



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

March 28, 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) ,¹ [MVP-2025-00032-RLG]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,

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00032-RLG]

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, Non-Jurisdictional
 - ii. Pond 1, 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. January 2023 Rule preamble at 88 FR 3090

3. REVIEW AREA.

- a. Project Are Size (in acres): review area that is solely the extent of two wetlands labeled Wetland 1 and Pond 1 and excludes all other aquatic resources on-site. The larger parcel area that the review area is within is approximately 14.79 acre.
- b. Location Description: The project/review area is located in Section 2, Township 116, Range 23, Carver County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.53988 Longitude: -93.324824
- d. Nearest City or Town: Chanhassen
- e. County: Carver
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes): No other AJDs done onsite.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00032-RLG]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶

N/a

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):

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00032-RLG]

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

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).⁹

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).

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

⁹ 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00032-RLG]

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.

The areas labeled Wetland 1 and Pond 1 were evaluated as potential (a)(4) water, but it does not have a continuous surface connection to a jurisdictional water.

Wetland 1 connects in times of high precipitation through a drainage swale to Pond 1 that does not connect to any other surface waters either on or offsite. Therefore Wetland 1 does not have a continuous surface connection to an (a) (1-3) water, a relatively permanent water, nor to the nearby tributaries that connect to the nearby Lotus Lake and Christmas Lake.

Based on the Hillshade, 3DEP Digital Elevation Model, MNDNR Contours of pond 1 suggests ground surface was graded to contain water before being piped by a PVC pipe to a stormwater pound to the west of the project site.

Based on the on-site photo, topographic maps and Hillshade It is shown that wetland 1 is a small, shallow, isolated depression.

The National Wetland Inventory and National Hydrography Dataset show no waters for the location of Wetland 1. The National Wetland Inventory shows pond 1 but the pond does not connect to any other waters. The USDA NRCS' Web Soil Survey and USA Soils Map shows mapped hydric soils on the western half of pond 1.

The closest TNW is the Minnesota River which is directly 5.9 miles to the south.

Minnesota Historical Aerial Photographs Online (MHAPO) Imagery from 1937, 1956, and 1967 shows the agriculture field that was on site and there were no wet signatures seen at the location of Wetland 1 or pond 1.

Wetland 1 and pond 1 do not meet the terms of paragraphs (a)(4) because they lack 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, they are not adjacent.

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. Pleasant View Pointe Replacement Plan 12-20-2024

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00032-RLG]

- b. Revised Pleasant View Pointe Replacement Plan 01-29-2025
- c. MNDNR Hillshade - 2016 accessed Jan 5, 2025 and March 25, 2025
- d. MHAPO years 1937, 1956, and 1967
- e. USDA NRCS Soil Survey USDA-NCSS SSURGO and STATGO
- f. 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/>.
- g. USGS. (2018, September 27). National Hydrography Dataset Plus High Resolution (NHDPlus HR) for 4-digit Hydrologic Unit - 1601. Washington, D.C., USA. Retrieved from ftp://rockyftp.cr.usgs.gov/vdelivery/Datasets/Staged/Hydrography/NHDPlus/HU4/HighResolution/GDB/NHDPLUS_H_1601_HU4_GDB.xml
- h. MN 2ft – contours accessed Jan 5, 2025 and March 25, 2025
- i. 3DEP Digital Elevation Model- DEM accessed Jan 5, 2025 and March 25, 2025

10. OTHER SUPPORTING INFORMATION.

Photo Binder opt was provided for this review looking into wetland 1.

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.

