

VIA EMAIL

June 17, 2024

Chair Michele Doolan
Members of the Zoning & Land Regulation Committee
Dane County Planning and Development
City County Building, Room 116
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

RE: Rezoning Application of Maier Farm Real Estate LLC
County File No. 12058
Our File No. 23278.103556

Dear Chair Doolan and Supervisors Bollig, Kroning, Postler and Ritt:

Axley Brynelson, LLP represents the applicant, Maier Farm Real Estate LLC (“Maier”), in the above-referenced rezoning application. I write to address certain concerns raised in the Staff report about Maier’s application, answer some of Staff’s questions regarding Maier’s application, and provide additional information that may assist the Zoning and Land Regulation Committee in its review of Maier’s application.

Maier has applied to rezone two parcels, totaling 46.9 acres located at the intersection of County Road V and Schumacher Road, in the Town of Vienna, Dane County (the “Property”). Maier acquired the Property in 2023. Prior to Maier acquiring it, the Property was owned and farmed by the Koch family. As noted in the Staff report, the Maier family farm is adjacent to the Property, so Maier is aware of the conditions that existed on the Property prior to its acquisition.

The Property has been cultivated farmland for the last 87-plus years. Not only is Maier aware of that fact, having operated its family farm adjacent to the Property, historic Dane County aerial photographs demonstrate the use of the Property as farmland. Included in the Staff report is a photograph demonstrating cultivation of the entire Property in 1937. Similarly, attached to this correspondence as Exhibit 1 is an aerial photograph of the Property in 1976, which also demonstrates cultivation of the entire Property.

The use of the Property as farmland corresponds to the class of wetland on the Property. The State of Wisconsin classified the wetland as E1Kf – which are wetlands that have been farmed in years

of low to normal precipitation. Indeed, the aerial photographs of the Property demonstrate this historic use of the Property. Attached to this correspondence are Exhibits 2 through 9, which are aerial photographs of the Property in 1987, 2000, 2005, 2010, 2014, 2017, 2020, and 2022. These photographs, and those included in the Staff report, conclusively demonstrate the Property has been and is used as cultivated farmland.

Certain aerial photographs indicate surface water pools on the Property, in particular wet conditions, but these single images do not capture the fact that the entire Property has been tillable under normal and even wetter than normal conditions. Indeed, the tendency of the photographs to show modest accumulation of surface water on the Property in more recent years is because Dane County is seeing increased precipitation due to climate change and the preexisting tile system used to drain the Property is no longer functional.

Regarding the existing tile system, the Staff report notes Maier has not provided evidence that the system pre-existed its purchase of the Property. Please find attached to this correspondence as Exhibit 10 photographs of portions of the damaged, not functional, pre-existing tile system on the Property. The deterioration of this drainage system is one of the reasons surface water occasionally impounds on the Property.

The Staff report does not mention the fact that the Property has been mapped by the USDA Natural Resources Conversation Service (“NRCS”). Attached to this correspondence as Exhibit 11 is the NRCS Wetland Conversation Determination provided to the prior owners of the Property. Under NRCS determination, the Property is classified as PC/NW, which indicates a wetland existed on the Property sometime prior to December 23, 1985, but that the Property is capable of being cropped and does not contain a wetland. This determination is consistent with the historic use of the Property.

As noted by the Wisconsin Department of Natural Resources, the Committee shall apply Dane County Ordinance Section 11.10(2) to Maier’s rezoning application. Pursuant to Section 11.10(2), the County may not amend a shoreland-wetland zoning district map if the amendment would have

a significant adverse impact upon the following:

- a. Storm and flood water storage capacity;
- b. Maintenance of dry season stream flow, or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
- c. Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- d. Shoreline protection against soil erosion;
- e. Fish spawning, breeding, nursery or feeding grounds;

- f. Wildlife habitat; or
- g. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

An analysis of these factors demonstrates Maier's application meets the criteria for rezoning. Regarding factor a., the rezoning of the parcels will not have a significant adverse effect on storm and flood water storage capacity. The nature of the parcels at issue is that in times of greater precipitation, the low area on the Property occasionally holds water. This function will not change because of the rezoning. It is the result of the natural course of surface water flow in wet seasons.

As demonstrated by the NRCS analysis, the aerial photographs of the Property, and state classification of the wetland at issue as E1Kf, the Property has been used historically as cultivated farmland. Accordingly, the rezoning of Applicant's two parcels will have no effect factors b. – g. The wetland at issue is a low area in a cultivated farm field, which occasionally holds water in wet seasons. It does not foster the maintenance of stream flow; nor does it act as a filter for or store sediments, nutrients, or other compounds that would otherwise drain into navigable waters. The wetland at issue has no shoreline, there are no fish present, it is not part of a wildlife habitat, nor is it an area of recreational, scenic, or scientific interest. It is, simply, a low area in a farm field that impounds water after heavy rains, in part due to a damaged, not functional tile drainage system.

It is also important for the Committee to factor climate change when considering Maier's rezoning application. The Dane County area has experienced increased rainfall over the past 15 years, which has required agricultural areas to improve their drainage systems to continue farming operations as they did prior to the recent increased rainfall. This issue is pervasive throughout Dane County – portions of farm fields that were routinely farmed in the past now flood with water during heavy rainfalls. The increased frequency of substantial rainfall, however, does not transform the portions of agricultural fields prone to flooding into wetlands. If lower elevations of fields that have been farmed historically are considered wetlands due to increased rainfall, Dane County risks thousands of acres of prime agricultural land, such as the parcels at issue in this application, being rendered unusable. Such an action would have a substantial impact on farm production, tax base, farmer income and livelihood, and the culture of the Dane County as a whole.

Based on the evidence before the Committee, Maier has demonstrated its rezoning application meets the criteria for rezoning in Dane County Ordinance Section 11.10(2). With its rezoning application, Maier simply asks the Committee to ensure that land that has been farmed traditionally remains tillable farmland for the future.

Thank you for your consideration.

