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

CEMVP-RD

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-2026-00712 [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.

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
W-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 Area Size (in acres): 58.58 acres
   b. Location Description: The project/review area is located in Section 20, Township 008N, Range 019E, Waukesha County, Wisconsin.
   c. Center Coordinates of the Project Site (in decimal degrees)
      Latitude: 43.138230 Longitude: -88.266120
   d. Nearest City or Town: Lisbon
   e. County: Waukesha
   f. State: Wisconsin
   g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2009-01334	AJD	All waters were determined to be non-jurisdictional (excluded waters) under the AJD

MVP-2012-00526	AJD	All waters were considered as non-jurisdictional under the AJD.

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 WATERS[7]: 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.

[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.

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).[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).

We have reviewed and evaluated the current and historical photography, LiDAR, soil mapping, and the information submitted by the applicant for the following features under the categories of waters of the United States:

- Wetland 1, non-jurisdictional

[9] 88 FR 3004 (January 18, 2023)

Wetland 1 (1.07 acres) is located within a closed depression with uplands on all sides. The wetland delineation sheets completed by Heartland Ecological Group, Inc. on July 8, 2021 indicate that the delineated wetland does not extend further west into the site, as there are three surrounding upland data points around the wetland data point. The WI 24k Hydro Flowlines Stream Order mapping layer showed that there is a stream just north of Wetland 1, which is consistent with the information reported in the delineation documents. Inspection of Lidar, including the Digital Elevation Model (DEM) and Hillshade showed that Wetland 1 is located at the lowest part of the site, and that there seems to be a similar elevation as the wetland across the eastern road. Aerial imagery indicates minor earth disturbance consistent with agricultural practices in the past decade in the vicinity of the mapped resource, but Wetland 1 was left primarily untouched. Photos taken in the field of the two culvert resources showed that there is no continuous surface flow through the 18-inch culvert that would connect Wetland 1 to the stream along the north of the site. No pooling or additional wet features can be observed at the inlet or outlet of the culvert. USACE reviewed additional offsite resources to check for possible connections to this mapped wetland. LiDAR imagery shows the elevation dropping to the north, which indicates wetland drainage in that direction. There are no other aerial signatures that indicate the presence of another aquatic resource. This leads USACE to understand that there is no evidence to show that Wetland 1 is connected to the stream feature and is surrounded by uplands. Therefore Wetland 1 is not a jurisdictional wetland.

The wetland is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. The wetland does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and is not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. 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 conducted on July 24, 2026.

   b. Wetland Delineation Report, completed by Heartland Ecological Group, Inc on August 13, 2021.

c. Wetland Delineation Data Sheets completed by Heartland Ecological Group, Inc. on July 8, 2021.

d. GIS Layers consisting of the National Wetland Inventory layer, the Wisconsin Wetland Inventory layer, DEM, Hillshade, and WI 24k Hydro Flowlines Stream Order, accessed using the National Regulatory Viewer on July 24, 2026.

