

**PROGRAMMATIC AGREEMENT AMONG
THE CHOCTAW NATION OF OKLAHOMA; THE MISSISSIPPI BAND OF
CHOCTAW INDIANS; THE MISSISSIPPI DEPARTMENT OF
ENVIRONMENTAL QUALITY; THE MISSISSIPPI POWER COMPANY; THE
MISSISSIPPI STATE HISTORIC PRESERVATION OFFICER; NORTH
AMERICAN COAL CORPORATION; SOUTHERN COMPANY SERVICES,
INC.; THE UNITED STATES ARMY CORPS OF ENGINEERS, MOBILE
DISTRICT; AND THE UNITED STATES DEPARTMENT OF ENERGY**

WHEREAS, Mississippi Power Company proposes to construct and operate the Kemper County Integrated Gasification Combined Cycle generating facility, an electricity generating facility that will consist of two lignite coal gasifiers with gas cleanup systems, two gas combustion turbines, two heat recovery steam generators, a steam turbine, and associated support facilities and infrastructure (collectively referenced hereafter as the “IGCC Facility”). The IGCC Facility is intended to be constructed within an approximately 1,650-acre undeveloped site located in east-central Mississippi near the town of Liberty, in Kemper County (the “IGCC Facility Site”). The IGCC Facility itself would actually physically occupy only a portion of the larger IGCC Facility Site;

WHEREAS, Southern Company Services, Inc., an affiliate of Mississippi Power Company, has entered into a Cooperative Agreement with the **United States Department of Energy (“Department of Energy”)** in order to secure cost-shared funding on behalf of Mississippi Power Company for the construction of the IGCC Facility;

WHEREAS, there will be certain facilities associated with the IGCC Facility that will be located beyond the IGCC Facility Site, to include associated transmission lines and substations, a CO₂ pipeline, a natural gas pipeline, a reclaimed effluent pipeline, access roads, staging/laydown areas, borrow areas, and certain geotechnical and hydrogeological drilling sites (collectively referenced hereafter as “Associated Facilities”);

WHEREAS, The North American Coal Corporation proposes to co-locate, construct, and operate a surface lignite coal mine (“the Liberty Fuels Mine”) to provide the primary source of fuel for the IGCC Facility. The cultural resource survey area for the Liberty Fuels Mine will encompass approximately 18,200 acres principally in Kemper County and partially in Lauderdale County, Mississippi. Within this area, an estimated total of approximately 13,000 acres would be disturbed and reclaimed over the life of the Liberty Fuels Mine, which is anticipated to be approximately 40 years;

WHEREAS, for the purposes of this Programmatic Agreement, the IGCC Facility, the Associated Facilities, and the Liberty Fuels Mine will be referenced collectively hereafter as the “Undertaking”;

WHEREAS, to date, a number of cultural resource surveys related to the Undertaking have been conducted and/or are ongoing as set forth in **Exhibit A** to this Programmatic Agreement ;

WHEREAS, pursuant to Sections 101(d)(6)(B) and 106 of the National Historic Preservation Act (“NHPA”), codified at 16 U.S.C. §§ 470a(d)(6)(B) and 470f respectively, and their implementing regulations, codified at 36 C.F.R. Part 800, which applies to the Undertaking, the **United States Department of Energy (“Department of Energy”)** and the **United States Army Corps of Engineers, Mobile District (“Corps”)** have determined the Undertaking may adversely affect Historic Properties, as that term is defined at 36 C.F.R. § 800.16(l)(1) and have accordingly initiated consultation with the **Advisory Council on Historic Preservation (“Advisory Council”)**, the **Mississippi State Historic Preservation Officer (“SHPO”)**, the **Mississippi Band of Choctaw Indians**, and the **Choctaw Nation of Oklahoma** (the latter two parties referenced collectively hereafter as the “**Tribes**”);

WHEREAS, twenty-four other Native American tribes and one non-profit, inter-tribal organization were also contacted by the Department of Energy with respect to the Undertaking; other than the Tribes, however, no other tribes or organizations elected to participate in formal consultation;

WHEREAS, the **Mississippi Department of Environmental Quality (“MDEQ”)** has certain legal and regulatory obligations related to the permitting of the Liberty Fuels Mine and the protection of certain historic and cultural resources associated therewith;

WHEREAS, the signatories to this Programmatic Agreement anticipate that the ongoing and future cultural resource surveys associated with the Undertaking may identify additional Historic Properties that may be adversely affected by the Undertaking; and

WHEREAS, due to the complexity and scope of the Undertaking, the best approach for ensuring compliance with the NHPA is to continue with phased identifications and assessments of Historic Properties and to resolve adverse effects to any Historic Properties pursuant to this Programmatic Agreement, as authorized by 36 C.F.R. § 800.14(b).

NOW, THEREFORE, the signatories to this Programmatic Agreement agree that the Undertaking shall be implemented in accordance with the following stipulations which the signatories agree will ensure all necessary compliance with the relevant provisions of the NHPA.

STIPULATIONS

I. **Lead Federal Agency**. The Department of Energy will serve as the lead Federal agency until the completion of the Undertaking's Demonstration Period. The Demonstration Period is anticipated to be conducted over a 4.5-year period from mid-2014 through 2018 and to focus on achieving reliable plant operation (at least 80 percent

gasifier availability) with high thermal efficiency, low emissions, equipment performance improvement, and low operation and maintenance costs. Upon completion of the Demonstration Period, commercial operation will follow immediately. Upon completion of the Demonstration Period, should the Undertaking continue, the Corps shall become the lead Federal agency for the duration of the Undertaking and fulfill its obligations in compliance with the NHPA (to include any relevant implementing regulations, as may be effective now or in the future) and, to the extent that no conflicts exist herein with said regulations, as otherwise set forth below.

II. **Components of the Undertaking.** The Undertaking covered by this Programmatic Agreement consists of the following: the IGCC Facility, the Associated Facilities, and the Liberty Fuels Mine.

III. **Areas of Potential Effect for the Undertaking.** The Undertaking has three separate areas of potential effect ("APEs"): the IGCC Facility APE, the Associated Facilities APE, and the Liberty Fuels Mine APE, as set forth below. **Exhibit B** to this Programmatic Agreement provides geographic representations of the anticipated boundaries of the IGCC Facility APE, the Associated Facilities APE, and the Liberty Fuels Mine APE. Certain APEs may overlap (either geographically or sequentially) and it is not the intent of the signatories to this Programmatic Agreement that redundant surveys be undertaken of areas already surveyed.

A. **IGCC Facility.** With respect to the IGCC Facility, the APE is the entirety of the approximately 1,650-acre IGCC Facility Site, the perimeter of which is depicted in **Exhibit B**.

B. **Associated Facilities.** With respect to the Associated Facilities, the relevant APEs are as follows:

1. **Transmission Lines.** At the present time, it is anticipated that 65 miles of new transmission lines will be constructed and 24 miles of existing transmission lines will be upgraded in Kemper and Lauderdale counties, Mississippi, in association with the Undertaking. Whether the transmission lines are new or upgraded, the specific APE for transmission lines will be a 200-foot-wide corridor centered on the transmission line centerline. **Exhibit B** to this Programmatic Agreement provides specific routes of the proposed new lines and/or upgrades.

2. **Pipeline Corridors.** With respect to pipelines to be constructed in association with the Undertaking, the relevant APE is (i) the 61-mile CO₂ pipeline that will extend from the IGCC facility in Kemper County through Lauderdale and Clarke counties into Jasper County, ending near the city of Heidelberg, Mississippi; (ii) the 6-mile natural gas pipeline that will extend from the IGCC facility eastward in Kemper County; and (iii) a 45-mile reclaimed effluent pipeline which will generally be co-located with transmission line rights-of-way discussed in the preceding section. The specific APE for these pipeline corridors will be a 200-foot-wide corridor centered on the

pipeline's centerline. **Exhibit B** to this Programmatic Agreement provides specific routes of the proposed pipelines.

3. **Substations.** With respect to substations to be modified or reconstructed in association with the Undertaking, it is not anticipated that such modifications or reconstructions will be of a nature to adversely affect Historic Properties. With respect to substations that may be expanded in association with the Undertaking, the relevant APE is the footprint of the substation's expansion area beyond any existing fenced area. At the present time, the precise nature of any particular substation's modification, reconstruction, or expansion is unknown.

4. **Staging/Laydown Areas.** With respect to staging/laydown areas for temporary storage of equipment and/or materials to be utilized in association with the Undertaking, the APE is the footprint of each staging/laydown area. At the present time, the precise location of any such staging/laydown area is unknown.

5. **Borrow Areas.** With respect to borrow areas to be developed or utilized in association with the Undertaking, the APE is all existing and new borrow areas. At the present time, the precise location of any such borrow area is unknown.

6. **Geotechnical and Hydrogeological Drilling Sites.** With respect to any geotechnical and/or hydrogeological drilling conducted in association with the Undertaking, the APE is the footprint of each drill site, which is anticipated to be approximately 40 feet by 40 feet.

7. **Pumping Stations.** With respect to any pumping stations for reclaimed effluent and/or for CO₂, the APE is the footprint of each pumping station.

8. **Access Roads.** With respect to any new access roads constructed in connection with the Undertaking, the APE is a 100-foot-wide corridor centered on the new access road centerline and extending for the full length of such roads. At the present time, the precise location of any such access road(s) is unknown.

C. **Liberty Fuels Mine.** The Liberty Fuels Mine APE is the approximately 18,200-acre life-of-mine (LOM) permit area, of which approximately 13,000 acres would be disturbed and reclaimed over the life of the Liberty Fuels Mine. The perimeter of this APE, as well as land within the APE surveyed to date, is set forth in **Exhibit B**.

D. **Amending APEs.**

1. **IGCC Facility and Associated Facilities.** The IGCC APE and/or the Associated Facilities APE may be modified by agreement among the signatories without amending the Programmatic Agreement. The lead Federal agency at the time in question shall engage in necessary communications regarding the amendment of an APE either upon the request of a signatory or upon determination that a larger area is necessary to

assess and/or avoid impacts to Historic Properties. Any such amendment shall be memorialized in writing.

2. **Liberty Fuels Mine.** The Liberty Fuels Mine APE may be modified by agreement among the signatories without amending the Programmatic Agreement. Any of the signatories may request amendment of the Liberty Fuels Mine APE. Upon such request, MDEQ, in coordination with the Tribes and the SHPO, shall, within five (5) business days, make a preliminary determination as to whether the Liberty Fuels Mine APE may require amendment in order to assess and/or avoid effects on Historic Properties. Once such a determination is made, MDEQ shall provide written notice of this preliminary determination to the lead Federal agency. If the lead Federal Agency does not request further consultation within ten (10) business days, MDEQ, with approval of the lead Federal agency (with which final decision-making authority resides), shall notify the signatories of the amendment to the Liberty Fuels Mine APE.

IV. Professional Standards. The professional standards applicable to the conduct of all work prescribed by this Programmatic Agreement has been and shall be as follows:

A. **Professional Qualifications.** All actions that involve the identification, evaluation, analysis, recordation, treatment, monitoring, mitigation, and disposition of historic properties and that involve the reporting and documentation of such actions in the form of reports, forms or other records, shall be carried out by or under the direct supervision of a person or persons meeting at a minimum, the Secretary of the Interior's Professional Qualifications Standards for archaeology, history, or architectural history, as appropriate and as set forth at 48 Fed. Reg. 44716 (Sept. 29, 1983), or as subsequently revised, and the Mississippi Department of Archives and History's Guidelines for Archaeological Investigations and Reports in Mississippi (effective Sept. 1, 2001), or as subsequently revised. All such actions will be carried out in consultation with the signatory tribes.

B. **Documentation Standards.** Documentation associated with the implementation of this Programmatic Agreement shall conform to every reasonable extent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation as set forth in 48 Fed. Reg. 44716 (Sept. 29, 1983), or as subsequently revised, and the Mississippi Department of Archives and History's Guidelines for Archaeological Investigations and Reports in Mississippi (effective Sept. 1, 2001), or as subsequently revised.

C. **Curation and Curation Standards.** To the extent that curation of recovered cultural resources is required, such curation shall, to the reasonable extent practicable, be curated in Mississippi in accordance with the laboratory and curation guidelines set forth in the Mississippi Department of Archives and History's Guidelines for Archaeological Investigations and Reports in Mississippi (effective Sept. 1, 2001), or as subsequently revised, and pursuant to 36 C.F.R. Part 79.

V. Identification of Historic Properties, Determinations of Eligibility, and Determination and Evaluation of Effects.

A. Consistent with 36 C.F.R. §§ 800.3 – 800.5, the standards set forth in Stipulation IV to this Programmatic Agreement, and the Historic Properties Treatment Plans required to be developed by Stipulation XVII of this Programmatic Agreement, the lead Federal Agency will take steps necessary to undertake efforts to identify Historic Properties within the Undertaking's APEs, to determine if the Undertaking will affect the Historic Properties within the Undertaking's APEs, , and to evaluate whether such effects will be adverse to the Historic Properties within the Undertaking's APEs. To the extent that consultation is required pursuant to 36 C.F.R. §§ 800.3 – 800.5, the lead Federal agency will afford such consultation opportunities to all signatories to this Programmatic Agreement. At the present time, no consultation with parties other than those signatories is anticipated.

B. Upon the completion of any relevant determinations, and upon the completion of such consultation as may be required pursuant to 36 C.F.R. §§ 800.3 – 800.5 with respect to such determination, the lead Federal agency will either:

(i) provide a Notice to Proceed to the relevant party, with a copy to all signatories to this Programmatic Agreement, thereby authorizing ground disturbance of the site or property in question to proceed; or

(ii) require resolution of adverse affects pursuant to Stipulation VII, as may be appropriate.

VI. Confidentiality. Information on the specific location of Historic Properties will be treated consistent with Section 304 of the NHPA. Furthermore, information collected from the Tribes to identify, record, and evaluate properties of religious or cultural significance to the Tribes will be held confidential, provided by the Tribes as intellectual property, and available only to those responsible for eligibility or management concerns relevant to such Historic Properties. All such information will be returned to the relevant Tribe upon completion of the relevant survey(s) and no copies of such data will be retained outside the Tribes.

VII. Resolution of Adverse Effects. If a Historic Property will be adversely affected by the Undertaking, reasonable efforts will be made to avoid the Historic Property and/or an adverse effect on it. If avoidance is impossible, then the Federal Agency will, in compliance with 36 C.F.R. § 800.6, resolve such adverse effect pursuant to the Historic Properties Treatment Plans required by Stipulation XVI of this Programmatic Agreement. Furthermore, the signatories agree that, should avoidance of a Historic Property be unreasonable, then the implementation of Phase III Mitigation (i.e., data recovery and analysis) by the party responsible for the activity that creates such an adverse effect (the "Acting Party") as follows in order to resolve such adverse effects:

A. Data recovery plans/research designs (“plans”) will be developed by the Acting Party in coordination with the signatories for each adversely affected Historic Property or reasonably related group of adversely affected Historic Properties. Such plans and their implementation, to include the personnel responsible for implementation, will meet the standards set forth in Stipulation IV of this Programmatic Agreement and shall be submitted to the lead Federal agency.

B. The plans will be reviewed and approved by the lead Federal agency in consultation with the Mississippi SHPO and the Tribes. In the case of Historic Properties located within the APE of the Liberty Fuels Mine, consultation shall also occur with MDEQ. To the extent that comments are received regarding a plan(s) from a reviewing party more than fourteen (14) calendar days after the submission of said plan(s) to that reviewer, a good faith effort will be made to address such comments during the course of the ongoing data recovery.

C. Upon the conclusion of data recovery with respect to the Historic Property in question, a management summary regarding the completion of such data recovery shall be provided to the lead Federal agency. The lead Federal agency shall, in turn, provide the management summary (or cause the management summary to be provided) to any other signatories that, upon review of the pertinent plan, had requested an opportunity to review the associated management summary. Upon submission of same to the lead Federal agency, disturbance of the Historic Property may occur unless an objection is timely received from the lead Federal agency within 14 days and notwithstanding the requirements of Stipulation VII.D below.

D. All materials and records resulting from data recovery will be curated pursuant to Stipulation IV.C. Copies of the draft and final analytical reports will be provided to the lead Federal agency for its timely review and comment in consultation with the SHPO and the Tribes to the extent that such party(ies), upon initial review of the plan in question, requested further consultation. Such report submissions will occur no later than three years after the conclusion of data recovery from the Historic Property in question. Comments on the draft and final reports will be coordinated through the lead Federal agency and forwarded to the author(s) for incorporation into the final document(s). All such reports will meet the standards set forth in Stipulation IV of this Programmatic Agreement.

E. To the maximum extent practicable, the foregoing submissions (and comments on the same) shall be provided to the signatories electronically (i.e., via email).

VIII. Post-Review Discoveries. The Emergency Discovery Plan attached as **Exhibit C** has been developed in consultation with the signatories to this Programmatic Agreement. Its purpose is to establish response procedures for avoidance or data recovery in the event that any potential archaeological artifacts are discovered during the course of the Undertaking within the APEs that were not previously located during the Phase I Cultural Resource Surveys, or if unanticipated effects on historic properties are found to occur within the APEs.

IX. Human Remains Discoveries. The human remains treatment plan attached as **Exhibit D** has been developed in consultation with the signatories to this Programmatic Agreement. Its purpose is to ensure appropriate and respectful treatment of any human remains discovered within the APEs during the course of archaeological activity or the Undertaking. This plan will be appended to any research designs and/or data recovery plans.

X. Amendments to Programmatic Agreement. Any signatory to this Agreement may submit a request to the other signatories that the terms of this Programmatic Agreement and/or the provisions of any attachment hereto be amended. Such requests shall be in writing. Any requested amendment shall require the unanimous consent of all signatories to this Programmatic Agreement. If approved, the amendment shall be memorialized in writing and distributed to all signatories.

XI. Dispute Resolution

A. **IGCC Facility and Associated Facilities.** Should any signatory to this Programmatic Agreement object within 30 days to any actions proposed pursuant to this Programmatic Agreement within the IGCC Facility's or the Associated Facilities' APEs, the lead Federal agency will inform all signatories of the nature of the dispute and, in consultation with the other signatories, consult with the objecting signatory to resolve the objection. If the lead Federal agency determines that the objections cannot be resolved, the lead Federal agency will forward all documentation relevant to the dispute to the Advisory Council and proceed pursuant to the relevant provisions of 36 C.F.R. Part 800.

B. **Liberty Fuels Mine.** Should any signatory to this Programmatic Agreement object within 30 days to any actions proposed within the Liberty Fuels Mine's APE, MDEQ, with the approval of the lead Federal Agency, shall inform all signatories of the nature of the dispute. MDEQ and the SHPO, in consultation with the other signatories, shall reach a preliminary determination no later than five (5) business days after notification to the signatories of the dispute. Once such preliminary determination is made, MDEQ shall provide written notice of this determination to the lead Federal Agency. If the lead Federal agency does not request further consultation within ten (10) business days, then MDEQ, with approval of the lead Federal agency, shall notify the signatories to the Programmatic Agreement of the final decision. If the objecting party or any signatory disagrees with such final decision, it may notify the lead Federal agency. Upon receipt of such notice, the lead Federal agency, in its discretion, may forward all documentation relevant to the dispute to the Advisory Council and proceed pursuant to the relevant provisions of 36 C.F.R. Part 800.

XII. Termination.

A. Except as set forth in Subsection C below, any of the signatories to this Programmatic Agreement may terminate their involvement in this Programmatic Agreement without rendering the Programmatic Agreement null and void for the other

signatories. The signatory proposing termination will notify all other signatories to this Programmatic Agreement in writing, explain the reasons for proposing termination, and consult with all other signatories for at least 60 calendar days to seek alternatives to termination. Should such consultation result in an agreement on an alternative to termination, the Signatories will proceed in accordance with the terms of such an agreement.

B. Should such consultation fail, the signatory proposing termination may terminate its involvement in this Programmatic Agreement by promptly notifying all other signatories to this Programmatic Agreement in writing.

C. If the lead Federal Agency or the SHPO terminate their involvement in this Programmatic Agreement, the Programmatic Agreement shall be terminated in its entirety. Such termination, however, will not excuse compliance with the NHPA or 36 C.F.R. Part 800 from otherwise being achieved.

XIII. Duration. Unless this Programmatic Agreement is terminated pursuant to Stipulation XII or superseded by another agreement, or the Undertaking has been terminated, this Programmatic Agreement will remain in effect until the lead Federal agency, in consultation with the other signatories, determines that all ground disturbing activities associated with the Undertaking have been completed and that all terms of this Programmatic Agreement have been fulfilled in a satisfactory manner or until December 31, 2025. Upon a determination by the lead Federal agency that all ground disturbing activities associated with the Undertaking have been completed and that all terms of this Programmatic Agreement have been fulfilled in a satisfactory manner, the lead Federal agency will notify the other signatories of this determination in writing, whereupon this Programmatic Agreement will be null and void and the requirements of the NHPA and 36 C.F.R. Part 800 will be deemed to have been fulfilled.

XIV. Funding and Responsibility for Costs. The cost of Phase I cultural resource surveys, Phase II evaluations, associated studies, and Phase III data recovery activities, and associated reports shall be borne by the relevant private-party signatory. The cost of reviewing and commenting upon any surveys or reports related to such activities shall be borne by the relevant governmental or tribal agency.

XV. Annual Review. The signatories to this Programmatic Agreement shall meet annually, either telephonically or in person or in some combination thereof, to review compliance with this Programmatic Agreement and to suggest any appropriate amendments to it.

XVI. Review of Public Objections. At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the lead Federal Agency will take the objection into account and consult as needed with the objecting party and the signatories to resolve the objection.

XVII. Historic Properties Treatment Plan(s) (HPTP)

A. The lead Federal agency will oversee the development of a comprehensive HPTP (or multiple HPTPs, if the development of individual HPTPs for individual components of the Undertaking proves to be a more efficient approach) based upon the results of the Phase II inventory and evaluation, previous inventories for cultural resources, and preliminary engineering data. The HPTP(s) will be completed as early as possible in the planning process in consultation with the signatories. Implementation of the HPTP(s) will follow the Department of Energy's NEPA decision document. The HPTP(s) will be submitted for review and comment in accordance with Stipulation VII.

B. The HPTP(s) will identify all historic properties recorded as a result of the inventories and provide a detailed description of potential effects to each. The HPTP(s) will identify specific treatment strategies proposed to address project effects at each location. Avoidance will be the preferred mitigation measure. Avoidance could include redesign for the Undertaking or relocation of specific components of the Undertaking.

C. For adverse effects, the HPTP(s) will provide specific treatment measures that could include but will not be limited to mitigation or other documentation. The HPTP(s) will reflect the guidance provided by the Advisory Council in Treatment of Archaeological Properties (1980), or as subsequently revised, other relevant standards of the Secretary of the Interior, National Park Service bulletins, and other appropriate published Federal guidelines.

EXECUTION and implementation of this Programmatic Agreement are evidence that the lead Federal agency has afforded the Advisory Council an opportunity to comment on the undertaking and that the lead Federal agency(ies) has taken into account the effects of this undertaking on historic properties pursuant to Section 106 of the NHPA and 36 C.F.R. Part 800.

SIGNATORIES

THE CHOCTAW NATION OF OKLAHOMA


Signature: 

Date: 5-23-10

Print Name and Title:

Gregory E. Pyle, Chief

THE MISSISSIPPI BAND OF CHOCTAW INDIANS

Signature: 

Date:

Print Name and Title:

BEASLEY DENSON, TRIBAL MIKO

MISSISSIPPI STATE HISTORIC PRESERVATION OFFICER

Signature: 

Date: May 10, 2010

Print Name and Title: H.T. HOLMES SHPO

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

Signature: 

Date: 5/13/10

Print Name and Title: Tracy D. Fisher
Executive Director

MISSISSIPPI POWER COMPANY

Signature: 

Date: 5/13/10

Print Name and Title: KIMBERLY D FLOWERS
VP Generation + SPO

THE NORTH AMERICAN COAL CORPORATION

Signature: 

Date: May 10, 2010

Print Name and Title: Harry B. Tipzon III, General Manager

SOUTHERN COMPANY SERVICES, INC.

Signature:



Date:

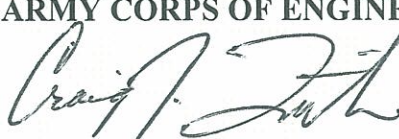
5/6/2010

Print Name and Title:

Christopher M. Hobson, Senior Vice President and
Chief Environmental Officer

THE UNITED STATES ARMY CORPS OF ENGINEERS, MOBILE DISTRICT

Signature:



Date:

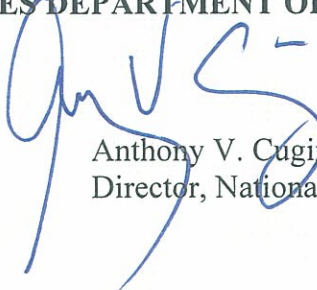
6/10/10

Print Name and Title:

Craig J. Litteken, Chief, Regulatory Division

THE UNITED STATES DEPARTMENT OF ENERGY

Signature:



Date:

6/15/10

Print Name and Title:

Anthony V. Cugini
Director, National Energy Technology Laboratory

EXHIBIT A

Current Status of Cultural Resource Assessments for the Kemper County IGCC Facility and Other Associated Facilities (As of April 24, 2010)

1. IGCC Facility

The IGCC facility site was initially assessed by Barry Vittor & Associates (“BVA”) in March of 2007. The results of that assessment were detailed in “A Phase I Cultural Resources Assessment for the Integrated Gasification Combined Cycle Generating Facility Station in Kemper County, Mississippi,” dated March 2007. That effort included 97 shovel tests within the physical footprint of the IGCC facility (in addition to a literature review focused on the entire IGCC facility site) that identified one archaeological site. The assessment concluded that, with respect to that particular site, “[i]t is unlikely that any intact deposits are present, and no further testing is needed.”

Subsequently, in July of 2007, BVA conducted further assessment of the IGCC facility site. BVA conducted an on-site pedestrian survey of the entire IGCC facility site and further shovel tests (bringing the total number of tests to 296). BVA detailed its results in “A Phase I Cultural Resources Assessment of a Proposed Integrated Gasification Combined Cycle Generating Station in Kemper County, Mississippi,” dated October 2007. This assessment discovered six archaeological sites but determined that, due to a lack of integrity at each of the sites, none were eligible for listing on the NRHP.

On September 5, 2008, the Mississippi SHPO provided BVA with its review of the October 2007 report. In a letter dated September 18, 2008, BVA responded to the Mississippi SHPO, advising the Mississippi SHPO that BVA had addressed its concerns in a revised report (enclosed with BVA’s letter) and otherwise responding to the SHPO’s comments. The revised report included a discussion of an abandoned farmhouse referenced as the Goldman House. Although the structure was estimated as originally pre-dating the Civil War, BVA determined it was not eligible for listing on the NRHP due to its lack of “any high architectural qualities, folk or formal style.”

On October 24, 2008, the Mississippi SHPO advised BVA that it concurred with its determination of non-eligibility with respect to the aforementioned six archeological sites but determined that the Goldman House was potentially eligible for listing on the NHRP as “a local example of a vernacular rural house with late Victorian details.” Determining that the house’s demolition would thus be an adverse effect, the Mississippi SHPO accordingly requested that HABS-level documentation (including measured drawings and archival photographs) be undertaken.

2. Liberty Fuels Mine

From May 26, 2008, to October 8, 2008, the Cobb Institute of Archaeology, Mississippi State University (“MSU”) conducted a Phase I cultural resource survey of

6461 acres of the mine's approximately 18,200-acre LOM permit area and cultural resource survey area. The original cultural resource survey area was the 31,000-acre environmental impact study area for the mine. This area was later revised to encompass only the area proposed to be disturbed during the life of the mine. This survey occurred pursuant to a revised research design (which also encompassed transmission and pipeline corridors) dated June 30, 2008, and revised August 14, 2008, that was approved by the Mississippi SHPO on August 25, 2008.

MSU detailed the initial findings of this effort in a report entitled "Systematic Archaeological Survey of a Mine Area in Kemper and Lauderdale Counties, Mississippi," dated January 2, 2009. That report reported that the survey had discovered 170 archeological sites but did not provide eligibility determinations with respect to such sites, stating that such determinations would be made upon the completion of the survey of the entire cultural resource survey area associated with the mine. Such survey work is, at the present time, continuing.

3. CO₂ Pipeline

Between October 6 and November 14, 2008, New South Associates ("NSA") conducted a Phase I cultural resources survey of the proposed CO₂ pipeline route, based upon a 200-foot right-of-way. The survey also examined architectural resources within 300 feet of the right-of-way. This survey comprised forty miles of right-of-way not adjacent to proposed transmission line rights-of-way (in order to avoid redundancy of cultural resource assessment activities already occurring with respect to such transmission line rights-of-way). This survey was based on a research design submitted to the Mississippi SHPO on or about September 17, 2008, and approved September 29, 2008.

The findings of this survey were detailed in a report entitled "Phase I Cultural Resource Survey of a 40-Mile CO₂ Pipeline," dated January 14, 2009. The survey identified three architectural resources that it deemed eligible for listing on the NRHP but determined that they would not be adversely affected by the pipeline. The survey also identified a total of 33 archaeological sites, concluding that one was eligible for listing on the NRHP and 13 were potentially eligible. Finally, the survey identified a potential "rural historic landscape" in the vicinity of the historic oil/gas fields of Heidelberg, Mississippi, but determined that, given the pipeline's compatibility with such a landscape, there would be no adverse impact.

