



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

May 7, 2026

CEMVP-RD

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-2024-00702-CJB, 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.

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00702-CJB

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
W-5	Non-Jurisdictional	N/A
W-8	Non-Jurisdictional	N/A

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. Review Area Size (in acres): 1.0
- b. Location Description: The project/review area is located in Section 16, Township 24N, Range 20E, Brown County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.551120 Longitude: -88.075720
- d. Nearest City or Town: Green Bay
- e. County: Brown
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
N/A	N/A	N/A

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00702-CJB

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

N/A

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 record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used.

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.

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 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).

We have reviewed and evaluated the current and historical photography, LiDAR, soil mapping, and the information submitted by the applicant for the following features under the categories of waters of the United States:

- Wetland 5, non-jurisdictional
- Wetland 8, non-jurisdictional

⁹ 88 FR 3004 (January 18, 2023)

Wetland 5 (0.09 acre) is located within a closed depression in the southern portion of the review area. Review of aerial photos indicates a discrete drainage feature near the western boundary of this wetland. This drainage feature appears to have been excavated after the 2022 Wetland Delineation Supplement that was completed by George & Holdt. However, additional information provided by the requestor identified a topographic rise between Wetland 5 and this drainage feature indicating the drainage feature does not provide Wetland 5 with a continuous surface connection to a relatively permanent water (RPW). No other discrete features near Wetland 5 were identified in LiDAR, topographic maps, or the delineation reports. Therefore, Wetland 5 is surrounded by upland, does not abut a jurisdictional water, and does not meet the continuous surface requirement.

Wetland 8 (0.04 acre) is located within a depression near the western boundary of a railroad right-of-way in the northern portion of the review area. Based on the wetland delineation report that was completed by Evergreen Consultants on an area adjacent to the review area (east of the railroad right-of-way) a culvert extends below the railroad tracks potentially connecting Wetland 8 to a wetland, identified as Wetland 4 on the figure labeled MVP-2024-00702-CJB Figure 3 of 5, outside of the review area east of the railroad tracks. However, review of the Evergreen Consultants delineation outside the review area to the east of Wetland 8 did not indicate any discrete features near the exterior boundaries of Wetland 4 that would provide Wetland 8 with a continuous surface connection to an RPW. No other discrete water conveyance features were identified in the wetland delineation reports or in LiDAR review. Therefore, Wetland 8 does not abut a jurisdictional water and does not meet the continuous surface requirement.

Wetland 5 and Wetland 8 are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetland 5 and Wetland 8 are nontidal wetlands that do not abut a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. These wetlands are not intrastate lakes or ponds that meet the relatively permanent standard and cannot be evaluated as (a)(5) waters: lakes and ponds not identified in (a)(1) – (a)(4). Wetland 5 and Wetland 8 do not directly abut a water of the United States; therefore, these wetlands are not jurisdictional under the “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule (September 8, 2023).

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00702-CJB

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 April 30, 2026
 - b. Wetland Delineation Report, completed by George & Holdt, dated May 1, 2017
 - c. Wetland Delineation Supplement, completed by George & Holdt, dated October 30, 2022
 - d. Wetland Delineation Report, completed by Evergreen Consultants, dated October 2, 2024
 - e. GIS Layers consisting of DEM, Hillshade, and WI 24k Hydro Flowlines Stream Order, accessed using the National Regulatory Viewer on April 30, 2026

