



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

MVP-2025-00810-JMK

22 August 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-2025-00810-JMK MFR 1 of 1²

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*").

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00676-JMK

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. 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. S01, Non-Jurisdictional
 - ii. S02, Non-Jurisdictional
 - iii. OW01, Non-Jurisdictional
 - iv. W01, Non-Jurisdictional
 - v. W03, Non-Jurisdictional
 - vi. W04, 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).

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-2025-00676-JMK

3. REVIEW AREA. The review area for this determination includes two non-jurisdictional ditches, one non-jurisdictional pond, and three non-jurisdictional wetlands, as identified in Section 1(a) of this MFR and shown on the attached figures labeled MVP-2025-00810-JMK AJD Pages 1-2 of 2.
 - a. Project Area Size (in acres): 2.27 acres
 - b. Location Description: The project/review area is located in Section 1, Township 32 North, Range 18 East, Marinette County, Wisconsin.
 - c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 45.2801 Longitude: -88.1955
 - d. Nearest City or Town: Stephenson
 - e. County: Marinette
 - f. State: Wisconsin
 - g. Other associated Jurisdictional Determinations (including outcomes): N/A
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
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

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00676-JMK

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

- 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).

Ditches S01 (799 LF) and S02 (9 LF) are linear drainage features located at the base of the High Falls Reservoir dam that collect seepage water. According to recent aerial imagery and photographs submitted by the agent, these features do exhibit flowing and/or standing water during normal hydrologic conditions and therefore meet the relatively permanent water standard. However, S01 is

⁸ 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00676-JMK

confined by uplands to the north, the dam structure along its northwestern boundary, and non-jurisdictional wetland W01 along its southeastern boundary; S02 continues from the survey area to the southwest where it experiences a rise in elevation and a clear upland break from another channel, Ditch S05, that exhibits relatively permanent flow off-site. In addition, OW01 exhibits standing water during normal hydrologic conditions and meets the relatively permanent standard. However, OW01 is entirely surrounded by non-jurisdictional wetland W01.

Because these resources do not flow directly or indirectly through another water or waters to a paragraph (a)(1) or (a)(2) water they do not meet the definition of a tributary. Therefore, these resources were assessed as a potential paragraph (a)(5) water. However, these resources do not exhibit a continuous surface connection to a (a)(1) or (a)(3) water and do not meet the continuous surface connection requirement. In conclusion these resources cannot be evaluated as an (a)(5) water and are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

Wetlands W01, W03, and W04 are not traditionally navigable waters (TNW), territorial seas, or interstate waters and therefore are not (a)(1) waters.

Topographic maps, LiDAR data, and recent aerial imagery indicate wetland W04 is a depressional basins surrounded entirely by upland. Wetland W01 is surrounded by uplands along three sides of it's boundary, non-jurisdictional water S01 is located along the northwest boundary. The majority of W03 is surrounded by upland, it does receive flow directly from s02 into the northern portion of the wetland. Therefore, wetlands W01 and W03 do not meet the continuous surface connection requirement to a requisite jurisdictional water.