On March 10, 2009, the Mississippi SHPO concurred with NSA's determinations regarding eligibility and adverse affect with respect to the aforementioned sites and landscape.

The foregoing survey did not encompass a four-mile-long length of the pipeline corridor that, at the time, was unable to be surveyed due to restrictions by the current property owner within said length. Ultimately, however, the property owner granted the necessary permission and NSA surveyed the additional acreage (in addition to a proposed

construction buffer around two modern cemeteries identified in the course of the earlier assessment). In a draft report dated July 15, 2009, entitled Addendum: Phase I Archaeological Survey of a 40-Mile CO₂ Pipeline, NSA concluded that no resources eligible for listing on the NRHP were present in the areas surveyed.

4. Transmission Lines (Upgrades)

Between June and November 2008, Tennessee Valley Archaeological Research (“TVAR”) conducted a Phase I cultural resource survey with respect to the proposed transmission line upgrades (encompassing a linear distance of approximately 27 miles). Survey activities occurred within the existing 100’ rights-of-way. In addition, structures within 100 feet of the edges of the rights-of-way were examined. This survey occurred pursuant to a revised research design dated June 30, 2008, and revised August 14, 2008, that was approved by the Mississippi SHPO on August 25, 2008.

The results of that survey were detailed in a report entitled “A Cultural Resource Management Survey of Existing Transmission Lines to be Upgraded in Association with the Mississippi Power KCIP Project in Kemper and Lauderdale Counties, Mississippi,” dated March 2009. The report stated that 23 archeological sites and 137 structures were discovered during the course of the survey. The report concluded that five of the sites were potentially eligible for listing on the NRHP. Although four of the structures were deemed to be potentially eligible, the report concluded that, given that the existing ROW will not be expanded nor will the transmission line heights be increased, no adverse effect will occur to such structures.

5. Transmission Lines (New)

Between June and November 2008, TVAR conducted a Phase I cultural resource survey with respect to the proposed new transmission lines (encompassing a linear distance of approximately 66 miles). Survey activities occurred within projected 200’-wide corridors. Additionally, structures within 100 feet of the edges of the proposed rights-of-way were identified and assessed. This survey occurred pursuant to a revised research design dated June 30, 2008, and revised August 14, 2008, that was approved by the Mississippi SHPO on August 25, 2008.

The results of this survey were detailed in a report entitled “A Cultural Resource Management Survey of the Proposed New Transmission Lines Associated with the Mississippi Power KCIP Project in Kemper and Lauderdale Counties, Mississippi,” dated February 2009. That report stated that 27 archaeological sites had been discovered and concluded that two of them were potentially eligible for listing on the NRHP. The report also identified twenty-three existing structures within the APE; it concluded, however, that none of the structures identified in the survey were potentially eligible for listing on the NRHP.

It should also be noted that a portion of the aforementioned CO₂ pipeline will be co-located with these transmission lines; specifically, approximately 21 miles of CO₂

pipeline that will be co-located with the western feeder transmission line. Thus, the survey work associated with that transmission line also provided the assessment necessary with respect to that 21-mile stretch of the CO2 pipeline.

6. Natural Gas Pipelines

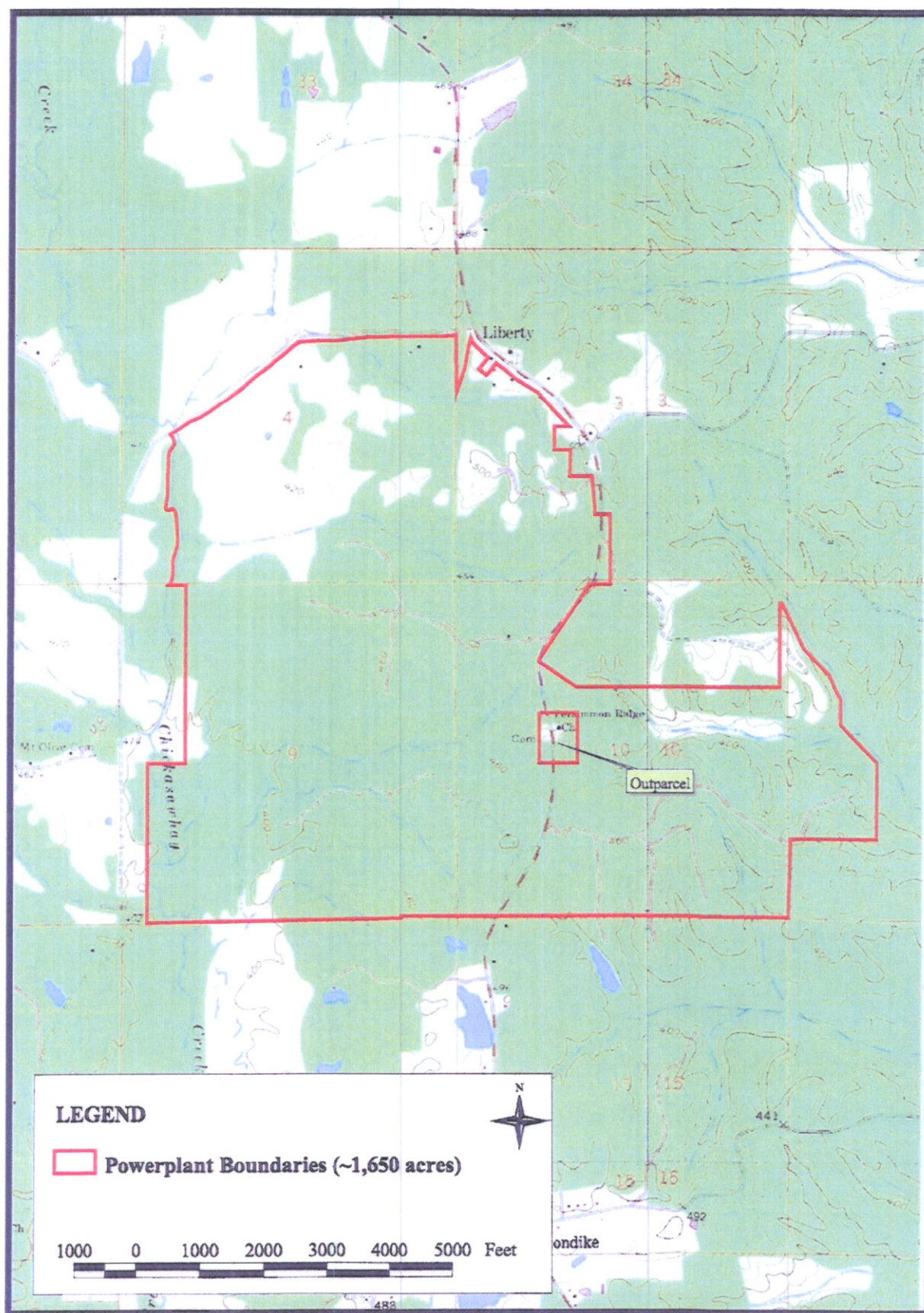
Between August 27 and September 19, 2008, TVAR conducted a Phase I cultural resource survey with respect to the proposed natural gas pipeline (encompassing a linear distance of 5.76 miles), associated access roads, and a 10-acre metering station. Survey activities for the pipeline occurred within the projected 200'-wide right-of-way corridor; surveys for the access roads encompassed 15 meters on each side of the roads' centerlines. Additionally, structures within 100 feet of the edges of the proposed right-of-way were identified and assessed.

TVAR detailed the results of the survey in a report entitled "A Cultural Resource Management Survey of a Proposed New Natural Gas Line, Access Roads, and Liberty Metering Site Associated with the Mississippi Power KCIP Project in Kemper County, Mississippi," dated January 2009. That report stated that three archaeological sites were discovered but concluded that none were eligible for listing on the NRHP. The report reached the same conclusion with respect to historic structures identified during the survey.

7. Reclaimed Effluent Water Pipeline

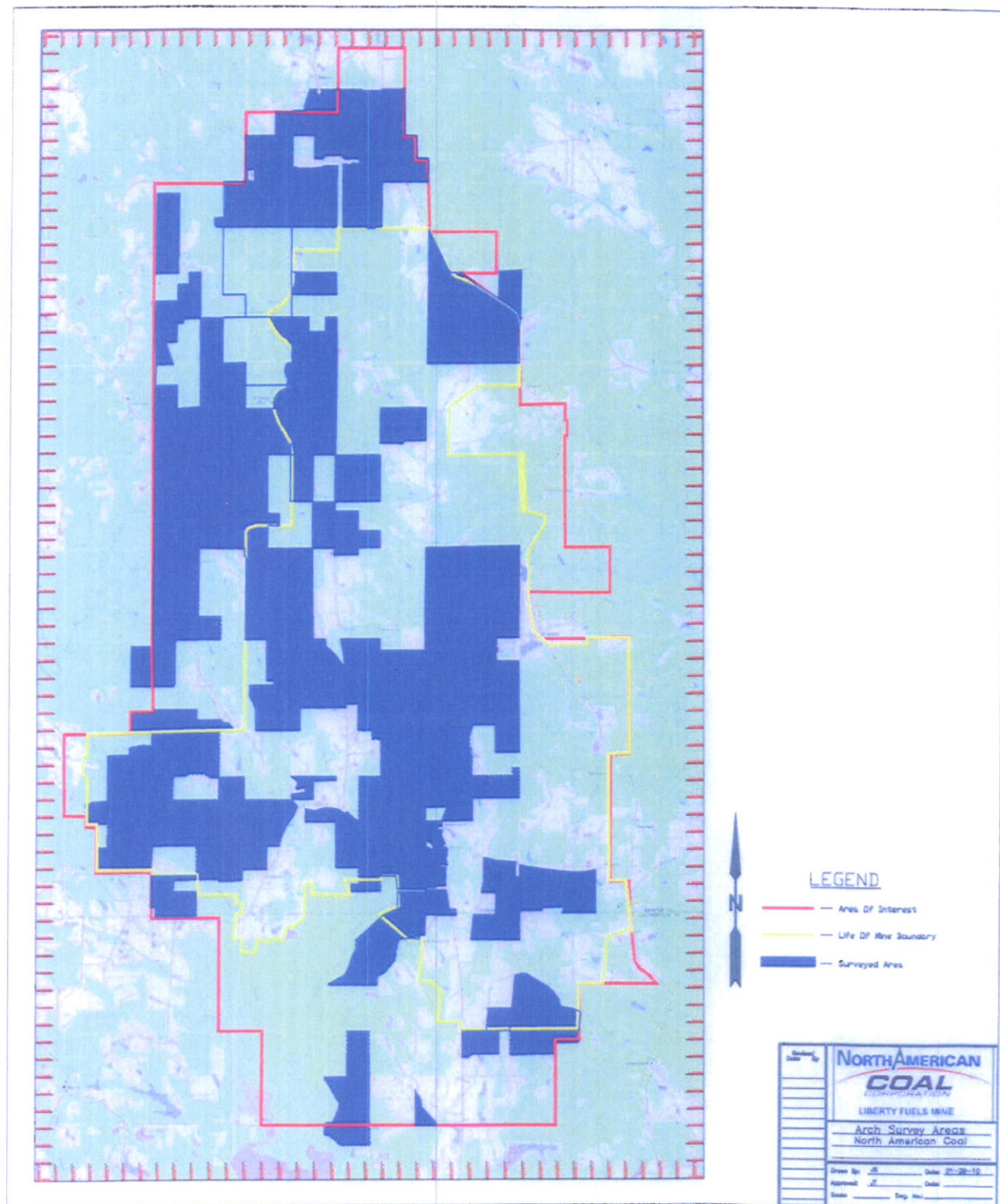
The Undertaking will include the construction of a 45-mile-long reclaimed effluent water pipeline. This pipeline, which will run underground, will be co-located with the eastern feeder of the new transmission lines discussed above. Accordingly, much of the survey work associated with that transmission line also provided the assessment necessary with respect to the reclaimed effluent water pipeline. However, 13.5 miles of the 45 miles of pipeline will not be co-located with the aforementioned eastern feeder to the transmission line. Accordingly, that 13.5-mile stretch was surveyed separately by New South Associates as documented in a report entitled "Phase I Cultural Resource Survey of a 13.5-Mile Water Pipeline," dated December 2, 2009. That report stated that one previously recorded archaeological site was located within the survey area and was recommended to be eligible for listing on the NRHP. A previously unrecorded archaeological site was also discovered; it, however, was recommended as not eligible for listing on the NRHP. Finally, eight architectural resources were encountered that were in excess of 50 years of age. Although five of those resources were recommended as eligible, it was also recommended that the underground pipeline would be unlikely to have an adverse visual effect on those five resources.

EXHIBIT B



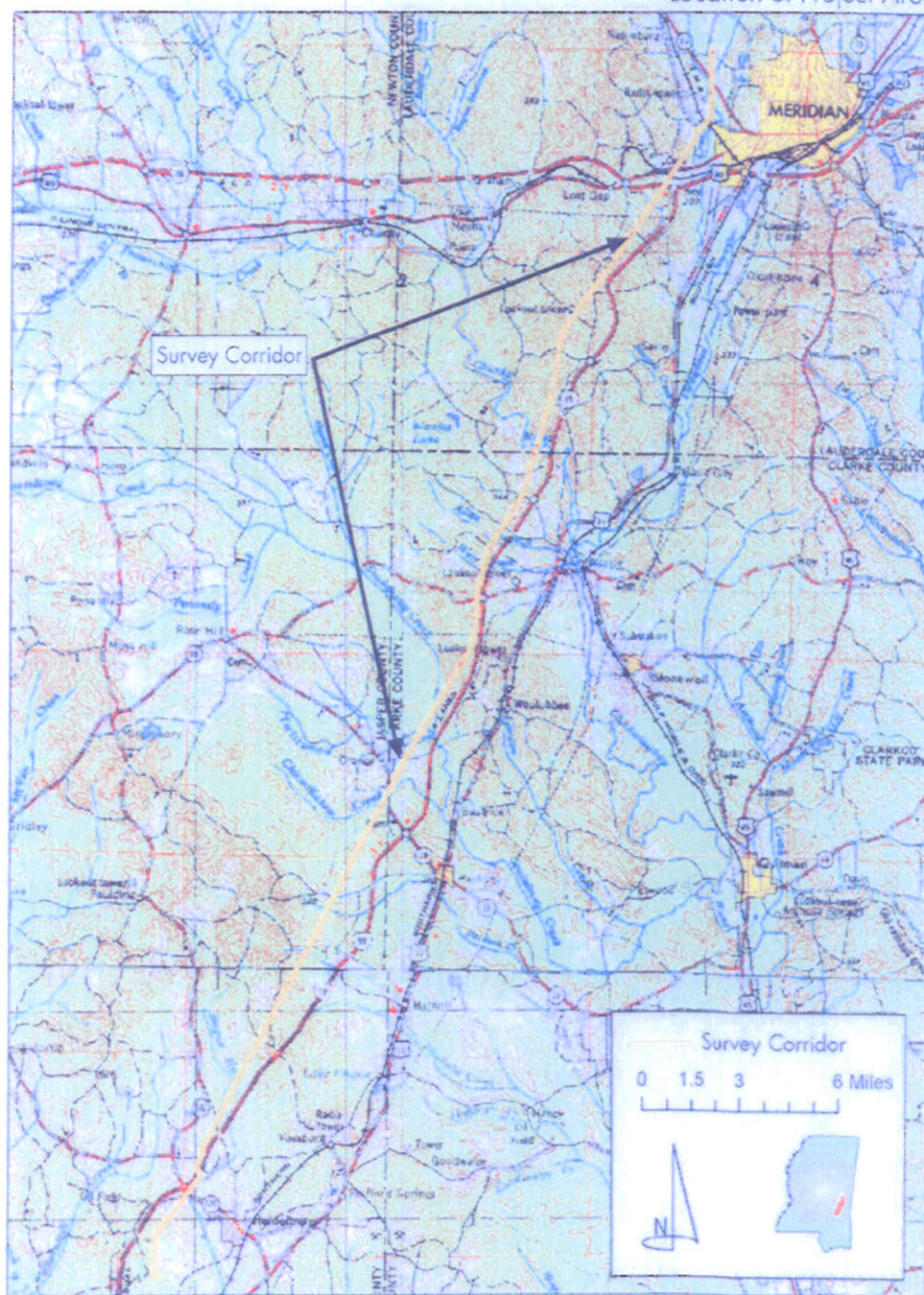
Base Maps: Moscow and Lauderdale NW USGS 7.5-minute topographic quadrangles

APE of Liberty Fuels Mine



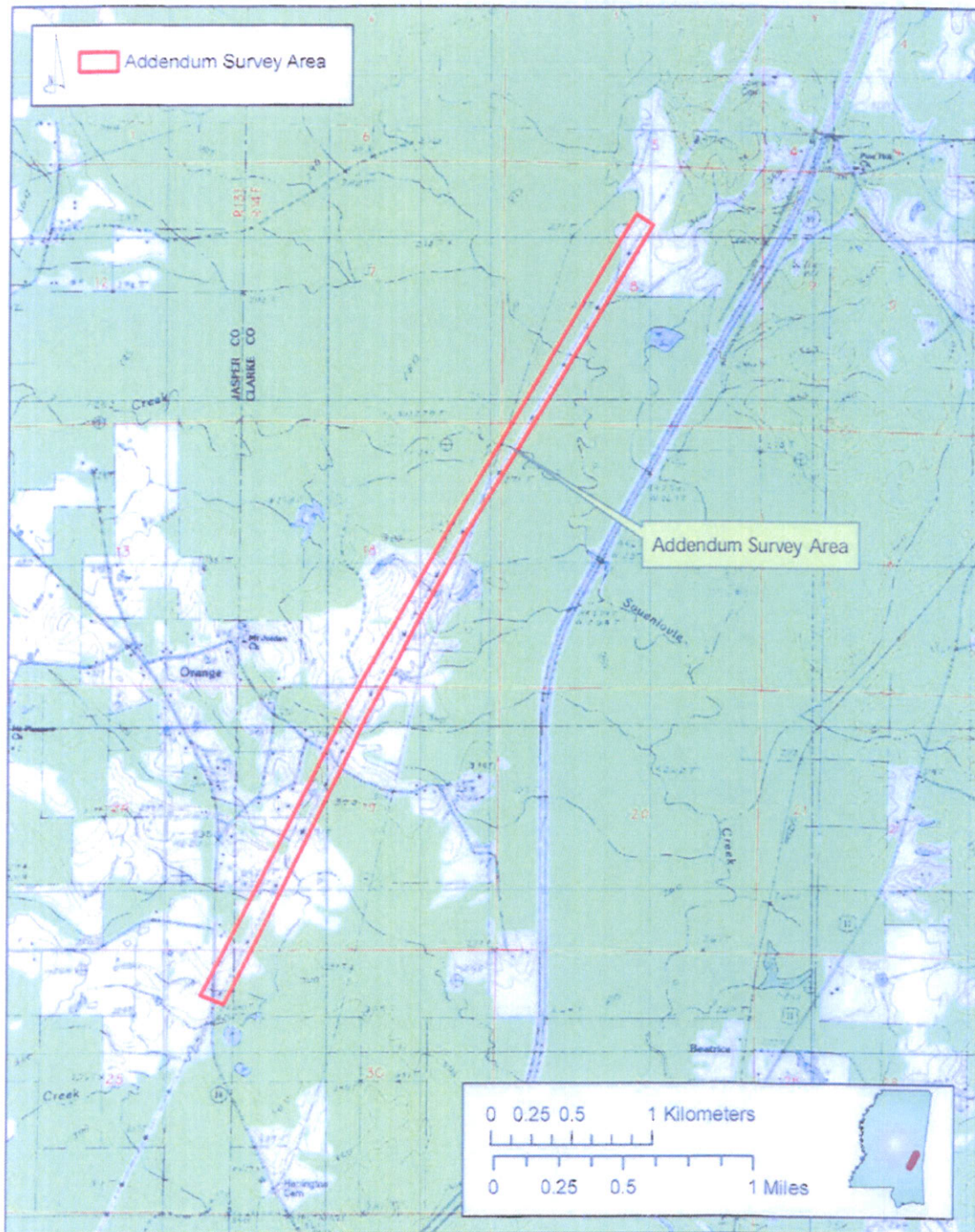
Base Maps: Lauderdale, Moscow, Center Hill and Daleville 7.5-minute topographic quadrangles

Figure 1.
Location of Project Area



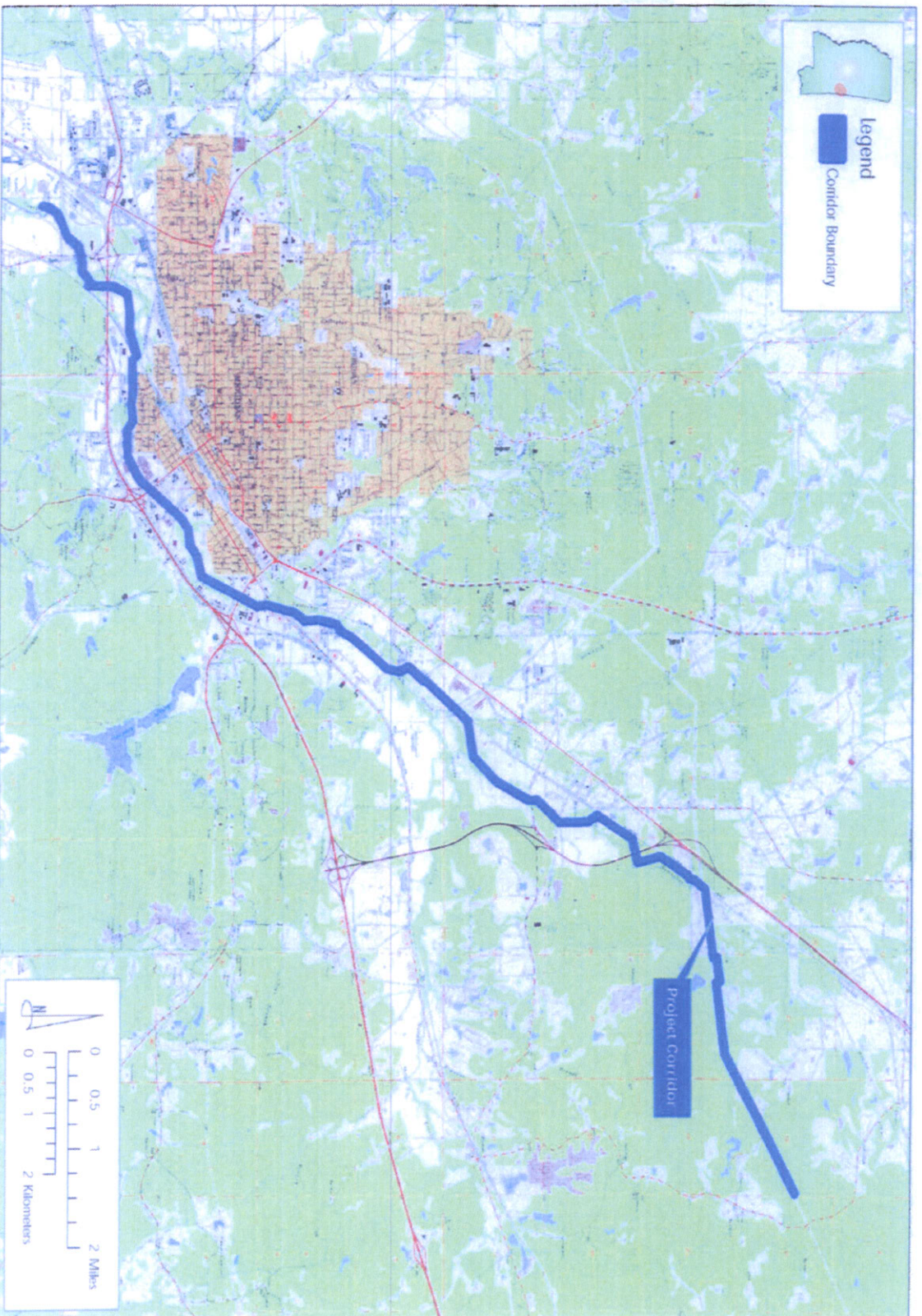
Source: 1983 USGS Quadrangles, Collinsville, Heidelberg, Meehan, Meridian, Pachuta, Rose Hill
Sandersville, Stonewall, Wairup, Mississippi

APE of CO2 Pipeline (addendum)



Source: USGS Quadrangle Pachuta, Mississippi

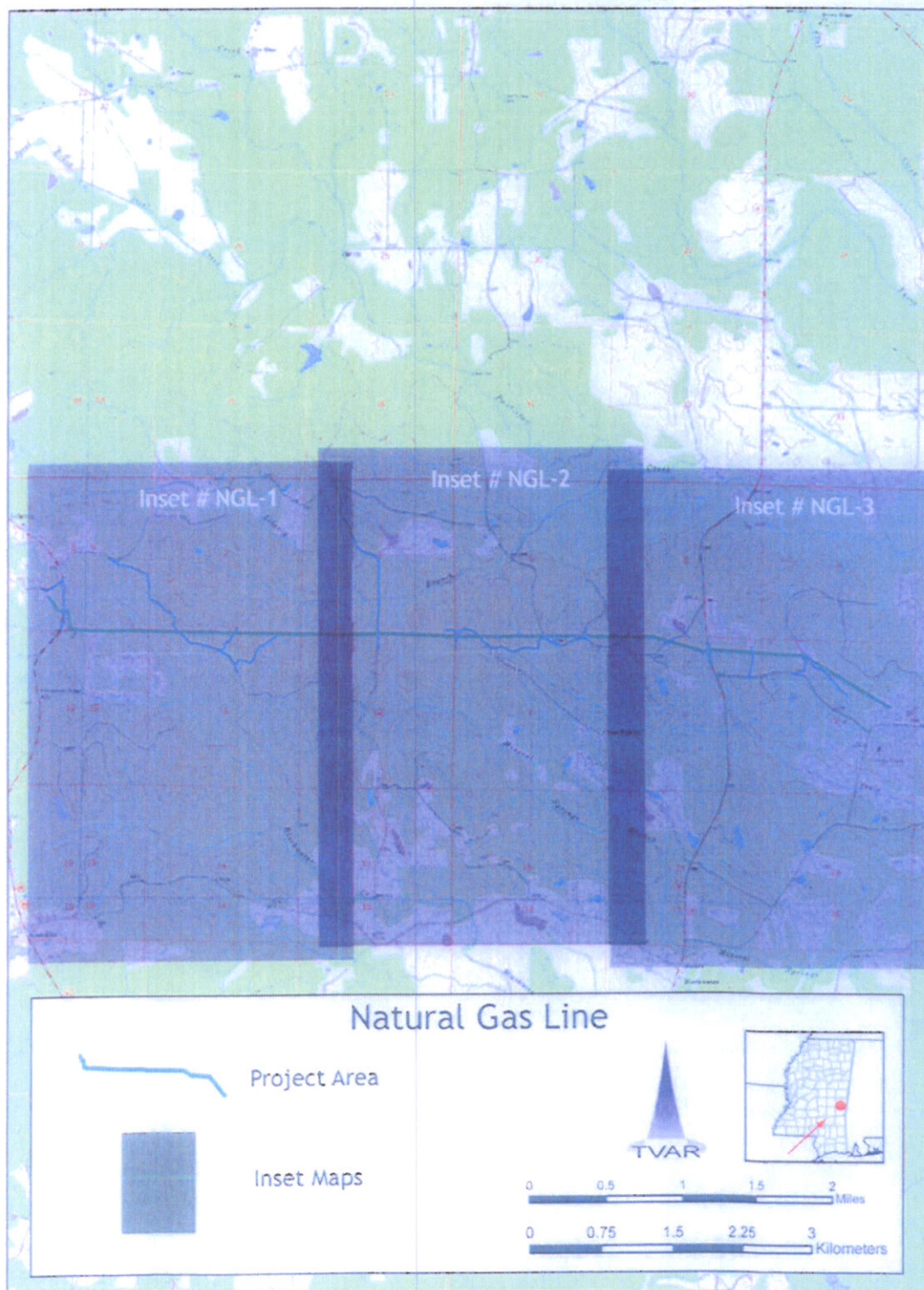
13.5-Mile Water Pipeline Corridor



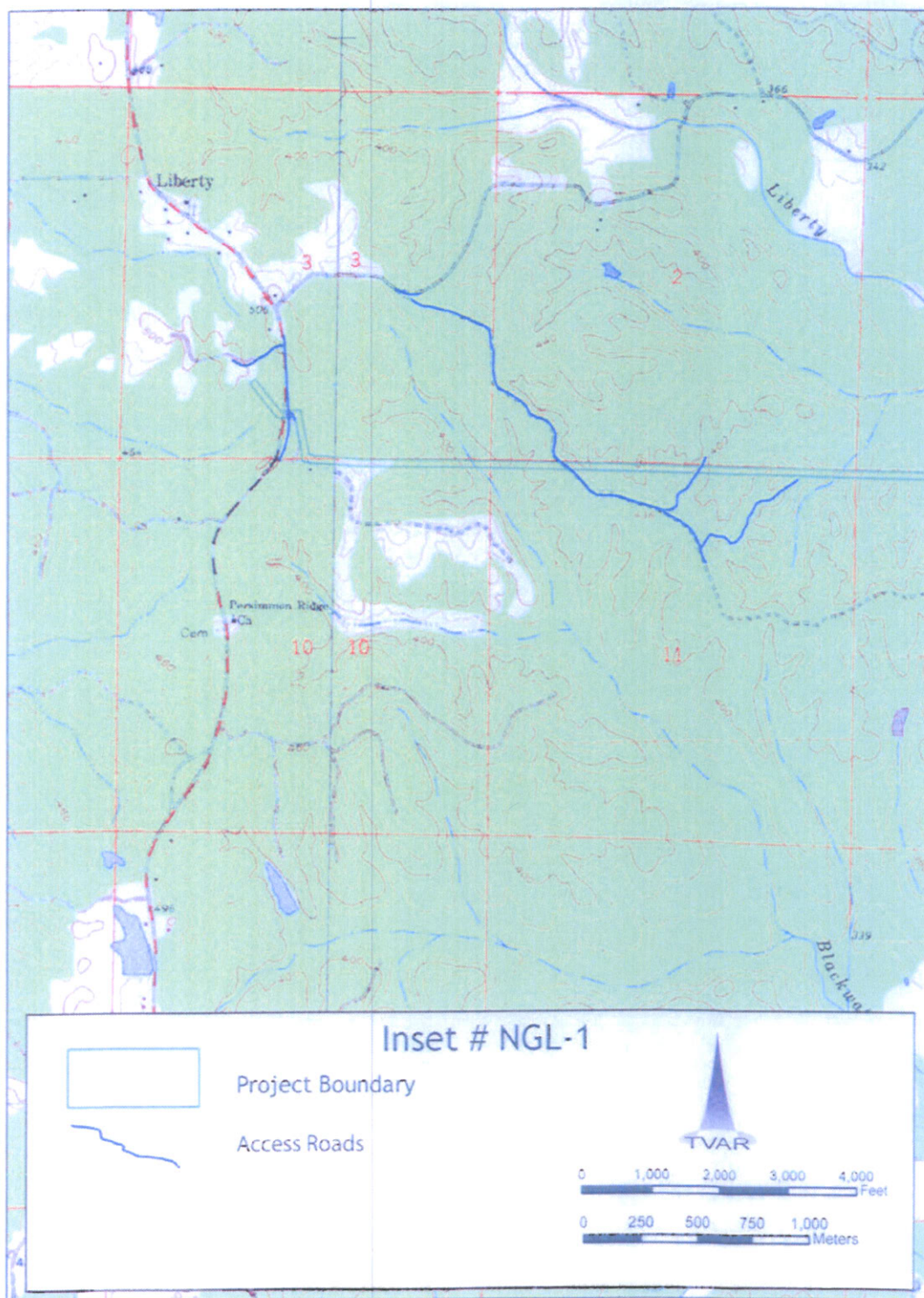
Base maps: USGS 7.5 minute quadrangles Meridian North 1982, Toomsuga 1982, Vimville 1973, and Meridian South 1980

