



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

MVP-2023-01353-JMK (SP 010-596-014)

4 April 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),<sup>1</sup> MVP-2023-01353-JMK 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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## 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. Non-jurisdictional Ditches: Wetland 1A, Wetland 1C, Wetland 1D, Wetland 1E, Wetland 4A, Wetland 4C, Wetland 4D, Wetland 4E, Wetland 5, Wetland 8, Wetland 10, Wetland 11A, Wetland 11B, Wetland 12C, Wetland 12D, Wetland 12E, Wetland 12F, Wetland 12G, Wetland 13B, Wetland 13C, Wetland 14A, Wetland 14B, Wetland 15, Wetland 16A, Wetland 16B, Wetland 19A, Wetland 19B, Wetland 19C, Wetland 19D, Wetland 20, Wetland 22C (Type 2 only), Wetland 23, Wetland 24 (Type 2 only), Wetland 25A, Wetland 25B, Wetland 25C, Wetland 25D, Wetland 25E, Wetland 26, Wetland 31A, Wetland 31C, and Wetland 33B.
  - ii. Non-jurisdictional Stormwater Ponds: Wetland 6A, Wetland 6B, Wetland 6C, Wetland 6D, Wetland 7, Wetland 12A, Wetland 12B, Wetland 21A, and Wetland 21B.

## 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)

3. REVIEW AREA. The review area for this determination includes 9 non-jurisdictional stormwater features and 42 non-jurisdictional roadside ditches, as identified in Section 1(a) of this MFR and on the attached figures labeled 2023-01353-JMK Figures 1-8 of 8. The review area is located at 44.8665 N, -93.6180 W in the cities of Chanhassen and Victoria, Carver County, Minnesota. There are no other JDs associated with the review area.

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

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6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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>5</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>6</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 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>7</sup>
- Please reference Enclosure 1 for the aquatic resources within the review area identified as linear roadside drainage ditches constructed in upland and draining only upland based on the following:
    - US Geological Service 3DEP DEM and MNDNR 2-foot contour maps shows the ditches are located in areas of the project that are higher in elevation and supportive of uplands.
    - NHD data revealed none of the ditches are relocated or captured tributaries.
    - Recent aerial photos do not show relatively permanent flow in the aforementioned aquatic resources.

Based on the desktop resources reviewed the aquatic resources listed in Enclosure 1 are linear roadside drainage ditches constructed in upland, draining only upland, and do not carry a relatively permanent flow of water. Therefore, these aquatic resources have been determined to be Paragraph (b)(3) excluded ditches and not subject to Section 404 of the Clean Water Act (CWA).

- Wetland 6A (0.37 acre), Wetland 6B (0.06 acre), and Wetland 6C (0.03 acre), Wetland 6D (0.03 acre), Wetland 7 (0.17 acre), Wetland 12A (0.04 acre), Wetland 12B (0.05 acre), Wetland 21A (0.23 acre), and Wetland 21B (0.36 acre) within the review area are stormwater features constructed in upland to collect and retain water as settling basins based on the following:
  - US Geological Service 3DEP Hillshade and DEM and MNDNR 2-foot contour maps shows the ponds are located in areas of the project that are higher in elevation and supportive of uplands.

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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- NWI maps do not display presence of mapped wetlands in the areas the ponds have been constructed.
- Recent aerial photos show that ponds are located in close proximity to residential developments and consist of geometry indicative of being manmade to store stormwater from these developments.

Therefore, these features have been determined to be Paragraph (b)(5) excluded artificial lakes and ponds and not subject to Section 404 of the CWA.

- 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. "Hwy 5 Project – Arboretum Area Wetland Delineation Report – Amended" dated January 22, 2024.
- b. Minnesota Regulatory Viewer: 2016 MNDNR Hillshade layer, MNDNR 2-foot contour layer, US Geological Service 3DEP Digital Elevation Model (DEM) and NHD layers, and USFWS NWI layer.

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.

