

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB 1324X

ALABAMA RAILROAD, LLC
-- ABANDONMENT EXEMPTION --
IN ESCAMBIA, CONECUH AND MONROE COUNTIES, ALABAMA

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**ABANDONMENT PETITION FOR EXEMPTION OF
ALABAMA RAILROAD, LLC**

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**ATTORNEYS FOR ALABAMA
RAILROAD, LLC**

Dated: July 6, 2022

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Pursuant to 49 U.S.C. § 10502 and the corresponding regulations of the Surface Transportation Board (the “Board”) at 49 C.F.R. §§ 1121 and 1152.60, Alabama Railroad, LLC, Inc. (“ARL”) hereby petitions the Board for an exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon approximately 47.5 miles of railroad line (the “Line”) described below. A map depicting the Line that is the subject of this proceeding is attached as Exhibit A. A draft *Federal Register* notice in the form prescribed at 49 C.F.R. § 1152.60(c) is attached as Exhibit C. Certificates of compliance with the service requirement of 49 C.F.R. § 1152.60(d) and the newspaper publication requirement of 49 C.F.R. § 1105.12, respectively, are attached as Exhibit D.

The Line was recently authorized for abandonment while under different ownership. Specifically, Alabama Railroad Co. (“ALAB”) sought and secured authorization to abandon the Line pursuant to the Board’s class exemption procedures at 49 C.F.R. Part 1152, subpart F, in 2019. *Alabama Railroad Co. – Abandonment Exemption – In Escambia, Conecuh, and Monroe Counties, in Alabama*, AB-463 (Sub-No. 2X) (STB served Apr. 18, 2019) (“*ALAB – Abandonment*”). However, ALAB never filed a notice of abandonment consummation as

required under 49 C.F.R. §§ 1152.50(e) and 1152.29(e)(2), and, as such, *the subject Line was not, and could not have been, legally abandoned, and, although long without local traffic, it remains a Board-jurisdictional line of railroad to this day.*¹ Moreover, after securing abandonment authorization (but having not consummated abandonment), ALAB sold the subject railroad line to ARL in late 2020 as a Board-jurisdictional line of railroad. *Alabama Railroad, LLC – Acquisition and Operation Exemption – Line of Alabama Railroad Co., Inc.*, FD 36450 (STB served November 3, 2020).

Since its purchase in 2020, ARL has not moved any local traffic over the Line, and there is no overhead traffic. (The Line is stub-ended, and represents the entirety of the ARL system. As such, no overhead traffic could exist.) Indeed, were it not for the Board’s prohibition against tacking out-of-service intervals (ARL has owned the Line for roughly a year-and-a-half), ARL would have been eligible to use the same class exemption that ALAB had invoked a few years prior.² ARL doubts that future demand for service on the Line will materialize, particularly at volumes that would warrant restoring operations. ARL has decided, under the circumstances, to seek Board authority to abandon the Line, freeing ARL (and the Line) from STB jurisdiction and regulation, and affording ARL greater flexibility in possible future disposition of the Line’s track assets and underlying right-of-way. Post-abandonment authorization (if granted), ARL anticipates salvaging some or all of the Line’s track assets as commercial circumstances may dictate.

While ARL sees independent, economic merit to abandoning the Line, ARL has been approached by adjacent landowners threatening to divest ARL of its interest in the Line via

¹ Emphasis added for reasons explained below.

² *Cf. Alcoa Energy Services, Inc. – Abandonment Exemption – in Milam County, Tex.*, AB-1291X (STB served Mar. 9, 2020).

hostile state court action (and outside of ordinary Board processes). These landowners adjacent to the Line were unhappy to find that ALAB did not consummate abandonment of the Line under applicable Board processes or, in the alternative, pursue interim trails use (under 49 C.F.R. § 1152.29) back in 2019. Either of these alternatives would have been to the benefit of the adjacent landowners, who could have reclaimed portions of the Line's right-of-way held by the railroad in easement in the event of abandonment consummation or, in the alternative, sought compensation from the Federal Government under 28 U.S.C. § 1491 for the supplemental interim trails use taking in the event of a notice of interim trails use and subsequent trails use agreement. Dissatisfied with the continued status of the Line as a line of railroad under the exclusive jurisdiction of this Board, these landowners have threatened to pursue relief under Alabama state law to reclaim unencumbered use of the portions of their land currently occupied by ARL by way of easement.³ Such hostile state court action, if successful, would, of course, conflict with federal law, which entrusts railroad line abandonments exclusively to this Board pursuant to 49 U.S.C. §§ 10501(b) and 10903.

In any other state, this threat of railroad line divestiture under operation of state law might not have to be taken so seriously, but, in Alabama, State Supreme Court jurisprudence appears to have rejected, at least in part, the widely-recognized proposition that the Board alone has the authority to determine when a particular common carrier railroad corridor has been abandoned to permit any underlying right-of-way easement interests to be extinguished.

Specifically, in 2019, the Alabama Supreme Court concluded that Alabama courts could determine whether an unused railroad line (including a legally un-abandoned line subject to appropriately-issued – and controlling – notice or certificate of interim trails use) has been

³ ARL takes no position at this time as to the scope of ARL right-of-way held in fee and the amount that may be held in easement.

abandoned to permit the exercise of state property law claims that otherwise would be preempted under Section 10501(b). *Monroe County Commission v. Nettles*, 288 So.3d 452 (Ala 2019) (“*Nettles*” – attached as Exhibit B). *Nettles* invalidated a trails use arrangement properly entered into under 16 U.S.C. § 1247, essentially on the basis that the arrangement violated the adjacent landowners property rights and that such exercise of state law (to extinguish the corridor easement) was not preempted under Sections 10501(b) and 10903. The *Nettles* ruling appears to be directly at odds with prevailing jurisprudence in other jurisdictions, including the jurisprudence of this agency under such cases as *Sunflower Rails-Trails Conservancy, Inc. – Petition for Declaratory Order – Sale of Railbanked Right-of-Way*, FD 36034 (STB served Feb. 23, 2017); *Jie Ao and Xin Zhou – Petition for Declaratory Order*, FD 35539 (STB served Jun. 6, 2012); and *Idaho N. & Pac. R.R. – Aban. & Discontinuance Exemption—in Wash. & Adams Crys., Idaho*, 3 S.T.B. 50, 59 (1998).

ARL has reason to believe that landowners adjacent to the Line intend to argue that, in keeping with Alabama common law, a railroad line – (a) that the STB previously has authorized for abandonment; (b) for which the abandoning carrier has not, for whatever reason, filed timely notice of abandonment consummation; and (c) that is currently inactive (with no known prospects for railroad traffic in the future) *is abandoned*, such that a state court may order ARL’s non-marketable interests in the subject right-of-way (where ARL does not hold the right-of-way in fee) to be extinguished, even though, as in *Nettles*, the railroad has never taken the final step of formally consummating abandonment by notice to the Board.

ARL does not believe that the Board would agree with *Nettles*, or that the subject Line is beyond the protections of federal law under Section 10501(b). But adjacent landowner threatens to rely on the *Nettles* precedent to force the ARL’s divestiture of the Line’s right-of-way

(and, in the process, potentially to seize possession of ARL's trackage before it can be salvaged) is a very real concern in Alabama, and this consideration is one of the factors motivating ARL to file the subject Petition, if for no other reason than to assure the orderly disposition of the Line as ARL sees fit, and as federal law (and federal law and corresponding Board regulation implemented under Congressional mandate) would permit. Moreover, in the absence of Board guidance on the issue, ARL is concerned that Alabama could ignore the widely-recognized principle that an abandonment exemption (like any other exemption) is permissive in nature, and that, absent formal consummation of abandonment pursuant to 49 C.F.R. §§ 1152.50(e) and 1152.29(e)(2), the Line (or any portion of it not fully abandoned under applicable Board processes) is protected from adverse state property law claims.

As is proven below, abandonment of the Line satisfies the individual exemption criteria of 49 U.S.C. § 10502, and, accordingly, this Petition should be granted.

I. IDENTIFICATION OF PETITIONER

Petitioner ARL is a Class III common carrier by virtue of its acquisition of the subject Board-regulated Line in 2020.

The complete name and address of ARL is:

Alabama Railroad, LLC
7450 W 130th St, Suite 100
Overland Park, KS 66213

II. DESCRIPTION OF THE LINE THAT IS THE SUBJECT OF THIS PETITION

The Line consists of approximately 47.5 miles of main line track extending from milepost 607.73 (at Flomaton, Alabama) to milepost 655.2 (near Tunnel Springs, Alabama), including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama. The Line constitutes the entirety of the ARL

system. The Line traverses United States Postal Service ZIP Codes 36426, 36441, 36460, 36471, and 36475. Based on information in ARL's possession, the Line does not contain federal-granted right-of-way. Any documentation in ARL's possession relevant to the foregoing statement will be made available promptly to those requesting it. ARL has not undertaken a review of the extent to which it holds fee title to portions of the right-of-way and the extent to which ARL's right-of-way consists of easement or any other non-marketable interest if the Line were to be abandoned.

As mentioned above, ARL has not provided railroad common carrier service over the Line since it acquired it in late 2020. In fact, *ALAB-Abandonment* indicates that the line has seen no common carrier railroad service since at least 2017. *ALAB – Abandonment*, 3. ARL is unaware of any plans by any third-party to commence shipping rail traffic via the Line.

III. JURISDICTION AND STATUTORY STANDARDS

The Board has exclusive jurisdiction over the proposed abandonment of the Line pursuant to 49 U.S.C. § 10903. A railroad common carrier such as ARL must obtain authority from the Board under Section 10903 before abandoning a line. However, 49 U.S.C. § 10502 requires the Board to exempt a person, transaction or service from the formal statutory and regulatory requirements otherwise applicable to a rail carrier when the Board determines that: (1) application of those requirements is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the "RTP"); and (2) either (a) the transaction is of limited scope or (b) regulation is not needed to protect shippers from an abuse of market power. This abandonment petition meets the standards for an exemption.

IV. CRITERIA OF 49 U.S.C. § 10502

A. Detailed scrutiny under 49 U.S.C. § 10903 is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101.

Granting ARL an exemption to abandon the Line is consistent with the goals articulated in the RTP. By allowing ARL to avoid the expense of maintaining a line that generates no local traffic (and hosts no overhead traffic, for reasons explained above), and permitting for the potential liquidation of the Line's assets to permit the salvage value of those assets to earn an adequate return on investment, an exemption will encourage the honest and effective management of railroads, and promote the development of an economically sound and efficient transportation system. *See* 49 U.S.C. §§ 10101(3), (4), (5) and (9).

The RTP also provides that the Board should minimize the need for federal regulatory control over the rail transportation system, expedite regulatory decisions and reduce barriers to exit. *See* 49 U.S.C. §§ 10101(2), (7), and (15). An exemption from the formal abandonment application procedures pursuant to Section 10502 would obviate the need for the expensive and time-consuming processes attendant to an application proceeding under Section 10903. Reliance on the adequate and expeditious individual exemption procedures would minimize Board regulation of the abandonment, and it would free ARL to make decisions regarding the future disposition of the Line without the need for additional Board regulatory oversight, all of which is in the furtherance of the RTP.

Finally, none of the other RTP criteria would be thwarted by an exemption.

B. The transaction is of limited scope.

The proposed abandonment involves a long-unused, stub-ended line segment roughly 47.5 miles in length. No rail service has been provided on the Line for at least five years and there is no known current interest for shipper use of the Line. Under these circumstances,

the proposed abandonment clearly is of limited scope and, of a type that the Board has recognized as such in the past. *See, e.g. Central Texas & Colorado River Railway, LLC – Discontinuance Exemption – in Mc Cullouch, San Saba, Mills, and Lampasas Counties, Texas*, AB-1272X (STB Served Apr. 27, 2022) (“*Central Texas*”) (granting petition to discontinue service over 67.5-mile line of railroad); *Norfolk Southern Railway Company – Discontinuance of Service Exemption – In Isle of Wight, Southampton, Greensville, and Brunswick Counties, VA*, AB-290 (Sub-No. 362X) (STB Served Mar. 13, 2014) (granting petition to discontinue service over 53.2 mile, stub-ended rail line).

C. Regulation is not necessary to protect shippers from market power abuse.

Since this abandonment is of limited scope, ARL does not need to demonstrate that regulation is unnecessary to protect shippers from market power abuse. *See* 49 U.S.C. § 10502(a)(2). Even so, it is clear that this transaction will not, and cannot, subject shippers to market power abuse.

There are no active shippers on the Line, and there has been no service on it in at least five years. There is no one that could be the target of any market power abuse. Fundamentally, there is simply no evidence to support the proposition that ARL possesses market power (it has none, as the owner of an entirely inactive railroad line without any foreseeable traffic prospects), and there is no one that ARL would have reason, or ability, to subject to any such market power abuse, if it had.

V. LABOR PROTECTION

As a general rule in railroad line abandonment and discontinuance proceedings, the Board would impose labor protective conditions under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville*

Counties, Idaho, 360 I.C.C. 91 (1979). However, where a railroad proposes to abandon its entire railroad system, as ARL is proposing to do here, the Board customarily declines to impose labor protective conditions. *See, e.g., Knox and Kane RR. Co.—Abandonment Exemption—McKean County, Pa.*, AB-551 (Sub-No. 2X) (STB served July 24, 2015); *cf. Central Texas*. It is appropriate in entire system abandonments such as this one for the Board to refrain from imposing labor protective conditions, because there will be no remaining entity subject to the Board’s jurisdiction. In keeping with longstanding precedent, it is appropriate in this proceeding that no labor protective conditions be imposed.

VI. ENVIRONMENTAL IMPACT REVIEW

In keeping with 49 C.F.R. §§ 1105.7(a), 1105.8(a) and 1121.3(b), a combined Environmental and Historic Report (“Report”) is attached hereto as Exhibit E. ARL does not believe that the proposed abandonment will result in any significant environmental impact. Also, ARL has received confirmation from that the proposed abandonment will not result in any adverse impact to historic resources, as is reflected in the attached Historic Report. ARL recognizes that it must comply with any conditions to abandonment and/or salvage as the Board may impose upon it in granting this Petition.

WHEREFORE, ARL respectfully requests that the Board exempt from the prior approval requirements of 49 U.S.C. § 10903 the abandonment of the Line extending from milepost 607.73 (at Flomaton, Alabama) to milepost 655.2 (near Tunnel Springs, Alabama), including all sidings and the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, Alabama.

Respectfully submitted,

By: /s/ *R. A. Wimbish*

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**ATTORNEYS FOR ALABAMA
RAILROAD, LLC**

Dated: July 6, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

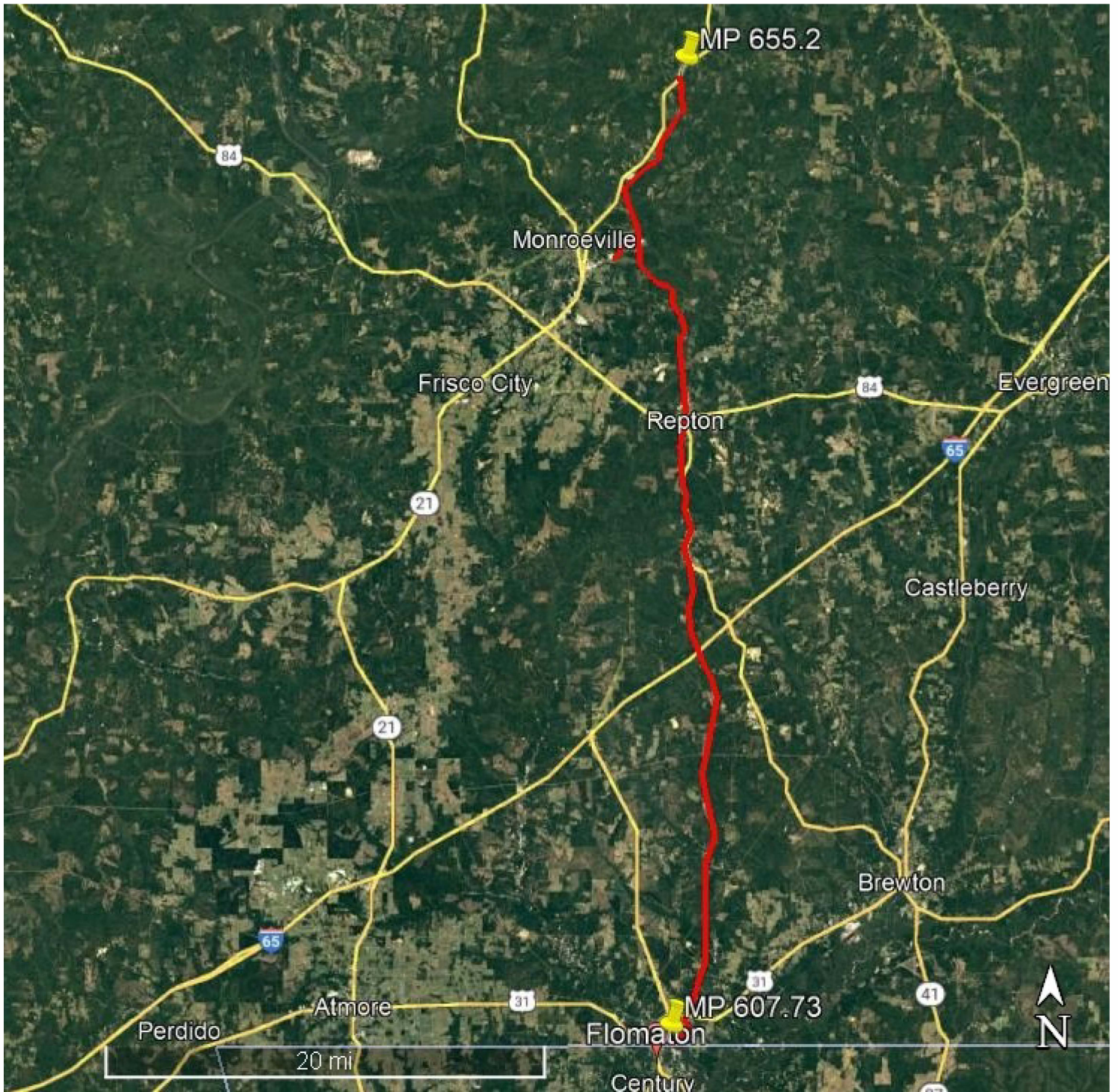
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**ALABAMA RAILROAD, LLC
-- ABANDONMENT EXEMPTION --
IN ESCAMBIA, CONECUH AND MONROE COUNTIES, ALABAMA**

EXHIBIT A

MAP

**Docket No. AB 1324X Alabama Railroad, LLC -
Abandonment Exemption - In Escambia, Conecuh,
and Monroe Counties, Alabama**



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SURFACE TRANSPORTATION BOARD**

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**ALABAMA RAILROAD, LLC
-- ABANDONMENT EXEMPTION --
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EXHIBIT B

***MONROE COUNTY COMMISSION V. NETTLES,*
288 SO.3D 452 (ALA 2019)**



KeyCite Yellow Flag - Negative Treatment

Disagreed With by [Burgoyne, LLC v. Chicago Terminal Railroad Company](#),
Ill.App. 1 Dist., June 25, 2020

288 So.3d 452

Supreme Court of Alabama.

MONROE COUNTY COMMISSION

v.

A.A. NETTLES, Sr. Properties
Limited and Eula Lambert Boyles

1170738

I

April 26, 2019

Synopsis

Background: Purported owner and owner's tenant brought action to quiet title to right-of-way that had been conveyed by railroad company to county commission for use as a recreational trail in accordance with the National Trails System Act. The Circuit Court, Monroe County, No. CV-17-900097, [Jack B. Weaver, J.](#), quieted title in favor of plaintiffs. County commission appealed.

[Holding:] The Supreme Court, [Sellers, J.](#), held that sufficient evidence supported finding that railroad company had ceased using right-of-way for railroad purposes before the conveyance.

Affirmed.

[Bryan, J.](#), concurred in the result.

[Parker, C.J.](#), dissented and filed opinion.

[Shaw, J.](#), dissented and filed opinion, which [Stewart, J.](#), joined.

Procedural Posture(s): On Appeal; Motion to Quiet Title.

West Headnotes (8)

[1] Appeal and Error 🔑 Subject-matter jurisdiction

Appellate courts review de novo whether the trial court had subject-matter jurisdiction.

[2] States 🔑 State police power

In all preemption cases, and particularly in those in which Congress has legislated in a field which the states have traditionally occupied, courts start with the assumption that the historic police powers of the states were not to be superseded by the federal act unless that was the clear and manifest purpose of Congress.

[3] Railroads 🔑 Supervision by Public Officers

The goal of the federal Surface Transportation Board is to limit, if not prevent, state regulation of interstate rail transportation to avoid the pitfalls and nuances of laws enacted by each state's legislature that would deter a railroad's ability to operate efficiently and the possibility of divergent regulations from each state.

[4] Railroads 🔑 What constitutes abandonment
Railroads 🔑 Rights of parties or privies on abandonment

Sufficient evidence supported finding that railroad company ceased using right-of-way for railroad purposes before it conveyed the corresponding property by quitclaim deed to county commission, and thus the right-of-way had lapsed before the conveyance and the property burdened by the right-of-way vested, upon right-of-way's lapse, in the owner, who was the successor-in-interest to recipient of a quitclaim deed by the railroad company in which the company retained the right-of-way for the maintenance and operation of a railroad; railroad line had fallen into disrepair and had not been used for many years, railroad company had failed to reconstruct an essential trestle that had burned, and company negotiated with the federal Surface Transportation Board (STB) to sell its interest.

2 Cases that cite this headnote

[5] **Easements** 🔑 Alteration

One holding an easement cannot change the character of that easement, and neither can the easement holder enlarge upon an easement for other purposes.

[6] **Railroads** 🔑 Construction and effect of conveyance or license in general

An easement specifically for railroad purposes precludes the easement holder from expanding the use of the easement to anything other than railroad operations.

[7] **Easements** 🔑 Termination in General

An easement given for a specific purpose terminates as soon as the purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment.

[8] **Quieting Title** 🔑 Jurisdiction and venue

Trial court had subject-matter jurisdiction over quiet-title action concerning right-of-way that had been conveyed by railroad company to county commission for use as a recreational trail in accordance with the National Trails System Act; the federal Surface Transportation Board (STB) had already acted in the matter, i.e., the STB had decided to grant a Notice of Interim Trail Use (NITU) based on the railroad company's certification that it had not used the right-of-way for at least two years, and the trial court merely relied on the STB's finding to quiet title. 📄 16 U.S.C.A. § 1247.

2 Cases that cite this headnote

***453 Appeal from Monroe Circuit Court (CV-17-900097); Jack B. Weaver, Judge**

Attorneys and Law Firms

Jamie H. Kidd of Webb & Eley, P.C., Montgomery, for appellant.

David F. Steele, Jr., Emily P. Steele, and David F. Steele, Sr., of Steele Law, LLC, Monroeville, for appellees.

Whitney H. Barlow, Monroeville, for amicus curiae Monroeville/Monroe County Economic Development Authority, in support of the appellant.

William H. Weems, Jr., Birmingham; and **Andrea C. Ferster**, gen. counsel, Rails to Trails Conservancy, Washington, D.C., for amicus curiae Rails to Trails Conservancy, in support of the appellant.

Thomas J. Saunders, Alabama Forestry Association, Montgomery; and **Scott Yager**, National Cattlemen's Beef Association, Washington, D.C., for amici curiae Alabama Forestry Association, Alabama Cattlemen's Association, and National Cattlemen's Beef Association, in support of the appellees.

Opinion

SELLERS, Justice.

***454** A.A. Nettles, Sr. Properties Limited (“Nettles”) and Eula Lambert Boyles (hereinafter referred to collectively as “the plaintiffs”)¹ filed in the Monroe Circuit Court an action seeking to quiet title to a right-of-way that had been conveyed by Alabama Railroad Company (“the railroad”) to the Monroe County Commission (“the Commission”) for use as a recreational trail in accordance with the National Trails System Act (“the Trails Act”), 📄 16 U.S.C. § 1247. The trial court quieted title in favor of the plaintiffs. The Commission appealed. We affirm.

I. Background -- The Trails Act

“As background, the Interstate Commerce Act of 1887, ch. 104, 24 Stat. 379, and the Transportation Act of 1920, ch. 91, 41 Stat. 477-78, grant the Interstate Commerce Commission, now the Surface Transportation Board (‘STB’), exclusive authority over the construction, operation and abandonment of the Nation's rail lines. In order for a railroad company to terminate rail service, the railroad company must obtain the consent of the

STB. To obtain consent, the railroad company may apply for permission to discontinue service, seek permission to terminate through abandonment proceedings, or file a request for an exemption from abandonment proceedings. Once the STB consents, the rail line is removed from the national transportation system and the STB's jurisdiction comes to an end.

“In 1983, Congress amended the National Trails System Act to include an alternative process for railroad companies to abandon rail lines.  16 U.S.C. § 1247(d).^[2] This process, known as ‘railbanking,’ preserves corridors or rights-of-way not in use for train service for possible future use as recreational trails.

“In order for a rail line to be ‘railbanked,’ the railroad company must first file an abandonment application under *455 49 U.S.C. § 10903, or a notice of exemption from that process under 49 U.S.C. § 10502. Once an abandonment application, or request for an exemption, is filed, a party interested in railbanking may request the issuance of a Certificate of Interim Trail Use (‘CITU’) (in abandonment application proceedings) or a Notice of Interim Trail Use (‘NITU’) (in abandonment exemption proceedings). If the railroad company indicates that it is willing to negotiate a railbanking and interim trail use agreement, the STB issues the CITU or NITU. The issuance of the CITU or NITU preserves the STB's jurisdiction over the rail line and allows the railroad company to discontinue operations and remove track and equipment while the parties negotiate a railbanking and interim trail use agreement.

“The NITU or CITU affords the railroad company 180 days in which to negotiate a railbanking and interim trail use agreement with the third party. If an agreement is reached, the NITU (or CITU) automatically authorizes the interim trail use. If the STB takes no further action, the trail sponsor then may assume management of the right-of-way, subject only to the right of a railroad to reassert control of the property for restoration of rail service. If no agreement is reached, the

railroad company may proceed with the abandonment process.”

[Burnett v. United States](#), 139 Fed.Cl. 797, 801-02 (2018)(internal citations omitted).

II. Facts and Procedural History

In May 1997, the railroad conveyed, by quitclaim deed, real property to Charles W. Boyles, retaining for itself a right-of-way over Charles's property for the maintenance and operation of a railroad.³ After Charles died, his wife Eula inherited the property subject to the railroad's right-of-way; Nettles leases the property from Eula.

In March 2013, the railroad filed with the Surface Transportation Board (“the STB”) a “Notice of Exemption,” seeking to abandon approximately 7.42 miles of rail line, which included the right-of-way over the property owned by Eula and leased by Nettles. To support its invocation of the exemption, the railroad certified that it had not run trains over the line for at least two years. The railroad published its Notice of Exemption in the Federal Register on March 21, 2013. By letter dated March 22, 2013, the Commission filed with the STB a request for a public-use condition, as well as a request for interim trail use pursuant to the Trails Act. In that request, the Commission indicated its willingness to assume responsibility for the management, legal liability, and payment of taxes for the right-of-way, and it acknowledged that use of the right-of-way for trail purposes was subject to possible future reconstruction and reactivation of the right-of-way for rail service. The railroad, in turn, filed a response indicating its willingness to negotiate with the Commission for interim trail use. On April 19, 2013, the STB issued a Notice of Interim Trail Use (“NITU”) permitting the Commission and the railroad to negotiate a trail-use agreement. After the railroad and the Commission reached an agreement, the railroad quitclaimed its interest in the right-of-way to the Commission. The plaintiffs thereafter filed a complaint *456 to quiet title to the right-of-way; they sought a judgment declaring that Eula owned the right-of-way in fee simple, as well as an injunction prohibiting the Commission from proceeding with the trail project pending resolution of the quiet-title action.

On December 20, 2017, the trial court conducted a bench trial. At the close of the plaintiffs' evidence and again at the close of all the evidence, the Commission moved for a judgment

as a matter of law on the basis that the plaintiffs' quiet-title action was federally preempted. The trial court denied those motions.

On January 10, 2018, the trial court entered a final order quieting title to the right-of-way in the plaintiffs. The trial court, applying Alabama property law, held that the right-of-way had terminated by operation of law before the railroad purported to convey its interest in the right-of-way to the Commission. Accordingly, the trial court enjoined the Commission from proceeding with the recreational trail on the property owned by Eula and leased by Nettles. The Commission thereafter filed a motion requesting that the trial court alter, amend, or vacate its judgment or, in the alternative, order a new trial on the basis of federal preemption. Following a hearing, the trial court denied that motion. This appeal followed.

III. Discussion

1. Federal Preemption

[1] The Commission contends that the trial court lacked jurisdiction to hold that the right-of-way had been abandoned under state law because, its says, the STB has exclusive jurisdiction over abandonments of regulated rail lines. “We review de novo whether the trial court had subject-matter jurisdiction.”  [Solomon v. Liberty Nat'l Life Ins. Co.](#), 953 So.2d 1211, 1218 (Ala. 2006). It is undisputed that the Interstate Commerce Commission Termination Act (“ICCTA”) vests the STB with exclusive jurisdiction over “(1) transportation by rail carriers” and “(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities” and states that “the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b). The STB has explained that there are two broad categories of state regulation that are categorically preempted:

“Indeed, the courts have found two broad categories of state and local actions to be preempted regardless of the context or rationale for the action. The first is any form of state or local permitting or preclearance that, by its nature, could be used to deny a railroad the ability to conduct some part of

its operations or to proceed with activities that the [STB] has authorized.

“Second, there can be no state or local regulation of matters directly regulated by the [STB]--such as the construction, operation, and abandonment of rail lines; railroad mergers, line acquisitions, and other forms of consolidation; and railroad rates and service.

“Both types of categorically preempted actions by a state or local body would directly conflict with exclusive federal regulation of railroads. Accordingly, for those categories of actions, the preemption analysis is addressed not to the reasonableness of the particular state or local action, but rather to the act of regulation itself.

“In other words, state and local laws that fall within one of the precluded categories are a per se unreasonable interference with interstate commerce. For such cases, once the parties have *457 presented enough evidence to determine that an action falls within one of those categories, no further factual inquiry is needed.

“For state or local actions that are not facially preempted, the [section 10501\(b\)](#) preemption analysis requires a factual assessment of whether that action would have the effect of preventing or unreasonably interfering with railroad transportation.”

[CSX Transp., Inc.--Petition for Declaratory Order](#), STB Finance Docket No. 34662 (STB May 3, 2005)(internal citations omitted).

[2] [3] “Despite its breadth, the jurisdiction of the STB does not foreclose every conceivable state claim.”  [Sunflour R.R. v. Paulson](#), 670 N.W.2d 518, 523 (S.D. 2003). Rather, “[i]n all pre-emption cases, and particularly in those in which Congress has ‘legislated ... in a field which the States have traditionally occupied,’ ... we ‘start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.’ ”  [Medtronic, Inc. v. Lohr](#), 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) (quoting  [Rice v. Santa Fe Elevator Corp.](#), 331 U.S. 218,

230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947)). The United States Supreme Court has explained this assumption: “We rely on the presumption because respect for the States as ‘independent sovereigns in our federal system’ leads us to assume that ‘Congress does not cavalierly preempt state-law causes of action.’ ”  Wyeth v. Levine, 555 U.S. 555, 565 n. 3, 129 S.Ct. 1187, 173 L.Ed.2d 51 (2009) (quoting  Lohr, 518 U.S. at 485, 116 S.Ct. 2240). “The presumption thus accounts for the historic presence of state law but does not rely on the absence of federal regulation.”  555 U.S. at 566 n. 3, 129 S.Ct. 1187. The idea is that, although the STB has “exclusive and preemptive jurisdiction,” this expansive jurisdiction is given for a specific reason: to prevent attempts by states to impose economic regulation on rail transportation. In other words, the goal of the STB is to limit, if not prevent, state regulation of interstate rail transportation to avoid the pitfalls and nuances of laws enacted by each state's legislature that would deter a railroad's ability to operate efficiently and the possibility of divergent regulations from each state.

In this case, we are not faced with an Alabama regulation attempting to regulate rail transportation and to limit the use of rail property to deter interstate commerce. Rather, we are dealing with state property laws that existed before the advent of railroads, and we are asked to consider the impact of a railroad right-of-way, reserved in a quitclaim deed, on the rights of an adjoining property owner when the purpose of the right-of-way has lapsed by nonuse and the holder of the right-of-way attempts to transfer its interest to create a new use, not envisioned by the reservation of rights in the initial instrument conveying the right-of-way.

In  Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1001, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984), the United States Supreme Court stated: “[W]e are mindful of the basic axiom that ‘[p]roperty interests ... are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.’ ” (Quoting  Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 161, 101 S.Ct. 446, 66 L.Ed.2d 358 (1980), quoting in turn  Board of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).) In  Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co., 429 U.S. 363, 378, 97 S.Ct. 582, 50 L.Ed.2d 550 (1977), *458 the United States Supreme Court stated that, “[u]nder our federal

system, property ownership is not governed by a general federal law, but rather by the laws of the several States.” See also  Davies Warehouse Co. v. Bowles, 321 U.S. 144, 155, 64 S.Ct. 474, 88 L.Ed. 635 (1944)(“The great body of law in this country which controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state.”). It is clear then that, even in a regime of federal preemption, determining the ownership of real property requires a review of state law.

2. State-Law Quiet-Title Action

As indicated, the plaintiffs filed a complaint seeking to quiet title to the right-of-way. It is helpful to remember that the right-of-way was created by reservation in a 1997 quitclaim deed and that the railroad, as the holder of the easement, attempted to convey the right-of-way also by quitclaim deed. As a matter of Alabama law, the precise language and nature of the rights reserved under the 1997 quitclaim deed are critical in assessing whether the railroad had any right or title to effectively quitclaim its interests in the right-of-way to the Commission. The trial court determined that, under the quitclaim deed, the railroad reserved for itself a right-of-way for the maintenance and operation of a railroad only; that the railroad had changed the character of the right-of-way from a railroad right-of-way to a right-of-way for recreational trail use; that the railroad had abandoned the right-of-way when it failed to rebuild a burnt train trestle and removed the rails and cross ties from the right-of-way; and that the right-of-way was thus extinguished by operation of law. Accordingly, the trial court concluded that, because the right-of-way had been extinguished by operation of law, the railroad had nothing to convey to the Commission. See  Benedict v. Little, 288 Ala. 638, 643, 264 So.2d 491, 494 (1972)(noting that, under Alabama law, “[a] quitclaim deed can convey nothing more than what the grantor actually owns”). The analogy used by the trial court is the same analogy employed by a federal claims court assessing a claim under the Miller Act,  28 U.S.C. § 1491. See, e.g., Burnett, 139 Fed.Cl. at 804:

“To determine whether a Fifth Amendment takings has occurred in a rails-to-trails case, the Court follows a three-part analysis established by the United States Court of Appeals for the Federal Circuit. First, the Court must determine who owned the land at issue at the time of the takings, and specifically, whether the railroad company

owned the land in fee simple or held only an easement. Second, if the railroad company owned only an easement, the Court must determine whether the terms of the easement are limited to use for railroad purposes, or whether the terms include use as a public recreational trail. Third, if the railroad company's easement is broad enough to encompass recreational trail use, the Court must determine whether the easement terminated prior to the alleged takings, so that the property owner held a fee simple estate unencumbered by easement at the time of the takings."

(Citations omitted.)

[4] Thus, as did the trial court, we look to what the railroad owned at the time it executed and delivered the quitclaim deed to the Commission. When the railroad undisputedly ceased using the right-of-way for railroad purposes, under Alabama property law, its right-of-way across Eula's property lapsed by nonuse. When the right-of-way lapsed by nonuse, the right-of-way was extinguished, and the *459 property burdened by the right-of-way vested in Eula automatically, by operation of law. Thus, the quitclaim deed conveyed nothing to the Commission because the railroad, at the time of conveyance, had nothing to transfer. In other words, the railroad's inaction in failing to use its right-of-way terminated the right-of-way, divesting it of any further interest in the property. Further, the right-of-way was limited to use for railroad purposes; even under decisions from the federal courts, conveying a railway easement for another use allows the adjoining property owner to look to state law to determine the owner's rights in the property.

[5] [6] [7] Under Alabama law, one holding an easement cannot change the character of that easement. [Blalock v. Conzelman](#), 751 So.2d 2 (Ala. 1999). Neither can the easement holder "enlarge upon an easement for other purposes." [Roberts v. Monroe](#), 261 Ala. 569, 577, 75 So.2d 492, 499 (1954). An easement, then, specifically for railroad purposes precludes the easement holder from expanding the use of the easement to anything other than railroad operations. Alabama has specifically addressed railroad easements and has determined that they are limited and cannot be expanded. See [Nashville, Chattanooga & St. Louis Ry. v. Karthaus](#), 150 Ala. 633, 43 So. 791 (1907); [West v. Louisville & Nashville R.R.](#), 137 Ala. 568, 34 So. 852 (1903). "[A]n easement given for a specific purpose terminates as soon as the purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment." [Tatum v. Green](#), 535 So.2d 87, 88 (Ala.

1988). Thus, under the facts of this case, the trial court did not err in applying state-law principles to conclude that the right-of-way had been extinguished by operation of law, causing title to the right-of-way to revert to Eula. "In an action to quiet title, when the trial court hears evidence ore tenus, its judgment will be upheld unless it is palpably wrong or manifestly unjust." [Woodland Grove Baptist Church v. Woodland Grove Cmty. Cemetery Ass'n, Inc.](#), 947 So.2d 1031, 1036 (Ala. 2006). We cannot say that the trial court's determination here was wrong, much less unjust.

3. [Mobile & Gulf R.R. v. Crocker](#), 455 So.2d 829 (Ala. 1984)

[8] The Commission relies on [Mobile & Gulf R.R. v. Crocker](#), 455 So.2d 829 (Ala. 1984), to support its argument that the trial court lacked subject-matter jurisdiction to determine that the railroad had abandoned its right-of-way over Eula's property. In [Crocker](#), the landowners sought a judgment declaring that a railroad had abandoned its right-of-way over their property. At the time the landowners filed their state-court action, the railroad had not initiated any proceedings with the Interstate Commerce Commission ("ICC"), now the STB, seeking to abandon the right-of-way; thus, the ICC had not authorized the abandonment of the right-of-way. The railroad filed, among other things, a motion to dismiss the landowners' declaratory-judgment action on the basis that the trial court lacked subject-matter jurisdiction over it. The trial court denied that motion. This Court granted the railroad permission to appeal pursuant to [Rule 5, Ala. R.](#)

[App. P.](#) The [Crocker](#) Court reversed the judgment of the trial court, concluding that the ICC had exclusive jurisdiction over the abandonment of the right-of-way; that the ICC had not authorized the abandonment of the right-of-way; and that the trial court, thus, lacked jurisdiction to hear the landowners' action.

In this case, the Commission's reliance on [Crocker](#) is misplaced; [Crocker](#) is easily distinguished, not only procedurally, but also by changes in the law since [Crocker](#) was decided. Consider the manner in *460 which the rights-of-way were created. The right-of-way easement in [Crocker](#) was created by a condemnation action. In this case, the right-of-way easement was reserved in a quitclaim deed when the railroad conveyed its property to Eula's

predecessor in title. Because a condemnation action is a much more aggressive means to create a right-of-way and requires not only judicial action but also a showing of necessity, the lapse of a right-of-way by nonuse is much harder to establish in such a case and requires judicial scrutiny. By merely reserving the right-of-way in a quitclaim deed and limiting it to railroad use, establishing lapse by nonuse in such a case involves a lower threshold, especially because the railroad had reserved the right-of-way without any court action and the right-of-way would lapse by nonuse without a specific finding or the necessity of any court action. Thus, reserving a right-of-way in a quitclaim deed is a nonjudicial method by which a railroad can establish an easement, and it stands to reason that such an easement could be undone without judicial action. Condemnation, on the other hand, is a much more involved judicial process such that any lapse in use and establishing nonuse would require judicial action to vacate the

right-of-way and change its use. Additionally, in [Crocker](#), both the landowners and the railroad requested a judgment declaring whether the right-of-way had been abandoned. As noted, the railroad had never invoked the jurisdiction of the ICC seeking permission to abandon the right-of-way. In other words, the declaratory-judgment action in [Crocker](#) would have required the trial court to specifically invade the ICC's jurisdiction to determine whether the right-of-way had been abandoned. Here, neither the plaintiffs nor the Commission sought a judgment concerning whether the right-of-way had been abandoned. Rather, the plaintiffs merely filed a statutory action seeking to quiet title to the right-of-way because the Commission had represented, in conjunction with the trails project, that it held fee title to the right-of-way. [Section 6-6-540, Ala. Code 1975](#), provides:

“When any person is in peaceable possession of lands, whether actual or constructive, claiming to own the same, in his own right or as personal representative or guardian, and his title thereto, or any part thereof, is denied or disputed or any other person claims or is reputed to own the same, any part thereof, or any interest therein or to hold any lien or encumbrance thereon and no action is pending to enforce or test the validity of such title, claim, or encumbrance, such person or his personal representative or guardian, so in possession, may commence an action to settle the title to such lands and to clear up all doubts or disputes concerning the same.”

