

**RECEIVED**

SEP 18 2009

**PUBLIC SERVICE  
COMMISSION**

COMMONWEALTH OF KENTUCKY  
PUBLIC SERVICE COMMISSION

IN RE: CASE NO. 2009-00064  
APPLICANT: EAST KENTUCKY NETWORK, LLC, d/b/a APPALACHIAN  
WIRELESS  
INTERVENOR: LEE ETTA CUMMINGS

**NOTICE OF FILING OF PREFILED DIRECT TESTIMONY**

Comes the Intervenor, Lee Etta Cummings, and files in the record herein the prefiled testimony of Lee Etta Cummings, Fred Webb, Michael Cornett and Duane Lester as required by the Commission's Order entered on September 9, 2009.

SWORD, FLOYD & MOODY, PLLC

BY:   
Nora J. Shepherd  
Counsel for Intervenor

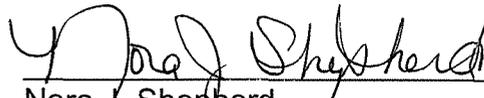
ADDRESS: 218 West Main Street  
P. O. Box 300  
Richmond, KY 40476-0300  
859-623-3728  
859-623-4224 fax

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of Filing of  
Prefiled Direct Testimony was served upon the following on this the 18<sup>th</sup> day of  
September, 2009:

William S. Kendrick  
P. O. Box 268  
Prestonsburg, KY 41653  
Counsel for Applicant

Allyson Honaker  
Counsel for Public Service Commission  
211 Sower Blvd  
Frankfort, KY 40602

  
\_\_\_\_\_  
Nora J. Shepherd

**DIRECT TESTIMONY OF Lee Etta Cummings**  
**BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION**  
**CASE NO. 2009-00064**

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PUBLIC SERVICE  
COMMISSION

**Q. Please state your name for the record.**

A. Lee Etta Cummings

**Q. What is your interest in this proceeding before the Public Service Commission?**

A. I own 50% interest in a 42-acre tract and 100% interest in a 95-acre tract immediately adjacent to Eastern Kentucky Network's proposed tower location at Van in Letcher County. I am here today because I oppose the proposed tower location due to the negative impact on the potential development of my property as a direct result of a loss of an estimated 7 acres if East Kentucky Network/Appalachian Wireless is successful in securing a Certificate of Convenience for the proposed tower location. In addition I am concerned about loss of recoverable tons of coal on my property once Sapphire Coal commences mining on the property.

**Q. Can you describe the potential land development opportunities that you have had in regards to your property located at Van in Letcher County?**

A. In 2001, the Letcher County Board of Education surveyed the site for the potential location of the consolidated high school. And in July of 2008, I was contacted by Mr. Elwood Cornett, Letcher County Planning Commissioner, regarding a Right of Entry to the property in order to conduct various technical studies to determine if the site may be suitable for a Federal prison on the land.

**Q. Did you have an appraisal conducted on the property in 2001 when the Letcher County Board of Education contacted you?**

A. Yes, on June 27, 2001.

**Q. What did the appraisal report show the value of the property to be at that time?**

A. The appraiser estimated the property value at \$10,000/per acre.

**Q. Did you have an appraisal conducted on the property in 2009?**

A. Yes, on April 15, 2009.

**Q. What did the appraisal report show the value of the property at that time?**

A. The appraiser estimated the property value at \$10,000/per acre.

**Q. Did the same appraiser perform both the 2001 and 2009 appraisals of your property?**

A. Yes, Vance Mosley of Kentucky Field Service Realty, Inc., performed both appraisals.

**Q. Do you have a copy of Mr. Moseley's 2001 appraisal to present to the Commission?**

A. Yes.

**Q. And do you ask the Commission to accept both the 2001 and 2009 appraisals performed by Vance Moseley into the record for consideration in this matter?**

A. Yes.

**Q. Did your Before and After Appraisal Report in 2009 indicate a negative impact on the development opportunities of your property if a tower is constructed at the proposed location?**

A. Yes, the appraisal indicated 4 flat acres would be unusable land on each side of the Right-of-Way that has a limited use. An estimated eight acres would be affected.

**Q. Have you reviewed the appraisal reports prepared by Mr. Dixon Nunnery Appraisal Service and Mr. Willie Prater at the request of East Kentucky Network/Appalachian Wireless?**

A. Yes.

**Q. Do these appraisal reports indicate a negative impact on the development opportunities of your property?**

A. Yes, both reports indicate a loss of 4.20 flat acres and Mr. Prater's report indicates an additional loss of 2.53 acres of hilly land for a grand total loss of 7 acres.

**Q. Do you have a copy of a map developed by Summit Engineering for the Prison Board committee that depicts the necessary acreage for the prison project?**

A. Yes. I ask the Commission to accept this certified copy of the Prison Board's map, which was prepared by Summit Engineering, Inc. on 8-9-09 and which indicates that the Prison Board needs 40 acres of land for its prison project.

**Q. Is it your understanding that, because you will lose the use of 7 acres on your property due to location of the cellular tower, your property will be rendered unsuitable for location of the proposed federal prison?**

A. Yes.

**Q. Do you have other concerns in regards to your property and the proposed tower location?**

A. Yes, I have a coal mining lease with Sapphire Coal Company. The President of the company expressed concern about blasting around the proposed tower location on May 27, 2009. Sapphire Coal has since recommended alternate tower locations that would not hinder their mining operations, and I have presented Sapphire Coal's map of those alternate tower locations to the Commission.

**Q. Are there alternate tower locations that have been acknowledged by East Kentucky Network/Appalachian Wireless to provide adequate coverage of the targeted area?**

A. Yes, East Kentucky Network/Appalachian Wireless confirmed on June 11, 2009, that one of five proposed alternate tower locations provided adequate coverage of the targeted area and that location was identified as Alternate #1. However, East Kentucky Network stated that it found Alternate Site #1 unsuitable due to the location of gas lines on that property and the impossibility and expense of an access road.

**Q. Do you own the property identified as Alternate #1?**

A. Yes.

**Q. Do you have existing Right of Way Agreements with two gas companies on that property?**

A. Yes, I have agreements with Basin Energy and Quality Natural Gas Properties.

**Q. Are both companies required per your existing Right of Way Agreements to relocate the existing lines at your request if necessary?**

A. Yes.

**Q. Do you have copies of those Right of Way Agreements to present to the Commission?**

A. Yes.

**Q. Have you received correspondence from both companies expressing their willingness to relocate the lines at their expense if necessary?**

A. Yes.

**Q. In regards to the expense of construction of a road to Alternate #1, did you contact a contractor and receive a bid for construction of a road to the tower site identified as Alternate #1?**

A. Yes, I contacted Michael Cornett of C & C Construction, and I have filed his bid with the Commission which indicates the building of an access road to Alternate #1 is possible and the cost of doing so ranges from \$5,200.00 to \$6,800.00.

**Q. In regards to the terrain, do you have photos depicting the suitability of the terrain at Alternate #1?**

A. Yes.

**Q. Who took these photos and when were they taken?**

A. I took them on September 16, 2009. Fred Webb, the engineer for Sapphire Coal, accompanied me to Alternate #1 and helped me locate it, and these pictures accurately depict Alternate #1 and its terrain on September 16, 2009.

**Q. Do you ask the Commission to accept these two photos of Alternate #1 into the record as Photo #1 and Photo #2 for consideration by the Commission in this matter?**

A. Yes.

**Q. In regards to appropriate terrain for a cell tower, do you have photos depicting a few examples of other towers in Letcher County and the terrain surrounding those towers?**

A. Yes.

**Q. How and when did you obtain these photos and what do they depict?**

A. I took these photos on September 16, 2009, while traveling through Letcher County to visit my property. I am attempting to show the Commission by these photos that, if a cellular tower can be located on terrain such as is exhibited in these photos, then Alternate Tower Site #1's terrain is suitable for the location of a cellular tower.

**Q. Do you ask the Commission to accept these photos of other cellular tower sites in Letcher County into the record as Photo #3 and Photo #4 for consideration by the Commission in this matter?**

A. Yes.

**Q. Did you travel to the property on 9-16-09 and take photos of the tower location proposed by East Kentucky Network/Appalachian Wireless?**

A. Yes.

**Q. Do the photos that you took on 9-16-09 depict that construction has continued at the tower location proposed by East Kentucky Network/Appalachian Wireless even since you filed your protest to the location of the tower?**

A. Yes.

**Q. And how do you know that construction has continued?**

A. When I visited the proposed tower site this past winter, shortly after East Kentucky Network served notice of its Application, I noticed then that construction of the cellular tower had already commenced and that East Kentucky Network had already laid the foundation for its tower. Even since my protest, East Kentucky Network has continued with its construction and has placed a structure on the site.

**Q. Do you ask the Commission to accept these photos of the current condition of construction of a tower at East Kentucky Network's proposed tower site as photo#5 and photo #6 into the record for consideration by the Commission in this matter?**

A. Yes.

**Q. If East Kentucky Network/Appalachian Wireless re-located a permanent tower site to Alternate #1 would you have the same concerns regarding the loss of development potential of your property?**

A. No.

**Q. If East Kentucky Network/Appalachian Wireless re-located a permanent tower site to Alternate #1 would you experience any loss of coal associated with the mining plan and your coal lease with Sapphire Coal Company?**

A. No.

**Q. How would you request the commission rule in this matter?**

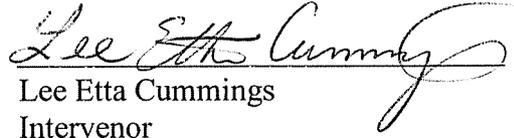
A. I would like to see the commission represent my best interests as the land owner and protect me from losing an estimated 7-8 acres of land and potentially experiencing a loss of several thousand dollars due to loss of coal. Since Alternate #1 has been confirmed by East Kentucky Network/Appalachian Wireless as a site that provides adequate coverage of the targeted area and the only barriers expressed regarding gas lines and expense to construct a road have been adequately addressed, I see no reason why a re-location to Alternate #1 would not be in order.

**Q. Does this conclude your testimony?**

A. Yes.

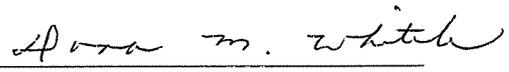
**VERIFICATION**

I hereby verify that the foregoing testimony is true and accurate to the best of my knowledge and belief.

  
Lee Etta Cummings  
Intervenor

STATE OF KENTUCKY                    )  
COUNTY OF Franklin                )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by  
Lee Etta Cummings, to me known, on this the 18<sup>th</sup> day of  
September, 2009.

