



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

MVP

December 17, 2024

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-2015-02026-RLG MFR 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,

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.

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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

Based on a review of desktop data resources listed in Section 9 of this memorandum there are no aquatic resources on the identified project site that exhibit an Ordinary High Water Mark or the Three (3) wetland criteria listed in the 1987 Corps of Engineers Wetland Delineation Manual or any of the applicable regional supplements. No watercourses, basins, or wetlands are identified on the National Wetlands Inventory or the MN DNR Public Waters Inventory. The USGS NHD map shows that the Mississippi River is located approximately 15' west of the project area but it does not extend into the project area. National Wetlands Inventory shows a wetland offsite to the east of the project site. The project site consists of only dry land. Based off Hillshade, topography, and contours of the project site and offsite show that the project area is approximately 10 feet above the water level for the Mississippi River and the waterbody to the east of the project site.

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)
- d. January 2023 Rule preamble at 88 FR 3090

3. REVIEW AREA.

- a. Project Area Size (in acres): 0.08 acres

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- b. Location Description: The project/review area is located in Section 35, Township 028N, Range 022W, Washington County, Minnesota.
 - c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.874200 Longitude: -93.010140
 - d. Nearest City or Town: Newport
 - e. County: Washington
 - f. State: Minnesota
 - g. Other associated Jurisdictional Determinations (including outcomes):
None
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 WATERS⁶: 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 10.⁷ 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.

⁶ 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.

⁷ 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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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).⁸ N/a

⁸ 88 FR 3004 (January 18, 2023)

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- 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).
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. Joint application for Newport Levee dated Dec 4, 2024
- b. MNDNR Hillshade - 2016 accessed April 19, 2024
- c. USDA NRCS Soil Survey USDA-NCSS SSURGO and STATGO
- d. 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/>.
- e. USGS. (Nov 26, 2024). National Hydrography Dataset Plus High Resolution (NHDPlus HR) for 4-digit Hydrologic Unit - 1601. Washington, D.C., USA. Retrieved from

10. OTHER SUPPORTING INFORMATION.

Hillshade figure from the NRV

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.



NOTES

- SEE SHEET C-2 FOR SITE PLANS AND DIMENSIONS FOR LEVEE BREAK
- WATER BOUNDARY LINES SHOWN ARE BASED ON EXISTING LIDAR DATA AND MAY VARY IN THE FIELD BASED ON THE WATER SURFACE ELEVATION OF THE MISSISSIPPI RIVER.
- GEOTECHNICAL INFORMATION FOR THE PROJECT PROVIDED BY CHOSEN VALLEY TESTING INC. PROJECT NO. 23260.24.MNT DATED 05-15-2024.
- PROPERTY LINE LOCATION AND INFORMATION PROVIDED BY WASHINGTON COUNTY GIS SERVICES.

STATEMENT OF ESTIMATED QUANTITIES				
ITEM NO.	MNDOT SPEC.	ITEM DESCRIPTION	ESTIMATED QUANTITY	UNITS
SCHEDULE 1.0 - LEVEE BREACH				
1	2021.501	MOBILIZATION	1	LS
2	2106.507	EXCAVATION - COMMON (P)	2,250	CY
3	2106.507	EXCAVATION - ROCK	20	CY
4	2106.507	COMMON EMBANKMENT (CV)	2,250	CY
5	2511.507	RANDOM RIPRAP CLASS III	131	CY
6	2573.503	SILT FENCE, TYPE MS	1,088	LF
7	2573.503	FLOTATION SILT CURTAIN, TYPE MOVING WATER	94	LF
8	2573.503	FLOTATION SILT CURTAIN, TYPE STILL WATER	88	LF
9	2574.505	SOIL BED PREPARATION	3.1	ACRE
10	2574.507	COMMON TOPSOIL BORROW (LV)	50	CY
11	2574.508	FERTILIZER TYPE 3	700	LBS
12	2575.505	SEEDING	3.1	ACRE
13	2575.508	SEED, MIXTURE 25-131	667	LBS
14	2575.504	ROLLED EROSION PREVENTION CATEGORY 70	415	SY

BASIS FOR ESTIMATED QUANTITIES		
QUANTITY	AMOUNT	UNIT
SEED MIXTURE 25-131	220	LB/AC
FERTILIZER, TYPE 3	200	LB/AC

SOIL BORING LOCATION (TYP.)

GRADING LIMITS (TYP.)

CONSTRUCTION LIMITS (TYP.)

