



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

MVP-RD

[22 April 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-2025-00399-TMS 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.

MVP

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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, 6.34 acres](#)]

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 is approximately 6.34 acres in size and is located at Lat. 46.82091, Long. -92.19798 in Hermantown, St. Louis County, Minnesota. The review area is an undeveloped forested parcel surrounded by residential properties to the west and south, West Arrowhead Road to the north, and Stebner Road to the East.](#)]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [[N/A](#)]⁵

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [[N/A](#)]

⁵ 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.

MVP

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6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ [[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](#)]

⁶ 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.

⁷ 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

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8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. 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, territorial sea, or interstate water and is therefore not an \(a\)\(1\) water. The wetland delineation report, application, aerial imagery, topographical maps, and digital elevation modeling indicate that Wetland 1 does not physically abut a relatively permanent \(a\)\(2\) impoundment or a jurisdictional \(a\)\(3\) tributary and is not separated by a natural berm, bank, dune, or similar landform. Wetland 1 is surrounded by uplands to the west and south and public roads to the north and east and drains under Stebner Road to the east via a culvert into wetlands off-site. The off-site wetlands on the east side of Stebner Road do not appear to have a continuous surface connection to a relatively permanent jurisdictional water. Wetland 1 is located in a low area that is fed by precipitation from surrounding uplands and wetlands to the north that drain via culvert under West Arrowhead Road. 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 a jurisdictional water 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. [[Application, GEI Consultants](#)]
- b. [[Wetland Delineation Report, MSA Professional Services, Inc.](#)]
- c. [[National Regulatory Viewer, 2023 data sources](#)]
- d. [[Google Earth Pro](#)]
- e. [[Desktop Evaluation, April 18, 2025](#)]

10. OTHER SUPPORTING INFORMATION. [[N/A](#)]

MVP

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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.

