

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2020-00477-JLK

MVP

December 29, 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-2020-00477-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 1	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): 36.62
- b. Location Description: The project/review area is located in Section 01, Township 19N, Range 16E, Winnebago County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.14257 Longitude: -88.53231
- d. Nearest City or Town: Neenah
- e. County: Winnebago
- 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

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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
 - 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

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.

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).

Wetland 1 is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. The wetland delineation report, topographic maps, and Google Earth Pro aerial imagery, indicates Wetland 1 is a linear wetland traversing north to south along the eastern boundary of the review area. Uplands involving a recently constructed residential development are immediately east and west. The Surface Water Data Viewer shows a mapped tributary running through the central portion of Wetland 1. However, a review of historical aerial photos and a site visit completed on November 7, 2025, shows no standing or flowing water present and no bed and bank or ordinary high water mark were present, indicating Wetland 1 is not a relatively permanent water but a wetland swale. Lidar data and a separate wetland delineation report completed on the area immediately north of the review area, shows Wetland 1 extends north where it meets a series of ditches spanning in all directions. A review of historical aerial photos shows no standing or flowing water, indicating these ditches are also not relatively permanent waters. The Wisconsin Surface Water Data View also shows the mapped tributary continuing south outside of the review area. However historical aerial photos and the previously mentioned site visit on November 7, 2025, shows no flowing or standing water, no bed and bank, and no ordinary high water mark present, indicating this feature is a wetland swale and not a tributary. Based on a review of aerial photos, Lidar data, and the Nov. 7th site visit, this wetland swale continues approximately 0.54 of a mile southward before reaching a portion of the aquatic resource that exhibits tributary like features such as a bed and bank. This offsite tributary would be a first order stream that continues approximately 0.29 of a mile southeastward before reaching an unnamed second order stream. However, further review of historical

⁸ 88 FR 3004 (January 18, 2023)

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aerial photos shows no standing or flowing water within the 0.27 of a mile of the first order stream, indicating this is a non-relatively permanent water.

Based on this information, Wetland 1 is surrounded mostly by uplands involving the recently constructed residential development. This wetland does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Therefore, Wetland 1 is not jurisdictional under the 2023 Revised Definition of "Waters of the United States": Conforming" 88 FR 61964 Final Rule.

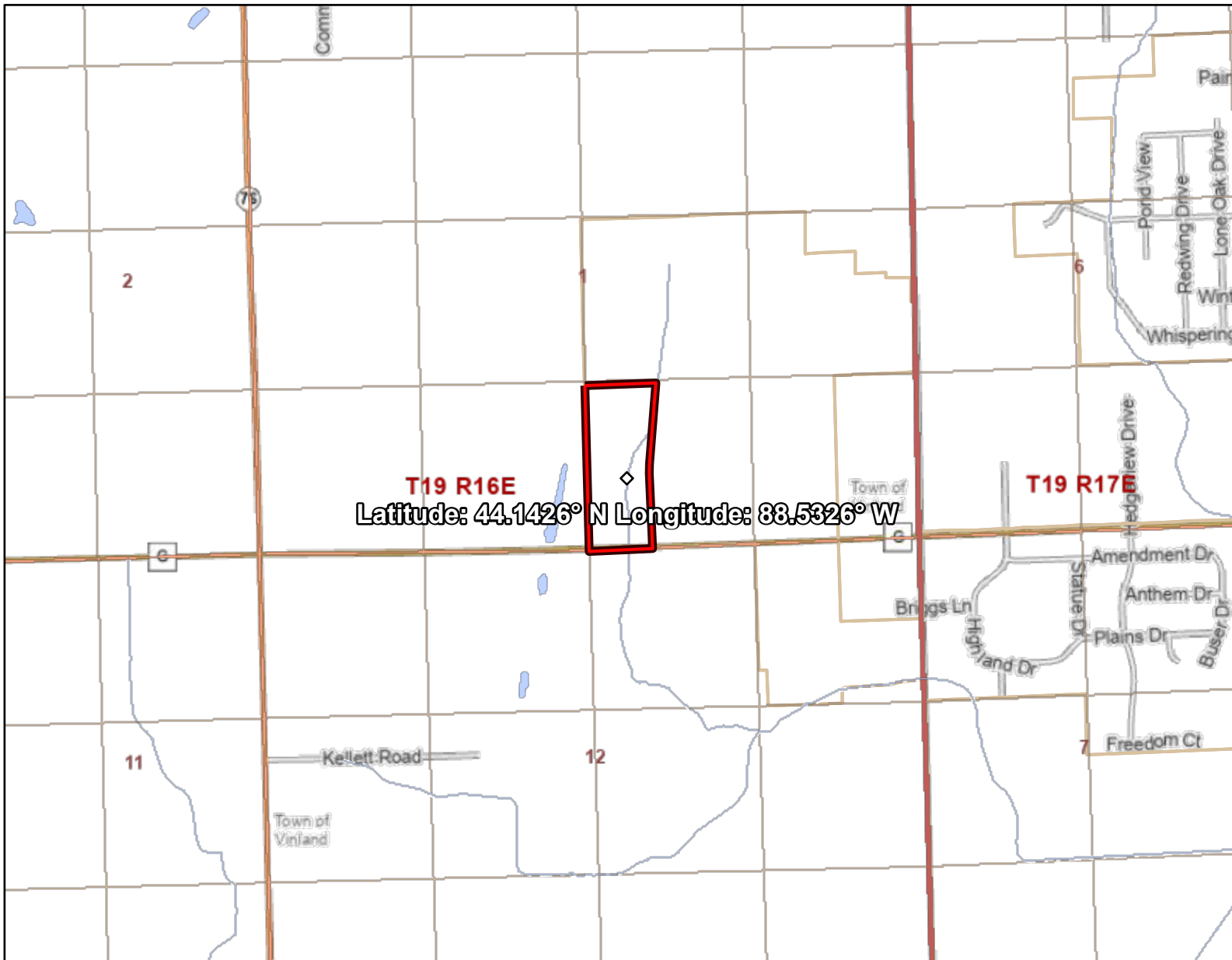
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Office evaluation conducted on November 19, 2025.
 - b. Previous Approved Jurisdictional Determination Issued on December 11, 2025.
 - c. National Regulatory Viewer-Lidar Data and Google Earth Pro assessed August 6, 2025.
 - d. The Homes of Freedom Meadows-Lot 109, City of Neenah, Winnebago County, Wetland Delineation Report provided by Davel Engineering dated May 22, 2024.
 - e. Freedom Acres 2nd Addition, City of Neenah, Winnebago County, Wetland Delineation Report provided by Davel Engineering dated July 25, 2025.
 - f. Site evaluation conducted on November 7, 2025.
 - g. Esri, Wayback World Imagery assessed November 20, 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 additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



