



MEMORANDUM

To: Michelle Carpenter
TPE IL MH680, LLC

From: Ashley Payne & Keller Leet-Otley
Kimley-Horn and Associates, Inc.

Date: August 30, 2024

Subject: *Nunda Township, McHenry County, Illinois – MH680 Environmental Constraints Memorandum*

INTRODUCTION

Kimley-Horn was contracted by TPE IL MH680, LLC to review the MH680 Solar project study area for potential environmental constraints. See Figure 1 for project location and Figure 2 for the study area boundary. The study area is located in Nunda Township, McHenry County, Illinois. The study area is approximately 92 acres in size and is located in Section 9 of Township 44N, Range 8E. Kimley-Horn reviewed available background data to assist in determining if there are any potential environmental constraints for the study area.

ENVIRONMENTAL CONSTRAINTS:

Aquatic Resources (Wetlands and Waterways)

Kimley-Horn reviewed available topographic maps, the National Wetlands Inventory (NWI), the National Hydrography Dataset (NHD), LiDAR, soil survey data, public waters, floodplain data, and aerial photography to identify potential wetlands or surface waters within the study area vicinity.

U.S. Geological Survey (USGS) Topographic Map

A review of the McHenry, Illinois 7.5-minute topographic quadrangle depicted one intermittent stream along the east boundary of the study area. The study area is depicted as undeveloped agricultural land. The USGS topographic map is presented on Figure 3.

National Wetlands Inventory (NWI)

Based on a review of the U.S. Fish and Wildlife Service (USFWS) NWI,¹ portions of two wetland features are present within the study area. The NWI-mapped features include one freshwater emergent wetland (PEM1C) and one riverine feature (R4SBC). One riverine feature (R5UBH) is located offsite adjacent to the south boundary of the study area, and connects to the riverine feature within the east boundary. The NWI-mapped features are presented on Figure 4.

¹ USFWS. 2022. National Wetlands Inventory. Vector Digital Data. Published October 6, 2022.

USGS National Hydrography Dataset (NHD)

Based on a review of the USGS NHD,² a portion of one unnamed flowline segment transects the study area as an intermittent stream segment. One unnamed waterbody is present within the study area and is classified as an emergent freshwater wetland. The NHD-mapped flowlines generally align with NWI-mapped riverine features. The NHD-mapped resources are presented on Figure 4.

2-ft LiDAR Contours

Two-foot contours³ were reviewed to determine if any wetland areas or drainage swales may be present within the study area. The study area generally slopes from west to east and north and is drained via channels which approximately align with NWI-mapped riverine features and NHD-mapped flowline segments in the eastern portion of the study area. The study area ranges in elevation from 790 to 844 feet above sea level. The 2-foot contours are presented on Figure 5.

McHenry County Soil Survey

A review of the McHenry County soil survey via the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Web Soil Survey (WSS), the USDA WSS database identified 7 soil types within the study area. Approximately 10 percent of the study area is mapped with a hydric soils rating of 100 percent, and 20 percent of the area is mapped as predominately hydric, with a hydric rating of 85 percent. These areas are generally located in the vicinity of NWI-mapped and NHD-mapped features. Approximately 65 percent of the study area is mapped with a non-hydric rating of 0 percent. The remainder of the study area is mapped with a predominantly non-hydric soils rating at or below 10 percent. Hydric soils rating data are presented on Figure 6.

Illinois Department of Natural Resources (IDNR) Public Waters Inventory

A review of the IDNR Public Waters Inventory⁴ was completed. No IDNR Public Waters are located within the study area vicinity.

FEMA Floodplain

The Federal Emergency Management Agency (FEMA) National Flood Hazard Layer (NFHL) Viewer⁵ was reviewed to determine if FEMA 100-year floodplains are located within the study area. Based on Panel 17111C0220J (effective November 16, 2006), the southeastern corner of the study area is located within FEMA Flood Zone A, which is within the 100-Year FEMA Floodplain. Based on Panel 17111C0215J (effective November 16, 2024), the west portion of the study area is located within Zone X, which is outside the FEMA 100-Year Floodplain. FEMA floodplain data is presented on Figure 7.

² USGS. 2022. National Hydrography Dataset. Vector Digital Data. Published December 12, 2022.

³ USGS. 2021. USGS 1 Meter DEM Panels. Published December 8, 2022.

⁴ IDNR. 2023. Illinois Public Waters. Available online at

<https://idnr.maps.arcgis.com/apps/webappviewer/index.html?id=b64decfb69504164a46badb2841ebb11>

⁵ USGS. FEMA National Flood Hazard Layer Viewer. Available online at <https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd>

Study Area Disturbance

Historic aerials from 1988 to 2023 were reviewed to determine previous land use and disturbance on the study area and are presented in Attachment A. The study area has been used for agricultural purposes since at least 1988.

Aquatic Resource Assessment

Based on the National Wetlands Inventory and National Hydrography Dataset, Kimley-Horn identified potential wetlands and waterway features within the property (see Figure 4). A Level 2 (field) wetland delineation is recommended to confirm the extents of wetlands and waterways within the project study area.

USFWS Federally Listed Threatened and Endangered Species

Kimley-Horn conducted a preliminary review of the potential for federally listed threatened, endangered, and proposed species to occur within the study area or be affected by the proposed project for the purposes of due diligence in compliance with the Endangered Species Act (ESA). A list of the threatened, endangered, and proposed species, and designated critical habitat that could occur in McHenry County was obtained and evaluated from the USFWS Information for Planning and Consultation (IPaC) online planning tool. The resource list is not considered official USFWS correspondence for ESA consultation. Habitat descriptions for the identified species were compared to the habitat within or near the study area. The resource list obtained via the USFWS IPaC for the project identified five species that should be considered in an effects analysis. The resource list is included in Attachment B and the identified species are reviewed below in Table 1.

Table 1. USFWS Listed Threatened and Endangered Species

Species	Status	Preferred Habitat	Findings
<i>Myotis septentrionalis</i> (Northern Long-Eared Bat [NLEB])	Endangered	During summer, NLEB roost singly or in colonies underneath bark, in cavities, or in crevices of both live and dead trees. This bat uses tree species based on suitability to retain bark or provide cavities or crevices. It has also been found, rarely, roosting in structures like barns and sheds. Northern long-eared bats spend winter hibernating in caves and mines.	No critical habitat has been designated for this species. Minimal suitable habitat may be present within the study area due to the presence of a forested corridor located in the eastern portion of the study area. Any tree trimming or removal should be completed between October 1 and March 31.
<i>Grus americana</i> (Whooping crane)	Experimental population, Non-essential	The whooping crane breeds, migrates, winters and forages in a variety of habitats, including coastal marshes and estuaries, inland marshes, lakes, open ponds, shallow bays, salt marsh and sand or tidal flats, upland	No critical habitat has been designated for this species. The study area contains agricultural fields which are listed as habitat for the whooping crane. Due to the non-essential, experimental nature of the

Species	Status	Preferred Habitat	Findings
		swales, wet meadows and rivers, pastures, and agricultural fields.	population, no impacts are anticipated.
<i>Danaus plexippus</i> (Monarch butterfly)	Candidate	The monarch butterfly requires grassland habitats where milkweed and flowers are present. North American populations of the monarch butterfly typically follow a seasonal migration pattern.	No critical habitat has been designated for this species. Minimal preferred habitat may appear within the study area. Because the area is primarily active farmland and therefore disturbed, no adverse impacts anticipated. To avoid potential impacts, reseeding with native seed mixes is recommended, although not required.
<i>Bombus affinis</i> (Rusty Patched Bumble Bee [RPBB])	Endangered	RPBB has been observed in a variety of habitats, including prairies, woodlands, marshes, agricultural landscapes and residential parks and gardens. RPBB requires areas that support sufficient food, including nectar and pollen from diverse and abundant flowers, as well as undisturbed nesting sites that are in proximity to those floral resources.	No critical habitat has been designated for this species. The study area is within a RPBB high potential zone. Suitable habitat may be present in unmanicured areas as well as forested portions of the study area. Impacts to forested areas should be minimized or avoided. The area is primarily active farmland. No adverse impacts anticipated.
<i>Platanthera leucophaea</i> (Eastern Prairie Fringed Orchid)	Threatened	The eastern prairie fringed orchid occurs in a wide variety of habitats, from wet to mesic prairie, to wetland communities, including sedge meadow, fen, marsh and marsh edge. It can occupy a very wide moisture gradient of prairie and wetland vegetation. In general, the habitat is moist or moderately moist.	No critical habitat has been designated for this species. Minimal preferred habitat may appear within the study area. Wetlands may be within study area which are listed as habitat for the eastern prairie fringed orchid. The area is primarily active farmland. No adverse impacts are anticipated.

Migratory Birds

According to the IPaC resource list, two migratory species on the Birds of Conservation Concern (BCC) list have been identified within the study area. The BCC list was updated in 2023 by the USFWS and

is an effort to “identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act.”

The Migratory Bird Treaty Act (MBTA) makes it illegal for anyone to “take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to Federal regulations by the USFWS”. Typically, if active nests of bird species protected by the MBTA are identified, the USFWS recommends avoiding tree clearing or nest removal until at least the peak of the nesting season (generally March through August) has passed or until the nest is abandoned.

