CASE STUDY: FRONT LOADING DAMAGE CLAIMS VERSUS JUST COMPENSATION IN CONDEMNATION

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UTILITY CONDEMNATION

Key Aspects

- Performed for the Public's Best Interest
- Parties Were Unable to Agree on Compensation
- Utility – Obligated to Pay Owner Just Compensation – Typically Based Upon Impact to Market Value
- Owner – Often Believes Condemned Property is "Worth" Significantly More

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UTILITY CONDEMNATION

Owner's Perception

- Often Does Not Understand:
  - Concept of Market Value
  - Concept of Time Value of Money when Rationalizing Future Income Potential
  - Concept of Impact to the Larger Parcel

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UTILITY CONDEMNATION

Utility's Mandate

- Fairly Compensate Owner For Impact of "Taking"
  - Obligated to Not "Over Compensate" As Cost Often Factored Into Consumer Utility Rates
  - Obligated to Not "Under Compensate" for Taking
  - Maintain Public Trust and Confidence

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UTILITY CONDEMNATION

Resolution

- Compensation is Often Determined by a "Finder of Fact" – Depending on the venue, this could be:
  - Judge
  - Jury
  - Commission
  - Panel
  - Other

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UTILITY CONDEMNATION

Resolution

- Both Parties Typically Have Appraisals Conducted to Support their Arguments/Case
- Finder of Fact Makes Own Determination
  - Reviews Both Sides' Arguments
  - Asks Questions and Performs Own Analysis
  - Considers Any Other Factors Deemed Significant

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CASE STUDY

Background

- Installation of Long-Distance Utility Transmission Line
- Taking of a Small Right-of-Way Over a Portion of a Large, Permitted Limestone-Bearing Property
- Some Limestone Resources No Longer Mineable
  - Portion Underlying the ROW
  - Portion Not Underlying the ROW but Lost Due to Setback Requirements

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General Property Layout

Large Property: ~500 Acres

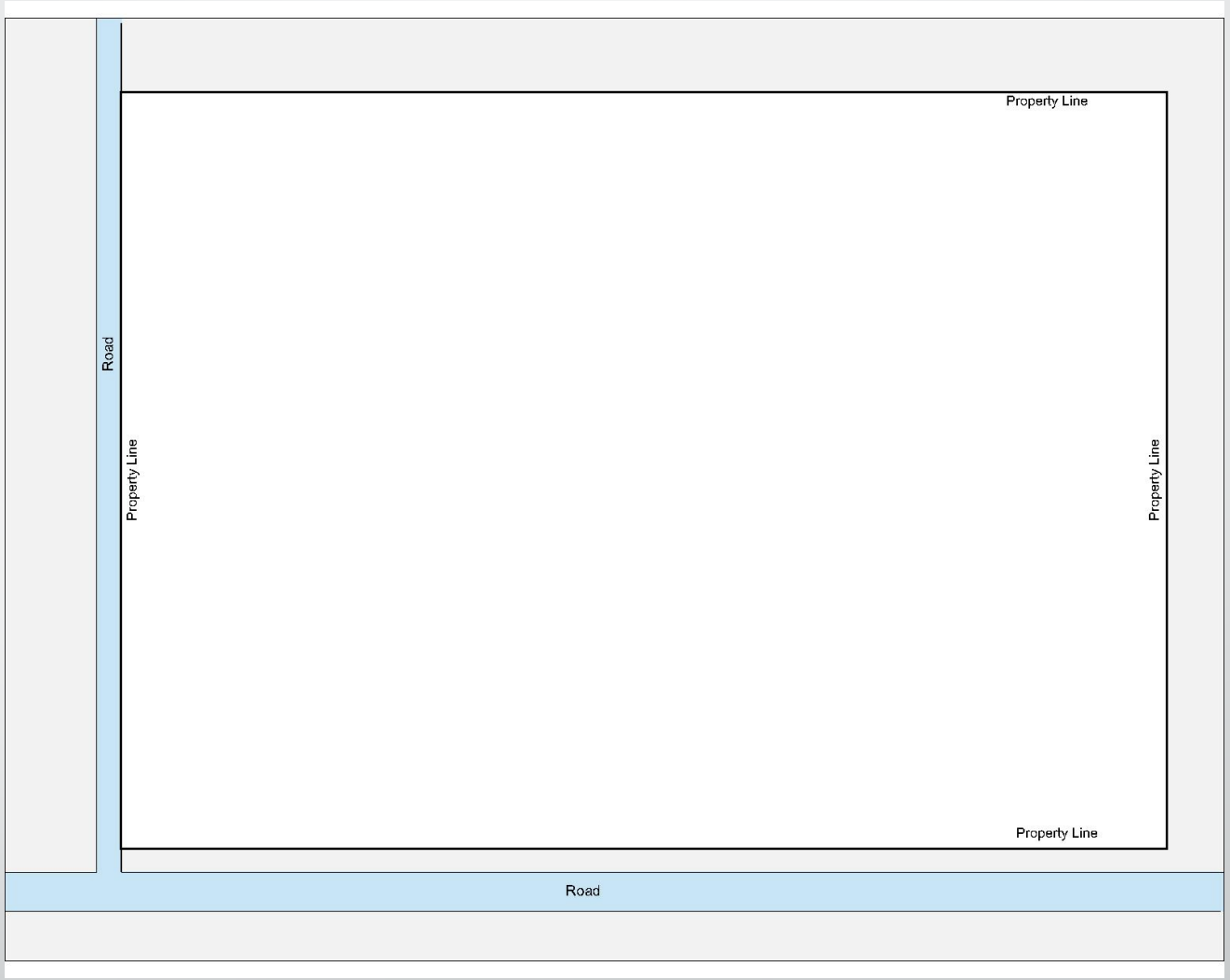
Rural Location

Fronted by One Major and One Minor County Road

Nearest Town Population: <10,000

Relatively Near a Major Interstate

Historic Use: Grazing or Farmland



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Permitted for Limestone Extraction