Enclosure 1  
Non-Jurisdictional Ditches

<b>Aquatic Resource Name</b>	<b>Acreage</b>
Wetland 1A	0.11
Wetland 1C	0.10
Wetland 1D	0.02
Wetland 1E	0.01
Wetland 4A	0.07
Wetland 4C	0.75
Wetland 4D	0.32
Wetland 4E	0.04
Wetland 5	0.02
Wetland 8	0.13
Wetland 10	0.22
Wetland 11A	0.01
Wetland 11B	0.01
Wetland 12C	0.15
Wetland 12D	0.02
Wetland 12E	0.03
Wetland 12F	0.01
Wetland 12G	0.03
Wetland 13B	0.09
Wetland 13C	0.02
Wetland 14A	0.11
Wetland 14B	0.02
Wetland 15	0.12
Wetland 16A	0.02
Wetland 16B	0.01
Wetland 19A	0.01
Wetland 19B	0.02
Wetland 19C	0.01
Wetland 19D	0.01
Wetland 20	0.36
Wetland 22C (Type 2)	0.07
Wetland 23	0.04
Wetland 24 (Type 2)	0.34
Wetland 25A	0.01
Wetland 25B	0.18
Wetland 25C	0.18
Wetland 25D	0.07
Wetland 25E	0.01
Wetland 26	0.07
Wetland 31A	0.03
Wetland 31C	0.18
Wetland 33B	0.44

