



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

*Sterling Drng Site 3*  
*R-4*  
*B. Curley*  
*C. Bourke*

March 15, 2018

New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1500  
Office of General Counsel  
Attention: Andrew Guglielmi, Esq.

Re: Environmental Easement, Site No.: 442011 -  
CSX Transportation, Inc. (NY 9J, East Greenbush, Rensselaer, New York)

Dear Mr. Guglielmi:

As per your letter dated, February 14, 2018 enclosed you will find a copy of the DEC Easement which was recorded in the Rensselaer County Clerk's Office on February 27, 2018 in Book 8447, page 318 as Instrument # 2018-529949 along with a copy of the Notice to the Municipality to the Town Clerk for the Town of East Greenbush and certified returned receipt acknowledging delivery of same.

Upon receipt of the enclosed, if the Certificate of Completion is ready to be processed please forward the original to our office and we will make arrangements to have the Certificate of Completion recorded in the Rensselaer County Clerk's Office.

If you have any questions relative to this matter or the enclosed, please feel free to contact either myself or Paul Sylvestri directly at (585) 231- 1194.

Thank you for your assistance and attention to this matter.

Very truly yours,

Harter Secrest & Emery, LLP

*Debra L. Williamson*

Debra L. Williamson

Real Estate Paralegal

DIRECT DIAL: (585) 231-1495

E-MAIL: DWILLIAMSON@HSELAW.COM

Enclosures

## OFFICE OF GENERAL COUNSEL

New York State Department of Environmental Conservation  
625 Broadway, 14th Floor, Albany, New York 12233-1500  
Phone: (518) 402-9185 • Fax: (518) 402-9018  
[www.dec.ny.gov](http://www.dec.ny.gov)

February 14, 2018

**SENT VIA FEDEX EXPRESS**  
**TRACKING NO. 8122 1293 6228**

Ms. Debra Williamson  
Harter Secrest & Emery  
1600 Bausch and Lomb Place  
Rochester, NY 14604

**RE: Environmental Easement Package**  
**Site Name: Sterling Drug Site 3**  
**Site No.: 442011**

Dear Ms. Williamson:

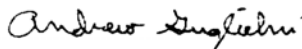
Enclosed, please find the fully executed Environmental Easement and TP 584.2 tax form referencing the site located at NY 9J, East Greenbush, Rensselaer County and CSX Transportation, Inc.

Once the Environmental Easement is recorded, the local municipality will need to be notified via Certified Mail, Return Receipt Requested.

Please return a copy of the recorded easement marked by the County Clerk's Office with the date and location of recording, and a certified copy of the municipal notice. The information from the recorded easement and notices are necessary to process the Certificate of Completion.

If you have any further questions or concerns relating to this matter, please contact our office at 518-402-9510.

Sincerely,



Andrew Guglielmi, Esq.  
Section Chief A  
Bureau of Remediation



Department of  
Environmental  
Conservation

SENDER, COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ms. Kim Carlock  
Town Clark  
Town of East Greenbush  
225 Columbia Turnpike  
Rensselaer, NY 12144



9590 9402 2159 6193 2802 71

2. Article Number (Transfer from service label)

7004 1350 0004 8459 7441

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x Michelle Eckler

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

Michelle Eckler

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
- If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

March 7, 2018

Ms. Kim Carlock  
Town Clerk  
Town of East Greenbush  
225 Columbia Turnpike  
Rensselaer, New York 12144

Re: New York State Department of Environmental Easement

Dear Ms. Carlock:

Enclosed please find a copy of the Environmental Easement granted by CSX Transportation ("CSX") to the New York State Department of Environmental Conservation (the "Department"), pursuant to Article 71, Title 36 of the New York State Environmental Conservation Law ("Easement"), a copy of which was filed in the County of Rensselaer on February 27, 2018 shown below:

Dated: February 12, 2018  
Recorded: February 28, 2018  
By: CSX Transportation, Inc.  
To: The People of the State of New York  
Property: NY 9J, Town of East Greenbush, County of Rensselaer, State of New York,  
Tax Map No.: 165.-1-5,  
Site No.: 442011.

