



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

MVP-2024-01189-TRS

November 8, 2024

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-2024-01189-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.

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).

- Wetland 1 (0.18 acre), 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. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The Corps review area is limited to Wetland 1 as shown on the attached Figure 1. The review area is located on the Champions Arena site at the intersection of Springfield Road (CTH P) and Francis Lane in the Village of Cross Plains, Dane County, WI at Latitude: 43.12074 Longitude: -89.63202.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. 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.

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
 - 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

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.

- 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 is not a TNW, territorial seas, or interstate waters and therefore is not an (a)(1) water. Wetland 1 is a ruderal wet meadow wetland located within an isolated depression in the southeast corner of the Corps review area. General drainage from the surrounding land use is towards the depression, which does not have an outlet. Based on our review of the November 4, 2024, Heartland Ecological Group INC. Wetland Delineation Report, USGS topographic map, NHD layer, WDNR Surface Water Data Viewer, USDA Web Soil Survey, and Google Earth aerial imagery indicate that Wetland 1 is a depressional wetland, surrounded by upland. Wetland 1 does 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 closest waterway to wetland 1 is Brewery Creek located approximately 0.26 miles to the west. There are no ditches, swales, pipes, or culverts that provide a surface connection from Wetland 1 to Brewery Creek. Wetland 1 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 an (a)(4) adjacent wetlands; therefore, Wetland 1 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.

⁹ 88 FR 3004 (January 18, 2023)

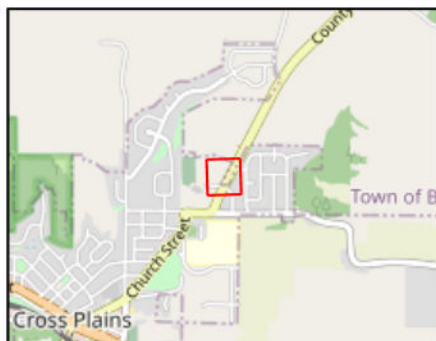
MVP-2024-01189-TRS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01189-TRS

- a. Heartland Ecological Group INC. – Champion Arena Site Wetland Delineation Report dated November 4, 2024.
- b. Google Earth Imagery Accessed: October 29, 2024.
- c. USACE National Regulatory Viewer (NRV) Accessed: October 29, 2024.
- d. Wisconsin Wetland Inventory, USDA Web Soil Survey, and USGS NHD and Topographic Maps Accessed: October 29, 2024.
- e. WDNR - Surface Water Data Viewer Accessed: October 29, 2024.
- f. USGS 1:24K Quad Name: Cross Plains.
- g. Office evaluation conducted on October 29, 2024.

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.



- Study Area (3.45 ac)
- Dane Co 1' Contours
- Drainage Features
- Field Delineated Wetlands (0.18 ac)