The U.S. Department of the Interior, Office of the Solicitor, published a memorandum (M-37050) dated December 22, 2017 regarding the MBTA and how “incidental take” is viewed by the Department. The memorandum analyzes whether the MBTA prohibits the accidental or “incidental” taking or killing of migratory birds. “Incidental take” is take that results from an activity, but is not the purpose of that activity. In this memorandum, the Department of the Interior concluded that “the MBTA’s prohibition on pursuing, hunting, taking, capturing, killing, or attempting to do the same applies only to direct and affirmative purposeful actions that reduce migratory birds, their eggs, or their nests, by killing or capturing, to human control.” Therefore, according to the Department of the Interior, the MBTA does not prohibit “incidental take.” Courts have different opinions and decisions with respect to including or excluding “incidental take” when considering the prohibitions under the MBTA. In 2015, the Fifth Circuit in *United States v. Citgo Petroleum Corp.* issued an opinion that agreed with the Eighth and Ninth circuits that a taking is limited to deliberate acts done directly and intentionally to migratory birds. Therefore, the Fifth Circuit decided that the MBTA only prohibits intentional take and does not prohibit incidental take. This decision by the Fifth Circuit set precedent within the Fifth Circuit’s jurisdiction.

On January 7, 2021, the USFWS published a final rule (“MBTA rule”) defining the scope of the MBTA which excluded incidental take of migratory birds from being unlawful. This interpretation of the MBTA was effective as of March 8, 2021. On May 7, 2021, the USFWS proposed to revoke the January 7, 2021 final regulation and opened a public comment period which closed on June 7, 2021. On September 29, 2021, the U.S. Department of Interior announced a series of actions to unwind the most recent rulemaking in an effort “to ensure that the MBTA conserves birds today and into the future.” On October 4, 2021, the USFWS published a final rule revoking the most recent rule enacted by the Trump Administration that limited the scope of the MBTA. According to the Federal Register, the final MBTA revocation rule went into effect on December 3, 2021.

In addition, on October 4, 2021, the USFWS published an Advanced Notice of Proposed Rulemaking announcing the intent to solicit public comments and information to help develop proposed regulations that would establish a permitting system to authorize the incidental take of migratory birds in certain circumstances. The USFWS issued a Director’s Order establishing criteria for the types of conduct that will be a priority for enforcement activities with respect to incidental take of migratory birds.

It should be noted that the regulatory climate with respect to the MBTA is changing; however, it is our understanding that as of December 3, 2021 incidental take of migratory birds would be liable under the MBTA. As of December 1, 2023, the USFWS withdrew its proposed rule revising the MBTA regulations and additional review is ongoing as of the date of this report. This should be considered until a rulemaking process is complete. Kimley-Horn recommends evaluating the MBTA regulation prior to ground disturbance activities commencing.

Kimley-Horn downloaded the Trust Resources Report Migratory Bird List from the IPaC online planning tool. The IPaC results are included in Attachment B. Kimley-Horn conducted a preliminary desktop review of the potential for migratory bird habitat (focusing primarily on trees and shrubs) to occur on the proposed study area or be affected by the proposed study area for the purposes of due diligence in complying with the MBTA. The desktop review revealed the presence of minimal potential migratory bird habitat within the study area. It is our understanding that as of December 1, 2023, incidental take would be enforceable under the MBTA.

IDNR State Listed Threatened, Endangered, and Species of Special Concern

The IDNR identified that the presence of Blanding's Turtle and Rusty Patched Bumble Bees may be in the vicinity of the project area. Additionally, the IDNR identified no Illinois Natural Area Inventory sites, dedicated Illinois Nature Preserves, or registered Land and Water Reserves in the vicinity of the study area. The IDNR provided recommendations for exclusionary fencing prior to March 1st to limit impacts to the Blanding's Turtle. The IDNR must be notified if the management practices are adopted. No adverse effects are anticipated if the management practices are implemented. The IDNR Consultation Letter is included in Attachment B.

Historic Resources Database Review

A cultural resources desktop review was conducted for the project study area and 0.5-mile buffer by Kimley-Horn and Associates, Inc. cultural resources management staff who meet the Secretary of Interior's professional qualifications in archaeology. Kimley-Horn staff reviewed the Illinois Inventory of Archaeological Sites (IIAS) to conduct the desktop review.

The IIAS records indicate that only a small area in the western portion of the study area was previously surveyed. The survey (MH-14420), which occurred in 2004, did not identify any cultural resources within the study area. As such, no known cultural resources are located in the study area. An Archaeological Resource Potential polygon intersects the southeast corner of the study area.

The IIAS provides additional cultural data for the 0.5-mile buffer surrounding the study area. Three additional previous archaeological surveys have occurred in the buffer: MH-7119, MH-12025, and MH-12450. While the results of all the surveys were positive for cultural resources, the cultural resources are located outside the 0.5-mile buffer. As such, there are no previously recorded cultural resources in the 0.5-mile buffer.

The Illinois Historic and Architectural Resources Geographic Information System (HARGIS) was reviewed for the potential of any historic structures to occur within the vicinity of the study area. No protected structures were identified within or adjacent to the study area.

CONCLUSIONS AND RECOMMENDATIONS:

Based on the information reviewed, Kimley-Horn has identified potential environmental constraints that could require additional planning.

Based on the aquatic resource assessment, Kimley-Horn identified potential wetlands and waterways within the study area. A Level 2 (Field) wetland delineation is recommended to determine the extents of wetlands and waterways within the study area.

Potential suitable habitat for listed federal species may be present within the study area. If tree clearing or structure demolition is anticipated, it is recommended to be completed between October 1 and March 31, which is outside of the active bat season. The IDNR determined that adverse effects to state listed species or protected resources are unlikely if the recommended management practices are implemented. The IDNR must be notified if the management practices are adopted.

No impacts to known IAS-listed resources are anticipated. Correspondence with the Illinois State Historic Preservation Office (SHPO) is ongoing and results are pending.

Figures



Figure 1. Project Location
 Nunda Township, McHenry County
 TPE IL MH680, LLC

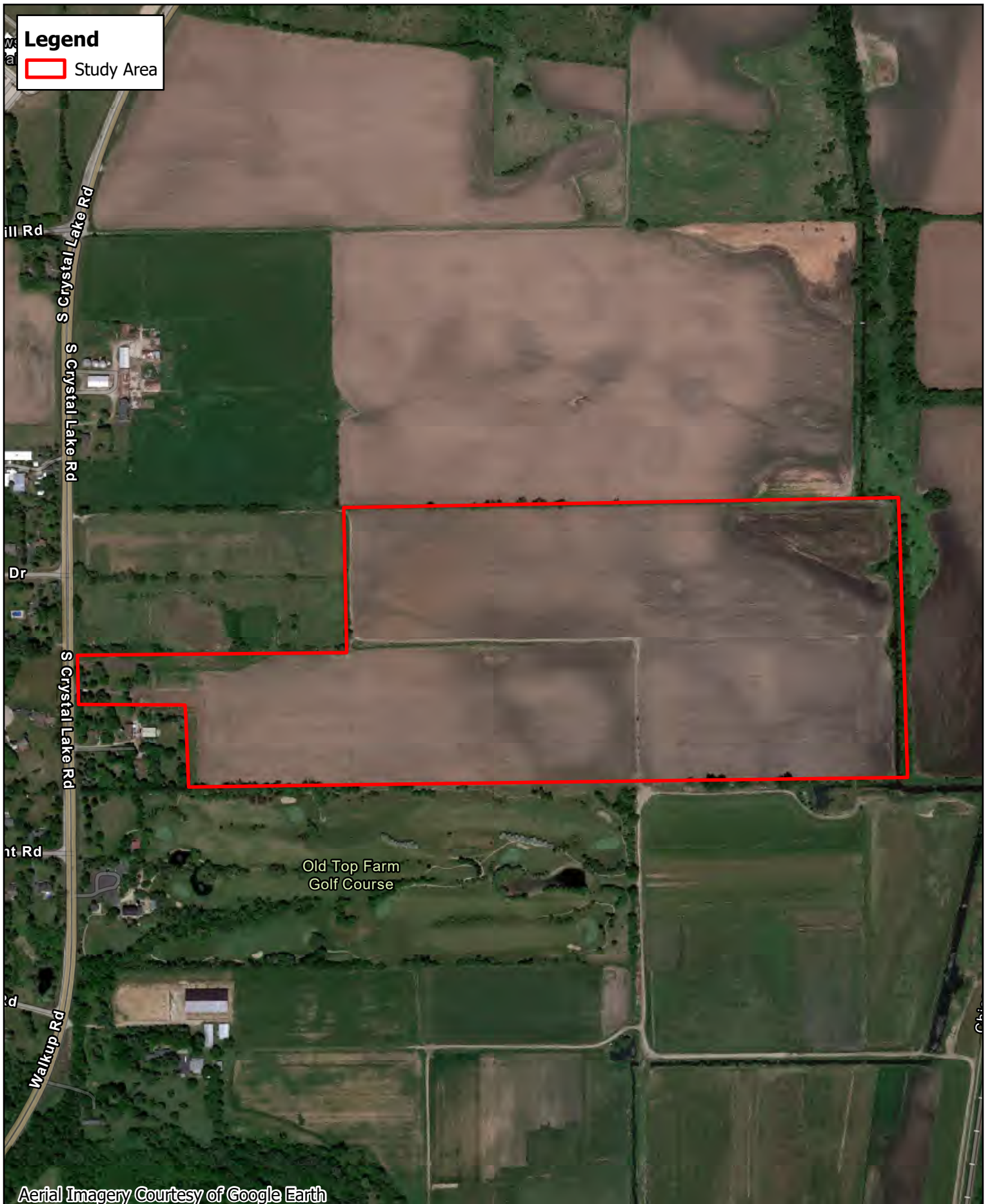
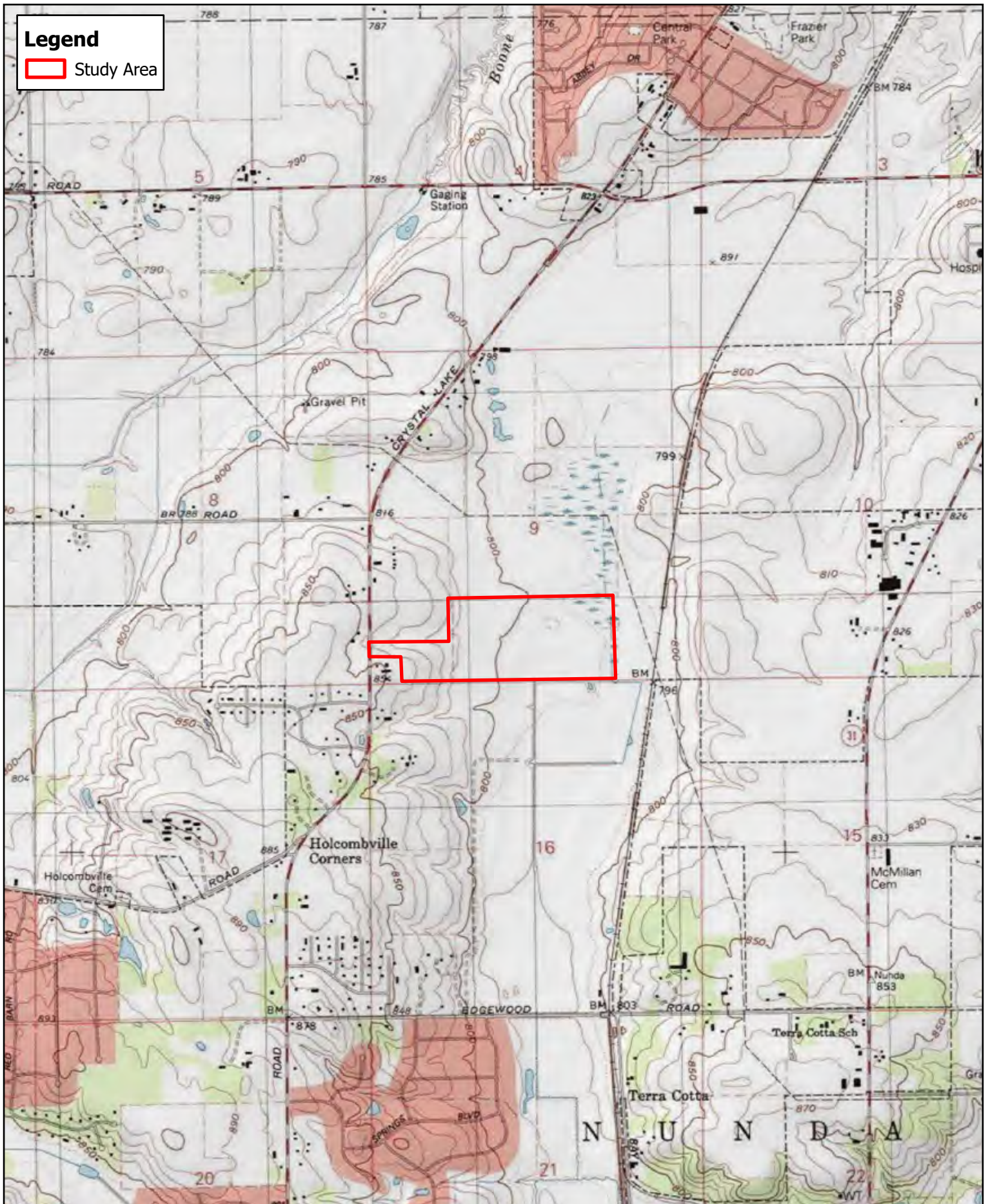


