



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
ST. PAUL DISTRICT OFFICE
332 MINNESOTA STREET SUITE E 1500
ST. PAUL MINNESOTA 55101

MVP-R

April 15, 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-2024-00642-RJH-RJH ([MFR 3 of 3](#))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-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00642-RJH

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

1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area)
- b. 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).
 - W005-a, (3,404 sqft)- 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. 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): 90
- b. Location Description: The project/review area is located in Section 4 and 9, Township 06N, Range 020E, Waukesha County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 42.9964 Longitude: -88.1378
- d. Nearest City or Town: Cascade

MVP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00642-RJH

- e. County: Waukesha
 - 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. [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.

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 "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.

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.

MVP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00642-RJH

- 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 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).

- W005-a, (3,404 sqft)

Based on the Digital Elevation Model and aerial photography show that the above wetland is not abutting or physically touching a relatively permanent water (RPW). W005-a is an emergent wetland adjacent to open field and Poplar Creek Church and is surrounded by uplands. W005-a is approximately 0.3 miles south of Poplar Creek.

This wetland is not a TNW, territorial sea, or interstate water and therefore is not (a)(1) water. The wetland does not physically abut a relatively permanent water, paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. The wetland is a non-tidal wetland that does not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetland; therefore, the wetland 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.

MVP-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00642-RJH

- a. [Office evaluation conducted 15 April 2025]
- b. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, Hillshade layer and DEM layer accessed on 15 April 2025.]
- c. [Wetland Delineation Report, submitted by Merjent, dated August 2024]

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.