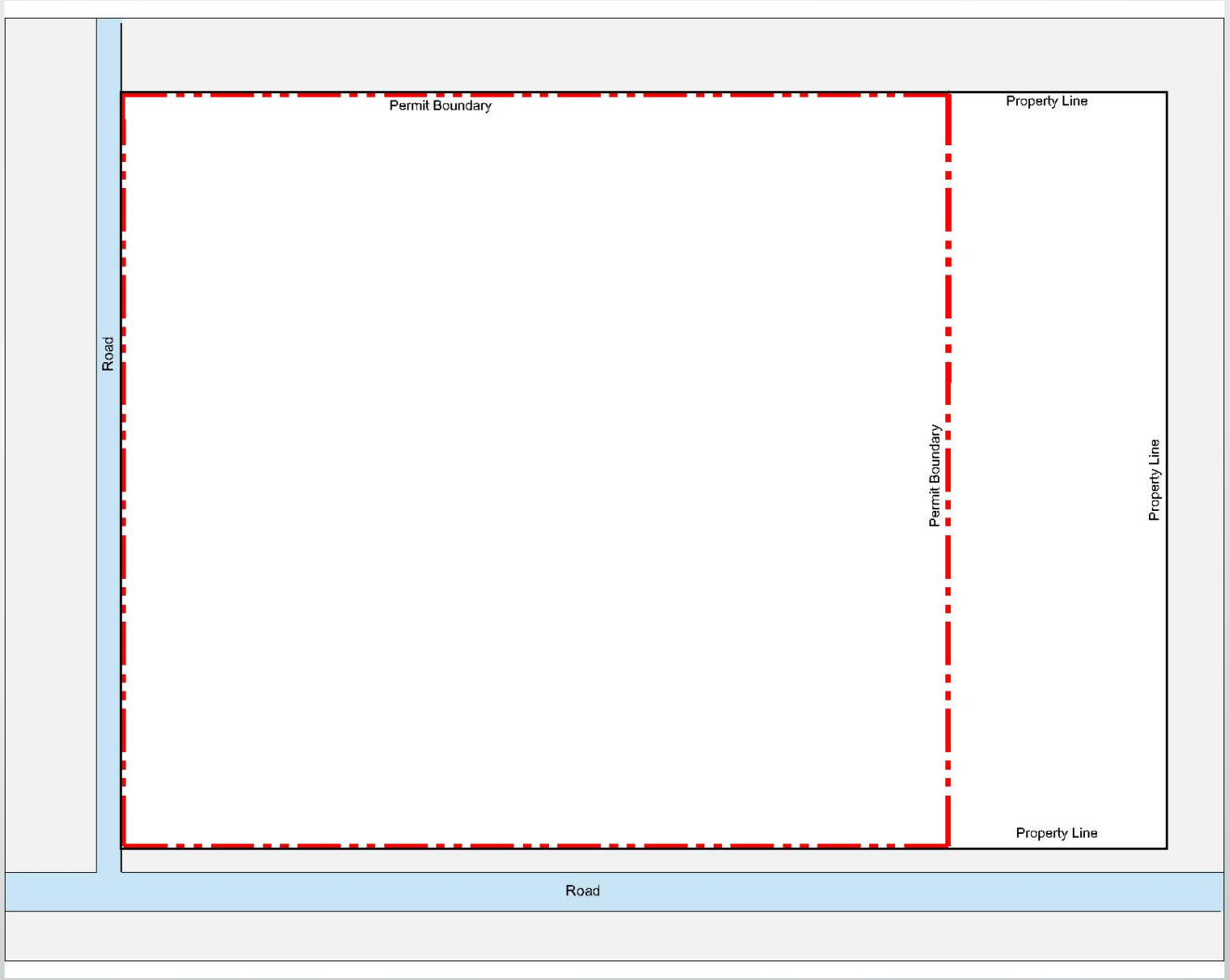
Moderately Geologically Complex Area

Good Quality Limestone Outcrops On Much of the Property

Geologic Mapping Established Limestone Extends Out +/- 1 Mile

Roughly 75% of Property Permitted by Potential Operator

"Soft" Plan to Develop

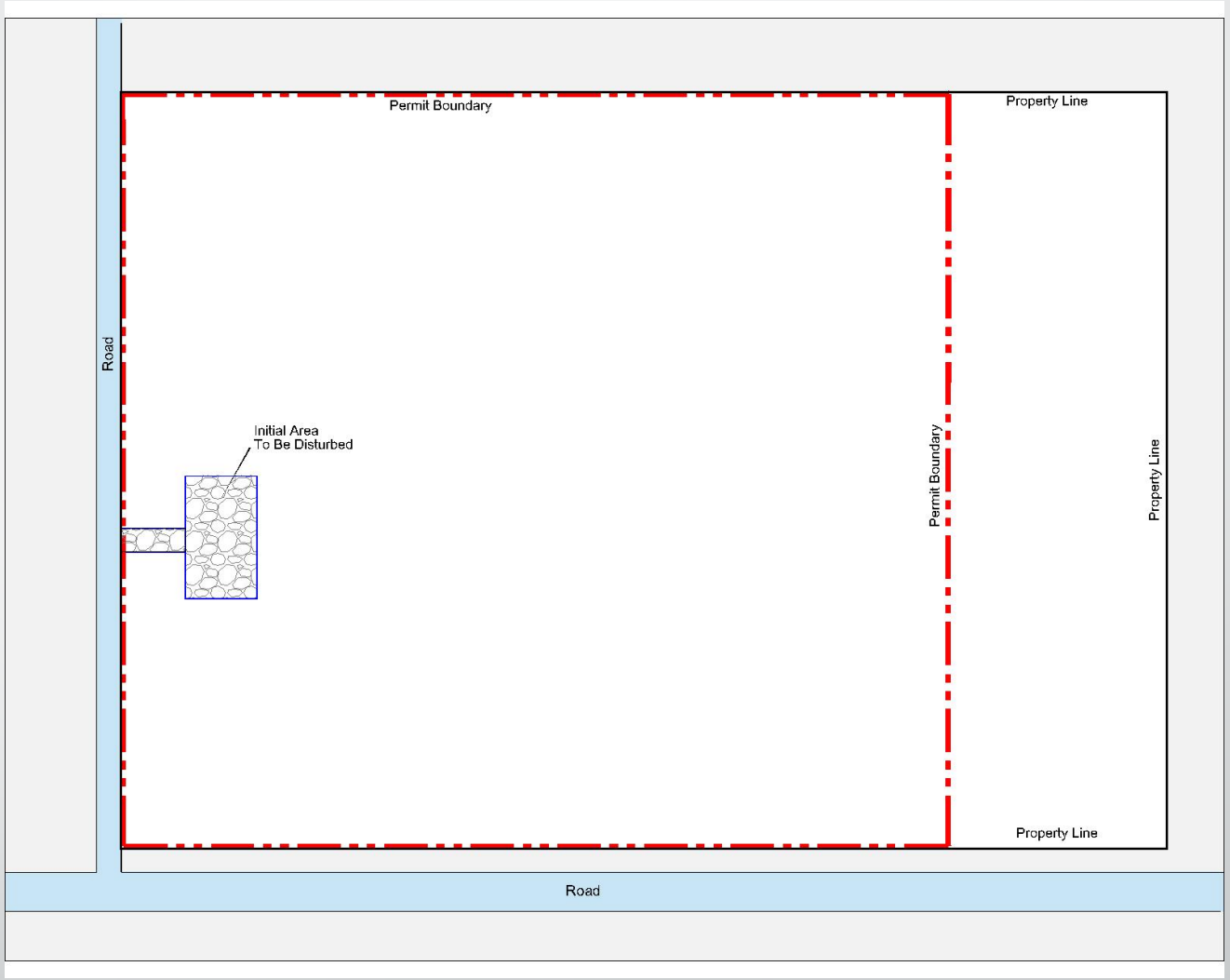


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Initial Area To Be Disturbed

Potential Quarry Operator had Initially Planned to Access Property from the West

Permit Map Included a Proposed Initial Area To Be Disturbed



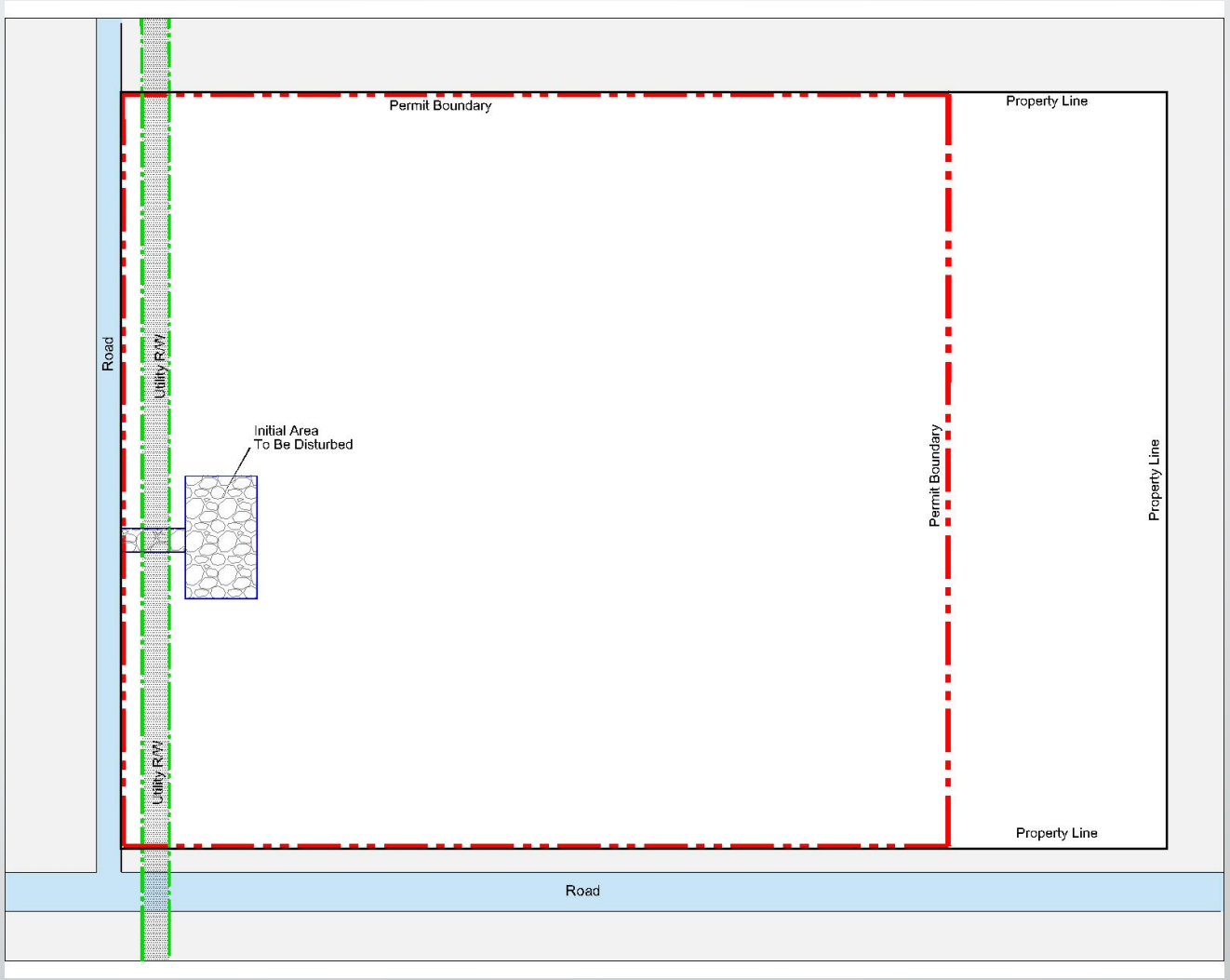
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Utility Right-of-Way

Prior to Development, Utility "Took" a ROW Surface Strip <5 acres

Utility located the ROW as Far West on the Property as Topography and Other Parameters Allowed

