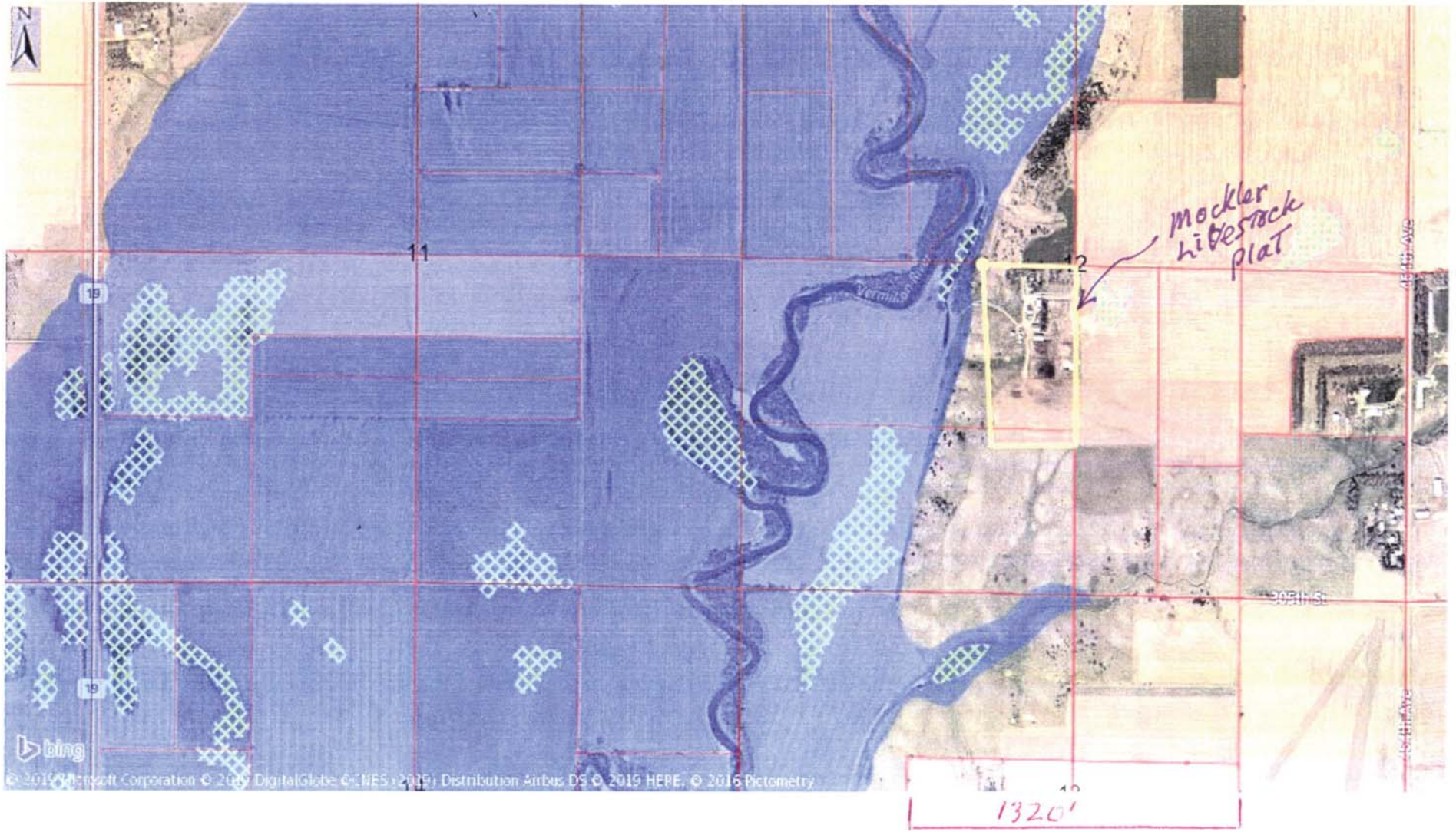


Floodplain map, Mockler CUP

Figure 1.



tm2016picRunoff

Figure 2.



