



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

MVP-2025-00676-JMK

7 August 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-2025-00676-JMK 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-2025-00676-JMK

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. Tributary 1, Non-Jurisdictional
 - ii. Tributary 2, Non-Jurisdictional
 - iii. Ditch #1, Non-Jurisdictional, Excluded Water
 - iv. Ditch #2, Non-Jurisdictional, Excluded Water
 - v. Wetland #1, Non-Jurisdictional, Excluded Water

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 for this determination includes two non-jurisdictional tributaries, two non-jurisdictional roadside ditches, and one non-jurisdictional stormwater pond as identified in Section 1(a) of this MFR and shown on the attached figures labeled MVP-2025-00676-JMK AJD Pages 1-5 of 5.
 - a. Project Area Size (in acres): 0.19 acre
 - b. Location Description: The project/review area is located in Section 6, Township 26 North, Range 20 West, Washington County, Minnesota.
 - c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.7675 Longitude: -92.8602
 - d. Nearest City or Town: Hastings
 - e. County: Washington
 - f. State: Minnesota
 - g. Other associated Jurisdictional Determinations (including outcomes): N/A

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00676-JMK

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 WATERS⁵: 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 10.⁶ 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

⁵ 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.

⁶ 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-2025-00676-JMK

- 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).⁷

Ditch #1 (0.01 acre) and Ditch #2 (0.01 acre) are linear roadside drainage ditches constructed in upland and draining only upland based on the following:

- US Geological Service 3DEP DEM and MNDNR 2-foot contour maps shows the ditches are located in areas of the project that are higher in elevation and supportive of uplands.
- NHD data revealed none of the ditches are relocated or captured tributaries.
- Recent aerial photos do not show relatively permanent flow in the aforementioned aquatic resources.

Based on the desktop resources reviewed, Ditch #1 and Ditch #2 are linear roadside drainage ditches constructed in upland, draining only upland, and do not carry a relatively permanent flow of water. Therefore, these aquatic resources have been determined to be Paragraph (b)(3) excluded ditches and not subject to Section 404 of the Clean Water Act (CWA).

⁷ 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00676-JMK

Wetland #1 (0.19 acre) within the review area is a stormwater feature constructed in upland to collect and retain water as a settling basin based on the following:

- US Geological Service 3DEP Hillshade and DEM and MNDNR 2-foot contour maps shows the pond is located in areas of the project that are higher in elevation and supportive of uplands.
- NWI maps do not display presence of mapped wetlands in the area the pond has been constructed.
- A historical aerial from 2010 shows the pond located in an upland forested area and in 2013 the pond exists between the newly constructed W Point Douglas Road S and existing Trunk Highway 61 indicating the pond was constructed to store and treat stormwater from the surrounding transportation infrastructure.

Based on desktop resources reviewed Wetland #1 is a stormwater pond constructed in uplands. Therefore, this feature has been determined to be Paragraph (b)(5) excluded artificial lake and pond and not subject to Section 404 of the CWA.

- 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).

Tributary 1 (360 LF) and Tributary 2 (550 LF) are single order tributaries through their entire length and have small, localized watersheds that are primarily fed via runoff during and shortly after storm events. Information submitted by the agent, including photographs, indicated Tributary 1 and 2 exhibited dry channels during a site visit conducted during wetter than normal conditions per the antecedent precipitation tool. Therefore, Tributary 1 and 2 only flow for a short duration in direct response to precipitation and do not meet the relatively permanent standard.

Because these resources did not exhibit flowing or standing water during wetter than normal hydrologic conditions, they have been determined to only flow for a short duration in direct response to precipitation and as such do not meet the definition of a tributary and cannot be evaluated as an (a)(3) tributary; therefore,

