



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

MVP

29 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-2025-00609-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, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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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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 (0.22 acre), non-jurisdictional
 - ii. Upland Constructed Ditch #1 (0.33 acre), non-jurisdictional
 - iii. Upland Constructed Ditch #2 (0.09 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 Upland Constructed Ditch #1 (0.33 acre), Upland Constructed Ditch #2 (0.09 acre), and Wetland 1 (0.22 acre), located on the 73.52 acre property in the City of Deforest, Dane County, Wisconsin. Latitude: 43.234324 Longitude: -89.340222. The Corps review area is shown on the enclosed figure labeled: MVP-2025-00609-KDZ, Figure 1. A previous AJD was prepared for the review area on February 11, 2020.

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

A May 2016 wetland delineation report prepared by Stantec Consulting Services, Inc. (Stantec) was submitted to the Corps documenting the presence of aquatic resources within approximately 73.52 acres of property in the City of Deforest, Dane County, Wisconsin. An AJD has been requested for two upland constructed ditches (Upland Ditch #1-0.33 acre and Upland Ditch #2-0.09 acre), and one wetland (Wetland 1-0.22 acre) as shown on the attached figure labeled MVP-2019-01851-KDZ: Figure 1. One other wetland (Wetland 2-13.12 acres) was also identified as part of the delineation report; however, the jurisdictional status of this wetland is not included with this AJD.

A separate and expired wetland delineation was completed for the site in 2003 and did not delineate Upland Constructed Ditch # 1 and Upland Constructed Ditch #2 as wetland. Between 2003 and 2016, portions of the site were graded to accommodate stormwater runoff from surrounding residential developments located north and west of the JD review area. Subsequently, Upland Constructed Ditch #1 and Upland Constructed Ditch #2 were formed in swales created due to grading and filling. These activities were confirmed by review of historic aerial photos, Wisconsin Wetland Inventory, NRCS Web Soil Survey (WSS), and the May 2016 Stantec wetland delineation report. Accordingly, the Corps has determined that both ditches/swales (Upland Constructed Ditch #1 and Upland Constructed Ditch #2) are excluded from Section 404 jurisdiction under (b)(7) of the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule as waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land, until abandoned.

- 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).

⁸ 88 FR 3004 (January 18, 2023)

