



**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS, ST PAUL DISTRICT**  
**GREEN BAY FIELD OFFICE**  
**320 NORTH BROADWAY SUITE 200**  
**GREEN BAY WI 54303**

**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) ,<sup>1</sup> MVP-2025-01306 [[MFR 1 of 1](#)]<sup>2</sup>

**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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

**1. SUMMARY OF CONCLUSIONS.**

---

<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

- 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 11	Non-Jurisdictional	None
Wetland 13	Non-Jurisdictional	None
Wetland 7 Ditch	Non-Jurisdictional	None

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): 7.2-acre
- b. Location Description: The project/review area is located in Section 17, Township 12N, Range 21E, Ozaukee County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 43.4985 Longitude: -88.0017
- d. Nearest City or Town: Fredonia
- e. County: Ozaukee
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

CE MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01306

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A]
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup>  
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

---

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

- 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).<sup>9</sup>

The ditched portion of Wetland 7 (W-7D) is a constructed drainage feature that is not a water of the U.S. This aquatic feature fits under the definition of a b(3) water, from 33 CFR 328.3(b), as it was excavated wholly in and drains only dry land and does not carry a relatively permanent flow of water. This is evident following review of a 2025 Westwood wetland delineation report, state and national wetland mapping, historic aerial imagery, along with elevation and soil data. Neither the Wisconsin nor National Wetland Inventory (WWI and NWI) show wetlands mapped in the location of W-7D. Review of elevation data shows that W-7D is not located within a geomorphic and landscape positioning that would support wetland formation. Adjacent uplands gradually slope down towards the mapped wetland to the west and show no sign of wetness signature or any other indication of wetland presence (standing water, repeated crop/vegetation stress, distinct variation of vegetation). Additionally, USDA soil map data indicates the review area consists of predominantly non-hydric soils. Historic mapping shows no aquatic resources in the location of W-7D, further supporting the ditch was excavated in uplands. Review of aerial imagery shows no evidence of standing water or prolonged saturation (veg stress/darkened soils), indicating no relatively permanent flow of water.

---

<sup>9</sup> 88 FR 3004 (January 18, 2023)

- 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 11 and Wetland 13 (W-11, W-13) are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. Review of a 2025 Westwood wetland delineation report, historic aerial images, County GIS mapping, WI Surface Water Data Viewer, and LiDAR (hillshade and DEM GIS layers from the Mississippi Valley Division Regulatory Viewer) indicate that W-11 and W-13 are depressional wetlands, surrounded by upland. Review of these resources indicate W-11 and W-13 are not and do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. As such, W-11 and W-13 do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. W-11 and W-13 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). Therefore, W-11 and W-13 are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

Wetlands 11 and 13 (W-11, W-13) are non-tidal, depressional wetlands associated with the north ditch of the Belgium-Kohler Road. Based off review of the above resources, both W-11 and W-13 connect to the roadside ditch and do not abut any downstream waters. These ditches are non-RPWs as they show no evidence of standing water or prolonged saturation (veg stress/darkened soils). Neither wetland is mapped in the WWI or NWI and each continues outside the wetland delineation study area to the north. Topography in the area generally slopes down to the west, towards mapped wetland and an unnamed tributary (outside the AJD Review Area). W-11 is bound by fill material to the west and south while topography slopes up to farmed upland at the north and east. A culvert along the roadway continues to the non-jurisdictional ditched portion of W-7 (Section 8.a above) to the west. Similarly, W-13 discharges to a culvert at its southwest end along Belgium-Kohler Road and Fairway Drive. Delineated upland sits to the east of W-13 while roadway fill material bounds the wetland to the south. W-13 appears to be contained to a slight depressional area at the northeast of the intersection of Belgium-Kohler Road and Fairway Drive. From the delineated wetland area, W-13 continues north past a mapped open water pond where topography levels out and land use transitions to row crop agriculture, beyond the tree line 660 feet to the north. No wetlands are mapped (WWI/NWI) immediately surrounding this depressional area. Here, wetland characteristics are lost and gradually transition to upland as you move away from

CE MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01306

W-13 with increasing elevation. Aerial imagery shows a lack of wetness signature or any other indication of wetland presence (standing water, repeated vegetation stress, distinct variation of vegetation) outside the depressional area which contains W-13. W-13 does not abut any downstream jurisdictional waters.

