

SOUND AGRICULTURAL PRACTICE
Opinion Number 19-1

SUBJECT: Request for an Opinion Pursuant to Section 308 of the Agriculture and Markets Law as to the soundness of the use of land for the production of field crops in relation to stormwater drainage within the Town of Royalton, Niagara County, New York.

REQUESTOR: Steven Ohol
6307 Dewhurst Road
Lockport, NY 14094

Preliminary Statement

On June 16, 2017, the Department received a request from Steven Ohol for an Opinion pursuant to Section 308 of the Agriculture and Markets Law concerning the soundness of agricultural practices related to stormwater runoff from fields used to grow agricultural crops.

The Department conducted a sound agricultural practice review concerning Mr. Ohol's current agricultural practices employed in relation to existing drainage infrastructure, and has concluded that the agricultural practices conducted on the affected parcels do not contribute to the drainage issues experienced.

The following information and findings have been considered in reaching this Opinion.

Information Considered in Support of the Opinion

THE FARM

1. Steven Ohol produces soybeans and wheat on farmland which he owns and rents. The owned land consists of about 29.66 acres, located within Niagara County Agricultural District No. 1 and receives an agricultural assessment. Niagara County tax records indicate that this property is improved by an actively used barn and residence and consists of approximately 7 acres of woodland, 17.3 acres of cropland and about 0.6 acres of land associated with a pond. A portion of this parcel is designated as a State regulated wetland (DEC ID No. WO-1).
2. Mr. Ohol leases a 11.6 acre parcel from Thomas Stockwell to produce field crops. This parcel lies adjacent to, and directly south of, Mr. Ohol's parcel. This parcel is located within Niagara County Agricultural District No. 1 and receives an agricultural assessment.
3. At one time, the Ohol and Stockwell properties were part of a larger parcel of land used for the production of crops. Mr. Ohol informed Department staff that his family owned the property for about 90 years. His parents subdivided the property

associated with the farm and sold off lots. Mr. Ohol stated that he purchased his property in 1998, reconstructed the barn and built his residence in 2000.

4. In May 2017, Mr. Ohol received a letter from Phillip A. Oswald, Esq., an attorney representing a downslope neighbor, demanding remedial measures be taken to ameliorate damage to his client's property from upslope drainage. (**APPENDIX A**).
5. After receiving the letter from Mr. Oswald, Mr. Ohol requested an opinion pursuant to Agriculture and Markets Law Section 308. Mr. Ohol's request concerns the soundness of agricultural practices conducted by him on his farm fields located in the Town of Royalton, Niagara County, New York relating to stormwater runoff and drainage necessary to grow agricultural crops.
6. Mr. Ohol indicated that flooding has been a long-standing issue in the area. The drainage ditch (highlighted in yellow), the subject of this review, is on the east end of his property and drains property north, east and west of the ditch. (**APPENDIX B**).
7. Dr. Robert Somers, Manager of the Department's Farmland Protection Unit, and Michael Saviola, Department Environmental Analyst, conducted a field investigation on June 27, 2017. At the time of this field visit, Department staff viewed land owned and rented by Mr. Ohol. The rented land (owned by Mr. Stockwell) is adjacent to, and south of, Mr. Ohol's property. Dr. Somers and Mr. Saviola also examined a portion of the ditch located south of the Stockwell property that has grown back to successional vegetation and grass.
8. On March 26, 2018, Dr. Somers revisited the Ohol property. Dr. Somers looked at the ditching under early spring conditions to determine if the surface water on property farmed by Mr. Ohol was being moved off of the property and into existing drainage ditches. Mr. Ohol stated that in 2017 he cleaned out existing ditching to facilitate the capture and movement of surface water off of his owned and rented agricultural fields. Department staff observed that it appeared that the slope of the land and the use of ditching along the eastern portion of the property was working as intended and very little standing water, outside of depressions, drainage ditches and drainageways, was on the surface of the soil.
9. On March 26, 2018, Dr. Somers also met with Patrick Wagner, the downslope neighbor alleging damage from the drainage. Both parcels farmed by Mr. Ohol are located north of Mr. Wagner's property. Dr. Somers observed the area on Mr. Wagner's farm where the drainage ditch bisects his property. Dr. Somers observed large rocks in a portion of the ditch. Mr. Wagner stated that he did this to create a barrier to impede the flow of water onto his property and create a drivable lane that would accommodate the movement of some of his farm equipment onto the

remainder of his farmland. Mr. Wagner stated that the drop in elevation from Mr. Ohol's property to his property is approximately 18 inches. Mr. Wagner stated that much of the erosional issues downstream from his lane started after the Town of Royalton cleaned out the ditch in 2004. Mr. Wagner indicated that the Town also installed a 12 inch culvert at the same time to allow access to his property on the other side of the ditch. Dr. Somers observed that the ditch that divides the Wagner property is approximately 25' wide and 6' to 10' deep. Mr. Wagner stated that at one time, he used to be able to cross the entire length of the stream with a tractor and/or 4-wheeler.

COMMENTS FROM ADJOINING LANDOWNERS

10. Dr. Somers sent a letter, dated July 14, 2017, to adjacent landowners that surround property owned and rented by Steven Ohol located within the Town of Royalton. The letter stated that Mr. Ohol requested a Sound Agricultural Practice Opinion pursuant to Section 308 of the Agriculture and Markets Law, related to a natural drainage way on the farm and the water's southerly migration into Mudd Creek. The letter invited the adjacent landowners to submit written comments on or before August 4, 2017.
11. On July 25, 2017, Phillip A. Oswald, an attorney representing some of the adjacent landowners sought and was granted a thirty-day extension to submit information. No further information or documentation has been submitted by Mr. Oswald on behalf of these owners.
12. On August 16, 2017, the Department received a letter from Bruce and Molly McGirr.¹ Mrs. McGirr said that several years ago, she and Mr. McGirr signed Mr. Ohol's petition to have the Town maintain the ditch at the east end of the property. They indicated that the ditch was about one foot deep and the Town improved the ditch so that it was three to four feet deep and six feet wide. A culvert pipe was installed on a portion of the property by the Town. They indicated that Mr. Ohol has done a lot of grading and trucking in of dirt and it seems that the amount of water coming into the ditch has changed. They stated that "...the town ditching staff [said] that previously water north of [their] property flowed north and water on [their] property flowed south. Now it seems all water is flowing south." They indicated that last spring water exceeded the ditch capacity, overflowed the culvert and caused erosion down the line. They surmised that the volume of water passing through the McGirr property has increased over the past few years.

