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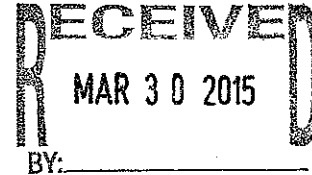
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TELEPHONE EXTENSION NO. 37

March 27, 2015



Amy Peabody
Assistant General Counsel
Kentucky Department of Education
Office of Guiding Support Services
500 Mero Street, CPT 133
Frankfort, KY 40601

Re: Floyd County Board of Education vs. The Elkhorn Coal Company, LLC
Floyd Circuit Court, Division II C.A. No. 14-CI-613

Dear Ms. Peabody:

Enclosed please find Request for Waiver from the requirements contained in 702 KAR 4:050 Section 4 (4)(a) which would request the Board to either acquire by purchase or condemnation or obtain a forbearance agreement from the owner of the coal beneath the surface of an access road tract to be conveyed by the Kentucky Transportation Cabinet.

Thanks for your cooperation concerning this matter.

Very truly yours,

PORTER, SCHMITT, BANKS & BALDWIN

A handwritten signature in cursive script that reads "Michael J. Schmitt".

Michael J. Schmitt, Attorney
Floyd County Board of Education
MJS/cnb
Enc.



FLOYD COUNTY BOARD OF EDUCATION
Henry Webb, Superintendent
106 North Front Avenue
Prestonsburg, Kentucky 41653
Telephone (606) 886-2354 Fax (606) 886-8862
www.floyd.kyschools.us

Jeff Stumbo, Chair - District 3
Linda Gearheart, Vice-Chair - District 1
Dr. Chandra Varia, Member - District 2
Rhonda Meade, Member - District 4
Sherry Robinson - District 5

RECEIVED
MAR 30 2015
BY: _____

REQUEST FOR WAIVER

To: Kentucky Board of Education
From: Board of Education of Floyd County, Kentucky
Re: Request for Waiver from the requirements contained in 702 KAR 4:050 Section 4 (4)(a) which would require the Board to either acquire by purchase or condemnation or obtain a forbearance agreement from the owner of the coal beneath the surface of an access road tract to be conveyed by the Kentucky Transportation Cabinet.

The Board of Education of Floyd County, Kentucky at a special meeting on March 10th, 2015 at 6:00 p.m. voted to request the Kentucky Board of Education pursuant to KRS 156.160(2)(a) for a waiver of the requirements of 702 KAR 4:050 Section 4 (4)(a) which would otherwise require the Board to acquire title to the coal or obtain a forbearance agreement from the owner of the coal within the boundary of an access road tract only which is to be conveyed to the Board by the Kentucky Transportation Cabinet as a means of access to the site on which the Board will construct the new Floyd County Central High School. A copy of the minutes of the board meeting of March 10th, 2015 are attached hereto as Appendix 1.

The Board of Education of Floyd County has acquired by eminent domain a site on which Floyd County Central High School will be constructed. The surface was acquired from Stanley Allen and Rita Allen, his wife. Mr. and Mrs. Allen did not own either the coal or the oil and gas. 702 KAR 4:050 Section 4 (4)(a) requires that when a school district acquires a building site that, "that a fee simple title shall be received by local board in accordance with KRS 162.010 and certificate of title insurance provided. Should the mineral rights not be acquired, it shall require a forbearance agreement to ensure surface support." Although surface support is never an issue with respect to ownership and operation of the oil and gas, the Kentucky Department of Education has always required school districts to obtain a forbearance agreement from either the owner or lessee of the oil and gas. The Board of Education of Floyd County has obtained a forbearance agreement from EQT Production Company with respect to the oil and gas beneath the school site tract. The Board was unable to either purchase or obtain a forbearance agreement from the owner of the coal, The Elkhorn Coal Company, LLC. As a result, the Board initiated an eminent domain action against Elkhorn

The Floyd County Board of Education does not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability in employment, educational programs, or activities as set forth in Title IX & VI, and in Section 504.

Coal and has been obtained a judgment entitling it to a commissioner's deed for the coal and mining rights beneath the property. All coal on the school site had been the subject of a number of previous mining operations at elevations above the location of the new school. The Board has been advised by the Master Commissioner of the Floyd Circuit Court that a Commissioner's Deed has been prepared and has been executed by the Commissioner, the Circuit Clerk and the Circuit Court Judge and is in the process of being recorded.

The site of the new school is located adjacent to Kentucky State Route 680. Construction and operation of the school and its related facilities will require the construction of a road from Kentucky State Route 680 to the school tract. The Kentucky Transportation Cabinet has agreed to convey a portion of its highway right of way to the Board at no cost. The Transportation Cabinet obtained its right of way through eminent domain proceedings a number of years ago but did not obtain title to either the oil and gas or the coal because neither mineral could be extracted on state property without the consent of the Cabinet.

The Board of Education of Floyd County requests a waiver of the requirement to obtain either title to the coal or a forbearance agreement from the owner of the coal which is located only upon the access road tract which is presently a part of the state highway right of way. The request for waiver is based upon the following circumstances and considerations:

1. The Board has employed Keene Mining Consultants, Inc., for the purpose of evaluating the coal and mining rights presently owned by The Elkhorn Coal Company, LLC on the highway access tract. Mr. Keene has determined that potential mining reserves total 8,600 tons but that such coal can only be mined by surface mining methods. The reserves are small and Mr. Keene has concluded that what small amount of coal is located upon the tract is neither minable nor merchantable.
2. Mr. Keene has also advised that the coal located upon the tract can only be mined by surface mining methods which would require a lease from the surface owner. As a consequence, the coal cannot be surface mined without a lease from the Floyd County Board of Education which in turn would require the written consent of the Kentucky Department of Education. Neither the Floyd County Board nor the Kentucky Department of Education would ever permit surface mining upon this tract. The written opinion and evaluation of Mr. Rick P. Keene, Professional Engineer is attached hereto in support of this request Appendix 2.

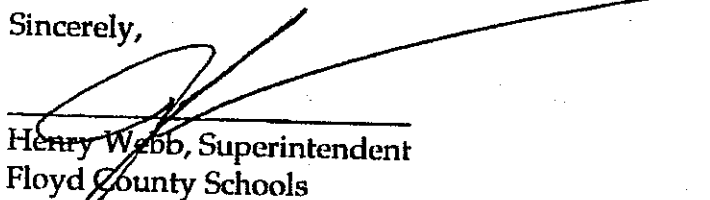
3. The Energy and Environment Cabinet has adopted a regulation pertaining to obtaining a surface coal mining permit. That regulation, 405 KAR 8:030 Section 4 expressly provides that where the mineral estate to be mined has been severed from the private surface estate, the permit application must contain the written consent of the surface owner for the extraction of coal by surface mining methods. A copy of 405 KAR 8:030 Section 4 is attached hereto as Appendix 3. A copy of the title opinion of attorney Dale Phillips confirms that the surface and coal estates have been severed and that the Transportation Cabinet owns the surface and The Elkhorn Coal Company, LLC is the owner of the coal. The Phillips title opinion is attached hereto as Appendix 4.
4. The Energy and Environment Cabinet has also designated certain areas unsuitable for mining. 405 KAR 24:040 Section 2 (6) provides that lands within 100 feet measured horizontally of the outside right of way of a public road constitutes an area unsuitable for mining. The road to be constructed by the Floyd County Board of Education from Kentucky State Route 680 to the school site will be a public road and the area of the coal in question is within the right of way. In fact, the entire tract to be conveyed by the Kentucky Transportation Cabinet is a "public road right of way". A copy of 405 KAR 24:040 Section 2(6) is attached hereto as Appendix 5.
5. The coal located upon the access right of way tract to be conveyed by the Transportation Cabinet is all above drainage. That is to say, it is well above the area where the road will be constructed. The regulation for which the Floyd County Board of Education seeks a waiver provides that, "should the mineral rights not be acquired, it shall require a forbearance agreement to ensure surface support. No surface support will be acquired by obtaining title to the coal since the small amount of coal which exists on this tract is above the elevation of the road way surface. See appraisal of Dixon Nunnery which contains photographs of the tract to be conveyed by the Transportation Cabinet and the location of the proposed road way, attached hereto as Appendix 6.
6. The Board of Education made an inquiry of the coal owner with respect to obtaining a forbearance agreement and has been provided no assurance that a forbearance agreement can be obtained.
7. The Floyd County Board seeks to avoid the filing of an expensive condemnation proceeding or making a needless payment for coal which in fact cannot be mined.

While the Board does not believe that the oil and gas can be extracted from the access right of way tract, it is presently in discussions with EQT Production Company, the Lessee of the oil and gas and is confident that a forbearance agreement can be obtained.


The coal and oil and gas are the only known mineral rights known to exist on the subject property.

The Board of Education of Floyd County respectfully requests the Kentucky Board of Education to waive the regulatory requirement that the coal be purchased or acquired by condemnation or in the alternative that a forbearance agreement be obtained with respect to the coal on the tract to be obtained from the Kentucky Transportation Cabinet.

Sincerely,


Henry Webb, Superintendent
Floyd County Schools

Porter, Schmitt, Banks & Baldwin
327 Main Street
Paintsville, Kentucky 41240

By: 
Michael J. Schmitt, Attorney
Floyd County Board of Education

APPENDIX

- APPENDIX 1: Copy of the minutes of the board meeting of March 10th, 2015.
- APPENDIX 2: The written opinion and evaluation of Mr. Rick P. Keene, Professional Engineer.
- APPENDIX 3: 405 KAR 8:030 Section 4.
- APPENDIX 4: The title opinion of attorney Dale Phillips.
- APPENDIX 5: 405 KAR 24:040 Section 2(6).
- APPENDIX 6: Appraisal of Dixon Nunnery.

APPENDIX

1

SPECIAL CALLED MEETING

**FLOYD COUNTY BOARD OF EDUCATION
TUESDAY, MARCH 10, 2015 – 6:00 P.M.
MAY VALLEY ELEMENTARY
MARTIN, KENTUCKY**

A G E N D A

- 1. CALL TO ORDER – ROLL CALL – Board Chair**
- 2. CONSIDER AND APPROVE A REQUEST TO THE KENTUCKY BOARD OF EDUCATION PURSUANT TO KRS 156.160(2)(A) FOR A WAIVER OF THE REQUIREMENT CONTAINED IN 702 KAR 4:050 SECTION 4 (4)(A) THAT WOULD REQUIRE THE BOARD TO EITHER ACQUIRE TITLE TO THE COAL OR OBTAIN A FORBEARANCE AGREEMENT FROM THE COAL OWNER FOR THE COAL WITHIN THE BOUNDARY OF THE ACCESS ROAD TRACT TO BE CONVEYED TO THE BOARD BY THE KENTUCKY TRANSPORTATION CABINET AS A MEANS OF ACCESS TO THE SITE ON WHICH THE NEW FLOYD COUNTY CENTRAL HIGH SCHOOL WILL BE CONSTRUCTED.**
- 3. ADJOURNMENT.**

**Dr. Henry Webb, Superintendent
Floyd County Schools**

The meeting was called to order at 6:00 PM by Mr. Jeff Stumbo, Board Chair. Let the record show that the following board members were present at this meeting: Mr. Jeff Stumbo, Ms. Rhonda Meade, Ms. Linda Gearheart, and Ms. Sherry Robinson. Dr. Chandra Varia was not present. Also present was Dr. Henry Webb, Superintendent of Floyd County Schools and Mr. Mike Schmitt, Board Attorney.

