



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

MVP-2025-00763

28 January 2026

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-2025-00763 MFR 1 of 1²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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), non-jurisdictional
 - ii. Lake of the Woods, 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 AJD review area is limited to Wetland 1 within the approximately 7.90-acre project area located in Section 21, Township 163 North, Range 33 West, 48.922242 N, -94.906826 W, Lake of the Woods County, Minnesota. The review area (Wetland 1) is shown on the enclosed figure labeled: MVP-2025-00763, AJD Figure 1. Previous jurisdictional determinations have been completed for portions of the 7.90-acre project area under MVP-1993-06275-JAK and *US v. Bailey*.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A]
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ Lake of the Woods is a navigable-in-fact and Section 10 waterbody. The Widseth Wetland Delineation Report for Matt and Erika Johnson Properties dated July 2025 notes the ordinary high water mark of Lake of the Woods to be 1,062.00' (NAVD 88 datum), with portions of the project area lying below this elevation.
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.

⁶ 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.

⁷ 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.

⁸ 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. Traditional Navigable Waters (TNWs) (a)(1)(i): Lake of the Woods is a TNW. The Widseth Wetland Delineation Report for Matt and Erika Johnson Properties dated July 2025 notes the ordinary high water mark of Lake of the Woods to be 1,062.00' (NAVD 88 datum), with portions of the project area lying below this elevation.
- 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 within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁹ [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 7.90 acre project area contains Lake of the Woods, an (a)(1) water, and 187 linear feet of unnamed stream (Stream 1), however, this AJD review area is limited to Wetland 1 (6.34 acres) as shown in the Widseth Wetland Delineation Report for Matt and Erika Johnson Properties dated July 2025 (Widseth Report) The Widseth Report identified a naturally occurring upland beach ridge lying between Wetland 1 and the OHWM of Lake of the Woods for the entire length of shoreline within the review area. Based on information contained in the Widseth Report, the upland beach ridge sits above the Lake of the Woods OHWM

⁹ 88 FR 3004 (January 18, 2023)

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elevation of 1,062.00'. The Widseth Report did not note any elevation changes, tributaries, channels, or wetland conditions within the beach ridge that would provide a continuous surface connection between Wetland 1 and the Lake of the Woods OHWM. Based on this information, the Corps has determined that Wetland 1 does not physically abut the Lake of the Woods OHWM, or a relatively permanent paragraph (a)(2) impoundment, or a jurisdictional (a)(3) tributary. Wetland 1 is a non-tidal wetland that does not have a continuous surface connection to a TNW or relatively permanent 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. Site photographs accompanying August 25, 2025, Minnesota Wetland Conservation Act Notice of Decision for wetland delineation approval.
 - b. Widseth Wetland Delineation Report for Matt and Erika Johnson Properties dated July 2025.
 - c. USACE Regulatory Viewer Accessed: January 27, 2026.
 - d. National Wetland Inventory, USDA Web Soil Survey, and USGS NHD. Accessed: January 27, 2026, for Lake of the Woods County, MN.
 - e. USGS 1:24K Quad Name: Williams NW.
 - f. Office Evaluation Conducted on January 27, 2026.
10. OTHER SUPPORTING INFORMATION. Previous site data, reports, photographs, and jurisdictional determinations associated with Corps administrative record MVP-1993-06275-JAK and *US v. Bailey*.
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.

