



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1678

MVP

29 JULY 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-2024-00655-SSC, MFR 1 of 1².

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 A, 0.96 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)
- d. January 2023 Rule preamble at 88 FR 3090
- e. US EPA's Memorandum on NWP-2023-602, March 19, 2024

3. REVIEW AREA. The review area is approximately 1 acre in size and is identified on the attached figures labeled MVP-2024-00655-SSC, Pages 1-2 of 2. The review area is located at 45.014246 N, -93.109872 W, in the City of Roseville, Ramsey County, Minnesota. There are no other JDs associated with this review area.

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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. A review of the submitted delineation report, the National Hydrography Dataset (NHD), and City of Roseville's storm sewer map indicate that the storm sewer system originates from the south side of County Road B2 West and flows into the site through a storm sewer inlet located along the southern boundary of Wetland A. An outlet is located along the northern boundary of Wetland A which drains into the City storm sewer system. The NHD indicates that the subsurface flow continues in the storm sewer for

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approximately 0.78 miles before outflowing into a wetland complex that flows into a surface ditch that flows west and then north into Lake Owasso, a relatively permanent lake. Lake Owasso flows into a culvert under Owasso Boulevard North into Lake Wabasso, which flows into a culvert under Interstate 694 into Grass Lake, which flows into a culvert under Rice Street into Vadnais Lake. The flow then enters a subsurface pipeline before resurfacing into a surface ditch that drains into Gervais Lake. Gervais Lake drains into Keller Lake into Round Lake and into Lake Phalen. The outlet of Lake Phalen is located along the south side of the lake and flows into a subsurface system that drains into the Mississippi River, a traditionally navigable water.

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

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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- 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).⁸ 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).

Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 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.

Wetland A is not a TNW, territorial sea, or interstate water and is therefore not an (a)(1) water. Wetland A is located approximately 16 miles from the Mississippi River. Under the amended 2023 rule, “adjacent” is defined as “having a continuous surface connection,” consistent with *Sackett* and the *Rapanos* plurality. The subsurface flow of the City’s storm sewer system does not qualify as flow through a discrete feature that can serve as a continuous surface connection. This is consistent with our review of the National Wetland Inventory,

⁸ 88 FR 3004 (January 18, 2023)

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NHD, 2-foot lidar contours, and aerial photographs, which showed no evidence of a continuous surface connection. Multiple stormwater laterals drain into the City of Roseville's storm sewer system before it reaches Lake Owasso, a relatively permanent lake. Thus, this particular storm sewer appears to convey stormwater subsurface from multiple sources, including commercial and residential developments in the City of Roseville. A field visit was conducted on July 2, 2024, during which the storm sewer southern inlet into Wetland A was observed. A non-functioning culvert was located on the western boundary of Wetland A but was filled with debris and located above the delineated wetland boundary such that no flow appeared to access the culvert. The outlet of Wetland A on the north side of the wetland was not reviewed due to a lack of access. No other inlets or outlets were observed in the review area. Because this storm sewer system cannot serve as part of a continuous surface connection, the other aspects of the flowpath do not need to be evaluated to determine if they can serve as part of a continuous surface connection. Wetland A does not have a surface connection to a relatively permanent jurisdictional water and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore Wetland A is a non-tidal water 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. Field visit conducted on July 2, 2024
 - b. Office evaluation completed on July 25, 2024
 - c. United States Fish and Wildlife Service, National Wetland Inventory, accessed July 25, 2024
 - d. United States Geological Survey (USGS), National Hydrography Dataset, accessed July 25, 2024
 - e. Minnesota Department of Natural Resources, lidar data (2-foot contours), accessed July 25, 2024
 - f. City of Roseville's Stormwater System Map, accessed July 2, 2025
 - g. Google Earth Aerial Photographs, dated 1991-2023, accessed on July 25, 2024

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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.