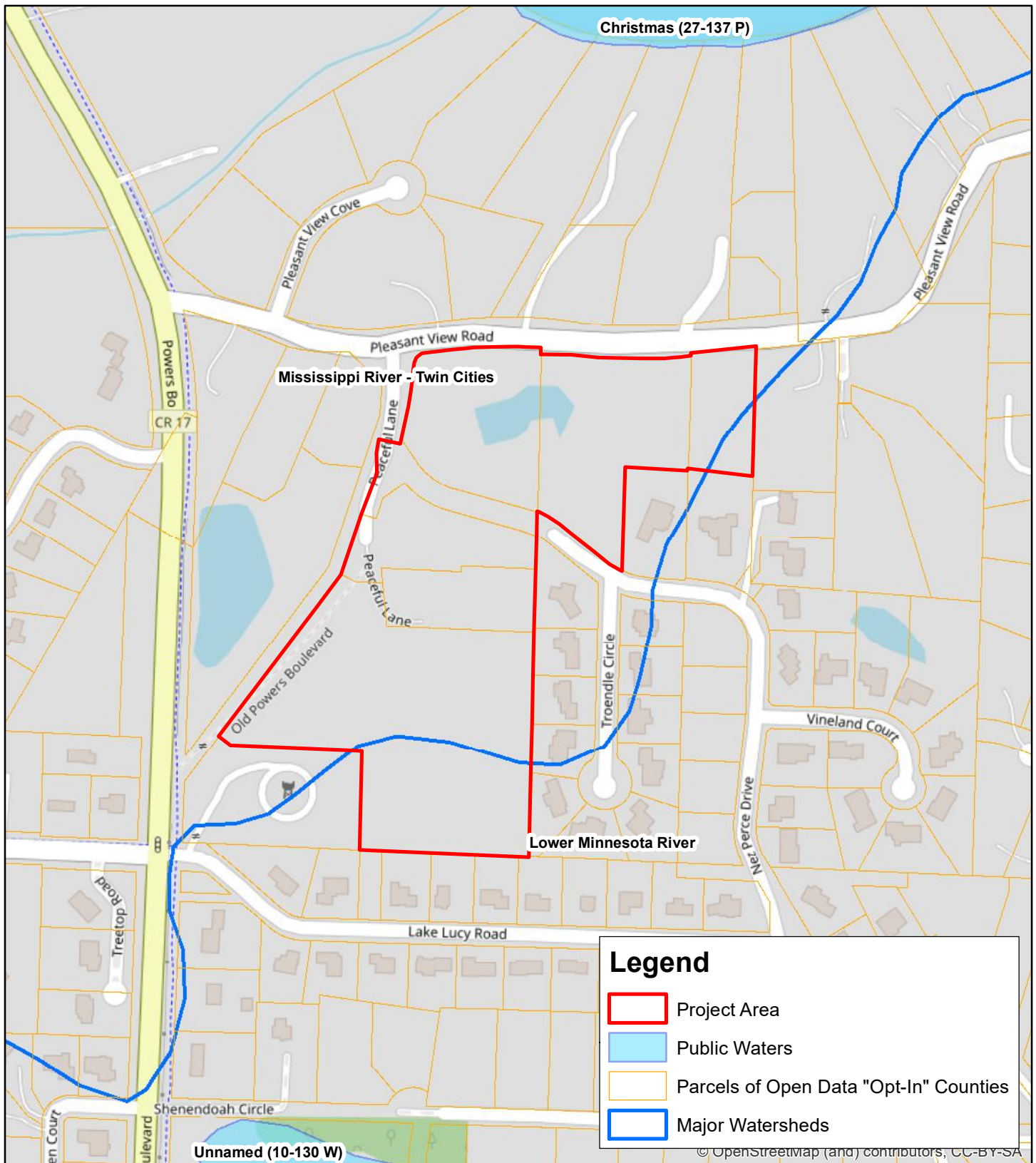
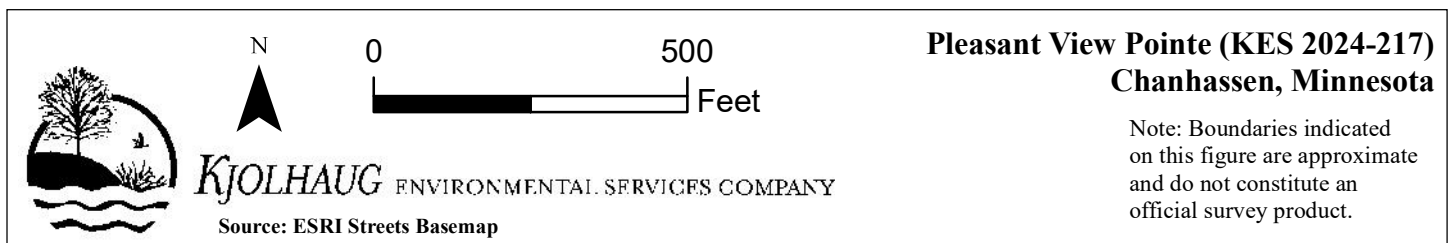


