

October 31, 2018

Ms. Julie Faenza, Project Analyst
Ms. Gloria Hale, CON Team Leader
Healthcare Planning and Certificate of Need Section
Division of Health Service Regulation
809 Ruggles Drive
Raleigh, North Carolina 27603

Re: Public Written Comments,
CON Project ID # N-11588-18, Robeson County Dialysis

Dear Ms. Faenza:

Bio-Medical Applications of North Carolina, Inc. offers the following comments on the above referenced Certificate of Need application filed by Total Renal Care of North Carolina, LLC

The applicant has filed an application to relocate a total of 10 dialysis stations to develop a new 10-station dialysis facility in Robeson County. The applicant has filed an application which must be denied for myriad reasons.

1. The total concept of this application contradicts the rationale provided by the applicant:

“In order to make the travel to dialysis—three times a week for in-patients and monthly for PD patients—more convenient....nearer to their homes for better access...”

The applicant expresses an intent to make dialysis more convenient for the patient. However, the applicant proposes to develop a facility in Lumberton, essentially at the heart of Robeson County, and have patients travel further for dialysis than they currently travel. The CON Analyst must ask, “how is this more convenient?”

In simple terms it is not more convenient. BMA has mapped the distance from the proposed facility to the closest point of the zip code of residence identified in the patient letters of support. Consider the following:

Patients of Lumbee River Dialysis:

- 28371, Parkton, NC. It is a distance of 8.7 miles to the Lumbee River dialysis facility, and a distance of 13.8 miles to the proposed Robeson County Dialysis facility. There are two patient letters of support from this zip code.
- 28372, Pembroke, NC. It is a distance of 5.15 miles to the Lumbee River dialysis facility, and a distance of 6.28 miles to the proposed Robeson County Dialysis facility. There is one patient letter of support from this zip code.
- 28386, Shannon, NC. It is a distance of 1.5 miles to the Lumbee River dialysis facility, and a distance of 7.3 miles to the proposed Robeson County Dialysis facility. There are two patient letters of support from this zip code.
- 28357, Lumber Bridge, NC. It is a distance of 4.5 miles to the Lumbee River dialysis facility, and a distance of 15 miles to the proposed Robeson County Dialysis facility. There are three patient letters of support from this zip code.
- 28377, Red Springs, NC. This is the zip code for the Lumbee River dialysis facility; it is a distance of 6.26 miles to the proposed Robeson County Dialysis facility. There are 12 patient letters of support from this zip code.
- 28384, St. Pauls, NC. It is a distance of 6.2 miles to the Lumbee River dialysis facility, and a distance of 4.6 miles to the proposed Robeson County Dialysis facility. There are two patient letters of support from this zip code.
- 28360, Lumberton, NC. This is the zip code for the proposed Robeson County Dialysis facility. There are only two patient letters of support from this zip code.

Patients of Maxton Dialysis:

- 28383, Rowland, NC. It is a distance of 6.1 miles to the Maxton Dialysis facility operated by DaVita, and a distance of 7.9 miles to the proposed Robeson County Dialysis facility. There is one patient letter of support from this zip code.
- 28377, Red Springs, NC. It is a distance of 6.4 miles to the Maxton Dialysis facility operated by DaVita, and a distance of 6.3 miles to the proposed Robeson County Dialysis facility. There is one patient letter of support from a Maxton patient in this zip code.

- 28372, Pembroke, NC. It is a distance of 6.8 miles to the Maxton Dialysis facility operated by DaVita, and a distance of 6.3 miles to the proposed Robeson County Dialysis facility. There are two patient letters of support from this zip code.

Patients of Dialysis Care of Hoke County:

- 28357, Lumber River, NC. It is a distance of 8.2 miles to the Dialysis Care of Hoke County facility operated by DaVita, and a distance of 15 miles to the proposed Robeson County Dialysis facility. There are four patient letters of support from this zip code

It is clearly further travel for the overwhelming majority of the patients in order for them to reach the proposed Robeson County dialysis facility. Yet, the applicant has not provided a single shred of evidence to say why it is more convenient for the patient.

At best, there are nine patients who might actually reside closer to the proposed location. The patients residing in 28360, 28384, 28383 and 28372 might reside closer. Even if one assumes that half of the 12 Red Springs patients from zip code 28377 were to reside closer, this is still only 15 of the patients who might be better served.

The idea that the proposed facility would be more convenient is dubious, at best. This applicant has in the past indicated that a facility would be more convenient and then it was discovered that (1) patients signing letters of support didn't know where the facility was to be located, and (2) that some patients signing letters did not reside in the reported county of origin¹.

On page 23 of the application, the applicant repeats the commentary about development of the "*dialysis center nearer to their homes for better access...*" The CON Project Analyst must ask, which part of further travel translates to "*nearer to their homes*"?

BMA is attaching a series of maps depicting:

- a. dialysis facilities as noted;
- b. zip codes depicting the patient residence zip code, and;
- c. a circle, centered on the closest dialysis facility to the zip code

¹ In the appeal by BMA of Nash County review from 2013, it was discovered that some patients did not reside where indicated; similarly in the current appeal of the DaVita Guilford approval, in discovery it was disclosed that some patients did not reside where indicated.

