

MEMORANDUM

TO: Hudson Zoning Board of Appeals
Subject: Boundaries of Hudson Core-Riverfront (C-R) Zoning District
Date: March 21, 2018

FACTS:

The ZBA was asked by the City of Hudson to define the boundaries of the C-R zoning district. The boundaries of the district are well defined by the railroad tracks on its east side, by Dock Street on its northern side, and by the Hudson River on its east side. What is not clear are the boundaries of the southern “tail” of the C-R district which are depicted solely on the zoning map, and not otherwise legally defined. A copy of the zoning map is attached as Exhibit A.

Two issues arise with respect to the boundaries of the southern tail. The first issue is that the map shows the tail departing from the “haul road” and crossing the railroad tracks somewhat south of where the haul road merges into the public right of way of Front Street. As a consequence, as depicted by the zoning map, that portion of the haul road north of where the C-R zoning district tail crosses the railroad tracks is in the R-C (Recreation Conservation) zoning district and not the C-R district. The second issue is the width of the tail of the C-R district, and the relationship of its boundaries to the haul road between Front Street and Highway 9G.

The ZBA hired a consultant to address these issues, Barton and Loguidace, who wrote a report to the ZBA Chairwoman dated November 10, 2017 (the “Report”). The Report addresses only the first issue with respect to the tail departing from the haul road and crossing the railroad tracks, and not the second issue with reference to the width of the tail, and the relationship of its boundaries to the haul road.

As to the first issue, the Report concludes (on page 5) that the zoning map where it shows the C-R district “terminating at the railroad tracks as opposed to the Front Street property frontage would appear to be in error” (presumably it should have shown the tail continuing to contain the haul road until it merges into the public right of way of Front Street). This conclusion appears to be based on the statement in the final LWRP report that states:

The proposed zoning map has been amended to include the South Bay Causeway (not the South Bay) within an extension of the Core Riverfront (C-R) District rather than within the Recreation Conservation (R-c) District as proposed in the draft LWRP. This change gives the City the ability to control, though the conditional use permit process, proposed improvements to and changes associated with the transportation uses along the South Bay Causeway.

DISCUSSION:

Issue One – Should the Zoning Map be reformed so that the C-R district tail follows the haul road rather than divert from it and cross the railroad tracks.

Under the law, in order for a legal document to be reformed (changed) so that there must be a finding of “scrivener’s error.” A high burden of proof must be met to find scrivener’s error. There is a “heavy presumption that a deliberately prepared and executed written instrument manifest[s] the true intention of the parties.” *Stonebridge Capital, LLC v. Nomura International PLC*, 68 A.D. 3d 546, 548, 891 N.Y.S. 2d 56 (2009). “The requisite standard of proof has been stated variously (*Amend v. Hurley*, 293 N.Y. 587, 595, 59 N.E.2d 416, 421 (“clear, positive and convincing evidence” so as to demonstrate not the probability *220 by the certainty of error in the making of the contract); *Porter v. Commercial Cas. Ins. Co.*, 292 N.Y. 176, 181, 54 N.E.2d 353, 355 (“evidence of the clearest and most satisfactory character”); *Christopher & Tenth St. R. R. Co. v. Twenty-third St. Ry. Co.*, supra, 149 N.Y. p. 58, 43 N.E. p. 539 (proof of “the most substantial and convincing character”)). Allowing for difference in expression, all the cases demand a high order of proof. It would serve no purpose to add yet another definition. Rather, the definitions may more easily be conceptualized for our present purposes if we think in terms of what is to be avoided. Viewed from that perspective, the evidentiary requirement “ ‘operate(s) as a weighty caution upon the minds of all judges, and it forbids relief whenever the evidence is loose, equivocal or contradictory’ ” (*Southard v. Curley*, 134 N.Y. 148, 151, 31 N.E. 330, 331). *George Backer Mgt. Corp. v. Acme Quilting Co.*, 46 N.Y.2d 211, 219, 413 N.Y.S.2d 135, 385 N.E.2d 1062 (1978).”

