

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01204-MWV

CEMVP-RD

August 1, 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-2024-01204-MWV.

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.

---

<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.

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01204-MWV

- 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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 2 (0.03 acre)	Non-Jurisdictional	Does not meet (a)(4)
Wetland 3 (0.03 acre)	Non-Jurisdictional	Does not meet (a)(4)
Wetland 4 (0.41 acre)	Non-Jurisdictional	Does not meet(a)(4)
Stream 3 (113 linear feet)	Non-Jurisdictional	(b)(8) exclusion

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 consists of Wetland 2, Wetland 3, Wetland 4, and Stream 3 as identified in Section 1 above and shown on the attached figures labeled MVP-2024-01204-MWV, Figures 1-8 of 8.

- a. Location Description: The project/review area is located in Section 11, 12, 14, 15, 22, 23, 27, and 28, Township 109 North, Range 15 West, Goodhue County, Minnesota.
- b. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.238870 Longitude: -92.581070
- c. Nearest City or Town: Pine Island
- d. County: Goodhue
- e. State: Minnesota

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01204-MWV

- f. Other associated Jurisdictional Determinations (including outcomes): N/A
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
  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

---

<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.

<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.

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01204-MWV

- 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).<sup>8</sup>

Stream 3 is a linear feature that flows to the north, beginning to the west of CSAH 11. The Corps evaluated this feature with desktop resources including Google Earth aerial imagery, Goodhue County aerial imagery, and the application materials. The Corps determined this feature is a swale that carries low volumes of water and has a short duration of flow. USGS StreamStats shows that this feature has a relatively small drainage area, of 0.29 square miles. Aerial and roadside imagery shows that the feature is typically dry without standing or moving water and contains low-lying vegetation, indicating the lack of bed, banks, or ordinary high water mark due to the limited duration of flow within the feature. As such, this feature has been determined to be excluded under Paragraph (b)(8) and not subject to Section 404 of the Clean Water Act (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).

---

<sup>8</sup> 88 FR 3004 (January 18, 2023)

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01204-MWV

Wetlands 2 and 3 extend beyond the corridor in which the applicant completed the wetland delineation. The Corps used desktop resources to review the areas delineated for this project along with the entire extent of the larger overall wetlands associated with Wetlands 2 and 3. The determination summarized below is based on the overall review of the larger wetland areas.

Wetlands 2 and 3 are located along Stream 3, which has been determined to be a (b)(8) excluded feature, and, as such, cannot serve as a continuous surface connection for these wetlands to a downstream RPW. Wetlands 2 and 3 do not have any other connection to a downstream RPW. Wetlands 2 and 3 are not traditionally navigable waters (TNW), territorial seas, or interstate waters and therefore are not (a)(1) waters. Topographic maps, LiDAR imagery, and Google Earth aerial imagery indicate that Wetlands 2 and 3 are depressional wetlands surrounded entirely by upland. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. These wetlands are non-tidal wetlands that do not abut a relatively permanent jurisdictional water and, as such, do not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

Wetland 4 is surrounded entirely by upland and is approximately 1900 feet from North Fork Zumbro River to the east. Topographic maps show that, while the Wetland 4 appears to drain to the east, this area does not have a continuous surface connection to the North Fork Zumbro River. LiDAR imagery, and Google Earth aerial imagery indicate that Wetland 4 is surrounded entirely by upland. This wetland does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. This wetland is a non-tidal wetland that does not abut 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, this wetland 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. Google Earth Imagery, Dated 2003, 2004, 2006, 2008, 2009, 2011, 2015, 2021, 2024. Accessed July 25, 2025.

