

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2011-01112-JLK

MVP

January 6, 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-2011-01112-JLK [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.

MVP

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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 T01-W	Non-Jurisdictional	None
Wetland T02-W	Non-Jurisdictional	None
Wetland T03-W	Non-Jurisdictional	None
Wetland T04-W	Non-Jurisdictional	None
Wetland T05-W	Non-Jurisdictional	None
Wetland T06-W	Non-Jurisdictional	None
Wetland T07-W	Non-Jurisdictional	None
Wetland T08-W	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)

3. REVIEW AREA.

- a. Project Area Size (in acres): 24.00
- b. Location Description: The project/review area is located in Section 32, Township 8N, Range 21E, Milwaukee County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.11747 Longitude: -88.03263
- d. Nearest City or Town: Milwaukee
- e. County: Milwaukee

MVP

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- f. State: Wisconsin
 - g. Other associated Jurisdictional Determinations (including outcomes):
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. NA
 5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. NA
 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. NA
 - 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

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.

MVP

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- 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 NA
- 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 T01-W, W02-W, T03-W, T04-W, T05-W, T06-W, T07-W, and T08-W are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. Topographic maps, Google Earth Pro aerial imagery, and site photos provided in the delineation report, indicates Wetlands W02-W, T03-W, T04-W, T05-W, T06-W, T07-W, and T08-W are confined within the northern/western portions of the review area and surrounded by uplands involving open fields and buildings associated with the Timmerman Airport to the south, north, and east, and residential development to the west. The same data resources indicate Wetland T01-W is surrounded by uplands involving the same field to the north and south, and residential development to the west while extending outside of the review area to the east. However, a review of Lidar data indicates this wetland continues approximately 130 feet to the east, then transitions to uplands involving a runway associated with the airport.

Further review of the above-mentioned data sources indicates Wetland W02-W is a ditch-like feature running north to south along the western boundary of the

⁸ 88 FR 3004 (January 18, 2023)

MVP

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review area for approximately 440 feet. A culvert transports stormwater from the airport runways to the east into this wetland while the north end empties into a second culvert. From here it is unclear where the surface water is routed. Lidar data suggests this feature may continue further to the north and south. However, a review of Google Earth Street level photos shows the resource to the north transitions to uplands involving the existing grassy field while a review of site level photos provided in the delineation report show the south end of Wetland W02-W transitions to uplands involving the same grassy field. The Surface Water Data Viewer shows a tributary historically intercepted this wetland. However, Google Earth aerial photos and site level photos provided in the delineation report show no evidence of the tributary and do not indicate a culvert connecting this resource to the tributaries located approximately 0.32 of a mile further west. Additionally, further review of historical aerial photos and ground level photos demonstrates this ditch-like feature is shallow with no standing/flowing water, indicating it is not a relatively permanent water.

Based on the above information, Wetlands T01-W, W02-W, T03-W, T04-W, T05-W, T06-W, T07-W, and T08-W do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. Therefore, Wetlands T01-W, W02-W, T03-W, T04-W, T05-W, T06-W, T07-W, and T08-W are 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. Office evaluation conducted on December 9, 2025.
 - b. Timmerman Airport Fence Replacement, Milwaukee County Wetland Delineation Report provided by Westwood dated August 27, 2025.
 - c. National Regulatory Viewer-Lidar Data and Google Earth Pro assessed December 9, 2025.