  
\_\_\_\_\_  
Notary Public, State at Large

My commission expires MAY 1, 2012



**RIGHT OF WAY AGREEMENT**

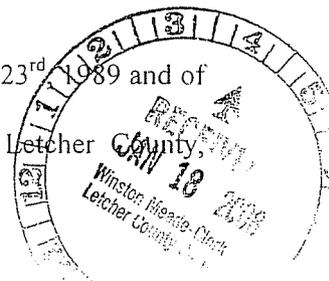
This Agreement made and entered into this the 11 day of December 2007, by and between **Lee Etta Cummings**, single, of P.O. Box 1254, Richmond, Kentucky 40476, First Party, and **QUALITY NATURAL GAS PROPERTIES, LTD.**, of P.O. Box 480, Allen, KY 41601, Second Party:

**W-I-T-N-E-S-S-E-T-H:**

For good and valuable consideration, First Party does hereby grant unto Second Party, the necessary right-of-way to construct, repair, replace and use pipelines in the service of its oil and gas operations. Said pipeline will be situated on premises of First Party which is located on the waters of Cornett Branch of Smoot Creek located in Letcher County, Kentucky. Second Party hereby agrees to reseed all areas on said land disturbed by Second Party and to maintain that section of said pipeline that is constructed by said Second Party. It is understood and agreed that this right-of-way does not and shall not extend generally for the use of the public, but is limited to and for the use of the Second Party and First Party, their successors and assigns, for their agents and employees, for the persons, firms and corporations doing work for the First and Second Party and upon discontinuance of use by Second Party, said right-of-way shall revert to First Party.

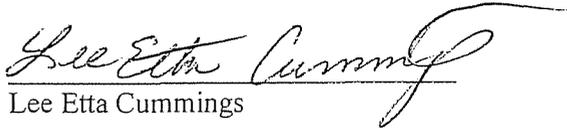
Second Party shall protect, defend, indemnify and hold harmless First Party for and from any and all liability, claims, loss and/or expense resulting from the death of or injury to any persons whatsoever, and destruction of or damage to any property arising out of or resulting from the use of Premises by Second Party. Second Party also agrees to relocate said pipeline one time at the expense of the Second Party, to be used at the discretion of the First Party should it be necessary.

Being the same property conveyed to Lee Etta Cummings by deed dated January 23<sup>rd</sup> 1989 and of record in Deed Book 289, Page 255 of the Letcher County Court Clerk's Office, Letcher County, Kentucky.



IN WITNESS WHEREOF, the Parties of the First Part and Second Part have hereunto subscribed their names the day and year first above written.

**FIRST PARTY:**

  
\_\_\_\_\_  
Lee Etta Cummings

**SECOND PARTY:**

**QUALITY NATURAL GAS PROPERTIES, LTD.**

BY: Quality Natural Gas Partner, LLC

ITS: General Partner

BY:  Manager

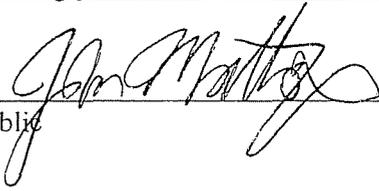
**STATE OF KENTUCKY**

**SPECIAL COMMISSION**

I, John Mattox, a Notary Public of said County and State aforesaid, do certify that **Lee Etta Cummings**, whose name is signed to the within writing has this day acknowledged the same before me in my said county.

My commission expires May 23<sup>rd</sup> 2011.

Given under my hand this 11 day of December, 2007.

  
\_\_\_\_\_  
Notary Public

STATE OF KENTUCKY

STATE AT LARGE

I, Shane Kester, a Notary Public of said County and State aforesaid, do certify that Sam Dusek, Manager of **QUALITY NATURAL GAS PROPERTIES, LTD.**, whose name is signed to the within writing has this day acknowledged the same before me in my said county.

My commission expires 7-29-2009.

Given under my hand this 18 day of December, 2007.

Shane Kester  
Notary Public

THIS INSTRUMENT PREPARED BY:

John Mattox  
**QUALITY NATURAL GAS PROPERTIES, LTD.**  
John Mattox  
P. O. Box 480  
Allen, Kentucky 41601  
(606) 874-8041

STATE OF KENTUCKY  
COUNTY OF LETCHER

I WINSTON MEADE, CLERK OF LETCHER COUNTY, DO HEREBY CERTIFY THAT THE FOREGOING Easement WAS ON THIS 18<sup>th</sup> DAY OF Jan, 2008, LODGED IN MY OFFICE FOR RECORD AND THAT IT AND THIS CERTIFICATE HAVE BEEN RECORDED IN Lead BOOK 393 PAGE 851.

WITNESS MY HAND THIS 18<sup>th</sup> DAY OF Jan, 2008.

BY: Winston Meade WINSTON MEADE, CLERK  
\_\_\_\_\_ D.C.

THIS IS A COMPLETE APPRAISAL REPORT IN SUMMARY FORM.

of

PROPERTY LOCATED IN VAN AT  
THE JUNCT. OF RT. 160 AND RT. 15,  
CONTAINING 21.97 ACRES

**PREPARED FOR:**

LEE ETTA CUMMINGS  
PO BOX 176  
VICCO, KY 41773

**AS OF:**

June 27, 2001

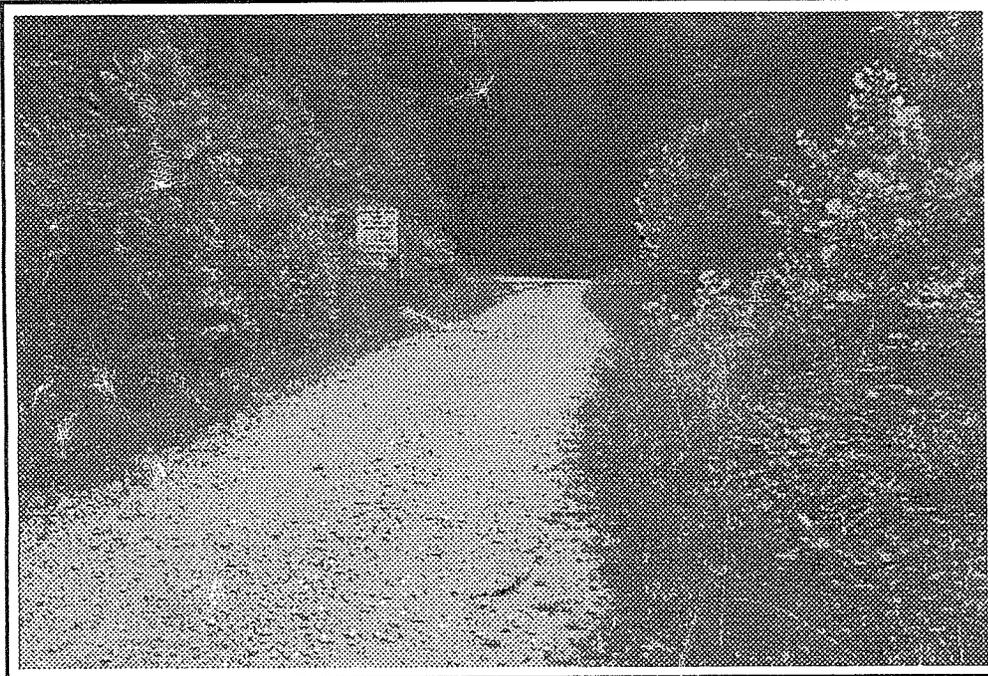
**PREPARED BY:**

**Kentucky Field Service**

KENTUCKY FIELD SERVICE REALTY, INC.  
PO BOX 921  
HYDEN, KY 41749

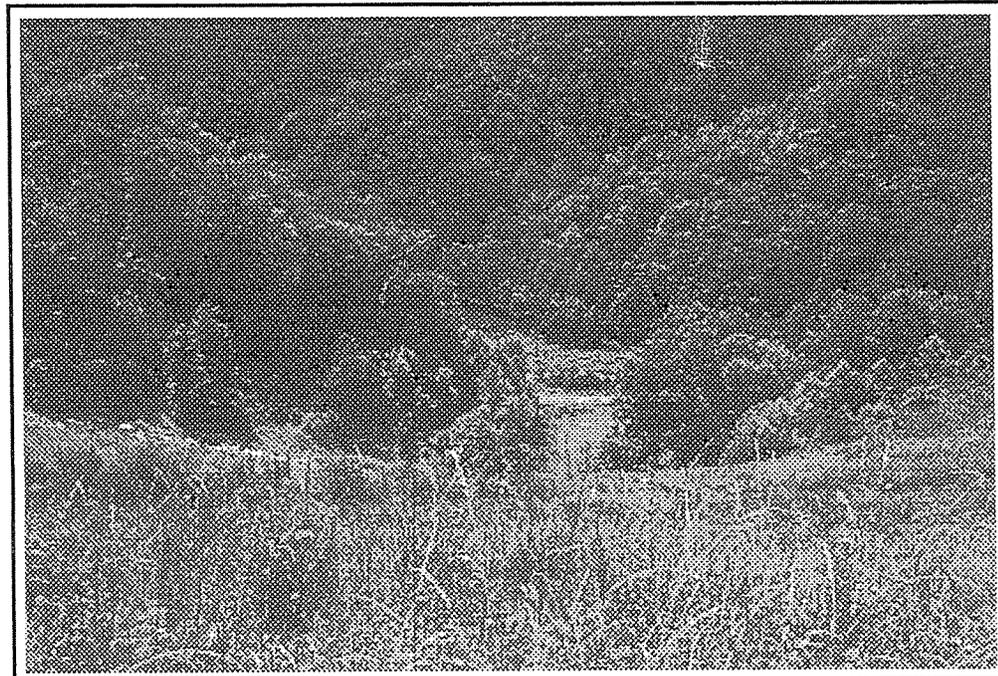
SUBJECT PHOTOGRAPHS

File No. LET01IND



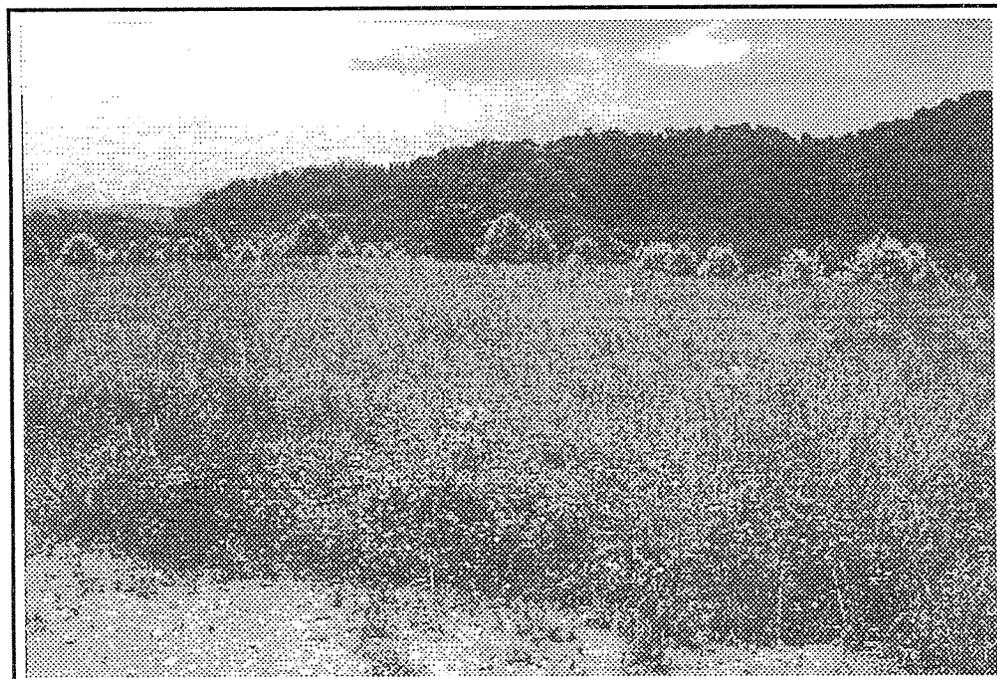
ACCESS ROAD

CUMMINGS



CUMMINGS LEE-

ETTA



CUMMING'S LEE-

ETTA

SUBJECT ADDRESS:

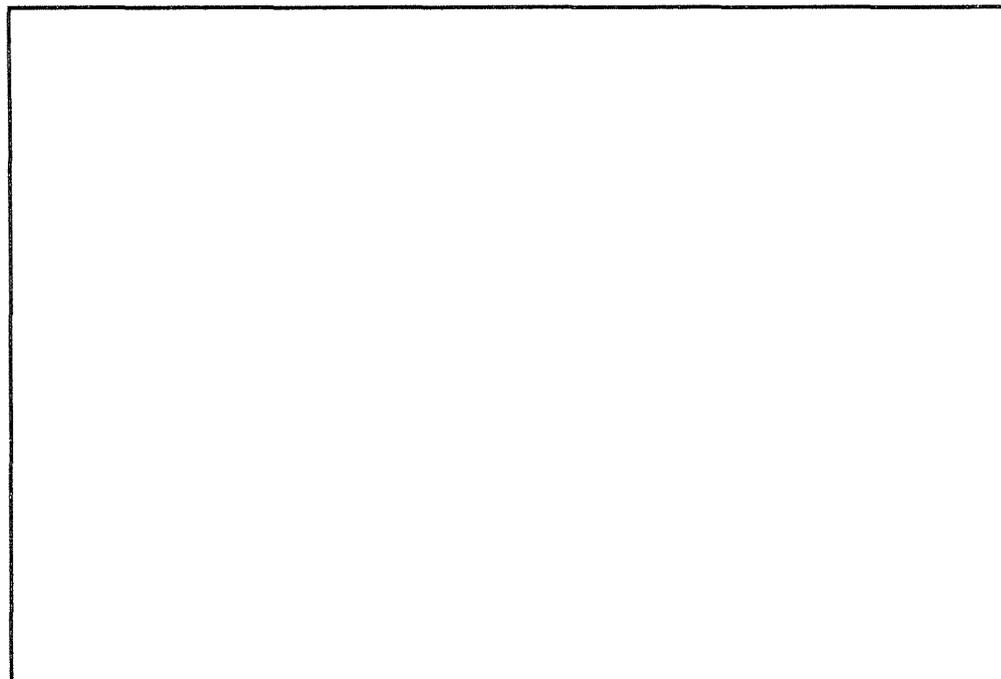
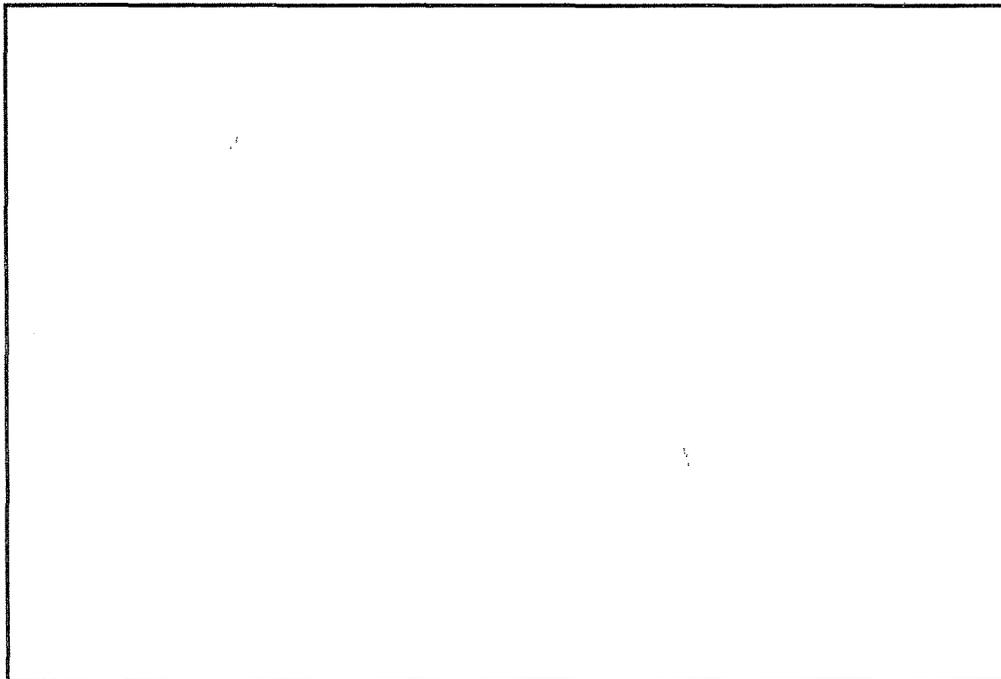
SUBJECT PHOTOGRAPHS



File No. LET01IND

VIEW OF SUBJECT

LOOKING EAST



SUBJECT ADDRESS:

**COMPARABLE SALES**

File No. LET01IND

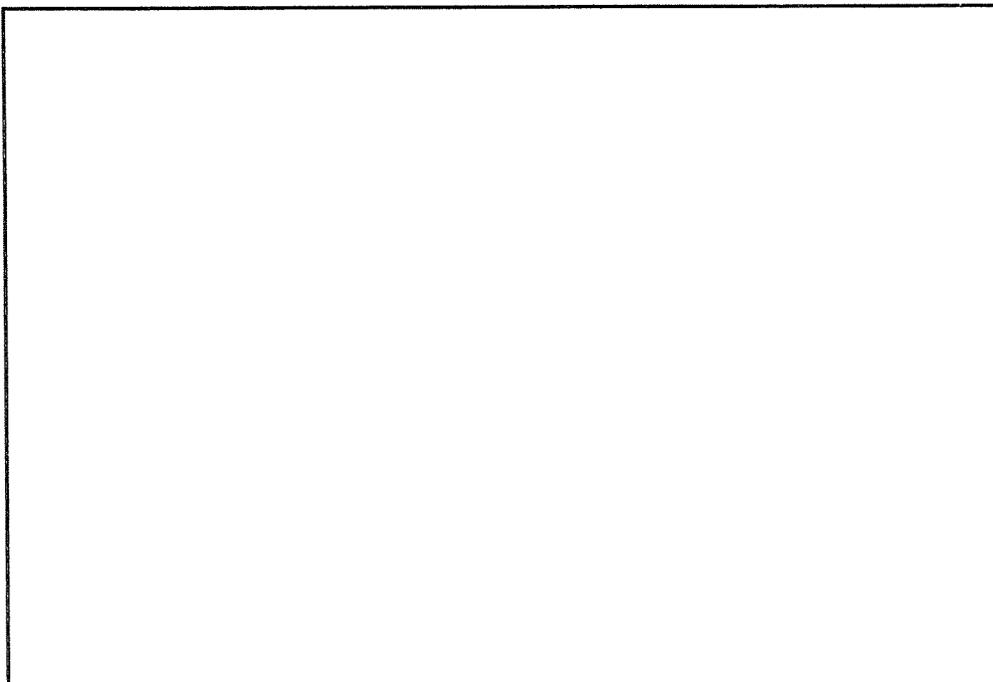
SALE #1



SALE #2



SALE #3



**SUBJECT ADDRESS:**

**Kentucky Field Service  
LAND APPRAISAL REPORT**

File No. LETO1IND

**IDENTIFICATION**

Borrower CLIENT-LEE ETTA CUMMINGS Census Tract N/A Map Reference BLACKY TOPO.  
 Property Address VAN, INTERSECTION OF RT. 160 AND RT. 15  
 City VICCO County LETCHER State KY ZIP Code 41773  
 Legal Description BOUND ON THE NORTH BY HARRY FIELDS, EAST BY RAYMOND BROWN, WEST BY SMOOT COAL  
 Sale Price \$ N/A Date of Sale N/A Loan Term N/A yrs. Property Rights Appraised  Fee  Leasehold  De Minimis PUD  
 Actual Real Estate Taxes \$ UNKNOWN (yrl) Loan charges to be paid by seller \$ N/A Other sales concessions NONE  
 Lender/Client LEE ETTA CUMMINGS Address BOX 176 VICCO, KY 41773  
 Occupant VACANT Appraiser VANCE MOSLEY Instructions to Appraiser ESTIMATE THE FAIR MARKET VALUE OF THE SUBJECT PROPERTY.

**NEIGHBORHOOD**

Location	<input type="checkbox"/> Urban	<input type="checkbox"/> Suburban	<input checked="" type="checkbox"/> Rural	
Built-up	<input type="checkbox"/> Over 75%	<input checked="" type="checkbox"/> 25% to 75%	<input type="checkbox"/> Under 25%	
Growth Rate	<input type="checkbox"/> Fully Dev.	<input checked="" type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Steady	<input type="checkbox"/> Slow
Property Values	<input type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining	
Demand/Supply	<input type="checkbox"/> Shortage	<input checked="" type="checkbox"/> In Balance	<input type="checkbox"/> Oversupply	
Marketing Time	<input type="checkbox"/> Under 3 Mos.	<input checked="" type="checkbox"/> 4-6 Mos.	<input type="checkbox"/> Over 6 Mos.	
Present Land Use	<u>10</u> % 1 Fmly	<u>85</u> % 2-4 Family	<u>5</u> % Apts.	<u>5</u> % Condo
	<u>85</u> % Industrial	<u>0</u> % Vacant	<u>0</u> %	<u>0</u> % Commercial
Change in Present Land Use	<input checked="" type="checkbox"/> Not Likely	<input type="checkbox"/> Likely (*)	<input type="checkbox"/> Taking Place(*)	
	(*) From _____ To _____			
Predominant Occupancy	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Tenant	<u>0</u> % Vacant	
Single Family Price Range	\$ <u>20,000</u> to \$ <u>200,000</u>		Predominant Value \$ <u>50,000</u>	
Single Family Age	<u>NEW</u> yrs. to	<u>60</u> yrs.	Predominant Age <u>25</u> yrs.	

	Good	Avg.	Fair	Poor
Employment Stability	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Convenience to Employment	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Convenience to Shopping	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Convenience to Schools	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adequacy of Public Transportation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreational Facilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adequacy of Utilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Property Compatibility	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Protection from Detrimental Conditions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Police and Fire Protection	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Appearance of Properties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appeal to Market	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): A NEW CUT THROUGH AT JENKINS HAS IMPROVED ACCESS TO THE AREA. A NEW GOLF COURSE HAS BEEN CONSTRUCTED EAST OF JENKINS. THE SUBJECT IS LOCATED ON A MOUNTAIN TOP WITH GOOD VIEWS BETWEEN RT. 160 AND HWY. 15.