Sincerely,

AXLEY BRYNELSON, LLP



Mitchell R. Olson

MRO/eae

cc: Patrick Maier, Maier Farm Real Estate LLC – *Via Email*
Rachel Holloway, Dane County Planning and Development – *Via Email*
Hans Hilbert, Dane County Planning and Development – *Via Email*
Roger Lane, Dane County Planning and Development – *Via Email*

Enclosures

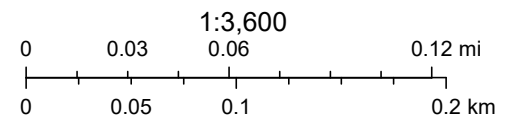
Dane County Map Year 1976



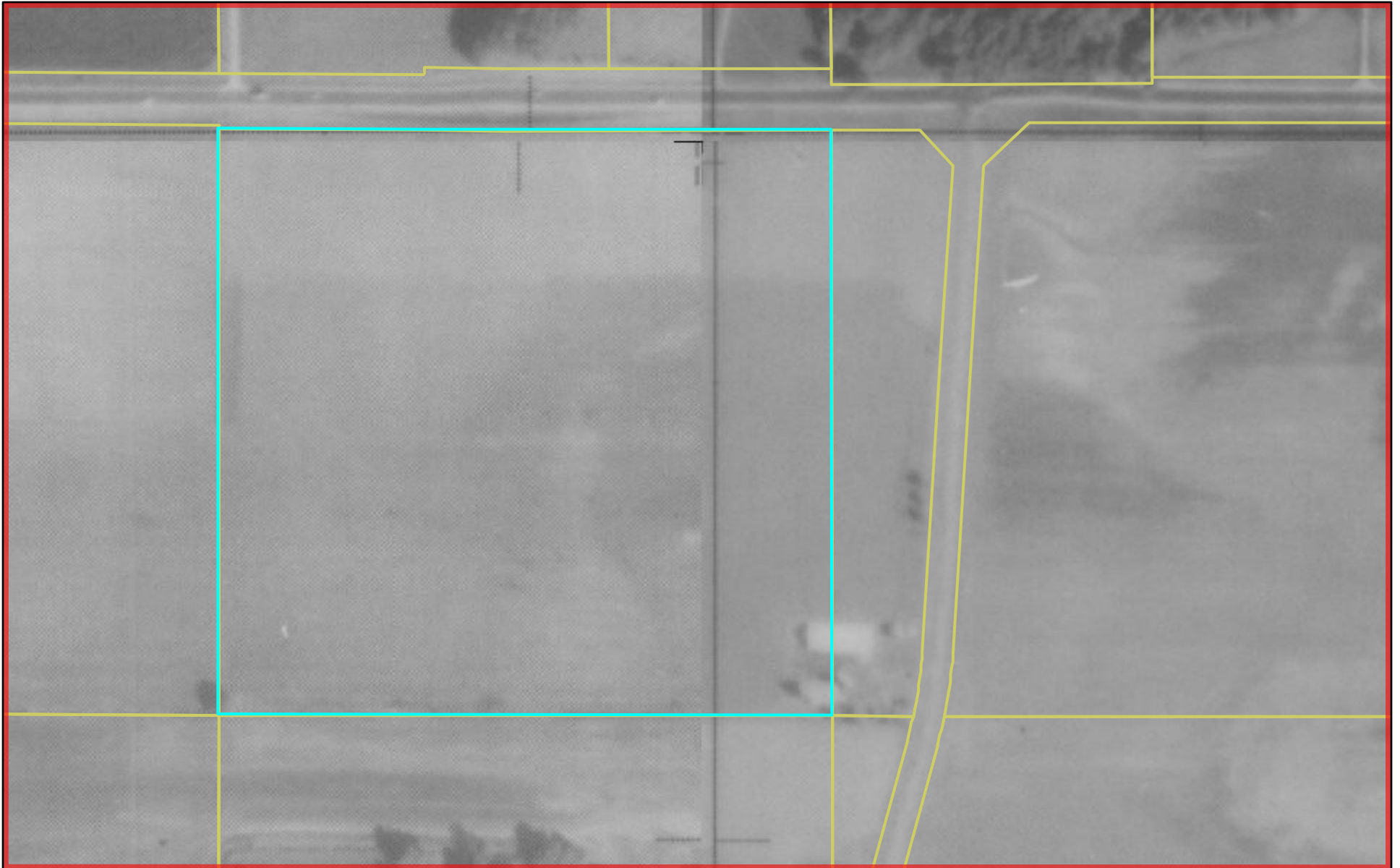
May 15, 2024

 Parcels

EXHIBIT
1



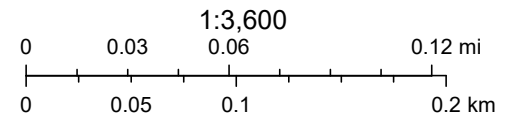
Dane County Map Year 1987



May 15, 2024

 Parcels

EXHIBIT
2



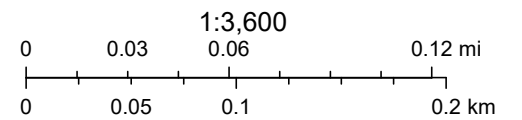
Dane County Map Year 2000



May 15, 2024

 Parcels

EXHIBIT
3



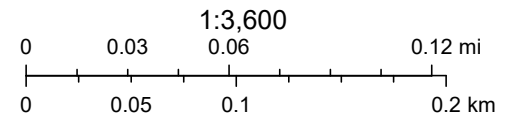
Dane County Map Year 2005



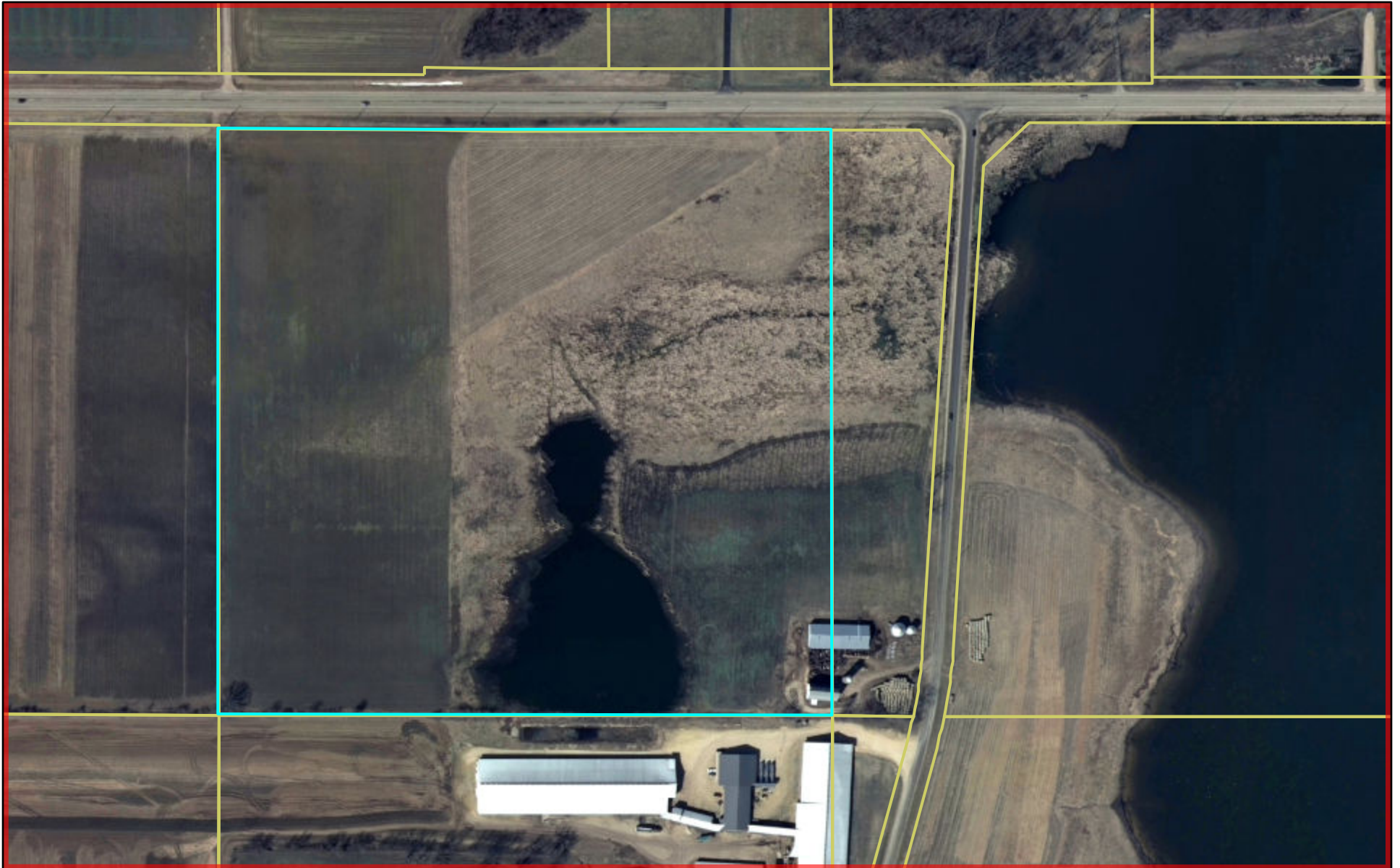
May 15, 2024

 Parcels

EXHIBIT
4



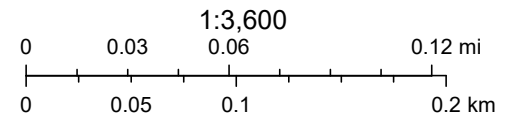
Dane County Map Year 2010



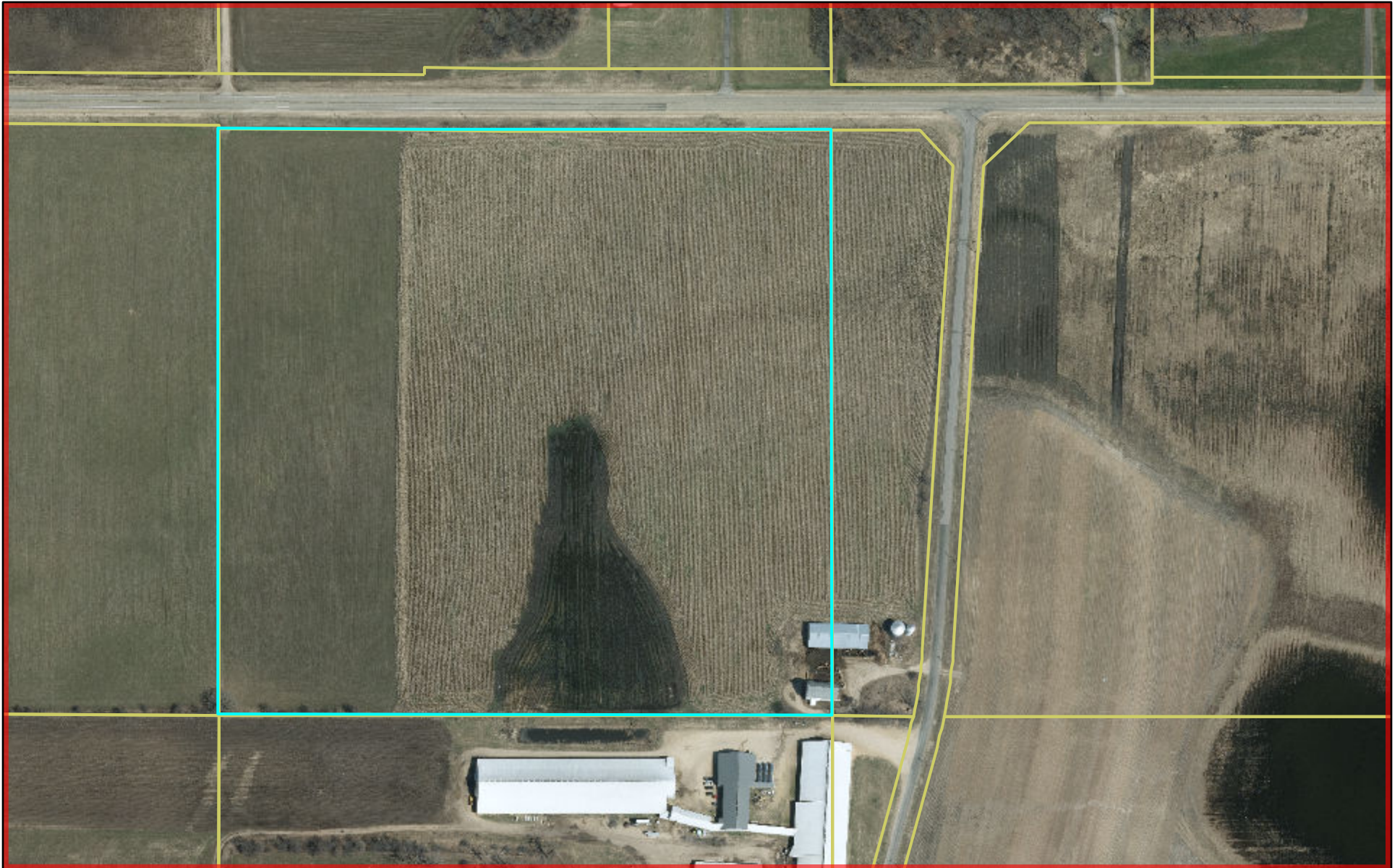
May 15, 2024

 Parcels

EXHIBIT
5



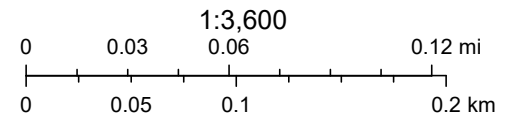
Dane County Map Year 2014



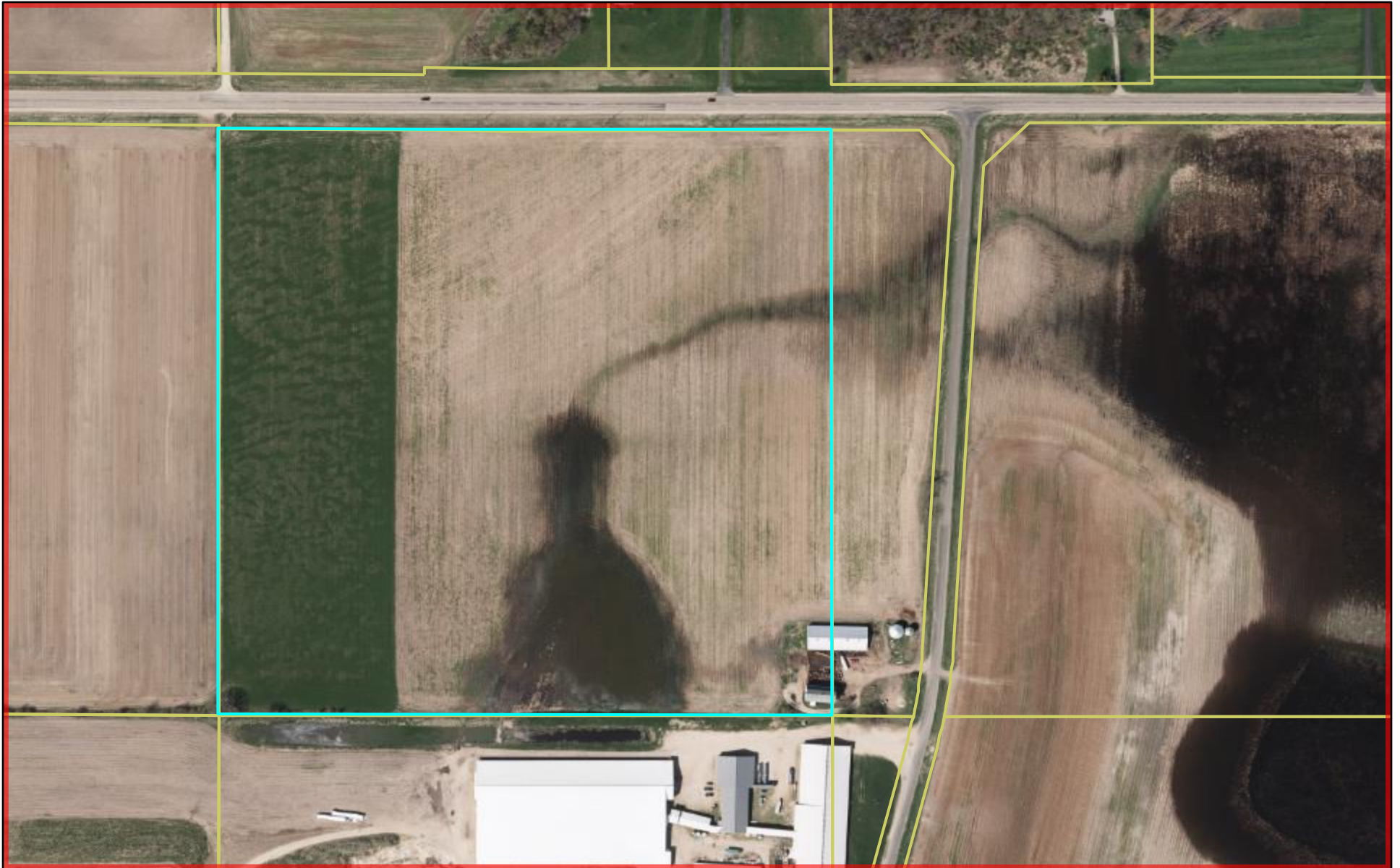
