



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

MVP

December 20, 2024

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-2021-01839-JST 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. SUMMARY OF CONCLUSIONS.

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.

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-01839-JST

- 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 |
|--------------------------|--------------------|
| Wetland 1 (0.28 acre) | Non-Jurisdictional |
| Wetland 2 (0.78 acre) | Non-Jurisdictional |
| Wetland 3 (0.21 acre) | Non-Jurisdictional |
| Wetland 12 (0.06 acre) | Non-Jurisdictional |
| Wetland 13 (0.11 acre) | Non-Jurisdictional |
| Wetland 14 (0.03 acre) | Non-Jurisdictional |
| Wetland 16 (1.13 acre) | Non-Jurisdictional |
| Wetland 18 (0.13 acre) | Non-Jurisdictional |
| Resource 19 (0.02 acre) | Non-Jurisdictional |
| Wetland 20 (0.05 acre) | Non-Jurisdictional |
| Resource 9 (0.05 acre) | Non-Jurisdictional |
| Resource 10 (0.04 acre) | Non-Jurisdictional |
| Resource 11 (0.03 acre) | Non-Jurisdictional |
| Wetland 15 (0.33 acre) | Non-Jurisdictional |
| Wetland 17 (0.37 acre) | Non-Jurisdictional |
| Resource 21 (0.09 acre) | Non-Jurisdictional |
| Wetland 26 (0.49 acre) | Non-Jurisdictional |

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. ___, 143 S. Ct. 1322 (2023)

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-01839-JST

2. REVIEW AREA. The review area is located in Section 1, Township 117 North, Range 24 West, Hennepin County, Minnesota. The site is approximately 200 acres in size. The center coordinates for the site are Latitude: 44.974900, Longitude: -93.663420. The review area is solely limited to the aquatic resources identified on the enclosed project figures. The review area is located within the Burl Oaks Golf Club off 5400 North Arm Drive. The nearest known tributary is Painter Creek which is located approximately 1.05 miles northwest of the center of the site. An unnamed tributary to Painter Creek intersects the center of the site.
3. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
5. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ N/A
6. 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

⁵ 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.

⁶ 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.

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-01839-JST

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](#)

g. Additional Waters (a)(5): [N/A](#)

7. 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).⁷ 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).

Based on review of the delineated wetland boundaries and landscape position depicted in aerial imagery, Wetlands 1, 2, 3, 12, 13, 14 15, 16, 17,18, 20, and 26 are not TNWs, territorial seas, or interstate waters; therefore, these waters are not category (a)(1) waters. In addition, Resources 9,10,11, 19 and 21 are not tributaries and have not been created by impounding a water of the U.S.; therefore, they are not category (a)(2) or (a)(3) waters. The review area is located entirely within the Burl Oaks Golf Club and is surrounded by residential neighborhoods.

Wetlands 1, 2, 3, 12, 13, 14 15, 16, 17,18, 20, and 26 do not directly abut a jurisdictional water identified in paragraph (a)(1), (a)(2), or (a)(3) of the conforming rule and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. Wetlands 1, 2, 3, 12, 13, 14 15, 16, 17,18, 20, and 26 have no continuous surface or near surface connection to any (a)(1-3) water. An unnamed tributary intersects the center of the site and flows offsite northwest approximately 1.15 miles to a known relatively permanent water, Painter Creek.

Wetlands 1 and 3 are a wetland complex consisting of fresh wet meadow and shallow marsh community types. Wetlands 1 and 3 are in an area mapped as partially hydric (1-25%) and non-hydric soils. Wetland 1 is connected to Wetland 3 to the north and Wetland 2 to the southeast via short length culverts. Wetlands 1 and 3 are not mapped on the National Wetlands Inventory. However, these culverts do not constitute a continuous surface connection to any downstream waters and only serve as a hydrologic connection between these waters.

⁷ 88 FR 3004 (January 18, 2023)