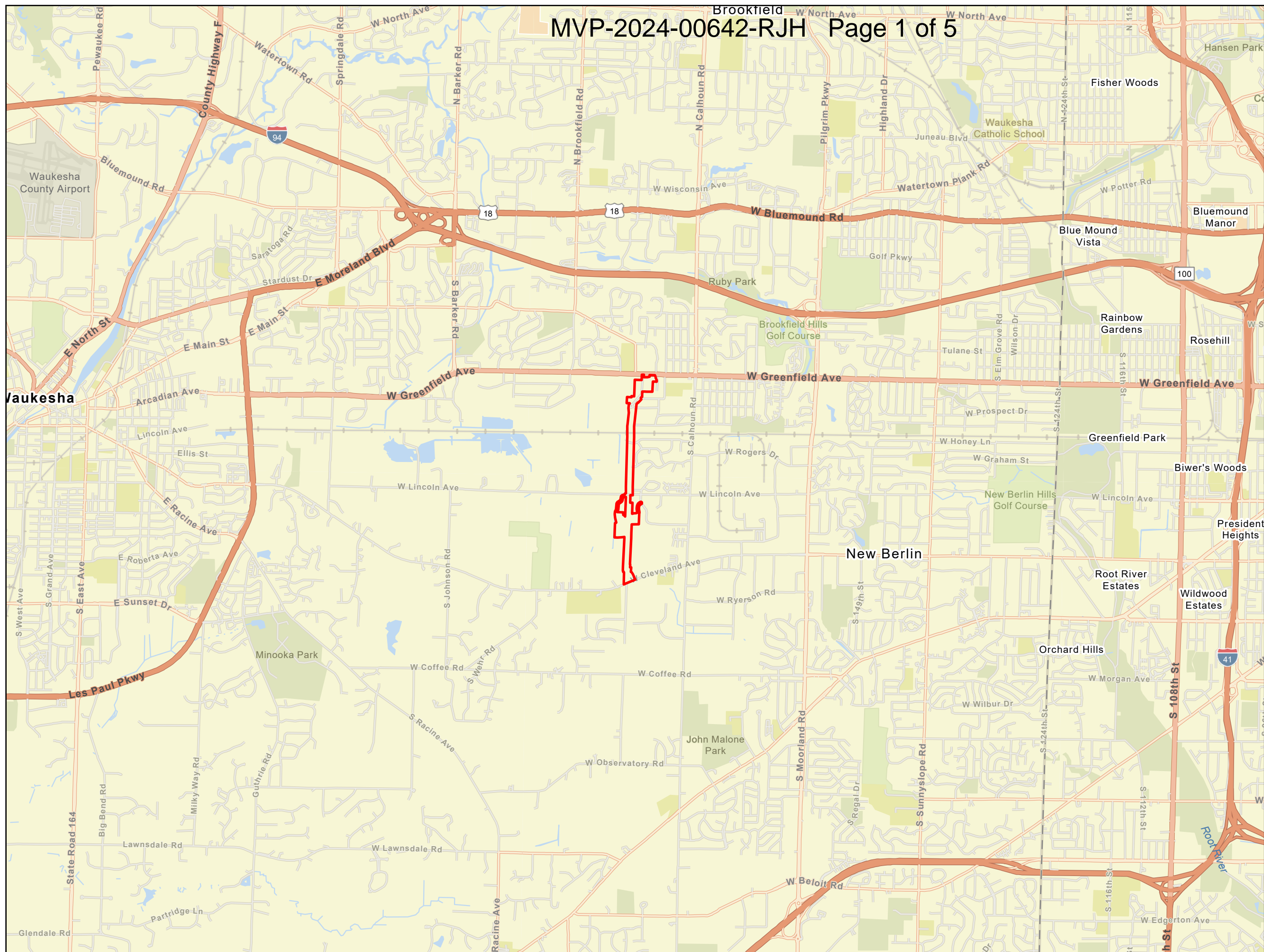
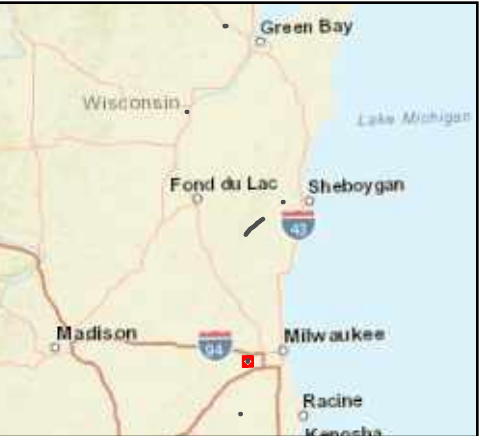
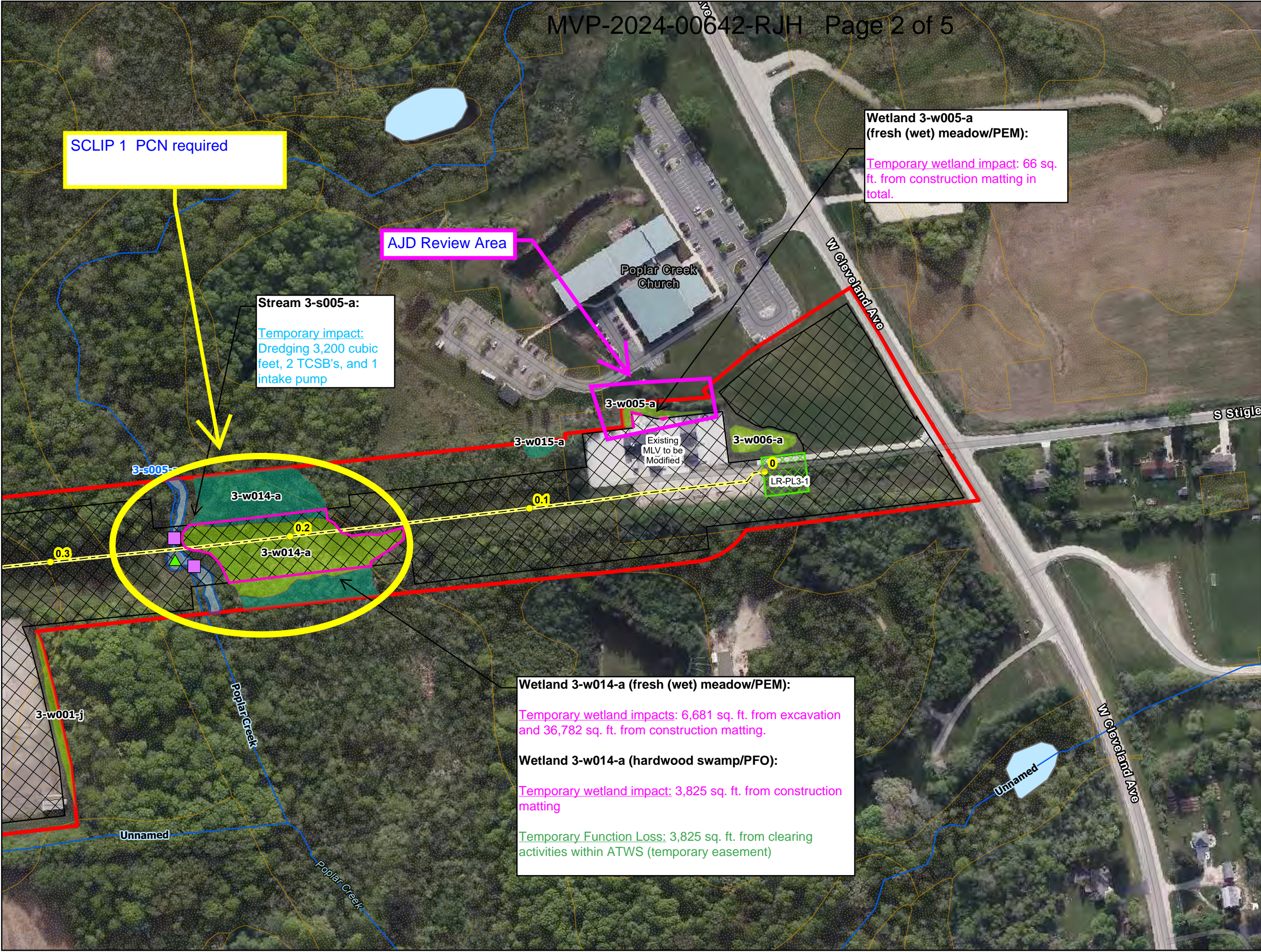
 Environmental Survey Corridor

