



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

MVP

07 March 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-2024-00584-PJH MFR 1 of 2](#).

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.

1. SUMMARY OF CONCLUSIONS.

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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.

## MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00584-PJH

- 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 1 is a 0.29-acre depressional basin that is non-jurisdictional.
  - ii. Wetland 2 is a 0.49-acre depressional basin that is non-jurisdictional.

## 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)

## 3. REVIEW AREA.

The subject aquatic resources are within an approximately 4.50-acre review area identified by the blue polygon located on the figures labeled MVP-2024-00584-PJH (MFR 1) Page 2 of 4. The review area is located near Alexandria, Douglas County, Minnesota. Center coordinates are 45.848000°, -95.403786°. The review area is located in Section 36, Township 128 North, Range 38 West. No previous jurisdictional determinations have been completed in 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

## MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2024-00584-PJH](#)

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.

## 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>

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).

Wetland 1 is a 0.29-acre depressional basin surrounded by upland that can be seen on the figure labeled MVP-2024-00584 (MFR 1) Page 2 of 4. Aerial imagery, LiDAR, and the National Wetland Inventory (NWI) support this determination. The wetland is not a Traditional Navigable Water (TNW), territorial sea, or interstate water, therefore is not an (a)(1) water. The wetland does not physically abut a relatively permanent (a)(2) impoundment or jurisdictional (a)(3) tributary and is not separated from jurisdictional waters by a man-made dike, barrier, or natural landform (river berm, beach, dune, etc.). The closest tributary is an unnamed tributary that is approximately 1.40 miles to the east. The unnamed tributary appears to be a man-made ditch that collects agricultural runoff before entering Lake Mary. Wetland 1 is not connected to an (a)(1) relatively permanent water by a discrete feature such as a ditch, swale, pipe, or culvert. Wetland 1 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, is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

Wetland 2 is a 0.49-acre depressional basin surrounded by upland that can be seen on the figure labeled MVP-2024-00584 (MFR 1) Page 2 of 4. Aerial imagery, LiDAR, and the National Wetland Inventory (NWI) support this determination. The wetland is not a Traditional Navigable Water (TNW), territorial sea, or interstate water, therefore is not an (a)(1) water. The wetland does not

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

## MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00584-PJH

physically abut a relatively permanent (a)(2) impoundment or jurisdictional (a)(3) tributary and is not separated from jurisdictional waters by a man-made dike, barrier, or natural landform (river berm, beach, dune, etc.). The closest tributary is an unnamed tributary that is approximately 1.40 miles to the east. The unnamed tributary appears to be a man-made ditch that collects agricultural runoff before entering Lake Mary. Wetland 2 is not connected to an (a)(1) relatively permanent water by a discrete feature such as a ditch, swale, pipe, or culvert. Wetland 2 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, is 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. Multiple office evaluations were conducted February 11, 2025 – March 5, 2025.
  - b. Great River Energy Alexandria Substation Expansion Wetland Delineation Report dated October 2024.
  - c. Aerial imager: Google Earth Pro, MN NAIP 2019, MN NAIP 2019-CIR
  - d. USFWS NWI of MN
  - e. LiDAR: MNDNR Hillshade – 2016, 3DEP Hillshade
  - f. 3DEP Digital Elevation Model (DEM), 3DEP Slope, MN Contours – 2ft

## 10. OTHER SUPPORTING INFORMATION.

The applicant intends to permanently discharge fill material into these wetlands for the purpose of expanding the Alexandria Substation.

An additional jurisdictional determination is associated with this project and is being evaluated in a separate Memorandum For Record (2024-00584-PJH MFR 2 of 2). The aquatic resources meet the definitions of a (b)(1) and (b)(3) exclusion and do not require EPA coordination.

