



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

MVP

10 July 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-2025-00664-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.

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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 3 (0.08 acres), non-jurisdictional
 - ii. Wetland 4 (0.07 acres), non-jurisdictional
 - iii. Wetland 5 (0.06 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)

3. REVIEW AREA. The Corps review area is limited to Wetlands 3-5 (combined 0.21-acres) located in the Village of Cottage Grove, Dane County, Wisconsin. Latitude: 43.11205 Longitude: -89.19926. The Corps review area is located on the 21.93-acre site, located within the CTH N and CTH TT right-of-way and is shown on the enclosed figures labeled MVP-2025-00664-TRS AJD Figures, Page 1 to 12.

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

6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

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.

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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

- 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

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.

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within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁸

Wetlands 3-5 were identified in the May 21, 2025, Hey and Associates, Inc. – CTH N and CTH TT Improvements Assured Wetland Delineation Report. These wetlands are all man-made linear features which formed as a result of grading activities after the construction of CTH N, improvements to a CTH TT off-ramp, and the construction of a park-and-ride parking lot off CTH TT. Wetlands 3 and 4 were constructed in uplands between 2010 and 2014 as a result of the construction of the park-and-ride parking lot off CTH TT. Wetlands 3 and 4 are used as stormwater swales to hold runoff coming from the park-and-ride parking lot. Wetland 5 was constructed in uplands between 2010 and 2015 when Willow Creek Parkway (off-ramp) was constructed, and the Willow Creek development started to expand to the north. Wetland 5 is a result of the construction of a ditch system to manage stormwater within the Willow Creek residential expansion site boundary. Accordingly, the Corps has determined that Wetlands 3-5 are excluded from Section 404 jurisdiction under (b)(3) of the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule as ditches excavated wholly in and draining only dry land that do 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). 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. May 21, 2025, Hey and Associates, Inc. – CTH N and CTH TT Improvements Assured Wetland Delineation Report.
 - b. USACE Regulatory Viewer Accessed: July 2, 2025.
 - c. WDNR - Surface Water Data Viewer Accessed: July 2, 2025.
 - d. Google Earth Imagery Accessed: July 2, 2025.

⁸ 88 FR 3004 (January 18, 2023)

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- e. Wisconsin Wetland Inventory, USDA Web Soil Survey, and USGS NHD and Topographic Maps Accessed: July 2, 2025.
- f. USGS 1:24K Quad Name: Cottage Grove.
- g. Office evaluation conducted on July 7, 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.



Scale:

0 450
Feet

Project Number: 25-0103

Prepared by:

Orientation:



Date: 4/25/2025

Legend:

- Project Boundary
- Surveyed Wetland Boundary
- Off-site Surveyed Wetland
- Photograph Location (PH)

Project Name:

CTH N & CTH TT - Cottage Grove

Prepared for:

Pinnacle Engineering Group

Aerial Date:

