

**Zoning Board of Appeals  
July 31, 2019 Regular Meeting**

**STAFF REPORT**

**Subject: ZBA19-014; 2875 Boardwalk Drive**

**Summary:**

International Transmission Company dba ITC Transmission, representing the property owners, is seeking a variance from Section 5.20.3 (B) Interior Landscape Islands. The requested variance is to allow the removal of required vegetation in the high voltage electric transmission lines easement area only.

**Background:**

The subject property is zoned M1, Limited Industrial and located north of East Eisenhower Parkway and west of the rail road corridor. ITC is an independent transmission company which transmits electric energy by an extensive network of high voltage transmission lines. ITC is in the process of constructing new 120,000 volt double-circuit transmission lines through the City of Ann Arbor and the Charter Township of Pittsfield to connect the State and Pioneer substations. The project is approximately three miles long and located in the rear of commercial buildings adjacent to and along the existing rail corridor. The State-Pioneer Transmission Line Project is designed to improve the reliability of high-voltage electrical service in the Washtenaw County area. The project will enhance reliability of electric service to residents and businesses and create additional capacity throughout the region, which will benefit the community as a whole. If granted, the variance will protect the site from being rendered non-conforming on the work of ITC, an essential service under the Unified Development Code.

**Description:**

On December 7, 2018, ITC initiated an eminent domain action in the Washtenaw County Circuit Court, under the procedures set forth in the UCPA (Uniform Condemnation Procedures Act), seeking to acquire the easement on the property. Certain rights in the easement include the removal of incompatible vegetation located in the easement area. These rights are necessary to comply with safety and reliability standards and ensure the reliability of the electrical system by preventing outages caused by vegetation.

**Standards for Approval- Variance**

The Zoning Board of Appeals has all the power granted by State law and by Section 5.29.12, Application of the Variance Power from the UDC. The following criteria shall apply:

- (a). *That the practical difficulties are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the City.***

The property owner did not have a choice in the transmission line location being imposed on their property. The owners should not suffer an adverse consequence to their property as a result of a needed project that will enhance the reliability of electric service to the community.

- (b). That the practical difficulties will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.**

The failure to grant the variance will result in the easement area being in a nonconforming status. The variance is minor and warranted so that the easement area can remain in conformity.

- (c). That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.**

The importance of maintaining the reliability of transmission lines benefits all property owners in the community and the requested variance will not otherwise have a negative impact, thus resulting in substantial justice being done.

- (d). That the conditions and circumstances on which the variance request is based shall not be a self-imposed hardship or practical difficulty.**

The practical difficulty was not created by the Property owner. This situation resulted from eminent domain proceedings. The practical difficulty arises from condemnation and is subject to the Michigan Uniform Condemnation Procedures Act.

- (e). A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.**

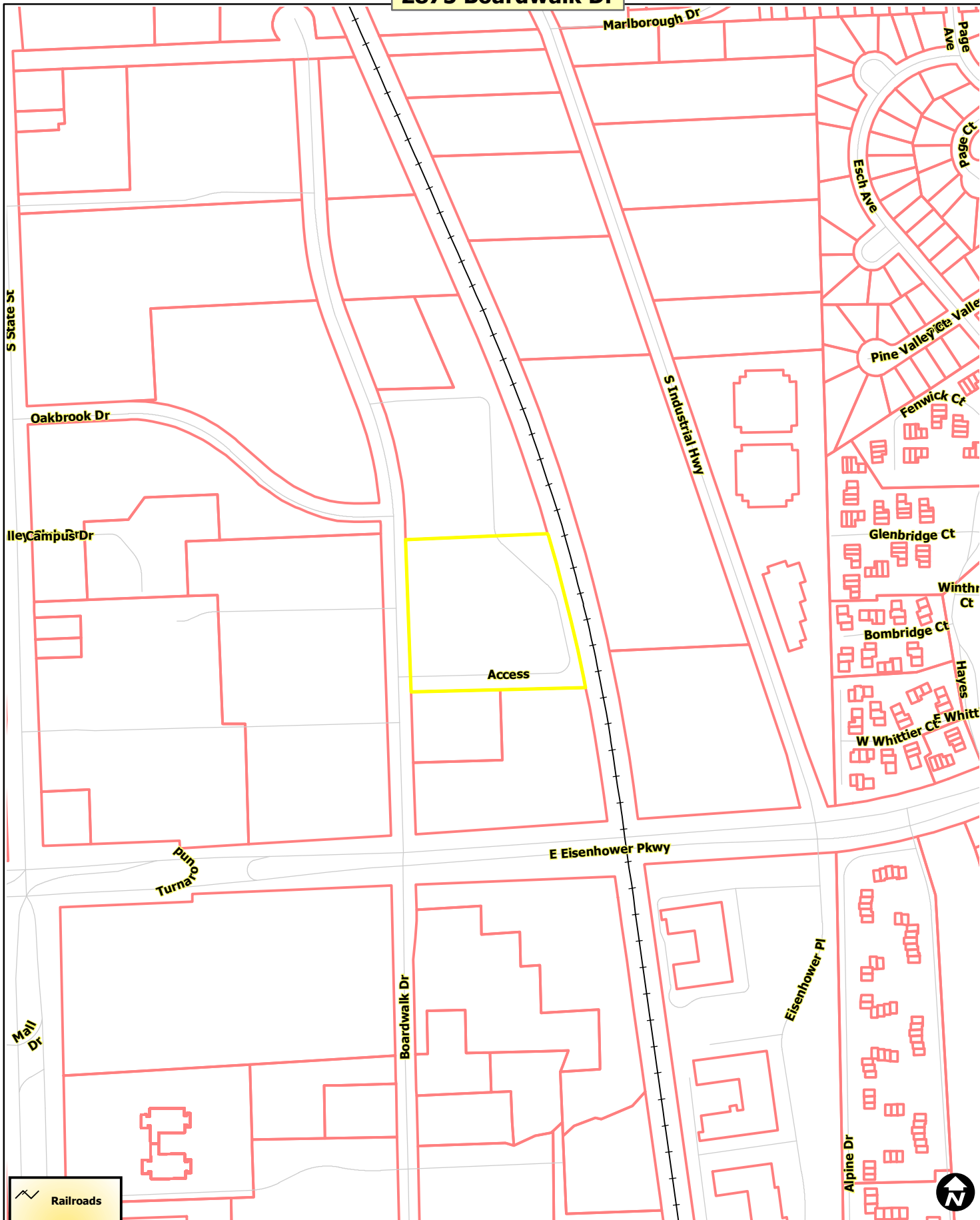
The applicants state that a lesser variance requested would not ensure the goal of the easement remaining in a conforming status, while at the same time allowing use of the easement area for the Transmission Line. The trees have been properly removed and the only variance that will allow this area to remain in conformity with the landscaping requirements of the Ordinance is the variance requested.




Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jon Barrett".

**Jon Barrett**  
**Zoning Coordinator**

# 2875 Boardwalk Dr



-  Railroads
-  Huron River
-  Tax Parcels



Map date: 7/12/2019  
Any aerial imagery is circa 2018 unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)

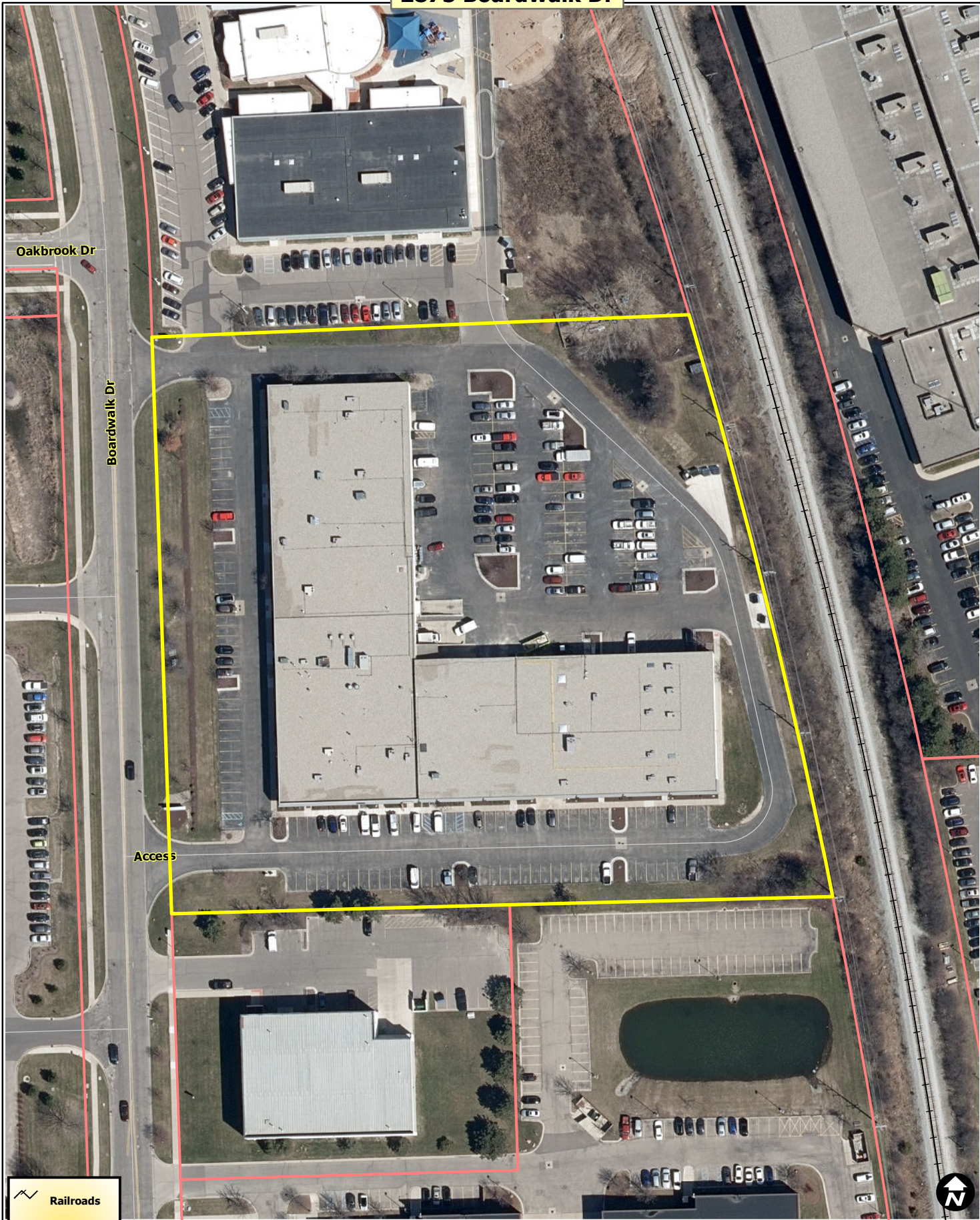


# 2875 Boardwalk Dr



Map date: 7/12/2019  
Any aerial imagery is circa 2018  
unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)




# 2875 Boardwalk Dr



Oakbrook Dr

Boardwalk Dr

Access

-  Railroads
-  Huron River
-  Tax Parcels



Map date: 7/12/2019  
Any aerial imagery is circa 2018  
unless otherwise noted  
Terms of use: [www.a2gov.org/terms](http://www.a2gov.org/terms)



# ZONING BOARD OF APPEALS APPLICATION

City of Ann Arbor Planning Services

City Hall: 301 E Huron Street Ann Arbor, MI 48107-8647

Phone: 734-794-6265 Fax: 734-794-8460 Email: [planning@a2gov.org](mailto:planning@a2gov.org)

## PROPERTY INFORMATION

ADDRESS OF PROPERTY 2875 Boardwalk Drive, Ann Arbor, MI		ZIP CODE 48104	
ZONING CLASSIFICATION MI Limited Industrial District	NAME OF PROPERTY OWNER* <i>If different than applicant, a letter of authorization from the property owner must be provided</i> Boardwalk Commerce Park Associates LLC		
PARCEL NUMBER 09-12-04-301-012	OWNER EMAIL ADDRESS		

## APPLICANT INFORMATION

NAME International Transmission Company d/b/a ITCTransmission			
ADDRESS 27175 Energy Way	CITY Novi	STATE MI	ZIP CODE 48377
EMAIL sestey@dykema.com		PHONE 248-203-0538	
APPLICANT'S RELATIONSHIP TO PROPERTY Easement holder			

## REQUEST INFORMATION

<input checked="" type="checkbox"/> VARIANCE REQUEST Complete Section 1 of this application	<input type="checkbox"/> REQUEST TO ALTER A NONCONFORMING STRUCTURE Complete Section 2 of this application
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## REQUIRED MATERIALS

<p>One hard copy application complete with all required attachments must be submitted. Digital copies of supportive materials included in the submitted hard copy will only be accepted in PDF format by email or accompanying the hard copy application on a USB flash drive.</p> <p><b>Required Attachments:</b></p> <p><input checked="" type="checkbox"/> Boundary Survey of the property including all existing and proposed structures, dimensions of property, and area of property.</p> <p><input type="checkbox"/> Building floor plans showing interior rooms, including dimensions.</p> <p><input checked="" type="checkbox"/> Photographs of the property and any existing buildings involved in the request.</p>	<p><b>OFFICE USE ONLY</b></p> <p>Fee Paid: <del>\$600.00</del> ZBA: 19-014</p> <p>DATE STAMP CITY OF ANN ARBOR RECEIVED  JUN 25 2019</p> <p>PLANNING &amp; DEVELOPMENT SERVICES</p>
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## ACKNOWLEDGEMENT

All information and materials submitted with this application are true and correct.

