



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

MVP

December 27, 2024

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-2019-02403-RLG MFR 1²

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,

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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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).
 - a. Wetland B (5.34 Acres)

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. ___, 143 S. Ct. 1322 (2023)
- d. January 2023 Rule preamble at 88 FR 3090

3. REVIEW AREA.

- a. Project Area Size (in acres): 71.7 acres
- b. Location Description: The project/review area is located in Section 4, Township 27N, Range 21 W, Washington County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.860177 Longitude: -92.924910
- d. Nearest City or Town: Cottage Grove
- e. County: Washington
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes):
None

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 WATERS⁶: 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 10.⁷ 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

⁶ 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.

⁷ 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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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 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).⁸

N/a

- 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).

The area labeled as Wetland 1 was evaluated as a potential (a)(4) water but it does not have a continuous surface connection to a jurisdictional water.

Wetland 1 extends offsite to the south. Wetland 1 is not connected to any downstream water via a culvert, ditch, swale, or relatively permanent water. Wetland 1 does not have a continuous surface or near surface connection to any (a)(1-3) water or any relatively permanent water. Wetland 1 does not connect to any other wetlands or tributaries on or offsite.

The USDA NRCS' Web Soil Survey and Soil Survey Geographic (SSURGO) shows mapped hydric soils in the project area where Wetland 1 is. The soil on site is listed as Auburndale silt loam (hydric) where Wetland 1 is and soil types of Ostrander and Ripon silt loams at the rest of the site.

⁸ 88 FR 3004 (January 18, 2023)

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The closest surface water feature is the Gabbles Lake to the northeast of the project site by 1.45 miles away. No surface water drainage feature was identified on Hillshade, topographic or hydrologic mapping between Wetland 1 and any waters on or off site. The National Wetland Inventory does show Wetland 1 and the National Hydrography Dataset does not show Wetland 1. Wetland 1 is listed as a DNR public water from the state.

Wetland 1 does not meet the terms of paragraphs (a)(4) because it lacks a continuous surface connection to waters identified in paragraph (a)(1) or relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3) and with a continuous surface connection to those waters, and therefore, the water is not adjacent.

Wetland 1 does not support a link to interstate or foreign commerce. Wetland 1 is not known to be used by interstate or foreign travelers for recreation or other purposes; does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and is not known to be used for industrial purposes by industries in interstate commerce. Wetland 1 was determined to not be jurisdictional under the CWA because Wetland 1 lacks a link to interstate commerce sufficient to serve as a basis for jurisdiction.

Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 rule preamble discussed the *Rapanos* plurality standard, the implementation guidance and tools in the 2023 rule preamble that address the regulatory text that was not amended by the conforming rule, including the preamble relevant to the *Rapanos* plurality standard incorporated in paragraphs (a)(3), (4), and (5) of the 2023 rule, as amended, generally remain relevant to implementing the 2023 rule, as amended.

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. Military Road Pulte Cottage Grove Wetland Delineation, dated Sep 9, 2024
- b. MNDNR Hillshade - 2016 accessed Dec 3 and Dec 20, 2024
- c. USDA NRCS Soil Survey USDA-NCSS SSURGO and STATGO
- d. National Regulatory Viewer 2021- accessed Dec 3 and 20, 2024
- e. U. S. Fish and Wildlife Service. Publication date (found in metadata). National Wetlands Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. <http://www.fws.gov/wetlands/>.

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- f. USGS. (Dec 3, 2024). National Hydrography Dataset Plus High Resolution (NHDPlus HR) for 4-digit Hydrologic Unit - 1601. Washington, D.C., USA.

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.

