and a certificate of occupancy will NOT be issued until such penalty has been paid.

If you wish to contest thei ORDER, you may request a hearing before the Construction Board of Appeals of the county of **SALEM** within 15 days of receipt of this ORDER as provided by N.J.A.C. 5:23A-2.1. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-29-2024
Subcode Official Date

Richard Saunders 10-29-2024
Richard Saunders Date
Construction Official

U.C.C. F211

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

CORRECTED

Permit No.
Control No.
Log No. 462

NOTICE AND ORDER OF PENALTY

(Work Without A Permit, 2.14)

Identification

Work Site EAST LAKE RD
Block/Lot 73/3//QFARM
Owner SMS RAIL SERVICE INC.
P.O. BOX 711
BRIDGEPORT, NJ 08014

Contractor

Action

Date of Notice **10/10/24** Compliance Due Date **10/30/24** Date of Inspection **10/10/24**

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

Violation of NJAC 5:23-2.14(a), Failure to Obtain Permits;
Violation of NJAC 5:23-2.31(D)(3), Failure to Obey Stop Work Order;
Violation of Township of Pilesgrove 145-15 General District Regulations

If the entity maintains it is exempt under the ICCTA, violation and failure to abide by Village of Ridgefield Park v. New York, Susquehanna & Western Railway Corp., 318 N.J. Super. 385, 724 A.2d 267 (App. Div. 1999), in failing to submit all construction documents to the construction office and request inspections.

Your are hereby ordered to terminate the said violations on or before **10/30/24**
No Certificate of Occupancy or Approval will be issued unless the said violations are corrected.
You are hereby ordered to pay a penalty of **$2,000.00** for each violation for a total penalty of **$2,000.00** Each **Week** that any of the said violations remain outstanding after shall result in an additional penalty of **$500 per Week**
If you wish to contest the validity of the above action, you may request a hearing before the Construction Board of Appeals of the County of **SALEM** within 15 days of the receipt of these Orders. The Application to the Construction Board of Appeals may be used for this purpose.

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

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

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

Richard Saunders 10-29-2024
Subcode Official Date

Richard Saunders 10-29-2024
Richard Saunders Date
Construction Official

U.C.C. F210

Robert A. Klein, Esquire
NJ Attorney ID No. 009731986
Berkowitz Klein, LLP
433 West Market Street, Suite 100
West Chester, PA 19382
T. 215-880-6913
E. rak@berklein.com
Attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad

THE STATE OF NEW JERSEY vs. SMS RAIL SERVICE, INC. and THE STATE OF NEW JERSEY vs. WOODSTOWN CENTRAL RAILROAD and THE STATE OF NEW JERSEY vs. COUNTY OF SALEM	**MID-SALEM COUNTY MUNICIPAL COURT (Woodstown, NJ; Court ID 1715)** Docket Nos. SC-2024-007161, SC-2024-007162, and SC-2024-007163 Docket Nos. SC-2024-007164, SC 2024-007165, and SC-2024-007166 Docket Nos. SC-2024-007167, SC-2024-007168, SC-2024-007169

ORDER GRANTING MOTIONS OF SMS RAIL SERVICE, INC. TO DISMISS

THIS MATTER coming before the Court on the motions of Defendants SMS Rail Service, Inc. and Woodstown Central Railroad, a fictious name owned by SMS Rail Service, Inc. ("SMS"), by Robert A. Klein, Esquire appearing, to dismiss the above-captioned matters initiated by The State of New Jersey, in the presence of The State of New Jersey, by Municipal Prosecutor of the Township of Mannington, NJ, Ekaterine N. Eleftheriou, Esquire appearing, and the County of Salem, by Karin M. Wood, Esquire appearing, and the Court having considered

the papers in support of and in opposition to the motions and oral argument having been heard, and for good cause having been shown,

IT IS on this 26th day of September, 2024,

ORDERED that the motions of SMS to dismiss are GRANTED and Complaint Nos.: SC-2024-007161, SC-2024-007162, SC-2024-007163, SC-2024-007164, SC 2024-007165, SC-2024-007166, SC-007167, SC-007168, and SC-007169 are DISMISSED, without prejudice.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record within 5 days of the date hereof.

Date: 9/26/24

Hon. Martin Whitcraft, J.M.C.

( ) Opposed

( ) Unopposed

EXHIBIT FF

COUNTY OF GLOUCESTER
CONSTRUCTION BOARD OF APPEALS
P.O. BOX 337
WOODBURY, NJ 08096

November 27, 2024

Robert A. Klein, Esquire
Berkowitz Klein, LLP
433 West Market Street, Suite 100
West Chester, Pennsylvania 19382

Ekaterine N. Eleftheriou, Esquire
Solicitor of Pilesgrove Township
99 North Main Street
Mullica Hill, New Jersey 08062

Richard Saunders, Construction Official
Township of Pilesgrove
1180 Route 40 East
Pilesgrove, New Jersey 08098

RE: SMS Rail Service, Inc.
Appeal #2024-12
Transferred from the Salem County Construction Board of Appeals on November 12, 2024

To All Parties:

On November 12, 2024, the Gloucester County Construction Board of Appeals received the above appeal from the Salem County Construction Board of Appeals with a request for the Gloucester County Construction Board of Appeals to "Hear" and "Act" upon this application for appeal due to a conflict.

This Appeal is currently the subject of a prior pending declaratory order proceeding before the Surface Transportation Board. Mr. Klein provided this office with a copy of the Surface Transportation Board Decision, Docket No. FD 36770, Decided: October 24, 2024.

The Board will hold in abeyance until the other matter is complete If you have any questions, please contact my office at (856) 384-6943.

Sincerely,

Kelly DeTurk
Kelly DeTurk
Recording Secretary

EXHIBIT GG

SUPERIOR COURT OF NEW JERSEY
SALEM COUNTY
MID-SALEM MUNICIPAL COURT
TICKET NOS. SC-2024-007161,
SC-2024-00762, SC-2024-00763
A-_____

STATE OF NEW JERSEY,	)	
	)	
	)	
Plaintiff,	)	TRANSCRIPT
	)	
v	)	OF
	)	
SMS RAIL SERVICE, INC.,	)	HEARING
	)	
	)	
Defendant.	)	
	)	

Place: Mid-Salem Municipal Court
25 West Avenue
Woodstown, NJ 08098

Date: July 25, 2024

BEFORE:

THE HONORABLE MARTIN W. WHITCRAFT, J.M.C.

TRANSCRIPT ORDERED BY:

FRANK J. HOERST, III, ESQUIRE

APPEARANCES:

EKATERINE ELEFTHERIOU, MUNICIPAL PROSECUTOR
Attorney on behalf of the State of New Jersey

ROBERT KLEIN, ESQUIRE
Attorney on behalf of the Defendant SMS Rail Service

KAREN WOODS, ESQUIRE
Attorney on behalf of the County of Salem

WILLIAM L. HORNER, ESQUIRE
Attorney on behalf of Mannington Township

ROBERT SCHMID, MANNINGTON ZONING OFFICER (VIA ZOOM)

Carol H. Vendzules, AD/CTR
The TYPE-RIGHT-ER
(856)881-2422
FAX NO. (856)494-7806
E-mail: Cvendzules@comcast.net
Audio Recorded
Audio Operator, Jamie Mayhew

INDEX

WITNESSES:

FOR THE STATE	DIRECT	CROSS	REDIRECT	RECROSS
(No Witnesses Sworn)				

EXHIBITS	IDENTIFICATION	EVIDENCE
(No Exhibits Marked)		

THE COURT: And I see that while we're waiting for a ready case, there are several attorneys in the courtroom. If that matter's ready to be addressed, I'll have the -- all parties come forward and I guess we would also need the participation of the Prosecutor.

Is that ready to be addressed, the matter that counsel is here for? Then why don't you come forward and we'll call that case now. If we can get the attention of the Prosecutor? Yeah.

Okay. And I understand this to be, let's see. All right. The Prosecutor or the court administrator has provided me with several tickets. I am assuming these are all related, so let me just go through these in the order that they were presented to me.

I have Ticket Number SC-7161, 62 and 63. Robert Schmid as the Mannington Township Zoning Officer issued these charges. It looks like the first ticket was for not having a zoning permit

The Defendant is SMS Rail Service, with a P.O. Box in Bridgeport, New Jersey, as the listed address. So that's a local ordinance for not having a zoning permit.

The second ticket was no variance approval under local ordinance there and finally, no state plan approval is the third allegation on that ticket.

And do we have counsel here representing SMS Rail Service?

MR. KLEIN: Yes, Your Honor. Robert Klein for SMS Rail Service, Inc.

THE COURT: Excellent, thank you. And --

MR. KLEIN: Your Honor, just to correct you, nothing -- for the record.

THE COURT: Sure.

MR. KLEIN: It's a site plan, I think it was referring, not state plan.

THE COURT: Oh, it looks like state plan.

MR. KLEIN: For what it matters.

THE COURT: And obviously, it would be a site plan.

MR. KLEIN: No problem.

THE COURT: I appreciate that.

MR. KLEIN: No problem.

THE COURT: Yeah, counsel just corrected me on that third charge. The ticket looks like it says no state plan but obviously, it makes more sense for that to be no site plan approval.

And we do have Mr. Schmid online. Hello, Mr. Schmid. If you could just state your name for the record?

MR. SCHMID: Good morning, Your Honor.

Robert Schmid, Zoning Officer, Mannington Township.
THE COURT: Great. Thank you very much. And we do have the Prosecutor here. Ms. Prosecutor, your appearance, please?
MS. ELEFTHERIOU: Good morning, Judge. Ekaterine Eleftheriou for the State.
THE COURT: Okay, thank you. Let me continue, as I believe there are related matters with separate counsel here.
The County of Salem has been charged under those three same ordinances and sequentially, those Tickets are 3 -- excuse me -- SC-7167, 68 and 69. Again, that's no zoning permit, no variance approval and no site plan approval through Mannington Township. Mr. Schmid also the complainant on those charges.
And it appears that we do have counsel here, as well, for the County. Your appearance, Counsel?
MS. WOODS: Good morning, Judge. Karen Wood, Salem County Counsel, appearing on behalf of the County.
THE COURT: Thank you. And then finally, I see that the three infractions were issued by Mr. Schmid to a third Defendant, that being Woodstown Central Railroad.
Those allegations are contained on Ticket Numbers SC-7164, 65 and 66, and do we have counsel

present for that Defendant?
MR. KLEIN: Your Honor, that would be, Woodstown is a fictitious name owned by SMS Rail Service, Inc., so they should -- that should be subsumed in the same.
THE COURT: Okay. Why don't we --
MR. KLEIN: It's not a separate entity.
THE COURT: Understood. So there would be acknowledge of responsibility. Well, I should say SMS is recognizing that they'd be the same entity.
MR. KLEIN: That is correct, Your Honor.
THE COURT: All right. So I'll sort of keep those consolidated. You would be representing until the matter is adjudicated, I assume, that separate entity that you've indicated doesn't really exist. So technically, you're entering an appearance on behalf of that Defendant?
MR. KLEIN: Yes, Your Honor.
THE COURT: Okay, thank you. Okay. So we'll indicate that those Defendants are related, I'll call it, at this point. And, Counsel, which -- who are you here for?
MR. HORNER: I'm the Solicitor for Mannington Township. My name is William L. Horner. I am here -- I wrote a letter a couple days ago to the Court about

this, and I'm here in case there are any questions for me --

THE COURT: All right. Yeah, okay.

MR. HORNER: -- if you have some along --

THE COURT: I just received that. This is your letter, I am assuming, dated July 23?

MR. HORNER: It is, yes.

THE COURT: Okay. Very good. And --

MR. KLEIN: Your Honor, may I ask? I also sent a letter and I think Ms. Wood sent a letter, as well, last week. I believe mine was --

THE COURT: Dated July 18?

MR. KLEIN: Correct.

THE COURT: All right.

MR. KLEIN: And Ms. Wood, I --

THE COURT: And that is attached to the file, but I must confess it was not provided to me prior to today's hearing, so I have not had an opportunity to digest, if you will, the information contained. Any submission from the County at this point?

MS. WOODS: No, Judge.

THE COURT: All right. Ms. Prosecutor, have you had an opportunity to review these matters with counsel?

MS. ELEFTHERIOU: Your Honor, I have some

background on the matter. I -- so I -- this is a matter that I actually would have a personal conflict with and would likely have to bring in a conflict prosecutor to resolve.

I am Township of Pilesgrove Solicitor, so there are some issues with the Township of Pilesgrove and Mannington Township have filed a petition with the STB Board against SMS Rail, in connection to some issues that are -- that need to be addressed.

So unfortunately, I would not be the proper prosecutor to address the issues here. I have reviewed the letters that have been sent in by counsel and by Mannington Township Solicitor.

The matter could be determined by a court if another prosecutor is brought in. It doesn't necessarily have to be held in abeyance until the STB makes any ruling because these are issues that -- the Township of Mannington.

And if you -- when you have an opportunity to review the letter, you'll be able to review their submission as to why the matter could be resolved on its merits before an STB ruling is I guess rendered.

THE COURT: Okay. Any -- and --

MS. ELEFTHERIOU: I was going to say, the STB is the Surface Transportation Board, and that usually

puts -- and that promulgates, I guess, promulgates rules that would be -- that SMS Rail has to comply with.

And it discusses their preemption abilities and things that they have to comply with or not com -- you know, as far as Township ordinances, rules and that type of thing.

THE COURT: Any response from any counsel with regard to Prosecutor's request to have a -- or the declaration that she has a conflict with regard to resolving this matter?

MR. KLEIN: Well, Your Honor, I don't quite understand it, to be frank. I don't believe it is a direct conflict.

It seems to me, and this was raised by us in the letter that I did send to the Court, Pilesgrove -- and by the way, if I may hand up to you, the Surface Transportation Board is a federal agency.

THE COURT: Okay.

MR. KLEIN: And it regulates railroads. It has preemptive authority over this Court relative to the activities of SMS Rail Service, Inc., and for what it's worth, the fictitious name that you've also recognized.

The proceedings here are beyond the subject matter jurisdiction of this Court. So what I'd like to hand to Your Honor are the two pleadings that were done

that are connected, one by Pilesgrove Township, one by Mannington Township.

Both of them raise the same sort of issues relative to zoning, permitting, site plan approval. All of those things, by virtue of federal law, are out of bounds for these authorities to bring.

Now, the reason I want to hand these to you is it will show that in the STB, declaratory relief relative to this subject was filed both by Pilesgrove and Mannington.

First by Pilesgrove in April; April 22 was their document that they filed with the STB, and I think Mannington was in June, June 10 I believe.

So in both of those pleadings, Your Honor, they recognize that they're not sure whether they have any regulatory authority relative to the things that they've brought charges on against the company SMS and against Salem County. Not recognizing it, they filed for declaratory relief.

Pilesgrove previously, in regard to their -- the same exact charges earlier to those of Mannington, withdrew their charge and then went to the STB. That's pending. Mannington joined in the Pilesgrove petition. They are the two things that I'd like to hand up to Your Honor.

THE COURT: Sure.
MR. KLEIN: And then if I may continue just in a minute? Thank you.
THE COURT: Thank you.
MR. KLEIN: So, Your Honor, there's been much written in these two pleadings that are both pending, and from the STB process, the regulatory framework in the federal system, it will require SMS to respond to that upon their review first of those petitions. That time has not passed or they haven't initiated any briefing schedule.
THE COURT: Any idea, for the Court's edification, how long that would take?
MR. KLEIN: I would anticipate sometime this summer. The trouble I'm having here with counsel for Mannington, the solicitor for Mannington, he's asking the Court that if there's going to be an adjournment that Your Honor put a deadline on us to respond to the petitions in the Surface Transportation Board, which with all due respect, it's absurd.
That's not for this Court to decide the procedure in the Surface Transportation Board. It'll process and eventually, it'll be determined if there's any regulatory issue relative to the operations of the railroad that they can regulate.

But one thing that is for certain and it's not disputed, they have a right to inspect. So a big thing that's being raised by Mannington, Pilesgrove previously, is that their regulatory scheme, you know, zoning, permits, site plans, all is in the nature of preserving safety for the community. We don't dispute that.
They have a right to inspect. They've been asked to inspect or invited in to inspect and to this day, they haven't inspected. So if safety is such a concern, we welcome them to come in and take a look at whatever they want to see.
Maybe we can address some of these things, but this is not to be adjudicated in this context. And respectfully, while I don't want to burden this Court with a motion, it would be the next course if the Court is inclined to take this case further.
What I respectfully ask happen is that you dismiss the case. It's not going to cause them not to be able to come back later after the STB determines whether there's any green territory here for them to regulate.
And if there is, we'll certainly abide but at this point in time, that's not been determined. They've expressly stated in their papers that they don't know.

So we're here on a charge that, according to them in their own mind, is conjecture and not one to be proceeding today.

Now, in terms of the conflict that's alleged, Pilesgrove though its solicitor, who is the Prosecutor here today, filed the petition I've just shared with Your Honor. Mannington has joined in it through its solicitor, who stands here today.

The Prosecutor today is not taking a different position on the substantive issues that they've presented on behalf -- or she has presented on behalf of Pilesgrove, or that she would be prosecuting if it were appropriate to go forward. They're all the same positions.

The only difference, the only -- which is an inconsistency; I don't see it as a conflict. It's an inconsistency for her to want to prosecute this now when she, on behalf of Pilesgrove, withdrew the same charges in Pilesgrove because they were premature.

Everyone agreed on the law that applied and everyone agreed that the STB, if there's going to be any kind of determination, has to decide it first, so that's inconsistent.

Like, why would she want to proceed today when she's already acknowledge previously, the same person,

just a different entity, that it would be premature? And the papers are not inconsistent with what I just said.

It's unclear to them, they say. It's clear to us, but that's beside the point; right? It's unclear to them, unclear to the Prosecutor in both hats that she's worn here in and in Pilesgrove, and unclear to the Mannington solicitor, as well.

So I stand here next to Salem County, with whom SMS was brought into this situation, not bey any fault. Of course, it was negotiated, but the process here is to develop commerce in Salem County.

What SMS is, is a rail carrier, a common rail carrier regulated by federal law and the Surface Transportation Board has that authority. There is rail being restored that has existed on a branch called the Salem Branch, for more than 100 years in some cases, maybe in all cases.

But a large lot of it is very old, under utilized, in bad shape, so money is being put into restoring that rail to make it suitable to service industry.

And what they're complaining about, both Pilesgrove and Mannington, is there's an incidental part -- not incidental. That's not the right word. There is

a passenger service that they can also provide, but that doesn't remove them from being a common carrier, regulated by the federal government through the STB.

So the latter part here is the question that they've put before the STB and we're going to deal with it and we're going to respect it, and that's why we think we shouldn't be going any further today.

But in terms of the conflict, I don't see it necessarily. I see it's an inconsistent position. From what I understand Mannington's solicitor, although he's not a prosecutor here today, his view is that this should be adjourned today, but put on a short leash of 30 days.

And between now and then a condition should be SMS has to respond to the STB. We can't respond in the STB. We're not ordered to respond. We're not invited to respond yet.

The STB sometimes adjudicates these issues based on the papers that are submitted. Whether we're going to actually have to respond is to be determined, but it would probably be determined very soon. I don't know when. I don't have a means by which to tell you that.

THE COURT: Okay.

MR. KLEIN: Thank you, Your Honor.

THE COURT: Thank you. And, Ms. Wood, did you want to add anything?

MS. WOODS: I just wanted to clarify, Your Honor, the County of Salem owns the property that we're discussing, the railroad, and we have a lease with SMS, who leases the property.

And basically, they can do whatever -- not they can do whatever they want, but they do their operations for commerce and tourism and the like, without getting any type of authority or okay from us. It's a lease and they are the leaseholder at this time.

THE COURT: Okay. Thank you. And before I hear from Mr. Horner -- you know what? Why don't I hear from you, Mr. Horner, now.

MR. HORNER: Okay. Thank you, Your Honor.

THE COURT: Sure.

MR. HORNER: First of all, the attorney for SMS has misrepresented Mannington's position in this case and in the Surface Transportation Board case.

Mannington is certain that the activities Mannington complains of are not within the federal preemption that comes from the Interstate Commerce ICC Termination Act.

The activities complained of have to do with an entirely intrastate rail service, which is an

excursion service that runs from maybe Swedesboro to Mannington. It has no connections with any other state, carries no freight to any other state. It's purely an entertainment-based line that runs for 20 miles or so.

Mannington zoning officer has inspected the property and has seen that, at a place in Mannington, an entertainment area has been developed alongside a certain area of tracks, where land has been cleared, picnic tables have been installed, fencing has been installed, port-a-pots are there, hand-washing stations, fire pits.

And none of those installations have been the subject of site plan review by the Planning Board. The zoning officer also observed the train stop and numerous passengers get off and use the recreation area for all kinds of entertainment purposes.

So clearly, it's a railroad operation. It's not a preempted operation because case law that I've cited in materials that have been submitted to this Court involve the Surface Transportation Board's prior rulings on other railroads where similar disputes have arisen.

And there are at least four cases that I've found and cited where the court has said if there's no connection with other states, if it's purely intrastate,

if it's purely entertainment, it's not subject to the federal preemptions. It's not interstate commerce.

And local regulations do not impinge on the kind of railroading that is the intent of the ICCTA to protect. So in this instance, Mannington Township is certain of its position.

It's not -- it has not file with the Surface Transportation Board because of some uncertainty. It has filed with the Surface Transportation Board because it became aware that Pilesgrove has filed and Mannington expected there to be this sort of an argument presented to this Court.

And Mannington feared that Mannington would be remiss in not simply joining in to the Surface Transportation Board's Decision on the Pilesgrove case to get confirmation of what Mannington Township already knows.

My review of the federal law indicates to me that a Court like this does not have to wait for a Surface Transportation Board ruling if this Court is satisfied, based on the Court's own interpretation of the federal laws and the Surface Transportation Board's opinions in court cases, that there is no federal preemption.

Certainly any party can go to the Surface

Transportation Board for a declaratory ruling on it, but it's not a threshold requirement for review at this level.

Mannington Township, like many municipalities, has a land use ordinance. It contains two very important components. One is the listed land uses that are allowed to be done in the municipality.

Those listed land uses in each zoning district are presumed to be beneficial for the public good. Mannington's ordinance, like many ordinances, says that if anything is not listed, it's deemed prohibited. There is an open question or even a decision against it being for the public good.

Whenever an activity is not listed and someone wants to conduct it, they have to appear before the planning board to get use variance review. The use variance review looks at two things, what's called the positive criteria and the negative.

The positive is where the board analyzes the kinds of arguments that counsel was just making; that there may be good reasons for a board to grant a variance to allow a use that's not permitted in a zoning district.

If a good use is -- if it's determined by the board that there's something that carries out the public

good, then that positive criteria can be deemed to be satisfied and the board shifts its review to what's called the negative criteria.

That's where the planning board ensures that by granting a variance for the good reasons under the positive criteria, it doesn't create problems that could impact the surrounding neighborhood where the activity is taking place.

So in this case, what Mannington believes that SMS is required to do, like any user of land that is conduct -- that wants to conduct a prohibited use, is appear before the planning board. Give public notice to the adjoining property owners.

Have a hearing, analyze these things and determine whether the board can see its way fit to grant the use variance, and impose appropriate conditions as may be necessary to make sure that the thing functions properly.

There may be limitations on the nature or the duration of activities, the frequency of them. I mean, this is in the backyards of residential houses. Beyond that, Mannington has a site plan ordinance.

Site plan is designed to make sure that the site is appropriately improved to accommodate the use that's going to take place there. That's part and

parcel of what has to happen, as well.

So the absence of a zoning permit is serious in this matter. It means that that planning board approval has not been obtained, those notices have not been issued. That determination has not been made by the proper municipal entity that has authority to make it.

And that's why Mannington is here, to urge this Court to impose the fines that might be necessary to compel the Defendants to get that done.

The County is involved because under the lease, in addition to the base rent and in addition to being the land owner, the County receives part of the revenue from the train service. So it's a totally intrastate activity, which is exempt from the federal preemption.

The -- so this Court isn't, as suggested by counsel, deprived of jurisdiction by the Surface Transportation Board. This Court can take jurisdiction unless the Surface Transportation Board confirms that there is a preemption.

The request in the letter that I sent a couple days ago is that if -- certainly, there should be no dismissal of this case. There is absolutely no reason why Mannington should be required to re-file and

re-serve Complaints, and get into this two month long process again to get here in front of this, Judge, again when we're already here.

So if there is going to be an adjournment in order for the Court to get up to speed on the case, in order to find a conflict prosecutor, if that's needed, then Mannington only urges that we not have any inordinate delay in doing so, and a 30-day control date would be appropriate.

I believe that counsel for SMS has said that there's nothing they can do with respect to Surface Transportation Board. All Mannington wants is for Your Honor to be satisfied that that's true if that's the case.

If there is a way for SMS to actually make a filing with the Surface Transportation Board without waiting to be requested by the Surface Transportation Board, then that would presumably move things along.

And so, this Court is not asking -- sorry. Mannington is not asking this Court to get in and change federal law. It's asking this Court to say, okay, we have this thing happening at the Surface Transportation Board. SMS, please get involved.

Please file something in two weeks to state your position, in hopes that maybe the Surface

Transportation Board can make this determination soon, because while all this is happening, the zoning violations continue.

These folks who live near this train have this stuff happening in their backyards. Mannington Township doesn't know if there's any real limitation on how loud or how frequent or how often this is all going to be happening.

And Mannington Township simply wants this Defendant to get in front of the planning board and get this right. So it's not a matter of the Court being requested to alter the procedures of the Surface Transportation Board.

It's asking this Court to do whatever this Court can to make sure that there's affirmative movement in that tribunal, in order to prevent any further delay here.

So inspection is not an issue. We've done the inspection. It's really zoning and planning review by the planning board. The fact that there may be good commerce happening is something that the planning board would presumably take into consideration in its evaluation of the positive criteria.

So it's not for this Court to make a judgment on land use based on the Court's ideas about what

commerce might be good for Salem County. That's for the planning board and that's why Mannington wants them to get in there and ask for this use variance that's needed.

And I think that covers my list, unless the Court has any questions. So if there is going to be a postponement -- certainly, there should be no dismissal. If there's going to be a postponement, keep a tight leash on it, 30 days maybe.

And do whatever can be done to cause SMS to make a move before the Surface Transportation Board to get that decision quickly.

THE COURT: And, Counsel, any brief response to what was just --

MR. KLEIN: Yes, Your Honor. I don't know what to say other than to say, since I have handled matters before the STB for years and know this area of the law, that he's terrifically uninformed or just doesn't understand it.

And it would be hazarding incredibly bad precedent for this Court to exercise subject matter jurisdiction under these circumstances. I don't disagree that there are all these land use issues relative to localities.

But the federal law says they don't apply to

federal -- federally authorized common carriers, which is SMS. The fact that they do have some rail excursion, which by the way, hasn't operated in months, since April.

He's telling us in his papers that it's going on and they're taking unfair advantage. That's not so. It's not so. They're also asking us to rip up track that's been put down because we expanded track. That's not so either.

The track that was put down was replacing track, whether it was in the Tumbleweeds or wherever it was, not utilized for years. So maybe they're waking up that they have a railroad neighbor. The neighbor has been there for over 100 years.

It's a part of the interstate commence of federal railroads that has existed in this country for a very long time and the jurisdiction over this area is entirely federal and not state, unless the federal says otherwise.

So if we start going down this path, we're going to employ a lot of different actions that unfortunately is going to cause courts and parties and so forth a lot of undue expense.

I cannot be compelled by this Court or by Mannington to file in the STB. If I were to present

this in the standpoint akin to a Petition for Cert in the Supreme Court, which we as lawyers are a little bit more familiar with, courts determine in those situations what cases to take.

Oftentimes the STB in my experience, which I'm hazarding now a little bit of a statement, which I'm not meaning to suggest is going to happen one way or the other.

But they sometimes issue what is almost advisory because these are common issues that come up and have been dealt with. But we're not technically presently required or invited to file any response to these petitions at this juncture.

We have to wait for what the STB says. Typically, it's about a 90-day period. Mannington filed in June. That may have extended the time. If we -- if it was running from the April filing of Pilesgrove, perhaps it would have been by now, but whatever. I can't say because I'm obviously not that authority.

THE COURT: Right. Okay. And, Ms. Prosecutor, any response to the arguments raised with regard to the conflict that you're raising?

MS. ELEFTHERIOU: Well, Your Honor, I do want to address a couple of things that counsel had indicated. For Pilesgrove Township, the reasoning

behind our withdrawal of previously -- previous Complaints was not as counsel had suggested.

We -- the withdrawal was in connection to the way that the, I guess, the -- sorry, the Complaints were written up. They were only written up on permit requests.

Certainly SMS does not have to obtain permits in every situation, but they do have to comply with health, safety and other welfare regulations that are, you know, that our Township -- you know, that the Township does pass and do have -- and they do have to comply with the ordinances.

That was the reasoning, along with other reasons, that the Township withdrew their initial Complaints against SMS. Town -- and also, Pilesgrove has been asking SMS to come into the construction office and provide certain documentation, which they do have to provide, so that they can move forward with inspecting and doing different things.

While they have some preemption rights, they don't necessarily have preemption rights where it comes -- it governs the general safety and welfare. The Township still has that authority.

As to the conflict that you wanted me to address, I feel that there is a conflict, based on my

representation of Pilesgrove Township. I certainly am, I guess, educated now in the area of STB, Surface Transportation Board and preemption law, just based on my, I guess, representation of the Township of Pilesgrove.

The reason that we had submitted with STB was to gain some -- I guess a declaration from them, indicating that we do have the right to do this and move forward.

Just to let them know that they do have to, in fact, comply with these regulations and they do have to have, you know, they do have to, you know, in certain instances go in front of the zoning board, go in front of the planning board.

Although we are not in any way going against their right for interstate commerce, so we obviously know that there's a, you know, a certain amount of rights on each party's side. But that was the reasoning behind the STB.

Your Honor, if you feel that there is no conflict -- I feel there is a conflict based on my representation of Pilesgrove. If you feel there is not --

THE COURT: Well, let me ask you this. If -- first of all, as an aside --

MS. ELEFTHERIOU: Um-hum. Um-hum.
THE COURT: -- my knowledge of railroad law is non-existent, so this is very educational and I am going to have to catch up, to so to speak.
I recognize the potential meritorious arguments on both sides, but I do need an opportunity to actually review the materials submitted and sort of catch up.
So there's going to have to be a continuation. I can't just decide for one party or the other at this point, based on my lack of the facts and the laws that exist, so I'm going to have to review that.
Would you agree that if we move forward and you're uncomfortable prosecuting the case, that it would be your responsibility to have someone prosecute it in your -- on your behalf?
MS. ELEFTHERIOU: Yes, of course.
THE COURT: All right. Well, I would anticipate, since the matter is going to be postponed, that you'll endeavor to do that immediately, if not sooner, so that there would be no delay in moving forward.
Giving that prosecutor as much opportunity to also get familiar with the cases. So in that regard, if you do find a substitute prosecutor because you're

uncomfortable, without me actually having to decide whether there's an actual conflict, that would be fine because there would be no delay caused in the substitution, if you will, of prosecutor.
I am concerned, obviously. It was conceded that potentially, the appropriate review board at the federal lever -- level could at some point indicate that the issues before this Court currently are preempted.
So I don't want to spin our wheels and go through litigation here, only to have a federal board say you have no jurisdiction over those cases, why did you resolve them? And sort of undo anything that may be done here.
So I'm going to review everything. Obviously, I'm going to do my best to catch up on the issues presented before the Court. We'll get it rescheduled. I know unfortunately both parties are arguing that they have no control over this review process through the STB.
It would be great if I could pick up the phone, call somebody and say, can we get a decision on this like yesterday? And then we would know where we stand.
MR. KLEIN: Your Honor, there is some likelihood that we'll get a briefing schedule on this

soon. I hate to give you a date because it's -- I can't estimate that.

THE COURT: I -- a briefing schedule doesn't give me hope that it's going to be actually, there's going to be some sort of definitive decision made.

MR. KLEIN: Well --

THE COURT: And I am cognizant of the arguments being made by Mannington that this continues to go on and --

MR. KLEIN: But, Your Honor, this goes on with every railroad.

THE COURT: Okay.

MR. KLEIN: We're not talking about anything that's so-called intrastate, as they want to put it. This is a common carrier, approved in the federal system because of it's interstate status, which carries with it the ability to run this railroad.

Whether it's freight or passenger locally, it doesn't remove it from being interstate. So he wants to argue this is exclusive intrastate. He's incorrect on the federal law.

THE COURT: Well, I understand.

MR. KLEIN: But that's what the STB decides.

THE COURT: Understood.

MR. KLEIN: And I respectfully ask that you

give the opportunity for the STB to rule on this or give us some guidance on this and it would be very --

THE COURT: Okay. I may agree with you moving forward if we do have -- I mean, it might be -- my decision could be influenced by a time frame. I mean, if that's imminent, then obviously it would make sense, I would think, to have them make a decision first.

But if there's no end in sight, I'm going to have to make a decision based on the arguments that were raised.

MR. KLEIN: But, Your Honor, the opportunity to inspect was not Mr. Schmid coming there and finding violations because the permits weren't sought or the zoning site plan wasn't submitted.

The opportunity to inspect is literally to come in and see what you want to see. There's nobody preventing that. In fact, we invite it. That's what the federal law allows in the context of an interstate carrier.

THE COURT: Okay. Well, perhaps you can just -- while I'm catching -- getting up to speed, perhaps that can be an ongoing discussion with the Township.

MR. KLEIN: I hope so. Sure, surely. Thank you.

THE COURT: Okay. All right. And we'll

anticipate the -- I want to hear again then from -- well, why don't I hear from you now again, Mr. Horner.

MR. HORNER: Two things; first of all, it's not enough just for Mannington to go and inspect for basic public safety and health and welfare. This has to go before the planning board to determine whether the use can take place and under what conditions, on notice to the public and a proper hearing.

The other thing is, Your Honor, when you do review the materials that I've submitted and I believe I've provided copies of all of the Surface Transportation Boards to the Court through the zoning officer.

You'll see that there are cases where the Surface Transportation Board has determined that a common carrier cannot obtain preemptive protection over the kinds of activities we're dealing with here.

THE COURT: And you cited those cases?

MR. HORNER: Yes.

THE COURT: Okay.

MR. HORNER: Simply by virtue of the common carrier's preemptive activities.

THE COURT: Understood. Um-hum.

MR. HORNER: And that extends not only to whether the same lines are being used for freight or

interstate passenger service, or whether there's a common dispatching system or whether there's common ownership.

And that's consistent with land use law because the land use law focuses on the land use, not the status of the user.

And so Mannington's concern is that, in this case, there's someone who's land use is subject to site plan and zoning review, who has failed to go before the planning board to obtain the necessary approvals.

MR. KLEIN: Your Honor, to just add to the framework here, the regulation on these uses is federal railroad administration.

The STB makes these decisions relative to the jurisdictional boundaries and so forth, and the operation, which has been approved by the STB, because I frankly was the person who made the application following the lease.

THE COURT: Okay.

MR. KLEIN: But we're not begrudging the Township to have all these things. The process doesn't apply. Federal law preempts that process.

THE COURT: Apparently there's cases that may suggest to the contrary.

MR. KLEIN: The cases are very distinguishable

and he filed those with the STB, so allow the STB to rule on that because that's STB territory. It's not the subject matter jurisdiction of this Court, respectfully.