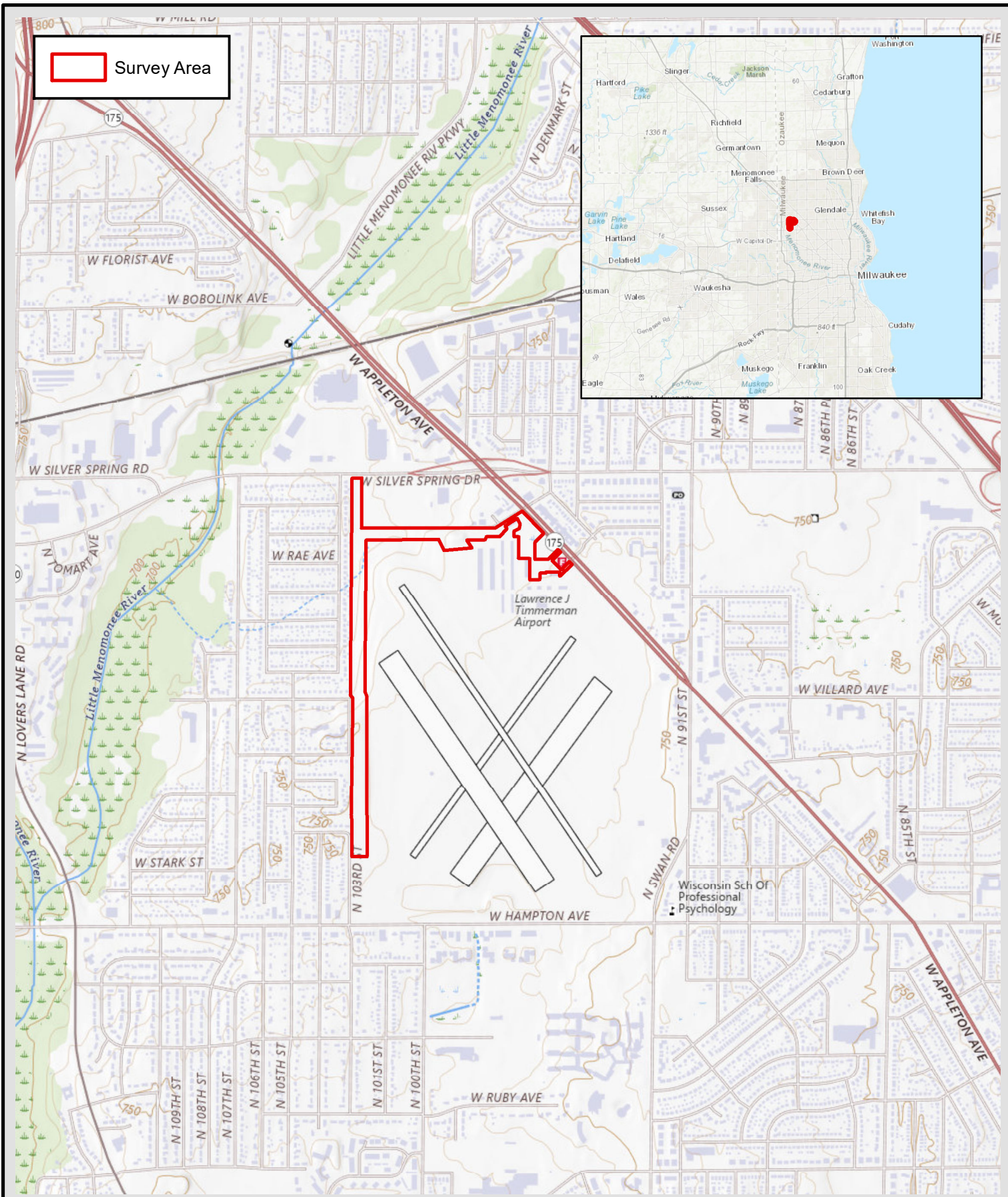
10. OTHER SUPPORTING INFORMATION. NA

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

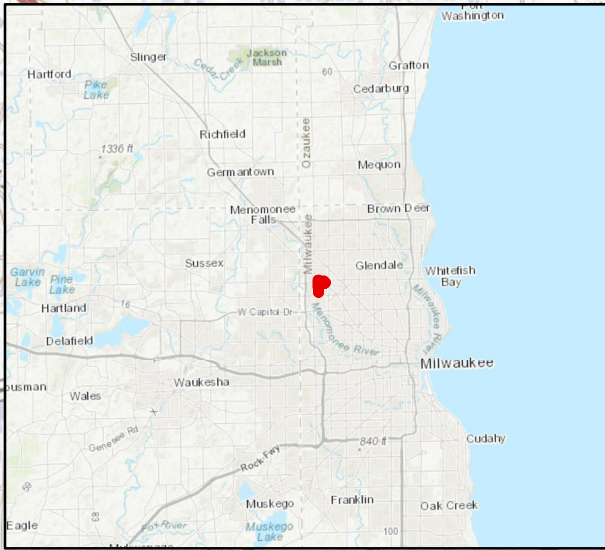
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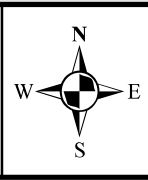
additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