Is it certain or near certain that the zoning map is in error when it depicts the C-R zoning district tail as terminating at the railroad tracks? In my opinion, the answer is no. We have no evidence from the drafters of the map (the consultant BEJ Planning), that an error was made by them here. I have been told via hearsay that the individual consultants involved in the map drawing at BEF Planning were asked by our consultant about this matter, and they stated that they had no recollection. Unlike with respect to the second issue that will be discussed below, the map is clear on its face that the C-R tail departs from the haul road and crosses the railroad tracks. This depiction, is not subtle, but obvious. When the map was adopted, is it reasonable to find that it is a “certainty” that the entirety of the common council, the mayor, the city attorney, and the consultants, missed this obvious error?

In addition, if one looks at Figure 26 in the LWRP statement dated November 30, 2011, portions of which are contained in the Report, including Figure 26, there appears a circled Number 7, which is explained to be a “Potential Pedestrian Trestle Overpass.” The path of this pedestrian overpass appears to be very close to where the tail of the C-R zoning district departs from the haul road and crosses the railroad tracks. This depiction would provide a possible basis for where in fact the C-R tail

was drawn when it terminates at the railroad tracks, as opposed to its location serving no function. Figure 26 is attached hereto as Exhibit B. Finally, as discussed in more detail below as to the second issue, the quoted language in the LWRP upon which our consultant relied in concluding that the zoning map on this issue was in error, refers to the C-R district as including the “South Bay Causeway,” and not the haul road itself. No “causeway” (raised land) exists in the area where the map depicts the C-R zoning district tail crossing the railroad tracks. There is no raised land. See Exhibit C, which is a photo I took of the haul road running from the trestle across the tracks to where the haul road merges with Front Street. The haul road is level or below the land which surrounds it. Consequently the zoning map does not literally contradict the statement in the LWRP, but rather is consistent with it. Where the haul road is on raised land is elsewhere to the east.

For the reasons stated above, I conclude that the evidence is insufficient to demonstrate that there is a “certainty” that the map is in error when it depicts the C-R zoning district tail departing from the haul road and terminating at the railroad tracks.

Issue Two – Where are the boundaries of the C-R Zoning District boundaries as compared to the haul road, and what is its width?

On this issue, no evidence is before the ZBA at all as this memo is being written. The issue was not addressed at all in the Report.

Based on my doing an overlay via photo-shop of the C-R tail of the zoning map over a Columbia County GIS map that shows the boundaries of all legal parcels (<http://sdg.giscloud.com/map/311797/columbia/1529549/parcelid/100600-109.11-1-24>), it does appear that the C-R zoning district tail does marginally stray from the haul road. See Exhibit D.

Unlike with respect to issue one, as to the matter of the C-R zoning district tail terminating at the railroad tracks however, I do conclude that this straying of the C-R tail from the haul road, to the extent such straying exists, is scrivener’s error. That error is not facially obvious from the zoning map (it requires going through the exercise which I did to discern it), and the result would be nonsensical. Consequently, except where the C-R zoning district tail departs from the haul road and crosses the railroad tracks, to the extent that along the balance of the haul road, it is not within the C-R zoning district, the zoning map should be reformed so that the haul road is within the C-R district.

The remaining issue is the width of the C-R zoning district tail. Just as with respect to the tail appearing to stray off the haul road, it does not appear that the map was drawn with any particular care when it came to defining the width of the tail, and there is no legal or other description or reference to such width in the documents

that have been submitted to the ZBA. As noted above, the LWRP language states that the C-R district tail includes the “South Bay Causeway.”

Given that there is no other guidance as to the intended width of the tail, and that no evidence exists that zoning map was drawn with any intended precision that would make retaining a surveyor to scale the map and infer the width from such scaling a worthwhile exercise, I conclude that the width of the C-R zoning district tail should be co-extensive with the width of the “South Bay Causeway.”

