



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),¹ MVP-2024-01207-JLK [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,

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

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01207-JLK

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 1	Non-Jurisdictional	None
Wetland 2	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 61764 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

- a. Project Area Size (in acres): 1.79 Acres
- b. Location Description: The project/review area is located in Section 21, Township 18N, Range 16E, Winnebago County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.01531 Longitude: -88.60235
- d. Nearest City or Town: Algoma
- e. County: Winnebago
- 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

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01207-JLK

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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

⁶ 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.

⁷ 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.

- 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).⁸ 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 1 and 2 are not TNW's, territorial seas, or interstate waters and therefore are not (a)(1) waters. Wetlands 1 and 2 are open grassy wetlands and confined within the northeastern and southeastern portions of the review area. Topographic maps, Google Earth Pro aerial imagery, and site photos provided in the delineation report, indicate Wetlands 1 and 2 are depressional wetlands, surrounded by uplands involving an open grassy field to the southwest and northwest, residential development to the north and east, an unnamed tributary and commercial development to the south, and a paved roadway and additional residential development to the west. Above mentioned resources also illustrate an increase in topography associated with the surrounding uplands and development outside of the review area. Though, one Lidar image suggests the presence of an unconfined hydrological connection between Wetland 2 and the tributary to the south. However further review of other Lidar images and site photos provided in the delineation report, demonstrate a clear topographic increase associated with a vegetated berm separating Wetland 2 and this tributary. Additional review of other Lidar images and aerial photos via Google Earth Pro indicate no confined or discrete hydrological connection such as ditches, swales, pipes, or culverts are present that connects Wetlands 1 and 2 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.

⁸ 88 FR 3004 (January 18, 2023)