2. This application is internally in-consistent. On page 31 within the discussion of Criterion 4, the applicant says:

“It is generally preferred that patients receive their dialysis services in the county they live. Dialyzing out of county can present challenges to patients with regard to receiving support services provided by the county they live in.”

The applicant has apparently been providing dialysis care for the 32 patients signing letters of support for the proposed facility. Of these 32 patients, 28 have been receiving dialysis outside of Robeson County. The applicant has not provide any evidence that these twenty-eight patients have been denied any services by Robeson County. Moreover, if receiving dialysis within the county of residence was so important, these 28 patients could have been receiving dialysis at the Maxton Dialysis facility, which is also operated by DaVita.

BMA readily acknowledges that this comment about where the patients receive their care does not address any specific CON review criteria. But, what this comment should do is cause the CON Project Analyst to question the veracity of the applicant’s discussion regarding “convenience”. Further, in the absence of any compelling evidence regarding patients being denied service, the Project Analyst must question if the applicant has adequately demonstrated why patients need dialysis services in Lumberton.

3. An application which is non-conforming to CON Review Criterion 3 should be similarly found non-conforming to CON Review Criterion 5. To the extent that the applicant has based its projections of revenues and expenses upon a flawed projection of the patient population to be served, then the resultant financial projections are suspect and should be found non-conforming to Criterion 5. The applicant has not demonstrated the long term financial viability of the project.
4. The applicant should be found non conforming to Criterion 7 and 8. The applicant has identified but a single nephrologist to provide care for the patients of the facility: Dr. Jonathan Nestor. Dr. Nestor is the Medical Director for the Maxton Dialysis facility and the McColl (South Carolina) dialysis facility. In addition, Dr. Nestor has rounding and admitting privileges at the BMA Laurinburg facility, the FMC Scotland County facility, the FMC Pembroke facility and at BMA Red Springs. In addition to these dialysis facilities, Dr. Nestor also rounds on patients at the Scotland Memorial Hospital in Laurinburg. He is quite busy as a solo practitioner.

Dr. Nestor does not have admitting privileges at Southeastern Regional Medical Center in Lumberton. Yet, the applicant proposes that the dialysis patients would receive acute dialysis treatments at the Southeastern Regional Medical Center. Who then will round on the patients of the facility when they are admitted to the hospital?

The applicant has not provided any indication that patients would be referred to a hospital where Dr. Nestor does have privileges.

The applicant has not provided any evidence of support from another nephrologist with privileges at Southeastern Medical Center.

5. The applicant should be found non-conforming to CON Review Criterion 12. Criterion 12 requires the applicant to demonstrate that the cost, design ... represent the most reasonable alternative. The applicant has proposed to develop a facility far larger than is necessary for 10 in-center dialysis stations. A review of the floor plan in Section K-1 would indicate the proposed facility could house 24 in-center dialysis stations. The applicant is clearly proposing to over develop. This is far more space than is necessary for a 10 station dialysis facility.

As the CON Project Analyst is considering the proposed development, the size of the facility must be questioned. This is clearly not a reasonable proposal.

6. The applicant should be found non-conforming to CON Review Criterion 13. The applicant has provided un-reliable information for its proposed payor mix. The applicant represented on page 54 of the application that its projected in-center payor mix *"is based on the sources of patient payment that has been received by DaVita operated facilities in Robeson County during the last full operating year"*.

However the applicant is only serving four of the 32 projected patients at its Maxton dialysis center. Maxton is the only center the applicant operates in Robeson County.

Further, the applicant is proposing that the overwhelming majority of the patient population projected to be served are dialyzing with the DaVita Lumbee River Dialysis in Hoke County. It would have been more appropriate to base the projected payor mix off of a facility serving the majority of the patients projected to be served.

Finally, six of the 10 stations proposed for the facility are coming from the DC Hoke County facility. There is no indication that the applicant considered using payor mix of DC Hoke County.

Summary:

The applicant has provided an application which is not conforming to CON Review Criterion 3, 5, 7, 8, 12, and 13. An application which is non-conforming to other CON Review Criteria cannot be the best alternative. Thus, this application should be found non-conforming to CON Review Criterion 4.