This Easement limits future use of the above-referenced property to closed landfill uses. Any on-site activity must be done in accordance with the Declarations and the Site Management Plan, which are incorporated into the Easement. The use of groundwater underlying the property is prohibited without necessary water quality treatment, and the user must first notify and obtain written approval from the Department.

The Department requires that:

1. Whenever the Department is granted an Easement, it shall provide each affected local government with a copy of such Easement and shall also provide a copy of any documents modifying or terminating such Easement.

March 7, 2018  
Page 2

2. Whenever an affected local government receives an application for a building permit or any other application affecting land use or development of land that is subject to an Easement and that may be related to or impact such Easement, the affected local government shall notify the Department and refer such application to the Department. The Department shall evaluate whether the application is consistent with the Easement and shall notify the affected local government of its determination in a timely fashion, considering the time frame for the local government's review of the application. The affected local government shall not approve the application until it receives approval from the department.

An electronic version of the Easement is available to the public at: <http://www.dec.ny.gov/chemical/36045.html>. Please forward this notice to your building and/or planning departments, as applicable, to ensure your compliance with the Department's requirements. If you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

Harter Secrest & Emery LLP

Leslie M. Mauro  
DIRECT DIAL: 585.231.1367  
EMAIL: LMAURO@HSELAW.COM

LMM:dlw  
Attachments



RENSSELAER COUNTY – STATE OF NEW YORK  
FRANK MEROLA COUNTY CLERK  
105 THIRD STREET, TROY, NEW YORK 12180

5

COUNTY CLERK'S RECORDING PAGE  
\*\*\*THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH\*\*\*



BOOK/PAGE: 8447 / 318  
INSTRUMENT #: 2018-529949

Receipt#: 1117349  
Clerk: RAH  
Rec Date: 02/27/2018 12:55:37 PM  
Doc Grp: RP  
Descrip: EASEMENT  
Num Pgs: 9  
Rec'd Frm: HARTER ET AL

Party1: CSX TRANSPORTATION INC  
Party2: DEPT OF ENVIRONMENTAL  
CONSERVATION  
Town: EAST GREENBUSH

Recording:

|                           |       |
|---------------------------|-------|
| Cover Page                | 5.00  |
| Recording Fee             | 60.00 |
| Cultural Ed               | 14.25 |
| Records Management - Coun | 1.00  |
| Records Management - Stat | 4.75  |
| TP584-1                   | 5.00  |

Total: 90.00  
\*\*\*\* NOTICE: THIS IS NOT A BILL \*\*\*\*

WARNING\*\*\*

I hereby certify that the within and foregoing was recorded in the Rensselaer County Clerk's Office, State of New York. This sheet constitutes the Clerks endorsement required by Section 316 of the Real Property Law of the State of New York.

Record and Return To:

Frank Merola  
Rensselaer County Clerk

HARTER SECREST & EMERY LLP  
1600 BAUSH & LOMB PLACE  
ROCHESTER NY 14604

9  
E6  
ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36  
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

**THIS INDENTURE** made this 12<sup>th</sup> day of February, 2018, between Owner(s) CSX Transportation, Inc., having an office at 500 Water Street, Jacksonville, County of Duval, State of Florida (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

**WHEREAS**, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS**, Grantor, is the owner of real property located at the address of NY 9J in the Town of East Greenbush, County of Rensselaer and State of New York, known and designated on the tax map of the County Clerk of Rensselaer as tax map parcel numbers: Section 165 Block 1 Lot 5, being the same as that property conveyed to Grantor by deed dated June 1, 1999 and recorded in the Rensselaer County Clerk's Office in Liber and Page Deed Book 161 at Page 1401. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 1.608 +/- acres, and is hereinafter more fully described in the Land Title Survey dated November 13, 2013 revisions made on May 5, 2014, April 30, 2015, May 21, 2015 and October 31, 2017 prepared by Richard M. Rybinski, L.S., which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation

established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number: A4-0624-08-09, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

closed landfill

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Rensselaer County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

[10/12]

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for any other use other than closed landfill, and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation**

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against

the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:      Site Number: 442011  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

