



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

MVP-RD

[4 June 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-2025-00545-TMS MFR 1 of 1](#)]

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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-2025-00545-TMS]

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, 0.08 acre]

ii. [Wetland 3, 0.27 acre]

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. [The review area is approximately 0.35 acre in size and is located at Lat. 46.839340, Long. -92.250384 in Hermantown, St. Louis County, Minnesota. The review area is surrounded by Highway 53 to the north, commercial properties to the east and west, and undeveloped forested area to the south.]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]⁵

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A]

⁵ 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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00545-TMS]

6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ [N/A]
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. Traditional Navigable Waters (TNWs) (a)(1)(i): [N/A]
 - b. The Territorial Seas (a)(1)(ii): [N/A]
 - c. Interstate Waters (a)(1)(iii): [N/A]
 - d. Impoundments (a)(2): [N/A]
 - e. Tributaries (a)(3): [N/A]
 - f. Adjacent Wetlands (a)(4): [N/A]
 - g. Additional Waters (a)(5): [N/A]

⁶ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁷ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00545-TMS]

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- 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 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).

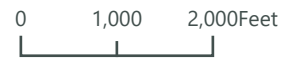
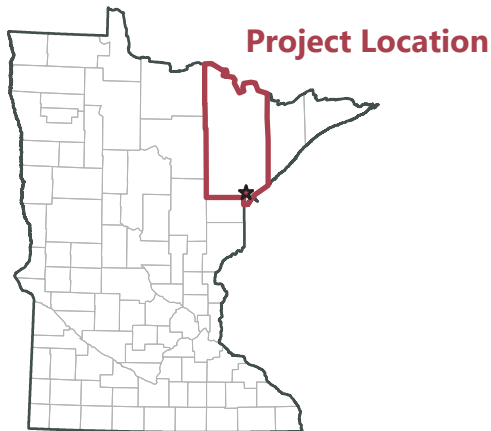
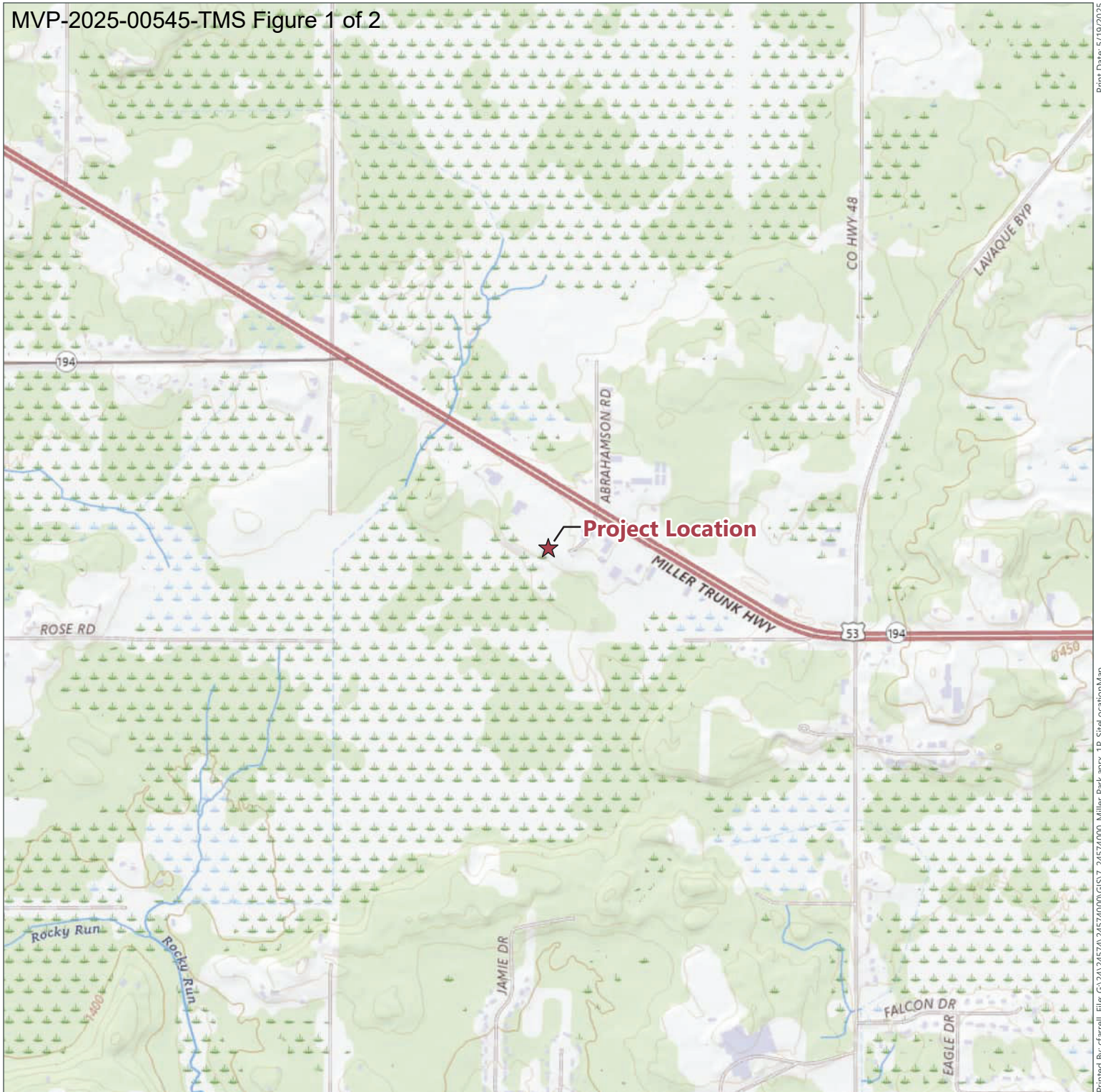
[Wetlands 1 and 3 are not Traditionally Navigable Waters, territorial seas, or interstate waters and are therefore not (a)(1) waters. The wetland delineation report, application, topographical maps, and digital elevation modeling indicate that Wetlands 1 and 3 do not physically abut a relatively permanent (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated by a natural berm, bank, dune, or similar landform. Wetlands 1 and 3 are surrounded by uplands to the north, east, and west. Forested wetlands are located to the south and downslope from Wetlands 1 and 3. However, the delineation report includes an upland data point taken immediately to the south of Wetlands 1 and 3 which identified a rise in elevation between these wetlands and off-site wetlands to the south. Based on the delineation report and additional information provided by the applicant's agent, Wetlands 1 and 3 do not have continuous surface connections to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent water. Therefore, Wetlands 1 and 3 are not jurisdictional waters under the 2023 Revised Definition of "Waters of the United States"; Conforming" 88 FR 61964 Final Rule.]

