



Steven L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

John W. Clay
Commissioner

April 29, 2009

PARTIES OF RECORD

Re: Case No. 2009-00064

Attached is a copy of the memorandum which is being filed in the record of the above-referenced case. If you have any comments you would like to make regarding the contents of the informal conference memorandum, please do so within five days of receipt of this letter. If you have any questions, please contact Allyson Honaker at 502/564-3940, Extension 265 or by e-mail at Allyson.Honaker@ky.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director

AH/ew

Attachment

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File

FROM: Allyson Honaker
Staff Attorney

DATE: April 29, 2009

SUBJECT: Case No. 2009-00064
Informal Conference

Pursuant to Commission Order dated April 20, 2009, an informal conference was held in this matter on April 23, 2009. Present for the conference were: Mr. William Kendrick, counsel for the applicant, East Kentucky Network, LLC ("East Kentucky"); Marty Thacker and Dennis Shepherd, both with East Kentucky; the Intervenor, Ms. Lee Etta Cummings; her counsel, Nora Shepherd; and Commission Staff. The attendance list is attached to this memorandum.

The purpose of the conference was to discuss the Intervenor's objections and concerns as to the location of the proposed tower.

Ms. Shepherd stated that her client, Ms. Cummings, had three main concerns in relation to the cellular tower construction: first, the effect the tower will have on the development potential of the two tracts of land that Ms. Cummings either owns solely and in fee, or co-owns with another person; second, the effect the tower will have on mining operations on her property; and third, the use of the existing access road and the grading of a new road which runs across the property she co-owns.

Ms. Cummings then elaborated on each concern. She stated that, on the tract of land she owns solely and in fee, there are approximately 50,000 tons of mineable coal and that she currently has a lease with Sapphire Mining to mine this coal. She stated that this would be interrupted because there are state regulations on blasting within so many feet of a cellular tower. She also stated that the development potential of both pieces of her property would be impacted and had already been impacted. She stated that the Federal Bureau of Prisons was considering this property as a site for a new federal prison, but that she had received word that her site was no longer going to be considered, as the proposed tower would be built in a location that would interrupt the flat acreage needed to build the prison. She stated that other potential developers that have shown an interest in the property would not be able to build there because the tower would interrupt the flat acreage needed to build there. Ms. Cummings provided copies of a report that she obtained which gave appraisals of the property value prior to

the tower being built, and the amount by which the property value would decrease after the tower is erected. The appraisal report is attached as Exhibit 1. (Exhibit 1 will not be forwarded to the parties as copies were provided at the informal conference.) Ms. Cummings also stated that she did not give her permission for the access road use, and that she did give her permission for a new access road to be graded across the property she co-owns. Ms. Cummings had been on the property on different occasions and had obtained photographs of the new access road, the use of the road, Coleman Engineering trucks, and construction on the tower. Ms. Cummings provided copies of the pictures to Commission Staff and Ms. Shepherd stated that she would supply copies of the pictures to Mr. Kendrick. These pictures are attached as Exhibit 2. (Exhibit 2 will not be forwarded to the parties as copies are already being provided by counsel for Ms. Cummings.)

Mr. Kendrick stated that the company had received a right of way for the access road from Mr. Brown, who is the owner of the property where the tower is to be located. He said that East Kentucky did not find a deed to the property co-owned by Ms. Cummings in its search of records prior to obtaining the right of way for the access road. Mr. Kendrick went on to state that East Kentucky has recently changed the access road which it uses to gain access to the tower site. East Kentucky is now using a road located on the opposite side of the property and does not cross either of Ms. Cummings' properties.

Mr. Kendrick stated that East Kentucky had looked at other sites for the cellular tower but that it has not been able to locate a site due to signal problems or problems with existing gas lines or future placement of gas lines. He also stated that there is a need for cellular service in this area because it is a dead zone. He stated that it is a highly traveled area and that there are two valleys which have no signal. The position of this tower would provide service in the valleys. He stated that there is a demand for service from law enforcement and emergency personnel as well as from the general public. He also stated that East Kentucky has been able to deal with several mining companies when building cellular towers in other areas in the eastern portions of Kentucky. He stated that East Kentucky had never had a problem dealing with and compromising with the mining companies they had previously encountered. The company does not feel it would be a problem in this matter to deal with Sapphire Mining in coordinating the mining and cellular tower construction efforts.

Representatives of East Kentucky stated that the proposed cell site is on the back of the property and is only a half-acre site and that another prison in East Kentucky's service area had requested a cellular tower to be closer to its property. They also stated that, in their experience, the values of property do decline with the construction of a cellular tower but that people usually welcome the cellular tower because they want better cellular coverage.

Ms. Cummings responded by stating that there are other suitable locations and that East Kentucky's engineer had stated that he had actually looked at a site located on Ms. Cummings' property. Ms. Cummings stated that she would prefer the tower to be located on Mr. Brown's property so that he would not lose the money provided to lease the property.

Based on the discussion during the conference, Commission Staff stated that it did not appear that a resolution would be reached soon in this matter. Commission Staff informed the parties that a memo would be issued shortly after the conference to memorialize the issues that were discussed and that the parties would have an opportunity to comment on the memo.

Commission Staff informed the parties that the Commission would issue an order outlining the next steps to be taken, including giving Ms. Cummings a date by which she must present her evidence of alternative sites and setting the May 13, 2009 deadline for East Kentucky to respond to the appraisal report provided by Ms. Cummings. After all this information is submitted to the record, the Commission will review the information and determine if a hearing is to be held in this matter.

The conference was then adjourned.

AH/ew

Attachments

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CASE NO. 2009-00064

APPLICATION OF EAST KENTUCKY NETWORK LIMITED LIABILITY
COMPANY FOR THE ISSUANCE OF A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO CONSTRUCT A TOWER IN LETCHER
COUNTY, KENTUCKY

SIGN IN

April 23, 2009

PERSON

REPRESENTING

Allyson Honahan

PSC

W. J. Stan Jrick

EKC

Marty Shuler

ERN

Dennis Shepherd

ERN

Noa Shepherd

Lee Etta Cummings

Lee Etta Cummings

PSC

Eri Bowman

PSC

Tiffany Bowman

PSC

**BEFORE AND AFTER
APPRAISAL REPORT OF**

Lee Etta Cummings Property
42 +/- acres, 50% Ownership = 21 Acres
Located South of Van and Rt. 15
In Letcher County, Kentucky

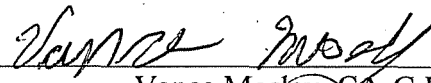
FOR

Lee Etta Cummings
P.O. Box 176
Vicco, KY 41773

APPRAISED BY

Kentucky Field Service Realty, Inc.
Vance Mosley, KY Lic. No. 0832 CA-G
PO Box 921
Hyden, KY 41749
Phone 606-672-3856
Fax 606-672-4093

The Estimated Market Value of the subject property as of April 15, 2009 Before the construction of a tower is \$200,000 and the value after the construction of the tower is \$150,000 with a difference of \$50,000.