Permission is granted to City of Ann Arbor Planning Services and members of the Zoning Board of Appeals to access the subject property for the purpose of reviewing the variance request. N/A

Property Owner Signature: N/A, see attached regarding UCPA Variance Request Authorization (MCL 213.54(2)) Date: 6/25/19

# Section 1 City of Ann Arbor Planning Services – Zoning Board of Appeals Application

## VARIANCE REQUEST

ARTICLE(S) AND SECTION(S) FROM WHICH A VARIANCE IS REQUESTED: *(Example: Article 3, Section 5.26)*

Article IV, Section 5.20.3(B)

REQUIRED DIMENSION: *(Example: 40' front setback)*

Feet:           Inches:

PROPOSED DIMENSION: *(Example: 32 foot 8 inch front setback )*

Feet:           Inches:

DESCRIPTION OF PROPOSED WORK AND REASON FOR VARIANCE:

See attached

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**The City of Ann Arbor Zoning Board of Appeals has the powers granted by State law and City Code Chapter 55, Section 5:29. A variance may be granted by the Zoning Board of Appeals only in cases involving practical difficulties or unnecessary hardships when all of the following statements are found to be true. Please provide a complete response to each of the statements below.**

The alleged hardships or practical difficulties, or both, are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the city.

See attached

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The alleged hardships are practical difficulties, or both, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

See attached

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Allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this chapter, the individual hardships that will be suffered by a failure of the board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

See attached

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The conditions and circumstances on which the variance request is based shall not be a self-imposed hardship or practical difficulty.

See attached

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A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.

See attached

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# Section 2 City of Ann Arbor Planning Services – Zoning Board of Appeals Application

## REQUEST TO ALTER A NONCONFORMING STRUCTURE

For the purposes of Article VI: Nonconformities Section 5.32.2 Nonconforming Structure, **alteration** is defined as any change in a Building that results in additional Floor Area being fit for occupancy, a greater number of dwelling or rooming units or an increase in the exterior dimensions of the Building.

**A nonconforming structure may be maintained or restored, but permission to alter a nonconforming structure will only be approved by the Zoning Board of Appeals upon finding that it complies as nearly as practicable with the requirements of this Chapter and that it will not have a detrimental effect on neighboring property.**

**In the space below, describe the current use of the property, the proposed alteration, and the impact it would have on neighboring property.**

N/A

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Please complete the table below as it relates to your request

Requirement	Existing Condition	Code Requirement
Lot Area		
Lot Width		
Floor Area Ratio		
Setbacks		
Parking		
Landscaping		
Other		



# EXHIBIT A



Dykema Gossett PLLC  
Suite 300  
39577 Woodward Avenue  
Bloomfield Hills, Michigan 48304  
WWW.DYKEMA.COM  
Tel: (248) 203-0700  
Fax: (248) 203-0763  
**Stephen R. Estey**  
Direct Dial: (248) 203-0538  
Email: SESTEY@DYKEMA.COM

June 25, 2019

City of Ann Arbor  
Zoning Board of Appeals  
301 E. Huron Street  
Ann Arbor 48107

**Re: Request for Non-Use Variance – 2875 Boardwalk Drive, Ann Arbor, MI 48104 – Parcel No. 09-12-04-301-012 (ITC No. SP-3235)**

Dear Zoning Board Members:

We represent International Transmission Company d/b/a ITC *Transmission* (“ITC”). This letter and its accompanying materials, including the Application attached hereto as **Exhibit A**, are presented to the City of Ann Arbor (“City”) Zoning Board of Appeals (“ZBA”) in furtherance of ITC’s request for a variance under the Michigan Uniform Condemnation Procedures Act, MCL 213.51 et seq. (“UCPA”) for relief from certain vegetation requirements (as set forth herein) within the Permanent Electric Transmission Line Easement (“Easement” attached as **Exhibit B**), which was acquired by ITC in Case No. 2018-001265-CC, *ITC v. Boardwalk Commerce Park Associates LLC et. al.*, Washtenaw County Circuit Court (“Litigation”). As discussed below, under Michigan law, the UCPA allows a condemning agency, such as ITC, to apply for a variance in order to address a nonconformity created by the taking of property, such as the Easement in this case.

## **I. BACKGROUND**

### **A. The Property**

The property at issue is located at 2875 Boardwalk Drive, Ann Arbor, MI 48104 (“Property”). The zoning classification for the Property is M1 Limited Industrial. A Boundary Survey is attached as **Exhibit C** and an aerial/photograph of the Property is attached as **Exhibit D**.

## **B. State-Pioneer Transmission Line Project**

ITC is an independent transmission company as defined in the Electric and Gas Corporations Act, MCL 486.251 et seq. (“EGCA”) which transmits electric energy by an extensive network of high voltage transmission lines. ITC is currently in the process of constructing a new 120,000 volt (120kV) double-circuit transmission line (“Transmission Line”) through the City of Ann Arbor and the Charter Township of Pittsfield to connect the State and Pioneer substations (“State-Pioneer Transmission Line Project” or “Project”). The Project is approximately 3 miles long and located in the rear of commercial buildings adjacent to and along an existing operating rail road corridor (Ann Arbor Railroad). *See* Map of Project, attached hereto as **Exhibit E**. The City of Ann Arbor Staff (and City Council) are well aware of this project and have been involved since its inception. The State-Pioneer Transmission Line Project is designed to improve the reliability of high-voltage electrical service in the Washtenaw County area. Specifically, this Project will reduce the demand on the area’s existing aging electrical infrastructure, which was constructed decades ago and was not built to support modern-day demands. The Project will enhance reliability of electric service to residents and businesses and create additional capacity throughout the region, which will serve as a significant benefit for the community as a whole.

## **C. The Acquisition of the Easement**

As part of the Project, on December 7, 2018, ITC initiated an eminent domain action in the Washtenaw County Circuit Court, under the procedures set forth in the UCPA, seeking to acquire the Easement on the Property, subject to payment of just compensation for the property taken (“Just Compensation”).<sup>1</sup> Among the rights included in the Easement, are certain rights to remove incompatible vegetation located in the Easement Area<sup>2</sup> on the Property. Such rights are necessary for ITC to comply with the safety and reliability standards set forth by the North American Electric Reliability Corporation (“NERC”), among other things, and are also necessary to ensure the safety and reliability of the entire bulk electricity system by preventing possible outages caused by vegetation.

The Court confirmed these Easement rights and granted ITC possession of the rights set forth in the Easement on or before March 20, 2019 and further confirmed that title to the rights described in the Easement had vested with ITC on December 7, 2018. *See* Stipulated Order Waiving Necessity, Confirming Title, Transferring Possession, Ordering Payment of Just

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<sup>1</sup> The EGCA specifically authorizes ITC to acquire property interests necessary to transmit electric energy for public use through condemnation proceedings. MCL 486.255. ITC is further authorized to condemn property pursuant to the procedures set forth under the UCPA.

<sup>2</sup> The Easement Area is depicted in Exhibit B.

Compensation, and for Other Relief attached as **Exhibit F**. The only issue that remains in the Litigation is the amount of just compensation due to the owner of the Property, which is being addressed by the parties and the Court as per the normal course of these types of actions.

ITC has completed initial vegetation removal in the Easement Area on the Property in preparation for the construction of the Transmission Line.<sup>3</sup>

#### **D. UCPA Variance Request Authorization**

As a condemning agency under the UCPA, ITC has the right to seek a zoning variance in order to reduce the impact of the Easement on the Property.<sup>4</sup> MCL 213.54(2) specifically states:

If the acquisition of a portion of a parcel of property actually needed by an agency would leave the remainder of the parcel in nonconformity with a zoning ordinance, **the agency, before or after acquisition, may apply for a zoning variance for the remainder of the parcel.** In determining whether to grant the zoning variance, **the governmental entity having jurisdiction to grant the variance shall consider the potential benefits of the public use for which the property would be acquired,** in addition to those criteria applicable under the relevant zoning statute, ordinance, or regulation. The agency must actually acquire the portion of the parcel of property for the proposed public use for the zoning variance to become effective for the remainder. If a variance is granted under this subsection, the property shall be considered by the governmental entity to be in conformity with the zoning ordinance for all future uses with respect to the nonconformity for which that variance was granted. However, if the property was also nonconforming for other reasons, the grant of that variance has no effect on the status of those other preexisting nonconformities. An owner shall not increase the nonconformity for which a variance is granted under this section without the consent of the governmental entity. An agency has the same right to appeal action on a zoning variance as would a property

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<sup>3</sup> As an essential service, ITC has the right to remove vegetation within its Easement in accordance with the City's Ordinance, and per the terms of the Easement. This was reviewed and discussed with Staff as part of the overall project discussions. However, as a gesture of good faith, and while not required to do so by Ordinance, ITC paid the City \$47,600.00 for removal of identified landmark trees within all of its Easements on this Project.

<sup>4</sup> MCL 213.54(2) attached as **Exhibit G**.

owner seeking a zoning variance. This section does not deprive a governmental entity of its discretion to grant or deny a variance.<sup>5</sup>

In accordance with the above provision, when determining whether to grant this variance, the ZBA must consider the potential benefits of the State-Pioneer Transmission Line Project.

## II. THE REQUIREMENTS JUSTIFYING A VARIANCE ARE MET

### *Description of the Proposed Work and Reason for Variance:*

With this Application, ITC is seeking a minor variance, for relief from vegetation requirements in the Easement Area only on the Property. Specifically, ITC is seeking a variance from Section 5.20.3(B) of the Ordinance which relates to Vehicular Use Area Landscaping and Screening - Interior Landscape Islands.<sup>6</sup> Due to safety and reliability concerns set forth above, certain vegetation that was maintained/planned for the Property (*see* Plan with Easement Area Overlay attached as **Exhibit H**), is not compatible with the construction and operation of State-Pioneer Transmission Line Project. All trees located in the Easement Area on the Property were either previously removed or recently removed by ITC as part of the Project, and cannot be replanted in the Easement Area.

MCL 125.3604 gives a zoning board of appeals the authority to grant nonuse variances if there are “practical difficulties,” relating to the “construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse related standard in the ordinance.” Likewise, Section 5.29.12 of the Ordinance provides that the ZBA may grant nonuse variances upon certain criteria being met. This is consistent with Michigan law, which provides that there need only be a reasonable showing of “practical difficulty” to warrant a nonuse variance. *Heritage Hill Ass’n, Inc v City of Grand Rapids*, 48 Mich App 765; 211 NW2d 77 (1973).

As shown in greater detail below, practical difficulties exist in this case and all of the specific standards of review pursuant to Section 5.29.12 of the Ordinance have been met:

*A variance may be allowed by the ZBA only in cases involving practical difficulties after the ZBA makes an affirmative finding that each of these criteria are met:*

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<sup>5</sup> MCL 213.54(2) (emphasis added).

<sup>6</sup> If the ZBA finds that another section of the Ordinance additionally or alternatively requires incompatible vegetation in the Easement Area, ITC hereby requests a variance from that Section(s) of the Ordinance as well.

1. *That the alleged practical difficulties are exceptional and peculiar to the property of the Person requesting the variance, and result from conditions that do not exist generally throughout the City.*

**RESPONSE:** The practical difficulties for this Property are exceptional because they relate to an eminent domain action, which was needed to create a critical electrical infrastructure Project that will benefit the residents and businesses throughout the area. This is the first high voltage electric transmission line ever constructed in Ann Arbor. To safely construct and maintain the new Transmission Line, the Easement Area must be free of trees that, consistent with ITC's determinations either pose a risk to the operation and maintenance of the Transmission Line, or are an obstacle to construction of such line. Outages caused by incompatible vegetation can result in substantial economic losses in commerce and have a dramatic impact on the community. The Property owner was not the cause of the trees and/or landscaping removal. The Property owner had no choice as to whether the Transmission Line would be imposed on its Property or not. The Property owner should not suffer an adverse consequence to its Property as a result of a needed Project that will enhance the reliability of electric service for the entire community.

2. *That the alleged practical difficulties that will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.*

**RESPONSE:** The practical difficulties that will result if a variance is not granted will be far more than mere inconvenience or inability to attain a higher financial return. The trees required by Section 5.20.3(B) can no longer be located in the Easement Area because they are not compatible with the Transmission Line. Not granting a variance to the Property owner here, would negatively impact the Property owner, who did not create this circumstance and leave the area within the Easement in a nonconforming status. The Property has existed at this location in its current developed status for years. A minor variance to eliminate the need for the parking lot trees in the Easement Area is warranted so that the Property can remain in conformity in this area notwithstanding the imposition of the Easement.

3. *That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this chapter, the practical difficulties that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.*

**RESPONSE:** The variance requested is very narrowly directed at vegetation in the Easement Area on the Property, which is incompatible with the construction and operation of the Transmission Line. The variance will enable the Property to function in a conforming status in the Easement Area. The Transmission Line will bring significant

**public benefits to the community in terms of electrical reliability and increased capacity. The importance of maintaining the reliability of transmission lines benefits all property owners in the community and the requested variance will not otherwise have a negative impact, thus resulting in substantial justice being done.**

4. *That the conditions and circumstances on which the variance request is based are not a self-imposed practical difficulty.*

**RESPONSE:** The practical difficulty was not created by the Property owner. This situation resulted from eminent domain proceedings. As such, the practical difficulty arises from condemnation and is subject to relief pursuant to the Michigan Uniform Condemnation Procedures Act as detailed above.

5. *The variance to be approved is the minimum variance that will make possible a reasonable use of the land or Structure.*

**RESPONSE:** A lesser variance than requested would not achieve the goal of ensuring the area within the Easement remains in conforming status, while at the same time allowing use of the Easement Area for the Transmission Line. Again, the trees were properly removed by ITC and the only variance that will allow this area to remain in conformity with the landscaping requirements of the Ordinance is the variance requested.

