

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-02285-JLK

MVP

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-2021-02285-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

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-02285-JLK

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 W1(a)	Non-Jurisdictional	None
Wetland W01	Non-Jurisdictional	None
Wetland W2(a)	Non-Jurisdictional	None
Wetland W03	Non-Jurisdictional	None
Wetland W3(a)	Non-Jurisdictional	None
Wetland W4(a)	Non-Jurisdictional	None
Wetland W05/5(a)	Non-Jurisdictional	None
Wetland W07	Non-Jurisdictional	None
Wetland W08	Non-Jurisdictional	None
Wetland W09	Non-Jurisdictional	None
Wetland W10	Non-Jurisdictional	None
Wetland W11	Non-Jurisdictional	None
Wetland W12	Non-Jurisdictional	None
Wetland W15	Non-Jurisdictional	None
Wetland W16	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))

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-02285-JLK

c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

- a. Project Area Size (in acres): 538
- b. Location Description: The project/review area is located in Section 19, Township 03N, Range 22E, Racine County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 42.705570 Longitude: -87.941290
- d. Nearest City or Town: Sturtevant
- e. County: Racine
- 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

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

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-02285-JLK

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

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

Wetlands W1(a), W01, W2(a), W03, W3(a), W4(a), W05/5(a), W07, W08, W09, W10, W11, W12, W15, and W16 are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. Topographic maps, Google Earth Pro aerial imagery, and site photos provided in the delineation report, indicate these wetlands are depressional wetlands located throughout the review area. Wetlands W15 and W16 are in the northern review area and are surrounded mostly by agricultural fields with industrial development immediately west of Wetland W16. A review of Lidar data shows W16 transitions to uplands involving the previously mentioned development. Wetlands W1(a), W11, and W2(a) are in the central portion of the southern review area and surrounded by uplands involving a paved roadway to the north, and an agricultural field to the east, west,

⁸ 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-02285-JLK

and south. Wetlands W01, W03, W3(a), W4(a), W05/5(a), are in the southern/central portion of the southern review area and surrounded by uplands involving residential development to the south and the same agricultural field to the north, east, and west. Wetlands W07, W08, W09, W10, and W12 are in the southeastern portion of the southern review area and surrounded by uplands involving the previously mentioned agricultural field with a “Rails to Trails” pathway and associated ditch extending northeast to southwest immediately south of W09. A review of Lidar data shows the associated ditch is relatively shallow while a review of aerial photos shows no standing or flowing water, indicating this feature is a non-relatively permanent water. All above listed wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Therefore, Wetlands W1(a), W01, W2(a), W03, W3(a), W4(a), W05/5(a), W07, W08, W09, W10, W11, W12, W15, and W16 are not jurisdictional under the 2023 Revised Definition of “Waters of the United States”: Conforming” 88 FR 61964 Final Rule.

- 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). NA

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.