Sample Points

- Upland
- Wetland

0 100 Ft

Heartland
ECOLOGICAL GROUP INC

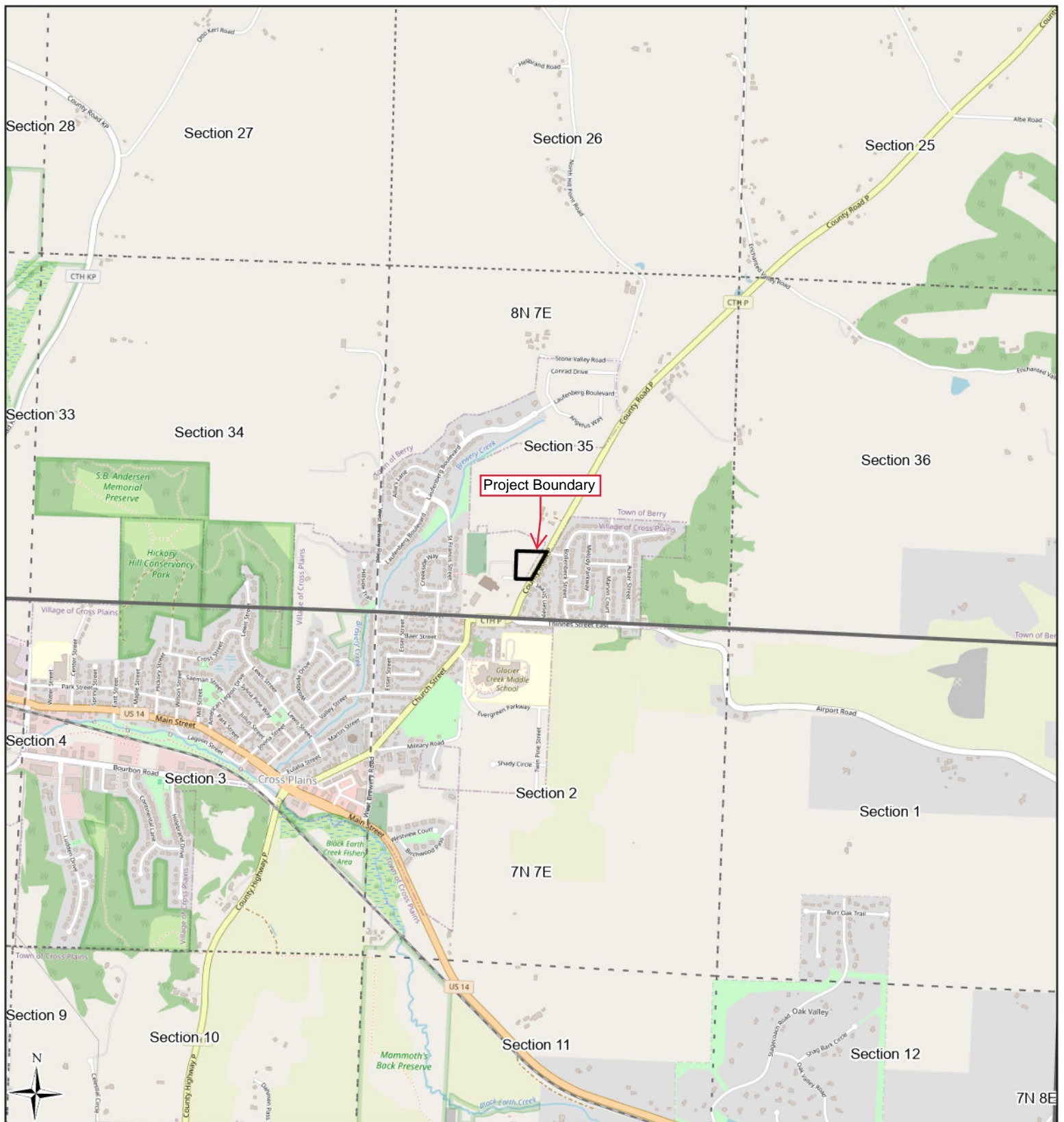
Figure 7. Field Delineated Wetlands

Champion Arena
Project #20241392
T8N, R7E, S35
V Cross Plains, Dane Co

2022 Orthophoto
Dane Co, HEG

LRR: NCNE

Figure Created: 10/23/2024



- Study Area (3.45 ac)
- Township
- Section

0 1,000 2,000
Ft

Heartland
ECOLOGICAL GROUP INC

Figure 1. Project Location

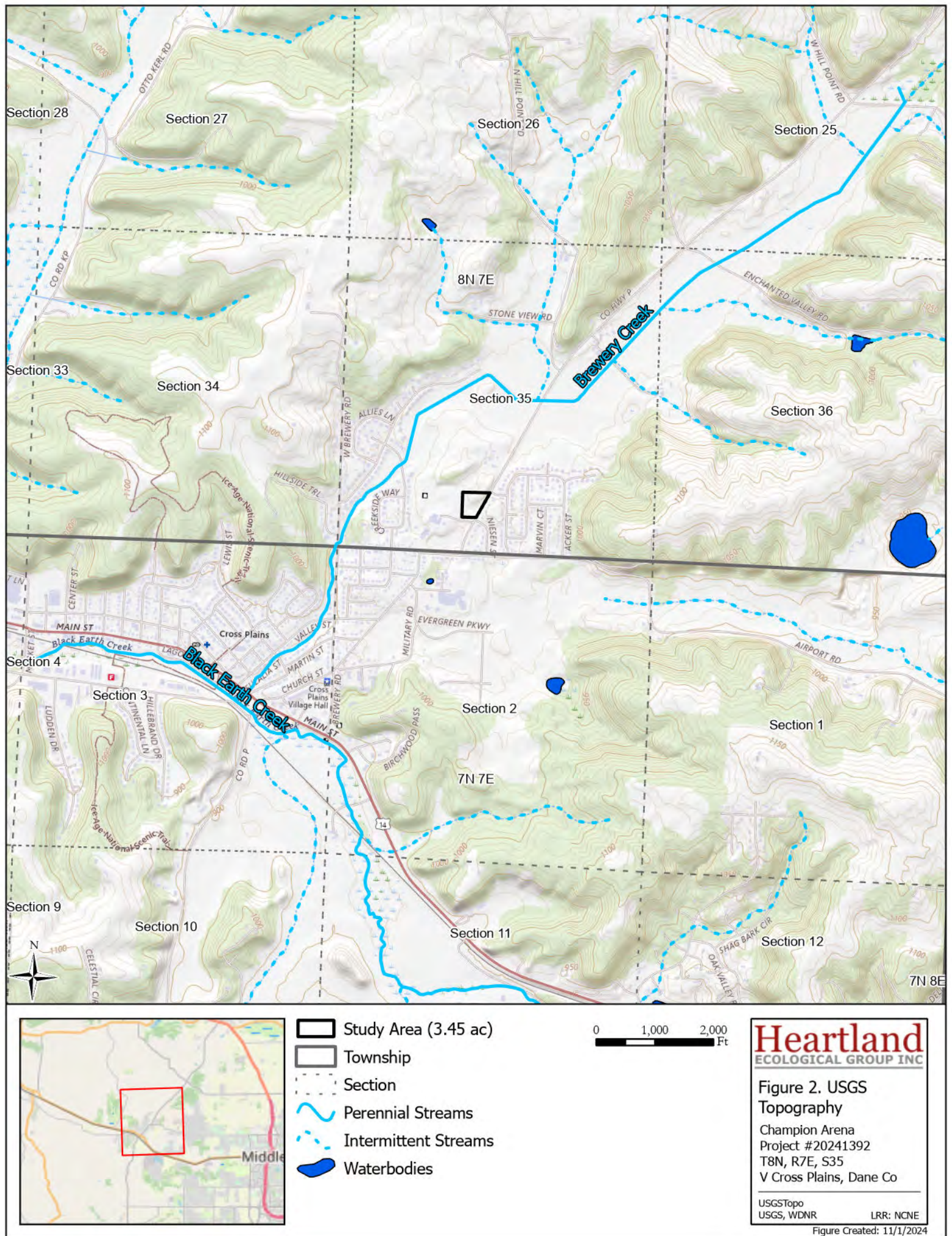
Champion Arena
Project #20241392
T8N, R7E, S35
V Cross Plains, Dane Co

OpenStreetMap
ESRI

LRR: NCNE

Figure Created: 10/23/2024







Study Area (3.45 ac)

NRCS Soil Survey Data

- Hydric (100%)
- Predominantly Hydric (85-99%)
- Partially Hydric (16-84%)
- Predominantly Non-Hydric (1-15%)
- Non-Hydric (0%)

0 100 Ft

Heartland
ECOLOGICAL GROUP INC

Figure 3. NRCS Hydric Soils

Champion Arena
Project #20241392
T8N, R7E, S35
V Cross Plains, Dane Co

2022 Orthophoto
NRCS

LRR: NCNE

Figure Created: 11/1/2024



Surface Water Data Viewer

Search... Sign in

Maps & Data Basic Tools Locate & Identify Draw & Measure Additional Resources

☒ Tool Labels

Home

Show Layers

Show Legend

Pan

Zoom In

Zoom Out

Previous Extent

Next Extent

Full Extent

Bookmarks

Point Identify

Print

Home

Map Layers

Navigation

Identify

Print

Layers

All Available Layers

Filter Layers...

☐ Assessments & Impairments

☐ Priority Navigable Waterways (PNW, ASNRI, PRF)

