



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

December 31, 2025

Regulatory File No. MVP-2025-01056-TJH

Ross Bintner
City of Edina Engineering Department
7450 Metro Boulevard
Edina, MN 55439
rbintner@edinamn.gov

Dear Ross Bintner,

This letter contains an Approved Jurisdictional Determination (AJD) for the area(s) identified below, located on the study area bounded by West 64th Street to the North, York Avenue South to the West, Xerxes Avenue South to the East, and residential lots to the South. in Section 29, Township 028N, Range 024W, Hennepin County, Minnesota. The review area for this determination is identified on the enclosed figure labeled: MVP-2025-01056-TJH 1-3 of 3.

Non-Jurisdictional Area(s):

We have determined that the following area(s) are not waters of the United States subject to Corps of Engineers (Corps) jurisdiction under Section 404 of the Clean Water Act or Sections 9 or 10 of the Rivers and Harbors Act:

- Wetland 1, (0.55 acre)

You are not required to obtain Corps authorization within the area(s) listed above. This determination only applies to the area(s) identified above and is based on a reasonable approximation of their location and boundaries. The basis for this determination is provided in the enclosed Memorandum for Record.

Appeal Process:

If you object to this approved jurisdictional determination, you may request an administrative appeal under Corps regulations at 33 CFR 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Mississippi Valley Division Office at the address shown on the form. In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the enclosed NAP.

It is not necessary to submit an RFA form to the division office if you do not object to the determination in this letter.

AJD Expiration:

This AJD may be relied upon for five years from the date of this letter. However, the Corps reserves the right to review and revise the determination in response to information that was not considered during our initial review.

Contact Information:

If you have any questions, please contact me in our St. Paul District Office at 651-290-5344 or tom.j.hayek@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,

Handwritten signature of Thomas J. Hayek Jr. in cursive script.

Tom Hayek
Regulatory Specialist

Enclosures
AJD MFR, Appeals Form

cc: Tyler Seiboldt, Barr Engineering Co.
tseiboldt@barr.com

Jed Chestnut, BWSR
Jed.chestnut@state.mn.us

Karen Wold, Nine Mile Creek WD
kwold@barr.com



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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-2025-01056-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,

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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01056-TJH

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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 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 1 non-jurisdictional wetland labeled as Wetland 1 on the attached figures labelled as 2025-01056-TJH Figure 1 of 3 through 3 of 3. A wetland delineation was completed at this site by Barr Engineering Co. on September 2025. The review area is located on an approximately 0.78-acre site in Section 29, Township 28 North, Range 24 West, Hennepin County, Minnesota. The approximate center coordinates of this site (in decimal degrees), Latitude: 44.886770, Longitude: -93.320090. There are no other JDs associated with this review area.

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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
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.
 - 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

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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- 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 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 1 is not a traditionally navigable waters (TNW), territorial sea, or interstate water and therefore is not an (a)(1) waters. Wetland 1 does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. This wetland is approximately 0.3 mile from the nearest relatively permanent water, a pond located to the East of the review area. The wetland delineation reported the dominant vegetation on the edge of the wetland consists of silver maple (*Acer saccharinum*), common buckthorn (*Rhamnus cathartica*), and riverbank grape (*Vitis riparia*). There is a moderately abrupt change in the slope from the toe of Wetland 1 going into upland, which lacked hydrophytic vegetation, hydrology, and hydric soil indicators higher up slope from the wetland. The wetland delineation and desktop resources, including topographic maps, LiDAR imagery, and Google Earth aerial imagery, indicate that Wetland 1 is a shallow, open water wetland. It is covered entirely by standing water which is estimated to be 4 feet deep in the center of the open water. This wetland is a non-tidal wetland that does not have a continuous surface connection to a relatively permanent jurisdictional water and, as such, does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, this wetland 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. Barr Engineering Co. Wetland Delineation Report, dated September 2025
 - b. Desktop Evaluation conducted December 31, 2025

