



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

MVP

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-2025-01179-ALH [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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01179-ALH

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
Wetland 1	Non-Jurisdictional	N/A

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): 0.6 acre
- b. Location Description: The project/review area is located in Section 19, Township 15N, Range 17E, Fond du Lac County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.757720 Longitude: -88.511000
- d. Nearest City or Town: Fond du Lac
- e. County: Fond du Lac
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01179-ALH

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01179-ALH

- 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 [Part of Wetland 1 is a constructed linear ditch feature that is not a water of the U.S. It is parallel to Wild West Lane on the south side. The landscape position along a gradual slope, and the historic aerial imagery in the location of the ditch indicate active farm fields in this area, suggesting uplands prior to construction of Wild West Lane around 2005. Multiple years of recent aerial imagery show there is not a relatively permanent flow of water in this feature as no surface water is seen in the aerial photos. The Digital Elevation Model shows the slope of this wetland going north. There appears to be a culvert under Wild West Lane going north, however there are no indicators of an Ordinary High-Water Mark near or through that culvert on recent imagery or in the Wetland Delineation Report. The linear portion of Wetland 1 is entirely within the delineated area. Part of this wetland fits under the definition of a b(3) water, from 33 CFR 328.3(b) as it is a linear ditch excavated in and draining only dry land and does not carry a relatively permanent flow of water.]
- 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). [Most of Wetland 1 extends south outside of the linear ditch and into the undeveloped lot. The National Wetland Inventory layer on the National

⁹ 88 FR 3004 (January 18, 2023)

MVP

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Regulatory Viewer does not indicate a presence of wetlands where this wetland is located. The Hillshade layer, Digital Elevation Model (DEM) layer, and 2-ft Contours layer indicate that the wetland transitions to upland to the east and west while the linear ditch portion is to the north. As described above in section 8a, the linear ditch does not have a relatively permanent flow of water, so this part of Wetland 1 does not abut a relatively permanent water. To the south, Wetland 1 appears to abut a man-made pond that was dug between 1992 and 2002 for the residential subdivision. This pond has two linear features on the southside. However, neither of them serves as a connection with a relatively permanent flow to a jurisdictional water. The Hillshade layer, Digital Elevation Model (DEM) layer and 2-ft Contours layer indicate that the linear features lose their defining topographies as they get further away from the pond. The West Branch of the Fond du Lac River is approximately 0.8 miles to the north of these linear features. The linear feature that stretches to the west has partially hydric (2%) or not hydric soils, indicating a lack of relatively permanent flow. The 2-ft Contours layer shows that it loses its ditch-like curve around 650 linear feet away from the pond between active agricultural fields, which also indicate uplands. The linear feature that stretches to the east has varying levels of hydric soils and the 2-ft Contours layer shows that it loses its ditch-like curve around 680 linear feet away from the pond between residential developments.

The wetland is not a TNW, territorial sea, or interstate water and therefore not an (a)(1) water. The wetland does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. The wetland is a nontidal wetland that does not abut a relatively permanent jurisdictional water and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, the wetland 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. [Office evaluation was conducted on December 8 and 9, 2025.]
 - b. [Wild West Lane Property Professionally Assured Wetland Delineation Report prepared by Evergreen Consultants, LLC dated August 1, 2025.]
 - c. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, 2-ft Contours, Hillshade layer, DEM layer and WDNR Imagery 2022, 2020 and 2015 accessed on December 8, 2025.]

