



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
ST. PAUL OFFICE, EAST BRANCH
332 MINNESOTA STREET SUITE E1500
ST. PAUL MINNESOTA 55101

MVP

October 25, 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-1900-00248-LAH 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.

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- 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 (2.419 acres), non-jurisdictional
 - ii. Wetland B (0.122 acre), non-jurisdictional
 - iii. Wetland C (0.168 acre), non-jurisdictional
 - iv. Wetland D (0.075 acre), non-jurisdictional
 - v. Wetland E (0.027 acre), non-jurisdictional
 - vi. Wetland F (0.132 acre), non-jurisdictional
 - vii. Wetland G (0.530 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)

3. REVIEW AREA.

- a. Project Area Size (in acres): The review area is approximately 34.4 acres and identified with a red polygon in 1900-00248-LAH Figures 1 of 2 through 2 of 2.
- b. Location Description: The project/review area is located in Section 25, Township 003N, Range 022E, Racine County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 42.685660 Longitude: -87.852240
- d. Nearest City or Town: Racine
- e. County: Racine
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):
There are no other Jurisdictional Determinations associated with the review area.

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

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. 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
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
 - 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

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.

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- 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).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).

Wetlands A, B, C, D, E, F, and G are not TNWs, territorial seas, or interstate waters, and therefore are not defined as (a)(1) waters. A review of topographic maps, LiDAR, aerial imagery, ground view imagery, the delineation report, and NRV indicates that these wetlands are depressional and surrounded by upland. The review area is comprised of agricultural field that has historically maintained farmed crops since as early as 1937 and has a consistent south to north drainage pattern. The review area is surrounded by a considerable number of residential communities toward the north, east, and south with Old Green Bay Road bordering the west. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from jurisdictional waters by natural berms, banks, dunes, or similar natural landforms. An unnamed tributary of the Pike River is located about 5,000 feet east of the review area. These wetlands do not maintain a continuous surface connection to this jurisdictional water.

Wetland A is located at the northern most border of the review area. It is described in the delineation report as forested/scrub-shrub and extends offsite into the north neighboring area beyond the review boundary. Through topography, ground view, and LiDAR imagery, it's clear that Wetland A is the southern portion of a much larger wetland/stormwater collection basin, located directly north, and provides water runoff from the surrounding neighborhoods.

⁷ 88 FR 3004 (January 18, 2023)

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This collection basin contains a culvert emptying into the wetland from the north residential neighborhood but has no continuous surface connections draining away from the wetland and is topographically lower than surrounding areas. Historically, Wetland A has shown partial crop growth success with periodic wetland signatures as early as 1955; however, since around 2000 there has been a large amount of development that appears to have created the larger wetland basin through increased elevations surrounding. As mentioned in the delineation report and confirmed through review, wetland signatures were apparent 100% of the years since the 2000 development began.

Wetland B, an active farmed crop wetland considered to have problematic hydrophytic vegetation conditions, and Wetland C, a fresh wet meadow, are described in the delineation report as being located in a swale formation with observable drainage patterns surrounded by upland. Through LiDAR review, it has been confirmed Wetlands B and C are located in topographic swales with overflow events leading northeast into Wetland A. There are no confined flows most years and these wetlands do not act as continuous surface connections to jurisdictional waters.

Wetlands D, E, and F are described in the delineation report as small, farmed wetlands located in depressions. These areas have historically experienced scattered farm crop success and, evidenced through LiDAR and historic aerials review, are surrounded by upland with occasional flow patterns toward Wetland A to the north. As with Wetlands B and C, these wetlands do not have confined flow most years and do not act as continuous surface connections to jurisdictional waters.

Wetland G, located within a slight depression, is described in the delineation report to continue into the neighboring mowed lawns to the south. Historic aerials show the area of Wetland G containing wetland signatures as early as 1955 with a pond-like border evident. Residential development beginning around 1970 to the south of this wetland eliminated the predominant pond-like border that was observable in earlier aerials. However, wetland signatures have remained in Wetland G and the area has had limited farmed crop success in recent years. Topographic review shows this wetland is a low laying area that is surrounded by upland.

