



# City of Jonesboro

300 S. Church Street  
Jonesboro, AR 72401

## Signature Copy

Resolution: R-EN-062-2022

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**File Number: RES-22:056**

**Enactment Number: R-EN-062-2022**

A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO ENTER INTO A  
SECOND AMENDMENT TO INDUSTRIAL TRACK AGREEMENT

WHEREAS, the City of Jonesboro entered into an Industrial Track Agreement with BNSF Railway Company on July 7, 1989, for the maintenance and operation of certain track located at Nettleton, County of Craighead, State of Arkansas;

WHEREAS, the City of Jonesboro and BNSF Railway Company desire to amend the terms of the original Industrial Track Agreement as described in the attached Second Amendment to Industrial Track Agreement and Exhibit A.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF  
JONESBORO, ARKANSAS THAT:

Section 1: That the City of Jonesboro shall enter into a Second Amendment to Industrial Track Agreement with BNSF Railway Company.

Section 2: The Mayor and the City Clerk are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.

PASSED AND APPROVED THIS 19TH DAY OF APRIL 2022.

## SECOND AMENDMENT TO INDUSTRIAL TRACK AGREEMENT BN27696

THIS SECOND AMENDMENT ("**Amendment**") is made to be effective as of the date of the last signature hereto (the "**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Railroad**") and **CITY OF JONESBORO, ARKANSAS**, a municipality ("**Industry**").

### RECITALS:

A. Railroad (as successor-in-interest to Burlington Northern Railroad Company) and Industry are currently parties to that certain Industrial Track Agreement BF27696 dated July 7, 1989 (as amended February 29, 2012 by that certain First Amendment, collectively referred to herein as the "**Original Contract**"), regarding certain track and/or real property located at the City of Jonesboro, County of Craighead, State of Arkansas, as more particularly described in the Original Contract. The Original Contract, as modified by this Amendment hereof, shall be referred to herein as the "**Contract**".

B. Railroad and Industry desire to, among other things, amend the terms of the Original Contract to update the Exhibit drawing attached to the Original Contract, as further described below.

### AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual covenants, premises, and agreements and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Exhibit Replacement.

1.1 As of the Effective Date, Drawing No. 3-50648A-B, dated 12/22/2011, originally identified as Exhibit "A" (the "**Original Exhibit**") to the Original Contract, is hereby replaced and superseded by Drawing No. 82979A-G, dated 02/25/2022, marked Exhibit "A", attached hereto and incorporated herein by this reference. Effective immediately, any references in the Original Contract to the Original Exhibit or the track and/or real property located thereon shall refer to Exhibit "A" attached hereto and the track and/or real property described or depicted thereon.

1.2 For the avoidance of doubt, references in the Original Contract and Original Exhibit to:

1.2.1 the Track between letters A – B shall mean the "**Railroad Track**" shown heavy solid and described as "Railroad Track" on Exhibit "A" attached hereto.

1.2.2 the Track between letters B – H shall mean the "**Industry Track**" shown heavy hatched and described as "Industry Track" on Exhibit "A" attached hereto.

2. Right of Railroad to Use. As of the Effective Date, the Track shown heavy dashed and labeled "**Third Party Track**" on Exhibit "A" attached hereto shall mean spur tracks extended from the Track for the accommodation of the business of Railroad or the business of other parties as permitted under Section 4 of the Contract.

3. Environmental. As of the Effective Date, the following provisions are added as new Section 13 to the Original Contract:

**"Section 13. NOTIFICATION REQUIREMENTS.**

13.1 Industry shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of Hazardous Materials (as hereinafter defined) on, from, or affecting the Track as soon as the release of Hazardous Materials becomes known to Industry. Without limitation to the foregoing, Industry shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-

5452 of violation of Environmental Laws (as hereinafter defined), or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to the use of the Track for Industry. Industry also shall give Railroad immediate notice of all measures undertaken by or on behalf of Industry to investigate, remediate, respond to or otherwise cure each such release or violation.

13.2 Industry shall promptly report to Railroad in writing any conditions or activities upon the Track or Industry's property which create a risk of harm to persons, property or the environment as soon as said condition or activity becomes known to Industry. Industry shall further promptly take whatever action is necessary to mitigate injury or damage to persons, property or the environment arising out of such conditions or activities, including but not limited to releases or violations of Environmental Laws; provided, however, that Industry's reporting to Railroad shall not relieve Industry of any obligation whatsoever imposed on it by this Agreement or by any Legal Requirement. Industry shall promptly respond to Railroad's request for information regarding such conditions or activities. To the extent such conditions or activities with respect to the Track are attributable to Industry, Railroad may require Industry, at Industry's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such conditions or activities on, from, or otherwise affecting the Track.

13.3 For purposes of this Agreement, "**Environmental Laws**" means any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* ("**CERCLA**"); the Hazardous Materials Transportation Act, 49 U.S.C. §5101 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*; all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

13.4 For purposes of this Agreement, "**Hazardous Material(s)**" shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law."

