



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

MVP

17 June 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-2025-00605-TRS, 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-2025-00605-TRS

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. Wetland 1 (0.47 acres), 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)

3. REVIEW AREA. The Corps review area is limited to Wetland 1 (0.47-acres) located in the Town of Caledonia, Waupaca County, Wisconsin. Latitude: 44.2683 Longitude: -88.7468. The Corps review area is located on the 1.4-acre Whispering Winds, Lot 15 site, and is shown on the enclosed figures labeled MVP-2025-00605-TRS AJD Figures, Page 1 to 7.

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

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00605-TRS

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 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

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-2025-00605-TRS

- 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).

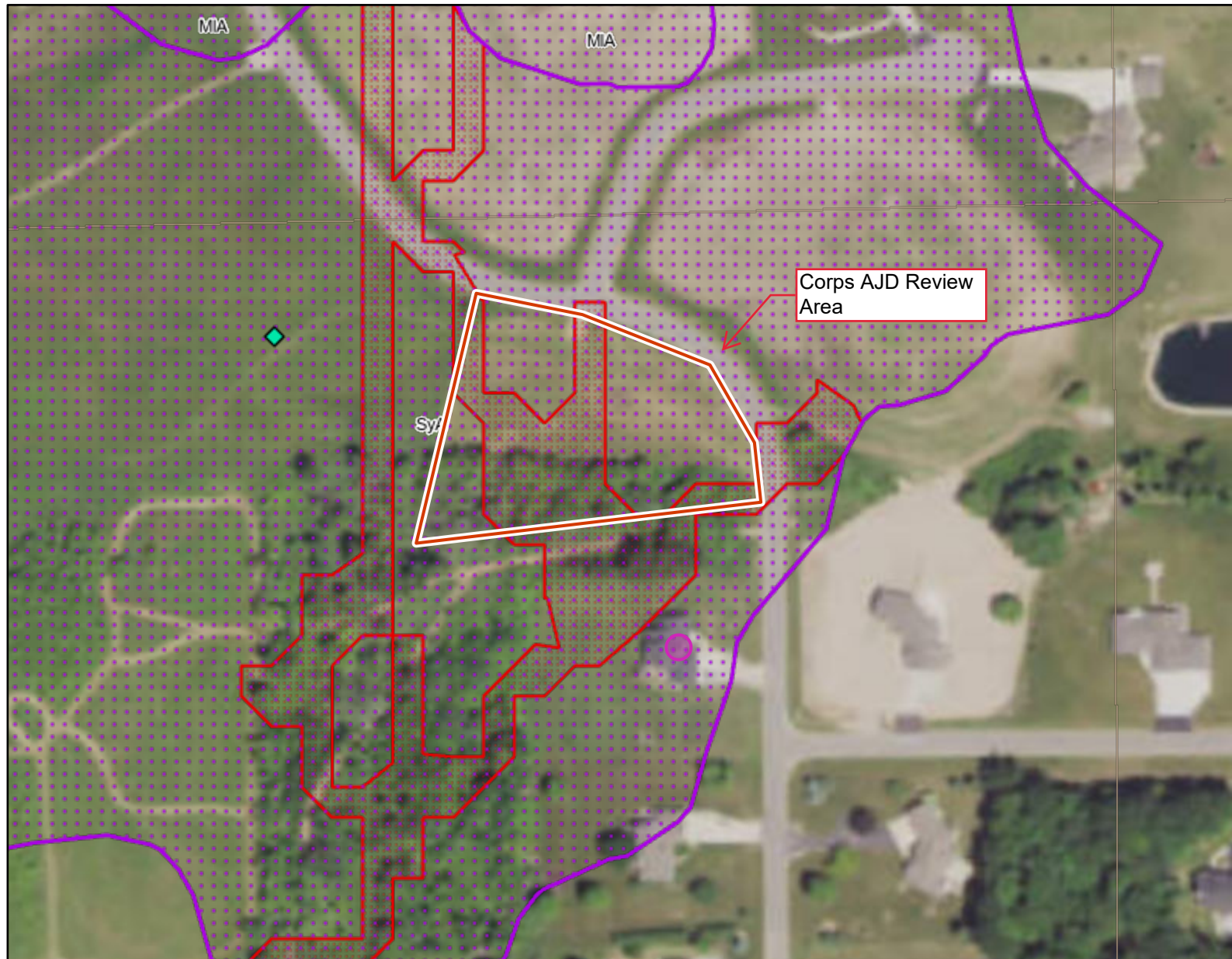
Wetland 1 (W1) was delineated by Davel Engineering & Environmental, Inc. on May 25, 2025. W1 is located in the southwest corner of the property and extends south beyond the review area. W1 is not a TNW, territorial seas, or interstate waters and therefore is not an (a)(1) water. Based on a review of the National Hydrography Dataset (NHD) the nearest waterway is an unnamed tributary (WBIC 5021802) to the Wolf River located 0.36 miles south. WBIC 5021802 is a mapped linear watercourse which resembles a man-made ditch. The Wisconsin Wetland Inventory (WWI) shows no mapped wetlands within the review area and the closest mapped wetland is approximately 0.17 miles west. The WDNR Surface Water Data Viewer shows that the entire review area has mapped hydric soils present. The WDNR 2ft LiDAR Viewer contours map shows that W1 extends south to a gravel pit which appears to be dug in the side of an upland drumlin topographic feature approximately 0.15 miles from the review area. This gravel pit is approximately 30 ft higher in elevation than WBIC 5021802. A review of aerial photography (1994-2024) shows that W1 extends to the gravel pit, but there is no surface connection to WBIC 5021802. Although there are mapped wetlands abutting WBIC 5021802, they do not extend all the way to our review area nor to the gravel pit. Therefore, W1 is not adjacent to WBIC 5021802. Based on this information W1 is a concave feature with no surface connection to the nearest RPW or TNW. W1 does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. W1 is a non-tidal wetland that lacks a continuous surface connection to a relatively permanent water and as such does not meet the definition of adjacent and cannot be evaluated as (a)(4) an adjacent wetland; therefore, W1 is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