APE of Natural Gas Line

Tennessee Valley Archaeological Research - 2



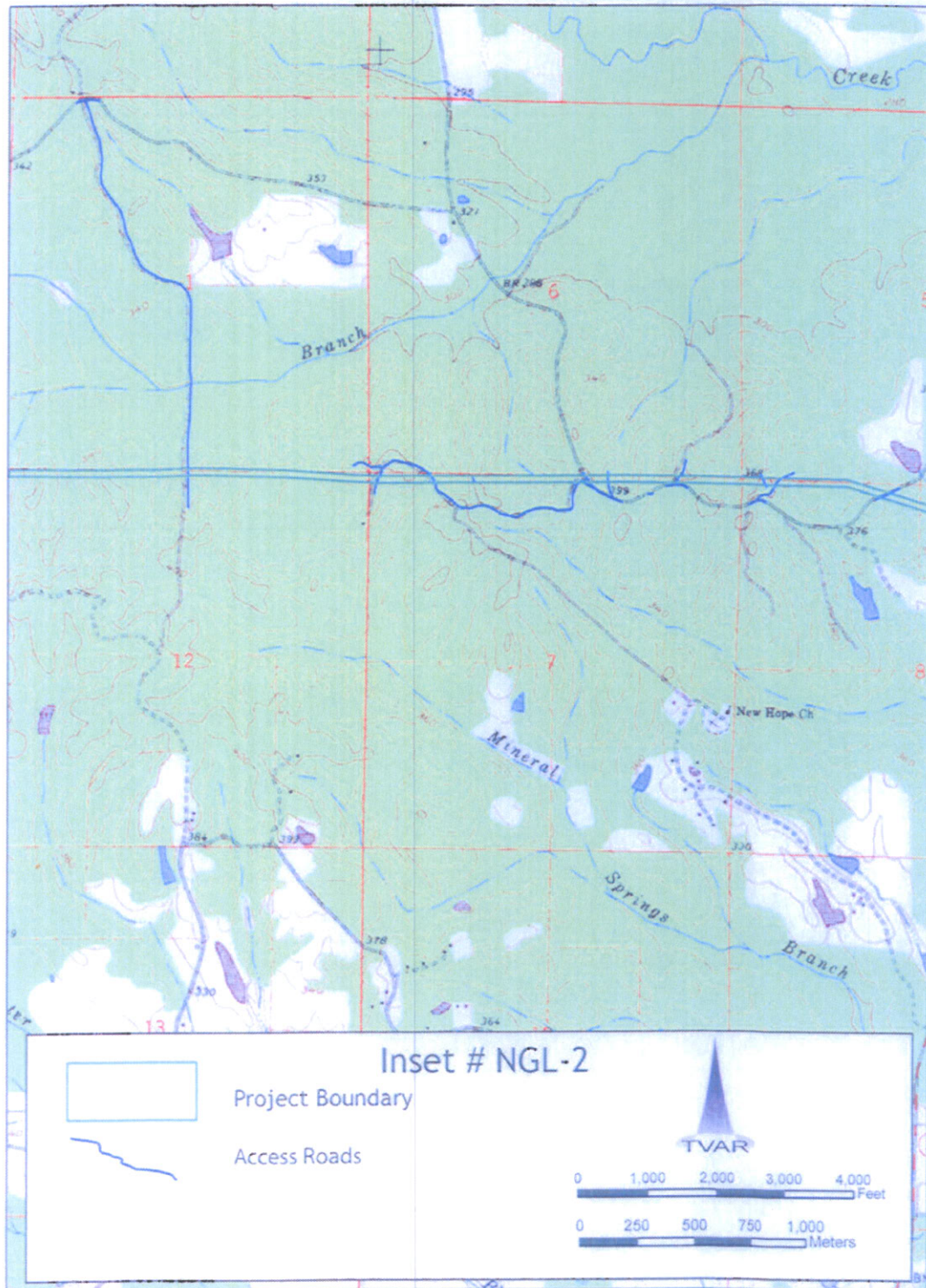
Base maps: USGS 7.5-minute quadrangles Moscow and Lauderdale NW



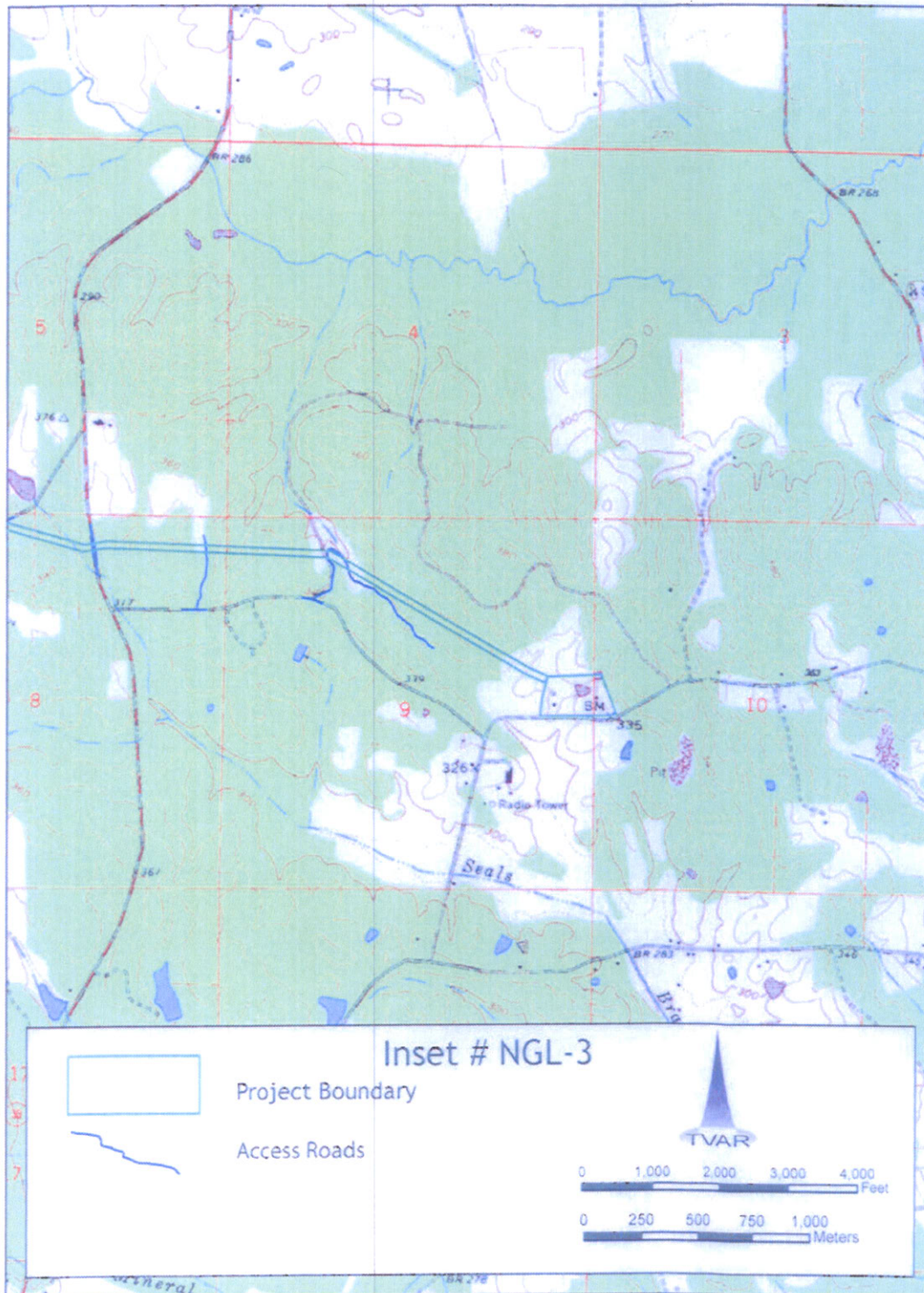
Base maps: USGS 7.5-minute quadrangles Moscow and Lauderdale NW

APE of Natural Gas Line Section NGL-2

Tennessee Valley Archaeological Research - 4



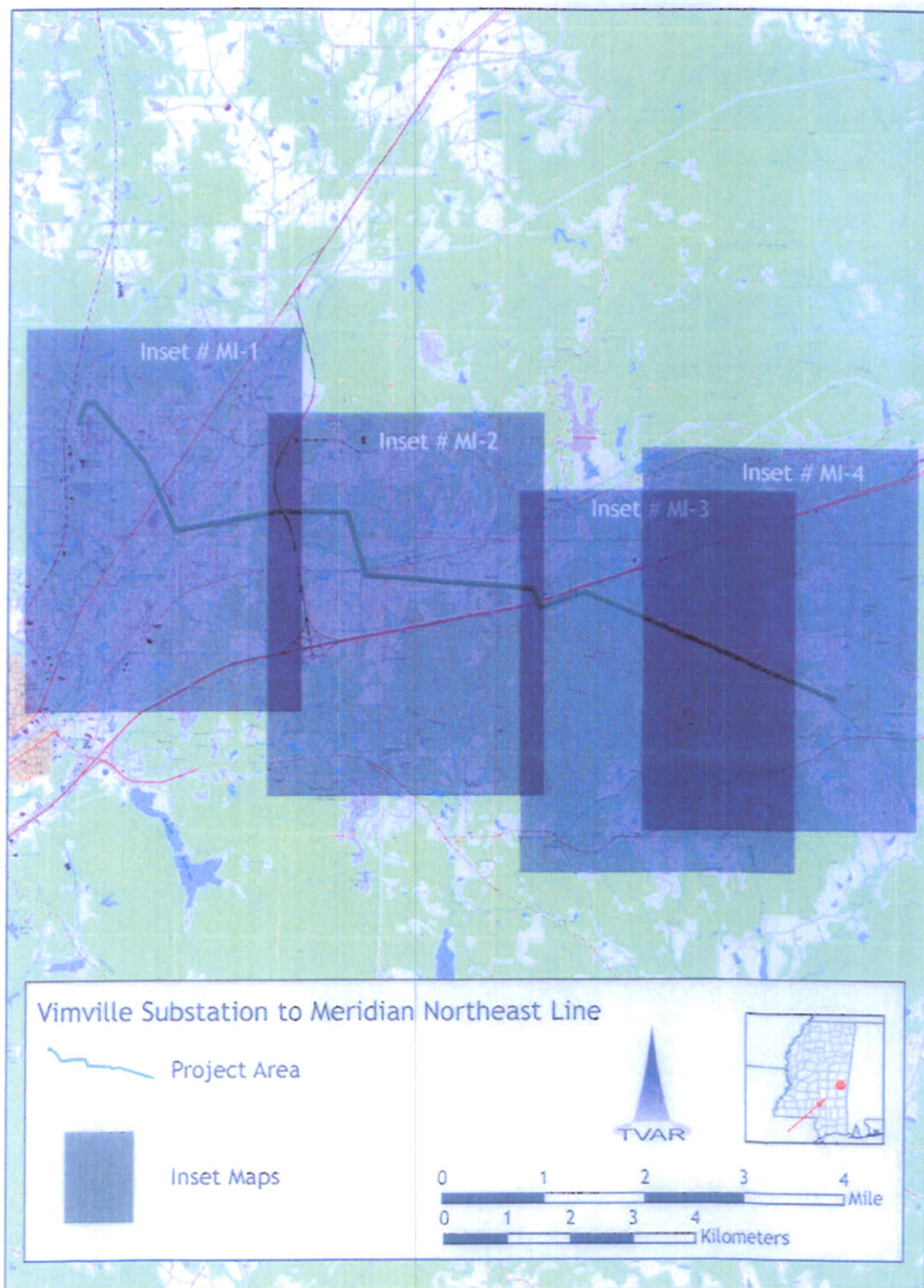
Base map: USGS 7.5-minute quadrangle Lauderdale NW



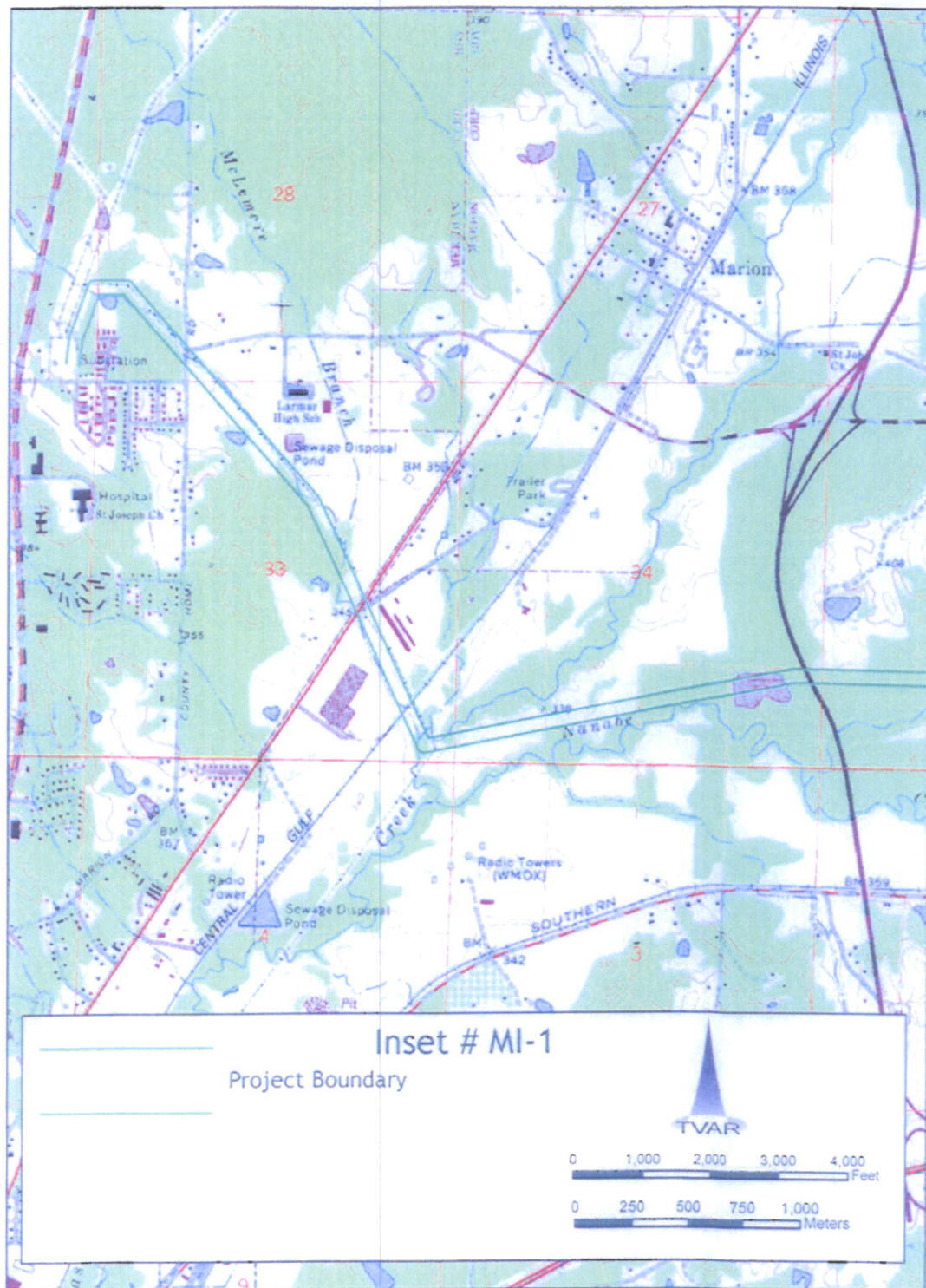
Base map: USGS 7.5-minute quadrangle Lauderdale NW

APE for Vimville Substation to Meridian Northeast Transmission Line

Tennessee Valley Archaeological Research - 24

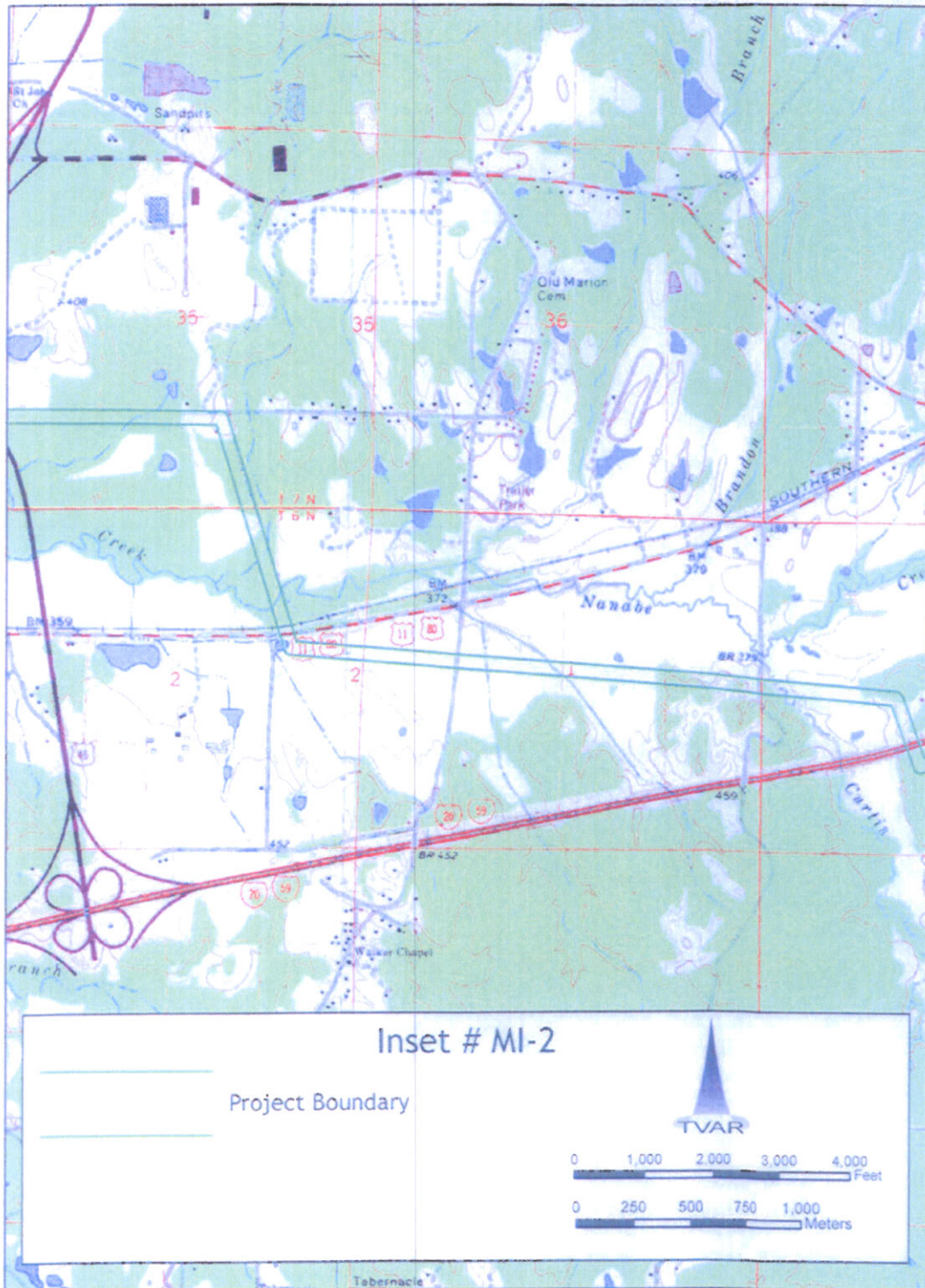


Base maps: USGS 7.5-minute quadrangles Meridian North and Toomsba



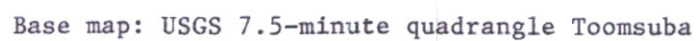
Base map: USGS 7.5-minute quadrangle Meridian North

APE for Vimville Substation to Meridian Northeast Transmission Line MI-2



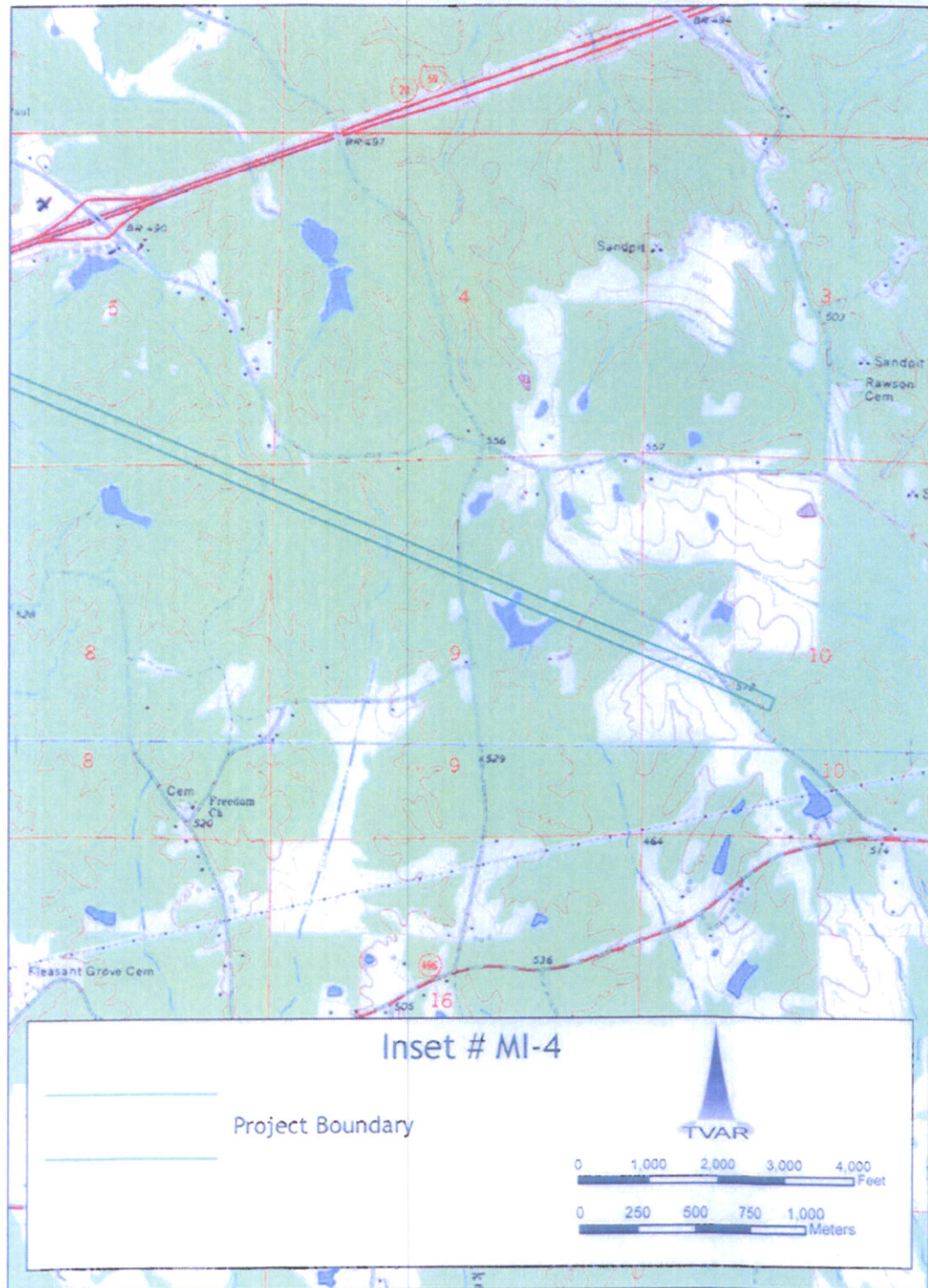
Base maps: USGS 7.5-minute quadrangles Meridian North and Toomsuba

Mississippi Power Company KCIP project - 27



APE for Vimville Substation to Meridian Northeast Transmission Line MI-4

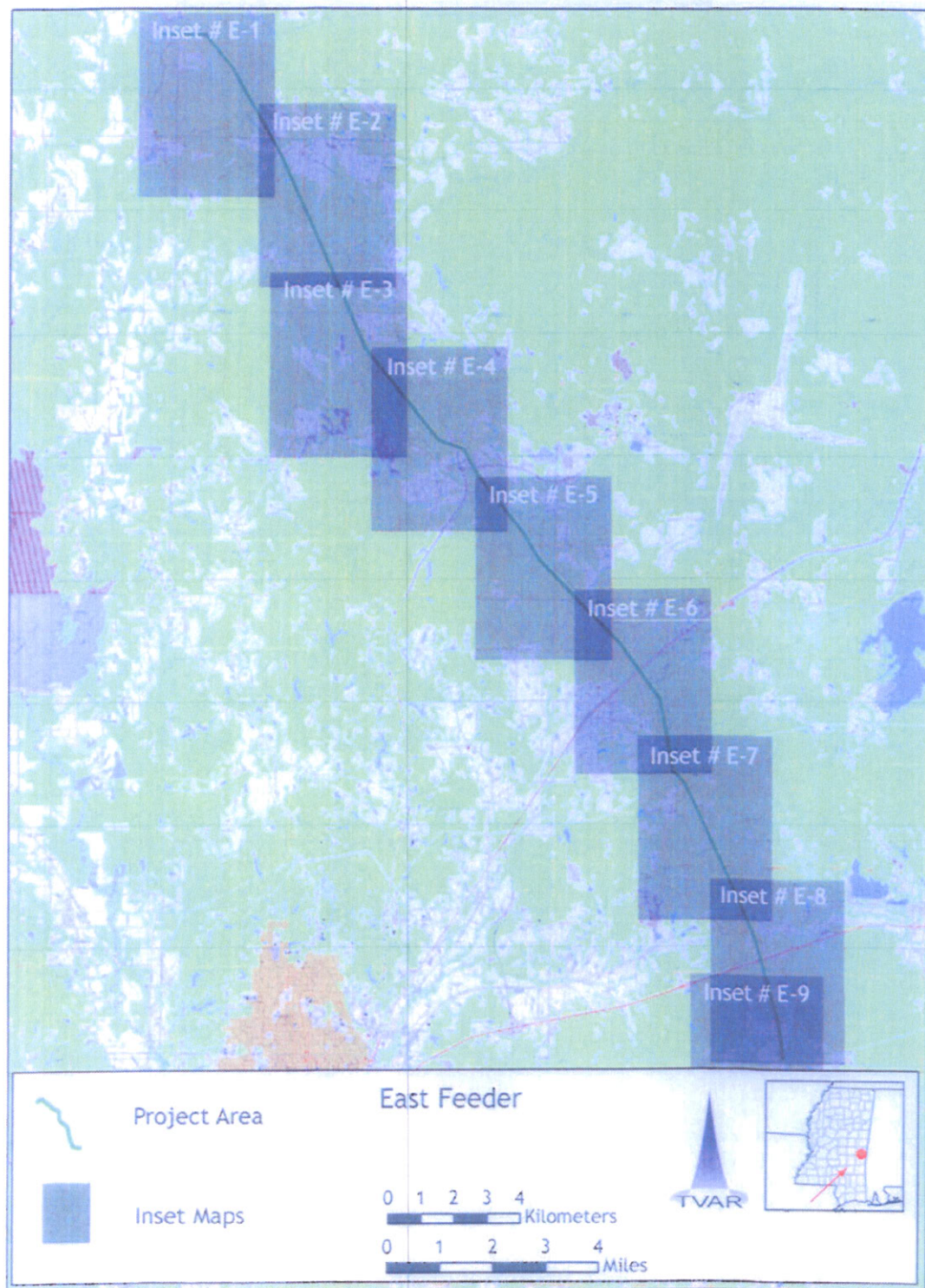
Tennessee Valley Archaeological Research - 28



