

COMMISSIONERS COURT OF DEWITT COUNTY, TEXAS

**MARCH 28, 2016 PUBLIC HEARING REGARDING:
OLIVER ROAD PETITION**

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PUBLIC HEARING

of

3/28/2016

Regarding

**“A PETITION BY PROPERTY
OWNERS OF DEWITT COUNTY
REQUESTING THE
COMMISSIONERS COURT TO
DISCONTINUE, VACATE
AND/OR ABANDON A
PORTION OF A ROAD TO THE
PUBLIC”**

RE: OLIVER ROAD

POSTED
DATE: 3-4-16 @ 3:05pm
NADRELSON

Daryl L. Fowler, County Judge
DeWitt County, Texas
Date: March 4, 2016



NOTICE OF MEETING - DeWITT COUNTY COMMISSIONERS COURT

The Commissioners Court of DeWitt County, Texas, will hold a SPECIAL meeting on the 28th day of MARH, 2016, at 1:30 P.M. in the COUNTY COURTROOM of the DeWITT COUNTY COURTHOUSE, in Cuero, Texas.

Pursuant to authorization provided by and limited therein by Title 5, Chapter 551 of the Government Code, DeWitt County Commissioners Court reserves the right to meet in a closed session on any agenda item should the need arise. Immediately before any closed session, the specific section or sections of Government Code, Chapter 551 which provides statutory authority will be announced.

CALL TO ORDER; PLEDGE OF ALLEGIANCE & INVOCATION.

NEW BUSINESS:

1. **PUBLIC HEARING:** A written petition ("Petition") was filed by certain property owners on February 16, 2016 with the Commissioners Court of DeWitt County, Texas ("Commissioners Court"), the governing body of DeWitt County, Texas ("County"), entitled: "A PETITION BY PROPERTY OWNERS OF DEWITT COUNTY, REQUESTING THE COMMISSIONERS COURT TO DISCONTINUE, VACATE AND/OR ABANDON A PORTION OF A ROAD TO THE PUBLIC." The Petition requests the following pursuant to Chapter 251 of the Texas Transportation Code: the discontinuance, vacation, and/or abandonment by the County of a portion of Oliver Road, said road being a county public road located in the unincorporated area of said county, said road being a part of the Mary Cogswell Survey (A-109), Wiley W. Hunter Survey (A-230), Memphis El Paso & Pacific Railroad Company Survey (A-358), and Alex Hamilton Survey (A-609) therein, and said road being located in DeWitt County Commissioner Precinct No. 1. A public hearing regarding this Petition will be conducted by the Commissioners Court on Monday, March 28, 2016 at 1:30 p.m. in the Commissioners Court Courtroom, First Floor, DeWitt County Courthouse, located at 307 North Gonzales St., Cuero, Texas 77954. Please make plans, if desired, to: (1) attend this public hearing; and (2) present testimony and/or other evidence to the Commissioners Court for or against the Petition.
2. **CLOSE PUBLIC HEARING.**
3. **EXECUTIVE/CLOSED SESSION:** A closed meeting will be held pursuant to Section 551.071 of the Texas Government Code (consultation with attorney) for the Commissioners Court to consult with and seek advice from its attorney, as needed, regarding any topic listed on the agenda posted for this March 28, 2016 meeting.
4. **DISCUSSION AND POTENTIAL ACTION:** Pursuant to Chapter 251 of the Texas Transportation Code and other authority, discussion and potential action may occur by the DeWitt County Commissioners Court on the following matters related to the February 16, 2016 Petition filed with the Commissioners Court and described in Agenda Item No. 1 above (the contents of which agenda item are incorporated by reference): (1) final action on said Petition; (2) scheduling a date for final consideration/action on said Petition; and (3) all related matters.

5. ADJOURN.


County Judge

CERTIFICATE: I hereby certify that the foregoing notice was duly posted by me on the bulletin board at the elevator on the first floor of the Courthouse at 307 N. Gonzales St., Cuero, Texas, on the 22nd day of **MARCH, 2016** 9:00 A.M./P.M., which is at least 72 hours prior to the scheduled meeting.

Natalie Carson County Clerk By: _____ Deputy

WITNESS LIST

PUBLIC HEARING

March 28, 2016

"A PETITION TO CLOSE A PORTION OF OLIVER ROAD"

FOR: Oliver, Robert (Self)
Schwartz, Marcus, Attorney for Robert Oliver and Mark & Betty Zgabay
Zgabay, Mark (Self)

AGAINST: Carson, John (Self)
Elder, Donald (Self)
Elder, Patrick B. (Self)
McGinnis, Davin, Attorney for Devon Energy
Ramee, Walton (Self)
Waggoner, Justin, Attorney for BHP Billiton Petroleum

Registering, but not testifying:

AGAINST: Carter, Teddy (Employee Devon Energy)
Dixon, Drew (Employee of BHP Billiton Petroleum)
Johnson, Jeffrey W. (Employee of BHP Billiton Petroleum)
Lange, Floyd (Self)
Leech, Ronnye (Employee of Devon Energy)
Owen, Brian F. (Employee of BHP Billiton Petroleum)
Perez, Oscar (Westhoff Fire Department)
Willette, Lynnae (Employee of BHP Billiton Petroleum)

Registering, but not registering an opinion:

Pennell, Tim (Self)

EXHIBITS PRESENTED BY:

MARCUS SCHWARTZ



PROPONENT
Exhibit #1
Contested part of Oliver Road from
East to West



PROPONENT
Exhibit #2
Contested part of Oliver Road looking
East

PROPOSED
#3
Looking East
on Oliver
From Bellevue
"IMPROVED
ROAD"



Proceeding east Jeep approaching.

Proposed #4
(108th)

From: Robert Oliver <oliver.robert@me.com>
To: Mark Schwartz <marcusfschwartz@aol.com>; Robert Oliver <oliver.robert@me.com>
Subject: Photos from Oliver Road; 7.31.14
Date: Thu, Jul 31, 2014 10:30 pm



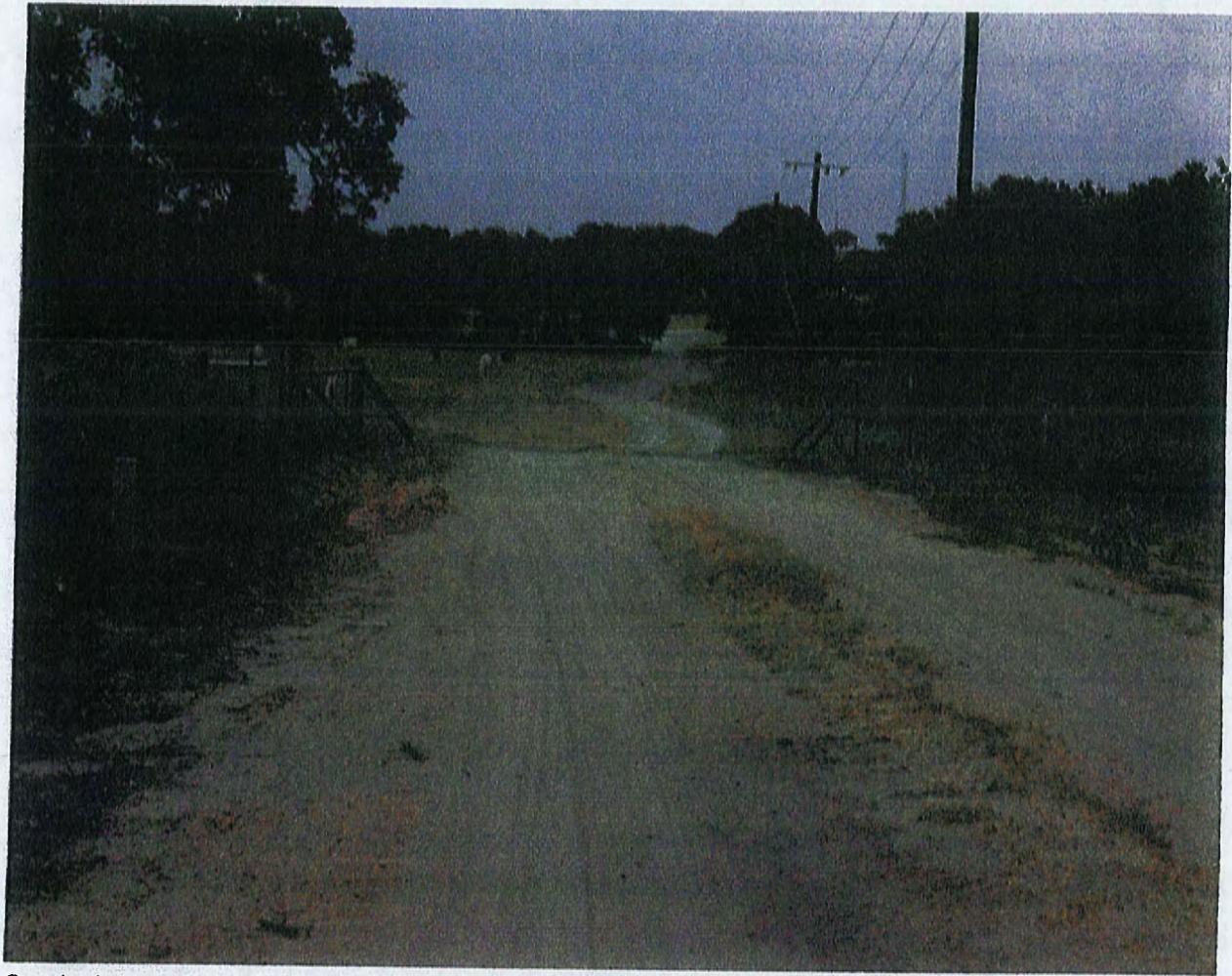
Continuing north OLIVER ROAD

PROPOSAL #4
(2014)



Continuing north

OLIVER ROAD



Continuing north

OLIVER ROAD (nearing Fulcher Creek)

PROPOSAL #4
(484)



Cattle grazing in unfenced area alongside the road.