RECORD OF BOARD PROCEEDINGS

335

(Minutes)

Prestonsburg, Kentucky, March 10, 2015

The Floyd County Board of Education met at May Valley Elementary School at 6:00 o'clock

P M., on the 10th day of March, 2015, with the following members present:

- (1) Jeff Stumbo (2) Rhonda Meade (3) Linda Gearheart
(4) Sherry Robinson (5) _____

ORDER NO. 18558 Waiver (Item 2)

Mr. Stumbo made the motion and Ms. Robinson seconded the motion to approve a request to the Kentucky Board of Education pursuant to KRS 156.160(2)(A) for a waiver of the requirement contained in 702 KAR 4:050 Section 4(4)(A) that would require the board to either acquire title to the coal or obtain a forbearance agreement from the coal owner for the coal within the boundary of the access road tract to be conveyed to the board by the Kentucky Transportation Cabinet as a means of access to the site on which the New Floyd County Central High School will be constructed.

There was an affirmative vote by all board members present to approve this motion. The motion carried.

ORDER NO. 18559 Adjournment (Item 3)

Ms. Meade made the motion and Ms. Robinson seconded the motion to adjourn the meeting.

There was an affirmative vote by all board members present to approve this motion. The motion carried. The time being 6:06 PM.


CHAIR


SECRETARY

APPENDIX

2

Keene Mining Consultants, Inc.

21 Crestwood Circle, Prestonsburg, KY 41653

Phone: (606) 886-9002 Fax: (606) 889-0021

Email: rick@keenemining.net

March 11, 2015

Mr. Mike Schmitt
Porter, Schmitt, Jones & Banks
PO Box 1767
Paintsville, KY 41240-1043

Re: Floyd County Central High School
Excess Right Of Way (Surplus Property)
Kentucky Transportation Cabinet

Dear Mr. Schmitt:

You have brought to my attention that the Floyd County Board of Education is in the process of acquiring an additional surface tract (Parcel 1) adjacent to the proposed Floyd County Central High School site. Such Parcel 1, consisting of 16.73 acres, is to be acquired from the Kentucky Transportation Cabinet.

In accordance with your request, Keene Mining Consultants, Inc. has performed an analysis of the potential coal reserves on such parcel.

The mineable coal seams present on the property include the following:

- Elkhorn 1
- Elkhorn 3

Elkhorn 1.

The Elkhorn 1 seam, located at an approximate elevation of 776, has been mined extensively by the deep mine, contour and auger mining methods. See the attached exhibit for the extent of such mining. No mineable and merchantable coal remains on the property.

Elkhorn 3.

The Elkhorn 3 seam, located at an approximate elevation of 815, has been mined extensively by the deep mine method. See the attached exhibit for the extent of such mining. The amount of potential recoverable surface mine reserves remaining beneath such parcel are as follows:

Contour Mining	4,300
Auger Mining	4,300
Total Recoverable Tons	8,600

Re: Floyd County Central High School
Excess Right Of Way (Surplus Property)
Kentucky Transportation Cabinet
February 11, 2015
Page 2 of 2

However, I would point out that such coal could only be mined by surface mining methods. Under Kentucky regulations, a right of entry agreement in the form of a surface lease would be required before a permit to enable mining would be issued. Such surface owner, in this instance the Floyd County Board of Education, would not be compelled to enter into such a lease.

Furthermore, taking into consideration the limited amount of recoverable reserves, it is my professional opinion that the potential Elkhorn 3 coal reserves on this parcel are not mineable and merchantable. They could not be mined at a profit.

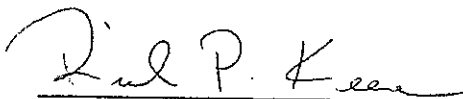
Conclusions.

In conclusion, after a thorough review of the information provided, and based upon my education, training and experience, it is my professional opinion that there are no mineable merchantable coal reserves located on such Parcel 1.

The opinions set forth herein are based upon the information available to me at the time that this report was written and represent my opinion within a reasonable professional and engineering probability. I reserve the right to amend or alter the conclusions set forth herein in the event that additional or contradictory information is supplied which would lead me to alter or amend such conclusions.

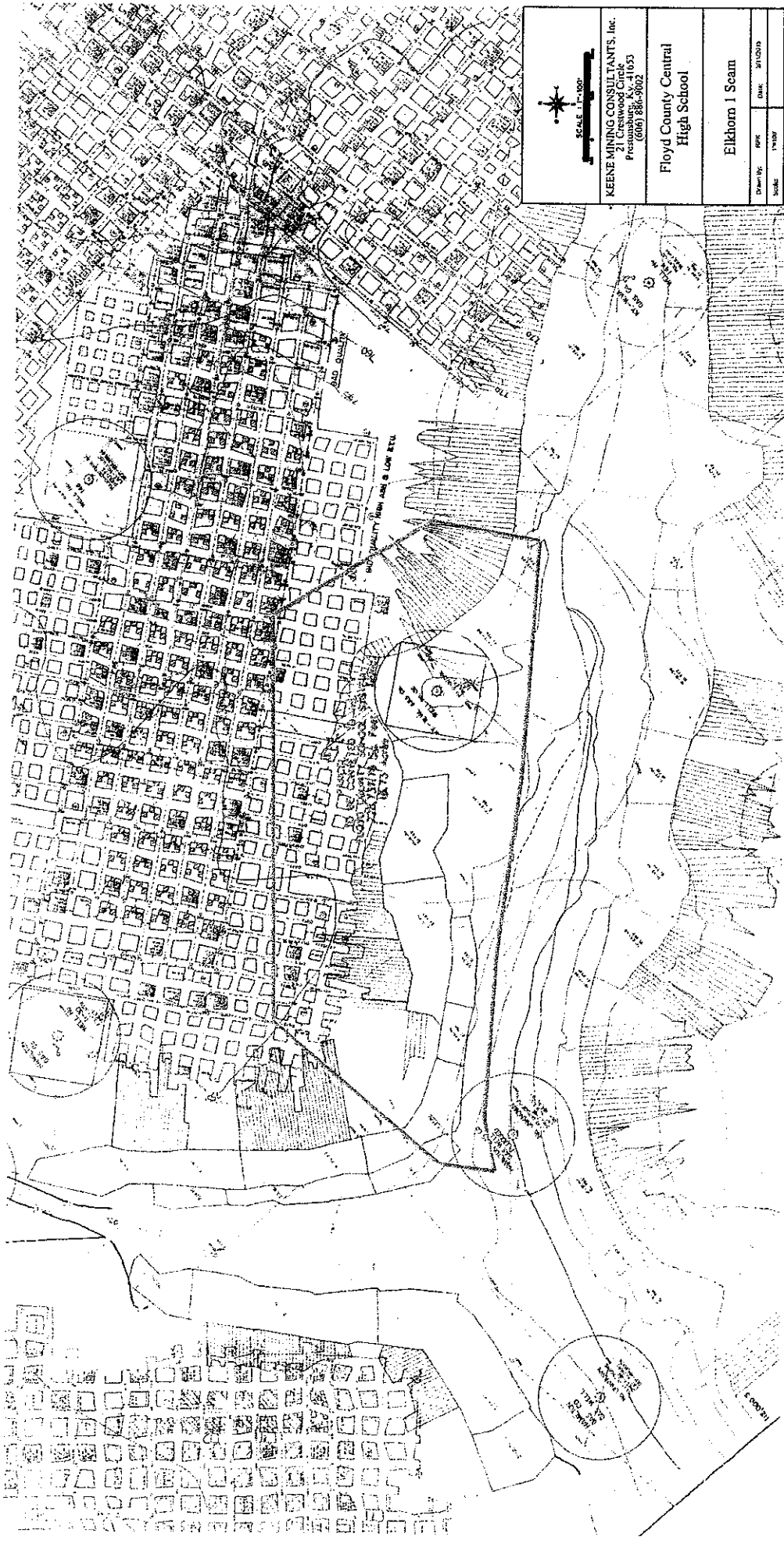
If you have questions once you have reviewed this report, please don't hesitate to call on me.


Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Rick P. Keene", with a horizontal line drawn underneath the signature.

Rick P. Keene, P.E., P.L.S.

