



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

MVP

January 3, 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) ,¹ MVP-2024-01220-TJH MFR 1 of 1²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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).
 - a. Wet Ditch SP-1, 0.01 acre, non-jurisdictional
 - b. Wet Ditch SP-3, 0.12 acre, 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. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area for this determination includes two roadside ditches labeled as Wet Ditch SP-1 and Wet Ditch SP-3 on the attached figures labeled 2024-01220-TJH Figure 1 of 2 through 2 of 2. The review area is located at the County State Aid Highway (CSAH) 25 crossing over Perch Creek in Section 5, Township 105N, Range 29W, Blue Earth County, Minnesota. The approximate center coordinates of the site (in decimal degrees) are Latitude: 43.934905, Longitude: -94.339342. There are no other JDs associated with this review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A.

⁶ 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.

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6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

⁷ 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.

⁸ 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).⁹

Wet Ditch SP-1 and Wet Ditch SP-3 are roadside ditches constructed in upland within the CSAH 25 right of way based on review of the wetland delineation report and desktop resources including US Geological Service 3DEP Hillshade and DEM maps; MNDNR 2-foot contour maps; MNDNR NWI Wetland Finder/NWI maps; NHD data; NRCS hydric soil data; and aerial imagery from Google Earth Pro. Recent aerial photos do not show relatively permanent flow in the assessed ditches. Based on the wetland delineation and desktop resources reviewed, these aquatic resources were excavated wholly in and draining only uplands and do not carry a relatively permanent flow and, according to exclusion (b)(3) of the 2023 Rule, as amended, are not waters of the United States.

- 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. Aquatic EcoSolutions, Inc. Wetland Delineation Report, dated February 28th, 2024.
- b. Desktop evaluation conducted December 9 and 11, 2024.
- c. USGS LiDAR, 3DEP Elevation Model, USGS TNM – National Hydrography Dataset, USFWS NWI Maps, and USDA/NRCS Soil Survey Maps.

10. OTHER SUPPORTING INFORMATION. N/A

⁹ 88 FR 3004 (January 18, 2023)

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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.

MINNESOTA DEPARTMENT OF TRANSPORTATION BLUE EARTH COUNTY

MINN. PROJ. NO.

GOVERNING SPECIFICATIONS
THE 2020 EDITION OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION" SHALL GOVERN.

LIST OF SHEETS

NO.	TITLE
1	TITLE SHEET
2	GENERAL PLAN & ELEVATION
3	BRIDGE TYPICAL SECTION & QUANTITIES
4	BRIDGE LAYOUT
5-6	ABUTMENT
7	FRAMING PLAN
8	PRESTRESSED CONCRETE BEAM
9	PRESTR. CONCRETE BEAM DIAPHRAGM CONN. DETAILS
10-11	SUPERSTRUCTURE
12-13	END DIAPHRAGM
14	CONCRETE BARRIER 36" (TYPE S, TL-4)
15	MISC. CONCRETE BARRIER AND PARAPET DETAILS
16-20	MISC. BRIDGE DETAILS
21	TURF MAT DETAILS AT WINGWALLS
22	BRIDGE SURVEY
23	BRIDGE SURVEY ~ PLAN & PROFILE
24-25	ROADWAY TYPICAL SECTION & QUANTITIES
26	ROADWAY PLAN & PROFILE
27-33	EROSION CONTROL PLAN
34	TRAFFIC CONTROL
35-37	ROADWAY CROSS SECTIONS

CONSTRUCTION PLANS FOR BRIDGE NO. 07608 AND APPROACH GRADING

LOCATED 0.5 MILES EAST OF JCT. C.R. 136 ON C.S.A.H. 25
OVER PERCH CREEK, 1.2 MILES EAST OF PLEASANT MOUND, MN.
(Geographical Description)

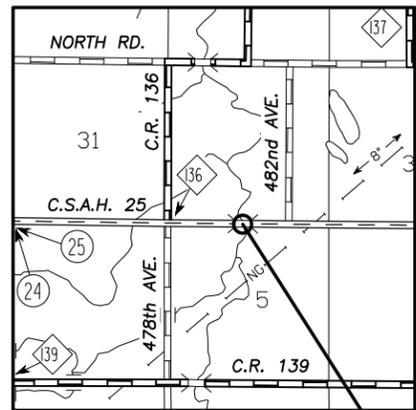
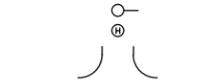
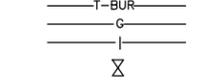
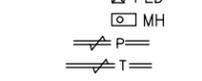
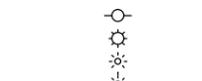
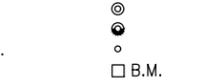
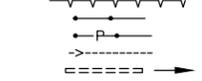
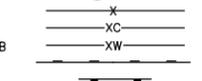
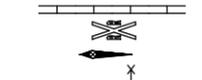
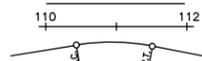
SEC. 5 TWP. 105 N R 29 W (Legal Description)