04/10/2016



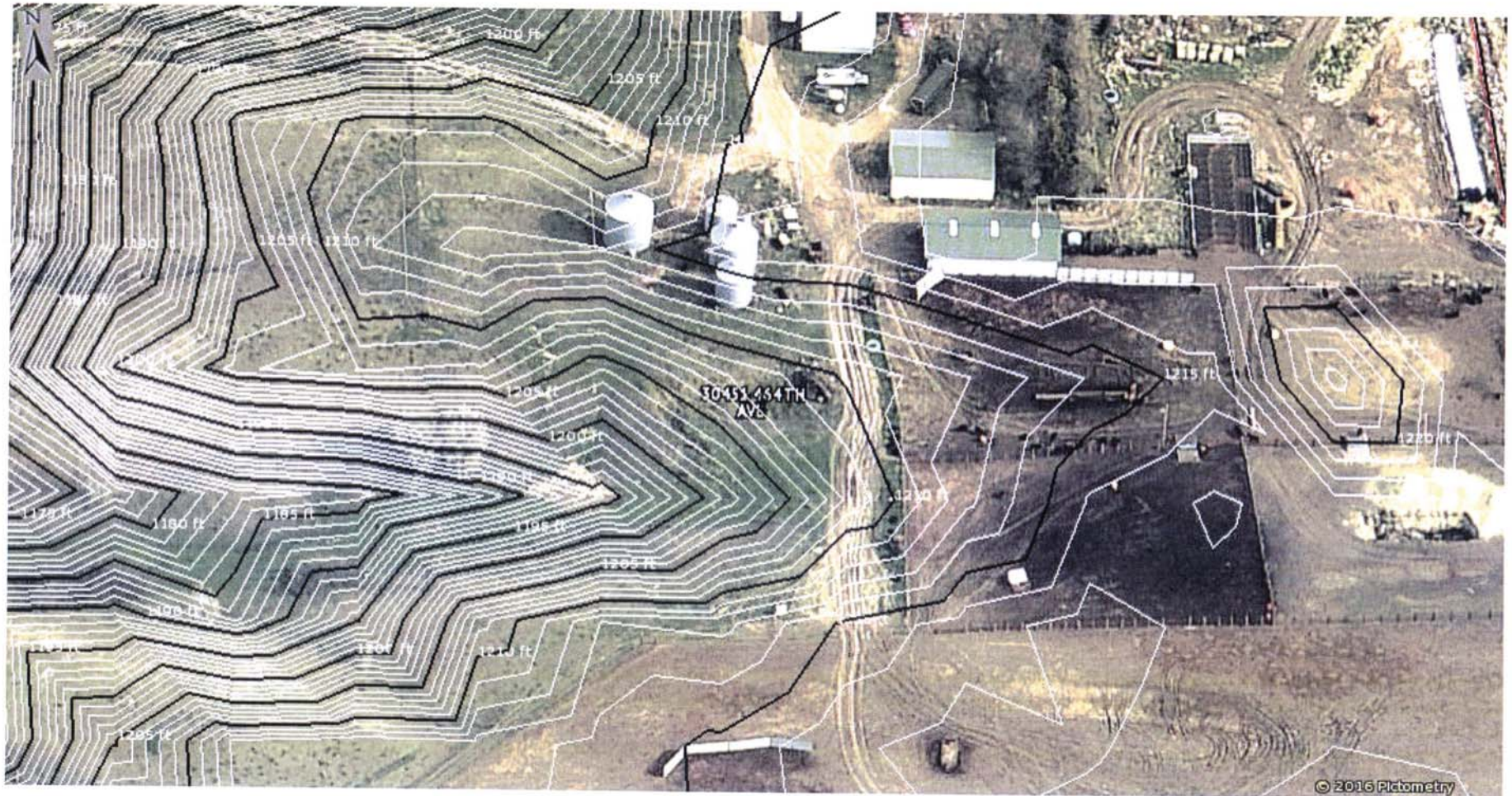
tm2016runoffclose

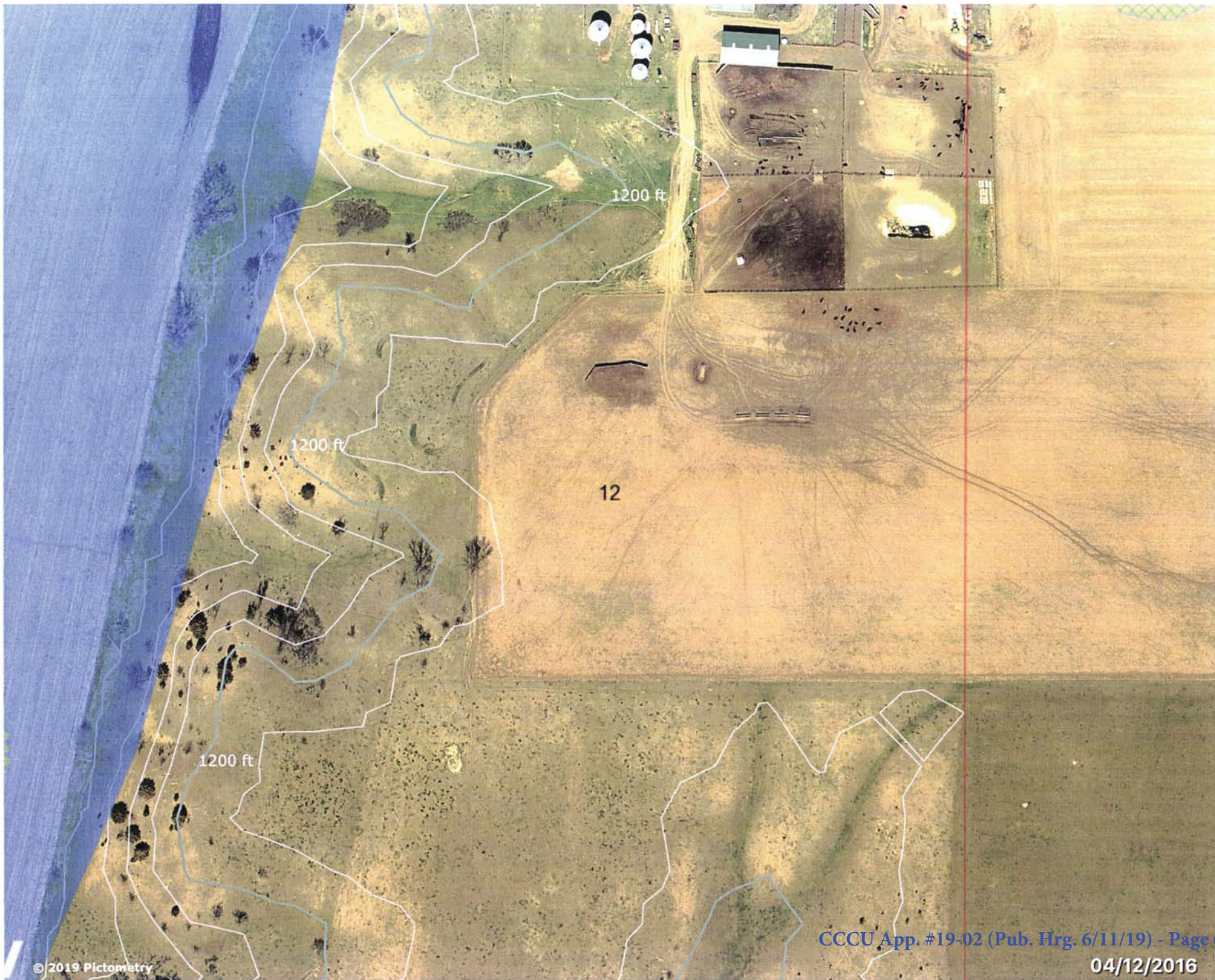
Figure 3a

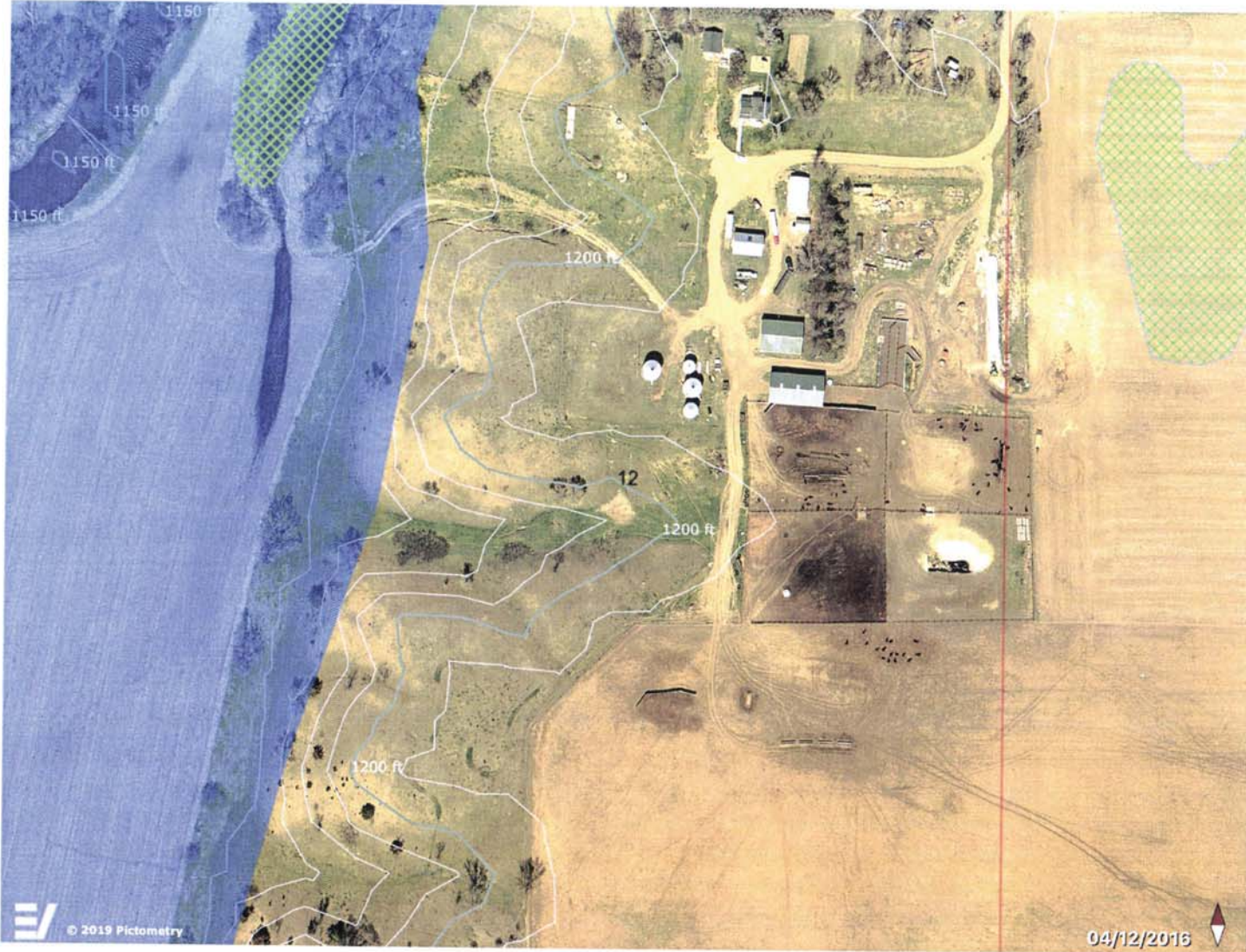


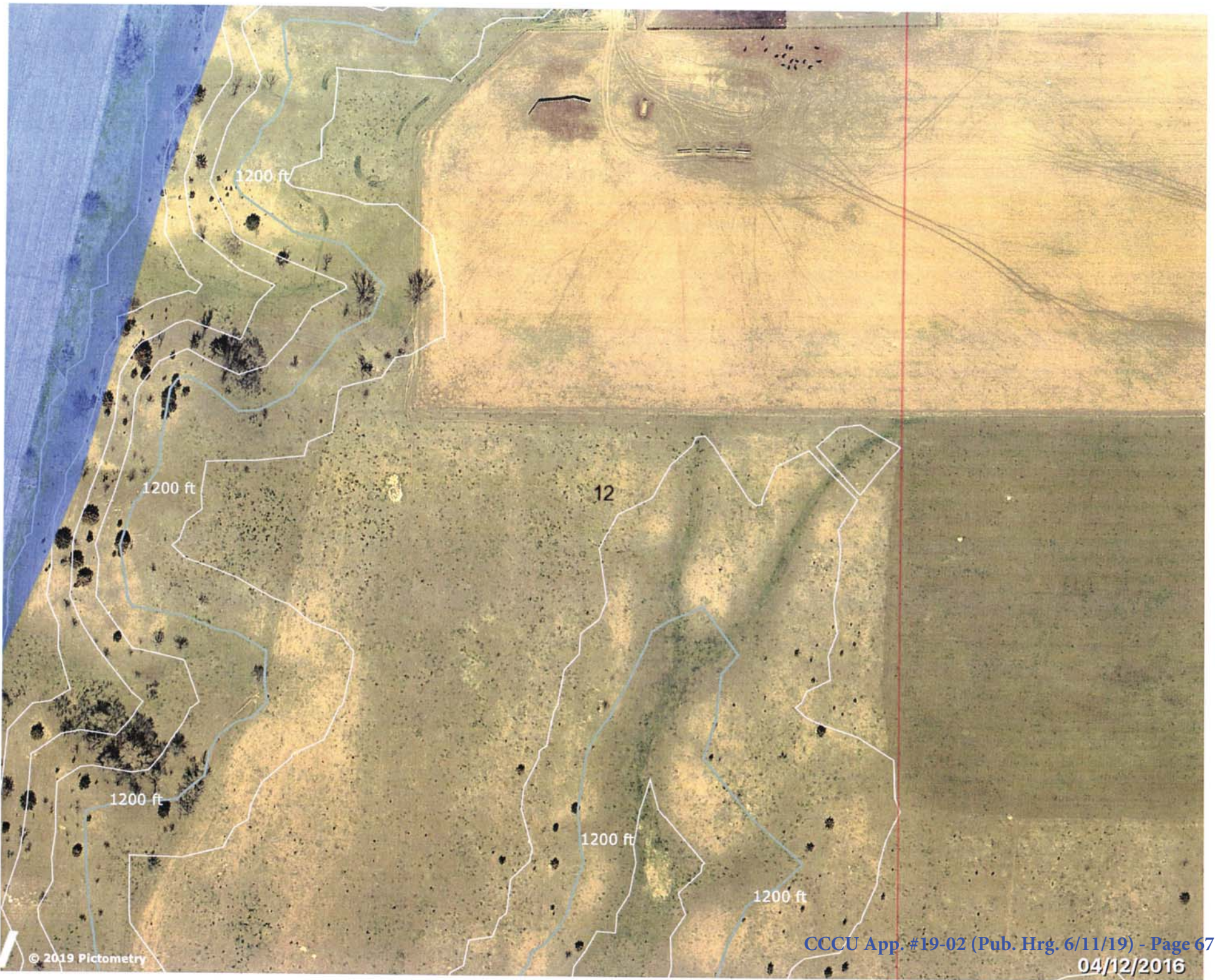
tm2016runoffcloseCont

Figure 3b









June 11, 2019

The Board of County Commissioners met in regular session Tuesday, June 11, 2019 at 9:00 a.m. Members present: Travis Mockler, Phyllis Packard, Leo Powell, Micheal Manning, and Richard Hammond.

Packard moved, seconded by Manning and carried to approve the agenda.

Minutes of the June 4, 2019 meeting were amended to reflect that Mockler left the meeting prior to the Executive Session and approved with a motion by Manning, seconded by Hammond and carried.

Highway Superintendent Rod Polley met with the Board to discuss highway matters. He discussed a washout near the Dakota St. bridge. It was discussed that rip rap will need to be placed along the bank, and the Board discussed with Emergency Management Director Layne Stewart who might be responsible for the cost.

Polley also updated the Board on culverts, gravel purchasing, and road closures. He reported that SD Local Transportation Assistance Program (SDLTAP) will be visiting the county to advise him on some of the damaged roads. He discussed a damaged dike along the Volin Road.

Cathi Powell and Rhonda Howe met with the Board to discuss computer purchases and personnel in the Treasurer's Office. Cathi said she got quotes, and Erickson Solutions Group was the least expensive, so she has ordered the computers. Rhonda has hired Jeff Kleeman, and he will start June 24, 2019 at \$14.98/hour (17/1 on the pay scale). They also discussed upcoming tax deed property sales. It was discussed that the properties will be sold all at once in August rather than advertising and selling each one individually. Powell moved, seconded by Packard and carried to declare the Treasurer's Office computers surplus and authorize the sale.