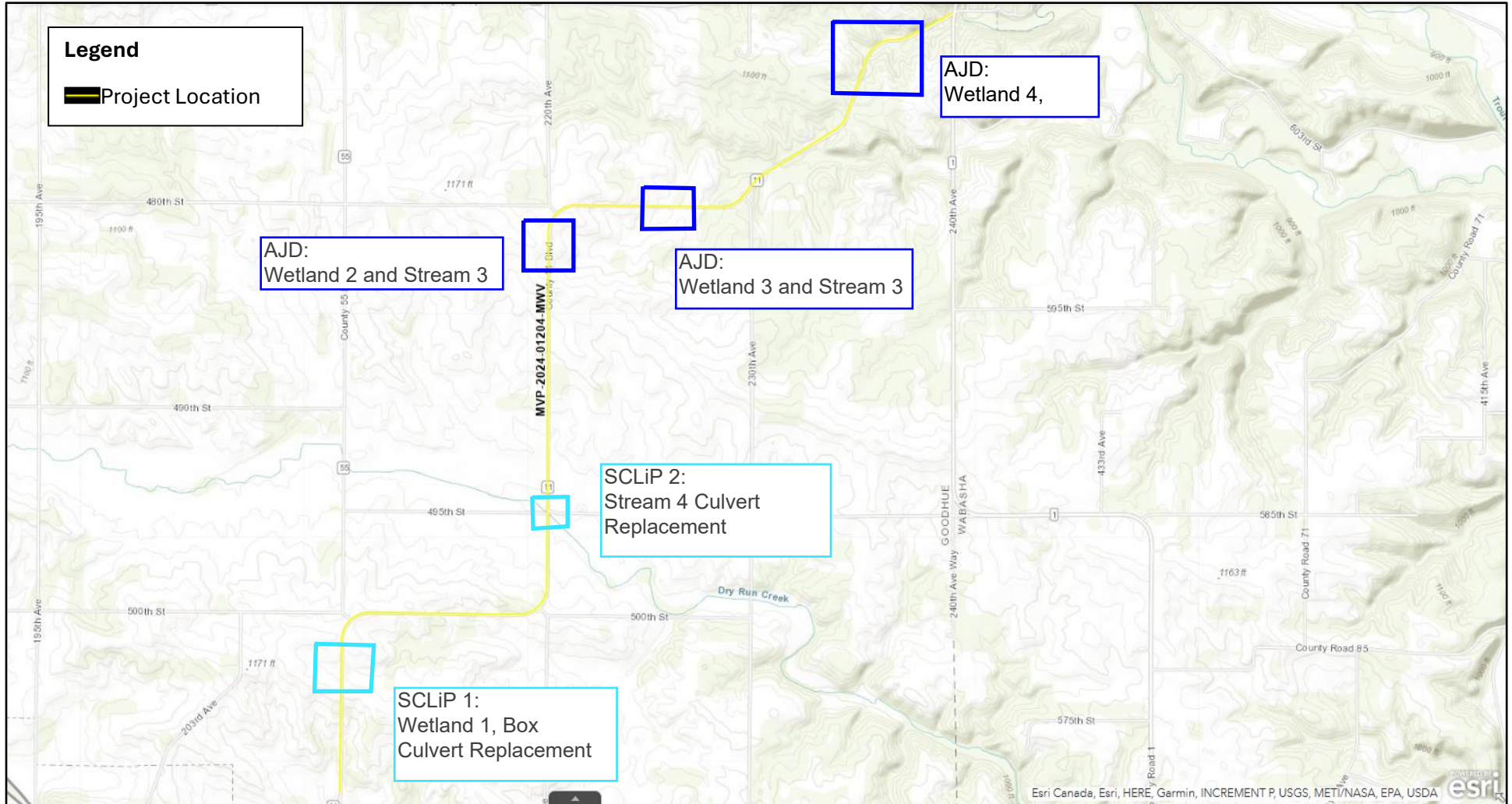
CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01204-MWV

- b. USGS StreamStats. Minnesota. Accessed Jun 16, 2025.
- c. Goodhue County GIS Imagery. DEM, Goodhue County Imagery. Accessed Jun 16, 2025.
- d. USGS 3DEP Elevation. Accessed Jun 16, 2025.
- e. USDA NRCS Soil Survey SSURGO and STATGO. Accessed Jun 16, 2025.
- f. USFWS National Wetland Inventory (MapServer). Accessed Jun 16, 2025.