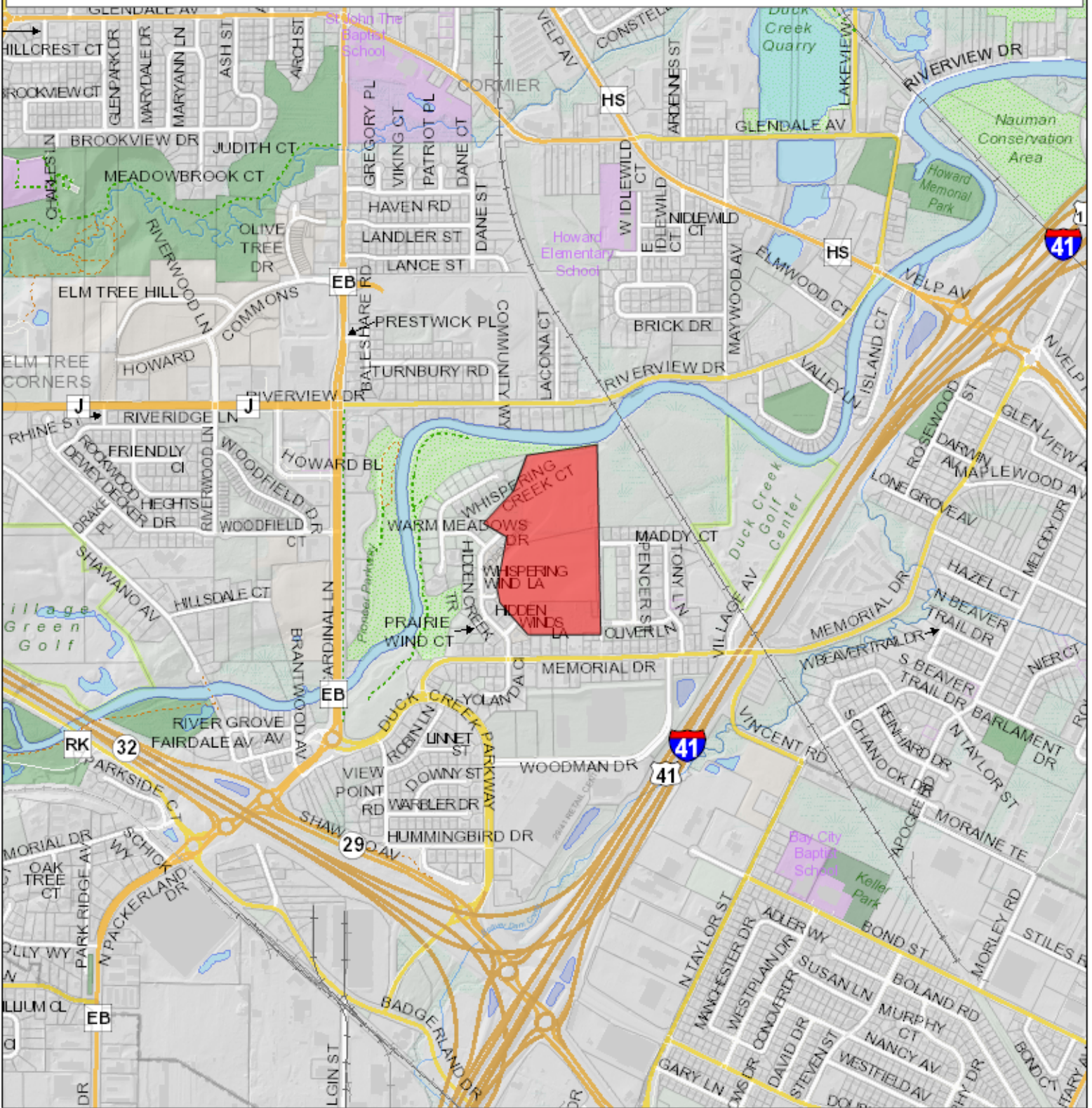
10. OTHER SUPPORTING INFORMATION.

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.

Project Location

Sec 16, T24N-R20E Village of Howard Brown Co



Map provided by the Brown County Planning & Land Services Department - Land Information Office (LIO)


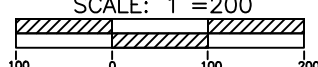
A map key (legend) and other information about this map is available at: maps.gis.co.brown.wi.us

This map is intended for advisory purposes only. It is based on sources believed to be reliable, but Brown County distributes this information on an "As Is" basis. No warranties are implied. Boundaries shown on this map are general representations only and should not be used for legal documentation, boundary survey determinations, or other property boundary issues.

11/06/2016
Scale 1:15840



Key
 ● Transect Point
 Wetland Boundary
 Project Area


 NORTH
 SCALE: 1"=200'