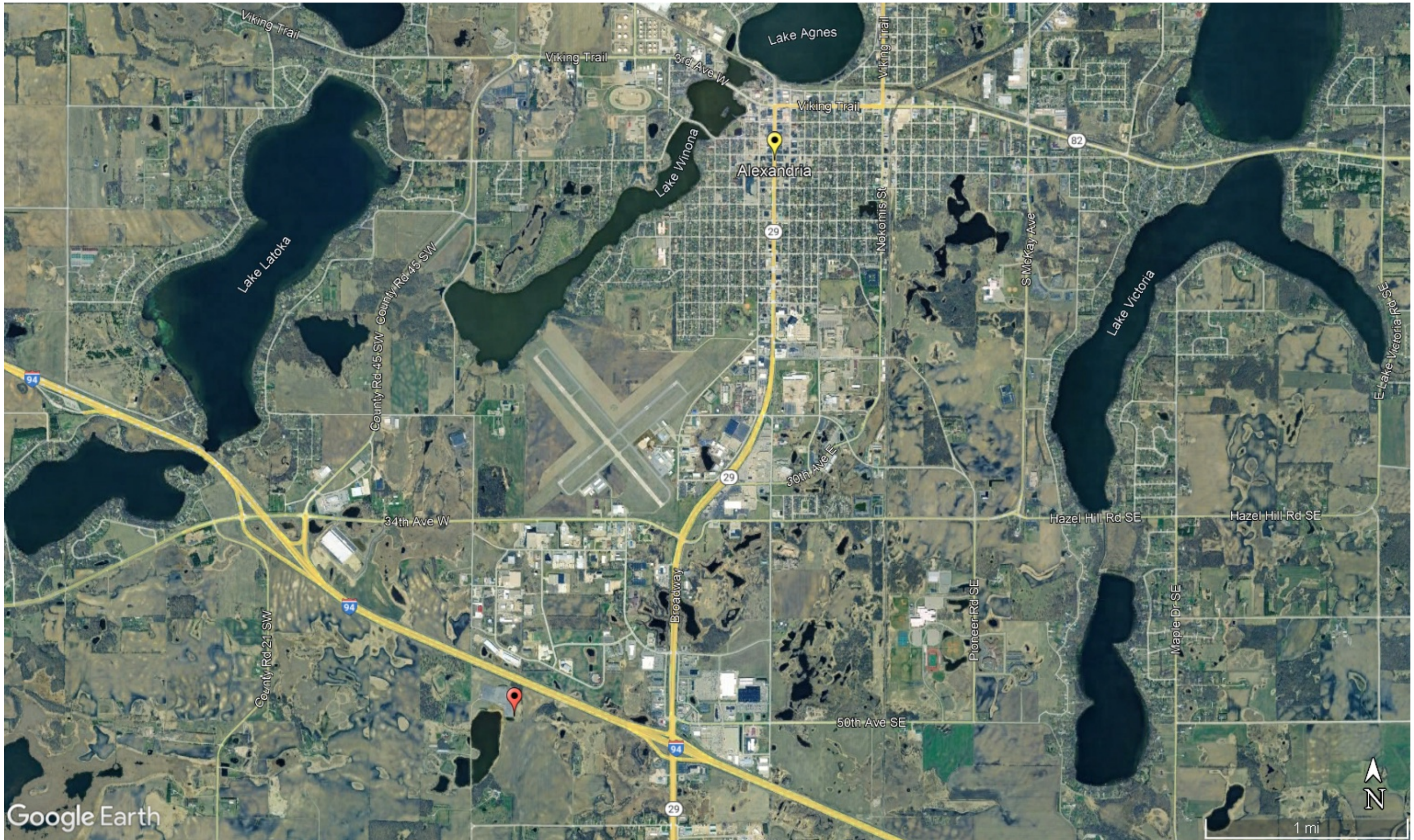
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be

[MVP-RD](#)

