

## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Scott Hassett, Secretary  
Ronald W. Kazmierczak, Regional Director

Northeast Region Headquarters  
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Green Bay, Wisconsin 54307-0448  
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October 25, 2005

BRRTS #: 02-08-281506

TRC Environmental Corporation  
Attn. Martina Schlauch Jones, P.E.  
10 South Riverside Plaza  
Suite 1770  
Chicago, Illinois 60606-3807

**Subject:** Liability Clarifications for Multiple Properties in the Hayton Area Remediation Project, Impacted by Soil and Sediment Contamination Migrating from an Off-site Source

Dear Ms. Schlauch Jones:

### Purpose

The Department of Natural Resources ("the Department") has recently reviewed your request for a liability clarification letter for properties located along Jordan Creek, Pine Creek and the Hayton Millpond downstream of storm sewer at Taft Avenue in New Holstein, Calumet County, Wisconsin (hereafter referred to in this letter as the "Properties" or a single "Property"). As you are aware, Wisconsin's Hazardous Substance Spill Law, s. 292.11, Wis. Stats., makes persons who possess (i.e., own) or control a discharge of a hazardous substance responsible for conducting an investigation and cleanup of the contamination. Because of this concern, you have requested that the Department determine whether or not the owners of the Properties would be held liable for any hazardous substances in the soil and sediment that you believe have migrated on to the Properties from the Tecumseh Products Company. Please refer to the attached maps in Appendix A for the general location of the impacted Properties.

### Request

On September 13, 2005, you have requested clarification as to whether or not the owners of the Properties are eligible for the protections offered by the Spill Law's off-site discharge liability exemption, in s. 292.13, Wis. Stats.

With the creation of the off-site exemption in s. 292.13, Wis. Stats., the Legislature has limited the environmental liability of a person in possession (i.e., who owns a property) or control of a property affected by the discharge of a hazardous substance, when the discharge originates from an off-site source, if the conditions listed in the statute are satisfied. The maps in Appendix A were submitted with the request. Those areas shaded in gray are the Properties impacted by the hazardous substance. Additional information was then requested and received by the Department.

In response, the Department is providing you with a liability clarification letter, under s. 292.55(1)(d), Wis. Stats., that should explain the general environmental liability of the owners of Properties that are impacted.

### **Summary of Environmental Conditions**

Based upon the Department's review of the information from the reports listed below and on file information, it is our understanding that the polychlorinated biphenyl (PCB) contamination detected in the soil and sediment on the Properties originated from Tecumseh Products Company, 1604 Michigan Avenue, New Holstein, Wisconsin, via the stormwater outlet at Taft Avenue. It is the Department's understanding that the PCB contamination migrated by way of the drainage ditches to contiguous properties located downstream of the Taft Avenue stormwater outlet.

Figures showing the sample locations were taken from the following reports:

Report 1 – *“HARP OU1/Segment 7 and OU2/Upper Remedial Documentation Report”*, January 10, 2005. Earth Tech, Inc. and Ann Arbor Technical Services, Inc.

Report 2 – *“Technical Memorandum for HARP OU2/Lower, Reach F, Forested Wetland Overbank and In-Channel Preliminary Sampling – Spring 2003 and Fall 2004”*, March 23, 2005. Ann Arbor Technical Services, Inc. and Earth Tech, Inc., submitted under cover of TRC Environmental Corporation.

Report 3 – *“HARP OU2/Lower and OU3 Sampling and Analysis Plan”*, June 29, 2005. Ann Arbor Technical Services, Inc. and Earth Tech, Inc., submitted under cover of TRC Environmental Corporation.

Report 4 – *“HARP OU4 Sampling and Analysis Plan,”* May 4, 2005. Ann Arbor Technical Services, Inc. and Earth Tech, Inc., submitted under cover of TRC Environmental Corporation.

### **Liability Determinations**

Wisconsin's statutes include an “off-site exemption,” in s. 292.13, Wis. Stats., that limits the liability of a property owner. A person who meets all the conditions of the off-site exemption is not responsible for investigating and cleaning up environmental contamination that migrates onto his or her property from a neighboring property.

In particular, the Department believes that the environmental contamination is originating from Tecumseh Products Company via the stormwater outlet at Taft Avenue. As such, we do not anticipate holding any individual owners of the affected off-site Properties responsible for investigation and clean up of the PCB contamination that has migrated by water and deposited into the soil and sediment on the Properties. This assurance is conditioned on satisfying the off-site exemption criteria in s. 292.13, Wis. Stats., which include:

1. The hazardous substance discharges originated from a source on property that is not possessed or controlled by the person who owns one of the Properties.
2. The Property owner did not possess or control the hazardous substance on the property on which the discharge originated.
3. An investigation or other information has been submitted to the Department that is adequate to substantiate criteria (1) and (2), listed above.
4. The Property owner did not cause the discharge.
5. The facts upon which the Department based its determination are accurate and do not change.
6. The Property owner agrees to allow the following persons to enter the Property to take action to respond to the discharge: the Department and its authorized representatives; any party that possessed or controlled the hazardous substance or caused the discharge; and any consultant or contractor of such a party.
7. The Property Owner agrees to avoid any interference with actions undertaken to respond to the discharge and to avoid actions that worsen the discharge.
8. With respect to soil and sediment contamination only, the Property Owner agrees to take one or more specified actions directed by the Department, if the Department determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment, after the Department has made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge.
9. The Property Owner agrees to any other conditions that the Department determines are reasonable and necessary to ensure that the Department and the responsible party can adequately respond to the discharge.

If the criteria for the off-site exemption are met by an individual Property owner in the impacted area, then the Property owner would have no responsibility to investigate and cleanup the soil and sediment contamination that has migrated onto the Property. On the other hand, if a Property owner fails to satisfy one or more of the exemption criteria, such as refusing to allow the Department access to the Property to respond to the environmental contamination, then that individual Property owner would no longer be eligible for the protections of the off-site exemption. **Thus, it is very important that the owners of Properties in the impacted area cooperate with the Department and responsible party to ensure that we can adequately respond to the hazardous substance discharges that have migrated onto those Properties.**

If an owner of one of the Properties in the impacted area would like a property-specific letter from the Department, under s. 292.13, Wis. Stats., he or she may request such a letter by

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submitting the review fee of \$500, an off-site exemption form (#4400-201), and the necessary documentation to the Department. Information about the state's off-site exemption is available on the Department's web page, at <http://dnr.state.wi.us/org/aw/rr/liability/index.htm>. **However, the Department would like to make it clear to the owners of the Properties that, if they meet the criteria in state law for the off-site exemption, they are protected by the exemption regardless of whether they have a property-specific letter from the Department.**

The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is included at the top of this letter. The Department tracks information on all determinations such as this in a database that is available on the Internet at <http://dnr.wi.gov/org/aw/rr/>. See "BRRTS on the web" under "Contaminated Land Databases".

