



Charles Mix Electric Association, Inc.

440 Lake Street, PO Box 10 Lake Andes SD 57356-0010
Toll Free: (800) 208 8587 Local (605) 487-7321

www.cme.coop
cme@cme.coop

South Dakota Department of Transportation
South Dakota Electronic Bidding System
Becker-Hansen Building
700 E. Broadway Avenue
Pierre, SD 57501

November 18, 2019

PROPOSAL TO PURCHASE STATE-OWNED RAIL LINE

BIDDER:

Company ID - 7581

Charles Mix Electric Association, Inc.
440 Lake Street
Lake Andes, South Dakota 57356-0010
Phone: 605-487-7321
Fax: 605-487-7868
Email: cme@cme.coop

PROJECT NUMBER P 000S(00)326

Napa-Platte Line
Railbanked Segment
700 Linear Feet in Lake Andes, South Dakota

Designated Bidding Administrator:

Bidder ID – MWhalen7581

Michael J. Whalen, Attorney
Michael J. Whalen Law Office Prof. LLC
mwhalen@rapidnet.com

In accordance with the SD DOT Invitation for Proposals to Purchase State-owned Rail Lines, Charles Mix Electric Association, Inc. (CME) proposes to purchase 700 linear feet of the Napa-Platte Line adjacent to the Moneke Addition to the City of Lake Andes, South Dakota, as shown on attached Maps A and B, *together* with the appurtenant railroad right-of-way(s) for the sum of **Seven Thousand Dollars (\$7,000.00)** cash due upon closing at a date, time, and place to be determined by the parties. This Proposal is subject to the provisions hereinafter set forth and such supplemental requirements as subsequently promulgated by the South Dakota Department of Transportation and the South Dakota State Railroad Board.

COMPLIANCE WITH IFP PROPOSAL REQUIREMENTS

Pursuant to the corresponding IFP provisions, this Proposal includes the following:

3.1 Proposer Information

1. Lead Contact Information.

Michael J. Whalen
Michael J. Whalen Law Office, Prof. LLC
14 Saint Joseph Street, Suite 200A
Rapid City, SD 57701
Phone: 605-341-5352
Email: mwhalen@rapidnet.com

ATTORNEY FOR CHARLES MIX ELECTRIC ASSOCIATION, INC.

2. History and Background.

CME was organized under S.D.C.L. Chapter 47-21 in 1948 (Restated Articles of Incorporation dated April 23, 1948). CME is a small rural electric distribution cooperative serving 1,818 member-consumers located in Charles Mix County, South Dakota. CME currently employs thirteen (13) full-time employees. CME has no railroad industry experience.

3. Leadership and Command Structure.

The Board of Directors manages the business and affairs of CME. The President is Richard Dvorak; Vice-President is Ron Samuelson; and Secretary/Treasurer is Sam Schuman. The General Manager, with overall authority, is Russell Gall. Wanda Weber serves as Office Manager. Chad Loeffler is the Line Superintendent supervising two (2) Line Foremen. The Line Foremen are responsible for all journeymen and apprentice linemen. The Office Manager supervises the Cooperative's accountant and secretary / receptionist. Michael J. Whalen is General Counsel for CME.

4. Parental / Guarantor Relationships.

None.

5. Prior Bankruptcies / Operational Issues.

None.

6. Fines and Civil Penalties.

None.

7. Business Goals.

The Cooperative's business goals are to provide affordable and reliable electricity to the Cooperative's members. CME is acquiring the real estate adjacent to and located north of the railroad property described above. This Proposer intends to construct a new headquarters and facilities on such real property and CME requires access to US Highway 18 / 281 which lies south of the railroad property and parallel thereto (See attached Maps).

8. Anticipated Successes and Challenges.

Not applicable.

3.2 Lines to be Purchased

The segment of the Napa-Platte Line to be purchased is a strip of land approximately 100 feet wide and running 700 linear feet which is adjacent to the Moneke Addition to the City of Lake Andes, South Dakota, as shown on attached Maps A and B, *together* with the appurtenant railroad right-of-way(s).

3.3 Purchase Price

Seven Thousand Dollars (\$7,000.00) lump sum (cash) due upon closing. Anticipated closing date on or before June 1, 2020, or as otherwise determined by SD DOT.

