



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

CEMVP-RD

30 April 2026

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-2026-00475-ARC 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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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).
 - i. Wetland 1, non-jurisdictional 0.18-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 is approximately 0.3 acre in size located on the south side of West 9th Street in the Fond du Lac neighborhood of West Duluth. The review area is identified by the red polygon on Page 2 of the attached figures. The approximate center of the review area is located at 46.66435 N, -92.26867 W in the City of Duluth, in St. Louis County, Minnesota.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]⁶

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.

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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 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.
 - 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]

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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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).

There is 1 wetland that is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule. This wetland is not a TNW, territorial sea, or an interstate water and therefore is not an (a)(1) water. The application figures, topographical maps, Google Earth, and the National Regulatory Viewer indicate that this wetland does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary.

This wetland extends offsite south and east beyond the project boundaries but is confined to the city block between 9th Street and 7th Street with 128th Avenue to the east. The wetland is also severed from extending further south by two city streets and there are no ditches, swales, pipes, or culverts that connect the wetland to a downstream jurisdictional water.

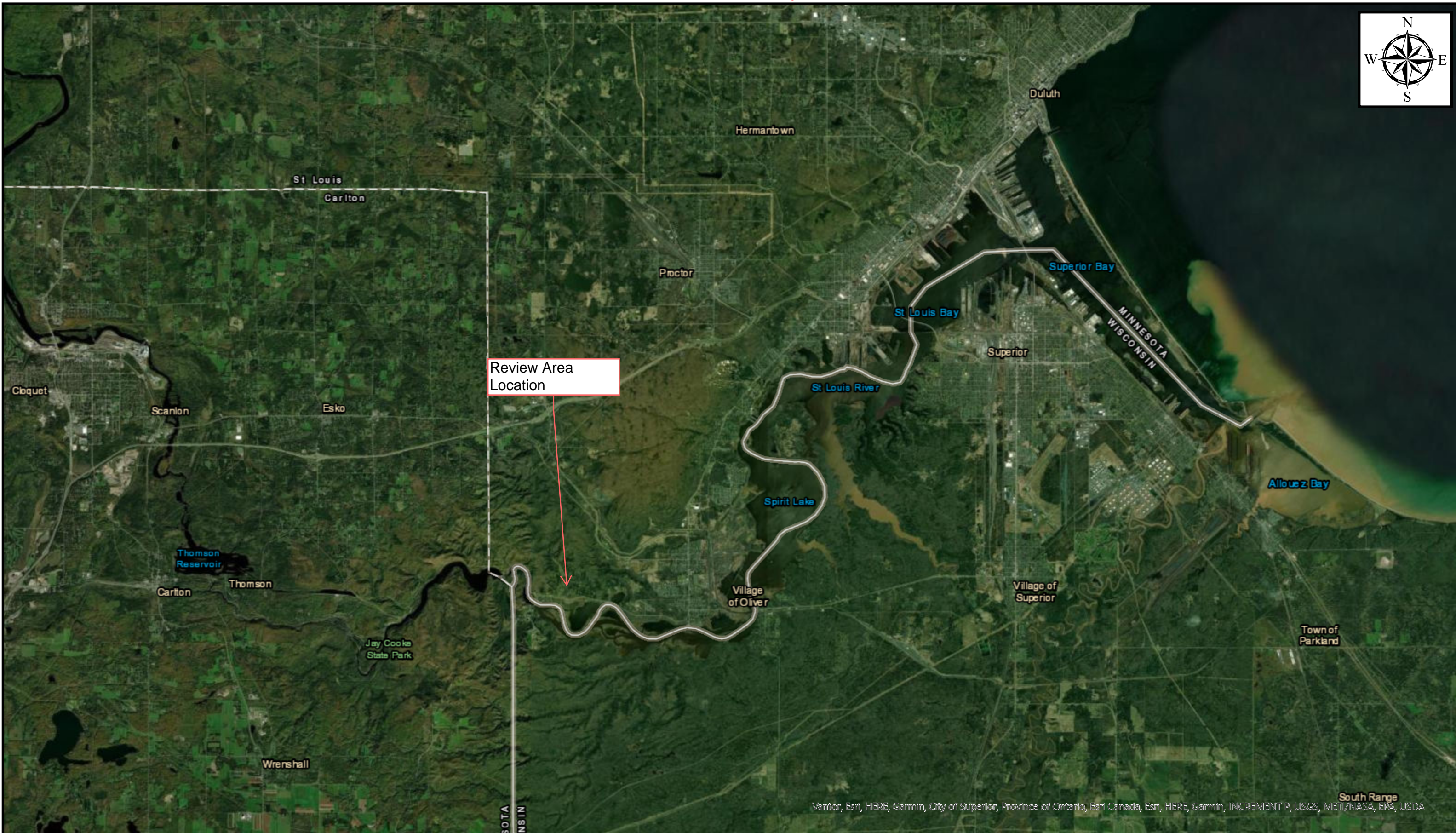
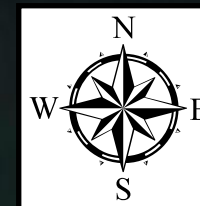
The wetland does not contain a continuous surface connection to any relatively permanent jurisdictional water, and does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, this wetland is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

⁹ 88 FR 3004 (January 18, 2023)

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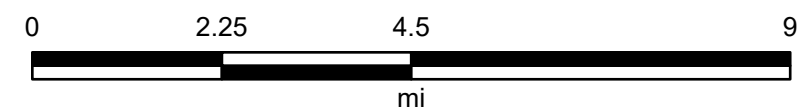
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Office evaluation conducted 30 April 2026
 - b. National Regulatory Viewer Lidar, Digital Elevation Model, USGS Stream Stats, and Soils data
 - c. Application documents received 23 April 2026
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.



Vantor, Esri, HERE, Garmin, City of Superior, Province of Ontario, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA



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Map Center: 92.209576°W 46.705734°N

Map Created by: USACE

Date: 4/30/2026

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

The screenshot displays the 'County Land Explorer' web application for St. Louis County, MN. The interface includes a top navigation bar with the 'Environmental' tab selected, a search bar for addresses or tax PINs, and a legend on the left side. The legend is organized into several categories: 'Inundation Area' (e.g., Levee, Rapids, Spillway, Stream/River, Submerged Stream, Wash, Water Intake/Outflow), 'Rivers and Streams', 'National Wetland Inventory' (e.g., Seasonally Flooded, Wet Meadow, Shallow Marsh, Deep Marsh, Shallow Open Water and Lakes, Shrub Swamp, Wooded Swamp, Bog, Other, Riverine), and 'Cadastral' (Tax Parcels - Neighborhood). The main map area shows an aerial view of a residential neighborhood in Duluth, MN, with street names like W 9th St, W 8th St, and W 7th St. A large brown area, representing a 'Wooded Swamp' according to the legend, is highlighted with a red square and a red 'X' mark. A red arrow points from a text box labeled 'AJD Review Area' to this highlighted area. The map also shows a scale bar (100ft) and coordinates (46.66397 -92.26635 Degrees). A small 'App State' notification box in the bottom right corner contains the text: 'Click to restore the map extent and layers visibility where you left off.'