

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01218

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-2025-01218 [MFR1]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
Wetland 1	Non-Jurisdictional	N/a
Wetland 2	Non-Jurisdictional	N/a
Wetland 6	Non-Jurisdictional	N/a
Wetland 7	Non-Jurisdictional	N/a
Wetland 4	Non-Jurisdictional	N/a

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)
- e. January 2023 Rule preamble at 88 FR 3090

3. REVIEW AREA.

- a. Project Are Size (in acres): 80 acres
- b. Location Description: The project/review area is located in Section 23, Township 115 N, Range 23 W, Scott County, MN.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.749280 Longitude: -93.546310
- d. Nearest City or Town: Shakopee
- e. County: Scott

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- f. State: MN
 - g. Other associated Jurisdictional Determinations (including outcomes):
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. ⁶
N/a
 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.

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.

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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
- 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).

Wetlands 1, 2, 4, 6, and 7 are not TNW (Traditional Navigable Water), territorial sea, or interstate water and is therefore not considered (a)(1) waters. Wetlands 1, 2, 4, 6, and 7 do not abut any other wetlands or tributaries, either on-site or off-site. Wetlands 1, 2, 4, 6, and 7 were evaluated as a potential (a)(4) waters but do not have a continuous surface connection to a jurisdictional water.

⁹ 88 FR 3004 (January 18, 2023)

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The National Wetland Inventory (NWI) was reviewed for the site and all five waterbodies were not seen on the NWI. The National Hydrography Dataset (NHD) was also reviewed for the site and did not indicate the presence of any wetlands or any other surface waters flowing through the site. Soils within this area are described as a mix of predominantly hydric and non-hydric soils, according to the Soil Survey.

Wetlands 1, 2, 4, and 7 are located within topographically low areas and are separated from the off-site wetland to the northwest by uplands, as indicated in the wetland delineation report submitted on behalf of the applicant. Wetland 6 is adjacent to Wetland 5 (not reviewed for jurisdictional status) but neither connect to any other waterbodies on or off site. Hillshade and 3DEP (3D Elevation Program) Digital Elevation Modeling (DEM) were reviewed for this area and did not show a continuous surface connection to a jurisdictional water. No other aquatic resources were identified in this area of the site.

Wetlands 1, 2, 4, 6, and 7 do not have any continuous surface connection to a relatively permanent jurisdictional water and, as such, do not meet the definition of "adjacent." Therefore, it cannot be evaluated as an (a)(4) adjacent wetland. Consequently, Wetland 1 is a non-tidal wetland that 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. Wetland Delineation Report dated September 23, 2025 by MNR, INC.
 - b. US Geological Survey, 3DEP Bare Earth DEM Dynamic service – hillshade and 3DEP DEM, accessed on Nov 3, 2025
 - c. Google Earth aerial imagery (1991 – present), accessed Jan 29, 2026
 - d. United States Geological Survey, National Hydrography Dataset, accessed on Jan 29, 2026
 - e. United States Fish and Wildlife Service, National Wetland Inventory, accessed on Jan 29 and 30, 2026

10. OTHER SUPPORTING INFORMATION.

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

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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