We hope this clarifies for you and the owners of the Properties our understanding of their liability for the contamination migrating onto their Properties. We can assure you that it is our intent to continue to work with TRC Environmental Corporation to address the cleanup of the PCB contamination that may remain on and that has migrated off of the Tecumseh Products Company property. If you have further questions about this letter, please contact Alan Nass directly at 920-662-5161 or by email at [alan.nass@dnr.state.wi.us](mailto:alan.nass@dnr.state.wi.us).

Sincerely,



Bruce Urben  
Team Supervisor  
Northeast Region  
Remediation and Redevelopment Program

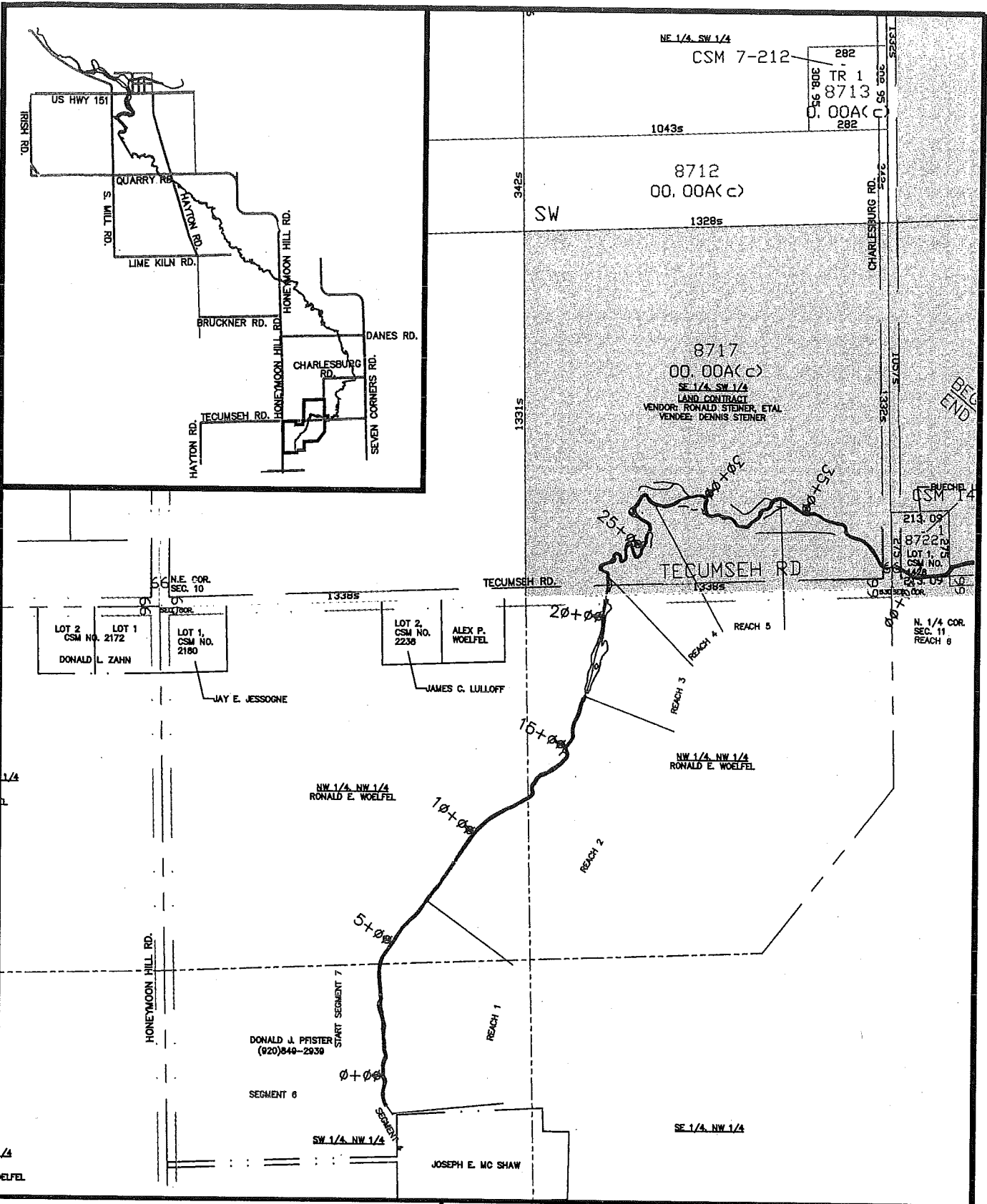
Enclosures

cc: Alan Nass - NERH  
Annette Weissbach - NERH  
Percy Mather - RR/3

Apendix A  
Location of Properties Impacted by PCBs

Areas shaded in gray are properties impacted by PCBs. PCBs are located in the soil and sediment adjacent to Jordon Creek, Pine Creek and Hayton Millpond.