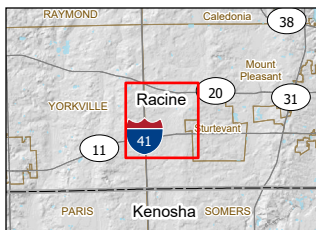
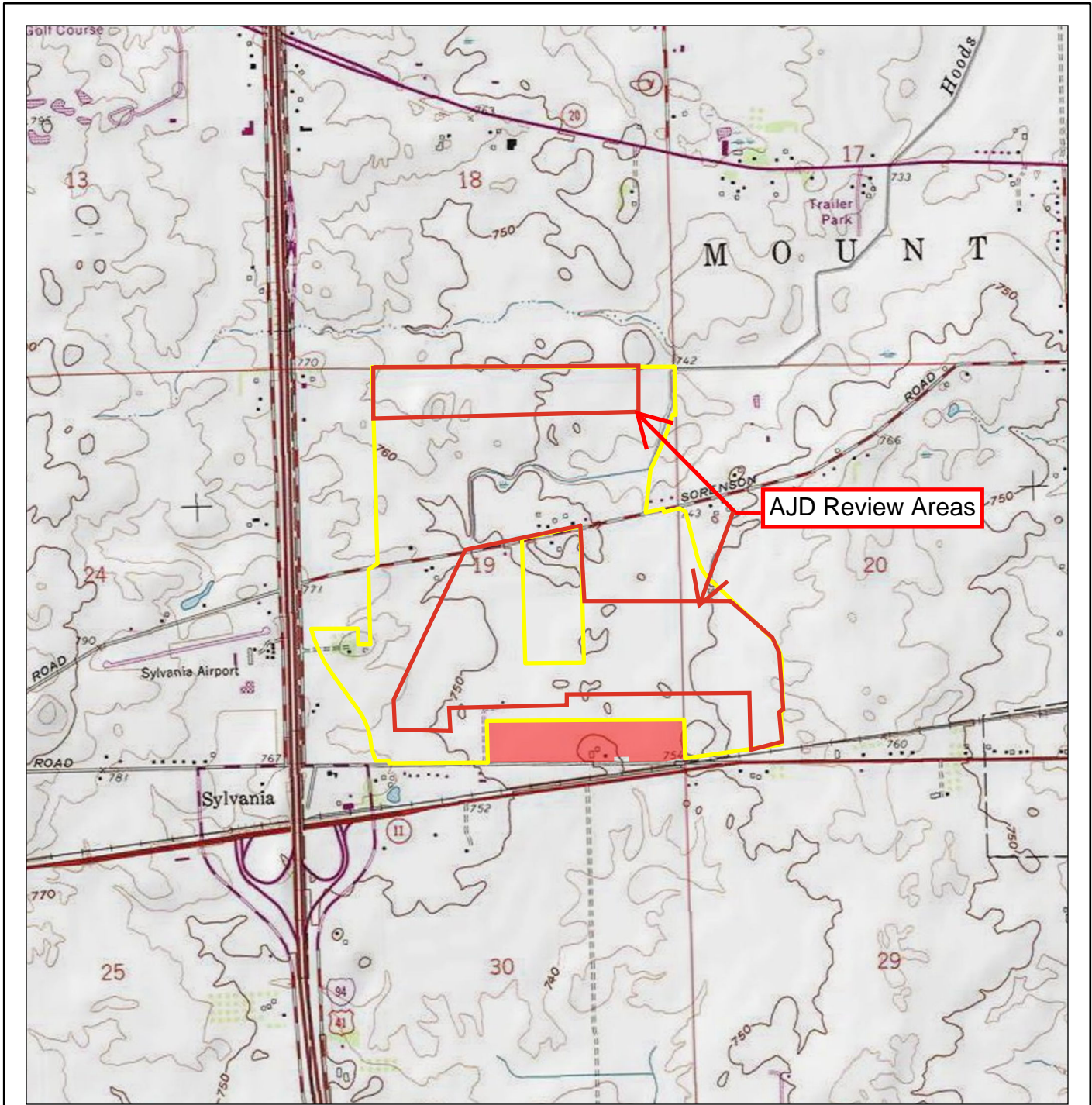
- a. Office evaluation conducted on September 17, 2025.
- b. 12721 Louis Sorenson Road, Village of Mt. Pleasant, Racine County Wetland Delineation Report provided by Evergreen Consultants Inc., dated August 26, 2021.
- c. MKE-Area North, Stantec Project #193709860, Racine County, Wetland Delineation Report provided by Stantec Consulting Services Inc., dated December 2, 2024.
- d. National Regulatory Viewer-Lidar Data and Google Earth Pro assessed September 17, 2025.

10. OTHER SUPPORTING INFORMATION. NA

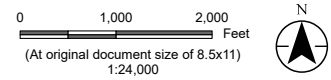
MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2021-02285-JLK

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.



