

AREA OF POTENTIAL EFFECTS (APE)

R.L. HARRIS PROJECT
FERC NO. 2628

Prepared by:

**ALABAMA POWER COMPANY
BIRMINGHAM, ALABAMA**



MAY 2020

AREA OF POTENTIAL EFFECTS

R.L. HARRIS PROJECT FERC NO. 2628

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AREA OF POTENTIAL EFFECTS

R.L. HARRIS PROJECT FERC NO. 2628

1.0 PURPOSE

The purpose of this document is to describe the Area of Potential Effects (APE)¹ for the R.L. Harris Hydroelectric Project (Project)² and the process used to establish the APE. As outlined in the April 2019 Federal Energy Regulatory Commission (FERC) Study Plan Determination (SPD), this document will provide “a written description of the APE, a map clearly identifying the APE and its relationship to the Harris Project Boundary, and concurrence from the Alabama SHPO on the APE prior to conducting fieldwork (5.9(b)(6)).” The APE was developed in consultation with the Alabama Historical Commission (Alabama State Historic Preservation Officer (Alabama SHPO)), FERC, Cherokee Nation, Eastern Band of Cherokee Indians, United Keetoowah Band of Cherokee Indians in Oklahoma, Alabama-Coushatta Tribe of Texas, Alabama-Quassarte Tribal Town, Coushatta Tribe of Louisiana, Kialegee Tribal Town, Muscogee (Creek) Nation, Poarch Band of Creek Indians, and Thlopthlocco Tribal Town³ (applicable tribes) and in compliance with the following applicable Federal and State local laws, regulations, policies, or guidelines associated with the protection and preservation of historic properties⁴, human remains, funerary objects, and objects of cultural patrimony:

1. The Advisory Council's "Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects", dated February 23, 2007.
2. Public Law 101-601; 25 U.S.C. 3001-3013 (Native American Graves Protection and Repatriation Act).
3. 54 U.S.C. 306108 (National Historic Preservation Act of 1966, Section 106). Title 54 of the United States Code, Subtitle III – National Preservation Programs, Division A –

¹ This document describes APC's proposed APE and the justifications FERC will need to approve it.

² The National Historic Preservation Act of 1966 provides definitions of many of the terms used herein. Those definitions can be found in 54 U.S.C. §300301-300321.

³ Applicable Tribes as of March 2019.

⁴ 3 CFR 102.103 defines "historic properties" as those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Historic Preservation, Subdivision 5 – Federal Agency Historic Preservation Responsibilities, Chapter 3061, Subchapter I – In General, Section 306108 – Effect of undertaking on historic property (formerly Section 106 of the National Historic Preservation Act).

4. 36 CFR Part 800 (The Advisory Council's Regulations for implementing Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470F)).
5. Ala. Code 1975, §41-3-6 (Aboriginal Mounds, Earthworks and Other Antiquities).
6. Ala. Code 1975, §13A-7-23.1, as amended (Alabama Cemetery and Human Remains Protection Act, Burials).
7. Alabama Historical Commission Policy for Archaeological Survey and Testing in Alabama, as adopted May 13, 1996 and Revised October 1, 2002.
8. Ala. Code 1975, §35-1-4 (Alabama Cemetery Access Law).
9. Alabama Historical Commission Administrative Code Chapter 460-X-10 (Burials)
10. 33 C.F.R Part 325, Appendix C (United State ACOE Procedures for Protection of Historic Properties).
11. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000.
12. 54 U.S.C. §§ 320301-320303 (Antiquities Act of 1906).
13. 42 U.S.C. §4321 (National Environmental Policy Act).
14. 42 U.S.C. §§ 470aa-470mm (Archaeological Resources Protection Act of 1979).
15. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971.
16. Executive Order 13007, Indian Sacred Sites, May 24, 1996.

