



**DEPARTMENT OF THE ARMY**  
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS  
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CESWL-RD

17 December 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime  
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322  
(2023),<sup>1</sup> **SWL-2024-00383**

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.<sup>2</sup> 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.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

1. SUMMARY OF CONCLUSIONS.

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<sup>1</sup> While the Supreme Court's decision in *Sackett* 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area). The review area includes a baseball field and park which has been in service for over 40 years. U.S. Fish and Wildlife Service National Wetlands Inventory Map indicates a pond is located within the review area; however, the applicant has provided evidence that the pond does not exist and has not since the development of the area. These findings were corroborated by Corps personnel via desktop review. Corps personnel also concurred that there are no aquatic features within the review area.

## 2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is an approximately 1.7-acre site southwest of the intersection of Jefferson Ave. and North Main Ave. in Section 13, Township 25 N., Range 32 W., Neosho, Newton Co., MO. The site lies within an area of historical development and is currently a park with recreational facilities and a baseball field. The coordinates for the center of the review area are 36.8848, -94.3766. Figures 1-8 provide maps highlighting topography and photos of specific locations throughout the subject property.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A<sup>5</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A

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<sup>5</sup> 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.

6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: 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.<sup>7</sup> 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 pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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. TNWs (a)(1): N/A
  - b. Interstate Waters (a)(2): N/A
  - c. Other Waters (a)(3): N/A
  - d. Impoundments (a)(4): N/A
  - e. Tributaries (a)(5): N/A
  - f. The territorial seas (a)(6): N/A
  - g. Adjacent wetlands (a)(7): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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<sup>6</sup> 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.

<sup>7</sup> 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.

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).<sup>8</sup> Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A
  - b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A
  - c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
  - d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
  - e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A
  - f. 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 pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). N/A
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. A Corps desktop review was conducted on December 17, 2024.

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<sup>8</sup> 51 FR 41217, November 13, 1986.

- b. Applicant provided request: Request 404 Review.pdf, Accessed December 17, 2024.
- c. NHD data accessed on National Regulatory Viewer, Accessed December 12, 2024.
- d. USGS Topographic Quadrangle Tipton Ford, MO (1:24K), Accessed December 12, 2024.
- e. U. S. Fish and Wildlife Service. Publication date (found in metadata). National Wetlands Inventory website, Accessed December 17, 2024.
- f. Google Earth Pro. (1993-2024 Imagery). Lat. 36.8848°, Long. -94.3766°, Accessed December 17, 2024.
- g. USDA Natural Resources Conservation Service Soil Survey. Citation: USDA-NRCS Web Soil Survey. Accessed December 17, 2024.
- h. OTHER SUPPORTING INFORMATION.

Leasure, D.R.; Magoullick, D.D.; Longing, S.D. 2016. Natural flow regimes of the Ozark-Ouachita interior highlands region. *River Res. Appl.* 32: 18–35.