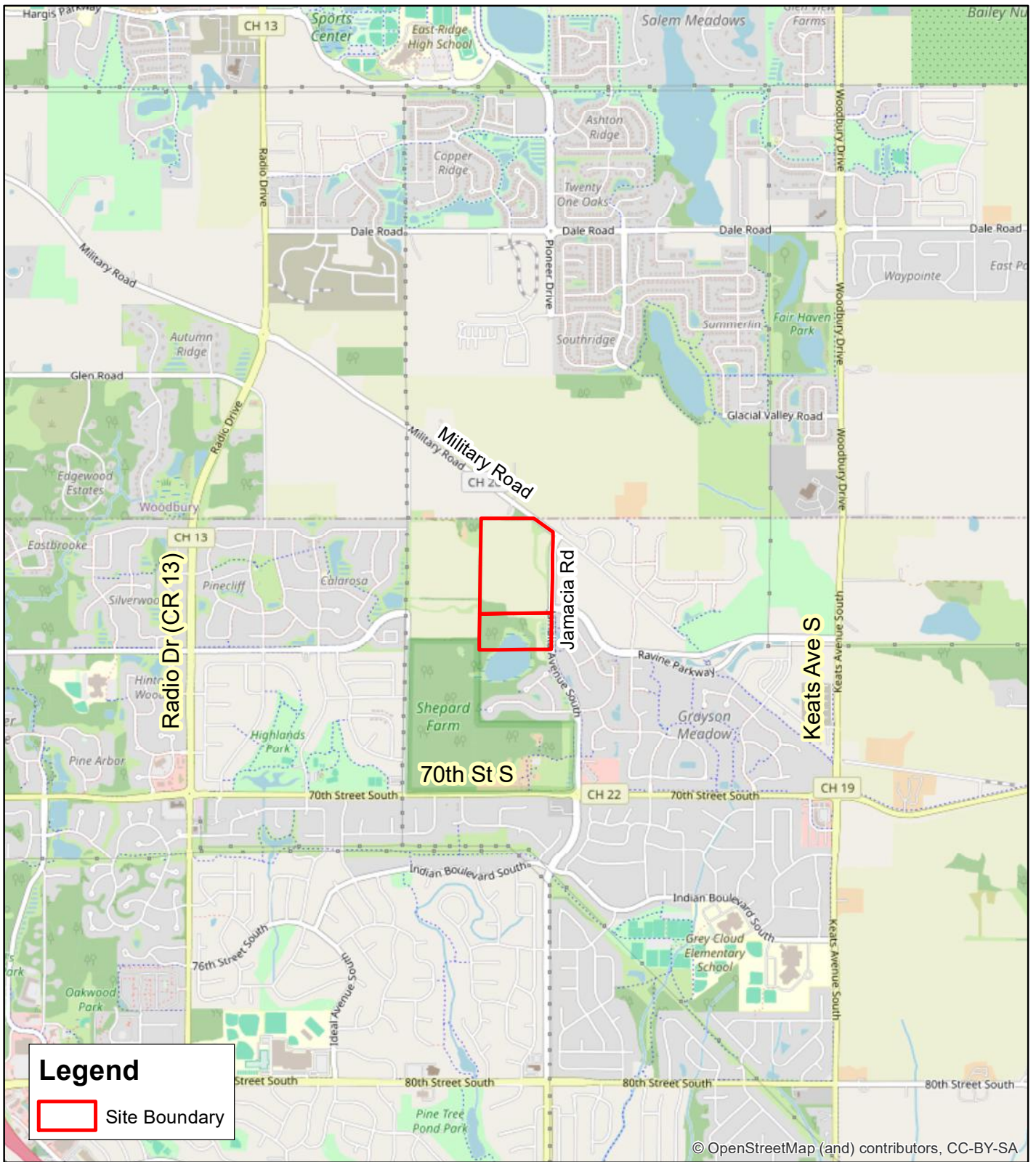
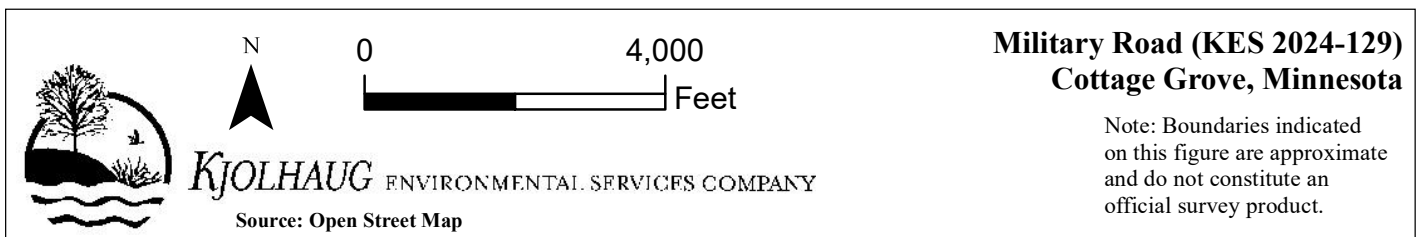


