



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

CEMVP-RD

May 29, 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-2026-00468 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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 1 (1.30 acres)	Non-Jurisdictional	None
Infiltration Basin A (0.20 acre)	Non-Jurisdictional	None
Infiltration Basin B (0.28 acre)	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): 9.25 Acres
- b. Location Description: The project/review area is located in Section 02, Township 06N, Range 08E, Dane County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.019830 Longitude: -89.517450
- d. Nearest City or Town: Madison
- e. County: Dane
- 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.⁶ N/A
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

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.

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.

- 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).⁹

Infiltration Basin A (0.20 acre) and Infiltration Basin B (0.28 acre) were identified in the West Badger Mill Creek Greenway Enhancement Assured Wetland Delineation Report from the City of Madison, dated October 24, 2025. Infiltration Basin A and Infiltration Basin B meet the definition of category (b)(6), the wetlands formed within stormwater management facilities associated with the construction of neighboring subdivisions. Both wetlands were created by constructing closed depressions/ponds within mapped upland soils (Newglarus-Dunbarton, very stony, silt loam and Troxel silt loam). Accordingly, the Corps has determined that Infiltration Basin A and Infiltration Basin B, are excluded from Section 404 jurisdiction under (b)(6) of the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule as Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating or diking dry land to retain water for primarily aesthetic reasons.

- 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).

⁹ 88 FR 3004 (January 18, 2023)

Wetland 1 (1.3 acres) is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. A desktop review of the USGS topographic map, National Hydrography Dataset (NHD) layer, Wisconsin Wetland Inventory, LiDAR elevation data, on-site photos, and multiple years of aerial photography, shows Wetland 1 is man-made drainage swale (Badger Mill Creek), with no base flow, no discernible ordinary high-water mark, and exhibits short duration flows for 1-2 months during significant rainfall events and spring snowmelt runoff. The Corps has determined that this reach of Badger Mill Creek is not a jurisdictional (a)(3) tributary.

Wetland 1 terminates at a culvert present in Interlaken Pass. From this point, the drainage swale extends southeasterly approximately 0.91 miles, through two additional culverts in roadways, to an unnamed tributary. The Corps has determined that the Interlaken Pass culvert severs a continuous surface connection to downstream waters. Wetland 1 is a non-tidal wetland which does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetland 1 does not have a continuous surface connection to a relatively permanent jurisdictional water and as such does not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, Wetland 1 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. West Badger Mill Creek Greenway Enhancement Assured Wetland Delineation Report from the City of Madison. (dated October 24, 2025)
 - b. USGS 1:24K Quad Name: Middleton.
 - c. Mississippi Valley Division National Regulatory Viewer layers consisting of hillshade, National Hydrography Dataset, Digital Elevation Model, topographic contours, and National Wetland Inventory Accessed: May 26, 2026.
 - d. Offsite aerial imagery review from the City of Madison Wetland Delineation Report and Dane County GIS (dated 1937, 1955, 1974, 1976, 1987, 1995, 2000, 2005, 2010, 2014, 2017, 2020, and 2024).
 - e. 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'

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Under The Definition Of “Waters Of The United States” Under The Clean Water Act” (March 12, 2025).

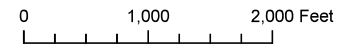
10. OTHER SUPPORTING INFORMATION. N/A

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 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.



West Badger Mill Creek
Greenway Enhancement
Figure 1 - Site Location Map

- PLSS Sections
- Project Area (9.25 Acres)



Wisconsin Dept. of Natural Resources (DNR); USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System; National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road data; Natural Earth Data; U.S. Department of State HJ; NOAA National Centers for Environmental Information. Data refreshed October 3, 2025.