APPROXIMATE GRADING LIMITS. FOR FILL AREA FOR FUTURE PARKING LOT AND TRAIL CONSTRUCTION. CONTRACTOR MUST VERIFY TREE LOCATION IN FIELD PRIOR TO REMOVAL OF TREES.

EXISTING LEVEE BREAKLINE

MISSISSIPPI RIVER

LEVEE BREACH LOCATION. SEE ST-2 & ST-3 FOR ADDITIONAL DETAIL. TREE REMOVAL BY OTHERS.

PROPERTY LINE (TYP.)

16TH STREET

PROJECT DATE: 10/9/2024 3:28 PM, G:\110\10316\10316096\CADD\Construction Documents\10316096-ST1 SITE PLAN & SEQ.dwg	DRAWN BY: TJS	NO. -	DATE -	REVISION	BY -
	DESIGNED BY: CSD	-	-		-
	CHECKED BY: JOH	-	-		-
PRELIMINARY					

I HEREBY CERTIFY THAT THIS PLAN, REPORT, OR SPECIFICATION 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.

10/09/2024
Date
JON D. HERDEGEN

46288
License No.



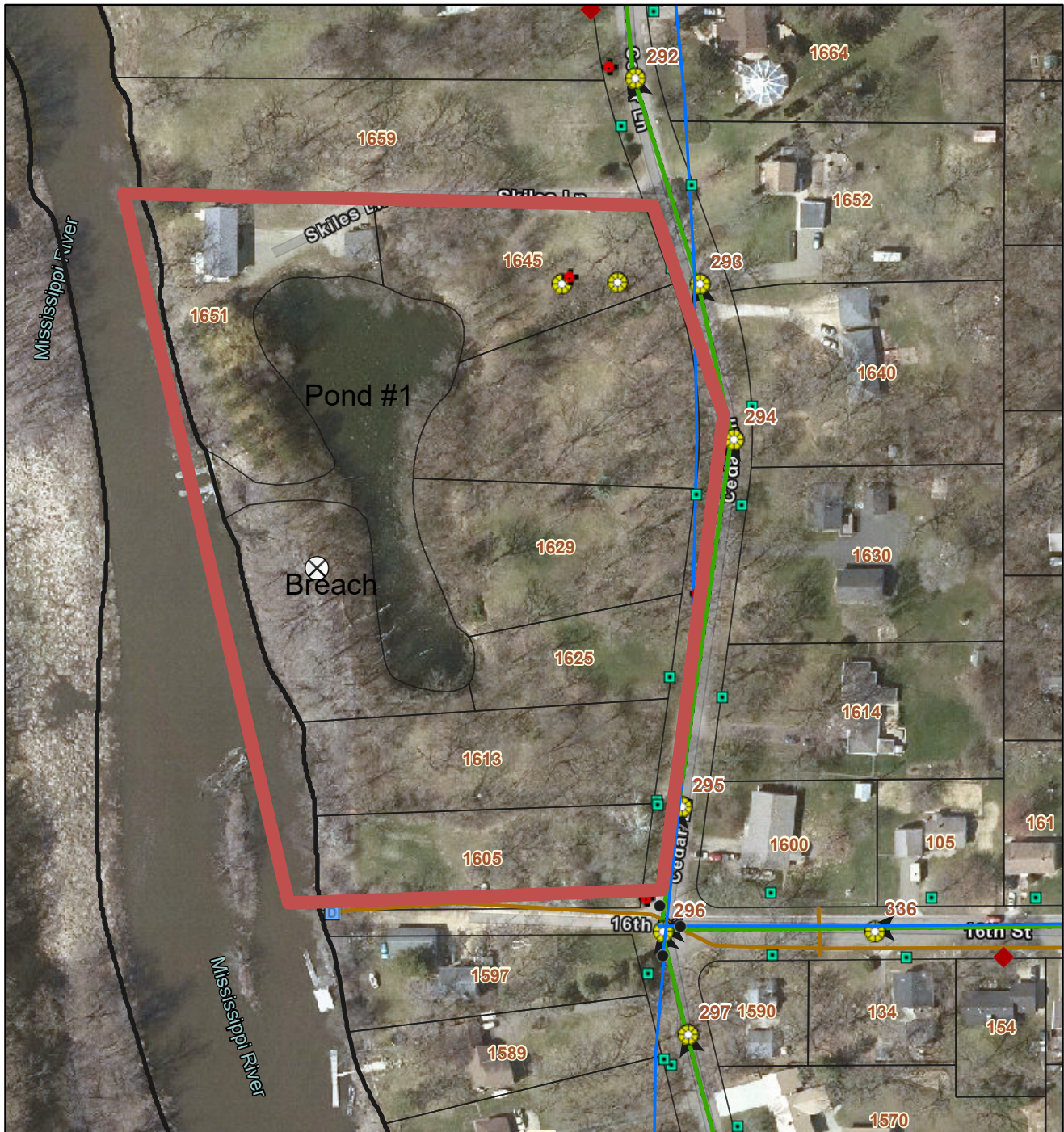
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CEDAR LANE LEVEE BREACH
CITY OF NEWPORT
WASHINGTON COUNTY, MINNESOTA