Purpose Was To Minimize Impact to Landowner



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CASE STUDY

Landowner's Position

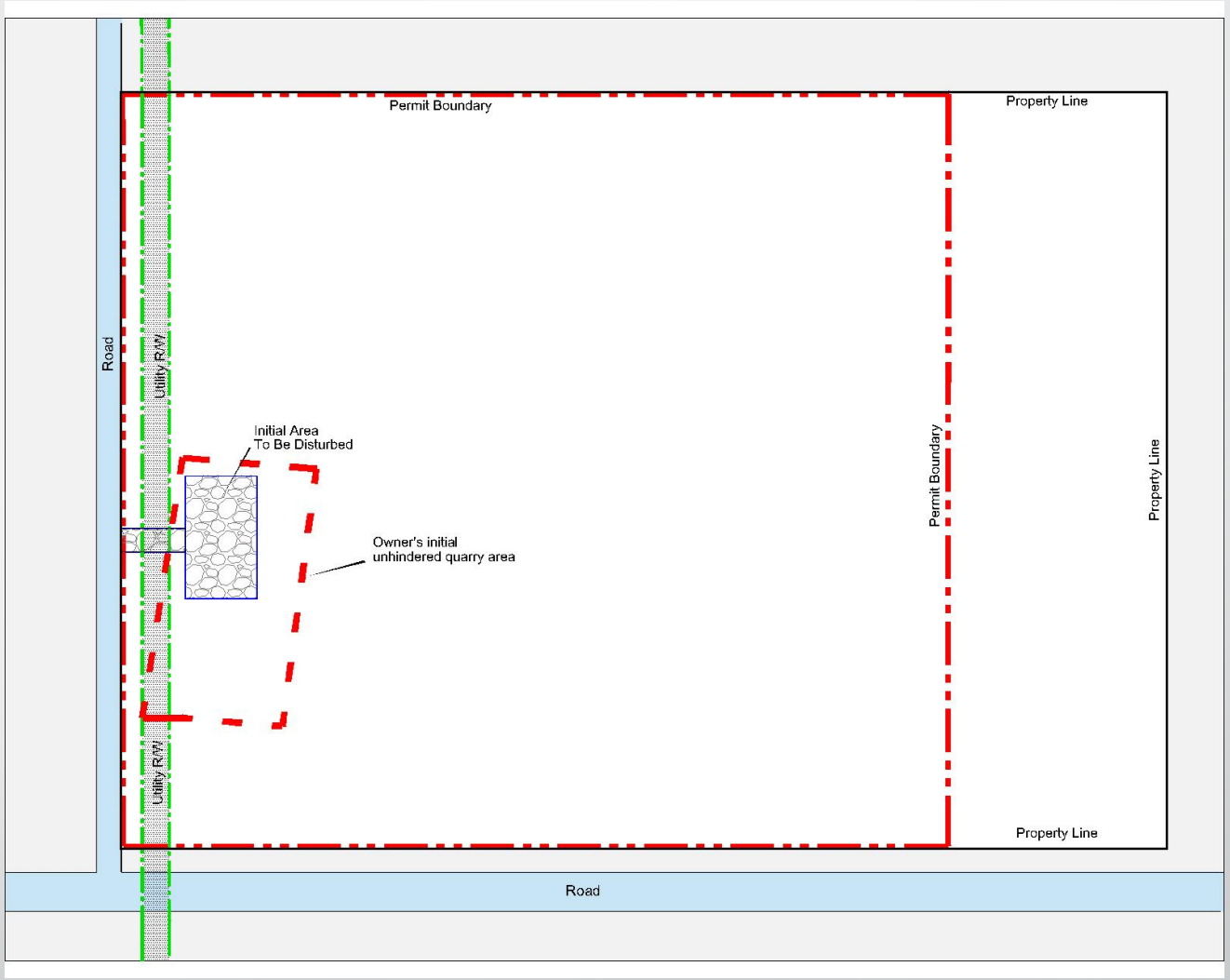
- Its Plan to Access Property was Impacted by ROW
- Claims Limestone Taken Was First Stone to be Mined
- Landowner Adamant It Should be Paid on Stone Rendered Unmineable Up-Front ("Front Loading")

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"Planned" Initial Quarry

To Support Its Position, Landowner Provided Maps, Etc. of a "Planned" Initial Quarry Area "Unhindered" by the Utility Right-of-Way

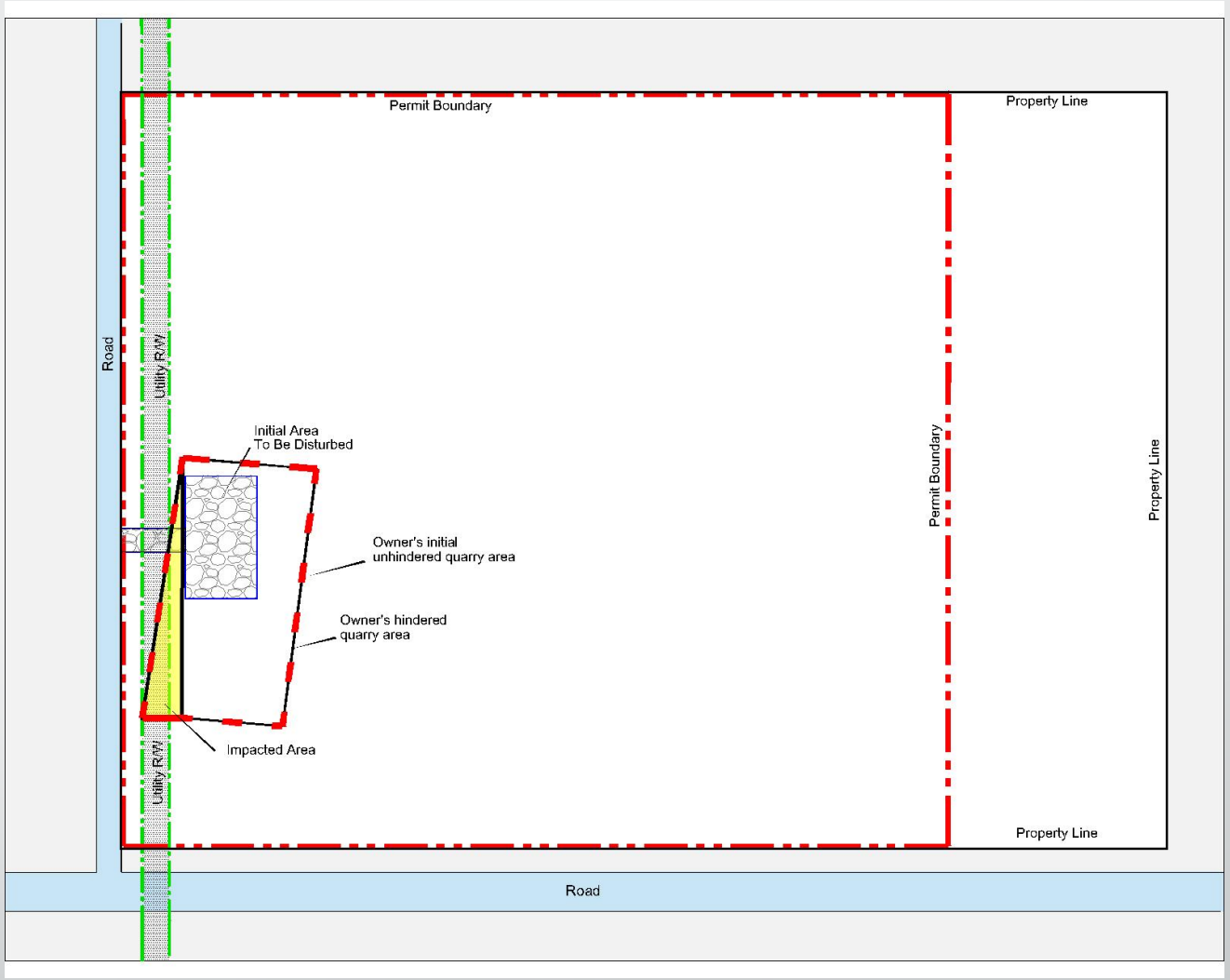
Upper Benches of Unhindered Quarry Area Extended Into Portion of Utility Right-of-Way