Vance Mosley, CA-G Lic. No. 0832
Appraiser

THIS IS AN APPRAISAL REPORT IN SUMMARY FORM

Kentucky Field Service Realty, Inc

PO Box 921, Hyden KY 41749 ~ Phone: (606) 672-3856 ~ Fax: (606) 672-4093 ~ Email: kfsr@tds.net

Lee Etta Cummings
P.O. Box 176
Vicco, KY 41773

April 15, 2009

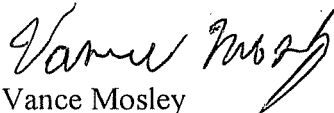
Dear Mrs. Cummings:

In accordance with your request, I have made a summary appraisal report of the Lee Etta Cummings Property located adjacent to Van, South of Rt. 15 in Letcher County, Kentucky.

The Estimated Market Value of the subject property as of April 15, 2009 before tower is \$200,000 and after tower construction is \$150,000, with a difference of \$50,000.

If you have any questions, please feel free to contact me.

Sincerely,



Vance Mosley
CA-G Lic. No. 0832
Appraiser

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ADDENDA

- Aerial Photo
- Comparable Sales
- Legal Description
- Tract Map
- Qualifications

PART 1 – INTRODUCTION

Summary of Facts and Conclusions

| | |
|---------------------------------|--------------------------------------|
| Owner of Record: | Lee Etta Cummings 50% ownership |
| 1. Acreage: | 42 acres/ 50% Interest = 21 Acres |
| 2. Highest and Best Use: | Commercial/Residential |
| 3. Improvements: | None |
| 4. Date of Inspection: | April 15, 2009 |
| 5. Date of Report: | April 16, 2009 |
| 6. Value of Appraised Property: | Before = \$ 200,000 |
| 1. | After = \$ 150,000 |
| 2. | Difference = \$ 50,000 |

References

1. HARLAN, LESLIE, LETCHER AND BELL COUNTY RECORDS.
2. MR. FRED WEBB
3. OWNER- LEE ETTA CUMMINGS
4. MR. ELWOOD CORNETT- WHITESBURG, KY.

Statement of Limiting Conditions

This appraisal is made subject to the following assumptions and limiting conditions:

That title is assumed to be merchantable and marketable.

That no responsibility is assumed by the appraiser for legal matters, especially those affecting title to the property.

That the legal description furnished the appraiser is correct.

That certain opinions, estimates, or other data furnished the appraiser by others are correct.

That the property has not been surveyed and the acreage is taken from Tax maps, and the landowners' maps.

The appraiser reserves the right to alter his opinion value on the basis of information that would not be uncovered during the normal course of investigation.



The appraisal is to be used as a whole and not in part.

Environmental Disclaimer

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. The appraisers routine inspection of and inquires 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.

Verification of Inspection

This is to certify that the appraiser did personally inspect the subject property on April 14, 2009. The landowners did accompany the appraiser on the examination of the property.

PART 2 – FACTUAL DATA

Purpose of Appraisal

This appraisal is made to estimate the Market Value of the Surface only interest of one tract containing in aggregate 42 acres, more or less, of which a 50% interest of Commercial property for damage purposes if any before and after the purposed tower construction on site adjacent to the property.

Definition of Market Value

Market Value is defined as the amount in cash, or on terms reasonable equivalent to cash, for which, in all probability, the property would be sold by a knowledgeable owner, willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy.

Estate Appraised

The estate appraised is the Surface Only Estate, consisted of 42 acres, more or less with 50% undivided interest belonging to Lee Etta Cummings.

Legal Description

A certain tract of parcel of land lying and being in Letcher County, Kentucky. Being Tract as shown on attached deed addenda.

Area and Local Data

The Upper Cumberland River Basin is located in Southeastern Kentucky on Pine Mountain in Letcher County. There are no natural breaks in the mountains, the terrain is fertile in the valleys, and the mountains are too steep for civilization. Letcher County is located in the mountainous Kentucky River area of southeastern Kentucky, formed from portions of Perry and Harlan Counties in 1842. Southeastern Letcher County and the Kentucky border join and share a common border with the state of Virginia that cuts through Jefferson National Forest. Along the western edge of the forest, a few miles south of the county seat at Whitesburg, lies the Pine Mountain Wildlife Management area. The population of Letcher County was approximately 24,420 in 2006. The population for Letcher County is projected to be 24,089 by 2011.

The Economic Framework: According to the Letcher County Statistical Summary, in 2006 there were 9,971 households with an income of \$23,138 and 2.43 persons per household.

Transportation: The nearest Interstate/Parkway is 45.0 miles from Letcher County. Gateway Drive connects to relocate four-lane US 23 east.

Power and Fuel: Electric power is provided to Letcher County by the Kentucky Utilities Company (electric generation and Transportation Company). Letcher

County is also served by the East Kentucky Power, and Cumberland Valley Electric Power Cooperative Corporation,

**The above information is based on information obtained from the Resources for Economic Development and the Kentucky Cabinet of Economic Department.*

Property Data

Land: The subject property consists of 42. acres m/l and is situated adjacent to Van just South of Rt. 15,, Letcher County, Kentucky. The subject is about 50% usable.

Access: Direct access to the subject is from Rt. 160. and Rt. 15 by a gravel coal haul road.

Improvements: None.

Outstanding Rights: Coal, oil and gas.

Hazardous Materials: The appraiser did not observe any hazardous materials on the subject as of the date of appraisal.

Assessment: The subject property is assessed along with another 50% owner.

Topography (Terrain): The topography is flat to strip mined land to rolling.

Site Index: Is unknown as most of the property is apparent material from strip mining and has grass vegetation.

Species Composition: Mixed hardwood and hemlock.

Water: Public water supply is available to this area as the water line is along Rt. 160 and Rt. 15.

PART 3 – ANALYSIS AND CONCLUSIONS

Highest and Best Use

Definition of Highest and Best Use when appraising real property is the reasonably probable and legal use of the property that is physically possible, appropriately supposed, and financially feasible, and that results in the highest value.

Analysis of Highest and Best Use: The subject property is situated in a rural section of Letcher County with utilities. Typical properties, like the subject, are used for Commercial/residential. The property has been considered in the past for a school site, prison site and residential use.

It is Physically possible, financially feasible and legal permissible for such uses and would be the Highest and Best Use.

This means that the subject can benefit from these uses and would result in the highest and best use.

Appraisal Approaches Used

The Sale Comparison Approach to value gives the most meaningful estimate of value and is the approach used in this report. The Income Approach to value is rejected due to the lack of data and the nature of the subject. The Cost Approach is also rejected due to the lack of improvements.

Scope of Appraisal

The appraiser searched the market area of the subject for similar sales by obtaining information from other appraisal firms, PVA, County Court Clerk, and City Offices in other Kentucky counties. The market area of the subject was expanded to Eastern Kentucky due to the nature of the property and to arrive at the estimate value. The appraiser lacks the knowledge and experience with

respect to the detection and measurement of hazardous substances affecting the property. A complete physical inspection of the subject was conducted.

History of the Subject

The subject property has transferred ownership in 1991 between relatives and does not indicate current value.

Zoning

There is no zoning in Letcher County.

Intended Use and User

The intended use of this report is to arrive at an Estimate of Market Value for the purpose of estimating damages if any before and after the construction of a tower adjacent to the property and use of a Right-of-way over same.

The intended user of the report is Lee Etta Cummings.