☐ Fisheries Management

☐ Grant Locations

☐ Permits & Determinations

☐ Sediment Inventory

☒ Mapped Wetlands

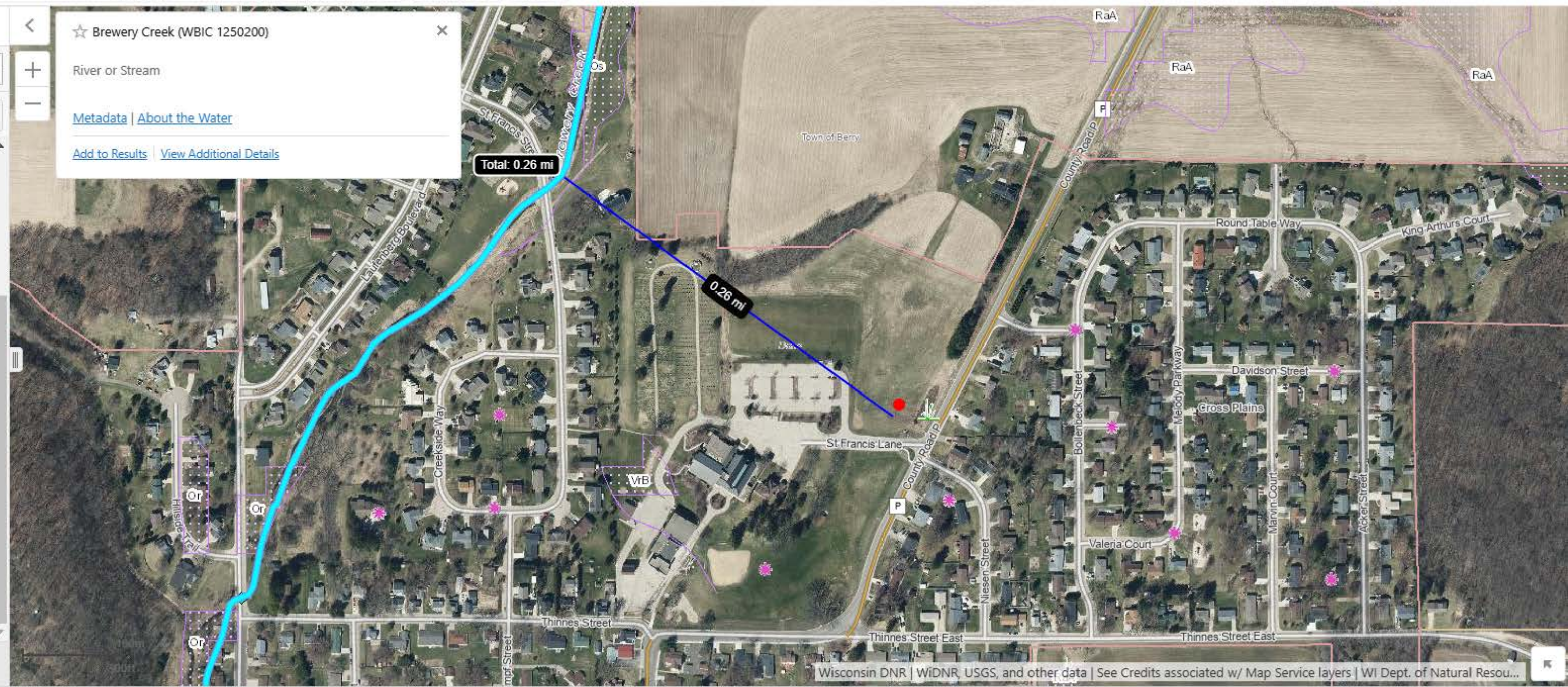
☒ Wetland Indicators & Soils

☐ Wild Rice Waters

☐ Ecoregions & Vegetation

☒ Administrative, Political & Cadastral

☒ Base Maps

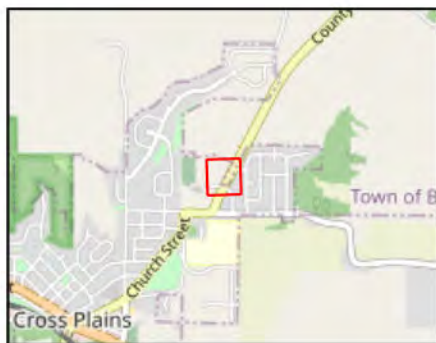


☆ Brewery Creek (WBIC 1250200)


River or Stream

[Metadata](#) | [About the Water](#)

[Add to Results](#) | [View Additional Details](#)



 Study Area (3.45 ac)

 SWDV Wetland Indicators (None in Map Extent)