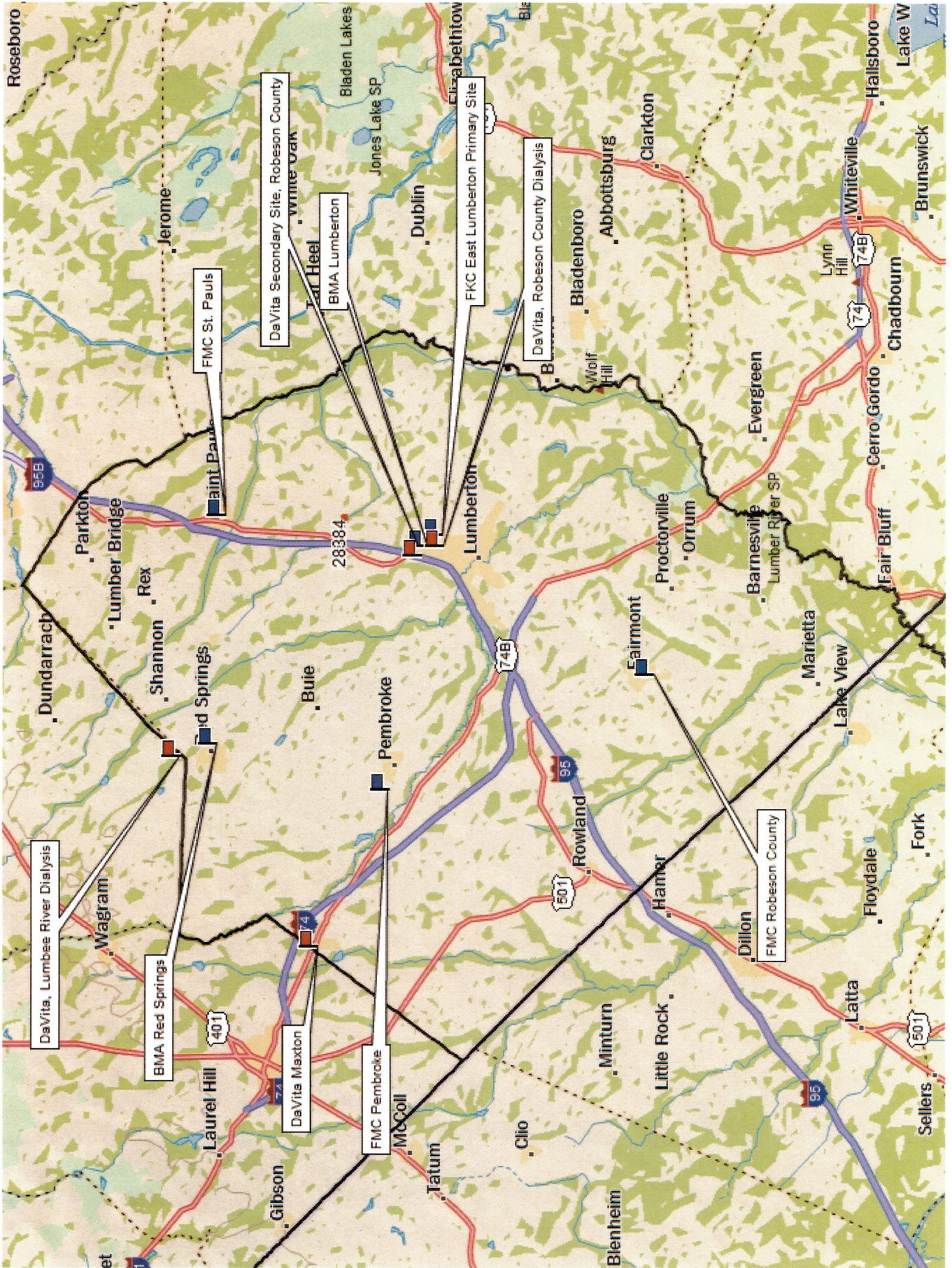
The applicant has provided an application which cannot be approved. Therefore the application must be denied.