STATE AID PROJ. NO. 007-625-007

GROSS LENGTH	1000.00 FEET	0.189 MILES
BRIDGES-LENGTH	74.92 FEET	0.014 MILES
EXCEPTIONS-LENGTH	0.00 FEET	0.000 MILES
NET. LENGTH	1000.00 FEET	0.189 MILES

PLAN SYMBOLS

COUNTY LINE	---
TOWNSHIP OR RANGE LINE	----
SECTION LINE	-----
QUARTER LINE	-----
SIXTEENTH LINE	-----
EXISTING R/W	-----
NEW R/W	-----
TEMP EASE	-----
RAILROAD R/W	-----
UNSURFACED RD. OR SHLD.	-----
EDGE OF LAKE	-----
SWAMP BOUNDARY	-----
MISCELLANEOUS BOUNDARY	-----
CORPORATE OR CITY LIMITS	-----
VACATED PLATTED PROPERTY	-----
RECREATIONAL TRAIL	-----
ALIGNMENT STATIONS	-----
ALIGNMENT POINTS	-----
RIVER OR CREEK	-----
DRAINAGE DITCH	-----
BRIDGE	-----
RAILROAD (SINGLE TRACK)	-----
RR CROSSING PAVEMENT MARKING	-----
RR CROSSING GATE	-----
RR CROSSBUCK SIGN	-----
RR CROSSBUCK SIGN W/LIGHTS	-----
BARBED WIRE FENCE	-----
CHAIN LINK FENCE	-----
WOVEN WIRE, COMBINATION WOVEN AND BARB	-----
WOOD FENCE	-----
BILLBOARD	-----
RETAINING WALL	-----
GUARDRAIL (CABLE)	-----
GUARDRAIL (PLATE BEAM)	-----
DRAIN TILE	-----
CULVERT	-----
CULVERT WITH APRONS	-----
WOODS OR BRUSH, NURSERY	-----
DECIDUOUS TREES	-----
CONIFER (EVERGREEN) TREES	-----
HEDGE	-----
BUSH OR SHRUB	-----
STUMP	-----
SWAMP OR MARSH	-----
MONUMENT (CI,ACT,ACP,BCP,...)	-----
CONCRETE OR STONE MONUMENT	-----
IRON PIPE	-----
IRON PIN OR REBAR	-----
IRON PIN WITH BRASS DISK	-----
NAIL, PK NAIL, SPIKE, SFP, T-BAR, ...	-----
VERTICAL CONTROL	-----
HORIZONTAL CONTROL	-----
POWER POLE	-----
LIGHT POLE	-----
LIGHT AND TELEPHONE POLE	-----
LIGHT, TELEPHONE AND POWER POLE	-----
GUY POLE	-----
POLE ANCHOR	-----
TELEPHONE POLE	-----
TELEPHONE AND POWER POLE	-----
UNDERGROUND CABLE PEDESTAL	-----
TELEPHONE MANHOLE (VAULT)	-----
TELEPHONE CABLE IN CONDUIT	-----
TELEPHONE CABLE IN CONDUIT	-----
BURIED ELECTRIC CABLE	-----
BURIED TELEPHONE CABLE	-----
GAS LINE	-----
WATER LINE	-----
VALVE	-----
FIRE HYDRANT	-----
WATER MANHOLE	-----
WELL	-----
LAWN SPRINKLER HEAD	-----
MANHOLE	-----
CATCH BASIN	-----
SEPTIC TANK	-----
FORCE MAIN LIFT STA.	-----
SEWER LINE	-----
PERMANENT BARRICADE	-----
TRAFFIC SIGNAL LIGHT	-----
HAND HOLE	-----
ENTRANCE	-----
BUILDING	-----
SATELLITE DISH	-----
STEEL TOWER	-----
FLAG POLE	-----



PROP. BRIDGE NO. 07608
S.A.P. 007-625-007
BEG. PROJ. STA. 15+00.00
END PROJ. STA. 25+00.00
EXIST. BRIDGE NO. 90529
CONC BOX CULV
STRUCTURE LENGTH: 34.0'
ROADWAY WIDTH: 26.0'
YEAR BUILT: 1940

