



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

13 March 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-2023-01215-ARC 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.

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- 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 TB-20d, non-jurisdictional \(a\)\(5\) 0.09-acre](#)
 - ii. [Wetland RS-1, non-jurisdictional \(a\)\(5\) 0.01-acre](#)
 - iii. [Wetland RS-6a, non-jurisdictional \(a\)\(5\) 0.10-acre](#)
 - iv. [Wetland RS-6b, non-jurisdictional \(a\)\(5\) 0.16-acre](#)
 - v. [Wetland RS-7c, non-jurisdictional \(a\)\(5\) 0.01-acre](#)
 - vi. [Wetland RS-7d, non-jurisdictional \(a\)\(5\) 0.01-acre](#)
 - vii. [Wetland RS-12/TB-17, non-jurisdictional \(a\)\(5\) 0.97-acre](#)
 - viii. [Wetland RS-13, non-jurisdictional \(a\)\(5\) 0.01-acre](#)
 - ix. [Wetland PSD-24, non-jurisdictional \(a\)\(5\) 0.32-acre](#)
 - x. [Wetland PSD-18, non-jurisdictional \(a\)\(5\) 0.09-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 [61954](#) (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. [The review area is approximately 81 acres in size and consists of a perimeter buffer from the toe of the north, northeast, and east sides of the Minorca Mine tailings basin berm as well as a small review area west of the mine plant. The review area is identified by the purple polygon and red circled review areas on the](#)

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[attached figures](#). The approximate center of the review area is located at 47.599772 N, -92.445419 W near the city of Virginia, in St. Louis County, Minnesota.

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

⁵ 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.

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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- 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
- 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).
[The review area contains 10 wetlands that are considered not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule, see individual features list in Section 1.a. above. These wetlands are not TNWs, territorial seas, or interstate waters and therefore are not \(a\)\(1\) waters. The wetland delineation, topographical maps, Google Earth, and the National Regulatory Viewer indicate that these wetlands 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. All wetlands are surrounded by upland with no natural or constructed outlet. The site was walked by the Wetland Conservation Act Technical Evaluation Panel and the U.S. Army Corps Project Manager, and the 10 subject wetlands were visibly surrounded by uplands with no continuous surface connection. There are no ditches, swales, pipes, or](#)

⁸ 88 FR 3004 (January 18, 2023)