Figure 1 - Site Location & Major Watershed



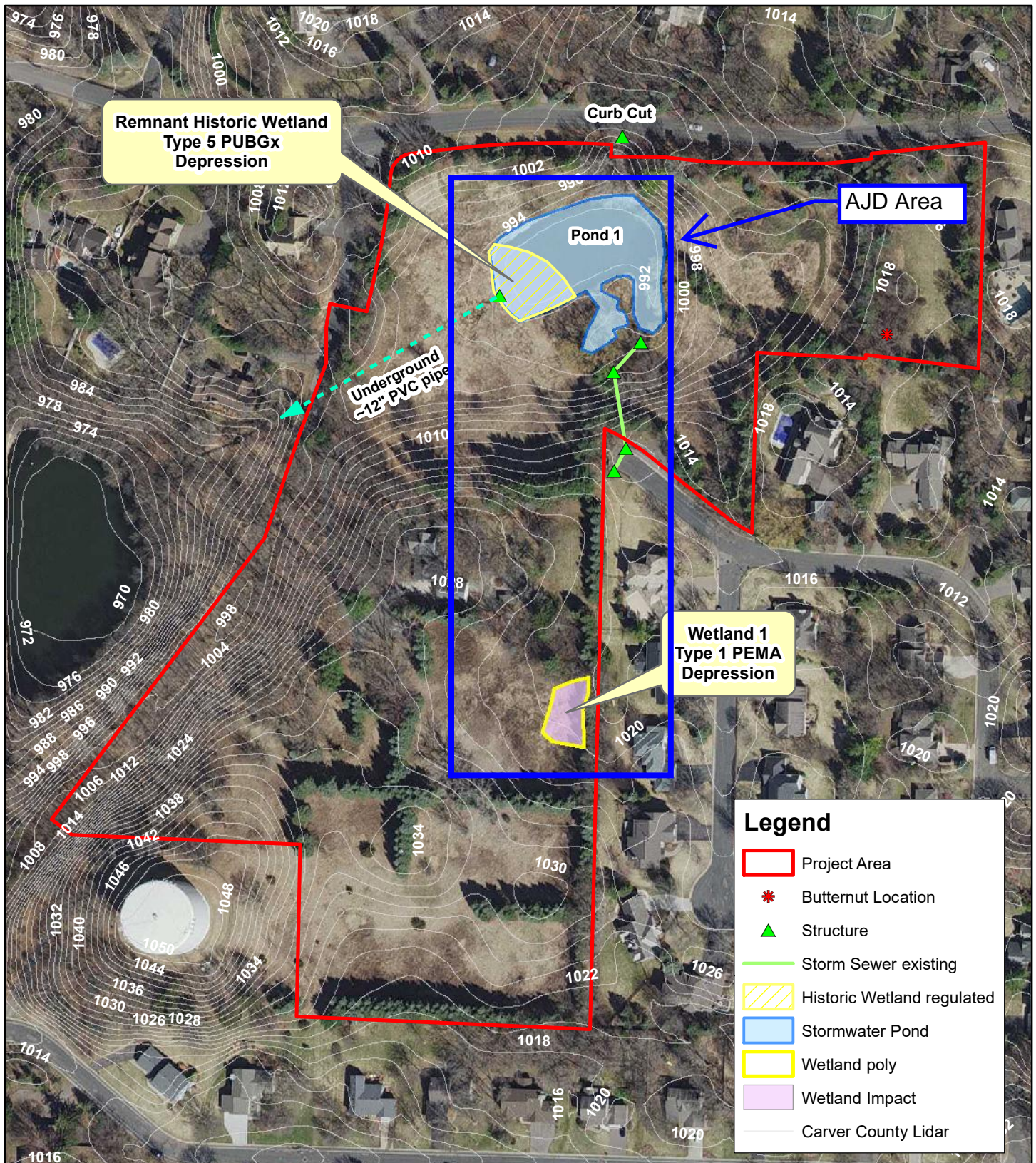


Figure 2 - Existing Conditions (April 2020 Metro Photo)