Figure 1 - Site Location Map



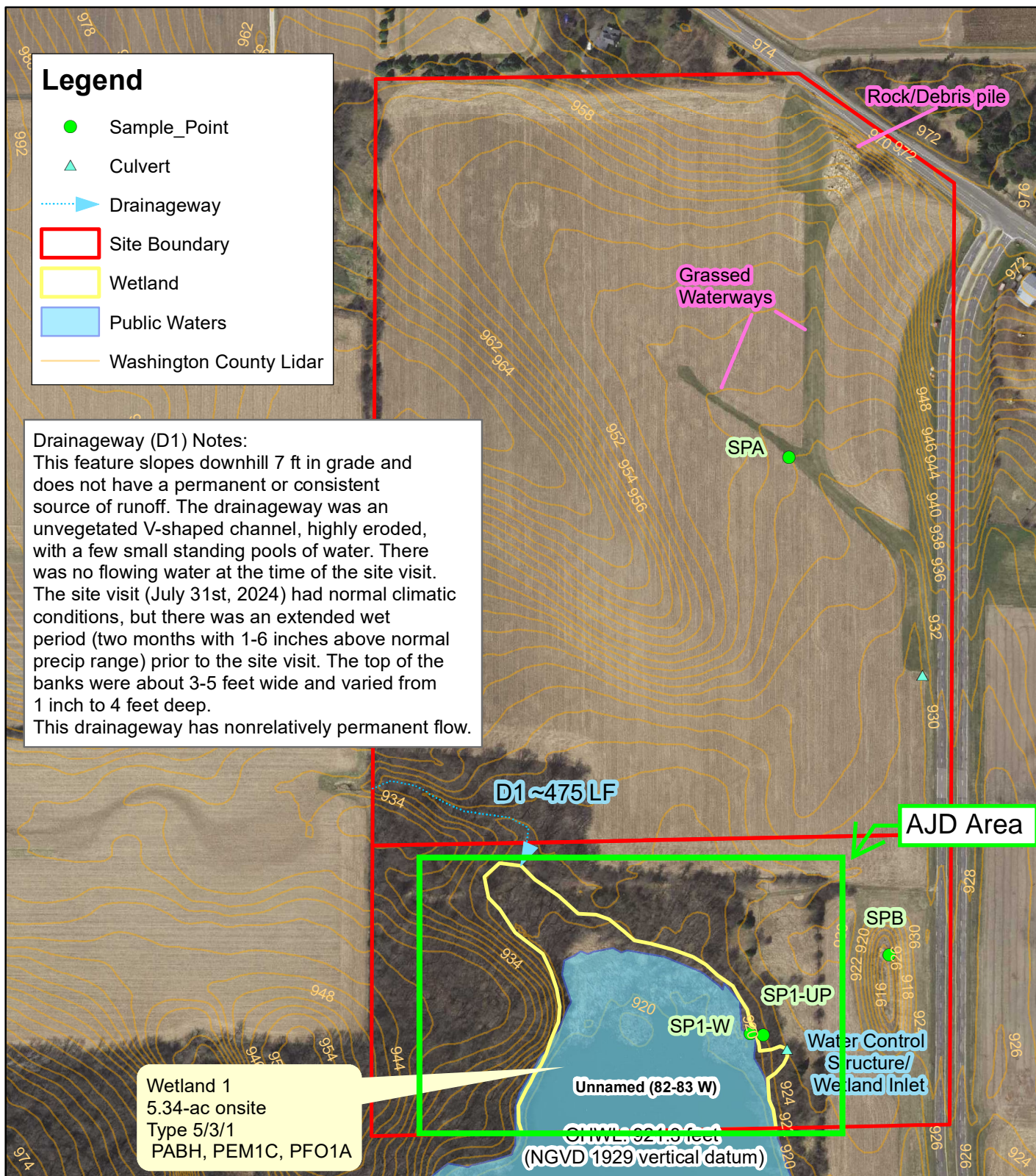
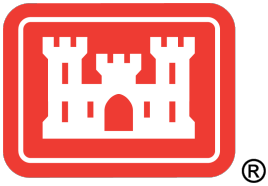