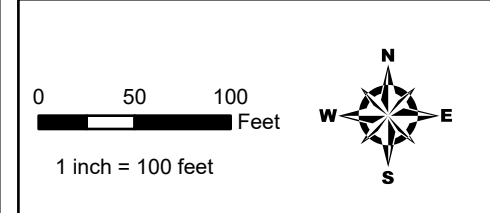
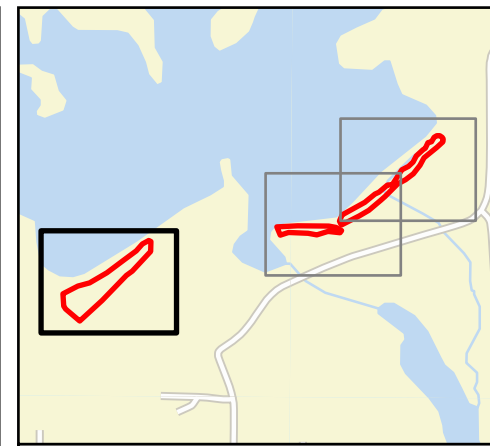
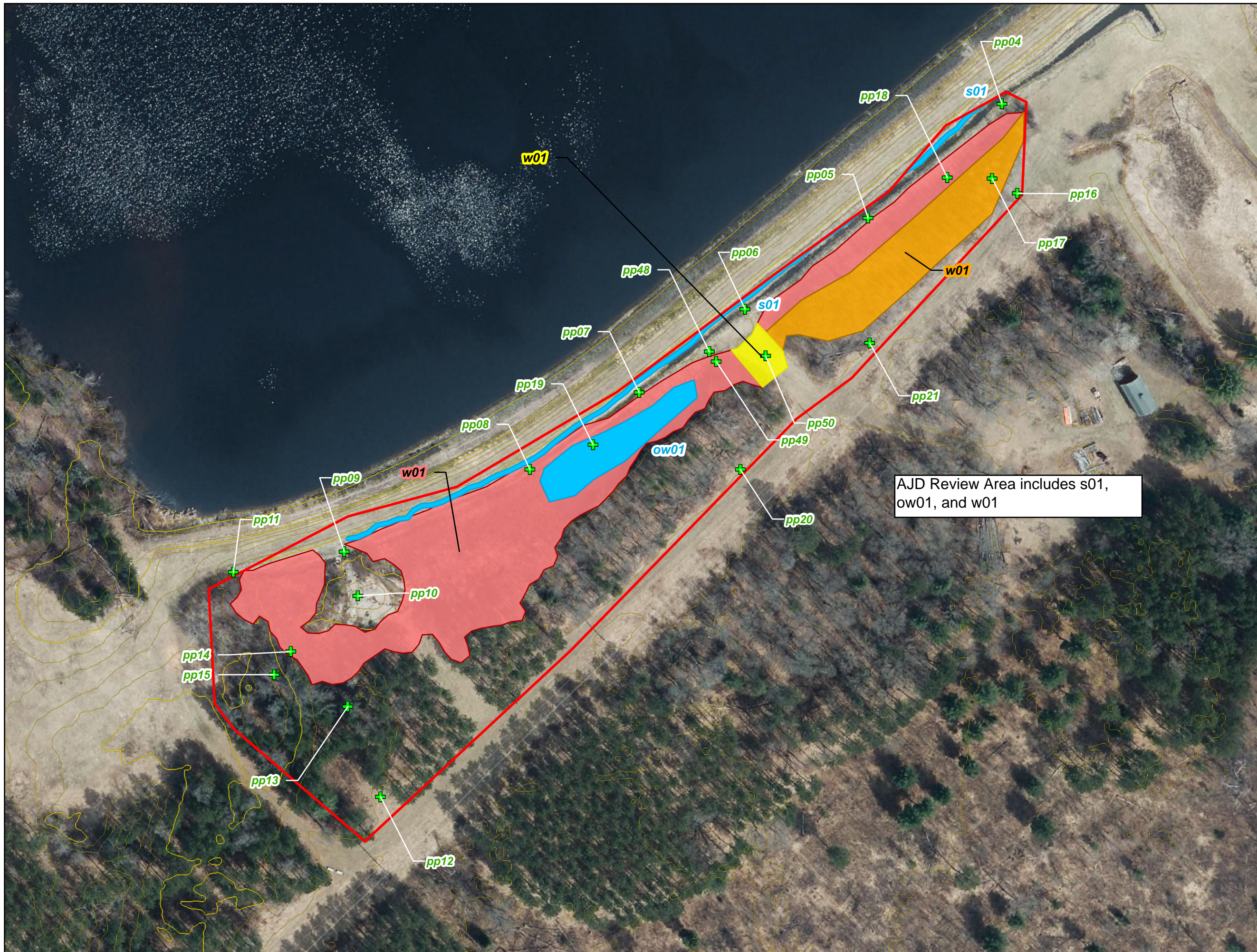
Wetlands W01, W03, and W04 do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. These wetlands are located approximately 87 feet from the nearest requisite jurisdictional water, the High Falls Reservoir, located north of the review area.

Wetlands W01, W03, and W04 are non-tidal wetlands that do not abut a relatively permanent jurisdictional water and, as such, do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00676-JMK

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. High Falls Embankment Clearing Project, Marinette County – Request for Approved Jurisdictional Determination dated July 15, 2025.
 - b. Photographs submitted by Merjent, Inc on August 6, 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.



- Survey Area
- + Photo Point
- Determined Waterway
- Determined Wetland
- Alder Thicket
- Fresh (Wet) Meadow
- Shrub-Carr

AJD Review Area includes s01, ow01, and w01

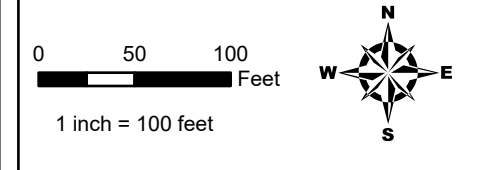
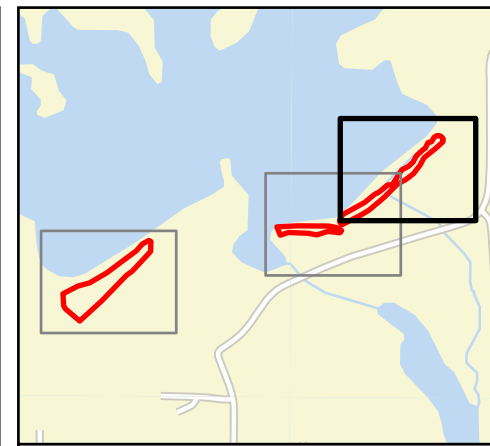
Figure 5
Wetland Determination
High Falls Hydro
Embankment Clearing
Wisconsin Public Service
Marinette County, WI
 Page 1 of 3



Source: Z:\Clients\U_X\WPS\Hydro\Projects\High_Falls\ArcGIS\Biological\002_ArcPro\High_Falls_Hydro_Embankment_Clearing.aprx Date: (7/15/2025)



AJD Review Area includes s02, and w03



- Survey Area
- + Photo Point
- Determined Waterway
- Determined Wetland
 - Alder Thicket
 - Fresh (Wet) Meadow
 - Shrub-Carr

Figure 5
Wetland Determination
High Falls Hydro
Embankment Clearing
Wisconsin Public Service
Marinette County, WI



Source: Z:\Clients\U_X\W\PS_U_Hydro_Projects\High_Falls\ArcGIS\Biological\00_T_ArcPro\High_Falls_Hydro_Embankment_Clearing.aprx