2.0 INITIAL AREA OF POTENTIAL EFFECTS (APE) PROPOSAL

2.1 ALABAMA POWER INITIAL APE PROPOSAL (MAY 2019-APRIL 2020)

The Alabama Power initial APE proposal was the lands in the R.L. Harris FERC Project Boundary (Lake Harris and Skyline). The Harris Project Boundary includes:

The Harris Project consists of a dam, spillway, powerhouse, and those lands and waters necessary for the operation of the hydroelectric project and enhancement and protection of environmental resources. These structures, lands, and water are enclosed within the FERC Project Boundary. Under the existing Harris Project license, the FERC Project Boundary encloses two distinct geographic areas.

Harris Reservoir is the 9,870-acre reservoir (Harris Reservoir) created by the R.L. Harris Dam (Harris Dam). Harris Reservoir is located on the Tallapoosa River, near Lineville, Alabama. The lands adjoining the reservoir total approximately 7,392 acres and are included in the FERC Project Boundary. This includes land to 795 feet mean sea level (msl) (Alabama Power owns 2 feet of flood storage (793-795), as well as natural undeveloped areas, hunting lands, prohibited access areas, recreational areas, and all islands. Finally, this includes a scenic easement (to 800 feet msl or 50 horizontal feet from 793 feet msl, whichever is less, but never less than 795 feet msl).

The Harris Project also contains 15,063 acres of land within the James D. Martin-Skyline Wildlife Management Area (Skyline WMA) located in Jackson County, Alabama. These lands are located approximately 110 miles north of Harris Reservoir and were acquired and incorporated into the FERC Project Boundary as part of the FERC-approved Harris Project Wildlife Mitigative Plan and Wildlife Management Plan. These lands are leased to, and managed by, the State of Alabama for wildlife management and public hunting and are part of the Skyline WMA.

3.0 APE CONSULTATION

3.1 APE DISCUSSIONS

At the May 22, 2019 Harris Action Team (HAT) 6 meeting, Alabama Power began the work of developing the Harris APE. Alabama Power proposed that the APE include the lands in the R.L. Harris FERC Project Boundary (Lake Harris and Skyline). Alabama Power did not receive any comments on the proposed APE following the meeting.

At the November 6, 2019 HAT 6 meeting, Alabama Power again presented the proposed APE. At this meeting, Alabama Power requested a response to the proposed APE on or before December 11, 2019.

Alabama Power received one comment regarding the Harris APE. The Muscogee (Creek) Nation filed comments on December 12, 2019. The Muscogee (Creek) Nation submitted the following⁵: “The APE for this undertaking includes all lands in the R. L. Harris FERC-approved Project Boundary (Lake Harris and Skyline). The APE also includes lands or properties outside of the Project Boundary where Project-related operations or Project-related recreation activities or other

⁵ Accession No. 20191212-5155.

enhancements may cause changes in the character or use of historic properties, if any such properties exist.”

On March 2, 2020, Alabama Power conducted another HAT 6 meeting. At this meeting, the group discussed the Muscogee (Creek) Nation APE language. RaeLynn Butler (Muscogee (Creek) Nation) stated that the proposed definition allows for flexibility in the event that a site not currently within the FERC Project Boundary is impacted by Project activities in the future and that in the past the Muscogee (Creek) Nation worked with utilities to incorporate this definition of APE. Rachel McNamara (FERC) stated that the standard definition for the APE is the project boundary and areas affected by project operations, which may extend to areas that may have indirect effects. Rachel added that the APE and project boundary could be different.

On February 19, 2020 and again on March 26, 2020, Alabama Power requested concurrence from the SHPO on the Harris APE. The respective communications included a detailed description of the Harris Project Boundary (February 19, 2020) and a clarification regarding the APE discussion at the March 2, 2020 meeting (March 26, 2020).

In the April 10, 2020 Initial Study Report, Alabama Power noted a variance in the *Cultural Resources Programmatic Agreement and Historic Properties Management Plan Study Plan* (Study Plan) to continue consultation to finalize the APE and, therefore, file the APE and associated consultation by June 30, 2020 (revised from April 2020 in the final Study Plan).

At the April 28, 2020 Initial Study Report meeting, Rachel McNamara asked about defining the APE and the possibility of extending the APE downstream. Rachel stated there is a need for more discussion, and Alabama Power noted that it intended to schedule a HAT meeting in May 2020 to continue APE discussions.