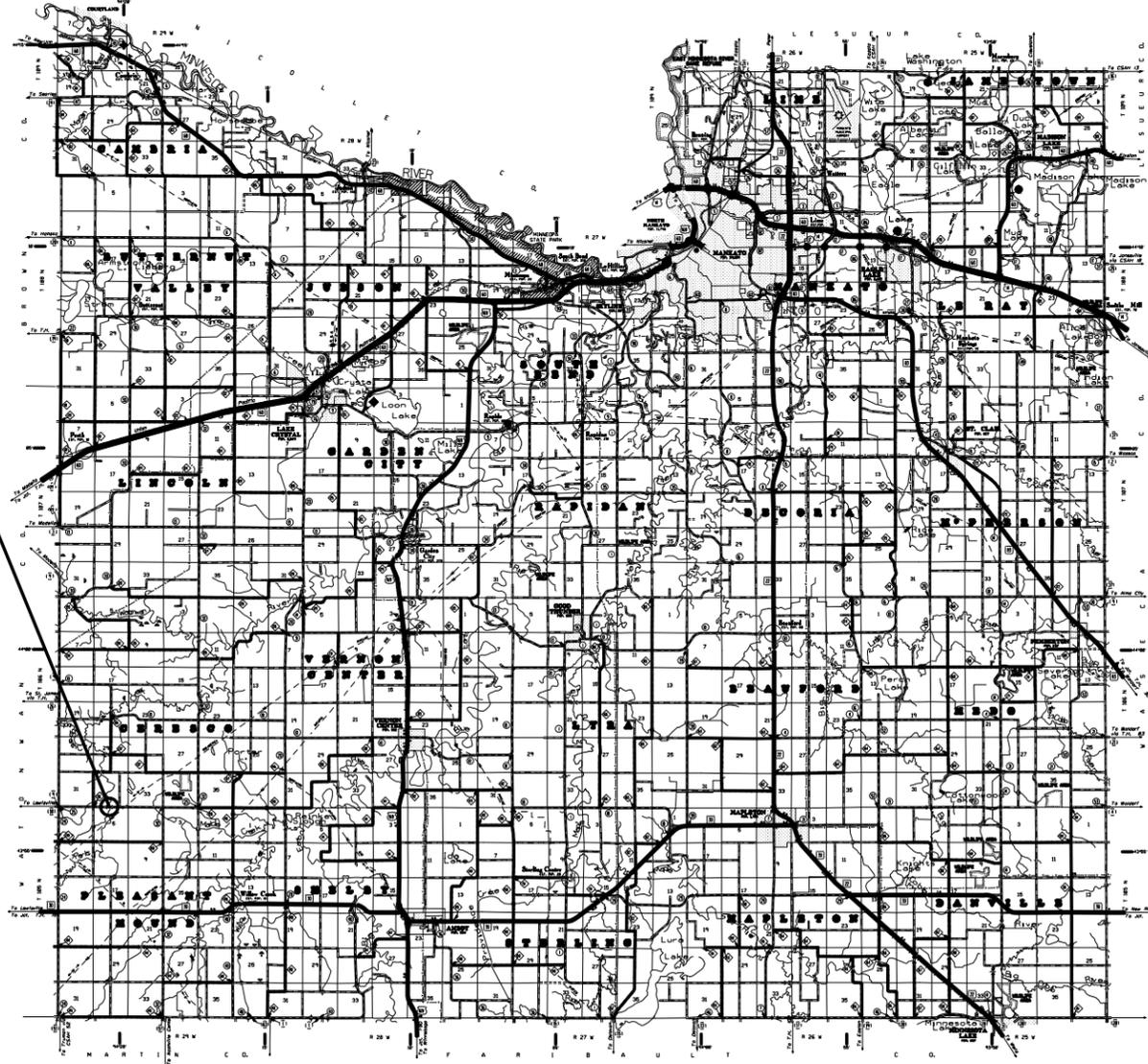
PROJECT LOCATION
Outline Map of Minnesota showing location of the County within the State.



BLUE EARTH COUNTY

TRAFFIC CONTROL NOTE
ALL TRAFFIC CONTROL DEVICES SHALL CONFORM TO THE LATEST MMUTCD, INCLUDING THE LATEST FIELD MANUAL FOR TEMPORARY TRAFFIC CONTROL ZONE LAYOUTS.

SUBSURFACE UTILITY NOTE
THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY QUALITY LEVEL D. THIS UTILITY QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF CI/ASCE 38-22, ENTITLED "STANDARD GUIDELINE FOR INVESTIGATING AND DOCUMENTING EXISTING UTILITIES".



SCALE: 0 5 MI.

