

CEMVP-RD E

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00544-TKO

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August 19, 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-2025-00544-TKO [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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
W-1 (4.84-acre)	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. 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 Are Size (in acres): ~12.50-acre
- b. Location Description: The project/review area is located in Section 12, Township 08N, Range 15E, Jefferson County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.1744 Longitude: -88.6728
- d. Nearest City or Town: Watertown
- e. County: Jefferson
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): [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]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. [N/A]
 - 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).

Review of a 2025 Cason Land & Water Management, LLC wetland delineation report, historic aerial images, County GIS mapping, WI Surface Water Data Viewer, and LiDAR resources (hillshade and DEM GIS layers from the Mississippi Valley Division Regulatory Viewer) indicate that the onsite wetland complex, here on referred to as Wetland 1 (W-1), is a depressional wetland, surrounded by uplands. Review of these resources indicate the assessed wetland is not, and does not physically abut, a jurisdictional water. Wetland 1 is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. W-1 does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. W-1 is a non-tidal wetland that does not abut relatively permanent jurisdictional waters and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland. W-1 is not an intrastate lake or pond that meets the relatively permanent standard and cannot be evaluated as an (a)(5) water: lakes and ponds not identified in (a)(1) - (a)(4). Therefore, Wetlands 1 is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

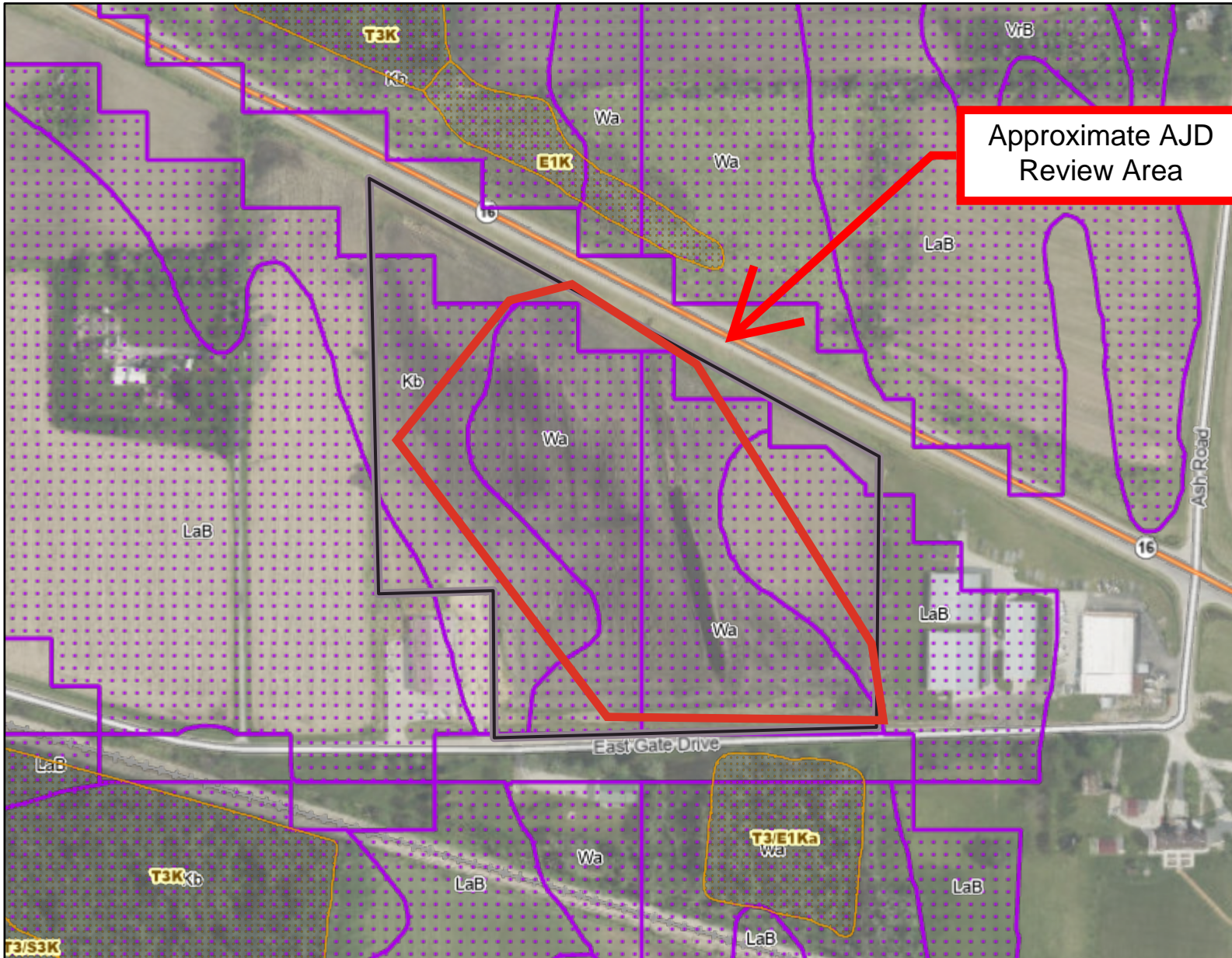
⁹ 88 FR 3004 (January 18, 2023)

