



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

MVP

14 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-2025-00976-PJH 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.<sup>2</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>3</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>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

---

<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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00976-PJH](#)

- 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 D is an approximately 0.03-acre \(1,120 square foot\) depressional basin that is non-jurisdictional.](#)
  - ii. [Wetland E is an approximately 0.15-acre \(6,504 square foot\) depressional basin that is non-jurisdictional.](#)
  - iii. [Wetland F is an approximately 0.25-acre \(11,061 square foot\) depressional basin that is non-jurisdictional.](#)
  - iv. [Wetland 1 is an approximately 1.41-acre \(65,420 square foot\) depressional basin that is 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)

## 3. REVIEW AREA.

[The subject aquatic resources are within an approximately 8.30-acre review area identified by the purple polygon the figure labeled MVP-2025-00976-PJH AJD Page 2 of 3. The review area is located in St. Cloud, Benton County, Minnesota. Center coordinates are 45.565570°, -94.104590°. The review area is located in in Section 32, Township 36 North, Range 30 West. No previous jurisdictional determinations have been completed in the review area.](#)

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

[N/A](#)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00976-PJH](#)

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

[N/A](#)

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</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](#)

c. Interstate Waters (a)(1)(iii): [N/A](#)

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

---

<sup>5</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>6</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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00976-PJH](#)

- 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>7</sup>

[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 D \(0.03 acres\), Wetland E \(0.15 acres\), Wetland F \(0.25 acres\), and Wetland 1 \(1.41 acres\) are depressional basins surrounded by uplands that are non-jurisdictional. The wetlands can be seen on the figures labeled MVP-2025-00976-PJH AJD Pages 2 through 3. The wetlands are not Traditional Navigable Waters \(TNWs\), territorial seas, or interstate waters, therefore, are not \(a\)\(1\) waters. The wetlands do not physically abut relatively permanent \(a\)\(2\) impoundments or jurisdictional \(a\)\(3\) tributaries. The closest tributary, County Ditch #3, is located approximately 0.42 miles southwest of the review area. The wetlands do not have a continuous surface connection \(CSC\) to County Ditch #3 or any other jurisdictional waters. Wetland D, Wetland E, Wetland F, and Wetland 1, are non-tidal wetlands that do not have a CSC to relatively permanent jurisdictional waters, and as such do not meet the definition of adjacent and cannot be evaluated as \(a\)\(4\) adjacent wetlands; therefore, they are not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.](#)

---

<sup>7</sup> 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-00976-PJH](#)

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. [Office/desktop evaluations were conducted October 1, 2025 – November 7, 2025](#)
  - b. [Aerial Imagery: Google Earth Pro, MN NAIP 2019, MN NAIP-2019-CIR](#)
  - c. [LiDAR: MNDNR Hillshade – 2016, 3DEP Hillshade](#)
  - d. [3DEP Digital Elevation Model \(DEM\), 3DEP Slope, MN Contours – 2ft](#)
  - e. [National Wetland Inventory \(NWI\), National Hydrography Dataset \(NHD\)](#)

10. OTHER SUPPORTING INFORMATION.

[The applicant intends to construct a residential development within the review area. Preliminary construction plans can be seen on the figure labeled MVP-2025-00976-PJH AJD Page 3 of 3.](#)

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.



**Legend**

-  AJD Review Area
-  St. Cloud

Figure 3

# Wetland Delineation Exhibit





for  
**Chris and Linda Bulow**  
Section 32, Township 36 North, Range 30 West  
City of St. Cloud, Benton County, Minnesota

