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

CEMVP-RD May 4, 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-2015-02617 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,

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[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.

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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 1	Non-Jurisdictional	None
Incidental Area 1	Non-Jurisdictional	None
Incidental Area 2	Non-Jurisdictional	None
Incidental Area 3	Non-Jurisdictional	None
Incidental Pond Area 4	Non-Jurisdictional	None
Incidental Area 5	Non-Jurisdictional	None
Stormwater Pond 1	Non-Jurisdictional	None
Stormwater Pond 2	Non-Jurisdictional	None
Channel 1	Non-Jurisdictional	None

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.
   a. Project Area Size (in acres): 19.6

b. Location Description: The project/review area is located in Section 20, Township 114N, Range 020W, Dakota County, Minnesota.
c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.616140 Longitude: -87.787000
d. Nearest City or Town: Oostburg
e. County: Dakota
f. State: Minnesota
g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2015-02617	AJD	All waters were determined to be non-jurisdictional (excluded waters) under the AJD

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

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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

[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.

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

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]

Wetland 1 (W1) is identified in the Berean Property, City of Lakeville, Dakota County, Minnesota Wetland Delineation Report dated 27 August 2025 (updated October 3, 2025) as a depressional Fresh Wet Meadow/Open Water Wetland. W1 was constructed in uplands between 1985 and 1991 in the northwest corner of the property in a farm field. Accordingly, the Corps has determined that W1 is 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 for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States.

[8] 88 FR 3004 (January 18, 2023)

Stormwater Pond 1 was constructed between 2000 and 2003, and Stormwater Pond 2 was constructed between April 2018 and October 2019. Stormwater Ponds 1 and 2 were constructed in uplands for stormwater retention for future residential construction. Accordingly, the Corps has determined that Stormwater Ponds 1 and 2 are excluded from Section 404 jurisdiction under (b)(5) Artificial lakes or ponds created in dry land, used exclusively for specific purposes.

Incidental Areas 1-5 were formed in uplands due to land altering grading and construction activities for future residential construction within the review area. Incidental Area 1 formed between 2005 and 2006. Incidental areas 2, 3, and 5 formed between 2018 and 2019. Incidental pond area 4 formed between 2019 and 2020. Accordingly, the Corps has determined that Incidental Areas 1-5 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 for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States.

Channel 1 is a man-made linear swale feature that was constructed between April 2018 and October 2019 as a result of grading activities to convey water from Wetland 2 (outside the review area) and immediately adjacent areas south toward Stormwater Pond 1. Accordingly, the Corps has determined that Channel 1 is excluded from Section 404 jurisdiction under (b)(8) Swales and erosional features (e.g., gullies, small washes) characterized by low volume, infrequent, or short duration flow.

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. USACE Office Evaluation conducted on April 29, 2026.