How is the word “causeway” defined? What does it mean? Attached as Exhibit E is a screen shot of a page from my computer that shows the definition of the word “causeway “ from a variety of respected sources. While various definitions use the one or more of the words “path, way or road,” what all the definitions have in common is that the path, way or road must be on raised land. Thus the entirety of the haul road is not a causeway, or on a causeway, because parts of it at least are not on raised land.

Moreover, on information and belief and not personal knowledge (yes, it would have been useful if the ZBA members had had an opportunity to walk the haul road in its entirety), where the haul road is on raised land, the width of that raised land varies considerably, so if the tail were to track the perimeters of the raised land, the perimeter lines of the tail would be jagged or erose, rather than parallel as depicted on the zoning map. If the perimeters of the tail tracked or were co-extensive with the haul road itself, again on information and belief, I believe that the perimeter lines of the tail would be substantially parallel, because the width of the haul road itself is reasonably consistent.

Based on the above, I conclude that the width of the C-R zoning district tail is co-extensive with and tracks the width of the haul road itself, and has no additional width beyond the haul road, which would cause the lines of the tail to become erose rather than parallel, and narrow to the location of the haul road itself, where no raised land or causeway exists.

CONCLUSION:

(1) The C-R zoning district tail terminates at the railroad tracks as depicted on the zoning map, rather than continue to track the haul road until its terminus as the City public right of way at end of Front Street, and (2) elsewhere, the perimeters of the C-R zoning district tail align with and have a width defined by the perimeters of the haul road, and not any other raised land appending the haul road which may exist with respect to portions, but not all, of the haul road.

