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May 24, 2006

VIA FIRST-CLASS MAIL
The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Application of United Utility Companies, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service; Docket No. 2006-107-WS

Dear Mr. Terreni:

Enclosed for filing please find the original and ten (10) copies of Applicant's Answer to Petition to Intervene of North Greenville University and Motion to Dismiss a Portion of Petition to Intervene and to Limit the Scope of Intervention in the above-referenced matter.

By copy of this letter, I am serving counsel for all parties of record with a copy of same and enclose a certificate of service to that effect.

I would appreciate your acknowledging receipt of this document by date-stamping the extra copy that is enclosed and returning it to me via the enclosed, self-addressed envelope. If you have any questions or if you need any additional information, please do not hesitate to contact us.

Sincerely,

WILLOUGHBY & HOEFER, P.A.

Benjamin P. Mustian

BPM/amw
Enclosures
cc: Shannon B. Hudson, Esquire
Nanette S. Edwards, Esquire
Duke K. McCall, Jr., Esquire
Newton Horr
Jacqueline H. Patterson, Esquire

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-107-WS

IN RE: Application of United Utility Companies, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service.	))))))))	**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Applicant's Answer to Petition to Intervene of North Greenville University and Motion to Dismiss a Portion of Petition to Intervene and to Limit the Scope of Intervention** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Shannon B. Hudson, Esquire
Nanette S. Edwards, Esquire
Office of Regulatory Staff
1441 Main Street, 3rd Floor
Columbia, South Carolina 29201

Duke K. McCall, Jr. Esquire
Leatherwood Walker Todd & Mann, P.C.
Post Office Box 87
Greenville, SC 29602

Jacqueline H. Patterson, Esquire
Patterson & Coker, P.A.
1225 South Church Street
Greenville, SC 292605

Newton Horr
131 Greybridge Road
Pelzer, SC 29669

Andrea M Wright
Andrea M. Wright

Columbia, South Carolina
This 24th day of May, 2006.

179722

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2006-107-W/S

IN RE: Application of United Utility Companies, Inc. for adjustment of rates and charges and modification to certain terms and conditions for the provision of water and sewer service.	))))))))	**APPLICANT'S MOTION TO DISMISS A PORTION OF PETITION TO INTERVENE AND TO LIMIT THE SCOPE OF INTERVENTION**

Applicant, United Utility Companies, Inc. ("UUC" or "Company"), pursuant to 26 S.C. Code Ann. Regs. R.103-840 (1976), moves that the Commission dismiss that portion of the Petition to Intervene of North Greenville University ("Petition") which seeks to relitigate an issue previously determined by the Commission in Docket No. 2000-210-W/S and to limit the scope of the Petitioner's intervention by precluding it from introducing evidence relating to such issue into the record of this case. In support of its Motion, UUC would respectfully show unto this Honorable Commission as follows:

INTRODUCTION

The instant docket involves UUC's current application for rate relief pursuant to S.C. Code Ann. § 58-5-240 (Supp. 2005). However, the Petition of North Greenville University ("NGU")[1]

[1] UUC is informed and believes that the present Petitioner, North Greenville University, was known as and held itself out as "North Greenville College" at the time UUC began providing service to it and during previous submissions to this Commission, specifically in Docket 2000-210-W/S. For purposes of brevity and consistency, references to North

primarily relates to an earlier Commission docket involving an application for rate relief by UUC, namely Docket No. 2000-210-W/S. For the reasons discussed hereinbelow, NGU's Petition should be dismissed to the extent that it seeks to relitigate issues from an earlier docket.

FACTUAL AND PROCEDURAL BACKGROUND OF DOCKET NO. 2000-210-W/S

On September 21, 2001, UUC filed an application with the Commission in Docket No. 2000-210-W/S requesting that it be permitted to increase the rates and charges it was authorized to impose upon customers. On March 22, 2002, the PSC entered an order granting UUC's request for a rate increase *in part*. [See Order No. 2002-214, Docket No. 2000-210-W/S.] UUC unsuccessfully sought reconsideration of Order No. 2002-214 [see Order No. 2002-751, October 23, 2002, Docket No. 2000-210-W/S] and on November 7, 2002, UUC petitioned the court of common pleas for Richland County ("Circuit Court") for judicial review of these Commission orders. UUC thereafter placed rates in effect under bond pursuant to S.C. Code Ann. §58-5-240 (D) and Commission Order No. 2002-494 and began imposing those rates on NGU and other customers.

On January 21, 2004, NGU moved to intervene in the judicial review proceeding, even though it had not sought to intervene before the Commission, had not participated as a party of record in Docket No. 2000-210-W/S and some thirteen (13) months had passed since UUC filed its petition for judicial review. In response, UUC filed with the Circuit Court a return in opposition, a memorandum detailing the history of the matter, and the February 20, 2004, affidavit of its employee John Rick Bryan. A copy of Mr. Bryan's affidavit submitted to the Circuit Court is attached hereto

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Greenville University herein also include North Greenville College.

and incorporated herein by reference as Exhibit A. The Circuit Court, thereafter, in orders dated April 8 and April 19, 2004, denied NGU's Petition to Intervene and remanded the underlying rate case to the Commission to give effect to a settlement reached by the parties of record. NGU did not appeal the Circuit Court's order. However, while the matter was pending on remand before this Commission, NGU filed a Petition to Intervene in Docket No. 2000-210-W/S. UUC filed an Answer in Opposition, which incorporated Mr. Bryan's affidavit, and NGU's petition to intervene was denied in Commission Order No. 2004-253 dated May 19, 2004. Therein, the Commission specifically rejected NGU's allegation that it was contractually entitled to a service rate different than that specified in UUC's authorized rate schedule as it may be approved by this Commission and in effect from time to time. Order No. 2004-253 at 8. NGU did not appeal Commission Order No. 2004-253. Also on May 19, 2004, the Commission issued its Order No. 2004-254, authorizing UUC to place new rates into effect, which rates UUC is currently charging NGU.

FACTUAL AND PROCEDURAL BACKGROUND OF DOCKET NO. 2001-355-S

In May of 2001, UUC was contacted by Mr. Cal Caldarella of MDC Corporation regarding the potential expansion of UUC's sewer service area to include the Tigerville, South Carolina campus of NGU and certain adjoining real property developed for residential use. (Exhibit A, Bryan Aff., ¶ 3.) As part of the potential arrangement, it was proposed that UUC would acquire and operate a wastewater treatment plant ("WWTP") owned by NGU and then serving its campus and the adjacent development. (Exhibit A, Bryan Aff., ¶ 3.) UUC was thereafter advised by the President of NGU, Dr. James B. Epting, that Mr. Caldarella and MDC Corporation had been retained by NGU

to negotiate a proposed contract on its behalf. (Exhibit A, Bryan Aff., ¶ 3.) UUC engaged in contract negotiations with MDC Corporation for that purpose, during which negotiations Mr. Caldarella was made aware that UUC intended to file an application with the PSC for rate relief. (Exhibit A, Bryan Aff., ¶ 4.)

As a result of these negotiations, UUC, NGU and Greenville Timberline S.C., LLC, the developer of the property adjacent to the NGU campus, entered into a July 9, 2001, contract whereby UUC agreed to acquire and operate the NGU WWTP subject to receipt of PSC approval for the expansion of UUC's service area to incorporate the campus and adjoining property and the acquisition of the NGU WWTP. (Exhibit A, Bryan Aff., ¶ 5; and Ex. B.) The contract provides that "[w]astewater usage charges and service fees shall be rendered by Utility in accordance with Utility's rates, rules and regulations and conditions of service **from time to time on file with the [Public Service] Commission and then in effect."** (Exhibit A, Bryan Aff., Ex. B at 5, ¶ 7(a) (Emphasis supplied)).

In accordance with the terms of the contract, UUC filed an application with the PSC on August 8, 2001, requesting that it be permitted to expand its service area to include the territory of NGU and the adjacent development. (Exhibit A, Bryan Aff., ¶ 5, Ex. C.) As part of this application, which was assigned Docket No. 2001-355-S, UUC requested authority from the PSC to impose in the proposed expanded service area the "rates and charges set forth in its existing rate schedule, **as may be changed from time to time as a result of any rate proceedings that might be brought before the Commission by [UUC], including those in Docket No. 2000-0210-W/S."** (Exhibit A, Bryan Aff. Ex. C at 2-3, ¶ 5. (Emphasis supplied)).

Thereafter, on September 24, 2001, UUC filed its application in Docket No. 2000-0210-W/S requesting that it be permitted to increase the rates and charges it was authorized to impose upon customers. NGU was made aware of the proposed rate increase. (Exhibit A, Bryan Aff. at ¶ 4.) NGU was advised of the amount of rate relief being requested. (Exhibit A, Bryan Aff., ¶ 6.) Moreover, during the pendency of UUC's rate adjustment application, the Commission Staff requested that UUC obtain from NGU documentation that NGU was aware that UUC had filed an application seeking a rate increase. (Exhibit A, Bryan Aff., ¶ 7.) Thereupon, UUC obtained from NGU's President, Dr. Epting, a statement addressed to the Commission dated November 29, 2001, documenting NGU's knowledge that a rate adjustment application had been filed by UUC. (Exhibit A, Bryan Aff., ¶ 7, Ex. D.) This statement by Dr. Epting was provided to Commission Staff.[2]

On November 21, 2001, by its Order No. 2001-1070, the Commission approved UUC's application for expansion of its service area to include NGU's campus and the adjoining property and UUC began providing wastewater treatment service to NGU at the rates then in effect and approved by the PSC. Subsequent thereto, UUC has imposed upon NGU only the lawful rates authorized by the Commission in Docket No. 2000-210-W/S.

ISSUES

NGU seeks to justify its intervention based upon various assertions relating to its July 9, 2001, contract with UUC. [See Petition, paragraphs 5, 9 and 10.] The central issue raised by the instant Motion is whether NGC should be permitted to litigate these assertions in the instant docket.

[2] See Order No. 2004-253, Docket No. 2000-210-W/S at 3, paragraph 4.

ARGUMENT

I. A Portion of NGU's Petition Should be Dismissed as Barred by the Doctrine of *Res Judicata*

Initially, UUC submits that NGU's assertions regarding its contractual entitlement to a rate different than that which was approved by the Commission in Docket No. 2000-210-W/S is barred by the doctrine of *res judicata*. "*Res judicata* is shown if (1) the identities of the parties is the same as in prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." Johnson v. Greenwood Mills, 317 S.C. 248 452 S.E.2d 832, 834 quoting Reidman Corporation v. Greenville Steel Structures, Inc., 308 S.C. 467, 468-69, 419 S.E.2d 217, 218 (1992). "[U]nder the doctrines of res judicata and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action." Bennett v. South Carolina Dep't of Corrections, 305 S.C. 310, ___, 408 S.E.2d 230, 231 (1991). A person is precluded from denying facts adjudicated by a court of competent jurisdiction. Watson v. Goldsmith, 205 S.C. 215, 223, 31 S.E.2d 317, 320 (1944) citing 19 Am. Jur., 601. If, in a prior suit, "a party had a full and fair chance to litigate an issue and it has been necessarily and finally determined against him, he will be estopped to relitigate the issue..." 7 S.C. Jur. Estoppel and Waiver § 27 (2005) citing C.B. Marchant Co. v. Eastern Foods, Inc., 756 F.2d 317 (4th Cir. 1985); Graham v. State Farm Fire and Cas. Ins. Co., 277 S.C. 389, 287 S. E. 2d. 495 (1982). "It is a fundamental principle of jurisprudence that material facts or questions which were directly in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become *res judicata* and may not again be litigated in a subsequent action between the same parties or their

privies, regardless of the form that the issue may take in the subsequent action." Laughon v. O'Braitis, 360 S.C. 520,527, 602 S.E. 2d 108, 112 (Ct. App. 2004) quoting 46 Am. Jur. 2d Judgments § 539 (1994).

