



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

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-2011-01383-CJB, 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.

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
W-3	Non-Jurisdictional	N/A
W-4	Non-Jurisdictional	N/A
W-5	Non-Jurisdictional	N/A
W-6	Non-Jurisdictional	N/A
W-7	Non-Jurisdictional	N/A

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. Review Area Size (in acres): 14
- b. Location Description: The project/review area is located in Section 13, Township 8N, Range 20E, Waukesha County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.155330 Longitude: -88.070830
- d. Nearest City or Town: Menomonee Falls

e. County: Waukesha

f. State: Wisconsin

g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2018-02520 (dated December 18, 2018)	AJD	All waters were determined to be non-jurisdictional under the AJD
MVP-2011-00785 (dated April 12, 2011)	AJD	All waters were determined to be non-jurisdictional under the AJD

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

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.

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

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

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.,

⁹ 88 FR 3004 (January 18, 2023)

tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Two previous AJDs were completed for this site to include 2011-00785-DJP (dated April 12, 2011) and 2018-02520-MHK (dated December 18, 2018). All aquatic resources within the review areas of these AJDs were determined non-jurisdictional. However, due to the current needs of the applicant and it being longer than five years since the completion of the last AJD, the site was reevaluated to determine the jurisdictional status of the aquatic resources and features within the review area.

We have reviewed and evaluated the historical photography, LiDAR, Google Earth photography, soil mapping, and the information submitted by the applicant for the following features:

- W-3, non-jurisdictional
- W-4, non-jurisdictional
- W-5, non-jurisdictional
- W-6, non-jurisdictional
- W-7, non-jurisdictional

Wetlands W-3 (0.36 acre), W-4 (0.10 acre), and W-5 (0.14 acre) are hardwood swamp/ephemeral ponds located near the southwestern boundary of the site. Based on LiDAR review, submitted delineation report, and aerial review, these wetlands are surrounded entirely by uplands with no discrete conveyance features evident, and do not abut any other waterbodies. Therefore, wetlands W-3, W-4, and W-5 do not abut a jurisdictional water and do not meet the continuous surface connection requirement.

Wetland W-6 (0.04 acre) is a ruderal shrub carr wetland located near the mid-eastern border of the site approximately 36 feet to the northwest of a stormwater pond. Based on LiDAR review, submitted delineation report, and aerial review, this wetland is surrounded entirely by uplands. Based on the delineation report, the exterior boundary of this wetland is correlated with a poorly defined topographic break; however, no discrete conveyance features carrying a relatively permanent flow of water were observed in the delineation report, LiDAR or aerial imagery near the exterior boundary of W-6. Therefore, W-6 does not abut a jurisdictional water and does not meet the continuous surface connection requirement.

Wetland W-7 (0.16 acre) is a hardwood swamp located near the center of the site. Based on the delineation report, the exterior boundary of this wetland

correlates mostly with a moderately defined topographic break located within a drainage way. This drainage way is evident in LiDAR images and topographic maps. Based on lack of water in current and historic aerial imagery and lack of a bed and bank or ordinary high water mark in ground level site photos from the delineation report, this drainage way does not carry relatively permanent flow and lacks the presence of all three wetland criteria. Therefore, Wetland W-7 does not abut a jurisdictional water and does not meet the continuous surface connection requirement.

Wetlands W3-W7 are not TNWs, territorial seas, or interstate water and therefore is not (a)(1) waters. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetlands W3-W7 are nontidal wetlands that do not abut a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetlands. These wetlands are not intrastate lakes or ponds that meet the relatively permanent standard and cannot be evaluated as (a)(5) waters: lakes and ponds not identified in (a)(1) – (a)(4). Wetlands W3-W7 do not directly abut a water of the United States; therefore, these wetlands are not jurisdictional under the “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule (September 8, 2023).

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 December 8, 2025
 - b. Wetland Delineation Report, completed by Heartland Ecological Group, Inc., dated August 13, 2025
 - c. National Regulatory Viewer, LiDAR (Hillshade and DEM), accessed December 8, 2025
 - d. Previously completed AJDs, 2011-00785-DJP (dated April 12, 2011) and 2018-02520-MHK (dated December 18, 2018)

10. OTHER SUPPORTING INFORMATION.

While the previous delineation report associated with the AJD dated December 18, 2018, identified 4 small (less than 0.155 acre) wetlands in the area between Wetland 7 and Wetlands 3-5, the delineation report dated August 13, 2025, did not support the presence of wetlands in this area. This area is a high ridgeline that likely