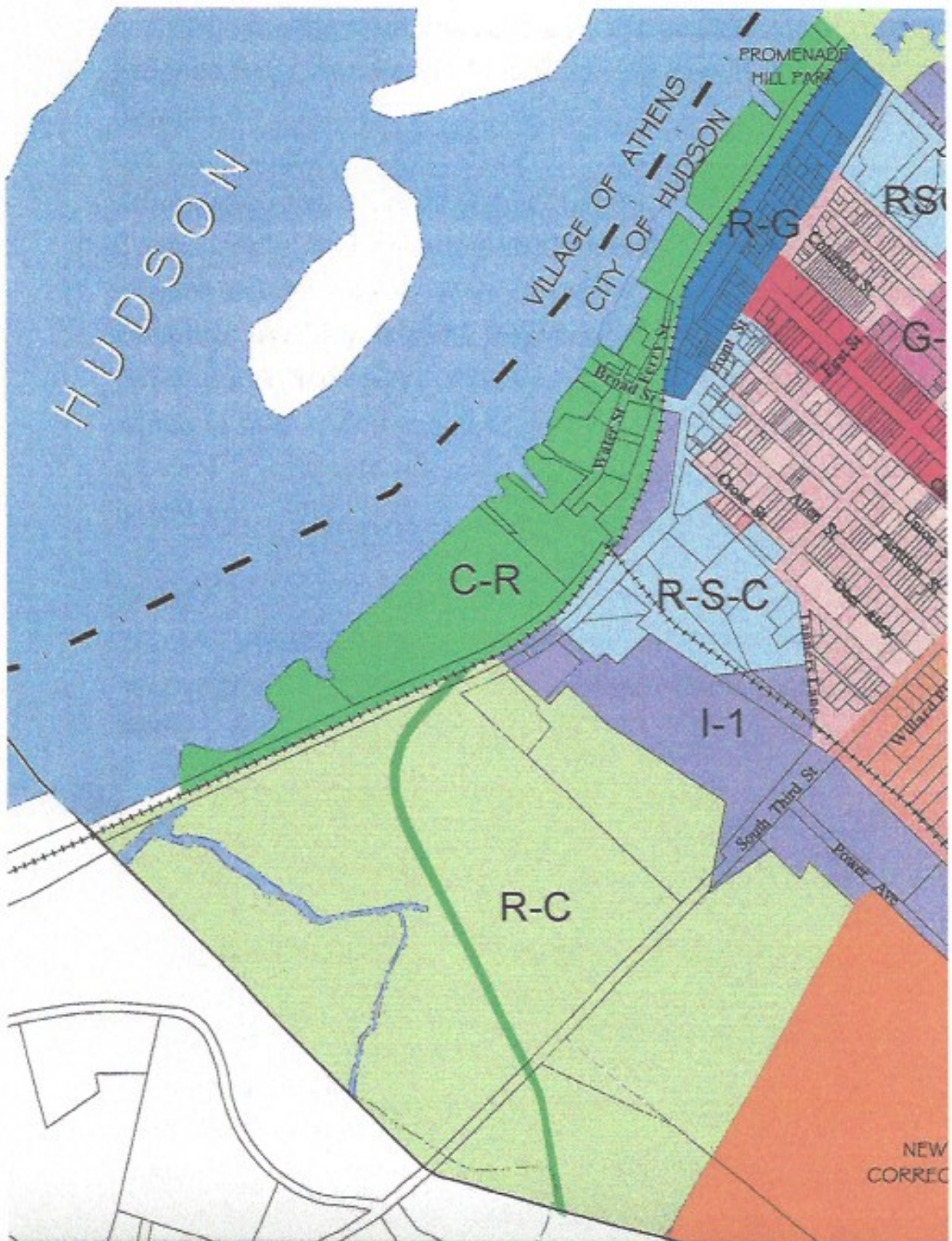


EXHIBIT A

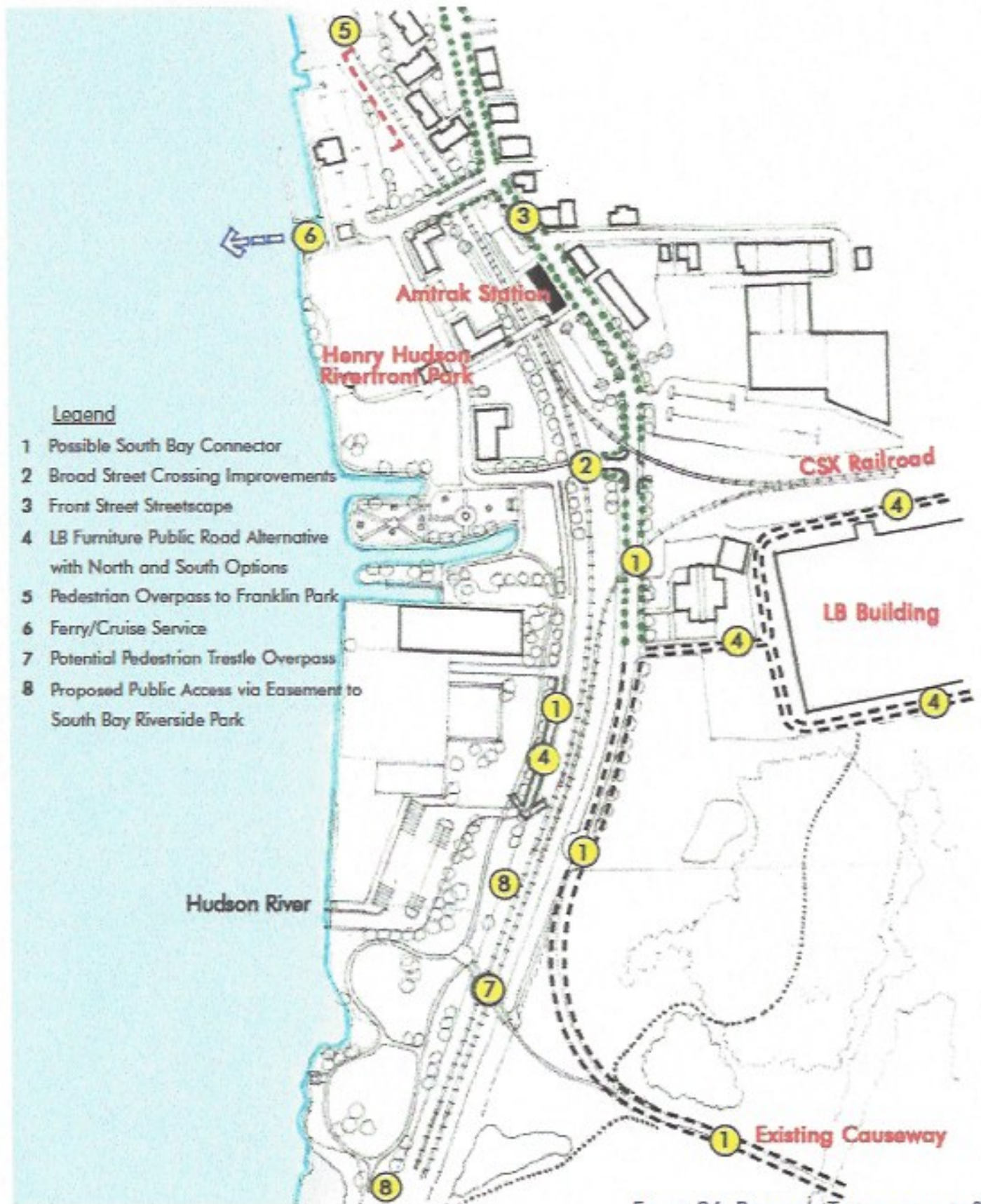


FIGURE 26: PROPOSED TRANSPORTATION & INFRASTRUCTURE PROJECTS

HUDSON LOCAL WATERFRONT REVITALIZATION PROGRAM

HUDSON, NEW YORK



FRU Planning

Exhibit B

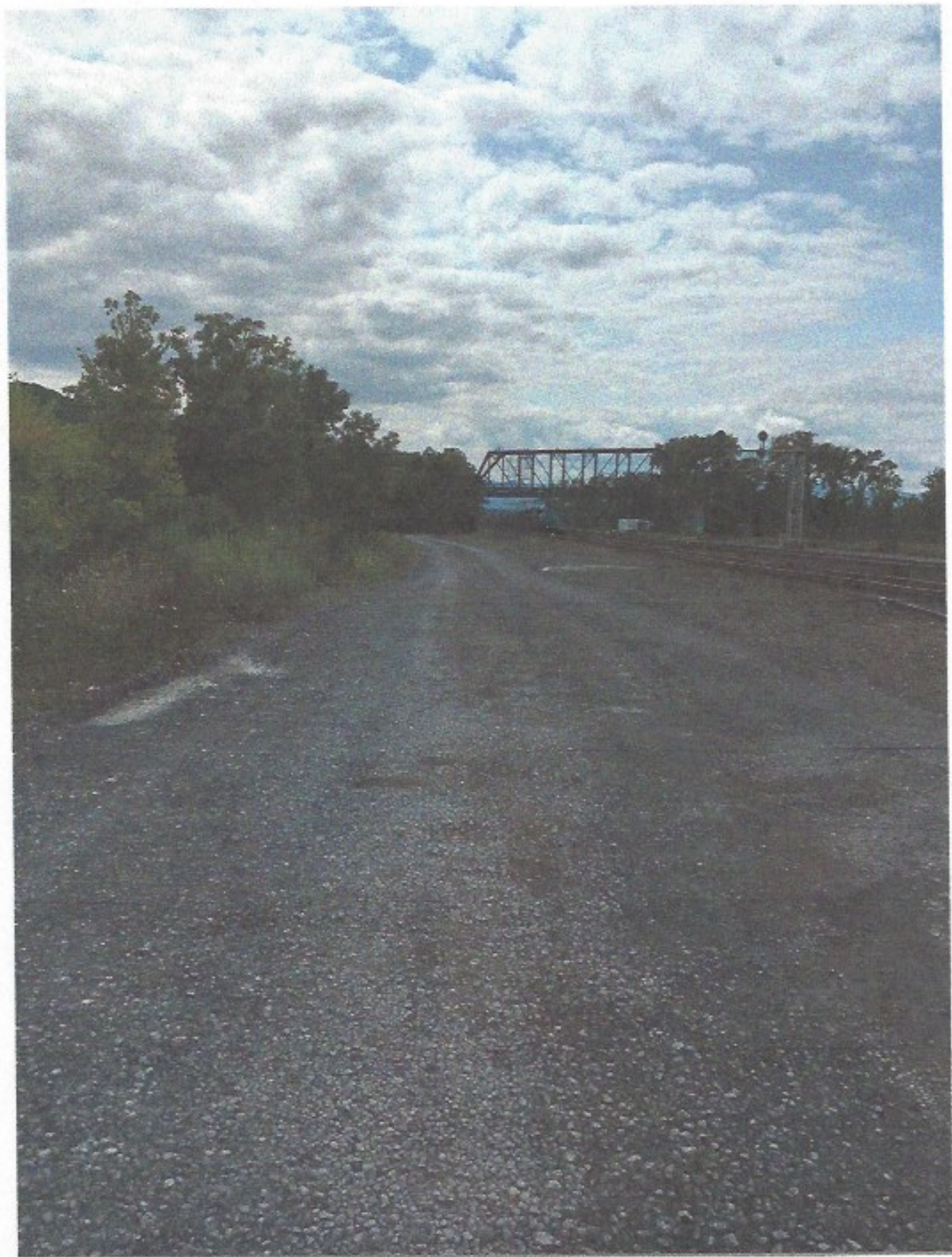



Exhibit C



Exhibit D

causeway

[ˈkɔːz, wə] 

NOUN

a raised road or track across low or wet ground.

synonyms: footpath · pathway · footway · pavement · track · jogging track · trail · trackway · bridleway · bridle path · ride · riding · towpath · walk · walkway · promenade · esplanade · avenue · [more]

More translations and word origin



Feedback

Causeway - definition of causeway by The Free Dictionary

www.thefreedictionary.com/causeway ▾

causeway - A raised path, road, or way across a wet place or stretch of water—based on causey, "a mound, embankment, or dam to retain water."

