



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MVP DISTRICT
ST. PAUL DISTRICT OFFICE
332 MINNESOTA ST E1500
ST. PAUL MN 55101

MVP

September 12, 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-2025-00890-TJH [[MFR 1 of 1](#)]²

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, 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 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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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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
WLB	Non-Jurisdictional	Non-WOTUS
WLE-1	Non-Jurisdictional	Non-WOTUS
WLE-2	Non-Jurisdictional	Non-WOTUS
WLE-3	Non-Jurisdictional	Non-WOTUS
WLC North	Non-Jurisdictional	Non-WOTUS
WLC South	Non-Jurisdictional	Non-WOTUS
WLH	Non-Jurisdictional	Non-WOTUS
WLZ-1	Non-Jurisdictional	Non-WOTUS

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 for this determination includes eight non-jurisdictional wetlands labeled as Wetland WLC North, Wetland WLC South, Wetland WLB, Wetland WLE-1, Wetland WLE-2, Wetland WLE-3, Wetland WLH, and Wetland WLZ-1 on the attached Figures labeled as 2025-00890-TJH Figure 1 of 2 through 2 of 2. A wetland delineation was completed at this site by Kjolhaug Environmental Servies (KES) in

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April and July of 2025. The review area is located on an approximately 114-acre project area in Ham Lake which is currently being used in agricultural production, in Section 13, Township 32 North, Range 23 West, Anoka County, Minnesota. The approximate center coordinates of this site (in decimal degrees), Latitude: 45.258800, Longitude: -93.158760. There are no other JDs associated with this 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
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.

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.

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- 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 within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁸ 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). Wetland WLC North, Wetland WLC South, Wetland WLB, Wetland WLE-1, Wetland WLE-2, Wetland WLE-3, Wetland WLH, and Wetland WLZ-1 are not traditionally navigable waters (TNW), territorial sea, or interstate water and therefore are not an (a)(1) waters. The wetland delineation and desktop resources, including topographic maps, LiDAR imagery, and Google Earth aerial imagery indicate that Wetland WLC North, Wetland WLC South, Wetland WLB, Wetland WLE-1, Wetland WLE-2, Wetland WLE-3, and Wetland WLH, are depressional basins surrounded entirely by upland with no continuous surface connection (CSC) to jurisdictional waters. Wetland WZ-1 continues offsite and abuts an agricultural ditch that does not appear to be a relatively permanent waterway; therefore Wetland WZ-1 does not have a CSC to jurisdictional waters. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. These wetlands are

⁸ 88 FR 3004 (January 18, 2023)

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approximately 0.24 - 0.41 mile from the nearest relatively permanent water, an unnamed stream located to the northwest of the project. 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 an (a)(4) adjacent wetland; therefore, Wetland WLC North, Wetland WLC South, Wetland WLB, Wetland WLE-1, Wetland WLE-2, Wetland WLE-3, Wetland WLH, and Wetland WLZ-11 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.

- a. Kjolhaug Environmental Services Delineation Report, dated April 2025 and July 2025.
- b. Desktop evaluation conducted September 8, 2025.
- c. USGS LiDAR, 3DEP Elevation Model, USGS TNM – National Hydrography Dataset, USFWS NWI Maps, and USDA/NRCS Soil Survey Maps

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.