Attachments



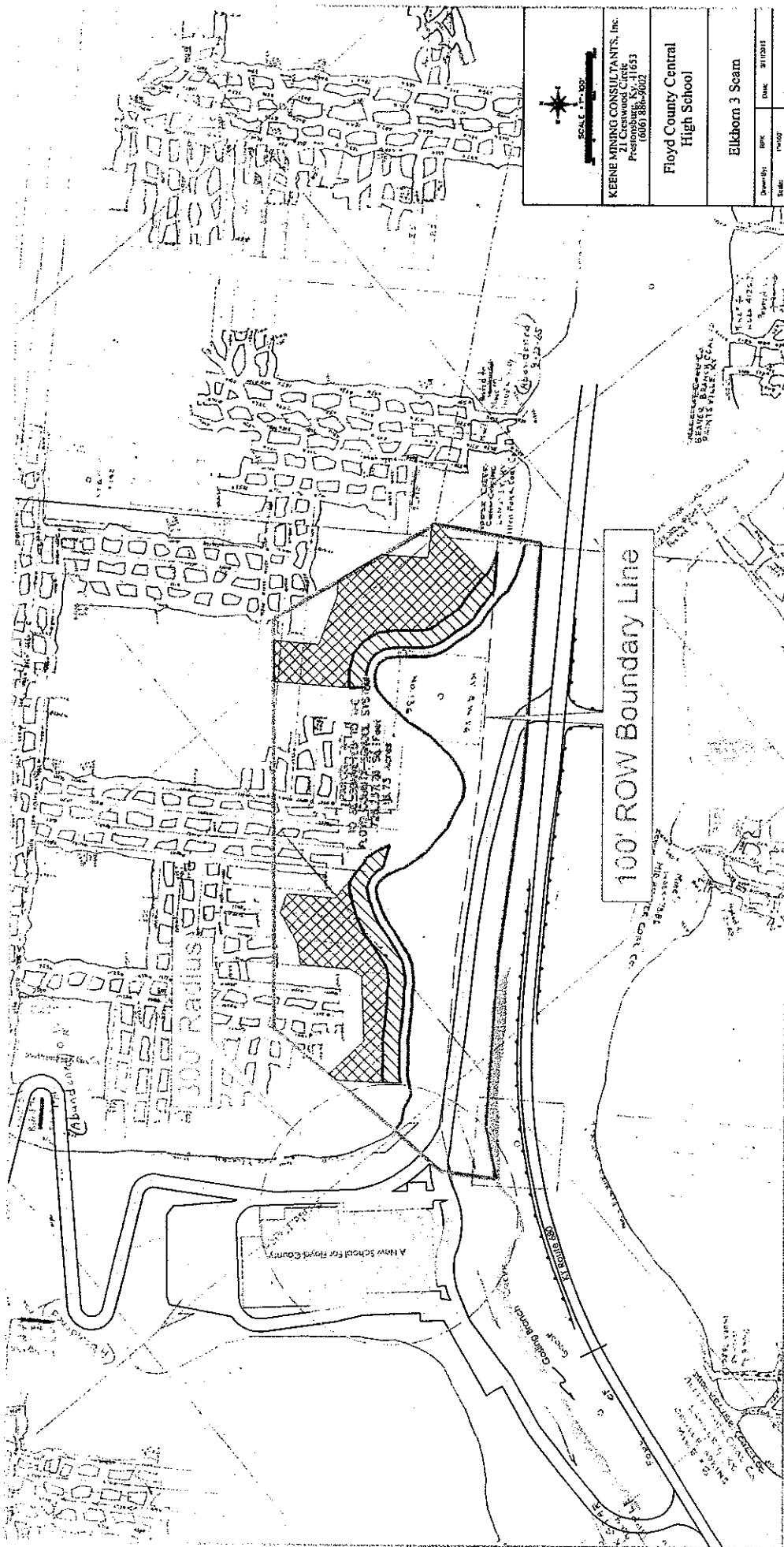



SCALE 1"=100'

KEENE MINING CONSULTANTS, Inc.
21 Crestwood Circle
Pittsburgh, Pa. 15253
(412) 881-9882

Floyd County Central
High School

Drawn By:	WPK	Date:	3/1/2019
Scale:	1"=100'		





SCALE 1" = 100'

KEENE MINING CONSULTANTS, Inc.
 211 Cedarwood Circle
 Princeton, NJ 08540
 (609) 881-2022

**Floyd County Central
 High School**

Elkborn 3 Seam

Drawn By: BPC
 Date: 8/1/2015
 Scale: 1" = 100'

APPENDIX

3

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 - 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 - 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for granting a surface coal mining permit. This administrative regulation differs from 30 C.F.R. 780.25. Section 34(3) and (5) of this administrative regulation require that the permit applicant submit to the cabinet after approval by the Mine Safety and Health Administration (MSHA), a:

- (1) Copy of the final approved design plans for impounding structures;
- (2) Copy of all correspondence with MSHA;
- (3) Copy of technical support documents requested by MSHA; and
- (4) Notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements set forth in this administrative regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as set forth in 405 KAR 8:010.

(3) This administrative regulation sets forth information required to be contained in each application for a permit to conduct surface mining activities, including:

- (a) Legal, financial, compliance, and related information;
- (b) Environmental resources information; and
- (c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) An application shall contain the following information, except that the submission of a Social Security number shall be voluntary:

- (a) A statement identifying if the applicant is a corporation, partnership, single proprietorship, association, or other business entity;
- (b) The name, address, telephone number and, as applicable, Social Security number, and employer identification number of the:

1. Applicant;
2. Applicant's resident agent; and
3. Person who will pay the abandoned mine land reclamation fee;

- (c) For each person who owns or controls the applicant:

1. The person's name, address, Social Security number, and employer identification number;

2. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3. The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

4. Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

5. The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

- (d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

1. Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

2. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

- (e) The names and addresses of:

1. Every legal or equitable owner of record of the property to be mined;
2. The holders of record of any leasehold interest in the property to be mined; and
3. Any purchaser of record, under a real estate contract, of the property to be mined;

- (f) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area;

- (g) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval;

- (h) Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter; and

- (i) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands that are contiguous to the area to be covered by the permit.

- (2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsection (1) (a) through (d) of this section.

- (3) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

- (4) The permittee shall submit updates of the information established in paragraphs (a) through (c) of this subsection in writing to the cabinet within thirty (30) days of the effective date of any change. An update shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. After the permittee's refusal or failure to timely submit the

information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection:

- (a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;
- (b) The names and addresses of principal shareholders; and
- (c) If the permittee or other persons specified in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. (1) Each application shall contain:

(a) A statement identifying if the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

1. Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

2. Forfeited a coal mining performance bond or similar security deposited in lieu of bond;

(b) If any suspension, revocation, or forfeiture as established in paragraph (a) of this subsection has occurred, a statement of the facts involved, including:

1. Identification number and date of issuance of the permit, and date and amount of bond or similar security;

2. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

3. The current status of the permit, bond, or similar security involved;

4. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

5. The current status of these proceedings; and

(c) For any violation of a provision of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or regulations under SMCRA, any federal law, rule, or regulation pertaining to air or water environmental protection, or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number; the dates of issuance of the violation notice and MSHA number; the name of the person to whom the violation notice was issued; and the name of the issuing regulatory authority, department, or agency;

2. A brief description of the particular violation alleged in the notice;

3. The final resolution of each violation notice, if any; and

4. For each violation notice that has not been finally resolved:

a. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation;

b. The current status of the proceedings and of the violation notice; and

c. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, if necessary, the applicant shall update the application to indicate what change, if any, has occurred in the information previously submitted under subsection (1) of this section.

(3) Upon request by a small operator, the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section who are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and if that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If the private mineral estate to be mined has been severed from the private surface estate, the application shall contain:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable state law, the applicant has the legal authority to extract coal by those methods.

(3) Nothing in this section shall be construed to authorize the cabinet to adjudicate property rights disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information identifying if the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

- (1) Type of permit or license;
- (2) Name and address of issuing authority;
- (3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and
- (4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement, which is acceptable to the cabinet, shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include a description of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this administrative regulation. The description required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) According to historical databases, the cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information that has been collected, analyzed, and submitted in the detail and manner sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation that will be implemented during the mining and reclamation process to assure protection of the hydrologic balance or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures, and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) if reclamation as required by 405 KAR can be accomplished and if the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, shall demonstrate if the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet if this information is:

1. Needed in preparing the cumulative impact assessment; and
2. Available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation, or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) Water quality analysis and sampling required by this chapter shall be conducted according to:

- (a) Standard Methods for the Examination of Water and Wastewater (14th Edition); or
- (b) 40 C.F.R. Parts 136 and 434.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area that shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material which has been collected using acceptable sampling techniques.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined.

2. Where aquifers located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata that have a potential to produce acid drainage and to determine the area and vertical extent of aquifers that may be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling specified in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information;

(b) Chemical analyses including maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata which have a potential to produce acid or toxic drainage; and

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(2) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

1. The applicant can demonstrate through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2. Other information equivalent to that required by this subsection is available to the cabinet and is made a part of the permit application; and

3. The cabinet provides a written statement granting a waiver.

(3) The application shall contain a description of the geology of the proposed permit area and adjacent area that shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers may be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers; and

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers that may be adversely affected by the mining operation.

(4) If necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet shall require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata that may be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area that shall be collected and submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and if possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage, or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, pH, dissolved iron, dissolved manganese, acidity, alkalinity, and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information described in subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require groundwater information in addition to that described in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area that shall be collected and submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments, or other surface water bodies in the permit and adjacent area that are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and if possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership if appropriate, of all streams, lakes, impoundments, and other surface water bodies that receive run-off from watersheds that will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds that will be disturbed by the mining operation and may contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges that may be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds that will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, total suspended solids, pH, total iron, total manganese, acidity, alkalinity, and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require surface water information in addition to that established in subsections (2), (3), and (4) of this section, including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed surface mining activities may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) Upon cabinet request, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

- (a) The average seasonal precipitation;
- (b) The average direction and velocity of prevailing winds; and
- (c) Seasonal temperature ranges.

(2) The cabinet shall request additional data if necessary to ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) If a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required if the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 – 1544), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of if fish and wildlife information is necessary, and the scope of information needed, shall be made on a case-by-case basis in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine if lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland if the applicant can demonstrate one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation that show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and if the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey of lands within the proposed permit area contains soil map units designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey for lands within the proposed permit area contains no soil map units designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall decide to grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service when deciding on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described; and

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

(2) The application shall state if the proposed permit area has been previously mined, and, if so and, if available, the:

(a) Type of mining method used;

(b) Coal seams or other mineral strata mined;

(c) Extent of coal or other minerals removed;

(d) Approximate dates of past mining; and

(e) Uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters that will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area; and

(l) Other relevant information required by 30 C.F.R. 779.24(l).

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or which will be used for this data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

- (e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;
 - (f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;
 - (g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;
 - (h) Location and extent of existing or previously surface-mined areas within the proposed permit area;
 - (i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;
 - (j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area; and
 - (k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the requirements established in subparagraphs 1. through 3. of this paragraph.
1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, if impractical, at locations and in a manner sufficient to demonstrate that the surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24, can be feasibly accomplished in accordance with the mining and reclamation plan.
 2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance representative of the premining configuration of the land.
 3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.
- (3) The permit application shall include the map information specified in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and 405 KAR 8:010, Section 5(6).
- (4) Maps, drawings, and cross-sections included in a permit application that are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet if there is a material change. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as set forth in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum a narrative:

(a) Description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) Explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of the facilities is to be approved as necessary for postmining land use as specified in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;
2. Overburden and topsoil handling and storage areas and structures;
3. Coal removal, handling, storage, cleaning, and transportation areas and structures;
4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;
5. Mine facilities; and
6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas pursuant to paragraphs (a) through (c) of this subsection.

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;
2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;
4. Each coal storage, cleaning, and loading area;
5. Each topsoil, spoil, coal waste, and noncoal waste storage area;
6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
7. Each air pollution collection and control facility;
8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;
9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;
10. Each explosive storage and handling facility; and
11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; and measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

PCL XL error

Subsystem: TEXT

Error: InternalError 0x50

Operator: Text

Position: 2816

APPENDIX

4

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February 23, 2015

Floyd County Board Of Education
106 N. Front Avenue
Prestonsburg, Kentucky 41653

C/O: Hon. Michael J. Schmitt
Porter, Schmitt, Banks & Baldwin
P.O. Drawer 1767
Paintsville, Kentucky 41240

Re: Floyd Central/Transportation Tract

Dear Mike:

Pursuant to your request, I have made an examination of the Floyd County Court Clerk's Office in regard to the mineral estate underlying the property to be acquired by the Floyd Bounty Board Of Education from the Transportation Cabinet described on the attached Exhibit "A".

