



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT  
332 MINNESOTA STREET, SUITE E1500  
ST. PAUL, MN 55101-1323

MVP

09 June 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,<sup>1</sup> MVP-2025-00566-TRS, MFR 1 of 1.<sup>2</sup>

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>3</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>4</sup>

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
  - i. Wetland 1 (0.11 acres), non-jurisdictional
  - ii. Wetland 2 (0.01 acres), non-jurisdictional
  - iii. Wetland 3 (0.47 acres), non-jurisdictional
  - iv. Wetland 4 (0.36 acres), non-jurisdictional
  - v. Wetland 5 (0.01 acres), non-jurisdictional

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023)
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The Corps review area is limited to Wetlands 1-5 (combined 0.96-acres) located in the City of Chippewa Falls, Chippewa County, Wisconsin. Latitude: 44.95029 Longitude: -91.41590. The Corps review area is located on the 25-acre Willow Creek residential development site north of 1893 Willow Creek Parkway and is shown on the enclosed figures labeled MVP-2025-00566-TRS AJD Figures, Page 1 to 9.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A

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6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>7</sup> N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
  - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
  - b. The Territorial Seas (a)(1)(ii): N/A
  - c. Interstate Waters (a)(1)(iii): N/A
  - d. Impoundments (a)(2): N/A
  - e. Tributaries (a)(3): N/A
  - f. Adjacent Wetlands (a)(4): N/A
  - g. Additional Waters (a)(5): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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<sup>6</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>7</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>8</sup>

Wetlands 1 and 2 are identified in the May 28, 2025, Bopray Environmental – Willow Creek residential development Site Memorandum. Wetland 1 is a group of nine continuous small squares that were constructed in uplands between 2010 and 2014 for a Tough Mudder obstacle-endurance racecourse that occurred on the Willow Creek residential site before development/expansion of the subdivision was proposed. Wetland 2 was constructed between 2006 and 2010 in ruts left by equipment on a soil stockpile that was formed after expansion from this residential site occurred to the southwest of the property. Wetlands 1 and 2 developed as a result of grading activities from previous residential expansion within the Willow Creek subdivision. Accordingly, the Corps has determined that Wetlands 1 and 2 are excluded from Section 404 jurisdiction under (b)(7) of the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule as Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land, until abandoned.

Wetlands 3 and 4 are identified in the May 28, 2025, Bopray Environmental – Willow Creek residential development Site Memorandum. Wetlands 3 and 4 (artificially constructed ponds) were constructed in uplands between 1968 and 1980 when the surrounding fields were taken out of agricultural production. Eventually those fields were planted and transitioned to a pine plantation. These ponds do not have a continuous surface connection to any other wetlands or waterways near the site. Accordingly, the Corps has determined that Wetlands 3 and 4 are excluded from Section 404 jurisdiction under (b)(5) of the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule as Artificial lakes or ponds created in dry land, used exclusively for specific purposes.

Wetland 5 is identified in the May 28, 2025, Bopray Environmental – Willow Creek residential development Site Memorandum. This wetland is a man-made linear feature which formed as a result of grading activities in mapped uplands after the construction of Willow Creek Parkway. Wetlands 5 was constructed between 2010 and 2015 when Willow Creek Parkway was constructed, and the

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<sup>8</sup> 88 FR 3004 (January 18, 2023)

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Willow Creek development started to expand to the north. Wetland 5 is a result of the construction of a ditch system to manage stormwater within the Willow Creek residential expansion site boundary. Accordingly, the Corps has determined that Wetland 5 is excluded from Section 404 jurisdiction under (b)(3) of the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule as ditches excavated wholly in and draining only dry land that do not carry a relatively permanent flow of water.