Value Estimate (Sales Comparison Approach) Before Value

Sales Analysis Grid

| | SUBJECT | SALE #1 | SALE #2 | SALE #3 |
|---------------------|----------------|----------------|----------------|----------------|
| SALE PRICE | N/A | \$159,500.00 | \$44,440.00 | \$450,000.00 |
| DATE OF SALE | N/A | 07/11/08 | 12/11/07 | 03/02/09 |
| LAND SIZE | 21 (50%) | 15.95 | 4.44 | 32 |
| SP/ACRES | N/A | \$10,000.00 | \$10,000.00 | \$14,062.00 |
| LOCATION | Average | Average | Average | -4,000 good |
| TOPOGRAPHY | Steep to Flat | Flat | Flat | Flat |
| ACCESS | Avg | Avg | Avg | Average |
| USABLE | | similar | similar | |
| SP/ACRE | N/A | \$10,000.00 | \$10,000.00 | \$10,000.00 |

Sales Analysis Before

Sale #1: Sale #1 occurred 7-11-08 for a sale price of \$159,500 and contained 15.95 acres indicating a sale price of \$10,000/acre. Sale is similar in all elements of value. After adjustments, sale indicated a value of \$10,000/acre.

Sale #2: Sale #2 occurred 12-11-07 for a sale price of \$44,400 or \$10,000/acre and contained 4.444 acres. After adjustment sale indicated a value of \$10,000/acre.

Sale #3: Sale #3 occurred 3/02 for a sale price of \$450,000 or \$1,4062/acre for 32 acres. Sale was superior due to location with a -\$4000/acre made for this factor. After adjustment sale indicated a value of \$10,000/acre.

Estimate of Value

The Three before sales used indicated an adjusted value of \$10,000 per acre. After considering all three sales the value assigned the subject as April 14, 2009 is
 $\$10,000/\text{acre} \times 42 \text{ acres} = \$400,000 \times 50\% = \$200,000$

Other Possible Effects

The land owner is concerned that the tower may have an effect on an adjacent 95 acre Fee tract just West of and adjoining the subject property. The property estimated to contain an additional 54,000 tons of coal that could be mined in the future. According to an E-mail from Fred Webb to the owner there is a portion of the law that deals with the blasting within ½ mile of a public structure and this tract would fall within this category.

After Value

The property in the after condition has been impaired with a proposed 300 foot free standing, self supported tower with antennas along with an access road off Rt. 15 to the subject tower site. The tower site is not on the property but is adjacent to and within about 60 to 80 feet of the boundary line according to the information provided the appraiser. This tower if constructed would limit the view from the subject and make it less desirable for a commercial/residential use. The access road extending from the coal haul road North East across the property limits the use of about 4 acres of the flat area as it leaves unusable land on each side of the Right-of-way that has a limited use. The tower also limits use as the height (300 feet) imposes some concern about stigmatizing the use of the flat area for Commercial/Residential use. It is estimated that about eight acres or about 38% would be effected. It is estimated that the property would have an overall reduction in market value of 25 percent which equates to an after value of \$150,000.

Final Estimate of Value and Correlation.

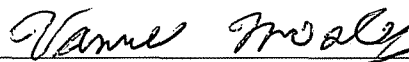
| | |
|--------------|-------------|
| Value Before | = \$200,000 |
| Value After | = \$150,000 |
| Difference | = \$50,000 |

After considering the facts and figures contained in this report the amount due the landowner for a 50% undivided interest reduction in value as of April 15, 2009 is \$50,000.

CERTIFICATE OF VALUE

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest with respect to the parties involved.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Appraisal Standards for Federal Land Acquisition* and the *Uniform Standards of Professional Appraisal Practice*.
- The date of inspection was April 15, 2008.
- I have made a personal inspection of the property that is the subject of this report and all comparable sales used in developing the estimate of value presented in this report.
- In my opinion, the Estimated Market Value of the subject property as of April 15, 2009 in the before is \$200,000 and the after is \$150,000 with a difference of \$50,000.



Vance Mosley
KY Certified General Appraiser #0832

COMPARABLE SALE NUMBER: 1

State: Kentucky

County: Letcher

Conformation: Seller

Seller: Appalachian Industrial Authority,
Inc.

Buyer: Equitable Production Company

Deed Book/Page No.: 398/91

Date of Sale: July 11, 2008

Sale Price: \$159,500

Map Number: Top Map

Acreage: 15.95

SP/Acre: \$ 10,000 Per/acre

Fee Simple: Surface only

Allocated: N/A

Acres by Type

Crop/Pasture: 0

Timber: 0

Brush: 0

Developed: 15.95

Topography: Flat

Highest & Best Use: Industrial/Commercial

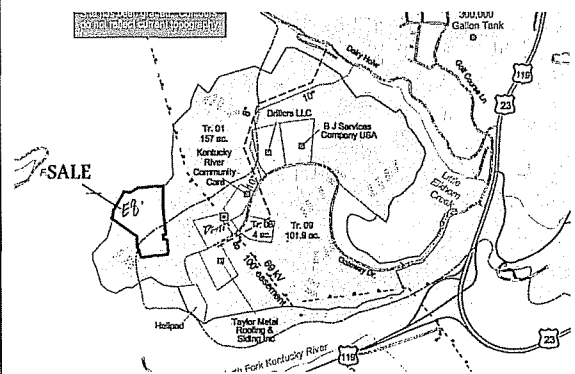
Restrictions: None

Outstanding Rights: All oil gas and coal

Utilities: All available

Access: Paved

Remarks: This is in an Industrial park with various uses.



COMPARABLE SALE NUMBER: 2

State: Kentucky

County: Letcher

Conformation: Deed

Seller: Appalachian Industrial Authority Inc.

Buyer: Drill Steel Services Inc.

Deed Book/Page No.: 393/361

Date of Sale: December 11, 2007

Sale Price: \$44,440

Map Number: Topo map

Acreage: 4.444

SP/Acre: \$ 10,000

Fee Simple: Surface Only

Allocated: N/A

Acres by Type

Crop/Pasture: 0

Timber: 0

Brush: 0

Developed: 4.444

Topography: Flat

Highest & Best Use: Industrial/Commercial

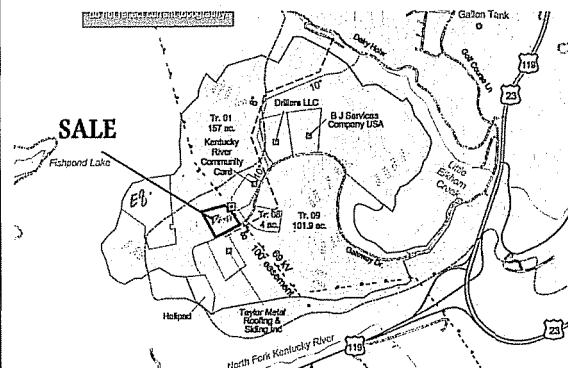
Restrictions: None

Outstanding Rights: All oil, gas and coal

Utilities: All available

Access: Paved

Remarks: This property is in an industrial park with various uses.



