



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

CEMVP-RD

March 31, 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-2025-00245-TKO (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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 1, (0.78-acres)	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)

3. REVIEW AREA.

- a. Project Area Size (in acres): 0.8-acre
- b. Location Description: The project/review area is located in Section 18, Township 10N, Range 20E, Washington County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.3354 Longitude: -88.1750
- d. Nearest City or Town: Jackson
- e. County: Washington
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): [N/A](#)

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

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

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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. 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

(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.

- 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).

Wetland 1 (W-1) is an excavated catch basin located at the western extent of a parcel containing a commercial development. Review of historic aerial imagery shows the basin was excavated at some point between 2000-2005. Prior to excavation, the area containing W-1 was actively farmed, though presented repeated wetness signature through various years of imagery reviewed. Review of the 2024 WI Department of Natural Resources Wetland ID Report, Google Earth and historic aerial images, Washington County GIS, and LiDAR hillshade and DEM GIS layers (from the Mississippi Valley Division Regulatory Viewer) indicate that W-1 transitions to upland at the north, west, and east. Wetland 1 continues off site to the southwest, where it discharges to a mapped (NWI/WWI) wetland complex. Two (2) excavated drainage swales run north/south through W-1, sloping to the south where they discharge to the off-site wetland. Review of wetland and soil inventory data, along with ground and aerial imagery and LiDAR layers, shows this off-site wetland is bound by uplands at the north, south, east, and west. Topography within the wetland slopes down to the southwest where it appears to discharge to a culvert, which outlets to a storm water retention pond south of Northwest Passage. Review of historic imagery shows this surface water feature was constructed in phases between 1995-2005. Review of aerial imagery and LiDAR shows the storm pond does not directly abut a jurisdictional water.

⁹ 88 FR 3004 (January 18, 2023)

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Wetland 1 is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. Wetland 1 does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetland 1 is a non-tidal wetland that does not abut a relatively permanent jurisdictional water and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland. The wetland is not an intrastate lake or pond that meets the relatively permanent standard and cannot be evaluated as an (a)(5) water: lakes and ponds not identified in (a)(1) - (a)(4). Therefore, the 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.