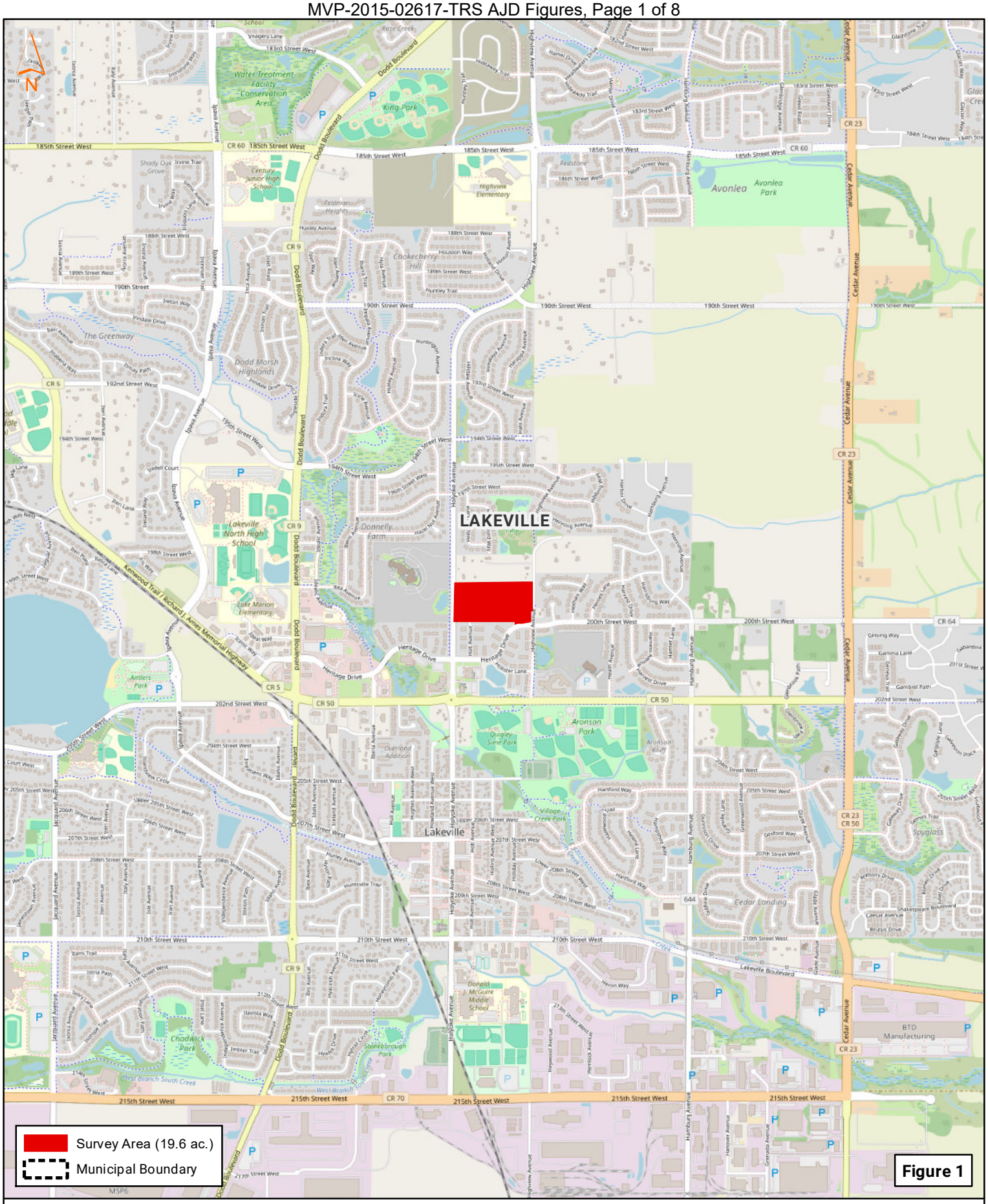
b. Berean Property, City of Lakeville, Dakota County, Minnesota Wetland Delineation Report dated 27 August 2025 (updated October 3, 2025).

c. Google Earth Accessed: April 29, 2026. Imagery from: April 1991, Sep 2003, Dec 2003, April 2004, Sept 2004, Nov 2004, Dec 2004, Feb 2005, June 2005, April 2006, July 2006, Sept 2006, Sept 2008, Sept 2009, May 2010, April 2011, April 2012, Sept 2013, October 2014, August 2015, March 2016, April 2017, April 2018, Oct 2019, May 2020, June 2020, Oct 2020, June 2021, Aug 2021, April 2023, March 2024, Sept 2024, Feb 2025, and Oct 2025.

d. USACE National Regulatory Viewer (NRV) Accessed: April 29, 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.