There are no ditches, swales, pipes, or culverts that connect Wetlands A, B, C, D, E, F, and G to downstream waters. These wetlands are non-tidal and do not have continuous surface connections to relatively permanent jurisdictional waters and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. Therefore, Wetland A, B, C, D, E, F, and G are not

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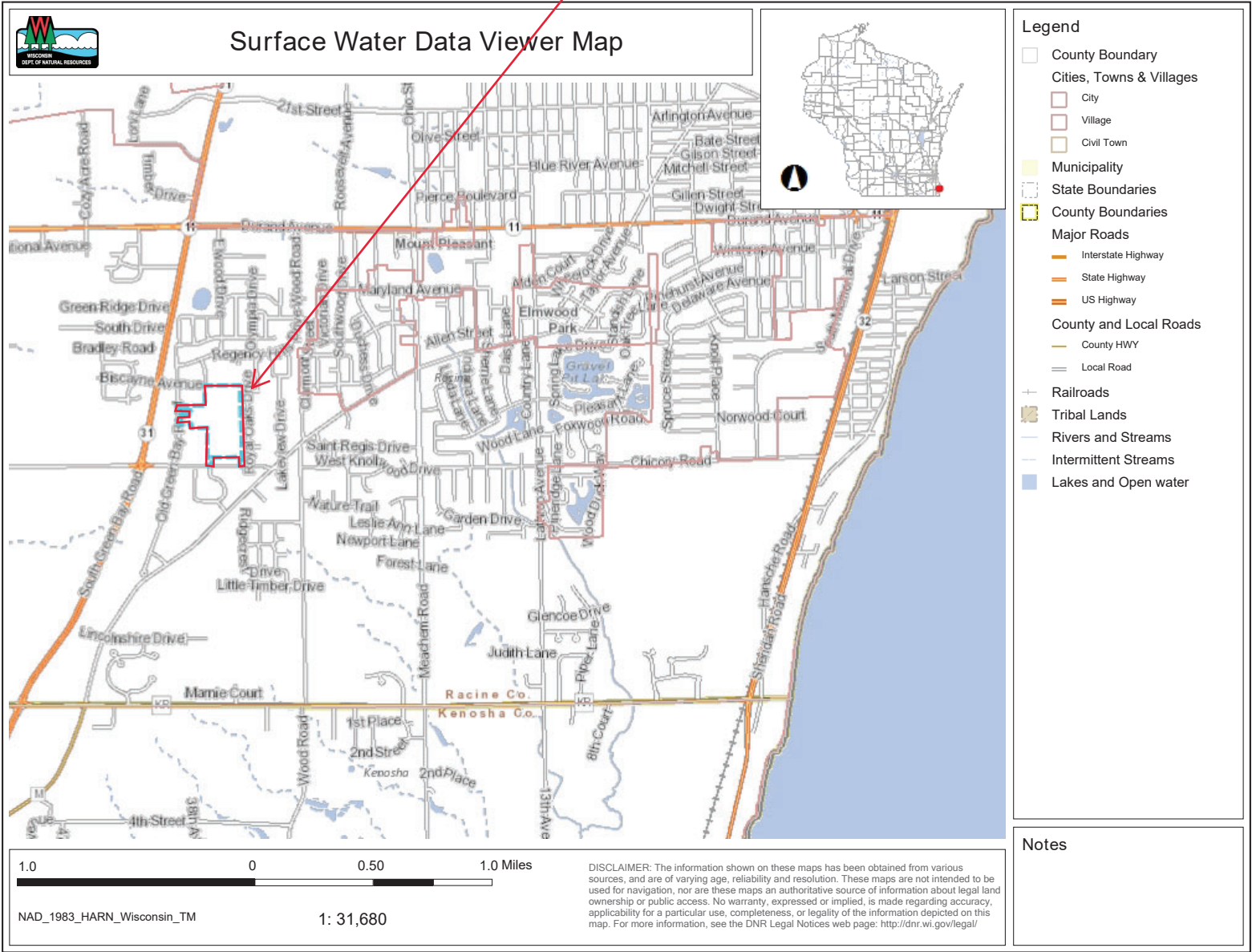
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jurisdictional under the 2023 Revised Definition of “Waters of the United States”
Conforming 88 FR 61964 Final Rule.

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. Office evaluation conducted and completed on October 10, 2024.
 - b. Wetland and Waterway Consulting LLC Wetland Delineation Report completed for Primestone Residential dated July 22, 2024.
 - c. Mississippi Valley Division NRV, LiDAR Wisconsin DNR DEM and Hillshade layers accessed October 10, 2024 (layer date created March 2021).
 - d. Google Earth aerial imagery accessed October 10, 2024.
 - e. Historic aerial imagery available at <https://www.historicaerials.com/viewer> accessed October 10, 2024.
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.

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Figure 1

2024 USACE
Review Area



Wetlands located in designated area: Being part of the Southwest ¼ of Section 25, Township 3 North, Range 22 East, in the Village of Mt. Pleasant, Racine County, Wisconsin.

