



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-R

July 14, 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-2025-00680-RJH (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).

- WL1, (1,483 square feet): Non-jurisdictional
- WL2, (2,608 square feet): 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)
- 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): 2
- b. Location Description: The project/review area is located in Section 28, Township 022N, Range 022E, Brown County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.353800 Longitude: -87.832640
- d. Nearest City or Town: Denmark
- e. County: Brown
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [NA]⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [NA]
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

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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- 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 historical photography, Google Earth photography, soil mapping, and the information submitted by the applicant for the following wetlands:

- i. WL1, (1,483 square feet): Non-jurisdictional
- ii. WL2, (2,608 square feet): Non-jurisdictional

WL1 and WL2 are shallow depressional basins located and surrounded by uplands in the form of commercial development and paved access roads. A review of the Digital Elevation Model (DEM) data, LiDAR imagery, and aerial photography indicate that WL1 and WL2 do not extend beyond the boundary of the review area. Based on our review of the available data, we have determined that WL1 and WL2 are not adjacent to a relatively permanent water (RPW). WL2 is located approximately 273.1 linear feet from an

⁹ 88 FR 3004 (January 18, 2023)

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unnamed tributary to the Neshota River, which is classified as perennial stream.

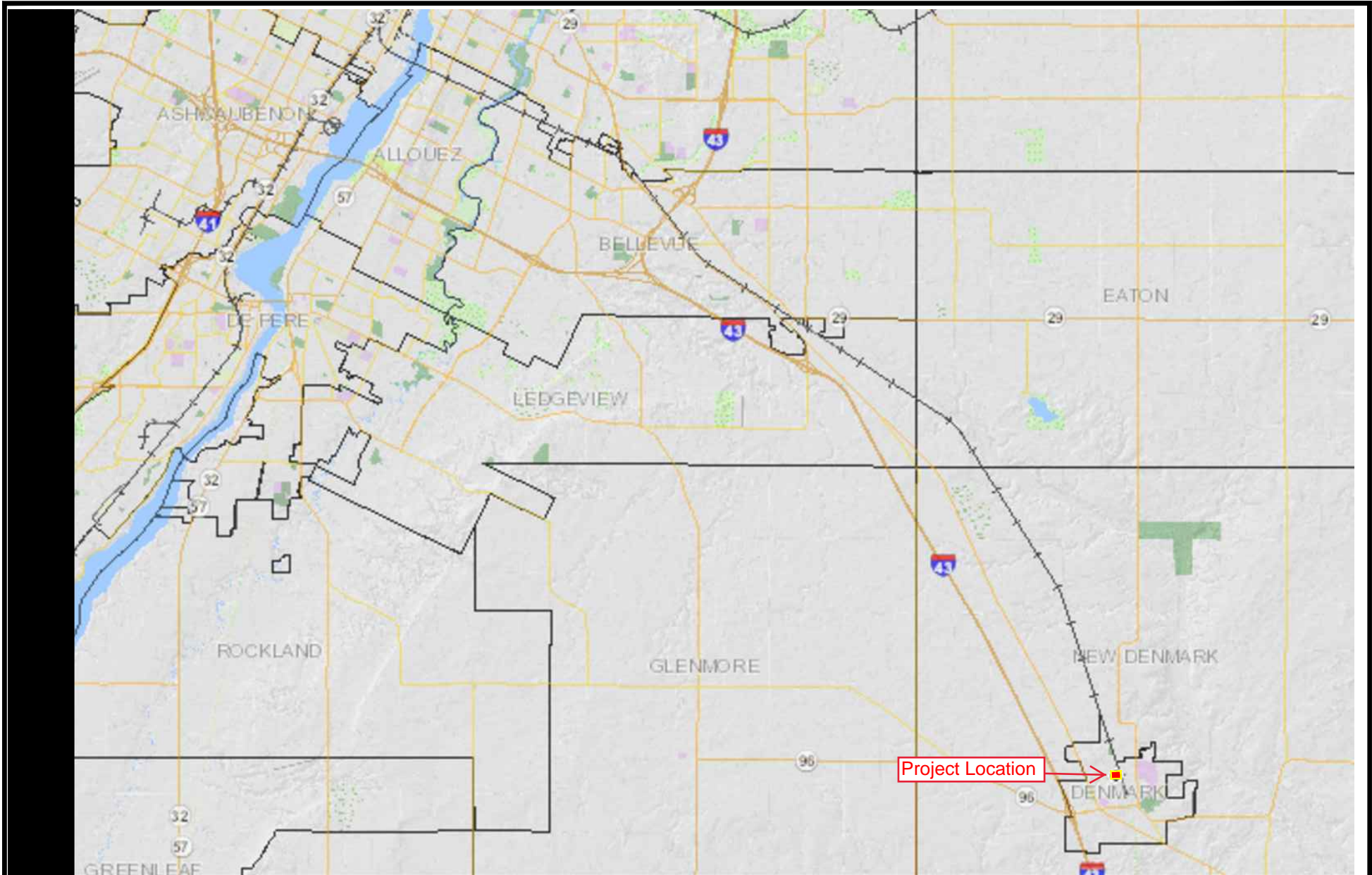
Because WL1 and WL2 are not traditionally navigable waters (TNWs), territorial seas, or interstate waters, they do not meet the criteria for (a)(1) waters. Furthermore, these wetlands do not physically abut an RPW, are not located within a paragraph (a)(2) impoundment, and are not adjacent to a jurisdictional (a)(3) tributary. As non-tidal wetlands that do not meet the definition of “adjacent,” WL1 and WL2 cannot be evaluated under paragraph (a)(4). Therefore, under the 2023 Revised Definition of “Waters of the United States” (Conforming Rule, 88 FR 61964), WL1 and WL2 are not considered jurisdictional.