After the Circuit Court remanded to the Commission to give effect to the parties' settlement in Docket No. 2000-210-W/S, NGU submitted a Petition to Intervene Out of Time which contended UUC had agreed in its July 9, 2001, contract with NGU to charge a different rate than that applied for by UUC or approved by the Commission. In denying NGU's petition, the Commission repeatedly and consistently rejected this contention.[3] NGU now seeks to re-assert the same claim it made and which was rejected by the Commission in Docket No. 2000-210-W/S. NGU has already litigated the question of whether UUC had contractually agreed to charge NGU a rate different than that imposed upon other customers and the Commission unambiguously ruled in favor of UUC. As the Commission has previously held, the contract does not preclude UUC from requesting rate relief and charging NGU approved rates.[4] The Commission should dismiss the portions of the NGU Petition to Intervene which seeks to assert a contractual entitlement to rates as being barred by the doctrine of *res judicata.*

---

[3]"The contract ... contemplate[s] that NGC would be charged such rates as this Commission might approve and place into effect from time to time." Order No. 2004-253 (dated May 19, 2004) in Docket No. 2000-210-W/S, at. 6. "We also conclude that NGC will not suffer any prejudice since, on its face, the July 9, 2001, contract it entered into with United contemplates that **the rates to be charged by United will be those set by the Commission and in effect from time to time.**" Id. at 8. (Emphasis supplied.) "NGC has not asserted any substantive basis upon which it would challenge the rates requested other than its contention that its contract with [UUC} contemplates a specific rate different than that approved for [UUC's} other customers. **Because we find that the contract specifically contemplates the exact opposite,** denial of the petition to intervene does not work any prejudice on NGC." Id. (emphasis supplied.)

[4] Moreover, if NGU were permitted to attack the Commission's prior determination on this point, UUC's other customers could be exposed to higher rates since any determination that UUC is required to provide service at the rate alleged by NGU would necessarily cause UUC's revenue requirement to be spread unevenly among customers. Such a result would be unjust.

II. No Claim to Rates other than Commission Approved Rates is Stated

Even if the assertions of NGU's Petition pertaining to the July 9, 2001, contract are not barred from consideration by the Commission by the doctrine of *res judicata*, there is no claim stated which will support these assertions. As an exhibit to its Petition, NGU has attached a copy of the July 9, 2001, contract with UUC. The contract clearly states that "[w]astewater usage charges and service fees shall be rendered by Utility **in accordance with Utility's rates, rules and regulations and conditions of service from time to time on file with the [Public Service] Commission and then in effect**." NGU Petition Exhibit A at 5, ¶7(a) (emphasis supplied). A motion for judgment on the pleadings pursuant to SCRCP 12(c) will be sustained where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action or defense is stated. Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638 (1982); Diminich v. 2001 Enters., Inc., 292 S.C. 141, 355 S.E.2d 275 (Ct. App. 1987).

Based upon the four corners of the document supplied by NGU, the applicable rates are those approved by the Commission and in effect from time to time and not the rates in effect when the contract was executed. The language is clear and unambiguous, and any attempt by NGU to introduce parole evidence regarding the contract "is inadmissible since extrinsic evidence is to be admitted to resolve ambiguities, not create them." Kirven v. Bartell, 266 S.C. 385, 223 S.E.2d 597, 599 (1967).[5] Therefore, NGU's Petition to Intervene based upon its assertions of contractual entitlement to rates other than those approved by the Commission should be dismissed as the

[5] Further, UUC would note that it has previously submitted an affidavit to the Circuit Court and this Commission disputing NGC's contention regarding this provision of the contract, but NGU has failed to present any evidence to the contrary in the form of an affidavit or other documentation.

assertions of its Petition are so defective in view of the plain contractual language that they fail to assert a proper claim. Rosenthal, Diminich, *supra.*

III. The Scope of NGU's Intervention Should be Limited and Evidence to the Contractual Issue it Seeks to Raise Should be Excluded

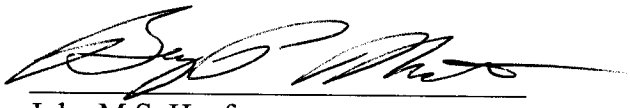
In its letters dated May 15, 2006, and May 22, 2006, NGU has notified the Commission of its intent to present various witnesses on its behalf. The Commission should not allow NGU to introduce evidence supporting its contentions that the contract provides for a rate in opposition to the authorized rates authorized. As noted above, the Commission has already found that this contract allows the Company to charge NGU Commission approved rates as may be in effect from time to time, and any attempt to introduce evidence suggesting otherwise would be irrelevant and immaterial. "For evidence to be admissible, there must be a logical or rational connection between the fact sought to be presented and a matter of fact in issue at trial." Butler v. Gamma Nu Chapter of Sigma Chi, 314 S.C. 477, ___, 445 S.E.2d 46, 470 (Ct. App. 1994). The contractual issue sought to be raised by NGU has been litigated and decided and any attempt to present evidence in support of this issue should be denied. The only issue to be determined in this matter is the reasonableness of the rates proposed to be implemented by UUC and the Commission should limit NGU's ability to do otherwise.

CONCLUSION

Having fully set forth its motion, UUC respectfully requests that NGU's Petition to Intervene be dismissed to the extent that it claims that NGU is contractually entitled to a rate other

than Commission approved rates on the grounds that such claims are barred by the doctrine of *res judicata* or, alternatively, that such assertions are so defectively stated that they fail to give rise to a claim pursuant to SCRCP 12(c). UUC also moves that the Commission preclude NGU from attempting to introduce evidence into the record of this case in furtherance of its effort to relitigate this issue and limit the scope of NGU's intervention to like extent.

WILLOUGHBY & HOEFER, P.A.



John M.S. Hoefer
Benjamin P. Mustian
Post Office Box 8416
Columbia, South Carolina 29202-8416
803-252-3300
Attorneys for Applicant

Columbia, South Carolina
This 24th day of May, 2006

Exhibit "A"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	C/A No. 02-CP-40-5793
Ex Parte:	)	
North Greenville College,	)	
	)	
Petitioning Intervenor,	)	
	)	
In Re:	)	
	)	
Elliott F. Elam, Jr. – Acting Consumer Advocate for the State of South Carolina,	)	**AFFIDAVIT OF JOHN RICK BRYAN**
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
The Public Service Commission of South Carolina and United Utility Companies, Inc.,	)	
	)	
Respondents.	)	

Before me personally appeared John Rick Bryan, who, after being duly sworn, deposes and states as follows:

1. I am a citizen and resident of Lexington County South Carolina and am over the age of eighteen.

2. I am currently employed as the Director of Unregulated Utilities, for Utilities, Inc., the parent company of United Utility Companies, Inc. ("United Utility"). From 1992 to 2002, I was employed as Regional Manager of United Utility and was so employed at all times pertinent to the within affidavit.

3. In May of 2001, United Utility was approached by Mr. Cal Caldarella of MDC Corporation with a proposal for United Utility to acquire a wastewater treatment facility in

Tigerville, South Carolina owned by North Greenville College ("NGC") and to thereafter provide sewer service to NGC and an adjacent tract of real property being developed by Greenville Timberline S.C., LLC ("Timberline"). By letter dated May 18, 2001 from Dr. James B. Epting, President of NGC, I was advised that Mr. Caldarella and MDC Corporation had been retained by NGC for the purpose of negotiating a contract to that effect. A copy of that letter is attached hereto as Exhibit "A."

4. At my initial meeting with Mr. Caldarella, I informed him that United Utility was planning to file an application with the Public Service Commission of South Carolina ("PSC") for a rate increase which would affect the rates for service to NGC and the Timberline Development. United Utility's plans to request a rate increase were thereafter discussed several times during the negotiation of the contract.

5. United Utility, NGC and Timberline reached an agreement and a contract was executed on or about July 9, 2001 a copy of which is attached as Exhibit "B." Thereafter United Utility filed an application with the PSC to expand its service area to include the territory where NGC and the adjacent Timberline development are located, a condition precedent to United Utility's performance of the contract. A copy of this application is attached hereto as Exhibit "C."

6. On September, 24, 2001, United Utility filed an application for rate relief with the PSC. In October of 2001, I contacted Mr. Caldarella and informed him of the amount of rate increase proposed in the United Utility application. During the pendency of that application, I also discussed the amount of the requested rate increase with Dr. James Epting, the President of NGC.

7. In late November, 2001, the PSC requested that United Utility obtain documentation from NGC that it was aware of the pending application by United Utility for a rate increase. I

contacted Dr. Epting for that purpose and he thereafter provided me with a November 29, 2001 statement to the PSC acknowledging NGC's awareness of the pending rate application. A copy of his statement letter is attached hereto as Exhibit "D."

FURTHER AFFIANT SAYETH NOT.

John Rick Bryan

SWORN TO AND SUBSCRIBED BEFORE ME
This 20th day of February, 2004

Notary Public for South Carolina
My Commission Expires: 12-18-06

Exhibit "A"

NORTH GREENVILLE COLLEGE • P.O. BOX 1892 • TIGERVILLE, SC 29688 • (864) 977-7000

OFFICE OF THE PRESIDENT

RECEIVED MAY 21 2001

May 18, 2001

Mr. Rick Bryan
c/o United Utility Companies, Inc.
110 Queen Parkway
P.O. Box 4509
West Columbia, SC 29171

Dear Mr. Bryan:

This letter is to confirm that North Greenville College has agreed to the annexation of our waste water treatment plant (WWTP) by United Utility Companies, Inc. Please direct questions you may have relative to the completion of this transaction to Cal Caldarella of MDC Corporation, who has been retained to represent us in this agreement.

Sincerely,

Jimmy

James B. Epting
President

JBE:gl

Exhibit "B"

AGREEMENT FOR ASSET ACQUISITION AND WASTEWATER SERVICE

NORTH GREENVILLE COLLEGE – GREENVILLE TIMBERLINE S.C., LLC. – UNITED UTILITY COMPANIES, INC.

This Agreement entered into this 9 day of ~~June~~ July 2001, by and between North Greenville College ("**NGC**") and Greenville Timberline S.C., LLC ("**GTSC**") (hereinafter collectively referred to as "**Sellers**"), and United Utility Companies, Inc., a South Carolina corporation, (hereinafter referred to as "**Utility**").

WITNESSETH

WHEREAS, Sellers are the owners or are duly authorized to act on behalf of the owners of certain real property including a regional wastewater utility system which has been installed and interconnected to provide central wastewater service to NGC Campus (the "**Campus**") and residences (the "**Residences**") constructed or to be constructed contiguous to the Campus in Greenville County, South Carolina. Both Campus and Residences are more fully described on **Exhibit 1** attached, (hereinafter collectively referred to as the "**Property**"); and

WHEREAS, Utility is a South Carolina corporation, that is engaged in the business of furnishing wastewater utility service to the public in Greenville County, South Carolina. Utility desires to acquire, and Sellers desire to sell the wastewater treatment plant, wastewater collection facilities, and all other assets utilized in the provision of wastewater utility service to the Property (collectively hereinafter referred to as the "**Facilities**"), excluding the wastewater collection system located on the Campus, subject to the terms and conditions of this Agreement.

WHEREAS, GTSC is in the process of developing the Residences into a residential community which will contain approximately 425 homes when completed and NGC is a four-year college which may from time to time expand the service to the Campus as determined by its Board, and

WHEREAS, Sellers desire the Utility to provide wastewater utility services to the Property according to the terms, conditions and covenants of this Agreement.

WHEREFORE, IN CONSIDERATION of the mutual covenants hereinafter set forth, the parities hereto agree as follows.

1. Service by Utility

Subject to the terms and conditions of this Agreement as hereinafter set forth, Utility shall operate and maintain a utility system providing wastewater utility service to the

public in the Property in accordance with this Agreement and the regulations o appropriate regulatory agencies and governmental authorities.

2. Representation and Warranties of Sellers

Sellers represent and warrant to Utility:

(a) That Sellers are the owners of or are duly authorized to act on behalf of owners of the Property and Facilities, and

(b) That Sellers will cooperate with Utility in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction, installation and operation of the Facilities contemplated by this Agreement.

3. Title to Facilities

(a) Attached hereto as **Exhibit 2** is a detailed list of the existing Facilities of Sellers showing their respective installation or construction costs to be acquired by Utility pursuant to this Agreement. Said Facilities include all wastewater utility assets and related equipment owned by the Sellers within the Property, including but not limited to one (1) 200,000 gpd wastewater treatment plant; and a complete central wastewater collection system. However, all wastewater collection mains, man holes and related facilities located within the Campus up to the point of interconnection to the wastewater treatment plant grounds will remain the property of NGC. NGC will be responsible for operating and maintaining the wastewater collection facilities located within the Campus. All Facilities as indicated on Exhibit 2 will be in satisfactory operating condition as of the date of Closing.