10. OTHER SUPPORTING INFORMATION. N/A

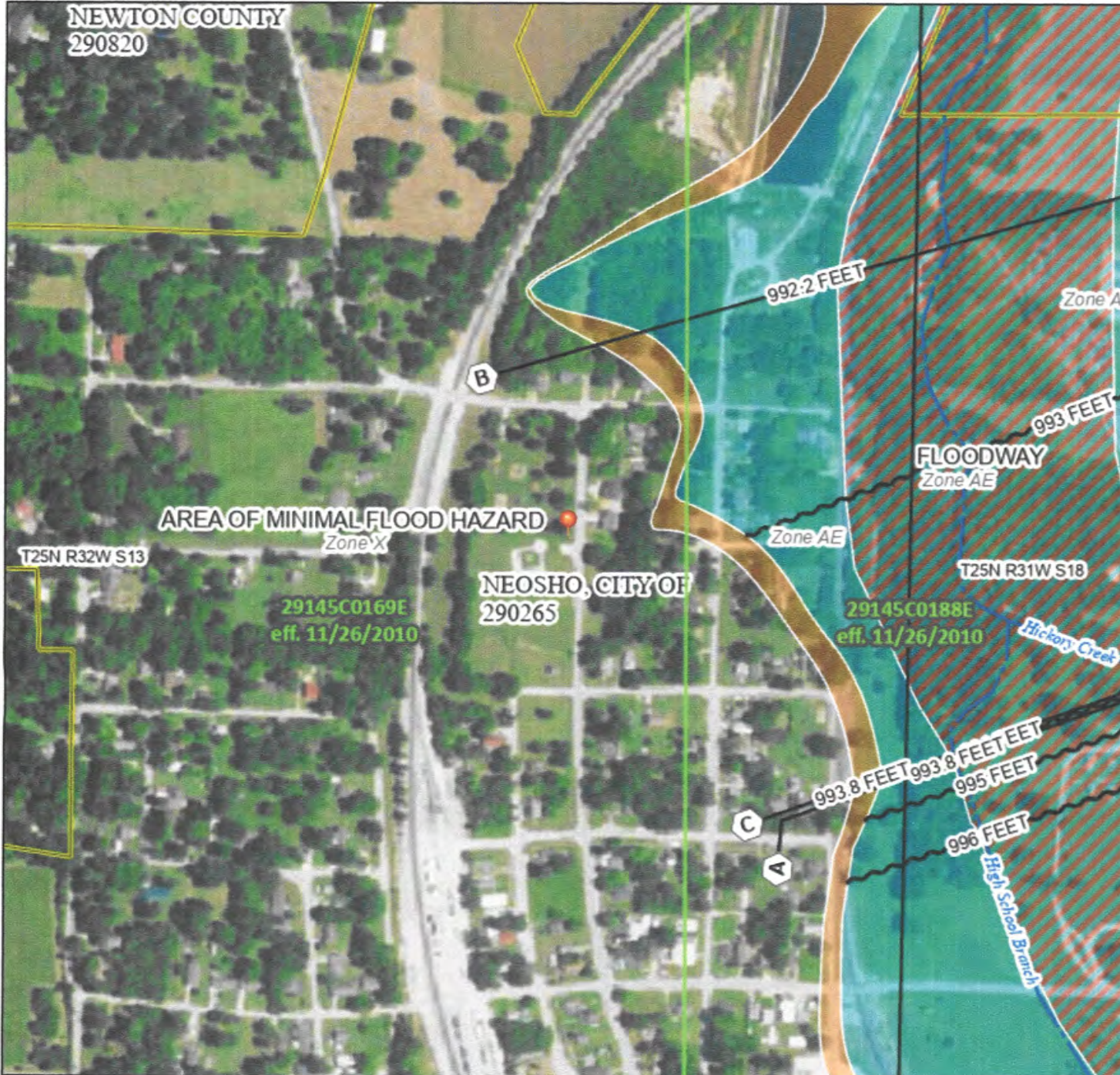
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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



# National Flood Hazard Layer FIRMette



94°22'53"W 36°53'20"N



0 250 500 1,000 1,500 2,000 Feet 1:6,000

94°22'15"W 36°52'51"N

Basemap Imagery Source: USGS National Map 2023

## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone I
		Channel, Culvert, or Storm Sewer
OTHER FEATURES		Levee, Dike, or Floodwall
		Cross Sections with 1% Annual Chance Water Surface Elevation
MAP PANELS		Coastal Transect
		Base Flood Elevation Line (BFE)
OTHER FEATURES		Limit of Study
		Jurisdiction Boundary
OTHER FEATURES		Coastal Transect Baseline
		Profile Baseline
OTHER FEATURES		Hydrographic Feature
		Digital Data Available
MAP PANELS		No Digital Data Available
		Unmapped



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 11/7/2024 at 9:46 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is elements do not apply legend, scale bar, FIRM panel number unmapped and unregulatory purpose

Action No. SWL 2024-00383  
Neosho, Newton Co., MO  
City of Neosho, Scenic Park NPR  
Section: 8 Township: 15 N. Range: 31 W.  
December 2024 Page 1 of 8





U.S. Fish and Wildlife Service









# National Wetlands Inventory

## 2024 Scenic Park Phase I



November 7, 2024

### Wetlands

- |  |   |  |
|--|---|--|
|  Estuarine and Marine Deepwater |  Freshwater Emergent Wetland       |  Lake     |
|  Estuarine and Marine Wetland   |  Freshwater Forested/Shrub Wetland |  Other    |
|  |  Freshwater Pond                   |  Riverine |