Figure 2. Study Area Boundary
Nunda Township, McHenry County
TPE IL MH680, LLC



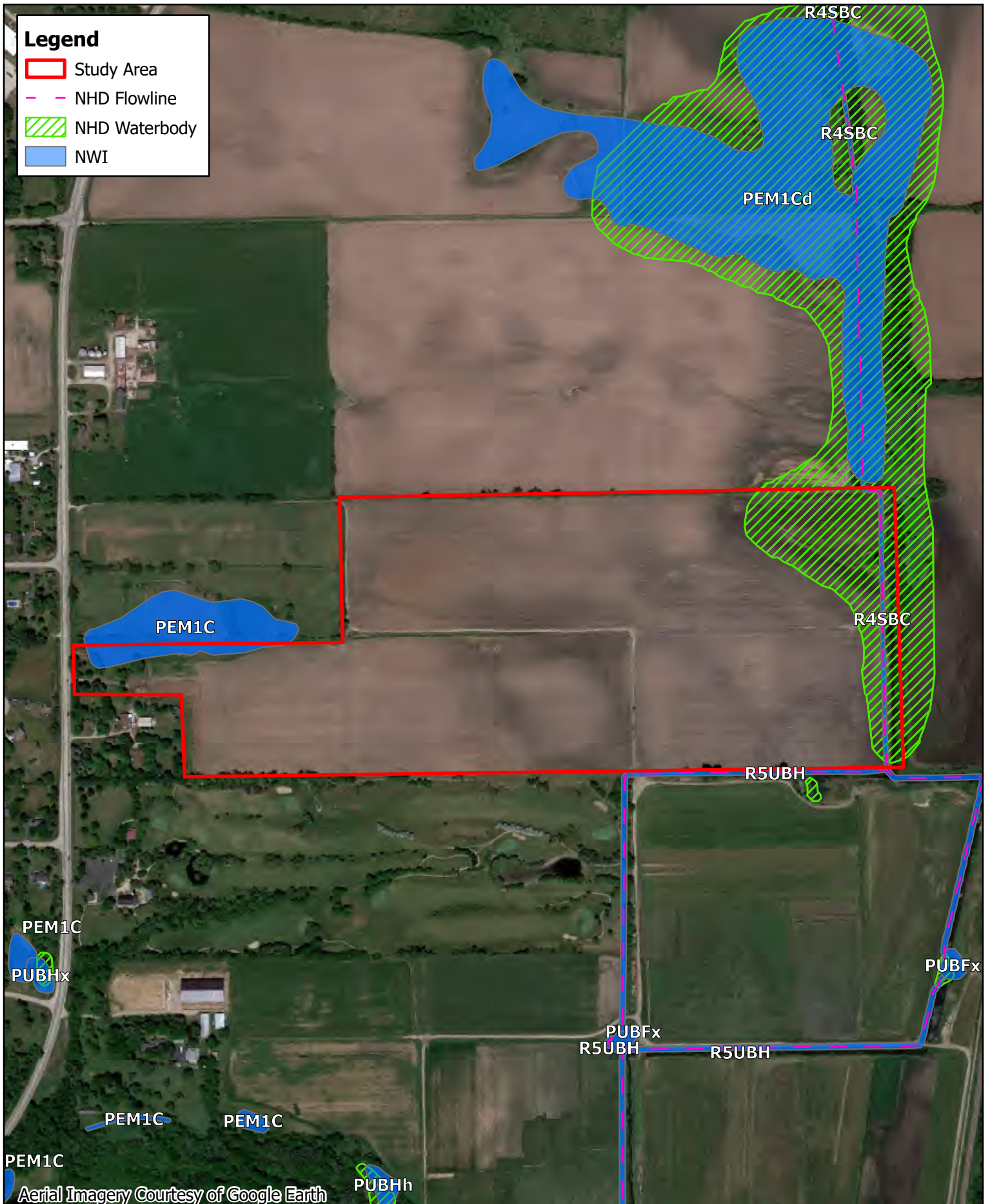


Figure 4. NHD and NWI Map
 Nunda Township, McHenry County
 TPE IL MH680, LLC