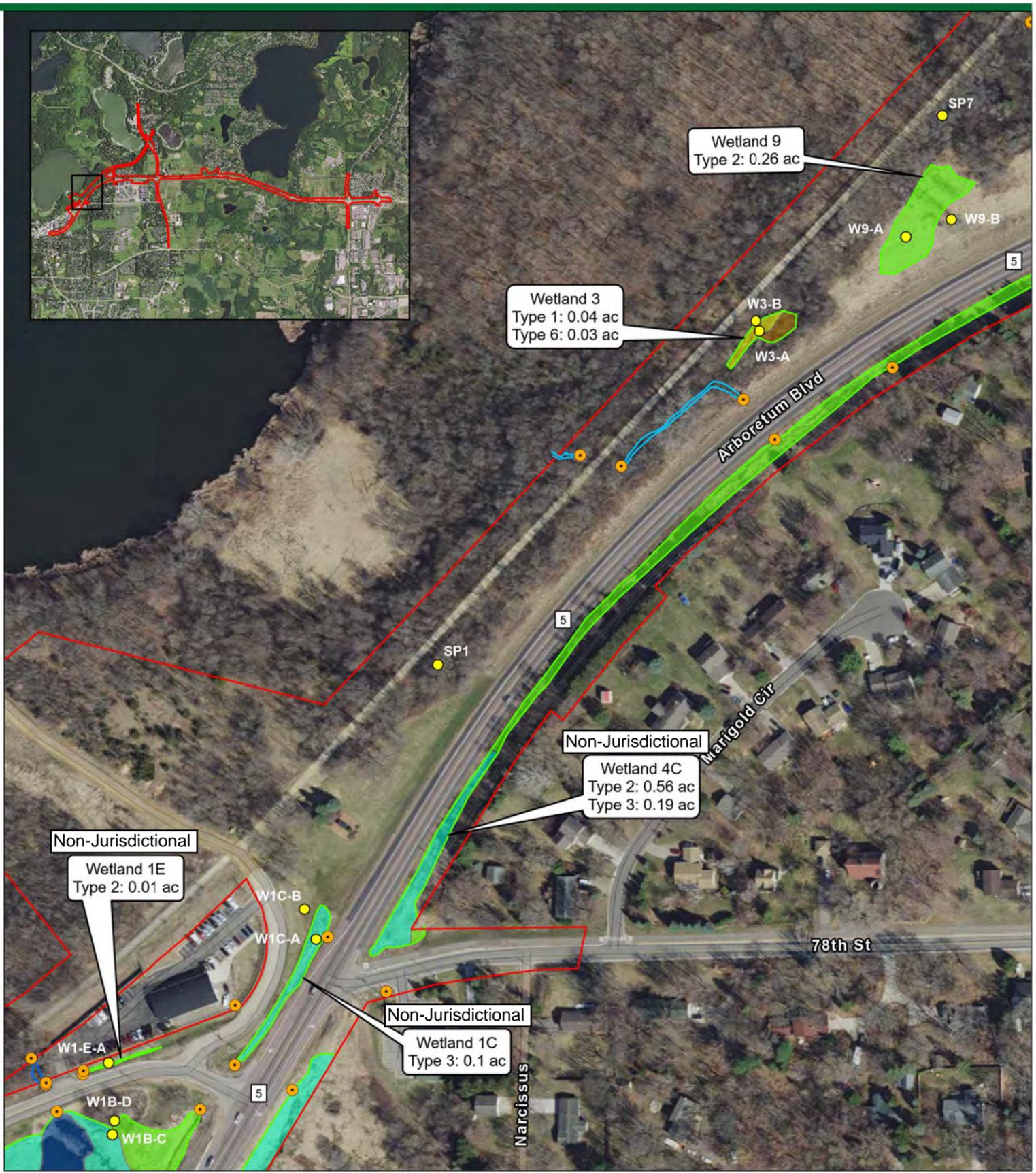