May 15, 2024

 Parcels

EXHIBIT
6



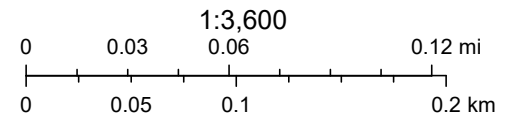
Dane County Map Year 2017



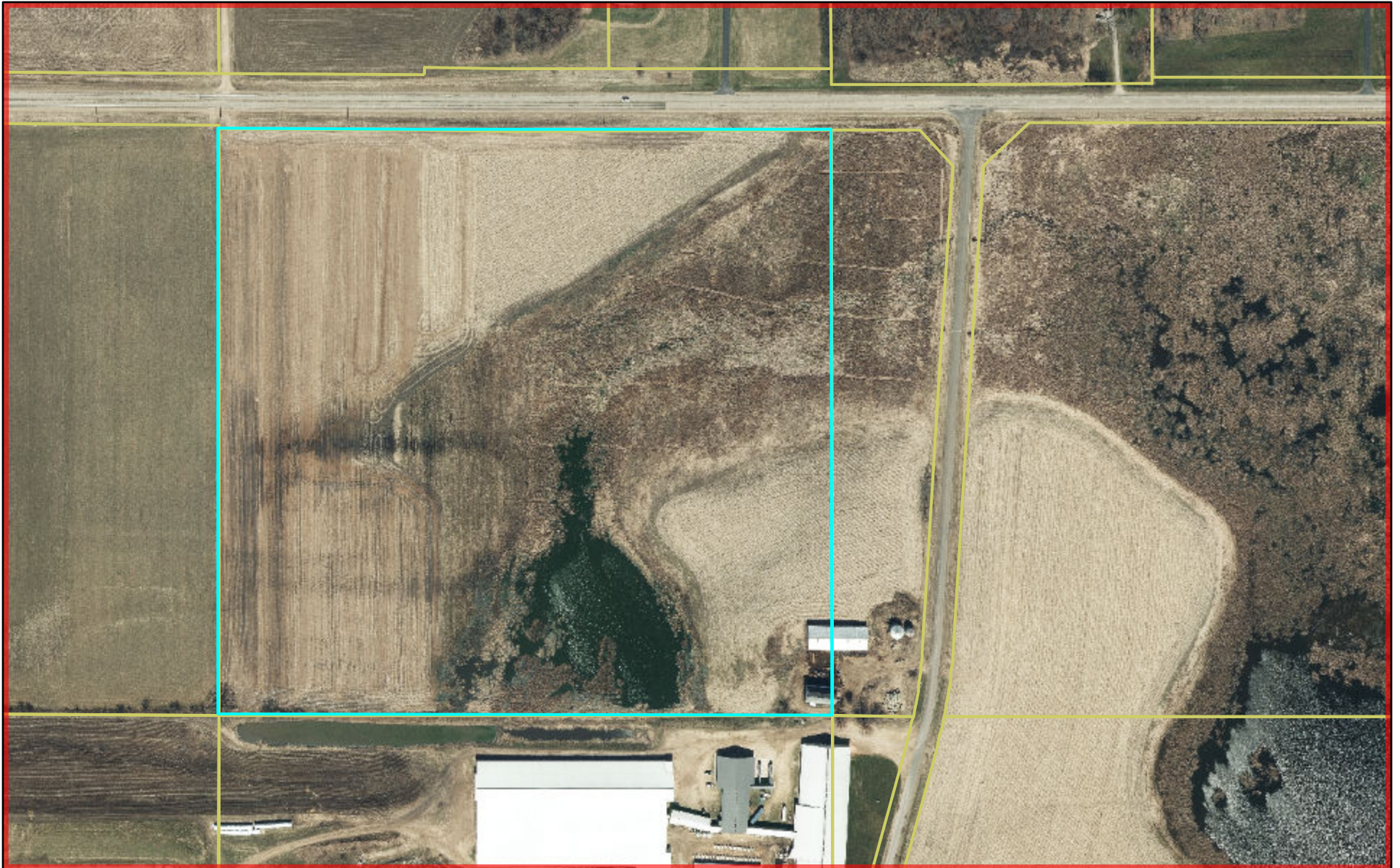
May 15, 2024

 Parcels

EXHIBIT
7



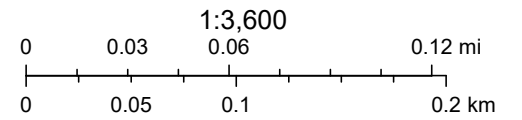
Dane County Map Year 2020



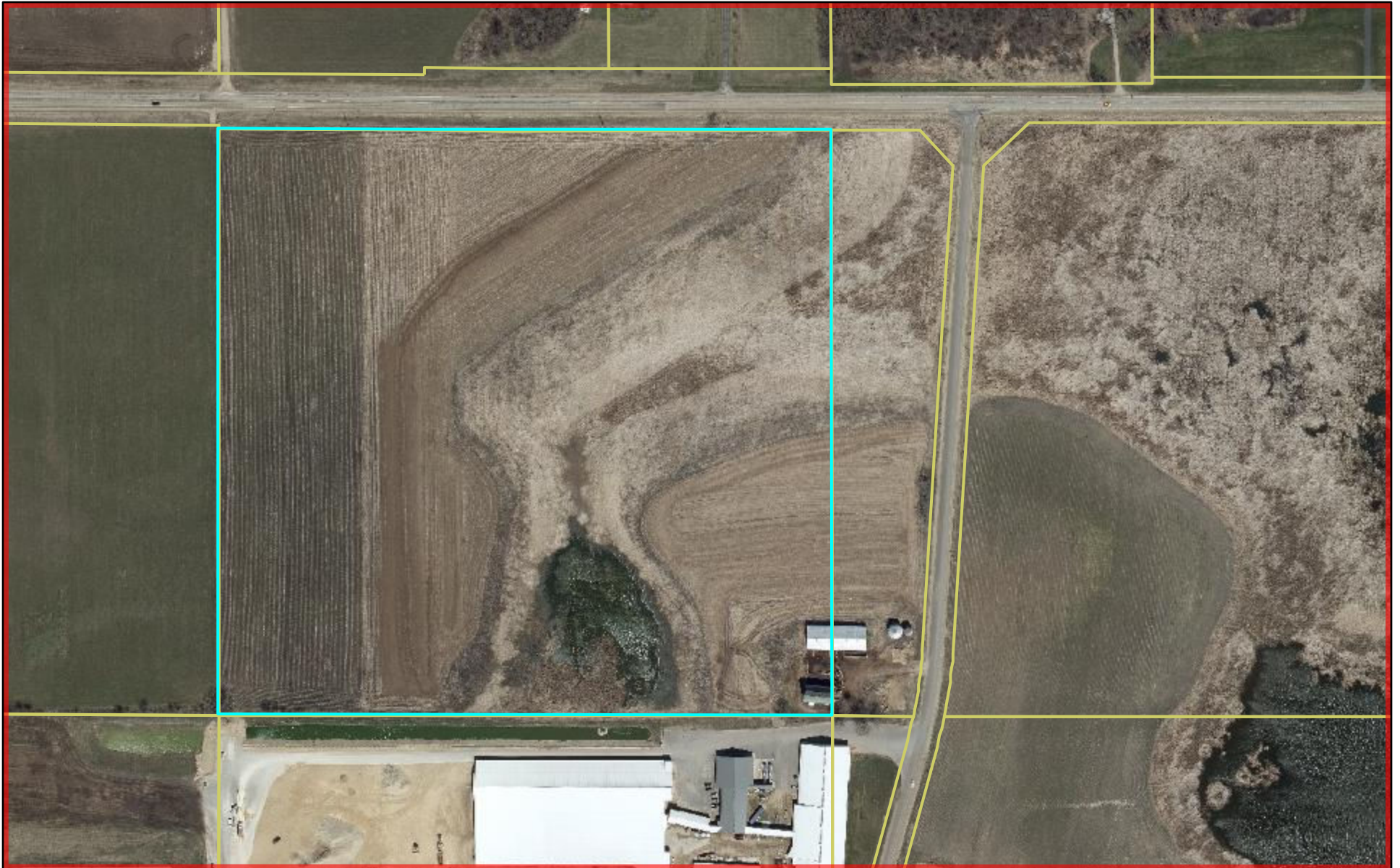
May 15, 2024

 Parcels

EXHIBIT
8



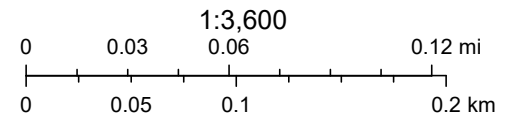
Dane County Map Year 2022



May 15, 2024

 Parcels

EXHIBIT
9







United States Department
of Agriculture

Natural Resources
Conservation Service

NRCS-CPA-026e
8/2013

HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION

Name	Owner: Koch Family Farm LLC Operator: James Koch 7260 Madigan Rd Deforest, WI 53532	Request Date: 6/27/2019	County: Dane
Address:			
Agency or Person Requesting Determination:	FSA	Tract No: 12854	FSA Farm No.: 19554

Section I - Highly Erodible Land

Is a soil survey now available for making a highly erodible land determination?	
Are there highly erodible soil map units on this farm?	