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SCALE IN FEET  
1" = 500'-0"

### RIPARIAN LANDOWNER MAP FOR GENERAL LIABILITY CLARIFICATION LETTER

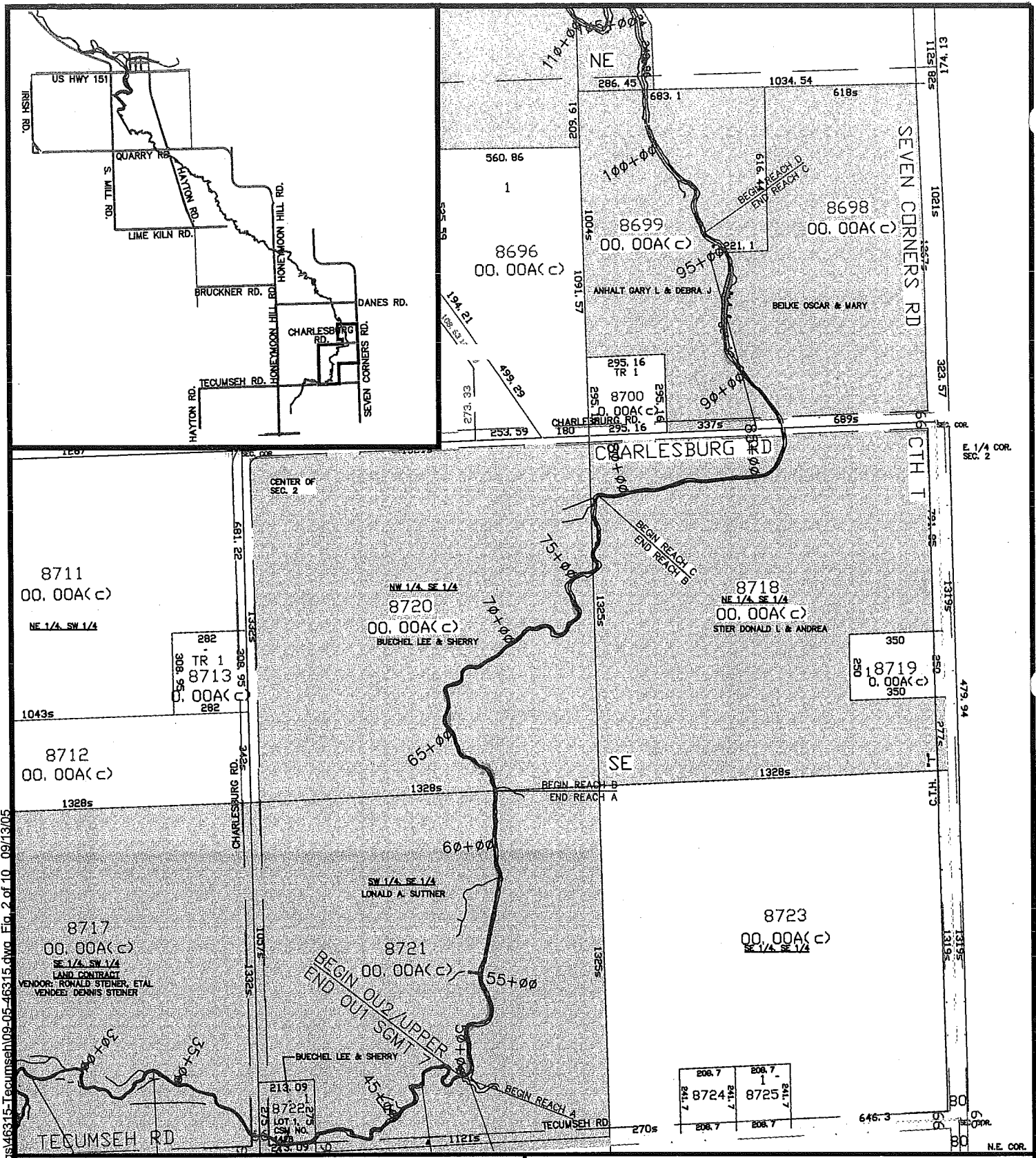
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NEW HOLSTEIN, WISCONSIN

DRAWN BY:	MDH	DATE:	08/30/2005
PROJECT NO:	46315	DWG FILE:	09-05-46315

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SUITE 1770  
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312-879-0191

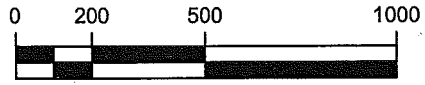
FIGURE  
1 of 10



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### RIPARIAN LANDOWNER MAP FOR GENERAL LIABILITY CLARIFICATION LETTER

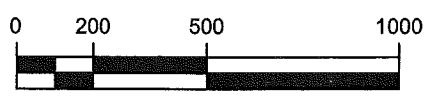
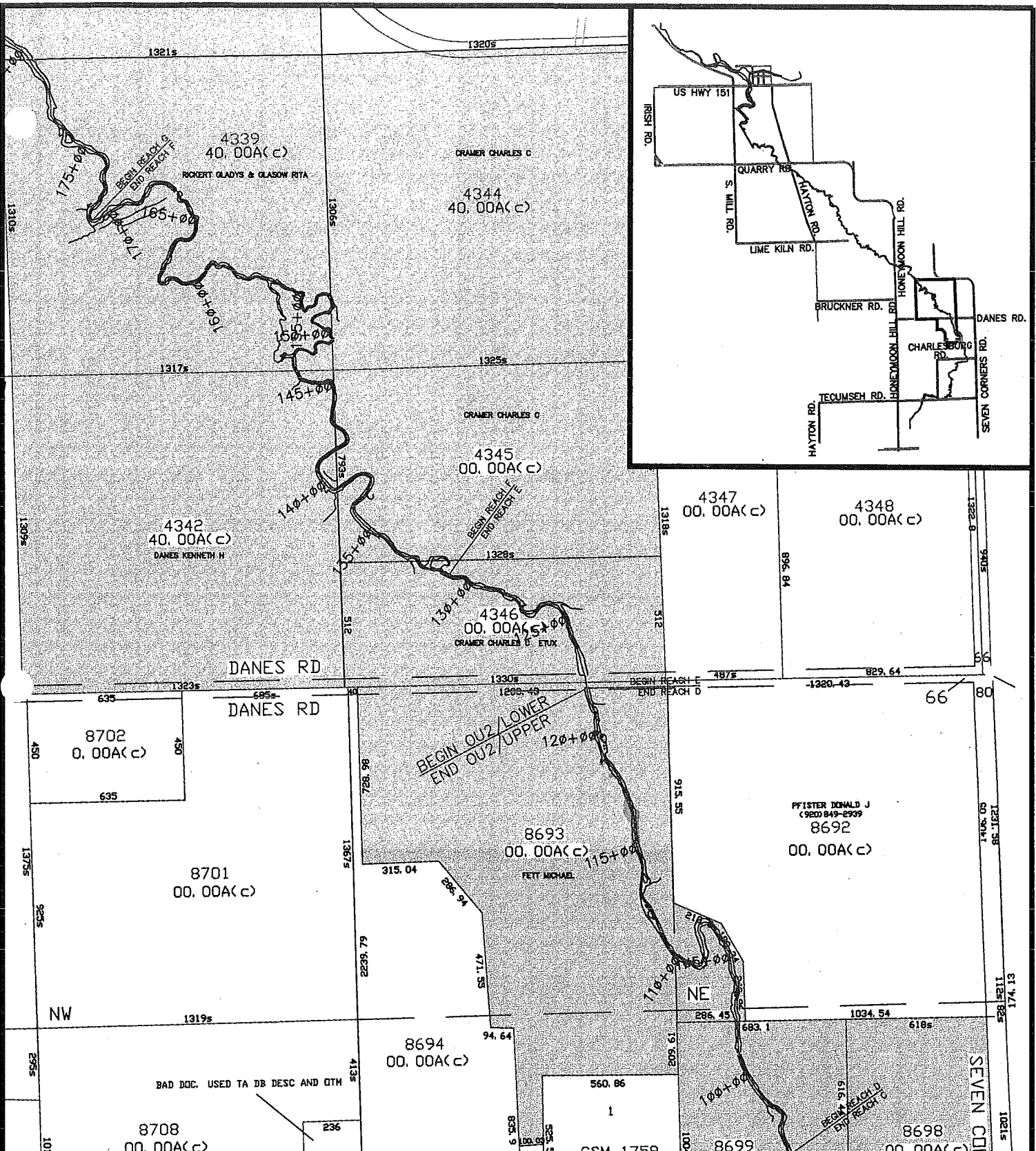
HAYTON AREA REMEDIATION PROJECT  
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SCALE IN FEET  
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PROJECT NO:	46315	DWG FILE:	09-05-46315

