

# Title Issues with Railroad MLTA Fall Conference November 10, 2021

Presented by: Bob Wuerfel, President, Lighthouse Title Group  
C. Lynn Sagar, State Counsel, First American Title  
Insurance Co.

# Railroads & Title *All Aboard!*

## Takeaways from our presentation:

1. Participants will understand the historical significance of railroads in Michigan
2. Participants will be able to recognize various title issues relating to railroads in a chain of title
3. Participants will have access to various railroad related resources

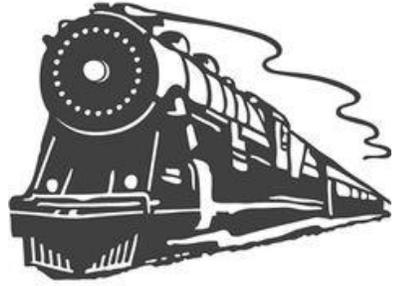
In 1833, The first railroad tracks west of Schenectady, New York were laid in Michigan by the Erie & Kalamazoo Railroad between Adrian and Toledo.

For nearly 190 years railroads have traversed our state.



Oldest active original wooden train trestle east of the Mississippi River is located in Hamilton, MI. It was constructed in 1916.

# Brief History of Railroads in Michigan



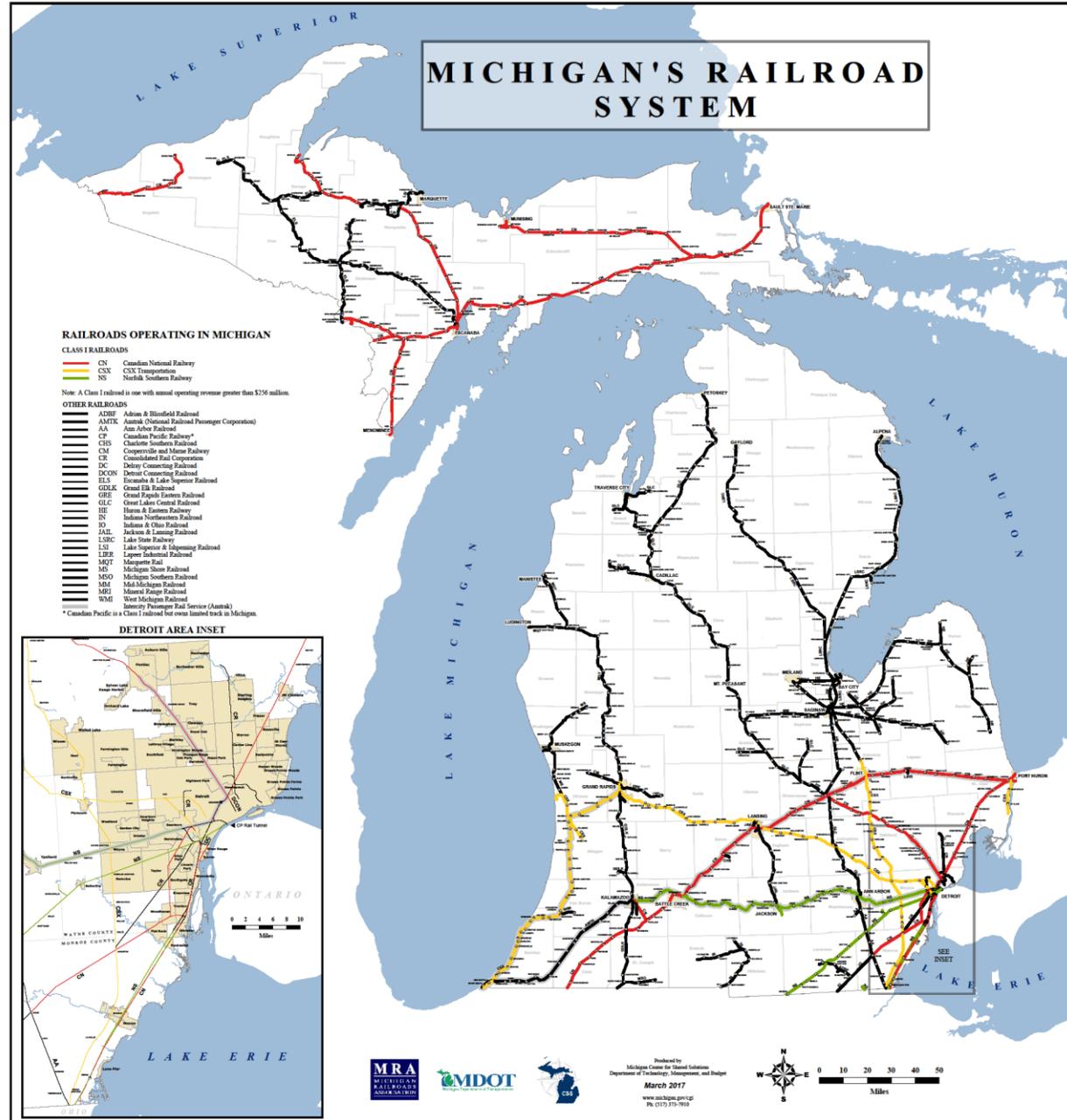
## Michigan's Railroad System - 1915



- ▶ Michigan's railroad system increased to a high of more than 9,000 route miles during the 1910 decade. At its peak mileage, all 83 Michigan Counties were connected to the rail network.

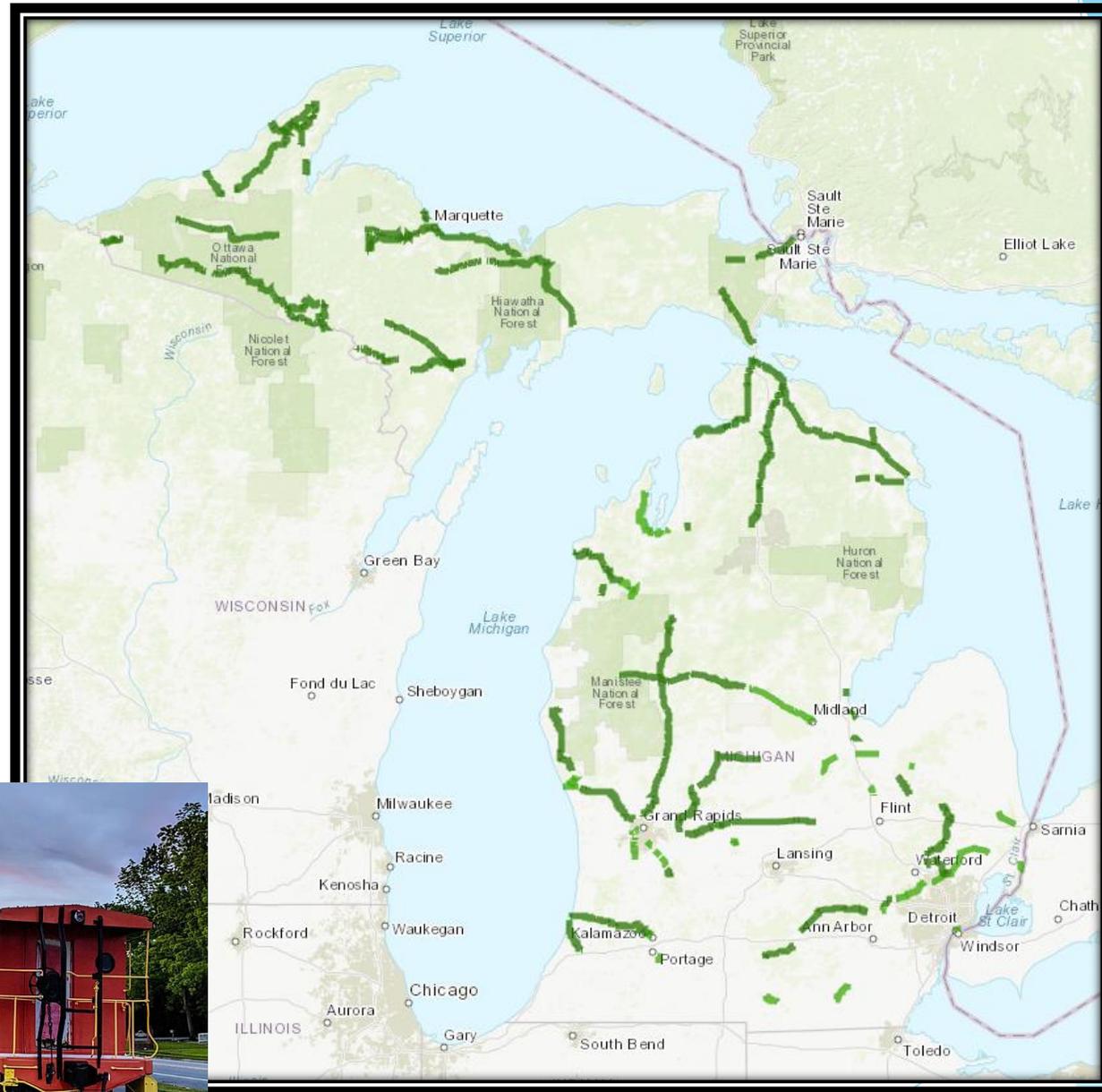
# Brief History of Railroads in Michigan

- ▶ Today, Michigan's railroad system has some 3,600 route miles of track that traverse 70 counties.