4. Notices. As of the Effective Date, the addresses for notices under the Original Contract are hereby replaced and superseded with the following:

4.1 Railroad:

BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, Texas 76131-2380  
Attn: CRE-D – Track Agreements

With a copy to:

Jones Lang LaSalle Brokerage, Inc.  
2650 Lou Menk Drive  
Fort Worth, Texas 76131-2380  
Attn: Track Agreements

4.2 Industry:

City of Jonesboro, Arkansas  
300 S. Church Street  
Jonesboro, AR 72401  
Attn: Harold Copenhaver - Mayor

5. Ratification. Except as amended hereby, all of the terms and provisions of the Original Contract are hereby reaffirmed and remain in full force and effect. In the event there is a conflict between the terms and provisions of the Original Contract and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall control.

6. Miscellaneous. This Amendment (i) shall be binding upon and inure to the benefit of Railroad and Industry and their respective legal representatives, successors and assigns; (ii) may be modified or amended only by a writing signed by each party hereto; and (iii) may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Amendment may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.

7. Representative. The parties acknowledge that Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of the Effective Date above.

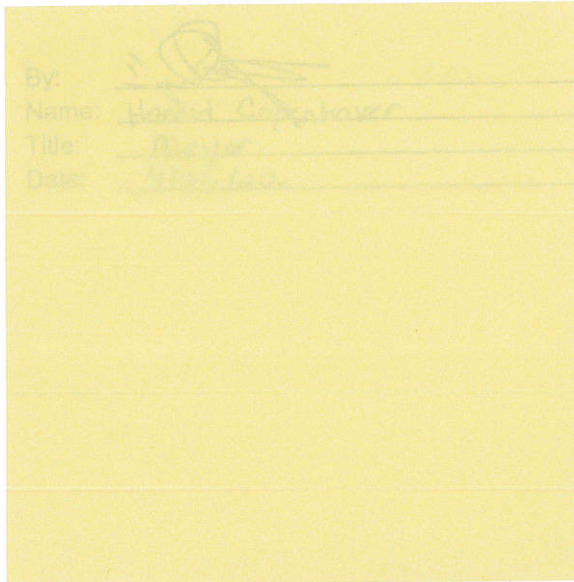
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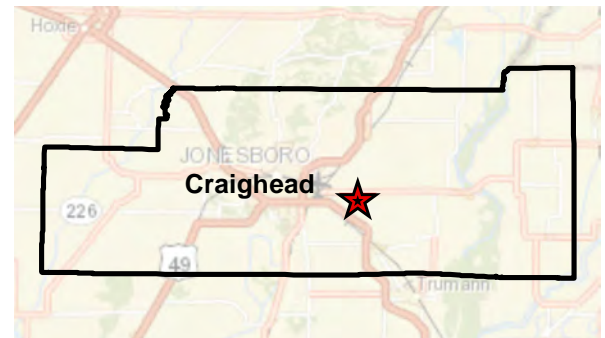
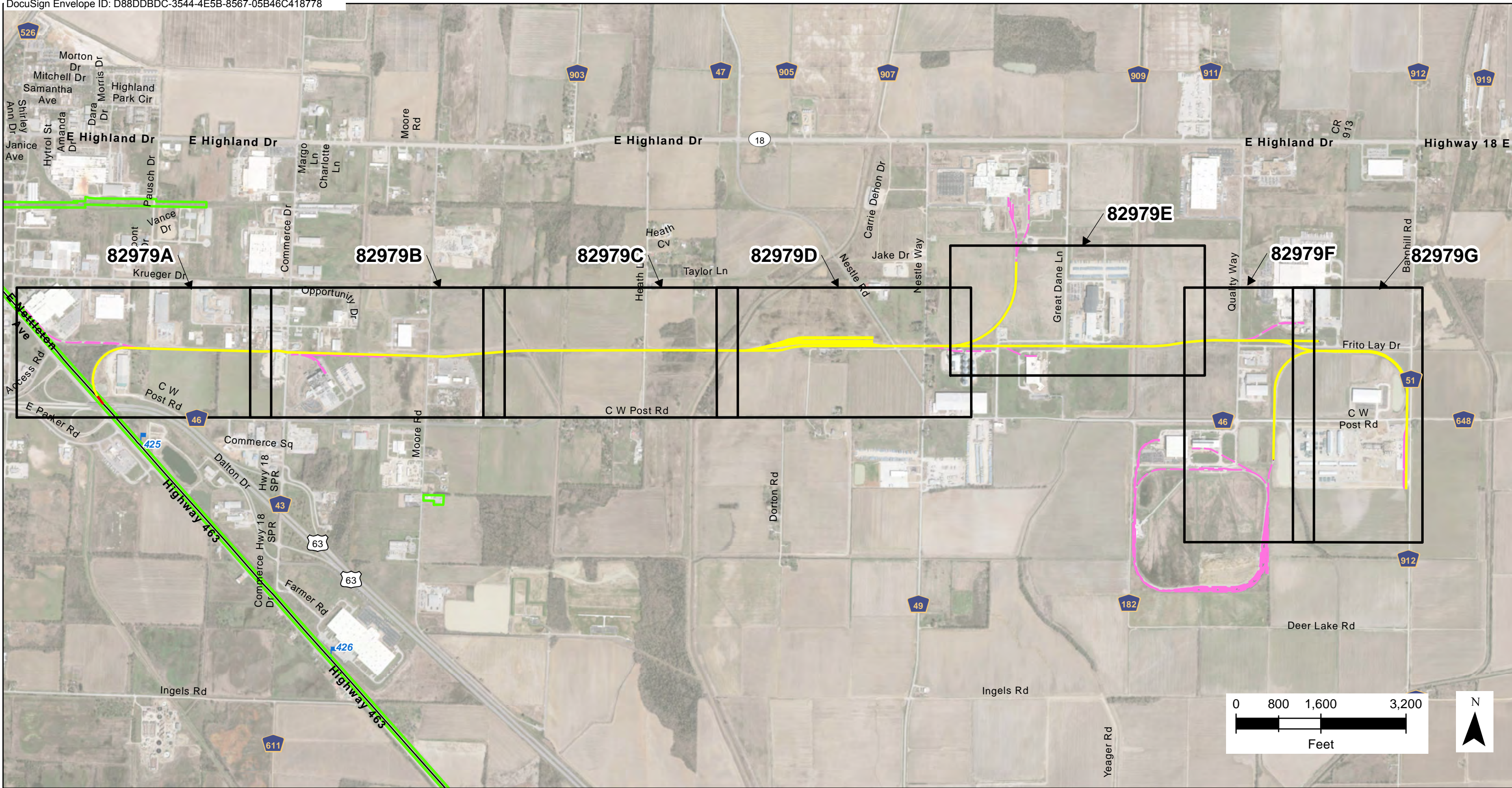
**BNSF Railway Company**, a Delaware corporation

