



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

MVP

17 July 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-2015-02665-KDZ, 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 1 (0.10 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. The Corps review area is limited to Wetland 1 (0.10 acre) located on the 13.03 acre property in the City of Madison, Dane County, Wisconsin. Latitude: 43.05006 Longitude: -89.27237. The Corps review area is shown on the enclosed figure labeled: MVP-2025-00587-KDZ, Figure 1.

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

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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
 - g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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.

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- 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).

This AJD is limited to Wetland 1 (W-1) identified in the Heartland Ecological Group, Inc. wetland delineation report dated May 30, 2025. W-1 is not a TNW, territorial seas, or interstate waters and therefore is not an (a)(1) water. Based on a review of the National Hydrography Dataset (NHD) the nearest waterway is an unnamed tributary to Door Creek located 0.56 miles east. The Wisconsin Wetland Inventory (WWI) shows a mapped wet symbol within the review area and the closest mapped wetland is approximately 0.25 mile to the east. The WDNR 2ft LiDAR Viewer contours map shows that W-1 is a concave feature with no surface connection to the nearest RPW or TNW. 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 lacks a continuous surface connection to a relatively permanent water and as such does not meet the definition of adjacent and cannot be evaluated as (a)(4) an adjacent wetland; therefore, W-1 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.
 - a. USACE Regulatory Viewer Accessed: July 17, 2025.
 - b. WDNR - Surface Water Data Viewer Accessed: July 17, 2025.
 - c. Google Earth Imagery Accessed: July 17, 2025.

⁸ 88 FR 3004 (January 18, 2023)

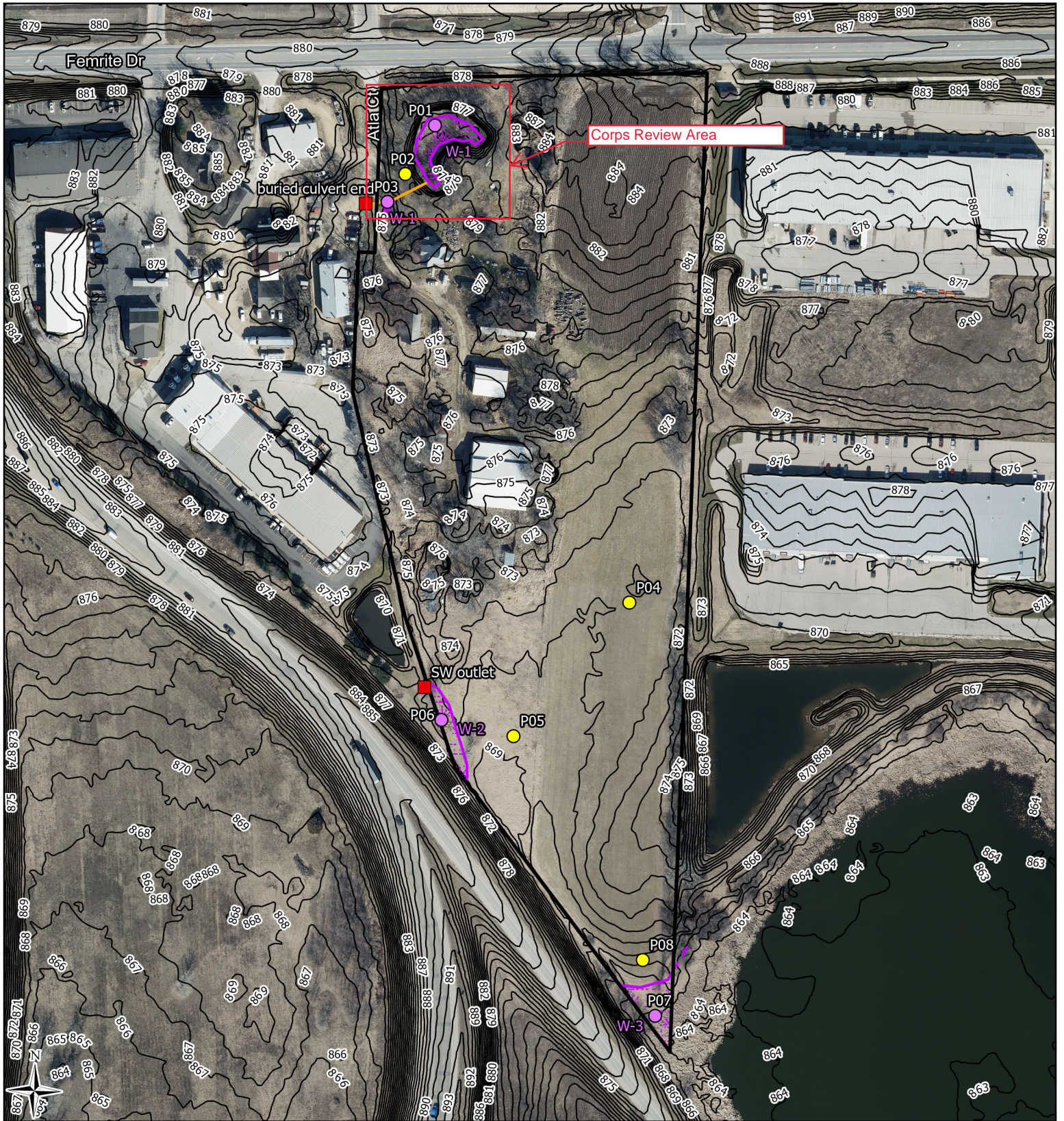
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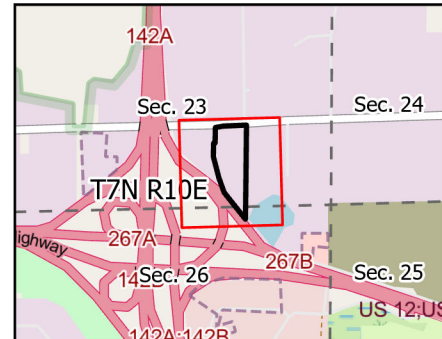
- d. Wisconsin Wetland Inventory, USDA Web Soil Survey, and USGS NHD and Topographic Maps Accessed: July 17, 2025, for Dane County, WI.
- e. USGS 1:24K Quad Name: Madison.
- f. Office evaluation conducted on July 17, 2025.