Base map: USGS 7.5-minute quadrangle Toomsuba

APE for East Feeder Transmission Line

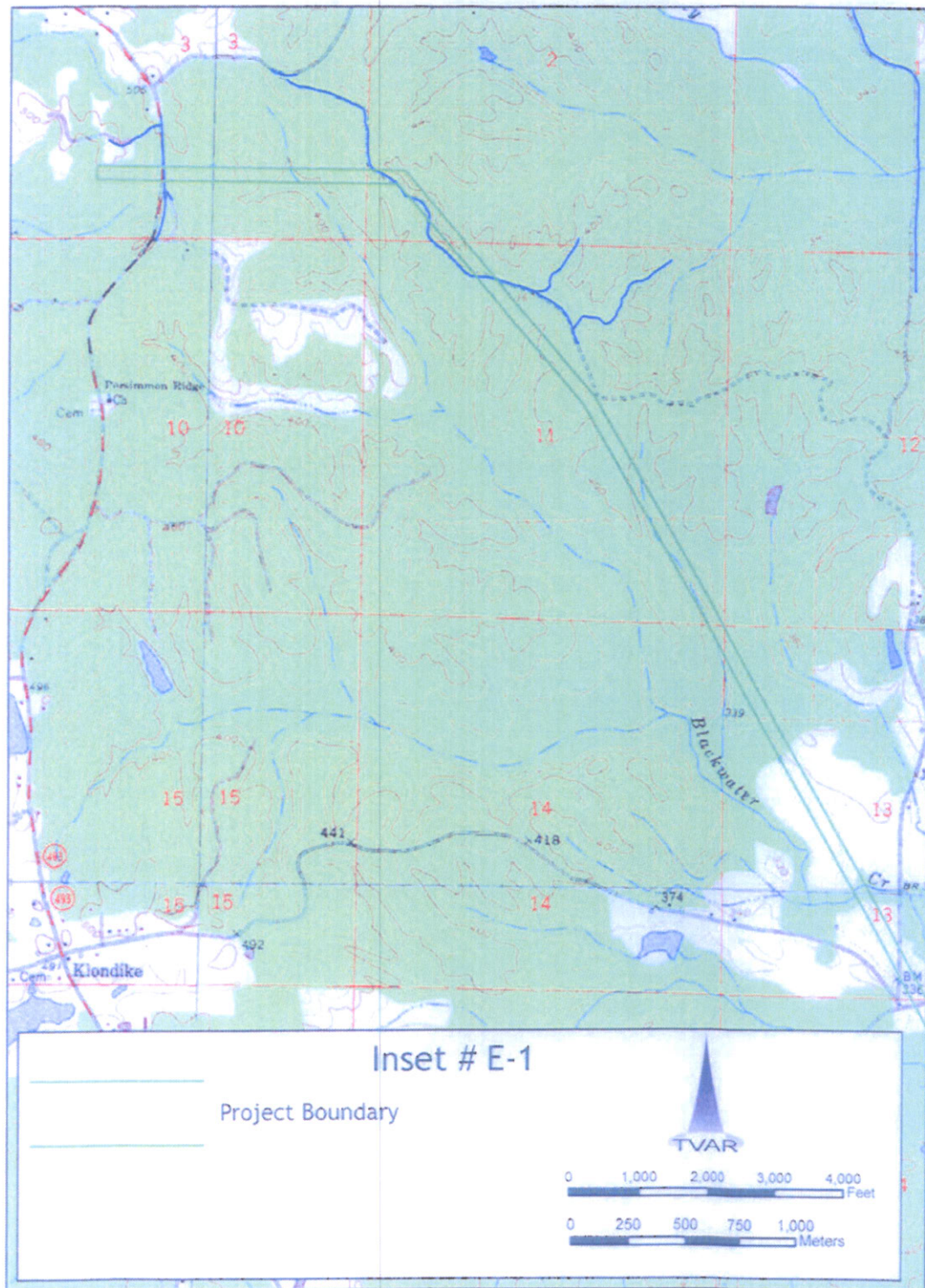
Tennessee Valley Archaeological Research - 14



Base maps: USGS 7.5-minute quadrangles Moscow, Lauderdale NW, Daleville, Lauderdale, and Toomsba

APE for East Feeder Transmission Line Section E-1

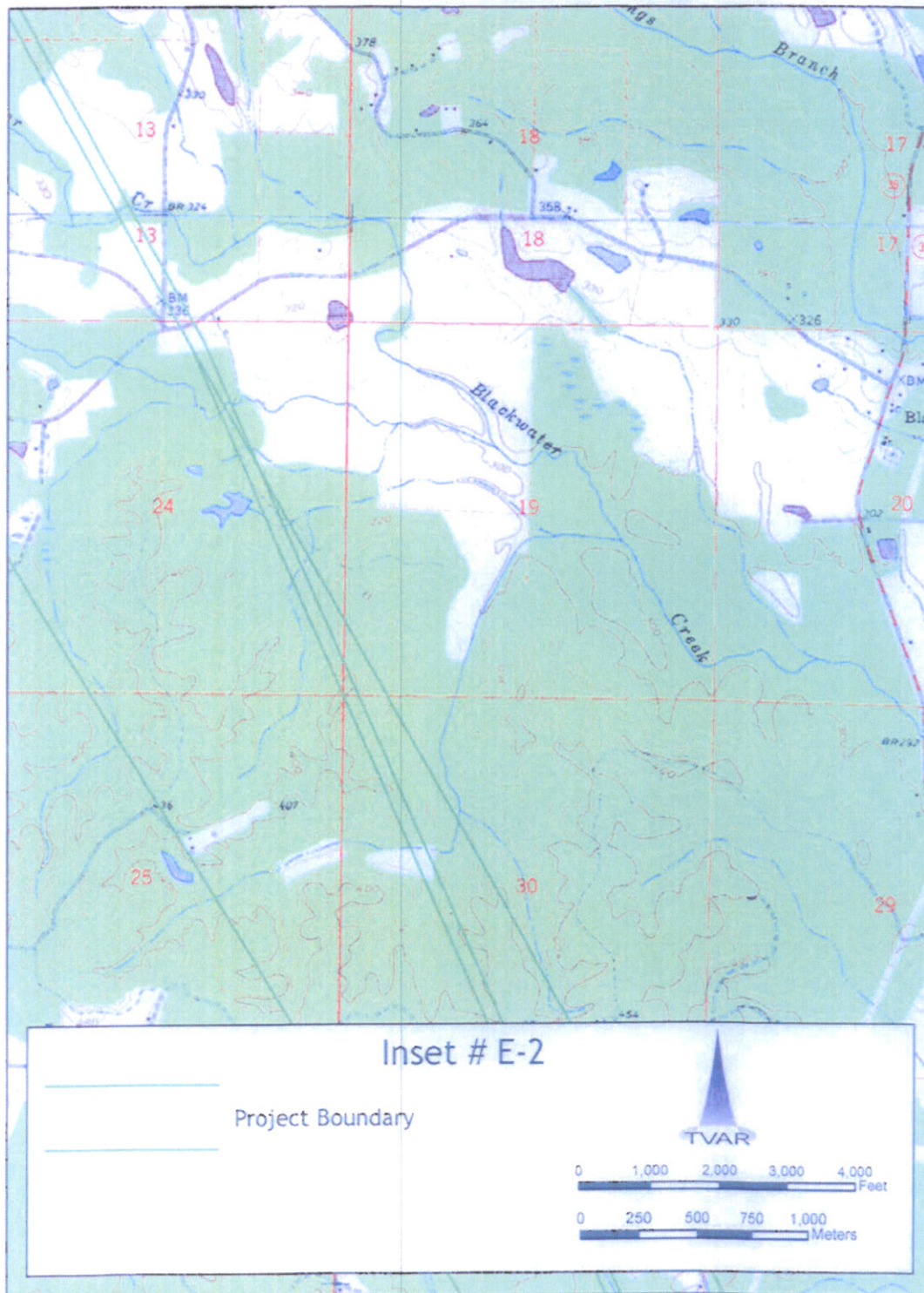
Mississippi Power Company KCIP project - 15



Base maps: USGS 7.5-minute quadrangles Moscow and Lauderdale NW

APE for East Feeder Transmission Line Section E-2

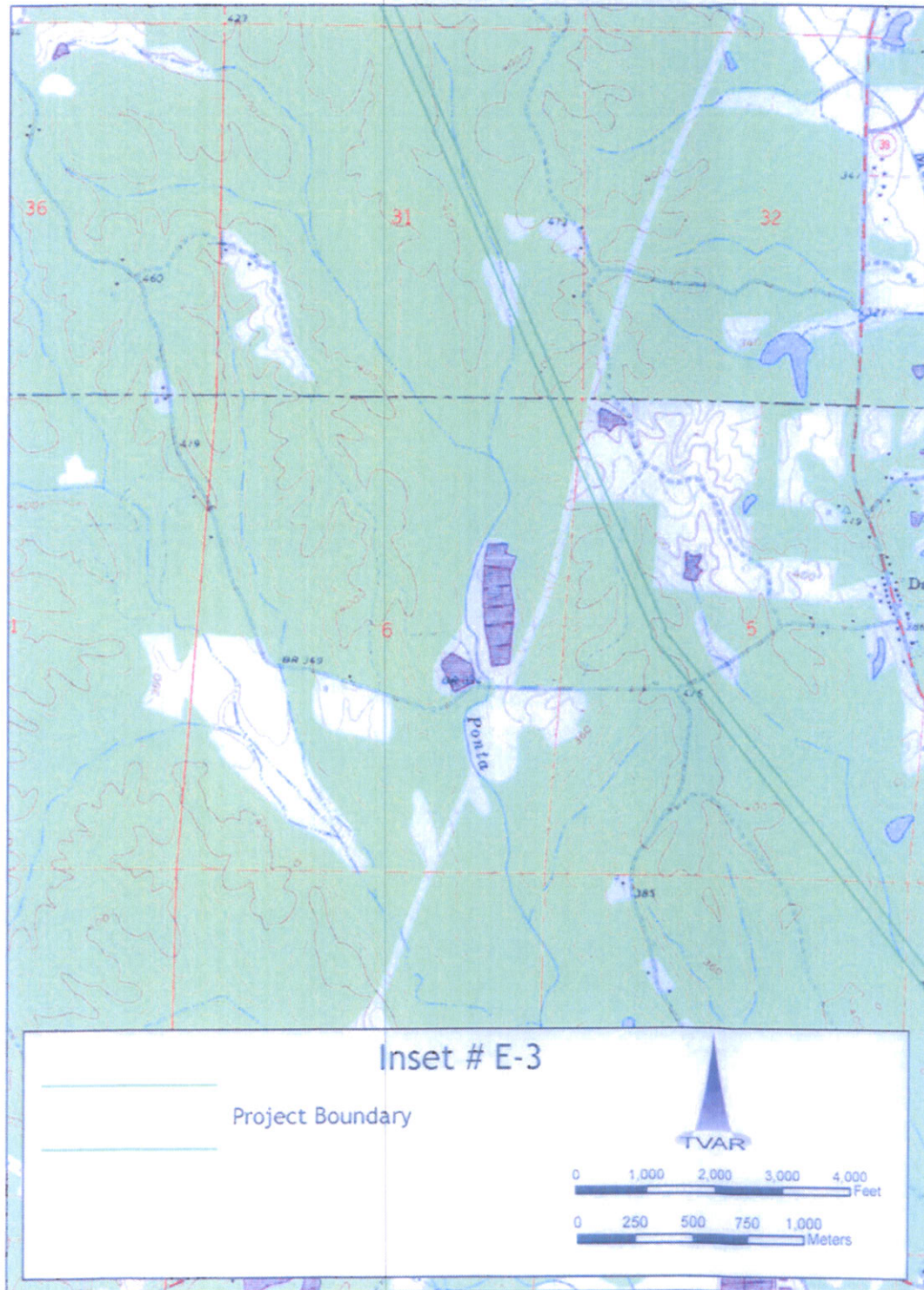
Tennessee Valley Archaeological Research - 16



Base map: USGS 7.5-minute quadrangle Daleville

APE for East Feeder Transmission Line Section E-3

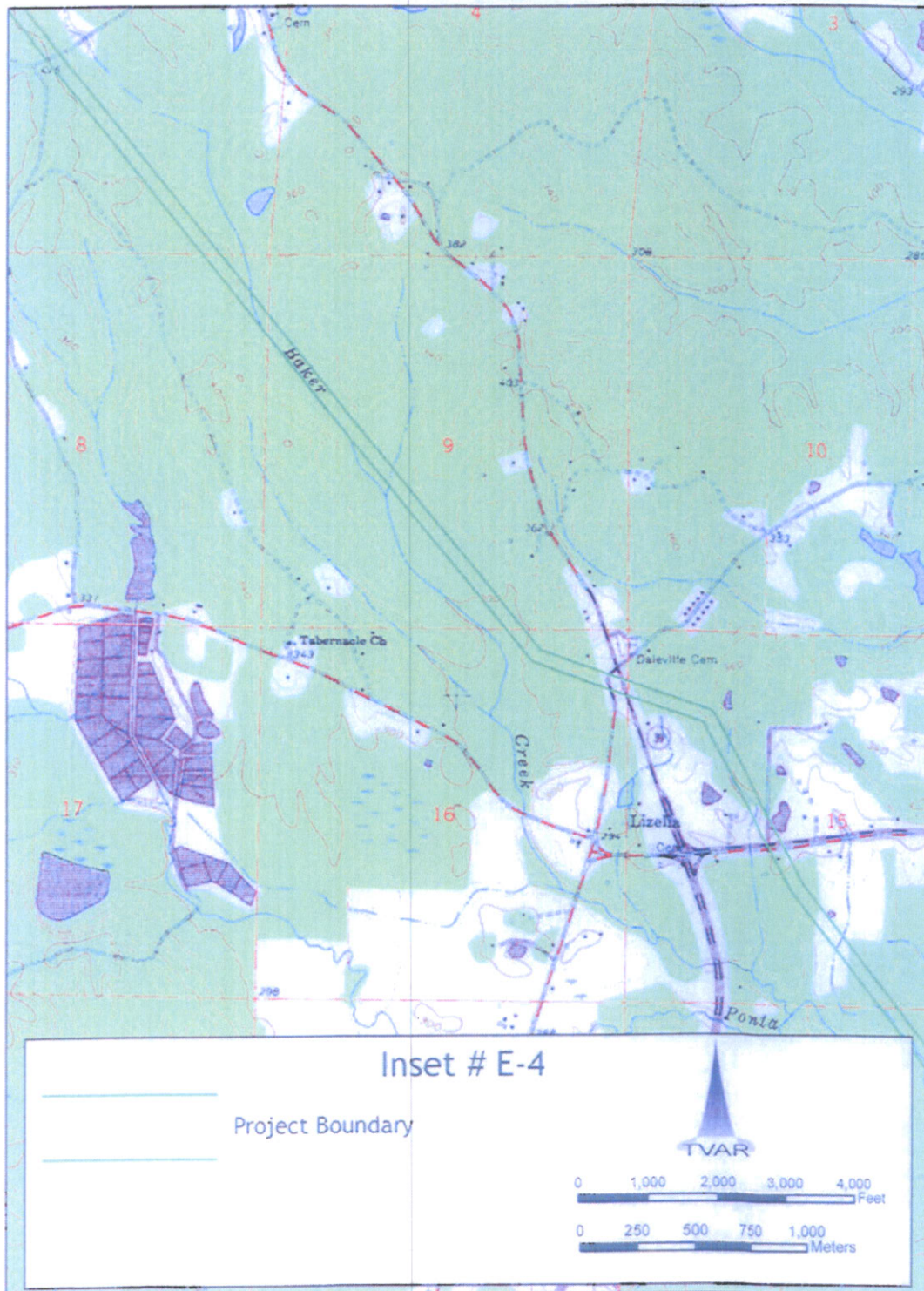
Mississippi Power Company KCIP project - 17



Base map: USGS 7.5-minute quadrangle Daleville

APE for East Feeder Transmission Line Section E-4

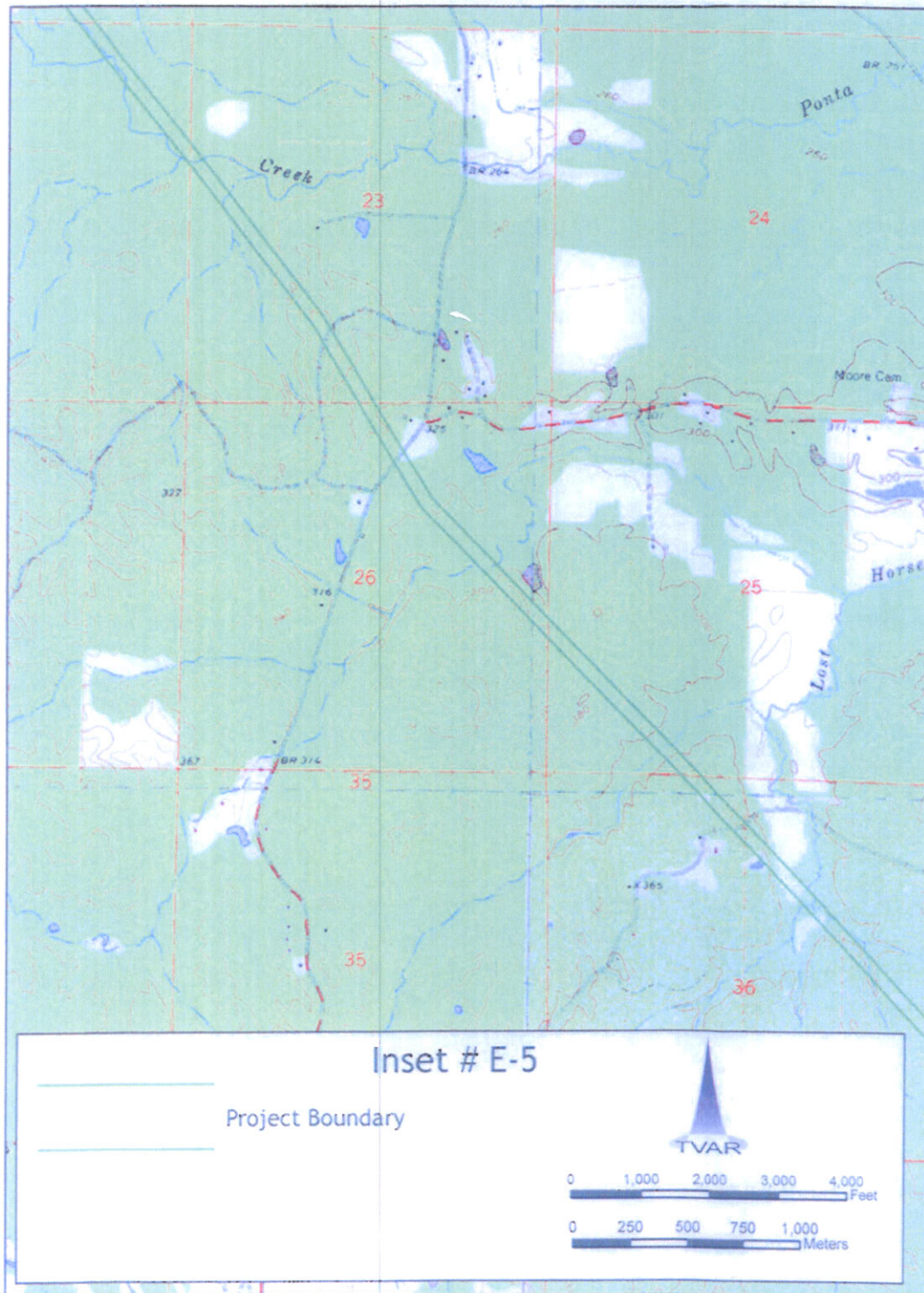
Tennessee Valley Archaeological Research - 18



Base map: USGS 7.5-minute quadrangle Daleville

APE for East Feeder Transmission Line Section E-5

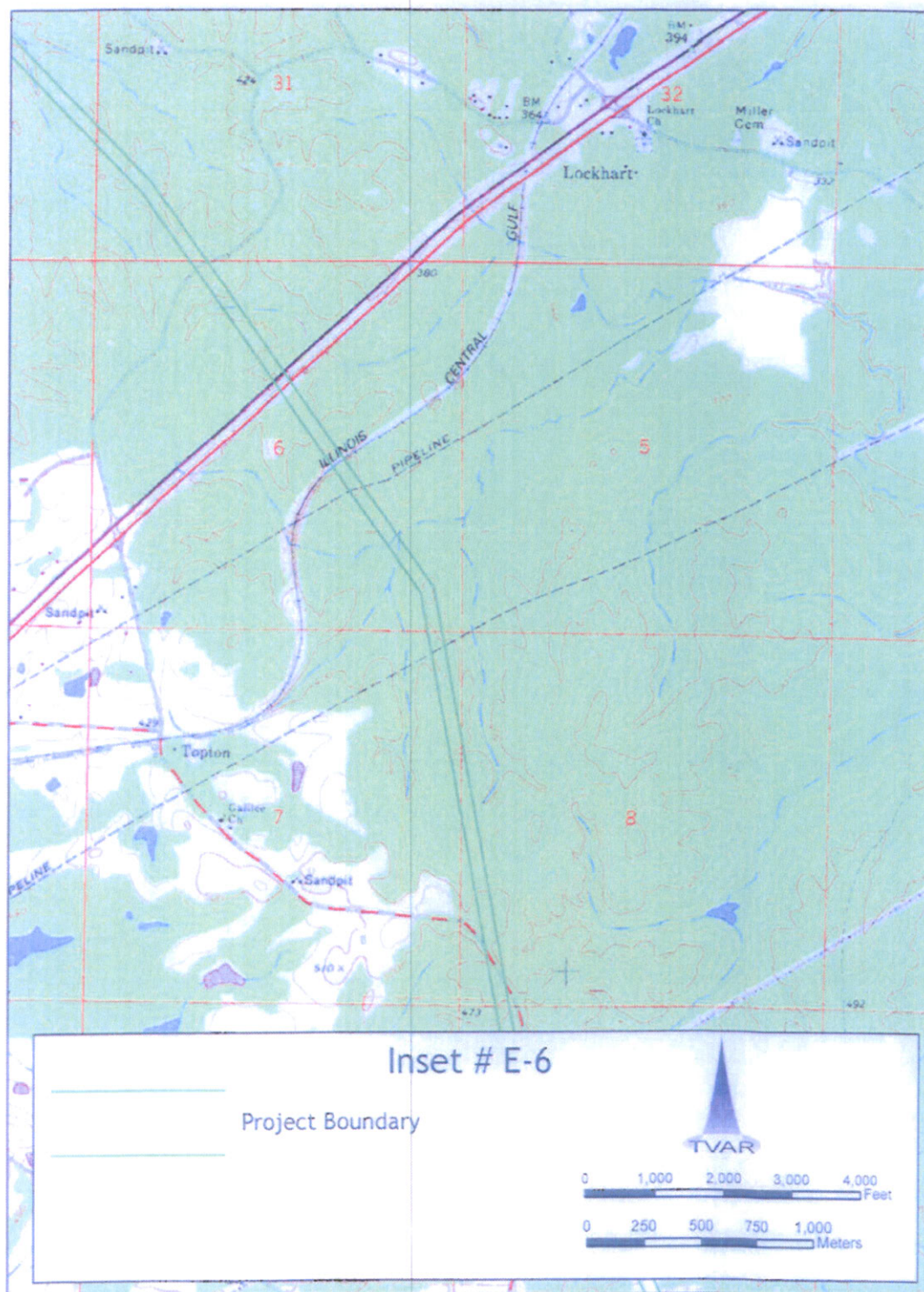
Mississippi Power Company KCIP project - 19



Base maps: USGS 7.5-minute quadrangles Daleville, Lauderdale, and Toomsba

APE for East Feeder Transmission Line Section E-6

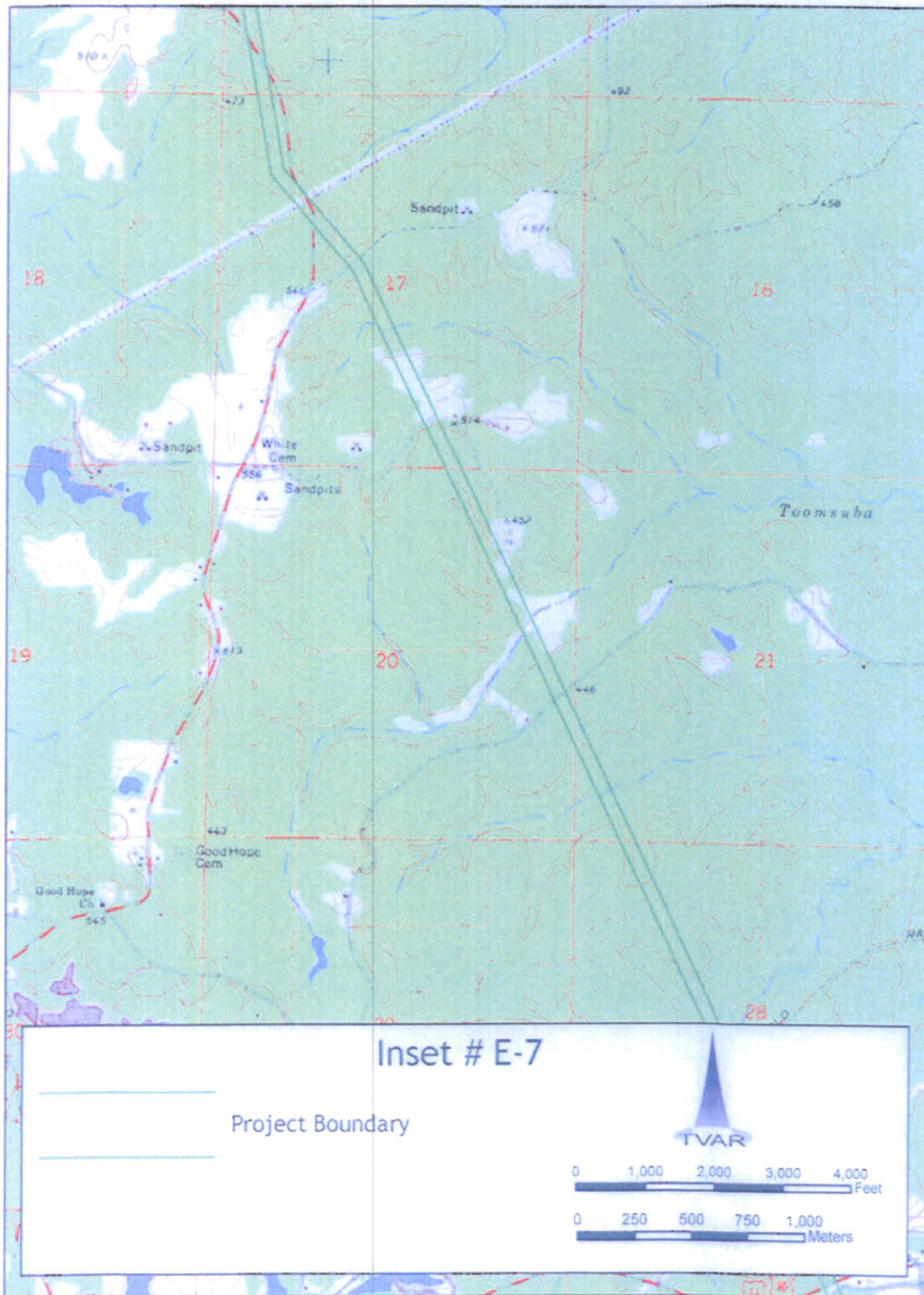
Tennessee Valley Archaeological Research - 20