### *Alternative Criteria for Specific Types of Variances*

*Variances to the following types of standards shall require that the ZBA make an affirmative finding that the application meets the specific criteria listed below that are applicable to that type of variance application.*

#### *Landscaping, Screening and Buffering*

*In the case of an application for a variance from the landscaping, screening and buffering requirements of Section 5.20, a variance may be granted from the strict application of that section when the evidence supports that the public benefit intended to be secured will exist with less than the required landscaping or screening.*

**RESPONSE:** This variance request is the result of the construction of a needed electrical infrastructure Project which will benefit the City broadly, but only physically burdens a very small portion of land in the City on several commercial properties such as the instant Property. The Easement Area is located in the rear of the Property, adjacent to an operating railroad track (Ann Arbor Railroad). The benefits of vehicular use area landscaping and screening can still be achieved in the City if the small variance requested here to eliminate the trees in the Easement Area is granted. This request only involves

**vegetation in the Easement Area and will not have a significant impact on the landscaping of the Property as a whole.**


### **III. CONCLUSION**

Accordingly, ITC respectfully requests that the ZBA grant its requested variance to allow for the area within the Easement on the Property to remain conforming by granting a variance from the landscape requirements (as set forth herein) in Easement Area.

Thank you for your consideration of this request. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

**DYKEMA GOSSETT PLLC**



Stephen R. Estey



# EXHIBIT B

**PERMANENT ELECTRIC TRANSMISSION LINE EASEMENT AGREEMENT**

This Permanent Electric Transmission Line Easement Agreement (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, with an address of \_\_\_\_\_ ("Grantor") and INTERNATIONAL TRANSMISSION COMPANY, a Michigan corporation, with an address of 27175 Energy Way, Novi, Michigan 48377, and its successors and assigns ("Grantee").

WHEREAS, Grantor is the owner of certain real property more particularly described on the attached Exhibit "A" as the "Property".

WHEREAS, Grantee requires a perpetual easement upon, under, across and through an Easement Area located on the Property as more particularly described and depicted on Exhibit "A" (the "Easement Area"), upon the terms and conditions stated below.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor and Grantee hereby agree as follows:

1. **Grant of the Easement.** Grantor hereby conveys and grants to Grantee, its successors and assigns, a perpetual easement (the "Easement") over, under, across and through the Easement Area on the Property with the right, privilege and authority for Grantee, its agents, employees, and contractors, to:

(a) construct, reconstruct, modify, upgrade, improve, maintain, operate, inspect, replace, repair, patrol and remove one (1) double circuit electric transmission line and affiliated Telecommunications Line or Lines (as defined in paragraph 5 below) consisting of poles, towers, crossarms, insulators, wires, guy wires, anchors and other necessary fixtures, structures, cables (including fiber optic cable related to the Telecommunications Line or Lines), and equipment for transmitting electricity and communications relating to same ("Grantee's Facilities"); and

(b) temporarily improve the surface of the Easement Area as reasonably necessary to place and operate Grantee's construction vehicles and equipment; and

(c) prohibit and/or remove, at Grantee's sole discretion, any buildings or other above-ground structures (collectively referred to as "Structures") that are constructed or erected within the Easement Area after December 11, 2017 ("Prohibited Structures"). Grantee may remove such Prohibited Structures from the Easement Area without prior notice and without responsibility for any damage that occurs as a result of such removal.

- (i) This paragraph is not intended to apply, nor does it apply, to any Structure that existed within the Easement Area as of December 11, 2017 ("Permitted Structure"), except that for any fence that existed in the Easement Area as of December 11, 2017 Grantee may: (1) install and maintain a gating system, of Grantee's choice, in order to obtain access through the fence to the Easement Area for the purposes provided for herein; and (2) cause such fence to be removed as Grantee deems necessary provided that Grantee restores such fence to substantially the same condition as existed prior to removal.
- (ii) This Easement is not intended to prohibit, nor does it prohibit Grantor's restoration, replacement or reconstruction of any Permitted Structure (any subsequent restored, replacement or reconstructed structure referred to herein as "Replacement Structure") in the event that such a Permitted Structure is damaged or destroyed, so long as any Replacement Structure meets the following terms and conditions: (1) the Replacement Structure is located in the same footprint as the damaged or destroyed Permitted Structure; (2) the Replacement Structure does not exceed the maximum height of the damaged or destroyed Permitted Structure; and (3) the Replacement Structure is built with the same general materials as utilized in the damaged or destroyed Permitted Structure.
- (iii) If Grantor proposes to construct or erect a Replacement Structure that fails to meet any of the terms and conditions set forth in 1(c)(ii) or any other Prohibited Structure, a proposed construction plan may be submitted to Grantee for its review and a determination as to whether the proposed Replacement Structure or Prohibited Structure would interfere with the safe and reliable operation or maintenance of Grantee's Facilities within the Easement Area. Grantee's approval of a proposed Replacement Structure or Prohibited Structure under these circumstances will not be unreasonably withheld; and

(d) locate Grantee's poles and/or towers within the Easement Area; provided, however, that such poles and/or towers shall be located as near as possible to the transmission line depicted on Exhibit A; and

(e) at any time to cut, trim, remove, destroy or otherwise control any or all trees, bushes, or brush now or hereafter standing or growing upon or within the Easement Area, all at Grantee's sole and absolute discretion; and

(f) enter upon and cross the Easement Area for the above described purposes on other land(s).

2. **Ingress and Egress.** Grantor grants to Grantee ingress and egress to the Easement Area on, over and across the Property. Grantor shall work in good faith with Grantee to determine access points that are acceptable to both parties. Grantee's right to ingress and egress during the initial construction of the transmission line shall be limited insofar as all access to the Easement Area during the initial construction shall be restricted to the area identified on Exhibit B as "Access During Initial Construction," or to an alternative access point that is mutually agreeable to both parties.

3. **Repair and Restoration.** Grantee shall:

(a) re-grade, repair and restore, at Grantee's sole expense, as nearly as possible to its former condition, any portions of the Easement Area or Property owned by Grantor damaged by Grantee in the exercise of any of Grantee's rights under this Agreement; and

(b) repair or replace, at Grantee's sole expense, any actual damage located within the Easement Area or Property, caused by the exercise of any of Grantee's rights under this Agreement. Notwithstanding the foregoing, at no time shall Grantee be responsible for any damage to the extent that such damage results from Grantor's negligence. Upon reasonable notice to Grantee that damage has been sustained, the parties shall work cooperatively to identify the damage and to determine the scope of repair or replacement work.

4. **Binding/Run With The Land.** This conveyance shall be permanent, shall run with the land, and shall be binding upon the parties' successors and assigns.

5. **Telecommunications Line or Lines.** For purposes of this Agreement, the term "Telecommunications Line or Lines" shall be defined as Grantee's internal telecommunications line or lines (and not the telecommunications line of a third party telecommunications provider).

6. **Limited Use/Non-Use.** Limited use or non-use of the rights granted herein shall not prevent later use to the full extent herein conveyed.

This Easement is exempt from real estate transfer tax pursuant to MCLA 207.505(f) and from State real estate transfer tax pursuant to the provisions of MCLA 207.526(f).

[SIGNATURE(S) ON NEXT PAGE]

**GRANTOR:**

\_\_\_\_\_

Acknowledged before me in \_\_\_\_\_ County, State of Michigan, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_  
County, \_\_\_\_\_  
Acting in \_\_\_\_\_ County, \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

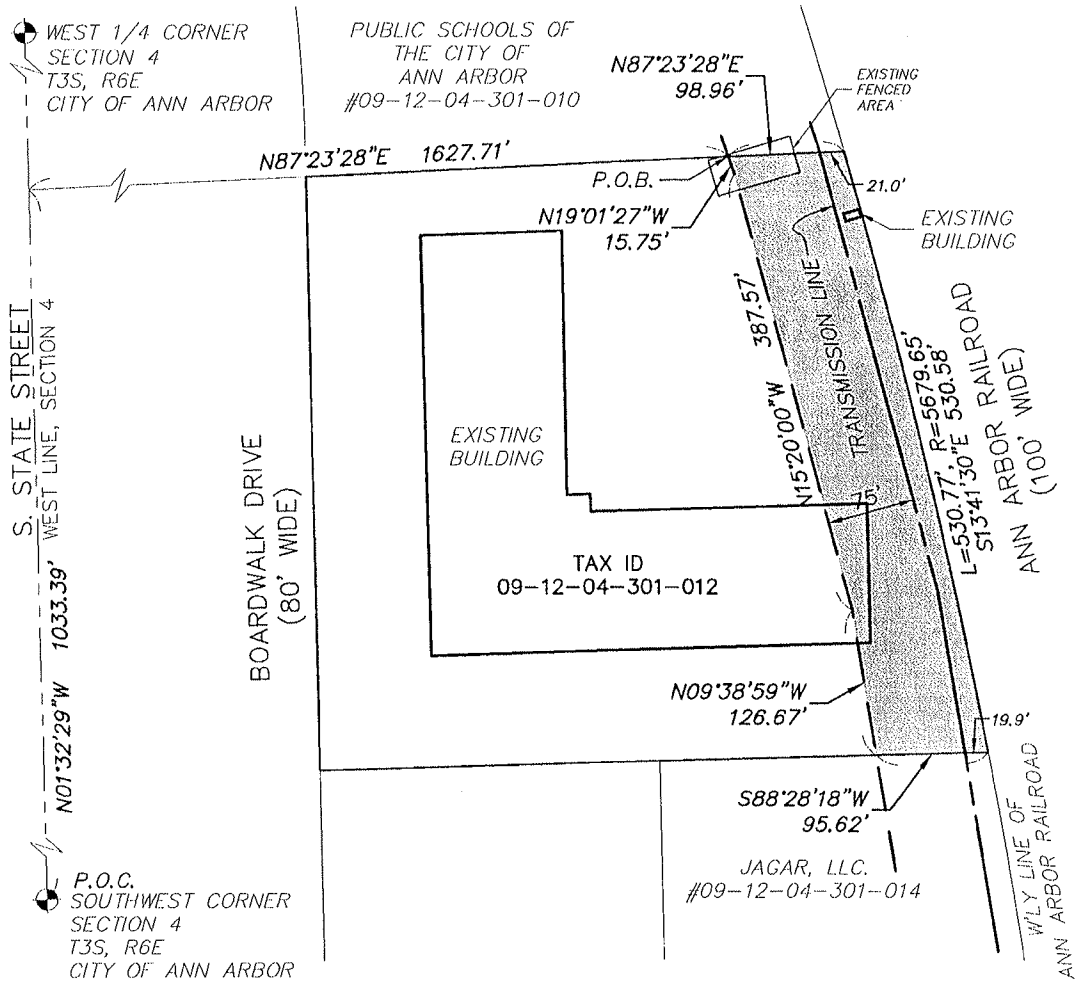
Drafted by:

When recorded return to:

EXHIBIT "A"

SURVEY DRAWING AND LEGAL DESCRIPTIONS

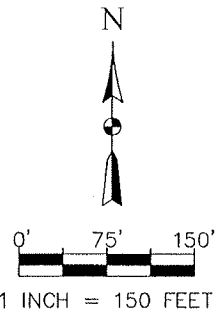
**EXHIBIT A**  
 SITE 3235  
 BOARDWALK COMMERCE PARK ASSOCIATES, LLC



NOTE: THIS IS NOT A BOUNDARY SURVEY

**LEGEND**

- TRANSMISSION LINE
- EASEMENT AREA
- $N 88^{\circ} E$  DESCRIBED EASEMENT - BEARINGS BASED ON MICHIGAN STATE PLANE COORDINATES, NAD83, SOUTH ZONE, INTERNATIONAL FOOT SECTION CORNER
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT



Easement area 49,880 Square Feet



CLIENT: INTERNATIONAL TRANSMISSION COMPANY  
 PROJECT: PIONEER - STATE

JOB: 1054-17-8089  
 DATE: 8-31-2017  
 REV.: 10-22-2017  
 SHEET: 1 OF 2

**PROPERTY**

(PER WARRANTY DEED, LIBER 5137, PAGE 568, PARCEL 1)



GRANTOR'S LAND IS LOCATED WITHIN THE CITY OF ANN ARBOR, SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, COUNTY OF WASHTENAW, STATE OF MICHIGAN.

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN; THENCE NORTH 87 DEGREES 09 MINUTES 00 SECONDS EAST 1904.44 FEET ALONG THE SOUTH LINE OF SAID SECTION TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF THE ANN ARBOR RAILROAD; THENCE NORTH 08 DEGREES 20 MINUTES 00 SECONDS WEST 220.94 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE 298.12 FEET ALONG THE ARC OF A 5679.97 FOOT RADIUS CIRCULAR CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 03 DEGREES 00 MINUTES 26 SECONDS, HAVING A CHORD WHICH BEARS NORTH 09 DEGREES 50 MINUTES 13 SECONDS WEST 298.08 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88 DEGREES 07 MINUTES 00 SECONDS WEST 571.22 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF BOARDWALK DRIVE; THENCE NORTH 01 DEGREES 53 MINUTES 00 SECONDS WEST 510.00 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE NORTH 87 DEGREES 01 MINUTES 00 SECONDS EAST 459.75 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF THE ANN ARBOR RAILROAD; THENCE ALONG SAID RIGHT-OF-WAY LINE 530.88 FEET ALONG THE ARC OF A 5679.97 FOOT RADIUS CIRCULAR CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 05 DEGREES 21 MINUTES 20 SECONDS, HAVING A CHORD WHICH BEARS SOUTH 14 DEGREES 01 MINUTES 05 SECONDS EAST 530.68 FEET TO THE POINT OF BEGINNING. BEING A PART OF THE SOUTHWEST 1/4 OF SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN.