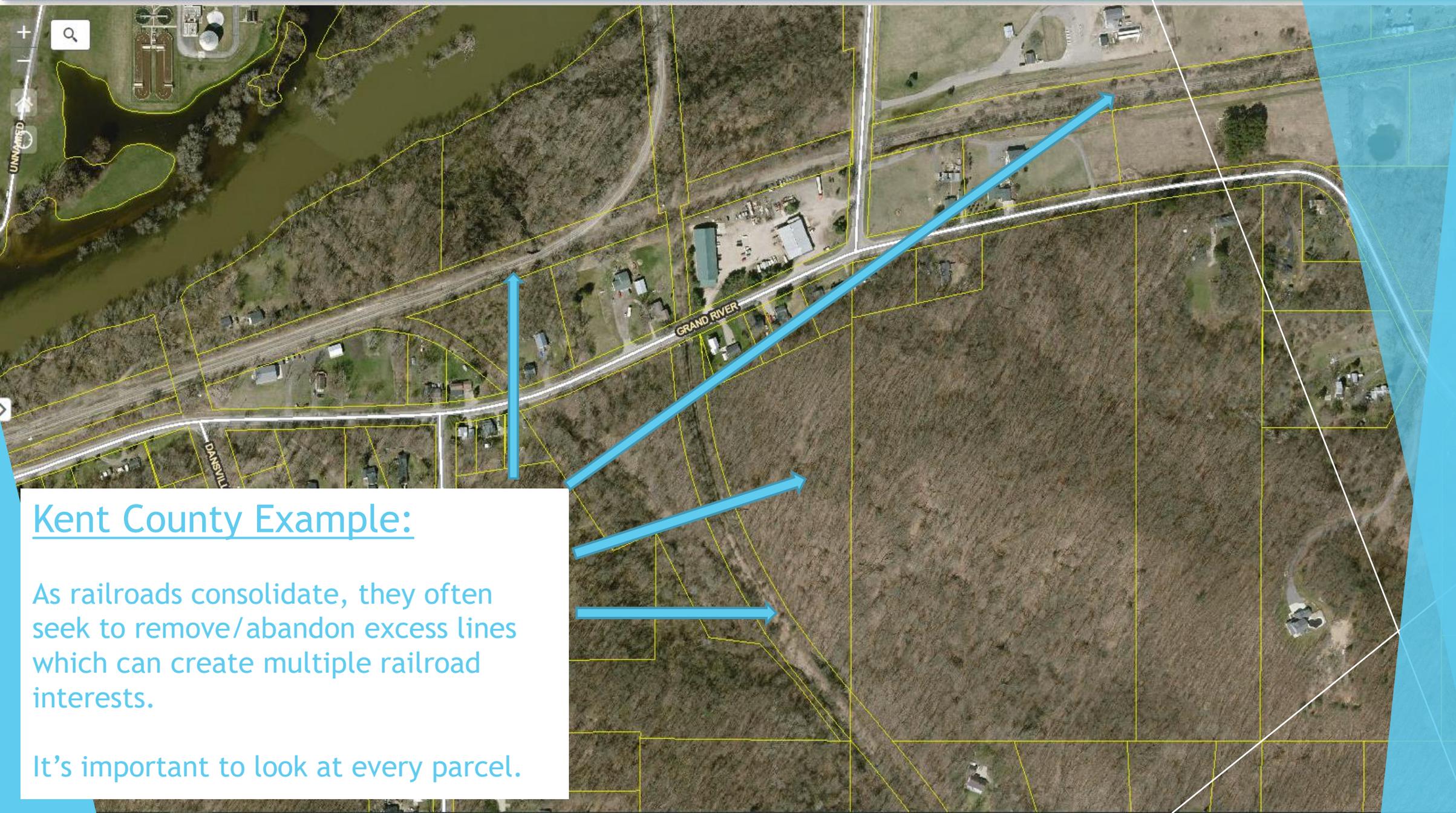
# Brief History of Railroads in Michigan

With the reduction in the rail network, State Transportation Act 295 of 1976 was passed, which preserves right of way and allows for rail trail use. Since 1976, Michigan has become the #1 trail state in the nation at 2,623 miles of rail trails.



# Who Actually Owns the Railroad Right-of-Way?

- ▶ Although the general public thinks of a corridor as being “owned” by a railroad, in reality the average rail right-of-way is often a hodge-podge of conflicting ownership interests, which may begin to unravel upon a possible sale or abandonment of the right-of-way.
- ▶ The railroad may own outright some portions of the corridor (which were acquired in “fee simple”) while it may have only the right to use other portions (which are held in “easement”).
- ▶ Additionally in Michigan, MDOT manages 665 miles of state-owned rail lines. These five lines are operated under contract by five freight railroads. Intercity passenger rail service is also provided by Amtrak on a 135-mile state-owned line between Kalamazoo and Dearborn.



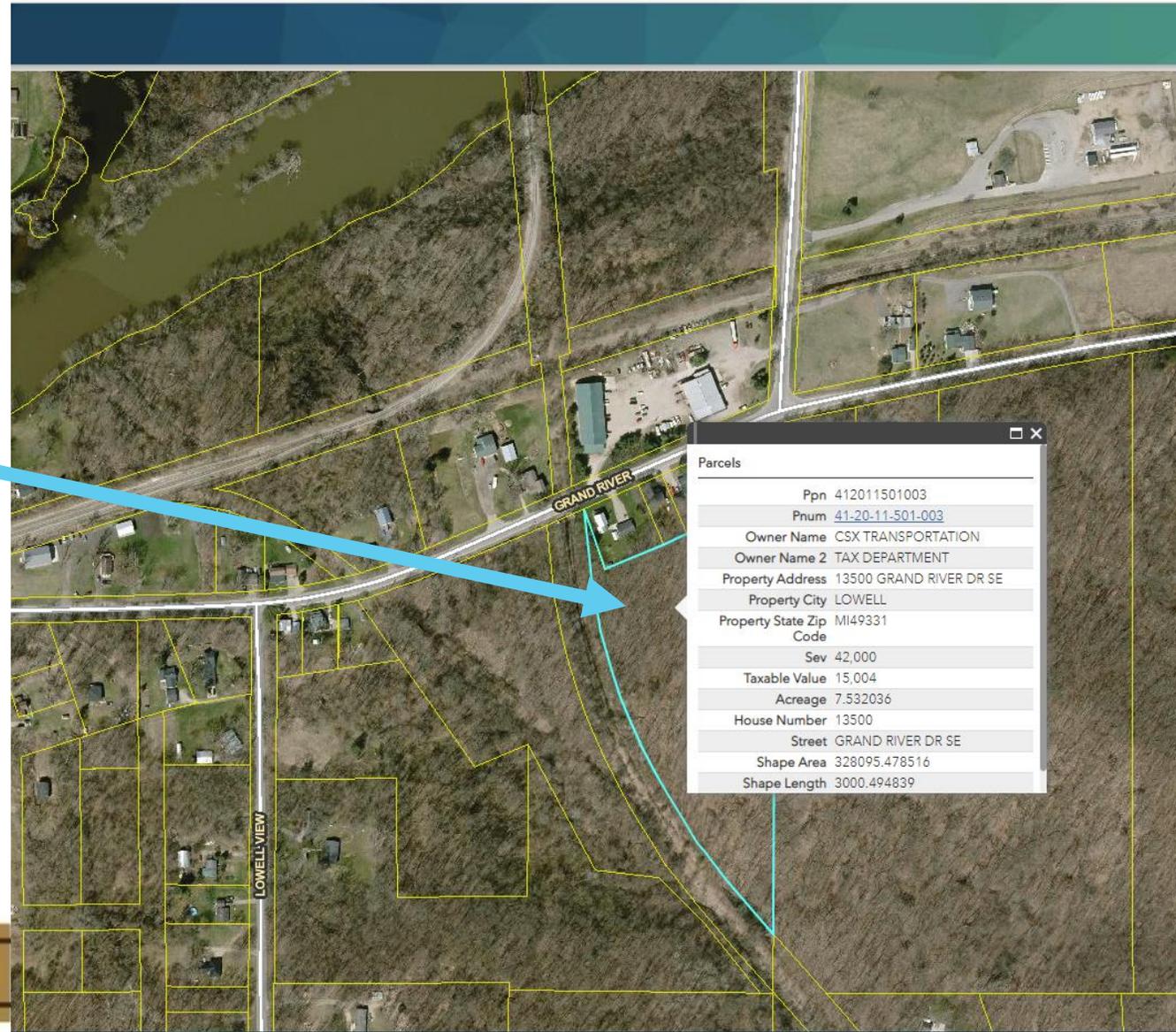
## Kent County Example:

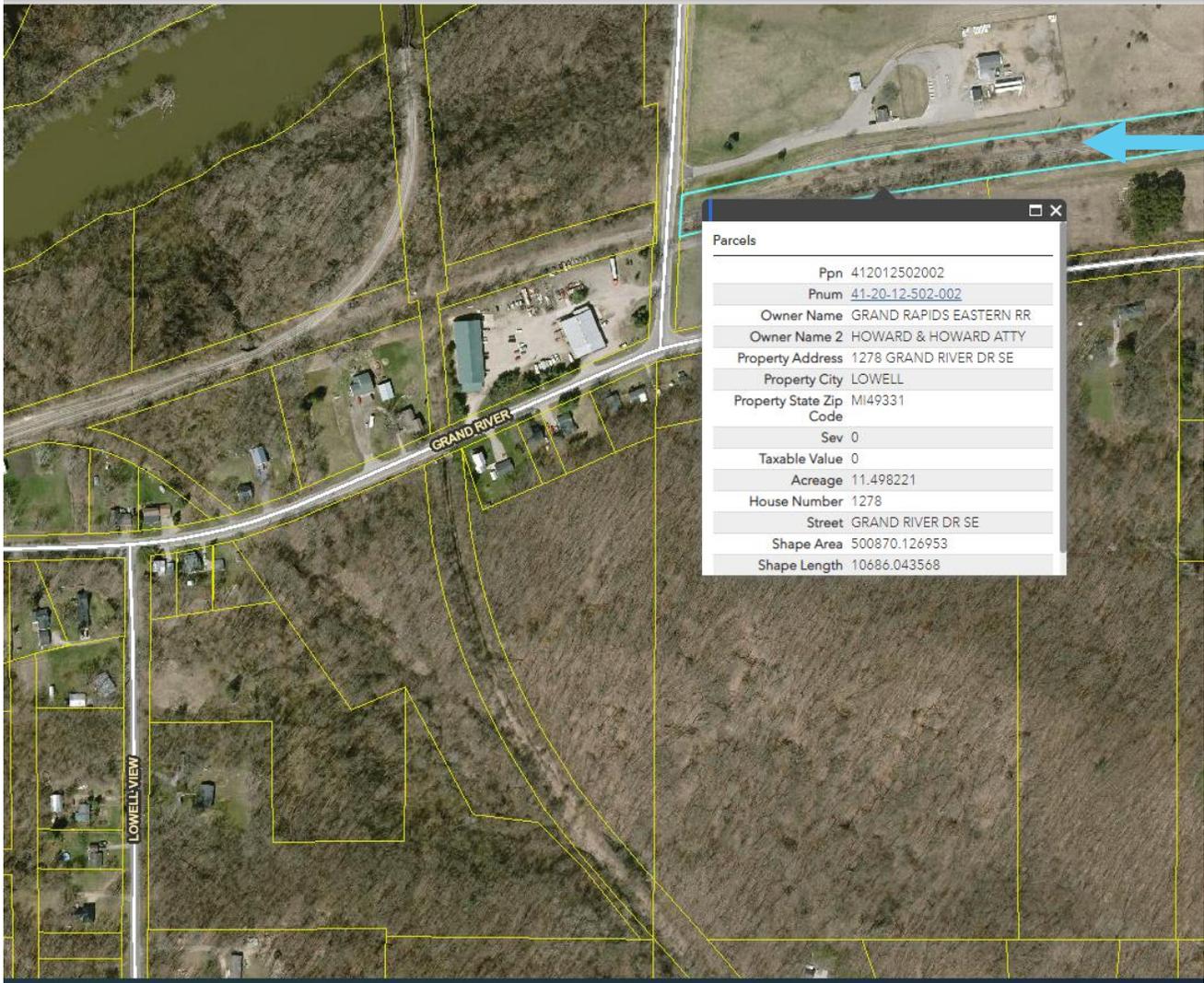
As railroads consolidate, they often seek to remove/abandon excess lines which can create multiple railroad interests.