Wetland 1 (W-1) is a non-tidal wetland complex, located within a pair of agricultural fields between Hwy 16 and East Gate Drive, southeast of Watertown. Emergent portions of W-1, primarily to the northwest and southeast, extend from a central (north/south running) man-made basin which holds standing water. W-1 extends towards the roadside ditches of Hwy 16 and East Gate Drive outside of the review area. Wetland area is mapped immediately north of Hwy 16. This area and W-1 likely constituted a single wetland complex prior to extensive land disturbance associated with HWY 16, East Gate Drive, and the nearby railroad corridor south of the review area. This northern wetland is non-jurisdictional as it is surrounded by entirely dry land. Wetland boundaries transition to upland in all directions, with associated ditches draining towards the wetlands. No wetlands are mapped (National and WI Wetland Inventories) immediately surrounding the northern wetlands. Review of aerial imagery shows the areas surrounding the northern wetlands to be continually farmed. Periods of sporadic wetness signature (darkened saturated soils, standing water, repeated vegetative stress, distinct variation in vegetation from surrounding uplands) is observed over various years of review though no persistent wetness signature is present. No continuous surface connection exists between this wetland and any downstream waters. Elevation data (NRV mapping tool) shows surrounding topography sloping down into the depression which contains W-1, with ditches draining into the wetland. LiDAR and elevation data (NRV) shows a slight rise within the ditch along Hwy 16 at a hedgerow at the western end of the depression containing W-1, approximately 880 feet northwest of the culvert. This elevational break serves as a divide directing flows to the east into W-1, and west to the unnamed tributary, approximately 1,600 linear feet. The eastern ditch also slopes down into W-1. These ditches are non-RPWs as they lack a defined bed and bank (LiDAR), OHWM, and show no evidence of standing water or prolonged saturation (veg stress/darkened soils). This larger topographic basin extends gradually downslope towards an unnamed relatively permanent tributary (WBIC: 5033580) approximately 0.3 miles west-northwest of the review area, though there is no continuous surface connection and W-1 does not physically abut the tributary. No other continuous surface connections exist outside of the ditches and culverts. Topography immediately surrounding W-1 remains relatively level to the east and west. Here, wetland characteristics are lost and gradually transition to upland as you move away from W-1 with increasing elevation. W-1 does not abut any downstream jurisdictional waters. Review of elevation data and historic aerial imagery supports the delineated wetland boundary. Elevation data shows W-1 sitting at a topographic low point of the parcel and immediate surrounding, while aerial imagery shows a lack of persistent wetness signature or any other indication of wetland presence (standing water, repeated vegetation stress, distinct variation of vegetation) outside the delineated wetland boundary. Delineation confirmation was obtained through WDNR wetland confirmation program.

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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. No field visits were conducted. Desktop review evaluation was conducted on 08/06/2025.
 - b. AJD Application “2025-00544-TKO 20250602 APP.pdf” in the administrative record.
 - c. Mississippi Valley Division Regulatory Viewer, 08/06/2025.
 - d. Wisconsin DNR Surface Water Data Viewer, 08/06/2025.
 - e. Jefferson County GIS Interactive Mapping, 08/06/2025.
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.

