



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

CEMVP-RD

April 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-2023-01610-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, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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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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

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): 0.13-acre
- b. Location Description: The project/review area is located in Section 19, Township 05N, Range 19E, Waukesha County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 42.8799 Longitude: -88.2936
- d. Nearest City or Town: Vernon
- e. County: Waukesha
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): [N/A](#)

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

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 2023 Wetland & Waterway Consulting \(WWC\) delineation report, a 2020 WWC delineation report from Corps project 2024-00769-ALH, historic aerial images, Waukesha County GIS, WI Surface Water Data Viewer, and LiDAR layers \(hillshade and DEM GIS from the Mississippi Valley Division Regulatory Viewer\) indicate that Wetland 1 \(W-1\) is a depressional wetland, within an elongated Y-shaped basin. Review of the above resources indicate that W-1 does not physically abut a jurisdictional water. W-1 extends beyond the wetland delineation study area at the east, west, southwest and northwest, as mapped in the Wisconsin and National Wetland Inventories \(WWI and NWI\). Delineated uplands border the wetland to the north and southeast within the review/study area. The eastern lobe of W-1 extends approximately 1,450 feet, to the east-northeast, where surrounding mapped uplands gradually slope down into the wetlands. At the west, W-1 is delineated and mapped as terminating along the parcel boundary. Here, topography gradually slopes up within an agricultural field mapped \(WWI and NWI\) as upland. Mapped wetland boundaries are supported](#)

⁹ 88 FR 3004 (January 18, 2023)

by review of LiDAR and contours showing the wetland sitting at a lower elevation than the surrounding upland, while aerial imagery shows a lack of wetness signature outside the wetland's mapped borders. At the north, W-1 continues approximately 1,800 feet through a pair of culverted roadbeds. Here, W-1 abuts an excavated pond which was constructed through a series of phases beginning in the 1950's. Review of elevation data shows the pond providing hydrology to W-1, as the pond outlets to an excavated channel feeding into the north end of W-1. The pond is surrounded by mapped uplands and discharges to a second excavated pond through an overflow culvert/pipe at the southwest. This second pond similarly discharges through an overflow culvert/pipe to an excavated channel which discharges to the Fox River. The man-made berms associated with the ponds prevent the wetlands from physically touching the Fox River. Elevation data shows topography within the wetland complex sloping down to the southwest, where W-1 continues outside the review area. The 2020 WWC delineation report, which includes the area directly south of the current delineation study area, identifies a stormwater manhole at a location within the wetland complex identified in this AJD as W-1. The Wisconsin Wetland Inventory identifies a contiguous wetland complex (including W-1) which continues offsite for approximately 0.66-miles towards the Fox River to the south. However, the 2020 WWC delineation report shows a segment of upland separating the complex referred to in this AJD as W-1 from the downstream wetland complex which continues towards the Fox River. County elevation data shows a depression area in which the manhole is located. This manhole is located at the point of lowest elevation within the wetland complex and is the only identified outlet of W-1.

Wetland 1 (W-1) is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. Wetland W-1 does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetland W-1 is a non-tidal wetland that do not abut relatively permanent jurisdictional waters and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. Wetland W-1 is not an intrastate lake or pond that meets the relatively permanent standard and cannot be evaluated as an (a)(5) water: lakes and ponds not identified in (a)(1) - (a)(4). Therefore, Wetland W-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.

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- a. No field visit was performed. Desktop review evaluation was conducted on 04/22/2025.
- b. AJD Request: "2023-01610-TKO 20250324 APP.pdf" in the administrative record, 04/22/2025.
- c. Corps Permit Application: "2024-00769-ALH 20240726 APP", in the administrative record, 04/22/2025.
- d. Mississippi Valley Division Regulatory Viewer, 04/22/2025.
- e. Waukesha County GIS Interactive Mapping, 04/22/2025.

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.



Legend: (some map layers may not be displayed)

Wetland Class Points

Excavated pond

Wetland Class Areas

City or Village

County Boundaries

Major Roads

Interstate Highway

County and Local Roads

County HWY

Local Road

Latest Leaf Off Imagery

Notes:



Map: 0 380 760 Feet
0 110 220 Meters

Service Layer Credits:

Latest Leaf Off: Wisconsin Wetland Inventory NWI (Dynamic): Calvin Lawrence, Dennis Weise, Nina Rihn,
Cities, Roads & Boundaries:

