



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

March 5, 2026

Regulatory File No. MVP-2026-00145

Al Brisack
Edgewood College
1000 Edgewood College Dr
Madison, WI 54711
abrisack@edgewood.edu

Dear Al Brisack,

This letter contains an Approved Jurisdictional Determination (AJD) for the area(s) identified below, located on the Rettler Corporation Site in Section 17, Township 06N, Range 09E, Dane County, Wisconsin. The review area for this determination is identified on the enclosed figure labeled: MVP-2026-00145 AJD Figure.

Non-Jurisdictional Area(s):

We have determined that the following area(s) are not waters of the United States subject to Corps of Engineers (Corps) jurisdiction under Section 404 of the Clean Water Act or Sections 9 or 10 of the Rivers and Harbors Act:

- Wetland 1-E, (12.48 acre)
- Wetland 2-E, (2.29 acre)

You are not required to obtain Corps authorization within the area(s) listed above. This determination only applies to the area(s) identified above and is based on a reasonable approximation of their location and boundaries. The basis for this determination is provided in the enclosed Memorandum for Record.

The proposed work identified in your request and reflected on the attached drawing(s) does not require Corps authorization. If a change in design or location is contemplated, please contact our office to reassess permit requirements. Please note that you may need state or local authorizations.

Agricultural Lands Information:

This determination has been conducted to identify the location and extent of the aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of an NRCS Certified Wetland Determination with the local USDA service center, prior to starting work.

Appeal Process:

If you object to this approved jurisdictional determination, you may request an administrative appeal under Corps regulations at 33 CFR 331. Enclosed you will find a Notification of Appeal

Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Mississippi Valley Division Office at the address shown on the form. In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the enclosed NAP.

It is not necessary to submit an RFA form to the division office if you do not object to the determination in this letter.

AJD Expiration:

This AJD may be relied upon for five years from the date of this letter. However, the Corps reserves the right to review and revise the determination in response to information that was not considered during our initial review.

Contact Information:

If you have any questions, please contact me in our Green Bay at 651-290-5315 or benjamin.j.lacount@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,



Benjamin LaCount
Project Manager

Enclosures
AJD MFR, Appeals Form

cc:
Chase Rettler, (Rettler Corporation) crettler@rettler.com
Al Ramminger (WDNR) Allen.Ramminger@wisconsin.gov



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CEMVP-RD

March 5, 2026

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-2026-00145, 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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2026-00145

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-E (12.48 acres) | Non-Jurisdictional | None |
| Wetland 2-E (2.29 acres) | 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 Area Size (in acres): 12 acres
- b. Location Description: The project/review area is located in Section 17, Township 06N, Range 09E, Dane County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 42.999230 Longitude: -89.463060
- d. Nearest City or Town: Fitchburg
- e. County: Dane
- 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.⁶ N/A
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.
 - 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).

Wetland 1-E (12.48 acres) and Wetland 2-E (2.29 acres) are not a TNW, territorial sea, or interstate water and therefore are not an (a)(1) water. Topographic maps w/Lidar and Google Earth aerial imagery indicate that Wetlands 1-E and 2-E are depressional wetlands, surrounded by upland. The wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The wetlands are located approximately 1.7 miles west of Nine Springs Creek, the nearest Relatively Permanent Water (RPW) located east of the review area. However, there are no ditches, swales, pipes, or culverts that connect these wetlands to a downstream jurisdictional water. The wetlands are nontidal and do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as a (a)(4) adjacent wetland; therefore, Wetlands 1-E and 2-E are not

⁹ 88 FR 3004 (January 18, 2023)

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jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

Wetlands 1-E and 2-E both extend beyond the review area, but they were confirmed by the consultant to be enclosed depressions on the landscape, located south of west Seminole Highway and south of Lacy Road, that do not have a continuous surface connection to any relatively permanent jurisdictional water, and are not jurisdictional.

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. Wetland Delineation Report from NES Ecological Services (NES) (dated June 2019)
 - b. LiDAR 1’ contours – WDNR Surface Water Data Viewer (included with Wetland Delineation Report)
 - c. United States Fish and Wildlife Service (USFWS) National Wetland Inventory (dated November 2025)
 - d. Offsite aerial imagery review from Farm Service Agency (FSA), National Agriculture Imagery Program (NAIP), and Google Earth (included with Wetland Delineation Report) (dated 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2008, 2010, 2012, 2013, 2015, 2017, and 2018, 2020, 2021, and 2023)
 - e. Offsite aerial imagery review from Google Earth (dated 2020, 2021, 2022, 2023, 2024, and 2025)
 - f. USACE National Regulatory Viewer layers consisting of DEM, Hillshade, and National Wetland Inventory Accessed: February 27, 2026.
 - g. USGS 1:24K Quad Name: Oregon and Madison West.
 - h. Office evaluation conducted on February 27, 2026.
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.