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

Action No. SWL 2024-00383  
Neosho, Newton Co., MO  
City of Neosho, Scenic Park NPR  
Section: 8 Township: 15 N. Range: 31 W.  
December 2024 Page 2 of 8





No pond on the baseball field

Wednesday • Nov 6, 2024 • 3:42 PM [Adjust](#)

✓ IMG\_9125

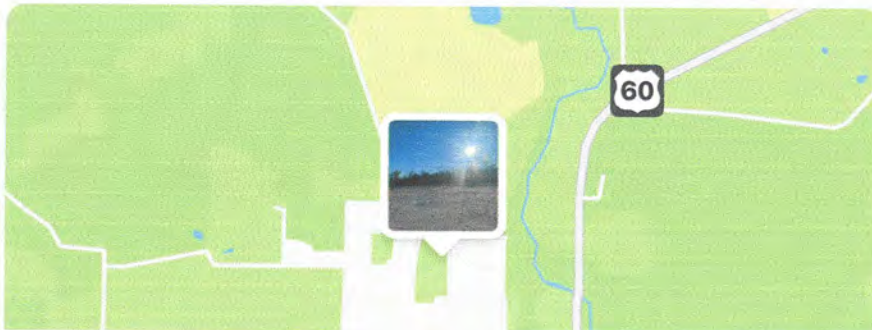
Apple iPhone 13

HEIF

Wide Camera — 26 mm  $f1.6$

12 MP • 4032 × 3024 • 3.3 MB

ISO50 | 26mm | 0ev |  $f1.6$  | 1/9091s



[Scenic Park >](#)

[Adjust](#)