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.



- Study Area (13.03 AC)
 - Dane Co 1' Contours
 - Field Delineated Wetlands (0.26 ac)
 - Offsite Wetland Boundaries
 - Point Features
 - Culverts
- Sample Points**
- Upland
 - Wetland



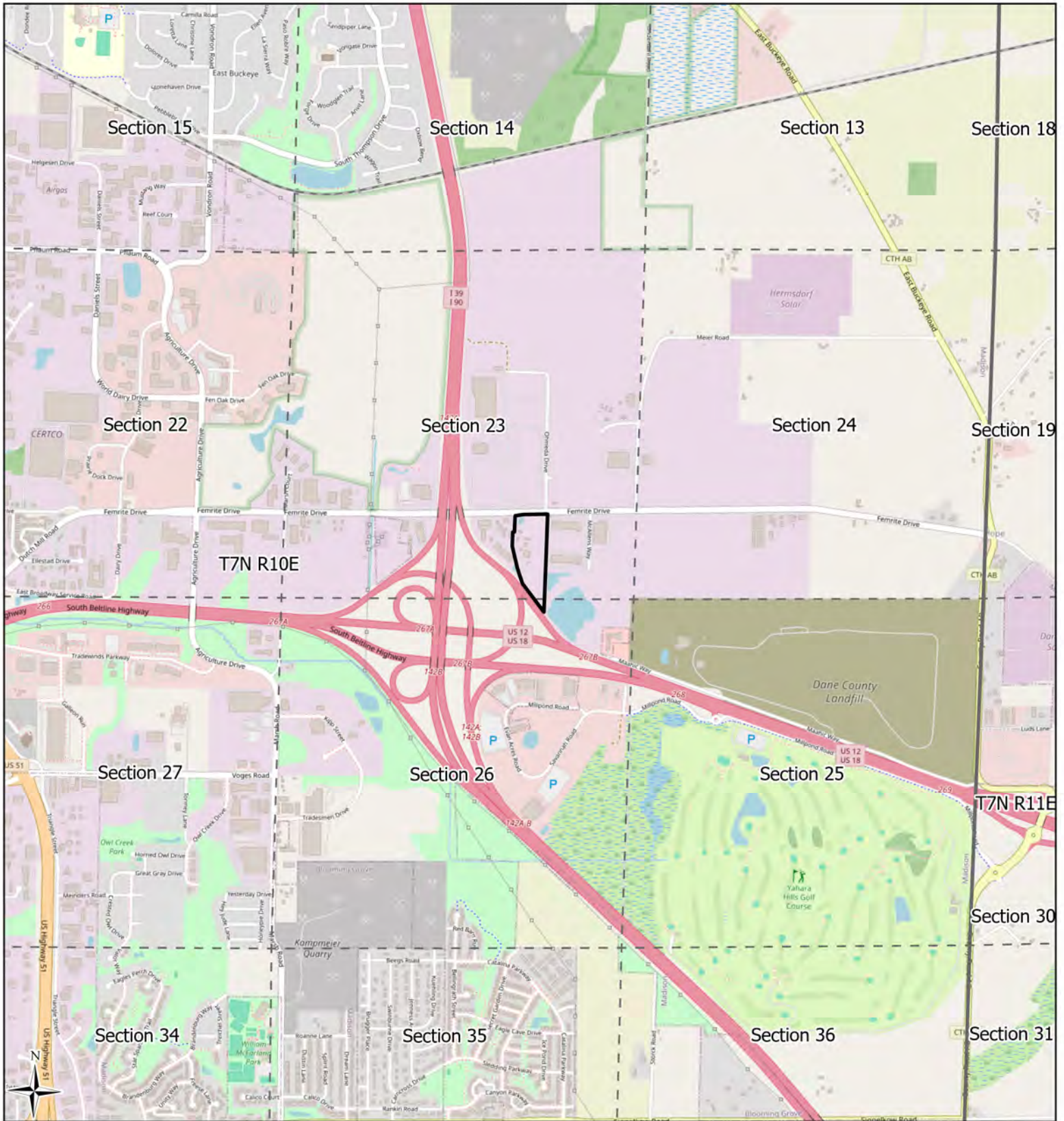
Heartland
ECOLOGICAL GROUP INC




Figure 7. Field Delineated Wetlands

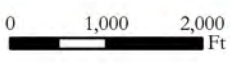
Ferrite Drive Parcels
Project #20251452
T7N, R10E, S23 & 26
C Madison, Dane Co