(b) Sellers shall furnish Utility with copies of all Facilities construction invoices and lien waivers from all suppliers, sub-contractors, lessors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with the Facilities construction herein.

(c) Attached hereto as **Exhibit 3** is a list signed by the Sellers and briefly describing, as of the date of this Agreement, the following:

(d) All pending or threatened actions at law, suits in equity or administrative proceedings relating to the Facilities and/or involving Sellers.

(e) All contracts or obligations of any nature relating to the Facilities between Sellers and any other party.

(f) All liens and encumbrances with respect to the Facilities owned by Sellers to be transferred hereunder.

(g) Except as indicated on Exhibit 3, there are no pending or threatened actions at law or suits in equity relating to the Facilities, or any pending or threatened proceedings before the South Carolina Public Service Commission (the "**Commission**") or any other governmental agency.

(h) Except as described on Exhibit 3, there are no contracts or obligations of any nature between Sellers and any other party relating to the Facilities,

(i) Sellers are, and at the Closing will be, the owner of the Facilities described in Exhibit 2, with good and marketable title to the said Facilities, free and clear of all liens and encumbrances except as indicated on Exhibit 3.

(j) Sellers have, or at the Closing will have, all necessary permits, licenses and easements (including sufficient rights to access) for the Facilities; the Facilities have been installed within the easements relating thereto and in accordance with any necessary permits or licenses; the Facilities have been constructed and will be capable of operation in accordance with at least the minimum standards, requirements, rules and regulations of all governmental bodies and regulatory agencies which may have jurisdiction thereover.

4. Construction of Additional Facilities by Sellers

(a) Sellers shall construct and/or install all necessary additional wastewater facilities such as wastewater mains, lift stations, manholes, service lines, wastewater main extensions and other facilities reasonably required to provide adequate sanitary wastewater service (in accordance with applicable governmental and Utility standards) to all new wastewater customers to be constructed within the Property. However, Sellers shall not be responsible for any upgrades or expansions to the 200,000 gpd wastewater treatment plant, except as required in Subparagraph (d) herein.

(b) All Facilities constructed and installed by Sellers pursuant to Subparagraph (a) of this Paragraph 4 shall be constructed and installed without cost or expense to Utility.

(c) All of the Facilities to be constructed and installed by Sellers pursuant to Paragraph 4 of this Agreement, excluding extensions to the wastewater collection system located within the Campus, shall become the property of Utility as installed without the requirement of written documents of transfer. Utility shall own, operate and maintain as its sole responsibility and shall have all right, title and interest as sole

owner of such Facilities. Sellers shall execute all conveyances, licenses and other documents reasonably requested by Utility as necessary or desirable in its opinion to insure its ownership of, ready access to, and operation and maintenance of such Facilities.

(d) Sellers further agree to complete the following actions prior to closing:

i. Install a 90kW diesel generator and related appurtenances at the wastewater treatment plant to provide backup electrical power.

ii. Install an all-weather access road to the wastewater treatment plant to facilitate sludge removal.

iii. Install a four-inch (4") steel sludge removal line from the wastewater treatment plant digester to the all-weather access road.

iv. Complete construction of a service building/bathroom facility at the wastewater treatment plant site.

v. Repair any deficiencies with the existing Phase I wastewater collection main system.

vi. Install a flow proportional sampler on the wastewater treatment plant effluent line.

(e) All plans, specifications and construction pursuant to this Paragraph 4, including facilities to be constructed or installed prior to closing, shall be in accordance with applicable standards, requirements, rules and regulations of all agencies of the State of South Carolina and the County or municipal jurisdiction within which the Property is situated, and shall have received the written approval of Utility before construction is begun, which approval shall not be unreasonably withheld or delayed.

5. Maintenance of Facilities

(a) Upon installation and/or transfer of the additional and existing Facilities, Utility agrees to supply all customers within the Property with adequate and customary wastewater utility service, and to operate, maintain and repair all Facilities as indicated herein.

(b) Sellers agree to maintain existing Facilities in proper condition and are wholly responsible for all expenses required to maintain and or repair existing facilities until such time as transfer of ownership is authorized.

(c) NGC will be responsible for proper operation, maintenance and repair of all wastewater collection lines located within the Campus, including but not limited to

grease traps. Wastewater from NGC is required to be domestic in nature and must no exceed pollution standards for domestic waste. NGC agrees that no hazardous wast is to be discharged into its sanitary wastewater system. NGC also agrees tha inflow/infiltration is to be minimized within the on-campus wastewater collectior system. Utility agrees to provide wastewater treatment, on a bulk basis per Paragrapl 7 herein, for all wastewater generated by NGC.

(d) NGC will be responsible for all maintenance and or repair of the pond and adjacent fence located within the wastewater treatment plant grounds.

(e) Following Closing, Utility agrees to install noise abatement materials around the main wastewater treatment plant blowers to reduce noise.

6. Easements

Sellers shall convey to Utility or provide by recorded subdivision plats, in either case at no cost or expense to Utility, such easements or rights-of-way for the Facilities and the use, operation maintenance thereof as Utility shall reasonably require for the performance of Utility's obligations under this Agreement to include anticipated wastewater treatment plant expansions. Such plats or conveyances shall be in a form satisfactory to Utility's and Sellers' respective legal counsels.

7. Usage Rates

(a) Wastewater usage charges and service fees shall be rendered by Utility in accordance with Utility's rates, rules and regulations and conditions of service from time to time on file with the Commission and then in effect.

(b) The existing facilities of the NGC as of the execution date of this agreement will be charged based on 225 Single Family Equivalents. If the Utility's flow measurements establish the existence of excessive inflow/infiltration ("**I&I**") into the Utility's wastewater system, NGC shall pay a wastewater user charge for the I&I based upon the applicable tariff in effect at the time of determination of excessive I&I.

8. Connection or Tap-On Fees

In consideration of the undertakings of Sellers pursuant to this Agreement, Utility hereby agrees to waive 25 future Single Family Equivalent tap-on fees for NGC. Other new connections or additional usage by NGC beyond the Single Family Equivalent tap-on fees waived herein will be charged a tap-on fee on a Single Family Equivalent basis in accordance with our tariff on file with the Commission. Utility agrees that the tap-on fee for the first 116 lots in the Residences will be assessed at

$500 per Single Family Equivalent. Tap-on fees for lots in the Residences beyond 116 lots will be charged a tap-on fee on a Single Family Equivalent basis in accordance with our tariff on file with the Commission.

9. Approvals

This Agreement is expressly contingent upon obtaining written approval of this Agreement in its entirety by the Commission. Utility will submit this Agreement within thirty (30) days of full execution, along with any other required documentation to the Commission for approval. Sellers shall cooperate fully with the Utility in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with (i) obtaining an extension of Utility's Service Area, (ii) Commission approval of the terms and conditions contained within this Agreement, and (iii) construction and installation of the wastewater collection facilities contemplated by this Agreement.

10. Closing

(a) The Closing hereunder shall take place within ten (10) days following approval of this Agreement by the Commission at the offices of Sellers' counsel, or at such other time and place as Sellers and Utility may agree upon.

(b) At the Closing, the Sellers will, upon due performance by Utility of its obligations under the Agreement, deliver to Utility:

(i) such good and sufficient easements, bills of sale with covenants of warranty, and sufficient instruments of sale, in form and substance satisfactory to Utility's counsel, as shall be required to vest in Utility good, indefeasible and marketable title to all of the Facilities used or to be used for wastewater treatment or collection in the Property, free and clear of liens and encumbrances except as indicated on Exhibit 3;

(ii) all of the files, documents, papers, agreements, books of account, customer lists, original cost invoices, engineering drawings, and records pertaining to the wastewater utility business conducted by Sellers in the Property, other than their minute books and stock records, and any other records reasonably needed by Sellers;

(iii) all orders, permits, licenses, franchises, or certificates issued or granted to Sellers by any governmental authority in connection with any authorization related to the construction, operation or maintenance of its Facilities or the conduct of their wastewater utility businesses; and

(iv) an opinion of Counsel for Sellers, dated as of the Closing, that upon the execution of this Agreement; delivery to Utility of the Bill of Sale for the Facilities; and the approval of the Commission of these transactions that Utility will then have good and marketable title to the Facilities, free and clear of all liens and encumbrances.

(b) At the Closing and from time to time thereafter, Sellers shall, at the request of Utility, take all action necessary to put Utility in actual possession and operating control of the Sellers' Facilities and shall execute and deliver such further instruments of sale, conveyance, transfer and assignment, and take such other action as Utility may request, in order more effectively to sell, convey, transfer and assign to Utility any of the Facilities, to confirm the title of Utility thereto and to assist Utility in exercising rights with respect thereto.

11. Purchase Price

The amount of the Purchase Price (the **"Purchase Price"**) shall be **$10.00 (Ten Dollars)**, increased by the amount of any cash or current accounts receivable (which Sellers represent and warrant will be collected at their face amount) transferred by Sellers to Utility and decreased by any liabilities (current, accrued, long-term or other) assumed by Utility.

12. Indemnification

Sellers shall save and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur within the Property in the course of the performance of the construction of the Facilities by Sellers or by anyone acting on Sellers' behalf, or under Sellers' supervision and control, including, but not limited to claims made by employees of Sellers.

13. Delays

Neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of public enemy, interference by civil authorities, passage of laws, orders of court, adoption of rules, ordinances, acts, failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence such party is unable to prevent or overcome.

14. Utilities

The Sellers will be responsible for all costs, if any, to establish separate phone, water and electric utility accounts for the Facilities including any costs required by the providers of these services to install dedicated lines to the Facilities.

15. Assignment

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

16. Governing Law, Notices, Etc.

This Agreement is intended to be performed in the State of South Carolina and shall be governed by the laws of the State of South Carolina. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect. This Agreement sets forth the complete understanding between Sellers and Utility and supersedes all prior agreements with respect to service to the Property. Any amendments hereto to be effective must be made in writing.

17. Notices

Notices, correspondence and invoicing required hereunder shall be given to Sellers and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Sellers: North Greenville College
P.O. Box 1892
Tigerville, SC 29688

Greenville Timberline S.C., LLC
100 Laurel Way
Tigerville, SC 29688

If to Utility: United Utility Companies, Inc.
P.O. Box 4509
West Columbia, SC 29171

Delivery, when made by registered or certified mail, return receipt requested, shall be deemed completed upon mailing.

IN WITNESS WHEREOF, this Agreement is executed on the date first above written.

James B. Epting (President)

By: _____
North Greenville College

ATTEST

Cliff Brown

By: _____
Greenville Timberline S.C., LLC

ATTEST

James Camaren. (Chairman and C.E.O.)

By: _____
United Utility Companies, Inc.

ATTEST

Exhibit "C"

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. _____

S. C. PUBLIC SERVICE COMMISSION
RECEIVED
AUG 0 8 2001
RECEIVED

IN RE: Application of United Utility Companies, Inc. requesting an expansion of its existing sewer service area to include certain portions of Greenville County, South Carolina.	)))))))	**APPLICATION**

United Utility Companies, Inc. ("Applicant" or "Utility") hereby applies for an expansion of its authorized sewerage service area to include certain additional portions of Greenville County, South Carolina. In support of this Application, Applicant would respectfully show as follows:

1. Applicant is a public utility currently operating water and wastewater systems under the jurisdiction of the Commission in Greenville County as well as the counties of Spartanburg, Union, Greenwood and Anderson. Its corporate charter is presently on file with the Commission and an appropriate bond has been posted with same. A schedule of rates and charges for Applicant's services has previously been approved by the Commission in Docket No. 89-602-W/S, Order No. 90-65, for its certificated service area.

2. Applicant currently provides water and sewerage service in Greenville County in the Trollingwood subdivision, water service only in the Kingswood and Woodmont Estates subdivisions, and sewer service only in the Canterbury, Valleybrook, and the Village subdivisions. The sewer service area for which expansion is sought (the "Service Area") is also located in

Greenville County and is described on the document attached hereto and incorporated herein by reference as Exhibit "A".

