CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 6/27/2013

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Lease Agreement with McDonald Farms

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Lease Agreement with McDonald Farms for the Lease of Farm Land in Cummings Research Park

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.

Lease agreement in the amount of $7,500.00 for 100 acres of unimproved land in Cummings Research Park. Land will be used for agricultural purposes. Income-$7,500.00 to be credited to Acct. No. 24-0000-3077-0000

Associated Cost: $7,500.00

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: _____

Date: 6/17/13

revised 3/12/2012

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Engineering** Council Meeting Date: **6/27/2013**

Department Contact: **Lynn Majors** Phone # **256-427-5201**

Contract or Agreement: **Farm Lease Renewal**

Document Name: **McDonald Farms Farm Lease Renewal**

City Obligation Amount: **0**

Total Project Budget: **$7,500.00**

Uncommitted Account Balance: **0**

Account Number: **24-0000-3077-0000**

Procurement Agreements

Not Applicable	**Not Applicable**

Grant-Funded Agreements

Not Applicable	**Grant Name:**

Department	Signature	Date
1) Originating		6/17/13
2) Legal	Nancy C Gates	6/19/13
3) Finance		6/20/13
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 13-____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a lease with McDonald Farms, Lessee, whereby the City will rent and lease approximately 100 acres of unimproved land in Cummings Research Park to be used for agricultural purposes, said lease being substantially similar in words and figures to that certain document attached hereto and identified as "Land Lease Agreement Between the City of Huntsville and McDonald Farms", and consisting of six (6) pages plus two (2) additional pages consisting of Exhibit "A", and the date of June 27, 2013, appearing on the margin of the first page, together with the signature of the President of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 27th day of June, 2013.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 27th day of June, 2013.

Mayor of the City of Huntsville,
Alabama

LAND LEASE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND MCDONALD FARMS

THIS AGREEMENT made, entered into and executed, in duplicate, by and between the City of Huntsville, a municipal corporation within the State of Alabama, hereinafter referred to as "City", and McDonald Farms, hereinafter referred to as "Lessee".

City hereby rents and lets to Lessee and Lessee hereby takes and leases from City the lands hereinafter described upon the terms and conditions hereinafter set forth:

1. **The Property**: Approximately 100 acres of unimproved land described in Exhibit "A" attached hereto and incorporated herein as fully as if appearing herein, generally described and located as follows:

   100 Acres being generally located in Cummings Research Park and more accurately identified in Exhibit "A".

2. **Terms**: The terms of this agreement shall commence on the 28th day of June, 2013, and expire on the 31st day of December, 2013, unless sooner terminated or extended in accordance with the terms and conditions herein set forth.

3. **Extended Term**: Subject to the provisions of paragraphs 4 and 5, of this Lease agreement, Lessee may extend this Lease for successive additional twelve (12) month terms upon giving written notice to City no less than thirty (30) days prior to the end of the then current terms.

4. **Right toTerminate**: City reserves the right to terminate this agreement at the end of any crop year.

5. **Rights Reserved:** It is understood and agreed that this property is owned by the City for development and that the lease of it for farming is secondary to the development purpose. The City reserves the right to show the property at any time to prospective purchasers or tenants, to permit prospective purchasers or tenants to come upon the land to conduct such tests as it deems fit to determine the suitability of the land for its purposes, and to terminate this lease as to any or all of the land so leased at any time upon written notice to the Lessee. The City shall compensate the Lessee for any direct losses which may be sustained by the Lessee as a result of any such showing, testing, or termination. Said direct losses shall include the actual cost of such items as fuel, seed, fertilizer, herbicides and pesticides incurred by Lessee in the normal course of farming operation on the leased land. However, compensation shall not extend to such expenses as labor costs, insurance costs or loss of anticipated profits. If all or any portion of the property is sold or leased by the City during the term of this lease the rent due under the lease will be reduced on a pro rata basis according to the number of acres withdrawn.

6. **Rent**: Lessee agrees to pay City the sum of $75.00 per acre for a total of $7,500.00. The number of acres planted shall be as recorded in the records of the Madison County Office of the Agricultural Stabilization and Conservation of the U.S. Department of Agriculture. The number of acres planted shall be computed as of July 15th. All rent shall be payable in arrears on or before the 30th day of September, and is due without demand, set-off or deduction of any kind. Any rental payment received by City more than ten (10) days after the due date shall be assessed a late charge equal to one and one-half percent (1.5%) per month of the amount due.