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-01839-JST

Wetland 2 is a wetland complex consisting of seasonally flooded basin, fresh wet meadow, and shallow marsh community types. Wetland 2 is an area mapped as partially hydric (1-25%), hydric (100%), and partially hydric (26-50%) soil units. Wetland 2 is connected to Wetland 1 through a culvert on the northwest side and is located adjacent to North Arm Drive. Wetland 2 is not mapped on the National Wetlands Inventory. According to information provided by Anderson Engineering, a cross culvert is located adjacent to North Arm Drive which conveys water from Wetland 2 under the road flowing into a ditch feature approximately 895 feet long south of the road. Anderson Engineering conducted a site visit on December 6, 2024, and measured the length of this culvert which is approximately 50 linear feet and flowing water was observed in this conveyance. The cross culvert located at North Arm Drive serves as part of the city storm water system which conveys drainage through wetlands and culverts to Forest Lake/West Arm of Lake Minnetonka located approximately 1.25 miles southeast of Wetland 2. The ditch feature appears to convey flow offsite into a large wetland complex and several culverts before reaching Lake Minnetonka. Under the amended 2023 rule, “adjacent” is defined as “having a continuous surface connection”, consistent with *Sackett* and the *Rapanos* plurality. The subsurface flow through the city’s storm water system does not qualify as flow through a discrete feature that can serve as a continuous surface connection. Multiple stormwater laterals drain into the City of Minnetrista stormwater system. As Wetland 1 and 3 are connected to Wetland 2 via culverts, these features would also not be considered “adjacent” under the amended 2023 Rule and are not connected to any other waters via discrete features, ditches, swales, or streams.

Wetlands 12, 13, and 14 are all shallow marsh wetland communities located within the golf course and located within non-hydric soils. Wetlands 12 and 13 are connected via a culvert but this culvert does not constitute a continuous surface connection to any downstream waters offsite. Wetlands 12, 13, and 14 are all surrounded by uplands associated with the golf course and are non-adjacent wetlands. They were likely constructed in conjunction with the development of the golf course and serve as ornamental features for the existing course. There are no swales, ditches, streams, or any erosional features connecting them to any downstream waters.

Wetland 15 is located within a shallow marsh/open water area that appears to be an ornamental pond associated with the golf course. Wetland 15 is an area mapped as mostly hydric (76-95%) and partially hydric (1-25%). Wetland 15 is mapped as a PUBHx excavated wetland on the National Wetland Inventory. Wetland 15 is a non-adjacent wetland located within a depression and is surrounded by uplands. A culvert exists on the southeast side of Wetland 15 but

does not constitute a continuous surface connection to any downstream waters and is contained within the golf course. Wetland 15 appears to be connected to Wetland 17 to the south via culvert and is part of the Golf course stormwater system.

Wetland 16 is located within a fresh wet meadow/open water pond located within the golf course adjacent to manicured grass associated with the course fairways. Wetland 16 is located within hydric soils and the open water portion of the wetland appears to have been constructed at the time the course was developed. Wetland 16 is a non-adjacent wetland located within a depression and is surrounded by uplands. The wetland extends offsite to the west but there are no discrete features, streams, swales, or any erosional features connecting it to any downstream waters.

Wetland 17 located within an open water pond that appears to be an ornamental pond associated with the golf course. Wetland 17 is an area mapped as hydric (100%). Wetland 17 is mapped as a PUBGx excavated wetland on the National Wetlands Inventory. Wetland 17 is connected to Wetland 18 through a short culvert to the east. A culvert is located on the western side of Wetland 17 but does not constitute a continuous surface connection to any downstream waters and is contained within the golf course. Wetland 17 appears to be connected to via culvert to Resource 19 but is contained within the golf course stormwater system.

Wetland 18 is located within a shallow marsh wetland community and is connected to Wetland 17 to the west through a culvert. The wetland is contained entirely within the golf course and is surrounded by uplands adjacent to manicured grass associated with the course fairways and rough. Wetland 17 is a non-adjacent wetland located within a ditch in a depression and there are no discrete features, streams, swales, or any erosional features connecting it to any downstream waters.

Wetland 20 is located within a fresh wet meadow wetland community and located within non-hydric soils surrounded by uplands within the golf course. Wetland 20 is a non-adjacent wetland located within non-hydric soils and was likely constructed in conjunction with the development of the golf course. Wetland 20 is likely connected to Resource 19 via a culvert of approximately 200 feet in length and is connected to the Golf Course's stormwater system. There are no other discrete features, streams, swales, or any erosional features connecting it to any downstream waters.

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-01839-JST

The linear features identified as Resources 9, 10, 11, 19 and 21 appear to be drainage ditches that were constructed to serve as part of the Golf Course stormwater system. According to site photos dated December 6, 2024, collected by Anderson Engineering, these features appear to have flowing water as indicated by the features being frozen over at the time of the site visit. These resources are connected via culverts that convey flow. Resource 9 is connected to Wetland 22 to the northeast via culvert that conveys subsurface flow and is approximately 450 feet in length. There is upland that exists between these features with no swales, ditches, or streams as the flow enters the subsurface stormwater system within the golf course. There is no swale, erosional feature, stream, ditch, nor pipe connecting these features to any stream or river downstream. As such, these features do not flow directly or indirectly into (a)(1) or (a)(2) impoundments, therefore these features cannot be evaluated as (a)(3) tributaries.