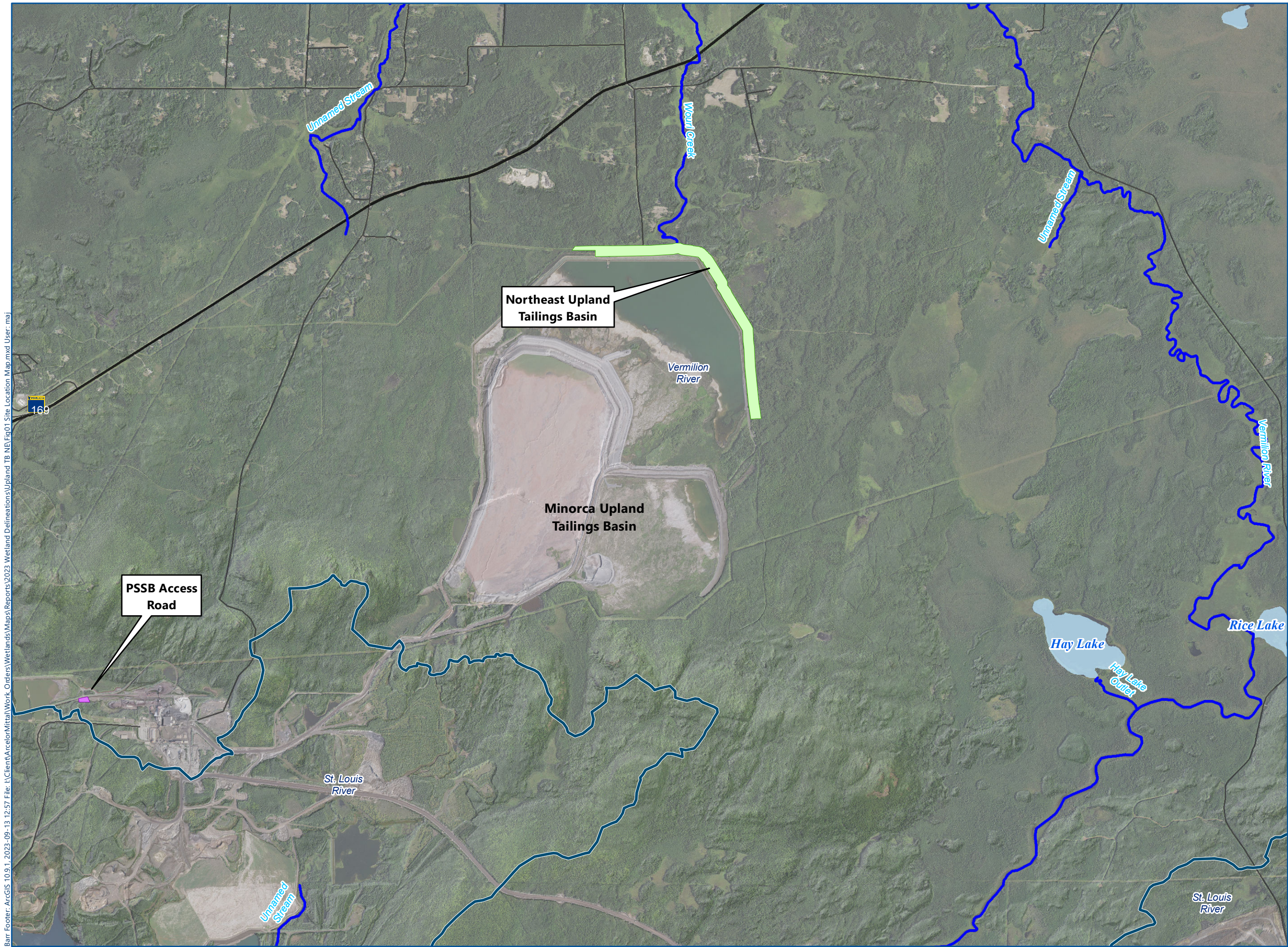
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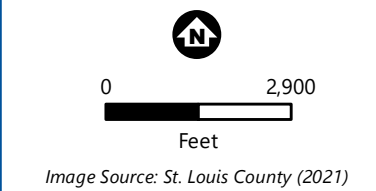
culverts that connect these wetlands to downstream jurisdictional waters. These wetlands are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands 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. [Field visit conducted October 11, 2023. Office evaluation conducted February 27, 2024.](#)
 - b. [Wetland Delineation, Barr Engineering Company, September 2023. Follow up Barr Engineering Technical Memo, December 2023.](#)
 - c. [National Regulatory Viewer Lidar, Digital Elevation Model, and Soils data.](#)
 - d. [Google Earth historical imagery.](#)
10. OTHER SUPPORTING INFORMATION. [The Corps project manager performed a site visit, along with the Minnesota DNR, and found that RS-6a and RS-6b are contained within man-made dirt roads and trails and no culverts or hydrologic connections were observed. The Corps also observed the lack of contour change between RS-7c and RS-7b; however, this area was walked, and test pits were dug that observed non-hydric soils containing sand and gravelly fill as well as upland vegetation with a lack of hydrology. Lastly, the Corps reviewed PSD-18 and found a culvert connecting to FO-4, however FO-4 does not contain a hydrologic connection to a downstream jurisdictional water. FO-4 looks to collect hydrology from the surrounding uplands where it's contained in the wetland and infiltrated into the water column.](#)
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.

