



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

MVP

August 11, 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-2025-00429-RMH 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. 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.

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- 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	Jurisdictional or Non-jurisdictional
Wetland 3 (0.003 acre)	Non-Jurisdictional
Wetland 4 (0.06 acre)	Non-Jurisdictional
Wetland 5 (0.007 acre)	Non-Jurisdictional
Wetland 6 (0.07 acre)	Non-Jurisdictional
Wetland 7 (0.06 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 is limited to Wetlands 3-7 as identified in the enclosed project figures. The nearest tributary is an unnamed tributary located approximately 0.10 miles northwest of the review area. There are no other JDs associated with this review area.](#)

- a. Project Area Size (in linear feet): 10,249
- b. Location Description: The project/review area is located in Section 32, Township 117N, Range 22W.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.904162 Longitude: -93.48454
- d. Nearest City or Town: Minnetonka
- e. County: Hennepin
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes) NA

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

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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): [N/A](#)
 - d. Impoundments (a)(2): [N/A](#)

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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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 aquatic resources within the review area identified as Wetlands 3, 4, 5, 6 and 7 are not TNWs, territorial seas, or interstate waters and therefore are not](#)

⁷ 88 FR 3004 (January 18, 2023)

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(a)(1) waters. The wetlands are not adjacent to (a)(1) or (a)(2) waters nor do they physically abut or touch an (a)(1) or (a)(2) water. A review of aerial imagery does not indicate any connections to support evidence of a continuous surface connection. There are no ditches, swales, pipes, or culverts that connect these wetlands to downstream jurisdictional waters. This determination is supported by the national wetland and hydrography datasets which do not identify any aquatic resources or other potential connections (either surface or subsurface) between these aquatic resources and any other waters. Topographic maps, soils maps, 3DEP 2-ft contours, 3DEP Digital Elevation Model, 3DEP Hillshade and Google Earth aerial imagery indicate that wetlands 3, 4, 5, 6 and 7 are located in depressional areas, surrounded by upland.

All wetlands are primarily within the road corridor of Excelsior Boulevard and consist of distinct topographic boundaries. The supporting evidence of historic aerial photos and presence of mapped non-hydric soils suggests the three wetlands (wetlands 3, 5 and 6) were created by road construction activities not intended to create wetlands.

Historical Imagery indicates that wetland 3 was created through the construction of County Road 3/Excelsior Boulevard and re-confined to the roadway way ditch. The NRCS soil map also shows no hydric soil mapped within wetland boundary. and the area directly around the wetland is mapped as non-hydric soil.

Historical Imagery indicates that wetlands 5 and 6 were formed in dry land incidental to the construction of two stormwater basins. The NRCS soil map also shows no hydric soil mapped within wetlands 5 and 6. Wetlands 5 and 6 are also geographically separated from wetland 7 basin by approximately 10 feet in elevation gain.

Wetland 7 is located in a depressional area with partially hydric soils (2%) and non-hydric soils surrounding the wetland. A review of LIDAR, 2-ft contours and hill shade indicated that the wetland is surrounded by upland.