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.



**RESOURCE IMPACT SUMMARY**  
Wetlands 2 / S.A.P. 025-611-031

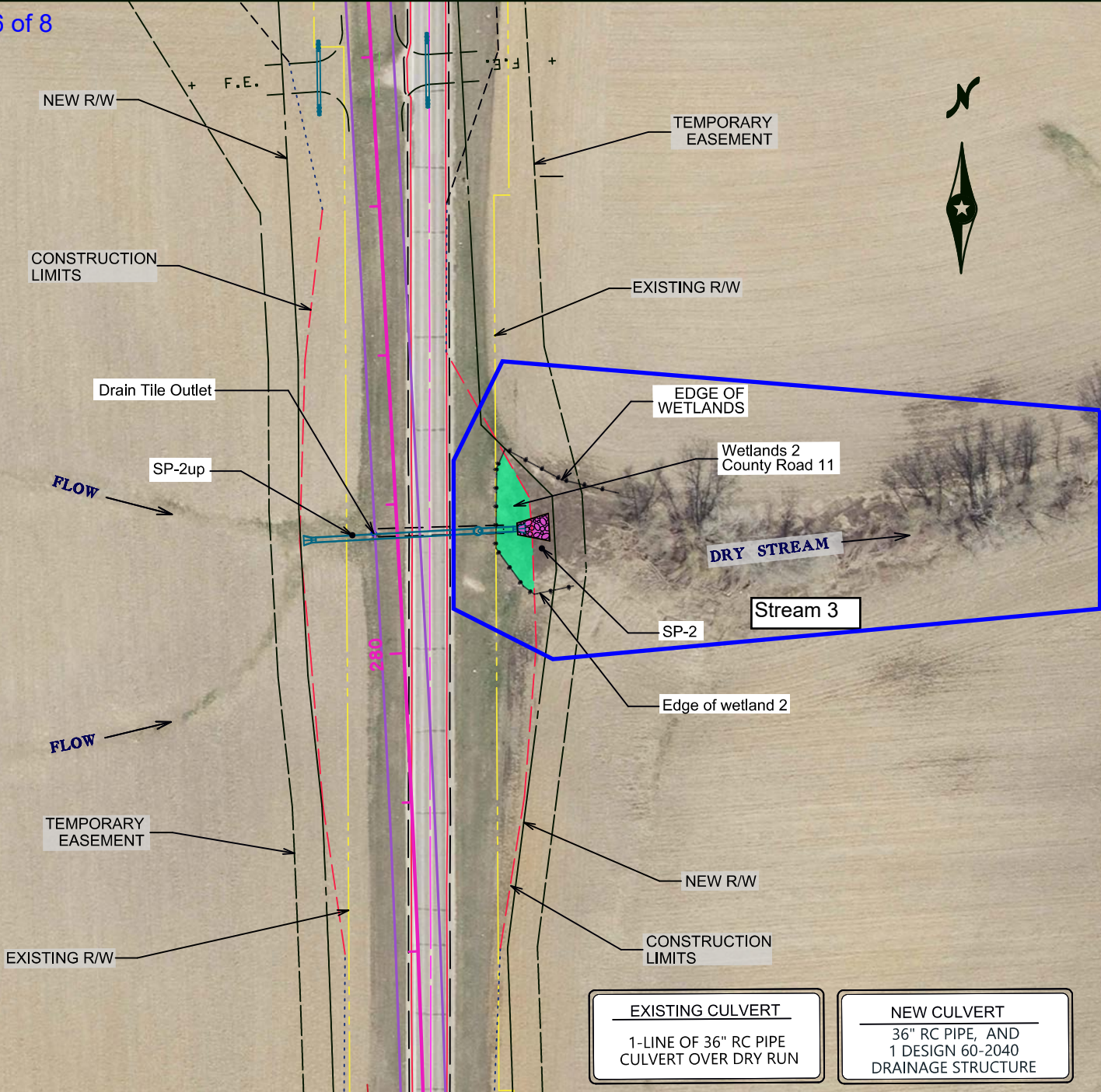
**WETLANDS IMPACTS**

- FILL
- RIP RAP (FILL)