Packard moved, seconded by Manning and carried to approve the following claims for payment. June Bills: (Due to Other Governments) SD Dept of Rev \$270,079.00; SDACO – M&P Fund \$398.00 (Insurance Deductible Reimbursement) Ganschow, Dennis \$500.00; (Other Insurance) Jensen Insurance \$544.00; (Professional Services and Fees) Avera McKennan \$703.00; Avera University \$199.26; City of Vermillion \$312.00; Dakotah Reporting Agency \$615.50; Davis Pharmacy \$188.32; Ear Nose and Throat \$104.41; Empco, Inc. \$75.00; Erickson Solutions Group \$1,499.00; Houska DDS, Randy \$374.00; Lewno, Lucille M \$166.50; Lincoln County Treasurer \$1,222.06; Lockwood, Darcy \$15.00; Netsys Plus, Inc. \$71.25; Office Systems Company \$325.52; Pharmchem, Inc. \$571.00; Price, Thomas L. Inc. \$500.00; Satellite Tracking \$305.50; SD Dept of Health Lab \$935.00; Tigert Art Gallery \$100.00; Ulteig \$2,144.26; Yankton Co Sheriff \$100.00 and Yankton Co Treasurer \$451.50; (Other Professional Service) SD Attorney General \$504.00 and Yankton Co Sheriff \$1,400.00; (Law Office) Katterhagen, Mark \$15.00; Kennedy, Pier & Knoff \$602.50; Kogel, Linda L \$430.80; Lambeth Law Office LLC \$780.20; Mikelson, Gary E \$271.25; Peterson, Stuart, Klen \$546.00; Reed Law Offices \$95.00; (Mental Health) SD Dept of Rev \$1,354.88; Lewis & Clark Behavior \$534.00; SD Achieve \$240.00 and SESD Activity Center \$360.00; (Publishing) Broadcaster Press \$655.38; Broadcaster Press \$165.00 and The Equalizer \$96.00; (Repairs and Maintenance) Buhls

Drycleaners \$172.50; Canon \$123.48; Concrete Materials \$1,773.97; Hollaway Const. Co. \$100,00.00; Johnsen Heating & Cooling \$258.00; Johnson Feed, Inc. \$104.33; Office Systems Company \$329.72; Presto-X Company LLC \$134.00; Road King, Inc. \$800.00 and Turner Plumbing Inc. \$86.50; (Data Processing) Bureau of Administration \$24.75; Erickson Solutions Group \$13,554.46 and Microfilm Imaging System \$775.00; (Supplies and Materials) A & B Business \$427.96; A-Ox Welding Supply Co. \$176.65; Appeara \$64.56; Blue Tarp Financial \$234.99; Bob Barker Co Inc. \$175.92; Brunick Service Inc. \$2,417.16; Buhls Drycleaners \$20.00; Campbell Supply Co. \$169.58; Concrete Materials \$4,809.10; Davis Pharmacy \$8.99; Diamond Mowers Inc. \$769.01; FedEx \$88.54; Hollaway Const. Co. \$7,782.18; JCL Solutions \$416.91; L.G. Everist, Inc. \$2,192.43; Neopost USA INC \$36.51; North Central Rental \$1,650.00; Office Elements \$92.64; Office Systems Company \$158.75; Pressing Matters \$31.00; Riverside Hydraulics \$200.00; Road King, Inc. \$3,700.00; Sanford Health Clinic \$27.89; Sturdevant's Auto Parts \$3,685.41; TrueNorth Steel \$174,217.62; Vermillion Ace Hardware \$215.90; VFW Post #3061; One Office Solution \$121.94; Wieman Construction \$538.51; Yankton Janitorial Sup \$1,191.60 and Zee Medical Service Co \$102.15; (Copier Supplies) Canon \$161.12; (Travel and Conference) Christensen, Laura \$92.00; Lunn, Gene \$514.80; Peterson, Ina \$92.00; SDAAO \$750.00; SDSU Extension Service \$85.85 and Stewart, Layne \$33.68; (Inmate Travel) Brunick Service, Inc. \$392.84 and Pennington County Jail \$242.05; (Utilities) Bureau of Administration \$80.89; CenturyLink \$593.59; CenturyLink Emg \$13.69; City of Vermillion \$1,302.93; Clay Rural Water System \$64.80; Clay Union Electric Company \$563.74; Fischer's Disposal LLC \$50.00; Manger, Bill \$92.00; MidAmerican Energy \$225.00; Midco Business \$285.00; Stewart, Layne \$150.00; Vermillion Garbage SVC \$236.00 and Wakonda Town \$66.90; (Payment) American Tire Distribution \$126.42; Brunick Service, Inc. \$1,266.95; Clay Co Historical Society \$500.00; SD Dept of Revenue \$541.86; Hy-Vee, Inc. \$3,289.33; Southeastern SD-DTA \$510.00; Stone, Jim \$475.00; Subway \$148.17; Two Way Radio Solution \$95.00; Vermillion Federal \$120.25 and Woodbury Co. Sheriff \$43.00; (JDC/Special Eqp.) Clay County EMS \$15.00; (Books) Thomson Reuters – West \$399.05; (Furniture and Minor Equipment) Microfilm Imaging System \$185.00; (Automotive) Brunick Service, Inc. \$72.46.

The Board discussed July 5 due to July 4 being on Thursday. Powell moved, seconded by Manning and carried to close the Courthouse on July 5, 2019 as well as the holiday.

The meeting recessed until 9:30 a.m.

Packard called the meeting back to order with the Board of County Commissioners acting as Board of Adjustment. Mockler excused himself from the meeting. Packard gave lengthy instruction as to how the meeting would be conducted and opened the public hearing for the Living Rivers Group to present its appeal.