Figure 1.
Project Location
Segment PL-3
Heartland Project
ANR Pipeline Company
Waukesha County, Wisconsin





Project and Impact Data

- Mile Posts
- ▲ Open Water Intake Source
- Temporary Clear Span Bridge
- Temporary Wetland Impact
- Proposed Pipe: Trench Install
- ▨ New Impervious Surface Pad
- ▨ Construction Work Area (CWA)

Environmental Field Data

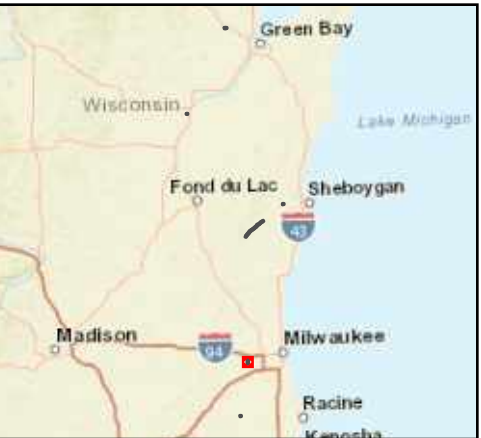
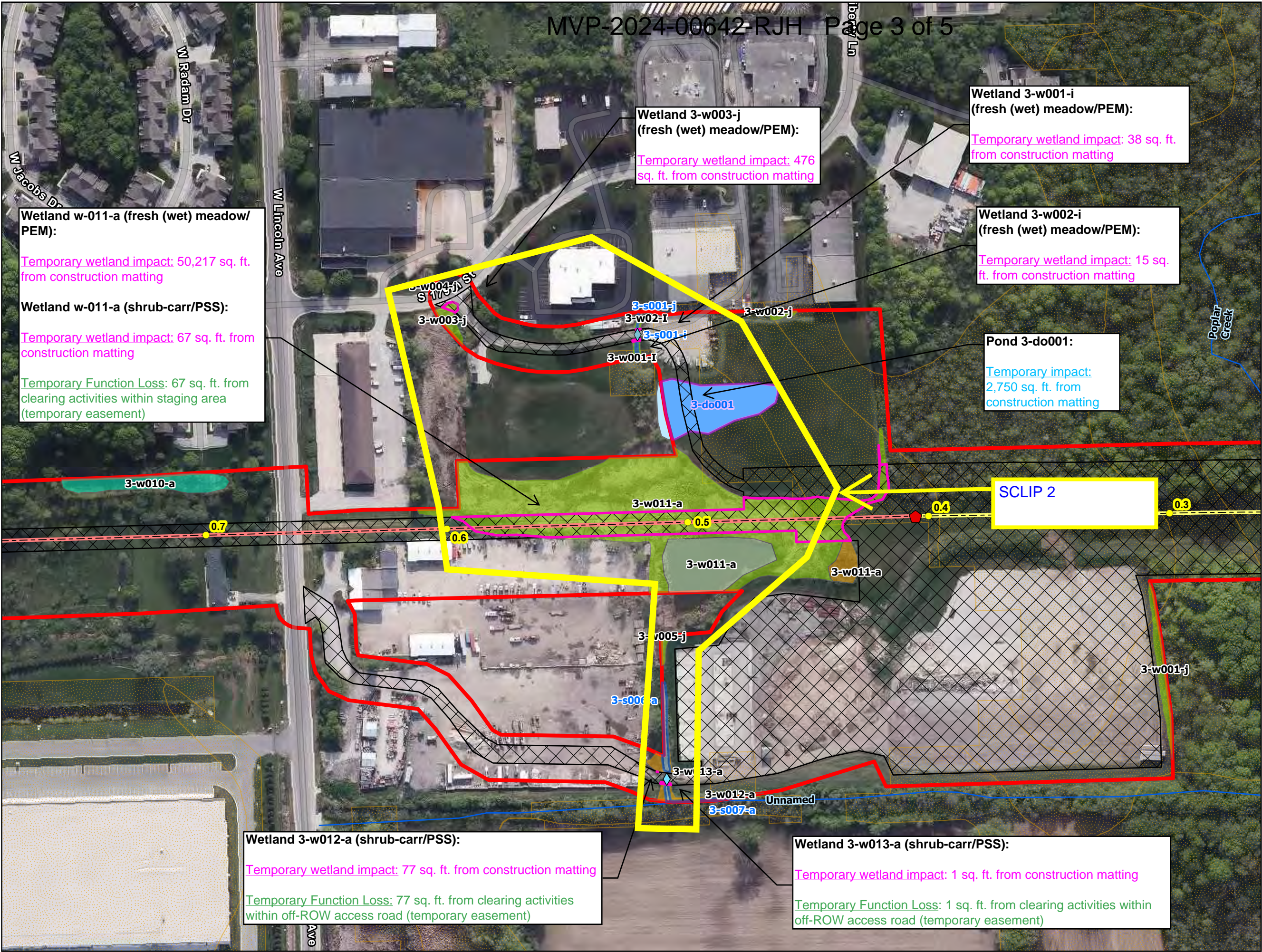
- Delineated Waterway
- Delineated Fresh (Wet) Meadow
- Delineated Hardwood Swamp