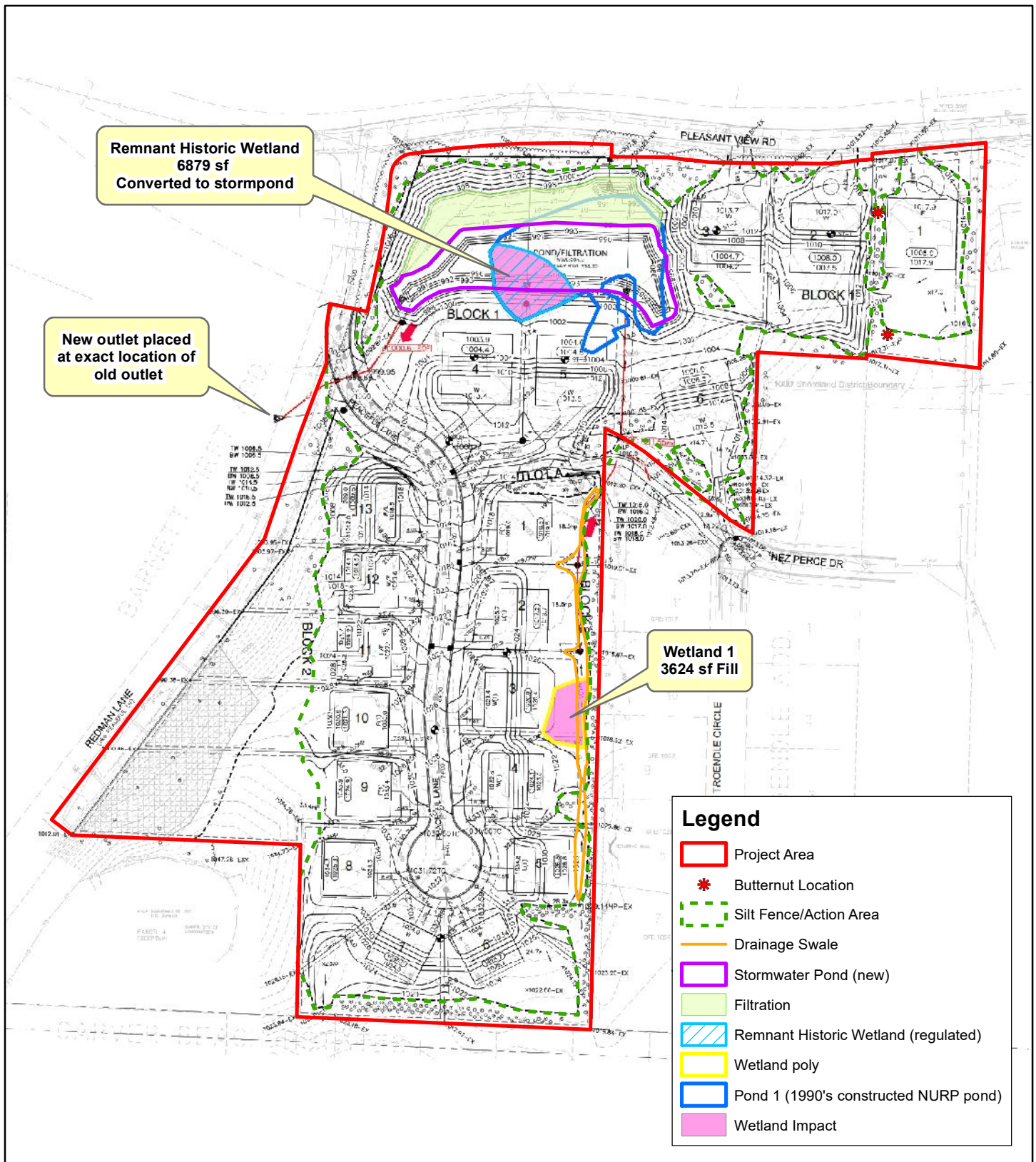