Suzanne Skyrn, Co-Chair of the Living River Group of the Sierra Club, said the club found problems with the conditional use permit application from Travis Mockler, and the proposal. In the March 25th Conditional Use Permit Application, she said, there were not enough details, and as of the April 29th meeting, where the application was approved, there were still details lacking. When asked whether the Zoning Administrator or any member had personally inspected the site,

no one answered in the affirmative. Skrym said, regarding Animal Feeding Operation (AFO) or Concentrated Animal Feeding Operation (CAFO), the letter from Jeff Loof of the Natural Resources Conservation Service (NRCS) said he declined to make a determination and suggested Mockler request a determination from the Department of Natural Resources (DENR). She said the Zoning Administrator implied the applicant had followed up, but an e-mail from Kent Woodmansey of the DENR did not indicate the follow-through. She said on April 15th, citizens tried to supply information such as topographical maps and photographs, but DENR declined to intervene and claimed the applicant substituted e-mail from Woodmansey as determination of AFO status, but said it defies logic and topography with this spring's weather. At the April 29th Planning & Zoning Commission, she said the Zoning Administrator falsely implied the DENR determination was based on information she provided at a previous meeting. Manure application maps are incomplete and failed to delineate setbacks from the Vermillion River, flood plain, and NRCS area. She said Mockler previously stated that pasture grass would stop runoff to waters of the state and presented March 8th photographs of the grassland condition in the pasture. Skrym said topographical maps show the site 50 ft. above the flood plain, but Mockler claimed it was 150 ft. She said drainage to the south and west would flow to the river. Powell asked if the appeal was the information submitted April 11th or the packet received this morning. Skrym replied it was this morning. State's Attorney Alexis Tracy cited the timeline for appeals, and suggested this morning's information be considered additional information. Skrym said as a commissioner and a representative on the Planning & Zoning Commission, Mockler pushed changes to the zoning ordinance to allow expansion of small to medium operations without setbacks, and it is a conflict of interest. She said there were failures of transparency and cited conflicts on the Planning & Zoning Department's website for meeting dates. Skrym said the March 25th meeting ended with a referral to the State's Attorney, and the State's Attorney said she lacked the authority to make a determination. Skrym said the role of the Zoning Administrator is to impartially apply zoning regulations based on facts and to protect ground and surface waters, but said that Zoning Administrator Cynthia Aden said she relies on applicant statements with no independent verification. Skrym said Aden claimed at the March 25th meeting this was the first application she worked on since the ordinance, but at the April 29th meeting a planning commissioner said it was the third. Skrym also said Aden told her no new information would be added after the March 25th meeting, but new information, such as a map, was added at the April meeting. The Living River Group said their items of concern should be reversed, and the group does not believe the site is good based on what is proposed. Skrym said there is potential to have almost 3,000 animals on site, which creates a lot of manure and urine. She gave maps to the Board of Adjustment.

Packard announced that Zoning Administrator Cynthia Aden would now have the opportunity to speak. Aden responded to the claims. She said the Living River Group wished the Planning Commission & Zoning Administrator would put things into place for AFOs and CAFOs, but she does not get to do that. It requires a change in ordinance. Aden said she did not present new information at the April 29th meeting. Those things were available at the meeting, but the motion was made to refer it to the States Attorney before she could present them. She clarified that the first 2 CAFO applications were done under old zoning regulations and were what prompted the changes in ordinance. She said the changes were not pushed by Mockler or anyone on the

Planning Commission. The changes were pushed by her, and she is solely responsible for that. Aden said there were never any documents presented to her or the Planning Commission by the Living River Group; maps were never presented prior to the present hearing. Aden said the photographs of Mockler's site were taken in the winter; grass does not grow here in the winter. Aden referred to accusations made regarding false statements. She said she does not regularly engage in lying, does not intend to start now, or intend to in the future. Aden said the claim that the animal numbers of the two AFOs should be combined is false. She said the zoning regulations do not combine species. She does not get to add them together as the rules are written. That would require changes to the regulations. Aden said she has received a couple letters from the Sierra Club, and she used the letter given the first time as the group's appeal because she understood that was what the Sierra Club wished for her to do. She said, regarding the claim that there was a lack of application details, she gets to decide how she looks at things, looks at the file, and develops the file. She said the Sierra Club was vague. She had asked Mockler to prepare a plat regarding the site, which is a legal document that delineates that site. It is a farm, so there are no lots & blocks such as in city legal descriptions. Aden said she was presented evidence that the buildings would be hoop barns, open buildings, which will be situated where they need to go when the time comes. Regarding the letter from NRCS, Aden said in the process of changing zoning regulations the NRCS agreed to provide a letter that could be used, but NRCS would now not provide a letter of determination and instead said to talk to DENR. Aden said both she and Mockler spoke to Woodmansey, and she sent information via e-mail. Now she knows that this part of the regulations will not work because NRCS will not provide a letter, but regulations state because one part of the ordinance is not valid, it does not negate the rest, so it does not stop Mockler's application. The Mocklers are expanding an existing operation, which provides subtle differences in the regulations. Aden referred to the last paragraph of Woodmansey's e-mail where the Sierra Club said he needs to present the information. She said during the February 27th e-mail, as she was working on Mockler's application, she discussed his claim as well as what she can do in the future. The paragraph cited by the Living River Group is discussing a future work product and has nothing to do with Mockler's application. Aden said manure application is a question the Sierra Club asks about frequently, but the County does not regulate manure, there is just a manure setback table in the regulations. Manure is regulated by another agency. However, Mockler provided pictures of areas where manure might be spread. As for notices, Aden said she has complied with regulations. She said the Sierra Club can always contact her instead of relying on the website. She said she and the Planning Commission have never been contacted. Aden said the website is not spectacular and does not have a lot of space for things, and she is only required to post notice 24 hours in advance. It says to contact her to be put on an agenda. Aden said she has not added to any of the documents, except the findings which is required to be added. She said the findings has addressed every regulation that applies to the particular application, and the Planning Commission has been using this particular findings document format for approximately 3 years.

Manning asked about letter from NRCS in the regulations. Aden said NRCS will not provide it, although they agreed to it when the regulations were being formed, and applicants will have to go to the DENR anyway, regardless.

Packard said anyone wishing to speak in support of the appeal request will have 5 minutes each, for a total of 30 minutes.

Kelly Dilliard said she specifically asked about the Woodmansey letter and pointed out the list of things he said should be included. She said she brought it up at meetings, but Aden never said it was part of a completely different discussion. Dilliard said the lack of transparency was a problem. She said at every meeting the Sierra Club had maps and photographs and were told they could not submit them at the meetings. Powell asked who told them that. She said Aden and the Planning Commission. Jay Bottolfson, Chairman of the Planning Commission, said no board member refused to take information. Dilliard claimed Bottolfson was not at the meeting. Powell asked Auditor Carri Crum if the document provided this morning was ever received prior to today, to which she said no.

Skyrm said at the March meeting she showed a map and asked Mockler where the barns will be, and Mockler showed her. She said she asked about runoff, and he said there would not be runoff, which is hard to believe because of slope. Skyrm asked permission to show the map, and the Planning Commission said it was ok, but she was never asked to submit it. Powell asked Vice-Chair Packard for permission to see the map, and he reviewed it. Hammond asked Skyrm if she offered the document to the Planning Commission, to which she replied no. She said she figured if they wanted it, they would ask for it.

Sharon Gray said she has been to a lot of meetings when the regulations were formed where they were told there would always be an opportunity to appeal. She pointed out that is what they are doing now. Gray said she appreciates the work everyone is doing, and no one is trying to be contrary or snotty. They are just pushing back with the appeal.

Tim Shriner said it seems the Board sets an example for how residents of the county should adhere to rules and regulations. He said there is disagreement about how the regulations have been followed, and the board should have all i's dotted and t's crossed. He said it does not seem like that has been done. He said it looks vague at best, that the board has taken Mockler's word at face value. Shriner said water is precious, and not requiring more of the applicant puts them in danger of making a mockery of their own rules.