Sources: OpenStreetMap, US Census Bureau
US Census Bureau, Date: 8/28/2025

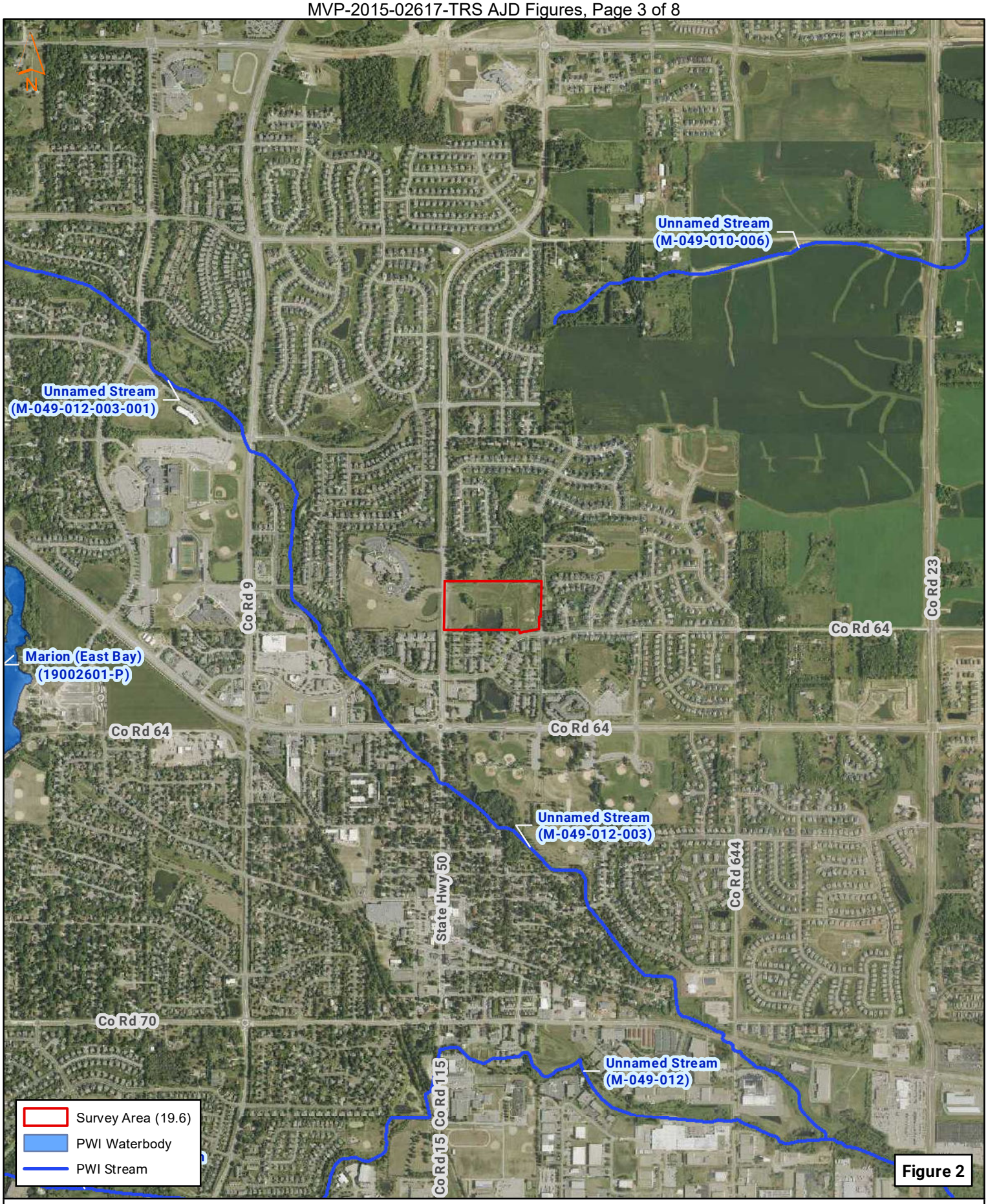
0 1,000 2,000 Feet

Site Location
Lennar
Berean Property
Lakeville, MN

Sources: color Dakota 6 in., 2023,
MnGeo, MN Department of Natural Resources,
US Census Bureau, Date: 4/29/2026