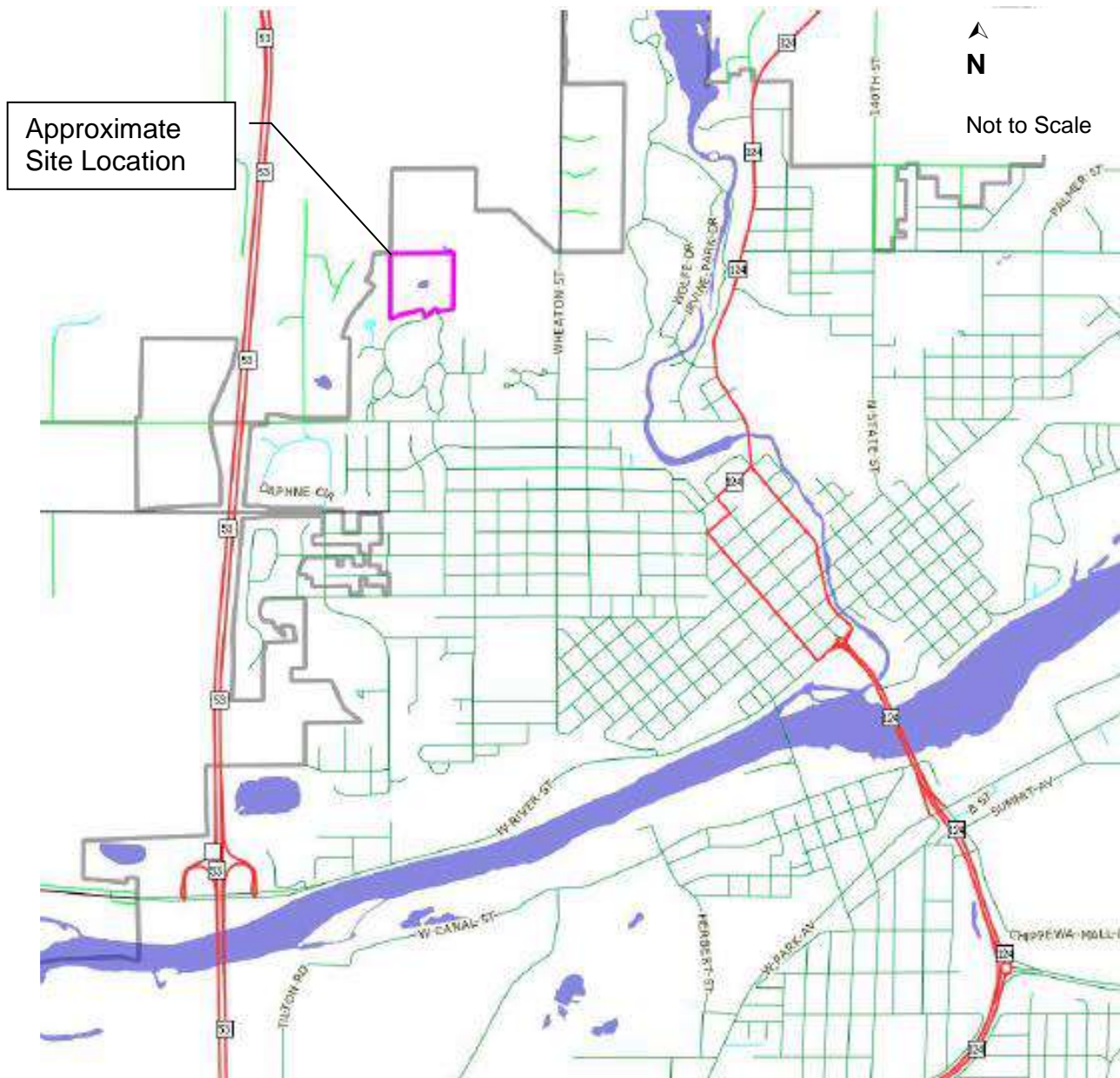
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).  
N/A

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. May 28, 2025, Bopray Environmental – Willow Creek residential development Site Memorandum.
- b. USACE Regulatory Viewer Accessed: June 6, 2025.
- c. WDNR - Surface Water Data Viewer Accessed: June 6, 2025.
- d. Google Earth Imagery Accessed: June 6, 2025.
- e. Wisconsin Wetland Inventory, USDA Web Soil Survey, and USGS NHD and Topographic Maps Accessed: June 6, 2025.
- f. USGS 1:24K Quad Name: Chippewa Falls.
- g. Office evaluation conducted on June 6, 2025.