7. **Use of Property**: The Property shall be used for agricultural purposes only and shall be subject to the following additional terms and conditions:

President of the City Council of the City of Huntsville, AL
Date: June 27, 2013

1. Lessee agrees to conduct farming activities on The Property in an efficient, economic, safe and careful manner, and in accordance with the best farming methods commonly practiced in the area. Lessee shall periodically have the soil tested by the Alabama Department of Agriculture and shall make such applications of fertilizers or lime as may be necessary and appropriate, as recommended by the Alabama Department of Agriculture. All such soil tests shall be conducted at Lessee's sole expense and copies of the soil test reports shall be furnished to the City upon request.

2. Lessee shall cut no timber, nor conduct any mining operations nor remove any soil or other natural substances from The Property.

3. Lessee shall allow no unlawful, improper or otherwise offensive use of The Property, nor commit or permit waste or damage to The Property nor commit or permit any nuisance to exist on The Property. Lessee shall strictly comply with all applicable rules, regulations, laws, administrative orders and ordinances of the City of Huntsville, County of Madison, State of Alabama, the United States and any other governmental agency having jurisdiction regarding use of The Property.

4. Lessee shall not make, construct or install any additions, improvements or alterations to or on The Property without the advance written consent of the City. Lessee shall not construct or install any fuel tanks on The Property, whether permanent or temporary, whether above or below ground, under any circumstances. Any approved additions, improvements or alterations shall become the property of the City upon termination of this Agreement, unless the City gives written approval for Lessee to retain such improvements, in which case Lessee shall promptly remove such improvements at the end of the lease term and shall repair any damages caused by such removal.

8. **Maintenance**: It shall be the responsibility of Lessee to:

1. Maintain The Property and conduct all operations in strict compliance with all governmental regulations and federal, state, county and municipal statutes, laws, ordinances and rules in effect during the term of this agreement.

2. Keep The Property in an orderly condition and free from debris, weeds and brush which would be detrimental to efficient farming operations.

3. Insure that no mechanic's, materialmen's or other liens are placed against The Property for labor or materials furnished or supplied at Lessee's request.

4. Use every reasonable means to prevent soil erosion on The Property.

In the event the City determines that The Property is not being properly maintained, in accordance with the provisions of this Agreement, it shall notify Lessee of the deficiency. Lessee shall perform the required maintenance, at Lessee's sole expense. In the event the maintenance is not satisfactorily performed within thirty (30) days of receiving the notice or, in the event such maintenance is not capable of being performed within said period and Lessee has not begun such maintenance and is not pursuing completion with due diligence, then the City may, in addition to all other rights or remedies provided herein, enter The Property and perform the maintenance. Lessee agrees to reimburse the City for the reasonable cost of all such maintenance

immediately upon demand.

9. **Condition of the Property**: Lessee acknowledges that Lessee has thoroughly inspected the condition of The Property, and found the Property to be in satisfactory condition for the intended purpose. This Agreement is made without any representations or warranties by the City as to the condition of The Property and without obligation of the City to make any changes or alterations to The Property. Lessee expressly assumes sole liability for any and all accidents, loss, cost or damage alleged to have been caused by the condition of The Property.

10. **Environmental Matters**: Lessee agrees to strictly comply with all applicable governmental regulations and federal, state, county and municipal statutes, laws, rules, orders and ordinances, as now exist or may hereafter be adopted concerning protection of the environment. It is an express condition of this Agreement that Lessee shall comply with all rules and regulations of the Environmental Protection Agency, the Alabama Department of Environmental Management, the Department of Agriculture, and any other authority of competent jurisdiction regarding operations on The Property and reporting and clean-up of any spills, emissions, discharges, leaks or releases causing contamination of the environment. Lessee hereby indemnify and holds the City harmless from and against any and all liability, including fines, suits, claims, loss, costs, damage, liens, expenses, judgments and causes of action of every kind resulting from pollution, emissions, leaks, discharges, release, escapes or spills resulting from the activities, operations or omissions of Lessee, the employees, independent contractors or agents of Lessee in connection with the operations on The Property; including, but not limited to, costs of any required clean up, abatement or environmental remediation. This obligation on the part of Lessee shall survive the expiration or earlier termination of this agreement.