 <b>TRC</b> <i>Customer-Focused Solutions</i>	10 SOUTH RIVERSIDE PLAZA SUITE 1770 CHICAGO, ILLINOIS 60606-3807 312-879-0191	<b>FIGURE</b> 2 of 10
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SCALE IN FEET  
1" = 500'-0"

### RIPARIAN LANDOWNER MAP FOR GENERAL LIABILITY CLARIFICATION LETTER

HAYTON AREA REMEDIATION PROJECT  
NEW HOLSTEIN, WISCONSIN

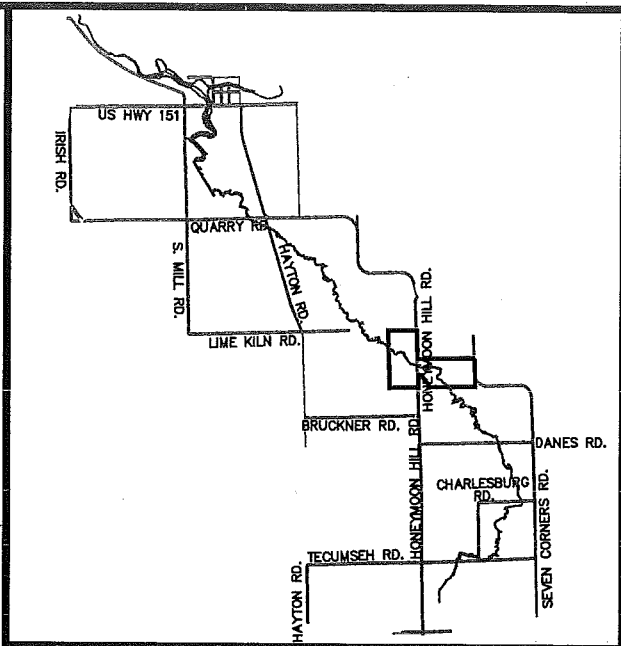
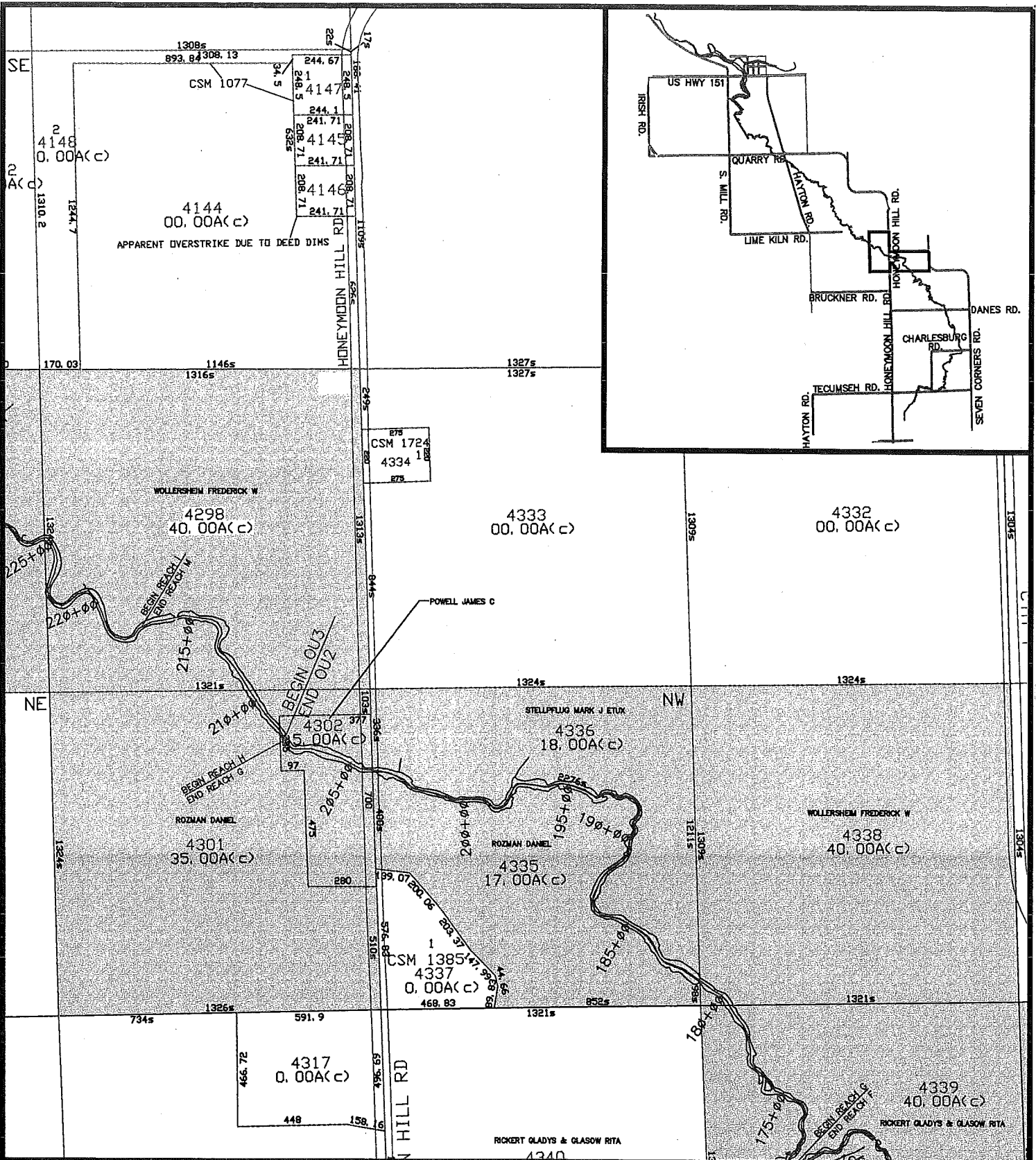
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PROJECT NO.:	46315	DWG FILE:	09-05-46315