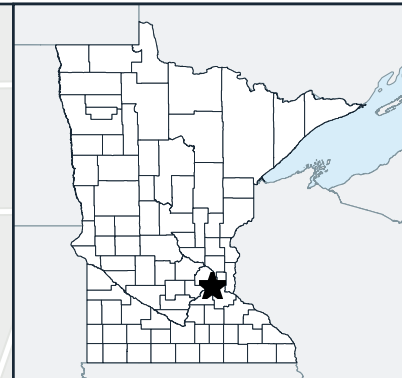
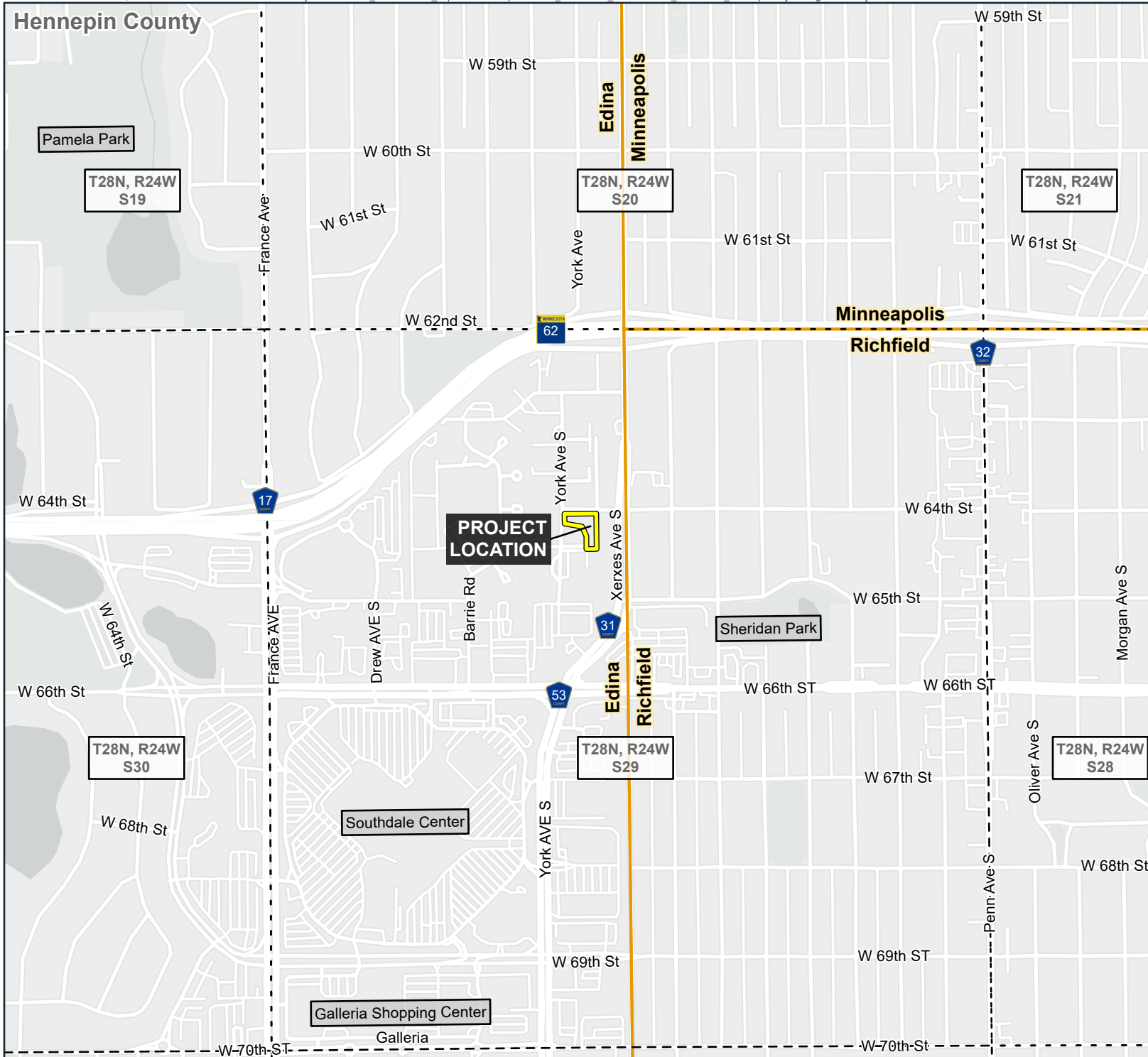
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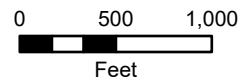
- c. USGS LiDAR, 3DEP Elevation Model, USGS TNM – National Hydrography Dataset, USFWS NWI Maps, and USDA/NRCS Soil Survey Maps

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.