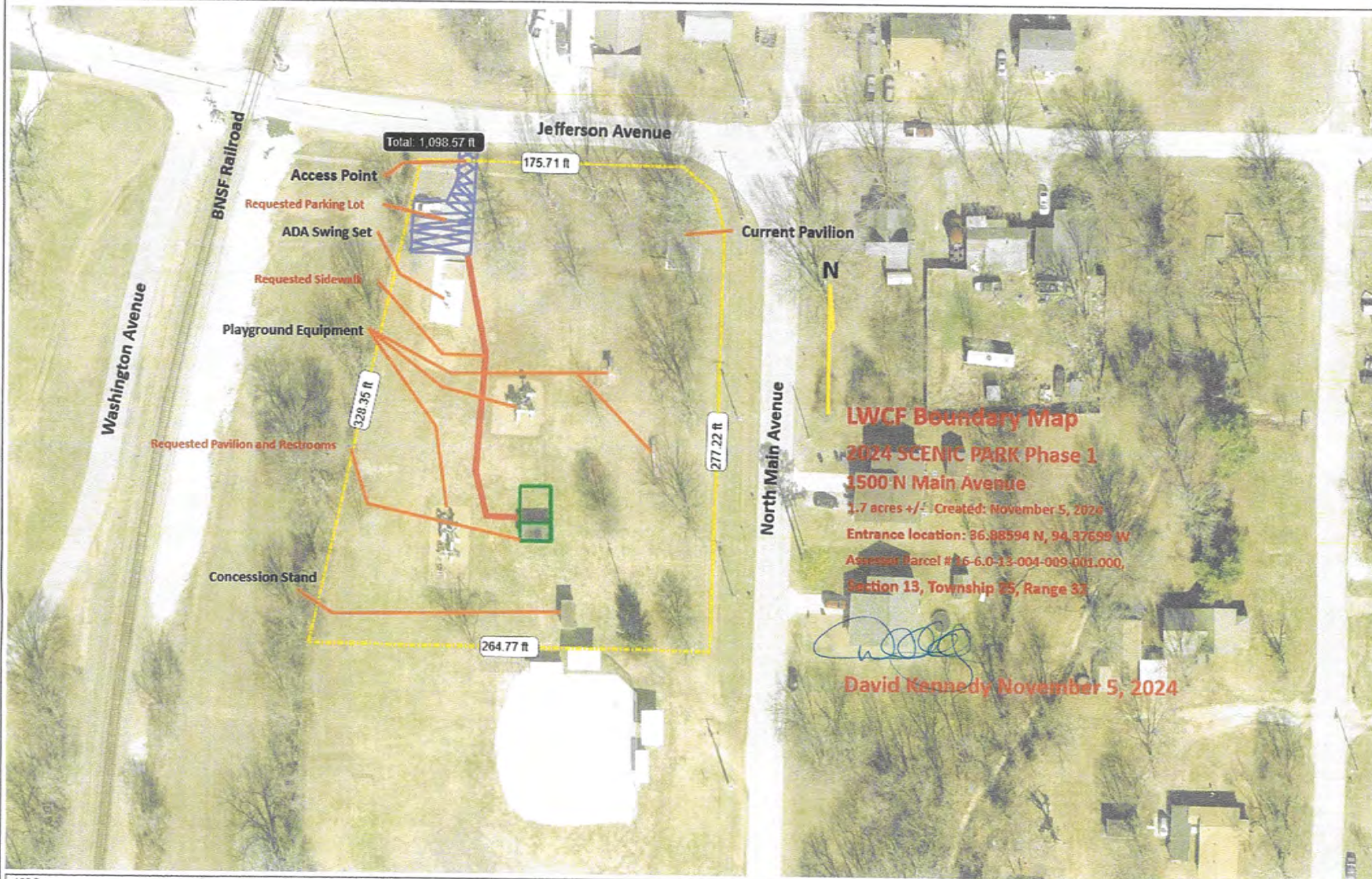




Neosho, MO



Legend



**LWCF Boundary Map**

**2024 SCENIC PARK Phase 1**

**1500 N Main Avenue**

1.7 acres +/- Created: November 5, 2024

Entrance location: 36.88594 N, 94.37699 W

Assessor Parcel # 16-6-0-13-004-009-001-000,

Section 13, Township 25, Range 32

**David Kennedy November 5, 2024**

1: 755

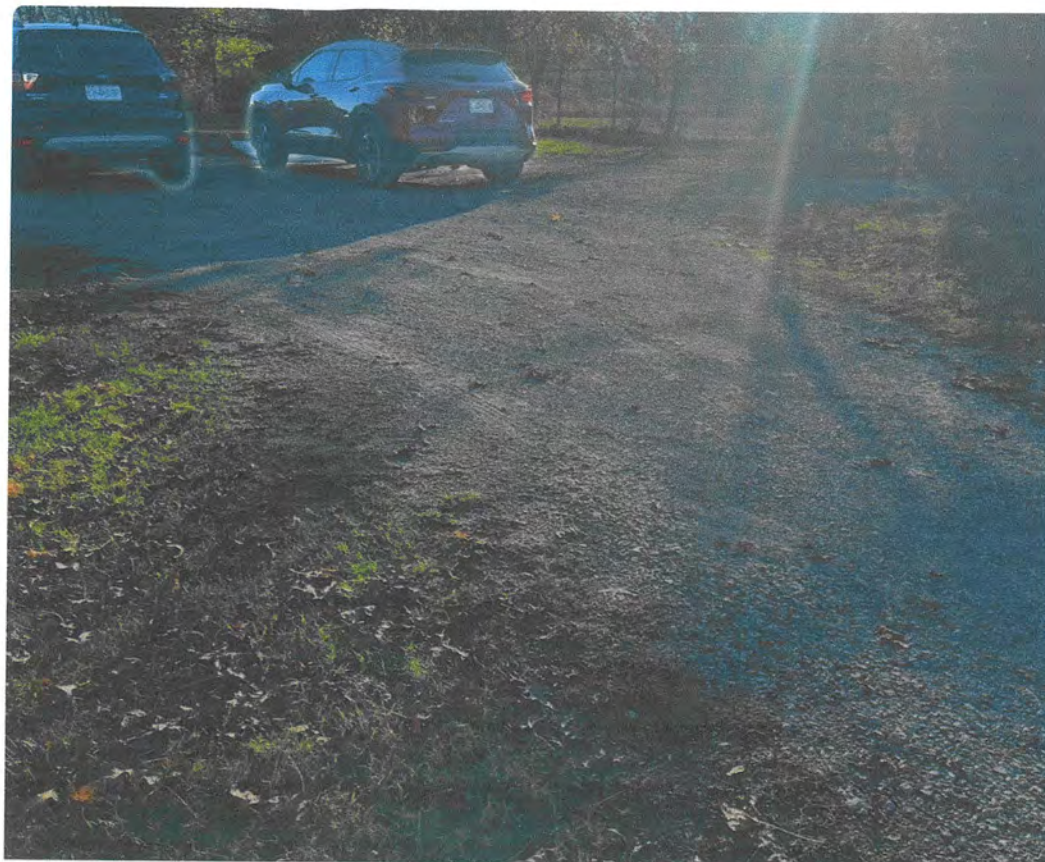
Notes

Doniphan Drive  
Neosho, MO

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION





## Scenic Park Current gravel parking lot

Wednesday • Nov 6, 2024 • 3:38 PM

[Adjust](#)

