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Instrument Number
105835-002

No. of Pages: 8
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DATE: 07/25/2008

Time: 10:01 AM

Document Type: EASEMENT/RIGHT OF WAY

Parties To Transaction: PETER COOPER TO WILHELM ENT

Town/City: DY - Dayton

Deed Information

Consideration: \$0.00

Transfer Tax: \$0.00

RETT No: 03653

Mortgage Information

Mortgage Amount:

Basic Mtge. Tax:

Special Mtge. Tax:

Additional Mtge. Tax:

State of New York
Cattaraugus County Clerk

Mortgage Serial No.:

This sheet constitutes the Clerk endorsement required by Section 316-A(5) & Section 319 of the Real Property Law of the State of New York.

Cattaraugus County Clerk

Please do not remove this page.



**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants is made this 1st day of July, 2008, by and between the Peter Cooper Corporations upon Order and Judgment of the Hon. Larry Himelein, J.S.C., being a defunct Delaware corporation and record owner of the property identified herein ("Grantor") and a group of entities being those parties named as Potentially Responsible Parties for certain potentially hazardous conditions at the site, including Wilhelm Enterprises Corporation, a New York corporation having an address at 333 International Drive Suite B-4, Williamsville, NY 14221; Prime Tanning Company, a Maine corporation having an address at 20 Sullivan Street, Berwick, ME 03901; Seton Company, a Pennsylvania corporation having an address at 30445 Northwestern Hwy Suite 225, Farmington Hills, MI 48334; Viad Corp, an Arizona corporation having an address at 1850 North Central Avenue Suite 800, Phoenix, AZ 85004; GST AutoLeather, a Michigan corporation having an address at 20 Oak Hollow Drive Suite 300, Southfield, MI 48033; Brown Shoe Company, Inc., a Missouri corporation having an address at 8300 Maryland Avenue PO Box 29, St. Louis, MO 63166; Con Agra Grocery Products Company, a Nebraska corporation having an address at One Con Agra Drive, Omaha, NE 68102; Beggs & Cobb Corporation, a Delaware corporation having an address at 139 Lynnfield Street, Peabody, MA 01960; Genesco, Inc., a Tennessee corporation having an address at PO Box 731 Suite 490, Nashville, TN 37202; Leucadia National Corporation, a New York corporation having an address at 315 Park Avenue South, New York, NY 10010; S.B. Foot Tanning Company, a Minnesota corporation having an address at 805 Bench Street, Red Wing, MN 55066; and Horween Leather Company, a Illinois corporation having an address at 2015 Elston Avenue, Chicago, IL 60614, (collectively the "Grantees"); acting on their own behalf and f/b/o third party beneficiaries being the United States of America acting by and through the Environmental Protection Agency ("EPA") and the State of New York, acting through the Department of Environmental Conservation ("DEC").

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the County of Cattaraugus, State of New York, more particularly described on **Exhibit A** attached hereto and made a part hereof together with any buildings and improvements thereon and appurtenances thereto (the "Property"); and

WHEREAS, the Property is part of the Peter Cooper (Markhams) Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the Federal Register on February 3, 2000; and

WHEREAS, in a Record of Decision dated December 1, 2006 (the "ROD"), EPA, with the concurrence of the New York State Department of Environmental Conservation ("NYSDEC") selected a "response action" for the Site, which provides, in part, for the following actions at the Site: consolidating waste/fill piles; capping the consolidated wastes with a low permeability soil cover consistent with State requirements, including seeding with a mixture to foster natural habitat; and institutional controls to prohibit the use of groundwater unless and until groundwater quality standards are met and to restrict activities on the Site that could compromise the integrity of the cap; and

WHEREAS, the parties hereto have agreed that Grantor shall grant a permanent easement and covenant: a) to provide a right of access over the Property to the Grantees for purposes of implementing, facilitating and monitoring the response action; and b) to impose on the Property use restrictions that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor, by Order of the Supreme Court, Cattaraugus County, shall cooperate with EPA and the Grantees in the implementation of all response actions at the Site;

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Consent Decree in the case of the United States of America v. Wilhelm Enterprises Corporation et al. ("Consent Decree"), upon the Order of the Supreme Court, Cattaraugus County, does hereby give, grant, covenant and declare in favor of the Grantees that the Property shall be subject to the restrictions on use and rights of access set forth below, and does give, grant and convey to the Grantees with general warranties of title the perpetual right to enforce said restrictions and rights, which shall be of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.
2. Purpose: It is the purpose of this instrument to convey to the Grantees real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.
3. Restrictions on use: The following restrictions on use apply to the use of the Property, run with the land and are binding on the Grantor and its heirs, successors and assigns: the extraction of groundwater, and any activities that would interfere with, or adversely affect, the integrity or protectiveness of the cap are prohibited.
4. Modification or termination of restrictions: The restrictions on use specified in the preceding paragraph of this instrument may only be modified, or terminated in whole or in part, in writing, by the Grantees, with the prior written consent of EPA, provided, however, that any modification or termination of said restrictions shall not adversely affect the remedy selected by EPA for the Site. If requested by the Grantor, and approved by EPA, such writing will be executed by Grantees in recordable form.

