



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, ST PAUL DISTRICT  
GREEN BAY FIELD OFFICE  
320 NORTH BROADWAY SUITE 200  
GREEN BAY WI 54303

CEMVP-RD E

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),<sup>1</sup> MVP-2026-00158-TKO [MFR 1 of 1]<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 1	Non-Jurisdictional	None
Wetland 2	Non-Jurisdictional	None

### 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.

- a. Project Are Size (in acres): 18.55-acre
- b. Location Description: The project/review area is located in Section 12, Township 02N, Range 21E, Kenosha County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 42.6415 Longitude: -87.9707
- d. Nearest City or Town: Union Grove
- e. County: Kenosha
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A.]<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A.]
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup>  
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. [N/A.]
  - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A.
  - b. The Territorial Seas (a)(1)(ii): N/A.

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

- 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).<sup>9</sup> [[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 and 2 \(W-1 and W-2\)](#) are non-tidal, depressional wetlands, located within an undeveloped 15-acre property in the Town of Paris. Review of a [2025 Heartland Ecological Services wetland delineation report](#), [historic aerial images](#), [County GIS mapping](#), [WI Surface Water Data Viewer](#), and [LiDAR resources](#) (hillshade and DEM GIS layers from the [Mississippi Valley Division Regulatory Viewer](#)) indicate that [Wetland 1](#) and [Wetland 2 \(W-1 and W-2\)](#), are depressional wetlands, surrounded by uplands. Review of these resources indicate [W-1](#) and [W-2](#) are not, and do not physically abut, a jurisdictional water. [Wetlands 1 and 2](#) are not a TNW, territorial sea, or interstate water and therefore are not (a)(1) waters. [W-1](#) and [W-2](#) are not and do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary, and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. [W-1](#) and [W-2](#) are not an intrastate lake or pond that meets the relatively permanent standard and cannot be evaluated as an (a)(5) water: lakes

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

and ponds not identified in (a)(1) - (a)(4). Therefore, Wetland 1 and Wetland 2 are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

W-1 is a wetland complex consisting of wet meadow/ shrub carr community types. W-1 spans the review area diagonally from the northwest to southeast. The majority of the wetland's boundary is surrounded by delineated upland though the complex extends outside the wetland delineation study area at the northwest to southeast. A drainageway appears to feed W-1 hydrology from a culvert which enters the review area at the southwest, beneath Highway M. Review of elevation data shows the drainage way sloping into W-1 and that it does not provide a continuous surface connection to any jurisdictional waters. The drainageway is a non-RPW as it lacks a defined bed and bank (LiDAR), OHWM, and shows no evidence of standing water or prolonged saturation (veg stress/darkened soils). This is also shown by photos and data points within the delineation report. At the southeast, W-1 exits the review area north of a single family home. Wetland mapping (WWI and NWI) shows W-1 terminating just west of the residential development. Fill material from that development bounds W-1 at the south while the landscape transitions to upland at its north and to the east. At the north, topography gradually slopes to upland as wetland characteristics are lost. To the east, elevation gradually slopes down towards an off-site roadside ditch. Though not mapped as such, wetland conditions appear to continue to the southeast for approximately 200 feet where they terminate into the roadside ditch. The ditch is non-RPW as it lacks a defined bed and bank (LiDAR), OHWM, and shows no evidence of standing water or prolonged saturation (veg stress/darkened soils), according to historic and street view imagery. Based on the above information, W-1 does not abut any downstream waters

W-2 is surrounded entirely by delineated upland and does not abut any jurisdictional waters. As indicated in the report, W-2 appears to be the result of prior excavation as a berm of material is present at W-2's southeast boundary. W-1 and a delineated drainageway are located approximately 65 feet east of W-2, however no continuous surface connections exist between W-2 and the other aquatic resources. Topographic data shows W-2 located within a depressional area which sits in an elevational low spot when compared to surrounding upland. Aerial imagery shows a lack of persistent wetness signature or any other indication of wetland presence (standing water, repeated vegetation stress, distinct variation of vegetation) outside the delineated wetland boundary. W-2 is surrounded by delineated upland in all directions. Based on the above information, W-2 does not abut any downstream waters.]