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-2025-00605-TRS

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. May 25, 2025, Routine Wetland Determination Report for Whispering Winds, Lot 15 by Davel Engineering and Environmental, Inc.
 - b. USACE Regulatory Viewer Accessed: June 13, 2025.
 - c. WDNR - Surface Water Data Viewer Accessed: June 13, 2025.
 - d. Google Earth Imagery Accessed: June 13, 2025.
 - e. Wisconsin Wetland Inventory, USDA Web Soil Survey, and USGS NHD and Topographic Maps Accessed: June 13, 2025, for Waupaca County, WI.
 - f. USGS 1:24K Quad Name: Hortonville.
 - g. Office evaluation conducted on June 13, 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.



Legend: (some map layers may not be displayed)
◆ Wetland Identifications and Confirmations

Wetland Indicators

Potentially Restorable Wetlands (2016)

Township

Section

Quarter-Quarter

Cities, Towns & Villages

Civil Town

Latest Leaf On Imagery

County Boundaries

County and Local Roads

Local Road

Notes:



Map: 0 150 300 Feet
0 40 80 Meters

Map projection: NAD 1983 HARN Wisconsin TM

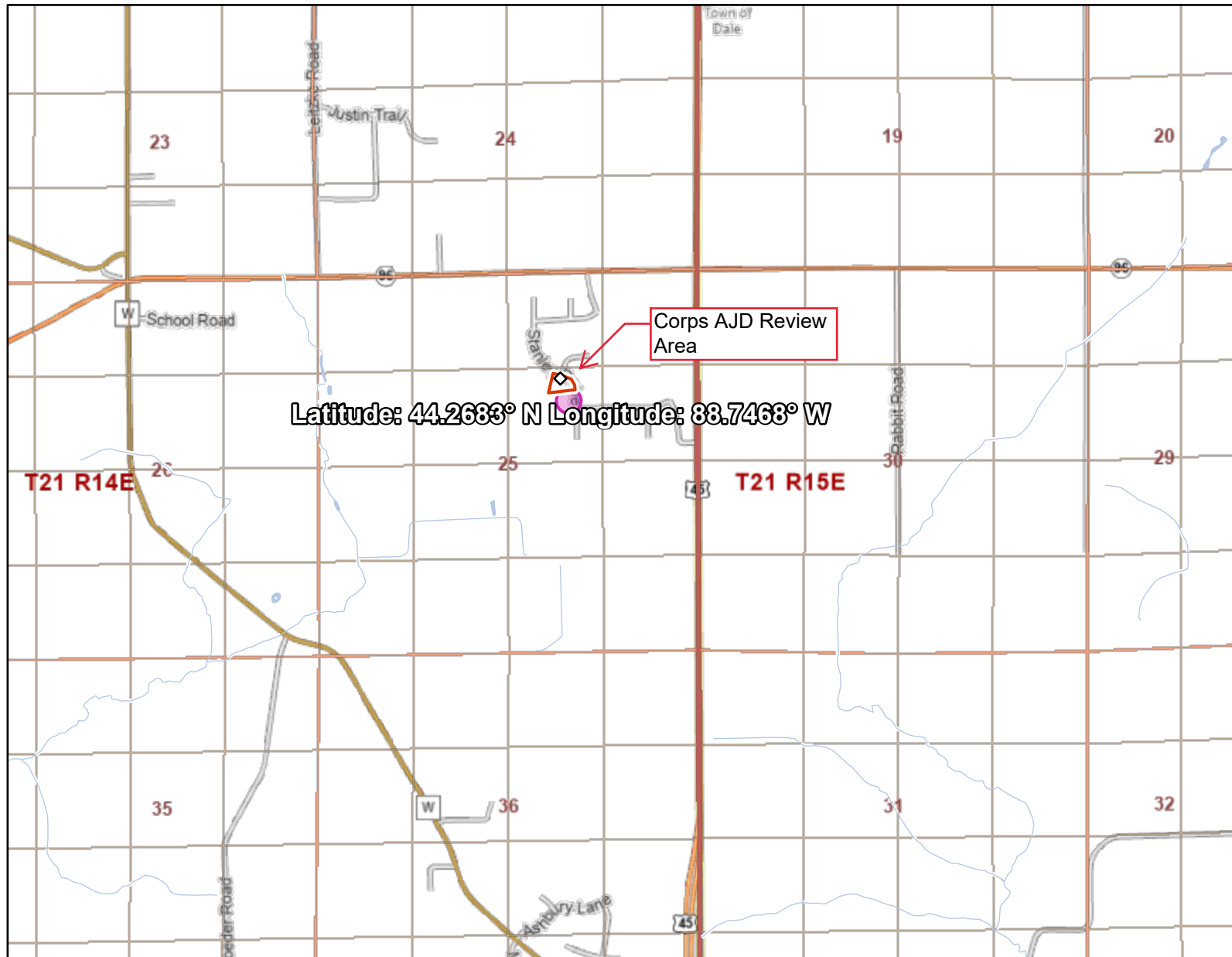
Service Layer Credits:

Wetland Indicators & Soils: Surface Water Data Viewer Team, EN Basic Basemap WTM Ext , 2022 Leaf On: , Permits & Determinations: WI DNR Bureau of Watershed Management, Wisconsin Wetland Inventory NWI (Dynamic): Calvin Lawrence, Dennis Weise, Nina Rihn, Cadastral:

This map is a product generated by a DNR web mapping application.

