

MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2019-00384-TKO

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October 21, 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-2019-00384-TKO [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-1	Non-Jurisdictional	N/A
W-2	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 Are Size (in acres): ~22-acre
- b. Location Description: The project/review area is located in Section 33, Township 21N, Range 17E, Outagamie County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.2596 Longitude: -88.4436
- d. Nearest City or Town: Appleton
- e. County: Outagamie
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]⁶
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 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. [N/A]
 - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
 - b. The Territorial Seas (a)(1)(ii): 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.

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

[Review of a 2018 Merjent wetland 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 W-1 and W-2 are depressional wetlands, surrounded by uplands. It should be noted wetland delineations are generally valid for a period of 5 years. Being conducted in 2018, conditions documented within the study area were compared to current site conditions, based off available desktop resources. Site conditions have been confirmed to be consistent with those reported in 2018. Review of these resources indicate the assessed wetlands are not, and do not physically abut, a jurisdictional water. Wetlands W-1 and W-2 are not TNWs, territorial seas, or interstate waters and therefore is not \(a\)\(1\) waters. Wetlands W-1 and W-2 do not physically abut a relatively permanent paragraph \(a\)\(2\) impoundment or a jurisdictional \(a\)\(3\) tributary. Wetlands W-1 and W-2 are non-tidal wetlands that do not abut relatively permanent jurisdictional waters and as such does not meet the definition of adjacent and cannot be evaluated as an \(a\)\(4\) adjacent wetlands. Wetlands W-1 and W-2 are not an intrastate lakes or ponds that meet the relatively](#)

⁹ 88 FR 3004 (January 18, 2023)

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permanent standard and cannot be evaluated as an (a)(5) waters: lakes and ponds not identified in (a)(1) - (a)(4). Therefore, Wetlands W-1 and W-2 are not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

Wetlands W-1 and W-2 are non-tidal, depressional wetlands, located within a developed commercial lot. Topography within the site generally slopes down to the southwest. The wetlands do not abut any jurisdictional downstream waters. W-1 is located at the southeast of the review area, extending off-site at the south and along a portion of the eastern boundary. Review of LiDAR resources show W-1 is bound by commercial fill material along the west and north boundaries. The southern half of the east boundary is also bound by fill material from residential development. Along the northern portion of the eastern boundary W-1 extends off-site to the east. Review of elevation data and aerial imagery shows W-1 bound by a parking lot approximately 150 feet east of the study area boundary. A ditch appears along the toe of this parking lot which connects to the same roadside ditch mentioned earlier. At the south, W-1 connects to a roadside ditch outside the review area. These ditches are non-jurisdictional as they lack a relatively permanent flow of water. This is evident as they lack a defined bed and bank (LiDAR), OHWM (ground level/aerial imagery), and show no evidence of standing water or prolonged saturation (veg stress/darkened soils). Wetland 2 was identified as a fresh (wet) meadow and is located between asphalt parking lots at the northwest of the review area. W-2 was found to be partially undisturbed in a concave local relief position with higher elevations on the sides. Boundaries of W-2 transition to delineation upland along the north, south, and east. W-2 exits the delineation study area to the west. Here, elevation data and imagery show the depression which contains W-2 continues northwest to a mapped emergent wetland. Aerial imagery and topographic data show the mapped wetland area connecting to a ditch at the southwest. This ditch continues further west where it meets another roadside ditch. This ditch is also non-jurisdictional as it lacks a relatively permanent flow of water. This is evident as review shows a lack of defined bed and bank (LiDAR), OHWM (ground level/aerial imagery), and shows no evidence of standing water or prolonged saturation (veg stress/darkened soils).

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 10/21/2025.
 - b. AJD Application “2025-00384-TKO 20250923 APP.pdf” in the administrative record.
 - c. Mississippi Valley Division Regulatory Viewer, 10/21/2025.