COMPARABLE SALE NUMBER: 3

State: Kentucky

County: Letcher

Conformation: PVA/records

Seller: ACIN LLC

Buyer: American Woodmark
101 Woodmark Way
Chavies, KY 41727

Deed Book/Page No.: 292/127

Date of Sale: March 12, 2002

Sale Price: \$450,000

Map Number: 058-00-00-009.06

Acreage: 32

SP/Acre: \$ 14,062

Fee Simple: Surface Only

Allocated: N/A

Acres by Type

Crop/Pasture: 0

Timber: 0

Brush: 0

Developed: 32

Topography: Flat to Rolling

Highest & Best Use: Industrial/Commercial

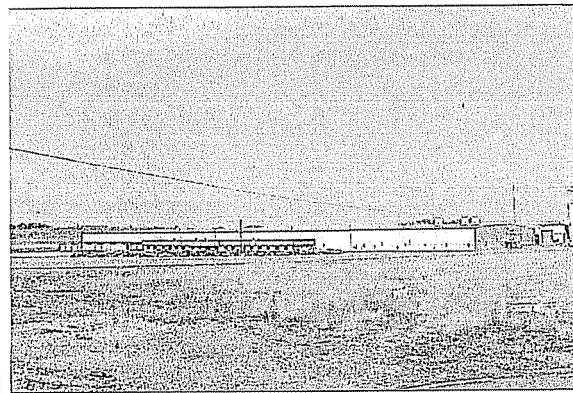
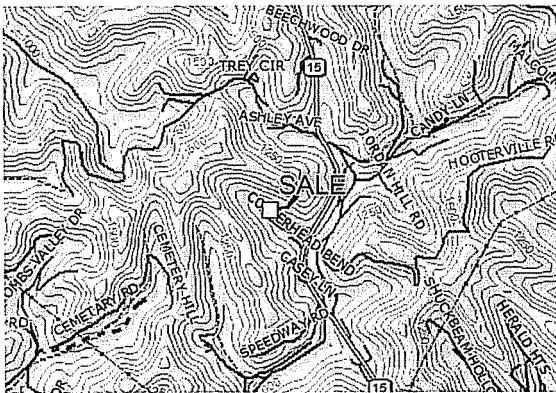
Restrictions: None

Outstanding Rights: All oil, gas and coal

Utilities: All available

Access: Paved

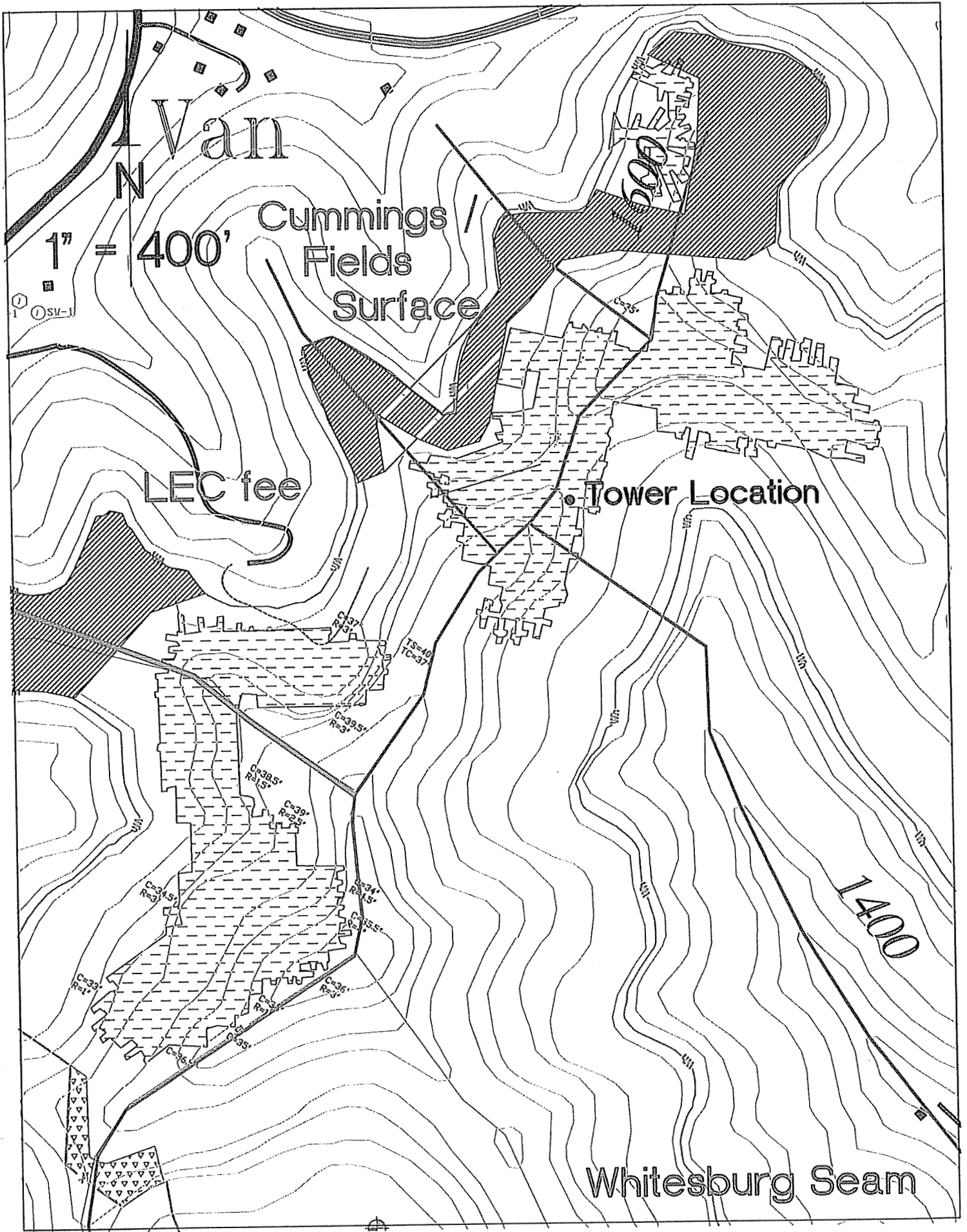
Remarks: This property is in an industrial park with various uses.