Site Location

S3 T6 R8

S2 T6 R8

S1 T6 R8

S10 T6 R8

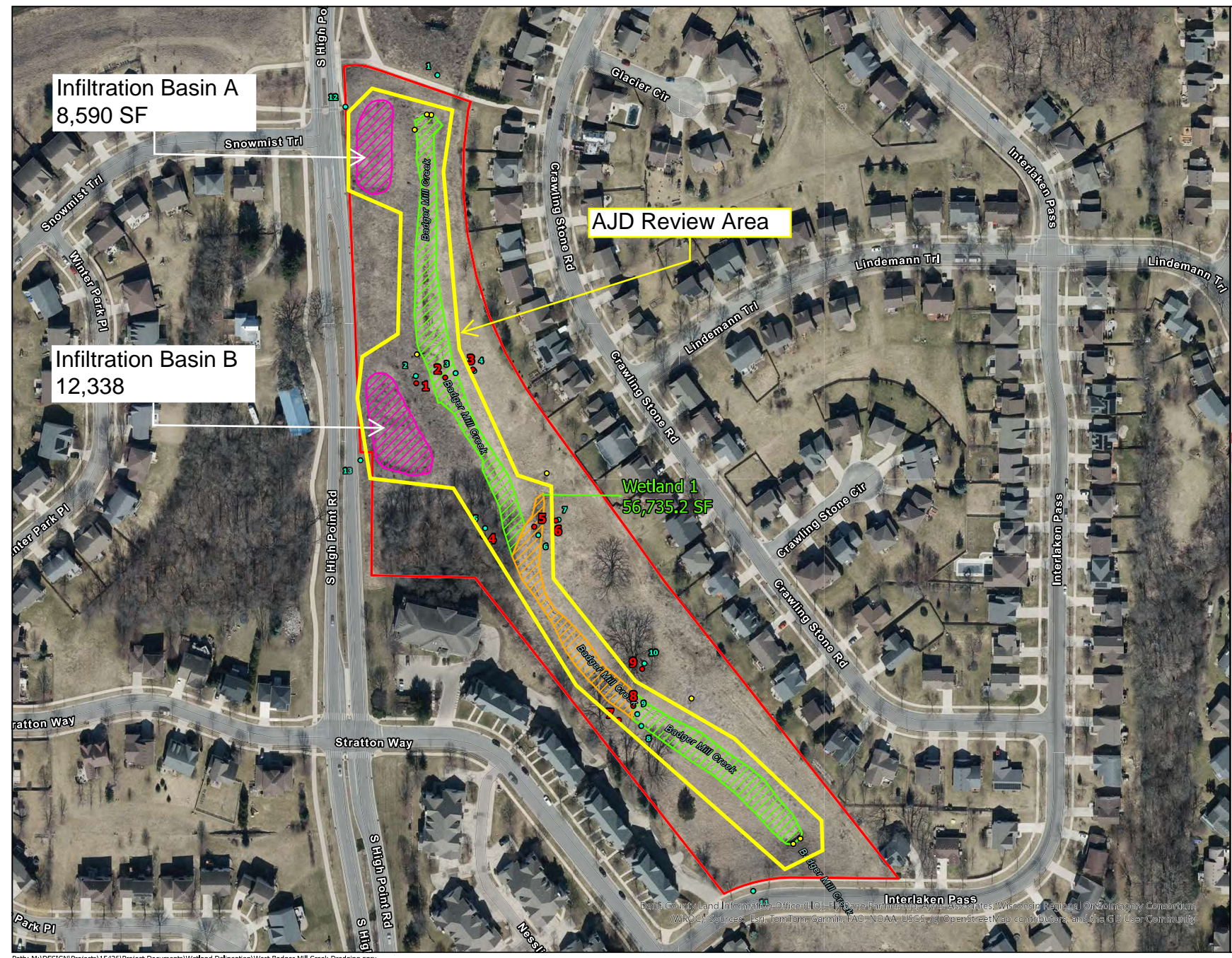
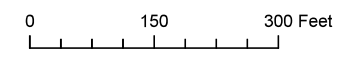
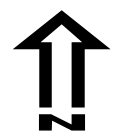
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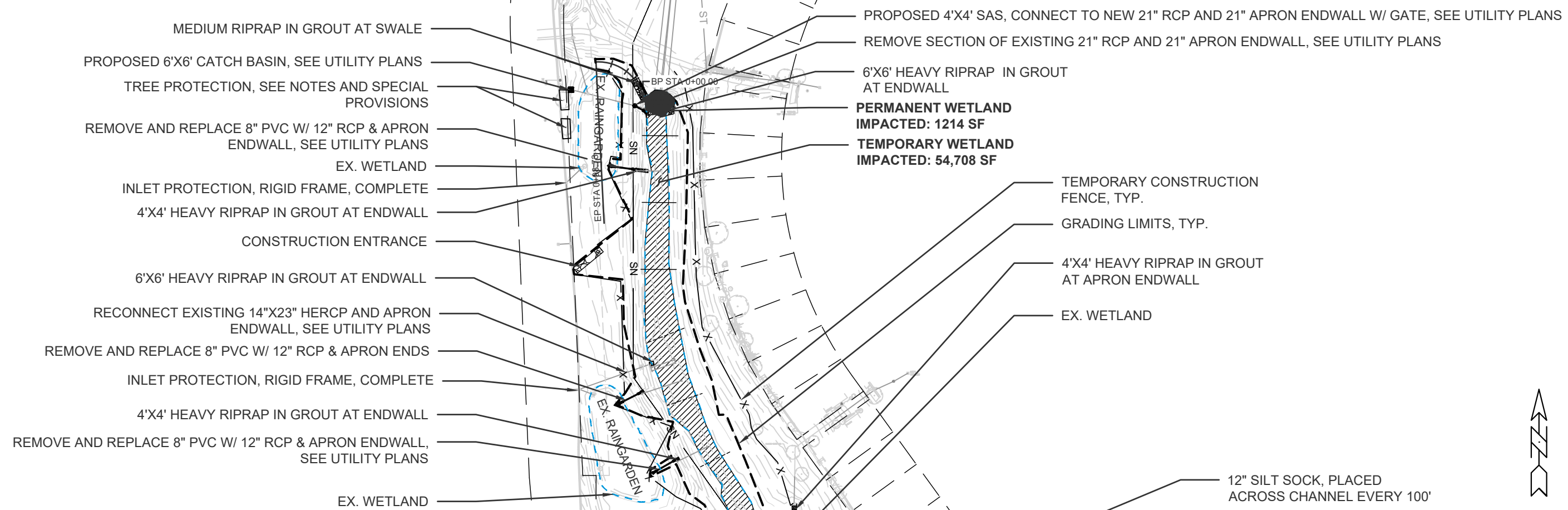