0 100
Ft

Heartland
ECOLOGICAL GROUP INC

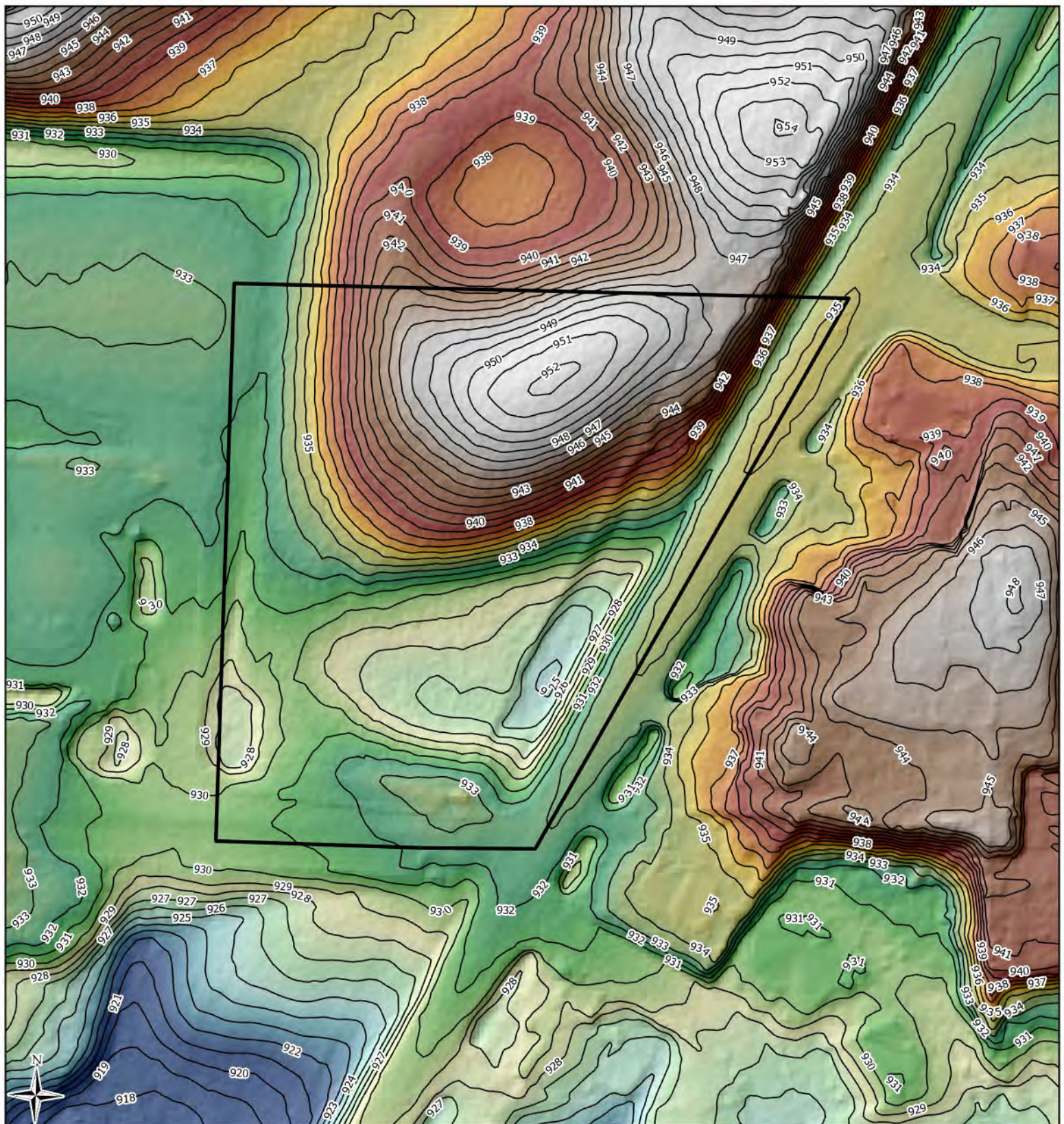
Figure 4. SWDV
Wetland Indicators

Champion Arena
Project #20241392
T8N, R7E, S35
V Cross Plains, Dane Co

2022 Orthophoto
WDNR

LRR: NCNE

Figure Created: 11/1/2024



Study Area (3.45 ac)
~ Dane Co 1' Contours

0 100 Ft

Heartland
ECOLOGICAL GROUP INC

**Figure 6. Color-Stretch
Digital Elevation Model**

Champion Arena
 Project #20241392
 T8N, R7E, S35
 V Cross Plains, Dane Co

DNR Lidar Service
 WDNR

LRR: NCNE

Figure Created: 11/1/2024

