



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

MVP

16 February 2024

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-2023-01439-LAH MFR 1 of 1.

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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- 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).
 - i. W-1, non-jurisdictional
 - ii. W-2, non-jurisdictional
 - iii. W-3, non-jurisdictional
 - iv. W-4, non-jurisdictional
 - v. W-5, non-jurisdictional
 - vi. W-6, non-jurisdictional
 - vii. W-7, non-jurisdictional
 - viii. W-8, non-jurisdictional
 - ix. W-9, non-jurisdictional
 - x. W-10, non-jurisdictional
 - xi. W-14, non-jurisdictional
 - xii. W-15, non-jurisdictional
 - xiii. W-15A, non-jurisdictional
 - xiv. W-16, non-jurisdictional
 - xv. Pond 1, non-jurisdictional
 - xvi. Pond 2, non-jurisdictional

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")

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- 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)
3. REVIEW AREA. The review area is approximately 248 acres in size and is identified by the black polygon in the attached Figures 1 and 2. The review area is located at 42.759475, -87.951483 in the Village of Caledonia, Racine County, Wisconsin. There are no other JDs associated with the review area.
 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 WATERS⁵: 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 10.⁶ 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.

⁵ 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.

⁶ 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.

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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).⁷

Wetlands W-5 and W-6 have been formed within a roadside ditch that drains the immediate surrounding area, which is dry, agricultural field uplands with no apparent water connections creating a relatively permanent flow. Historically, W-5 and W-6 have held a consistent form and contain no culverts leading into or out of these wetlands. There are no mapped wetlands or hydric soil units in these areas. Based on these factors, it has been determined that W-5 and W-6 are water filled depressions situated within a roadside ditch that were created in upland and therefore are non-jurisdictional and considered (b)(3) exclusions of the 2023 Rule, as Amended.

Wetland W-10 was formed in upland sometime between 2013 and 2014 with the construction of a building directly to the west of this wetland. Historic aerial images show no wetland signatures in the area of W-10 prior to the construct of this building, and there were no mapped wetlands or hydric soil units identified

⁷ 88 FR 3004 (January 18, 2023)

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within the limits of W-10. W-16 also appears to have been formed in upland from the removal of a building and the construction of a new building and man-made berm sometime between 1995 and 2000. Again, there were no wetland signatures apparent within the area of W-16 prior to this construction, and there are no mapped wetlands or hydric soil units in this area. Based on this information, these wetlands are water filled depressions created in dry upland and therefore are considered (b)(7) exclusions of the 2023 Rule, as Amended.

- 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).

Wetlands W-1 through W-4, W-7 through W-9, W-14, W-15, and W-15A are not TNWs, territorial seas, or interstate waters, and therefore are not (a)(1) waters. A review of topographic maps, Google Earth aerial and ground view imagery, delineation report, and WDNR Digital Elevation Model and Hillshade accessed from Mississippi Valley Division NRV indicate that those wetlands mentioned are depressional wetlands, surrounded by upland. The review area is comprised of a golf course and agricultural fields which are surrounded by additional agricultural fields to the north, east, and south with Northeast Frontage Road and I94 directly to the west. The topography of the review area is described in the delineation report as “rolling, with various hills, depressions, and slopes...general drainage is to the north and west.” These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The East Branch Root River Canal is located approximately 4,000 feet to the west of the review area, and the resources listed above do not maintain a continuous surface connection to this jurisdictional water.

Wetland W-1 is located in the northwestern most region of the review area. The western boundary generally follows a topographical break and connects from a stormwater culvert system. These culverts convey water away from the adjacent highway into a ditch. Further review of this ditch shows an additional culvert located at the most southern and lowest part of the wetland leading under the I94 highway system to the west and creating a clear surface water connection offsite. Discovered through historic aerial and topography images, this culvert is found to empty into a large, often saturated depressional area to the west of the review area, which is surrounded entirely by upland agricultural fields. This depressional wetland has no discernable, discrete outlets. As a result, it is concluded that

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there are no continuous surface connections of this wetland to downstream jurisdictional waters.