Alabama Power will provide a summary of the May 28, 2020 HAT 6 meeting in the final report.

4.0 SHPO APE CONCURRENCE- DIRECT EFFECTS

On April 7, 2020, the Alabama SHPO submitted a letter regarding the Harris APE (Appendix A). The letter stated the following:

“Upon review of the proposed Area of Potential Effects (APE) for the R.L. Harris Relicensing Project, we find that we concur with the Direct Effects APE boundary as defined by Alabama Power Company.

Per information from previous communications, we understand that there is ongoing discussion between Alabama Power Company, the Federal Regulatory Commission’s Federal Preservation Officer (FERC-FPO), and the Muscogee Creek Nation regarding the possibility of including an Indirect Effects APE to this relicensing project. As per 36 CFR §800.4 (a)(1), if the FERC-FPO, in consultation on the definition of the APE to include Indirect Effects, we are happy to consult on any proposed language.”

5.0 ALABAMA POWER REVISED APE PROPOSAL

As a result of extensive stakeholder consultation, Alabama Power presents a revised APE proposal below

- The Direct Effects APE are the lands in the R.L. Harris FERC Project Boundary (Lake Harris and Skyline)⁶.
- The Indirect Effects APE, such as auditory and visual settings, are areas in the Project Boundary that are indirectly affected by Project operations.
- Finally, if through any ongoing Harris relicensing studies, Harris Project operations are determined to affect any historic properties outside of the Project Boundary below Harris Dam, Alabama Power will amend the APE to include these historic properties.

⁶ The APE will be revised to reflect changes in the FERC Project Boundary, as necessary.