¹ The McGirr property is downslope of Ohol's property and is adjacent to and south of Stockwell's property – See **APPENDIX B**

13. On September 5, 2017, the Department received a letter from Carol Kauschinger, the next landowner downslope from the McGirr property.² Ms. Kauschinger stated that she does not know the history of the ditch, but Mr. Ohol trespassed on their property to mow the ditch to ensure that water keeps flowing through the channel. She stated that she attended a town meeting where the drainage issue was discussed. She stated that a town employee stated that alterations have been made to change the water flow. (No explanation for this statement was provided in her letter).
14. On August 31, 2017, the Department received a letter from Patrick Wagner, the next downslope neighbor. Mr. Wagner stated that Mr. Ohol is conducting farming operations without any regard to the damaging effect the diverted water is having on neighboring properties. Mr. Wagner contends that Mr. Ohol has cleared land that was brush, placed the land in production and diverted more and more water into the ditch. He stated that Mr. Ohol graded the land so that the water flows toward the eastern most drainage ditch. Mr. Wagner indicated that a Town employee stated that due to a change in grades by Mr. Ohol, water that flowed east and then north was diverted into the ditch in question and ultimately onto his property.

Mr. Wagner stated that the Town increased the depth of the ditch at Mr. Ohol's request and due to land use changes, the ditch in question cannot handle the water after a heavy rain. The Town installed a culvert on Mr. Wagner's property so he would have access to his farmland east of the drain, but the culvert washed out and extensive erosion has occurred. Mr. Wagner stated that the ditch across his property is now five to six feet deep and has increased in width. Mr. Wagner stated that Mr. Ohol's farming practices are not a nuisance, but drainage onto property not owned by him is the problem. He states that initially he agreed to Mr. Ohol's installation of the ditch in question, but he has since revoked permission to use the ditch to transport his (Ohol's) water to Mudd Creek. Mr. Wagner surmised that this use of his property constitutes trespass.

DRAINAGE AND STORMWATER ISSUES

15. By letter dated May 30, 2017 (**APPENDIX A**) Phillip A. Oswald, Esq., an attorney representing Patrick Wagner, contends that "...Mr. Patrick Wagner...[intends] to pursue legal actions...for your [Mr. Ohol's] continued diversion of drainage onto his property that is located at 6331 Dewhirst Road." Mr. Oswald alleges that due to increased farming activities on the Ohol and Stockwell properties, the capacity of the ditch to convey water has been exceeded and has caused Mr. Wagner's property to

² The Kauschinger property is downslope of Ohol's property and is adjacent to and south of McGirr's property and parallel to and north of the Wagner property – See **APPENDIX B**

erode. He further states that Mr. Wagner is unable to access a portion of his property due to damages caused by the water flowing through the ditch.

16. According to the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) soil survey for Niagara County, a majority of the soils on the Ohol and Stockwell parcels, consists of Hilton silt loam, Ovid silt loam, Canandaigua silty clay loam, and Rhinebeck silt loam (**APPENDIX C**)³. Except for the Hilton series, these soils are nearly level, somewhat to very poorly drained and have high water tables due to their clay dominated subsoil. The USDA states that farm development is limited by natural drainage and slow permeability. The survey states that farm development is limited without group drainage projects that provide suitable outlets for the surface water.
17. Aerial imagery of the ditch (**APPENDIX D**) depicts the drainageway traversing the Wagner property in 1938, 1951, 1995, 2008 and 2016. In all images, it clearly shows that the drainageway is present. Due to the resolution of the imagery, it is difficult to tell the depth of the ditch over time. It appears, however, that the lane that parallels the northern edge of the property, where the ditch crosses from the Kauschinger parcel to the Wagner parcel, a culvert was present under the lane to accommodate farm traffic and access to the eastern portion of the Wagner property. Sometime between the October 14, 2016 acquisition of the newest image in the Appendix and the field review on March 26, 2018, the culvert was uprooted from the road. Increased rainfall intensity and the size of the culvert could have contributed to this phenomenon.⁴
18. In the May 31, 2017 letter, Mr. Oswald states that due to Mr. Ohol's increased farming activities, the amount of water leaving the property exceeds the capacity of the ditch, causing Mr. Wagner's property to erode. Mr. Oswald opines that Mr. Ohol is intentionally diverting drainage into and through the ditch causing damages to Mr. Wagner's property. He further contends that the Town was willing to install a larger drainage pipe in 2015, but Mr. Ohol refused to share in the cost of the pipe. Mr. Oswald demands that Mr. Ohol cease and desist using the ditch in any manner. Mr. Oswald stated that his client cancels any permission to use his property in any manner, including its use to transfer and divert drainage from the Ohol/Stockwell properties. Mr. Oswald demands that Mr. Ohol divert his water somewhere else or face legal action.

³ Soil Survey of Niagara County, New York. 1972. USDA Soil Conservation Service.

⁴ Tim Clark, Department Environmental Engineer, with the Division of Land and Water Resources, suggested that a 2-year storm would have a flow rate of 16 cubic feet per second (cfs), requiring a 24-inch culvert.

19. The image, labeled **APPENDIX B**, depicts the man-made channel/drainage ditch (highlighted in yellow), which is used to convey water from a 70+ acre watershed (**APPENDIX E**) in a southerly direction, across land owned by Mr. Wagner, to Mudd Creek. Water from seven property owners, including Mr. Ohol and Mr. Wagner, convey water into the channel, which eventually empties into Mudd Creek.
20. **APPENDIX F** contains a series of four aerial images as acquired by the Niagara County Highway Department (1938 image) and the U. S. Department of Agriculture (1951, 1995, and 2015 images). This imagery shows that the land uses have changed over time, but the same man-made channel/drainage ditch is clearly visible in every image, beginning with the oldest, 1938 image. It is unknown when the channel was constructed, but this ditch has been used for over 80 years to convey water from land within the watershed to Mudd Creek.
21. The 1951, 1995 and 2015 images also depict another drainage ditch to the west of, and parallel to, the disputed drainage channel. This drainageway also receives a portion of the surface and subsurface water within the watershed and conveys that water to Mudd Creek. The land within this region is fairly flat, consists of lake plain sediments, and is poorly drained. Artificial drainage and man-made channels move water to downslope positions, making the soils suitable for the production of agricultural crops. These man-made drainage facilities can also be viewed from a 2008 image acquired by the U.S. Geological Survey (USGS) and available on google earth (**APPENDIX G**).
22. The Town of Royalton Code recognizes the need to maintain drainage ditches within the Town and appropriately manage surface and some subsurface water on individual properties. Town of Royalton Code Chapter 55, "Drainage Systems," provides that it is the intent and "...finding of this Board that a viable drainage system in the Town of Royalton is necessary in order to protect the health and welfare of the citizens thereof, that because of the topography of the Town, it is imperative that natural drainage flows not be unduly tampered with, that man-made, Town-made, county-made drainage systems not be impeded or tampered with, and that culverts, storm drains, and other drainage amenities be protected, and to conform to Town requirements."
23. Mark Seider, Niagara County Soil and Water Conservation District Engineer, stated that generally, town highway departments in the county usually maintain drainage structures within their jurisdictional boundaries. Mr. Wagner and Mr. Ohol acknowledged that in the 2000's, the Town Highway Department dug out the ditch to improve water flow within the channel.

24. Department staff reviewed the four images contained in **APPENDIX F**, and concluded that almost all of the land within the watershed was used for the production of agricultural crops in 1938. In the 1951 image, the Ohol and Stockwell properties were being farmed as one unit and were probably part of the same parcel. The 1995 image shows that a new drainage ditch was constructed sometime between 1951 and 1995 behind the house now owned by the Kauschingers. The drainage ditch traverses that parcel of land in a west to east direction. The status of that ditch is unknown. Land currently owned by Stockwell, McGirr and Kauschinger partially reverted to woody vegetation as depicted in the 1995 image (**APPENDIX F**). This successional regrowth of woody vegetation is evident in the 2015 image for the McGirr and Kauschinger properties. Sometime between 2002 and 2006, the Stockwell property was cleared and placed back into agricultural production (**APPENDIX H**). The Thomas Stockwell parcel and the Steven Ohol parcel, as well as land north of these parcels, continue to be used for agricultural purposes.

ADDITIONAL INFORMATION

25. Agriculture and Markets Law (AML) §308(1) requires that the Commissioner consider whether an agricultural practice is conducted by a farm owner or operator as part of his or her participation in the Agricultural Environmental Management (AEM) Program as set forth in Agriculture and Markets Law Article 11-A. Mr. Ohol indicated that he is not a participant in AEM.
26. On August 4, 2017, Dr. Somers spoke with New York State Department of Environmental Conservation (NYSDEC) Senior Wetlands Ecologist Chuck Rosenberg about the Ohol property. Mr. Rosenberg stated that on July 22, 2016 and November 7, 2016, he visited the property with Environmental Conservation Officer (ECO) Roger Thompson based upon a complaint alleging that Mr. Ohol had filled in a south draining ditch in the vicinity of a State regulated wetland (Wetland ID WO-1). They observed recent spoil piles along the south side of the Ohol pond, small soil/brush piles and farm equipment within the wetland woodlot on the Ohol parcel. Between July 22, 2016 and November 7, 2016, ECO Thompson visited the property along with the Ohols and asked them to remove the farm equipment from the wetland and adjacent area and to remove one or more small piles of fill material. Mr. Rosenberg and Mr. Thompson on November 7, 2016 determined that the equipment and spoil material had been removed. Mr. Ohol was not issued a ticket for violating Environmental Conservation Law Article 24, but was given a verbal warning.
27. Heath Eisele, District Conservationist, USDA, NRCS, by e-mail dated April 4, 2018, informed Dr. Somers that he checked with the Lockport field office and the Farm

Service Agency (FSA); neither agency had a record of performing any drainage work on the Ohol or Wagner properties.

28. On November 16, 2018 Dr. Somers e-mailed the draft opinion to the Advisory Council on Agriculture to review. He requested that comments be received by the Department by December 3, 2018.
29. Dr. Somers received comments from two ACA members, within the comment period, supporting the Department's assessment and the proposed Opinion.
30. By e-mail dated November 20, 2018, Dr. Somers sent the draft opinion to Dr. Glenn Evans, Cornell University of College of Agriculture and Life Sciences, Greg Kist of the United States Department of Agriculture Natural Resource Conservation Service, and Mark Seider, of Niagara County Soil and Water Conservation District. Comments were requested by December 7, 2018, only Dr. Evans provided comments.
31. By correspondence dated December 5, 2018, Dr. Evans requested further information to support the Opinion, including details related to the use and construction of the pond; location of, or any agricultural restrictions for, the wetlands; concerns about on-site grading and filling; and cropping history.
32. By e-mail dated December 12, 2018, Dr. Somers responded to Dr. Evans's comments and addressed field drainage, grading and fill deposition concerns. The Ohol property drains in two directions; to the west towards Dewirst Road and south towards Mudd Creek. The area where Mr. Ohol added fill is in a separate sub-watershed and drains west.
33. Dr. Somers consulted with Tim Clark, Department Environmental Engineer, about concerns raised relating to increased drainage from the pond. Based upon a review of field reports and images, Mr. Clark determined that the pond is a groundwater influenced structure, and very little drainage from the surrounding property enters the pond. He indicated that ponds typically reduce the peak flows out of a drainage areas.
34. Mr. Ohol informed Dr. Somers that the excavation of the pond pre-dated his 1998 purchase of the land. However, he received permission from the Town prior to his excavation activities, and he used fill for his residence, located in a different sub-watershed, which drains west towards Dewhirst Road.

35. Dr. Somers forwarded a New York State Department of Environmental Conservation (DEC) field report to Dr. Evans to address wetland concerns. A DEC biologist conducted a field investigation of Mr. Ohol's property and no violations were issued.
36. Dr. Somers contacted the United States Department of Agriculture Farm Service Agency (USDA FSA) office in an effort to ascertain the age of the subject drainage ditch and a description of need and design. Historically, USDA administered farm drainage programs and in this portion of Town surface drainage ditching is necessary to make land suitable for farming.
37. Dr. Somers contacted Mr. Ohol for a more detailed cropping history. According to Mr. Ohol, the farm was in hay production for about ten years at the time he purchased it and he leased the land to another farmer for corn production. He indicated that he has planted soybeans followed by wheat for the last four years; wheat is the only cover crop during the winter.
38. By e-mail dated January 18, 2019, Dr. Evans informed Dr. Somers that the additional information that he provided addressed all of his concerns and that he fully supported the Department's findings.

Findings

Based upon the facts, information and circumstances described above, and in consultation with the Advisory Council on Agriculture, Cornell University College of Agriculture and Life Sciences, the USDA Natural Resources Conservation Service, Niagara County Soil and Water Conservation District and the Sound Agricultural Practice Guidelines⁵ by which agricultural practices are evaluated, I find the following:

1. The Department has found no evidence or received other information indicating that Steven Ohol is in violation of federal, state or local law resulting from the current use of his farm land for agricultural purposes, or the current drainage practices employed.
2. Mr. Wagner alleges that Mr. Ohol's current agricultural use of the land has caused flood damage on his property. Other neighboring landowners believe that the amount of water that enters the drainage ditch has increased in volume. However, the

⁵ On November 1, 1993, the NYS Advisory Council on Agriculture published its report entitled *Protecting the Right of New York Farmers to Engage in Sound Agricultural Practices*. The Council developed guidelines to assist the Commissioner of the Department of Agriculture and Markets in determining what is sound pursuant to Section 308 of the Agriculture and Markets Law. The Guidelines state that the practice 1) should be legal; 2) should not cause bodily harm or property damage off the farm; 3) should achieve the results intended in a reasonable and supportable way; and 4) should be necessary. The sound agricultural practices guidelines recommended by the Advisory Council on Agriculture are given significant weight in assessing agricultural practices.


Department has found no evidence of any specific agricultural or water management practices employed by Mr. Ohol causally related to the alleged property damage off the farm.

3. The current use of the land for crop production has achieved results in a reasonable and supportable way. Surface drainage and the existence and maintenance of man-made drainage channels is a common use and practice in Niagara County. The Town of Royalton adopted Zoning Code Section 55 to address drainage. Department staff's review of aerial imagery of the immediate area indicates that drainage ditches have been constructed on neighboring properties to remove excess surface water so that agricultural crops can be planted. The man-made channel/drainage ditch has been in use for over 80 years to convey water from land within the watershed to Mudd Creek. The installation of an under-sized culvert, a large rock barrier and increased rainfall intensity could have contributed to the damage complained of.
4. It is necessary for Mr. Ohol to continue to use the established drainage system to move water from his crop fields so that he can continue to effectively grow crops on his fields. The drainage system has been in place for 80+ years and has supported crop production. The USDA NRCS Niagara County soil survey provides that the soils are, for the most part, nearly level, somewhat to very poorly drained, have water tables that are at the surface to 18 inches deep and have slow permeability within their subsoil. The survey states that farm development is limited by natural drainage and slow permeability. The survey further states that farm development is limited without group drainage projects that provide suitable outlets for the surface water. Based upon a review of surrounding properties, it is evident that drainage ditches have been constructed and are used to drain off surface water so that the land is suitable for the planting of crops.

Conclusion

Based on the information and findings set forth above and in accordance with Section 308 of the Agriculture and Markets Law, I conclude that, from a water management perspective, the use of land for agricultural production and the movement of water from the cultivated fields, as described above, is sound.

3/8/19
Date



RICHARD A. BALL
Commissioner of Agriculture and
Markets



**RUPP
BAASE
PFALZGRAF
CUNNINGHAM LLC
ATTORNEYS**

1600 Liberty Building, 424 Main Street, Buffalo, NY 14202
P 716.854.3400 • www.ruppbabase.com

PHILLIP A. OSWALD
oswald@ruppbabase.com

May 30, 2017

VIA CERTIFIED MAIL

Mr. Steve Ohol
6307 Dewhurst Road
Lockport, NY 14094

Mr. Thomas Stockwell
6311 Dewhurst Road
Lockport, NY 14094

Dear Mr. Ohol and Mr. Stockwell,

Re: **Cease and desist drainage intrusion**
6307, 6311 Dewhurst Road, Lockport, NY 14094
Our File No.: 3814.21058

This office has been retained by Mr. Patrick Wagner to pursue legal action against you for your continued diversion of drainage onto his property that is located at 6331 Dewhurst Road. As you know, for several years, Mr. Wagner allowed you to use the drainage ditch that had been dug out and installed by the Town of Royalton in approximately 2002 to divert drainage from your agricultural operations into Mud Creek, which runs through Mr. Wagner's property. This ditch runs from your properties to and through Mr. Wagner's property.

However, due to your increased farming activities on both of your properties, you are exceeding the capacity of that ditch and causing it to erode Mr. Wagner's property. In addition to substantial erosion, your conduct in this respect inhibits Mr. Wagner's ability to access portions of his property, disrupts his use of his property, completely prevents him from using certain portions of his property at times, and causes him other damages. Moreover, you have continued to divert drainage into and through the ditch with full knowledge that it is causing these damages to Mr. Wagner. As you know, Mr. Wagner tried to arrange for a joint solution to the problem in 2015 by having the Town install a larger drainage pipe. Even though you initially agreed to this proposed solution, you then reneged on it and refused to share in the costs for it.

Innovation in Practice

Rochester 300 Powers Building, 16 West Main Street, Rochester, NY 14614 • P 585.381.3400
Lockport 172 East Avenue, Lockport, NY 14094 • P 716.438.0488
Jamestown 111 W 2nd Street, Suite 1100, Jamestown, NY 14701 • P 716.664.2967

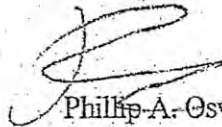
May 30, 2017

Page 2

Accordingly, please consider this letter as **a formal demand to cease and desist** using the ditch and Mr. Wagner's property in any manner, including, but not limited to, ceasing the intrusion of water from your properties and your agricultural operations onto and through Mr. Wagner's property. In other words Mr. Wagner is **revoking and cancelling any permission** to use his property in any manner, including, but not limited to, his permission to use his property to divert and transfer drainage from your properties and your agricultural operations. Since Mr. Wagner now has revoked his permission to use his private property to divert your drainage, you have no right whatsoever to use his property to drain the water. Should you fail to comply with this demand and should you fail to construct an alternative drainage system that drains your properties without using Mr. Wagner's property, Mr. Wagner has authorized me to pursue litigation against you.

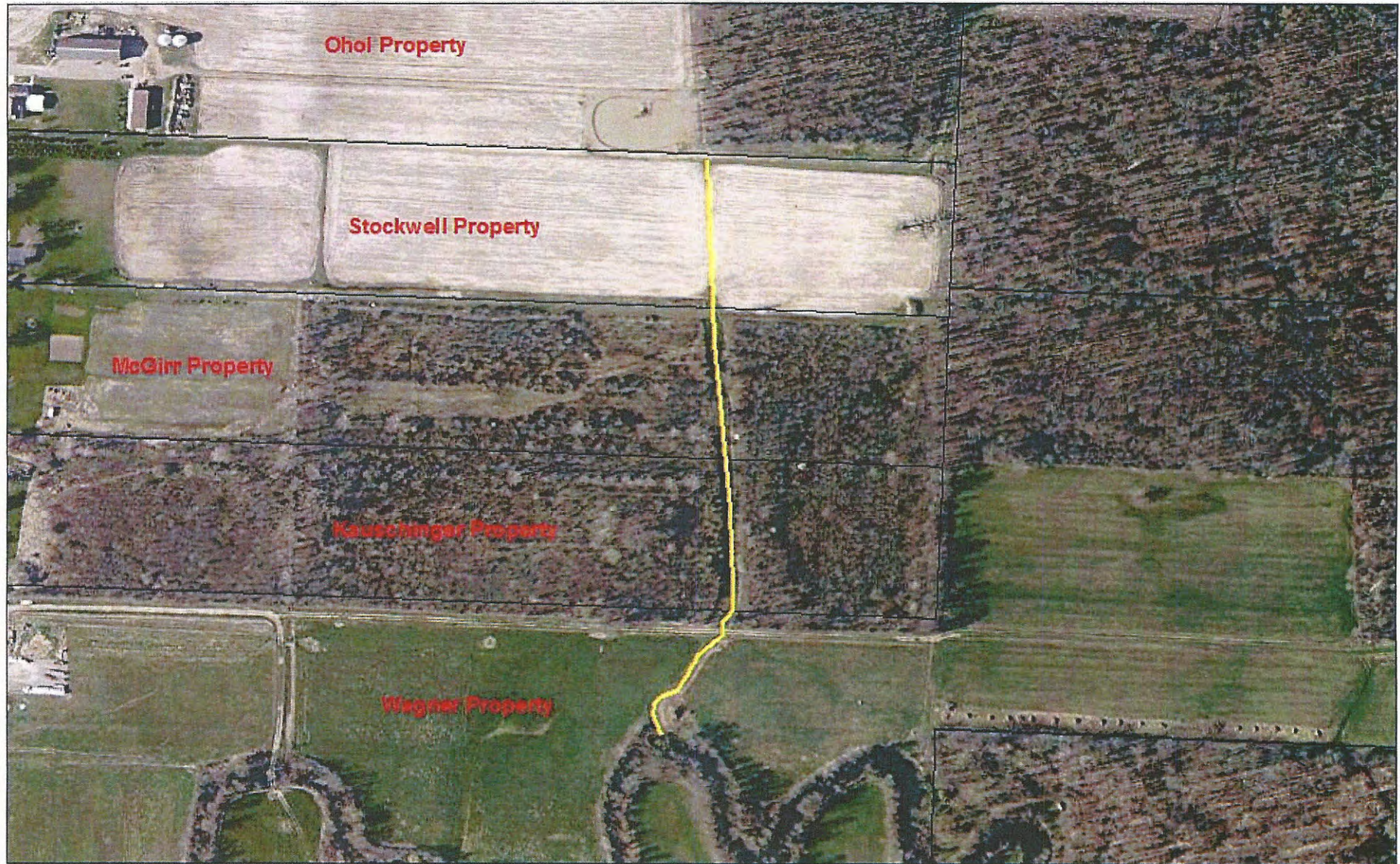
If I have not received confirmation from you that you are constructing an alternative drainage system and if you have not ceased using the ditch on or before **July 1, 2017**, this office will commence litigation against you. Lastly, please also consider this letter as a formal demand that you preserve any and all documents — including, but not limited to, electronic documents — that concern your property, your farming activities, your use of Mr. Wagner's property, and/or the ditch. If you have an attorney, please provide this letter to him or her immediately. Your attorney is free to contact me at the phone number or email address that is listed above.