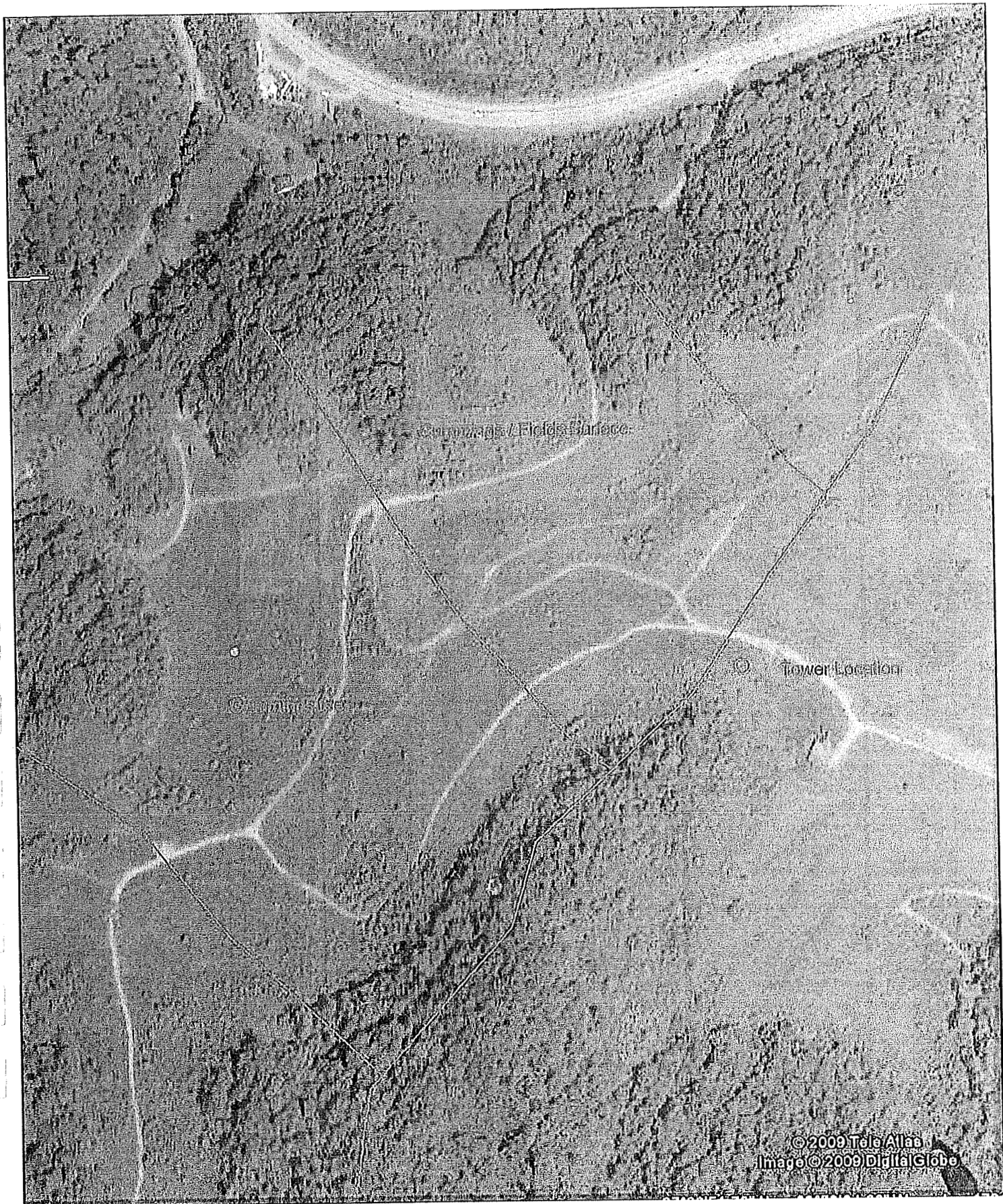


Aerial Photo



Image provided by mapquest.com





Cambridge / Fields Barre

Cambridge

Tower Location

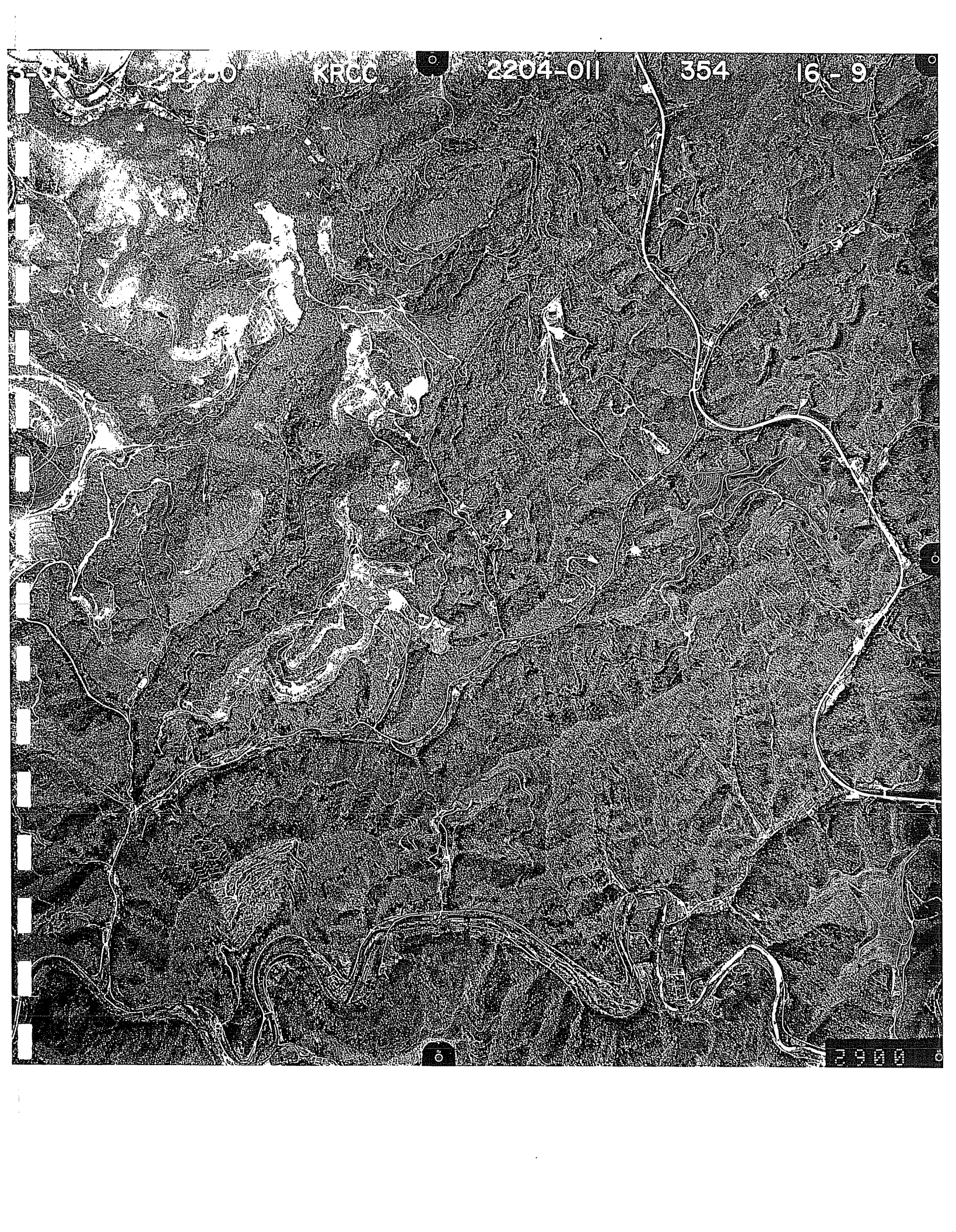
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KRCC

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354

16-9



2900

EAST KENTUCKY NETWORK
101 TECHNOLOGY TRAIL
IVEL, KY 41642
PHONE: (606) 874-7550
FAX: (406) 874-7551
EMAIL: INFO@EKN.COM
WEBSITE: WWW.EKN.COM



VIA: U.S. CERTIFIED MAIL

PUBLIC NOTICE

March 4, 2009

Lee Etta Gay Cummins
Box 176
Vicco, KY 41773

RE: Public Notice-Public Service Commission of Kentucky (Case No. 2009-00064)

East Kentucky Network, LLC d/b/a Appalachian Wireless has applied to the Public Service Commission of Kentucky for a Certificate of Public Convenience and Necessity to construct and operate a new facility to provide cellular telecommunications service. The proposed tower will be a 300 foot self-supporting tower with attached antennas located on a ridge approximately 3.0 mi (4.8 km) NW of Whitesburg at Dry Fork in Letcher County., Kentucky (37° 8' 49.40" N, 82° 52' 6.40"W). A map showing the location of the proposed new facility is enclosed. This notice is being sent to you because you may own property or reside within a 500' radius of the proposed tower.