**SITE**

Dimensions N/A = 21.97 Ac. Ft. or Acres  Corner Lot

Zoning classification NONE Present improvements  do  do not conform to zoning regulations

Highest and best use  Present use  Other (specify) INVESTMENT

Electricity	<input checked="" type="checkbox"/> Public	<u>AVAILABLE</u>	OFF SITE IMPROVEMENTS	Topography	<u>FLAT TO STEEP</u>
Gas	<input type="checkbox"/>		Street Access	<input type="checkbox"/> Public	<input checked="" type="checkbox"/> Private
Water	<input type="checkbox"/>		Surface	<u>GRAVEL ACCESS</u>	
San. Sewer	<input type="checkbox"/>		Maintenance	<input type="checkbox"/> Public	<input checked="" type="checkbox"/> Private
	<input type="checkbox"/>	Underground Elec. & Tel.	<input type="checkbox"/> Storm Sewer	<input type="checkbox"/> Curb/Gutter	
	<input type="checkbox"/>		<input type="checkbox"/> Sidewalk	<input type="checkbox"/> Street Lights	

Is the Property located in a HUD Identified Special Flood Hazard Area?  No  Yes

Comments (favorable or unfavorable including any apparent adverse easements, encroachments or other adverse conditions): THERE IS A STRIP MINED AREA WITH OLD DEEP MINE WORKS-EXTENT UNKNOWN.

**MARKET ANALYSIS**

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to or more favorable than the subject property, a minus (-) adjustment is made thus reducing the indicated value of subject; if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	<u>JNCT. RT. 160 AND HWY. 15</u>	<u>HWY. 15 &amp; RT. 80, PERRY COUNTY KY DB253,521</u>	<u>EAST OF JENKINS DB 352, PG. 265</u>	<u>NORTH OF HAZARD DB 280, PG389</u>
Proximity to Subject		<u>20 MILES</u>	<u>20 MILES</u>	<u>29 MILES</u>
Sales Price	<u>\$/ACRE- N/A</u>	<u>\$ 11,233/A</u>	<u>\$ 14,044/A</u>	<u>\$ 15,000/A</u>
Price	<u>N/A</u>	<u>\$ 225,000</u>	<u>\$ 1,166,666</u>	<u>\$ 330,000</u>
Data Source	<u>MAP</u>	<u>PVA-SELLER</u>	<u>CHARLES DIXON</u>	<u>SYCKES</u>
Date of Sale and Time Adjustment	<u>N/A</u>	<u>8-95</u>	<u>1-9-2001</u>	<u>8-1999</u>
Location	<u>AVERAGE</u>	<u>EQUAL</u>	<u>EQUAL</u>	<u>EQUAL</u>
Site/View	<u>GOOD</u>	<u>EQUAL</u>	<u>EQUAL</u>	<u>EQUAL</u>
SIZE	<u>21.97 ACRES</u>	<u>EQUAL</u>	<u>EQUAL</u>	<u>EQUAL</u>
USEABLE AC	<u>11 ACRES/50%</u>	<u>EQUAL</u>	<u>EQUAL</u>	<u>EQUAL</u>
UTILITIES	<u>NONE</u>	<u>WATER</u>	<u>SEWAGE/WATER</u>	<u>SUPERIOR</u>
TERRAIN	<u>50 % USEABLE</u>	<u>EQUAL</u>	<u>EQUAL</u>	<u>SUPERIOR</u>
Sales or Financing Concessions	<u>NONE</u>	<u>NONE</u>	<u>NONE</u>	<u>NONE</u>
Net Adj. (Total)		<input type="checkbox"/> Plus <input checked="" type="checkbox"/> Minus \$ <u>-1,000</u>	<input type="checkbox"/> Plus <input checked="" type="checkbox"/> Minus \$ <u>-4,000</u>	<input type="checkbox"/> Plus <input checked="" type="checkbox"/> Minus \$ <u>-6,000</u>
Indicated Value of Subject		Net <u>8.9%</u> Gross <u>8.9%</u> \$ <u>10,233</u>	Net <u>28.5%</u> Gross <u>28.5%</u> \$ <u>10,044</u>	Net <u>40.0%</u> Gross <u>40.0%</u> \$ <u>9,000</u>

Comments on Market Data: THE SALES INDICATE A VALUE RANGE FROM \$9,000/ACRE TO \$10,233/ACRE. THE APPRAISER PLACES MOST EMPHASIS ON SALE #1 AND SALE #2.

**RECONCILIATION**

Comments and Conditions of Appraisal: THE MAIN DIFFERENCE BETWEEN SALES AND THE SUBJECT WAS THE SUBJECT HAD NO UTILITIES AND POOR ACCESS. ADJUSTMENTS WERE MADE FOR THESE FACTORS. SALE #1 HAD NO SEWAGE AND WAS MOST SIMILAR.

Final Reconciliation: AFTER CONSIDERING THE FACTS AND FIGURES CONTAINED IN THIS REPORT, THE APPRAISER ESTIMATES THE FAIR MARKET VALUE OF THE SUBJECT TO BE \$10,000/ACRE X 21.97 ACRES = \$219,700, CALL \$220,000.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF JUNE 26TH, 2001 to be \$ 220,000.00

Appraiser(s) VANCE MOSLEY *Vance Mosley* Review Appraiser (if applicable)  Did  Did Not Physically Inspect Property

**Kentucky Field Service**

**CURRENT SALES CONTRACT**

- The subject property is currently not under contract.
- The contract and/or escrow instructions were not available for review. The unavailability of the contract is explained later in the addenda section.
- The contract and/or escrow instructions were reviewed. The following summarizes the contract:  

Contract Date	Amendment Date	Contract Price	Seller
_____	_____	_____	_____
- The contract indicated that personal property was not included in the sale.
- The contract indicated that personal property was included. It consisted of \_\_\_\_\_ Estimated contributory value is \$ \_\_\_\_\_
- Personal property was not included in the final value estimate.
- Personal property was included in the final value estimate.
- The contract indicated no financing concessions or other incentives.
- The contract indicated the following concessions or incentives: \_\_\_\_\_
- If concessions or incentives exist, the comparables were checked for similar concessions and appropriate adjustments were made, if applicable, so that the final value conclusions is in compliance with the Market Value defined herein.

**MARKET OVERVIEW**

Include an explanation of current market conditions and trends.

12 months is considered a reasonable marketing period for the subject property based on **OTHER VACANT LAND SALES IN THE MARKET AREA OF THE SUBJECT.**

**ADDITIONAL CERTIFICATION**

The Appraiser certifies and agrees that:

- (1) The analyses, opinions, and conclusions were developed, and this report was prepared, in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"), and in accordance with the regulations developed by the Lender's Federal Regulatory Agency as required by FIRREA, except that the Departure Provisions of the USPAP do not apply.
- (2) Their compensation is not contingent upon the reporting of predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- (3) This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.

**ADDITIONAL (ENVIRONMENTAL) LIMITING CONDITIONS**

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. The appraiser's routine inspection of and inquiries about the subject property did not develop any information that indicated any apparent significant hazardous substances or detrimental environmental conditions which would affect the property negatively unless otherwise stated in this report. It is possible that tests and inspections made by a qualified hazardous substance and environmental expert would reveal the existence of hazardous substances or detrimental environmental conditions on or around the property that would negatively affect its value.

**ADDITIONAL COMMENTS**

**THE PROPERTY HAS BEEN BOTH DEEP MINED AND STRIP MINED, AND MAY BE UNSTABLE DUE TO POSSIBLE SUBSIDANCE AND SLIDES. BEFORE ANY BUILDINGS OR STRUCTURES ARE BUILT ON THE SITE, IT SHOULD BE EXAMINED BY AN ENGINEER IN THIS FIELD.**

**APPRAISER'S SIGNATURE & LICENSE/CERTIFICATION**

Appraiser's Signature *Vance Mosley* Effective Date 6-26-2001 Date Prepared 6-28-2001  
 Appraiser's Name VANCE MOSLEY Phone # 606-672-3856  
 State KY  License  Certification # 0832 Tax ID # 61-1183317

**CO-SIGNING APPRAISER'S CERTIFICATION**

- The co-signing appraiser has personally inspected the subject property, both inside and out, and has made an exterior inspection of all comparable sales listed in the report. The report was prepared by the appraiser under direct supervision of the co-signing appraiser. The co-signing appraiser accepts responsibility for the contents of the report including the value conclusions and the limiting conditions, and confirms that the certifications apply fully to the co-signing appraiser.
- The co-signing appraiser has not personally inspected the interior of the subject property and:
  - has not inspected the exterior of the subject property and all comparable sales listed in the report.
  - has inspected the exterior of the subject property and all comparable sales listed in the report.
- The report was prepared by the appraiser under direct supervision of the co-signing appraiser. The co-signing appraiser accepts responsibility for the contents of the report, including the value conclusions and the limiting conditions, and confirms that the certifications apply fully to the co-signing appraiser with the exception of the certification regarding physical inspections. The above describes the level of inspection performed by the co-signing appraiser.
- The co-signing appraiser's level of inspection, involvement in the appraisal process and certification are covered elsewhere in the addenda section of this appraisal.

**CO-SIGNING APPRAISER'S SIGNATURE & LICENSE/CERTIFICATION**

Co-Signing  
 Appraiser's Signature \_\_\_\_\_ Effective Date \_\_\_\_\_ Date Prepared \_\_\_\_\_  
 Co-Signing Appraiser's Name \_\_\_\_\_ Phone # \_\_\_\_\_  
 State  License  Certification # \_\_\_\_\_ Tax ID # \_\_\_\_\_

**ADDENDUM TO APPRAISAL**

**APPRAISAL REQUIREMENTS  
MANDATED BY FIRREA**

I certify that the appraisal conforms to the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation.

The subject  (is)  (is not) listed for sale, the listing price is \$ N/A . My estimate of the reasonable marketing period of the subject property is N/A .

If an approach to value was not used, the following is an explanation why it was not considered.

Cost: THE PROPERTY WAS UNIMPROVED AND THEREFORE THIS APPROACH IS NOT APPLICABLE.

Market: \_\_\_\_\_

Income: THE PROPERTY DID NOT HAVE AN INCOME STREAM, THEREFORE IT DOES NOT APPLY AND WAS NOT USED.

The appraisal assignment  (was)  (was not) based on requested minimum or specific valuation or on the approval of a loan.

I  (have)  (have no) financial interest in the loan transaction and do not stand to benefit in any way from the value placed on the property.

I  (have)  (have not) included a separate assessment of personal property, fixtures, or intangible items which are attached to or located on the real property. These items  (do)  (do not) affect the market value of the real property.

Any creative financial or sales concessions that are known to the appraiser have been adjusted in the comparables of this appraisal.

In performing this appraisal, I was not able to review the:

N/A \_\_\_\_\_ (insert N/A if inapplicable)  
N/A \_\_\_\_\_

The above items should be obtained by the lender when reviewing the appraisal report.

This appraisal was done with an "as is" market value. This is the value of the property in its current physical condition and subject to the zoning in effect as of the current date of value.

I certify that I have the appropriate knowledge and experience that was necessary to complete this assignment.

Vance Mosley  
VANCE MOSLEY

6-28-2001  
DATE

## SUMMARY OF SALIENT FEATURES

**Subject Address** VAN, JNCT. RT. 160 AND HWY. 15

**Legal Description** DB , PG

**City** VICCO

**County** LETCHER

**State** KY

**ZIP Code** 41773

**Census Tract** N/A

**Map Reference** BLACKY TOPO.

**Sale Price** \$ N/A

**Date of Sale** N/A

**Borrower/Client** N/A

**Lender** LEE ETTA CUMMINGS

**Size (Square Feet)** VACANT-21.97 ACRES, +/-

**Price per Square Foot** \$ VACANT

**Location** AVERAGE

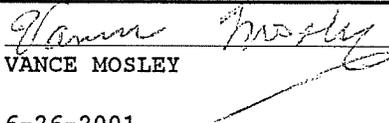
**Age** N/A

**Condition** FAIR

**Total Rooms** N/A

**Bedrooms** N/A

**Baths** N/A

**Appraiser**   
VANCE MOSLEY

**Date of Appraised Value** 6-26-2001

**Final Estimate of Value** \$ 220,000.00

**CERTIFICATE OF VALUE**

I have carefully inspected the property owned by

\_\_\_\_\_ ('Owner'), located at

JNCT. RT. 160 AND HWY. 15

\_\_\_\_\_ ('Subject Property')

and it is my considered opinion that the Fair Market Value\* of the Subject Property, as of the Date of Inspection, is . . .

