



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

MVP 2025-00279-MMP (SAP 008-603-023)

June 20, 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 2025-00279-MMP. 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 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), 2025-00279-MMP

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).

- i. Wetland 1, (0.18 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. 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 for this determination includes one non-jurisdictional wetland, as identified on the enclosed figures labeled MVP-2025-00279-MMP Figures 1-2 of 2. The review area is located in Section 12, Township 108 North, Range 35 West. The review area is located at Latitude: 44.1770, Longitude: -94.9997 in the Township of Stately, Brown County, Minnesota.

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

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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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- 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).

Wetland 1 is not a traditionally navigable water (TNW), territorial sea, or interstate water and therefore is not an (a)(1) water.

Based on desktop resources, including contour maps and the National Wetland Inventory, Wetland 1 is a depressional basin surrounded by upland. A wetland identification map was submitted by the applicant, and the entirety of Wetland 1 was captured within the review area for aquatic resources. Based on the delineation, Wetland 1 is completely surround by uplands and does not exhibit a continuous surface connection to any downstream jurisdictional waters. A culvert is present under County State Aid Highway (CSAH) 3 offering a conveyance to the west side of the roadway. The west side of CSAH 3 was included in the review area for aquatic resources and none were identified within the area opposite of Wetland 1 or near the culvert. However, aerial photos, LiDAR data, and contour maps indicate a wet ditch may be present beyond the review area boundary. Historic topographic maps from 1953, 1957, 1967, and 1986 do not identify wetlands in the roadside ditch on the west side of the road. The National Wetland Inventory identifies an upland break between the nearest wetland and the roadside ditch on the west side of the road. Additionally, aerial photos confirm that the roadside ditch is surrounded by upland, concluding that the wet ditch on the west side of the road was constructed in uplands and is draining only upland. Wetland 1 does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. This wetland is approximately 0.25 miles from the closest requisite jurisdictional water, Mound Creek, south of the review area. However, there is no continuous surface connection that connects this wetland to downstream jurisdictional waters.

⁷ 88 FR 3004 (January 18, 2023)

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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, Wetland 1 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. Wetland identification map submitted by Brown County on March 10, 2025.
 - b. 3DEP 2-ft, 5-ft, 10-ft, and 25-ft Contour maps, USA Soils Hydric Class, and NWI accessed on the National Regulatory Viewer.
 - c. USGS Topographic Maps from 1953, 1957, 1967, and 1986.
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.

MINNESOTA DEPARTMENT OF TRANSPORTATION
THE COUNTY OF BROWN

MVP-2025-00279-MMP Figure 1 of 2

CONSTRUCTION PLAN FOR: SHOULDER WIDENING GRADING

LOCATED ON: C.S.A.H. 3 FROM C.S.A.H. 21 TO C.S.A.H. 23, FIVE MILES SOUTHWEST OF SPRINGFIELD (GEOGRAPHIC DESC.)
FROM A POINT 159.1' SOUTH OF THE SOUTHEAST CORNER OF SECTION 11, T 108 N, R 35 W
TO THE SOUTH QUARTER CORNER OF SECTION 36, T 109 N, R 35 W (LEGAL DESC.)

