STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS

CITY OF MADISON PERMIT APPLICATION TO CONSTRUCT AND OPERATE A SOLID WASTE RESTRICTED USE FACILITY	DANR 24-001 **CITY OF MADISON'S LIMITED RESPONSE TO POTTER PETITIONERS' OBJECTION: FLOODPLAIN CLARIFICATION**

INTRODUCTION

The City of Madison submits this limited response to the Potter Petitioners' Objection to the Proposed Decision. It addresses one issue: the difference between the 100-year floodplain and the 500-year (0.2% annual chance) flood hazard area on the Madison restricted use site.

The Potters' Objection rests in part on the premise that a "100-year floodplain" runs east to west through the center of the site. The FEMA maps in the record show otherwise. The center of the site is mapped as Zone X: partly "Area of Minimal Flood Hazard" and partly shaded 0.2% annual chance (500-year) flood hazard. The 100-year (Zone A) areas are at the edges of the property, and the Proposed Decision's conditions keep all solid waste activity out of them. A 500-year flood hazard area is not a "100-year floodplain" under ARSD 74:27:11:03.

The City otherwise stands on the Proposed Decision and its prior briefing, and it does not waive any response to the Objection's other arguments.

ARGUMENT: THE SITE'S INTERIOR IS, AT MOST, A 500-YEAR (0.2%) FLOOD HAZARD AREA, NOT A 100-YEAR FLOODPLAIN

A. The governing rule is limited to the 100-year floodplain.

ARSD 74:27:11:03 provides: "Facilities shall not be located within the boundaries of a 100-year floodplain." ARSD 74:27:07:01(26) defines "floodplain" as "the lowland and relatively flat areas adjoining inland waters which may be inundated by a base flood, which is a flood that has one percent or greater chance of occurring in any year or that has a chance of occurring once in 100 years on the average over a long period." The rule says nothing about 0.2% annual chance (500-year) areas, and nothing about areas of minimal flood hazard. The question, therefore, is not whether some part of the site has any flood hazard mapping, but whether the permitted facility is inside the 100-year (1%) floodplain.

B. The FEMA FIRMettes (Exhibits 109 and 110) map the site's interior as Zone X.

Exhibits 109 and 110 are FEMA National Flood Hazard Layer FIRMettes for panel 46079C0125D (effective 11/21/2024). Each carries FEMA's printed legend, which separates three categories:

- Special Flood Hazard Areas, shown in blue and labeled Zone A, are the 1% annual chance (100-year) areas.
- "Other Areas of Flood Hazard" include the "0.2% Annual Chance Flood Hazard," shown in solid orange (shaded Zone X). The same legend line also lists "Areas of 1% annual chance flood with average depth less than one foot or with drainage

areas of less than one square mile." Neither is designated a Special Flood Hazard Area.

- "Area of Minimal Flood Hazard," Zone X, is unshaded.

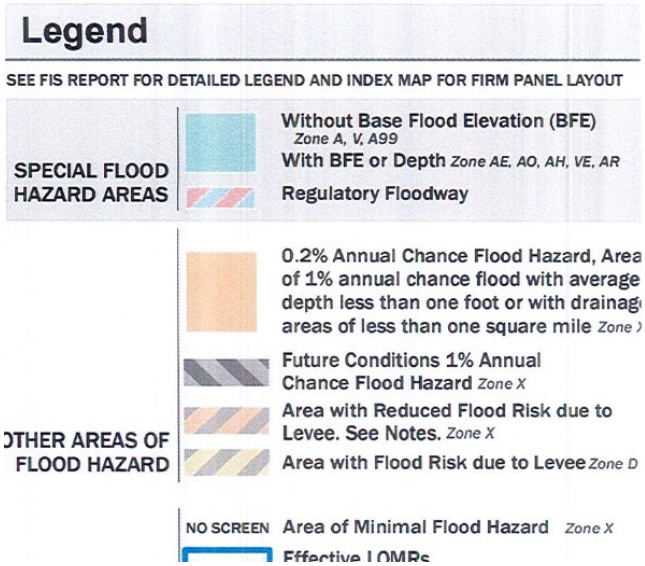


Figure 1. Exhibit 109, FEMA legend (cropped from the exhibit; colors unaltered).

