

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2017-00608-CJB

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July 23, 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-2017-00608-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
Wetland 2	Non-Jurisdictional	N/A
Wetland 3	Non-Jurisdictional	N/A
Wetland 4	Non-Jurisdictional	N/A
Wetland 5	Non-Jurisdictional	N/A
Wetland 6	Non-Jurisdictional	N/A
Wetland 7	Non-Jurisdictional	N/A
Wetland 8	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. Project Area Size (in acres): 34

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- b. Location Description: The project/review area is located in Section 23, Township 21N, Range 16E, Outagamie County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.285715 Longitude: -88.529697
- d. Nearest City or Town: Greenville
- e. County: Outagamie
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2017-00608-NTD (dated June 14, 2018)	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

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.

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
 - 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., tributaries that are non-relatively

⁹ 88 FR 3004 (January 18, 2023)

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

The review area for this JD request includes seven wetlands identified as Wetlands 2-8. A wetland delineation was completed for this site by Davel Engineering & Environmental, Inc. in April 2018. An update/redelineation, dated February 2025, was then completed that included an onsite investigation conducted on October 30, 2025, also by Davel Engineering & Environmental, Inc. Review of the Stream Orders layer within the National Regulatory Viewer indicates the closest tributaries to the review area include an unnamed tributary approximately 1,060 feet to the south, an unnamed tributary approximately 1,900 feet to the east, and an unnamed tributary approximately 1,300 feet to the north. Based on review of the 2025 update to the 2018 wetland delineation report, current and historic aerial photos, and LiDAR images consisting of Hillshade and DEM, and the Stream Orders layer, these wetlands are depressional features surrounded wholly by uplands and do not abut a relatively permanent waterway.

Wetlands 2, 3, 4, and 6 are located near the center of the site. Based on current and historic aerial images, LiDAR, and the 2025 wetland delineation report, these wetlands are surrounded by uplands and do not abut a relatively permanent waterway.

Wetland 5 is located near the southern limits of the site. After the 2018 AJD was issued (June 14, 2018) for this site, the southern portion of Wetland 5 appears to have been filled during the construction of a residential development. Based on review of the 2025 wetland delineation report, aerial photos, and LiDAR imagery, Wetland 5 is located within a depression and does not abut a relatively permanent waterway.

Wetlands 7 and 8 are located along the eastern portion of the site. Wetland 8 extends eastward off site, so the area outside the review area, north, south, and east of Wetlands 7 and 8, was reviewed. Review of hydric soils indicates the area north, south, and east of these wetlands is non-hydric soil. Aerial photos indicate the area immediately to the north, south, and east of these wetlands is an agricultural field. The National Wetland Inventory and the Wisconsin Wetland Inventory did not identify any mapped wetlands within these areas. Based on review of LiDAR images and topographic maps, a notable increase in elevation exists to the north and east of these wetlands. This, in combination with lack of wetness signatures in aerial photos, suggests the areas immediately to the north and east of Wetlands 7 and 8 are upland. Similar elevation and wetness signatures observed in aerial photos near the southern boundary of Wetland 8 indicates a potential hydrologic connection between Wetland 8 and this area so the area south of Wetland 8 was reviewed. Based on review of LiDAR images consisting of Hillshade and DEM, this area near the southern boundary of Wetland 8 appears to be a depressional area within the agricultural field. Due to a noticeable increase in elevation beyond this area, lack of hydric soil, and lack of mapped wetlands within the National Wetland Inventory and WI

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Wetland Inventory, this area does not appear to provide Wetlands 7 or 8 with a hydrologic connection to another aquatic resource. Therefore, based on review of the resources mentioned above, Wetlands 7 and 8 do not abut a relatively permanent waterway.

Wetlands 2-8 are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. These wetlands are not tributaries and have not been created by impounding a water of the U.S.; therefore, these wetlands are not category (a)(2) or (a)(3) waters. Wetlands 2-8 are non-tidal wetlands that do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. Wetlands 2-8 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 2-8 do not physically abut a jurisdictional water; therefore, Wetlands 2-8 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 on June 27, 2025
- b. Wetland Delineation Report, completed by Davel Engineering & Environmental, Inc., dated February 12, 2025
- c. Wetland Delineation Report, completed by Davel Engineering & Environmental, Inc., dated April 23, 2018
- d. Google Maps Street View, accessed on June 27, 2025
- e. National Regulatory Viewer layers consisting of Hillshade, DEM, WI 24k Hydro Flowlines Stream Order, USA Soils Hydric Class, National Wetland Inventory, and WI Wetland Inventory, accessed June 27 and July 17, 2025
- f. Updated Wetland Delineation Map, received on July 18, 2025