5. Right of access: A right of access to the Property at all reasonable times for the following purposes shall run with the land and be binding on Grantor and its heirs, successors and assigns:
- a) Implementing the response actions in the ROD, including, but not limited to, consolidating waste/fill piles and capping of the consolidated waste;
 - b) Verifying any data or information relating to the Site;
 - c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
 - d) Conducting investigations under CERCLA relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils; and
 - e) Implementing additional or new response actions under CERCLA.
6. Reserved rights of Grantor: Grantor hereby reserves unto itself, its heirs, successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights, covenants and easements granted herein.
7. Federal authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.
8. No public access and use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.
9. Public notice: Grantor agrees to include in each instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS
SUBJECT TO AN ENVIRONMENTAL PROTECTION
EASEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS, DATED _____, 20__, RECORDED IN
THE CLERK'S OFFICE, COUNTY OF CATTARAUGUS,
ON _____, 20 , IN BOOK _____, PAGE _____, IN
FAVOR OF, AND ENFORCEABLE BY, GRANTEEES [as
listed herein], AND BY THE UNITED STATES OF
AMERICA AND THE STATE OF NEW YORK, AS THIRD
PARTY BENEFICIARY[IES].**

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor

agrees to provide Grantees and EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

10. Enforcement: The Grantees shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any forbearance, delay or omission to exercise Grantees' rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantees under this instrument.
11. Damages: Grantees shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Site as a result of such breach or violation.
12. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
13. Covenants: Grantor hereby covenants to and with the Grantees and their assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances except as otherwise disclosed to and accepted by Grantees and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.
14. Notices: Any notice, demand, request, consent, approval, or communication under this instrument that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantees:

Wilhelm Enterprises Corporation
c/o Lipman & Biltekoff, LLP
333 International Drive Suite B-4
Williamsville, New York 14221

Prime Tanning Company
20 Sullivan Street
Berwick, ME 03901

Seton Company
30445 Northwestern Highway, Suite 225
Farmington Hills, 48334

Viad Corporation
1850 North Central Avenue, Suite 800
Phoenix, AZ 85004

GST AutoLeather
20 Oak Hollow Drive, Suite 300
Southfield, MI 48033

Brown Shoe Company, Inc.
8300 Maryland Avenue
PO Box 29
St. Louis, MO 63166

Con Agra Grocery Products Company
One Con Agra Drive
Omaha, NE 68102

Beggs & Cobb Corporation
139 Lynnfield Street
Peabody, MA 01960

Genesco, Inc.
PO Box 731, Suite 490
Nashville, TN 37202

Leucadia National Corporation
315 Park Avenue South
New York, NY 10010

S.B. Foot Tanning Company
805 Bench Street
Red Wing, MN 55066

Horween Leather Company
2015 Elston Avenue
Chicago, IL 60614

15. General provisions:

a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the state where the Property is located.

b) Liberal construction: Any general rule of construction to the contrary

notwithstanding, this instrument shall be liberally construed in favor of the grant to effectuate the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein; provided that nothing in this instrument shall be deemed to alter or modify the Consent Decree.

e) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) 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.

g) Successors: The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns.

h) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

j) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA and the State of New York through NYSDEC shall be, on behalf of the public,

third-party beneficiaries of the benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of EPA or NYSDEC.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