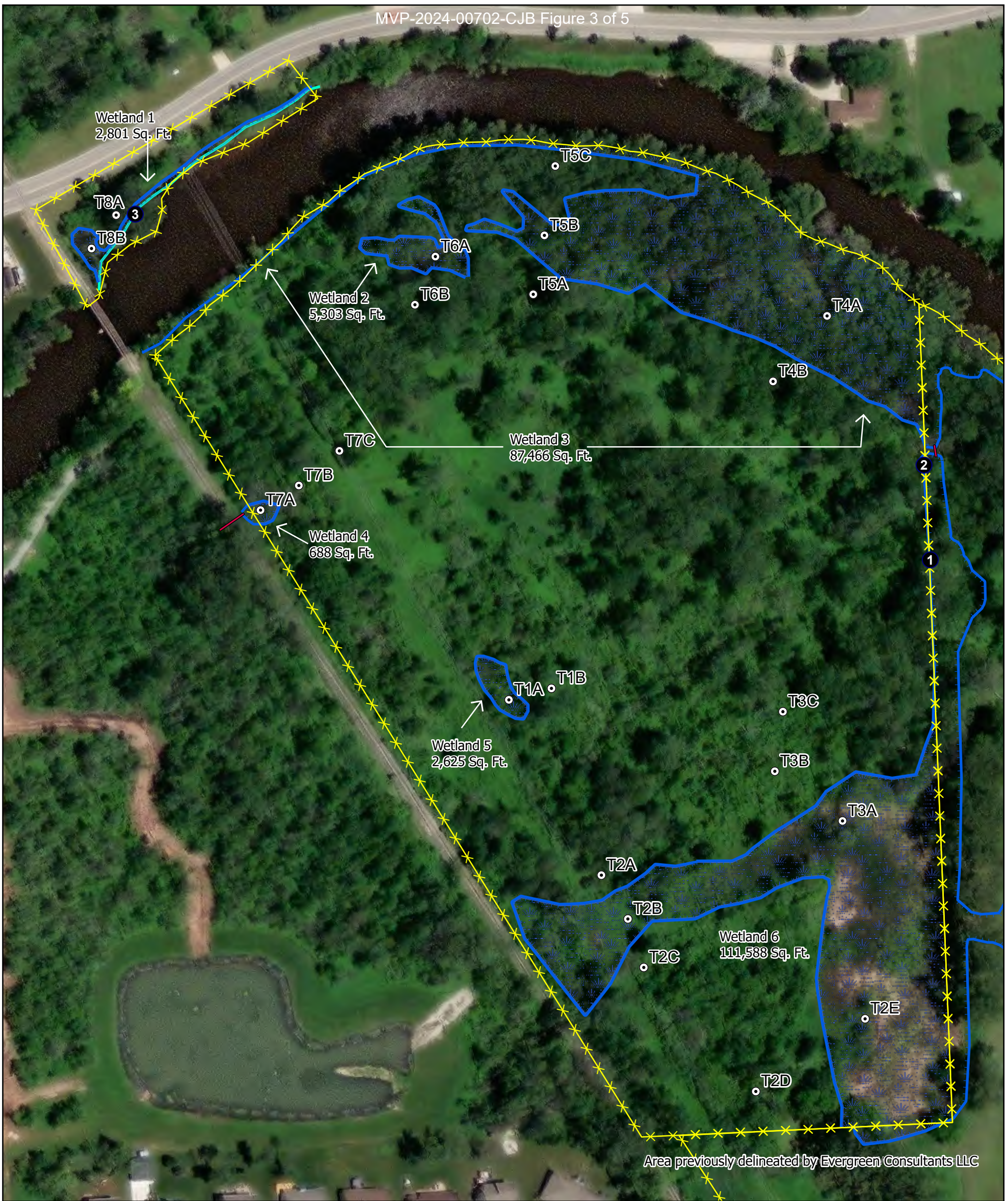
GEORGE & HOLDT- SOIL CONSULTANTS LLC
 6350 Nero Lane
 Sobieski, WI 54171
 (920)822-9918
 georgeandholdt.com

Daybreak Development LLP
 2585 S Broadway
 Green Bay, WI 54304

S16,T24N-R20E
 Village of Howard
 Brown County

DAVID A. GEORGE

AARON HOLDT

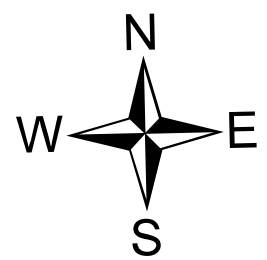


Area previously delineated by Evergreen Consultants LLC

Legend

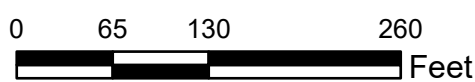
- Site Boundary
- Sample Point
- Picture Location
- Wetland Line
- Wetland
- Culvert
- Approx. OHWM