THE COURT: Okay. I'm assuming, did you cite cases that support --

MR. KLEIN: I didn't cite anything, Your Honor, because I wrote a letter just bring --

THE COURT: Okay. I guess --

MR. KLEIN: I'm sorry. I didn't mean to cut you off.

THE COURT: Yeah. No, no, no, that's fine. I'm just wondering if you have a case that perhaps deals with a similar issue that you believe is on point and contradicts the argument being made by Mr. Horner.

MR. KLEIN: There are plenty out there, Your Honor, and I can tell you that when we get to the briefing in the STB, which I prefer to have decide that issue upon proper briefing.

And I think they'll probably raise some things in response to his if they don't even ask for mine, because there's more to this than what's been presented.

THE COURT: Okay. I'm just suggesting --

MR. KLEIN: I got it.

THE COURT: -- that if you have a cite that would clarify your issue with regard to --

MR. KLEIN: Well, Your Honor, where I'm not wanting to go, with all due respect, is to actually invite the Court to --

THE COURT: Understood.

MR. KLEIN: -- rule because my position is the subject matter jurisdiction doesn't exist here, and I don't mean any disrespect to this Court over that.

THE COURT: I'm just saying, if there's a citation, even if it's one that's sort of globally recognize that supports your position, I would be happy to peruse it.

MR. KLEIN: That's -- okay. Fair enough, Your Honor.

THE COURT: But I understand why you don't want to delve too far into those issues.

MR. KLEIN: I hate to take the slippery slope, if you know what I mean.

THE COURT: I totally understand and if you did, I wouldn't reel you in on that, but I understand --

MR. KLEIN: Okay. Thank you.

THE COURT: -- why you would be reluctant. All right. So as I indicated, we're going to have the matter continued.

If the Prosecutor continues to believe that she has an issue with regard to prosecuting the case,

we'll anticipate that a substitute prosecutor will be involved right away, so that that prosecutor can also review the submissions and discuss as appropriate with counsel the issues raised.

I will catch up to speed. We'll re-list it in the due course. That could be 45 days because that's typically the turnaround time, and if we get some movement from the STB Board in the meantime, fantastic.

If there is any information that someone wants me to review with regard to that scheduling, if you will, I'd be happy to take a look at those for you.

MR. KLEIN: May I ask a question?

THE COURT: Certainly.

MR. KLEIN: In 45 days, what are we to expect, assuming that a prosecutor were in place?

THE COURT: I'll make a cursory review of whether I think it's preempted and would not be resolved in this court, and grant your, effective, your Motion to Dismiss at this level at this time.

Or I side with Mr. Horner's argument and determine that there is jurisdiction over the matters raised her and move forward, as we would any other case.

MR. KLEIN: So if that -- let's assume on a worst case basis, from my point of view, due respect to Mannington, that we are going forward after the 45-day

period, what does that look like in terms of schedule?

Because in that event, and assume, too, that the STB were to rule in favor of their side of the case. We would have discovery rights and so forth.

THE COURT: Okay.

MR. KLEIN: We've pled not guilty but, you know, we're taking the position there's no jurisdiction.

THE COURT: Well, right now it is pending before the Court. I would anticipate that you are pursuing discovery as if the case would move forward. I don't think that any arguments raised today would absolve you of the --

MR. KLEIN: Preclude.

THE COURT: -- responsibility to seek that.

MR. KLEIN: Or preclude us, or preclude us.

THE COURT: Or preclude you, yes.

MR. KLEIN: So on the 45th day that you're speaking of here, are we coming back here for an actual adjudication or are we --

THE COURT: I would --

MR. KLEIN: -- going forward with an understanding as to whether you're going to accept jurisdiction and come back yet another time?

THE COURT: Great question.

MR. KLEIN: Thank you.

THE COURT: I'm not sure.
MR. KLEIN: I'm not sure. It's a great -- thank you. Okay.
THE COURT: Yeah, I'm not sure. Yeah. So --
MR. KLEIN: All right. Thank you very much, Your Honor.
THE COURT: All right. Thank you.
MR. KLEIN: Appreciate it.
THE COURT: Appreciate it. Everyone have a great day.
MR. HORNER: Thank you, Your Honor.
MR. KLEIN: You, too. Thank you, Your Honor.
(Whereupon the hearing concluded at this time, at 10:36:47 a.m.)

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CERTIFICATION

I, CAROL H. VENDZULES, AD/CTR, the assigned transcriber, do hereby certify the forgoing transcript of proceedings on July 25, 2024, FTR-G, (2024-07-25), Index 9:56:51 to 10:35:47, Mid-Salem County Joint Municipal Court, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

CAROL H. VENDZULES

/S/ CAROL H. VENDZULES, AOC #268
THE TYPE-RIGHT-ER DATE: 11-05-24

EXHIBIT HH

SUPERIOR COURT OF NEW JERSEY
SALEM COUNTY
MID-SALEM MUNICIPAL COURT
TICKET NOS. SC-2024-007161,
SC-2024-00762, SC-2024-00763
A-_____

STATE OF NEW JERSEY,	)	
	)	
	)	
Plaintiff,	)	TRANSCRIPT
	)	
v	)	OF
	)	
SMS RAIL SERVICE, INC.,	)	MOTION TO DISMISS
	)	
	)	
Defendant.	)	
	)	

Place: Mid-Salem Municipal Court
25 West Avenue
Woodstown, NJ 08098

Date: September 26, 2024

BEFORE:

THE HONORABLE MARTIN W. WHITCRAFT, J.M.C.

TRANSCRIPT ORDERED BY:

FRANK J. HOERST, III, ESQUIRE

APPEARANCES:

EKATERINE ELEFTHERIOU, MUNICIPAL PROSECUTOR
JOHN MOUSTAKAS, CONFLICT MUNICIPAL PROSECUTOR (VIA ZOOM)
Attorneys on behalf of the State of New Jersey

ROBERT KLEIN, ESQUIRE
Attorney on behalf of the Defendant SMS Rail Service

KAREN WOOD, ESQUIRE (VIA ZOOM)
Attorney on behalf of the County of Salem

WILLIAM L. HORNER, ESQUIRE
Attorney oh behalf of Mannington Township

FRANK HOERST, ESQUIRE
Attorney, Land Use Counsel for SMS Rail Service

ROBERT SCHMID, MANNINGTON ZONING OFFICER (VIA ZOOM)

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INDEX

WITNESSES:

FOR THE STATE	DIRECT	CROSS	REDIRECT	RECROSS
(No Witnesses Sworn)				

EXHIBITS	IDENTIFICATION	EVIDENCE
(No Exhibits Marked)		

DECISION - 28

THE COURT: Is Mr. Moustakas here?
MS. ELEFTHERIOU: So as a conflict prosecutor? I just brought him in just recently because I did, in July, indicate that I might have a conflict with the matter, so he is coming in on it in that sense.
THE COURT: Okay. Since we have all parties assembled, I'm going to call these matters now. It's New Jersey vs. SMS Rail Service. Also New Jersey vs. Woodstown Central Railroad and New Jersey vs. County of Salem.
And I know we have several people assembled in the courtroom that are here on this matter. We also have some people that are appearing virtually.
The Complainant on these charges against all Defendants is the Mannington Township Code Enforcement Officer, Mr. Robert Schmid, S-C-H-M-I-D, who is present. Good morning, Mr. Schmid.
MR. SCHMID: Good morning, Your Honor.
THE COURT: I should say he's present virtually. We also have virtually the conflict prosecutor. I'll hear -- can you enter your appearance, sir?
MR. MOUSTAKAS: Good morning, Your Honor. John Moustakas on behalf of the State.
THE COURT: Thank you. And, Ms. Wood, your

appearance?
MS. WOOD: Good morning, Judge. Karen Wood appearing on behalf of the County of Salem.
THE COURT: Okay. And we have several attorneys here in the courtroom. I'm just going to go from my left to the right and, Counsel, if you can enter your appearance, please?
MR. HORNER: William Horner, solicitor for Mannington Township.
THE COURT: Thank you very much. Counsel for --
MR. KLEIN: Oh, I was going to let you go.
MS. ELEFTHERIOU: Go ahead, Counsel. It's okay.
MR. KLEIN: Robert Klein on behalf of SMS Rail --
THE COURT: Thank you very much.
MR. KLEIN: -- which also has the fictitious name entity of Woodstown Central.
THE COURT: Understood.
MR. HERSCHEL: Frank Herschel (phonetic) on behalf of SMS. I'm the land use counsel for the company.
THE COURT: Okay, very good. And I don't know if there was any sort of conference this morning. This

matter was before the Court back in July. Off the top of my head, I believe it was July 25 was the prior court session.

MR. KLEIN: That is correct.

THE COURT: At that time, arguments were heard and I was sort of caught up to speed with regard to the issues presented by these charges.

Arguments with regard to whether the charges before the Court were properly before this Court's jurisdiction or whether the jurisdiction was preempted by a federal entity assigned to essentially resolve railroad-type cases.

So I have now sort of caught up to speed, read the submissions. And in addition to that, there was a development. The matter was transferred or I should say was brought to the attention of the Surface Transportation Board, more commonly known as the STB.

Back in July when we heard the matter initially, we did not know the status of their involvement. We did get an update on that earlier this month, I believe. Again, it was September 13.

MR. KLEIN: The 13th, right.

THE COURT: There was a decision or I should say an initial response from the STB, indicating that they are going to assume jurisdiction over the issues

presented to the Court, to review where we stand or what issues may be preempted.

Based on that, I did receive initially a Motion to Dismiss from Karen Wood on behalf of Salem County, indicating that the issues need to be addressed initially, at least, by the STB before this Court would have any residual, if there is any, following the review from them.

Following that, I received a followup Motion to Dismiss filed by Mr. Klein, essentially making the same argument. Also indicating that the charges should be dismissed because they're vague and are not appropriate for the Court to consider at this time.

So I did read both of those submissions, obviously, and Mr. Prosecutor, I guess I'll hear from you first with regard to the State's position, based on the most recent developments.

MR. MOUSTAKAS: Your Honor, and again, I apologize. I'm just catching up to speed very quickly as of yesterday.

I think at this point I would recommend if we could, I guess, hold the matter in abeyance to see what the STB rules, because that would be dispositive one way or the other.

THE COURT: Okay. And I know --

MS. ELEFTHERIOU: Your Honor?
THE COURT: -- Mr. Klein wants to be heard. He had mentioned in his moving papers that he thinks a dismissal outright of the matters at this point is the more appropriate position to take. But before I make a decision, I will --
MS. ELEFTHERIOU: Your Honor?
THE COURT: Yes.
MS. ELEFTHERIOU: I'm sorry. Is it appropriate, may I be heard? Because I am -- it's -- I think it is unfair for Mr. Moustakas to have to deal with this, as I am just bringing him on as a conflict prosecutor. Could I be heard on the matter, as well, since --
THE COURT: I'm not sure that you have standing if --
MS. ELEFTHERIOU: Of the appropriateness? Okay.
THE COURT: -- Mr. Moustakas is standing in as the Prosecutor. I think the --
MS. ELEFTHERIOU: Okay. May the Township of Mannington be heard and in --
THE COURT: Sure. Absolutely, Mr. Horner, if you --
MR. KLEIN: Well, Your Honor, I would object

to that because Mr. Horner is not here as prosecutor. I understand he's a solicitor for Mannington. This is not a case in which he is the Plaintiff. The Plaintiff is the State of New Jersey.
Frankly, Mr. Horner is a witness in this case and if we were to go before this Court and present evidence, maybe I would be calling Mr. Horner, among other things. In this situation -- you'll understand those circumstances, I think.
THE COURT: Yeah.
MR. KLEIN: Thank you for your patience.
THE COURT: Sure.
MR. KLEIN: The situation I presented in my motion is this. There are a number of civil cases from the New Jersey Superior Court Appellate Division and Supreme Court, as well.
Long-established that when agencies are involved, federal or state, particularly federal, you definitely pause at this level and there could be an abeyance in those circumstances.
They're civil situations, however, and this is a criminal, quasi-criminal. You can't back to (inaudible - recording issue) no matter what the STB does and say it or (inaudible - recording issue) when these charges were brought, that we were on notice that

we were subject to the jurisdiction of the Mannington Township laws and so forth.

That just can't be put back in the bottle. It's not even close to thin ice. I mean, we are now looking at an STB proceeding that they acknowledged is necessary as the precursor to anything they could do.

So let's suppose the STB comes back with a decision, and I don't submit that they will against us. I think it will be for us on the facts presented. But if those facts, from their point of view, support that jurisdiction should be allowed to some extent in their hands, meaning the township, then we go through a process. Then we have an opportunity.

No one has stopped them, notwithstanding all of the complaints about safety, no one has stopped them from doing what they're allowed to do under any circumstance, including if the STB finds preemption here.

They can inspect. We have welcomed them. They don't want to come. They want us to come to them and go through this process of submissions, none of which is authorized by the law and acknowledged.

You know, among the cases cited was the Village of Richfield Markets, the New Jersey Supreme Court Decision from 2000, and I think it makes it very

clear, and that one involved a civil nuisance and injunction proceeding. That was not a criminal case, and they put the brakes on.

This is much different. It's very different. It is the distinguishing point that any of the civil cases in which stays were granted or Appellate cases held in abeyance. This case should not be.

If you should do anything, I think it should be dismissed at minimum without prejudice. They can come back and go through this whole thing again.

I submit to the Court that if the STB finds jurisdiction for the township to enforce its laws upon SMS, we'll do everything appropriately as we would understand to be at that point in time.

We're not there now and you can't go back to April 8 when these charges were made, to suggest that we had an obligation then and should be charged by virtue of that. That's a matter of just basic constitutional due process.

THE COURT: Okay. I understand.

MR. KLEIN: I appreciate it.

THE COURT: I considered that when I was reviewing the moving papers. But, Mr. Horner, I understand the objection to your participation, but I have no issue with you presenting whatever information

you think is relevant to the Court at this time.
MR. HORNER: Thank you.
THE COURT: Just so I have a global understanding of all parties' positions.
MR. HORNER: I'd like the opportunity to do that, Your Honor.
THE COURT: Sure.
MR. HORNER: May I do it now or is there --
THE COURT: Yeah, now would be great.
MR. HORNER: All right. In this Motion to Dismiss, you're being told that you have to dismiss is because you have to wait for the STB to make a determination on the declaratory judgment action.
You're being told that the Defendants, that the charges against the Defendants are unclear and that Mannington for some reason even questions whether the charges should be brought.
The striking thing about what's been provided with that Motion to Dismiss is it's lack of any case law to support any of those things. Lack of any certification or document that would support those things.
As far as the alleged un-clarity of the law, one of the things that the Defendants say is, the charge are based on non-existent or unclear law and should be

dismissed for that reason alone.
The charges are not based on unclear law. They're based on Mannington's ordinances. They're state-derived laws and they're properly before this Court.
And the letter that I wrote to the zoning officer, where I had already done the analysis on preemption, explains very clearly what those claims are. So there's no mystery as to what's being alleged or the basis for the allegations, or the fact that the laws in question are simply Mannington's site plan and zoning ordinances.
One of the things they try to say is that by State's own admission, the charges are based on non-existent or clear law, and what they're talking about is the fact that Mannington, having seen that Pilesgrove has made a declaratory judgment action to the STB on a similar matter decided to join in.
Not because Mannington didn't think -- doubted whether there was preemption or not, as an aid to this Court. I mean, if as you decide this case, there can be some kind of collateral movement on Pilesgrove's matter that Mannington's not allowed to get into, that could be helpful.
But the other thing is, they're trying to tell

you that you have to wait and you don't. I've reads lots of federal case law on this. I've read the cases provided by the Defendants and federal preemption in this country is strongly disfavored; okay?

It's not the default setting. There's a presumption against preemption. There are very, very few areas of federal law that have been determined to completely preempt in the field, and those are even routinely cited in these ICTA cases that I read.

One has to do with labor relations, one has to do with the National Banking Associations. There's one other. So the rest of those federal schemes are reviewed as ordinary preemption, not as complete preemption.

And in the case of a law that does not directly target railroads, such as Mannington's generally applicable zoning and site plan requirements, the STB has repeatedly pointed out in its decisions and the courts have also agreed, that the proper analysis is on an as-applied basis.

You take a look at the way the law applies to the allegedly protected railroad and determine to what extent it either conflicts with regulations that have been put in place that the ICCTA and the STB are intended to govern. Those tend to be very regulatory

type things.

Or whether it has the effect of impairing the interstate commerce of interstate railroading; all right? There was a case in Delaware where the state decided to enact a law, which limited the time, the duration during which railroad engines could idle because of the noise that they made. Clearly within an area regulated by STB, clearly shot down.

But as for those as-applied cases, where the look is to whether there's this impact on interstate commerce and interstate railroading, it's the state courts that make the decisions on that.

And if it's raised as a defense, if preemption is raised as a defense in a State claim, that doesn't convert it into a federal claim. That doesn't throw the brakes on because of a potential federal issue.

What that does is, it's a defense that the State court decides and that's exemplified in the Ridgefield case that has been presented as pretty much the only case cited in the Motion to Dismiss.

That case had decisions from trial court through Appellate Division, up to the Supreme Court and the Supreme Court is the one that determined that in that case, which by the way did not involve any question about whether the railroad was, in fact, an interstate

railroad.

This was a maintenance facility that was causing problems in this town. The Supreme Court just said, no, you need to go to the Surface Transportation Board, not for a declaratory judgment as to preemption. The Supreme Court of New Jersey took care of that.

But rather, for the municipality to see if it can get some relief for the things it was complaining about, about this legitimate maintenance station that the railroad is operating.

In making that determination, the Supreme Court relied on an STB decision in another matter, the Riverdale matter, that was pending at that time. So -- and that's the way it is in all of the cases.

It's the -- if it's a Complaint that's pleaded under state law, it's properly in the State court and if a defense is raised based on preemption the State judge decides it using whatever guidance the judge has, and it can be an STB Decision.

In preparing the letter that I sent to Bob Schmid, I reviewed the Decisions. I found that in cases where it's a purely intrastate excursion that has no involvement with other state railroad systems through through-ticketing or going to other destinations out of state.

Where it's -- in those situations, it doesn't effect interstate commerce, it doesn't effect interstate railroading and it is not subject to -- it doesn't benefit from the preemption.

In Mannington's case, its primary concern doesn't even have to do with what's going on, on the tracks but rather, what's going on beside the tracks.

It's the Easter bunny events, the activities where people pour out of the train cars and congregate in an area and do all kinds of activities that really have nothing to do with transportation. It's an entertainment.

So for those reasons, I -- the Judge in this case, you, should not be thinking that you have to pause. You have the right to proceed and Mannington wants you to proceed and get the facts.

I mean, there was no certification submitted with this Motion to Dismiss that stated outright, we are an interstate railroad. We offer passenger service out of state through a through-ticketing process.

There was nothing to explain anything to you but nonetheless, you're being asked to actually dismiss the thing.

The -- so really, the reason for continuing this is that there has been no support that would --

there's been no support shown that the claims are unclear.

No support shown that Mannington is somehow not thinking that it's appropriate to bring in action. There should be no belief on your part that you have to wait, that you aren't equipped to handle this in dealing with the defense of preemption.

And that we're talking about a really a different issue than in Richfield because we're not talking about something that everybody agrees is an interstate railroad. It's not a maintenance facility.

It's not -- and this isn't a regulation that targets anything that's railroad-based. It's just like plan and use variance review for land activities. And so those are things to -- for you to handle.

As far as what the Surface Transportation Board is actually doing now, all they're doing is a determination of preemption. And you can go alongside that and make your decision and that's something that's happening separately, and Mannington didn't even initiate it.

It had been initiated without Mannington's knowledge before Mannington even filed these Complaints, so there had been no intention. But Mannington did not want to be accused of not having availed itself of the

opportunity to find out what the Surface Transportation Board has to say.

There was no intention of having that well-intended attempt to get more information to actually slow down this case and for SMS to continue violating Mannington's zoning and site plan ordinances.

And it's certainly not a reason for the railroad to plead ignorance and say, you need to do away with the April charges because we didn't know. I mean, how many times have you heard about people not knowing that they didn't break the law?

It happens in zoning matters all the time. People just start doing a business. People just start building something. They get told that they have to stop. They can't say I didn't know. They can't use that as their defense.

So in this case, it happened and it's a sophisticated entity. These folks have a lawyer who understands railroad law, who didn't have to just suddenly try to get up to speed on it like I do. Who could have advised them, look, go to the planning board.

Get your approvals. Do this properly, but that didn't happen. So really, the clarification, if any, that needs to be done in this case is to clarify to the Defendants that there is no preemption here.

It's a locally operated concession, even as evidenced by the notice of exemption that is cited in the Motion to Dismiss but not provided to the Court. That expressly says, 19.4 miles of track in Gloucester and Mannington Township, running from Swedesboro to Salem. That's the extent of the line.

So in this case, right off the bat, there is no federal -- it says in the very beginning of the applicability of the inter -- the ICCTA that in cases where there is not that interstate component, the STB doesn't have the jurisdiction. There's no preemption.

They're focusing on interstate commerce. They're focusing on regulatory issues like making sure that the trains run on time, no interference with time tables, no interference with tariffs.

Certainly not an allowance for the Easter bunny express to have its entertainment alongside the tracks. That's not something that STB has, the way I've read these opinions.

So what I urge you to do, Your Honor, is schedule the matter for trial and ask for proofs as to SMS's defense. Mannington's put it all out there already. There's more that could be provided in response to whatever their motion might be or whatever your decision might require.

But to summarily dismiss it or even to delay it at this point, no -- because we don't -- have no idea how long Surface Transportation Board is going to go and meanwhile, these activities are happening.

So really if, I would say that if these Defendants are feeling strong about their position, they should be telling it to you. They should be giving you your proofs, so that you can make your decision and we can keep this thing moving.

I don't know that in this situation you need to feel as though you're really on the fence about it. I -- and so if you've read the letter that I wrote on April 10, that sets forth the basis for it.

THE COURT: I did. Okay.

MR. HORNER: So that would be Mannington's request, of course subject to the Prosecutor.

THE COURT: All right. Obviously, I'll allow a response.

MR. KLEIN: May I, please?

THE COURT: Yes.

MR. KLEIN: Thank you, Your Honor. I heard him just say it's the way he reads the Opinions. He refers to his letter to Mr. Schmid, directing Mr. Schmid file the charges. He's not the judge, he's not the jury. He's not even the Plaintiff in this case.

The law he refers to is so clear. We're not disputing that there are zoning laws, that there are permit requirements, that here are applications that have to be made, site plan, zoning variances.

In the ordinary sense, that would be frankly, with all due respect, ignorant to suggest that we don't acknowledge that they exist. They exist.

This is a railroad. He wants to make it sound like he knows so much that he can proclaim that this is not an interstate federally regulated railroad, and he makes light of the citation at footnote two in my Motion to Dismiss, which is a matter of public record.

It's also a matter of the basis on which the federal funding that went into the development or the revitalization of this rail line, for the purpose of keeping it in the national railroad system. It has been inutile for so long, the reason why SMS was brought in was to revitalize it.

Now, what it's doing on there relative to freight, the amount of freight, these excursions that are relatively small in time, seasonal, all of which the STB is fully able to and has in the past in various different places around the country, addressed.

It's a factually intensive analysis that, with all due respect to Your Honor, it is not something that

typically comes before your court and I would not expect Your Honor to be easily able to get around this in the matter that the STB will.

The idea here that this was not initiated by Mannington but was initiated by a prosecutor, and to suggest that Mannington felt so strongly that they went first with charges, is really disingenuous. This is really, it's a sham.

When you consider that the woman standing next to me, the Prosecutor, just withdrew just today after telling you July 25 that she was out just today. As recently as this past week, we dealt with discovery issues and the other things.

She is involved in the STB case. Why? Because she is the solicitor for Pilesgrove that initiated the proceedings. And by the way, Pilesgrove chilled out after that and actually withdrew their process relative to their zoning requirements and permitting requirements and so on.

Good advice, very good advice. Very bad advice, though, that Mannington's following and contrary to what the Prosecutor followed and gave herself.

Now, the actual statement here that we didn't provide a certification, with all due respect, a Motion to Dismiss has nothing to do with the facts that might

be disputed and somehow put before the Court through a process of a trial in this case, so that is irrelevant, totally irrelevant.

Presumption against federal preemption; I would hope if it's going to be Mannington's solicitor, who intends to make the arguments about that, that he'll take it up with the STB because that's where that belongs. It doesn't belong here.

There's no federal claim. Questioning whether this is interstate railroad, it's a federally approved operator of this rail line. We didn't come into this county and just initiate ourselves like a private business.

A process was involved. It was long. It began with Salem's interest in having a new operator replace the previous operator, who by the way also had passenger excursions and my understanding is, Mannington never said anything about that.

However, now suddenly you get the big SMS, the company with the proven track record operating in different places around the country, and the prospect of commerce building on this rail line that has been inutie for decades and decades, on track that's been there for over 100 years.

He makes noise in his papers about how we're

putting down new track, as if we're like building track where a track wasn't before. He's just so mistaken. It's a matter of public record where these tracks were.

So everything he's trying to do here is act like the judge and jury, and he's not, and he's way beyond his skis. He's not even on thin ice, Your Honor. But his whole case ought to be put before the STB, where it'll get tested and not in a criminal process like this.

Again, I'm not suggesting that there is not regulation out there for land use in Mannington Township. Every township in the country has land use. It's the circumstance involving a railroad that's federally regulated that takes us away from that and that's the reason why I suggest it should be dismissed.

THE COURT: Okay. Understood.

MS. ELEFTHERIOU: Your Honor?

MR. HORNER: May I say one thing?

THE COURT: You may, Mr. Horner.

MR. HORNER: Yeah, I just want to make a point of clarification. Mannington's not opposed to the interstate aspects of the railroad or the freight carrying aspects of the railroad, or even the usage of the tracks by trains.

I suppose there might be a point at which the

excursion use could become so frequent or loud or disruptive that it might need to be subject to site plan review. If they had a brass band on a flatbed going by in the middle of the night, something like that.

But Mannington is not concerned about the trains on the tracks. It is concerned about the track-side activities, which are subject to site plan review and use variance. That's a point of clarification.

There's nothing here requesting that tracks be ripped up or that Mannington opposed the installation of tracks. It's usage.

THE COURT: Understood.

MS. ELEFTHERIOU: Your Honor, may I? I know I'm not here as speaking as a prosecutor, but may I enter an appearance as solicitor for Pilesgrove?

MR. KLEIN: I would object to that, Your Honor. This is not the rep for the Pilesgrove solicitor to speak.

THE COURT: Yeah, I would agree.

MR. KLEIN: Thank you.

MS. ELEFTHERIOU: Just to clarify some inaccurate statements that were made on the record, but if that's -- that's fine. I appreciate that.

THE COURT: Understood. And, Mr. Hoerst, did you want to contribute to --

MR. HOERST: No, Your Honor.

THE COURT: Okay.

MR. HOERST: I would defer to Mr. Klein, as far as his expertise with regard to the federal application to this.

THE COURT: All right. Thank you. And we do have Ms. Wood, who had also made the Motion to Dismiss, with us virtually, so I'll see if Ms. Wood has anything that she wants to put before the Court.

MS. WOOD: Thank you, Judge. No, I don't really have anything of substance to add, other than what was submitted in my papers and what counsel has already put on the record. Thank you.

THE COURT: Okay. Mr. Moustakas on behalf of the State, anything further before I make a Decision, based on the information before me? Oh, you're on mute, sir. If you can un-mute?

MR. MOUSTAKAS: Your Honor, I'm just -- not to be overly pragmatic but, I mean, counsel did acknowledge there are zoning ordinances, et cetera. I know in municipalities, they have a process they can go before the board for a certification of -- and again, I -- the word escapes me.

But they could essentially, a declaratory judgment in the Lane Use Board or before the Land Use

Board. Now, whether it's applicable or not -- none of that was done.

And I think we're just being reactionary here when we should have been proactive at the beginning, if there was an objective to the activities being held on the line.

MR. KLEIN: Your Honor, I would -- if I understand the Prosecutor, Mr. Moustakas correctly, what he's suggesting is, yes, they should have been proactive and gone to the STB if they had an issue because that's where the definition of jurisdiction, that's where it begins.

THE COURT: Okay.

MR. KLEIN: Not here, Your Honor.

THE COURT: All right. Anything further, Mr. Moustakas?

MR. MOUSTAKAS: No, Your Honor.

THE COURT: Okay. I am prepared to make a Decision. There are two pending motions before me, filed by the County and by the Railroad to dismiss the charges at this point.

Mr. Horner, who I understand is here more as a legal authority as the solicitor for Mannington Township, to sort of make sure that the Court is fully informed about all issues before the Court, makes

interesting arguments.

Argues that the issues that are not preempted are clear and that we should be able to move forward with regard to the Complaints that Mannington Township has.

I'm not so sure. There's potential ambiguity with regard to what is preempted, what is not preempted. All the cases that discuss these types of issues are initially addressed through the STB.

And then with guidance through the STB if there's fallout, residual issues to be decided, they're transferred back for me to decide. I don't want to duplicate efforts. I don't want to have a decision made by me that is at odds with what is ultimately determined by the STB.

So I think we would be essentially spinning our wheels to move forward at this time, until there's some clarification based on the STB review, which we now know is going to happen because they have assumed jurisdiction, pursuant to their Decision on September 13.

I wish I knew the length of that process. I'm hopeful that it's fast. I don't want Mannington Township waiting around while there's these perceived ongoing violations of their local laws going -- ongoing.

But I anticipate that the process is relatively quick, probably in tune with what we would be doing here, so I see no reason why I can't defer this matter for STB's review.

Initially, language that I read in the dissenting Opinion from Judge Long in the Supreme Court case, Village of Ridge Field Park vs. New York, which was cited, I think is applicable.

The case ends with this statement; "This case should be heard in the first instance by the STB. After a presumption determination by that agency, based on these particularized facts, the actual contours of the State's case will be clear."

So I think that's the prudent procedure at this point. If the STB determines that there is violations that are not preempted or potential violations that this Court would have jurisdiction over, I'll be more than happy to decide them at that time.

MR. KLEIN: May I, Your Honor?

THE COURT: You may.

MR. KLEIN: But they're not violations on April 8 of 2024.

THE COURT: I understand that argument, as well, and I understand. I'm going to dismiss the matters without prejudice, pending the review from the

STB.

I know you're concerned about this backdating to April because the potential is that if I ultimately determine that there are violations, the State is clearly going to be seeking penalties back to that time.

But I'm practical and I recognize that if there are good faith disputes that have only been brought to light through the STB's determination, that really that would be the focus point with regard to penalties, if they were ever imposed.

So I can't perceive a situation where I would date back to April 1 and say, clearly they knew they were in violation. I recognize that there is a good faith argument with regard to whether or not there's jurisdiction over those issues.

And if ultimately the STB determines that this Court does have jurisdiction over certain complaints made Mannington, I would be looking at those violations, if they in fact determined --

MR. KLEIN: Prospectively.

THE COURT: Yeah, exactly. So that's the Court's determination. I'm going to dismiss the matters without prejudice.

If there's a delay of some lengthy magnitude from the STB that would require that there be a more

emergent procedure, the Complaints would still be out there pending.

There could be an application made by whatever interested party, for me to take a look at it, if it did become a matter of extreme importance and urgency. But I'm thinking that the STB is going to be moving forward in accordance with essentially the same schedule that this Court would be anyway.

MR. KLEIN: There is a process that -- excuse me. A process it going through, including with public comment and public opportunity to be heard. So typically, it begins with an opening statement, it begins with a public response and then a reply.

The opening statements by both parties, next the public and thirdly, the replies by both parties all at the same time in three different increments.

THE COURT: Okay.

MR. MOUSTAKAS: We have submitted an Order, Judge.

MR. HORNER: Your Honor, may I ask for clarification, please?

THE COURT: Yeah, sure.

MR. HORNER: Okay. So if there is a ruling by STB as anticipated, saying that there was no preemption, can these Complaints simply be reactivated?

THE COURT: Yes.

MR. HORNER: Okay. And they would pertain to the dates of violation in question; right?

THE COURT: They would, and obviously the argument could be made that they should be enforced from the date of the charges and there's going to be push-back on that with regard to whether or not there were any violations at that time, and I'm mindful of those arguments.

MR. HORNER: Sure. And I this action is to be reactivated under those circumstances, could it be done through a quick and abbreviated process, like simply a letter to the Court, a copy to the attorneys?

THE COURT: Yeah, subject to a response.

MR. HORNER: Yeah. Just so that there's not a whole lot of service and filing by the zoning officer.

THE COURT: That's one of the reason why I'm not dismissing the matters outright and requiring that they be reinstituted. We already have service of the Complaints.

We have knowledge -- acknowledgment by all parties and an understanding as to where we stand procedurally. So, yes, I believe that that would be appropriate.

MR. HORNER: We would just notify the Court,

notify each --
THE COURT: Correct. Um-hum.
MR. HORNER: So this is technically then a dismissal without prejudice, with the cases that can be reactivated on notice.
THE COURT: Yes.
MR. HOERST: Not technically; exactly. There's no technical about it.
MR. HORNER: I don't come to these things very often.
MR. HOERST: That's what the dismissal reads.
MR. HORNER: Understood.
MR. KLEIN: Thank you, Judge.
THE COURT: If you have the proposed Order?
MR. KLEIN: Yes.
THE COURT: Do you have a copy of that?
MR. KLEIN: I do, of course.
MS. WOODS: Judge, I submitted an Order, as well.
MR. KLEIN: I think I may even have it.
MR. HOERST: It's right here. It's right here.
THE COURT: Yeah, and I don't have your moving papers before me, Ms. Wood, and I am going to, rather that execute this now, I'll review it to make sure that

the language is in accordance with my Decision today.
I don't want to sign this and then realize there may have been a glitch. I also want to make sure that Ms. Wood's Order is reflective of the same Decision. So following the court session, I'll gather the moving papers.
MR. HOERST: Your Honor, for brevity, I also have the County's Order if you would like that.
THE COURT: There we go. Now I won't have to --
MR. HOERST: If you would like that?
MS. WOODS: Thank you, Mr. Hoerst.
THE COURT: There we go. Ms. Wood just thanked you.
MR. HOERST: You're welcome.
THE COURT: So I'm going to review both of those Orders in detail to make sure that they are accurate and consistent, execute them by days end.
But the Court's Decision is, it will be a dismissal without prejudice, subject to the STB review, and we'll see where we stand with everything following that.
MR. KLEIN: Your Honor, thank you very much.
THE COURT: Thank you.
MR. KLEIN: Thank you, Your Honor.

THE COURT: I appreciate the arguments.
MR. KLEIN: Thank you, Your Honor.
MR. HORNER: Thank you, Your Honor.
(Whereupon the hearing concluded at this time, at 9:50:55 a.m.)

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CERTIFICATION

I, CAROL H. VENDZULES, AD/CTR, the assigned transcriber, do hereby certify the forgoing transcript of proceedings on September 24, 2024, FTR-G, (2024-09-24), Index 9:16:21 to 9:50:55, Mid-Salem County Joint Municipal Court, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

CAROL H. VENDZULES

/S/ CAROL H. VENDZULES, AOC #268
THE TYPE-RIGHT-ER DATE: 11-07-24

EXHIBIT II

William L. Horner <wlh@hornerlaw.net> 7/25/2024 11:59 AM

SMS Railroad Zoning Violation Letter

To Barbara L. Garozzo <barbara.garozzo@njcourts.gov> Copy
Ekaterine N. Eleftheriou <kat@thevigilantelawfirm.com> • Robert L. Schmid <zoning@manningtontwp.com> •
Esther A. Mitchell <townshipclerk@manningtontwp.com> • Patti L. Davis <deputyclerk@manningtontwp.com> •
Robert A. Klein <rak@berklein.com> • Frank J. Hoerst III <fhoerstlaw@comcast.net> •
David A. Avedissian <david@avedissianlaw.com> • Karin M. Wood <counsel@salemcountynj.gov> •
Donald C. Asay <dasay@manningtontwp.com> • William L. Horner <wlh@hornerlaw.net>

Ms. Garozzo, here is a copy of my letter to the Mannington Township Zoning Officer that served as a basis for Mannington's complaints against SMS Railroad. I believe this letter was served on the defendants with the complaints, but just to be sure I am providing copies to all counsel with this email. Please give the letter to Judge Whitcraft because it contains some of the legal analysis and case citations I mentioned this morning.