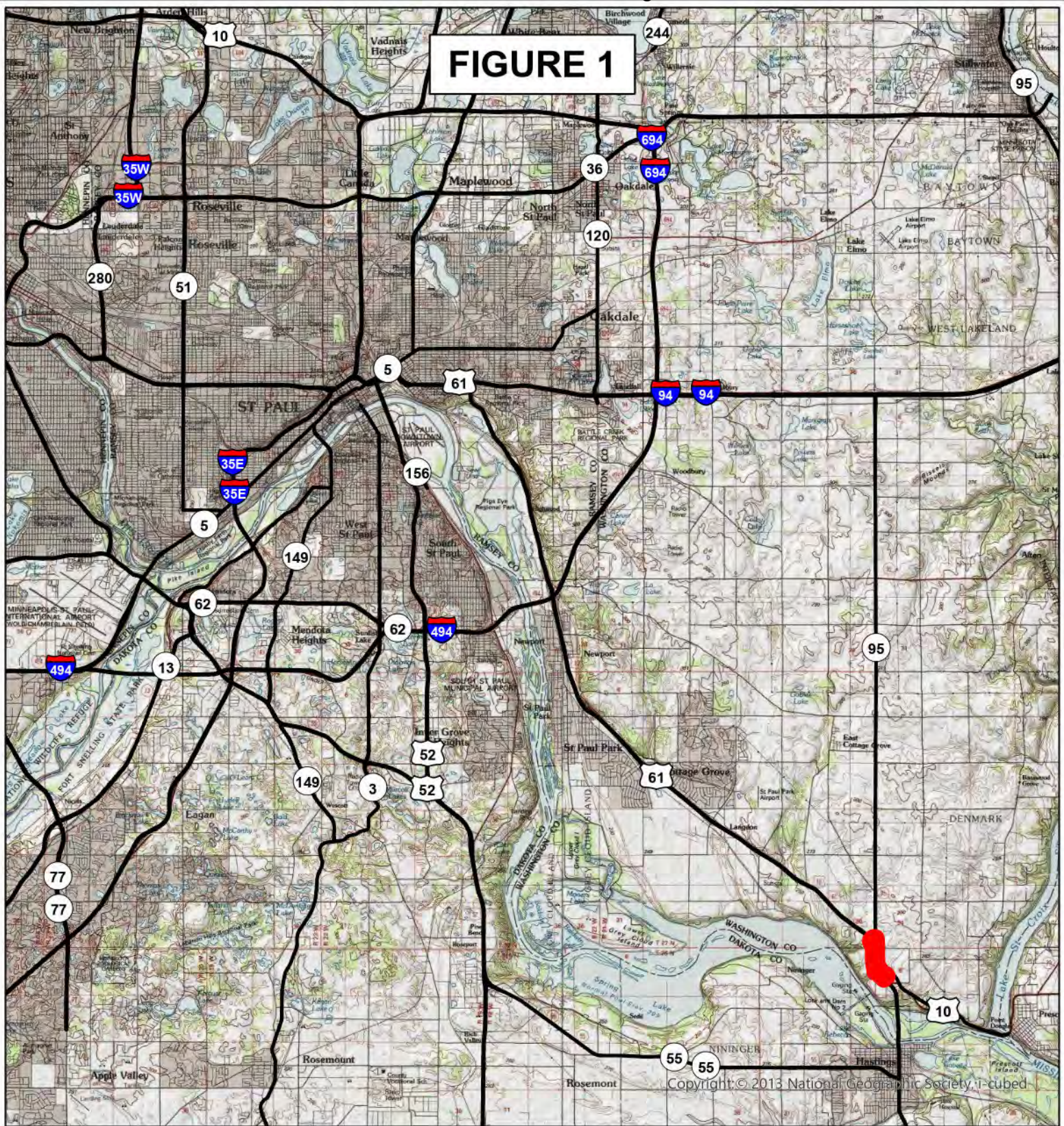
MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00676-JMK

these resources are not jurisdictional 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. Request for Jurisdictional Determination submitted May 28, 2025.
 - b. Historical aerial imagery dated 2010 and 2013.
 - c. Photographs of Tributary 1 taken during a site visit on May 28, 2025
 - d. Minnesota Regulatory Viewer: 2016 MNDNR Hillshade layer, MNDNR 2-foot contour layer, US Geological Service 3DEP Digital Elevation Model (DEM) and NHD layers, and USFWS NWI layer.
 - e. Antecedent Precipitation Tool figure and tables
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.

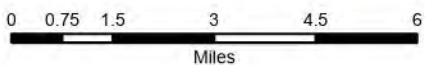
FIGURE 1



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Legend

Wetland Review Area



MnDOT Metro District
 TH 61 Wetland Review
 Project Location Map

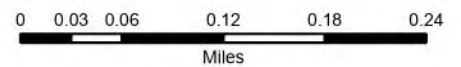
STATE PROJ. NO. 8205-155

FIGURE 2



LEGEND

- L1 Wetland Delineation
- Project Location
- Stormwater Pond
- Tributary
- Lake
- Ditches with wetland bottoms
- COE Ditch
- WCA and COE Ditch