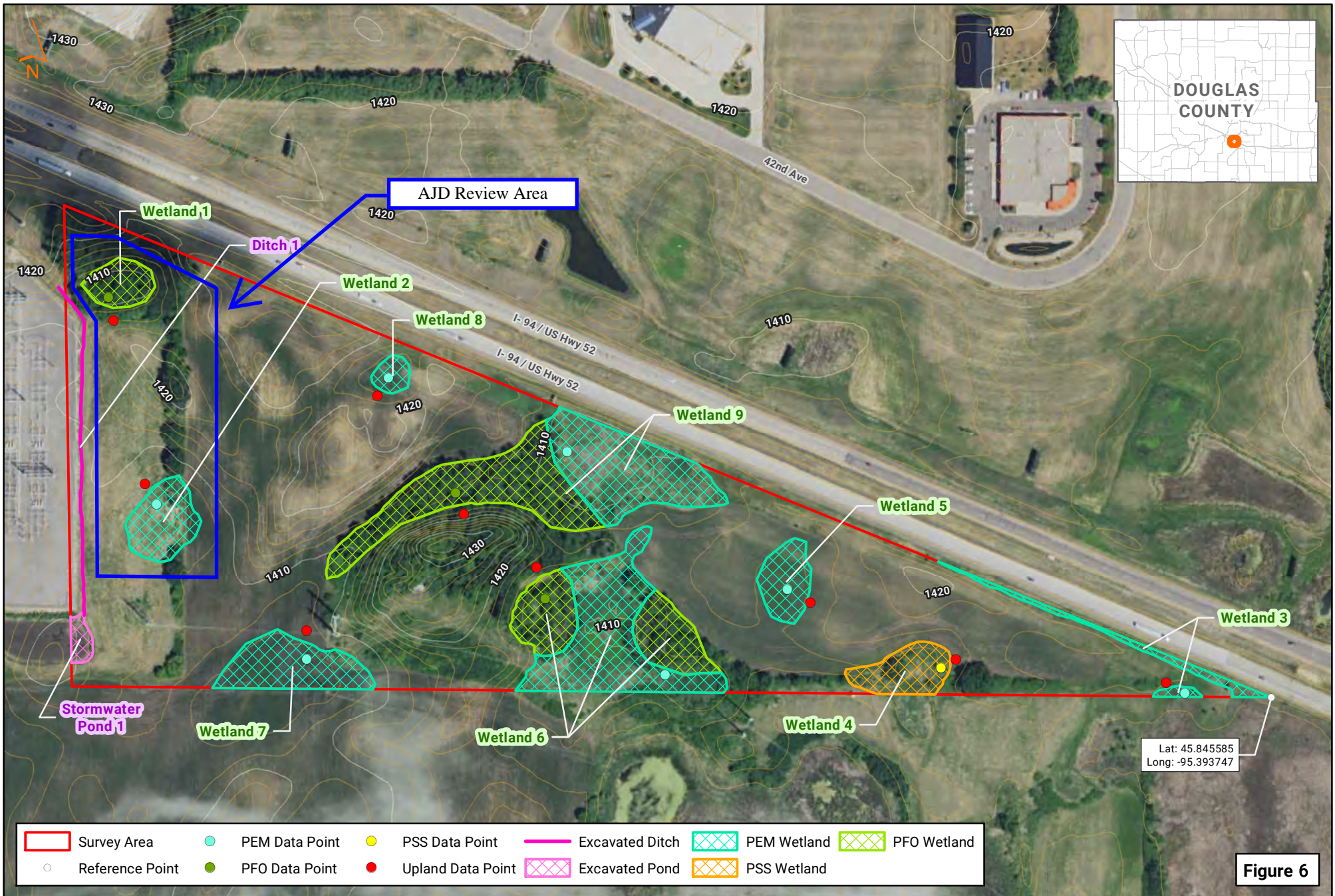
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2024-00584-PJH](#)

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.









Sources: USDA Farm Service Agency NAIP Imagery, 2021,  
MnGeo, MN Department of Natural Resources,  
US Census Bureau, Date: 10/15/2024