Cordially,

Bill Horner

_____

William L. Horner
HORNER & HORNER, L.L.C.
67 Market Street/P.O. Box 66
Salem, New Jersey 08079
Tel.: (856) 935-0958
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- ltr 04 (wlh to RLS re enforcement of sms zoning violation -- b-w w-att -- 04-10-24).pdf (2 MB)

William L. Horner <wlh@hornerlaw.net> 7/25/2024 12:06 PM

ICC/STB Decisions RE: SMS Railroad Zoning Violation Letter

To Barbara L. Garozzo <barbara.garozzo@njcourts.gov> Copy
Ekaterine N. Eleftheriou <kat@thevigilantelawfirm.com> • Robert L. Schmid <zoning@manningtontwp.com> •
Esther A. Mitchell <townshipclerk@manningtontwp.com> • Patti L. Davis <deputyclerk@manningtontwp.com> •
Robert A. Klein <rak@berklein.com> • Frank J. Hoerst III <fhoerstlaw@comcast.net> •
David A. Avedissian <david@avedissianlaw.com> • Karin M. Wood <counsel@salemcountynj.gov> •
Donald C. Asay <dasay@manningtontwp.com> • William L. Horner <wlh@hornerlaw.net>

Ms. Garozzo, I have attached copies of the Interstate Commerce Commission and Surface Transportation Board decisions that are cited in my letter to the Mannington Township Zoning Officer that served as a basis for Mannington's complaints (which letter I just sent you by email). Please provide copies of these decisions to Judge Whitcraft because these are the decisions that I mentioned generally during our appearance before him this morning. I am providing copies to all counsel by copy of this email.

Cordially,

Bill Horner

_____

William L. Horner
HORNER & HORNER, L.L.C.
67 Market Street/P.O. Box 66
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Tel.: (856) 935-0958
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- 1991-07-18 (napa valley wine train -- icc).pdf (2 MB)
- 1998-03-05 (fun train -- stb).pdf (2 MB)
- 2012-02-23 (denver & rio grande 1 -- stb).pdf (2 MB)
- 2014-08-18 (denver & rio grande 2 -- stb).pdf (6 MB)
- 2015-03-24 (denver & rio grande 3 -- stb).pdf (6 MB)
- 1999-09-10 (riverdale-ny susquehanna 1 -- stb).pdf (49 KB)
- 2012-12-21 (all aboard florida -- stb).pdf (4 MB)

William L. Horner <wlh@hornerlaw.net> 7/25/2024 12:27 PM

RE: ICC/STB Decisions RE: SMS Railroad Zoning Violation Letter

To Barbara L. Garozzo <barbara.garozzo@njcourts.gov> Copy
Ekaterine N. Eleftheriou <kat@thevigilantelawfirm.com> • Robert L. Schmid <zoning@manningtontwp.com> • Esther A. Mitchell <townshipclerk@manningtontwp.com> • Patti L. Davis <deputyclerk@manningtontwp.com> • Robert A. Klein <rak@berklein.com> • Frank J. Hoerst III <fhoerstlaw@comcast.net> • David A. Avedissian <david@avedissianlaw.com> • Karin M. Wood <counsel@salemcountynj.gov> • Donald C. Asay <dasay@manningtontwp.com> • wlh@hornerlaw.net

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Just to be clear, I had previously asked the Mannington Township Zoning Officer to provide copies of these decisions to the Court along with my April letter, so you might already have them.

Cordially,

Bill Horner

From: William L. Horner <wlh@hornerlaw.net>
Sent: Thursday, July 25, 2024 12:07 PM
To: Barbara L. Garozzo <barbara.garozzo@njcourts.gov>
Cc: Ekaterine N. Eleftheriou <Kat@thevigilantelawfirm.com>; Robert L. Schmid <zoning@manningtontwp.com>; Esther A. Mitchell <townshipclerk@manningtontwp.com>; Patti L. Davis <deputyclerk@manningtontwp.com>; Robert A. Klein <rak@berklein.com>; Frank J. Hoerst III <fhoerstlaw@comcast.net>; David A. Avedissian <david@avedissianlaw.com>; Karin M. Wood <Counsel@salemcountynj.gov>; Donald C. Asay <dasay@manningtontwp.com>; William L. Horner <wlh@hornerlaw.net>
Subject: ICC/STB Decisions RE: SMS Railroad Zoning Violation Letter

Ms. Garozzo, I have attached copies of the Interstate Commerce Commission and Surface Transportation Board decisions that are cited in my letter to the Mannington Township Zoning Officer that served as a basis for Mannington's complaints (which letter I just sent you by email). Please provide copies of these decisions to Judge Whitcraft because these are the decisions that I mentioned generally during our appearance before him this morning. I am providing copies to all counsel by copy of this email.

Cordially,

Bill Horner

William L. Horner
HORNER & HORNER, L.L.C.
67 Market Street/P.O. Box 66
Salem, New Jersey 08079
Tel.: (856) 935-0958
Fax: (856) 935-1708
E-mail: wlh@hornerlaw.net

EXHIBIT JJ

Ekaterine Eleftheriou <kat@thevigilantelawfirm.com> 9/25/2024 9:38 PM

Re: State of New Jersey v. SMS Rail Service, Inc. et al.

To rak berklein.com <rak@berklein.com> Copy Karin Wood <attorneywood@comcast.net> • wlh@hornerlaw.net • fhoerstlaw@comcast.net

---

Good Afternoon Mr. Klein:

Please advise which materials and/or discovery materials remain outstanding and I will review the file to determine the availability of same. Further, please accept this email correspondence as a request for reciprocal discovery from all parties included herein. My hope is to rectify any discovery deficiency without a HOLUP order at this time; however, a HOLUP may be a consideration in the future if we are unable to resolve it on our own. Again, a specific list of items you are requesting and which remain outstanding would be appropriate and appreciated.

Thank you for your kind attention.

Ekaterine N. Eleftheriou
The Vigilante Law Firm, P.C.
99 North Main Street
Mullica Hill, NJ 08062
856-223-9990

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From: rak berklein.com <rak@berklein.com>
Sent: Wednesday, September 25, 2024 1:57 PM
To: Ekaterine Eleftheriou <Kat@thevigilantelawfirm.com>
Cc: Wood, Karin <attorneywood@comcast.net>; wlh@hornerlaw.net <wlh@hornerlaw.net>; fhoerstlaw@comcast.net <fhoerstlaw@comcast.net>
Subject: Re: State of New Jersey v. SMS Rail Service, Inc. et al.

Good afternoon, Ms. Eleftheriou,

I received the discovery your office sent to me in response to our requests. As I am sure you are aware, significant information requested was not included with your submission. As such, the case is not prepared to be tried tomorrow. If need be, I can bring a *Holup* Order to court tomorrow for your consideration.

Regards,

Bob Klein
215-880-6913

> On 09/20/2024 1:45 PM EDT Ekaterine Eleftheriou <kat@thevigilantelawfirm.com> wrote:

Dear Mr. Klein:

Thank you for your correspondence. Our office will be sending you and county counsel the requested discovery via a wetransfer link coming from Alex@thevigilantelawfirm.com. If you have any trouble accessing the discovery, please advise immediately.

Thank you for your kind attention.

Best,
Ekaterine

Ekaterine N. Eleftheriou
The Vigilante Law Firm, P.C.
99 North Main Street
Mullica Hill, NJ 08062
856-223-9990

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Please consider the environment before printing this e-mail

From: rak berklein.com <rak@berklein.com>
Sent: Thursday, September 12, 2024 5:33 PM
To: Ekaterine Eleftheriou <Kat@thevigilantelawfirm.com>
Cc: Wood, Karin <attorneywood@comcast.net>; wlh@hornerlaw.net <wlh@hornerlaw.net>; fhoerstlaw@comcast.net <fhoerstlaw@comcast.net>
Subject: State of New Jersey v. SMS Rail Service, Inc. et al.

Dear Ms. Eleftheriou,

Please see the attached letter.

If you have any questions, please contact me.

Regards,

Bob Klein
215-880-6913

EXHIBIT KK

From: Ekaterine Eleftheriou
To: Jim Pfeiffer
Subject: Re: Steve v. Edward Wentz - 24000201
Date: Tuesday, December 10, 2024 1:16:51 PM

Dear Jim:

I have reached out to the Troopers who ultimately picked up Mr. Wentz after the theft but have not been able to confirm their attendance tomorrow. That being said, we can set forth the evidence we have including the photos and the loss report you provided. You could also bring any eyewitnesses to the theft to court tomorrow. I will have you testify first as COO and after some identifying questions about your role in the business ask you about the theft and what was taken and what proof is in existence that it was the defendant (photos) who stole the items. You will also have to identify the defendant in the court room.

Any evidence you may want to bring to court is welcome and I will review.

I understand that the cost was approximately $32k and there was no insurance identified. Did you put in a claim through the state? We can discuss this further tomorrow as well.

Thank you,
Ekaterine

Ekaterine N. Eleftheriou
The Vigilante Law Firm, P.C.
99 North Main Street
Mullica Hill, NJ 08062
856-223-9990

**LEGAL CONFIDENTIAL: The information in this email and in any attachment may contain information which is legally privileged. It is intended only for the attention and use of the named recipient. If you are not the intended recipient, you are not authorized to retain, disclose, copy or distribute the message and/or any of its attachments. If you received this email in error, please notify me and delete this message. Thank you.*
Please consider the environment before printing this e-mail

From: Jim Pfeiffer <jpfeiffer@smsrail.com>
Sent: Wednesday, October 2, 2024 10:29 PM

To: Ekaterine Eleftheriou <Kat@thevigilantelawfirm.com>
Subject: Steve v. Edward Wentz - 24000201

Good Evening, Kat:

Per Judge Lacovara's request at the hearing last Wednesday, September 25, 2024, attached please find 5 photographs captured on a trail camera installed at SMS's property in Pilesgrove, which depict Mr. Wentz in the act of loading railroad materials into his pickup truck. These were given to the police officer and ultimately resulted in Mr. Wentz's apprehension.

Thank you for your attention and assistance. Please feel free to contact me if at this time you require anything further.

Kind regards,
Jim Pfeiffer
SMS Rail Service, Inc.
Office: (856) 467-4800, ext. 303
Mobile: (610) 739-3729

EXHIBIT LL

Of Counsel:
Mati Jarve (NJ, PA, AZ)
Certified by the Supreme Court of New Jersey as a Civil Trial Attorney
Certified by the National Board of Trial Advocates as a Civil Trial Advocate

HOERST LAW, LLC
FRANK J. HOERST, III
ATTORNEY AT LAW
The Opera House
13 West Avenue, Post Office Box 217
Woodstown, New Jersey 08098
Office: (856) 769-1700 ~ Fax: (856) 769-0361
Email: fhoerstlaw@comcast.net

Of Counsel:
Richard F. Klineburger, III
Certified by the Supreme Court of New Jersey as a Criminal Trial Attorney

December 12, 2024

Kristin J. Telsey, Salem County Prosecutor
Salem County Prosecutor's Office
PO Box 462
Salem, NJ 08079

Sharin M. Harvey, Victim Witness Coordinator
Salem County Prosecutor's Office
PO Box 462
Salem, NJ 08079

Re: State of New Jersey v. Edward N. Wentz
Prosecutor File No. 24000201

Dear Prosecutor Telsey and Ms. Harvey:

Please be advised that I represent SMS Rail Service, Inc., which is the victim of the aforementioned crime. In response to your letter dated June 13, 2024, they have submitted the completed Victim Impact Information form, along with supporting documentation for review. Additionally, they have specified and confirmed the value of the theft. I am attaching a copy of this for your convenience. It is important to highlight that the total amount lost was $32,548.50.

As you are aware, my clients cooperated fully with the New Jersey State Police during the investigation. They had taken the initiative to place tracking devices on their equipment, which proved instrumental in helping the Troopers identify the location of the stolen property. Through the efforts of the scrapyard, law enforcement was able to apprehend Edward N. Wentz, the individual responsible for the theft. However, it has come to our attention that the Troopers prepared Complaint No. S-2024-000042, which, in count 1, states an approximate theft value of only $1,500. This figure is significantly below the actual loss incurred by my clients.

My clients were instructed to attend a hearing in the Pilesgrove Court regarding this matter but received no prior explanation of the court process. They were unaware that the case had been remanded to the Prosecutor's Office due to the discrepancy in the amount stated in the Complaint. Consequently, they had no input into the preparation, execution, or service of the Complaint.

Recently, my clients received an email from the Prosecutor in Pilesgrove Court indicating that their testimony would be required. This notification came less than 24 hours before the scheduled trial, prompting them to contact my office for assistance. Upon receiving this

notification, I promptly reached out to the Municipal Prosecutor to clarify why a case involving a theft of over $34,000 was being addressed in Municipal Court. The Prosecutor expressed no knowledge of the case's remand and its implications.
In light of the circumstances, I drafted a letter to the Municipal Judge, requesting the opportunity to address the court regarding the matter. During the Municipal Court session held on December 11, 2024, I was able to discuss my concerns with Judge Lacovara. It became apparent that a conflict of interest existed between the Municipal Prosecutor and my client, as the Prosecutor was involved in multiple cases, both filed and dismissed, that pertain to my client. Judge Lacovara acknowledged this conflict without objection from the Prosecutor, who chose not to be present during my presentation.

Following our discussion, Judge Lacovara reviewed Complaint S-2024-000042 and identified the stated loss amount of $1,500 as incorrect, given the evidence we provided. Consequently, he has postponed the prosecution in Municipal Court and is awaiting a review from your office.

I hope that after your review, this matter can be addressed in the Superior Court, Criminal Division of New Jersey. If you would like to discuss this further, please call me on my cellphone at (609) 617-0966, as my office will be closed for the holidays.

I trust your office can acknowledge the actual amount and substance of this theft, allowing for appropriate action without requiring my client to re-file a complaint with the State Police.

I look forward to hearing from you. Thank you.

Yours very truly,

FRANK J. HOERST, III

FJH:ci
Enclosure
c: Mr. James Pfeiffer
Robert A. Klein, Esq.

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

June 13, 2024

Kristin J. Telsey, Salem County Prosecutor
Salem County Prosecutor's Office
Post Office Box 462
Salem, NJ 08079

Sharmin M. Harvey, Victim Witness Coordinator
Salem County Prosecutor's Office
Post Office Box 462
Salem, NJ 08079

RE: **State v. Edward N. Wentz**
Prosecutor File No. 24000201

Dear Ms. Telsey and Ms. Harvey:

Receipt of your letter dated April 30, 2024 addressed to Travis Massey is hereby acknowledged. Please be advised that SMS Rail Service, Inc. is the victim of the crime underlying the above matter. Travis Malseed, an employee of SMS, was on site and involved in the reporting of the theft. Please forward to my attention all future correspondence related to this case.

Enclosed please find the completed *Victim Impact Information Form*, which sets forth the value of the track materials stolen from SMS Rail Service. The materials were purchased throughout 2023, and I have included several receipts from our vendor, evidencing the purchase of these and other materials in that time frame. They were staged at SMS's property located at 650 Alloway-Woodstown Rd, Woodstown, NJ for use in ongoing railroad infrastructure rehabilitation projects.

Thank you for your assistance. Please feel free to contact me with any questions or concerns that may arise.

Kind regards,

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

/JRP
Enclosure

Salem County Prosecutor's Office
Victim Impact Information Form

Prosecutor's File # 24000201 Defendant's Name: EDWARD N WENTZ

Your Name: James R. Pfeiffer Indictment #: _____

If you are not the victim, how are you related to the victim? Chief Operating Officer of corporate victim

This *Victim Impact Information Form* and *Victim Impact Statement* are ways for you to participate in the prosecution and sentencing of the offender. **Instructions:** Please answer the questions that apply to your situation. If you need more space, you may use additional sheets of paper. Please print neatly or type.

(1) If you were hurt during the incident, please describe your injuries:

N/A

(2) Did you need medical treatment because of this incident? YES or NO

(3) Do you have medical insurance that will help you with the cost? YES or NO

(4) If yes, how much will or did you have to pay out of your own money? $ _____
How much has your insurance paid so far? $ _____

(5) Did you have property damaged or stolen in this incident? YES or NO
If stolen, was it recovered by the police? YES or NO
Please list all items damaged or stolen and the cost of each item:

Item	Date of Purchase	Purchase Price	Current Value
See attached			

(6) Do you have property insurance that will help with the cost? YES or NO
If yes, how much will or did you have to pay of your own money $ 32,548.50

The Victims of Crime Compensation Office can provide assistance to cover the cost of medical services, counseling and funeral services. **If you need help filling a claim with the Victims of Crime Compensation Office, please call the Office of Victim Witness Advocacy at (856) 935-7510.** Restitution is money that the offender must pay back to you because of the crime. You have the right to ask for a restitution order. In order for the judge to order restitution, you **MUST** attach copies of bills, receipts or estimates of medical costs, counseling expenses, stolen or damaged property and lost wages. If you do not possess these items at this time, you **MUST** provide them at a later time to receive any consideration. Please note that restitution to you is based on uninsured loss. You **MUST** submit losses to your insurance company if you are covered.

(7) Do you want the judge to order restitution? YES or NO
If yes, what is the total amount requested? $ 32,548.50

(8) Would you like help finding a counselor or support group for crime victims? YES or NO

(9) Please attach any photos or receipts that you possess regarding your personal injury and property loss for documentation purposes.

(10) Do you need interpreting services or other special assistance to help you give a statement or testify? If yes, what type of assistance? Please be specific: _____ YES or NO

Important: Court rules require the prosecutor's office to give a copy of this form to the defendant.

The above statements are true: [signature] C.O.O. SMS Rail Service, Inc. 6/13/24
Signature Date

STATE V. EDWARD N. WENTZ

Prosecutor's File Number: 20444201

Accounting of SMS Rail Service Stolen Property

Item	Date of Purchase	Purchase Price		Current Value
50 kegs railroad spikes	Throughout 2023	$ 89.00	per keg	$ 4,450.00
100 pairs 132 RE joint bars	Throughout 2023	$ 160.00	per pair	$ 16,000.00
12 kegs joint bolts	Throughout 2023	$ 128.00	per keg	$ 1,536.00
1,250 6" DS tie plates	Throughout 2023	$ 8.45	each	$ 10,562.50
			TOTAL:	**$ 32,548.50**

Remit to:

Atlantic Track + Turnout Co.
P.O. Box 827234
Philadelphia, PA 19182-7234
973-748-5885

INVOICE	
Number	Date
IN-128088	03/24/23
Partial Shipment	

Sold To:

S.M.S. Rail Service, Inc.
510 Heron Drive, Suite 106
P.O. Box 711
Bridgeport, NJ 08014
United States

Ship To:

SMMS Rail Lines
George
650 Alloway Woodstown Rd
Pilesgrove, NJ 08098
United States

Ordered by:

Salesperson: John Fehr 570-429-1462

Ship Date: 03/17/23
Your Order No.: PO# VERBAL GEORG
Our Order No.: SO-109479
Project: Woodstown, NJ

Ship Via: Truck Prepaid BAYSHORE
Package Tracking #: BOL11502/11503/11504/11506
F.O.B.: Woodstown, NJ
Terms: Net 30 Days

tem/Description	Unit	Quantity	Unit Price	Total Price
132# RE Relay Rail Drilled	Lineal	2,028	21.20	42,993.60
New Track Spikes 5/8x6, MC	Keg	48	89.00	4,272.00
6" Relay DS Tieplates 13"/14" Min 5- hole	Each	2,100	8.45	17,745.00
New 136RE Joint Bars Dom	Pair	70	160.00	11,200.00
New Track Bolts 1 x 6*	Keg	20	128.00	2,560.00
Lockwashers 1" E.D.	Each	500	0.88	440.00
New 132RE/136RE Rail Anchor	Each	2,000	2.55	5,100.00

ENTERED

11
Grant

51-SMSRBR

A Finance Charge of 1-1/2% Per Month Will Be Added To All Accounts Over The Terms Noted Above

Subtotal:	84,310.60
Sales Tax:	0.00
Total:	84,310.60

Remit to:

Atlantic Track + Turnout Co.
P.O. Box 827234
Philadelphia, PA 19182-7234
973-748-5885

INVOICE	
Number	Date
IN-128629	04/25/23
Order Complete	

Sold To:

S.M.S. Rail Service, Inc.
510 Heron Drive, Suite 106
P.O. Box 711
Bridgeport, NJ 08014
United States

Ship To:

George Sutch
S.M.S. Rail Service, Inc.
513 Sharptown Road
Bridgeport, NJ 08014

Ordered by:

Salesperson: John Fehr 570-429-1462

Ship Date: 04/21/23
Your Order No.: PO# VERBAL GEORG
Our Order No.: SO-110888
Project:

Ship Via: Truck Prepaid NEWPENN
Package Tracking #: 6918618152/BOL433642977
F.O.B.: Bridgeport, NJ
Terms: Net 30 Days

Item/Description	Unit	Quantity	Unit Price	Total Price
Gage Rod Single End (F)	Each	20	53.00	1,060.00
Gage Rod Insulated Double End	Each	10	129.00	1,290.00
New Track Bolts 7/8X5"	Keg	2	385.00	770.00
Lockwashers 7/8" E.D.	Each	308	0.94	289.52
Freight	Each	1	314.60	314.60

C/155 20 Track work

ENTERED

51-SMSRBR

A Finance Charge of 1-1/2% Per Month Will Be Added To All Accounts Over The Terms Noted Above

Subtotal:	3,724.12
Sales Tax:	0.00
Total:	3,724.12

Remit to:

Atlantic Track + Turnout Co.
P.O. Box 827234
Philadelphia, PA 19182-7234
973-748-5885

INVOICE	
Number	**Date**
IN-129508	06/20/23
Partial Shipment	

Sold To:
S.M.S. Rail Service, Inc.
510 Heron Drive, Suite 106
P.O. Box 711
Bridgeport, NJ 08014
United States

Ship To:
SMS Rail Lines
George
650 Alloway Woodstown Rd
Pilesgrove, NJ 08098
United States

Salesperson: John Fehr 570-429-1462

Ordered by:

Ship Date: 06/16/23
Your Order No.: PO# VERBAL GEORG
Our Order No.: SO-109479
Project: Woodstown, NJ
Ship Via: Customer Pickup
Package Tracking #: BOL6973 TK6
F.O.B.: Shipping Point
Terms: Net 30 Days

Item/Description	Unit	Quantity	Unit Price	Total Price
New 136RE Joint Bars Dom	Pair	25	160.00	4,000.00

11
6942
Grant work

51-SMSRBR

A Finance Charge of 1-1/2% Per Month Will Be Added To All Accounts Over The Terms Noted Above

Subtotal:	4,000.00
Sales Tax:	0.00
Total:	4,000.00

Remit to:

Atlantic Track + Turnout Co.
P.O. Box 827234
Philadelphia, PA 19182-7234
973-748-5885

INVOICE	
Number	Date
IN-129634	06/26/23
Partial Shipment	

Sold To:

S.M.S. Rail Service, Inc.
510 Heron Drive, Suite 106
P.O. Box 711
Bridgeport, NJ 08014
United States

ENTERED

Ship To:

SMS Rail Lines
George
650 Alloway Woodstown Rd
Pilesgrove, NJ 08098
United States

Salesperson: John Fehr 570-429-1462

Ordered by:

Ship Date: 06/23/23
Your Order No.: PO# VERBAL GEORG
Our Order No.: SO-109479
Project: Woodstown, NJ

Ship Via: Truck Prepaid BASHORE
Package Tracking #: BOL11714,11715
F.O.B.: Woodstown, NJ
Terms: Net 30 Days

Item/Description	Unit	Quantity	Unit Price	Total Price
132# RE Relay Rail Drilled	Lineal	1,326	21.20	28,111.20
New Track Spikes 5/8x6, MC	Keg	28	89.00	2,492.00
6" Relay DS Tieplates 13"/14" Min 5- hole	Each	650	8.45	5,492.50
New Track Bolts 1 x 6*	Keg	9	128.00	1,152.00
Lockwashers 1" E.D.	Each	225	0.88	198.00
New 132RE/136RE Rail Anchor	Each	440	2.55	1,122.00

20

51-SMSRBR

A Finance Charge of 1-1/2% Per Month Will Be Added To All Accounts Over The Terms Noted Above

Subtotal:	38,567.70
Sales Tax:	0.00
Total:	38,567.70

Remit to:

Atlantic Track + Turnout Co.
P.O. Box 827234
Philadelphia, PA 19182-7234
973-748-5885

INVOICE	
Number	Date
IN-129652	06/26/23
Partial Shipment	

Sold To:

S.M.S. Rail Service, Inc.
510 Heron Drive, Suite 106
P.O. Box 711
Bridgeport, NJ 08014
United States

ENTERED

Ship To:

SMS Rail Lines
George
Mannington Mills
75 Manninton Mills Road
Mannington Township, NJ 08079

Salesperson: John Fehr 570-429-1462

Ordered by:

Ship Date: 06/26/23
Your Order No.: PO# VERBAL GEORG
Our Order No.: SO-109479
Project: Woodstown, NJ

Ship Via: Truck Prepaid BASHORE
Package Tracking #: BOL11716
F.O.B.: Mannington, NJ
Terms: Net 30 Days

Item/Description	Unit	Quantity	Unit Price	Total Price
New 136RE Joint Bars Dom	Pair	37	160.00	5,920.00

2C

51-SMSRBR

A Finance Charge of 1-1/2% Per Month Will Be Added To All Accounts Over The Terms Noted Above

Subtotal:	5,920.00
Sales Tax:	0.00
Total:	5,920.00

Remit to:

Atlantic Track + Turnout Co.
P.O. Box 827234
Philadelphia, PA 19182-7234
973-748-5885

INVOICE	
Number	**Date**
IN-129757	06/29/23
Partial Shipment	

Sold To:

S.M.S. Rail Service, Inc.
510 Heron Drive, Suite 106
P.O. Box 711
Bridgeport, NJ 08014
United States

ENTERED

Ship To:

SMS Rail Lines
George
650 Alloway Woodston Road
Pilesgrove, NJ 08098
United States

Salesperson: John Fehr 570-429-1462

Ordered by:

Ship Date: 06/29/23
Your Order No.: PO# VERBAL GEORG
Our Order No.: SO-109479
Project: Woodstown, NJ

Ship Via: Truck Prepaid BASHORE
Package Tracking #: BOL 11722, 11723, 11724
F.O.B.: Mannington, NJ
Terms: Net 30 Days

Item/Description	Unit	Quantity	Unit Price	Total Price
132# RE Relay Rail Drilled	Lineal	897	21.20	19,016.40
New Track Spikes 5/8x6, MC	Keg	53	89.00	4,717.00
6" Relay DS Tieplates 13"/14" Min 5- hole	Each	2,540	8.45	21,463.00
New 136RE Joint Bars Dom	Pair	100	160.00	16,000.00
New Track Bolts 1 x 6*	Keg	44	128.00	5,632.00
Lockwashers 1" E.D.	Each	1,100	0.88	968.00
New 132RE/136RE Rail Anchor	Each	2,500	2.55	6,375.00

20

51-SMSRBR

A Finance Charge of 1-1/2% Per Month Will Be Added To All Accounts Over The Terms Noted Above

Subtotal:	74,171.40
Sales Tax:	0.00
Total:	74,171.40

Invoice IN130343

ATLANTIC TRACK®

September 15, 2023
Page 1 / 1
Payment Terms: Net 30 Days
Payment Due Date: October 15, 2023

A finance charge of 1-1/2% per month will be added to all accounts over the terms noted above.

Sold To: 53-SMSRBR
S.M.S. Rail Service, Inc.
510 Heron Drive, Suite 106
PO Box 711
Bridgeport, NJ 08014
USA

Ship-to Address:
S.M.S. Rail Service, Inc.
Ron Blake
Mannington Mills
75 Mannington Mills Rd
Salem, NJ 08079
USA

Remit To:
Atlantic Track & Turnout Co.
PO Box 827234
Philadelphia, PA 19182-7234
USA

Confirm To:	George	**Salesperson:**	John Fehr
Purchase Order No.:	PO# VERBAL GEORGE	**Shipment Date:**	September 1, 2023
Marks:	PO# Verbal George	**Ship Via:**	Truck Prepaid
Project:		**Delivery Terms:**	FOB Salem, NJ
Quote No.:		**Agent:**	BASHORE
Sales Order No.:	SO-109479	**Package Tracking No:**	BOL#1022, 1023, 1026, 1027

Description	Qty	UOM	Unit Price	Total Price
132#RE Relay Rail drilled, max 3/16" VHW 39ft	2,574	LF	21.20	54,568.80
New Track Spikes 5/8x6, MC	24	KG	89.00	2,136.00
Relay 6"DS Tieplates 13/14" min 5-hole	1,500	EA	8.45	12,675.00
136RE Joint Bars, 36"	50	PR	160.00	8,000.00
New Track Bolts 1 x 6*	11	KG	128.00	1,408.00
Lockwashers 1" E.D.	200	EA	0.88	176.00
Comp Joints Relay 136RE/132RE	6	JT	335.00	2,010.00
				80,973.80
			Subtotal	0.00
			Total Tax	
			Total $	**80,973.80**

COMPLAINT - SUMMONS

COMPLAINT NUMBER			
1709	S	2024	000042
COURT CODE	PREFIX	YEAR	SEQUENCE NO.

PILESGROVE JOINT MUNICIPAL CT
1180 RT 40
PILESGROVE NJ 08098-0000
856-769-1275 COUNTY OF: SALEM

# of CHARGES	CO-DEFTS	POLICE CASE #:
2		A140240141

COMPLAINANT NAME: B T DANLEY
NEW JERSEY STATE POLICE

THE STATE OF NEW JERSEY
VS.
EDWARD N WENTZ

ADDRESS: 450 SOUTH MAIN STREET
WOODSTOWN NJ 08098-0000

DEFENDANT INFORMATION
SEX: M EYE COLOR: HAZEL DOB: 09/27/1960
DRIVER'S LIC. #: [redacted] DL STATE: NJ
SOCIAL SECURITY #: [redacted] SBI #: 813909A
TELEPHONE #: ( )
LIVESCAN PCN #: 406125008803

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about 03/22/2024 in ALLOWAY TWP, SALEM County, NJ did:

WITHIN THE JURISDICTION OF THIS COURT, COMMIT THE OFFENSE OF THEFT BY UNLAWFULLY TAKING SPECIFICALLY BY REMOVING PROPERTY TO INCLUDE NUTS, BOLTS, WASHERS, SPIKES, ETC. VALUED AT APPROXIMATELY $1500.00 BELONGING TO SMS RAILWAY, WITH PURPOSE TO DEPRIVE SMS RAILWAY THEREOF, THIS BEING CONTRARY TO AND IN VIOLATION OF N.J.S. 2C:20-3A; A THIRD DEGREE CRIME.

WITHIN THE JURISDICTION OF THIS COURT, KNOWINGLY AND PURPOSELY ENTERED ONTO PROPERTY KNOWING HE WAS NOT LICENSED OR PRIVILEGED TO DO SO, SPECIFICALLY BY ENTERING THE PROPERTY OF SMS RAILWAY LOCATED AT EAST LAKE ROAD AND ALLOWAY-WOODSTOWN ROAD, PILESGROVE TOWNSHIP, WITH THE INTENT TO UNLAWFULLY TAKE PROPERTY, THIS BEING CONTRARY TO AND IN VIOLATION OF N.J.S. 2C:18-3A ; A DISORDERLY PERSONS OFFENSE.

in violation of:

Original Charge	1) 2C:20-3A	2) 2C:18-3A	3)
Amended Charge			

CERTIFICATION:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: B T DANLEY Date: 03/26/2024

The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED to appear before the Superior Court in the county of: SALEM

at the following address: SALEM COUNTY COURT
92 MARKET STREET SALEM NJ 08079-0000

If you fail to appear on the date and at the time stated below, a warrant may be issued for your arrest.

Date of Arrest: 03/26/2024 Appearance Date: 04/24/2024 Time: 08:00 AM Room #: 0001

Phone: 856-878-5050

Signature of Person Issuing Summons: B T DANLEY Date: 03/26/2024

❑ **Domestic Violence – Confidential**

❑ **Related Traffic Tickets or Other Complaints**

❑ **Serious Personal Injury/ Death Involved**

Special conditions of release:
- ❑ **No phone, mail or other personal contact w/victim**
- ❑ **No possession firearms/weapons**
- ❑ **Other** (specify):

ORIGINAL

NJ/CDR1 1/1/2017

EXHIBIT MM

BERKOWITZ · KLEIN, LLP
ATTORNEYS AT LAW
433 WEST MARKET STREET, SUITE 100
WEST CHESTER, PENNSYLVANIA 19382

Robert A. Klein rak@berklein.com
Telephone 215-880-6913

July 16, 2024

Via Email: kat@thevigilantelawfirm.com

Ekaterine N. Eleftheriou, Esquire
The Vigilante Law Firm
99 North Main Street
Mullica Hill, NJ 08062

Re: State of New Jersey v. SMS Rail Service, Inc. et al.
NJ Municipal Court, Complaint Nos. 1715-SC-007161, 007162, 007163, 007164, 007165, 007166, 007167, 007168, 007169

Dear Ms. Eleftheriou:

I represent SMS Rail Service, Inc. ("SMS"), a Class III rail carrier under federal law, which since 2022 has been the authorized operator of the rail line known as the Salem Branch in Salem and Gloucester Counties.

I am writing regarding the above-referenced complaints initiated by Mannington Township ("Mannington") against SMS, Woodstown Central Railroad (a fictitious name owned by SMS), and Salem County which you are prosecuting as Municipal Prosecutor, scheduled for appearance before the Mid-Salem County Municipal Court on July 25, 2024, at 9:30 a.m. SMS hereby requests that the complaints be withdrawn immediately for the reasons set forth below. Should you not be amenable to doing so, SMS will be forced to seek dismissal of the complaints and to take such further action as warranted.

The record of the Surface Transportation Board ("STB") indicates that on May 1, 2024, you, in your capacity as Solicitor of Pilesgrove Township ("Pilesgrove"), filed on behalf of Pilesgrove a Petition for Declaratory Relief before the STB ("Petition") at Docket No. FD 36770. The Petition requests that the STB issue a declaratory order regarding whether SMS's activities in relation to similar permitting, zoning, and site plan requirements to those raised by Mannington in the above complaints "fall under the umbrella of federal preemption." The Petition on behalf of Pilesgrove acknowledges the STB's ruling would likely determine subject matter jurisdiction relative to the issues in this case. As you know, Mannington has filed with the STB a Petition for Leave to Intervene in the proceedings regarding Pilesgrove's Petition, likewise raising such jurisdictional

issues. Both Pilesgrove's and Mannington's Petitions are pending, which in and of itself shows that the prosecution of the complaints is premature at best.

Therefore, I request your response by close of business tomorrow, July 17, 2024, to this request to withdraw the instant complaints.

