



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

CEMVP-RD

15 MAY 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the “Revised Definition of ‘Waters of the United States’”; (88 FR 3004 (January 18, 2023) as amended by the “Revised Definition of ‘Waters of the United States’; Conforming” (8 September 2023),<sup>1</sup> MVP-2026-00167 (MFR 1 of 1)<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>

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),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> 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.

<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, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<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.

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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

### 1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Waterway (1,300 linear feet (0.12 acres))	Non-Jurisdictional	N/A
Wetland 1 (0.8401 acres)	Non-Jurisdictional	N/A
Wetland 2 (0.0374 acres)	Non-Jurisdictional	N/A
Wetland 3 (0.0822 acres)	Non-Jurisdictional	N/A

### 2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- d. Memorandum To the Field Between the U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of "Waters Of The United States" Under The Clean Water Act" (March 12, 2025)

### 3. REVIEW AREA.

- a. Project Area Size (in acres): 14.26 acres
- b. Location Description: The project/review area is located in Sections 18 and 19, Township 107N, Range 013W, Olmsted County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.063920 Longitude: -92.431650
- d. Nearest City or Town: Rochester
- e. County: Olmsted
- f. State: Minnesota

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- g. Other associated Jurisdictional Determinations (including outcomes):  
None
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. No continuous surface connection to a TNW was observed; however, the National Hydrography Dataset (NHD) identifies an intermittent flow to Hadley Creek, that is a tributary to the South Fork Zumbro River, that is a tributary to the Zumbro River, that is a tributary to the Mississippi River, a TNW.
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 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,

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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.

<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.

including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
- b. The Territorial Seas (a)(1)(ii): N/A
- c. Interstate Waters (a)(1)(iii): N/A
- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>9</sup>

N/A

- 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).

A total of four aquatic resources were found in the review area: Wetland 1, Wetland 2, Wetland 3, and the Waterway. Based on review of the delineated wetland boundaries and landscape position depicted in aerial imagery, the aquatic resources are not TNWs, territorial seas, or interstate waters; therefore, these waters are not category (a)(1) waters. In addition, Wetlands 1 and 3 are

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

not tributaries and have not been created by impounding a water of the U.S.; therefore, they are not category (a)(2) or (a)(3) waters.

The delineated Waterway within the Review Area is identified by the NHD as an intermittent flowline. During a site visit on April 9, 2025, surface flow of approximately 1 to 2 feet wide and 6 inches deep was observed in the delineated waterway.

Wetland 1 is a Fresh (Wet) Meadow/Sedge Meadow wetland in the upgradient end of the review area. The delineated boundary of Wetland 1 is approximately 100 feet from the delineated waterway. No surface water connection was observed between Wetland 1 and the Waterway.

Wetland 2 is a floodplain wetland along the delineated waterway. During the April 9<sup>th</sup> site visit, a surface water connection was observed between Wetland 2 and the delineated waterway.

Wetland 3 is identified as a Fresh (Wet) Meadow wetland located in an isolated basin. The delineated boundary of Wetland 3 is approximately 100 feet from the delineated waterway. No surface water connection was observed between Wetland 3 and the Waterway.

The Waterway extends north out of the review area approximately 700 linear feet. Flowing water was observed through this segment on April 9, 2025. The Waterway enters a culvert and continues north for the next approximately 2,000 linear feet, no definable channel or contiguous surface water is present. The flow path consists of a series of culverts and ditches which were observed with no surface water present, and storm water ponds with standing water below the outlet elevation. The NHD flowpath continues north and west along a defined channel identified as intermittent by NHD for approximately 2 miles until it connects to the South Fork Zumbro River, a perennial tributary. No contiguous surface water was observed in the intermittent tributary on April 9, 2025.

Based on the information provided above, the Waterway, and Wetland 1, Wetland 2, and Wetland 3, do not meet the terms of paragraph (a)(3) or (a)(4) because they lack a continuous surface connection to waters identified in paragraph (a)(1) or relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3); and therefore, are not waters of the United States.

Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 rule preamble discussed the *Rapanos* plurality standard, the