-  Project Area
-  Municipal Boundary
-  Public Land Survey Section

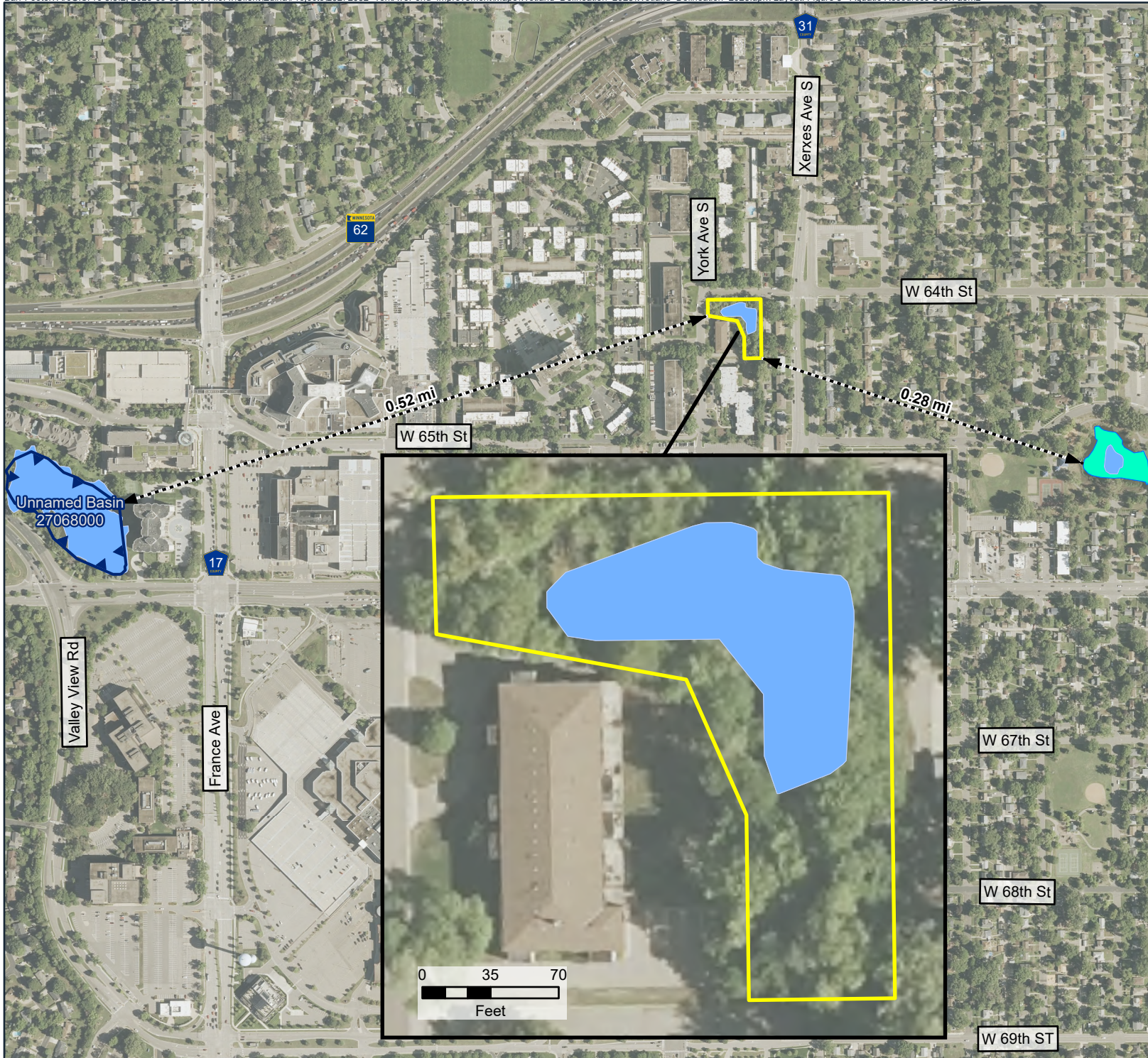






Basemap: ESRI, USA Topography

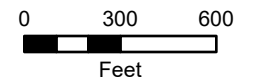
Project Location
 York Ave. Pond Improvement
 Wetland Delineation - 2025
 Hennepin County, MN

FIGURE 1





-  Project Area
-  Public Waters Basins
- Wetlands (National Wetlands Inventory)**
-  Freshwater Emergent Wetland
-  Freshwater Pond