\$ 220,000.00

I appraised the Subject Property in 'as is' condition as of the Date of Inspection, including, if any, wall-to-wall carpeting, custom-made draperies, built-in appliances and fixtures.

I hereby certify that I have no interest, actual or contemplated . . .

In THE SUBJECT PROPERTY.

In the company that employs the Owner;

In the Subject Property, including any business or family relationship with the Owner.

Appraiser (Type or Print) VANCE MOSLEY

Appraiser (Signature) *Vance Mosley*

Date of Inspection 6-26-2001

-----  
\* 'Fair Market Value'

'The price at which a property would most probably sell if exposed to the market for a reasonable period of time in an 'as is' condition, where payment is made in cash or its equivalent.'

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the 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 sale 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.

\* Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

## STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

**CONTINGENT AND LIMITING CONDITIONS:** The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements, and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower; the mortgagee or its successors and assigns; the mortgage insurer; consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

# Kentucky Field Service

## APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable, and if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report, and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

**SUPERVISORY APPRAISER'S CERTIFICATION:** If a supervisory appraiser signed the appraiser report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the Appraiser's Certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

**ADDRESS OF PROPERTY APPRAISED:** JUNCT. RT. 160 AND HWY. 15 VICCO

### APPRAISER:

Signature: Vance Mosley  
Name: VANCE MOSLEY  
Date Signed: 6-28-2001  
State Certification No.: 0832  
or State License No.: \_\_\_\_\_  
State: KY  
Expiration Date of Certification or License: JUNE 30TH, 2002

### SUPERVISORY APPRAISER (only if required):

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Date Signed: \_\_\_\_\_  
State Certification No.: \_\_\_\_\_  
or State License No.: \_\_\_\_\_  
State: \_\_\_\_\_  
Expiration Date of Certification or License: \_\_\_\_\_  
 Did  Did Not Inspect the Property

**RECEIVED**

SEP 18 2009

PUBLIC SERVICE  
COMMISSION

**DIRECT TESTIMONY OF FRED WEBB**  
**BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION**  
**CASE NO. 2009-00064**

**I. INTRODUCTION**

**Q. Please state your name and business address.**

A. My name is Fred Webb. My business address is 147 Big Blue Boulevard, Whitesburg, KY 41858.

**Q. By whom are you employed and what is your position?**

A. I am Chief Engineer at Sapphire Coal Company.

**Q. Please outline your work experience.**

A. I have been involved in mining engineering since 1980.

**Q. What is your educational background?**

A. I have a degree in Civil Engineering from the University of Kentucky.

**Q. Have you previously testified before regulatory commissions?**

A. No.

**Q. What is the purpose of your direct testimony?**

A. To discuss the negative impact regarding loss of coal on the Cumming's tract located at Smoot Creek in Letcher County if East Kentucky Network/Appalachian Wireless is successful in placement of a cellular tower at that proposed location.

**II. LEASE AGREEMENT**

**Q. Does Sapphire Coal have a current coal mining lease with Ms. Cummings?**

A. Yes, on 8-17-09 Sapphire Coal Company leased Ms. Cumming's mineral and has plans to mine the coal on her property adjacent to the proposed tower location at Smoot Creek.

**Q. Are you prepared to share your calculations of remaining/recoverable tons of coal in place on the Cumming's tract?**

A. Yes, the remaining/recoverable tons on the Cumming's tract is 54,445 recoverable tons.

**Q. Are you familiar with the May 27, 2009, letter generated by Sapphire Coal Company's President, John Schroder, to Gerald Robinette, general manager of East Kentucky Network?**

A. Yes.

**Q. Can you further explain the concerns Sapphire Coal Company has with leaving the tower at the location proposed by Eastern Kentucky Network?**

A. Leaving the tower at the proposed location would so limit blasting, mining would be impractical, uneconomical. The key problem with the proposed tower location is it overlies a previously mined area. There is less than 100' of cover and there is an abandoned deep mine directly under the proposed location. The blasting is guaranteed to cause settling and subsidence.

**Q. Can you identify loss of coal on Cumming's tract if the tower is left at the proposed location?**

A. The loss from our point of view would be 100% if Virginia Drilling, our blasting subcontractor, is resistant to blast.

**Q. You received a letter dated May 20, 2009, from Gerald Robinette, CEO of East Kentucky Network, which discussed the possibility of East Kentucky Network granting a blasting release?**

A. Yes.

**Q. Are you aware of any signed blasting release, waiver of liability or any agreement between Sapphire Coal Company or your blasting subcontractor and East Kentucky Network/Appalachian Wireless that would permit you, at least as far as East Kentucky Network is concerned, to blast within 25 feet of the proposed tower location?**

A. No.

**Q. Would your company need to blast within 25 feet of the proposed tower location in order to recover the coal from the Cummings' tract?**

A. Yes.

**Q. Are you aware of other any other coal companies that have signed waivers to blast within 25 feet of a cellular tower?**

A. No. I consulted with other coal companies, TECO, Nally and Hamilton, and Pemier Elkorn, none of which have ever blasted near a tower. Towers are relatively new and usually follow in the footsteps of mining, not before. I have seen several towers go up after mining was completed and the site reclaimed, but none before.

**Q. If blasting is permitted within 25 feet of the proposed tower location should there be any reason for concern?**

A. The reason for concern for blasting within 25 feet of the proposed tower location is not the direct impact on the tower which is probably designed to withstand the mild airblast, but the effects of the blast on the abandoned underground mine. We can't be certain of the mine's condition. We can't inspect the mine. Therefore, we can only assume the nearby blast will likely

cause some collapse. The collapse will certainly affect the roof of the mine, and it will set down some. Just how much movement will occur, we can't be sure. Cracks and subsidence will likely occur. It is the subsidence that will ultimately bring down the tower in the end. Again, we are not doubting the tower can stand the effects of the blast. We are worried about the abandoned underground mine located about about 50' below this tower and its effects on the tower.

**Q. Did Sapphire Coal Company assist Ms. Cummings in generating alternate tower site locations that will not interfere with Sapphire's mining plan or recovery of coal from Cummings' tract?**

A. Yes.

**Q. Was the attached topo map entitled "Alternate Tower Location" prepared by you?**

A. Yes.

**Q. Do you adopt the attached topo map as part of your testimony to the Commission?**

A. Yes.

**Q. Are you familiar with Alternate Site #1 on the map entitled "Alternate Tower Location?"**

A. Yes.

**Q. If Alternate Site #1 was selected as the permanent tower location would Sapphire Coal Company have the same concerns regarding the mining plan and blasting?**

A. No.

**Q. If Alternate Site #1 was selected as the permanent tower location would there be the same issues with loss of coal on the Cummings' tract?**

A. No.

**Q. Based on your credentials as a PE, PLS and Chief Engineer at Sapphire Coal Company, would you prefer this tower be located at Alternate Site#1?**

A. Yes. Due to the negative effects of recoverable coal on the Cummings' tract if the tower is left at the proposed location and interference of the proposed tower location with the mining plan of Sapphire Coal Company, I would request the commission rule that Appalachian Wireless move the tower to Alternate Site #1 as a permanent location.

**Q. Does this conclude your testimony?**

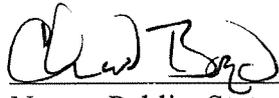
A. Yes.

I hereby verify that the foregoing testimony is true and accurate to the best of my knowledge and belief.

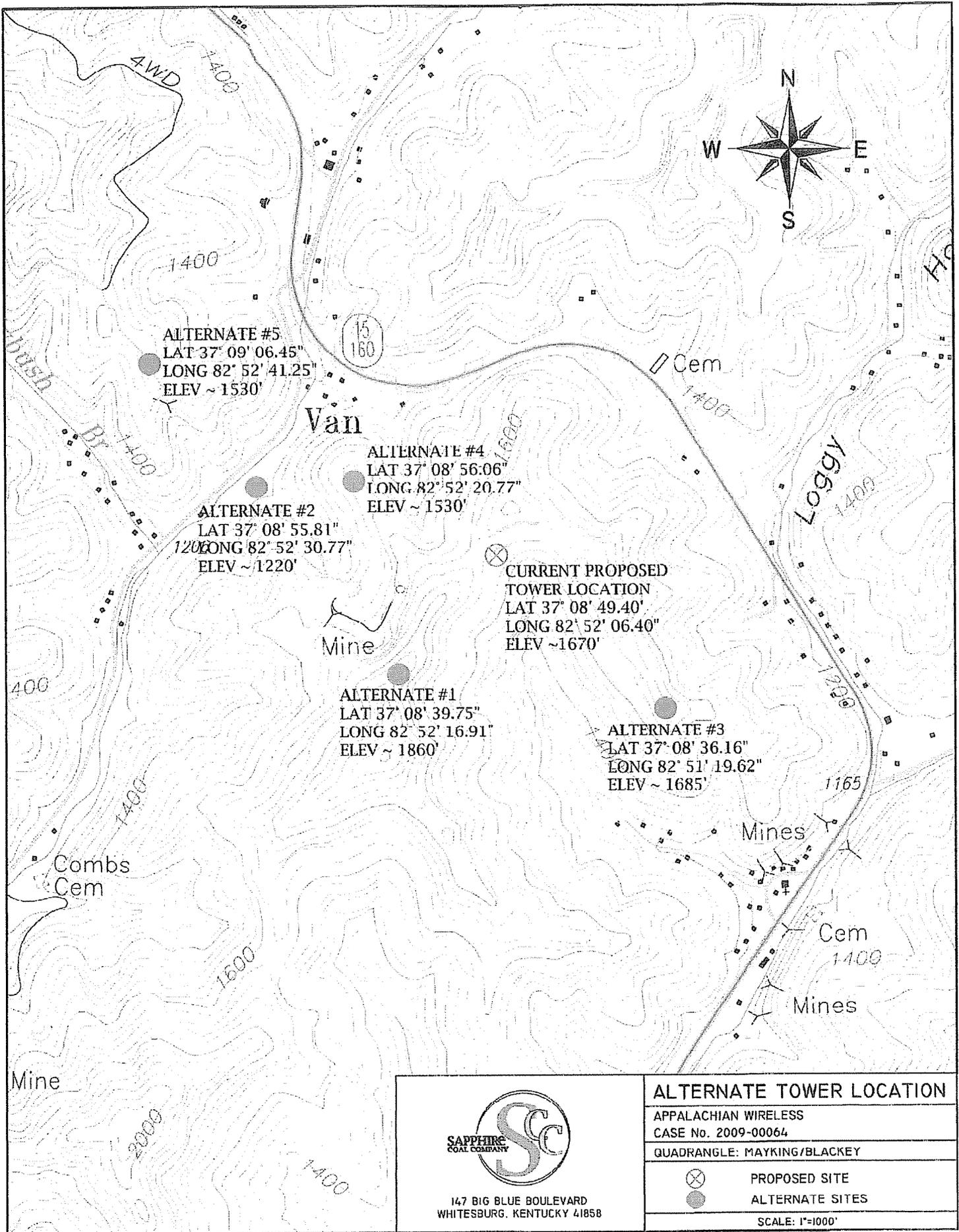
  
\_\_\_\_\_  
Fred Webb,  
Chief Engineer for Sapphire Coal

STATE OF KENTUCKY                    )  
COUNTY OF LETCHER                )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Fred Webb, to me known, in his capacity as Chief Engineer for Sapphire Coal on this the 10<sup>th</sup> day of SEPTEMBER, 2009.