6.0 DIRECT EFFECTS APE MAPS

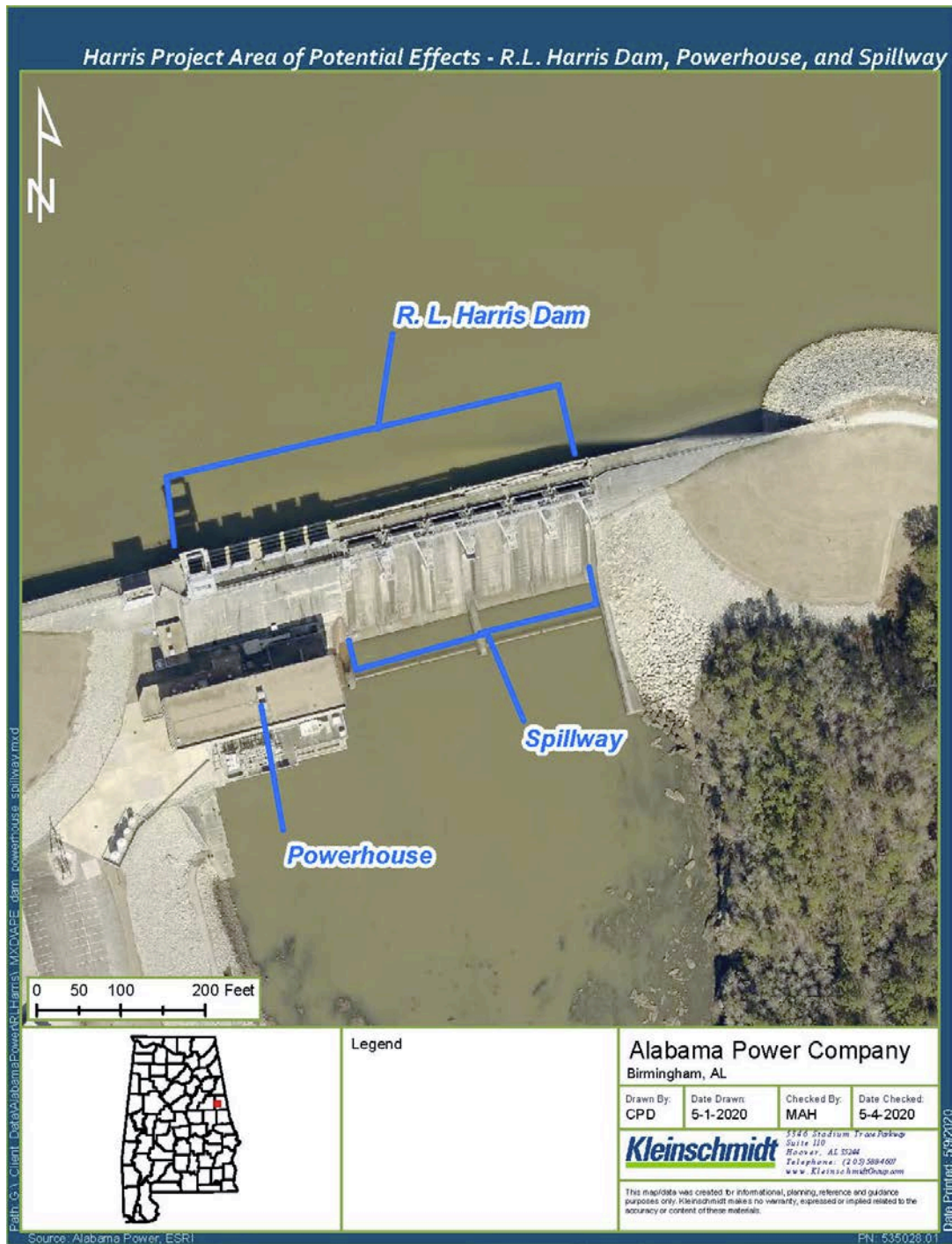


FIGURE 6-1 AREA OF POTENTIAL EFFECTS- R.L. HARRIS DAM, POWERHOUSE AND SPILLWAY

Harris Project Area of Potential Effects - Lake Harris

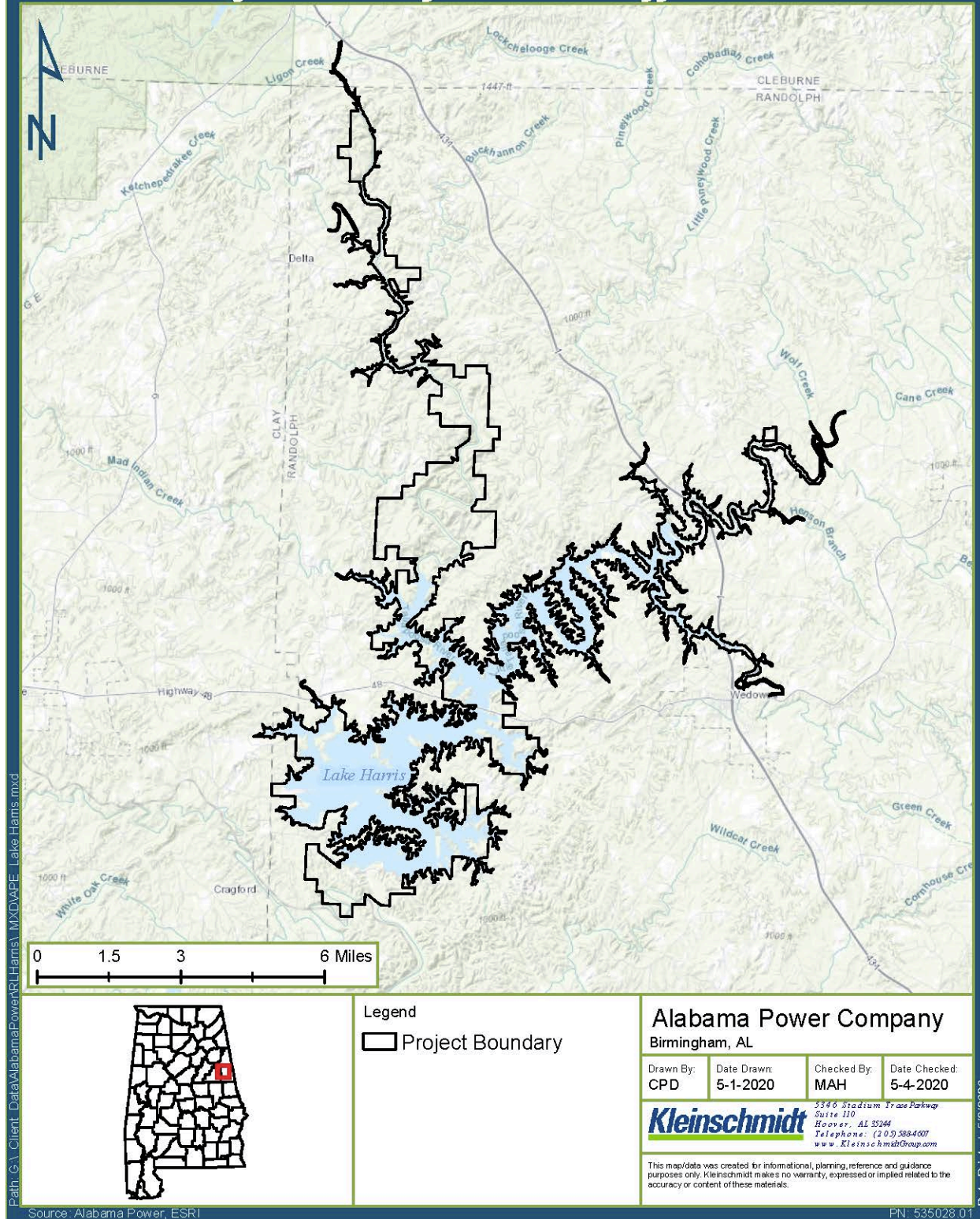


FIGURE 6-2 AREA OF POTENTIAL EFFECTS- LAKE HARRIS

Harris Project Area of Potential Effects - Skyline

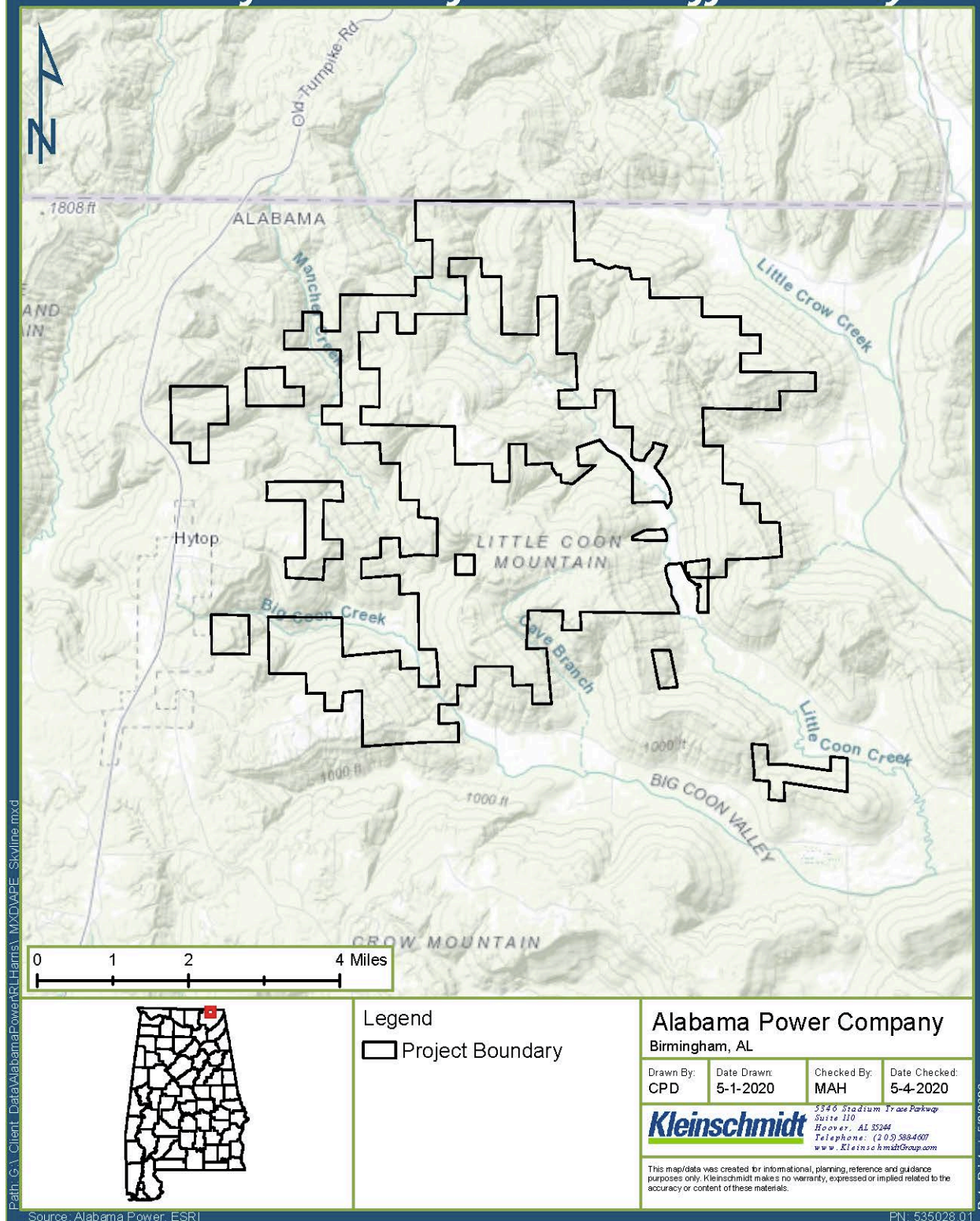


FIGURE 6-3 AREA OF POTENTIAL EFFECTS- SKYLINE

7.0 CONSULTATION SUMMARY

Table 7-1 provides a summary of the APE consultation to date.

TABLE 7-1 SUMMARY OF CONSULTATION

<u>DATE</u>	<u>PARTICIPANTS</u>	<u>CONSULTATION TYPE</u> ⁷
May 22, 2019	SHPO Muscogee (Creek) Alabama Power	HAT 6 meeting – discussion on developing the area of potential effects.
November 6, 2019	SHPO Muscogee (Creek) Cherokee Nation Alabama Power FERC	HAT 6 meeting - Alabama Power proposed APE and requested comments.
December 12, 2019	Muscogee (Creek)	Stakeholder comment - Muscogee (Creek) proposed APE language.