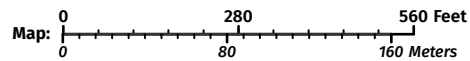


Legend: (some map layers may not be displayed)

- Wetland Class Areas
- Wetland Indicators
- County Boundaries
- Major Roads
- State Highway
- County and Local Roads
- Local Road
- Railroads

Notes:

wetland indicator soils present; no mapped wetlands



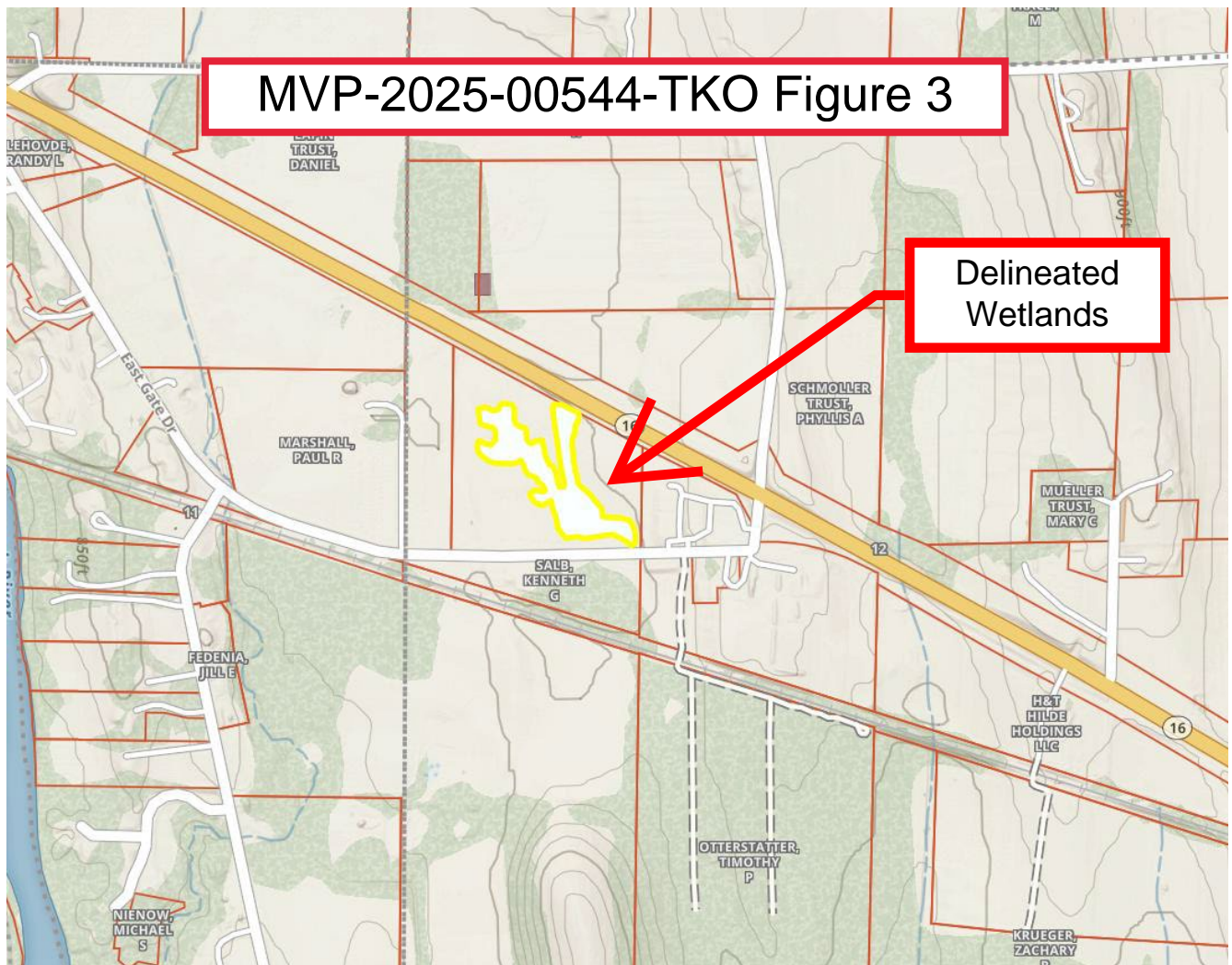
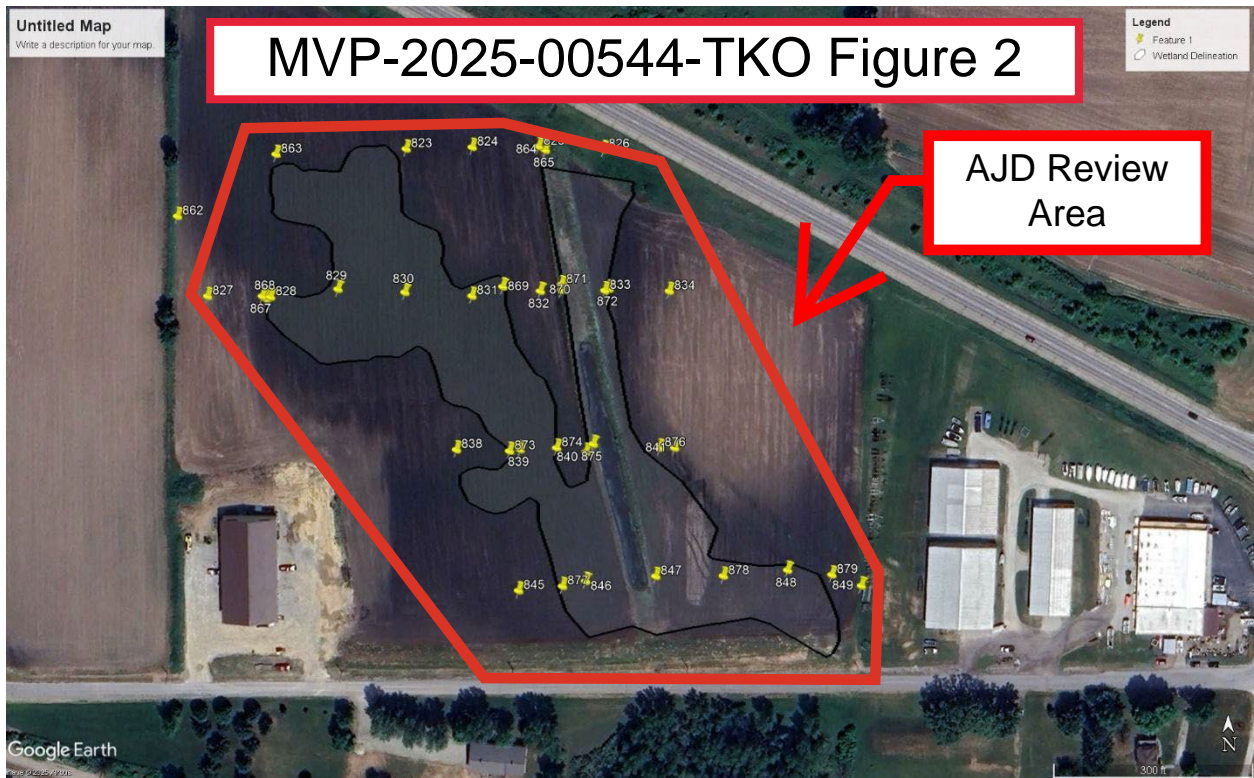
Service Layer Credits:
Latest Leaf Off: , Wetland Indicators & Soils: Surface Water Data Viewer Team, Latest Leaf On: , Wisconsin Wetland Inventory NWI (Dynamic): Calvin Lawrence, Dennis Weise, Nina Rihn, Cities, Roads & Boundaries: , Surface Water (Cached): WiDNR, USGS, and other data

Map projection: NAD 1983 HARN Wisconsin TM

This map is a product generated by a DNR web mapping application.

