



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
ST. PAUL OFFICE EAST BRANCH
322 MINNESOTA SUITE E1500
ST. PAUL MINNESOTA 55101

MVP-R

June 27, 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-2025-00520-RJH (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.

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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).

- i. Wetland A, (0.215 acre): Non-jurisdictional
- ii. Wetland B, (0.074 acre): Non-jurisdictional
- iii. Wetland C, (2.688 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. 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): 4
- b. Location Description: The project/review area is located in Section 31, Township 009N, Range 022E, Ozaukee County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.199270 Longitude: -87.943100
- d. Nearest City or Town: Mequon
- e. County: Ozaukee
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [NA]⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [NA.]
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.
 - 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 "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.

- 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).

We have reviewed and evaluated the historical photography, Google Earth photography, soil mapping, and the information submitted by the applicant for the following wetlands:

- i. Wetland A, (0.215 acre): Non-jurisdictional
- ii. Wetland B, (0.074 acre): Non-jurisdictional
- iii. Wetland C, (2.688 acre): Non-jurisdictional

Wetland A is a shrub-carr located within a shallow depressional basin along the northwestern boundary of the parcel. Similarly, Wetland B is a shrub-carr occupying a shallow depressional basin in the southwestern portion of the property. An adjacent upland data point is situated slightly upslope in a wooded area dominated by Norway spruce (*Picea abies*), jack pine (*Pinus banksiana*), and common buckthorn (*Rhamnus cathartica*). Wetland C

⁹ 88 FR 3004 (January 18, 2023)

consists of a combination of shrub-carr and shallow water marsh and occupies a shallow depression. A portion of the roadside ditch in this area is directly connected to the wetland complex.

A review of the Digital Elevation Model (DEM) data, LiDAR imagery, and aerial photography indicate that Wetland A extends northward beyond the review area. Based on the change of elevation, we have determined that Wetland A transitions into uplands and is not adjacent to a relatively permanent water (RPW). Wetland B is surrounded by uplands and a roadside ditch, which is not considered an RPW.

Although Wetland C extends beyond the review area, a detailed review of historical aerial imagery, DEM data, and LiDAR indicates that no RPWs are adjacent to this wetland complex. The wetland appears to extend north and east transitioning into uplands areas along Charter Mall Road, which interrupts any potential connection to an RPW. Based on the elevation data and aerial photography, Charter Mall Road does not appear to bi-sect any portion of Wetland C. South of the review area, Wetland C is interrupted by Range Line Terrace, a berm, and a two-track trail along the edge of a wildlife preserve.

No culverts connecting Wetlands A, B, or C to downstream waters were observed in aerial imagery or via Google Street View. Based on analysis of the available elevation data, it has been determined that Wetlands A, B, and C do not abut or physically touch any relatively permanent water. Wetland C is located approximately 1,691 linear feet from an unnamed tributary to Lake Michigan, which is classified as an RPW.

Because Wetlands A, B, and C are not traditionally navigable waters (TNWs), territorial seas, or interstate waters, they do not meet the criteria for (a)(1) waters. Furthermore, these wetlands do not physically abut an RPW, are not located within a paragraph (a)(2) impoundment, and are not adjacent to a jurisdictional (a)(3) tributary. As non-tidal wetlands that do not meet the definition of “adjacent,” Wetlands A, B, and C cannot be evaluated under paragraph (a)(4). Therefore, under the 2023 Revised Definition of “Waters of the United States” (Conforming Rule, 88 FR 61964), Wetlands A, B, and C are not considered jurisdictional.

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 17 June 2025]

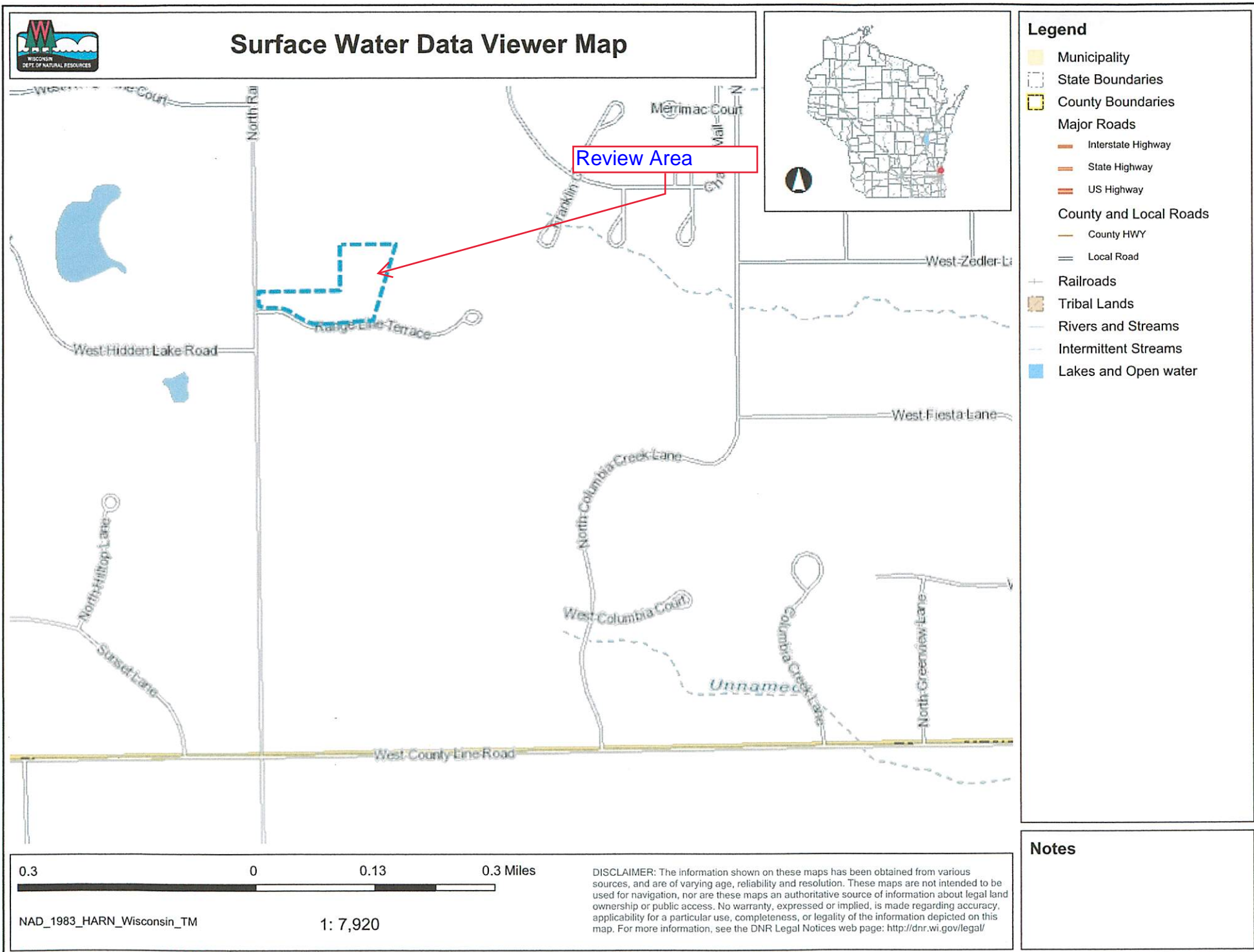
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- b. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, Hillshade layer and DEM layer accessed on 17 June 2025.]
- c. [Wetland Delineation Report, submitted by Wetland & Waterway Consulting, LLC, dated July 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.





