



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

MVP

April 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) ,¹ MVP-2025-00041-RLG MFR 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.

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00041-RLG

- 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 8, Non-Jurisdictional
 - ii. Wetland 5, Non-Jurisdictional
 - iii. Wetland WB-02, Non-Jurisdictional
 - iv. Wetland WB-03, 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)
- d. January 2023 Rule preamble at 88 FR 3090

3. REVIEW AREA.

- a. Project Are Size (in acres): review area that is solely the extent of two wetlands labeled Wetland 8, Wetland 5, Wetland WB-02 and Wetland WB-03 excludes all other aquatic resources on-site. The larger parcel area that the review area is within is approximately 4.52 acre.
- b. Location Description: The project/review area is located in Section 20, Township 28, Range 22, Dakota County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.8993756 Longitude: -93.0775132
- d. Nearest City or Town: City of West Saint Paul
- e. County: Dakota
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes): No other AJDs done onsite.

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

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00041-RLG

N/a

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

N/a

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):

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00041-RLG

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).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).

The areas labeled as Wetland 8, Wetland 5, Wetland WB-02 and Wetland WB-03 were evaluated as a potential (a)(4) waters, but they do not have a continuous surface connection to a jurisdictional water. These wetlands do not physically abut an (a)(1) water, (a)(2) impoundment, or (a)(3) tributary. Wetland 8, Wetland 5, Wetland WB-02 and Wetland WB-03 all do not have a continuous surface connection to any relatively permanent water and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) wetland; therefore, this aquatic resource is not jurisdictional under the 2023 Revised definition of ‘Waters of the United States’; Conforming” 88 FR

⁷ 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00041-RLG

61964 Final Rule. The closest surface water feature is the Mississippi River to the northeast of the project site by 1.74 miles away.

Wetland WB-01 extends offsite to the east but does not connect to any of the waters being evaluated. Wetland 8, Wetland 5, Wetland WB-02 and Wetland WB-03 do not connect to Wetland WB-01 via relatively permanent water or surface water. No surface water drainage feature was identified on Hillshade, topographic or hydrologic mapping between Wetland 8, Wetland 5, Wetland WB-02 and Wetland WB-03 to each other or any other waters on or off site. The National Wetland Inventory and the National Hydrography Dataset does show Wetland WB-01 but not Wetland 8, Wetland 5, Wetland WB-02 and Wetland WB-03.

The waterbodies do not support a link to interstate or foreign commerce. The wetlands are not known to be used by interstate or foreign travelers for recreation or other purposes; do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and are not known to be used for industrial purposes by industries in interstate commerce. The waterbodies were determined to not be jurisdictional under the CWA because the wetlands lacked links to interstate commerce sufficient to serve as a basis for jurisdiction.

Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 rule preamble discussed the *Rapanos* plurality standard, the implementation guidance and tools in the 2023 rule preamble that address the regulatory text that was not amended by the conforming rule, including the preamble relevant to the *Rapanos* plurality standard incorporated in paragraphs (a)(3), (4), and (5) of the 2023 rule, as amended, generally remain relevant to implementing the 2023 rule, as amended.

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. Incidental Determination and Approved Jurisdictional Determination Request West St. Paul - Greco Housing Project, City of West St. Paul, Dakota County Dated November 26, 2024
 - b. MNDNR Hillshade - 2016 accessed March 26, 2025
 - c. MN 2ft – contours accessed March 26, 2025
 - d. 3DEP Digital Elevation Model- DEM accessed March 26, 2025
 - e. USDA NRCS Soil Survey USDA-NCSS SSURGO and STATGO
 - f. National Regulatory Viewer 2021- accessed March 26, 2025
 - g. U. S. Fish and Wildlife Service. Publication date (found in metadata). National Wetlands Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. <http://www.fws.gov/wetlands/>.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00041-RLG