  
\_\_\_\_\_, Kentucky  
Notary Public, State at Large

My commission expires 8-22-12



147 BIG BLUE BOULEVARD  
WHITESBURG, KENTUCKY 41858

**ALTERNATE TOWER LOCATION**

APPALACHIAN WIRELESS  
CASE No. 2009-00064

QUADRANGLE: MAYKING/BLACKKEY

- ⊗ PROPOSED SITE
- ALTERNATE SITES

SCALE: 1"=1000'

**COAL MINING LEASE**

THIS COAL MINING LEASE (the "Lease") is made and effective this the 17<sup>th</sup> day of August, 2009 (the Effective Date), by and between Lee Etta Cummings, single, of P.O. Box 1254 Richmond, Kentucky 40476, hereinafter referred to as "Lessor", and Sapphire Coal Company, a Virginia corporation, with its principal office located at 147 Big Blue Boulevard, Whitesburg, KY 41858, hereinafter referred to as "Lessee".

WHEREAS, Lessor owns that certain property located in Letcher County, Kentucky, said property being more particularly described in Deed of Conveyance from John Cummings dated October 25, 1988 and recorded in Deed Book 289, page 255, in the Letcher County Clerk's Office ("Leased Premises"), and Lessor has the right to convey use of the Leased Premises to the Lessee in the manner described herein; and,

WHEREAS, Lessor desires to lease said Leased Premises to Lessee; and

WHEREAS, Lessee desires to lease said Leased Premises from Lessor.

WITNESSETH

NOW, THEREFORE, IN CONSIDERATION of the promises, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows,

Demise, Appurtenant Rights

1. Lessor hereby leases, lets and demises to Lessee:

(a) All of the mineable and merchantable coal in Whitesburg seam and all seams above the Whitesburg seam only, in, upon and under the Leased Premises, together with the right to use the surface overlying said property for mining purposes defined herein.

(b) The exclusive right to extract by all mining methods, including, but not limited to, deep, auger, contour and any other mining methods now being used in the coal industry and all methods that may be developed hereafter, all coal from all seams on the Leased Premises without liability for subsidence or

damage to the surface resulting from high extraction underground mining or "high-wall mining".

(c) The exclusive right to use the Leased Premises for any and all purposes appurtenant to mining on the Leased Premises or other lands including, without limitation, the construction and operation of portals, airshafts, drillholes, stockpile areas, haul roads, fill areas and ponds.

(d) The exclusive right to transport coal, earth, rock, men, machinery, equipment and supplies across the surface of the Leased Premises or through underground mine works on, to and from the Leased Premises or to and from any other lands owned by third parties.

Lessee understands that the oil and gas rights on the Leased Premises are currently leased out to other parties. Lessee agrees that its operations on the Leased Premises shall be conducted so as not to interfere with any existing or future drilled oil and gas well. Provided, however, Lessor agrees to allow gas pipelines be relocated to new locations on the Leased Premises in the event such pipelines interfere with the mining operations of Lessee.

2. Reservations: Lessor reserves all merchantable trees and timber upon the Leased Premises except those which Lessee cuts in the reasonable exercise of the rights granted it under this Lease.

3. No Warranty of Title or Acreage: Lessor hereby leases unto Lessee only such coal mining rights and surface rights and privileges as Lessor owns and has the right to grant or lease. This Lease is made without warranties of title, or covenants of rights to lease, or of quiet or peaceful possession, express or implied. In the event there should be any deficiency of acreage in the property, such deficiency shall not impose any liability upon Lessor or in any way affect any provision of this Lease, except that Lessee shall not be obligated to pay royalties to Lessor for any portion of the Leased Premises not owned by Lessor. Lessee shall take reasonable steps to assure itself of the sufficiency of Lessor's title prior to commencing mining operations on the Leasehold. In the event a question arises as to the ownership of the surface or mineral rights and Lessor and Lessee can not agree as to the rightful owner, Lessee agrees to pay all royalties to an escrow agent agreeable to the parties until such time as the surface or mineral title is determined by

the opinion of a reputable attorney or by a final judgment of a court of competent jurisdiction.

4. No Warranty as to Coal: Lessor makes no implied or express warranty or representation concerning the existence, quantity, quality, mineability or merchantability of the leased coal underlying the premises or title thereto, and Lessee acknowledges and agrees that no representations, statements or warranties, express or implied, have been made by or on behalf of Lessor regarding the premises, its condition, the use or occupation that may be made thereof or the income therefrom.

5. Term: The primary term of this lease shall be for a period of five (5) years from the effective date or until terminated as hereinafter provided. Provided there are no uncured defaults under this lease and further provided that Lessee is actively mining coal or hauling coal across the Leased Premises at the expiration of the primary term, the term may be extended for an additional five (5) years at Lessee's option by giving written notice to Lessor at least sixty (60) days prior to expiration of the initial term. At the end of the five (5) year extension, if any, provided there are no uncured defaults under this lease and further provided the Lessee is actively mining coal on or hauling coal across the Leased Premises, the term may be extended for an additional two (2) years at Lessee's option by giving written notice to Lessor at least sixty (60) days prior to expiration of the first extension period. Lessee may terminate this lease at any time during the first or second extension periods by giving written notice to Lessor at least sixty (60) days prior to termination.

6. Tonnage, Minimum Royalties and Wheelage

(a) For each ton of coal mined and removed from the Leased Coal Premises by underground mining methods, Lessee shall pay to Lessor Actual Royalty in the sum of seven (7%) percent of the Gross Sales Price of such leased coal or one dollar and fifty cents (\$1.50), whichever is greater. For each ton of coal mined and removed from the Leased Premises by strip mining methods, Lessee shall pay to Lessor the sum of ten (10%) percent of the Gross Sales Price of such leased coal or two dollars (\$2.00), whichever is greater. For each ton of coal mined and removed from the Leased Premises by the auger or highwall mining method, Lessee shall pay to Lessor twelve (12%) percent of the Gross Sales Price of such leased coal or two dollars and fifty cents (\$2.50), whichever is greater.

(b) Lessee further covenants that it will pay a minimum royalty in the amount of Four Thousand Dollars (\$4,000.00 dollars). The Lessee shall pay the first such minimum royalty upon the execution of this Lease with a like sum being due and payable on the anniversary date each year thereafter Said minimum shall be fully recouped or off-set against actual royalties paid during the life of this Lease.

(c) In addition to the actual mining royalty, Lessee agrees to construct, use and maintain a road on said Leased Premises for the haulage of coal from properties other than the Leased Premises. Lessee agrees to pay Lessor a "wheelage" of four tenths of one percent (.4%) percent of the gross sales price or ten cents (\$.10) per ton, whichever is greater, for coal hauled over, under or across the Leased Premises if such coal is mined from properties other than the Leased Premises.

(d) For purposes of calculating the royalties payable hereunder, the term "Gross Sales Price" shall mean the actual price at which coal from the Leased Premises is sold to the ultimate consumer f.o.b. the preparation plant (if cleaned) or the mine (if shipped raw), without deduction for any taxes, sales commissions, transportation costs, preparation charges, processing charges or other expenses. "Ton" means 2,000 pounds.

(e) Lessee covenants and agrees that it will not market or remove from the Leased Premises any substances mixed with the coal which it mines under this lease other than rock and debris occurring naturally in the coal being mined or recovered incidental to mining operations hereunder.

(f) In the event that Lessee shall commingle coal mined and removed from the Leased Premises with coal produced from lands other than the Leased Premises, the coal is to be mined and prepared or blended in such a manner that Lessor's coal will be accorded its fair market price.

(g) Weights upon which actual mining royalties and wheelage are to be based shall be clean tonnage determined as follows: (i) if shipped by rail, the railroad's train weights; (ii) if shipped to the ultimate consumer by truck, the actual scale weight of the truckloads.

(h) The royalties and wheelage as determined above shall be due and payable without demand on the 20th day of the month following the month in which the coal is removed from the Leased

Premises or coal is mined from lands of others and transported across the Leased Premises.

(i) Lessee shall furnish to Lessor, along with each monthly payment of royalty, a written report showing the amount of coal mined from the Leased Coal Premises, the sales price of all coal mined from the Leased Coal Premises, the tonnage of coal transported across the Leased Premises, and calculations of royalties and wheelage.

(j) The existence of a dispute as to any amount of royalties and/or wheelage due Lessor shall not relieve Lessee from paying when due the amount not in dispute, and the receipt of such amount shall not be treated as a waiver by Lessor of any of its claims with respect to any amounts in dispute.

7. Taxes: Lessee shall pay all real property taxes, ad valorem taxes, unmined mineral taxes, and all other taxes, including omitted unmined minerals tax, levies, assessments, fees and other charges imposed during the term of this lease by any government having authority to impose same upon the leasehold estate hereby created, the coal in place or the coal mined and produced pursuant to this Lease, or upon any other use or occupancy for which Lessor is, or but for this Lease would be, liable or for which the Leased Premises may be subject to a lien, so that Lessor shall be entirely reimbursed for such charges; provided, however that nothing herein shall be construed as requiring Lessee to pay any taxes, levies, assessments, fees or other charges imposed upon any timber located on the Leased Premises, and not used by Lessee, nor any taxes which may have accrued prior to the date of this Lease. Lessee shall also pay all other taxes, levies, assessments and other charges imposed by any appropriate governmental authority upon it and upon all plant, equipment and improvements owned by Lessee. Each party shall immediately forward to the other any pertinent tax statements or tax bills or tax collection documents received by it, and each shall cooperate with the other in resolving or contesting tax claims.

8. Permits and Bonds: Lessee shall obtain any and all necessary licenses permits and shall be bound by the terms thereof and shall perform work in accordance therewith, Lessee shall have full responsibility therefore, including all requisite reclamation work; and Lessee, its sublessees or contractors, shall pay all fees, fines and assessments related thereto. Lessor agrees to cooperate with Lessee in effecting any reasonable changes or modifications to the permits. Upon

completion of mining operations upon the Leased Premises pursuant to this Lease, Lessee shall complete all required reclamation upon the Leased Premises in full compliance with all the applicable lease terms, regulations and permit requirements. Lessee shall have the right to reenter the Leased Premises after termination of this lease for the purpose of performing or completing such reclamation.