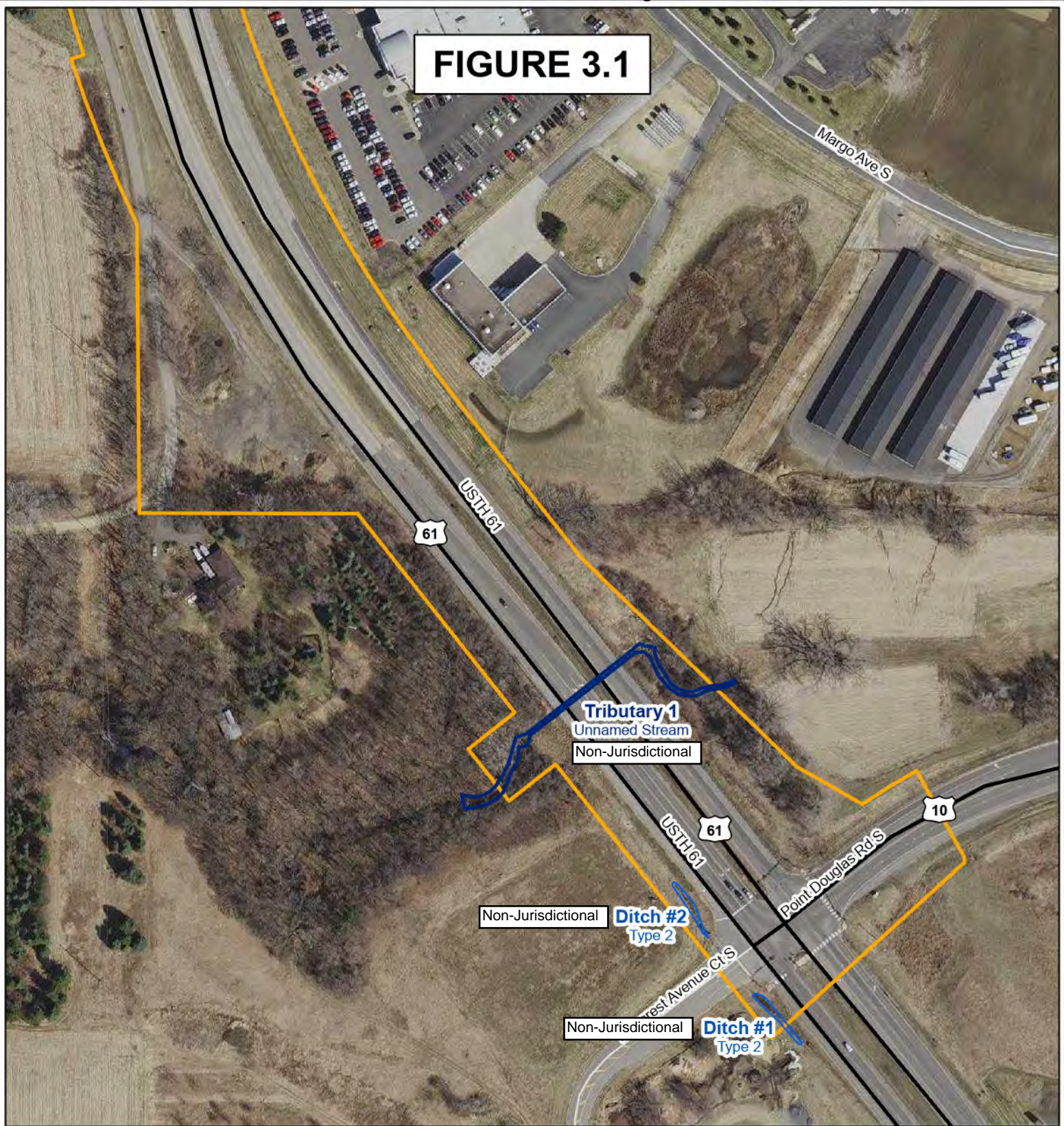


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TH 61 Wetland Review
Overview Map

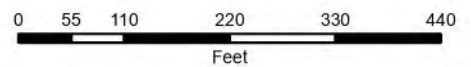
STATE PROJ. NO. 8205-155

FIGURE 3.1



LEGEND

- L1 Wetland Delineation
- Stormwater Pond
- Tributary
- Lake
- Project Location
- Ditches with wetland bottoms
- COE Ditch
- WCA and COE Ditch



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TH 61 Wetland Review
Level 1 Delineation Maps

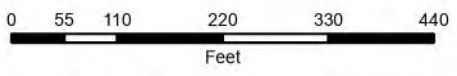
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FIGURE 3.2



LEGEND

	L1 Wetland Delineation		Project Location
	Stormwater Pond		Ditches with wetland bottoms
	Tributary		COE Ditch
	Lake		WCA and COE Ditch