Wetlands W-2 and W-3 are located on the eastern boundary within the review area. W-2 is situated in the middle of an agricultural field entirely within the review area. W-3 is situated on the eastern edge of the review area, and abuts an agricultural field located to the east, outside of the review area. This neighboring field experiences flooding and often unsuccessful cropping within the adjacent area of wetlands W-2 and W-3, as identified with historic aerial images, and lays within lowland topographically extending into these wetlands. W-3 extends offsite to the northeast towards a depressional area which is surrounded entirely by upland agricultural fields and at times becomes entirely inundated with water. There are no discrete or confined outlets from this adjacent depressional feature which would serve as a continuous surface connection to a downstream TNW. As a result, it has been concluded that there are no continuous surface connections of these wetlands to downstream jurisdictional waters.

Wetland W-4 encircles and drains into Pond 1 on the east side of a hill-like topographical formation. Wetland W-4 and Pond 1 are within a topographically low area that appears to have been manicured for golf course purposes; however, this low lying area is self-contained, historically present in similar formation, shows no discrete outlets from these wetland/pond features, and does not have a continuous surface connection to downstream jurisdictional waters.

Wetlands W-7, W-15, W-15A, and Pond 2 located at the northern most, central area of the review area, also follow a topographical break and have been manicured for golf course purposes from what appears as low-lying areas showing wetland signatures in historic aerial imagery. Topographic maps and aerial imagery show a hill-like formation to the north and east of wetlands W-15 and W-15A, as they geographically encircle this hill. Wetlands W-15 and W-15A lead into W-7 and Pond 2, which encompass the roadside ditch adjacent to Pond 2. Wetland W-7 drains to the north through a culvert located under Golf Road to what appears to be a topographically low area throughout the northern land parcel. Through investigation of this wetland complex, the area is low land surrounded by uplands, sustained through overland sheet flow, with no observable discrete outlets offering connection to downstream waters. Therefore, Wetlands W-7, W-15, W-15A, and Pond 2 contain no continuous surface connections to downstream jurisdictional waters.

Wetlands W-8 and W-9 are situated similarly to wetlands W-2 and W-3 in that these wetlands are also depressional wetlands, surrounded by upland toward the eastern border of the review area. W-8 and W-9 are situated within

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topographically low areas and are surrounded entirely by uplands. The delineated limits of these wetlands are consistent with wet signatures which were observed on multiple years of aerial imagery. Both of these wetlands are depressional features which do not maintain a continuous surface connection to a downstream TNW.

Wetland W-14, located in the center of the review area, follows a topographic low-land occurring in upland. W-14 has historically shown wetland signatures and ultimately became a manicured element within the golf course. W-14 is an isolated wetland feature which does not maintain a hydrologic connection to a downstream TNW as it is surrounded entirely by uplands.

Wetlands W-1 through W-4, W-7 through W-9, W-14, W-15, and W-15A contain no ditches, swales, pipes, or culverts that connect these wetlands to downstream jurisdictional waters. These wetlands are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. Therefore, these wetlands are 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 and completed on February 14, 2024.
 - b. Pinnacle Engineering Group, Assured Wetland Delineation Report for the South Hills Country Club Property dated October 31, 2023.
 - c. Mississippi Valley Division NRV, WDNR Digital Elevation Model and Hillshade layers accessed December 19, 2023.
 - d. Google Earth Ground Level View accessed December 20, 2023.
 - e. Google Earth imagery dated 2000, 2005, 2006, 2007, 2008, 2010, 2011, 2014, 2015, 2017, 2018, 2020, 2021, 2022, and 2023. Accessed December 8, 2023.
 - f. Historic Aerials provided by Netronline, HistoricAerials.com, dated 1956, 1971, 1976, 1981, 1986, 1987, 1995, 2000, 2005, 2008, 2010, 2013, 2015, 2017, 2018, and 2020. Accessed December 18, 2023.