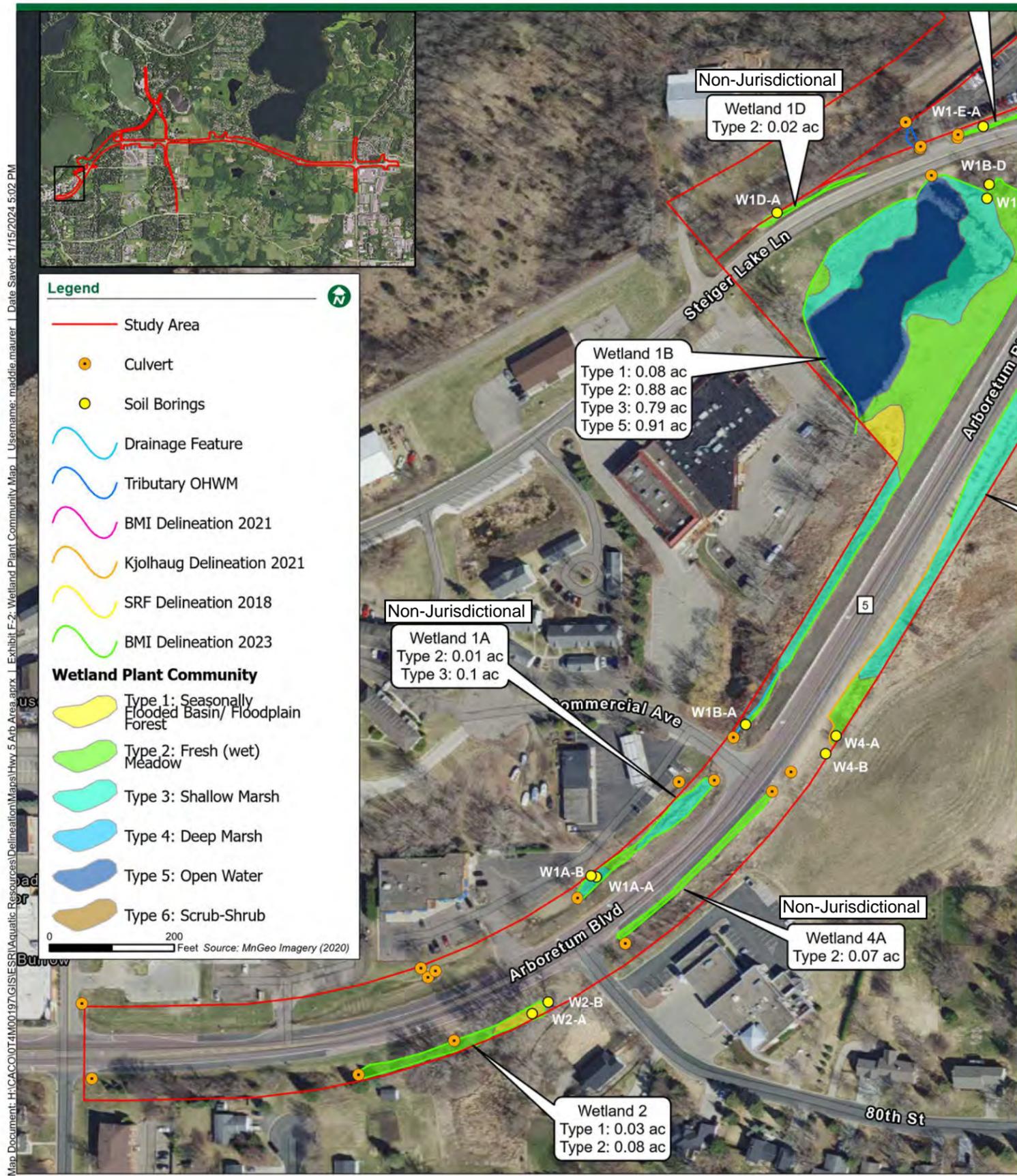