DocuSigned by:  
*David Polzin*  
By: David Polzin  
Name: David Polzin  
Title: Director, Economic Development  
Date: 4/28/2022

**INDUSTRY:**

**City of Jonesboro, Arkansas**, a municipality





ATTACHED TO CONTRACT BETWEEN  
 BNSF RAILWAY COMPANY  
 AND  
**CITY OF JONESBORO**  
 JONESBORO, AR



# EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN  
**BNSF RAILWAY COMPANY**  
AND

## CITY OF JONESBORO, ARKANSAS

SCALE: 1 IN = 300 FT  
HEARTLAND DIV.  
THAYER SOUTH SUBDIV. L.S. 1001  
DATE: 2/25/2022

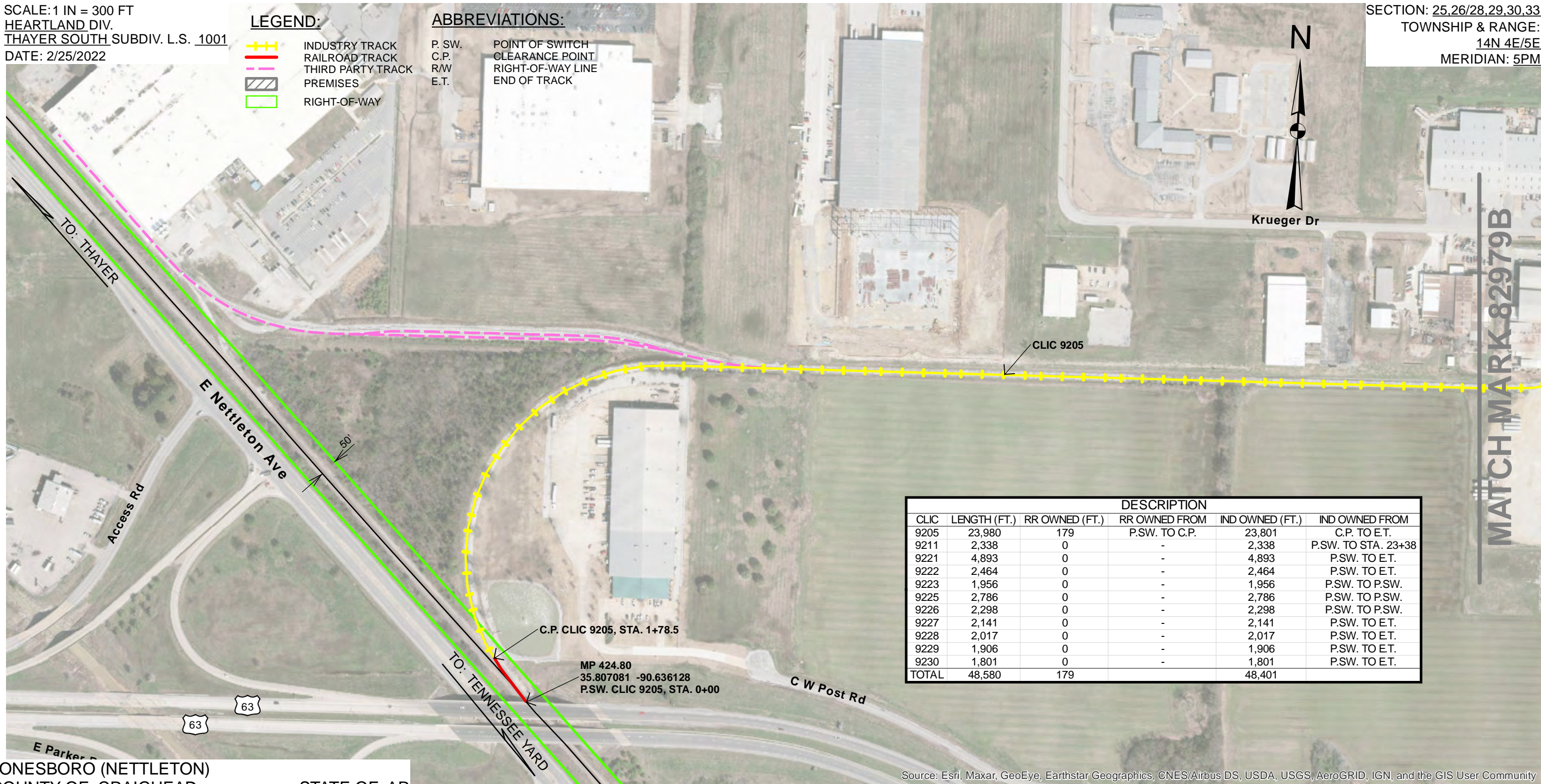
**LEGEND:**

	INDUSTRY TRACK
	RAILROAD TRACK
	THIRD PARTY TRACK
	PREMISES
	RIGHT-OF-WAY

**ABBREVIATIONS:**

P. SW.	POINT OF SWITCH
C.P.	CLEARANCE POINT
R/W	RIGHT-OF-WAY LINE
E.T.	END OF TRACK

SECTION: 25,26/28,29,30,33  
TOWNSHIP & RANGE:  
14N 4E/5E  
MERIDIAN: 5PM



DESCRIPTION					
CLIC	LENGTH (FT.)	RR OWNED (FT.)	RR OWNED FROM	IND OWNED (FT.)	IND OWNED FROM
9205	23,980	179	P.S.W. TO C.P.	23,801	C.P. TO E.T.
9211	2,338	0	-	2,338	P.S.W. TO STA. 23+38
9221	4,893	0	-	4,893	P.S.W. TO E.T.
9222	2,464	0	-	2,464	P.S.W. TO E.T.
9223	1,956	0	-	1,956	P.S.W. TO P.S.W.
9225	2,786	0	-	2,786	P.S.W. TO P.S.W.
9226	2,298	0	-	2,298	P.S.W. TO P.S.W.
9227	2,141	0	-	2,141	P.S.W. TO E.T.
9228	2,017	0	-	2,017	P.S.W. TO E.T.
9229	1,906	0	-	1,906	P.S.W. TO E.T.
9230	1,801	0	-	1,801	P.S.W. TO E.T.
<b>TOTAL</b>	<b>48,580</b>	<b>179</b>		<b>48,401</b>	

