



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

MVP

24 April 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-2024-00411-KDZ 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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2024-00411-KDZ](#)

- 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. [Wetland 3 \(0.07 acre\), non-jurisdictional](#)
 - ii. [Wetland 4 \(0.15 acre\), non-jurisdictional](#)
 - iii. [Wetland 5 \(0.01 acre\), non-jurisdictional](#)
 - iv. [Wetland 6 \(0.02 acre\), non-jurisdictional](#)
 - v. [Wetland 7\(0.27 acre\), non-jurisdictional](#)

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. __, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. [The review area is limited to Wetlands 3, 4, 5, 6, 7 as shown on the attached Figure 1. The review area is located at 43.9776900, -90.7329600 in the Town of Angelo, Monroe 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

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.

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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2024-00411-KDZ](#)

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. 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

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2024-00411-KDZ](#)

exclusions listed in 33 CFR 328.3(b).⁷ Wetlands 3, 4, 5, 6, 7, and 8 were identified in the November 17, 2021, SEH Wetland Delineation Report. All five wetlands formed in 2014 during grading for stormwater management facilities associated with the construction of Quartermaster Avenue and a military housing development. All five wetlands were created in mapped upland soils (Majik loamy sand). On January 3, 2022, the Wisconsin Department of Natural Resources determined all five wetlands were artificially created and not subject to state wetland regulation. Accordingly, the Corps has determined that Wetlands 3, 4, 5, 6, 7, and 8 are excluded from Section 404 jurisdiction under (b)(1) of the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule as waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act.

- 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).
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 April 16, 2024.](#)
 - b. [November 17, 2021, SEH Wetland Delineation Report.](#)
 - c. [January 3, 2022, Wisconsin Department of Natural Resources Artificial Wetland Exemption.](#)
 - d. [Wisconsin Wetland Inventory, USDA Web Soil Survey, USGS NHD, USGS Topographic Maps, WDNR Surface Water Data Viewer, USACE National Regulatory Viewer.](#)
 - e. [Google Earth imagery dated 1999, 2010, 2011, 2015, 2018, 2019, 2020, 2021, and 2022. Accessed April 16, 2024.](#)

⁷ 88 FR 3004 (January 18, 2023)

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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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www.sehinc.com

Project: USAMC 161601
Print Date: 10/13/2021
Map by: mfalk
Prj: WISCRS, Monroe Co. (ft)
Aerial Year: 2020
Source: WDNR, Monroe County