Fields in this section have undergone a determination of whether they are highly erodible land (HEL) or not; fields for which an HEL Determination has not been completed are not listed. In order to be eligible for USDA benefits, a person must be using an approved conservation system on all HEL.

Field(s)	HEL(Y/N)	Sodbust (Y/N)	Acres	Determination Date
1-4	No	No	163.2	7/24/2019

The Highly Erodible Land determination was completed in the office.

Section II - Wetlands

Fields in this section have had wetland determinations completed. See the Definition of Wetland Label Codes for additional information regarding allowable activities under the wetland conservation provisions of the Food Security Act and/or when wetland determinations are necessary to determine USDA program eligibility.

Field(s)	Wetland Label*	Occurrence Year (CW)	Acres	Determination Date	Certification Date
1, 2, 4, 15	PC/NW		84.5	7/24/2019	8/26/2019

The wetland determination was completed in the office. It was mailed to the person on 7/24/2019

Remarks: This is a partial tract certified wetland determination on FSN 19554, T12854. Wetland determination completed per request. Fields 1-4 are non-highly erodible (NHEL). If you plan on ditching, tiling, or any other manipulation you must fill out another request with the Farm Service Agency.

I certify that the above determinations are correct and were conducted in accordance with policies and procedures contained in the National Food Security Act Manual.

Signature Designated Conservationist	Date
	7/24/19

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.



July 24, 2019

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Owner: Koch Family Farm LLC
Operator: James Koch
7260 Madigan Rd
Deforest, WI 53532

Dear James:

The Natural Resources Conservation Service (NRCS) is issuing a **preliminary certified wetland determination** and **highly erodible land determination** on property you own or operate, further described as Farm 19554, Tract 12854, located in Sections 20, & 21, T9N, R9E in Dane County Wisconsin. This is in response to questions you answered via form **AD-1026, Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification**, initiated with the Farm Service Agency.