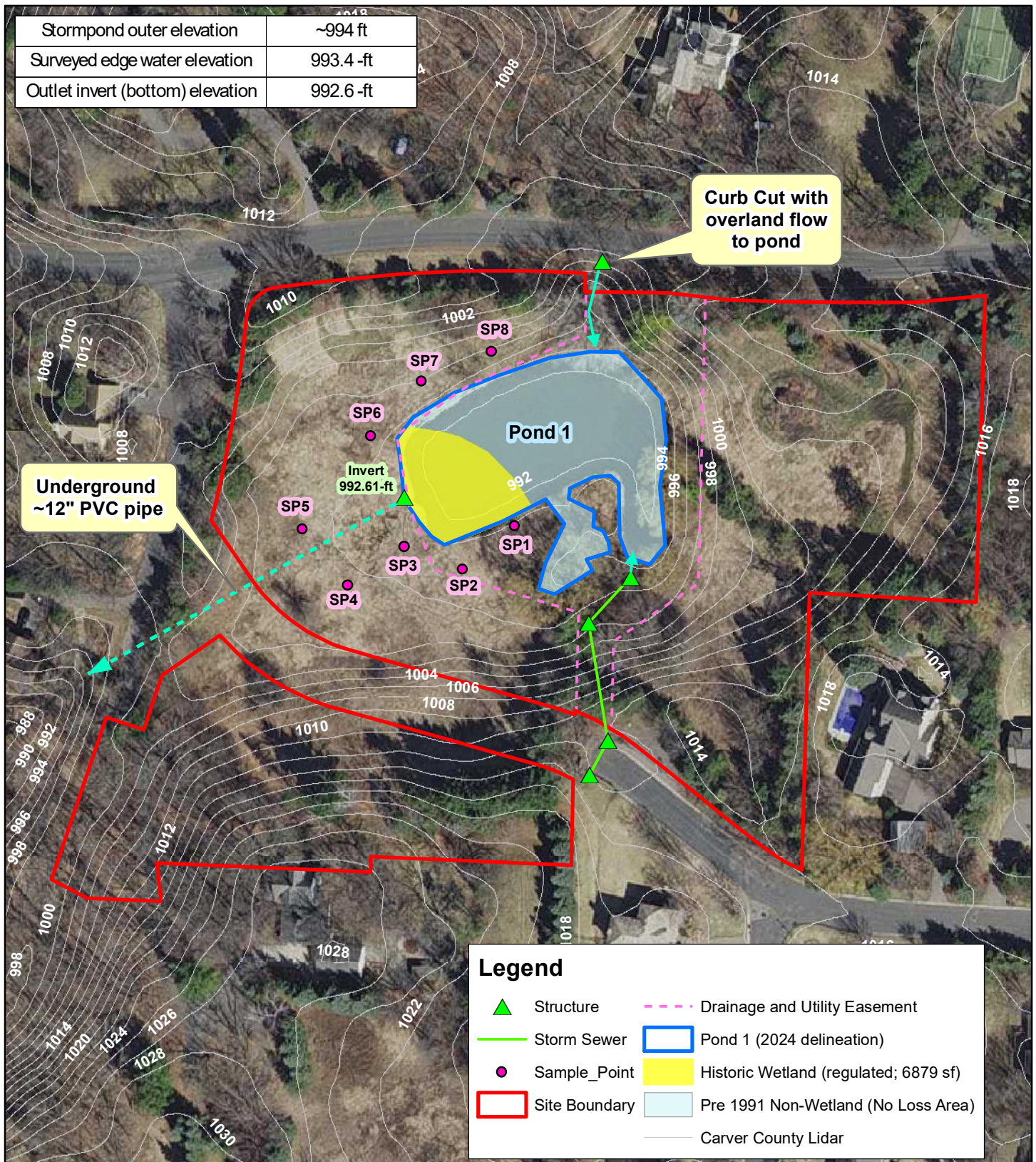