This tract is a part of the tract acquired by the Transportation Cabinet by Deed from Coal-Mac, Inc. dated February 24, 1992 recorded in Deed Book 355, page 654. Two of the stated sources in that Deed, i.e. Deed Book 269, page 234 and Deed Book 269, page 240, appear to be incorrect, the correct source being Deed Book 269, page 208.


The mineral title connects to the title identified in the March 26, 2014 title opinion of Hon. Greg Isaac. The connection is outlined on the title diagram attached as Exhibit "B".

Based upon my examination, it is my opinion that the title to the mineral estate underlying the tract to be acquired is vested as follows:

Coal: The Elk Horn Coal Company, LLC
Oil & Gas: Hunt Oil Company
Working Interest: EQT Production Company

My examination was concluded at 2:30 p.m. on February 20, 2014.

Yours very truly,


Dale Phillips

DP/mp
Attachments
BOE-FloydCentral-Transportation

LEGAL DESCRIPTION
FOR:
RIGHT OF WAY BUYBACK
COMMONWEALTH OF KENTUCKY TO
FLOYD COUNTY BOARD OF EDUCATION.

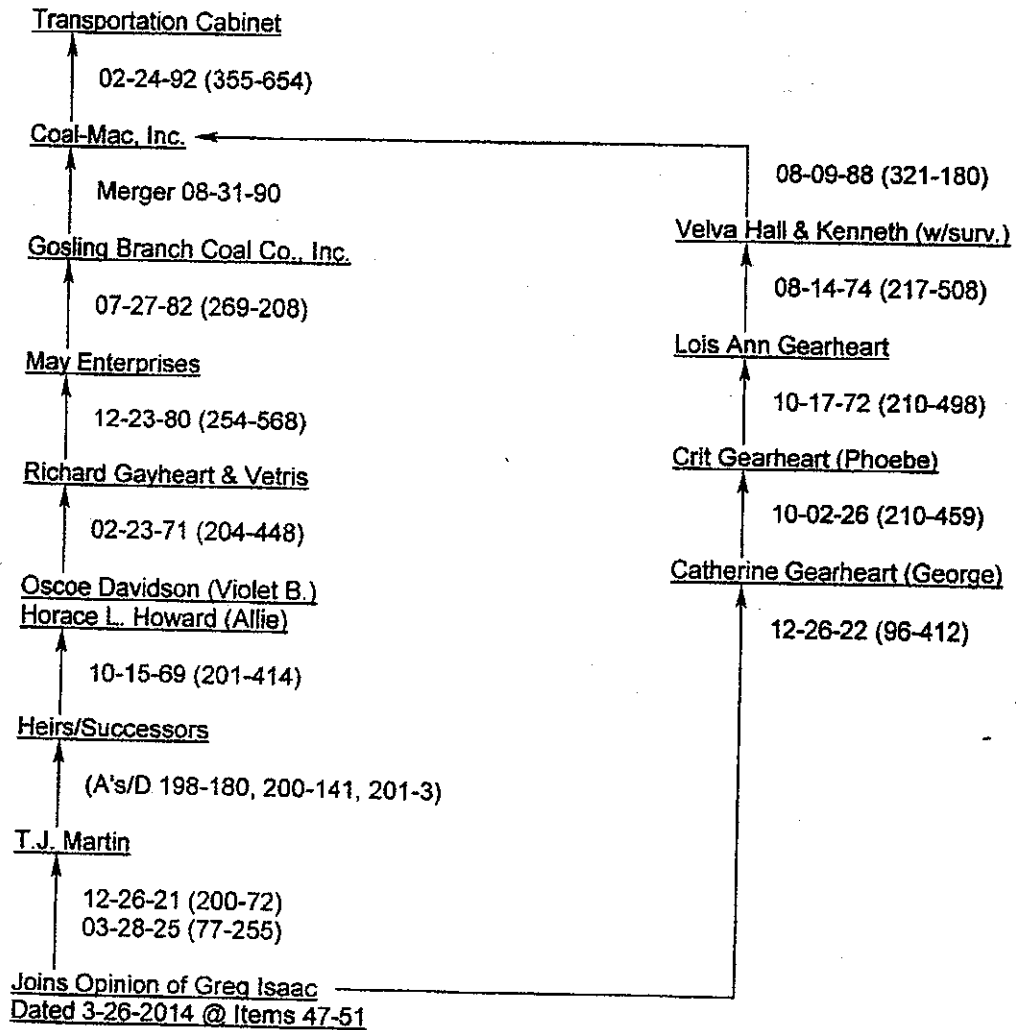
A PARCEL OF LAND SITUATED ON THE NORTHERN RIGHT OF WAY LINE OF KENTUCKY STATE ROUTE 680 IN EASTERN, FLOYD COUNTY, KENTUCKY, BEING A PORTION OF RECORD SOURCE PARCEL #6 OF DEED BOOK 355 PAGE 654, RECORDED IN FLOYD COUNTY CLERK'S OFFICE, PRESTONSBURG, KENTUCKY, AND LOCATED APPROXIMATELY 0.7 MILES SOUTHEAST OF THE INTERSECTION OF U.S. ROUTE 80 AND KENTUCKY STATE ROUTE 680, EASTERN, FLOYD COUNTY, KENTUCKY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning on an iron pin found near the center of a point on the existing northern right of way line of Kentucky State Route 680, said iron pin being 590.00 feet left of said Route 680 centerline station 49+42.14, and a corner common to Floyd County Board of Education, Deed Book 608 Page 73, Tract 2, and Appalachian Land Company, Deed Book 433 Page 359, and having NAD83 Kentucky state plane south zone coordinate system values of Northing 2,078,266.85 feet and Easting 2,495,346.83 feet; Thence leaving Deed Book 608 Page 73, Tract 1 and along the side of the hill with said right of way and Deed Book 433 Page 359 S 51°50'59" E 953.07 feet to an iron pin set 675.00 feet left of centerline station 58+58.00; Thence S 07°47'59" W 436.49 feet to an iron pin set 320.00 feet left of centerline station 61+12.00; Thence leaving Deed Book 433 Page 359 down the hill passing through the existing right of way Deed Book 355 Page 654 S 48°36'23" W 252.06 feet to an iron pin set near the toe of the slope 70.97 feet left of centerline station 60+92.65; Thence along the top of the slope of a drainage ditch N 47°21'02" W 570.04 feet to an iron pin set 61.62 feet left of centerline station 55+22.69; Thence N 43°42'56" W 407.36 feet to an iron pin set 80.78 feet left of centerline station 51+15.78; Thence N 47°24'49" W 386.13 feet to an iron pin set 103.08 feet left of centerline station 47+47.59; Thence N 63°15'35" W 121.42 feet to an un-monumented corner in the centerline of Gosling Branch, said corner being 94.00 feet left of centerline station 46+35.06 and a corner on the existing right of way and a common corner to Deed Book 608 Page 73, Tract 2; Thence leaving said creek and with the existing right of way Deed Book 355 Page 654 and across a flat with Deed Book 608 Page 73, Tract 2 N 46°08'19" E 130.60 feet to an iron pin found 218.73 feet left of centerline station 46+69.98; Thence up the point N 78°54'45" E 248.75 feet to an iron pin found 391.74 feet left of centerline station 48+17.84; Thence N 78°13'36" E 259.55 feet to the beginning and containing 16.73 acres or 728,737.76 sq. ft. All iron pins set are 5/8 inch rebar, 18 inches long with a 2 inch diameter aluminum cap bearing the words "Bocook Engineering PLS 3921." All iron pins found, unless otherwise noted, are 5/8 inch rebar with a 2 inch aluminum cap stamped "Bocook Engineering PLS 3949," and this description is based on a survey made under the direct supervision of Thomas E. Nairn, Licensed Professional Land Surveyor on June 16 and 18, 2014 by the method of GPS Real Time Kinematic survey with a measurement precision of +/-0.05' + 100 ppm. This is a "Rural" class survey and meets all of the specifications of this class. Completion date of survey: June 18, 2014.

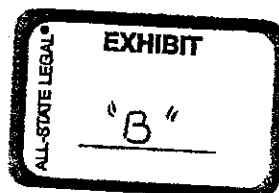
Bocook Engineering's file of this plat of survey can be found in W:\WO8000\8778\ACAD\8778-survey.dwg.

Thomas E. Nairn, PLS #3921
September 10, 2014
Bocook Engineering, Inc.
259 North Arnold Ave., Prestonsburg, Ky. 41653





BOE-Floyd-2-19-15



APPENDIX

5

405 KAR 24:040. Areas unsuitable for mining.

RELATES TO: KRS 350.465(2)(b), 350.610

STATUTORY AUTHORITY: KRS Chapter 13A, 350.465(2), 350.610

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465(2) and 350.610 require the cabinet to prepare, develop, and promulgate a permanent regulatory program for the implementation of SMCRA containing procedures similar to that Act. This administrative regulation sets forth procedures for reviewing applications for surface coal mining and reclamation operation permits to determine whether surface coal mining and reclamation operations are limited or prohibited.

Section 1. General. The cabinet shall prohibit or limit surface coal mining and reclamation operations on or near certain private, federal, and other public lands designated by Congress in SMCRA, except for operations which existed on August 3, 1977, or were subject to valid existing rights on that date. The cabinet shall also prohibit certain surface coal mining operations on lands designated unsuitable for all or certain types of surface coal mining and reclamation operations under 405 KAR 24:030.

Section 2. Permit Application Review. Except for operations which existed on August 3, 1977, unless the required approvals or waivers have been obtained, upon receipt of a complete and accurate application for a surface coal mining and reclamation operation permit, and subject to valid existing rights, the cabinet shall review the application and deny the permit if it determines that the lands on which the proposed operation would be conducted include:

(1) Lands within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)) or study rivers or study river corridors as established in any guidelines pursuant to that Act, and the National Recreation Areas designated by Act of Congress;

(2) Lands within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building; or

(3) Lands within 100 feet, measured horizontally, of a cemetery; except that cemeteries may be relocated if authorized by applicable state law or administrative regulations;

(4) Lands where mining will adversely affect any publicly-owned park or any places included on the National Register of Historic Places unless jointly approved by the cabinet and the federal, state, or local agency with jurisdiction over the park or place as set forth in paragraphs (a) and (b) of this subsection.

(a) The cabinet shall transmit to the federal, state, or local government agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has thirty (30) days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The cabinet, upon request by the appropriate agency, may grant an extension to the thirty (30) day period of an additional thirty (30) days. Failure to interpose an objection within thirty (30) days or the extended period granted shall constitute an approval of the proposed permit by the agency.