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Wetland 4B  
Delineated by Kjolhaug Environmental 11/17/21  
Approved 9/15/22

Wetlands 14A & 14B  
Delineated by Bolton & Menk, Inc. 9/23/21  
Approved 8/15/22

Wetlands 18A, 20, 22B, 22C, 22D, 24  
Delineated by SRF Consulting Group, Inc. 7/19/18  
Approved by City of Chanhassen 5/8/20



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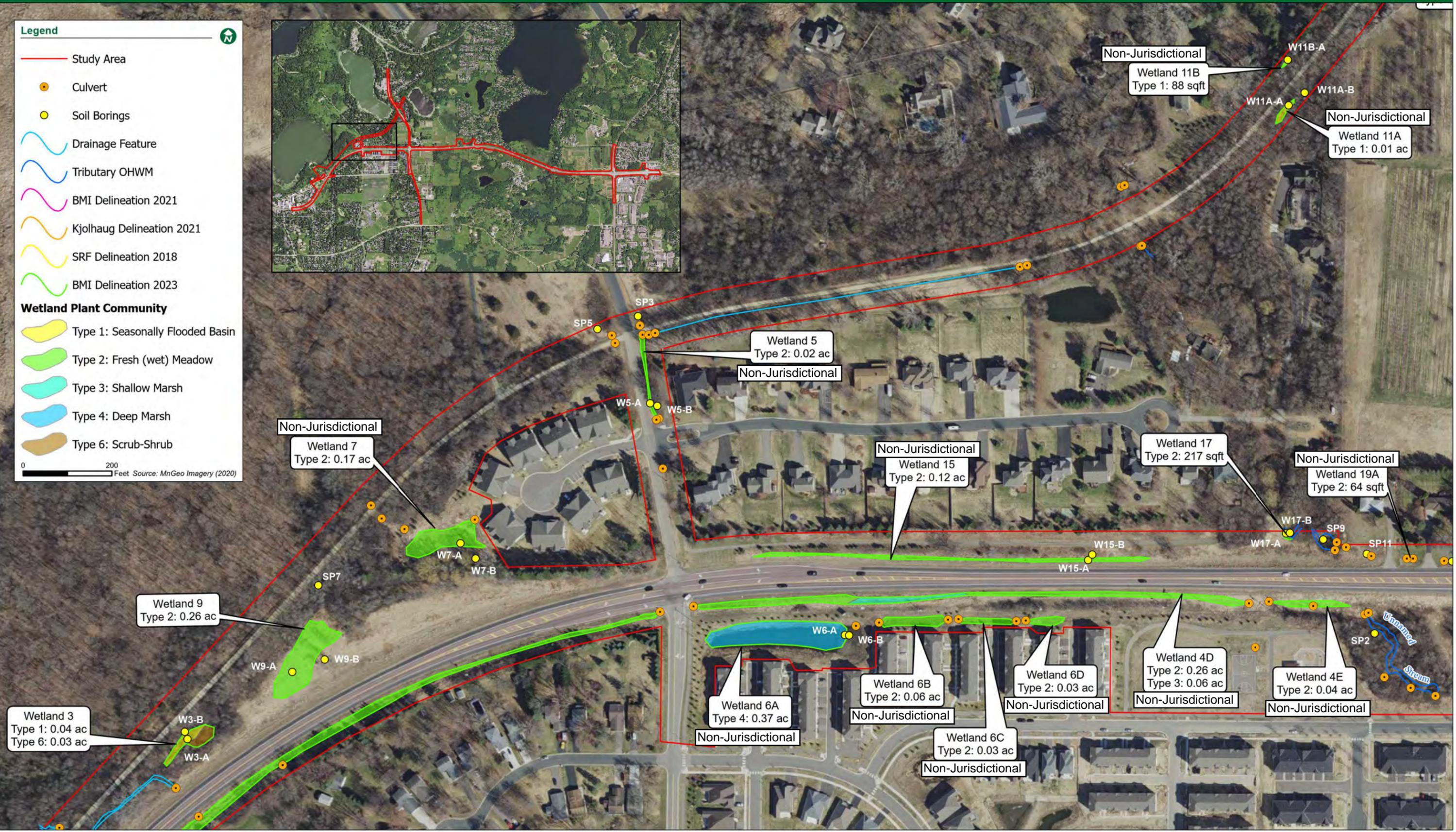
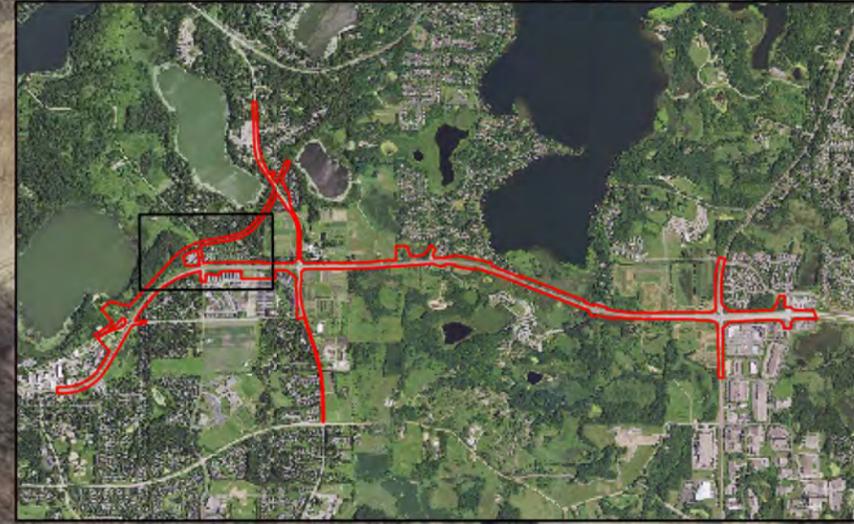
**Legend**

