



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

CEMVP-RD

13 March 2026

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),¹ MVP-2017-00267-TRS, MFR 1 of 1.²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

¹ 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.

² 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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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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 10 (0.19 acres) non-jurisdictional
- ii. Wetland 11A (0.04 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)
- d. "Memorandum to the Field Between the U.S. Department of The Army, U.S. Army Corps of Engineers and The U.S. Environmental Protection Agency Concerning the Proper Implementation Of 'Continuous Surface Connection' Under the Definition Of "Waters of The United States" Under the Clean Water Act" (March 12, 2025)

3. REVIEW AREA. The Corps review area is located in Section 19, Township 116N, Range 24 West, Laketown Township, Carver County, MN. The center coordinates of the site are Lat: 44.847672, Long: -93.755589. The Corps review area is limited solely to Wetlands 10 and 11A as identified in the wetland delineation report. The review area is north of Airport Road, south of State Highway 5, west of Scandia Road, and east of Main Street. The review area is also adjacent to Laketown Elementary School. A preliminary jurisdictional determination was issued for this site on April 19, 2017, with file number MVP-2017-00267-LMG and an approved jurisdictional determination was issued on December 8, 2023, with file number MVP-2017-00267-JST. The Corps review area is shown on the enclosed figures labeled MVP-2017-00267-TRS, AJD Figures, Page 1 of 6.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

⁷ 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.

⁸ 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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- 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

- a. 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).
 - Wetlands 10 (W10) and 11A (W11A) are classified as Freshwater, Palustrine, Emergent/Wet Meadow Wetlands (PEM1A) in the Wetland Delineation from July 21, 2023. W10 and W11A are not TNWs, territorial seas, or interstate waters; therefore, W10 and W11A are not category (a)(1) waters. Current and historic aerial photos indicate W10 and 11A are not tributaries and were not created by impounding a water of the U.S.; therefore, W10 and 11A are not category (a)(2) or (a)(3) waters. Based on review of the wetland delineation map and additional referenced material from Section 9 in this MFR, W10 and 11A do not directly abut a jurisdictional water identified in paragraph (a)(1), (a)(2), or (a)(3), of the conforming rule. The closest catalogued water is Reitz Lake located approximately 0.17 miles south of the Corps review area. W10 and 11A are surrounded by uplands and Airport Road to the South. There are no ditches, swales, pipes, or culverts that provide a continuous surface connection from W10 and 11A to the nearest lake. W10 and 11A are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, W10 and 11A are not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

Culverts were identified and mapped south of W10 and 11A (outside of the review area). The culvert travels under Airport Road and into a swale feature leading to Reitz Lake. After reviewing historical and current imagery, it was confirmed that the culvert does not have a defined bed and bank or ordinary

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high water mark and does not carry a relatively permanent flow of water. It therefore does not provide a continuous surface connection to any identified RPW.

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. Wetland Delineation Re-Approval Memorandum for Kirsch Property prepared by Kjolhaug Environmental Services on July 21, 2023.
 - b. USACE National Regulatory Viewer Accessed: March 13, 2026.
 - c. Google Earth Imagery Accessed: March 13, 2026 (1991, 2003, 2006, 2011).
 - d. Office evaluation conducted on: March 13, 2026
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.