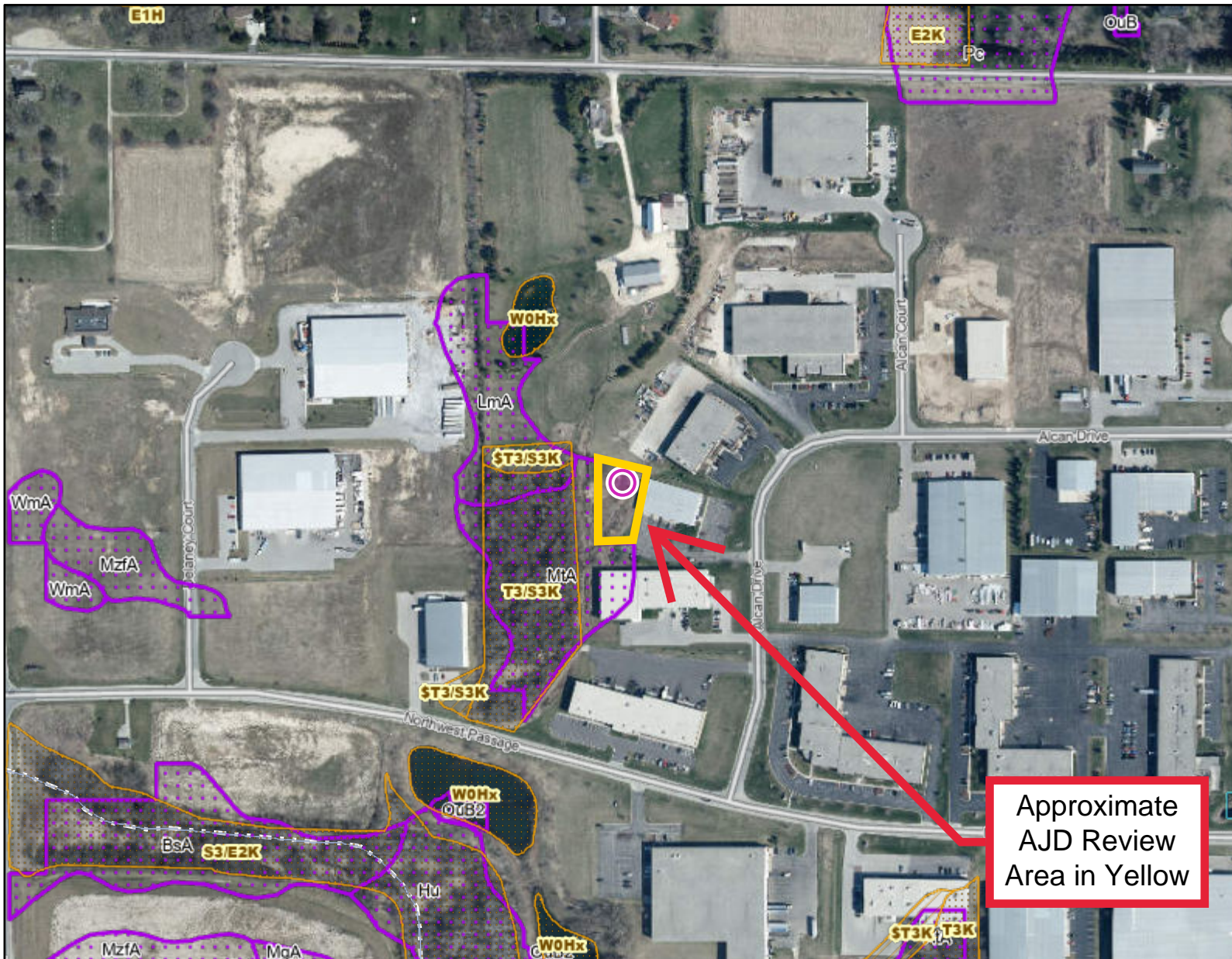
- a. No field visits were conducted. Desktop review evaluation was conducted on 03/27/2025.
- b. AJD Application "2025-00245-TKO 20250303 APP.pdf" in the administrative record, 03/27/2025.
- c. Mississippi Valley Division Regulatory Viewer, 03/27/2025.
- d. Wisconsin DNR Surface Water Data Viewer, 03/27/2025.
- e. Washington County GIS Interactive Mapping, 03/27/2025.

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.



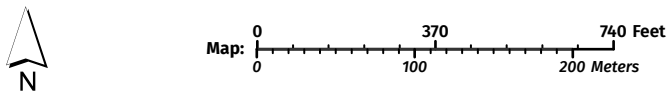
2025-00245-TKO Figure 1 of 3



- Legend:** (some map layers may not be displayed)
- Wetland Class Points
 - Excavated pond
 - Wetland Class Areas
 - Y
 - Filled Areas
 - Wetland Indicators
 - Rivers and Streams
 - Intermittent Streams
 - 24K Intermittent Streams
 - 24K Streams and Rivers
 - City or Village
 - County Boundaries
 - County and Local Roads
 - Local Road
 - Latest Leaf Off Imagery

Approximate AJD Review Area in Yellow

Notes:



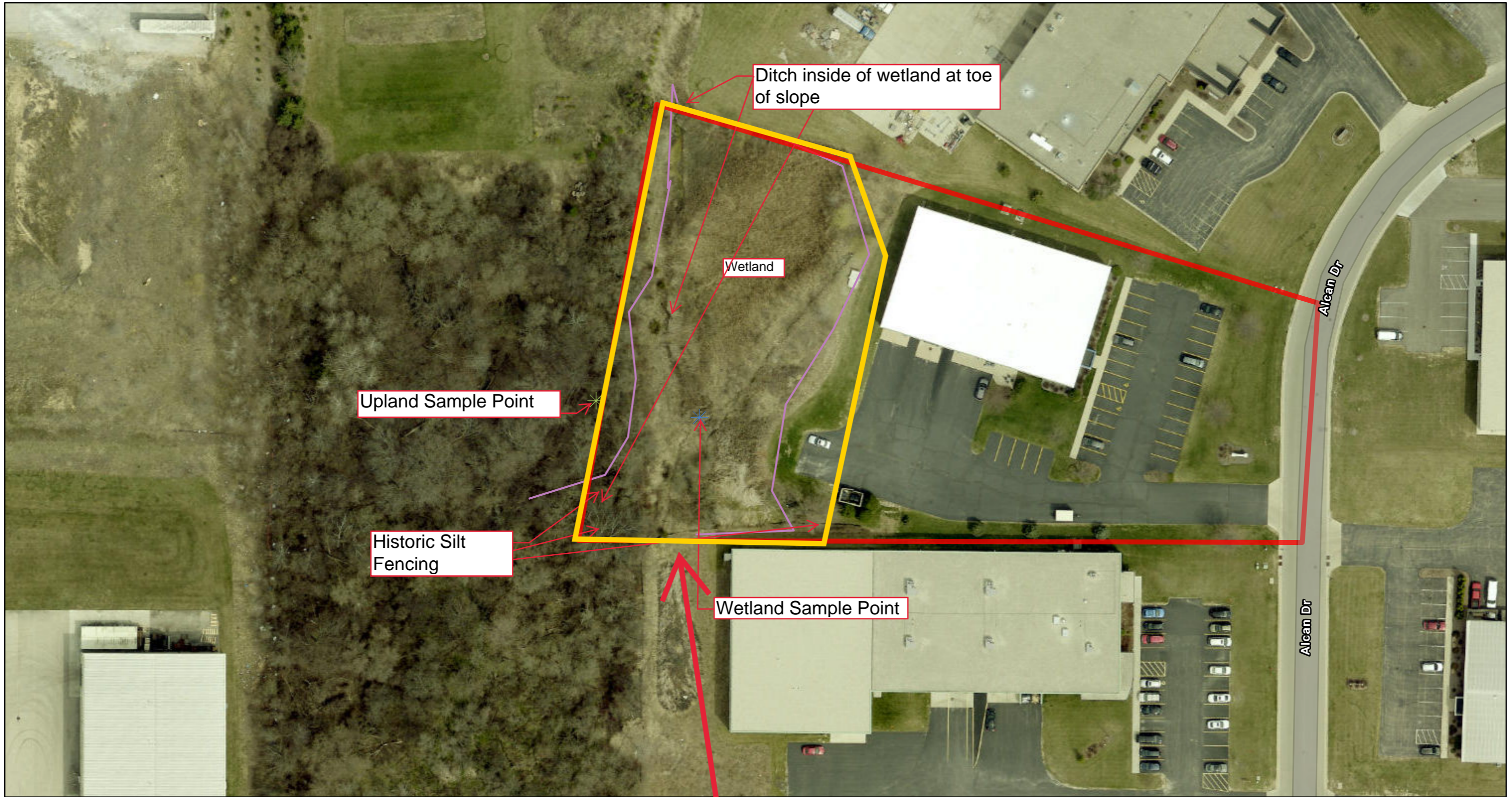
Service Layer Credits:
Latest Leaf Off: , Wetland Indicators & Soils: Surface Water Data Viewer Team, Wisconsin Wetland Inventory NWI (Dynamic): Calvin Lawrence, Dennis Weise, Nina Rihn, Cities, Roads & Boundaries: , Surface Water (Cached): WiDNR, USGS, and other data

Map projection: NAD 1983 HARN Wisconsin TM

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

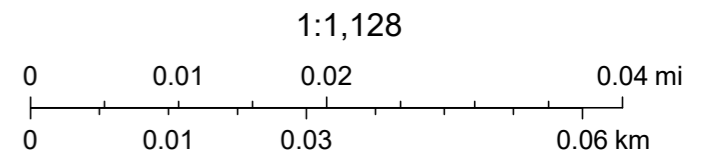
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Date Printed: 3/27/2025 1:30 PM