(b) A permit for a surface coal mining and reclamation operation shall not be issued unless jointly approved by all affected agencies.

(5) Lands within 300 feet, measured horizontally, from any occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to surface coal mining operations closer than 300 feet.

(a) The applicant shall submit with the permit application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to the operation within a closer distance of the dwelling specified in the waiver. Valid waivers obtained prior to August 3, 1977 shall be valid for the purposes of this paragraph. Waivers obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to state law or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

(b) The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver. In this case, a copy of the lease or deed shall be included with the permit application.

(c) This subsection shall not apply when the part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling.

(6) Lands within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except where mine access roads or haulage roads join the right-of-way). The cabinet may allow areas within 100 feet to be affected or may allow the public road to be closed or relocated, provided that, the cabinet shall:

(a) Require the applicant to obtain any necessary approval of the governmental authority with jurisdiction over the public road;

(b) Provide opportunity for a public hearing in the locality of the proposed mining operations for the purpose of determining whether the interests of the public and affected landowners will be protected;

(c) Publish notice in a newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county of the affected area at least two (2) weeks before the public hearing;

(d) Make a written finding within thirty (30) days after the hearing or after any public comment period ends if no hearing is held, on the basis of information received at the public hearing as to whether the interests of the public and affected landowners will be protected. No mining shall be allowed within 100 feet of the outside right-of-way line of a road nor may a road be relocated or closed unless the cabinet determines that the interests of the public and affected landowners will be protected.

(7) Federal lands within the boundaries of any national forest, unless specifically approved by the Secretary of the Interior.

Section 3. Assistance Review. (1) If the cabinet is unable to determine whether the proposed surface coal mining operation is located within the distances or boundaries of any of the lands identified in Section 2 of this administrative regulation, the cabinet shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the agency that it shall respond in writing within thirty (30) days of receipt of the request.

(2) The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have thirty (30) days from receipt of notification in which to respond.

(3) The cabinet, upon request by the appropriate agency, shall grant an extension to the thirty (30) day period of an additional thirty (30) days. If no response is received within the thirty (30) day period or within the extended period granted, the cabinet may make the necessary determination based upon the information it has available.

Section 4. Valid Existing Rights. (1) Except for haul roads, "valid existing rights" means property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, contract or other instrument which authorizes the applicant to produce coal and the person proposing to conduct a surface coal mining operation on the lands either:

(a) Had been validly issued or had made a good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct surface coal mining operations on those lands, application for the permits being deemed to constitute good faith efforts to obtain the permits; or

(b) Can demonstrate to the cabinet that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

(2) For haul roads, "valid existing rights" means:

(a) A recorded right-of-way, recorded easement, or a permit for coal haul road recorded as of August 3, 1977; or

(b) Any other road in existence as of August 3, 1977.

(3) "Valid existing rights" does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining.

(4) Interpretation of the terms of the documents relied upon to establish existing rights shall be based upon the laws of Kentucky.

(5) A determination that coal is "needed" shall be based upon, but not be limited to, a finding that additional production originating on adjacent land is necessary to preclude a financial hardship on the mining operation measured by standard accounting and financial procedures, provided that:

(a) A fair rate-of-return on invested capital is not achievable on existing permitted land;

(b) A less than fair rate-of-return on invested capital is attributable to this chapter; and

(c) The operator can establish that the adjacent unpermitted land is part of the operator's mining plan.

(6) Where an area comes under the protection of Section 2 of this administrative regulation after August 3, 1977, valid existing rights shall be found if, on the date the protection comes into existence, a validly authorized surface coal mining operation exists on that area.

Section 5. Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations. Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to this chapter does not prohibit coal exploration operations in the area, if conducted in accordance with KRS Chapter 350 and 405 KAR Chapters 7 through 20. Exploration operations on any lands designated unsuitable for surface coal mining operations shall be approved only when the cabinet finds that the proposed exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining operations.

Section 6. Lands Designated Unsuitable. (1) If the cabinet determines that the proposed surface coal mining operation is not prohibited by Section 2 of this administrative regulation, it may nevertheless, pursuant to appropriate petitions, designate the lands as unsuitable for all or certain types of surface coal mining operations pursuant to 405 KAR 24:030.

(2) The cabinet shall not issue permits which are inconsistent with designations made pursuant to 405 KAR 24:030 and this administrative regulation. (8 Ky.R. 1597; eff. 1-6-83; Am. 15 Ky.R. 515; eff. 12-13-88; 1897; eff. 6-28-89.)

APPENDIX

6



Certified General Real Property Appraiser

Dixon Nunnery Appraisal Service

35 College Lane
Prestonsburg, Kentucky 41653
(606) 886-6464

APPRAISAL REPORT

OF

EXCESS RIGHT OF WAY
(SURPLUS PROPERTY)
TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS, DISTRICT 12
PIKEVILLE, KENTUCKY 41501

FOR

FLOYD COUNTY BOARD OF EDUCATION
106 NORTH FRONT STREET
PRESTONSBURG, KENTUCKY 41653

CERTIFICATION

I, the undersigned, do hereby certify that I have made a field inspection of the property herein appraised on January 15, 2015, and have made a field inspection of the comparable sales relied upon in making said appraisal, and that neither my employment nor my compensation for making this appraisal are in any way contingent upon the value reported herein, and that to the best of my knowledge and belief that statements contained in the appraisal report are true, and the information upon which the opinions expressed herein are based is correct, subject to the limiting conditions herein set forth.


That it is my opinion the fair market value of subject property as of the date of inspection is as follows:

Estimated Market Value After Assemblage: - - - \$ 1,350,000.

Estimated Market Value Before Assemblage:- - - \$ 1,275,000.

Contributing Market Value Surplus R/W: - - - \$ 75,000.

2-2-15


Dixon Nunnery

LIMITING CONDITIONS AND ASSUMPTIONS

The following underlying assumptions and conditions have been made:

1. That the title to the property is good and marketable.
2. That there are no encumbrances against the property that would in any way affect the valuation.
3. That a survey of the excess R/W and adjoining property has been made, and that I assume no responsibility in connection with such matter.
4. That information supplied by others is, to the best of my knowledge and belief, in conformity with the true facts, but no further liability can be assumed for their accuracy.
5. That a legal description has been furnished this appraiser, and that I assume no responsibility with such matter.
6. That no one other than the appraiser signing this report prepared the analysis, conclusions and opinions concerning real estate that are set forth in this appraisal report.
7. All valuations in the report are applicable only under the stated program of highest and best use and are not necessarily applicable under other uses.
8. That any applicable sketches and photographs included in this report are only for the purpose of aiding the reader in visualizing the property.
9. That the appraisal is based on information gathered from public records, brokers, other identified sources, inspection of the subject property and neighborhood, and selection of comparable sales within the subject market area.
10. The value estimated is based on the assumption that the property is not negatively affected by the existence of hazardous substances or detrimental environmental conditions unless otherwise stated in this report. The appraiser is not an expert in the identification of hazardous substances or detrimental environmental conditions.
11. That the following appraisal is for surface rights only.
12. That the following is a summary appraisal report.

APPRAISAL REPORT

Purpose of Appraisal

To estimate the fair market assemblage value of surplus right of way owned by the Transportation Cabinet, Kentucky Department of Highways, District 12, Pikeville, Kentucky.

Said property is located on Ky. Rt. 680, within the Goose Creek area of Floyd County, near Minnie, Kentucky.

In a proposed assemblage of public right of way to a privately owned parcel, fair market value for appraisal purposes is based on the premis that contributing value is the reverse of the before-after valuations process as it applies to acquisitions. Thusly, the estimated fair market value of the proposed assemblage minus the estimated fair market value of the adjacent property (parent without the subject right of way) it is the estimate of contributory value for the subject property.

"Fair Market Value" is defined as the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, and buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus, Implicit in this definition is the consummation of a sales as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) A reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Date of Inspection

Subject property was inspected for appraisal purposes on January 15, 2015.

Property Rights/Interest Appraised

The unencumbered surface estate in the subject property as of the date of inspection.

Property Identification/Legal Description

Refer to addenda for complete legal description of surplus right of way; source of title for parent tract; and surveyed description and vicinity map for surplus right of way.

Area and Neighborhood Analysis

Subject tracts are located on the north side of Ky. Rt. 680, within the Goose Creek area of Floyd County, near the community of Minnie, Kentucky.

The immediate neighborhood in which subject property is located, is a rural, mostly undeveloped area along Ky. Rt. 680, consisting of small to large acreage residential tracts, or undeveloped hill woodland and hollow areas.

Prestonsburg, approximately seventeen miles to the north, provides for most of the social, economic, governmental, and medical needs of area residents.

Site Data (Adjoining Parent Tract)

Subject property is located on Ky. Route 680, within the Goose Creek area of Floyd County, near the community of Minnie, Kentucky.

Said property by survey, contains a total area of 156.45 acres; consisting of approximately eight acres of L-SR, development land situated within a hollow fill from previous mining on the property, and 148.45 acres of rolling to steep hill woodland, fill slopes, and high wall benches. Direct access to said property from Ky, Rt. 680, is by a graveled access road situated on the east side of the property which is located on state right of way.

Public utilities available to the property consist of water and electricity. Also, a pond and three gas wells are situated on the property.

As previously indicated, subject property has been extensively mined with underground mining; contoured, high wall; mining; and hollow fills.

Site Data (Surplus Right of Way Tract)

Subject tract contains a total area by survey of 16.73 acres; consisting of a 1,100+ gravel roadway and rolling to steep hill woodland berms, slopes, and small hollow areas. Said roadway is utilized as an access road to subject surplus tract and subject parent tract owned by the Floyd County Board of Education.

Improvement Data

None. Subject tracts are vacant.

Highest and Best Use (Parent Tract. Floyd County Board of Education)

Subject tract due to location and size, is considered to have a special purpose utility or industrial use within the real estate market. Said multi-purpose utility, in the opinion of this appraiser, being the most reasonable and probable use that will support the highest present value in the market as of the effective date of appraisal.

Said tract was purchased for construction of a new Floyd County High School Complex.

Highest and Best Use (Surplus Right of Way Tract)

Subject tract based on location and topography is suitable for its present use as an access road and undeveloped hill woodland, slopes and hollow area.

Highest and Best Use (Proposed Assemblage)

Special purpose/industrial. Subject property as a whole by assemblage has enhanced access and utility for future development.

Approaches to Value

There are three basic approaches to have which may be utilized by an appraiser in estimating the market value of real estate. These are the Market Data, the Cost and the Income. All three approaches must rely upon the data obtained from the real estate market at the time of the appraisal with different techniques of analysis and application as guided by the type of real property to be appraised.

The Market Data Approach is one of direct comparison of the property being appraised with others that have recently sold and are similar in most respects. The property is considered as a whole with plus or minus adjustments made for superior or inferior aspects when compared with the comparable sales.