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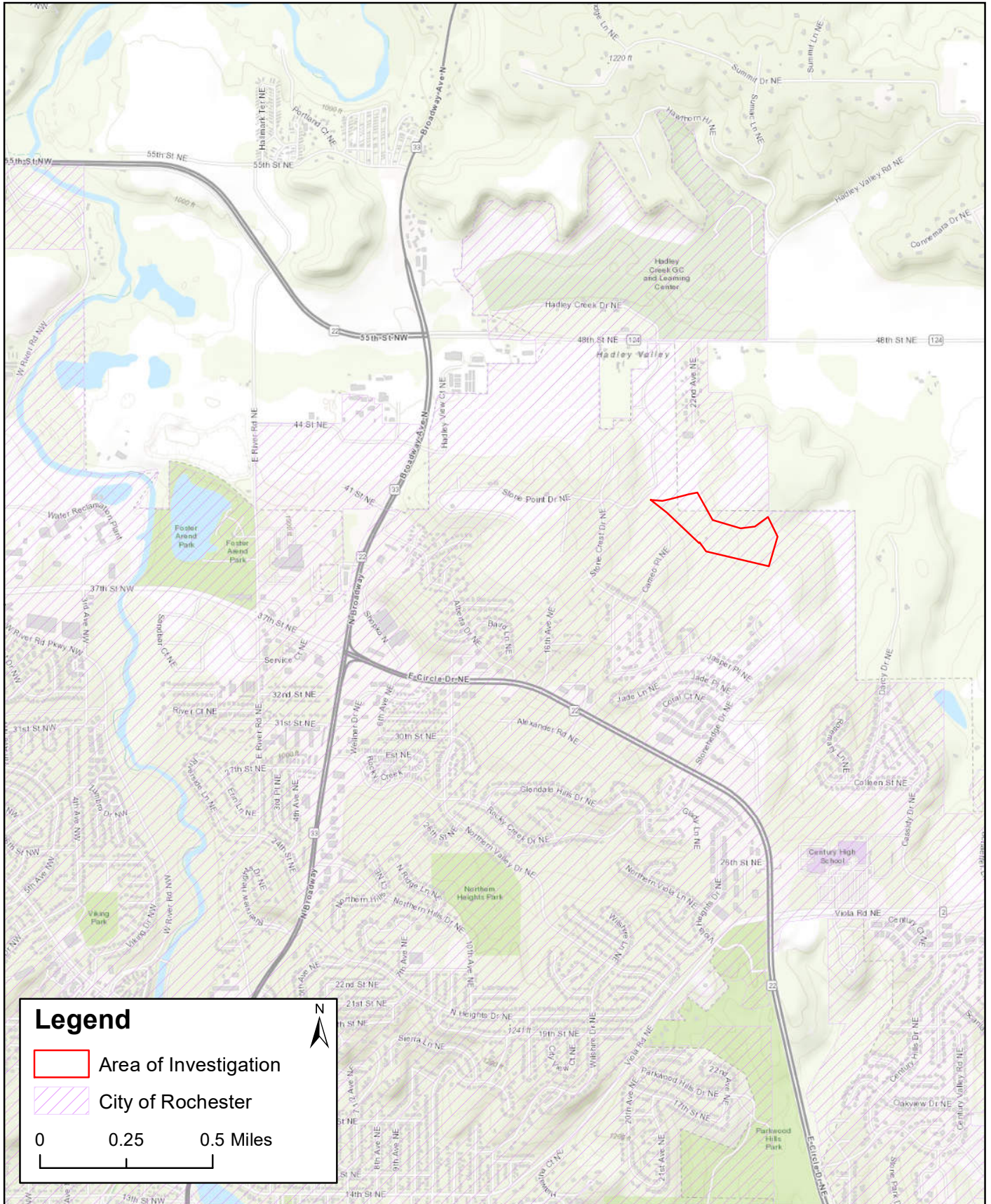
implementation guidance and tools in the 2023 rule preamble that address the regulatory text that was not amended by the conforming rule, including the preamble relevant to the Rapanos plurality standard incorporated in paragraphs (a)(3), (4), and (5) of the 2023 rule, as amended, generally remain relevant to implementing the 2023 rule, as amended.”

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. David Studenski (CEMVP-RD Lead Project Manager) visited the site on April 9, 2025.
- b. Minnesota Interagency Water Resource Application Form for Cassidy Ridge 5<sup>th</sup> dated January 26, 2026.
- c. Wetland Delineation Report Cassidy Ridge 5<sup>th</sup> Addition, prepared by Short Elliott Hendrickson Inc. dated December 2024.
- d. NHD Flowlines and MN Public Waters data was reviewed in Corps of Engineers Minnesota Regulatory Viewer on May 14, 2026.