Figure 3 - Proposed Plan and Wetland Impacts





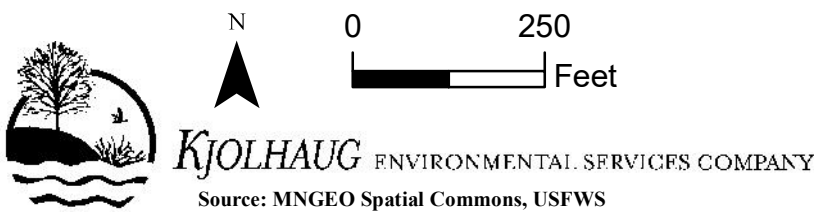
12-17-24 Revised Figure 2 - Existing Conditions (April 2020 Metro Photo)

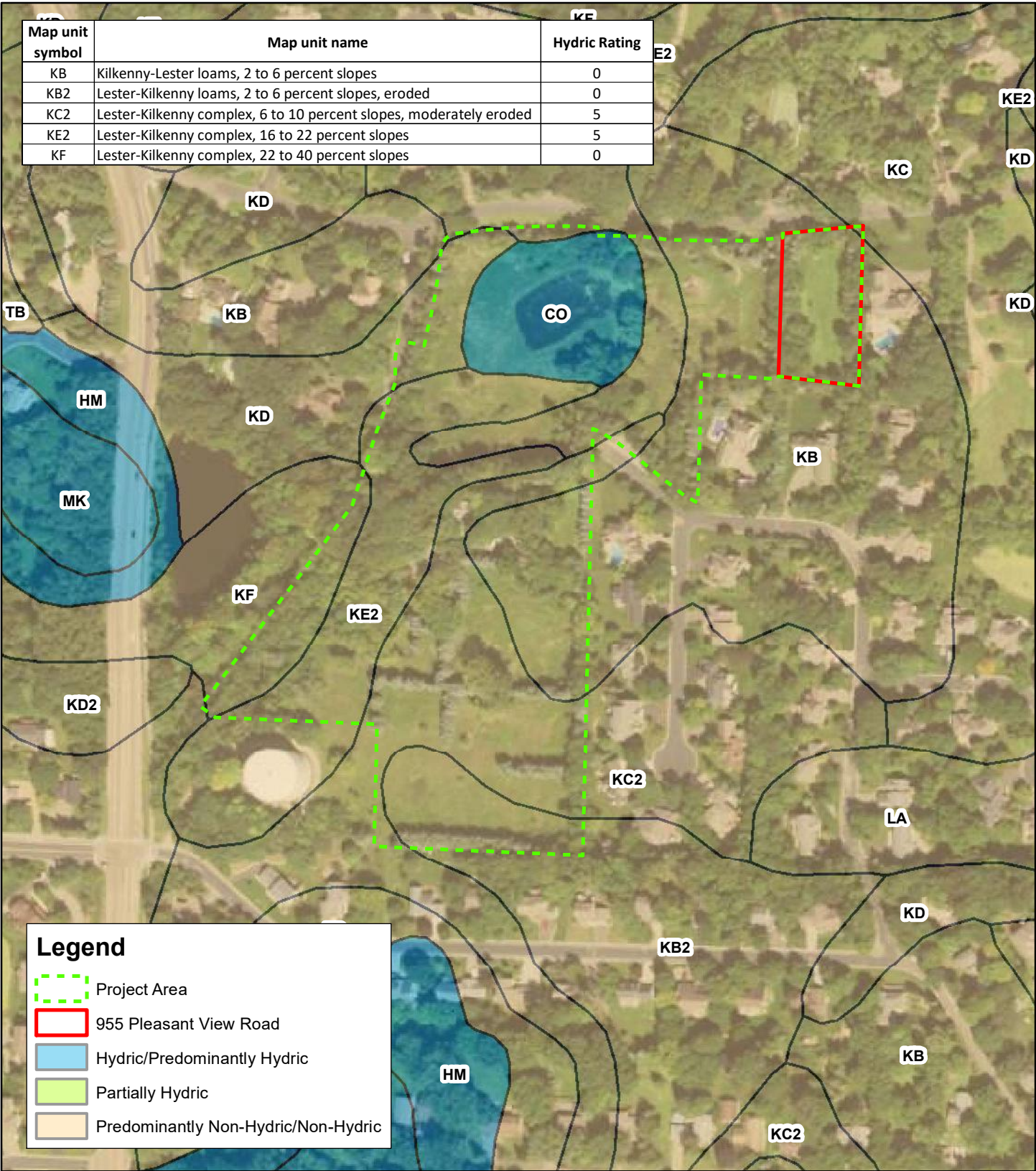


National Wetlands Inventory

6535 Peaceful Lane (KES 2024-093)
Chanhassen, Minnesota

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





Soil Survey



N



0 250 Feet



KJØLHAUG ENVIRONMENTAL SERVICES COMPANY
Source: MNGEO Spatial Commons, USDA, NRCS

955 Pleasant View Road (KES 2024-093)
Chanhassen, Minnesota

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