0 125 250 Feet

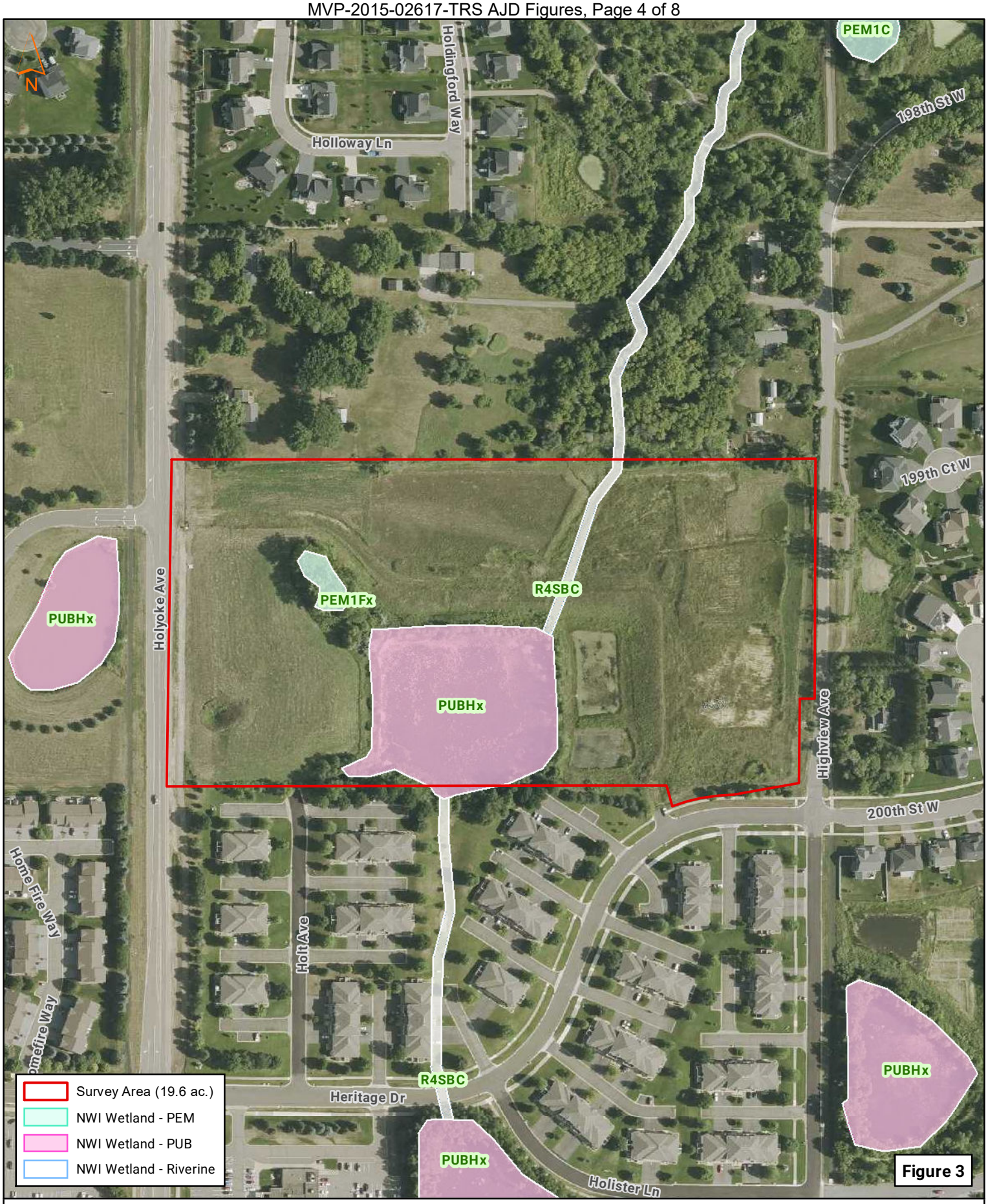
Delineated Aquatic Resources
Lennar
Berean Property
Lakeville, MN



Sources: USDA Farm Service Agency NAIP Imagery, 2023, MnGeo, MN Department of Natural Resources, US Census Bureau, Date: 8/28/2025