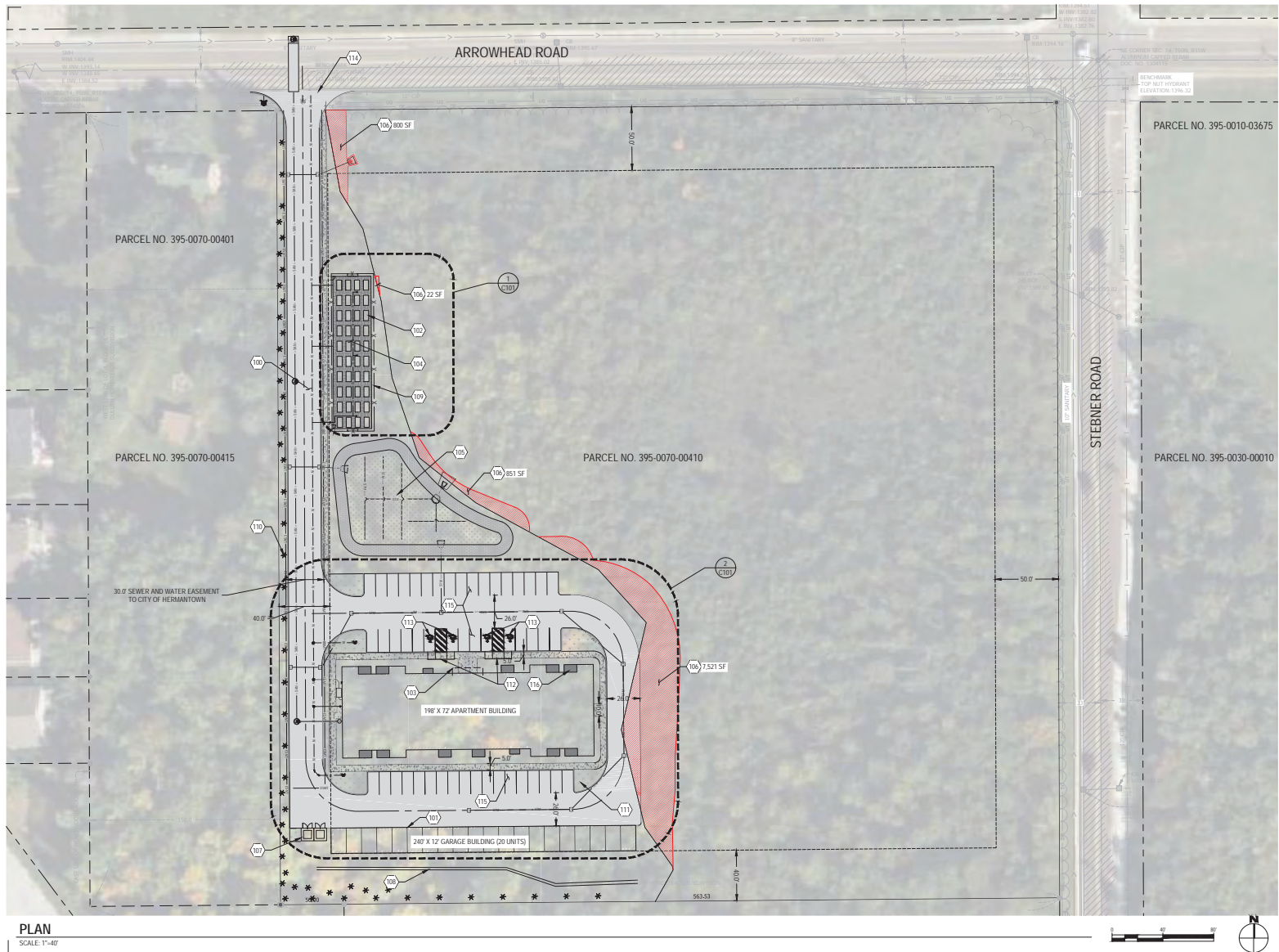


Print Date: 7/27/2020
Printed By: zsvoboda, File: C:\Users\zsvoboda\Documents\05331007_Weiland\GIS\05331007_ProjLoc.mxd



Figure 1
Project Location

W Arrowhead Rd and Stebner Rd
Hermantown, St. Louis County,
Minnesota



CONTRACTOR NOTE:

ALL EXISTING UTILITIES SHOWN ON PLANS ARE TO BE VERIFIED HORIZONTALLY AND VERTICALLY PRIOR TO ANY CONSTRUCTION. ALL EXISTING FEATURES INCLUDING BURIED UTILITIES ARE SHOWN AS INDICATED ON RECORD MAPS AND SURVEYS FURNISHED BY OTHERS. WINDSOR ASSUMES NO LIABILITY FOR THE ACCURACY OF THOSE RECORDS AND SURVEYS. CONTACT THE UTILITY OWNERS/AGENCY FOR THE FINAL LOCATION OF EXISTING UTILITIES IN AREAS CRITICAL TO CONSTRUCTION.

SITE PLAN NOTES:

1. ALL DIMENSIONS TO FACE OF CURB UNLESS NOTED OTHERWISE.
2. ALL SIGNS TO BE INSTALLED PER CITY OF HERMANTOWN STANDARDS.
3. ALL NEW SIDEWALKS AND CONNECTIONS TO EXISTING SIDEWALKS SHALL BE BARRIER FREE PATHWAYS (I.E. ADA COMPLIANT).
4. VERIFY LOCATION OF ALL STIPING WITH OWNER PRIOR TO INSTALLING. ALL STIPING SHALL BE WHITE PAINT UNLESS NOTED OTHERWISE.
5. SITE IMPROVEMENTS SHALL COMPLY WITH RECOMMENDATIONS FROM APRIL 19, 2022 "CITY OF HERMANTOWN STANDARD SPECIFICATIONS FOR THE CONSTRUCTION" BY CITY OF HERMANTOWN.

SITE PLAN KEYNOTES		
100	PROPOSED 26' ROADWAY W/ CURB AND GUTTER	3 C-307
101	PROPOSED GARAGES 12' X 18' (20)	
102	4X8 RAISED CEDAR PLANTING BED WITH GEOTEXTILE FABRIC UNDERNEATH BED (TYP)	
103	PROPOSED COVERED ENTRY	
104	PROPOSED COMMUNITY GARDEN SPACE 14 PLOTS AT APPROXIMATELY 214 SF EACH	
105	PROPOSED STORMWATER BIOFILTRATION POND	1 C-309
106	AREA OF POTENTIAL WETLAND IMPACT	
107	PROPOSED DUMPSTER STAGING AREA	
108	PROPOSED SWALE	
109	PROPOSED WOODEN FENCE AROUND COMMUNITY GARDEN SPACE. FENCE HEIGHT IS TO BE 4' TALL WITH POSTS SPACED EVERY 8 FEET. POSTS ARE TO BE INSTALLED BELOW THE FROST LINE.	
110	PROPOSED SCREENING TREE (TYP) SEE SHEET L100	
111	PROPOSED PARKING LOT LANDSCAPING (TYP) SEE SHEET L100	
112	PROPOSED PARALLEL ADA RAMP	
113	VAN ACCESSIBLE ADA STALL AND SIGN (4)	
114	CONNECT TO EXISTING ROADWAY	
115	PROPOSED PARKING STALLS 9' X 18' (46)	
116	PROPOSED AT GRADE PATH SPACE (TYP)	

SITE PLAN LEGEND		
	ASPHALT PAVEMENT	3 C-307
	WOOD MULCH	
	CONCRETE SIDEWALK	2 C-307
	LANDSCAPING	

Know what's below.
Call before you dig.

CALL 7 BUSINESS DAYS BEFORE YOU DIG.
UTILITY INFORMATION IS APPROXIMATE.
VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION.

Revisions:

LINE IS 1" ON FULL SCALE DRAWING

**WINDSOR
ENGINEERS**

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I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

DATE: 1/24/2025
REGISTRATION NO. 61158
SIGNED: JOHN F. DOUGHERTY, P.E.

RESIDE APARTMENTS
HERMANTOWN, MN

FINAL PUD
Project No: 24353
Issue Date: 03/21/2025

SITE PLAN

C100

Project Manager: JFD
Drawn By: JFD
Checked By: JFD