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: 4/22/2025 3:05 PM

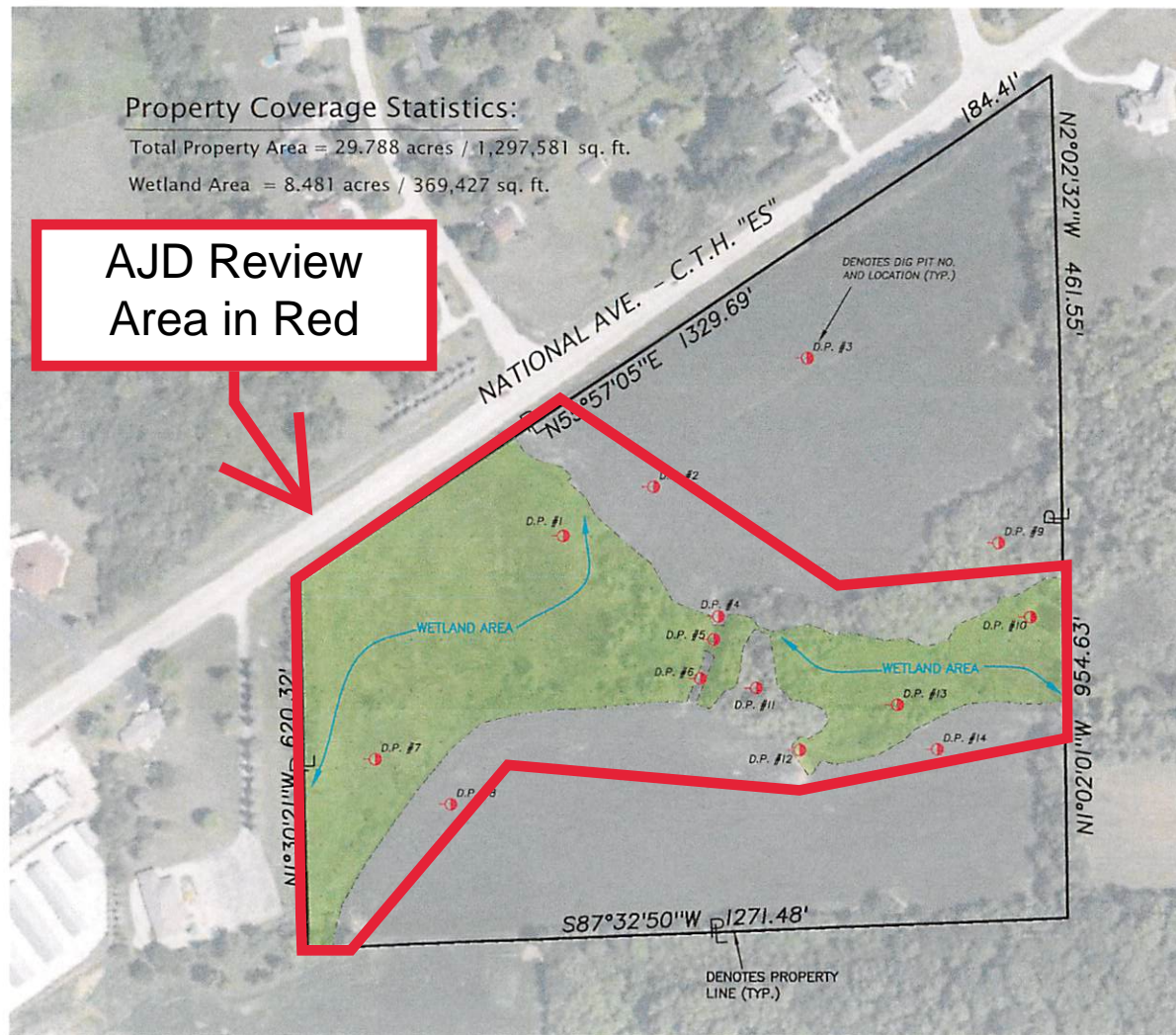
2023-01610-TKO Figure 2 of 2

Property Coverage Statistics:

Total Property Area = 29.788 acres / 1,297,581 sq. ft.

Wetland Area = 8.481 acres / 369,427 sq. ft.

**AJD Review
Area in Red**



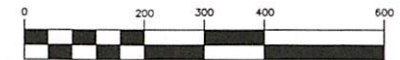
LEGAL DESCRIPTION :

All that part of the Northeast 1/4 of Section 19, Town 5 North, Range 19 East, in the Town of Vernon (now Village), Waukesha County, Wisconsin, bounded and described as follows:

Commencing at the North One-quarter (1/4) corner of said Section 19 and running due South along the West line of said Northeast 1/4, 2632.37 feet to the Southwest corner of said Northeast 1/4; thence North 89 degrees 03 minutes East along the South line of said Northeast 1/4 Section 315.25 feet to the point of beginning of the parcel to be described; thence continuing along the South line of said 1/4 section 1272.05 feet to a point; thence North 00 degrees 07 minutes East 1477.73 feet to a point in the center line of State Trunk Highway #15 (now C.T.H. "ES"); thence South 56 degrees 00 minutes 30 seconds West along the said center line 134.33 feet to a point; thence South 57 degrees 25 minutes West along said center line 1380.96 feet to a point; thence South 679.64 feet to the point of beginning.

EXCEPTING from the above described parcel that portion thereof conveyed to Waukesha County by Warranty Deed dated January 21, 1998, and recorded in the Office of the Register of Deeds for Waukesha County, Wisconsin on February 25, 1998, on Reel 2605, Image 544, as Document No. 2292782.

WETLANDS WERE DELINEATED BY WETLAND & WATERWAY CONSULTING LLC ON OCTOBER 10, 2023 AND LOCATED BY NSE ON OCTOBER 18, 2023



SCALE 1" = 200'

PROSPECTIVE OWNER:
KEVIN ECKERT
W24757405 SCOTLAND DR.
WAUKESHA, WI 53189

"WETLAND EXHIBIT"

for
Kevin Eckert

T.K. No. VNT 2089989
Village of Vernon, WI

MARK	DATE	REVISION	BY	APP'D
NORTH SHORE ENGINEERING, INC. Consulting Engineers & Land Surveyors 11433 N. Port Washington Rd., Mequon, Wisconsin, 53092 (262) 241-9400 • FAX: (262) 241-5337 www.northshoreengineering.net				

DATE:	October 23, 2023	DRAWN BY:	J.M.B.
FIELD CREW:	E.A.J. & S.F.Z.	Plot No.	LS-5646-23 WETLANDS