JONESBORO (NETTLETON)  
COUNTY OF CRAIGHEAD STATE OF AR

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community






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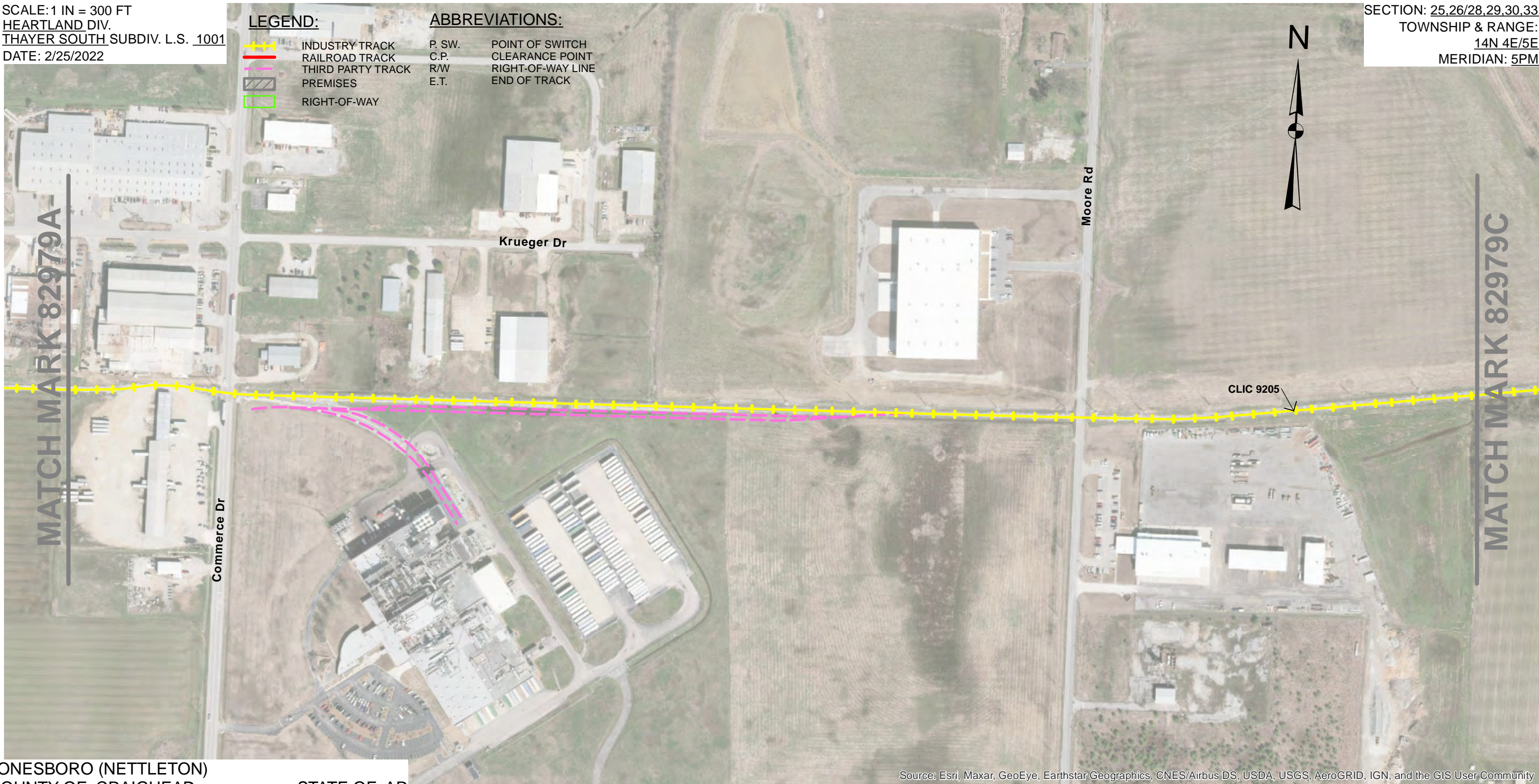
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-  RAILROAD TRACK
-  THIRD PARTY TRACK
-  PREMISES
-  RIGHT-OF-WAY

### ABBREVIATIONS:

- P. SW. POINT OF SWITCH
- C.P. CLEARANCE POINT
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SECTION: 25,26/28,29,30,33  
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MERIDIAN: 5PM