- Study Area
- Culvert
- Soil Borings
- Drainage Feature
- Tributary OHWM
- BMI Delineation 2021
- Kjolhaug Delineation 2021
- SRF Delineation 2018
- BMI Delineation 2023

**Wetland Plant Community**

- Type 1: Seasonally Flooded Basin
- Type 2: Fresh (wet) Meadow
- Type 3: Shallow Marsh
- Type 4: Deep Marsh
- Type 6: Scrub-Shrub

0 200 Feet Source: MnGeo Imagery (2020)



Wetland 3  
Type 1: 0.04 ac  
Type 6: 0.03 ac

Wetland 9  
Type 2: 0.26 ac

Non-Jurisdictional  
Wetland 7  
Type 2: 0.17 ac

Wetland 5  
Type 2: 0.02 ac  
Non-Jurisdictional

Non-Jurisdictional  
Wetland 15  
Type 2: 0.12 ac

Wetland 17  
Type 2: 217 sqft

Non-Jurisdictional  
Wetland 19A  
Type 2: 64 sqft

Wetland 4D  
Type 2: 0.26 ac  
Type 3: 0.06 ac  
Non-Jurisdictional

Wetland 4E  
Type 2: 0.04 ac  
Non-Jurisdictional

Wetland 6A  
Type 4: 0.37 ac  
Non-Jurisdictional

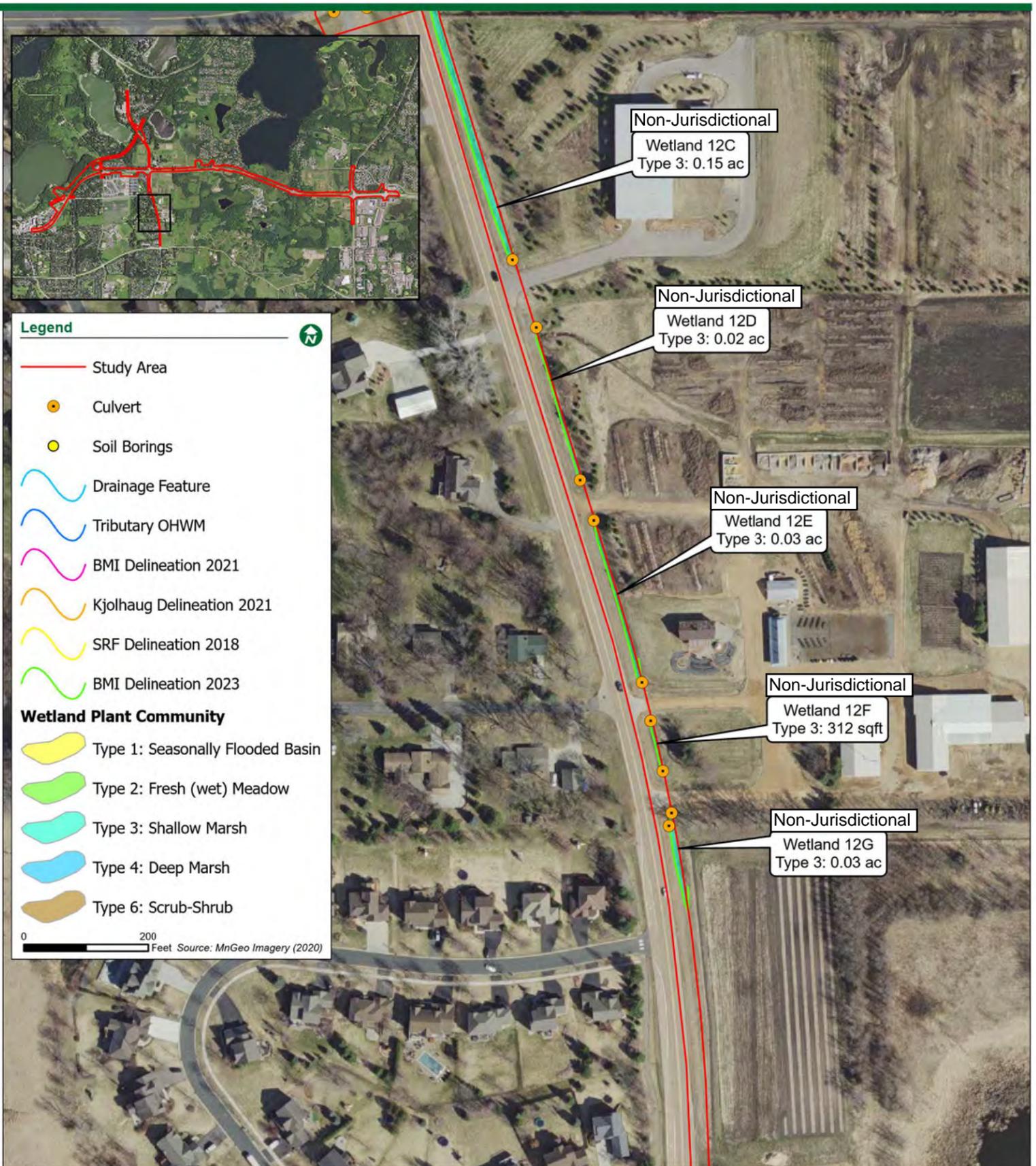
Wetland 6B  
Type 2: 0.06 ac  
Non-Jurisdictional