**Wetlands 2 - OUTLET**

Fill 0.03 Acres (1500 Sq. Ft) - 167 Cu Yd  
Excavation 0.01 Acres (280 Sq. Ft.) - 21 Cu Yd

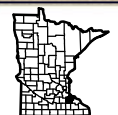
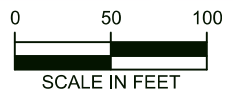
Wetland 2 and Stream 3 are part of AJD review



**EXISTING CULVERT**  
1-LINE OF 36" RC PIPE  
CULVERT OVER DRY RUN

**NEW CULVERT**  
36" RC PIPE, AND  
1 DESIGN 60-2040  
DRAINAGE STRUCTURE

PATH & FILENAME: P:\CO.ROADS\11CSAH\611-031 East Grading 2025\Aquatic Resource Impact maps.dgn MODEL 280+79 36in RC PIPE/REVISED: 12-DEC-2024 15:10





**GOODHUE COUNTY**  
DEPARTMENT  
OF PUBLIC WORKS

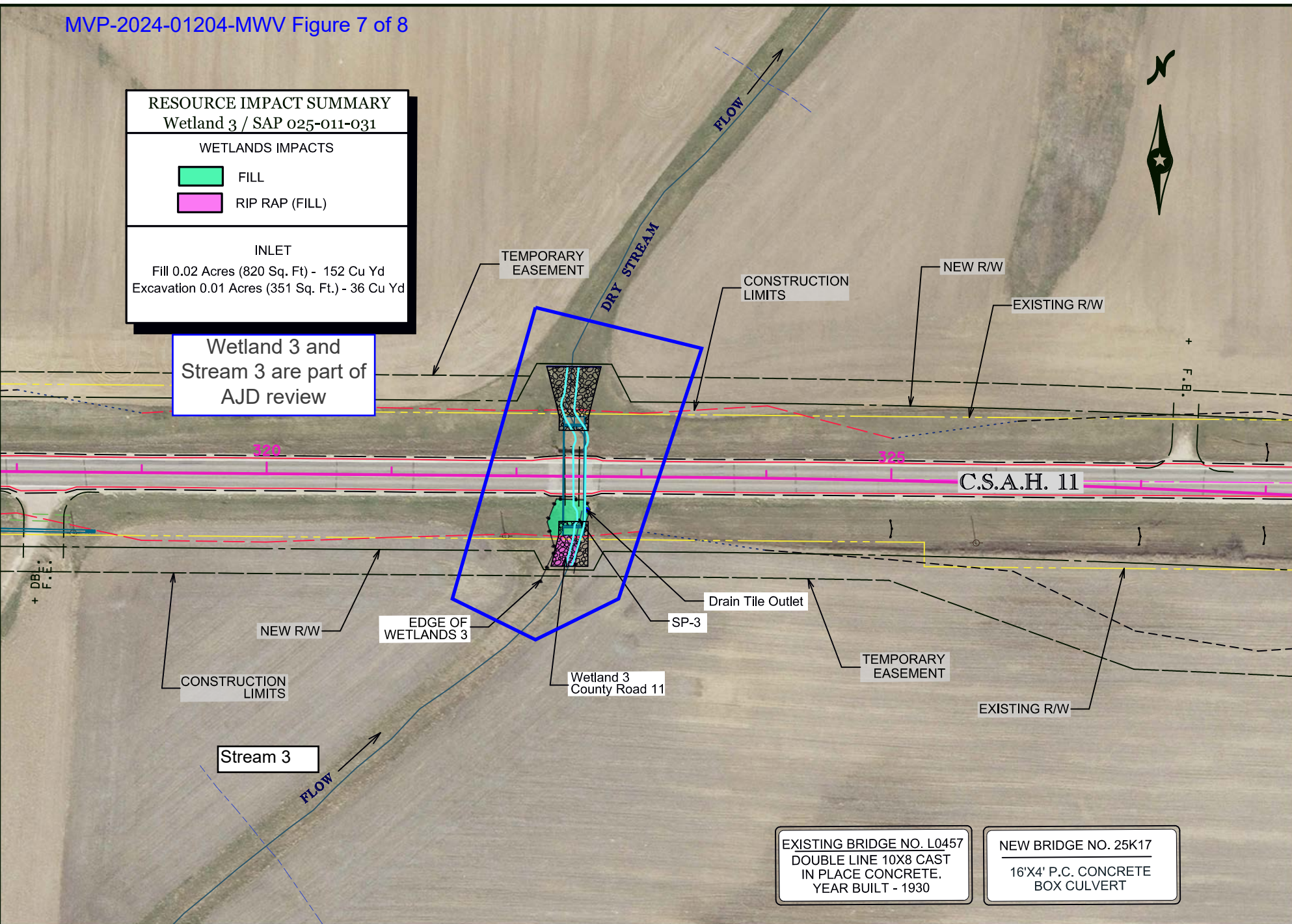


**Aquatic Resource Impact Summary Overview - Wetlands 2**

REPLACEMENT OF RC PIPE CULVERT STA. 280+79, S.A.P. 025-611-031  
Goodhue County, Pine Island Township, MN (Sec. 14 & 15, T. 109, R. 15)

RESOURCE IMPACT SUMMARY	
Wetland 3 / SAP 025-011-031	