    Lessee shall not, nor will Lessee permit any third parties, to discharge, dispose, dump or release, any hazardous substance or waste on or under The Property. The use of pesticides and herbicides, which have been approved by the appropriate regulatory agency, shall not be considered as hazardous substances, when used in accordance with approved application procedures.

11. **Security Deposit**: No security deposit shall be required upon commencement of the lease term. In the event of default by Lessee of any provision of this Agreement, the City reserves the right to institute a reasonable security deposit requirement as a condition of continuing the lease.

12. **Taxes, Assessments and Utilities**: The City shall be responsible for payment of any property taxes or general assessments which may be levied on or assessed against The Property. Lessee shall be responsible for the payment of all taxes levied against Lessee's personal property and taxes attributable to Lessee's use of or income from The Property. Lessee shall be responsible for payment of utility charges, if any.

13. **Sublease**: Lessee shall not sublease or encumber the Property nor any portion thereof under any circumstance. Use of The Property, by anyone other than Lessee constitutes a sublease. Any attempted sublease or assignment of Lessee's interest in this Agreement constitutes an event of default on the part of Lessee and gives the City the right to terminate this Agreement immediately upon notice to Lessee.

14. **Default**:

    1. In the event of Lessee's breach of any provision of this Agreement, the City shall give Lessee written notice of default. In the event the default is not corrected within ten (10) days from the date of such notice, then the City shall have the right to terminate this Agreement or terminate Lessee's right to

conduct operations on The Property. Upon termination of this Agreement or upon termination of Lessee's right to conduct operations at The Property, Lessee agrees to promptly remove any and all equipment and vacate The Property without further demand.

2. Lessee agrees to pay the City's reasonable attorneys' fees and all costs of legal proceedings if it becomes necessary for the City to employ an attorney or legal process to collect any amounts due hereunder, to remove any equipment from The Property, to restore The Property to the condition it was in upon commencement of the Agreement or to enforce any provisions of this agreement upon default by Lessee.

3. An assignment for the benefit of creditors, the appointment of a receiver, any proceedings in bankruptcy, whether voluntary or involuntary, or any act of Lessee's insolvency shall be deemed a breach of this Agreement.

4. Upon default by Lessee, the City may elect to exercise any of the remedies provided by this Agreement, individually or cumulatively, or may elect to assert such other remedies as are available in equity or at law.

15. **Insurance**:

1. Lessee shall, within thirty (30) days from the date of this Agreement and at Lessee's sole expense, procure and maintain during the term of this Agreement comprehensive public liability insurance in a minimum amount of ONE MILLION AND NO/100 DOLLARS ($1,000,000.00) per injured person, to a maximum of ONE MILLION AND NO/100 DOLLARS ($1,000,000.00) for a single incident.

2. The City and its councilmen, officers, employees and agents shall be named as additional insureds on the policy. The insurance carrier shall be required to send a certificate of insurance to the City, and give the City thirty (30) days' advance written notification of any cancellation or modification to the policy.

3. It is understood and agreed by Lessee that the City is not responsible for the loss of or damage to any of Lessee's equipment or personal property, nor does the City's insurance cover such loss or damage. Lessee is encouraged to procure and maintain sufficient insurance to protect Lessee's equipment against any loss or damage.

16. **Indemnification:** Lessee, the heirs, personal representatives and assigns of Lessee, shall indemnify and hold the City and its councilmen, officers, employees and agents harmless from and against any and all liability, including fines, suits, judgments, claims, loss, costs, damage, lines, expenses and causes of action of every kind resulting from Lessee's use of or presence on The Property, or arising out of or in connection with Lessee's or any third party's operations, activities or omissions pursuant to this Agreement. Lessee and the heirs, personal representatives and assigns of lessee, shall indemnify and hold the City and its councilmen, officers employees and agents, harmless from and against any and all liability for injury, disability or death to persons, for damage to or loss of property, resulting from Lessee's, or any third party's operations, activities, or omissions pursuant to this Agreement. This indemnification shall include the cost of defense of any suit or claim including all court costs and reasonable attorneys' fees.