The Cost Approach is one where the appraiser estimates the cost of replacing the improvements new and makes allowances for any depreciation when the subject improvements are not new or in like new condition. The land value is then added to the depreciated replacement cost of the improvements.

The Income Approach to value is the one used most often where income producing property or investment real estate is being appraised. The technique is to estimate the net economic rent years and then to capitalize this future benefit into its present worth or market value.

In determining the market value of subject property, this appraiser has relied solely on the Market Approach to value. This is due to the type property being appraised, which is vacant, development land; and due to the availability of sufficient comparable market data for establishing said approach to value.

The Cost Approach is not applicable since subject property is vacant land with no existing improvements. Also, due to the unavailability of reliable economic or contract rent within the market for a vacant tract of subject's size, no meaningful capitalization or return rate can be established for development of the income approach to value.

Estimated Market Value Before Assemblage

A. Floyd County Board of Education Tract. (Adjoining Parent Tract)

C.S. No. 1 (Subject Property)

Location:	Ky. Rt. 680. Minnie, Ky.
Sale Date:	5-9-14 608/73
Sale Price:	\$1,275,000.
Land Size:	156.45 acres
Unit Value:	\$8,150. acre overall
Development Land:	8.0+ acres @ \$75,000. acre
Hill Woodland/Hollows:	148.45+ acres @ \$4,547. acre
Market Adjustment Factors:	

Sale property and subject parent tract are the same property with no appreciable adjustments necessary. (Note: No changes in subject since sale.)

C.S. No. 2

Location:	US 23, Abbott Cr. Floyd Co.
Sale Date:	11-14-06 531/127
Sale Price:	\$700,000.
Land Size:	61.0+ acres
Unit Value:	\$11,475. acre overall
Development Land:	4.50+ acres @ \$90,000. acre
Hill Woodland & Hollows:	56.50+ acres @ \$5,221 acre
Market Adjustment Factors:	

Sale property superior as to overall location and development potential and demand by 15% overall or \$13,500. per acre for development land and \$783. per acre for hill woodland and hollow areas.

Sale property is located just off US 23, a major US highway within a rapidly developing area just north of Prestonsburg, Ky. Subject property is located in a rural area on a secondary highway. Therefore, indicating the following adjusted value for subject property parent tract overall.

1. Development Land - 8.0+ acres @ \$76,500. acre = \$ 612,000.
2. Hill Woodland/Hollow Areas - 148.45 acres @ \$4,438 acre=\$658,882.

Total Value: \$1,270,882.

Say: \$1,271,000.

C.S. No. 3

Location:	Ky. Rt. 114. Magoffin County.
Sale Date:	4-8-13 205/374
Sale Price:	\$1,000,000.
Land Size:	61.594 acres
Unit Value:	\$16,235. acre overall
Development Land:	6.0+ acres @ \$100,000. acre=\$600,000.
Hill Woodland/Hollows:	55.594 acres @ \$7,200. acre=\$400,000.
Market Adjustment Factors:	

Sale property superior as to overall location to subject parent tract by 25% overall or \$25,000. per acre for development land, and \$1,800. per acre overall for hill woodland/hollow areas.

Sale property is located on a major route thru Magoffin County, and is close to high density commercial development along Ky. Rt. 114. Subject parent tract is located in a rural area on a secondary highway.

Therefore, indicating the following adjusted unit value for subject parent tract.

1. Development Land: 8.0+ acres @ \$75,000. acre = \$ 600,000.
 2. Hill Woodland/Hollows: 148.45 acres @ \$5,400.acre=\$801,630.
- Total Value: \$1,401,630.
- Say: \$1,400,000.

Final Correlation:

Analysis of the above listed market data, giving most credence to Sale No. 1 (subject property), indicates a market value of \$1,275,000. to be justified. Said value being well supported by the indications of Sales No. 2 & 3.

B. Assemblage Tract: (Parent Tract plus Surplus R/W)

In determining the value of subject 173.18 acre assembled tract, the unit values established in the value of the parent tract are applicable in the assembled tract with no additional adjustments necessary, except for considering the additional land size and the overall increased market utility and demand due to having a privately owned engress and egress access road from Ky. Rt. 680.

Therefore, in the final analysis, subject assembled tract, taking into consideration the additional land area and the increased utility from acquiring a permanent access road, is estimated to have the following indicated value.

1. Development Land: 8.0+ acres @ \$75,000. acre = \$ 600,000.
 2. Remaining Woodland/hollow areas, etc.:
165.80 @ \$4,547 acre = \$ 753,893.
- Total Value: \$1,353,893.
- Say: \$1,350,000.

Summary

Estimated Market Value Before Assemblage: \$ 1,275,000.

Estimated Market Value After Assemblage: \$ 1,350,000.

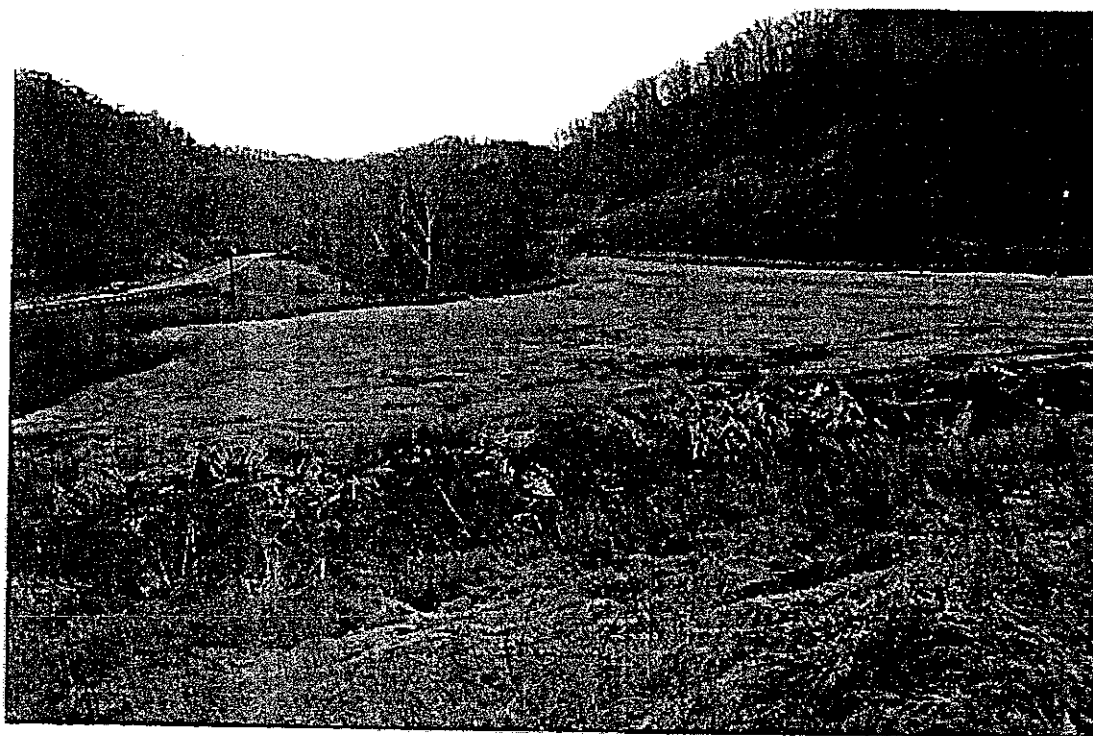
Contributing Market Value Surplus Right of Way: \$75,000.

A D D E N D U M

Scope of the Appraisal

The scope of this appraisal has included an inspection of the subject property as well as the neighborhood of which it is a part. In the course of preparing this report numerous sources of data were explored. These have included, where possible, plans and files, public records as found in the county courthouse, real estate agents and other knowledgeable persons. The purpose of investigating several sources has been not only to discover additional data but also to verify data obtained from the various sources. The information obtained from the above sources has been relied upon to form the opinion and conclusions expressed in this report. The data is believed to be factual but, since it has been obtained from others rather than from the appraisers personal first hand knowledge, its accuracy is not warranted. In most cases the appraisers inspection of the comparable data has been limited to the exterior only. In cases where the data provided appears to be in conflict with other sources, it has been necessary for the appraiser to rely upon his personal judgement.

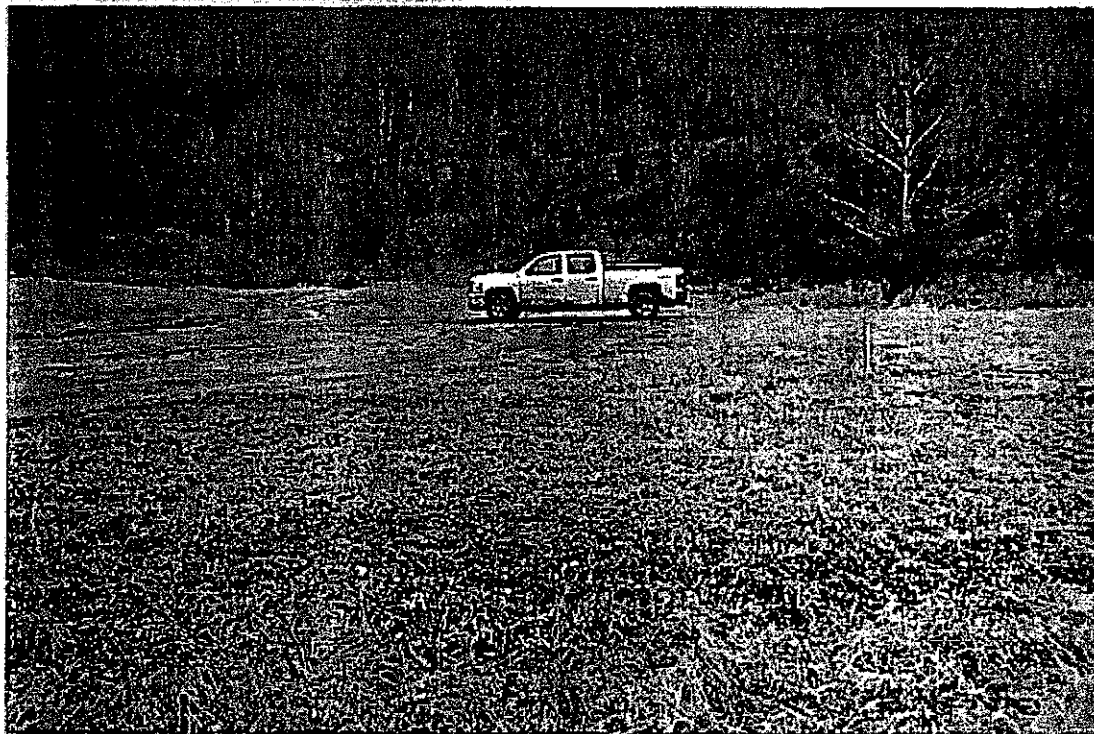
PHOTOGRAPHS
(Adjoining Parent Tract)