OLIVER ROAD (nearing Fulcher Creek)

PROPOSED EXH 5

LOOKING EAST
ON OLIVER ROAD
CONTESTED PORTION

BELLEVUE



PROPOONENT EXH 6

From: rocknznzranch rocknznzranch@gvec.net
Subject:
Date: March 24, 2016 at 4:16 PM
To: marcusfschwartz marcusfschwartz@aol.com

26000Y ENTRANCE

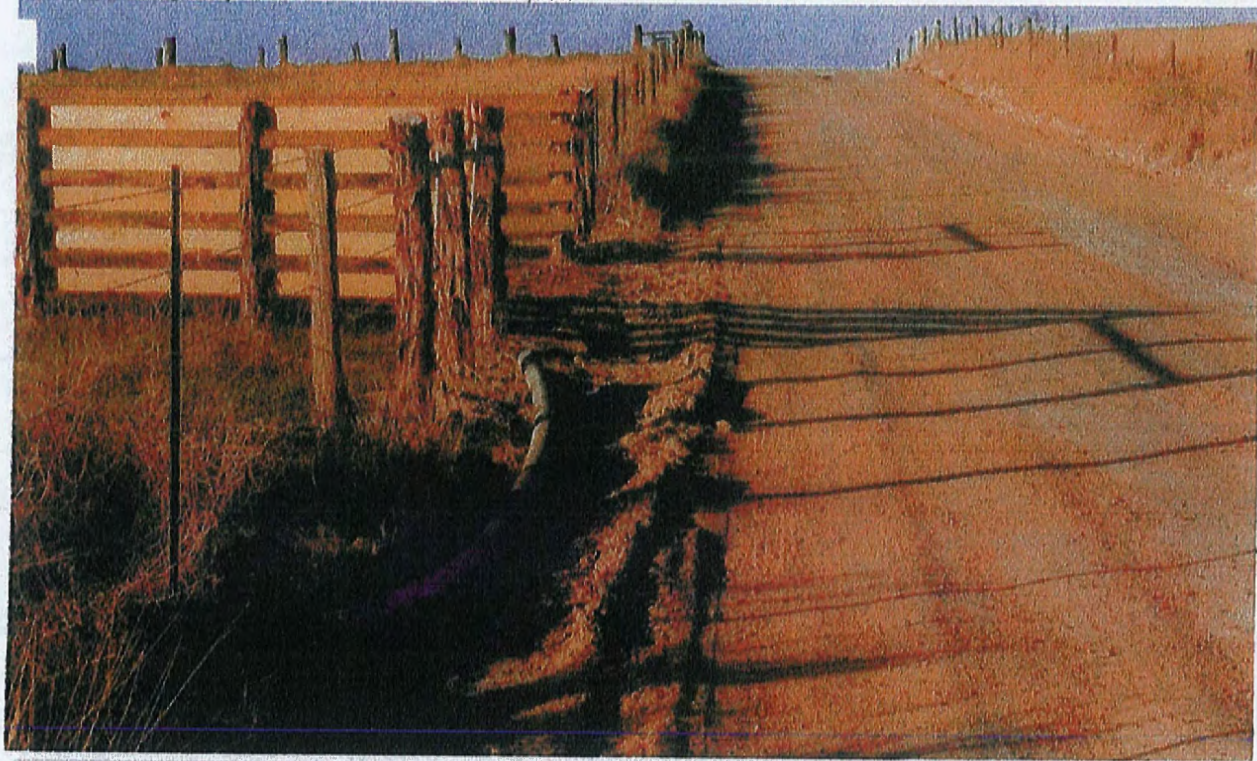
← NORTH

HEADING
EAST

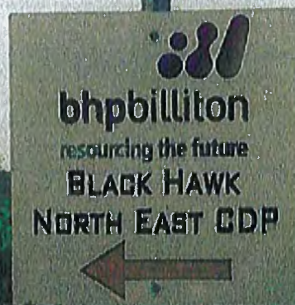


OLIVER ROAD

Sent via the Samsung Galaxy S5 ACTIVE™, an AT&T 4G LTE smartphone



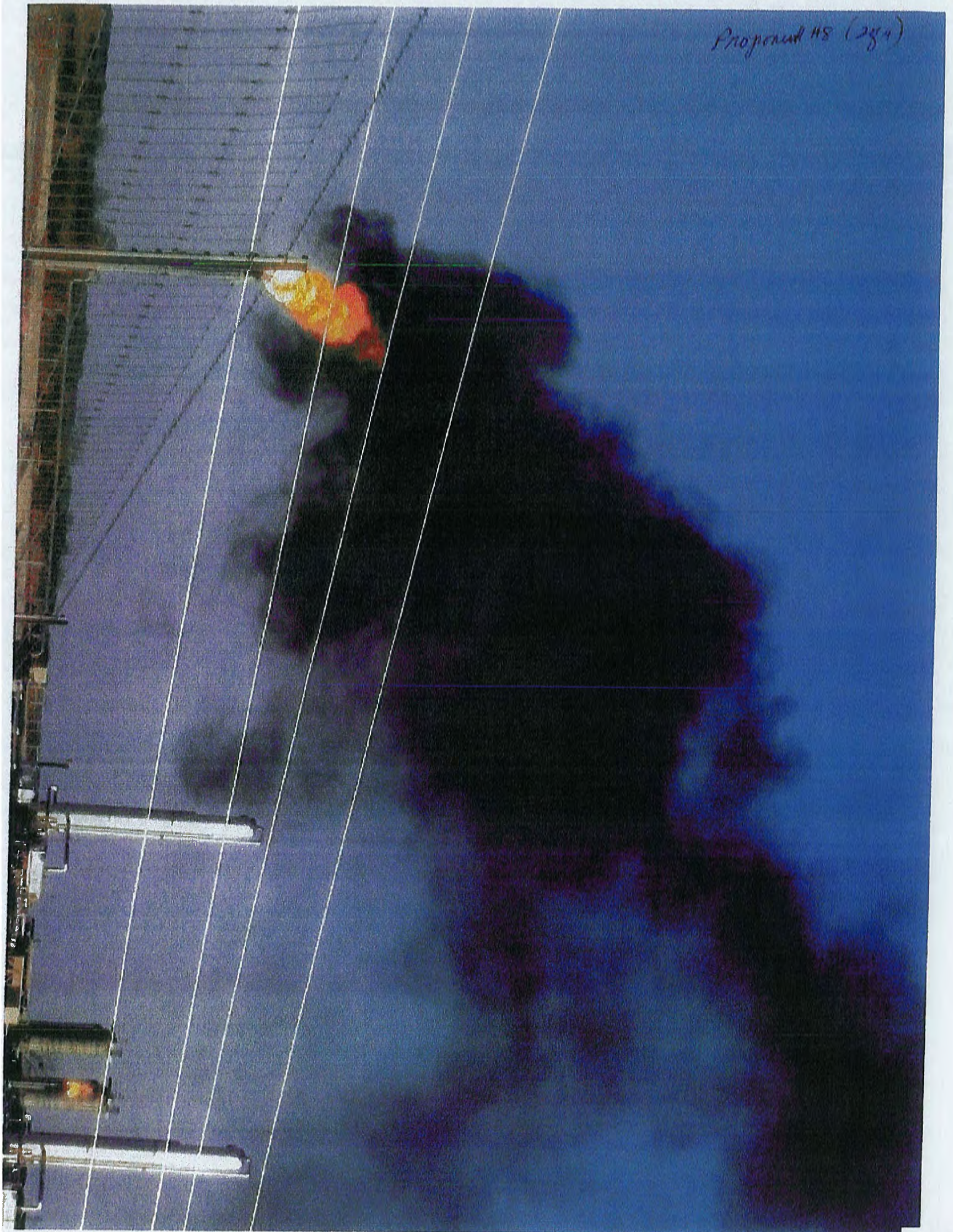
PROPOSAL EXH 7
CORNER OF OLIVER and
BELLEVUE CEMETERY RD.



PROPONENT EXH 8
4 pages (page 1 of 4)



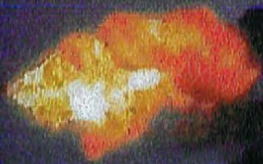
Propellant HS (2854)



Proposed #8
(#3074)

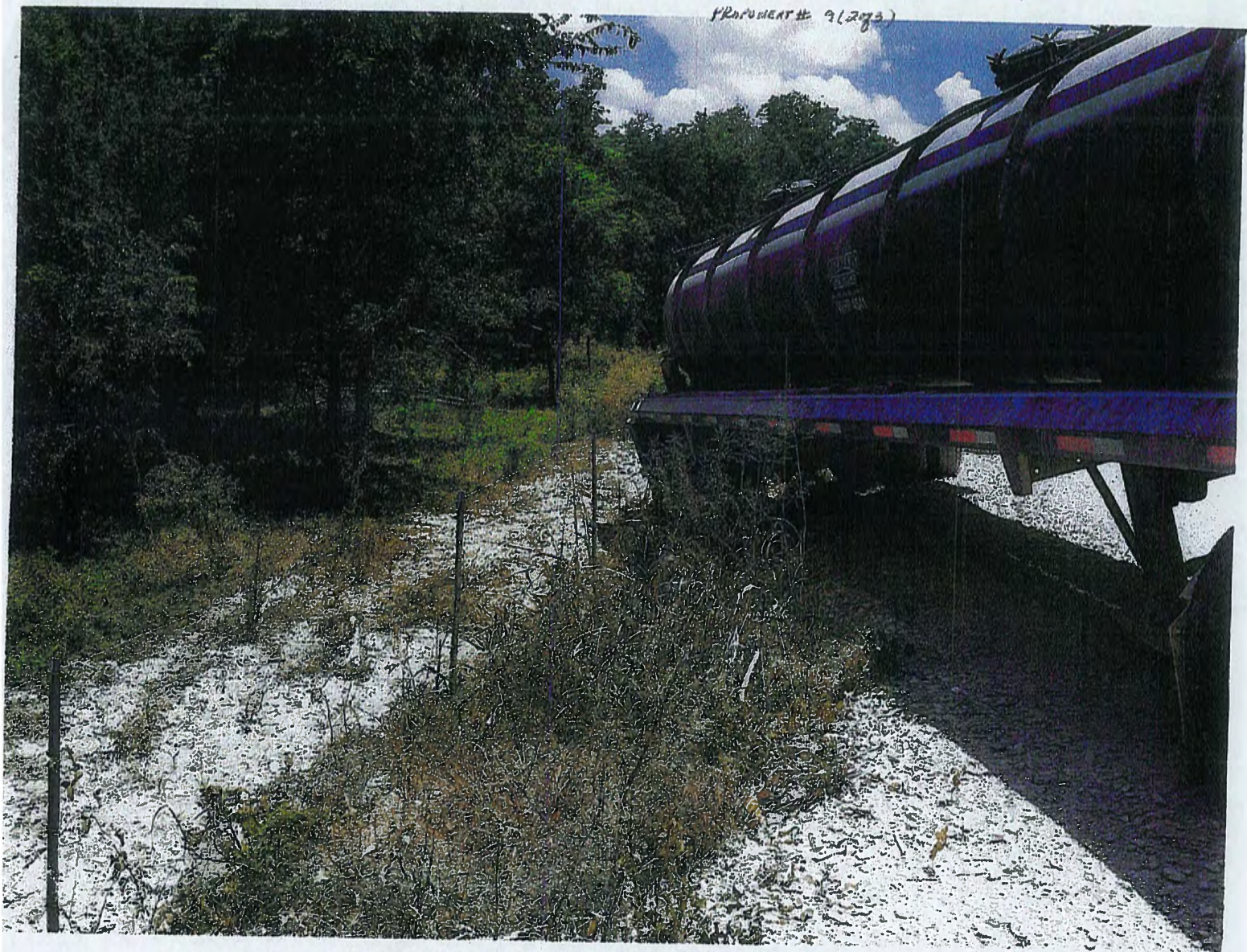


Proposed #8 (4/4)



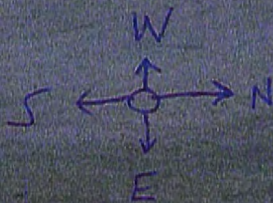


PERMIT # 9(2023)





PROPOSED EXH #10
EAST END OF OLIVER



PROPOSAL EXH 11 (page 5 of 3)
(PRIOR TO EXH 9 METAL POST DAMAGES)

EXCAVATION DONE BY
COUNTY COMMISSIONER

From: Robert Oliver <oliver.robert@me.com>
To: Mark Schwartz <marcusfschwartz@aol.com>
Subject: Photos from Oliver Road
Date: Thu, Jul 31, 2014 9:30 pm

This shows where the county had 45'd my two corners to Oliver Road. The guys in the photo are working corners back



- LOOKING EAST ON CONTESTED PORTION
- CORNER EXCAVATION AND FENCEWORK DONE BY COUNTY PRECINCT COMMISSIONER

PROPOSAL #11 (2013)

PROFICIENT #11 (563)



EXHIBIT PRESENTED BY:

JUSTIN WAGGONER

SMYSER KAPLAN & VESELKA, L.L.P.

BANK OF AMERICA CENTER
700 LOUISIANA SUITE 2300 HOUSTON, TEXAS 77002
TELEPHONE 713.221.2300 FACSIMILE 713.221.2320

Direct Dial Number:
713 221-2343

Author's E-mail Address:
jwaggoner@skv.com

March 24, 2016

Commissioners Court of DeWitt County
c/o Hon. Daryl L. Fowler
307 North Gonzales Street
Cuero, Texas 77954

Re: Opposition to Petition to Discontinue, Vacate and/or Abandon a Portion of Oliver Road, a Public Road of DeWitt County

Commissioners:

I write on behalf of BHP Billiton Petroleum Properties (N.A.), LP f/k/a Petrohawk Properties, LP, BHP Billiton Petroleum (Eagle Ford Gathering) LLC f/k/a EagleHawk Field Services, LLC ("BHPB Gathering"), and their affiliated entities (collectively, "BHPB") in opposition to the pending Petition filed by Mr. Robert Oliver, Mr. Mark Zgabay, et al., requesting discontinuance, vacatur, and/or abandonment of a portion of Oliver Road. BHPB values its relationship with DeWitt County and has striven to be a responsible and contributing member of the community. BHPB owns more than 250 surface acres of property in the County located in close proximity to Oliver Road and, together with its joint working interest owner, Devon Energy, holds oil and gas leases on more than 80,000 acres of land in the County. As a result of its oil and gas exploration and production activities, BHPB has paid more than half a billion dollars of royalty revenue to DeWitt County residents and property owners. In the last two years, BHPB's joint operations with Devon have contributed more than \$50 million in ad valorem tax revenue to the County. In the last two and a half years, BHPB has made approximately \$850,000 in charitable contributions to various causes within the County.

BHPB respectfully urges the Court to deny the Petition for closure of a portion of Oliver Road—a road in which the County has a continuing public interest and that is vital to BHPB's ongoing operations—for at least the following reasons:

1. The County's designation of the contested portion of Oliver Road as a county road on the DeWitt County road map, adopted in accordance with Chapter 258 of the Texas Property Code, constitutes "conclusive evidence" of Oliver Road's status as a county road and of the public's right to use the road.

2. BHPB purchased over 250 acres of land in DeWitt County adjacent to Oliver Road and invested substantial resources developing infrastructure in reliance on its right to use the contested portion of Oliver Road.
3. There is presently no other viable route for BHPB to obtain ingress and egress to and from its property in the County. Creating a viable alternative route would require more than half a million dollars in improvements to other County roads.
4. Any potential alternative route to BHPB's property is substantially longer than the route containing the contested portion of Oliver Road. As such, closing Oliver Road would (1) increase emergency response time to BHPB's property and (2) impose additional road maintenance expense on the State and County by necessitating BHPB's use of longer stretches of public roads to reach its property.
5. The burden on the two Petitioners who own property abutting the contested portion of Oliver Road purportedly created by BHPB's operations is minimal. BHPB estimates its current and future operations will require heavy trucks to travel the contested portion of Oliver Road an average of five times or less per day. Moreover, granting the Petition would result only in transferring whatever minimal inconvenience these Petitioners claim to face to other County residents whose property abuts any alternative route BHPB might use.
6. Petitioners seeking to close the contested portion of Oliver Road have themselves reaped tens of millions of dollars in royalty revenue from BHPB's operations and will continue to receive substantial royalty income in the future. It is unfair for Petitioners to derive an economic benefit from BHPB's operations and simultaneously demand that the County burden BHPB with additional costs by closing a road critical to BHPB's operations.
7. Petitioner Robert Oliver acquired property adjacent to the contested portion of Oliver Road with knowledge of BHPB's ownership of property in the same area and use of the road in its operations. He should not be heard to demand closure of the road based upon BHPB's use thereof, when he acquired his property with knowledge of BHPB's use of the road to access its property and conduct operations in the area.
8. BHPB understands that Petitioners Mark and Betty Zgabay have previously demanded that the County expend public funds improving the challenged portion of Oliver Road. Mr. and Mrs. Zgabay should not now

be heard to demand that the County deed to them public property that they demanded the County improve at taxpayer expense.