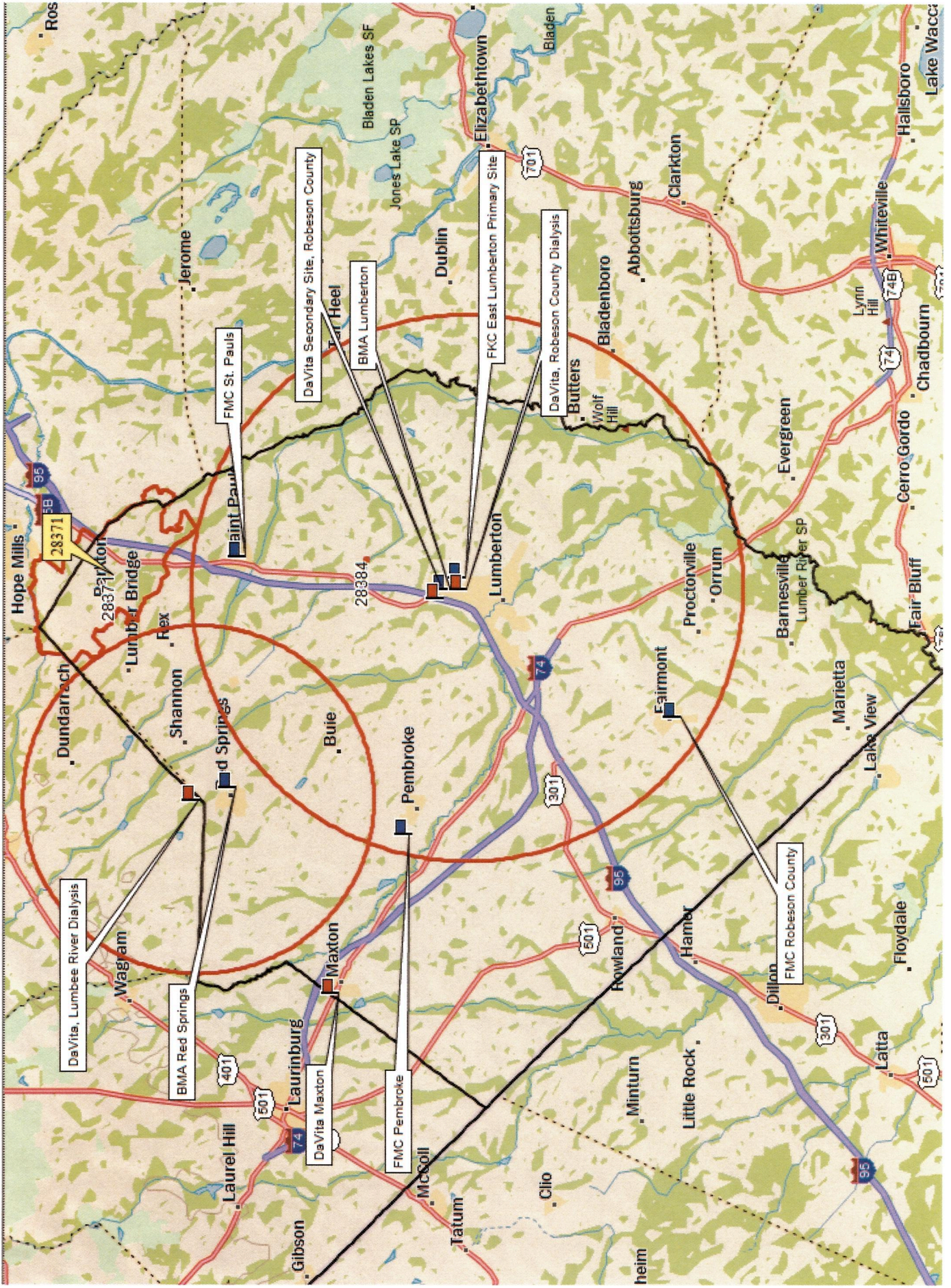
If you have any questions please contact me at 910-568-3041, or email jim.swann@fmc-na.com.