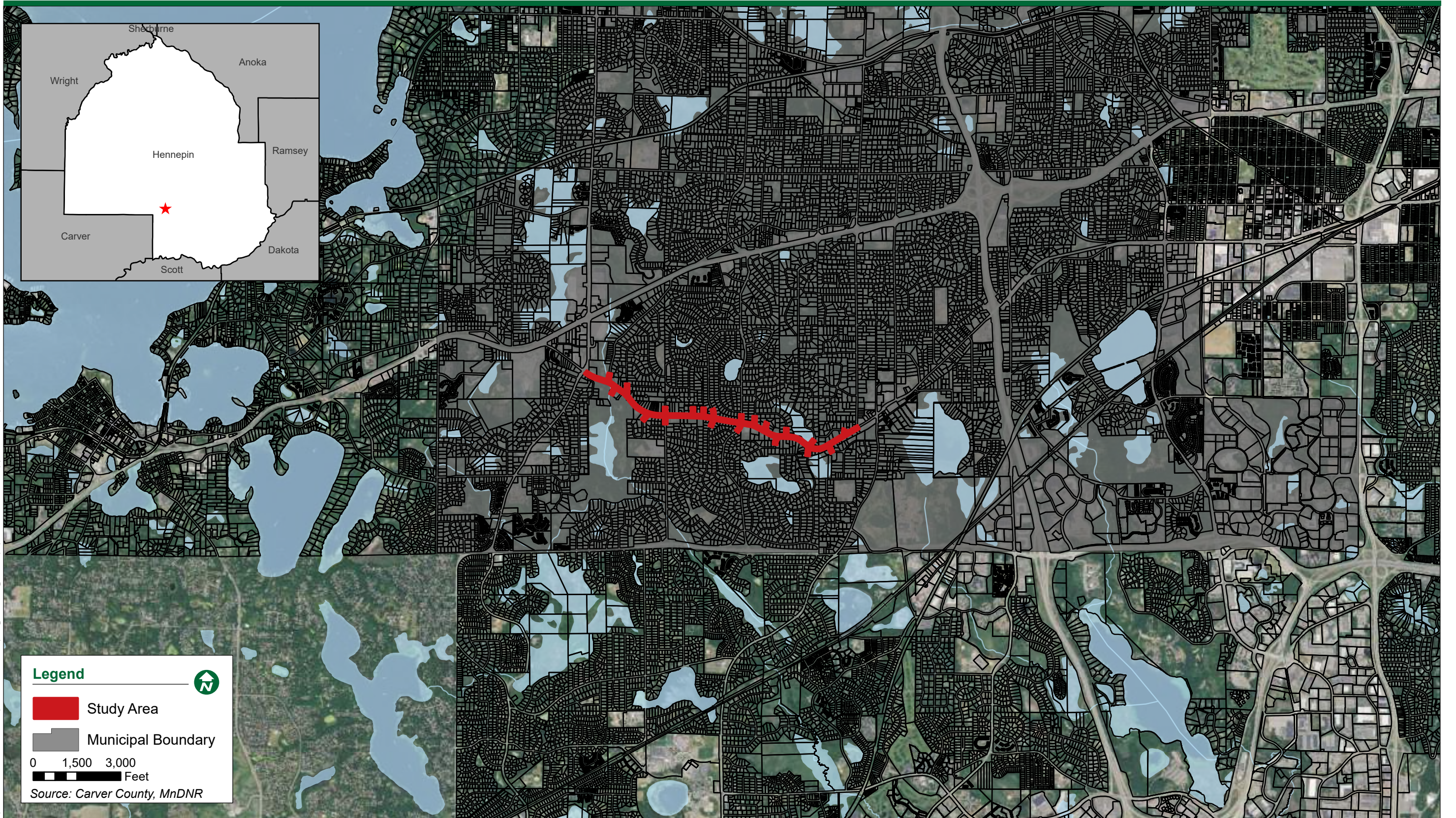
These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. These wetlands are approximately 0.10 miles from the closest tributary. These wetlands are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