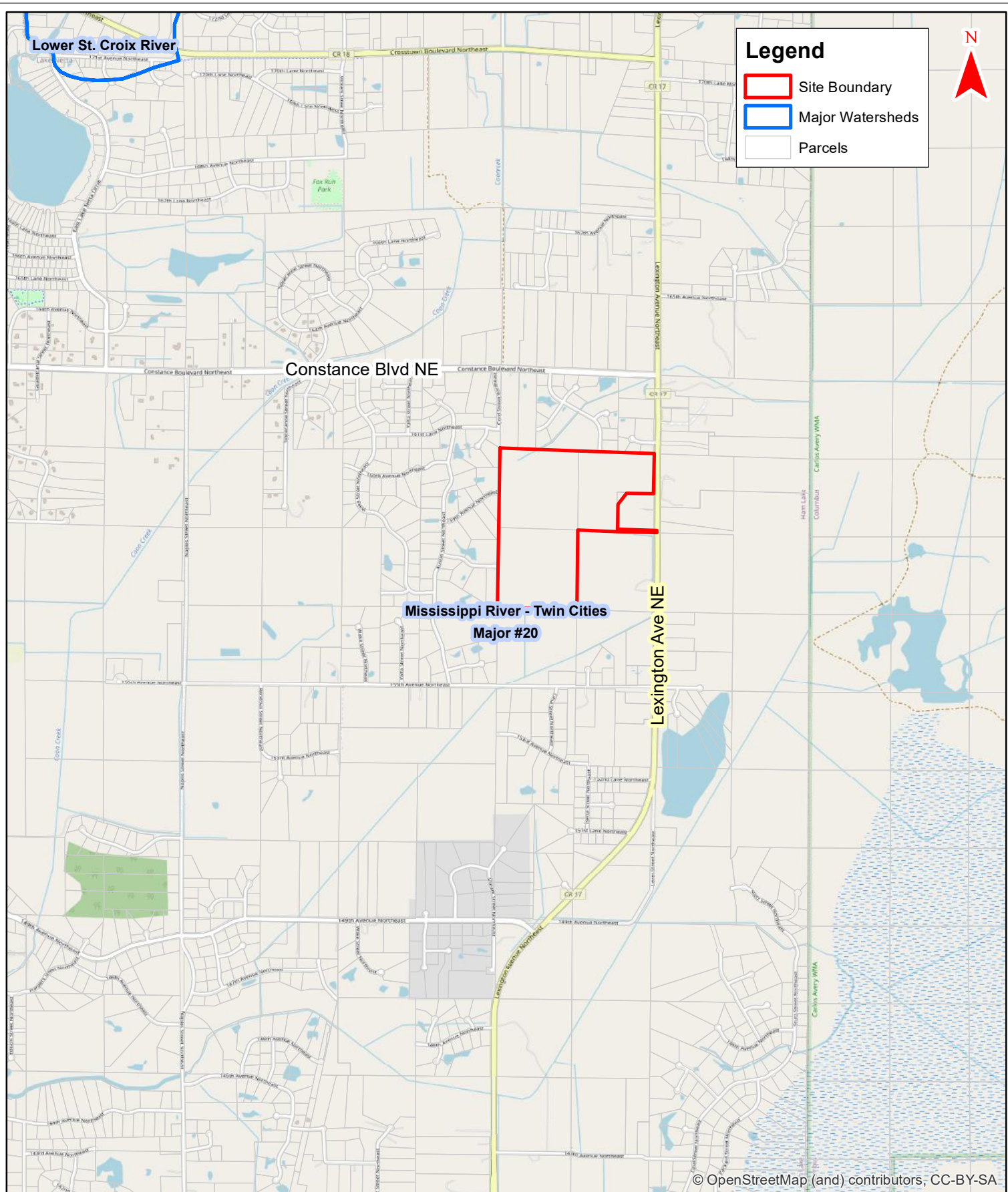
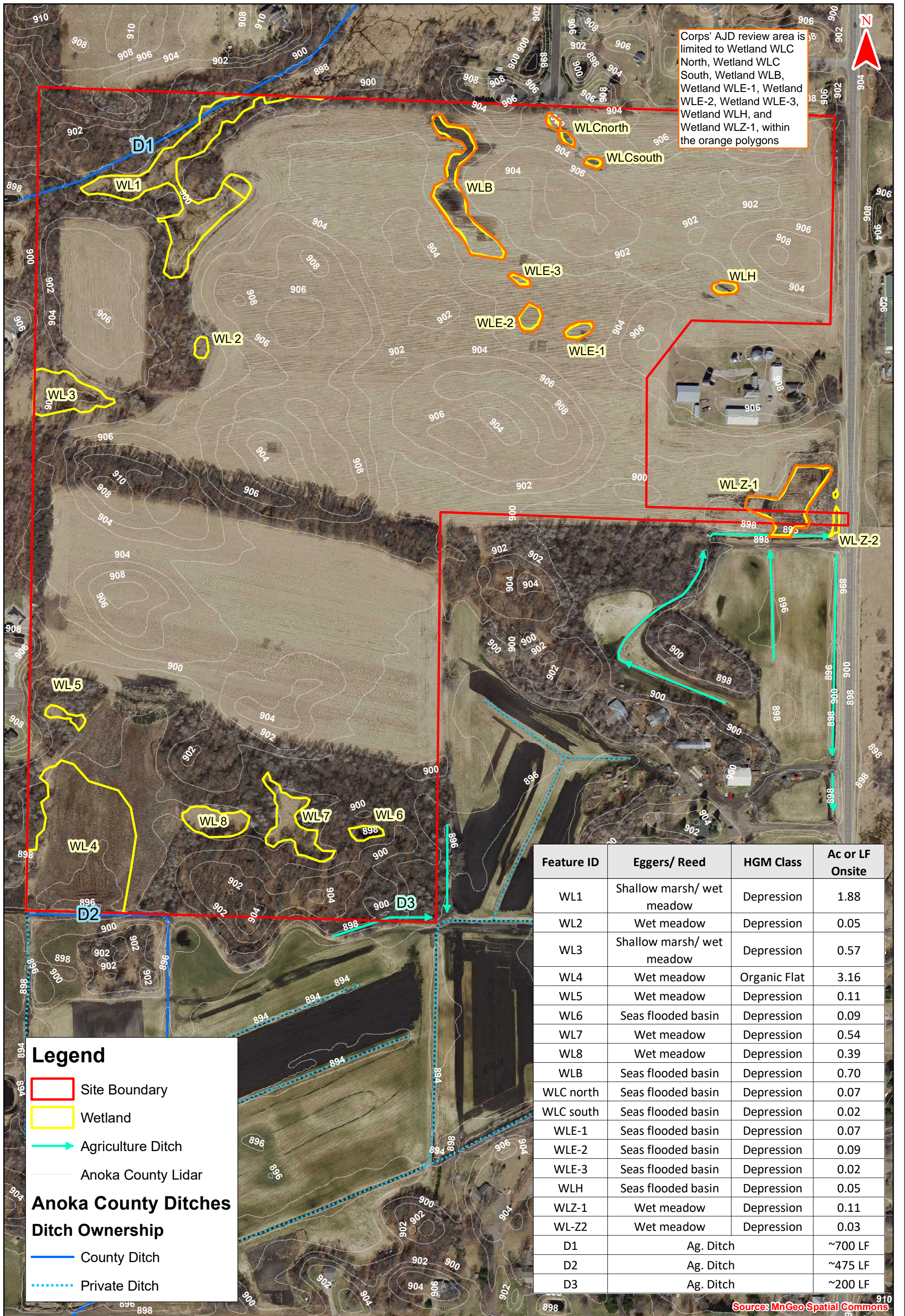