10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



**Figure 1. Location Map**  
Gen3 Properties, Willow Creek Add.  
Chippewa Falls, Wisconsin

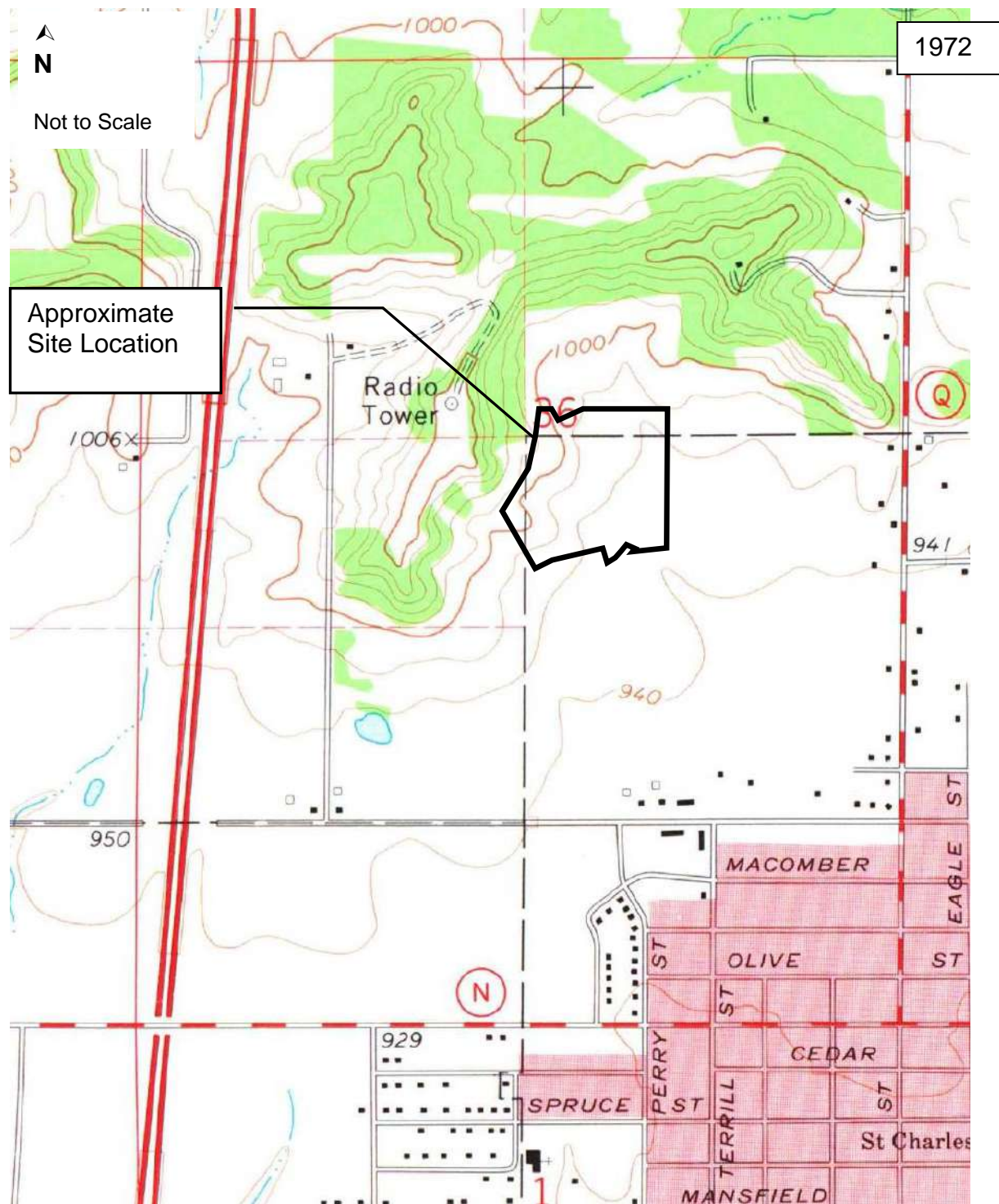
Project No. 2025-015





**Figure 2. U.S.G.S.  
Quadrangle Map**  