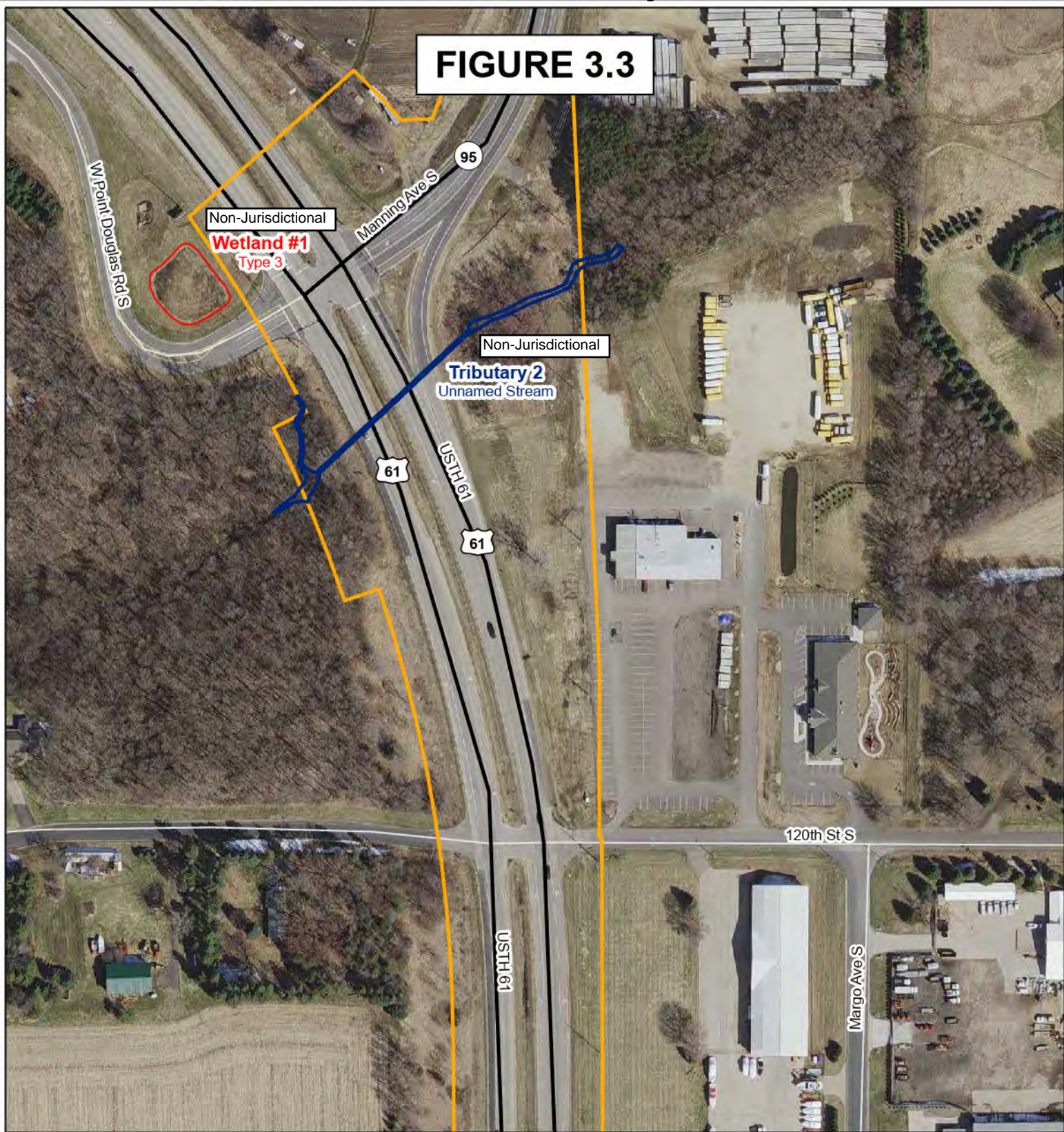


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TH 61 Wetland Review
Level 1 Delineation Maps

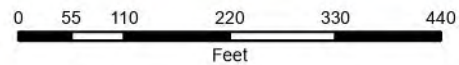
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FIGURE 3.3



LEGEND

- | | | | |
|--|------------------------|---|------------------------------|
|  | L1 Wetland Delineation |  | Project Location |
|  | Stormwater Pond |  | Ditches with wetland bottoms |
|  | Tributary |  | COE Ditch |
|  | Lake |  | WCA and COE Ditch |



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TH 61 Wetland Review
Level 1 Delineation Maps

STATE PROJ. NO. 8205-155