Dr. Charles Yelverton said he has not been involved in particulars of the present situation, and his concern is about water quality. He said people already know the Vermillion River is not very clean, and runoff will get worse. Yelverton said bigger operations affect all of us, and health-wise water is our most precious commodity, so everyone needs to do due diligence and get this matter ironed out better.

Jerry Wilson said it is not true that the Sierra Club did not provide information. After the March 25th hearing, they submitted a letter of appeal without as much detail. Wilson said that Aden said she was the driving force behind changes to the ordinance, and shortly after he left the County Commission she told the Board the ordinance was confusing and needed clarification from the Planning Commission. Then, he said, Mockler proposed major sweeping changes, including no limit on size or limitation over aquifers. He said the new document was approved as a matter of compromise, that no one was particularly happy with it, but it was what we had. Regarding

Mockler's statement at the January hearing at which rezoning of the property from NRCS to Ag occurred, Wilson said Mockler stated his pasture grass would contain runoff, which grossly misrepresented the fact. Wilson cited photos taken March 18th from 305 St. right-of-way showing the grassland. He said this spring we got 3 inches of rain on top of frozen ground, which is becoming a frequent occurrence, and the idea that there would be no runoff is absurd. He cited Woodmansey's letter and said there would be discharge to waters of the state, that to suggest otherwise is to put your head in the sand and believe pseudoscience. Wilson pointed out Section 11.04 of the zoning regulations, saying plans shall be drawn to scale and show detail. He asked if all existing and proposed buildings and the dimensions of proposed buildings have been presented. Wilson discussed regulations for adjoining animal feeding operations and said it applies to this. He mentioned the NRCS director's letter where he declined to make a determination and said in ordinance said letter "shall" be determined. Wilson said since there is no letter, this means they cannot legally approve the permit.

Cindy Struckman-Johnson referred to winter photos and said the condition of the pasture is what happened during the grazing season. The grass was low and trampled down during grazing season.

Laurie Brown cited the design of manure management and said the application failed to provide details for manure storage, only that it would be stored in buildings and disposed of twice a year. A waste management system was not provided as part of the process.

Packard said the Board of Adjustment had not received any other written information other than what was received this morning. Powell asked State's Attorney Alexis Tracy, regarding Section 11.04 under conditional use permits, what exactly does it say? Tracy read the section, including a general note regarding exceptions.

Wilson asked that items D and E in the section are addressed as relevant. Aden said the Planning Commission has listened to comments of people who attended the hearings, considered findings, and recommended approval, and it is up to Board of Adjustment to determine if they have followed the rules. She said what she considers a site plan is different than what the Sierra Club considers a site plan, and information differs depending on the project. It is up to her interpretation and what she feels is sufficient. What she wants to know for an AFO is where the animals are being kept. Animals cannot go outside of boundaries delineated on the plat. Aden said the proposed buildings are not truly a structure. They are canvas. She said she makes a habit of believing applicants coming into her office, that they do not lie to her as they have to pay money and go through a significant process. Manning asked about dimensions of the proposed buildings. He said he has been around hoop barns and knows how they operate. Manning said, if within that area is where livestock will be, within the platted area, he understands why there is not a specific size of building. He said he assumes buildings will be permanent, and when they are built, they will know the precise spot within the specified area. Hammond said he is a little concerned because there are a number of different types of hoop barns. He cited a particular example of one he is familiar with, and that one is 2/3 covered, and 1/3 not covered, with crushed concrete as a floor. He said he thinks Mockler will use corn fodder. Aden said it will be dry bed pack, a new concept, and manure will be under cover in the barn. She said bed pack is a

natural material that can be spread on the field. Hammond asked if a million gallons will be absorbed in bed pack. Aden said it is designed to contain the majority, but the site has been set up to have land buffers on all sides. Hammond asked when building is scheduled to happen. Aden said it is not yet scheduled. Hammond asked about a pole barn vs a hoop barn construction. Mockler said the plan for the cattle was a pole barn, but it could change to a hoop barn. Hammond asked if it will have bed pack as well and cited that 1/5 of the site area is under Aquifer Protection Overlay (APO) zone B. Mockler reviewed the map to clarify the specifics of the site area of zone B. He said none of the livestock would go in the specific area, and the current livestock are not in that area. Mockler said during the Planning Commission process he addressed where the buildings would likely be, but the contractor will tell him where to place the buildings to maximize sunlight. He said he cannot go west because of aquifer protection, cannot go south or north, and the neighbor to the east signed off on it. Hammond asked that there be a better layout, and he would ask that of any applicant. He said it was omitted, and it should have been provided to the Planning Commission. Mockler said those questions were answered to Skyrn and to the Planning Commission during its meetings. Bottolfson said he asked Mockler to pinpoint the location of buildings on the map, and Mockler did that. Hammond said he thinks including that would have put a lot of minds to ease. Aden said Mockler provided answers in the Planning Commission meetings, and she had the information necessary to make the decision that the buildings were in an appropriate place on the site.

There was discussion regarding who had visited the site. Powell said he has been on the site personally in the past regarding drain tile, and Manning said he had been there. Tracy said there is case authority regarding the matter; had a member of the commission been to the site and offered information for the record, there needs to be a record of that. Hammond said he wrote a one-page research report he did independently. He said placement of the building was one point in it.

Mockler asked if proponents could speak, which was granted. Sandy Strom spoke as a proponent. She said she has been in farming over 50 years and knows some of the opponents mean well. She said her land adjoins the Vermillion River, and in the instance of runoff, there would be a lot of dilution of it. Strom said she is fully in favor of application, opponents should be supporting small family farms, and they should be more careful in their objections because a lot of what was said is not true. She said no one builds a house and knows to the inch where it will be. She thinks a lot of the issue is trivial and not necessary to question. Mockler said what is not mentioned is that 30 acres of the area south of the building site has been restored to pasture. Mockler said he never said it would hold the water, just that it would filter it. He said it is not typically grazed down that far. Mockler said he followed the ordinance; people may not like the current ordinance, even he doesn't like it, but it is what we have. At the end of the day, he said, what matters is that he followed the ordinance.