Sincerely,

/s/ Robert A. Klein
Robert A. Klein

cc (via email):
William L. Horner, Esq. (wlh@hornerlaw.net)
Karin M. Wood, Esq. (attorneywood@comcast.net)
Frank J. Hoerst, III, Esq. (fhoerstlaw@comcast.net)

EXHIBIT NN

THE VIGILANTE LAW FIRM, P.C.

EKATERINE ELEFTHERIOU, ESQUIRE
PHONE: 856-223-9990
KAT@THEVIGILANTELAWFIRM.COM

308483

ENTERED
Office of Proceedings
July 18, 2024
Part of
Public Record

July 18, 2024

VIA US CERTIFIED MAIL & EMAIL *MILSS@STB.GOV*

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

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

Dear Ms. Brown:

Kindly accept this correspondence in follow up to a Petition for a Declaratory Order filed by the Township of Pilesgrove on or about May 1, 2024. Subsequently, as your office may be aware, Mannington Township filed a Petition for Leave to Intervene in the proceeding against SMS Rail Service, Inc.

To date, we have neither received a briefing schedule nor any follow up correspondence regarding status. The issues raised in the Petition are outstanding.

Most recently, on July 16, 2024, SMS' legal counsel submitted to my office correspondence requesting that I withdraw complaints issued against SMS by Mannington Township. *See attached Exhibit "A".* As my Township did not charge the violations, I cannot act to withdraw same. These violation citations have been filed in the municipal court against SMS by Mannington Township and will likely be held in abeyance pending a determination by the STB. As I am the municipal prosecutor for the Mid-Salem Municipal Court, I immediately notified the court clerk of a conflict and these matters were to be transferred to another municipal court.

It is pertinent to note that Salem County's counsel joined in on SMS' request to withdraw the violation complaints as filed by Mannington Township. *See attached Exhibit "B".*

It is unclear what actions, if any, SMS counsel and/or County counsel have taken to contact the STB board to address the Petitions submitted by the Township of Pilesgrove or Mannington Township yet the issues that brought us before this board remain the same. At this time, kindly advise as to status regarding the matters filed with the STB and when we might expect to hear from the STB board in connection with the Petitions submitted.

Thank you for your attention and assistance in this regard.

Respectfully,

/s/ Ekaterine N. Eleftheriou

Ekaterine N. Eleftheriou
Attorney for the Township of Pilesgrove

Enclosures

cc: Frank Hoerst, Esq. (Attorney for SMS Rail Line, Inc.)
David Avedissian, Esq. (Attorney for SMS Rail Line, Inc.)
William L. Horner, Esq. (Solicitor, Mannington Township)
Karin Wood, Esq., (Salem County Counsel)

CERTIFICATION OF SERVICE

I certify that I have this day served copies of this document upon all parties of record (and as noted above) in this proceeding by U.S. Regular Mail and Email which is consistent with 49 CFR 1104.12(a).

/s/ Donna Manzo

Donna Manzo July 18, 2024

99 NORTH MAIN STREET • MULLICA HILL• NEW JERSEY • 08062
KAT@THEVIGILANTELAWFIRM.COM
P. 856-223-9990/F. 856-494-1400

Exhibit A

BERKOWITZ · KLEIN, LLP
ATTORNEYS AT LAW
433 WEST MARKET STREET, SUITE 100
WEST CHESTER, PENNSYLVANIA 19382

Robert A. Klein rak@berklein.com

Telephone 215-880-6913

July 16, 2024

Via Email: kat@thevigilantelawfirm.com

Ekaterine N. Eleftheriou, Esquire
The Vigilante Law Firm
99 North Main Street
Mullica Hill, NJ 08062

Re: State of New Jersey v. SMS Rail Service, Inc. et al.
NJ Municipal Court, Complaint Nos. 1715-SC-007161, 007162, 007163, 007164, 007165, 007166, 007167, 007168, 007169

Dear Ms. Eleftheriou:

I represent SMS Rail Service, Inc. ("SMS"), a Class III rail carrier under federal law, which since 2022 has been the authorized operator of the rail line known as the Salem Branch in Salem and Gloucester Counties.

I am writing regarding the above-referenced complaints initiated by Mannington Township ("Mannington") against SMS, Woodstown Central Railroad (a fictitious name owned by SMS), and Salem County which you are prosecuting as Municipal Prosecutor, scheduled for appearance before the Mid-Salem County Municipal Court on July 25, 2024, at 9:30 a.m. SMS hereby requests that the complaints be withdrawn immediately for the reasons set forth below. Should you not be amenable to doing so, SMS will be forced to seek dismissal of the complaints and to take such further action as warranted.

The record of the Surface Transportation Board ("STB") indicates that on May 1, 2024, you, in your capacity as Solicitor of Pilesgrove Township ("Pilesgrove"), filed on behalf of Pilesgrove a Petition for Declaratory Relief before the STB ("Petition") at Docket No. FD 36770. The Petition requests that the STB issue a declaratory order regarding whether SMS's activities in relation to similar permitting, zoning, and site plan requirements to those raised by Mannington in the above complaints "fall under the umbrella of federal preemption." The Petition on behalf of Pilesgrove acknowledges the STB's ruling would likely determine subject matter jurisdiction relative to the issues in this case. As you know, Mannington has filed with the STB a Petition for Leave to Intervene in the proceedings regarding Pilesgrove's Petition, likewise raising such jurisdictional

issues. Both Pilesgrove's and Mannington's Petitions are pending, which in and of itself shows that the prosecution of the complaints is premature at best.

Therefore, I request your response by close of business tomorrow, July 17, 2024, to this request to withdraw the instant complaints.

Sincerely,

/s/ Robert A. Klein
Robert A. Klein

cc (via email):
William L. Horner, Esq. (wlh@hornerlaw.net)
Karin M. Wood, Esq. (attorneywood@comcast.net)
Frank J. Hoerst, III, Esq. (fhoerstlaw@comcast.net)

Exhibit B

KARIN M. WOOD, ESQ.
County Counsel
E-Mail: Counsel@salemcountynj.gov

110 Fifth Street, Suite 400
Salem, NJ 08079
Telephone: (856) 935-7510
Fax: (856) 339-4190

July 17, 2024

Ekaterine N. Eleftheriou, Esq.
The Vigilante Law Firm
99 North Main Street
Mullica Hill, New Jersey 08602

RE: State v. Salem County
Mid-Salem Municipal Court
SC-007167, SC-007168, SC-007169

Dear Ms. Eleftheriou:

As you file will reflect, I represent the County of Salem in the above-referenced matters currently scheduled to be heard in Mid-Salem Municipal Court on Thursday, June 25, 2024.

It is my understanding that counsel for co-defendant, SMS Rail Service, Inc., through its attorney Robert A. Klein, Esquire, submitted a letter to you requesting that the matter be administratively dismissed at this time, based upon the Petition for Declaratory Relief you filed before the Surface Transportation Board (STB) on behalf of the Township of Pilesgrove. The Complainant in this matter, Mannington Township, has also filed a Petition to be joined in the STB matter, given the same set of circumstances exist in both municipalities.

As such, I am writing to join in Mr. Klein's request that the matter be dismissed without prejudice at this time, pending the outcome of the Surface Transportation Board matter.

Thank you for your consideration in this regard. Should you have any questions or wish to discuss this in more detail, please do not hesitate to contact me.

Very truly yours,

Karin M Wood
KARIN M. WOOD
Salem County Counsel

KMW/
cc: Robert A. Klein, Esq. (via email only)
Frank Hoerst, Esq. (via email only)
William Horner, Esq. (Via email only)

EXHIBIT OO

BERKOWITZ · KLEIN, LLP
ATTORNEYS AT LAW
433 WEST MARKET STREET, SUITE 100
WEST CHESTER, PENNSYLVANIA 19382

Robert A. Klein rak@berklein.com
Telephone 215-880-6913

July 18, 2024

Via Email: Barbara.Garozzo@njcourts.gov

Ms. Barbara Garozzo
Court Administrator
Mid-Salem County Municipal Court
25 West Avenue
Woodstown, NJ 08098

Re: State of New Jersey v. SMS Rail Service, Inc. et al.
NJ Municipal Court, Complaint Nos. 1715-SC-007161, 007162, 007163, 007164, 007165, 007166, 007167, 007168, 007169

Dear Ms. Garozzo:

I represent SMS Rail Service, Inc. regarding the complaints scheduled for appearance before the Mid-Salem County Municipal Court on July 25, 2024, at 9:30 a.m. The complaints were initiated by Mannington Township ("Mannington") against SMS Rail Service, Inc. and a fictitious name it owns, "Woodstown Central Railroad" ("SMS"), and Salem County.

While SMS pleads that it is not guilty, SMS respectfully submits that this Court is without subject matter jurisdiction in this matter. In fact, this matter is subject to a prior pending federal action before the Surface Transportation Board ("STB"), wherein Mannington and its neighboring municipality, Pilesgrove Township ("Pilesgrove"), are seeking "clarification" from the STB as to what they may regulate in light of federal law preempting application of state and local laws.

SMS is a Class III rail carrier under federal law, and the authorized operator of the rail line known as the Salem Branch in Salem and Gloucester Counties. Under federal law, SMS is subject to the jurisdiction of the STB, and preemption under federal law that applies to SMS's railroad operations shields SMS from application of many state and local laws, including the local zoning and permitting laws underlying Mannington's complaints. Similar complaints initiated by Mannington's neighboring municipality, Pilesgrove, were withdrawn in March 2024 in light of the federal law.

The prior pending federal proceeding before the STB relates to both the previously withdrawn complaints of Pilesgrove and Mannington's complaints. Specifically, after Pilesgrove

conceded applicable federal law required it to withdraw its complaints against SMS, Pilesgrove turned around and filed a Petition for Declaratory Order, dated April 22, 2024 (docketed in the STB at FD 36770), requesting the STB to issue a declaratory order regarding whether SMS's activities in relation to similar permitting, zoning, and site plan requirements to this instant matter, "fall under the umbrella of federal preemption." Mannington has sought to intervene and join in Pilesgrove's Petition for Declaratory Relief upon filing a Petition for Leave to Intervene. Pilesgrove and Mannington acknowledge by their respective Petitions to the STB that the STB's ruling would likely determine subject matter jurisdiction relative to the issues in this matter. Indeed, these townships claim in the STB proceeding that it is "unclear" to them what regulatory authority they have in this matter. Both Pilesgrove's and Mannington's Petitions are pending, which in and of itself shows the contradictory position taken by Pilesgrove subsequent to its conceding applicable federal law and withdrawing its complaints, and that prosecution of the instant complaints is improper and/or premature at best.

As noted, earlier this year Pilesgrove withdrew its complaints against SMS that were based on similar permitting, zoning, and site plan requirements. SMS and Salem County, through its Solicitor, Attorney Karin Wood, have requested the Municipal Prosecutor in this matter to likewise withdraw the instant complaints. The Municipal Prosecutor has not responded to SMS's and Salem County's requests.

For these reasons, SMS respectfully requests that the Court take judicial notice of the foregoing and dismiss the instant matter.

In the event this matter is not dismissed at this time by the Court upon taking judicial notice of the STB proceedings, or withdrawn by the Prosecutor, SMS reserves and does not waive its rights to a) file a motion to dismiss and for such other relief as appropriate, and/or b) all discovery to which it would be entitled if jurisdiction did exist in this matter.

Thank you for your time and consideration.

Respectfully,

/s/ Robert A. Klein
Robert A. Klein

cc (via email):
Ekaterine N. Eleftheriou, Esquire (kat@thevigilantelawfirm.com)
William L. Horner, Esq. (wlh@hornerlaw.net)
Karin M. Wood, Esq. (attorneywood@comcast.net)
Frank J. Hoerst, III, Esq. (fhoerstlaw@comcast.net)

EXHIBIT PP

BERKOWITZ · KLEIN, LLP
ATTORNEYS AT LAW
433 WEST MARKET STREET, SUITE 100
WEST CHESTER, PENNSYLVANIA 19382

Robert A. Klein rak@berklein.com
Telephone 215-880-6913

September 20, 2024

Via Email: Barbara.Garozzo@njcourts.gov

Ms. Barbara Garozzo
Court Administrator
Mid-Salem County Municipal Court
25 West Avenue
Woodstown, NJ 08098

Re: State of New Jersey v. SMS Rail Service, Inc. et al.
NJ Municipal Court, Complaint Nos. 1715-SC-007161, 007162, 007163, 007164, 007165, 007166, 007167, 007168, 007169

Dear Ms. Garozzo:

Enclosed please find Defendant SMS Rail Service, Inc.'s Notice of Motion to Dismiss and supporting Brief regarding the above matters, currently scheduled to be heard before the Court on September 26, 2024.

Thank you for your assistance.

Respectfully,

/s/ Robert A. Klein
Robert A. Klein

Encl.
cc (w/encl., via email):
Ekaterine N. Eleftheriou, Esquire (kat@thevigilantelawfirm.com)
William L. Horner, Esq. (wlh@hornerlaw.net)
Karin M. Wood, Esq. (attorneywood@comcast.net)
Frank J. Hoerst, III, Esq. (fhoerstlaw@comcast.net)

Robert A. Klein, Esquire
NJ Attorney ID No. 009731986
Berkowitz Klein, LLP
433 West Market Street, Suite 100
West Chester, PA 19382
T. 215-880-6913
E. rak@berklein.com
Attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad

THE STATE OF NEW JERSEY vs. SMS RAIL SERVICE, INC. and THE STATE OF NEW JERSEY vs. WOODSTOWN CENTRAL RAILROAD and THE STATE OF NEW JERSEY vs. COUNTY OF SALEM	**MID-SALEM COUNTY MUNICIPAL COURT (Woodstown, NJ; Court ID 1715)** Docket Nos. SC-2024-007161, SC-2024-007162, and SC-2024-007163 Docket Nos. SC-2024-007164, SC 2024-007165, and SC-2024-007166 Docket Nos. SC-2024-007167, SC-2024-007168, SC-2024-007169

ORDER GRANTING MOTIONS OF SMS RAIL SERVICE, INC. TO DISMISS

THIS MATTER coming before the Court on the motions of Defendants SMS Rail Service, Inc. and Woodstown Central Railroad, a fictious name owned by SMS Rail Service, Inc. ("SMS"), by Robert A. Klein, Esquire appearing, to dismiss the above-captioned matters initiated by The State of New Jersey, in the presence of The State of New Jersey, by Municipal Prosecutor of the Township of Mannington, NJ, Ekaterine N. Eleftheriou, Esquire appearing, and the County of Salem, by Karin M. Wood, Esquire appearing, and the Court having considered

the papers in support of and in opposition to the motions and oral argument having been heard, and for good cause having been shown,

IT IS on this _____ day of _____, 2024,

ORDERED that the motions of SMS to dismiss are GRANTED and Complaint Nos.: SC-2024-007161, SC-2024-007162, SC-2024-007163, SC-2024-007164, SC 2024-007165, SC-2024-007166, SC-007167, SC-007168, and SC-007169 are DISMISSED.

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record within ___ days of the date hereof.

Date:

_____
Hon. Martin Whitcraft, J.M.C.

( ) Opposed

( ) Unopposed

Robert A. Klein, Esquire
NJ Attorney ID No. 009731986
Berkowitz Klein, LLP
433 West Market Street, Suite 100
West Chester, PA 19382
T. 215-880-6913
E. rak@berklein.com
Attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad

THE STATE OF NEW JERSEY vs. SMS RAIL SERVICE, INC. and THE STATE OF NEW JERSEY vs. WOODSTOWN CENTRAL RAILROAD and THE STATE OF NEW JERSEY vs. COUNTY OF SALEM	**MID-SALEM COUNTY MUNICIPAL COURT (Woodstown, NJ; Court ID 1715)** Docket Nos. SC-2024-007161, SC-2024-007162, and SC-2024-007163 Docket Nos. SC-2024-007164, SC 2024-007165, and SC-2024-007166 Docket Nos. SC-2024-007167, SC-2024-007168, SC-2024-007169

NOTICE OF MOTION TO DISMISS PURSUANT TO N.J. RULE 7:8-5

To:

Hon. Martin Whitcraft
Mid-Salem Municipal Court
25 West Avenue
Woodstown, NJ 08098
c/o Barbara.Garozzo@njcourts.gov

Court Administrator
Mid-Salem Municipal Court
25 West Avenue
Woodstown, NJ 08098
Barbara.Garozzo@njcourts.gov

Ekaterine N. Eleftheriou, Esq.
Mid-Salem County
Municipal Prosecutor
99 North Main Street
Mullica Hill, New Jersey 08602
kat@thevigilantelawfirm.com

Karin M. Wood, Esq.
Salem County Solicitor
95 South Broadway
Pennsville, NJ 08070
attorneywood@comcast.net

PLEASE TAKE NOTICE that the undersigned, attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad, a fictious name owned by SMS Rail Service, Inc. ("SMS"), moves before the Mid-Salem County Municipal Court for an Order dismissing Complaint Nos.: SC-2024-007161, SC-2024-007162, SC-2024-007163, SC-2024-007164, SC 2024-007165, SC-2024-007166, SC-007167, SC-007168, and SC-007169, against all Defendants therein. A proposed form of Order is attached to this Notice of Motion. In support of this Motion, the movant shall rely on the Brief submitted herewith.

If you do not want the Court to grant the relief sought in this Motion, you must respond in writing filed with the Court explaining your position and mail a copy to the undersigned attorney in accordance with the applicable rules.

Respectfully submitted,

Dated: September 20, 2024

By: /s/ Robert A. Klein
Robert A. Klein, Esquire (NJ ID #009731986)
Berkowitz Klein, LLP
433 West Market Street, Suite 100
West Chester, PA 19382
T. 215-880-6913
E. rak@berklein.com
Attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad

Robert A. Klein, Esquire
NJ Attorney ID No. 009731986
Berkowitz Klein, LLP
433 West Market Street, Suite 100
West Chester, PA 19382
T. 215-880-6913
E. rak@berklein.com
Attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad

THE STATE OF NEW JERSEY vs. SMS RAIL SERVICE, INC. and THE STATE OF NEW JERSEY vs. WOODSTOWN CENTRAL RAILROAD and THE STATE OF NEW JERSEY vs. COUNTY OF SALEM	**MID-SALEM COUNTY MUNICIPAL COURT (Woodstown, NJ; Court ID 1715)** Docket Nos. SC-2024-007161, SC-2024-007162, and SC-2024-007163 Docket Nos. SC-2024-007164, SC 2024-007165, and SC-2024-007166 Docket Nos. SC-2024-007167, SC-2024-007168, SC-2024-007169

BRIEF IN SUPPORT OF MOTIONS OF SMS RAIL SERVICE, INC. TO DISMISS

SMS Rail Service, Inc. ("SMS"), a common carrier under federal law and the operator of the railroad known as the Salem Branch,[1] submits this brief in support of its motions to dismiss the

[1] In 1994, SMS was first authorized to become a rail carrier providing common carrier railroad carriage by authority of the Interstate Commerce Commission (predecessor of the Surface Transportation Board – *see infra* n.2) Finance Docket No. 32494, *SMS Rail Service, Inc. – Lease and Operate Exemption – Pureland Associates*, 59 Fed. Reg. 27298 (May 26, 1994).

The requisite rail carrier authority to operate the subject Salem Branch was granted to SMS by the STB in its Decision in STB Finance Docket No. 36529, *SMS Rail Service, Inc. – Change in Operator Exemption Including Acquisition by Lease – Salem Brank Line in Salem and Gloucester Counties, N.J.*, 87 Fed. Reg. 42536 (July 15, 2022).

above-captioned related quasi-criminal matters brought against the named Defendants by the State of New Jersey ("State"). SMS's motions are based on the following grounds and those set forth in its pending motion to dismiss for lack of subject matter jurisdiction, which was made by letter brief submitted to the Court on and dated July 18, 2024, which is incorporated herein by reference. These matters are currently scheduled for hearing before this Court on September 26, 2024, at 9:00 a.m. SMS's motions should be granted, the hearing should be cancelled, and the matters should be dismissed.

Preliminary Statement

These matters involve criminal charges brought against the Defendants by the State despite its admission in pleadings filed with the Surface Transportation Board ("STB" or "Board")[2] that the charges may be based on nonexistent or unclear law. The charges should be dismissed for that reason alone.

Here, where charges are brought that by the State's own admission may be based on nonexistent or, at best, unclear law, probable cause for the charges and fair and proper due process are lacking. This violates these Defendants' constitutional rights, particularly the right to be properly informed of the nature and cause of the charges. As such, the charges violate the Defendants' constitutional substantive and procedural rights under the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and Article 1, paragraphs 1 and 7 of the New Jersey State Constitution.

Accordingly, the charges should be dismissed.

[2] The STB was established by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), as the successor to the Interstate Commerce Commission as the agency charged with the responsibility for the economic regulation of our Nation's railroads.

Factual Background

On or about April 30, 2024, the criminal charges were set forth in Complaints and Summons were issued executed by the Township of Mannington's ("Mannington") Zoning Officer. The Complaints appear to have been filed by the State on the recommendation and/or at the direction of Mannington's Solicitor.

The charges against the Defendants are for identical alleged violations: 1) No site plan approval; 2) No variance approval; and 3) No zoning permit. Among other things, the charges subject the Defendants to imposition of fines or penalties pursuant to the Mannington Township Code for failure to cease the alleged violations and require certain cessation of operations and removal of improvements. All of these quasi-criminal charges brought against each of the Defendants are hereinafter referred to as the "Charges."

Eight days before the Complaints were issued, on April 22, 2024, facts alleged by the State underlying the Charges were raised in a request to the STB for a declaratory order proceeding in a petition of Mannington's neighbor, the Township of Pilesgrove ("Pilesgrove"). Pilesgrove's petition to the STB was filed through the Mid-Salem County Municipal Prosecutor in these matters, ostensibly serving as Pilesgrove's Solicitor.

Prior to the July 25, 2024 hearing, by petition dated June 10, 2024, the Mannington Solicitor on behalf of Mannington sought to intervene in the declaratory order proceeding requested in Pilesgrove's April 22, 2024 petition, which, as noted, was filed by Pilesgrove through the Prosecutor herein who is also Pilesgrove's Solicitor.

Mannington's and Pilesgrove's petitions ask the STB to declare whether or not federal law prevents Mannington and Pilesgrove (also referred to herein as the "Townships") from imposing upon SMS local permitting and zoning requirements and fines or penalties for violations thereof.

Mannington and the State had a right and an obligation to obtain that answer from the STB before the State proceeded with the Charges against Defendants. They failed to do so.

The Court will recall that the Prosecutor/Pilesgrove Solicitor and the Mannington Solicitor appeared at the July 25, 2024 hearing when the Charges were aggressively presented by them against the Defendants. At the hearing, the Prosecutor and Mannington offered and handed up to the Court copies of Pilesgrove's and Mannington's STB petitions (cited herein as "STB Petitions"). Significantly since that hearing, on September 13, 2024, the STB issued a Decision accepting and instituting the declaratory order proceeding requested by both Mannington and Pilesgrove ("Declaratory Order Proceeding" or "STB Proceeding"). A copy of the STB's September 13, 2024 Decision is attached as Exhibit "A". The bottom line is that in the STB Proceeding, SMS will have an opportunity to present the relevant facts and circumstances necessary for the STB to make its declaratory ruling on the Petitions of the Townships. It is anticipated the STB Proceeding will also allow an opportunity for the public or other interested persons to be heard. In sum, the STB Proceeding is the only viable legal proceeding relating to SMS's operation of the Salem Branch that should take place at this time. The Charges should never have been brought.

SMS submits that the Charges are preempted by federal law and that these issues are committed to the exclusive jurisdiction of the STB which will decide them in the Declaratory Order Proceeding. Despite SMS's request to the Prosecutor to withdraw the Charges, made prior to the July 25, 2024 hearing[3] and most recently on September 17, 2024, the Prosecutor has not withdrawn the Charges. Therefore, SMS respectfully requests that this Court dismiss the Charges.

[3] As noted in the STB's September 13, 2024 Decision, the Prosecutor herein apparently responded to the undersigned SMS's counsel's letter dated July 16, 2024, in which the undersigned requested the Prosecutor to dismiss these matters, by writing a letter directly to the STB dated July 18, 2024 enclosing a copy of the undersigned's letter. The Prosecutor, however, failed to copy SMS's undersigned counsel on her letter to the STB, as the Board took note in its Decision.

It is worth emphasizing again that the Charges were brought even though both the Prosecutor and Mannington in their Petitions filed in the STB Proceeding indicate that it is unclear to them whether or not local permitting and zoning requirements and fines and penalties sought to be imposed against Defendants that are the subject of the Charges are preempted by federal law. The Declaratory Order Proceeding seeks to have the STB clarify and determine the law that should be applied under the facts and circumstance of these matters, which alone aptly demonstrates the Charges were not cognizable to the State when they were brought, which clearly shows the Defendants' constitutional rights (including lack of probable cause and due process) are being violated. While SMS anticipates the factual record that will be made in the Declaratory Order Proceeding will show that it is entitled to federal preemption, the Charges must be dismissed now in light of the fact that at the time the Charges were brought, they were based on what Mannington and the State concede may be nonexistent or unclear law. *See* STB Petitions.

Legal Argument

A. There is No Question That the STB Process Should Have Come First and That There Was No Probable Cause for Bringing the Charges Against the Defendants.

1. The Charges must be dismissed.

The Charges affect regulation of a railroad that is part of the national railroad system and that is entrusted to the exclusive jurisdiction of the STB. (*See* SMS's pending July 18, 2024 motion to dismiss for lack of subject matter jurisdiction). The Charges present predicate questions of fact underlying whether permitting and zoning requirements and certain fines and penalties apply to the railroad. Those questions should have been decided first by the STB, and not by Mannington's Solicitor as occurred here. *Village of Ridgefield Park v. New York Susquehanna & Western Railway Corporation*, 163 N.J. 446, 453, 750 A.2d 57, 60 (2000).[4] The Charges present issues that lie within

[4] *Cf. Curzi v. Raub*, 415 N.J. Super. 1, 21, 999 A.2d 1182, 1194 (App. Div. 2010); *Muise v. GPU, Inc.*, 332 N.J. Super. 140, 158, 753 A.2d 116, 126 (App. Div. 2000).

the STB's special expertise regarding federal preemption applicable to common rail carriers and cannot and should not have been brought given that under these circumstances no notice of the basis of the Charges could have been properly provided to Defendants. Indeed, even the State concedes by virtue of the Townships' STB Petitions that the Charges may be based on nonexistent or unclear law. Therefore, unlike in civil matters, retaining jurisdiction in this Court regarding criminal Charges that should not have been brought in the first place, for the reasons stated above, not only would dislocate here the intricate regulatory structure governing a sensitive industry (*see Campione v. Adamar of N.J.*, 155 N.J. 245, 264, 714 A.2d 299, 308 (1998)), it would continue to violate the Defendants' constitutional rights under the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and Article 1, paragraphs 1 and 7 of the New Jersey State Constitution.

In civil actions, the courts of New Jersey refer to governmental agencies when the claims are based on a theory affecting regulation entrusted to the exclusive jurisdiction of a governmental agency. But here the Charges are quasi-criminal which implicates Defendants' constitutional rights to be informed of the nature and basis of the Charges. The Charges state a rail carrier, SMS, has violated local permitting and zoning requirements, the applicability of which is dubious at best by the State's own admissions.

No future prosecution can be based on the Charges brought in April 2024 because they were admittedly without a cognizable legal basis. If, *arguendo*, a subsequent ruling of the STB was to provide that the local permitting and zoning regulations apply to the railroad, charges could not be based on offenses allegedly committed on April 8, 2024 (the date of the offenses alleged in the existing Complaints) when by the State's admission it was unsure that a basis for those Charges existed as of that time. *See* STB Petitions.

For these reasons, the current Charges must be dismissed.

2. A stay is not the proper course in these criminal matters.

For the same reasons as set forth above, a stay of the Charges based on offenses allegedly occurring on April 8, 2024, i.e., before the STB rules, would make no sense. Not only would a stay burden the Court's docket and administration, such as further tracking and revisiting the matters periodically, the existing Charges should not be permitted to remain pending or be ever prosecuted given that at the time they were brought even the State admits it was unclear a basis for the Charges existed. *See* STB Petitions.

Where, as here, the Defendants' constitutional rights are implicated, the Court should be even more sensitive to the purported Charges that are civil federal regulatory issues trusted to the STB. *Cf. Boss v. Rockland Elec. Co.*, 95 N.J. 33, 42, 468 A.2d 1055, 1060 (1983). While in a civil case referral to the STB and a stay pending referral and determination of subject matter jurisdiction would ordinarily be proper,[5] there is a significant difference here in that the matters involve quasi-criminal Charges that were not based on cognizable offenses (admitted by the Petitions filed by both the Prosecutor and Mannington's Solicitor by virtue of their conceding that the STB's special expertise in this regard is required), and Defendants' constitutional rights to due process are thus clearly implicated and violated. These matters in this Court therefore must be dismissed.

Dismissal is also in the interest of judicial efficiency, and there will be no prejudice to the State caused thereby. It was simply wrong for the Charges to have been brought when the State clearly knew that resolution of the issues involved a federal regulatory scheme placed within the special competence of the STB. *See* STB Petitions. No criminal charges should be permitted to stand on this record.

[5] *E.g., Lemelledo v. Beneficial Management Corp. of Am.,* 150 N.J. 255, 275, 696 A.2d 546, 556 (1997) (staying the judicial process in a civil case pending referral). *See also Curzi*, 415 N.J. Super. at 21, 999 A.2d at 1194; and *Muise,* 332 N.J. Super. at 159, 753 A.2d at 126, both also involving civil cases.

Conclusion

For the foregoing reasons, it is respectfully requested that the Court grant SMS's motions to dismiss the Charges against all Defendants.

Respectfully submitted,

Dated: September 20, 2024

By: /s/ Robert A. Klein

Robert A. Klein, Esquire (NJ ID #009731986)
Berkowitz Klein, LLP
433 West Market Street, Suite 100
West Chester, PA 19382
T. 215-880-6913
E. rak@berklein.com
Attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad

EXHIBIT A

52163 SERVICE DATE – SEPTEMBER 13, 2024
EB

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36770

TOWNSHIP OF PILESGROVE, N.J.—PETITION FOR DECLARATORY ORDER

Digest:[1] This decision grants the Township of Mannington, N.J.'s petition to intervene, institutes a proceeding, and orders that the parties file a proposed procedural schedule to develop the record before the Board.

Decided: September 13, 2024

On May 1, 2024, the Township of Pilesgrove, N.J. (Pilesgrove), filed a petition for a declaratory order asking the Board to determine whether and to what extent 49 U.S.C. § 10501(b) preempts certain local and state laws regarding land use and land development by SMS Rail Service, Inc. (SMS). The petition was accompanied by a certificate of service stating that attorneys for SMS had been served with a copy of the petition. No reply has been filed with the Board on behalf of SMS, and the deadline for such a reply under 49 C.F.R. § 1104.13 has passed.

On June 10, 2024, the Township of Mannington, N.J. (Mannington), filed a petition for leave to intervene, asserting that it has a legitimate interest in the proceeding because SMS's rail line also extends through Mannington, and Mannington has similarly attempted to enforce its municipal land regulations on SMS and its apparent operational affiliate Woodstown Central Railroad (WCR). Mannington served its petition on SMS and WCR, as well as their counsel. Neither SMS nor WCR has replied, and the deadline for doing so under 49 C.F.R. § 1104.13 has passed.

On July 18, 2024, Pilesgrove filed a letter requesting an update on the status of its petition and enclosing a letter it had received from an attorney on behalf of SMS. The letter from SMS's counsel requested that Pilesgrove withdraw complaints in certain enforcement cases brought by Pilesgrove and Mannington in the Mid-Salem County (N.J.) Municipal Court that are related to the issues sought to be determined by a declaratory order in this case. Based on this letter, it appears that SMS is represented by counsel other than the attorneys served with Mannington's and Pilesgrove's petitions.

Service on SMS by Pilesgrove. Although the certificate of service accompanying Pilesgrove's petition states that it was served on counsel for SMS, it does not appear that either

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

of the attorneys identified by Pilesgrove has represented SMS before the Board,[2] nor is there any indication in the petition or its attachments that they represent SMS in this proceeding. And although Mannington did serve its petition to intervene on corporate officers of SMS, its submission did not include Pilesgrove's petition for declaratory order. While it appears that SMS has some knowledge of this proceeding, to remove any doubt about whether it has properly been served the pending petition, Pilesgrove will be directed to serve a copy of its petition for declaratory order and this decision on both a corporate officer of SMS at SMS's home office or principal place of business and the attorney who wrote to Pilesgrove on SMS's behalf on July 16, 2024, by September 18, 2024, and contemporaneously certify to the Board that it has done so.

Intervention. Mannington satisfies the standard for intervention. Its participation will not disrupt the filing schedule and will not unduly broaden the issues raised in this proceeding. See 49 C.F.R. § 1112.4. Mannington, like Pilesgrove, is a municipal corporation in which SMS operates its passenger excursion rail operations through WCR. Further, Mannington's petition raises the same legal issues as those presented by Pilesgrove's petition for declaratory order. Mannington's unopposed petition to intervene therefore will be granted.

Institution of Declaratory Order. The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty. The petition raises questions that should be addressed by SMS to facilitate development of a more complete record. To date, SMS has not participated in this proceeding, and the apparent controversy surrounding the scope of preemption over activities performed by SMS in both Pilesgrove and Mannington has implications for how the townships can regulate those activities.

Accordingly, a declaratory order proceeding will be instituted. Pilesgrove and Mannington are directed to confer with the SMS counsel who sent the July 16, 2024 letter and jointly submit, by October 8, 2024, a proposed procedural schedule to govern the proceeding. Should the current parties and SMS fail to agree on a procedural schedule, each shall file its own proposed schedule by that same date.

It is ordered:

1. Pilesgrove is directed to serve a copy of its petition for declaratory order and this decision on a corporate officer of SMS at SMS' home office or principal place of business and on the attorney representing SMS in the July 16, 2024 letter by September 18, 2024, and contemporaneously certify to the Board that it has done so.

2. Mannington's request to intervene is granted.

---

[2] The attachments to the petition indicate that the attorneys who were served represented SMS in certain proceedings before Pilesgrove. However, SMS was represented by different counsel in the Board proceeding in which it received operating authority over the line at issue in this proceeding. See Verified Notice of Exemption, June 10, 2022, SMS Rail Serv.—Change in Operator Exemption Including Acquis. by Lease—Salem Branch Line in Salem & Gloucester Cntys., N.J., FD 36529.

3. A declaratory order proceeding is instituted.

4. Pilesgrove and Mannington are directed to confer with the SMS counsel who sent the July 16, 2024 letter and jointly submit, by October 8, 2024, a proposed procedural schedule to govern this proceeding. Should the current parties and SMS fail to agree on a procedural schedule, each shall file its own proposed schedule by that date.

5. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

Robert A. Klein, Esquire
NJ Attorney ID No. 009731986
Berkowitz Klein, LLP
433 West Market Street, Suite 100
West Chester, PA 19382
T. 215-880-6913
E. rak@berklein.com
Attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad

THE STATE OF NEW JERSEY vs. SMS RAIL SERVICE, INC. and THE STATE OF NEW JERSEY vs. WOODSTOWN CENTRAL RAILROAD and THE STATE OF NEW JERSEY vs. COUNTY OF SALEM	**MID-SALEM COUNTY MUNICIPAL COURT (Woodstown, NJ; Court ID 1715)** Docket Nos. SC-2024-007161, SC-2024-007162, and SC-2024-007163 Docket Nos. SC-2024-007164, SC 2024-007165, and SC-2024-007166 Docket Nos. SC-2024-007167, SC-2024-007168, SC-2024-007169

PROOF OF FILING AND SERVICE

I hereby certify that the foregoing Notice of Motion to Dismiss, together with supporting Brief and proposed Order, was submitted to the Mid-Salem County Municipal Court, and that a copy of thereof was served by email as follows on the date set forth below:

Hon. Martin Whitcraft Mid-Salem Municipal Court 25 West Avenue Woodstown, NJ 08098 c/o Barbara.Garozzo@njcourts.gov	Court Administrator Mid-Salem Municipal Court 25 West Avenue Woodstown, NJ 08098 Barbara.Garozzo@njcourts.gov

Ekaterine N. Eleftheriou, Esq.
Mid-Salem County
Municipal Prosecutor
99 North Main Street
Mullica Hill, New Jersey 08602
kat@thevigilantelawfirm.com

Karin M. Wood, Esq.
Salem County Solicitor
95 South Broadway
Pennsville, NJ 08070
attorneywood@comcast.net

A courtesy copy of the same was also served by email upon the Mannington Township Solicitor, as follows:

William L. Horner, Esq.
Horner & Horner, LLC
67 Market Street
Salem, NJ 08079
wlh@hornerlaw.net

Dated: September 20, 2024

/s/ Robert A. Klein
Robert A. Klein, Esquire (NJ ID #009731986)
Attorney for Defendants SMS Rail Service, Inc. and Woodstown Central Railroad

EXHIBIT QQ

From: Kevin Elder
To: Paul Harland; Jim Pfeiffer; George Sutch; Jeff Sutch
Subject: Fwd: Zoning Project Form
Date: Monday, October 31, 2022 12:47:12 PM
Attachments: SMS Zoning project page 1.docx
SMS Zoning Project page 2.docx

Sent from my iPhone

Begin forwarded message:

From: Melissa Fackler <pilesgroveclerk@comcast.net>
Date: October 31, 2022 at 11:38:59 AM EDT
To: Kevin Elder <kelder@smsrail.com>
Cc: Tanya Timberman <pgzoning@pilesgrovenj.org>, Julia Dobbs <jdobbs@pilesgrovenj.org>
Subject: Zoning Project Form

Good morning,

After our conversation last week I discussed it with our Zoning Officer and Solicitor to be sure we were following the correct process for SMS to get their street address. All forms/applications/projects need to have a signature from the owner and owner information. I know SMS doesn't want to fill out an application, so for the request of a street address we have amended our Zoning Application and tailored it to SMS to change words, this way the Township is covered as well as accommodating SMS on this request.

Please note that the Township will still have to issue a permit for our files, you will be given a copy as well. This document "Permit" will still have permit written on it because this is how these forms come, but there is a section for the Zoning Officer to add a comment. This comment section will note "Preliminarily Exempt".

I hope that this help move along the process in SMS receiving their street address.

Thank you,

Melissa Fackler
Clerk/Administrator
Pilesgrove Township

TOWNSHIP OF PILESGROVE
ZONING OFFICE APPLICATION

1) PROJECT REQUESTED FOR:

BLOCK: _____ LOT: _____ ZONE: _____ # BEDROOMS: _____

STREET: _____

2) REQUESTER:

NAME: _____

STREET:_____

CITY:_____ STATE: _____ ZIP: _____

PHONE: _____ FAX: _____

EMAIL: _____

CERTIFICATION IN LIEU OF OATH:

I hereby certify that I am the (agent of) owner of record and am authorized to make this project request.

_____
Signature

ZONING OFFICE USE ONLY

FEE: $ N/A **CASH: ☐ CHECK # :**_____

COLLECTED BY: _____ **DATE:**_____

APPROVED: ☐ DENIED: ☐ PERMIT #: Preliminarily Exempt

_____ _____

Tanya Timberman **DATE**
ZONING OFFICER

3) **OWNER**: SAME AS REQUESTER ☐ APPLICANT IS NOT THE OWNER OF THE PROPERTY ☐

IF NOT THE CURRENT OWNER OF THE PROPERTY, THE ATTACHED AFFIDAVIT OF OWNERSHIP MUST BE COMPLETED, NOTARIZED AND SUBMITTTED WITH THE ZONING PROJECT.

NAME: _____

STREET _____

CITY: _____ STATE: _____ ZIP: _____

4) **DETAILED DESCRIPTION (INCLUDE ALL DIMENSIONS) OF PROPOSED IMPROVEMENTS & INTENDED USE (e.g. DECK 10' X 10' X 2' H FOR RECREATIONAL USE), IF A COMMERCIAL USE, PROVIDE SPECIFIC DETAIL ON THE TYPE OF BUSINESS, USE OF THE BUILDING AND PARKING. USE ADDITIONAL SHEET IF NECESSARY:**

_____

_____

5) **HAS A VARIANCE EVER BEEN ISSUED FOR THIS PROPERTY**? YES: ☐ NO: ☐

IF YES, INCLUDE APPROVED SITE PLAN AND/OR PLANNING BOARD RESOLUTION

6) **IS THIS PROPERTY GOVERNED BY A HOME OWNERS ASSOCIATION**? YES: ☐ NO: ☐

IF YES, PLEASE INCLUDE A NOTARIZED LETTER FROM AN OFFICER OF THE ASSOCIATION APPROVING THE PROJECT PROPOSED IN QUESTION #4 ABOVE.

THIS PROJECT SHALL INCLUDE A PLOT PLAN OR NJ LICENSED LAND SURVEY IF AVAILABLE, CLEARLY DETAILED SHOWING ALL EXISTING AND PROPOSED STRUCTURES WITH DIMENSIONS, SETBACKS AND RECORDED EASEMENTS. IN CERTAIN SITUATIONS A NEW JERSEY LICENSED LAND SURVEY MAY BE REQUIRED.

ALL INFORMATION SUPPLIED HEREIN IS CONSIDERED TO BE MATERIAL FACTS, AND MISREPRESENTATION SHALL BE SUFFICIENT CAUSE FOR DENIAL OF THIS PROJECT OR REVOCATION OF ANY PERMIT(S) PREVIOUSLY ISSUED.

_____ _____

APPLICANT'S SIGNATURE DATE

Township of Pilesgrove, Zoning Project
1180 Route 40, Pilesgrove, NJ 08098
Office (856)769-3222, Fax (856) 769-5490
www.pilesgrovenj.org

EXHIBIT RR

TOWNSHIP OF PILESGROVE
ZONING OFFICE INFORMATION

1) PROJECT FOR:

BLOCK: 73 LOT: 1 ZONE: _____ # BEDROOMS: N/A

STREET: Alloway Woodstown & East Lake Roads

2) PROPERTY OWNER:

NAME: SMS Rail Service, Inc.

STREET: Post Office Box 711

CITY: Bridgeport STATE: NJ ZIP: 08014

PHONE: (856) 467-4800 FAX: (856) 467-2121

EMAIL: jsutch@smsrail.com

CERTIFICATION IN LIEU OF OATH:

I hereby certify that I am the (agent of) owner of record and am authorized to complete this form.

_____
Signature

ZONING OFFICE USE ONLY

FEE: $ N/A **CASH:** ☐ **CHECK # :** _____

COLLECTED BY: _____ **DATE:** _____

APPROVED: ☐ **DENIED:** ☐ **PERMIT #:** Preliminarily Exempt

_____ _____
Tanya Timberman **DATE**
ZONING OFFICER

3) **OWNER:** SAME AS #2 ABOVE [X] PROVIDER IS NOT THE OWNER OF THE PROPERTY [ ]

IF NOT THE CURRENT OWNER OF THE PROPERTY, THE ATTACHED AFFIDAVIT OF OWNERSHIP MUST BE COMPLETED, NOTARIZED AND SUBMITTTED WITH THE ZONING PROJECT.

NAME: _____

STREET _____

CITY: _____ STATE: _____ ZIP: _____

4) **DETAILED DESCRIPTION (INCLUDE ALL DIMENSIONS) OF PROPOSED IMPROVEMENTS & INTENDED USE (e.g. DECK 10' X 10' X 2' H FOR RECREATIONAL USE), IF A COMMERCIAL USE, PROVIDE SPECIFIC DETAIL ON THE TYPE OF BUSINESS, USE OF THE BUILDING AND PARKING. USE ADDITIONAL SHEET IF NECESSARY:**

Railroad terminal facility(ies), as necessary, in support of common carrier rail operations. Current improvements include a driveway and parking/material lay-down area (see attached drawing).

5) **HAS A VARIANCE EVER BEEN ISSUED FOR THIS PROPERTY?** YES: [ ] NO: [X]

IF YES, INCLUDE APPROVED SITE PLAN AND/OR PLANNING BOARD RESOLUTION

6) **IS THIS PROPERTY GOVERNED BY A HOME OWNERS ASSOCIATION?**

YES[ ] NO: [X]

IF YES, PLEASE INCLUDE A NOTARIZED LETTER FROM AN OFFICER OF THE ASSOCIATION APPROVING THE PROJECT PROPOSED IN QUESTION #4 ABOVE.

THIS PROJECT SHALL INCLUDE A PLOT PLAN OR NJ LICENSED LAND SURVEY IF AVAILABLE, CLEARLY DETAILED SHOWING ALL EXISTING AND PROPOSED STRUCTURES WITH DIMENSIONS, SETBACKS AND RECORDED EASEMENTS. IN CERTAIN SITUATIONS A NEW JERSEY LICENSED LAND SURVEY MAY BE REQUIRED.

ALL INFORMATION SUPPLIED HEREIN IS CONSIDERED TO BE MATERIAL FACTS, AND MISREPRESENTATION SHALL BE SUFFICIENT CAUSE FOR A REQUEST FOR FURTHER INFOMATION.

_____ 11/07/2022

PROPERTY OWNER'S SIGNATURE DATE

Township of Pilesgrove, Zoning Project
1180 Route 40, Pilesgrove, NJ 08098
Office (856)769-3222, Fax (856) 769-5490
www.pilesgrovenj.org

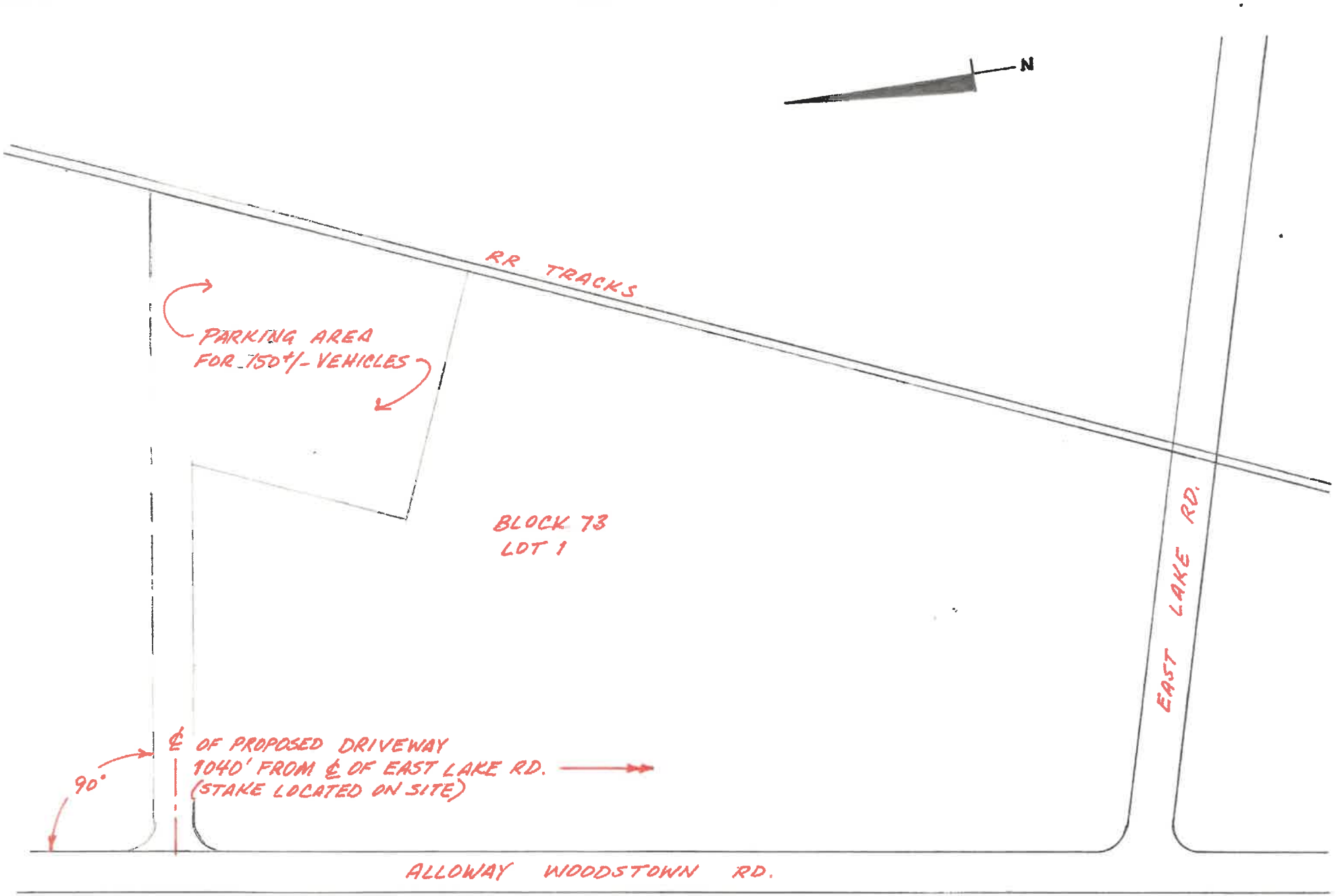
N
RR TRACKS
PARKING AREA
FOR 150+/- VEHICLES
BLOCK 73
LOT 1
EAST LAKE RD.
℄ OF PROPOSED DRIVEWAY
1040' FROM ℄ OF EAST LAKE RD.
(STAKE LOCATED ON SITE)
90°
ALLOWAY WOODSTOWN RD.

EXHIBIT SS

From: Kevin Elder
To: Jim Pfeiffer; Amber Sutch; Paul Harland; George Sutch; Jeff Sutch
Subject: FW: Zoning Project Form
Date: Wednesday, November 9, 2022 4:25:12 PM

Kevin R Elder
Director of Logistics
SMS Lines
513 Sharptown Rd.
Bridgeport, NJ 08085
Cell 609-420-3747
www.smsrail.com

From: Julia Dobbs <jdobbs@pilesgrovenj.org>
Sent: Wednesday, November 9, 2022 4:04 PM
To: Kevin Elder <kelder@smsrail.com>
Subject: RE: Zoning Project Form

Good Afternoon Kevin,
I have given the railway the address of 650 Alloway Woodstown Road, Pilesgrove, NJ 08098. I will send out a formal letter with this information as soon as I get back in the office.

Thank you and have a great Day,

Julia Dobbs
Technical Assistant
Construction, Zoning and Housing

Pilesgrove Township
1180 Route 40
Pilesgrove, NJ 08098
(856)769-3222
pilesgrovenj.org

From: Kevin Elder [mailto:kelder@smsrail.com]
Sent: Wednesday, November 9, 2022 11:41 AM
To: 'Julia Dobbs'

Subject: FW: Zoning Project Form

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Julie,

Please send me the street address when you get a chance.

Thank you!

Kevin R Elder
Director of Logistics
SMS Lines
513 Sharptown Rd.
Bridgeport, NJ 08085
Cell 609-420-3747
www.smsrail.com

From: Tanya Timberman <pgzoning@pilesgrovenj.org>
Sent: Wednesday, November 9, 2022 11:09 AM
To: Kevin Elder <kelder@smsrail.com>; 'Melissa Fackler' <pilesgroveclerk@comcast.net>
Cc: 'Julia Dobbs' <jdobbs@pilesgrovenj.org>
Subject: RE: Zoning Project Form

Hi Kevin,

Attached is the Zoning for the information provided.
Please reach out to Julie, copied on this email, for a street address.
Thanks!

-tanya timberman
Zoning & Housing Officer
Pilesgrove Township
www.pilesgrovenj.org
(856) 769-3222

From: Kevin Elder [mailto:kelder@smsrail.com]
Sent: Monday, November 7, 2022 2:46 PM
To: Melissa Fackler
Cc: 'Tanya Timberman'; 'Julia Dobbs'
Subject: RE: Zoning Project Form

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Melissa,

Please see attached and thanks again.

Kevin R Elder
Director of Logistics
SMS Lines
513 Sharptown Rd.
Bridgeport, NJ 08085
Cell 609-420-3747
www.smsrail.com

From: Melissa Fackler <pilesgroveclerk@comcast.net>
Sent: Monday, October 31, 2022 11:38 AM
To: Kevin Elder <kelder@smsrail.com>
Cc: 'Tanya Timberman' <pgzoning@pilesgrovenj.org>; 'Julia Dobbs' <jdobbs@pilesgrovenj.org>
Subject: Zoning Project Form

Good morning,

After our conversation last week I discussed it with our Zoning Officer and Solicitor to be sure we were following the correct process for SMS to get their street address. All forms/applications/projects need to have a signature from the owner and owner information. I know SMS doesn't want to fill out an application, so for the request of a street address we have amended our Zoning Application and tailored it to SMS to change words, this way the Township is covered as well as accommodating SMS on this request.

Please note that the Township will still have to issue a permit for our files, you will be given a copy as well. This document "Permit" will still have permit written on it because this is how these forms come, but there is a section for the Zoning Officer to add a comment. This comment section will note "Preliminarily Exempt".

I hope that this help move along the process in SMS receiving their street address.

Thank you,

Melissa Fackler
Clerk/Administrator
Pilesgrove Township

EXHIBIT TT

0 ALLOWAY-WOODSTOWN RD
Block/Lot 73/1//QFARM

Zone
RR

SMS RAIL SERVICE INC
PO BOX 711
BRIDGEPORT NJ 08014

2643

Application is
Approved

This is to certify that the above-named has applied for a permit to/authorization for:

Driveway and parking area for ±150 vehicles for transportation of freight purposes only., which is a use permitted by ordinance

Comments on Decision:
Preliminarily Exempt.
Zoning Permits are valid for one year after issuance.

11/9/2022
Date

Township of Pilesgrove
Municipal Building
Pilesgrove, NJ 08098
(856)769-3222 FAX(856)769-5490

November 9, 2022 Applic No. 162

100

Cut Here

Deliver to...

kelder@smsrail.com
SMS RAIL SERVICE INC
PO BOX 711
BRIDGEPORT NJ 08014

EXHIBIT UU

From: David Avedissian
To: Jim Pfeiffer
Subject: FW: Correspondence- Appeal 2024-5
Date: Tuesday, March 12, 2024 11:46:55 AM
Attachments: image001.png

Hi Jim, please see the below. I would like to respond that we do permit them reasonable access. Frank agrees. I know you mentioned they are welcome to inspect yesterday but just wanted to run it by you.

David A. Avedissian, Esquire
135 Kings Highway East
Haddonfield, New Jersey 08033
Phone: 856-857-1901
Facsimile: 856-857-1902

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From: Burns, Scott <sburns@co.gloucester.nj.us>
Sent: Tuesday, March 12, 2024 11:42 AM
To: Ekaterine Eleftheriou <Kat@thevigilantelawfirm.com>
Cc: David Avedissian <david@avedissianlaw.com>
Subject: RE: Correspondence- Appeal 2024-5

Kat and David – I read both briefs. It appears everyone agrees with the law; the town cannot force the RR top get permits; issue stop work orders, or delay construction. However, as the DEA Bulletin states after *Ridgefield,* the municipality "may enforce fire, health, plumbing, safety, and construction regulations that are applicable to the facility. The Court decided that the railroad may not deny the municipality access for reasonable inspection of the facility."

I do not want to speak for the Board, but you may want to consider dismissing the Violation on the condition that the RR allow access for inspection. The Board may help you in crafting this resolution, or we can proceed with testimony.

Thank you for your attention.

Scott D. Burns, Esq.
County of Gloucester
Assistant County Counsel
2 South Broad Street
Woodbury, NJ 08096
Tel: (856) 384-6942
Fax: (856) 384-6894

sburns@co.gloucester.nj.us



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

From: Ekaterine Eleftheriou <Kat@thevigilantelawfirm.com>
Sent: Tuesday, March 12, 2024 11:26 AM
To: David Avedissian <david@avedissianlaw.com>
Cc: Julie Dobbs <constructionta@pilesgrovenj.org>; Construction Appeals <constructionappeals@co.gloucester.nj.us>
Subject: Fw: Correspondence- Appeal 2024-5

Dear Mr. Avedissian:

Kindly accept this email in connection to the above referenced Appeal. It appears you were inadvertently not included in the original email from the Construction office. Thank you.

Best Regards,

Ekaterine

Ekaterine N. Eleftheriou

The Vigilante Law Firm, P.C.

99 North Main Street

Mullica Hill, NJ 08062

856-223-9990

**LEGAL CONFIDENTIAL: The information in this email and in any attachment may contain information which is legally privileged. It is intended only for the attention and use of the named recipient. If you are not the intended recipient, you are not authorized to retain, disclose, copy or distribute the message and/or any of its attachments. If you received this email in error, please notify me and delete this message. Thank you.*
Please consider the environment before printing this e-mail

From: Julie Dobbs <constructionta@pilesgrovenj.org>
Sent: Monday, March 11, 2024 10:39 AM
To: constructionappeals@co.gloucester.nj.us <constructionappeals@co.gloucester.nj.us>
Cc: Ekaterine Eleftheriou <Kat@thevigilantelawfirm.com>; John Holroyd <constructionofficial@pilesgrovenj.org>
Subject: Correspondence- Appeal 2024-5

Good Morning,
Please see attached correspondence in regards to Appeal 2024-5 SMS RAIL SERVICE,INC v. TOWNSHIP OF PILESGROVE.

Thank you ,

Jenna Seeney
Technical Assistant
Construction, Zoning and Housing

Pilesgrove Township
1180 Route 40
Pilesgrove, NJ 08098
(856)769-3222
pilesgrovenj.org

CAUTION: This email originated from outside of the Gloucester County Email System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

EXHIBIT VV

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

October 24, 2024

Via Hand Delivery

Mr. Richard Saunders, Construction Official
Pilesgrove Township
1180 Route 40 East
Pilesgrove, NJ 08098

RE: SMS Rail Service, Inc.
Stop Construction Order - Block 73, Lot 1
Notice and Order of Penalty (Control No. 457) - Block 73, Lot 1
Notice of Violation and Order to Terminate (Control No. 458) - Block 73, Lot 1

Dear Mr. Saunders:

SMS Rail Service, Inc. ("SMS") is in receipt of your *Stop Construction Order*, *Notice and Order of Penalty* (Control No. 457), and *Notice of Violation and Order to Terminate* (Control No. 458), all of which have been issued against SMS for alleged construction activities on Block 73, Lot 1 in Pilesgrove Township. Please be advised that there are no ongoing construction activities on said Block and Lot, and proceedings regarding the same were resolved in front of the Construction Board of Appeals last spring. Therefore, such *Order* and *Notices* are a nullity, and we request that Pilesgrove Township acknowledge the same and withdraw them.

Regarding a separate location, by email dated September 5, 2024, I forwarded to Ekaterine Eleftheriou, Pilesgrove Township's Solicitor, notice to the Township of the impending federally preempted construction activities (a locomotive engine house) on Block 73, Lot 3, as required by federal law and confirmed in the Village of Ridgefield Park case that you cite in your above *Notices* against Block 73, Lot 1. SMS's notice for Block 73, Lot 3 included drawings and specifications for the structure, which are certified by a New Jersey licensed engineer, together with a map depicting the location of the building, receipt of which by the Pilesgrove Construction Office was confirmed by the Township inspector upon his visiting the site on October 10, 2024. At that time, the workers were told by the Township inspector that they should continue working on the building and that if they followed the plans that were submitted, when the Township returns to inspect again, everything would "be okay." Another Township inspector visited the site on October 18, 2024, and made only positive remarks.

Notwithstanding the foregoing, when the Township inspector was at the site on October 10, 2024, the inspector posted an orange "Stop Work Order" stating "No permit" and containing an incorrect street address for the property. The inspector apologetically stated when posting the Stop Work Order that he was only doing what he was told to do. It makes no sense that the Township would force the inspector to post such an Order when it knows the law prohibits the

Township from doing so and no permits are required. The Township has acknowledged that local regulation of the property is preempted under federal law, as confirmed in the Ridgefield Park case you cited, and, indeed, its inspector told the workers that they should continue working.

Also, it appears from the above invalid *Notices* that you and the Township mistakenly contend that SMS must "request" inspections of its construction activities. As you should be aware, there is no basis under federal law for this requirement. See also Ridgefield Park, and the State of New Jersey Department of Community Affairs Bulletin 01-1 (May 2001), which Pilesgrove's Solicitor cited in prior pending matters before the Construction Board of Appeals. Rather, as those materials state, SMS is required to give notice to the Township. And, in fact, SMS has given notice to the Township consistently in accordance with federal law.

For ease of your reference, I have enclosed another copy of the above-referenced, previously supplied drawings, specifications and map. Also enclosed is a copy of the above-referenced Bulletin, which notably specifically states that the Township "is not able to require permits, fees, and Certificates of Occupancy" and that "stop-work orders are not permitted."

Both Township inspectors made positive statements about the work on the above properties upon their visits on October 10 and 18. As noted, the inspector who posted the illegal Stop Work Order stated that he was only doing what he was told to do, which is unfortunate.

Again, if you or a representative of your office would like an opportunity to inspect SMS's construction activities, including those being undertaken on Block 70, Lot 3, or the sheds previously placed on Block 70, Lot 1, please simply email me at jpfeiffer@smsrail.com to let us know when you want to inspect. You may also reach me at my office number below, or by mobile phone or text at 610-739-3729.

Kind regards,

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

/JRP
Enclosures
c.c. via email only; with enclosures:
Jenna Seeney, Technical Assistant, Pilesgrove Township Construction Office – (conast@pilesgrovenj.org)
Ekaterine Eleftheriou, Solicitor, Pilesgrove Township – (kat@thevigilantelawfirm.com)
Melissa Fackler, Clerk, Pilesgrove Township – (clerk@pilesgrovenj.org)
Jeffrey Ridgway, Administrator, Salem County – (Jeffrey.Ridgway@salemcountynj.gov)



08/05/2024

NJ COA #24GA28127800

Alpine, an ITW company
155 Harlem Ave.
North Building, 4th Floor
Glenview, IL 60025
Phone: (800)326-4102 (314)344-9121
alpineitw.com

Site Information:	Page 1:
Customer: D. L. Truss	*Job Number:* 34023
Job Description: /34023 /Lanc Pole/SMS Rail Servic	
Address: 650 Alloway Woodstown Rd, Woodstown , NJ 08098	

Job Engineering Criteria:	
Design Code: IBC 2021	*IntelliVIEW Version:* 24.01.00A *JRef #:* 1Y2566970001
Wind Standard: ASCE 7-16 *Wind Speed (mph):* 115 *Building Type:* Closed	*Design Loading (psf):* 40.00

This package contains general notes pages, 2 truss drawing(s) and 0 detail(s).

Item	Drawing Number	Truss
1	218.24.0617.58577	30Ags/Com/50/412-cat2-2021

Item	Drawing Number	Truss
2	218.24.0618.10053	30Ags/Sgab/50/412-cat2-2021

General Notes

Truss Design Engineer Scope of Work, Design Assumptions and Design Responsibilities:
The design responsibilities assumed in the preparation of these design drawings are those specified in ANSI/TPI 1, Chapter 2; and the National Design Standard for Metal Plate Connected Wood Truss Construction, by the Truss Plate Institute. The truss component designs conform to the applicable provisions of ANSI/TPI 1 and NDS, the National Design Specification for Wood Construction by AWC. The truss component designs are based on the specified loading and dimension information furnished by others to the Truss Design Engineer. The Truss Design Engineer has no duty to independently verify the accuracy or completeness of the information provided by others and may rely on that information without liability. The responsibility for verification of that information remains with others neither employed nor controlled by the Truss Design Engineer. The Truss Design Engineer's seal and signature on the attached drawings, or cover page listing these drawings, indicates acceptance of professional engineering responsibility solely for the truss component designs and not for the technical information furnished by others which technical information and consequences thereof remain their sole responsibility.

The suitability and use of these drawings for any particular structure is the responsibility of the Building Designer in accordance with ANSI/TPI 1 Chapter 2. The Building Designer is responsible for determining that the dimensions and loads for each truss component match those required by the plans and by the actual use of the individual component, and for ascertaining that the loads shown on the drawings meet or exceed applicable building code requirements and any additional factors required in the particular application. Truss components using metal connector plates with integral teeth shall not be placed in environments that will cause the moisture content of the wood in which plates are embedded to exceed 19% and/or cause corrosion of connector plates and other metal fasteners.

The Truss Design Engineer shall not be responsible for items beyond the specific scope of the agreed contracted work set forth herein, including but not limited to: verifying the dimensions of the truss component, calculation of any of the truss component design loads, inspection of the truss components before or after installation, the design of temporary or permanent bracing and their attachment required in the roof and/or floor systems, the design of diaphragms or shear walls, the design of load transfer connections to and from diaphragms and shear walls, the design of load transfer to the foundation, the design of connections for truss components to their bearing supports, the design of the bearing supports, installation of the truss components, observation of the truss component installation process, review of truss assembly procedures, sequencing of the truss component installation, construction means and methods, site and/or worker safety in the installation of the truss components and/or its connections.

This document may be a high-quality facsimile of the original engineering document which is a digitally signed electronic file with third party authentication. A wet or embossed seal copy of this engineering document is available upon request.

Temporary Lateral Restraint and Bracing:
Temporary lateral restraint and diagonal bracing shall be installed according to the provisions of BCSI chapters B1, B2, B7 and/or B10 (Building Component Safety Information, by TPI and SBCA), or as specified by the Building Designer or other Registered Design Professional. The required locations for lateral restraint and/or bracing depicted on these drawings are only for the permanent lateral support of the truss members to reduce buckling lengths, and do not apply to and may not be relied upon for the temporary stability of the truss components during their installation.

Permanent Lateral Restraint and Bracing:
The required locations for lateral restraint or bracing depicted on these drawings are for the permanent lateral support of the truss members to reduce buckling lengths. Permanent lateral support shall be installed according to the provisions of BCSI chapters B3, B7 and/or B10, or as specified by the Building Designer or other Registered Design Professional. These drawings do not depict or specify installation/erection bracing, wind bracing, portal bracing or similar building stability bracing which are parts of the overall building design to be specified, designed, and detailed by the Building Designer.

Connector Plate Information:
Alpine connector plates are made of ASTM A653 or ASTM A1063 galvanized steel with the following designations, gauges and grades: W=Wave, 20ga, grade 40; H=High Strength, 20ga, grade 60; S=Super Strength, 18ga, grade 60. Information on model code compliance is contained in the ICC Evaluation Service report ESR-1118, available on-line at www.icc-es.org.

Bearing Information:
The bearing area factor, Cb, is considered for the allowable capacity of solid sawn wood bearings supporting trusses that are located a minimum of 3" from the end of the lumber piece.

General Notes (continued)

Coated Lumber:
Coated lumber must be properly re-dried and maintained below 19% or less moisture level through all stages of construction and usage. Coated lumber has no adjustments to lumber properties. Coated lumber may be more brittle than uncoated lumber. Special handling care must be taken to prevent breakage during all handling activities. Refer to manufacturer literature, specifications, and code evaluation reports for restrictions, details, and requirements.

Fire Retardant Treated Lumber:
Fire retardant treated lumber must be properly re-dried and maintained below 19% or less moisture level through all stages of construction and usage. Fire retardant treated lumber may be more brittle than untreated lumber. Special handling care must be taken to prevent breakage during all handling activities.

Key to Terms:
Information provided on drawings reflects a summary of the pertinent information required for the truss design. Detailed information on load cases, reactions, member lengths, forces and members requiring permanent lateral support may be found in calculation sheets available upon written request.

BCDL = Bottom Chord standard design Dead Load in pounds per square foot.
BCLL = Bottom Chord standard design Live Load in pounds per square foot.
C = Coated lumber.
C-AT = AtTEK coated lumber.
C-FX = FX Lumber Guard coated lumber.
C -TE = TechWood 4400 coated lumber.
CL = Certified lumber.
Des Ld = total of TCLL, TCDL, BCLL and BCDL Design Load in pounds per square foot.
FRT = Fire Retardant Treated lumber.
FRT-BF = Boraflame Fire Retardant Treated lumber
FRT-DB = D-Blaze Fire Retardant Treated lumber.
FRT-DC = Dricon Fire Retardant Treated lumber.
FRT-FP = FirePRO Fire Retardant Treated lumber.
FRT-FL = FlamePRO Fire Retardant Treated lumber.
FRT-FT = FlameTech Fire Retardant Treated lumber.
FRT-ON = OnWood Fire Retardant Treated lumber.
FRT-PG = PYRO-GUARD Fire Retardant Treated lumber.
FRT-PR = ProWood Fire Retardant Treated lumber.
g = green lumber.
HORZ(LL) = maximum Horizontal panel point deflection due to Live Load, in inches.
HORZ(TL) = maximum Horizontal panel point long term deflection in inches, due to Total Load, including creep adjustment.
HPL = additional Horizontal Load added to a truss Piece in pounds per linear foot or pounds.
Ic = Incised lumber.
FJ = Finger Jointed lumber.
L/# = user specified divisor for limiting span/deflection ratio for evaluation of actual L/defl value.
L/defl = ratio of Length between bearings, in inches, divided by the vertical Deflection due to creep, in inches, at the referenced panel point. Reported as 999 if greater than or equal to 999.
Loc = Location, starting location of left end of bearing or panel point (joint) location of deflection.
Max BC CSI = Maximum bending and axial Combined Stress Index for Bottom Chords for all load cases.
Max TC CSI = Maximum bending and axial Combined Stress Index for Top Chords for all load cases.
Max Web CSI= Maximum bending and axial Combined Stress Index for Webs for all load cases.
NCBCLL = Non-Concurrent Bottom Chord design Live Load in pounds per square foot.
PL = additional Load applied at a user specified angle on a truss Piece in pounds per linear foot or pounds.
PLB = additional vertical load added to a Bottom chord Piece of a truss in pounds per linear foot or pounds
PLT = additional vertical load added to a Top chord Piece of a truss in pounds per linear foot or pounds.
PP = Panel Point.
R = maximum downward design Reaction, in pounds, from all specified gravity load cases, at the indicated location (Loc).
-R = maximum upward design Reaction, in pounds, from all specified gravity load cases, at the identified location (Loc).
Rh = maximum horizontal design Reaction in either direction, in pounds, from all specified gravity load cases, at the indicated location (Loc).
RL = maximum horizontal design Reaction in either direction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the indicated location (Loc).