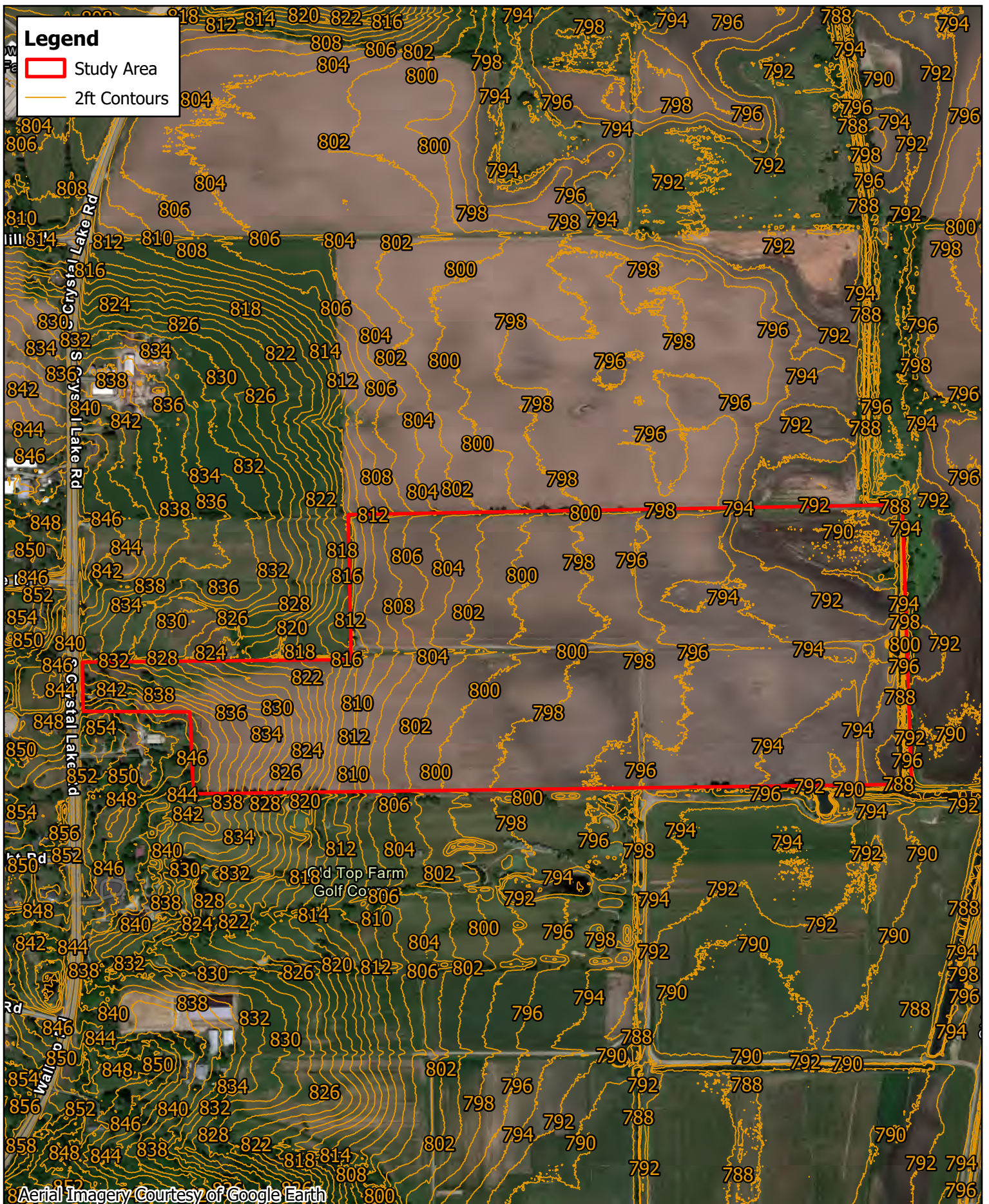


Figure 5. 2-ft Contours
 Nunda Township, McHenry County
 TPE IL MH680, LLC

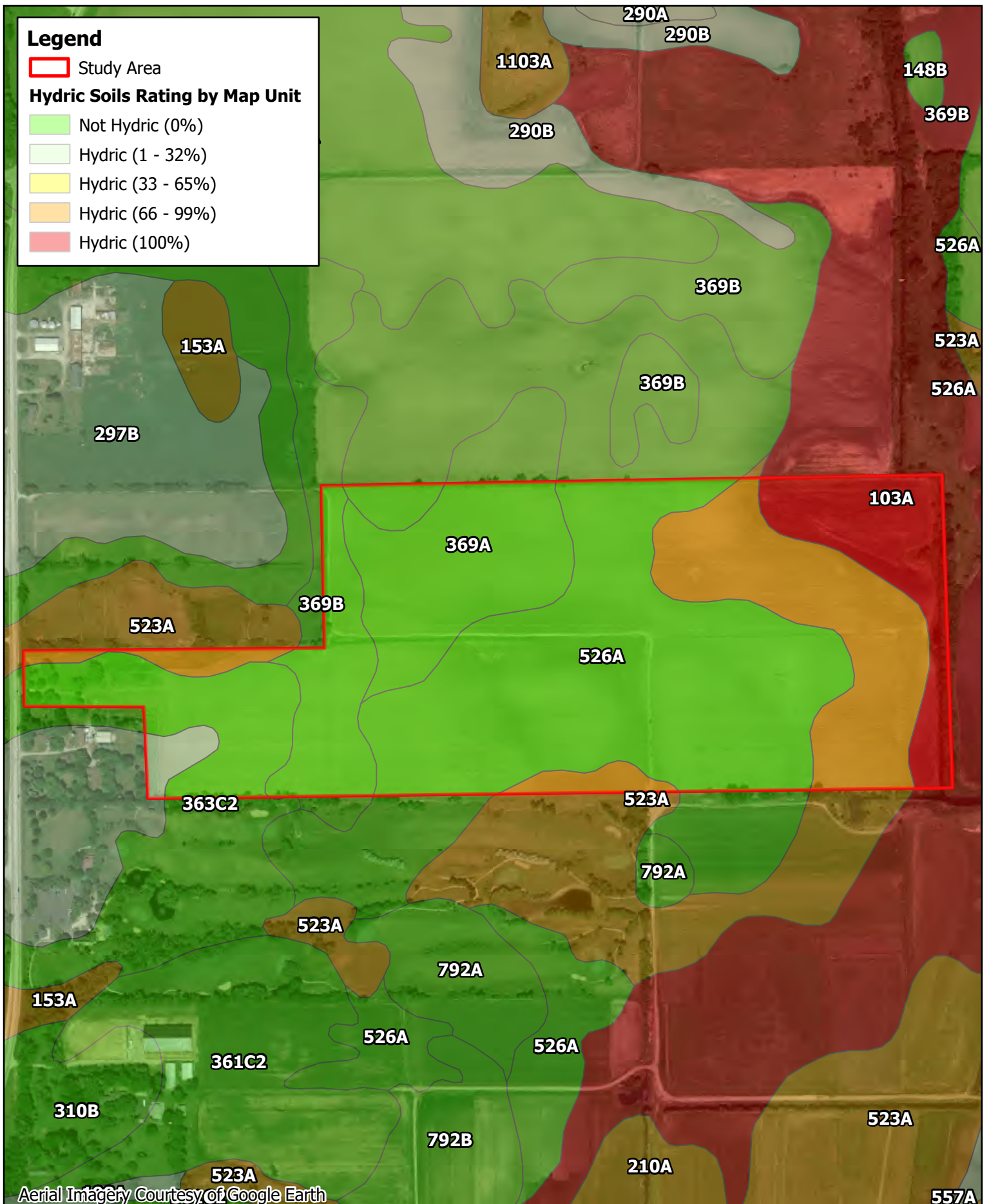
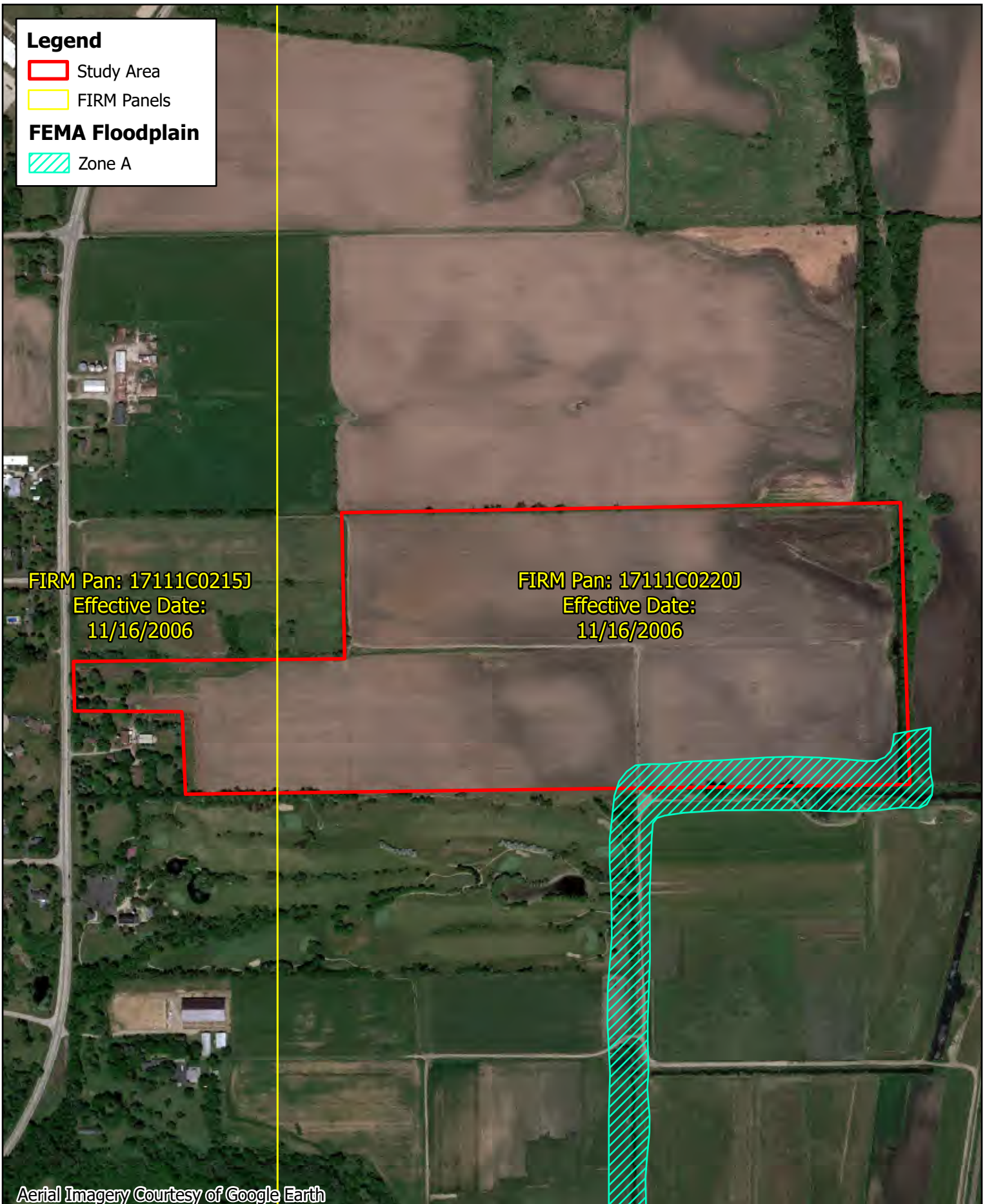


