



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

MVP-RD

[9 October 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-2022-01782 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.

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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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2022-01782]

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 W10, non-jurisdictional, 0.40 acre]

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 is approximately 0.40 acre in size and is located at Lat. 47.048996, Long. -91.675639 in Two Harbors, Lake County, Minnesota. The review area is located immediately to the north of the developed areas of the Louisiana Pacific Two Harbors facility and is immediately surrounded by undeveloped forested areas with scattered residential properties to the north and west.]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]<sup>5</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A]

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<sup>5</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.

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6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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>7</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](#)]
  - e. Tributaries (a)(3): [[N/A](#)]
  - f. Adjacent Wetlands (a)(4): [[N/A](#)]
  - g. Additional Waters (a)(5): [[N/A](#)]

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<sup>6</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>7</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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## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. 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).

[Wetland W10 is not a Traditionally Navigable Water, territorial sea, or interstate water and is therefore not an (a)(1) water. The wetland delineation addendum, application, aerial imagery, topographical maps, and digital elevation modeling indicate that W10 does not physically abut a relatively permanent (a)(2) impoundment or a jurisdictional (a)(3) tributary and is not separated by a natural berm, bank, dune, or similar landform. W10 is located in a depressional area that is immediately bordering the developed areas of the Louisiana Pacific Two Harbors facility and is immediately surrounded by uplands to the north and west. W10 is located in a low area that is fed by precipitation from surrounding uplands and drains to the east through multiple culverts that do not appear to contain relatively permanent flow into a drainage swale before draining into off-site wetlands to the southeast. W10 does not appear to have a continuous surface connection to a relatively permanent jurisdictional water. W10 is a non-tidal wetland that does not have a continuous surface connection to a relatively permanent jurisdictional water and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland. Therefore, W10 is not a jurisdictional water under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.]

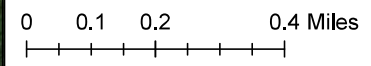
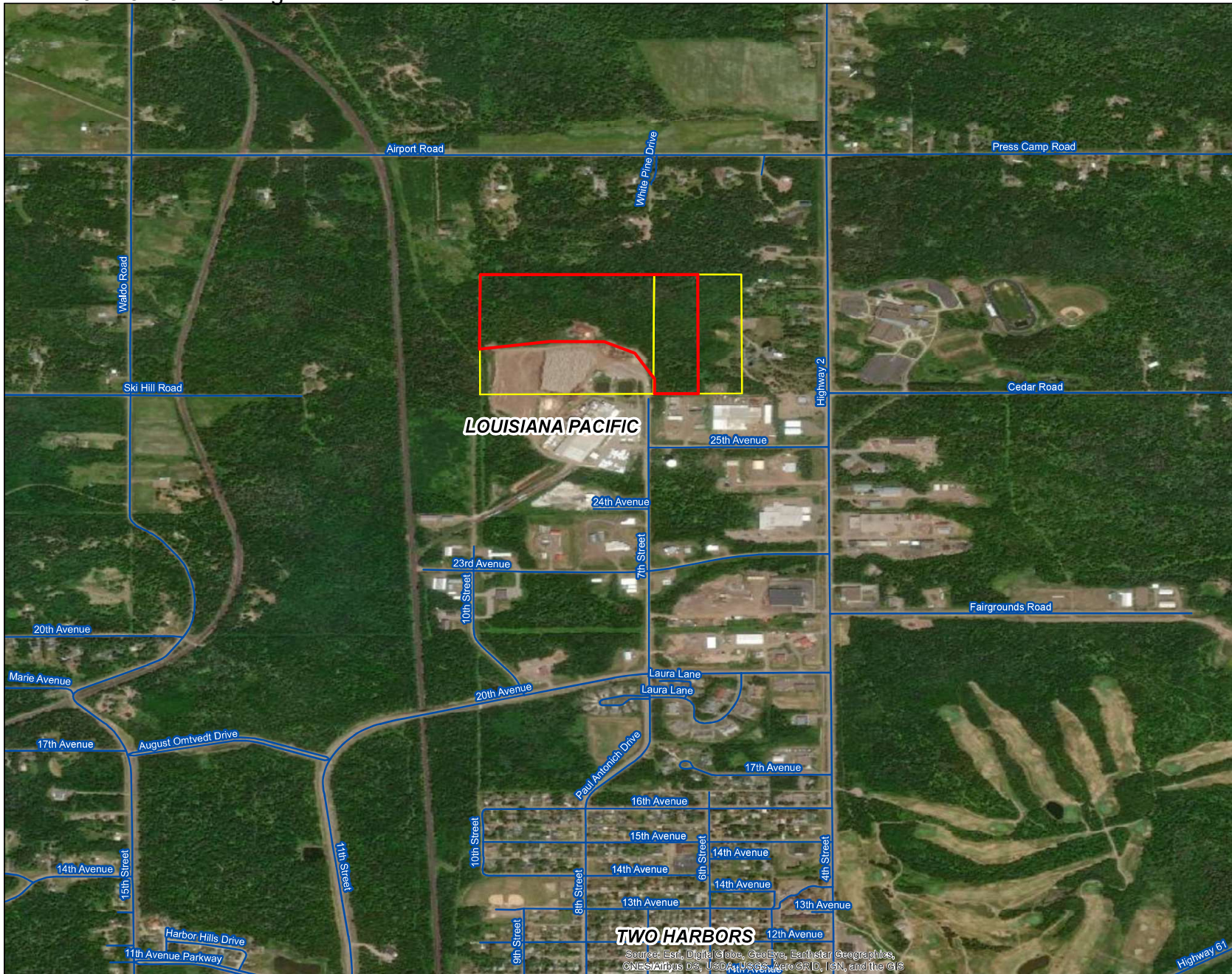
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. [Application, Barr Engineering, dated July 23, 2025]
  - b. [Drainage Path Figure and Photo Log, Barr Engineering, received September 17, 2025]
  - c. [Wetland Delineation Addendum, Stantec, dated August 2, 2023]
  - d. [National Regulatory Viewer, 2023 data sources]
  - e. [Google Earth Pro]
  - f. [Desktop Evaluation]