Location Map



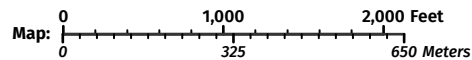
T19 R16E
Latitude: 44.1426° N Longitude: 88.5326° W

T19 R17E

Legend: (some map layers may not be displayed)

- Rivers and Streams
- - - Intermittent Streams
- Open Water
- 24K Intermittent Streams
- 24K Lakes and Open Water
- Township
- Section
- Quarter-Quarter
- Cities, Towns & Villages
- City
- Civil Town
- City or Village
- County Boundaries
- Major Roads
- State Highway
- County and Local Roads
- County HWY
- Local Road

Notes:



Service Layer Credits:
Cadastral: , Cities, Roads & Boundaries: , Surface Water (Cached): WiDNR, USGS, and other data

Map projection: NAD 1983 HARN Wisconsin TM

This map is a product generated by a DNR web mapping application.

This map is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. The user is solely responsible for verifying the accuracy of information before using for any purpose. By using this product for any purpose user agrees to be bound by all disclaimers found here: <https://dnr.wisconsin.gov/legal>

Date Printed: 3/26/2025 8:44 AM

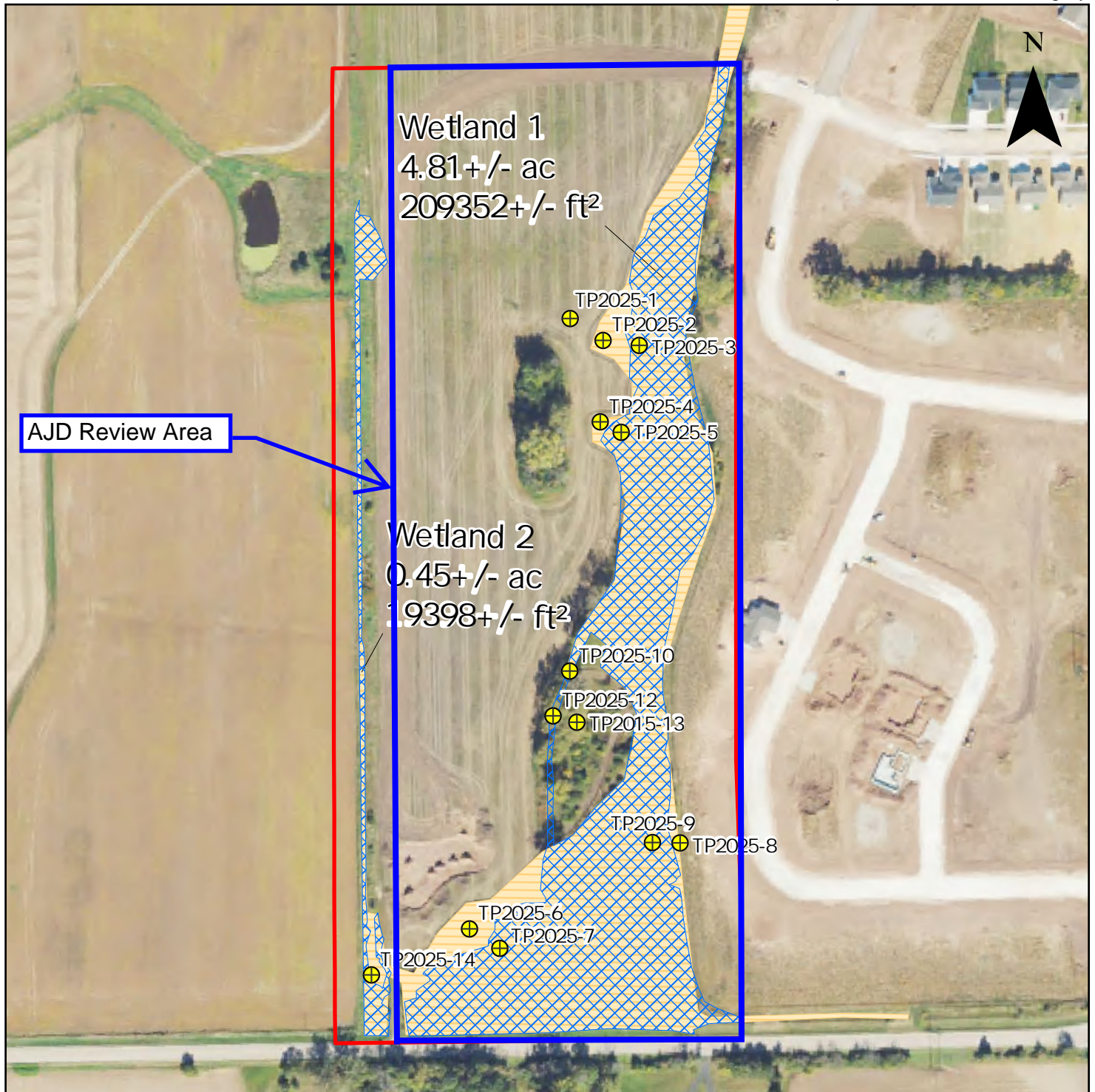
2025 Wetland Delineation Map

Freedom Acres 2nd Addition (Southern Scope)

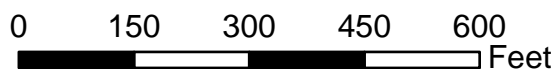
Part of Sec. 01, T19N, R16E, City of Neenah, Winnebago County, WI

For: Van Sistine Homes, LLC

September 2024 Aerial Imagery



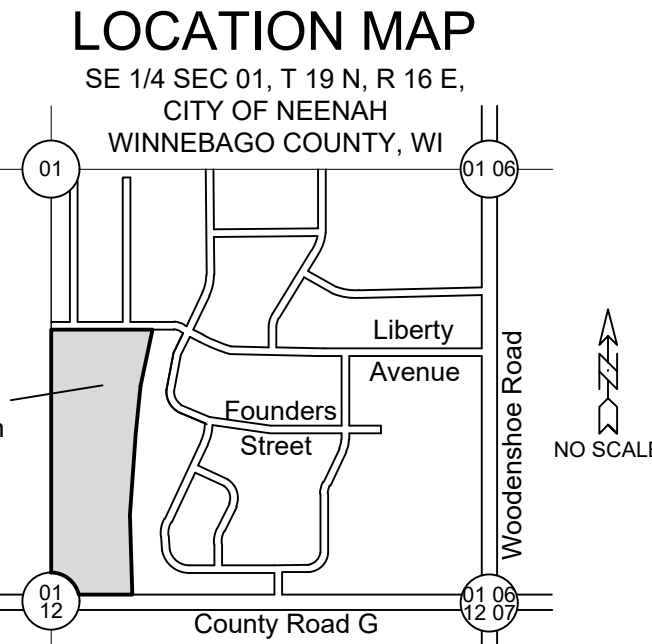
The project scope limits shown on this map is not intended to be the parcel boundary