Figure 6. Hydric Soils Map
 Nunda Township, McHenry County
 TPE IL MH680, LLC



ATTACHMENT A

Historic Aerials

Legend

 Study Area



Aerial Imagery Courtesy of Google Earth

Legend
Study Area



Aerial Imagery Courtesy of Google Earth



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 Study Area



Aerial Imagery Courtesy of Google Earth



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Study Area

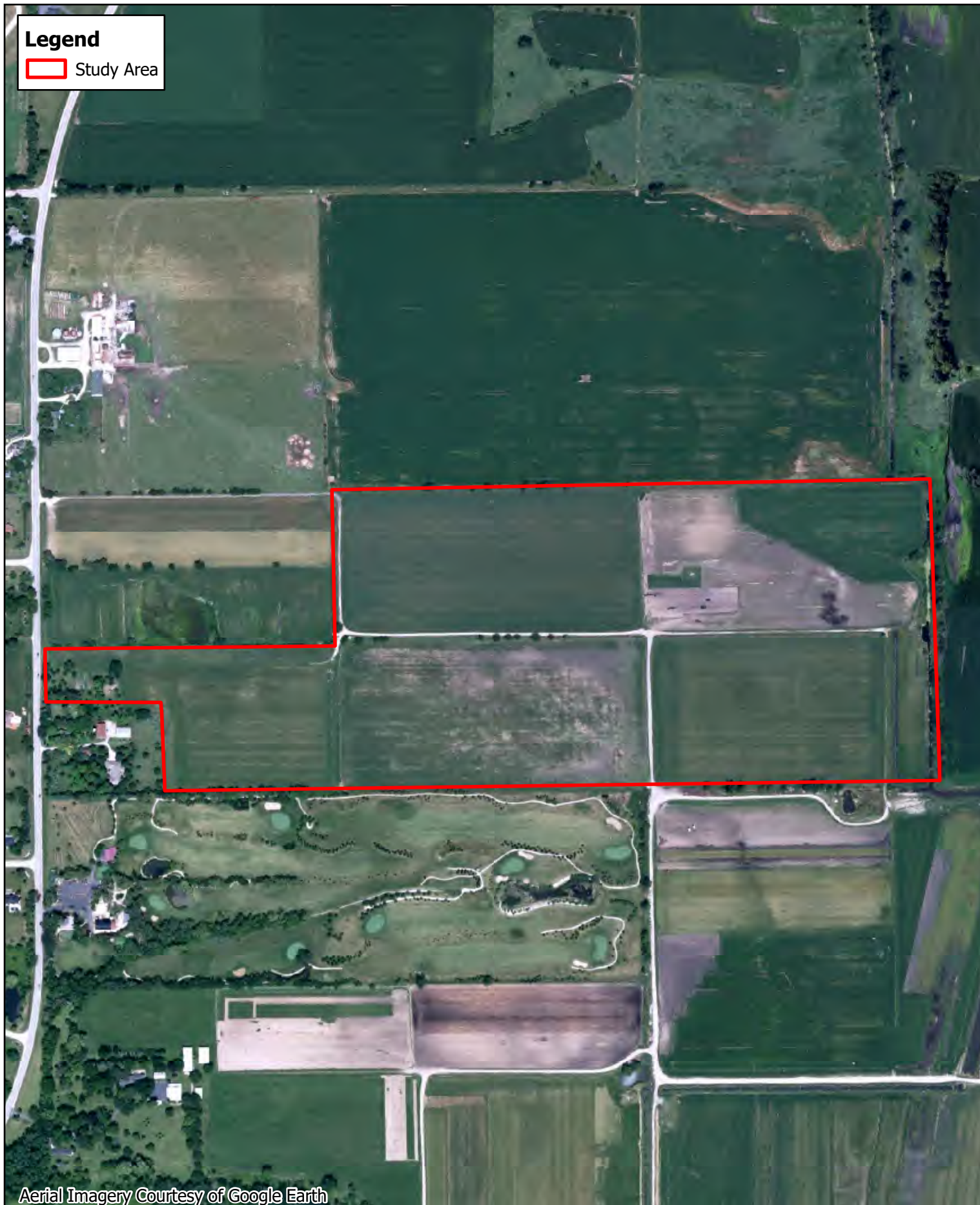


Aerial Imagery Courtesy of Google Earth



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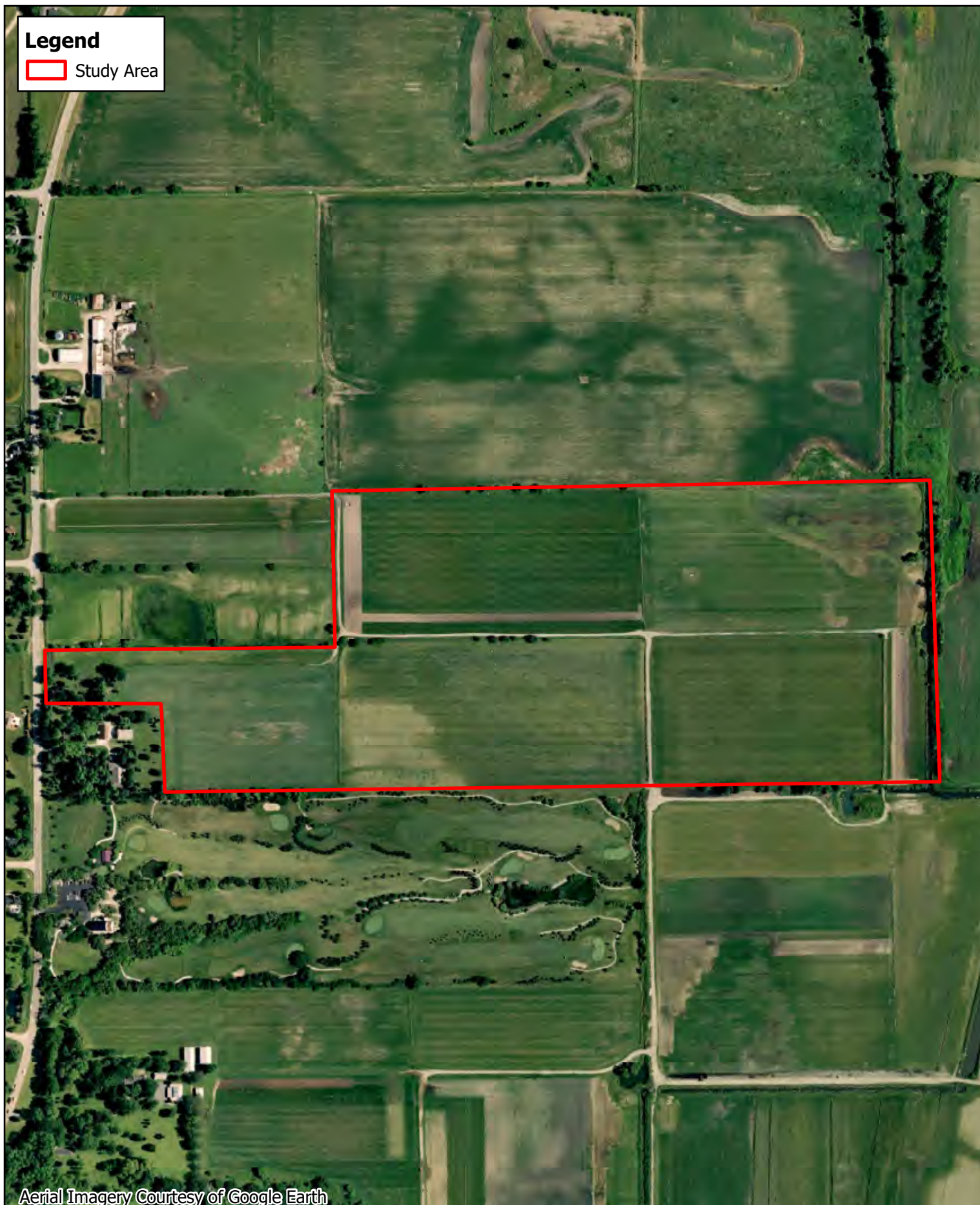
 Study Area



Aerial Imagery Courtesy of Google Earth

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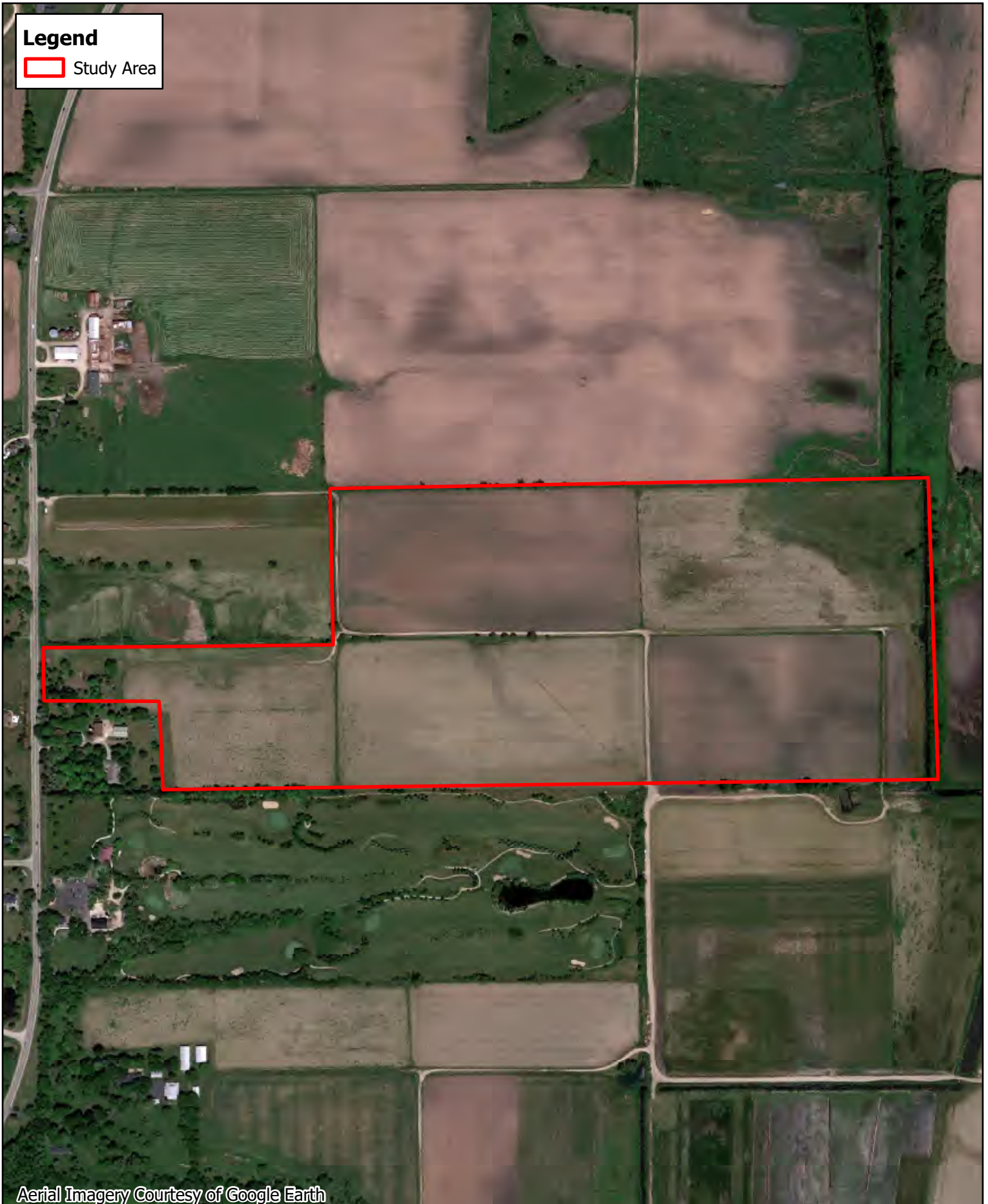
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Aerial Imagery Courtesy of Google Earth



