



**DEPARTMENT OF THE ARMY**  
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS  
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CESWL-RD

24 February 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),<sup>1</sup> **SWL-2025-00396**<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> 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 Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

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<sup>1</sup> While the Supreme Court's decision in *Sackett* 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, interstate water, or territorial seas 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.

amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

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. Stream #1, jurisdictional, Section 404
  - ii. Stream #2, non-jurisdictional
  - iii. Stream #3, non-jurisdictional
  - iv. Stream #4, non-jurisdictional
  - v. Stream #5, non-jurisdictional
  - vi. Stream #6, non-jurisdictional
  - vii. Stream #7, non-jurisdictional
  - viii. Wetland #1, non-jurisdictional
  - ix. Wetland #2, non-jurisdictional
  - x. Wetland #3, non-jurisdictional
  - xi. Wetland #4, non-jurisdictional
  - xii. Wetland #5, non-jurisdictional
  - xiii. Wetland #6, non-jurisdictional
  - xiv. Wetland #7, non-jurisdictional
  - xv. Wetland #8, non-jurisdictional
  - xvi. Wetland #9, non-jurisdictional
  - xvii. Wetland #10, non-jurisdictional
  - xviii. Pond #1, non-jurisdictional

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area encompasses approximately 286 acres located along Dr. Russell Smith Way Carthage, MO 64836. The review area is located on the Carthage, MO 7.5-minute quadrangle, within Section 21, Township 28 North, Range 31 West, at approximately 37.129306°N, -94.321286°W. Situated in the upper Center Creek watershed, the site consists of agricultural row-crop fields and forested habitats, bordered by similar landscapes and by Dr. Russell Smith Way to the east. Ecologically, the area lies within the Ozark Highlands and the Springfield Plateau ecoregions, which are characterized by a dissected limestone plateau with karst features like sinkholes and caves. The natural vegetation potential includes oak-hickory forests, savannas, and prairies. From a hydrological standpoint, the site is outside the 100-year floodplain but contains two riverine wetlands and two ponds identified by the National Wetlands Inventory. The NRCS has mapped four soil types on the property, with Maplegrove silt loam being the only one classified as hydric. Maps detailing the review area and resource locations are provided in Figures 1-9.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Grand (Neosho) River (11070103) is the nearest downstream TNW (Oklahoma) as it is designated as a Section 10 water north of Fort Gibson, (35.869618, -95.230020)<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The project site's hydrology is characterized by two primary drainage systems, both of which ultimately flow into the Grand River, a Traditional Navigable Waterway (TNW). The western portion of

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<sup>6</sup> 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.

the site is drained by Stream 3, which originates from Wetland 4 and flows south through Wetland 3 and Wetland 2 before exiting the site at its southwest corner and emptying into Center Creek, a Relatively Permanent Water (RPW). The eastern drainage system is more complex, with multiple features converging into the main channel, Stream 1. Specifically, Wetlands 5, 6, and 7 discharge into Stream 4, while Wetland 1 discharges into Stream 2. Concurrently, Stream 7 flows through Wetland 9 and Wetland 8 before merging with Stream 6 to create Stream 5. These tributaries then combine, with Stream 5 flowing into Stream 4, and both Stream 4 and Stream 2 converging with Stream 1 in the southern part of the site. This consolidated flow in Stream 1 then exits the review area and also discharges into Center Creek. From this point, all water from the site follows the same path, with Center Creek conveying flow to the Spring River (an RPW), which in turn flows into the Grand River (a TNW). Notably, Wetland 10, a depression wetland in the northeastern corner of the site, is hydrologically isolated and does not contribute flow to any downstream features.

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</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>8</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 pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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. TNWs (a)(1): N/A

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<sup>7</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>8</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.

- b. Interstate Waters (a)(2): N/A
- c. Other Waters (a)(3): N/A
- d. Impoundments (a)(4): N/A
- e. Tributaries (a)(5):

The agent identified seven streams of which one is considered jurisdictional and confirmed by a Corps site inspection: Stream #1 (1,693 lf). This third-order intermittent stream originates at the confluence of Streams 4 and 5 and drains approximately 300 acres as it flows south. Stream #1 possesses a well-defined Ordinary High Water Mark (OHWM) seven feet wide with three-foot banks and a sediment, cobble, and gravel substrate. Stream #1 possesses flow permanence which is indicated by the presence of shredder macroinvertebrates and spring-obligate aquatic vegetation, likely resulting from a spring recharge as a reliable groundwater influence. Stream #1 maintains a direct connection to a Traditional Navigable Waterway (TNW) by flowing into Center Creek (RPW), then to the Spring River (RPW), and ultimately into the Neosho River (TNW). Because Stream #1 meets the criteria for a Relatively Permanent Water (RPW) and maintains a clear hydrologic connection to downstream navigable waters, it is subject to federal jurisdiction under Section 404 of the Clean Water Act.

- f. The territorial seas (a)(6): N/A
- g. Adjacent wetlands (a)(7): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).<sup>9</sup> Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A

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<sup>9</sup> 51 FR 41217, November 13, 1986.

- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A
- 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 pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (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 agent identified seven streams, of which six are considered non-jurisdictional and confirmed by a Corps site inspection: Stream #2 (599 linear feet), Stream #3 (2,305 linear feet), Stream #4 (1,132 linear feet), Stream #5 (555 linear feet), Stream #6 (1,197 linear feet), and Stream #7 (910 linear feet). Stream #2 has been identified as a non-jurisdictional, ephemeral drainage feature. This determination is based on site assessments conducted during slightly drier-than-normal conditions, which found no observable flow or pooling. The channel's ephemeral nature is further supported by its small 20-acre drainage area, the presence of upland-rooted vegetation within the channel, discontinuous bed and bank geomorphology, and inconsistent Ordinary High Water Mark (OHWM). These characteristics indicate the feature only conveys water in direct response to precipitation and lacks the seasonal or permanent flow required to be considered a jurisdictional Water of the United States. Stream #3 has been identified as a non-jurisdictional, ephemeral drainage feature. This determination is based on multiple lines of evidence indicating a lack of sustained flow. Site assessments conducted during slightly drier-than-normal conditions found no observable flow or pooling within the channel. This observation was further corroborated by a review of available aerial photography from the "wet season" spanning from 2016 to 2023, which also showed no signs of pooling or flow.

Although the stream has a defined channel, a 162-acre drainage area, and a downstream connection to Center Creek (RPW), the complete lack of observed water—both on the ground and in historical imagery—indicates that the feature only conveys water in direct response to precipitation. It lacks the seasonal or permanent flow required to be considered a Water of the United States and is therefore not subject to federal jurisdiction. Stream #4 has been identified as a non-jurisdictional, ephemeral drainage feature. This determination is based on multiple lines of evidence indicating it lacks sustained flow. Site assessments conducted during slightly drier-than-normal conditions revealed no observable flow or pooling. This was corroborated by a review of available aerial photography from the "wet season" between 2012 and 2023, which also showed no signs of water. These findings indicate the feature only conveys water in direct response to precipitation and lacks the seasonal or permanent flow required to be considered a Water of the United States. Stream #5 has been identified as a non-jurisdictional, ephemeral drainage feature. This determination is based on a lack of consistent channel morphology and hydrology. Site assessments found no observable flow or pooling. Furthermore, the feature exhibits a discontinuous bed and bank, with a highly variable and, at times, indiscernible Ordinary High Water Mark (OHWM). These characteristics indicate that it does not function as a cohesive stream channel but rather as a transient path for stormwater, failing to meet the criteria for a jurisdictional water body. Stream #6 has been identified as a non-jurisdictional, ephemeral drainage feature. This conclusion is supported by extensive evidence showing a lack of consistent water presence. Field assessments during slightly drier-than-normal conditions found no flow or pooling. This was confirmed by an analysis of "wet season" aerial photography from 2008 to 2023, which also failed to show any signs of water. The evidence demonstrates that the stream only carries water in direct response to precipitation and is therefore not subject to federal jurisdiction. Stream #7 has been identified as a non-jurisdictional, ephemeral drainage feature. The lack of sustained hydrology is well-documented. On-site assessments during slightly drier-than-normal conditions revealed no observable flow or pooling within the channel. This finding is consistent with a review of available "wet season" aerial imagery from 2008 to 2023, which also showed no evidence of water. Lacking the seasonal or permanent flow required to be considered a Water of the United States, this feature is not federally jurisdictional.

The agent identified ten wetlands that were all considered non-jurisdictional and confirmed by a Corps site inspection: Wetland #1 (0.04-acre), Wetland #2 (0.03-acre), Wetland #3 (0.18-acre), Wetland #4 (0.18-acre), Wetland #5 (0.57-acre), Wetland #6 (1.02-acre), Wetland #7 (0.26-acre), Wetland #8 (0.14-acre), Wetland #9 (0.12-acre), and Wetland #10 (0.20-acre). Wetland #1, a farmed wetland, is considered non-jurisdictional. While it exhibits hydric soils and wetland hydrology, it lacks a continuous surface connection to jurisdictional waters. Its surface water flows into Stream #2, a non-jurisdictional ephemeral

