

MEMORANDUM

TO: Programs, Projects, and Operations Subcommittee
FROM: Justin Novak, Field Representative
SUBJECT: Probable Violation of Erosion and Sediment Control Rules and Regulations
DATE: November 26, 2019

On November 21, 2019 two Erosion & Sediment complaints were submitted by Baird Holm LLP on behalf of (A) Mark Ondracek (3476 Golden Eagle Circle) and (B) Rod Scheer (3510 Golden Eagle Circle) Blair, NE; Section 19-Township 17N-Range 12E), against Michael Cornwell (Farm 5696 Tract 4434, 65.7 acres) for excessive sediment being deposited on their property. Mr. Cornwell was notified of the complaint, and a field review was completed on November 25, 2019 with Michael & Todd Cornwell, Justin Novak (NRD) and Terry Schumacher (NRD).

The NRD was originally contacted by Mark Ondracek in 2018 about excessive sediment being deposited on his property along with Rod Scheer's. During the initial review of the field in 2018, there were no terraces, deeply incised ditches, and was being farmed up and down the hill. Working with the NRCS a conservation plan was developed to get Mr. Cornwell below his allowable soil loss, that included constructing terraces, no-till and contour farming. Construction of the terraces was completed in April 2019.

After a field review this fall, it was determined that the continued sediment damage Mr. Ondracek and Mr. Scheer are receiving is due to the failure of the terraces systems constructed last spring. The pictures the District received from Mr. Ondracek show that on September 19th he started to see excessive sediment being deposited on his property, this correlates with the 6.7" of rain recorded at the Blair Airport on that day. The NRD and the NRCS believe this is the reason for the failure, as terraces are designed to handle 4.26" of rain in a 24hr period.

In the farms current state, Mr. Cornwell is not meeting the NRCS's allowable soil loss due to non-functioning terraces.

Under the District's Rules, there are 4 options that the Committee can take action upon:

- A) If the staff and committee determine that no violation of these rules and regulations has occurred, it shall recommend and the Board may approve dismissal of the complaint. The complainant shall be given the opportunity to appear before the entire Board before the Board acts on the recommendation.
- B) If the committee determines that a farm unit conservation plan previously approved by the District is being implemented and maintained in strict conformance with a conservation agreement including the land subject to the complaint, it shall recommend and the Board may approve dismissal of the complaint.
- C) If the committee determines that the land which is identified in the complaint is being used for non-agricultural purposes, and is under an erosion and sediment control plan that has been approved by the District, is in conformance with any NPDES (National Pollution Discharge Elimination System) permit issued by the Nebraska Department of Environmental Quality (NDEQ), or any political subdivision of the state designated by NDEQ to issue such permits, it shall recommend and the Board may approve dismissal of the complaint.
- D) If the committee determines that a probable violation of these rules and regulations has occurred, it shall proceed in accordance with Rule 12.