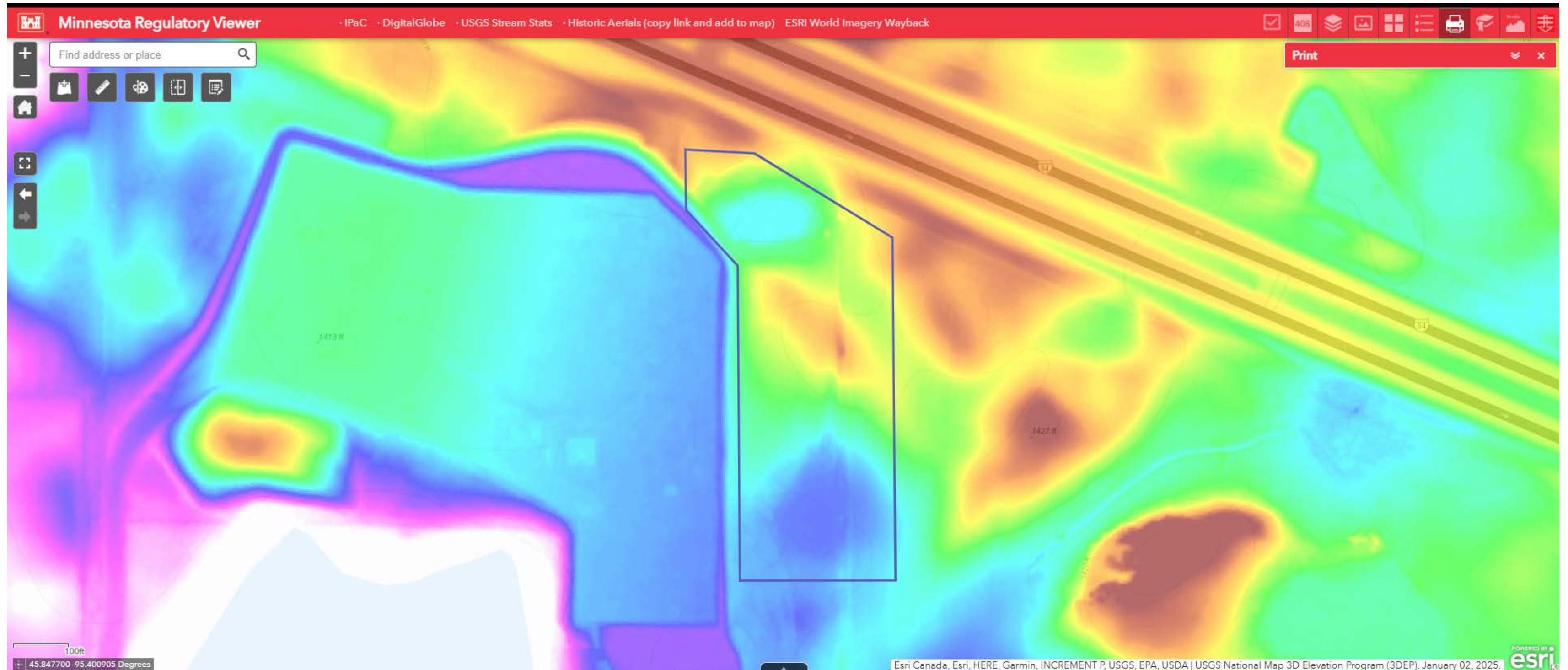
**Survey Results**  
**Alexandria Substation Expansion Project**  
**Great River Energy**  
**Douglas County, Minnesota**

