

247113

Before the
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
February 21, 2019
Part of
Public Record

STB Docket No. AB 1242

**HARTWELL FIRST UNITED METHODIST CHURCH
- ADVERSE ABANDONMENT AND DISCONTINUANCE -
THE GREAT WALTON RAILROAD COMPANY, INC., IN HART COUNTY, GA**

**REPLY OF
HARTWELL FIRST UNITED METHODIST CHURCH
TO JANUARY 2019 STATUS REPORT OF
THE GREAT WALTON RAILROAD COMPANY, INC.**

(color images included)

Eric M. Hocky
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103-7041
(215) 640-8500
ehocky@clarkhill.com

Attorneys for
Hartwell First United Methodist Church

Dated: February 20, 2019

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB 1242

**HARTWELL FIRST UNITED METHODIST CHURCH
- ADVERSE ABANDONMENT AND DISCONTINUANCE -
THE GREAT WALTON RAILROAD COMPANY, INC., IN HART COUNTY, GA**

**REPLY OF
HARTWELL FIRST UNITED METHODIST CHURCH
TO JANUARY 2019 STATUS REPORT OF
THE GREAT WALTON RAILROAD COMPANY, INC.**

On January 31, 2019, The Great Walton Railroad Company, Inc. (“GWRC”) filed its January 2019 Status Report (the “January 2019 Status Report”) pursuant to the requirements of the Board’s January 31, 2018 Decision (the “2018 Decision”) in this proceeding. Hartwell First United Methodist Church (“Hartwell First”) is filing this Reply because it believes that the January 2019 Status Report goes beyond merely reporting on the status of GWRC’s rehabilitation and utilization of the Line, and provides misleading information to the Board relating to the current situation in Hartwell relating to GWRC’s use of the tracks and its efforts to obtain the property it would need to construct a runaround track.¹ Although the Board’s 2018 Decision did not specifically mention the right of Hartwell First (or other parties) to file a reply, the Board’s regulations provide that “[a] party may file a reply or motion addressed to *any pleading* within 20 days after the pleading is filed with the Board...” 49 CFR §1104.13(a) (emphasis added).

¹ The January 2019 Status Report also requested that the Board issue a declaration finding that the conclusions of the Georgia Public Service Commission (“PSC”) are preempted. The Board in a decision dated February 12, 2019, determined that GWRC’s request was not properly raised in the context of the status report. Accordingly, Hartwell First will not respond to GWRC’s request except to comment that it is hard to see how the PSC’s denial of relief in the condemnation proceeding commenced by GWRC would be preempted.

DISCUSSION

As Hartwell First has continuously maintained, the “Line” in this proceeding involves only the 0.25 miles of the single main line track and associated right of way (varying between 20 feet and 12 feet wide) for which Hartwell First sought adverse abandonment authority. The adverse abandonment application did not reference or include the north spur track that had previously been removed, or the Clinkscates industrial track that had previously been connected to the north spur (and which together GWRC contends constituted a “runaround track”) because at the time of the filing there was no north spur or runaround track, and GWRC does not have any property interest outside of the main line right of way.²

In the adverse abandonment proceeding GWRC claimed that it needed the Line to enable it to provide common carrier service to the one remaining customer Quality Industries (“Quality”) on the GWRC line between Bowersville and Hartwell, and to handle the suggested increase in traffic Quality was expecting; however, it was clear that the Line would only be useful or necessary for the service to that one customer if GWRC were also able to reestablish the runaround track, a portion of which had been removed by GWRC many years ago.

In the 2018 Decision, the Board found only that GWRC’s proposed use of the Line in conjunction with the runaround tracks (if and when constructed) would not allow for the grant of adverse abandonment, but did so without prejudice to Hartwell First seeking reopening should “the rehabilitation or utilization of the Line not occur within a reasonable period of time.” 2018 Decision, at 5.

² GWRC has not shown that it has any property interest where the north spur was previously located, and the Clinkscates industrial track agreement clearly provides that Clinkscates (and its successors) own the industrial track and underlying property comprising the remaining portion of track that GWRC wants to use as a runaround.

Hartwell First concedes that GWRC is currently “using” the Line - to store three rail cars. January 2019 Status Report at 6, fn. 9. GWRC’s photograph of three flat cars being stored on the Line behind the church is accurate, but the Board should be aware that the storage of those flat cars only began on January 28, 2019, just before the January 2019 Status Report was filed.³ GWRC does not give any explanation of why it moved the cars from Airline where they had previously been stored to the location directly behind the Church – there is now empty track at Airline where the cars were previously being stored (*see* the photograph attached as Exhibit B), as well as the approximately four miles of empty main line between Airline and the church (including the portion of the Line between Athens Street and Bank Avenue, to the west of the Church – *see* the photograph attached as Exhibit C). There is obviously no “need” for GWRC to park the cars behind the Church except to show the Board that the Line is “being used,” and perhaps in an attempt to frustrate the Church (although Hartwell First acknowledges that GWRC has left a break between the storage cars for the Church’s walkway).

While long term car storage may be considered “transportation”, it does not constitute “common carriage.” Accordingly, the Board should note that GWRC is not currently using the Line to fulfill any common carrier obligations. GWRC mentions that it is “[holding] out rail service” to Quality (the only previously identified shipper between Bowersville and Hartwell to be served by GWRC) (January 2019 Status Report at 6), but fails to update the Board on the facts that Quality not only has failed to increase shipments, but Quality has not received any

³ GWRC actually began using the Line for storage as of January 18, 2019, when it brought in three boxcars and parked them behind the Church. *See* Exhibit A attached hereto. However, those cars were evidently not photogenic enough and were replaced with the three more open cars. The three boxcars were moved by GWRC to, and are currently being held on, the Quality spur.

shipments in the six months since the July 2018 Status Report.⁴ And while GWRC vaguely asserts it will keep the Line open for “other rail services for other future shippers that may require its services,” GWRC gives no indication of who those shippers might be or what services might be offered that would require use of the Line. Hartwell First believes that there are no shippers located on the Line east of Athens Street, or elsewhere that have expressed an interest in service from GWRC that would require use of the Line.

GWRC clearly has made no progress on obtaining ownership of the property necessary to construct a new north spur and reestablish a runaround. As indicated in the January 2019 Status Report, GWRC’s application for condemnation was denied by the PSC, as was GWRC’s request for reconsideration. To clarify, the PSC has not refused to allow, or prevented, reconstruction by GWRC of the segment of the runaround track behind the Church (January 2019 Status Report at 3, n.3, and 4); rather, the PSC has denied GWRC’s application to allow condemnation of the property on which GWRC proposes to construct the track. GWRC was forced to appeal the PSC decisions in an attempt to keep its property claims open. It is axiomatic that GWRC cannot construct tracks on property in which it has no property interest.⁵

GWRC continues to suggest that there is only a “small gap” in the runaround track that needs to be completed. January 2019 Status Report at 2. That suggestion continues to be misleading. While there may be only a small gap where the north spur previously was located, that is only because GWRC began reconstruction without having any property rights to do so and

⁴ The Board should also be aware that Quality’s witness in the adverse abandonment proceeding, Jonathan Talbot Colehower, is no longer with the company.

⁵ Further, GWRC has taken no action in the pending state court litigation in which GWRC was enjoined from constructing the track on property in which it had no property interest. (That action remains pending in state court after GWRC attempted to remove the action to federal court on preemption grounds, and the federal court remanded the case back to state court.)

before Hartwell First could obtain an injunction to prevent any further improper construction. In fact, the “gap” remaining should be considered to be the approximately 250-foot length of the former north spur – that is the length of the area to which GWRC has no title or interest. Indeed, the focus of the January 2019 Status Report and the Board’s update should be on the fact that GWRC has made no progress towards obtaining the property title necessary in order to construct the spur track across the property of Hartwell First that would be necessary to complete the proposed runaround.⁶ Without the runaround tracks, GWRC has no demonstrated need or ability to use the Line for common carrier service. *See* January 2019 Status Report at 4 and 6 (conceding that the runaround track is a necessary prerequisite for GWRC’s proposed operation of its trains).⁷

As indicated in its Reply to the July 2018 Status Report, by not appealing the 2018 Decision denying the application for adverse abandonment of the Line, Hartwell First was not conceding any of state law property issues. Instead, it chose to allow those issues to be determined by the appropriate state court and agency. Hartwell First does not dispute that if it

⁶ In the State Court litigation, GWRC having failed in its attempt to remove the litigation to Federal Court, the injunction remains in place. At the PSC, GWRC’s request for condemnation has been denied, both initially and on reconsideration.