Gen3 Properties, Willow Creek Add.  
Chippewa Falls, Wisconsin

Project No. 2025-015



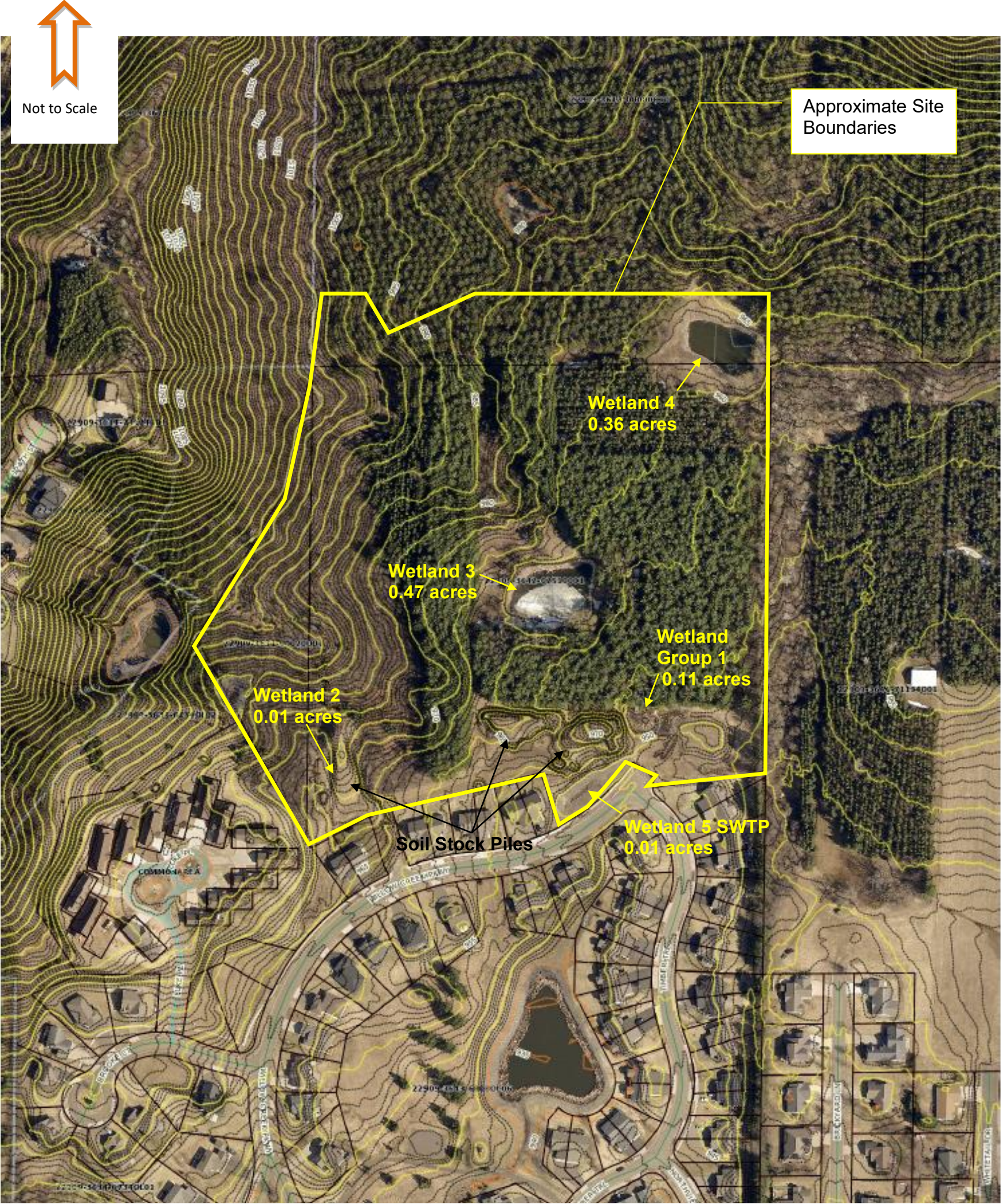
### Figure 2. U.S.G.S. Quadrangle Map

Gen3 Properties, Willow Creek Add.  
Chippewa Falls, Wisconsin

Project No. 2025-015







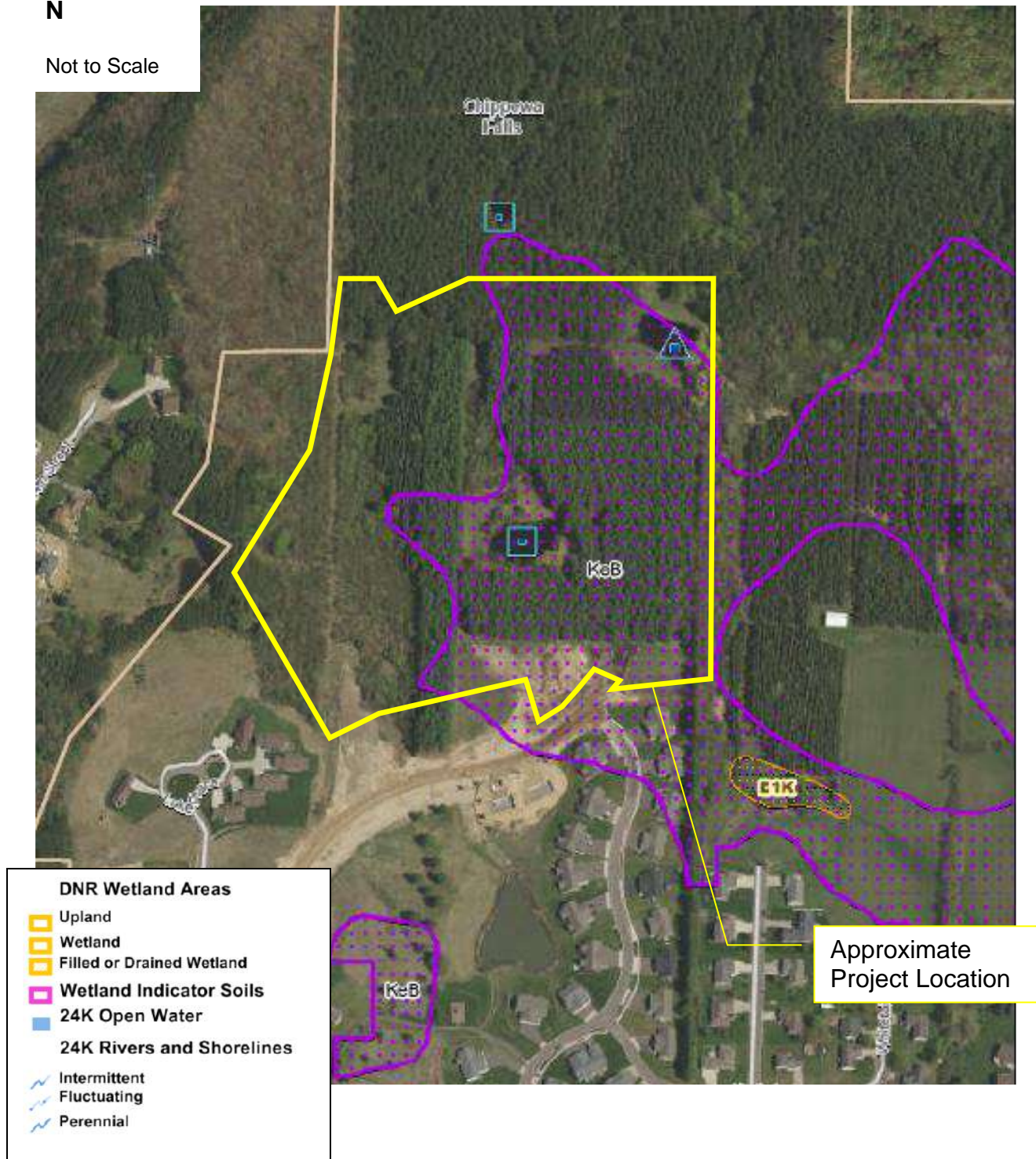
Wetland 1:	44.949518	-91.415116
Wetland 2:	44.949030	-91.417750
Wetland 3:	44.950294	-91.415907
Wetland 4:	44.951697	-91.414472
Wetland 5:	44.948968	-91.415645

Figure 3. Aerial Photo with Approximate Wetland Locations





Not to Scale



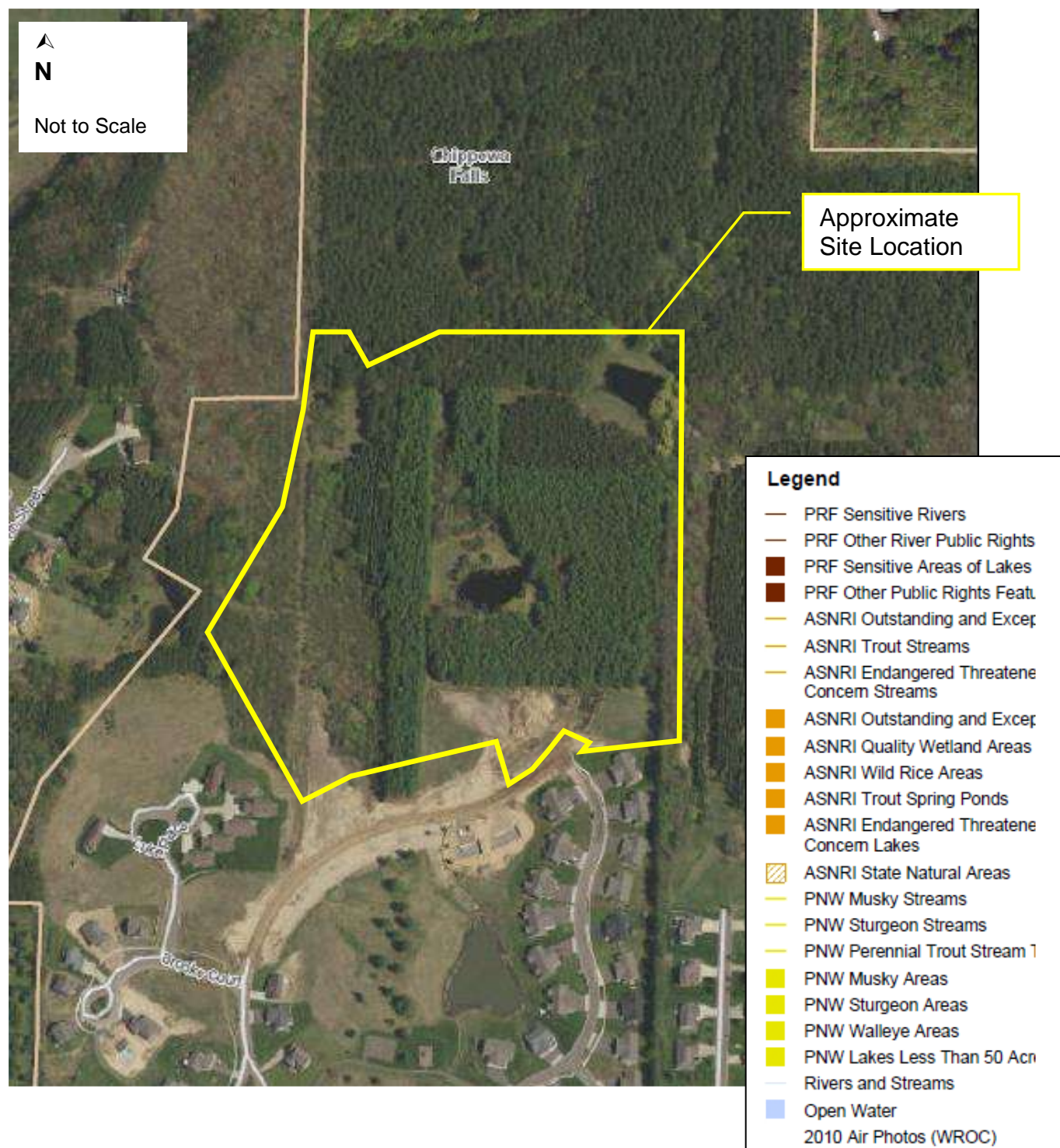
**Figure 4. Wisconsin Wetland Inventory Map**

Gen3 Properties, Willow Creek Add.  
Chippewa Falls, Wisconsin



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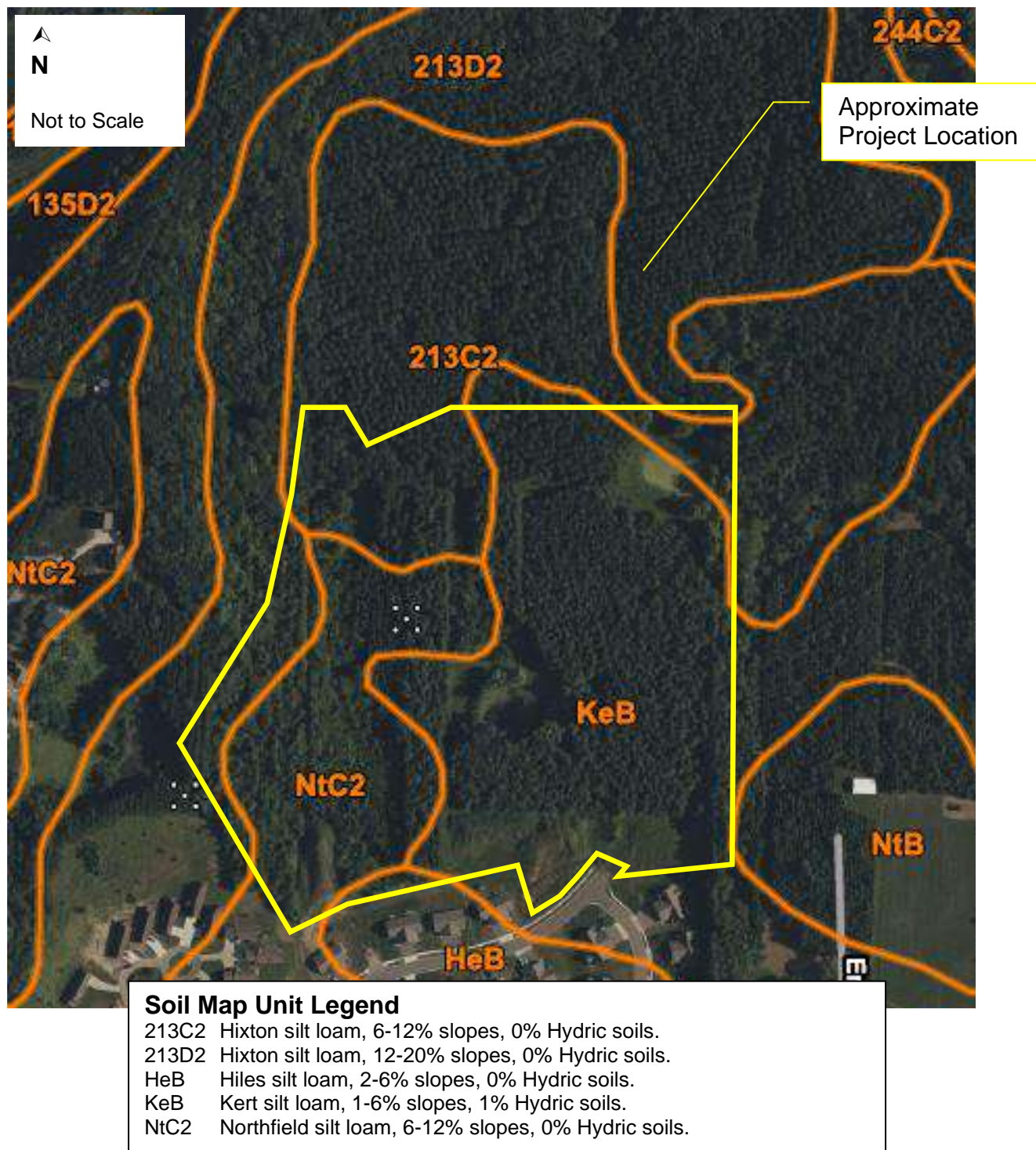


**Figure 5. Wisconsin Designated Waters Map**

Gen3 Properties, Willow Creek Add.  
Chippewa Falls, Wisconsin



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**Figure 6. Chippewa County  
Soil Survey Map**  
Gen 3 Properties, Willow Creek Add.  
Chippewa Falls, Wisconsin

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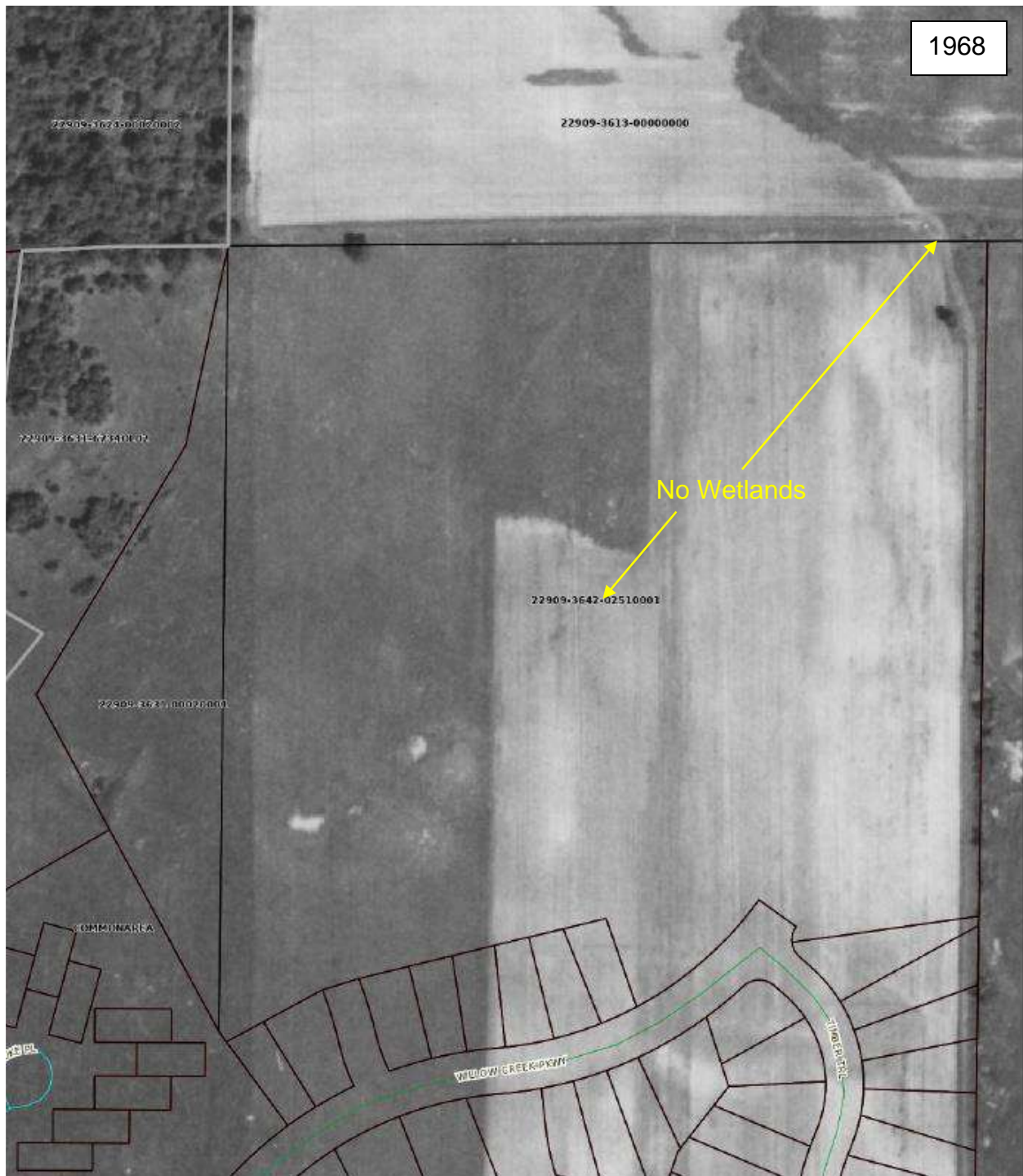
## Appendix A. Historical Aerial Photos



Gen3 Properties, Willow Creek Add.  
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Entire site is cultivated cropland.



## Appendix A. Historical Aerial Photos

Gen3 Properties, Willow Creek Add.  
Chippewa Falls, Wisconsin

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