10. OTHER SUPPORTING INFORMATION.

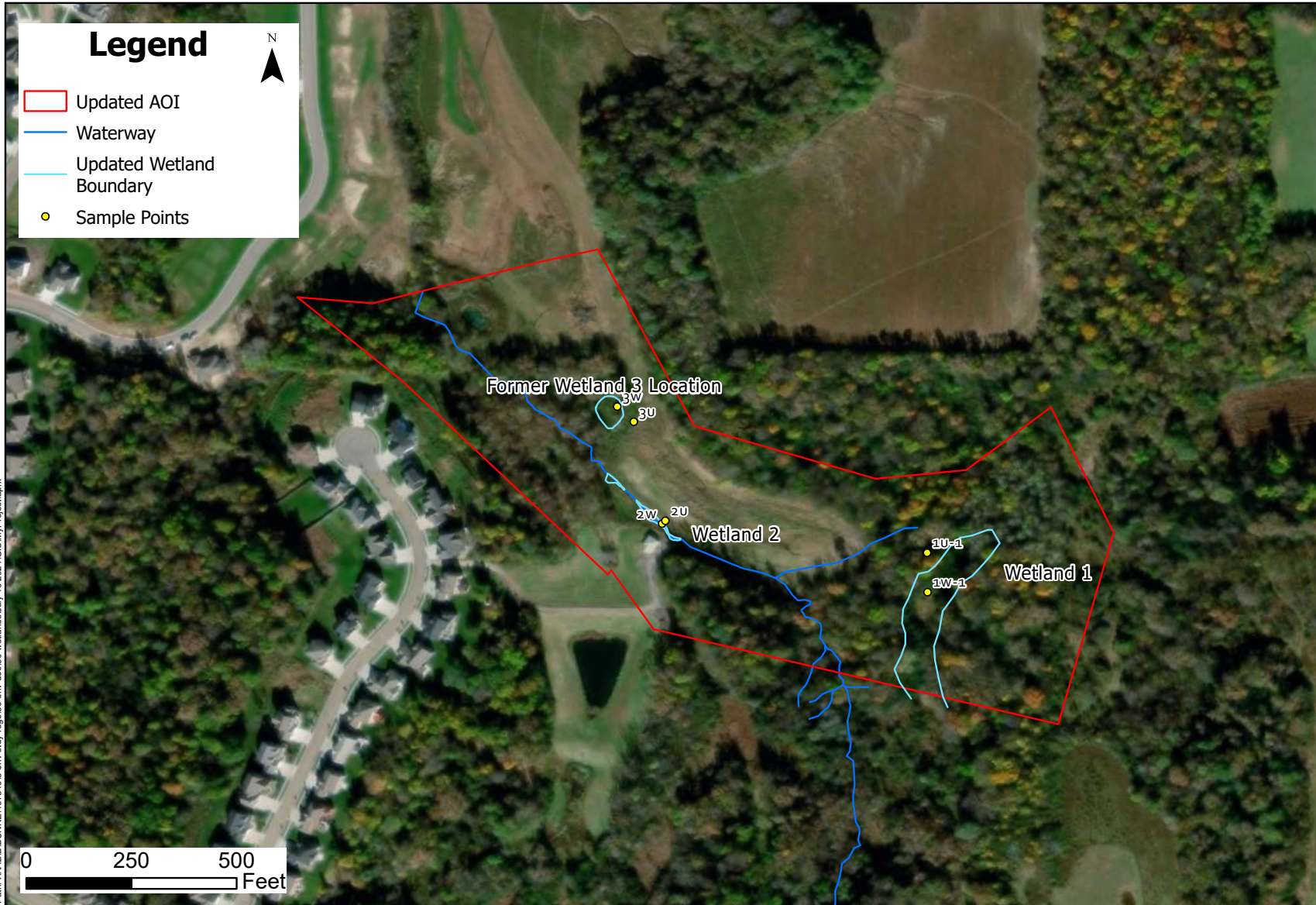
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.




Path: X:\AEI\BUNNE167819\3-env-study-rgrs\30-env-doc\00-wetlands\June 2023\GIS\Figure 1 - Location.mxd

	Project: BUNNE 167819 Print Date: 12/11/2024	<h3>SITE LOCATION</h3> <p>Cassidy Ridge 5th Development                  Rochester, Olmsted County, MN</p>	<h3>Figure 1</h3>
	Map by: amack Projection: UTM NAD 83 Zone 15N Source: SEH, USGS, MNDNR NRCS, USDA, Olmsted Co		

This map is neither a legally recorded map nor a survey map and is not intended to be used as one. This map is a compilation of records, information, and data gathered from various sources listed on this map and is to be used for reference purposes only. SEH does not warrant that the Geographic Information System (GIS) Data used to prepare this map are error free, and SEH does not represent that the GIS Data can be used for navigational, tracking, or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. The user of this map acknowledges that SEH shall not be liable for any damages which arise out of the user's access or use of data provided.



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	<p>Short Elliott Hendrickson Inc. 3535 Vadnais Center Drive St. Paul, MN 55110-3507 651.490.2000</p>	<p>Project: BUNNE 167819 Print Date: 1/3/2025 Map by: amack Projection: NAD 1983 UTM Zone 15N Source: Google, ESRI, SEH</p>	<p><b>UPDATED WETLAND DELINEATION RESULTS</b> Cassidy Ridge 5th Development Rochester, Olmsted County, MN</p>	<p>Figure 7</p>
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