

MEMORANDUM OF AGREEMENT
Between the Surface Transportation Board and the
Ohio Historic Preservation Office Under 36 CFR 800
Regarding the Abandonment of Railroad (STB Docket No. AB-227 (Sub-No. 9X))
In Harrison and Jefferson Counties, Ohio

WHEREAS, on July 1, 1999, the Wheeling & Lake Erie Railway Company (W&LE) filed with the Surface Transportation Board (STB) a petition under 49 U.S.C. 10502 for an exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 18 miles of railroad known as the Valley Line located in Harrison and Jefferson Counties, Ohio; and,

WHEREAS, by decision served October 19, 1999, the STB granted W&LE's petition subject to certain conditions, including that W&LE retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; and,

WHEREAS, the proposed abandonment will involve the removal of tracks and the cessation of use of the Long Run Tunnel and the Adena Tunnel, and will change the setting for the Dillonvale Depot all of which are 50 years old or older (please refer to Attachment A: Project Map Showing Properties with Standard Mile Post Measurements); and,

WHEREAS, the STB has determined, in consultation with W&LE and the Ohio Historic Preservation Office (OHPO), that the abandonment, removal of tracks, and cessation of use may have an adverse effect on properties meeting the criteria for National Register of Historic Places eligibility, specifically the Long Run Tunnel, the Adena Tunnel, and the Dillonvale Depot; and,

WHEREAS, on February 11, 2002, pursuant to 36 CFR 800.6(a)(1) and 36 CFR 800.11(e), the STB notified the Advisory Council on Historic Preservation of its determination that the proposed abandonment may adversely affect historic properties; and,

WHEREAS, the STB has consulted with OHPO in accordance with 36 CFR Part 800; and,

WHEREAS, the STB has invited W&LE to participate in the consultation for this undertaking; and,

WHEREAS, the consulting parties agree to the following stipulations and conditions in order to mitigate impacts to the Long Run Tunnel, the Adena Tunnel, and the Dillonvale Depot in carrying out the undertaking; and,

WHEREAS, to the best of the parties' knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony, as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered; and,

WHEREAS, W&LE has made a good faith effort to locate original architectural plans and dates of construction for the Long Run Tunnel, the Adena Tunnel, and the Dillonvale Depot, but no architectural plans or actual construction dates have been located;

NOW, THEREFORE, the STB, with the assistance of W&LE shall ensure that the following stipulations, terms and conditions will be implemented in a timely manner and with adequate resources in compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470).

I. STIPULATIONS

A. Recordation:

1. The STB shall ensure that recordation on Ohio Historic Inventory Forms with continuation sheets, commensurate with HABS/HAER Level II as supplemented or modified herein, of the Long Run Tunnel, the Adena Tunnel, and the Dillonvale Depot are carried out by W&LE prior to the abandonment and removal of tracks.
2. The recordation will include measurements of the size of the two tunnels and the depot building in accordance with the requirements of the Ohio Historic Inventory Form. This recording is at a level of a site plan, and not at the level of HABS Level I measured drawings.
3. The photographic documentation will include both archivally stable black and white prints and color prints, prepared and mounted on suitable card stock, without adhesive, and with labels. Digital images may not be substituted for either the black and white prints or the color prints, but may be included to augment the documentation. The photographs are to be based on 35 mm negatives.
4. The photographic documentation is to be agreed upon in prior consultation with the Ohio Historic Preservation Office and is to include at least 10 photographs of each of the two tunnels, and 10 photographs of the depot.
5. W&LE will ensure that the photographs are keyed to mapping and that they accurately show the conditions in and around the properties and that they accurately show any significant construction details, especially names and dates on the portals to the tunnels.
6. To the extent feasible and safe, W&LE will include interior photographs of the tunnels and depot.
7. W&LE will provide the approximate dates of construction of the tunnels and depot on the Ohio Historic Inventory Forms.
8. The STB's Section of Environmental Analysis, with the assistance of National Archives research personnel, will conduct an in-person search of records of the National

Archives, which include the valuation schedules of the former Interstate Commerce Commission, for any information on the tunnels and depot, and will provide a written report of the results of the search to W&LE and OHPO.