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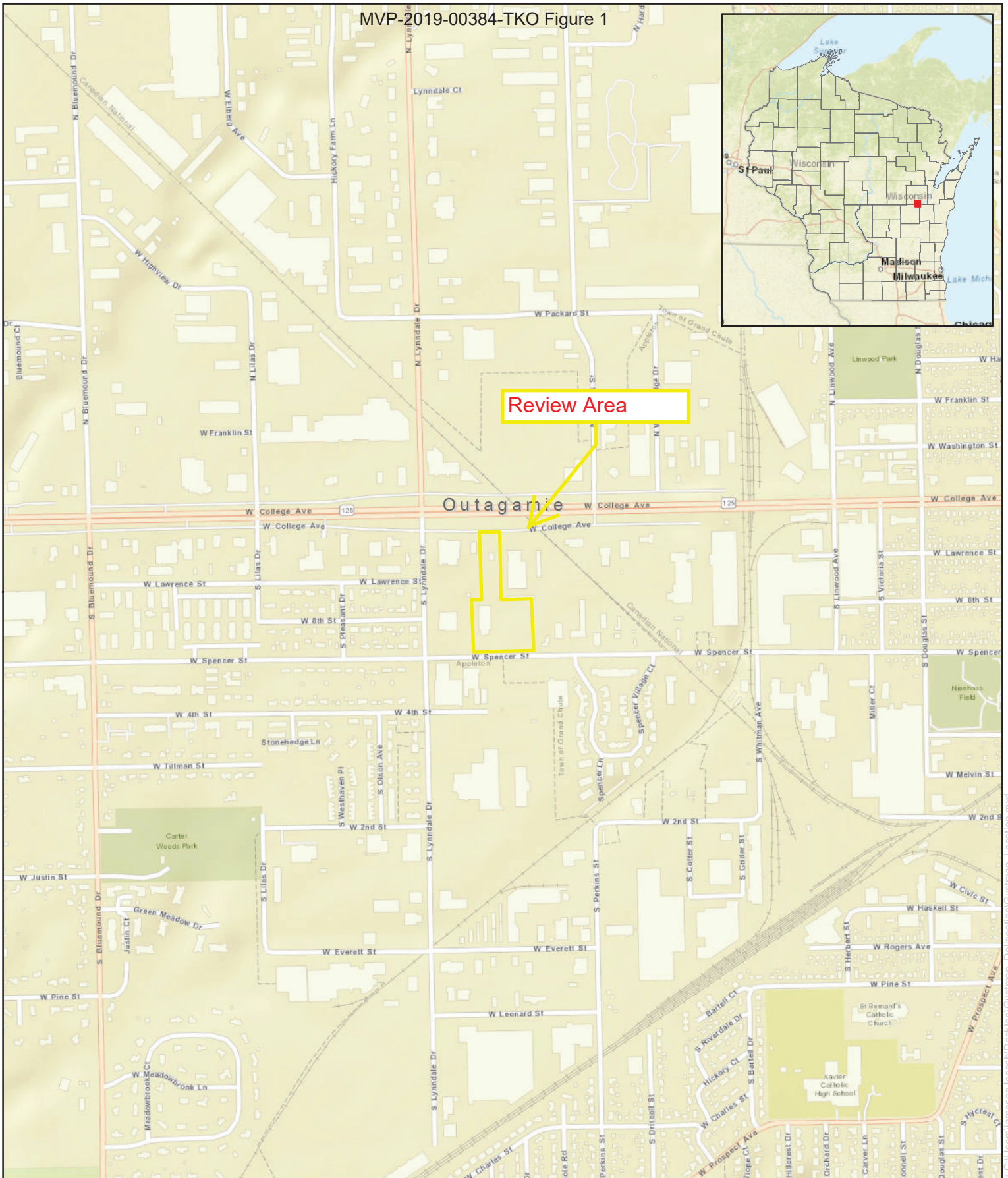
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d. [Wisconsin DNR Surface Water Data Viewer, 10/21/2025.](#)

e. [Outagamie County GIS Interactive Mapping, 10/21/2025.](#)

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



Review Area

Outagamie



0 500 1,000 Feet
1 inch = 1,000 feet



Project Location Figure
Mach IV Engineering and Surveying LLC
Gustman Honda Subaru Wetland Delineation
T21N, R17W, Sec. 28
Outagamie County, Wisconsin

Survey Area

Wetlands continue outside of the survey area, but were not field delineated.

West College Avenue

West College Service Road

Review Area



West Spencer Street



0 75 150 Feet
1 inch = 150 feet

Wetland Delineation Figure
Mach IV Engineering and Surveying LLC
Gustman Honda Subaru Wetland Delineation
T21N, R17W, Sec. 28
Outagamie County, Wisconsin

- Survey Area
- Wetland Data Point
- Delineated Wetland
- Roads