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Feet



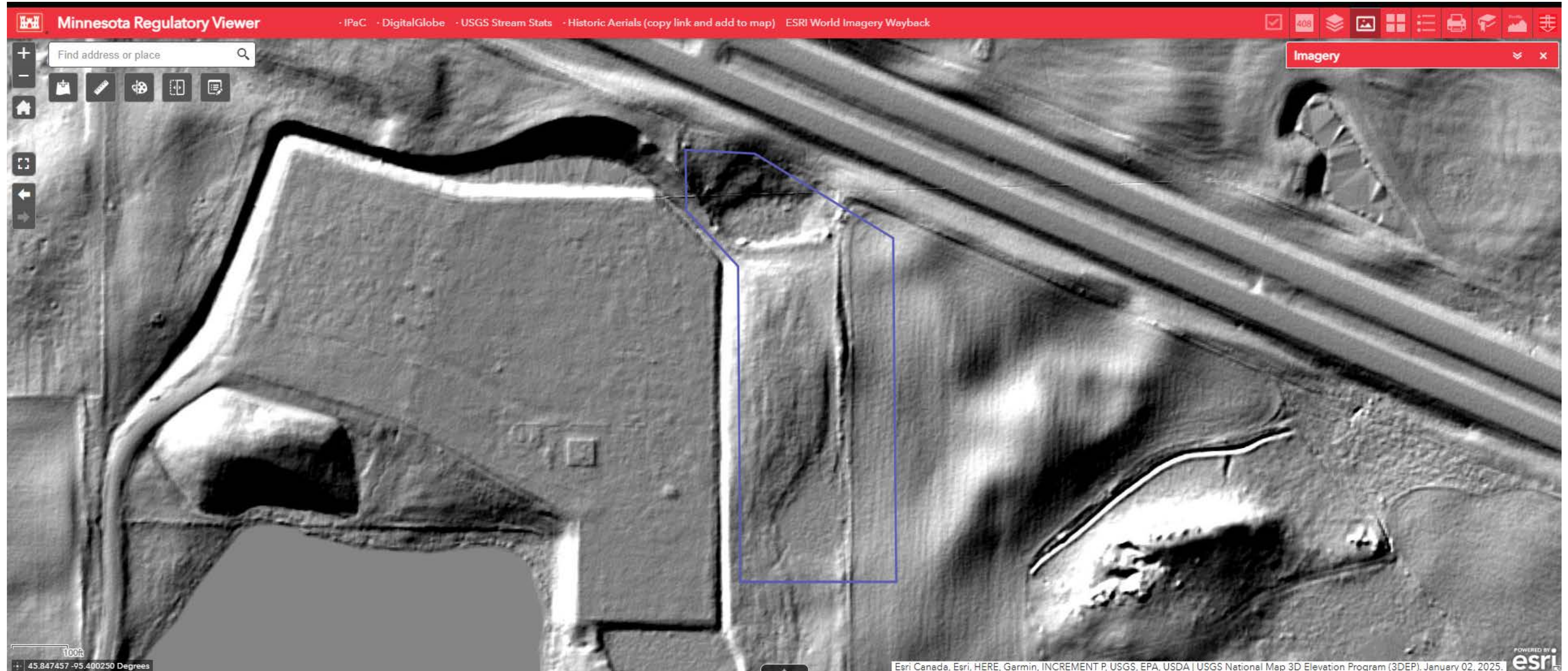


3 DEP Digital Elevation Model (DEM)





LiDAR: 3DEP Hillshade







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27 March 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-2024-00584-PJH MFR 2 of 2](#).

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>

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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.

1. SUMMARY OF CONCLUSIONS.

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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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2024-00584-PJH](#)

- 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. [Ditch 1 is an approximately 0.03-acre man-made ditch that is non-jurisdictional.](#)
  - ii. [Stormwater Pond 1 is an approximately 0.54-acre man-made stormwater feature that is non-jurisdictional.](#)

## 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)

## 3. REVIEW AREA.

[The subject aquatic resources are within an approximately 1.50-acre review area identified by the red polygon located on the figure labeled MVP-2024-00584-PJH \(MFR 2\) Page 2 of 6. The review area is located near Alexandria, Douglas County, Minnesota. Center coordinates are 45.846164°, -95.404196°. The review area is located in Section 36, Township 128 North, Range 38 West. No previous jurisdictional determinations have been completed in 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](#)



MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2024-00584-PJH](#)

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.

## 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>

Ditch 1 is an approximately 0.03-acre man-made ditch excavated wholly in uplands that does not carry a relatively permanent flow. Ditch 1 can be seen on the figure labeled MVP-2024-00584-PJH (MFR 2) Page 2 of 6. The man-made ditch was created for the purpose of conveying stormwater runoff and is non-jurisdictional. Ditch 1 appears to collect surface water runoff from the existing Alexandria Substation and transfer that water to Stormwater Pond 1 and an unnamed stormwater pond to the northwest (not being reviewed as part of this jurisdictional determination). The conveyance ditch is currently being used for the function for which the system was designed. Ditch 1 meets the definition of a (b)(3) exclusion since it is a man-made feature excavated in uplands; therefore, is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

Stormwater Pond 1 is an approximately 0.54-acre man-made excavated stormwater pond that can be seen on the figure labeled MVP-2024-00584-PJH (MFR 2)Page 2 of 6. The stormwater pond was created for the purpose of collecting and treating surface water and stormwater runoff. Stormwater Pond 1 collects water from the adjacent substation and Ditch 1. The stormwater pond is currently being used for the function for which the system was designed. Stormwater Pond 1 meets the definition of a (b)(1) exclusion; therefore, is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule. The regulations exclude waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act.

- 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).

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



MVP

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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.