9. The bulk of the property owners who have joined the petition either do not own surface property abutting the contested portion of Oliver Road or do not live in DeWitt County at all. They have no apparent interest in closure of the contested portion of Oliver Road.
 10. To the extent the Court is inclined to grant the Petition—and BHPB respectfully submits there is no basis to do so—the Transportation Code requires further notice to utility easement holders, including BHPB Gathering, before entry of an order vacating, abandoning, or discontinuing the road.
1. **Oliver Road is indisputably a County road in which the public has an existing right of access.**

The Petition states that the contested portion of Oliver Road is “alleged by DeWitt County to be a public road.” Oliver Road is not merely “alleged” to be a public road. It is, indisputably, a public road.

Chapter 258 of the Transportation Code provides that “a county may clarify the existence of a public interest in a road” by adopting a county road map through the process specified in Chapter 258. Tex. Transp. Code § 258.001. Once a county adopts such a map, a property owner “may contest the inclusion of the road in the county road map by filing a suit in a district court in the county in which the road is located not later than the second anniversary of the date on which the county road map including the road was adopted.” *Id.* § 258.004. Absent a suit challenging the inclusion of a road in the county road map within the two-year period following adoption of the map, the “county road map . . . is *conclusive evidence* of: (1) the public’s right of access over a road included in the map; and (2) the county’s authority to spend public money to maintain a road included on the map.” *Id.* § 258.003 (emphasis added).

As reflected in the Court’s minutes, the County adopted a map pursuant to Chapter 258 in or about July 2007. The official County road map specifies that Oliver Road, including the contested portion thereof, is a county road. No property owner—including Petitioners now before the Court—has ever filed suit challenging the inclusion of Oliver Road on the County road map. To the extent Petitioners now challenge Oliver Road’s status as a public road, they

¹ BHPB notes that the Petition contains only a conclusory demand for the vacatur, abandonment, or discontinuance of the contested portion of Oliver Road and sets forth no reasons why Petitioners seek such relief. To the extent Petitioners offer arguments at the public hearing on the Petition, scheduled for 1:30 p.m. on March 28, 2016, that BHPB has not anticipated and addressed herein, BHPB respectfully requests the opportunity to submit supplemental briefing and evidence to the Court a reasonable amount of time after the hearing to address any such issues.

are more than six years late in doing so. Oliver Road's inclusion on the County road map *conclusively establishes* its status as a public road.

By adopting a County road map including Oliver Road, the County legitimately claimed its public interest in the road. No legitimate basis exists for the County to relinquish that public interest as requested in the Petition.

2. BHPB spent substantial resources purchasing and improving property in DeWitt County in reliance on its right to use the contested portion of Oliver Road.

In 2013, BHPB purchased more than 250 acres of property in the County to serve as the site of a Central Delivery Point ("CDP") that would gather and process gas and other hydrocarbons produced by surrounding wells in the County. Exhibit A (Affidavit of Brian F. Owen). Because BHPB would need regular, reliable access to the CDP, both during and after construction, the availability of public road access was critical to BHPB's decision on where to purchase property to build the CDP. *Id.* The contested portion of Oliver Road, which had been a public road for decades and which no property owner challenged being included on the County road map, provided the safe, reliable access BHPB sought. *Id.* BHPB therefore purchased the site for its CDP and thereafter invested substantial resources building the facility in reliance on its public access rights to use the contested portion of Oliver Road. *Id.* BHPB further spent more than \$30,000 of its own funds improving Oliver Road, including the contested portion, again in reliance on the fact that BHPB would have continuing access to the road. *Id.*² Given the size of BHPB's investment in reliance on Oliver Road's status as a public road, it would be unfair and improper to now close the road. *Cf. Moore v. Commissioners Court of McCulloch Cty.*, 239 S.W.2d 119, 121 (Tex. Civ. App.—Austin 1951, writ ref'd) ("We are unable to find any authority for a Commissioners Court to close or order closed a public road over the protest of an owner of land abutting a public road previously maintained as a part of a highway, and which owner having bought his property in relation to such road, as owner had acquired a property interest in the public road or highway. This property interest entitled the plaintiff to its use free from obstruction or hindrance by the appellee.").

3. No viable alternative ingress and egress route to BHPB's property presently exists.

The Petition should also be denied because BHPB presently has no viable route for ingress and egress to and from its property for the heavy trucks and equipment necessary to BHPB's operations other than the contested portion of Oliver Road.

Attached hereto as Exhibit B is a map depicting the location of BHPB's property in the County, where its CDP is located. The current route BHPB uses to access its CDP, via the contested portion of Oliver Road, appears on Exhibit B in yellow. The other conceivable alternative routes include the following: (i) a route via Elder Road (depicted in pink on

² Attached as Exhibit E are photographs reflecting BHPB's improvements to the contested portion of Oliver Road.

Exhibit B), (ii) a route via Cheapside (depicted in green on Exhibit B), and (iii) a route via Wild Road (depicted in orange on Exhibit B).³ None of these routes presently constitute a viable alternative for BHPB to reach its CDP for several reasons.

All three potential alternative routes include the northern, uncontested portion of Oliver Road, depicted on Exhibit B in blue. This portion of Oliver Road contains a low water crossing bridge that poses a flood risk in heavy rain, potentially precluding access. Exhibit B, Photos Blue 9, 10. Additionally, the northern portion of Oliver Road is a heavily rutted dirt road with a sharp turn that would require substantial improvement before it could be used in BHPB's operations. Exhibit B, Photo Blue 1-8. According to an estimate obtained by BHPB, it would cost more than half a million dollars to undertake the improvements necessary to render Oliver Road, as well as portions of Elder Road, a viable potential alternative access route. Exhibit A.

The remaining portions of all three potential routes pose a variety of problems, depicted in the photographs attached to Exhibit B, including the following:

- narrowness of the roads and visibility distance limitations make two-way traffic hazardous; e.g., Photos Pink 2, 5, Orange 12, 14;
- sharp turns with limited visibility; e.g., Photos Green 7, 9, Orange 9, 11;
- trees with low-hanging branches across the road present clearance problems; e.g., Photos Green 6, Orange 2, 4, 7, 8;
- proximity of power line poles to the roads renders navigation difficult; e.g., Photos Green 1, 2, 3;
- cattle guards across the road could be damaged by heavy equipment and prevent two-way traffic; e.g., Photos Pink 3, Green 1, 4; Blue 8.

Additionally, the route via Cheapside (the green route on Exhibit B) includes a weight-restricted bridge that cannot withstand the heavy vehicles necessary to BHPB's operations. Exhibit A; Exhibit B, Photos Green 5, 8.⁴ Moreover, the routes via Cheapside and Wild Road would require entering Gonzales County.

The lack of an available alternative route for ingress and egress to and from BHPB's CDP independently precludes the Court from granting the Petition to discontinue, vacate or abandon the contested portion of Oliver Road. See Tex. Transp. Code § 251.051(c) ("The

³ The numbers along each route correspond to photographs of each numbered location, which are attached to Exhibit B. These photos are referenced herein by the color of the route on Exhibit B to which the photos relate, followed by the number of the photo—e.g., "Orange 3" for the photo depicting location number 3 along the Wild Road route.

⁴ Additionally, there are two gas well pads located on property that abuts the contested portion of Oliver Road—designated by green circles on Exhibit B—for which the contested portion of the road constitutes the only possible route of ingress or egress, absent construction of an entirely new road.

commissioners court of a county may not discontinue a public road until a new road designated by the court as a replacement is ready to replace it.”).

4. **Apart from their structural inadequacy, all potential alternative routes to BHPB's property are substantially longer, increasing emergency response time and wear and tear on public roads.**

Wholly apart from the inadequacy of proposed alternative routes caused by their existing structural deficiencies, all potential alternative routes to BHPB's property are substantially longer than BHPB's current route across the contested portion of Oliver Road. Specifically, the Elder Road route is twenty-five percent longer than the route containing the contested portion of Oliver Road.⁵ Exhibit A. The routes via Cheapside and Wild Road are substantially longer still. Closing the contested portion of Oliver Road will thus result in greater wear and tear on larger stretches of public road. *Id.*

Even more problematic, closing the contested portion of Oliver Road will increase emergency response time to BHPB's property. BHPB understands from County officials that the primary emergency response to BHPB's property would come from the Cuero Volunteer Fire Department. Exhibit A. The distance that Cuero VFD first responders would be required to travel over the only other in-County route, via Elder Road, is twenty-five percent longer than the route via the contested portion of Oliver Road. Exhibit A; Exhibit C. Moreover, reaching BHPB's property via the Elder Road route may not be possible year-round, given the existence of a low water crossing on this route that poses a flood risk. Exhibit A; Exhibit B. While BHPB places the highest priority on safety in its operations, in the unlikely event of a fire or explosion, minimized emergency response time is critical. Even adding a few minutes to response times can cost lives. The same would be true of a fire or medical emergency at the residence of Petitioners Mark and Betty Zgabay. Because the contested portion of Oliver Road constitutes, by a substantial margin, the shortest route for first responders, it would be injurious to the health and safety of DeWitt County and its residents to vacate, discontinue, or abandon the road.

5. **The burden on adjacent property owners posed by public access to Oliver Road is minimal.**

During construction of its CDP, BHPB made substantially more frequent use of the contested portion of Oliver Road. Now that construction is complete, BHPB's use of the road has dropped off significantly. BHPB now estimates that, excluding light duty vehicles, its current operations necessitate sending heavy trucks (e.g. tractor trailers) across the contested portion of Oliver Road an average of five times or less per day. Exhibit A. As such, any inconvenience to adjacent property owners posed by BHPB's ongoing use of the road is minimal

⁵ BHPB has measured the length of alternative routes from the juncture of FM 766 and Bellevue Cemetery Road, as this is the last common point, from which each of the potential routes diverge as they proceed north. Exhibit C is a series of maps reflecting the lengths of each route from this common starting point.

at best—and plainly nowhere near the magnitude of the burden that closing the road would impose on BHPB.

Moreover, closing the contested portion of Oliver Road would not eliminate whatever modest inconvenience Petitioners claim to face from BHPB's operations. Rather, it would merely shift that alleged inconvenience to other County residents with property abutting whatever alternative route BHPB would be required to use, as well as other portions of Petitioners' property abutting such alternative routes. As noted above, this would impact more adjacent property owners, as all possible alternative routes are much longer. As the map attached as Exhibit B demonstrates, there is only a single permanent residence structure along BHPB's current route using the contested portion of Oliver Road and between five and ten residences adjacent to each potential alternative route.⁶

6. Petitioners have profited substantially from BHPB's operations.

As noted above, BHPB's operations in DeWitt County have resulted in royalty payments of more than half a billion dollars to County residents and property owners. Many of the signatories to the Petition are among those who have benefited from BHPB's operations, having collectively obtained tens of millions of dollars in associated royalty revenue. Exhibit A. Having benefitted handsomely from BHPB's operations, it is unfair for these same property owners to demand a road closure that will substantially increase BHPB's burden and expense associated with those operations.

7. Petitioner Robert Oliver bought his property with knowledge of BHPB's operations along Oliver Road.

Petitioner Robert Oliver presently owns approximately 75 percent of the acreage abutting the contested portion of Oliver Road. He acquired that property in August 2013, after BHPB purchased the land where its CDP is located, after BHPB had drilled multiple wells adjacent to the contested portion of Oliver Road, and after BHPB had installed pipelines across the contested portion of Oliver Road. Mr. Oliver thus purchased his property with knowledge of BHPB's ownership of adjacent property, operations along the contested portion of Oliver Road, and associated use of the road. It is unfair and improper for Mr. Oliver now to demand that the road be closed based on any inconvenience he claims BHPB's operations cause. *See City of Weslaco v. Turner*, 237 S.W.2d 635, 646 (Tex. Civ. App.—Waco 1951, writ refused n.r.e.) (denying injunction to prevent drainage into lake where property owners built their homes near lake with knowledge that the drainage existed as a result of local industry practice).

⁶ The locations of residences are noted in red on Exhibit B.

8. **Petitioner Robert Zgabay insisted that the County spend public money maintaining the portion of Oliver Road he now asks the Court to close and make his private property.**

BHPB understands that Petitioners Mark and Betty Zgabay—the only Petitioners other than Robert Oliver with property abutting the contested portion of Oliver Road—previously demanded that the Court authorize the expenditure of County funds to improve Oliver Road, insisting that Oliver Road was a public road that the County was obligated to maintain at public expense. BHPB further understands that the County complied. Having insisted that the County spend their fellow taxpayers' money improving what they then insisted was a public road, it is unfair and improper for Mr. and Mrs. Zgabay to now demand that the road be converted to their private property.

9. **Most of Petitioners have no apparent interest in closing the contested portion of Oliver Road.**

BHPB notes that the addresses provided by most of the Petitioners who have signed the Petition indicate that (1) they do not reside on surface property abutting the contested portion of Oliver Road and (2) many of them are not even residents of DeWitt County. As such, they have no apparent interest in closing the contested portion of Oliver Road.

10. **BHPB Gathering's status as a public utility with easement rights across the contested portion of Oliver Road precludes discontinuing, vacating, or abandoning the road absent further notice.**

As demonstrated above, no basis exists for the Court to grant the Petition, as Petitioners can present no viable basis for discontinuing, abandoning, or vacating the contested portion of Oliver Road. In the event that the Court disagrees, however, BHPB respectfully submits that the Transportation Code requires deferral of any further action on the Petition. Specifically, 251.058(b-1) of the Transportation Code provides as follows:

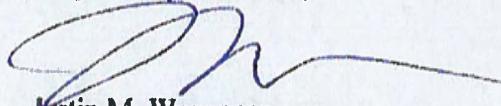
Not later than the 30th day before the date an order is signed [vacating, abandoning, or discontinuing a public road], the commissioners court shall notify a public utility or common carrier [that has the right of eminent domain and is using the property covered by the road for a right-of-way or easement purpose] of the proposal to close, abandon, and vacate the public road or portion of the public road.

Tex. Transp. Code § 251.058(b-1). A BHPB affiliate, BHPB Gathering, is a public utility that has acquired permits from the County authorizing installation of gas and liquid pipelines across the contested portion of Oliver Road, copies of which are attached as Exhibit D. To the extent that the Court, after receiving all of the evidence and argument of interested parties, considers

granting the Petition, BHPB Gathering is entitled to at least thirty days' written notice prior to the Court's entry of an order granting the Petition.

BHPB reiterates the value that it places on its status as a member of the DeWitt County community and hopes to continue contributing substantial value to the community for many years to come. The Petition before the Court threatens BHPB's ability to do so, as the portion of Oliver Road that Petitioners seek to close is vital to BHPB's continuing operations. Closing the contested road would serve no legitimate public or private interest. BHPB respectfully urges the Court to deny the Petition.

Respectfully submitted,



Justin M. Waggoner

JMW:td

Attachments

EXHIBIT A

AFFIDAVIT OF BRIAN F. OWEN

State of Texas §
 §
County of Harris §

BEFORE ME, the undersigned authority, on this day personally appeared Brian F. Owen, who is personally know to me and being first duly sworn by me, testified upon oath as follows:

"My name is Brian F. Owen. I am over the age of 18, of sound mind, and I am competent and legally capable of making this affidavit. The facts stated herein are true and correct, based upon my own personal knowledge and review of business records of my employer and DeWitt County public property records.

I am the Senior Land Manager—Oil Production Unit of BHP Billiton Petroleum (North America) Inc., which, together with its affiliates, is referenced in this affidavit as "BHPB."

Together with its joint working interest owner, Devon Energy, BHPB holds oil and gas leases on more than 80,000 acres of land in DeWitt County (the "County"). As a result of its oil and gas exploration and development activities, BHPB has paid more than half a billion dollars of royalty revenue to County residents and property owners, including tens of millions of dollars of royalty revenue to the signatories to the pending Petition to Discontinue, Vacate and/or Abandon a Portion of Oliver Road. In the last two years, BHPB's joint operations with Devon have contributed more than \$50 million in ad valorem tax revenue to the County. In the last two and a half years, BHPB has made approximately \$850,000 in charitable contributions to various causes within the County.

In June 2013, BHPB affiliate BHP Billiton Petroleum (Eagle Ford Gathering) LLC f/k/a EagleHawk Field Services, LLC ("BHP Gathering") purchased more than 250 acres of property in the County to serve as the site of a Central Delivery Point ("CDP") that would gather and process gas and other hydrocarbons produced by surrounding wells in the County. Because BHPB would need regular, reliable access to the CDP, both during and after construction, the availability of public road access was critical to BHPB's decision on where to purchase property to build the CDP. The contested portion of Oliver Road provided the safe, reliable access BHPB sought. BHPB therefore purchased the site for its CDP and thereafter invested substantial resources building the facility in reliance on its public access rights to use the contested portion of Oliver Road. BHPB further spent more than \$30,000 of its own funds improving Oliver Road, including the contested portion, again in reliance on the fact that BHPB would have continuing access to the road.

Attached as Exhibit B to BHPB's letter in opposition to the Petition to Discontinue, Vacate and/or Abandon a Portion of Oliver Road (the "BHPB Opposition Letter") is a map depicting the location of BHPB's property in the County, where its CDP is located. The current route BHPB uses to access its CDP, via the contested portion of Oliver Road, appears on

Exhibit B in yellow. The other conceivable alternative routes include the following: (i) a route via Elder Road (depicted in pink on Exhibit B), (ii) a route via Cheapside (depicted in green on Exhibit B), and (iii) a route via Wild Road (depicted in orange on Exhibit B). Photos that truly and accurately depict the numbered locations noted on the map are attached to Exhibit B. Each photo is labeled with the color of the route and the numbered location on that route that the photo depicts.

None of the available routes other than BHPB's present route via the contested portion of Oliver Road presently constitutes a viable alternative for BHPB to reach its property for several reasons. All three potential alternative routes include the northern, uncontested portion of Oliver Road, depicted on Exhibit B in blue. This portion of Oliver Road contains a low water crossing bridge that poses a flood risk in heavy rain, potentially precluding access. Exhibit B, Photo Blue 9, 10. Additionally, the northern portion of Oliver Road is a heavily rutted dirt road with a sharp turn that would require substantial improvement before it could be used in BHPB's operations. Exhibit B, Photo Blue 1-8. According to an estimate obtained by BHPB from a third party construction contractor, it would cost more than half a million dollars to undertake the improvements necessary to render Oliver Road and Elder Road a viable potential alternative access route.