feature. Because the wetland does not abut a jurisdictional Relatively Permanent Water (RPW) and its only downstream connection is via an ephemeral stream, it does not meet the criteria for federal jurisdiction under current regulatory guidance. Wetland #2, an emergent wetland, is considered non-jurisdictional. This feature is located where the non-jurisdictional Stream #3 loses its defined channel. Although it meets the three wetland criteria (hydrology, hydric soils, and hydrophytic vegetation), its hydrologic connection is not sufficient for jurisdiction. It receives and discharges flow into Stream #3, an ephemeral channel. Since Wetland #2 does not abut a jurisdictional RPW, it is not subject to federal regulation. Wetland #3, an emergent wetland, is considered non-jurisdictional. Situated along the path of the ephemeral Stream #3, it demonstrates wetland characteristics but lacks the required connection to jurisdictional waters. Its surface water flows into Stream #3, a non-jurisdictional feature. As the wetland does not abut a jurisdictional RPW, it does not meet the criteria for federal oversight. Wetland #4, a forested wetland, is considered non-jurisdictional. It meets the technical criteria for a wetland but fails the jurisdictional test because it lacks a continuous surface connection to jurisdictional waters. Its outflow is conveyed to Stream #3, a non-jurisdictional ephemeral stream. Because Wetland #4 does not abut a jurisdictional RPW, it is not considered a Water of the United States. Wetland #5, an emergent wetland, is considered non-jurisdictional. This wetland is located in a swale that drains into the ephemeral Stream #4. Although it exhibits clear wetland hydrology and hydric soils, its connection to downstream waters is not sufficient for jurisdiction. Since the wetland flows into a non-jurisdictional feature and does not abut a jurisdictional RPW, it is not subject to federal regulation. Wetland #6, an emergent wetland, is considered non-jurisdictional. It lacks the necessary continuous surface connection to jurisdictional waters. Its surface water flows south into Wetland #7, which then discharges into the non-jurisdictional Stream #4. Because Wetland #6 does not abut a jurisdictional RPW and its drainage path is through other non-jurisdictional features, it does not fall under federal jurisdiction. Wetland #7, a forested wetland, is considered non-jurisdictional. This wetland is situated directly upstream of the ephemeral Stream #4. While it meets the three criteria for a wetland, it does not have a direct, continuous surface connection to jurisdictional waters. Its flow is conveyed to the non-jurisdictional Stream #4. As it does not abut a jurisdictional RPW, it is not a federally regulated feature. Wetland #8, a forested wetland, is considered non-jurisdictional. It is located between Pond #1 and the ephemeral Stream #6. Its surface water flows into Stream #6, a non-jurisdictional drainage feature. Because the wetland's only hydrologic connection is to an ephemeral stream and it does not abut a jurisdictional RPW, it does not meet the criteria for federal jurisdiction. Wetland #9, a forested fringe wetland, is considered non-jurisdictional. It is located along the edge of Pond #1 and receives flow from the ephemeral Stream #7. Its surface water flows back into Stream #7, a non-jurisdictional feature. Since the wetland does not abut a jurisdictional RPW and is only connected to an ephemeral stream, it is not

subject to federal regulation. Wetland #10, a farmed wetland, is considered non-jurisdictional. This wetland drains into the ephemeral Stream #5. Despite exhibiting wetland hydrology and hydric soils, it lacks a continuous surface connection to jurisdictional waters. Because it does not abut a jurisdictional RPW and its only connection is via a non-jurisdictional stream, it is not a federally regulated water body.

The agent identified one pond feature that is considered non-jurisdictional that was confirmed by a Corps site inspection: Pond #1 (0.32-acre). Pond #1 is considered non-jurisdictional. Although likely built for historical agricultural use, it is now overgrown and no longer in operation. Critically, it lacks a continuous surface hydrologic connection to any jurisdictional waters, as it does not abut or impound a jurisdictional Relatively Permanent Water (RPW) and therefore is not jurisdictional.

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. A Corps site inspection was conducted 21 January 2026. Filename: SWL-2025-00396 Site Inspection.pdf
  - b. A Corps desktop delineation was conducted 24 February 2026.
  - c. Agent provided Section 404 Delineation Report: 251117 Dr Russell Smith Way Development Parcel Revised JA Report (Complete).pdf accessed 24 February 2026.
  - d. NHD data accessed on National Regulatory Viewer accessed 24 February 2026.
  - e. USGS Topographic Quadrangle Carthage, MO (1:24K) accessed 24 February 2026.
  - f. U. S. Fish and Wildlife Service. Publication date (found in metadata). National Wetlands Inventory website accessed 24 February 2026.
  - g. Google Earth Pro. (1993-2025 Imagery). *Lat. 37.129306°N, Long. -94.321286°* accessed 24 February 2026.
  - h. USDA Natural Resources Conservation Service Soil Survey. Citation: USDA-NRCS Web Soil Survey accessed 24 February 2026.