COMMONLY KNOWN AS: 2875 BOARDWALK DRIVE  
TAX ID: 09-12-04-301-012

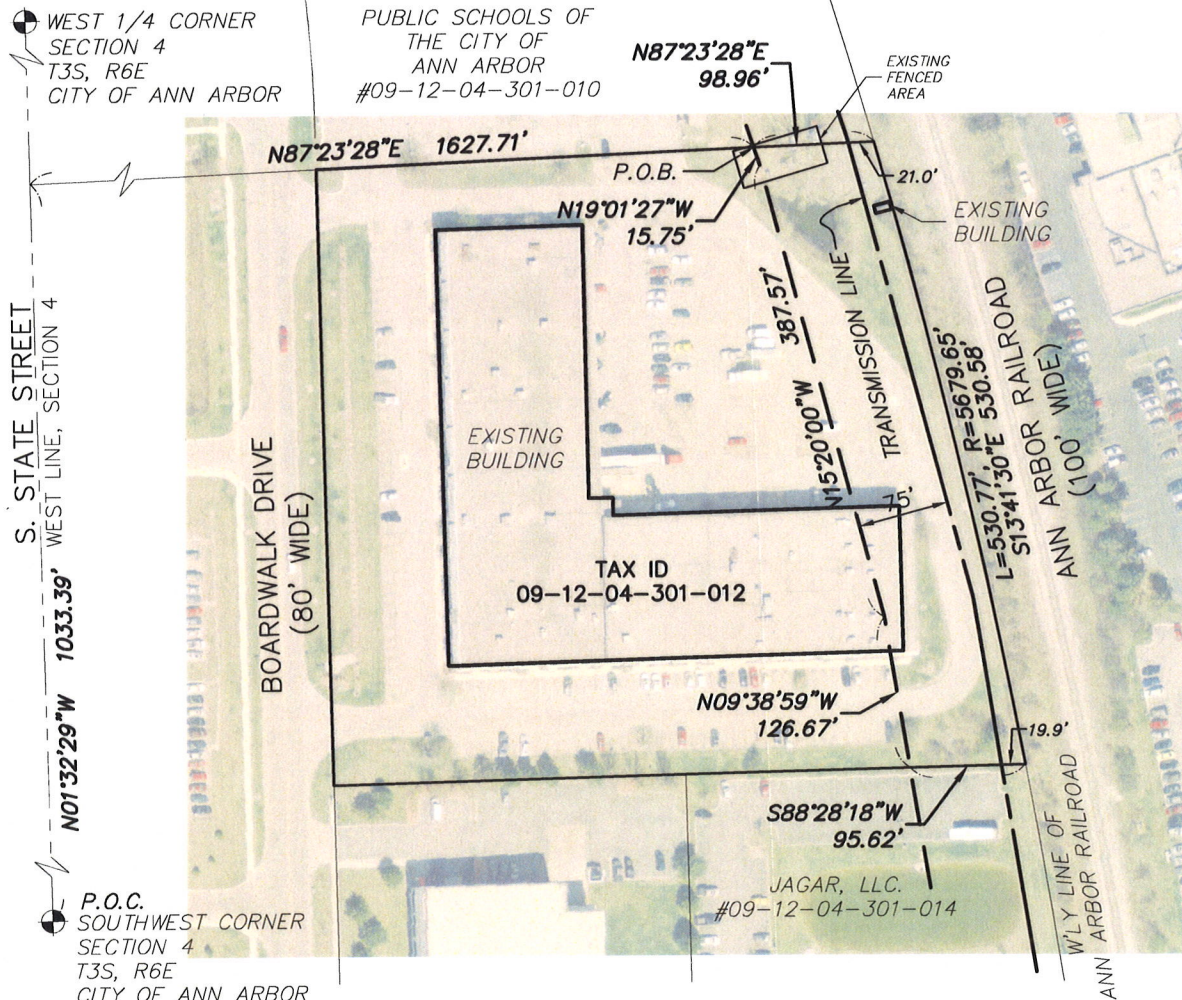
**EASEMENT AREA**

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN; THENCE N01°32'29"W 1033.39 FEET ALONG THE WEST LINE OF SAID SECTION 4; THENCE N87°23'28"E 1627.71 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUING N87°23'28"E 98.96 FEET; THENCE 530.77 FEET ALONG THE ARC OF A 5679.65 FOOT RADIUS NON-TANGENTIAL CIRCULAR CURVE TO THE RIGHT, HAVING A CHORD WHICH BEARS S13°41'30"E 530.58 FEET ALONG THE WESTERLY LINE OF THE ANN ARBOR RAILROAD (100 FEET WIDE); THENCE SOUTH 88°28'18"W 95.62 FEET; THENCE N09°38'59"W 126.67 FEET; THENCE N15°20'00"W 387.57 FEET; THENCE N19°01'27"W 15.75 FEET TO THE POINT OF BEGINNING.

	 800.525.6016 <a href="http://www.metroca.net">www.metroca.net</a>	CLIENT: INTERNATIONAL TRANSMISSION COMPANY	JOB: 1054-17-8089
		PROJECT: PIONEER - STATE	DATE: 8-31-2017
		REV.: 10-22-2017	SHEET: 2 OF 2



**EXHIBIT A**  
**SITE 3235**  
**BOARDWALK COMMERCE PARK ASSOCIATES, LLC**

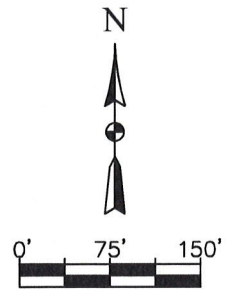


NOTE: THIS IS NOT A BOUNDARY SURVEY

DO NOT RECORD

**LEGEND**

- TRANSMISSION LINE
- EASEMENT AREA
- N 88° E**  
DESCRIBED EASEMENT - BEARINGS BASED ON MICHIGAN STATE PLANE COORDINATES, NAD83, SOUTH ZONE, INTERNATIONAL FOOT SECTION CORNER
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT



1 INCH = 150 FEET

Easement area 49,880 Square Feet



CLIENT:  
INTERNATIONAL TRANSMISSION COMPANY

PROJECT: PIONEER - STATE

JOB: 1054-17-8089

DATE: 8-31-2017

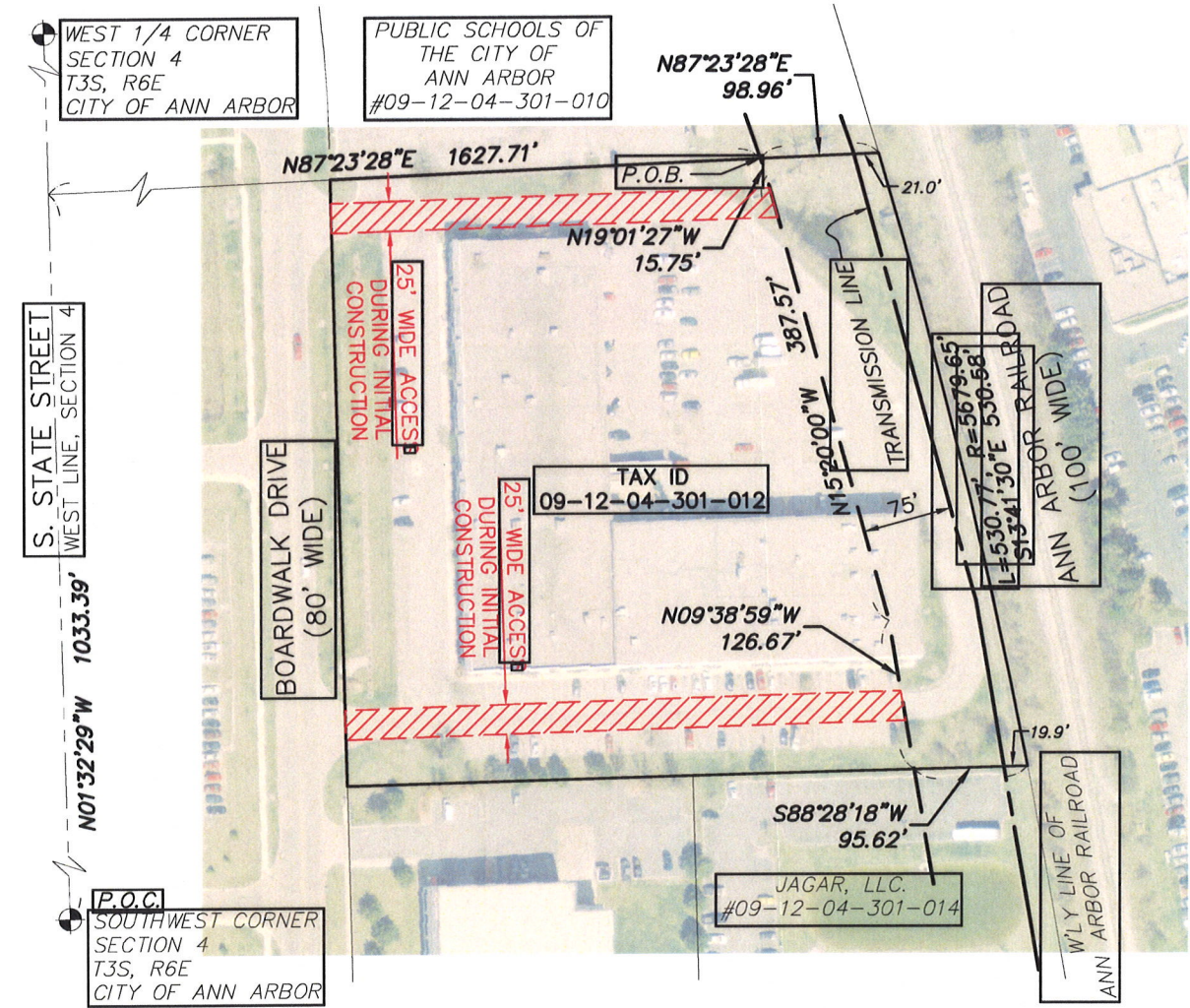
REV.: 10-22-2017

SHEET: 1 OF 1

EXHIBIT "B"

ACCESS DURING INITIAL CONSTRUCTION

**EXHIBIT B**  
**SITE 3235**  
**BOARDWALK COMMERCE PARK ASSOCIATES, LLC**



**NOTE: THIS IS NOT A BOUNDARY SURVEY**

**LEGEND**

- TRANSMISSION LINE
- EASEMENT AREA
- N 88° E** DESCRIBED EASEMENT - BEARINGS BASED ON MICHIGAN STATE PLANE COORDINATES, NAD83, SOUTH ZONE, INTERNATIONAL FOOT
- SECTION CORNER
- P.O.B.** POINT OF BEGINNING
- P.O.C.** POINT OF COMMENCEMENT

N

0' 75' 150'  
 1 INCH = 150 FEET

Easement area 49,880 Square Feet  
 Temporary Construction Access Easement area 20,970 Square Feet

	 800.525.6016 www.metroca.net	CLIENT: INTERNATIONAL TRANSMISSION COMPANY	JOB: 1054-17-8089
		PROJECT: PIONEER - STATE	DATE: 1-22-2018
			REV.: 9-26-2018
			SHEET: 1 OF 1

# EXHIBIT C

**BOUNDARY SURVEY**  
SECTION 4, TOWNSHIP 3 SOUTH, RANGE 6 EAST  
CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN

**PROPERTY**

(PER WARRANTY DEED, LIBER 5137, PAGE 568, PARCEL I, WASHTENAW COUNTY RECORDS)

GRANTOR'S LAND IS LOCATED WITHIN THE CITY OF ANN ARBOR, SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, COUNTY OF WASHTENAW, STATE OF MICHIGAN.

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN; THENCE NORTH 87 DEGREES 09 MINUTES 00 SECONDS EAST 1904.44 FEET ALONG THE SOUTH LINE OF SAID SECTION TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF THE ANN ARBOR RAILROAD; THENCE NORTH 08 DEGREES 20 MINUTES 00 SECONDS WEST 220.94 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE 298.12 FEET ALONG THE ARC OF A 5679.97 FOOT RADIUS CIRCULAR CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 03 DEGREES 00 MINUTES 26 SECONDS, HAVING A CHORD WHICH BEARS NORTH 09 DEGREES 50 MINUTES 13 SECONDS WEST 298.08 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88 DEGREES 07 MINUTES 00 SECONDS WEST 571.22 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF BOARDWALK DRIVE; THENCE NORTH 01 DEGREES 53 MINUTES 00 SECONDS WEST 510.00 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE NORTH 87 DEGREES 01 MINUTES 00 SECONDS EAST 459.75 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF THE ANN ARBOR RAILROAD; THENCE ALONG SAID RIGHT-OF-WAY LINE 530.88 FEET ALONG THE ARC OF A 5679.97 FOOT RADIUS CIRCULAR CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 05 DEGREES 21 MINUTES 20 SECONDS, HAVING A CHORD WHICH BEARS SOUTH 14 DEGREES 01 MINUTES 05 SECONDS EAST 530.68 FEET TO THE POINT OF BEGINNING. BEING A PART OF THE SOUTHWEST 1/4 OF SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN.

**SURVEYORS NOTES:**

1. BEARING BASIS: BOARDWALK COMMERCE PARK ASSOCIATES LLC PARCEL I DEED DESCRIPTION AS RECORDED IN WARRANTY DEED, LIBER 5137, PAGE 568, WASHTENAW COUNTY RECORDS.
2. DATE OF SURVEY: JUNE, 13, 2019
3. SOME FEATURES SHOWN ON SURVEY MAY BE OUT OF SCALE FOR CLARITY.
4. DIMENSIONS ON THIS SURVEY ARE EXPRESSED IN FEET AND DECIMAL PARTS THEREOF UNLESS OTHERWISE NOTED.