9. Operations: Lessee's mining operations on the leased premises shall be conducted in a skillful, efficient, and workmanlike manner and in conformity with all present and future laws and regulations including environmental laws of the State of Kentucky and the United States now in force and which may hereafter be adopted governing or regulating the operation of coal mines. Lessee shall employ machinery and mining methods that are modern, adequate and efficient, develop the property according to a recognized standard and proper system of mining, and in such manner as to recover, insofar as practicable the greatest amount of mineable and merchantable coal in the leased premises, but in so doing, it shall give due consideration to the largest practical recovery of mineable and merchantable coal from such premises..

10. Books, Records and Maps:

(a) Lessee covenants and agrees that it will furnish to Lessor mine maps on a quarterly basis of all prospective mining (the "Mine Plan"). Each Mine Plan furnished hereunder shall show, inter alia, the mines to be opened and developed, the mine openings, entries, loading points, surface uses and surface areas to be disturbed, buildings and other structures or facilities to be erected, plans for reclamation of areas to be disturbed, and other relevant plans for mining the coal and developing the Leased Premises. Except in emergency situations, Lessee shall not substantially deviate from the Mine Plan without the express written consent of Lessor, which consent shall not be unreasonably withheld.

(b) Lessee covenants and agrees to furnish to Lessor true, complete and correct copies of each of the maps required by all governmental agencies within thirty (30) days from the date the maps are approved by such governmental agencies.

(c) Lessee shall promptly make available to Lessor for review any and all data that Lessee may obtain, by drilling or other means, with respect to the quality or quantity of the coal in, on or under the Leased Premises.

11. Inspection of Premises: The Lessee agrees that the Lessor, her agents, engineers, or other authorized persons in her behalf, with her assistants, shall have the right at all reasonable times to enter upon the leasehold and the mines and works connected therewith, including the tipple, cleaning plant or other loading facilities, whether on or off said leasehold property, in order to inspect, examine, survey or measure the same or any part thereof, or for any other lawful purposes and for said purposes to use freely any of the means of access thereto without hindrance or molestation. However, Lessor shall be responsible for the safety of her employees except such as results from the negligence of Lessee, its agents and employees.

12. No Assignment: Lessor agrees that this Lease is strictly personal to the Lessee, and that Lessee shall not mortgage, encumber or assign, convey, lease, underlet, sublease, license, sub-contract, transfer or set over by any agreement or contract whatever, any of its estate interests, or mining rights hereunder, or any part thereof, or the improvements made or placed upon the leasehold, or any part of said improvements to any person or persons whomsoever, or any corporation or other entity whatsoever, without the written consent of the Lessor for that purpose being first had and obtained. This paragraph shall not be construed to prohibit such transactions with wholly-owned corporations, subsidiary or affiliated companies, provided the parent company or individual lessee guarantees the performance of all the terms and conditions of this lease. Any such corporation, subsidiary or affiliated company shall not be sold, merged, or transferred so as to violate the intent and purpose of this paragraph prohibiting assignments and transfers.

13. Indemnification:

(a) Lessee agrees to Indemnify and hold harmless Lessor from any and all claims, demands, suits, losses, expenses (including reasonable attorneys fees), damages and injuries (including death) to persons and property whatsoever that result from or arise out of a breach of this lease or the operations of Lessee or any of its sublessees, contractors, subcontractors or assigns under this lease, and Lessor, their successors, assigns, sublessees and contractors (other than Lessee), shall have no responsibility or liability therefor.

(b) This covenant of indemnity shall survive for a period of five years after termination of this Lease or until Lessee has obtained full and final release of all reclamation bonds

held by Lessee and encompassing the Leased Premises, whichever is later.

14. Insurance: The Lessee agrees that it will annually and at such other times as may be requested by Lessor, furnish to the Lessor evidence of Lessee's financial responsibility, and the Lessee shall maintain insurance in an adequate amount to protect the Lessor's interest in all the buildings, structures, equipment and improvements on the leasehold, and shall carry and maintain public liability insurance in an amount of not less than one million dollars unless the Lessor shall agree otherwise in writing, and the Lessee shall annually and at such other times upon the request of Lessor, furnish to Lessor proper certification of compliance herewith.

Lessee shall subscribe to and at all times during the life of this lease and any supplements thereto, operate under and in compliance with the provisions of the Kentucky Workers' Compensation Act (KRS, Chapter 342) and the Federal Black Lung Act (30 U.S.C. 901, et.seq.) and all regulations promulgated and issued thereunder, and shall before beginning operations on this leasehold and thereafter annually, and at such other times as the Lessor may request, furnish to the Lessor proper certification of such compliance.

15. Additional Security: Lessee agrees that the Lessor shall, and does hereby have as additional security for the performance of all the terms of this lease, a further lien upon all the mined coal on the leasehold or in stockpiles used in connection therewith, and upon all improvements and personal property made or placed by the Lessee on said leasehold and upon all property and equipment used in the mining, transporting, cleaning and shipping of the coal mined hereunder, whether located on or off the leasehold. Said lien is in addition to all other statutory liens and is given to the Lessor as further security for the payment of the royalties, wheelage, rentals and other payments herein provided and for the performance of each and all the covenants in this Lease contained, upon the part of the Lessee to be observed, kept and performed. All of the provisions contained herein for the collection of royalties, wheelage, rentals or other payments or for the enforcement or protection of the rights of Lessor shall be deemed cumulative and non exclusive and shall not deprive the Lessor of the benefit of any other legal, statutory or equitable remedies or other remedies in this lease provided.

16. Compliance with All Laws and Regulations: Lessee covenants to conduct all operations on the Leased Premises in compliance with all laws, rules and regulations of any government or agency having jurisdiction and to promptly correct any violations of such rules and regulations and discharge any fines or civil penalties levied by reason of such violations. The parties agree, however, that nothing herein contained shall constitute a waiver of the right of Lessee to contest citations, fines or civil penalties in good faith and in the normal course of business operations.

17. Default; Remedies:

(a) Lessee's failure to promptly and timely pay all royalties and wheelage when due or its failure to comply with any of the material terms or provisions of this Lease shall constitute a default for which Lessor may terminate this Lease.

(b) If Lessee shall remain in default or violation of any such terms or conditions for thirty (30) days after receiving written notice thereof from Lessor, then this Lease and all of the rights of Lessee hereunder shall, at the election of Lessor, terminate and be forfeited. If this Lease is terminated pursuant to the provisions hereof, Lessee shall remain liable to Lessor for damages resulting from Lessee's breach, including but not limited to, all costs and fees, including reasonable attorney fees, associated with the breach and termination. Furthermore, if any money is due and owing to the Lessor at the time of the breach, all monies due and owing shall accrue interest at a rate of eighteen percent (18 %) annually. This provision shall in no wise relieve Lessee of obligations to comply with reclamation and all other laws. Provided, however, in the event, and as often as such event may occur, of a dispute between the Parties hereto concerning an alleged default by Lessee under this Lease relevant to this paragraph, it is stipulated between the Parties hereto that said thirty (30) day period shall not commence until final agreement or adjudication, as the case may be, as to the validity of any such default(s).

(c) Lessee's filing of a petition in federal bankruptcy court shall automatically terminate this Lease.

18. Payments and Notice: All payments and notices provided for herein shall be deemed to have been duly given if and when personally delivered or if and when deposited in the United

States mail, certified, return receipt requested, properly stamped and addressed to the party for whom intended at the following addresses:

If to Lessor:

Ms. Lee Etta Cummings  
P.O. Box 1254  
Richmond, KY 40476

If to Lessee:

Sapphire Coal Company  
147 Big Blue Boulevard  
Whitesburg, KY 41858

Notification of any change of address shall be given in a like manner.

19. Removal of Personal Property and Improvements: Provided Lessee is not in default of any of the terms of this Lease, at the termination of this Lease, whether by forfeiture, expiration, or otherwise, Lessee shall have for a period of ninety (90) days thereafter the right and privilege of removing all of the personal property, machinery, equipment, and improvements owned by Lessee, and located in, under, or upon the Leased Premises, provided, however, that Lessee shall be entitled to keep on the Leased Premises any and all machinery and equipment necessary for Lessee's reclamation activities until Lessee has obtained full and complete bond release. If Lessee shall fail to remove any such personal property, machinery, equipment or improvements (other than machinery and equipment necessary for Lessee's reclamation activities) within said ninety (90) days, all rights of Lessee in and to such property, at the option of Lessor, shall cease and terminate.

20. Relationship of Parties:

(a) This Lease does not empower Lessor to make any decisions for Lessee and Lessor hereby expressly waives and disclaims any right to exercise any Supervision, operation or control with respect to the terms and conditions under which the coal is extracted or prepared. The parties hereto do acknowledge, however, that Lessor have reserved certain rights and has imposed certain requirements under the terms of this Lease solely for the purpose of preventing waste and protecting the reserved rights of the Lessor. The relationship between

Lessor and Lessee shall be that of landlord and tenant and nothing herein shall be construed or interpreted as establishing between Lessor and Lessee a relationship of partners, joint venturers, principal and agent, vendor and purchaser, or any other relationship except that of landlord and tenant.

22. Force Majeure: "Force Majeure" means any event or condition that wholly or partially delays or prevents such party from performing any of its or their obligations hereunder and is beyond the reasonable control of, and occurs without the fault or negligence of the party affected thereby including, without limitation, acts of God, acts of the public enemy, insurrections, riots, fires, explosions, floods, embargoes, or orders or acts of any court or government authority having jurisdiction or any military authority. If, as a result of Force Majeure, it becomes impossible or impractical for any party to carry out its or their obligations hereunder in whole or in part, then such obligations shall be suspended to the extent necessary by such Force Majeure during its continuance. The party affected by such Force Majeure shall give prompt written notice to the other party of the nature and probable duration of such Force Majeure, and of the extent of its effects on such party's performance hereunder. Each party shall, in the event it or they experience Force Majeure, use all commercially reasonable efforts to eliminate such Force Majeure and/or its effects on such party's performance hereunder insofar as is practicable and with all reasonable dispatch; provided that no party shall be obligated to expend monies in order to eliminate Force Majeure and/or its effects, if in such party's sole judgment, such expenditures would be economically unjustifiable.

22. Applicable Law: This Lease shall be construed and governed under the laws of the State of Kentucky.

23. Severability: In the event any provision of this Lease conflicts with the laws under which it is to be construed, or if any such provision is held invalid by a court with jurisdiction over the parties to the Lease, such provision shall be deleted from the Lease, and the Lease shall be construed to give effect to the remaining provisions thereof.

24. Memorandum of Lease: The parties agree that upon request by either party a short form of this Lease shall be executed and recorded in lieu of recording this Lease.

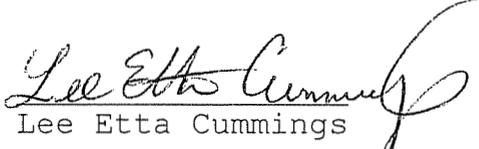
25. No Oral Amendment: No amendment or modification of any provision of this lease or any document or related writings, nor

consent to any departure by any party there from, shall be binding and effective unless the same shall be in writing and signed by the party or a duly authorized representative of the party sought to be charged with performance, which writing shall be strictly construed.

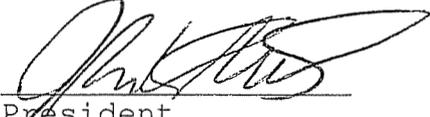
26. Drafting: The parties have participated jointly in negotiation and drafting of this Lease. If any ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Lease.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed hereby by the proper officers, thereunto duly authorized, as of the day and year first above written.