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Impacted Area

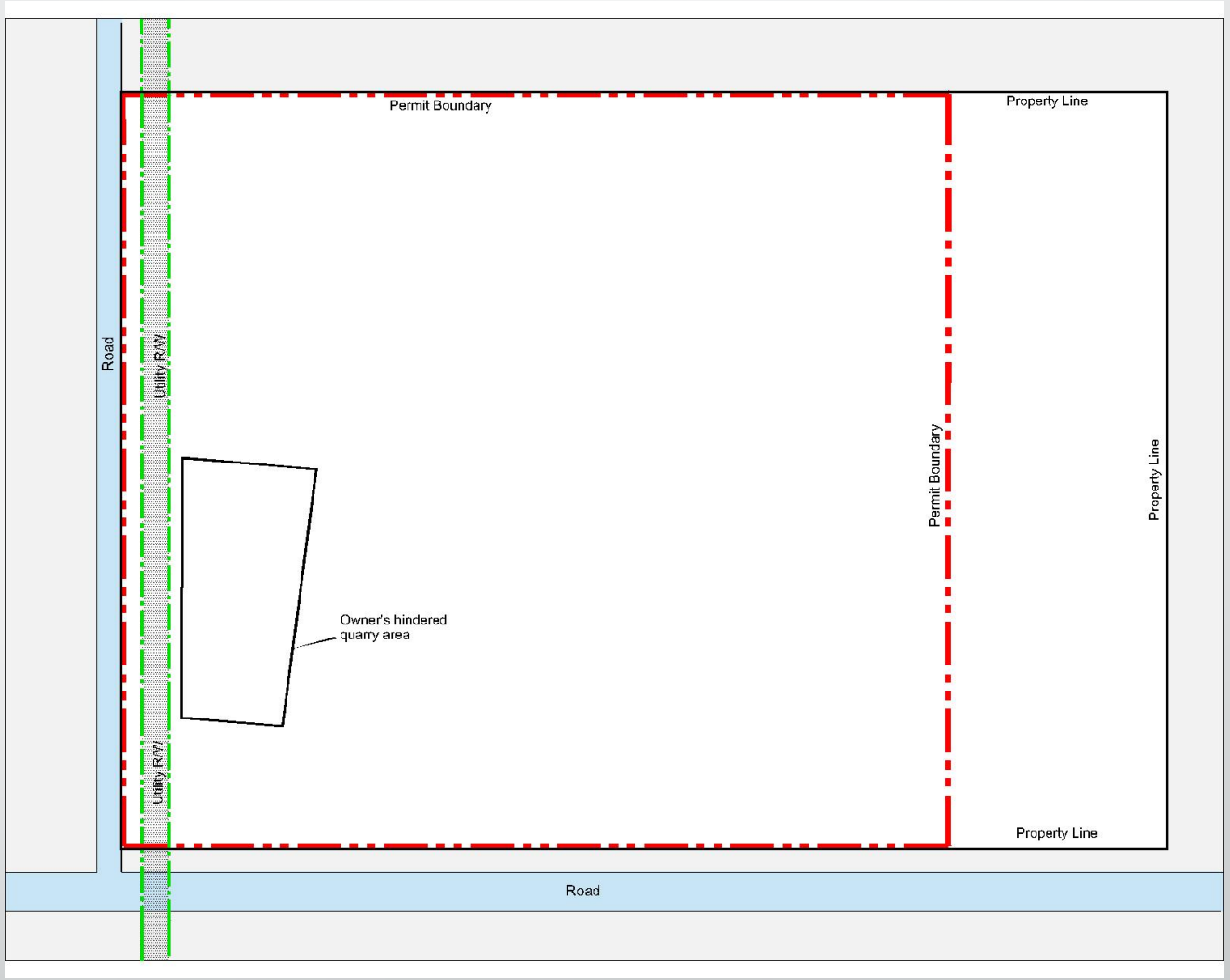
Landowner Determined the Impacted Area Due to ROW and Required Setback from the ROW



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Owner's Hindered Quarry Area

This Leaves the Remaining Portion of the Owner's Stated Initial Quarry Area, After Accounting for the Impacted Area

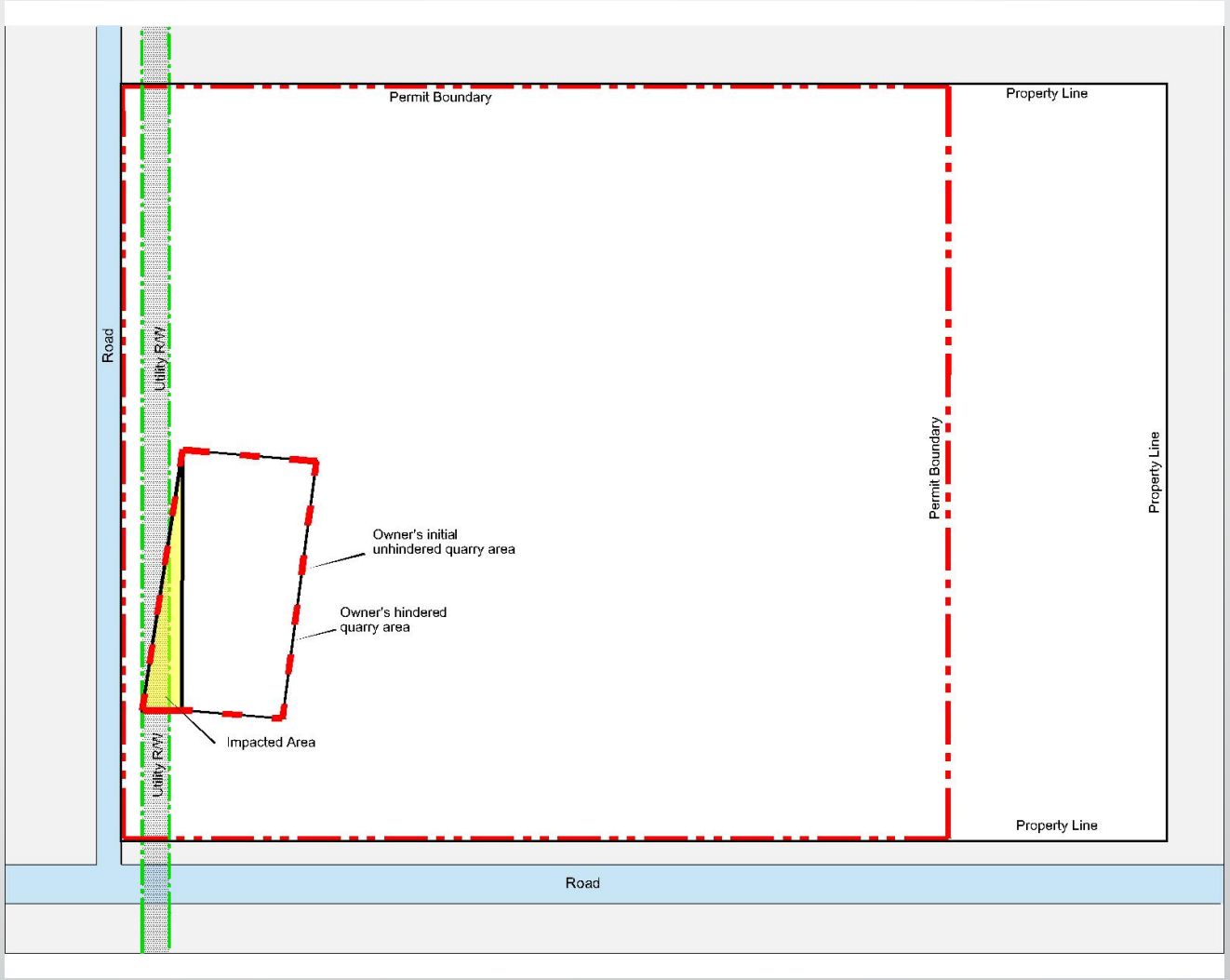


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Impacted Tons

Landowner Then:

- Forecast the Saleable Limestone Tons in Unhindered Quarry Area
- Forecast the Saleable Limestone Tons in Hindered Quarry Area
- Calculated the Tons Lost as the Difference Between the Two (~300,000 Tons)