WETLAND DETERMINATION

This **preliminary technical determination** was conducted by the NRCS on 7/24/2019. Please refer to the attached NRCS-CPA-026e Form, Definitions of Wetland Labels page, and the Certified Wetland determination Map for more details regarding location, wetland designations, or exemptions, allowable uses and authorized maintenance pertaining to each area that is determined to be a wetland.

This Certified Wetland Determination/Delineation has been conducted for the purpose of implementing the WC provisions of the Food Security Act of 1985, as amended only. This determination/delineation may not be valid for identifying the extent of the U.S. Army Corps of Engineer (USACE) Clean Water Act jurisdiction for this site. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the local office of the USACE prior to starting the work. Manipulation of any wetland, stream channel, shoreland, or floodplain area may require USACE, WI Department of Natural Resources and/or county zoning permits.

If an area is identified as a Wetland, it is for the following reasons:

Presence of Hydrophytic Vegetation:

Hydrophytic vegetation means plants growing in water or in a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content (16 U.S.C.§3801(a)(12)).

Presence of Hydric Soils:

Hydric soil means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation (16 U.S.C.§3801(a)(13)).

Presence of Wetland Hydrology:



United States
Department of
Agriculture

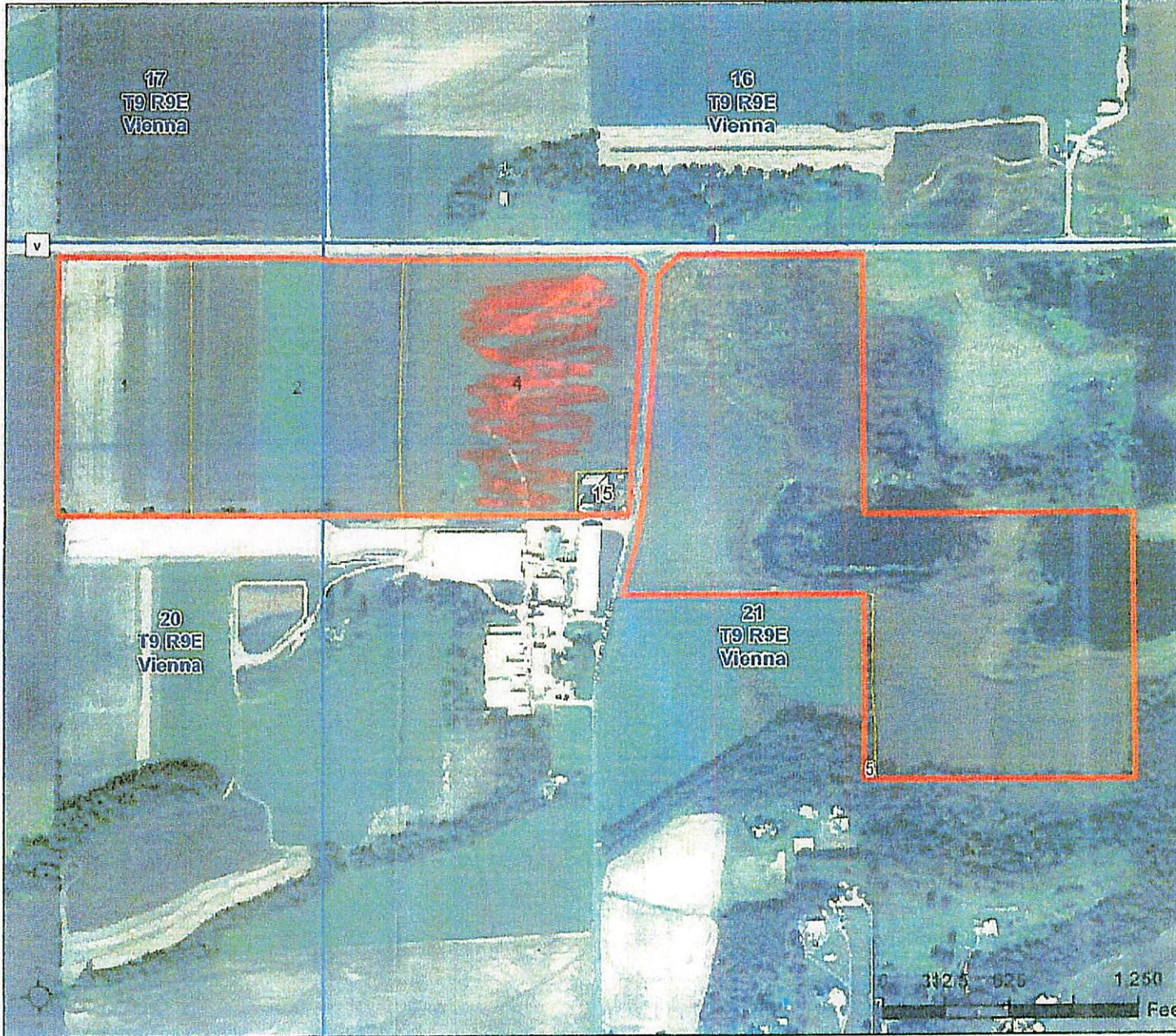
Dane County, Wisconsin

Entire Tract: IR / NI GR / FG unless otherwise labeled
Name/Shares: _____

Farm 19554

Tract 12854

2019 Program Year



CLU	Acres	HEL	Crop
1	19.66	UHEL	
2	31.01	UHEL	
3	80.09	UHEL	
4	32.5	UHEL	
5	0.97	UHEL	NC
15	1.34	UHEL	NC

Page Cropland Total: 163.26 acre

Map Created May 22, 2019

Common Land Unit

- Cropland
- Non-Cropland
- Tract Boundary
- PLSS

NAIP Imagery 2018

Wetland Determination Identifiers

- Restricted Use
- ▼ Limited Restrictions
- Exempt from Conservation
- Compliance Provisions

USDA FSA maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or the NAIP imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. The USDA Farm Service Agency assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact NRCS.