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Our investigation found the presence of one wetland complex that is approximately 4.84 acres (210,830.4 sq. ft.) in size.

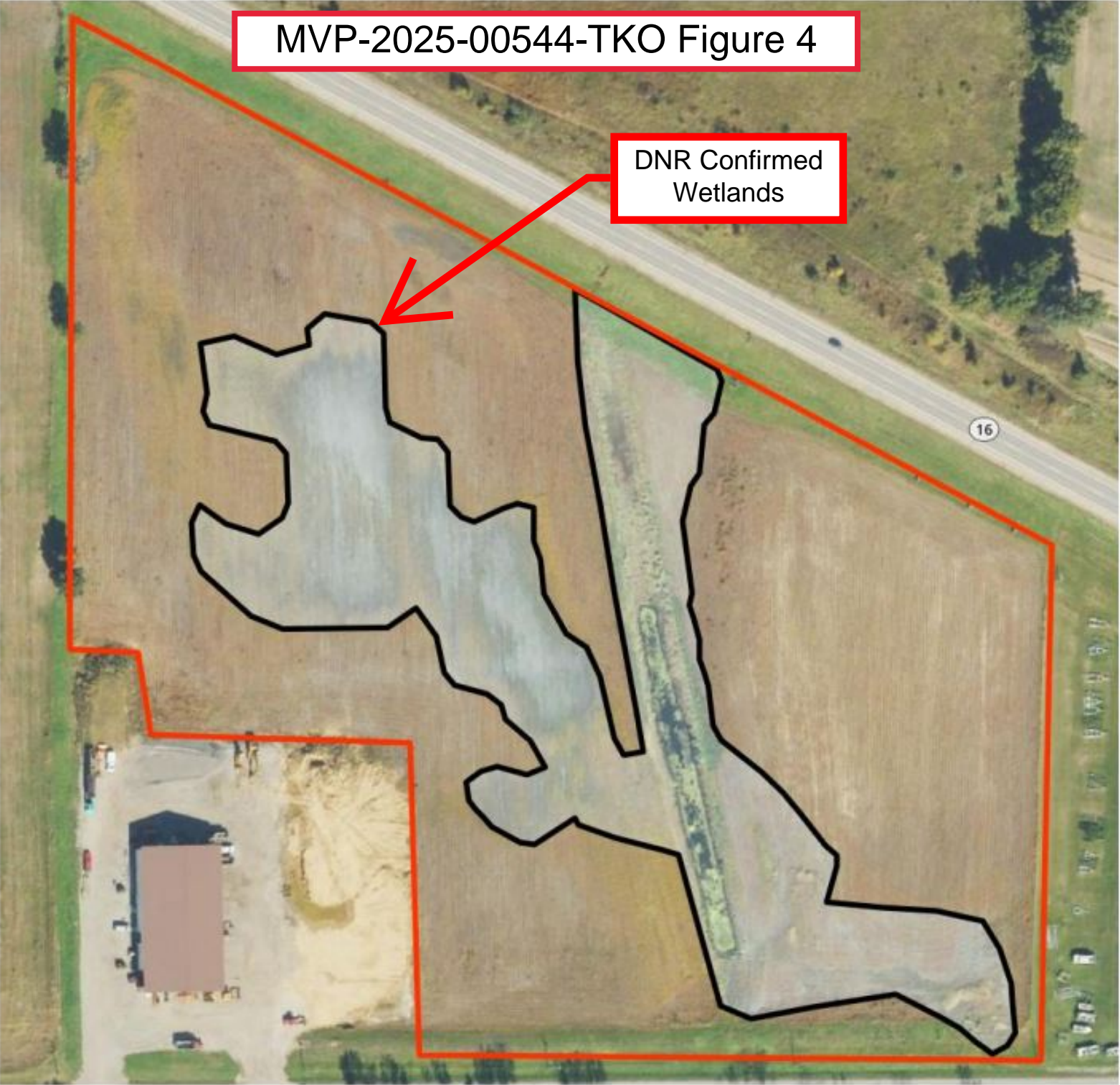


Figure 3. Mapped wetland (black polygon) with survey area (red polygon).