3. Wastewater treatment facilities to serve the Service Area have already been constructed and are currently being operated by North Greenville College ("NGC") to serve its campus. No service is being provided to the public, however. NGC is not, therefore, a public utility subject to the commission's jurisdiction. Additionally, adjacent to the campus is a tract of land currently being developed for residential use by Greenville Timberline, LLC ("LLC"). The residences to be built in this subdivision, to be known as Valley View subdivision, when completed are also to be served by the NGC wastewater treatment facilities. Since no residences are being served by LLC's facilities, LLC is not a public utility subject to the Commission's jurisdiction. Applicant, NGC and LLC have entered into an Agreement which provides for the transfer of NGC's wastewater treatment facilities, with certain additions or modifications thereto, and LLC's wastewater transportation facilities already constructed, or to be constructed, for the collection and transportation of sewerage from Valley View to Applicant. Said Agreement is conditioned upon approval of the instant Application for expansion of Applicant's territory to include the Service Area.

4. The Service Area is not presently served by any public utility subject to the jurisdiction of this Commission. Moreover, the Metropolitan Sewer Sub-District, which has service rights in the service area, has declined to serve. See Exhibit "B", which is attached hereto and incorporated herein by this reference.

5. Applicant requests that it be allowed to provide service in the Service Area pursuant to the terms, conditions, rates and charges set forth in its existing rate schedule, as may be changed

from time to time as a result of any rate proceedings that might be brought before the Commission by Applicant, including those in Docket No. 2000-0210-W/S.

6. Applicant is informed and believes that the public convenience and necessity will be served by the approval of this Application.

Wherefore, having fully set forth its Application, Applicant prays that the Commission grant the requested expansion of its service area to include that area set forth in Exhibit "A"; that the terms, conditions, rates and charges approved by the Commission for Applicant's currently authorized sewerage service territory, as such may be adjusted from time to time by this Commission, apply to the provision of sewer service in the Service Area; that, if no intervention is filed, hearing on the within matter be waived, and for such other and further relief as the Commission may deem just and proper.

Respectfully submitted,

John M. S. Hoefer
WILLOUGHBY & HOEFER, P.A.
1022 Calhoun Street, Suite 302
Post Office Box 8416
Columbia, SC 29202-8416
803-252-3300

Attorneys for Applicant

Columbia, South Carolina
This 8th day of August, 2001
U:\CWS\United Utilities\Greenville Acquisition\Pleadings\Application.wpd

EXHIBIT "A"

All those certain pieces, parcels, or tracts of land, situate lying and being in the County of Greenville, in and near the unincorporated community of Tigerville, west of Highway 253 and north and south of Highway 414, east of Meadow Fork Creek and south of Burban Fork Creek, portions of which are bisected by Chinqapin Road, and which are owned by North Greenville College or Greenville Timberline, LLC, as shown on the attached drawing, and bearing the following tax map numbers:

Property owned by North Greenville College:

TM# 650.1.005.2
650.1.006
650.1.006.2
650.1.006.4
650.1.006.5
650.1.006.27

650.4.005
650.4.007
650.4.007.1
650.4.007.3
650.4.007.4

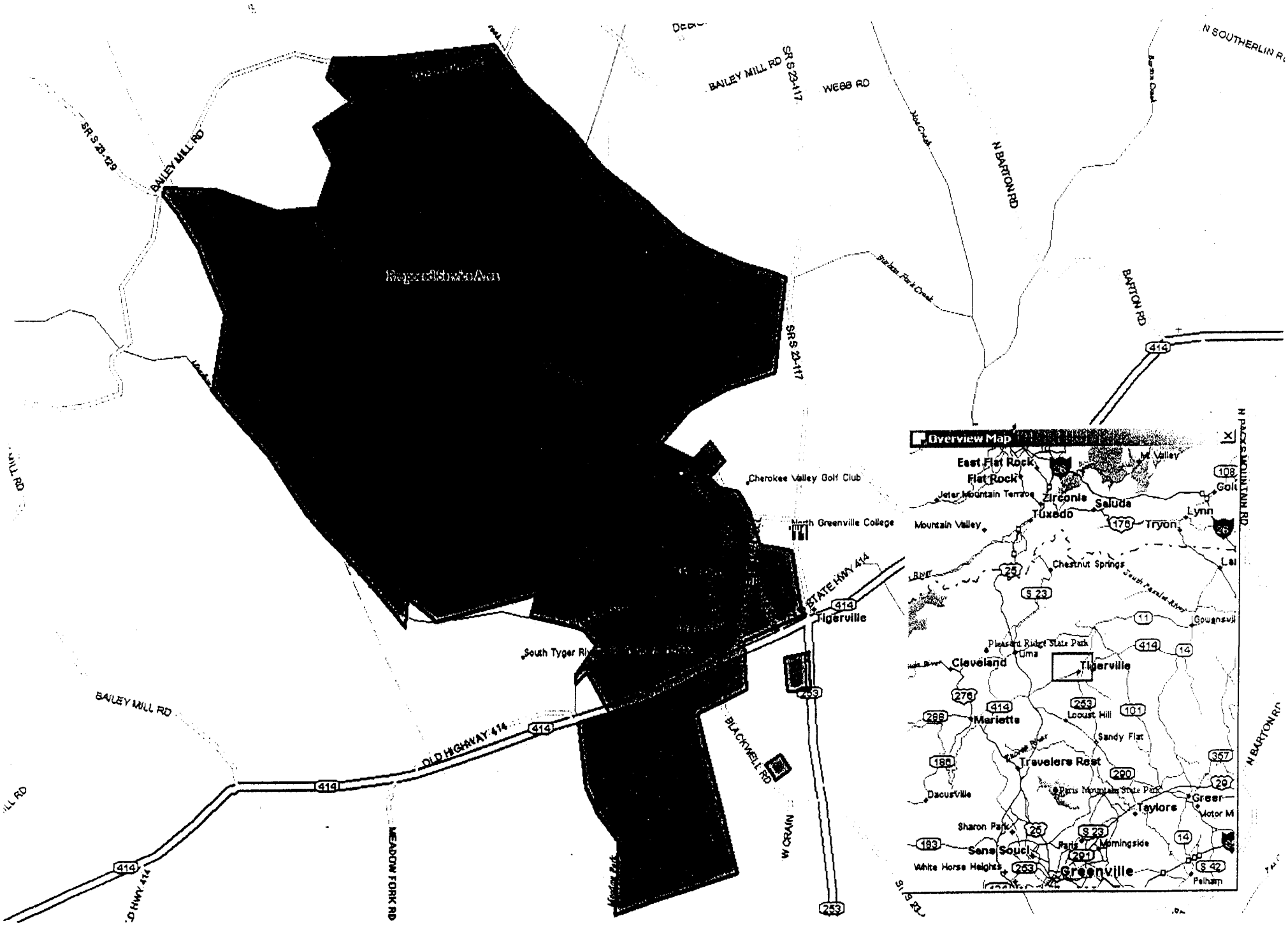
651.2.021.7

655.4.004.1

656.1.006

Property owned by Greenville Timberline, LLC:

TM# 656.3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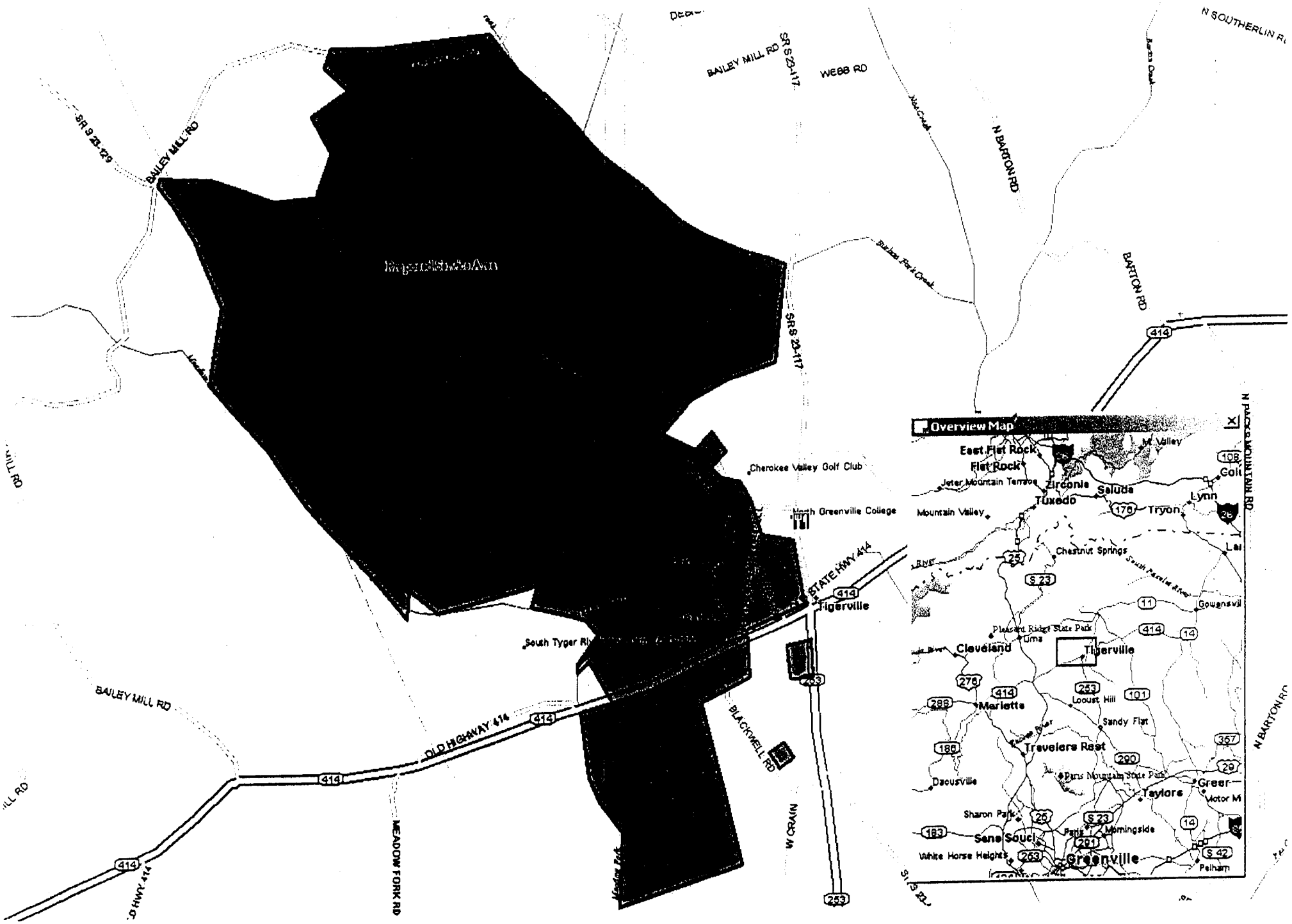
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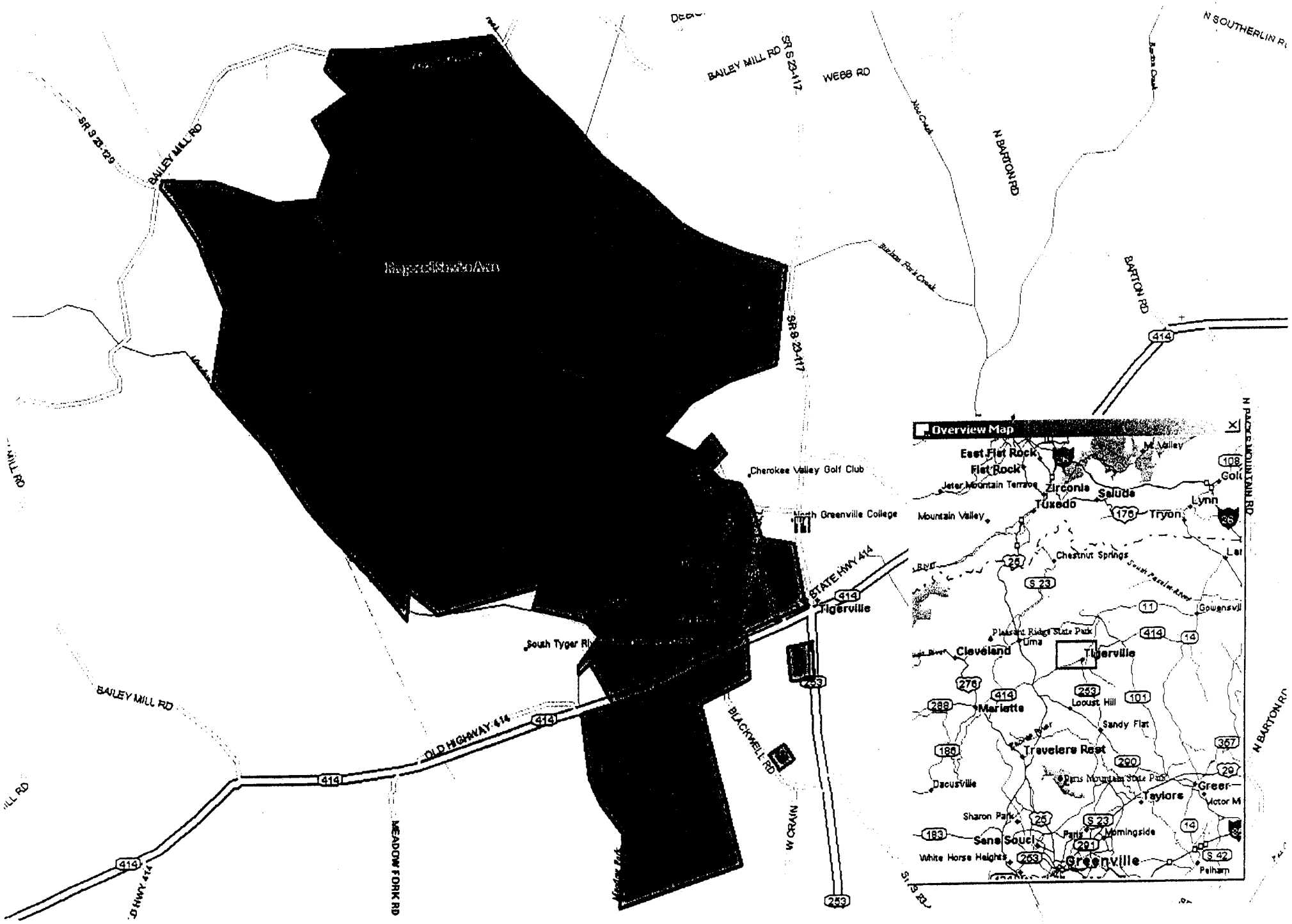
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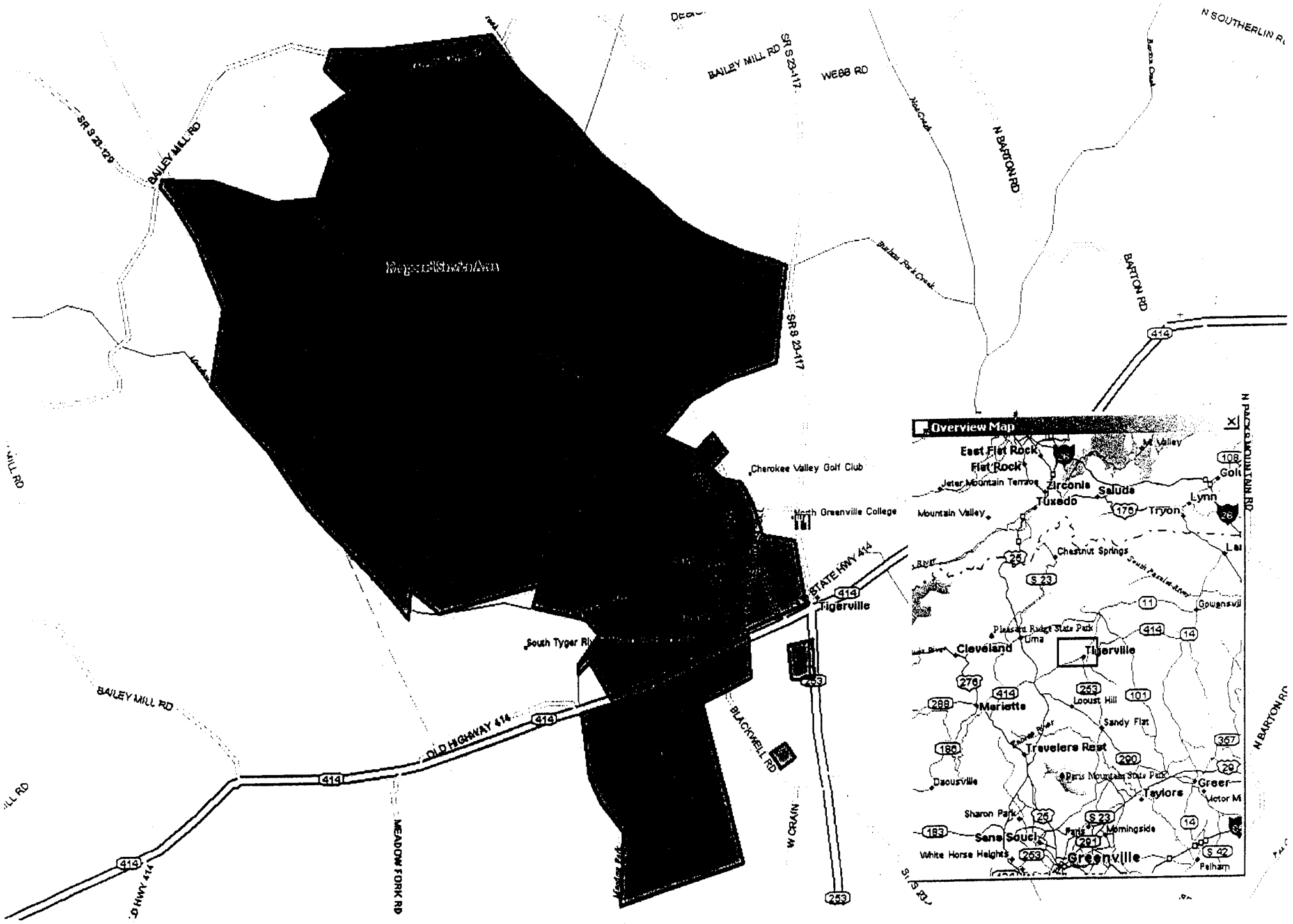
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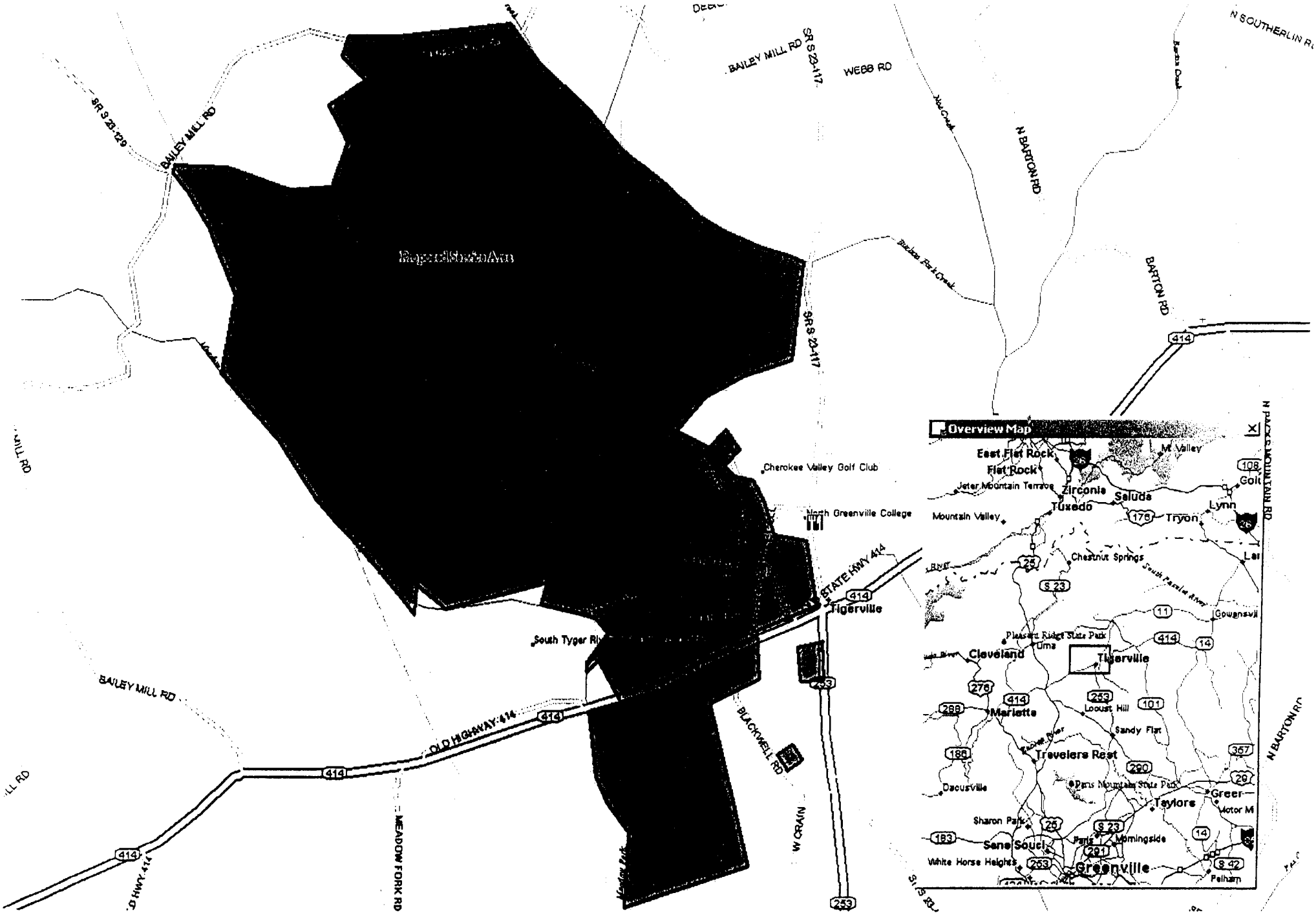
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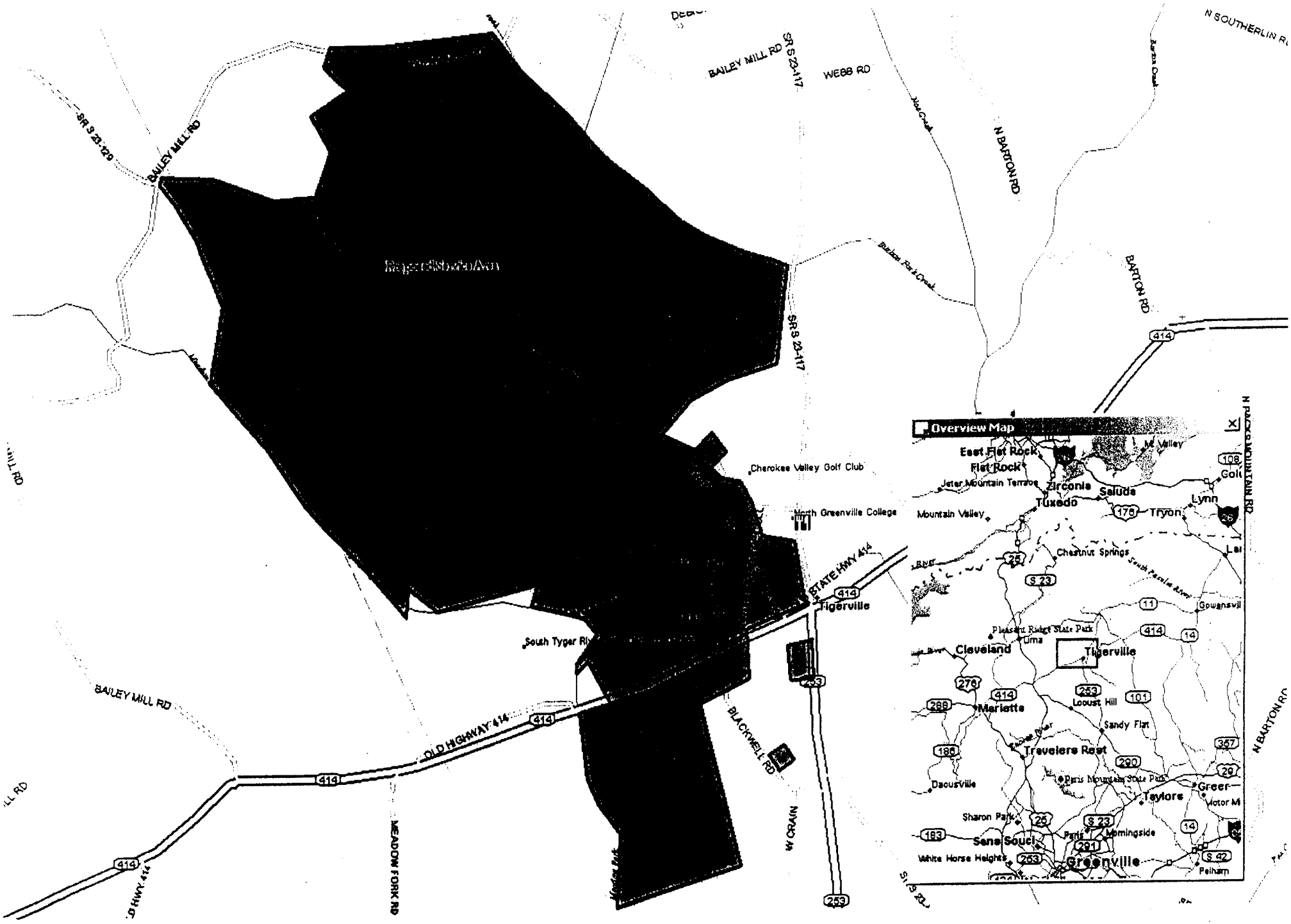