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 03/02/2026.
- b. Permit Application "2025-01306\_20260211 APP.pdf" in the administrative record.
- c. Mississippi Valley Division Regulatory Viewer, 03/02/2026.
- d. Wisconsin DNR Surface Water Data Viewer, 03/02/2026.
- e. Ozaukee County GIS Interactive Mapping, 03/02/2026.
- f. Google Earth, 03/02/2026

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.

Survey Area

# MVP-2025-01306-TKO Figure 1



Project Manager:  
Project Engineer: KMK  
Drawn By:  
Checked By:  
Date: 7/28/2025

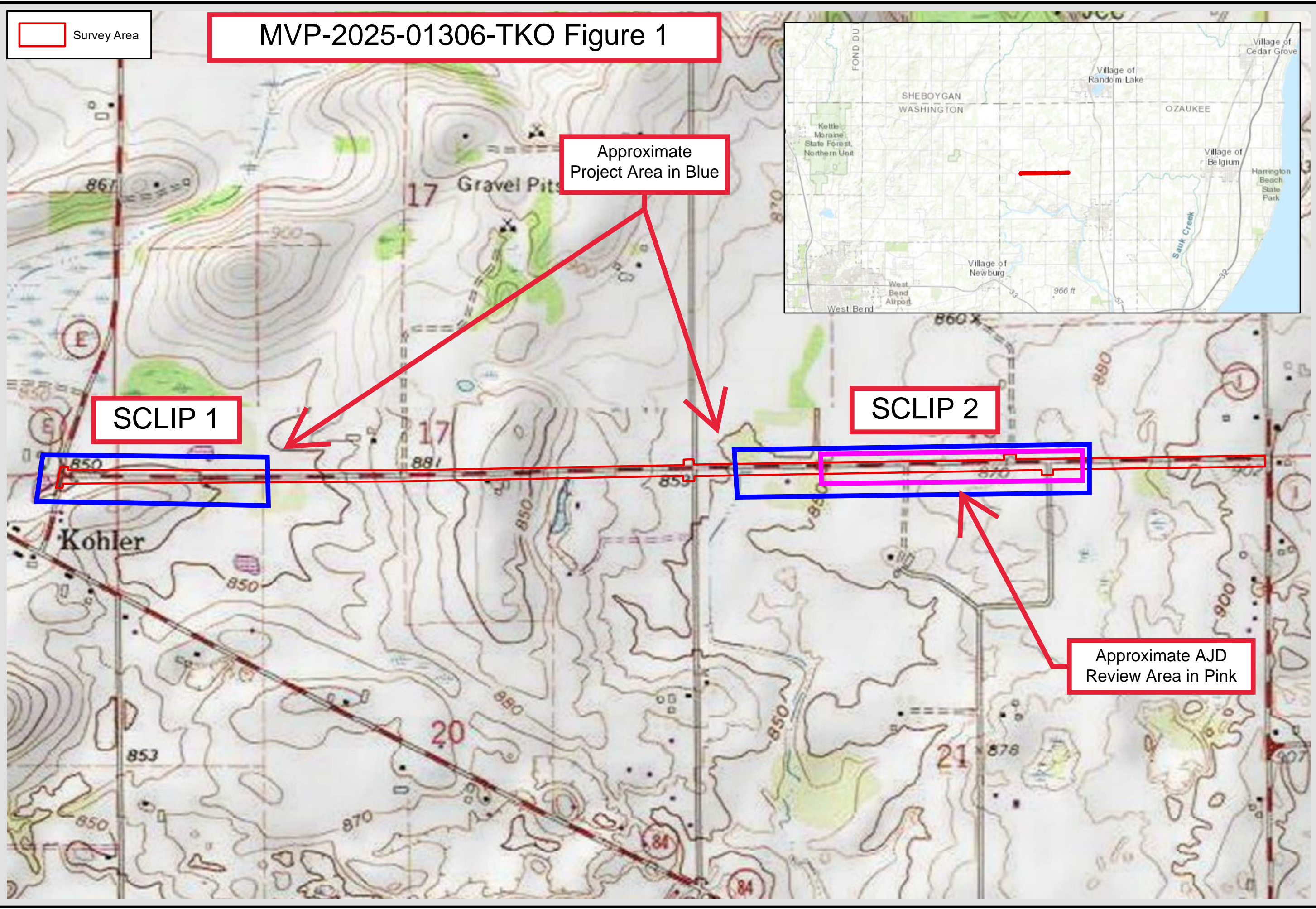


Approximate Project Area in Blue