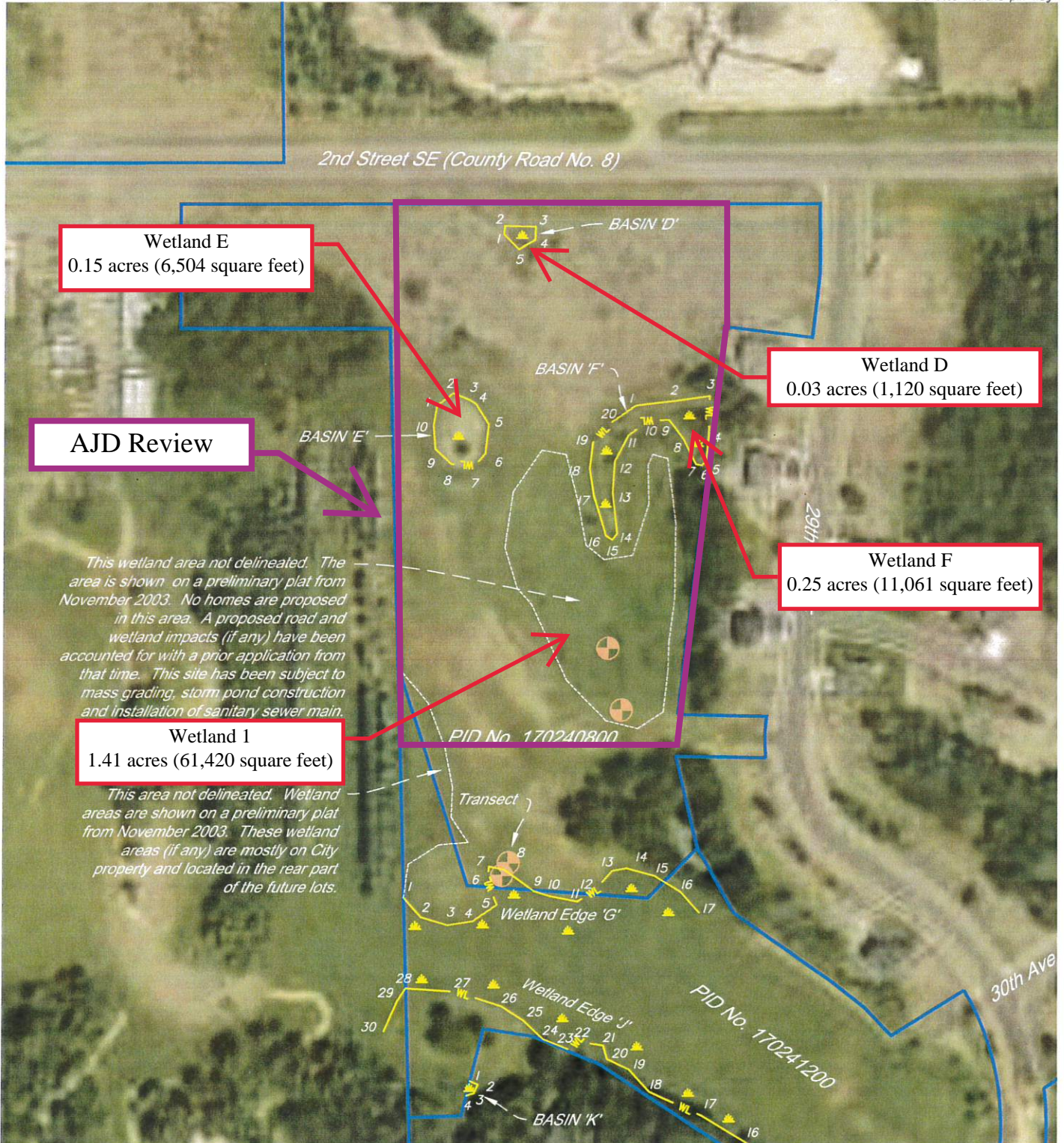
**Wetland Basins D through G, K, part of J**

Date of Field Work: November 2nd and 3rd 2021. Aerial Image: Spring 2020 per Benton County Beacon



0 200  
SCALE: 1" = 200'

-  Denotes soil boring
-  Denotes wetland edge
-  Denotes boundary of parcel
-  15 Denotes wetland pin flag