Packard asked Hammond if he would like to be recognized on his questions. He passed out information to be placed in the file. Hammond said he finds the permit is incomplete or incorrect pertaining to Section 11.04 for the site plan. In summary, he cited APO zone B, said the floodplain map should identify the property, manure application maps should be more accurately

defined, location and design of the buildings should be provided, and discussed DENR animal unit guidelines. Packard asked for comments or questions from other commissioners. Manning asked Hammond if he thinks Mockler should have to have two permits. Hammond cited Woodmansey's letter. Manning said there are existing operations, so they are expanding from small to medium. Hammond also said he thinks it is incorrect to say the pasture is a buffer. He said he has a number of photos to show that there is no vegetation for the open feedlot, and it should be taken as a whole if it is expanded. He said runoff is funneled through a narrow drainage way to an old channel of the Vermillion River, and 13 of the last 20 years that channel had water. He suggests that engineering be done to fix those feedlots since Mockler is expanding, and the old stuff ought to comply so that no runoff reaches the waters of South Dakota. Hammond said his expert opinion is that during certain periods runoff has reached the Vermillion River, and that problem should be fixed by berm or other engineered structures to stop runoff from reaching the floodplain. Manning asked how the runoff would be concentrated into the ground. Hammond said the upper 25 feet of the soil is permeable and cited the Soil Survey of Clay County. Manning asked how long it would take to get into the water level, and Hammond guessed 5 years, although he hadn't done the calculation, hence his recommendation of going back 144 ft. with buildings and other things that could contain pollutants. Hammond said each of his items should be thought of as an individual bullet point and should be thought of as potential amendments to the existing application. Tracy asked him to clarify whether he proposes them as amendments to the findings that have been presented. He said they should be amendments to the permit itself so that it is a lot clearer and more in tune to the location. Tracy asked if the information is evidence of record. He said yes, those are things that were excluded by administrative decision, and Aden should have included them. If the proposal were a half mile east, away from the APO zone B, he would not have looked at it. Tracy asked him which sections of the ordinance he is speaking of. He cited Section 11.04, the last paragraph in reference to Woodmansey's letter, which is part of the record. His manure application comments are in response to the original application. Tracy asked if he feels information in the application itself is lacking, or if the findings are unclear. Hammond said the conditional use permit itself is incomplete or incorrect, and improperly omitted data should be included. Hammond said they have the option of recognizing and approving the appeal, approve the permit itself, or modify it so that it is acceptable to the Board of Adjustment. He proposes that the items be included so it can be acceptable to him as a member of the Board, and the other board members need to decide whether the information provided is acceptable to approve as it is. Manning asked if Hammond has evidence to the contrary regarding the APO. Hammond said it could go either way, that there are places where the aquifer extends back beneath the bluffs; a lot of the time it is contained within the bluff line, but it is not always the case. He said information should be included, and the burden of proof should be on the applicant, but it could be as simple as a well log from the farm place. Hammond showed photos with contours to show the funneling effect.

Packard said she read the state regulations, and they are also not clear as to whether separate species are added together to determine size. Hammond asked whether it is the intent of the board to put double the number of animal units into this location. Packard discussed the regulations, and Hammond said the board may make more stringent requirements than what is in the code. He said the load to the environment is additive, no matter how you apply the

regulations. Manning said he does not have a problem with having one permit, but he has a problem with item B. He said a person can have a lot of surveys and studies, and each expert can have a different opinion. Hammond said using NRCS's percolation rates, it could take less than 50 years for contaminants to break through to an aquifer 50 feet down, and future generations could be drinking contaminated water. He said we need to ask if that is acceptable? Hammond said it's not all that expensive to fix. It could be a matter of digging through existing records of well testing for the house, or a test hole could be dug by an engineering style driller for about \$1,000.

Packard asked Tracy, as a Chair, can she form a proposed amendment? Tracy said yes, that historically the Chair refrains from voting unless it is a tie and cited case law that statute does not discuss and does not mention the Chairman abstaining from the vote. Supreme Court interpreted in case law that the Chair should be participating. Packard reviewed the following points: A) additional maps detailing the site, B) well log or drill sample where the buildings will be, C) additional labeling or identification with figure 1 in the file being a suitable substitute, D) additional information drawings, maps, or description of plans for existing manure containment and dead animal storage and potentially a sheet on designs for possible size and type of building and flooring (would it require an impermeable flooring if well logs showed it was necessary), and additional maps with setbacks. Packard said she feels 90% of this is just more information on the maps and checking, and it is pretty easily done. She feels #3 of Hammond's report is something to be taken up with DENR and the regulations in the future because it is not clear. Nothing is mentioned anywhere in state regulations, and therefore nothing is mentioned anywhere in Clay County regulations. Hammond moved to amend based on items 1-3 to list those items, seconded by Powell.

Mockler called a Point of Order and asked the Board to go back to item 7 on the agenda as the Board had skipped to item 8. Motion was tabled. Packard went back to item 7 for additional testimony. Wilson submitted another document and stated on April 1st the Sierra Club submitted an appeal and said what was received today was not new. It was clarified that the 3-page document from this morning is different. The Board clarified that the April 1st document was received prior to today. Cindy Kirkeby said she understands there is a clause that if there are 2 AFOs under single ownership or share a manure facility that they have to be considered together. She said she does not understand why there is a question whether this is a CAFO or AFO. She asked, "Why wouldn't it be a CAFO?" She said if it goes to the state the same things would be required. Wilson said it is in the definition of animal feeding operation in the regulations. Mockler said if you speak with Woodmansey, you have to use Animal Units, which is what he wanted, but the table was wanted instead by others during modifications to the ordinance so therefore they are separate. Aden said there is no mechanism to combine the numbers. Wilson again read the definition of animal feeding operation. Mockler said the definition is exactly what the state says, and the state's determination stands. Tracy said of all the AFO/CAFO cases she has reviewed, that issue is not addressed in any of them. The vast majority of issues in the cases have to do with due process. There has never been an allegation that she has found that would touch that issue. Tracy said the language that needs to be adhered to is the definition of an AFO and the table in the regulations; nothing says you can only have X number of cattle if you have X

number of swine. Wilson asked, the 999 cattle on the same site, is it in the public interest of the people of Clay County and the Vermillion River to permit the numbers of a large CAFO without the state requirements? Mockler said the bottom line is what the people would like to see in the ordinance and what we actually have. What do we have and do we follow it, and is he being scrutinized more than other people in the same process? Packard said she does think they are getting into a discussion about what we want vs. what we have.

Strom asked Hammond if he would rather have Mockler take crop out of production a half mile east to move the animal operation, and does he know that the opponents would accept it? Hammond said the opponents are not the ones voting. Strom said the opponents will never be satisfied. Barbara Yelverton said they are interested in drinking water quality. Norma Wilson said she thinks there is a misunderstanding for what the Living River group is asking. She said they are asking that regulations be followed, not changed, and they do not want aquifers to be messed up and animals to be safe. She said they respect farmers but want them to follow the regulations. She said she thinks Hammond's points are very important to be considered, and they weren't included or submitted to Planning Commission.

It was asked if the Board of Adjustment needs to send the matter back to the Planning Commission. Tracy said the recommendation of the Section 11.06 decision is to uphold, amend, or overrule, and there is no language to remand to the Planning Commission.

Hammond said this is the first situation under the new rules, and in Aden's defense it is her first, and we all make mistakes. He said it is the Board of Adjustment's job to fix errors and go on, and this hearing has to be done with blinders on that Mockler happens to be the first applicant. Hammond said they need to treat everyone from this day on like they treat Mockler. They cannot treat him better or worse than any other applicant. Each application stands alone. Mockler's is a difficult setting, and going forward there may be more that are easier or harder physical settings.