SCLIP 1

SCLIP 2

Approximate AJD Review Area in Pink



BELGIUM KOHLER RD, CTH E TO CTH I  
SITE LOCATION AND  
TOPOGRAPHIC MAP  
TOWN OF FREDONIA  
OZAUCREE COUNTY, WISCONSIN

**Westwood**  
1 Systems Drive  
Appleton, WI 54914  
(920) 735-6900  
[www.westwoodps.com](http://www.westwoodps.com)

SCALE:  
1" = 800'  
PROJECT NO.  
**R0057696.00**  
FIGURE NO.  
**1**

# MVP-2025-01306-TKO Figure 2

- Survey Area
- Parcels
- WDNR Hydro 24K
- Wetland Survey Points
- Wetland Boundary
- Wetland Area



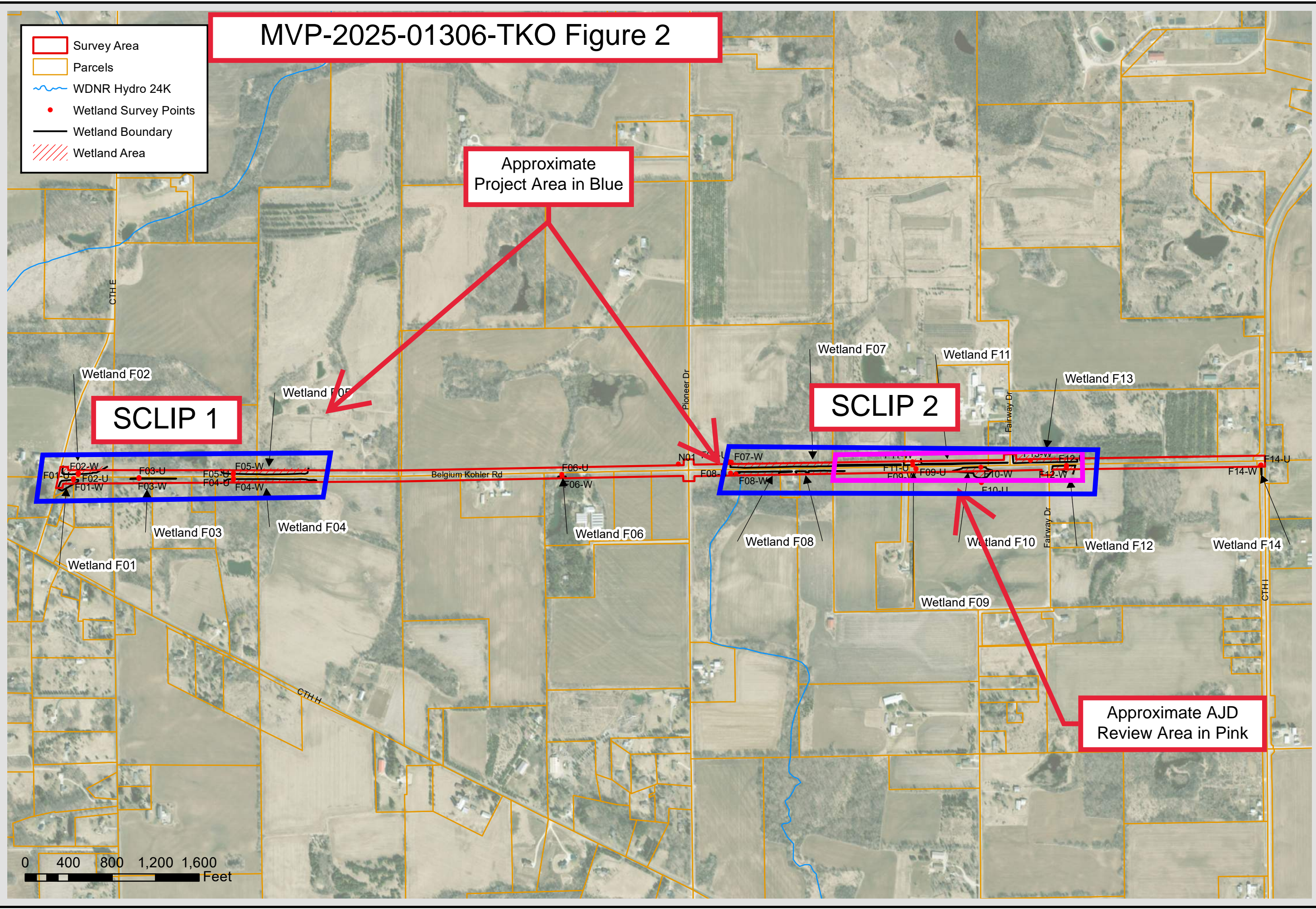
Project Manager:  
Project Engineer: KMK  
Drawn By:  
Checked By:  
Date: 7/23/2025

