



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 55101-1323

CEMVP-RD

June 6, 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)).<sup>1</sup> MVP-2025-00476-JST 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,

---

<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.

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
Drainage Feature (115 linear feet)	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. “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. The review area for this determination includes the linear drainage feature as identified in Section 1(a) of this MFR and shown on the attached figures labeled MVP-2025-00476-JST AJD Figures – Page 2-4 of 4. There are no other AJDs associated with this project area.

- a. Project Area Size (in acres): 0.13 acres
- b. Location Description: The project/review area is located in Section 13, Township 117N, Range 024W, Hennepin County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.948470 Longitude: -93.649890
- d. Nearest City or Town: Mound
- e. County: Hennepin
- f. State: Minnesota

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. N/A
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, 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. N/A
  - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
  - b. The Territorial Seas (a)(1)(ii): N/A

---

<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.

- 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>

The aquatic resource identified as ‘drainage feature’ is an excluded feature and is not a Water of the United States. Based on the wetland delineation report submitted on behalf of the requestor, this feature is an erosional feature that lacks a defined bed and bank and is surrounded by uplands. At the time of the delineation on April 24, 2025, there was no flowing water within this feature. The feature only carries water after heavy rainfall events and for short durations. The national wetland inventory and national hydrography dataset do not identify any waterways or wetlands within the site boundaries. The Hennepin County Soil Survey data included in the delineation report indicates the site is mapped within non-hydric soils. As the subject feature lacks an Ordinary High-Water Mark (OHWM), and is a swale or erosional feature (e.g., gullies, small washes), that are characterized by low volume, infrequent, or short duration flow, it meets the (b)(8) exclusion.” Based on this review, the ‘drainage feature’ is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’: Conforming” 88 FR 61964 Final Rule.

- 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).

---

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

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00476-JST

N/A

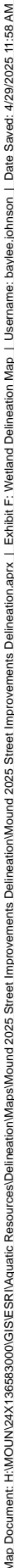
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. [Minnesota Regulatory Viewer: 3DEP Hillshade Layer, US Geological Service 3DEP Digital Elevation Model \(DEM\), NHD layers, and USFWS NWI layer.](#)
- b. [Google Earth aerial imagery dated 2006 and 2017.](#)
- c. [2025 Street Improvements No Wetlands Memorandum prepared by Bolton & Menk, Inc. dated May 2, 2025.](#)