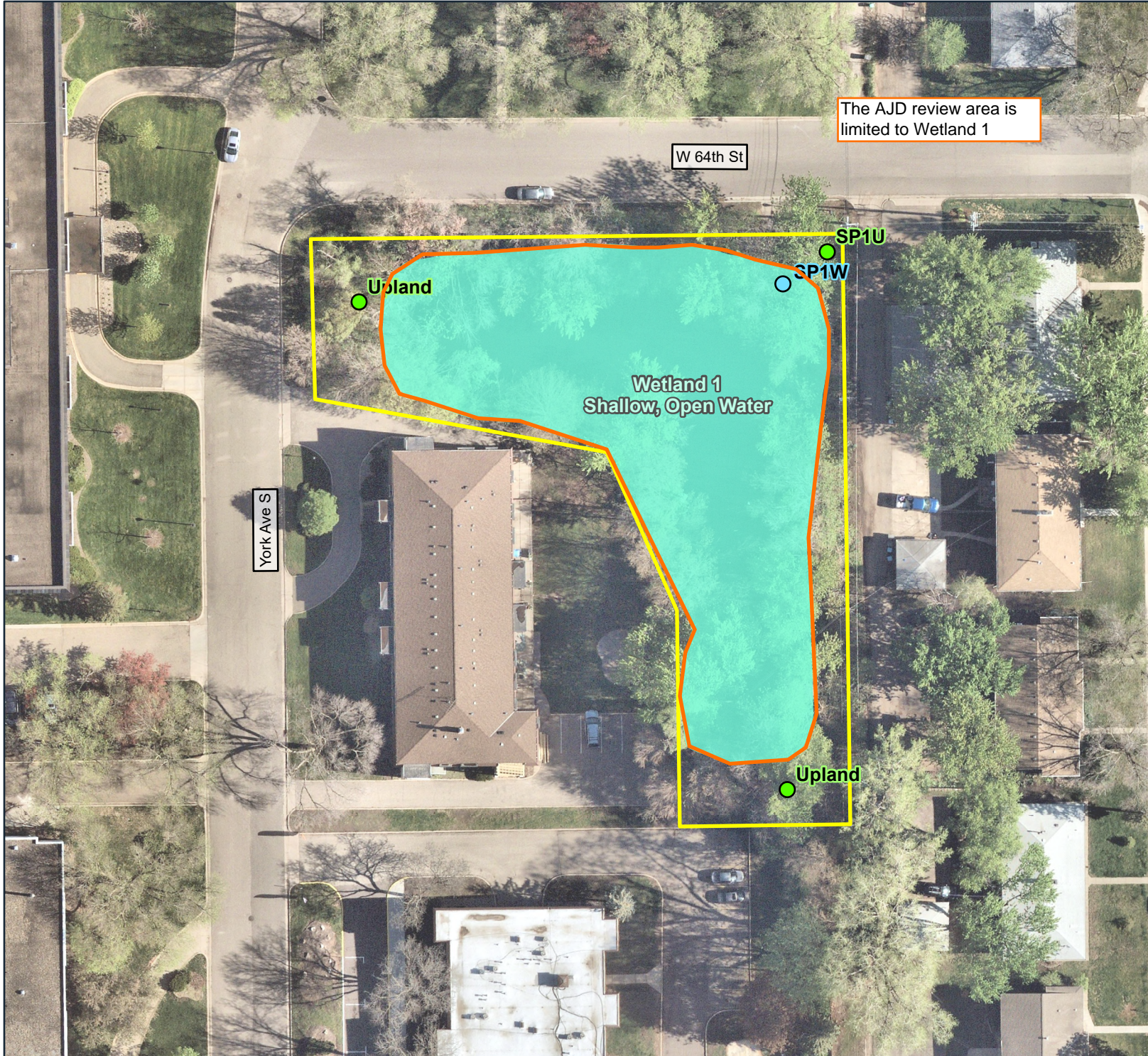


Imagery: Nearmap, 05/03/2024

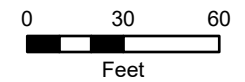
Aquatic Resources
 York Ave. Pond Improvement
 Wetland Delineation - 2025
 Hennepin County, MN

FIGURE 3





- Project Area
- Field-Delineated Wetland - 2025
- Field Sample Points**
- Wetland
- Upland



Imagery: Nearmap, 05/03/2024

Wetland Delineation Results
York Ave. Pond Improvement
Wetland Delineation - 2025
Hennepin County, MN

FIGURE 5