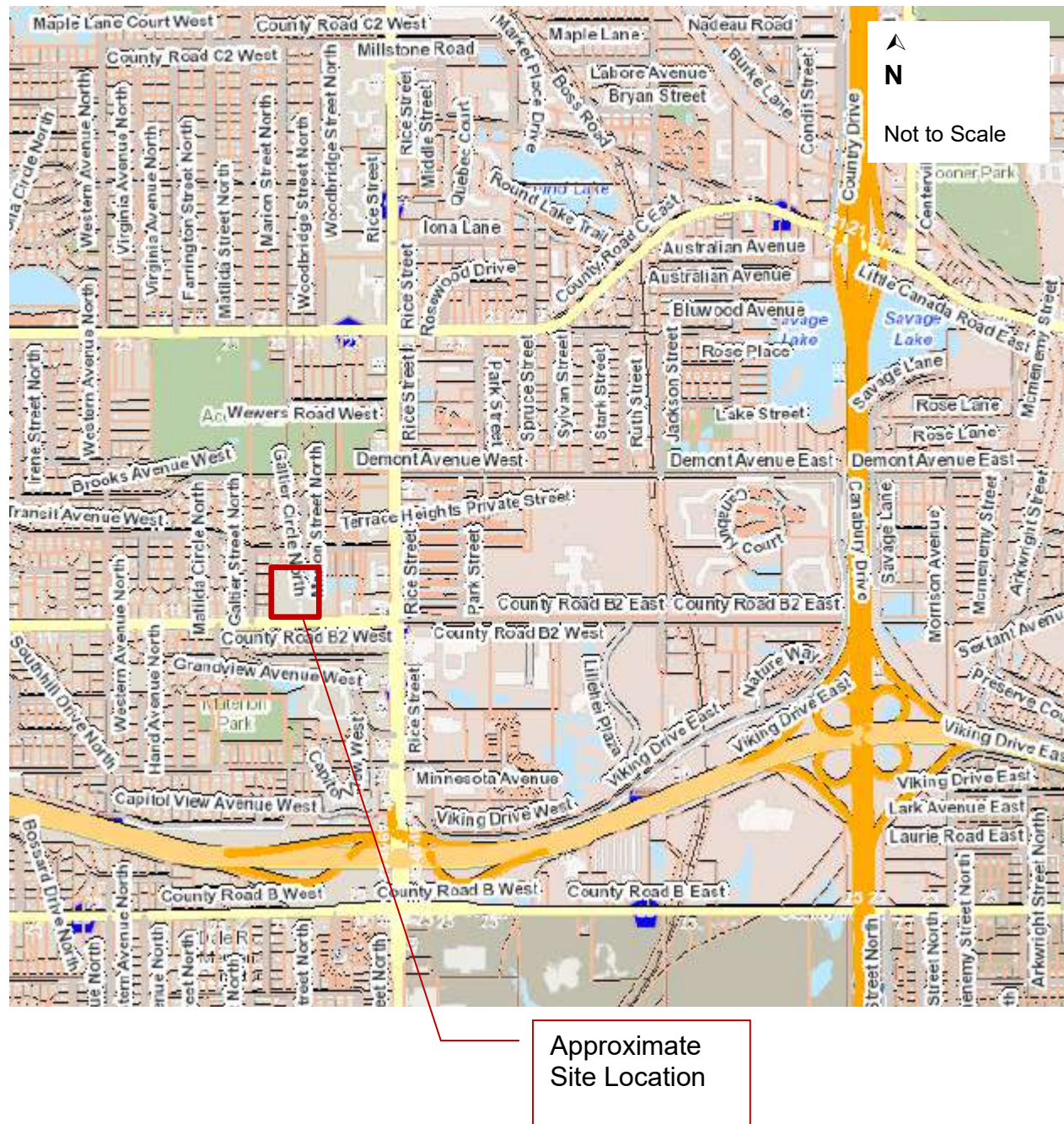


Figure 1. Location Map

Roseville Baptist Church, 211 Co. Rd. B2 W

Roseville, Minnesota



N

Not to Scale

Approximate Site
Location

AJD Review Area:
Wetland A (0.96 acre)



**Figure 3. Aerial Photo with
Approximate Wetland Boundary**
Roseville Baptist Church, 211 Co. Rd. B2 W
Roseville, Minnesota