DESIGN DESIGNATION FOR:

FUNCTIONAL CLASSIFICATION	C.S.A.H. 25
RURAL/MINOR COLLECTOR	
NO. OF TRAFFIC LANES	2
NO. OF PARKING LANES	
DRIVING LANE WIDTH	12'
SHOULDER WIDTH	4'
ADT (CURRENT YEAR) 2024	305
ADT (PROJECTED YEAR) 2044	305
PAVEMENT DESIGN	10 TON
ESALS (20)	150,000
R=VALUE	10
SOIL FACTOR	
DESIGN SPEED	55 MPH
BASED ON SIGHT DISTANCE	495'
HEIGHT OF EYE / HEIGHT OF OBJECT	3.5' / 2.0'
DESIGN SPEED NOT ACHIEVED AT:	

JULIE R. JENSEN

DESIGN ENGINEER: I HEREBY CERTIFY THAT THIS PLAN (SHEETS 1-23) WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

DATE _____ LICENSE NUMBER 52271

APPROVED: COUNTY ENGINEER _____ DATE _____

DISTRICT STATE AID ENGINEER: REVIEWED FOR COMPLIANCE WITH STATE AID RULES/POLICY _____ DATE _____

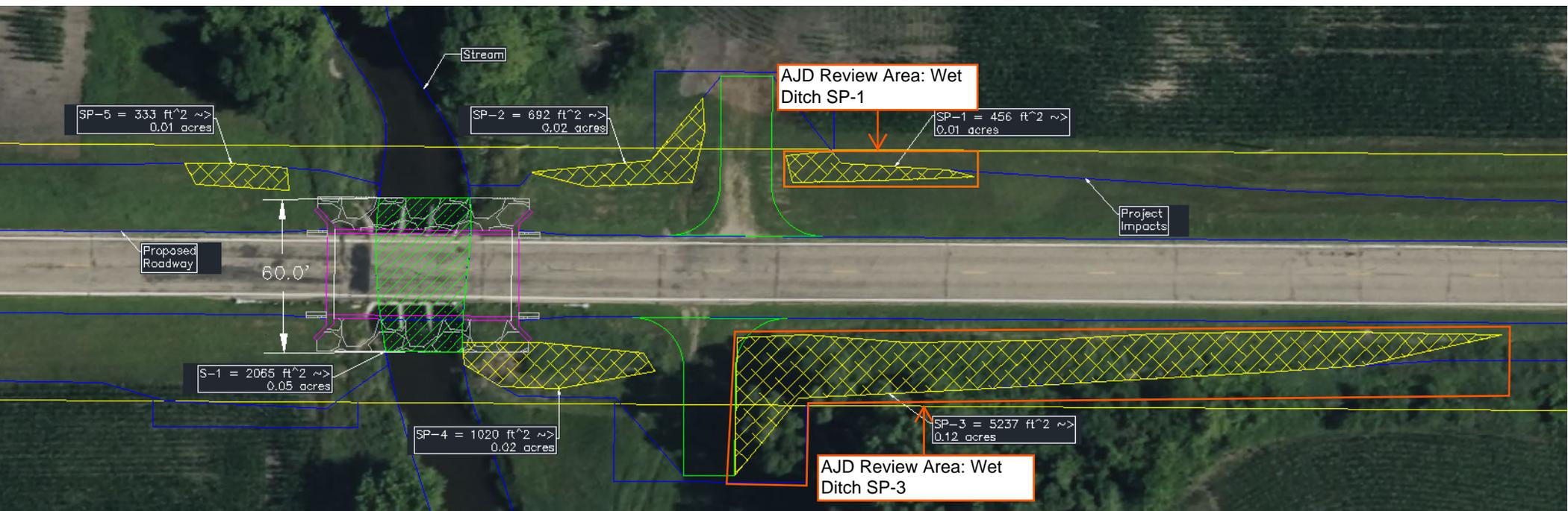
STATE AID ENGINEER: APPROVED FOR STATE AID FUNDING _____ DATE _____

REV.	DATE	DESCRIPTION	BY

ERICKSON ENGINEERING
WWW.ERICKSONENGINEERING.COM
952-929-6791

STATE AID PROJECT NO. 007-625-007
SHEET NO. 1 OF 37 SHEETS

BRIDGE NO. 07608



NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Ryan Thilges, Blue Earth County Highway Department	File Number: MVP-2024-01220-TJH	Date: 1/3/2025
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL WITHOUT PREJUDICE	C
<input type="checkbox"/>	PERMIT DENIAL WITH PREJUDICE	D
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	E
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	F

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

District Engineer, St. Paul Regulatory Division
Attn: Tom Hayek
St. Paul District U.S. Army Corps of Engineers
332 Minnesota Street
St. Paul, MN 55408

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Brian Oberlies
Regulatory Administrative Appeal Review Officer
U.S. Army Corps of Engineers
Mississippi Valley
180th Fifth Street E Suite 700
St. Paul, Minnesota 55101-1678

Phone: 601-634-5820
Email: brian.m.oberlies@usace.army.mil

SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

<hr/> <p>Signature of appellant or agent.</p>	Date:
Email address of appellant and/or agent:	Telephone number: