



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

MVP

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-2019-00345 MFR 1 of 1²

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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 1 (2026)	Non-Jurisdictional	Non-WOTUS

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 Are Size (in acres): 4.5
- b. Location Description: The project/review area is located in Section 22, Township 41N, Range 9W, Sawyer County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 46.016540 Longitude: -91.469760
- d. Nearest City or Town: Hayward
- e. County: Sawyer
- f. State: Wisconsin

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g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2019-00345-JMB	AJD	All waters were determined to be non-jurisdictional (excluded waters) under the AJD
MVP-2007-01566-WMS	AJD	All waters were determined to be non-jurisdictional (excluded waters) under the AJD

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
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

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.

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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. N/A

- 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).

A wetland delineation was conducted by Tim King of Ecosystems, LLC on May 14th, 2025. Within the 4.5 acre site, one wetland (2025 Wetland 1) was identified totaling approximately 2.5 acres. No waterways were mapped or identified onsite. A WDNR mapped unnamed open water pond is located directly to the east of the site. The 2025 Wetland 1 is a wet meadow, shrub Carr, hardwood swamp, shallow marsh and shallow open water wetland complex located in a concave depression surrounded by commercial

⁹ 88 FR 3004 (January 18, 2023)

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developments to the north and west, and by vacant, undeveloped lands to the south and east. The wetland is located approximately 0.37 miles north of Hayward Lake (Namekagon River). Prior isolated AJDs was completed for the site in 2019 and 2007 and have been referenced during this determination. The project area is not located in or near a FEMA floodplain. Although the wetland is adjacent (neighboring) to another small pond located immediately offsite and to the east, it is separated by naturally occurring uplands. The small offsite pond was also determined to likely be depressional/isolated, based on a review of available topographic maps and LiDAR contours. 2025 Wetland 1 is not a TNW, territorial sea, or interstate water and are therefore not (a)(1) water. A May 4, 2026, desktop review using NRV data including topographic maps, aerial imagery and LIDAR indicates that the feature is a depressional area surrounded by uplands. The feature 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 feature is a nontidal wetland that does not have a continuous surface connection to a relatively permanent jurisdictional water and as such does not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetland; therefore, this 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 May 4, 2026
 - b) Hexum Lot Wetland Delineation Report completed by DNR Assured Wetland Delineator Timothy D. King of Eco systems, llc for NWBE, Inc. A field investigation was conducted on May 14, 2025. The wetland delineation report used the US Army Corps of Engineers, *Wetlands Delineation Manual* (Technical Report Y-87-1) and the January 2012 *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region* (Version 2.0), and subsequent guidance documents (WDNR, USACE & NRCS) for the methods used.
 - c) Offsite methods used included review of available resources such as U.S. Geological Survey (USGS) topographic map, Natural Resources Conservation Service (NRCS) soil survey data, WDNR Surface Water Data Viewer (SWDV) and Wisconsin Wetland Inventory (WWI) mapping, U.S. Fish & Wildlife Service (USFWS) National Wetland Inventory (NWI) mapping, recent aerial photography,

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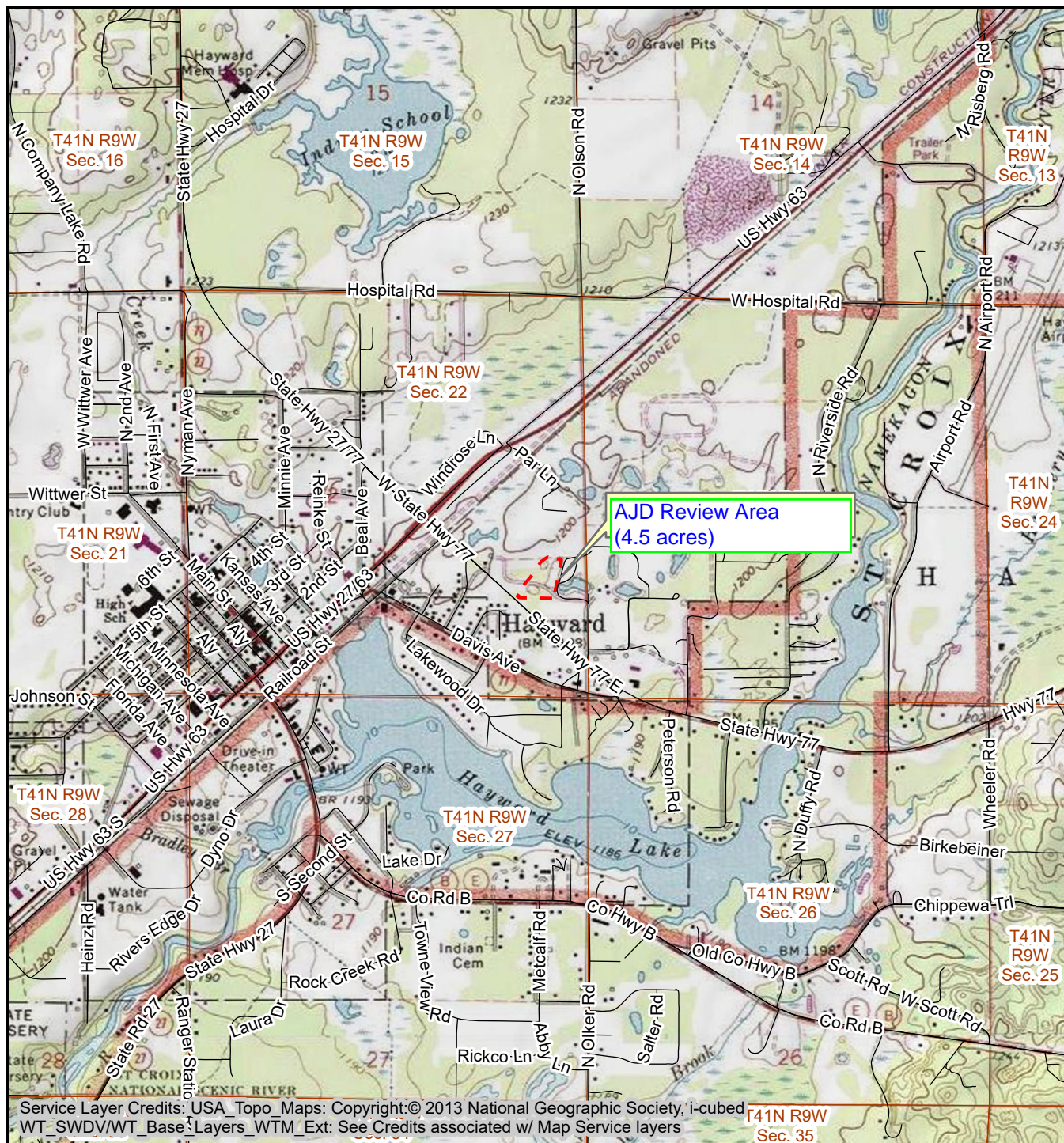
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WDNR LiDAR and 1 ft. contour mapping, client data and other sources to help identify wetlands and other aquatic resources. Antecedent precipitation conditions were also reviewed to determine if climatic conditions were dry, normal, or wet using an antecedent precipitation tool developed by the USACE or WETS analysis developed by NRCS.

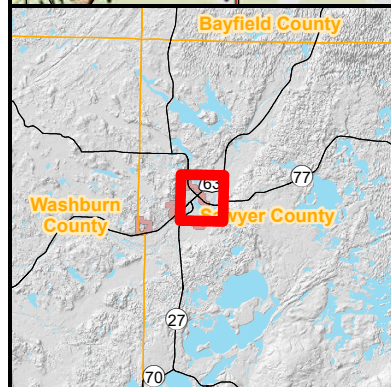
d) National Regulatory Viewer; Wisconsin

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.



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 WT_SWDV/WT_Base/Layers_WTM_Ext: See Credits associated w/ Map Service layers




▭ Approximate Study Area
 Roadway
 Section

N

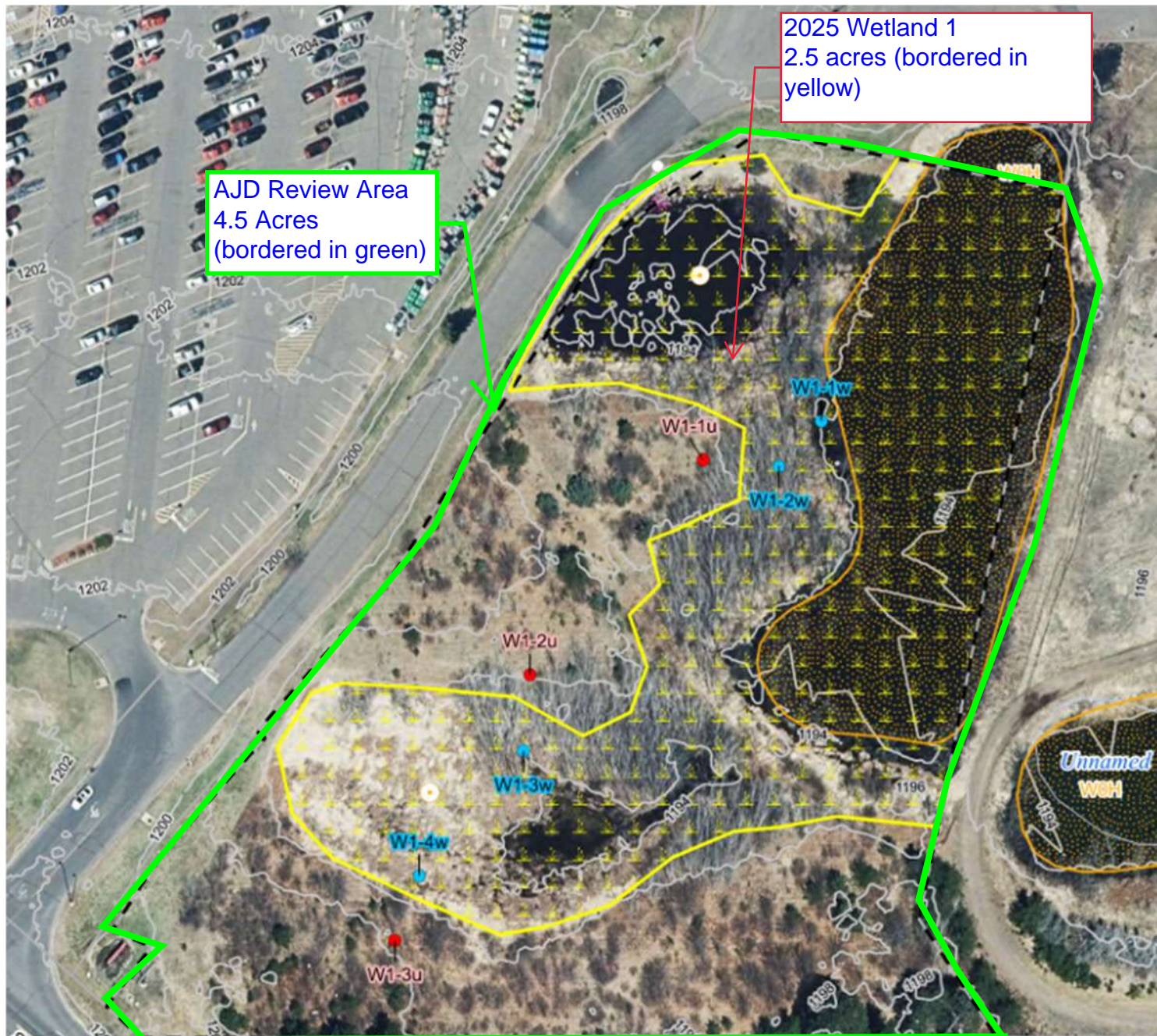
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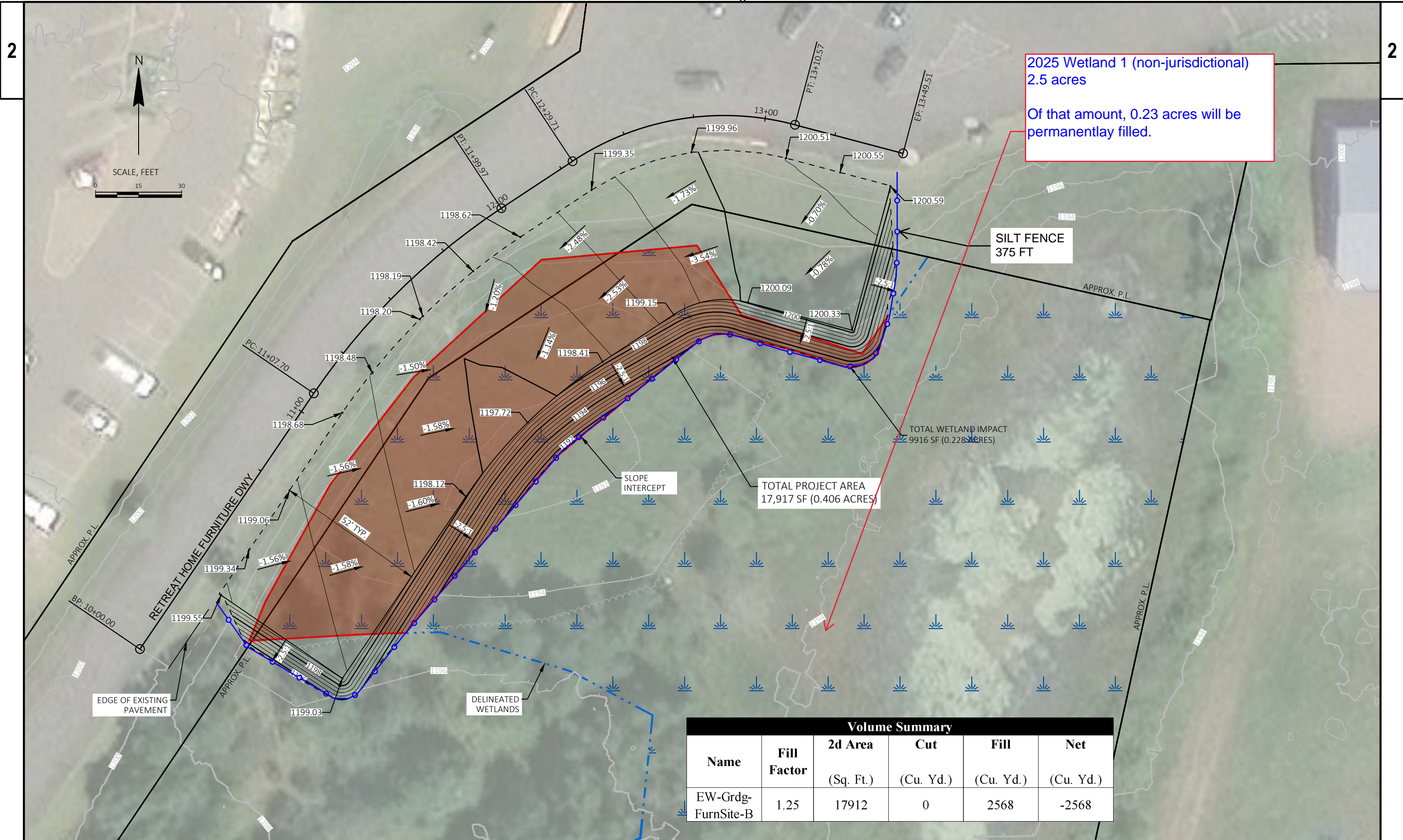
Hexum Lot
City of Hayward
Sawyer County, Wisconsin

Figure 1.
 Project Location Map



P.O. Box 481 | Rice Lake, WI 54868





Volume Summary					
Name	Fill Factor	2d Area (Sq. Ft.)	Cut (Cu. Yd.)	Fill (Cu. Yd.)	Net (Cu. Yd.)
EW-Grdg-FurnSite-B	1.25	17912	0	2568	-2568