



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

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-2026-00098-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.

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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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland 1	Non-Jurisdictional	N/A
Wetland 3	Non-Jurisdictional	N/A
Wetland 4	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. Project Are Size (in acres): 1-acre
- b. Location Description: The project/review area is located in Section 18, Township 16N, Range 16E, Fond du Lac County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude 43.8657, Longitude -88.6486
- d. Nearest City or Town: Eldorado
- e. County: Fond du Lac
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

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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]⁶
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

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.

- 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

Wetland 1 (W-1) 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 is a ditch that 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 the applicant’s wetland determination, 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-1. Review of elevation data shows that W-1 is not located within a geomorphic and landscape positioning that would support wetland formation. Adjacent uplands abruptly slope down to W-1 at the north, east, and west while fill material from Olden Rd bound W-1 at the south. No sign of consistent wetness signature or any other indication of wetland presence (standing water, repeated crop/vegetation stress, distinct variation of vegetation) is evident in adjoining upland. Additionally, USDA soil map data indicates the area containing W-1 consists of predominantly non-hydric soils. Historic mapping shows no aquatic resources in the location of W-1, 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. Additionally, street view images show a lack of OHWM or bend and bank within W-1.

⁹ 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 3 and Wetland 4 (W-3 and W-4) are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. Review of applicant's wetland determination, 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-3 and W-4 are depressional wetlands, surrounded by upland. Review of these resources indicate W-3 and W-4 are not and do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. As such, W-3 and W-4 do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. W-3 and W-4 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-3 and W-4 are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

W-3 and W-4 are separate portions of a singular mapped wetland complex, bisected by Olden Road. Hydrologic connectivity is maintained between the two delineated wetlands through culverts beneath Olden Road, allowing them to function as a single wetland. For review purposes, W-3 and W-4 were reviewed as a single wetland. The wetland complex is mapped in both Wisconsin and National Wetland Inventories (WWI, NWI) and is identified as an emergent/wet meadow. Mapped wetlands extend beyond the wetland delineation/determination area to the east and west. Non-jurisdictional roadside ditches are associated with both W-3 and W-4. Review of aerial and ground level imagery and elevation data shows the ditches possess no OHWM, bed and bank, or carry relatively permanent flows of water. The wetland complex sits in a well-defined depressional area and is surrounded by upland in all directions. Elevation slopes up from the depression in all directions except at the southwest where a drainage ditch extends towards additional mapped wetland areas and an unnamed tributary. This ditch is not RPW as review of imagery shows no evidence of flowing or standing water, or prolonged saturation (veg stress/darkened soils), indicating no relatively permanent flow of water. Additionally, street view images show a lack of OHWM or bed and bank within the ditch. W-3 and W-4 do not abut any jurisdictional downstream waters.]

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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 04/09/2026.](#)
- b. [Permit Application "2026-00098 20260312 APP.pdf" in the administrative record.](#)
- c. [Mississippi Valley Division Regulatory Viewer, 04/09/2026.](#)
- d. [Wisconsin DNR Surface Water Data Viewer, 04/09/2026.](#)
- e. [Fond du Lac County GIS Interactive Mapping, 04/09/2026.](#)
- f. [Wisconsin Historic Aerial Imagery Finder, 04/09/2026.](#)
- g. [Google Earth, 04/09/2026](#)

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.