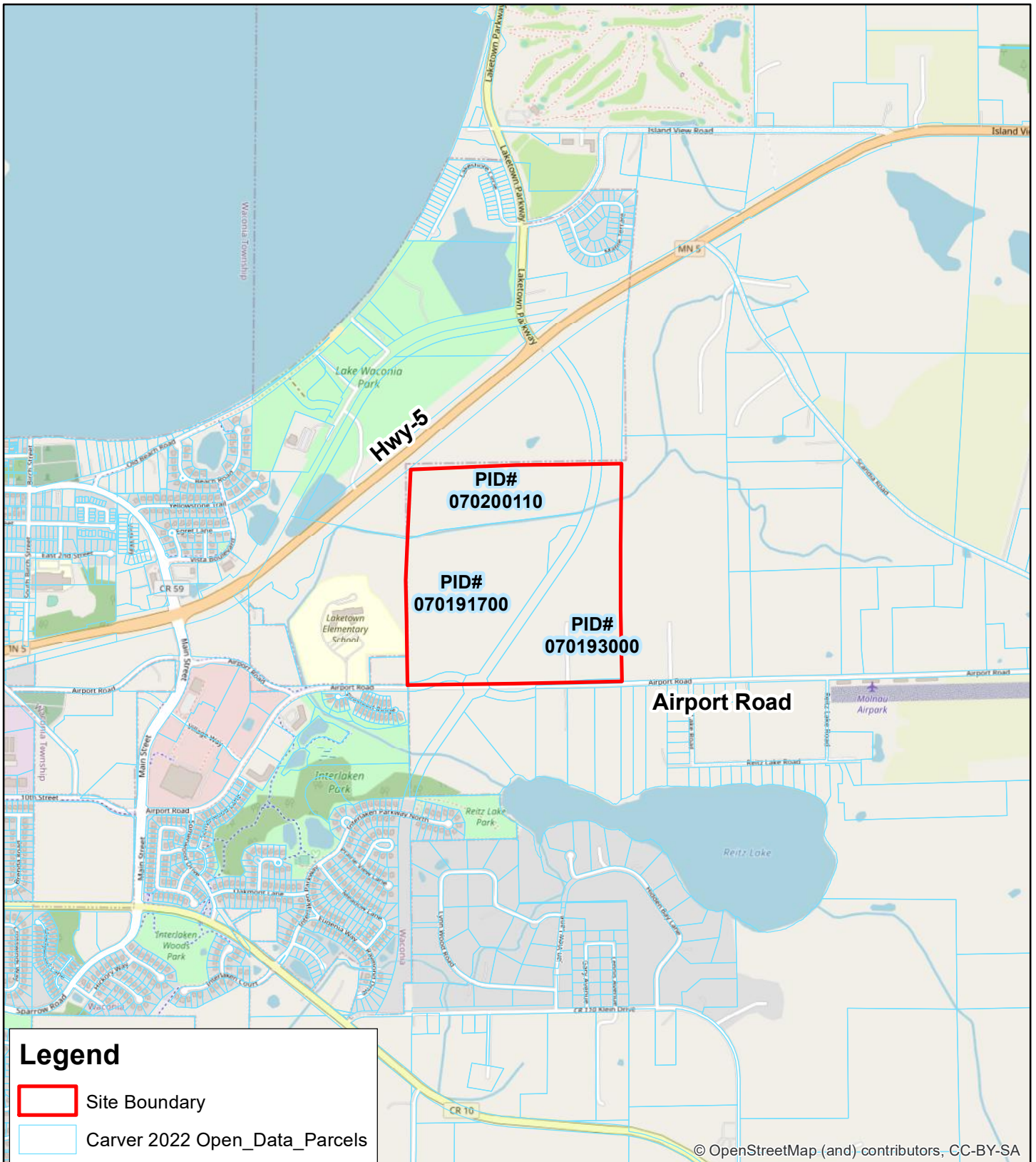


Figure 1 - Site Location



KJOLHAUG ENVIRONMENTAL SERVICES COMPANY
Source: MNGEO Spatial Commons, USFWS

N



0 1,000
Feet



Kirsch Property (KES 2023-057)
Laketown Township, Minnesota

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.