JONESBORO (NETTLETON)  
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



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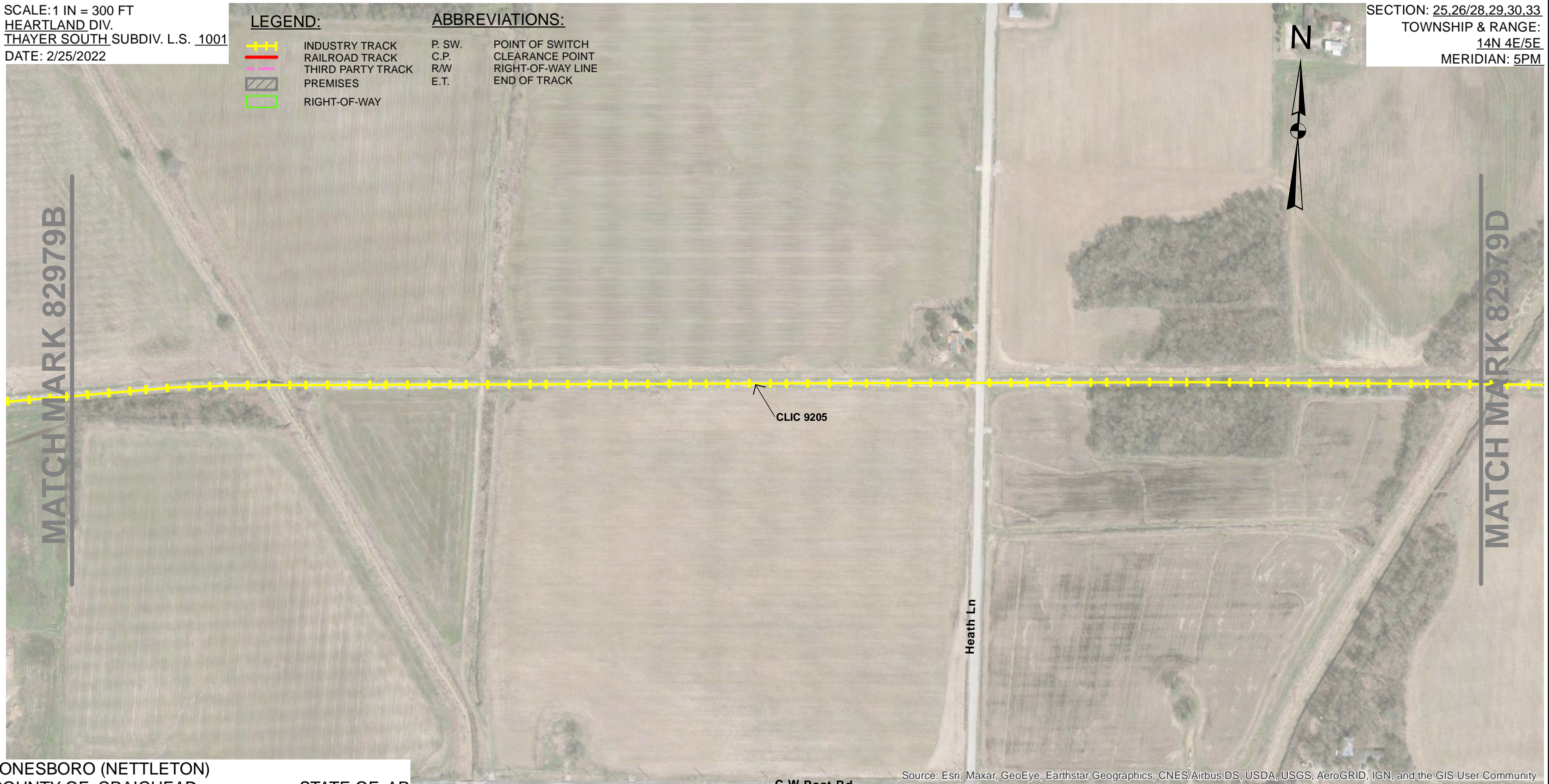
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SECTION: 25,26/28,29,30,33  
TOWNSHIP & RANGE:  
14N 4E/5E  
MERIDIAN: 5PM