10. OTHER SUPPORTING INFORMATION.

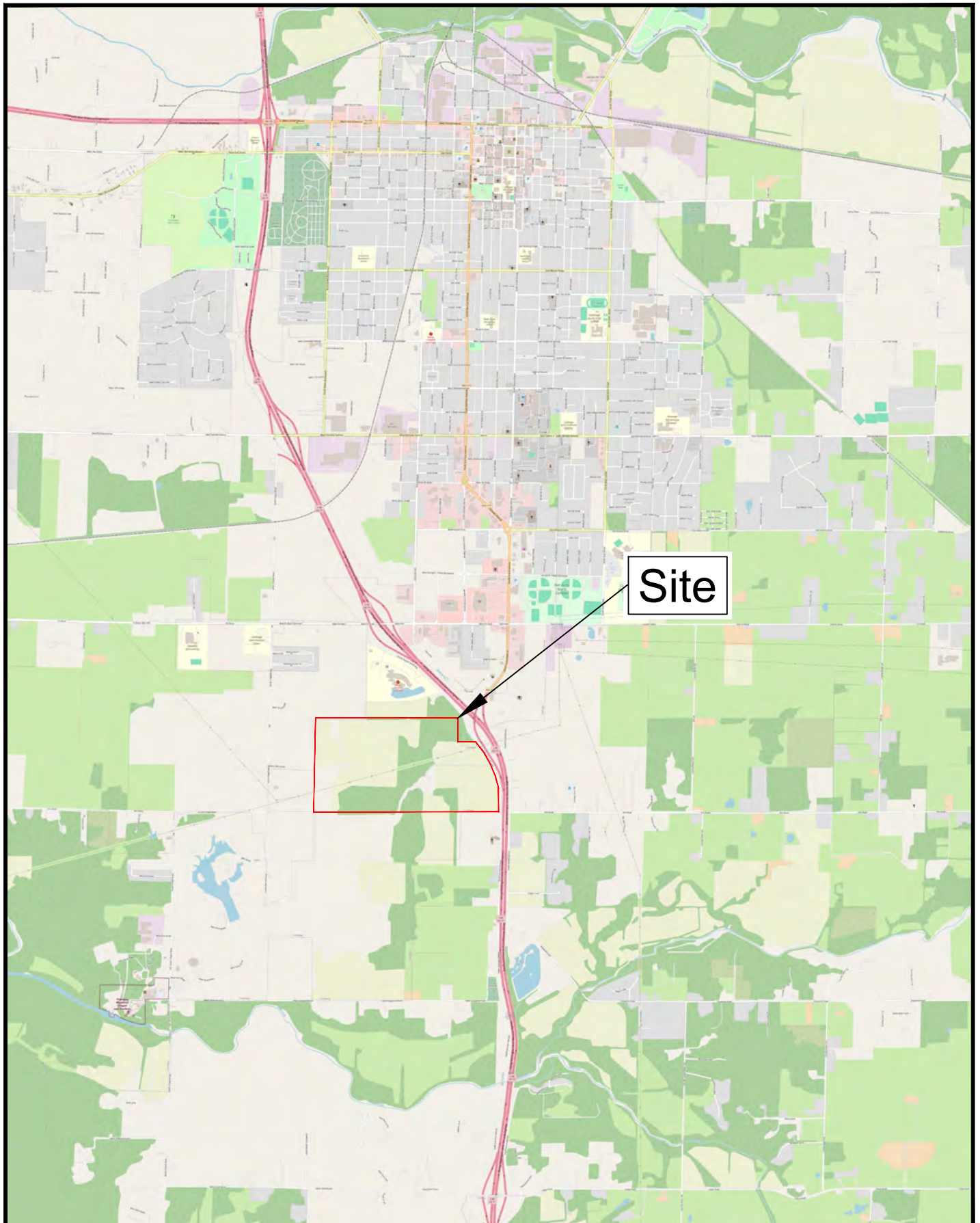
Leasure, D.R.; Magoulick, D.D.; Longing, S.D. 2016. Natural flow regimes of the

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SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWL-2025-00396

Ozark-Ouachita interior highlands region. River Res. Appl. 32: 18–35.

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.



Site

Revisions		
No.	Description	Date



**Terra  
Foundation**

928 SE Crimson Ct.  
Blue Springs, MO 64014  
Tel 913.217.5808

Dr Russell Smith Way  
Development  
Carthage, Jasper

Site Location Map

**Action No. SWL 2025-00396**  
**Carthage, Jasper Co. MO**  
**Dr. Russell Smith Way Development (Access Road)**  
**Section: 21 Township: 28 N. Range: 31 W.**  
**March 2026 Page 1 of 9**