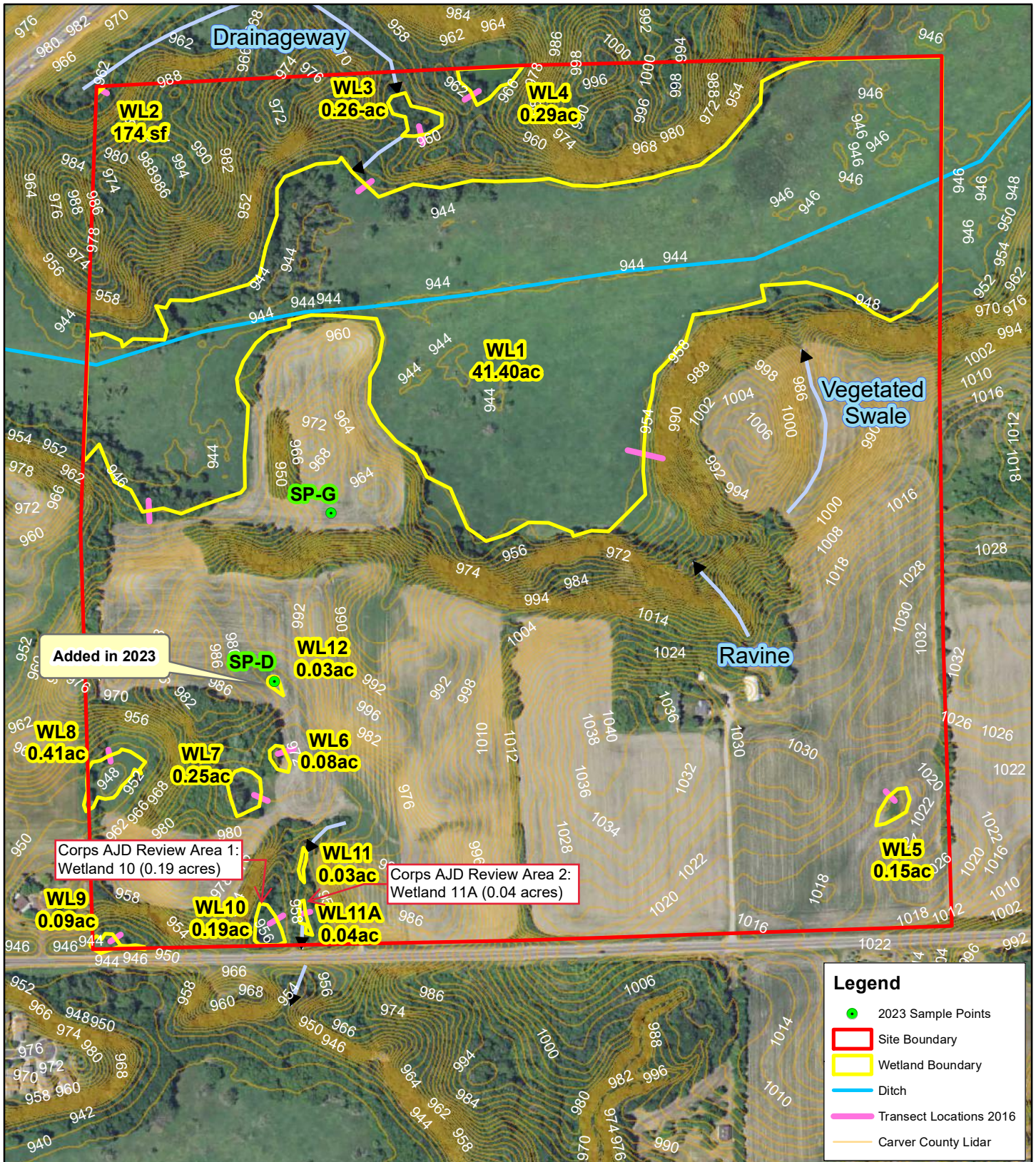


Figure 2 - Existing Conditions (2021 FSA Photo)

0 500 Feet

Kirsch Property (KES 2023-057)
Laketown Township, Minnesota

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.