**LEGEND**

	TRANSMISSION LINE		APPROXIMATE LOCATION OF TRANSMISSION LINE POLES - SUBJECT TO FINAL ENGINEERING
	EASEMENT AREA		FOUND MONUMENTATION (AS DESCRIBED)
	<b>N 88° E</b>		(M) MEASURE BEARING
	P.O.B. POINT OF BEGINNING		(R) RECORDED BEARING
	P.O.C. POINT OF COMMENCEMENT		



Trevor A. McMann, PS  
Professional Surveyor No. 50442  
TmCmann@MetroCA.net

Dated: 06-13-2019



**VICINITY MAP**  
NOT TO SCALE



**Revisions**

DATE	DESCRIPTION
1	

Project Number 1054-17-8089 Date 6/13/2019

P.M.	Checked by	Drawn by	Crew/Book
MT	TM	AM	BC

**Client**

ITC TRANSMISSION



**Project**

STATE TO PIONEER  
TRANSMISSION LINE  
SITE NO. 3235

State MICHIGAN

County WASHTENAW

Community ANN ARBOR

Township	Range	Section
3S	6E	4

**Title**

BOUNDARY SURVEY  
2875 BOARDWALK DR.,  
ANN ARBOR, MICHIGAN

Drawing Scale Sheet Number

1 OF 1

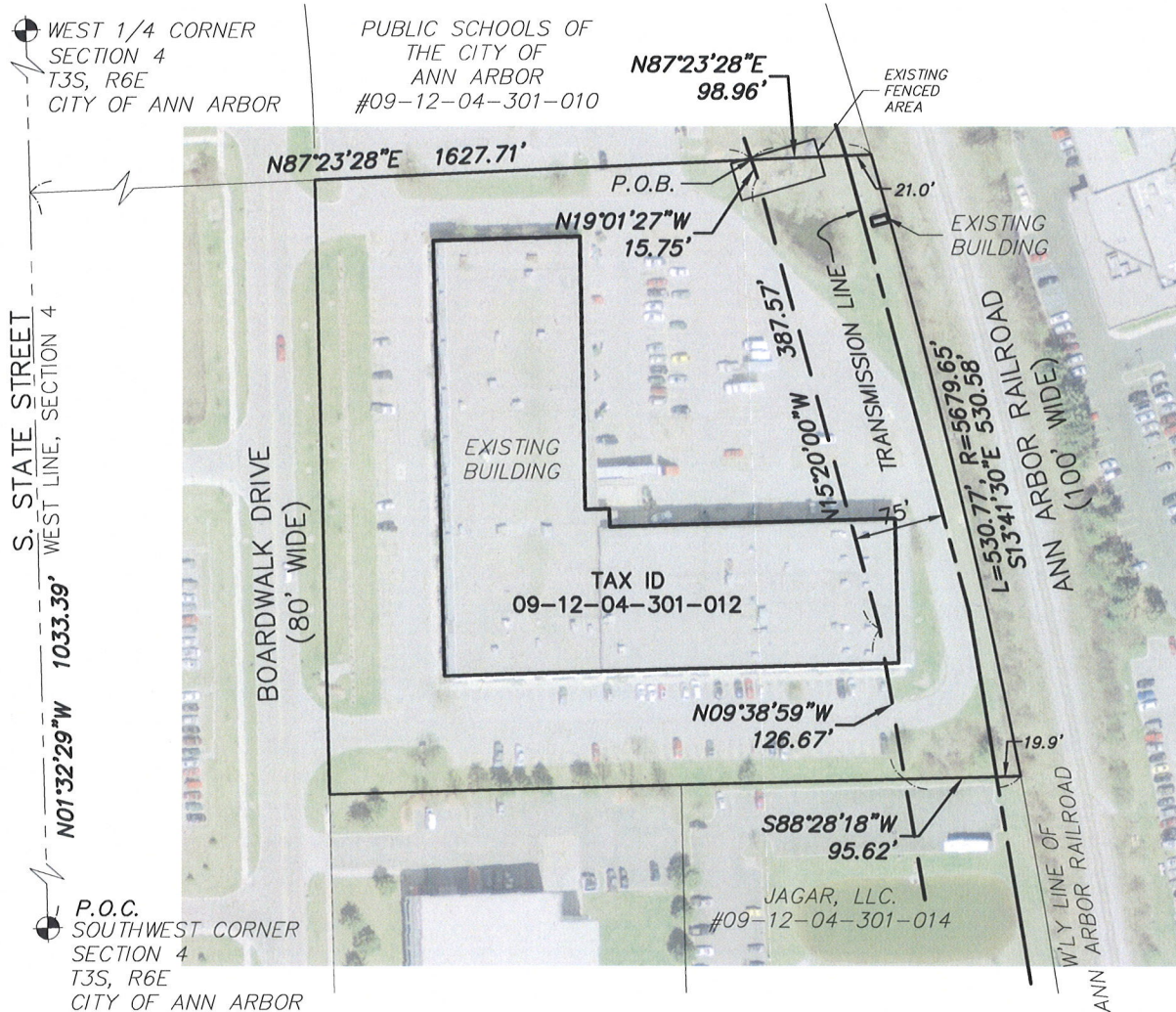
# EXHIBIT D



2875 Boardwalk Dr

Boardwalk Dr

**EXHIBIT A**  
**SITE 3235**  
**BOARDWALK COMMERCE PARK ASSOCIATES, LLC**

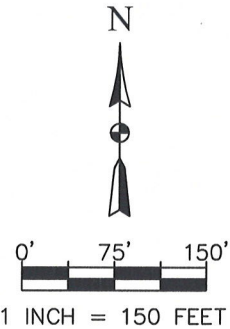


NOTE: THIS IS NOT A BOUNDARY SURVEY

DO NOT RECORD

**LEGEND**

- TRANSMISSION LINE
- EASEMENT AREA
- N 88° E** DESCRIBED EASEMENT – BEARINGS BASED ON MICHIGAN STATE PLANE COORDINATES, NAD83, SOUTH ZONE, INTERNATIONAL FOOT
- SECTION CORNER
- P.O.B.** POINT OF BEGINNING
- P.O.C.** POINT OF COMMENCEMENT



Easement area 49,880 Square Feet

	<p>800.525.6016 www.metroca.net</p>	CLIENT: INTERNATIONAL TRANSMISSION COMPANY	JOB: 1054-17-8089
		PROJECT: PIONEER – STATE	DATE: 8-31-2017
			REV.: 10-22-2017
			SHEET: 1 OF 1



# EXHIBIT E

# STATE TO PIONEER TRANSMISSION LINE ROUTE SURVEY

CITY OF ANN ARBOR & PITTSFIELD CHARTER TOWNSHIP, WASHTENAW COUNTY, MICHIGAN



REV.	DATE	ISSUED FOR
8	1-18-2018	ADDED ADDITIONAL UTILITIES
9	2-6-2018	ADDED ADDITIONAL EASEMENTS
10	2-13-2018	ADDED ADDITIONAL EASEMENTS
11	2-20-2018	CHANGES IN POLE/ALIGNMENT LOCATIONS
12	2-27-2018	CHANGES IN POLE/ALIGNMENT LOCATIONS
13	4-25-2018	ADDED TEMP CONSTRUCTION EASEMENTS
14	4-25-2018	UPDATED PARCEL INFORMATION
14	5-1-2018	UPDATED PARCEL INFORMATION

**METRO CONSULTING ASSOCIATES**  
 Relationships | Reputation | Results  
 800.525.6016 www.metroca.net

CLIENT NAME: ITC TRANSMISSION  
**STATE TO PIONEER TRANSMISSION LINE**  
 ROUTE SURVEY  
 CITY OF ANN ARBOR & PITTSFIELD CHARTER TOWNSHIP, WASHTENAW COUNTY, MICHIGAN

GRAPHIC SCALE

(24"x36" DRAWINGS ONLY)

MCA JOB #:	1054-17-6089
DATE:	6-20-2017
DRAWN BY:	NPA/TR/MT
CHECK BY:	TM/MT
PM:	MT
BOOK/CREW:	BC/JE
SECTION:	VARIES
TOWNSHIP:	3S
RANGE:	6E
COMMUNITY:	ANN ARBOR
COUNTY:	WASHTENAW
SHEET:	1

CONSTRUCTION SITE SAFETY IS THE RESPONSIBILITY OF THE CONTRACTOR. NEITHER THE OWNER NOR THE ENGINEER SHALL BE EXPECTED TO ASSUME ANY RESPONSIBILITY FOR SAFETY OF THE WORK, OF PERSONS ENGAGED IN THE WORK, OR OF ANY NEARBY STRUCTURES, OR OF ANY OTHER PERSONS.

THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.



**PRELIMINARY. SUBJECT TO  
FINAL ENGINEERING DESIGN**

# EXHIBIT F



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

INTERNATIONAL TRANSMISSION  
COMPANY, d/b/a ITC*Transmission*, a  
Michigan corporation,  
Plaintiff,

Civil Action 2018-001265-CC

Honorable Timothy P. Connors

vs.

Parcel No. SP-3235

BOARDWALK COMMERCE PARK  
ASSOCIATES LLC; BANK OF ANN ARBOR;  
DTE ELECTRIC COMPANY; CITY OF ANN  
ARBOR; PUBLIC SCHOOLS OF THE CITY  
OF ANN ARBOR; JAGAR, L.L.C.; W. W.  
GRAINGER, INC.; DEWITT CLINTON  
HOLBROOK, OR HIS UNKNOWN HEIRS,  
LEGATEES, DEVISEES, AND ASSIGNS;  
MARY SMITH, OR HER UNKNOWN HEIRS,  
LEGATEES, DEVISEES, AND ASSIGNS;  
THOMAS S. SANGFORD, OR HIS  
UNKNOWN HEIRS, LEGATEES, DEVISEES,  
AND ASSIGNS; KENNETH J. BETLEY;  
DEBRA ZAPINSKI-BETLEY; UNKNOWN  
TENANT(S); BALANCEPOINT FITNESS;  
PKSA ANN ARBOR, LLC; MILLCRAFT  
PAPER CO.; ARC DOCUMENT  
SOLUTIONS, LLC; GRACE ANN ARBOR  
CHURCH; TAVOLINA, LLC D/B/A  
TAVOLINA CATERING & EVENTS;  
MICRO-TECH ENDOSCOPY USA, INC.; A2  
AVIARY, LLC; KIN MOVEMENT, INC.;  
STONE ROBOT ENTERPRISES, LLC;  
INTELLIGENT EXERCISE, L.L.C.;  
CAYMAN SPORTS PRO LLC; URBAN  
ENERGY WORKS, LLC; BOARDWALK  
COMMUNITY CENTER, LLC; FRONTLINE  
CHURCH, ANN ARBOR; 242 COMMUNITY  
CHURCH; SAVCO HOSPITALITY INC;  
HONGXIA HE; THE COMMUNITY SCHOOL  
OF BALLET LLC; and OXFORD PROPERTY  
MANAGEMENT, LLC,

**STIPULATED ORDER WAIVING  
NECESSITY, CONFIRMING TITLE,  
TRANSFERRING POSSESSION,  
ORDERING PAYMENT OF JUST  
COMPENSATION, AND FOR OTHER  
RELIEF**

Defendants.

Washtenaw County  
Trial Court

MAR 07 2019

FILED

SP-3235

1

Time Submitted for Recording  
Date 3-19-2019 Time 10:20am  
Lawrence Kestenbaum  
Washtenaw County Clerk/Register

✓  
EX

Douglas J. Fryer (P51765)  
Stephen R. Estey (P53262)  
DYKEMA GOSSETT PLLC  
Attorneys for International Transmission  
Company, d/b/a ITC*Transmission*  
39577 Woodward Avenue, Suite 300  
Bloomfield Hills, MI 48304  
(248) 203-0700

Stephon B. Bagne (P54042)  
Clark Hill PLC  
Attorney for Defendant Boardwalk Commerce  
Park Associates LLC  
151 S. Old Woodward Ave., Ste. 200  
Birmingham, MI 48009  
(313) 965-8300

**STIPULATED ORDER WAIVING NECESSITY, CONFIRMING TITLE,  
TRANSFERRING POSSESSION, ORDERING PAYMENT OF JUST COMPENSATION,  
AND FOR OTHER RELIEF**

At a session of the Court, held in the  
County of Washtenaw, State of Michigan  
on 3-7-19.

PRESENT: THE HONORABLE Hon. Timothy P. Connors  
Circuit Court Judge

This matter is before the Court pursuant to the filing of a Complaint for Condemnation (“Complaint”) by Plaintiff International Transmission Company, d/b/a ITC*Transmission* (“ITC”), for the acquisition of certain easement rights related to property identified as Tax Parcel No. 09-12-04-301-012 (the “Property”); and the Court being fully advised in the premises:

WHEREAS, on December 7, 2018, ITC filed a Complaint against Defendant Boardwalk Commerce Park Associates LLC (“Owner”) and other defendants, seeking a Permanent Electric Transmission Line Easement;

WHEREAS, pursuant to MCL 213.55(5), ITC deposited certain funds in the amount of \$129,600 in escrow with eTitle Agency, Inc. (“Escrow Agent”), representing what ITC has alleged in the Complaint as the Estimated Just Compensation (“Escrow Funds” and/or “Estimated Just Compensation” or “EJC”) payable herein;

WHEREAS, none of the remaining Defendants in this matter filed a motion challenging necessity as required by MCL 213.56(1) and therefore, pursuant to MCL 213.57(1) and

applicable case law, the right for the Defendants in this action to file such a challenge was waived;

WHEREAS, ITC and the Owner have agreed to the following clarifications of the Permanent Electric Transmission Line Easement attached hereto as Exhibit 1 (the "Easement"). In the event of any conflict in language between this Order and Exhibit 1, the language of this Order shall control. Capitalized terms not defined in this Order shall have the meaning attributed to them in the Easement.

