



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

MVP

December 23, 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),<sup>1</sup> MVP-2024-00893-JLK [MFR 1 of 1]<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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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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 W-02	Non-Jurisdictional	None
Wetland W-05	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))
- c. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023)

## 3. REVIEW AREA.

- a. Project Area Size (in acres): 96 acres
- b. Location Description: The project/review area is located in Section 06, Township 15N, Range 23E, Sheboygan County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 43.800830 Longitude: -87.783890
- d. Nearest City or Town: Sheboygan
- e. County: Sheboygan
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
There are no other JDs associated with the review area.	N/A	N/A

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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 WATERS<sup>6</sup>: 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.<sup>7</sup> 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

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<sup>6</sup> 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.

<sup>7</sup> 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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- 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).<sup>8</sup> 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).

Wetlands W-02 and W-05 are not TNW's, territorial seas, or interstate waters and therefore are not (a)(1) waters. Review of Lidar data and aerial photos via Google Earth Pro indicates there is no confined or discrete hydrological connection such as ditches, swales, pipes, or culverts present that connects Wetlands W-02 and W-05 to any other downstream water of the U.S. 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.

Wetland W-02 is a combination of forests and grassy areas located within the southern/central portion of an agricultural field. Topographic maps, Google Earth Pro aerial imagery, and site photos provided in the delineation report, indicate Wetland W-02 is a depressional wetland, surrounded by uplands involving the previously mentioned agricultural field to the north, east, and west, and residential development to the south. The delineation report demonstrates a small swale-like feature extending south from Wetland W-02 where it meets the boundary of the property. However, additional information and site photos provided by the consultant on October 23, 2024, and November 7, 2024,

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<sup>8</sup> 88 FR 3004 (January 18, 2023)

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demonstrates this swale-like feature of Wetland W-02 meets an increase in topography associated with a berm traversing east to west, marking the southernmost property line. Additional photos taken along Bender Road to the south and Bender Court to the southwest of Wetland W-02 further show this area consists of uplands involving residential development and manicured lawns. Wetland W-05 is associated with a tree line extending north to south and located in the north/central portion of the agricultural field. Topographic maps, Google Earth Pro aerial imagery, and site photos provided in the delineation report, indicate Wetland W-05 is a depressional wetland, surrounded by uplands involving the previously mentioned agricultural field to the south, east, and west, and residential development to the north. Above mentioned resources also illustrate an increase in topography associated with the surrounding uplands and development outside of the review area.

Historical aerial photos provided via Google Earth Pro indicates the site has been in agricultural production since before 1992. The nearest mapped tributary is the Pigeon River approximately 0.41 mile to the southwest of Wetland W-02. There are no ditches, swales, pipes, or culverts that connect Wetlands W-02 and W-05 to this or any other downstream jurisdictional water. 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 on December 16, 2024.
  - b. Halo Sheboygan Mixed Use Development Wetland Delineation Report provided by Stantec Consulting Services Inc. dated August 9, 2024.
  - c. National Regulatory Viewer-Lidar Data and Google Earth Pro assessed December 16, 2024.
  - d. Additional site information including ground-level photos provided by the consultant on October 23, 2024, and November 7, 2024.
10. OTHER SUPPORTING INFORMATION. N/A