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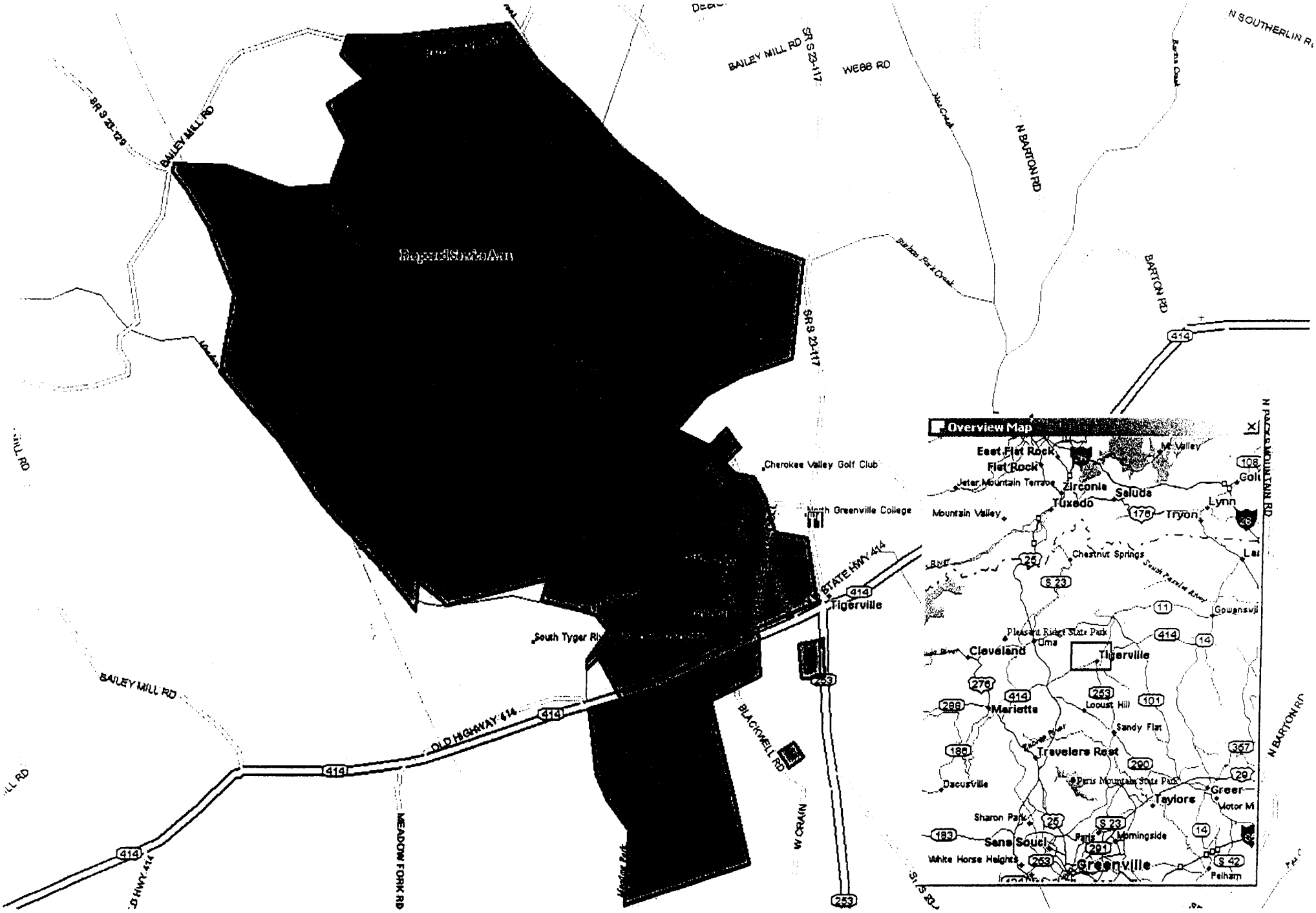
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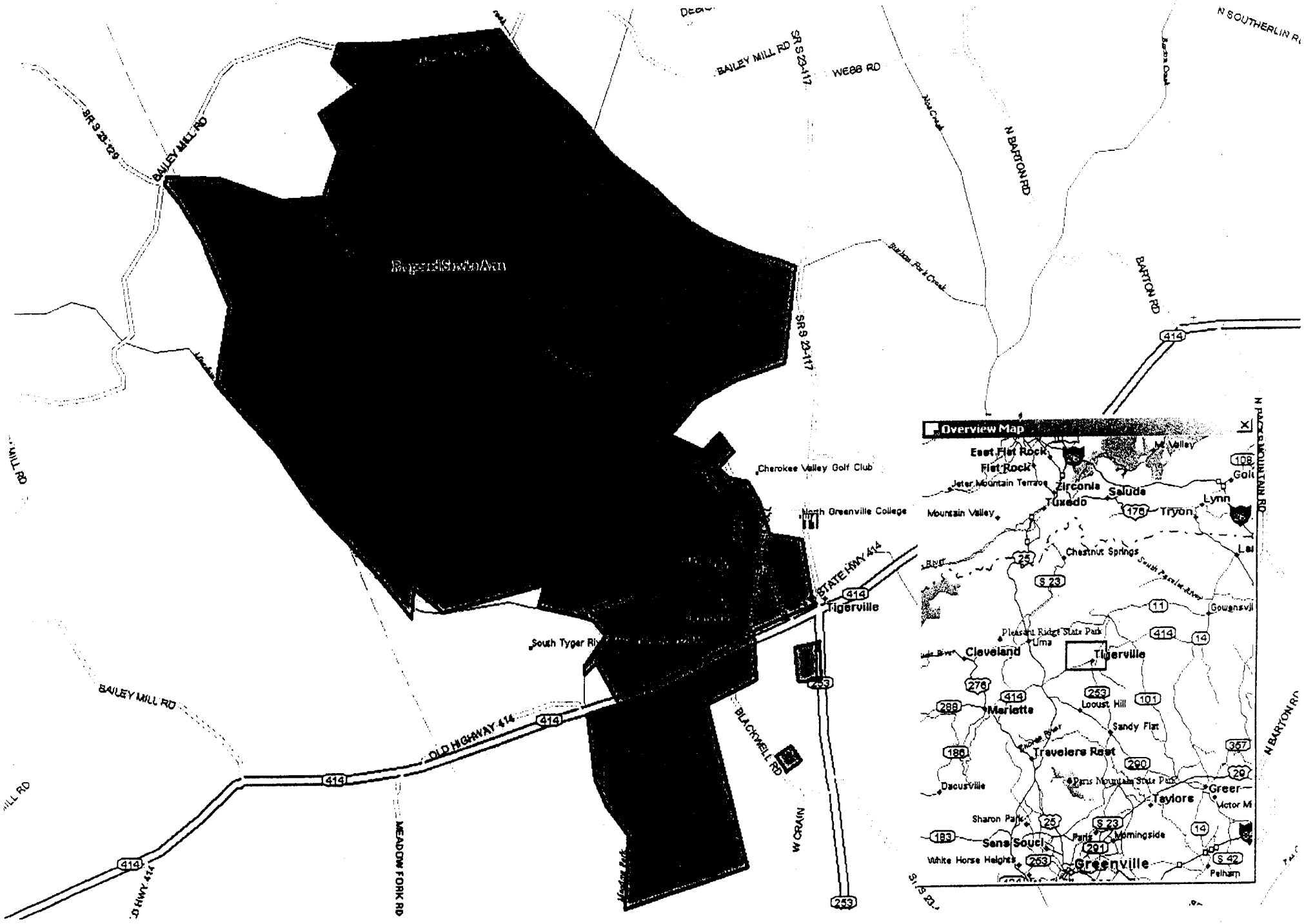
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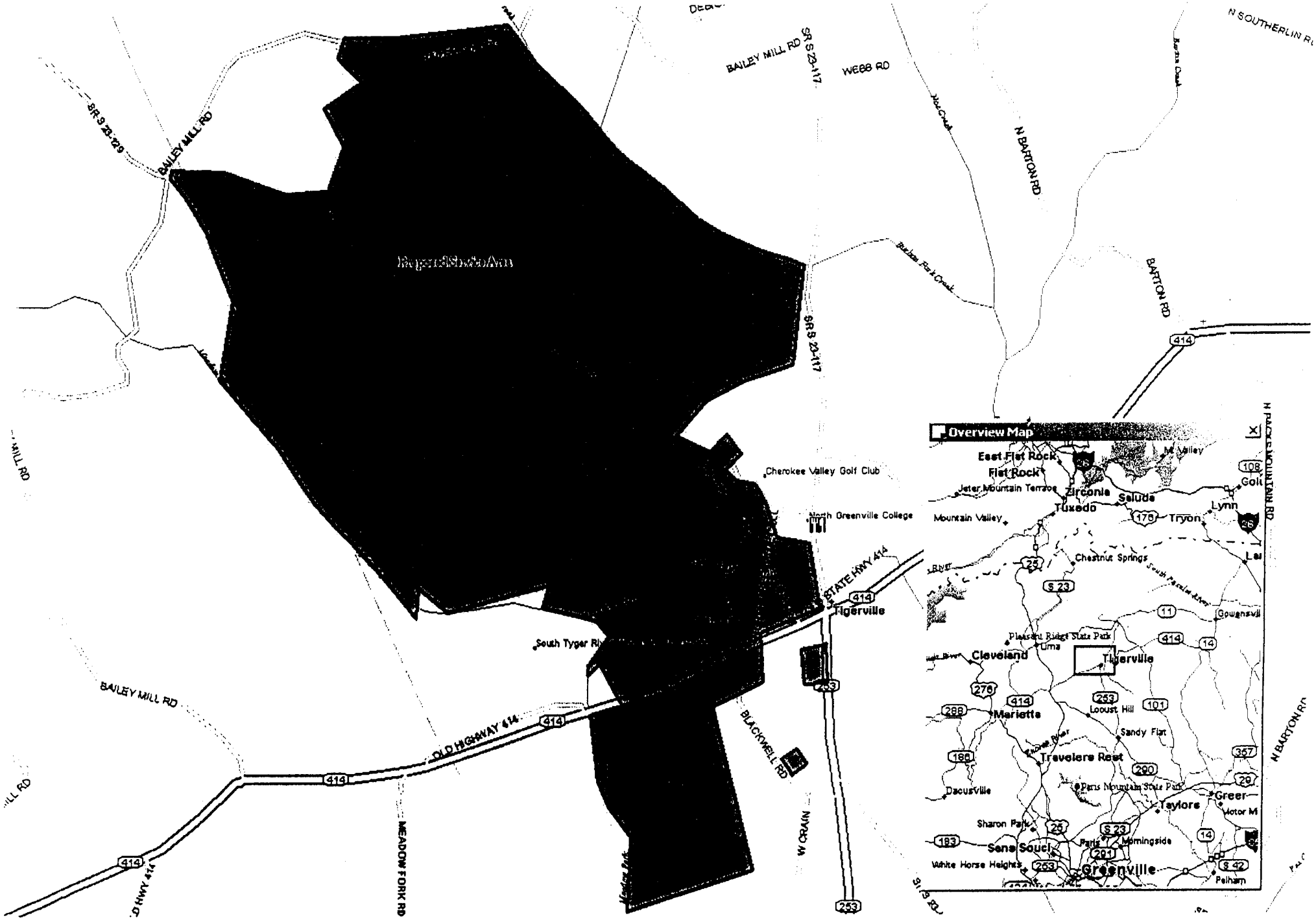
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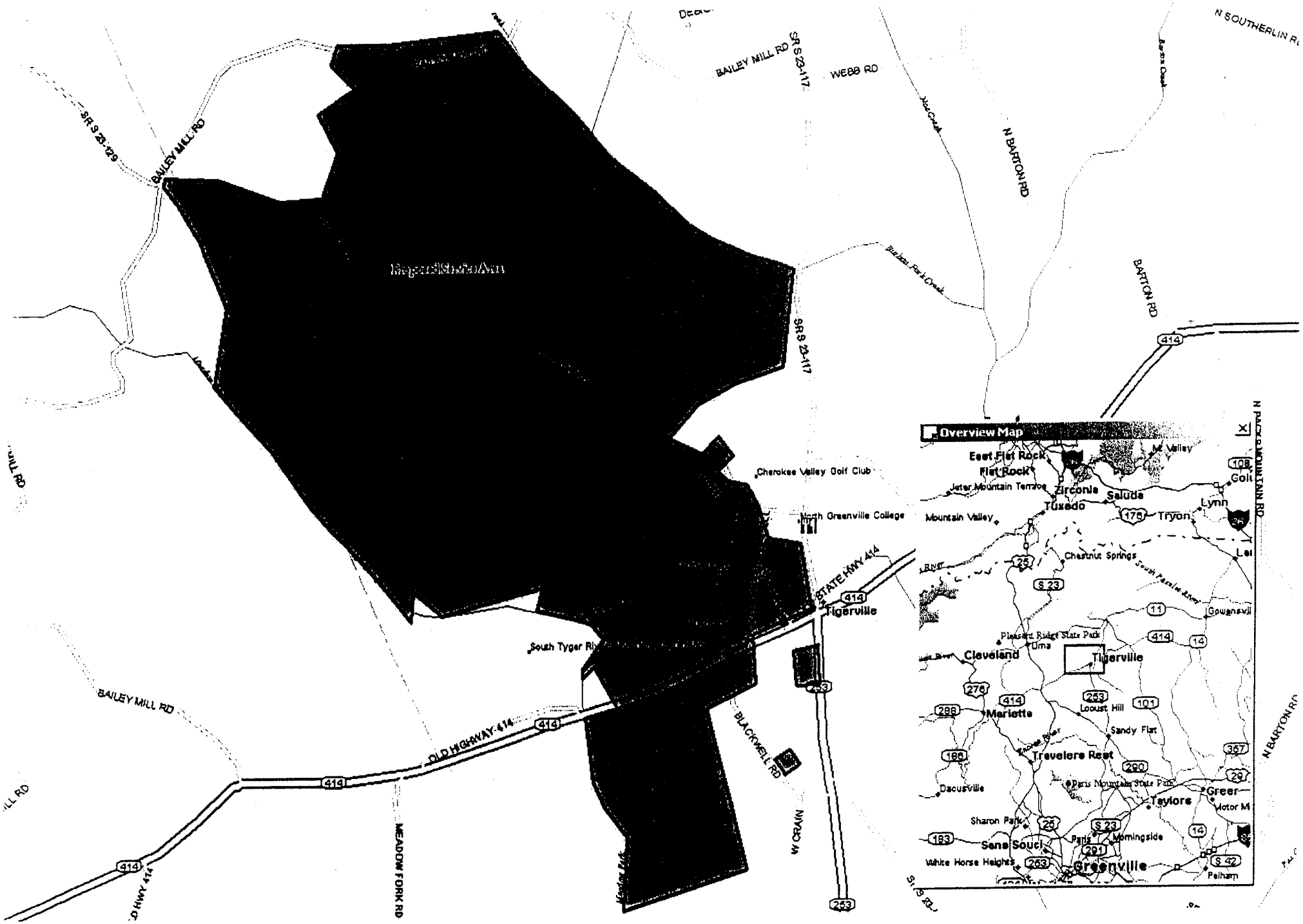
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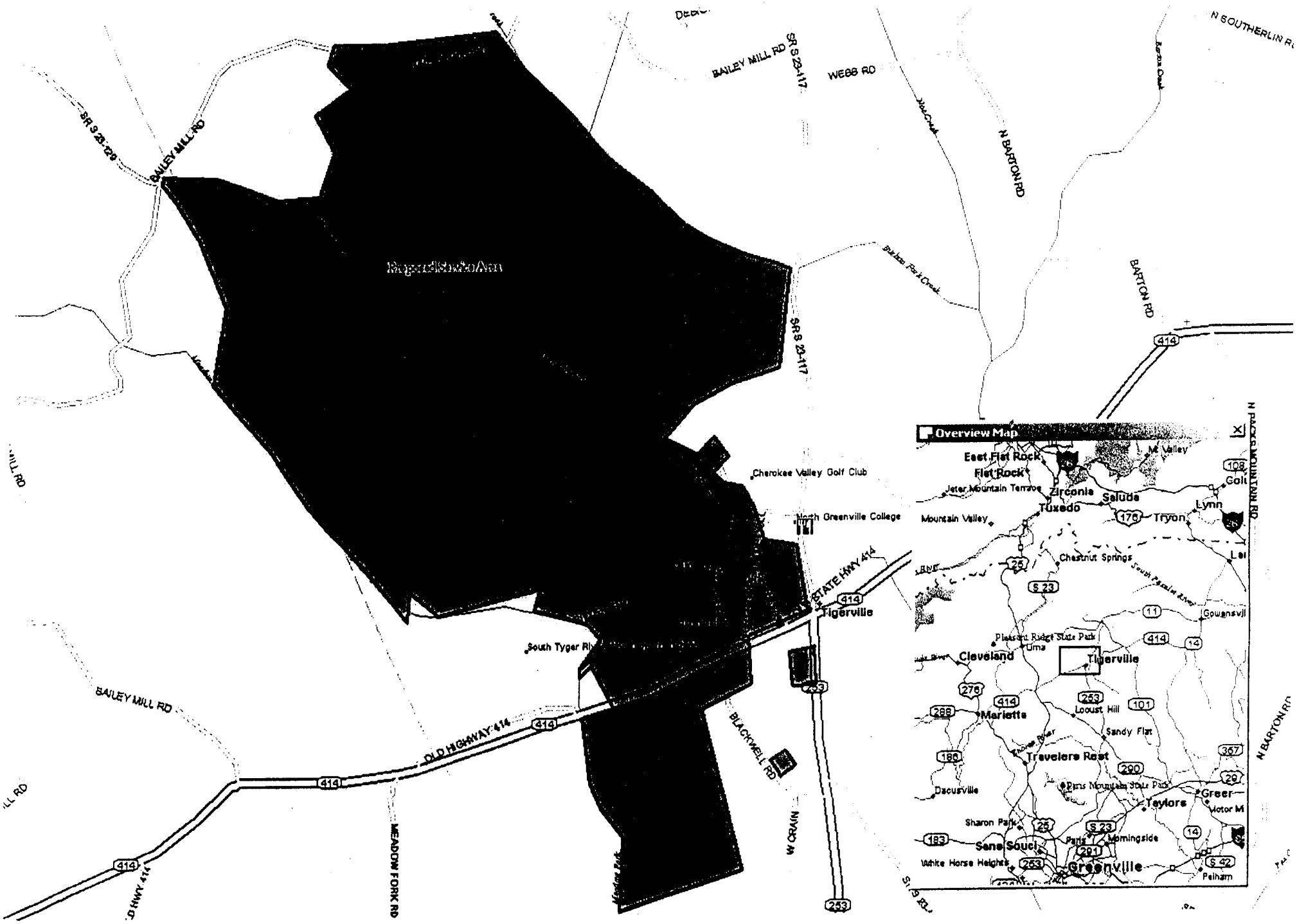