FEMA's own words, "AREA OF MINIMAL FLOOD HAZARD Zone X," are printed on Exhibit 109 and across the top of Exhibit 110. On both maps, the blue Zone A areas lie at the margins. On Exhibit 109 they are at the east wetland and at the southwest and southeast corners. On Exhibit 110 they are Schaefer Lake and the area to the south. The orange that crosses near the middle of the site is the 0.2% annual chance (shaded Zone X) color, not the Zone A blue.

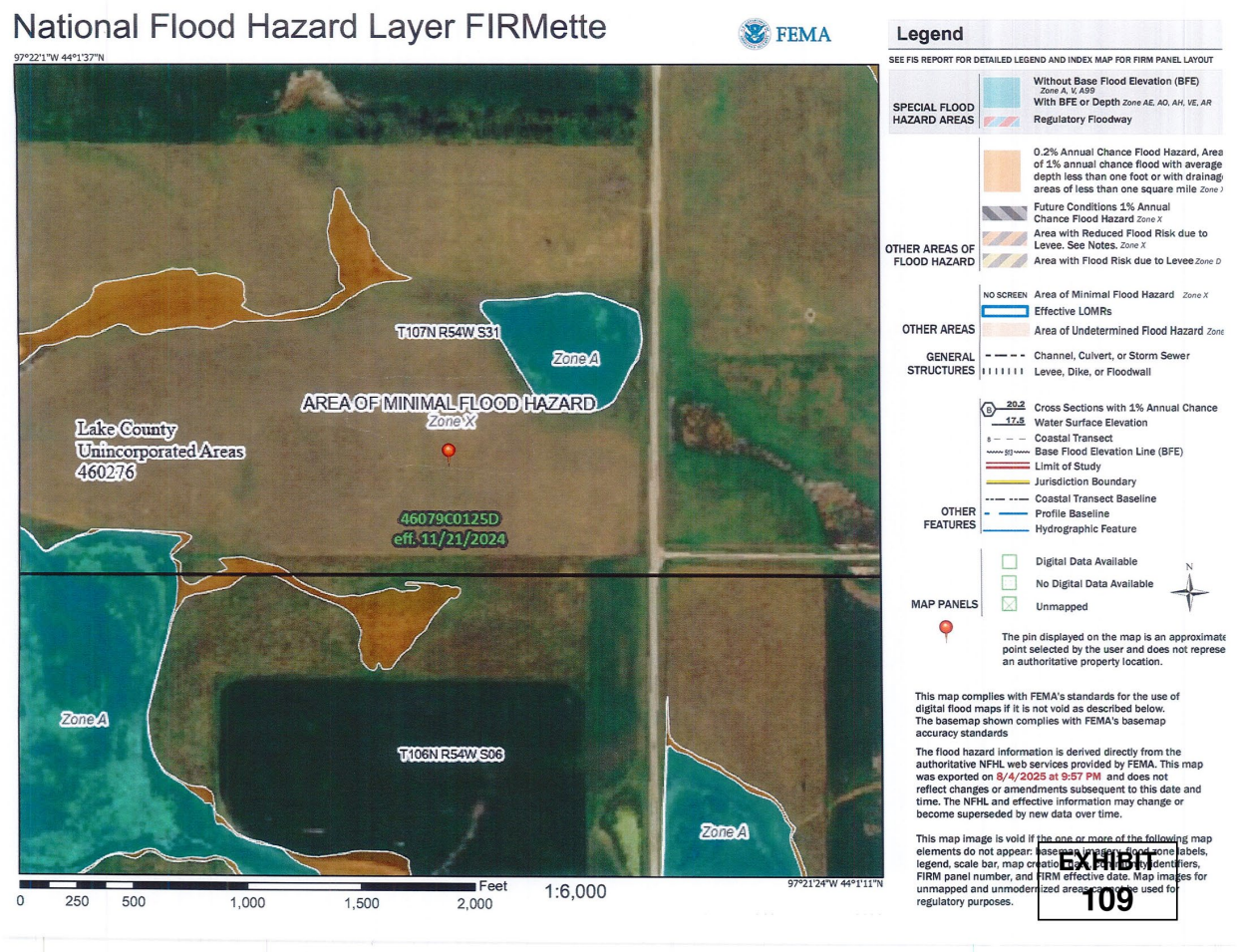


Figure 2. Exhibit 109, FEMA National Flood Hazard Layer FIRMette (East), as admitted (rotated for reading).

