



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

MVP

27 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-2024-00380-RMH 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.

- a. The review 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

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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2024-00380-RMH](#)

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).

The review area includes a parcel measuring approximately 13.08 acres located in Section 8, Township 112 North, Range 14 West, Goodhue County, Minnesota. The NWI (USFWS, 2023), MN NWI update (MNDNR, 2023a), PWI (MNDNR, 2023b) and NHD data sets were reviewed for the presence of mapped wetlands and/or waterbodies within the review area. No aquatic features contained within these datasets, intersect the review area nor did contain any areas that exhibited wetland hydrology or hydrophytic vegetation. The majority of the review area contained unharvested corn and forested slopes. Elevation and topographic data from the USGS and MNDNR were reviewed within the review area to identify potential basins and depressional areas which could be indicative of wetlands. The Goodhue County Soil Survey indicated no hydric soils within the survey area. In addition, the agent completed a site assessment and conducted a transect survey. The transect confirmed a lack of adequate wetland hydrology (based on site conditions as well as historic imagery review) and a lack of dominance of hydrophytic vegetation.

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 is approximately 13.08 acres in size and is identified by the red polygon on the attached figures. The review area is located at 44.516307 N, -92.525008 W approximately 3.1 miles south of the City of Redwing in Goodhue 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 WATERS⁵: 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 10.⁶ [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](#)

⁵ 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.

⁶ 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).⁷ [N/A](#)
- 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](#)

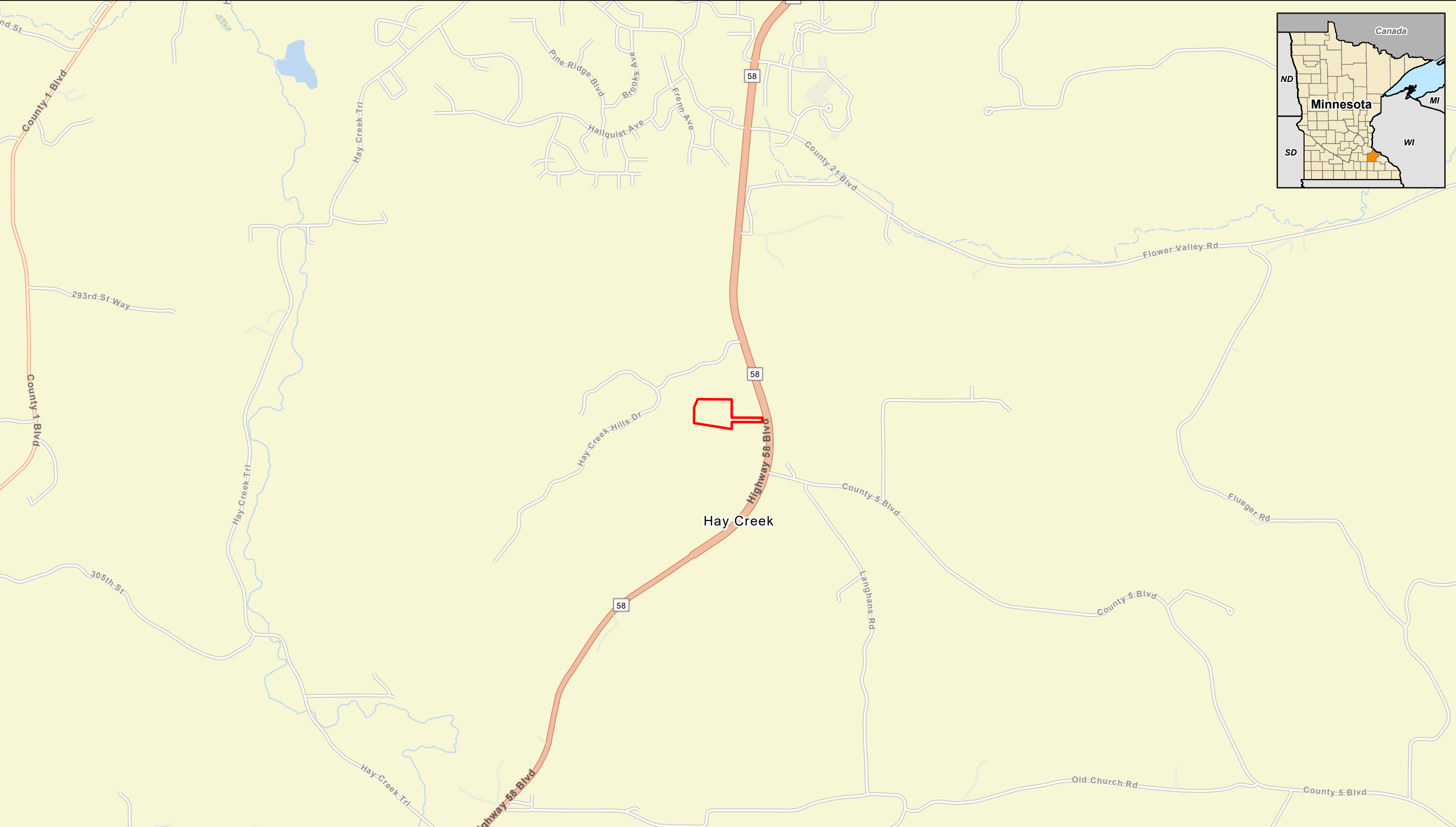
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. [Joint application packet received on November 1, 2023, from Merjent, Inc.](#)
- b. [Wetland Delineation Survey for Bullard Garden Solar Project prepared by Merjent, Inc., dated October 2023.](#)
- c. [Office evaluation March 26, 2024, using National Regulatory Viewer, 2023 data sources.](#)

