



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

MVP-2025-00714-DDP

July 22, 2025

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-2025-00714-DDP 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.

- 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 (0.290 acre) - Non-Jurisdictional

1. 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)

2. REVIEW AREA. The Corps review area is limited to Wetland 1 (0.29 acre) located in the Hickories subdivision near Hickory Road in Section 30, Township 16, Range 13, Town of Brooklyn, Green Lake County, Wisconsin and is shown on the enclosed figures labeled MVP-2025-00714-DDP AJD Figures Page 2 of 2.

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

4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A

5. 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

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.

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ 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 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 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).

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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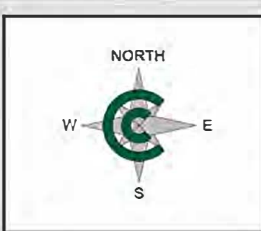
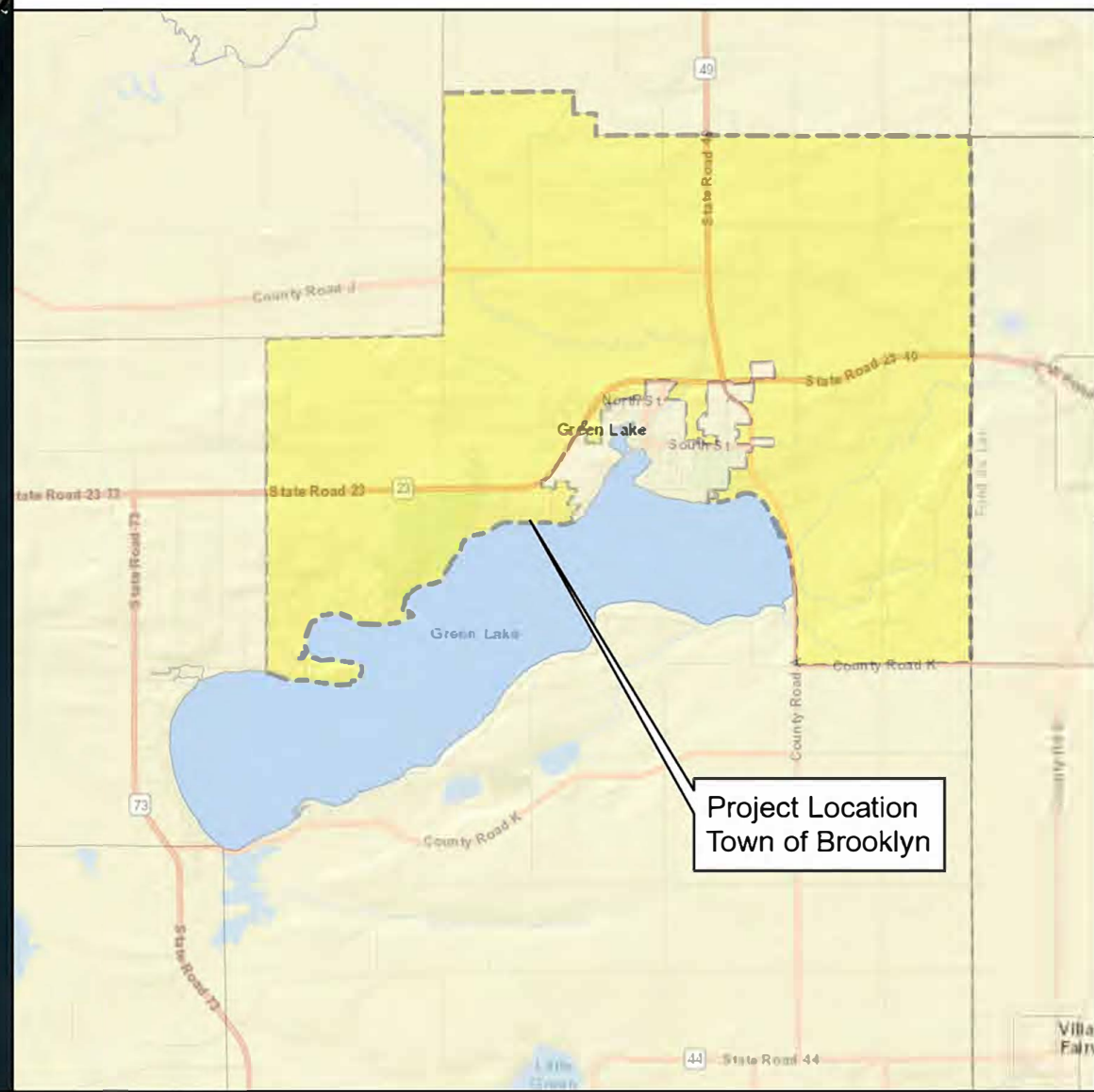
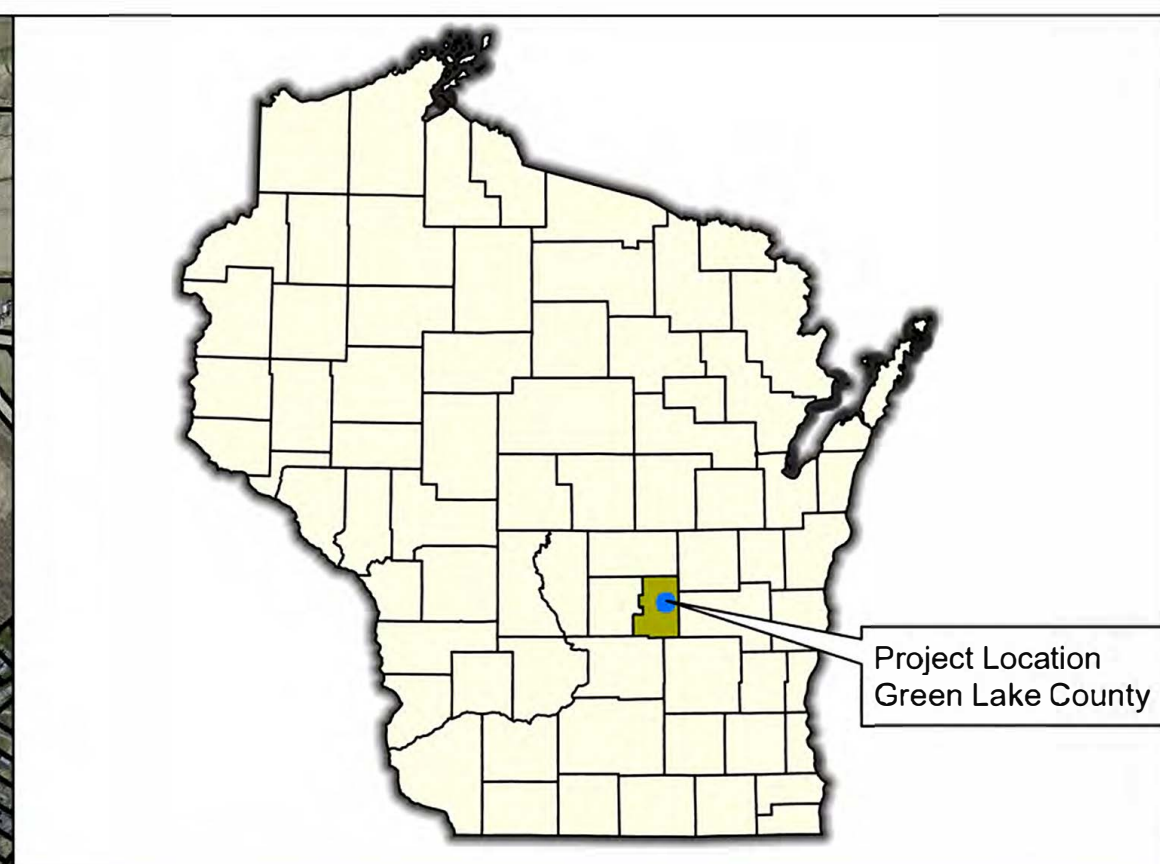
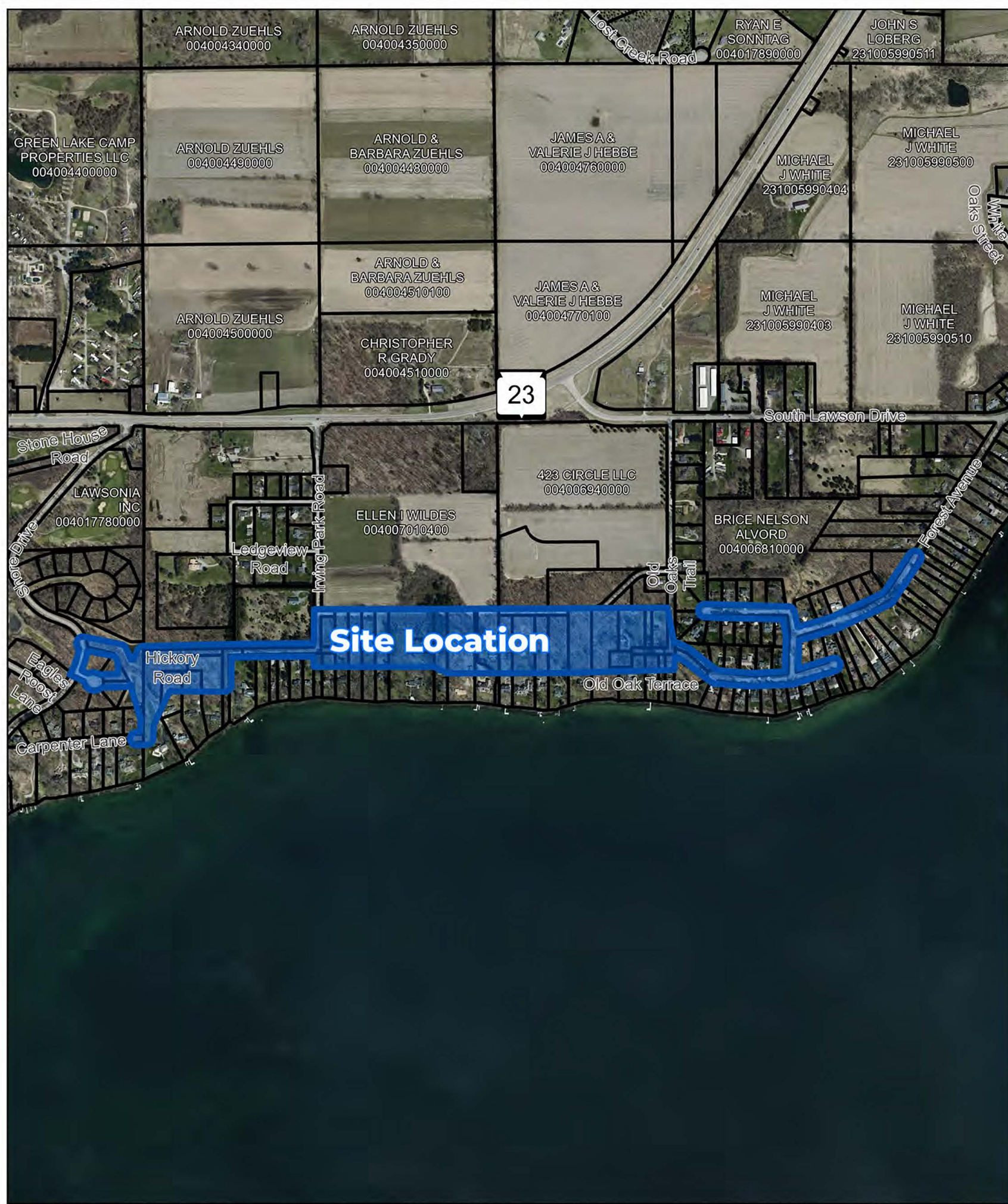
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00714-DDP