0 1,000 2,000 Feet

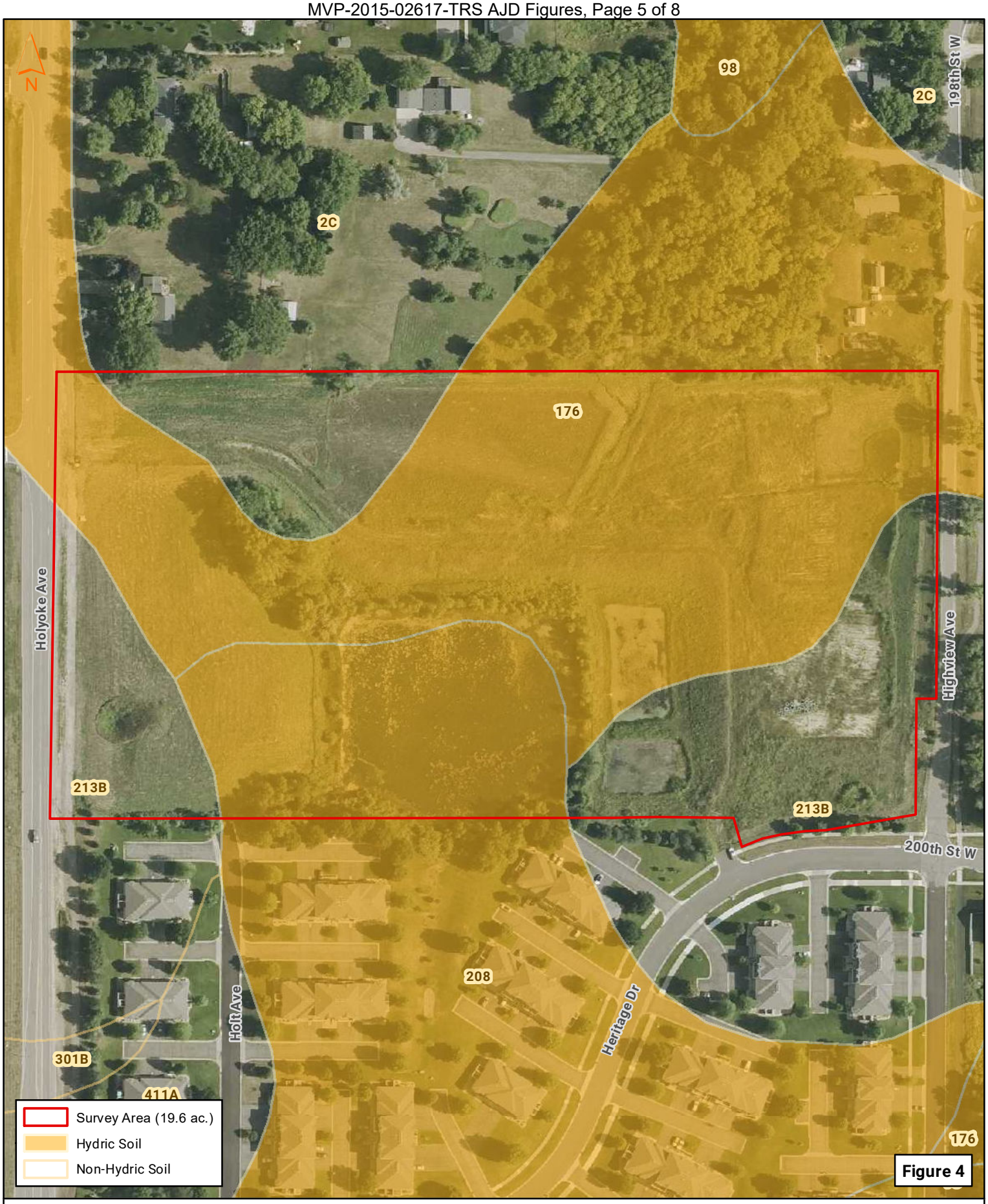
MN DNR Public Waters Inventory
Lennar
Berean Property
Lakeville, MN



Sources: USDA Farm Service Agency NAIP Imagery, 2023, MnGeo, MN Department of Natural Resources, US Fish and Wildlife Service, US Census Bureau, Date: 8/28/2025

