



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

MVP

April 18, 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-2022-00678-RLG MFR 1 of 1²

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.³ 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.⁴

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),⁵ 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 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.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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-2022-00678-RLG

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 WL A, Non-Jurisdictional
 - ii. Wetland WL B, Non-Jurisdictional
 - iii. Wetland W 3, 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)
- d. January 2023 Rule preamble at 88 FR 3090
- e. "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): review area that is solely the extent of three wetlands labeled Wetlands WLA, WLB, and WL3 and excludes all other aquatic resources on-site. The larger parcel area that the review area is within is approximately 20 acres.
- b. Location Description: The project/review area is located in Section 32, Township 120N, Range 022W, Hennepin County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 45.156060 Longitude: -93.488820

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2022-00678-RLG

- d. Nearest City or Town: Dayton
 - e. County: Hennepin
 - f. State: Minnesota
 - g. Other associated Jurisdictional Determinations (including outcomes): No other AJDs done onsite.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. ⁶
N/a
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [
N/a
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸

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

⁶ 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.

⁷ 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.

⁸ 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-2022-00678-RLG

“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).⁹

N/a

⁹ 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-2022-00678-RLG

- 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).

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

The areas labeled as Wetlands WL A, WL B, and WL3 were evaluated as a potential (a)(4) waters, but they do not have a continuous surface connection to a jurisdictional water. These wetlands do not physically abut an (a)(1) water, (a)(2) impoundment, or (a)(3) tributary. Therefore, these aquatic resources are not jurisdictional under the 2023 Revised definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

The National Wetland Inventory shows Wetland WL3 but not Wetlands WLA or WLB. The National Hydrography Dataset does not show any waters onsite. No surface water drainage feature was identified on Hillshade, topographic or hydrologic mapping between Wetland WLA and Wetland WLB to each other or any other waters on or off site. Therefore, according to the "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" released on March 12, 2025, pond 2 is a discrete feature that does not provide a continuous surface water connection for Wetland WL3.

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. Territorial Road Wetland Delineation Dated July 15, 2024
 - b. Territorial Road Joint application Dated Jan 20, 2025
 - c. MNDNR Hillshade - 2016 accessed April 7, 2025
 - d. MN 2ft – contours accessed April 7, 2025
 - e. 3DEP Digital Elevation Model- DEM accessed April 8, 2025
 - f. USDA NRCS Soil Survey USDA-NCSS SSURGO and STATGO

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2022-00678-RLG

- g. National Regulatory Viewer 2021- accessed April 8, 2025
- h. U. S. Fish and Wildlife Service. Publication date (found in metadata). National Wetlands Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. <http://www.fws.gov/wetlands/>.
- i. USGS. (Dec 3, 2024). National Hydrography Dataset Plus High Resolution (NHDPlus HR) for 4-digit Hydrologic Unit - 1601. Washington, D.C., USA.

10. OTHER SUPPORTING INFORMATION.

Permit Figure 3 impacts that was revised 3-3-25

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.