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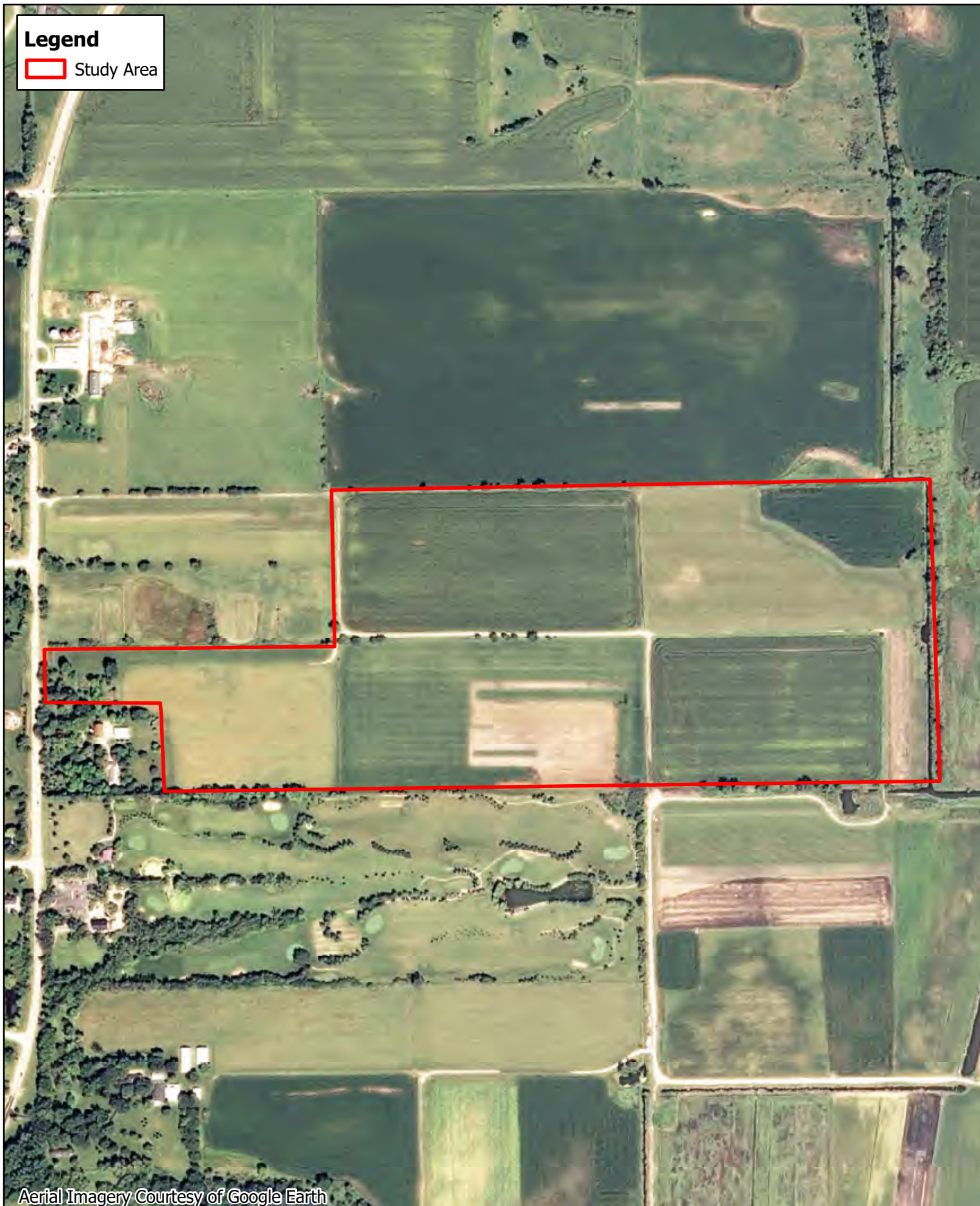


Aerial Imagery Courtesy of Google Earth



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 Study Area



Aerial Imagery Courtesy of Google Earth



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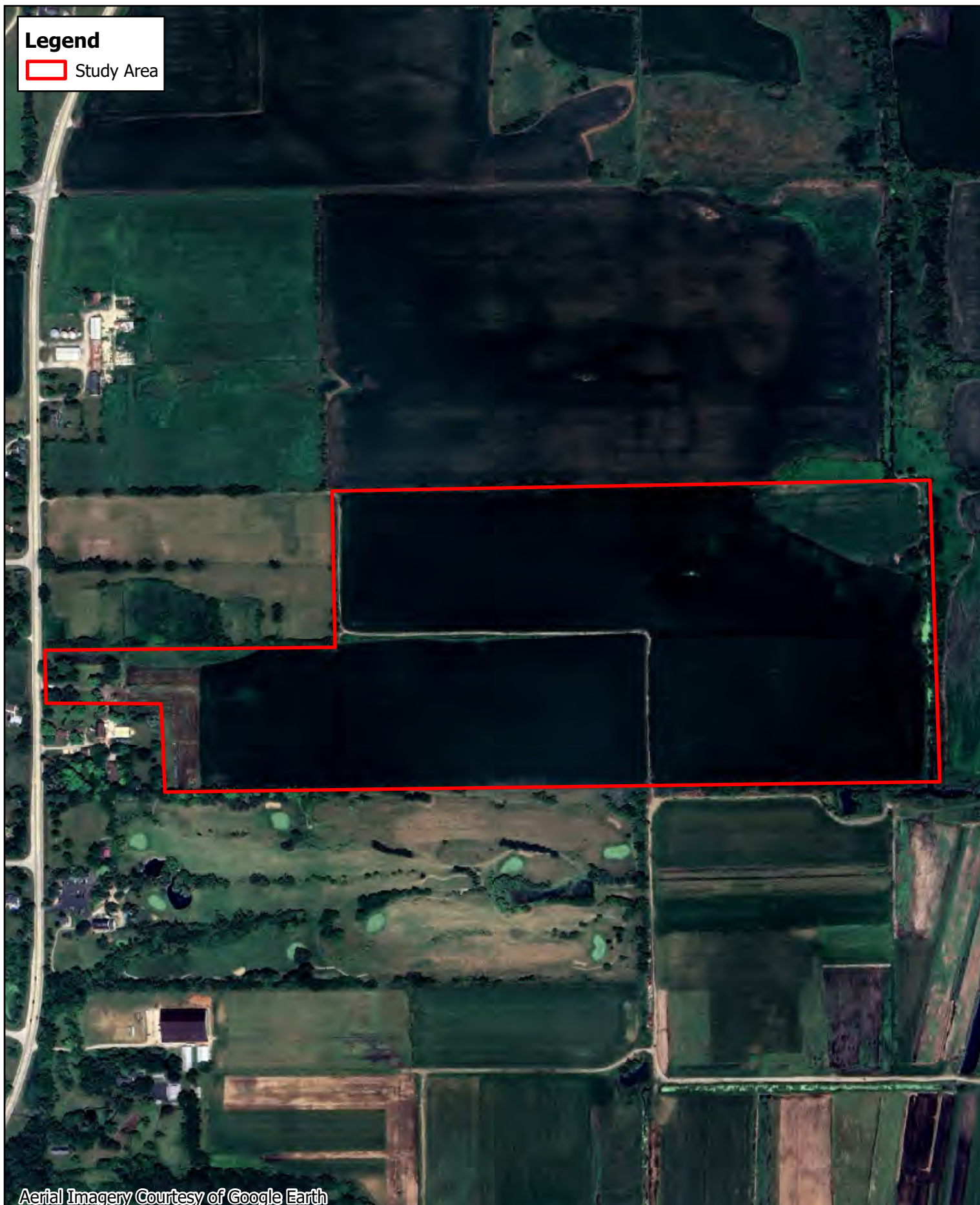


Aerial Imagery Courtesy of Google Earth



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 Study Area



Aerial Imagery Courtesy of Google Earth



ATTACHMENT B

Species Resources

Applicant: Bill Carleton
Contact: Ryan Solum
Address: 3270 S Dahlia St
Atlanta, GA 30305

Project: MH680 Solar
Address: S Crystal Lake Rd, McHenry

IDNR Project Number: 2502443
Date: 08/20/2024

Description: Construction of a roughly 40 acre commercial solar energy facility with associated sidewalks, roads, and utilities.