WETLANDS IMPACTS	
	FILL
	RIP RAP (FILL)
INLET	
Fill 0.02 Acres (820 Sq. Ft.) - 152 Cu Yd	
Excavation 0.01 Acres (351 Sq. Ft.) - 36 Cu Yd	

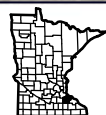
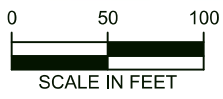
Wetland 3 and Stream 3 are part of AJD review



EXISTING BRIDGE NO. L0457  
DOUBLE LINE 10X8 CAST  
IN PLACE CONCRETE.  
YEAR BUILT - 1930

NEW BRIDGE NO. 25K17  
16'X4' P.C. CONCRETE  
BOX CULVERT

PATH & FILENAME: P:\CO.ROADS\11CSAH\611-031 East Grading 2025\Aquatic Resource Impact maps.dgn MODEL 10457 16 x4 6/8/24 REVISED: 12-DEC-2024 15:10



GOODHUE COUNTY  
DEPARTMENT  
OF PUBLIC WORKS



Aquatic Resource Impact Summary Overview - Wetlands 3

REPLACEMENT OF EXISTING BRIDGE L0457 S.A.P. 025-611-031  
Goodhue County, Pine Island Township, MN (Sec. 14, T. 109, R. 15)

RESOURCE IMPACT SUMMARY

Wetland 4 / SAP 025-011-031

WETLANDS IMPACTS

- FILL
- RIP RAP (FILL)