SITE PLAN & SEQ

PROJECT NO.
10316096
SHEET
ST-1

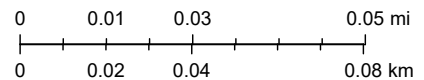
ArcGIS Web Map



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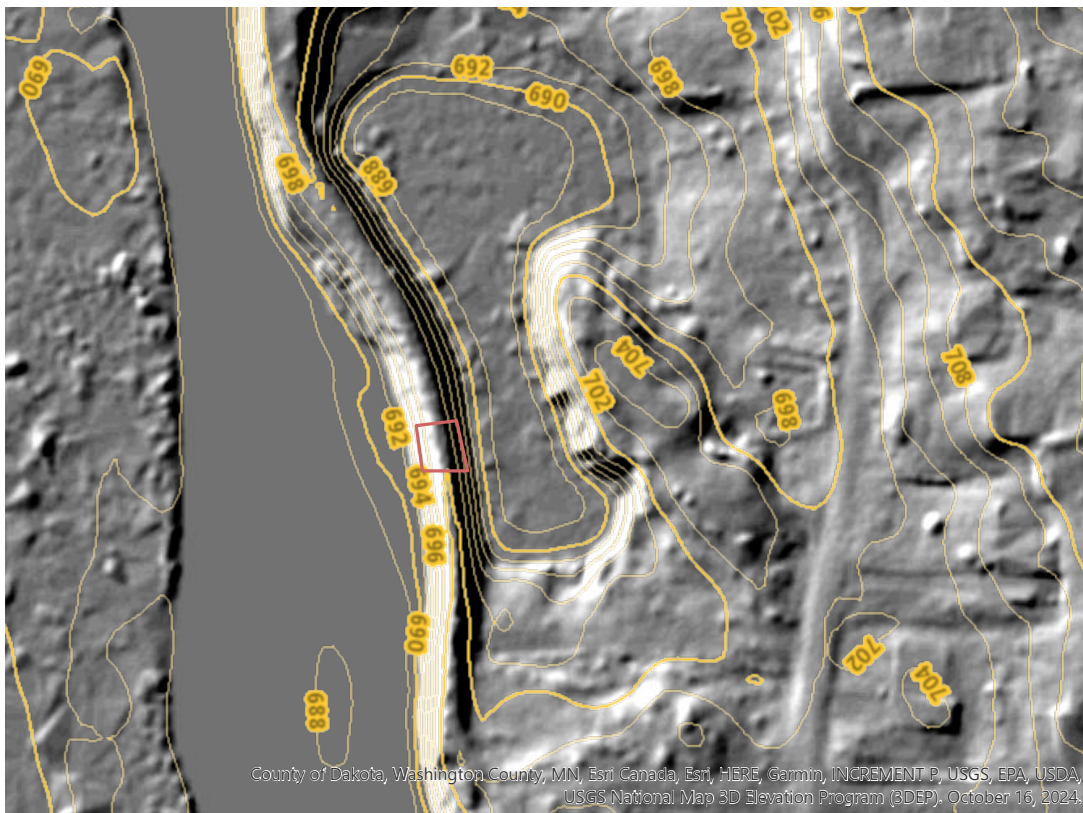
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|-------------------------|----------------------------------|------------------------|
| Wash_Co_mosaic_2022.jp2 | Water_Curb_Stop_Valves_2021_7800 | SewerPipesCoCords_4217 |
| Red: Band_1 | True | StormwaterSystem_5776 |
| Green: Band_2 | Water_Service_8733 | Outfall |
| Blue: Band_3 | Water_Service_7660 | StormwaterSystem_2727 |
| ProjectPlanManager_4016 | SanAGO_7359 | City of Newport |
| No | Closed Manhole | Parcels_2244 |
| Water_Service_7297 | SewerPipesCoCords_3598 | Boundaries_8183 |



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Mississippi River



Mississippi River