11/20/2024, 11:32:37 AM

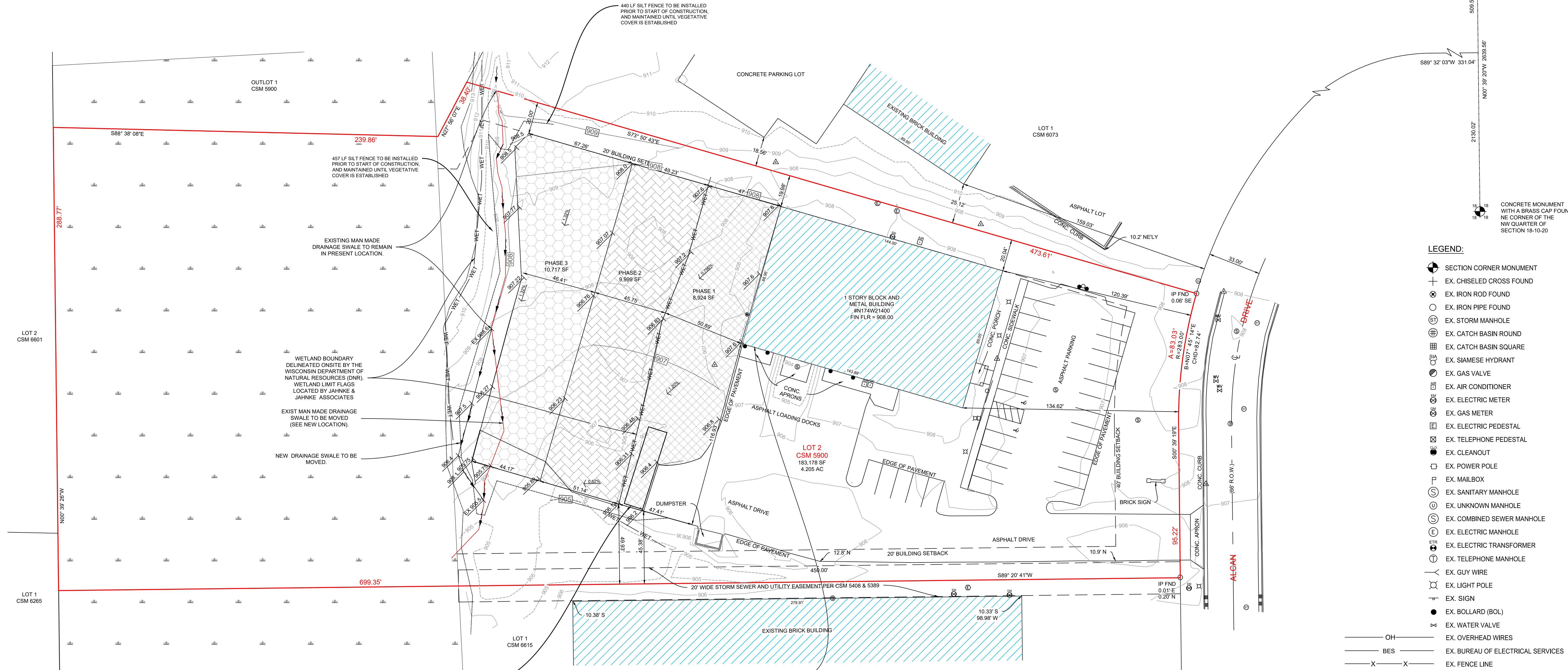
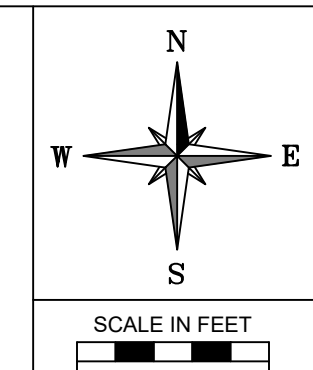
- Wetland_ID_Data - Polygon layer
- Wetland_ID_Data - Line layer
- Wetland_ID_Data - Point layer
- Upland
- Wetland Delineation Boundary
- Wetland



AJD Review Area in Yellow

SEWRPC, Maxar, Microsoft, Esri Community Maps Contributors, County of Washington, WI, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS

2025-00245-TKO Figure 3 of 3



- LEGEND:**
- ⊕ SECTION CORNER MONUMENT
 - ⊕ EX. CHISELED CROSS FOUND
 - ⊕ EX. IRON ROD FOUND
 - EX. IRON PIPE FOUND
 - ⊕ EX. STORM MANHOLE
 - ⊕ EX. CATCH BASIN ROUND
 - ⊕ EX. SIAMESE HYDRANT
 - ⊕ EX. GAS VALVE
 - ⊕ EX. AIR CONDITIONER
 - ⊕ EX. ELECTRIC METER
 - ⊕ EX. GAS METER
 - ⊕ EX. ELECTRIC PEDESTAL
 - ⊕ EX. TELEPHONE PEDESTAL
 - ⊕ EX. CLEANOUT
 - ⊕ EX. POWER POLE
 - ⊕ EX. MAILBOX
 - ⊕ EX. SANITARY MANHOLE
 - ⊕ EX. UNKNOWN MANHOLE
 - ⊕ EX. COMBINED SEWER MANHOLE
 - ⊕ EX. ELECTRIC MANHOLE
 - ⊕ EX. ELECTRIC TRANSFORMER
 - ⊕ EX. TELEPHONE MANHOLE
 - ⊕ EX. GUY WIRE
 - ⊕ EX. LIGHT POLE
 - ⊕ EX. SIGN
 - EX. BOLLARD (BOL)
 - ⊕ EX. WATER VALVE
 - OH — EX. OVERHEAD WIRES
 - BES — EX. BUREAU OF ELECTRICAL SERVICES
 - X — EX. FENCE LINE
 - COM — EX. COMMUNICATIONS
 - T — EX. TELEPHONE LINE
 - G — EX. GAS LINE
 - FIB — EX. FIBER OPTICS
 - > — EX. SANITARY SEWER (SAN)
 - > — EX. STORM SEWER (STO)
 - W — EX. WATER MAIN
 - — EX. TREE LINE
 - SF — SF — PRIMARY ENVIRONMENTAL CORRIDOR (PER WASHINGTON COUNTY GIS)
 - SF — SF — SILT FENCE

BY	DATE	DESCRIPTION

CHECKED BY: NR DATE: 12/12/2024
 DRAWN BY: JB JOB NO.: 24-10014
CLIENT
 LIZ HAYES-KOTECKI
 N174W21400 ALCAN DRIVE
 JACKSON, WI 53037
PROJECT
 PATRIOT FENCE
 N174W21400 ALCAN DRIVE
 JACKSON WI. 53037