February 19, 2020	Alabama Power	HAT 6 communication - Alabama Power requested APE response from SHPO.
March 2, 2020	SHPO Muscogee (Creek) Alabama Power FERC	HAT 6 meeting - discussed the Muscogee (Creek) APE language.
March 26, 2020	Alabama Power	Email communication-Alabama Power requested APE response from SHPO.
April 7, 2020	SHPO	Letter and Email communication- SHPO provided Direct Effects APE concurrence.
May 15, 2020	HAT 6	Email communication- Alabama Power provides this APE report and requests any additional comments on or before June 15, 2020.

⁷ Due to the sensitive nature of the subject matter, Alabama Power limited the information distribution and meeting participants.

APPENDIX A

APRIL 7, 2020 SHPO CONCURRENCE



ALABAMA HISTORICAL COMMISSION

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Lisa D. Jones
Executive Director
State Historic Preservation Officer

April 7, 2020

Angie Segars Anderegg
Hydro Services
Alabama Power Company
Birmingham, Alabama

AHC 2017-1147
Area of Potential Effects Definition
Harris Relicensing (FERC Project Number 2628)
Multiple Counties

Dear Ms. Anderegg:

Upon review of the proposed Area of Potential Effects (APE) for the R.L. Harris Relicensing Project, we find that we concur with the Direct Effects APE boundary as defined by Alabama Power Company.

Per information from previous communications, we understand that there is ongoing discussion between Alabama Power Company, the Federal Energy Regulatory Commission's Federal Preservation Officer (FERC-FPO), and the Muscogee Creek Nation regarding the possibility of including an Indirect Effects APE to this relicensing project. As per 36 CFR § 800.4(a)(1), if the FERC-FPO, in consultation with the other relevant consulting parties, decides to continue Section 106 consultation on the definition of the APE to include Indirect Effects, we are happy to consult on any proposed language.

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

Sincerely,

A handwritten signature in blue ink that reads "Lee Anne Wofford".

Lee Anne Wofford
Deputy State Historic Preservation Officer

LAW/EDS/amh