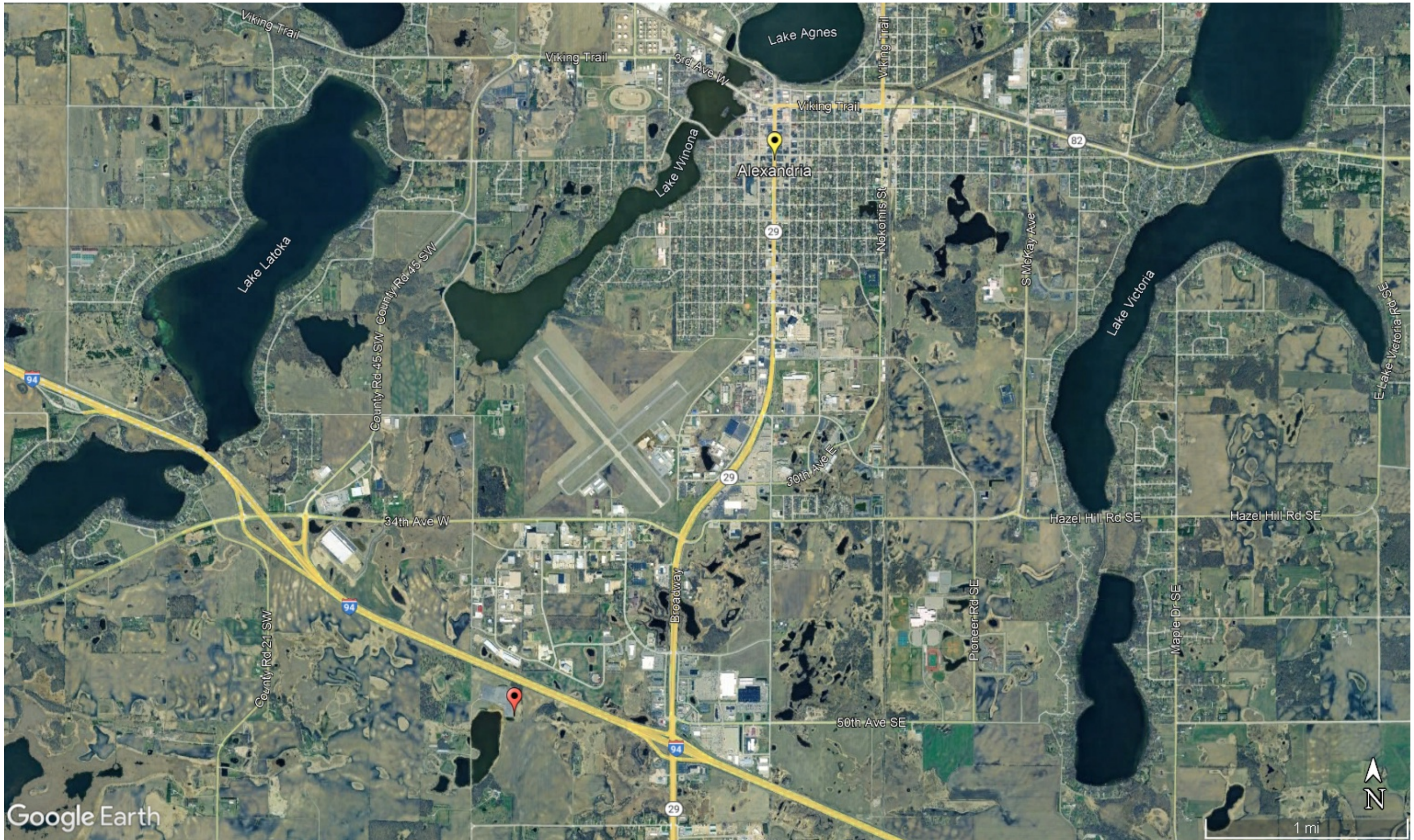
- a. [Multiple office evaluations were conducted February 11, 2025 – March 5, 2025](#)
- b. [Great River Energy Alexandria Substation Expansion Wetland Delineation Report dated October 2024](#)
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- d. [USFWS NWI of MN](#)
- e. [LiDAR: MNDNR Hillshade – 2016, 3DEP Hillshade](#)
- f. [3DEP Digital Elevation Model \(DEM\), 3DEP Slope, MN Contours – 2ft](#)

10. OTHER SUPPORTING INFORMATION.

[The applicant intends to permanently discharge fill material into Ditch 1 for the purpose of expanding the Alexandria Substation. Stormwater Pond 1 is expected to be excavated and expanded to accommodate runoff from the additional impervious surface caused by the expansion.](#)

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.