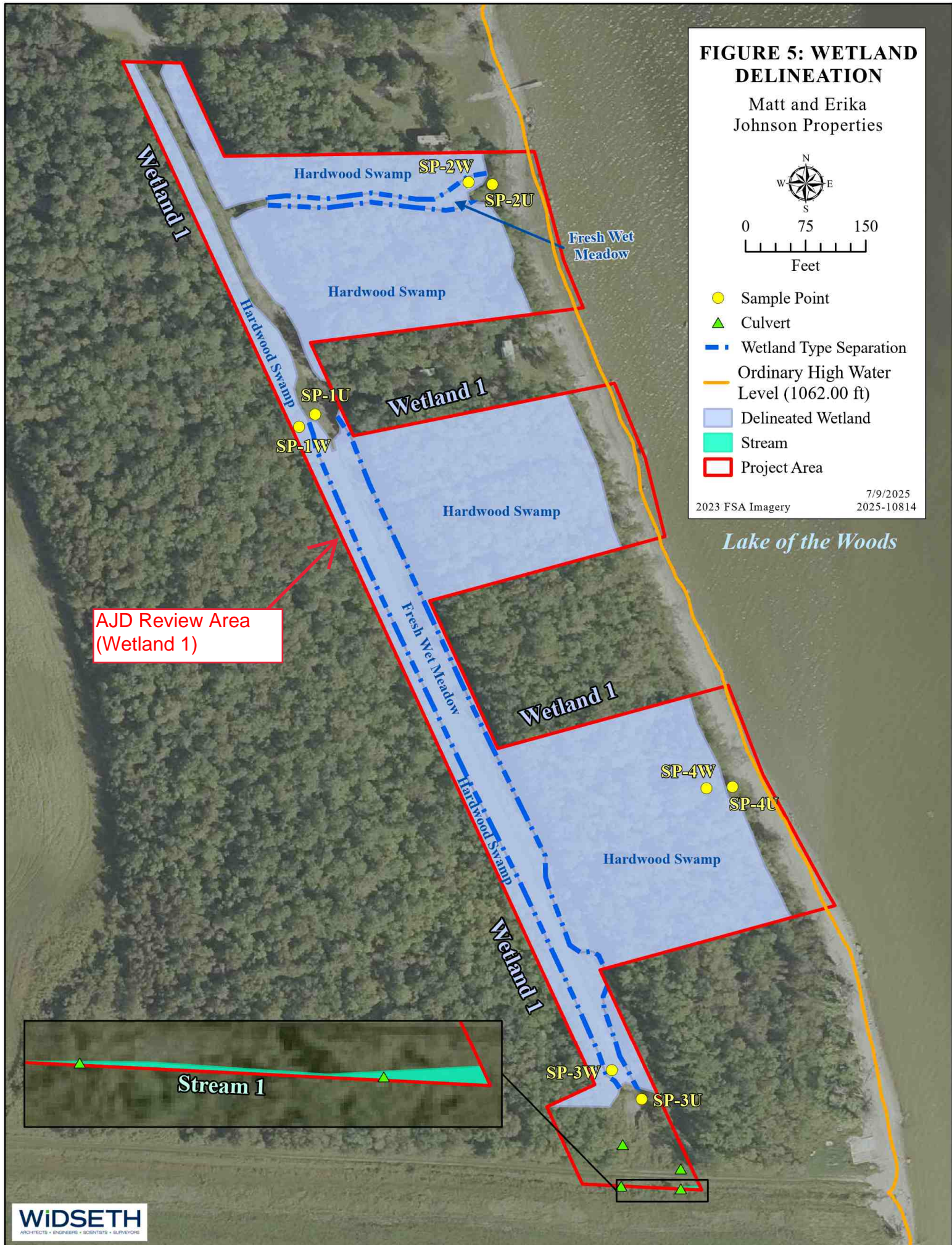


FIGURE 5: WETLAND DELINEATION

Matt and Erika Johnson Properties



0 75 150
Feet

- Sample Point
- ▲ Culvert
- - - Wetland Type Separation
- Ordinary High Water Level (1062.00 ft)
- Delineated Wetland
- Stream
- Project Area

2023 FSA Imagery 7/9/2025
2025-10814

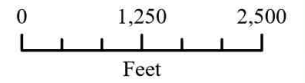
Lake of the Woods

AJD Review Area (Wetland 1)