See also [Dake v. Inglis](#), 239 Ala. 241, 243, 194 So. 673, 674 (1940) (“The purpose of the [quiet-title] proceeding is not to invest the court with jurisdiction to sell or dispose of the title

to the land, but merely to determine and settle the same as between the complainant and the defendants.”).

In entertaining the plaintiffs' quiet-title action, the trial court had before it various documents, including the decision of the STB granting the NITU based on the railroad's certification that it had not used the right-of-way for at least two years. In other words, the trial court had an admission by the railroad as the former title holder affirming that it had ceased to use the right-of-way for railroad purposes. The trial court clearly had jurisdiction to decide the nature and extent of the right-of-way under Alabama law and to quiet title in Eula. Accordingly, unlike [Crocker](#), where the jurisdiction of the ICC had not been invoked, the STB had already acted in this case, and the trial court merely [*461](#) relied on the STB's findings to quiet title to the right-of-way.

Finally, we note that [Crocker](#) was decided in July 1984, shortly after Congress amended the Trails Act in March 1983 to include interim trail use as an alternative process by which railroad companies could abandon rail lines. Contrary to the Commission's interpretation of [Crocker](#), i.e., that the plaintiffs' quiet-title action falls exclusively within the STB's jurisdiction, we note that the STB has routinely issued decisions refusing to intervene in actions involving property disputes that can be resolved under state law. See, e.g., [Allegheny Valley R.R.—Petition for Declaratory Order—William Fiore](#), STB Finance Docket No. 35388 (STB April 25, 2011) (denying a railroad's request for a declaratory order that state-law claims and remedies concerning the size and extent of a railroad easement were preempted by [49 U.S.C. § 10501\(b\)](#), where the disputes involved “the application of state property law and properly are before the state court”). In the [Allegheny Valley](#) case, the landowner purchased a parcel of land subject to a railroad's right-of-way; the railroad had acquired the right-of-way from another railroad via a quitclaim deed. The landowner filed a state-court action seeking a determination under Pennsylvania law as to the width and location of the property claimed by him and the railroad, as well as a determination whether the railroad owned the property in fee simple or had only an easement. The STB declined the railroad's request for a declaratory order because the landowner's action involved questions of state property law that would be best handled by state courts. Again, the STB's decisions express an unwillingness to accept jurisdiction of matters involving state-property issues even when railroad companies attempt to invoke the STB's exclusive jurisdiction. See also [Ingredion Incorporated—](#)

Petition for Declaratory Order, STB Finance Docket No. 36014 (STB September 30, 2016), where the STB declined to issue a declaratory order when the case arose from a property dispute originating in state court concerning the application of state property law on the ground that those are questions that the state court should resolve--“questions of [state] property law generally are more appropriately decided by [state] courts.”

4. Sufficiency of the Evidence -- Abandonment

Alternatively, the Commission argues that the trial court erred in refusing to grant it a new trial because, it says, there was no evidence indicating that the railroad had abandoned its interest in the right-of-way before it conveyed the property to the Commission by quitclaim deed. It is undisputed that, at all times relevant to this appeal, the rail line fell into disrepair and had not been used for many years. The trial court stated in its order that the character of the right-of-way was changed when the railroad conveyed its interests in it to the Commission and that both the failure of the railroad to construct an essential trestle and the removal of the rails indicated an abandonment of the right-of-way and rendered the specific purpose of the easement impossible. Thus, the trial court held that the right-of-way was extinguished by operation of law, causing title to the right-of-way to vest with Eula. In Chatham v. Blount County, 789 So.2d 235, 241 (Ala. 2001), this Court explained:

“As a general rule, one holding an easement cannot change the character of that easement, Blalock v. Conzelman, 751 So.2d 2 (Ala. 1999), or ‘enlarge upon [that] easement for other purposes.’ Roberts v. Monroe, 261 Ala. 569, 577, 75 So.2d 492, 499 (1954). Specifically as to a railroad easement, this Court has held that such an easement was limited in use *462 to railroad purposes. Nashville, C. & St. L. Ry. v. Karthaus, 150 Ala. 633, 43 So. 791 (1907); West v. Louisville & N. R.R., 137 Ala. 568, 34 So. 852 (1903). An easement granted for a specific purpose is deemed abandoned when its owner ‘ ‘ ‘by his own act renders the use of the easement impossible, or himself obstructs it in a manner inconsistent with its further enjoyment.’ ” ’ Byrd Cos. v. Smith, 591 So.2d 844, 847 (Ala. 1991) (quoting Polyzois v. Resnick, 123 Neb. 663, 668, 243 N.W. 864, 866 (1932) (quoting treatise)). See also Tatum v. Green, 535 So.2d 87, 88 (Ala. 1988) (‘[A]n easement given for a specific purpose terminates as soon

as the purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment.’).”

The Commission contends that there was no evidence before the trial court indicating that the railroad had removed the tracks and ties from the railroad corridor. Notably, there is nothing in the trial transcript indicating that the tracks and ties had been removed from the railroad corridor. However, the record does indicate that the parties had been before the court on at least two other occasions; those transcripts are not before us. In any event, we conclude that the trial court had sufficient evidence before it to determine that the railroad intended to abandon its interest in the right-of-way. The trial court had before it pictures of a train trestle that had burned in January 2007; the railroad never rebuilt that trestle, thereby making the specific purpose of the right-of-way, i.e., operation of a railroad, impossible. The evidence of intent to abandon is further bolstered by the railroad's actions of negotiating with the Commission to sell all of its interest in the right-of-way for use as a recreational trail. See, e.g., Lawson v. State, 107 Wash. 2d 444, 452, 730 P.2d 1308, 1313 (1986) (holding that, where deed conveyed right-of-way for railroad purposes only, change in use from “Rails to Trails” constituted abandonment). Accordingly, the trial court did not err in concluding that the easement reserved to the railroad by a right-of-way as provided in the quitclaim deed conveying the property to Charles lapsed by nonuse and was thus extinguished by operation of law, leaving nothing for the railroad to convey to the Commission.

IV. Conclusion

Based on the foregoing, the judgment of the trial court is due to be affirmed.

AFFIRMED.

Bolin, Wise, Mendheim, and Mitchell, JJ., concur.

Bryan, J., concurs in the result.

Parker, C.J., and Shaw and Stewart, JJ., dissent.

PARKER, Chief Justice (dissenting).

I reluctantly dissent. The rule of law requires that we cannot ignore the federal statute, the United States Supreme Court's

interpretation of it, and this Court's precedent in [Mobile & Gulf R.R. v. Crocker](#), 455 So.2d 829 (Ala. 1984).

When we interpret an express-preemption clause in a federal statute, we must “ ‘focus on the plain wording of the clause.’ ” [Norfolk Southern Ry. v. Goldthwaite](#), 176 So.3d 1209, 1213 (Ala. 2015) (quoting [CSX Transp., Inc. v. Easterwood](#), 507 U.S. 658, 664, 113 S.Ct. 1732, 123 L.Ed.2d 387 (1993)). The statutory scheme underlying the Rails-to-Trails Act gives the Surface Transportation Board (“the STB”) exclusive jurisdiction over the “abandonment[] or discontinuance” of a rail line. 49 U.S.C. § 10501(b)(2). Although “[s]tate law generally governs the disposition of reversionary interests, ... [the STB has] ‘exclusive and plenary’ jurisdiction *463 to regulate abandonments.” [Preseault v. ICC](#), 494 U.S. 1, 8, 110 S.Ct. 914, 108 L.Ed.2d 1 (1990).

Thus, the federal courts have repeatedly held that “there could be no abandonment until authorized by federal law.” [Barclay v. United States](#), 443 F.3d 1368, 1374 (Fed. Cir. 2006); see [Jackson v. United States](#), 135 Fed.Cl. 436, 443 (2017) (“The Trails Act prevents a common law abandonment of the railroad right-of-way from being effected, thus precluding state law reversionary interests from vesting.” (emphasis added)); [Preseault v. ICC](#), 853 F.2d 145, 150 (2d Cir. 1988) (“Until the [STB] issues a certificate of abandonment, the railway property remains subject to the [STB's] jurisdiction, and state law may not cause a reverter of the property.”); [National Wildlife Fed'n v. ICC](#), 850 F.2d 694, 704 (D.C. Cir. 1988) (“Nor may state law cause a reverter of a right-of-way prior to an [STB]-approved abandonment.”).

Moreover, this Court has already decided the issue whether a state court has “subject matter jurisdiction of an abandonment of a railroad right-of-way, or ... [whether] the question of abandonment [is] pre-empted by ... 49 U.S.C. § 10501 et seq.” [Crocker](#), 455 So.2d at 830. After reasoning that the “act is among the most pervasive and comprehensive of federal regulatory schemes,” the Court held that “the [STB] has exclusive jurisdiction to determine whether there was an abandonment of the railroad right-of-way.” [Id.](#) at 832, 834. Because [Crocker](#) squarely addressed preemption of the issue of abandonment, I am unpersuaded that [Crocker](#) is distinguishable based on the vagaries of how or when

the issue arises in the state court. I am also not convinced that the prior denials of relief by the STB are relevant here, because those denials either addressed legal issues not within the scope of 49 U.S.C. § 10501(b)(2) or simply declined to rule on preemption. Therefore, this Court should reverse the circuit court's judgment and remand the case with directions to dismiss the plaintiffs' action.

Nevertheless, although I recognize that the Rails-to-Trails Act preempts Alabama law, I am concerned that the Act violates landowners' fundamental rights of contract and property. When the railroad reserved an easement over Charles W. Boyles's property, it negotiated for the right to use the easement for railroad operations. The railroad did not negotiate for a public recreational trail. The United States Court of Appeals for the Federal Circuit has recognized this disparity in anticipated use, noting that “[i]t is difficult to imagine that either party to the original transfers had anything remotely in mind that would resemble a public recreational trail.” [Preseault v. United States](#), 100 F.3d 1525, 1543 (Fed. Cir. 1996). Comparing the two uses, the court observed:

“When the easements here were granted ... specifically for transportation of goods and persons via railroad, could it be said that the parties contemplated that a century later the easements would be used for recreational hiking and biking trails, or that it was necessary to so construe them in order to give the grantee railroad that for which it bargained? We think not. Although a public recreational trail could be described as a roadway for the transportation of persons, the nature of the usage is clearly different. In the one case, the grantee is a commercial enterprise using the easement in its business, the transport of goods and people for compensation. In the other, the easement belongs to the public, and is open for use for recreational purposes, which happens to involve people engaged in *464 exercise or recreation on foot or on bicycles.”

[100 F.3d at 1542-43.](#)

Other courts have similarly noted that “[r]ecreational hiking, jogging and cycling are not connected with railroad use in any meaningful way.” [Glosemeyer v. United States](#), 45 Fed.Cl. 771, 779 (2000); see also [Harley-White v. United States](#), 129 Fed.Cl. 548, 556 (2016) (“Because the easements were held for a railroad purpose, the transformation of the right-of-way into a recreational trail goes beyond the scope of the easements”); [Lawson v. State](#), 107 Wash. 2d 444,

451, 730 P.2d 1308, 1312 (1986) (“[A] hiking and biking trail is not encompassed within a grant of an easement for railroad purposes only.”);  [Toews v. United States](#), 376 F.3d 1371, 1376-77 (Fed. Cir. 2004) (“[U]se of these easements for a recreational trail — for walking, hiking, biking, picnicking, frisbee playing, with newly-added tarmac pavement, park benches, occasional billboards, and fences to enclose the trailway — is not the same use made by a railroad, involving tracks, depots, and the running of trains.... Some might think it better to have people strolling on one's property than to have a freight train rumbling through. But that is not the point. The landowner's grant authorized one set of uses, not the other.”). More than a slight alteration, the Rails-to-Trails Act creates “a new easement for a new use — for recreational trail use.” [Hornish v. King Cty.](#), 899 F.3d 680, 696 (9th Cir. 2018).

The Federal Circuit has also acknowledged that “different uses create different burdens.”  [Toews](#), 376 F.3d at 1376.

“It is one thing to have occasional railroad trains crossing one's land. Noisy though they may be, they are limited in location, in number, and in frequency of occurrence.... When used for public recreational purposes, however, in a region that is environmentally attractive, the burden imposed by the use of the easement is at the whim of many individuals, and ... has been impossible to contain in numbers or to keep strictly within the parameters of the easement.”

 [Preseault v. United States](#), 100 F.3d at 1543.

This use of the Rails-to-Trails Act thus thwarts landowners' expectations. Before the Act, landowners “would have been secure in the knowledge ... that the only use that could be made of their lands were those related to the operation of a railroad.”  [Glosemeyer](#), 45 Fed.Cl. at 781. However, “[s]olely because of the operation of the Rails-to-Trails Act,” the lands are “now burdened by new easements -- for recreational trails. Whereas previously the [landowners] could exclude all but the railroads from use of the right-of-ways, now the public at large has access.”  [Id.](#) In this way, the Act strong-arms landowners into a new, unnegotiated agreement -- a new contract for which they were not given consideration and to which they did not assent.

The Rails-to-Trails Act also violates a landowner's property rights. The importance of those rights was emphasized by those whose ideas helped organize the English common law,

inspire American independence, and create the United States Constitution. John Locke explained: “The reason why men enter into society is the preservation of their property [W]hen the legislators endeavor to take away and destroy the property of the people, ... they put themselves into a state of war with the people” John Locke, [Concerning Civil Government, Second Essay](#) 75-76 (Robert Maynard Hutchins ed., Encyclopedia Britannica, Inc., 1952) (1690). The English jurist William Blackstone called the right to property “that sole and despotic dominion which one ^{*465} man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.” 2 William Blackstone, [Commentaries](#) *2.

During the Founding Era, James Madison, Father of the Constitution, echoed this right before the Virginia Constitutional Convention. He argued that “the rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted.” James Madison, “Speech in the Virginia Constitutional Convention” (1829), in [James Madison: Writings](#) at 824 (Jack N. Rakove ed., Library of America 1999). Madison also wrote that “[g]overnment is instituted to protect property of every sort; ... [T]hat alone is just government, which impartially secures to every man, whatever is his own.” James Madison, “Property” (1792), in [Madison: Writings](#) at 515. Conversely, Madison warned that it “is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest.” [Id.](#) at 516.

The Rails-to-Trails Act violates a landowner's property rights by taking his land and giving it to a railroad company for use by the public at large. Specifically, the Act “takes a landowner's right to use or sell his or her reversionary interest and gives this right to a railroad company. The railroad company now has the right ... to sell an interest in the landowner's property.” Mark F. Hearne II, Lindsay Brinton & Meghan Largent, [The Trails Act: Railroad Property Owners and Taxpayers for more than a Quarter Century](#), 45 Real Prop. Tr. & Est. J. 115, 162 (2010). Where once the owner held the full bundle of sticks (minus an easement allowing a railroad to operate), the Act “takes this entire bundle of sticks from the owner and gives them to the railroad The landowner is left with nominal title” [Id.](#) As a consequence, the landowner may be stuck with increased crime from those using the trail, loss of privacy, decrease in property values, and litigation costs. See Emily Drumm,

Comment, [Addressing the Flaws of the Rails-to-Trails Act](#), 8 Kan. J.L. & Pub. Pol'y 158 (Spring 1999).

Notably, the Act permits the whole public onto a landowner's property, terminating one of the most important property rights: the right to exclude. "In the bundle of rights we call property, one of the most valued is the right to sole and exclusive possession — the right to exclude strangers, or for that matter friends, but especially the Government."

 [Hendler v. United States](#), 952 F.2d 1364, 1374 (Fed. Cir. 1991); see also  [Loretto v. Teleprompter Manhattan CATV Corp.](#), 458 U.S. 419, 435-36, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) ("The power to exclude has traditionally been considered one of the most treasured strands in an owner's bundle of property rights.... [T]he permanent physical occupation of property forever denies the owner any power to control the use of the property").

Compounding these violations of contract and property rights, the rails-to-trails process does not require actual notice to the landowner before conversion of the easement. See [National Ass'n of Reversionary Prop. Owners v. ICC](#), 70 F.3d 638 (D.C. Cir. 1995)(table). Although the Act requires notice of a railroad's intent to abandon a rail line, that notice is not sufficient to apprise the landowner that the easement will be converted to a recreational trail. Thus, the Act essentially effects a taking without notice.

In all these ways, the Rails-to-Trails Act allows the federal government to take property rights away from Alabamians.

***466** "[T]he right to control one's property is a sacred right which should not be taken away without urgent reason." [Smith v. Smith](#), 254 Ala. 404, 409, 48 So.2d 546, 549 (1950). A recreational trail is not such a reason. However, due to express federal preemption by the Rails-to-Trails Act, the jurisdiction to address these violations of fundamental contract and property rights lies exclusively in the federal government.

SHAW, Justice (dissenting)

I respectfully dissent. Under federal law, the Surface Transportation Board ("the STB") has exclusive jurisdiction over this action that seeks to quiet title to an allegedly abandoned railroad easement.

The Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 et seq. ("the ICCTA"), established the

STB and gave it "exclusive jurisdiction over certain aspects of railroad transportation."  [Adrian & Blissfield R.R. v. Village of Blissfield](#), 550 F.3d 533, 539 (6th Cir. 2008). Additionally, "Congress intended to preempt state and local laws that come within the [STB's] jurisdiction."  [Texas Cent. Bus. Lines Corp. v. City of Midlothian](#), 669 F.3d 525, 530 (5th Cir. 2012). The intent of the ICCTA to "preempt state and local regulation of railroad transportation has been recognized as broad and sweeping."  [Union Pac. R.R. v. Chicago Transit Auth.](#), 647 F.3d 675, 678 (7th Cir. 2011). See also [New England Cent. R.R. v. Springfield Terminal Ry.](#), 415 F.Supp.2d 20, 27 (D. Mass. 2006) ("Courts have consistently found that state law that directly or indirectly regulates railroads is preempted by § 10501(b).").

The main opinion holds that the STB's "exclusive and preemptive jurisdiction" is limited by its "specific reason": to prevent "economic regulation" by the states of rail transportation. 488 So.3d at 457. Numerous federal court decisions, however, have rejected the idea that the ICCTA is limited only to "economic" regulation. Although economic regulation has been described as the "core of ICCTA preemption," its preemptive effect "may not be limited to state economic regulation."  [Elam v. Kansas City S. Ry.](#), 635 F.3d 796, 806 (5th Cir. 2011) (footnote omitted). The ICCTA "does not preempt only explicit economic regulation. Rather, it preempts all 'state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation.' "

 [New York Susquehanna & W. Ry. v. Jackson](#), 500 F.3d 238, 252 (3d Cir. 2007) (quoting  [Florida E. Coast Ry. v. City of W. Palm Beach](#), 266 F.3d 1324, 1331 (11th Cir. 2001)). See also  [Wisconsin Cent. Ltd. v. City of Marshfield](#), 160 F.Supp.2d 1009, 1014 (W.D. Wis. 2000) ("The ICCTA expressly preempts more than just state laws specifically designed to regulate rail transportation.").

In  [City of Auburn v. United States](#), 154 F.3d 1025 (9th Cir. 1998), a city challenged the STB's finding that the ICCTA preempted state and local environmental permitting laws, arguing that "the ICCTA legislative history establishes Congress' intent to preempt only economic regulation of rail transportation, not the traditional state police power of environmental review."  154 F.3d at 1029. The city,

pointing to legislative history, stated in its brief that the local environmental regulations at issue were not “economic regulations” but rather “‘essential local police power required to protect the health and safety of citizens....’ ”  154 F.3d at 1029.

The court noted that “there is nothing in the case law that supports [the city’s] argument that, through the ICCTA, Congress only intended preemption of economic regulation of the railroads.”  *467 154 F.3d at 1030. Further, it stated: “[I]f local authorities have the ability to impose ‘environmental’ permitting regulations on the railroad, such power will in fact amount to ‘economic regulation’ if the carrier is prevented from constructing, acquiring, operating, abandoning, or discontinuing a line.”  154 F.3d at 1031.

Thus, contrary to the main opinion, the preemptive effect of the ICCTA and the jurisdiction it provides to the STB is not limited to “economic” regulation.

In addressing whether the ICCTA preempts state-law claims that rail lines have been abandoned, courts have looked to the plain language of 49 U.S.C. § 10501(b), which states, in pertinent part:

“(b) The jurisdiction of the [STB] over--

“(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and

“(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

“is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.”

(Emphasis added.)

Under the ICCTA, “transportation” has a very broad meaning that includes “property ... regardless of ownership or agreement concerning use.” 49 U.S.C. § 10102(9)(A).  Union Pacific, 647 F.3d at 678 (“Congress also defined ‘transportation’ to include railroad property, facilities, and equipment ‘related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use.’ 49 U.S.C. § 10102(9).”). Thus, as discussed below, the STB has exclusive jurisdiction over railroad property and the issue of abandonment of that property--and any remedy provided by state law--is preempted.

In the context of attempts to use state law to obtain property from railroads, such as by condemnation or adverse possession, federal courts, in applying § 10501(b), have explicitly held that such claims are preempted and fall under

the jurisdiction of the STB. In  Soo Line R.R. v. City of St. Paul, 827 F.Supp.2d 1017 (D. Minn. 2010), the court held that a city’s proposed condemnation action seeking an easement over railroad property that ran along a rail line “falls squarely within the definition of ‘transportation’ as defined by ‘49 U.S.C. § 10102(9),’ ” despite the city’s argument that the easement it sought would not interfere with

railroad operations.  827 F.Supp.2d at 1021. The proposed condemnation, the court held, “would be an act seeking to control” the property and was thus “a form of regulation” that fell “into the broad category of actions that are per se preempted under the ICCTA.”  827 F.Supp.2d at 1022.

See also  Union Pacific, 647 F.3d at 683 (holding that a state-law action to condemn an easement over a portion of a railroad’s property that was being leased to the plaintiff was “preempted because it prevents and unreasonably interferes with railroad transportation” on the property);  B & S Holdings, LLC v. BNSF Ry., 889 F.Supp.2d 1252, 1260 (E.D. Wash. 2012) (holding that a quiet-title action alleging that property along a rail line had been adversely possessed under state law “necessarily involve[d] the regulation of rail transportation”); and *468 14500 Ltd. v. CSX Transp., Inc. (No. 1:12CV1810, March 14, 2013) (N.D. Ohio 2013) (not reported in F. Supp. 2d) (holding that the ICCTA preempted an action to quiet title over railroad property that had allegedly been adversely possessed).

In the context of allegations identical to the one in the instant case, i.e., that railroad easements or rights-of-way were abandoned, courts have held that the ICCTA preempts state-law actions. In  [Cedarapids, Inc. v. Chicago, Central & Pacific R.R.](#), 265 F.Supp.2d 1005 (N.D. Iowa 2003), the plaintiff contended that a railroad had abandoned a section of a rail-line easement by ceasing operations and, thus, under Iowa state law, that the property reverted to the plaintiff.  265 F.Supp.2d at 1007. After discussing the language of 49 U.S.C. § 10501(b) and the broad definition of “property” under 49 U.S.C. § 10102(9)(A), the court stated that “the ICCTA grants to the STB exclusive jurisdiction over nearly all matters of rail regulation.”  265 F.Supp.2d at 1012. Such regulation included not only state “economic” regulation, but also regulation of the abandonment of rail lines, which included the plaintiff’s state-law suit to declare a rail line abandoned:

“The Court’s review of the nature and purpose of the ICCTA, as evidenced by both the legislative history and the plain language of the statute, leads the Court to conclude that, in enacting the ICCTA, Congress intended to occupy completely the field of state economic regulation of railroads. The Court also finds that the ICCTA preempts state regulation of the abandonment of lines of railroad. The ICCTA’s grant of exclusive jurisdiction to the STB over the abandonment of tracks and its expansion of the types of tracks within this exclusive jurisdiction to include wholly intrastate spur and industrial tracks indicates that Congress intended for the abandonment of all types of tracks to be under the STB’s jurisdiction. This comports with Congress’ stated desire of deregulation of the railroad industry by ensuring that states do not impose regulations which conflict with or undermine those set forth in the ICCTA and imposed by the STB with respect to the abandonment of tracks.”

 265 F.Supp.2d at 1013 (emphasis added). See also [Wedemeyer v. CSX Transp., Inc.](#) (No. 2:13-cv-00440-LJM-WGH, Oct. 20, 2015) (S.D. Ind. 2015) (not reported in F. Supp. 2d) (holding that “the term ‘regulate’ does not only refer to a state regulation or state action; rather it refers to controls or limitations of any kind” and, thus, that an action to quiet title alleging that a railroad had abandoned an easement

was an attempt to use state law to “regulate” the railroad’s use of the easement), and [Groh v. Union Pacific R.R.](#) (No. 17-00741-CV-W-ODS, Dec. 1, 2017) (W.D. Mo. 2017) (not reported in F. Supp. 2d) (holding that a state-law action alleging that a railroad had abandoned its easement fell within the scope of the ICCTA).

This concept is not new in Alabama. In  [Mobile & Gulf R.R. v. Crocker](#), 455 So.2d 829 (Ala. 1984), certain landowners sought a judgment declaring that a railroad easement across their property had been abandoned because the railroad “ceased all operation of trains across the right-of-way in dispute.”  455 So.2d at 831. This Court held, however, that the STB’s predecessor agency, the Interstate Commerce Commission, “had exclusive jurisdiction to determine whether there was an abandonment of the railroad right-of-way.”  455 So.2d at 834. The main opinion attempts to distinguish  [Crocker](#) by noting a distinction in the way the easement in  [Crocker](#) was obtained as compared to the easement in the instant case. However, 49 U.S.C. § 10501(b) does not provide that its application is contingent on how a railroad obtains ^{*469} property initially. Furthermore, no proceedings before the STB are required to “invoke” its jurisdiction; the ICCTA itself preempts remedies under state law, and the STB’s jurisdiction is “exclusive.”  [Grosso v. Surface Transp. Bd.](#), 804 F.3d 110, 114 (1st Cir. 2015) (“Whether or not the [STB] is exercising its regulatory authority over the transportation, state and local laws governing such transportation are generally preempted.” (footnote omitted)).

Under the plain language of 49 U.S.C. § 10501(b), the claims in the underlying action are preempted by the ICCTA and exclusive jurisdiction of the action rests with the STB. Under  [Crocker](#), the trial court lacked subject-matter jurisdiction in this case.

[Stewart, J.](#), concurs.

All Citations

288 So.3d 452

Footnotes

1 The complaint to quiet title identifies Nettles, a plaintiff, as an Alabama family limited partnership doing business in the State of Alabama and as lessee of “the lands herein described.” The trial court’s order, discussed *infra*, quieted title to the right-of-way in both Nettles and Eula. Because, however, it appears that Eula holds sole title to the right-of-way and the right-of-way runs across property owned by Eula, we identify her as the owner of the property, where appropriate.

2  16 U.S.C. § 1247(d) states, in part:

“Consistent with the purposes of [the Railroad Revitalization and Regulatory Reform Act of 1976], and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes.”

3 The railroad retained, among other things, “a perpetual easement, rights of way, railroad tracks, track fixtures, tunnel structure, wire lines, signal lines, pipelines, wires, cables, apparatus, and other appliances presently existing for the operation of the railroad”; the right to maintain the right-of-way; and the right to restrict Charles’s activities so as to prevent him from interfering with or damaging railroad operations or property.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB 1324X

**ALABAMA RAILROAD, LLC
-- ABANDONMENT EXEMPTION --
IN ESCAMBIA, CONECUH AND MONROE COUNTIES, ALABAMA**

EXHIBIT C

DRAFT FEDERAL REGISTER NOTICE

DO

FR-_____

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Docket No. AB 1324X

Alabama Railroad, LLC – Abandonment Exemption – In Escambia, Conecuh, and Monroe
Counties, Alabama

On July 6, 2022, Alabama Railroad, LLC (ARL) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10903 to abandon approximately 47.5 miles of rail line, which extends from milepost 607.73 (at Flomaton, Alabama) to milepost 655.2 (near Tunnel Springs, Alabama), including all sidings and the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”). The Line traverses United States Postal Service ZIP Codes 36426, 36441, 36460, 36471, and 36475. The Line includes the stations of Peterman, Monroeville, Drewry, Repton, Range, Wallace, Osaka, and Flomaton.

Based on information in ARL’s possession, the Line does not contain federally-granted right-of-way. Any documentation in ARL’s possession relevant to the foregoing statement will be made available promptly to those requesting it.

Because ARL is abandoning its entire railroad system, ARL anticipates that the Board will not impose labor protective conditions. *See, e.g., Knox and Kane RR. Co.—Abandonment Exemption—McKean County, Pa.*, Docket AB 551 (Sub-No. 2X) (STB served July 24, 2015).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. § 10502(b). A final decision will be issued by _____, 2022.

Any offer of financial assistance (OFA) under 49 C.F.R. § 1152.27(b)(2) to acquire the line or to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a \$1,900 filing fee. *See* 49 C.F.R. § 1002.2(f)(25).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use, if AESI should consent to the same.

Any request for a public use condition and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*.

All filings in response to this notice must refer to Docket No. AB 1324X and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001, and (2) Robert A. Wimbish, Fletcher & Sippel LLC, 29 N. Wacker Drive, Suite 800, Chicago, IL 60606. Replies to the petition are due on or before _____.

Persons seeking further information concerning the Board's abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0295.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any

other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: _____.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB 1324X

**ALABAMA RAILROAD, LLC
-- ABANDONMENT EXEMPTION --
IN ESCAMBIA, CONECUH AND MONROE COUNTIES, ALABAMA**

EXHIBIT D

**CERTIFICATES OF SERVICE AND
PUBLICATION**

Certificate of Service

49 C.F.R. § 1152.60(d) – Notice

I certify that, in keeping with 49 C.F.R. § 1152.60(d), the following parties have been served with a copy of the foregoing abandonment petition for exemption as of the date of this filing:

Alabama Department of Transportation
Attn: Rail Programs Group (DESIGN)
1409 Coliseum Blvd.
Montgomery, AL 36110-3050

Military Surface Deployment & Distribution Command
Transportation Engineering Agency
Attn: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Bldg. 1900W
Scott AFB, IL 62225-50067

Mr. Bob Ratcliffe
Division Chief, Conservation and Outdoor Recreation
National Park Service
1849 C Street NW
Washington, DC 20240-0001
Email: Bob_Ratcliffe@nps.gov

Mr. Randy Moore
Chief, Forest Service
U.S. Department of Agriculture
1400 Independence Avenue S.W.
Washington, DC 20250-1111
Email: randy.moore@usda.gov

The Line lacks active rail users upon which to serve notice of the proposed abandonment.

July 6, 2022

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for Alabama Railroad, LLC

CERTIFICATE OF NEWSPAPER PUBLICATION

I hereby certify that a “Notice of Intent to Abandon” was published in the form prescribed by the Surface Transportation Board for a petition for exemption (49 C.F.R. § 1105.12) on June 29, 2022 in *The Brewton Standard* and the *Mobile Press* Register, collectively newspapers of general circulation in Monroe, Conecuh and Escambia Counties, Alabama, where the subject rail line is located.

July 6, 2022

/s/ *R. A. Wimbish*

Robert A. Wimbish
Attorney for Alabama Railroad, LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB 1324X

**ALABAMA RAILROAD, LLC
-- ABANDONMENT EXEMPTION --
IN ESCAMBIA, CONECUH AND MONROE COUNTIES, ALABAMA**

EXHIBIT E

**COMBINED ENVIRONMENTAL AND
HISTORIC REPORT**

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB 1324X
ALABAMA RAILROAD, LLC
– ABANDONMENT EXEMPTION –
IN ESCAMBIA, CONECUH, AND MONROE COUNTIES, ALABAMA

ENVIRONMENTAL AND HISTORIC REPORT

Alabama Railroad, LLC (“ARL”) submits this combined Environmental and Historic Report (the “Report”) in compliance with the requirements of 49 C.F.R. §§ 1105.7 and 1105.8. Supporting correspondence and certifications are appended. As explained herein, the proposed abandonment would not significantly impact the quality of the human environment or affect the conservation of energy resources.¹

ENVIRONMENTAL REPORT – 49 C.F.R. § 1105.7€

1. **Proposed Action and Alternatives.**

ARL intends to file an individual petition for exemption with the Surface Transportation Board (“STB”) to abandon approximately 47.5 miles of rail line, which extends from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including all sidings and the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”).² The

¹ See, generally, 49 C.F.R. § 1105.5(a) (incorporating “significant” standard of 40 C.F.R. § 1508.27).

² The Line was the subject of a previous abandonment notice of exemption filed by ARL’s immediate predecessor, Alabama Railroad Co. (“ALAB”). ALAB’s abandonment was authorized pursuant to Alabama Railroad Co. – Abandonment Exemption – In Escambia, Conecuh, and Monroe Counties, in Alabama, AB-463 (Sub-No. 2x) (“*ALAB 2019 Abandonment*”). ALAB never filed a notice of abandonment consummation, although there were no impediments to it doing so. Accordingly, ALAB’s authority to abandon the Line had lapsed. ARL, as ALAB’s predecessor, now seeks to abandon the Line in the current docket

Line has seen no local rail traffic in several years. ARL, having acquired the line roughly a year-and-a-half ago, now desires to end common carrier service on the Line, and to pursue salvage of some, or all, of the Line, as ARL may see fit post-abandonment authorization. To the extent ARL undertakes track salvage, the contour of the existing roadbed will remain as is, and existing drainage systems will remain intact. When the rail and track material are removed, the contractor will smooth the roadbed to a level surface. No ballast will be removed, and no soil disturbance will occur. No digging or burying of any kind will take place. Accordingly, ARL believes that no storm water mitigation measures - including, but not limited to, a National Pollutant Discharge Elimination System permit - will be required. All salvaged steel components will either be reused or sold as scrap. Crossties may be reused in other railroad operations, or they will be recycled in accordance with applicable federal and state laws and regulations.

Because the line has not hosted local traffic for several years, no alternatives to the proposed abandonment appear reasonable, and there is no foreseeable prospect that a need for rail service would re-emerge. The only alternative is to not abandon the Line and retain the track in place, which is not satisfactory, because ARL would continue to incur opportunity and other holding costs that would need to be covered by non-existent local traffic revenue were the Line to be retained. Additionally, retaining the Line would frustrate ARL's plans to extract value from otherwise unused assets.

A map showing the Line is attached hereto as Appendix A.

under an individual petition for exemption. ARL is unaware of any changes in, or to, the Line that would bear on and/or change the findings of the Office of Environmental Analysis' conclusions as reflected in the Environmental Assessment issued in connection with the *ALAB 2019 Abandonment* proceeding.

2. Transportation System. ARL does not anticipate that existing regional or local transportation systems or patterns will be significantly affected by the proposed abandonment but has requested input from the Alabama Department of Transportation (“ADOT”) and the Alabama Highway Department (“AHD”). Appendices B and C. No responses have been received from the ADOT or the AHD to date. Since the Line is inactive, abandonment would not result in the diversion of traffic to other modes.

3. Land Use.

(i) ARL does not believe that the proposed abandonment would be inconsistent with regional and/or local land use plans, and has solicited comments from The Honorable Sonya Greene Stinson (Judge of Probate & President of the Monroe County Commission) (Appendix D), the Conecuh County Commission (Appendix E), Mayor Terri Carter (Mayor for the City of Repton) (Appendix F), the Escambia Board of County Commissioners (Appendix G), and Mayor Dewey Bondurant, Jr. (Flomaton Town Council) (Appendix H), none of which have yet responded. The National Geodetic Survey (“NOAA”) has also been contacted and replied that since the issue is identical to the ALAB filing in 2019, their response has not changed. Appendices I and I-1 respectively.

(ii) The USDA Natural Resources Conservation Service (“NRCS”) has been contacted. Appendix J. ARL has received no response to date.

(iii) The Line does not appear to be within a designated Coastal Management Area. Accordingly, the proposed abandonment will not affect any land or water uses in such an area or result in any coastal impacts. ARL nevertheless has solicited comments from the U.S. Environmental Protection Agency Region 4 (“EPA Region 4”) and Alabama Department of Environmental Management Coastal Program (“ADEMC”) to determine whether

the proposed abandonment would have any bearing upon applicable federal, state, and local water quality standards. Appendices K and L, respectively. ARL has received no comments from EPA Region 4, however EPA's response to the 2019 ALAB abandonment filing is attached as Appendix K-1. The ADEMC replied that the project will not have any reasonably foreseeable effect on any coastal use or resource. Appendix L-1.

(iv) ARL has no opinion on whether or not the Line might be suitable for alternate public use under 49 U.S.C. § 10905. To the best of ARL's knowledge, the Line does not contain any federally granted right-of-way.

4. Energy.

(i) The proposed abandonment will not have any effect on the transportation of energy resources.

(ii) The movement and/or recovery of recyclable commodities will not be adversely affected by the proposed abandonment.

(iii) The abandonment will not result in an increase or decrease in overall energy efficiency. No rail freight traffic currently moves to or from points on the Line, and no local (or overhead) traffic has moved over the Line in years. Consequently, there will be no changes in existing transportation patterns or energy usage as a result of the proposed abandonment.

(iv) The abandonment of the Line will not cause the diversion of more than 1,000 rail carloads per year or an average of 50 rail carloads per mile per year to motor carriers.

5. Air.

(i) The Line is inactive. The abandonment will not result in – (A) a minimum increase in rail traffic of 100% or eight trains per day on any segment of rail line; (B) an increase in rail yard activity of at least 100%; or (C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles per day on any road segment.

(ii) ARL does not believe that Escambia, Conecuh and Monroe Counties, Alabama are a Class I or Nonattainment Area under the Clean Air Act. In any event, abandonment of the Line will not result in traffic increases exceeding the thresholds at 49 C.F.R. § 1105.7(e)(5)(ii)(A), (B) or (C).

(iii) ARL has contacted and requested comments from the EPA Region 4 and Alabama Department of Environmental Management (“ADEM”). Appendices K and M. The EPA Region 4 responded previously to the proposed abandonment of the Line in the *ALAB 2019 Abandonment* proceeding, as noted above. Appendix K-1. The ADEM has not responded.

6. Noise. As indicated above, none of the thresholds identified in 49 C.F.R. § 1105.7(e)(5)(i) will be exceeded as a result of the abandonment.

7. Safety.

(i) The proposed action will have no adverse effect upon public health or safety.

(ii) The proposed abandonment will have no effect on the transportation of hazardous materials.

(iii) There are no known hazardous waste sites or sites where there have been known hazardous material spills on the right-of-way of the Line.

8. Biological Resources.

(i) No critical habitat will be destroyed, altered or affected as a result of the proposed abandonment, and ARL does not believe that any endangered or threatened species are present in the area or would be adversely affected. ARL has requested comments from the ADEM and the U.S. Fish and Wildlife Service (“FWS”). Appendices M and N, respectively. FWS has not responded to date, however the FWS response in connection with the *ALAB 2019 Abandonment* proceeding is attached as Appendix N-1.

(ii) Similarly, ARL has no reason to believe that any wildlife sanctuaries or refuges will be affected, based on its review of the area around the Line, as depicted in Appendix A, and absent any further comment from conservation agencies. ARL has contacted, and requested comments from, the National Park Service Southeast Region (“NPS”). Appendix O. NPS has not responded to date, however NPS’ response in connection with the *ALAB 2019 Abandonment* proceeding is attached as Appendix O-1.

9. Water.

(i) The U.S. EPA Region 4 has been contacted. Appendix K. ADEM has also been contacted. Appendix M. To date, neither has responded to ARL.

(ii) The Army Corps of Engineers (the “Corps”) has been contacted to determine if the proposed abandonment requires permits under Section 404 of the Clean Water Act. Appendix P. The geometry of the roadbed will not be altered and no in-stream work is contemplated. No discernable effects on either 100-year flood plains or adjacent wetlands are expected in connection with the proposed abandonment. The Corps has not responded to date,

however the Corps' response in connection with the *ALAB 2019 Abandonment* proceeding is attached as Appendix P-1.

(iii) ARL does not anticipate the discharge of any pollutants in relation to its proposed abandonment. Additionally, no material will be disposed of into waterways given the intention to preserve the bridges along the line segment for potential interim trails use. Accordingly, ARL concludes that no permits under Section 402 of the Clean Water Act are required.