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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.



- Legend**
- Delineation\_Area
  - Subject Parcels
  - Roads

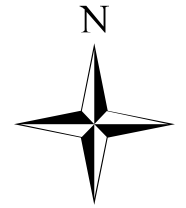
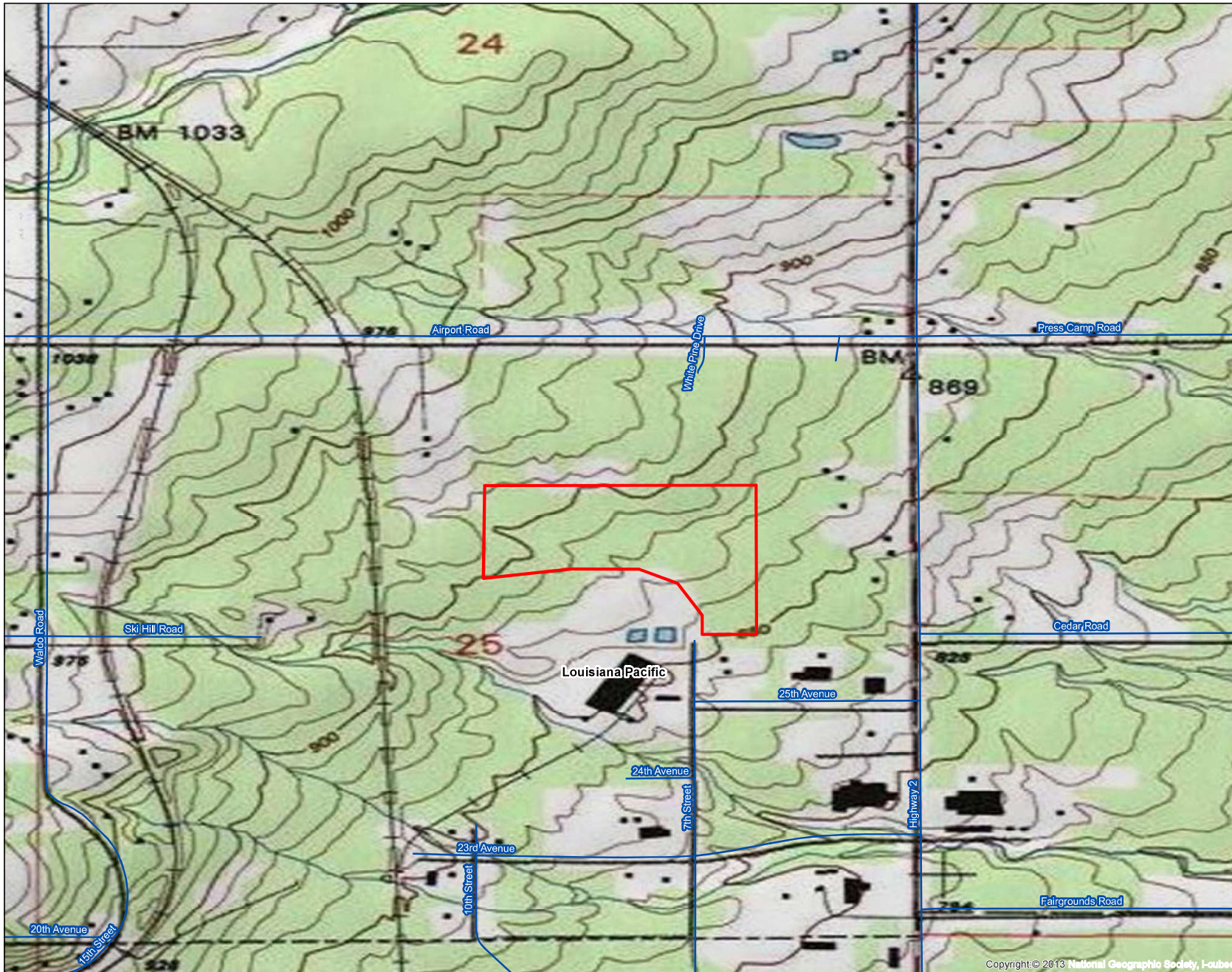
**Figure 1**  
**Site Location Map**

