



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

MVP-2026-00183

March 25, 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) ,¹ [MVP-2026-00183-JKM]

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.

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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, Shallow marsh, 0.11 acres, non-jurisdictional
 - ii. Wetland 2, Fresh (wet) Meadow, 0.03 acres, non-jurisdictional
 - iii. Wetland 3, Fresh (wet) Meadow, 0.07 acres, non-jurisdictional

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)

3. REVIEW AREA.



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The Corps review area is limited to Wetland 1 (0.11 acres), Wetland 2 (0.03 acres) and Wetland 3 (0.07 acres) located in Section 24, Township 119 North, Range 22 West at a MnDOT Truck Station on the northeast corner of the intersection of Zachary Lane and Elm Creek Boulevard North in Maple Grove, Hennepin County, MN (45.096058°, -93.419534°). The review area has experienced previous ground disturbance to build the existing truck station. A delineation was performed October 25, 2022, in this review area by Bolton & Menk, Inc. to determine the boundaries of aquatic resources on the property.

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

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.

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

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

N/A

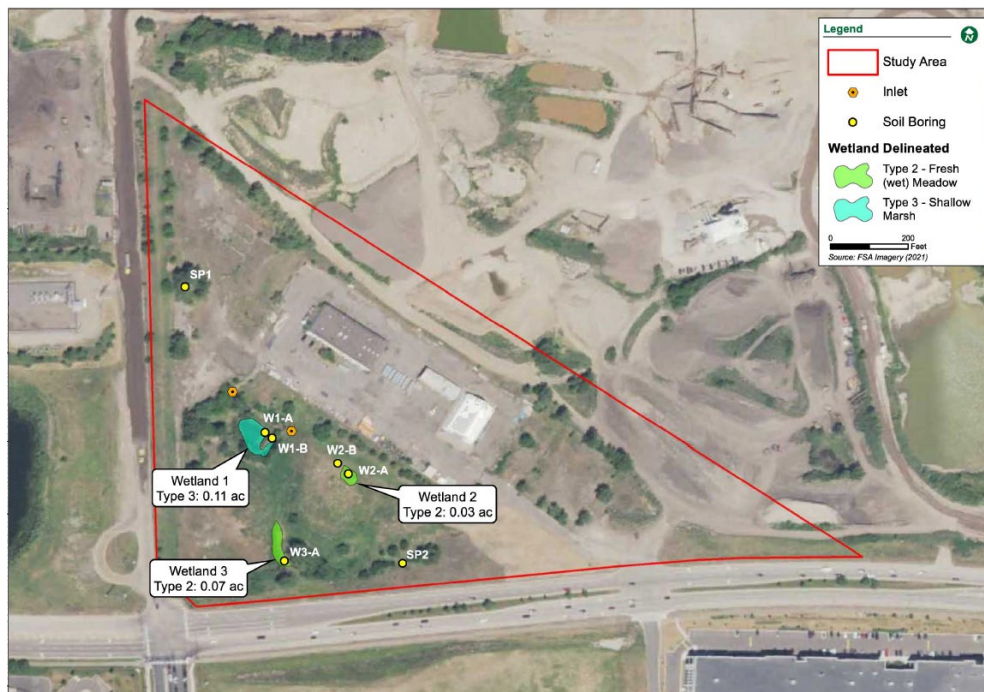
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

⁷ 88 FR 3004 (January 18, 2023)

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Wetlands 1, 2, and 3 shown in the figure below were identified as isolated depressional wetlands by the 2022 MnDOT delineation performed on the property. These wetlands were observed on high points of the property within shallow perched depressional areas. Wetlands 1, 2, and 3 are not TNWs, territorial seas, or interstate waters; therefore, they are not category (a)(1) waters. Wetlands 1, 2, and 3 are not tributaries and were not created by impounding a water of the U.S.; therefore, they are not category (a)(2) or (a)(3) waters. Based on a review of current and historic aerial imagery and the MnDOT wetland delineation report, Wetlands 1, 2, and 3 do not directly abut a jurisdictional water identified in paragraph (a)(1), (a)(2), or (a)(3), of the conforming rule and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The closest waterway is Eagle Creek located approximately 1.30 miles South of the Corps review area. Wetlands 1, 2, and 3 and there are no ditches, swales, pipes, or culverts that provide a continuous surface connection from these wetlands to Eagle Creek. Therefore, all three wetlands are surrounded on all sides by uplands and do not have a continuous surface connection to a relatively permanent water. As such these wetlands do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, Wetlands 1, 2, and 3 are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.



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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. Google Earth aerial imagery accessed 17 March 2026.
 - b. US EPA WATERSKMZ tool last updated 20 September 2022.
 - c. USDA-NCSS SSURGO and STATSGO web soil survey accessed 17 March 2026.
 - d. USFWS National Wetlands Inventory accessed March 17, 2026.
 - e. MnDOT Truck Station-Maple Grove Wetland Delineation Report dated October 26, 2022.

10. OTHER SUPPORTING INFORMATION.

The web soil survey shows non-hydric soils in the review area, which was confirmed by the delineation, except for the soil in the three wetlands that appear to be incidental to the previous ground distance activities related to the truck station. The National Wetlands Inventory only shows wetland 1 (not 2 or 3), but it confirms that there are no other aquatic resources that could be identified as waters of the U.S. that enter the review area, to which the wetlands could have a continuous surface connection with.

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.