



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-2025-01324-MMP (WISDOT ID 2040-21-00)

February 20, 2026

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 2025-01324-MMP-MMP. MFR 1 of 1.

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2025-01324-MMP

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).

1. Wetland 1, 0.01 acre. Non-Jurisdictional, Excluded (b)(3).
2. Wetland 6, 0.18 acre. Non-Jurisdictional, Excluded (b)(3).
3. Wetland 7, 0.001 acre. Non-Jurisdictional, Excluded (b)(3).
4. Wetland 8B, 0.001 acre. Non-Jurisdictional, Excluded (b)(3).
5. Wetland 11A, 0.003 acre. Non-Jurisdictional, Excluded (b)(3).
6. Wetland 11C, 0.01 acre. Non-Jurisdictional, Excluded (b)(3).
7. Wetland 12A, 0.01 acre. Non-Jurisdictional, Excluded (b)(3).
8. Wetland 16, 0.04 acre. Non-Jurisdictional, Excluded (b)(3).
9. Wetland 17, 0.01 acre. Non-Jurisdictional, Excluded (b)(3).

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. The review area for this determination includes 9 excluded features, as identified on the enclosed figures labeled MVP-2025-01324-MMP figures 1 of 4 through 4 of 4. The review area is located in Section 8 and 17, Township 5 North, Range 21 East. The northern terminus of the review area is located at Latitude:42.9122 and Longitude: -88.0421, the southern terminus of the review area is located at Latitude: 42.8918, and Longitude: -88.0398. The review area is located in the City of Franklin, Milwaukee County, Wisconsin.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶
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

⁵ 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.

⁶ 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.

- 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).⁷

The excluded waters within the review include Wetlands 1, 6, 7, 8B, 11A, 11C, 12A, 16, and 17 as shown on the attached figures. These features are being evaluated as excluded ditches because they meet the definition of excluded waters under paragraph b(3) as the ditch features were constructed in upland, drain only upland, do not carry a relatively permanent flow of water, and are not relocated tributaries.

These wetlands are associated with linear ditches along United States Highway (US) 45. Based on the wetland delineation report completed by Merjent, on behalf of the applicant, and desktop resources, the feature were constructed in upland and only drain upland. In a review of historic topographic maps, a roadway has been within the alignment of US 45 since at least 1891. In the 1891 topographic map, no wetlands or waterways are identified within the review area. A topographic map from 2022 does not identify a waterway within the review area, nor does the Wisconsin Department of Natural Resources Surface Water Data Viewer or the National Wetland Inventory. Finally, aerial photos from recent years do not show standing water or signs of surface flow within these wetlands. Wetlands 1, 6, 7, 8B, 11A, 11C, 12A, 16, and 17 do not carry relatively permanent flow and are not relocated tributaries.

Considering the information above, Wetlands 1, 6, 7, 8B, 11A, 11C, 12A, 16, and 17 have been determined to be excluded waters that meet the terms of paragraph (b)(3) and as such are not subject to Section 404 of the Clean Water Act (CWA).

⁷ 88 FR 3004 (January 18, 2023)

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- 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).

N/A

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. Wetland Delineation Report completed by Merjent in September 2023.
- b. Topographic Maps from 1891, 1901, 1954, 2018, and 2022.
- c. USFWS National Wetlands Inventory
- d. Google Earth Aerial Photos from 2018, 2020, 2021, 2022, 2023, 2024, and 2025.
- e. 3DEP 2-ft, 5-ft, 10-ft, and 25-ft Contour maps, 3DEP Hillshade, and Wisconsin DNR – Hillshade accessed on the National Regulatory Viewer.

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.