- A. Exhibit 2 hereto identifies the proposed location of Grantee's Facilities. The parties acknowledge that the location of Grantee's Facilities may change, for example, as a result of unknown conditions encountered in the field. The parties intend that the final location of Grantee's Facilities be known before the final determination of just compensation. Therefore, ITC shall provide notice of any deviations from Exhibit 2 as soon as reasonably possible. If appraisals have not been exchanged, the parties shall agree to extend the appraisal exchange date as reasonably necessary. If appraisals have already been exchanged, the parties shall agree to identify a date on which supplemental appraisals considering the revision to Exhibit 2 are exchanged.
- B. ITC and Owner agree that the Easement does not allow installation of an additional electric transmission line. For example, to "modify, upgrade, [or] improve" Grantee's Facilities does not allow replacement Grantee Facilities to be constructed while existing Grantee Facilities are operating, except that in the event of an emergency ITC may construct additional temporary poles as needed. The Easement does not authorize poles, towers, guy wires, anchors or other Grantee Facilities which would impede parking or access to buildings to be constructed in any area of

Grantor's Land improved with paved parking areas as of December 11, 2017, except temporary poles in case of emergency as described above.

- C. ITC and Owner agree that the Easement does not authorize ITC to enter any Structures.
- D. ITC and Owner agree that Structures as defined in the Easement include but are not limited to enclosures for dumpsters and unattached dumpsters within those enclosures.
- E. ITC and Owner acknowledge that the terms "restoration" and "replacement" in paragraph 1(c)(ii) of the Easement shall be construed to include "renovation" and that the processes described in paragraph 1(c)(ii) of the Easement need not be followed by Owner for any interior renovation.
- F. ITC shall provide at least 24 hours advance notice prior to construction on Owner's Land, subject to weather and conditions identified in the field.
- G. ITC shall not block any access entrances to the Property or access entrances to the buildings located on the Property at any time. In addition, ITC shall not block any fire lanes in a manner that violates municipal ordinances unless it first obtains permission from the City of Ann Arbor or the City of Ann Arbor Fire Department. The foregoing restrictions shall not apply in the event of an emergency.
- H. The 25 foot wide Access During Initial Construction temporary easements shall not be used for staging or parking of vehicles or equipment, but only for vehicular access to and from the Easement Area.
- I. ITC shall repair any damage done to parking lots actually caused by ITC's exercise of its rights under the Easement.

IT IS ORDERED AND ADJUDGED:

1. Title to those rights in the real property described in the Easement attached as Exhibit 1, is hereby confirmed to have vested with ITC on December 7, 2018, the date the Complaint was filed.

2. The above-mentioned clarifications of the Easement are hereby confirmed and incorporated herein.


3. Prior to March 20, 2019, and upon the receipt by ITC and the Escrow Agent of properly executed Form W-9(s) from the Owner, the Escrow Agent shall release the Escrow Funds and issue a check made payable to "Clark Hill Client IOLTA" in the amount of \$129,600, representing what ITC has alleged in the Complaint as the Estimated Just Compensation.

4. Physical possession of the property rights as set forth in the Easement is surrendered to ITC on March 20, 2019, unless possession is granted to ITC earlier in writing by the Owner.

5. The terms of this Order do not waive or limit the rights of the Owner to seek additional just compensation as provided in the Uniform Condemnation Procedures Act, MCL 213.51 *et seq.* ("UCPA").

6. Upon entry of this Order, ITC may record this Order with the Washtenaw County Register of Deeds.

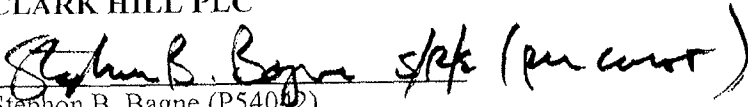
**THIS ORDER DOES NOT RESOLVE THE LAST PENDING CLAIM OR CLOSE THE CASE.**

  
\_\_\_\_\_  
Circuit Court Judge



APPROVED AS TO FORM AND SUBSTANCE:

CLARK HILL PLC

  
\_\_\_\_\_  
Stephon B. Bagne (P54062)  
Attorneys for Defendant Boardwalk Commerce  
Park Associates LLC

DYKEMA GOSSETT PLLC


  
\_\_\_\_\_  
Douglas J. Fryer (P51765)  
Stephen R. Estey (P53262)  
Attorneys for International Transmission  
Company, d/b/a ITC*Transmission*

EXHIBIT 1 TO STIPULATED ORDER WAIVING NECESSITY, CONFIRMING TITLE,  
TRANSFERRING POSSESSION, ORDERING PAYMENT OF JUST COMPENSATION,  
AND FOR OTHER RELIEF

**PERMANENT ELECTRIC TRANSMISSION LINE EASEMENT AGREEMENT**

This Permanent Electric Transmission Line Easement Agreement (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, with an address of \_\_\_\_\_ ("Grantor") and INTERNATIONAL TRANSMISSION COMPANY, a Michigan corporation, with an address of 27175 Energy Way, Novi, Michigan 48377, and its successors and assigns ("Grantee").

WHEREAS, Grantor is the owner of certain real property more particularly described on the attached Exhibit "A" as the "Property".

WHEREAS, Grantee requires a perpetual easement upon, under, across and through an Easement Area located on the Property as more particularly described and depicted on Exhibit "A" (the "Easement Area"), upon the terms and conditions stated below.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor and Grantee hereby agree as follows:

1. **Grant of the Easement.** Grantor hereby conveys and grants to Grantee, its successors and assigns, a perpetual easement (the "Easement") over, under, across and through the Easement Area on the Property with the right, privilege and authority for Grantee, its agents, employees, and contractors, to:

(a) construct, reconstruct, modify, upgrade, improve, maintain, operate, inspect, replace, repair, patrol and remove one (1) double circuit electric transmission line and affiliated Telecommunications Line or Lines (as defined in paragraph 5 below) consisting of poles, towers, crossarms, insulators, wires, guy wires, anchors and other necessary fixtures, structures, cables (including fiber optic cable related to the Telecommunications Line or Lines), and equipment for transmitting electricity and communications relating to same ("Grantee's Facilities"); and

(b) temporarily improve the surface of the Easement Area as reasonably necessary to place and operate Grantee's construction vehicles and equipment; and

(e) prohibit and/or remove, at Grantee's sole discretion, any buildings or other above-ground structures (collectively referred to as "Structures") that are constructed or erected within the Easement Area after December 11, 2017 ("Prohibited Structures"). Grantee may remove such Prohibited Structures from the Easement Area without prior notice and without responsibility for any damage that occurs as a result of such removal.

- (i) This paragraph is not intended to apply, nor does it apply, to any Structure that existed within the Easement Area as of December 11, 2017 ("Permitted Structure"), except that for any fence that existed in the Easement Area as of December 11, 2017 Grantee may: (1) install and maintain a gating system, of Grantee's choice, in order to obtain access through the fence to the Easement Area for the purposes provided for herein; and (2) cause such fence to be removed as Grantee deems necessary provided that Grantee restores such fence to substantially the same condition as existed prior to removal.
- (ii) This Easement is not intended to prohibit, nor does it prohibit Grantor's restoration, replacement or reconstruction of any Permitted Structure (any subsequent restored, replacement or reconstructed structure referred to herein as "Replacement Structure") in the event that such a Permitted Structure is damaged or destroyed, so long as any Replacement Structure meets the following terms and conditions: (1) the Replacement Structure is located in the same footprint as the damaged or destroyed Permitted Structure; (2) the Replacement Structure does not exceed the maximum height of the damaged or destroyed Permitted Structure; and (3) the Replacement Structure is built with the same general materials as utilized in the damaged or destroyed Permitted Structure.
- (iii) If Grantor proposes to construct or erect a Replacement Structure that fails to meet any of the terms and conditions set forth in 1(c)(ii) or any other Prohibited Structure, a proposed construction plan may be submitted to Grantee for its review and a determination as to whether the proposed Replacement Structure or Prohibited Structure would interfere with the safe and reliable operation or maintenance of Grantee's Facilities within the Easement Area. Grantee's approval of a proposed Replacement Structure or Prohibited Structure under these circumstances will not be unreasonably withheld; and

(d) locate Grantee's poles and/or towers within the Easement Area; provided, however, that such poles and/or towers shall be located as near as possible to the transmission line depicted on Exhibit A; and

(e) at any time to cut, trim, remove, destroy or otherwise control any or all trees, bushes, or brush now or hereafter standing or growing upon or within the Easement Area, all at Grantee's sole and absolute discretion; and

(f) enter upon and cross the Easement Area for the above described purposes on other land(s).

2. **Ingress and Egress.** Grantor grants to Grantee ingress and egress to the Easement Area on, over and across the Property. Grantor shall work in good faith with Grantee to determine access points that are acceptable to both parties. Grantee's right to ingress and egress during the initial construction of the transmission line shall be limited insofar as all access to the Easement Area during the initial construction shall be restricted to the area identified on Exhibit B as "Access During Initial Construction," or to an alternative access point that is mutually agreeable to both parties.

3. **Repair and Restoration.** Grantee shall:

(a) re-grade, repair and restore, at Grantee's sole expense, as nearly as possible to its former condition, any portions of the Easement Area or Property owned by Grantor damaged by Grantee in the exercise of any of Grantee's rights under this Agreement; and

(b) repair or replace, at Grantee's sole expense, any actual damage located within the Easement Area or Property, caused by the exercise of any of Grantee's rights under this Agreement. Notwithstanding the foregoing, at no time shall Grantee be responsible for any damage to the extent that such damage results from Grantor's negligence. Upon reasonable notice to Grantee that damage has been sustained, the parties shall work cooperatively to identify the damage and to determine the scope of repair or replacement work.

4. **Binding/Run With The Land.** This conveyance shall be permanent, shall run with the land, and shall be binding upon the parties' successors and assigns.

5. **Telecommunications Line or Lines.** For purposes of this Agreement, the term "Telecommunications Line or Lines" shall be defined as Grantee's internal telecommunications line or lines (and not the telecommunications line of a third party telecommunications provider).

6. **Limited Use/Non-Use.** Limited use or non-use of the rights granted herein shall not prevent later use to the full extent herein conveyed.

This Easement is exempt from real estate transfer tax pursuant to MCLA 207.505(f) and from State real estate transfer tax pursuant to the provisions of MCLA 207.526(f).

[SIGNATURE(S) ON NEXT PAGE]

**GRANTOR:**

\_\_\_\_\_

Acknowledged before me in \_\_\_\_\_ County, State of Michigan, on this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_  
\_\_\_\_\_, County, \_\_\_\_\_  
Acting in \_\_\_\_\_ County, \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

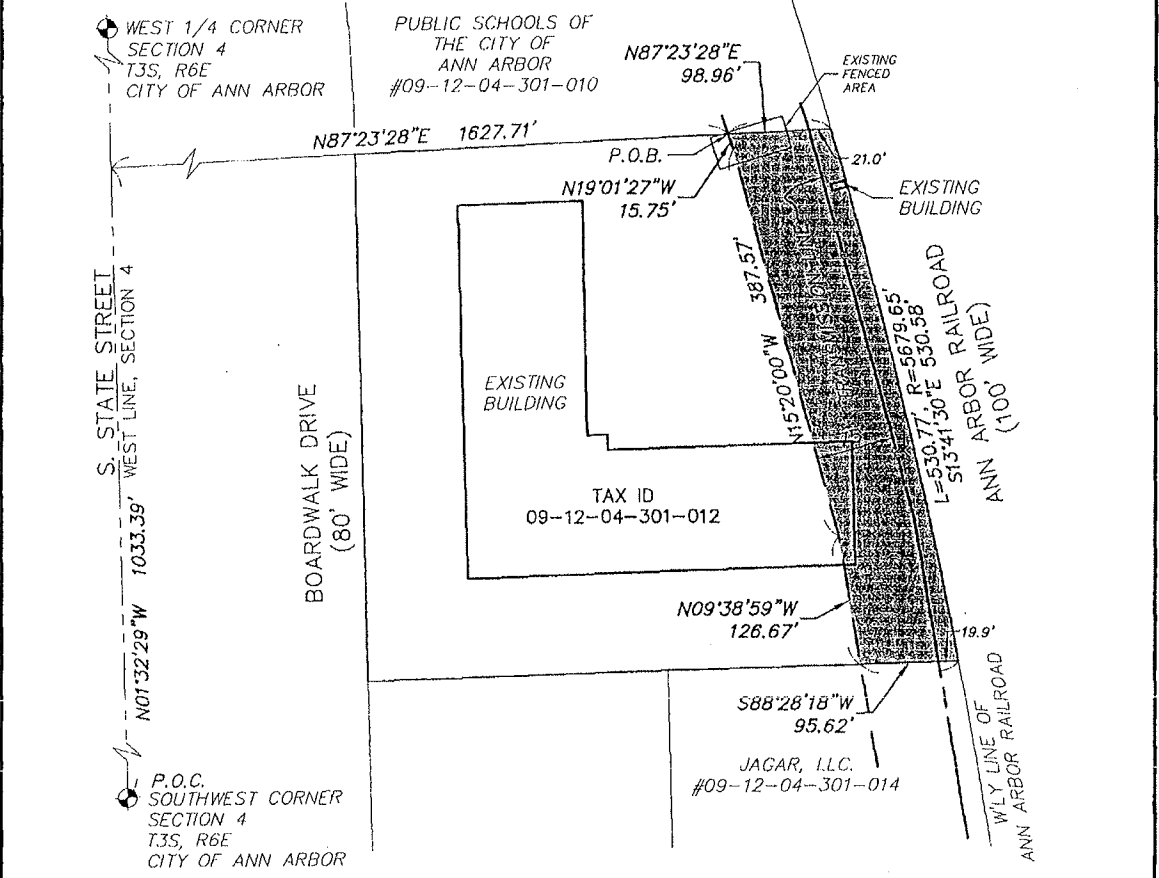
Drafted by:

When recorded return to:

EXHIBIT "A"





SURVEY DRAWING AND LEGAL DESCRIPTIONS

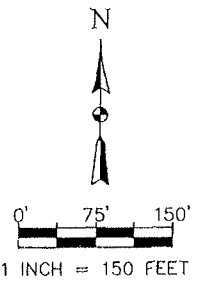
**EXHIBIT A**  
**SITE 3235**  
**BOARDWALK COMMERCE PARK ASSOCIATES, LLC**





NOTE: THIS IS NOT A BOUNDARY SURVEY

**LEGEND**

-  TRANSMISSION LINE
-  EASEMENT AREA
- N 88° E DESCRIBED EASEMENT - BEARINGS BASED ON MICHIGAN STATE PLANE COORDINATES, NAD83, SOUTH ZONE, INTERNATIONAL FOOT SECTION CORNER
-  P.O.B. POINT OF BEGINNING
-  P.O.C. POINT OF COMMENCEMENT



Easement area 49,880 Square Feet

	 800.525.6016 www.metroca.net	CLIENT: INTERNATIONAL TRANSMISSION COMPANY	JOB: 1054-17-8089
		PROJECT: PIONEER - STATE	DATE: 8-31-2017
		REV.: 10-22-2017	SHEET: 1 OF 2



PROPERTY

(PER WARRANTY DEED, LIBER 5137, PAGE 568, PARCEL 1)



GRANTOR'S LAND IS LOCATED WITHIN THE CITY OF ANN ARBOR, SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, COUNTY OF WASHTENAW, STATE OF MICHIGAN.