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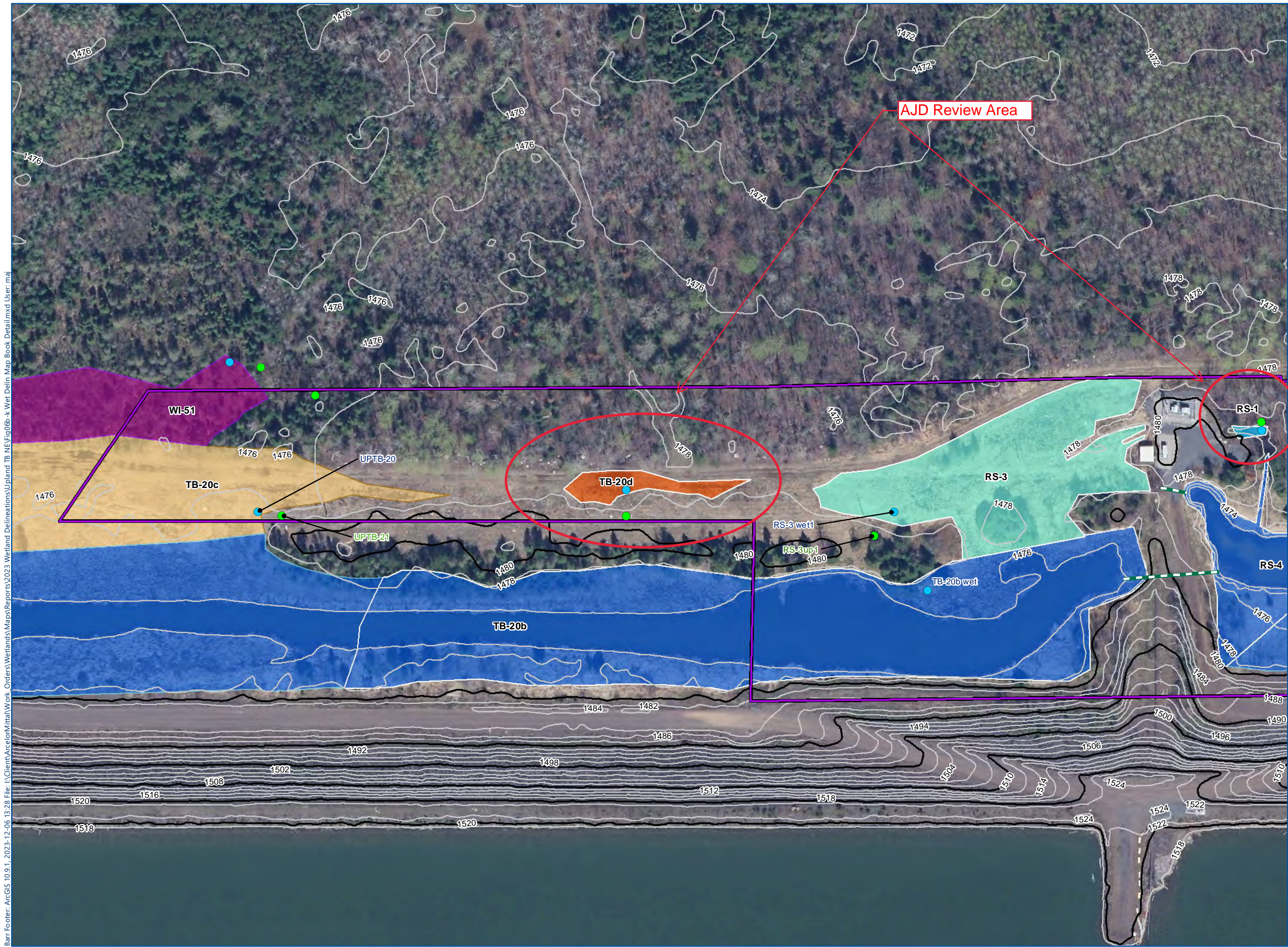


- Legend**
- Watersheds - DNR Level 4
 - Study Areas**
 - PSSB Access Road
 - Upland TB NE Perimeter Dam
 - PWI Watercourses and Basins**
 - Public Water Watercourse
 - Altered Watercourse
 - Public Waters Basins



SITE LOCATION MAP
2023 Wetland Delineations
Minorca Mine
Virginia, MN
FIGURE 1

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Legend

2023 Data Plots

- Upland Plot
- Wetland Plot
- Culverts
- Public Watercourses
- Study Areas
- Incidental Wetlands

Minorca 2022 Topography

- 10-ft Contour
- 2-ft Contour

Delineated Wetlands

- Shrub Swamp
- Coniferous Bog
- Seasonally Flooded Basin
- Sedge Meadow
- Wet Meadow
- Coniferous Swamp
- Deep Marsh
- Hardwood Swamp
- Shallow Marsh
- Shallow Open Water