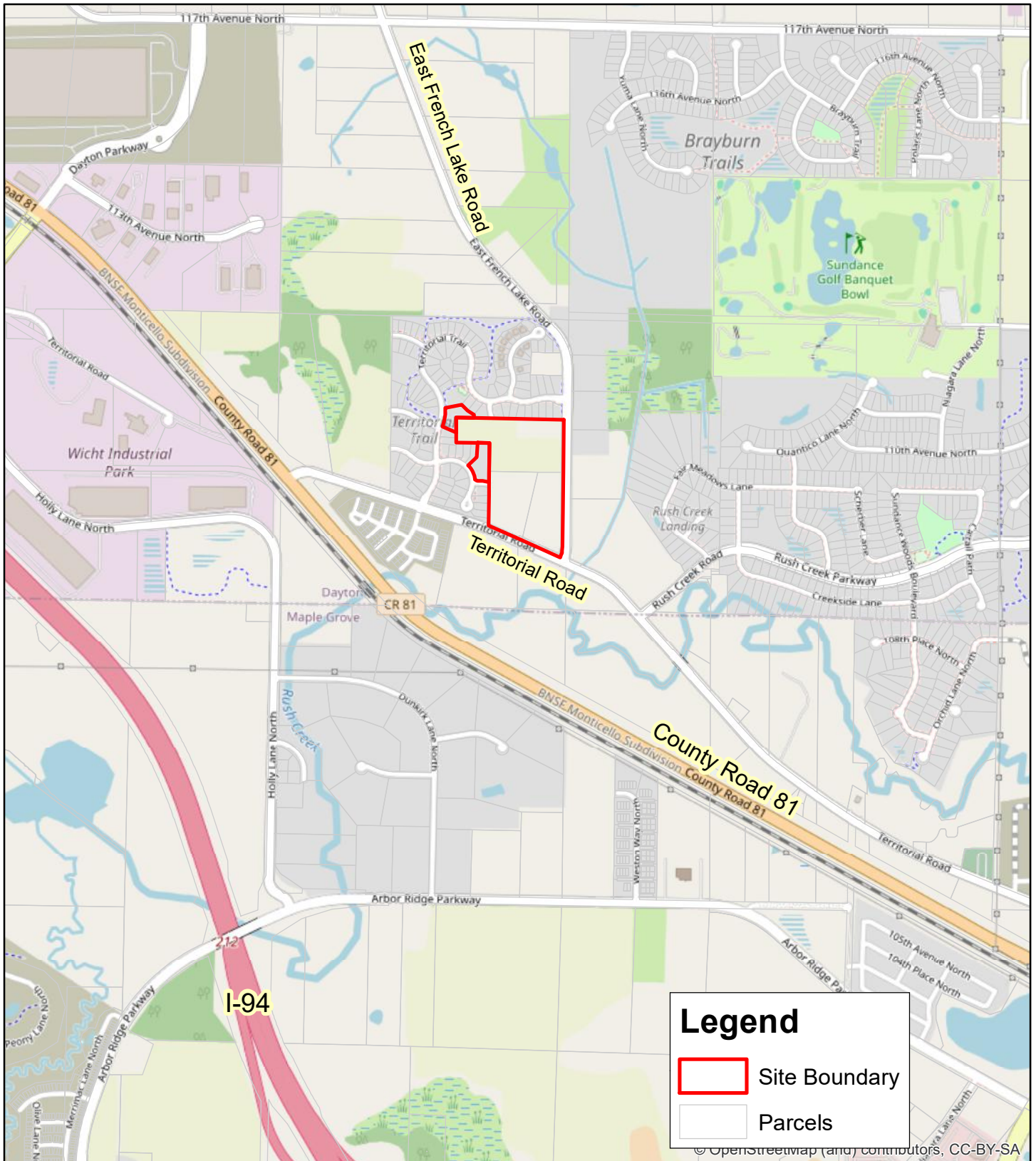




Figure 1 - Site Location Map



0 2,000
Feet

Territorial Grove (KES 2024-169)
Dayton, Minnesota

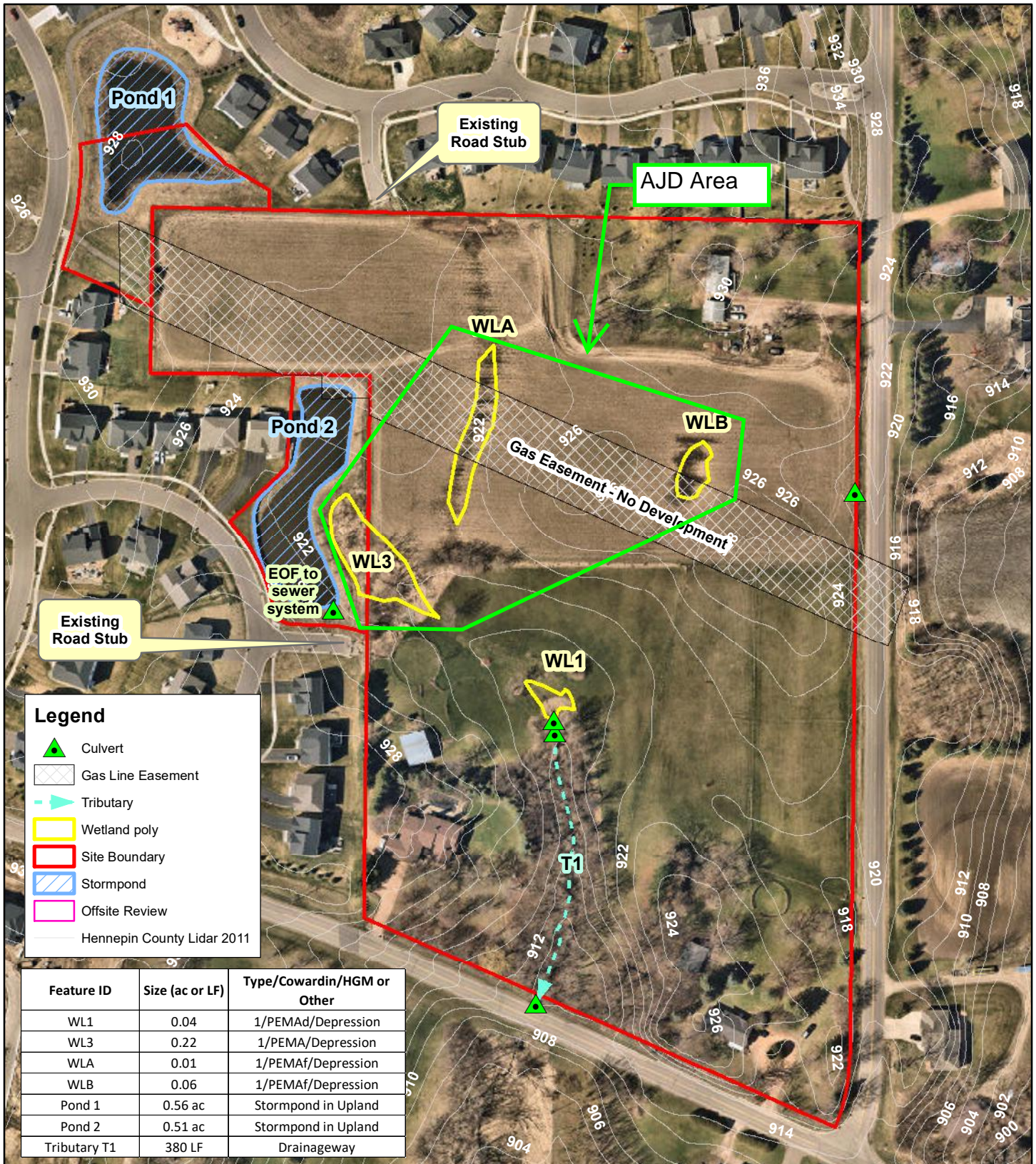
Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.



KJOLHAUG ENVIRONMENTAL SERVICES COMPANY

Source: Open Street Map

MVP-2022-00678-RLG Page 1 of 3



Legend

- Culvert
- Gas Line Easement
- Tributary
- Wetland poly
- Site Boundary
- Stormpond
- Offsite Review
- Hennepin County Lidar 2011

Feature ID	Size (ac or LF)	Type/Cowardin/HGM or Other
WL1	0.04	1/PEMA/Depression
WL3	0.22	1/PEMA/Depression
WLA	0.01	1/PEMAf/Depression
WLB	0.06	1/PEMAf/Depression
Pond 1	0.56 ac	Stormpond in Upland
Pond 2	0.51 ac	Stormpond in Upland
Tributary T1	380 LF	Drainageway

Figure 2 - Existing Conditions (2022 Hen Co Photo)