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN; THENCE NORTH 87 DEGREES 09 MINUTES 00 SECONDS EAST 1904.44 FEET ALONG THE SOUTH LINE OF SAID SECTION TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF THE ANN ARBOR RAILROAD; THENCE NORTH 08 DEGREES 20 MINUTES 00 SECONDS WEST 220.94 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE 298.12 FEET ALONG THE ARC OF A 5679.97 FOOT RADIUS CIRCULAR CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 03 DEGREES 00 MINUTES 26 SECONDS, HAVING A CHORD WHICH BEARS NORTH 09 DEGREES 50 MINUTES 13 SECONDS WEST 298.08 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88 DEGREES 07 MINUTES 00 SECONDS WEST 571.22 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF BOARDWALK DRIVE; THENCE NORTH 01 DEGREES 53 MINUTES 00 SECONDS WEST 510.00 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE NORTH 87 DEGREES 01 MINUTES 00 SECONDS EAST 459.75 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF THE ANN ARBOR RAILROAD; THENCE ALONG SAID RIGHT-OF-WAY LINE 530.88 FEET ALONG THE ARC OF A 5679.97 FOOT RADIUS CIRCULAR CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 05 DEGREES 21 MINUTES 20 SECONDS, HAVING A CHORD WHICH BEARS SOUTH 14 DEGREES 01 MINUTES 05 SECONDS EAST 530.68 FEET TO THE POINT OF BEGINNING. BEING A PART OF THE SOUTHWEST 1/4 OF SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN.

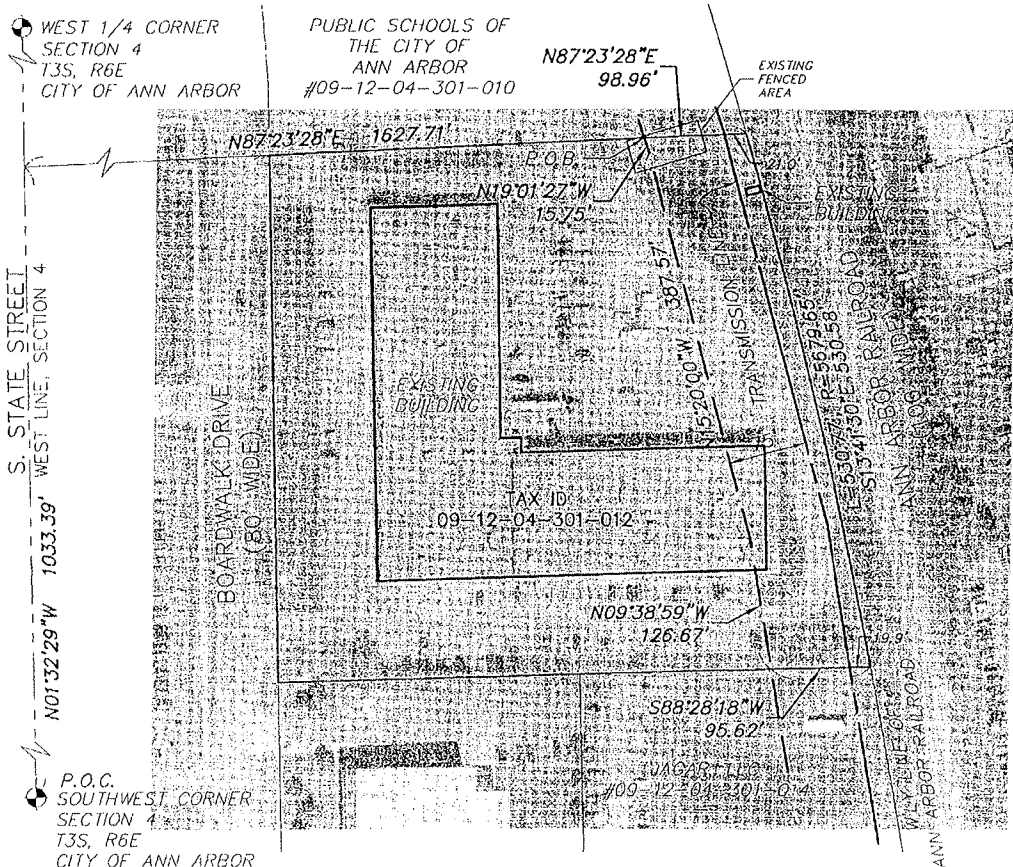
COMMONLY KNOWN AS: 2875 BOARDWALK DRIVE  
TAX ID: 09-12-04-301-012

EASEMENT AREA

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN; THENCE N01°32'29"W 1033.39 FEET ALONG THE WEST LINE OF SAID SECTION 4; THENCE N87°23'28"E 1627.71 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N87°23'28"E 98.96 FEET; THENCE 530.77 FEET ALONG THE ARC OF A 5679.65 FOOT RADIUS NON-TANGENTIAL CIRCULAR CURVE TO THE RIGHT, HAVING A CHORD WHICH BEARS S13°41'30"E 530.58 FEET ALONG THE WESTERLY LINE OF THE ANN ARBOR RAILROAD (100 FEET WIDE); THENCE SOUTH 88°28'18"W 95.62 FEET; THENCE N09°38'59"W 126.67 FEET; THENCE N15°20'00"W 387.57 FEET; THENCE N19°01'27"W 15.75 FEET TO THE POINT OF BEGINNING.

	 800.525.6016 <a href="http://www.metroca.net">www.metroca.net</a>	CLIENT:	JOB: 1054-17-8089
		INTERNATIONAL TRANSMISSION COMPANY	DATE: 8-31-2017
		PROJECT:	REV.: 10-22-2017
		PIONEER - STATE	SHEET: 2 OF 2

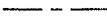

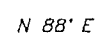

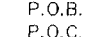
**EXHIBIT A**  
**SITE 3235**  
**BOARDWALK COMMERCE PARK ASSOCIATES, LLC**

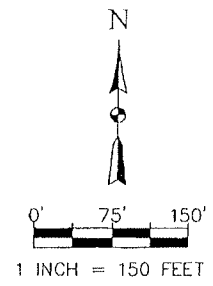


NOTE: THIS IS NOT A BOUNDARY SURVEY

DO NOT RECORD

**LEGEND**

-  TRANSMISSION LINE
-  EASEMENT AREA
-  DESCRIBED EASEMENT - BEARINGS BASED ON MICHIGAN STATE PLANE COORDINATES, NAD83, SOUTH ZONE, INTERNATIONAL FOOT SECTION CORNER
-  P.O.B. POINT OF BEGINNING
-  P.O.C. POINT OF COMMENCEMENT



Easement area 49,880 Square Feet



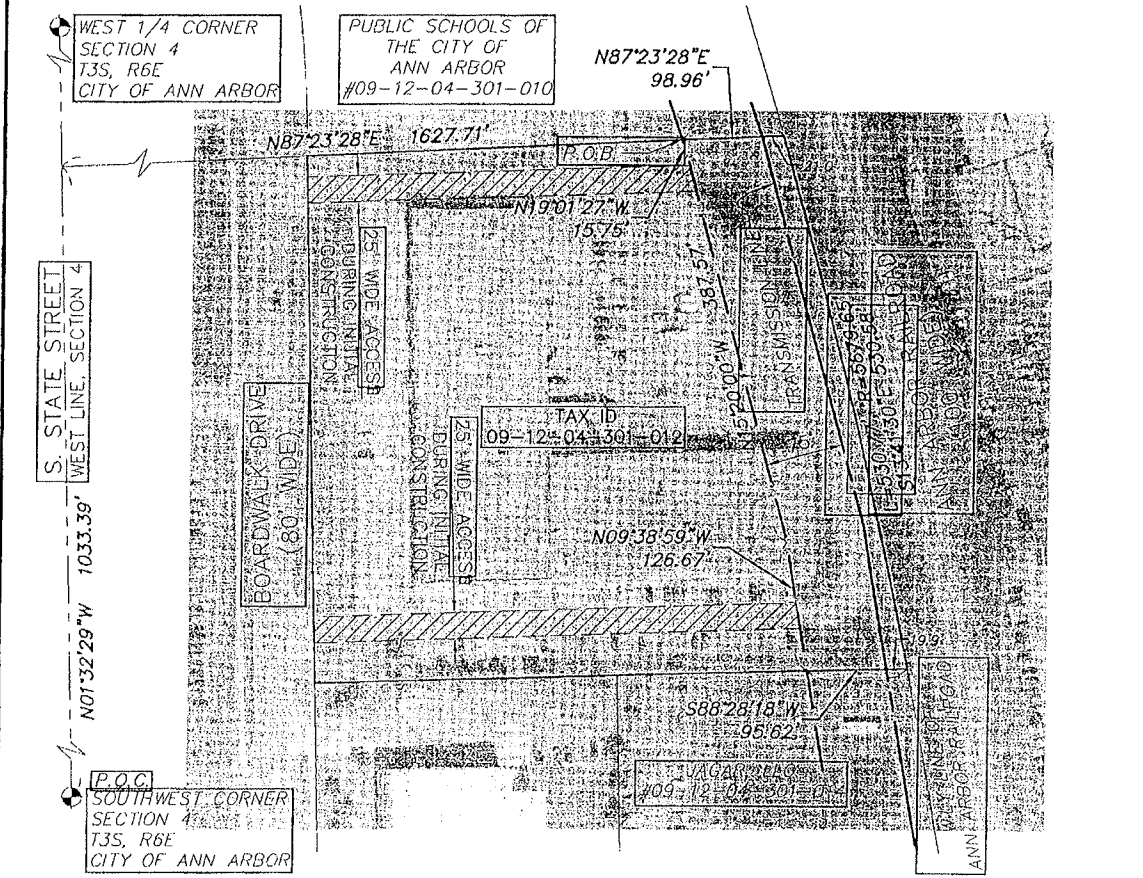
	 800.525.6016 www.metroca.net	CLIENT: INTERNATIONAL TRANSMISSION COMPANY	JOB: 1054-17-8089
		PROJECT: PIONEER - STATE	DATE: 8-31-2017
		REV.: 10-22-2017	SHEET: 1 OF 1

EXHIBIT "B"

ACCESS DURING INITIAL CONSTRUCTION

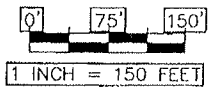
**EXHIBIT B**  
**SITE 3235**  
**BOARDWALK COMMERCE PARK ASSOCIATES, LLC**



NOTE: THIS IS NOT A BOUNDARY SURVEY

**LEGEND**

- TRANSMISSION LINE
- EASEMENT AREA
- $N 88^{\circ} E$  DESCRIBED EASEMENT - BEARINGS BASED ON MICHIGAN STATE PLANE COORDINATES, NAD83, SOUTH ZONE, INTERNATIONAL FOOT SECTION CORNER
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

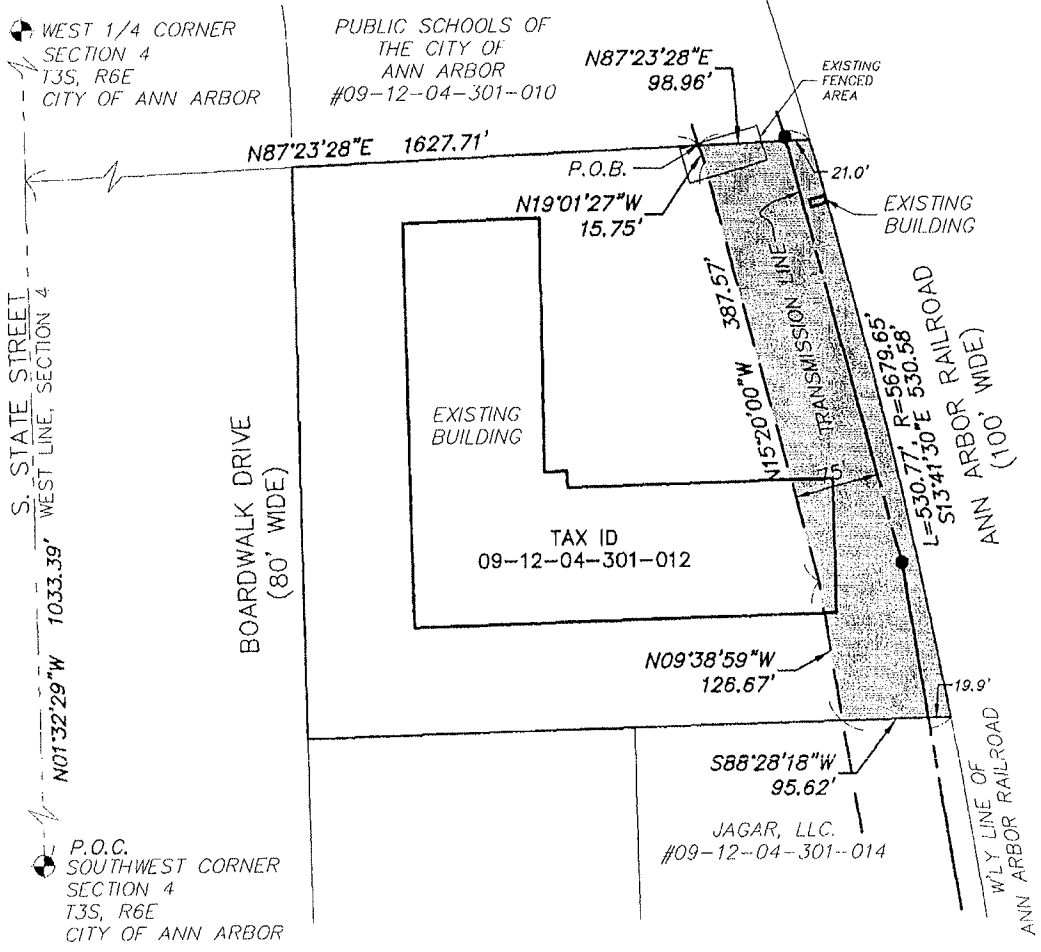


Easement area **49,880** Square Feet  
 Temporary Construction Access Easement area **20,970** Square Feet