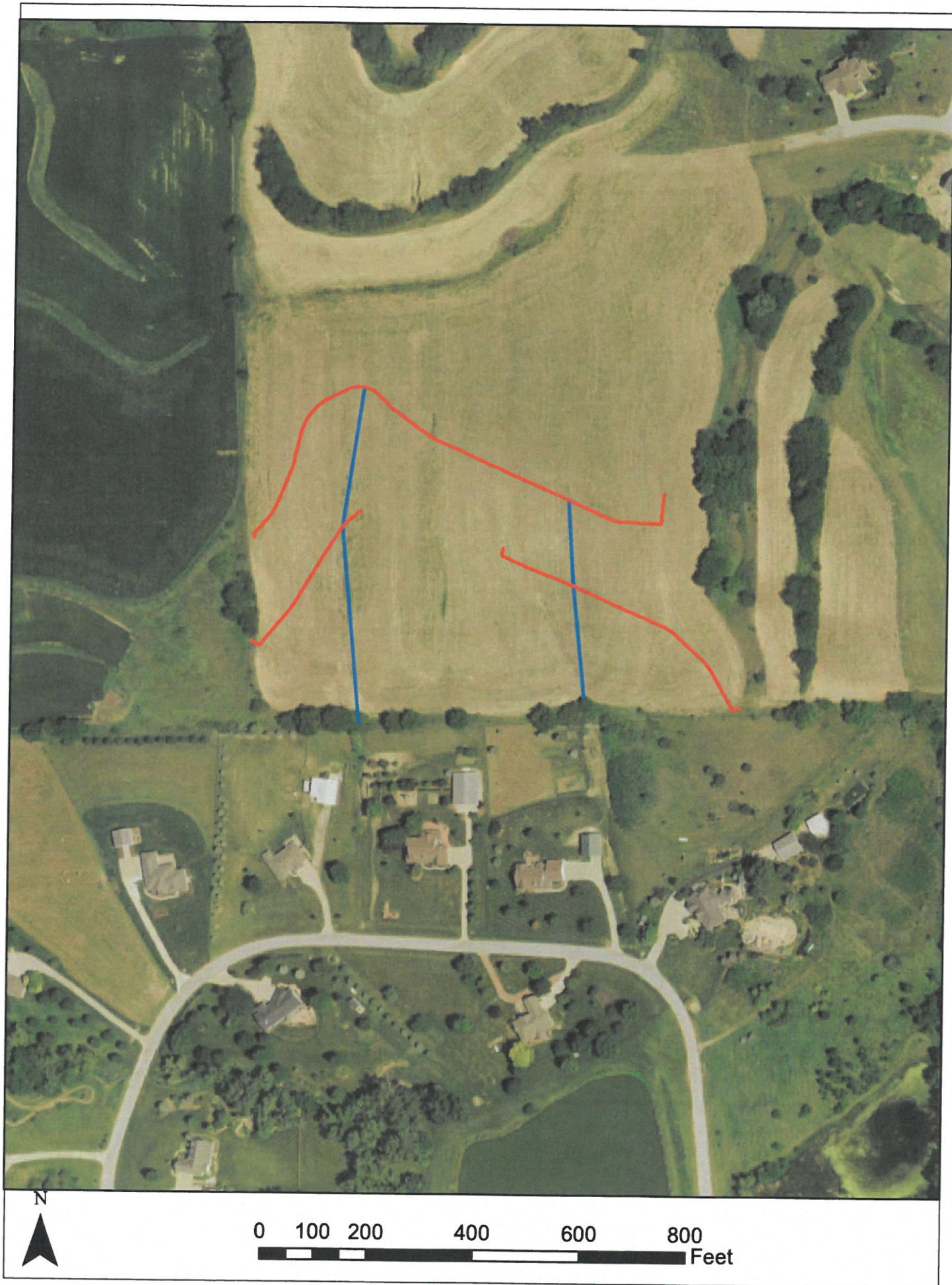
It is staff's recommendation that the Subcommittee review and recommend to the Board that the Papio-Missouri River NRD find Mr. Cornwell to be in probable violation (Option D) of the District's Erosion & Sediment Rules & Regulations.