Base map: USGS 7.5-minute quadrangle Toomsuba

APE for East Feeder Transmission Line Section E-7

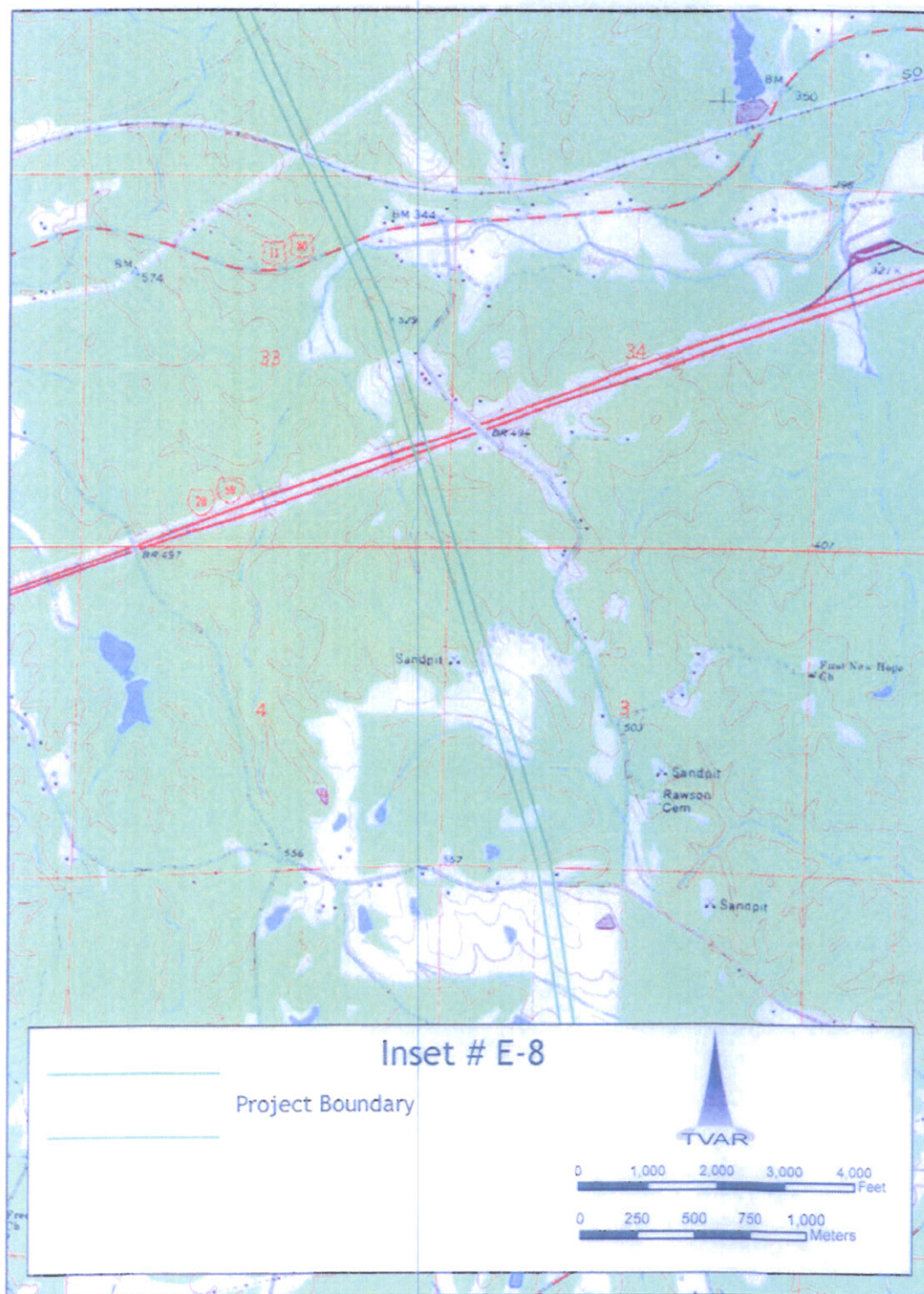
Mississippi Power Company KCIP project - 21



Base map: USGS 7.5-minute quadrangle Toomsuiba

APE for East Feeder Transmission Line Section E-8

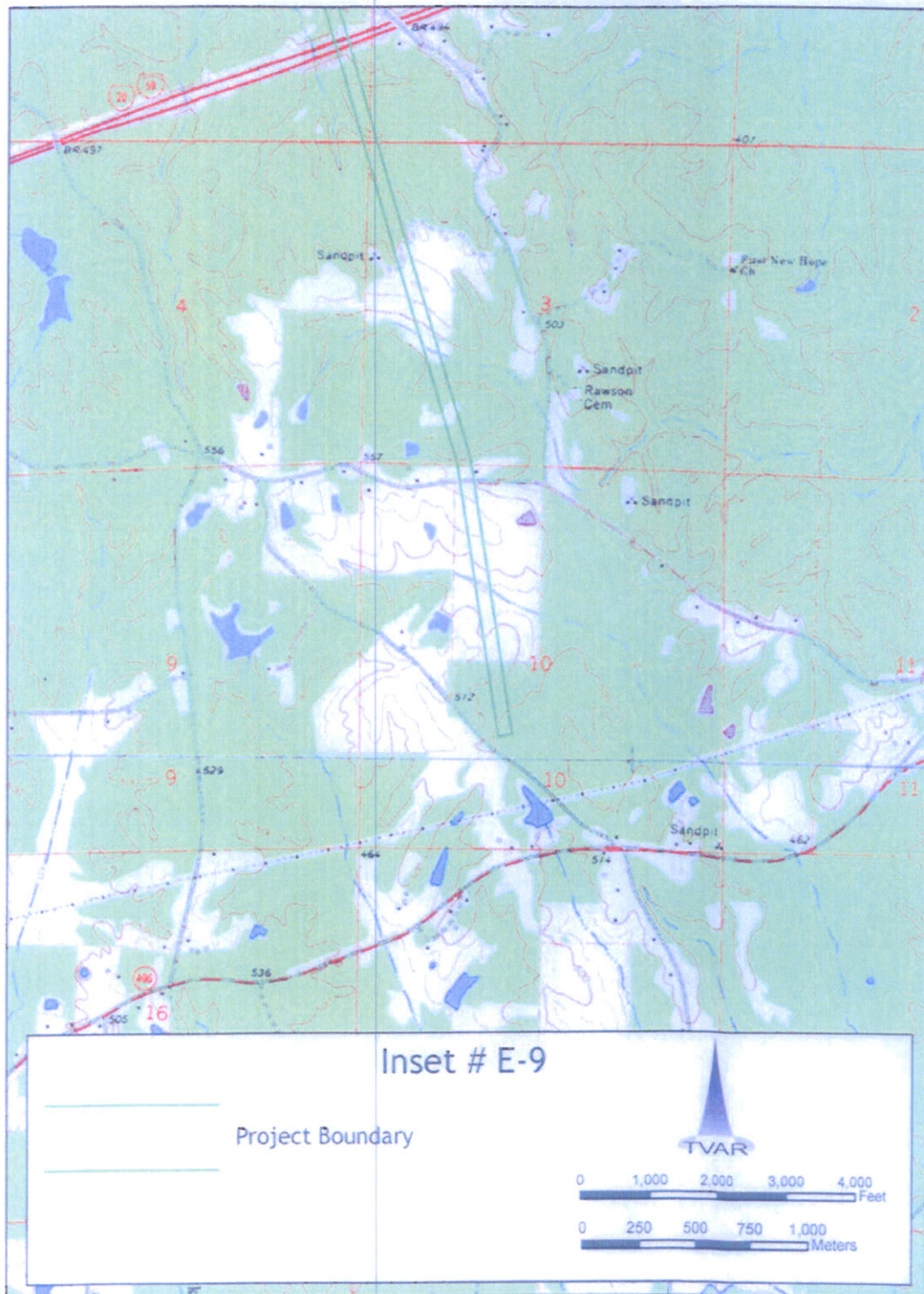
Tennessee Valley Archaeological Research - 22



Base map: USGS 7.5-minute quadrangle Toomsuba

APE for East Feeder Transmission Line Section E-9

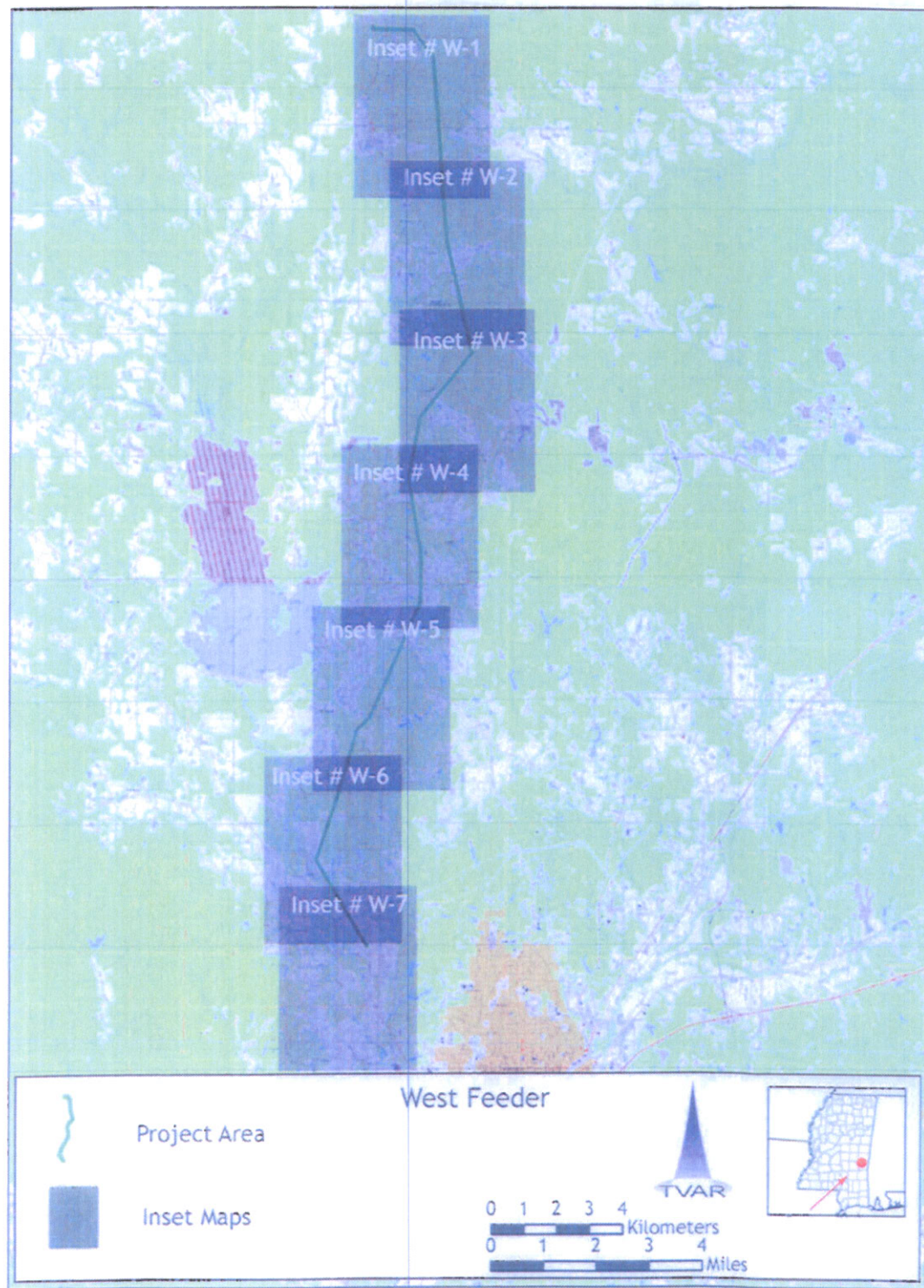
Mississippi Power Company KCIP project - 23



Base map: USGS 7.5-minute quadrangle Toomsu

APE for West Feeder Transmission Line

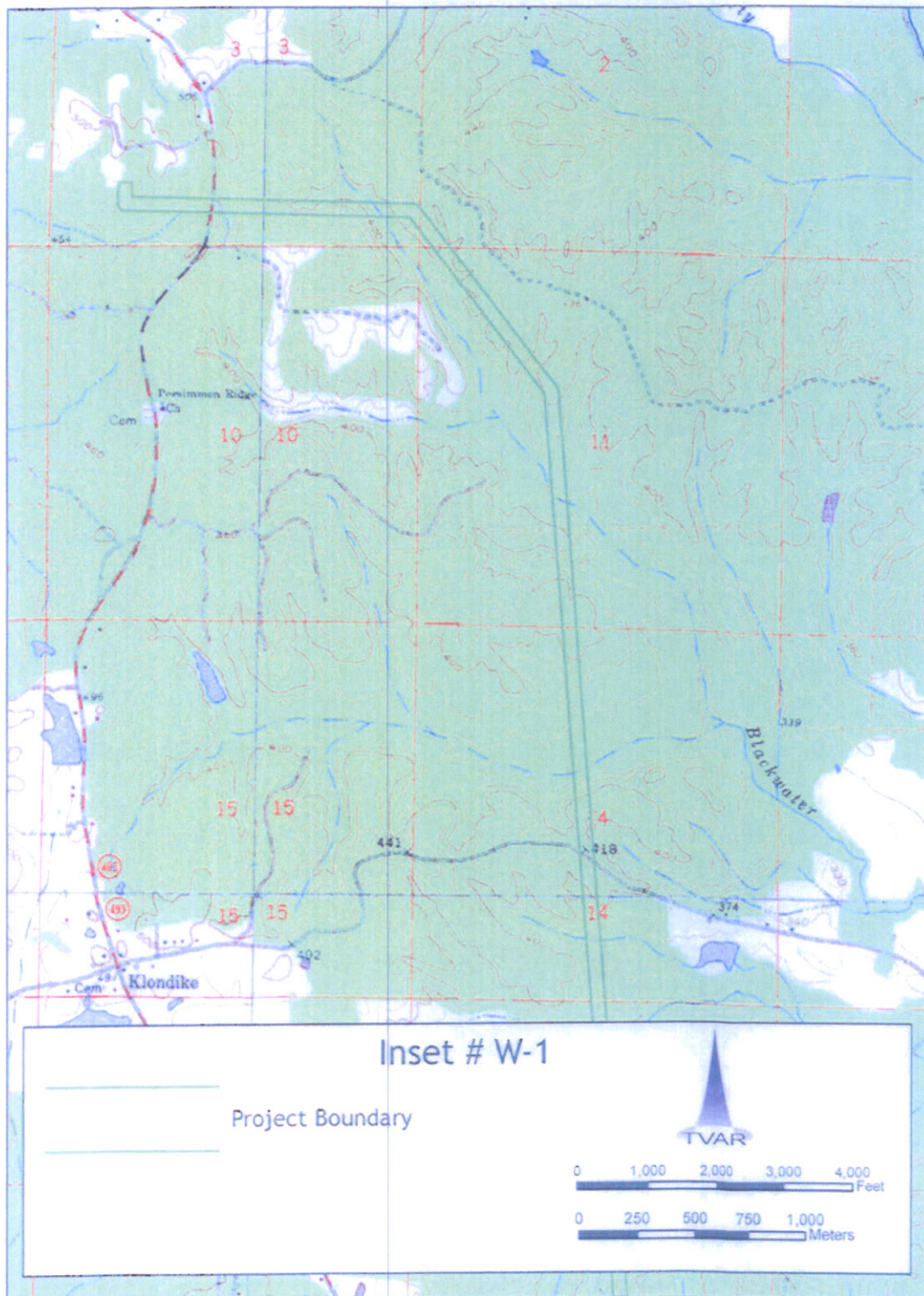
Tennessee Valley Archaeological Research - 6



Base maps: USGS quadrangles Moscow, Lauderdale NW, Daleville, Meridian North, and Collinsville

APE for West Feeder Transmission Line Section W-1

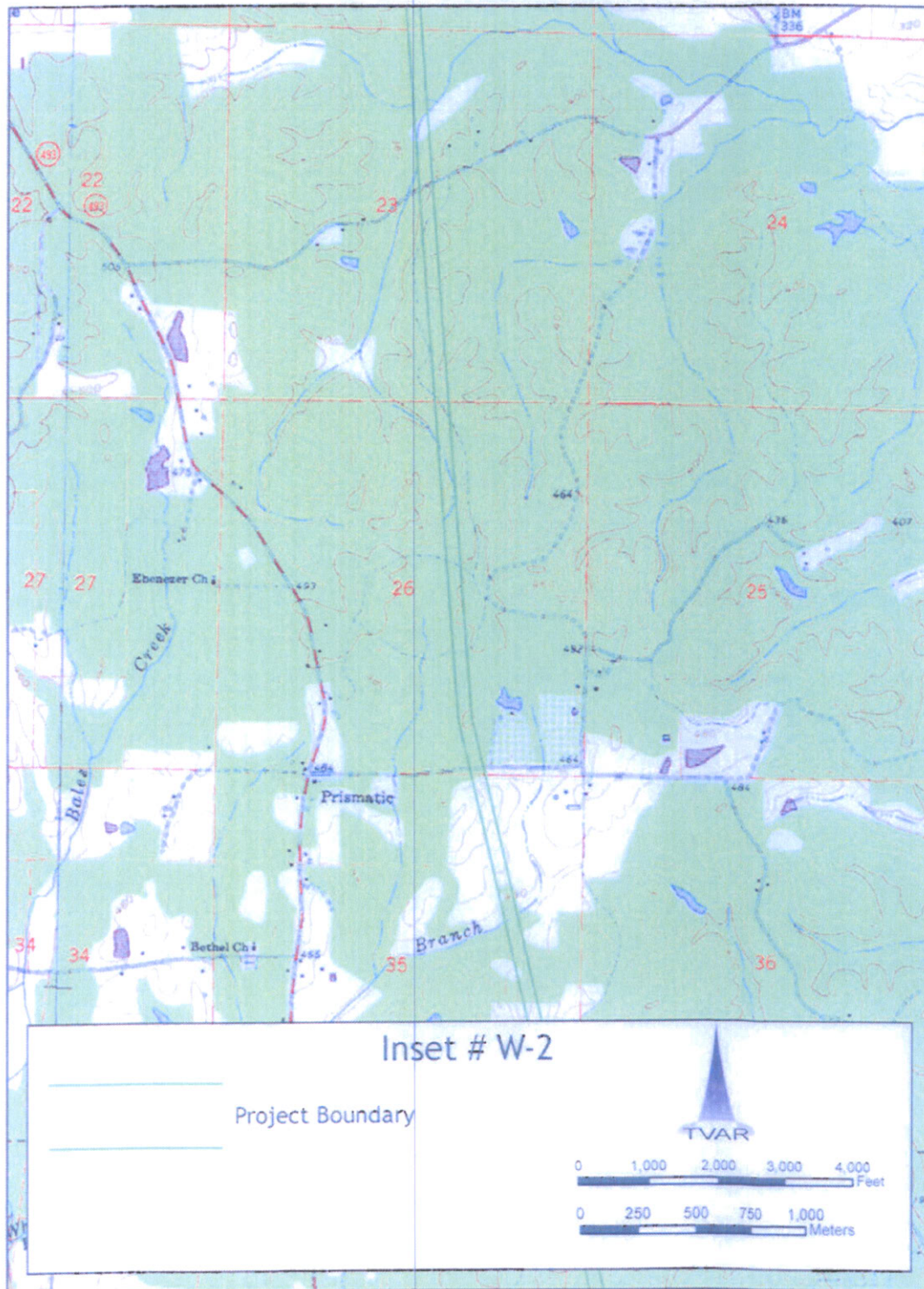
Mississippi Power Company KCIP project - 7



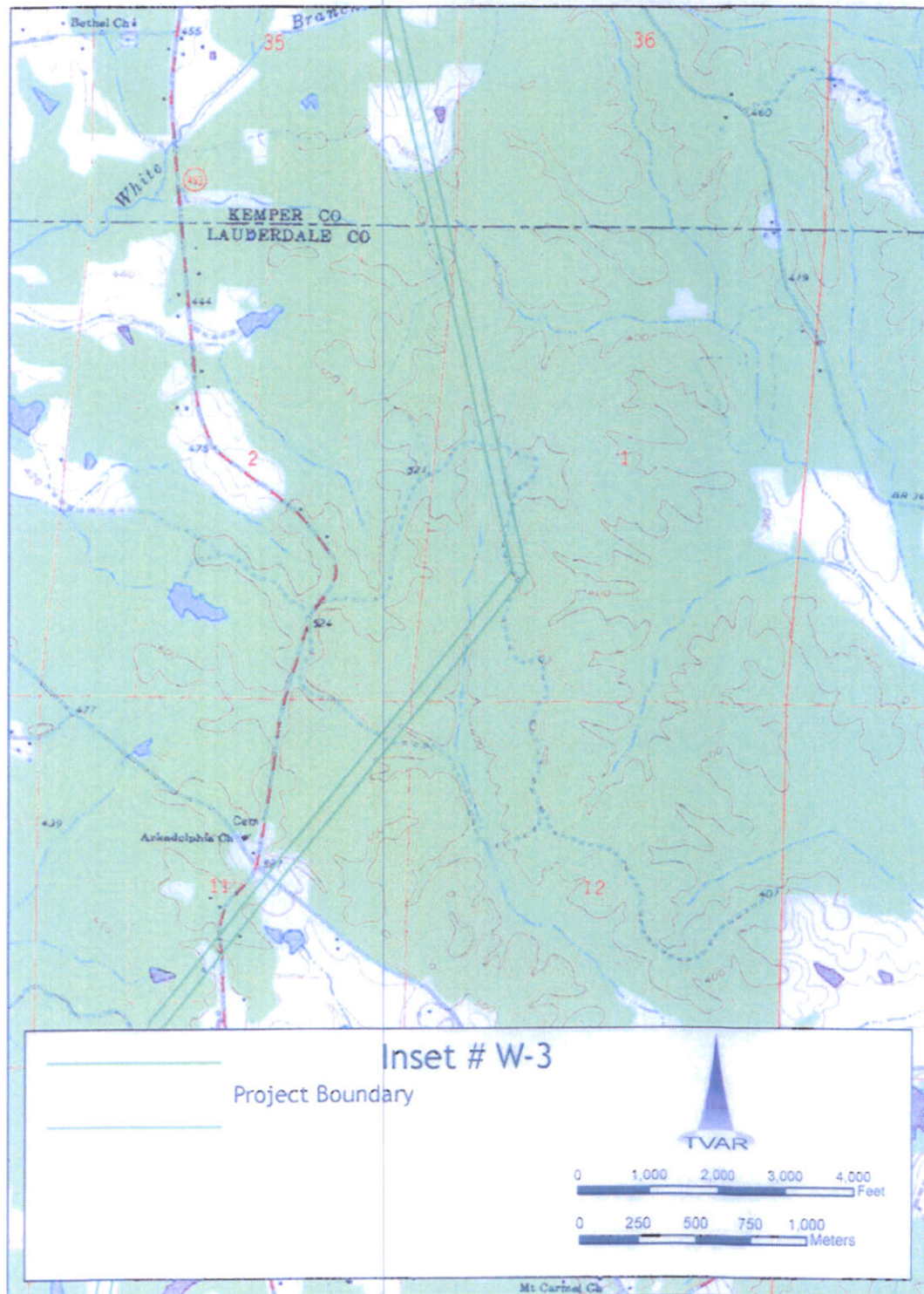
Base Maps: USGS quadrangles Moscow, Lauderdale NW, and Daleville

APE for West Feeder Transmission Line Section W-2

Tennessee Valley Archaeological Research - 8

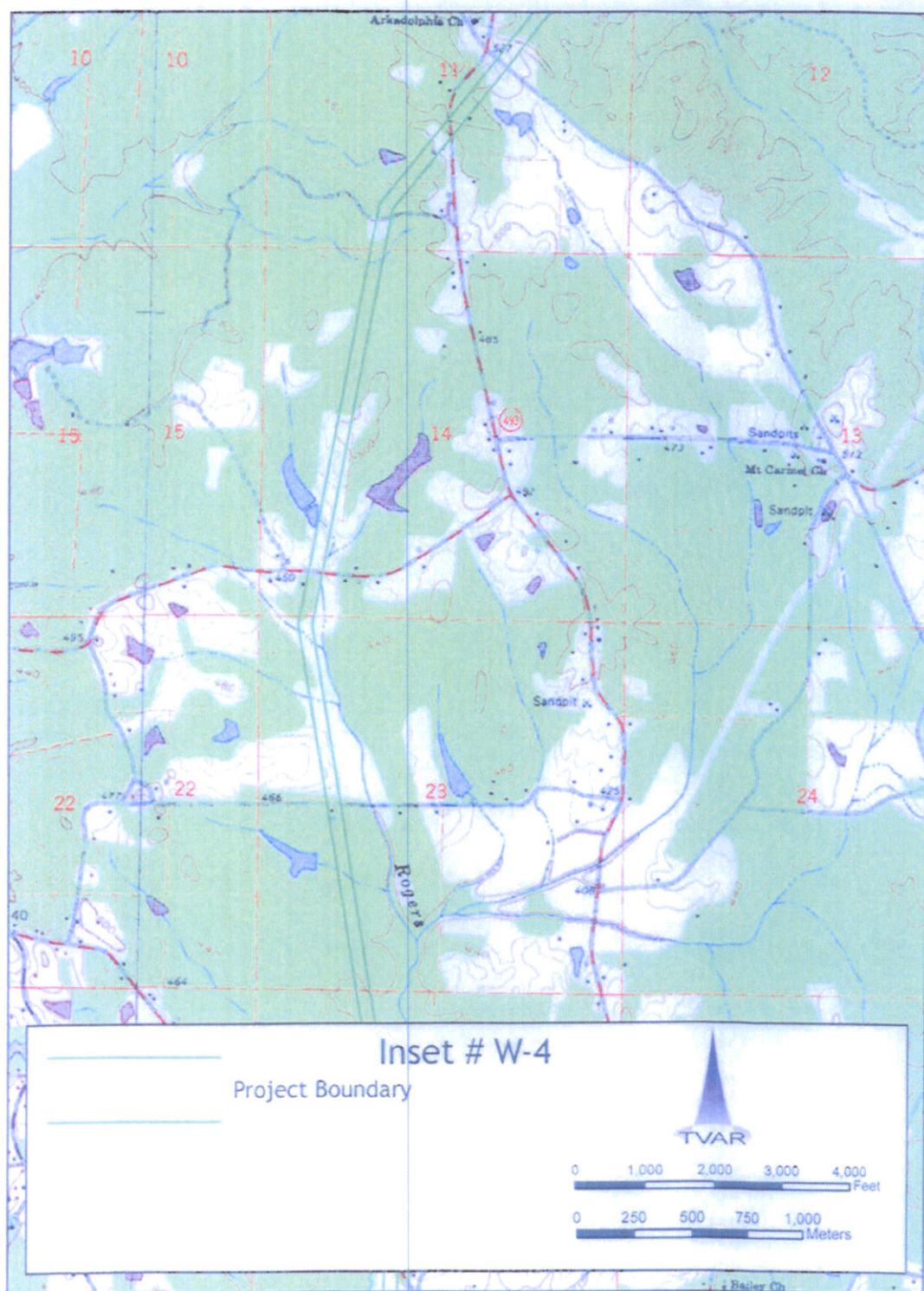


Base map: USGS quadrangle Daleville



APE for West Feeder Transmission Line Section W-4

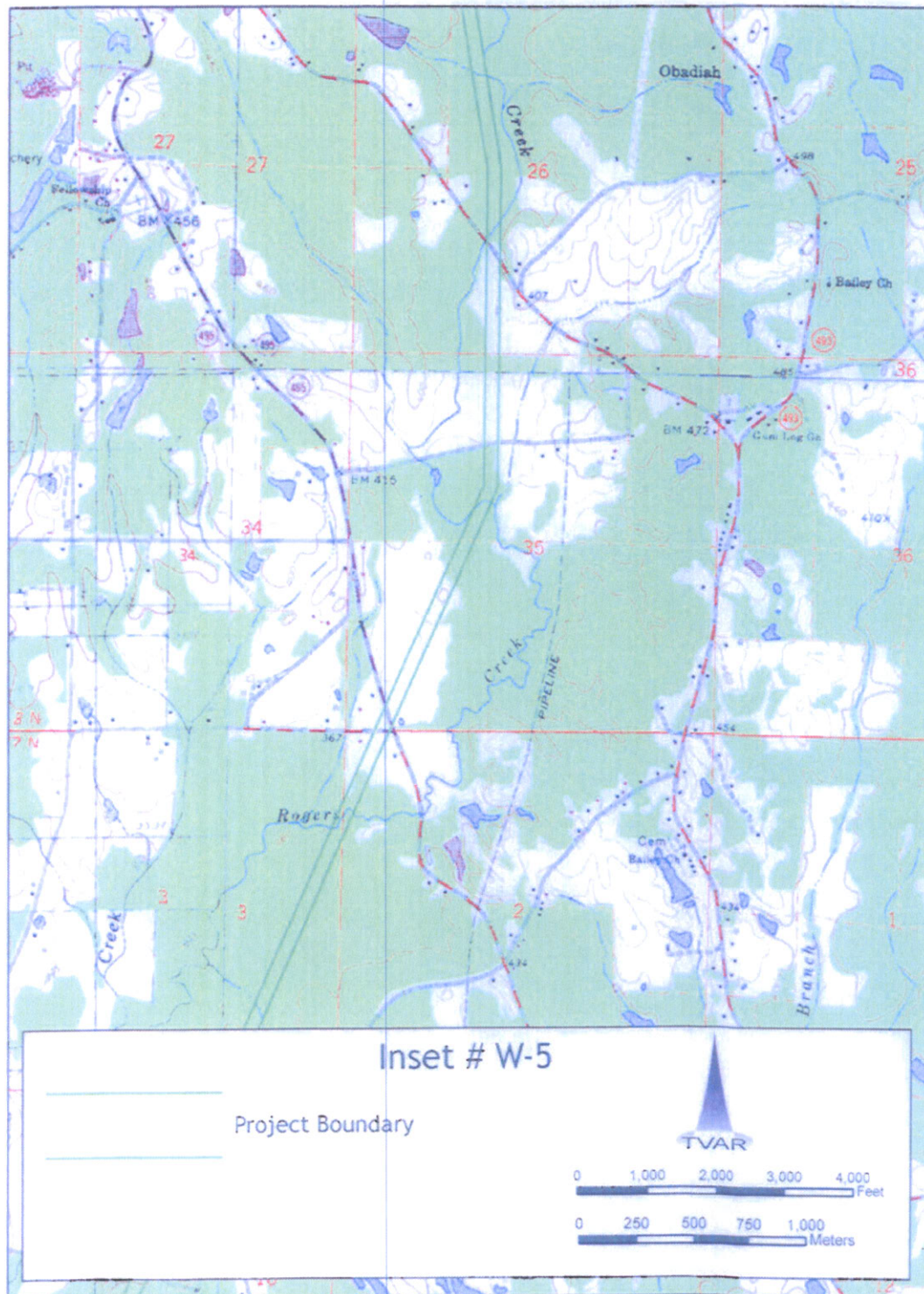
Tennessee Valley Archaeological Research - 10