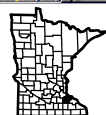
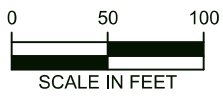
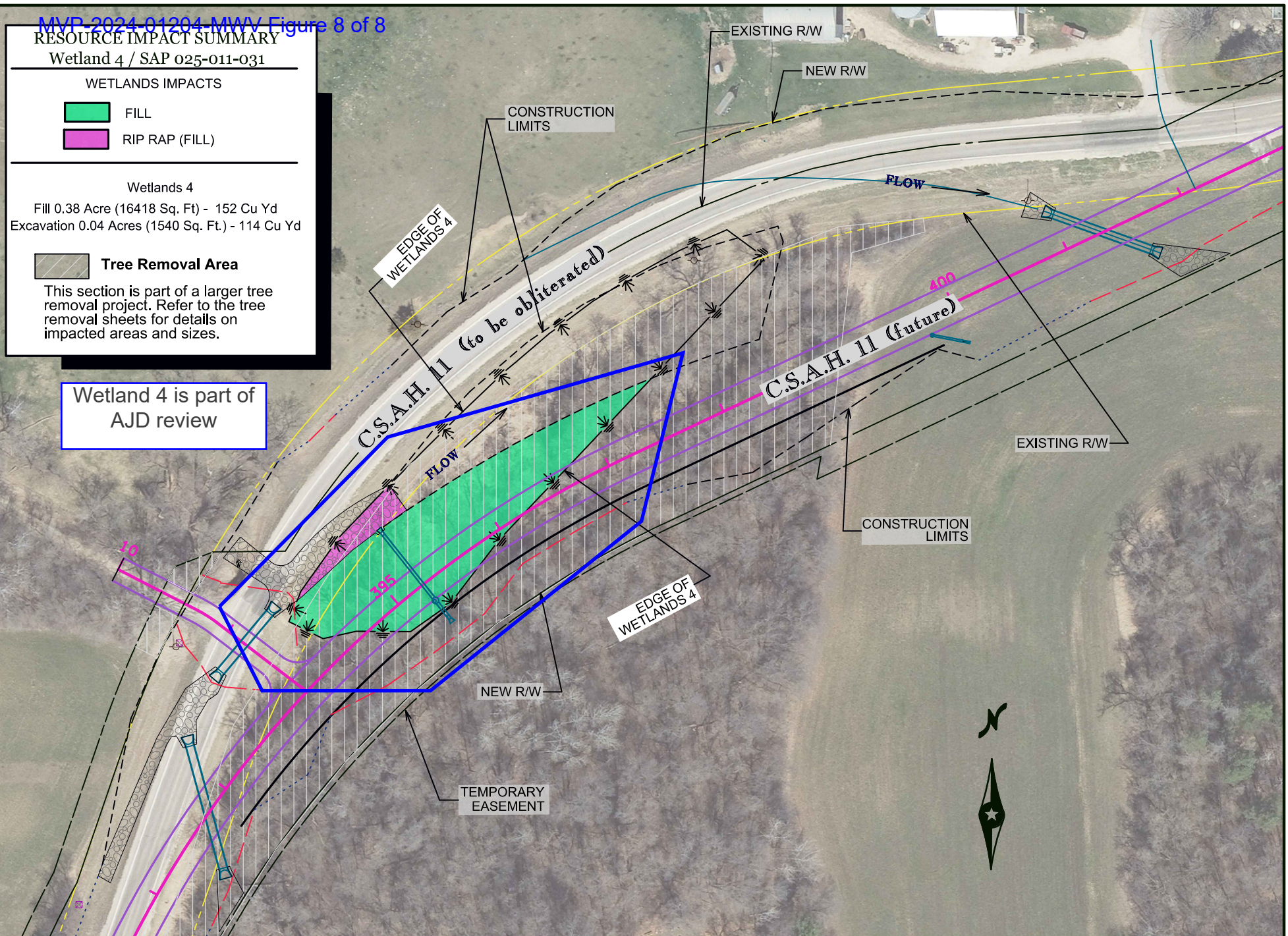
Wetlands 4

Fill 0.38 Acre (16418 Sq. Ft.) - 152 Cu Yd  
Excavation 0.04 Acres (1540 Sq. Ft.) - 114 Cu Yd

Tree Removal Area

This section is part of a larger tree removal project. Refer to the tree removal sheets for details on impacted areas and sizes.

Wetland 4 is part of  
AJD review



GOODHUE COUNTY  
DEPARTMENT  
OF PUBLIC WORKS



Aquatic Resource Impact Summary Overview - Wetlands 4  
REGRAIDING AND REALIGNMENT OF GOODHUE CSAH 11 S.A.P. 025-611-031  
Goodhue County, Pine Island Township, MN (Sec. 12, T. 109, R. 15)