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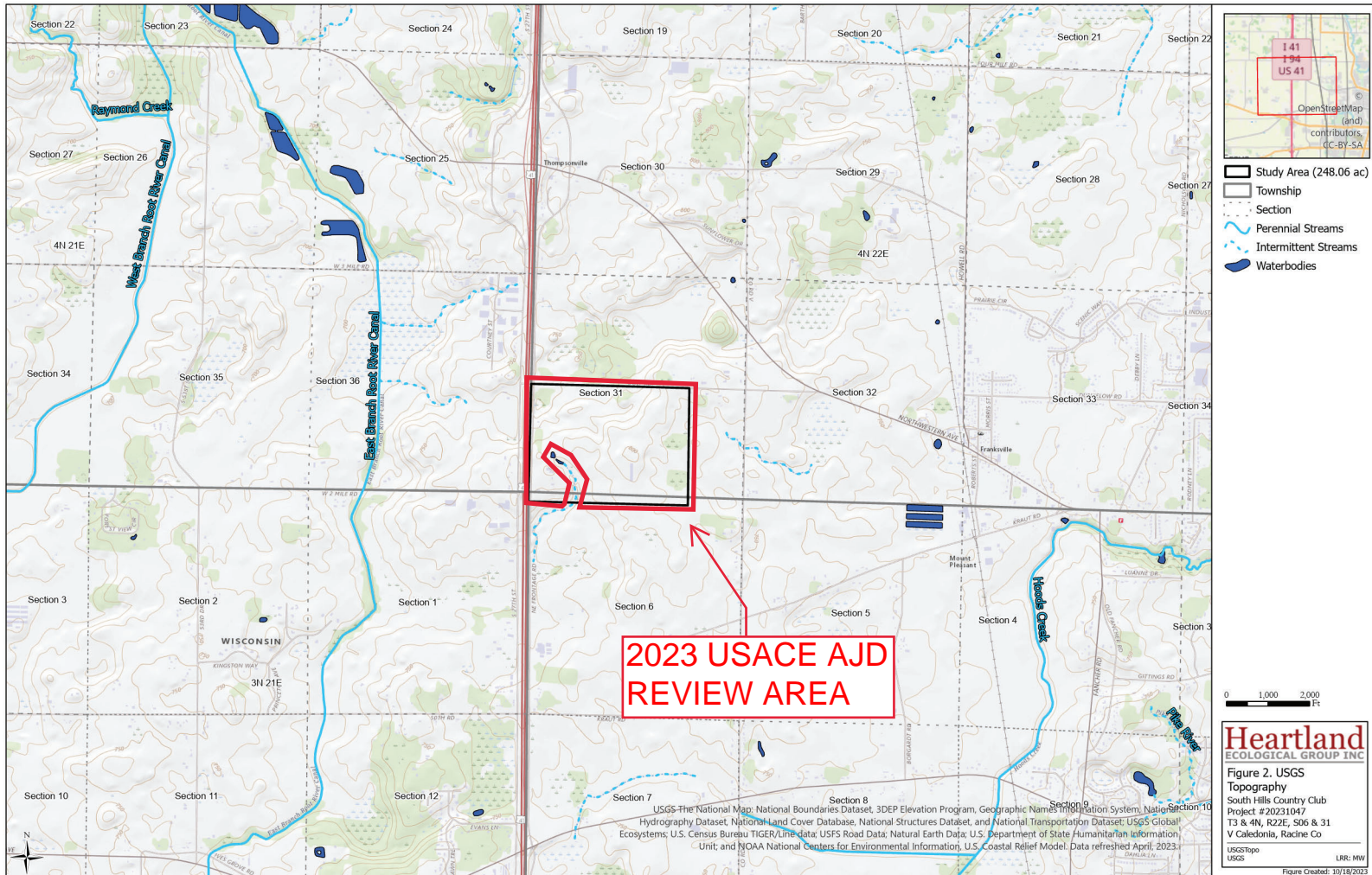
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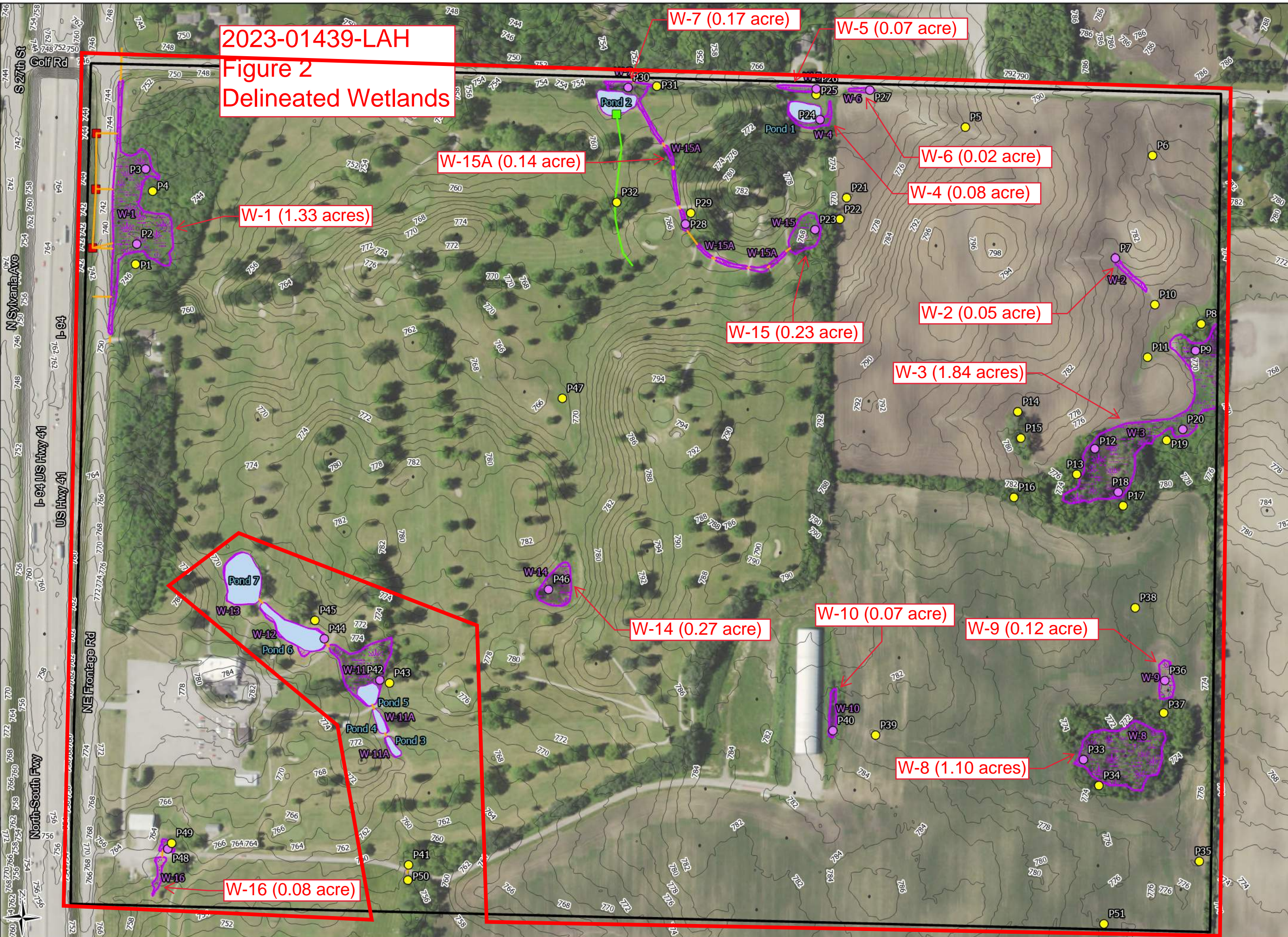
10. OTHER SUPPORTING INFORMATION. N/A

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.

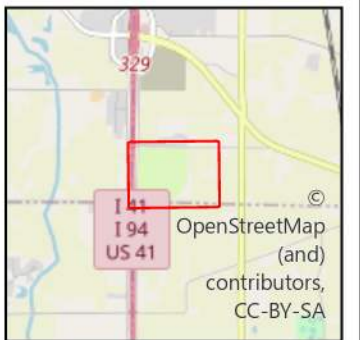
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Figure 1





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Figure 2
Delineated Wetlands



- Study Area (248.06 ac)
- Field Delineated Wetland (6.18 ac)
- Pond (1.10 ac)
- Culvert
- Drain Tile
- Racine Co 2' Contours
- Drain Tile Outlet
- Storm Inlet
- Sample Points
 - Upland
 - Wetland



Heartland
ECOLOGICAL GROUP INC

Figure 7. Field Delineated Wetlands
South Hills Country Club
Project #20231047
T3 & 4N, R22E, S06 & 31
V Caledonia, Racine Co

2022 NAIP
County Co, HEG

LRR: MW

Figure Created: 10/31/2023