Approximate Project Area in Blue

SCLIP 1

SCLIP 2

Approximate AJD Review Area in Pink



## BELGIUM KOHLER RD, CTH E TO CTH I WETLAND BOUNDARIES MAP

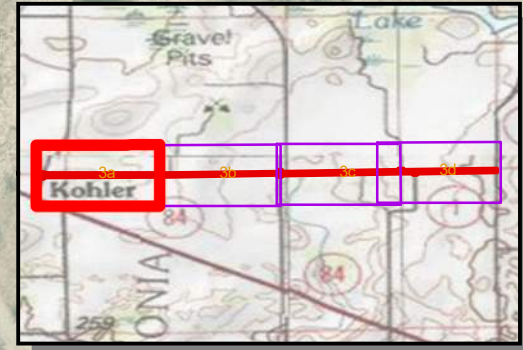
**Westwood**  
1 Systems Drive  
Appleton, WI 54914  
(920) 735-6900  
www.westwoodps.com

SCALE:  
1" = 800'  
PROJECT NO.  
**R0057696.00**  
FIGURE NO.  
**3**

TOWN OF FREDONIA  
OSHAUKEE COUNTY, WISCONSIN  
C:\Users\kmkenedy\OneDrive - Westwood Active Directory\GIS\Fredonia\_Belgium Kohler Rd\GIS\WetlandMap\_Overview.mxd  
Printed: kmkenedy 7/23/2025 3:54:46 PM

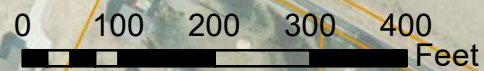
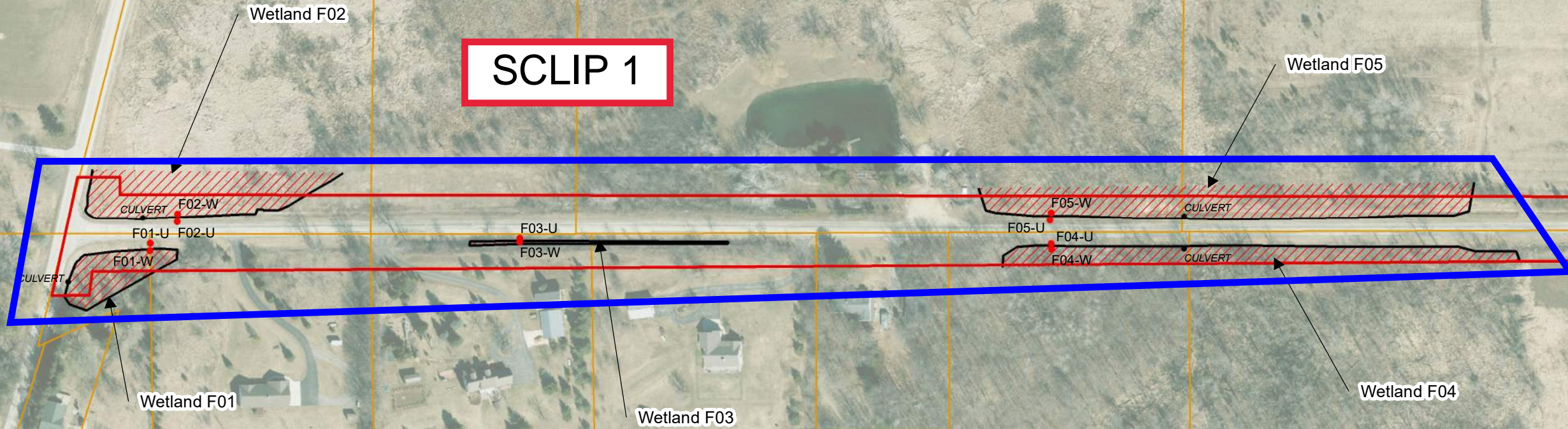
# MVP-2025-01306-TKO Figure 3