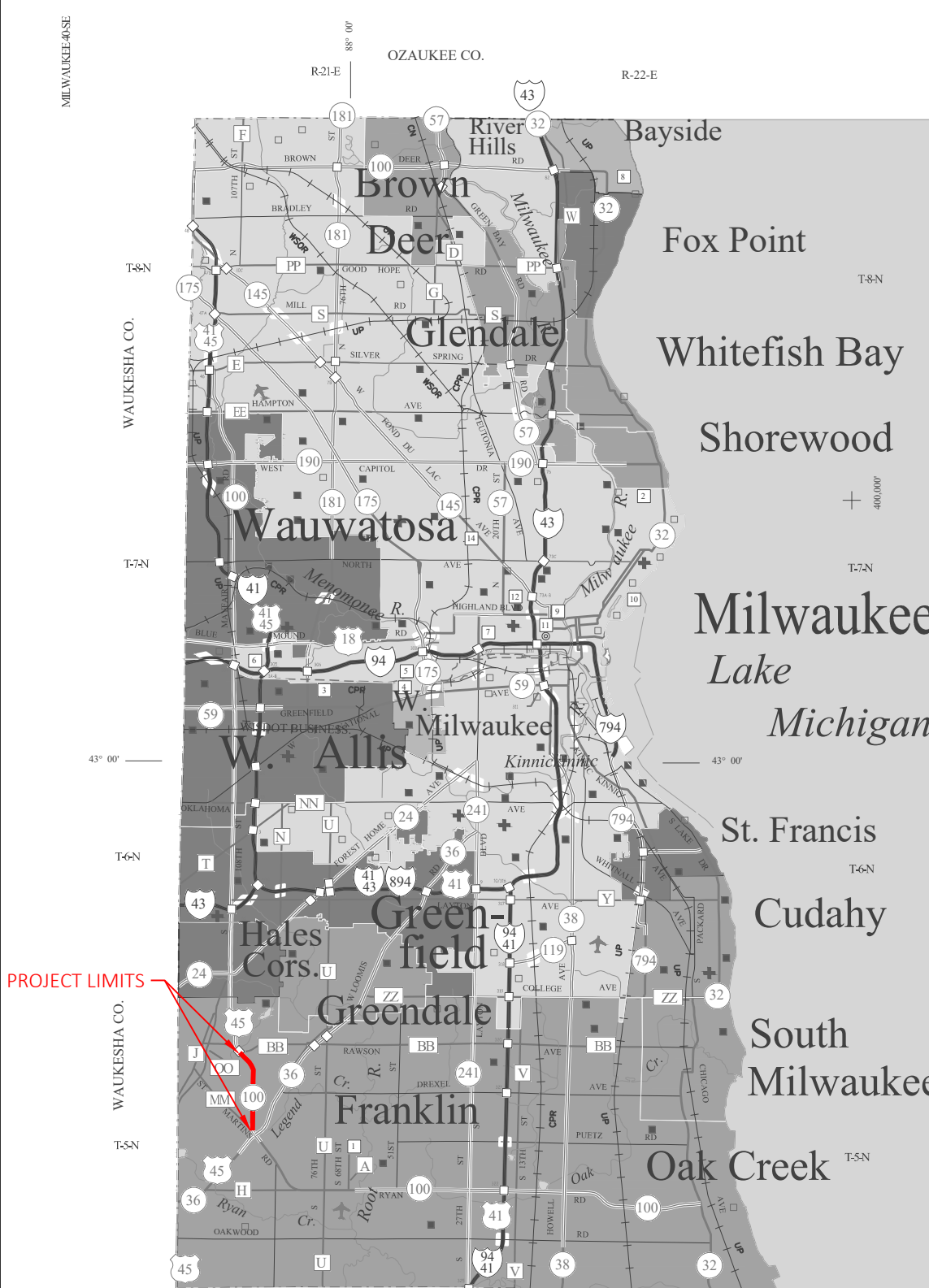
PROJECT LOCATION MAP

I.D. 2040-21-70
 USH 45
 LOVERS LANE, CITY OF FRANKLIN
 ST MARTINS RD TO RAWSON AVE (CTH BB)
 MILWAUKEE COUNTY

LEGEND

- Freeway
- Multilane Divided
- U.S. or State Hwy
- County Trunk Hwy
- Town Road
- Firelane
- Railroad
- State Trail
- Interchange
- Highway Separation
- Interstate Highway No.
- U.S. Highway No.
- State Highway No.
- County Highway Letter
- State Boundary
- County Boundary
- Civil Town Boundary
- Section Line
- Dam
- Hospital
- Airport
- County Seat
- Unincorporated Village
- Fish Hatchery
- Game Farm
- Public Hunt. or Fish. Grds.
- Public Camp & Picnic Grds.
- Ranger Station
- State Park
- County Park
- Without Facilities
- Rest Area
- Modern Facilities
- Wayside
