



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

MVP-RD

[18 December 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-2025-01229-TMS 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.² 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.³

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),⁴ 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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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).

i. [Wetland 1, non-jurisdictional, 367 square feet]

ii. [Wetland 2, non-jurisdictional, 0.06 acre]

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, as identified in the enclosed figures, is approximately 0.07 acre in size and is located at Lat. 46.808738, Long. -92.185050 in Hermantown, St. Louis County, Minnesota. The review area is surrounded by Westberg Road to the west, Maple Grove Road to the south, Loberg Avenue to the east, and a commercial development to the north. Boundaries for Wetland 1 extend beyond the review area to the east.]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]⁵

⁵ 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.

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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]
 - e. Tributaries (a)(3): [N/A]
 - f. Adjacent Wetlands (a)(4): [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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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).

[Wetlands 1 and 2 are not Traditionally Navigable Waters, territorial seas, or interstate waters and are therefore not (a)(1) waters. The application, aerial imagery, topographical maps, digital elevation modeling, and conditions observed during a site visit on November 24, 2025 indicate that Wetlands 1 and 2 do not physically abut a relatively permanent (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated by a natural berm, bank, dune or similar landform. Wetlands 1 and 2 are located in depressional areas in a forested area that are fed by precipitation from surrounding uplands to the north, east, and south. Wetlands 1 and 2 are non-tidal wetlands that do not appear to 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 (a)(4) adjacent wetlands. Therefore, Wetlands 1 and 2 are not jurisdictional waters 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. [Application, GEI Consultants, dated November 21, 2025 and received November 24, 2025]

b. [Wetland boundary verification site meeting with Technical Evaluation Panel November 24, 2025]

c. [National Regulatory Viewer, 2023 data sources]

d. [Desktop Evaluation, December 5, 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

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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.

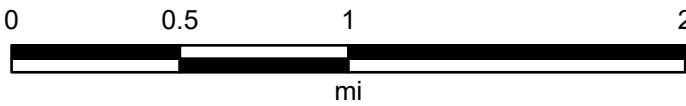


Site Location

University of Minnesota Duluth, Province of Ontario, Esri Canada, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA, Copyright © 2013 National Geographic Society, i-cubed



MVP-2025-01229-TMS
Location Map
AJD Figure 1 of 3



Map Center: 92.174976°W 46.824871°N

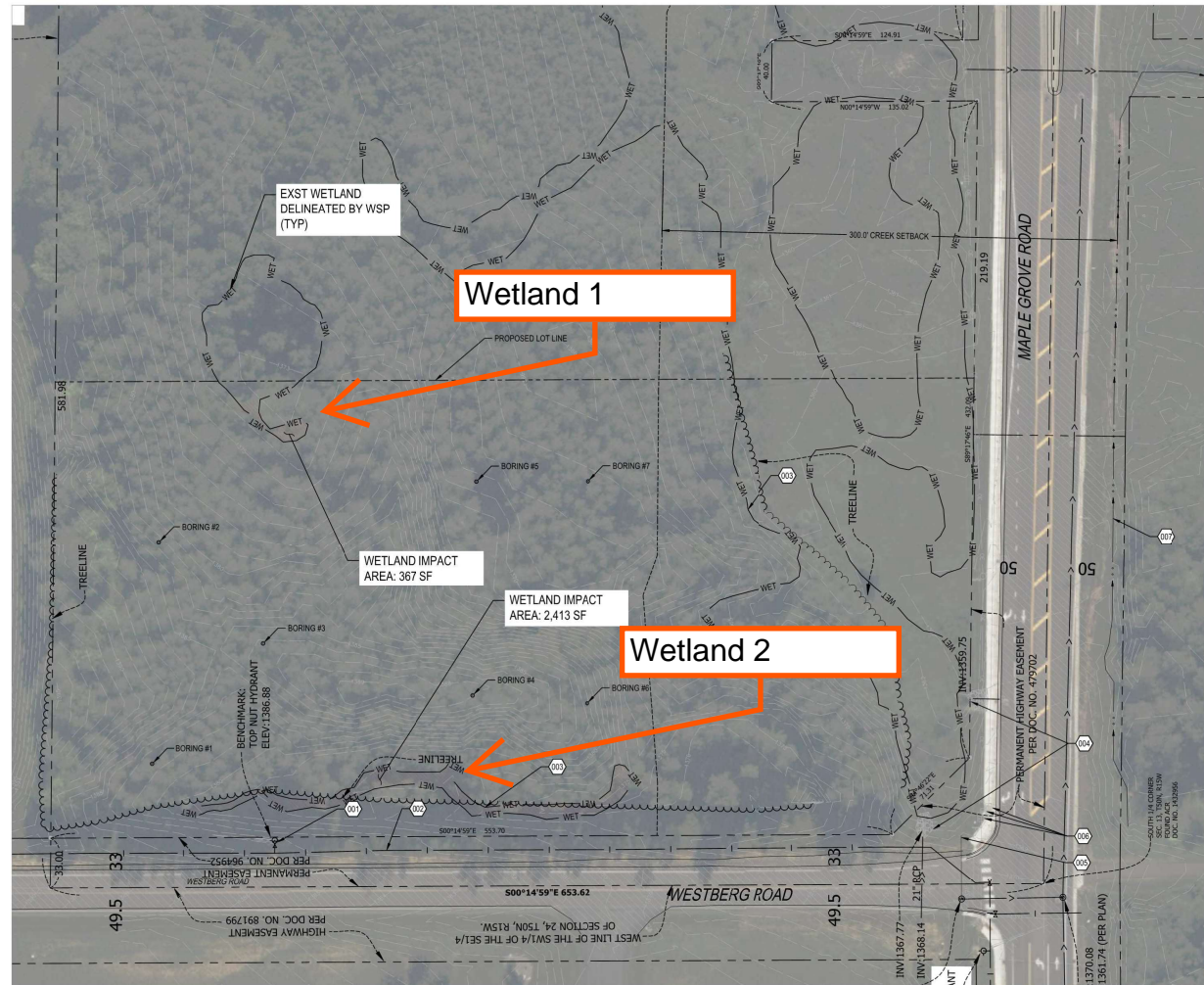
Map Created by: Sowinski
Date: 12/17/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere

CONTRACTOR NOTE:

ALL EXISTING UTILITIES SHOWN ON PLANS ARE TO BE VERIFIED HORIZONTALLY AND VERTICALLY PRIOR TO ANY CONSTRUCTION. ALL EXISTING FEATURES INCLUDING BURIED UTILITIES ARE SHOWN AS INDICATED ON RECORD MAPS AND SURVEYS FURNISHED BY OTHERS. WINDSOR ASSUMES NO LIABILITY FOR THE ACCURACY OF THOSE RECORDS AND SURVEYS. CONTACT THE UTILITY OWNERS AGENCY FOR THE FINAL LOCATION OF EXISTING UTILITIES IN AREAS CRITICAL TO CONSTRUCTION.

001 EXISTING CONDITIONS	
001	EXISTING FIRE HYDRANT TO REMAIN.
002	EXISTING WATER MAIN.
003	EDGE OF DELINEATED WETLAND BY WSP (TYP).
004	EXISTING STORM OUTFALL TO WETLAND.
005	EXISTING SANITARY SEWER SERVICE LATERAL. LOCATION NOT LOCATED OR SURVEYED. CONTRACTOR TO FIELD VERIFY PRIOR TO CONSTRUCTION.
006	EXISTING TELECOMMUNICATIONS PEDESTALS AND VAULTS TO REMAIN.
007	APPROXIMATE LOCATION OF EXISTING TROUT STREAM



PLAN
SCALE: 1" = 40'



Know what's below.
Call before you dig.

CALL 2 BUSINESS DAYS BEFORE YOU DIG.
CALL FOR UTILITY INFORMATION IS APPROXIMATE.
VERIFY ALL UTILITIES PRIOR TO CONSTRUCTION.

Revisions: #

NO.	DATE	DESCRIPTION

LINE IS 1" ON FULL
SCALE DRAWING



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I HEREBY CERTIFY THAT I
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SUPERVISION AND IN MY
REGISTERED ENGINEERING
CAPACITY AND IN ACCORDANCE
WITH THE LAWS OF THE STATE OF MINNESOTA.

DATE: 10/31/2025
REG#: 1000000
ENGINEER'S NAME: P. E.