- Survey Area
- Parcels
- WDNR Hydro 24K
- Wetland Survey Points
- Reference Points
- Wetland Boundary
- Wetland Area



Project Manager: KMK  
Drawn By: KMK  
Checked By:  
Date: 7/23/2025

## SCLIP 1



### BELGIUM KOHLER RD, CTH E TO CTH I WETLAND BOUNDARIES MAP

TOWN OF BEAVER DAM, DODGE COUNTY, WISCONSIN

**Westwood**  
1 Systems Drive  
Appleton, WI 54914  
(920) 735-6900  
[www.westwoodps.com](http://www.westwoodps.com)

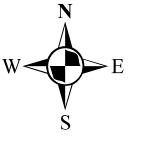
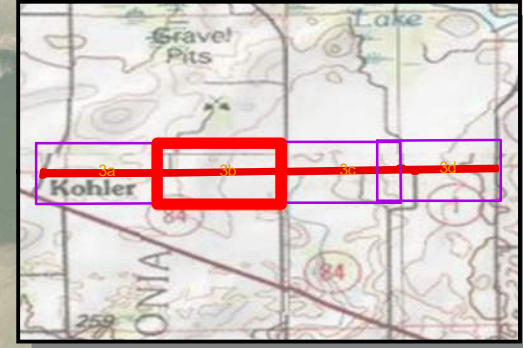
SCALE:  
1" = 200'