Natural Resource Review Results

Consultation for Endangered Species Protection and Natural Areas Preservation (Part 1075)

The Illinois Natural Heritage Database shows the following protected resources may be in the vicinity of the project location:

Blanding's Turtle (*Emydoidea blandingii*)
Rusty Patched Bumble Bee (*Bombus affinis*)

An IDNR staff member will evaluate this information and contact you to request additional information or to terminate consultation if adverse effects are unlikely.

Location

The applicant is responsible for the accuracy of the location submitted for the project.

County: McHenry

Township, Range, Section:

44N, 8E, 9
44N, 8E, 16



IL Department of Natural Resources
Contact
Isabella Newingham
217-785-5500
Division of Ecosystems & Environment

Government Jurisdiction
IL Environmental Protection Agency
Terri LeMasters
1020 North Grand Avenue East
Springfield, Illinois 62794 -9276

Disclaimer

The Illinois Natural Heritage Database cannot provide a conclusive statement on the presence, absence, or condition of natural resources in Illinois. This review reflects the information existing in the Database at the time of this inquiry, and should not be regarded as a final statement on the site being considered, nor should it be a substitute for detailed site surveys or field surveys required for environmental assessments. If additional protected resources are encountered during the project's implementation, compliance with applicable statutes and regulations is required.

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1. The IDNR EcoCAT website was developed so that units of local government, state agencies and the public could request information or begin natural resource consultations on-line for the Illinois Endangered Species Protection Act, Illinois Natural Areas Preservation Act, and Illinois Interagency Wetland Policy Act. EcoCAT uses databases, Geographic Information System mapping, and a set of programmed decision rules to determine if proposed actions are in the vicinity of protected natural resources. By indicating your agreement to the Terms of Use for this application, you warrant that you will not use this web site for any other purpose.
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3. IDNR reserves the right to enhance, modify, alter, or suspend the website at any time without notice, or to terminate or restrict access.

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EcoCAT operates on a state of Illinois computer system. We may use software to monitor traffic and to identify unauthorized attempts to upload, download, or change information, to cause harm or otherwise to damage this site. Unauthorized attempts to upload, download, or change information on this server is strictly prohibited by law.

Unauthorized use, tampering with or modification of this system, including supporting hardware or software, may subject the violator to criminal and civil penalties. In the event of unauthorized intrusion, all relevant information regarding possible violation of law may be provided to law enforcement officials.

Privacy

EcoCAT generates a public record subject to disclosure under the Freedom of Information Act. Otherwise, IDNR uses the information submitted to EcoCAT solely for internal tracking purposes.



August 21, 2024

Ryan Solum
3270 S Dahlia St
Atlanta, GA 30305

**RE: MH680 Solar
Consultation Program
EcoCAT Review #2502443
McHenry County**

Dear Mr. Solum:

The Department has received your submission for this project for the purposes of consultation pursuant to the *Illinois Endangered Species Protection Act* [520 ILCS 10/11], the *Illinois Natural Areas Preservation Act* [525 ILCS 30/17], and Title 17 *Illinois Administrative Code* Part 1075.

The proposed action consists of the construction of a roughly 40-acre commercial solar energy facility with associated sidewalks, roads, and utilities in McHenry County, IL.

The Illinois Natural Heritage Database shows the following protected resources may be in the vicinity of the project location:

State Threatened or Endangered Species
Blanding's Turtle (*Emydoidea blandingii*)
Rusty-patched Bumble Bee (*Bombus affinis*)

Due to the project scope and proximity to protected resources, the Department offers the following comments and recommends the following actions be taken to avoid adversely impacting listed species in the vicinity of the project:

Blanding's Turtle

EcoCAT has indicated records for the state-listed Blanding's Turtle in vicinity of the project area. The Department recommends:

- Exclusionary fencing should be installed to partition off any wetland areas before the active season (March 1st - November 1st). Exclusionary fencing should be trenched into the ground (a minimum of 4 inches) and inspected daily for Blanding's Turtles.

- Alternatively, a survey for Blanding's Turtle may be conducted to determine if the turtle is present within the project area. The principal investigator should obtain a Scientific Collectors Permit and T&E Permit from the Department to conduct such work. A survey proposal should be sent to this office for concurrence on methods, along with the results for final comment.

Rusty-patched Bumble Bee

The Department has determined that adverse impacts to this species are unlikely.

Please note that due to the federal status of the Rusty-patched Bumble Bee, and its potential occurrence in the project area, coordination with the U.S. Fish and Wildlife Service may be necessary and is separate from this consultation and Illinois State regulations.

Given the above recommendations are adopted, the Department has determined that impacts to these protected resources are unlikely. The Department has determined impacts to other protected resources in the vicinity of the project location are also unlikely.

In accordance with 17 Ill. Adm. Code 1075.40(h), please notify the Department of your decision regarding these recommendations.

Consultation on the part of the Department is closed, unless the applicant desires additional information or advice related to this proposal. Consultation for Part 1075 is valid for two years unless new information becomes available which was not previously considered; the proposed action is modified; or additional species, essential habitat, or Natural Areas are identified in the vicinity. If the action has not been implemented within two years of the date of this letter, or any of the above listed conditions develop, a new consultation is necessary.

The natural resource review reflects the information existing in the Illinois Natural Heritage Database at the time of the project submittal and should not be regarded as a final statement on the project being considered, nor should it be a substitute for detailed site surveys or field surveys required for environmental assessments. If additional protected resources are unexpectedly encountered during the project's implementation, the applicant must comply with the applicable statutes and regulations.

This letter does not serve as permission to take any listed or endangered species. As a reminder, no take of an endangered species is permitted without an Incidental Take Authorization or the required permits. Anyone who takes a listed or endangered species without an Incidental Take Authorization or required permit may be subject to criminal and/or civil penalties pursuant to the *Illinois Endangered Species Act*, the *Fish and Aquatic Life Act*, the *Wildlife Code* and other applicable authority.

The Department also offers the following conservation measures be considered to help protect native wildlife and enhance natural areas in the project area:

- The Department strongly recommends that the project proponent establish pollinator-friendly habitat as groundcover wherever feasible. Solar Site Pollinator Establishment Guidelines can be found here: <https://dnr.illinois.gov/conservation/pollinatorscorecard.html>
- The site should be de-compacted before planting.
- Long term management of the site should be planned for prior to development to ensure successful native pollinator habitat establishment and prevent the spread of invasive species throughout the lifetime of this project. An experienced ecological management consultant should be hired to assist with long-term management.
- Required fencing, excluding areas near or adjacent to public access areas, should have a 6-inch gap along the bottom to prevent the restriction of wildlife movement. Woven wire or a suitable habitat wildlife friendly fence should be used. Barbed wire should be avoided.
- If tree clearing is necessary, the Department recommends removing trees between November 1st and March 31st to avoid impacts to the state-listed bats and birds.
- Any required night lighting should follow International Dark-Sky Association's (IDA) Five Principles for Responsible Outdoor Lighting to minimize the effect of light pollution on wildlife: [Five Principles for Responsible Outdoor Lighting | DarkSky International](#)

Please contact me with any questions about this review.

Sincerely,



Bradley Hayes
Manager, Impact Assessment Section
Division of Real Estate Services and Consultation
Office of Realty & Capital Planning
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702
Bradley.Hayes@Illinois.gov
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United States Department of the Interior



FISH AND WILDLIFE SERVICE

Chicago Ecological Service Field Office
U.s. Fish And Wildlife Service Chicago Ecological Services Office
230 South Dearborn St., Suite 2938
Chicago, IL 60604-1507
Phone: (312) 485-9337

In Reply Refer To:

08/05/2024 20:48:06 UTC

Project Code: 2024-0126119

Project Name: Turning Point Energy - MH680

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

Additionally, please note that on March 23, 2022, the Service published a proposal to reclassify the northern long-eared bat (NLEB) as endangered under the Endangered Species Act. The U.S. District Court for the District of Columbia has ordered the Service to complete a new final listing

determination for the NLEB by November 2022 (Case 1:15-cv-00477, March 1, 2021). The bat, currently listed as threatened, faces extinction due to the range-wide impacts of white-nose syndrome (WNS), a deadly fungal disease affecting cave-dwelling bats across the continent. The proposed reclassification, if finalized, would remove the current 4(d) rule for the NLEB, as these rules may be applied only to threatened species. Depending on the type of effects a project has on NLEB, the change in the species' status may trigger the need to re-initiate consultation for any actions that are not completed and for which the Federal action agency retains discretion once the new listing determination becomes effective (anticipated to occur by December 30, 2022). If your project may result in incidental take of NLEB after the new listing goes into effect this will first need to be addressed in an updated consultation that includes an Incidental Take Statement. If your project may require re-initiation of consultation, please contact our office for additional guidance.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts, see <https://www.fws.gov/program/migratory-bird-permit/what-we-do>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and

their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures, see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Chicago Ecological Service Field Office

U.s. Fish And Wildlife Service Chicago Ecological Services Office
230 South Dearborn St., Suite 2938
Chicago, IL 60604-1507
(312) 485-9337

PROJECT SUMMARY

Project Code: 2024-0126119
Project Name: Turning Point Energy - MH680
Project Type: Power Gen - Solar
Project Description: 40 acre solar field within 95 acre study area.
Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@42.30176085,-88.30652832305923,14z>



Counties: McHenry County, Illinois

ENDANGERED SPECIES ACT SPECIES

There is a total of 5 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 1 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Endangered