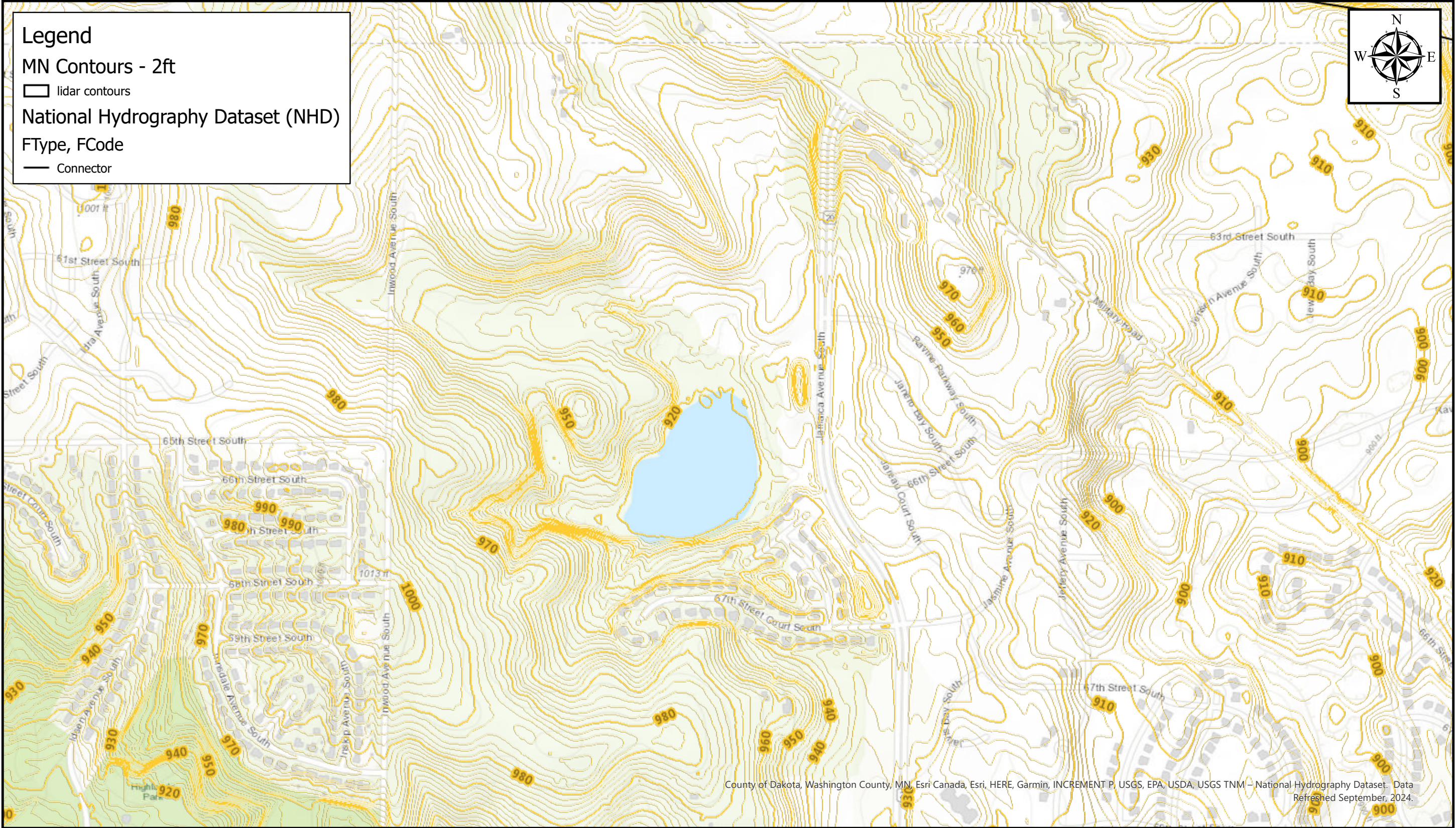
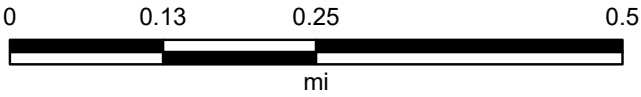