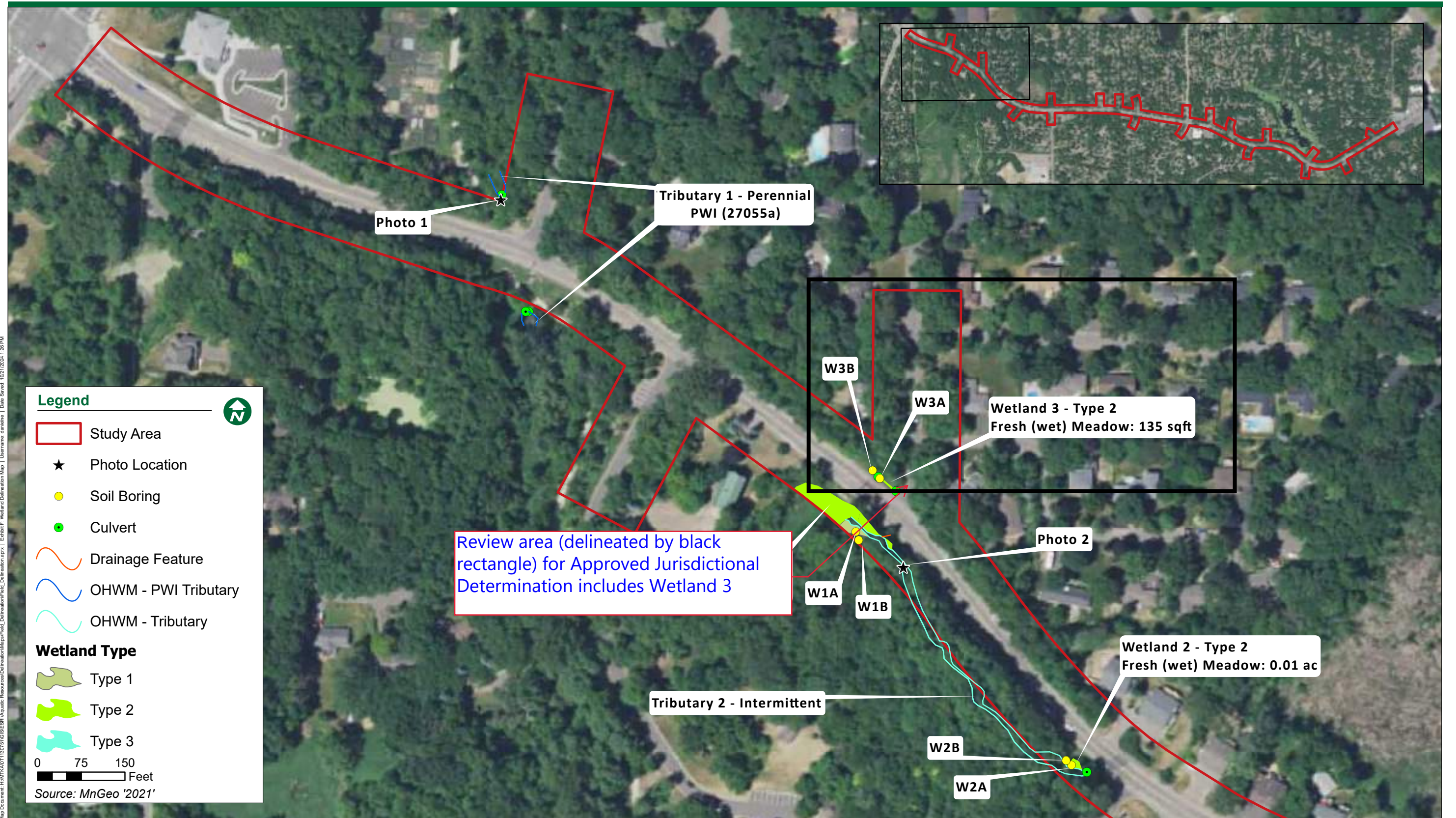
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Because the Supreme Court in *Sackett* adopted the Rapanos plurality standard and the 2023 rule preamble discussed the Rapanos plurality standard, the implementation guidance and tools in the 2023 rule preamble that address the regulatory text that 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. Joint Application packet for So Excelsior Boulevard Corridor Study prepared by Bolton & Menk, Inc. dated November 12, 2024.
 - b. USFWS NWI Map Service. Accessed July 31, 2025.
 - c. USGS 3D Elevation Program DEM. Accessed July 31, 2025.
 - d. USGS NHD Map Service. Accessed July 31, 2025.
 - e. Google Earth imagery dated 2020, 2023, 2024 and 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.





Map Document: H:\MTP\A0711075\GIS\ESRI\Aquatic_Resources\Delineation\Map\Final_Delineation.aprx | Exhibit F-1: Wetland Delineation Map | User: daniele | Date Saved: 10/21/2024 1:28 PM

