



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT  
332 MINNESOTA STREET, SUITE E1500  
ST. PAUL, MN 55101-1678

MVP

20 November 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),<sup>1</sup> MVP-2025-00789-SSC MFR 1 of 1<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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. D2, 115 LF (619 square feet), non-jurisdictional
  - ii. Stormwater Treatment Pond (SWTP), 0.92 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)
- d. January 2023 Rule preamble at 88 FR 3090
- e. "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.

- a. Project Area Size (in acres): 108 acres
- b. Location Description: The project/review area is located in Section 11, Township 117 North, Range 24 West, Hennepin County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees):  
Latitude: 44.953601 Longitude: -93.673940
- d. Nearest City or Town: Minnetrista
- e. County: Hennepin
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

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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<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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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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).<sup>9</sup>

The resource noted as D2 is a ditch constructed in uplands as reviewed using US Geological Service (USGS) topographic maps, the National Hydrography Dataset (NHD), Minnesota Department of Natural Resources (MN DNR) hillshade imagery and daily precipitation data, US Fish and Wildlife Services (USFWS) National Wetland Inventory (NWI), historic and current aerial imagery, and site photos and narrative submitted by the wetland delineator for the site. D2 is located within soils (US Department of Agriculture [USDA] Web Soil Survey) that are characterized as hydric (Cordova loam, 0 to 2 percent slopes), however, historic aerial imagery and historic topographic maps indicate that this feature was constructed in uplands. The NHD and NWI do not denote this feature. Hillshade imagery shows D2 as a straight linear feature further supporting that it was a constructed feature. Site photos from April 23, 2025 show shallow water and saturation in D2. The Antecedent Precipitation Tool (APT) generated for this date indicates that the site was under normal climatic conditions at this time. The local precipitation data from this period shows that this area received rain events 3 consecutive days prior to the site visit. An August 7, 2025 site visit was also completed. The APT indicated the site was under wetter than normal climate conditions during this site visit. There was no flow observed in the channel at this site visit. Precipitation data from this time period indicates approximately 0.08-inch of precipitation accumulated the day prior to the site visit, but did not result in surface flow. Aerial imagery review was conducted, however, due to the tree

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

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cover located within the area and the small nature of the feature it was difficult to observe D2. Based on the resources outlined above, D2 was excavated wholly in and drains only uplands and does not carry relatively permanent flow of water, and according to exclusion (b)(3) of the 2023 Rule as amended, is not a water of the United States.

The resource denoted as SWTP is a constructed stormwater treatment pond. SWTP was constructed between 2004 and 2006, as indicated by aerial imagery. Historic aerial imagery and imagery prior to the construction of SWTP indicate that the area is uplands, however, in several recent aerials prior to the construction of STWP there appeared to be an erosional feature present likely providing drainage as necessary from the nearby development to the northwest of SWTP. SWTP is shown on NWI mapping but not on the NHD mapping. The NWI indicates this wetland as an excavated wetland feature. Hillshade and 2-foot contours were reviewed and indicate SWTP is surrounded by uplands, further supporting that the basin was constructed in uplands. Review of this information supports the determination that Stormwater Pond SWTP is a stormwater control feature constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff for the adjacent development. Based on the review of available resources and information submitted on behalf of the applicant, SWTP, according to exclusion (b)(5) of the 2023 as amended, is not a water of the United States.