10. OTHER SUPPORTING INFORMATION. [N/A](#)

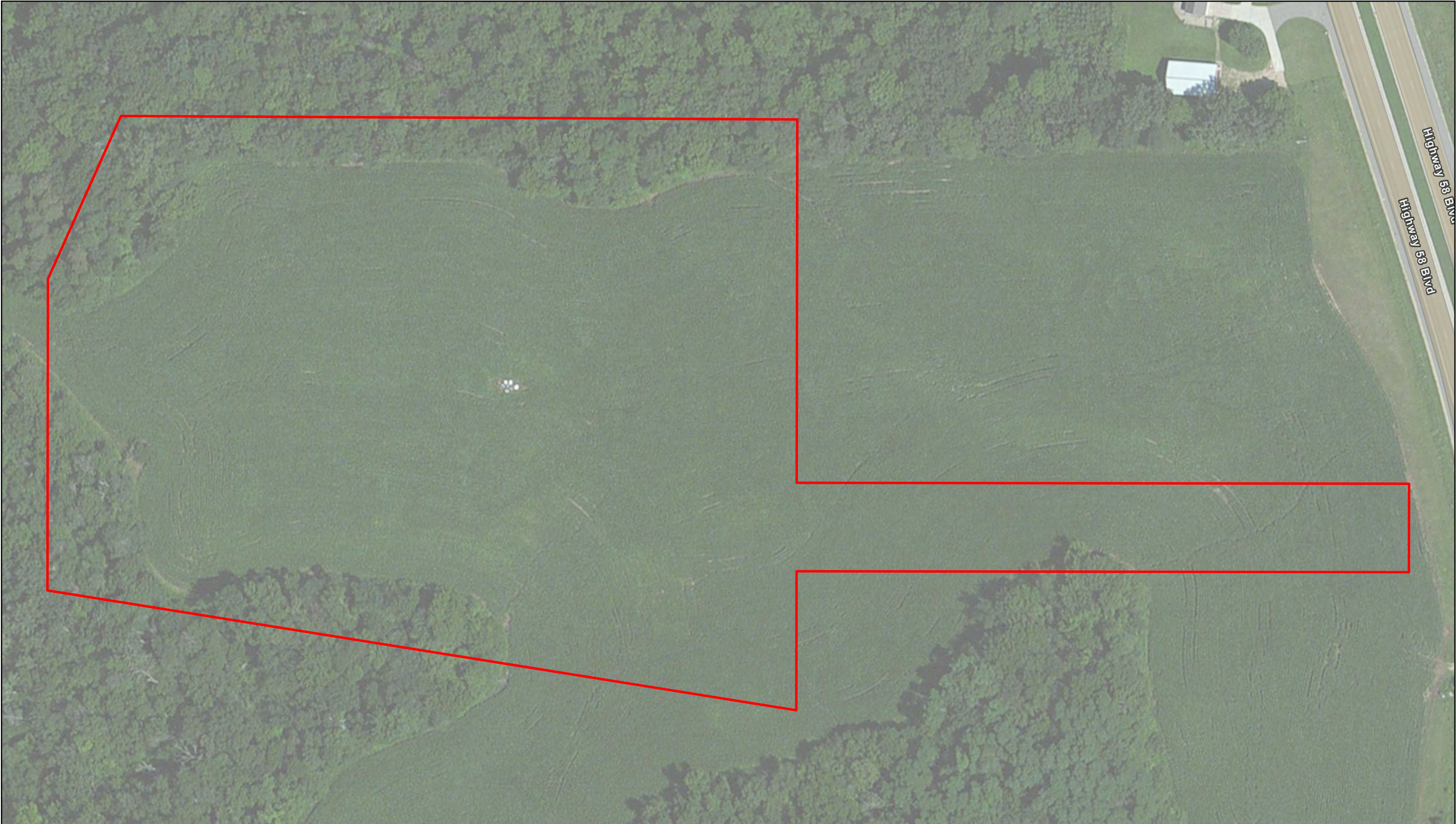
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

⁷ 88 FR 3004 (January 18, 2023)



0 1,000 2,000 Feet For Environmental Review Purposes Only	Figure 1: Project Location Bullard Garden Solar Project Bullard Garden, LLC Goodhue County, MN	Survey Area	
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Source: Z:\Clients\W_P\Nokomis_Energy\Bullard_Garden\ArcGIS\Bullard_Garden.aprx - Map Location
Date: (10/13/2023)



0 50 100 Feet	Figure 4: Hydrology Bullard Garden Solar Project Bullard Garden, LLC Goodhue County, MN	<table border="0"><tr><td> Survey Area</td><td> Mapped Wetland (NWI)*</td></tr><tr><td> Public Waters Watercourse (PWI)*</td><td> Mapped Waterway (MnDNR Hydrography)*</td></tr><tr><td> Public Waters Basin (PWI)*</td><td> Mapped Waterbody (MnDNR Hydrography)*</td></tr></table> *No features present within map extent	Survey Area	Mapped Wetland (NWI)*	Public Waters Watercourse (PWI)*	Mapped Waterway (MnDNR Hydrography)*	Public Waters Basin (PWI)*	Mapped Waterbody (MnDNR Hydrography)*	
Survey Area	Mapped Wetland (NWI)*								
Public Waters Watercourse (PWI)*	Mapped Waterway (MnDNR Hydrography)*								
Public Waters Basin (PWI)*	Mapped Waterbody (MnDNR Hydrography)*								

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Date: (10/13/2023)