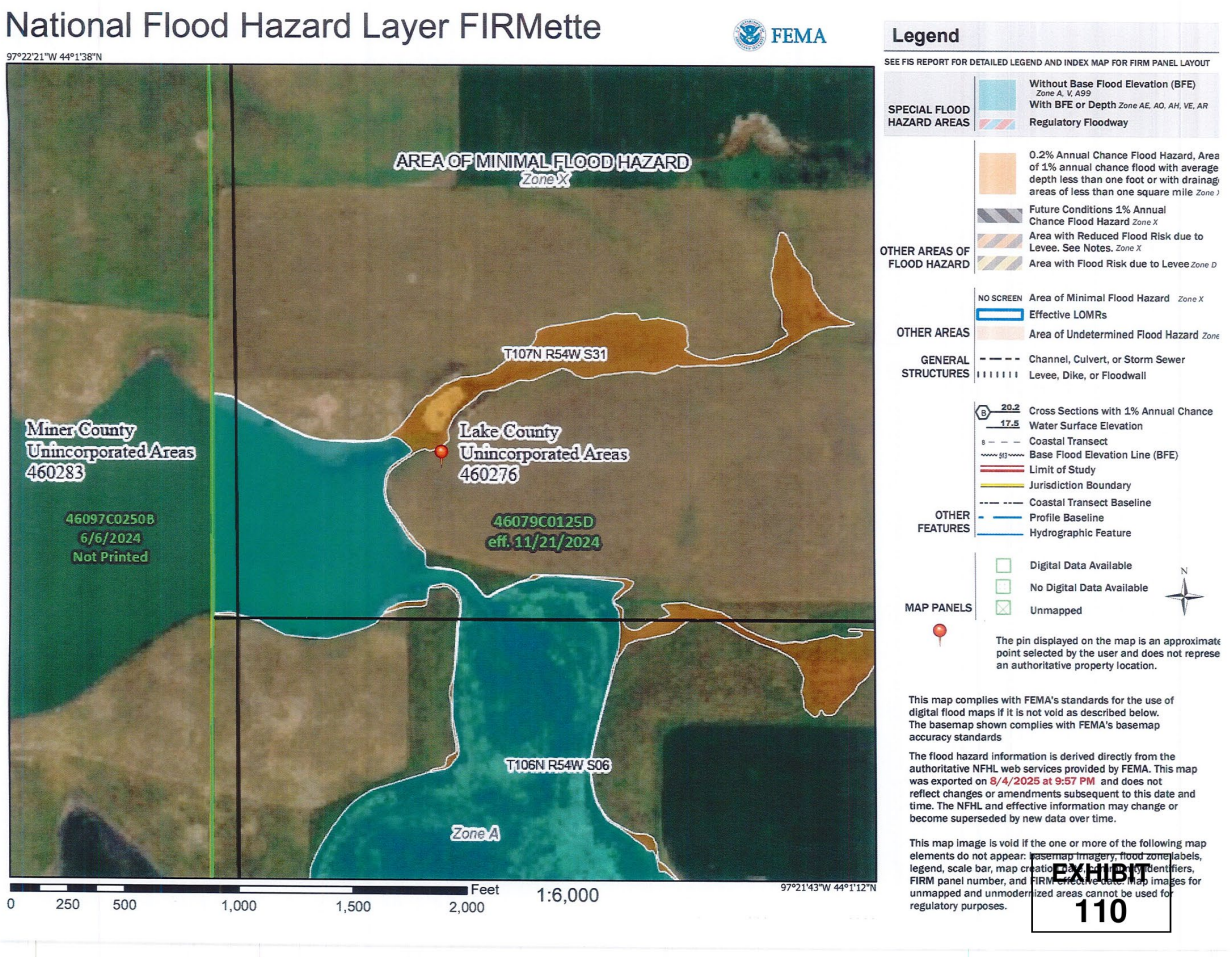


Figure 3. Exhibit 110, FEMA National Flood Hazard Layer FIRMette (West), as admitted (rotated for reading).

