



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

CEMVP-RD

September 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-2014-03548-TKO 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, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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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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	Non-Jurisdictional	None
Wetland 2	Non-Jurisdictional	None
Wetland 3	Non-Jurisdictional	None
Wetland 4	Non-Jurisdictional	None
Wetland 5	Non-Jurisdictional	None
Wetland 6	Non-Jurisdictional	None
Wetland 7	Non-Jurisdictional	None
Wetland 8	Non-Jurisdictional	None
Wetland 9	Non-Jurisdictional	None
Wetland 10	Non-Jurisdictional	None
Wetland 11	Non-Jurisdictional	None
Wetland 12	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. ___, 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)

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3. REVIEW AREA.

- a. Project Are Size (in acres): 18.50-acre
- b. Location Description: The project/review area is located in Section 07, Township 21N, Range 17E, Outagamie County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.1495 Longitude: -88.4845
- d. Nearest City or Town: Appleton
- e. County: Outagamie
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

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

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

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,

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.

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).⁸

The ditched portions of Wetlands 1 and 2, along with Wetland 11 and Wetland 12, are non-jurisdictional drainage ditches. These features meet the definition of a b(3) water, from 33 CFR 328.3(b) as they were excavated wholly in, and drain only, dry land, and do not carry a relatively permanent flow of water. Review of historic aerial imagery shows the areas containing Wetlands 11, 12, the northern ditched portion of Wetland 1, and the ditched portion of Wetland 2 as having ditches present from the earliest available imagery (1953). The southern (east/west running) ditched portion of Wetland 1 is shown as cropped agricultural land from the earliest available imagery. No other wetness signature surrounding these areas was evident. Review of aerial imagery shows no evidence of drained wetlands in these areas and shows actively farmed agricultural fields in areas

⁸ 88 FR 3004 (January 18, 2023)

adjacent to the ditch. Furthermore, the delineation report includes a historic (undated) land cover map, indicating the review area is entirely cleared crop land. Additionally, the original WI Public Lands Survey shows the lack of aquatic features in the quarter section aside from the tributary located outside of the review area to the northwest, further supporting the ditches were excavated in uplands. Review of aerial and ground level imagery shows a lack of bed and bank or ordinary high water mark, and shows no evidence of standing water, indicating none of the ditches possess a relatively permanent flow of water.

- 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).

Review of a May 2024 Davel Engineering delineation report, historic aerial images, County GIS mapping, WI Surface Water Data Viewer, and LiDAR resources (hillshade and DEM GIS layers from the Mississippi Valley Division Regulatory Viewer) indicate that Wetlands 1-10 (W-1, W-2, W-3, W-4, W-5, W-6, W-7, W-8, W-9, and W-10) are depressional wetlands, which lack a continuous surface connection to a jurisdictional water. Wetlands 1-10 are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. Wetlands 1-10 do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetlands 1-10 are non-tidal wetlands that do not abut relatively permanent jurisdictional waters and as such do not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland. Wetlands 1-10 are not intrastate lakes or ponds that meet the relatively permanent standard and cannot be evaluated as an (a)(5) waters: lakes and ponds not identified in (a)(1) - (a)(4). Therefore, Wetlands 1-10 are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

Wetlands 3-9 (W-3, W-4, W-5, W-6, W-7, W-8, and W-9) are located completely within the wetland delineation study area. The delineation report shows each of Wetlands 3-9 sitting within a depressional area surrounded by delineated uplands. This was confirmed through review of topographic data, showing the wetlands sitting at lower elevations than nearby uplands, and aerial imagery showing a lack of wetness signature outside the boundaries of the delineated wetlands. These wetlands each sit in an isolated geographic position with no continuous surface connection to any jurisdictional downstream water.

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Wetlands 1 and 2 (W-1 and W-2) are non-tidal wetlands which do not abut a jurisdictional water. W-1 and W-2 each poses hydrologic connections to transportation ditches on either side of the review area. Wetland 2 connects to the roadside ditch of Schultz Dr., with Wetland 1 abutting a roadway ditch to the south and railroad corridor to the west. As described above, these ditches are non-jurisdictional features as they were excavated wholly in, and drain only, dry land, and do not carry a relatively permanent flow of water. Outside of the ditched connections, both wetlands have boundaries that transition to delineated upland. Review of elevation data shows these ditches slope down into the review area, and do not serve as outlets. This is supported by data that shows the elevational low point within the ditch system laying within W-1. As noted in Section 7.a above, these non-jurisdictional ditches were excavated in, and drain only, uplands. Review of aerial imagery and LiDAR data shows none of the ditches possess a relatively permanent flow of water and no evidence of culverted connections can be seen. There are no discrete features associated with either wetland W-1 or W-2 which would serve as a continuous surface connection to any downstream water.