The Commission invites your comments regarding the proposed construction. You also have the right to intervene in this matter. The Commission must receive your initial communication within 20 days of the date of this letter as shown above.

Your comments and request for intervention should be addressed to: Executive Director's Office, Public Service Commission of Kentucky, P.O. Box 615, Frankfort, KY 40602. Please refer to Case No. 2009-00064 in your correspondence.

Sincerely,

Janice Robinson
Technical Site Coordinator
Enclosure 1

50% interest tract
Deed Book 299 Page 738

D E E D

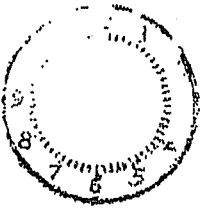
THIS DEED, made and entered into on this the 19th
day of June, 1991, by and between James Harry Fields
and Linda Fields, husband and wife, of Post Office Box 339,
Isom, Kentucky 41824, hereinafter referred to as Parties of
the First Part, and Lee Etta Cummings, a single woman, of
Vigco, Kentucky 41773, hereinafter referred to as Party of
the Second Part,

W I T N E S S E T H

That for and in consideration of the dissolution of
a partnership consisting of James Harry Fields and John
Cummings, the father of Second Party, said dissolution
occurring by reason of the death of John Cummings, the mutual
benefits to be derived by all parties, and other good and
valuable consideration, the receipt of which is hereby
acknowledged, Parties of the First Part do hereby grant,
sell, and convey unto Party of the Second Part, her heirs and
assigns forever, the following described property, same being
a fifty percent (50%) ownership interest in the entire tract
as described and being the same fifty percent (50%) of the
property acquired by Parties of the First Part by Deed from
John Cummings, Jr. and Betty Cummings, husband and wife,
bearing date of June 12, 1988, and recorded in Deed Book 286,
Page 603, records of the Letcher County Clerk's Office, and
more particularly described as follows:

Located on Cornett Branch of Smoot Creek in Letcher County, Kentucky, and more particularly described as follows:

APR 10 91 PM



BEGINNING at a stake on Cornett's Branch 48 feet South of a concrete culvert under State Highway 15; thence S 19 30 W 580 feet to an X on cliff thence S 22 50 W 92 feet to a white oak and black oak; second call in line of Estelle Frazier; thence S 31 05 E 1249 feet to a stake on ridge between Smoot Creek and Dry Fork on outside boundary line with ridge; S 61 35 E

164 feet to a water oak; N 42 35E 197 feet to a white oak and ironwood; N 29 00 E 248 feet to a dead white oak; N 32 15 E 241 feet to a chestnut oak and maple; N 52 35 E 190 feet to a chestnut oak on a knob; N 12 05 E 370 feet to a hickory; N 19 00 E 186 feet to a hickory; N 31 00 E 186 feet to a locust and hickory; N 10 05 W 290 feet to State Highway right of way in Cornett Gap; thence a Southwest course with highway right of way to the BEGINNING, containing 42 acres, more or less.

Being a part of the same property conveyed to Malinda Brown by Whitesburg Wholesale Company by Deed dated November 16, 1935, and recorded in Deed Book 86, Page 245, Letcher County Court Clerk's Office.

Being the same property conveyed by Deed of Conveyance dated September 15, 1987, from Astor Brown and Maxie Brown to James Herry Fields and John Cummings, Jr., as recorded in Deed Book 284, Page 190, records of the Letcher County Court Clerk's Office.

It is specifically understood and agreed that Parties of the First Part retain their original fifty percent (50%) ownership interest in the above described property as obtained by them from Astor Brown and Maxine Brown by deed in Deed Book 284, Page 190, records of the Letcher County Court Clerk's Office.

TO HAVE AND TO HOLD the same, with all the appurtenances thereunto belonging unto the Party of the Second Part, her heirs and assigns forever, with covenants of "General Warranty".

IN TESTIMONY WHEREOF, witness the signatures of the First Parties this the day and year first above written.

James Harry Fields
JAMES HARRY FIELDS

Linda Fields
LINDA FIELDS

COUNTY OF Letcher

Subscribed, acknowledged and sworn to by and before me
by James Harry Fields this the 19th day of June, 1991.

Pamela Kay Caudill
NOTARY PUBLIC/STATE AT LARGE

My commission expires:

October 24, 1994

STATE OF KENTUCKY

COUNTY OF Letcher

Subscribed, acknowledged and sworn to by and before me
by Linda Fields this the 19th day of June, 1991.

Pamela Kay Caudill
NOTARY PUBLIC/STATE AT LARGE

My commission expires:

10-24-94

CONSIDERATION CERTIFICATE

We, James Harry Fields and Linda Fields and Lee Ette Cummings, do hereby certify, pursuant to K.A.S. 382, that no actual cash consideration was paid for the within conveyance but that the conveyance was in consideration of dissolution of a partnership by death of John Cummings, but the parties state that the fair market value of the property is Seventeen Thousand Five Hundred Dollars (\$17,500.00). We further certify that we understand that falsification of the stated consideration and/or fair market value is a Class D Felony, subject to one to five years imprisonment and fines up to Ten Thousand Dollars (\$10,000.00).

James Harry Fields
JAMES HARRY FIELDS

Linda Fields
LINDA FIELDS

L. Ette Cummings

STATE OF KENTUCKY

COUNTY OF Letcher

The foregoing Consideration Certificate was acknowledged and sworn to before me by James Harry Fields this the 19th day of June, 1991.

Pamela Kay Caudill
NOTARY PUBLIC/STATE AT LARGE

My commission expires:
10-24-94

STATE OF KENTUCKY

COUNTY OF Letcher

The foregoing Consideration Certificate was acknowledged and sworn to before me by Linda Fields this the 19th day of June, 1991.

Pamela Kay Caudill
NOTARY PUBLIC/STATE AT LARGE

My commission expires:
10-24-94

STATE OF KENTUCKY

COUNTY OF Letcher

The foregoing Consideration Certificate was acknowledged and sworn to before me by Lee Etta Cummings this the 19th day of June, 1991.

Pamela Kay Caudill
NOTARY PUBLIC/STATE AT LARGE

My commission expires:
10-24-94

STATE OF KENTUCKY

COUNTY OF Letcher

I, Charlie Wright Clerk of the County Court, for the County and State aforesaid, hereby certify that the foregoing Deed was lodged of record on this the 11th day of July, 1991, at the hour of _____ m., whereupon the same, with this and the foregoing certificate hath been duly recorded in my office, in Deed Book 299, Page 738.

WITNESS MY HAND, this the 15th day of July, 1991.