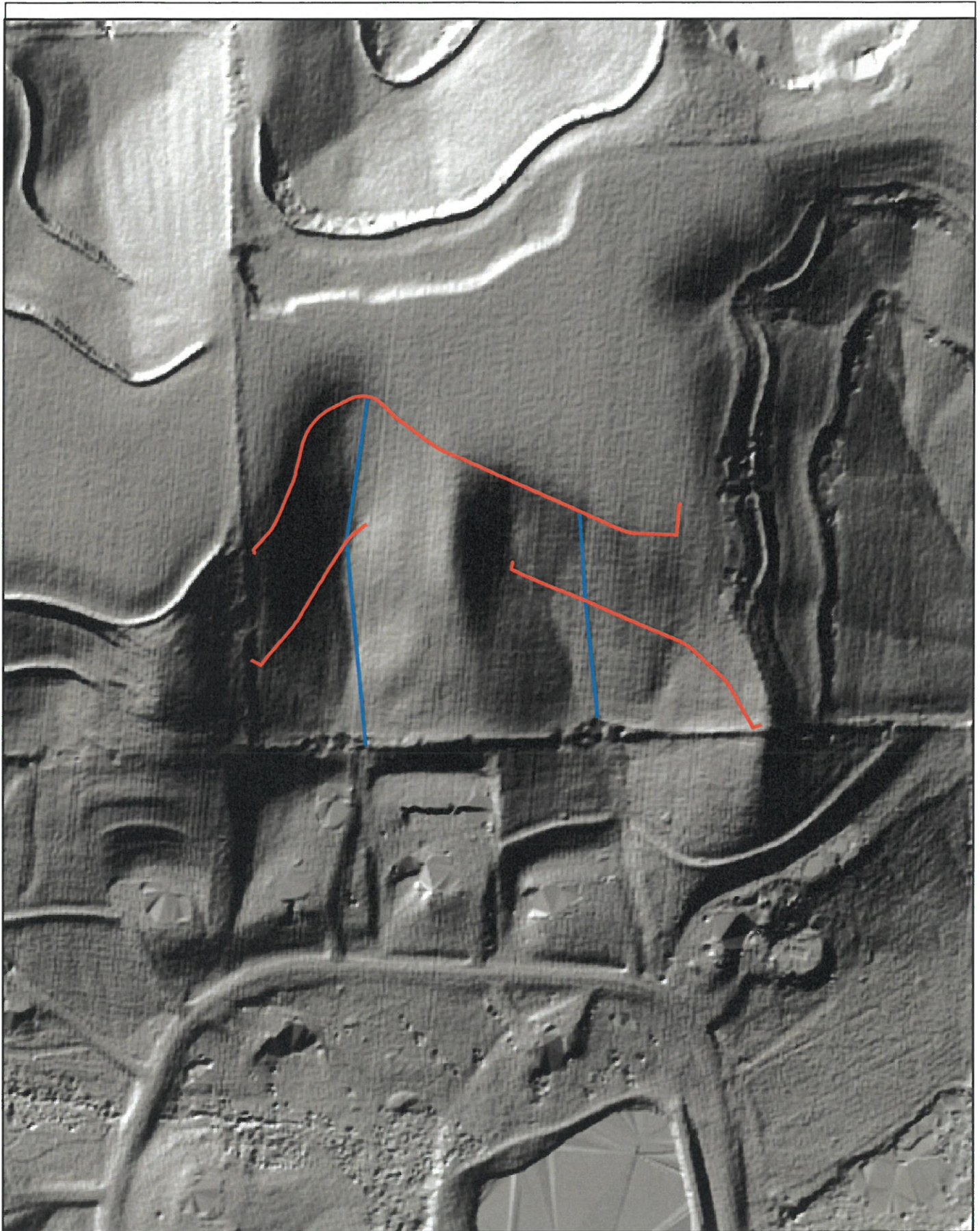


LOCATION OF COMPLAINT

N

0 500 1,000 2,000 3,000 4,000 Feet





0 100 200 400 600 800 Feet

A



06-19-2018

A



06-19-2018

A



06-19-2018

A



09-19-2019

K



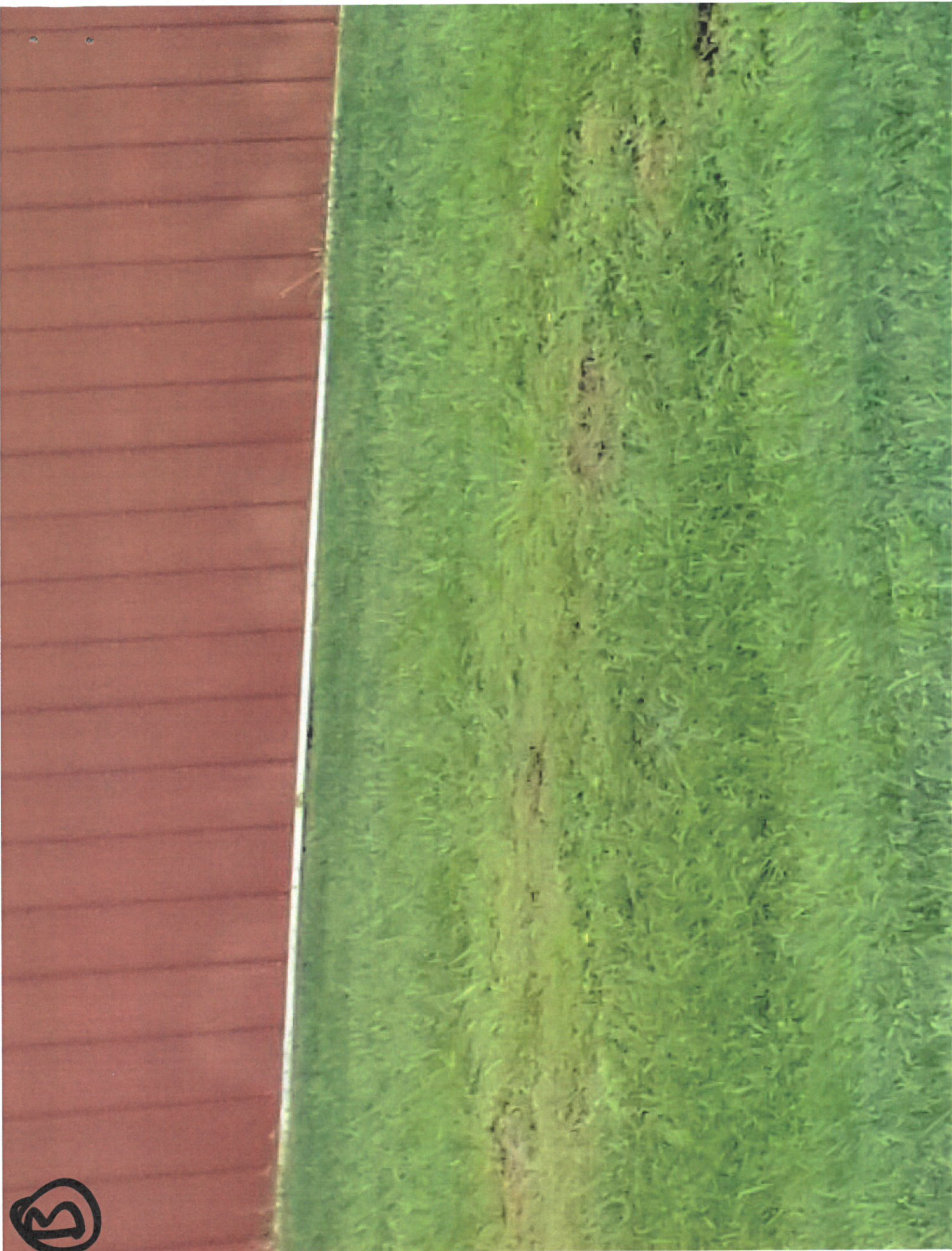
09-19-2019



10-11-2019







NEBRASKA EROSION AND SEDIMENT CONTROL ACT COMPLAINT FORM

Instructions

Complete items 1 through 5 by printing in ink or typing the appropriation information.

Photographs depicting location, nature, and extent of sediment damage or erosion and aerial photographs may also be submitted with this form.

For District Use Only

Filed in the office of the

Blair

Natural Resources District

At 11 a.m./p.m. on

November 23, 2019.

COMPLAINT NO. W-2-19 (A)

1. Name and address of the person filing this complaint.

Name: Baird Holm LLP on behalf of Mark and Lynne Ondracek

Address: 3476 Golden Eagle Circle

City: Blair

State: Nebraska

Zip Code: 68008

Telephone Number: (402) 636-8266

Cell phone: ()

Email: vsilke@bairdholm.com

2. Authority to file complaint. (Check one)

☒ Owner or operator of land being damaged by sediment.

☐ Authorized representative of a state agency or political subdivision whose roads or other public facilities are being damaged by sediment.

() identify

☐ Authorized representative of a state agency or political subdivision with responsibility for water quality maintenance.

() identify

☐ Authorized staff member or other agency of the natural resources district.

3. Sediment damage.

A. Location of the land or facility being damaged by excessive erosion (X) and the land believed to be the source of the sediment damage (O).

COUNTY _____

Twp _____ Rge _____

	Section SAMPLE	

COUNTY Washington

Twp 17 Rge 12

	Section 19 Highway 133 O X	

O = Michael and Lori Cornwell Property, Parcel No. 890009142

X = Mark and Lynne Ondracek Property, Parcel No. 890083237



Continued

B. Identify stream or lake whose quality is being impaired including location of upper and lower points of alleged impairment.

C. Description of the nature and extent of the sediment damage or water quality impairment. Include description of physical effects and any economic losses which have occurred.

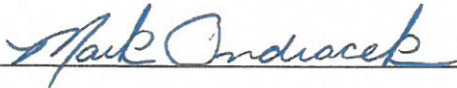
Erosion and sedimentation from the Cornwell property to the north has and continues to cause damage to our grass turf, vegetable beds, propane tank foundation, garage building foundation, sidewalk, and driveway. Economic losses include costs to repair previously mentioned damages, and loss of value of real and personal property. See attached photos.

