



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

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-2026-00520, 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. SUMMARY OF CONCLUSIONS.

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.

- 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
Wetland 3	Non-Jurisdictional	None
Wetland 1	Non-Jurisdictional	None
Wetland 2	Non-Jurisdictional	None
Wet Ditch 1	Non-Jurisdictional	None

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 Are Size (in acres): 9.73
- b. Location Description: The project/review area is located in Section 24, Township 120N, Range 023W, Hennepin County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 45.184210 Longitude: -93.535120
- d. Nearest City or Town: Rogers
- e. County: Hennepin
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2026-00520-TRS	AJD	All waters were determined to be non-jurisdictional (excluded waters) under the AJD

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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.

- 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

Wet Ditch 1 formed as a result of grading activities in uplands after the construction of Vevea Lane before April 1991. A small sliver of Wet Ditch 1 is located in the Corps Review Area, and the remainder extends outside the review area towards Vevea Lane. Accordingly, the Corps has determined that Wet Ditch 1 is excluded from Section 404 jurisdiction under (b)(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water.

Wetland 2 formed as a result of grading activities in uplands after the construction of Rogers Drive between October 2014 and March 2016. Accordingly, the Corps has determined that Wetland 2 is excluded from Section 404 jurisdiction under (b)(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water.

- 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).

Wetlands 1 and 3 are not TNW’s, territorial seas, or interstate waters and therefore are not (a)(1) waters. Wetland 1 is labeled as a palustrine emergent wetland on the National Wetland Inventory (NWI) and Wetland 2 is labeled as a

⁷ 88 FR 3004 (January 18, 2023)

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seasonally flooded farmed fresh (wet) meadow wetland on the Alliant Wetland Delineation Report – Rogers Drive Industrial dated 24 March 2026. Based on our review of the Alliant Wetland Delineation Report – Rogers Drive Industrial dated 24 March 2026, NWI, NHD layer, DEM and Hillshade layers, USDA Web Soil Survey, and Google Earth aerial imagery, indicate that Wetland 3 is surrounded entirely by uplands. Wetland 1 is surrounded by uplands to the east, and roads from all other directions. It is unclear if a culvert runs beneath Vevea Lane from Wetland 1 to the Wetland across the street to the north outside the Corps Review Area. Even then, that wetland is located in a swale feature that would not provide a continuous surface connection to any RPW or TNW. No ditches, swales, pipes, or culverts are present that provide a surface connection from Wetlands 1 and 3 to any RPW or TNW. Wetlands 1 and 3 do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. Wetlands 1 and 3 are non-tidal wetlands that lack a continuous surface connection to a relatively permanent water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, Wetlands A and B 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. Office evaluation conducted on May 5, 2026.
 - b. Google Earth Imagery Accessed: April 30, 2026. Imagery from: April 1991, Sept 2003, Dec 2004, Sept 2006, Sept 2008, Sept 2009, April 2011, Sept 2012, June 2016, April 2017, May 2017, May 2018, Aug 2022, and Sept 2024.
 - c. USACE Minnesota National Regulatory Viewer (NRV) Accessed: May 5, 2026.
 - d. Alliant Wetland Delineation Report – Rogers Drive Industrial dated 24 March 2026.
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

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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