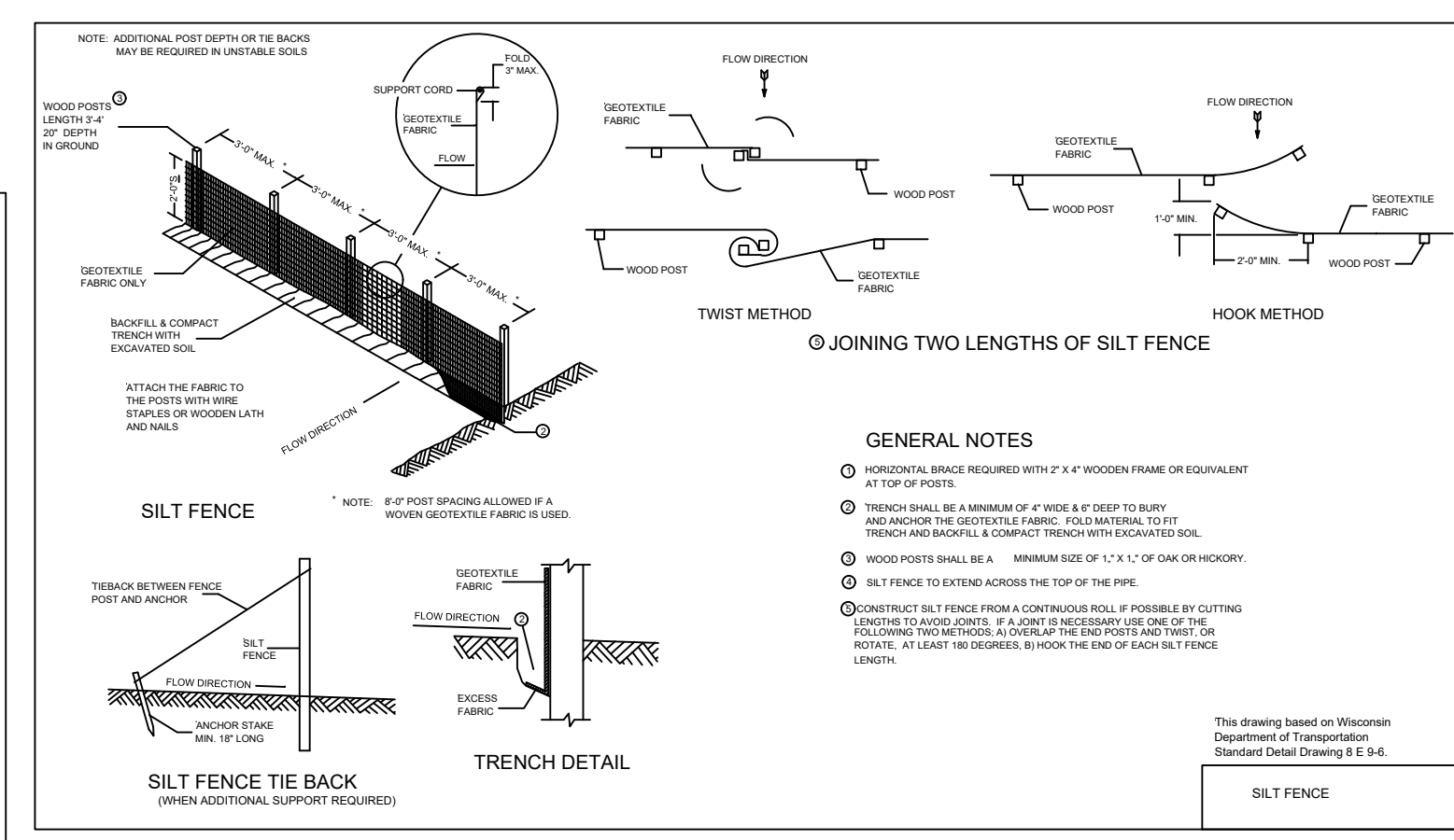
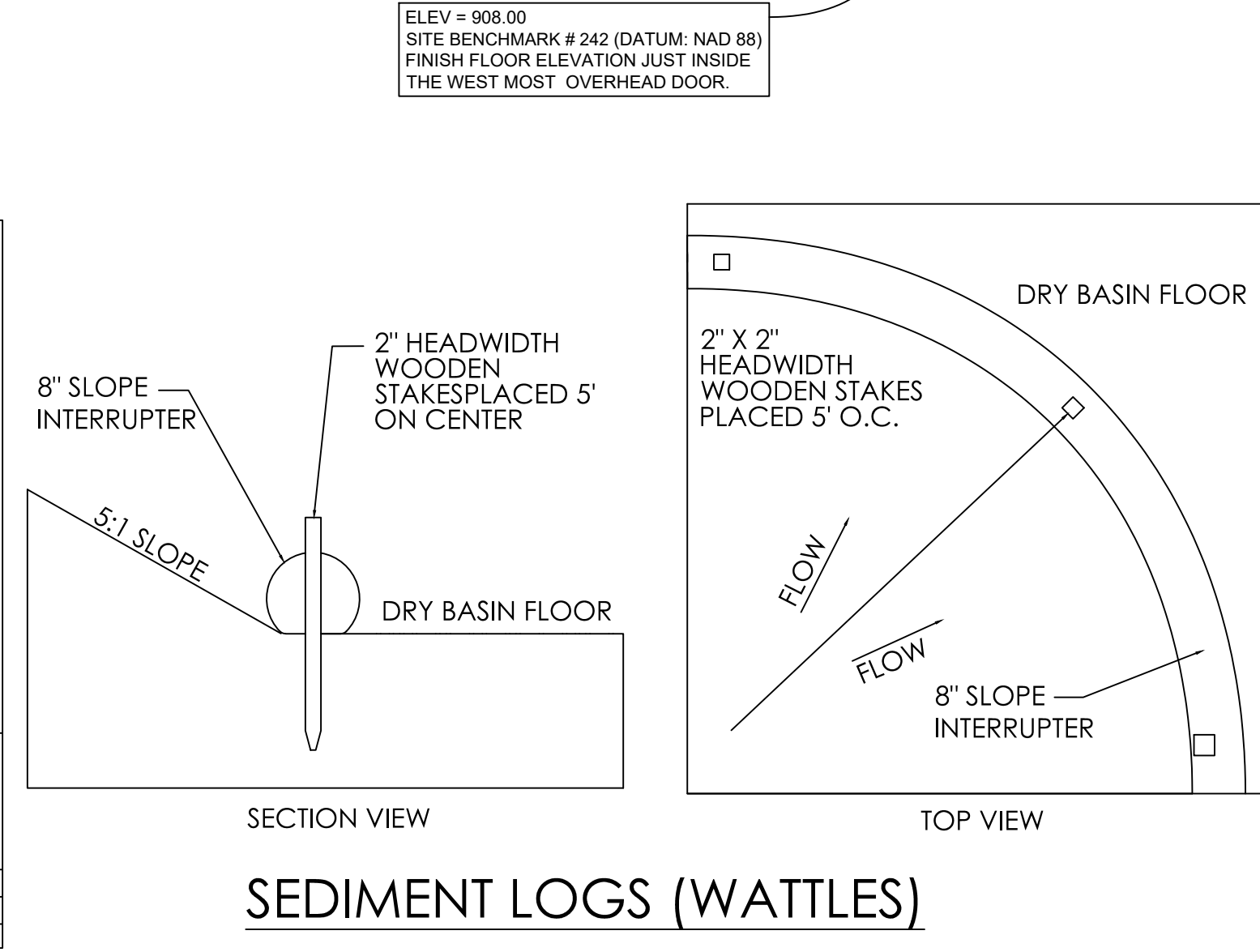
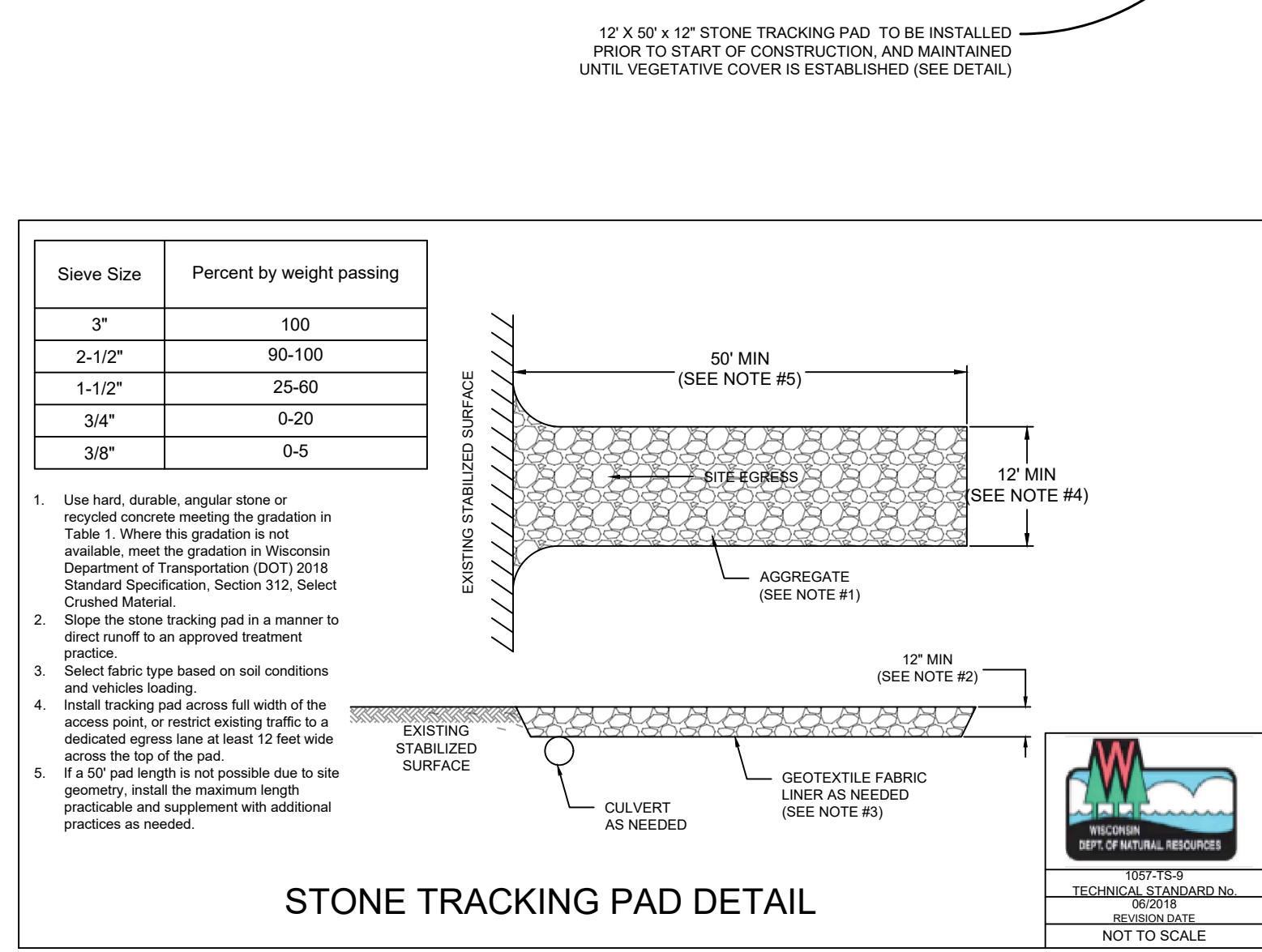
TO OBTAIN LOCATIONS OF PARTICIPANTS UNDERGROUND FACILITIES BEFORE YOU DIG IN WISCONSIN