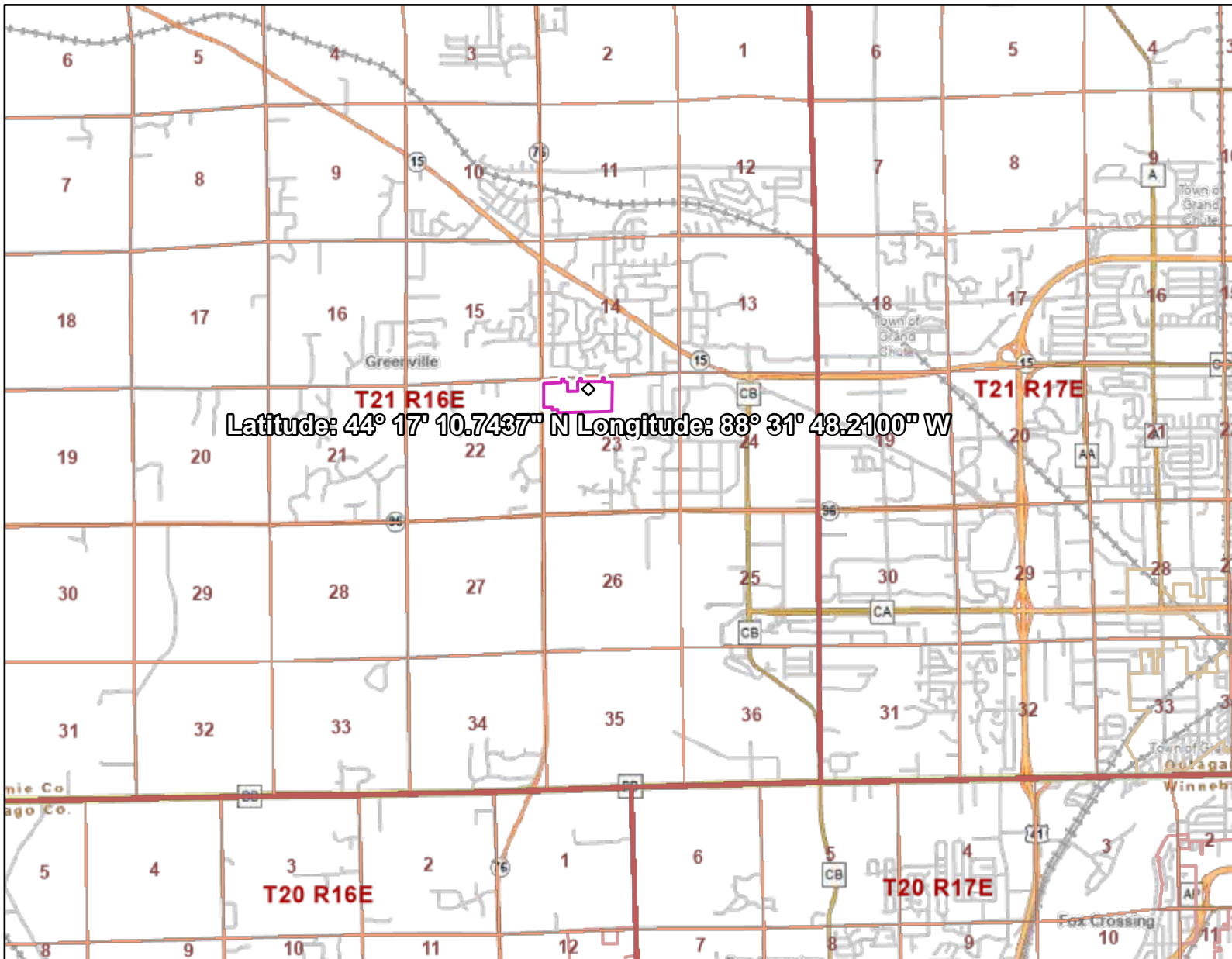
10. OTHER SUPPORTING INFORMATION. N/A

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 additional guidance from the

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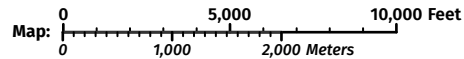
agencies; however, the approved jurisdictional determination described herein is a final agency action.