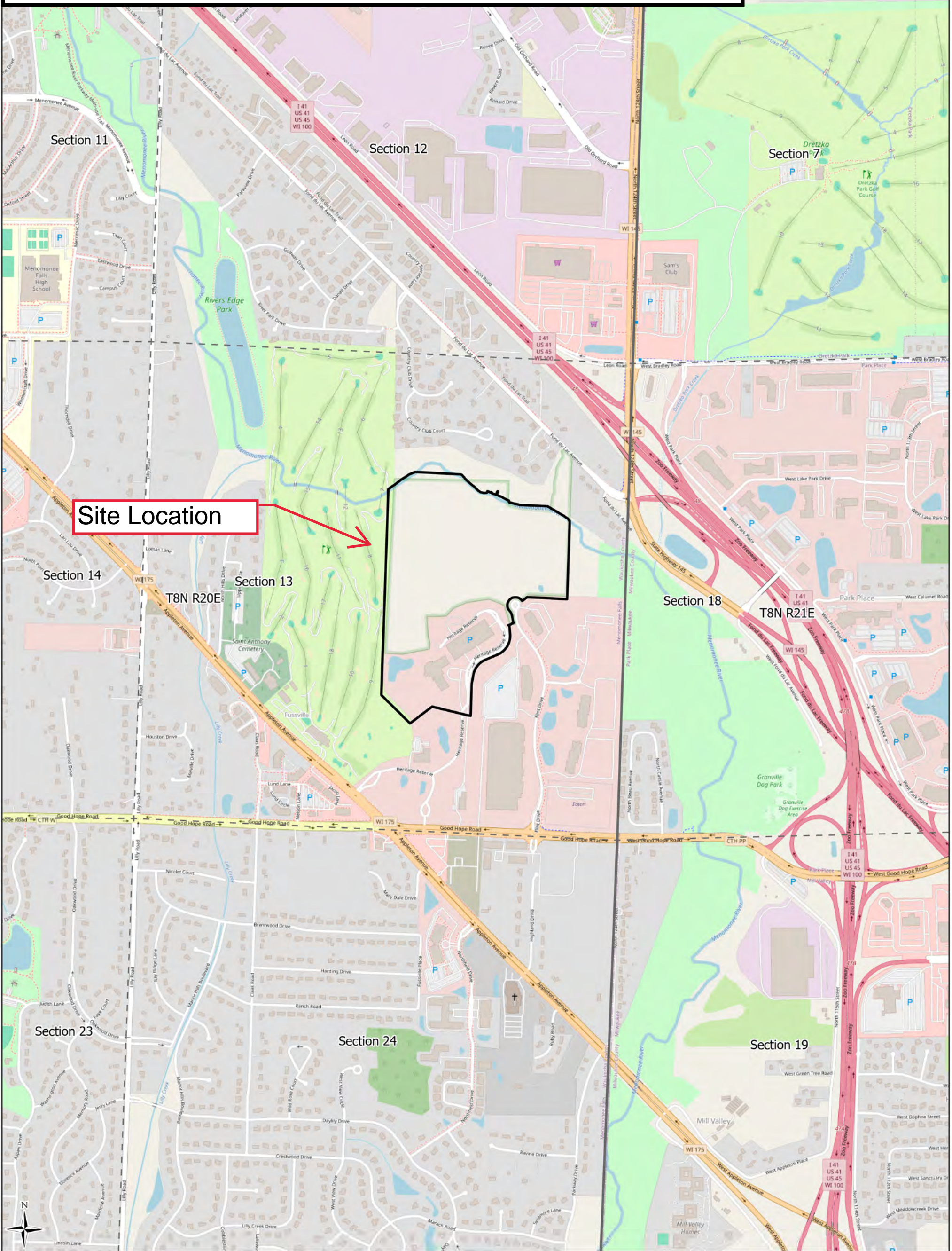
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contains small microtopographic depressions that have previously supported wetlands; however, the most recent delineation did not indicate the presence of all three wetland criteria.

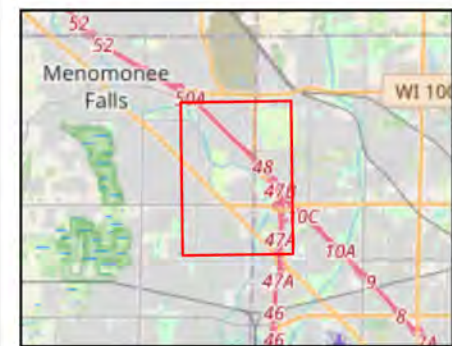
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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