Charlie Wright
CLERK, Letcher COUNTY COURT

BY: Lucille Bates Pelly DC

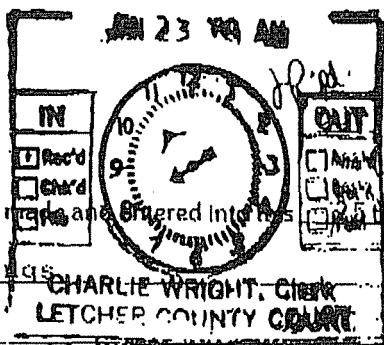
THIS INSTRUMENT PREPARED WITHOUT
TITLE EXAMINATION OR OPINION BY:

Marilyn McGhee
MARILYN BENGE MCGHEE
ATTORNEY AT LAW
323 WEST FIFTH STREET
POST OFFICE BOX 1408
LONDON, KENTUCKY 40743-1408
(606) 864-7200

100% interest tract
Deed Book 289 Page 255

Made 1/16
Vicc, KY
41723
TO: DEED

Smoot Creek Tract-2



W.C. ROOF ABSTRACT
This deed prepared by:

Kenneth S. Baker
KENNETH S. BAKER
P. O. BOX 1096
HAZARD, KENTUCKY 41701

THIS DEED OF CONVEYANCE made and entered into this 25th day of October, 1988

between John Cummings

of Vicco, county of Perry, and state of Kentucky, of the first part, and
Lee Etta Cummings

of Vicco, county of Perry, and state aforesaid, of the second part:

WITNESSETH, that the part Y of the first part, for and in consideration of the sum of _____
One (\$1.00) Dollar, cash in hand paid, and the
love and affection First Party has for Second Party,

the receipt and sufficiency of which is hereby acknowledged, haS bargained and sold, and by these presents
do bargain, sell and convey unto the said part Y of the second part, a certain tract or parcel of land lying
in Letcher County, Kentucky, and described as follows:



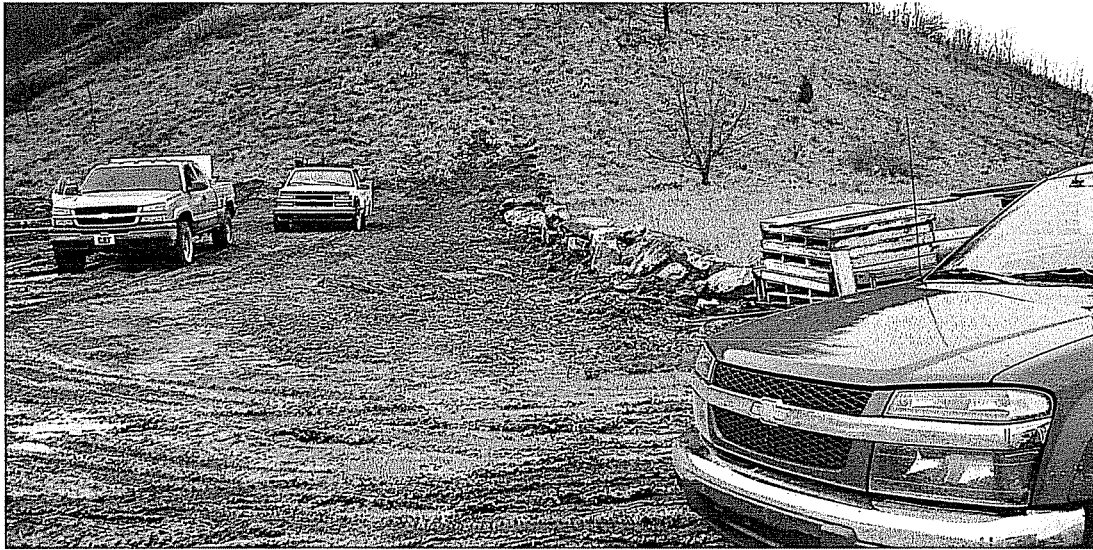
Tower site view looking Southeast. Photo by Vance Mosley



Right-of-way road constructed over subject. Photo by Vance Mosley



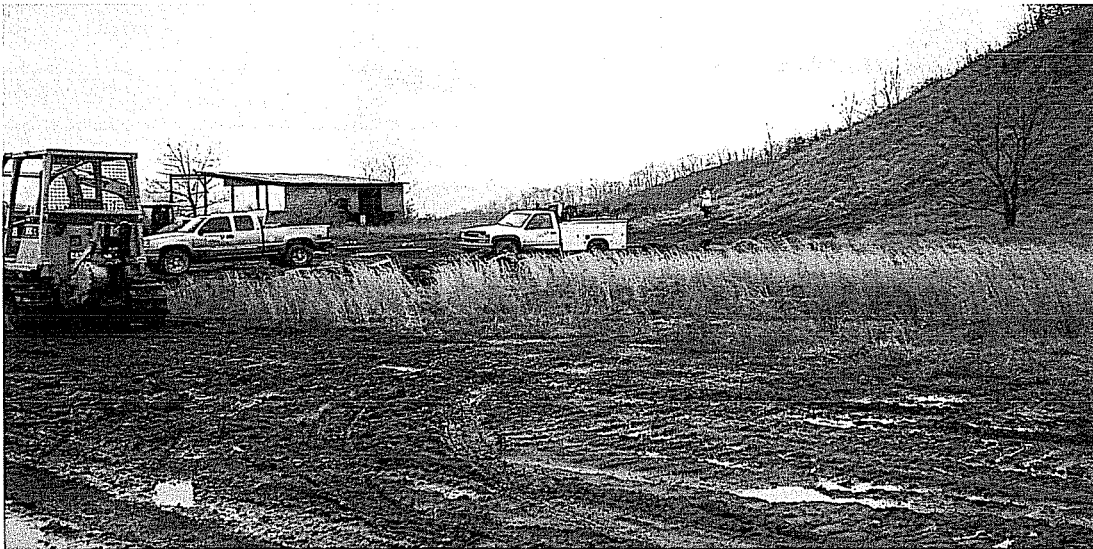
Usable area looking North. Photo by Vance Mosley



Tower site construction area. Photo by Vance Mosley



Boundary line area near tower site. Photo by Vance Mosley



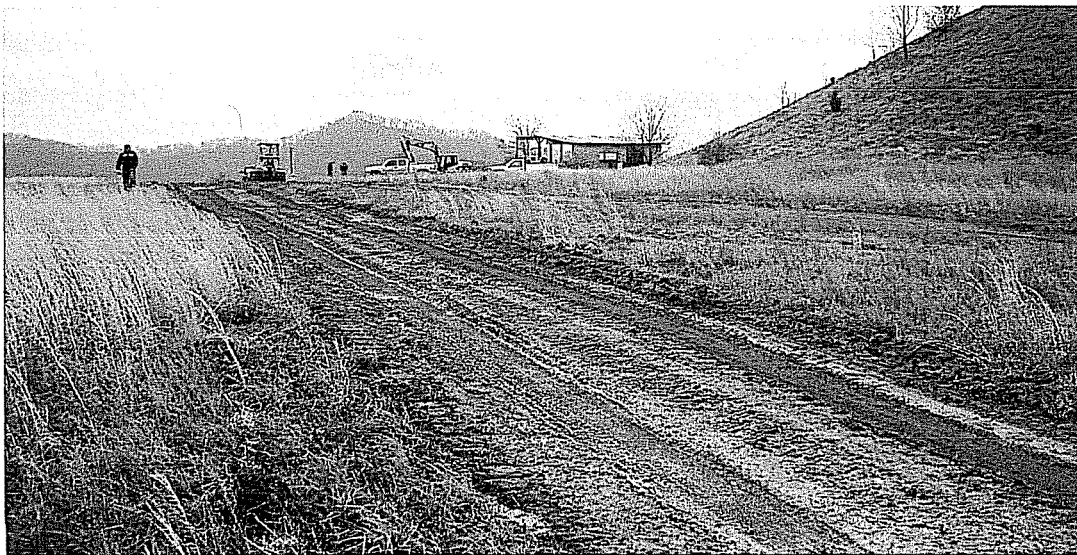
End of access road leaving the subject into tower site. Photo by Vance Mosley