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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. [No field visits were conducted. Desktop review evaluation was conducted on 03/30/2026.](#)
  - b. [AJD Application “2026-00158-TKO 20260202 APP.pdf” in the administrative record.](#)
  - c. [Mississippi Valley Division Regulatory Viewer, 03/30/2026.](#)
  - d. [Wisconsin DNR Surface Water Data Viewer, 03/30/2026.](#)
  - e. [Kenosha County GIS Interactive Mapping, 03/30/2026.](#)
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.

# MVP-2026-00158-TKO Figure 1

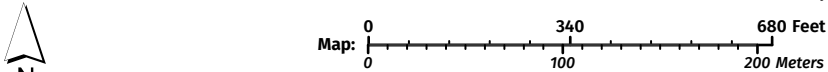


- Legend:** (some map layers may not be displayed)
- Wetland Class Points**
-  Wetland too small to delineate
  -  Wetland Class Areas
  -  Wetland Indicators
  -  Latest Leaf Off Index
  -  Latest Leaf Off Imagery

**Approximate AJD Review Area**

**Notes:**

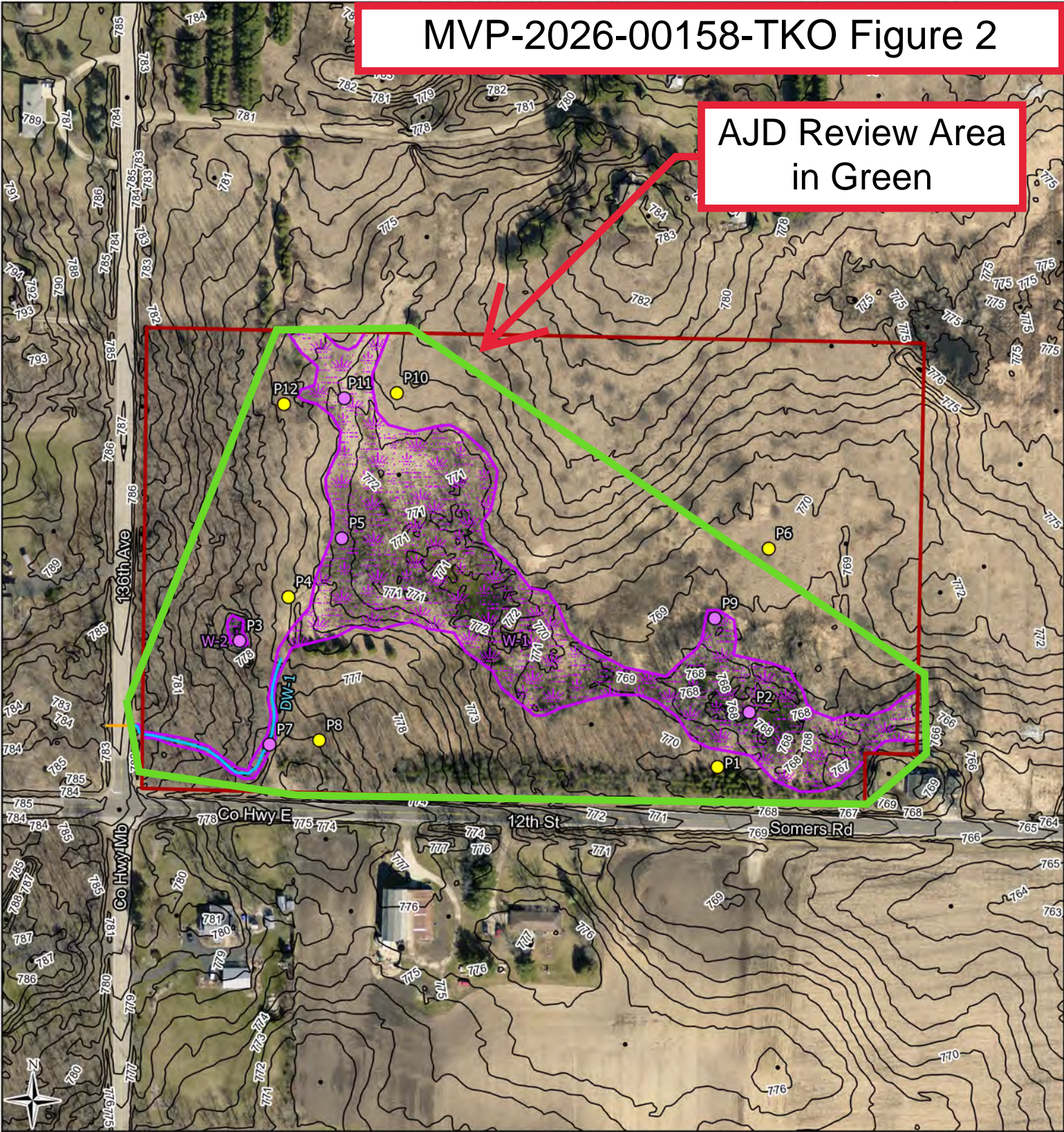
Service Layer Credits:  
 Wetland Indicators & Soils<sup>^</sup>: Surface Water Data Viewer Team, DNR Basic Feature VTL (WTM): Wisconsin Department of Natural Resources, GIS Section, Latest Leaf Off: Surface Water: WiDNR, USGS, and other data, Wetland Inventory NWI (Dynamic): Calvin Lawrence, Dennis Weise, Nina Rihn