PLAN LEGEND

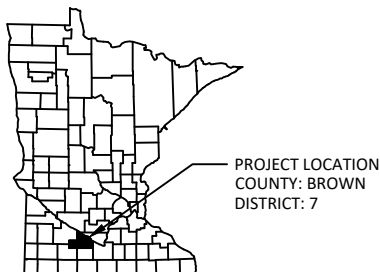
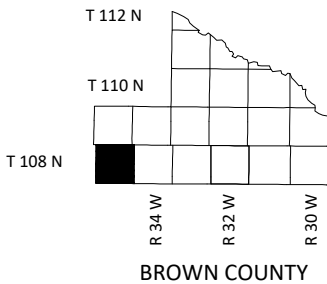
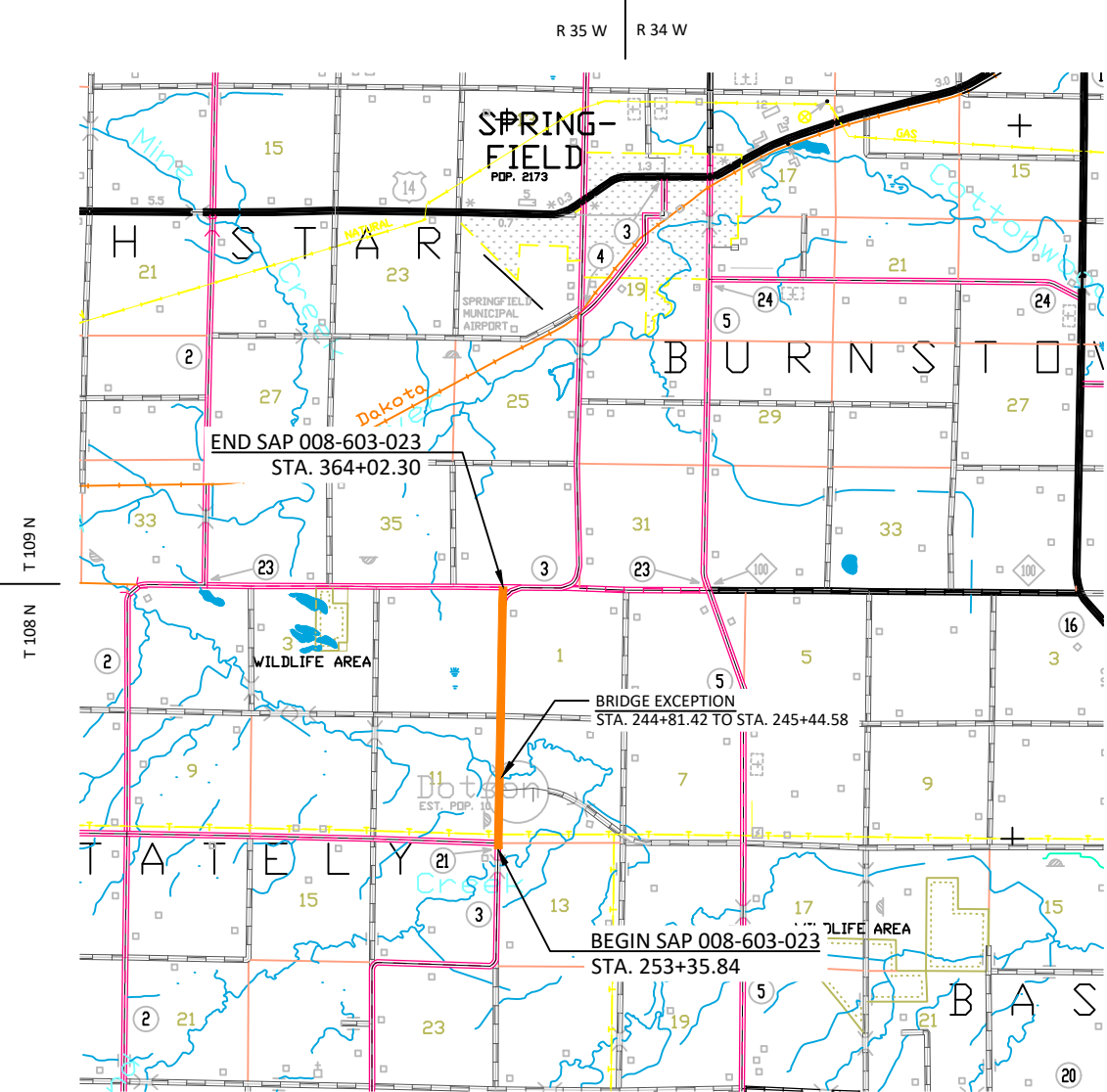
EXISTING LINES & SYMBOLS

- RAILROAD
LOT LINE
RIGHT OF WAY
UNDERGROUND GAS
UNDERGROUND ELECTRIC
UNDERGROUND FIBER OPTIC
UNDERGROUND COMMUNICATION
OVERHEAD ELECTRIC
TREE LINE
FENCE
CURB & GUTTER
BITUMINOUS/CONCRETE EDGE
GRAVEL EDGE
STORM SEWER
SANITARY SEWER
WATERMAIN