JONESBORO (NETTLETON)  
COUNTY OF CRAIGHEAD STATE OF AR

C W Post Rd

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community






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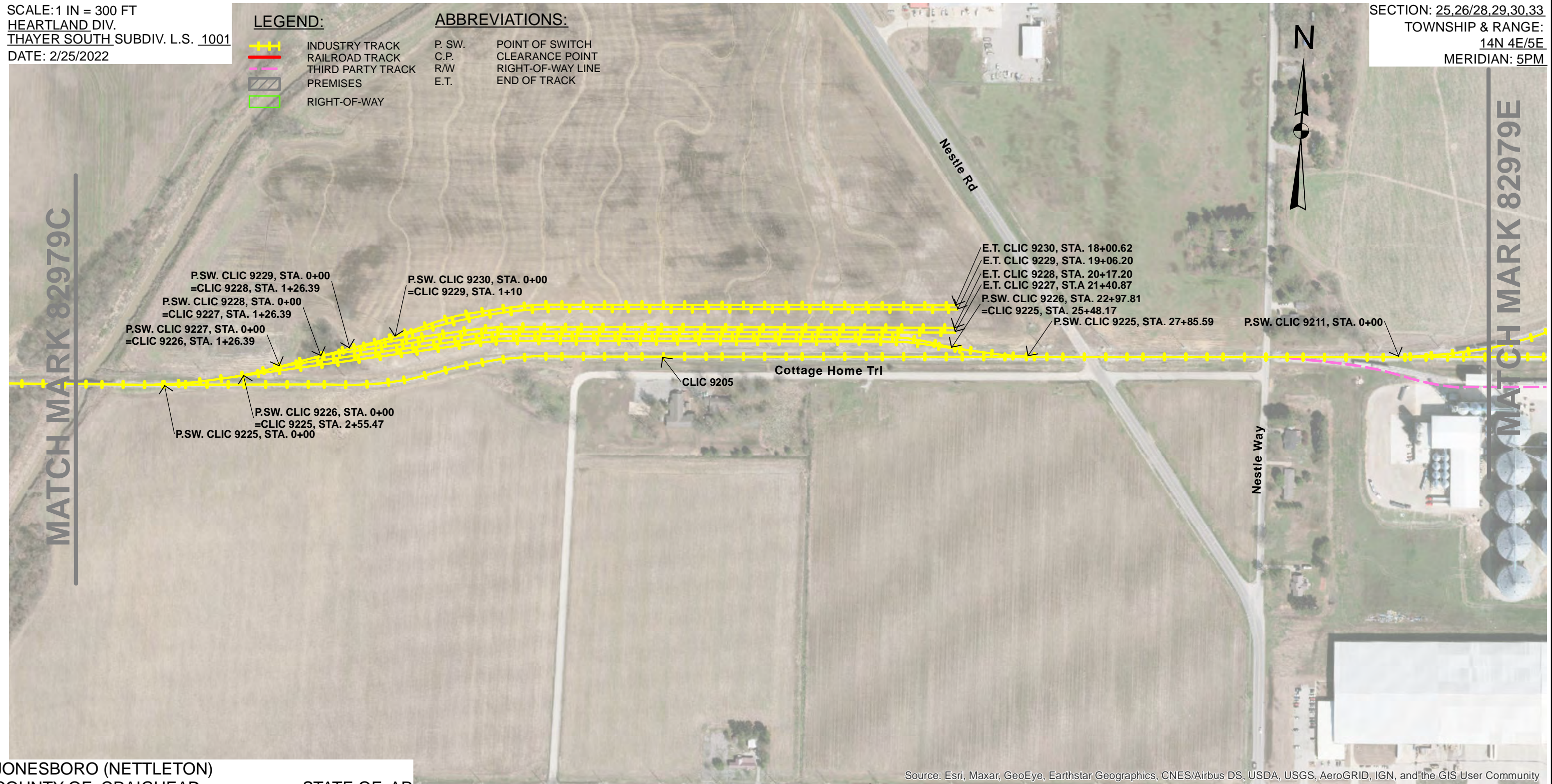
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14N 4E/5E  
MERIDIAN: 5PM