LESSOR:

  
Lee Etta Cummings

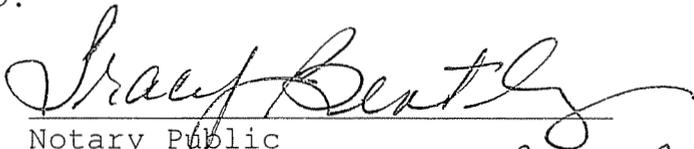
LESSEE:

  
President  
Sapphire Coal Company

STATE OF KENTUCKY

COUNTY OF FRANKLIN

I, the undersigned Notary Public, in and for the state aforesaid, do certify that the foregoing lease was acknowledged, subscribed and sworn to before me by Lee Etta Cummings, on this the 17 day of AUGUST 2009.

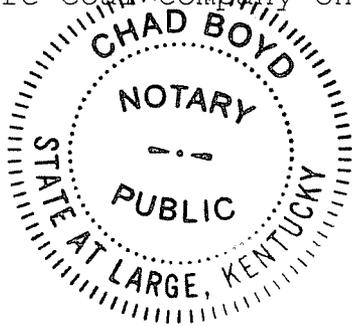
  
Notary Public

My commission expires: April 2010

STATE OF KENTUCKY

COUNTY OF LETCHER

I, the undersigned Notary Public, in and for the state aforesaid, do certify that the foregoing lease was acknowledged, subscribed and sworn to before me by John Schroeder, on behalf of Sapphire Coal ~~Company~~ on this the 14<sup>th</sup> day of AUGUST 2009.



Chad Boyd

Notary Public

My commission expires: 8-27-02

**RECEIVED**

SEP 18 2009

**DIRECT TESTIMONY OF MICHAEL CORNETT  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION  
CASE NO. 2009-00064**

**PUBLIC SERVICE  
COMMISSION**

**I. INTRODUCTION AND PURPOSE**

**Q. Please state your name and business address.**

A. My name is Michael Cornett. My business address is C & C Construction, 1163 Little Leatherwood Creek Road, Cornettsville, KY 41731.

**Q. By whom are you employed and what is your position?**

A. I am the owner of C & C Construction.

**II. BID FOR CONSTRUCTION OF ROAD TO ALTERNATE SITE #1**

**Q. Are you familiar with Alternate Site #1 as shown on the attached topo map entitled "Alternate Tower Location" and prepared by Sapphire Coal Company?**

A. Yes.

**Q. Based on your knowledge of the terrain and location of Alternate Site #1, is it possible to build a construction access road to that site?**

A. Yes.

**Q. Did your company receive an invitation to bid on construction of a road to Alternate Site #1?**

A. Yes.

**Q. Did you prepare an estimate for road construction to Alternate Site #1?**

A. Yes.

**Q. Is the attached document on your letterhead and dated June 18, 2009, a true and correct copy of your road construction estimate for Alternate Site #1?**

A. Yes.

**Q. Do you agree to adopt said road construction estimate as part of your testimony to the Commission?**

A. Yes.

**Q. Can you share the results of your road construction estimate with the Commission?**

A. Yes, we provided a low and high estimate for construction a road 1000 feet by 12 feet to Alternate Site #1. The high estimate will be the maximum cost should rock be encountered and need to be hammered. The low estimate is a grand total of \$5,200 and the high estimate is a grand total of \$6,800.

**Q. Did you provide a signed and notarized copy of your road construction estimate on September 4, 2009 at the request of Ms. Cummings?**

A. Yes.

**Q. Does this conclude your testimony?**

A. Yes.

**VERIFICATION**

I hereby verify that the foregoing testimony is true and accurate to the best of my knowledge and belief.

Michael E. Cornett  
Michael Cornett,  
Owner of C&C Construction

STATE OF KENTUCKY )  
COUNTY OF Peru )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Michael Cornett, to me known, in his capacity as Owner of C&C Construction on this the 16 day of Sept, 2009.

Barbara J. Brown  
Notary Public, State at Large

My commission expires 11-30-2010

**Michael E Cornett DBA**  
C & C Constructioin  
1163 Little Leatherwood Creek Rd  
Cornettsville KY 41731  
PH: 606-476-9855

September 4, 2009

To Whom It May Concern:

RE: Invitation to Bid  
Construction of 1000' X 12' road to the proposesd No. 1 Tower Site

It is our pleasure to provide an estimate for the construction of a road to the proposed Tower Site No. 1

WE estimate the road to be about 1,000' long and the finished roadway to be 12' wide. The road being constructed along the ridge, there will be no need for ditches or pipes.

Without testing for rock along the route, we are providing a low and high estimate. The high estimate will be the maximum, should rock be encountered and need to be hammered.

Low:

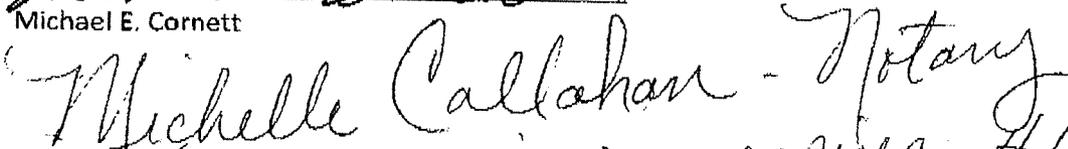
320 Excavator	20 Hours	\$95	\$1,900
D5 Dozer	20 Hours	\$65	\$1,300
Stone			<u>\$2,000</u>
		Total	\$5,200

High:

320 Excavator	30 Hours	\$95	\$2,850
D5 Dozer	30 Hours	\$65	\$1,950
Stone			<u>\$2,000</u>
			\$6,800

Thank you for the opportunity to be considered for this project.

  
Michael E. Cornett

  
Michelle Callahan - Notary  
My Commission expires 4/7/2013

Michael E. Cornett DBA  
C&C Construction  
1163 Little Leatherwood Road  
Leatherwood, KY 41731

June 18, 2009

To: To Whom it May Concern

RE: Invitation to bid  
Construction of 1000' X 12' road to the proposed No. 1 Tower Site

It is our pleasure to provide an estimate for the construction of a road to the proposed Tower Site No. 1.

We estimate the road to be about 1,000' long and the finished roadway to be 12' wide. The road being constructed along the ridge, there will be no need for ditches or pipes.

Without testing for rock along the route we are providing a low and high estimate. The high estimate will be the maximum should rock be encountered and need to be hammered.

Low:				
320 Excavator	20 hours	\$95		\$1,900
D-5 Dozer	20 hours	\$65		\$1,300
Stone				<u>\$2,000</u>
			Total	\$5,200

High:				
320 Excavator	30 hours	\$95		\$2,850
D-5 Dozer	30 hours	\$65		\$1,950
Stone				<u>\$2,000</u>
			Total	\$6,800

Thank you for the opportunity to be considered for this project.

Michael E. Cornett

**RECEIVED**

SEP 18 2009

**DIRECT TESTIMONY OF DUANE LESTER  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION PUBLIC SERVICE  
CASE NO. 2009-00064 COMMISSION**

**I. INTRODUCTION AND PURPOSE**

**Q. Please state your name and business address.**

A. My name is Duane Lester. My business address is P.O. Box 480, Allen, KY 41601.

**Q. By whom are you employed and what is your position?**

A. I am a paralegal and work on behalf of Quality Natural Gas, LLC.

**II. RIGHT OF WAY AGREEMENT**

**Q. Does your company have a Right of Way agreement with Ms. Cummings on that property for a gas line?**

A. Yes, on December 11, 2007, Ms. Cummings signed a Right of Way agreement for Quality Natural Gas Properties, LLC.

**Q. Does Quality Natural Gas Properties, LLC, have an approximate 3-inch gas line on Ms. Cumming's property?**

A. Yes.

**Q. Does the current Right of Way agreement between your company and Ms. Cummings include a statement that second party (Quality Natural Gas, LLC.) will re-locate said line one time at the request of first party (Ms. Cummings) at second party's expense?**

A. Yes.

**Q. If Ms. Cummings requests removal of this line is it possible from a physical standpoint due to the nature of the terrain?**

A. Yes.

**Q. Will Quality Natural Gas, LLC, absorb any and all expense associated with removal of the gas line if requested by Ms. Cummings?**

A. Yes.

**Q. Did you prepare a letter dated August 19, 2009 on behalf of Quality Natural Gas, LLC. at the request of Ms. Cummings?**

A. Yes.

**Q. Do you adopt the contents of that letter as part of your testimony today?**

A. Yes.

**Q. Does this conclude your testimony?**

A. Yes.

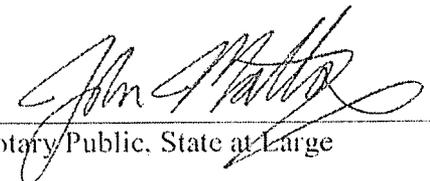
VERIFICATION

I hereby verify that the foregoing testimony is true and accurate to the best of my knowledge and belief.

  
\_\_\_\_\_  
Duane Lester,  
Paralegal for  
Quality Natural Gas, LLC

STATE OF KENTUCKY                    )  
COUNTY OF Floyd                    )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me by Duane Lester, to me known, in his capacity as a paralegal for Quality Natural Gas, LLC, on this the 18th day of September, 2009.

  
\_\_\_\_\_  
Notary Public, State at Large

My commission expires 1/8/2012

**KINZER BUSINESS REALTY, LTD**

**Quality Natural Gas, LLC**

P. O. Box 480

Allen, Kentucky 41601

Telephone #606-874-8041

Facsimile #606-874-2203

[dl Lester@kinzerdrilling.com](mailto:dl Lester@kinzerdrilling.com)

August 19, 2009

Ms. Lee Etta Cummings  
P. O. Box 1254  
Richmond, Kentucky 40476

Re: Quality Natural Gas Properties, Ltd.  
Right of Way Agreement dated 12-1-2007  
Cornett Branch of Smoot Creek  
Letcher County, Kentucky

Dear Ms. Cummings:

This letter shall serve as a follow up to our conversations regarding the above referenced right of way agreement as it affects the properties located on the waters of Smoot Creek which is subject to the proposed tower site(s) by Appalachian Wireless.

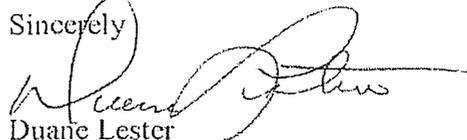
As noted in the agreement dated December 1, 2007, our company shall relocate this three (3") inch low pressure pipeline one time at our expense, upon written request from you, to an alternate location upon your properties located on the watershed of Smoot Creek.

Therefore, the response noted on alternate site number one (#1) by Appalachian Wireless dated June 11, 2009 regarding the "pre-existing permanent easement" should not be a deciding factor in their decision for this site. As noted above and in the December 1, 2007 right of way agreement, the cost of relocating this pipeline to an alternate site upon your properties shall be at our expense, not that of Appalachian Wireless.

Therefore, should you need our company to relocate this line, please advise accordingly and we shall take the appropriate measures to relocate the existing line to an alternate location upon your properties.

Should you need any additional information regarding the enclosed, please feel free to contact me at the above number at your earliest convenience.

Sincerely)



Duane Lester

Legal & Land Department