West Badger Mill Creek Greenway Enhancement
Figure 2 - Wetland Boundary Map

- Culvert/Outfall
- Photo Point
- Sample Point
- Project Area (9.25 Acres)
- Infiltration Basin PEM1Ex (20,928.8 SF)
- Wet Meadow PEM1E (43,364.5 SF)
- Willow Thicket PSS1E (13,370.7 SF)



Public Domain, Land Information Office, U.S. Geological Survey, Wisconsin Regional Orthoimagery Consortium, WRCO, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, iC, OpenStreetMap contributors, and the GIS User Community



- NOTES:
1. CONSTRUCTION STORAGE AND STAGING SHALL ONLY BE WITHIN EXISTING CONSTRUCTION FENCING.
 2. EROSION CONTROL MEASURES SHALL BE PLACED PER THE APPROVED EROSION CONTROL PLAN.
 3. STORM SEWER LENGTHS SHALL BE FIELD VERIFIED DURING CONSTRUCTION TO ENSURE THAT THEY ARE LONG ENOUGH TO CONFORM TO PLAN.
 4. ADDITIONAL TREE PROTECTION AND NO ROOT CUT BID ITEMS SHALL BE INSTALLED AND PERFORMED PER SPECIAL PROVISIONS.
 5. EXCAVATION NEAR STREET TREES: AS DEFINED BY SECTION 107.13 OF CITY OF MADISON STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION. NO EXCAVATION SHALL BE PERMITTED WITHIN (DBH IN FEET) OF THE TRUNK OF THE STREET TREE OR WHEN CUTTING ROOTS OVER 3 INCHES OF DIAMETER. IF EXCAVATION IS NECESSARY, THE CITY SHALL CONTACT MADISON CITY FORESTRY AT (608) 266-4816 PRIOR TO EXCAVATION. CITY OF MADISON PERSONNEL SHALL ASSESS THE IMPACT TO THE TREE AND TO ITS ROOT SYSTEM PRIOR TO WORK COMMENCING. EACH INDIVIDUAL TREE MAY HAVE IT'S OWN UNIQUE TREE PROTECTION ZONE.
 6. DAMAGING STREET TREES: CONTRACTOR SHALL TAKE PRECAUTIONS DURING CONSTRUCTION NOT TO DISFIGURE, SCAR, OR IMPACT THE HEALTH OF ANY STREET TREE. CONTRACTOR SHALL OPERATE EQUIPMENT IN A MANNER AS TO NOT DAMAGE THE BRANCHES OF THE STREET TREE(S). THIS MAY REQUIRE USING SMALLER EQUIPMENT AND LOADING AND UNLOADING MATERIALS IN A DESIGNATED SPACE AWAY FROM TREES ON THE CONSTRUCTION SITE. ANY DAMAGE OR INJURY TO EXISTING STREET TREES (EITHER ABOVE OR BELOW GROUND) SHALL BE REPORTED IMMEDIATELY TO CITY FORESTRY AT (608) 266-4816. PENALTIES AND REMEDIATION SHALL BE REQUIRED.
 7. SOIL COMPACTION: SECTION 107.13(G) OF CITY OF MADISON STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION ADDRESSES SOIL COMPACTION NEAR STREET TREES AND SHALL BE FOLLOWED BY CONTRACT. THE STORAGE OF PARKED VEHICLES, CONSTRUCTION EQUIPMENT, BUILDING MATERIALS, REFUSE, EXCAVATED SPOILS OR DUMPING OF POISONOUS MATERIALS ON OR AROUND TREES AND ROOTS WITHIN FIVE (5) OF THE TREE OR WITHIN THE PROTECTION ZONE IS PROHIBITED.
 8. PROTECTION FENCING: ON THIS PROJECT, STREET PROTECTION ZONE FENCING IS REQUIRED. THE FENCING SHALL BE ERECTED BEFORE THE DEMOLITION, GRADING OR CONSTRUCTION BEGINS. THE FENCE SHALL INCLUDE THE ENTIRE WIDTH OF TERRACE AND EXTEND AT LEAST (DBH IN FEET) OF BOTH SIDES OF THE OUTSIDE EDGE OF THE TREE TRUNK. DO NOT REMOVE THE FENCING TO ALLOW FOR DELIVERIES OR EQUIPMENT ACCESS THROUGH THE TREE PROTECTION ZONE. EACH INDIVIDUAL TREE MAY HAVE IT'S OWN UNIQUE TREE PROTECTION ZONE.

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