It's important to look at every parcel.

▶ First section of land shows ownership of CSX Transportation.

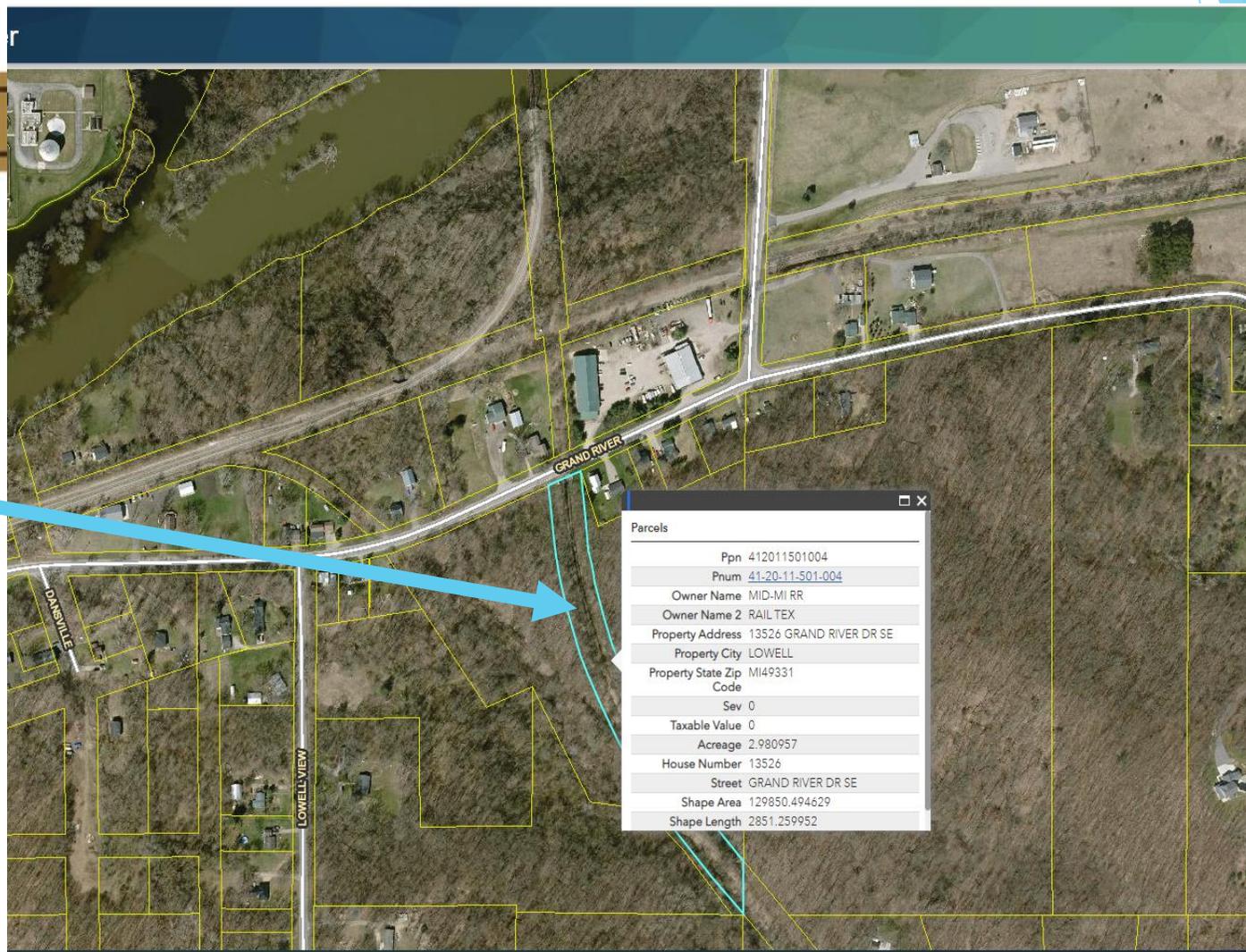
▶ This area did not have any track or buildings but as part of the *Act of June 3, 1856 - 11 US Statutes at Large, 21*, it stated that every alternate section of land along a rail line to be granted to a railroad. This was to allow the railroad to sell excess lands to raise capital for the completion of rail lines.





▶ This section shows tax roll interest of Grand Rapids and Eastern Railroad.

▶ This Abandoned Section shows tax roll interest Mid-Michigan Rail Road



# Easement or Fee?

- **EASEMENT**

- An Easement provides for a specific and limited use of property which is owned by another. When the property is no longer used for the specific purpose set forth in the easement document it reverts to the owner. Title to the property acquired under the power of condemnation to be only an Easement.

- **TITLE BY FEE SIMPLE DETERMINABLE**

- Fee Simple Determinable is similar to an easement in that there are conditions and restrictions on the use of the property. For example, a seller may include conditions and restrictive terms in the deed which allows the railroad to hold title to the property “only so long as the property is used for ‘rail operations’ or ‘rail purposes’.” If the railroad does not use the property as set out in the deed, then the property reverts to the seller, the seller’s heirs, successors or assignees.

- **TITLE BY FEE SIMPLE ABSOLUTE**

- Fee Simple Absolute or Warranty Deed mean, in simple terms, that the railroad acquired the land outright or received it through a federal land grant and has complete rights to the property.

# Easement or Fee?

## Legal Cases

Determining what interest the railroad acquired is the first step.

Quinn v Pere Marquette Railway Co. 256 Mich 143; 239 NW 376 (1931)

- the language of the deed controls
- The court held that a deed that conveys a parcel of land “to be used for railroad purposes” may still convey a fee estate.
- a railroad company may take real estate title only for railroad purposes, so this declaration, where there is no reverter clause, is merely an expression of the intention of the parties that the deed is for a lawful purpose.
- “right -of -way” has two meanings (1) the strip of land upon which the track is laid and (2) the legal right to use this strip.

# Easement or Fee?

## Legal Cases

- ▶ Michigan Dep't of Natural Resources v Carmody-Lahti Real Estate Inc, 472 Mich 359, 699 NW 2d 272 (2005)
  - ▶ The Court held that the deed to the railroad conveyed an easement
  - ▶ “ a deed granting a right-of-way typically conveys an easement absent a conveyance of the land itself
  - ▶ The deed in this case did not convey “all the estate, right, title, claim and demand whatsoever of the grantor”
  - ▶ Where the grant is not of the land, but as the use as a right-of-way, or the land specifically as a right-of-way, it is an easement
- ▶ Michigan Central RR v Garfield Petroleum 292 Mich 373, 290 NW 833 (1940)
  - ▶ When the railroad acquires by prescription or condemnation, it cannot acquire more than an easement

# Easement or Fee?

## Examples

- ▶ A conveyance of a strip of land “ being located across the grantor’s land” “granted, bargained, sold remised, released, aliened and confirmed all that certain strip of Land to the O & O Railroad . Also conveyed all the “Estate right, title, interest and claim and demand whatsoever to the O & O Railroad.” Also, restricted use for railroad purposes and no other.
  - ▶ Held to be a conveyance in fee
- ▶ A conveyance that “grants ,bargains, sells release, alien and confirm...all that certain piece or parcel of land described as follows: A strip of land for right of way 100 feet in width across the SW of the SW... said strip to extend 50 feet on either side of the railroad as now located...together with all hereditments and appurtenances
  - ▶ Held to be a conveyance in fee

"Deed of Conveyance"

John C. Sims  
and Grace L. Sims  
To  
Grand Rapids and Indiana  
Railway Company

Received for Record Aug 15th 1896.  
William H. Smith  
Register of Deeds

# Deed of Conveyance

This Indenture, Made this 25th day of July, in the year one thousand eight hundred and ninety six between John C. Sims, and Grace L. Sims, his wife, of Philadelphia, Pa as first party, and the Grand Rapids and Indiana Railway Company, a corporation of the States of Indiana and Michigan, as second party.