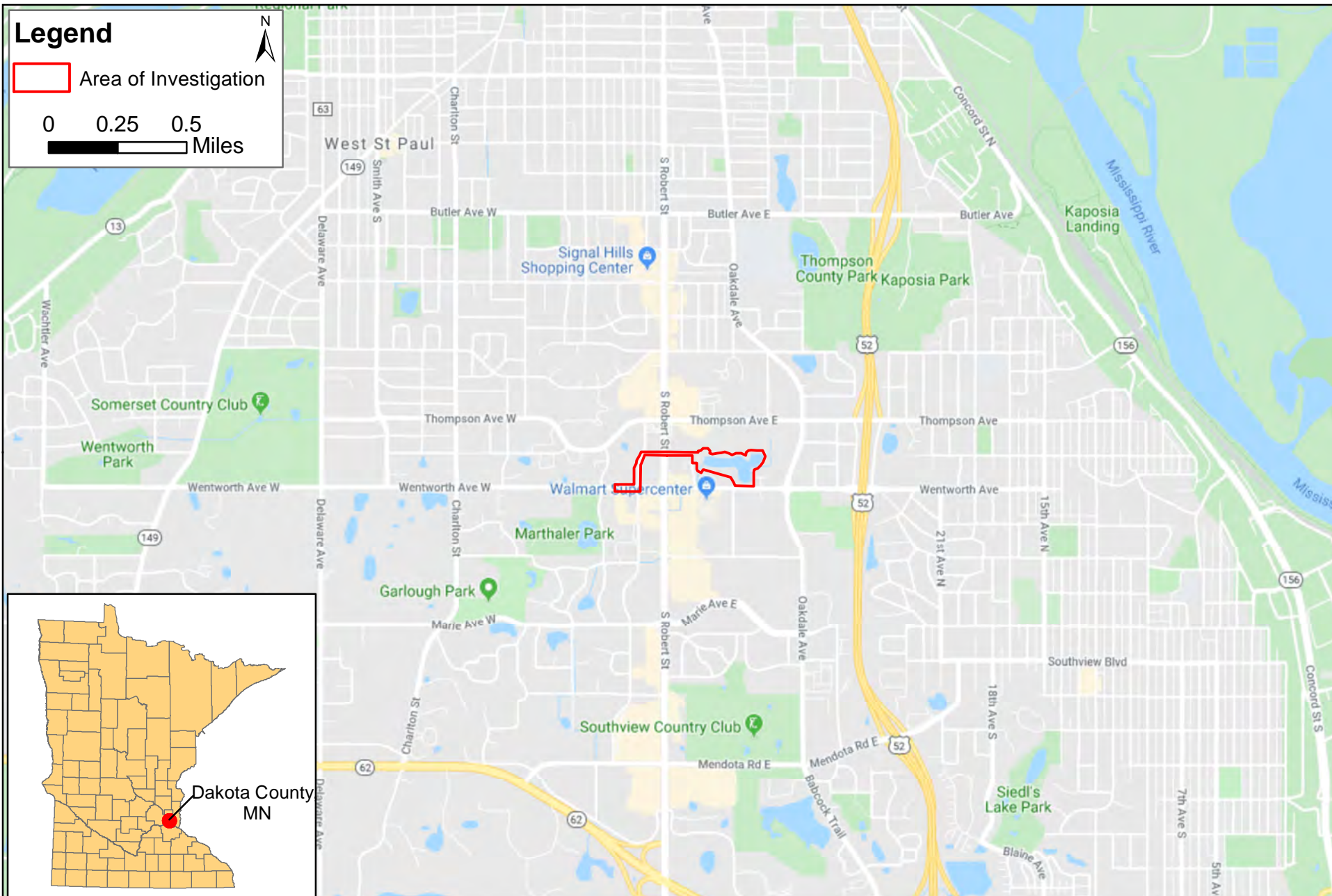
- h. USGS. (Dec 3, 2024). National Hydrography Dataset Plus High Resolution (NHDPlus HR) for 4-digit Hydrologic Unit - 1601. Washington, D.C., USA.


10. OTHER SUPPORTING INFORMATION.

Revised report sent 20250307 and labeled as 2025-03-06 WSP Housing - Wetland Impacts.

- 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.

Path: S:\AE\ID\Akot\15129\env-study-regis\30-env-dock90-wellands\GIS\Site location.mxd



	<p>3535 VADNAIS CENTER DR. ST. PAUL, MN 55110 PHONE: (651) 490-2000 FAX: (651) 490-2150 WATTS: 800-325-2055 www.sehinc.com</p>	<p>Project: DAKOT 151129 Print Date: 10/15/2019</p> <p>Map by: bnelson Projection: NAD 83 UTM Zone 15N Source: ESRI, SEH, Google</p>	<p>SITE LOCATION</p> <p>ROBERT STREET UNDERPASS</p> <p>West St. Paul, Minnesota</p>	<p>Figure</p> <p>1</p>
---	--	--	--	--------------------------------------

This map is neither a legally recorded map nor a survey map and is not intended to be used as one. This map is a compilation of records, information, and data gathered from various sources listed on this map and is to be used for reference purposes only. SEH does not warrant that the Geographic Information System (GIS) Data used to prepare this map are error free, and SEH does not represent that the GIS data can be used for navigational, tracking, or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. The user of this map acknowledges that SEH shall not be liable for any damages which arise out of the user's access or use of data provided.