KJØLHAUG ENVIRONMENTAL SERVICES COMPANY
 Source: MNGEO Spatial Commons

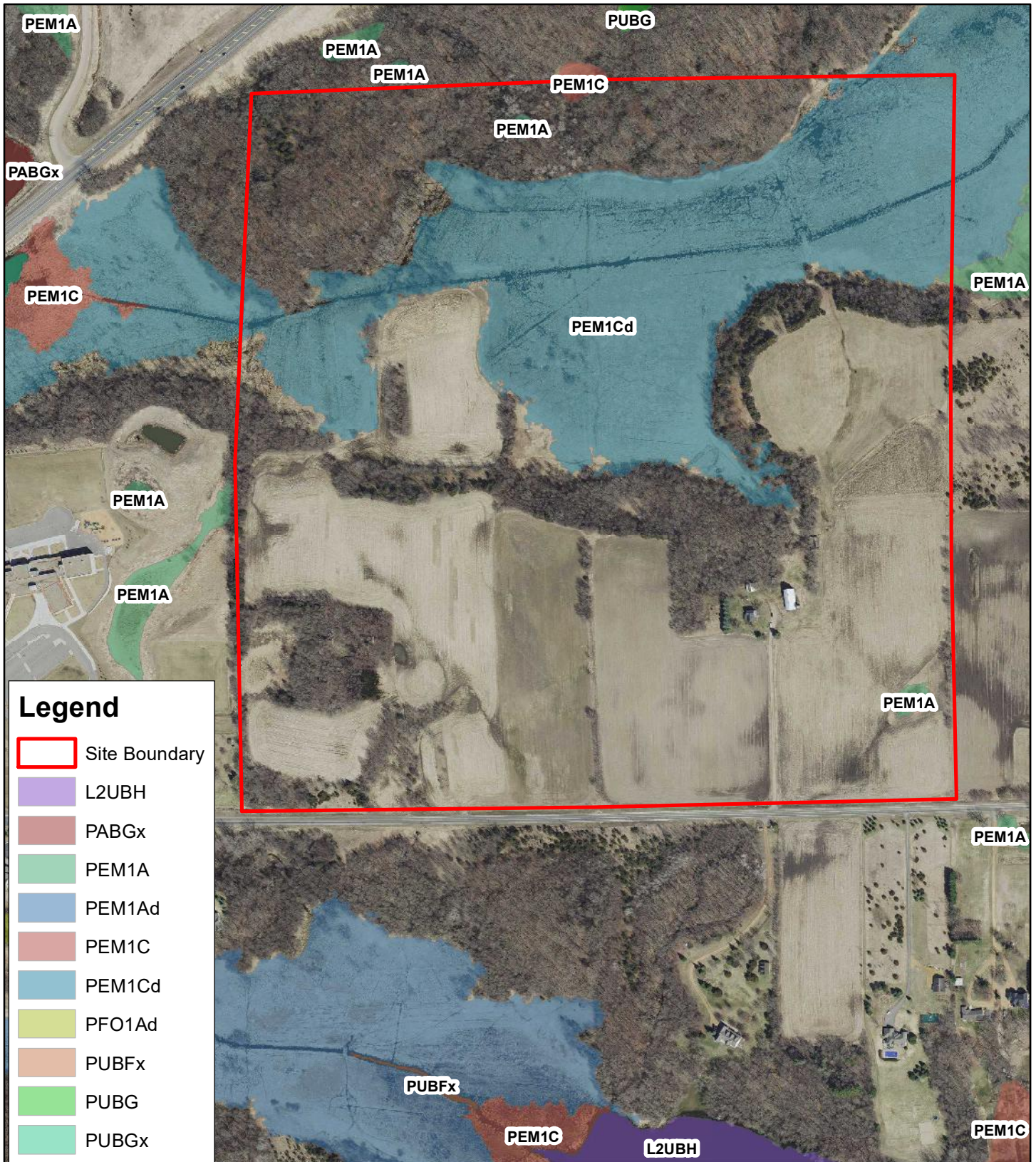




Figure 3 - National Wetlands Inventory

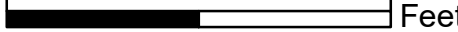


KJØLHAUG ENVIRONMENTAL SERVICES COMPANY
Source: MNGEO Spatial Commons, USFWS

N



0 1,000
Feet



Kirsch Property (KES 2023-057)
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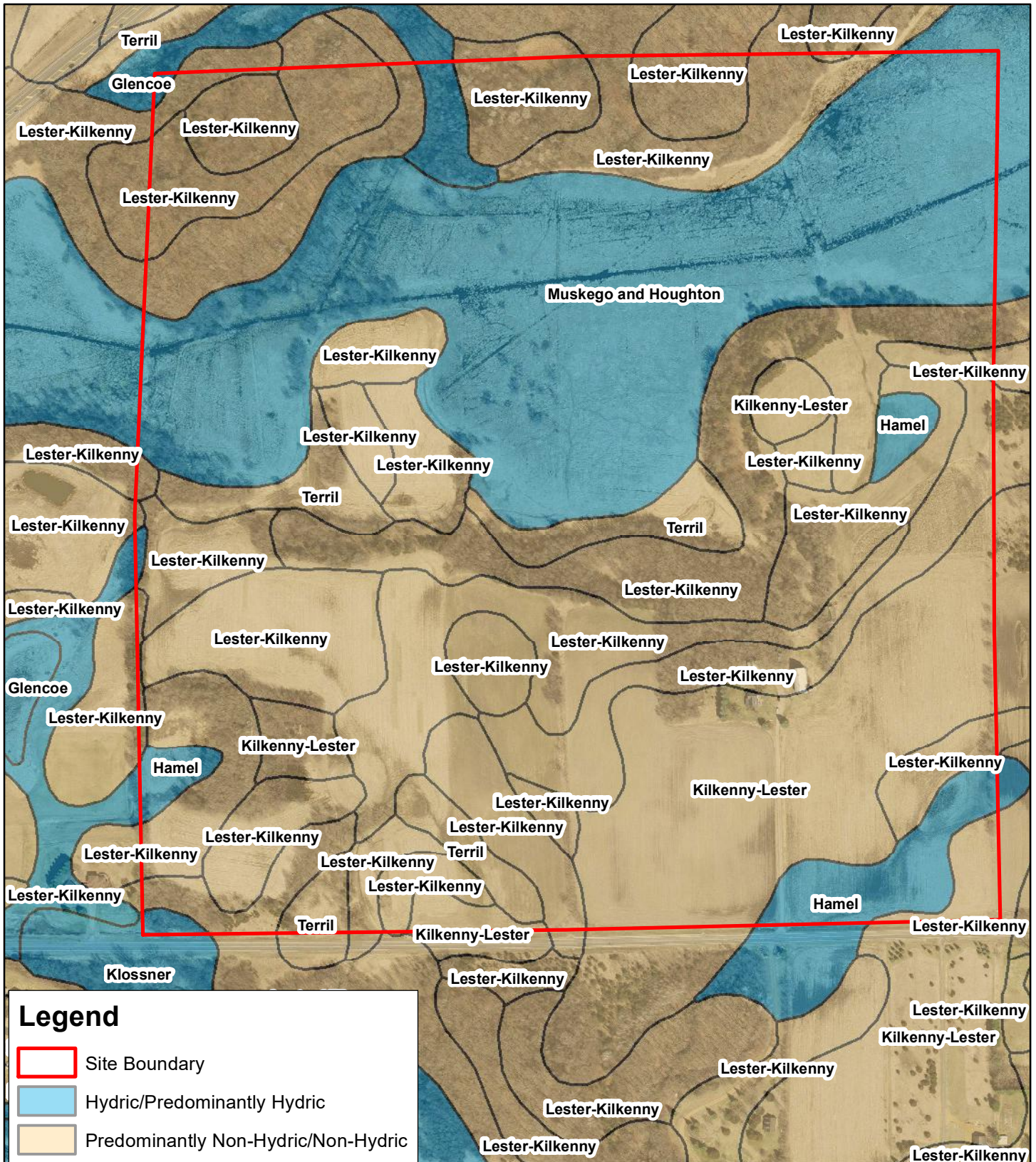




Figure 4 - Soil Survey

 0 1,000 Feet

 **KJOLHAUG** ENVIRONMENTAL SERVICES COMPANY
Source: MNGEO Spatial Commons, USFWS

Kirsch Property (KES 2023-057)
Laketown Township, Minnesota

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Figure 5 - DNR Public Waters Inventory

Kirsch Property (KES 2023-057)
Laketown Township, Minnesota

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Source: MNGEO Spatial Commons, USFWS