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 14 July 2025]
- b. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, Hillshade layer and DEM layer accessed on 14 July 2025.]
- c. [Wetland Delineation Report, submitted by George & Holdt LLC, dated May 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.



GEORGE & HOLDT- SOIL CONSULTANTS LLC

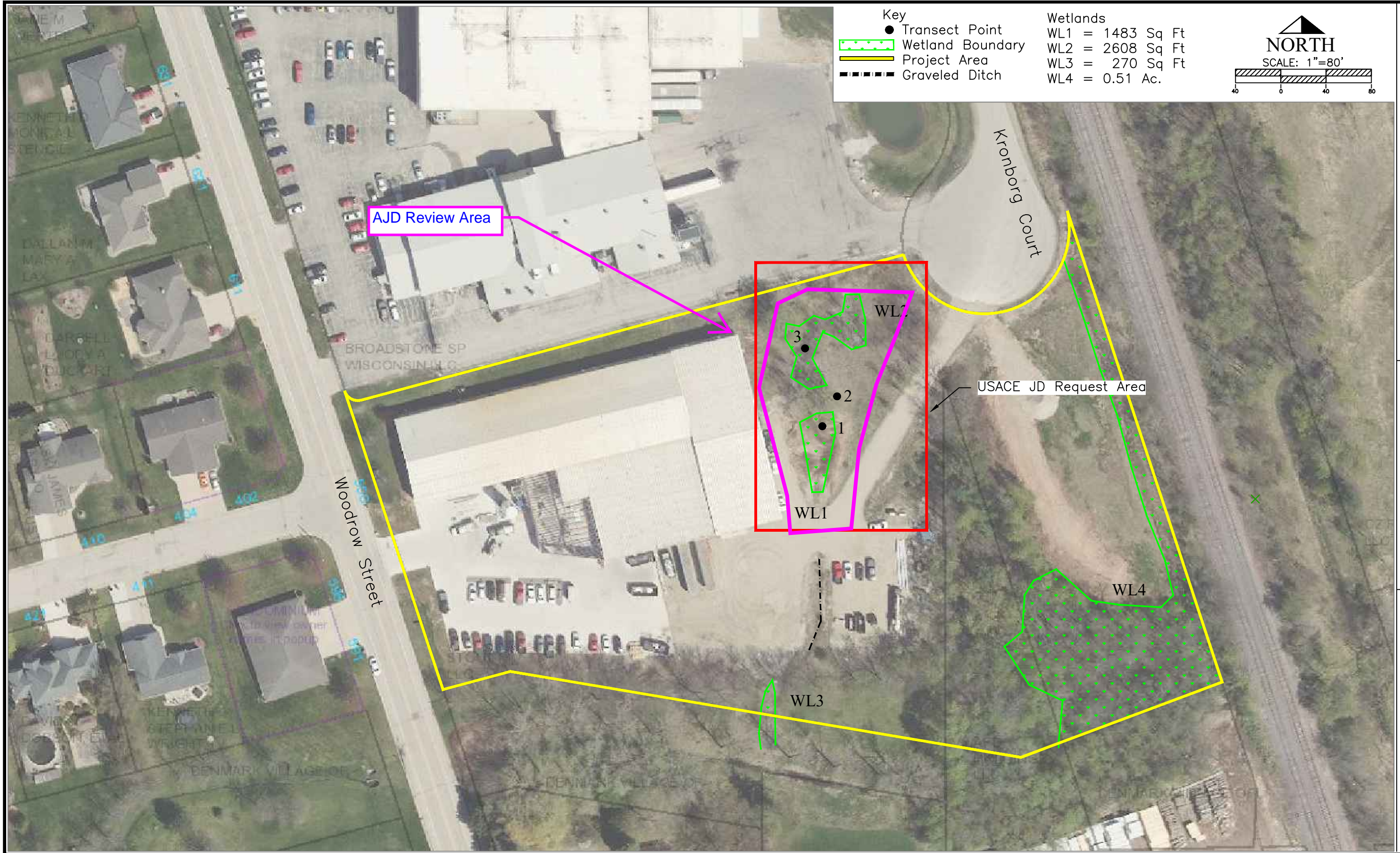
6350 Nero Lane
Sobieski, WI 54171
(920)822-9918
georgeandholdt.com