 Survey Area



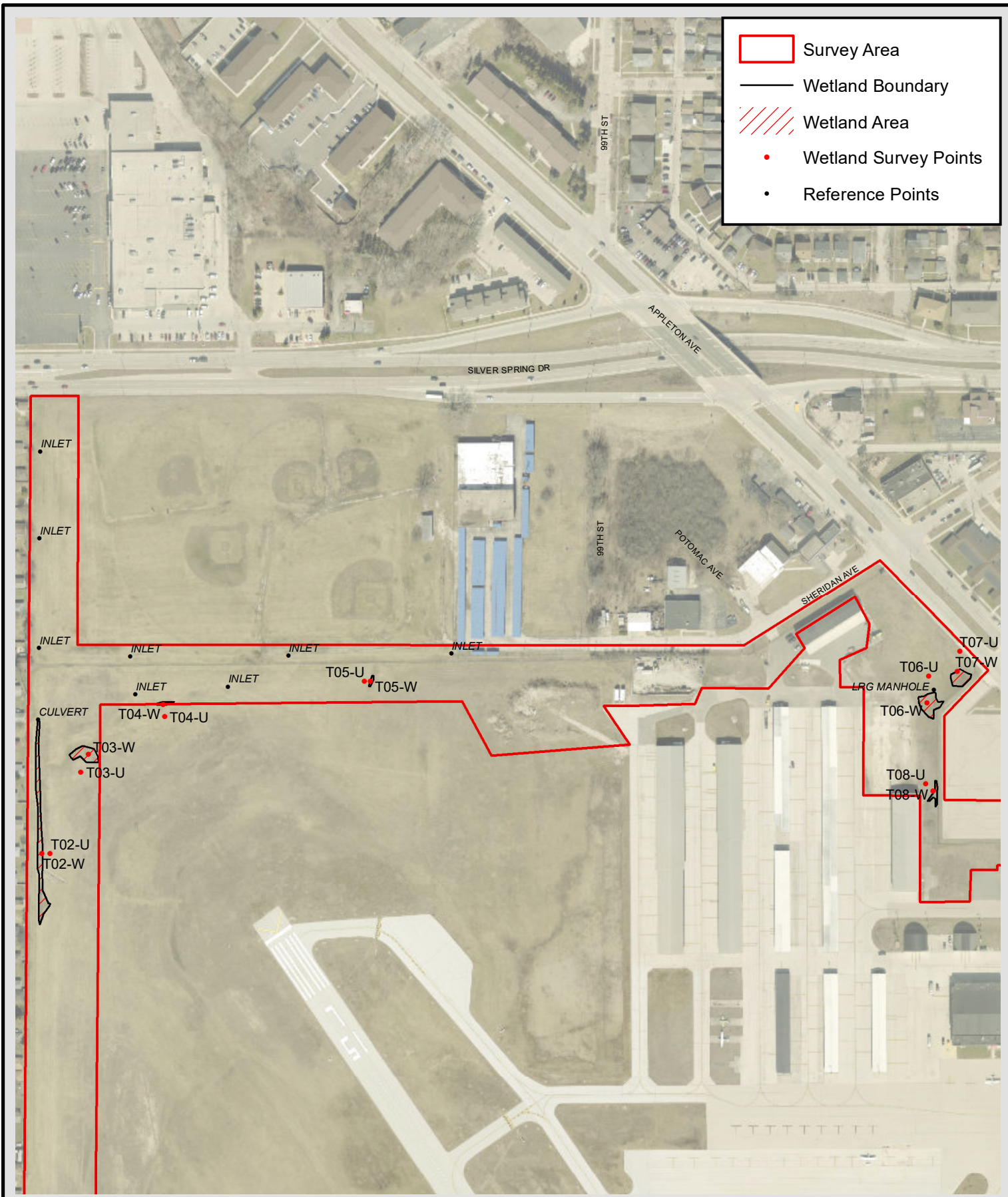
Westwood
 1 Systems Drive (920) 735-6900
 Appleton, WI 54914 www.westwoodps.com



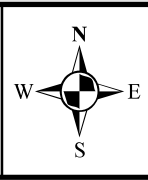
TIMMERMAN AIRPORT
SITE LOCATION AND
TOPOGRAPHIC MAP
 MILWAUKEE COUNTY
 MILWAUKEE, WI

Project Manager:
 Project Engineer:
 Drawn By: KMK
 Checked By:
 Date: 8/26/2025

SCALE:
 1" = 1,500'
 PROJECT NO.
R0058985.02
 FIGURE NO.
1



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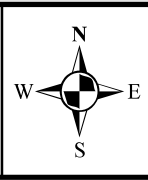
TIMMERMAN AIRPORT
WETLAND BOUNDARIES MAP
NORTH
 MILWAUKEE COUNTY
 MILWAUKEE, WI