This map is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. The user is solely responsible for verifying the accuracy of information before using for any purpose. By using this product for any purpose user agrees to be bound by all disclaimers found here: <https://dnr.wisconsin.gov/legal>

Date Printed: 1/15/2025 11:16 AM



Legend: (some map layers may not be displayed)

- 24K Lakes and Open Water
- 24K Streams and Rivers
- 24K Intermittent Streams
- Township
- Section
- Quarter-Quarter
- Cities, Towns & Villages
- Civil Town
- County Boundaries
- Major Roads
 - State Highway
 - US Highway
- County and Local Roads
 - County HWY
 - Local Road

Notes:



Map: 0 1,000 2,000 Feet
0 560 1,120 Meters

Service Layer Credits:
EN Basic Basemap WTM Ext: , Cadastral:

Map projection: NAD 1983 HARN Wisconsin TM

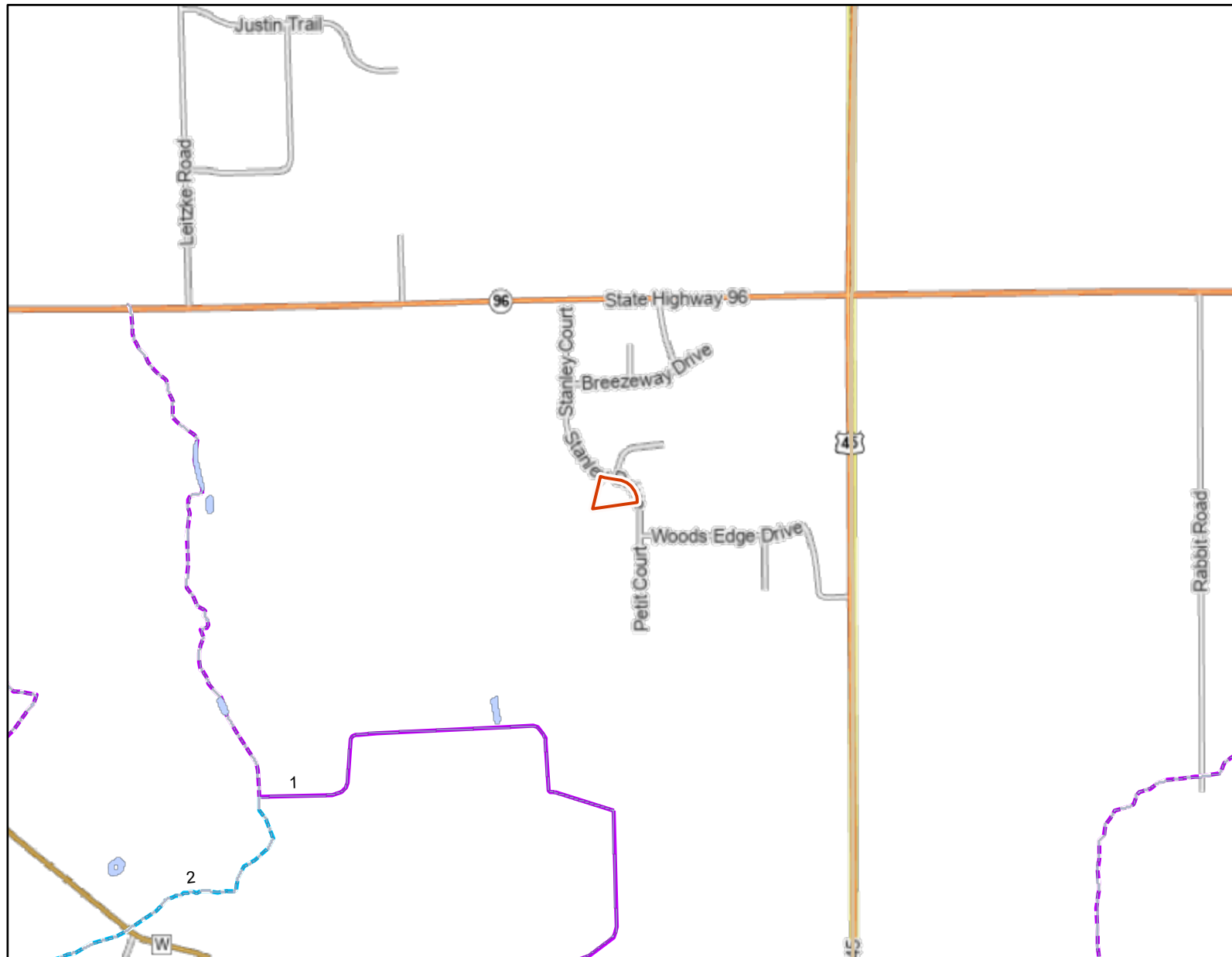
This map is a product generated by a DNR web mapping application.