Legend

- Study Area
- Sample Point
- TEP Boundary Update_4.16.26

Wetland Delineation

- Drainage Channel
- Wet Ditch
- Wetland

LiDAR Contours

- 10ft Contour
- 2ft Contour

Rogers Drive Industrial
Figure 2
Wetland Delineation

N

0 50 100
 US Feet

Source: Hennepin County Aerial 2025



Source: Hennepin County Aerial 2024

Rogers Drive Industrial



Legend

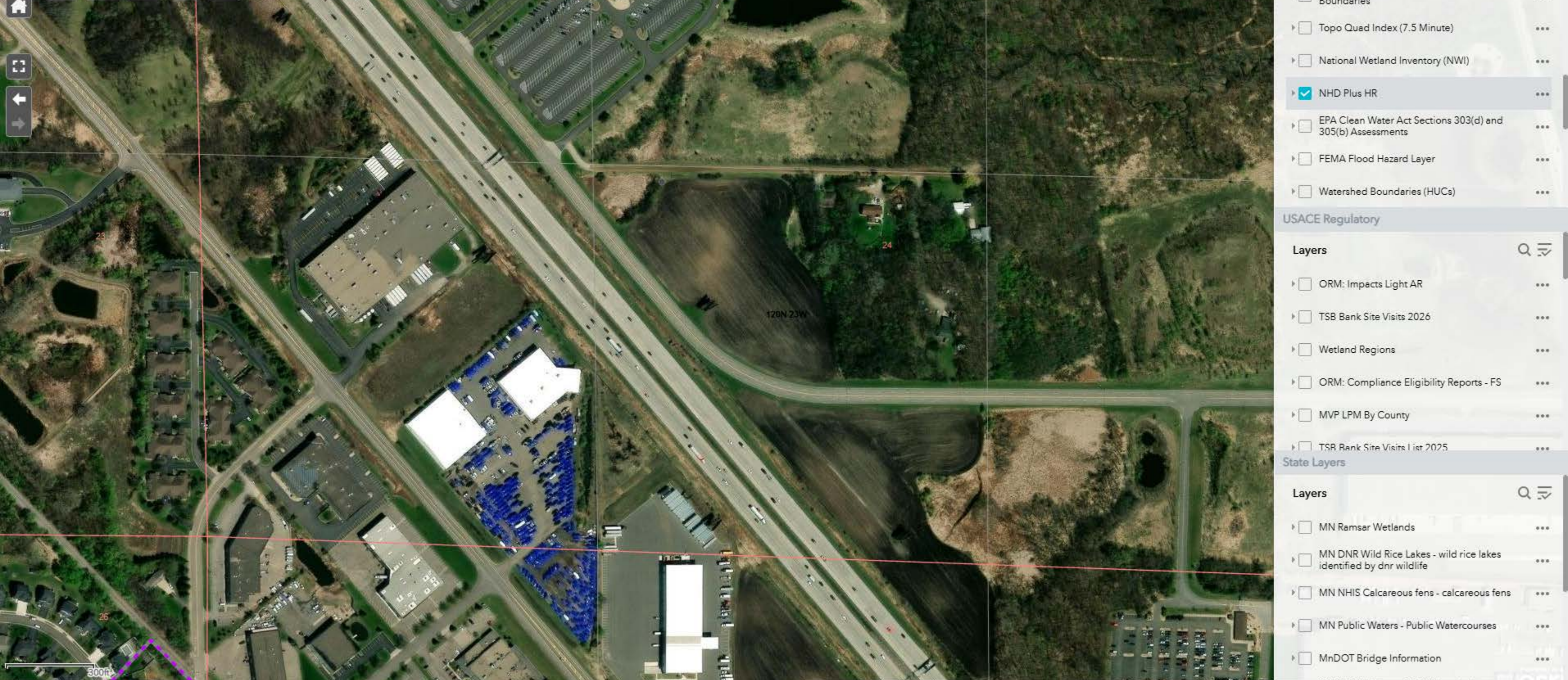
Study Area

Figure 1

Project Location



45.18497742, -93.53621824
Show search results for 45.18497742,...



Reference Layers

- National Layers**
- USFWS National Wildlife Refuge System Boundaries
 - Topo Quad Index (7.5 Minute)
 - National Wetland Inventory (NWI)
 - NHD Plus HR
 - EPA Clean Water Act Sections 303(d) and 305(b) Assessments
 - FEMA Flood Hazard Layer
 - Watershed Boundaries (HUCs)

- USACE Regulatory**
- Layers**
- ORM: Impacts Light AR
 - TSB Bank Site Visits 2026
 - Wetland Regions
 - ORM: Compliance Eligibility Reports - FS
 - MVP LPM By County
 - TSB Bank Site Visits List 2025

- State Layers**
- Layers**
- MN Ramsar Wetlands
 - MN DNR Wild Rice Lakes - wild rice lakes identified by dnr wildlife
 - MN NHIS Calcareous fens - calcareous fens
 - MN Public Waters - Public Watercourses
 - MnDOT Bridge Information
 - MN Public Waters - DNR Shoreland

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Reference Layers

National Layers

- Upper Mississippi River Pool Boundaries
- USFWS National Wildlife Refuge System Boundaries
- Topo Quad Index (7.5 Minute)
- National Wetland Inventory (NWI)
- NHD Plus HR
- EPA Clean Water Act Sections 303(d) and 305(b) Assessments
- FEMA Flood Hazard Layer