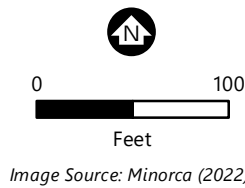
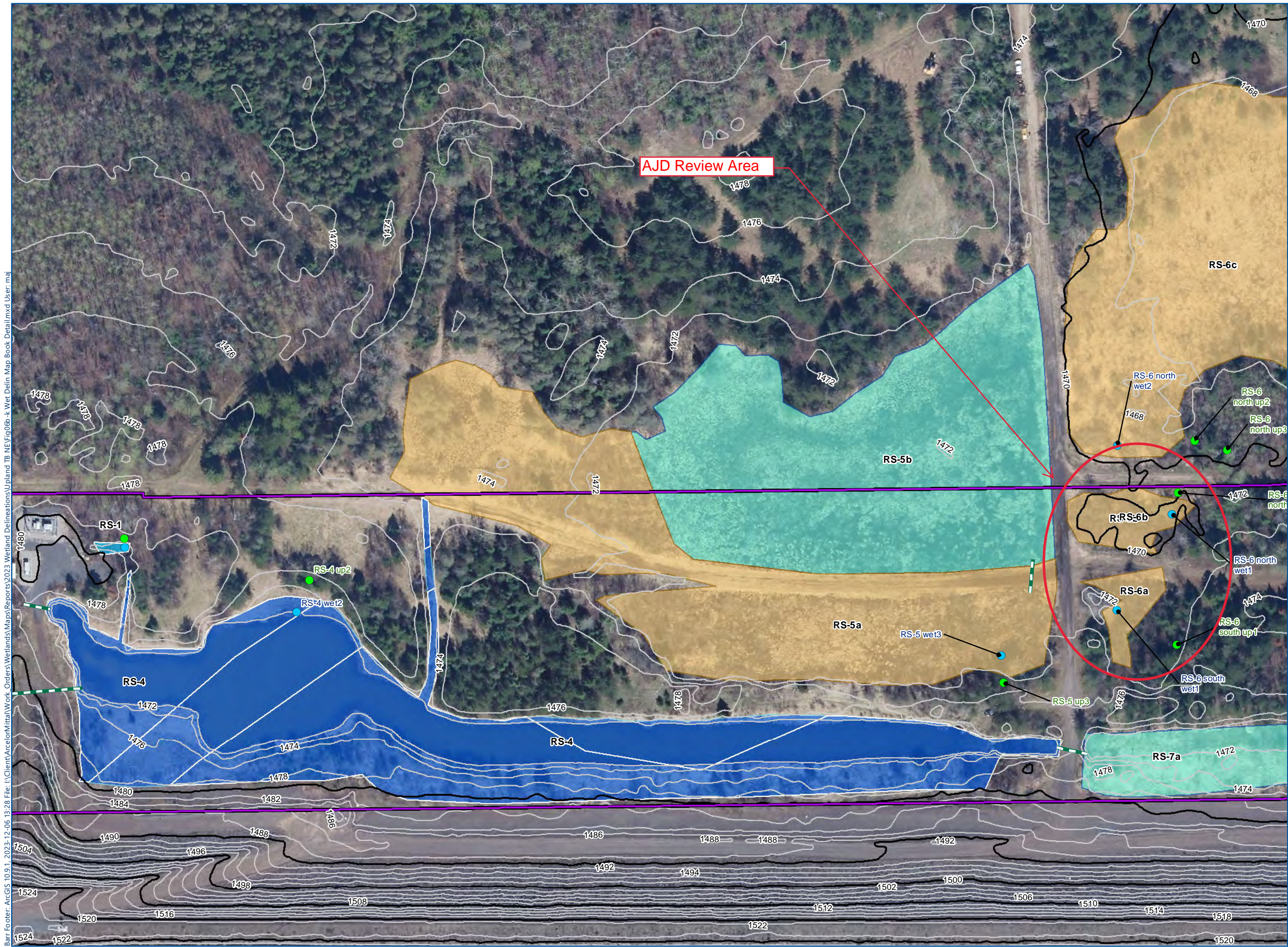


Image Source: Minorca (2022)

WETLAND DELINEATION
MAP BOOK DETAIL
2023 Wetland Delineations
Cleveland-Cliffs
Minorca Mine Inc.
Virginia, MN