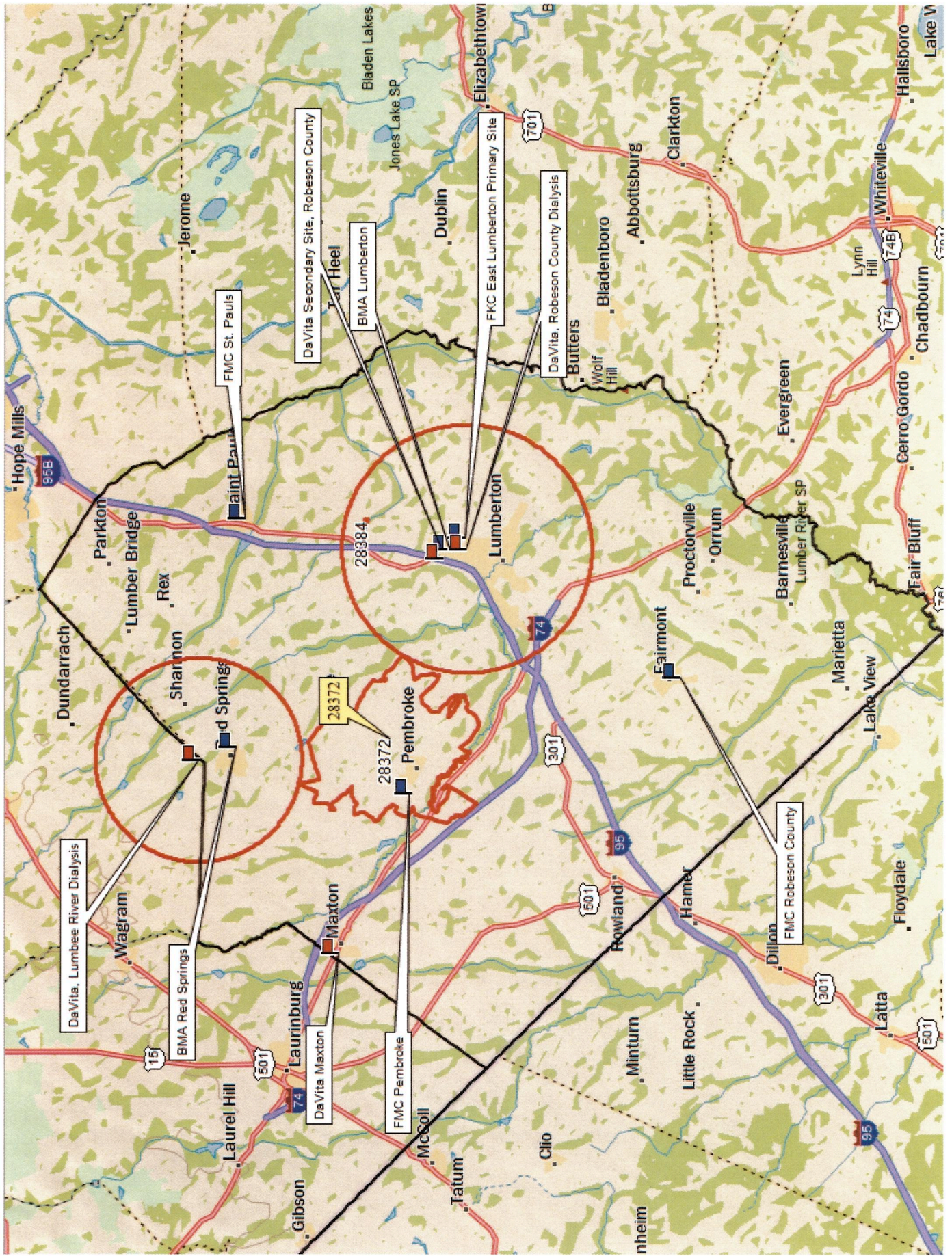
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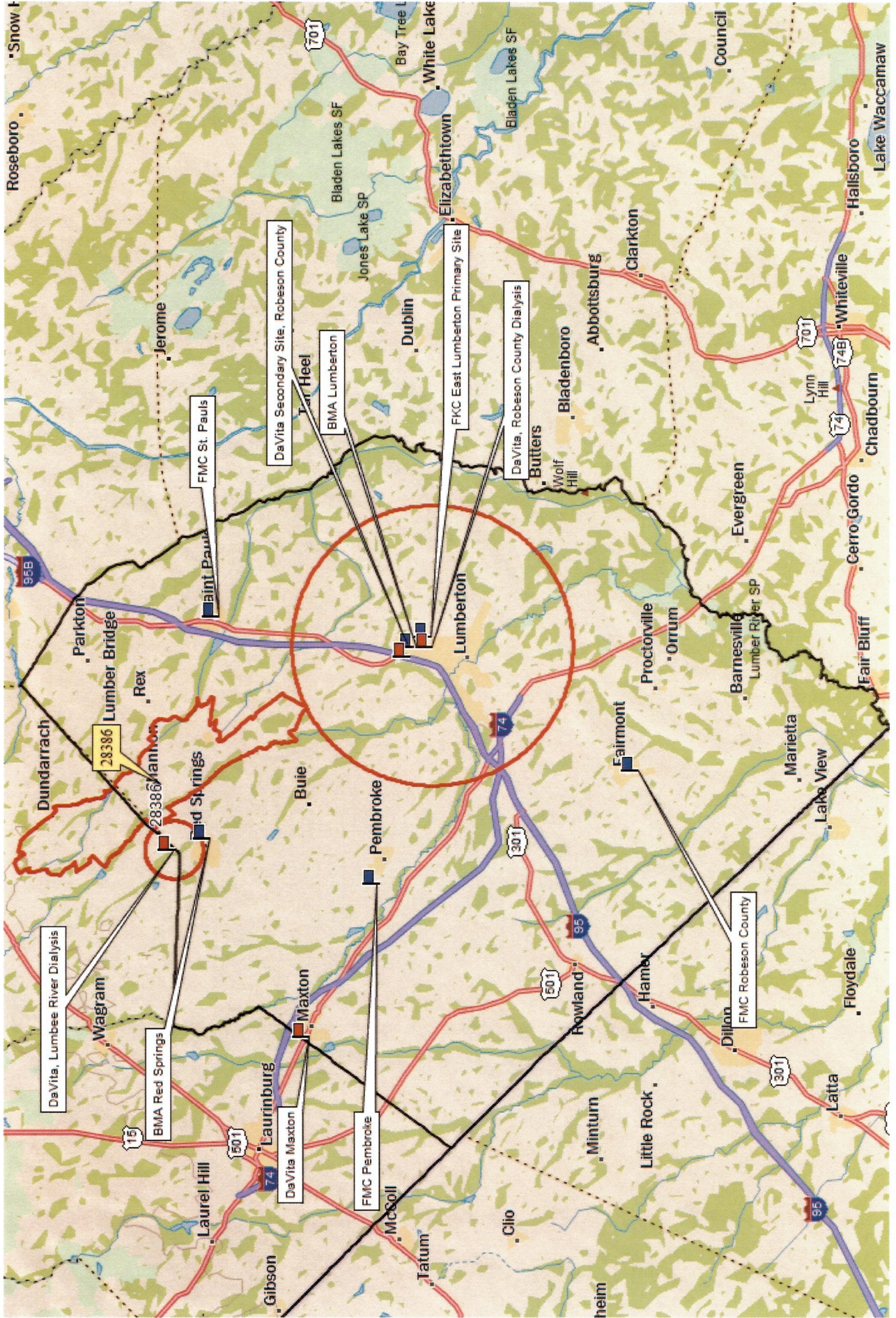