Base map: USGS quadrangle Daleville

APE for West Feeder Transmission Line Section W-5

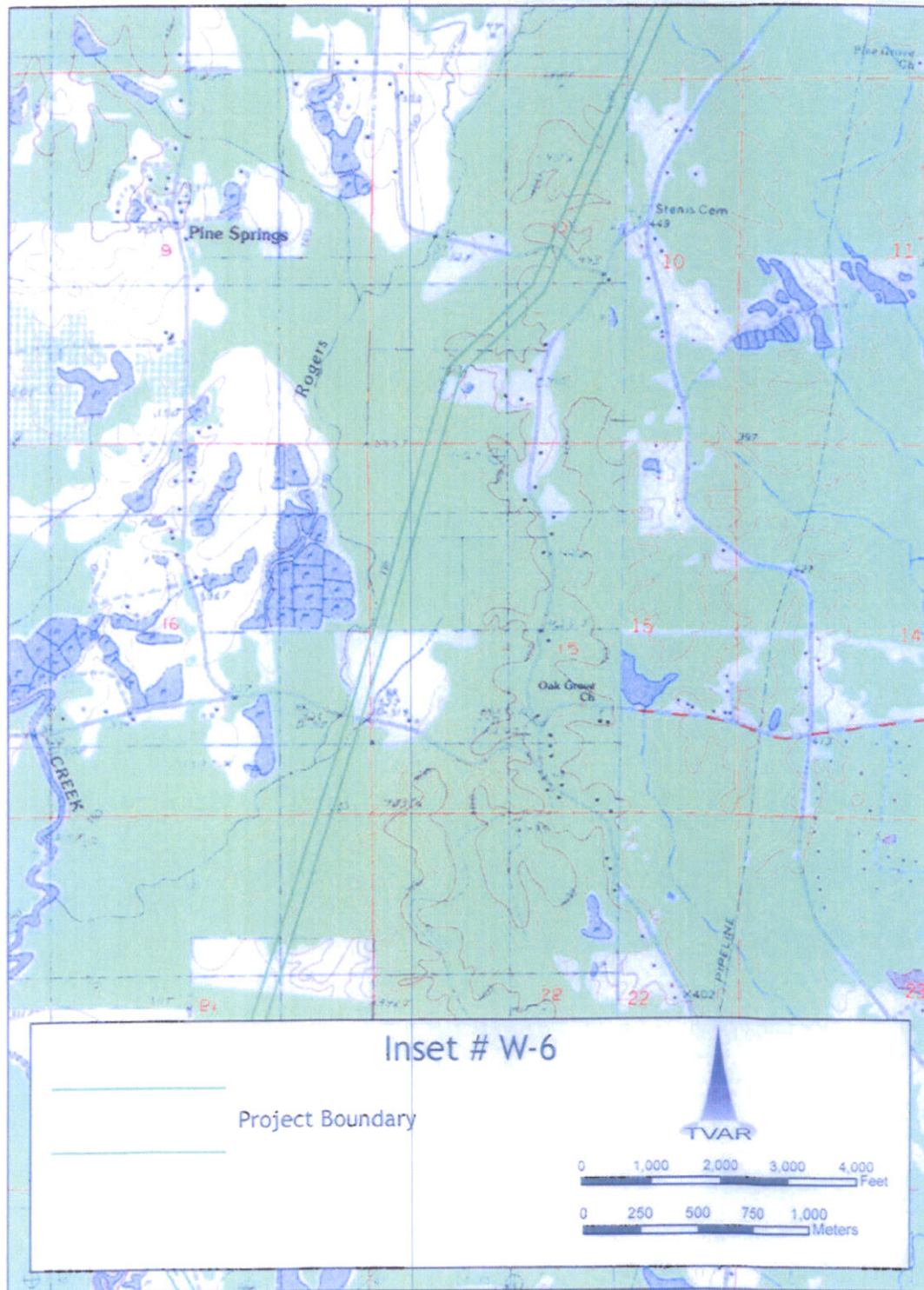
Mississippi Power Company KCIP project - 11



Base Maps: USGS quadrangles Daleville and Meridian North

APE for West Feeder Transmission Line Section W-6

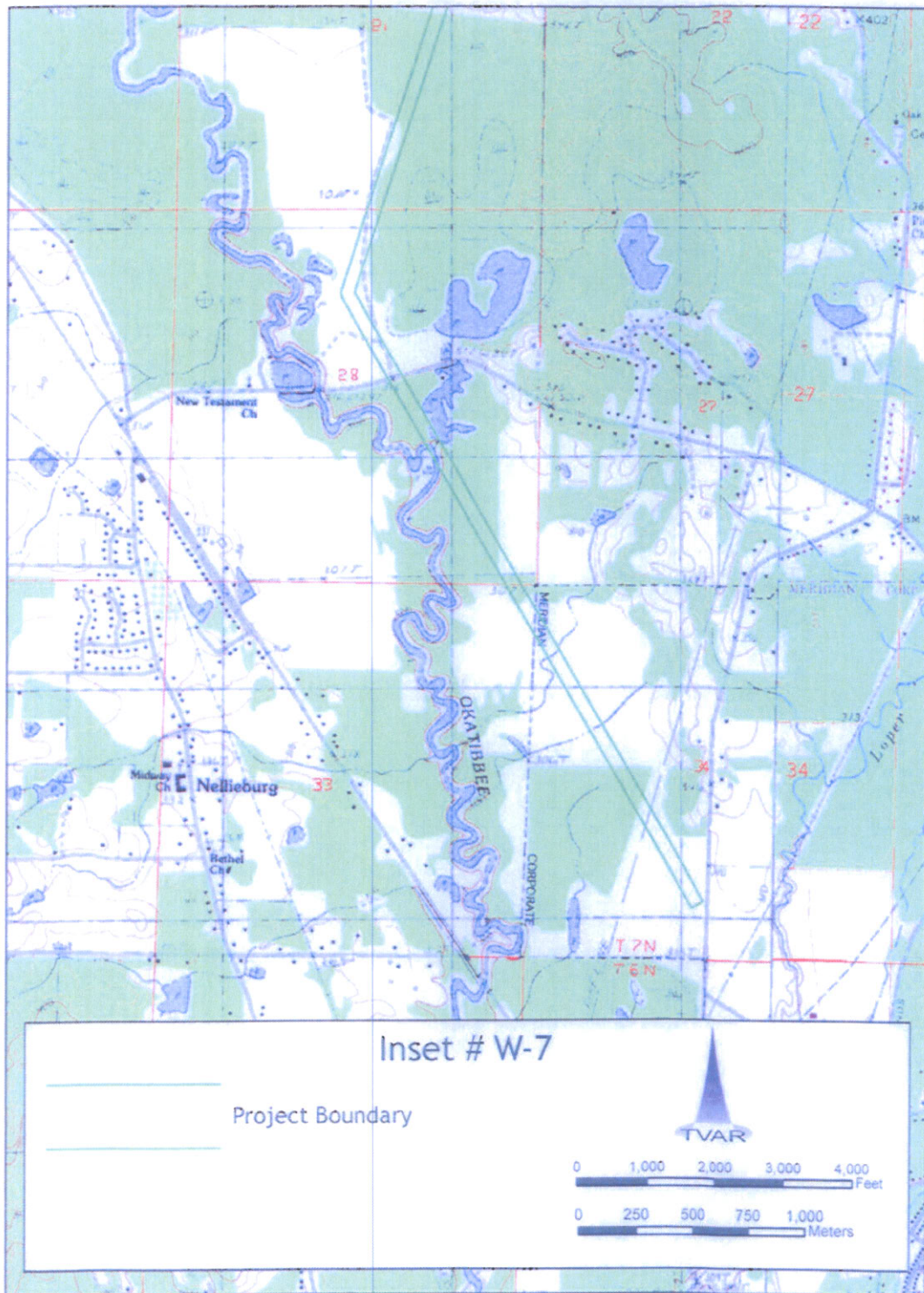
Tennessee Valley Archaeological Research - 12



Base maps: USGS quadrangles Meridian North and Collinsville

APE for West Feeder Transmission Line Section W-7

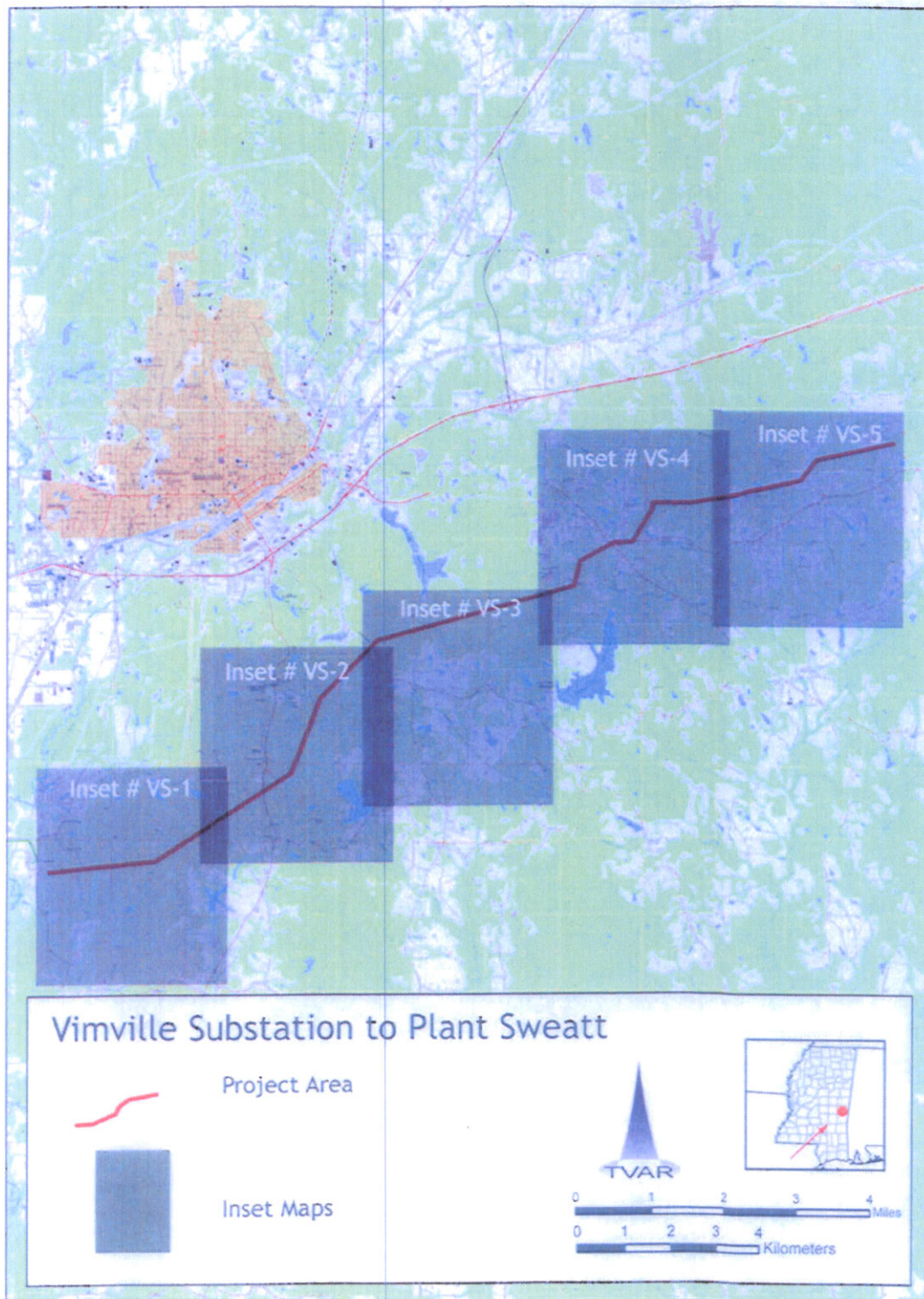
Mississippi Power Company KCIP project - 13



Base map: USGS quadrangle Collinsville

APE for Vimville Substation to Plant Sweatt Transmission Line

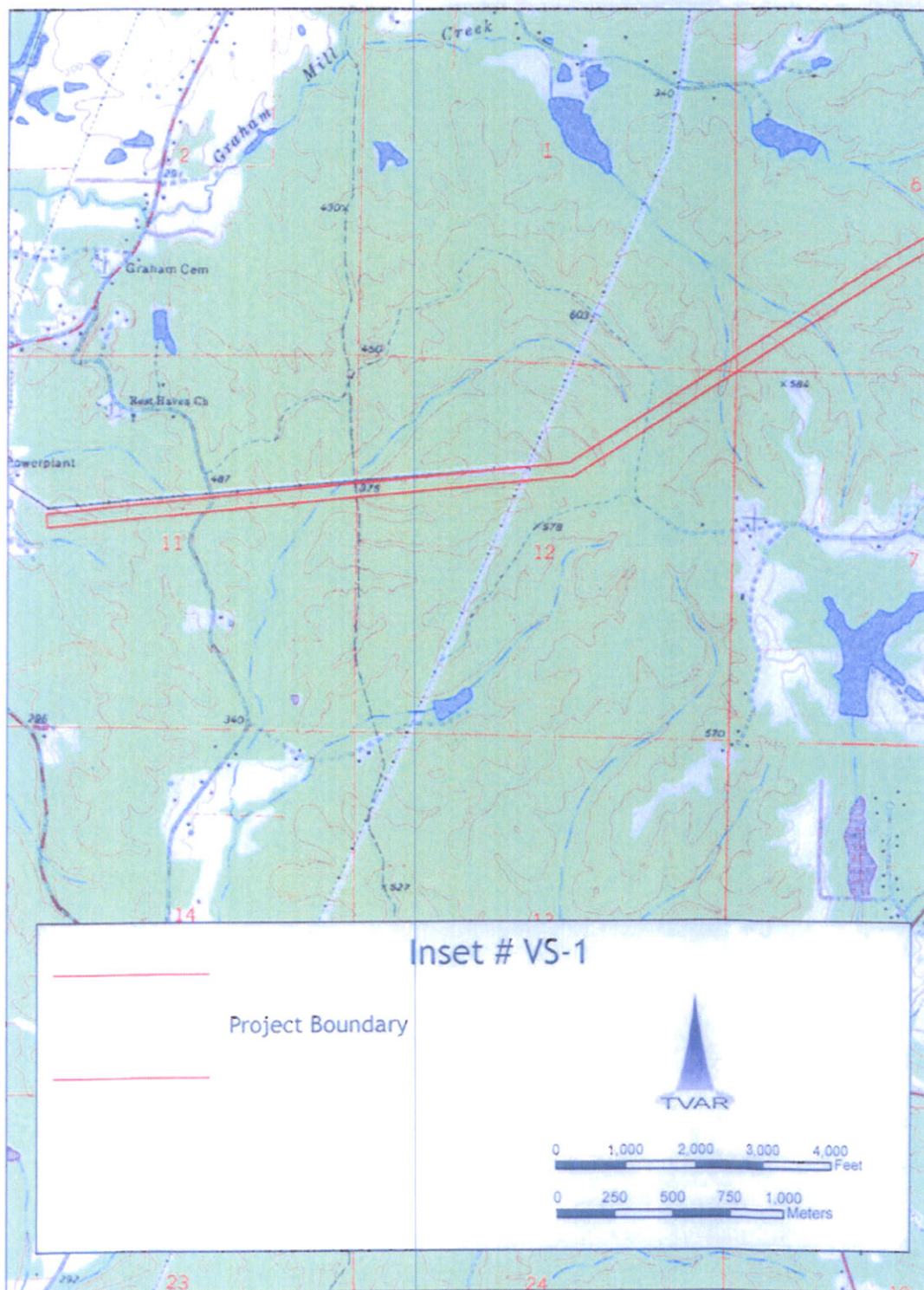
Mississippi Power Company KCIP project - 29



Base maps: USGS 7.5-minute quadrangles Vimville and Meridian South

APE for Vimville Substation to Plant Sweatt Transmission Line VS-1

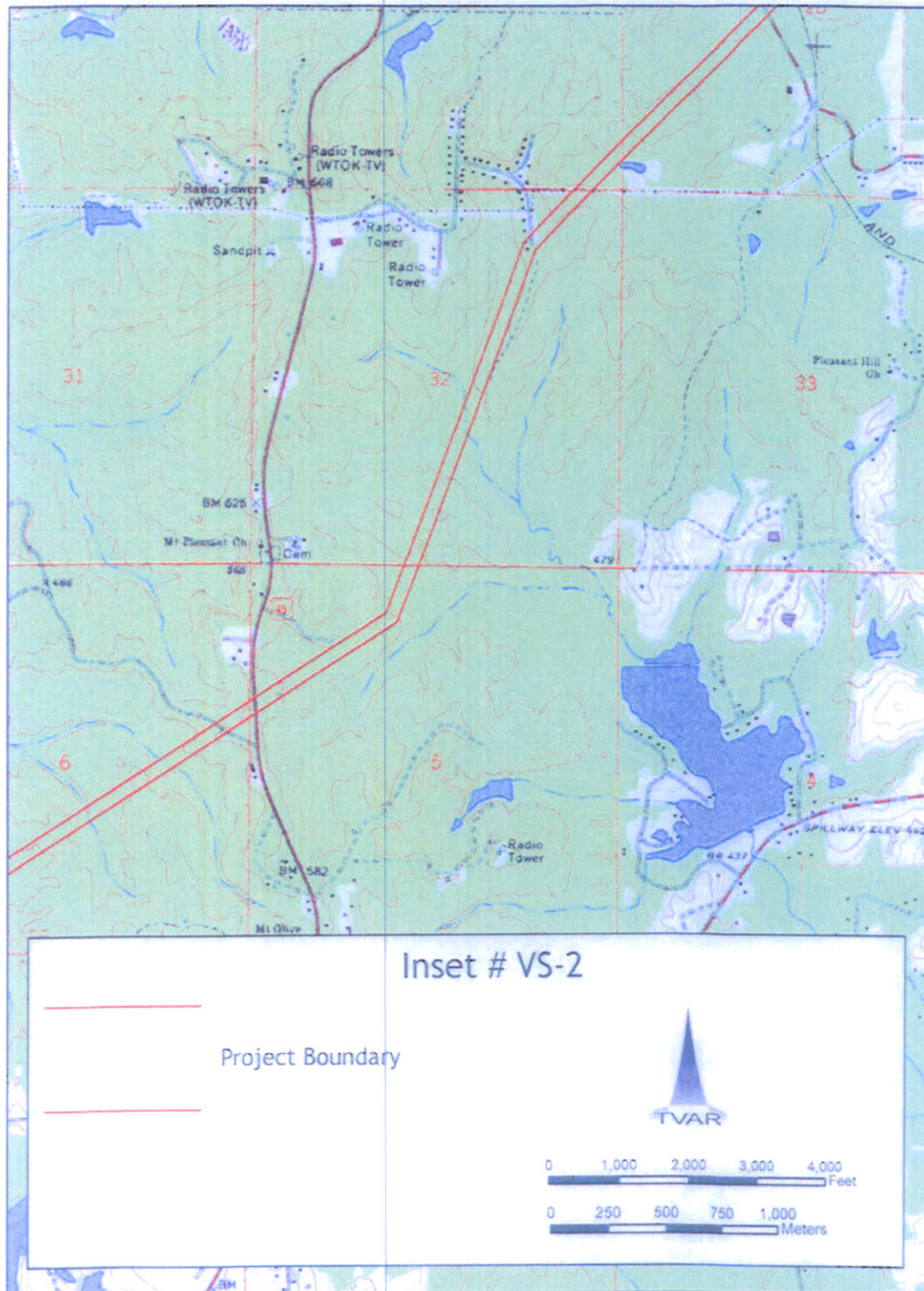
Tennessee Valley Archaeological Research - 30



Base map: USGS 7.5-minute quadrangle Meridian South

APE for Vimville Substation to Plant Sweatt Transmission Line VS-2

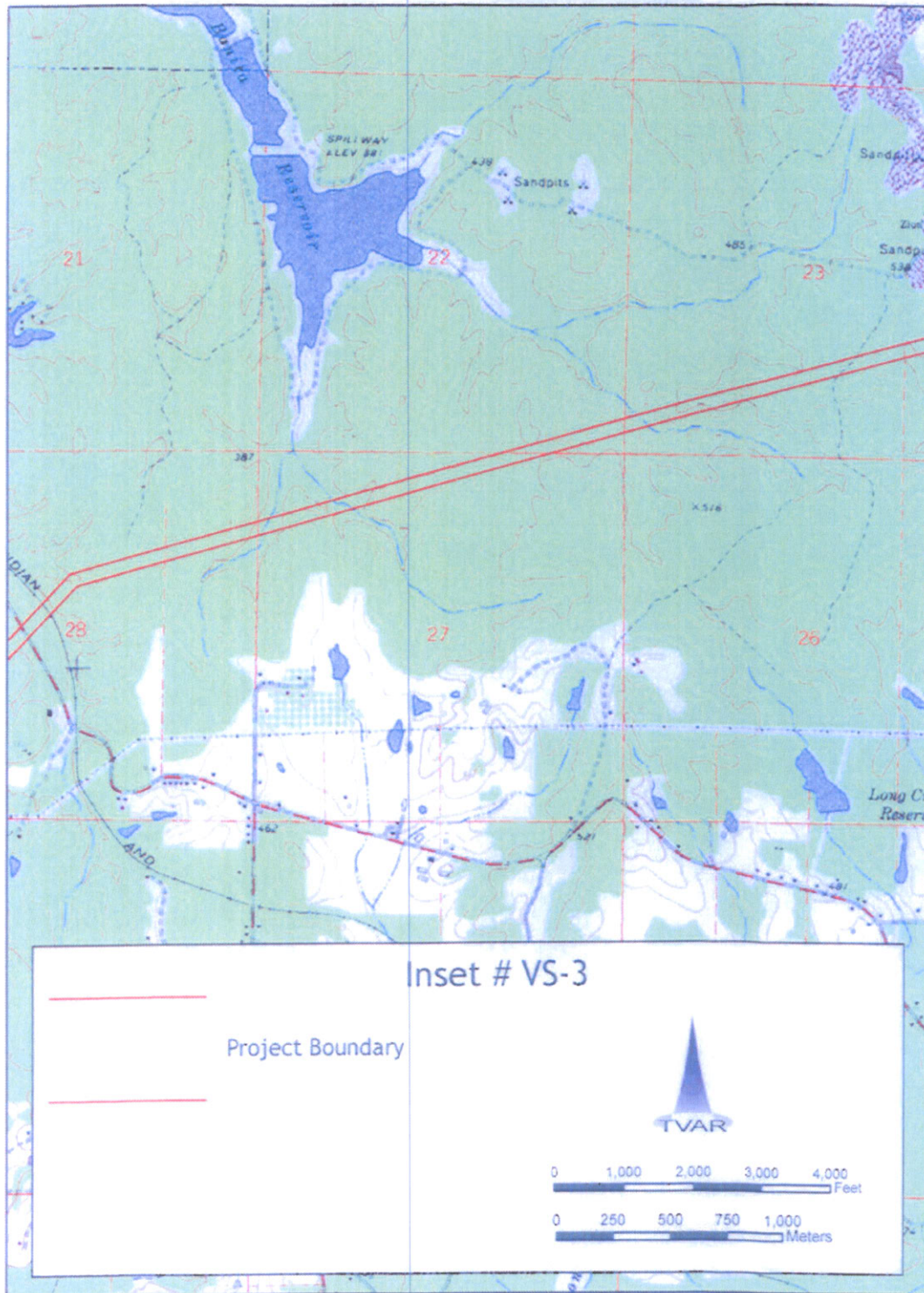
Mississippi Power Company KCIP project - 31



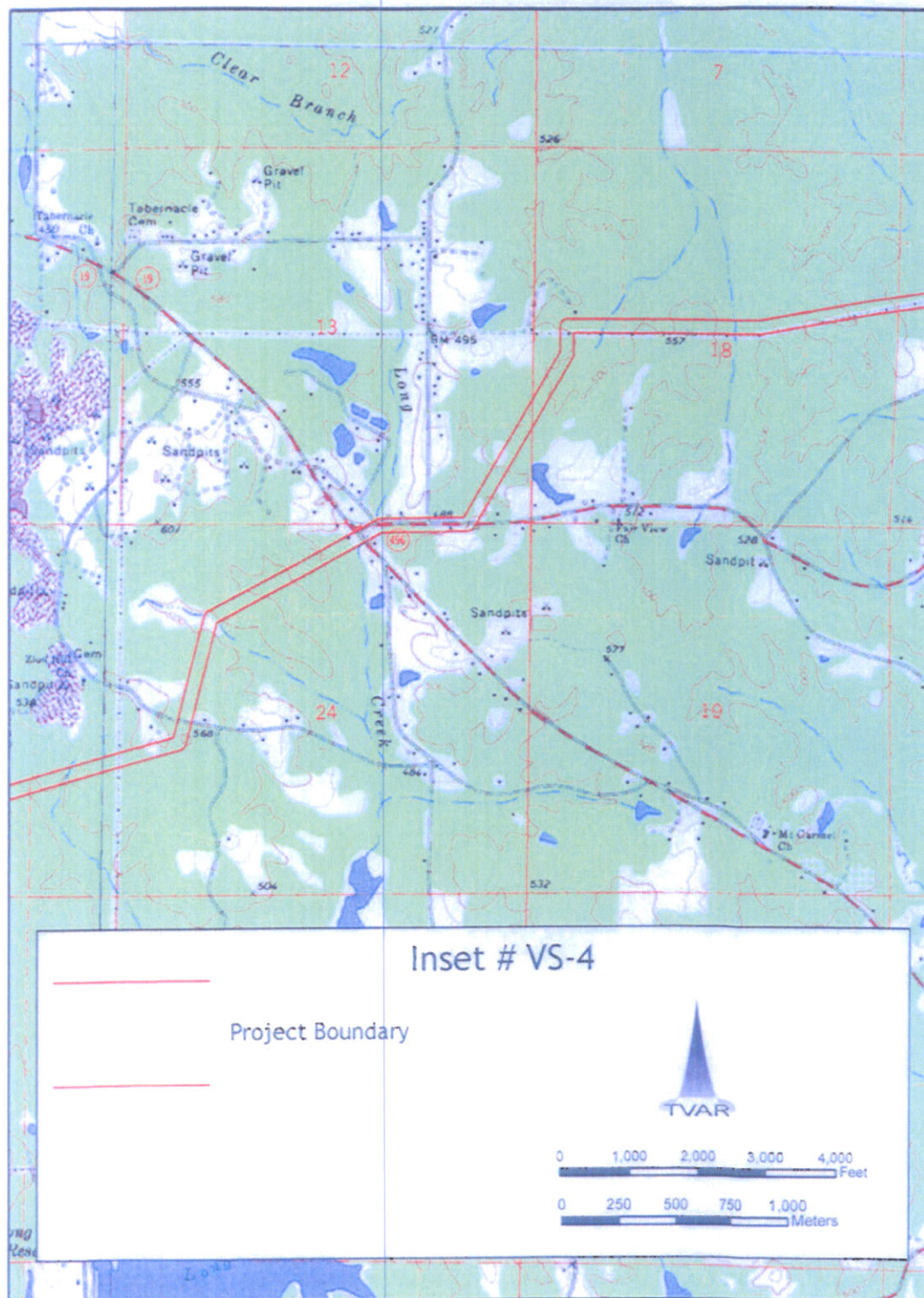
Base map: USGS 7.5-minute quadrangle Meridian South