General Notes (continued)

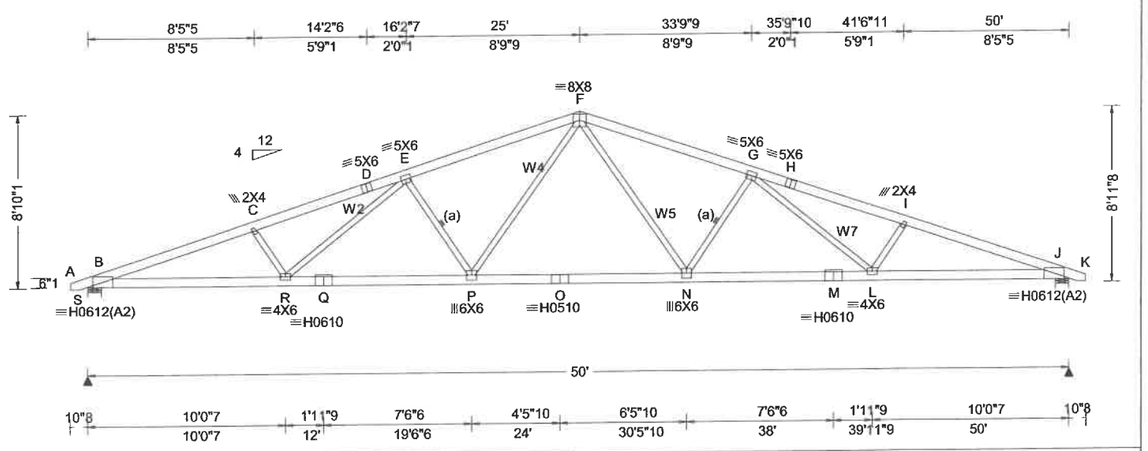
Key to Terms (continued):
Rw = maximum downward design Reaction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the identified location (Loc).
TCDL = Top Chord standard design Dead Load in pounds per square foot.
TCLL = Top Chord standard design Live Load in pounds per square foot.
U = maximum Upward design reaction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the indicated location (Loc).
VERT(CL) = maximum Vertical panel point deflection in inches due to Live Load and Creep Component of Dead Load in inches.
VERT(CTL) = maximum Vertical panel point deflection ratios due to Live Load and Creep Component of Dead Load, and maximum long term Vertical panel point deflection in inches due to Total load, including creep adjustment.
VERT(LL) = maximum Vertical panel point deflection in inches due to Live Load.
VERT(TL) = maximum Vertical panel point long term deflection in inches due to Total load, including creep adjustment.
W = Width of non-hanger bearing, in inches.

Refer to ASCE-7 for Wind and Seismic abbreviations.
Uppercase Acronyms not explained above are as defined in TPI 1.

References:

1. AWC: American Wood Council; 222 Catoctin Circle SE, Suite 201; Leesburg, VA 20175; www.awc.org.
2. ICC: International Code Council; www.iccsafe.org.
3. Alpine, a division of ITW Building Components Group Inc.: 155 Harlem Ave, North Building, 4th Floor, Glenview, IL 60025; www.alpineitw.com.
4. TPI: Truss Plate Institute, 2670 Crain Highway, Suite 203, Waldorf, MD 20601; www.tpinst.org.
5. SBCA: Wood Truss Council of America, 6300 Enterprise Lane, Madison, WI 53719; www. sbcacomponents.com

SEQN: 164997 COMN FROM:	Ply: 1 Qty: 28	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Com/50/412-cat2-2021	Cust: R 6697 JRef:1Y2566970001 T258 DrwNo: 218.24.0617.58577 / FK 08/05/2024



Loading Criteria (psf)

TCLL:	30.00
TCDL:	5.00
BCLL:	0.00
BCDL:	5.00
Des Ld:	40.00
NCBCLL:	10.00
Soffit:	2.00

Load Duration: 1.15
Spacing: 48.0 "

Wind Criteria
Wind Std: ASCE 7-16
Speed: 115 mph
Enclosure: Closed
Risk Category: II
EXP: C Kzt: NA
Mean Height: 28.00 ft
TCDL: 3.0 psf
BCDL: 3.0 psf
MWFRS Parallel Dist: 0 to h/2
C&C Dist a: 5.00 ft
Loc. from endwall: Any
GCpi: 0.18
Wind Duration: 1.60

Snow Criteria (Pg,Pf in PSF)
Pg: 30.0 Ct: 1.2 CAT: II
Pf: 25.2 Ce: 1.0
Lu: - Cs: 0.94
Snow Duration: 1.15

Building Code:
IBC 2021
TPI Std: 2014
Rep Fac: No
FT/RT/PT:2(2)/2(2)/2(0)
Plate Type(s):
HS, WAVE

Defl/CSI Criteria

PP Deflection in	loc	L/defl	L/#
VERT(LL):	0.864 P	690	240
VERT(CL):	1.020 P	584	240
HORZ(LL):	0.266 J	-	-
HORZ(TL):	0.313 J	-	-

Creep Factor: 2.0
Max TC CSI: 0.875
Max BC CSI: 0.996
Max Web CSI: 0.829

VIEW Ver: 24.01.00A.0411.17

▲Maximum Reactions (lbs)

	Gravity			Non-Gravity		
Loc	R+	/ R-	/ Rh	/ Rw	/ U	/ RL
S	4158	/-	/-	/1085	/1040	/258
J	4158	/-	/-	/1085	/1040	/-

Wind reactions based on MWFRS
S Brg Wid = 8.2 Min Req = 4.2 (Truss)
J Brg Wid = 8.2 Min Req = 4.2 (Truss)
Bearings S & J are a rigid surface.
Members not listed have forces less than 375#

Maximum Top Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - C	4233	-10464	F - G	3362	-7761
C - D	4126	-9938	G - H	4134	-9678
D - E	4134	-9678	H - I	4126	-9938
E - F	3361	-7761	I - J	4233	-10464

Maximum Bot Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - R	9782	-3837	O - N	6030	-2118
R - Q	8138	-3056	N - M	8138	-3057
Q - P	8138	-3056	M - L	8138	-3057
P - O	6030	-2118	L - J	9782	-3840

Maximum Web Forces Per Ply (lbs)

Webs	Tens.	Comp.	Webs	Tens.	Comp.
C - R	619	-989	F - N	2099	-850
R - E	1526	-626	N - G	979	-1804
E - P	979	-1804	G - L	1526	-626
P - F	2099	-850	L - I	619	-989

Lumber

Top chord: 2x6 SP 2400f-2.0E;
Bot chord: 2x6 SP SS Dense;
Webs: 2x4 SPF Stud; W2,W7 2x4 SPF #1/#2; W4, W5 2x4 SPF 2100f-1.8E;

Bracing

(a) Continuous lateral restraint, equally spaced on member.

Purlins

In lieu of structural panels or rigid ceiling use purlins to laterally brace chords as follows:

Chord	Spacing(in oc)	Start(ft)	End(ft)
TC	24	-0.88	25.00
TC	24	25.00	50.88
BC	64	0.15	49.85

Apply purlins to any chords above or below fillers at 24" OC unless shown otherwise above.

Loading

Bottom chord checked for 10.00 psf non-concurrent live load.

Truss designed for unbalanced snow loads.
Slope reduction based on Unobstructed Slippery Surface.

Wind

Wind loads based on MWFRS with additional C&C member design.

Wind loading based on both gable and hip roof types.

Bottom chord bracing may be spaced on 120" centers when truss is used in post-frame construction.

Additional Notes

WARNING: Furnish a copy of this DWG to the installation contractor. Special care must be taken during handling, shipping and installation of trusses. See "WARNING" note below.

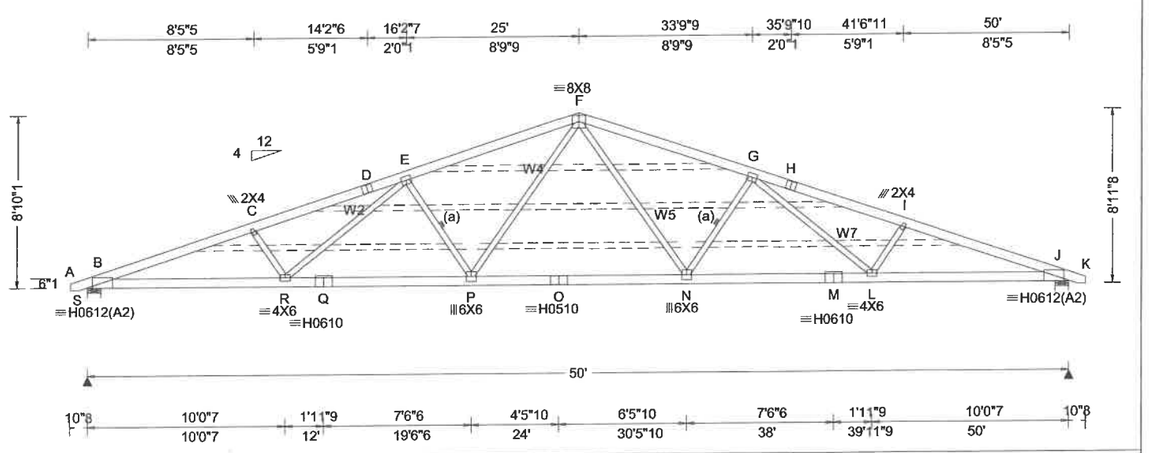
STATE OF NEW JERSEY
FRED KAMPMANN
No.
24GE06100200
LICENSED PROFESSIONAL ENGINEER

08/05/2024 NJ COA #24GA28127800

WARNING READ AND FOLLOW ALL NOTES ON THIS DRAWING!
IMPORTANT FURNISH THIS DRAWING TO ALL CONTRACTORS INCLUDING THE INSTALLERS
Trusses require extreme care in fabricating, handling, shipping, installing and bracing. Refer to and follow the latest edition of BCSI (Building Component Safety Information, by TPI and SBCA) for safety practices prior to performing these functions. Installers shall provide temporary bracing per BCSI. Unless noted otherwise, top chord shall have properly attached structural sheathing and bottom chord shall have a properly attached rigid ceiling. Locations shown for permanent lateral restraint of webs shall have continuous lateral restraint (CLR), installed with diagonal bracing installed on the CLR per BCSI sections B3, B7, or B10, as applicable. Apply plates to each face of truss and position as shown above and on the Joint Details, unless noted otherwise. Refer to drawings 160A-Z for standard plate positions. Refer to job's General Notes page for additional information.
Alpine, a division of ITW Building Components Group Inc. shall not be responsible for any deviation from this drawing, any failure to build the truss in conformance with ANSI/TPI 1, or for handling, shipping, installation and bracing of trusses. A seal on this drawing or cover page listing this drawing, indicates acceptance of professional engineering responsibility solely for the design shown. The suitability and use of this drawing for any structure is the responsibility of the Building Designer per ANSI/TPI 1 Sec.2.
For more information see these web sites: Alpine: alpineitw.com; TPI: tpinst.org; SBCA: sbcacomponents.com; ICC: iccsafe.org; AWC: awc.org

ALPINE AN ITW COMPANY
155 Harlem Ave
North Building, 4th Floor
Glenview, IL 60025

SEQN: 165001 GABL FROM: Page 1 of 2	Ply: 1 Qty: 2	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Sgab/50/412-cat2-2021	Cust: R 6697 JRef: 1Y2566970001 T259 DrwNo: 218.24.0618.10053 / FK 08/05/2024



Loading Criteria (psf)
TCLL: 30.00
TCDL: 5.00
BCLL: 0.00
BCDL: 5.00
Des Ld: 40.00
NCBCLL: 10.00
Soffit: 2.00
Load Duration: 1.15
Spacing: 48.0 "

Wind Criteria
Wind Std: ASCE 7-16
Speed: 115 mph
Enclosure: Closed
Risk Category: II
EXP: C Kzt: NA
Mean Height: 28.00 ft
TCDL: 3.0 psf
BCDL: 3.0 psf
MWFRS Parallel Dist: 0 to h/2
C&C Dist a: 5.00 ft
Loc. from endwall: Any
GCpi: 0.18
Wind Duration: 1.60

Snow Criteria (Pg,Pf in PSF)
Pg: 30.0 Ct: 1.2 CAT: II
Pf: 25.2 Ce: 1.0
Lu: - Cs: 0.94
Snow Duration: 1.15

Building Code:
IBC 2021
TPI Std: 2014
Rep Fac: No
FT/RT/PT:2(2)/2(2)/2(0)
Plate Type(s):
HS, WAVE

Defl/CSI Criteria

PP Deflection in	loc	L/defl	L/#
VERT(LL): 0.762	P	782	240
VERT(CL): 1.020	P	584	240
HORZ(LL): 0.234	J	-	-
HORZ(TL): 0.313	J	-	-

Creep Factor: 2.0
Max TC CSI: 0.875
Max BC CSI: 0.996
Max Web CSI: 0.829

VIEW Ver: 24.01.00A.0411.17

▲ Maximum Reactions (lbs)

Loc	Gravity R+	/ R-	/ Rh	Non-Gravity / Rw	/ U	/ RL
S	4158	/-	/-	/1085	/1040	/258
J	4158	/-	/-	/1085	/1040	/-

Wind reactions based on MWFRS
S Brg Wid = 8.2 Min Req = 4.2 (Truss)
J Brg Wid = 8.2 Min Req = 4.2 (Truss)
Bearings S & J are a rigid surface.
Members not listed have forces less than 375#

Maximum Top Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - C	4233	-10464	F - G	3362	-7761
C - D	4126	-9938	G - H	4134	-9678
D - E	4134	-9678	H - I	4126	-9938
E - F	3361	-7761	I - J	4233	-10464

Maximum Bot Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - R	9782	-3837	O - N	6030	-2118
R - Q	8138	-3056	N - M	8138	-3057
Q - P	8138	-3056	M - L	8138	-3057
P - O	6030	-2118	L - J	9782	-3840

Maximum Web Forces Per Ply (lbs)

Webs	Tens.	Comp.	Webs	Tens.	Comp.
C - R	619	-989	F - N	2099	-850
R - E	1526	-626	N - G	979	-1804
E - P	979	-1804	G - L	1526	-626
P - F	2099	-850	L - I	619	-989

Lumber

Top chord: 2x6 SP 2400f-2.0E;
Bot chord: 2x6 SP SS Dense;
Webs: 2x4 SPF Stud; W2,W7 2x4 SPF #1/#2; W4, W5 2x4 SPF 2100f-1.8E;

Bracing

(a) Continuous lateral restraint, equally spaced on member.

Plating Notes

All plates are 5X6 except as noted.

Purlins

In lieu of structural panels or rigid ceiling use purlins to laterally brace chords as follows:

Chord	Spacing(in oc)	Start(ft)	End(ft)
TC	24	-0.88	25.00
TC	24	25.00	50.88
BC	64	0.15	49.85

Apply purlins to any chords above or below fillers at 24" OC unless shown otherwise above.

Loading

Bottom chord checked for 10.00 psf non-concurrent live load.

Truss designed for unbalanced snow loads.
Slope reduction based on Unobstructed Slippery Surface.

Bottom chord bracing may be spaced on 120" centers when truss is used in post-frame construction.

Wind

Wind loads based on MWFRS with additional C&C member design.

Wind loading based on both gable and hip roof types.

Gable Studs

Dashed pieces are not analyzed and are optional; and may be attached at each end to adjacent pieces and members with connector plates, staples, nails, or other fasteners.

STATE OF NEW JERSEY
FRED KAMPMANN
No.
24GE06100200
LICENSED
PROFESSIONAL ENGINEER

NJ COA #24GA28127800
08/05/2024

****WARNING**** READ AND FOLLOW ALL NOTES ON THIS DRAWING!
****IMPORTANT**** FURNISH THIS DRAWING TO ALL CONTRACTORS INCLUDING THE INSTALLERS

Trusses require extreme care in fabricating, handling, shipping, installing and bracing. Refer to and follow the latest edition of BCSI (Building Component Safety Information, by TPI and SBCA) for safety practices prior to performing these functions. Installers shall provide temporary bracing per BCSI. Unless noted otherwise, top chord shall have properly attached structural sheathing and bottom chord shall have a properly attached rigid ceiling. Locations shown for permanent lateral restraint of webs shall have continuous lateral restraint (CLR), installed with diagonal bracing installed on the CLR per BCSI sections B3, B7, or B10, as applicable. Apply plates to each face of truss and position as shown above and on the Joint Details, unless noted otherwise. Refer to drawings 160A-Z for standard plate positions. Refer to job's General Notes page for additional information.

Alpine, a division of ITW Building Components Group Inc. shall not be responsible for any deviation from this drawing, any failure to build the truss in conformance with ANSI/TPI 1, or for handling, shipping, installation and bracing of trusses. A seal on this drawing or cover page listing this drawing, indicates acceptance of professional engineering responsibility solely for the design shown. The suitability and use of this drawing for any structure is the responsibility of the Building Designer per ANSI/TPI 1 Sec.2.

For more information see these web sites: Alpine: alpineitw.com; TPI: tpinst.org; SBCA: sbcacomponents.com; ICC: iccsafe.org; AWC: awc.org

ALPINE
AN ITW COMPANY
155 Harlem Ave
North Building, 4th Floor
Glenview, IL 60025

SEQN: 165001 GABL FROM: Page 2 of 2	Ply: 1 Qty: 2	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Sgab/50/412-cat2-2021	Cust: R 6697 JRef: 1Y2566970001 T259 DrwNo: 218.24.0618.10053 / FK 08/05/2024

Additional Notes

Truss has been designed for vertical in-plane loads only. Any lateral/horizontal wind loads shall be transferred into the roof and ceiling diaphragms. Connection and design of these systems is the responsibility of the Building Designer in accordance with ANSI/TPI 1.

WARNING: Furnish a copy of this DWG to the installation contractor. Special care must be taken during handling, shipping and installation of trusses. See "WARNING" note below.

STATE OF NEW JERSEY
FRED KAMPMANN
No.
24GE06100200
LICENSED PROFESSIONAL ENGINEER

08/05/2024 NJ COA #24GA28127800

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****IMPORTANT**** FURNISH THIS DRAWING TO ALL CONTRACTORS INCLUDING THE INSTALLERS

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For more information see these web sites: Alpine: alpineitw.com; TPI: tpinst.org; SBCA: sbcacomponents.com; ICC: iccsafe.org; AWC: awc.org

ALPINE
AN ITW COMPANY

155 Harlem Ave
North Building, 4th Floor
Glenview, IL 60025

BUILDING CODE SUMMARY:

1. PROJECT: NEW STORAGE GARAGE FOR SMS RAIL SERVICE
2. LOCATION: 650 ALLOWAY-WOODSTOWN RD
   WOODSTOWN, NJ 08098
3. THE PROJECT IS AN ENGINEERED DESIGN IN ACCORDANCE WITH 2021 IBC NJ STATE BUILDING CODE
4. THIS SUBMISSION IS FOR STRUCTURAL PLANS ONLY
5. PROPOSED USE: STORAGE GARAGE
6. CODES USED: 2021 IBC NEW JERSEY BUILDING CODE
   ACI 318
   ASCE-7
   ANSI STANDARDS
   NATIONAL DESIGN SPECIFICATION FOR WOOD CONSTRUCTION
7. CONSTRUCTION TYPE: VB
8. SPRINKLERS: NO
9. STANDPIPES: NO
10. FIRE DISTRICT: NO
11. FLOOD HAZARD AREA: NO
12. BUILDING HEIGHT: 24' (EAVE) NUMBER OF STORIES = 1 STORY
13. GROSS BUILDING AREA: 5000 S.F.
14. PRIMARY OCCUPANCY: STORAGE S-1 MODERATE HAZARD STORAGE
15. SECONDARY OCCUPANCY: NONE
16. SPECIAL USES: NONE
17. SPECIAL PROVISIONS: NONE
18. MIXED OCCUPANCY: NONE
19. INCIDENTAL USE SEPARATION: NONE
20. ALLOWABLE HEIGHT: 1 STORY
21. ALLOWABLE AREA: 9,000 SQUARE FEET
22. FRONTAGE AREA INCREASES: NOT CONSIDERED
23. SPRINKLER INCREASE: NOT APPLICABLE
24. FIRE PROTECTION REQUIREMENTS: NONE, FIRE AREA IS LESS THAN 12,000 S.F.
25. LIFE SAFETY SYSTEM REQUIREMENTS:
26. EMERGENCY LIGHTING: YES
27. EXIT SIGNS: YES
28. FIRE ALARM: NO
29. SMOKE DETECTION SYSTEMS: NO
30. PANIC HARDWARE: YES

EXIT REQUIREMENTS:

31. NUMBER AND ARRANGEMENT OF EXITS,
32. MINIMUM: 1
33. NUMBER OF EXITS PROVIDED: 3
34. WORST CASE TRAVEL DISTANCE: 70'
35. ALLOWABLE TRAVEL DISTANCE: 200'
36. ACTUAL DISTANCE BETWEEN EXIT DOORS: 56'
37. REQUIRED DISTANCE BETWEEN EXIT DOORS: 56'
38. CORRIDOR DEAD ENDS: NONE
39. EGRESS WIDTH PER OCCUPANT:
    REQUIRED AISLE WIDTH FOR LESS THAN 50 OCCUPANTS IS 36"
    REQUIRED CLEAR OPENING WIDTH OF DOORWAYS IS 32"
    ACTUAL WIDTH: 36" DOOR, 32" CLEAR OPENING (1 Leaf)
40. CALCULATED OCCUPANT LOADS:
    MAXIMUM 10 OCCUPANTS FOR THE BUILDING

BUILDING SUPPLIER

Lancaster Pole Buildings, Inc.
138 Rancks Church Rd
New Holland, PA 17557
P# (717) 572-2266 F# (717) 354-7653
www.lancasterpolebuildings.com

ACCESSIBILITY:

1. DOORWAYS AT GRADE ARE ACCESSIBLE

STRUCTURAL DESIGN CRITERIA:

1. IMPORTANCE FACTORS:
   CATEGORY I BUILDING
2. LIVE LOADS:
   FLOOR: 250 PSF (slab on grade)
   GROUND SNOW LOAD: 20 PSF
3. WIND LOAD: BASIC WIND SPEED 105 MPH (ASCE 7-16)
   EXPOSURE CATEGORY B
3. SEISMIC DESIGN
   ARCHITECTURAL AND MECHANICAL COMPONENTS ARE ANCHORED
   LATERAL DESIGN CONTROL: WIND
4. THIS STRUCTURE IS DESIGNED USING THE ALLOWABLE STRESS DESIGN METHOD AND APPLICABLE LOAD COMBINATIONS

NJ32140
James A. Koppenhaver, P.E
555 Van Reed Road, Wyomissing, PA 19610
(484) 794-9949 koppenhaverpe@gmail.com

WOOD TRUSSES: TOP CHORD LIVE 30 PSF
TOP CHORD DEAD 5 PSF
BOTTOM CHORD LIVE 0 PSF
BOTTOM CHORD DEAD 5 PSF

TRUSSES ARE TO BE DESIGNED AND FABRICATED IN ACCORDANCE WITH THE STANDARDS OF THE NATIONAL FOREST PRODUCTS ASSOCIATION AND THE TRUSS PLATE INSTITUTE'S "DESIGN SPECIFICATIONS FOR LIGHT METAL PLATE CONNECTED WOOD TRUSSES"
TRUSS WEB CONFIGURATION, PLATE SIZES, CHORD SIZES, AND LATERAL BRACING SHALL BE DESIGNED BY A NJ LICENSED PROFESSIONAL ENGINEER.
TRUSSES SHALL BE DESIGNED FOR THE LOADING, SPACING, AND GEOMETRY SHOWN ON THE PLAN.
INSTALL BRACING IN ACCORDANCE WITH THE MANUFACTURER'S DESIGN.

FOOTINGS:
FOOTINGS SHALL BE EXCAVATED TO VIRGIN SUBGRADE WITH A TYPICAL WORST-CASE CLASS OF MATERIAL AT SUBGRADE BEING SANDY GRAVEL, CLASSIFICATION GW
SOIL BEARING CAPACITY. ≈ 3,000 PSF

GENERAL NOTES:

1. STRUCTURAL COMPONENTS SUCH AS POSTS, BEAMS, TRUSSES, OR FASTENERS AND ATTACHMENT BRACKETS SHALL NOT BE MODIFIED, NOTCHED, OR CUT IN ANY MATTER WITHOUT REVIEW AND APPROVAL OF THE BUILDING DESIGN PROFESSIONAL.
2. DO NOT USE THE ATTIC ROOF TRUSSES FOR STORING MATERIAL
3. CONCENTRATED LOADS SHALL NOT BE ATTACHED TO THE ROOF TRUSSES WITHOUT PRIOR REVIEW AND WRITTEN APPROVAL OF THE BUILDING DESIGN PROFESSIONAL.

RIGID DIAPHRAGM DESIGN FOR WALLS:

1. ATTACHMENT OF METAL WALL PANELS TO THE SUBSTRAIGHT IS WITH #9 X 1-1/2" METAL TO WOOD SHARP POINT SCREWS WITH SEALING WASHERS. CARE SHALL BE TAKEN TO PROPERLY SET THE SCREW FASTENER FOR A WEATHERTIGHT FIT AND NOT TO OVERDRIVE THE FASTENER AND STRIP THE THREAD OUT IN THE SUBSTRAIGHT.
2. FASTENER SPACING @ 9"
3. FASTENERS ARE PLACED IN THE BOTTOM FLAT ADJACENT TO EACH RIB AND AT EAVES, LAPS, AND RIDGES, THE FASTENERS ARE PLACED ON BOTH SIDES OF EACH RIB

LUMBER:

1. ALL LUMBER SHALL COMPLY WITH THE REQUIREMENTS OF THE AMERICAN SOCIETY OF TIMBER CONSTRUCTION AND THE NATIONAL FOREST PRODUCTS ASSOCIATION'S "NATIONAL DESIGN SPECIFICATION FOR WOOD CONSTRUCTION".
2. ALL LUMBER SHALL BE #2 OR BETTER FOR LOAD SUPPORTING IDENTIFIED BY THE GRADE MARKS AND COMPLYING WITH DOC PS 20.
3. ALL LUMBER EXPOSED TO GROUND CONTACT OR INSECT INFESTATION SHALL BE TREATED ACCORDING TO THE AMERICAN WOOD PRESERVERS' ASSOCIATION STANDARDS, .60 ACQ MIN



NEW STORAGE GARAGE FOR SMS RAIL SERVICE
650 ALLOWAY-WOODSTOWN RD
WOODSTOWN, NJ 08098

Lancaster Pole Buildings

Construction Maestro® Estimating Software Pole Barns, Garages & Decks

FOR:
Sms Rail Service
650 Alloway-Woodstown Rd
Woodstown, NJ 08098
215-431-9225

CONTACT:
Jason Sensenig
Lancaster Pole Buildings
138 Ranck Church Rd.
New Holland, PA. 17557
717-572-2266

CONSTRUCTION: Post Frame
DIMENSIONS: 50' X 100' X 24'

SPECIFICATIONS FOR 50' X 100' X 24' POST FRAME PACKAGE:

- **MATERIAL PACKAGE**
  - Pre-Engineered Wood Trusses (4/12 Pitch, 4' O/C)
  - 6 x 5.25 Glulam 4 Ply Eave Posts (8' O/C)
  - 6 x 5.25 Glulam 4 Ply Gable Posts (8' O/C)
  - 2 x 8 Treated Skirt Boards (1 Row)
  - 2 x 4 Wall Girts (24" O/C) and Roof Purlins (24" O/C)
  - 2 x 12 MSR Double Top Girt Truss Carriers
  - Lt. Stone 28 Gauge Steel Siding Over Housewrap
  - 42' High Brown Steel Wainscot on All Four Sides
  - Barn Red 26 Gauge Steel Roof
  - 10" x 24" Concrete Footers - 15" Concrete Collars, 3500 psi

- **DOORS & WINDOWS**
  - Three 14 X 16 Insulated Overhead Doors - Chocolate, lift Kit
  - Three 3' Flush Outswing Entry Doors w/ Panic Hardware & Closers, Brown

- **12" OVERHANG ON ALL SIDES W/ VENTED SOFFIT**
- **2 ROWS OF SNOW GUARDS ON BOTH EAVES**
- **5K SEAMLESS GUTTERS W/ 3 DOWNSPOUTS PER EAVE - BROWN**

- **4 - GIRDER TRUSSES FOR STEAMER EXHAUST VENTS-LOCATION TBD**
- **2X6 TREATED INSULATION CAP BETWEEN POSTS AT SKIRT BOARD**

- **R-19 BATT INSULATION IN THE SIDEWALLS W/ WHITE LINER PANEL**
- **R-30 BLOWN INSULATION IN THE CEILING W/ WHITE LINER PANEL**

- **FASTENERS**
- **DETAILED BUILDING PLANS**

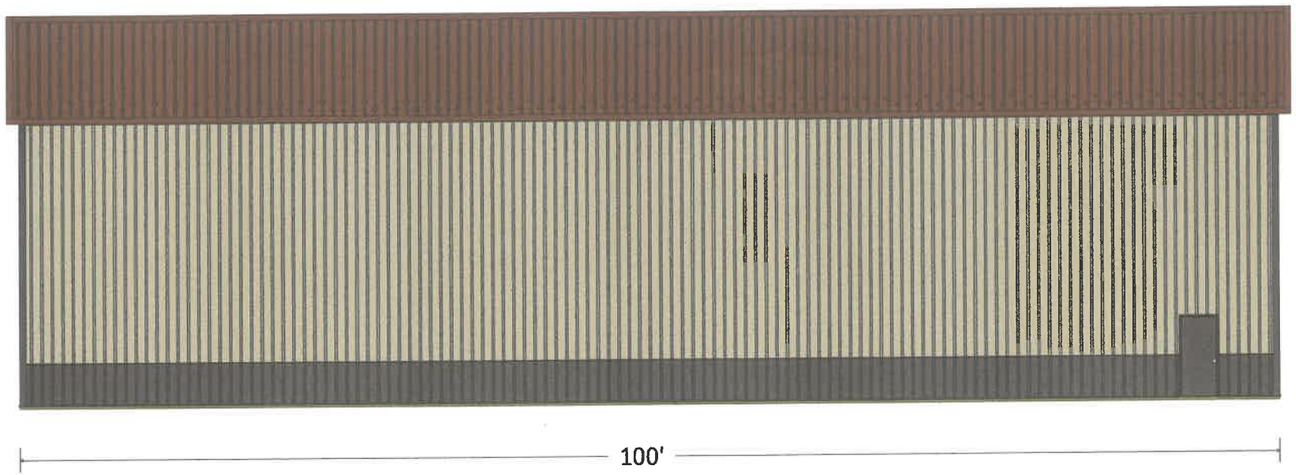




DATE: 8/12/2024

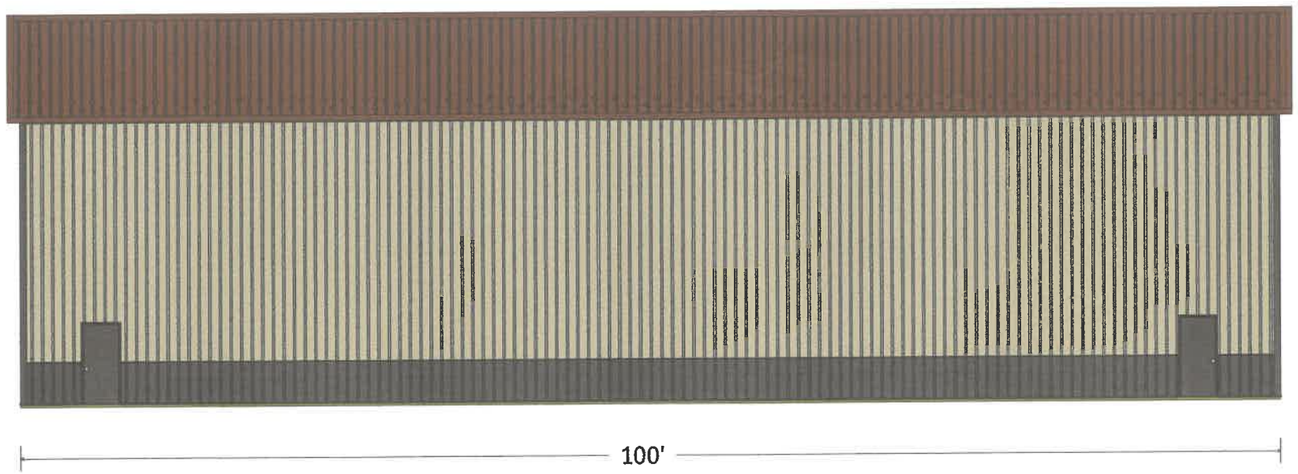
NUMBER: 4402

EAVE SIDE 2 ELEVATION



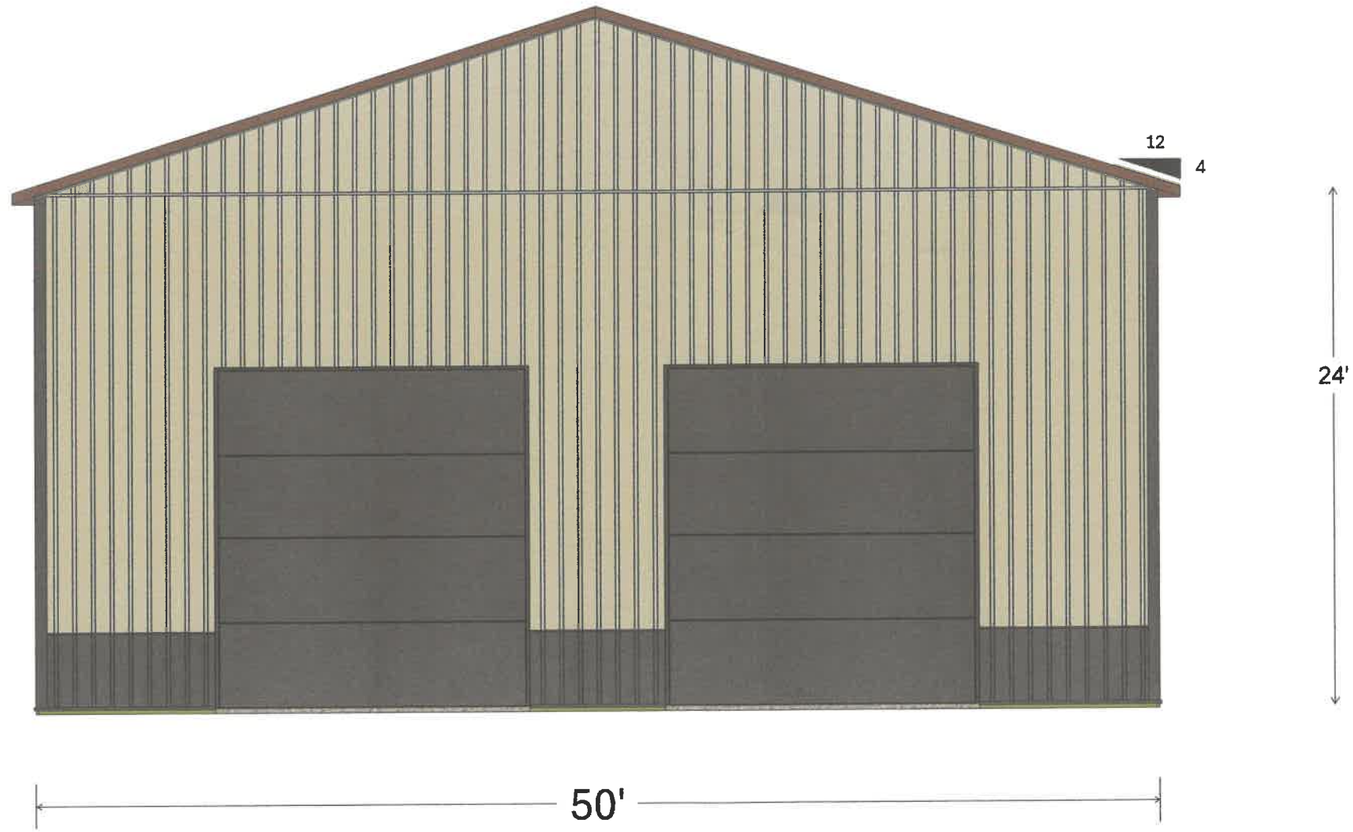
Jims Rail Service
Estimate Number: 4402
8/13/2024