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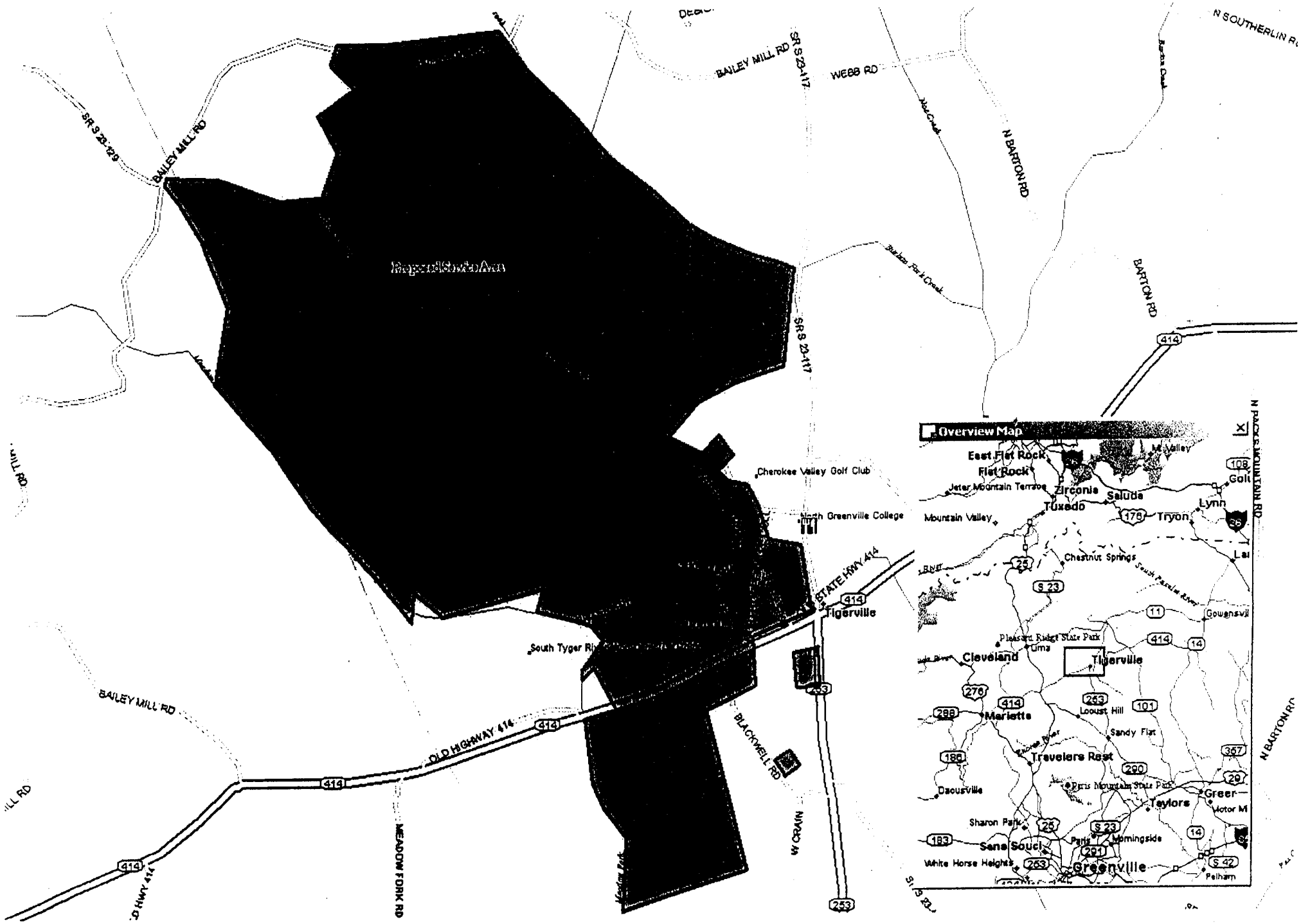
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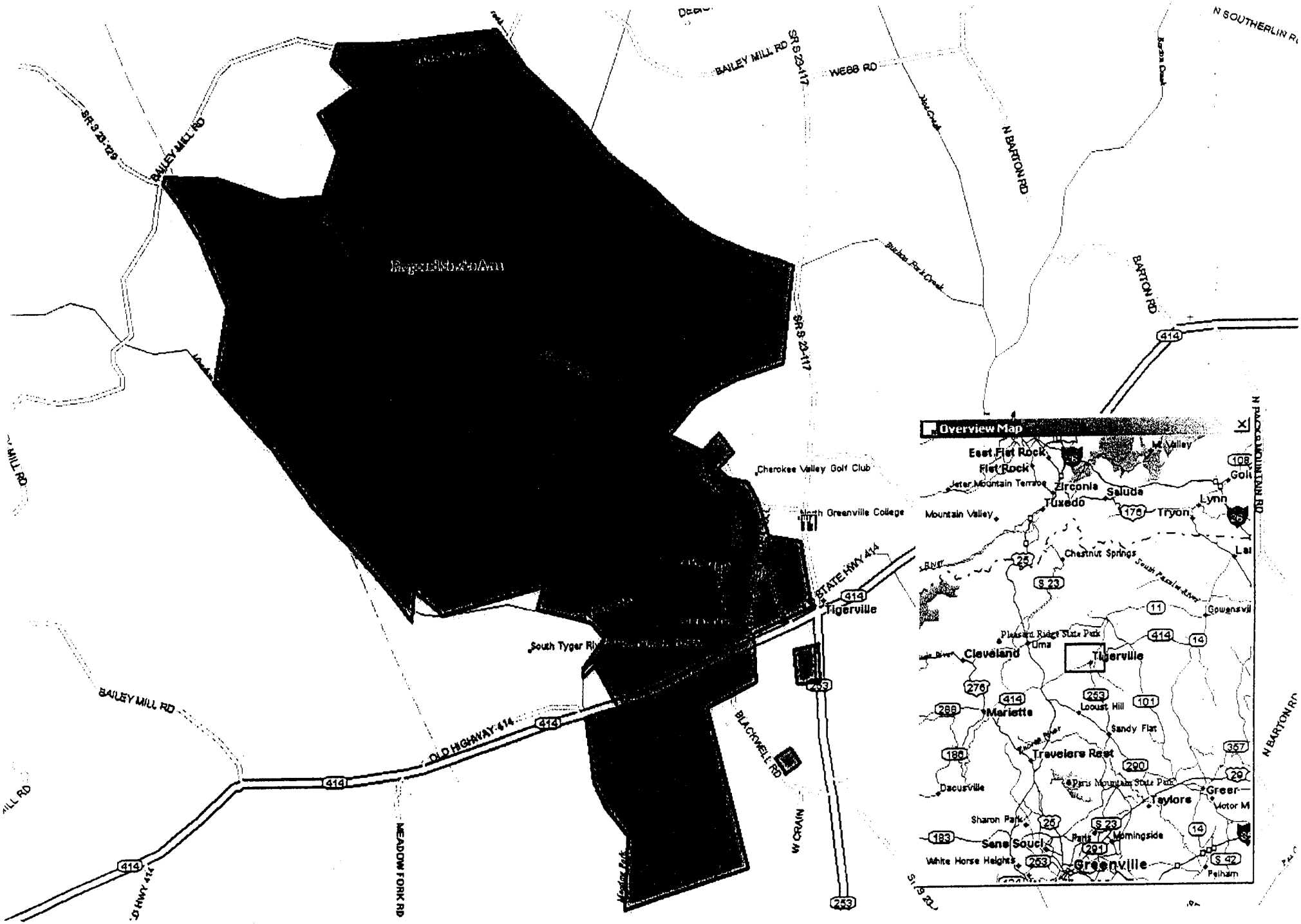
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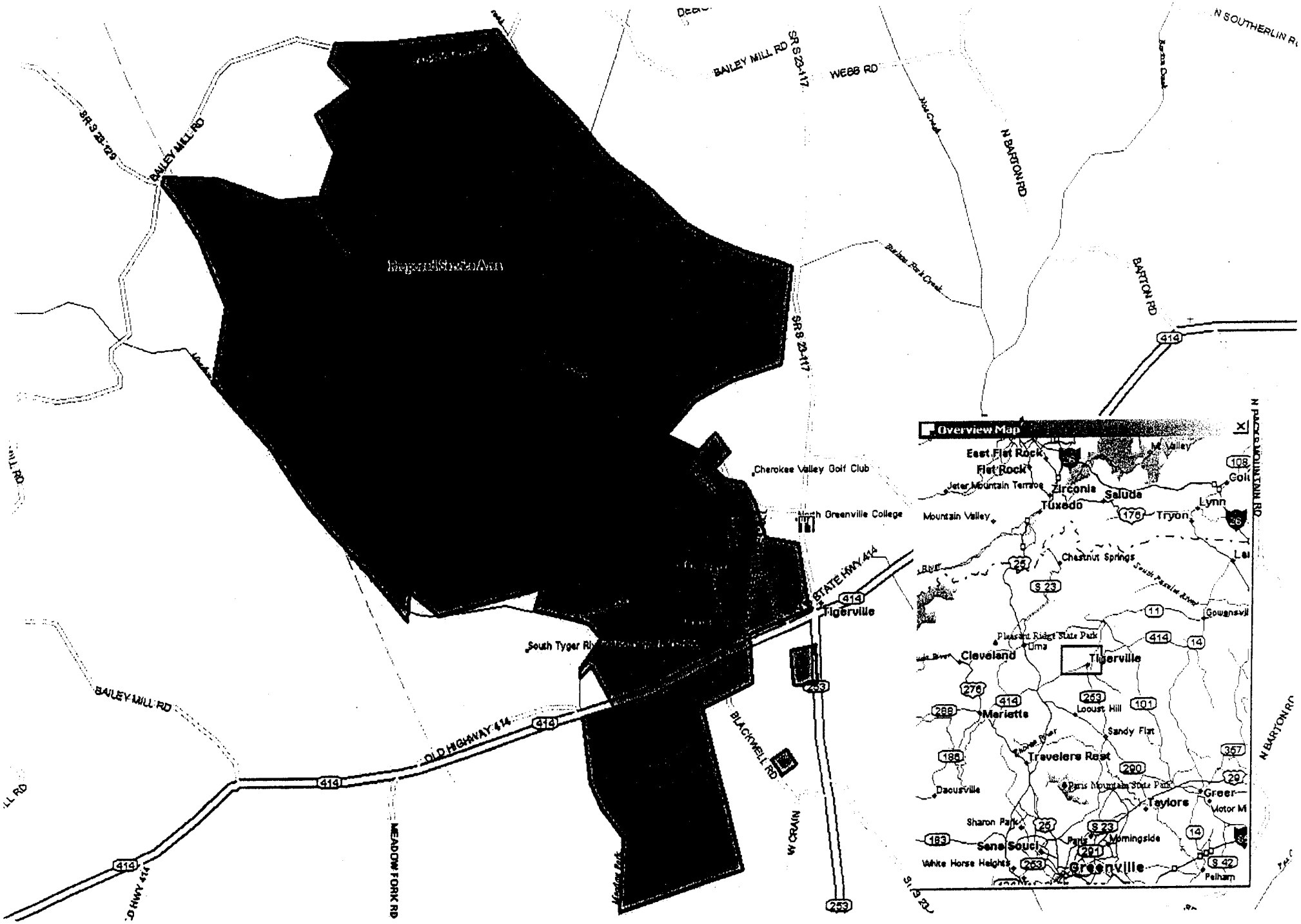
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Greenville
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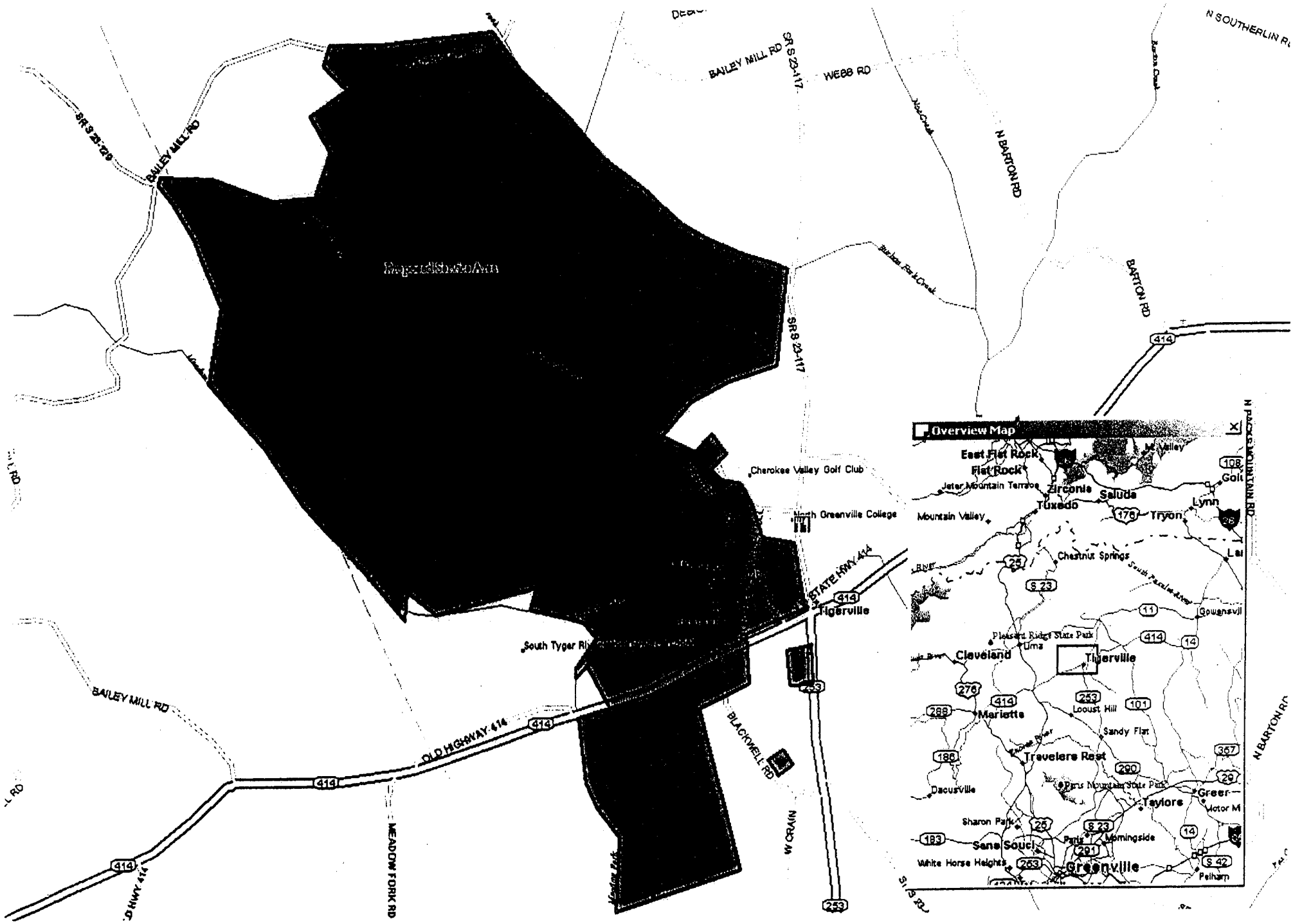
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N BARTON RD