We have repeatedly contacted NRD staff to work out a cooperative solution, and to date, the Cornwells refuse to engage. We believe that a formal complaint is the only way to resolve the erosion and sedimentation damage on our property caused by the Cornwells' farming and land management practices and we appreciate the NRD's assistance in resolving the Cornwells' continued violations of the Nebraska Erosion and Sediment Control Act, Neb. Rev. Stat. 2-4601 *et seq.*, and the NRD's rules.

4. Dates(s) the sediment damage or water quality impairment occurred or was observed.

We observe erosion and sediment damage daily and after each rain event following the prior complaint filed in July, 2018. Since the July, 2018 complaint was filed, the NRD cost-shared the implementation of controls on Cornwell's property to the north. Sediment continues to be deposited onto our property at increasing rates after each rain event during and since that time. At a site visit with NRD and NRCS staff on October 16, 2019, NRD and NRCS staff members confirmed that the controls implemented in 2018/2019 had failed and that new controls must be implemented for the Cornwells to comply with the Nebraska Erosion and Sediment Control Act, Neb. Rev. Stat. 2-4601 *et seq.*, and the NRD's rules. See attached photos.

5. I certify that the information contained in this complaint is, to the best of my knowledge and belief, true and accurate.

Date: 11/13/2019 Signature: 

Return to: _____ Papio-Missouri River Natural Resources District

(Address)

NEBRASKA EROSION AND SEDIMENT CONTROL ACT COMPLAINT FORM

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Filed in the office of the

Blair

Natural Resources District

At 11 a.m. on

November 23, 2019.

COMPLAINT NO. W2-19(B)

1. Name and address of the person filing this complaint.

Name: Baird Holm LLP on behalf of Casey and Rod Scheer

Address: 3510 Golden Eagle Circle

City: Blair State: Nebraska Zip Code: 68008

Telephone Number: (402) 636-8266

Cell phone: () _____

Email: vsilke@bairdholm.com

2. Authority to file complaint. (Check one)

☒ Owner or operator of land being damaged by sediment.

☐ Authorized representative of a state agency or political subdivision whose roads or other public facilities are being damaged by sediment.

(_____)
identify

☐ Authorized representative of a state agency or political subdivision with responsibility for water quality maintenance.

(_____)
identify

☐ Authorized staff member or other agency of the natural resources district.

3. Sediment damage.

A. Location of the land or facility being damaged by excessive erosion (X) and the land believed to be the source of the sediment damage (O).

COUNTY _____

Twp _____ Rge _____

	Section SAMPLE	

COUNTY Washington

Twp 17 Rge 12

	<div style="position: relative; height: 100px;"> <div style="position: absolute; top: 0; right: 0;">O</div> <div style="position: absolute; bottom: 0; left: 0;">X</div> <div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%);"> 19 Section </div> </div>	

O= Michael and Lori
Cornwell Property,
Parcel No. 890009142

X = Casey and Rod
Scheer Property, Parcel
No. 890083244



Continued

B. Identify stream or lake whose quality is being impaired including location of upper and lower points of alleged impairment.

C. Description of the nature and extent of the sediment damage or water quality impairment. Include description of physical effects and any economic losses which have occurred.

Erosion and sedimentation from the Cornwell property to the north has and continues to cause damage to our grass turf, playground equipment, landscaping, and paved areas. Economic losses include costs to repair previously mentioned damages, and loss of value of real and personal property. See attached photos.

We have repeatedly contacted NRD staff to work out a cooperative solution, and to date, the Cornwells refuse to engage. We believe that a formal complaint is the only way to resolve the erosion and sedimentation damage on our property caused by the Cornwells' farming and land management practices and we appreciate the NRD's assistance in resolving the Cornwells' continued violations of the Nebraska Erosion and Sediment Control Act, Neb. Rev. Stat. 2-4601 *et seq.*, and the NRD's rules.

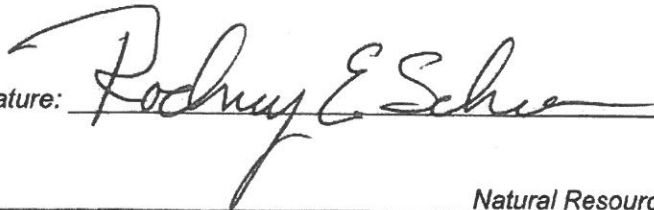
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5. I certify that the information contained in this complaint is, to the best of my knowledge and belief, true and accurate.

Date: Nov. 17, 2019

Signature: _____



Return to: _____ Natural Resources District

(Address)