Legal

Definition of causeway in the Legal Dictionary - by Free online English dictionary and ...

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Acronyms

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a raised road or path, as across low or wet ground. 2. a highway or paved way. verb (used with object) 3. to pave (a road or street) with cobblestones or pebbles. 4. to provide with a causeway.

Causeway | Definition of Causeway by Merriam-Webster

<https://www.merriam-webster.com/dictionary/causeway> ▾

Definition of causeway. 1 : a raised way across wet ground or water. 2 : highway; especially : one of ancient Roman construction in Britain.

Causeway - Wikipedia

<https://en.wikipedia.org/wiki/Causeway> ▾

In modern usage, a causeway is a road or railway on top of an embankment usually across a broad body of water or wetland.

Ancestor: None. (See Ford (crossing))

Carries: Traffic, Rail

Descendant: None. (See Viaduct)

Related: None. (See Step-stone bridge)

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<https://www.audioenglish.org/dictionary/causeway.htm>

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causeway Meaning in the Cambridge English Dictionary

<https://dictionary.cambridge.org/dictionary/english/causeway> ▾

In many places the soil, sodden with rain, was impracticable for cavalry and even for infantry, until trees had been felled and a rude causeway formed through the morass. She drove along the wide ...

Causeway definition and meaning | Collins English Dictionary

<https://www.collinsdictionary.com/dictionary/english/causeway> ▾

Causeway definition: A causeway is a raised path or road that crosses water or wet land. | Meaning, pronunciation, translations and examples

Exhibit AE