2024 Orthophoto
Dane Co, HEG LRR: NCNE

Figure Created: 4/23/2025



-  Study Area (13.03 ac)
-  Township
-  Section

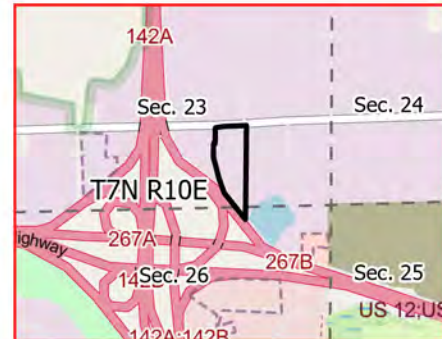


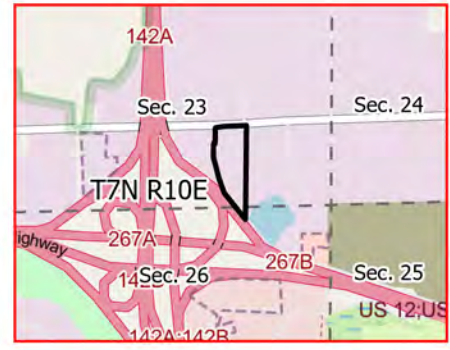
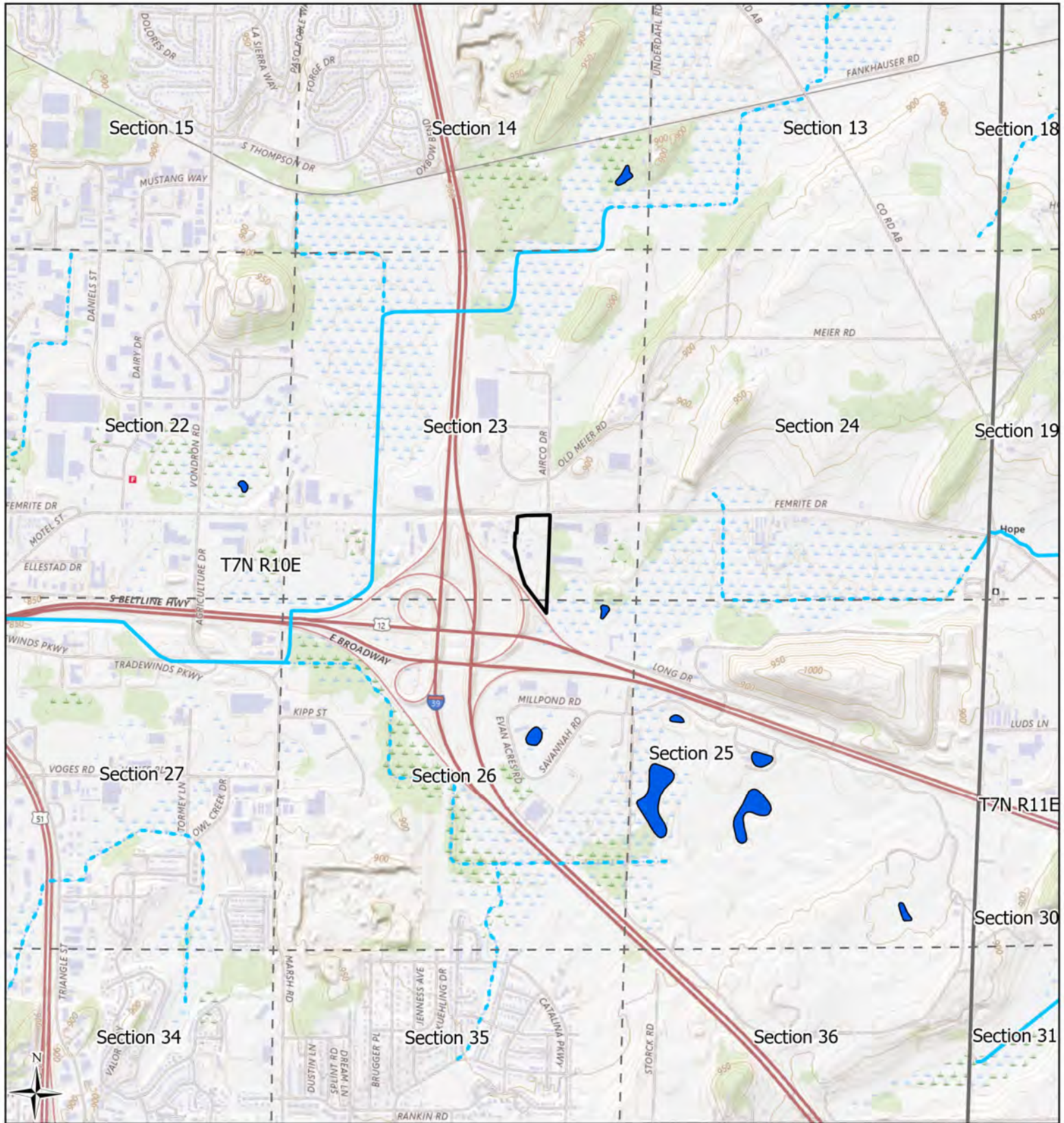
Heartland
ECOLOGICAL GROUP INC







Figure 1. Project Location
Femrite Drive Parcels
Project #20251452
T7N, R10E, S23 & 26
C Madison, Dane Co

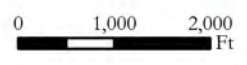
OpenStreetMap
ESRI LRR: NCNE

Figure Created: 3/10/2025





-  Study Area (13.03 ac)
-  Township
-  Section
-  Perennial Streams
-  Intermittent Streams
-  Waterbodies



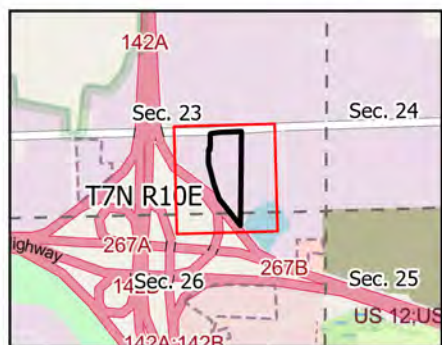
Heartland
 ECOLOGICAL GROUP INC







Figure 2. USGS Topography
 Femrite Drive Parcels
 Project #20251452
 T7N, R10E, S23 & 26
 C Madison, Dane Co

USGSTopo
 USGS, WDNR

LRR: NCNE

Figure Created: 3/10/2025



-  Study Area (13.03 AC)
-  WWI Polygons
-  WWI Points
-  Perennial Streams (None in Map Extent)
-  Intermittent Streams (None in Map Extent)
-  Waterbodies (None in Map Extent)



Heartland
 ECOLOGICAL GROUP INC

Figure 5. Wisconsin Wetland Inventory
 Femrite Drive Parcels
 Project #20251452
 T7N, R10E, S23 & 26
 C Madison, Dane Co

2024 NAIP
 WDNR, USGS

LRR: NCNE

Figure Created: 3/10/2025