MATCH MARK 82979C

MATCH MARK 82979E



JONESBORO (NETTLETON)  
COUNTY OF CRAIGHEAD STATE OF AR

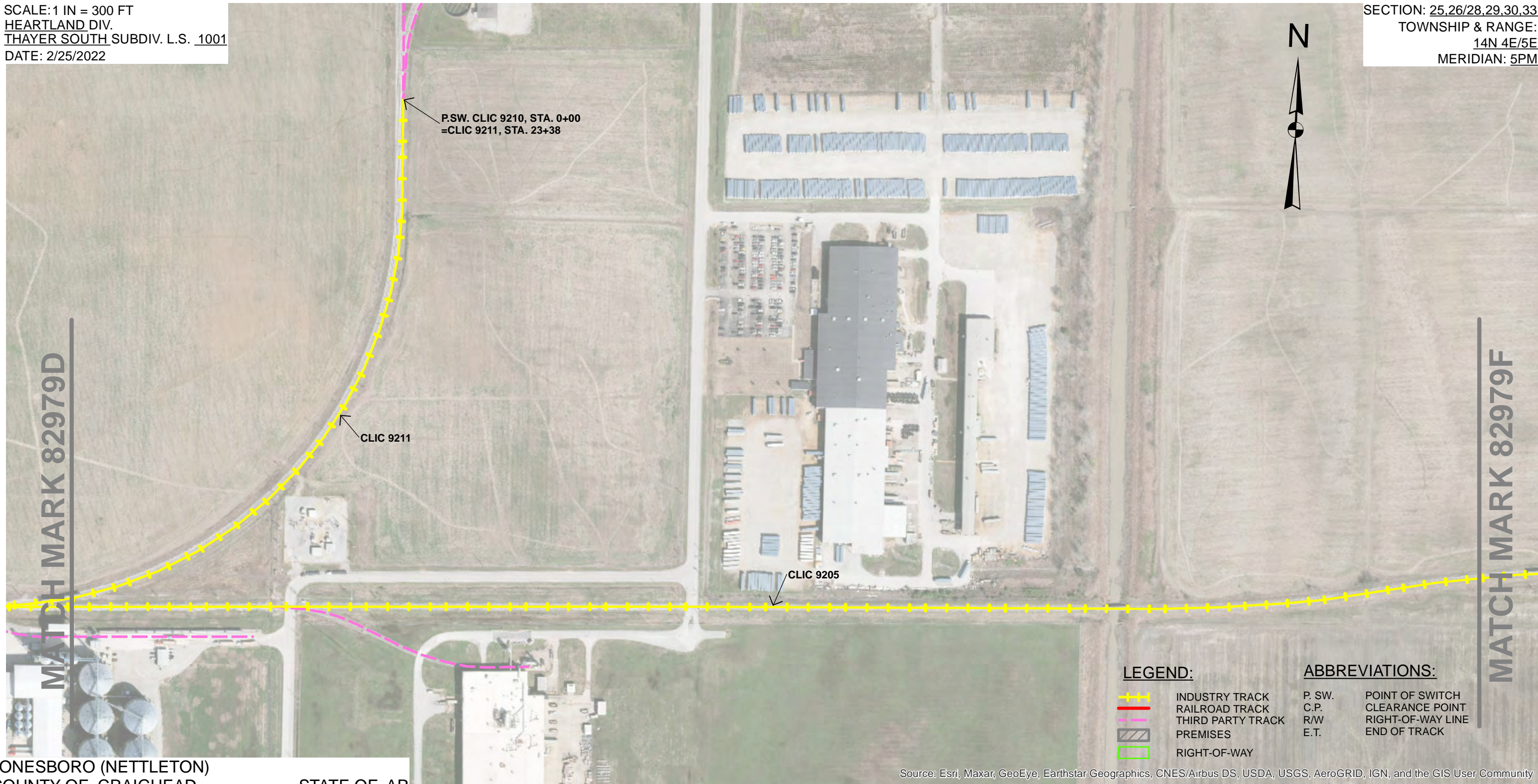
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