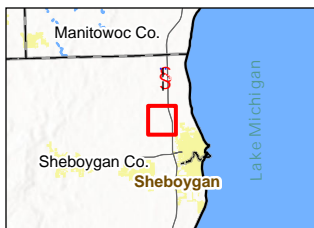
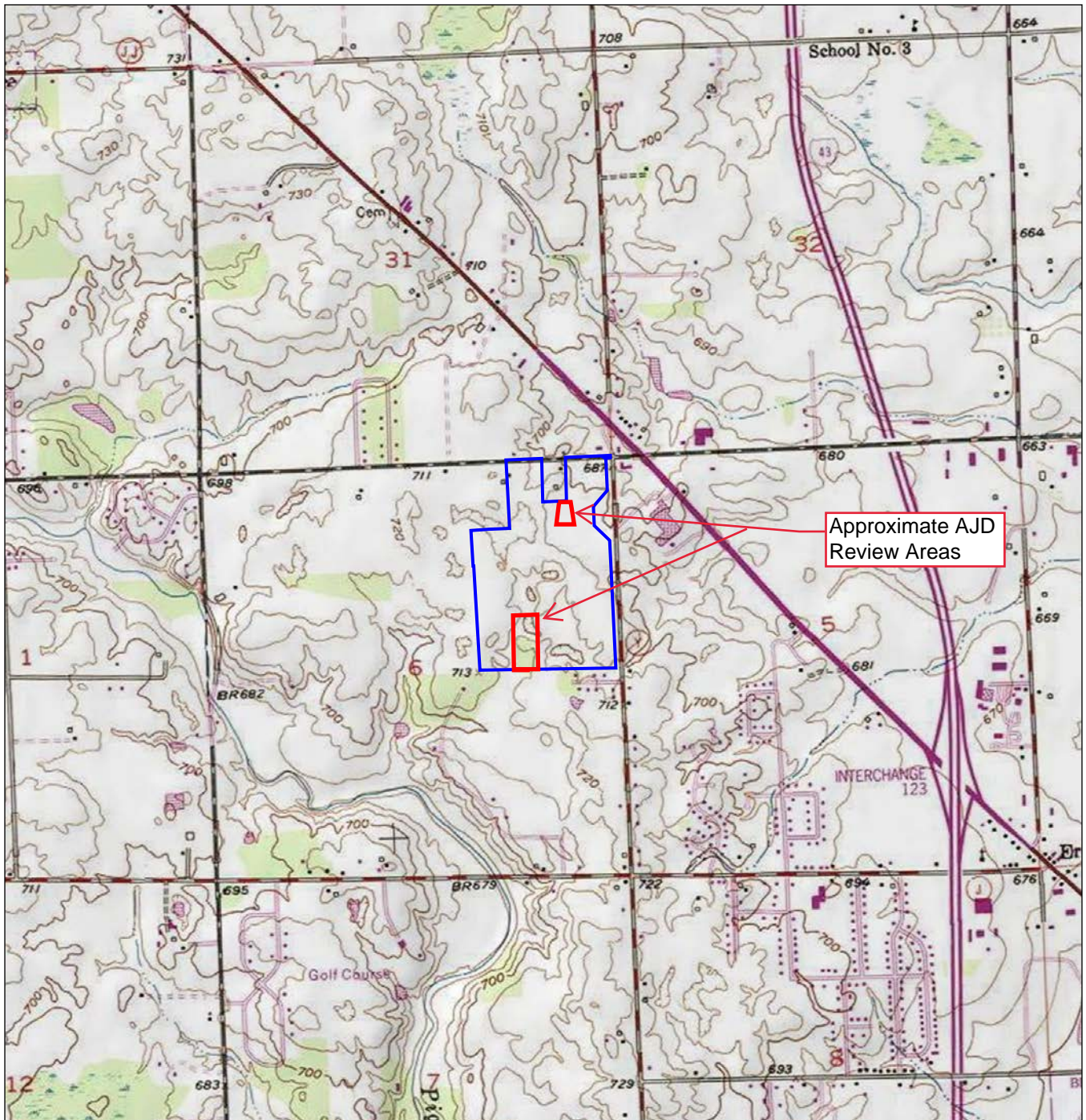
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11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



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Legend  
Project Boundary

0 1,000 2,000 Feet  
(At original document size of 8.5x11)  
1:24,000



Project Location T. of Sheboygan, Sheboygan Co., WI Prepared by MEK on 2024-07-18  
TR by JDS on 2024-07-19  
IR by SM on 2024-08-08