To assist the Board in reading Exhibit 109, the City provides the demonstrative below. It is a copy of Exhibit 109 with lettered labels and arrows added; no colors or map features have been changed. Each label simply repeats what the exhibit's own legend or printed text says about the area it points to.

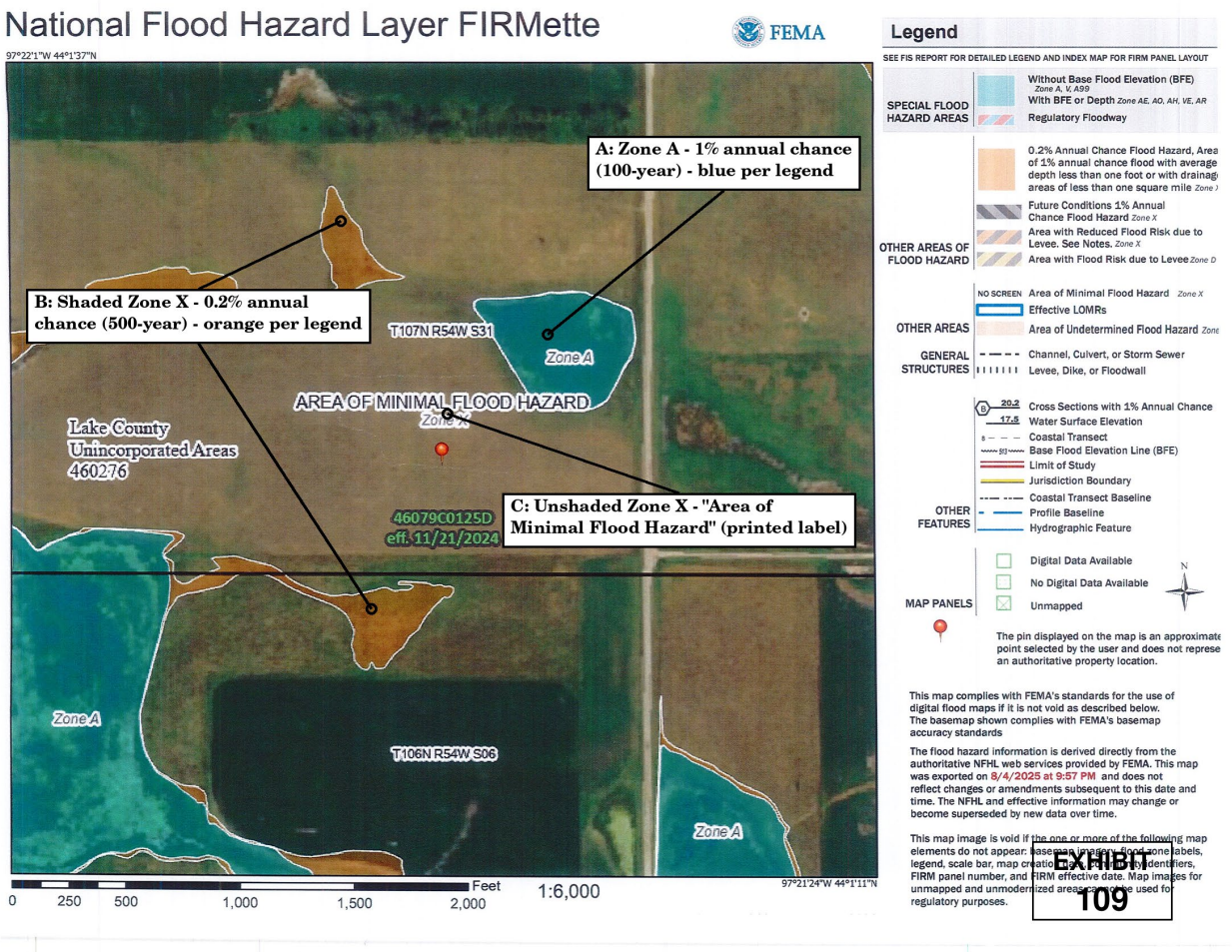


Figure 4. DEMONSTRATIVE ONLY. Exhibit 109 with labels and arrows added by counsel. The labels are based solely on Exhibit 109's printed legend and map text; no colors or features have been altered, and no property boundary is depicted.