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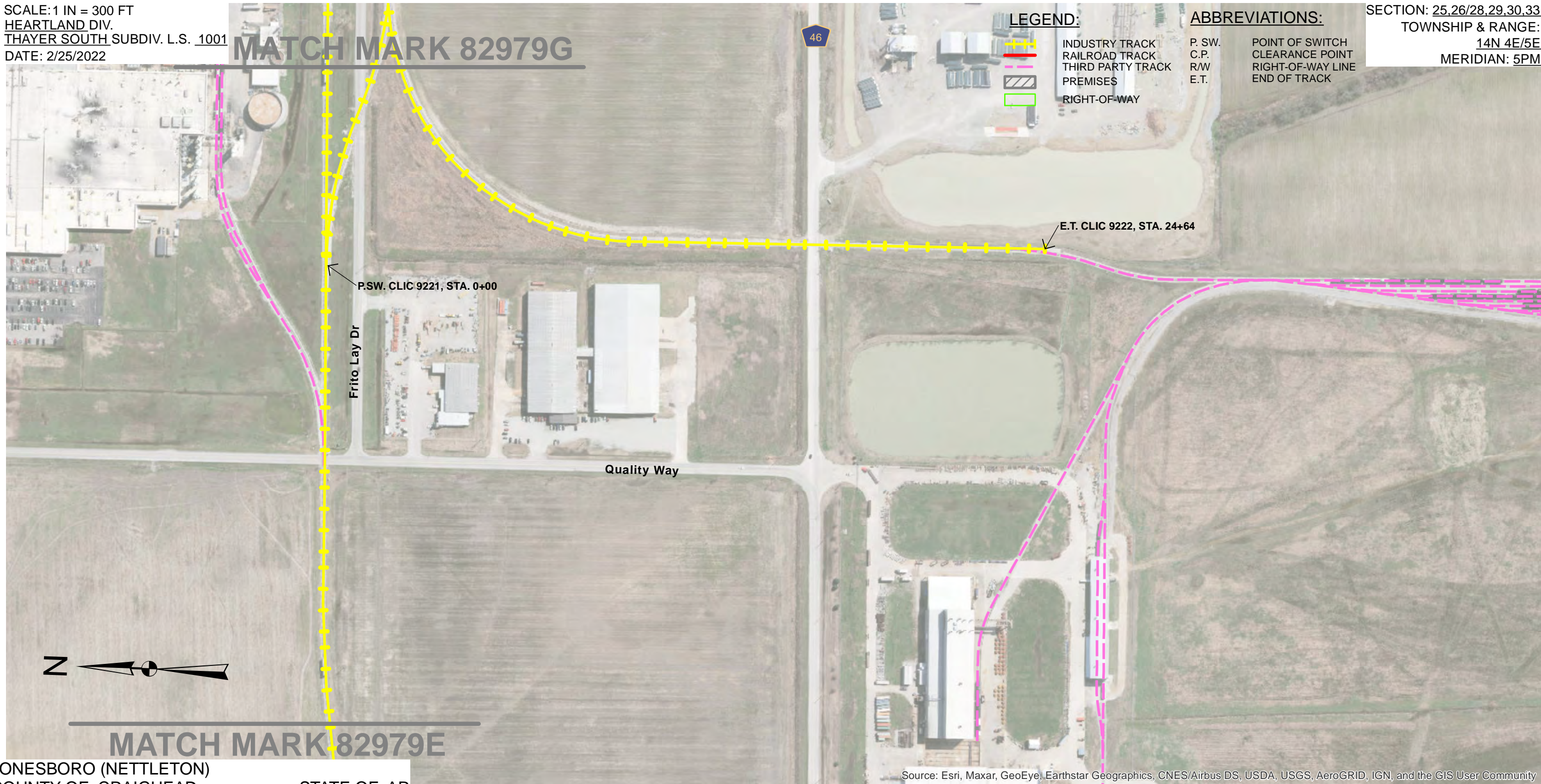
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### MATCH MARK 82979G



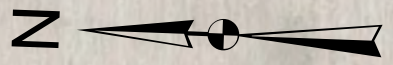
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MERIDIAN: 5PM



### MATCH MARK 82979E

JONESBORO (NETTLETON)  
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Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

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