PROJECT NO.  
**R0057696.00**

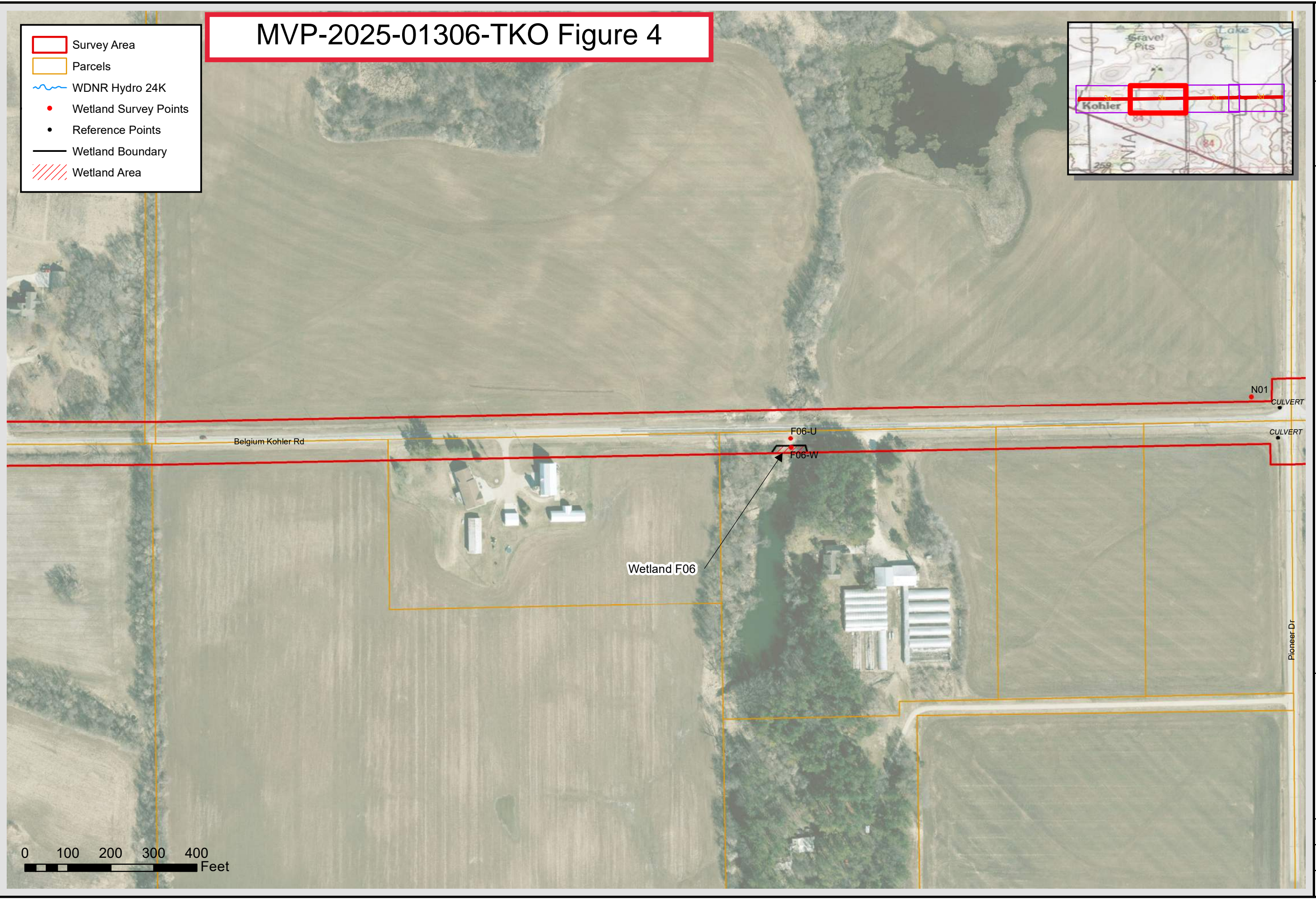
FIGURE NO.  
**3a**

# MVP-2025-01306-TKO Figure 4

- Survey Area
- Parcels
- ~ WDNR Hydro 24K
- Wetland Survey Points
- Reference Points
- Wetland Boundary
- / / / / Wetland Area



Project Manager:  
Project Engineer: KMK  
Drawn By:  
Checked By:  
Date: 7/23/2025



## BELGIUM KOHLER RD, CTH E TO CTH I WETLAND BOUNDARIES MAP

**Westwood**  
1 Systems Drive  
Appleton, WI 54914  
(920) 735-6900  
[www.westwoodps.com](http://www.westwoodps.com)

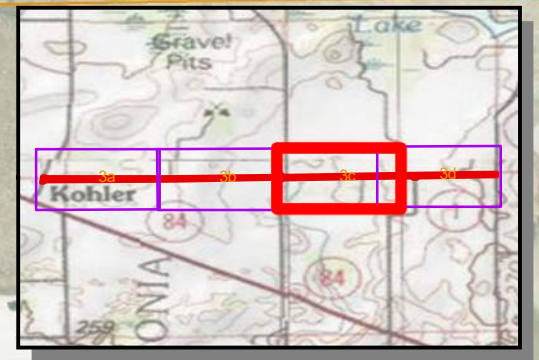
SCALE:  
1" = 200'  
PROJECT NO.  
**R0057696.00**  
FIGURE NO.  
**3b**

# MVP-2025-01306-TKO Figure 5

- Survey Area
- Parcels
- WDNR Hydro 24K
- Wetland Survey Points
- Reference Points
- Wetland Boundary
- Wetland Area