Surface Water Data Viewer Map



Legend

- Lake Class Areas
- Riverine/ditch Class Areas
- Wetland Class Areas
- Wetland Class Points**
 - Dammed pond
 - Excavated pond
 - Filled/draind wetland
 - Wetland too small to delineate
 - Filled excavated pond
- Filled Points
- Wetland Class Areas
- Filled Areas
- Wetland Identifications and Confirmations

0.1 0 0.03 0.1 Miles

NAD_1983_HARN_Wisconsin_TM

1: 1,980

DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <http://dnr.wi.gov/legal/>

Notes

LEGAL DESCRIPTION :

Parcel 1: Lot One (1) of Certified Survey Map No. 2225 recorded in the Ozaukee County Registry in Volume 16 of Certified Survey Maps on pages 277-279, as Document No. 437247, and being a redivision of Certified Survey Map No. 463, and lands in the Northwest 1/4 of the Southwest 1/4 and Southwest 1/4 of the Northwest 1/4 of Section 31, Town 9 North, Range 22 East, in the City of Mequon, Ozaukee County, Wisconsin.

Parcel 2: Lot Nine (9) in "RANGE LINE EAST", being a redivision of Lot 2 of Certified Survey Map No. 2225, a part of Lot 2 of Certified Survey Map No. 291, and other lands all being located in the Southwest 1/4 of the Northwest 1/4 and the Northwest 1/4 and Northeast 1/4 of the Southwest 1/4 of Section 31, Town 9 North, Range 22 East, City of Mequon, Ozaukee County, Wisconsin.

Property Coverage Statistics:

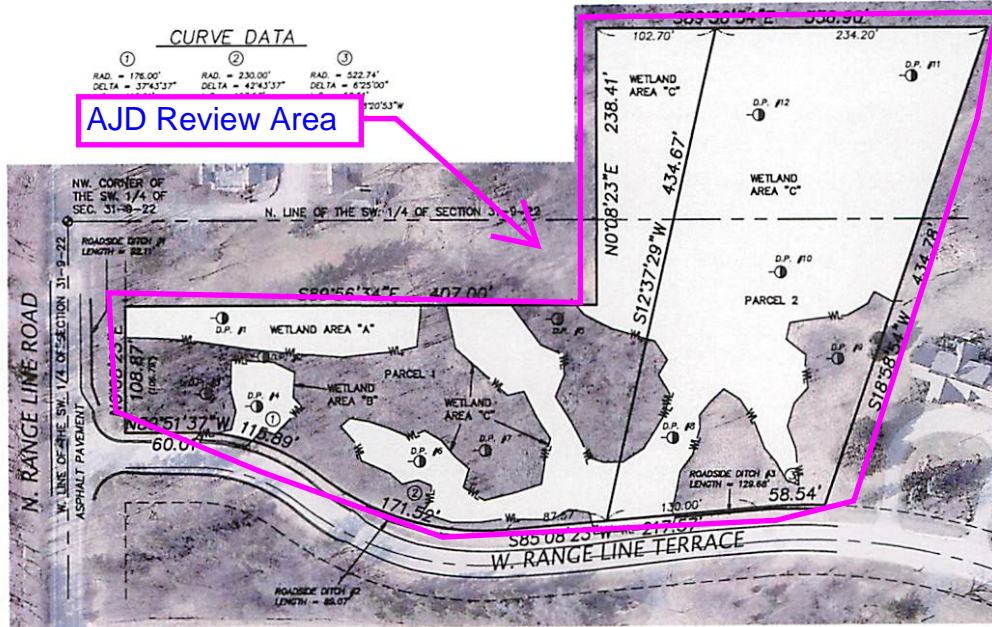
Total Property Area = 4.002 acres / 174,328 sq. ft.

Wetland Area "A" = 0.215 acres / 9,325 sq. ft.

Wetland Area "B" = 0.074 acres / 3,228 sq. ft.

Wetland Area "C" = 2.400 acres / 104,538 sq. ft.

Total Wetlands = 2.688 acres / 117,091 sq. ft.



OWNER:
LYNN RIX
10019 N. HOLMES CT.
MEQUON, WI 53092

NO.	DATE	REVISION	BY	APPROVED

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"WETLAND EXHIBIT"	
for Lynn Rix	
Lot 1, C.S.M. No. 2225 Mequon, WI	
DATE: August 9, 2024	DRAWN BY: J.R.S.
PROJECT: CRW	FILE NO: 27794-Rix-WETLANDS