Louisiana Pacific  
Woodyard Expansion  
Two Harbors, MN (Lake County)





Date Drawn: September 25, 2022	
Drawn By: T. Muck	<b>1</b>
NTS Project #: 22055A	

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



0 0.075 0.15 0.3 Miles

**Legend**

-  Delineation\_Area
-  Roads

**Figure 2**  
**Topographic Map**

Louisiana Pacific  
Woodyard Expansion  
Two Harbors, MN (Lake County)



Date Drawn:  
September 25, 2022

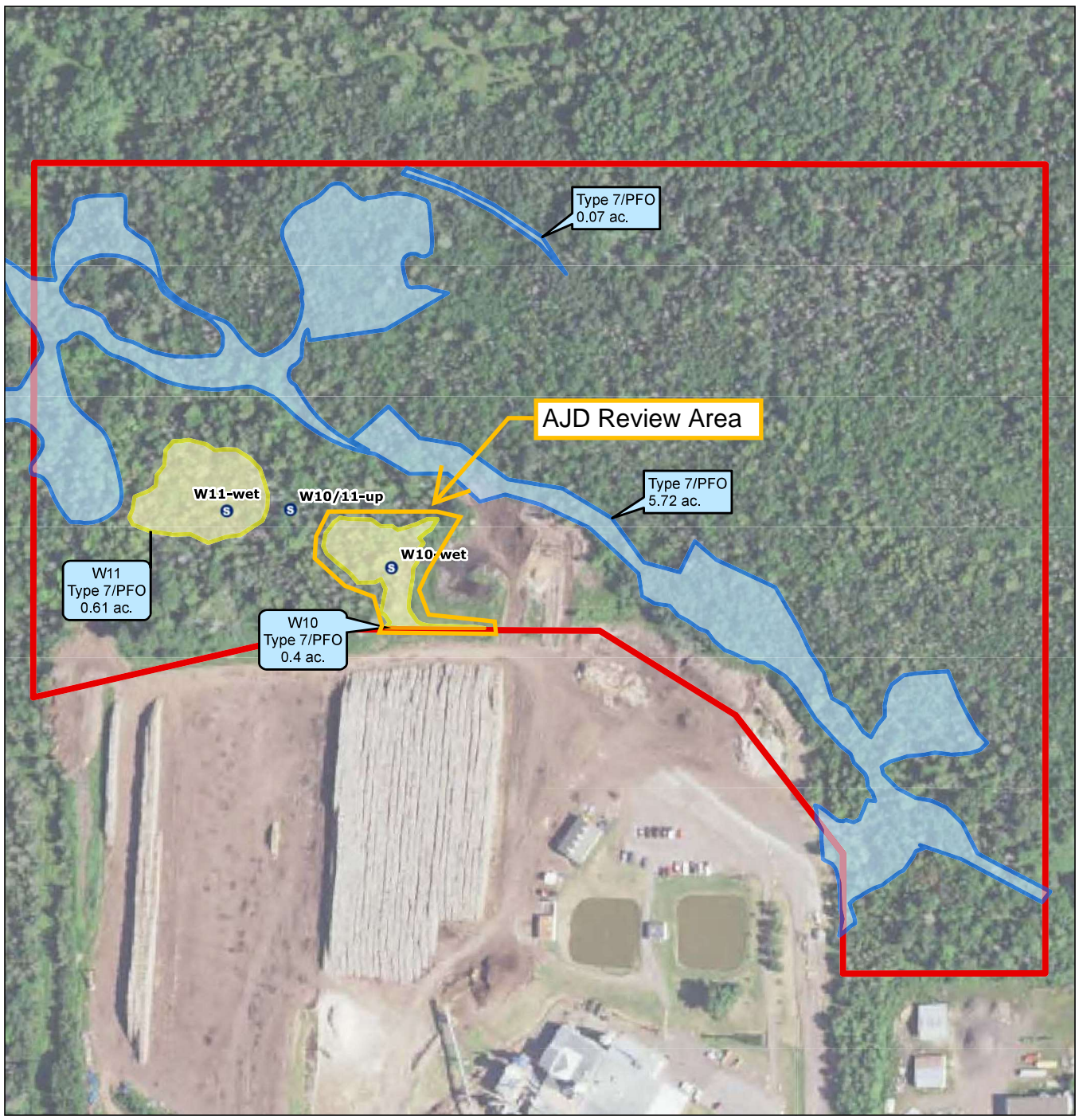
Drawn By:

T. Muck

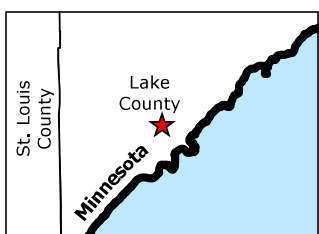
NTS Project #:

22055A

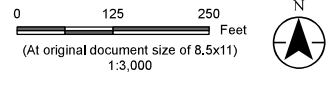
**2**



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- Legend**
- NTS Delineated Wetland 2022
  - Stantec Delineated Wetland 2023
  - Ⓢ Stantec Sample Point
  - Project Area



*Project Location*  
T53, R11W, S25  
Lake Co., MN

*Prepared by* KJM on 2023-08-01

*Client/Project*  
Louisiana Pacific Corporation  
Louisiana Pacific Two Harbors  
**Wetland Delineation**

227705135

*Figure No.*  
**1**

*Title*  
**Field Collected Data**

**Notes**

1. Coordinate System: NAD 1983 HARN Adj MN Lake Feet
2. Data Sources: Stantec
3. Background: 2021 NAIP

Disclaimer: This document has been prepared based on information provided by others as cited in the Notes section. Stantec has not verified the accuracy and/or completeness of this information and shall not be responsible for any errors or omissions which may be incorporated herein as a result. Stantec assumes no responsibility for data supplied in electronic format, and the recipient accepts full responsibility for verifying the accuracy and completeness of the data.



Barr Footer: ArcGISPro 3.3.2, 2024.10.27 11:00 File: I:\Projects\20230919\2023Mapx\MapLegend 10 Impacts Memo\Wetland 10 Impacts Memo\MapLayout - Figure 2 Impacted Area User.amxd

**Impacted Area**  
LP Building Products  
Two Harbors  
Lake County, Minnesota

FIGURE 1