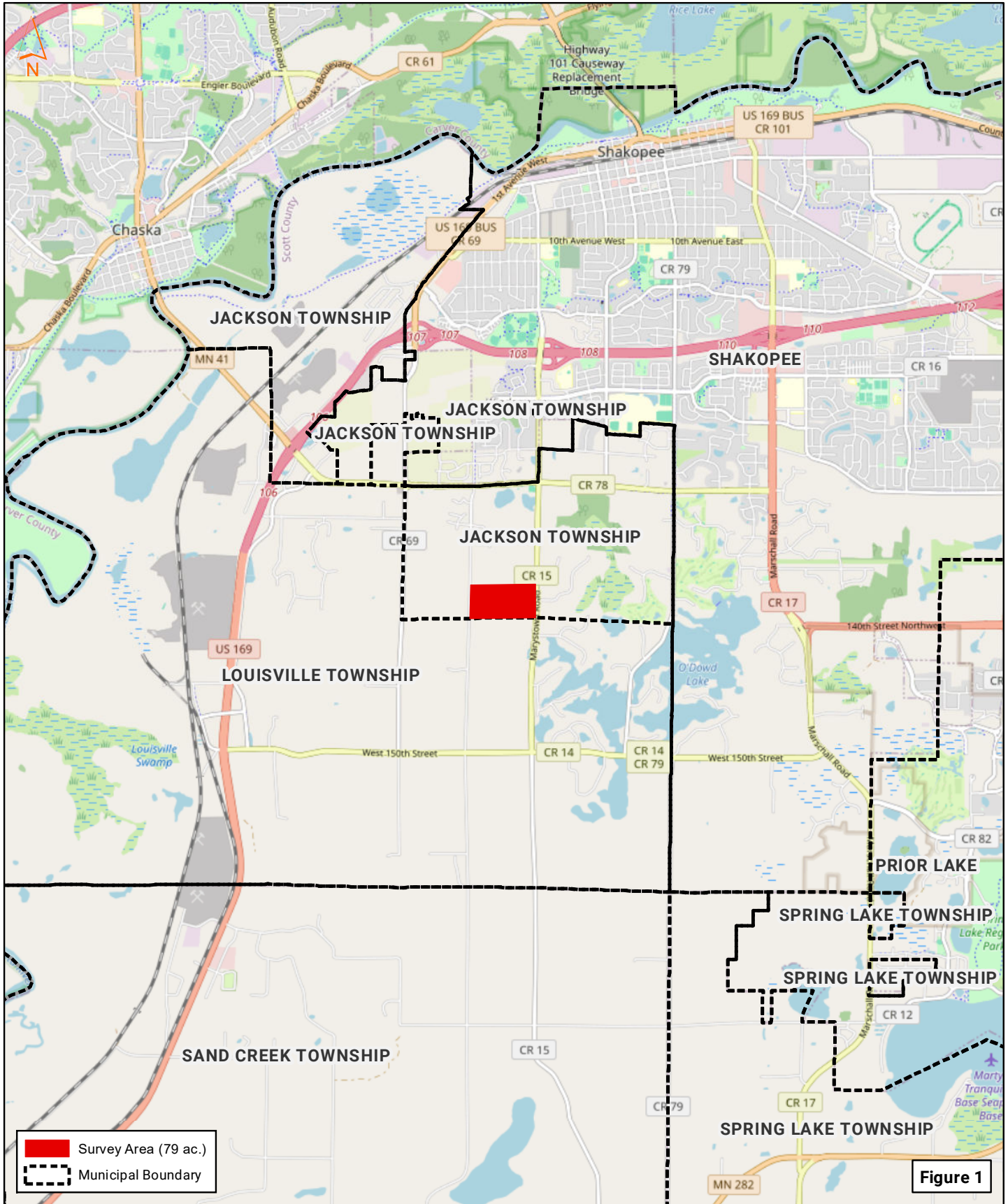
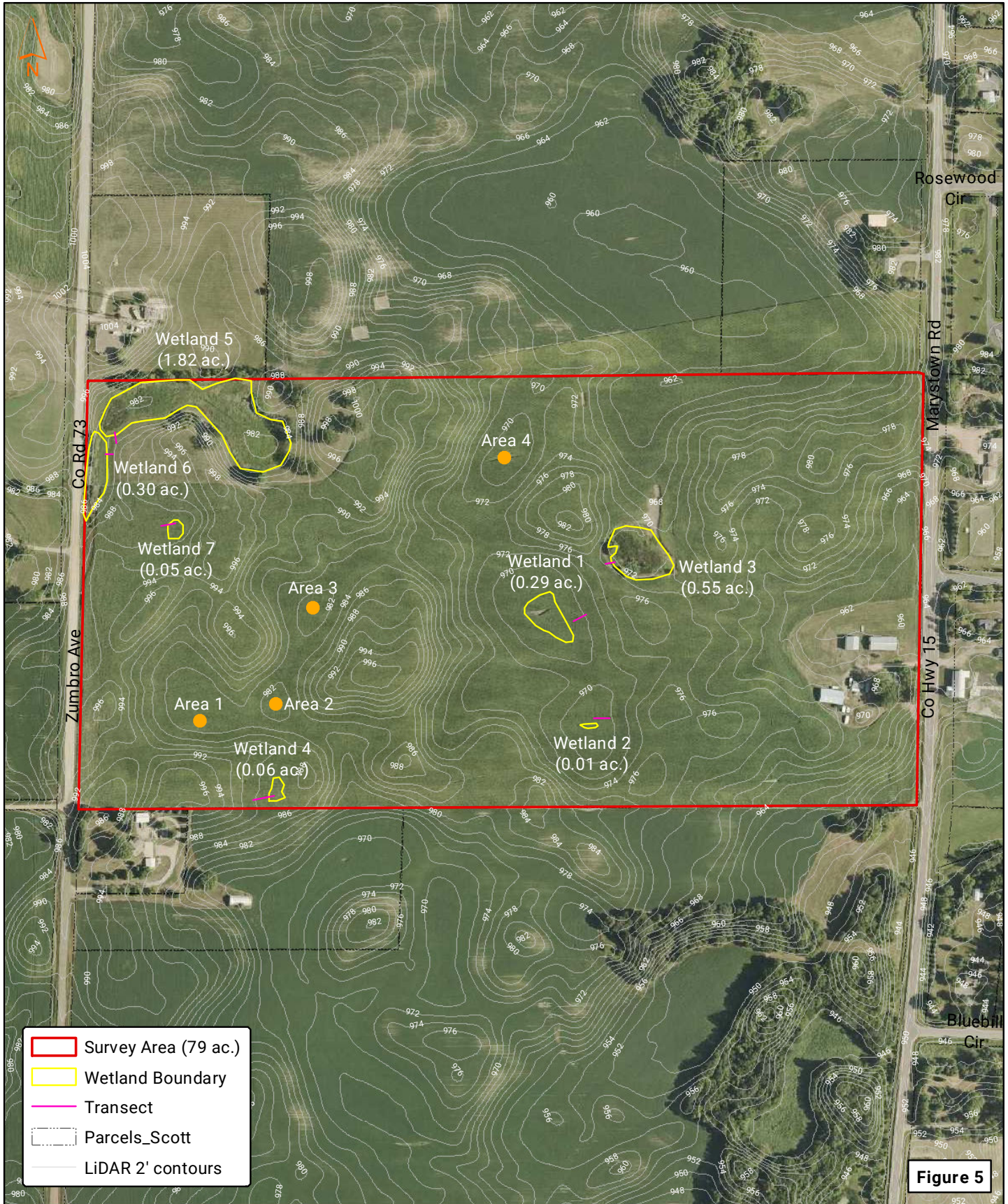


Figure 1

Sources: OpenStreetMap, US Census Bureau
 US Census Bureau, Date: 9/24/2025

Site Location
 Lennar
 Greenview
 Jackson Township, MN





- Survey Area (79 ac.)
- Wetland Boundary
- Transect
- Parcels_Scott
- LiDAR 2' contours

Figure 5

Sources: USDA Farm Service agency NAIP Imagery, 2023
 MnGeo, MN Department of Natural Resources,
 US Census Bureau, Date: 9/24/2025

**Delineated Aquatic Resources
 Lennar
 Greenview
 Jackson Township, MN**