- Rustic Facilities

- Milwaukee Co. House of Correction... [1]
- University of Wisconsin - Milwaukee [2]
- State Fair Park [3]
- Wood Veterans Hospital [4]
- Miller Park [5]
- Milwaukee Co. Zoo [6]
- Marquette University [7]
- Schlitz Audubon Nature Center [8]
- BMO Harris Bradley Center [9]
- Port of Milwaukee [10]
- Milwaukee Secure Detention Facility [11]
- Marshall Sherrer Correctional Center [12]
- Milwaukee Women's Correctional Ctr. [13]
- Felmers O. Chaney Correctional Center [14]



PROJECT LIMITS

MVP-2025-01324-MMP
Figure 1 of 4

MILWAUKEE CO.

DEPARTMENT OF TRANSPORTATION

Madison, Wisconsin
 SCALE: MILES

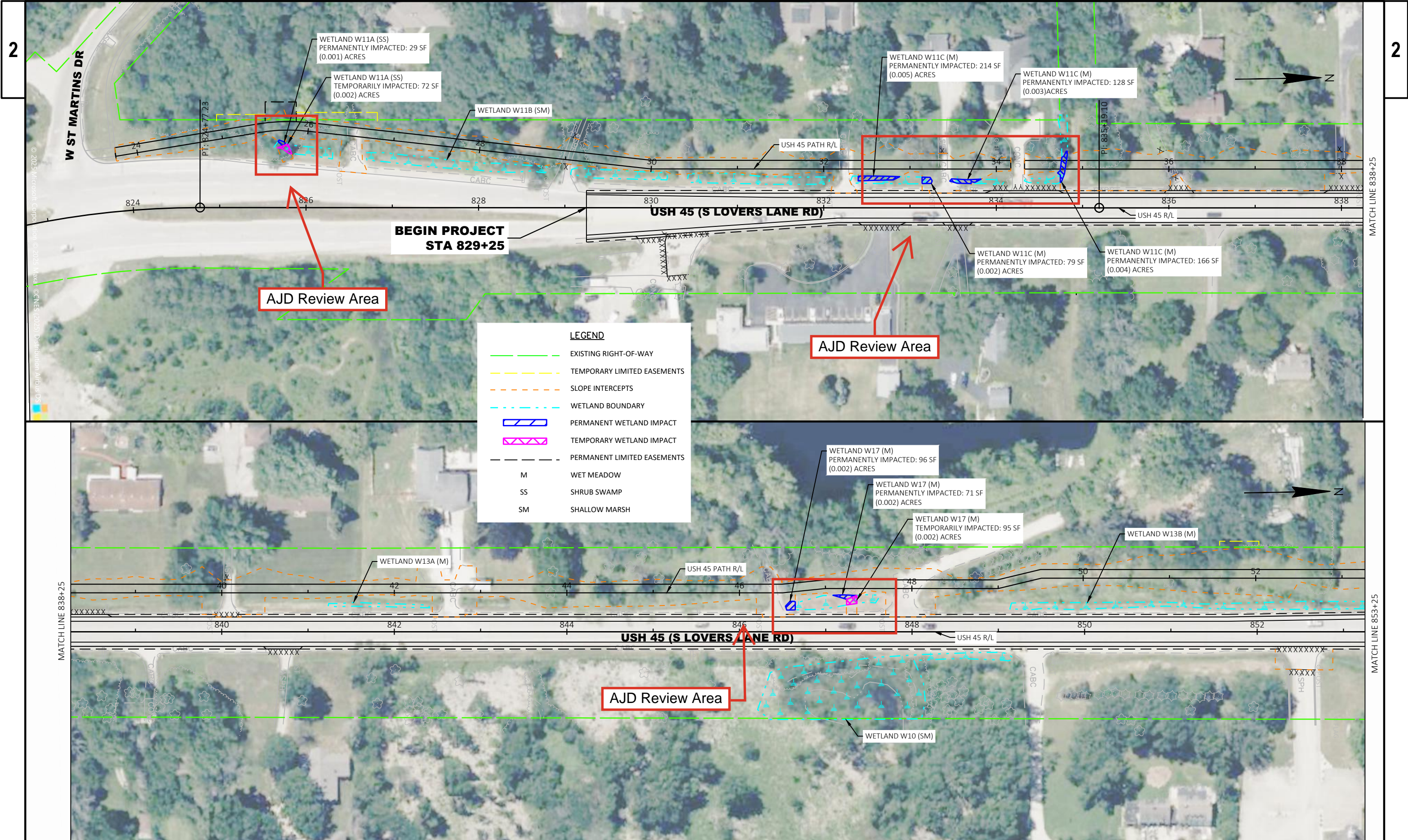
Corrected for
 JAN. 2021
 Base compiled from U.S.G.S. Quadrangles
 1:100,000 Series