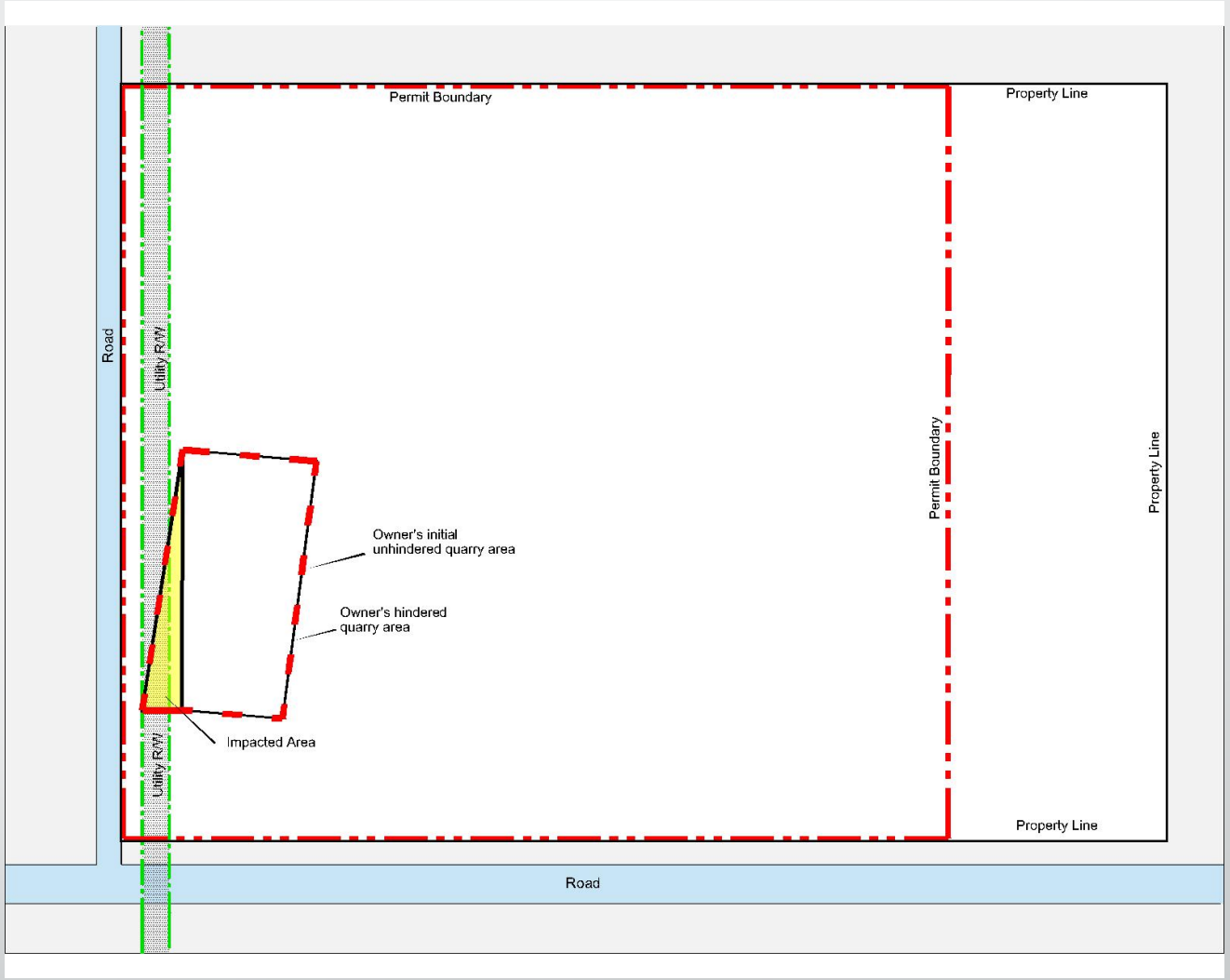


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Owner's Opinion of Damage

Landowner Initially Estimated Its Damage as:

- Tons Lost x Average Selling Price
- Say, 300,000 Tons x $15.00 = $4.5 million



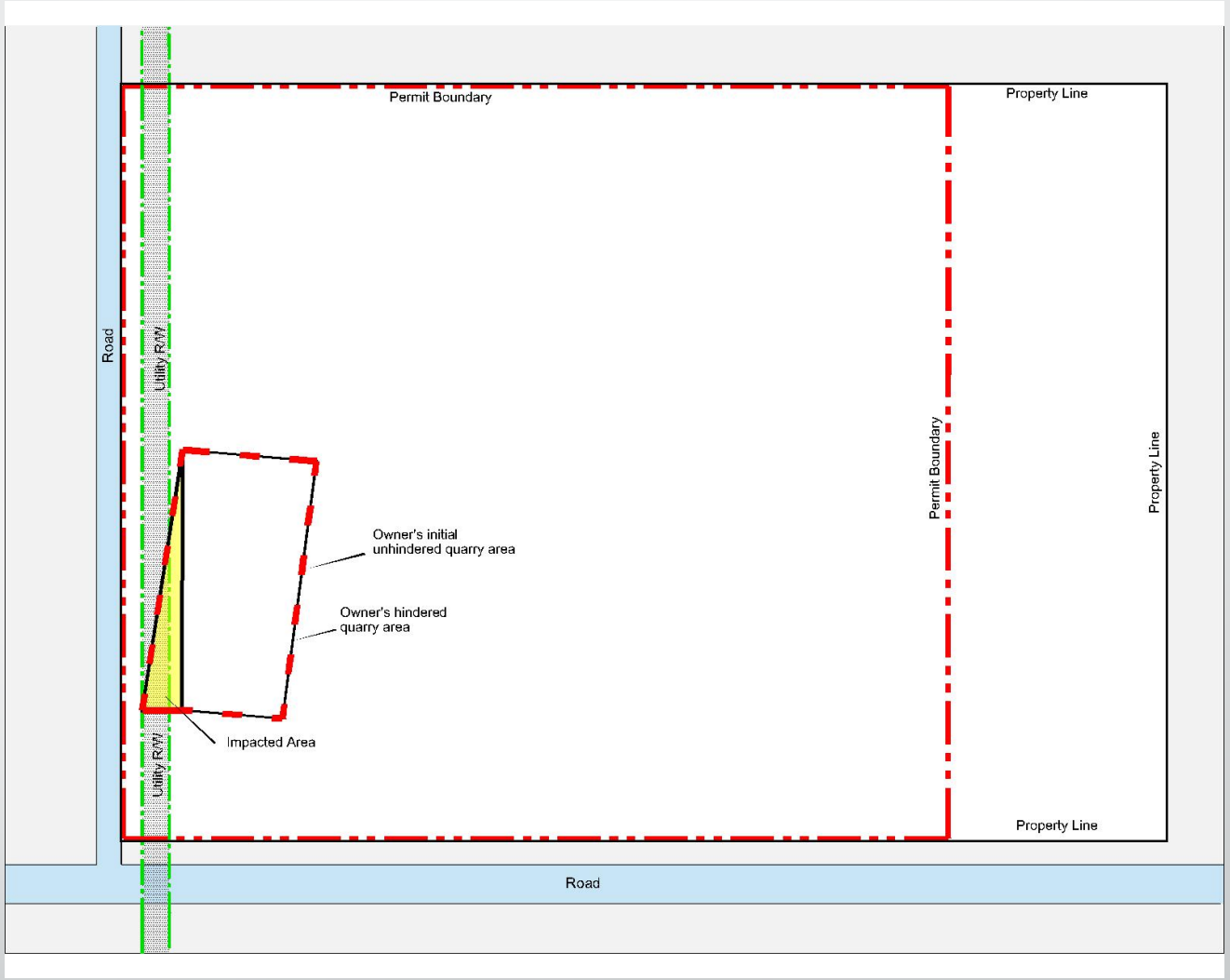
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Owner: Hey Utility, Cut Me A Check!!!



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ATTORNEYS FOR UTILITY ENGAGED SRCI

Scope of Work

- Review and Analyze Owner's Claim
- Assess the Impact of the Take on the Mineral Resource Potential of the Larger Property
- Provide Opinion on Impact of Take on Future Revenues that Could Be Derived from the Extraction of Limestone from the Larger Property

(Note: SRCI Was Not Engaged to Provide Appraisal)

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SRCI ANALYSIS

Owner's Opinion of Damage – Fundamental Flaws

- Owner's Analysis was Simplistic – Did Not Take Into Account the Concept of Market Value
  - Assumes "Value" of a Ton of Limestone in the Ground is Equal to its Sales Price
  - Ignores Costs Associated With Extracting, Processing, and Marketing, Among Others
  - Ignores Impact of Time Prior to Production (Time Value of Money)
  - Willing Buyer / Willing Seller – Good Luck Finding This Willing Buyer

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SRCI ANALYSIS

Owner's Opinion of Damage – Fundamental Flaws

- Ignores Impact of Take on the Larger Property
  - Required for Condemnation in this Venue
  - Diminution of Value of the Larger Property
    - The Difference Between Market Values of the Larger Property "Before the Take" and "After the Take"
    - Basis for Just Compensation

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SRCI ASSESSMENT

Impact of the Take on the Mineral Resource Potential of the Larger Property

- Quantity of Lost Tons is Equivalent to the *Potential* Anticipated Market Demand for One Year from the Planned Quarry (~300,000 Tons)
- Boundary of Unhindered Initial Quarry was limited by Owner to Illustrate Arbitrary 30 Years of Production (~9,000,000 Tons)
- Hindered Initial Quarry Thus Represents 29 Years of Production

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This Only Accounts for a Small Portion of the Total Limestone Resources on the Larger Property