- a. Wetland 1 was identified in the November 1, 2024, Cedar Corporation, Assured Wetland Delineation Report for the Hickories subdivision. Wetland 1 is a drainage swale which extends from Chestnut Road south to Hickory Road until it enters a culvert and continues underground ultimately discharging into Green Lake. The Corps has determined that Wetland 1 lacks an ordinary high-water mark, and the flow frequency is sporadic, occurring most frequently in direct response to precipitation events. Therefore, Wetland 1 is not a relatively permanent water. Additionally, Wetland 1 does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. The closest relatively permanent (a)(3) water is Green Lake located directly south of the review area. Based on a review of site photos provided in the delineation report, the culvert does not have an observable ordinary high-water mark therefore, Wetland 1 is a non-tidal wetland that lack a continuous surface connection to a relatively permanent water and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; Wetland 1 is therefore not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.
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. Cedar Corporation Assured Wetland Delineation Report for The Hickories subdivision Dated November 1, 2024
 - b. USACE Regulatory Viewer Accessed: July 16, 2025
 - c. WDNR - Surface Water Data Viewer Accessed: July 16, 2025
 - d. Google Earth Imagery Accessed: July 16, 2025
 - e. Wisconsin Wetland Inventory, USDA Web Soil Survey, and USGS NHD and Topographic Maps Accessed: July 16, 2025
 - f. USGS 1:24K Quad Name: Green Lake
 - g. Office evaluation conducted on: July 17, 2025
9. OTHER SUPPORTING INFORMATION. N/A