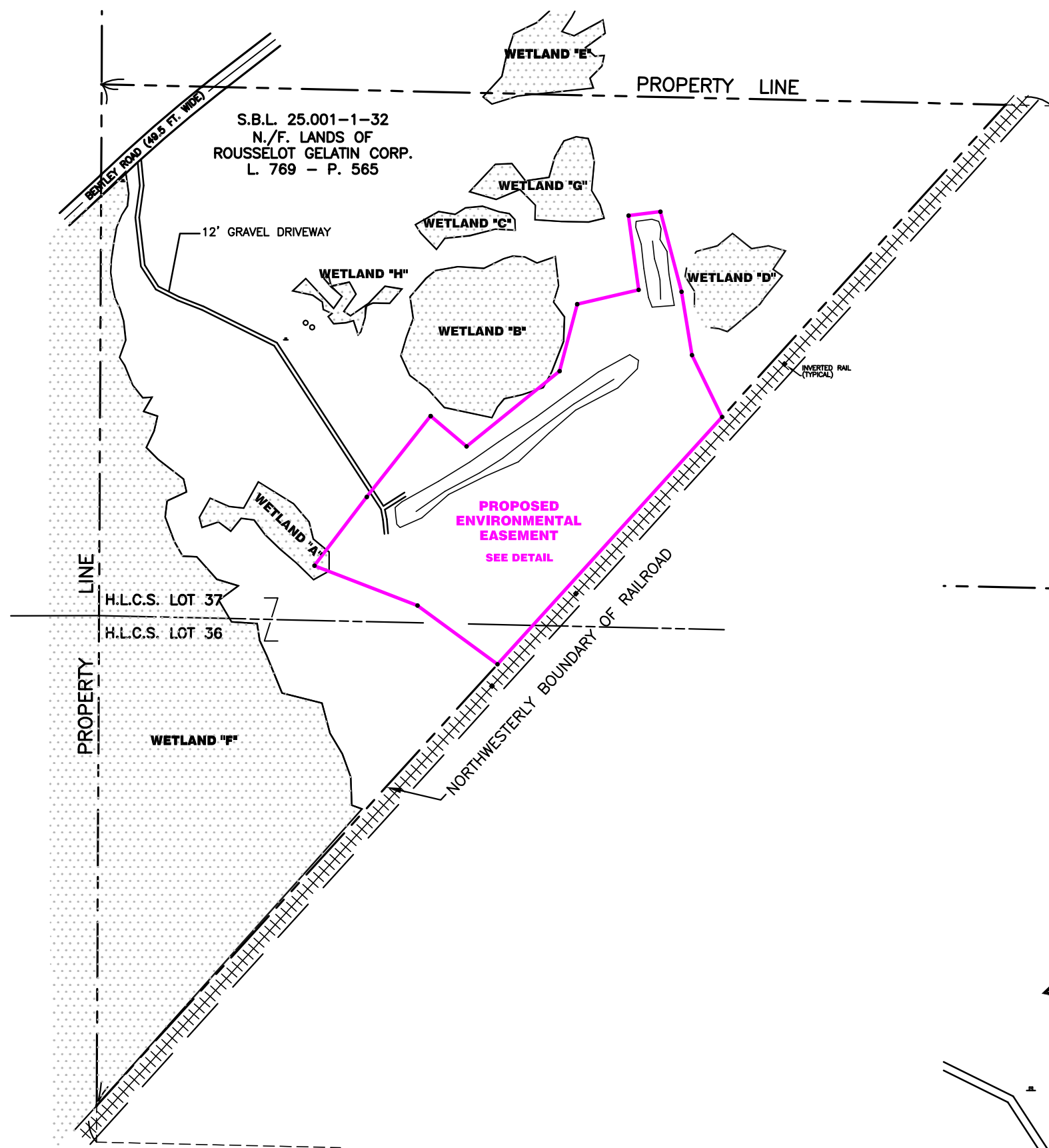
IN WITNESS WHEREOF, the Supreme Court, Cattaraugus County, has caused this instrument to be entered and recorded in the name of Grantor by Order of the Court dated _____, 2008.

Peter Cooper Corporations

Attachment: Exhibit A - legal description of the Property

EXHIBIT A - DESCRIPTION OF PROPERTY

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Dayton, County of Cattaraugus and State of New York, distinguished as being part of Lots 36 and 37, Township 5 and Range 9 of the Holland Land Company's Survey, being a triangular parcel of land bounded on the west by west lines of Lots 36 and 37; on the north by a line parallel with the south bounds of Lot 37 and 25 chains and 15 links north thereof; and on the southeast by lands formerly conveyed to the Buffalo and Jamestown Railroad Company; containing 136 acres more or less.