Project Manager:
 Project Engineer:
 Drawn By: KMK
 Checked By:
 Date: 7/30/2025

SCALE:
 1" = 300'
 PROJECT NO.
R0058985.02
 FIGURE NO.
3a



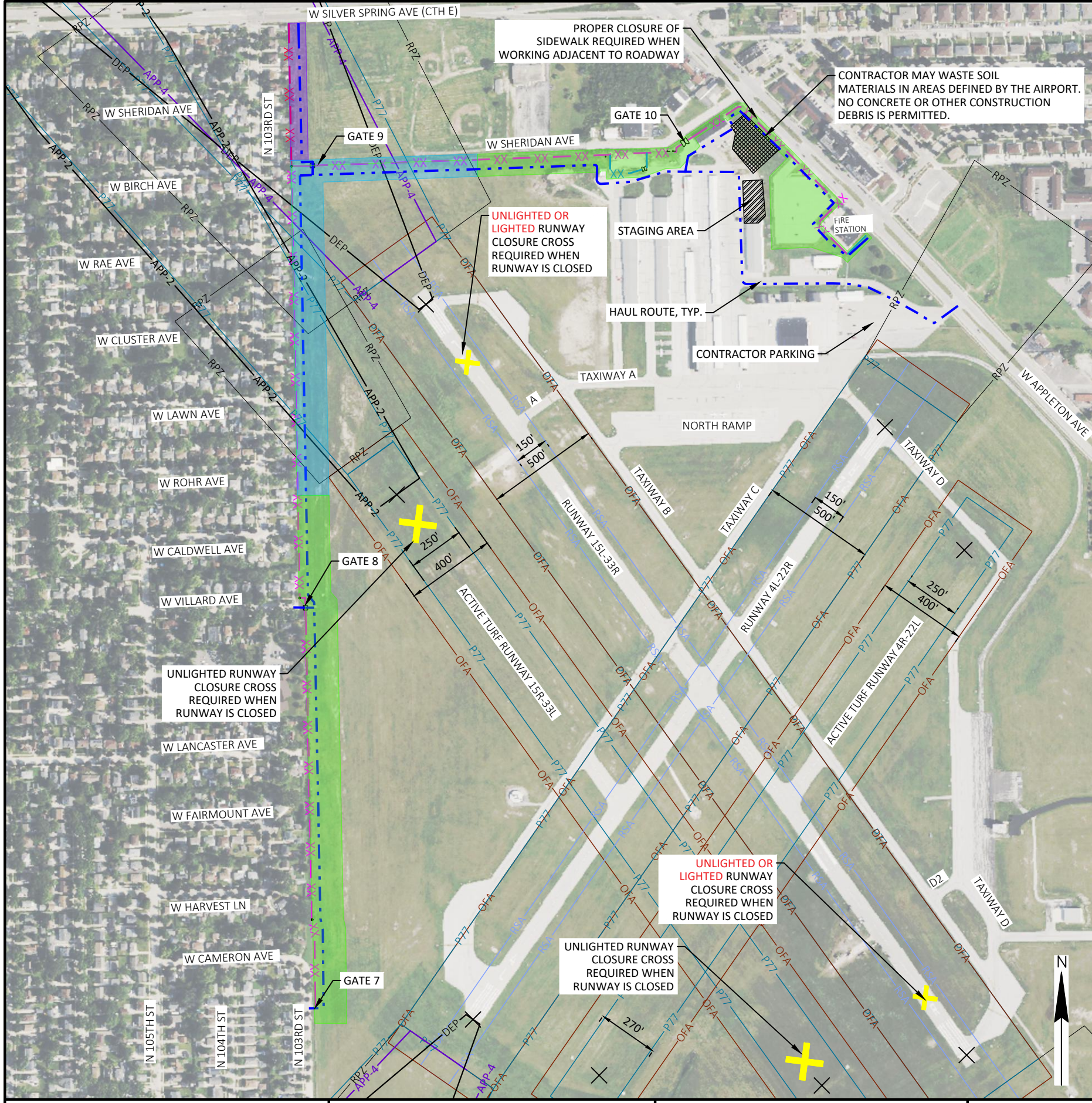
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 Appleton, WI 54914 www.westwoodps.com



TIMMERMAN AIRPORT
WETLAND BOUNDARIES MAP
SOUTH
 MILWAUKEE COUNTY
 MILWAUKEE, WI

Project Manager:
 Project Engineer:
 Drawn By: KMK
 Checked By:
 Date: 7/30/2025

SCALE:
 1" = 250'
 PROJECT NO.
R0058985.02
 FIGURE NO.
3b



PHASE SUMMARY		
	NAME	WORKING DAYS
	PHASE 1	
	PHASE 2 (RUNWAY 15L-33R AND 15R-33L CLOSURE)	5 CONSECUTIVE WORKING DAYS (DURING PHASE 1)
	PHASE 3 (ALTERNATE A)	3 ADDITIONAL WORKING DAYS (IF AWARDED)