Hidden Creek Trail Property Wetland Delineation Map 467 Hidden Creek Trail Village of Howard Brown County, WI



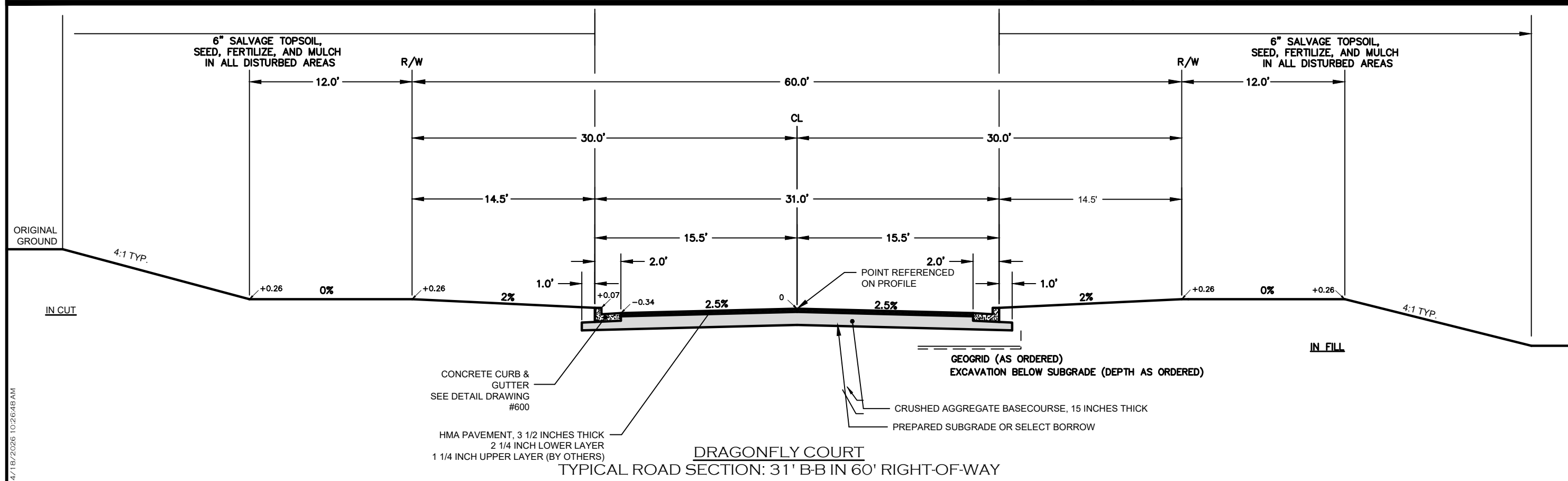
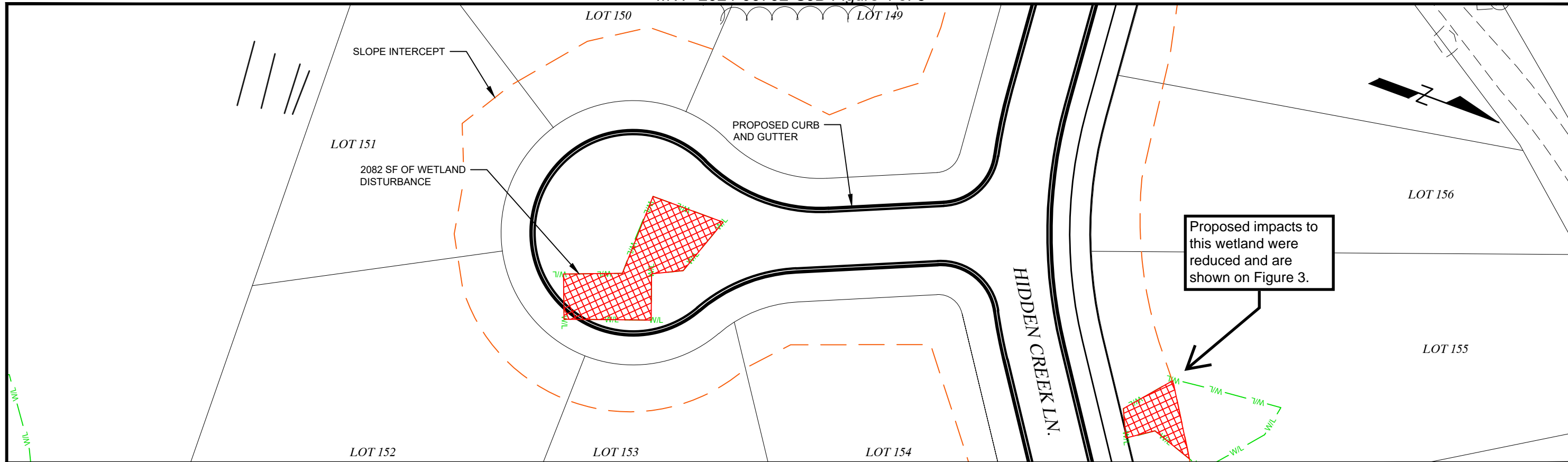
Wetland Delineation was conducted by Chad Fradette, EP, Chem, WDNR Professionally Assured Wetland Delineator with assistance from Shyann Banker, Environmental Scientist, WDNR Professionally Assured Wetland Delineator

