



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

MVP

03 September 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-2025-00517-MJG, 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).
 - i. Wetland 1, 0.04 acre, non-jurisdictional
 - ii. Wetland 2, 0.78 acre, non-jurisdictional
 - iii. Wetland 3, 0.77 acre, non-jurisdictional
 - iv. Wetland 4, 0.81 acre, non-jurisdictional
 - v. Wetland 7, 0.03 acre, non-jurisdictional
 - vi. Wetland 8, 0.23 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 is limited to Wetlands 1, 2, 3, 4, 7 and 8, and are identified by the pink polygons in the enclosed figures labeled MVP-2025-00517-MJG AJD Figures, Page 2 of 2. The review area is located at Section 12, Township 28 North, Range 22 West, Ramsey County, Minnesota (Lat: 44.924685, Long: -92.987100). The surrounding upland area consists of a golf course, roadway infrastructure, residential and commercial development. There are no other JDs associated with the review area.

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

- 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

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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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).

Wetlands 1, 2, 3, 4, 7, and 8, are not TNWs, territorial seas, or intrastate waters, and therefore, are not (a)(1) waters. Wetlands 1, 2, 3, 4, 7, and 8 do not physically abut a paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. The National Wetlands Inventory (NWI) does display Wetlands 2, 3, 4, and 8. The National Hydrography Dataset (NHD), USGS topographic maps, and aerial maps do not show any tributaries that abut wetlands within the review area.

Wetlands 2, 3, 7, and 8 are depressional wetlands, that receive hydrology from surrounding upland areas, and do not abut a tributary. Wetlands 1 and 4 are depressional wetlands that receive hydrology from drainage swales, surrounding upland areas, and culverts that inlet to the wetland areas. Hydrology from Wetland 4 outlets during high-water events at a culvert located at the northwest boundary of the wetland; however, after reviewing topographic, LiDAR, NWI, NHD, and aerial imagery, there is no identifiable connection to downstream waters.

Wetland 1 appears is separated from a roadside ditch by a culverted road crossing, along the north boundary of Wetland 1. Based on topographic, LiDAR, NWI, NRCS hydric soil data, the ditch has fine sandy loam and silt loam soils, ranging from non-hydric to partially hydric soils (0-25%), and no surface water was visible on Google Earth aeriels and street view (2025). Therefore, the roadside ditch does not carry a relatively permanent flow.

Wetlands 1, 2, 3, 4, 7, and 8 do not abut a relatively permanent water, and as such, cannot be evaluated as (a)(4) adjacent wetlands. Therefore, Wetlands 1, 2, 3, 4, 7, and 8 are 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.

⁷ 88 FR 3004 (January 18, 2023)

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- a. Office evaluation completed September 2, 2025.
- b. Lower Afton Road Wetland Delineation Report, prepared by Kjolhaug Environmental Services Company, Inc, updated April 10, 2024.
- c. National Regulatory Viewer accessed September 2, 2025.
- d. USGS 3D Elevation Program (3DEP) Bare Earth DEM Dynamic service, Hillshade, DEM and 2-ft Contours, accessed September 2, 2025.
- e. 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/>) accessed September 2, 2025.
- f. USDA NRCS Soil Survey USDA-NCSS SSURGO and STATGO accessed September 2, 2025
- g. National Hydrography Dataset accessed September 2, 2025.
- h. Google Earth 2025 Aerial imagery accessed September 2, 2025.
- i. MHAPO years 1953, 1940, and 1937, accessed September 3, 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.




Figure 1 - Site Location



KJOLHAUG ENVIRONMENTAL SERVICES COMPANY
Source: OpenStreets Map

0 2,000 Feet



Lower Afton Road (KES 2023-160)
Maplewood, Minnesota

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.