C. The City's floodplain map (Exhibit 107) shows the same thing.

Exhibit 107, filed with the application, marks "Zone A – 100 yr Floodplain" in red. The red appears only at the southwest corner of the 73.04-acre tract near Schaefer Lake and at the top of the east wetland. There is no red band through the middle. DANR's Mr. Burke reviewed this map and identified the floodplain at those same two locations (HT 164:18–168:25; 166:17–167:6). Those areas are outside the amended 54.43-acre boundary and the wetland buffer, or are covered by Attachment A's prohibition (PD FOF 15; Permit §§ 2.02, 2.03, Att. A).

Exhibit 107 looks slightly different from Exhibits 109 and 110 because it was prepared from the FEMA Digital FIRM in effect when the City applied, around August 2023; that map had an effective date of September 2, 2009. Lake County's FEMA maps changed while this permit was pending. Exhibits 109 and 110 are the current panels, effective November 21, 2024, and are the maps Lake County uses to issue permits today. The proposed cell is outside the 100-year Zone A on both the 2009 map and the 2024 map.

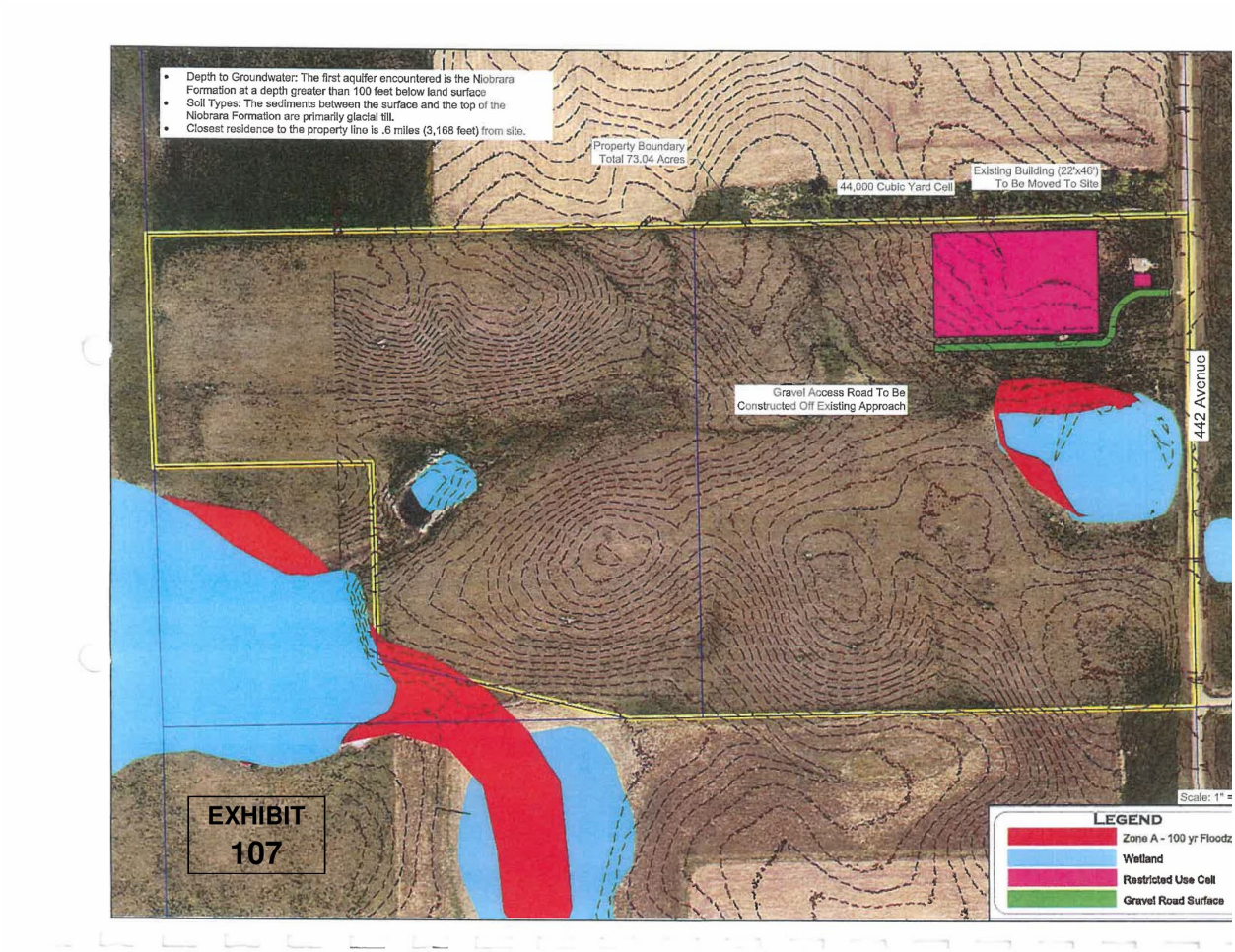


Figure 5. Exhibit 107, City of Madison Floodplain Map, as admitted (rotated for reading).

D. The "100-year" description of the center band came from a misreading of the orange color.

The testimony describing a "100-year floodplain" through the middle of the site traces back to the orange band on Exhibits 109 and 110:

Witness / source	Record cite	What was said
Kropp (DANR)	HT 297:7-14	Called the band "the orange thing and the other areas of flood hazard," the legend's own heading, and then agreed the orange was "the 100-year floodplain."
Kropp (cross)	HT 335:6-12	Agreed the orange-red area through the middle "would be" 100-year.
Hearing Examiner question	HT 342:9-19	Referred to Ex. 109 as "the 100-year flood map"; Kropp said the boundary "looks like it includes the floodplain."
Mark Potter	HT 546:24–547:7; 547:20-23	Said the copper band on Ex. 110 "has been identified as . . . floodplain"; did not say 100-year.
Wendte (DANR)	HT 830:7–831:6; 834:14-24	"The floodplain that is centered in the middle"; any delineation would be "only in regard to the 100-year floodplain."
Mayor Lindsay	HT 103:17–104:6	"The entirety of the property is not in a 100-year floodplain."