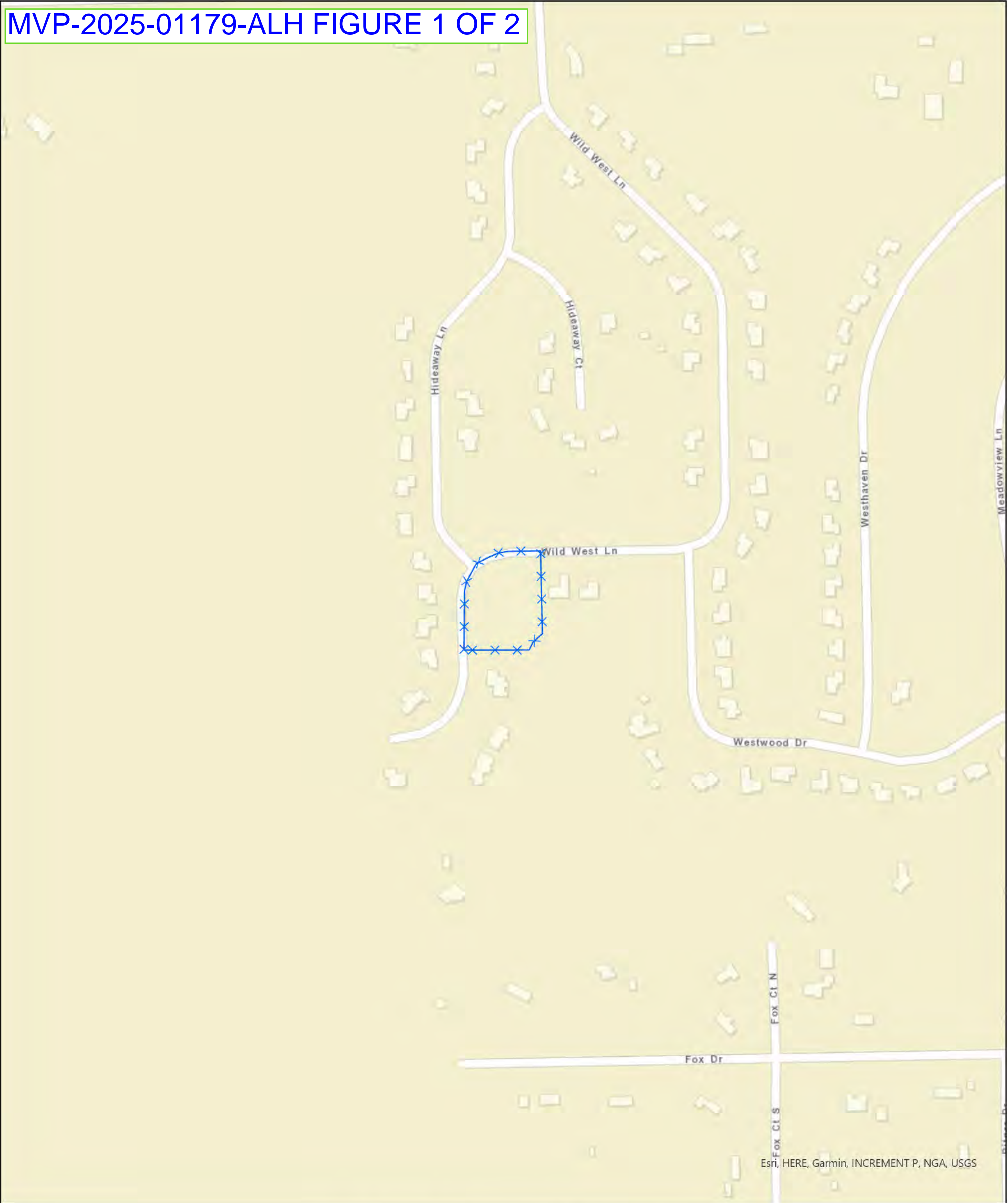
MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01179-ALH

- d. [Google Earth Aerial Imagery Finder, imagery from 1992 and 2002. Accessed December 9, 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.



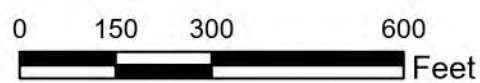
Wild West Lane Property
Site Location Map
Wild West Lane
Town of Fond Du Lac
Fond Du Lac County, WI

Legend

 Site Boundary



Project: FDL25-067-01



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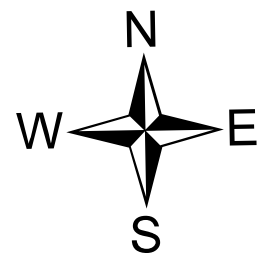


Maxar, Microsoft

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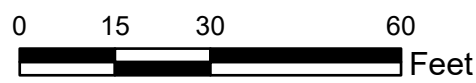
- Site Boundary
- Sample Point
- Wetland Line
- Wetland

**Wild West Lane Property
Wetland Delineation Map
Wild West Lane
Town of Fond du Lac
Fond du Lac County, WI**



Wetland Delineation was conducted by
Chad Fradette, EP, Chem,
WDNR Professionally Assured Wetland Delineator
with assistance from
Shyann Banker, Environmental Scientist
WDNR Professionally Assured Wetland Delineator

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