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. [Application and Wetland Delineation Report, MSA Professional Services, Inc.]
- b. [National Regulatory Viewer, 2023 data sources]
- c. [Desktop Evaluation, June 2, 2025]

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.



Data Sources: USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road data; Natural Earth Data; U.S. Department of State HIU; NOAA National Centers for Environmental Information. Data refreshed February, 2025.

FIGURE 1P

PROJECT LOCATION

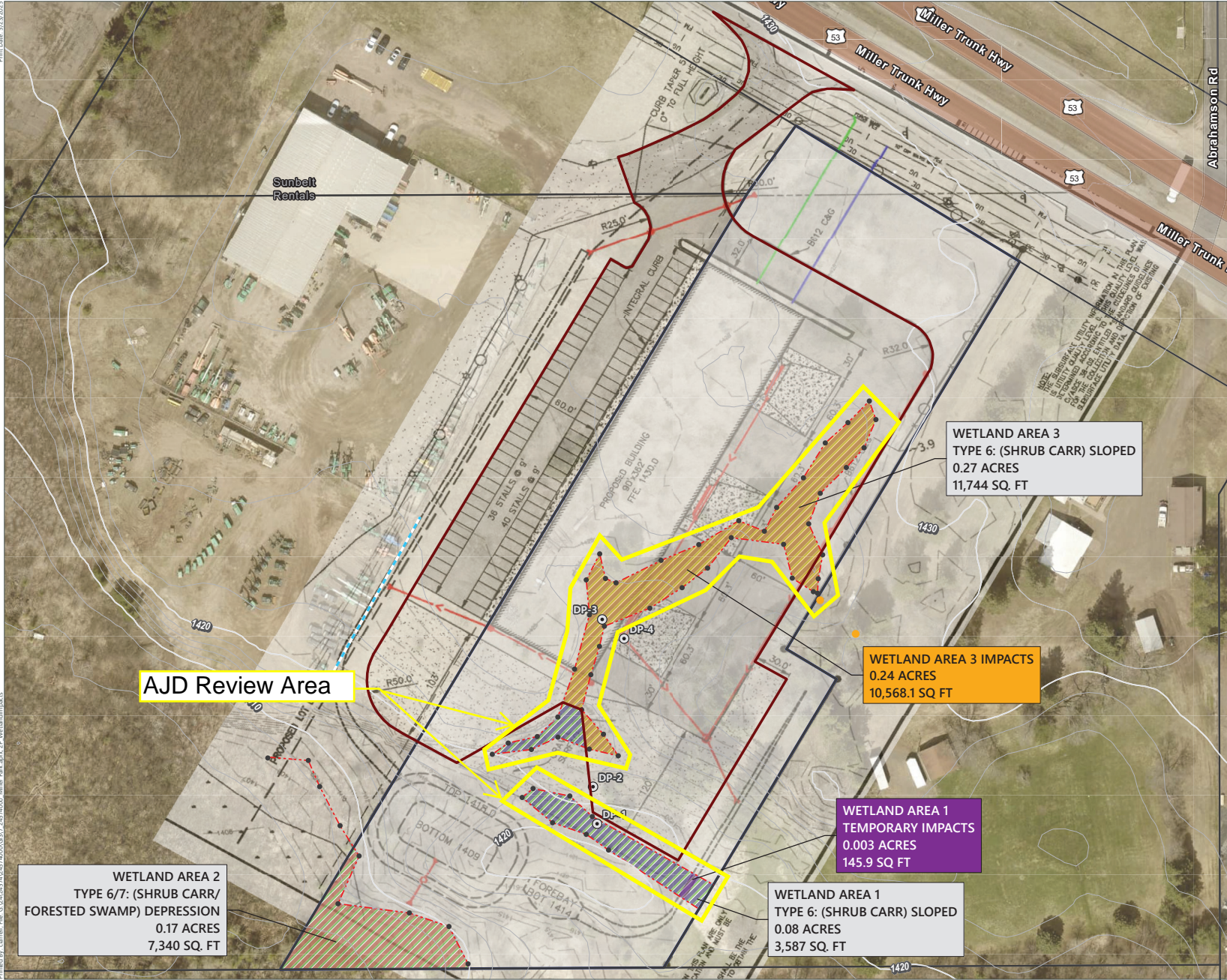
PIN: 395-0010-00781
 HERMANTOWN,
 ST. LOUIS COUNTY, MINNESOTA

FIGURE 2P

WETLAND IMPACTS

PIN: 395-0010-00781
HERMANTOWN, ST. LOUIS COUNTY,
MINNESOTA

- TAX PARCEL BOUNDARY
- INVESTIGATION LIMITS
- PROJECT PLAN GRADING LIMITS
- WETLAND BOUNDARY
- DRAINAGE
- GPS FLAG LOCATION
- CULVERT
- WETLAND DATA POINT
- TYPE 6/7: SHRUB CARR/FORESTED SWAMP
- TYPE 6: SHRUB CARR
- TEMPORARY WETLAND IMPACTS
- WETLAND IMPACTS
- LIDAR CONTOURS**
- 10 FOOT
- 2 FOOT



AJD Review Area

WETLAND AREA 2
 TYPE 6/7: (SHRUB CARR/
 FORESTED SWAMP) DEPRESSION
 0.17 ACRES
 7,340 SQ. FT

WETLAND AREA 3 IMPACTS
 0.24 ACRES
 10,568.1 SQ FT

WETLAND AREA 1
 TEMPORARY IMPACTS
 0.003 ACRES
 145.9 SQ FT

WETLAND AREA 1
 TYPE 6: (SHRUB CARR) SLOPED
 0.08 ACRES
 3,587 SQ FT

WETLAND AREA 3
 TYPE 6: (SHRUB CARR) SLOPED
 0.27 ACRES
 11,744 SQ. FT

All data shown in this exhibit is approximate for display purposes only and does not reflect actual survey data.

Data Sources:
 Wetlands data collected in field
 Aerial: St. Louis County, 2023
 Other Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, OpenStreetMap contributors, and the GIS User Community