3.4 Service Protections

The subject property is railbanked. It is unknown whether the State of South Dakota has provided initial notification to abandon the relevant rail line to the Surface Transportation Board. CME will agree to maintain the rail corridor for future rail use as required by state and federal authorities. CME has contacted entities interested in “Rails-to-Trails” projects in the area and determined that no entities or organizations have plans for any such improvement of the subject property. Local interest in rails-to-trails projects have focused upon that portion of the line running from Geddes to Platte, South Dakota. There is currently no rail service to be sustained or improved on this segment of the rail line (i.e., the subject property). Accordingly, this Proposer states as follows:

1. Expected Operational Improvements or Methods.

None.

2. Capital Investments Commitments or Plans.

CME intends to construct an access and approach to its future headquarters at the location shown on the attached Maps. Daily traffic at CME headquarters is expected to include ten to twenty automobiles, four CME pickups, and three straight utility trucks over 26,000 pounds. Semi-truck trailers would utilize this access and approach for delivery of supplies and equipment to CME approximately two or three times during a typical work day and during normal business hours. Other than the above described access and approach, the remainder of the subject property (not used for access and approach) would become part of the frontage and grounds of CME headquarters. No structures will be located on the subject property.

3. Potential Railroad Expansion Options.

None.

4. Projected Industry Developments for Current and Future Shippers.

Not applicable.

5. Management Headquarters, Projected Employee Needs, and Job Creation Estimates.

There is no current or future railway operations affecting the subject property. The property will be managed and maintained as part of CME facilities. Employment and job opportunities will result from construction activities and growth of CME’s electrical distribution system.

6. Marketing Plan for Rail Customers and Users.

Not applicable.

7. Rate or Service Modifications.

Not applicable.

8. Impact to Existing Shippers and Other Rail Users.

None.

9. Impact to Communities.

The SD DOT constructed an asphalt pathway for pedestrian traffic on the subject property in November of 1996. This Proposal is subject to a “Maintenance Agreement” (Project No. P-PH 0018(125)339-PCEMS 4540) with the City of Lake Andes. If CME acquires the subject property, it will allow the City to continue maintaining the pathway and public use thereof. Likewise, the purchase by CME is subject to dedicated and platted streets and public ways. Security fencing and structures will not be constructed over and across the subject property so as to obstruct, hinder, or interfere with streets, sidewalks, or other public rights-of-way. Such fencing and access gates will be set back from the subject property as part of the headquarters facility. If CME acquires the subject property, Ninth Avenue may be extended by the City from Lake Street to US Highway 18/ 281 to and for the benefit of the community and the City of Lake Andes. Upon such extension, the highway approach will provide access to Ninth Avenue. Adjacent properties located north of the proposed CME building will not be adversely impacted.

10. Experience Operating Short Line Railroads.

None.

11. Projected Economic Impact.

The subject property, as integrated with the new headquarters facility, will have a favorable economic impact. CME has experienced steady growth by reason of increased demand and electric service to new and existing members. In recent years, noteworthy growth has occurred by reason of development along the Missouri River. With the greater demand, CME has outgrown its existing headquarter facilities. Reliable projections indicate continued expansion and the need for larger, modernized facilities. The construction of the new headquarters, storage area, shop, and other facilities will provide a boost to the local economy and enhanced CME’s distribution operations.

12. Long Term Maintenance Plan to Meet Current Rail Standards.

Not applicable. This segment of the Napa-Platte Line is railbanked.

3.5 Trackage Rights, Haulage Rights, and Interchange Rights

Not applicable.

3.6 Current Grant Commitments

None.

3.7 Future Grant Commitments

None.

3.8 Loan Commitments

No loan commitments are required for this project. Adequate funds are currently available. As to the new headquarters and facilities, loans through RUS, CFC, and/or FFB will be required.

3.9 Other Financial Commitments

Not applicable.

3.10 Lease and Sub-Lease Agreements

Currently, the adjacent real property consisting of approximately ten acres is leased for agricultural purposes (hay land) by a local farmer on a year-to-year basis. Proposer acknowledges that termination of the lease is the responsibility of the landowner.

3.11 Permits, Licenses, Excess Property Lease, and Other Land Use Agreements

CME recognizes that SD DOT reserves the right to exclude any excess property from the sale of the Lines at any time prior to execution of the Line Purchase Agreement. Further, CME has reviewed Attachment #3C entitled “Napa-Platte Line Data Summary” and understands that the subject property is a portion of the Napa-Platte Line that has been railbanked and is not subject to a lease with the Dakota Southern Railway Company.