Site

Revisions		
No.	Description	Date



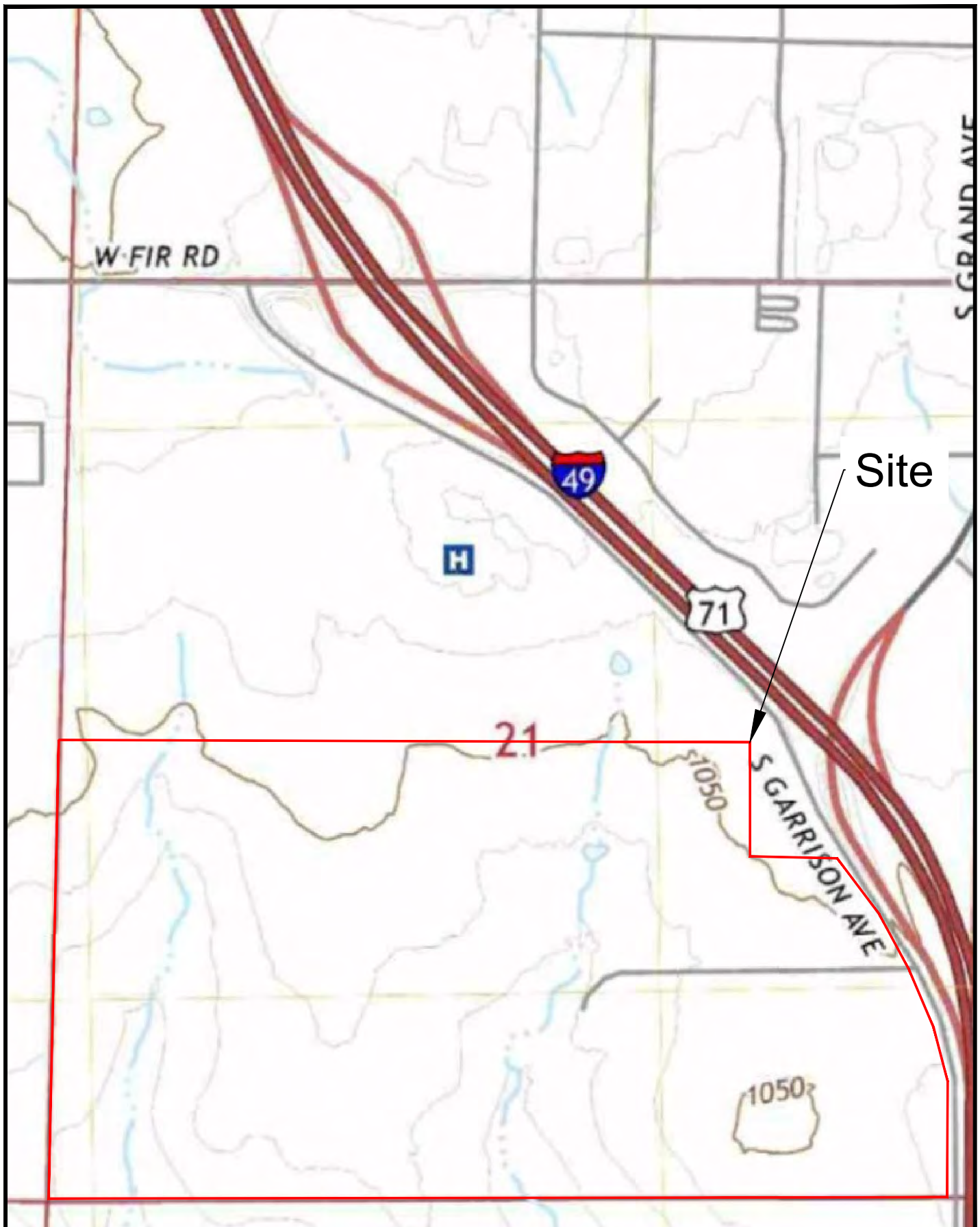
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Dr Russell Smith Way  
Development  
Carthage, Jasper

Section. Township.

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Revisions		
No.	Description	Date