DAVID A. GEORGE

AARON HOLDT

Project Location

S28,T22N-R22E
Village of Denmark
Brown County



Tax Parcel #VD-79-4
NW-NE,NE-NE,S28,T22N-R22E
Village of Denmark
Brown County

Stout LLC
Steve Brusda
550 Woodrow Street
Denmark, WI 54208

Site Diagram

PROPOSED UTILITY LEGEND

- >> STORM SEWER PIPE
- (---) STORM SEWER MANHOLE
- (---) STORM SEWER ENDWALL
- (---) STORM SEWER CURB INLET
- (---) STORM SEWER CURB INLET W/MANHOLE
- (---) STORM SEWER FIELD INLET
- (---) ROOF DRAIN CLEANOUT
- (---) SANITARY SEWER PIPE (GRAVITY)
- (---) SANITARY SEWER PIPE (FORCE MAIN)
- (---) SANITARY SEWER LATERAL PIPE
- (---) SANITARY SEWER MANHOLE
- (---) SANITARY SEWER CLEANOUT
- (---) WATER MAIN
- (---) WATER SERVICE LATERAL PIPE
- (---) FIRE HYDRANT
- (---) WATER VALVE
- (---) CURB STOP
- (---) WATER VALVE MANHOLE
- (---) PROPOSED PIPE INSULATION
- (---) GAS MAIN
- (---) ELECTRIC SERVICE

SITE PLAN LEGEND

- (---) PROPERTY BOUNDARY
- (---) CURB AND GUTTER (REVERSE CURB HATCHED)
- (---) PROPOSED CHAIN LINK FENCE
- (---) PROPOSED WOOD FENCE
- (---) PROPOSED CONCRETE
- (---) PROPOSED LIGHT-DUTY ASPHALT
- (---) PROPOSED HEAVY-DUTY ASPHALT
- (---) PROPOSED BUILDING
- (---) PROPOSED SIGN
- (---) PROPOSED LIGHT POLE
- (---) PROPOSED BOLLARD
- (---) PROPOSED ADA DETECTABLE WARNING FIELD
- (---) PROPOSED HANDICAP PARKING

ABBREVIATIONS

- TC - TOP OF CURB
- FF - FINISHED FLOOR
- FL - FLOW LINE
- SW - TOP OF WALK
- TW - TOP OF WALL
- BW - BOTTOM OF WALL

ABBREVIATIONS

- STMH - STORM MANHOLE
- FI - FIELD INLET
- CI - CURB INLET
- CB - CATCH BASIN
- EW - ENDWALL
- SMH - SANITARY MANHOLE

SITE STATISTICS (BEFORE CONSTRUCTION)

SITE AREA - 187,259 SF
 BUILDING 42,028 SF (22.4%)
 PAVEMENT 24,411 SF (13.0%)
 GRAVEL 32,260 SF (17.2%)
 PERVIOUS 88,560 SF (47.3%)

SITE STATISTICS (AFTER CONSTRUCTION)