CALL DIGGERS HOTLINE
 811 OR 1-800-242-8511 TOLL FREE
 WIS STATUTE 182.0175(1974) REQUIRES MIN. 3 WORK DAYS NOTICE BEFORE YOU EXCAVATE MILW. AREA 1-414-259-1181

NOTE: The location and size of the underground structures and utilities shown hereon have been located to a reasonable degree of accuracy, but the Engineer and/or Surveyor does not guarantee their exact location or the location of others not shown. Contact Diggers Hotline, Inc., Etc.

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- SURVEY NOTES**
- Date of the Survey field work: 09/16/2024
 - Building lines, easements and other restrictions not shown herein, should refer to deed, site plan and local zoning ordinances.
 - All dimensions shown are in decimal feet, US survey units.
 - Legal description was obtained from the client which may not be correct, accurate or complete. Review legal description and record measurements on this plan and at once report any apparent difference to the surveyor.
 - Utilities have not been certified, therefore the location and size of the underground structures and utilities shown hereon have been located to a reasonable degree of accuracy, but Jahnke & Jahnke Associates LLC does not guarantee their exact location or the location of others not shown. Contact Diggers Hotline, Inc., Etc.
 - Reference bearing is assumed unless noted. Bearing shown here are based on the North American Datum of 1983 (NAD 83), Wisconsin State Plane Coordinate System South Zone. Elevations (if any) shown are in relation to the North American Vertical Datum of 1988 (NAVD 88).
 - No measurements are to be assumed by scaling.
 - Any comments, modifications, alterations and revisions to this Survey must be brought to our attention within 30 days from date of completion on this sheet.
 - To insure legitimacy of this Plat of Survey, it must carry the Embossed Corporate Seal of Jahnke & Jahnke Associates LLC.
 - Per scope of this survey, not all improvements are shown.