EAVE SIDE 1 ELEVATION



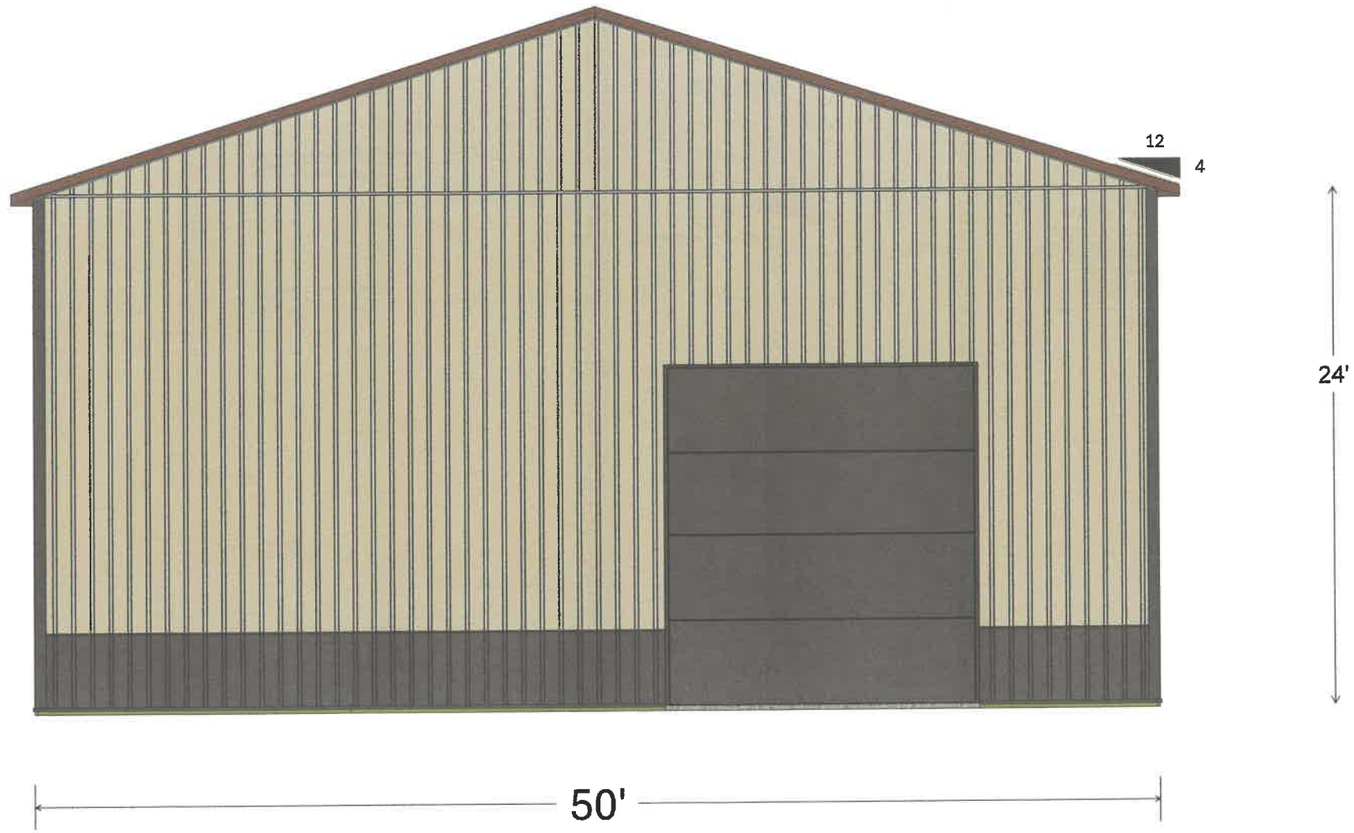
Sms Rail Service
Estimate Number: 4402
8/12/2024

GABLE SIDE 2 ELEVATION



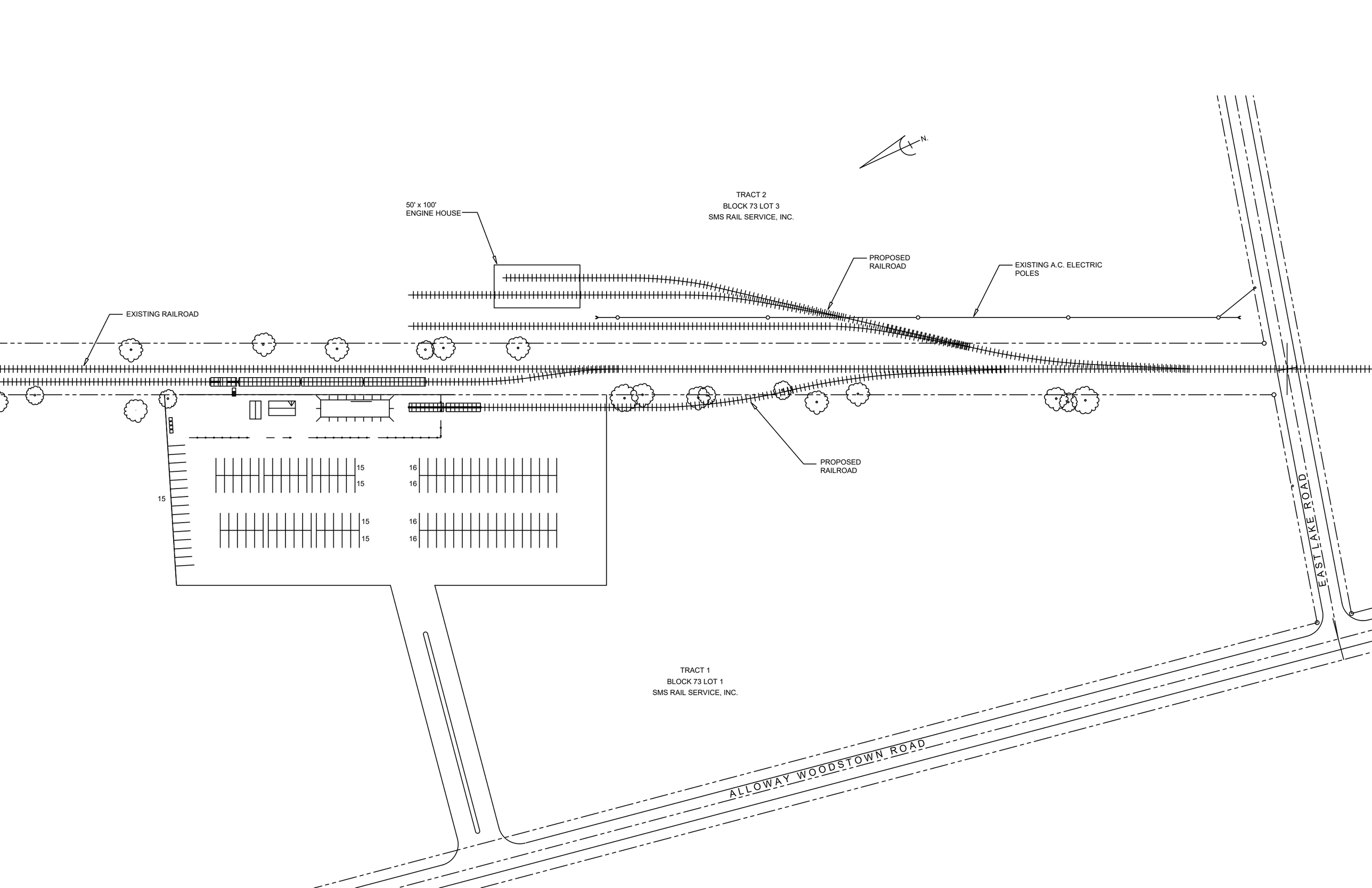
Sms Rail Service
Estimate Number: 4402
8/12/2024

GABLE SIDE 1 ELEVATION



Sms Rail Service
Estimate Number: 4402
8/12/2024

Sma Rail Service
Estimate Number: 4402
5/12/2024


N.
50' x 100'
ENGINE HOUSE
TRACT 2
BLOCK 73 LOT 3
SMS RAIL SERVICE, INC.
PROPOSED
RAILROAD
EXISTING A.C. ELECTRIC
POLES
EXISTING RAILROAD
15
15
16
15
15
16
15
15
16
15
15
16
PROPOSED
RAILROAD
EAST LAKE ROAD
TRACT 1
BLOCK 73 LOT 1
SMS RAIL SERVICE, INC.
ALLOWAY WOODSTOWN ROAD

PHILIP D. MURPHY
Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 802
TRENTON, NJ 08625-0802

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

BULLETIN 01-1

Issued: May 2001
Subject: Railroad Facilities and Superfund Sites
Reference: N.J.A.C. 5:23-2.2

Questions have arisen about whether a local enforcing agency has the authority to issue permits and conduct inspections on certain federally regulated facilities and construction projects.

Direction has now been given and a general standard has been set. The local enforcing agency is not able to require permits, fees, and Certificates of Occupancy (COs). However, the local enforcing agency is able to request construction documents and perform inspections. When undertaking an activity that would require a permit when undertaken by another entity, upon request, the railroad must provide construction documents and must also provide access for inspections. The project undertaken by the railroad must also comply with all the technical requirements of the Uniform Construction Code (UCC) and construction documents must be prepared by a design professional licensed in the State of New Jersey. However, administrative delays are not permitted. Therefore, the railroad is allowed to proceed with the construction while the construction documents are being reviewed. Violations, if found, must be handled with notices and penalties; stop-work orders are not permitted.

This direction is a result of a New Jersey Supreme Court decision, *The Village of Ridgefield Park v. New York Susquehanna & Western Railway Corp.*, which reconciled the overlapping jurisdictions of the UCC and the federal railroad. The case decided the extent to which the Federal Interstate Commerce Commission Termination Act preempted State regulation of railroads. In this case, the railroad had begun construction of a train maintenance facility in the Village of Ridgefield Park without seeking zoning or construction permits, or otherwise informing the municipality of its activities.

The Court determined that Ridgefield Park Village is able to enforce fire, health, plumbing, safety, and construction regulations that are applicable to the facility. The Court decided that the railroad may not deny the municipality access for reasonable inspection of the facility. The Court also determined that Ridgefield Park is not permitted to require the railroad to obtain construction permits. On the other hand, the railroad must notify the municipality when it is undertaking an activity that would require another entity to obtain a permit. To a large extent, the Court's decision rested upon the Federal Surface Transportation Board's determination of the limited, preemptive effect of the federal law.

These same rules apply at Superfund sites. There are no permits, fees, or COs issued. The jurisdiction having authority is able to request construction documents and perform inspections. When undertaking an activity that would require another entity to obtain a permit, the entity undertaking the cleanup must provide construction documents and access for inspections upon request. All construction documents must be prepared by a design professional licensed in the State of New Jersey. The Superfund mitigation is allowed to proceed while the construction documents are being reviewed; administrative delays are not allowed. Violations, if found, must be handled with notices and penalties; stop-work orders are not permitted.

For facilities that are federally owned or leased, the Federal Government performs the inspections. See Bulletin No. 93-2, entitled "Leased Structures," as to when a permit is required.

RECEIPT

I, the undersigned individual, hereby certify that a manilla envelope addressed to Mr. Richard Saunders, Construction Official for Pilesgrove Township, was hand delivered to me at the Pilesgrove Municipal Building, 1180 Route 40 East, Pilesgrove, NJ 08098 on the date and time noted below.

Signature: Donna J. Caulfield

Name: Donna J. Caulfield

Date: 10-24-24

Time: 10:53 A.M

EXHIBIT WW

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

November 8, 2024

Via Hand Delivery

Mr. Richard Saunders, Construction Official
Pilesgrove Township
1180 Route 40 East
Pilesgrove, NJ 08098

RE: SMS Rail Service, Inc.
Inspection of Block 73, Lot 3

Dear Mr. Saunders:

It is my understanding from the notice "Building - Not Approved" that was posted yesterday, October 7, 2024, on the locomotive engine house and servicing facility at Block 73, Lot 3, that you stopped by the property yesterday to perform an inspection. Unfortunately, you did not call us when you were there or let us know you were planning to inspect on the 7th, and no one from SMS was on site at the time you stopped by.

The posted notice referenced, "need plans and truss drawing on site for inspection." In case the Township has lost the plans and truss drawings that SMS previously provided to the Township Solicitor on September 5, 2024, and the additional set provided to you by hand delivery, the Township Construction Assistant (via email), the Township Solicitor (again, via email), and the Township Clerk (via email) by SMS on October 24, 2024, and are, in fact, attached to pleadings filed by Pilesgrove Township in two separate legal actions Pilesgrove Township has filed against SMS (in one case, against me, personally), enclosed is an additional copy of the plans, drawings, and map. If need be, we can provide yet another hard copy at the time of your inspection.

It is, frankly, quite strange that you made this notation on the notice you posted yesterday, as you told our crew upon inspecting on the 10th of October, that they should keep working, and said that if the building was constructed according to the plans that you acknowledged you had received, that there would be no problems upon a further inspection. Furthermore, the plans have been provided to numerous Township representatives at various times over the last two months, including pre-dating commencement of construction.

We will be at the property at 10:30 a.m. on Monday, November 11, 2024, specifically for the purpose of allowing the Township to inspect. If this time is not convenient to you, please email me or call today to arrange a mutually convenient time to inspect the buildings. I am reachable by mobile phone or text until noon today at 610-739-3729. This afternoon you may call my colleague,

George Sutch, at 267-565-0005. You may also reach me on my mobile phone starting again on Monday morning.

Thank you.

Kind regards,

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

JRP/
Enclosures
c.c. via email only; with enclosures:
Jenna Seeney, Technical Assistant, Pilesgrove Township Construction Office – (conast@pilesgrovenj.org)
Ekaterine Eleftheriou, Solicitor, Pilesgrove Township – (kat@thevigilantelawfirm.com)
Melissa Fackler, Clerk, Pilesgrove Township – (clerk@pilesgrovenj.org)
Jeffrey Ridgway, Administrator, Salem County – (Jeffrey.Ridgway@salemcountynj.gov)



08/05/2024

NJ COA #24GA28127800

Alpine, an ITW company
155 Harlem Ave.
North Building, 4th Floor
Glenview, IL 60025
Phone: (800)326-4102 (314)344-9121
alpineitw.com

Site Information:	Page 1:
Customer: D. L. Truss	*Job Number:* 34023
Job Description: /34023 /Lanc Pole/SMS Rail Servic	
Address: 650 Alloway Woodstown Rd, Woodstown , NJ 08098	

Job Engineering Criteria:	
Design Code: IBC 2021	*IntelliVIEW Version:* 24.01.00A *JRef #:* 1Y2566970001
Wind Standard: ASCE 7-16 *Wind Speed (mph):* 115 *Building Type:* Closed	*Design Loading (psf):* 40.00

This package contains general notes pages, 2 truss drawing(s) and 0 detail(s).

Item	Drawing Number	Truss
1	218.24.0617.58577	30Ags/Com/50/412-cat2-2021

Item	Drawing Number	Truss
2	218.24.0618.10053	30Ags/Sgab/50/412-cat2-2021

General Notes

Truss Design Engineer Scope of Work, Design Assumptions and Design Responsibilities:
The design responsibilities assumed in the preparation of these design drawings are those specified in ANSI/TPI 1, Chapter 2; and the National Design Standard for Metal Plate Connected Wood Truss Construction, by the Truss Plate Institute. The truss component designs conform to the applicable provisions of ANSI/TPI 1 and NDS, the National Design Specification for Wood Construction by AWC. The truss component designs are based on the specified loading and dimension information furnished by others to the Truss Design Engineer. The Truss Design Engineer has no duty to independently verify the accuracy or completeness of the information provided by others and may rely on that information without liability. The responsibility for verification of that information remains with others neither employed nor controlled by the Truss Design Engineer. The Truss Design Engineer's seal and signature on the attached drawings, or cover page listing these drawings, indicates acceptance of professional engineering responsibility solely for the truss component designs and not for the technical information furnished by others which technical information and consequences thereof remain their sole responsibility.

The suitability and use of these drawings for any particular structure is the responsibility of the Building Designer in accordance with ANSI/TPI 1 Chapter 2. The Building Designer is responsible for determining that the dimensions and loads for each truss component match those required by the plans and by the actual use of the individual component, and for ascertaining that the loads shown on the drawings meet or exceed applicable building code requirements and any additional factors required in the particular application. Truss components using metal connector plates with integral teeth shall not be placed in environments that will cause the moisture content of the wood in which plates are embedded to exceed 19% and/or cause corrosion of connector plates and other metal fasteners.

The Truss Design Engineer shall not be responsible for items beyond the specific scope of the agreed contracted work set forth herein, including but not limited to: verifying the dimensions of the truss component, calculation of any of the truss component design loads, inspection of the truss components before or after installation, the design of temporary or permanent bracing and their attachment required in the roof and/or floor systems, the design of diaphragms or shear walls, the design of load transfer connections to and from diaphragms and shear walls, the design of load transfer to the foundation, the design of connections for truss components to their bearing supports, the design of the bearing supports, installation of the truss components, observation of the truss component installation process, review of truss assembly procedures, sequencing of the truss component installation, construction means and methods, site and/or worker safety in the installation of the truss components and/or its connections.

This document may be a high-quality facsimile of the original engineering document which is a digitally signed electronic file with third party authentication. A wet or embossed seal copy of this engineering document is available upon request.

Temporary Lateral Restraint and Bracing:
Temporary lateral restraint and diagonal bracing shall be installed according to the provisions of BCSI chapters B1, B2, B7 and/or B10 (Building Component Safety Information, by TPI and SBCA), or as specified by the Building Designer or other Registered Design Professional. The required locations for lateral restraint and/or bracing depicted on these drawings are only for the permanent lateral support of the truss members to reduce buckling lengths, and do not apply to and may not be relied upon for the temporary stability of the truss components during their installation.

Permanent Lateral Restraint and Bracing:
The required locations for lateral restraint or bracing depicted on these drawings are for the permanent lateral support of the truss members to reduce buckling lengths. Permanent lateral support shall be installed according to the provisions of BCSI chapters B3, B7 and/or B10, or as specified by the Building Designer or other Registered Design Professional. These drawings do not depict or specify installation/erection bracing, wind bracing, portal bracing or similar building stability bracing which are parts of the overall building design to be specified, designed, and detailed by the Building Designer.

Connector Plate Information:
Alpine connector plates are made of ASTM A653 or ASTM A1063 galvanized steel with the following designations, gauges and grades: W=Wave, 20ga, grade 40; H=High Strength, 20ga, grade 60; S=Super Strength, 18ga, grade 60. Information on model code compliance is contained in the ICC Evaluation Service report ESR-1118, available on-line at www.icc-es.org.

Bearing Information:
The bearing area factor, Cb, is considered for the allowable capacity of solid sawn wood bearings supporting trusses that are located a minimum of 3" from the end of the lumber piece.

General Notes (continued)

Coated Lumber:
Coated lumber must be properly re-dried and maintained below 19% or less moisture level through all stages of construction and usage. Coated lumber has no adjustments to lumber properties. Coated lumber may be more brittle than uncoated lumber. Special handling care must be taken to prevent breakage during all handling activities. Refer to manufacturer literature, specifications, and code evaluation reports for restrictions, details, and requirements.

Fire Retardant Treated Lumber:
Fire retardant treated lumber must be properly re-dried and maintained below 19% or less moisture level through all stages of construction and usage. Fire retardant treated lumber may be more brittle than untreated lumber. Special handling care must be taken to prevent breakage during all handling activities.

Key to Terms:
Information provided on drawings reflects a summary of the pertinent information required for the truss design. Detailed information on load cases, reactions, member lengths, forces and members requiring permanent lateral support may be found in calculation sheets available upon written request.

BCDL = Bottom Chord standard design Dead Load in pounds per square foot.
BCLL = Bottom Chord standard design Live Load in pounds per square foot.
C = Coated lumber.
C-AT = AtTEK coated lumber.
C-FX = FX Lumber Guard coated lumber.
C -TE = TechWood 4400 coated lumber.
CL = Certified lumber.
Des Ld = total of TCLL, TCDL, BCLL and BCDL Design Load in pounds per square foot.
FRT = Fire Retardant Treated lumber.
FRT-BF = Boraflame Fire Retardant Treated lumber
FRT-DB = D-Blaze Fire Retardant Treated lumber.
FRT-DC = Dricon Fire Retardant Treated lumber.
FRT-FP = FirePRO Fire Retardant Treated lumber.
FRT-FL = FlamePRO Fire Retardant Treated lumber.
FRT-FT = FlameTech Fire Retardant Treated lumber.
FRT-ON = OnWood Fire Retardant Treated lumber.
FRT-PG = PYRO-GUARD Fire Retardant Treated lumber.
FRT-PR = ProWood Fire Retardant Treated lumber.
g = green lumber.
HORZ(LL) = maximum Horizontal panel point deflection due to Live Load, in inches.
HORZ(TL) = maximum Horizontal panel point long term deflection in inches, due to Total Load, including creep adjustment.
HPL = additional Horizontal Load added to a truss Piece in pounds per linear foot or pounds.
Ic = Incised lumber.
FJ = Finger Jointed lumber.
L/# = user specified divisor for limiting span/deflection ratio for evaluation of actual L/defl value.
L/defl = ratio of Length between bearings, in inches, divided by the vertical Deflection due to creep, in inches, at the referenced panel point. Reported as 999 if greater than or equal to 999.
Loc = Location, starting location of left end of bearing or panel point (joint) location of deflection.
Max BC CSI = Maximum bending and axial Combined Stress Index for Bottom Chords for all load cases.
Max TC CSI = Maximum bending and axial Combined Stress Index for Top Chords for all load cases.
Max Web CSI= Maximum bending and axial Combined Stress Index for Webs for all load cases.
NCBCLL = Non-Concurrent Bottom Chord design Live Load in pounds per square foot.
PL = additional Load applied at a user specified angle on a truss Piece in pounds per linear foot or pounds.
PLB = additional vertical load added to a Bottom chord Piece of a truss in pounds per linear foot or pounds
PLT = additional vertical load added to a Top chord Piece of a truss in pounds per linear foot or pounds.
PP = Panel Point.
R = maximum downward design Reaction, in pounds, from all specified gravity load cases, at the indicated location (Loc).
-R = maximum upward design Reaction, in pounds, from all specified gravity load cases, at the identified location (Loc).
Rh = maximum horizontal design Reaction in either direction, in pounds, from all specified gravity load cases, at the indicated location (Loc).
RL = maximum horizontal design Reaction in either direction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the indicated location (Loc).

General Notes (continued)

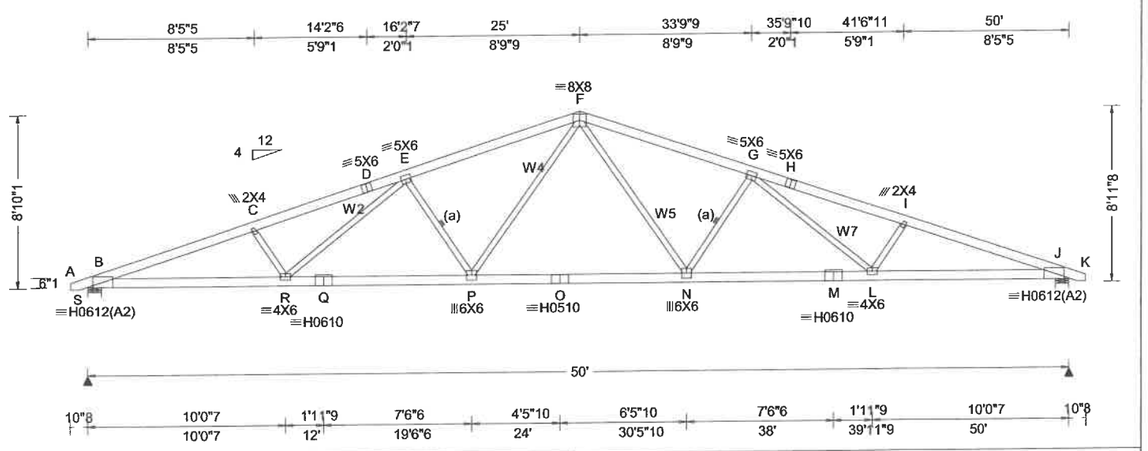
Key to Terms (continued):
Rw = maximum downward design Reaction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the identified location (Loc).
TCDL = Top Chord standard design Dead Load in pounds per square foot.
TCLL = Top Chord standard design Live Load in pounds per square foot.
U = maximum Upward design reaction, in pounds, from all specified non-gravity (wind or seismic) load cases, at the indicated location (Loc).
VERT(CL) = maximum Vertical panel point deflection in inches due to Live Load and Creep Component of Dead Load in inches.
VERT(CTL) = maximum Vertical panel point deflection ratios due to Live Load and Creep Component of Dead Load, and maximum long term Vertical panel point deflection in inches due to Total load, including creep adjustment.
VERT(LL) = maximum Vertical panel point deflection in inches due to Live Load.
VERT(TL) = maximum Vertical panel point long term deflection in inches due to Total load, including creep adjustment.
W = Width of non-hanger bearing, in inches.

Refer to ASCE-7 for Wind and Seismic abbreviations.
Uppercase Acronyms not explained above are as defined in TPI 1.

References:

1. AWC: American Wood Council; 222 Catoctin Circle SE, Suite 201; Leesburg, VA 20175; www.awc.org.
2. ICC: International Code Council; www.iccsafe.org.
3. Alpine, a division of ITW Building Components Group Inc.: 155 Harlem Ave, North Building, 4th Floor, Glenview, IL 60025; www.alpineitw.com.
4. TPI: Truss Plate Institute, 2670 Crain Highway, Suite 203, Waldorf, MD 20601; www.tpinst.org.
5. SBCA: Wood Truss Council of America, 6300 Enterprise Lane, Madison, WI 53719; www. sbcacomponents.com

SEQN: 164997 COMN FROM:	Ply: 1 Qty: 28	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Com/50/412-cat2-2021	Cust: R 6697 JRef:1Y2566970001 T258 DrwNo: 218.24.0617.58577 / FK 08/05/2024



Loading Criteria (psf)

TCLL:	30.00
TCDL:	5.00
BCLL:	0.00
BCDL:	5.00
Des Ld:	40.00
NCBCLL:	10.00
Soffit:	2.00

Load Duration: 1.15
Spacing: 48.0 "

Wind Criteria
Wind Std: ASCE 7-16
Speed: 115 mph
Enclosure: Closed
Risk Category: II
EXP: C Kzt: NA
Mean Height: 28.00 ft
TCDL: 3.0 psf
BCDL: 3.0 psf
MWFRS Parallel Dist: 0 to h/2
C&C Dist a: 5.00 ft
Loc. from endwall: Any
GCpi: 0.18
Wind Duration: 1.60

Snow Criteria (Pg,Pf in PSF)
Pg: 30.0 Ct: 1.2 CAT: II
Pf: 25.2 Ce: 1.0
Lu: - Cs: 0.94
Snow Duration: 1.15

Building Code:
IBC 2021
TPI Std: 2014
Rep Fac: No
FT/RT/PT:2(2)/2(2)/2(0)
Plate Type(s):
HS, WAVE

Defl/CSI Criteria

PP Deflection in	loc	L/defl	L/#
VERT(LL):	0.864 P	690	240
VERT(CL):	1.020 P	584	240
HORZ(LL):	0.266 J	-	-
HORZ(TL):	0.313 J	-	-

Creep Factor: 2.0
Max TC CSI: 0.875
Max BC CSI: 0.996
Max Web CSI: 0.829

VIEW Ver: 24.01.00A.0411.17

▲Maximum Reactions (lbs)

	Gravity			Non-Gravity		
Loc	R+	/ R-	/ Rh	/ Rw	/ U	/ RL
S	4158	/-	/-	/1085	/1040	/258
J	4158	/-	/-	/1085	/1040	/-

Wind reactions based on MWFRS
S Brg Wid = 8.2 Min Req = 4.2 (Truss)
J Brg Wid = 8.2 Min Req = 4.2 (Truss)
Bearings S & J are a rigid surface.
Members not listed have forces less than 375#

Maximum Top Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - C	4233	-10464	F - G	3362	-7761
C - D	4126	-9938	G - H	4134	-9678
D - E	4134	-9678	H - I	4126	-9938
E - F	3361	-7761	I - J	4233	-10464

Maximum Bot Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
B - R	9782	-3837	O - N	6030	-2118
R - Q	8138	-3056	N - M	8138	-3057
Q - P	8138	-3056	M - L	8138	-3057
P - O	6030	-2118	L - J	9782	-3840

Maximum Web Forces Per Ply (lbs)

Webs	Tens.	Comp.	Webs	Tens.	Comp.
C - R	619	-989	F - N	2099	-850
R - E	1526	-626	N - G	979	-1804
E - P	979	-1804	G - L	1526	-626
P - F	2099	-850	L - I	619	-989

Lumber

Top chord: 2x6 SP 2400f-2.0E;
Bot chord: 2x6 SP SS Dense;
Webs: 2x4 SPF Stud; W2,W7 2x4 SPF #1/#2; W4, W5 2x4 SPF 2100f-1.8E;

Bracing

(a) Continuous lateral restraint, equally spaced on member.

Purlins

In lieu of structural panels or rigid ceiling use purlins to laterally brace chords as follows:

Chord	Spacing(in oc)	Start(ft)	End(ft)
TC	24	-0.88	25.00
TC	24	25.00	50.88
BC	64	0.15	49.85

Apply purlins to any chords above or below fillers at 24" OC unless shown otherwise above.

Loading

Bottom chord checked for 10.00 psf non-concurrent live load.

Truss designed for unbalanced snow loads.
Slope reduction based on Unobstructed Slippery Surface.

Wind

Wind loads based on MWFRS with additional C&C member design.

Wind loading based on both gable and hip roof types.

Bottom chord bracing may be spaced on 120" centers when truss is used in post-frame construction.

Additional Notes

WARNING: Furnish a copy of this DWG to the installation contractor. Special care must be taken during handling, shipping and installation of trusses. See "WARNING" note below.

STATE OF NEW JERSEY
FRED KAMPMANN
No.
24GE06100200
LICENSED PROFESSIONAL ENGINEER

08/05/2024 NJ COA #24GA28127800

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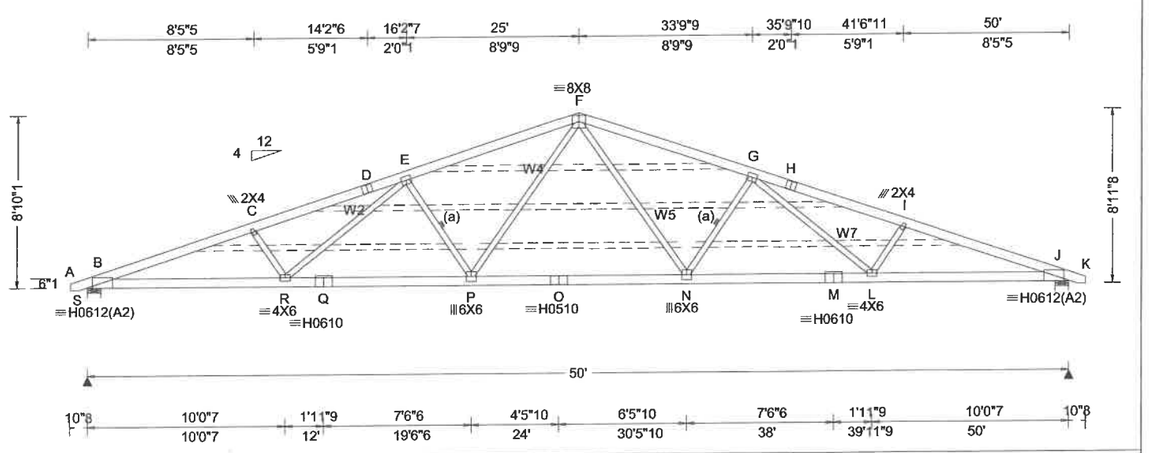
ALPINE AN ITW COMPANY
155 Harlem Ave
North Building, 4th Floor
Glenview, IL 60025

SEQN: 165001 GABL FROM: Page 1 of 2	Ply: 1 Qty: 2	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Sgab/50/412-cat2-2021	Cust: R 6697 JRef: 1Y2566970001 T259 DrwNo: 218.24.0618.10053 / FK 08/05/2024



Loading Criteria (psf)
TCLL: 30.00
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BCLL: 0.00
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Des Ld: 40.00
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Soffit: 2.00
Load Duration: 1.15
Spacing: 48.0 "

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Speed: 115 mph
Enclosure: Closed
Risk Category: II
EXP: C Kzt: NA
Mean Height: 28.00 ft
TCDL: 3.0 psf
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Loc. from endwall: Any
GCpi: 0.18
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Pg: 30.0 Ct: 1.2 CAT: II
Pf: 25.2 Ce: 1.0
Lu: - Cs: 0.94
Snow Duration: 1.15

Building Code:
IBC 2021
TPI Std: 2014
Rep Fac: No
FT/RT/PT:2(2)/2(2)/2(0)
Plate Type(s):
HS, WAVE

Defl/CSI Criteria

PP Deflection in	loc	L/defl	L/#
VERT(LL): 0.762	P	782	240
VERT(CL): 1.020	P	584	240
HORZ(LL): 0.234	J	-	-
HORZ(TL): 0.313	J	-	-

Creep Factor: 2.0
Max TC CSI: 0.875
Max BC CSI: 0.996
Max Web CSI: 0.829

VIEW Ver: 24.01.00A.0411.17

▲ Maximum Reactions (lbs)

Loc	Gravity R+	/ R-	/ Rh	Non-Gravity / Rw	/ U	/ RL
S	4158	/-	/-	/1085	/1040	/258
J	4158	/-	/-	/1085	/1040	/-

Wind reactions based on MWFRS
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Members not listed have forces less than 375#

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D - E	4134	-9678	H - I	4126	-9938
E - F	3361	-7761	I - J	4233	-10464

Maximum Bot Chord Forces Per Ply (lbs)

Chords	Tens.	Comp.	Chords	Tens.	Comp.
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Q - P	8138	-3056	M - L	8138	-3057
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E - P	979	-1804	G - L	1526	-626
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Top chord: 2x6 SP 2400f-2.0E;
Bot chord: 2x6 SP SS Dense;
Webs: 2x4 SPF Stud; W2,W7 2x4 SPF #1/#2; W4, W5 2x4 SPF 2100f-1.8E;

Bracing

(a) Continuous lateral restraint, equally spaced on member.

Plating Notes

All plates are 5X6 except as noted.

Purlins

In lieu of structural panels or rigid ceiling use purlins to laterally brace chords as follows:

Chord	Spacing(in oc)	Start(ft)	End(ft)
TC	24	-0.88	25.00
TC	24	25.00	50.88
BC	64	0.15	49.85

Apply purlins to any chords above or below fillers at 24" OC unless shown otherwise above.

Loading

Bottom chord checked for 10.00 psf non-concurrent live load.

Truss designed for unbalanced snow loads.
Slope reduction based on Unobstructed Slippery Surface.

Bottom chord bracing may be spaced on 120" centers when truss is used in post-frame construction.

Wind

Wind loads based on MWFRS with additional C&C member design.

Wind loading based on both gable and hip roof types.

Gable Studs

Dashed pieces are not analyzed and are optional; and may be attached at each end to adjacent pieces and members with connector plates, staples, nails, or other fasteners.

