

U.S. Army Corps of Engineers (USACE) NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL		<i>Form Approved –</i> OMB No. 0710-0003 Expires 2027-10-31
For use of this form, see Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act; the proponent agency is CECW-COR.		
DATA REQUIRED BY THE PRIVACY ACT OF 1974		
Authority	The authorities for requesting this information are Sections 9, 10, 13, and 14, Rivers and Harbors Act of March 3, 1899; Section 404, Clean Water Act; and Section 103 Marine Protection Research and Sanctuaries Act of 1972.	
Principal Purpose	This information serves as notification to affected parties regarding the USACE administrative appeal options and process, as well as to facilitate requests for appeal of USACE decisions with which they disagree.	
Routine Uses	Routine uses will include: (a) To serve as notification to affected parties of the Corps administrative appeal options and process and to facilitate requests for appeal of Corps decisions with which they disagree. (b) Records may be referred to the Department of Justice for possible criminal prosecution. (c) Records may be referred to other Federal, State, and local agencies for evaluation and enforcement purposes.	
Disclosure	Disclosure of this information is voluntary on your part. However, failure of individual to provide requested information could result in inability to determine all pertinent information regarding a Department of the Army permit matter.	
The Agency Disclosure Notice (ADN)		
The Public reporting burden for this collection of information, 0710-0003, is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil . Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.		
PURPOSE: This form is used to facilitate the initiation of the administrative appeals process. The appeals process allows an affected party to pursue an administrative appeal of certain Corps of Engineers decisions with which they disagree.		
Upon release, this form will also be available on the Corps website https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/		
Applicant : Martin Farrell	File Number: MVP-2025-01076	Date: 11/6/2025
Documents Attached (<i>select all that apply</i>):		Form Reference Section:
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL WITHOUT PREJUDICE	C
<input type="checkbox"/>	PERMIT DENIAL WITH PREJUDICE	D
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	E
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	F
SECTION I		
The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/ or Corps regulations at 33 CFR Part 331.		
<p>A: INITIAL PROFFERED PERMIT: You may accept or object to the permit</p> <ul style="list-style-type: none"> • ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit. • OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below. 		

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:	If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:
Name: Catherine Beatty	Name: Brian Oberlies, Regulatory Appeals Review Officer
Street Address, City, State: 332 Front Street South, 4th Floor La Crosse, WI 54601	Street Address, City, State: 1400 Walnut Street Vicksburg, Mississippi 39180
Phone: 612-258-3504	Phone: 601-634-5820
Email: Catherine.E.Beatty@usace.army.mil	Email: Brian.M.Oberlies@usace.army.mil

SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

Email address of appellant and/or agent

Telephone number

Signature of appellant or agent

Date



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

CEMVP-RD-S

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-2025-01076 [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.

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).
 - a. Area 1 (Wetland W4), non-jurisdictional, no discrete features that provide continuous surface connection between the wetland and an RPW, a topographically depressed area. The district has determined that this water is non-jurisdictional, therefore, it is not subject to CWA jurisdiction, and is not a waters of the U.S.
 - b. Area 2 (Wetland W5), non-jurisdictional, no discrete features that provide continuous surface connection between the wetland and an RPW, a topographically depressed area. The district has determined that this water is non-jurisdictional, therefore, it is not subject to CWA jurisdiction, and is not a waters of the U.S.
 - c. Area 3 (Wetland W2), non-jurisdictional, no discrete features that provide continuous surface connection between the wetland and an RPW, a topographically depressed area. The district has determined that this water is non-jurisdictional, therefore, it is not subject to CWA jurisdiction, and is not a waters of the U.S.

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.

- a. Project Area Size (in acres): 18 acres
- b. Location Description: The project/review area is located in Section 32, Township 120N, Range 22W, Hennepin County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 45.161630 Longitude: -93.496920
- d. Nearest City or Town: Osseo
- e. County: Hennepin

- f. State: Minnesota
 - g. Other associated Jurisdictional Determinations (including outcomes):
None to report.
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
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. [N/A]

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.