Figure 1 - Site Location & Major Watershed

**Kohler Farms (KES 2025-021)
Ham Lake, Minnesota**

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





Corps' AJD review area is limited to Wetland WLC North, Wetland WLC South, Wetland WLB, Wetland WLE-1, Wetland WLE-2, Wetland WLE-3, Wetland WLH, and Wetland WLZ-1, within the orange polygons

Feature ID	Eggers/ Reed	HGM Class	Ac or LF Onsite
WL1	Shallow marsh/ wet meadow	Depression	1.88
WL2	Wet meadow	Depression	0.05
WL3	Shallow marsh/ wet meadow	Depression	0.57
WL4	Wet meadow	Organic Flat	3.16
WL5	Wet meadow	Depression	0.11
WL6	Seas flooded basin	Depression	0.09
WL7	Wet meadow	Depression	0.54
WL8	Wet meadow	Depression	0.39
WLB	Seas flooded basin	Depression	0.70
WLC north	Seas flooded basin	Depression	0.07
WLC south	Seas flooded basin	Depression	0.02
WLE-1	Seas flooded basin	Depression	0.07
WLE-2	Seas flooded basin	Depression	0.09
WLE-3	Seas flooded basin	Depression	0.02
WLH	Seas flooded basin	Depression	0.05
WLZ-1	Wet meadow	Depression	0.11
WLZ-2	Wet meadow	Depression	0.03
D1	Ag. Ditch		~700 LF
D2	Ag. Ditch		~475 LF
D3	Ag. Ditch		~200 LF

Legend

- Site Boundary
- Wetland
- ➔ Agriculture Ditch
- Anoka County Lidar
- Anoka County Ditches**
- Ditch Ownership**
- County Ditch
- ⋯ Private Ditch

Source: MnGeo Spatial Commons



Figure 2 - Existing Conditions (2020, 7 County)

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