STATE OF NEW JERSEY
FRED KAMPMANN
No.
24GE06100200
LICENSED
PROFESSIONAL ENGINEER

NJ COA #24GA28127800
08/05/2024

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ALPINE
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155 Harlem Ave
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SEQN: 165001 GABL FROM: Page 2 of 2	Ply: 1 Qty: 2	**Job Number:** 34023 /34023 /Lanc Pole/SMS Rail Servic **Truss Label:** 30Ags/Sgab/50/412-cat2-2021	Cust: R 6697 JRef: 1Y2566970001 T259 DrwNo: 218.24.0618.10053 / FK 08/05/2024

Additional Notes

Truss has been designed for vertical in-plane loads only. Any lateral/horizontal wind loads shall be transferred into the roof and ceiling diaphragms. Connection and design of these systems is the responsibility of the Building Designer in accordance with ANSI/TPI 1.

WARNING: Furnish a copy of this DWG to the installation contractor. Special care must be taken during handling, shipping and installation of trusses. See "WARNING" note below.

STATE OF NEW JERSEY
FRED KAMPMANN
No.
24GE06100200
LICENSED PROFESSIONAL ENGINEER

08/05/2024 NJ COA #24GA28127800

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ALPINE
AN ITW COMPANY

155 Harlem Ave
North Building, 4th Floor
Glenview, IL 60025

BUILDING CODE SUMMARY:

1. PROJECT: NEW STORAGE GARAGE FOR SMS RAIL SERVICE
2. LOCATION: 650 ALLOWAY-WOODSTOWN RD
   WOODSTOWN, NJ 08098
3. THE PROJECT IS AN ENGINEERED DESIGN IN ACCORDANCE WITH 2021 IBC NJ STATE BUILDING CODE
4. THIS SUBMISSION IS FOR STRUCTURAL PLANS ONLY
5. PROPOSED USE: STORAGE GARAGE
6. CODES USED: 2021 IBC NEW JERSEY BUILDING CODE
   ACI 318
   ASCE-7
   ANSI STANDARDS
   NATIONAL DESIGN SPECIFICATION FOR WOOD CONSTRUCTION
7. CONSTRUCTION TYPE: VB
8. SPRINKLERS: NO
9. STANDPIPES: NO
10. FIRE DISTRICT: NO
11. FLOOD HAZARD AREA: NO
12. BUILDING HEIGHT: 24' (EAVE) NUMBER OF STORIES = 1 STORY
13. GROSS BUILDING AREA: 5000 S.F.
14. PRIMARY OCCUPANCY: STORAGE S-1 MODERATE HAZARD STORAGE
15. SECONDARY OCCUPANCY: NONE
16. SPECIAL USES: NONE
17. SPECIAL PROVISIONS: NONE
18. MIXED OCCUPANCY: NONE
19. INCIDENTAL USE SEPARATION: NONE
20. ALLOWABLE HEIGHT: 1 STORY
21. ALLOWABLE AREA: 9,000 SQUARE FEET
22. FRONTAGE AREA INCREASES: NOT CONSIDERED
23. SPRINKLER INCREASE: NOT APPLICABLE
24. FIRE PROTECTION REQUIREMENTS: NONE, FIRE AREA IS LESS THAN 12,000 S.F.
25. LIFE SAFETY SYSTEM REQUIREMENTS:
26. EMERGENCY LIGHTING: YES
27. EXIT SIGNS: YES
28. FIRE ALARM: NO
29. SMOKE DETECTION SYSTEMS: NO
30. PANIC HARDWARE: YES

EXIT REQUIREMENTS:

31. NUMBER AND ARRANGEMENT OF EXITS,
32. MINIMUM: 1
33. NUMBER OF EXITS PROVIDED: 3
34. WORST CASE TRAVEL DISTANCE: 70'
35. ALLOWABLE TRAVEL DISTANCE: 200'
36. ACTUAL DISTANCE BETWEEN EXIT DOORS: 56'
37. REQUIRED DISTANCE BETWEEN EXIT DOORS: 56'
38. CORRIDOR DEAD ENDS: NONE
39. EGRESS WIDTH PER OCCUPANT:
    REQUIRED AISLE WIDTH FOR LESS THAN 50 OCCUPANTS IS 36"
    REQUIRED CLEAR OPENING WIDTH OF DOORWAYS IS 32"
    ACTUAL WIDTH: 36" DOOR, 32" CLEAR OPENING (1 Leaf)
40. CALCULATED OCCUPANT LOADS:
    MAXIMUM 10 OCCUPANTS FOR THE BUILDING

ACCESSIBILITY:

1. DOORWAYS AT GRADE ARE ACCESSIBLE

STRUCTURAL DESIGN CRITERIA:

1. IMPORTANCE FACTORS:
   CATEGORY I BUILDING
2. LIVE LOADS:
   FLOOR: 250 PSF (slab on grade)
   GROUND SNOW LOAD: 20 PSF
3. WIND LOAD: BASIC WIND SPEED 105 MPH (ASCE 7-16)
   EXPOSURE CATEGORY B
3. SEISMIC DESIGN
   ARCHITECTURAL AND MECHANICAL COMPONENTS ARE ANCHORED
   LATERAL DESIGN CONTROL: WIND
4. THIS STRUCTURE IS DESIGNED USING THE ALLOWABLE STRESS DESIGN METHOD AND APPLICABLE LOAD COMBINATIONS

WOOD TRUSSES: TOP CHORD LIVE 30 PSF
TOP CHORD DEAD 5 PSF
BOTTOM CHORD LIVE 0 PSF
BOTTOM CHORD DEAD 5 PSF

TRUSSES ARE TO BE DESIGNED AND FABRICATED IN ACCORDANCE WITH THE STANDARDS OF THE NATIONAL FOREST PRODUCTS ASSOCIATION AND THE TRUSS PLATE INSTITUTE'S "DESIGN SPECIFICATIONS FOR LIGHT METAL PLATE CONNECTED WOOD TRUSSES"
TRUSS WEB CONFIGURATION, PLATE SIZES, CHORD SIZES, AND LATERAL BRACING SHALL BE DESIGNED BY A NJ LICENSED PROFESSIONAL ENGINEER.
TRUSSES SHALL BE DESIGNED FOR THE LOADING, SPACING, AND GEOMETRY SHOWN ON THE PLAN.
INSTALL BRACING IN ACCORDANCE WITH THE MANUFACTURER'S DESIGN.

FOOTINGS:
FOOTINGS SHALL BE EXCAVATED TO VIRGIN SUBGRADE WITH A TYPICAL WORST-CASE CLASS OF MATERIAL AT SUBGRADE BEING SANDY GRAVEL, CLASSIFICATION GW
SOIL BEARING CAPACITY. ≈ 3,000 PSF

GENERAL NOTES:

1. STRUCTURAL COMPONENTS SUCH AS POSTS, BEAMS, TRUSSES, OR FASTENERS AND ATTACHMENT BRACKETS SHALL NOT BE MODIFIED, NOTCHED, OR CUT IN ANY MATTER WITHOUT REVIEW AND APPROVAL OF THE BUILDING DESIGN PROFESSIONAL.
2. DO NOT USE THE ATTIC ROOF TRUSSES FOR STORING MATERIAL
3. CONCENTRATED LOADS SHALL NOT BE ATTACHED TO THE ROOF TRUSSES WITHOUT PRIOR REVIEW AND WRITTEN APPROVAL OF THE BUILDING DESIGN PROFESSIONAL.

RIGID DIAPHRAGM DESIGN FOR WALLS:

1. ATTACHMENT OF METAL WALL PANELS TO THE SUBSTRAIGHT IS WITH #9 X 1-1/2" METAL TO WOOD SHARP POINT SCREWS WITH SEALING WASHERS. CARE SHALL BE TAKEN TO PROPERLY SET THE SCREW FASTENER FOR A WEATHERTIGHT FIT AND NOT TO OVERDRIVE THE FASTENER AND STRIP THE THREAD OUT IN THE SUBSTRAIGHT.
2. FASTENER SPACING @ 9'
3. FASTENERS ARE PLACED IN THE BOTTOM FLAT ADJACENT TO EACH RIB AND AT EAVES, LAPS, AND RIDGES, THE FASTENERS ARE PLACED ON BOTH SIDES OF EACH RIB

LUMBER:

1. ALL LUMBER SHALL COMPLY WITH THE REQUIREMENTS OF THE AMERICAN SOCIETY OF TIMBER CONSTRUCTION AND THE NATIONAL FOREST PRODUCTS ASSOCIATION'S "NATIONAL DESIGN SPECIFICATION FOR WOOD CONSTRUCTION".
2. ALL LUMBER SHALL BE #2 OR BETTER FOR LOAD SUPPORTING IDENTIFIED BY THE GRADE MARKS AND COMPLYING WITH DOC PS 20.
3. ALL LUMBER EXPOSED TO GROUND CONTACT OR INSECT INFESTATION SHALL BE TREATED ACCORDING TO THE AMERICAN WOOD PRESERVERS' ASSOCIATION STANDARDS, .60 ACQ MIN

BUILDING SUPPLIER

Lancaster Pole Buildings, Inc.
138 Rancks Church Rd
New Holland, PA 17557
P# (717) 572-2266 F# (717) 354-7653
www.lancasterpolebuildings.com

NJ32140
James A. Koppenhaver, P.E
555 Van Reed Road, Wyomissing, PA 19610
(484) 794-9949 koppenhaverpe@gmail.com



NEW STORAGE GARAGE FOR SMS RAIL SERVICE
650 ALLOWAY-WOODSTOWN RD
WOODSTOWN, NJ 08098

Lancaster Pole Buildings

Construction Maestro® Estimating Software Pole Barns, Garages & Decks

FOR:
Sms Rail Service
650 Alloway-Woodstown Rd
Woodstown, NJ 08098
215-431-9225

CONTACT:
Jason Sensenig
Lancaster Pole Buildings
138 Ranck Church Rd.
New Holland, PA. 17557
717-572-2266

CONSTRUCTION: Post Frame
DIMENSIONS: 50' X 100' X 24'

SPECIFICATIONS FOR 50' X 100' X 24' POST FRAME PACKAGE:

- **MATERIAL PACKAGE**
  - Pre-Engineered Wood Trusses (4/12 Pitch, 4' O/C)
  - 6 x 5.25 Glulam 4 Ply Eave Posts (8' O/C)
  - 6 x 5.25 Glulam 4 Ply Gable Posts (8' O/C)
  - 2 x 8 Treated Skirt Boards (1 Row)
  - 2 x 4 Wall Girts (24" O/C) and Roof Purlins (24" O/C)
  - 2 x 12 MSR Double Top Girt Truss Carriers
  - Lt. Stone 28 Gauge Steel Siding Over Housewrap
  - 42' High Brown Steel Wainscot on All Four Sides
  - Barn Red 26 Gauge Steel Roof
  - 10" x 24" Concrete Footers - 15" Concrete Collars, 3500 psi

- **DOORS & WINDOWS**
  - Three 14 X 16 Insulated Overhead Doors - Chocolate, lift Kit
  - Three 3' Flush Outswing Entry Doors w/ Panic Hardware & Closers, Brown

- **12" OVERHANG ON ALL SIDES W/ VENTED SOFFIT**
- **2 ROWS OF SNOW GUARDS ON BOTH EAVES**
- **5K SEAMLESS GUTTERS W/ 3 DOWNSPOUTS PER EAVE - BROWN**

- **4 - GIRDER TRUSSES FOR STEAMER EXHAUST VENTS-LOCATION TBD**
- **2X6 TREATED INSULATION CAP BETWEEN POSTS AT SKIRT BOARD**

- **R-19 BATT INSULATION IN THE SIDEWALLS W/ WHITE LINER PANEL**
- **R-30 BLOWN INSULATION IN THE CEILING W/ WHITE LINER PANEL**

- **FASTENERS**
- **DETAILED BUILDING PLANS**

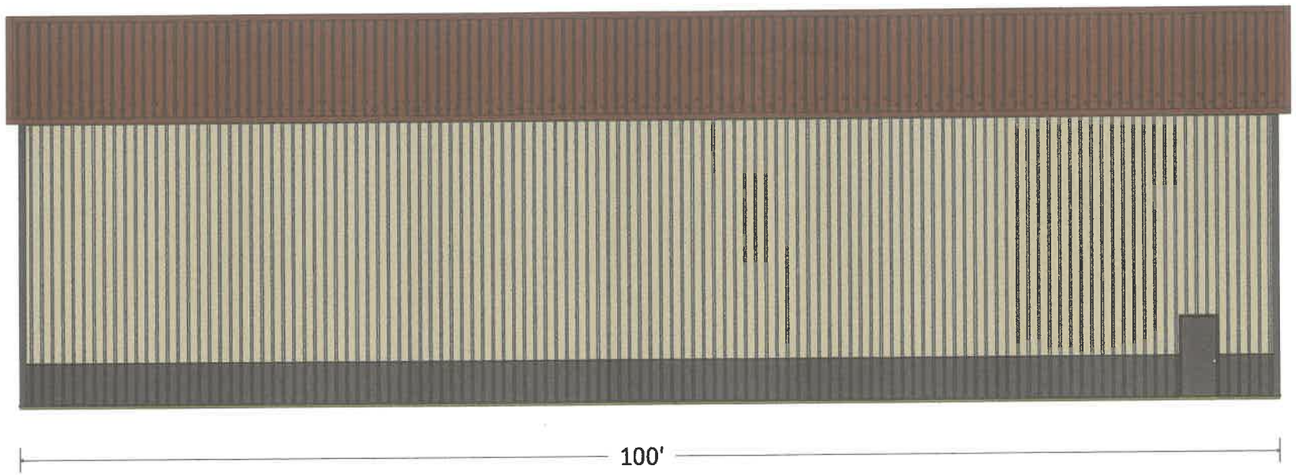




DATE: 8/12/2024

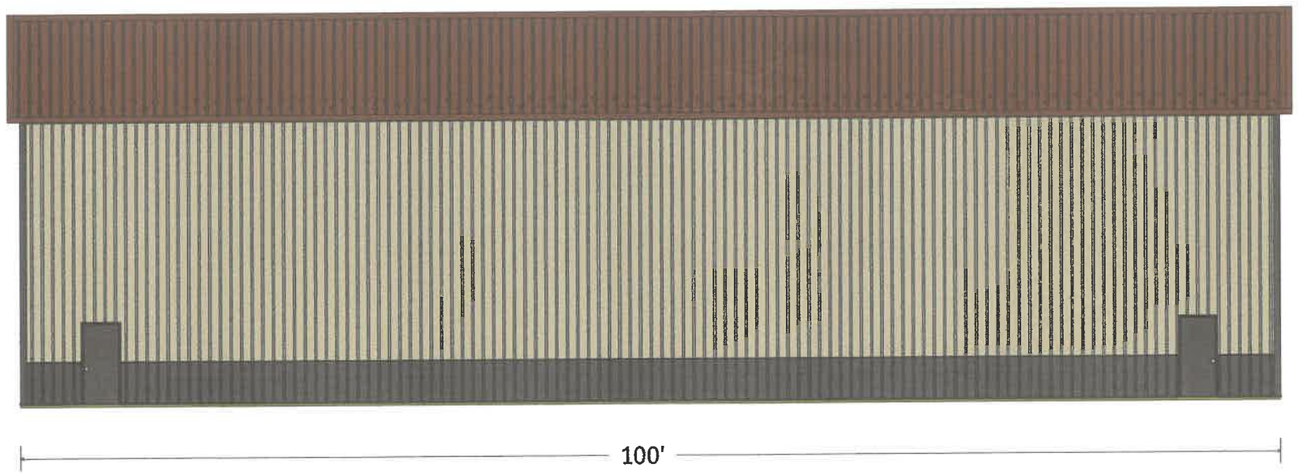
NUMBER: 4402

EAVE SIDE 2 ELEVATION



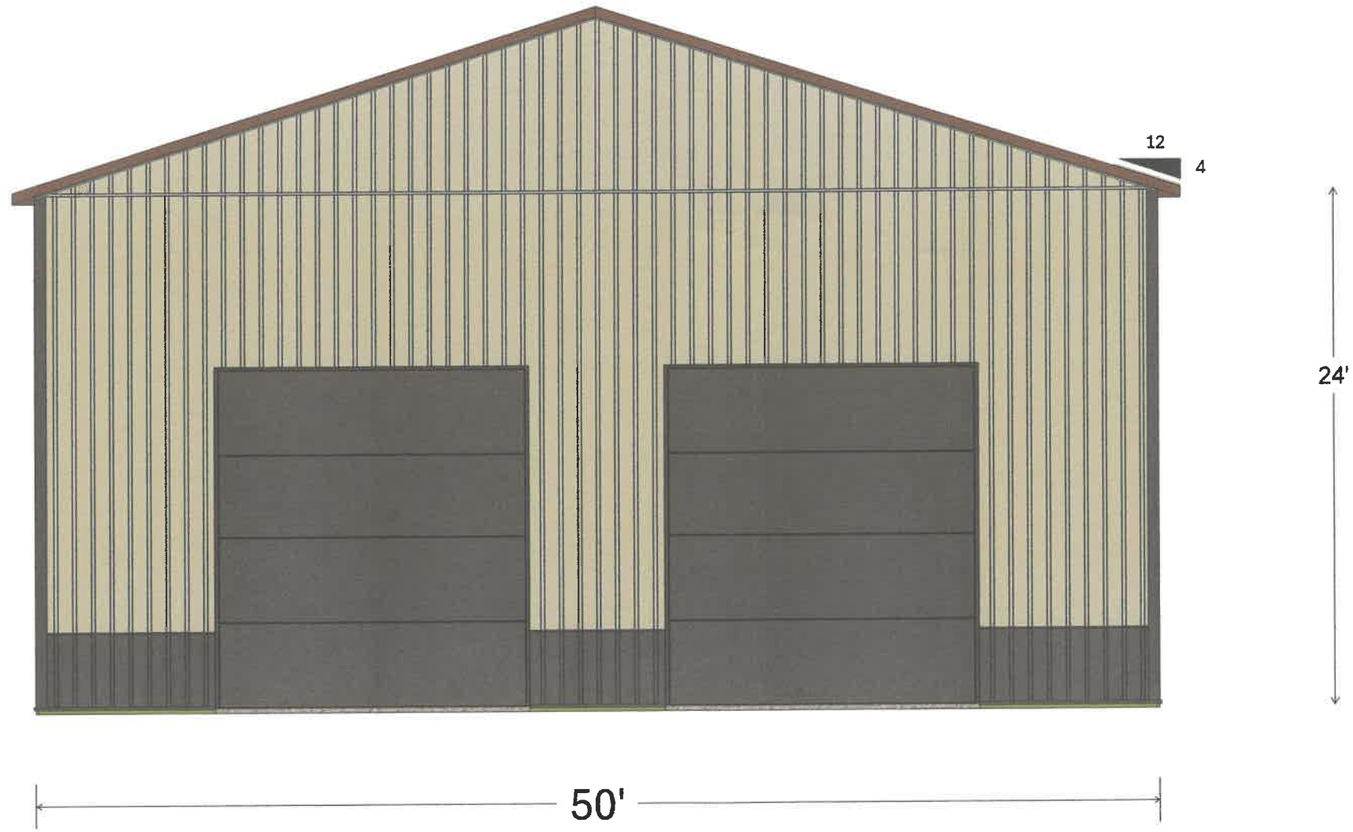
Jims Rail Service
Estimate Number: 4402
8/13/2024

EAVE SIDE 1 ELEVATION



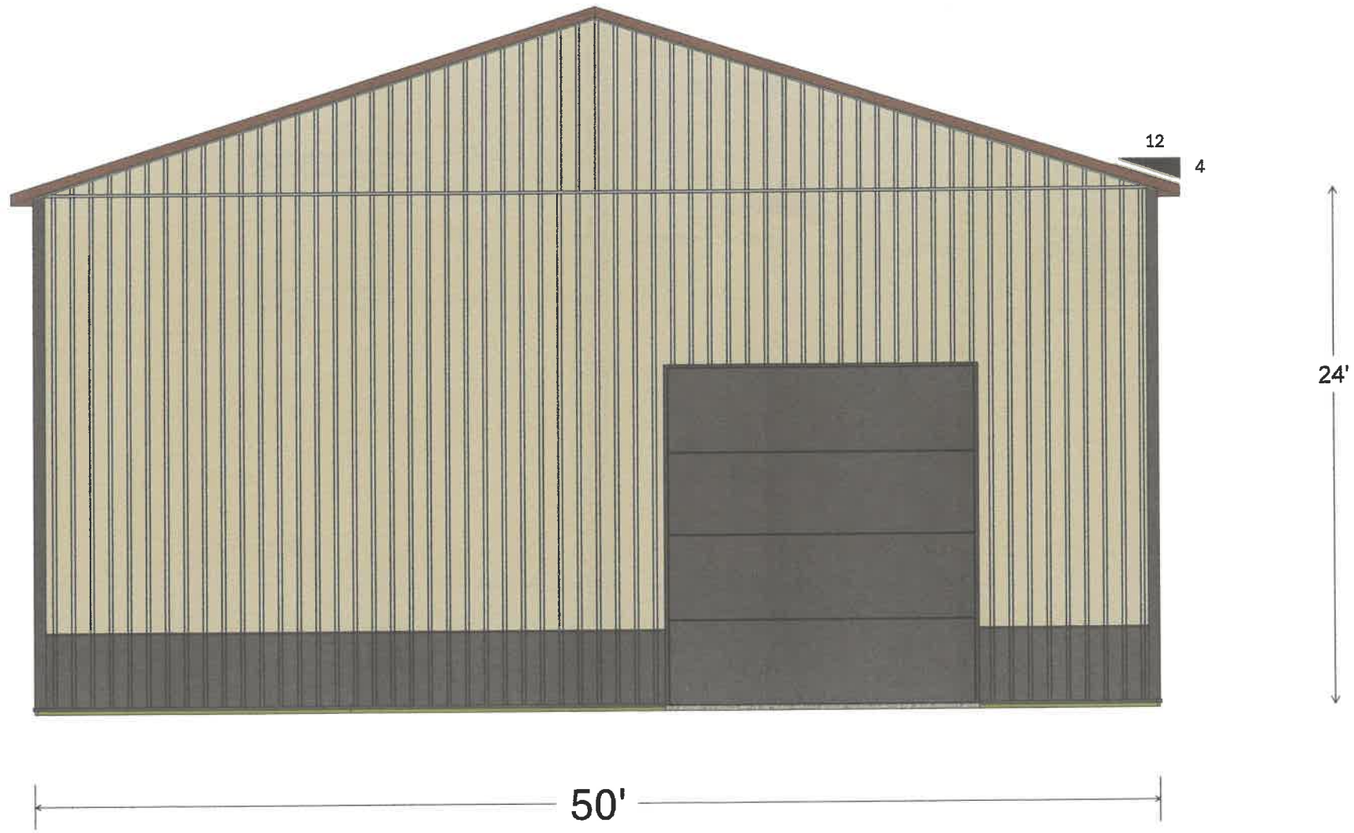
Sms Rail Service
Estimate Number: 4402
8/12/2024

GABLE SIDE 2 ELEVATION



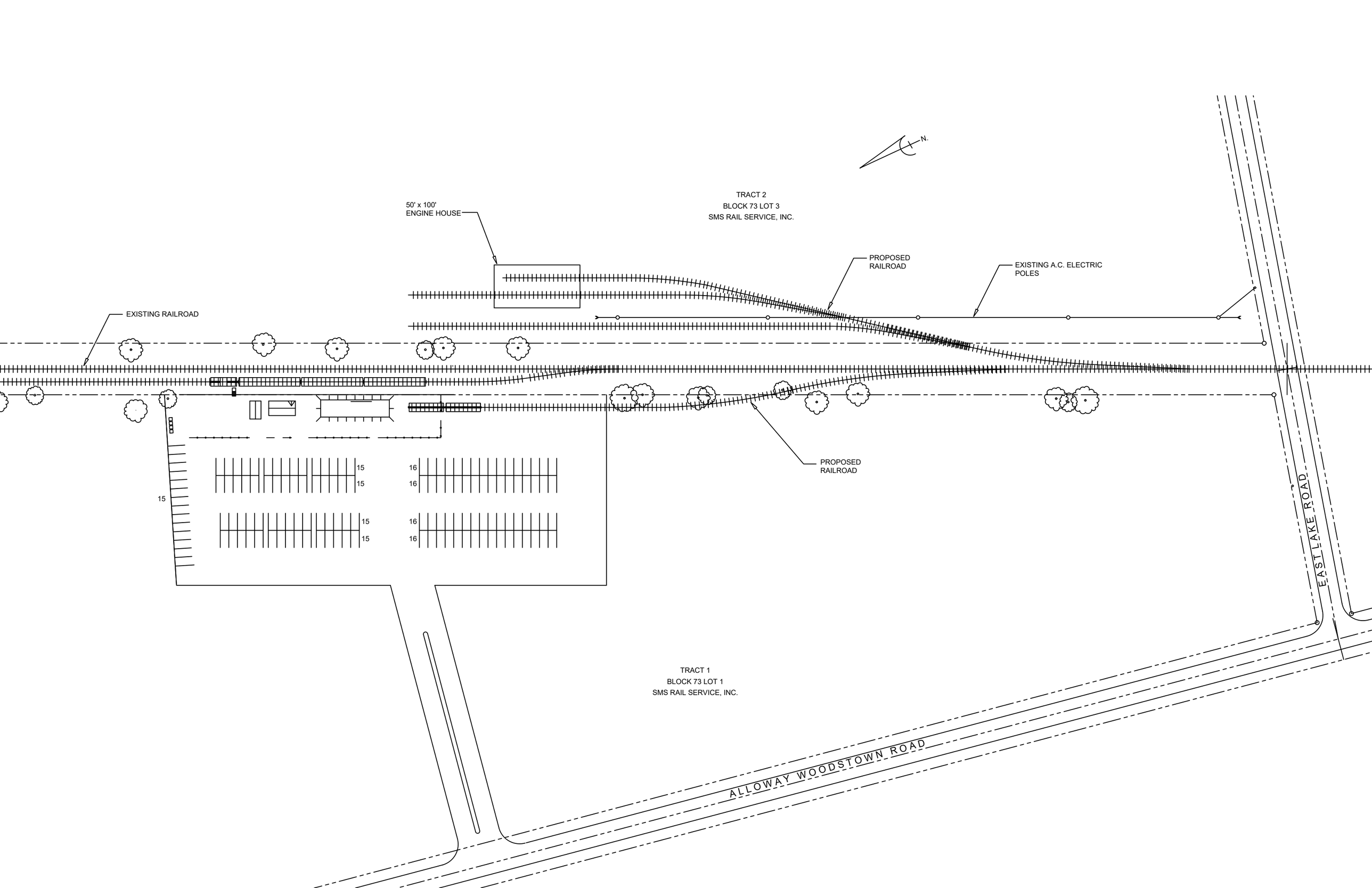
Sms Rail Service
Estimate Number: 4402
8/12/2024

GABLE SIDE 1 ELEVATION



Sms Rail Service
Estimate Number: 4402
8/12/2024

Sma Rail Service
Estimate Number: 4402
5/12/2024


N.
50' x 100'
ENGINE HOUSE
TRACT 2
BLOCK 73 LOT 3
SMS RAIL SERVICE, INC.
PROPOSED
RAILROAD
EXISTING A.C. ELECTRIC
POLES
EXISTING RAILROAD
15
15
16
15
15
16
15
15
16
15
15
16
PROPOSED
RAILROAD
EAST LAKE ROAD
TRACT 1
BLOCK 73 LOT 1
SMS RAIL SERVICE, INC.
ALLOWAY WOODSTOWN ROAD

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

November 13, 2024

Via Email & Hand Delivery

Melissa Fackler, Clerk
Pilesgrove Township
1180 Route 40 East
Pilesgrove, NJ 08098

RE: SMS Rail Service, Inc.
Inspection of Block 73, Lot 3

Dear Ms. Fackler:

Thank you for your email message to me yesterday in response to my November 8, 2024 letter to Mr. Saunders.

Regarding your message, please note that SMS has met and, in fact, exceeded its obligations to the Township under applicable law. SMS has notified the Township multiple times, proactively provided plans and drawings (multiple times), together with a construction timeline, and has not impeded the Township's right to inspect.

The Township has no right to issue or post stop work orders, as it has wrongly done, or require permits, which the Township also has wrongly required. SMS has made itself available for inspections, having contacted your Solicitor and Construction Office on multiple occasions.

The Township obviously has my letter to Mr. Saunders, dated November 8, 2024. Nevertheless, hand delivery of the hard copy of that letter was again attempted on Monday the 11th, as promised. But as you know, the Township office was closed, apparently in observance of Veterans Day.

SMS representatives were also at the property on Monday the 11th from 10:30 to 11:00 a.m. for the purpose of inspection, as stated in my letter to Mr. Saunders and confirmed in my second email to you and Township officials on Friday. Mr. Saunders did not come.

I trust that by now you have brought my November 8th letter to Mr. Saunders' attention directly. In any event, another attempt to hand deliver that letter to Mr. Saunders, along with a copy of this letter to you, is being made today. And I again request his return call.

As stated, SMS remains available for inspection of the engine house at a mutually convenient time. In light of my many attempts to accommodate the Township to allow it to inspect, I look forward to the courtesy of Mr. Saunders' return call or email. Again, I can be reached by cell at (610) 739-3729 and email at jpfeiffer@smsrail.com.

Thank you.

Kind regards,

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

JRP/

cc: Jenna Seeney, Technical Assistant, Pilesgrove Township Construction Office – (conast@pilesgrovenj.org) (via email only)
Ekaterine Eleftheriou, Solicitor, Pilesgrove Township – (kat@thevigilantelawfirm.com) (via email only)
Richard Saunders, Construction Official, Pilesgrove Township – (via hand delivery only)
Jeffrey Ridgway, Administrator, Salem County – (Jeffrey.Ridgway@salemcountynj.gov) (via email only)

RECEIPT

I, the undersigned individual, hereby certify that the following were hand delivered to me at the Pilesgrove Municipal Building, 1180 Route 40 East, Pilesgrove, NJ 08098 on the date and time noted below:

1. One manilla envelope addressed to Richard Saunders, Construction Official, Pilesgrove Township;
2. One number 10 business envelope addressed to Melissa Fackler, Clerk, Pilesgrove Township; and
3. One number 10 business envelope addressed to Richard Saunders, Construction Official, Pilesgrove Township.

Signature: Donna J. Caulfield

Name: Donna Caulfield

Date: 11/13/2024

Time: 3:03pm

From: Jim Pfeiffer
To: Construction Assistant
Subject: Inspection of Block 73, Lot 3
Date: Wednesday, November 13, 2024 6:09:00 PM

Good Evening, Jenna:

Despite having reached out to the Township numerous times, including directly to Mr. Saunders, Melissa Fackler suggested that I contact you, instead, regarding Pilesgrove Township's utilization of its entitlement to inspect SMS's engine house/locomotive servicing facility on Lot 73, Block 3. As you know from having been copied on various correspondences to Mr. Saunders and Ms. Fackler, SMS will make the property accessible to the Township at a mutually convenient time. I would appreciate the courtesy of your or Mr. Saunders' response to me via email, phone, or text message to schedule a time for inspection. My office and mobile numbers are listed below.

Kind regards,
Jim Pfeiffer
SMS Rail Service, Inc.
Office: (856) 467-4800, ext. 303
Mobile: (610) 739-3729

EXHIBIT XX

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWNSHIP OF PILESGROVE, N.J.	)	FINANCE DOCKET
PETITION FOR DECLARATORY ORDER	)	NO. 36770

VERIFIED STATEMENT OF GEORGE SUTCH

State of New Jersey)
) SS:
County of Gloucester)

I, George Sutch, Roadmaster and Vice President of SMS Rail Service, Inc., declare under penalty of perjury, under the laws of the United States of America, as follows:

1. I am the Roadmaster and Vice President of SMS Rail Service, Inc., which maintains its business address at 513 Sharptown Road, Logan Township, New Jersey 08085.

2. On October 16, 2024, at about 11:20 hours, a green Pilesgrove Township-branded pickup truck with a dump body parked in the parking area across from the new engine house.

3. I approached the person, who was a man in his late 30s with a large black beard, and asked if he needed any help. The individual introduced himself, but I do not remember his name.

4. The individual advised that he was a contractor sent by Pilesgrove Township to take some measurements.

5. The individual measured from the centerline of the main track (on the Salem County Railroad) to the centerline of the new engine house lead (on SMS's property), as well as from the centerline of the main track (on Salem County Railroad) to the southwest (timetable direction) corner of the new building.

6. This encounter lasted less than 5 minutes. The individual only took the measurements mentioned above, and did not enter the building or inspect anything on the site.

7. I gave the individual my business card and advised that he should call me if he needs anything else. He responded, thank you, and he remarked that he loves what is happening with the railroad. He mentioned that 90% of the county is supportive of what SMS is doing.

8. He did mention that the Township is concerned with public safety, but he did not inspect anything.

The above statements are true and correct to the best of my knowledge, information and belief.

Signed under the pains and penalties of perjury this day of December, 2024.

George Sutch

State of New Jersey)
) SS:
County of Gloucester)

Subscribed and Sworn to before me
this 16 day of December, 2024.

Notary Public

My Commission expires: 10/2/2025

EXHIBIT YY

96/4-01-00-0000348-0002-00000760

STATE OF NEW JERSEY

DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF FIRE SAFETY
BUREAU OF FIRE CODE ENFORCEMENT
101 S BROAD ST, PO BOX 809
TRENTON, NJ 08625-0809
609-633-6132

CERTIFICATE OF INSPECTION

Registration No.:	1709-230005		
Business Name:	South Woodstown Railroad Station		
Primary Business Owner:	SMS Rail Services		
Business Address:	650 Alloway Woodstown Road PILESGROVE TWP, SALEM COUNTY 08098		
Use Registration No:	1709-230005-002-001	**Issuance Date:**	12/12/2023
Use Code:	NL08:	**Inspection Date:**	12/5/2023
Use Description:	Structure used for storage less than 12,000 square feet.		
Building Name:	Storage Shed		
Building Address:	650 Alloway Woodstown Road PILESGROVE TWP, SALEM COUNTY 08098		
Floor #:			
Location:	:		

Take Notice: This certifies that the referenced property has been inspected pursuant to the Uniform Fire Safety Act and satisfies minimum requirements of the New Jersey Uniform Fire Code. This certificate is valid one year from the date of inspection unless inspections are required quarterly or semi-annually, in accordance with N.J.A.C. 5:70-2.5. Failure to post this certificate in a conspicuous location is subject penalties in accordance with N.J.A.C. 5:70-2.12.

Commissioner,
Department of Community Affairs

Louis Kilmer, Bureau Chief
Bureau of Fire Code Enforcement
Division of Fire Safety

CERTIFICATION OF SERVICE

It is hereby certified that on this 16th day of December, 2024, I served a true and correct copy of the foregoing Reply Evidence and Argument of SMS Rail Service, Inc. to Pilesgrove Township's and Mannington Township's Petitions for Declaratory Order and Supplemental Evidence and Argument, with exhibits, in the manner indicated below upon the following counsel for the parties:

By Email:

Ekaterine N. Eleftheriou, Esq.
Solicitor of Pilesgrove Township
99 North Main Street
Mullica Hill, NJ 08062
kat@thevigilantelawfirm.com

William L. Horner, Esq.
Solicitor of Mannington Township
67 Market Street
P.O. Box 66
Salem, NJ 08079
wlh@hornerlaw.net

Karin M. Wood, Esq.
Solicitor of Salem County
110 Fifth Street, Suite 400
Salem, NJ 08079
attorneywood@comcast.net
counsel@salemcountynj.gov

/s/ Robert A. Klein
Robert A. Klein, Esq.

Date: December 16, 2024