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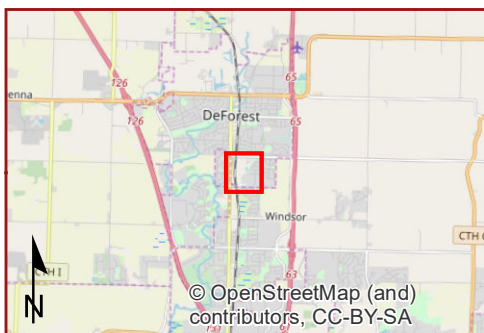
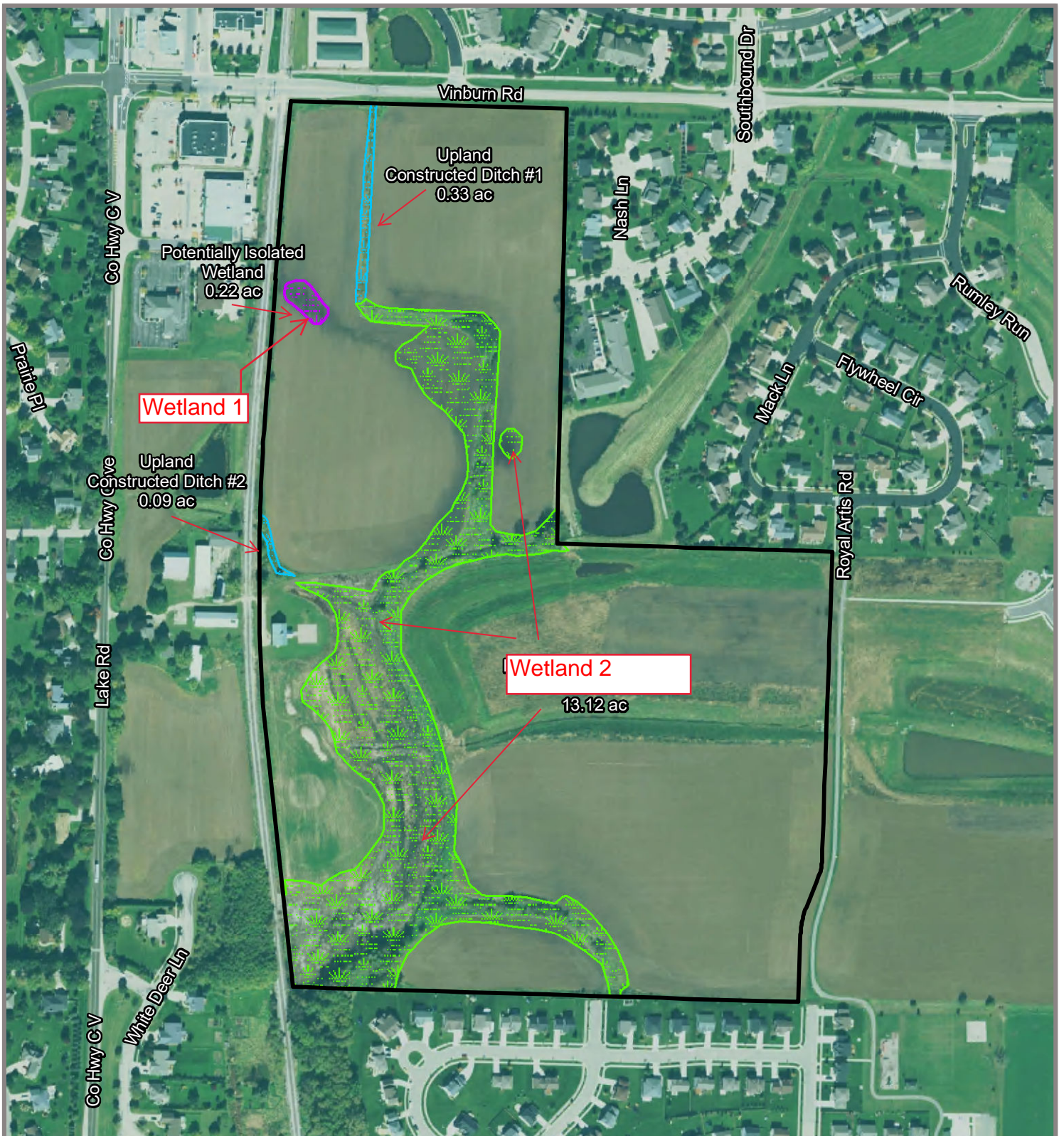
Wetland 1 (0.22 acres) and is a farmed depressional feature surrounded by a city street to the west, and agricultural fields to the north, east, and south. According to the WSS, Wetland 1 is located in Virgil silt loam (VrB) soil unit which is described as a hydric poorly drained soil with 1-4 percent slopes and a depth to water table of approximately 0-12 inches. The nearest RPW (unnamed tributary) is situated approximately 0.40 mile southeast of Wetland 1. No surface water features were identified within or near Wetland 1 which could potentially serve as a hydrologic connection to the unnamed tributary. Stantec confirmed via field investigation that Wetland 1 is surrounded by uplands. Wetland 1 is not a TNW, territorial seas, or interstate waters and therefore is not an (a)(1) water. The WDNR 2ft LiDAR Viewer contours map shows that Wetland 1 is a concave feature with no surface connection to the nearest RPW or TNW. Wetland 1 does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetland 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, Wetland 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. Corps Approved Jurisdictional Determination dated February 11, 2020.
 - b. May 2016 Stantec Wetland Report.
 - c. USACE Regulatory Viewer Accessed: July 29, 2025.
 - d. WDNR - Surface Water Data Viewer Accessed: July 29, 2025.
 - e. Google Earth Imagery Accessed: July 29, 2025.
 - f. Wisconsin Wetland Inventory, USDA Web Soil Survey, and USGS NHD and Topographic Maps Accessed: July 29, 2025, for Dane County, WI.
 - g. USGS 1:24K Quad Name: Deforest.
 - h. Office evaluation conducted on July 29, 2025.
10. OTHER SUPPORTING INFORMATION. N/A

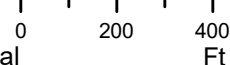
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11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance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



- Study Area (73.52 ac)
- Potentially Jurisdictional Wetlands
- Potentially Isolated Wetland
- Upland Constructed Ditches



Heartland
 ECOLOGICAL GROUP INC

Figure 5. USACE AJD Wetlands

Heritage Gardens
 Project #20190217
 T9N, R10E, S20
 V Deforest, Dane Co, WI

NAIP Year 2018
 Data: USDA, HEG 11/19/2019