Herein Recited, the first party has granted, bargained and sold, and by these presents, does grant, bargain, sell, convey and Transfer unto the said Grand Rapids and Indiana Railway Company, and its successors and assigns forever, all the right, Title and interest of them, (The persons constituting

Bears Witness:

Whereas, the first party is the owner of the entire railroad heretofore known as the Grand Rapids and Indiana Railroad, together with all extensions, branches, properties, estates, franchises, rights and equipment belonging to or connected therewith, having purchased the same at a Public sale, held in the city of Grand Rapids, Michigan, on the 10th day of June, A.D. 1896, pursuant to certain decrees and orders of the United States Circuit Courts in the States of Michigan and Indiana; and Whereas, the second party is a corporation, incorporated and organized under the laws of Indiana & Michigan, with authority to own, operate and maintain the entire railroad above described; and Whereas, the second party, has agreed to purchase from the first party said entire railroad, extensions, branches, properties, estates, franchises, rights and equipment; and has agreed

For Therefore, in consideration of the premises, and in further consideration of the sum of one dollar in hand paid by the second party, receipt whereof is here by acknowledged, and in further consideration of the execution and delivery of said four thousand bonds of one thousand dollars each, to be made as herein before recited, the first party has granted, bargained and sold, and by these presents, does grant, bargain, sell, convey and Transfer unto the said Grand Rapids and Indiana Railway Company, and its successors and assigns forever, all the right, Title and interest of them, (The persons constituting the first party hereto,) or any, or either of them, by virtue of a deed bearing date the (second day of July, A.D. 1896, made and delivered to the said John C. Sims & by John S. Lawrence, master in chancery, in pursuance of the decrees of the Circuit Courts of the United States for the Western District of Michigan and of the District of Indiana, in certain causes in chancery then depending in said courts,

First party has granted, conveyed and sold and by these present, bargain, sell, convey and transfer into said GR&I and its successors and assigns, forever all right, title and interest.

# Easement or Fee?

## Examples

- ▶ Deed titled “Deed of Right of Way”
- ▶ Deed granted “a strip of land for a Right of Way, said strip to include all land drawn 25 feet on either side of the center line of said railroad as now or hereafter located... for said party of the second part to construct a railroad in and over said strip of land... and to do all things property connected or incident... to said road... To have and to hold said easements and privileges to the party of the second part and its successors and assigns.
  - ▶ Held to be an easement.

# Right of Way Deed

John W Bagley wife  
 Received and Recorded February 17<sup>th</sup> A.D. 1854  
 Right of Way Deed  
 at 5<sup>th</sup> o'clock P.M.  
 Wm P. Chidman Registrar

This Indenture Made this Twelfth day of April in the year  
 four thousand eight hundred and seventy one between John W Bagley Esq  
 Jane Bagley his wife of Branches Tazewell County Michigan of the first part and the  
 Ohio & Michigan Railway Company of the second part. Witnesseth That the said parties  
 of the first part in consideration of the sum of Twenty Dollars and seventy five cents  
 to them in hand paid the receipt whereof is hereby acknowledged do grant bargain  
 sell and confirm unto the said party of the second part its successors and assigns forever  
 the Right of Way for its Railroad Sixty Six feet in width in over and upon a  
 certain strip of land in the County of Barry and State of Michigan and described as follows  
 to wit: Sixty six feet of the South East half of the North West quarter of Section Twenty Nine  
 (in Sec. 1-14th Township Number One North of Range Ten West, reference being made for a more certain  
 description of said strip of land to the map of the lands of said Company on file in the  
 Office of the Register of Deeds for the County of Hillsdale Branch Calhoun & Calumet  
 Branches Allegan & Jackson Counties. So Herein set forth the above described strip  
 of land as a Right of Way for the Ohio & Michigan Railway, with all the rights  
 privileges and easements incident thereto or in any way connected therewith to the said  
 party of the second part its successors and assigns forever. And the parties of the first  
 part for themselves and their heirs do covenant and agree that they will Warrant  
 and Defend the above granted Right of Way in the quiet and peaceable possession of  
 the said party of the second part its successors and assigns forever.  
 The above grant is subject nevertheless to the condition that the said party of the  
 second part shall build and put in running order that portion of its road which  
 passes over the above mentioned strip of land within three years from the date of  
 this Indenture and on breach of such condition the Right of Way hereby granted  
 shall cease and hereafter be forfeited and held for no purpose.  
 In Witness Whereof the said parties of the first part have hereunto set their  
 hands and seals this day and year first above written  
 Signed sealed & Delivered in presence of  
 J. H. Calkhurst  
 E. V. Loughren

John W Bagley  
 Jane Bagley

State of Michigan ss  
 County of Barry & On this Twelfth day of April in the  
 year one thousand eight hundred and seventy one before me a Notary Public in and for the  
 County of Barry the before named John W Bagley & Jane Bagley his wife known to  
 me to be the persons who executed the foregoing Instrument and acknowledged the same  
 to be their free act and deed. And the said Jane Bagley being by me separately

'party of the second part its successors and assigns forever. And the parties of the first  
 part for themselves and their heirs do covenant and agree that they will Warrant  
 and Defend the above granted Right of Way in the quiet and peaceable possession of  
 the said party of the second part its successors and assigns forever.



Parties of the first part for  
 themselves and heirs agree  
 the Right of Way is in the  
 possession of party of the  
 second part and successors  
 and assigns forever.

17th day of November 1857

Sergeant Daniel Smith Clerk

In the presence of the undersigned witnesses the above instrument with the necessary changes made therein and made in accordance with the said Statute in and to his last Will & Testament.

Noted this 17th day of November 1857  
 Noted at N. York and  
 Francis C. Brown

State of Michigan }  
 County of Cass } ss

I, Henry C. Campbell Judge of Probate for said County, do hereby certify that I have compared the foregoing copy of the last Will & Testament of George Smith with the last of the said George Smith County and State with the original Record thereof now remaining in the office, and have found the same to be correct in every particular and of the whole of said original record.

In testimony whereof I have hereunto set my hand and affixed the seal of said Probate Court at Grand Haven Village this 17th day of April 1857

Henry C. Campbell  
 Judge of Probate Court

Deed of Conveyance Right of Way and  
 Receipt for same this 12th day of July 1857

A. E. Banks  
 C. S. Banks  
 Trustees of the Cass R.R.

This Deed, made this 12th day of July, in the year 1857, between said A. E. Banks and C. S. Banks his wife parties of the first part, and the Directors of the Grand Haven and Company of Michigan parties of the second part.

Witnesseth that the said parties of the first part for and in consideration of One Dollar which consideration said parties of the first part have received from said party of the second part have granted, conveyed and sold by these presents to said party of the second part all and singular the land and premises situated in the County of Grand Haven in the State of Michigan described as follows to-wit: A parcel of land 100 feet in width by 50 feet on each side of the center line of the Grand Haven & Detroit Railroad as located and established upon and across the lands granted parties of the first part described as follows: To-wit: Section 16 of Town 26 North Range 12 West reserving all timber standing or lying upon the same.

Together with all and singular the hereditaments and appurtenances thereto in anywise appertaining and all the title, right, title, claim and demand whatsoever of the parties of the first part, not legal and equitable in said premises. It is covenanted and warranted by the said parties of the second part that the same and assigns forever for the use above expressed.

And the said parties of the first part hereby covenant that they are seized in fee of the premises above granted, that the same will free from all encumbrances

and that they will and all parties claiming under the same will hereafter do in the original and in the copies of said party of the second part to be executed or assigned, make all such further conveyance as may hereinafter be required for the benefit of the said party of the second part, with the hereditaments and appurtenances.

In Case said Company shall cease permanently to use said parcels of land or either of them for Railway purposes the same shall revert to and reinvest in the parties of the first part.

In Witness whereof, said parties of the first part have hereunto set their hands and seals this day and year first above written

Signed, sealed and delivered in presence of

A. E. Banks (Seal)  
 C. S. Banks (Seal)  
 Trustees of the Cass R.R.

H. C. Anderson  
 W. J. Seagle

Noted at N. York and  
 Francis C. Brown

State of Michigan }  
 County of Cass } ss

On this 12th day of July 1857 in the year of our Lord one thousand eight hundred and fifty seven before me a Notary Public in and for said County, personally came the above named A. E. Banks & C. S. Banks both of whom I know to be the persons who executed the foregoing instrument and who also acknowledged the same to be their free and lawful deed.

H. C. Anderson  
 Notary Public Cass Co.

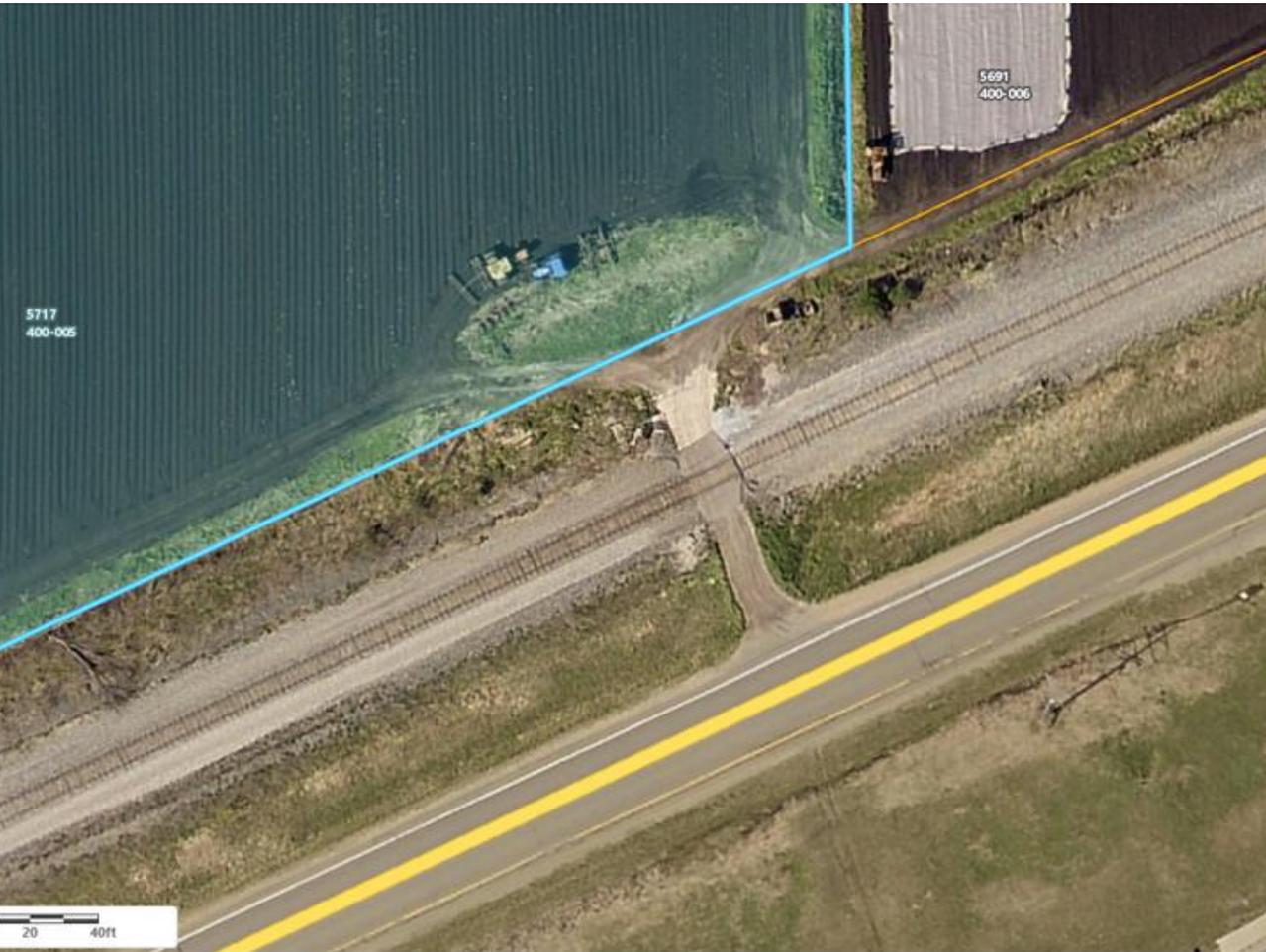
Quit Claim Deed  
 Right of Way Deed  
 with reverter  
 language.