✓ IMG\_9121

Apple iPhone 13

HEIF



Wide Camera — 26 mm  $f1.6$

12 MP • 4032 × 3024 • 4.3 MB

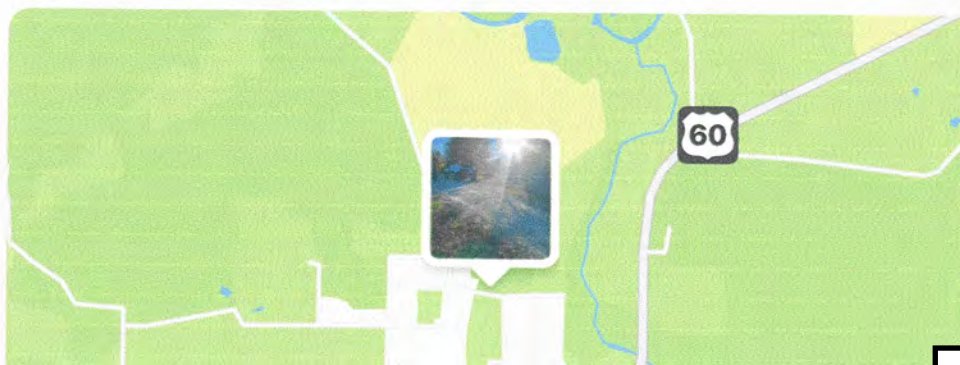
ISO50

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[Scenic Park](#) >

[Adjust](#)





Scenic Park standing in current gravel parking lot



Look Up **Plant** >

Wednesday • Nov 6, 2024 • 3:38 PM

[Adjust](#)



IMG\_9122

Apple iPhone 13

HEIF



Wide Camera — 26 mm  $f1.6$

12 MP • 4032 × 3024 • 4.7 MB

ISO50

26mm

0ev

$f1.6$

1/1580s



[Scenic Park](#) >

[Adjust](#)





Scenic Park looking past current restroom

Wednesday • Nov 6, 2024 • 3:41PM

[Adjust](#)