No witness compared the orange to the legend and found it to be Zone A, and none could have: the legend assigns that color to shaded Zone X. The Hearing Examiner got this right. The Proposed Decision describes the center as an "east-

west trending potential flood hazard area" (PD FOF 14; Permit § 2.03). It never finds that the band is a 100-year floodplain.

E. The Proposed Decision protects any 100-year area that is actually delineated.

Petitioners point out that the shaded Zone X legend line also covers some shallow 1% areas. That is a reason for the condition the Hearing Examiner imposed, not a reason to deny the permit. Section 2.03 requires a third-party delineation of the center area within 120 days, with any delineated 100-year floodplain staked. Attachment A forbids any solid waste activity "that would impact any 100-year floodplain." Mr. Kropp testified that no waste may be placed in the 100-year floodplain (HT 343:2-10; 344:7-18). If any part of the center band is ever shown to be 1% floodplain, the permit already keeps the facility out of it. That satisfies ARSD 74:27:11:03.

CONCLUSION

The FEMA maps answer the Objection's central premise. The middle of the site is mapped as Zone X, with minimal or 0.2% (500-year) flood hazard. The 100-year Zone A areas are at the edges, and the permit keeps all waste activity out of any 100-year floodplain. The City respectfully requests that the Board find that the east-west band through the center of the site is a 0.2% annual chance (500-year) flood hazard area, shaded Zone X, and not a 100-year floodplain. Subject to that clarification, the City asks the Board to adopt the Proposed Decision.

Dated this 4th day of November, 2026.

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CERTIFICATE OF SERVICE

I, David J. Jencks, do hereby certify that on November 4, 2026, the original "City of Madison's Limited Response to Potter Petitioners' Objection: Floodplain Clarification" was submitted via electronic mail upon the following to be filed in the above-captioned matter:

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Further, the undersigned certifies that a true and correct copy of the above-referenced document was served via electronic mail upon the following:

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