Access road extending through subject property looking east. Photo by Vance Mosley



Right-of-way extending through subject property looking west. Photo by Vance Mosley



Tower site in background and right-of-way access road. Photo by Vance Mosley



Undisturbed strip mined area. Photo by Vance Mosley



Right-of-way access road leaves coal haul road through subject property. Photo by Vance Mosley



New road constructed through the subject. Photo by Vance Mosley



Access off Rt. 160 looking south over the subject. Photo by Vance Mosley



Coal haul road access to the subject from Rt. 15. Photo by Vance Mosley



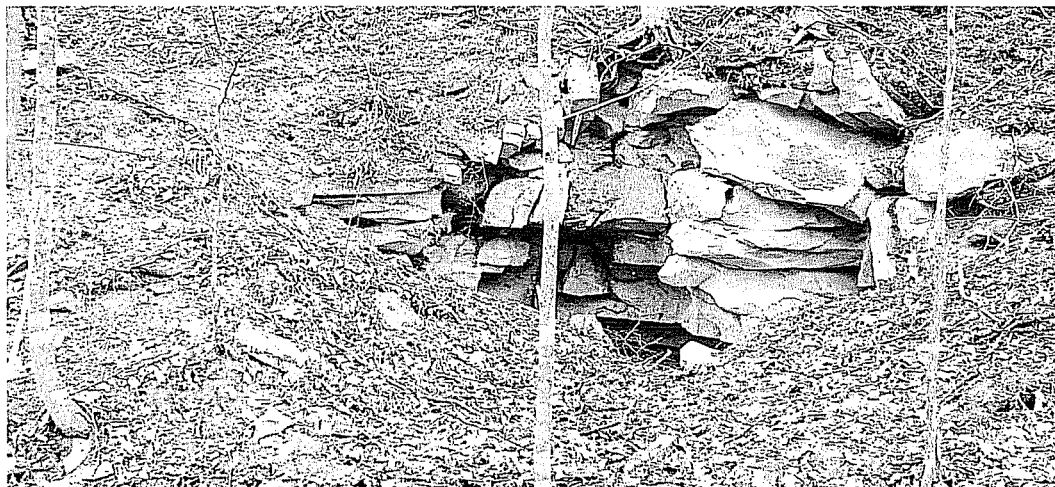
Boundary line between surface and fee tract. Photo by Vance Mosley



Access road to the fee tract and new road constructed through surface only tract
Photo by Vance Mosley



Looking south over the proposed tower site. Photo by Vance Mosley



Deep mine site located north end of the property 50 ft below level area.

KENTUCKY FIELD SERVICE REALTY, INC.**QUALIFICATIONS OF APPRAISER/BROKER, VANCE MOSLEY****EDUCATION:**

1. University of Kentucky Forestry and Wood Technician School, 1965.
Real Estate Appraisal I, University of Virginia, 1970.
5. Certified timber marker and tree measurement, US Forest Service, 1971, DBNF, Winchester KY
Real Estate Appraisal III, Rural Appraisal AIREA, Charlottesville, VA,
6. Bachelor of General Studies with Real Estate Certification; includes Real Estate Appraisal Principles, Finance, Law, and House Construction. University of Nebraska at Omaha, 1975.
7. Right of Way negotiations, International R/W Association, 1976.
8. Income Property Appraising 201, Society of Real Estate Appraisers, EKU, Richmond, KY.
9. Appraisal Report Writing, Society of Real Estate Appraisers, Knoxville, TN, 1977.
10. Photogrammetry, Remote Sensing, and Ecology, University of Kentucky, 1984.
11. International Right of Way Association – Legal Aspects (Title Abstracts), Louisville, KY, 1987.
12. WEG-155, Principles of Farm Appraisals/Income Approach, Bowling Green KY, 1991.
13. Completed course in home construction and environmental issues, WV, May 1993.
14. Completed 11 hours training with Appraisal Institute (Americans with Disabilities Act, Appraisal Practices for Litigation), Louisville, KY 1995.
15. Completed 8 hours on Minerals Appraisal Seminar for American Society of Farm Managers and Rural Appraisers on February 26-27, 1997.
16. Completed course in Appraising Agricultural Chattels, February 27, 2003, Lexington, KY.
17. Completed a course of attendance with the American Society of Farm Managers and Rural Appraisers, (course 6 hours), May 11, 2006, Elizabethtown, KY.
18. Completed course "KREAB Day With the Board", March 10, 2006 (course 7 hours) Louisville, KY.

Completed Appraisal Standard for Federal Land Acquisition February 2007, 16.

Appraiser & Associate training course 7 hours. March, 2009

Administrative Appraisal Review February 2009 ASFMRA, Lexington KY.

EXPERIENCE:

- Scaled logs, Georgia Pacific Corporation, scaling 7MMBF, 1965, Evarts, KY.
 - March 1968 to February 1986 – US Government – Appraising, negotiation, timber estimation, R/W acquisitions, military leasing, land acquisitions, condemnation and review appraiser; also supervised other appraiser and surveyors in office.
 - Met XZ-118 Civil Service qualifications for professional forester, GS-12, 1985.
 - Qualified expert witness, Clay County Circuit Court, 1986, and Harlan County Circuit Court, February 1987; Residential Property, Federal Court; London, KY Case #88-294, Case #89-271.
 - Appraised residential, income and timberland properties, US Park Service, 1987 to 1998 in New River at Oak hill WV.
 - Approved HUD: VA FHA appraiser, Louisville, KY, 1987.
 - Appraised 12,000 acres Fee Land (Coal Lands) in New River Gorge in September 1987, using Before and After Method, for US Park Service, Oak hill WV.
 - Approved numerous parcels of land for Kentucky Transportation Cabinet, Frankfort KY – 1987 to present.
 - Broker – Appraiser April 1, 1986 to present. Kentucky Field Service Realty, Inc., P.O. Box 921, Hyden, KY 41749; and Timberland Appraisals, established April 1, 2004.
 - Appraised properties, using Before and After Method for James S. Green, Atty, Hyden KY; and Hollen & Hollen, Atty's, Hazard, KY.
 - Appraised 17,000 acres of Coal Only Property in Nicholas, Green briar and Webster counties, WV, July 1989, for Trust for Public Lands.
 - Contract Appraiser for US Forest Service from 1986 to present.
 - Appraised property for Harlan County Independent Schools, Harlan KY.
- Commonwealth of KY, 34th Judicial Circuit Court, Whitley County Court. Timber Trespass KRS 364.130. Boyd Litrell, et al. VS Luther Tucker, et al.
- Appraised large coal and timber property for James River Coal in May 2002 – Leslie, Clay, and Perry counties.
- Contract appraiser for State of Kentucky Facilities Management Statewide from 1990 to present.

PROFESSIONAL DESIGNATIONS:

- Certified General Real Property Appraiser – Kentucky Lic. No. 0832. Expires June 30, 2008.
- Certified General Appraiser – West Virginia Lic. No. 097.