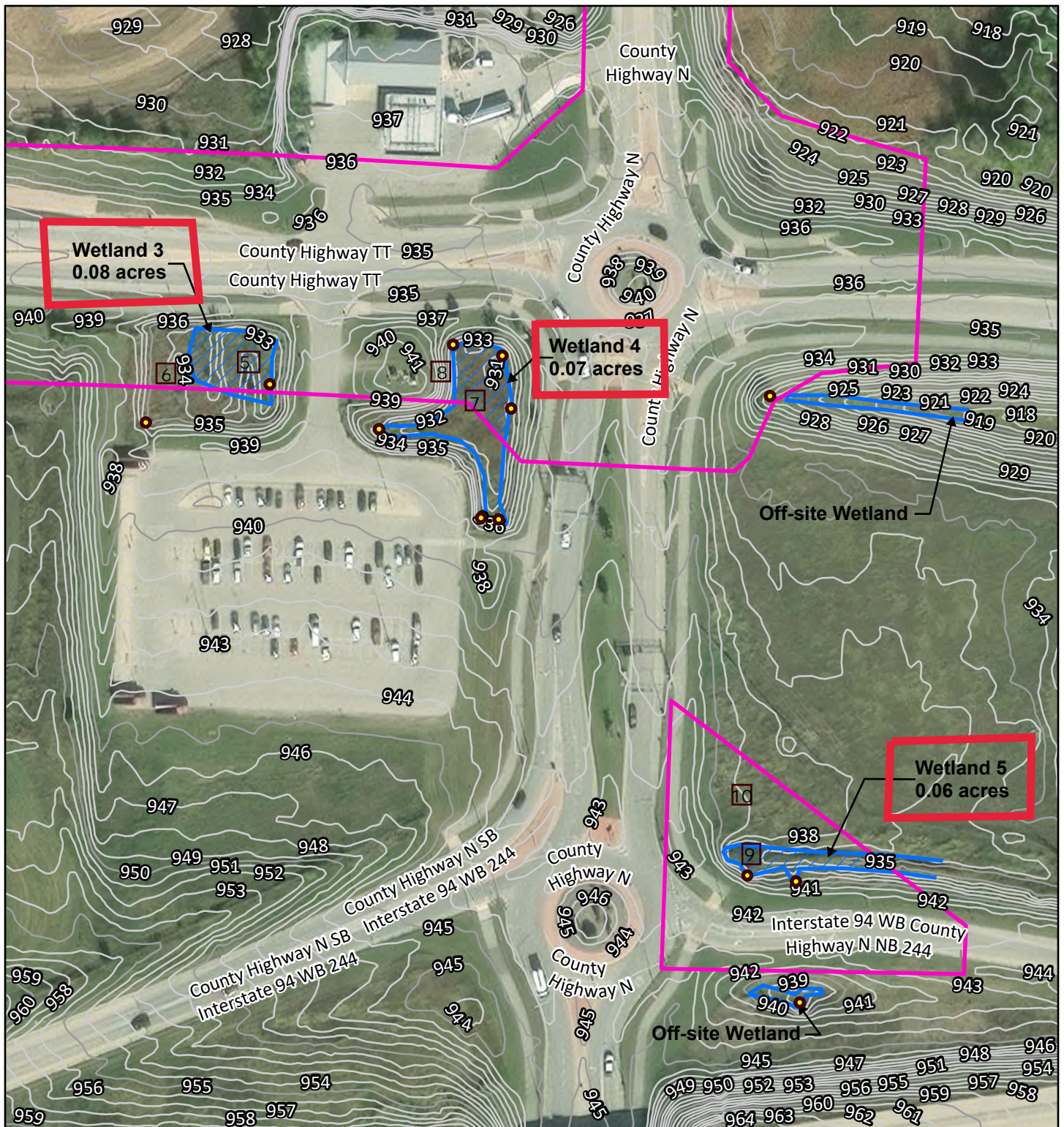
2024

Exhibit Title:

Surveyed Wetland Boundaries

Exhibit:

7



Scale:

0 125 Feet

Project Number: 25-0103

Prepared by:

Orientation:



Date: 5/7/2025

Legend:

- Project Boundary
- Surveyed Wetland Boundary
- Off-site Surveyed Wetland
- Data Point Location
- Culvert Location

Project Name:

CTH N & CTH TT - Cottage Grove

Prepared for:

Pinnacle Engineering Group

Aerial Date:

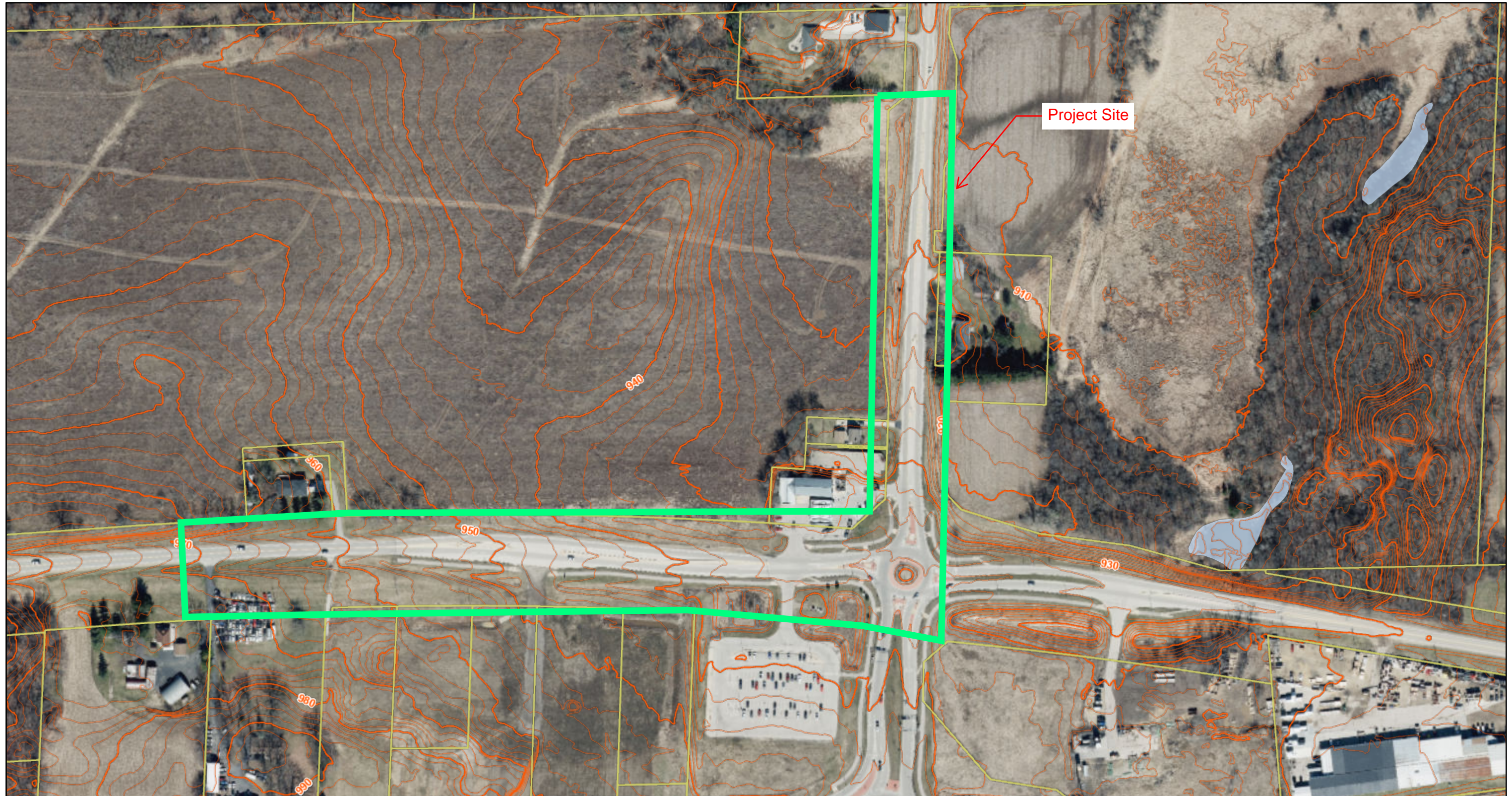
2024

Exhibit Title:

Surveyed Wetland Boundaries 7B








Exhibit:

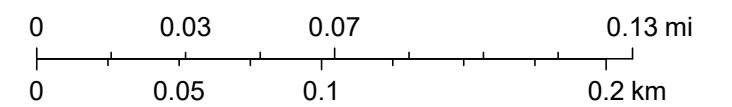
ArcGIS Web Map



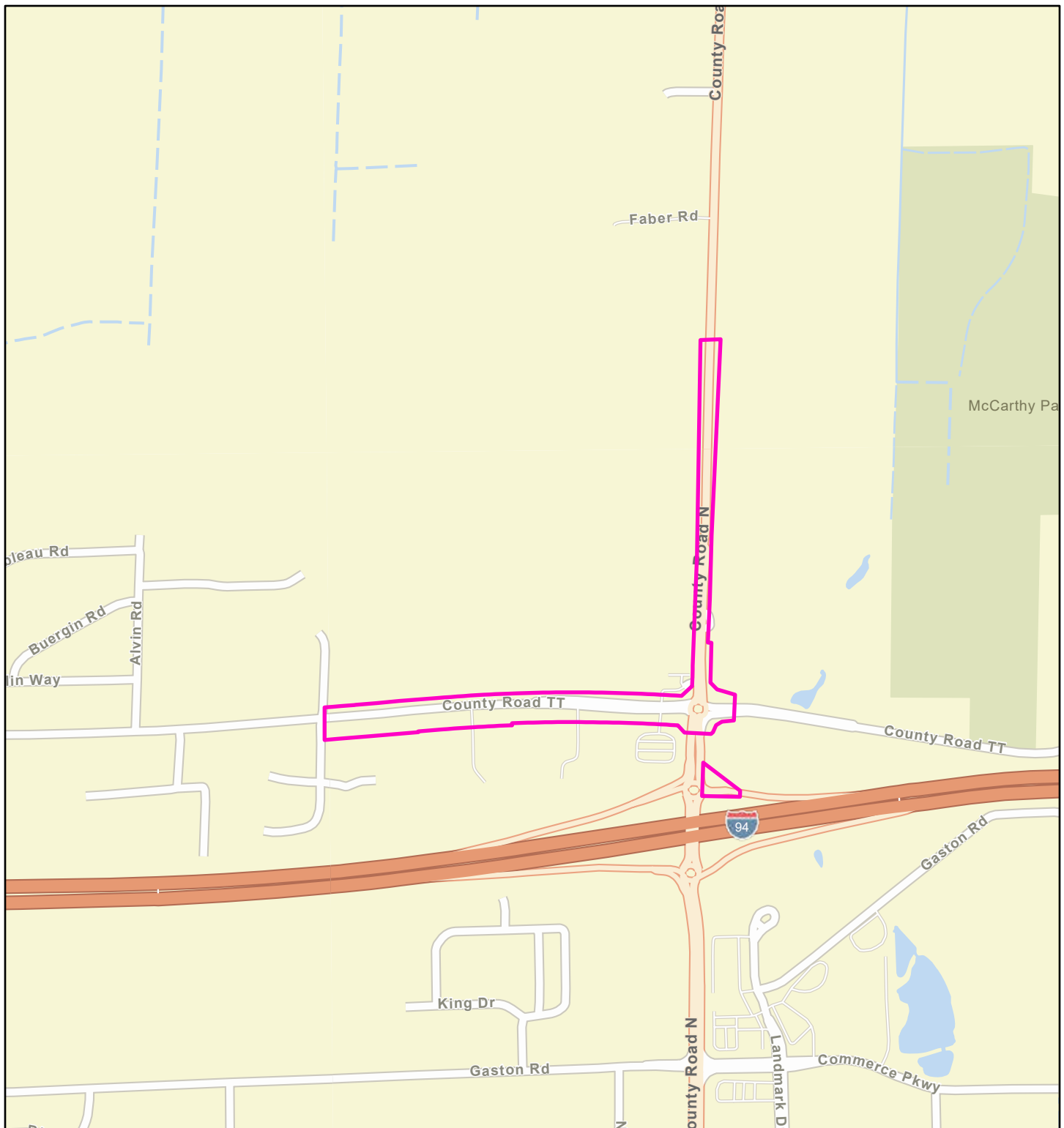
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1:3,631

- | | | |
|--|---|--|
|  Parcels |  Lakes and Ponds |  Blue: Blue |
| 2 foot Intervals | ColorOrtho3Inch2024Web | |
|  10 foot Intervals |  Red: Red | |
|  2 foot Intervals |  Green: Green | |



Dane County Land Information Office (LIO), Fly Dane Partnership, Ayres Associates, Wisconsin Regional Orthoimagery Consortium (WROC), Calvin Lawrence, Dennis Weise, Nina Rihn



Scale:

0 1,000 Feet

Project Number: 25-0103

Prepared by:

Orientation:



Date: 3/19/2025

Legend:

Project Boundary

Project Name:

CTH N & CTH TT - Cottage Grove

Prepared for:

Pinnacle Engineering Group

Location Information:

T.8N, R.11E, Section 33

Exhibit Title:

Project Location

Exhibit:

1



Scale:

0 1,000 Feet

Project Number: 25-0103

Orientation:



Date: 3/19/2025

Legend:

Project Boundary

Project Name:

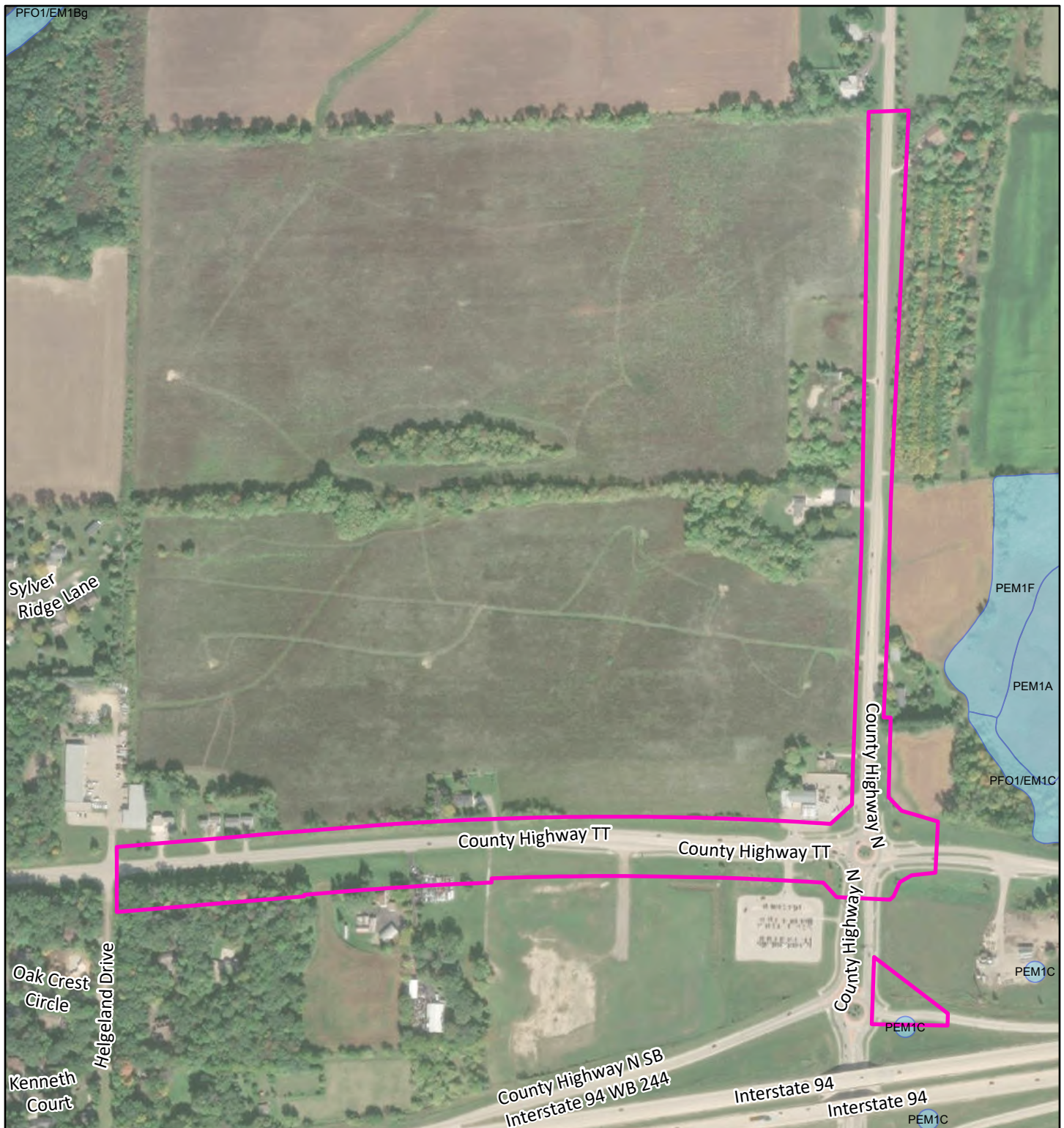
CTH N & CTH TT - Cottage Grove

Prepared for:

Pinnacle Engineering Group

Location Information:

Cottage Grove Quadrangle



Scale:

0 400 Feet

Project Number: 25-0103

Prepared by:

Orientation:



Date: 3/19/2025

Legend:

- Project Boundary
- National Wetland Inventory

Project Name:

CTH N & CTH TT - Cottage Grove

Prepared for:

Pinnacle Engineering Group

Location Information:

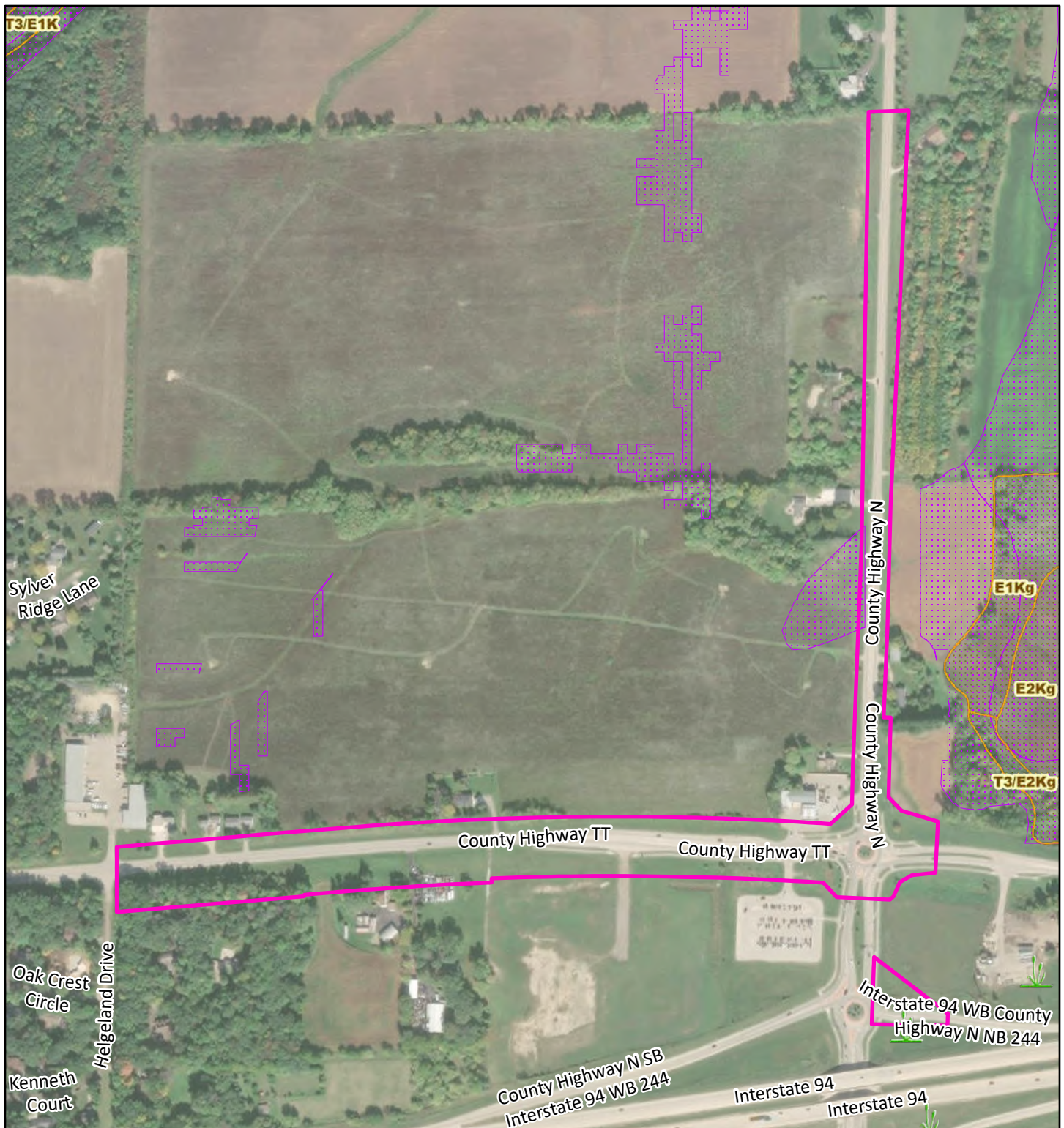
Cottage Grove Quadrangle

Exhibit Title:

National Wetland Inventory

Exhibit:

3



Scale:

0 400 Feet

Project Number: 25-0103

Prepared by:

Orientation:



Date: 3/19/2025

Legend:

- Project Boundary
- Wetland Class Areas
- Maximum Extent Wetland Indicators
- Rivers and Streams

Project Name:

CTH N & CTH TT - Cottage Grove

Prepared for:

Pinnacle Engineering Group

WWI Date:

2024

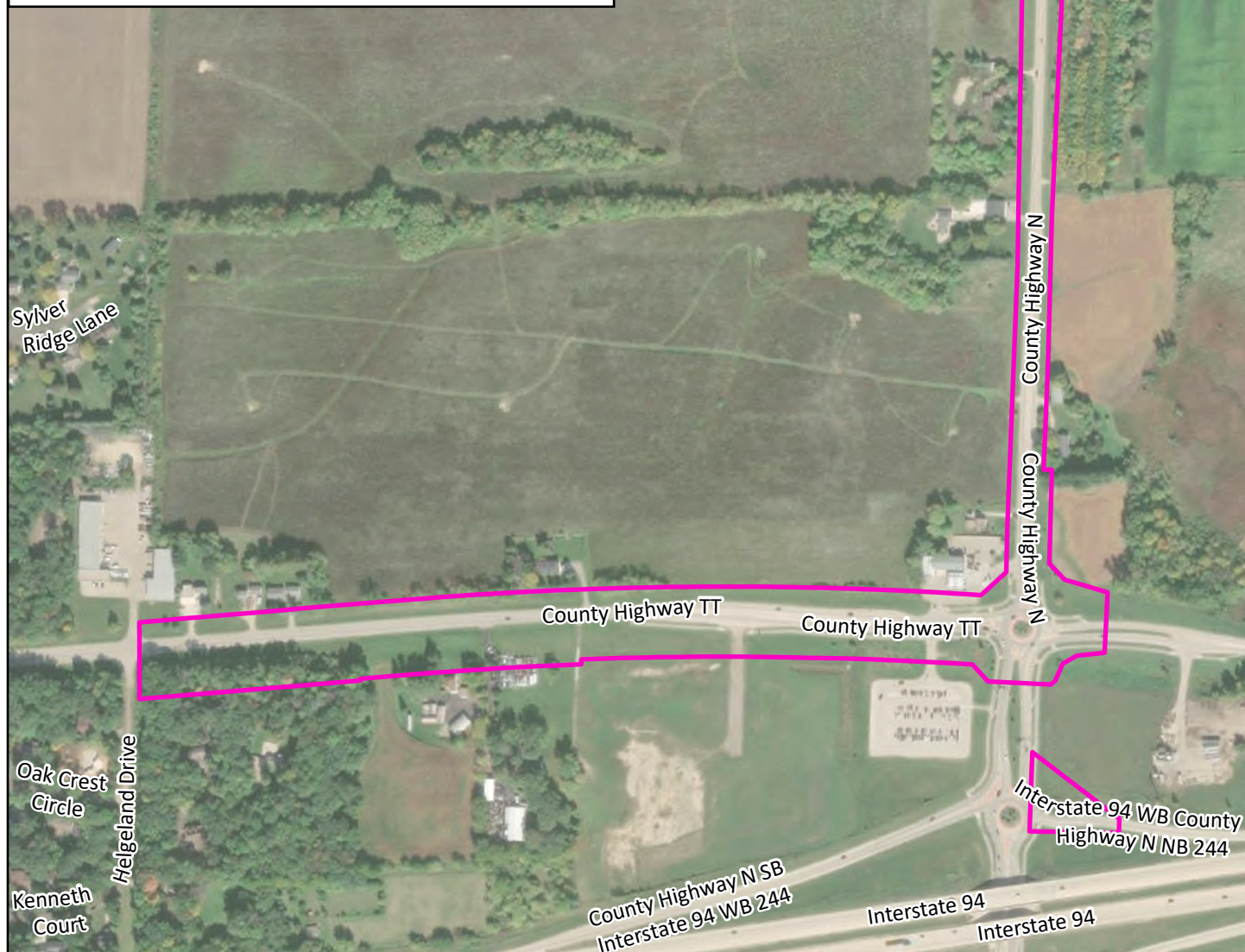
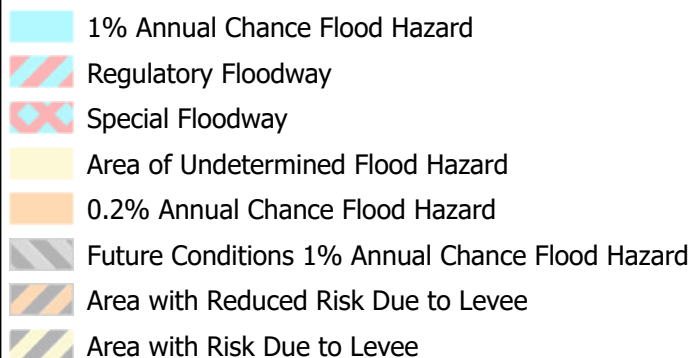
Exhibit Title:

Wisconsin Wetland Inventory

Exhibit:

4

Flood Hazard Zones



Scale:

0 400
Feet

Project Number: 25-0103

Prepared by:

Orientation:



Date: 3/19/2025

Legend:

 Project Boundary

Project Name:

CTH N & CTH TT - Cottage Grove

Prepared for:

Pinnacle Engineering Group

Effective Date:

9/17/2014

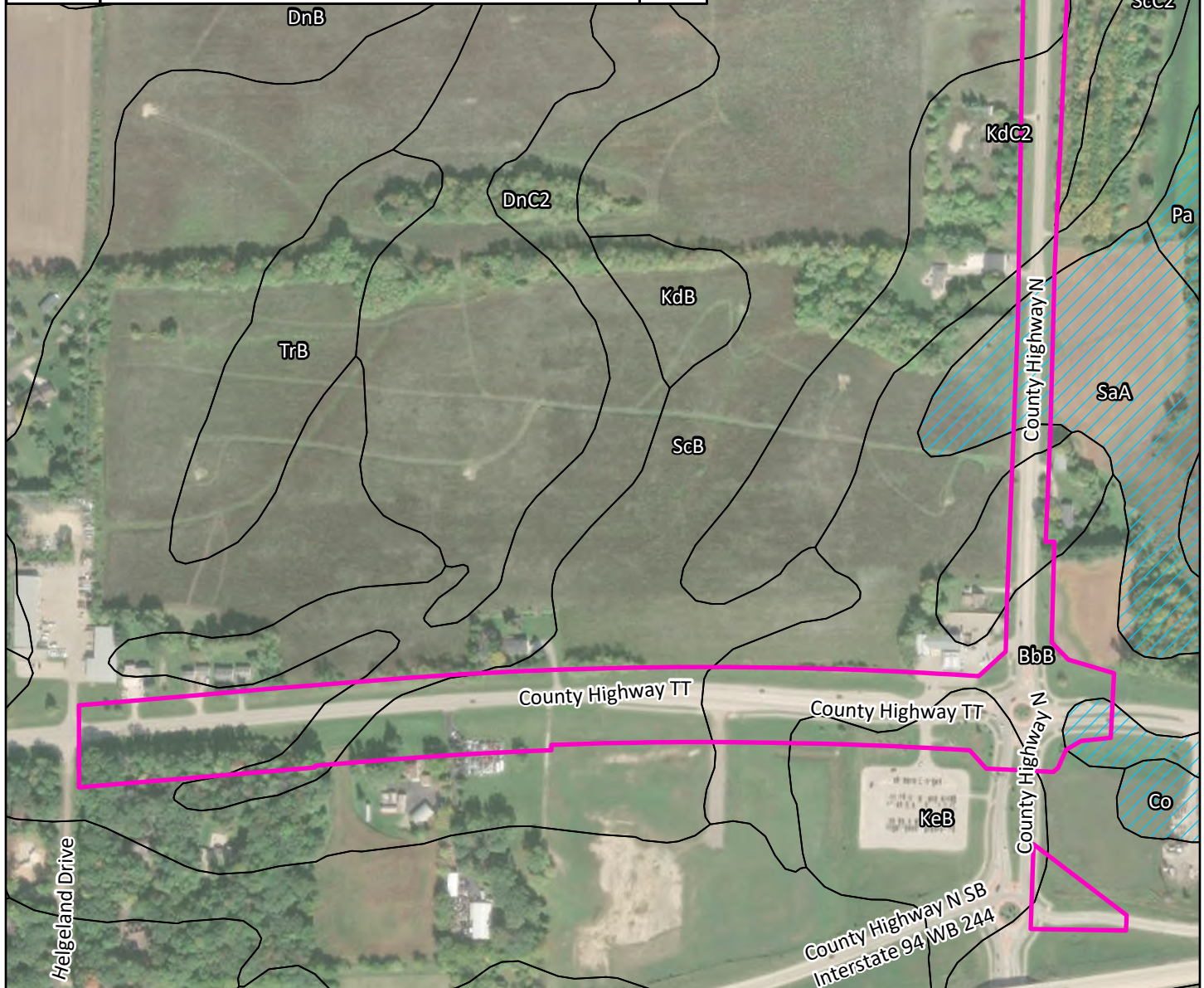
Exhibit Title:

FEMA Flood Hazard Zones

Exhibit:

5

Soil Code	Soil Description	Hydric
SaA	Sable silty clay loam, 0 to 2 percent slopes	Y
BbB	Batavia silt loam, gravelly substratum, 2 to 6 percent slopes	N
DnC2	Dodge silt loam, 6 to 12 percent slopes, eroded	N
KdC2	Kidder loam, 6 to 12 percent slopes, eroded	N
KeB	Kegonsa silt loam, 2 to 6 percent slopes	N
ScB	St. Charles silt loam, 2 to 6 percent slopes	N
ScC2	St. Charles silt loam, 6 to 12 percent slopes, eroded	N



Scale:

0 400
Feet

Project Number: 25-0103

Prepared by:

Orientation:



Date: 3/19/2025

Legend:

Project Boundary

Soils Units

Hydric Soils

Project Name:

CTH N & CTH TT - Cottage Grove

Prepared for:

Pinnacle Engineering Group

Soil Survey Date:

2019

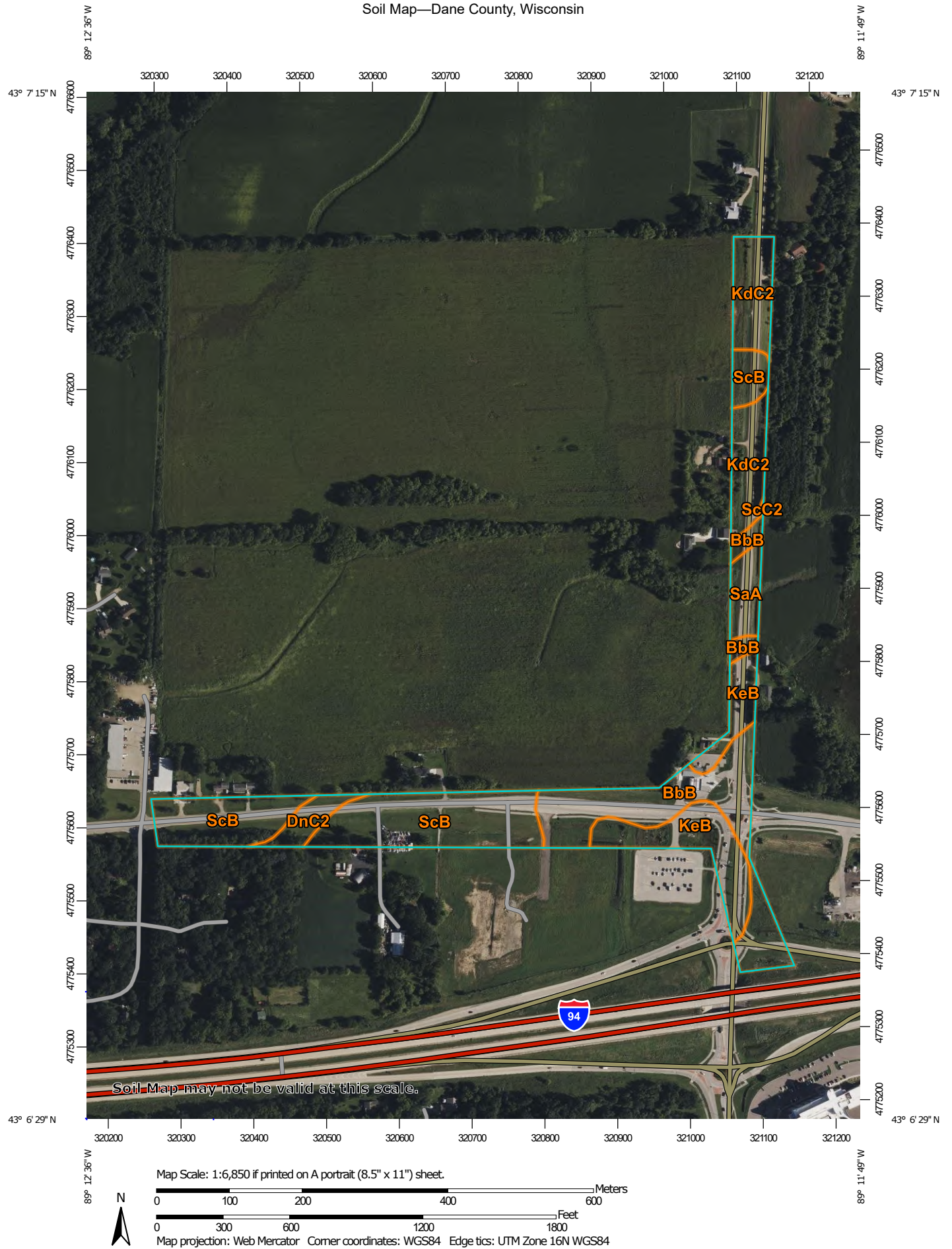
Exhibit Title:

NRCS Dane Co. Soil Survey

Exhibit:

6

Soil Map—Dane County, Wisconsin





NRCS Soil Drainage Class Map



Legend: (some map layers may not be displayed)

NRCS Soil Drainage Classes

- Well drained
- Moderately well drained
- Somewhat poorly drained
- Poorly drained
- Very poorly drained

City or Village

County Boundaries

Major Roads

Interstate Highway

County and Local Roads

County HWY

Local Road

Latest Leaf On Imagery

Notes:

Service Layer Credits:

Wetland Indicators & Soils: Surface Water Data Viewer Team, Latest Leaf On: , Cities, Roads & Boundaries: , Surface Water (Cached): WIDNR, USGS, and other data



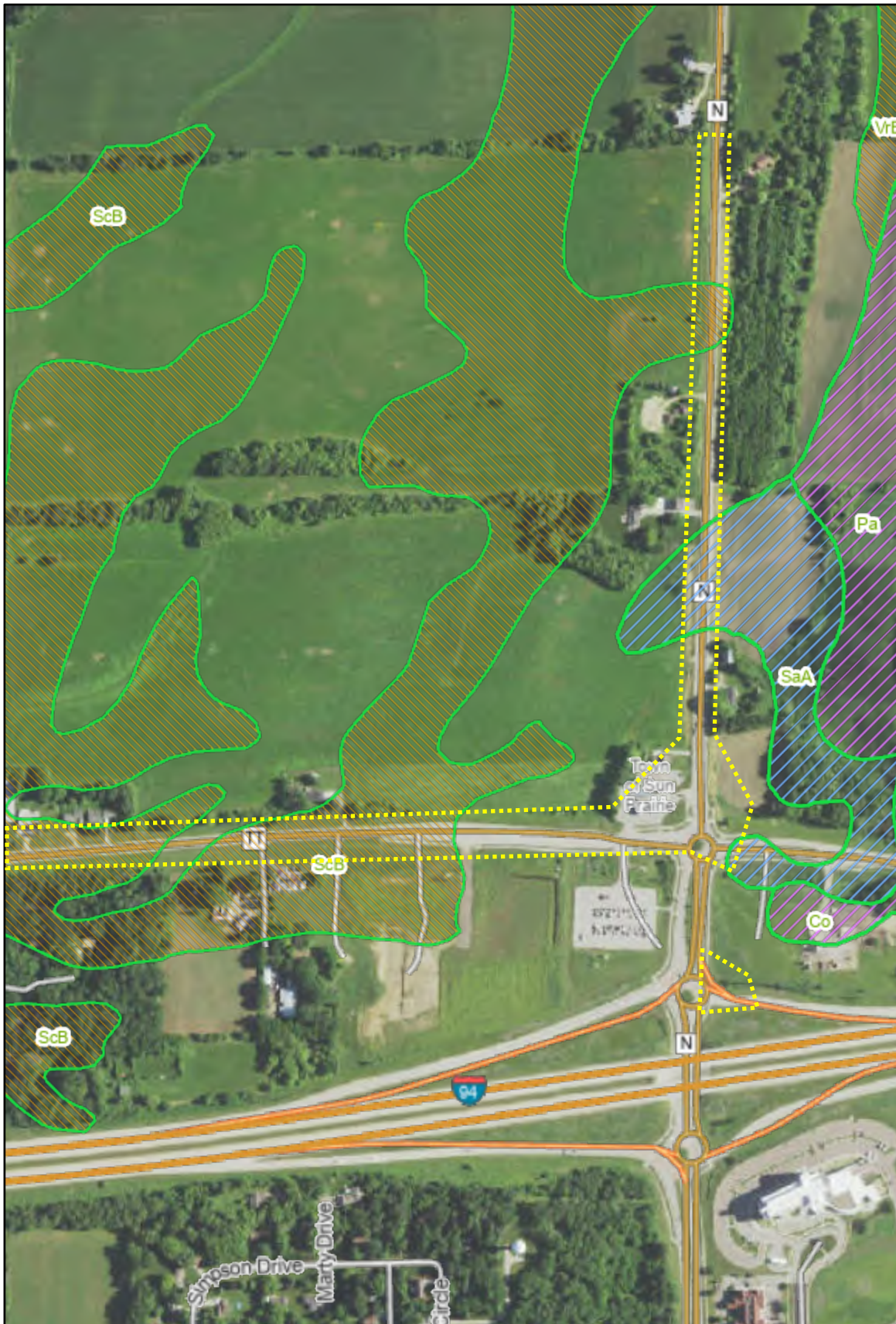
Map projection: NAD 1983 HARN Wisconsin TM

Map: 0 575 1,150 Feet
0 170 340 Meters

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: 5/6/2025 10:51 AM



Map projection: NAD 1983 HARN Wisconsin TM



Map: 0 575 1,150 Feet
0 170 340 Meters

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Date Printed: 5/6/2025 10:00 AM

Legend: (some map layers may not be displayed)

NRCS Soil Hydric Ratings

- Hydric
- Predominantly Hydric
- Predominantly Non-Hydric

City or Village

County Boundaries

Major Roads

Interstate Highway

County and Local Roads

County HWY

Local Road

Latest Leaf On Imagery

Notes:
Service Layer Credits:

Wetland Indicators & Soils: Surface Water Data Viewer Team, Latest Leaf On: , Cities, Roads & Boundaries: , Surface Water (Cached): WIDNR, USGS, and other data