MVP

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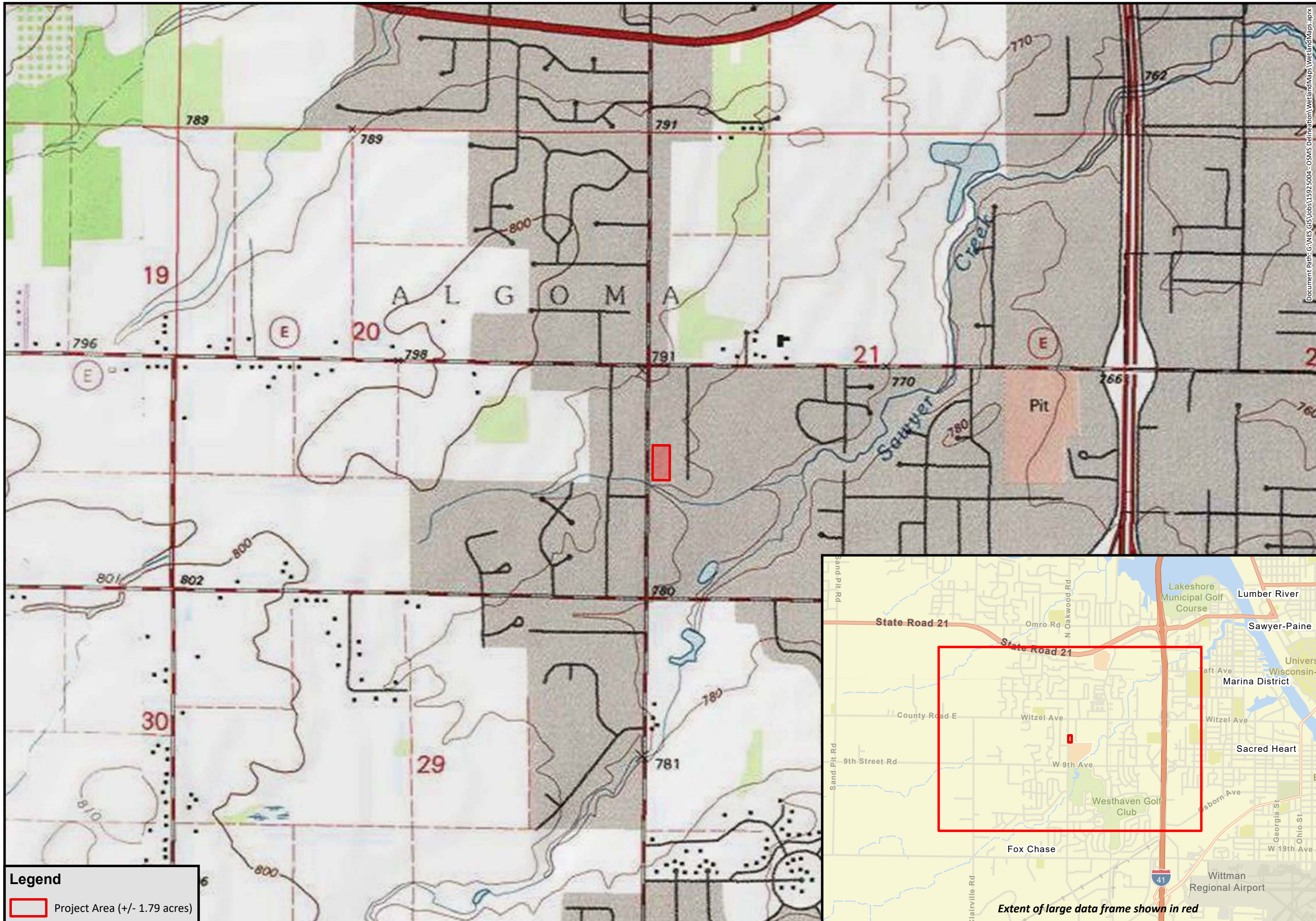
Historical aerial photos provided in the delineation report indicates the entire review area had been in agricultural production until the 1990's when development became more abundant, and the site was left fallow. The nearest mapped tributary is an unnamed tributary to Sawyer Creek approximately 72 feet south of Wetland 2. There are no ditches, swales, pipes, or culverts that connect Wetlands 1 and 2 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 an (a)(4) adjacent wetland. Therefore, Wetlands 1 and 2 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 13, 2024.
- b. Parcels 002141406, 0021415, 0021416, & 002025924 Wetland Delineation Report provided by NES Ecological Services dated December 5, 2024.
- c. National Regulatory Viewer-Lidar Data and Google Earth Pro assessed December 13, 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.





ECOLOGICAL SERVICES
A Division of Robert E. Lee & Associates, Inc.