Figure 2 - Existing Conditions (TCM 2016)



2019-02403 contour info



Map Created by: PM NAME
Date: 12/20/2024

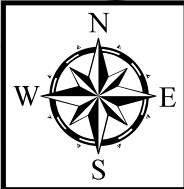
Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere

Legend

National Hydrography Dataset (NHD)

FType, FCode

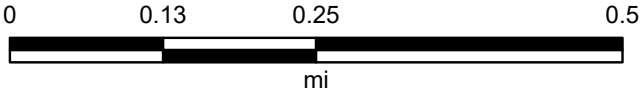
— Connector



MN DNR, USGS, County of Dakota, Washington County, MN, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, USGS TNM – National Hydrography Dataset. Data Refreshed September, 2024.



2019-02403 hilshade info



Map Center: 92.926186°W 44.855568°N

Map Created by: PM NAME

Date: 12/20/2024

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere

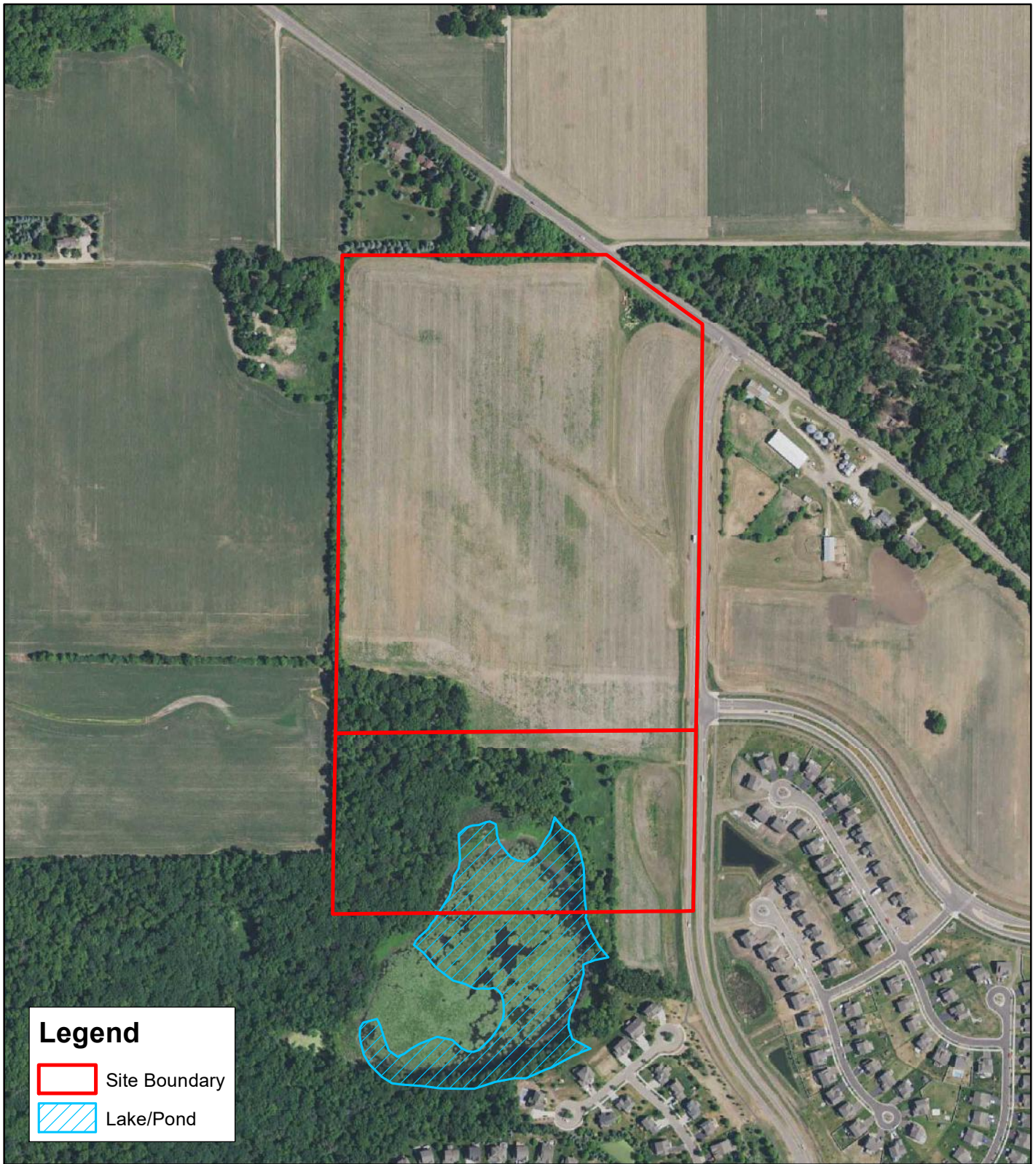




Figure 6 - National Hydrography Dataset




KJOLHAUG ENVIRONMENTAL SERVICES COMPANY

Source: MNGEO Spatial Commons, USGS

N



0 1,000 Feet



Military Road (KES 2024-129)
Cottage Grove, Minnesota

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