MVP-2011-01383-CJB Figure 1 of 2



- Study Area (90.33 ac)
- Township
- Section

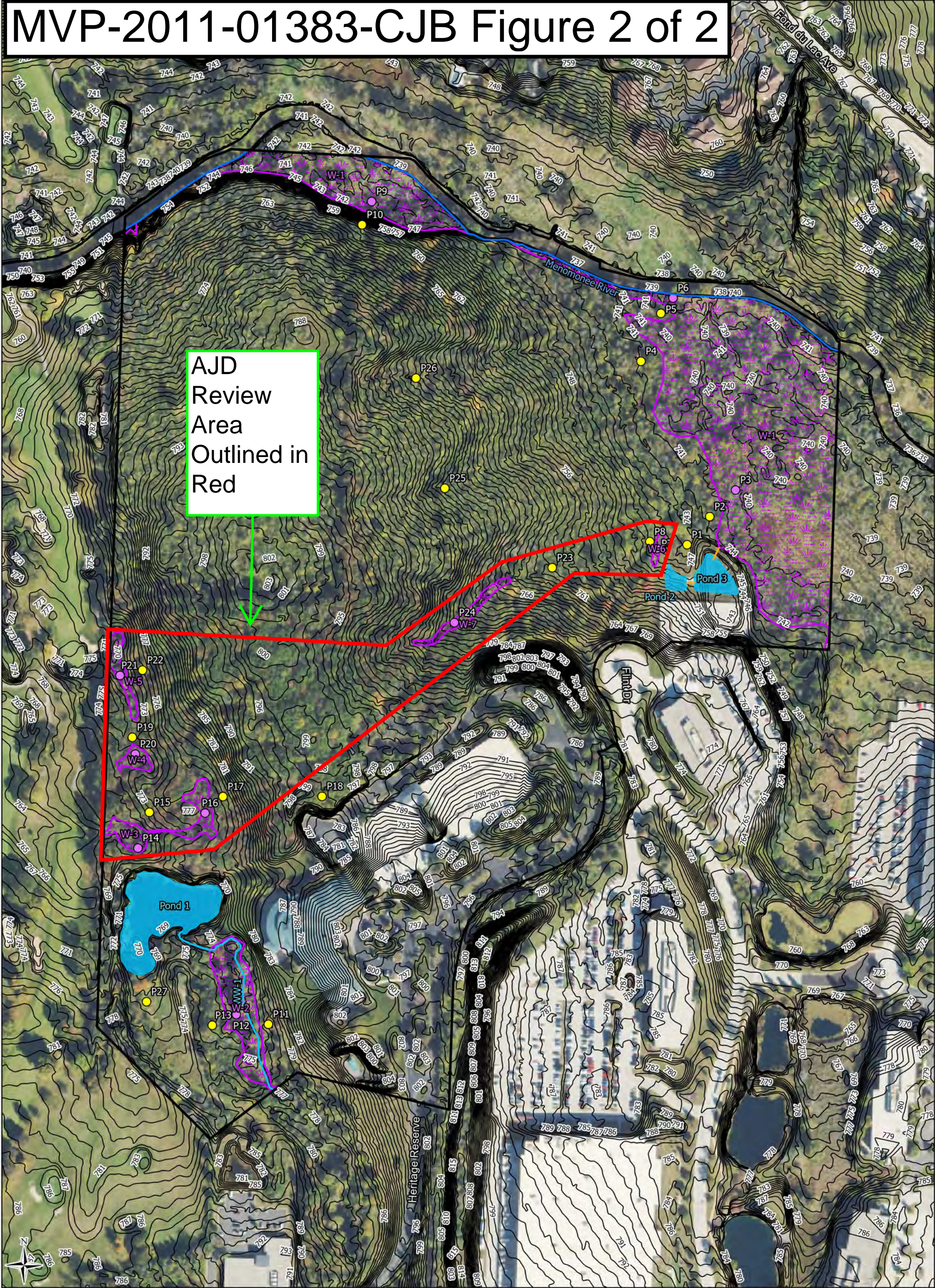
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Heartland
ECOLOGICAL GROUP INC

Figure 1. Project Location
Project Red Wood
Project 20251515
T8N, R20E, S13
V Menomonee Falls,
Waukesha Co
OpenStreetMap
ESRI LRR: Midwest
Figure Created: 8/18/2025

MVP-2011-01383-CJB Figure 2 of 2



AJD
Review
Area
Outlined in
Red



- Study Area (90.33 ac)
 - Field Delineated Wetlands (11.01 ac)
 - Ponds
 - Approximate Waterway OHWM
 - Approximate Waterway Centerline
 - Culverts
 - Waukesha Co 1ft Contours
- Sample Points**
- Upland
 - Wetland



Heartland
ECOLOGICAL GROUP INC

Figure 7. Field Delineated Wetlands
Project 20251515
T8N, R20E, S13
V Menomonee Falls,
Waukesha Co
2024 NAIP
Waukesha Co, HEG LRR: Midwest
Figure Created: 8/18/2025