APE for Vimville Substation to Plant Sweatt Transmission Line VS-3

Tennessee Valley Archaeological Research - 32

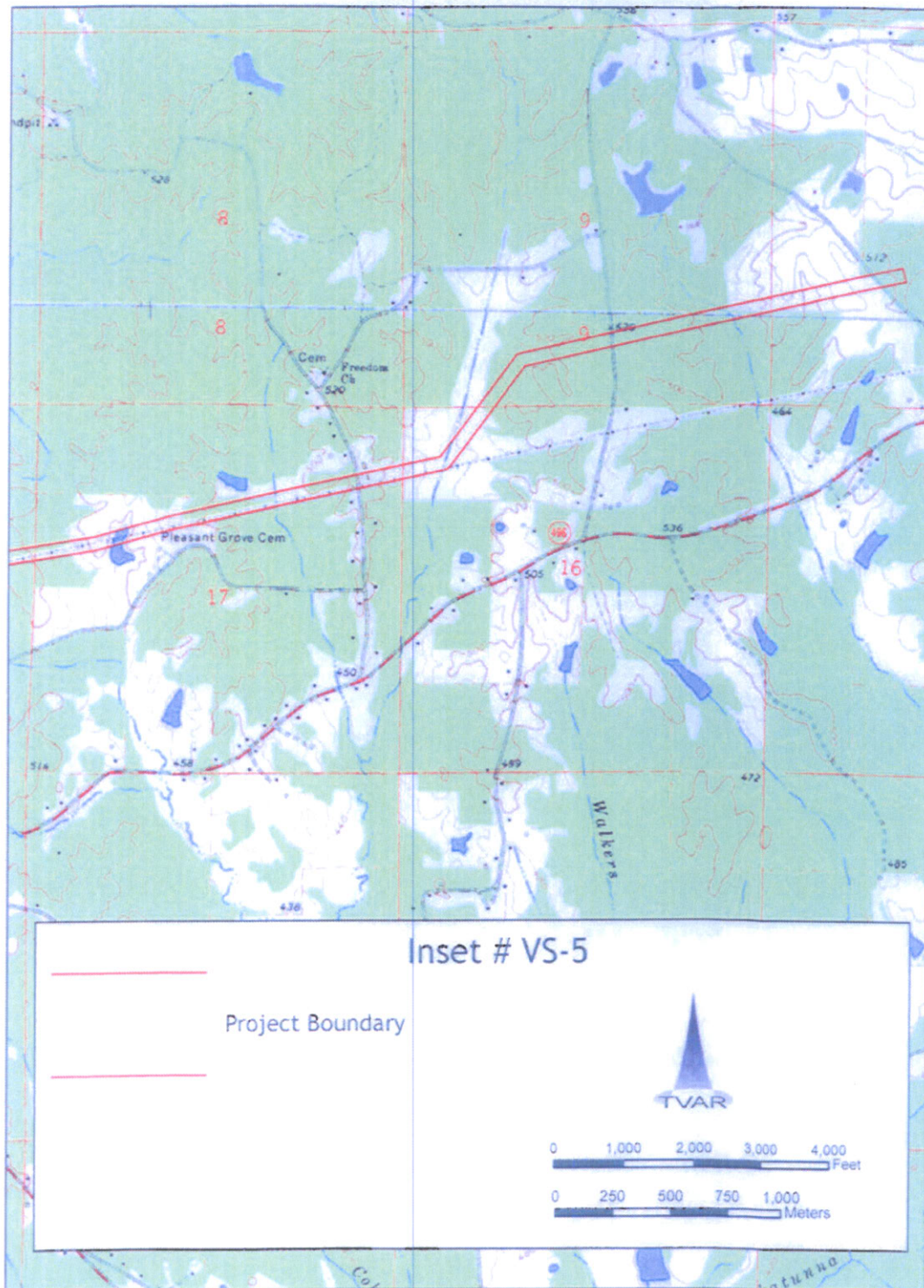


Base map: USGS 7.5-minute quadrangle Meridian South

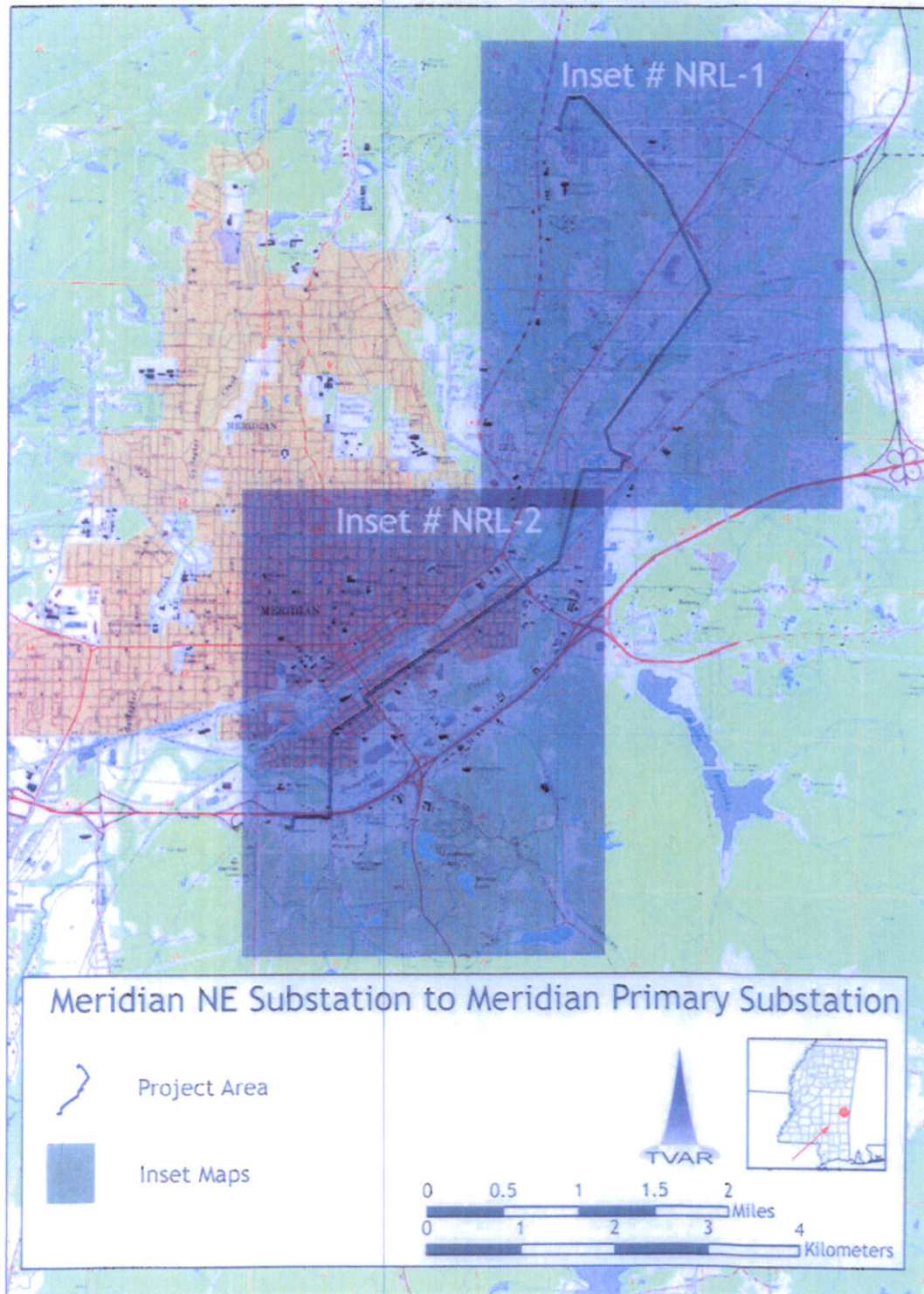


APE for Vimville Substation to Plant Sweatt Transmission Line VS-5

Tennessee Valley Archaeological Research - 34



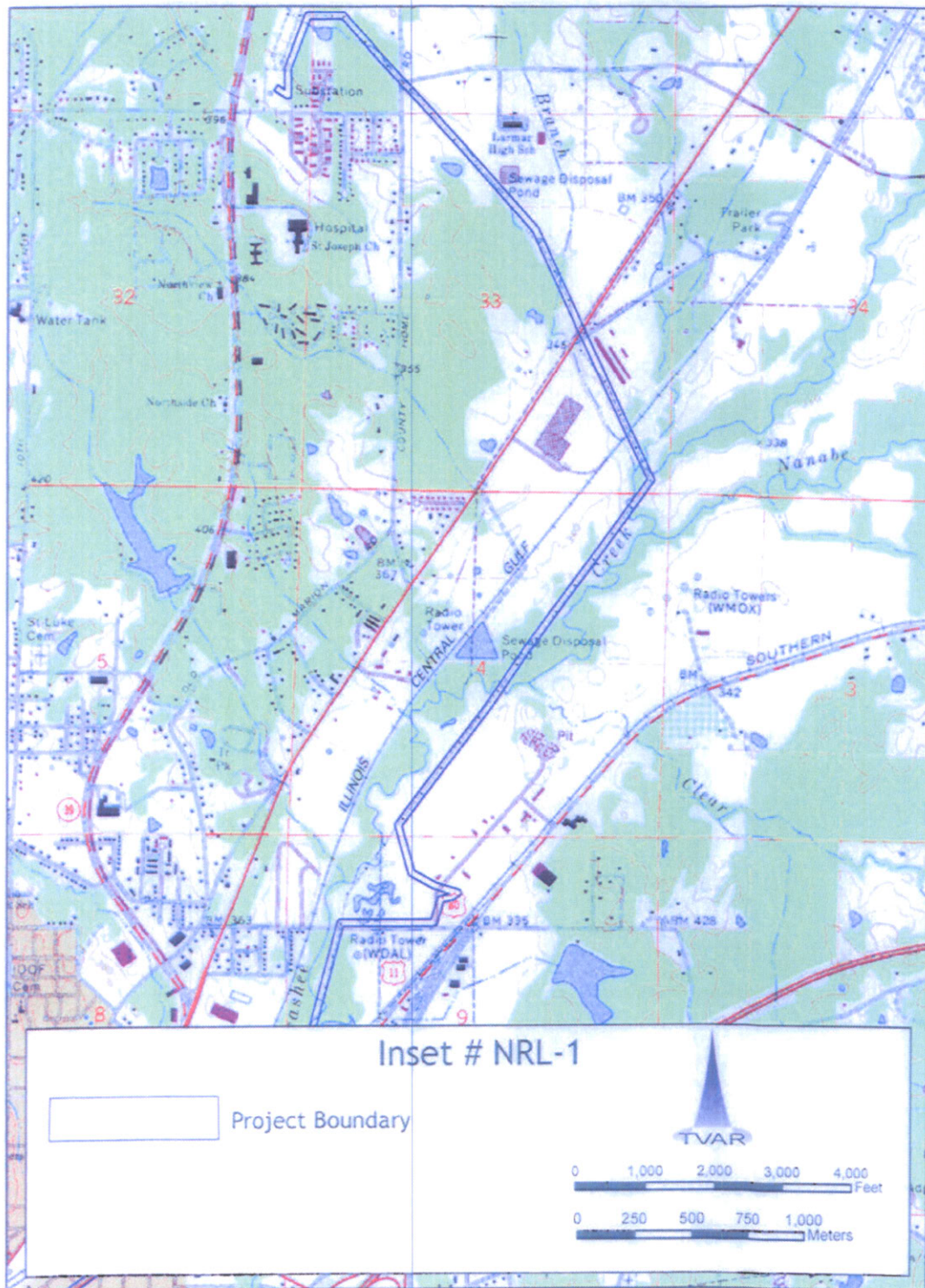
Base map: USGS 7.5-minute quadrangle Vimville



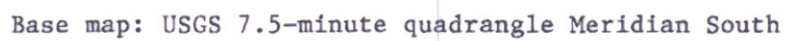
Base maps: USGS 7.5-minute quadrangles Meridian South and Meridian North

APE for Meridian NE Substation to Meridian Primary Substation Section NRL-1

Tennessee Valley Archaeological Research - 36

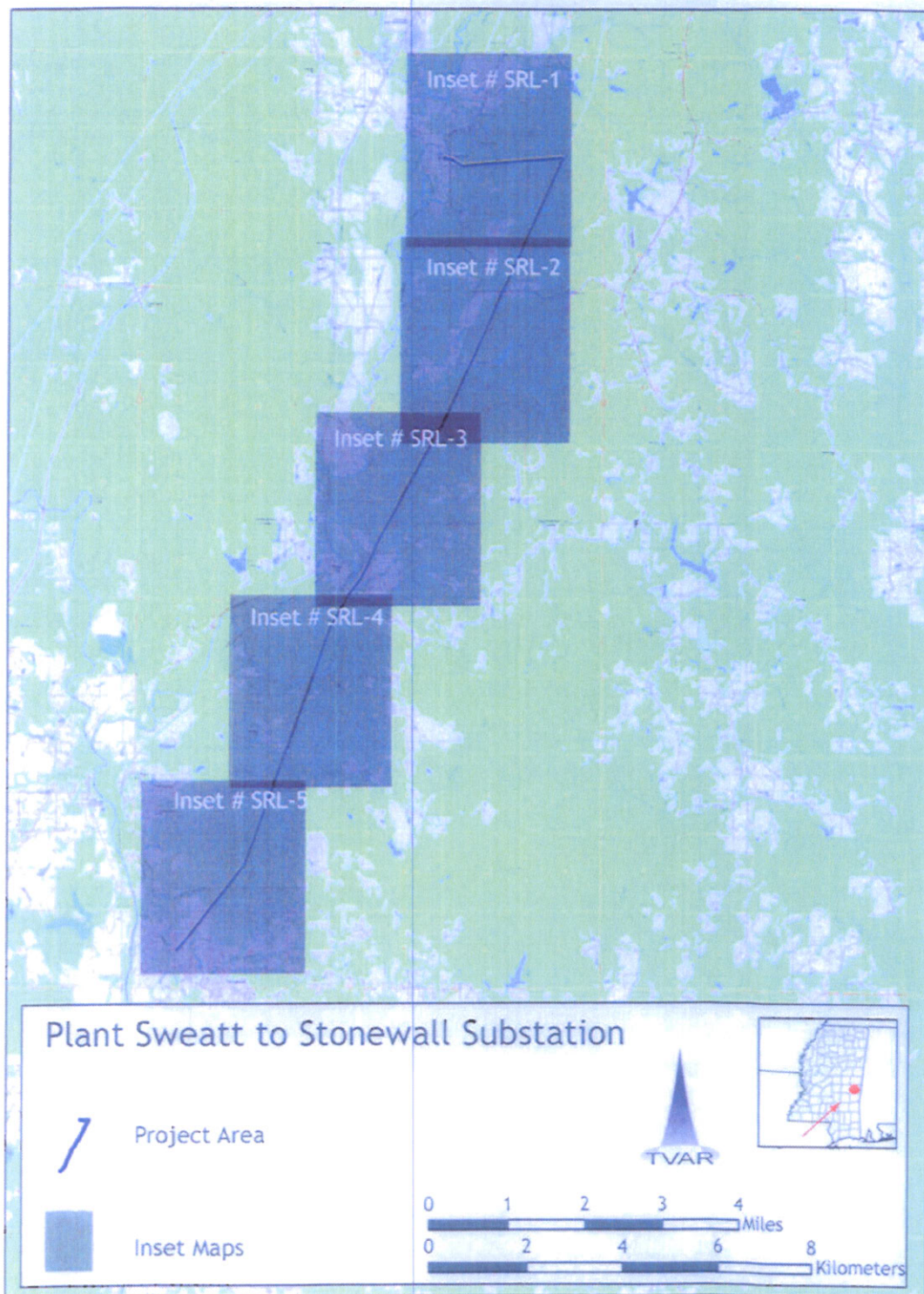


Base map: USGS 7.5-minute quadrangle Meridian North



APE for Plant Sweatt to Stonewall Substation Transmission Line

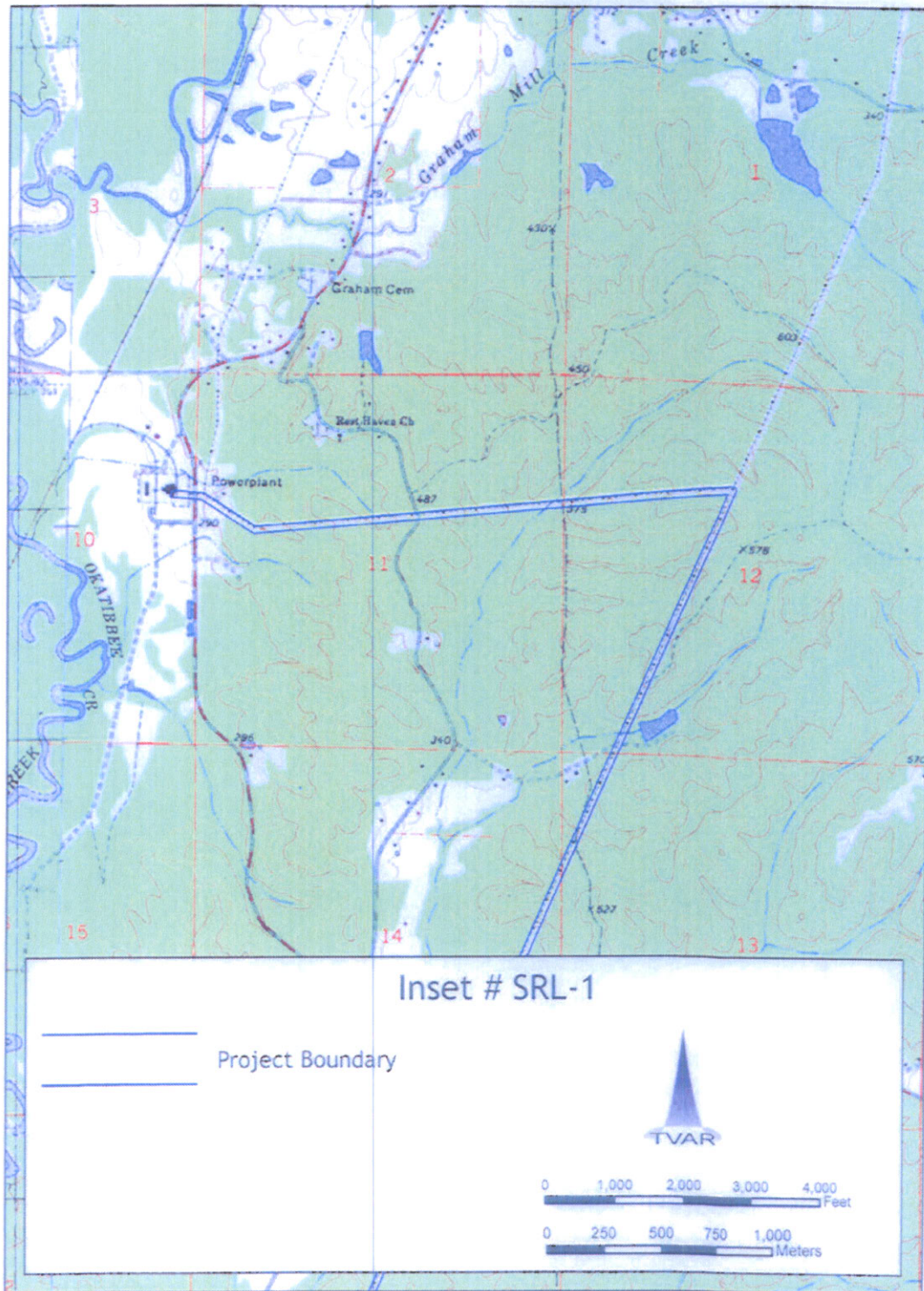
Tennessee Valley Archaeological Research - 38



Base maps: USGS 7.5-minute quadrangles for Stonewall, Sable, and Meridian South

APE for Plant Sweatt to Stonewall Substation Transmission Line Section SRL-1

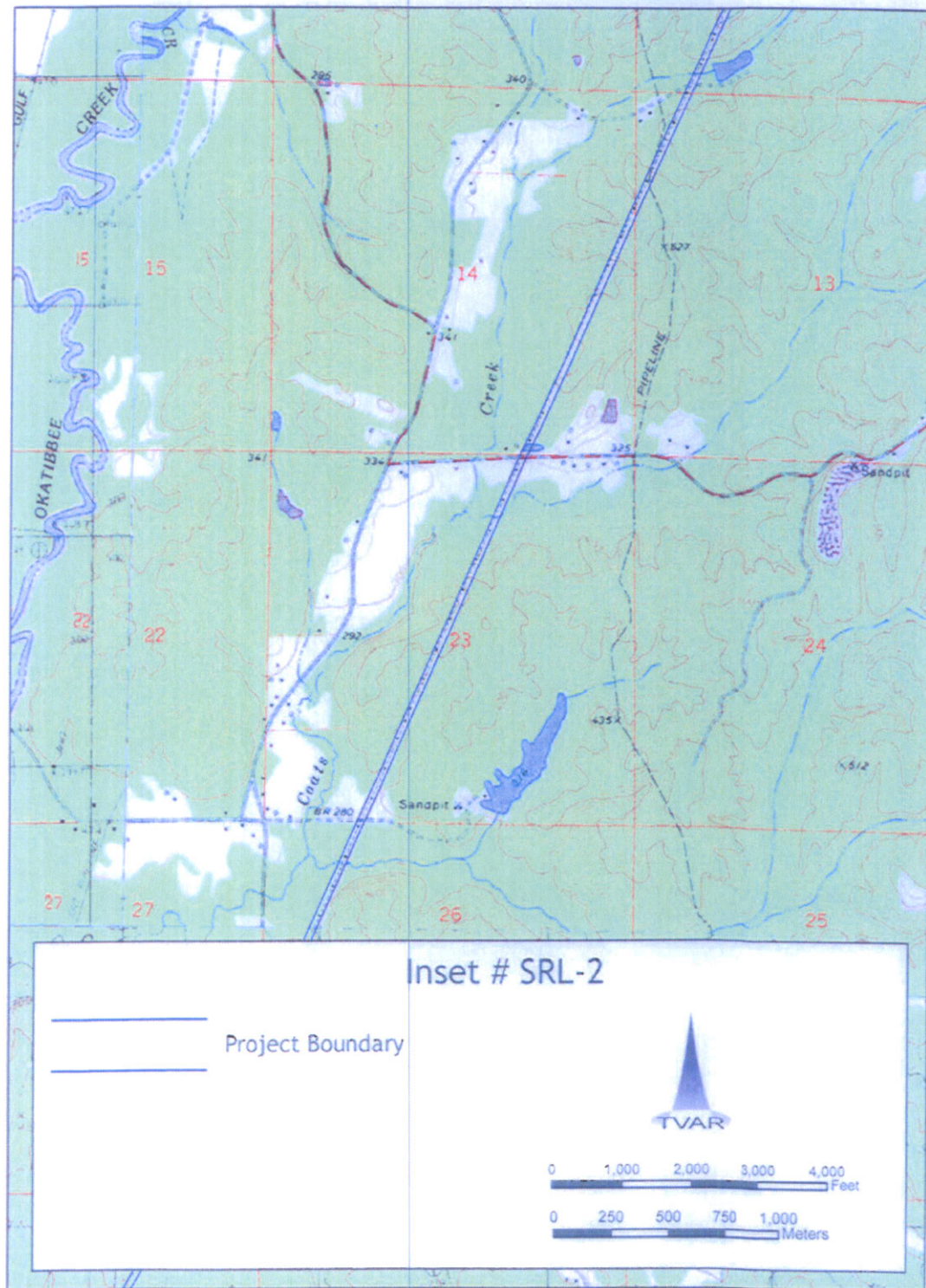
Mississippi Power Company KCIP project - 39



Base map: USGS 7.5-minute quadrangle Meridian South

APE for Plant Sweatt to Stonewall Substation Transmission Line Section SRL-2

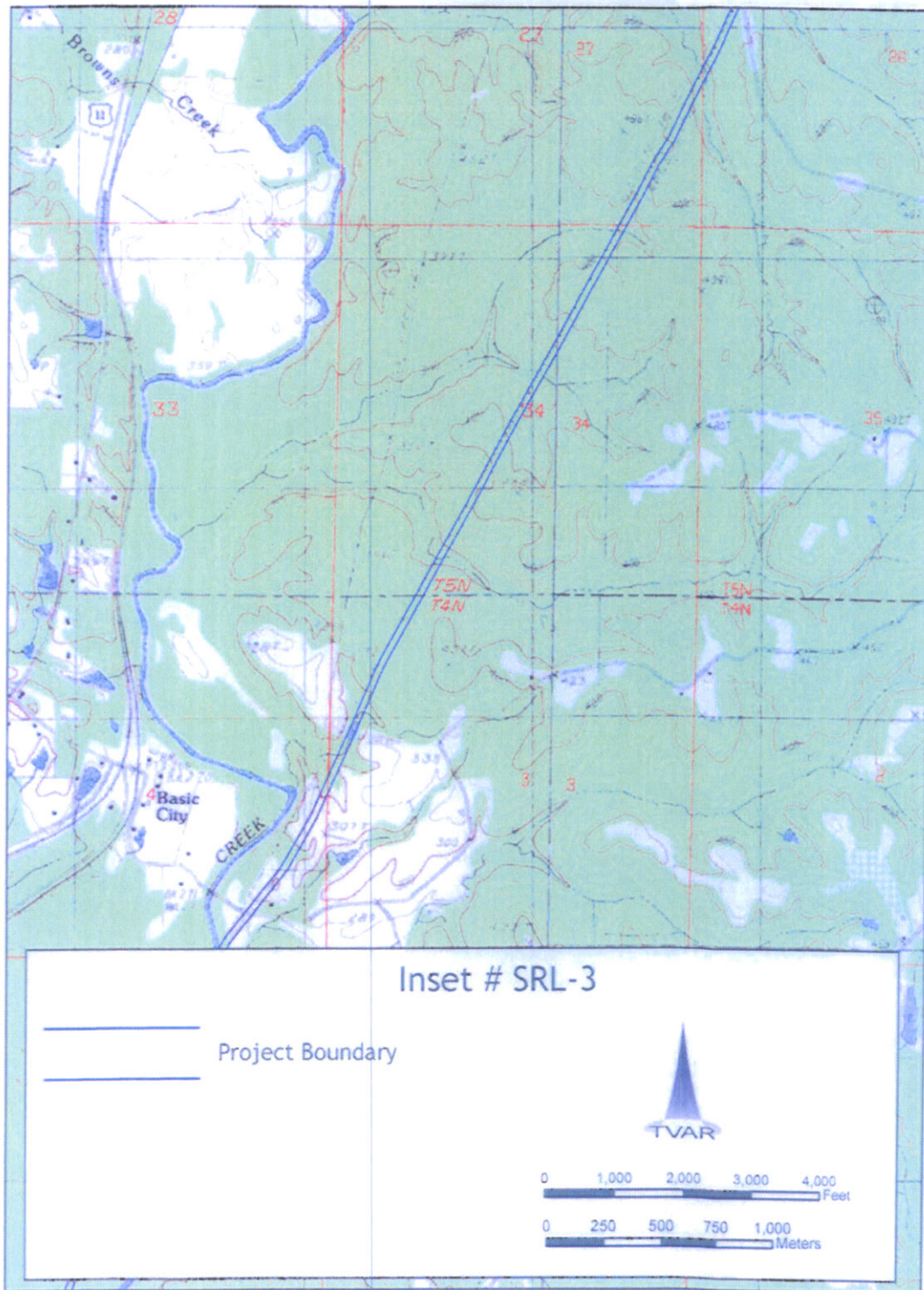
Tennessee Valley Archaeological Research - 40



Base maps: USGS 7.5-minute quadrangles Meridian South and Sable

APE for Plant Sweatt to Stonewall Substation Transmission Line Section SRL-3

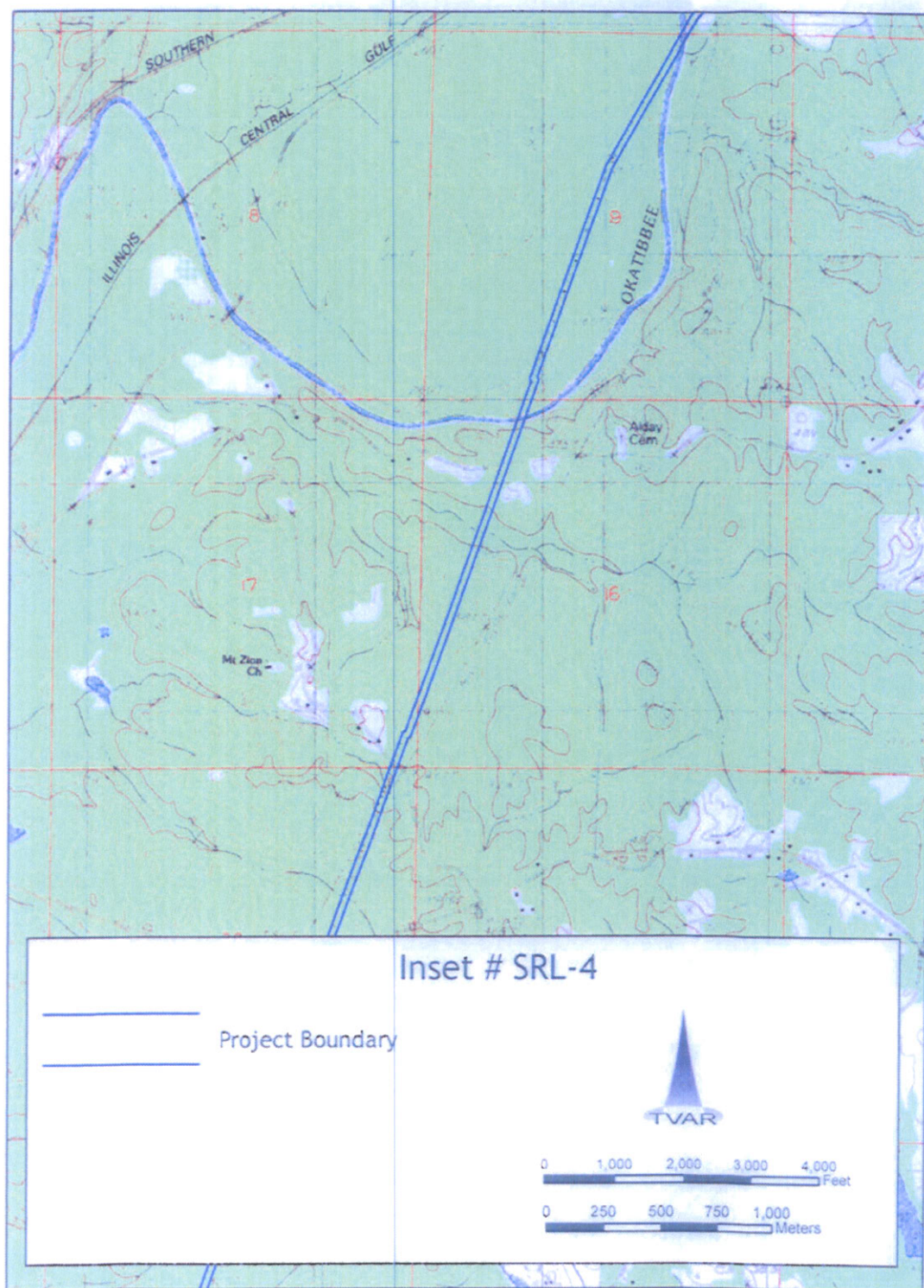
Mississippi Power Company KCIP project - 41