✓ IMG\_9124

Apple iPhone 13

HEIF



Wide Camera — 26 mm  $f1.6$

12 MP • 4032 × 3024 • 4.9 MB

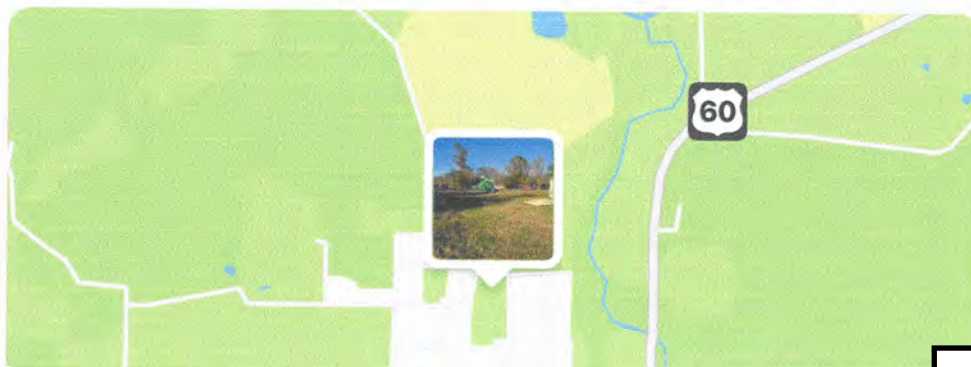
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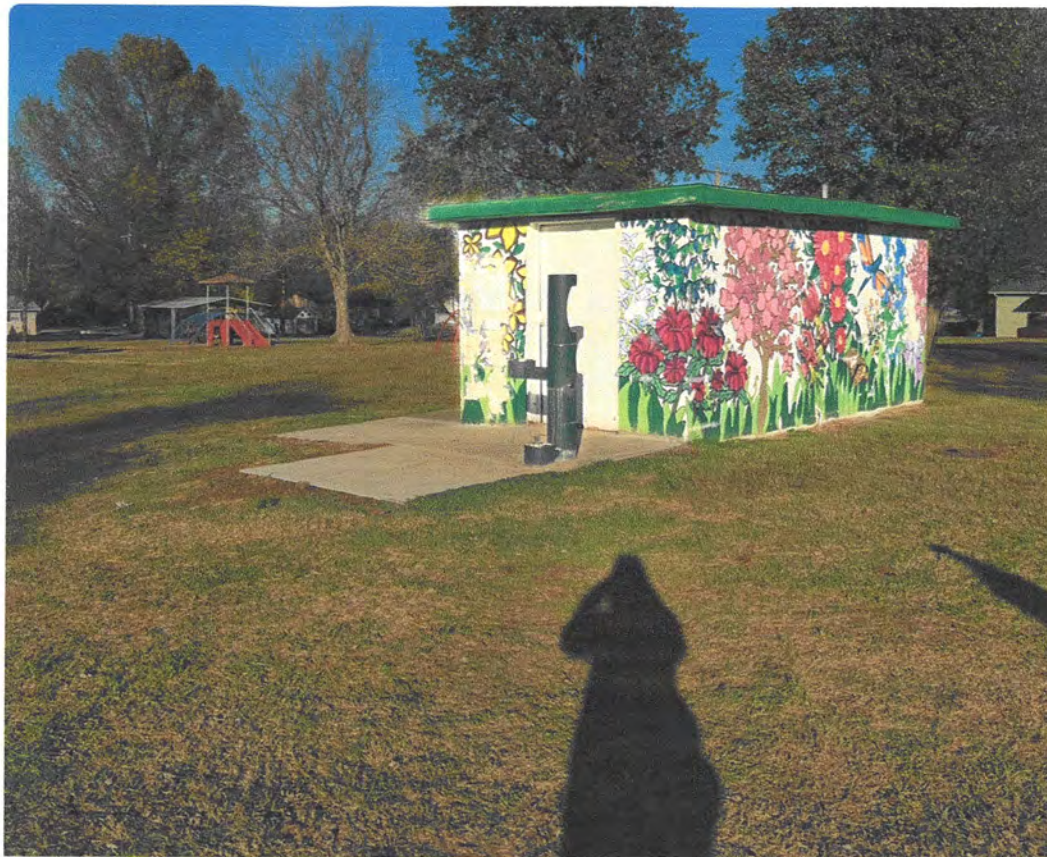
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[Scenic Park](#) >

[Adjust](#)





Scenic Park current restroom

Wednesday • Nov 6, 2024 • 3:41PM

[Adjust](#)

✓ IMG\_9123

Apple iPhone 13

HEIF



Wide Camera — 26 mm  $f1.6$

12 MP • 4032 × 3024 • 4.7 MB

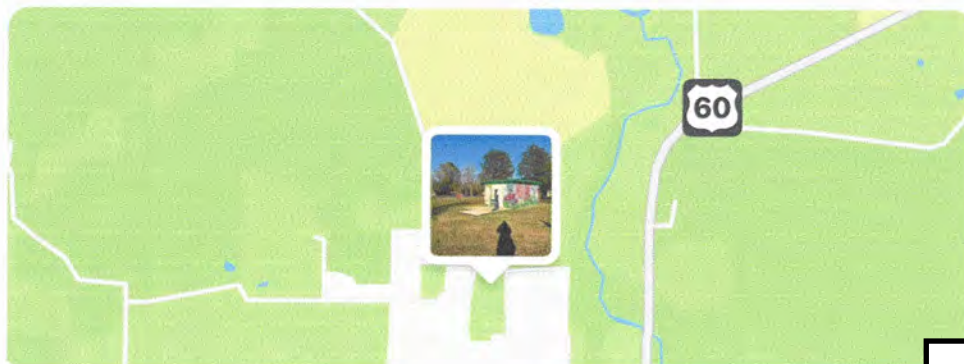
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Scenic Park >

[Adjust](#)