- WELL
FLARED END/APRON
STORM SEWER MANHOLE
CATCH BASIN
SANITARY SEWER MANHOLE
HYDRANT
GATE VALVE
CURB STOP
LIGHT POLE
POLE ANCHOR
POWER POLE
STREET SIGN
ELECTRICAL PEDESTAL/BOX
COMMUNICATION PEDESTAL/BOX
POST
MAILBOX
BUSH
TREE-CONIFEROUS
TREE-DECIDUOUS
U.S HIGHWAY
STATE HIGHWAY
COUNTY STATE AID HIGHWAY
COUNTY HIGHWAY

PROPOSED LINES & SYMBOLS

- 2+00
CENTERLINE
TEMPORARY EASEMENT
CURB & GUTTER
BITUMINOUS/CONCRETE EDGE
GRAVEL EDGE
STORM SEWER
STORM SEWER MANHOLE
STORM SEWER CATCH BASIN
INLET PROTECTION
CURB SEDIMENT FILTER
EROSION CONTROL BLANKET AND SEED
SOD
MULCH AND SEED

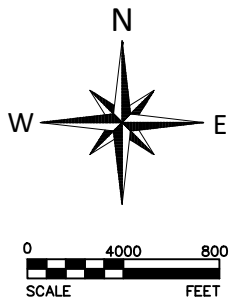


DESIGN DESIGNATION
C.S.A.H. 3 (STA 212+19.81 TO 364+02.30)

PRESENT ADT (2025)	175
PROJECTED ADT (2045)	175
FUNCTIONAL CLASSIFICATION	MINOR COLLECTOR
NO. OF TRAFFIC LANES	2 - 12'
NO. OF PARKING LANES	N/A
SHOULDER WIDTH	N/A
SHOULDER WIDTH - RURAL	7'
STRUCTURAL DESIGN STRENGTH	10 TON
SOIL FACTOR	N/A
PROJECTED HCADT (2045)	23
R VALUE	12 ASSUMED
ESALS	58,700
DESIGN SPEED	55 MPH
BASED ON STOPPING DIST.-HEIGHT EYE	3.5'
BASED ON STOPPING DIST.-HEIGHT OBJ.	2.0'

DESIGN SPEED NOT ACHIEVED AT: STA 280+69 TO 283+89 (40 MPH)

S.A.P 008-603-023		
GROSS-LENGTH	11066.46 FEET	2.096 MILES
BRIDGES-LENGTH	93.16 FEET	0.018 MILES
EXCEPTIONS-LENGTH	0.00 FEET	0.000 MILES
NET LENGTH	10973.30 FEET	2.078 MILES



PROJECT DATUM: BROWN COUNTY
HORIZONTAL:NAD83 (2011)
VERTICAL: NAVD 88

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

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

LOCATION OF UTILITIES REPRESENTED ON THIS PLAN ARE INTENDED FOR REFERENCE ONLY. THE CONTRACTOR SHALL FIELD VERIFY EXACT LOCATION PRIOR TO COMMENCING CONSTRUCTION AS REQUIRED BY LAW. NOTIFY GOPHER STATE ONE-CALL, 1-800-252-1166 OR 651-454-0002.

S.A.P. NO. 008-603-023

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

INDEX

SHEET NO.	DESCRIPTION
1	TITLE
2	STATEMENT OF ESTIMATED QUANTITIES
X	TYPICAL SECTIONS & DETAILS
X	TABLES
X	TYPICAL SECTIONS & DETAILS
X	STORMWATER TREATMENT POND DETAILS
X	SURFACE PLAN & PROFILES
X	CROSS SECTIONS
X	TRAFFIC CONTROL PLAN

THIS PLAN CONTAINS XX SHEETS

ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND ORDINANCES WILL BE
COMPLIED WITH IN THE CONSTRUCTION OF THIS PROJECT.

I HEREBY CERTIFY THAT THIS PLAN 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.