BIRDS

NAME	STATUS
Whooping Crane <i>Grus americana</i> Population: U.S.A. (AL, AR, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, NM, OH, SC, TN, UT, VA, WI, WV, western half of WY) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/758	Experimental Population, Non- Essential

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate
Rusty Patched Bumble Bee <i>Bombus affinis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9383	Endangered

FLOWERING PLANTS

NAME	STATUS
Eastern Prairie Fringed Orchid <i>Platanthera leucophaea</i> No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> Follow the guidance provided at https://www.fws.gov/midwest/endangered/section7/s7process/plants/epfos7guide.html Species profile: https://ecos.fws.gov/ecp/species/601	Threatened

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

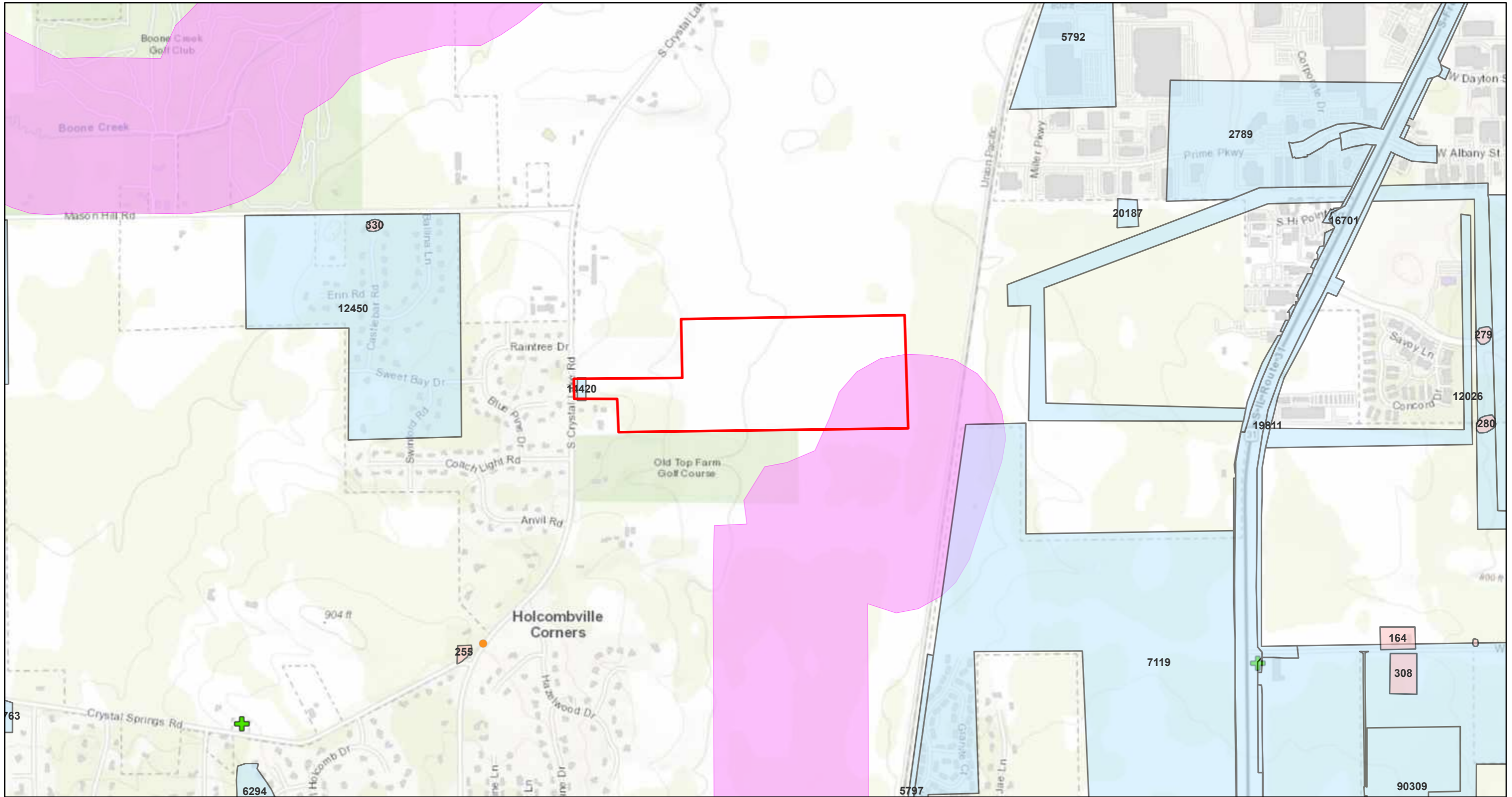
IPAC USER CONTACT INFORMATION

Agency: Private Entity
Name: Cade Deckard
Address: 500 E 96th St, Suite 300
City: Indianapolis
State: IN
Zip: 46240
Email: cade.deckard@kimley-horn.com
Phone: 3172803814

ATTACHMENT C

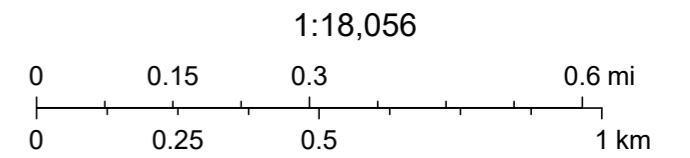
Historic Resources

MH680

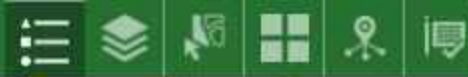


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- Study Area
- IAS Sites
- Surveys
- ISM Cemeteries
- National Register Properties
- Undetermined
- Archaeological Resource Potential

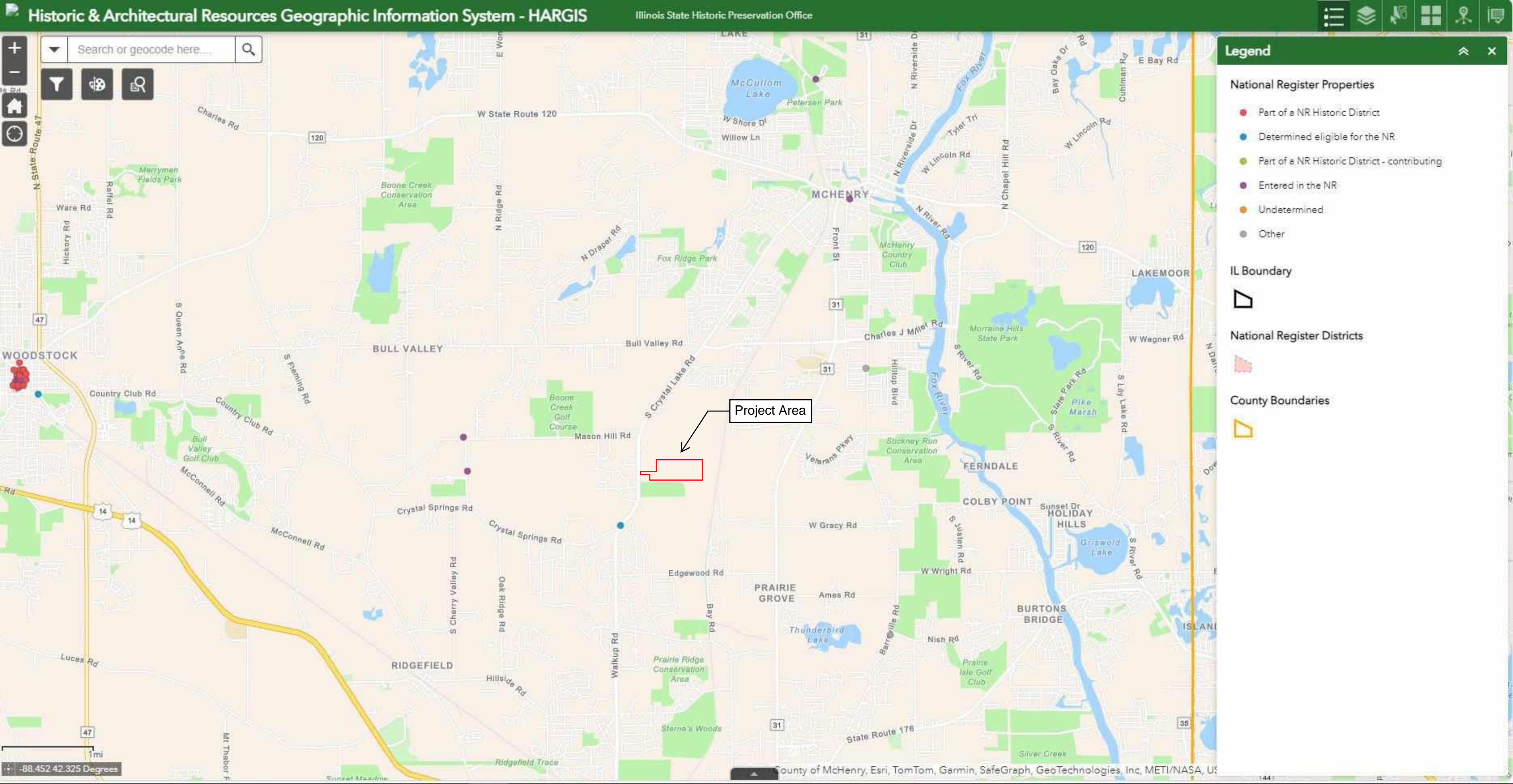


County of McHenry, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA



Search or geocode here.....

Map navigation controls: Home, Search, Zoom In, Zoom Out, Full Screen, Refresh.



Legend

- National Register Properties**
 - Part of a NR Historic District
 - Determined eligible for the NR
 - Part of a NR Historic District - contributing
 - Entered in the NR
 - Undetermined
 - Other
- IL Boundary**
 - ▭
- National Register Districts**
 - ▭
- County Boundaries**
 - ▭

Project Area