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

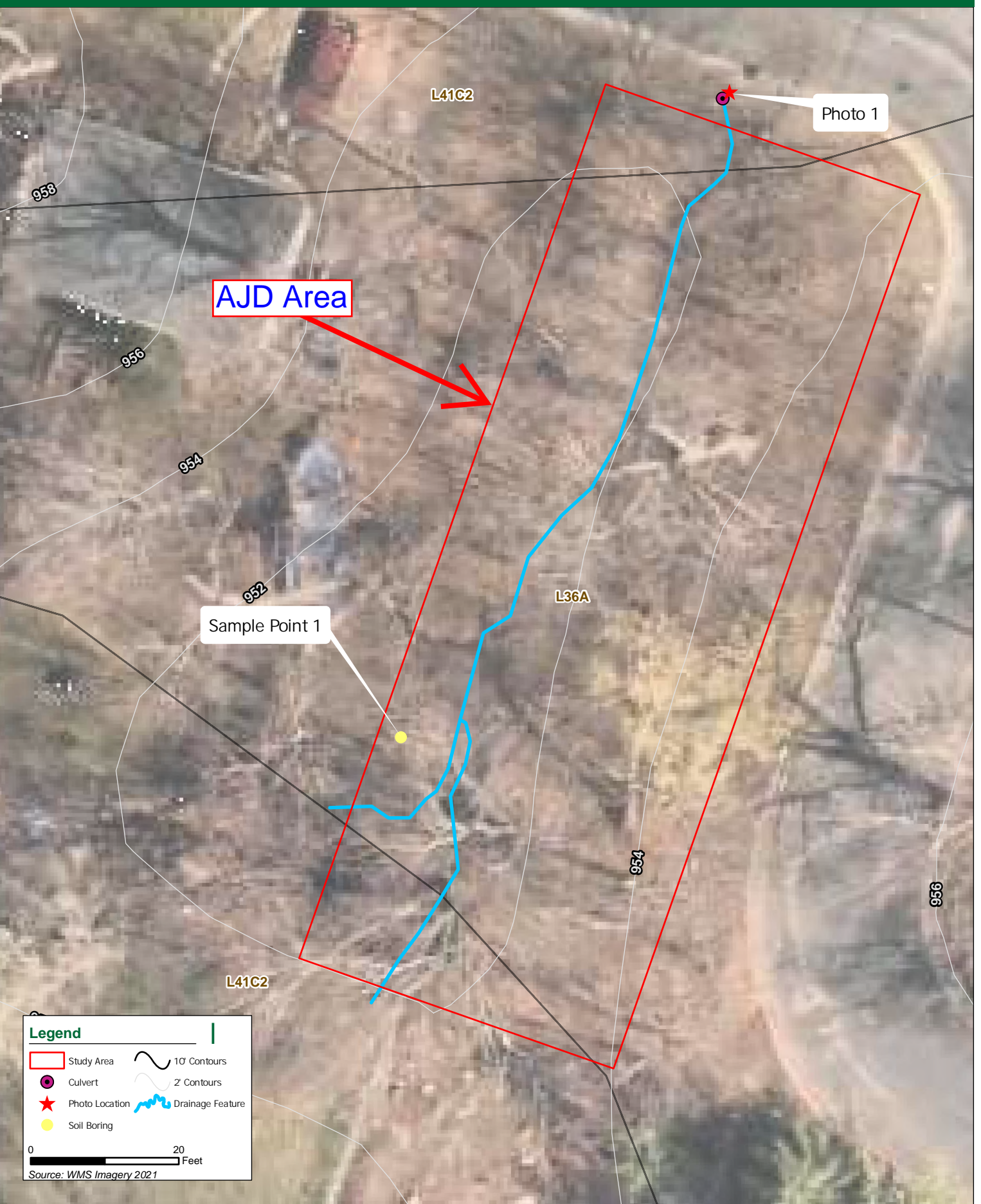






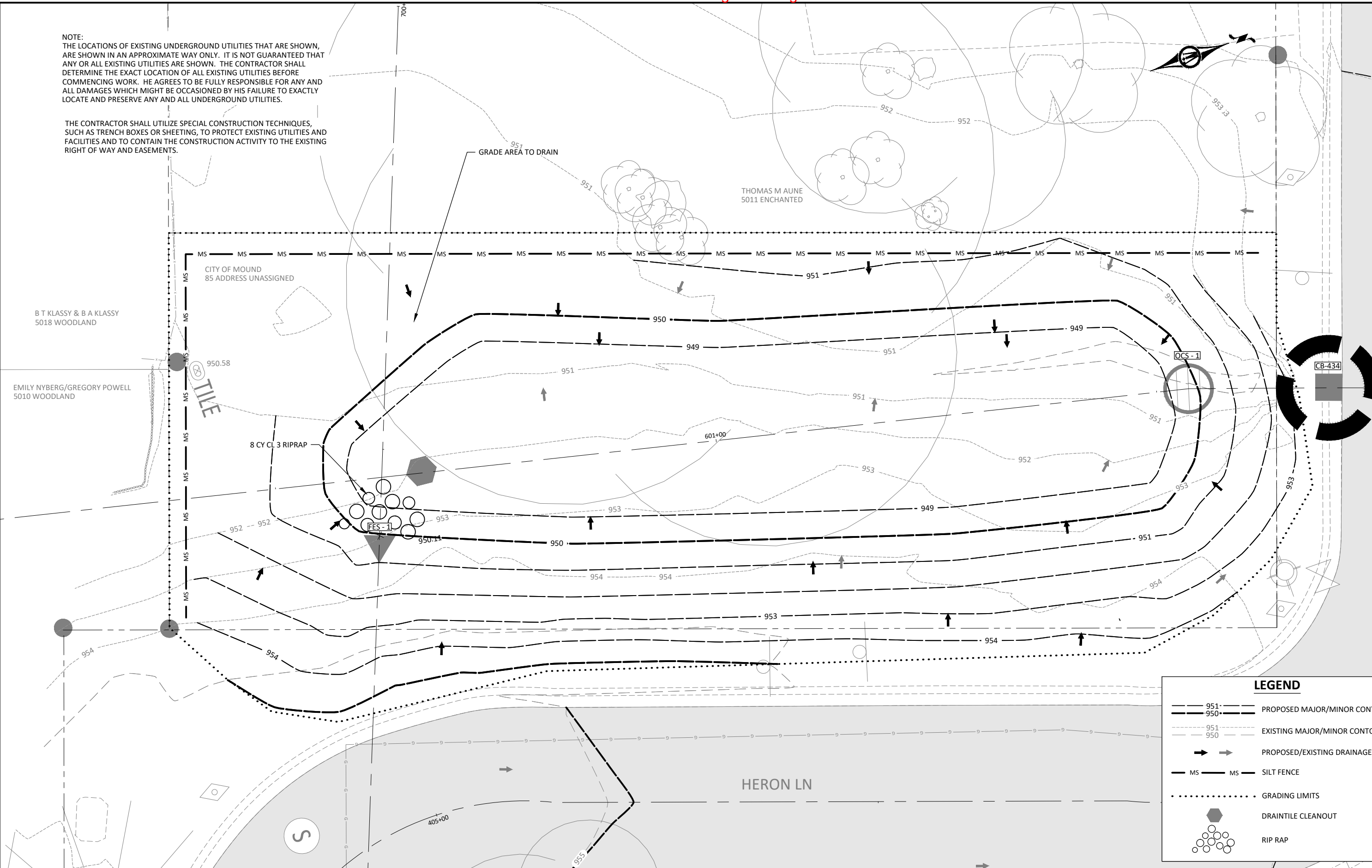


Map Document: H:\MOUND\24\136583000\GIS\ESRI\Aquatic Resources\Delination\Maps\Mound 2025 Street Improvements\Delination.aprx | Exhibit F: Wetland Delineation Map | Username: baylee.johnson | Date Saved: 4/29/2025 11:58 AM



NOTE:  
THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES THAT ARE SHOWN, ARE SHOWN IN AN APPROXIMATE WAY ONLY. IT IS NOT GUARANTEED THAT ANY OR ALL EXISTING UTILITIES ARE SHOWN. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

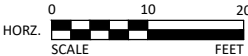
THE CONTRACTOR SHALL UTILIZE SPECIAL CONSTRUCTION TECHNIQUES, SUCH AS TRENCH BOXES OR SHEETING, TO PROTECT EXISTING UTILITIES AND FACILITIES AND TO CONTAIN THE CONSTRUCTION ACTIVITY TO THE EXISTING RIGHT OF WAY AND EASEMENTS.



**LEGEND**

- 951- 950- PROPOSED MAJOR/MINOR CONTOURS
- 951- 950- EXISTING MAJOR/MINOR CONTOURS
- → PROPOSED/EXISTING DRAINAGE FLOW
- MS MS SILT FENCE
- ..... GRADING LIMITS
- ⬢ DRAINTILE CLEANOUT
- ⊙ RIP RAP

© Bolton & Menk, Inc. 2025. All Rights Reserved.  