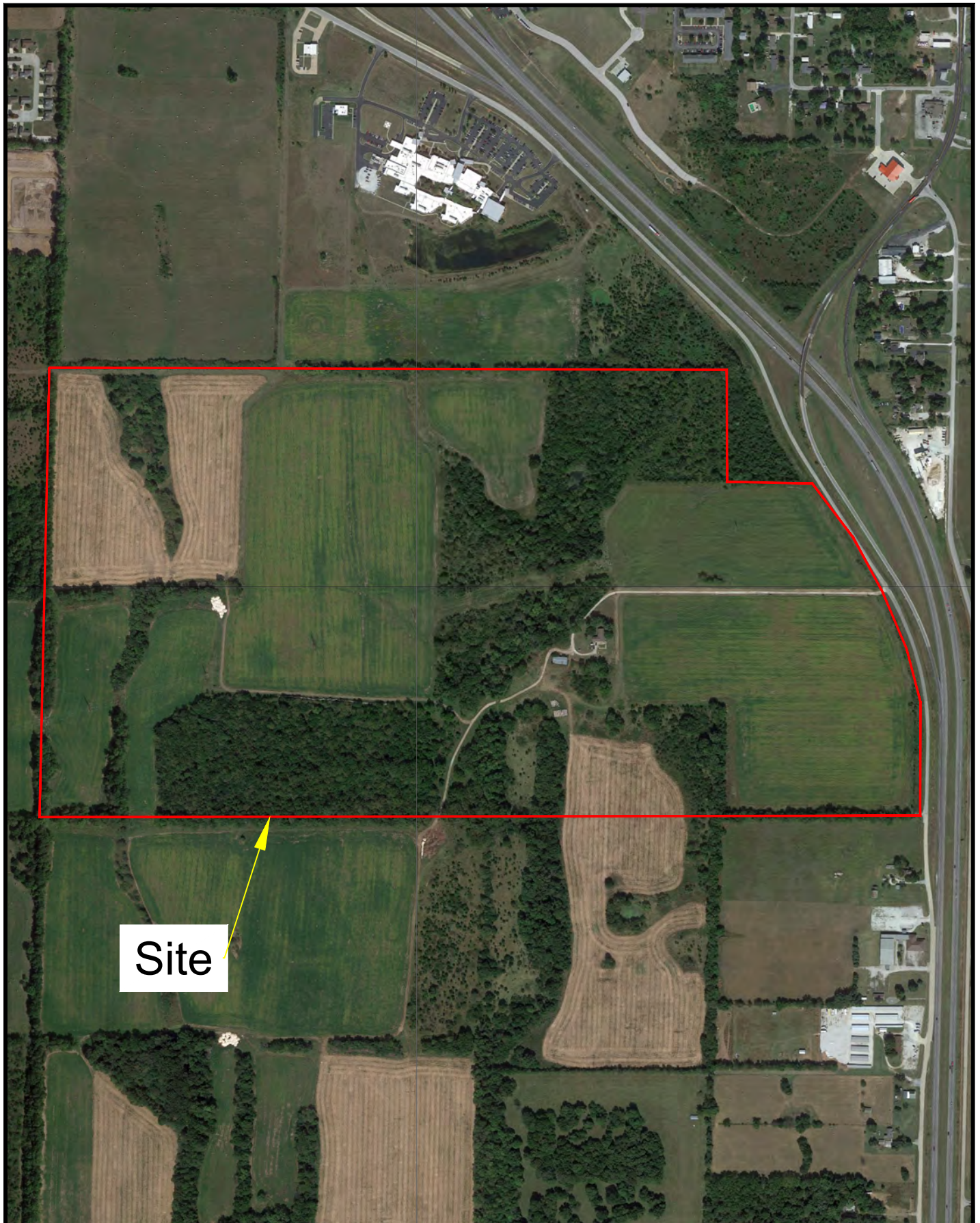


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Dr Russell Smith Way  
 Development  
 Carthage, Jasper

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Action No. SWL 2025-00396  
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Site

Revisions		
No.	Description	Date



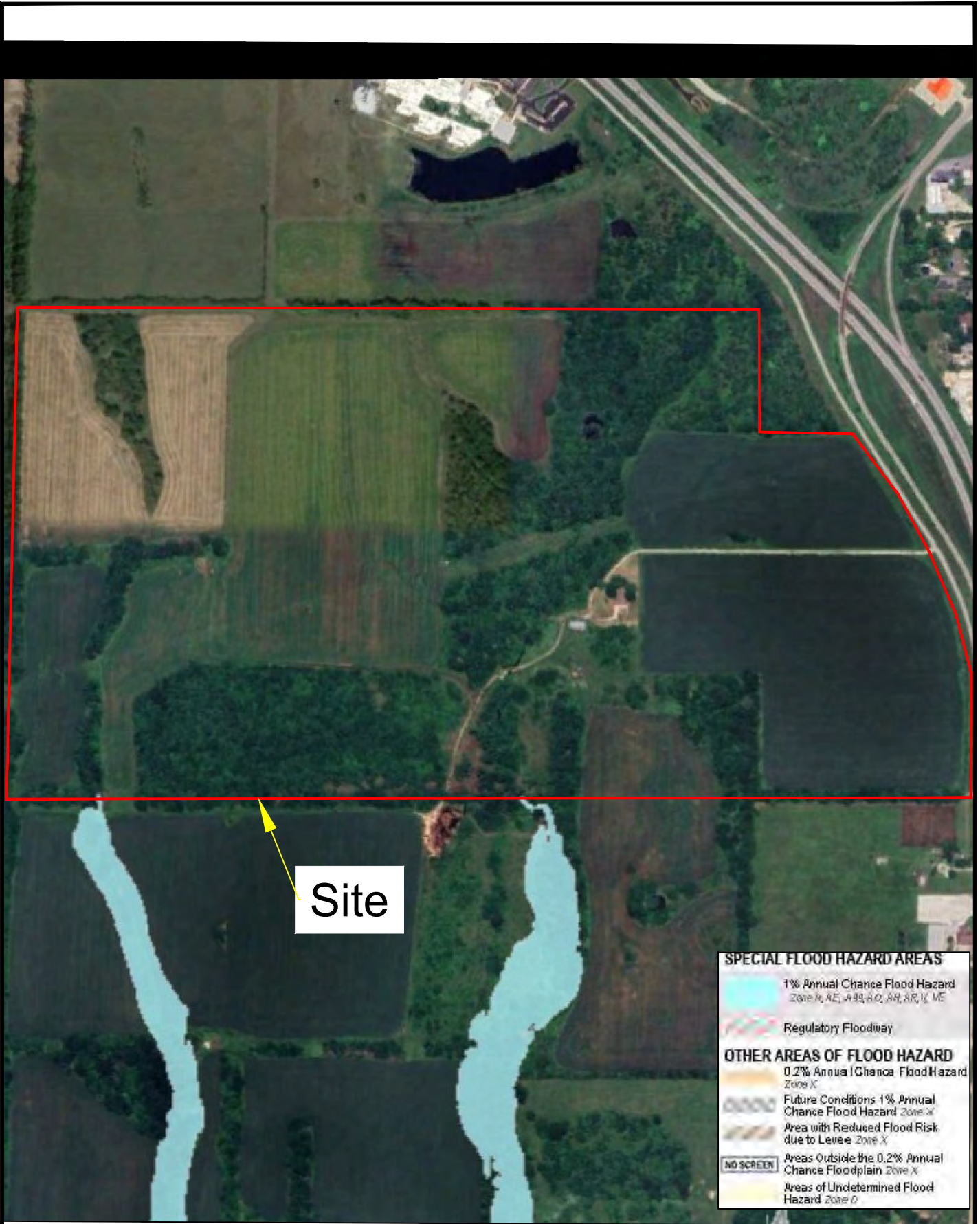
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Dr Russell Smith Way  
Development  
Carthage, Jasper