10. Proposed Mitigation. Abandonment of the Line is not expected to produce adverse environmental impacts for the reasons set forth above. Only minimal physical activity may occur as a result of the proposed abandonment, such as removal of rail, ties, and other railroad appurtenances. ARL will undertake all reasonable mitigation associated with these activities as directed by the Board to ensure abandonment does not produce adverse environmental impacts.

* * * * *

In addition to the agencies referenced above, ARL also has contacted and requested comments from the National Park Service Rivers and Trails Conservation Program ("NPS-RTC"). Appendix Q. No response has been received from the NPS-RTC to date.

* * * * *

HISTORIC REPORT - 49 C.F.R. § 1105.8(d)

1. Map. A map of the Line is attached hereto as Appendix A.
2. Description of Line. ARL intends to file an individual petition for exemption with the Surface Transportation Board ("STB") to abandon approximately 47.5 miles

of rail line, which extends from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including all sidings and the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (“the Line”).

3. Topographic Maps. Topographic maps depicting the location of the Line slated for abandonment and the location of structures that are believed to be 50 years old or older and that are located along the Line are attached as Appendix R. There are 60 railroad structures (bridges) on the Line which may be 50 years old or older.

4. Written Description of Right of Way. The ROW is generally 100 ft., but there are a few extra-width parcels as the Line passes through towns along the main track centerline. The Line runs adjacent to lands of varying uses, ranging from forested open land to rural farmland. The topography is generally flat, with some rolling hills.

Pursuant to STB policy, the railroad’s right-of-way will constitute the Area of Potential Effect (“APE”) for this undertaking.

5. Photographs. There are 60 structures (bridges) on the Line that are believed to be 50 years old or older. Photographs of those structures are attached as Appendix S. ARL does not have any additional information in its possession (such as engineering diagrams or other records) that it believes would be useful in aiding in any historic structures analysis. ARL does not anticipate removing or dismantling any of the 60 bridges located on the Line.

6. Information on Structures. According to the limited information in ARL’s possession, the 60 structures (bridges) along the Line are believed to have been built at least 50 years ago. ARL does not know when the bridges were built, and has no construction or

engineering records that could aid in determining likely construction dates. ARL has not undertaken any major improvements to these bridges during the term of ARL's ownership.

7. History of Operations. The Line that is the subject of this abandonment proceeding constitutes the remainder of a branch line that once extended from Flomaton (and a connection there with CSX Transportation, Inc. – “CSXT”) to a northern terminus at Corduroy, AL. In 1991, CSXT sold its roughly 61-mile-long branch line to the Wabash and Grand River Railway Co. (“WGRR”). *Wabash & Grand River Railway Co. - Acquisition and Operation Exemption – CSX Transportation, Inc., Line Between Flomaton and Corduroy, AL*, FD 31868 (ICC served September 17, 1991). Later that same year, WGRR sold the entire branch to ALAB (*Alabama Railroad Co. - Acquisition and Operation Exemption - Wabash & Grand River Railway*, FD 31943 (ICC served October 10, 1991)). In 1995, ALAB abandoned the northern portion of the branch from milepost 662.62 (near Beatrice, AL), to milepost 666.3 (at Corduroy). *Alabama Railroad Co. - Abandonment Exemption - In Monroe County, AL*, AB-463X (STB served December 1, 1995). In 2013, ALAB was granted abandonment authority for the segment between milepost 655.2 (near Tunnel Springs, AL) and milepost 662.62 (near Beatrice), resulting in the Line's current configuration. *Alabama Railroad Co. - Abandonment Exemption - In Monroe County, AL*, AB-463 (Sub-No. 1X) (STB served April 19, 2013). As mentioned above in footnote 2 of the Environmental Report, in 2019, ALAB was granted authority to abandon the Line ARL currently seeks authorization to abandon in the instant proceeding. ALAB never consummated its abandonment and ALAB's abandonment authorization lapsed. In the interim, ARL acquired the Line from ALAB, and, because under STB regulations, ALAB's abandonment authorization is not transferable, ARL now seeks separate authorization through the instant petition for exemption for authorization to abandon the Line.

Aside from the more recent ownership history supplied above, ARL has no historical records of its own relating to the Line. Based upon initial research, the Line appears to be part of a branch line originally constructed as the Pensacola & Selma Railroad (“PSR”), which thereafter became a part of the Louisville & Nashville Railroad (“L&N”). L&N, in turn, ultimately became a part of CSXT.

ARL intends, upon the effectiveness of the abandonment exemption, to terminate its rail common carrier obligation over, and to abandon, the Line. ARL would salvage the rail and track material that possesses positive net salvage value. ARL does not intend to dismantle or remove any of the 60 structures (bridges) along the Line. The right-of-way will either be disposed of or the easements will be relinquished (to the extent ARL does not own in fee any portion of the subject right-of-way), or the corridor may be preserved under an interim trail use arrangement.

6. Engineering Documents. ARL will provide copies of any engineering documents in its possession.

7. Historic Criteria. ARL has provided the Alabama Historical Commission (“AHC”) and notification of the proposed abandonment in an effort to undertake the requisite consulting efforts required by 49 C.F.R. § 1105.7(c) and (e) for this combined Environmental/Historic Report. 49 C.F.R. § 1105.7(c) (requiring such efforts be made “be made far enough in advance to afford those agencies a reasonable opportunity to provide meaningful input.”). Appendix T. Following written and oral communications among AHC and representatives of ARL, AHC tendered a letter dated June 8, 2022, advising ARL that AHC continues to “concur with the project” as it had “previously concurred with” the virtually identical abandonment undertaking initiated in the recent past by ALAB, provided that the

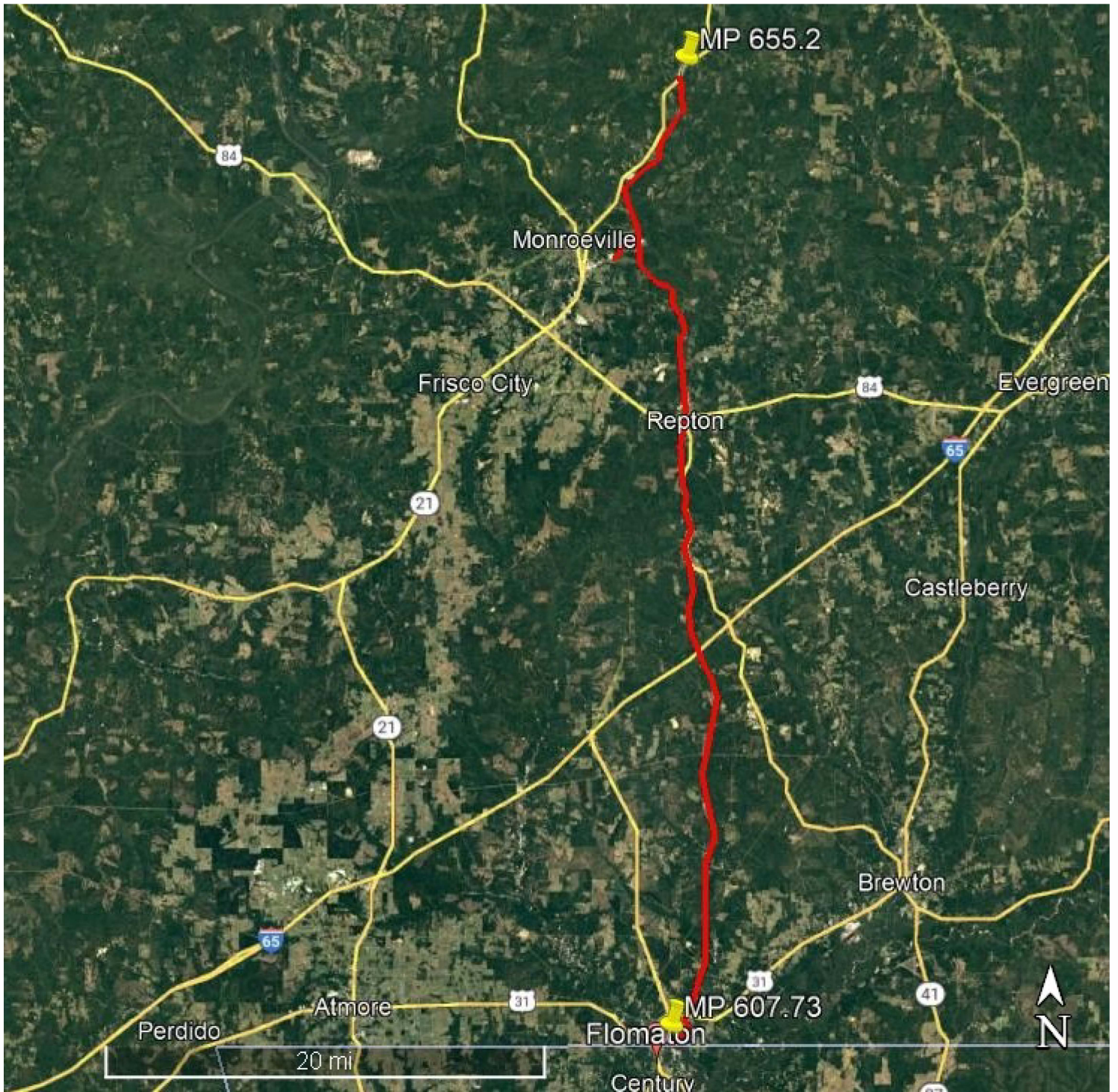
intended scope of work was the same as ALAB earlier has proposed. Appendix T-1.

Accordingly, AHC's suggested conditions relate to salvage activities and are consistent with AHC's recommendations in response to the ALAB abandonment proposal. Id. As information, ARL understands that its intended "scope of work" – as that phrase is used in the aforementioned AHC letter – is consistent with the scope of work proposed earlier by ALAB during ALAB's ownership of the Line.

8. Ground Disturbances. Based on available information, ARL does not believe that there are archaeological resources in the area. Access to the Line is generally good.

APPENDIX A

Docket No. AB 1324X Alabama Railroad, LLC -
Abandonment Exemption - In Escambia, Conecuh,
and Monroe Counties, Alabama



APPENDIX B

FLETCHER & SIPPEL LLC

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AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

Alabama Department of Transportation

PO Box 303050

Montgomery, AL 36130-3050

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Sir or Madam:

Alabama Railroad, LLC (“ARL”) is planning to file a Petition for Exemption with the Surface Transportation Board (“STB”) to abandon approximately 47.5 miles of rail line, extending from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”).

As you may recall, the Line was the subject of a previous (recent) abandonment sought by ARL’s immediate predecessor, Alabama Railroad Co. (“ALAB”). In Alabama Railroad Co. – Abandonment Exemption – In Escambia, Conecuh, and Monroe Counties, in Alabama, AB – 463 (Sub-No. 2x) (“ALAB 2019 Abandonment”), the STB authorized ALAB’s proposed abandonment. However, ALAB never consummated its abandonment as is required under the STB’s regulations, and ALAB’s abandonment authorization lapsed. In the interim, ARL acquired the Line from ALAB, and, under STB regulations, ALAB’s abandonment authority was not transferrable to ARL, even if ALAB’s abandonment authorization had not lapsed.

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APPENDIX B

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2. Regional or local transportation systems and patterns, including alternative transportation modes;
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4. Air emissions and noise levels;
5. Bodies of water and overall water quality under applicable federal, state or local standards;
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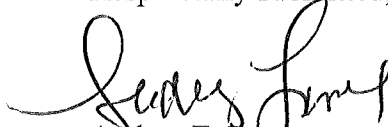
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APPENDIX B

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Respectfully submitted,



Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX C

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AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

Alabama Highway Department
1409 Coliseum Boulevard, Room K-101
Montgomery, AL 36130

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Sir or Madam:

Alabama Railroad, LLC (“ARL”) is planning to file a Petition for Exemption with the Surface Transportation Board (“STB”) to abandon approximately 47.5 miles of rail line, extending from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”).

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ARL has determined to initiate renewed abandonment efforts for the Line before the STB, and, since ARL cannot rely exclusively on the record in the past ALAB abandonment proceeding at the STB for purposes of the STB’s statutorily-mandated environmental and historic resources review, we are now reaching out to you (as did ARL before) to solicit your input on the proposal. If you are experiencing a moment of déjà vu, we understand completely, and yes . . . this is the exact same, inactive railroad line that you were contacted about roughly three years ago.

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APPENDIX C

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10. Existing or potential safety hazards;
11. Coastal Zone Management Areas; and
12. The need for permits under Sections 402 or 404 of the Clean Water Act.

Because of the limited nature of the proposed action, we foresee no adverse environmental effects. Nevertheless, we would appreciate your review and any comments you may wish to offer. We request a written response as soon as possible so that we may include it in the Environmental/Historic Report which will be prepared in connection with this abandonment in accordance with 49 C.F.R. § 1105.7. Any written comments should reference Docket No. AB 1324X and be sent to the undersigned, as counsel for ARL.

A draft of the Environmental/Historic Report associated with the proposed abandonment will be forwarded to you at least twenty days before ARL's petition is filed at the STB. If you have any questions regarding this correspondence, or if you wish to offer input on the

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Respectfully submitted,

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Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX D

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AUDREY E. LANE

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Alane@fletcher-sippel.com

April 28, 2022

Honorable Sonya Greene Stinson
Monroe County Commission
65 N. Alabama Ave.
Monroeville, AL 36460-1809

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Judge Stinson:

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APPENDIX D

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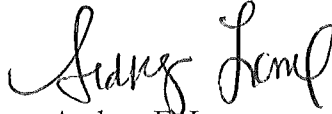
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APPENDIX D

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Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX E

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AUDREY E. LANE

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April 28, 2022

Conecuh County Commission

PO Box 347

Evergreen, AL 36401

Re: **Docket AB 1324X**
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In Escambia, Conecuh, and Monroe Counties, Alabama

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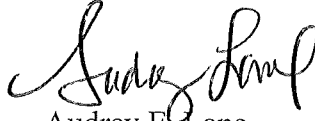
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Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX F

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AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

Mayor Terri Carter

City of Repton

1524 Conaly St.

Repton, AL 36475

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Mayor Carter:

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APPENDIX F

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ARL is unaware of any changes in the Line and/or the surface above or below the Line or any other issue related to the status of the Line that would have an impact and/or change your agency's response to the 2019 ALAB Abandonment solicitation letter that was previously provided. To that end, ***unless your response has changed from what was provided in connection with the 2019 ALAB Abandonment, there is no need to respond to this solicitation letter. ARL will assume that if no response is received within 20 days from the date of this letter, your input on the abandonment proposal for the Line remains as it was three years ago*** when a different railroad sought at that time to abandon the same line (but ultimately did not do so). To the extent you believe a further, or different response is warranted, ARL provides the below information with respect to the STB's environmental regulations.

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1. Regional and/or local use plans;
2. Regional or local transportation systems and patterns, including alternative transportation modes;
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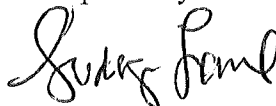
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A draft of the Environmental/Historic Report associated with the proposed abandonment will be forwarded to you at least twenty days before ARL's petition is filed at the

APPENDIX F

STB. If you have any questions regarding this correspondence, or if you wish to offer input on the proposed abandonment that differs from your input in response to ALAB's past undertaking, please contact me at either alane@fletcher-sippel.com or (312) 252-1518, or you may send your response via mail if you prefer. Thank you for your assistance on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Audrey Lane", written in a cursive style.

Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX G

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

Phone: (312) 252-1500

Fax: (312) 252-2400

www.fletcher-sippel.com

AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

Escambia Board of County Commissioners

PO Box 848

Brewton, AL 36427

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Sir or Madam:

Alabama Railroad, LLC (“ARL”) is planning to file a Petition for Exemption with the Surface Transportation Board (“STB”) to abandon approximately 47.5 miles of rail line, extending from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”).

As you may recall, the Line was the subject of a previous (recent) abandonment sought by ARL’s immediate predecessor, Alabama Railroad Co. (“ALAB”). In Alabama Railroad Co. – Abandonment Exemption – In Escambia, Conecuh, and Monroe Counties, in Alabama, AB – 463 (Sub-No. 2x) (“ALAB 2019 Abandonment”), the STB authorized ALAB’s proposed abandonment. However, ALAB never consummated its abandonment as is required under the STB’s regulations, and ALAB’s abandonment authorization lapsed. In the interim, ARL acquired the Line from ALAB, and, under STB regulations, ALAB’s abandonment authority was not transferrable to ARL, even if ALAB’s abandonment authorization had not lapsed.

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APPENDIX G

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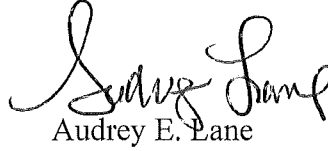
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Audrey E. Lane". The signature is fluid and cursive, with the first name "Audrey" and last name "Lane" clearly distinguishable.

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX H

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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www.fletcher-sippel.com

AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

Mayor Dewey Bondurant Jr.

2125 Ringold St.

PO Box 632

Flomaton, AL 36441

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Mayor Bondurant:

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APPENDIX H

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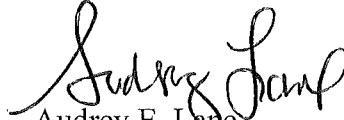
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Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX I

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www.fletcher-sippel.com

AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

National Geodetic Survey Information Services
Office of Ocean and Coastal Resource Management
NOAA Ocean Service
1305 East-West Highway
Silver Springs, MD 20910
Email: rrae@noaa.gov

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Sir or Madam:

Alabama Railroad, LLC (“ARL”) is planning to file a Petition for Exemption with the Surface Transportation Board (“STB”) to abandon approximately 47.5 miles of rail line, extending from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”).

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APPENDIX I

Specifically, ARL seeks your input as is required by the STB's environmental regulations specified below. Given your very recent participation and/or comment in the ALAB 2019 Abandonment, and in an effort to avoid unnecessary use your agency's resources reviewing the very same materials that were previously provided and reviewed, I am enclosing with this correspondence the STB's Environmental Assessment and its supplemental STB orders issued in the ALAB 2019 Abandonment, as well your agency's response (if any) to the ALAB 2019 Abandonment solicitation letter related to the same.

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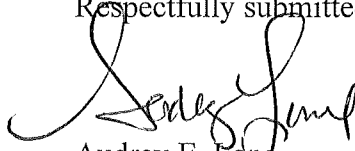
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Because of the limited nature of the proposed action, we foresee no adverse environmental effects. Nevertheless, we would appreciate your review and any comments you may wish to offer. We request a written response as soon as possible so that we may include it in the Environmental/Historic Report which will be prepared in connection with this abandonment in accordance with 49 C.F.R. § 1105.7. Any written comments should reference Docket No. AB 1324X and be sent to the undersigned, as counsel for ARL.

APPENDIX I

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Respectfully submitted,



Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX I-1

From: deborah.brooks <ngs.infocenter@noaa.gov>
Sent: Wednesday, May 11, 2022 3:31 PM
To: Emily K. Gurney
Subject: [JIRA] (IMOV-9216) Alabama Railroad, LLC Abandonment Exemption - Monroe, Escambia and Conecuh Counties, Alabama

A comment is added on your issue:

Re: Alabama Railroad, LLC Abandonment Exemption - Monroe, Escambia and Conecuh Counties, Alabama

Issue identical to ~~IMOV-5991~~, STB AB 463 (Sub-No.2x) submttd by ALAB in 2019.

Since nothing has changesd in the 2019 NGS response to ALAB, the same NGS response applies to ARL 2022.

Issue resolved. No further action required

National Geodetic Survey

APPENDIX I-1

From: deborah.brooks <ngs.infocenter@noaa.gov>
Sent: Friday, April 29, 2022 12:22 PM
To: Emily K. Gurney
Subject: [JIRA] (IMOV-9216) Alabama Railroad, LLC Abandonment Exemption - Monroe, Escambia and Conecuh Counties, Alabama

A comment is added on your issue:

Re: Alabama Railroad, LLC Abandonment Exemption - Monroe, Escambia and Conecuh Counties, Alabama

Thank you for informing the National Geodetic Survey (NGS) of Alabama Railroad, LLC (ARL)'s decision to abandon approximately **47.5 * miles of rail line extending from approximately *milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 * (near Tunnel Springs, AL) including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties in Alabama (the *Line) .**

There could be geodetic survey marks located in the area described, and any marks still present could be disturbed by the abandonment. While it is illegal to disturb or destroy a mark, sometimes disturbing or destroying a mark is unavoidable. In such cases, the mark can often be preserved or reset with advanced planning. NGS provides the public with tools to search for and locate survey marks, see the NGS Data Explorer (<https://geodesy.noaa.gov/NGSDataExplorer/>).

If a mark will be disturbed by the abandonment, ARL should consult with NGS at least 90 days prior to beginning salvage activities that will disturb, or destroy any geodetic marks identified nearby. Information is available online to help reset marks or report disturbed/destroyed marks: <https://geodesy.noaa.gov/surveys/mark-recovery/index.shtml>
<<https://www.google.com/url?q=https://geodesy.noaa.gov/surveys/mark-recovery/index.shtml&sa=D&ust=1560385764139000&usg=AFQjCNGDkoXCHtBcDJBsXm2KQLkhcwYDxQ>>.

This notice is also being shared with Denis Riordan (Denis.Riordan@noaa.gov, 240-678-2107) the Regional Geodetic Advisor, so he may work with any interested local agencies or stakeholders.

If you have additional questions, email NGS.Infocenter@noaa.gov.

Sincerely,
Deborah M. Brooks
Communications Specialist
deborah.brooks@noaa.gov

More information on preserving marks, mark resets, and destroyed marks.

Preserving Marks

Significant resources were invested to create an extensive geodetic network across the United States by establishing precise coordinates at physical survey marks. Disturbing or destroying these marks reduces geodetic control

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available to local surveyors, so please make every effort to preserve this valuable network.

Mark Resets

If a mark is about to be destroyed (e.g., due to planned construction), it may be possible to reset the mark and retain the geodetic control. Review the Bench Mark Reset Procedures (

https://geodesy.noaa.gov/PUBS_LIB/Benchmark_4_1_2011.pdf) or contact your closest geodetic advisor (<https://geodesy.noaa.gov/ADVISORS/index.shtml>).

Please do not attempt to reset a mark that has been separated from the base. Any remnants of destroyed marks must be properly discarded and not reused in any manner, as this is a violation of Federal law.

Destroyed Marks

If it is determined that a mark has been destroyed, please provide enough photo evidence to show how this determination was made. To submit this information to NGS, follow the instructions regarding “destroyed marks” on the Mark Recovery Entry web page (

https://geodesy.noaa.gov/cgi-bin/recvy_entry_www.prl)

APPENDIX J

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ATTORNEYS AT LAW

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Suite 800

Chicago, Illinois 60606-3208

Phone: (312) 252-1500

Fax: (312) 252-2400

www.fletcher-sippel.com

AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

USDA Natural Resources Conservation Service

3381 Skyway Dr.

Auburn, AL 36830

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Sir or Madam:

Alabama Railroad, LLC (“ARL”) is planning to file a Petition for Exemption with the Surface Transportation Board (“STB”) to abandon approximately 47.5 miles of rail line, extending from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”).

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proposed abandonment that differs from your input in response to ALAB's past undertaking, please contact me at either alane@fletcher-sippel.com or (312) 252-1518, or you may send your response via mail if you prefer. Thank you for your assistance on this matter.

Respectfully submitted,



Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX K

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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Suite 800

Chicago, Illinois 60606-3208

Phone: (312) 252-1500

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www.fletcher-sippel.com

AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

Daniel Blackman, Regional Administrator

EPA - Region 4

61 Forsyth St. SW

Atlanta, GA 30303

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Regional Administrator Blackman:

Alabama Railroad, LLC (“ARL”) is planning to file a Petition for Exemption with the Surface Transportation Board (“STB”) to abandon approximately 47.5 miles of rail line, extending from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”).

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Specifically, ARL seeks your input as is required by the STB’s environmental regulations specified below. Given your very recent participation and/or comment in the ALAB 2019 Abandonment, and in an effort to avoid unnecessary use your agency’s resources reviewing

APPENDIX K

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1. Regional and/or local use plans;
2. Regional or local transportation systems and patterns, including alternative transportation modes;
3. Energy consumption and efficiency;
4. Air emissions and noise levels;
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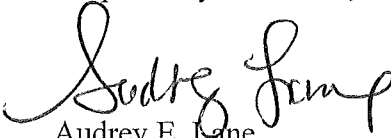
Because of the limited nature of the proposed action, we foresee no adverse environmental effects. Nevertheless, we would appreciate your review and any comments you may wish to offer. We request a written response as soon as possible so that we may include it in the Environmental/Historic Report which will be prepared in connection with this abandonment in accordance with 49 C.F.R. § 1105.7. Any written comments should reference Docket No. AB 1324X and be sent to the undersigned, as counsel for ARL.

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APPENDIX K

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Respectfully submitted,



Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX K-1



Re: Alabama Railroad Co. - Abandonment Exemption, AB-463 (Sub-No. 2X)

Crystal Zorbaugh to: Militscher, Chris
Cc: Eleanor Castillo

03/19/2019 11:09 AM

Thank you, Chris. Appreciate the promptness of your response.

From: "Militscher, Chris" <Militscher.Chris@epa.gov>
To: "czorbaugh@bakerandmiller.com" <czorbaugh@bakerandmiller.com>
Date: 03/19/2019 11:02 AM
Subject: Alabama Railroad Co. - Abandonment Exemption, AB-463 (Sub-No. 2X)

Dear Ms. Zorbaugh: The U.S. Environmental Protection Agency (EPA) Region 4 NEPA Program Office has reviewed the Combined Environmental and Historic Report dated 2/27/19, for the above referenced action which is located in Escambia, Conecuh, and Monroe Counties, Alabama. Based upon this review, the EPA did not identify any significant environmental impacts associated with the proposed 47.5-mile rail line abandonment. Thank you for the opportunity to comment. If you have any questions, please feel free to contact me from the information below.

Sincerely,

Christopher A. Militscher
Chief, NEPA Program Office
USEPA Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
Militscher.chris@epa.gov
404-562-9512



APPENDIX L

FLETCHER & SIPPET LLC

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Fax: (312) 252-2400

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AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

Alabama Department of Environmental Management

Attn: Coastal Program

3664 Dauphin St., Ste. B

Mobile, AL 36608

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Sir or Madam:

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APPENDIX L

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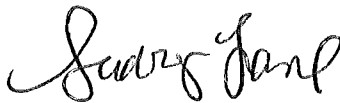
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APPENDIX L

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Audrey E. Lane". The signature is fluid and cursive, with the first name "Audrey" and last name "Lane" clearly distinguishable.

Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX L-1

From: Audrey E. Lane
Sent: Tuesday, May 10, 2022 10:09 AM
To: Emily K. Gurney
Subject: Fwd: Docket AB 1324X • Alabama Railroad, LLC - Abandonment Exemption - Escambia, Conecuh, and Monroe Counties, Alabama

Begin forwarded message:

From: "Brown, Scott" <jsb@adem.alabama.gov>
Date: May 10, 2022 at 10:05:05 AM CDT
To: "Audrey E. Lane" <ALane@fletcher-sippel.com>
Cc: "McNeill, Catherine" <CMcNeill@adem.alabama.gov>
Subject: **Docket AB 1324X • Alabama Railroad, LLC - Abandonment Exemption - Escambia, Conecuh, and Monroe Counties, Alabama**

Good morning Audrey:

After review of the referenced action – received by the ADEM 03MAY2022, it has been determined that the proposed activities will occur well outside the defined coastal area of Alabama and will not have any reasonably foreseeable effect on any coastal use or resource. Therefore the abandonment of approximately 47.5 miles of rail line extending from milepost 607.73 (at Flomaton, AL) to milepost 655.2 (near Tunnel Springs, AL) is not subject to the enforceable policies of the Alabama Coastal Area Management Program.

This response is intended to assist you in identifying any potential effects the proposed abandonment may have on Item No. 11 - Coastal Zone Management Areas.

Call or email anytime with questions.

v/r,

J. Scott Brown, Chief

Mobile Field Office | ADEM

3664 Dauphin Street, Suite B | Mobile, Alabama 36608

Telephones: 251.304.1176 Office | 334.850.4641 Cell

eMail: jsb@adem.alabama.gov

www.adem.alabama.gov

Email sent from or received by this sender - including any attachments therewith - is subject to the Alabama Open Records Act and may be disclosed to third parties.

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AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

Lance R. LeFleur

Alabama Department of Environmental Management

Director's Office

PO Box 301463

Montgomery, AL 36130-1463

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In Escambia, Conecuh, and Monroe Counties, Alabama

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APPENDIX M

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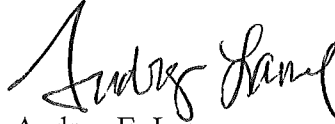
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LLC**

AEL/eg
Enclosures

APPENDIX N

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ATTORNEYS AT LAW

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AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

U.S. Fish and Wildlife Service

Region 4

1875 Century Blvd. NE

Atlanta, GA 31830

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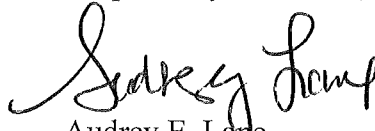
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Respectfully submitted,



Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX N-1



United States Department of the Interior

FISH AND WILDLIFE SERVICE
1208-B Main Street
Daphne, Alabama 36526

IN REPLY REFER TO:
2019-TA-0596

MAR 27 2019

Ms. Crystal M. Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037

Dear Ms. Zorbaugh:

Thank you for your letter, dated February 27, 2019, requesting comments regarding potential critical habitat and/or endangered species that may be impacted by the Alabama Railroad Co. Abandonment Exemption in Escambia, Conecuh, and Monroe Counties, in Alabama, AB-463 (Sub-No. 2X). We further understand that the Line's rail and related track material will be salvaged, along the approximately 47.5 miles of rail line associated with the Abandonment Exemption. Our report is submitted under the provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e) and the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq).

Federally Listed Species

Our records indicate that the following endangered, threatened, or candidate species may occur in the project area:

- E - Gray bat (*Myotis grisescens*)
- E - Indiana bat (*Myotis sodalis*)
- T - Red Hills salamander (*Phaeognathus hubrichti*)
- T - Orange-nacre mucket (*Hamiota perovalis*)

Based on the information in our records and your letter, we would not expect any impacts to any of the federally listed species. However, in areas, suitable habitat for Red Hills salamanders is known to be adjacent to the rail line and within the right-of way, in Monroe County. In these areas we recommend that no equipment or materials be stored or placed on any steep slopes (inclines or declines). We recommend use of best management practices to protect suitable habitat and conserve these species. For information on best management practices specific to your project please go to <http://www.fws.gov/daphne/section7/bmp.html>.

PHONE: 251-441-5181

FAX: 251-441-6222

APPENDIX N-1

Ms. Crystal Zorbaugh

2

For questions or comments regarding this correspondence, please contact Mr. Matt Laschet, at (251) 441-5842 or via email matthias_laschet@fws.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "William J. Pearson".

William J. Pearson
Field Supervisor
Alabama Ecological Services Field Office

APPENDIX O

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

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AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

Deirdre Hewitt

Southeast Regional Program Manager

National Park Service, Southeast Region

100 Alabama St. SW

Atlanta, GA 30303

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Ms. Hewitt:

Alabama Railroad, LLC (“ARL”) is planning to file a Petition for Exemption with the Surface Transportation Board (“STB”) to abandon approximately 47.5 miles of rail line, extending from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”).

As you may recall, the Line was the subject of a previous (recent) abandonment sought by ARL’s immediate predecessor, Alabama Railroad Co. (“ALAB”). In Alabama Railroad Co. – Abandonment Exemption – In Escambia, Conecuh, and Monroe Counties, in Alabama, AB – 463 (Sub-No. 2x) (“ALAB 2019 Abandonment”), the STB authorized ALAB’s proposed abandonment. However, ALAB never consummated its abandonment as is required under the STB’s regulations, and ALAB’s abandonment authorization lapsed. In the interim, ARL acquired the Line from ALAB, and, under STB regulations, ALAB’s abandonment authority was not transferrable to ARL, even if ALAB’s abandonment authorization had not lapsed.

ARL has determined to initiate renewed abandonment efforts for the Line before the STB, and, since ARL cannot rely exclusively on the record in the past ALAB abandonment proceeding at the STB for purposes of the STB’s statutorily-mandated environmental and historic resources review, we are now reaching out to you (as did ARL before) to solicit your input on the proposal. If you are experiencing a moment of déjà vu, we understand completely, and yes . . . this is the exact same, inactive railroad line that you were contacted about roughly three years ago.

Specifically, ARL seeks your input as is required by the STB’s environmental regulations specified below. Given your very recent participation and/or comment in the ALAB

APPENDIX O

2019 Abandonment, and in an effort to avoid unnecessary use your agency's resources reviewing the very same materials that were previously provided and reviewed, I am enclosing with this correspondence the STB's Environmental Assessment and its supplemental STB orders issued in the ALAB 2019 Abandonment, as well your agency's response (if any) to the ALAB 2019 Abandonment solicitation letter related to the same.

ARL is unaware of any changes in the Line and/or the surface above or below the Line or any other issue related to the status of the Line that would have an impact and/or change your agency's response to the 2019 ALAB Abandonment solicitation letter that was previously provided. To that end, ***unless your response has changed from what was provided in connection with the 2019 ALAB Abandonment, there is no need to respond to this solicitation letter. ARL will assume that if no response is received within 20 days from the date of this letter, your input on the abandonment proposal for the Line remains as it was three years ago*** when a different railroad sought at that time to abandon the same line (but ultimately did not do so). To the extent you believe a further, or different response is warranted, ARL provides the below information with respect to the STB's environmental regulations.

ARL's 2022 Petition for Exemption will be filed pursuant to 49 C.F.R. Part 1152, Subpart G. A map showing the location of the Line is attached for your reference. In accordance with the STB's environmental regulations, 49 C.F.R. § 1105, ARL is advising you of the proposed abandonment so that you may assist us in identifying any potential effects it may have on the following (to the extent they are within your area of expertise or authority):

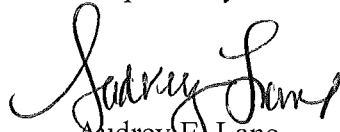
1. Regional and/or local use plans;
2. Regional or local transportation systems and patterns, including alternative transportation modes;
3. Energy consumption and efficiency;
4. Air emissions and noise levels;
5. Bodies of water and overall water quality under applicable federal, state or local standards;
6. Designated wetlands and 100-year old flood plains;
7. Endangered or threatened species and critical habitats;
8. Wildlife sanctuaries or refuges and national or state parks or forests;
9. Prime agricultural land, and soil and natural resource conservation;
10. Existing or potential safety hazards;
11. Coastal Zone Management Areas; and
12. The need for permits under Sections 402 or 404 of the Clean Water Act.

Because of the limited nature of the proposed action, we foresee no adverse environmental effects. Nevertheless, we would appreciate your review and any comments you may wish to offer. We request a written response as soon as possible so that we may include it in the Environmental/Historic Report which will be prepared in connection with this abandonment in accordance with 49 C.F.R. § 1105.7. Any written comments should reference Docket No. AB 1324X and be sent to the undersigned, as counsel for ARL.

APPENDIX O

A draft of the Environmental/Historic Report associated with the proposed abandonment will be forwarded to you at least twenty days before ARL's petition is filed at the STB. If you have any questions regarding this correspondence, or if you wish to offer input on the proposed abandonment that differs from your input in response to ALAB's past undertaking, please contact me at either alane@fletcher-sippel.com or (312) 252-1518, or you may send your response via mail if you prefer. Thank you for your assistance on this matter.

Respectfully submitted,



Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures

APPENDIX O-1



Fw: [EXTERNAL] Re: E&HR ALAB abandonment exemption - Escambia, Conecuh, Monroe Counties
Crystal Zorbaugh to: Eleanor Castillo

03/19/2019 11:10 AM

From: "Barrett, John" <john_barrett@nps.gov>
To: <CZorbaugh@bakerandmiller.com>
Date: 03/13/2019 10:34 AM
Subject: Re: [EXTERNAL] Re: E&HR ALAB abandonment exemption - Escambia, Conecuh, Monroe Counties

Thank you Crystal.

John

John Barrett
Program Manager
Federal Lands to Parks
National Park Service, Southeast Region
100 Alabama St., SW
Atlanta, GA 30303
john_barrett@nps.gov | 404 507 5689
www.nps.gov/flp

On Wed, Mar 13, 2019 at 10:07 AM <CZorbaugh@bakerandmiller.com> wrote:

Good Morning Mr. Barrett,

Yes, the Alabama State Historic Preservation Office was also sent a copy of the report. A complete list of the parties sent the report is included in the E&HR. Please let me know if you have further questions.

Best,

Crystal

From: "Barrett, John" <john_barrett@nps.gov>
To: <CZorbaugh@bakerandmiller.com>
Date: 03/13/2019 10:03 AM
Subject: E&HR ALAB abandonment exemption - Escambia, Conecuh, Monroe Counties

Crystal,

We're in receipt of your E&HR package concerning ALAB's expected filing of an abandonment exemption from STB for the rail line in portions of Escambia, Conecuh, and Monroe Counties, Alabama.

APPENDIX O-1

I don't anticipate that this office will have any comments on the report. However, did you provide a copy to the Alabama State Historic Preservation Office? If not, that office should be provided a copy of your report for review and comment.

Thank you.

John Barrett

John Barrett
Program Manager
Federal Lands to Parks
National Park Service, Southeast Region
100 Alabama St., SW
Atlanta, GA 30303

john_barrett@nps.gov | 404.507.5689

www.nps.gov/flp

APPENDIX P

FLETCHER & SIPPEN LLC

ATTORNEYS AT LAW

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

Phone: (312) 252-1500

Fax: (312) 252-2400

www.fletcher-sippel.com

AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

U.S. Army Corps of Engineers

Mobile District

PO Box 2288

Mobile, AL 36628-0001

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Sir or Madam:

Alabama Railroad, LLC (“ARL”) is planning to file a Petition for Exemption with the Surface Transportation Board (“STB”) to abandon approximately 47.5 miles of rail line, extending from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”).

As you may recall, the Line was the subject of a previous (recent) abandonment sought by ARL’s immediate predecessor, Alabama Railroad Co. (“ALAB”). In Alabama Railroad Co. – Abandonment Exemption – In Escambia, Conecuh, and Monroe Counties, in Alabama, AB – 463 (Sub-No. 2x) (“ALAB 2019 Abandonment”), the STB authorized ALAB’s proposed abandonment. However, ALAB never consummated its abandonment as is required under the STB’s regulations, and ALAB’s abandonment authorization lapsed. In the interim, ARL acquired the Line from ALAB, and, under STB regulations, ALAB’s abandonment authority was not transferrable to ARL, even if ALAB’s abandonment authorization had not lapsed.

ARL has determined to initiate renewed abandonment efforts for the Line before the STB, and, since ARL cannot rely exclusively on the record in the past ALAB abandonment proceeding at the STB for purposes of the STB’s statutorily-mandated environmental and historic resources review, we are now reaching out to you (as did ARL before) to solicit your input on the proposal. If you are experiencing a moment of déjà vu, we understand completely, and yes . . . this is the exact same, inactive railroad line that you were contacted about roughly three years ago.

Specifically, ARL seeks your input as is required by the STB’s environmental regulations specified below. Given your very recent participation and/or comment in the ALAB 2019 Abandonment, and in an effort to avoid unnecessary use your agency’s resources reviewing

APPENDIX P

the very same materials that were previously provided and reviewed, I am enclosing with this correspondence the STB's Environmental Assessment and its supplemental STB orders issued in the ALAB 2019 Abandonment, as well your agency's response (if any) to the ALAB 2019 Abandonment solicitation letter related to the same.

ARL is unaware of any changes in the Line and/or the surface above or below the Line or any other issue related to the status of the Line that would have an impact and/or change your agency's response to the 2019 ALAB Abandonment solicitation letter that was previously provided. To that end, ***unless your response has changed from what was provided in connection with the 2019 ALAB Abandonment, there is no need to respond to this solicitation letter. ARL will assume that if no response is received within 20 days from the date of this letter, your input on the abandonment proposal for the Line remains as it was three years ago*** when a different railroad sought at that time to abandon the same line (but ultimately did not do so). To the extent you believe a further, or different response is warranted, ARL provides the below information with respect to the STB's environmental regulations.