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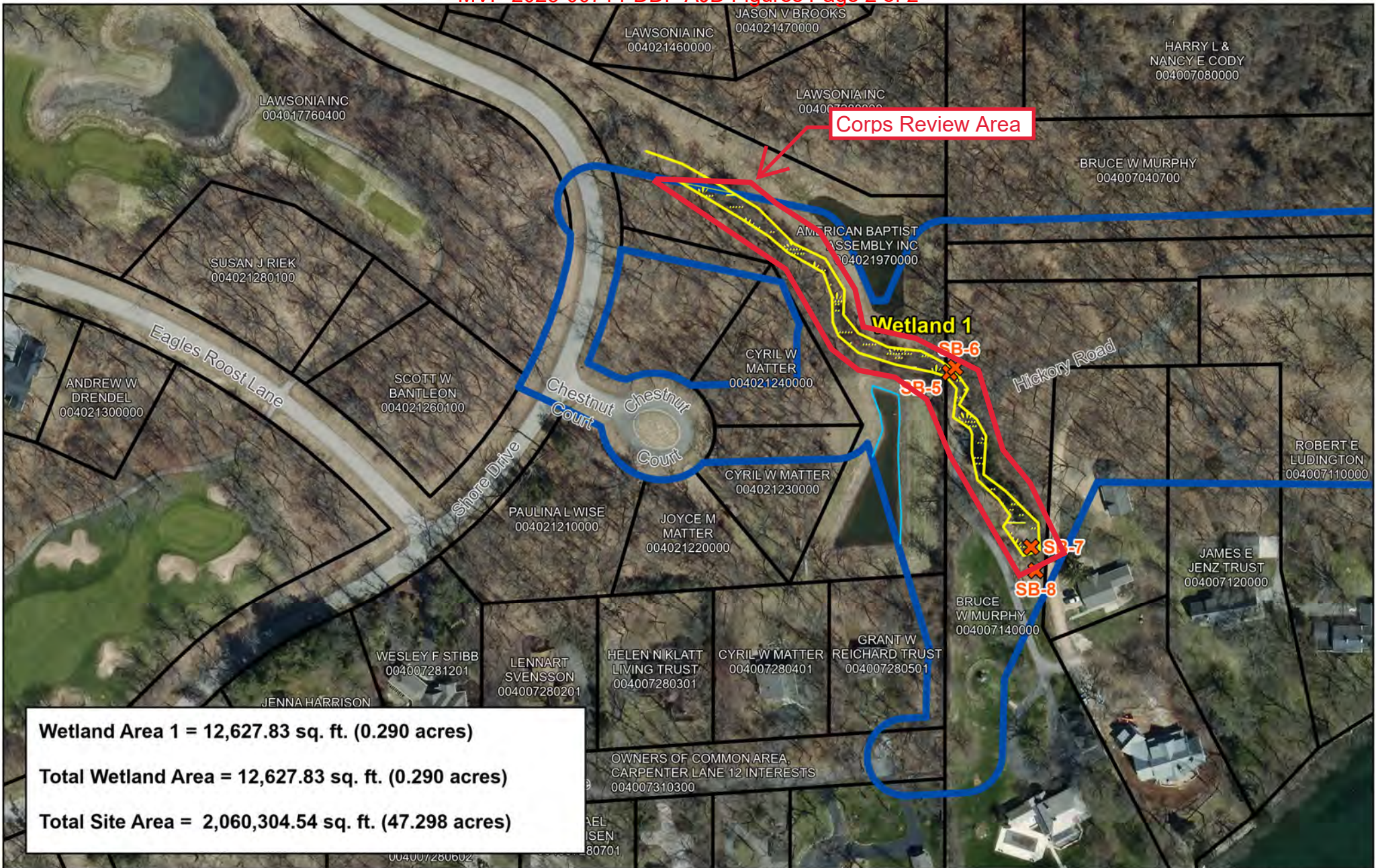
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10. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

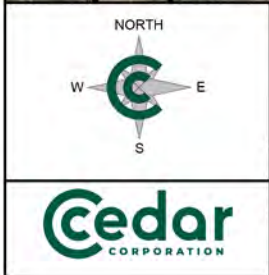


Site Location Map
The Hickories Sewer Extension - Area 9
 GREEN LAKE SANITARY DISTRICT
 TOWN OF BROOKLYN
 GREEN LAKE COUNTY, WI

JOB NO.	G4917-032
DATE	9/16/2024
FIGURE	1



Wetland Area 1 = 12,627.83 sq. ft. (0.290 acres)
Total Wetland Area = 12,627.83 sq. ft. (0.290 acres)
Total Site Area = 2,060,304.54 sq. ft. (47.298 acres)



The Hickories Sewer Extension - Area 9
 Surveyed Wetland Boundary

0 87.5 175 350 Feet

The information on this map is from a computer database accessed using a Geographic Information System (GIS). Cedar Corporation cannot guarantee the accuracy of the information contained on this map. Each user of this map is responsible for determining its suitability for their intended use or purpose.

Legend	
	Soil Boring
	Wetland
	Wetline
	Project Location
	Waterway
	Parcels

JOB NO	G4917-032
DATE	9/27/2024
FIGURE	2a