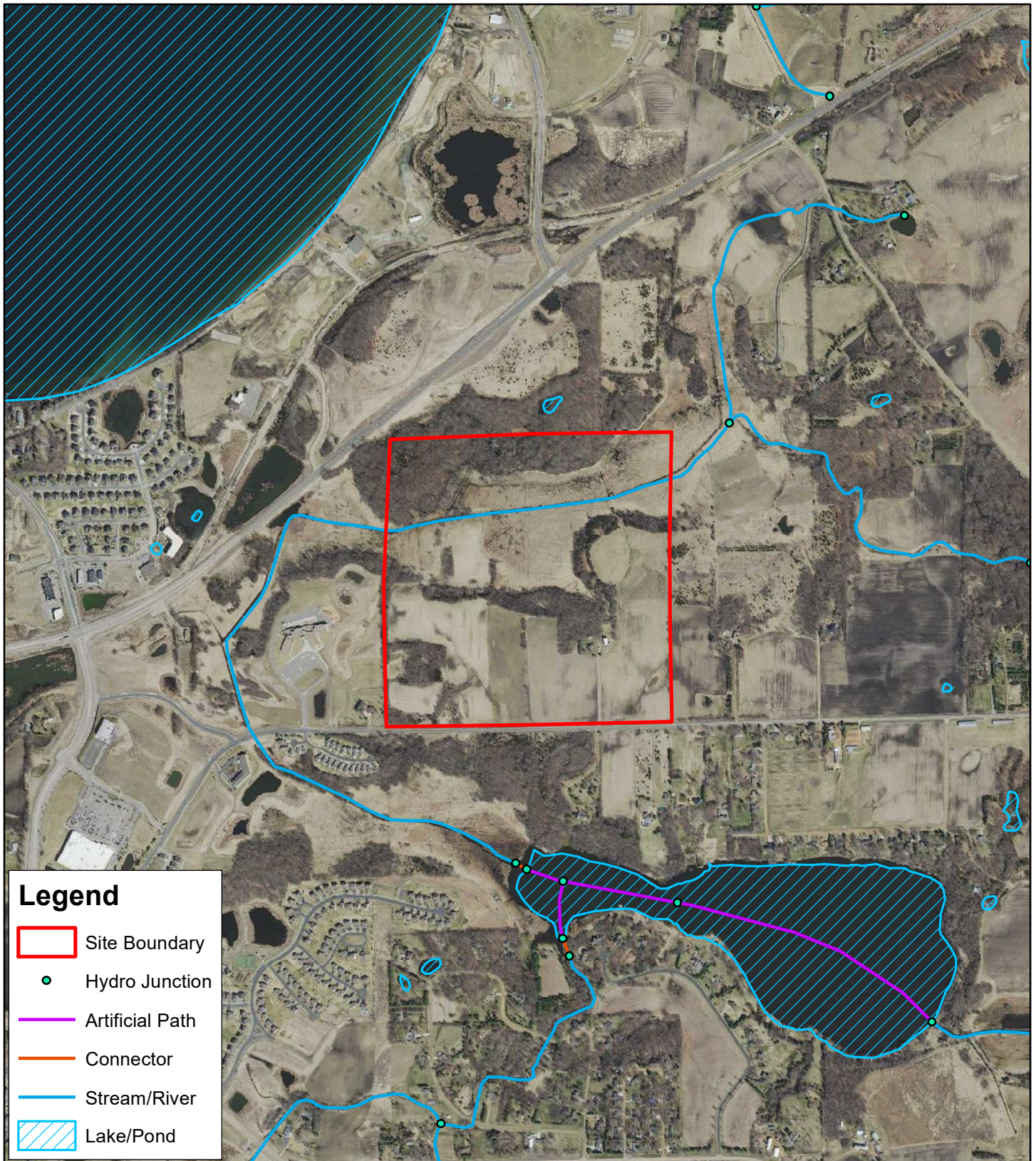


Figure 6 - National Hydrography Dataset

   **Kirsch Property (KES 2023-057)**
Laketown Township, Minnesota

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Source: MNGEO Spatial Commons, USFWS