With a copy to:      Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of [10/12]

this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

**IN WITNESS WHEREOF,** Grantor has caused this instrument to be signed in its name.

CSX Transportation, Inc.:

By: Shantel Davis

Print Name: Shantel Davis

Title: Vice President Date: 1/24/18  
Real Estate + Facilities Management

**Grantor's Acknowledgment**

Florida OK  
STATE OF ~~NEW YORK~~ )  
COUNTY OF Duval ) ss:

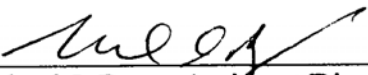
On the 24 day of January, in the year 20 18, before me, the undersigned, personally appeared Shantel Davis, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Jennifer Bryan  
Notary Public - State of ~~New York~~ Florida



**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK**, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

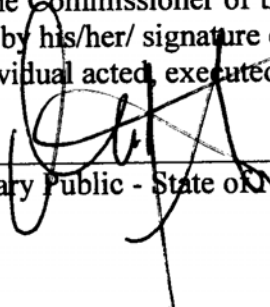
By:

  
Michael J. Ryan, Assistant Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

STATE OF NEW YORK     )  
                                          ) ss:  
COUNTY OF ALBANY     )

On the 12<sup>th</sup> day of February, in the year 2018, before me, the undersigned, personally appeared Michael J. Ryan, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public - State of New York

David J. Chiusano  
Notary Public, State of New York  
No. 01CH5032146  
Qualified in Schenectady County  
Commission Expires August 22, 2018

### **SCHEDULE "A" PROPERTY DESCRIPTION**

All that tract or parcel of land situate in the Town of East Greenbush, County of Rensselaer and State of New York, bounded and described as follows:

Beginning at the northeast corner of a chain link fence of the Environmental Easement of lands now or formerly Consolidated Rail Corp. recorded in Rensselaer County Clerk's Office in Book 163 Page 1401 as shown on a map titled "Environmental Easement Sterling Drug Site 3, Operable Unit No. 01, Site No. 442011", Sheets 1 and 2 of 4 prepared by Richard M. Rybinski, L.S. dated May 5, 2014 and the map "Boundary Survey of Lands Owned by Salvatore A. & Vincentia L. Graziano" filed in Drawer 1997 Map 7, said point being S. 62°29'15" E. a distance of 69.13 feet from the concrete monument at the northeast corner of Kodak Parcel 1 as shown on the said easement map; thence along the said fence of said railroad lands on a portion of an arc of a curve to the left having a central angle of 02°11'47", a radius of 8580.52 feet, an arc length of 328.92 feet, a chord bearing of S. 02°22'38" W. a distance of 328.90 feet to a point on the said fence; thence S. 02°22'00" E. a distance of 741.12 feet to a point; thence S. 53°48'23" W. a distance of 57.16 feet to a point; thence S. 70°06'21" W. a distance of 2.90 feet to a point on the westerly line of the said railroad and easterly line of now or formerly lands of Harry J. Abele, Jr., John J. Abele and Frances Schmitt recorded in deed Book 1300 Page 659 filed March 31, 1978; thence N. 05°53'23" W. a distance of 38.40 feet along the west line of said railroad and east line of said Abele to the northeast corner of said Abele and southwest corner of Kodak Parcel 2 as shown on said easement map of lands now or formerly Eastman Kodak Company deed Book 7136 Page 210; thence along the easterly line of said Parcel 2 and the westerly line of said railroad N. 05°53'23" W. a distance of 90.85 feet to a point; thence along the west line of the said railroad and the east lines of parcels Kodak Parcel 2, Niagara Mohawk and Kodak Parcel No. 1 on a portion of an arc of a curve to the right having a central angle of 09°41'41", a radius of 5812.50 feet, an arc length of 983.50 feet, a chord bearing of N. 01°02'33" W. a distance of 982.33 feet to the northwest corner of said railroad easement and the northeast corner of Kodak Parcel 1 Environmental Easement; thence along the northerly line of said railroad easement N. 88°33'13" E. a distance of 36.35 feet to a point; thence along the northerly line of said railroad easement S. 73°42'14" E. a distance of 27.81 feet to the point of beginning, containing 1.608 acres more or less.