**FIGURE 1:
SITE LOCATION**

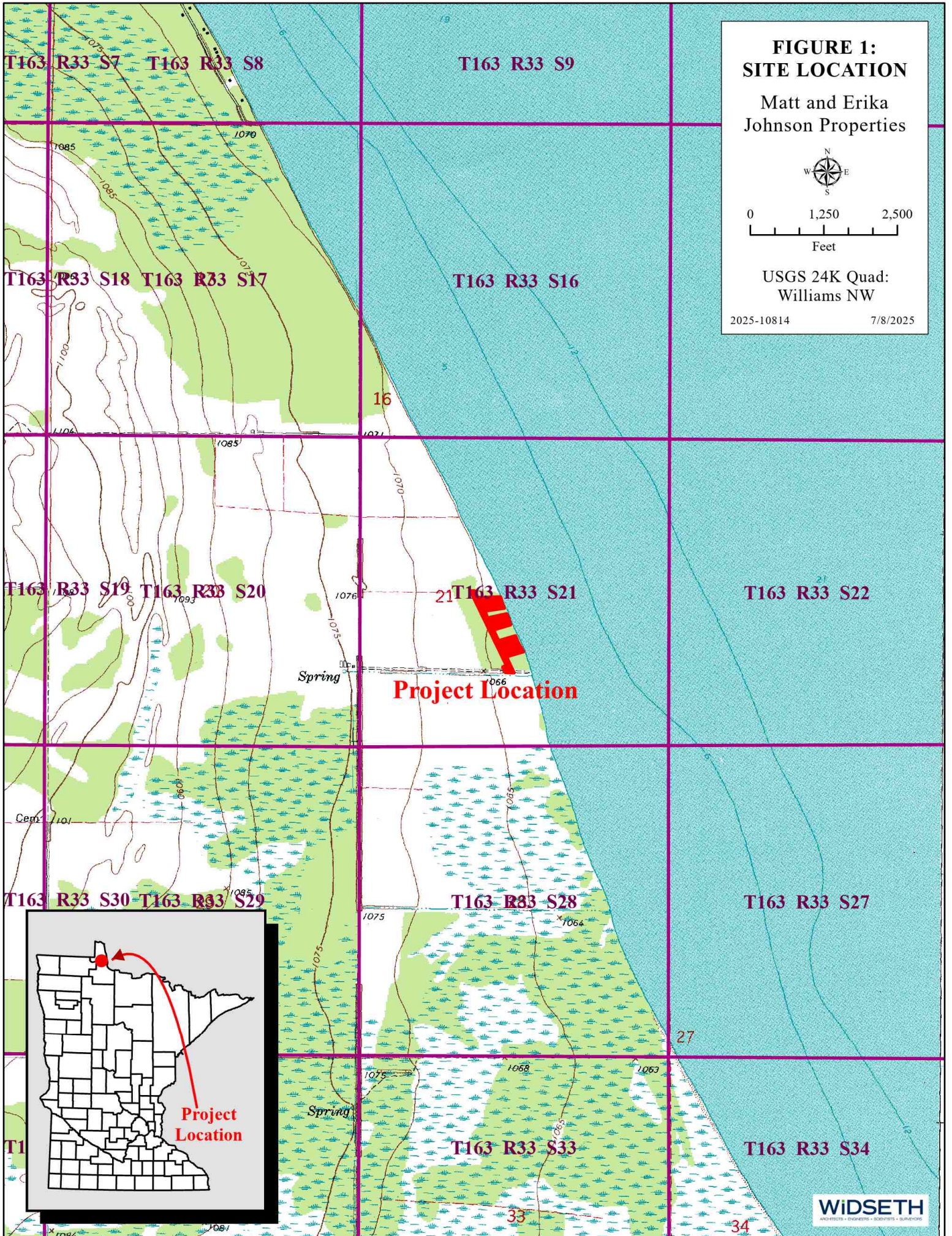
Matt and Erika
Johnson Properties



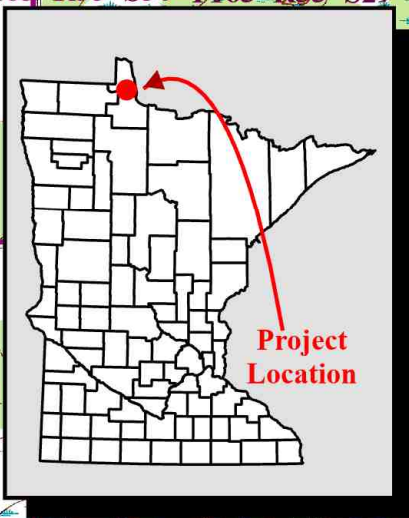
USGS 24K Quad:
Williams NW

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7/8/2025



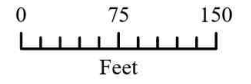
Project Location



**Project
Location**

**FIGURE 2:
NATIONAL
WETLANDS
INVENTORY (NWI)**

Matt and Erika
Johnson Properties