Aerial Photograph

**Action No. SWL 2025-00396**  
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**Section: 21 Township: 28 N. Range: 31 W.**  
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Site

**SPECIAL FLOOD HAZARD AREAS**

- 1% Annual Chance Flood Hazard  
Zone A, AE, A99, AO, AH, AR, X, VE
- Regulatory Floodway

**OTHER AREAS OF FLOOD HAZARD**

- 0.2% Annual Chance Flood Hazard  
Zone X
- Future Conditions 1% Annual  
Chance Flood Hazard  
Zone X'
- Area with Reduced Flood Risk  
due to Levee  
Zone X
- NO SCREEN  
Areas Outside the 0.2% Annual  
Chance Floodplain  
Zone X
- Areas of Undetermined Flood  
Hazard  
Zone D

Revisions		
No.	Description	Date



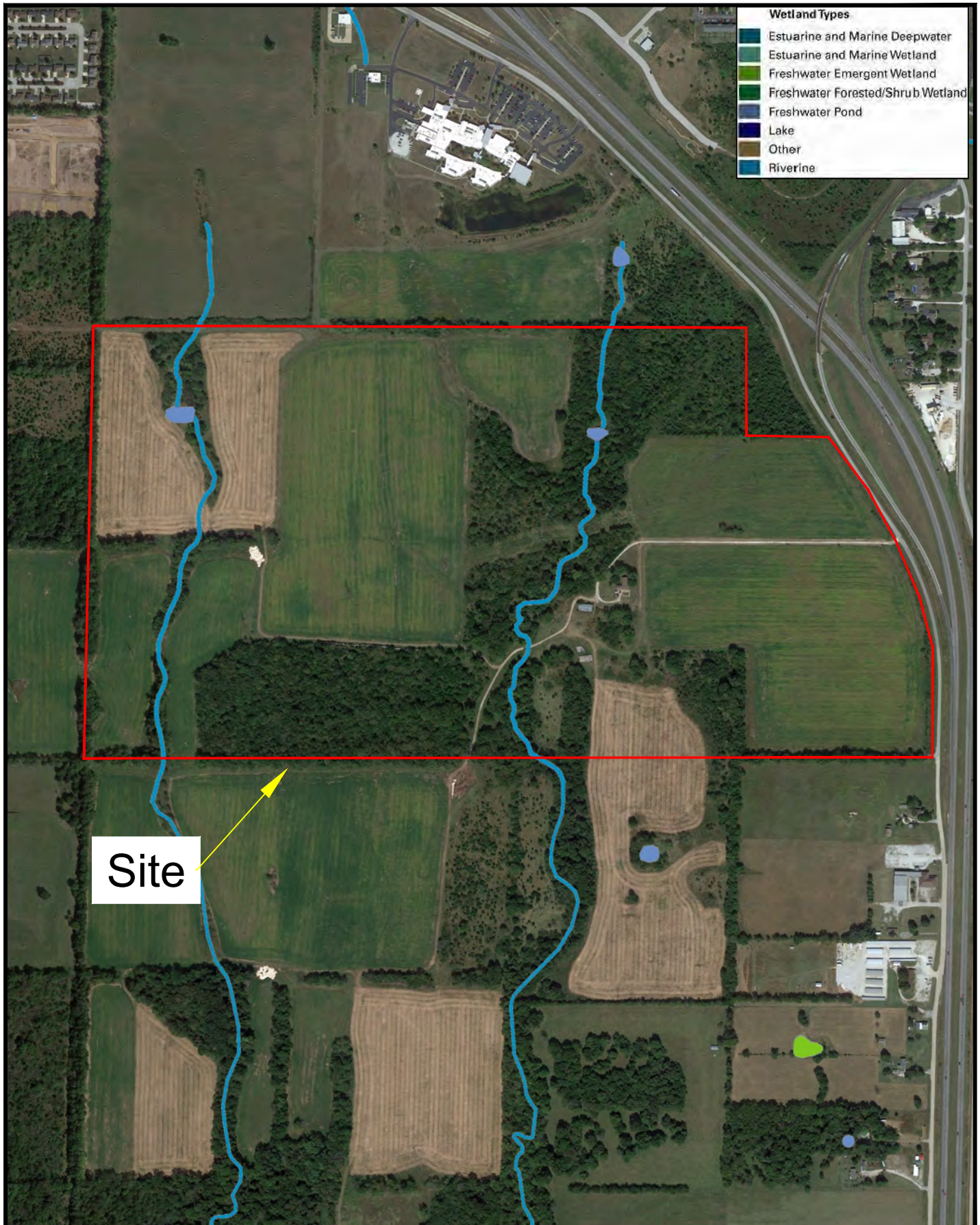
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Dr Russell Smith Way  
Development  
Carthage, Jasper