MAP OF TOWN OF DAYTON TAX IDENTIFICATION NO.
(S.B.L.) 25.001-1-32
(PERIMETER SURVEY AND MAP MADE BY E & M ENGINEERS AND SURVEYORS, P.C.)
SCALE: 1" = 400'

DESCRIPTION OF SUBJECT EASEMENT

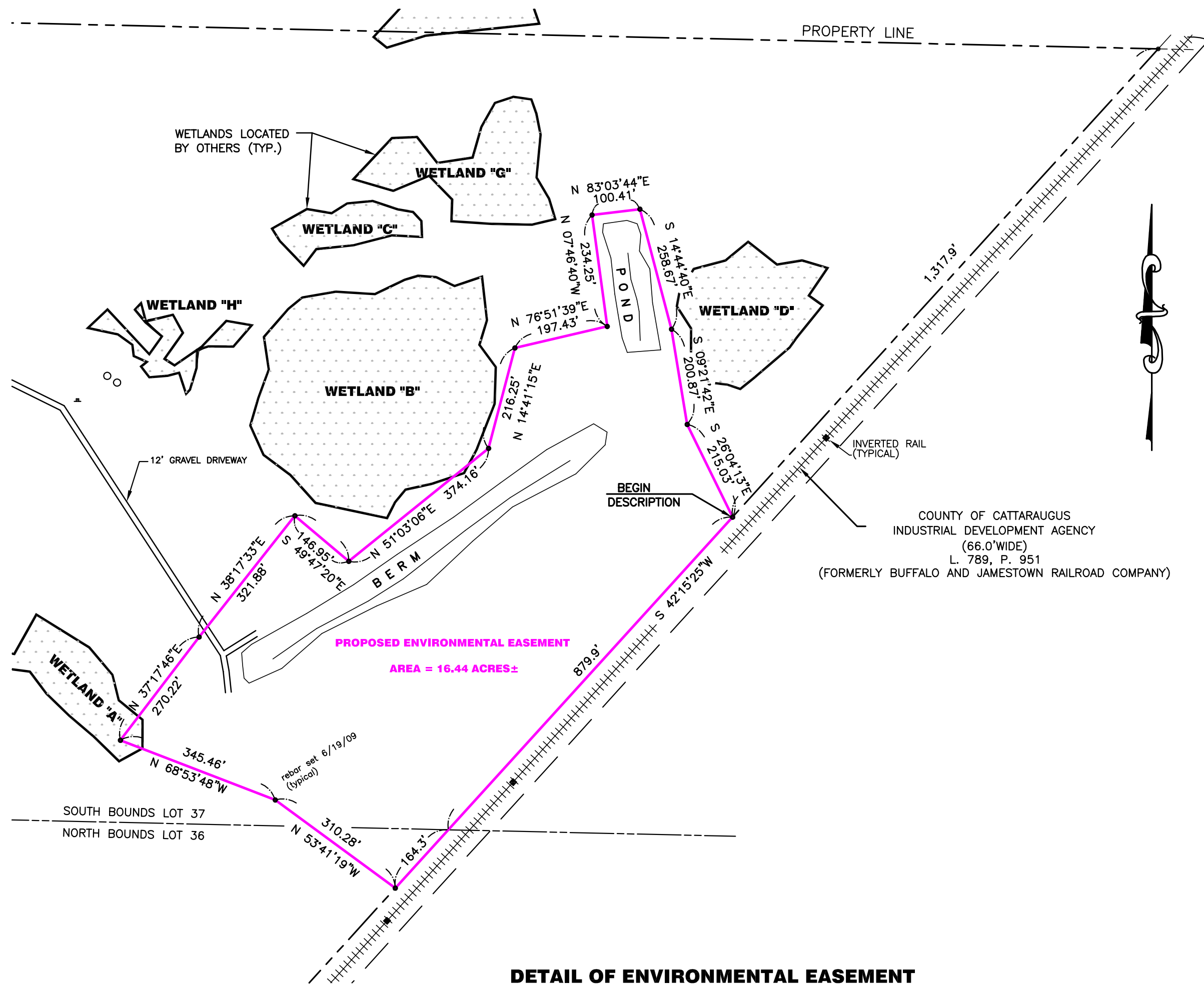
An EASEMENT to be exercised in, on and over the property hereinafter described situate in the Town of Dayton, County of Cattaraugus and State of New York; being part of Lot Nos. 36 and 37, Town 5 and Range 9 of the Holland Land Company's Survey; and being more particularly bounded and described as follows:

BEGINNING at a rebar on the northwestern boundary of property of the County of Cattaraugus Industrial Development Agency as described in a deed filed in the Cattaraugus County Clerk's Office in Liber 789 of Deeds at page 951 (formerly Buffalo and Jamestown Railroad Company), said rebar being South 42 degrees 15 minutes 25 seconds West as measured along said boundary of property of County of Cattaraugus Industrial Development Agency, a distance of 1,317.9 feet from a point at its intersection with the northerly line of property of Rousselot Gelatin Corp., hereinafter referenced; thence South 42 degrees 15 minutes 25 seconds West along said boundary of the County of Cattaraugus Industrial Development Agency, a distance of 1,044.2 feet to a rebar, said rebar being 164.3 feet distant southwesterly as measured along the last described line from a point at its intersection with the northerly line of said Lot No. 36 (southerly line of Lot No. 37); thence through the property of said Rousselot Gelatin Corp., the following thirteen (13) courses and distances: (1) North 53 degrees 41 minutes 19 seconds West, a distance of 310.28 feet to a rebar; thence (2) North 68 degrees 53 minutes 48 seconds West, a distance of 345.46 feet to a rebar; thence (3) North 37 degrees 17 minutes 46 seconds East, a distance of 270.22 feet to a rebar; thence (4) North 38 degrees 17 minutes 33 seconds East, a distance of 321.88 feet to a rebar; thence (5) South 49 degrees 47 minutes 20 seconds East, a distance of 146.95 feet to a rebar; thence (6) North 51 degrees 03 minutes 06 seconds East, a distance of 374.16 feet to a rebar; thence (7) North 14 degrees 41 minutes 15 seconds East, a distance of 216.25 feet to a rebar; thence (8) North 76 degrees 51 minutes 39 seconds East, a distance of 197.43 feet to a rebar; thence (9) North 07 degrees 46 minutes 40 seconds West, a distance of 234.25 feet to a rebar; thence (10) North 83 degrees 03 minutes 44 seconds East, a distance of 100.41 feet to a rebar; thence (11) South 14 degrees 44 minutes 40 seconds East, a distance of 258.67 feet to rebar; thence (12) South 09 degrees 21 minutes 42 seconds East, a distance of 200.87 feet to a rebar; thence (13) South 26 degrees 04 minutes 13 seconds East, a distance of 215.03 feet to the rebar at the point or place of beginning. Containing 16.44 acres, more or less.

Being part of the same premises conveyed to Rousselot Gelatin Corp. as described in a deed dated October 22, 1976 and filed in the Cattaraugus County Clerk's Office in Liber 769 of Deeds at page 565.

NOTES:

- (1) This survey and plat were prepared for Benchmark Environmental Engineering & Science, PLLC, 2558 Hamburg Turnpike, Suite 300, Lackawanna, New York 14218. Telephone: (716) 856-0599
- (2) This survey is prepared with the benefit of review of a map prepared by E & M Engineers and Surveyors, P.C., 482 South Cascade Drive, Springville, New York 14141-0159
- (3) The Easement Area shown hereon is a part of County Tax Parcel Number (S.B.L.) 25.001-1-32, property conveyed by Peter Cooper Corporations to Rousselot Gelatin Corp. as described in a deed filed in the Cattaraugus County Clerk's Office in Liber 769 of Deeds at page 565.
- (4) Easement staked on June 19, 2009.

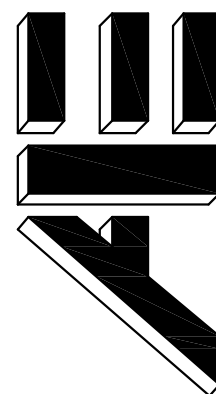


DETAIL OF ENVIRONMENTAL EASEMENT
SCALE: 1" = 200'
Scale: 1" = 200'

X:\LAND PROJECTS 2009\07-09-06A\DWG\MAR29541.DWG

ABATE ASSOCIATES ENGINEERS & SURVEYORS, P.C.

BUFFALO, NEW YORK
JAMESTOWN, NEW YORK



4455 GENESEE STREET, P.O. BOX 218 200 HARRISON STREET, P.O. BOX 3008
BUFFALO, NEW YORK 14225-0218 JAMESTOWN, NEW YORK 14702-3008
TELEPHONE: 716-632-2300 TELEPHONE: 716-488-2803
FAX: 716-632-2555 FAX: 716-488-2802
E-MAIL: abatejwn@abatepc.com E-MAIL: abatejwn@windstream.net

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PETER COOPER - MARKHAMS SITE

SURVEY OF LANDS OF:
BENTLEY ROAD
TOWN OF DAYTON
CATTARAUGUS COUNTY - NEW YORK
BEING PART OF LOT NO. 36 & 37, TOWN 5 AND RANGE 9
OF THE HOLLAND LAND COMPANY'S SURVEY