3.12 Approval of Sale

CME acknowledges that the Surface Transportation Board (STB) has jurisdiction over railroad rate and service issues and rail restructuring transactions, including line sales. Accordingly, and under 49 CFR 1105 and related federal regulations, adequate consideration must be given for environmental and energy issues by the STB pursuant to the National Environmental Policy Act and the Energy Policy and Conservation Act. If required, CME plans to petition for exemption and provide notice to the STB in order to obtain a waiver under section 1105.7(g). Particular consideration will be given to the dictates and timelines of Section 1105.7. CME is also aware of the burden imposed by state and federal law as to historic preservation compliance.

Archaeological research was performed on May 27, 2015, and a copy of the results are attached hereto as Attachment C. CME intends to meet all mandates of Title 49 U.S.C. 1105.6 through 1105.8.

3.13 Environmental Liabilities

CME has extensive experience and training in the handling of environmentally hazardous materials and substances. Due inquiry has been made of adjoining landowners regarding whether the subject property may contain any toxic, hazardous, or harmful chemicals, substances, or materials. At this time, and without further inspection or testing, CME does not have reasonable cause to believe that any such contamination currently exists. By agreement with the adjoining landowner, CME has access to the tract bordering the subject property and has been granted the right, at its own expense, to test that property to determine the presence of any such toxic, hazardous, or harmful chemicals, substances, or materials. CME, as a rural electric distribution coop, is required by federal law to maintain written policies, procedures, and protocols for dealing with hazardous and toxic contamination and remediation thereof. Those policies, procedures, and protocols adequately cover all contingencies that might occur on the subject property.

3.14 Conditions of Sale

CME hereby acknowledges the conditions of sale listed in Section 4 below. Proposer is prepared to address any other contingencies required by the South Dakota State Railroad Board.

4. Conditions of Sale

CME affirmatively states that the applicable “Conditions of Sale” set forth in Section 4 of the IFP are expected to be included in any agreement of sale. Under this Proposal, and with due regard for the content thereof, CME acknowledges the inclusion of the following conditions of sale:

1. The State reserves the right to re-purchase the line in an abandonment proceeding.
2. The State may re-purchase rights if a sale is contemplated to another buyer.
3. Any assignee or successor to the purchaser must abide by the terms of the sale agreement.
4. The sale of the line shall be “AS IS, WHERE IS” as allowed by law.
5. The purchaser shall indemnify the Department and hold the Department harmless for any claims related to any acts or omissions occurring after the close of the sale.
6. The purchaser shall fully protect any haulage, trackage, and interchange rights that apply to the line and to fully comply with any other obligations that apply to the Purchaser pursuant to the Departments Settlement Agreement with BNSF.
7. The Department retains mineral rights as required by South Dakota law.
8. The purchase will be subject to the right of highway authorities to maintain, construct, re-construct, sign, mark, and repair all existing public highway crossings.
9. The Department reserves a right to crossings that have not yet been constructed but are identified in the Department’s current Statewide Transportation Improvement Plan.
10. The Lines will be conveyed by quit claim deed and the purchaser will waive any title defects.

5. Evaluation of Proposals

This Proposal is submitted subject to the South Dakota State Railroad Board’s right to determine whether a sale of the identified Line Segment to CME is in the best interest of the State of South Dakota. CME hereby acknowledges that the Board will evaluate this Proposal based on the requirements set out in Section 3 and 4 of the IFP and the Proposal’s likelihood of meeting the IFP objectives set out in Section 1.3.

Dated this 18th day of November, 2019.