In Case said Company shall cease permanently to use said parcels of land or either of them for Railway purposes the same shall revert to and reinvest in the parties of the first part

In case the company shall cease permanently to use said parcels of land for Railway purposes the same shall revert and reinvest in the parties of the first part.

# Licenses/Easements granted by Railroads

## Example 1: Private Road Grade Crossings

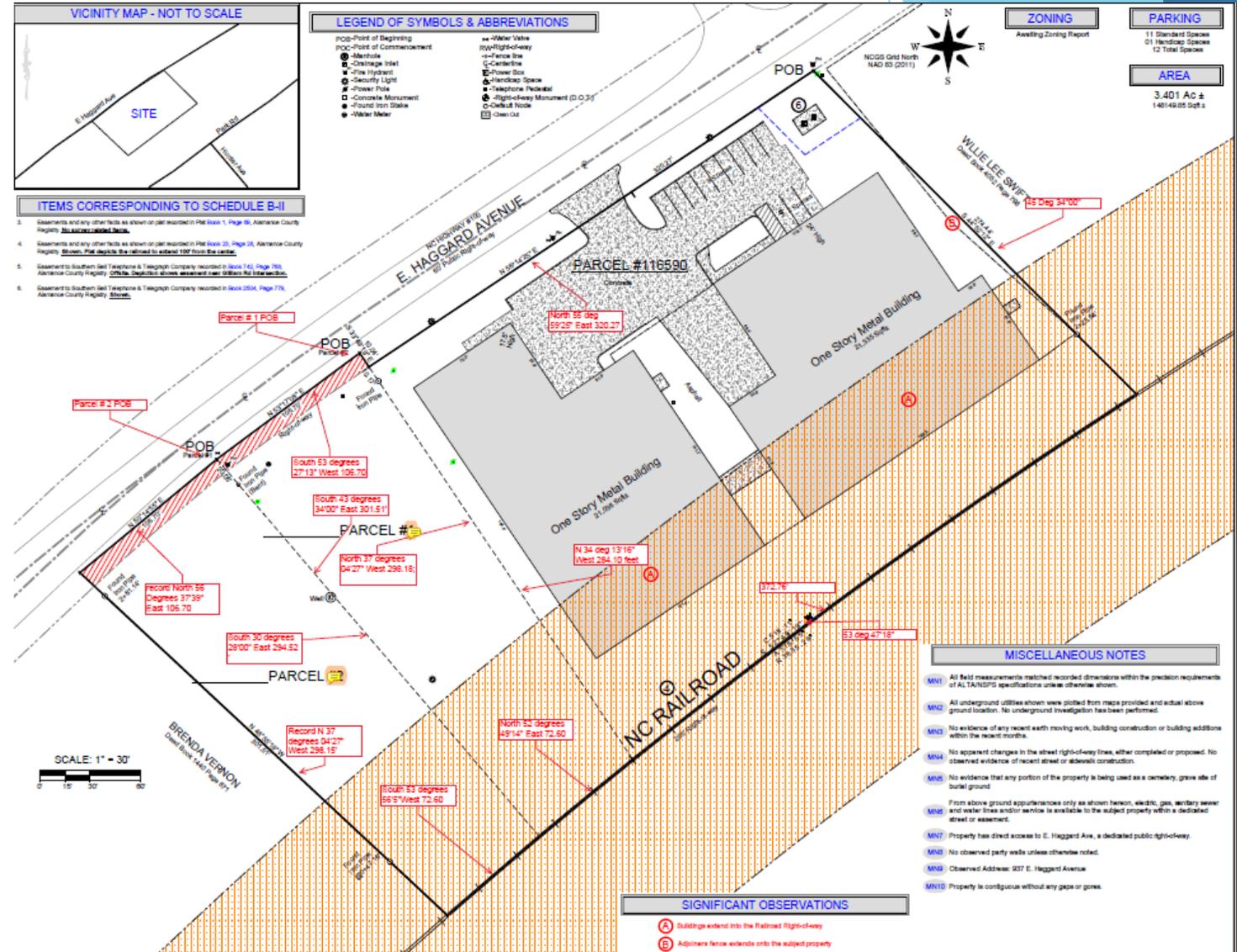


- ▶ If a party demonstrates that a particular property is landlocked, railroads may allow the Private Road Crossing Agreement.
- ▶ Where reasonable alternative access to private property is available, however, a Private Road Crossing Agreement is typically not be offered or granted.
- ▶ **Caution on overburdening of private road crossing. Granting a right for a farmer is different than private road for a subdivision. A change of use equates to new private road application.**

# Licenses/Easements granted by Railroads

## Example 2: Structure Encroachment(s)

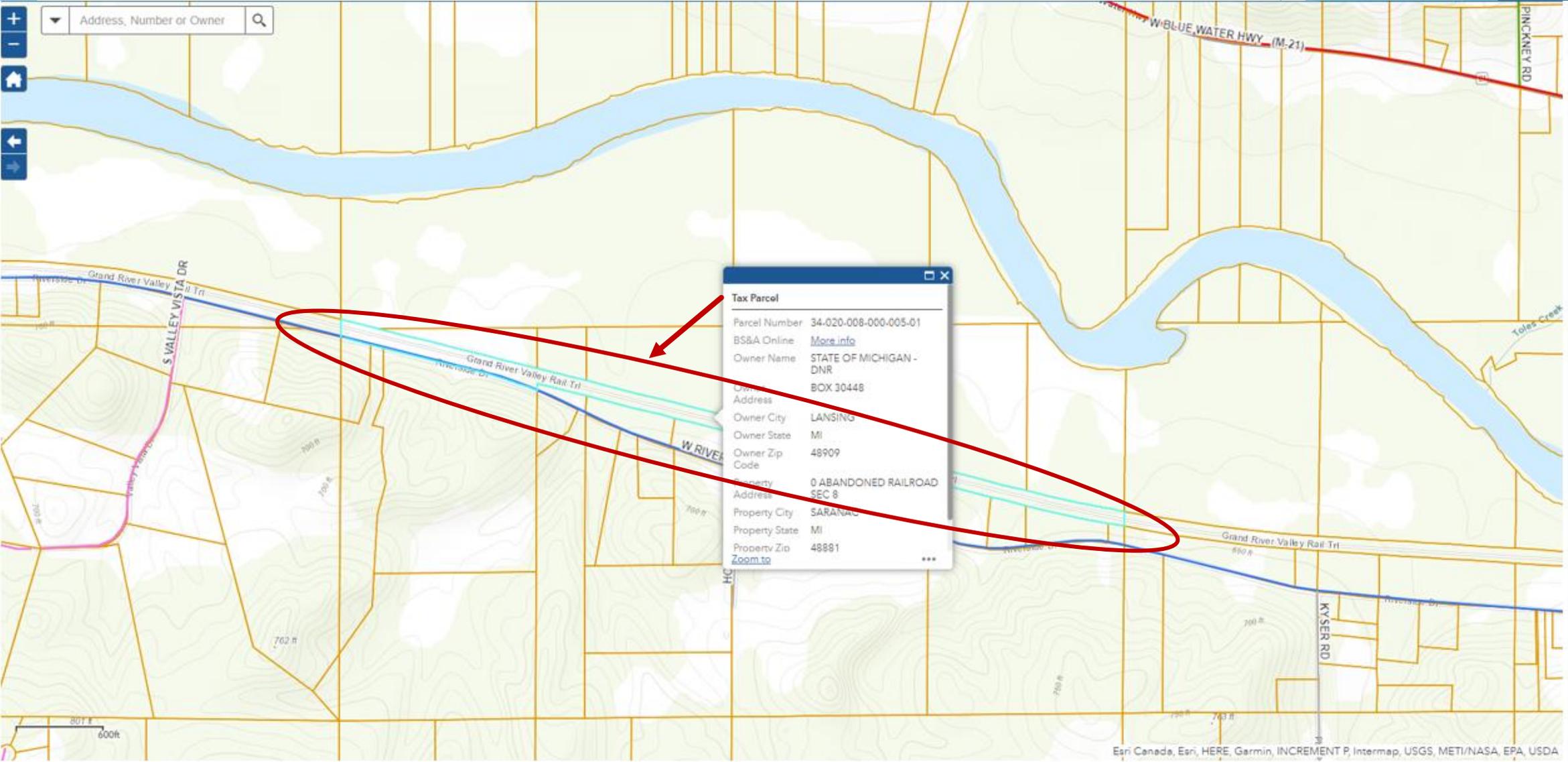
- Just because the footprint of the physical rails is smaller, it is important to look at the recorded instruments on the Right-of-Way width.
- Here is an example of a structure(s) that that encroach within the railroad right of way.
- In this example, the railroad granted a structure encroachment license, that reserves the railroad the right to request removal of said dwellings, should such a need arise.