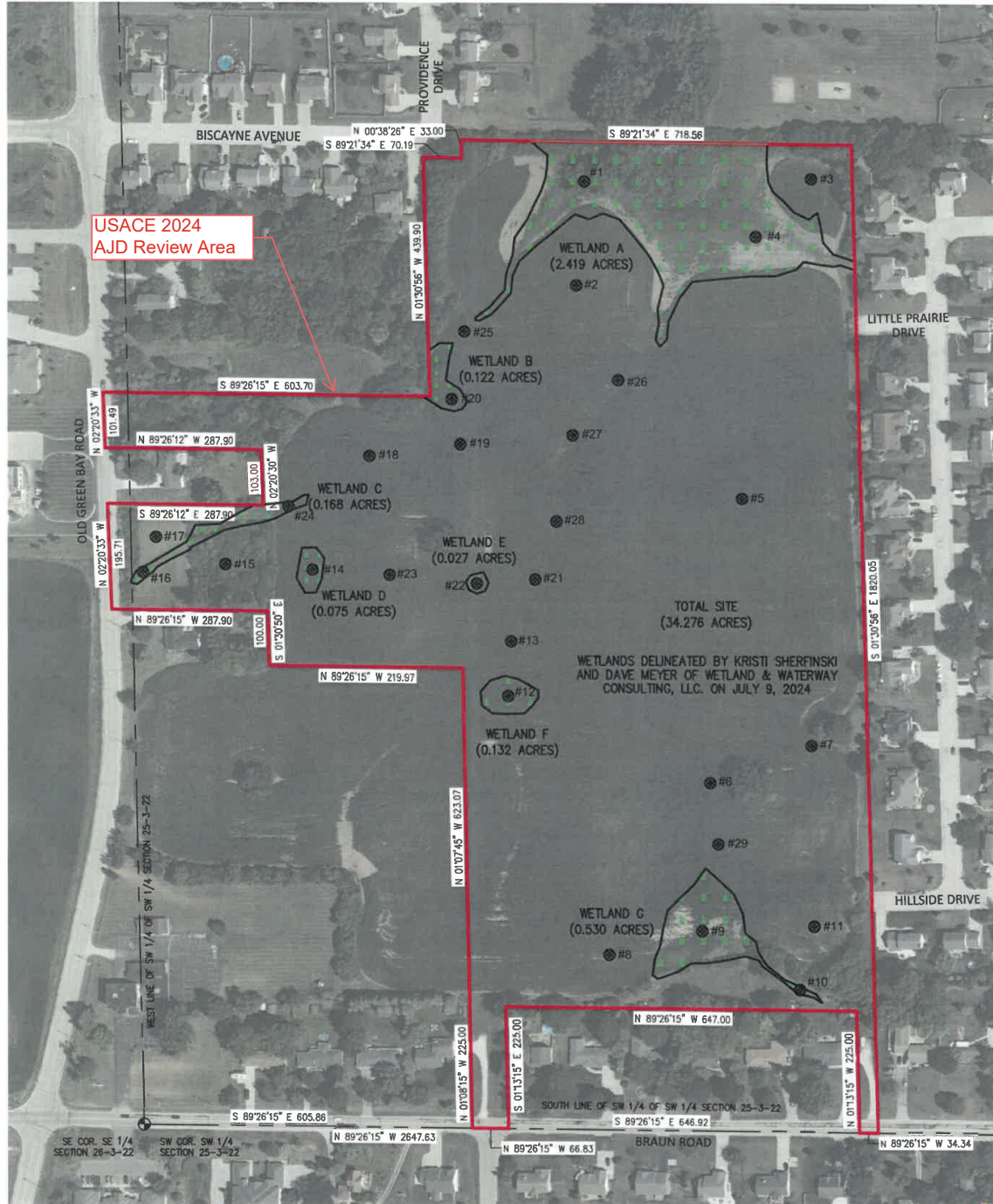
The wetlands marked by Wetland & Waterway Consulting, LLC. were located under my direction, and the map hereon drawn is a correct representation thereof.

July 22, 2024
 Mark R. Madsen
 LAND SURVEYOR
 RACINE, WI
 S-22111

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Figure 2

Delineated Wetlands



LEGEND

- DATA POINT
- WETLAND



Nielsen Madsen + Barber
 CIVIL ENGINEERS AND LAND SURVEYORS
 1458 Horizon Blvd. Suite 200, Racine, WI. 53406
 Tele: (262)634-5588 Website: www.nmbssc.net

NOTES

BEARING BASE: GRID NORTH, WISCONSIN
 COORDINATE SYSTEM, SOUTH ZONE.
 BASED UPON NAD 1983 / 2011

Scale: 1" = 200'
 Drawn By: SCB
 DATE: 7-22-2024
 2023.0016.01

Wetland Exhibit
 Stonestreet Partners, LLC.
 Mt. Pleasant, Wisconsin

8:13:38 AM

Monday, July 22, 2024