17. **Security and Damage**: The City Assumes no responsibility or liability for damage to The Property or crops from

any cause whatsoever. The City assumes no responsibility for the security of The Property or any improvements or equipment thereon, nor for the safety of Lessee's employees, independent contractors or agents. Lessee assumes full responsibility and risk of loss for all improvements and equipment on The Property and for the safety of all persons and equipment utilized in the operations of Lessee.

18. **Relationship of the Parties**: Nothing contained herein shall be deemed or construed as creating a partnership, joint venture or agency relationship between the parties. Neither party shall have the right or authority to bind the other.

19. **Right to Enter**: The City reserves the right to enter the Property at all reasonable times, to inspect the Property, to perform tasks, surveys, etc., or at any time in the event of emergency. The City will endeavor to limit entry to reasonable hours. Lessee shall have no claim against the City for interference with Lessee's interest during such periods of inspection.

20. **Joint and Several Liability**: Each individual lessee executing this Agreement hereby assumes individual as well as joint liability for the full and faithful performance of all provisions of this Agreement.

21. **Waiver**: The City's waiver of default by Lessee of any provision of this Agreement shall not operate as a waiver of subsequent defaults by Lessee.

22. **Integration**: This Agreement is the entire agreement between the parties, and cannot be altered or amended except in writing and signed by both parties.

23. **Binding Effect**: The rights and obligations of this Agreement shall extend to and be binding upon the parties and their heirs, personal representatives, successors and assigns. However, this section shall not be construed as giving Lessee the right to assign this Agreement.

24. **Assignment**: Lessee shall not assign or transfer this Agreement, sublet any portion of The Property or permit any part of The Property to be used by anyone other than Lessee.

25. **Construction**: This Agreement shall be construed under, and in accordance with, the laws of the State of Alabama. In the event any provisions of this Agreement are held to be invalid, illegal or unenforceable in any respect, by a court of competent jurisdiction, the remaining portion of this Agreement shall continue in full force and effect.

26. **Notice**: All payments and written notices required by this Agreement, unless otherwise provided, shall be mailed to the City at the following address:

City of Huntsville
Real Estate Department
P.O. Box 308
Huntsville, Alabama 35804
Attention: Kelly W. Davis

All notices required by this Agreement unless otherwise provided, shall be mailed to Lessee at the following Address:

Mr. Albert McDonald
McDonald Farms
~~113 Lake Point Circle~~
~~Huntsville, AL 35824~~

~~9785~~ 9785
~~9785~~ SEGERS RD.
MADISON, AL 35756

IN WITNESS WHEREOF, Russ McDonald, as Lessee, and the City of Huntsville, a municipal corporation, acting by and through Tommy Battle, as Mayor, and Charles Hagood, as Clerk-Treasurer of the City of Huntsville, Alabama, have hereunto set their hands and affixed the seal of the City of Huntsville and attested the same as and for the official act of said municipal corporation in accordance with their duly constituted authority as such Mayor and Clerk Treasurer as heretofore authorized by the City Council of the City of Huntsville, Alabama, on this the 27th day of June, 2013.

LESSEE:

Russ McDonald
McDonald Farms

LESSOR:

CITY OF HUNTSVILLE, a municipal corporation
In the State of Alabama

ATTEST:

BY:_____
Charles E. Hagood
City Clerk-Treasurer

BY:_____
Tommy Battle
Mayor

EXHIBIT "A"