Site Location

10/25/2024

OSMS

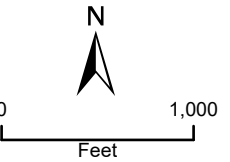
Wetland Delineation

NES Project No. 15925004

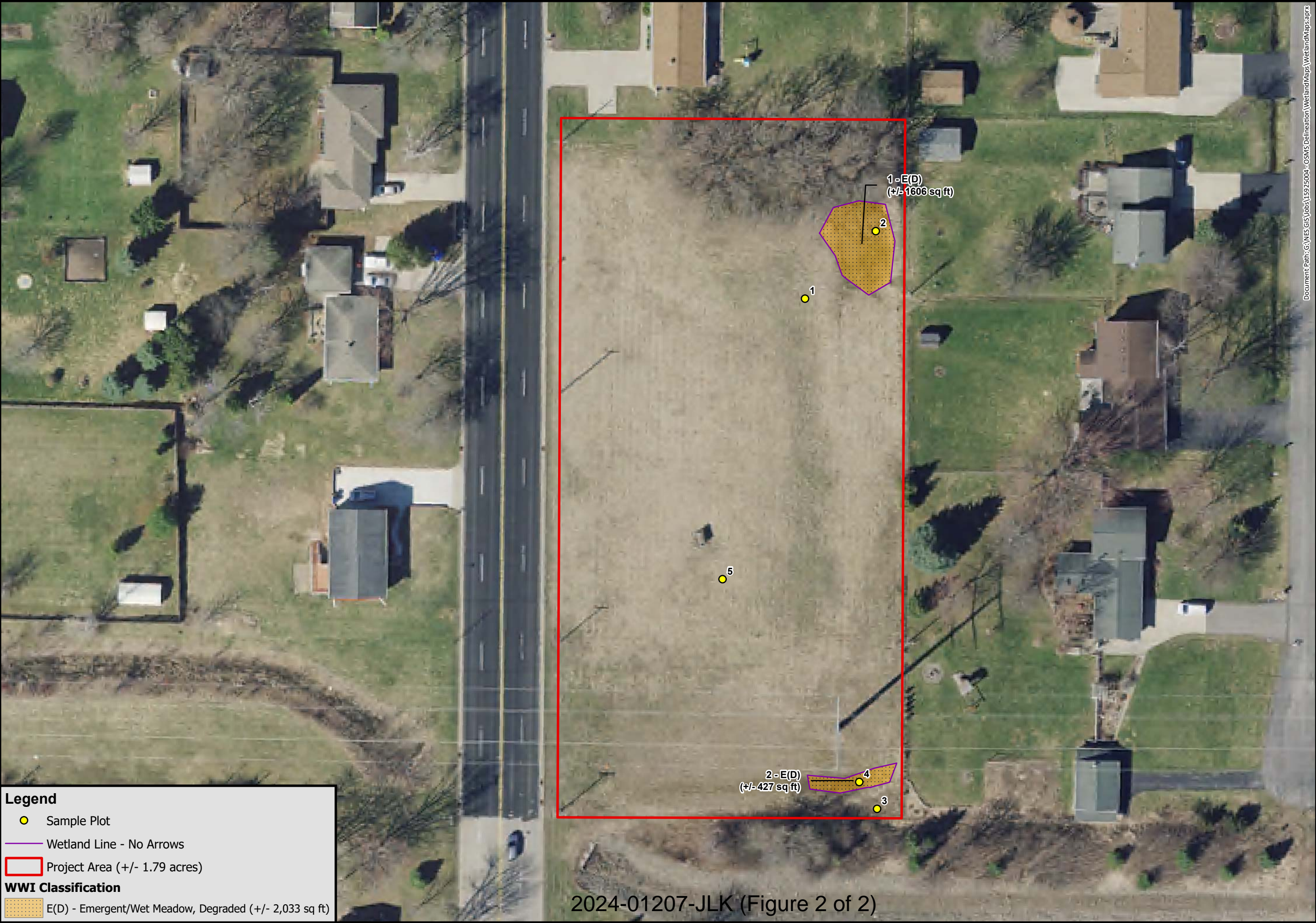
Town of Algoma

Winnebago County, Wisconsin

Located in part of:
Section 21, T18N, R16E
Town of Algoma
Winnebago County
Wisconsin



0 1,000
Feet



Document Path: G:\NES\GIS\Jobs\15925004 - OSMS Delineation\WetlandMaps\WetlandMaps.aprx



**Delineated
Wetland**

10/25/2024

OSMS
Wetland Delineation
NES Project No. 15925004
Town of Algoma
Winnebago County, Wisconsin

Sources: Robert E. Lee
& Associates, Inc.,
Winnebago County

Disclaimer: Robert E. Lee & Associates, Inc. makes every effort to ensure this map is free of errors but does not warrant the map or its features are either spatially or temporally accurate or fit for a particular use. Robert E. Lee & Associates, Inc., provides this map without any warranty of any kind whatsoever, either expressed or implied.



0 50 Feet

Legend

- Sample Plot
- Wetland Line - No Arrows
- Project Area (+/- 1.79 acres)

WWI Classification

- E(D) - Emergent/Wet Meadow, Degraded (+/- 2,033 sq ft)

2024-01207-JLK (Figure 2 of 2)