USACE Regulatory

Layers

- ORM: Impacts Light AR
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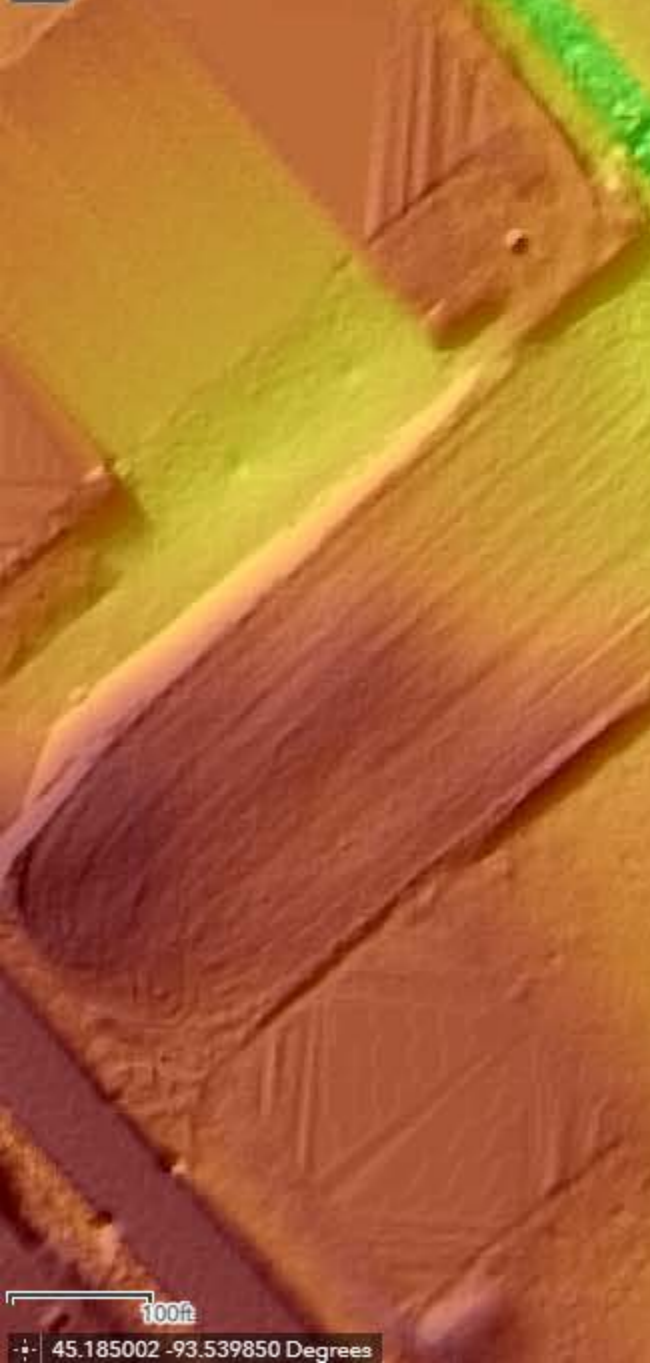
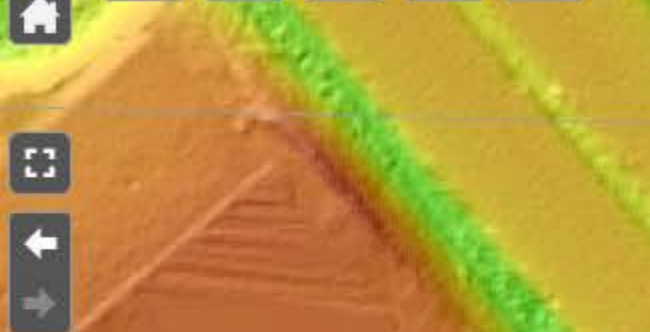
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Layers

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120N 23W

Imagery

Lidar

- Layers**
- 3DEP 25-ft Contour
 - 3DEP 10-ft Contour
 - 3DEP 5-ft Contour
 - 3DEP 2-ft Contour
 - MN Contours - 2ft
 - 3DEP Slope
 - 3DEP Digital Elevation Model (DEM)
 - 3DEP Hillshade

Satellite and Aerial Imagery

- Layers**
- USA NAIP Imagery: Natural Color
 - MN Contours - 2ft
 - USA NAIP Imagery: NDVI
 - USA NAIP Imagery: Color Infrared
 - World Imagery With Metadata