FOND DU LAC COUNTY HIGHWAY COMMISSION

PLAN OF PROPOSED IMPROVEMENT

OLDEN ROAD

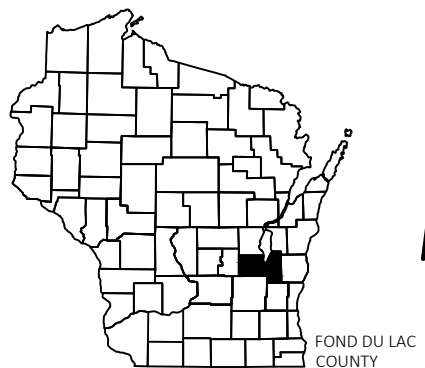
STH 26 - CTH C
TOWNS OF ROSENDALE & ELDORADO
FOND DU LAC COUNTY

PROJECT NUMBER
600424

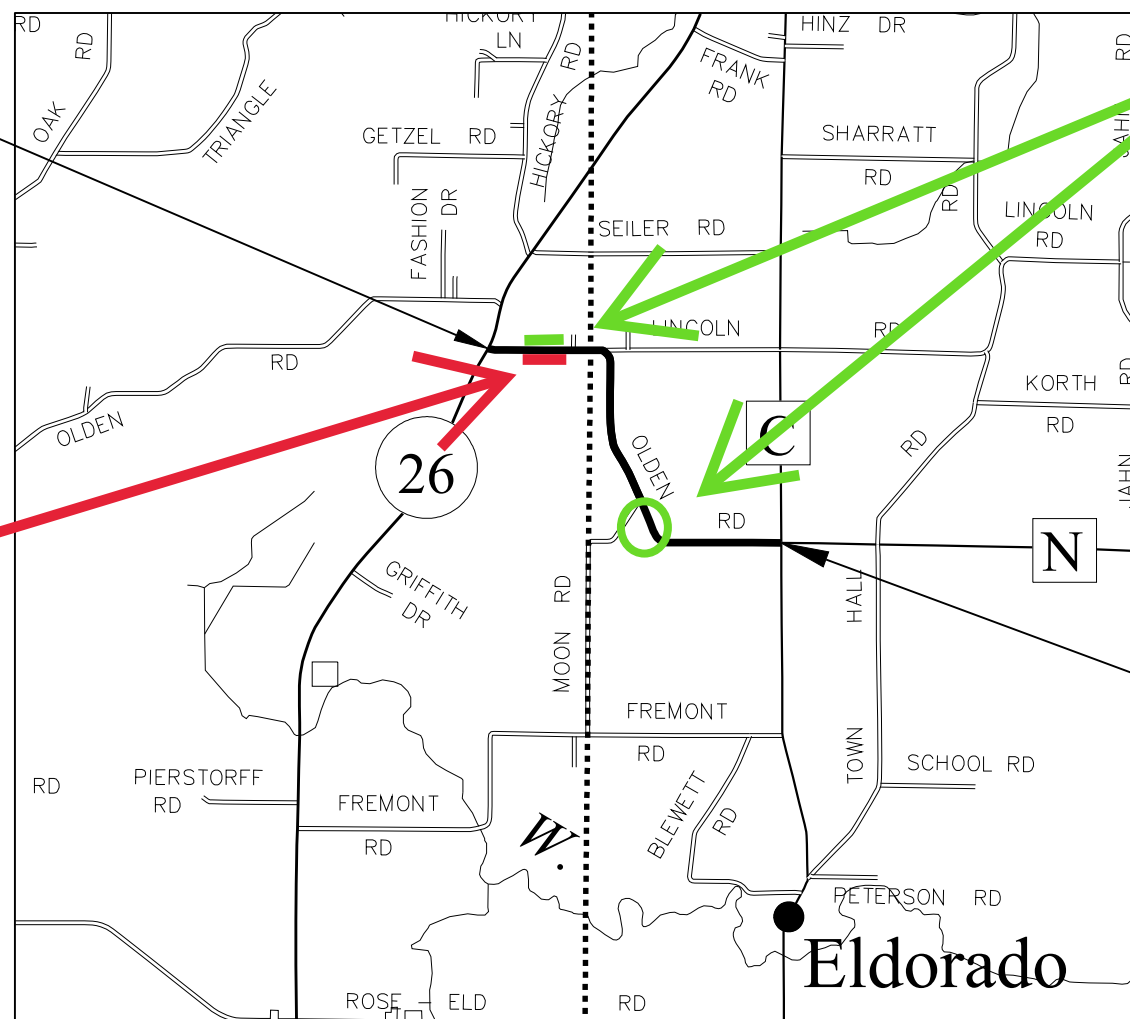
ORDER OF SHEETS

Section No.	1	Title
Section No.	2	Typical Sections and Details
Section No.	3	Miscellaneous Quantities
Section No.	4	Right of Way Plat
Section No.	5	Plan and Profile
Section No.	6	WisDOT Standard Detail Drawings
Section No.	7	WisDOT Sign Plates
Section No.	9	Computer Earthwork Data
Section No.	9	Cross Sections

TOTAL SHEETS =



BEGIN PROJECT
STA 99+29.57
Y = 417856.071
X = 762199.579



Approximate
SCLiP 1 Location
in Red

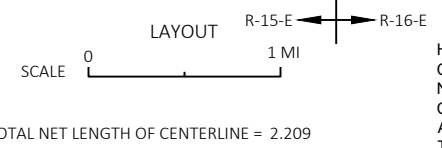
Approximate
AJD Review
Areas in Green

END PROJECT
STA 215.94.01
Y = 412548.742
X = 770109.117

CONVENTIONAL SYMBOLS

PLAN	
CORPORATE LIMITS	
PROPERTY LINE	
LOT LINE	
LIMITED HIGHWAY EASEMENT	
EXISTING RIGHT OF WAY	
PROPOSED OR NEW R/W LINE	
SLOPE INTERCEPT	
REFERENCE LINE	
EXISTING CULVERT	
PROPOSED CULVERT (Box or Pipe)	
COMBUSTIBLE FLUIDS	
MARSH AREA	
WOODED OR SHRUB AREA	