100-year

**Action No. SWL 2025-00396**  
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Dr. Russell Smith Way Development (Access Road)  
Section: 21 Township: 28 N. Range: 31 W.  
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Revisions		
No.	Description	Date



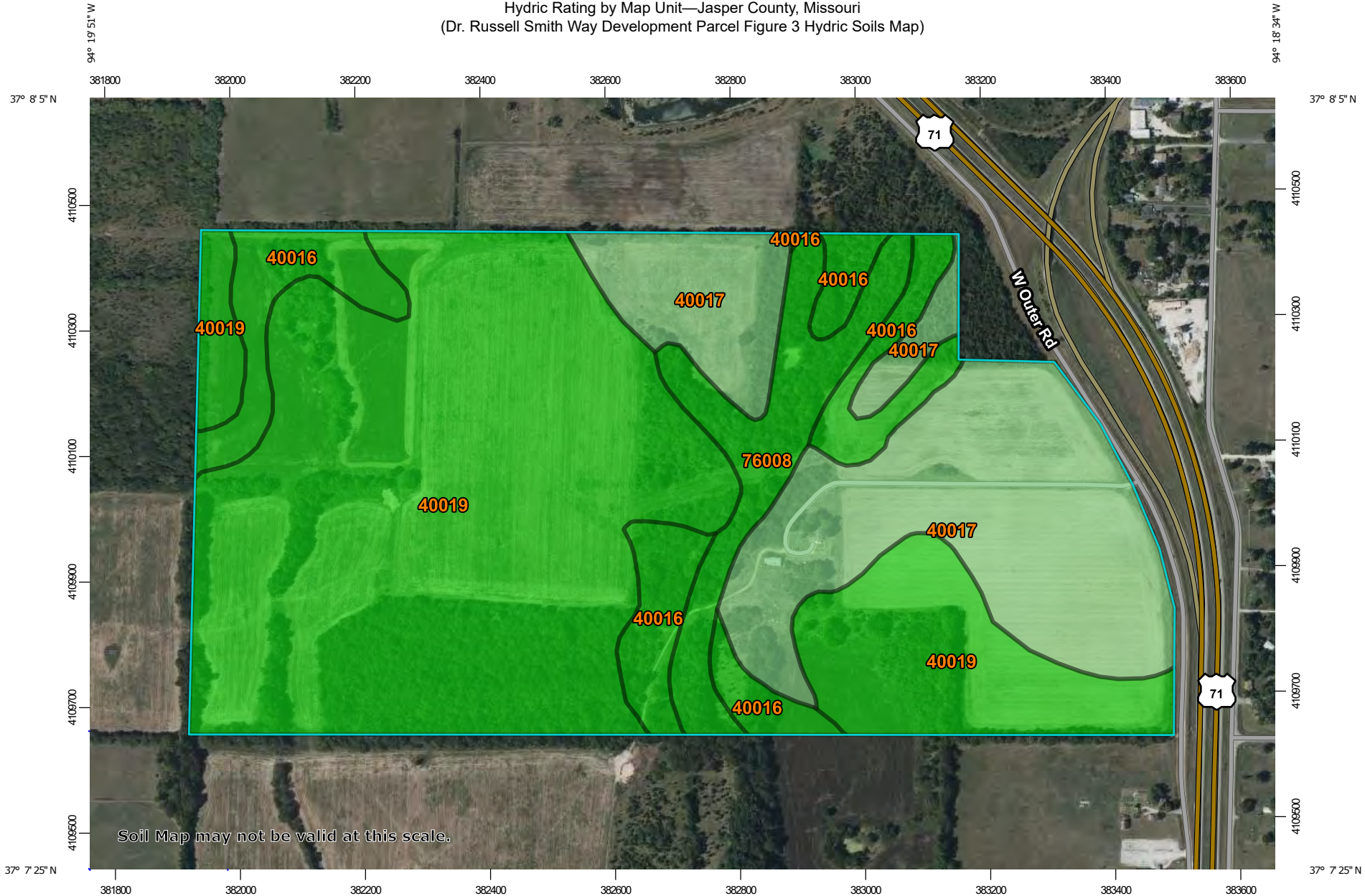
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Dr Russell Smith Way  
 Development  
 Carthage, Jasper

National Wetlands

**Action No. SWL 2025-00396**  
**Carthage, Jasper Co. MO**  
**Dr. Russell Smith Way Development (Access Road)**  
**Section: 21 Township: 28 N. Range: 31 W.**  
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Hydric Rating by Map Unit—Jasper County, Missouri  
 (Dr. Russell Smith Way Development Parcel Figure 3 Hydric Soils Map)



Soil Map may not be valid at this scale.