Reference Data

- ▨ Environmental Review Corridor
- Mapped Waterway (WDNR 24k Hydro)
- Mapped Waterbody (WDNR 24k Hydro)
- Mapped Wetlands (WDNR WWI and Indicators)

Figure 4.
Wetland and Waterway
Impacts
Heartland Project:
Segment PL-3
ANR Pipeline Company
Waukesha County, Wisconsin

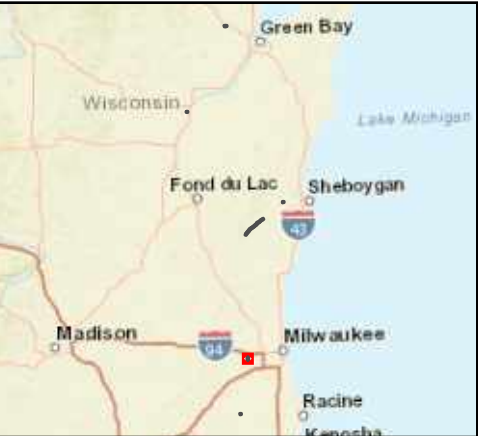
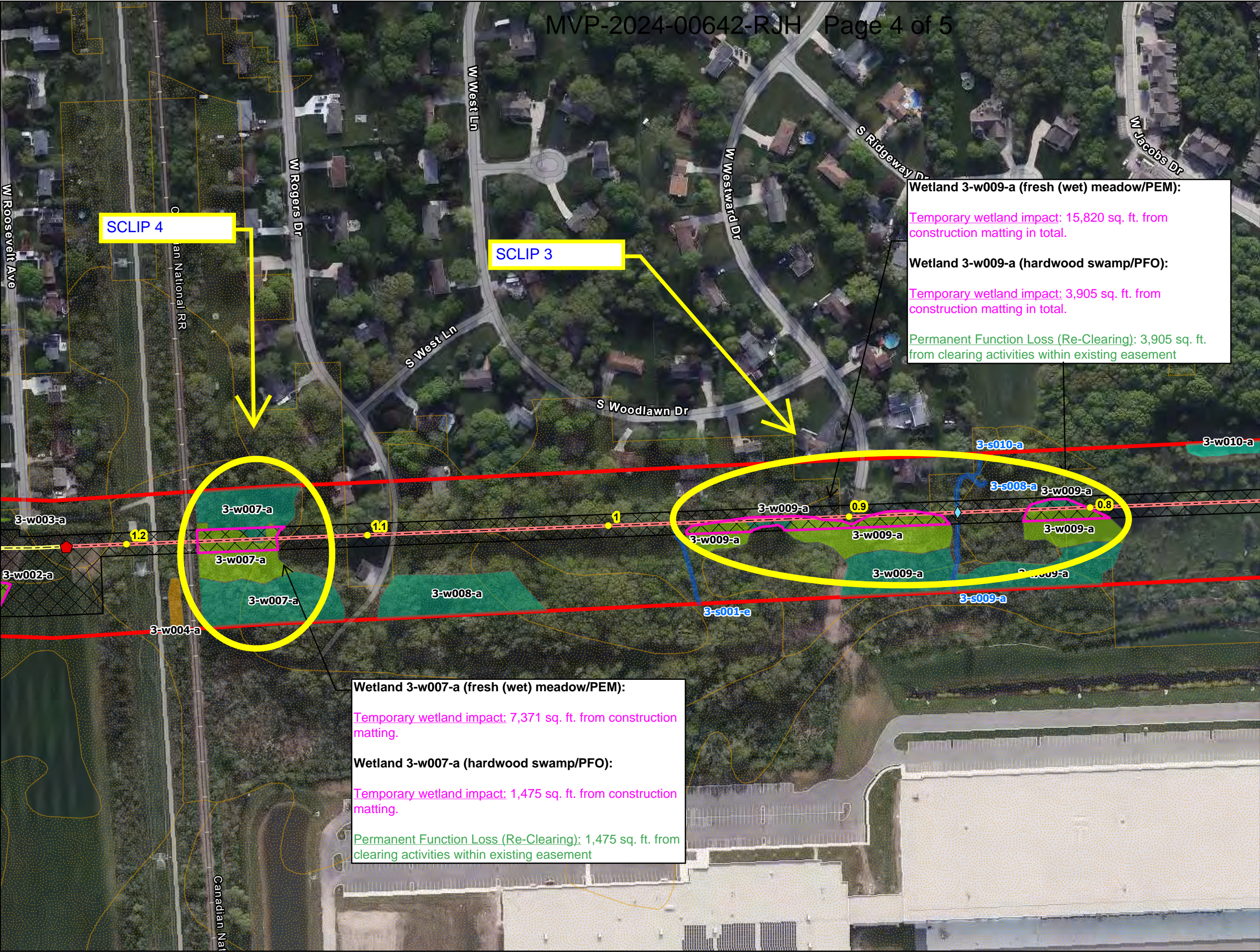