	<p>800.525.6016 www.metroca.net</p>	CLIENT: INTERNATIONAL TRANSMISSION COMPANY	JOB: 1054-17-8089
		PROJECT: PIONEER - STATE	DATE: 1-22-2018 REV: 9-26-2018 SHEET: 1 OF 1

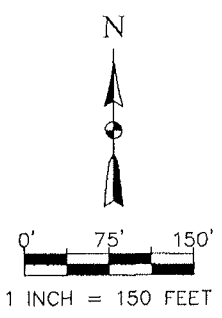
EXHIBIT 2 TO STIPULATED ORDER WAIVING NECESSITY, CONFIRMING TITLE,  
TRANSFERRING POSSESSION, ORDERING PAYMENT OF JUST COMPENSATION,  
AND FOR OTHER RELIEF

**EXHIBIT A**  
**SITE 3235**  
**BOARDWALK COMMERCE PARK ASSOCIATES, LLC**



NOTE: THIS IS NOT A BOUNDARY SURVEY

- LEGEND**
- TRANSMISSION LINE
  - EASEMENT AREA
  - N 88° E* DESCRIBED EASEMENT - BEARINGS BASED ON MICHIGAN STATE PLANE COORDINATES, NAD83, SOUTH ZONE, INTERNATIONAL FOOT
  - SECTION CORNER
  - P.O.B. POINT OF BEGINNING
  - P.O.C. POINT OF COMMENCEMENT
  - APPROXIMATE LOCATION OF TRANSMISSION LINE POLES - SUBJECT TO FINAL ENGINEERING



Easement area 49,880 Square Feet

	<p>800.525.6016 www.metroca.net</p>	CLIENT: INTERNATIONAL TRANSMISSION COMPANY	JOB: 1054-17-8089
		PROJECT: PIONEER - STATE	DATE: 8-31-2017
			REV.: 12-18-2018
			SHEET: 1 OF 2

**PROPERTY**

(PER WARRANTY DEED, LIBER 5137, PAGE 568, PARCEL 1)



GRANTOR'S LAND IS LOCATED WITHIN THE CITY OF ANN ARBOR, SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, COUNTY OF WASHTENAW, STATE OF MICHIGAN.

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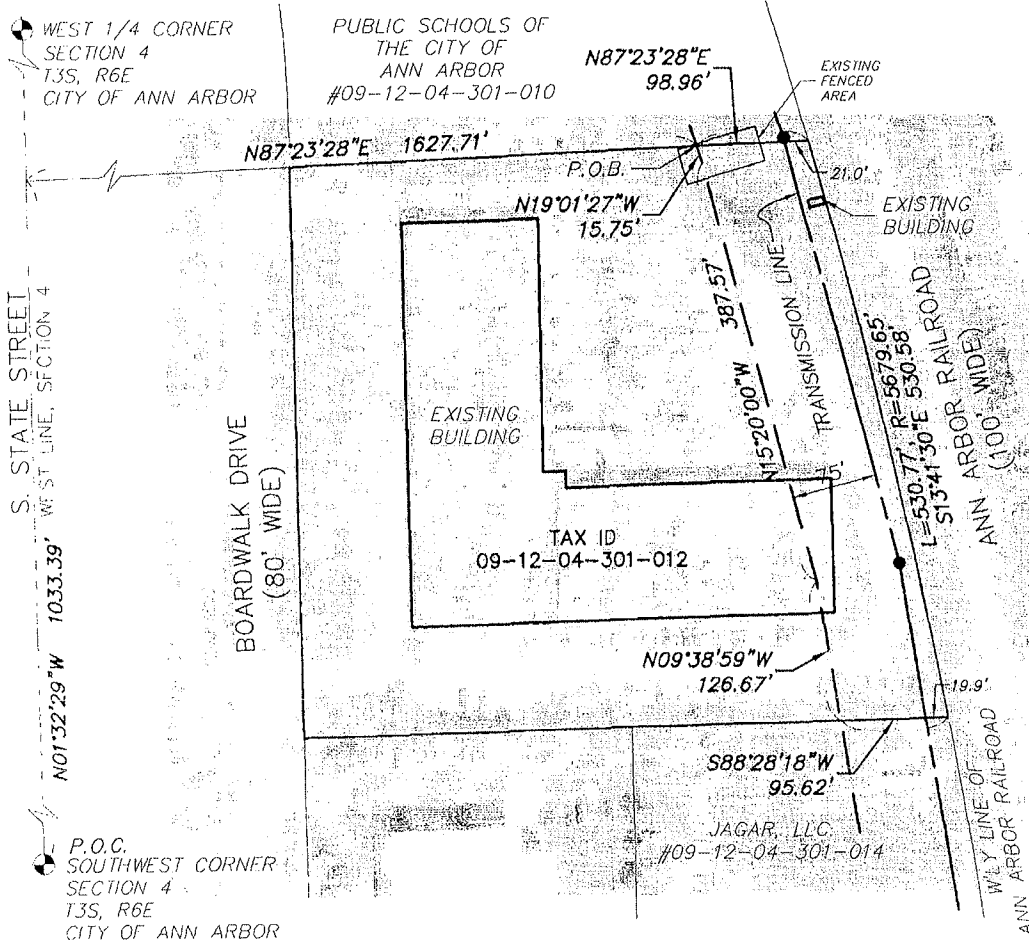
COMMONLY KNOWN AS: 2875 BOARDWALK DRIVE  
TAX ID: 09-12-04-301-012

**EASEMENT AREA**

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 4, TOWN 3 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN; THENCE N01°32'29"W 1033.39 FEET ALONG THE WEST LINE OF SAID SECTION 4; THENCE N87°23'28"E 1627.71 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUING N87°23'28"E 98.96 FEET; THENCE 530.77 FEET ALONG THE ARC OF A 5679.65 FOOT RADIUS NON-TANGENTIAL CIRCULAR CURVE TO THE RIGHT, HAVING A CHORD WHICH BEARS S13°41'30"E 530.58 FEET ALONG THE WESTERLY LINE OF THE ANN ARBOR RAILROAD (100 FEET WIDE); THENCE SOUTH 88°28'18"W 95.62 FEET; THENCE N09°38'59"W 126.67 FEET; THENCE N15°20'00"W 387.57 FEET; THENCE N19°01'27"W 15.75 FEET TO THE POINT OF BEGINNING.

	 800.525.6016 www.metroca.net	CLIENT:	JOB: 1054-17-8089
		INTERNATIONAL TRANSMISSION COMPANY	DATE: 8-31-2017
		PROJECT:	REV.: 12-18-2018
		PIONEER - STATE	SHEET: 2 OF 2

**EXHIBIT A**  
**SITE 3235**  
**BOARDWALK COMMERCE PARK ASSOCIATES, LLC**



NOTE: THIS IS NOT A BOUNDARY SURVEY

DO NOT RECORD

**LEGEND**

- TRANSMISSION LINE
- EASEMENT AREA
- N 88° E DESCRIBED EASEMENT - BEARINGS BASED ON MICHIGAN STATE PLANE COORDINATES, NAD83, SOUTH ZONE, INTERNATIONAL FOOT SECTION CORNER
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- APPROXIMATE LOCATION OF TRANSMISSION LINE POLES - SUBJECT TO FINAL ENGINEERING

N

WASHTENAW COUNTY REGISTER AS AN EASEMENT = 150 FEET OF THE RECORD AT ANN ARBOR MICHIGAN Easement area 49,880 Square Feet

	<p>800.525.6016 www.metroca.net</p>	CLIENT: INTERNATIONAL TRANSMISSION COMPANY	JOB: 1054-17-8089
		PROJECT: PIONEER - STATE	DATE: 8-31-2017
		VALID ONLY WITH RECORD OF THE RECORD AT ANN ARBOR MICHIGAN	REV.: 12-18-2018
		CERTIFIED BY	SHEET: 1 OF 1

*Lauren Kaplan*



# EXHIBIT G

THE UNIFORM CONDEMNATION PROCEDURES ACT (EXCERPT)

Act 87 of 1980

**213.54 Payment of just compensation for property if practical value or utility of remainder destroyed; zoning variance; entry upon property; purpose; notice; restitution for actual damages; "actual damage" defined; civil action for order permitting entry; contents of complaint; granting limited license for entry; terms; manner of entry under subsection (3); "environmental inspection" defined.**

Sec. 4. (1) If the acquisition of a portion of a parcel of property actually needed by an agency would destroy the practical value or utility of the remainder of that parcel, the agency shall pay just compensation for the whole parcel. The agency may elect whether to receive title and possession of the remainder of the parcel. The question as to whether the practical value or utility of the remainder of the parcel of property is in fact destroyed shall be determined by the court or jury and incorporated in its verdict.

(2) If the acquisition of a portion of a parcel of property actually needed by an agency would leave the remainder of the parcel in nonconformity with a zoning ordinance, the agency, before or after acquisition, may apply for a zoning variance for the remainder of the parcel. In determining whether to grant the zoning variance, the governmental entity having jurisdiction to grant the variance shall consider the potential benefits of the public use for which the property would be acquired, in addition to those criteria applicable under the relevant zoning statute, ordinance, or regulation. The agency must actually acquire the portion of the parcel of property for the proposed public use for the zoning variance to become effective for the remainder. If a variance is granted under this subsection, the property shall be considered by the governmental entity to be in conformity with the zoning ordinance for all future uses with respect to the nonconformity for which that variance was granted. However, if the property was also nonconforming for other reasons, the grant of that variance has no effect on the status of those other preexisting nonconformities. An owner shall not increase the nonconformity for which a variance is granted under this section without the consent of the governmental entity. An agency has the same right to appeal action on a zoning variance as would a property owner seeking a zoning variance. This section does not deprive a governmental entity of its discretion to grant or deny a variance.

(3) An agency or an agent or employee of an agency may enter upon property before filing an action for the purpose of making surveys, measurements, examinations, tests, soundings, and borings; taking photographs or samplings; appraising the property; conducting an environmental inspection; conducting archaeological studies pursuant to section 106 of title I of the national historic preservation act, Public Law 89-665, 16 U.S.C. 470f; or determining whether the property is suitable to take for public purposes. The entry may be made upon reasonable notice to the owner and at reasonable hours. An entry made pursuant to this subsection shall not be construed as a taking. The owner or his or her representative shall be given a reasonable opportunity to accompany the agency's agent or employee during the entry upon the property. The agency shall make restitution for actual damage resulting from the entry, which may be recovered by special motion before the court or by separate action if an action for condemnation has not been filed. The term "actual damage" as used in this subsection does not include, and an agency shall not make restitution for, response activity, as defined in section 20101 of part 201 (environmental remediation) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.20101 of the Michigan Compiled Laws, or diminution in the value or utility of a parcel that is caused by the discovery of information as the result of a survey, an appraisal, a measurement, photography, or an environmental inspection made pursuant to this section.

(4) If reasonable efforts to enter under subsection (3) have been obstructed or denied, the agency may commence a civil action in the circuit court in the county in which the property or any part of the property is located for an order permitting entry. The complaint shall state the facts making the entry necessary, the date on which entry is sought, and the duration and the method proposed for protecting the defendant against damage. The court may grant a limited license for entry upon such terms as justice and equity require, including the following:

- (a) A description of the purpose of the entry.
- (b) The scope of activities that are permitted.
- (c) The terms and conditions of the entry with respect to the time, place, and manner of the entry.

(5) An entry made under subsection (3) or (4) shall be made in a manner that minimizes any damage to the property and any hardship, burden, or damage to a person in lawful possession of the property.

(6) As used in this section, "environmental inspection" means the testing or inspection including the taking of samples of the soil, groundwater, structures, or other materials or substances in, on, or under the property for the purpose of determining whether chemical, bacteriological, radioactive, or other environmental

contamination exists and, if it exists, the nature and extent of the contamination.

**History:** 1980, Act 87, Imd. Eff. Apr. 8, 1980;—Am. 1988, Act 189, Eff. July 1, 1988;—Am. 1996, Act 58, Imd. Eff. Feb. 26, 1996;—Am. 1996, Act 474, Imd. Eff. Dec. 26, 1996.

# EXHIBIT H

# BOARDWALK DRIVE

BOARDWALK DRIVE (80 FT. WD.)

(80 FEET WIDE)

**SITE NO. 3235**  
BOARDWALK COMMERCE PARK  
ASSOCIATES, LLC  
2875 BOARDWALK DRIVE  
ANN ARBOR, MI 48104  
09-12-04-301-012  
WARRANTY DEED  
L.5137 PG.568

PROPOSED WAREHOUSE