PROFILE	
GRADE LINE	
ORIGINAL GROUND	
MARSH OR ROCK PROFILE (To be noted as such)	
SPECIAL DITCH	
GRADE ELEVATION	
CULVERT (Profile View)	
UTILITIES	
ELECTRIC	
FIBER OPTIC	
GAS	
SANITARY SEWER	
STORM SEWER	
TELEPHONE	
WATER	
UTILITY PEDESTAL	
POWER POLE	
TELEPHONE POLE	



HORIZONTAL POSITIONS SHOWN ON THIS PLAN ARE WISCONSIN COORDINATE REFERENCE SYSTEM (WISCRS), FOND DU LAC COUNTY, NAD83 (2011), IN U.S. SURVEY FEET. POSITIONS SHOWN ARE GRID COORDINATES, GRID BEARINGS, AND GRID DISTANCES. GRID DISTANCES ARE THE SAME AS GROUND DISTANCES. ELEVATIONS ARE REFERENCED TO NAVD 88 (2012). GPS DERIVED ELEVATIONS ARE BASED ON GEOID 18.

ACCEPTED FOR
FOND DU LAC COUNTY

Date _____
THOMAS JANKE
HIGHWAY COMMISSIONER

ORIGINAL PLANS PREPARED BY
GREMMER & ASSOCIATES, INC.
CONSULTING ENGINEERS

DATE: _____
BENJAMIN L. OITZINGER, PE

E

PROJECT ID: 600424
WITH: N/A