PRELIMINARY

LAKE SUPERIOR CONSULTING
HERMANTOWN, MN

SPECIAL USE PERMIT SUBMITTAL

Project No: 25157

Issue Date: 10/31/2025

EXISTING CONDITIONS & DEMOLITION

C001

Project Manager: JFD
Drawn by: LJB
Checked by: JFD

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100 SITE PLAN

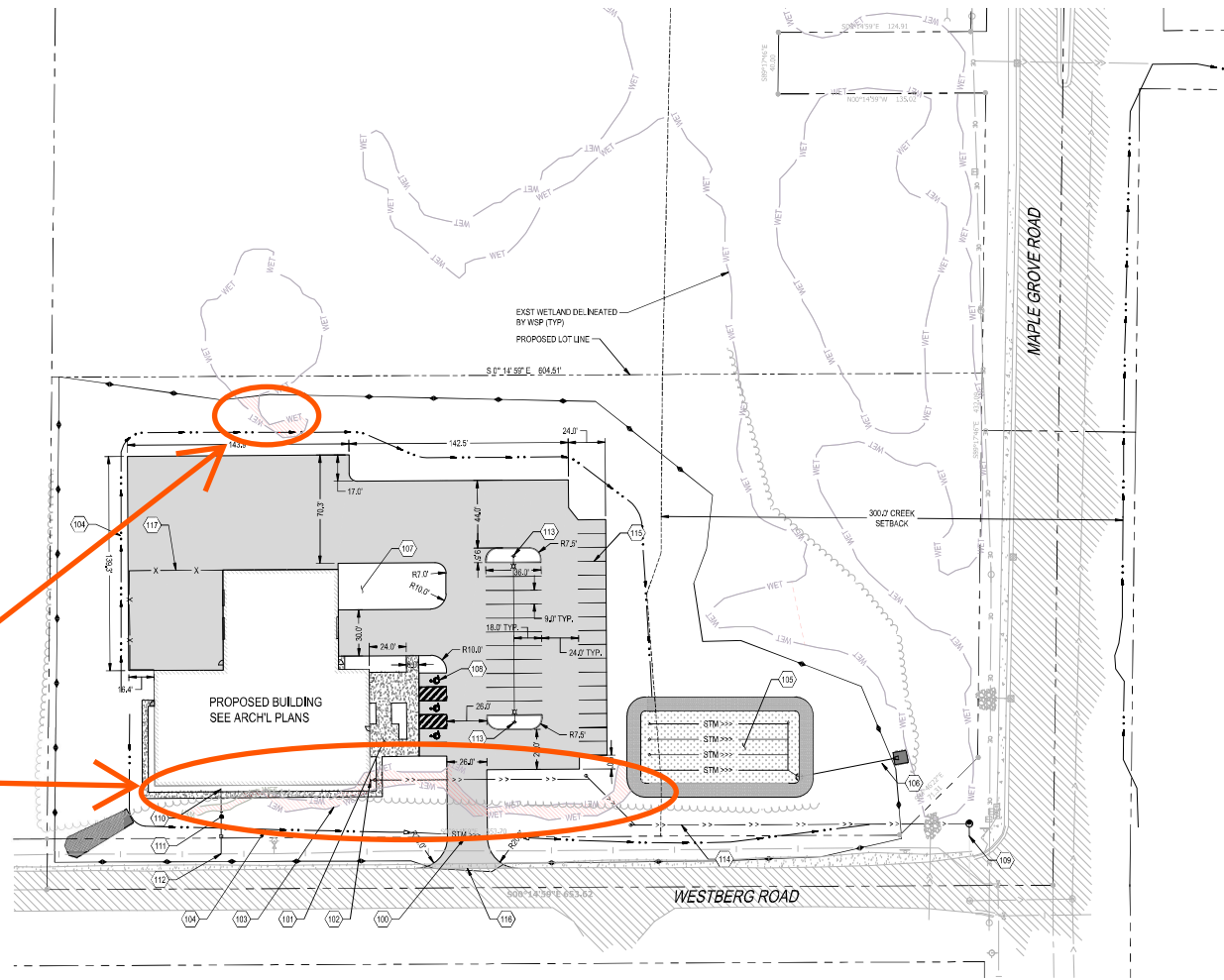
100	18" CULVERT UNDER DRIVEWAY. SEE SHEET C110.
101	CONCRETE SIDEWALK.
102	4" SEWER SERVICE BUILDING CONNECTION. SEE PLUMBING PLANS.
103	EXISTING WETLAND DELINEATED BY WSP (TYP).
104	STORMWATER CONVEYANCE SWALE (TYP) @ 10% MIN SLOPE.
105	STORMWATER FACILITY. SEE SHEET C300.
106	STORMWATER OUTFALL TO EXISTING WETLAND. SEE SHEET C300.
107	LANDSCAPING (TYP). SEE SHEET L100 FOR LANDSCAPE DESIGN.
108	VAN ACCESSIBLE ADA STALL. SEE SHEET C121 FOR GRADING.
109	CONNECT TO EXISTING 8" SEWER STM.
110	2" WATER SERVICE CONNECTION. SEE PLUMBING PLANS.
111	2" WATER SERVICE. SEE SHEET C110.
112	WATER SERVICE CONNECTION TO MAIN. SEE SHEET C110.
113	SITE LIGHTS TO BE PROVIDED BY OTHERS.
114	4" SANITARY SEWER SERVICE
115	PARKING STRIP
116	CONNECT TO EXISTING ASPHALT
117	PROPOSED FENCE

SITE PLAN

	ASPHALT PAVEMENT	1
	CONCRETE SIDEWALK	2
	INFILTRATION GALLERY	3

ZONING SUMMARY

PROJECT AREA (SF)	179983
PARCEL ZONING	HM
OFFICE (SF)	10493
WAREHOUSE (SF)	4877
REQUIRED PARKING STALLS	1 PER 250SF = 42
REQUIRED ADA STALLS	2
PROPOSED PARKING STALLS	40
PROPOSED ADA STALLS	3



AJD Review Area

PLAN
SCALE 1" = 40'



811
Know what's below.
Call before you dig.
CALL 3 BUSINESS DAYS BEFORE YOU DIG.
CONTACT US BY PHONE OR VISIT OUR WEBSITE.
CHECK ALL UTILITIES PRIOR TO CONSTRUCTION.

Revisions: #

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REP: J. XXXXX
ENGINEERS NAME P.E.

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Issue Date: 10/31/2025

Project Manager: JFD
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Checked by: JFD

SITE PLAN
C100

ISSUED FOR SPECIAL USE PERMIT SUBMITTAL APPROVAL ONLY