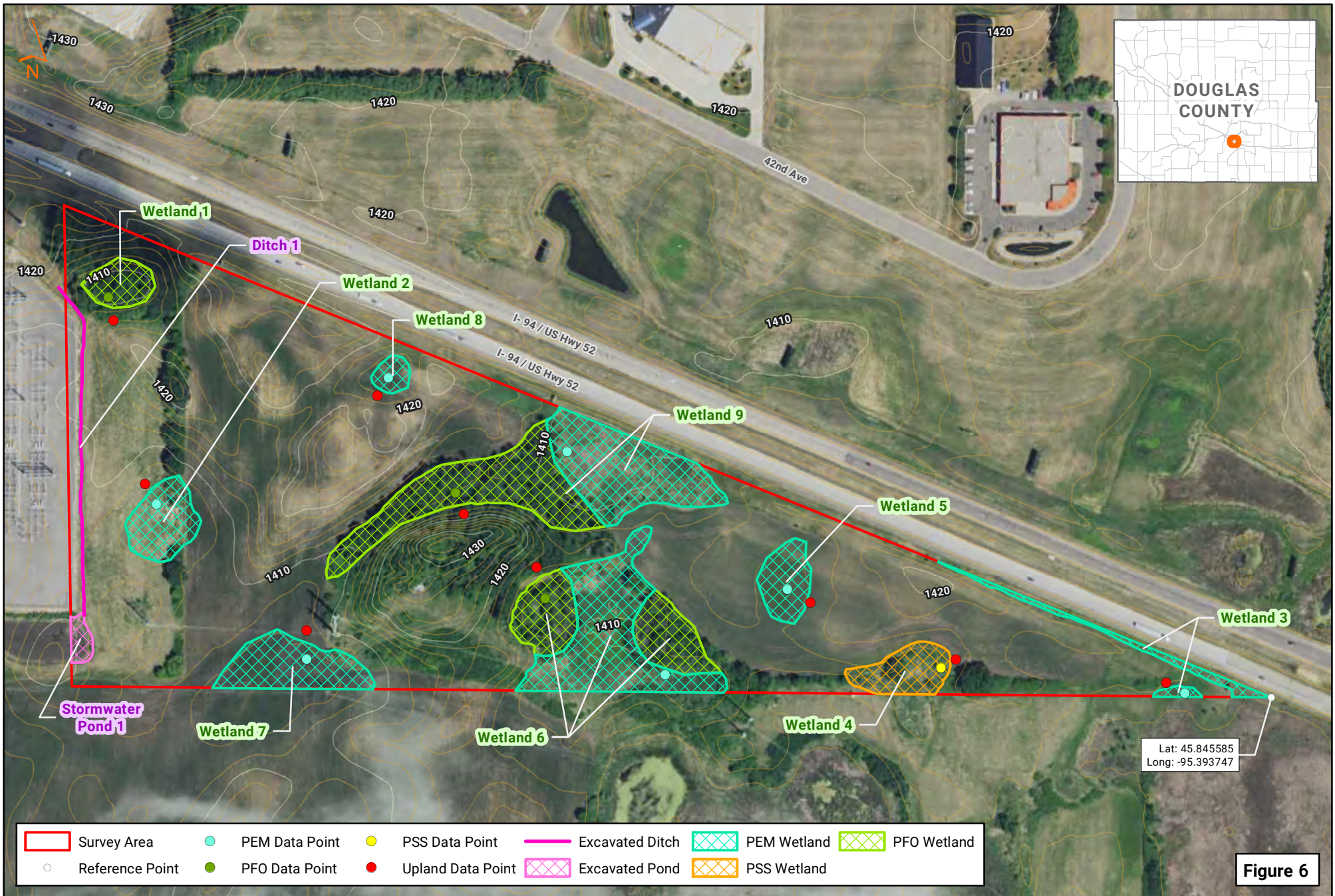












Sources: USDA Farm Service Agency NAIP Imagery, 2021,  
MnGeo, MN Department of Natural Resources,  
US Census Bureau, Date: 10/15/2024

**Survey Results**  
**Alexandria Substation Expansion Project**  
**Great River Energy**  
**Douglas County, Minnesota**



0 200 400  
Feet





Grassland east of existing Substation facing north



Excavated stormwater pond





Excavated stormwater pond



Excavated ditch on east side of the Substation, flowing south into the stormwater pond





Excavated ditch on east side of the Substation, facing north



Excavated ditch on east side of the Substation, facing west