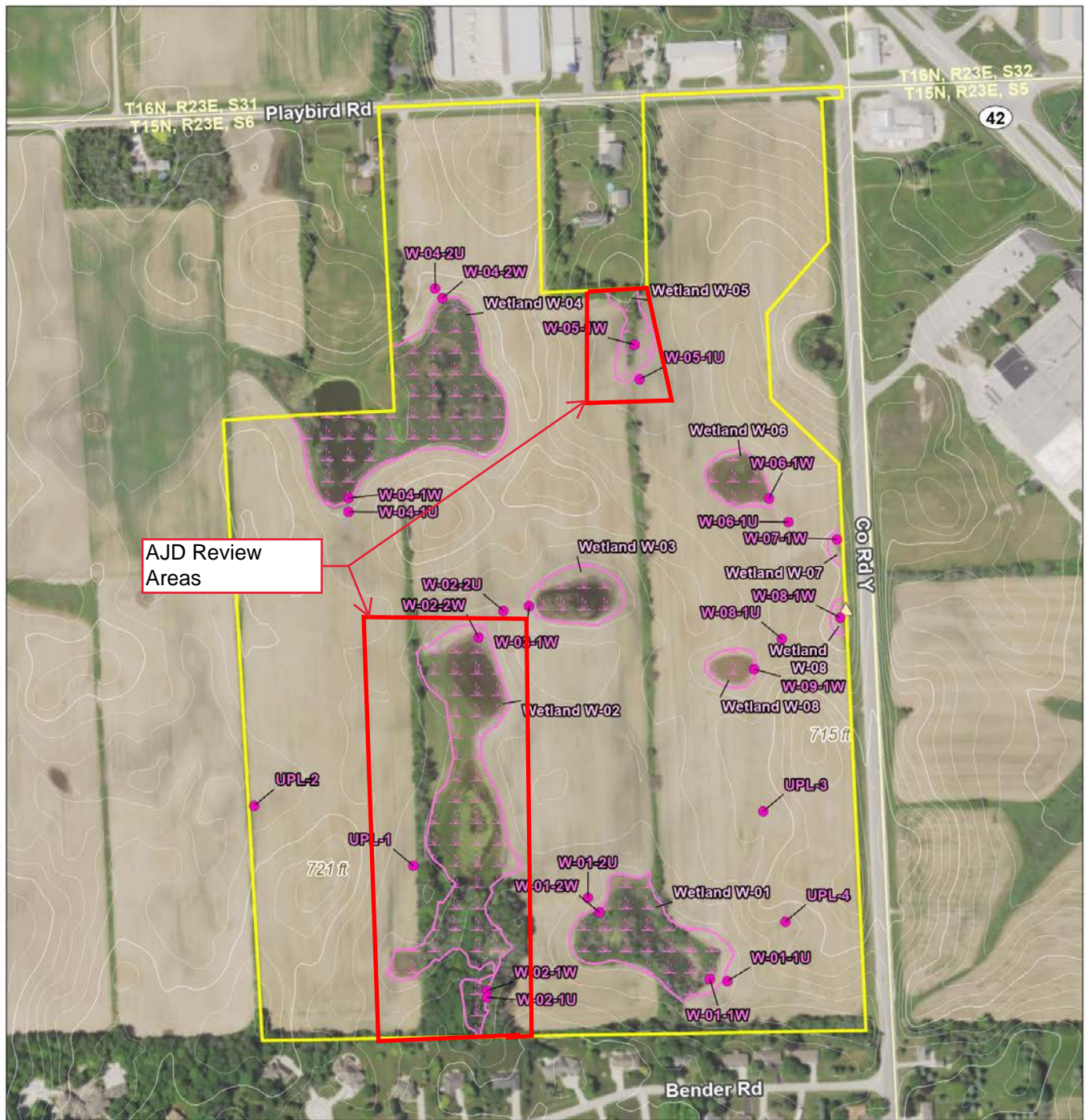
Client/Project LDC Acquisitions, LLC 193807149  
Halo Sheboygan Mixed Use  
Wetland Delineation

Figure No. 1  
Title

Project Location and Topography



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**Notes**  
1. Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803 Feet  
2. Data Sources: Stantec, LDC Acquisitions LLC, Esri, USCB, USGS  
3. Background: NAIP 2022

- Legend**
- Project Boundary
  - Wetland Sample Point
  - Culvert
  - Field Delineated Wetland
  - 2ft Elevation Contour
  - WI DNR 24k Hydrography\*
  - Perennial Stream
  - Intermittent Stream
  - Waterbody

0 225 450 Feet  
(At original document size of 8.5x11)  
1:5,400



Project Location T. of Sheboygan, Sheboygan Co., WI  
Prepared by MEK on 2024-07-18  
TR by JDS on 2024-07-19  
IR by SM on 2024-08-08  
193807149

Client/Project LDC Acquisitions, LLC  
Halo Sheboygan Mixed Use  
Wetland Delineation

Figure No. 4

Title  
Field Collected Data

\*No Features Within Data Frame

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2024-00893-JLK (Figure 2 of 2)