Tracy said she had just received a letter from the Director of Equalization Office that was addressed to the Board of Adjustment. The letter from Mary Begley in opposition to Mockler's application was opened and submitted to the Board. Mockler asked Tracy what constitutes aggrieved. Tracy said it is a person that claims they have been harmed in some fashion. Mockler questioned who he has aggrieved and said his neighbors approved, the animals are to be outside of APO zone B according to what everything has been based upon. Mockler said the rezoning meeting minutes reflect that he and Hammond had the conversation regarding APO zone B and that the site was drawn in on a map, just not the buildings themselves. Mockler said it should be in the minutes from the Planning Commission. He said Skyrn and Bottolfson asked him, and he showed them in the Planning Commission meeting. He said the steps Hammond is asking for classifies his operation as a CAFO, not an AFO. Mockler said he cannot have a 2,400 head turnkey, state of the art operation which would have to have liquid manure, not solid, and that will change his entire plan. He said he has a crop consultant and will have a manure management plan. Hammond cited a hog barn application in Yankton County for which he has a copy in a 3-ring binder and said the applicants jumped through extra hoops. Mockler said the opponents wanted drug free, gmo free when the ordinance was being amended, and he cited Dr. Yelverton's testimony at previous meetings. He said he is trying to build what the audience wanted, antibiotic

free and gmo free, and now they are opposing him. Hammond said he is just asking for further description. Mockler said it will be operated and built to the same standards as other hoop barns they have approved.

Packard closed the hearing and stated all information that has been provided and collected will be available, and anything referenced by presenters should be provided for the file.

Hammond moved, to strike D, E, and F from the findings and adopt Hammond's document items 1-3 in their entirety, or as separate units. Powell said he is not willing to second until he gets an opinion from the State's Attorney. Tracy said to take the facts and evidence they are basing their decisions on and they need to be in a stack on the table now, and they need to specifically reference points. If they are overruling the Planning Commission's opinion they need to specifically define it. Powell asked if they are going beyond what they should by going by what Hammond found, and cited the section that discusses the Zoning Administrator's recommendation. Hammond said the previous findings should stand with additional requirements. Tracy clarified that Hammond is asking for his one-page document be added to the findings to amend conditional use hearing findings. She recommended that the Board strike directly on the findings document and add what they recommend. Powell seconded the motion at hand. Manning said he does not believe they can change item 3 because neither County nor State regulations address it. Packard said they are asking for a clearer definition in the maps that follow the requirements. Manning asked, if they require him to drill a test hole at \$1,000, and the sample shows it is not going to work, then what happens? Is he done? Hammond said it's possible he would not be fulfilling the requirements of the ordinance if the aquifer is found to be too shallow. Manning asked if he could ask Mockler a question. Upon approval, he asked Mockler, if a test hole is drilled and he finds it will not work, what is the plan? Mockler said he would not be able to build, that he would have to remain a small operation. He said according to the map the burden of proof is not on him. If someone thought he was over a shallow aquifer, the burden of proof is on them. Manning and Packard said they read it the same way regarding burden of proof.

Manning said he would like to know where the buildings will be. Mockler asked if he should submit 3 plans because each of the companies (Diamond, Lynch, and Heritage) require a different plan. They each want them built differently. No matter what he builds, he said, water of the state will not pass through the building site. Mockler said the timeframe is not bothering him, but he does not know which company he will choose yet. Manning asked about manure. Mockler said it will stay in the building until it is moved out. Manning said bed pack has very little liquid and absorbs well. Mockler said rain will not fall on the manure. One of the plans he has seen has a concrete pad with concrete walls, or it will just stay in the barn.

Packard clarified which sections of the findings document they are amending or adding to, which the Board said they are striking the words "not required" from Section 11.04 D, E, and F and substituting with Hammond's proposal items 1 A-E, not including 2, not including 3, and requiring additional maps on Section 3.07c.

Mockler and Hammond discussed maps of the building locations. Hammond said a fair amount of what he wrote will be answered by a map of the buildings and features. Manning asked Tracy if they decide to amend it, whether they have to cite what they are amending. Tracy said yes, and the part of the issue becomes that they need to understand what they are talking about because when areas are left open to interpretation it is problematic for both sides. She discussed Supreme Court cases in similar matters.

Aden said regulations prohibit her from allowing a building for an AFO over an aquifer. Hammond said one of his recommendations is to stay away from the slope to the Vermillion River. Aden said that is not in the zoning regulations.

Powell said if the motion stands, he will need to vote against it because upon clarification there are things added that are not in the ordinance. Packard said she does not believe item 3 can be included. Packard called a roll call vote. Manning no, Powell no, Packard no, Hammond yes. Motion failed.

Manning moved to strike the words “not required” from Section 11.04 D, E, and F and substitute with Hammond’s proposal parts 1 A, C, D, E, and number 2, and require a map under 3.07c to keep what the ordinance requires and require additional clarification on the manure application maps. Hammond seconded the motion. Under discussion, Mockler and Hammond discussed the definition of slope as Hammond intended. Powell asked Aden whether the County controls manure. Aden said the County does not; the setbacks are in the regulations mostly as an informational item, and the state controls the manure. Powell said he sees a problem with the motion as it indicates the County would regulate it. Aden said she could take the information in the regulation and apply it. Packard said it is not for regulation but rather demonstrates on the map that it designates the setbacks. Powell asked if the motion is to amend the application. Hammond answered yes, that the Board is asking for replacement maps that are accurate. Roll call vote of the Board: Manning yes, Powell yes, Packard yes, Hammond yes. Motion passed.

Manning asked for a time frame for Mockler to complete the requirements. The Board deferred to Tracy for advice. She referenced Section 11.05d and advised the Board to set a subsequent hearing on the matter once Mockler has provided the conditional items. The Board discussed a timeframe with Mockler. Mockler and Hammond said the requirements should not take long. The deadline was July 9th for Mockler to submit the documentation.

David Lias asked whether the Board has voted on the appeal. Hammond said they have made an amendment to make the application acceptable to the Board, and at that point the Board could approve the permit as amended or deny the permit. Tracy cited Article 9 and Section 11.06. It was decided that the public hearing would remain open, to be scheduled at a later date.

Powell moved, seconded by Manning to adjourn as Board of Adjustment and reconvene as Board of County Commissioners.

Mockler re-joined the Board of County Commissioners meeting.

Powell moved, seconded by Manning and carried to enter an Executive Session for personnel and legal matters per SDCL 1-25-2.

Mockler excused himself from the meeting at 1:40 p.m.


Manning moved, seconded by Hammond and carried to exit the Executive Session.

At 2:13 p.m., Manning moved, seconded by Hammond and carried to exit the Executive Session, to adjourn, and to reconvene at 9:00 a.m. on Tuesday, June 25, 2019.



Travis Mockler, Chairman
Board of County Commissioners

ATTEST:


Carri R. Crum, County Auditor