FARM 8194
Tract 6326

Madison County, Alabama
USDA Farm Service Agency

USDA FSA

N
W E
S

1 inch equals 272 feet

Photography Date: ***2009***

Date Printed: ***April 12, 2011***

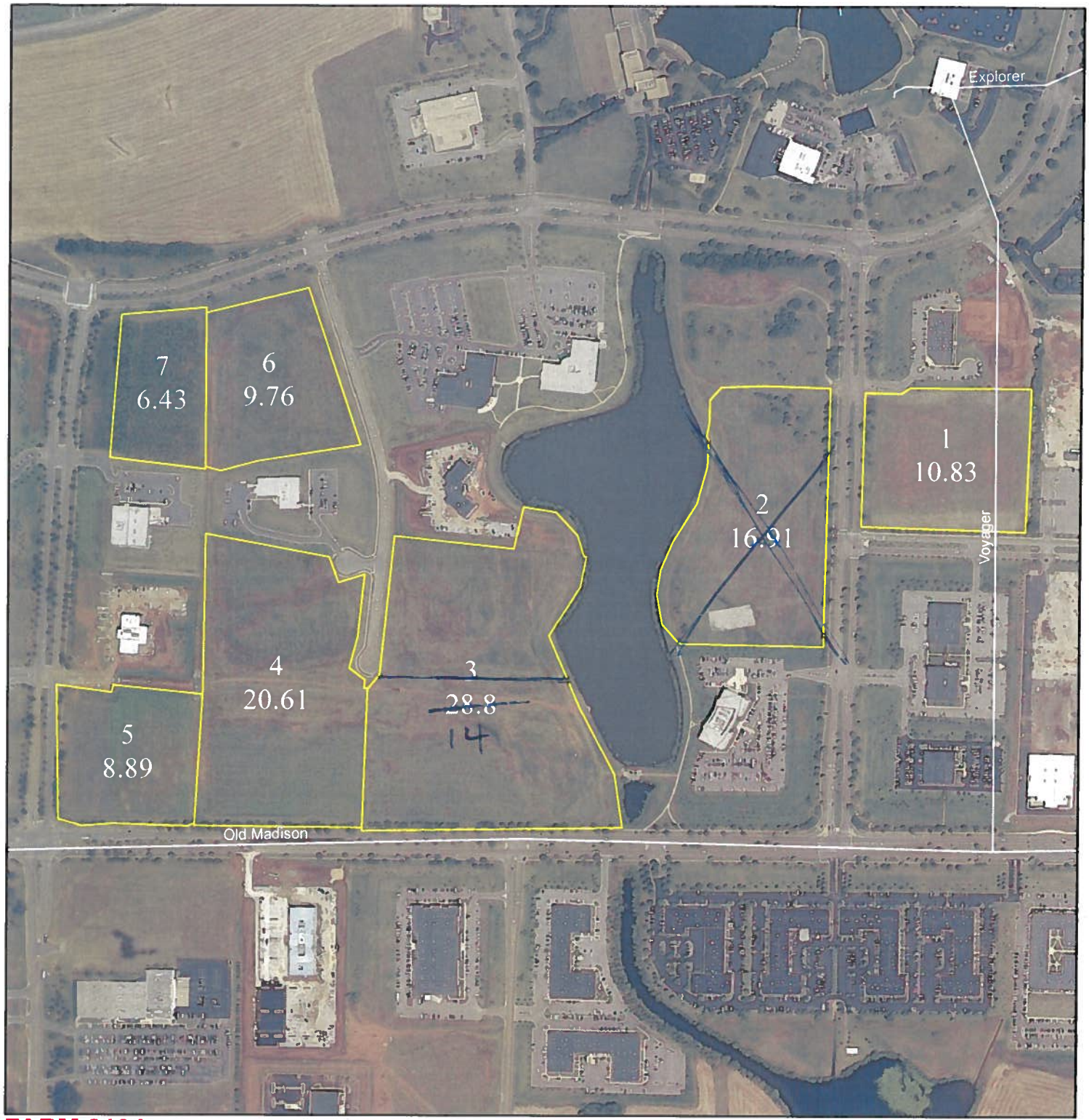
CLU Boundary

CRP Boundary

Wetland Determination Identifiers

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

Disclaimer: USDA FSA maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or the 2009 ortho-rectified imagery for Alabama. The producer accepts the data 'as is' and assumes all risks associated with its use. The USDA Farm Service Agency assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside of FSA Programs. Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS.



FARM 8194
Tract 6327

Madison County, Alabama
USDA Farm Service Agency

USDA FSA

N W E S

1 inch equals 607 feet

Photography Date: ***2009***

Date Printed: ***April 12, 2011***

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CRP Boundary

Wetland Determination Identifiers

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