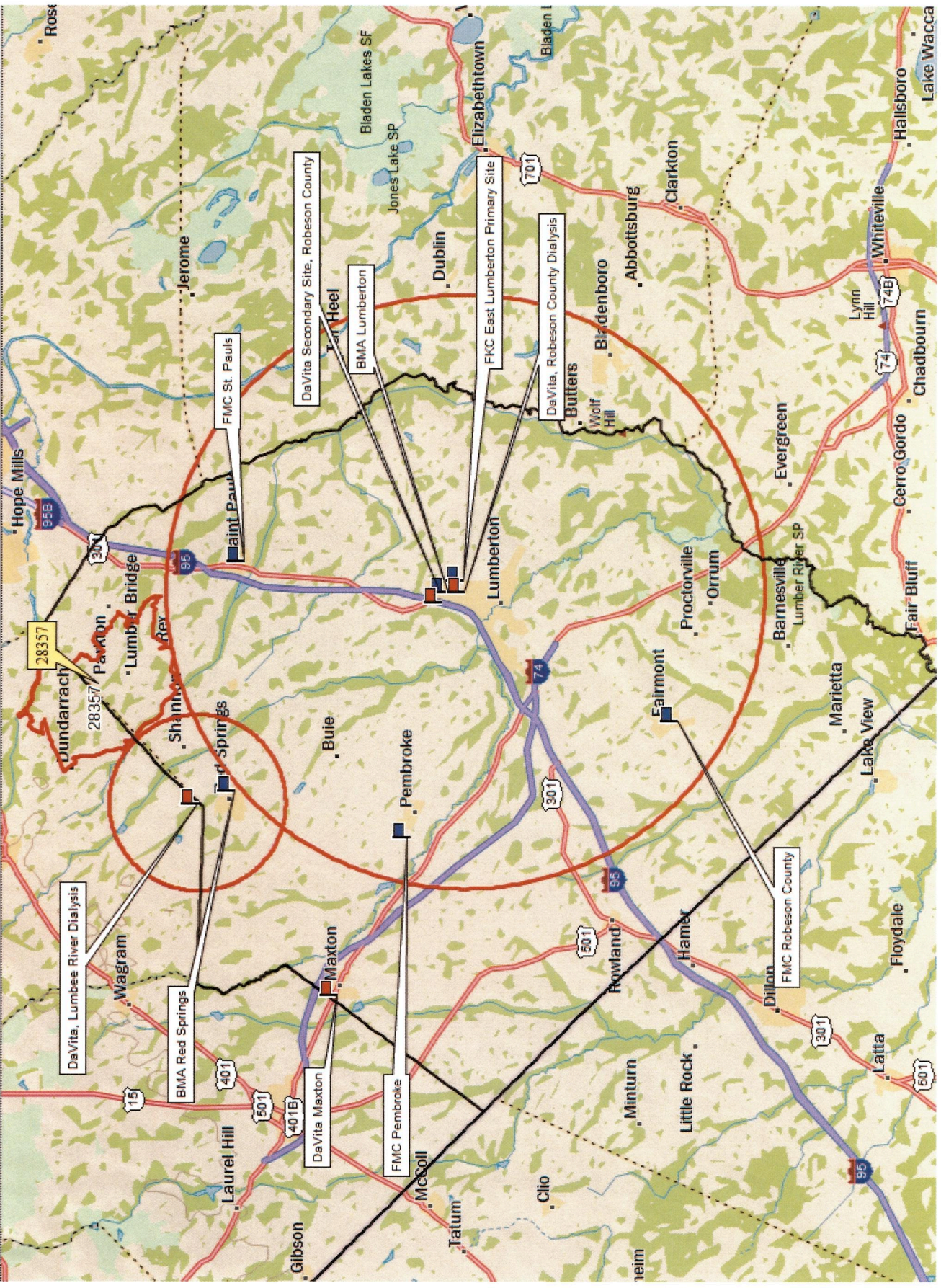
Jim Swann
Director of Operations, Certificate of Need

