



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

MVP

April 29, 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-2026-00226-RMH 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.<sup>2</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>3</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>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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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- 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 | Jurisdictional or Non-jurisdictional |
|--------------------------|--------------------------------------|
| Wetland 1 (0.16 ac)      | Non-Jurisdictional                   |
| Wetland A (0.11 ac)      | 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. \_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area includes two aquatic resource areas identified as Wetland 1 and Wetland A in the enclosed project figures. The nearest tributary indicated on the United States Geological Survey (USGS) National Hydrography Dataset (NHD) is the Middle Fork of the Zumbro River which is located approximately 0.50 miles to the south.

- a. Project Area Size (in acres): 190
- b. Location Description: The project/review area is located in Section 29, Township 109 North, Range 15 West.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.219703      Longitude: -92.645607
- d. Nearest City or Town: Pine Island
- e. County: Hennepin
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations: NA

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

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6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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, 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

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<sup>5</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>6</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.

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- 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>7</sup>
  
- 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).

The aquatic resources within the review area identified as Wetlands 1 and A are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. The aquatic resources are not adjacent to (a)(1) or (a)(2) waters nor physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. They are not separated from jurisdictional waters by a natural berm, bank, dune, or similar natural landform. This determination is supported by the national wetland and hydrography datasets which do not identify any aquatic resources or other potential connections (either surface or subsurface) between the wetlands or any other waters. Topographic maps, 3DEP 2-ft contours, 3DEP Digital Elevation Model, 3DEP Hillshade and Google

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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Earth aerial imagery indicates that the wetlands are depressional wetlands, surrounded by upland.

Wetland 1 is not located within a mapped hydric soil unit based on review of available soil survey data. An ephemeral stream feature is depicted within the boundary of Wetland 1 on the National Regulatory Viewer (NRV); however, review of historical and recent aerial imagery indicates the feature is consistent with a maintained grassed waterway rather than a defined channel. The feature lacks a clearly discernible bed and banks and does not exhibit indicators of an ordinary high water mark in aerial photography. Field observations corroborate this interpretation, as no evidence of a continuous surface hydrologic connection was identified. Accordingly, the mapped feature is not considered a jurisdictional tributary or a contributing hydrologic connection to Wetland 1.

Per the issued delineation Notice of Decision (LGU No. 2025-GC-WCA-05) – Technical Evaluation Panel (TEP) met and drove by the site. TEP concurs with the determination of no wetlands on site. TEP concurred that Wetland 1 incidentally formed due to the prevention of drainage by the roadway shoulder and a slight rise in topography in the ditch.

Wetland A appears to have been incidentally formed due to roadway and road ditch construction. This roadway has been present since 1938. Wetland 1 appears to have incidentally formed due to the prevention of drainage by the elevated constructed roadway shoulder and a slight rise in ditch elevations/topography at the south end of the road ditch/swale.

The wetlands are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands 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. Joint Application Form (packet) for Activities Affecting Water Resources prepared by Kjolhaug Environmental Services, dated February 13, 2026.
  - b. NRV USGS 3D Elevation Program and USGS NHD Map Service layers. Accessed April 28, 2026.

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- c. NRV Hydric Soils, Hillshade, 2' contours layers. Accessed April 28, 2026.
- d. Google Earth imagery dated 2009, 2011, 2015 and 2025.
- e. Minnesota Historical Aerial Photographs Online (1938). Accessed April 28, 2026.  
<https://apps.lib.umn.edu/mhapo/>

#### 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.



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**Figure 1 - Project Location & Major Watershed**