**West St. Paul - Greco
Housing Project**
West St. Paul, Dakota County,
Minnesota
Delineated Wetlands

Exhibit 1- 2023 Aerial Imagery

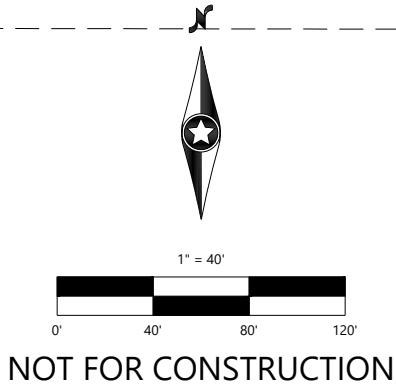
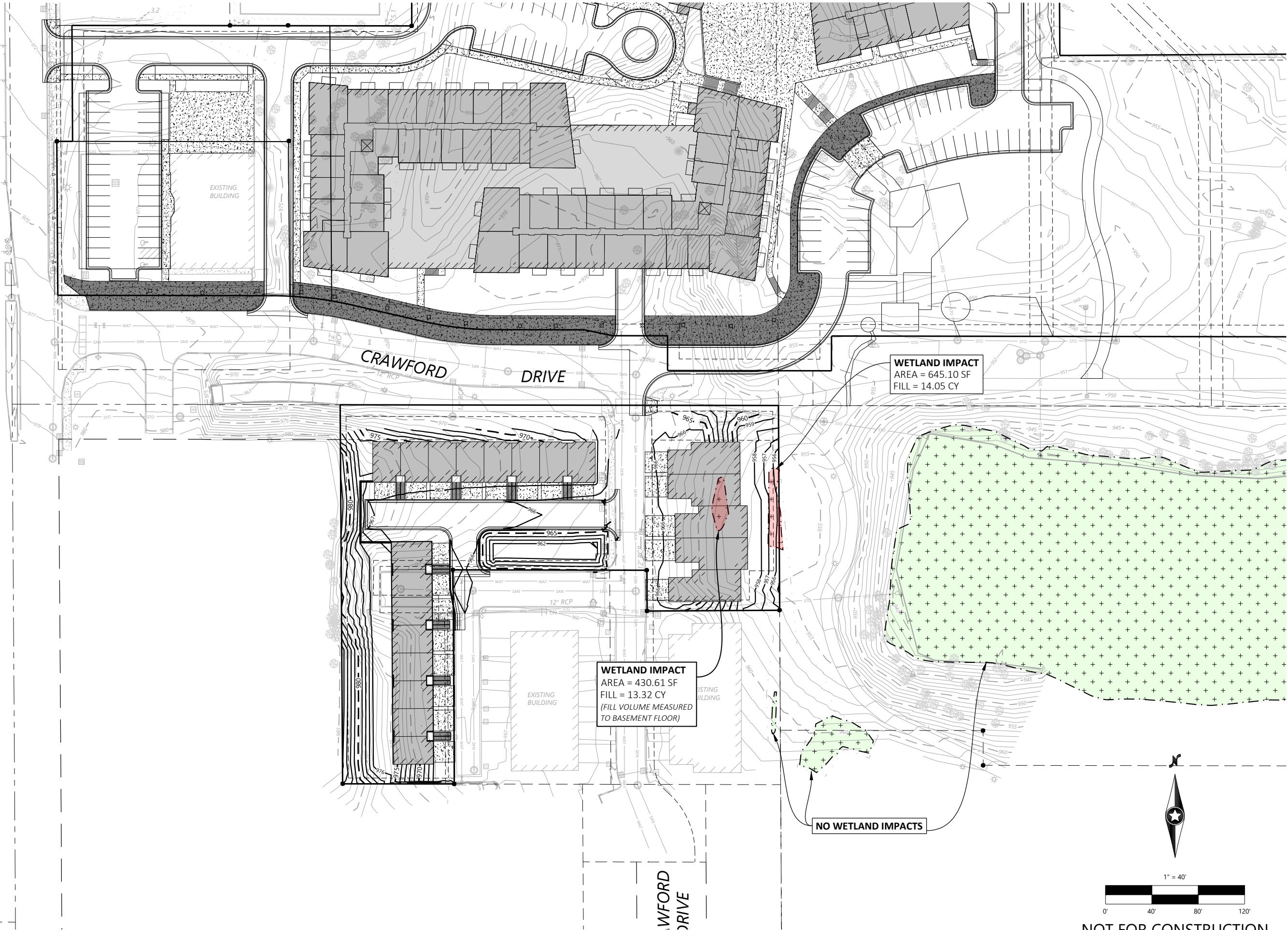
- Legend**
-  Westwood Delineated Wetland
 -  Road
 -  Roberts Street Underpass Delineated Wetland



Data Source(s): Westwood (2024); NAIP (2023); USGS 3DEP (Accessed 2024); U.S. Census Bureau (2023).



ROBERT STREET (STATE TRUNK HIGHWAY NO. 16)



DESIGNED:	
CHECKED:	
DRAWN:	
HORIZONTAL SCALE:	40'
VERTICAL SCALE:	

PREPARED FOR:
GRECO REAL ESTATE DEVELOPMENT, LLC
607 WASHINGTON AVENUE NORTH
MINNEAPOLIS, MN, 55488

WSP HOUSING
WEST ST. PAUL, MN

Westwood
Professional Services, Inc.
9201 Milwaukee Drive, Suite #800
Minnetonka, MN 55343
(888) 937-5150
www.westwoodps.com

WETLAND IMPACTS

SHEET NUMBER:

WL-1

DATE: 03/06/25

PROJECT NUMBER: 0045732.00

WSP HOUSING