Respectfully,

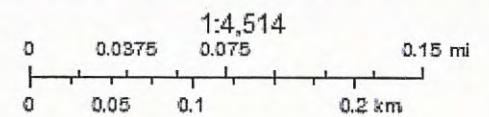


Phillip A. Oswald

EXHIBIT B
Subject Drainage Ditch



☐ Niagara County Parcel Boundaries



Soil Map—Niagara County Area, New York



Soil Map may not be valid at this scale.

78° 33' 31\"



Map Scale: 1:5,970 if printed on A portrait (8.5\"

0 50 100 200 300 Meters
0 250 500 1000 1500 Feet

Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 17N WGS84




Natural Resources
Conservation Service

Web Soil Survey
National Cooperative Soil Survey




7/9/2018
Page 1 of 3

MAP LEGEND

Area of Interest (AOI)

-  Area of Interest (AOI)

Soils


-  Soil Map Unit Polygons
-  Soil Map Unit Lines
-  Soil Map Unit Points

Special Point Features

-  Blowout
-  Borrow Pit
-  Clay Spot
-  Closed Depression
-  Gravel Pit
-  Gravelly Spot
-  Landfill
-  Lava Flow
-  Marsh or swamp
-  Mine or Quarry
-  Miscellaneous Water
-  Perennial Water
-  Rock Outcrop
-  Saline Spot
-  Sandy Spot
-  Severely Eroded Spot
-  Sinkhole
-  Slide or Slip
-  Sodic Spot

-  Spoil Area
-  Stony Spot
-  Very Stony Spot
-  Wet Spot
-  Other
-  Special Line Features


Water Features

-  Streams and Canals

Transportation

-  Rails
-  Interstate Highways
-  US Routes
-  Major Roads
-  Local Roads

Background

-  Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:15,800.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Niagara County Area, New York
Survey Area Data: Version 16, Feb 24, 2018

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Dec 31, 2009—Oct 18, 2017

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

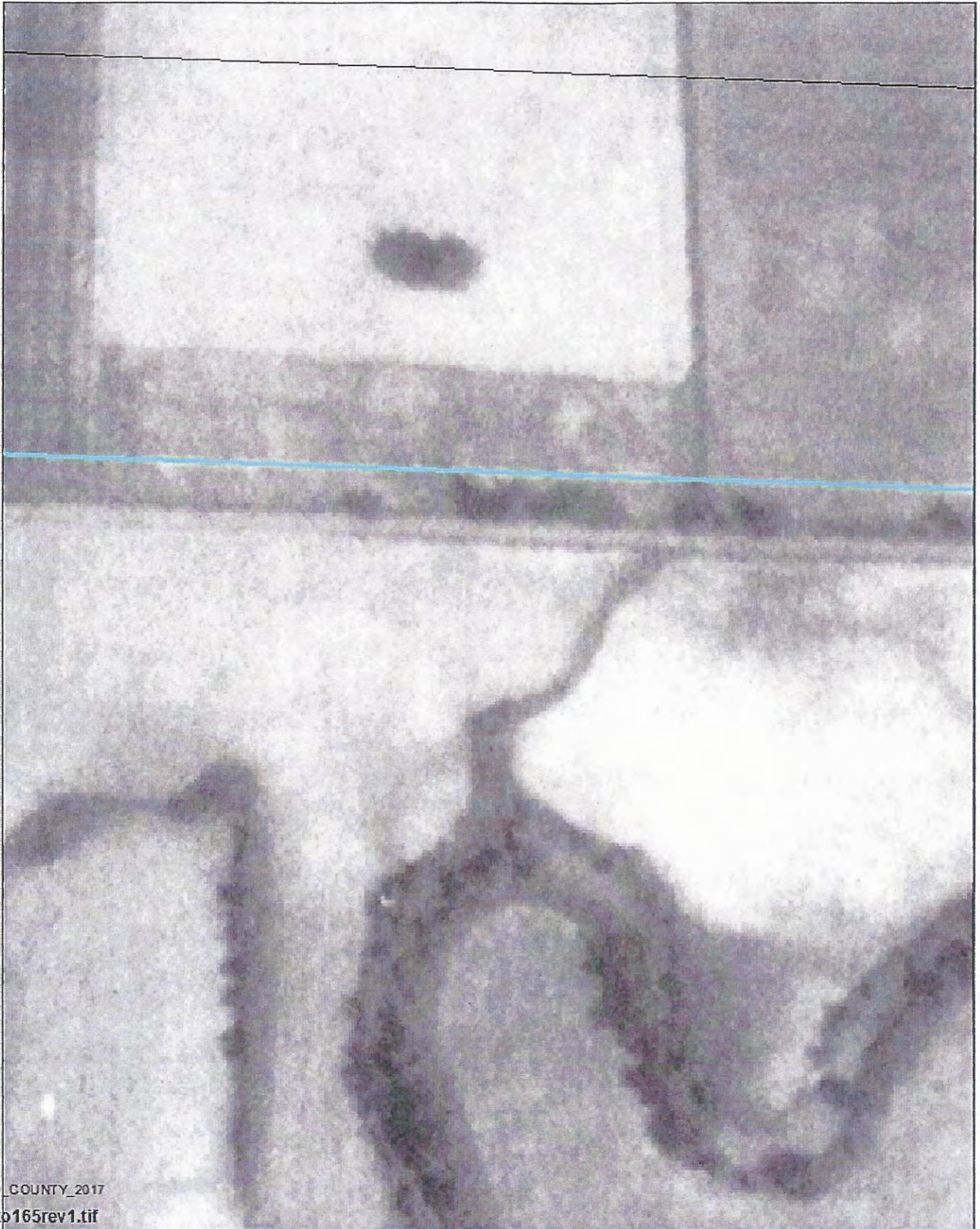
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
Cb	Canandaigua silty clay loam	16.6	11.6%
Ha	Hamlin silt loam	24.2	17.1%
HIA	Hilton silt loam, 0 to 3 percent slopes	11.4	8.0%
OnB	Ontario loam, 3 to 8 percent slopes	6.3	4.5%
OvA	Ovid silt loam, 0 to 2 percent slopes	12.2	8.6%
RbA	Rhinebeck silt loam, 0 to 2 percent slopes	2.9	2.0%
RhA	Rhinebeck silty clay loam, sandy substratum, 0 to 2 percent slopes	62.1	43.7%
RhB	Rhinebeck silty clay loam, sandy substratum, 2 to 6 percent slopes	6.4	4.5%
Totals for Area of Interest		142.2	100.0%