FIGURE 6b

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Legend

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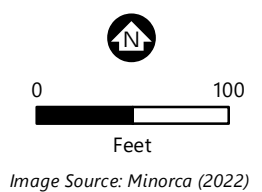
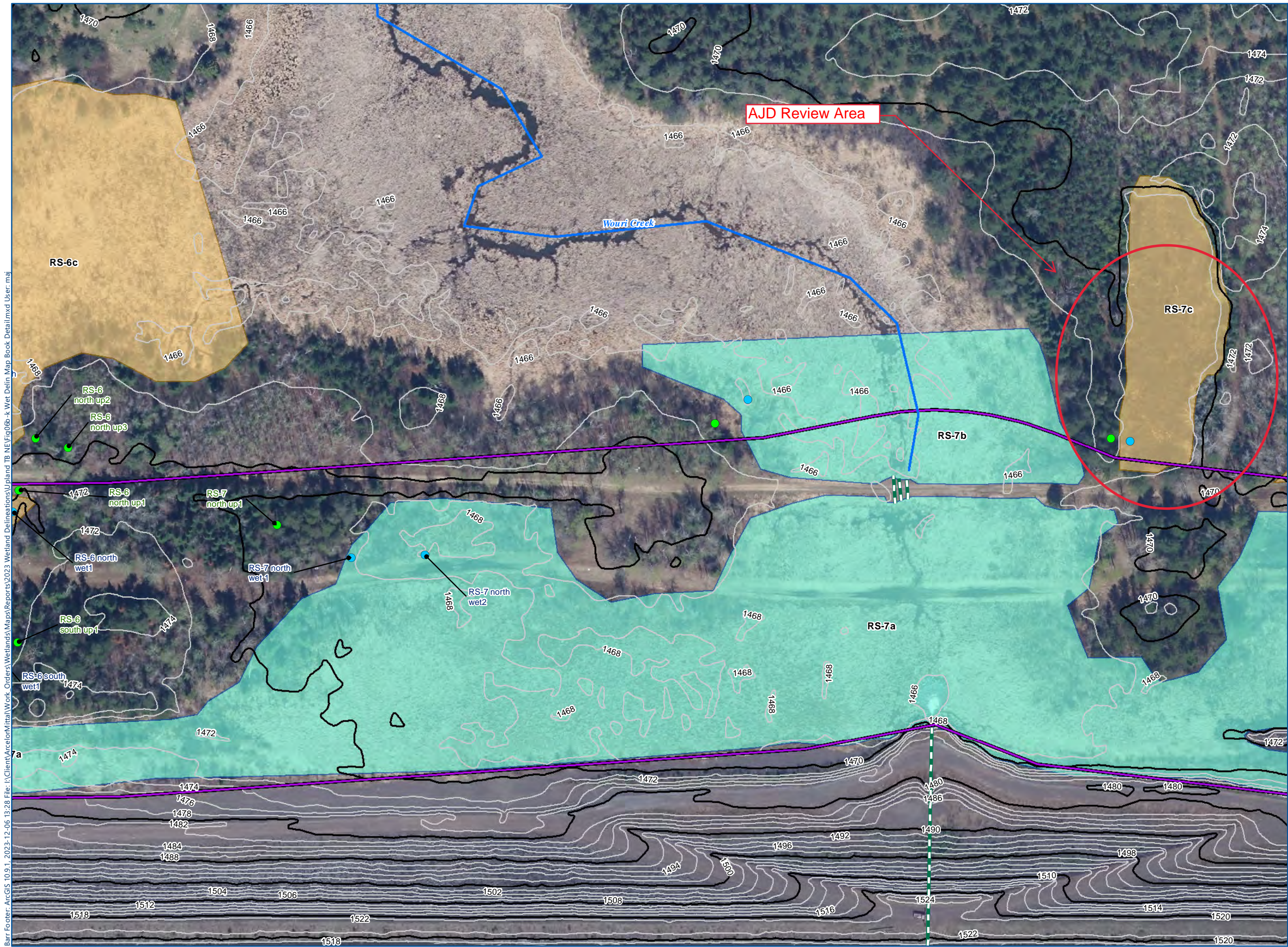


Image Source: Minorca (2022)

WETLAND DELINEATION
MAP BOOK DETAIL
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FIGURE 6c