- 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

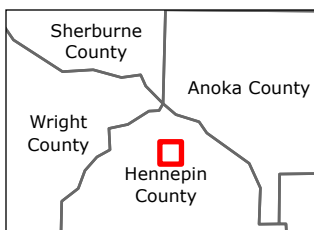
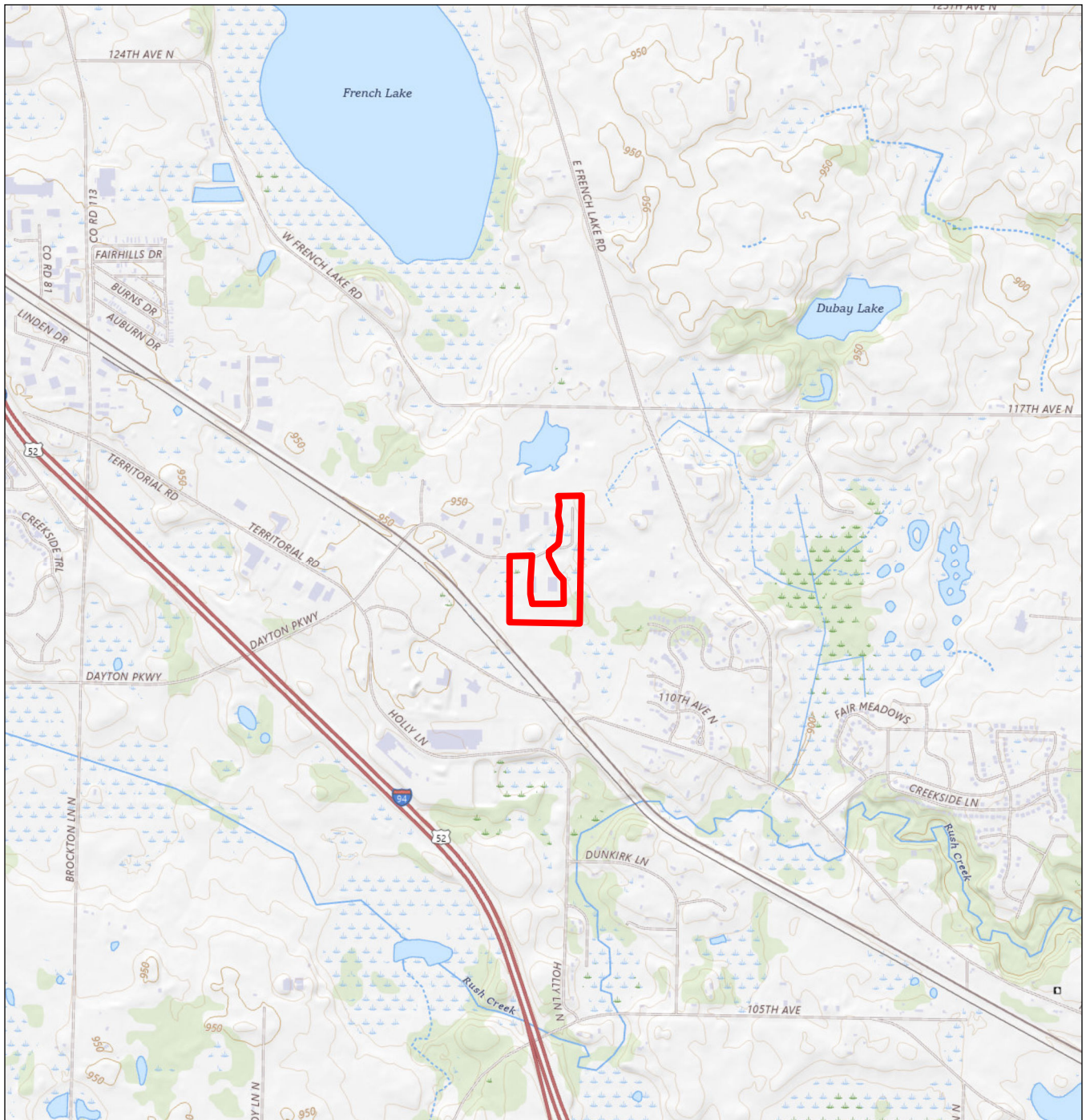
- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic 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).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).
 - 1. Area 1- (Wetland W4), 1.53 acres, (45.161893, -93.497928), this wetland is not adjacent to/ lacks a continuous surface connection to a WOTUS. [40 CFR 120.2(a)(4)]
 - 2. Area 2- (Wetland W5), 0.37 acres, (45.160574, -93.496780), this wetland is not adjacent to/ lacks a continuous surface connection to a WOTUS. [40 CFR 120.2(a)(4)]
 - 3. Area 3- (Wetland W2), 0.91 acres, (45.162005, -93.497958), this wetland is not adjacent to/ lacks a continuous surface connection to a WOTUS. [40 CFR 120.2(a)(4)]


⁹ 88 FR 3004 (January 18, 2023)

CEMVP-RD-S

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01076

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. Dayton 113th Ave Sewer Extension Project Wetland Delineation Report, prepared by Stantec Consulting Services Inc. dated May 2025.
 - b. Office desktop evaluation completed 28 October 2025.
 - c. National Regulatory Viewer (NRV) Minnesota Viewer: 3DEP: LiDAR, DEM, 2-ft contours and Hillshade, USFWS NWI, NHD, USDA-NRCS Soils Survey, Accessed 28 October 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.