Delineated Wetlands

South Post: Family Housing Drainage Design

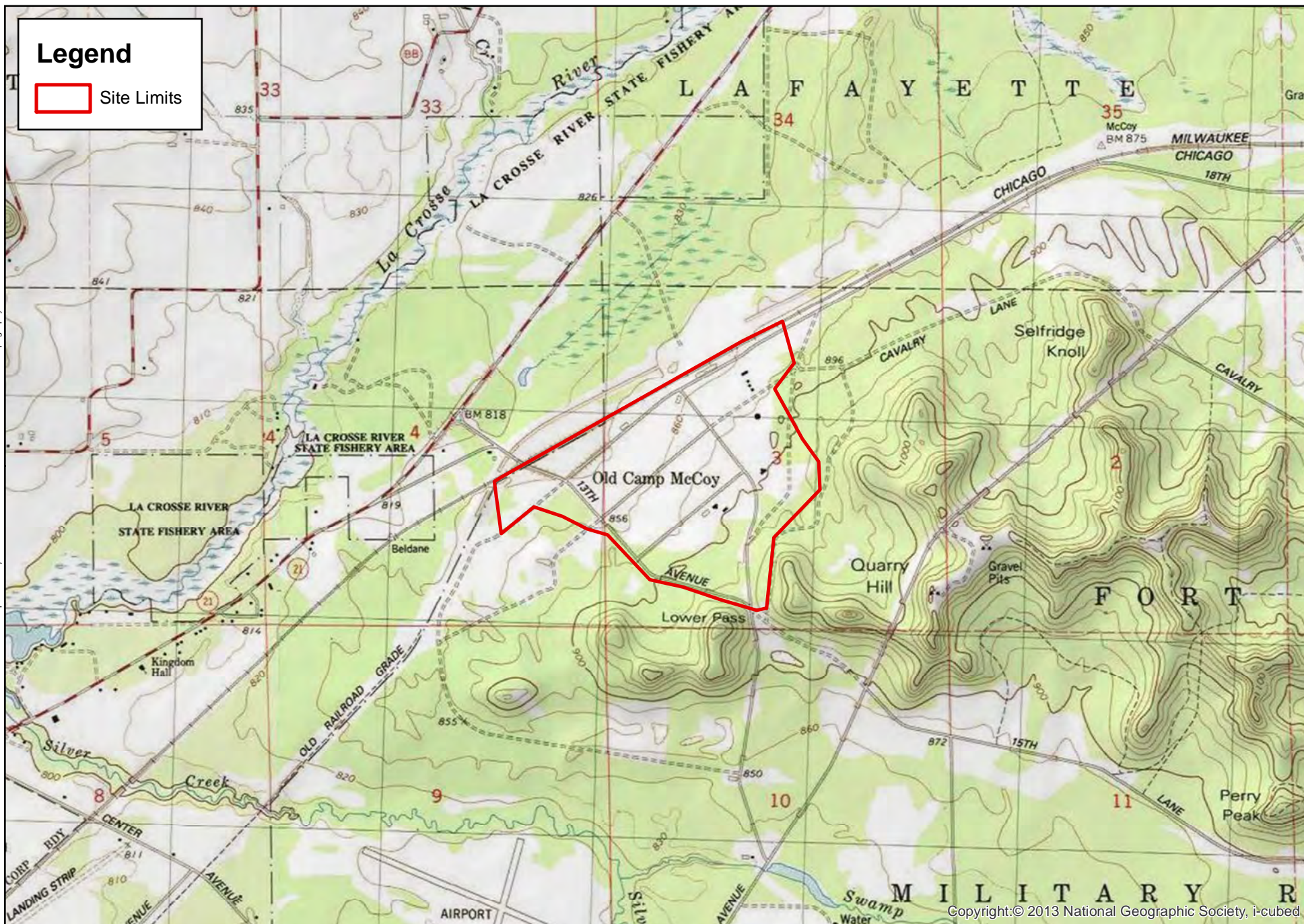
Fort McCoy, Monroe County, Wisconsin

0 75 150 Feet

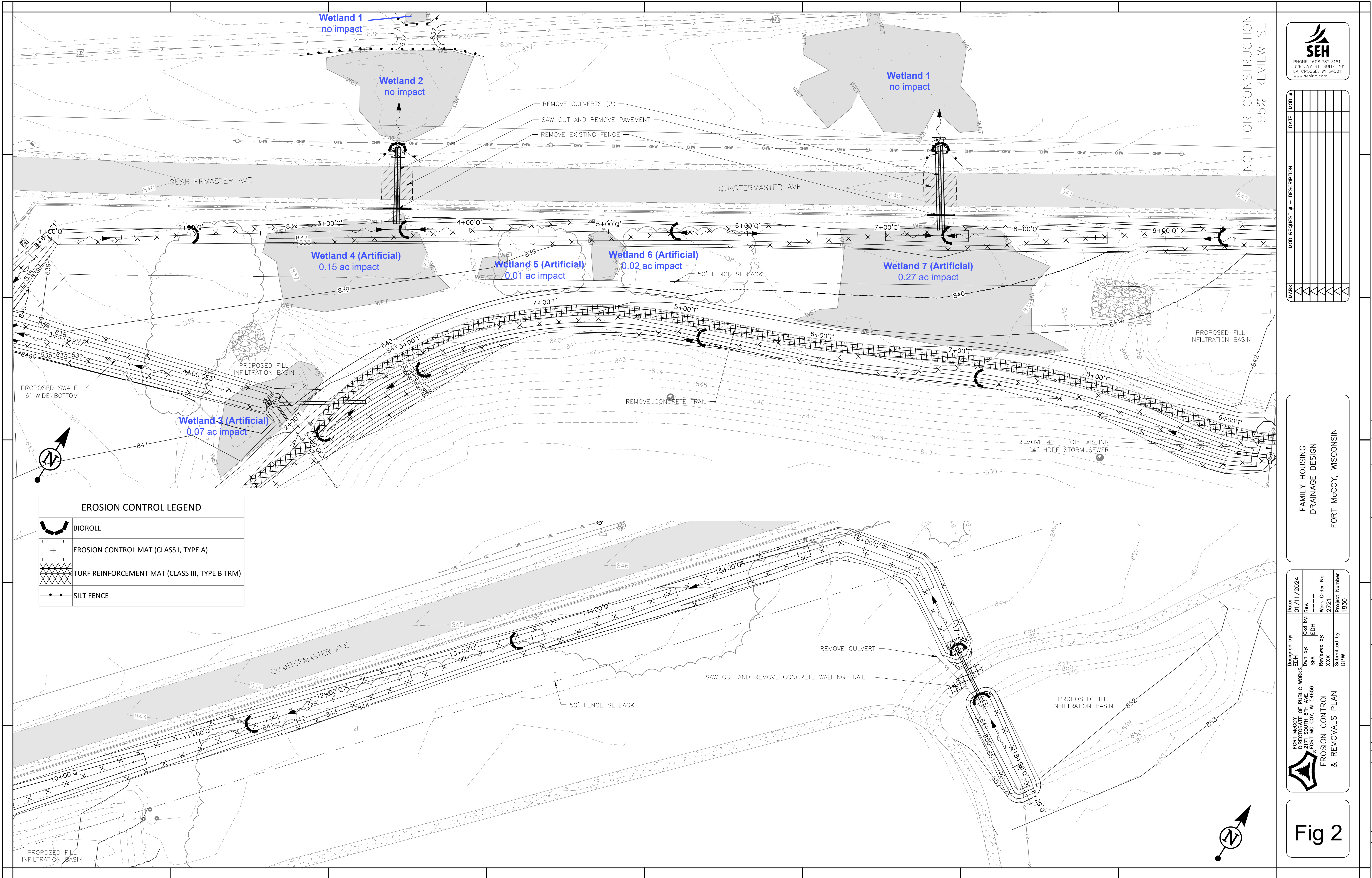


Figure
3a

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|---|--|---|---|------------------------------------|------------------------------------|
|  | <p>10 NORTH BRIDGE STREET CHIPPEWA FALLS, WI 54729-2550 PHONE: (715) 720-6200 FAX: (888) 908-8166 TF: (800) 472-5881 www.sehinc.com</p> | <p>Project: USAMC 161601 Print Date: 9/17/2021 Map by: mfrak Proj: WISCRS, Monroe Co. (ft) Aerial Year: 2018 Source: USGS, Monroe County</p> | <p>Site Location Map South Post: Family Housing Drainage Design Fort McCoy, Monroe County, Wisconsin</p> | <p>0 1,000 2,000 Feet</p> <p>N</p> | <p>Figure 1</p> |
|---|--|---|---|------------------------------------|------------------------------------|