# Deferral of Abandonment of a railroad line

- ▶ The STB may, in accordance with 49 CFR 1152.29 and 16 USC 1247 (d) (the National Trails Act), defer the abandonment to give interested parties the opportunity to negotiate a voluntary agreement with the railroad company for interim use of the right-of-way (ROW) for recreational trails.
  - ▶ Effective February 2, 2020: provide that the initial term for a certificate of interim trail use or abandonment (CITU) or notice of interim trail use or abandonment (NITU) will be one year (instead of the current 180 days)
  - ▶ Trails use is subject to future restoration and reconstruction of the right-of-way for rail purposes should rail service ever be reinstated.
- ▶ *The State of Michigan mandates that abandoned rail lines must first be offered respectively to both MDOT and Michigan Department of Natural Resources (MDNR) before being sold, since rail corridors acquired by MDOT can be utilized for interim trail purposes.*
- ▶ STATE TRANSPORTATION PRESERVATION ACT OF 1976 Act 295 of 1976
  - ▶ 474.60 Acquiring, leasing, or securing easement for use of real property owned by railroad; conveyance or lease to public or private entity; preservation of right-of-way for future use as railroad line; disposing of or leasing right-of-way; powers of department; restrictions to assure future rail use.

# Deferral of Abandonment of a railroad line





LIBER 0626 PAGE 8119 1 of 2

LIBER 0626 PAGE 8120 2 of 2

011-006-000-150-00  
020-001-000-010-02  
020-01  
021-002-000-015-01  
020-011-000-005-01  
020-010-000-005-01  
009-000-005-01  
008-000-005-01  
020-006-000-120-01

**QUIT-CLAIM DEED**

p-10582

The FRIENDS OF THE FRED MEIJER HEARTLAND TRAIL ("Grantor"), a Michigan non-profit corporation whose address is Post Office Box 455, Edmore, Michigan 48829, on Sept 21, 2012, for and in consideration of the sum of One and No/100ths Dollars (\$1.00), the receipt of which is acknowledged, quitclaims to the STATE OF MICHIGAN ("Grantee") by the DEPARTMENT OF NATURAL RESOURCES, whose address is Department of Natural Resources, Post Office Box 30448 Lansing, Michigan 48909-7948, the real property ("the Premises") situated in Ionia County, Michigan and described on Exhibit A, which is attached, together with all and singular tenements, hereditaments and appurtenances there unto belonging or in anywise appertaining.

Subject to the reservations and restrictions as recorded in Ionia County Records, Liber 0610 Pages 5774-5779. Further subject to the National Trails System Act, being 16 U.S.C. § 1247 (d), applicable regulations at CFR § 1152.29, and the Notice of Interim Trail Use issued by the United States Surface Transportation Board in Mid-Michigan Railroad, Inc - Abandonment Exemption - in Kent and Ionia Counties, MI., STB Docket No. AB-364 (Sub-No. 12X) decision served April 4, 2008.

The terms of this conveyance shall extend to the administrators, successors, and the assigns of the parties hereto.

This conveyance is subject to the following: for public use for non-motorized and non-equestrian recreational trail purposes.

Notice Required Pursuant to 1996 PA 591, MCL 560.109(3) and (4):

Grantor grants to the Grantee the right to make zero divisions under section 108 of the land Division Act, 1967 PA 288, as amended.

The property conveyed by this deed may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

Exemption from State Transfer Tax is claimed under authority of Section 6(a), Act 255, P.A. 1994 (207.526, Michigan Compiled Laws).

Exemption from County Real Property Transfer Fee is claimed under authority of Section 5(a), Act 134, P.A. 1966 (207.505, Michigan Compiled Laws).

IN WITNESS WHEREOF, this quit-claim deed has been executed on the date first written above.

FRIENDS OF THE FRED MEIJER HEARTLAND TRAIL

Don Stearns, President  
Don Stearns, President

STATE OF MICHIGAN )  
                                  ) ss  
COUNTY OF Montcalm

Subscribed and sworn to before me this 21 day of September, 2012, by Don Stearns

EXHIBIT A  
LEGAL DESCRIPTION  
IONIA COUNTY

All that portion of the Grand Rapids Eastern Railroad Company's (Mid-Michigan Railroad, Inc.) right-of-way that extends in a general East-West direction on, over, across a portion of Ionia County, Michigan, as depicted on Detroit, Grand Haven & Milwaukee Railway Company Right-of-Way and Track Maps V10-33, V10-34, and V10-35, varying in width and irregular in shape, and described as follows;

Commencing at a point known as Station 6888.54 being the East Line of Section 31, T06N, R07W, Ionia County, Michigan, thence traversing in a Westerly direction across the SE ¼ of Section 31, the NE ¼, the NW ¼, and the SW ¼ Section 6, T06N, R07W, Ionia County, Michigan.

Continuing Westerly across the NE ¼, the SE ¼ and the SW ¼ of Section 1, the SE ¼ of Section 2, and the NE ¼, and the NW ¼ of Section 11, the NE ¼ and the NW ¼ of Section 10, the NE ¼ and the NW ¼ of Section 9, the NE ¼ and the NW ¼ of Section 8, the SW ¼ of Section 5, the SE ¼ and the SW ¼ of Section 6, the NW ¼ of Section 7, and ending at the West Line of Section 7, T06 N, R 08W, Ionia County, Michigan.

# Abandonment of a railroad line

- ▶ Federal law requires a railroad request permission from the Surface Transportation Board ( “STB”), formerly the Interstate Commerce Commission (“ICC”) before it abandons service on any line.
- ▶ The State of Michigan must participate in the application to the STB for abandonment.
- ▶ MCL 474.58(1) - railroad must notify the Michigan Department of Transportation or the Department of Natural Resources at the time it files for abandonment
- ▶ MCL 474.58(2) - the railroad may not offer any rights for sale unless it is first offered to the State. *Act 295 of 1976 (474.60)*

# Abandonment of a railroad line

- ▶ After abandonment, the STB publishes resolution of abandonment in the Federal Register
- ▶ Once abandoned by the STB, if the railroad only had an easement, then upon abandonment, the land returns to the adjacent landowner.
- ▶ Rights of reverter self-destruct unless a notice is recorded every 30 years and one year after MCL 554.61 became effective in 1968.
- ▶ Also see Michigan Land Title Standard 9.13 (following slides)
  - ▶ Statute was upheld in L & NR Co v Epworth Assembly, 188 Mich App 25; 468 NW2d 884 (1991).

## STANDARD 9.13

### PERIOD OF LIMITATION FOR ENFORCEMENT OF POSSIBILITIES OF REVERTER AND RIGHTS OF ENTRY

**STANDARD:** A POSSIBILITY OF REVERTER OR A RIGHT OF ENTRY TO TERMINATE A POSSESSORY OR OWNERSHIP INTEREST IN REAL PROPERTY ON THE OCCURRENCE OF A SPECIFIED CONTINGENCY IS UNENFORCEABLE IF THE SPECIFIED CONTINGENCY DOES NOT OCCUR WITHIN 30 YEARS AFTER THE DATE OF CREATION OF THE INTEREST TO BE TERMINATED UNLESS:

- (A) THE SPECIFIED CONTINGENCY MUST OCCUR, IF AT ALL, WITHIN THE PERIOD OF THE RULE AGAINST PERPETUITIES; OR
- (B) THE INTEREST TO BE TERMINATED IS:
  - (1) A LEASE FOR A TERM OF YEARS;
  - (2) AN INTEREST HELD FOR PUBLIC, EDUCATIONAL, RELIGIOUS OR CHARITABLE PURPOSES; OR
  - (3) AN INTEREST CREATED IN A CONVEYANCE FROM THE UNITED STATES OF AMERICA, THE STATE OF MICHIGAN OR ANY AGENCY OR POLITICAL SUBDIVISION OF EITHER OF THEM; OR
- (C) THE POSSIBILITY OF REVERTER OR RIGHT OF ENTRY IS PRESERVED BY THE RECORDING, WITHIN A PERIOD OF NOT LESS THAN 25 NOR MORE THAN 30 YEARS AFTER CREATION OF THE TERMINABLE INTEREST OR WITHIN ONE YEAR AFTER MARCH 29, 1968, WHICHEVER IS LATER, OF A WRITTEN NOTICE THAT THE OWNER OF THE POSSIBILITY OF REVERTER OR RIGHT OF ENTRY DESIRES TO PRESERVE IT. THE NOTICE MUST BE RECORDED IN

9.13

**THE OFFICE OF THE REGISTER OF DEEDS OF THE COUNTY IN WHICH THE REAL PROPERTY SUBJECT TO THE POSSIBILITY OF REVERTER OR RIGHT OF ENTRY IS LOCATED.**

**Problem A:** On June 29, 1952, James Farmer conveyed Blackacre to the Michigan Railway Company “so long as it is used for railroad purposes and, if the land shall cease to be used for railroad purposes, the land shall revert to grantor or his heirs.” In 1987, the Michigan Railway Company ceased railroad operations and no longer used Blackacre for railroad purposes. Farmer did not record any written notice of his desire to preserve his possibility of reverter. The Michigan Railway Company later conveyed Blackacre to Robert Jones. Did Jones acquire title to Blackacre free of any interest of Farmer or his heirs?

**Answer:** Yes.

**Problem B:** Same facts as in Problem A, except that on July 20, 1980, Farmer recorded a notice of his desire to preserve his possibility of reverter in the office of the register of deeds in the county in which Blackacre is located. Did Jones acquire title to Blackacre free of any interest of Farmer or his heirs?

**Answer:** No.

## Standard 9.13 (cont. w/comments)

**Comment A:** The constitutionality of MCL 554.61 *et seq.*, as it affects interests created before the effective date of the Act, was upheld in *Ludington & Northern Railway v The Epworth Assembly*, 188 Mich App 25, 468 NW2d 884 (1991).