The remaining portions of all three potential routes pose a variety of other problems, depicted in the photographs attached to Exhibit B, including the following:

- narrowness of the roads and visibility distance limitations make two-way traffic hazardous; e.g. Photos Pink 2, 5, Orange 12, 14;
- sharp turns with limited visibility; e.g., Photos Green 6, 7, 9, Orange 9, 11
- trees with low-hanging branches across the road present clearance problems; e.g., Photos Green 6, Orange 2, 4, 7, 8;
- proximity of power line poles to the roads renders navigation difficult; e.g., Photos Green 1, 2, 3;
- cattle guards across the road could be damaged by heavy equipment and prevent two-way traffic; Photos Pink 3; Green 1, 4; Blue 8.

Additionally, the route via Cheapside (the green route on Exhibit B) includes a weight-restricted bridge that cannot withstand the heavy vehicles necessary to BHPB's operations. Exhibit B, Photos Green 5, 8. Moreover, the routes via Cheapside and Wild Road require entering Gonzales County.

Attached as Exhibit C to the BHPB Opposition Letter are a series of maps reflecting the distance along public roads to BHPB's property via the routes discussed above, beginning from the last common point for all four routes—the juncture of FM 766 and Bellevue Cemetery Road. All alternative routes to BHPB's property are substantially longer than BHPB's current route via the contested portion of Oliver Road. Specifically, the Elder Road route is twenty-five percent longer than the route containing the contested portion of Oliver Road. The routes via Cheapside and Wild Road, through Gonzales County, are substantially longer still. Closing the contested portion of Oliver Road will thus result in greater wear and tear on larger stretches of public road.

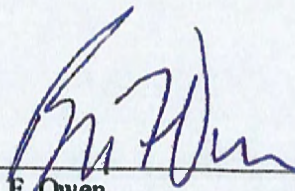
Closing the contested portion of Oliver Road will also increase emergency response time to BHPB's property. BHPB understands from County officials that the primary emergency response to BHPB's property would come from the Cuero Volunteer Fire Department. The distance that Cuero VFD first responders would be required to travel over the only other in-County route, via Elder Road, is twenty-five percent longer than the route via the contested portion of Oliver Road. Moreover, reaching BHPB's CDP via the Elder Road route may not be possible year-round, given the existence of a low water crossing on this route.

During construction of its CDP, BHPB made substantially more frequent use of the contested portion of Oliver Road. Now that construction is complete, BHPB's use of the road has dropped off significantly. BHPB now estimates that, excluding light duty vehicles, its current operations necessitate sending heavy trucks (e.g., tractor trailers) across the contested portion of Oliver Road an average of five times or less per day. The number of property owners impacted by any inconvenience posed by BHPB's operations is minimized through use of the contested portion of Oliver Road. The locations of residences along the various potential routes to BHPB's property are depicted in red on Exhibit B to the BHPB Opposition Letter. There is only one residence along the route via the contested portion of Oliver Road, and substantially more along all other potential routes.

Petitioner Robert Oliver presently owns approximately 75 percent of the acreage abutting the contested portion of Oliver Road. County real property records reflect that Mr. Oliver acquired the property in August 2013, via a deed describing the contested portion of Oliver Road as a public road. As of that time, BHPB had already (i) purchased the land where its CDP is located, (ii) drilled multiple wells on two pads adjacent to the contested portion of Oliver Road, and (iii) installed pipelines across the contested portion of Oliver Road. The location of pads containing wells drilled by BHPB and operated by Devon appear as green circles on Exhibit B to the BHPB Opposition Letter.

BHP Gathering is a public utility that has acquired permits from the County authorizing installation of gas and liquid pipelines across the contested portion of Oliver Road, copies of which are attached as Exhibit D to the BHPB Opposition Letter.

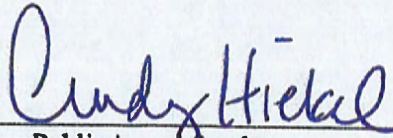
FURTHER AFFIANT SAYETH NOT."



Brian F. Owen

GIVEN UNDER MY HAND AND SEAL OF OFFICE and SWORN AND SUBSCRIBED
BEFORE ME on this the 23rd day of March, 2016.





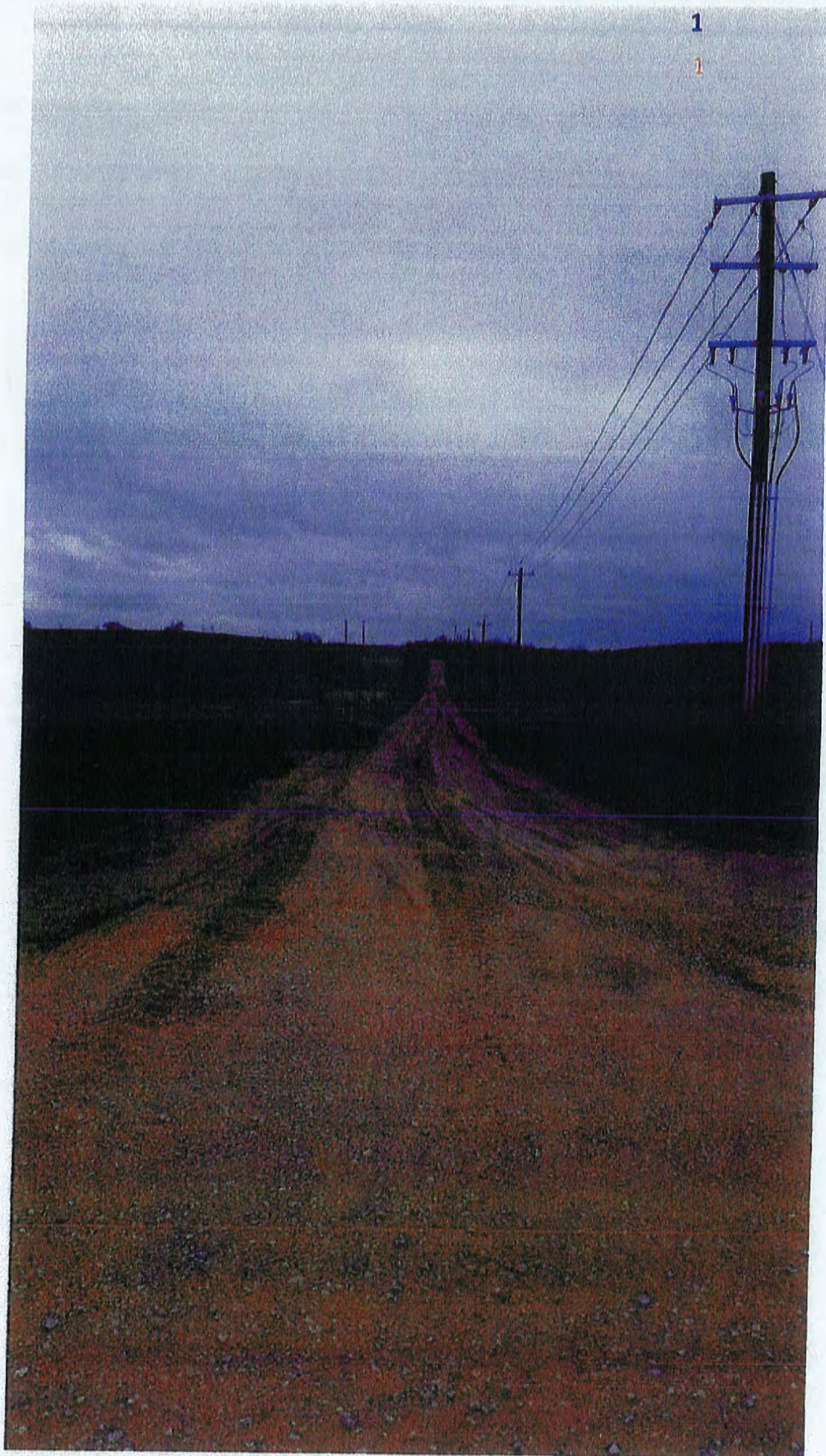
Notary Public in and for the
State of Texas

Printed name and commission expiration
date (or seal stating the same information)