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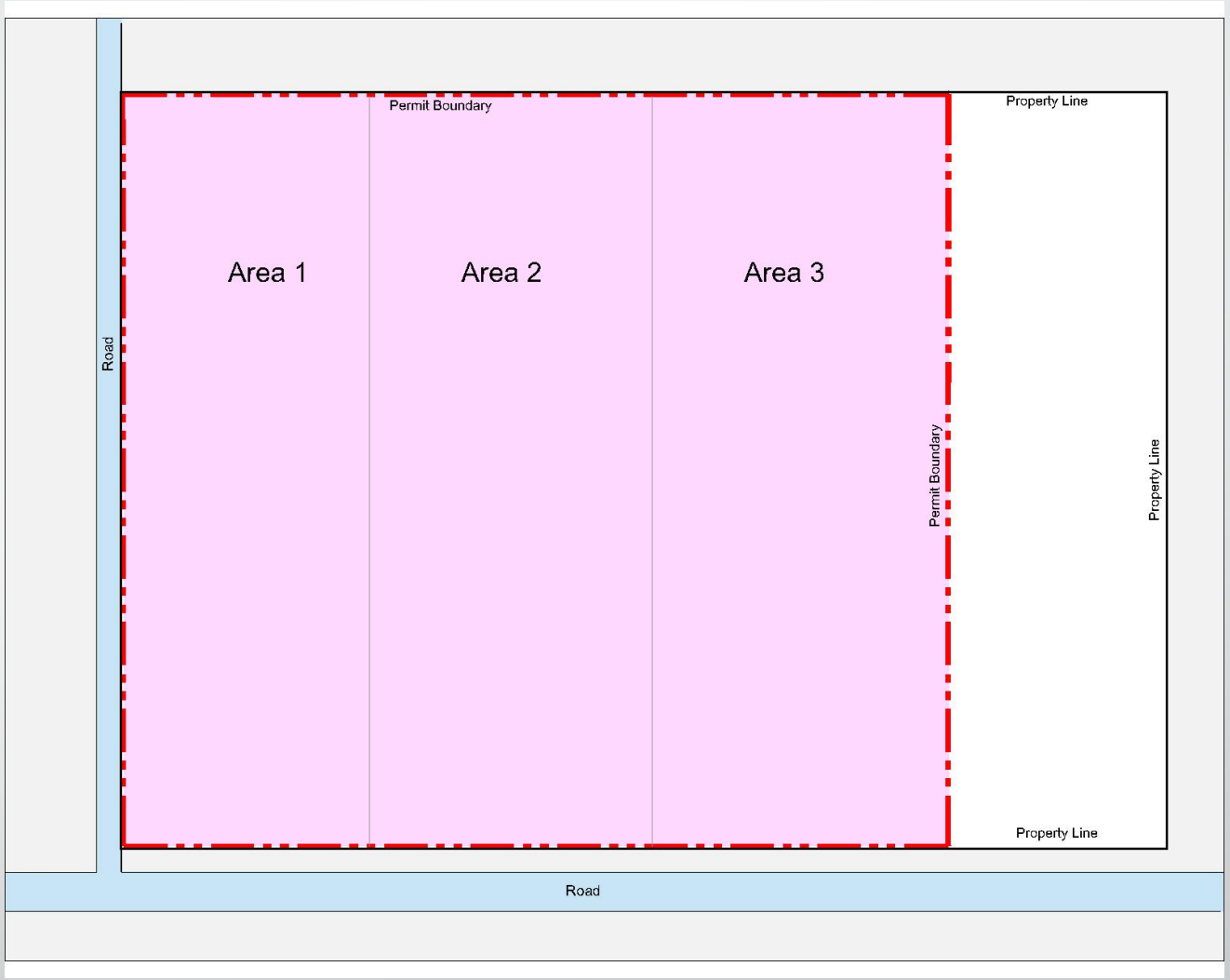
SRCI Assessment

Geology of Permitted Area is Well Mapped – Basis for Permitted Area

Divided Permitted Area into Three Logical Resource Areas Based on Various Factors

Area 1 Was Sufficiently Drilled and Tested to Establish *Mineral Reserve Estimate*

Mineral Resource Potential in Both Area 2 and Area 3 were Estimated (Tons-in-Place and Product Tons)

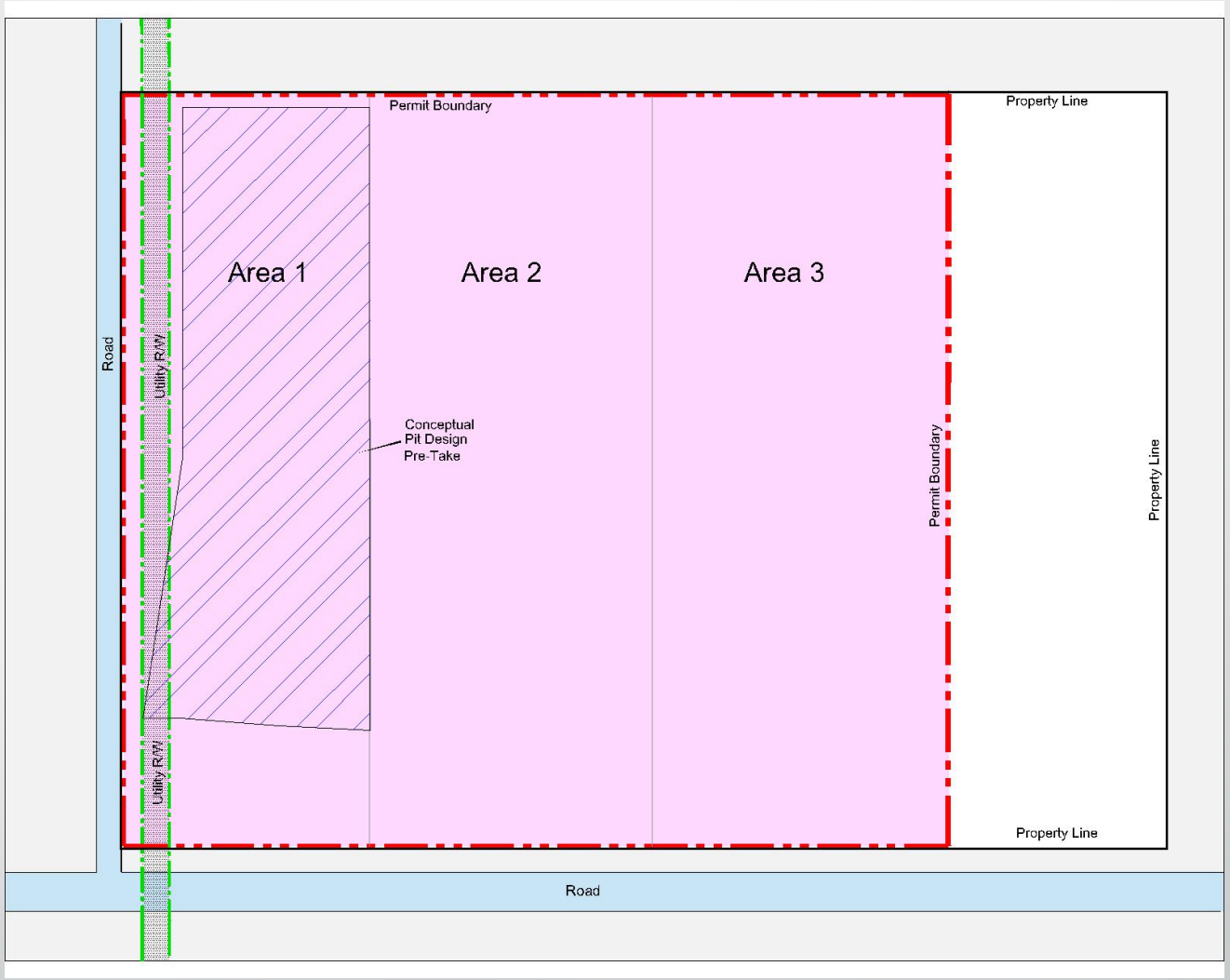


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SRCI Assessment

The Mineral Reserve Estimate Provided a Basis to Layout a Conceptual Pit Design for Area 1 – *As If The Taking Did Not Occur* **(Termed "Pre-Take")**

Note: It Had Also Been Established the Permitted Area was Accessible from the County Road to the South of the Property