 Project Area

2023 FSA Imagery

7/8/2025
2025-10814

L2UBH

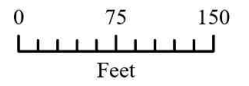
Lake of the Woods







PFO1D

R5UBEx

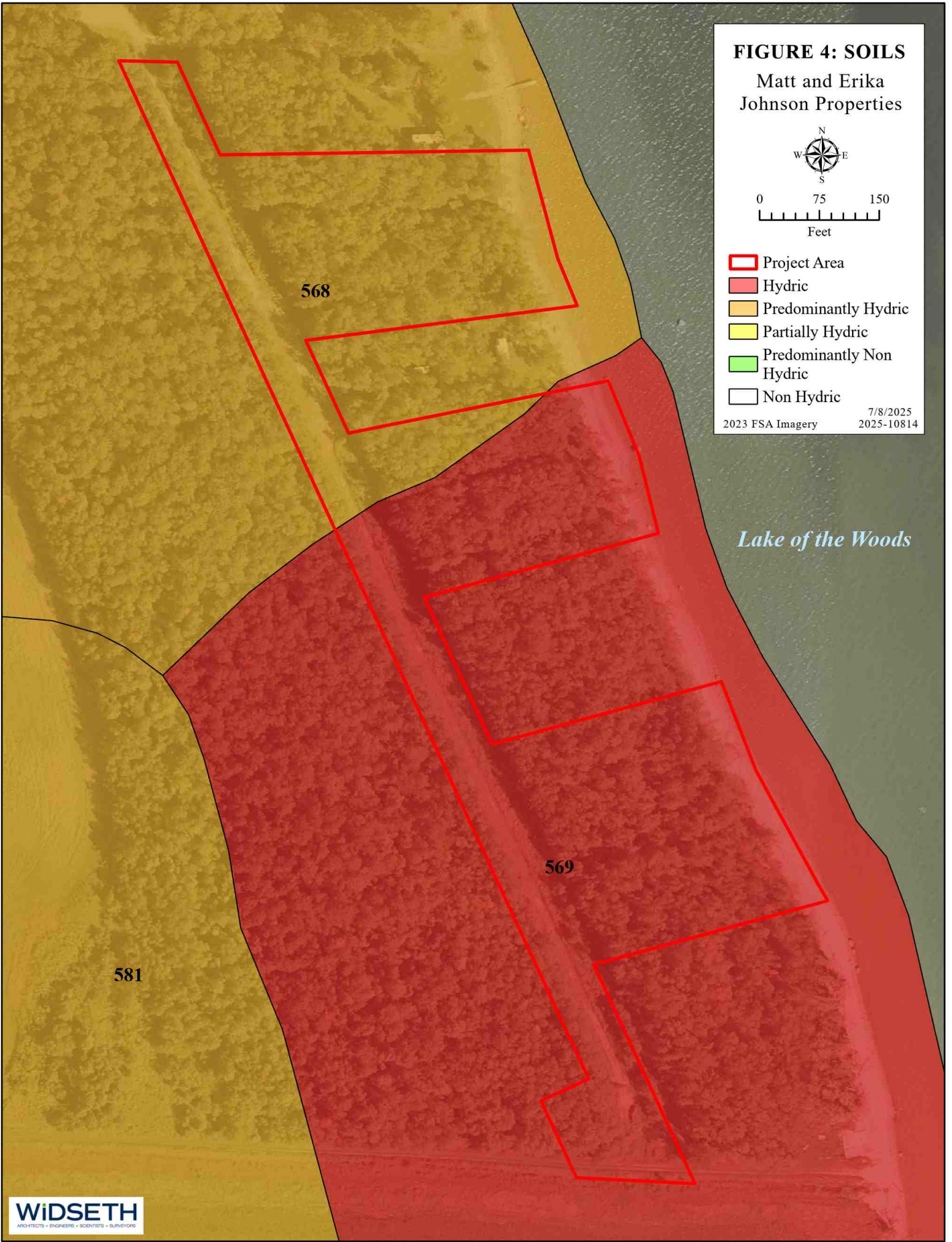
FIGURE 4: SOILS

Matt and Erika
Johnson Properties



-  Project Area
-  Hydric
-  Predominantly Hydric
-  Partially Hydric
-  Predominantly Non Hydric
-  Non Hydric

2023 FSA Imagery 7/8/2025
2025-10814



Lake of the Woods

568

569

581