0 150 300 Feet

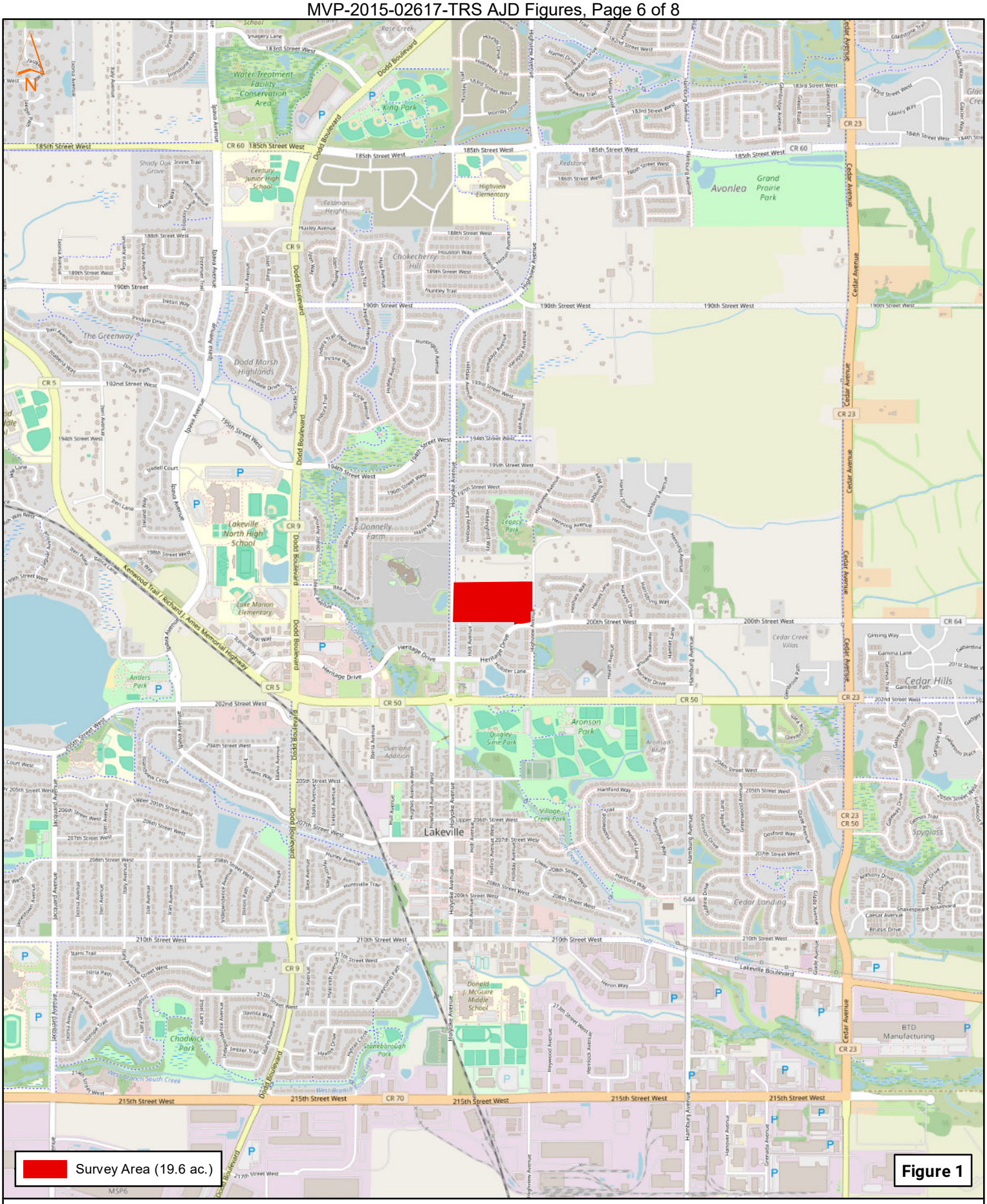
US FWS National Wetlands Inventory
Lennar
Berean Property
Lakeville, MN



Sources: USDA Farm Service Agency NAIP Imagery, 2023, MnGeo, MN Department of Natural Resources, USDA Natural Resources Conservation Service US Census Bureau, Date: 8/28/2025

0 100 200 Feet

County Soil Survey/SSurgo Soil Map Units
Lennar
Berean Property
Lakeville, MN



Sources: OpenStreetMap, US Census Bureau
US Census Bureau, Date: 3/19/2026

0 1,000 2,000 Feet

Site Location
Lennar
Highview
Lakeville, MN

Sources: color Dakota 6 in., 2023,
MnGeo, MN Department of Natural Resources,
US Census Bureau, Date: 3/19/2026