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. No field visits were conducted. Desktop review evaluation was conducted on 08/19/2025.
 - b. Application “2024-003548-TKO 20250808 APP.pdf” in the administrative record, 08/19/2025.
 - c. Mississippi Valley Division Regulatory Viewer, 08/19/2025.
 - d. Wisconsin DNR Surface Water Data Viewer, 08/19/2025.
 - e. Winnebago County GIS Interactive Mapping, 08/19/2025.
 - f. Google Earth Aerial Imagery, 08/19/2025

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

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

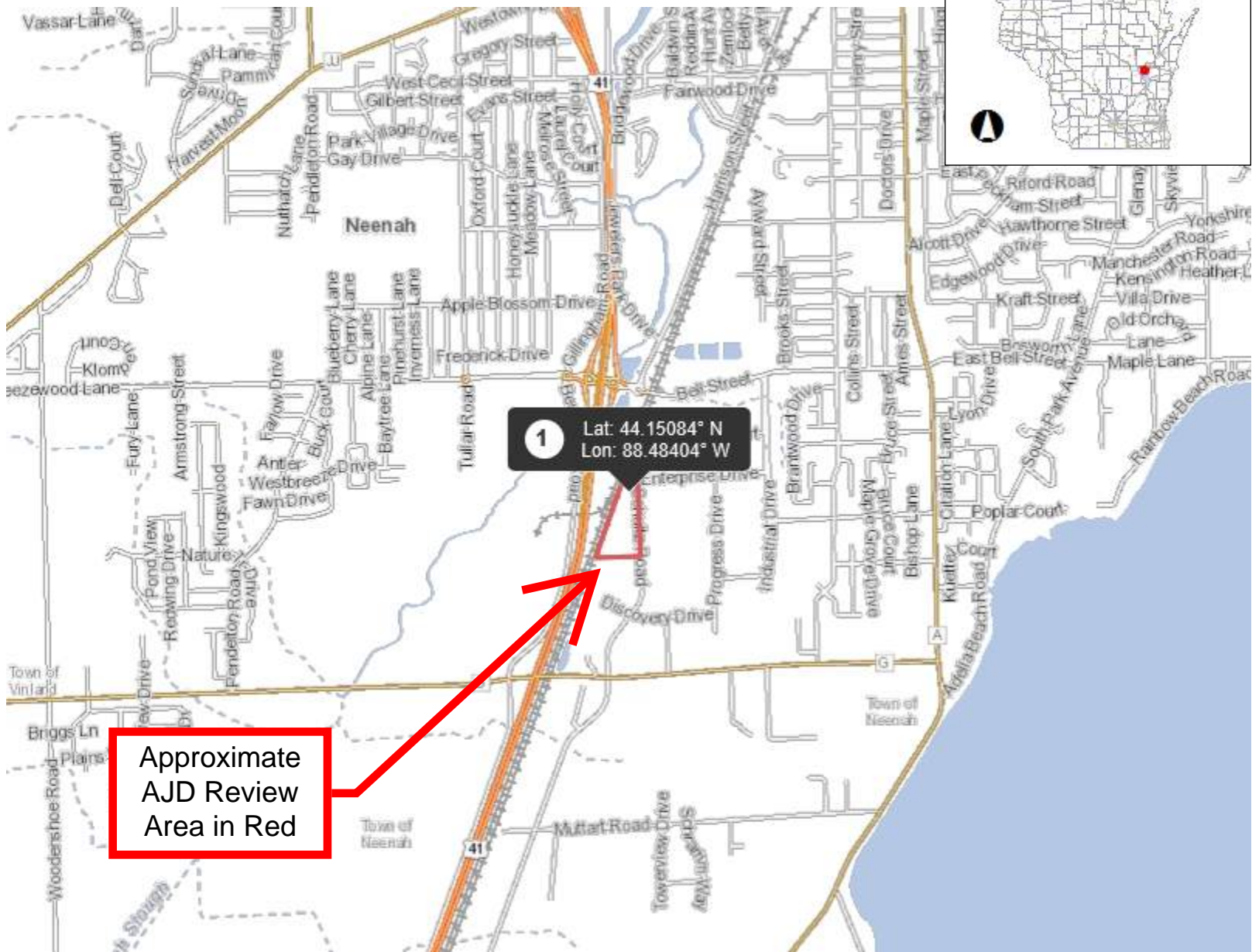


MVP-2014-03548-TKO Figure 1



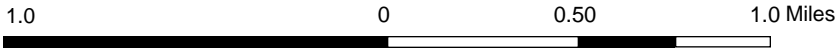
Legend

- Municipality
- State Boundaries
- County Boundaries
- Major Roads**
- Interstate Highway
- State Highway
- US Highway
- County and Local Roads**
- County HWY
- Local Road
- Railroads
- Tribal Lands
- Rivers and Streams
- Intermittent Streams
- Lakes and Open water