Michael J. Whalen

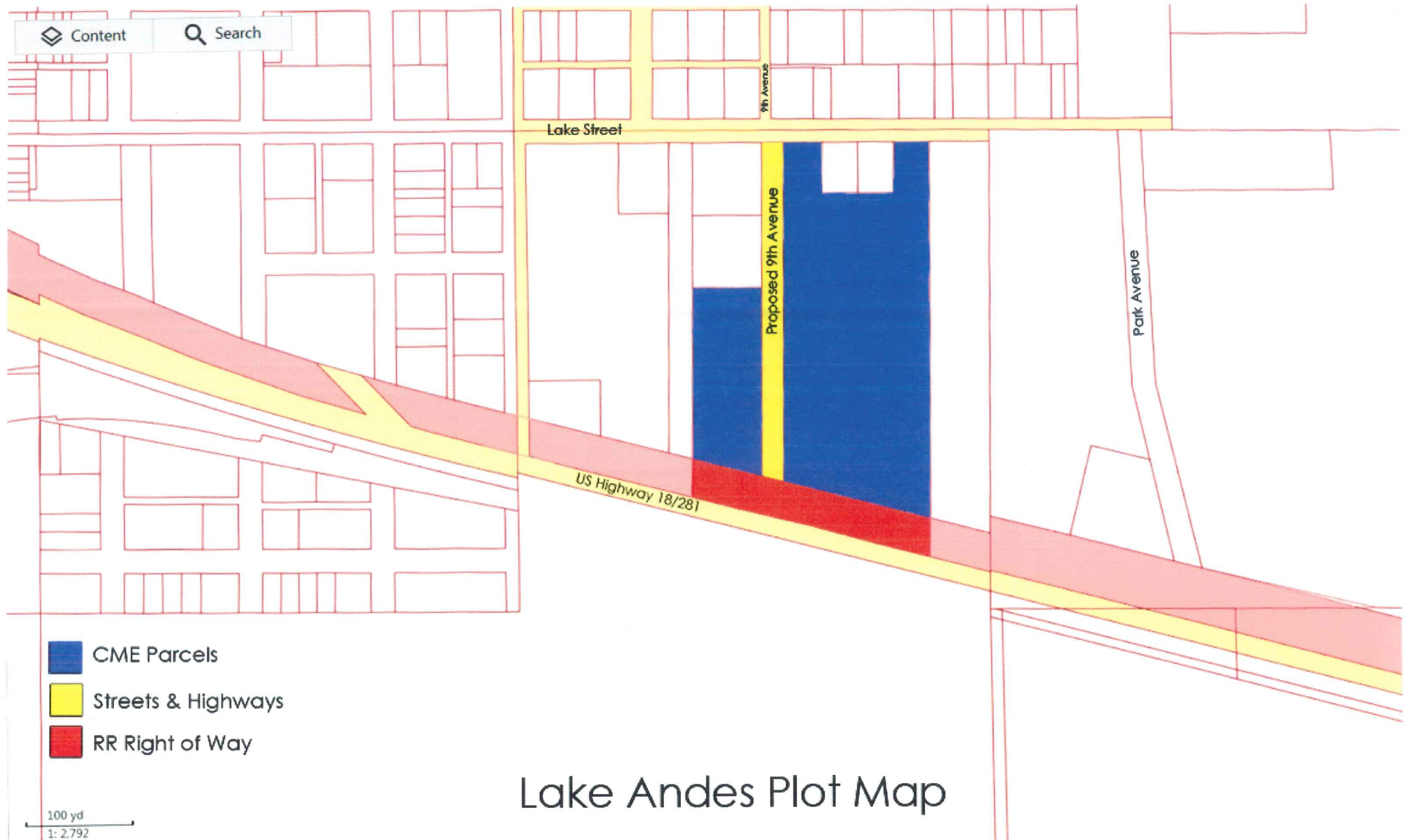
Michael J. Whalen Law Office, Prof. LLC
14 Saint Joseph Street, Suite 200A
Rapid City, SD 57701
Phone: 605-341-5352

Email: mwhalen@rapidnet.com

DESIGNATED BIDDING ADMINISTRATOR FOR
CHARLES MIX ELECTRIC ASSOCIATION, INC.