United States
Department of
Agriculture

Owner: Koch Family Farm LLC

Operator: James Koch T9N R9E S20,21

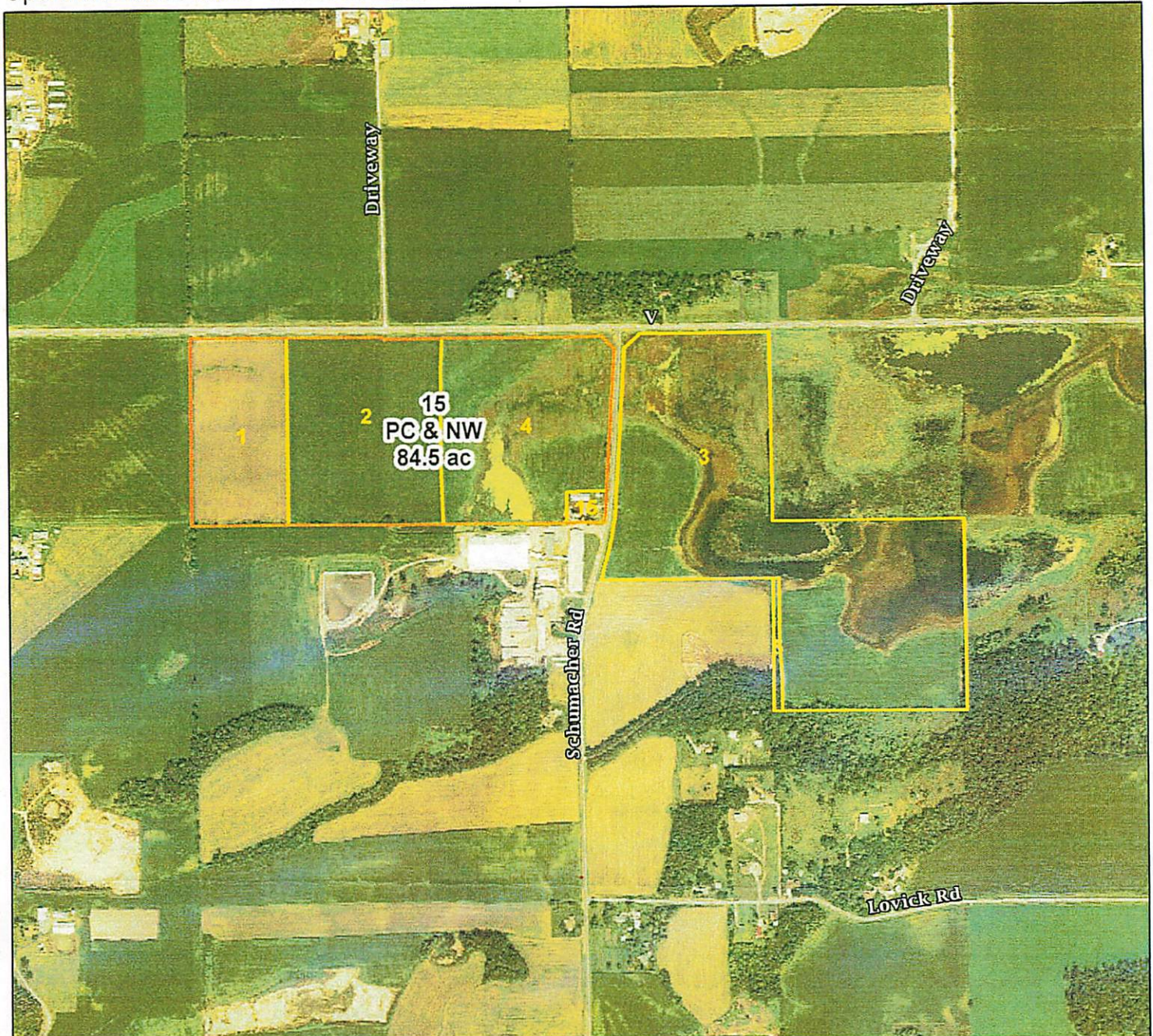
Certified Determination Map

Farm: 19554

Tract: 12854

Geographic County: Dane, WI

FSA Admin County: Dane, WI

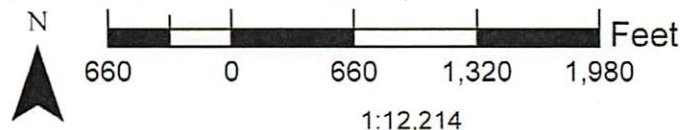


Base Map Image: 2017 NAIP
Map Prepared By: Carol Miller
Map Production Date: 7/22/2019

- Preliminary Technical Determination
- Tracts and Fields

This map is the official Determination Map for the current request. It is the responsibility of all program participants to not convert obvious wetlands regardless of map interpretation. Only newly completed request areas are shown on this map with a Food Security Act label.

Note: Acres shown on this map may not match official FSA CLU acres due to differences in rounding or the scale at which the work was completed. Previously certified areas retain their labels and status but are not shown on this map.