EXHIBIT D

Wagner 6331 Dewhirst Road
Town of Royalton

1938 Aerial



_legend

NAAC COUNTY_2017

1938_photo165rev1.tif

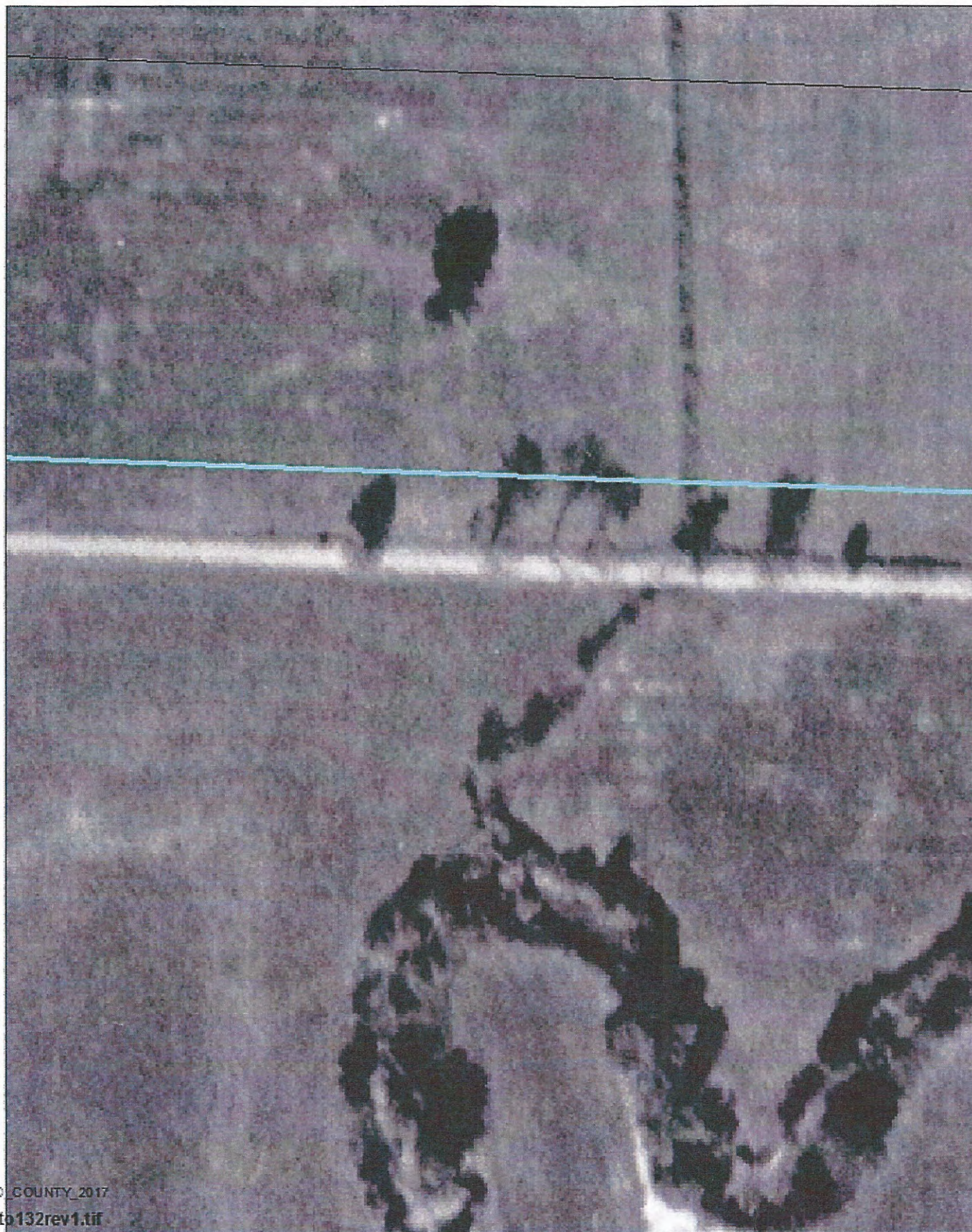
Value
- High : 224
- Low : 8

0 50 100 200 300 400
Feet



Wagner 6331 Dewhirst Road
Town of Royalton

1951 Aerial



Legend

NIACO COUNTY_2017
1951_photo132rev1.tif

Value
High : 241
Low : 7

0 50 100 200 300 400
Feet




Wagner 6331 Dewhirst Road
Town of Royalton

1995 Aerial



0 50 100 200 300 400
Feet

_legend

 NACO_COUNTY_2017

7/2009

Image U.S. Geological Survey

Google

1995

Imagery Date: 10/6/2008 43°06'50.37" N 78°03'05.28" W elev. 597 ft



Goog

Imagery Date: 10/14/2016 4306150.37° N 7823105.28° W elev. 507 ft

10/2016

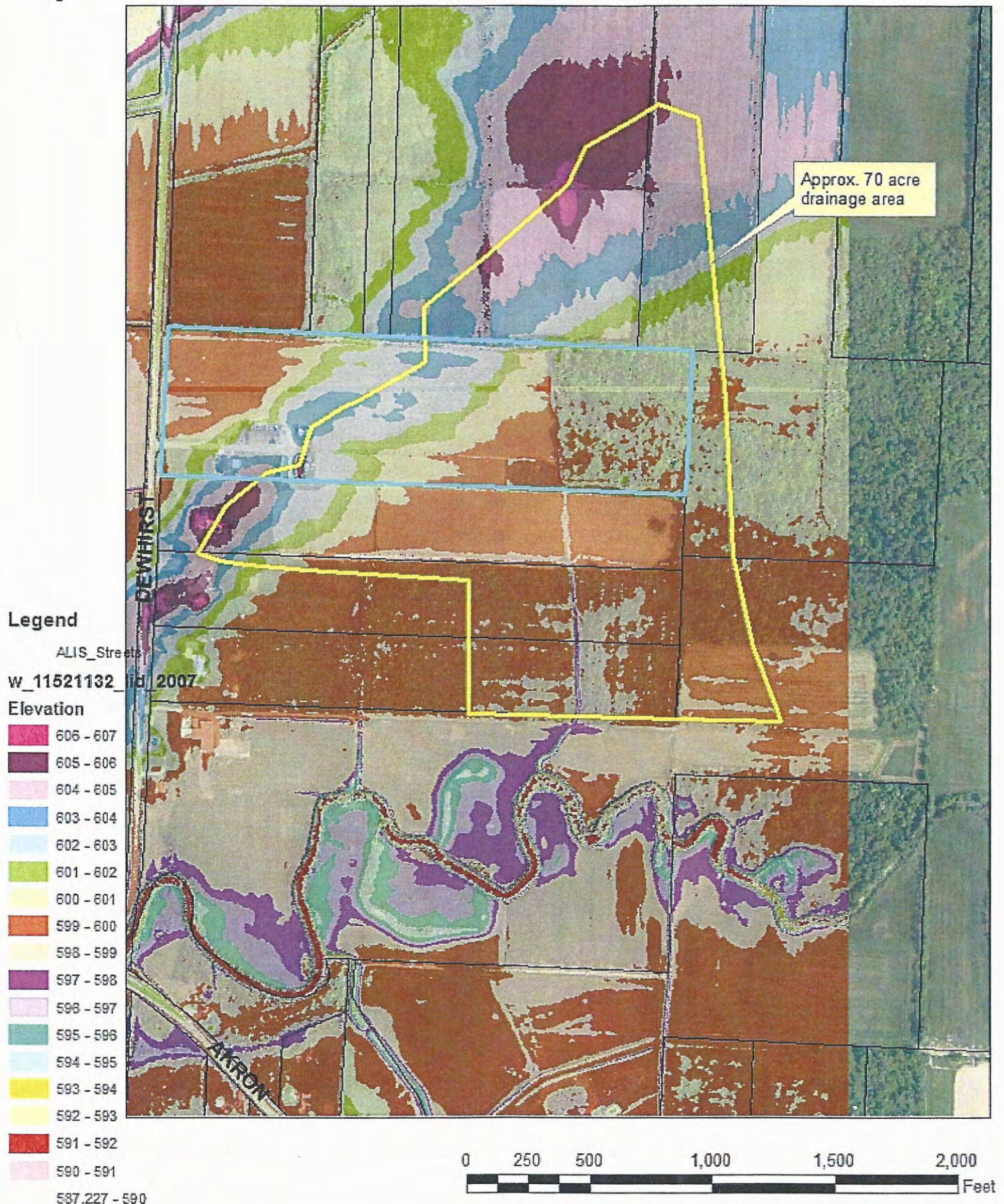
1995



Ohol 6307 Dewhirst Road
Town of Royalton

EXHIBIT E

2015 Aerial





Ohol 6307 Dewhirst Road