Approximate
AJD Review
Area in Red

1
Lat: 44.15084° N
Lon: 88.48404° W



DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <http://dnr.wi.gov/legal/>

Notes

Routine Wetland Delineation Overview Map

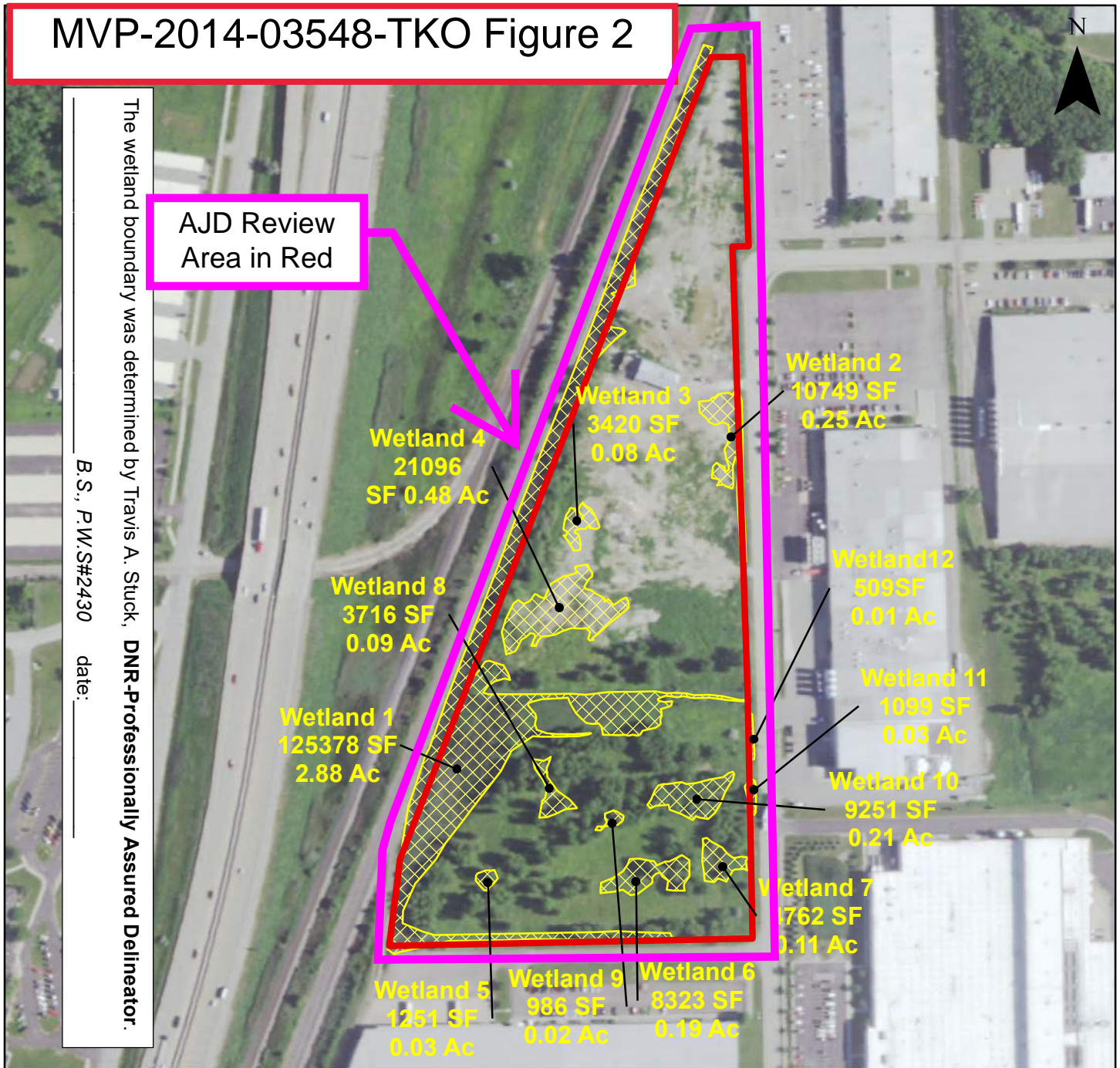
Schultz Drive Parcels

Part of Sec. 5, T19N, R17E, City of Neenah, Winnebago County, WI

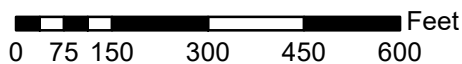
For: City of Neenah

2022 Aerial

MVP-2014-03548-TKO Figure 2



The scope limits shown on this map is not intended to be the parcel boundary.



Legend

- Project Area
- Wetland boundary
- AJD Review Area



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