This map is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. The user is solely responsible for verifying the accuracy of information before using for any purpose. By using this product for any purpose user agrees to be bound by all disclaimers found here: <https://dnr.wisconsin.gov/legal>

Date Printed: 1/15/2025 11:20 AM



Surface Hydrology Exhibit



Legend: (some map layers may not be displayed)

- Rivers and Streams
- Intermittent Streams
- Open Water
- 24K Intermittent Streams
- 24K Lakes and Open Water
- Stream Order
 - 1st Order
 - 2nd Order
- Cities, Towns & Villages
 - Civil Town
- County Boundaries
- Major Roads
 - State Highway
 - US Highway
- County and Local Roads
 - County HWY
 - Local Road

Notes:



Map: 0 1,000 2,000 Feet
0 325 650 Meters

Service Layer Credits:
Cities, Roads & Boundaries: , Surface Water (Cached): WiDNR, USGS, and other data

Map projection: NAD 1983 HARN Wisconsin TM

This map is a product generated by a DNR web mapping application.

This map is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. The user is solely responsible for verifying the accuracy of information before using for any purpose. By using this product for any purpose user agrees to be bound by all disclaimers found here: <https://dnr.wisconsin.gov/legal>

Date Printed: 6/5/2025 12:23 PM

ArcGIS Web Map



1/15/2025, 11:12:51 AM

- Index Lines (5-FT Interval)

Index Labels

Minor Lines (1-FT Interval)

Minor Labels

Addresses / Points of Interest

CSM-Plat of Survey

Parcel Numbers / Owner Names

Parcel Boundaries

Historic Lot Lines

Historic Lot Lines

Meander Line

Tie Bar

New Parcel Numbers

Parcel Changes (Splits-Combos etc)

PLSS GPS Control

Order B, Class 1 (1 PPM)

Order B, Class 3 (4 PPM)

Order B, Class 3 Azimuth

3rd Order Government Corner

Mean Sea Level Measurement (horizontal measurement is estimated)

WIDOT Benchmark

Witness Monument

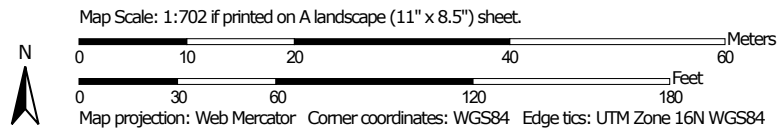
PLSS Government Monument

Section Line
- 1:1,162
-
-
- Waupaca County Land Information

Soil Map—Waupaca County, Wisconsin



Soil Map may not be valid at this scale.



**Natural Resources
Conservation Service**

Web Soil Survey
National Cooperative Soil Survey

1/15/2025
Page 1 of 3

2025 Wetland Delineation Map

Whispering Winds, Lot 15

Part of Sec. 25, T21N, R14E, Town of Caledonia, Waupaca County, WI

For: Patrick Jenkins

July 2020 Aerial Imagery



The project scope limits shown on this map is not intended to be the parcel boundary