Legend
 Study Area
 Exclusion Area

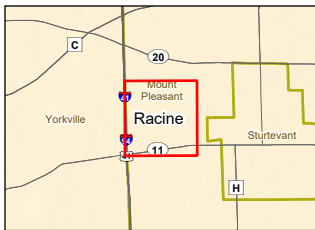
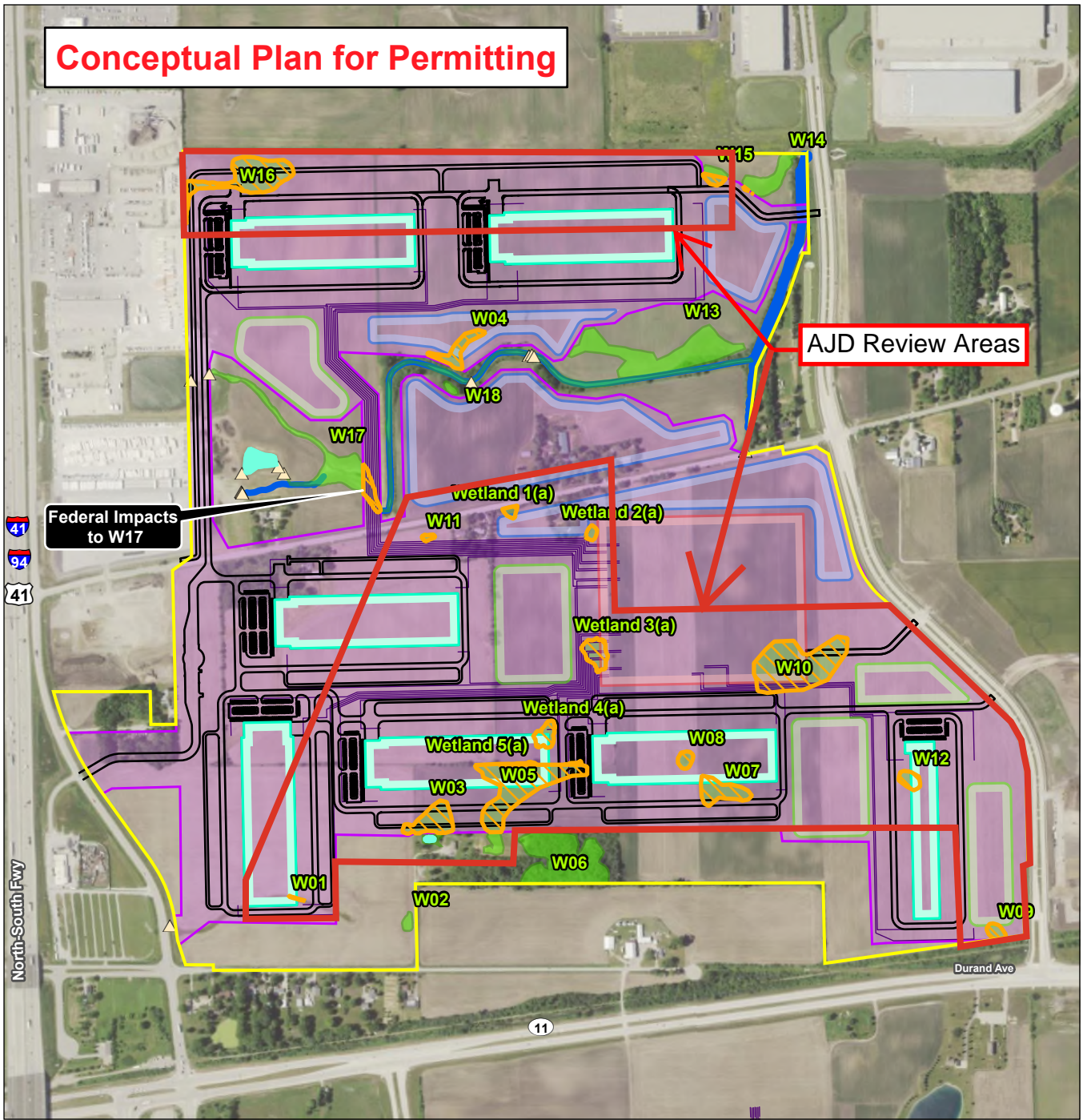


Project Location T. of Mount Pleasant, Racine Co., WI
Prepared by AJS on 2024-11-13, TR by JDP on 2024-11-13, IR by MJK on 2024-11-13
Client/Project Confidential Client, Area North, Wetland Delineation
 193709860

Figure No. 1
Title Study Area Location and Local Topography

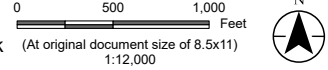
Notes
 1. Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803 Feet
 2. Data Sources: Stantec, WisDOT, WDNR
 3. Background: USGS 7.5' Topographic Quadrangles

Conceptual Plan for Permitting



Notes
 1. Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803 Feet
 2. Data Sources: Stantec, Microsoft Corporation, USGS, Esri, WHDP
 3. Background: NAIP 2022

- Legend**
- Project Area
 - Culvert
 - Field Delineated Waterway Line
 - Field Delineated Waterway Area
 - Field Delineated Open Water
 - Field Delineated Wetland
 - Impact Area
 - Impacted Wetland
 - Buried Electrical Duct Bank
 - Substation
 - Laydown Yard
 - Stormwater Pond
 - Building



Project Location
 Racine Co., WI

Prepared by AJIS on 2025-08-19
 TR by MP on 2025-08-19
 IR by KR on 2025-08-19

Client/Project
 Microsoft Corporation
 MKE54
 Wetland Impact

Figure No.
 X

CONFIDENTIAL

Title
 Wetland Impact Area
 Option 1

Conceptual Plan for Permitting

Disclaimer: This document has been prepared based on information provided by others as cited in the Notes section. Stantec has not verified the accuracy and/or completeness of this information and shall not be responsible for any errors or omissions which may be incorporated herein as a result. Stantec assumes no responsibility for data supplied in electronic format, and the recipient accepts full responsibility for verifying the accuracy and completeness of the data.