Project: BRN24-241-01



Phone: 920.615.0019 • Website: www.evergreenwis.com

PO Box 680 Pulaski, WI 54162

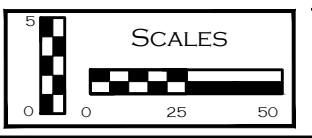


DRAGONFLY COURT
TYPICAL ROAD SECTION: 31' BB IN 60' RIGHT-OF-WAY

RECORD DRAWINGS OF COMPLETED CONSTRUCTION CONFORMING TO CONTRACTORS AND OWNERS RECORDS
By: DATE:

REVISIONS/REMARKS		
No.	DESCRIPTION	DATE
1	LOWER WM @ STM CROSSING	4-7-26
2		

SURVEYED BY: VIERBICHER
PROJECT NO: 24003
FILE NAME: 24003 BASE WETLAND ALT 1.DWG
DRAWN BY: VOH

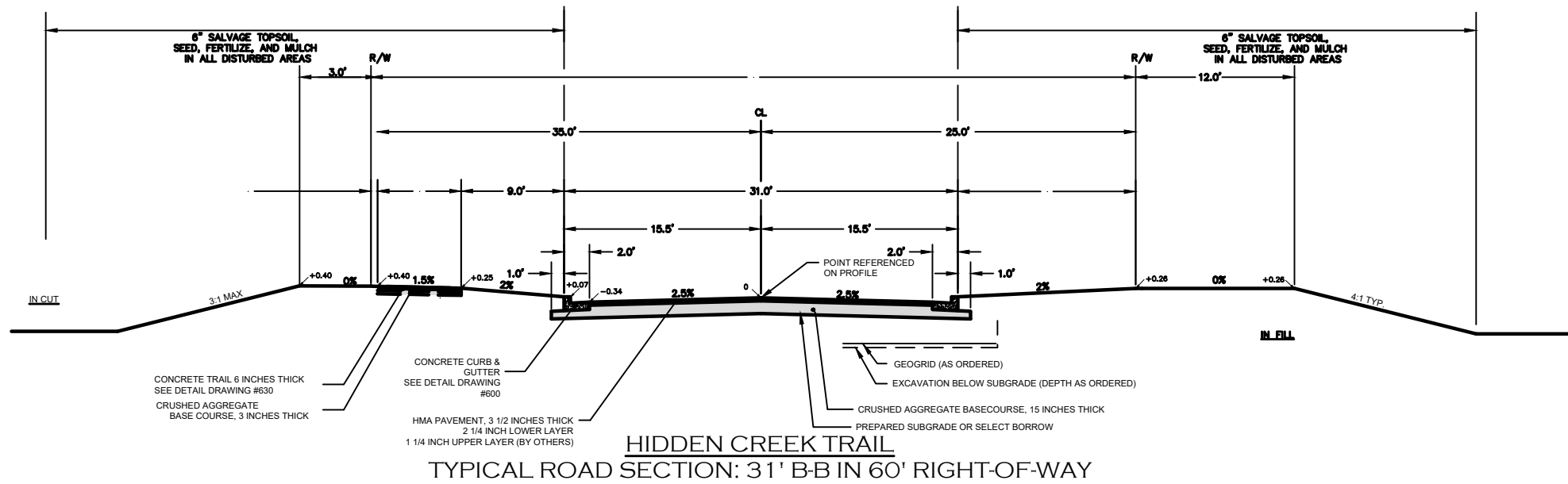
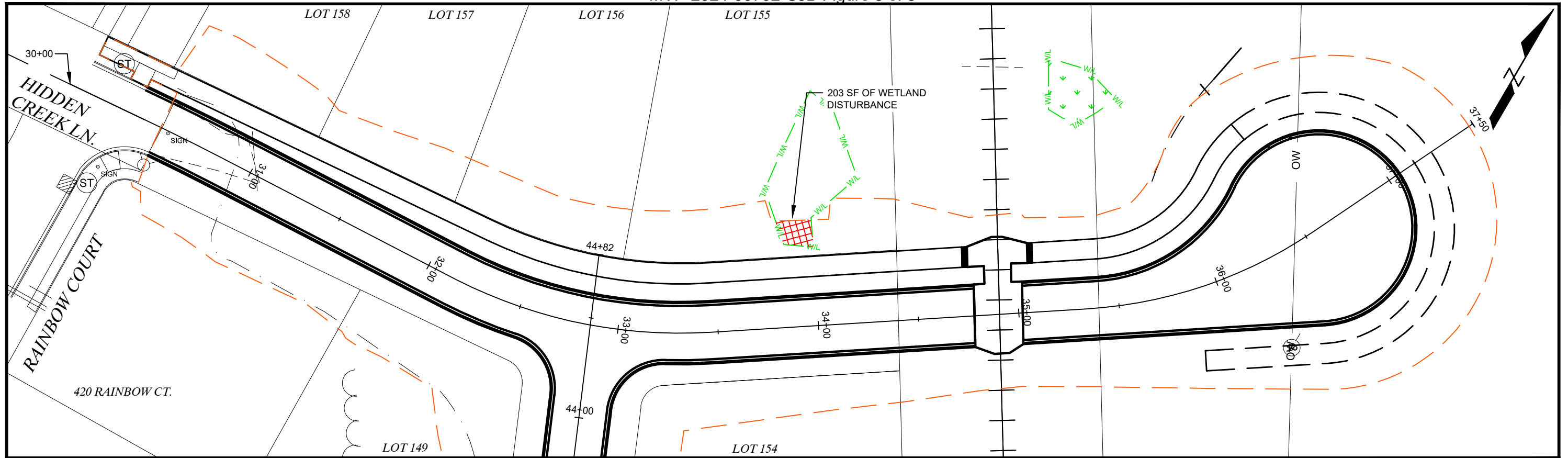


V I L L A G E O F
HOWARD
1336 CORNELL ROAD GREEN BAY, WISCONSIN 54313

DRAGONFLY COURT
ALTERNATES 1, 2, & 3

SHEET NO.
2

4/18/2026 10:26:48 AM



4/18/2026 11:11:18 AM