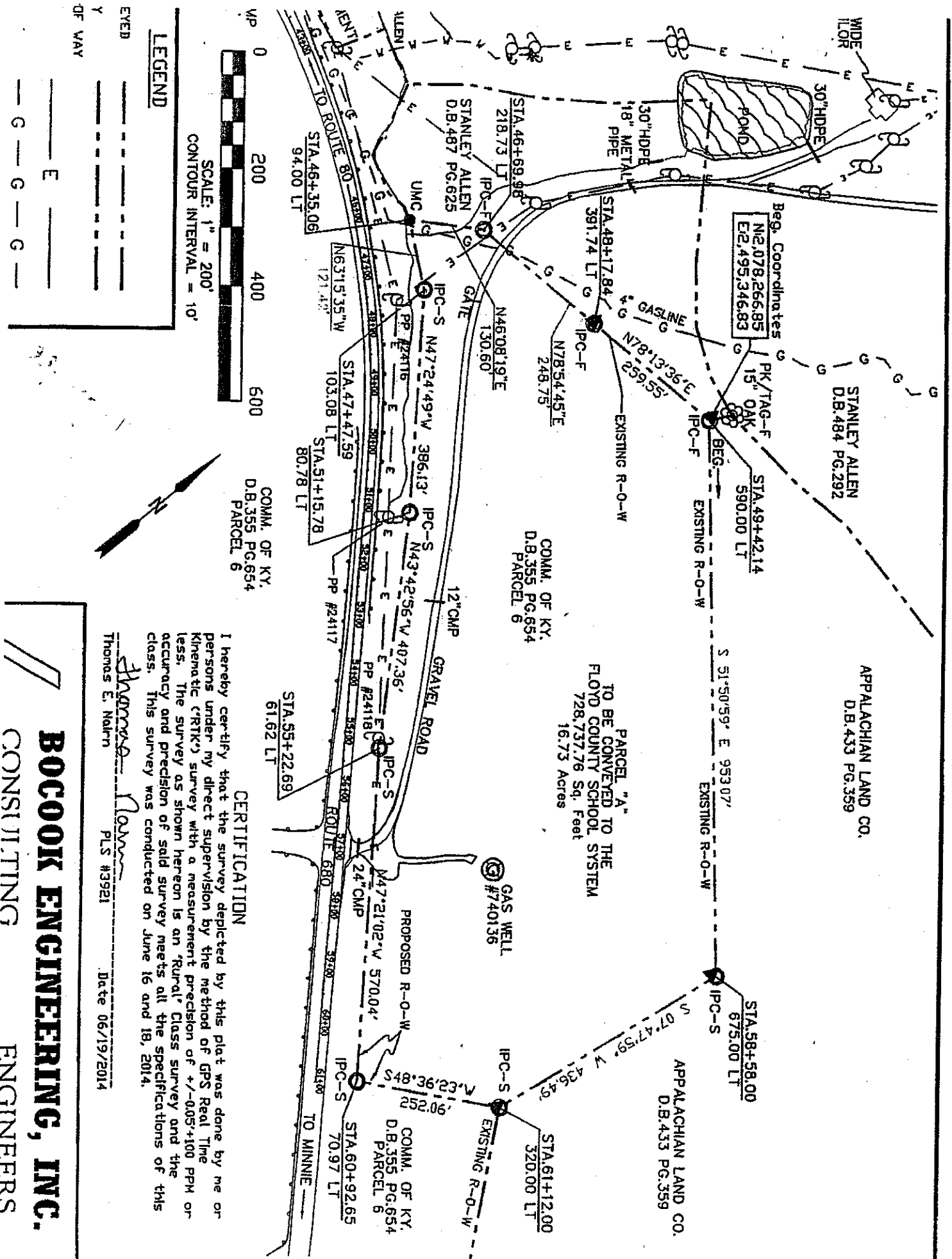


PHOTOGRAPHS
(Surplus R/W Tract)



PHOTOGRAPHS
(Surplus R/W Tract)





CERTIFICATION

I hereby certify that the survey depicted by this plat was done by me or persons under my direct supervision by the method of GPS Real Time Kinematic (RTK) survey with a measurement precision of +/-0.05+100 PPM or less. The survey as shown hereon is an "Rural" Class survey and the accuracy and precision of said survey meets all the specifications of this class. This survey was conducted on June 16 and 18, 2014.

Thomas E. Naltn
 Thomas E. Naltn
 PLS #3921
 Date 06/19/2014

BOCOOK ENGINEERING, INC.
 CONSULTING ENGINEERS

LEGAL DESCRIPTION
FOR:
RIGHT OF WAY BUYBACK
COMMONWEALTH OF KENTUCKY TO
FLOYD COUNTY BOARD OF EDUCATION.

A PARCEL OF LAND SITUATED ON THE NORTHERN RIGHT OF WAY LINE OF KENTUCKY STATE ROUTE 680 IN EASTERN, FLOYD COUNTY, KENTUCKY, BEING A PORTION OF RECORD SOURCE PARCEL #6 OF DEED BOOK 355 PAGE 654, RECORDED IN FLOYD COUNTY CLERK'S OFFICE, PRESTONSBURG, KENTUCKY, AND LOCATED APPROXIMATELY 0.7 MILES SOUTHEAST OF THE INTERSECTION OF U.S. ROUTE 80 AND KENTUCKY STATE ROUTE 680, EASTERN, FLOYD COUNTY, KENTUCKY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning on an iron pin found near the center of a point on the existing northern right of way line of Kentucky State Route 680, said iron pin being 590.00 feet left of said Route 680 centerline station 49+42.14, and a corner common to Stanley Allen, Deed Book 487 Page 625, and Appalachian Land Company, Deed Book 433 Page 359, and having NAD83 Kentucky state plane south zone coordinate system values of Northing 2,078,266.85 feet and Easting 2,495,346.83 feet; Thence leaving Deed Book 487 Page 625 and along the side of the hill with said right of way and Deed Book 433 Page 359 S 51°50'59" E 953.07 feet to an iron pin set 675.00 feet left of centerline station 58+58.00; Thence S 07°47'59" W 436.49 feet to an iron pin set 320.00 feet left of centerline station 61+12.00; Thence leaving Deed Book 433 Page 359 down the hill passing through the existing right of way Deed Book 355 Page 654 S 48°36'23" W 252.06 feet to an iron pin set near the toe of the slope 70.97 feet left of centerline station 60+92.65; Thence along the top of the slope of a drainage ditch N 47°21'02" W 570.04 feet to an iron pin set 61.62 feet left of centerline station 55+22.69; Thence N 43°42'56" W 407.36 feet to an iron pin set 80.78 feet left of centerline station 51+15.78; Thence N 47°24'49" W 386.13 feet to an iron pin set 103.08 feet left of centerline station 47+47.59; Thence N 63°15'35" W 121.42 feet to an un-monumented corner in the centerline of Gosling Branch, said corner being 94.00 feet left of centerline station 46+35.06 and a corner on the existing right of way and a common corner to Deed Book 487 Page 625; Thence leaving said creek and with the existing right of way Deed Book 355 Page 654 and across a flat with Deed Book 487 Page 625 N 46°08'19" E 130.60 feet to an iron pin found 218.73 feet left of centerline station 46+69.98; Thence up the point N 78°54'45" E 248.75 feet to an iron pin found 391.74 feet left of centerline station 48+17.84; Thence N 78°13'36" E 259.55 feet to the beginning and containing 16.73 acres or 728,737.76 sq. ft. All iron pins set are 5/8 inch rebar, 18 inches long with a 2 inch diameter aluminum cap bearing the words "Bocook Engineering PLS 3921." All iron pins found, unless otherwise noted, are 5/8 inch rebar with a 2 inch aluminum cap stamped "Bocook Engineering PLS 3949," and this description is based on a survey made under the direct supervision of Thomas E. Nairn, Licensed Professional Land Surveyor on June 16 and 18, 2014 by the method of GPS Real Time Kinematic survey with a measurement precision of +/-0.05' + 100 ppm. This is a "Rural" class survey and meets all of the specifications of this class. Completion date of survey: June 18, 2014.

Bocook Engineering's file of this plat of survey can be found in W:\WO8000\8778\ACAD\8778-survey.dwg.

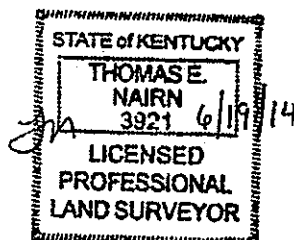
Thomas Nairn

Thomas E. Nairn, PLS #3921

June 19, 2014

Bocook Engineering, Inc.

259 North Arnold Ave., Prestonsburg, Ky. 41653



Book 608 Page 73

DEED

This Deed made and entered into this 5th day of September, 2014 by and between Stanley Allen and Rita Allen, his wife, Kentucky Route 680, P.O. Box 44, Minnie, Kentucky 41651, hereinafter referred to as "Grantors" and the Board of Education of Floyd County, Kentucky, 106 North Front Avenue, Prestonsburg, Kentucky 41653, hereinafter referred to as "Grantee". The "in-care" of tax mailing address for the current tax year is C/O Board of Education of Floyd County, Kentucky, 106 North Front Avenue, Prestonsburg, Kentucky 41653, Attention: Henry Webb, Superintendent, Floyd County Schools.