This map is a product generated by a DNR web mapping application.  
 This map is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. The user is solely responsible for verifying the accuracy of information before using for any purpose. By using this product for any purpose user agrees to be bound by all disclaimers found here: <https://dnr.wisconsin.gov/legal>

# MVP-2026-00158-TKO Figure 2

AJD Review Area  
in Green



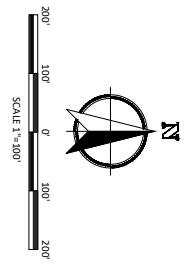
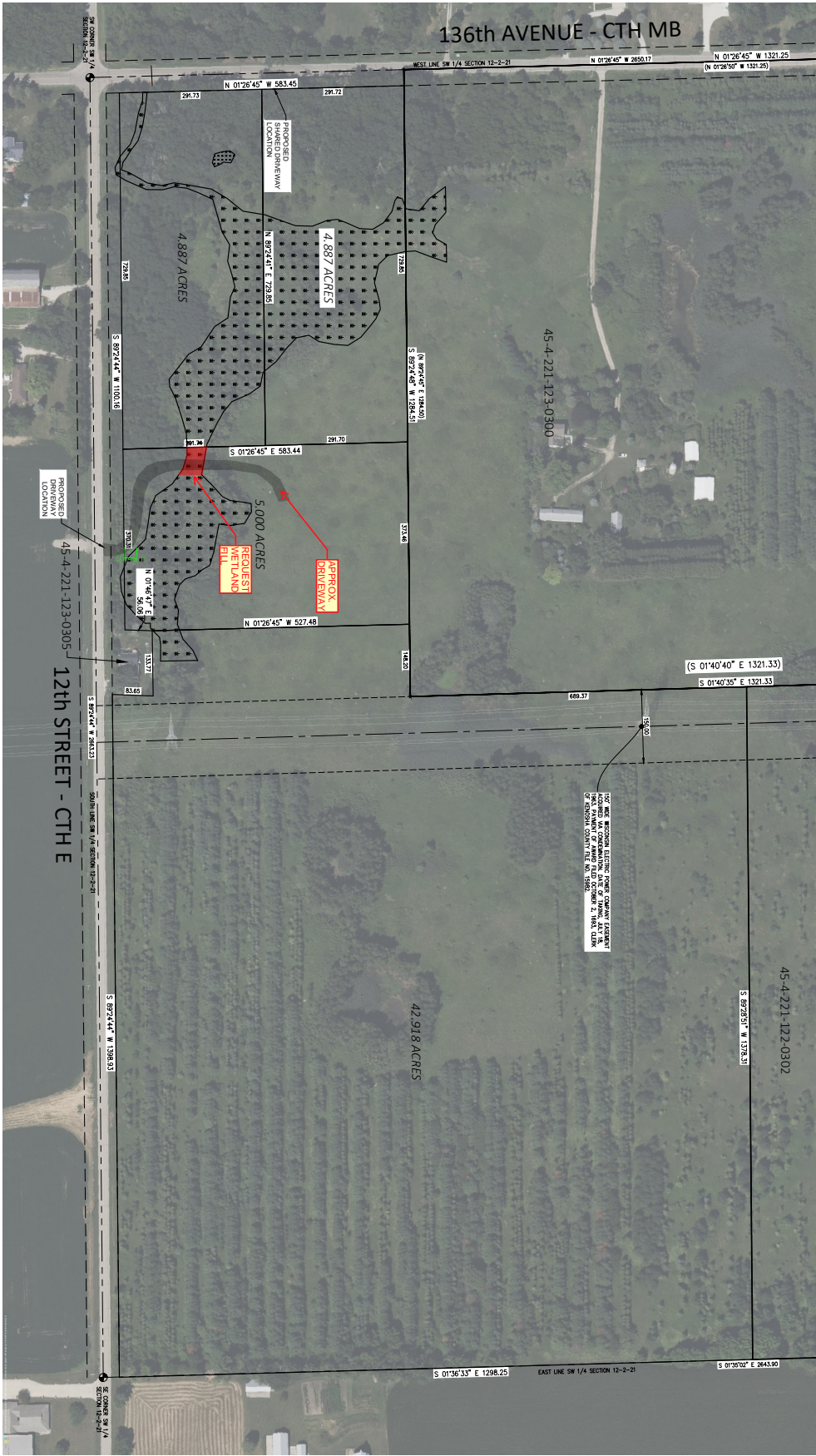
- Study Area (18.55 ac)
- Kenosha 2ft Contours
- Field Delineated Wetlands (3.98 ac)
- Offsite Wetland Boundaries
- Drainageway
- Culvert
- Sample Points**
  - Upland
  - Wetland



**Heartland**  
ECOLOGICAL GROUP INC

Figure 7. Field Delineated Wetlands  
CTHs E and MB  
Project #20251678  
T2N, R21E, S12  
T Paris, Kenosha Co

2024 Orthophoto  
Kenosha Co, HEG LRR: MW  
Figure Created: 11/4/2025



# MVP-2026-00158-TKO Figure 3

**NOTE**  
 EXAMINATION OF THE ORIGINAL SURVEY RECORDS HAS REVEALED THE FOLLOWING INFORMATION:  
 ( ) RECORDS BEARING AND DISTANCES

FOR THE RECORD ELECTRIC POWER COMPANY EXAMINER HAS REVIEWED THE RECORDS OF THE TOWN OF PARIS, COUNTY OF KENOSHA, WISCONSIN, FILE NO. 15965.

NO.	REVISION	BY	DATE

PROJ. MGR: JIC  
 DRAWN BY: SCS  
 CHECKED BY: SCS  
 DATE: 2025.0153.02  
 SHEET 1 OF 1

**PART OF THE SW 1/4 OF SEC. 12-2-21**  
 CONCEPTUAL CSM  
 FOR  
**HCP2 LLC**  
 TOWN OF PARIS, COUNTY OF KENOSHA, WISCONSIN

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