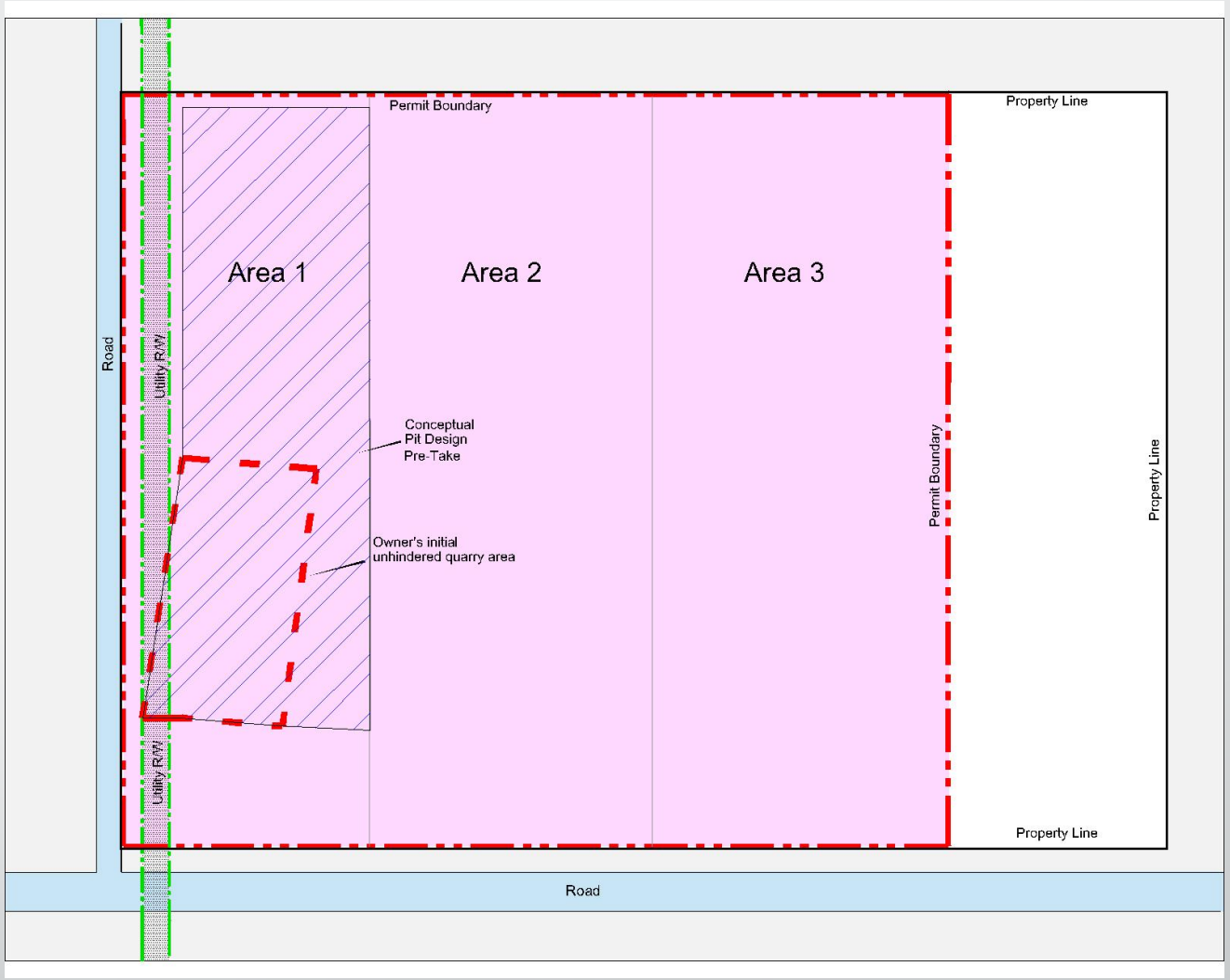


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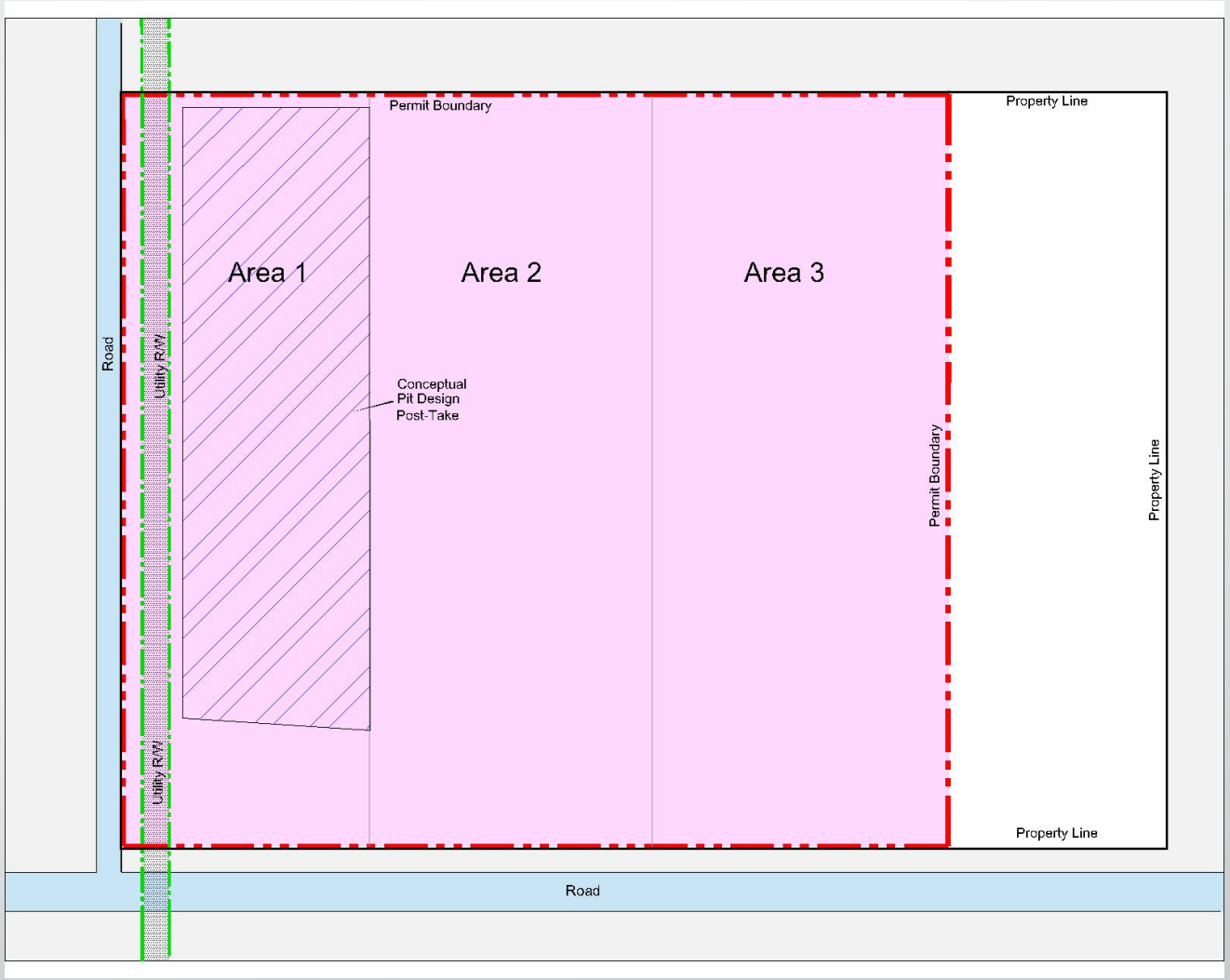
As Illustrated Here – The Owner's Initial *Unhindered Quarry Area* is a Subset of SRCI's Conceptual Pit Design (Pre-Take)



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SRCI Assessment

Also Using the Mineral Reserve Estimate, a Second Conceptual Pit Design for Area 1 was Developed That Accounted for the Take Area **(Termed Post-Take)**