ANDREW LANG, BROWN COUNTY ENGINEER

DATE _____ LICENSE NUMBER: 59930

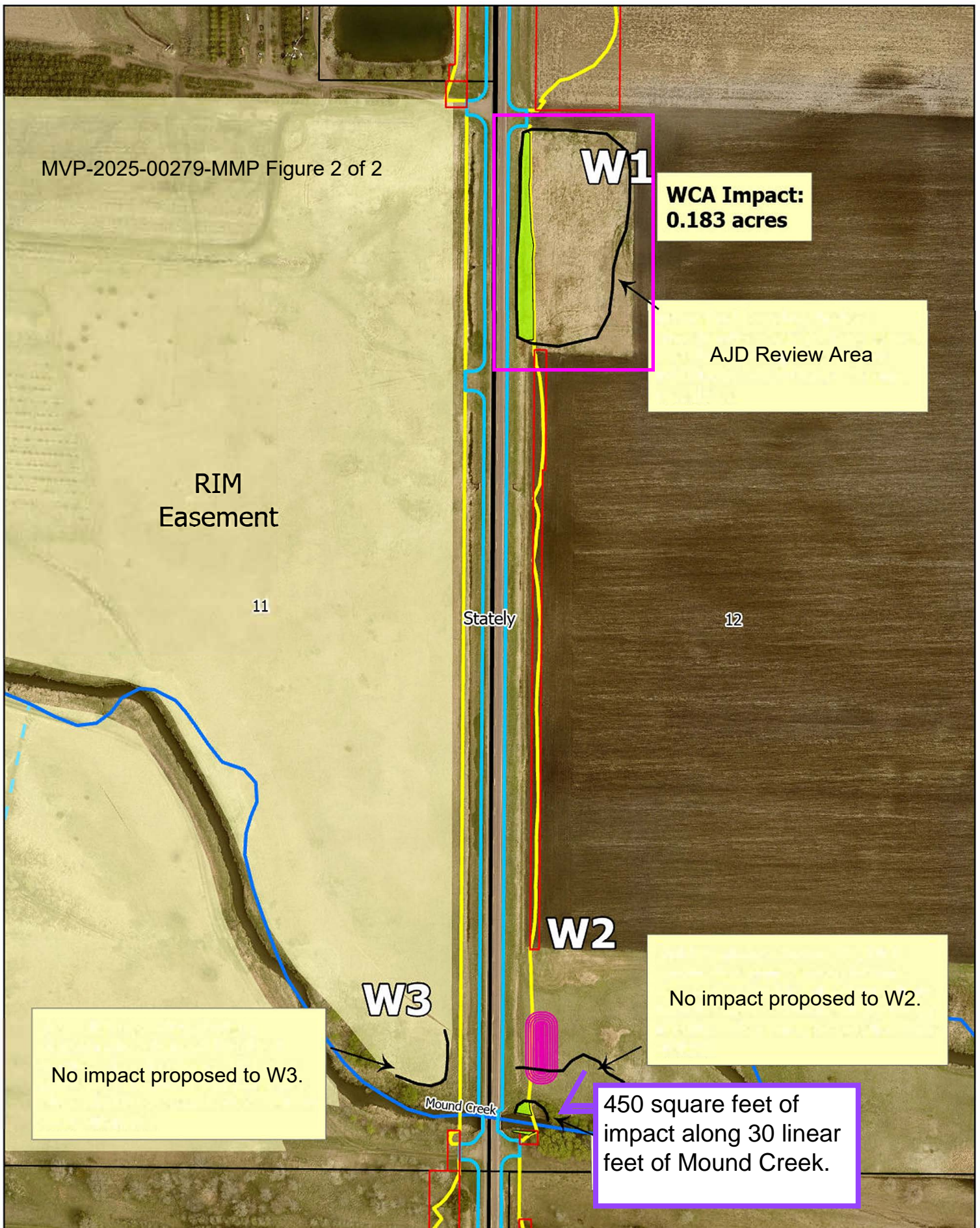
DATE _____
DISTRICT STATE AID ENGINEER:
REVIEWED FOR STATE AID RULES/POLICY COMPLIANCE

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

PRELIMINARY

TITLE
C.S.A.H. 3 - BROWN COUNTY, MINNESOTA
S.A.P. 008-603-023

SHEET
1
OF
XX



CSAH 3 Shoulder Widening
Stately twp
Section 11/12

- CSAH 3 - Storm Water Pond
- CSAH 3 - Temporary Easements
- CSAH 3 - Shoulder Gravel Limits
- CSAH 3 - Grading Limits

- PW1 Watercourses
- CSAH 3 Wetland Impacts
- RIM Easement

0 50 100 200 US Feet