ARL's 2022 Petition for Exemption will be filed pursuant to 49 C.F.R. Part 1152, Subpart G. A map showing the location of the Line is attached for your reference. In accordance with the STB's environmental regulations, 49 C.F.R. § 1105, ARL is advising you of the proposed abandonment so that you may assist us in identifying any potential effects it may have on the following (to the extent they are within your area of expertise or authority):

1. Regional and/or local use plans;
2. Regional or local transportation systems and patterns, including alternative transportation modes;
3. Energy consumption and efficiency;
4. Air emissions and noise levels;
5. Bodies of water and overall water quality under applicable federal, state or local standards;
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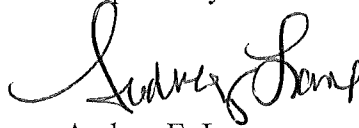
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A draft of the Environmental/Historic Report associated with the proposed abandonment will be forwarded to you at least twenty days before ARL's petition is filed at the

APPENDIX P

STB. If you have any questions regarding this correspondence, or if you wish to offer input on the proposed abandonment that differs from your input in response to ALAB's past undertaking, please contact me at either alane@fletcher-sippel.com or (312) 252-1518, or you may send your response via mail if you prefer. Thank you for your assistance on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Audrey E. Lane". The signature is fluid and cursive, with the first name "Audrey" being more prominent than the last name "Lane".

Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

AEL/eg
Enclosures



REPLY TO
ATTENTION OF

APPENDIX P-1

EI-26427

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, MOBILE DISTRICT
P.O. BOX 2288
MOBILE, AL 36628-0001

March 13, 2019

Environment and Resources Branch
Planning and Environmental Division

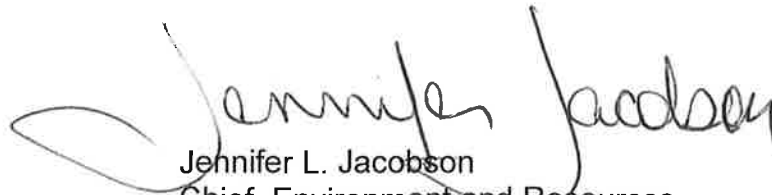
Ms. Crystal M. Zorbaugh
Baker and Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, D.C. 20037

Dear Ms. Zorbaugh:

Thank you for your February 27, 2019, letter notifying the U.S. Army Corps of Engineers (USACE), Mobile District of Alabama Railroad Co.'s (ALAB) intent to file a notice of exemption with the Surface Transportation Board. Although USACE, Mobile District does not anticipate any adverse environmental impacts to be incurred from this railroad abandonment, a federally authorized Continuing Authorities Program, Section 206: Aquatic Ecosystem Restoration Project was constructed in 2005 at Big Escambia Creek near Flomaton, Alabama and Century, Florida. The two non-Federal sponsors, Gulf Coast Resource Conservation and Development of Alabama and Florida Three Rivers Resource Conservation and Development Council, Inc., are responsible for the restoration project's continued operations and maintenance. Should ALAB's efforts ever expand southward, possible impacts could occur to that Federal project and additional coordination is requested.

Should you require any further assistance, please contact me via email at Jennifer.L.Jacobson@usace.army.mil or via phone (251) 690-2724.

Sincerely,


Jennifer L. Jacobson
Chief, Environment and Resources
Branch

APPENDIX Q

FLETCHER & SIPPET LLC

ATTORNEYS AT LAW

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

Phone: (312) 252-1500

Fax: (312) 252-2400

www.fletcher-sippel.com

AUDREY E. LANE

(312) 252-1518

Alane@fletcher-sippel.com

April 28, 2022

Stephan Nofield

Program Manager

National Park Service, Rivers and Trails Conservation Program

1849 C St. NW

Washington, D.C. 20240

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Mr. Nofield:

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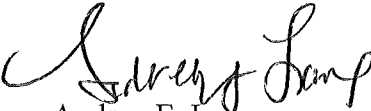
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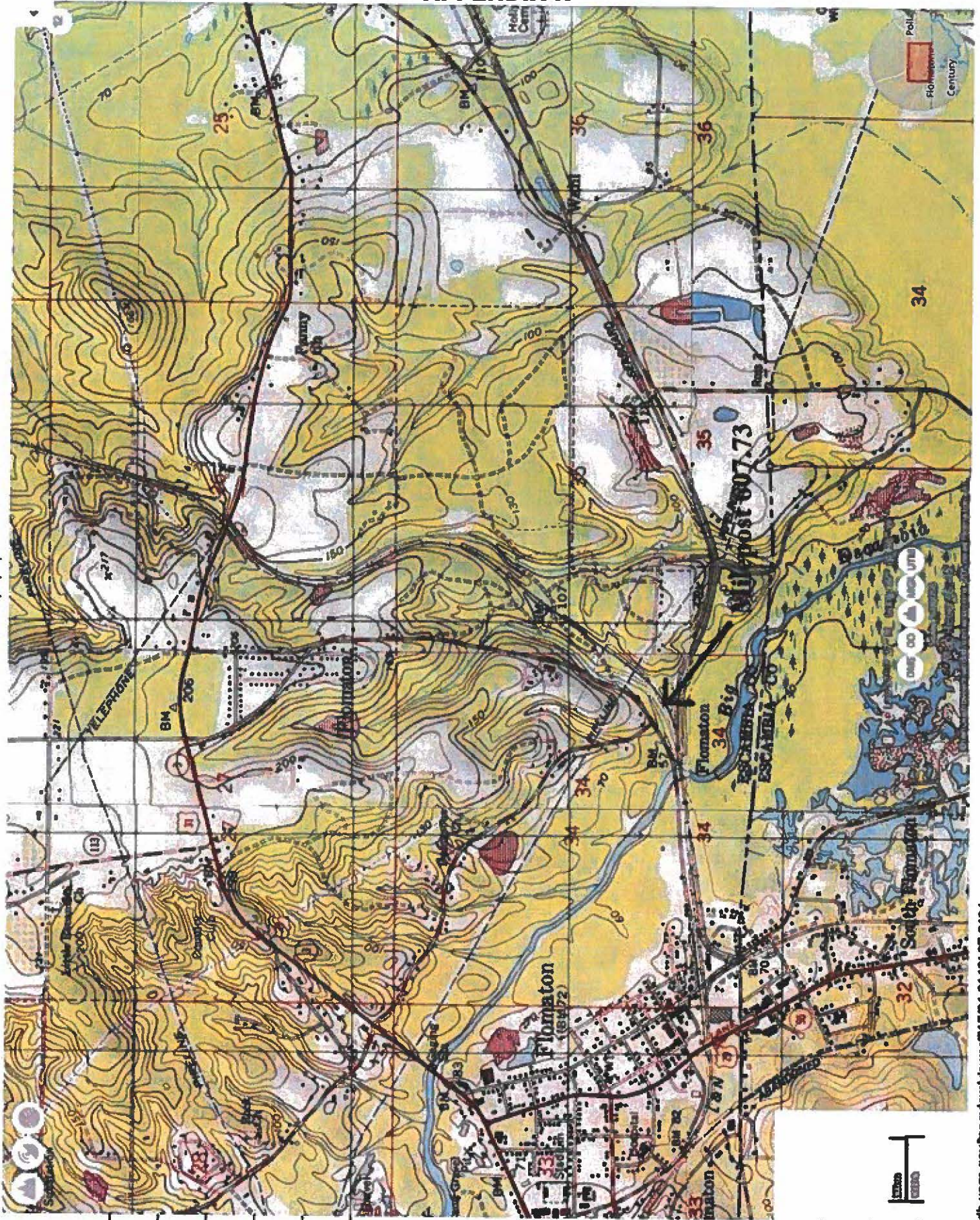
Audrey E. Lane

**ATTORNEY FOR ALABAMA RAILROAD,
LLC**

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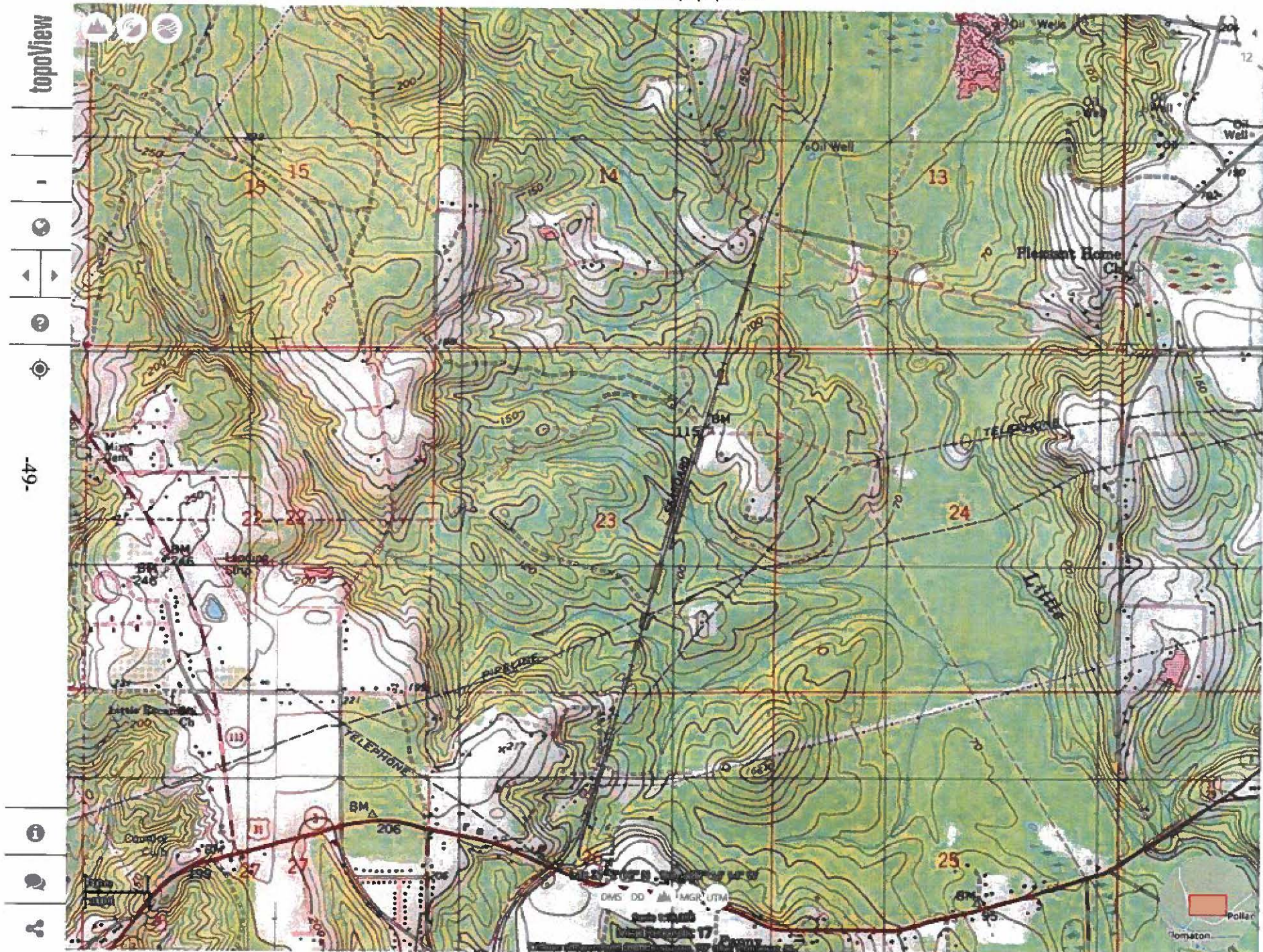


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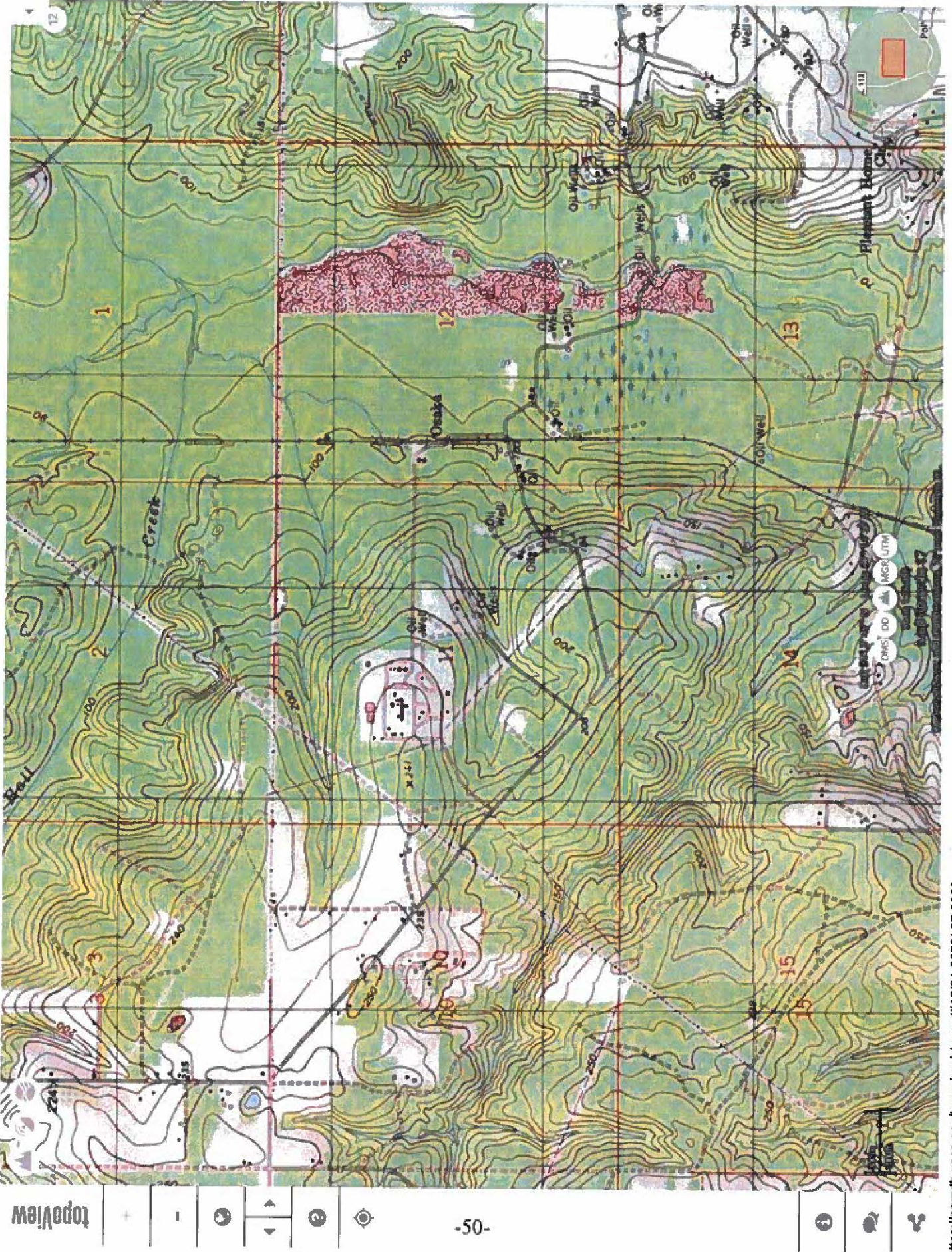
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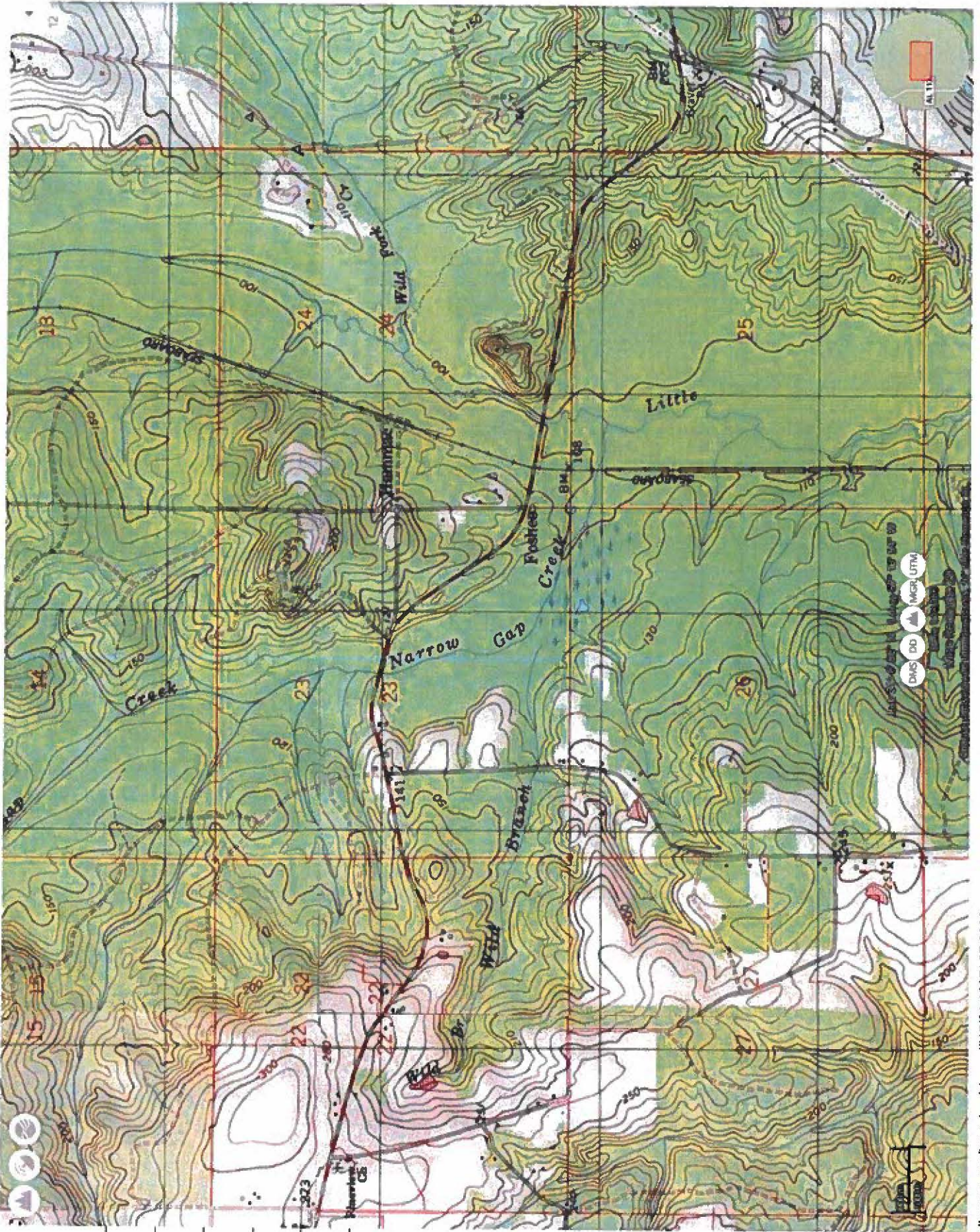
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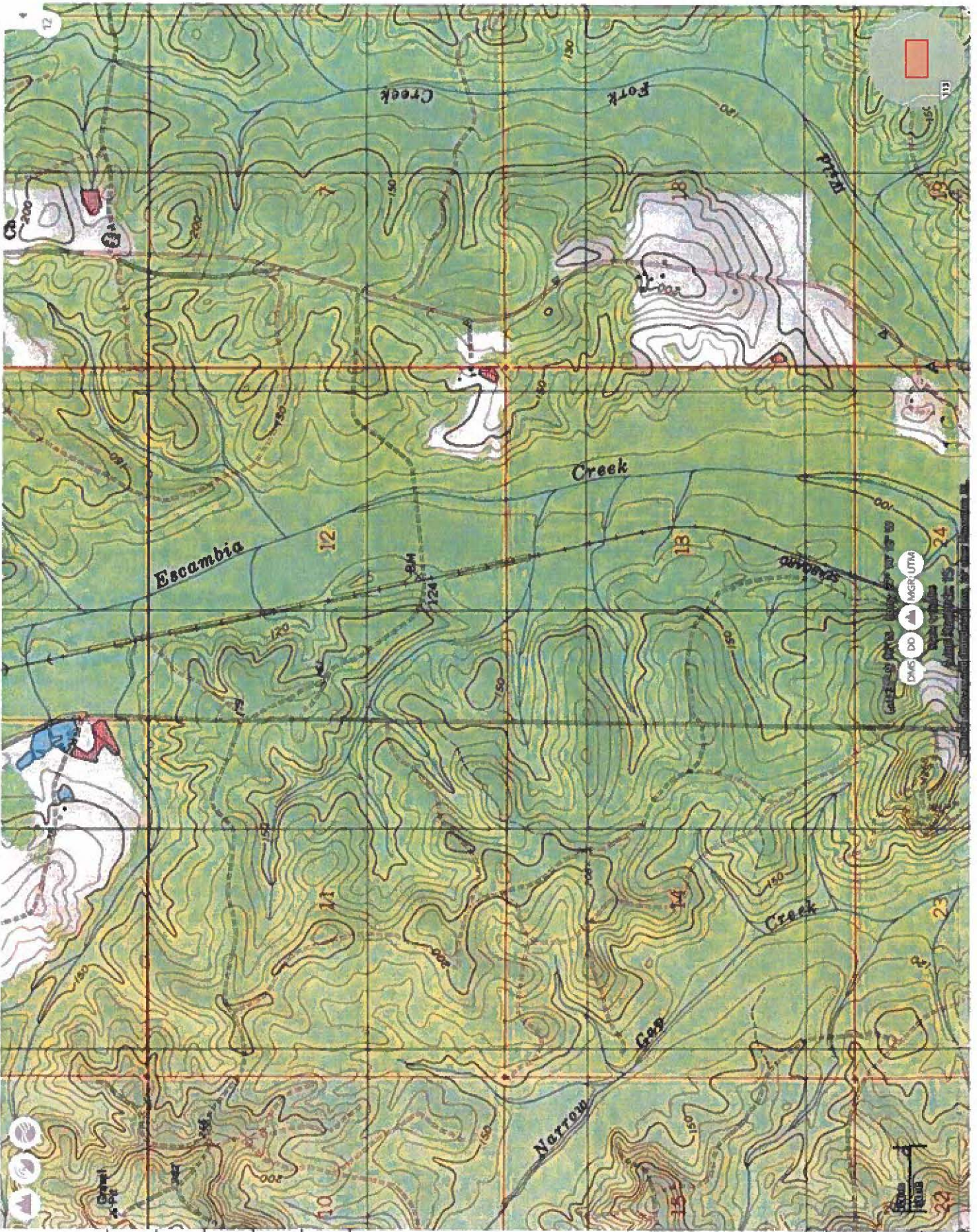
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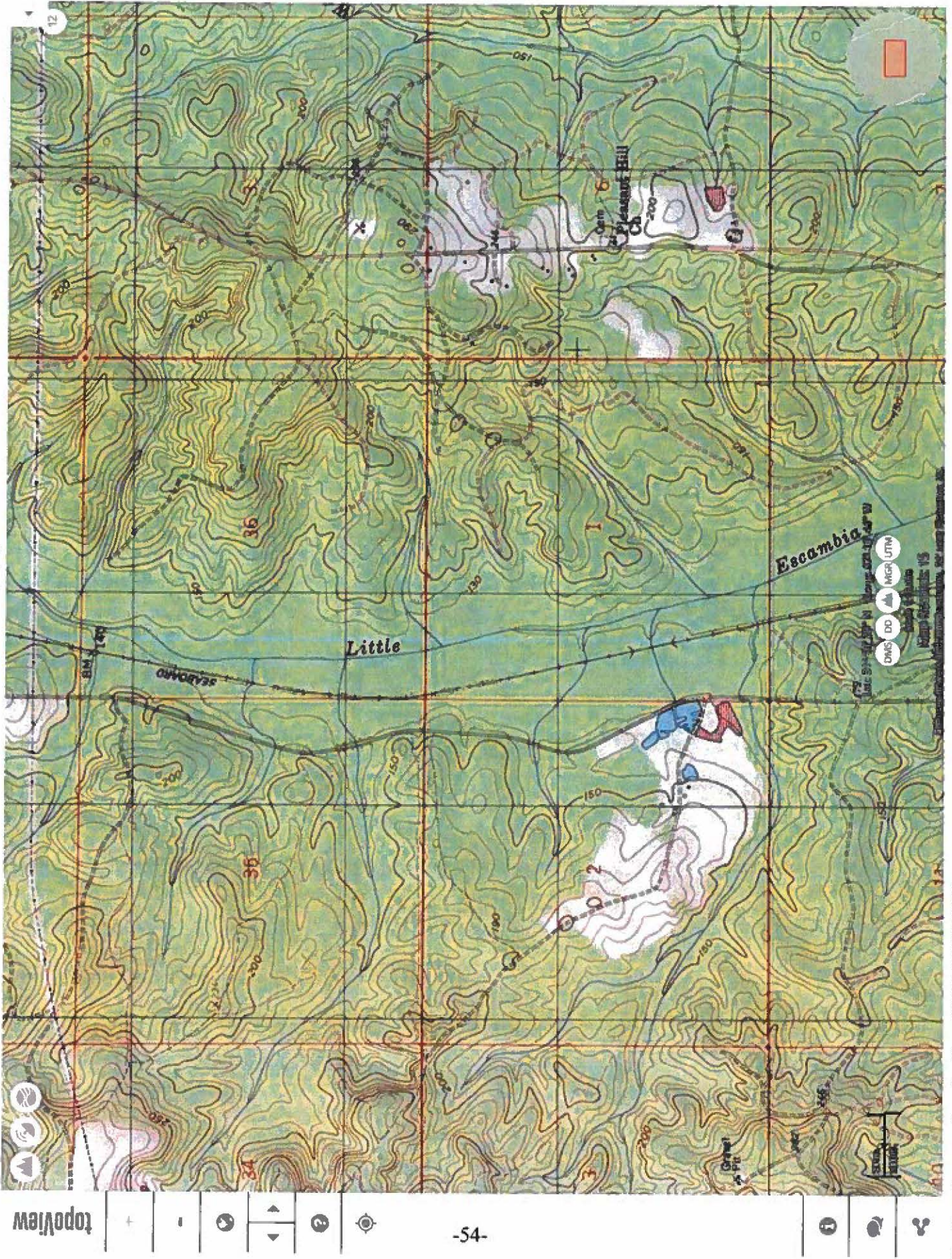
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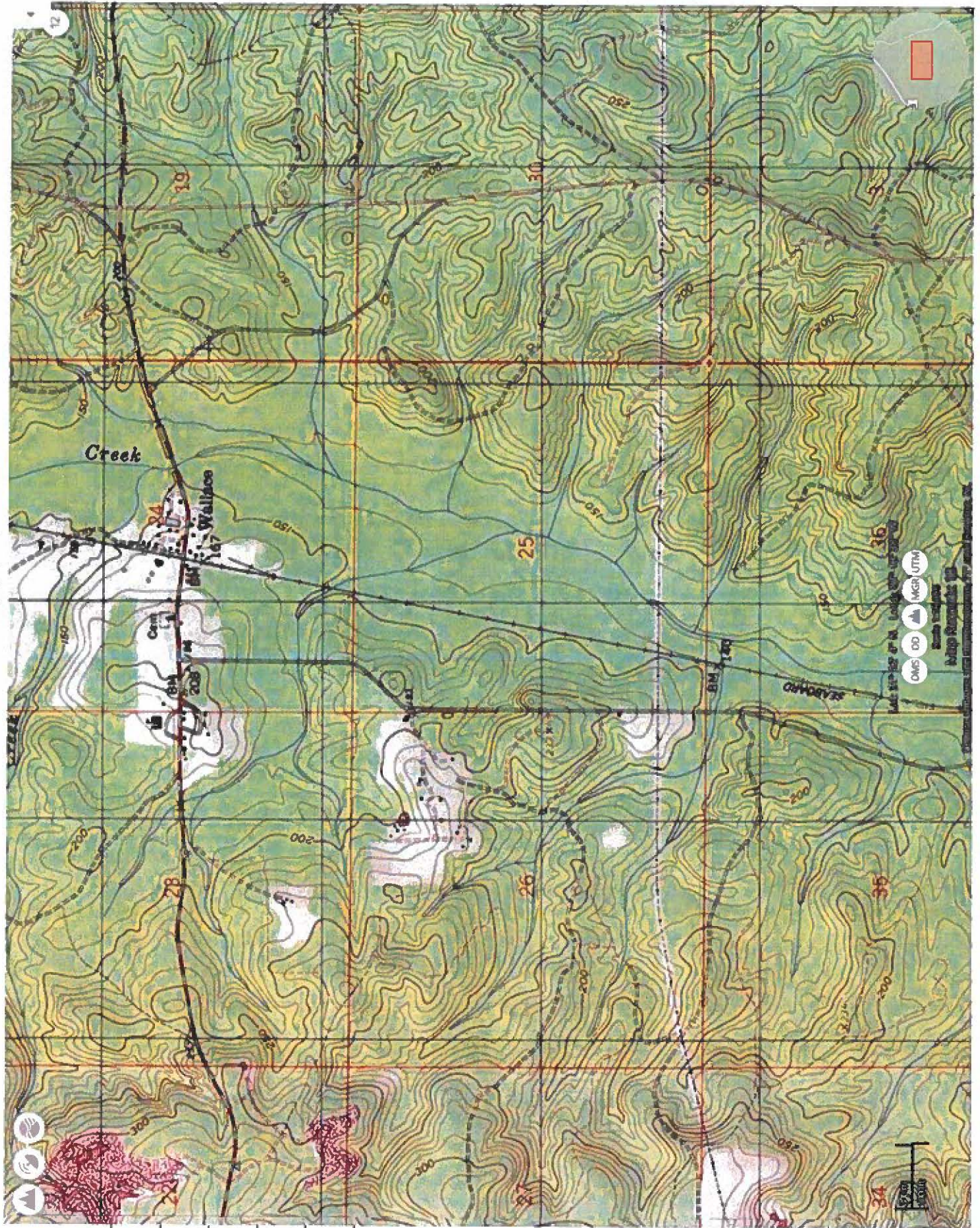
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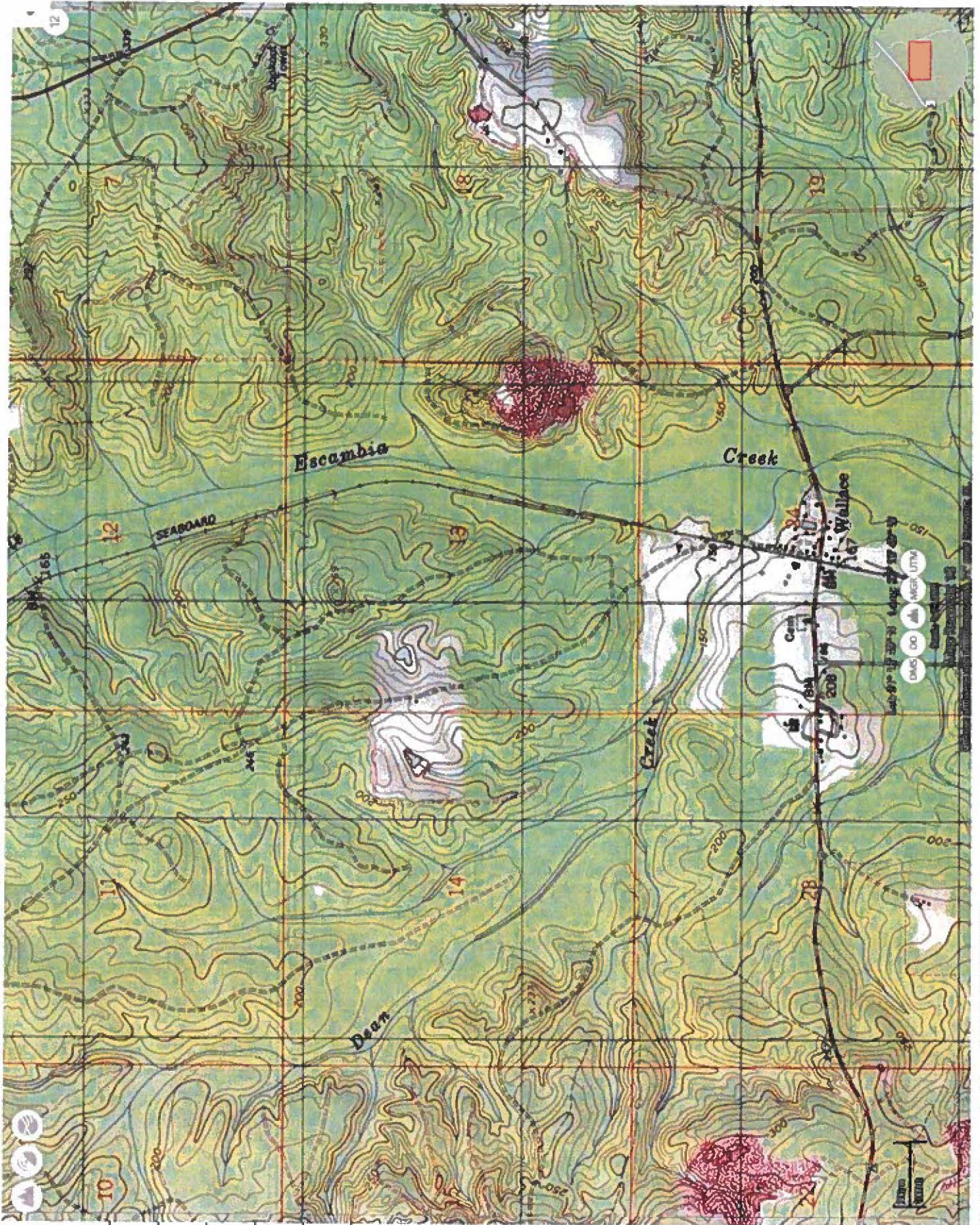


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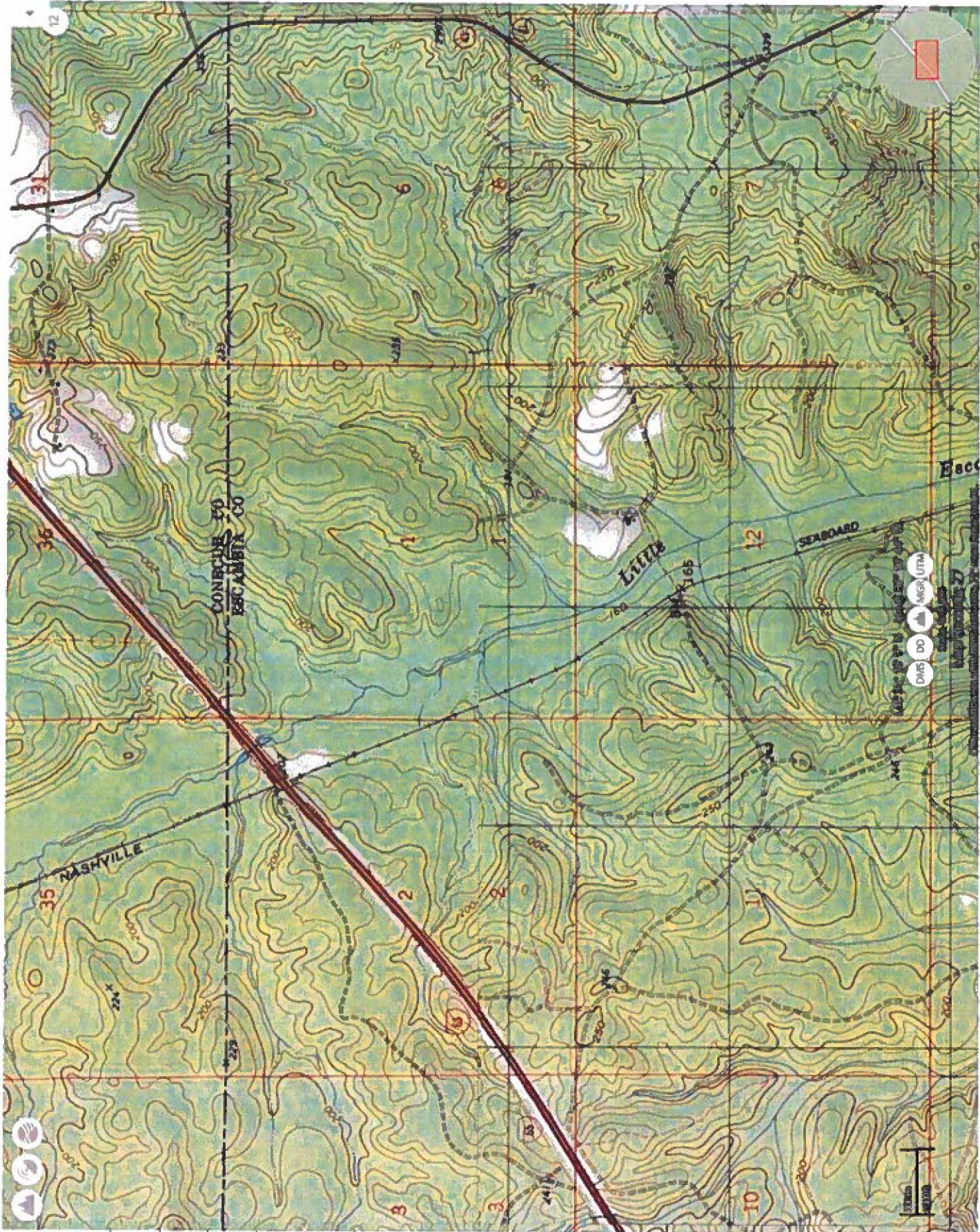
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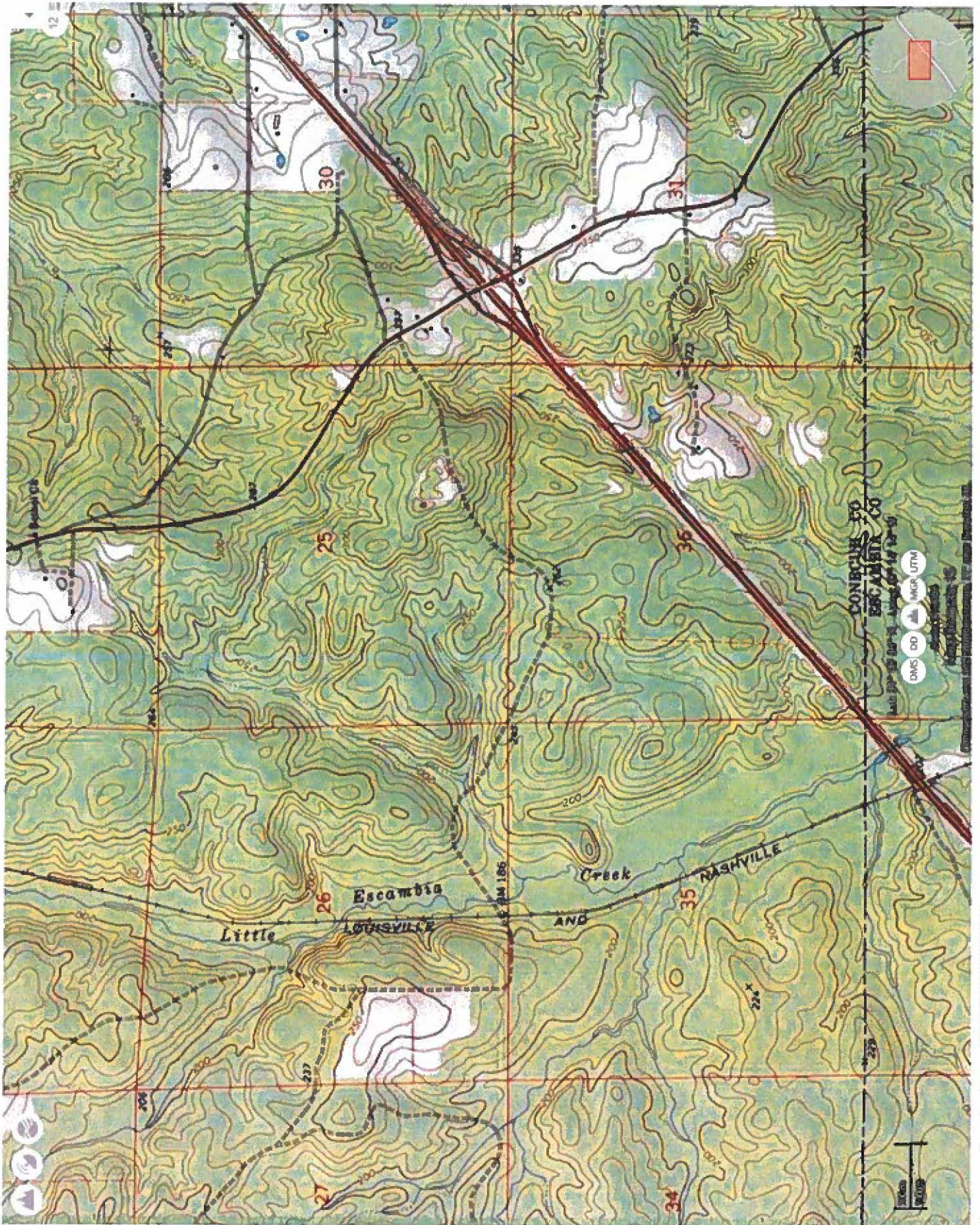
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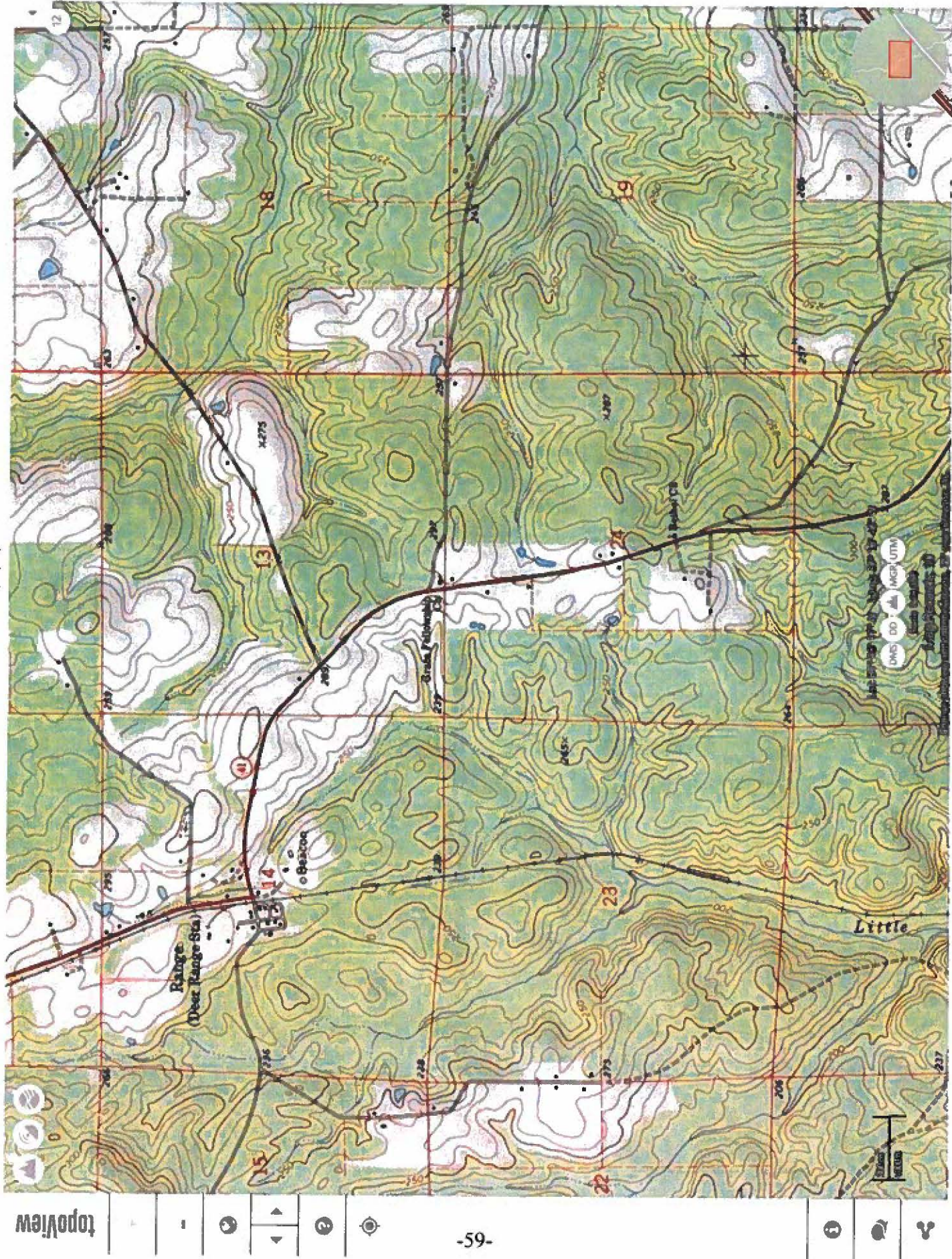
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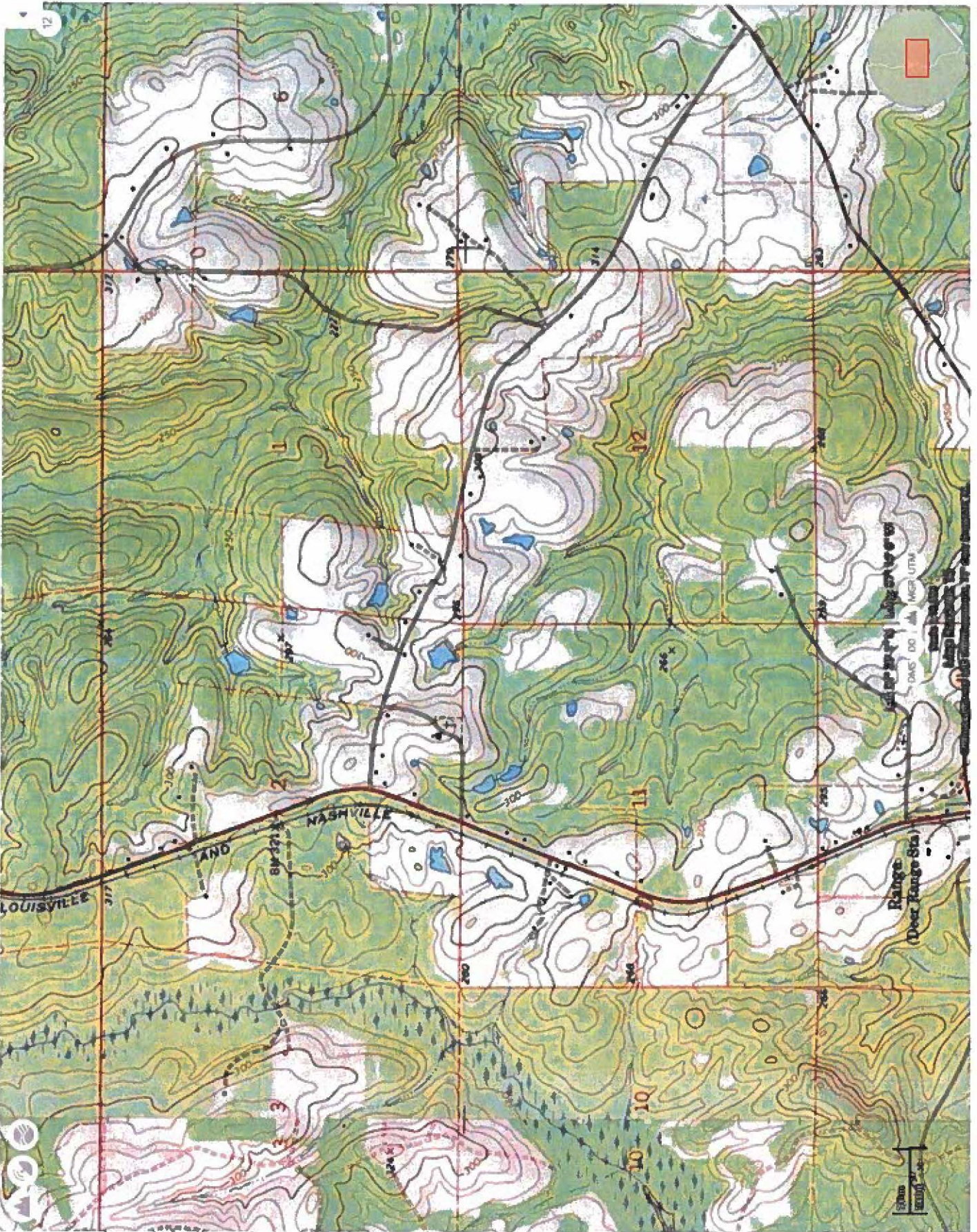
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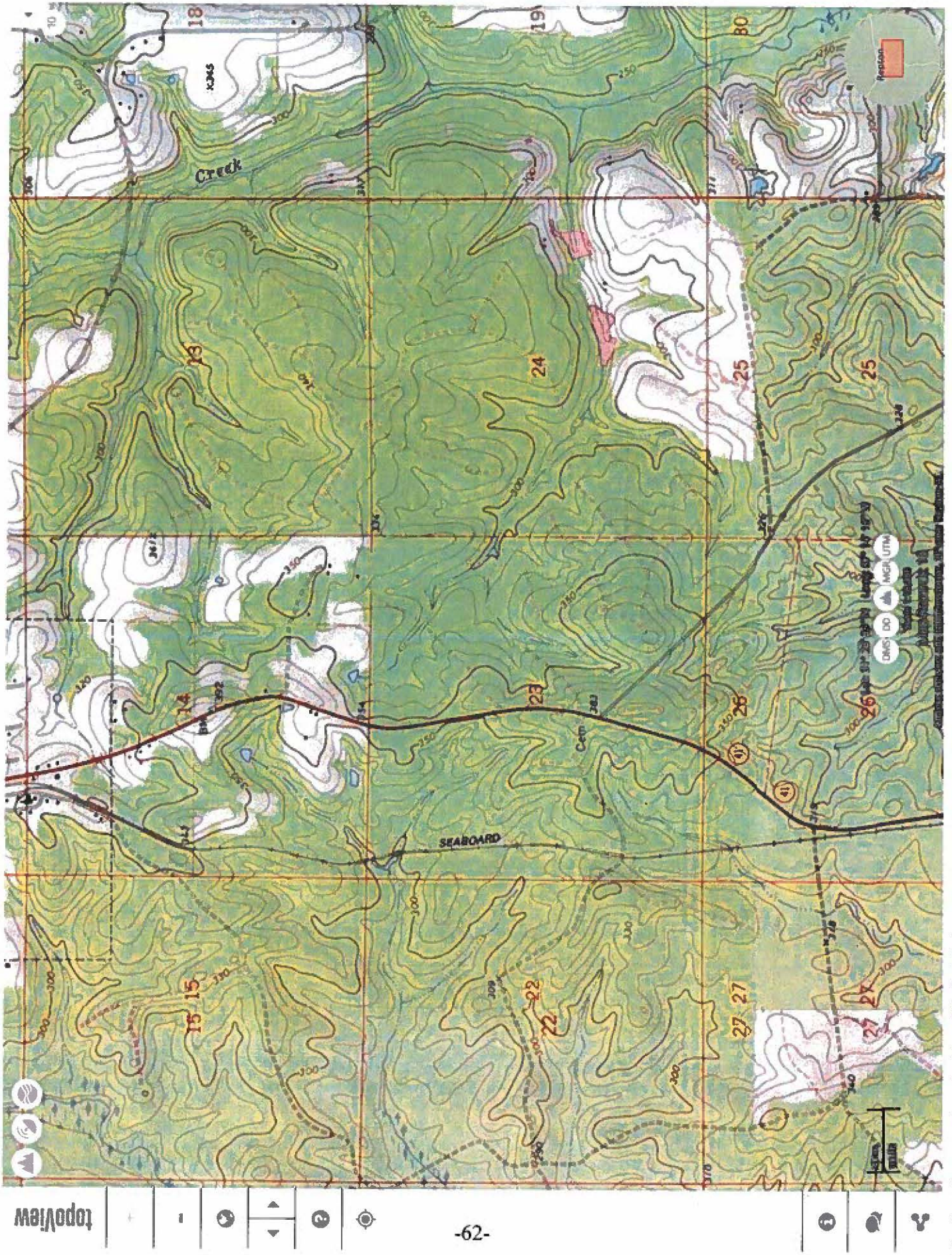
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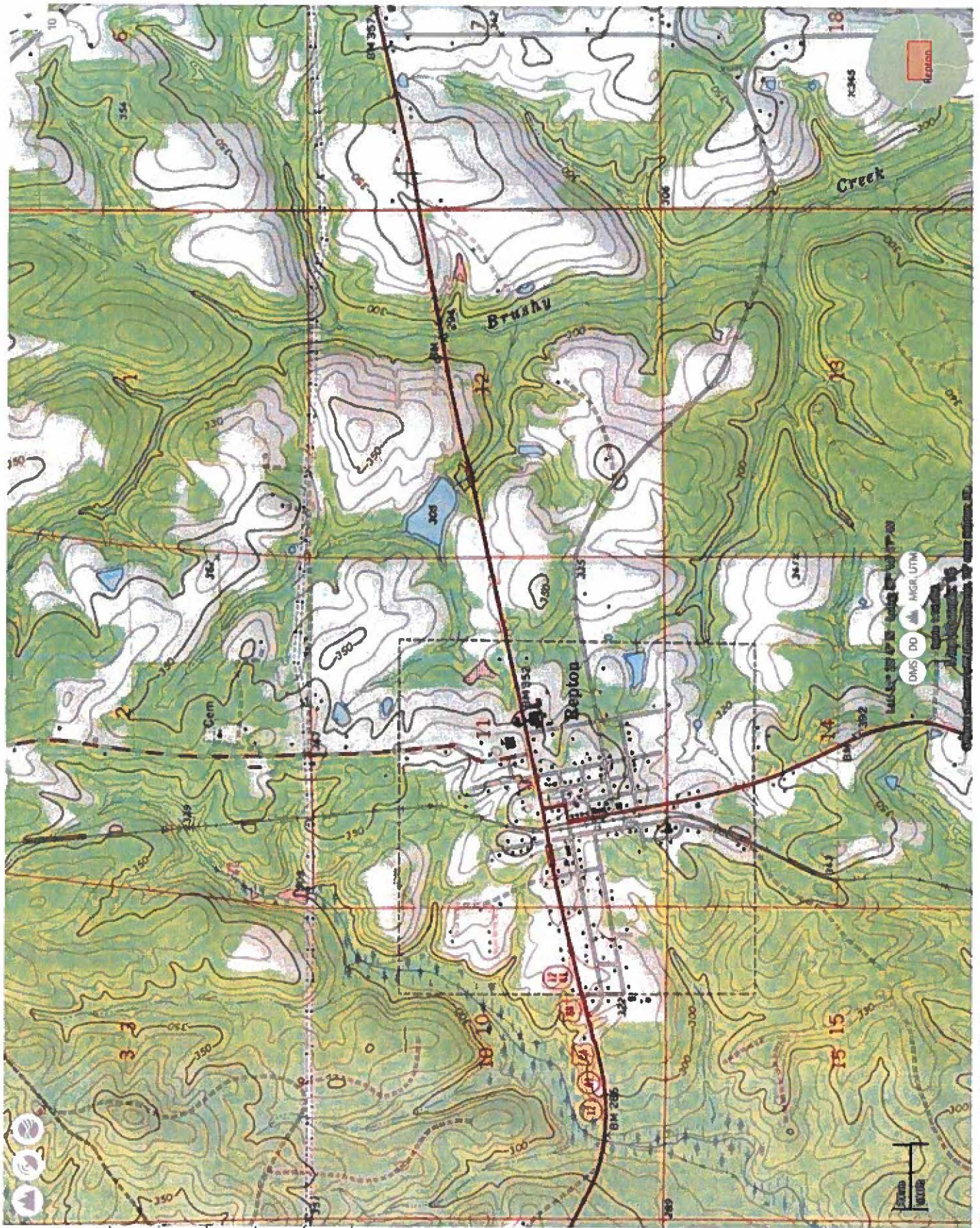
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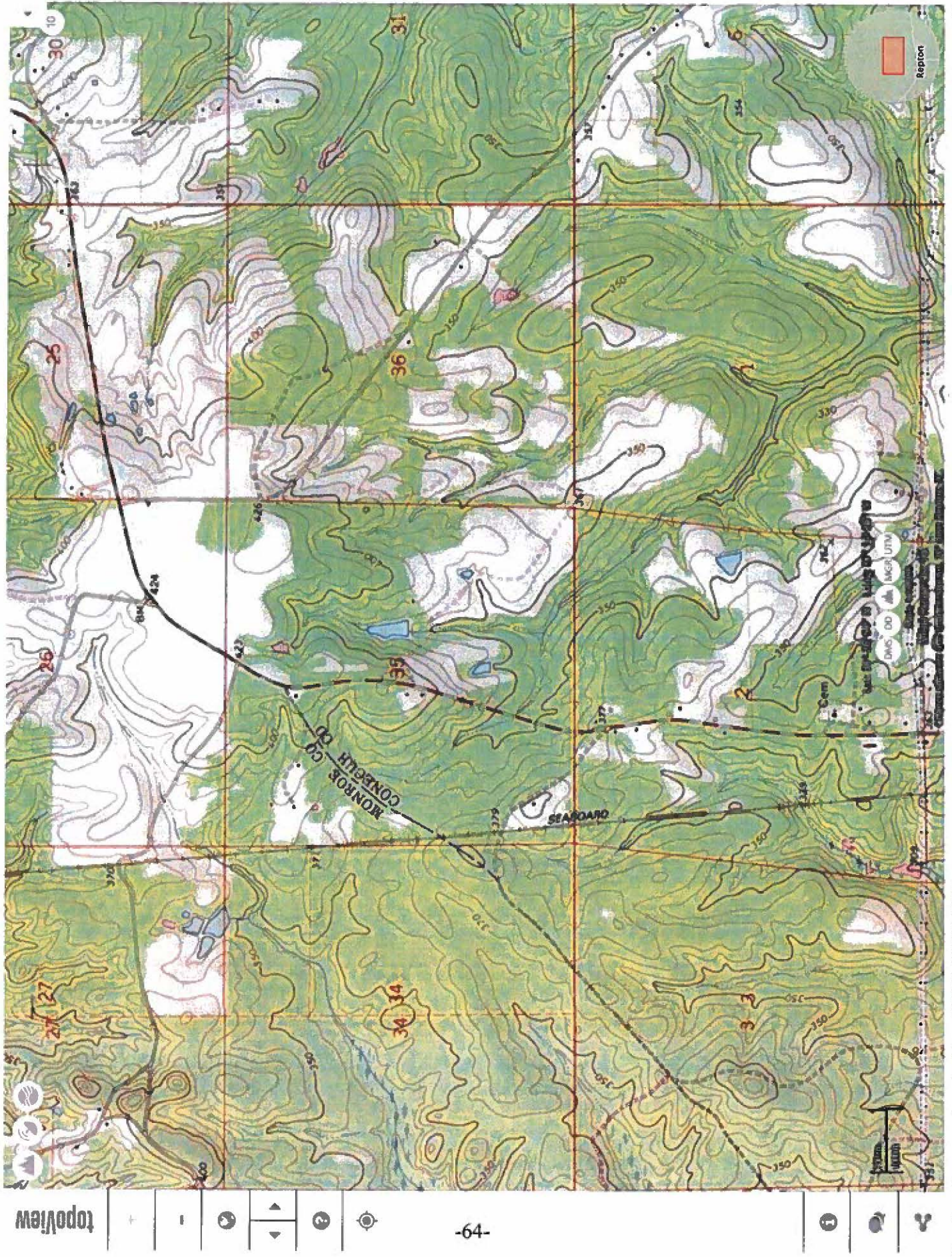
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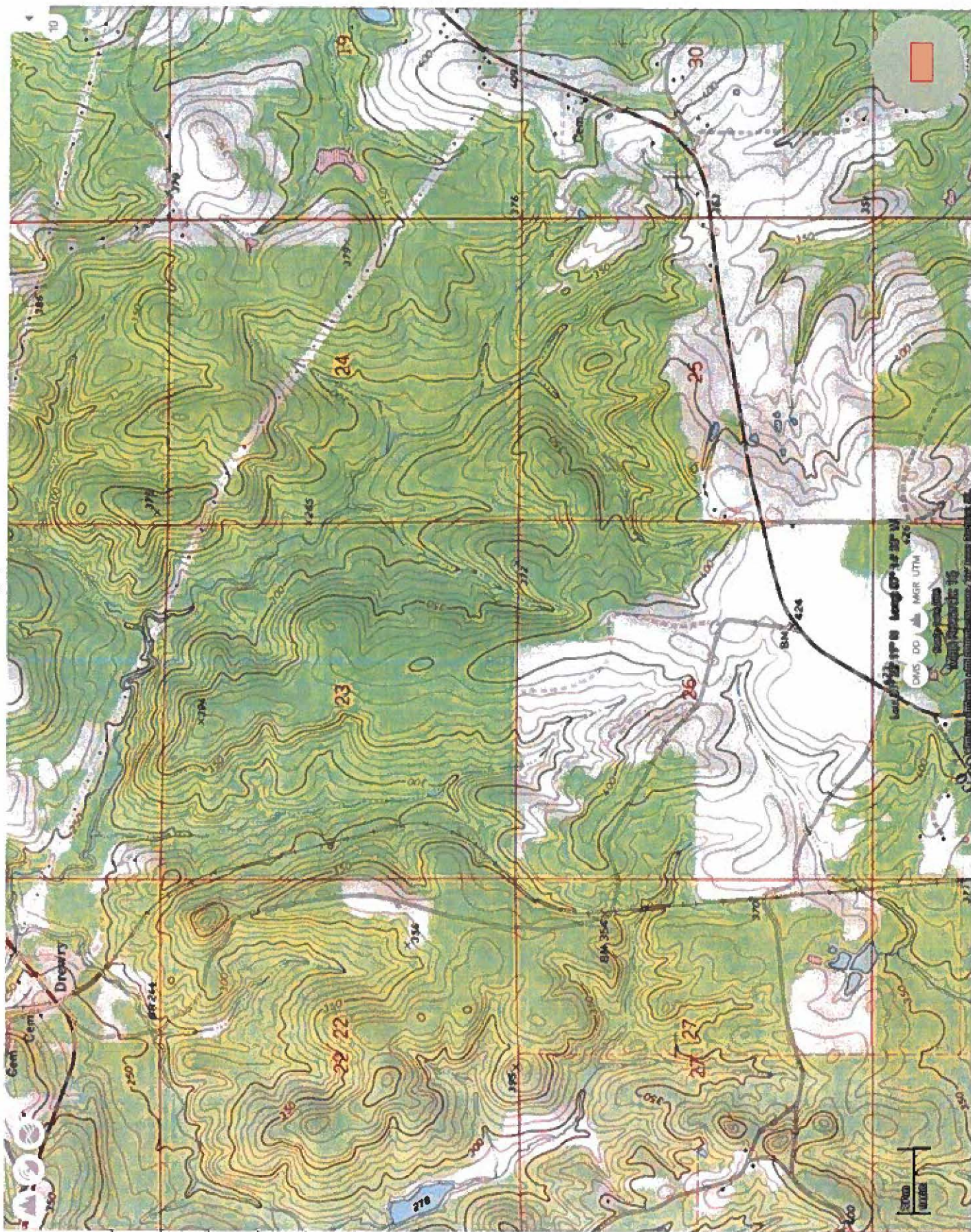
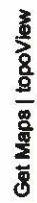
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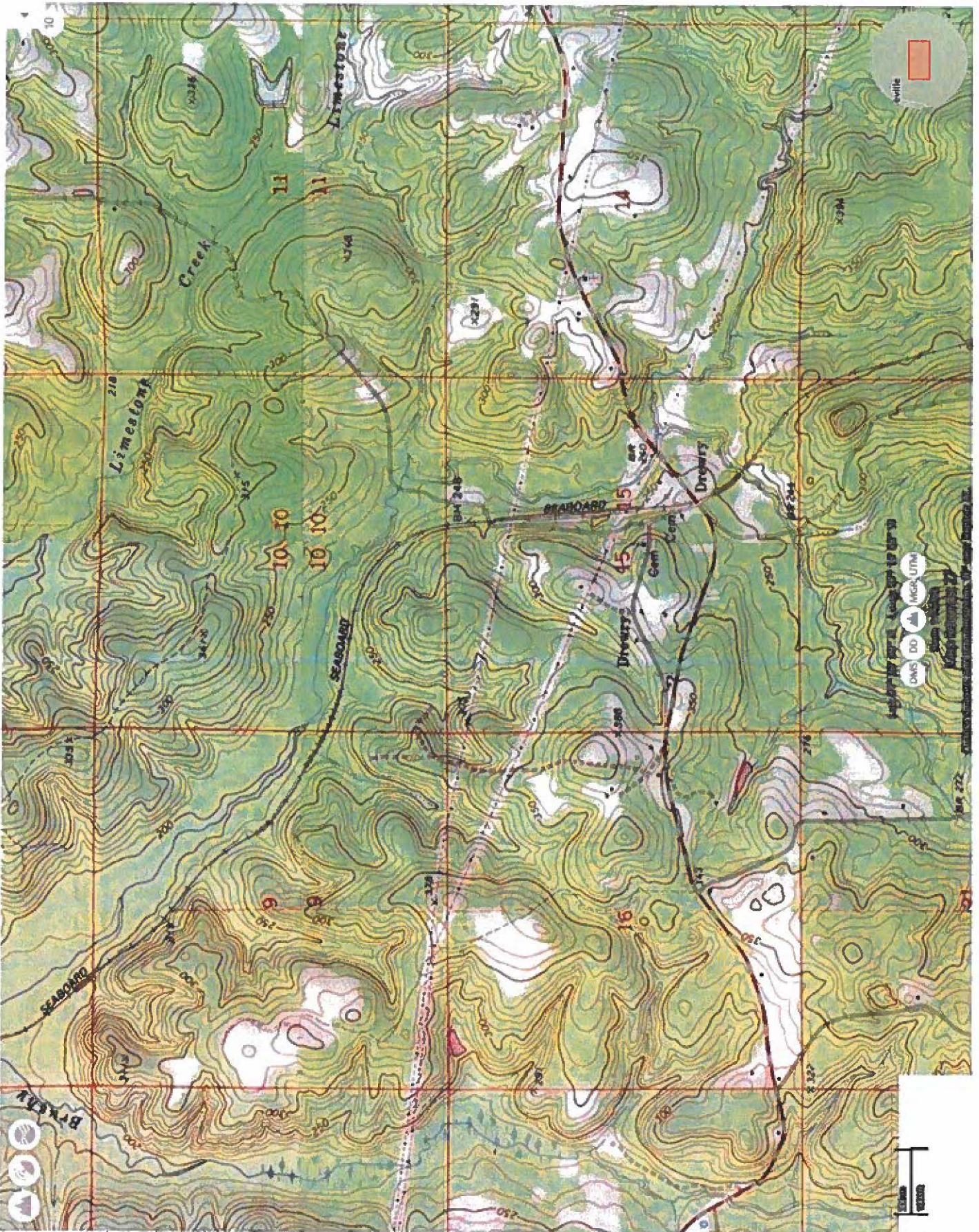
APPENDIX R

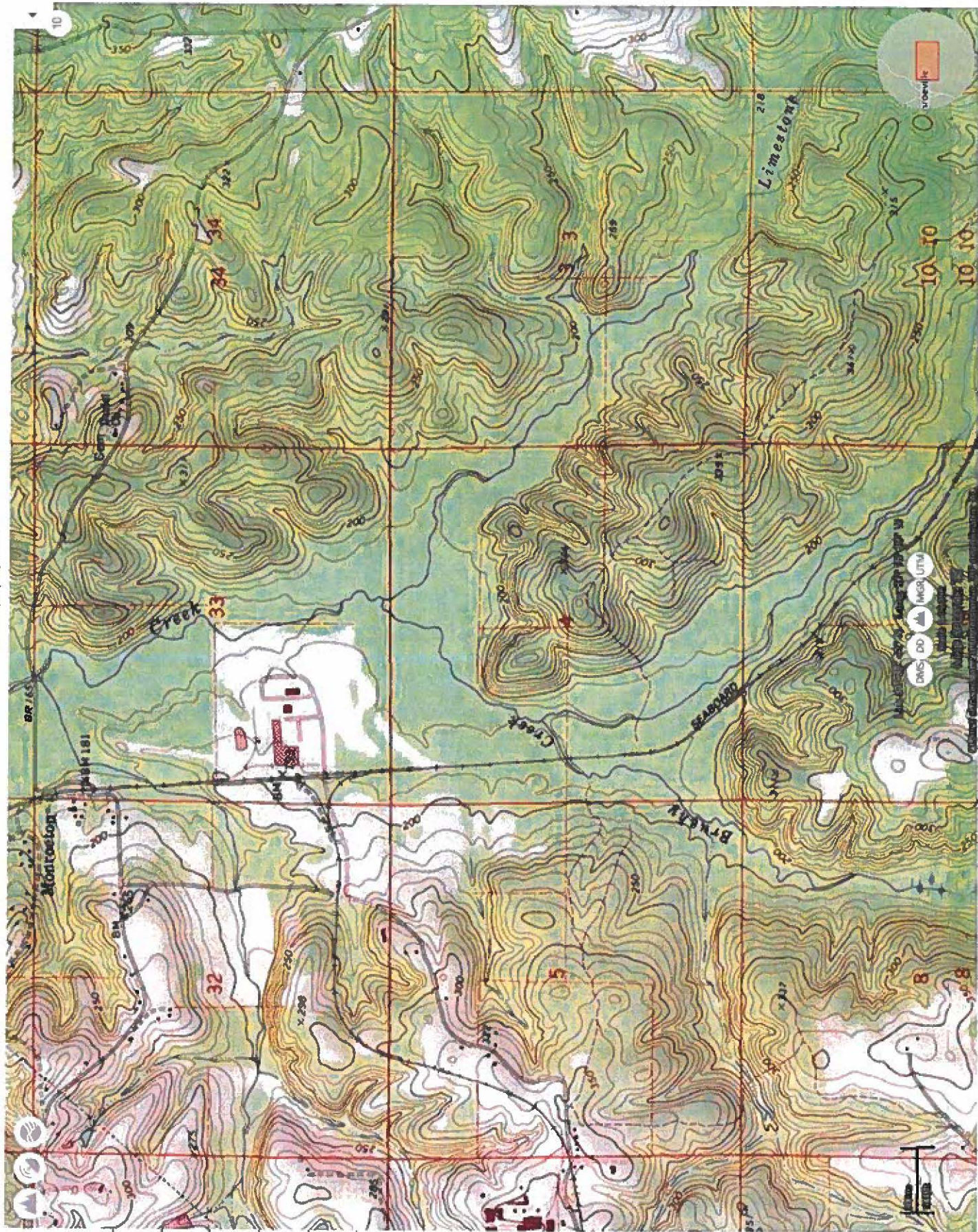


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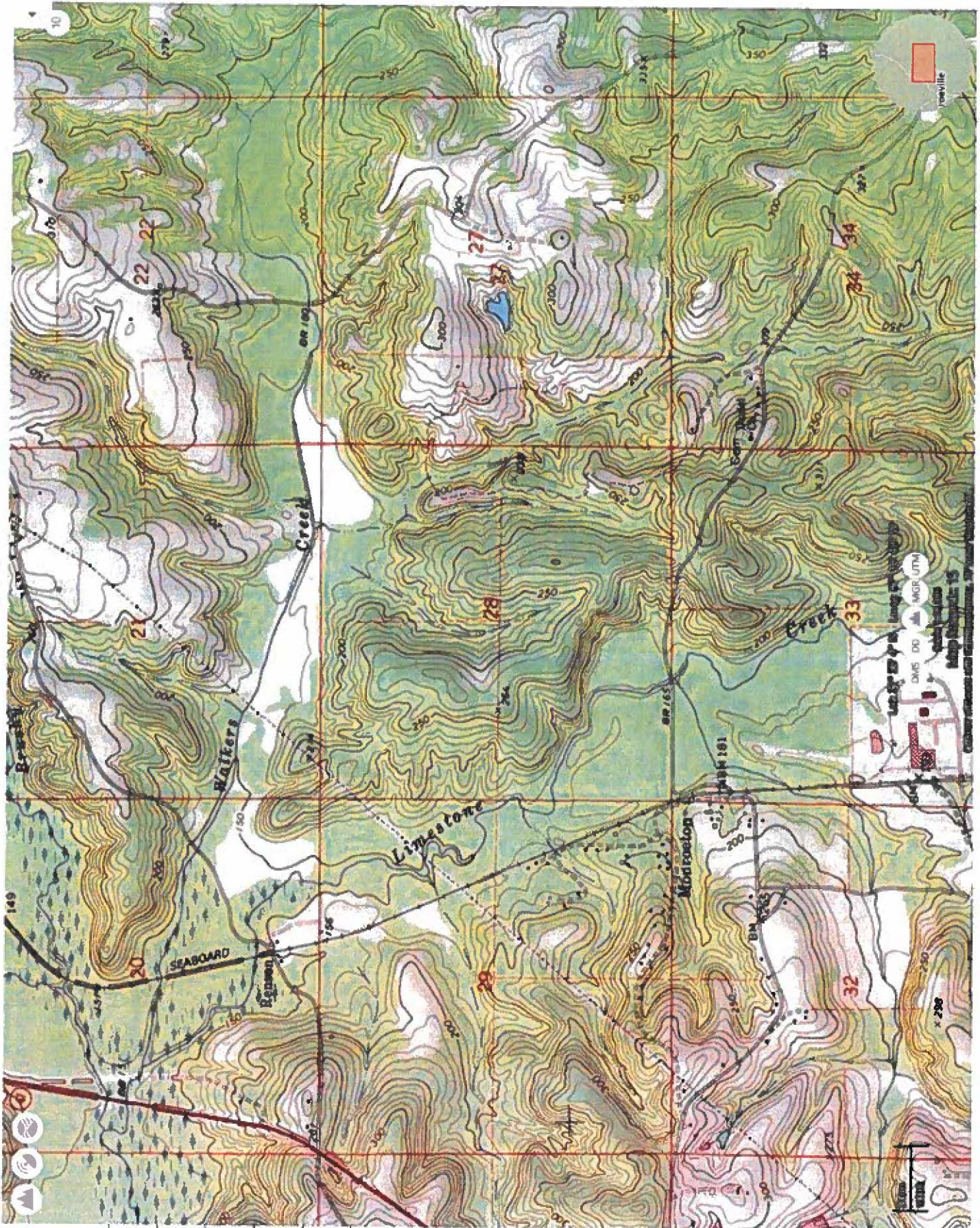




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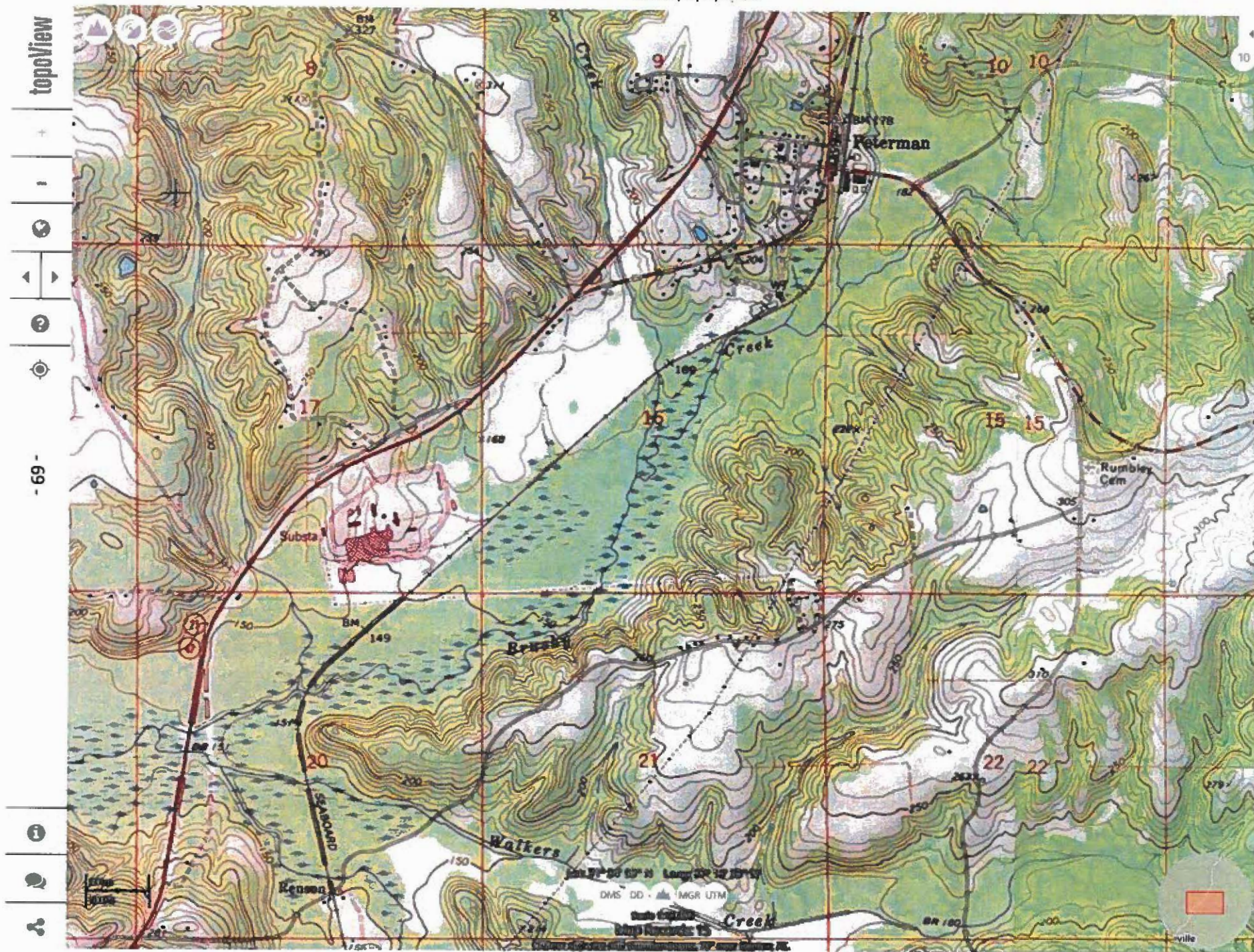


- 68 -

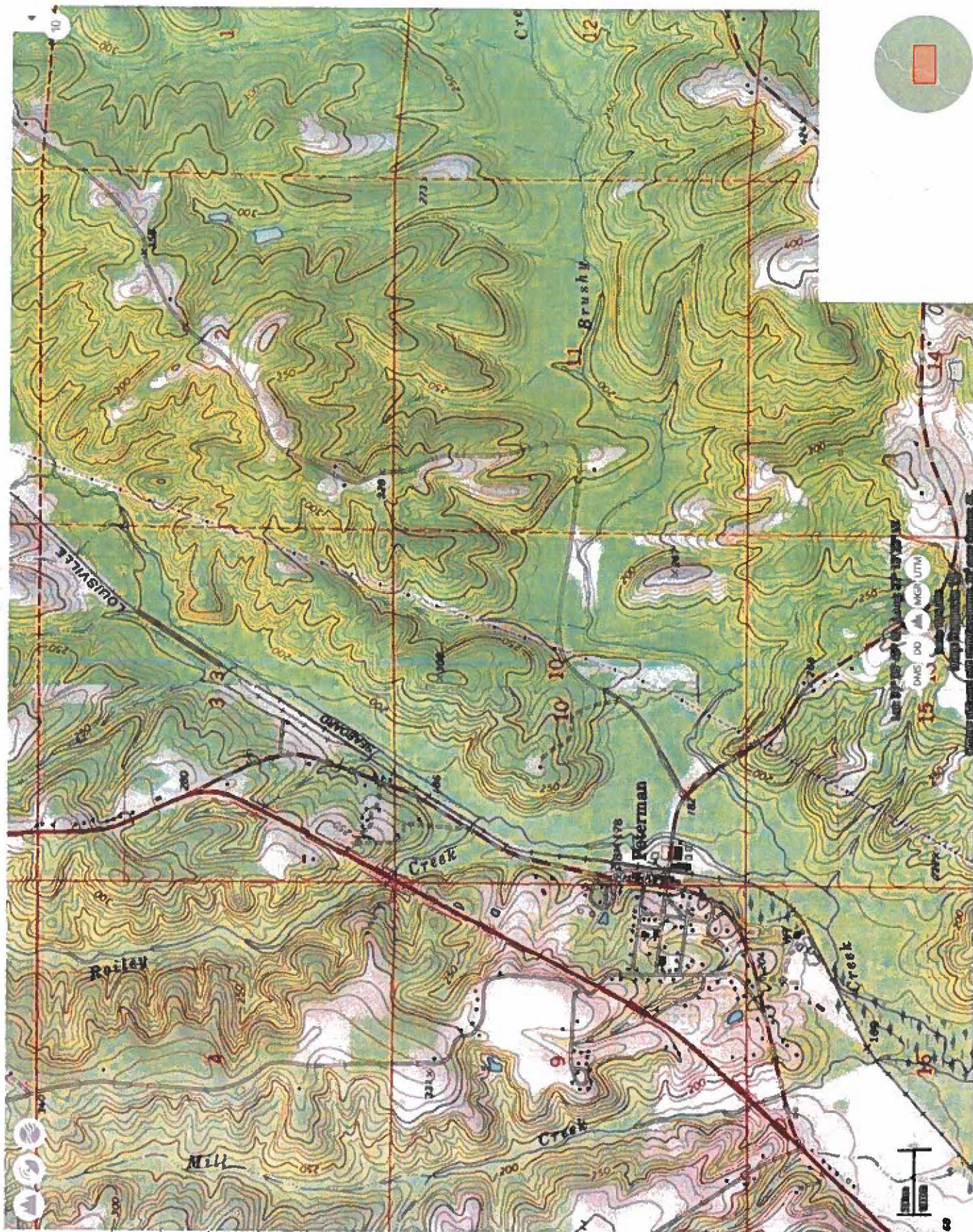


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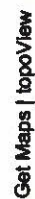
1/1



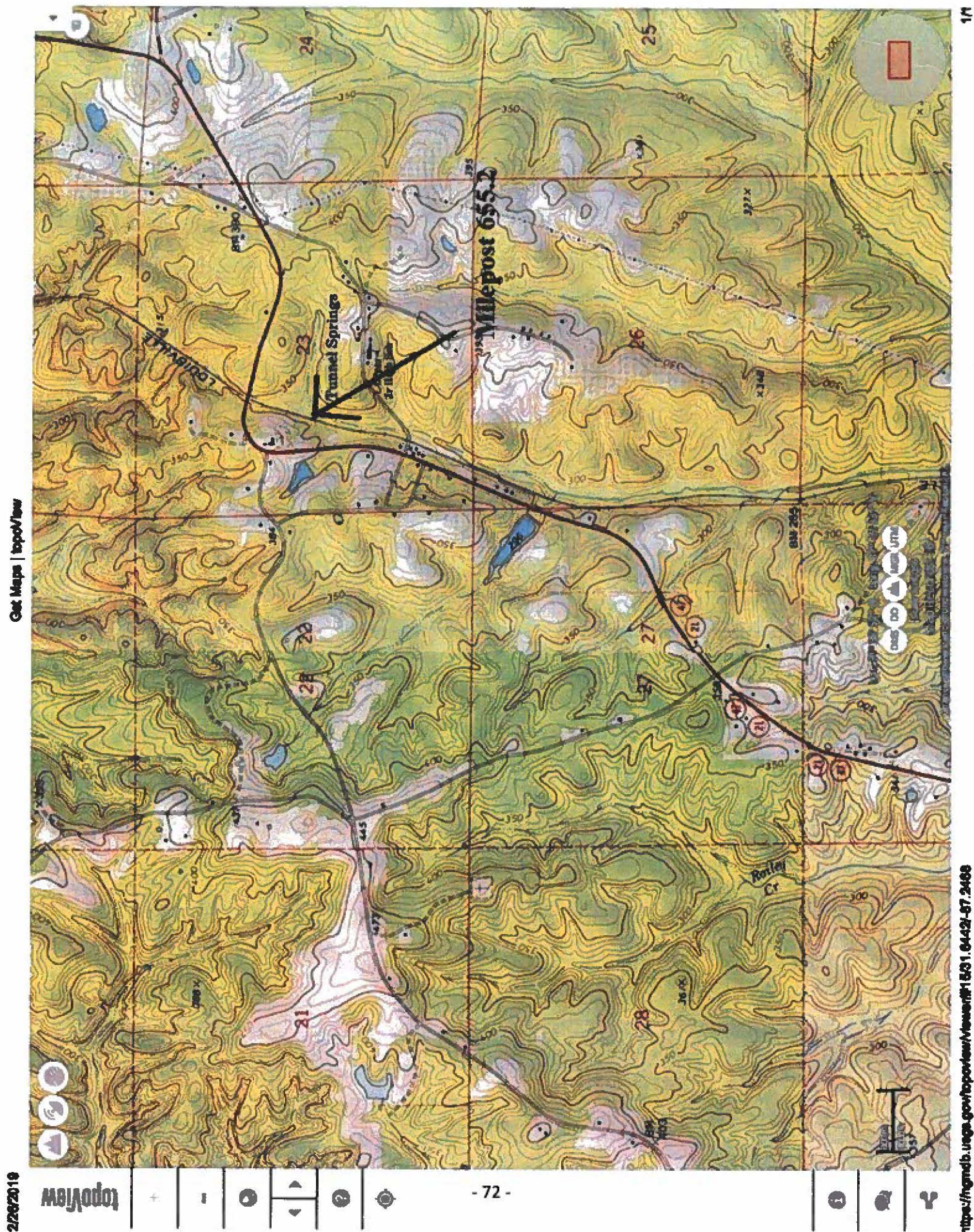
APPENDIX R



APPENDIX R



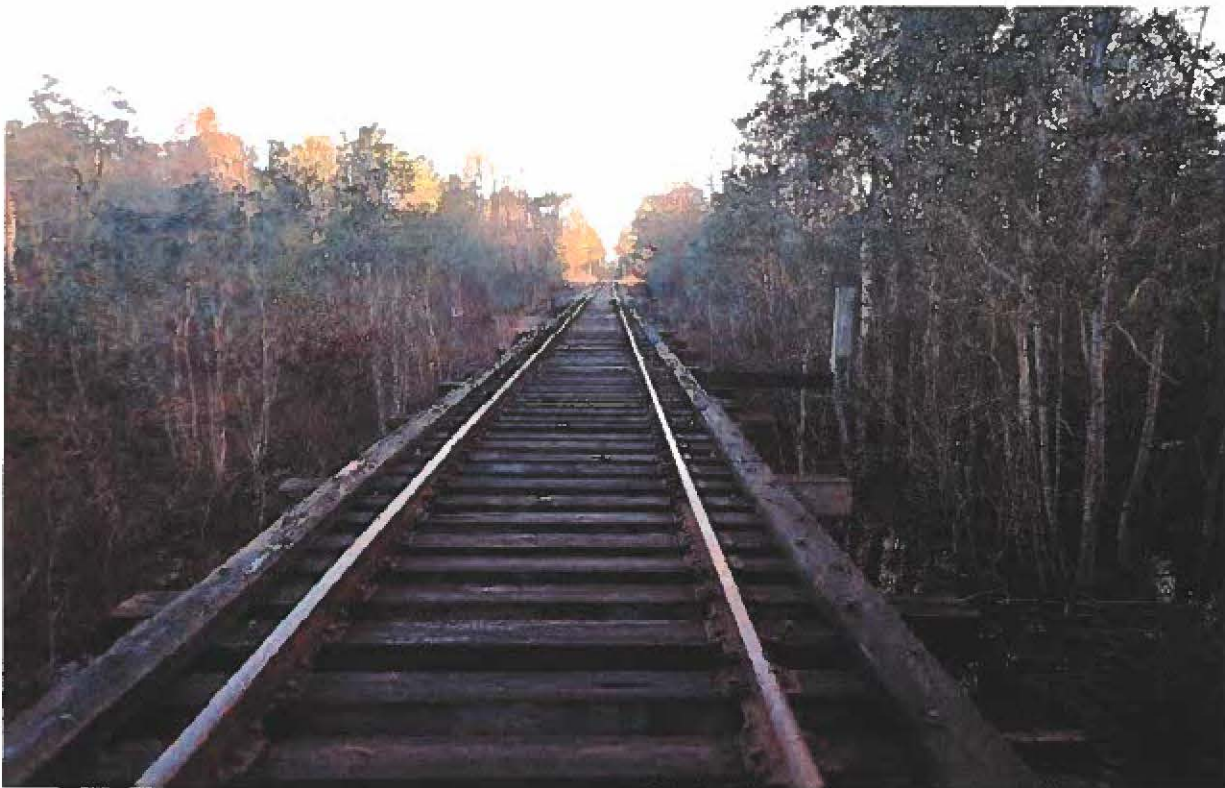
APPENDIX R



APPENDIX S



Bridge No. 1.00

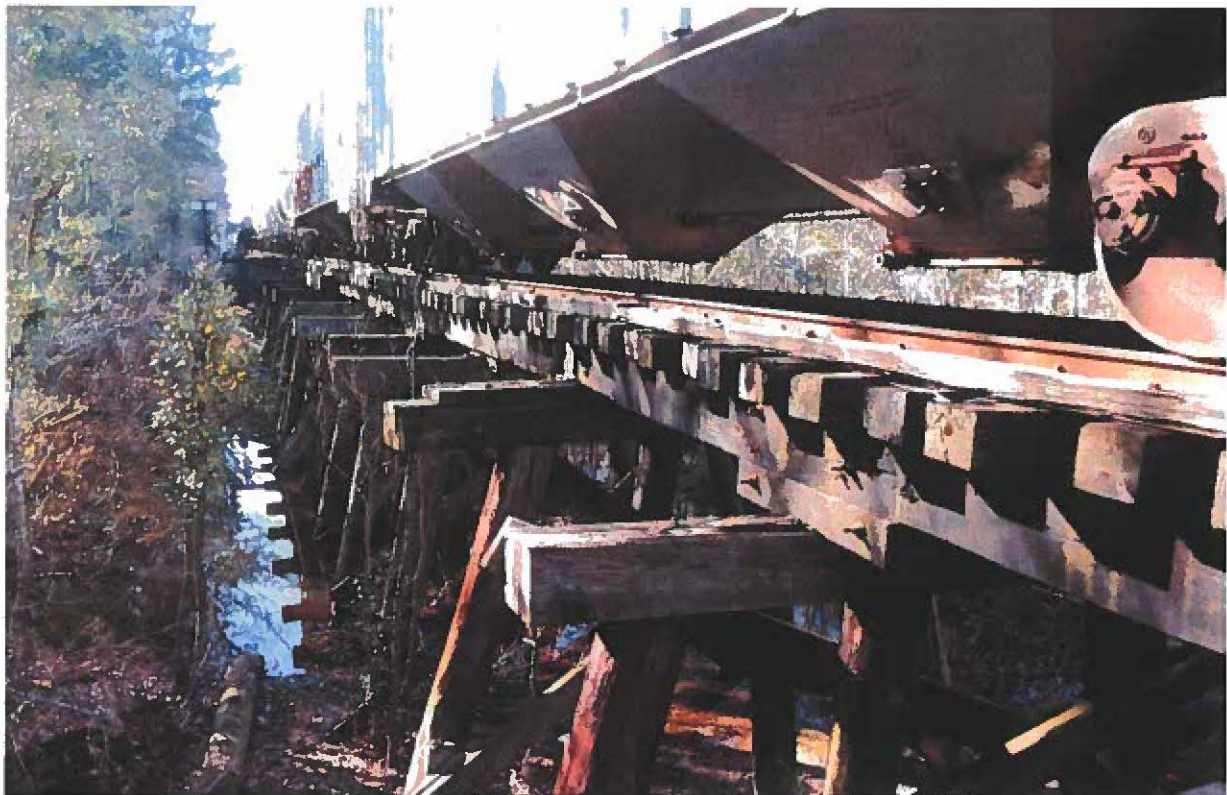


Bridge No. 1.00

APPENDIX S



Bridge No. 1.00



Bridge No. 1.00

APPENDIX S



Bridge No. 1.00



Bridge No. 1.00

APPENDIX S



Bridge No. 2.00



Bridge No. 2.00

APPENDIX S



Bridge No. 2.00



Bridge No. 2.00

APPENDIX S

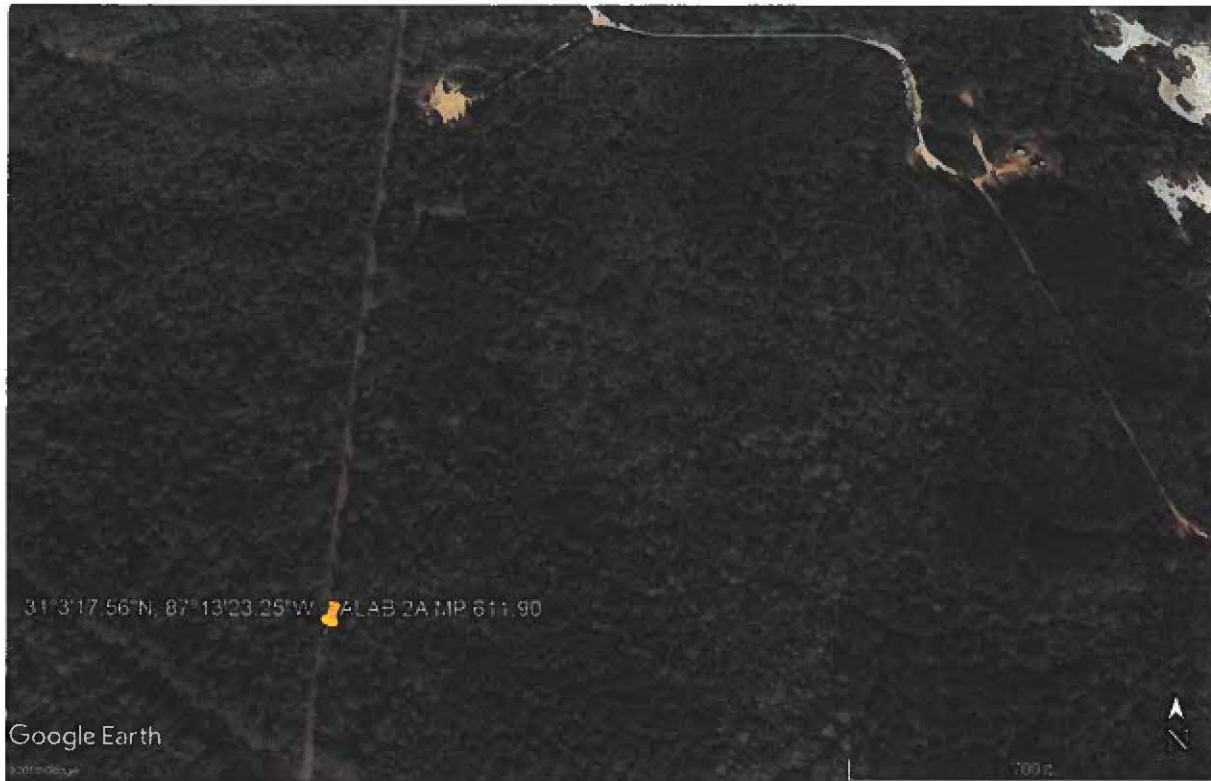


Bridge No. 2.00



Bridge No. 2.00

APPENDIX S



Bridge 2A



Bridge 2A

APPENDIX S



Bridge 2A



Bridge No. 3.00

APPENDIX S



Bridge No. 3.00



Bridge No. 3.00

APPENDIX S



Bridge No. 3.00



Bridge No. 3.00

APPENDIX S



Bridge No. 3.00



Bridge No. 3.00

APPENDIX S



Bridge No. 4.00



Bridge No. 4.00

APPENDIX S



Bridge No. 4.00



Bridge No. 4.00

APPENDIX S



Bridge No. 5.00



Bridge No. 5.00

APPENDIX S



Bridge No. 5.00



Bridge No. 5.00

APPENDIX S



Bridge No. 7.00

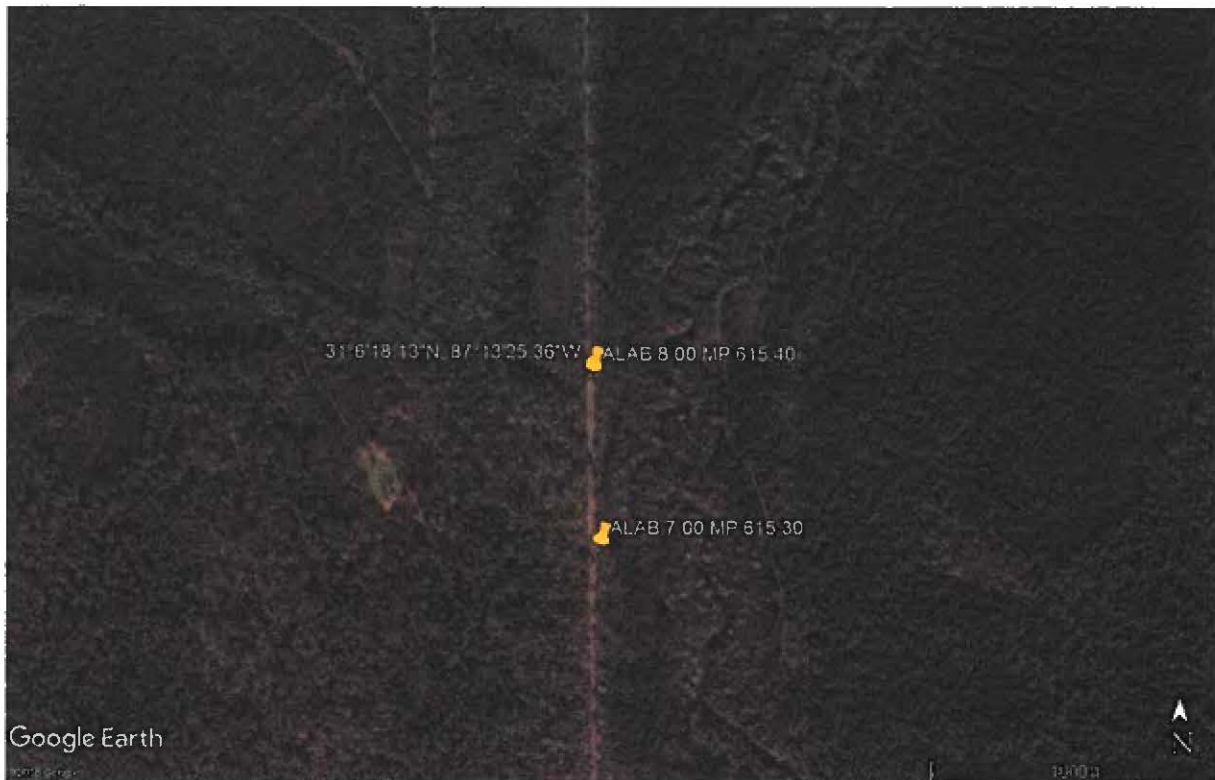


Bridge No. 7.00

APPENDIX S

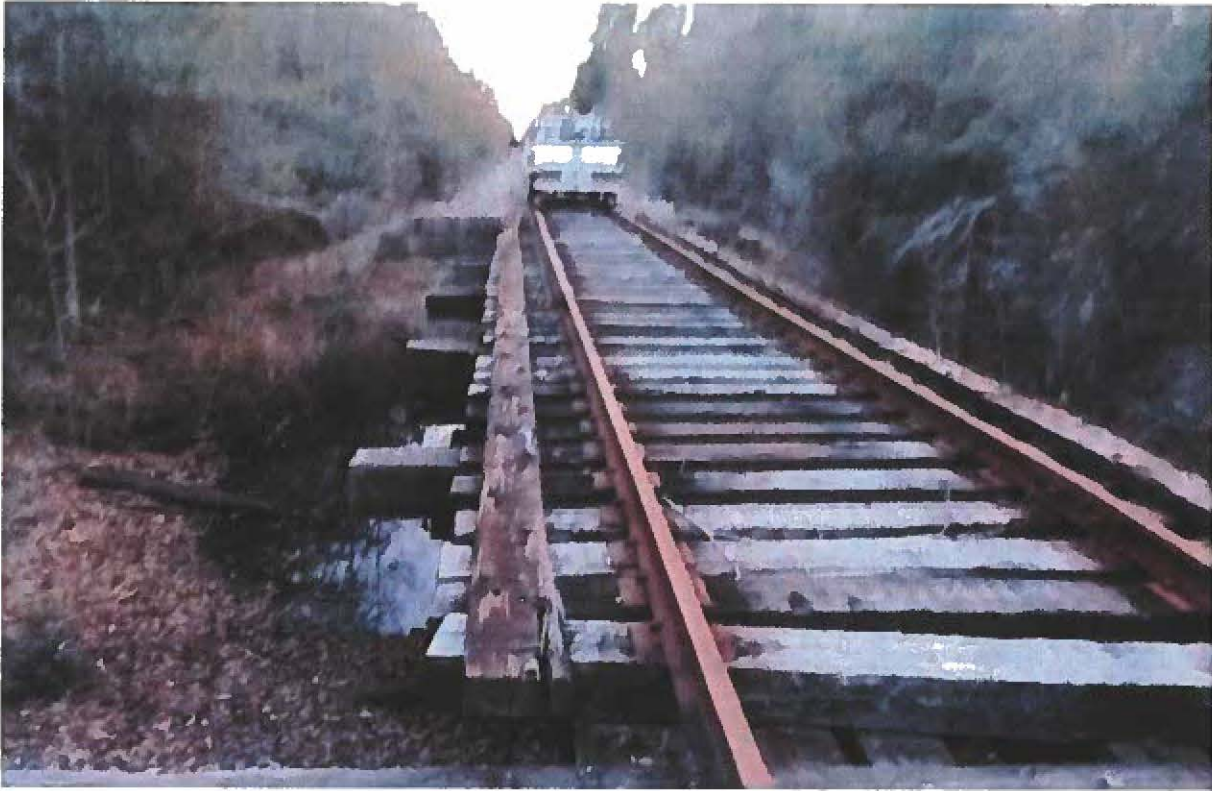


Bridge No. 7.00



Bridge No. 8.00

APPENDIX S



Bridge No. 8.00



Bridge No. 8.00

APPENDIX S



Bridge No. 9.00



Bridge No. 9.00

APPENDIX S



Bridge No. 9.00



Bridge No. 10.00

APPENDIX S



Bridge No. 10.00



Bridge No. 10.00

APPENDIX S



Bridge No. 10.00

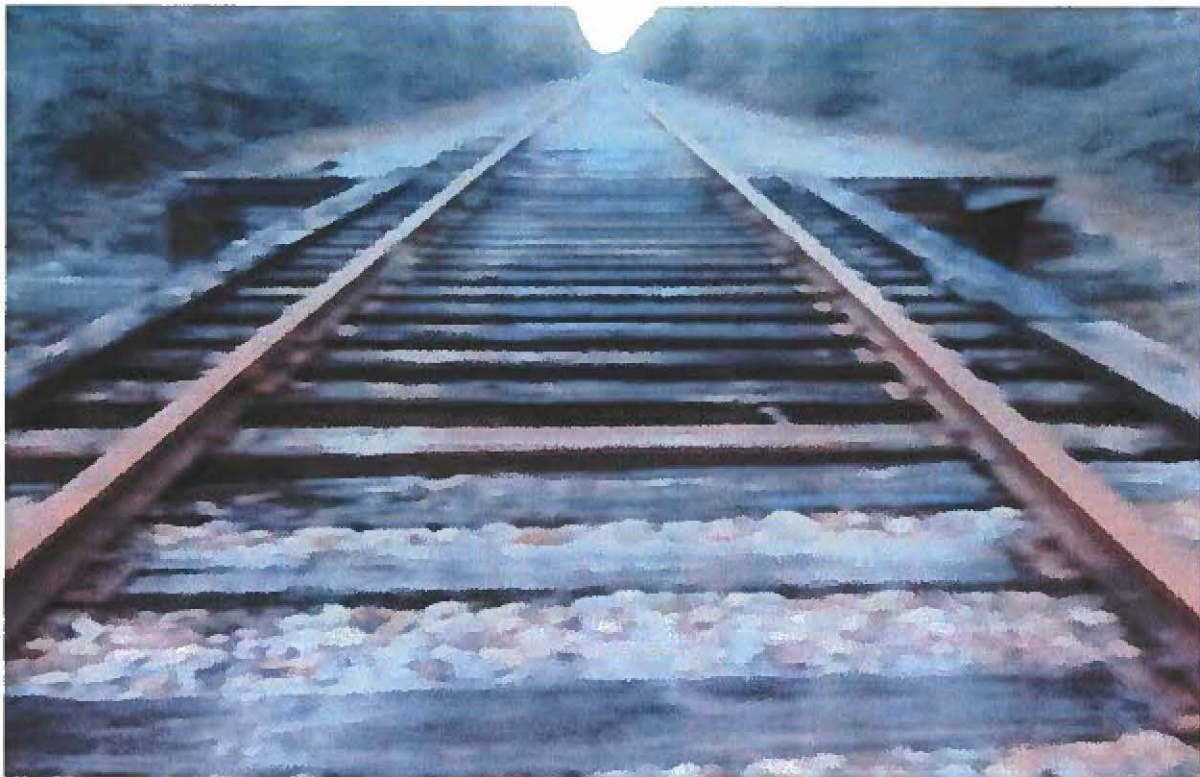


Bridge No. 10.00

APPENDIX S



Bridge No. 11.00



Bridge No. 11.00

APPENDIX S



Bridge No. 11.00



Bridge No. 11.00

APPENDIX S



Bridge No. 12.00

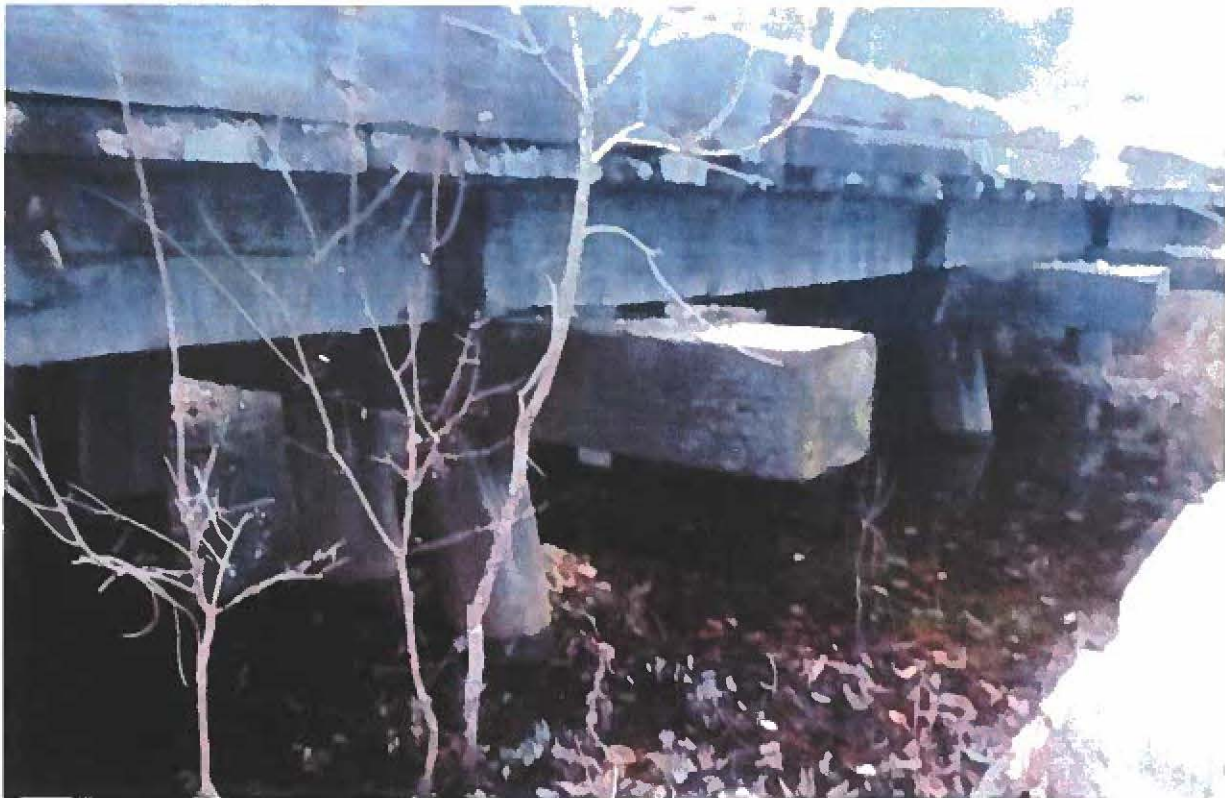


Bridge No. 12.00

APPENDIX S



Bridge No. 12.00

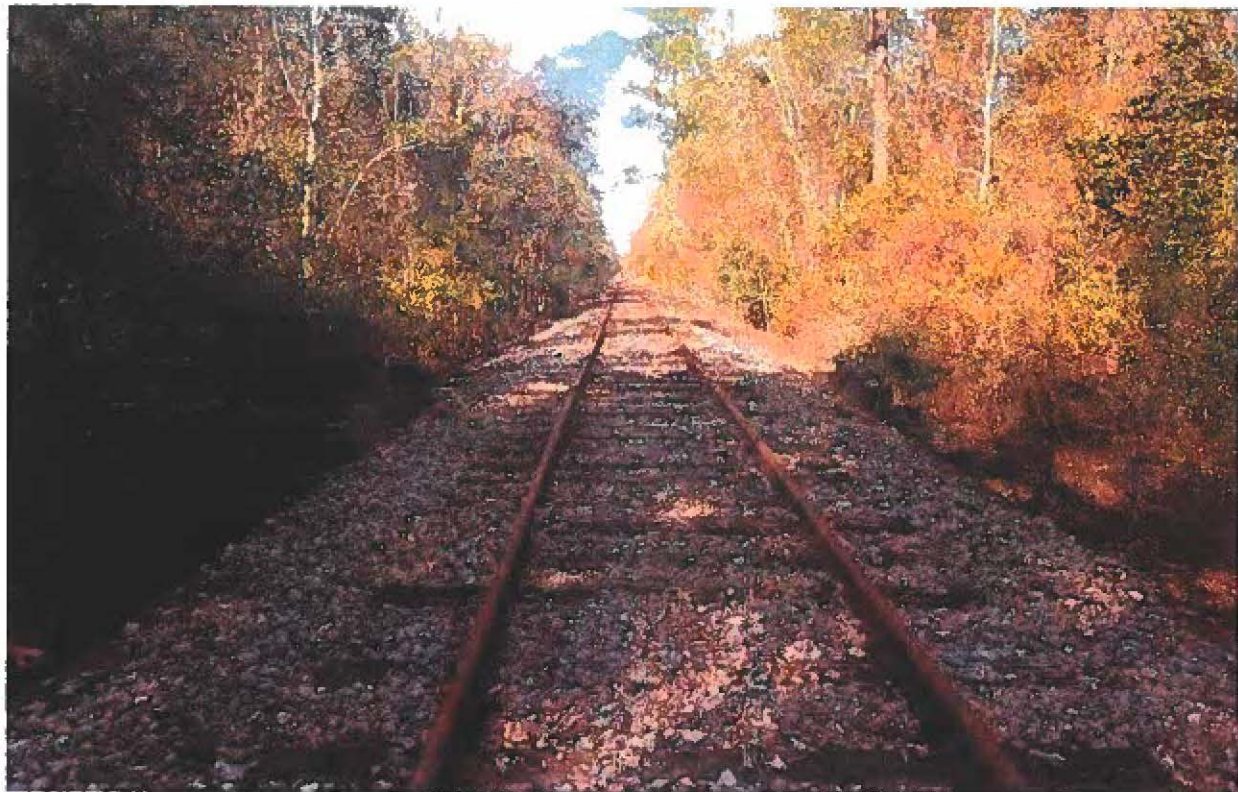


Bridge No. 12.00

APPENDIX S



Bridge No. 13.00



Bridge No. 13.00

APPENDIX S



Bridge No. 13.00



Bridge No. 13.00

APPENDIX S

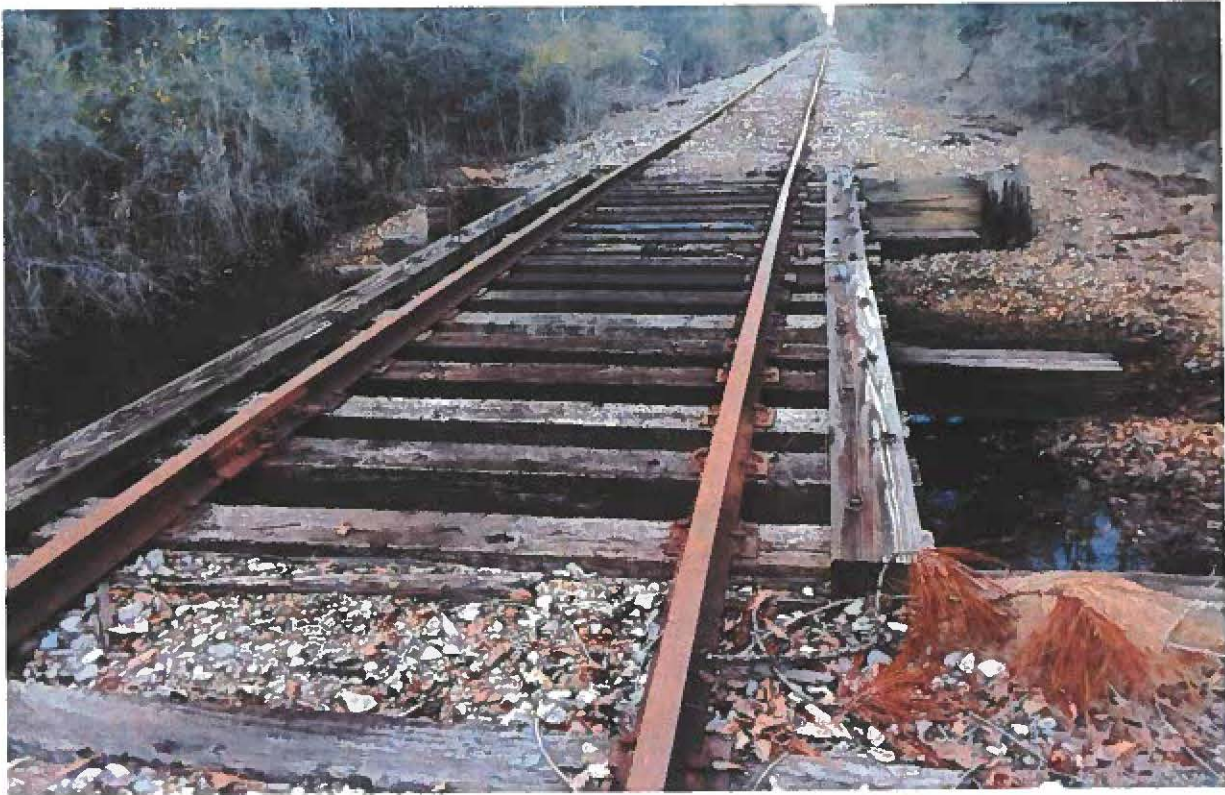


Bridge No. 13.00



Bridge 13A

APPENDIX S



Bridge 13A



Bridge 13A

APPENDIX S



Bridge 13B



Bridge 13B

APPENDIX S



Bridge 13B



Bridge No. 14.00

APPENDIX S



Bridge No. 14.00



Bridge No. 14.00

APPENDIX S



Bridge No. 15.00

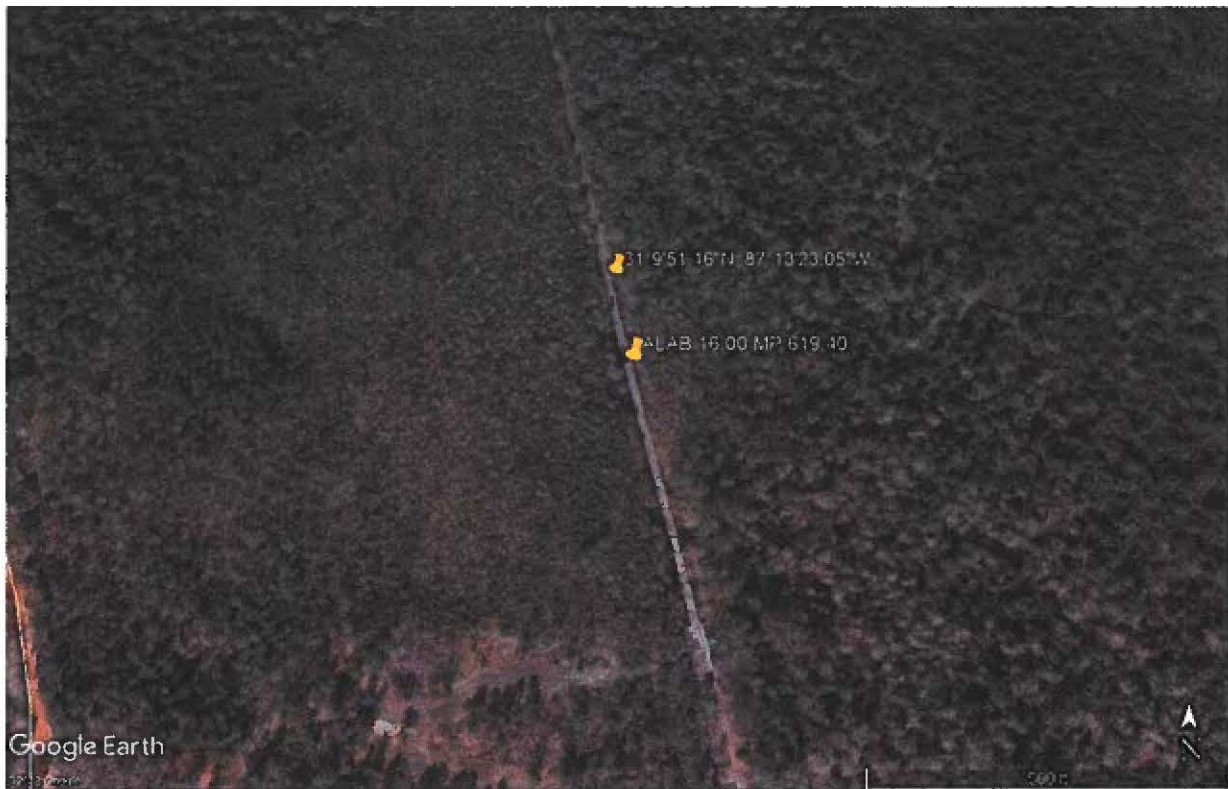


Bridge No. 15.00

APPENDIX S



Bridge No. 15.00



Bridge No. 16.00

APPENDIX S



Bridge No. 16.00



Bridge No. 16.00

APPENDIX S



Bridge No. 16.00



Bridge No. 17.00

APPENDIX S



Bridge No. 17.00



Bridge No. 17.00

APPENDIX S



Bridge No. 18.00



Bridge No. 18.00

APPENDIX S



Bridge No. 18.00



Bridge No. 19.00

APPENDIX S



Bridge No. 19.00



Bridge No. 19.00

APPENDIX S



Bridge No. 20.00



Bridge No. 20.00

APPENDIX S



Bridge No. 20.00



Bridge No. 20.50

APPENDIX S



Bridge No. 20.50



Bridge No. 20.50

APPENDIX S



Bridge No. 21.00



Bridge No. 21.00

APPENDIX S

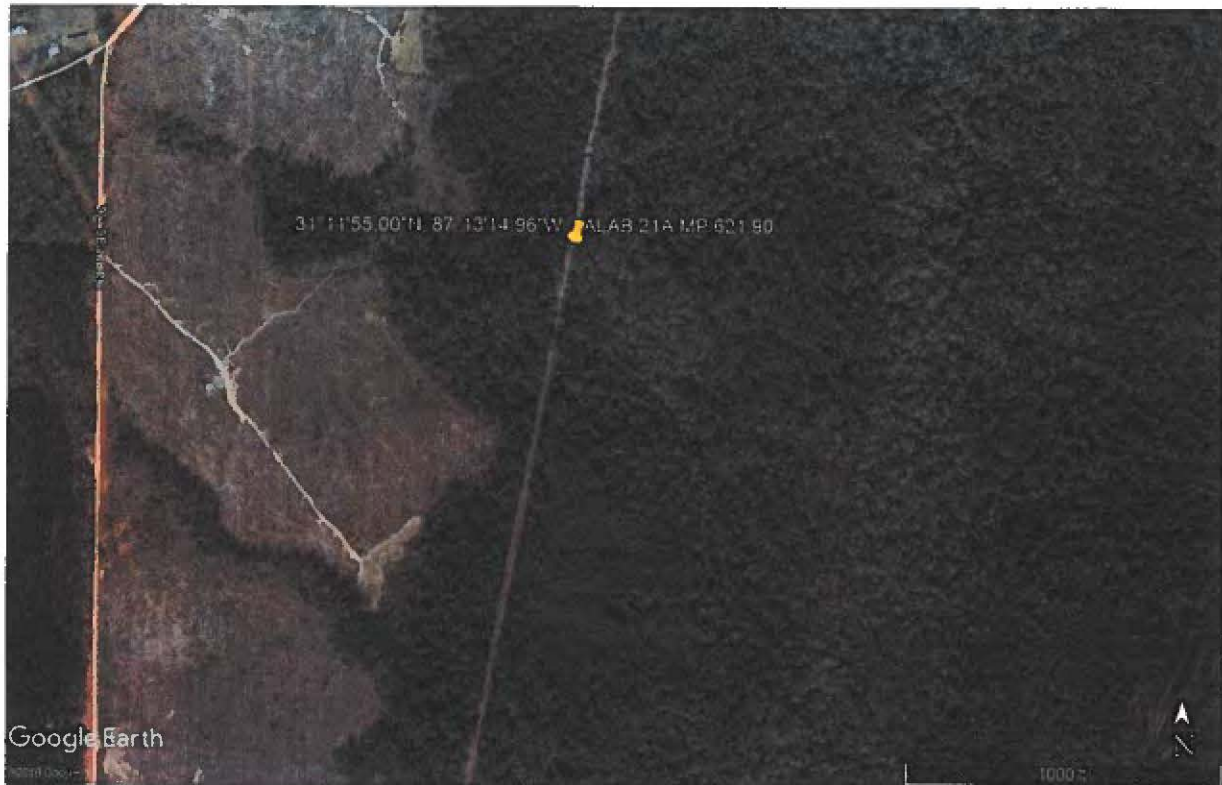


Bridge No. 21.00



Bridge No. 21.00

APPENDIX S



Bridge 21A



Bridge 21A

APPENDIX S



Bridge 21A



Bridge 21A

APPENDIX S



Bridge 21B



Bridge 21B

APPENDIX S



Bridge 21B



Bridge No. 22.00

APPENDIX S



Bridge No. 22.00



Bridge No. 22.00

APPENDIX S



Bridge No. 22.00



Bridge No. 22.00

APPENDIX S



Bridge No. 22.00



Bridge No. 23.00

APPENDIX S



Bridge No. 23.00



Bridge No. 23.00

APPENDIX S



Bridge No. 23.00



Bridge No. 23.25

APPENDIX S



Bridge No. 23.25



Bridge No. 23.25

APPENDIX S



Bridge No. 23.25



Bridge No. 23.25

APPENDIX S



Bridge 23A



Bridge 23A

APPENDIX S



Bridge 23A



Bridge 23C

APPENDIX S

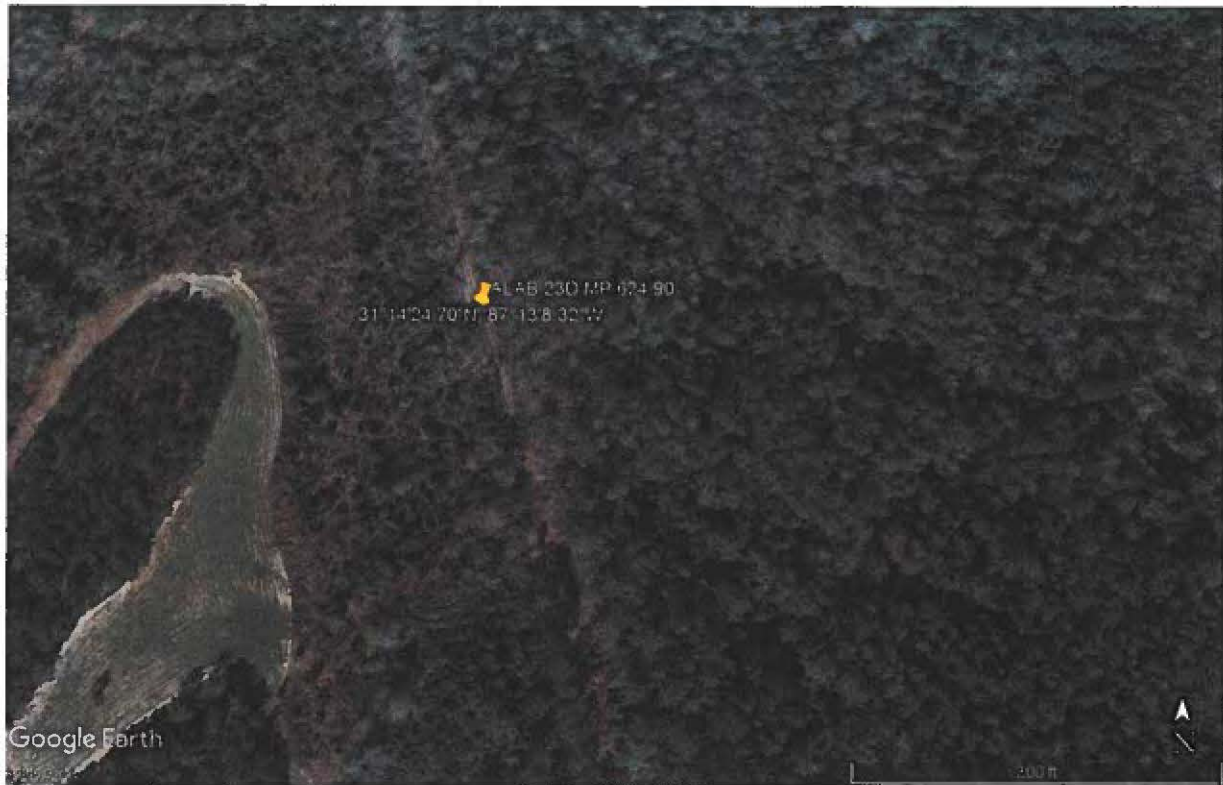


Bridge 23C

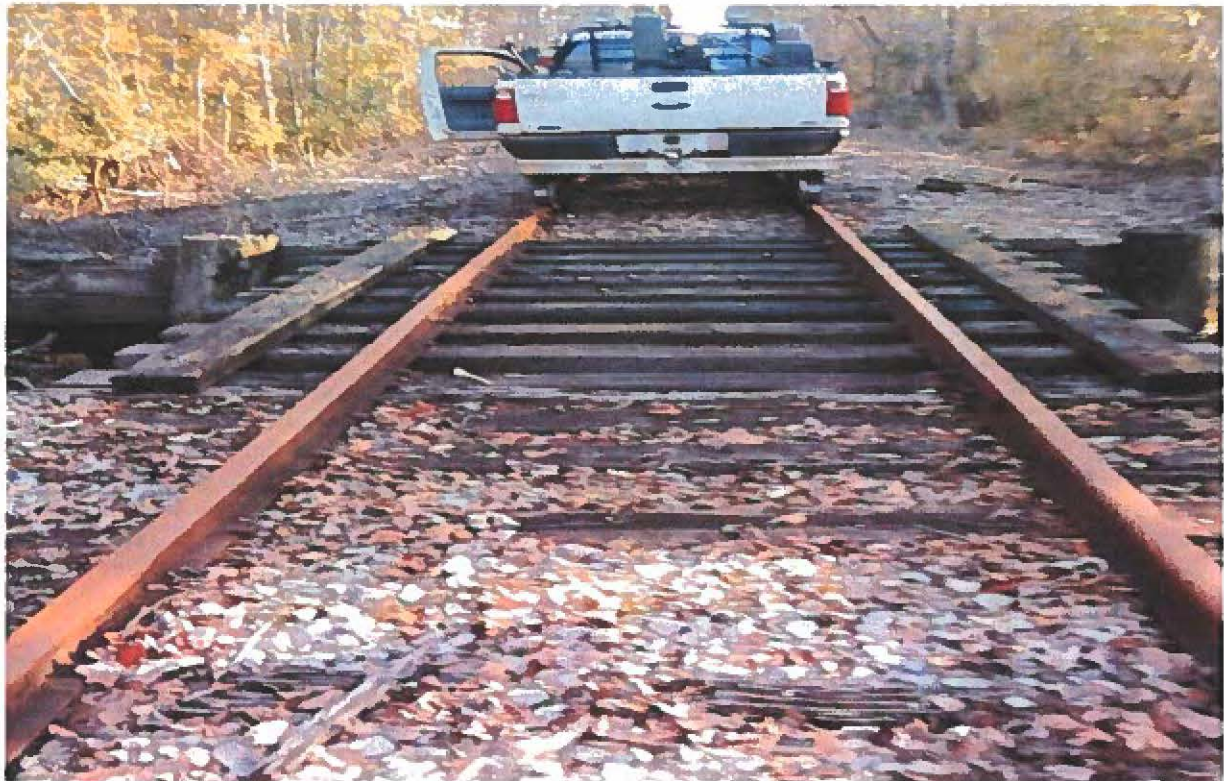


Bridge 23C

APPENDIX S



Bridge 23D

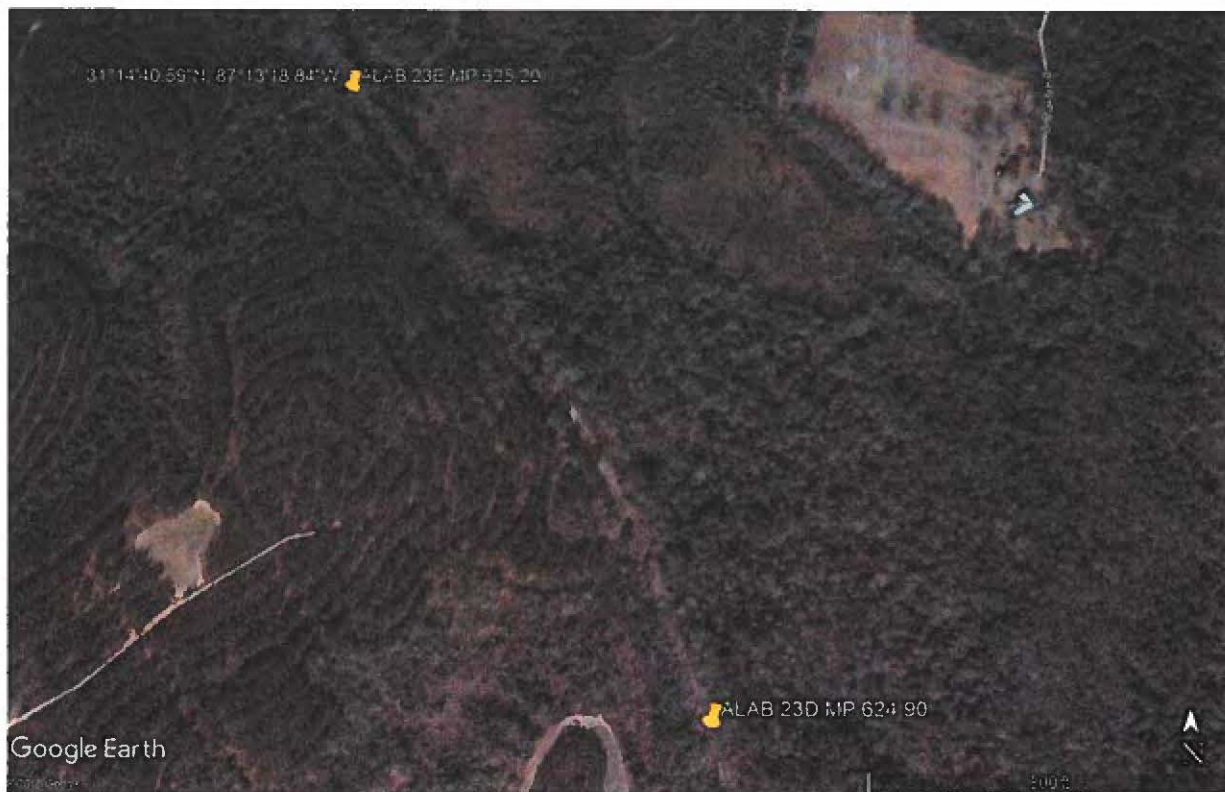


Bridge 23D

APPENDIX S

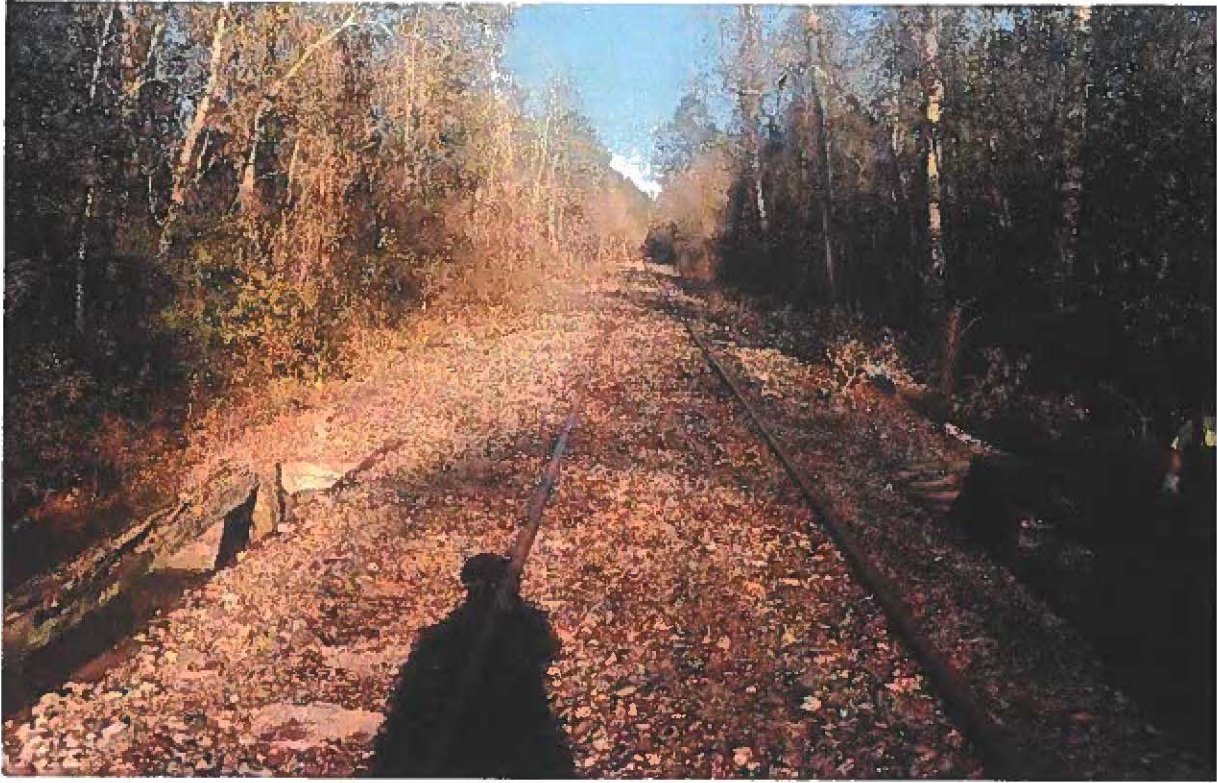


Bridge 23D



Bridge 23E

APPENDIX S



Bridge 23E



Bridge 23E

APPENDIX S



Bridge 23E

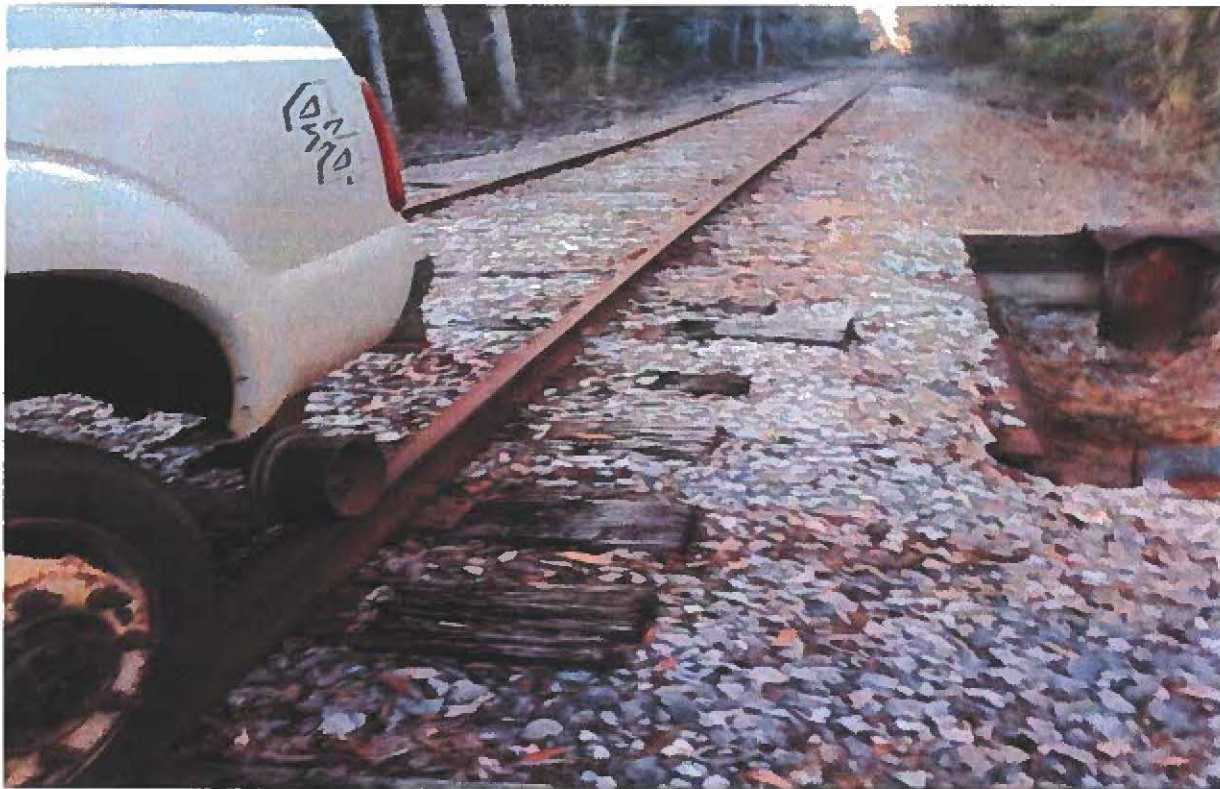


Bridge 23E

APPENDIX S



Bridge 23F



Bridge 23F

APPENDIX S



Bridge 23F



Bridge 23G

APPENDIX S



Bridge 23G

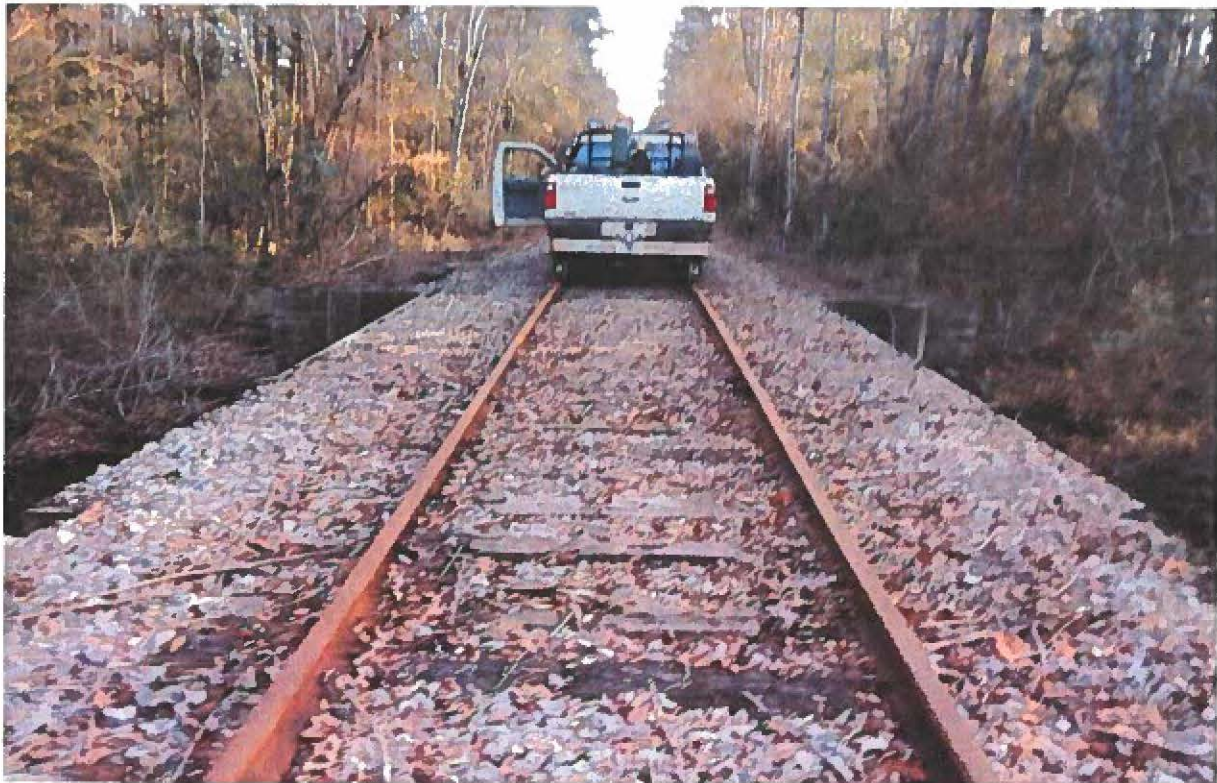


Bridge 23G

APPENDIX S



Bridge No. 24.00



Bridge No. 24.00

APPENDIX S

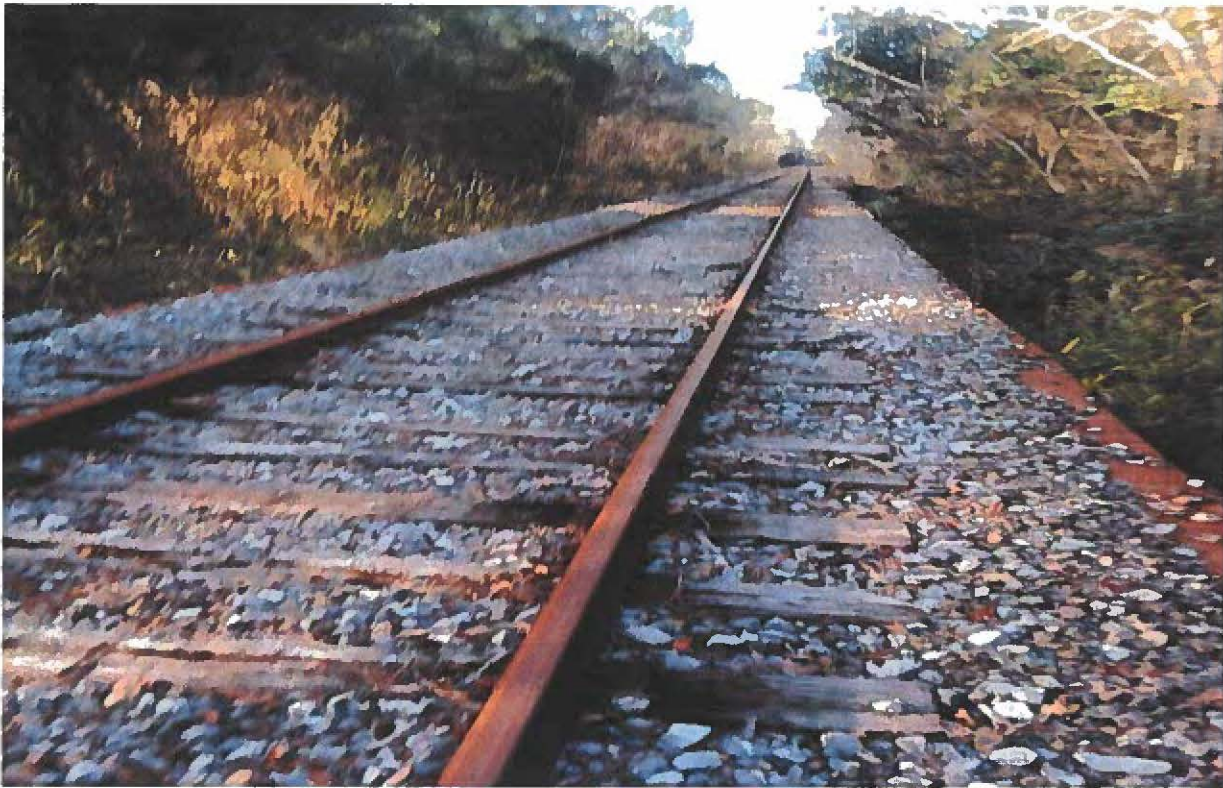


Bridge No. 24.00



Bridge No. 25.00

APPENDIX S



Bridge No. 25.00



Bridge No. 25.00

APPENDIX S



Bridge No. 26.00

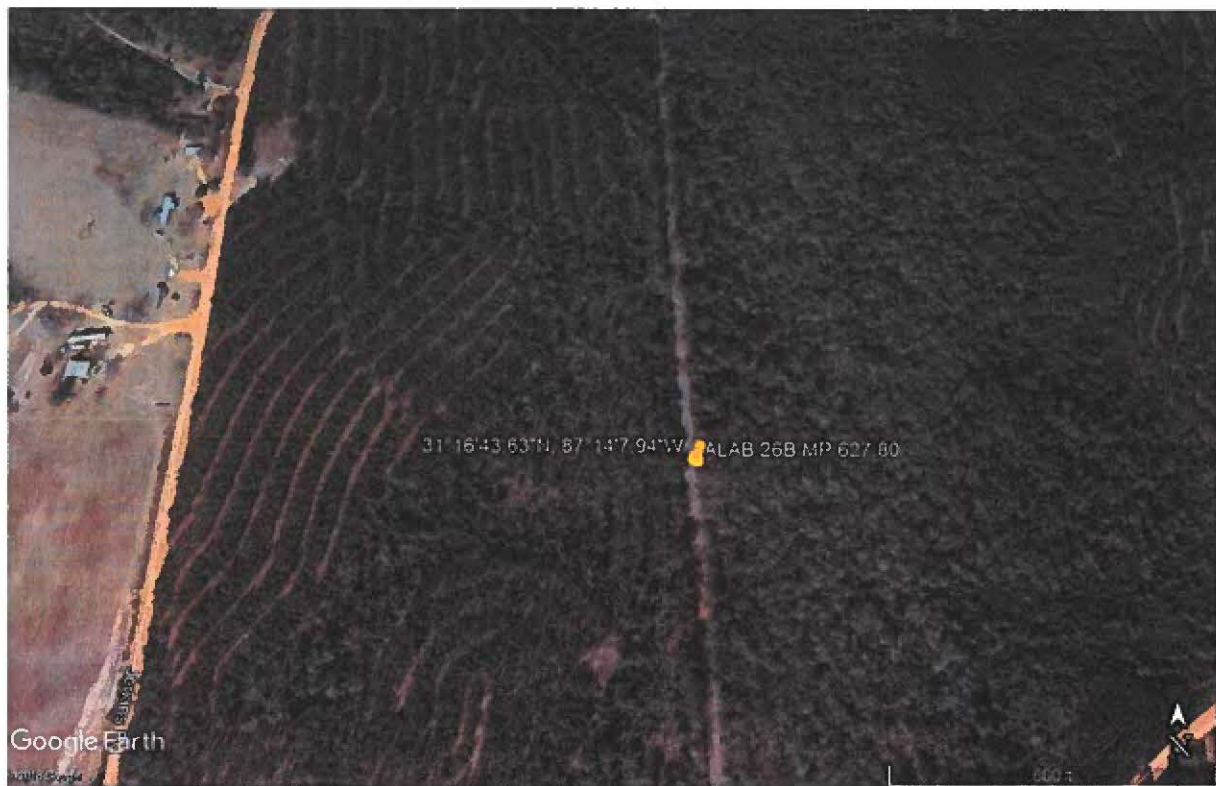


Bridge No. 26.00

APPENDIX S



Bridge No. 26.00



Bridge 26B

APPENDIX S



Bridge 26B

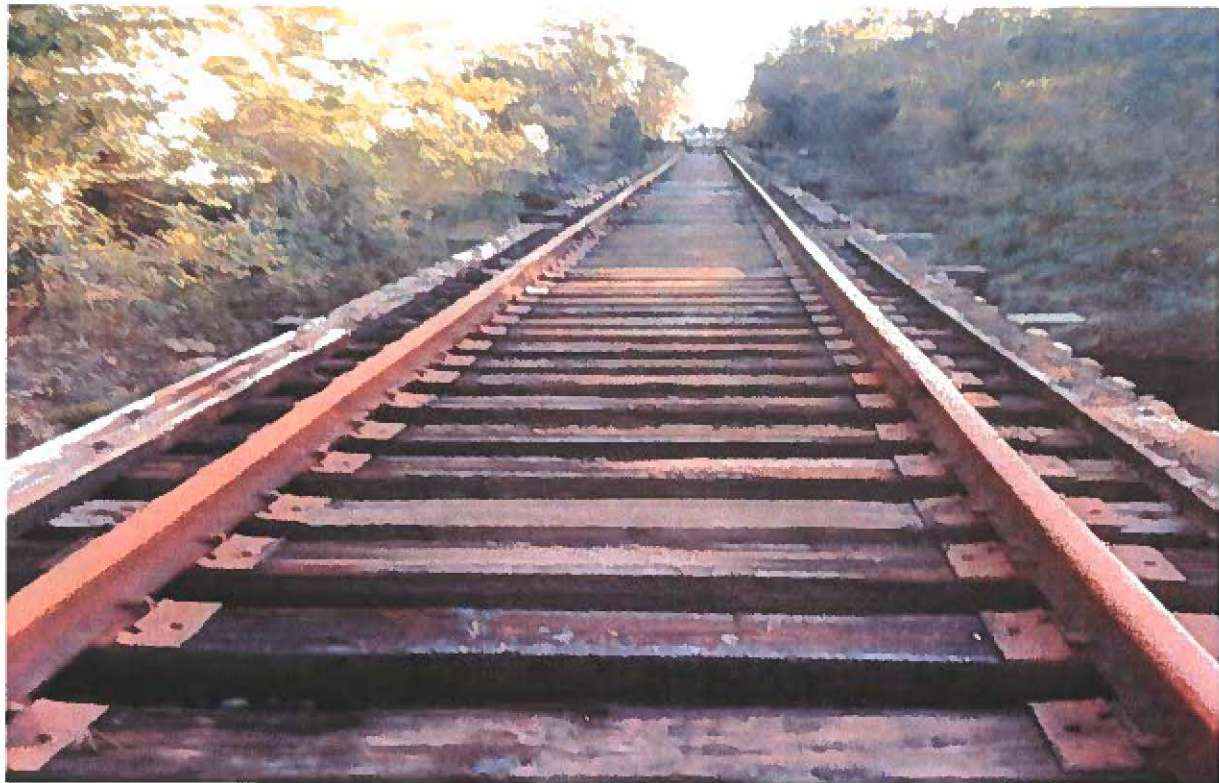


Bridge 26B

APPENDIX S



Bridge No. 27.00



Bridge No. 27.00

APPENDIX S



Bridge No. 27.00

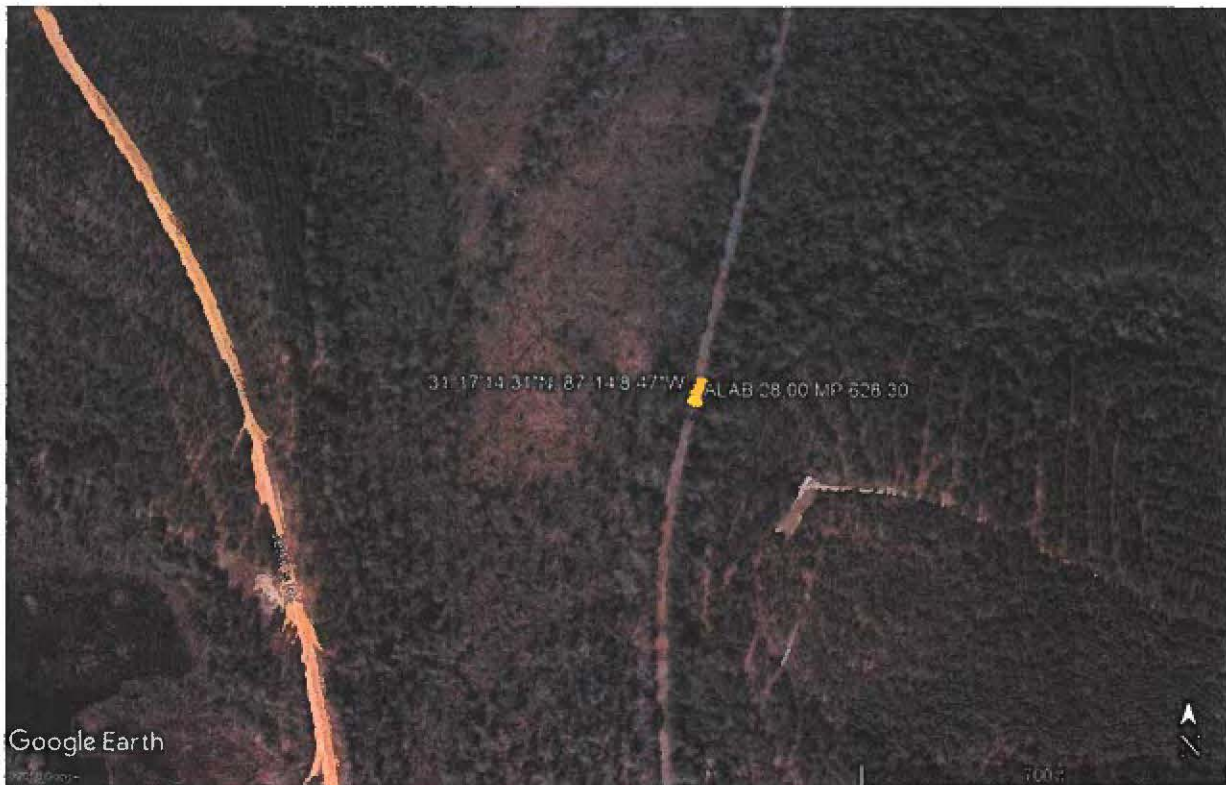


Bridge No. 27.00

APPENDIX S



Bridge No. 27.00



Bridge No. 28.00

APPENDIX S



Bridge No. 28.00



Bridge No. 28.00

APPENDIX S



Bridge 28A



Bridge 28A

APPENDIX S



Bridge 28A



Bridge 28A

APPENDIX S



Bridge 28A



Bridge No. 29.00

APPENDIX S



Bridge No. 29.00



Bridge No. 29.00

APPENDIX S



Bridge 29A



Bridge 29A

APPENDIX S



Bridge 29A



Bridge 29A

APPENDIX S



Bridge No. 31.00



Bridge No. 31.00

APPENDIX S



Bridge No. 31.00

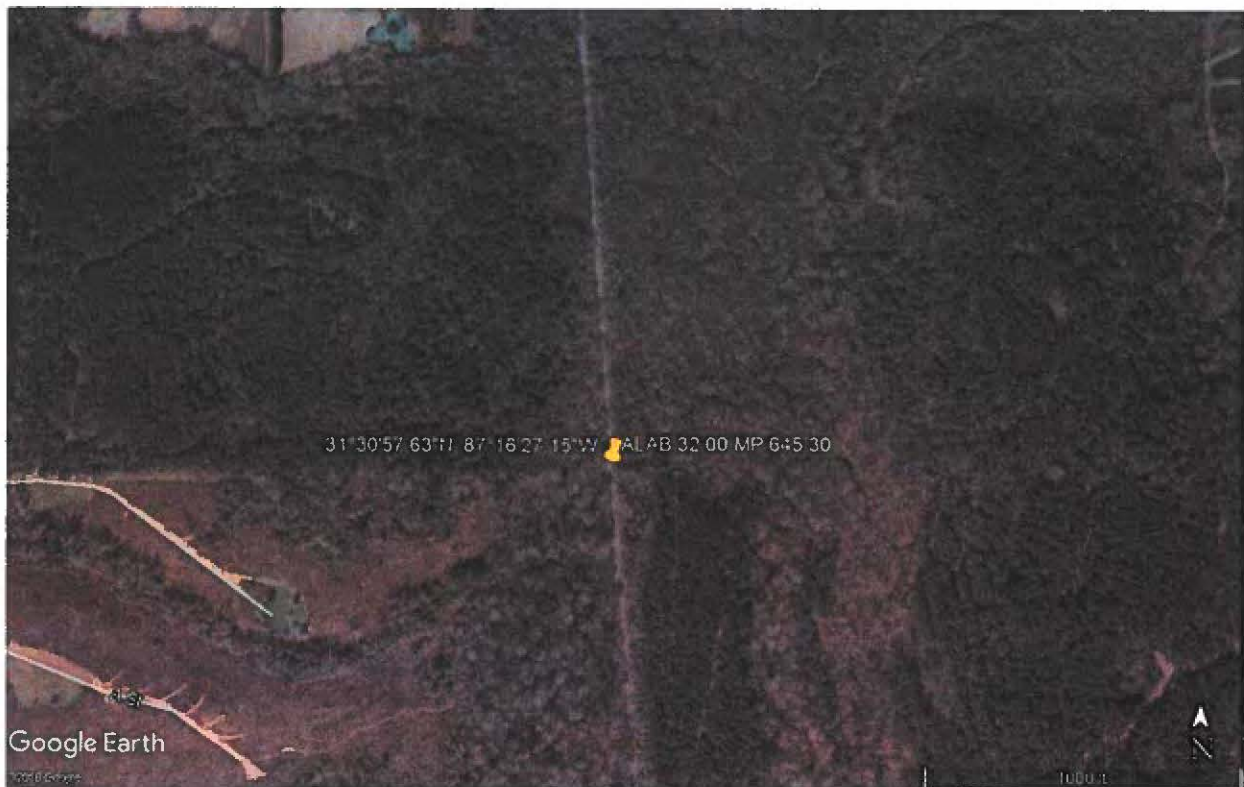


Bridge No. 31.00

APPENDIX S



Bridge No. 31.00



Bridge No. 32.00

APPENDIX S



Bridge No. 32.00



Bridge No. 32.00

APPENDIX S



Bridge No. 32.00



Bridge No. 32.00

APPENDIX S



Bridge No. 32.00



Bridge No. 33.00

APPENDIX S



Bridge No. 33.00



Bridge No. 33.00

APPENDIX S



Bridge No. 33.00



Bridge No. 33.00

APPENDIX S



Bridge 33A

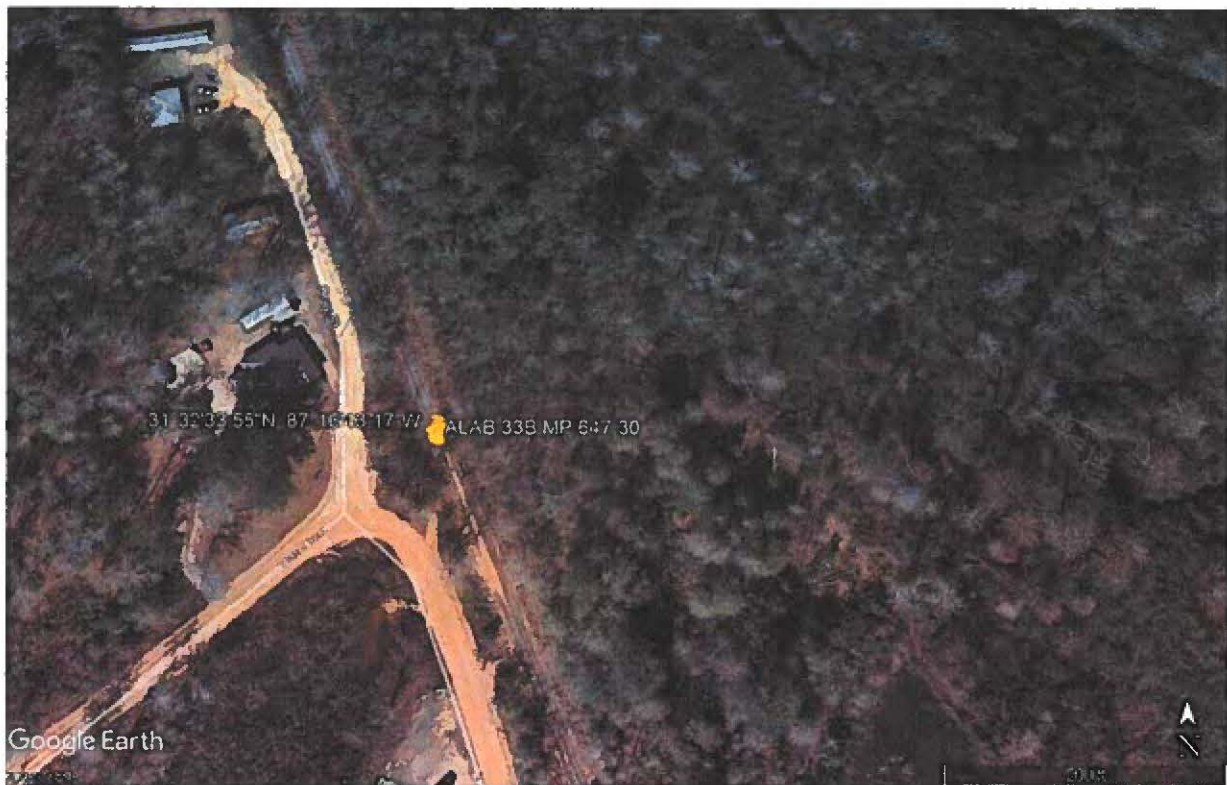


Bridge 33A

APPENDIX S



Bridge 33A



Bridge 33B

APPENDIX S



Bridge 33B

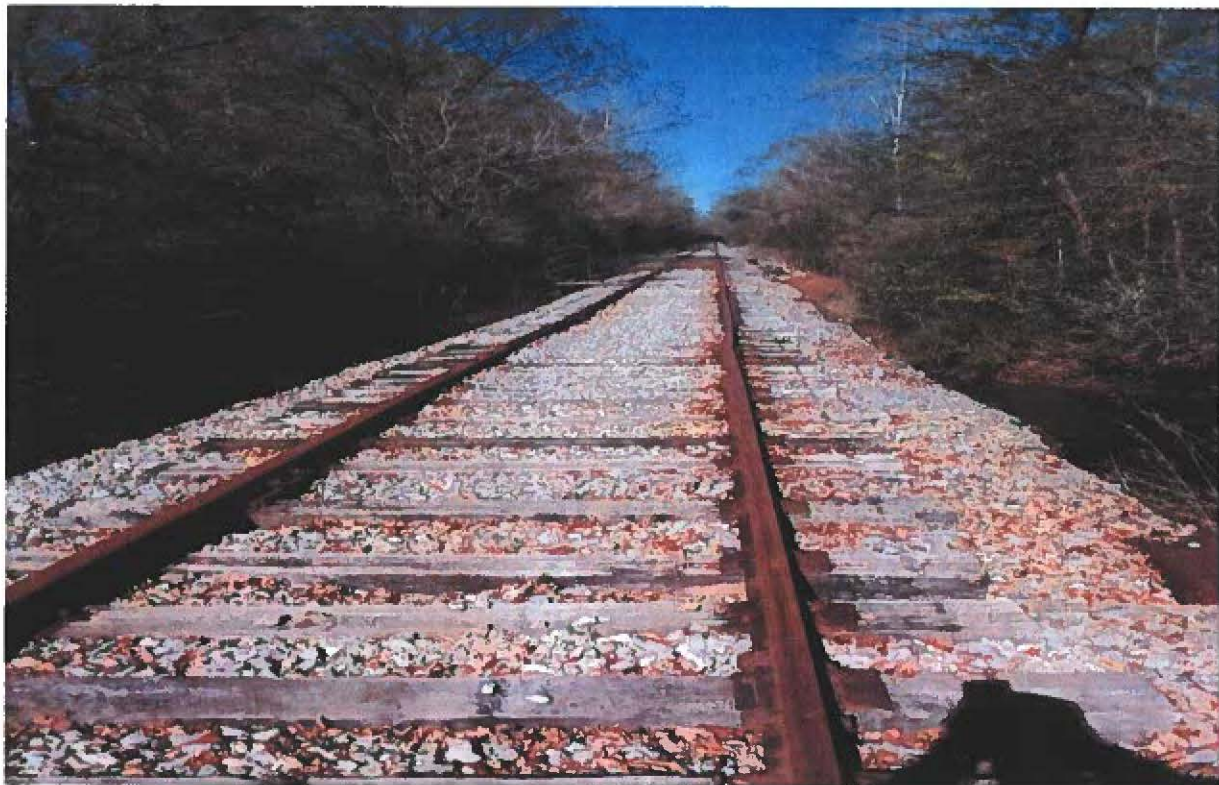


Bridge 33B

APPENDIX S

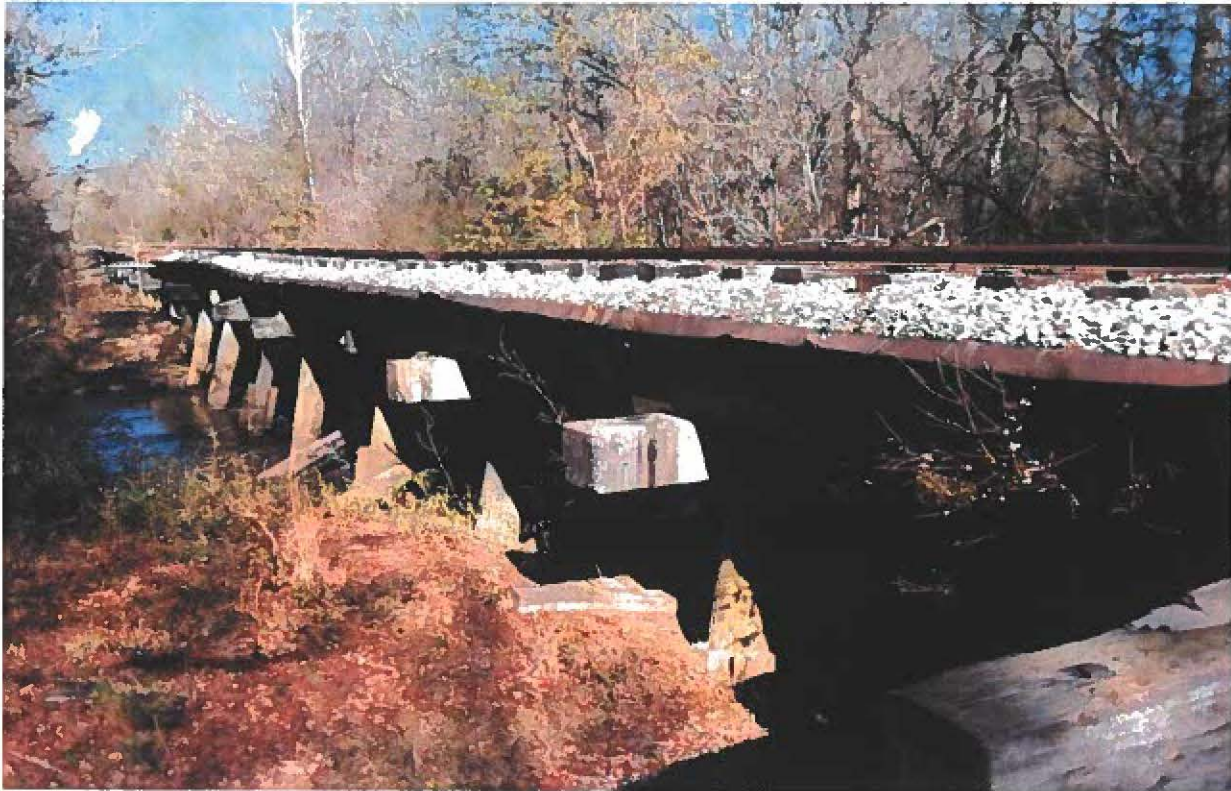


Bridge No. 34.00



Bridge No. 34.00

APPENDIX S



Bridge No. 34.00

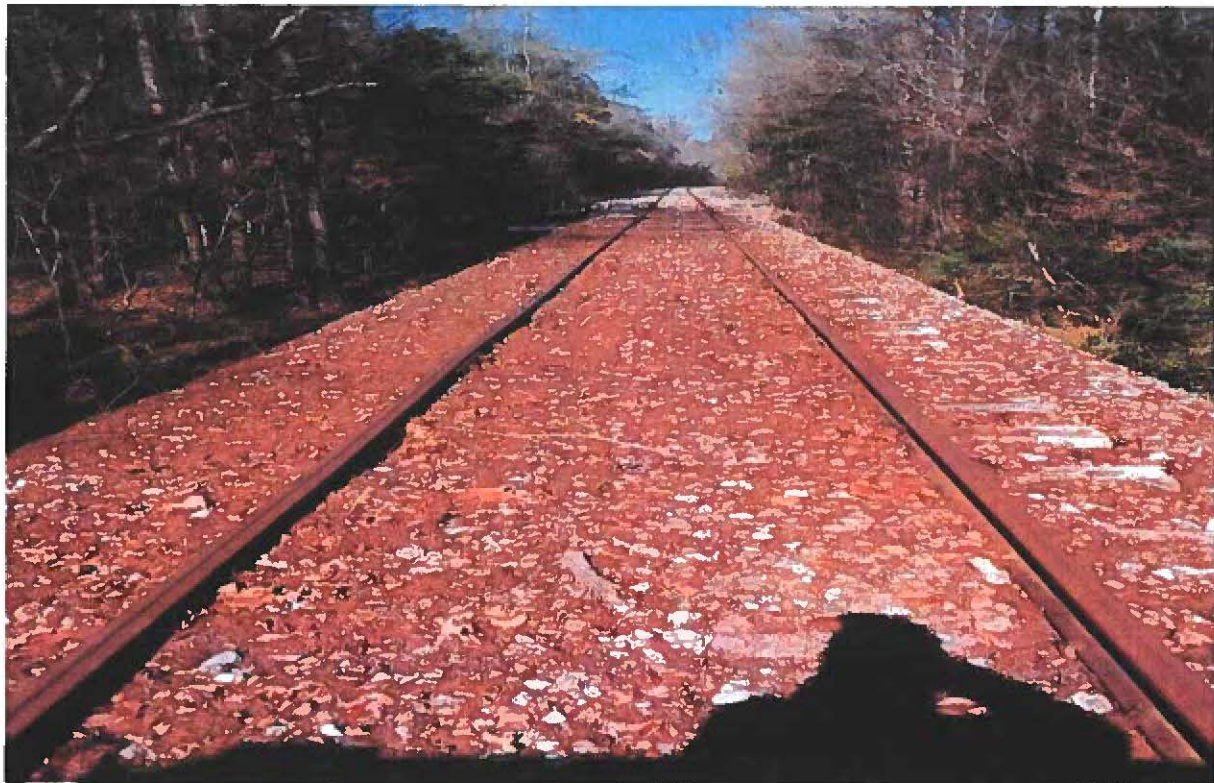


Bridge No. 34.00

APPENDIX S



Bridge No. 35.00



Bridge No. 35.00

APPENDIX S



Bridge No. 35.00



Bridge No. 35.00

APPENDIX S



Bridge No. 35.00



Bridge No. 35.00

APPENDIX S



Bridge No. 35.00



Bridge No. 35.00

APPENDIX S



Bridge No. 35.00

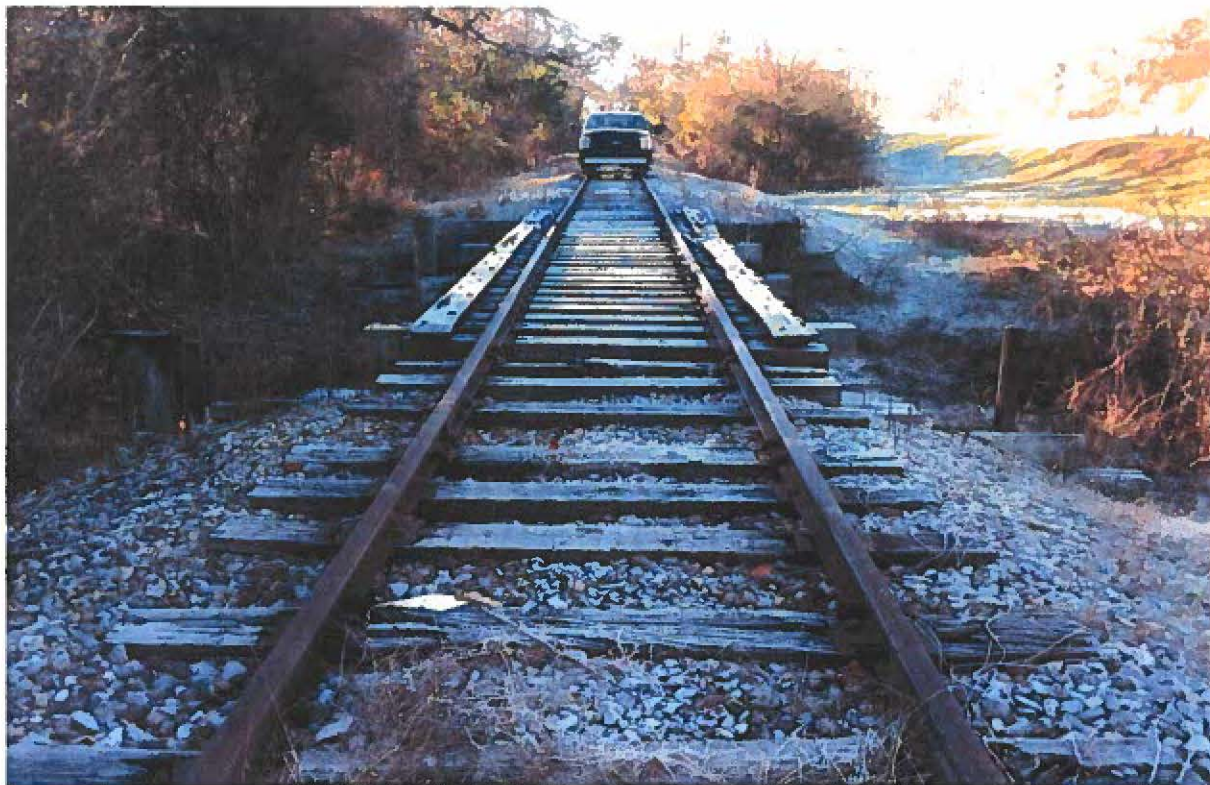


Bridge No. 35.00

APPENDIX S



Bridge No. 35.50

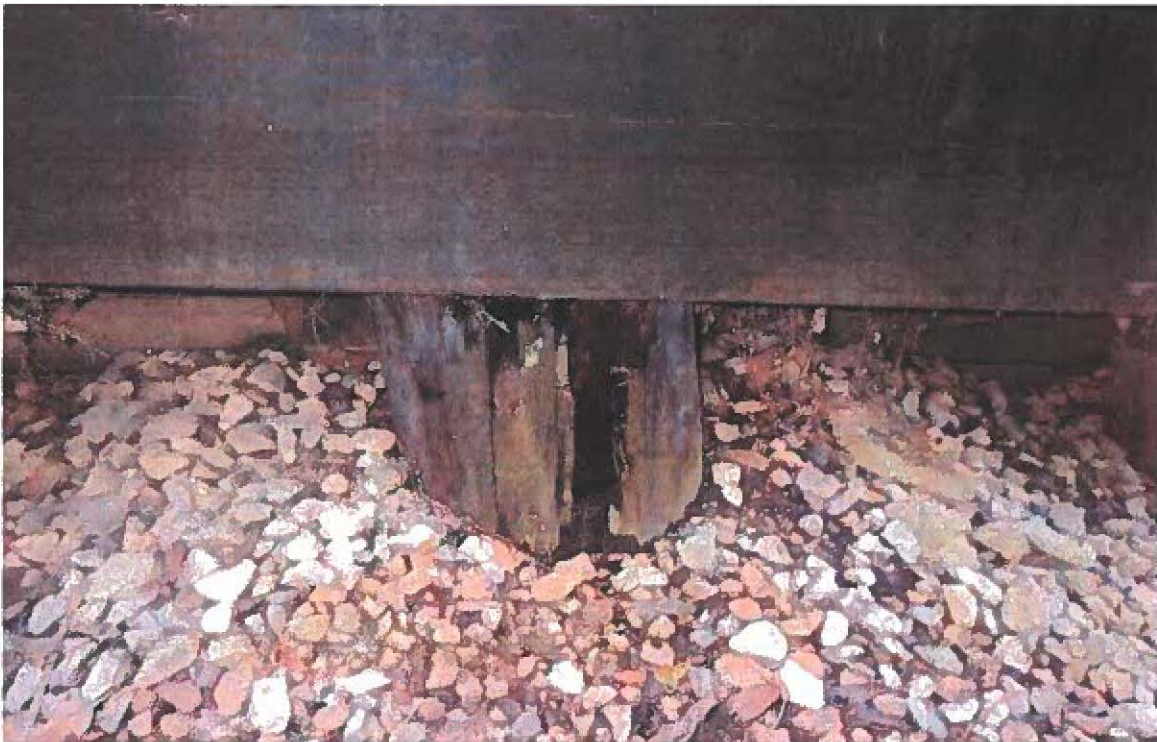


Bridge No. 35.50

APPENDIX S



Bridge No. 35.50



Bridge No. 35.50

APPENDIX S

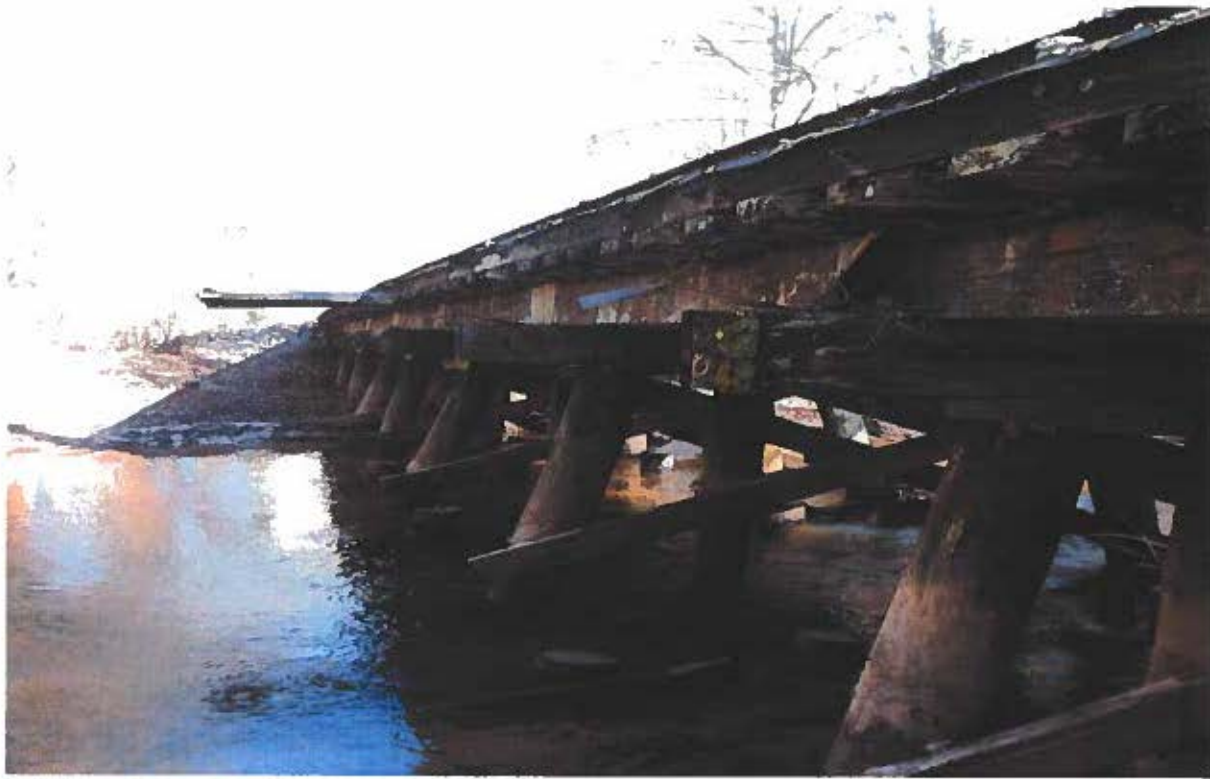


Bridge No. 36.00



Bridge No. 36.00

APPENDIX S



Bridge No. 36.00



Bridge No. 37.00

APPENDIX S



Bridge No. 37.00



Bridge No. 37.00

APPENDIX S

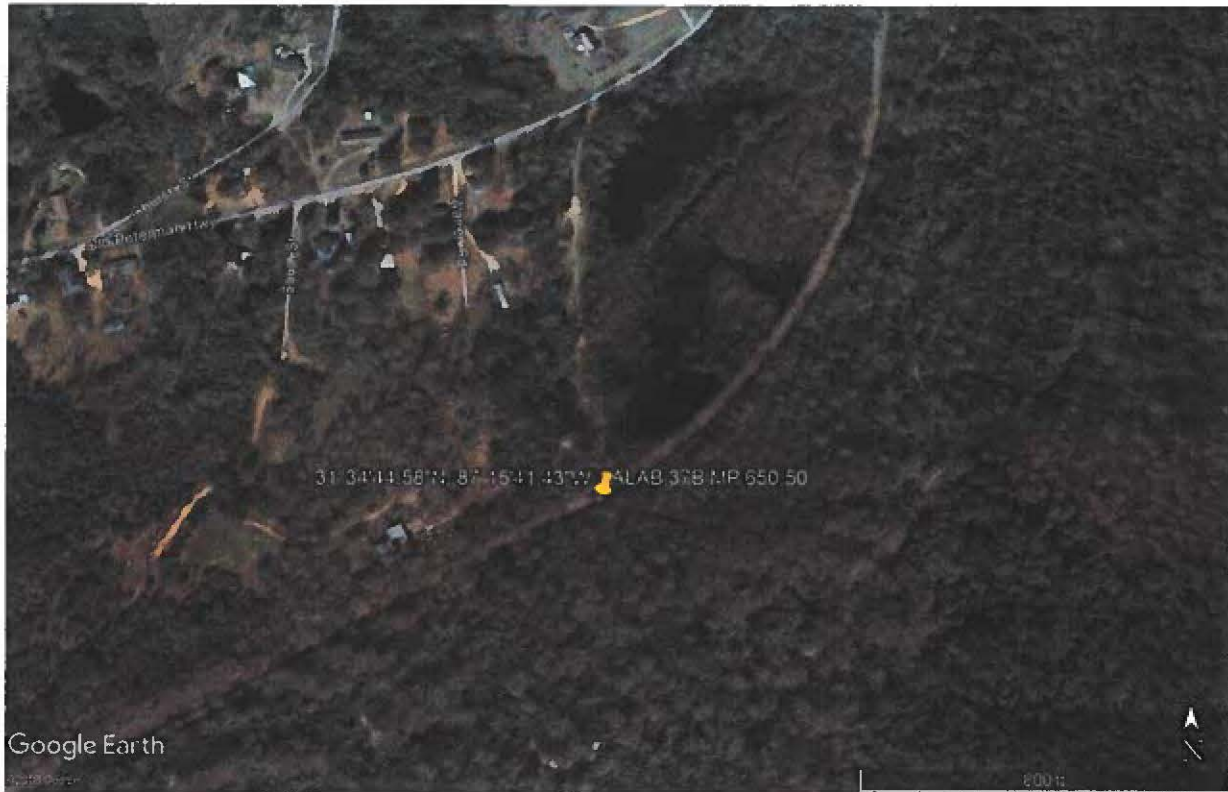


Bridge No. 37.00



Bridge No. 37.00

APPENDIX S



Bridge 37B



Bridge 37B

APPENDIX S



Bridge 37B



Bridge 37B

APPENDIX S



Bridge 37C



Bridge 37C

APPENDIX S



Bridge 37C

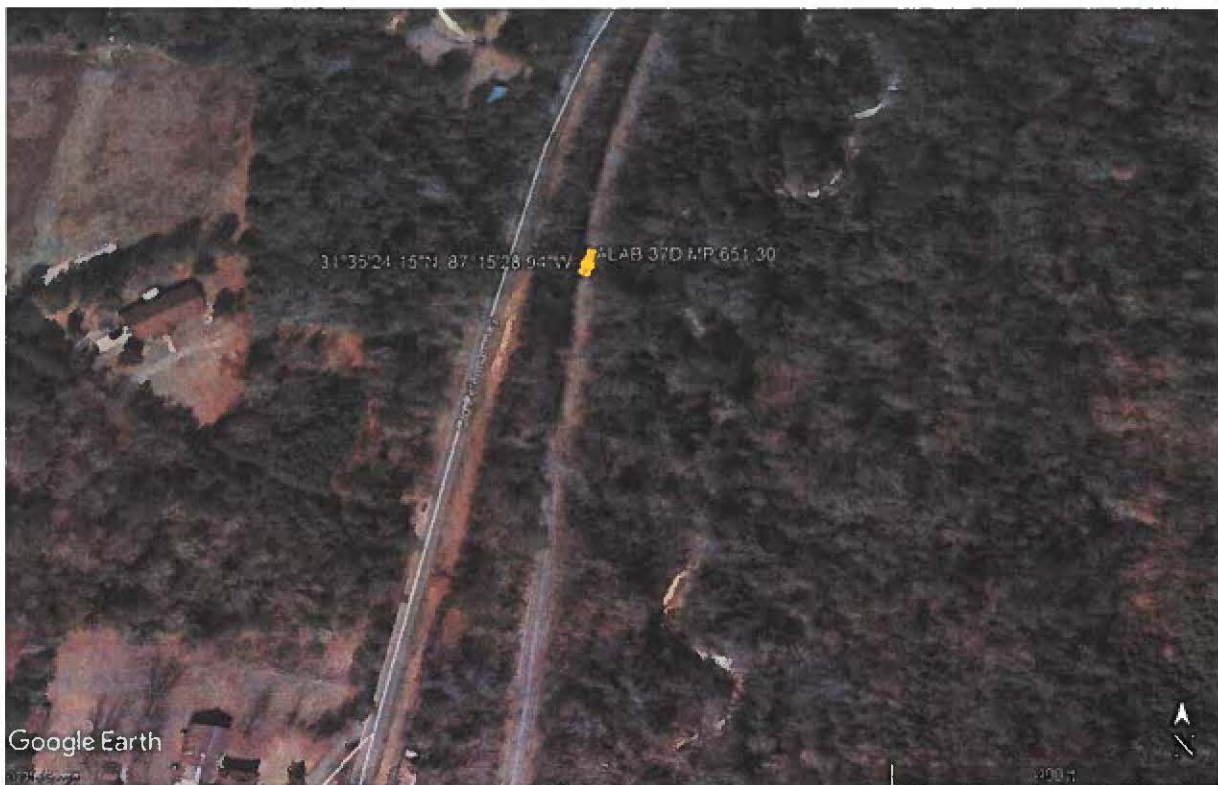


Bridge 37C

APPENDIX S



Bridge 37C



Bridge 37D

APPENDIX S



Bridge 37D



Bridge 37D

APPENDIX S

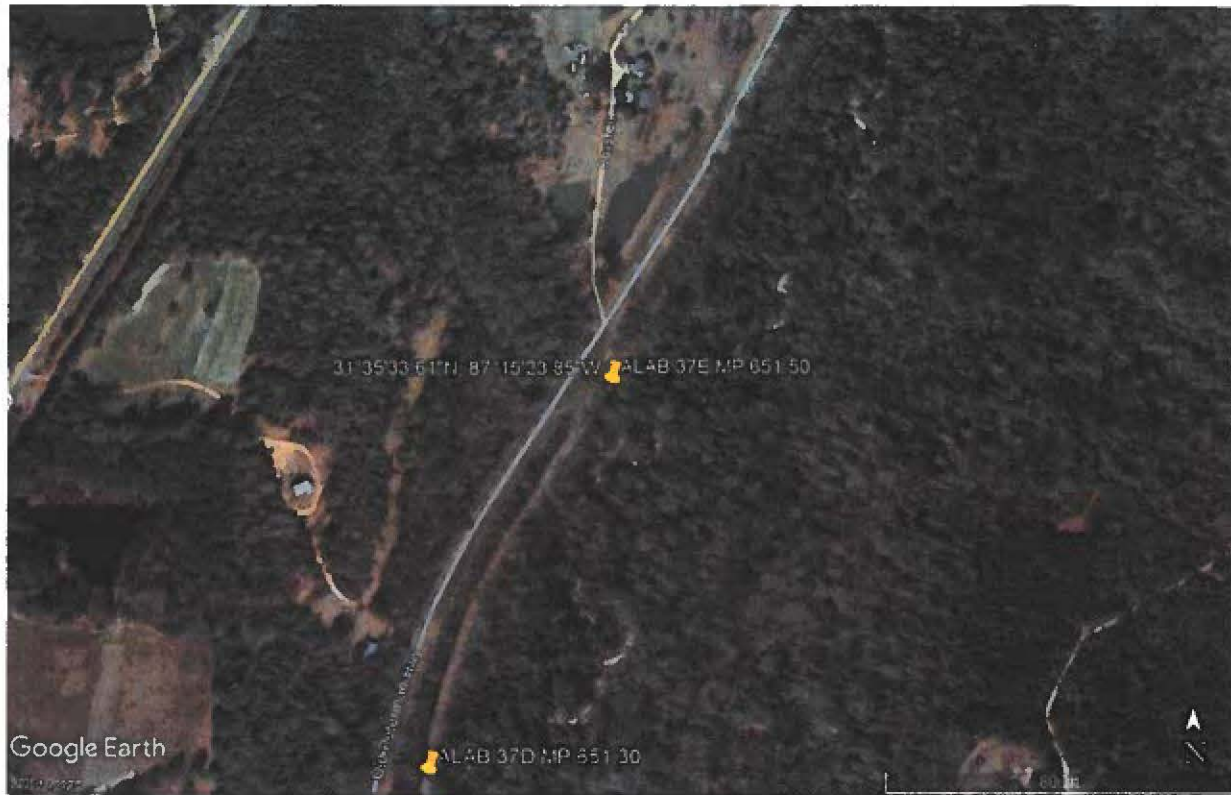


Bridge 37D



Bridge 37D

APPENDIX S



Bridge 37E



Bridge 37E

APPENDIX S



Bridge 37E



Bridge 37E

APPENDIX S



Bridge 37H



Bridge 37H

APPENDIX S

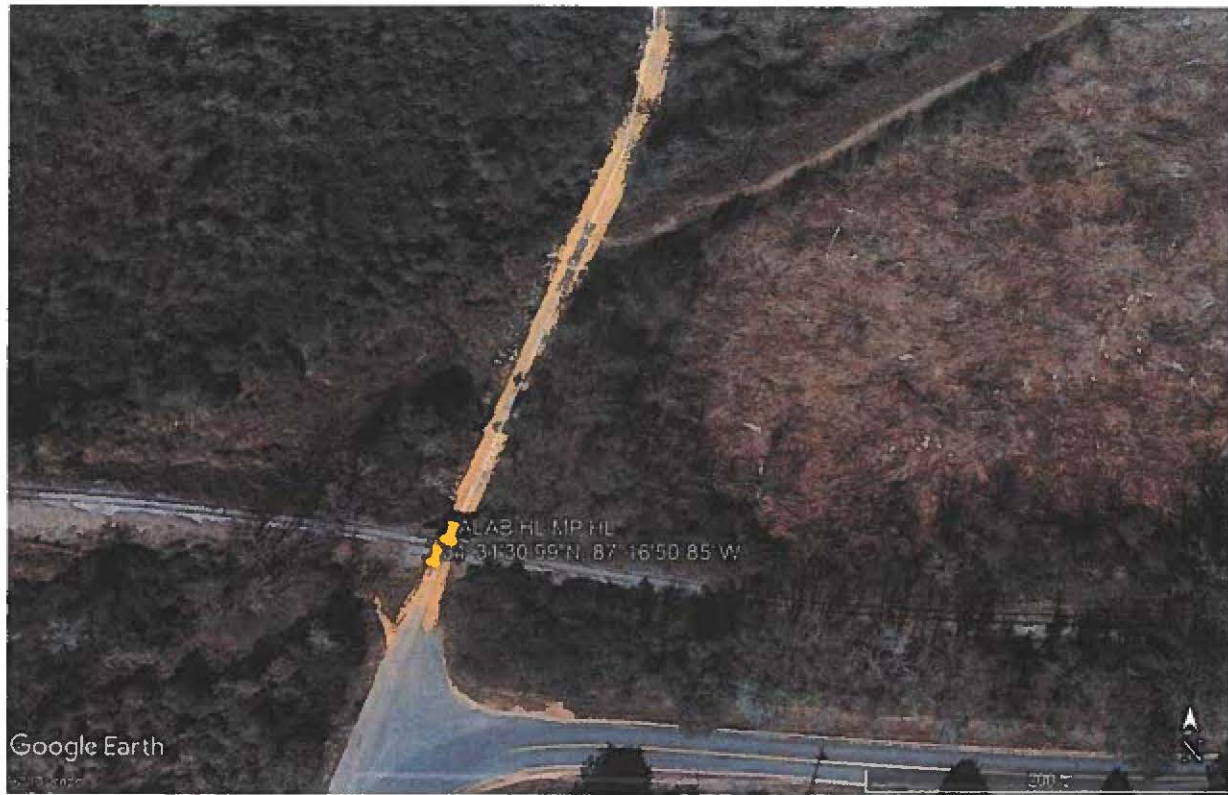


Bridge 37H



Bridge 37H

APPENDIX S



Bridge HL



Bridge HL

APPENDIX S

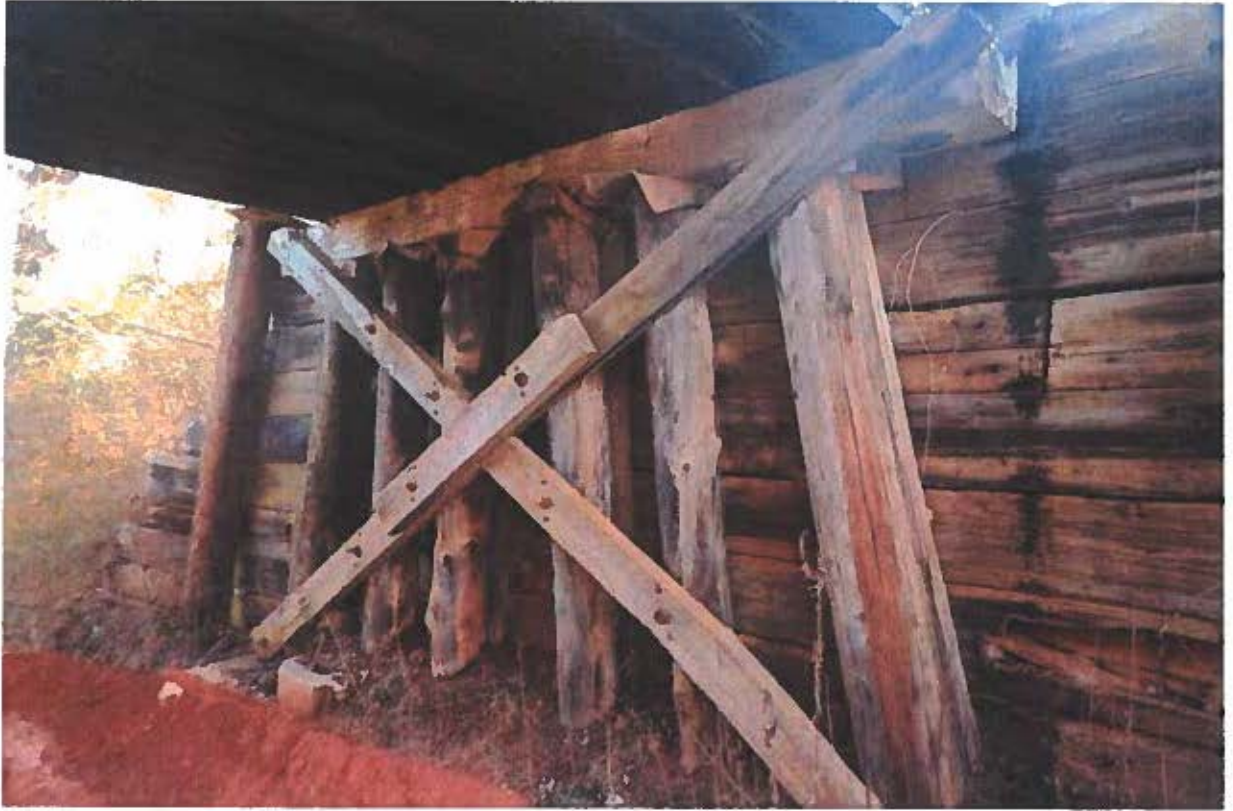


Bridge HL



Bridge HL

APPENDIX S



Bridge HL

APPENDIX T

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

AUDREY E. LANE
(312) 252-1518
Alane@fletcher-sippel.com

May 12, 2022

Via Electronic Mail

Alabama Historical Commission
468 South Perry St.
P.O. Box 300900
Montgomery, AL 36130-0900
Email: Section.106@ahc.alabama.gov

Re: **Docket AB 1324X**
Alabama Railroad, LLC – Abandonment Exemption –
In Escambia, Conecuh, and Monroe Counties, Alabama

Dear Sir or Madam:

Alabama Railroad, LLC (“ARL”) is planning to file a Petition for Exemption with the Surface Transportation Board (“STB”) to abandon approximately 47.5 miles of rail line, extending from approximately milepost 607.73 (at Flomaton, AL) to approximately milepost 655.2 (near Tunnel Springs, AL), including the MR Junction Spur between valuation stations 0+00 and 90+81 in Escambia, Conecuh, and Monroe Counties, in Alabama (the “Line”). A map showing the location of the line is enclosed for your reference.

As you may recall, the Line was the subject of a previous (recent) abandonment sought by ARL’s immediate predecessor, Alabama Railroad Co. (“ALAB”). In *Alabama Railroad Co. – Abandonment Exemption – In Escambia, Conecuh, and Monroe Counties, in Alabama*, AB-463 (Sub-No. 2X) (“*ALAB 2019 Abandonment*”), the STB authorized ALAB’s proposed abandonment. However, ALAB never consummated its abandonment as is required under the STB’s regulations, and ALAB’s abandonment authorization lapsed. In the interim, ARL acquired the Line from ALAB, and, under STB regulations, ALAB’s abandonment authority was not transferrable to ARL, even if ALAB’s abandonment authorization had not lapsed.

ARL will initiate renewed abandonment efforts for the Line before the STB. Since ARL cannot rely exclusively on the record in the past *ALAB 2019 Abandonment* proceeding at the STB for purposes of the STB’s statutorily-mandated environmental and historic resources review, we are now reaching out to you (as did ARL before) to solicit your input on the proposal. If you are experiencing a moment of déjà vu, we understand completely, and yes . . . this is the exact same, inactive railroad line that you were contacted about roughly three years ago.