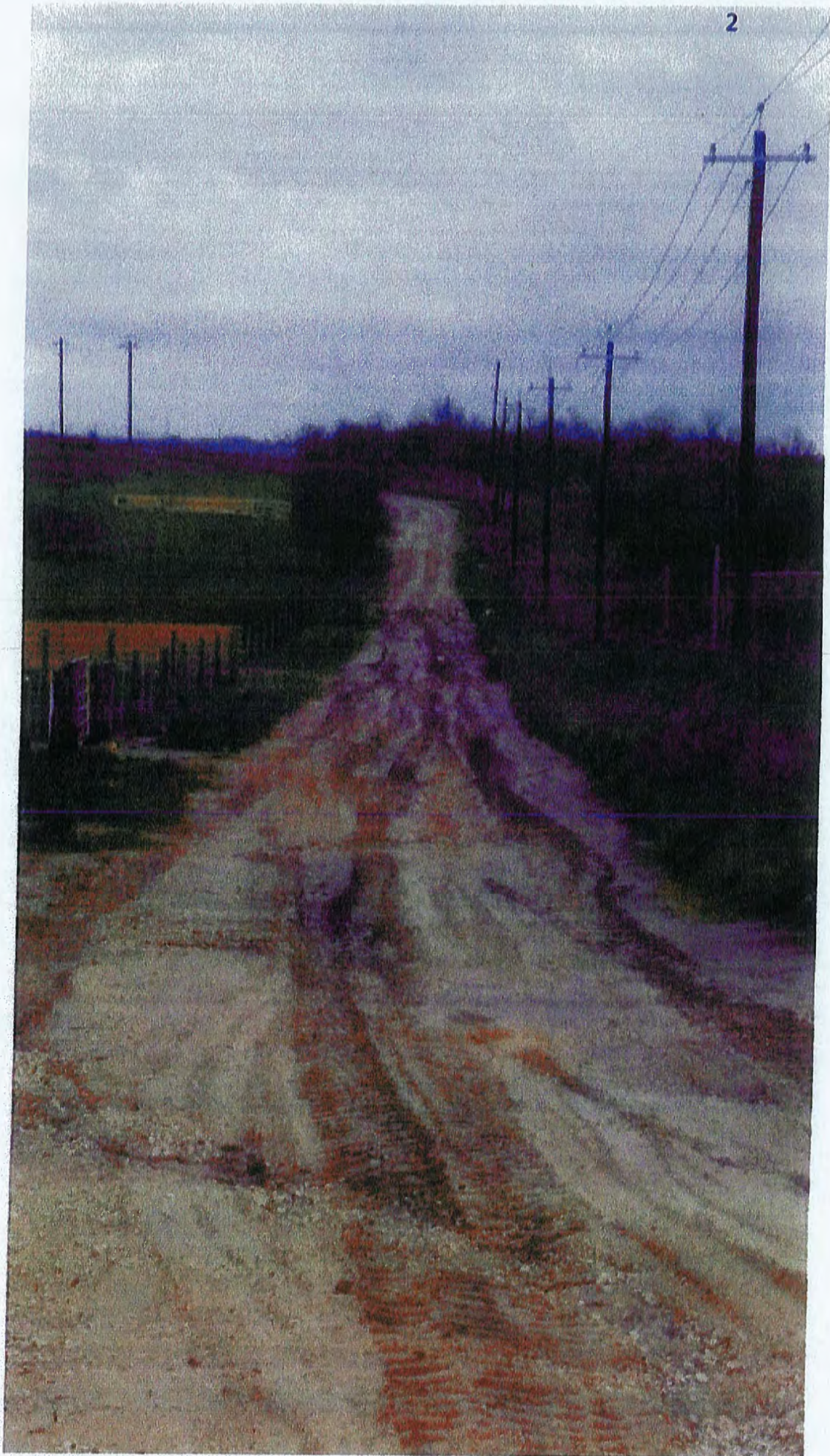
EXHIBIT B



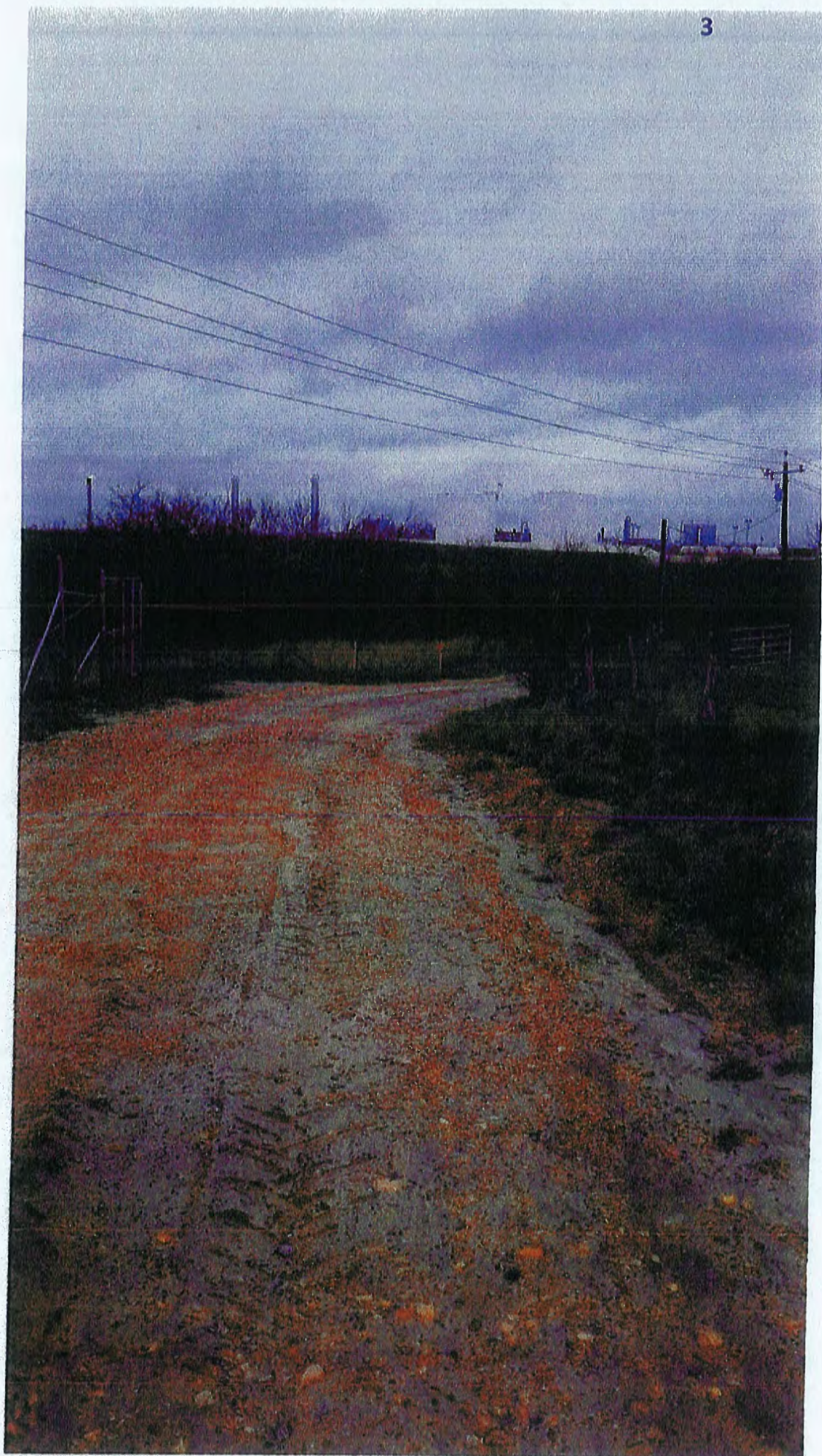
**BLUE
(UNCONTESTED PORTION OF OLIVER ROAD)**



Blue 1