**Wetland E**  
0.15 acres (6,504 square feet)

**Wetland D**  
0.03 acres (1,120 square feet)

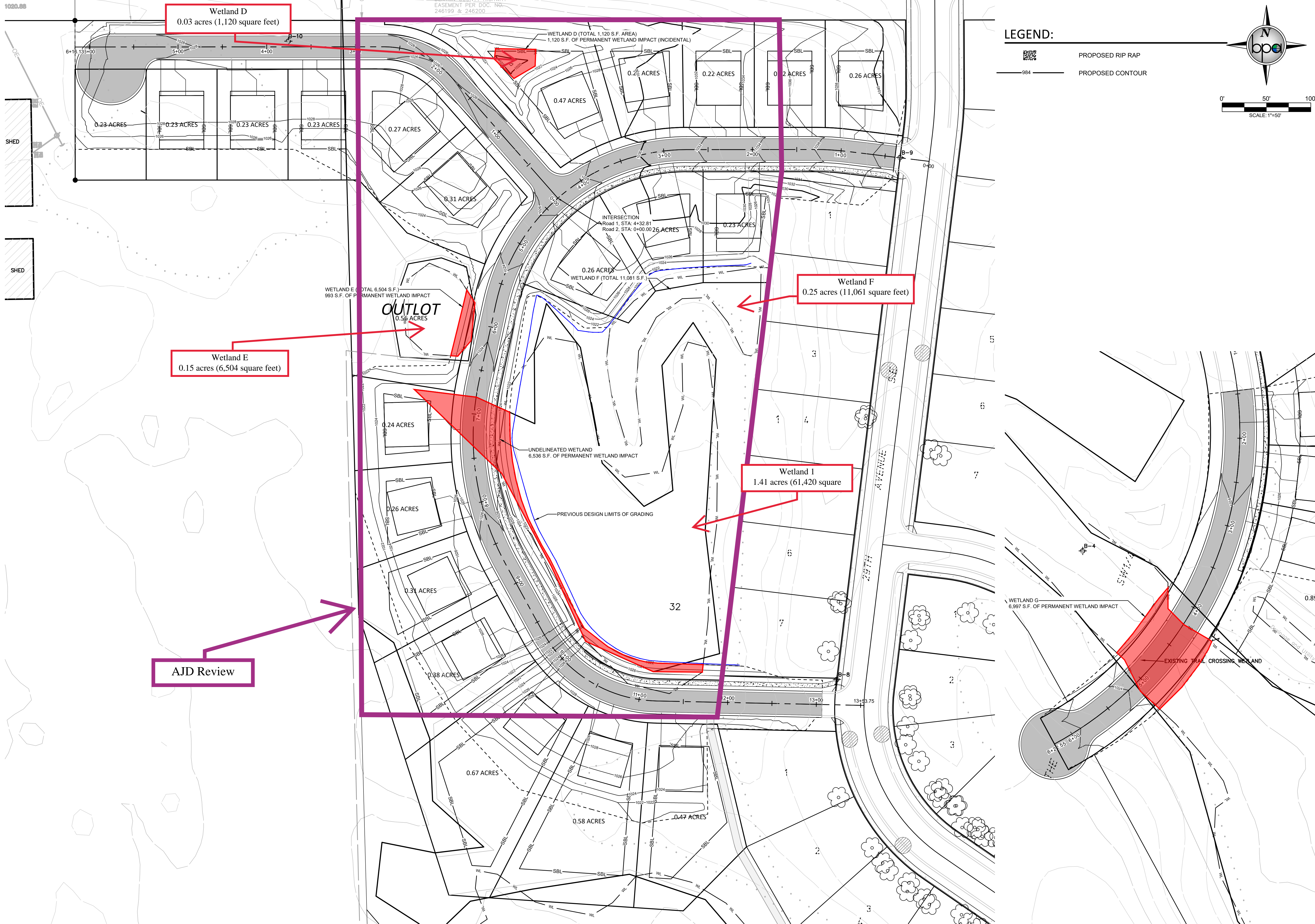
**Wetland F**  
0.25 acres (11,061 square feet)

**Wetland 1**  
1.41 acres (61,420 square feet)

**AJD Review**

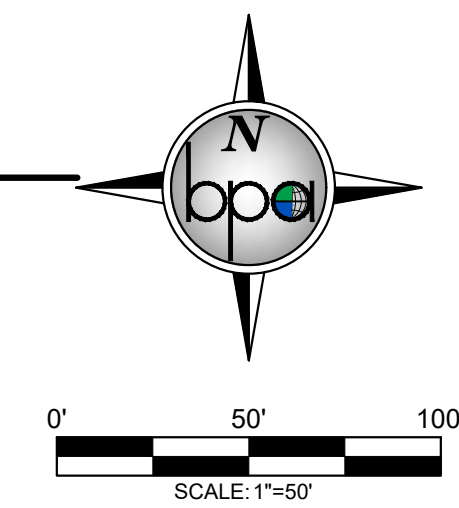
*This wetland area not delineated. The area is shown on a preliminary plat from November 2003. No homes are proposed in this area. A proposed road and wetland impacts (if any) have been accounted for with a prior application from that time. This site has been subject to mass grading, storm pond construction and installation of sanitary sewer main.*

*This area not delineated. Wetland areas are shown on a preliminary plat from November 2003. These wetland areas (if any) are mostly on City property and located in the rear part of the future lots.*



LEGEND:

- PROPOSED RIP RAP
- PROPOSED CONTOUR



REV. NO.	DATE	DESCRIPTION
1	10/01/2025	GRADING & SWPPP REVISIONS

DATE:	10/01/2025
DESIGN BY:	DML
DRAWN BY:	DML
CHECKED BY:	CJD
DWG FILE:	GRADING
FILE NO.:	21-0541.00

**NOT FOR CONSTRUCTION**

**BOGART, PEDERSON & ASSOCIATES, INC.**  
 LAND SURVEYING  
 ENVIRONMENTAL SERVICES  
 13076 FIRST STREET, BECKER, MN 55508-9322  
 TEL: 763-262-8822 FAX: 763-262-8844

**BULOW AYERS MILL POND**  
 City of St. Cloud, Benton County, MN  
 WETLAND IMPACT EXHIBIT

SHEET NO.  
**E1**

10/2/2025 8:55 AM N:\Projects\Comm\21-0541.00\Bulow Ayers Mill Pond\DWG\Wetland Impact.dwg