<p>RECORD DRAWINGS OF COMPLETED CONSTRUCTION CONFORMING TO CONTRACTORS AND OWNERS RECORDS</p> <p>By: _____ DATE: _____</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3">REVISIONS/REMARKS</th> </tr> <tr> <th>No.</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>LOWER WM @ STM CROSSING/ ADD SAN LAT</td> <td>4-7-26</td> </tr> <tr> <td>2</td> <td></td> <td></td> </tr> </tbody> </table>	REVISIONS/REMARKS			No.	DESCRIPTION	DATE	1	LOWER WM @ STM CROSSING/ ADD SAN LAT	4-7-26	2			<p>SURVEYED BY: VIERBICHER</p> <p>PROJECT NO: 24003</p> <p>FILE NAME: 24003 BASE WETLAND ALTS 23.DWG</p> <p>DRAWN BY: VOH</p>	<p>SCALES</p>	<p>HOWARD</p> <p>1336 CORNELL ROAD GREEN BAY, WISCONSIN 54313</p>	<p>V I L L A G E O F</p> <p>HIDDEN CREEK TRAIL</p> <p>ALTERNATE 3</p>	<p>SHEET NO.</p> <p style="font-size: 2em; font-weight: bold;">1</p>
REVISIONS/REMARKS																		
No.	DESCRIPTION	DATE																
1	LOWER WM @ STM CROSSING/ ADD SAN LAT	4-7-26																
2																		