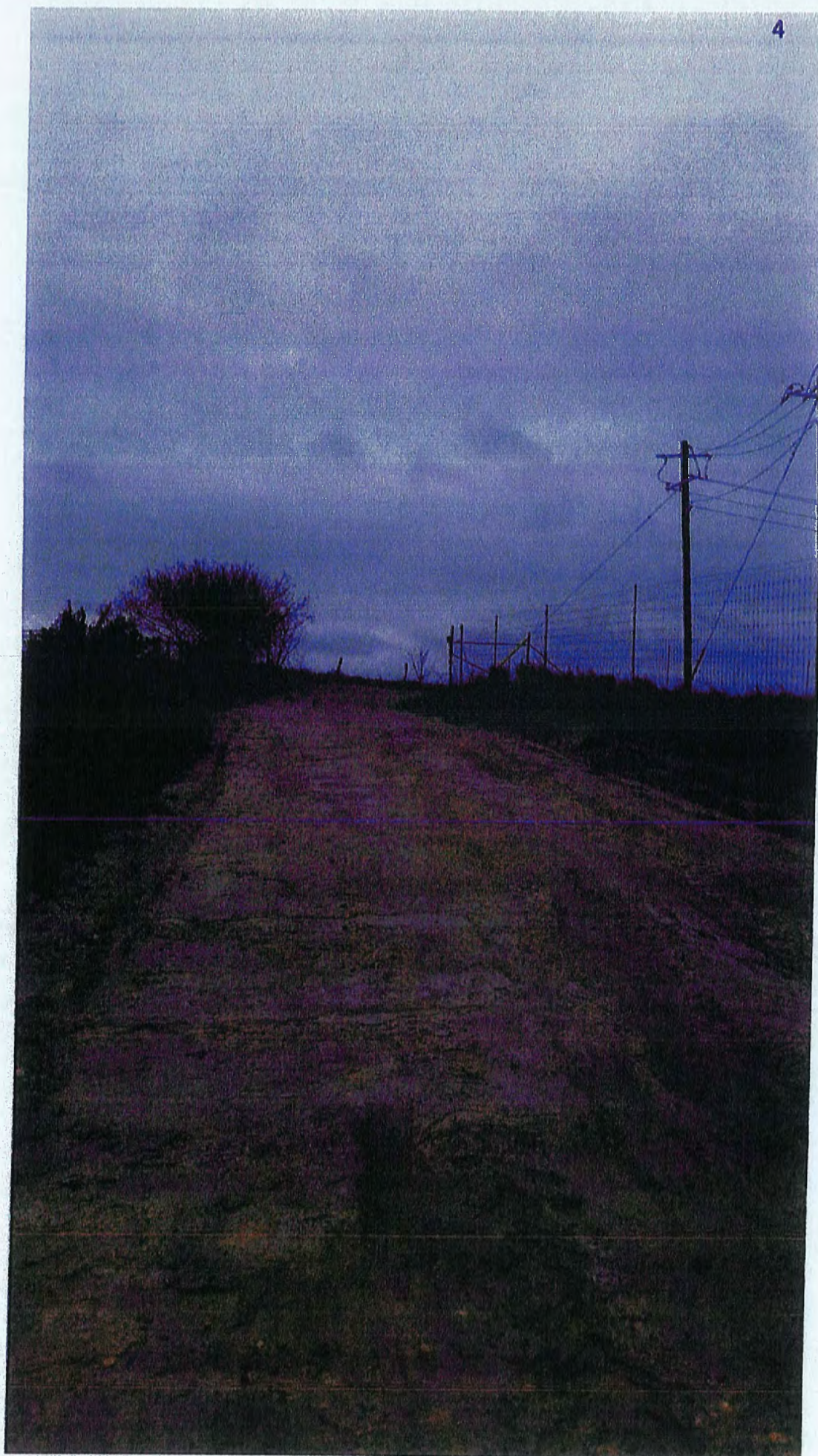


Blue 2

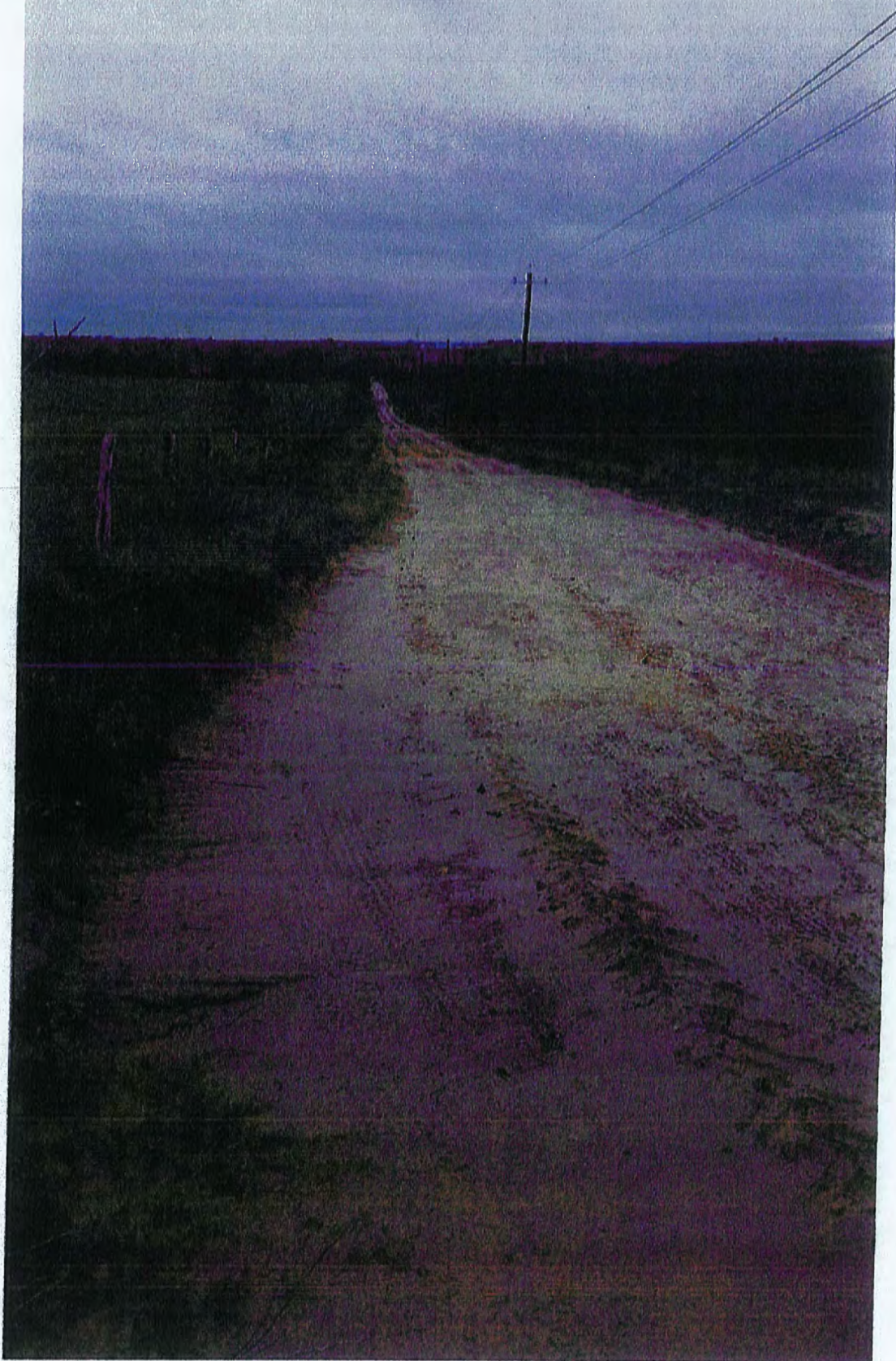


3

Blue 3

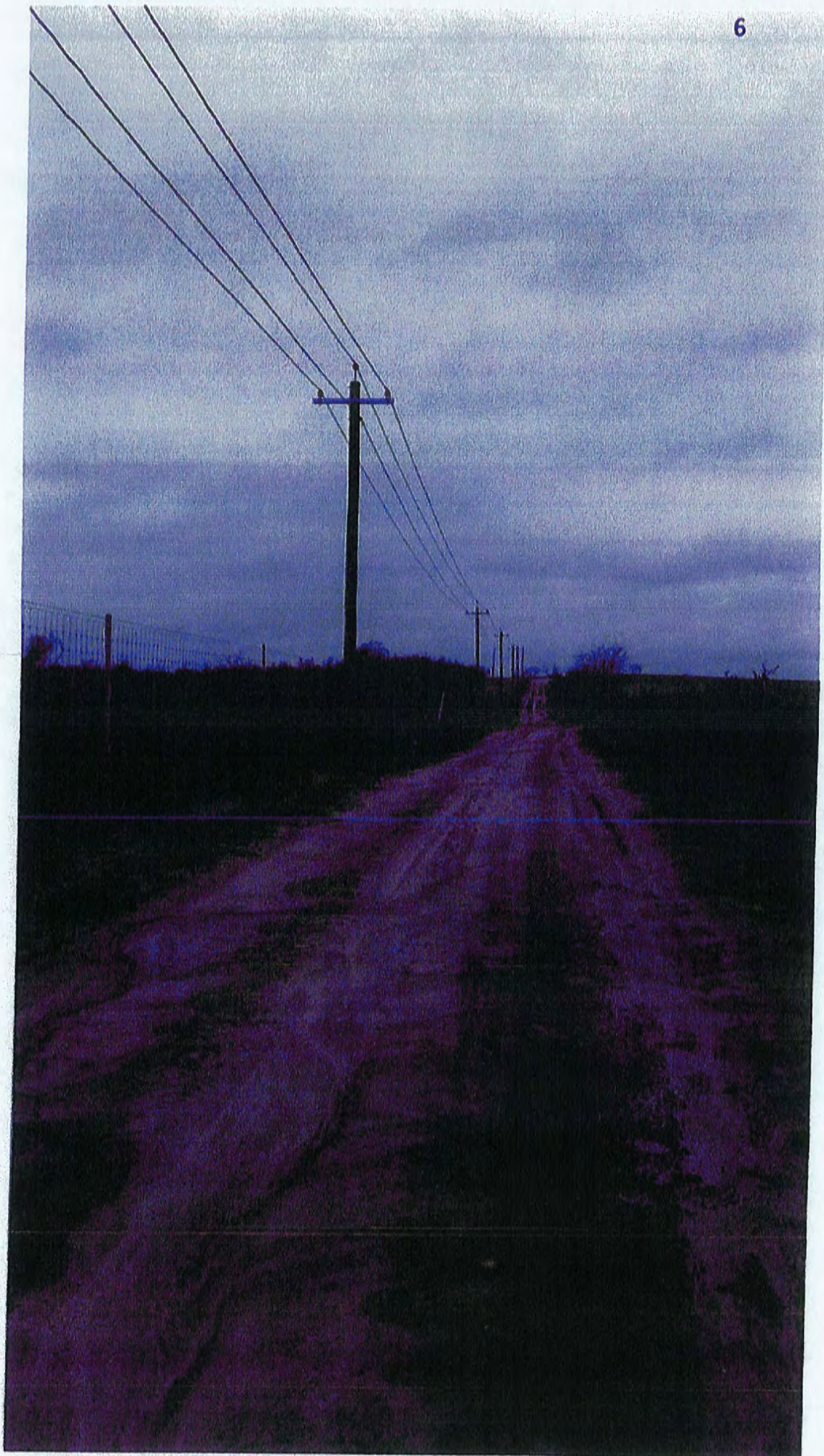


Blue 4



Blue 5

6



Blue 6