A:\MOUND\24X\136583\DWG\24X-136583-03.dwg 5/7/2025 8:15:32 AM



I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

*Matthew S. Bauman*  
MATTHEW S. BAUMAN  
LIC. NO. 51323 DATE 05/06/2025



2638 SHADOW LANE, SUITE 200  
CHASKA, MN 55318  
Phone: (952) 448-8838  
Email: Chaska@bolton-menk.com  
www.bolton-menk.com

DESIGNED	KLB	NO.	ISSUED FOR	DATE
DRAWN	BNM & EMD			
CHECKED	MSB			
CLIENT PROJ. NO.	24X-136583			

MOUND, MINNESOTA  
2025 STREET & UTILITY IMPROVEMENTS  
STORM WATER TREATMENT GRADING PLAN

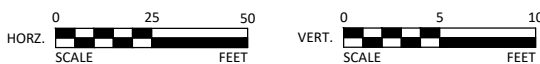
SHEET  
C3.02





NOTE:  
THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES THAT ARE SHOWN, ARE SHOWN IN AN APPROXIMATE WAY ONLY. IT IS NOT GUARANTEED THAT ANY OR ALL EXISTING UTILITIES ARE SHOWN. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

THE CONTRACTOR SHALL UTILIZE SPECIAL CONSTRUCTION TECHNIQUES, SUCH AS TRENCH BOXES OR SHEETING, TO PROTECT EXISTING UTILITIES AND FACILITIES AND TO CONTAIN THE CONSTRUCTION ACTIVITY TO THE EXISTING RIGHT OF WAY AND EASEMENTS.


**BOLTON  
& MENK**

DESIGNED	NO.	ISSUED FOR	DATE
KLB			
DRAWN			
BNM & EMD			
CHECKED			
MSB			
CLIENT PROJ. NO.			
24X.136583			

5.01