WITNESSETH:

The Grantors, for and in consideration of the sum of One Million Two Hundred Seventy Five Thousand Dollars (\$1,275,000), cash in hand paid, the receipt and sufficiency of which are hereby acknowledged, do hereby bargain, grant, sell and convey unto Grantee, two (2) certain tracts or parcels of land lying and being on Kentucky State Highway 680 at Eastern, Floyd County, Kentucky and more particularly bounded and described as follows, to wit:

TRACT NO. 1:

Beginning on an iron pin set in a ditch on the northern right of way line of Kentucky State Route #680, said iron pin being a corner common to the Commonwealth of Kentucky, Deed Book 355 Page 644, and Brent Allen, Deed Book 386 Page 799, and being on the southern boundary line of a permanent

construction easement for the Commonwealth of Kentucky, Parcel #65A of Deed Book 355 Page 644, and having NAD 83 Kentucky state plane south zone coordinate system values of Northing 2,078,286.43 feet and Easting 2,493,668.08 feet; Thence leaving said right of way, passing through said easement, and with Deed Book 386 Page 799 N 18°11'43" E 74.97 feet to an iron pin found on top of the creek bank of Gosling Branch; Thence leaving said easement and crossing Gosling Branch N 21°42'26" E 228.17 feet to an iron pin found near the toe of the hill; Thence up the hill N 17°34'45" E 325.42 feet to an iron pin found on the center of a point; Thence with the center of the point N 57°15'10" E 604.74 feet to an iron pin set; Thence continuing up the center of the point N 34°09'43" E 624.04 feet to an iron pin set; Thence N 27°28'15" E 163.31 feet to an iron pin found with a damaged cap, said iron pin being referenced by an iron pin set S 82°55'59" E 4.49 feet; Thence N 22°38'41" E 141.12 feet to a 17" Oak with a PK nail and tag set; Thence N 26°26'32" E 638.01 feet to a PK nail and tag set in a large rock; Thence N 26°44'58" E 312.40 feet to an iron pin set on the reclaimed ridge, said iron pin being a corner common to Melanie Warfield, Et Al, Deed Book 541 Page 44; Thence leaving Deed Book 386 Page 799 and with the reclaimed ridge and Deed Book 541 Page 44 S 29°47'21" E 45.37 feet to an iron pin found; Thence S 69°33'34" E 47.81 feet to an iron pin found; Thence S 64°26'10" E 210.81 feet to an iron pin found; Thence S 58°37'05" E 272.64 feet to an iron pin found; Thence S 58°43'34" E 164.40 feet to an iron pin found; Thence S 79°46'37" E 109.80 feet to an iron pin set; Thence S 83°02'09" E 156.82 feet to an iron pin found; Thence S 65°25'19" E 119.87 feet to an iron pin found; Thence S 68°40'20" E 159.76 feet to an iron pin found; Thence S 41°38'54" E 77.28 feet to an iron pin set; Thence S 46°29'23" E 64.33 feet to an iron pin set; Thence S 71°54'28" E 95.94 feet to an iron pin found; Thence S 84°50'12" E 152.89 feet to an iron pin found; Thence S 85°16'49" E 91.09 feet to an iron pin found; Thence S 79°45'38" E 184.83 feet to an iron pin set; Thence N 80°09'38" E 273.30 feet to an iron pin found; Thence N 85°31'16" E 21.56 feet to an iron pin found; Thence S 62°32'52" E 122.97 feet to an iron pin found; Thence S 75°33'47" E 105.17 feet to an iron pin found; Thence S 79°10'37" E 85.49 feet to an iron pin found; Thence S 72°29'19" E 63.73 feet to an iron pin found; Thence S 88°06'11" E 101.62 feet to an iron pin set; Thence N 78°59'37" E 112.56 feet to an iron pin found; Thence N 85°09'50" E 47.64 feet to an iron pin found on a reclaimed knob near the southwest corner of a chain link fence, said iron pin having a cap stamped "LS 2661" and being a corner common to Foothills Telephone Company, Deed Book 415 Page 622; Thence leaving Deed Book 541 Page 44 and with Deed Book 415 Page 622 N 83°06'42" E 29.75 feet to an iron pin found with cap stamped "LS 2661;" Thence S 64°19'21" E 30.84 feet to an iron pin stamped "LS 2661," said iron pin being a corner common to David Smith, Deed Book 222 Page 153, and Millie Dudley, Deed Book 486 Page 566; Thence leaving the reclaimed knob and Deed Book 415 Page 622 and Deed Book 222 Page 153 and with the reclaimed ridge and Deed Book 486 Page 566 S 09°35'00" E 49.57 feet to an iron pin found; Thence

continuing with the reclaimed ridge S 10°34'19" W 42.94 feet to an iron pin found; Thence S 04°00'20" W 126.45 feet to an iron pin found; Thence S 11°08'40" W 81.74 feet to an iron pin found; Thence S 27°47'06" W 326.97 feet to an iron pin found; Thence S 24°45'12" W 124.97 feet to an iron pin found, said iron pin being a corner common to Carl Dudley, Deed Book 359 Page 149; Thence leaving Deed Book 486 Page 566 and with Deed Book 359 Page 149 S 59°32'41" W 85.72 feet to an iron pin set; Thence S 31°53'59" W 219.12 feet to an iron pin set; Thence S 33°15'56" W 245.09 feet to an iron pin found; Thence S 30°47'41" W 181.91 feet to an iron pin found; Thence S 06°51'10" W 111.85 to an iron pin found; Thence S 17°26'25" W 79.14 feet to an iron pin set; Thence S 29°12'39" W 154.05 feet to an iron pin found; Thence S 02°34'35" E 73.22 feet to an iron pin set, said iron pin being a corner common to lands now or formally owned by Gosling Branch Coal and lands now or formally owned by Stevie Slone; Thence leaving the reclaimed ridge and Deed Book 359 Page 149 and said Gosling Branch Coal and down a point with said Stevie Slone S 85°40'17" W 371.56 feet to an iron pin found; Thence continuing down the point N 86°30'45" W 385.01 feet to an iron pin set; Thence S 86°34'10" W 164.34 feet to an iron pin set; Thence N 86°06'00" W 209.30 feet to an iron pin set; Thence S 77°53'12" W 143.39 feet to an iron pin set; Thence S 59°35'42" W 69.30 feet to a PK nail and tag set in a 24" Oak snag; Thence N 89°26'11" W 298.42 feet to an iron pin set; Thence S 79°32'33" W 114.65 feet to an iron pin found; Thence S 85°32'02" W 158.92 feet to a PK nail and tag set in a 15" Oak, said 15" Oak being a corner common to Stanley Allen, Deed Book 487 Page 625; Thence leaving the point and said Stevie Slone and down the hill with Deed Book 487 Page 625 N 81°02'30" W 75.00 feet to a PK nail and tag set in a 19" Oak; Thence N 67°16'21" W 87.85 feet to a PK nail and tag set in a 19" Oak; Thence N 51°44'06" W 109.39 feet to an iron pin found; Thence N 45°38'40" W 282.56 feet to an un-monumented point in an embankment pond, said un-monumented corner being referenced by an iron pin set online S 45°38'40" E 162.28 feet; Thence S 36°16'57" W 167.00 feet to an iron pin set on a flat; Thence S 42°26'34" W 137.01 feet to an iron pin set; Thence S 49°37'07" W 117.01 feet to an iron pin set; Thence leaving the flat and down the creek bank S 39°16'13" W 108.99 feet to an iron pin set near the edge of the creek, said iron pin being a corner common to the northern right of way line of the Commonwealth of Kentucky, Deed Book 355 Page 644; Thence leaving Deed Book 487 Page 625 and with the edge of the creek and said right of way N 75°39'00" W 102.32 feet to an iron pin set, said iron pin being a corner common to a permanent construction easement for the Commonwealth of Kentucky, Parcel #65B of Deed Book 355 Page 644; Thence leaving the edge of the creek and with said easement S 18°15'56" W 91.15 feet to an iron pin set; Thence N 76°50'16" W 219.67 feet to an iron pin set; Thence leaving said easement N 85°17'56" W 134.47 feet to an iron pin set; Thence N 80°48'18" W 387.90 feet to an iron pin set; Thence N 82°52'52" W 46.30 feet to the beginning and containing 152.18 acres or 6,629,009.08 sq. ft.,

according to survey of Peter Howard, Professional Land Surveyor, employed by Bocook Engineering, Inc.


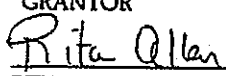
TRACT NO. 2:

Beginning on an iron pin set on the edge of the bank of Gosling Branch on the northern right of way line of Kentucky State Route #680, said iron pin being a corner common to the Commonwealth of Kentucky, Deed Book 355 Page 644, and Stanley Allen, Deed Book 484 Page 292, and having NAD 83 Kentucky state plane south zone coordinate system values of Northing 2,078,218.86 feet and Easting 2,494,572.54 feet; Thence leaving Gosling Branch and said right of way of Deed Book 355 Page 644 and up the bank with Deed Book 484 Page 292 N 39°16'13" E 108.99 feet to an iron pin set on a flat; Thence N 49°37'07" E 117.01 feet to an iron pin set; Thence N 42°26'34" E 137.01 feet to an iron pin set; Thence N 36°16'57" E 167.00 feet to an un-monumented corner in an embankment pond, said un-monumented corner being referenced by an iron pin set online S 36°16'57" W 76.38 feet; Thence leaving said pond and up the hill S 45°38'40" E 282.56 feet to an iron pin found; Thence S 51°44'06" E 109.39 feet to a PK nail and tag set in a 19" Oak; Thence S 67°16'21" E 87.85 feet to a PK nail and tag set in a 19" Oak; Thence S 81°02'30" E 75.00 feet to a PK nail and tag set in a 15" Oak on a point, said 15" Oak being a corner common to lands now or formally owned by Stevie Slone; Thence down the point and leaving Deed Book 484 Page 292 and with Stevie Slone S 26°09'22" W 41.24 feet to an iron pin set, said iron pin being on the northern right of way of Commonwealth of Kentucky, reference not found; Thence leaving said Stevie Slone and with said right of way S 78°13'36" W 259.55 feet to an iron pin set; Thence S 78°54'45" W 248.75 feet to an iron pin set; Thence S 46°08'19" W 130.60 feet to an un-monumented corner in Gosling Branch; Thence running with Gosling Branch N 73°11'06" W 23.58 feet to an un-monumented corner; Thence S 78°10'58" W 36.74 feet to an un-monumented corner; Thence N 75°21'23" W 62.22 feet to an un-monumented corner; Thence N 51°08'14" W 15.45 feet to an un-monumented corner; Thence N 19°55'20" W 53.88 feet to an un-monumented corner; Thence N 25°45'25" W 75.42 feet to the beginning and containing 4.27 acres or 186,182.87 sq. ft., according to survey of Peter Howard, Professional Land Surveyor, employed by Bocook Engineering, Inc.

The aforementioned tracts No. 1 and No. 2 being the same property conveyed to Stanley Allen and Rita Allen, his wife, by Deed dated March 13, 2003 and recorded in Deed Book 484 at Page 292, Floyd County Court Clerk's Office and Deed dated June 27, 2003 and recorded in Deed Book 487 at Page 625, Floyd County Court Clerk's Office.

TO HAVE AND TO HOLD the above described property with all of the appurtenances thereunto belonging unto Grantee, its successors and assigns forever, with covenants of General Warranty.

IN TESTIMONY WHEREOF, the Grantors have hereunto caused their signatures to be subscribed hereto the day and year first above written.


STANLEY ALLEN
"GRANTOR"

RITA ALLEN
"GRANTOR"

STATE OF KENTUCKY)

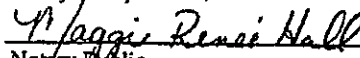
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COUNTY OF FLOYD)

The foregoing Deed was acknowledged before me by Stanley Allen and Rita Allen, his wife, Grantors this 5th day of September, 2014, to be their free act and deed.

My Commission expires April 29, 2018.

Witness my hand and Notarial Seal, this 5th day of September, 2014.


Maggie Renee Hall
Notary Public