APPENDIX T

Specifically, ARL seeks your input as is required by the STB's historic impacts analysis regulations. Given your very recent participation and/or comment in the *ALAB 2019 Abandonment* proceeding, and in an effort to avoid unnecessary use of your agency's resources reviewing the very same materials that were previously provided and reviewed, I am enclosing with this correspondence the STB's Environmental Assessment and its supplemental STB orders issued in the *ALAB 2019 Abandonment* proceeding, as well as your agency's response (if any) to the solicitation letter related to the same.

ARL is unaware of any changes in, or to, the Line that would bear on and/or change your agency's input in the *ALAB 2019 Abandonment* proceeding. To that end, ***unless your response has changed from what was provided in connection with the 2019 ALAB Abandonment, there is no need to respond to this solicitation letter. ARL will assume that if no response is received within 20 days from the date of this letter, your input on the abandonment proposal for the Line remains as it was three years ago*** when a different railroad sought at that time to abandon the same line (but ultimately did not do so). To the extent you believe a further, or different, response is warranted, if at all (and also simply as refresher background), ARL is including with this letter a copy of the *ALAB 2019 Abandonment* Historic Report, complete with copies of all of the supporting materials appended to that document (including images of the structures along the railroad line – bridges – that were considered to be 50 years old or older).

Given the railroad property in question, and your agency's recent, past input and collaboration with ALAB, we ask whether or not the proposed abandonment requires the imposition of any conditions to mitigate any historic resources impacts beyond (or in addition to) those you recommended back in the 2019 proceeding.

Kindly offer of any written comments you may have regarding the proposed abandonment (if any) as soon as possible. Such comments should reference Docket No. AB 1324X and be sent to the undersigned counsel for ARL.

A draft of the Environmental/Historic Report associated with the proposed abandonment will be forwarded to you at least twenty days before ARL's petition is filed at the STB. If you have any questions regarding this correspondence, or if you wish to offer input on the proposed abandonment that differs from your input in response to ALAB's past undertaking, please contact me at either alane@fletcher-sippel.com or (312) 252-1518, or you may send your response via mail if you prefer. Thank you for your assistance on this matter.

Respectfully submitted,



Audrey E. Lane
**ATTORNEY FOR ALABAMA
RAILROAD, LLC**

AEL/eg
Enclosures



APPENDIX T-1

ALABAMA HISTORICAL COMMISSION

Lisa D. Jones
Executive Director
State Historic Preservation Officer

468 South Perry Street
Montgomery, Alabama 36130-0900

Tel: 334-242-3184
Fax: 334-242-1083

June 8, 2022

Audrey Lane
Fletcher & Sippel LLC
29 North Wacker Street Suite 800
Chicago, IL 6060-3208

Re: AHC 22-0689
Docket No AB 1324X - Environmental Assessment - Alabama Railroad, LLC - Abandonment Exemption - Multiple Counties

Dear Ms. Lane:

Our records indicate that we have previously concurred with this project. We continue to concur with project activities provided the project location and scope of work remains exactly the same as the original submission. However, if the scope of work has changed, further consultation with our office will be necessary.

Should artifacts or archaeological features be encountered during project activities, work shall cease and our office shall be consulted immediately. Artifacts are objects made, used or modified by humans. They include but are not excluded to arrowheads, broken pieces of pottery or glass, stone implements, metal fasteners or tools, etc. Archaeological features are stains in the soil that indicate disturbance by human activity. Some examples are post holes, building foundations, trash pits and even human burials. This stipulation shall be placed on the construction plans to ensure contractors are aware of it.

We appreciate your commitment to helping us preserve Alabama's historic archaeological and architectural resources. Should you have any questions, please contact Amanda McBride at 334.230.2692 or Amanda.McBride@ahc.alabama.gov. Have the AHC tracking number referenced above available and include it with any future correspondence.

Sincerely,

Lee Anne Wofford
Deputy State Historic Preservation Officer

LAW/AMH/amh