- Project and Impact Data**
- Mile Posts
 - Existing Culvert
 - Trenchless Entry/Exit Pit
 - Temporary Wetland Impact
 - Proposed Pipe: Trenchless Install
 - Proposed Pipe: Trench Install
 - Construction Work Area (CWA)
- Environmental Field Data**
- Delineated Waterway
 - Delineated Fresh (Wet) Meadow
 - Delineated Shallow Marsh
 - Delineated Shallow, Open Water Communities
 - Delineated Shrub-Carr
- Environmental Desktop Data**
- Desktop Waterbody
- Reference Data**
- Environmental Review Corridor
 - Mapped Waterway (WDNR 24k Hydro)
 - Mapped Waterbody (WDNR 24k Hydro)
 - Mapped Wetlands (WDNR WWI and Indicators)

Figure 4.
Wetland and Waterway
Impacts
Heartland Project:
Segment PL-3
ANR Pipeline Company
Waukesha County, Wisconsin





Project and Impact Data

- Mile Posts
- ◆ Existing Culvert
- ◆ Trenchless Entry/Exit Pit
- Temporary Wetland Impact
- Proposed Pipe: Trenchless Install
- Proposed Pipe: Trench Install
- Construction Work Area (CWA)

Environmental Field Data

- Delineated Waterway
- Delineated Fresh (Wet) Meadow
- Delineated Hardwood Swamp
- Delineated Shallow Marsh
- Delineated Shrub-Carr

Reference Data

- Environmental Review Corridor
- Mapped Wetlands (WDNR WWI and Indicators)

Figure 4.
Wetland and Waterway
Impacts
Heartland Project:
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Waukesha County, Wisconsin





Project and Impact Data

- Mile Posts
- ◆ Existing Culvert
- ◆ Existing Culvert to be Replaced
- Temporary Clear Span Bridge
- ◆ Trenchless Entry/Exit Pit
- Temporary Wetland Impact
- Proposed Pipe: Trenchless Install
- Proposed Pipe: Trench Install
- New Impervious Surface Pad
- Proposed Permanent Access Road
- Construction Work Area (CWA)

Environmental Field Data

- Delineated Waterway
- Delineated Fresh (Wet) Meadow
- Delineated Hardwood Swamp

Reference Data

- Environmental Review Corridor

Figure 4.
Wetland and Waterway
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