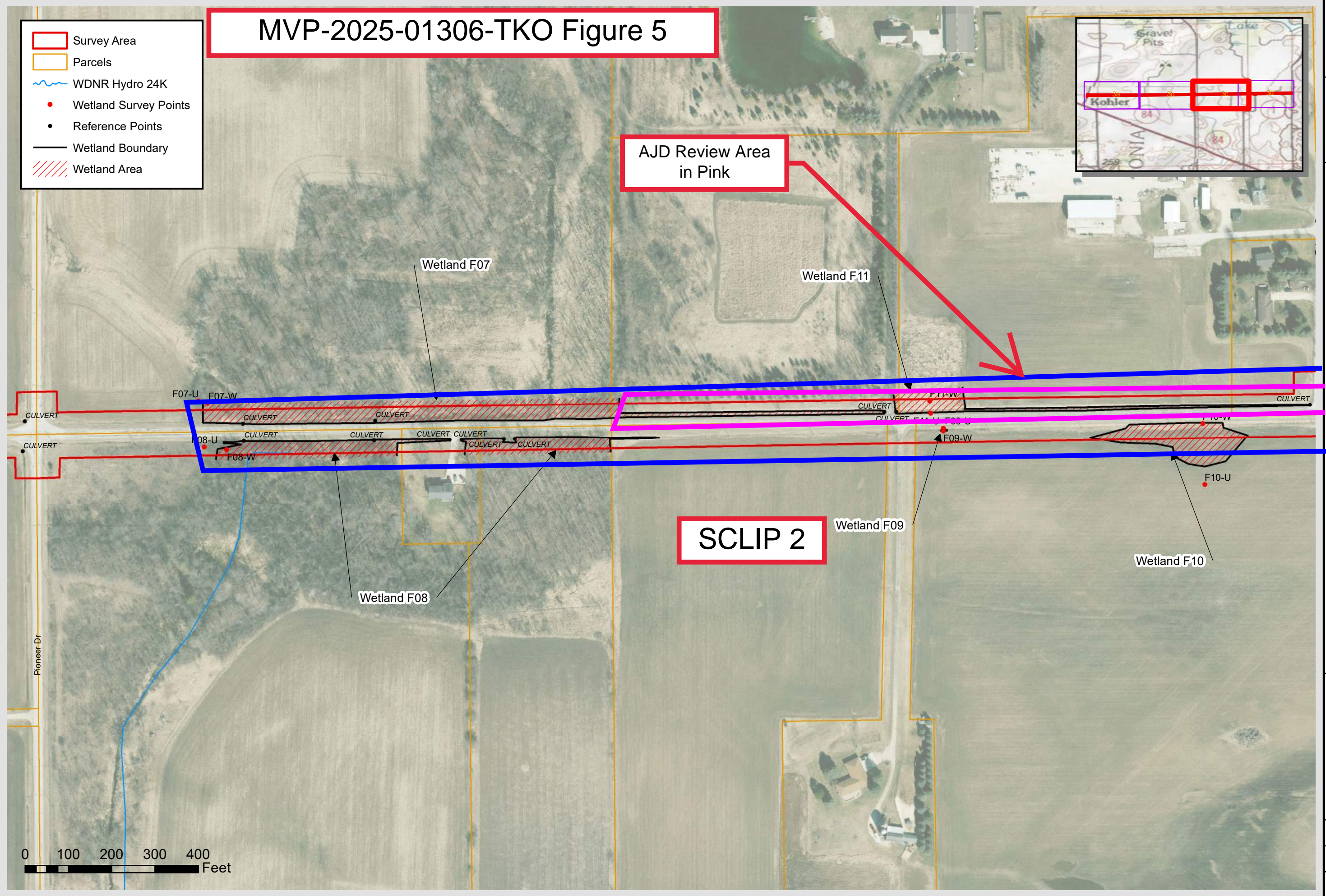


Project Manager: KMK  
Project Engineer: KMK  
Drawn By: KMK  
Checked By:  
Date: 7/23/2025



AJD Review Area  
in Pink

SCLIP 2



BELGIUM KOHLER RD, CTH E TO CTH I  
WETLAND BOUNDARIES MAP

**Westwood**  
1 Systems Drive  
Appleton, WI 54914  
(920) 735-6900  
[www.westwoodps.com](http://www.westwoodps.com)

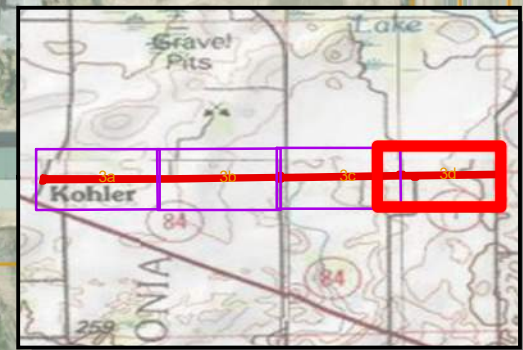
SCALE:  
1" = 200'  
PROJECT NO.  
**R0057696.00**  
FIGURE NO.  
**3c**

TOWN OF BEAVER DAM, DODGE COUNTY, WISCONSIN  
C:\Users\kmmckennedy\OneDrive - Westwood Active Directory\GIS\Fredonia\_Belgium Kohler Rd\GIS\WetlandMap\_Bddp.mxd

Service Layer Credits: Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community  
Copyright: © 2013 National Geographic Society, i-cubed