N

0 300 Feet

Territorial Grove (KES 2024-169)
Dayton, Minnesota

KJOLHAUG ENVIRONMENTAL SERVICES COMPANY

Source: MNGEO Spatial Commons MVP-2022-00678-RLG Page 2 of 3

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

See Appendix C for grading plan details

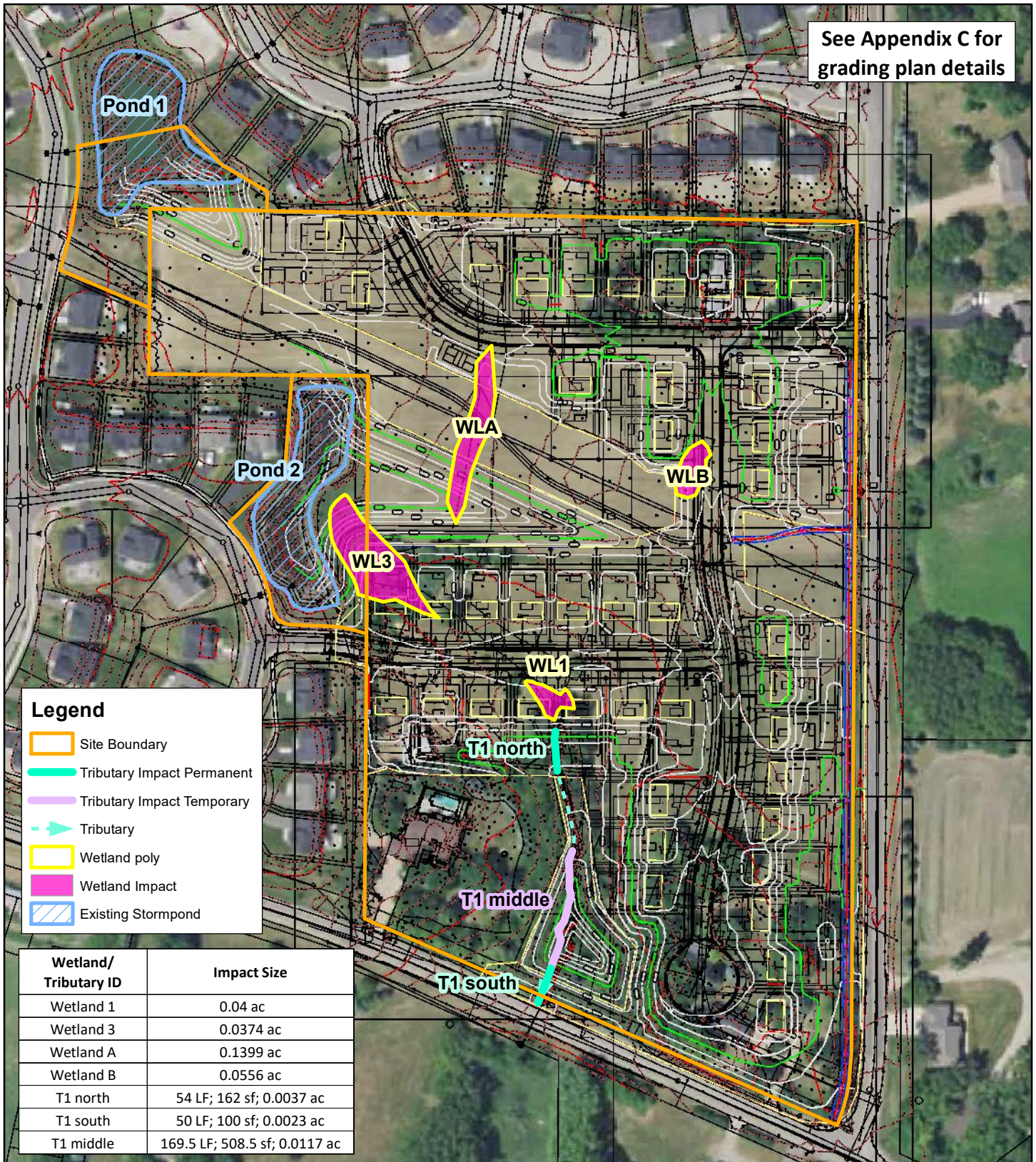




Figure 3 - Proposed Plan with Wetland & Tributary Impacts



0 300
Feet

Territorial Grove (KES 2024-169)
Dayton, Minnesota



KJOLHAUG ENVIRONMENTAL SERVICES COMPANY

Source: MNGEO Spatial Commons MVP-2022-00678-RLG Page 3 of 3

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