Wetland 26 is located within a seasonally flooded basin and is in an area mapped as hydric (100%) and partially hydric (1-25%). Wetland 26 is located within a depression surrounded by uplands, with no surface water outlets or discrete features identified and therefore is non-adjacent.

Wetlands 1, 2, 3, 12, 13, 14 15, 16, 17, 18, 20, and 26 do not support a link to interstate or foreign commerce. The wetlands are not known to be used by interstate or foreign travelers for recreation or other purposes; do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and are not known to be used for industrial purposes by industries in interstate commerce. These waterbodies were determined to not be jurisdictional under the CWA because these wetlands lacked links to interstate commerce sufficient to serve as a basis for jurisdiction. Wetlands 1, 2, 3, 12, 13, 14 15, 16, 17, 18, 20, and 26 do not meet the terms of paragraph (a)(4) because they lack continuous surface connection to waters identified in paragraph (a)(1) or relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3); and therefore, are not adjacent.

Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 rule preamble discussed the *Rapanos* plurality standard, the implementation guidance and tools in the 2023 rule preamble that address the regulatory text that was not amended by the conforming rule, including the preamble relevant to the *Rapanos* plurality standard incorporated in paragraphs (a)(3), (4), and (5) of the 2023 rule, as amended, generally remain relevant to implementing the 2023 rule, as amended.

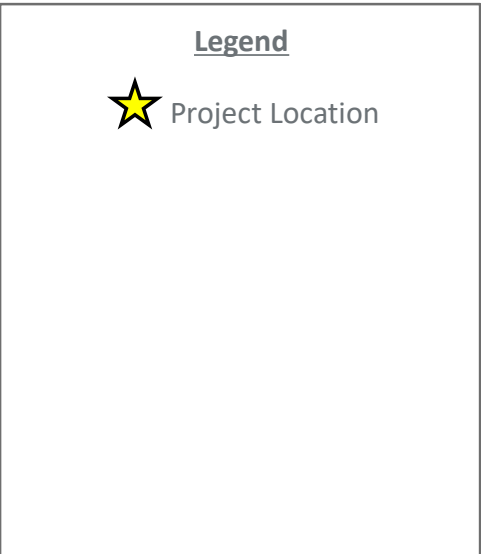
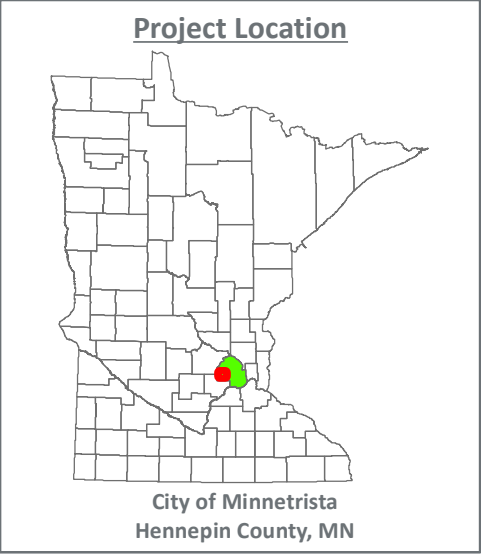
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-01839-JST

8. 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 Investigation – Burl Oaks Golf Club, INC. prepared by Anderson Engineering dated September 28, 2021.
- b. Wetland Replacement Plan Addendum – Burl Oaks Golf Club Minnetrista, MN prepared by Anderson Engineering dated November 20, 2024.
- c. National Hydrography Dataset (NHD) viewed in Minnesota Regulatory Viewer on November 25, 2024.
- d. National Wetland Inventory (NWI) viewed in Minnesota Regulatory Viewer on November 25, 2024.
- e. NRCS Web Soil Survey Report dated November 25, 2024.
- f. Google Earth Aerials dated 1991, 2016, 2018, 2021, 2023.
- g. MNHAPO Imagery dated 1960.
- h. USGS 3DEP Hillshade viewed in Minnesota Regulatory Viewer on November 25, 2024.
- i. USGS 3DEP LiDAR viewed in Minnesota Regulatory Viewer on November 25, 2024.
- j. USACE Request for Additional Information – Burl Oaks Golf Club Minnetrista, MN prepared by Anderson Engineering dated December 9, 2024.