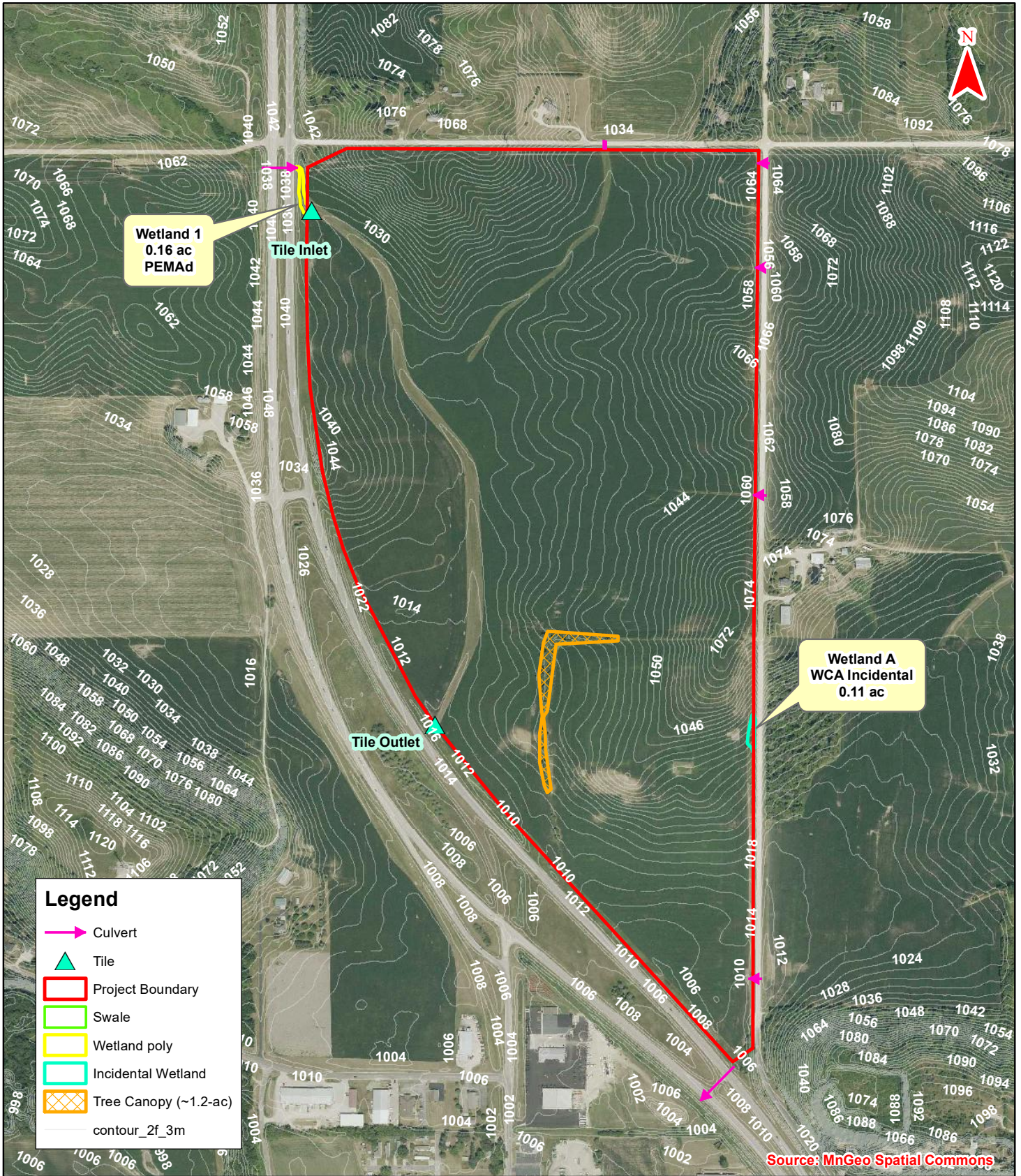
**Pine Island Industrial PUD (KES 2025-095)  
Pine Island, Minnesota**

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.

**Legend**

- Project Boundary
- Major Watersheds

0 2,000  
Feet

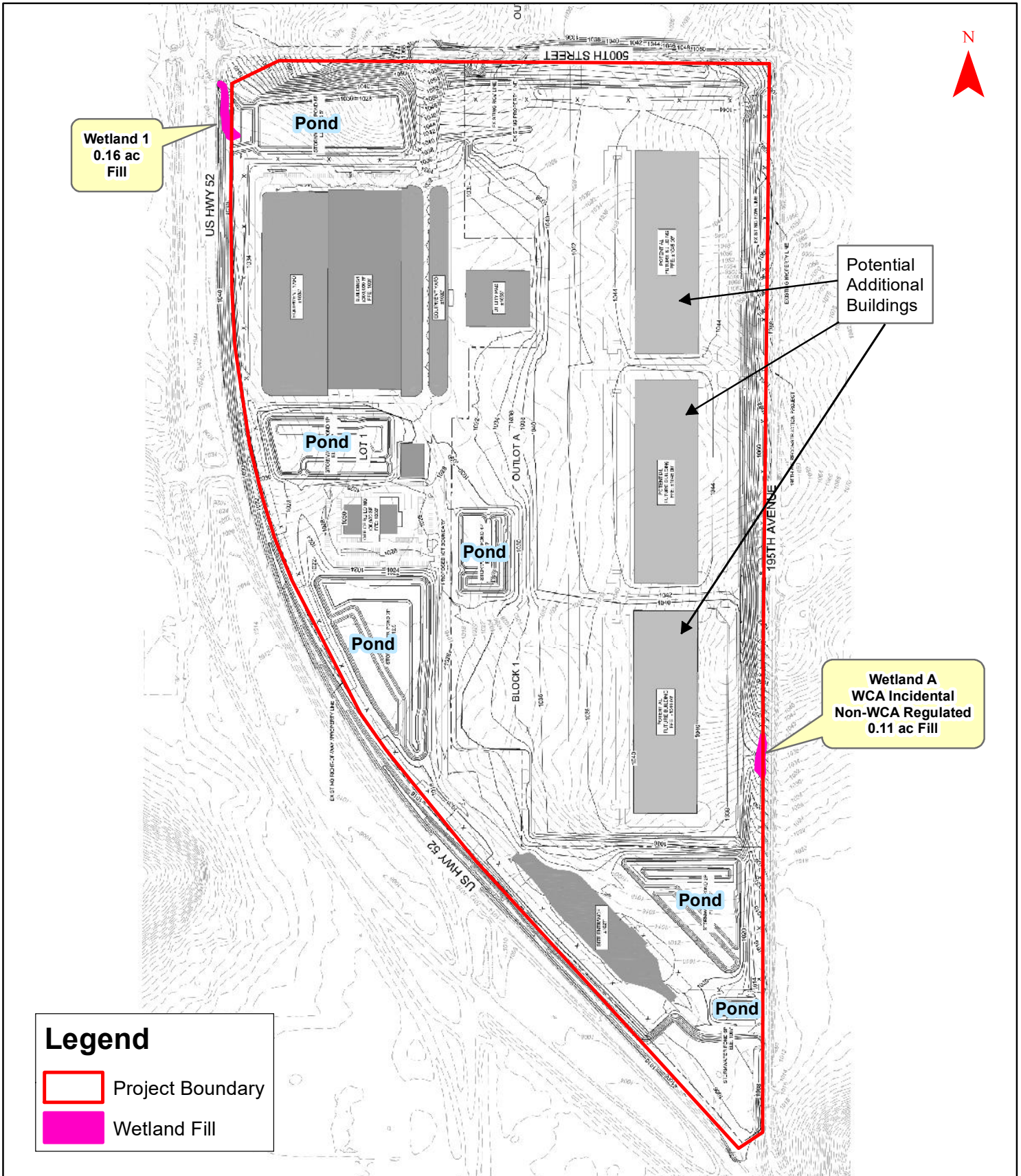


**Figure 2 - Existing Conditions (2023 FSA)**

**Pine Island Industrial PUD (KES 2025-095)**  
**Pine Island, Minnesota**

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.





**Figure 3 - Proposed Plan and Wetland Impacts**

**Pine Island Industrial PUD (KES 2025-095)  
Pine Island, Minnesota**

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.