9. W&LE will provide original copies of the documentation to OHPO for review and approval prior to the abandonment and removal of the tracks. The documentation will be submitted to OHPO as a complete packet for review and approval. OHPO will have 60 days to review and comment on the completed documentation packet, but will make a good faith effort to complete its review sooner, if possible.

B. Additional Documentation:

1. After approval by OHPO, W&LE will provide original copies of the documentation above, including selected photographs, to the public libraries in Adena, Dillonvale, Cadiz and Steubenville.

C. Barricading of the Tunnels After Abandonment:

1. Should W&LE decide to fence or barricade the tunnel entrances after abandonment, W&LE will, to the extent feasible, construct any fencing or barriers to the tunnels without attaching to the architectural elements of the portals, tunnel entrances, or tunnel interior. If any attachments are required, W&LE will consult with OHPO to consider alternate designs to reduce or minimize impacts to the architectural elements. W&LE will offer OHPO an opportunity to comment on plans to construct fencing or barriers at the tunnels.

D. Discovery:

If any previously unidentified historic properties should be discovered, or if unanticipated effects to known historic properties should occur, W&LE shall immediately cease work in the immediate area and notify OHPO. With the review and approval of OHPO, W&LE will develop a plan in consultation with the STB to complete the proposed project while seeking to avoid, minimize, or mitigate the effects to the historic property.

II. Modification, Amendment, or Termination of the Agreement:

E. Amendments:

Modification, amendment, or termination of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement. Any party to this agreement may propose to the other parties that it be amended. If any party to this agreement determines that the terms cannot be met or believes a modification is necessary, that party will promptly request consideration of an amendment. If the parties agree, then an amendment will be executed in the same manner as the original agreement.

F. Dispute Resolution:

Should OHPO, or W&LE, or any other consulting party object to any aspect of this agreement's implementation, the STB shall attempt to resolve the dispute by consulting with the objecting party and other consulting parties, as appropriate. If the STB is unable to resolve the dispute, then the STB shall seek comments from the Advisory Council on Historic Preservation in accordance with 36 CFR 800.7(a). The responsibility of the STB to carry out all actions under this agreement that are not subject to dispute will remain unchanged. The STB will take into account the comments of the Advisory Council on Historic Preservation in reaching a final decision on the dispute as described in 36 CFR 800.7(c). If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of the Advisory Council on Historic Preservation to assist in resolving the dispute.

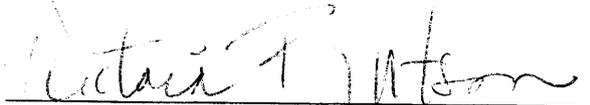
G. Duration:

If the proposed undertaking has not been implemented within five (5) years of the execution of this agreement, then the agreement shall be null and void, unless the signatories agree in writing to an extension for carrying out its terms.

The scope of this agreement is limited to this abandonment proceeding. Execution of this Memorandum of Agreement by STB and OHPO, concurred in by W&LE, and implementation of its terms, evidence that STB has afforded the Advisory Council on Historic Preservation an opportunity to comment on the abandonment of portions of the W&LE railroad line in Harrison and Jefferson Counties, Ohio, and that the STB has taken into account the effects of the undertaking on historic properties.

SIGNATURE OF THE PARTIES

SURFACE TRANSPORTATION BOARD



Victoria Rutson
Chief
Section of Environmental Analysis

Date: 3/18/03

STATE HISTORIC PRESERVATION OFFICE:



Mark Epstein, Department Head
Ohio Historic Preservation Office

Date: 6/18/03

WHEELING & LAKE ERIE RAILWAY COMPANY:



Date: 7/10/03

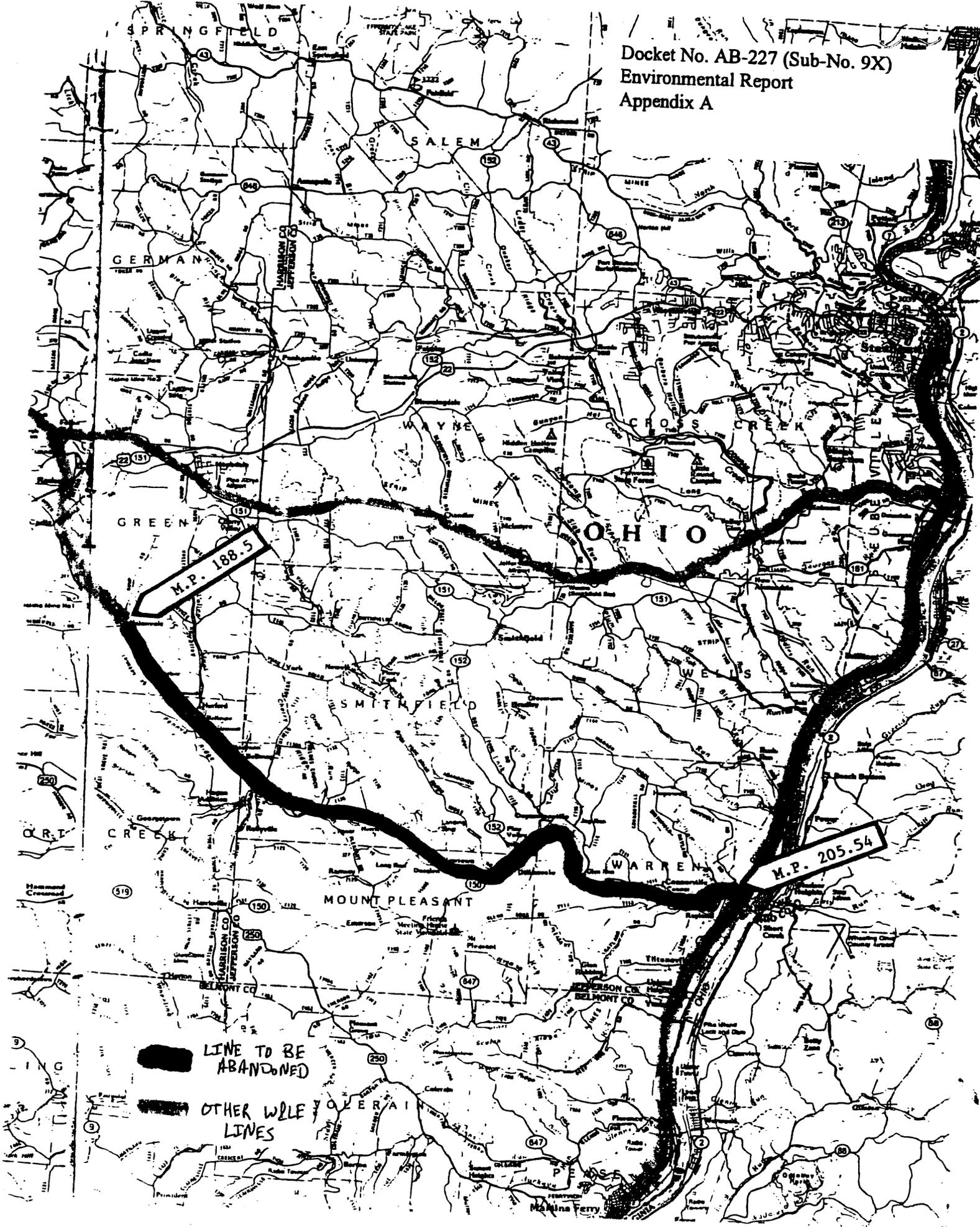
**ATTACHMENT A: PROJECT MAP SHOWING PROPERTIES WITH STANDARD
MILE POST MEASUREMENTS**