Base map: USGS 7.5-minute quadrangle Stonewall

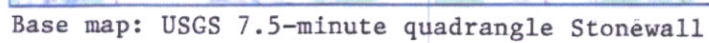
APE for Plant Sweatt to Stonewall Substation Transmission Line Section SRL-4

Tennessee Valley Archaeological Research - 42



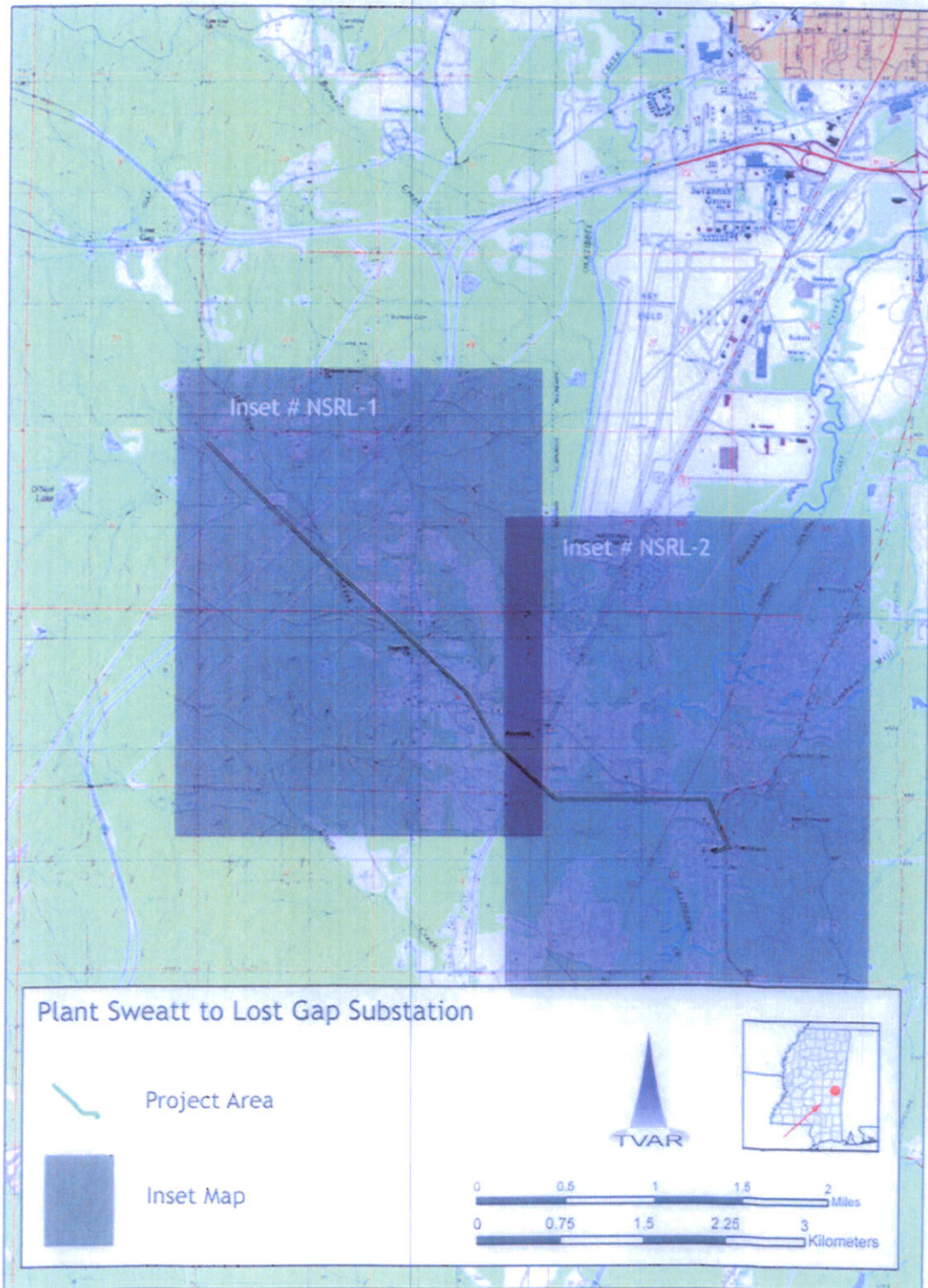
Base map: USGS 7.5-minute quadrangle Stonewall

Mississippi Power Company KCIP project - 43



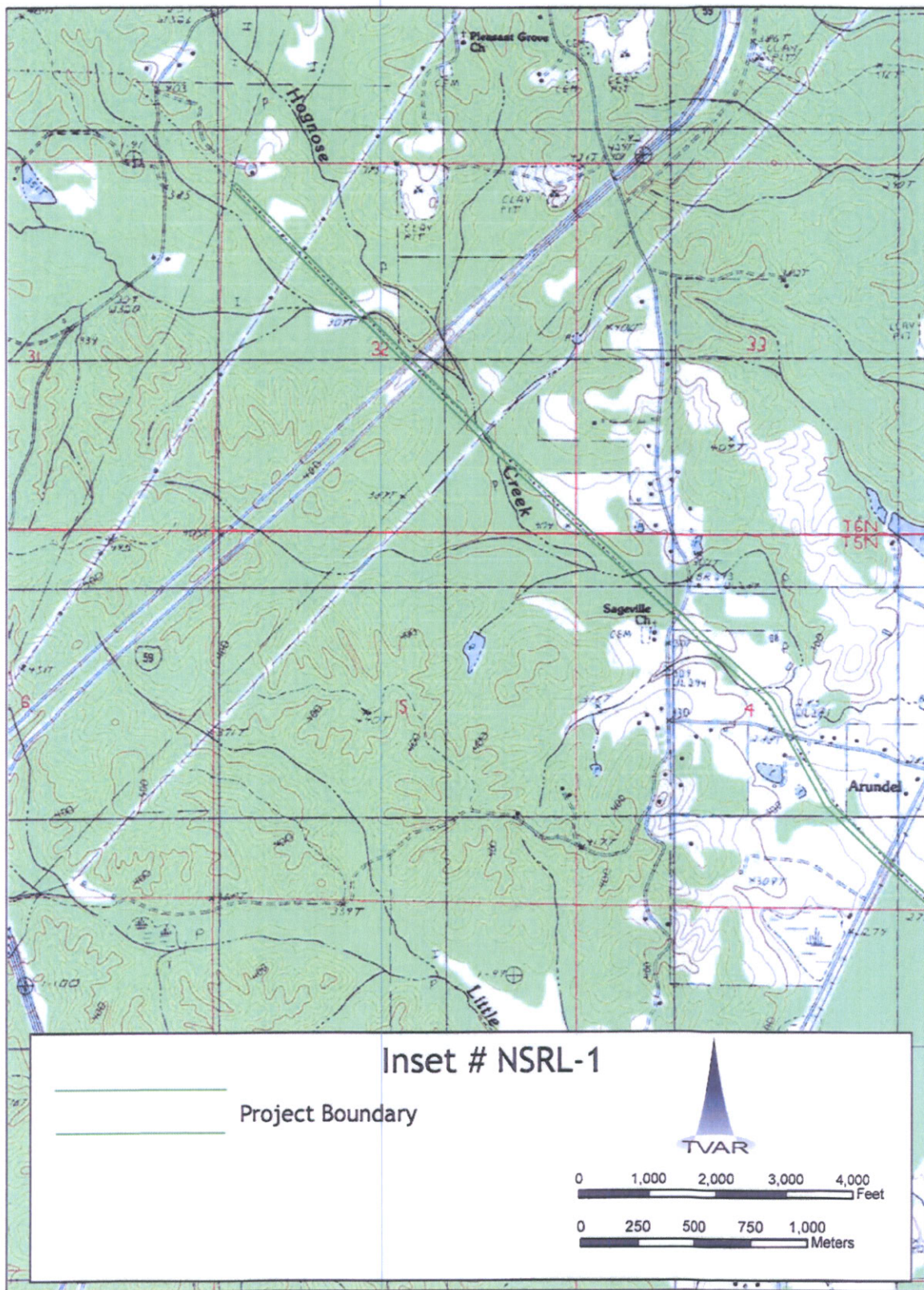
APE for Plant Sweatt to Lost Gap Substation Transmission Line

Tennessee Valley Archaeological Research - 44



Base maps: USGS 7.5-minute quadrangles Meehan and Meridian South

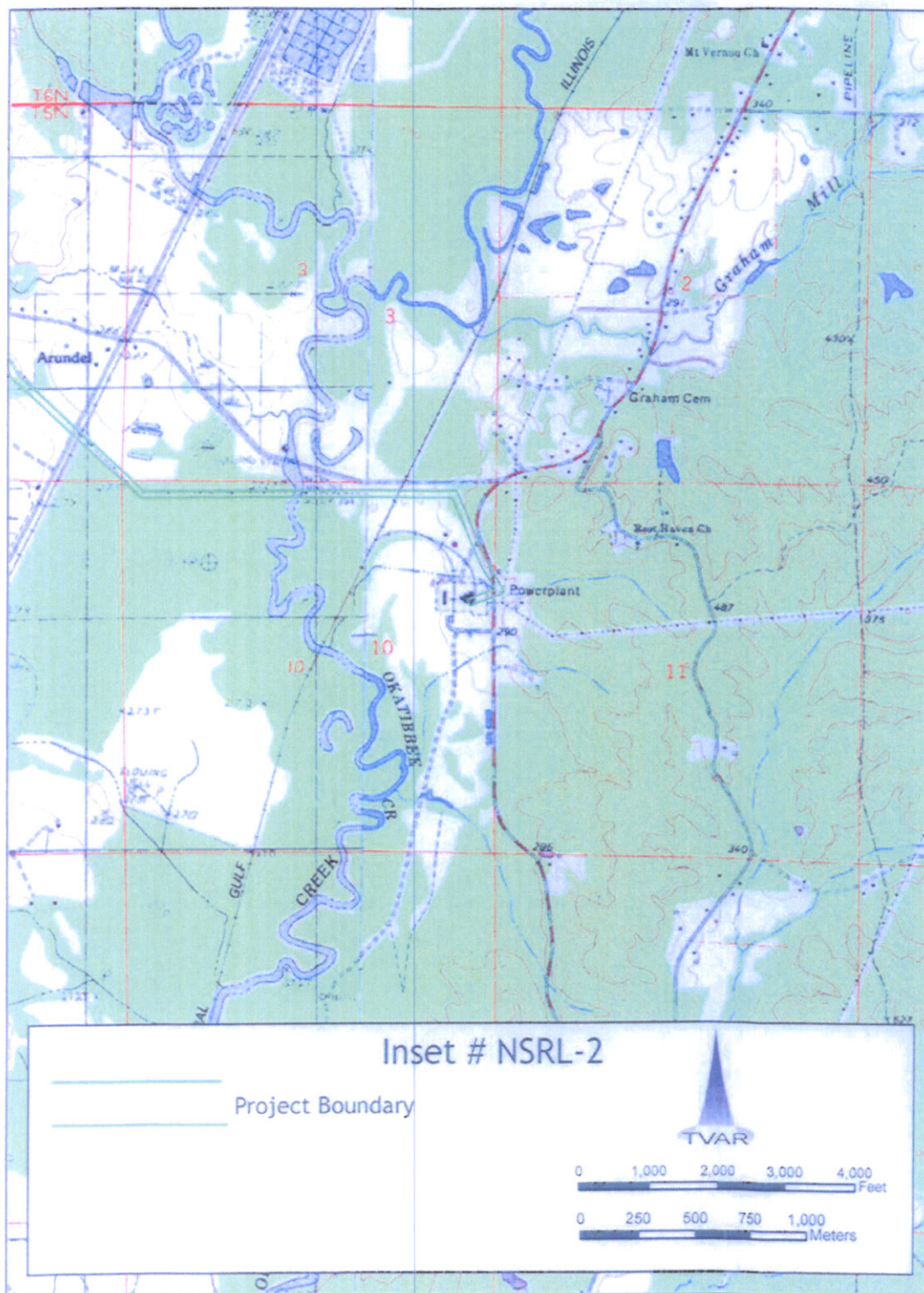
APE for Plant Sweatt to Lost Gap Substation Transmission Line Section NSRL-1



Base map: USGS Quadrangle 7.5-minute Meehan

APE for Plant Sweatt to Lost Gap Substation Transmission Line Section NSRL-2

Tennessee Valley Archaeological Research - 46



Base map: USGS 7.5-minute quadrangle Meridian South

EXHIBIT C

Emergency Discovery Plan

Kemper County IGCC Project, Mississippi

Introduction and Intent

This Emergency Discovery Plan, appended to the Programmatic Agreement for the above-referenced project, encompasses the following activities: (i) the construction and operation of the Kemper County Integrated Gasification Combined Cycle facility, an electricity generating facility that will consist of two lignite coal gasifiers with gas cleanup systems, two gas combustion turbines, two heat recovery steam generators, a steam turbine, and associated support facilities and infrastructure to be located in Kemper County, Mississippi (collectively referenced hereafter as the “IGCC Facility”); (ii) certain associated facilities that will be located beyond the IGCC Facility, to include associated transmission lines and substations, a CO₂ pipeline, a natural gas pipeline, a reclaimed effluent water pipeline, certain pump stations associated with such pipelines, access roads, staging/laydown areas, borrow areas, and certain geotechnical and hydrogeological drilling sites (collectively referenced hereafter as “Associated Facilities”); and (iii) the Liberty Fuels Mine. Collectively, the IGCC Facility, the Associated Facilities, and the Liberty Fuels Mine shall be collectively referenced herein as the “Undertaking.”

At the present time, it is anticipated that certain Historic Properties will be adversely affected by the Undertaking construction and it is further anticipated that, in the course of additional cultural resource surveys, additional Historic Properties will be identified. However, due to the large project area involved, coupled with dense vegetation, there may be other as-yet-unidentified resources that would become apparent during the construction phase of the Undertaking. The intent of this Emergency Discovery Plan is to ensure that any Historic Properties that are identified in the course of project activities related to the Undertaking that were not previously identified are, in fact, evaluated in a manner so as to ensure compliance with the National Historic Preservation Act (“NHPA”).

Principal Areas of Concern

This emergency discovery plan involves three principal areas of concern.

- **Archaeological Sites.** Previously unknown archaeological sites, to include properties of traditional religious and cultural importance to Native Americans, may be encountered during the course of the construction of the Undertaking. Generally, such sites will usually consist of artifacts as contained within a reasonably intact soil matrix. For prehistoric sites, items such as projectile points (arrow heads), pottery sherds, shells, bone fragments, etc., may be encountered within a dark soil (the result of humans introducing organics such as carbon from fires, animal tissue, waste, etc., to the soil). These sites may represent areas where people lived or may simply represent storage pits or fire basins. In some cases, they may indicate the presence of graves (see below). For historic sites, the

relevant artifacts may consist of brick fragments, broken bottle glass (clear, green, amethyst), ceramic plate fragments, iron objects (nails, hinges, etc.), bones, etc. Again, such artifacts may also be associated with dark soil.

- Architectural Resources. Given the dense foliage associated with much of the Undertaking, it is possible that previously unidentified architectural resources (or the remains of the same), will be encountered as the Undertaking progresses.
- Human remains. Beginning in prehistoric times and continuing into the present, humans have inhabited the area associated with the Undertaking. As a result, human remains may have been interred within the project area. If present, human remains are likely to appear as bone fragments or caulky white substances as contained within elongated dark areas (graves).

Dissemination of Emergency Discovery Plan

The private party signatories to the aforementioned Programmatic Agreement will ensure that those individuals under their control responsible for overseeing and conducting ground disturbance operations in connection with the construction of the Undertaking (e.g., site or grading supervisors and heavy equipment operators) receive a copy of this Emergency Discovery Plan and that they are adequately briefed as to its requirements. Education for such personnel regarding the initial identification and treatment of potentially significant artifacts (as defined below) in compliance with this Emergency Discovery Plan will take place in coordination with the Tribes and the SHPO. It is anticipated that such education will occur in connection with safety and site orientation activities that would otherwise occur prior to their ground disturbance operations. To the extent that third-party contractors are utilized by the signatories, compliance with this Emergency Discovery Plan will be made a provision of any relevant contract.

Emergency Discovery Protocol

In the event that a potentially significant artifact(s) (i.e. not trash, rubbish, or materials less than 50 years old) associated with one or a combination of the above described areas of concern (for the purpose of this Emergency Discovery Plan, referenced collectively herein as “potentially significant artifacts”) is observed, then the following procedures will be followed.

All heavy equipment operations within a 200-foot buffer surrounding the potentially significant artifact(s) or the observation will cease and the relevant site supervisor will be notified of the find.

The relevant site supervisor will investigate the potentially significant artifact. If the supervisor believes that the find does not represent a potentially significant artifact, then he or she will document the find, note the area via photograph and location, and, if possible, collect the item in question for further identification. However, in the event

that, in his or her opinion, the find is a potentially significant artifact, then he or she will cordon off the relevant area and enforce the aforementioned buffer around the find. He or she will then initiate the notification process outlined below.

Upon his or her determination of the finding of a potentially significant artifact, the supervisor will immediately notify a designated representative of the Mississippi Power Company or the North American Coal Corporation, depending upon the location of the find, and detail the circumstances of the find. The notified party will then notify the lead Federal agency and provide appropriate documentation, to include photographs. The notified party will also arrange for the deployment of a qualified archaeologist to the site of the find. Said archaeologist, in coordination with the Tribes and the SHPO, will investigate the find and determine whether or not, in his or her professional opinion, the site of the find warrants further investigation. Documentation justifying the archaeologist's determination will be provided to the lead Federal agency. Such documentation may be transmitted electronically (i.e., via email).

Upon receipt of the archaeologist's determination, the lead Federal agency will proceed as follows, depending upon whether the site is located on the IGCC Facility or on an Associated Facility or, alternatively, on the Liberty Fuels Mine.

1. If the site is located on the IGCC Facility or on an Associated Facility, the lead Federal agency will have fourteen (14) days to disagree with the archaeologist's determination. If the lead Federal agency agrees that the site does not warrant further investigation, or if fourteen (14) days pass without a conclusive response from the lead Federal agency, then the site may be disturbed. If the determination is that the site warrants further investigation, or if there is disagreement as to whether further investigation is or is not required, then the lead Federal agency will notify the other signatories to the Programmatic Agreement and a plan of action will be timely developed and implemented to resolve the disagreement and/or conduct further investigation.

2. If the site is located on the Liberty Fuel Mine site, then the role of the MDEQ as a relevant regulatory authority and the demands of ongoing coal-mining operations at the mine warrant a process different from the foregoing. Accordingly, in such case the lead Federal agency will have five (5) business days to disagree with the archaeologist's determination. If the lead Federal agency agrees that the site does not warrant further investigation, or if five (5) business days pass without a conclusive response from the lead Federal agency, then the site may be disturbed. If the determination is that the site warrants further investigation, or if there is a disagreement as to whether further investigation is required, then the lead Federal agency will promptly notify MDEQ which, in coordination with the SHPO and the Tribes, will timely develop and implement a plan of action to resolve the disagreement and/or conduct further investigation and submit the same to the lead Federal agency for approval.

3. In the case of the discovery of human remains, any such plans of action will comport with this Programmatic Agreement's Plan for Treatment of Human Remains.

Previously Mitigated Sites

It is recognized and understood that certain artifacts will likely remain on certain sites after the archaeologists have completed their work. These sites, though mitigated through data recovery, may contain some archaeological materials as a result of the sampling program employed. This is interpreted as an acceptable loss. Such sites are not intended to trigger the procedures outlined in this Emergency Discovery Plan (so long as human remains are not encountered). In the case of human remains being encountered at any site, all work will cease, as per the protocol outlined above, and the Plan for Treatment of Human Remains will be implemented.

EXHIBIT D

Plan for Treatment of Human Remains Kemper County IGCC Project, Mississippi

I. Introduction

This Plan for the Treatment of Human Remains, appended to the Programmatic Agreement for the above-referenced project, encompasses the following activities: (i) the construction and operation of the Kemper County Integrated Gasification Combined Cycle facility, an electricity generating facility that will consist of two lignite coal gasifiers with gas cleanup systems, two gas combustion turbines, two heat recovery steam generators, a steam turbine, and associated support facilities and infrastructure to be located in Kemper County, Mississippi (collectively referenced hereafter as the “IGCC Facility”); (ii) certain associated facilities that will be located beyond the IGCC Facility, to include associated transmission lines and substations, a CO₂ pipeline, a natural gas pipeline, a reclaimed effluent water pipeline, certain pump stations associated with such pipelines, access roads, staging/laydown areas, borrow areas, and certain geotechnical and hydrogeological drilling sites (collectively referenced hereafter as “Associated Facilities”); and (iii) the Liberty Fuels Mine. Collectively, the IGCC Facility, the Associated Facilities, and the Liberty Fuels Mine shall be collectively referenced herein as the “Undertaking.”

Both prehistoric and historic archaeological sites have been recorded within the Undertaking’s Areas of Potential Effect (“APEs”). Given the history of human occupation within these APEs, it is possible that burial sites are present therein. Accordingly, this Plan for Treatment of Human Remains (“Plan”) has been developed and is intended to be implemented in conjunction with the project’s Emergency Discovery Plan in order to recognize the potential for the discovery of human remains and to also ensure that specific actions are taken should such remains be encountered.

II. Relevant Laws and Regulations

As this project constitutes a Federal undertaking, the Advisory Council for Historic Preservation’s regulations, *Protection of Historic Properties, Final Rule*, as codified at 36 C.F.R. Part 800, provide the relevant context for ensuring that a process exists to protect significant historic properties and human remains. That process has led to the execution of the aforementioned Programmatic Agreement that, among other provisions, incorporates the Emergency Discovery Plan and this Plan.

Despite its status as a Federal undertaking, the project is not taking place on Federal land or tribal land. Accordingly, the State of Mississippi’s laws and regulations, including The Antiquities Law of Mississippi, Miss. Code Ann. §§ 39-7-1 *et seq.*, regarding the treatment of human remains – whether prehistoric, prehistoric, or otherwise – provide the most immediately relevant legal framework and compliance with those

laws must be assured regardless of the requirements of this Plan. Local law enforcement requirements may also be implicated.

III. Discovery of Human Remains

A. Initial Response to Discovery of Potential Human Remains

In coordination with the Tribes and the SHPO, site supervisors and heavy equipment operators will be educated with respect to the identification of human remains and these procedures in connection with the training set forth in this Programmatic Agreement's Emergency Discovery Plan.

In the event that potential human remains are discovered, then the following procedures will be followed. To the extent that these procedures conflict with the aforementioned state laws or regulations or the requirements of a law enforcement investigation, the requirements of those state laws or regulations or any law enforcement investigation will be followed instead.

1. All heavy equipment operations within a 200-foot buffer surrounding the potential human remains will cease and the grading supervisor will be notified of the find.

2. The relevant site supervisor will investigate the potential human remains. If he or she believes conclusively that the find does not represent human remains, then he or she will document the find, note the area via photograph and location, and collect the items in question for further identification.

3. (a) If the supervisor determines that the find may represent human remains, then he or she will immediately notify a designated representative of Mississippi Power Company or the North American Coal Corporation, depending upon the location of the find, and detail the circumstances of the find. He or she will also cordon off the area in question and arrange for the site to be otherwise secured. The notified party will then notify the lead Federal agency, providing appropriate documentation, to include photographs. Provision of such documentation may take place by electronic means (i.e., via email). The notified party will also arrange for the deployment of a qualified physical anthropologist to the site. Said anthropologist, in consultation with the Tribes and the SHPO, will investigate the find and determine whether or not, in his or her professional opinion, the site of the find warrants further investigation. Documentation justifying said determination will be provided to the lead Federal agency. Such documentation may be transmitted electronically (i.e., via email). At any point during the foregoing process, if the human remains are believed to be less than 100 years old and to be part of a crime scene, then the notified party will notify local law enforcement authorities of the find as well.

- (b) Upon receipt of the anthropologist's determination, the lead Federal agency will proceed as follows, depending upon whether the site of the find is

located on the IGCC Facility or on an Associated Facility or, alternatively, on the Liberty Fuels Mine.

(i) If the site is located on the IGCC Facility or on an Associated Facility, the lead Federal agency will have fourteen (14) business days to disagree with the anthropologist's determination. If the lead Federal agency agrees that the find does not warrant further investigation, or if fourteen (14) business days pass without a conclusive response from the lead Federal agency, then the site may be disturbed.

If, however, the determination is that the find warrants further investigation, or if there is disagreement as to whether further investigation is or is not required, then the lead Federal agency will notify the other signatories to the Programmatic Agreement and a plan of action will be timely developed and implemented consistent with the requirements set forth below.

(ii) If the site is located on the Liberty Fuel Mine site, then the role of the MDEQ as a relevant regulatory authority and the demands of ongoing coal-mining operations at the mine warrant a process different from the foregoing. Accordingly, in such case, then the lead Federal agency will have five (5) business days to disagree with the anthropologist's determination. If the lead Federal agency agrees that the find does not warrant further investigation, or if five (5) business days pass without a conclusive response from the lead Federal agency, then the site may be disturbed.

If, however, the determination is that the find warrants further investigation, or if there is disagreement as to whether further investigation is or is not required, then the lead Federal agency will notify MDEQ. Upon receipt of such notification, MDEQ, in coordination with the SHPO and the Tribes, will timely reach a determination on the matter and develop and implement a plan of action consistent with the requirements set forth below and with the approval of the lead Federal agency.

B. Treatment of Human Remains

When encountered, all human remains will be treated with dignity and respect and in accordance with applicable laws and regulations, to include The Antiquities Law of Mississippi, Miss. Code Ann. §§ 39-7-1 *et seq.*, and any relevant law enforcement requirements. Otherwise, the following procedures will be implemented:

1. As an initial matter, the party responsible for the site disturbance will reconsider whether the burial site must be disturbed pursuant to the Undertaking or if avoidance of the burial site is possible, with avoidance being the preferred alternative. If avoidance is not possible, then the signatories, including the Tribes, will proceed as follows.

2. All burials discovered during archaeological fieldwork will be uncovered by hand excavation, with care and respect;

3. Once burials are drawn and photographed in place, the human remains will be removed from the ground and placed, unwashed, in unbleached muslin and carried to a secure, on-site storage location;

4. Any associated artifacts and soil from beneath and around the human remains will be removed and carried to a secure, on-site storage location;

5. On-site storage will take place in a trailer or storage container which can be secured with locks;

6. While on site, some basic non-destructive measurements, drawings, photographs, and notes on the unwashed remains will be made, including information on characteristics of age, sex, stature, pathologies, and traumas, in order to assist in the determination of cultural affiliation of the remains. Any such determination will be made in consultation with the Tribes;

7. Burials and associated artifacts and soil will be maintained in secure storage on-site until re-interment on-site or as nearby as practicable. At time of re-interment, each burial will be interred with its associated artifacts and soil in a box made of kiln-dried eastern red cedar. A single re-interment ceremony, or in reasonable intervals in the case of multiple discoveries from different sites, will be held. If the lead Federal agency, in consultation with the Tribes, determines that the human remains are culturally affiliated with either Tribe, then re-interment will occur at a time in and in a manner agreed upon by the landowner, the responsible signatory, and representatives of the Tribe(s);

8. All notes, drawings, and photographs of burials will be placed in a secure curation facility for record purposes. The photographs are not to be published or publicly disseminated in any manner; and

9. The location of the re-interment will be kept strictly confidential.