Legend: (some map layers may not be displayed)

- Township
- Section
- Cities, Towns & Villages
- City
- Village
- Civil Town
- City or Village
- State Boundaries
- County Boundaries
- Major Roads
- Interstate Highway
- State Highway
- US Highway
- County and Local Roads
- County HWY
- Local Road

Notes:



Service Layer Credits: EN Basic Basemap WTM Ext., Cadastral:

Map projection: NAD 1983 HARN Wisconsin TM



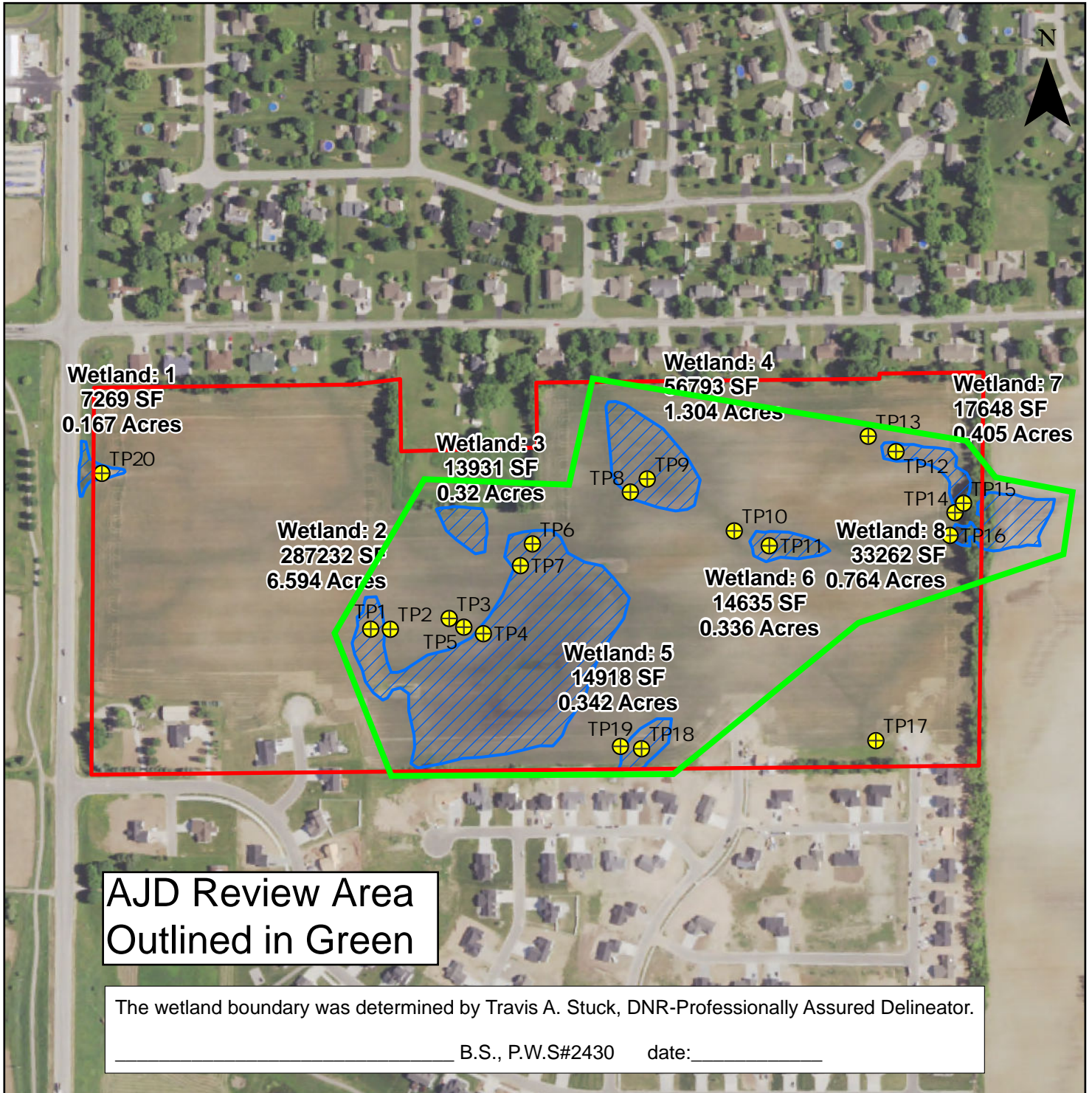
Wetland Delineation Overview Map

Breyer Property, Village of Greenville

Part of Sec. 23, T21N, R16E, Village of Greenville, Outagamie County, WI

For: Tom Dercks

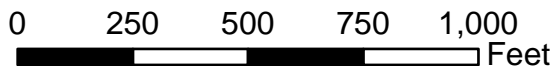
June 2022 "Normal" 3mo. AP



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



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Legend

- Project Scope
- Wetlands
- + Test Plot

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Drafted by: sarahk 7/18/2025