MILES OF HIGHWAY
 as of Dec. 31, 2019

STATE	255
COUNTY	140
LOCAL ROADS	2634
OTHER ROADS	19
TOTAL FOR COUNTY	3048
Land Area (2010 Census)	241 sq mi
Population (2010 Census)	947735
County Seat	Milwaukee

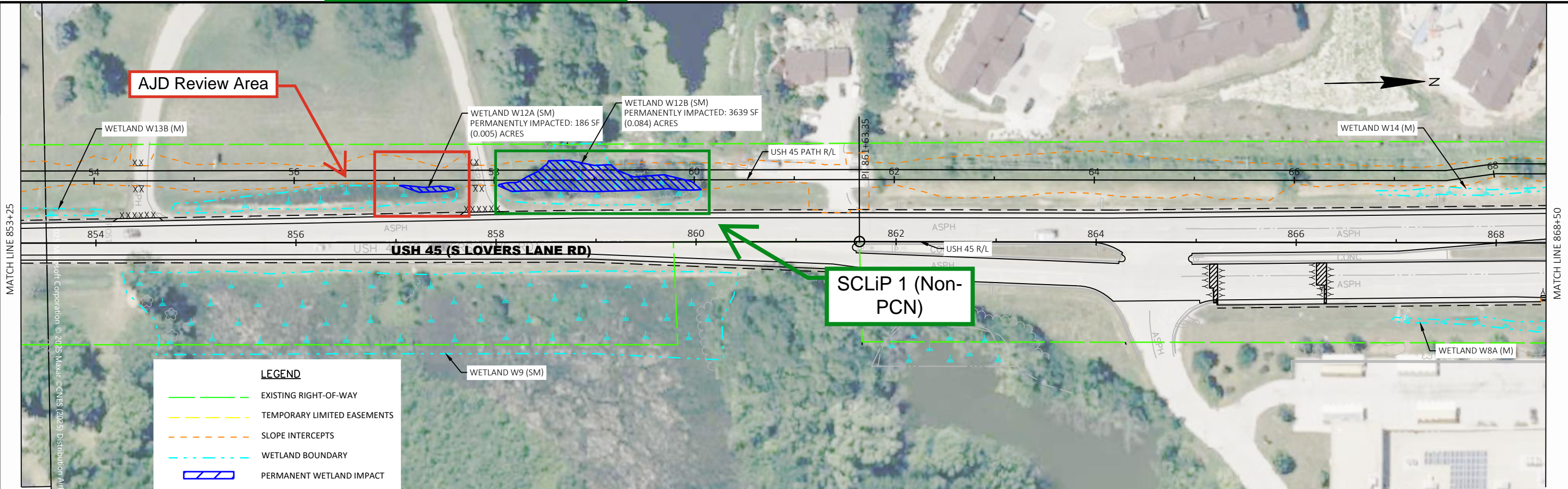


◆ For boundaries of public hunting and fishing grounds please contact the Department of Natural Resources



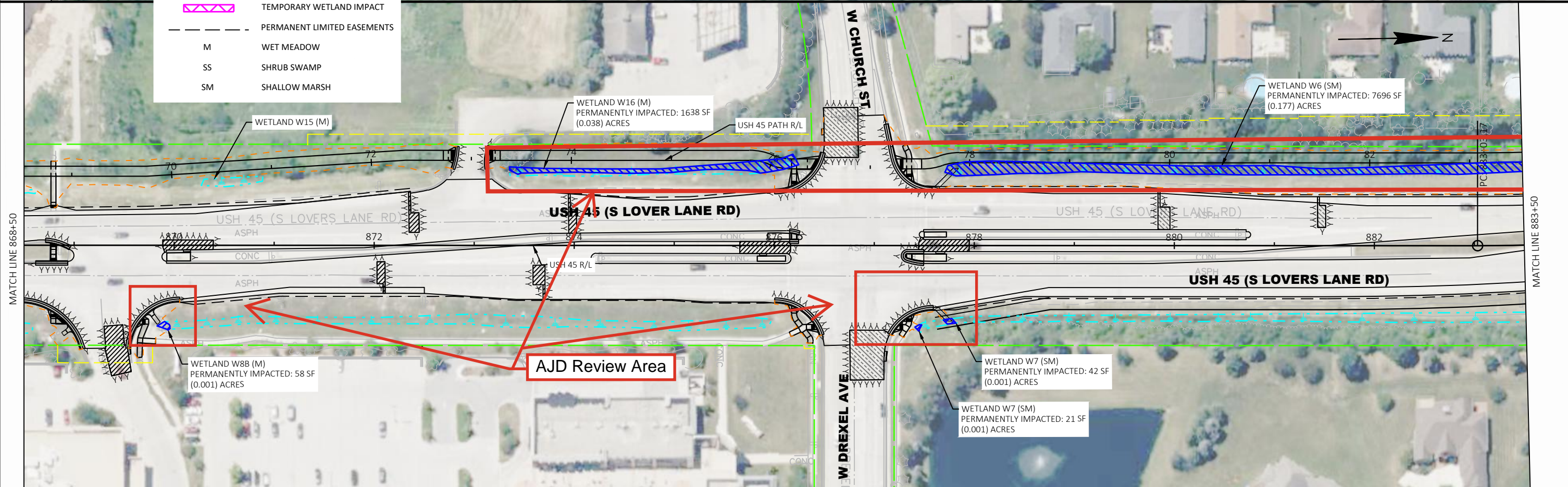
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2



LEGEND

	EXISTING RIGHT-OF-WAY
	TEMPORARY LIMITED EASEMENTS
	SLOPE INTERCEPTS
	WETLAND BOUNDARY
	PERMANENT WETLAND IMPACT
	TEMPORARY WETLAND IMPACT
	PERMANENT LIMITED EASEMENTS
M	WET MEADOW
SS	SHRUB SWAMP
SM	SHALLOW MARSH



PROJECT NO: 2040-21-70	HWY: USH 45	COUNTY: MILWAUKEE	WETLAND IMPACT EXHIBIT	SHEET	E
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