- 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).  
N/A

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. SW Corner of Campus, 5901 Sunnyfield Road E. Wetland Delineation report dated May 1, 2025
- b. Westonka High School Data Request Response Memorandum dated September 17, 2025
- c. United States Geological Survey, National Hydrography Dataset, accessed on September 25, 2025

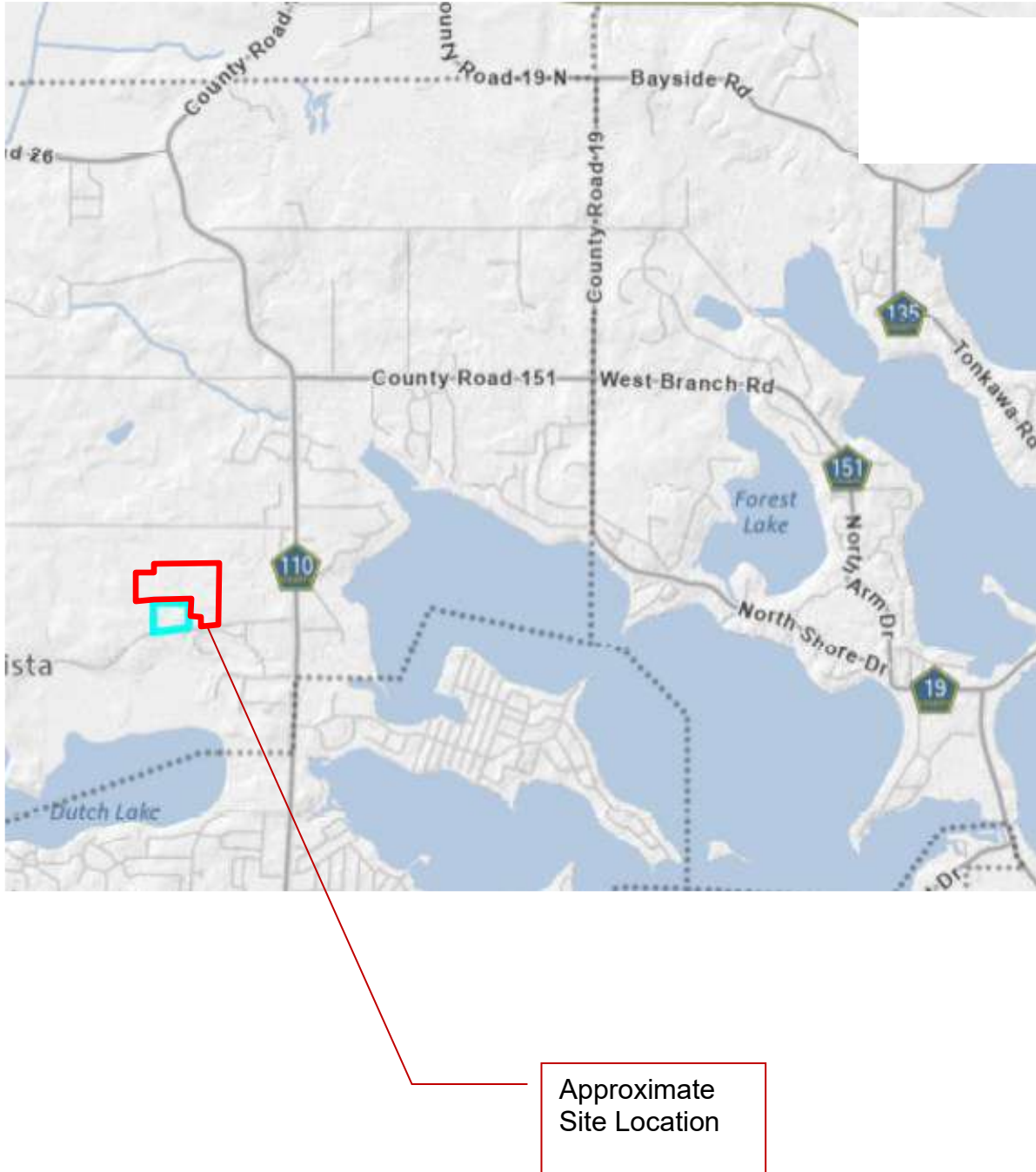
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- d. Minnesota Department of Natural Resources, 2-foot contours, hillshade, Precipitation Daily Data, accessed September 25, 2025

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. Location Map**  
SW Corner, 5901 Sunnyfield Road East  
Minnetrista, Minnesota

Project No. 2025-010