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Legend

2023 Data Plots

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Culverts

Public Watercourses

Study Areas

Incidental Wetlands

Minorca 2022

Topography

10-ft Contour

2-ft Contour

Delineated Wetlands

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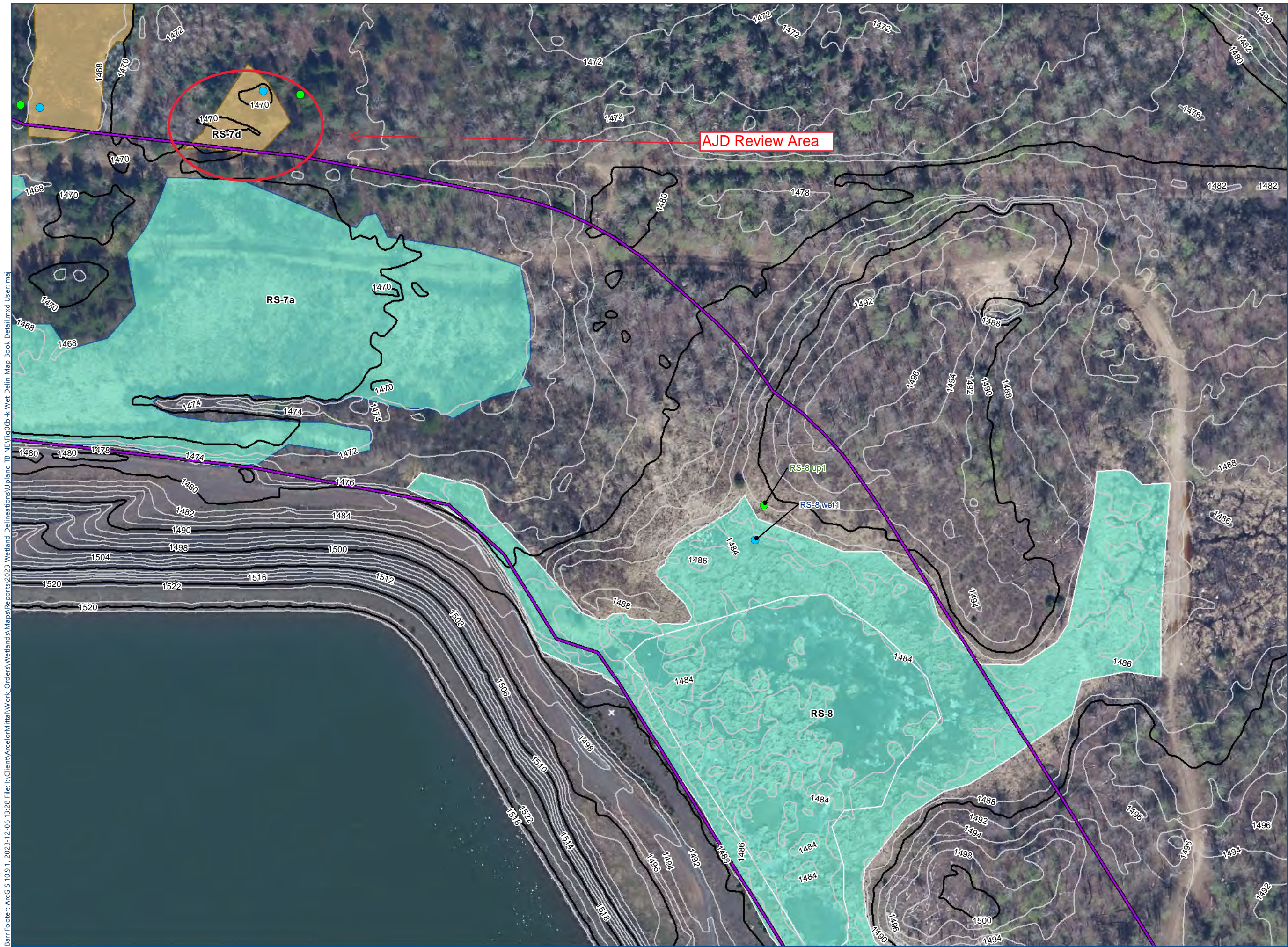
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Feet

Image Source: Minorca (2022)

WETLAND DELINEATION
MAP BOOK DETAIL
2023 Wetland Delineations
Cleveland-Cliffs
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FIGURE 6d

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Legend

2023 Data Plots

- Upland Plot
- Wetland Plot

- Culverts
- Public Watercourses
- Study Areas
- Incidental Wetlands

Minorca 2022 Topography

- 10-ft Contour
- 2-ft Contour

Delineated Wetlands

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Feet

Image Source: Minorca (2022)

WETLAND DELINEATION
MAP BOOK DETAIL
2023 Wetland Delineations
Cleveland-Cliffs
Minorca Mine Inc.
Virginia, MN

FIGURE 6e

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Legend

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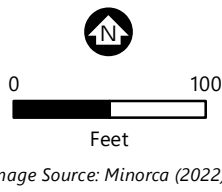


Image Source: Minorca (2022)

WETLAND DELINEATION
MAP BOOK DETAIL
2023 Wetland Delineations
Cleveland-Cliffs
Minorca Mine Inc.
Virginia, MN

FIGURE 6k

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Legend

2023 Data Plots

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Culverts

Public Watercourses

Study Areas

Incidental Wetlands

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10-ft Contour

2-ft Contour

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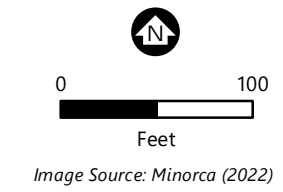


Image Source: Minorca (2022)

WETLAND DELINEATION
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FIGURE 6I