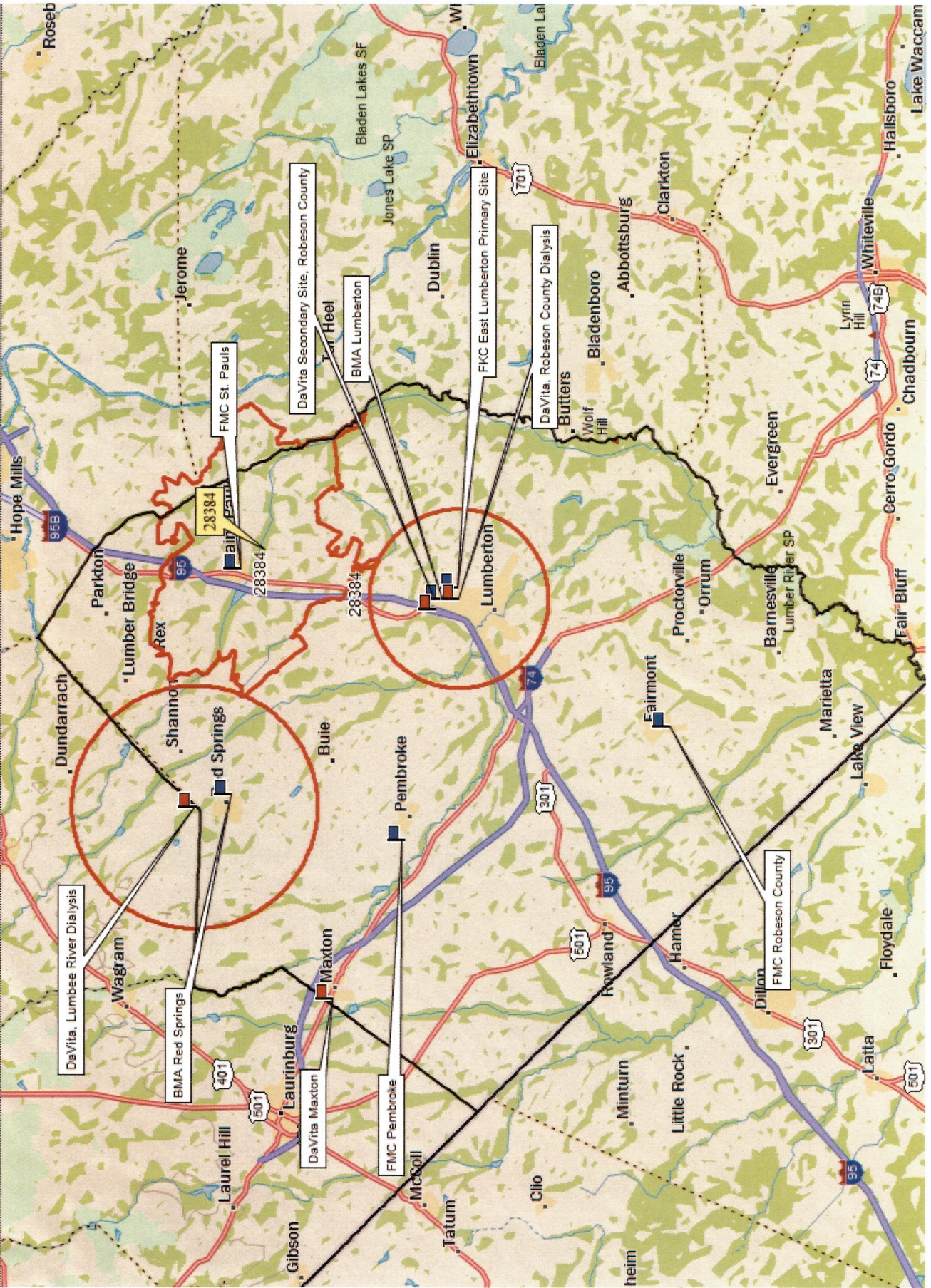


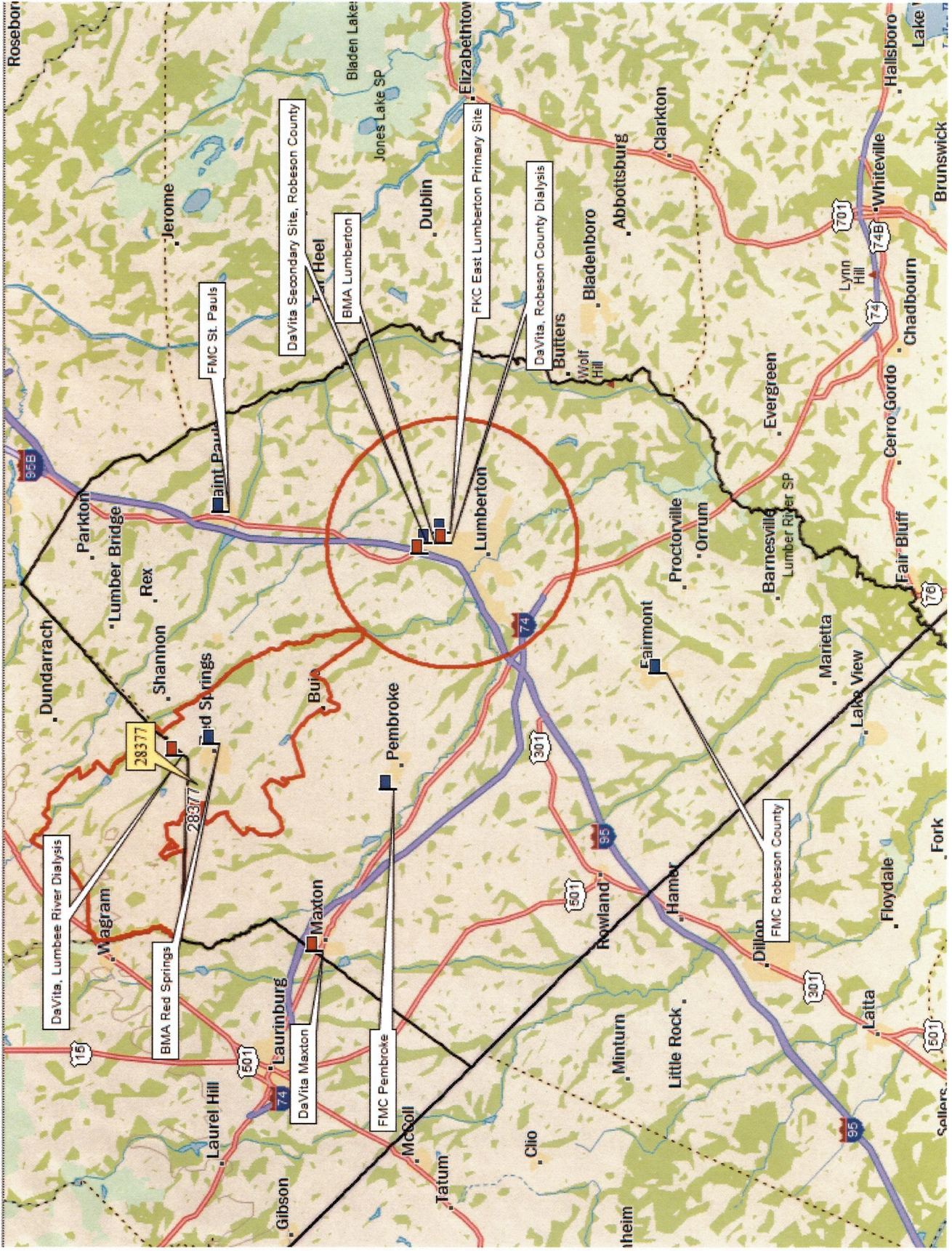




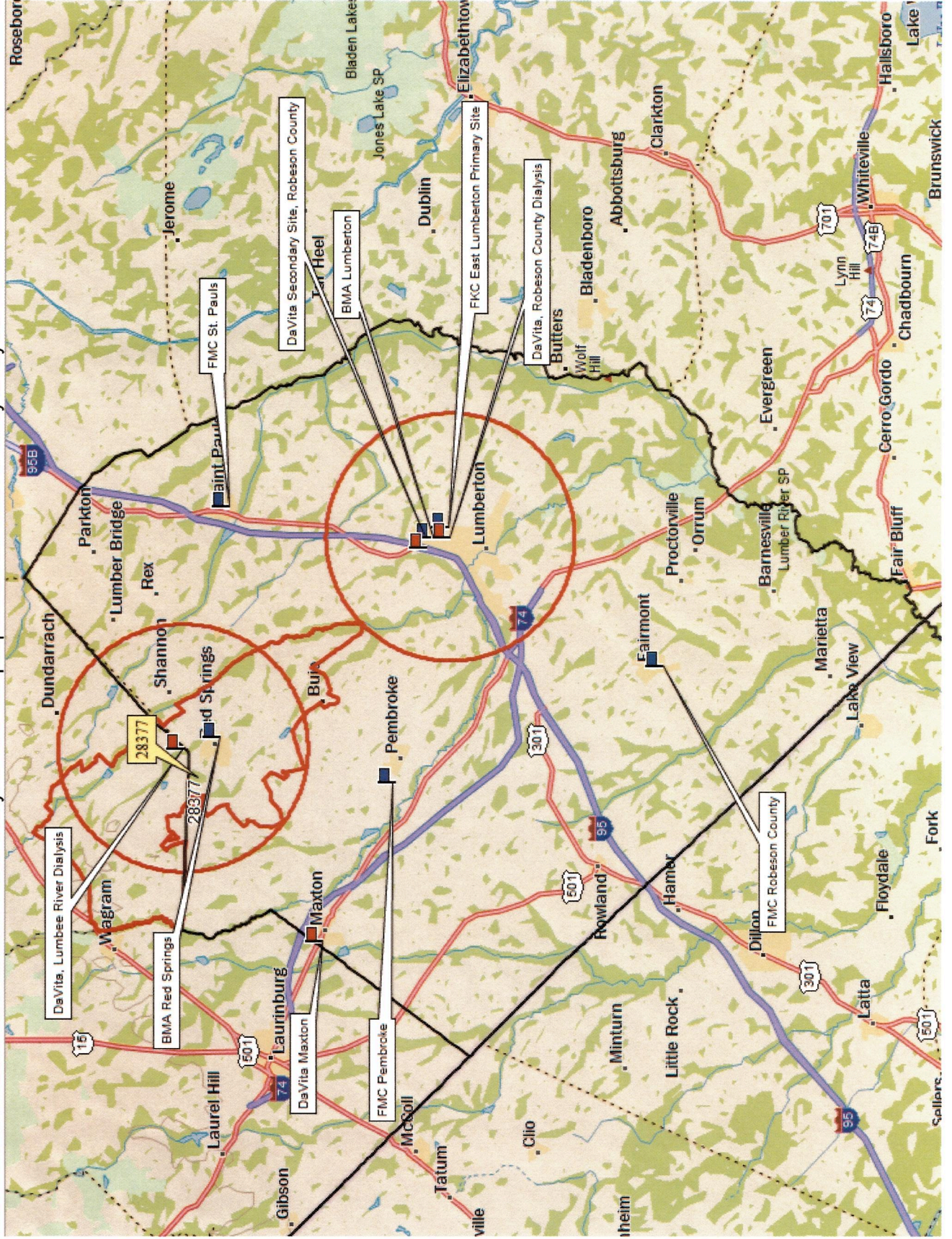








28377 with 6.26 radius around Lumbee River Dialysis and the proposed Robeson County Dialysis



Maxton
28383