Town of Royalton

EXHIBIT F

1938 Aerial



Legend

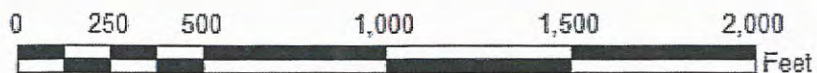
ALIS_Streets

1938_photo165rev1.tif

Value

High : 224

Low : 8





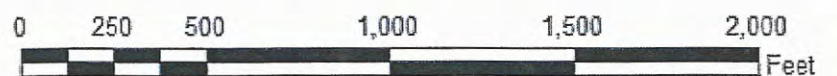
Ohol 6307 Dewhurst Road
Town of Royalton

1951 Aerial



Legend

ALIS_Streets
1951_photo132rev1.tif
Value
- High : 241
- Low : 7





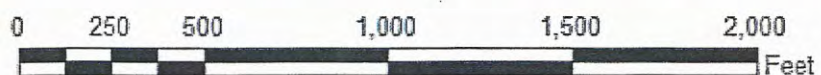
Ohol 6307 Dewhirst Road
Town of Royalton

1995 Aerial



Legend

ALIS_Streets





Ohol 6307 Dewhirst Road
Town of Royalton

2015 Aerial



Legend

ALIS_Streets



EXHIBIT G

Google

6307 Dewhirst Rd.

Dewhirst Rd

Image U.S. Geological Survey

Grover Rd

Akron Rd

93

108

4995

Imagery Date: 10/6/2018 48°06'50.28" N 78°03'35.67" W elev. 599.6



2002 image

8.5576 Long/Lat ▼
0.152

150 300ft

2006 image



-78.5563
23.1161

Long/Lat v

150

300ft