# MVP-2025-01306-TKO Figure 6

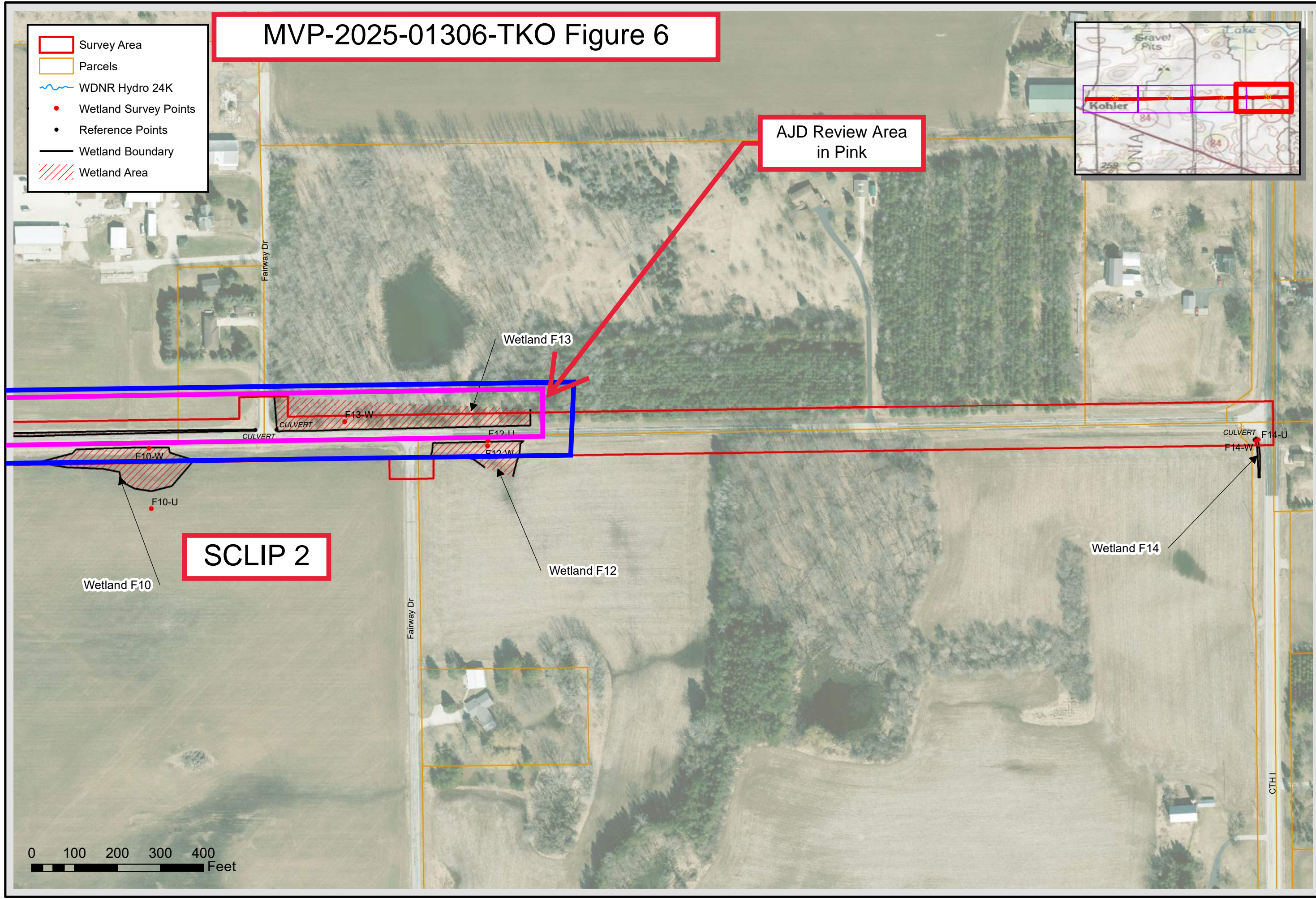
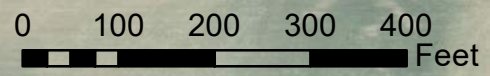
- Survey Area
- Parcels
- WDNR Hydro 24K
- Wetland Survey Points
- Reference Points
- Wetland Boundary
- Wetland Area



Project Manager:  
Project Engineer: KMK  
Drawn By:  
Checked By:  
Date: 7/23/2025

AJD Review Area  
in Pink

SCLIP 2



BELGIUM KOHLER RD, CTH E TO CTH I  
WETLAND BOUNDARIES MAP

**Westwood**  
1 Systems Drive  
Appleton, WI 54914  
(920) 735-6900  
www.westwoodps.com

SCALE:  
1" = 200'  
PROJECT NO.  
**R0057696.00**  
FIGURE NO.  
**3d**

TOWN OF BEAVER DAM, DODGE COUNTY, WISCONSIN  
C:\Users\kmcKennedy\OneDrive - Westwood Active Directory\GIS\Fredonia\_Belgium Kohler Rd\GIS\WetlandMap\_Bddp.mxd

Service Layer Credits: Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community  
Copyright: © 2013 National Geographic Society, i-cubed