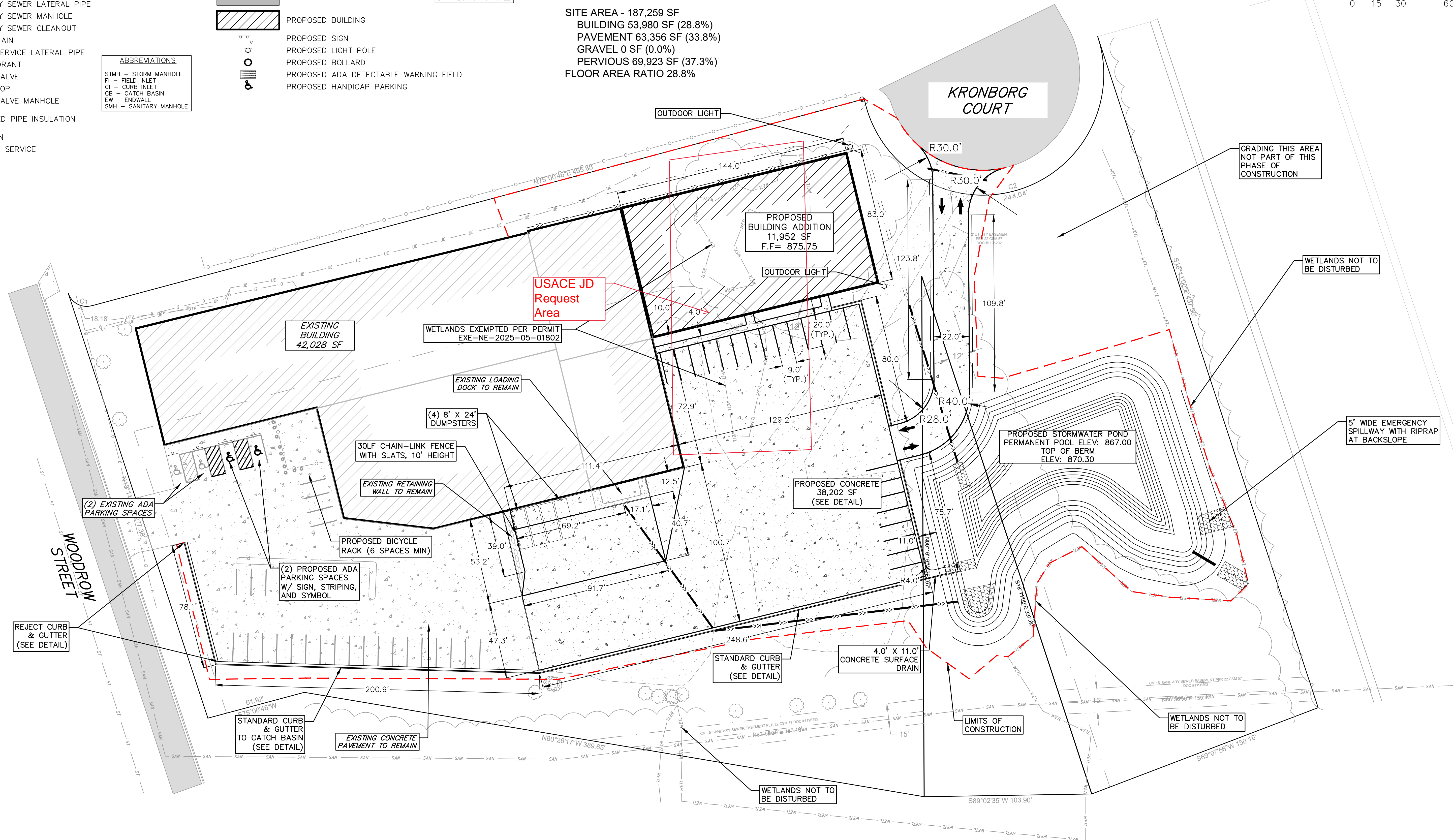
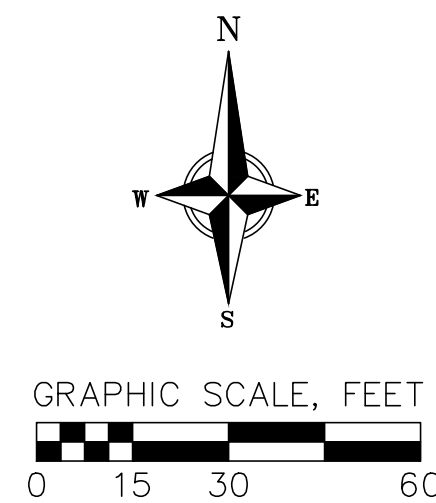
SITE AREA - 187,259 SF
 BUILDING 53,980 SF (28.8%)
 PAVEMENT 63,356 SF (33.8%)
 GRAVEL 0 SF (0.0%)
 PERVIOUS 69,923 SF (37.3%)
 FLOOR AREA RATIO 28.8%

SITE PARKING (BEFORE CONSTRUCTION)

TOTAL PARKING - 56 STALLS
 BARRIER-FREE PARKING - 2 STALLS

SITE PARKING (AFTER CONSTRUCTION)

TOTAL PARKING - 98 STALLS
 BARRIER-FREE PARKING - 4 STALLS



Site Plan
 Professional Fabrications, INC.
 550 Woodrow St.
 Village of Denmark, Wisconsin

REVISIONS	NO.	DATE	REMARKS

DATE: 06/25/2025
 DRAFTER: bsan
 CHECKED: twag
 PROJECT NO.: 250286

C4.0