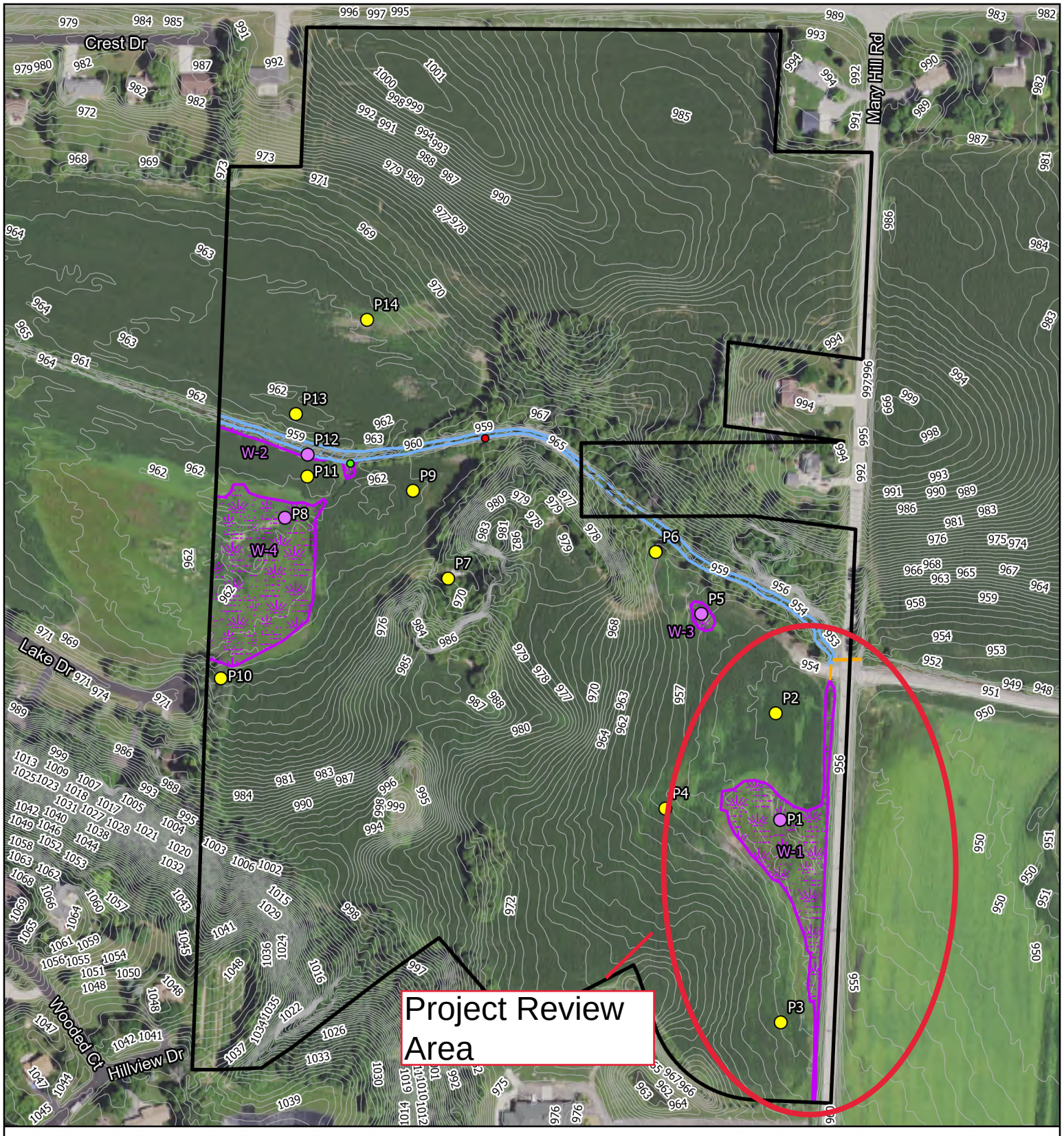
e. Historic aerial imagery accessed using Google Earth on July 24, 2026.

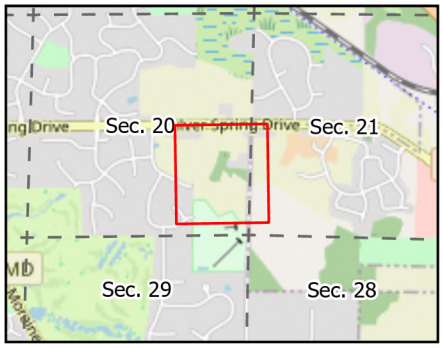
f. Site photographs taken on July 21, 2026.

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.

MVP-2026-00712





- Study Area (58.58 ac)
- Wetlands (2.74 ac)
- Waterways
- Offsite Waterways
- Field Recorded Culvert
- Field drain tile outlet
- Field tile riser
- Waukesha Co 1ft Contours

Field Recorded Sample Points

- Upland
- Wetland

0 300 Ft

Heartland ECOLOGICAL GROUP INC

Figure 6. Field Map

Hickory Hill West
Project #20210534
T8N, R19E, S20
T Lisbon, Waukesha Co

2020 NAIP
Waukesha Co, HEG