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FIGURE  
3 of 10





SCALE IN FEET  
1" = 500'-0"

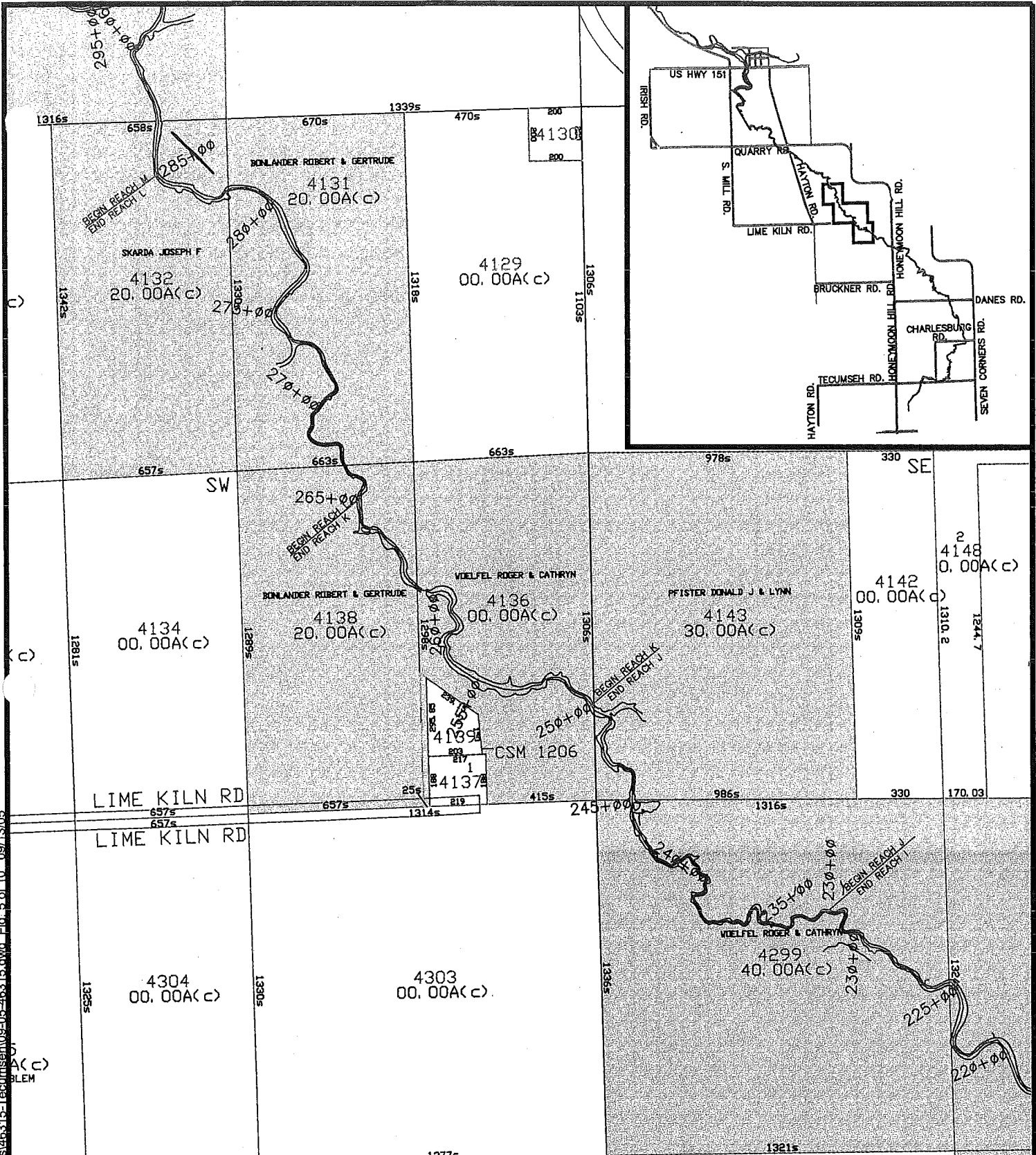
**RIPARIAN LANDOWNER MAP FOR  
GENERAL LIABILITY CLARIFICATION LETTER**  
HAYTON AREA REMEDIATION PROJECT  
NEW HOLSTEIN, WISCONSIN

DRAWN BY: MDH DATE: 08/30/2005  
PROJECT NO: 46315 DWG FILE: 08-05-46315

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FIGURE  
4 of 10

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SCALE IN FEET  
1" = 500'-0"