0 125 250 Feet

Delineated Aquatic Resources
Lennar
Highview
Lakeville, MN

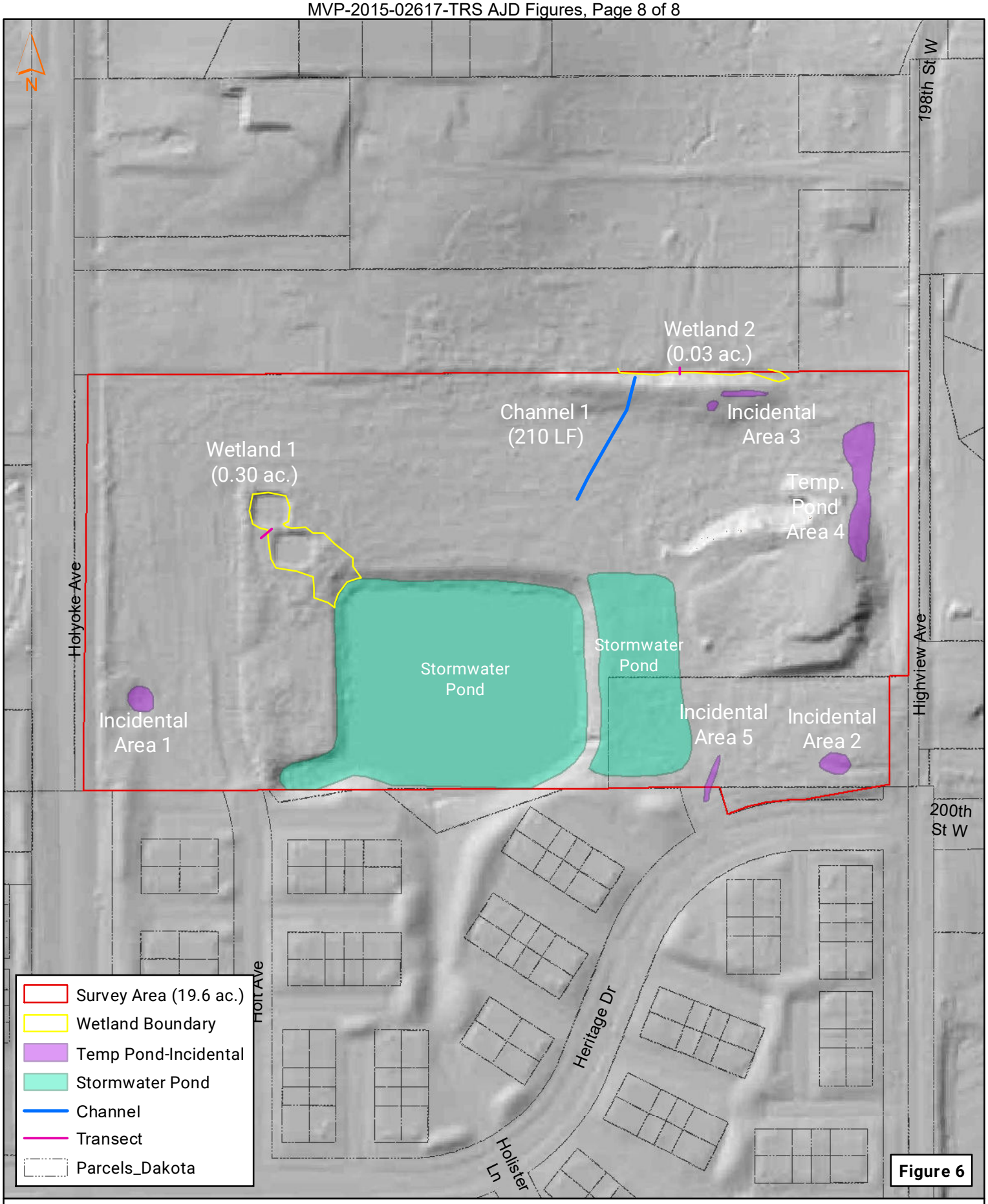


Figure 6

Sources: color Dakota 6 in., 2023,
MnGeo, MN Department of Natural Resources,
US Census Bureau, Date: 10/3/2025

0 125 250 Feet

Hillshade LiDAR
Lennar
Berean Property
Lakeville, MN