Legend

- Project Scope
- Wetland Boundary
- Previous Delineation
- Test Plots

2020-00477-JLK (Figure 2 of 3)

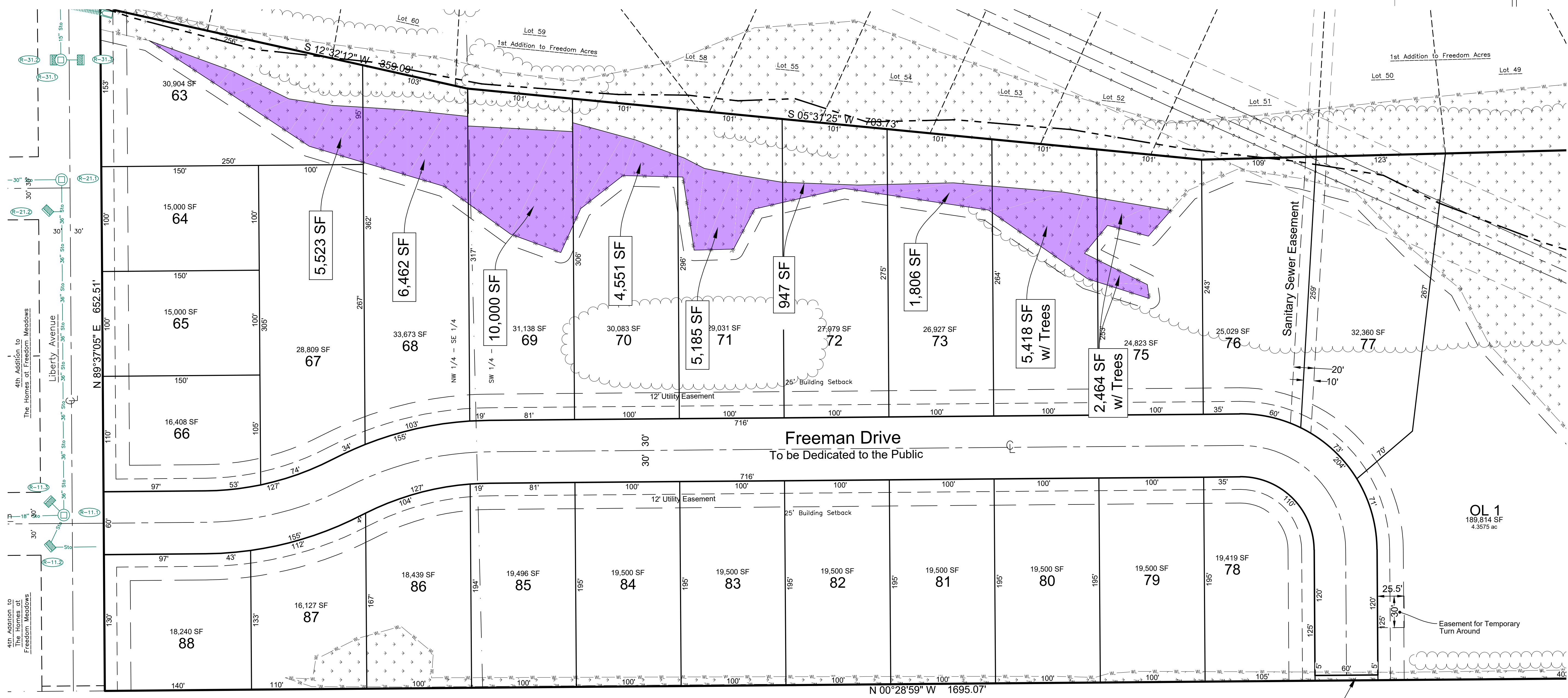


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POTENTIAL WETLAND IMPACT

2nd Addition to Freedom Acres
 City of Neenah, Winnebago County, WI
 For: Van Sistine Homes, LLC

Date: 04/8/2025
 Filename: 8613Plat.dwg
 Author: SRA
 Last Saved by: johnathon
 Page: Wetland



LEGEND

OH	Overhead Utility Lines	Inlet
Sto	Storm Sewer (Pipe Size)	Hydrant
UG	Underground Gas Line	Utility Valve
W	Water Main (Pipe Size)	Utility Pole
C	Culvert	799.9 Ex Spot Elevation
300	Index Contour - Existing	Government Corner
799	Intermediate Contour - Existing	Benchmark
Tree	Treeline	Asphalt Pavement
Dotted	Delineated Wetlands	Gravel
		Endwall

Wetland Impact for NonFed Exemption
 = 42,297 SF split between 9 lots