⁷ Hartwell First continues to deny that it has been “interfering” with GWRC’s construction of its proposed new spur track except to the extent that Hartwell First has been successful in protecting its property rights in the state proceedings.

continues to be successful in the state courts and agencies in confirming that GWRC has no right to construct additional track outside of the right of way of the Line, then it will renew its request for adverse abandonment of the Line unless the parties have reached an amicable resolution.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500

Attorneys for
Hartwell First United Methodist Church

Dated: February 20, 2019

VERIFICATION

I, Joe M. Whittemore, verify under penalty of perjury that the foregoing Reply is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on February 20, 2019.



Joe M. Whittemore

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2019, I served a copy of the foregoing

Reply on the following persons by the method indicated:

By email and U.S. mail, postage prepaid:

Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, DC 20016
rhstreeter@gmail.com

By U.S. mail, postage prepaid:

Wilbur K. Chapman
25 C and C Circle
Hartwell, GA 30643

Mary Gidley
PO Box 791
Hartwell, GA 30643

Rick Glasco
Glasco Properties, LLC
PO Box 1148
Hartwell, GA 30643

Robert F. Leverett
PO Box 399
Elberton, GA 30635-0399

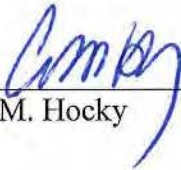

Eric M. Hocky

EXHIBIT A

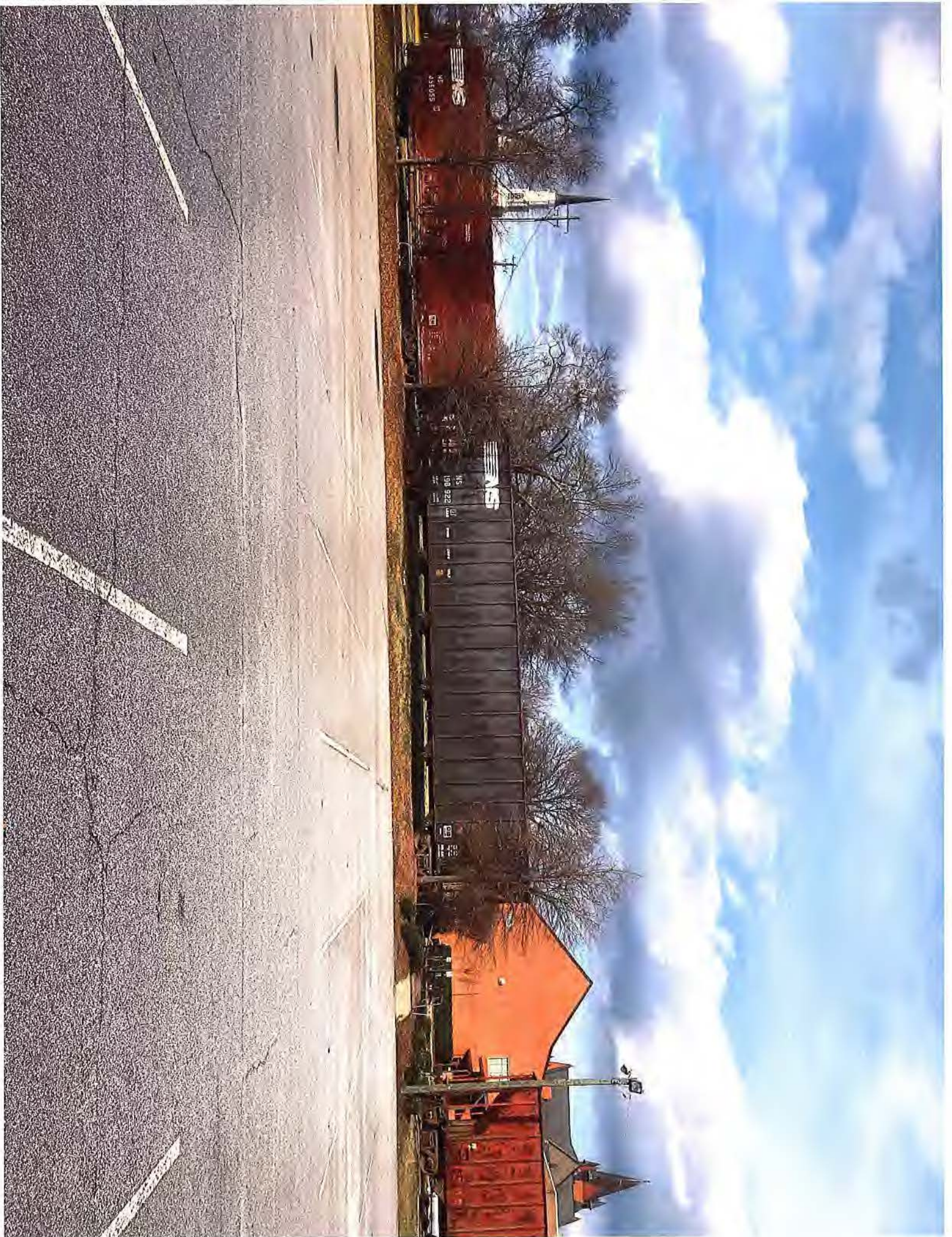


EXHIBIT B

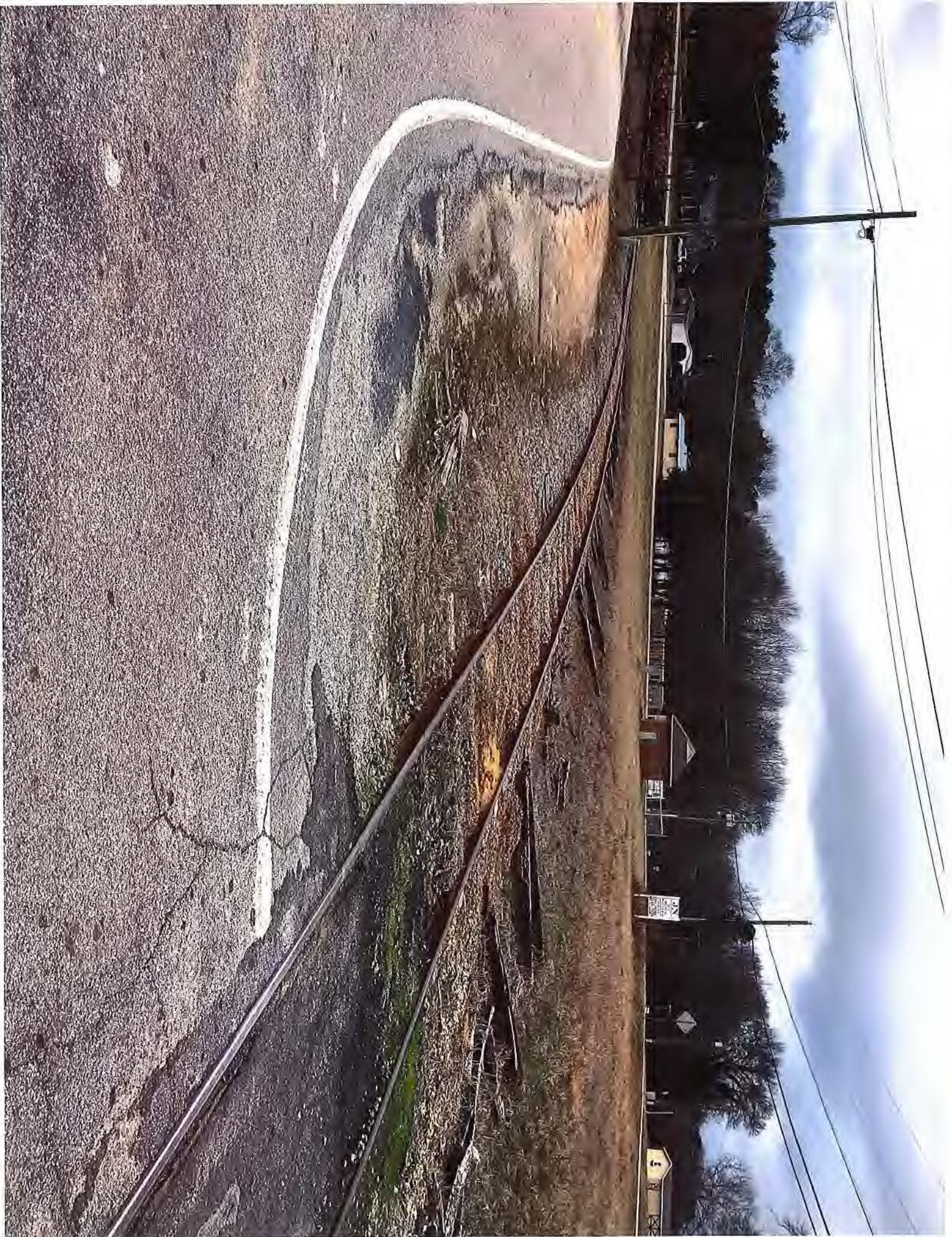


EXHIBIT C