MCL 554.65 provides that a right of termination created before the effective date of the Act may be preserved by the recording of a written notice that the owner desires to preserve the same “within a period of not less than 25 nor more than 30 years after creation of the terminable interest or within 1 year after the effective date of this act, whichever is later.”

**Comment B:** The term “terminable interest” under MCL 554.61 *et seq.* is defined as “a possessory or ownership interest in real property which is subject to termination by a provision in a conveyance or other instrument which either creates a right of reversion to a grantor or his heirs, successors or assigns or creates a right of entry on the occurrence of a specified contingency.” Under *Ludington & Northern Railway v The Epworth Assembly, supra*, it is clear that the limitation period on the duration of possibilities of reverter and rights of entry is enforceable in certain cases. Although not essential to the holding of the case, the Court of Appeals in *Ludington & Northern Railway v The Epworth Assembly, supra*, distinguished between a “true reversion,” in which a qualified fee is determinable upon the occurrence of an event which is ‘certain’ to happen, and a possibility of reverter, in which a fee is subject to termination upon the occurrence of an event which is not certain to happen. The Committee expresses no opinion whether the Act is effective to limit the time period within which a “true reversion” must occur.

*Example 1:* Railroad was abandoned between 1980 and 1981. All parcels of former railroad have been purchased by individuals, except one parcel remains in name of railroad.  
 What are the recommendations for handling the conveyance of this parcel?

**Property Address** Report

HARRISON RD  
 BLANCHARD, MI, 49310

**Owner Address**

CHESSIE SYSTEM RAILROADS	Unit:	16
--	Unit Name:	MILLBROOK

500 WATER ST  
 JACKSONVILLE, FL 32202

**General Information for 2021 Tax Year**

Parcel Number:	16 012 011 500	Assessed Value:	\$15,800
Property Class:	302	Taxable Value:	\$5,406
Class Name:	302 INDUSTRIAL-VACANT	State Equalized Value:	\$15,800
School Dist Code:	59045		
School Dist Name:	MONTABELLA		
PRE 2020:	0%		
PRE 2021:	0%		

Prev Year Info	MBOR Assessed	Final SEV	Final Taxable
2020	\$14,700	\$14,700	\$5,332
2019	\$14,700	\$14,700	\$5,233

**Land Information**

Acreage: 10.52

Zoning:

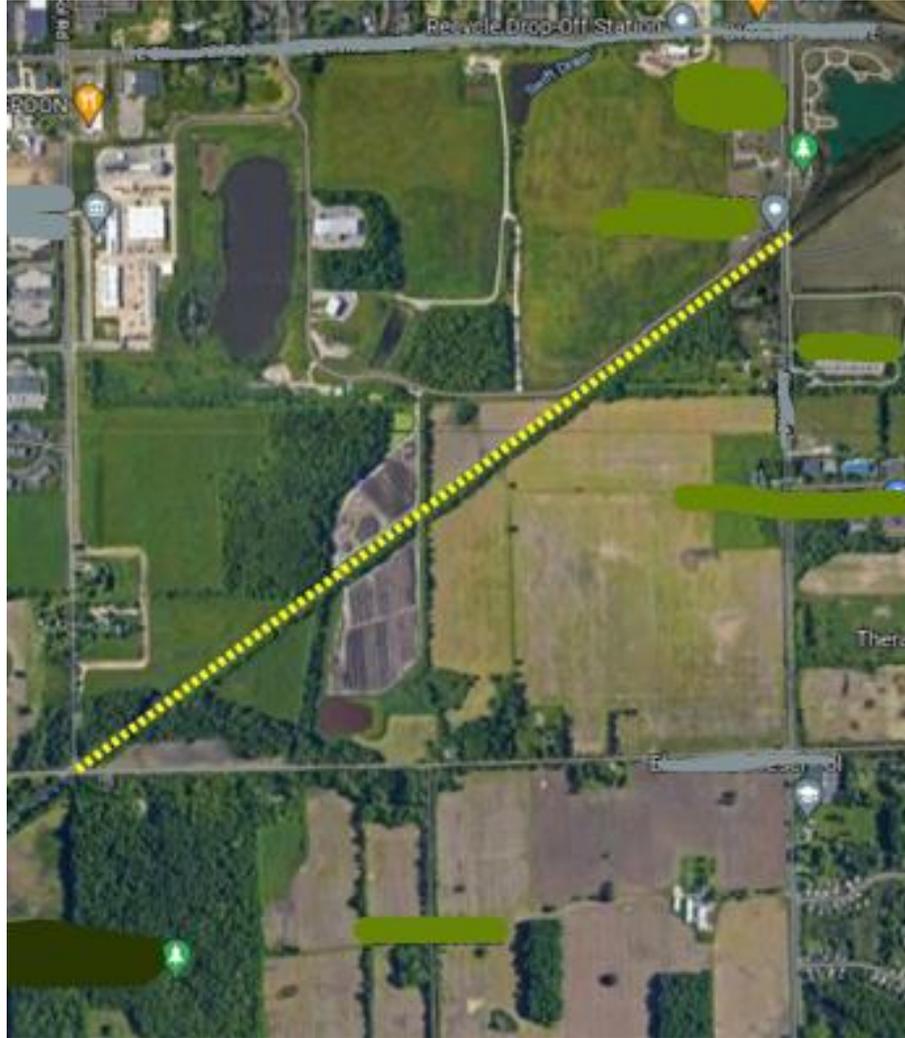
**Legal Description**

SEC 12 T13N R07W THAT PART OF ABANDONED RR R/W RUNNING THRU THE SE 1/4 NW 1/4, NE 1/4 SW 1/4, SE 1/4 SW 1/4, SW 1/4 SE 1/4

## Example 2:

City of owns property on both sides railroad right of way (dotted yellow line). City is looking to acquire said land to allow for contiguous placement of solar panels. While there is no rail line in the section the ownership still shows in Railroad.

What are the recommendations for the conveyance of this parcel?



# Consult your underwriter(s)

Even with a better understanding of railroad interests and ownership matters, it is imperative to connect with your underwriter when handling a parcel with that has/had any railroad interests.

Most underwriters have clauses in their agency contract that require such notice:

- *Give prior notice to and consult with Underwriter and comply with any special conditions and/or instructions of Underwriter for any policy(ies) of title insurance involving or pertaining to:*
  - *Any policy insuring title to railroad land(s).*

# References - Railroad Links for assistance (1 of 2)

## ▶ **Surface Transportation Board**

▶ [www.stb.gov](http://www.stb.gov)

## ▶ **Federal Railroad Administration**

▶ [www.dot.gov](http://www.dot.gov)

▶ [Go to About DOT and select FRA under Operating Administrations](#)

## ▶ **State Transportation Preservation Act of 1976 (Act 295 of 1976; 474.60)**

▶ [http://www.legislature.mi.gov/\(S\(cahq5tizaf1b2tc4fpdxe52u\)\)/documents/mcl/pdf/mcl-474-60.pdf](http://www.legislature.mi.gov/(S(cahq5tizaf1b2tc4fpdxe52u))/documents/mcl/pdf/mcl-474-60.pdf)

## ▶ **Michigan Land Title Standard (go to section 9.13 – Page 208)**

▶ <https://higherlogicdownload.s3.amazonaws.com/MICHBAR/44611bbd-6711-42cd-b769-2e5d4860ad2a/UploadedImages/pdf/LTS.pdf>

## ▶ **Michigan Department of Transportation**

▶ [License/Permit contacts - https://www.michigan.gov/mdot/0,4616,7-151-22444\\_56505---,00.html](https://www.michigan.gov/mdot/0,4616,7-151-22444_56505---,00.html)

▶ [Office of Rail - https://www.michigan.gov/mdot/0,4616,7-151-22444---,00.html](https://www.michigan.gov/mdot/0,4616,7-151-22444---,00.html)

# Example - STB Homepage

stb.gov

State of Michigan ... List of Vice Preside... When is a Railroad... MDOT Michigan St... Michigan State-ow... Rails-with-Trails Gui...

An official website of the United States government



## SURFACE TRANSPORTATION BOARD

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 **SEARCH**

STB Procedures Concerning COVID-19

The Surface Transportation Board is an independent federal agency that is charged with the economic regulation of various modes of surface transportation, primarily freight rail. The STB exercises its statutory authority and resolves disputes in support of an efficient, competitive, and economically viable surface transportation network that meets the needs of its users. For more about the Board's mission, click [here](#).



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- [Rail Service Data](#)
- [Environmental](#)
- [STB Reauthorization Reports](#)
- [Budget Requests](#)

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- October 26, 2021 | Chairman Oberman, Board Member Schultz Visit Railroads in Nebraska and Iowa
- September 30, 2021 | STB Finds Previous Approval of Voting Trust Applies to Proposed Merger Between CP and KCS
- September 23, 2021 | Final Environmental Assessment Issued For Proposed Abandonment of Harsimus Branch in Jersey City, N.J.
- September 7, 2021 | Railroad Revenue Adequacy – 2020 Determination

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1



2

STATE TRANSPORTATION PRESERVATION ACT OF 1976 (EXCERPT)  
Act 295 of 1976

**474.60 Acquiring, leasing, or securing easement for use of real property owned by railroad; conveyance or lease to public or private entity; preservation of right-of-way for future use as railroad line; disposing of or leasing right-of-way; powers of department; restrictions to assure future rail use.**

Sec. 10. (1) In weighing the varied interests of the residents of this state, the department shall consider the individual interest of any person, public or private corporation, local or regional transportation authority, local governmental unit, private carrier, group of rail users, state agency, other public or private entity, including a port authority established under the Hertel-Law-T. Stopczynski port authority act, 1978 PA 639, MCL 120.101 to 120.130, or any combination of these entities, expressing a desire to acquire or lease or secure an easement for the use of a portion or all of the real property owned by a railroad company. The property acquired by the department under this act may be conveyed or leased to an entity or combination of entities listed in this subsection with appropriate reimbursement, as determined by the department.