Wetland 6D  
Type 2: 0.03 ac  
Non-Jurisdictional

Wetland 6C  
Type 2: 0.03 ac  
Non-Jurisdictional



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**Legend**

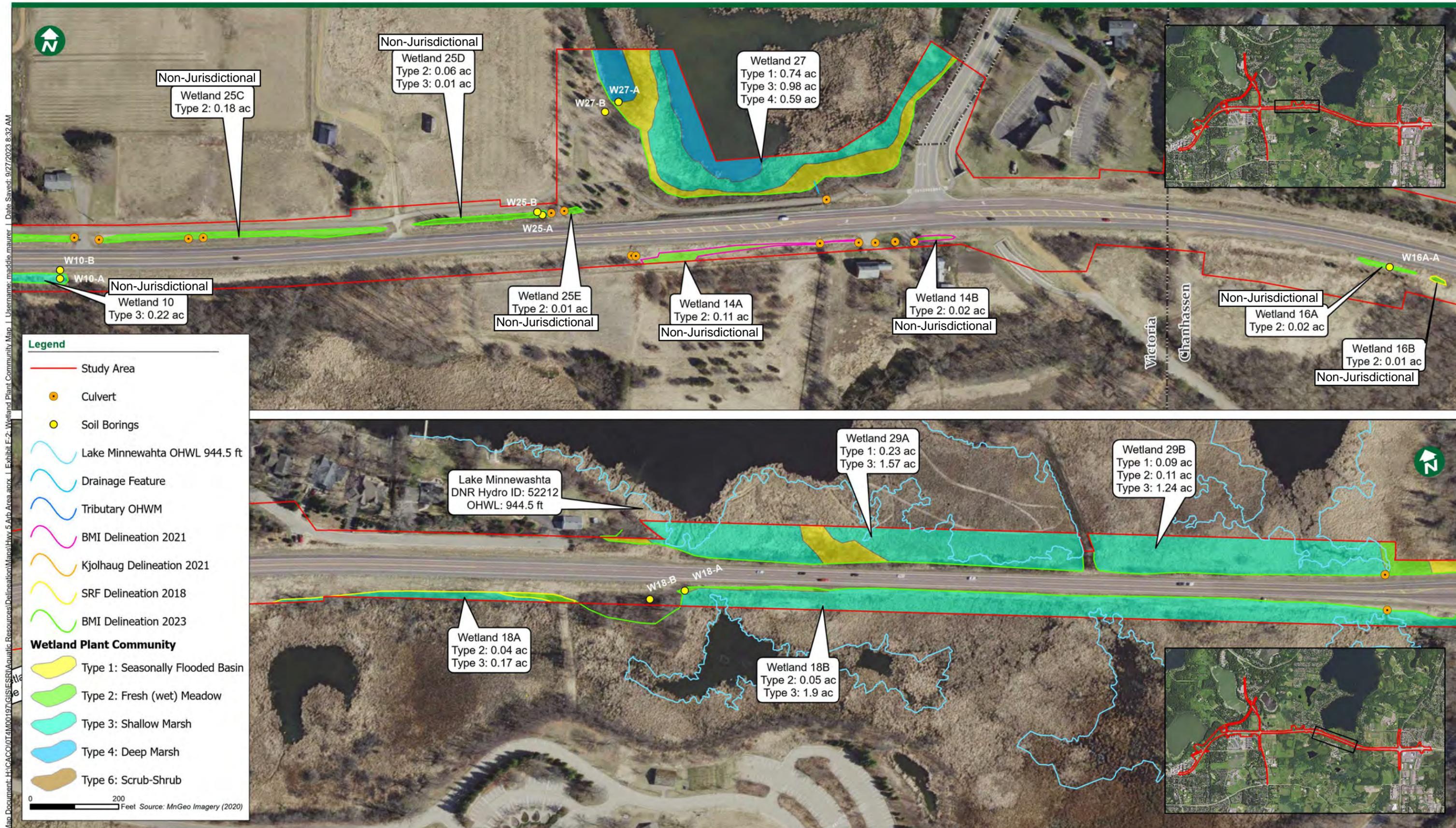
- Study Area
- Culvert
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- Drainage Feature
- Tributary OHWM
- BMI Delineation 2021
- Kjølhaug Delineation 2021
- SRF Delineation 2018
- BMI Delineation 2023

**Wetland Plant Community**

- Type 1: Seasonally Flooded Basin
- Type 2: Fresh (wet) Meadow
- Type 3: Shallow Marsh
- Type 4: Deep Marsh
- Type 6: Scrub-Shrub

0 200 Feet Source: MnGeo Imagery (2020)

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**Legend**

- Study Area
- Culvert
- Soil Borings
- Drainage Feature
- Tributary OHWM
- BMI Delineation 2021
- Kjolhaug Delineation 2021
- SRF Delineation 2018
- BMI Delineation 2023

**Wetland Plant Community**

- Type 1: Seasonally Flooded Basin
- Type 2: Fresh (wet) Meadow
- Type 3: Shallow Marsh
- Type 4: Deep Marsh
- Type 6: Scrub-Shrub

0 200 Feet Source: MnGeo Imagery (2020)