United States
Department of
Agriculture

All WC Determinations Map

Farm: 19554

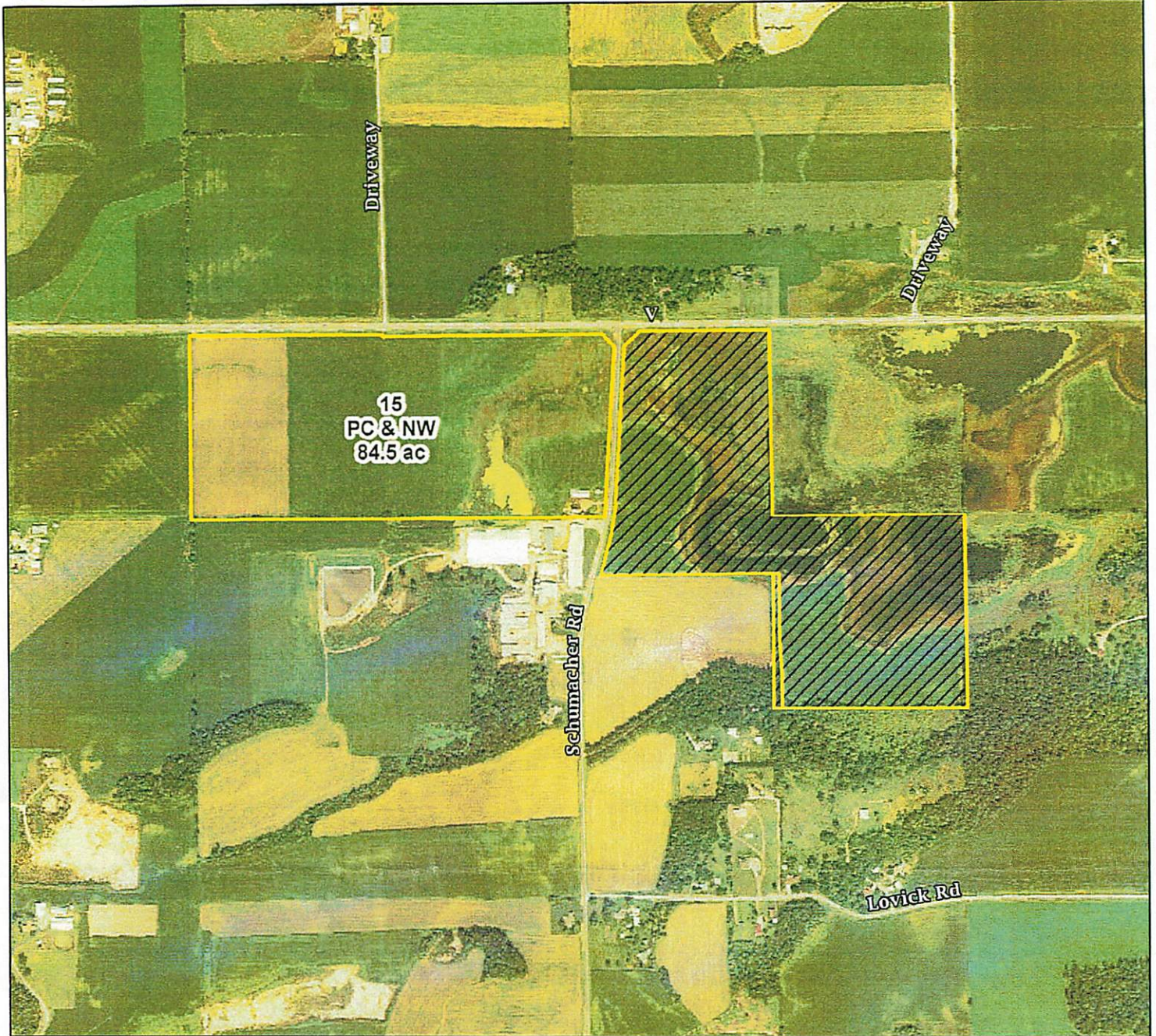
Tract: 12854

Owner: Koch Family Farm LLC

Geographic County: Dane, WI



Operator: James Koch T9N R9E S20,21

FSA Admin County: Dane, WI

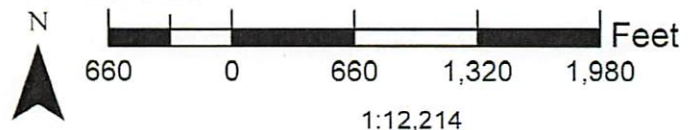


Base Map Image: 2017 NAIP
Map Prepared By: Carol Miller
Map Production Date: 7/22/2019

This map shows all completed WC determinations for the site. It is the responsibility of all program participants to not convert obvious wetlands regardless of map interpretation. Newly completed and previously certified areas are shown on this map. Other areas are marked as, "Not Evaluated."

-  Technical Determination Extents
-  Not Evaluated

Note: Acres shown on this map may not match official FSA CLU acres due to differences in rounding or the scale at which the work was completed. Previously certified areas retain their labels and certified status.



*DEFINITIONS OF WETLAND LABELS

AW	<u>Artificial Wetland</u> : An area that was formerly a non-wetland area under natural conditions but now exhibits wetland characteristics because of the influence of human activities. These areas are exempt from the Food Security Act of 1985, as amended. This label includes irrigation induced wetlands.
CC	<u>Commenced Conversion</u> : A wetland, farmed wetland, farmed wetland pasture, or converted wetland on which the conversion began but was not completed before December 23, 1985, was approved by FSA to continue, and the conversion was completed by January 1, 1995.
CPD	<u>COE Permit with Mitigation</u> : A converted wetland authorized by a permit issued under Section 404 of the Clean Water Act. Production of agricultural commodities is allowed subject to conditions of the permit.
CMW	<u>Categorical Minimal Effect</u> : A wetland that meets specific categories of conversion activities that have been determined by NRCS to have minimal effect, individually and cumulatively, on the functions and values of the wetland and the wetlands in the watershed.
CW	<u>Converted Wetland</u> : A wetland converted between December 23, 1985, and November 28, 1990. Production of an agricultural commodity or additional manipulation of these areas will yield USDA benefit ineligibility. Also, these areas are wetlands converted after December 23, 1985, by a county, drainage district, or similar entity. For these instances, production of an agricultural commodity or forage for mechanical harvest or additional manipulation will cause ineligibility for USDA program benefits.
CW+year	<u>Converted Wetland + (year the conversion occurred)</u> : A wetland converted after November 28, 1990, where the USDA program participant is ineligible for benefits until the wetland is restored or mitigated unless an exemption applies.
CWNA	<u>Converted Wetland Non-Agricultural Use</u> : A wetland converted after November 28, 1990, to a use other than agricultural commodity production. Label not used for certified wetland determinations completed after 2/2008.
CWTE	<u>Converted Wetland Technical Error</u> : A wetland converted or commenced after December 23, 1985, based on an incorrect NRCS determination. This label does not apply to obvious wetlands as defined in the National Food Security Act Manual.
FW	<u>Farmed Wetland</u> : A wetland that was manipulated and planted before December 23, 1985, but still meets inundation or saturation criteria. These areas may be farmed and maintained as documented before December 23, 1985, as long as they are not abandoned (i.e., management or maintenance for commodity production ceased for 5 consecutive years).
FWP	<u>Farmed Wetland Pasture or Hayland</u> : A wetland that is used for pasture or haying, was manipulated and planted before December 23, 1985, but still meets the inundation or saturation criteria. These areas may be farmed and maintained as documented before December 23, 1985, as long as they are not abandoned (i.e., management or maintenance for commodity production ceased for 5 consecutive years).
MIW	<u>Mitigation Exemption</u> : A converted wetland, farmed wetland or farmed wetland pasture of which the acreage, functions and values lost have been compensated for through an NRCS-approved mitigation plan.
MW	<u>Minimal Effect Exemption</u> : A converted wetland that is exempt from the wetland conservation provisions of the Food Security Act of 1985, as amended, based on an NRCS determination that the conversion has or will have a minimal effect, individually and cumulatively, on the functions and values of the wetland and the wetlands in the watershed.
MWM	<u>Mitigation Site</u> : The site of wetland restoration, enhancement, or creation serving as mitigation for the mitigation exemption (MIW) site.
NI	<u>Not Inventoried</u> : An area where no wetland determination has been conducted. Label not used for certified wetland determinations completed after 2/2008.
NW	<u>Non-Wetland</u> : An area that does not contain a wetland. Also includes wetlands converted before December 23, 1985, but a commodity crop was not produced and the area does not meet wetland criteria (not been abandoned).
PC	<u>Prior-Converted Cropland</u> : A wetland converted to cropland before December 23, 1985, and as of December 23, 1985, was capable of being cropped and did not meet farmed wetland hydrology criteria. These areas are not subject to the wetland conservation provisions of the Food Security Act of 1985, as amended, unless further drainage manipulation affects adjacent wetlands.
PC/NW	<u>Prior Converted Cropland/Non-Wetland</u> : An area that contains both PC and NW.
TP	<u>Third-Party Exemption</u> : A wetland converted after December 23, 1985, by a third party who is not associated with the participant, and the conversion is not a result of a scheme or device. A third party does not include predecessors in interest on the tract, drainage districts, or other local government entities.
W	<u>Wetland</u> : An area meeting wetland criteria that was not converted after December 23, 1985. These areas include farmed wetlands and farmed wetland pasture that have been abandoned.
WX	<u>Manipulated Wetlands</u> : A wetland manipulated after December 23, 1985, but the manipulation was not for the purpose of making production possible and production was not made possible. These areas include wetlands manipulated by drainage maintenance agreements.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.