NOT FOR CONSTRUCTION
95% REVIEW SET



SEH
PHONE: 608.782.3161
329 JAY ST, SUITE 301
LA CROSSE, WI 54601
www.sehinc.com

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FAMILY HOUSING
DRAINAGE DESIGN
FORT McCOY, WISCONSIN



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Fig 2

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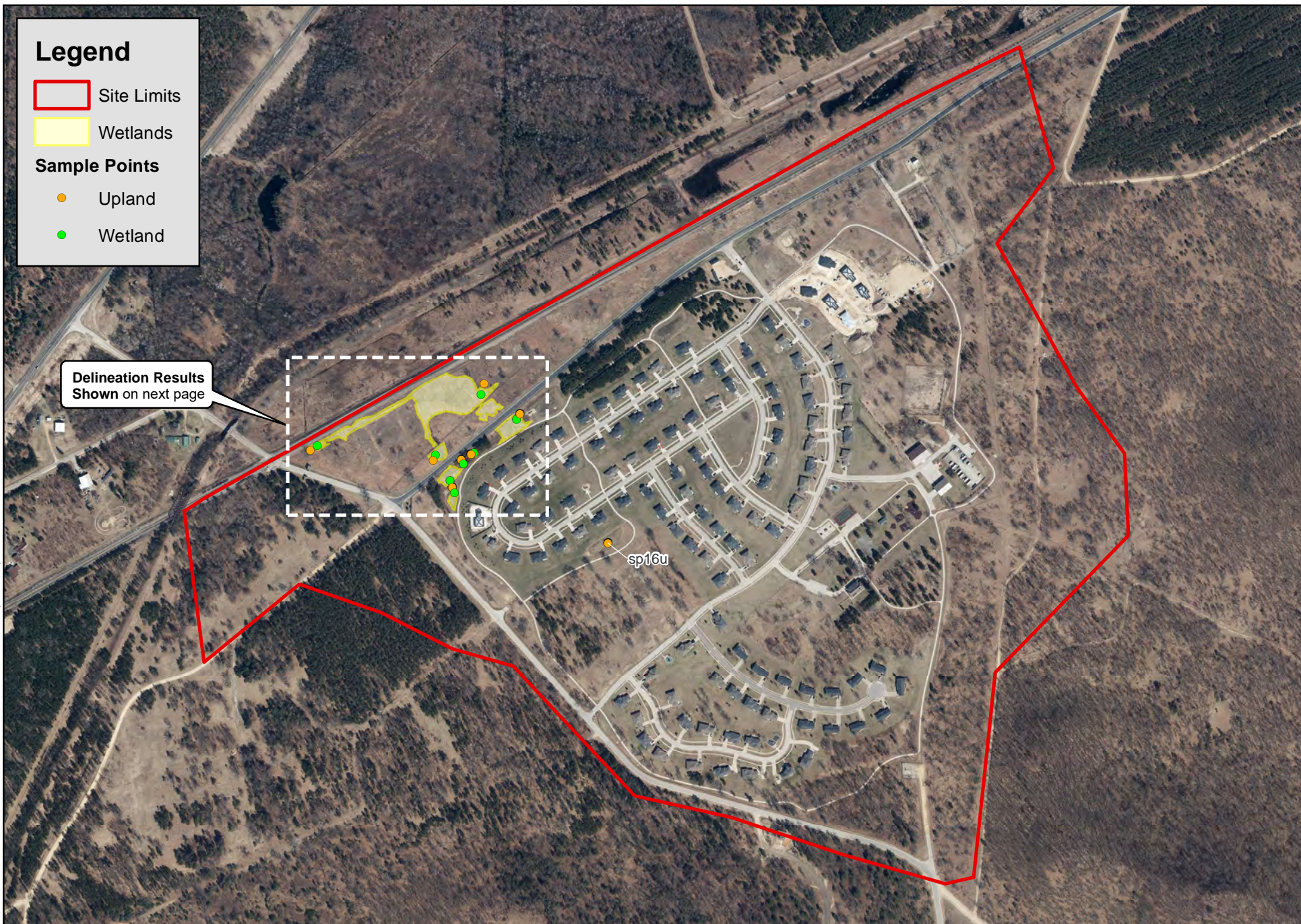


Figure 1. Wetland Exemption Map