Adena Tunnel: Mile Post 191.94

Long Run Tunnel: Mile Post 196.8

Dillonvale Depot: Mile Post 199.5

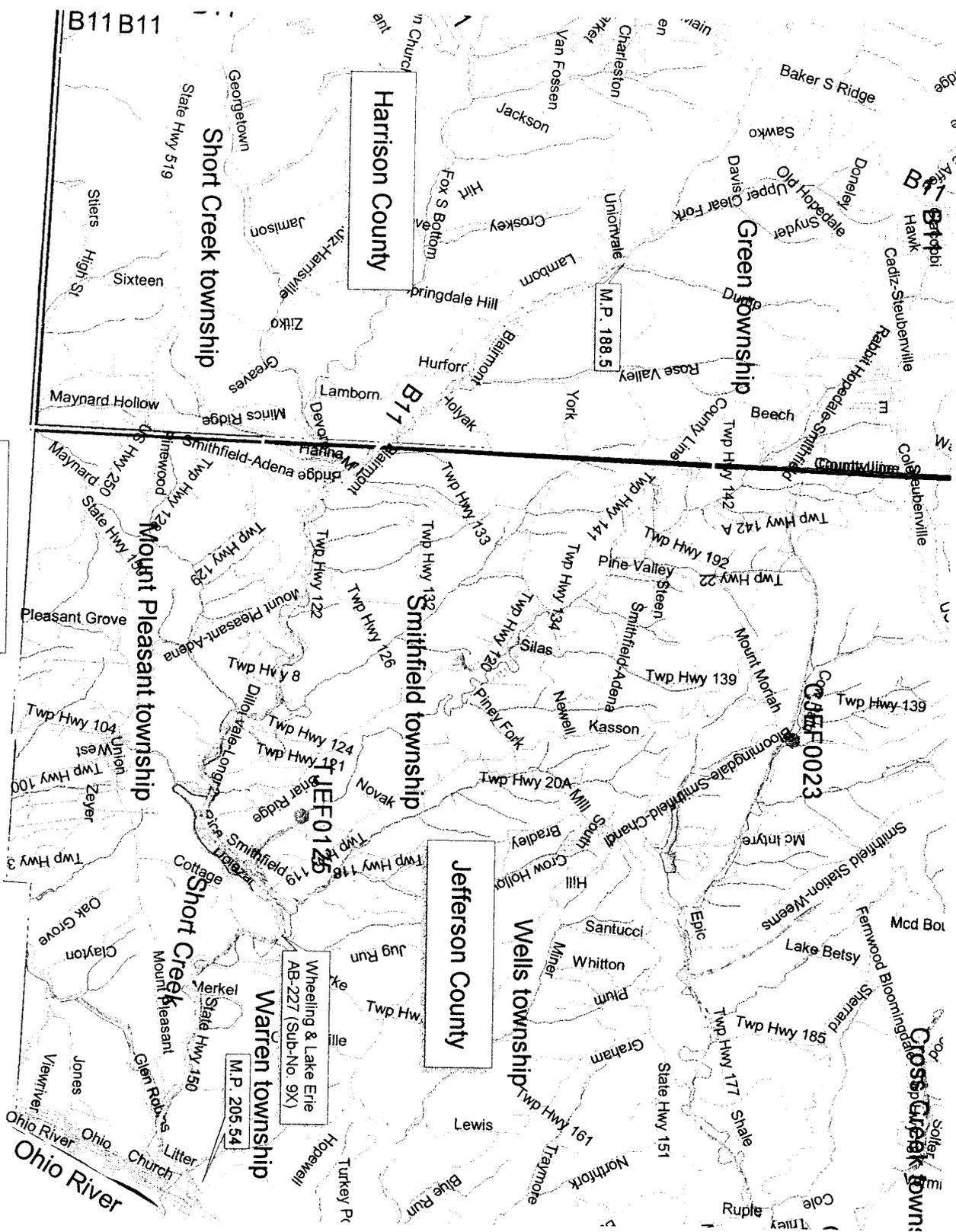
Docket No. AB-227 (Sub-No. 9X)
Environmental Report
Appendix A



LINE TO BE ABANDONED

OTHER WATER LINES

**Wheeling & Lake Erie Railway
AB-227 (Sub-No. 9X)**



- Hydrography-Line Harrison
- Roads Harrison
- Rail Features Harrison
- Historic Bridges Jefferson
- Township
- Harrison County
- Utilities Jefferson
- Roads Jefferson
- Rail Features Jefferson
- Hydrography Jefferson
- Hydrography (tpy) Jefferson
- Jefferson County