Exhibit "B"

COMMISSIONERS:
M. GRAHAM PROFFITT, III, Chairman
CHARLES F. STYLES
RANDOLPH L. ESKEW
JOE W. JELKS, III
JOEL H. BYARS

METROPOLITAN SEWER SUB-DISTRICT

MICHAEL F. DICKSON
General Manager

S. C. PUBLIC SERVICE COMMISSION
RECEIVED
AUG 0 8 2001
RECEIVED

May 15, 2001

Mr. Cal Caldarella
MDC Corporation
25 Sunset Rd.
Old Saybrook, CT 06475

Re: Laurel Valley Subdivision Annexation

Dear Mr. Caldarella,

After consideration of your request to annex the above mentioned project into the Metropolitan Sewer Sub-distict boundaries, Metropolitan has decided to decline this request. The plans submitted to this office have been returned to the project engineer (Milone & MacBroom, Inc.) If you need additional information please contact us.

Sincerely,

Metropolitan Sewer Sub-district

Robert Arms
Engineering Coordinator

cc: Pat Web, GCPC
Sam Weaver, Condor Environmental
Florence Hall, SCDHEC
Alan Epps, Milone & MacBroom, Inc.

Exhibit "D"

NORTH GREENVILLE COLLEGE • P.O. BOX 1892 • TIGERVILLE, SC 29688 • (864) 977-7000

OFFICE OF THE PRESIDENT

RECEIVED
NOV 30 2001
Willoughby & Hoefer, P.A.

TO: South Carolina Public Service Commission

DATE: November 29, 2001

We at North Greenville College are aware of the proposed rate increase by United Utility Companies, Inc.

James B. Epting
President

JBE:es