Legend
 Study Area

0 1,000 2,000 Feet
 (At original document size of 8.5x11)
 1:24,000



Project Location T120N, R22W, S32 Prepared by LAH on 2025-05-07
 C. of Dayton, Hennepin Co., MN

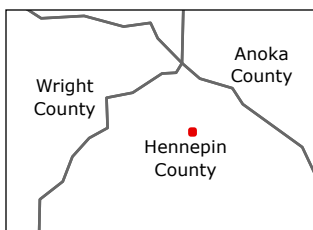
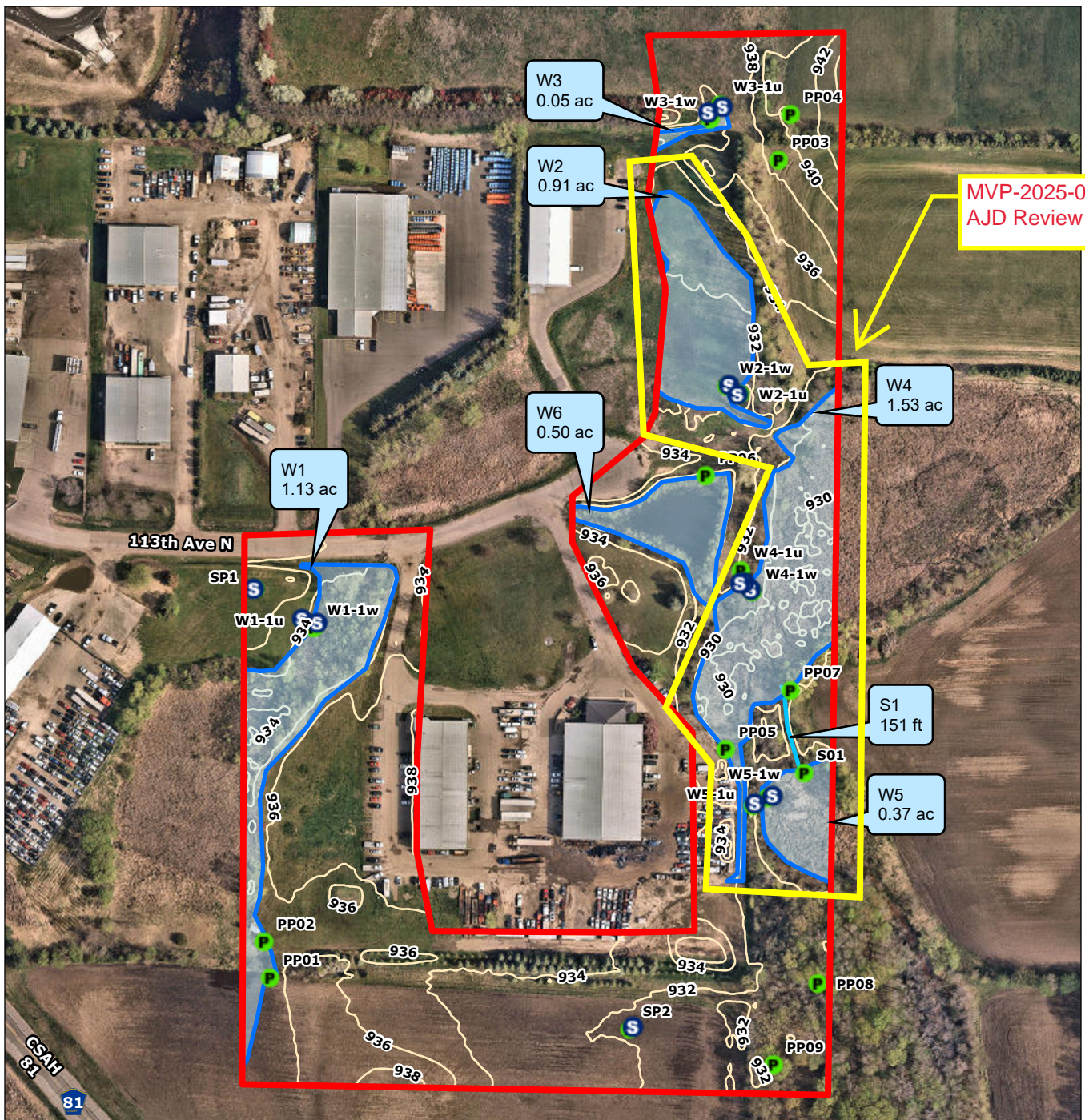
Client/Project City of Dayton 193807450

113th Ave
 Wetland Delineation

Figure No.

1

Title
 Project Location



Legend

- Study Area
- ~ Field Delineated Wetlands
- ~ Field Delineated Waterway
- 2 ft Contours
- Photo Location
- S Sample Point

0 120 240 Feet
(At original document size of 8.5x11)
1:2,880



Project Location
T120N, R22W, S32
C. of Dayton, Hennepin Co., MN

Client/Project
City of Dayton
113th Ave
Wetland Delineation

Figure No.
5

Title
Field Collected Data

Notes
1. Coordinate System: NAD 1983 UTM Zone 15N
2. Data Sources: Stantec, USGS
3. Background: Hennepin County Aerial, 2024

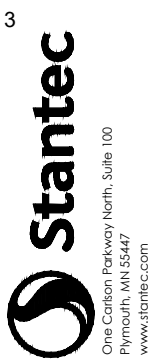


FIGURE 1

DATE 08/27/2025

PROJ. NO. 193807450

TEMPORARY WETLAND DISTURBANCE EXHIBIT

CITY OF DAYTON
113TH AVE TRUNK SEWER EXTENSION