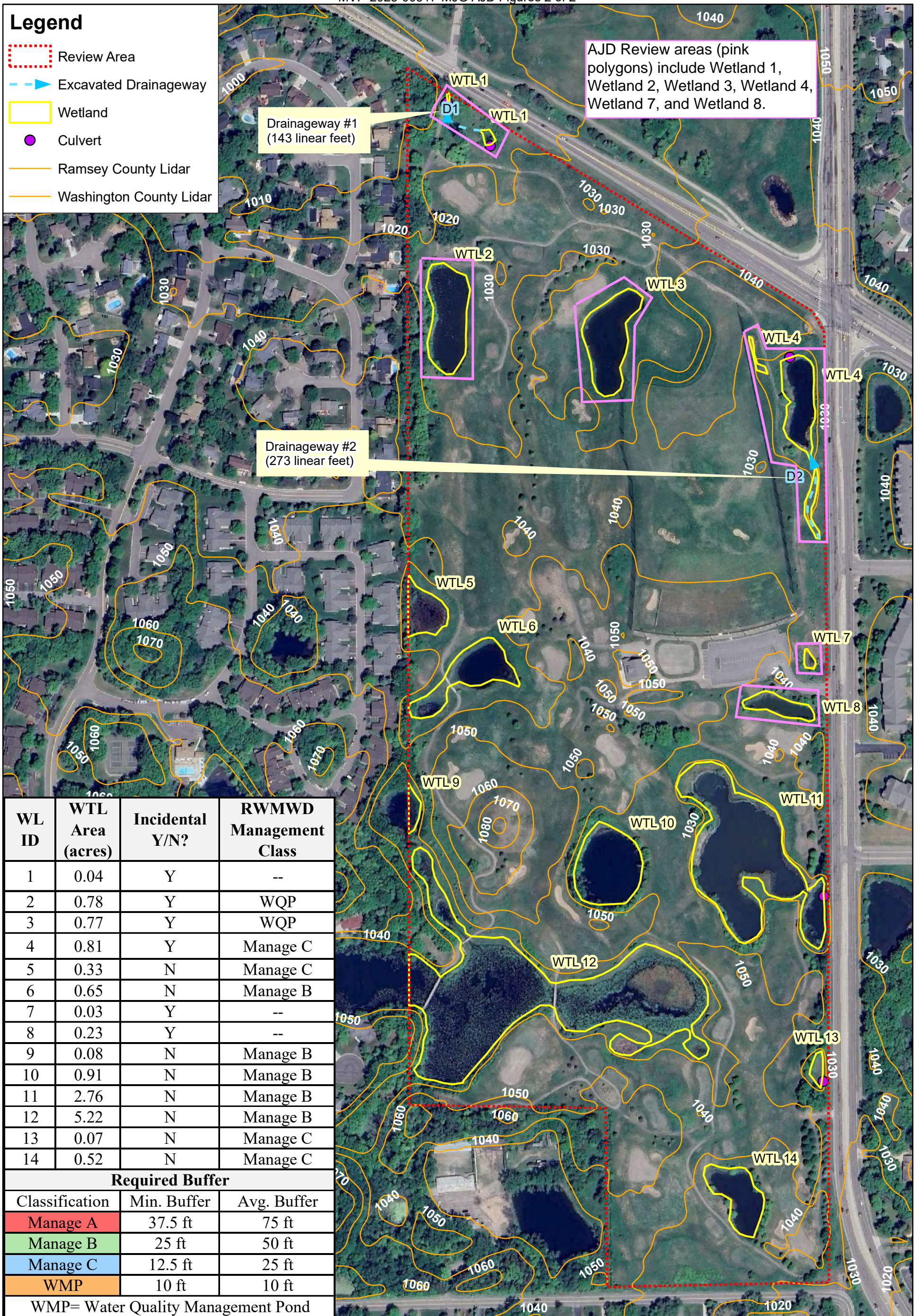
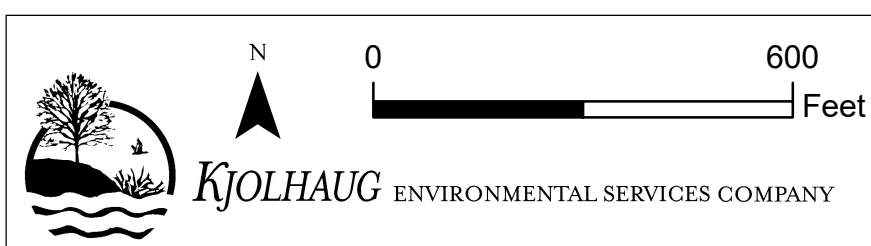


Figure 2A - Existing Conditions (5/25/2023 Google Earth Photo)



Lower Afton Road (KES 2023-160)
Maplewood, Minnesota

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.