Content

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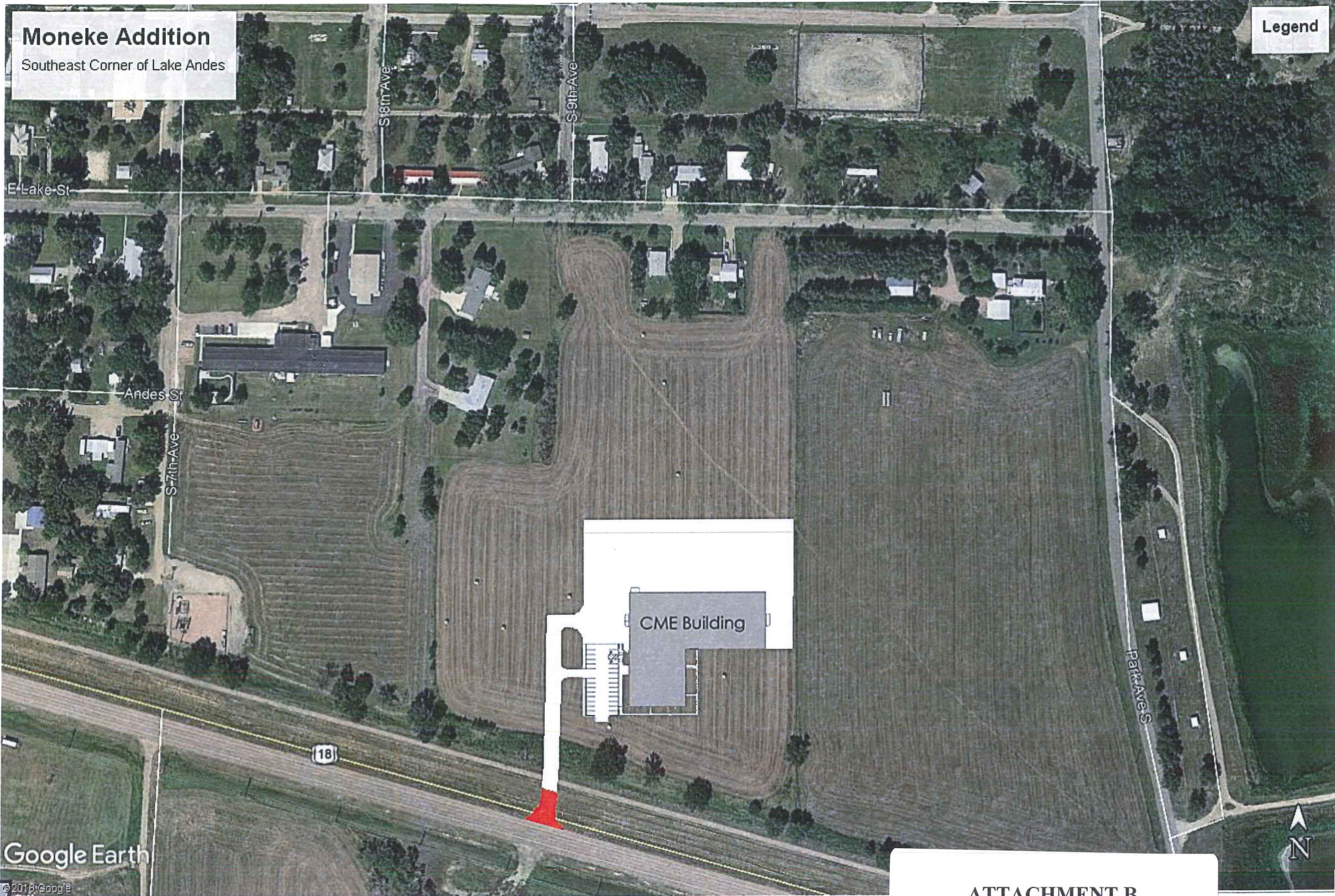
Lake Andes Plot Map

ATTACHMENT A

Moneke Addition

Southeast Corner of Lake Andes

Legend



Google Earth

© 2011 Google

ATTACHMENT B

ARCHAEOLOGICAL RESEARCH CENTER
Site No. 39CH0310

County Charles Mix **Site Name** Restricted **Other No.** LA-01
NR Status recom. Not eligible **SHPO determination** Not eligible
National Register Criterion A B C D
NR District
Map Reference Restricted **Owner** Restricted
Arch. Region Fort Randall **Topo pos** Lake
Vegetation Mixed Grass **Substrate** Loess **Land Use** Recreation
UTM Centroid: **Coord System** Restricted **Zone** XX / XXXXXX **E** / XXXXXX **N**
Surf. Visibility 50 % **Site Elevation** 1450 m **Condition** Disturbed
Site Dim. N-S 59 m **E-W** 61 m; **Area** 0.35 ha; **Depth** cm
Nearest Water: Type Restricted **Name** Restricted
Distance XXXX m **Elevation** XXXX m **Direction** XX **Bank** XX
Site No. Closed? N **Site Entry Created** 2015-05-27 **Updated** 2015-05-27

LOCATION

Legal Locations	Section	Twp	Rg
Locations Restricted			

COMPONENTS

Site Type	Time Period	Cultural Affiliation
Foundation	A.D. 1861-	Euro-American
Depression	A.D. 1861-	Euro-American

COMMENTS

Comments Restricted

ACCESSIONS

Accessions Restricted

REPORTS

Report Information Restricted

ATTACHMENT C

ARCHAEOLOGICAL RESEARCH CENTER
Site No. 39CH0310

LOCATION MAP

Map Information Restricted