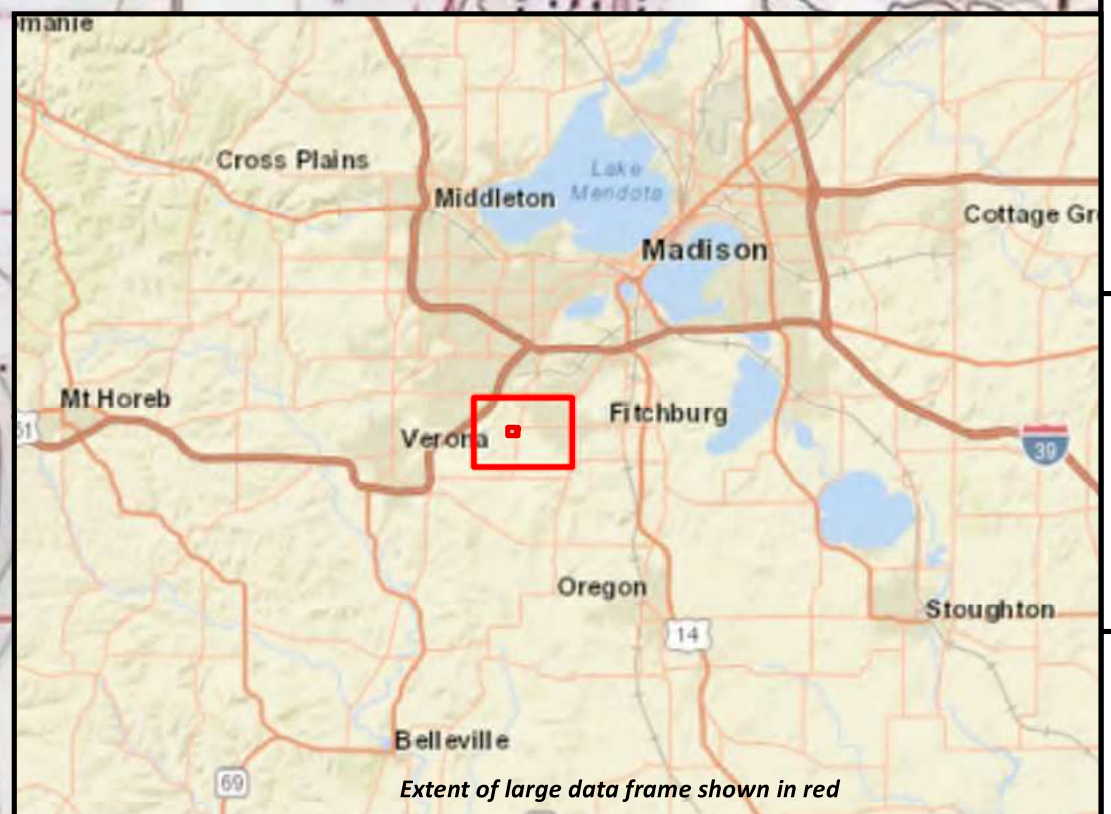
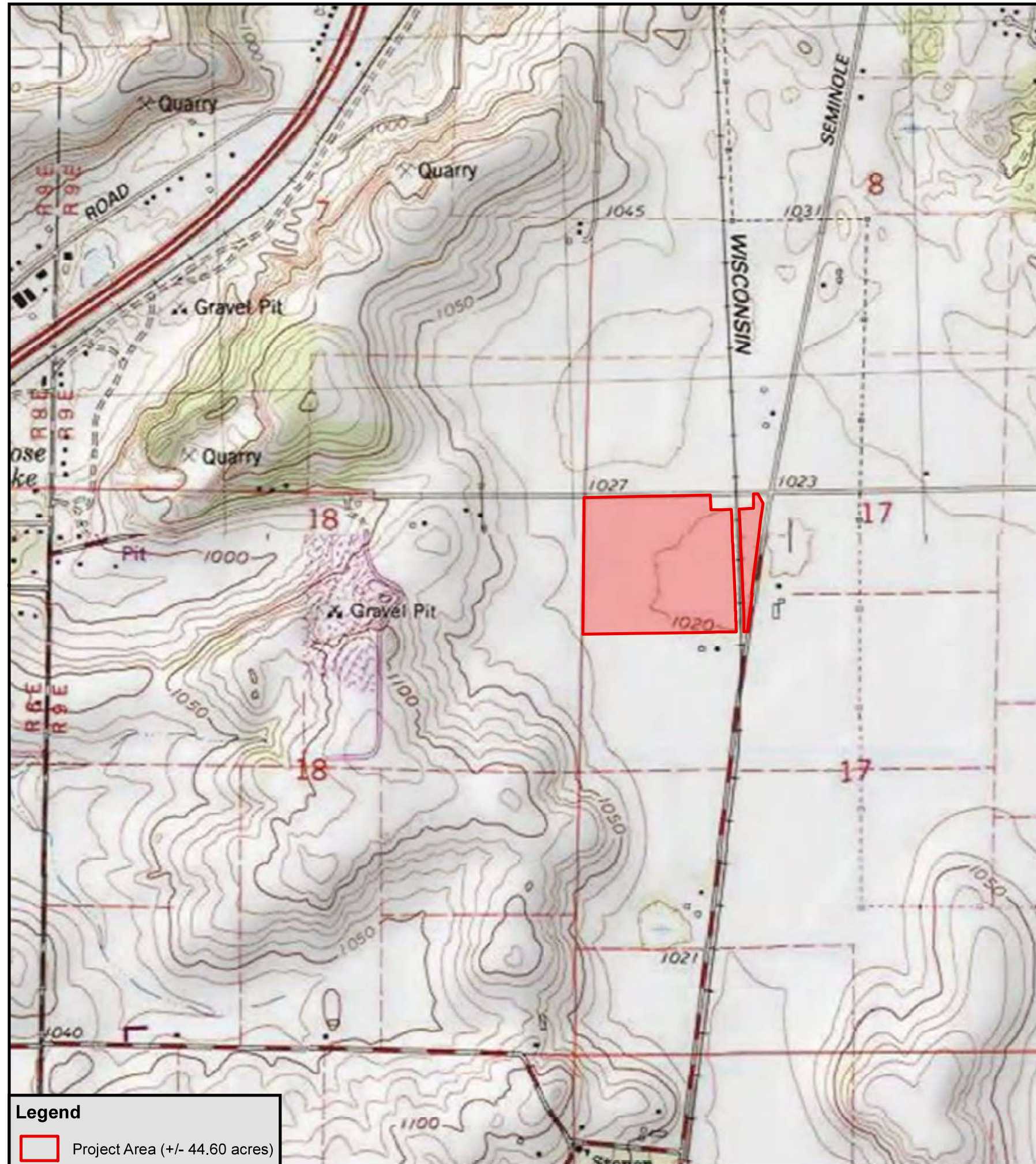
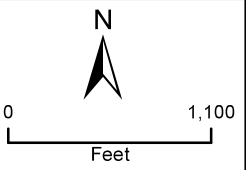


Site Location

5/9/2019

Rettler Corporation
225/0609-172-8501-1 & 225/0609-172-8091-8
NES Project No. 13485019
City of Fitchburg
Dane County, Wisconsin

Located in part of:
Section 17, T06N, R09E
City of Fitchburg
Dane County
Wisconsin



Legend

 Project Area (+/- 44.60 acres)

Extent of large data frame shown in red

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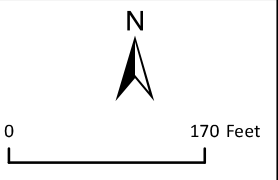


Delineated Wetland

6/12/2019

Rettler Corporation
225/0609-172-8501-1 & 225/0609-172-8091-8
NES Project No. 13485019
City of Fitchburg
Dane County, Wisconsin

Sources: Robert E. Lee & Associates, Inc.,
SOURCES
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AJD Review Areas
(Wetlands 1-E & 2-E)



Legend

- Sample Plot
- Culvert-Pipe
- ↔ Wetland Line
- ▭ Project Area - (+/-44.60 acres)

WWI Classification

- ▭ E - Emergent/Wet Meadow (+/- 643,473 sq ft)

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