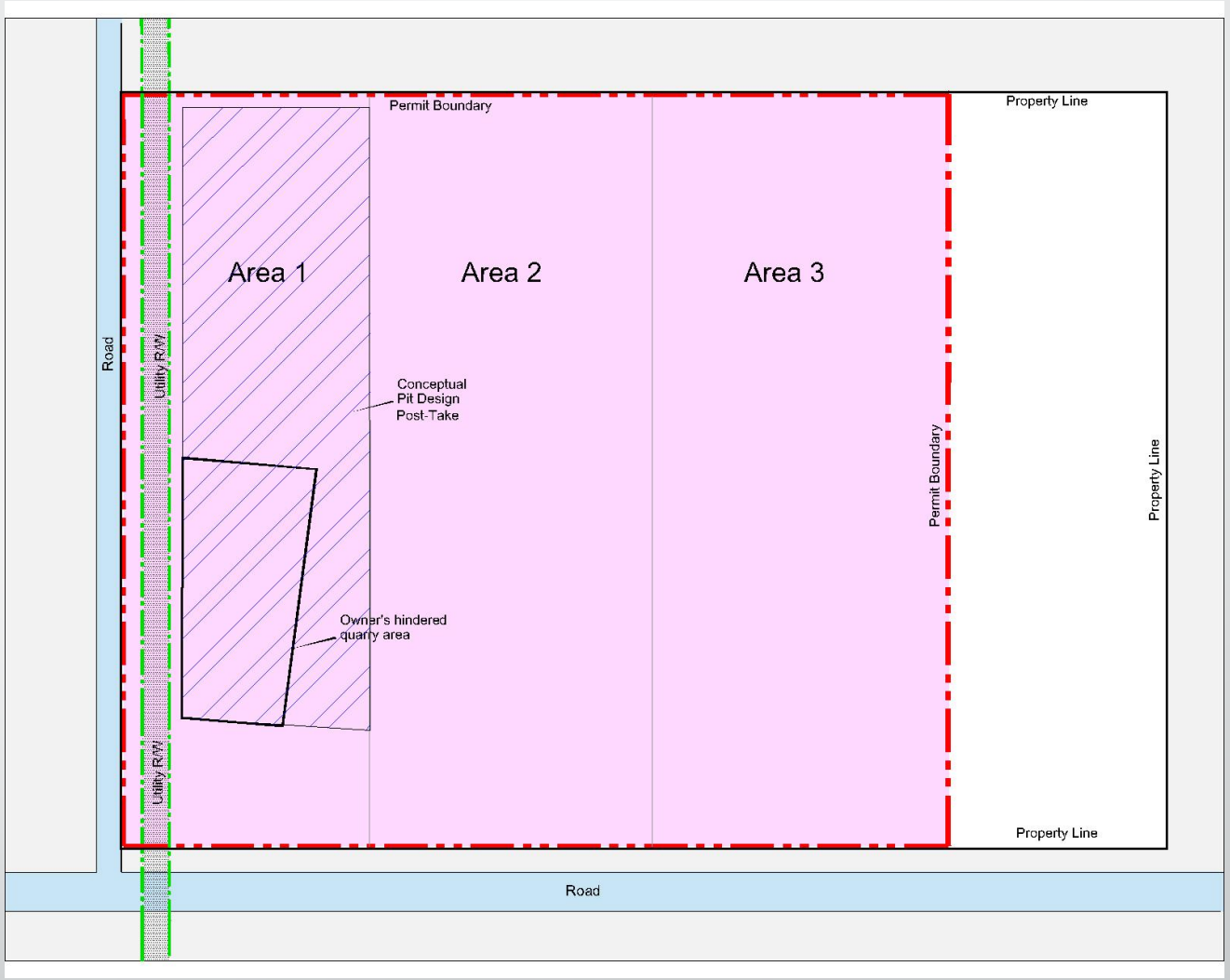


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SRCI Assessment

Also Using the Mineral Reserve Estimate, a Second Conceptual Pit Design for Area 1 was Developed That Accounted for the Take Area **(Termed Post-Take)**

As Shown – The Owner's *Hindered Quarry Area* is a Subset of SRCI's Conceptual Pit Design (Post-Take)

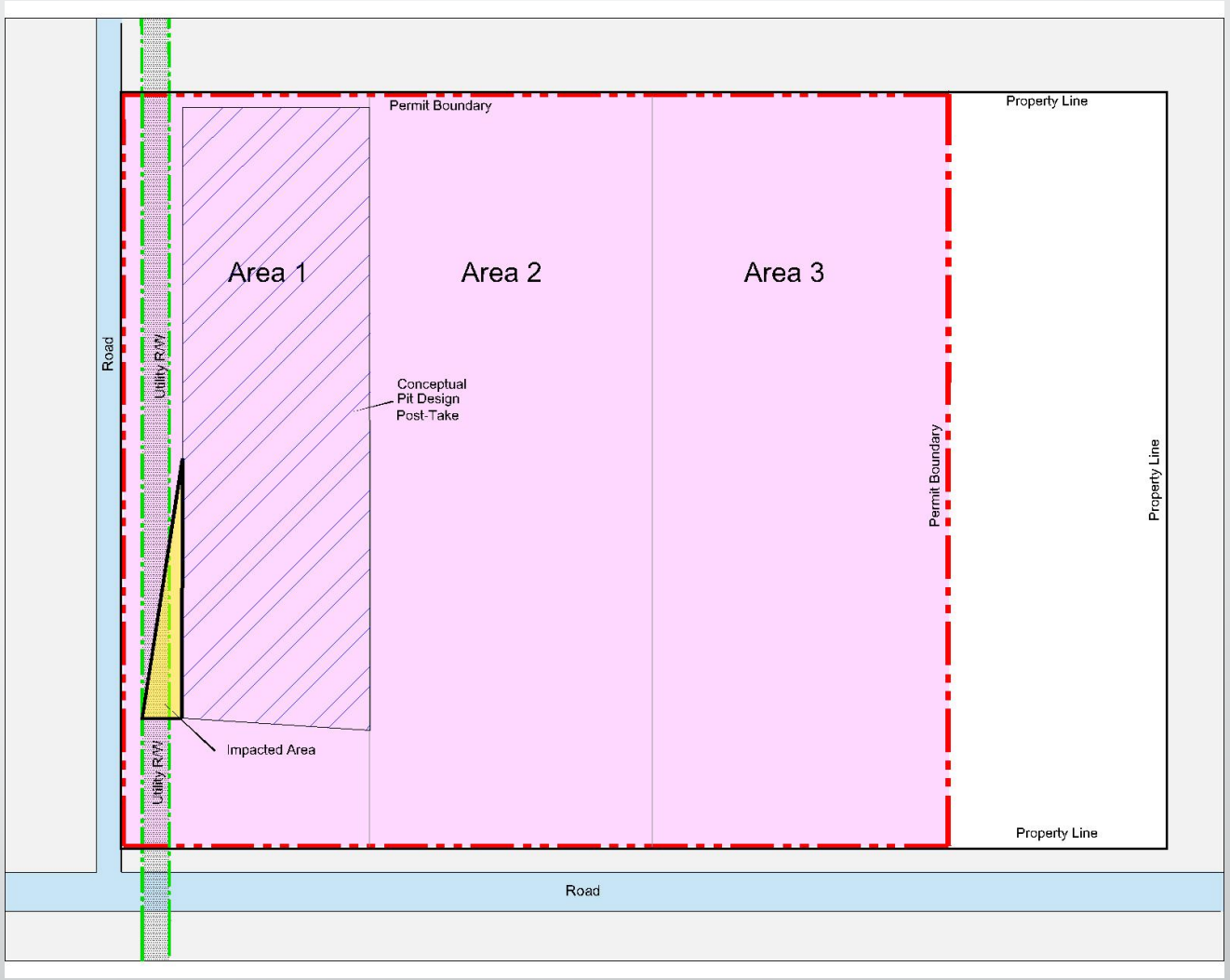


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SRCI Assessment

Also Using the Mineral Reserve Estimate, a Second Conceptual Pit Design for Area 1 was Developed That Accounted for the Take Area **(Termed Post-Take)**

And The Owner's *Impacted Area* is Also Equivalent to the Difference Between SRCI's Pre-Take and Post-Take Conceptual Pit Designs



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SRCI ASSESSMENT

Impact of the Take on the Mineral Resource Potential of the Larger Property

- Regardless of Quantity of Lost Tons, a Critical Flaw in Owner's Claim is the Impact Would Be Felt at the Start of the Operation
  - Any Prudent Operator Would Not Delay Mining and Would Adjust Location of Mining In Order to Maintain Production and Revenues
  - Thus, Any Lost Tons Would Only Be Felt at the End of the Operation When Remaining Reserves are Depleted Sooner.

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SRCI ASSESSMENT

Impact of the Take on the Mineral Resource Potential of the Larger Property

- Based on Just the Owner's Limited Initial Quarry Area, Impact Would Occur in the 30th Year of Production
- Based on SRCI's Conceptual Pit Design in Area 1, Impact Would Not Occur Until After Approximately 70 Years of Production
- Additional Mineral Resource Potential in Area 2 and Area 3 Could Provide Another 75 Years and 85 Years, Respectively, of Production – Thus Impact May Not Occur Until After More Than 200 Years of Production

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SRCI ASSESSMENT

Impact of the Take on the Mineral Resource Potential of the Larger Property

Conclusion –

The Tonnage of Limestone that was Rendered Unmineable by the Utility's Taking of the Right-of-Way is *De Minimis* Relative to the Total Reserve Potential of the Larger Property

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SRCI OPINION

Impact of the Take on the Future Revenues that Could Be Derived from the Extraction of Limestone from the Larger Property

- Conducted Economic Analysis of the Lost Tons – *Parameters*:
  - Used Just the Reserves Estimated in Area 1 to Develop Forecast Period
  - Assumed 300,000 TPY Production For Life of Operation
  - Pre-Take and Post-Take Forecasts Would Be Identical Until Reserves Depleted in Post-Take Case – So Only Needed to Model Final Year of Production (When Lost Tons Would Have Been Felt by Operation)

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SRCI OPINION

Impact of the Take on the Future Revenues (Continued)

- Conducted Economic Analysis of the Lost Tons – *Variables*:
  - Developed an Estimated Range of Cash Margins for the Operation and Used High-Low Endpoints as First Variable to Bracket Potential Impact
  - Time Until Initial Production was Unknown at the Date of the Take, with Potential Estimates of Initial Production Beginning in 2 Years, 5 Years, and 10 Years from the Date of the Take Used as Second Variable to Bracket Potential Economic Impact
  - Developed a WACC Discount Rate for the Operation to calculate NPV, and Used That "Base" Rate Plus Higher and Lower Discount Rates as Third Variable to Bracket Potential Impact

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SRCI OPINION

Impact of the Take on the Future Revenues (Continued)

- Conducted Economic Analysis of the Lost Tons – *Conclusions*:
  - Using the Stated Parameters and Accounting for the Combination of the Various Variables Yielded 18 Models in Total
  - Net Present Values Ranged Between $100 and $6,000
  - If Additional Mineral Resource Potential in Area 2 and Area 3 Were Included, NPV's Would Have Been Even Lower.

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SRCI OPINION

Impact of the Take on the Future Revenues (Continued)

Opinion –

The Impact of the Take on Future Revenues That Could be Derived from the Extraction of Limestone on the Larger Property is Not Significant

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