(2) Upon acquisition of a right-of-way, the department may preserve the right-of-way for future use as a railroad line and, if preserving it for that use, shall not permit any action that would render it unsuitable for future rail use. If the department determines a right-of-way or other property acquired under this act is no longer necessary for railroad transportation purposes, the department may preserve and utilize the right-of-way for other transportation purposes or may dispose of the right-of-way or other property acquired under this act for the purposes described in section 6, or may dispose of or lease the right-of-way or other property for other purposes, as appropriate. The department shall not dispose of or lease a right-of-way without first offering to transfer the right-of-way to the department of natural resources. If the department of natural resources desires to lease or purchase the right-of-way, the department of natural resources must indicate its desire to lease or purchase the right-of-way within 60 days and accept the offered transfer within 1 year after the offer is made. If the department of natural resources does not indicate a desire to lease or purchase the right-of-way within 60 days, the department may dispose of or lease the right-of-way as otherwise provided for in this act. If the department of natural resources does not accept the offered transfer within 1 year after indicating its desire to lease or purchase the right-of-way, the department may dispose of or lease the right-of-way as otherwise provided for in this act. When appropriate, a right-of-way or other property shall be transferred or leased to a public or private entity with appropriate reimbursement, as determined by the department.

(3) In preserving a right-of-way for future rail use, the department may do 1 or more of the following:

(a) Develop the right-of-way for use as a commuter trail where the use is feasible and needed or lease the right-of-way to a county, city, village, or township expressing a desire to develop the right-of-way as a commuter trail. The lease shall be for an indefinite period of time and is cancelable by the department only if the right-of-way is needed for rail usage. The trails, unless leased to a county, city, village, or township, shall remain under the jurisdiction of the department.

(b) Transfer, for appropriate reimbursement, the right-of-way to the department of natural resources for use as a Michigan railway pursuant to part 721 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.72101 to 324.72116, if the deed includes restrictions on the use of the property that assure that the property remains viable for future rail usage, and includes a clause that requires the department of natural resources to transfer, for appropriate reimbursement, the right-of-way to the department, upon a determination of the director of the department that the right-of-way is needed for use as a railroad line.

(c) Lease the right-of-way to the department of natural resources, or upon approval of the department of natural resources, to a county, city, village, or township for use as a recreational trail. The lease shall be for an indefinite period of time and is cancelable by the department only if the right-of-way is needed for rail usage. A recreational trail shall be reserved for non-motorized forms of recreation or snowmobiling only. Snowmobiling shall not be allowed on more than 50% of the mileage of the recreational trails established pursuant to this act.

(d) In cases where a trail serves both a significant commuter and recreation function, authorize the joint development of the trail by the department and the department of natural resources, or the department and any interested county, city, village, or township. Administration of the trail shall be determined jointly by the department and the department of natural resources.

(4) As a term of conveyance, the department may require restrictions on the use of the property that assure that the property remains viable for future rail use and that the rail line is made available by the purchaser for future freight or passenger rail uses and that the property will revert to the department if the purchaser fails to

# Example - State Preservation Act 295 of 1976



Search

- Roads and Travel
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- Safety Regulation
- Crossing Programs
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Sign up for email from MDOT!

MDOT / RAIL

Office of Rail

Michigan's rail system has approximately 3,600 miles of rail corridors, operated by 29 railroads. Four of the seven Class I railroads operate in Michigan. The system carries about 17 percent of all the state's freight tonnage and 21 percent of the commodities by value. This system also supports three intercity passenger-rail routes. The system is almost exclusively privately owned and financed by the railroad industry.



Report Crossing Concerns

The Office of Rail works to ensure that Michigan's rail system meets the economic needs of the state and is safe for the motoring public, rail passengers and railroad employees. Responsibilities include:

- Intercity passenger rail operations
- Crossing and rail-worker safety regulation
- State safety oversight of light-rail systems (QLINE and People Mover)
- Crossing funding programs on local roads and state trunklines
- Grade separations involving trunklines and/or state-owned tracks
- State-owned rail line management
- Rail-related economic development programs
- International border crossings

Questions? Contact Ouida Ford at 517-335-1902 to be directed within the Office of Rail.

Additional Information

- MI Rail Map (detail)
- MI Rail Map (print)
- MI Intercity Rail Map
- MI Rail History
- MI Railroad Code
- Commodity Flow Map
- Amtrak Michigan Services

Rail Resources

- Railroad Contacts
- Federal Railroad Administration
- Federal Transit Administration

Tweets by @MDOT\_Rail

MDOT Rail Retweeted

**MIPRC**  
@MW\_Rail

US Senate Appropriations Committee proposes \$863.1M increase for #passengerrail in FY22 THUD spending over FY21 levels: [bit.ly/3BbOd7z](https://bit.ly/3BbOd7z) @IDOT\_Illinois @INDOT @KDOHQ @MDOT\_Rail @MnDOT @MnDOT #INDOT @WisconsinDOT

Example - MDOT Office of Rail Homepage

# References - Railroad Links for assistance (2 of 2)

## ▶ **Michigan Railroads Association**

- ▶ Railroad Company Permit Contacts - <https://michiganrailroadsassociation.com/wp-content/uploads/2021/06/2021Permit-Contacts-flyer-WEB.pdf>
- ▶ Railroad Contacts/Real Estate - <https://michiganrailroadsassociation.com/wp-content/uploads/2018/09/2018-Economic-Brochure-Map-web.pdf>

## ▶ **Maps**

- ▶ Michigan County Maps – Current & Former Railroads
  - ▶ <http://www.michiganrailroads.com/maps/county-maps>
- ▶ Michigan Railroad Map –
  - ▶ [https://www.michigan.gov/documents/mdot/MI\\_Rail\\_Map\\_553909\\_7.pdf](https://www.michigan.gov/documents/mdot/MI_Rail_Map_553909_7.pdf)
- ▶ State owned rail –
  - ▶ [https://www.michigan.gov/documents/mdot/MDOTStateOwnedRail\\_330121\\_7.pdf](https://www.michigan.gov/documents/mdot/MDOTStateOwnedRail_330121_7.pdf)

## ▶ **Michigan's Railroad History**

- ▶ [https://www.michigan.gov/documents/mdot/Michigan\\_Railroad\\_History\\_506899\\_7.pdf](https://www.michigan.gov/documents/mdot/Michigan_Railroad_History_506899_7.pdf)



# MICHIGAN'S RAIL SYSTEM

Give us a call... 517.482.9413

## MRA

Michigan Railroads Association  
Jon Cool, President  
120 N. Washington Sq., Suite 701 | Lansing, Michigan 48933  
P 517.482.9413 | F 517.482.9225  
mra@michiganrailroadsassociation.com  
michiganrailroadsassociation.com  
@MI\_FreightRail

Michigan's railroads are ready to help you with your development efforts. The following are economic development contacts for each railroad operating in Michigan.

[michiganrailroadsassociation.com](http://michiganrailroadsassociation.com)



**Adrian & Blissfield Rail Road Co.**  
Mark W. Dobronski, President  
38225 N. Executive Dr  
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(p) 734.641.2300 (f) 734.641.2323  
mrdobronski@abrailroad.com  
abrailroad.com

**Amtrak**  
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Government Affairs-Central  
Chicago Union Station  
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jamesd@amtrak.com  
amtrak.com

**Ann Arbor Railroad**  
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Eric M. Thurkow, Marketing Manager  
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**Canadian Pacific Railway**  
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**Charlotte Southern Railroad Co.**  
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**CSX Transportation**  
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adam\_hess@csx.com  
csx.com

**Detour Connecting Railroad Co.**

**Escanaba & Lake Superior Railroad**  
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Vice President-Marketing  
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elw.com

**Grand Elk Railroad**  
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ccarter@waatccompanies.com  
Kirk Small, Commercial Manager  
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**Grand Rapids Eastern Railroad**  
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robert.bingham@gwr.com  
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**Great Lakes Central Railroad**  
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@glcrrailroad.com

**Huron & Eastern Railway**  
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**Indiana & Ohio Railway**  
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**Lapeer Industrial Railroad**  
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**Mid-Michigan Railroad**  
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**Norfolk Southern Corporation**  
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Josh Heath, Short Line  
Development Manager  
(p) 202.433.3199  
josh.heath@nscorp.com  
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### MAP KEY

- AA - Ann Arbor Railroad
- ADBF - Adrian & Blissfield Rail Road Company
- CHS - Charlotte Southern Railroad Company
- CM - Coppersville & Marme Railway
- CN - Consolidated Rail Corporation (Conrail)
- CR - Consolidated Rail Corporation (Conrail)
- CDK - CSX Transportation
- DC - Delray Connecting Railroad
- DCCN - Detroit Connecting Railroad Company
- ELS - Escanaba & Lake Superior Railroad
- GRS - Grand Rapids Eastern Railroad Company
- GRC - Grand Rapids Eastern Railroad Company
- HE - Huron & Eastern Railway Company
- IN - Indiana Northwestern Railroad Company
- IO - Indiana & Ohio Railway Company
- JAL - Jackson & Lansing Railroad Company
- LIR - Lapeer Industrial Railroad Company
- LSR - Lake State Railway Company
- LSI - Lake Superior & Ishpeming Railroad
- MM - Mid-Michigan Railroad Company
- MCT - Marquette Rail LLC
- MRI - Mineral Range Railroad

### DETROIT METRO AREA RAIL NETWORK



# Example - Railroad License or Real Estate Contacts



# Glossary of Terms covered in our presentation

- ▶ Fee simple: An absolute ownership interest in property that is transferable without any limitation, restriction or condition.
- ▶ Easement: A right to use the land belonging to another for a particular purpose, such as for a right-of-way.
- ▶ Deed: A document sealed as an instrument of bond, contract or conveyance, especially relating to property.
- ▶ Lease: A contract granting use or occupation of property during a specified period of time for a specified rent.
- ▶ Condemnation: The process by which private property is taken for public use. The Fifth Amendment to the U.S. Constitution requires the payment of just compensation.
- ▶ Reversionary interest: A future right to own or possess property that is subject to the present rights of another who is presently in possession of the property. The present owner's interest in property that is subject to a right of reverter is referred to as a "determinable fee."

# Thank you!

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First American Title Insurance Co.

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Bob Wuerfel, President,  
Lighthouse Title Group

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A Friendly Wave From the Conductor of CP Extra 8738 West at Puslinch Siding Photo By Larry Broadbent June 1972