LEGEND

- HAUL ROUTE
- PROPOSED 8FT (BARBED WIRE) FENCE (BASE BID)
- PROPOSED 6FT (NO BARBED WIRE) FENCE (BASE BID)
- PROPOSED 8FT (NO BARBED WIRE) FENCE (ALT A)
- STAGING AREA
- EXCESS EMBANKMENT AREA

PHASING NOTES:

- SECURITY AND CONSTRUCTION PHASING**
- NO OPENINGS SHALL BE ALLOWED IN THE FENCE OVERNIGHT.
 - ONLY 500 LF OF FENCE MAXIMUM (OR AS NEEDED TO SECURE SITE) MAY BE REMOVED AT ANY TIME FOR THE INSTALLATION OF NEW FENCE.
 - THE CONTRACTOR IS RESPONSIBLE TO PREVENT UNAUTHORIZED ACCESS THROUGH THE FENCE IN WORK AREAS.

- UNDERGROUND UTILITIES**
- THE CONTRACTOR SHALL NOT BEGIN EXCAVATION UNTIL ALL EXISTING UNDERGROUND FACILITIES WITHIN THE AREA TO BE EXCAVATED HAVE BEEN MARKED IN THE FIELD BY THE CONTRACTOR. THE CONTRACTOR SHALL POTHOLE AND VERIFY THE DEPTH OF ALL UTILITIES WITHIN THE CONSTRUCTION ZONE BEFORE TRENCHING.
 - NO GUARANTEE IS EXPRESSED OR IMPLIED THAT ALL UNDERGROUND OBSTRUCTIONS ARE SHOWN ON THE PLANS. UNDERGROUND OBSTRUCTIONS NOT SHOWN MAY BE ENCOUNTERED. THOSE SHOWN ARE BASED ON THE BEST INFORMATION AVAILABLE AND THE CONTRACTOR IS CAUTIONED THAT THE ENGINEERS AND THE COUNTY ASSUME NO RESPONSIBILITY FOR ANY OBSTRUCTIONS EITHER SHOWN OR NOT SHOWN ON THE PLANS.

- EXCESS EMBANKMENT**
- EXCESS SOILS MUST BE COMPACTED IN 6-INCH LIFTS TO THE SATISFACTION OF THE ENGINEER.
 - SEEDING, MULCHING, AND RESTORING TURF IS CONSIDERED INCIDENTAL TO THE PROJECT. WISDOT SEED MIX 20 OR 40 MUST BE USED UNLESS APPROVED BY THE ENGINEER.
 - NO CONCRETE OR OTHER CONSTRUCTION DEBRIS IS PERMITTED IN THE EXCESS EMBANKMENT AREA.
 - ALL WORK ASSOCIATED WITH THE EXCESS EMBANKMENT AREA IS CONSIDERED INCIDENTAL TO THE PROJECT.

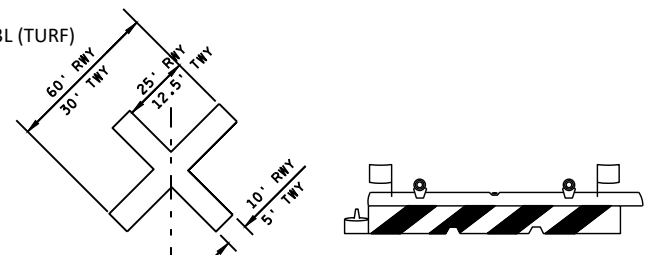
- STAGING**
- AT THE END OF EACH WORKING DAY, THE CONTRACTOR SHALL STORE ALL EQUIPMENT AND MATERIALS IN THE STAGING AREA UNLESS APPROVED BY THE ENGINEER.

RUNWAY SAFETY AREA WIDTHS

	RWY 15L/33R	RWY 15R/33L (TURF)
RSA	150 FT	250 FT
ROFA	500 FT	400 FT

TAXIWAY SAFETY AREA WIDTHS

TSA (ADG-II)	79 FT
TOFA (ADG-II)	124 FT
TLOFA (ADG-II)	110 FT



Preliminary
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- LOW-LEVEL BARRICADE DETAIL (NOT TO SCALE)**
- 6' MAX BETWEEN BARRICADES
 - LIGHTS SHALL HAVE PHOTO EYE AND LIGHT AT DUSK
 - CONTRACTOR SHALL ADD BALLAST (WATER) SO BARRICADES DO NOT MOVE

2011-01112-JLK (Figure 4 of 4)