Legend

- Project Scope
- In-Scope Wetland
- Out-of-Scope Wetland
- Test Plots

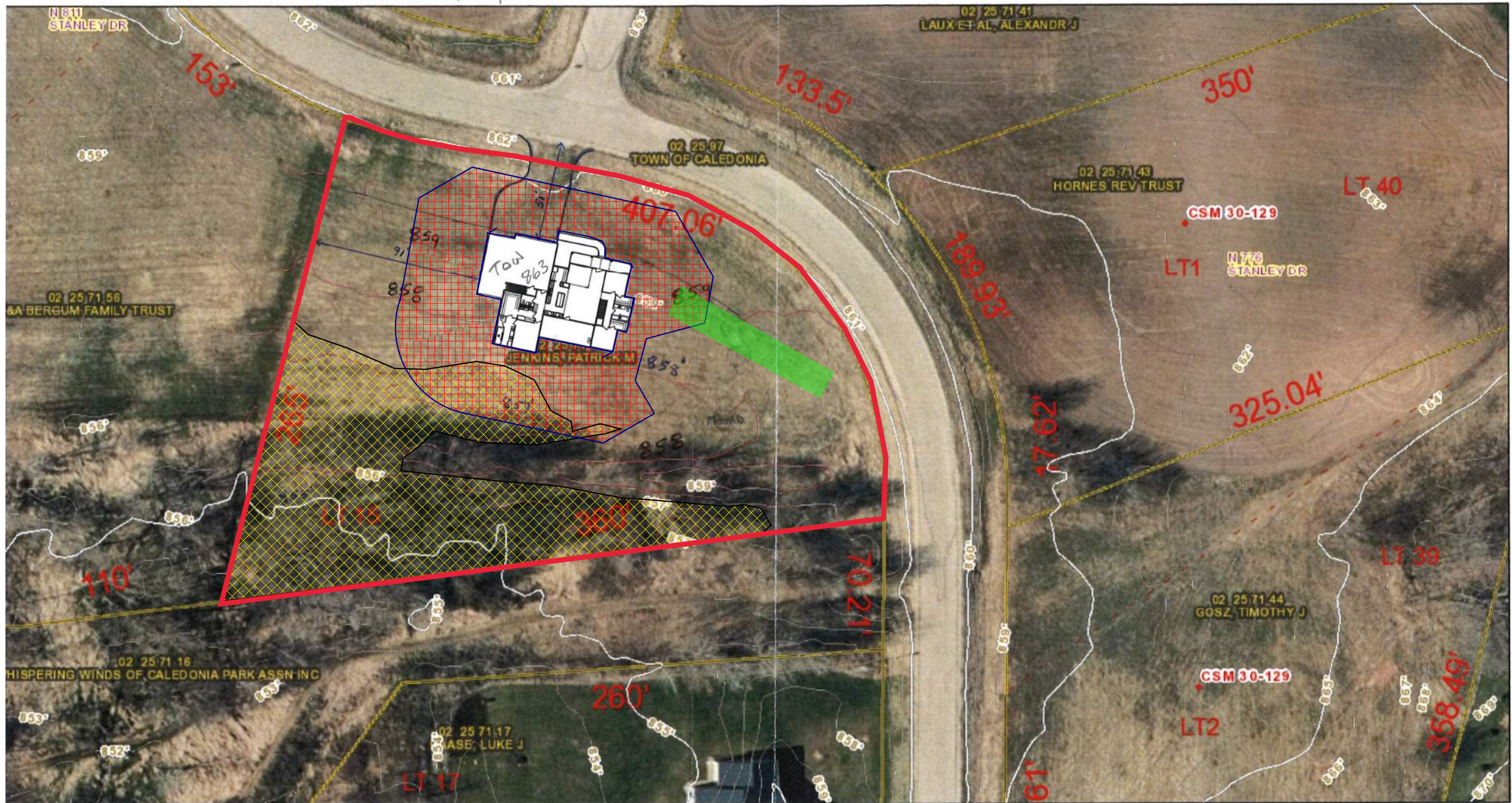


DAVEL ENGINEERING & ENVIRONMENTAL, INC.
Civil Engineers and Land Surveyors
1164 Province Terrace, Menasha, WI 54952
Ph: 920-991-1866 Fax: 920-441-0804
www.davel.pro

0 30 60 90 120
Feet

ArcGIS Web Map

296 370
444 1110 x 89,000.2



05 PM

- | | | |
|-----------|--------------------------|--|
| interval) | Historic Lot Lines | ▲ Order B, Class 3 (4 PPM) |
| | - - - Historic Lot Lines | ▲ Order B, Class 3 Azimuth |
| interval) | - - - Meander Line | ■ 3rd Order Government Corner |
| | ↔ Tie Bar | ▲ Mean Sea Level Measurement (horizontal measurement is estimated) |

SCALE: 1" = 50'