9. OTHER SUPPORTING INFORMATION. [N/A](#)

10. 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 Address: 5400 N Arm Dr.
Minnetrista, MN 55364
Project Coordinates:
44.9733, -93.6652
Project No: 13709
Date: 6.22.2021

Sources: MnDNR, USDA, ESRI,
TIGER, Bing, Hennepin Co.,
Anderson Engineering

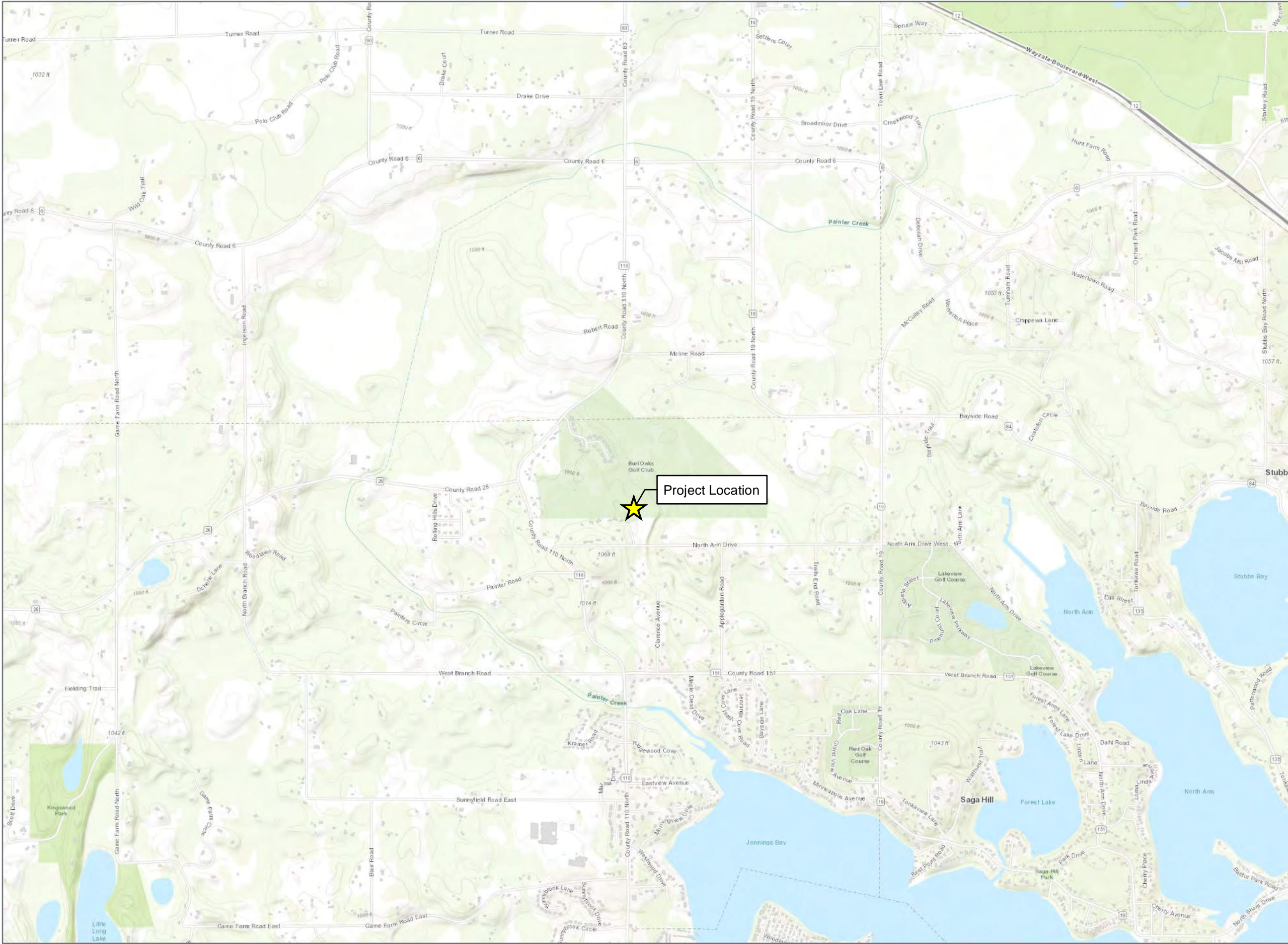
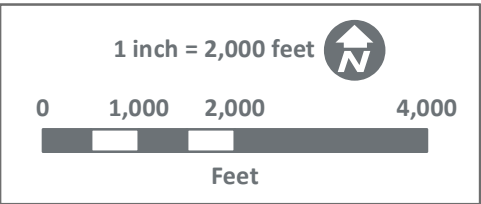


Figure 5
Delineation