### RIPARIAN LANDOWNER MAP FOR GENERAL LIABILITY CLARIFICATION LETTER

HAYTON AREA REMEDIATION PROJECT  
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DRAWN BY: MDH DATE: 08/30/2005

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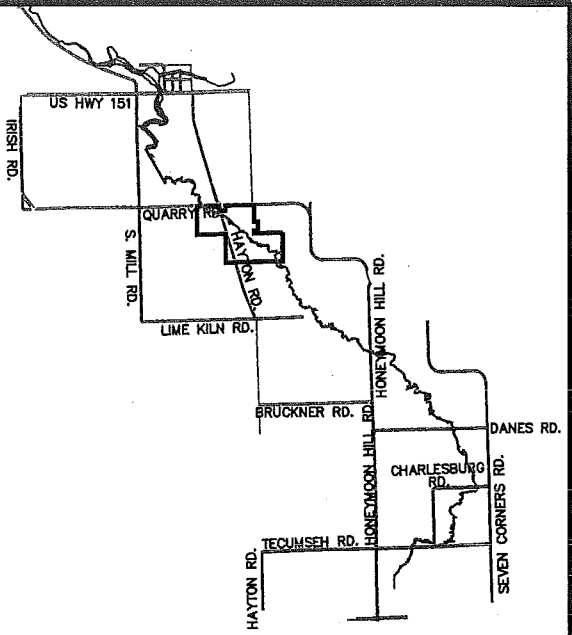
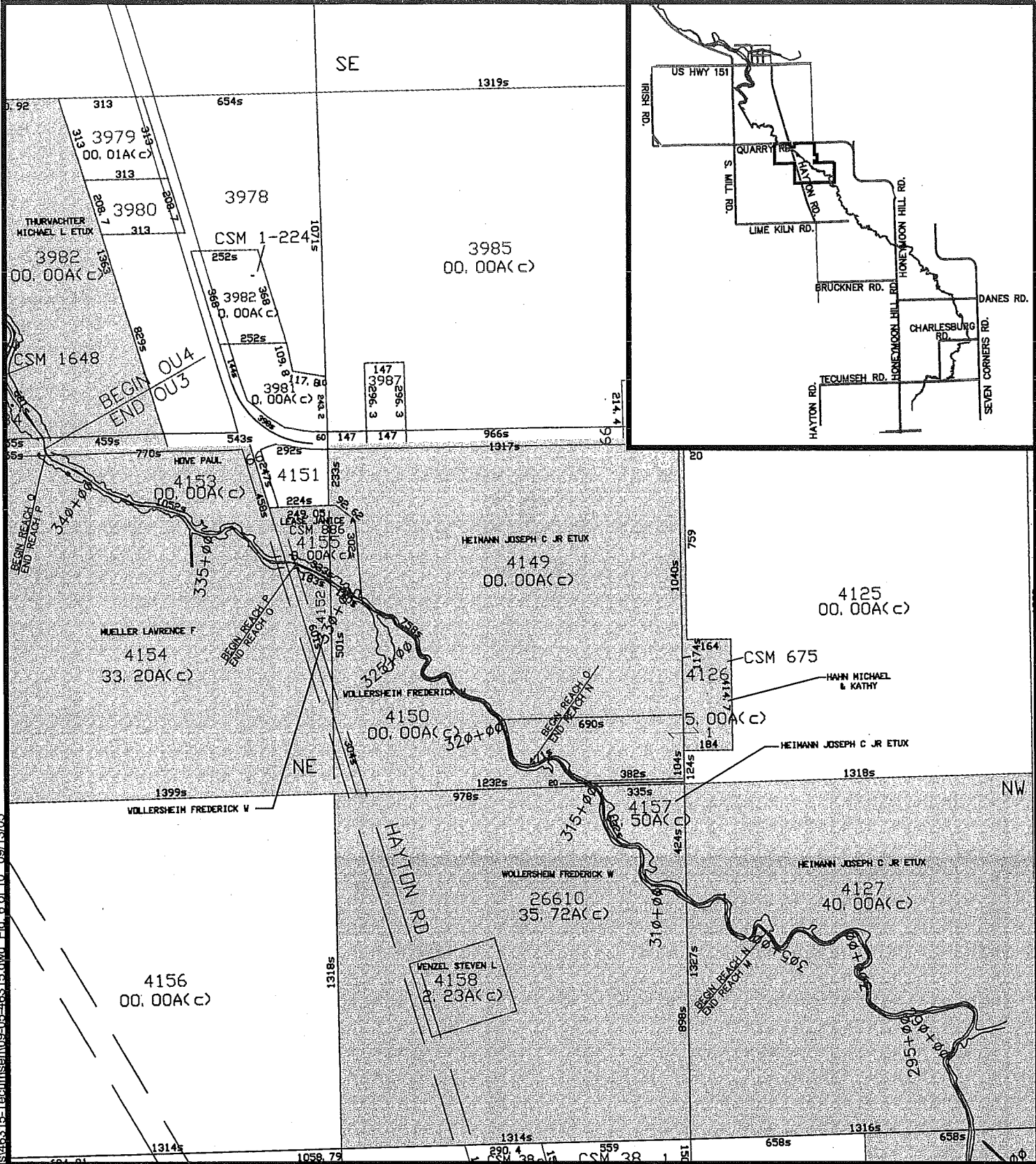
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FIGURE

5 of 10



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SCALE IN FEET  
1" = 500'-0"

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NEW HOLSTEIN, WISCONSIN

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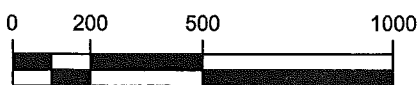
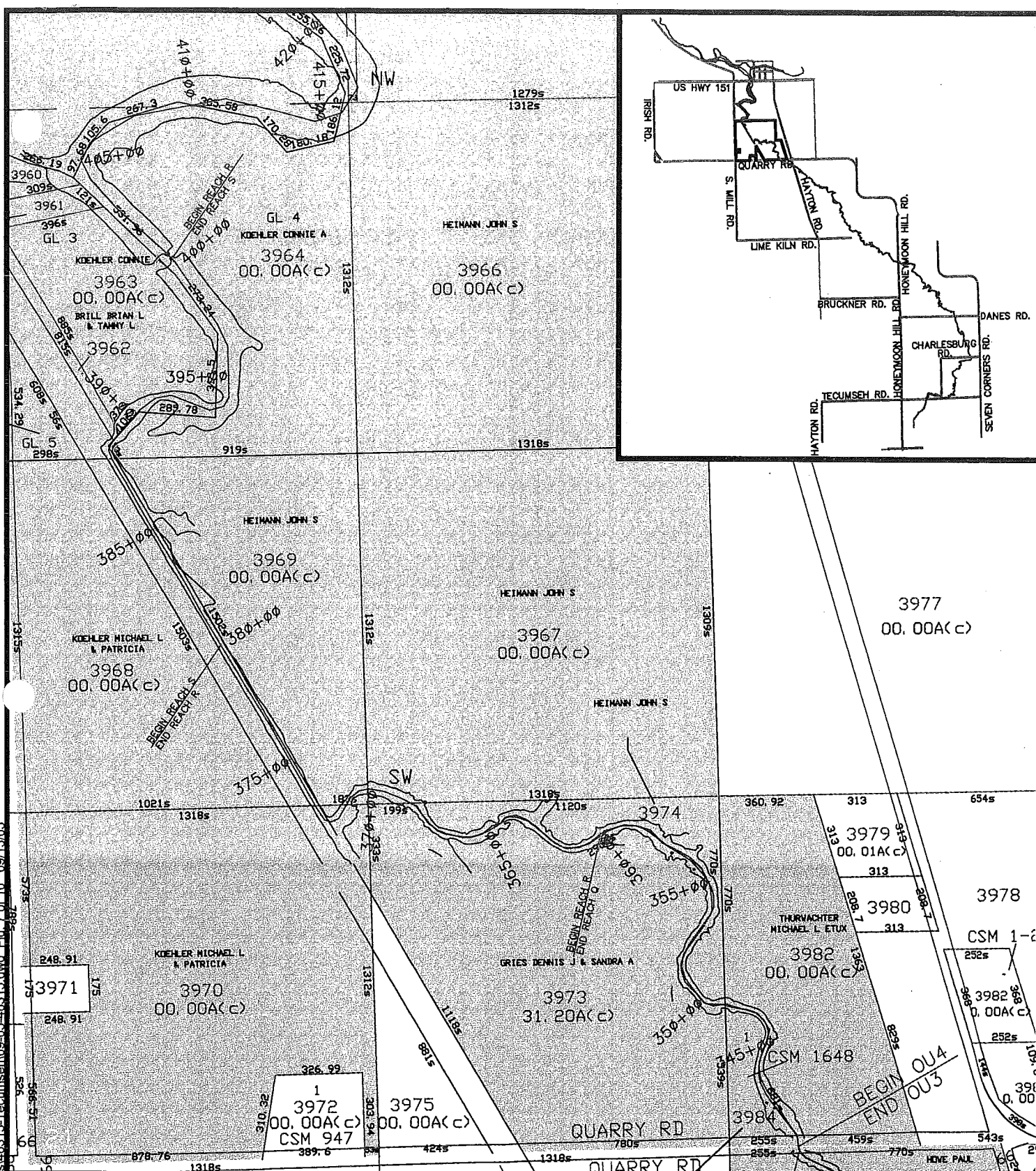


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FIGURE  
6 of 10



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SCALE IN FEET  
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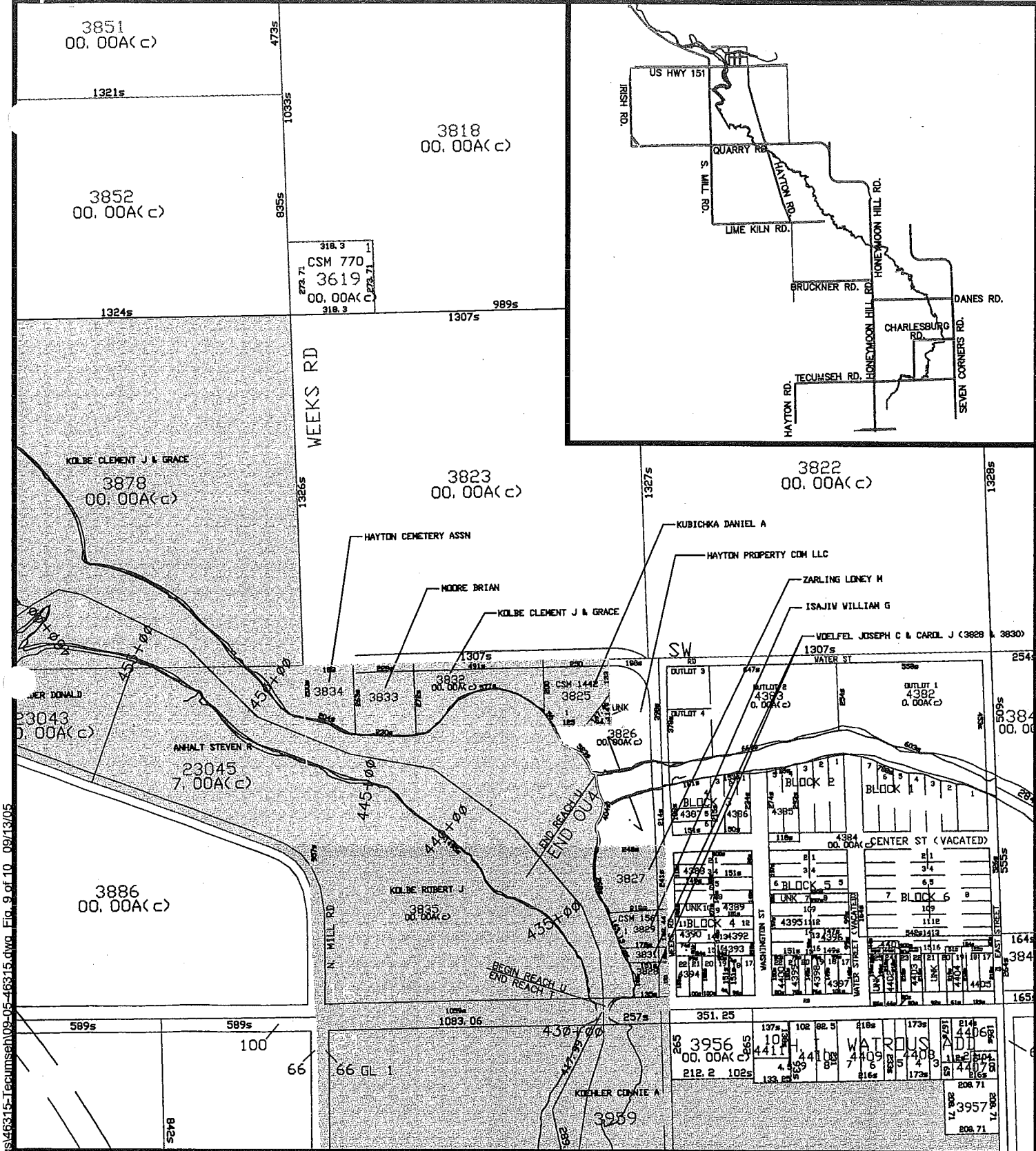
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 <b>TRC</b> Customer-Focused Solutions	10 SOUTH RIVERSIDE PLAZA SUITE 1770 CHICAGO, ILLINOIS 60606-3807 312-879-0191	<b>FIGURE</b> 7 of 10
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SCALE IN FEET  
1" = 500'-0"

**RIPARIAN LANDOWNER MAP FOR  
GENERAL LIABILITY CLARIFICATION LETTER**

HAYTON AREA REMEDIATION PROJECT  
NEW HOLSTEIN, WISCONSIN

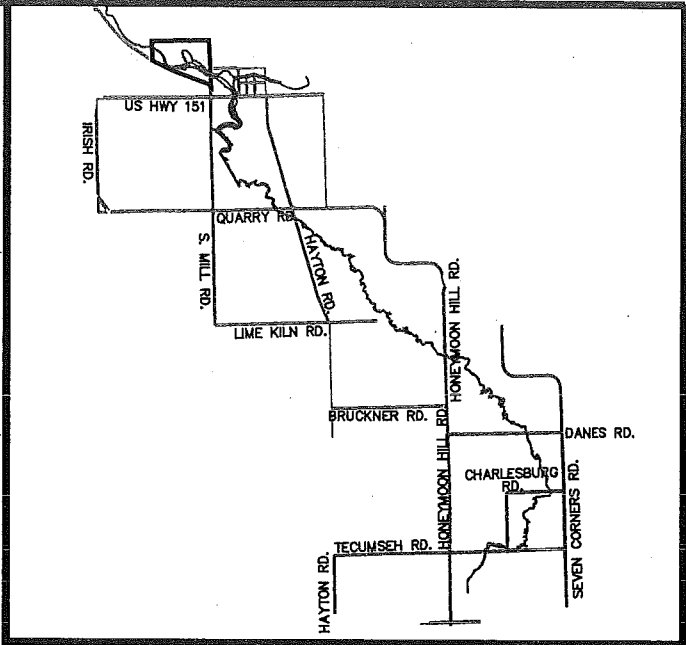
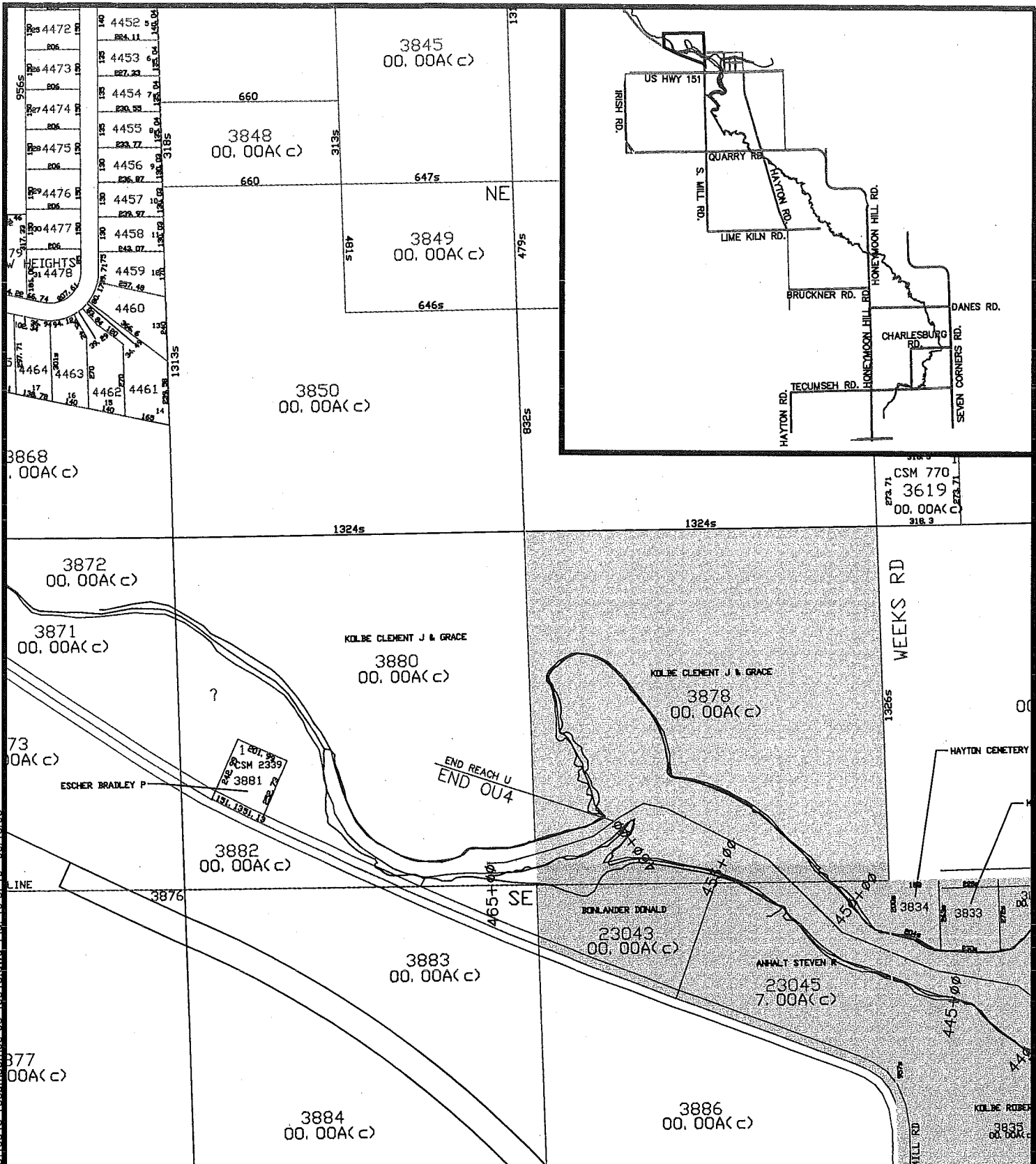
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FIGURE  
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### RIPARIAN LANDOWNER MAP FOR GENERAL LIABILITY CLARIFICATION LETTER

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FIGURE  
10 of 10