COUNTY: FOND DU LAC



MVP-2026-00098-TKO Figure 2

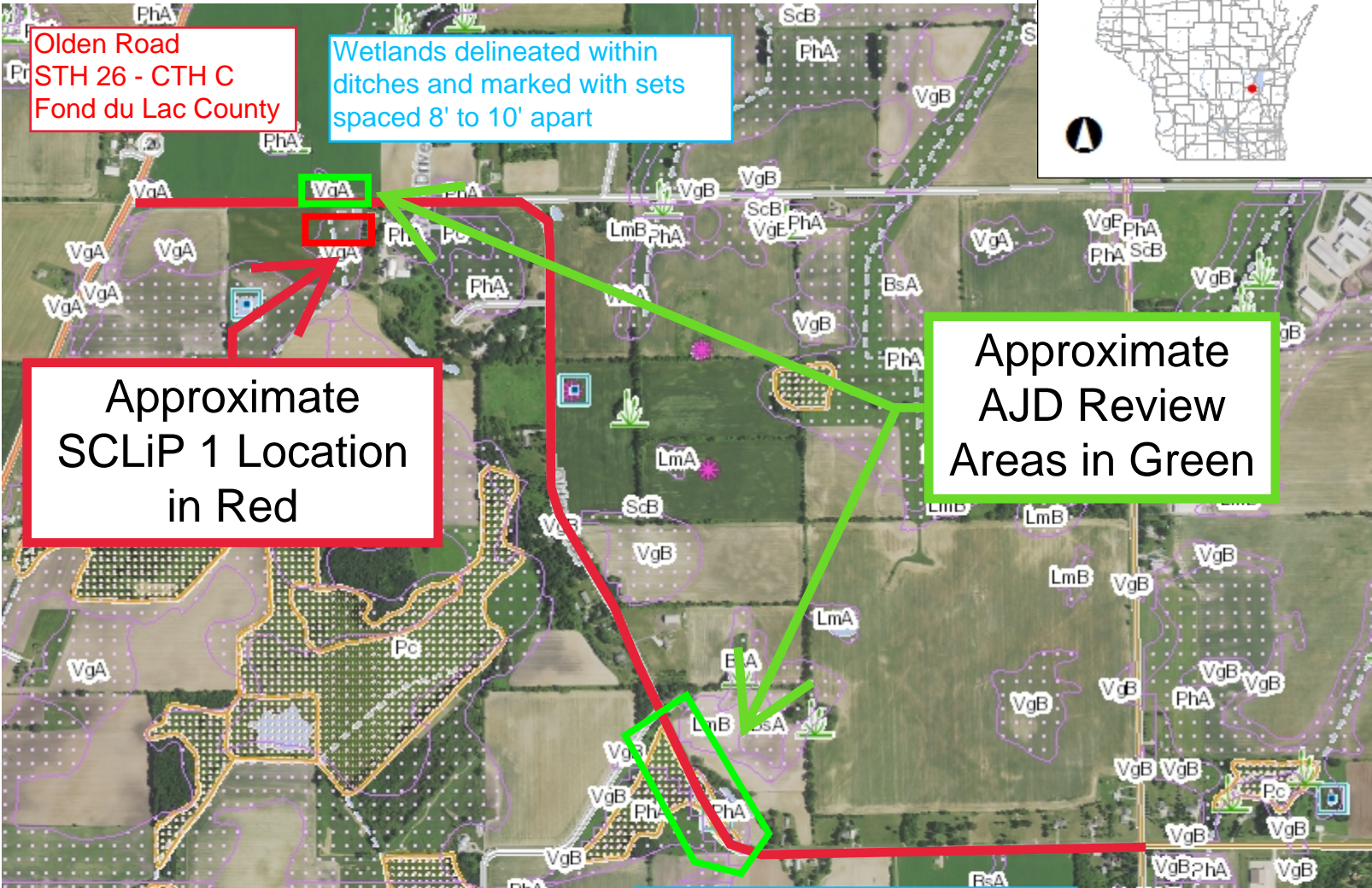


Olden Road
STH 26 - CTH C
Fond du Lac County

Wetlands delineated within
ditches and marked with sets
spaced 8' to 10' apart

Approximate
SCLiP 1 Location
in Red

Approximate
AJD Review
Areas in Green



Wetland determination by WDNR, Aug 2024. Surveyed flags by Gremmer

Wetland ID	Location (approx sta to sta)	Wetland Type	Impacts Permanent (Ditches)		Impacts Permanent* (Fill)	
			[SF]	[AC]	[SF]	[AC]
Wetland 1	113+19 LT-115+68 LT	Emergent/Wet Meadow	748	0.017	1607	0.037
Wetland 2	113+94 RT-116+44 RT	Emergent/Wet Meadow	227	0.005	2266	0.052
Wetland 3	178+39 LT-183+04 LT	Emergent/Wet Meadow	885	0.020	20424	0.469
Wetland 4	175+67 LT-181+63 RT	Emergent/Wet Meadow		0.000	8571	0.197
Total:			1860	0.043	32868	0.755

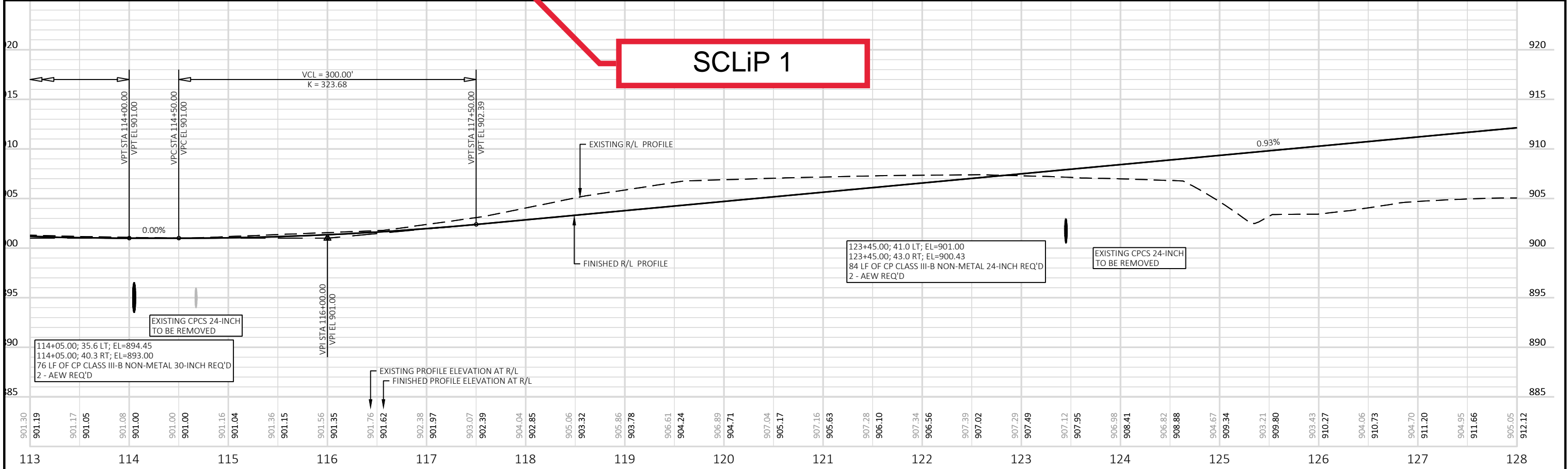
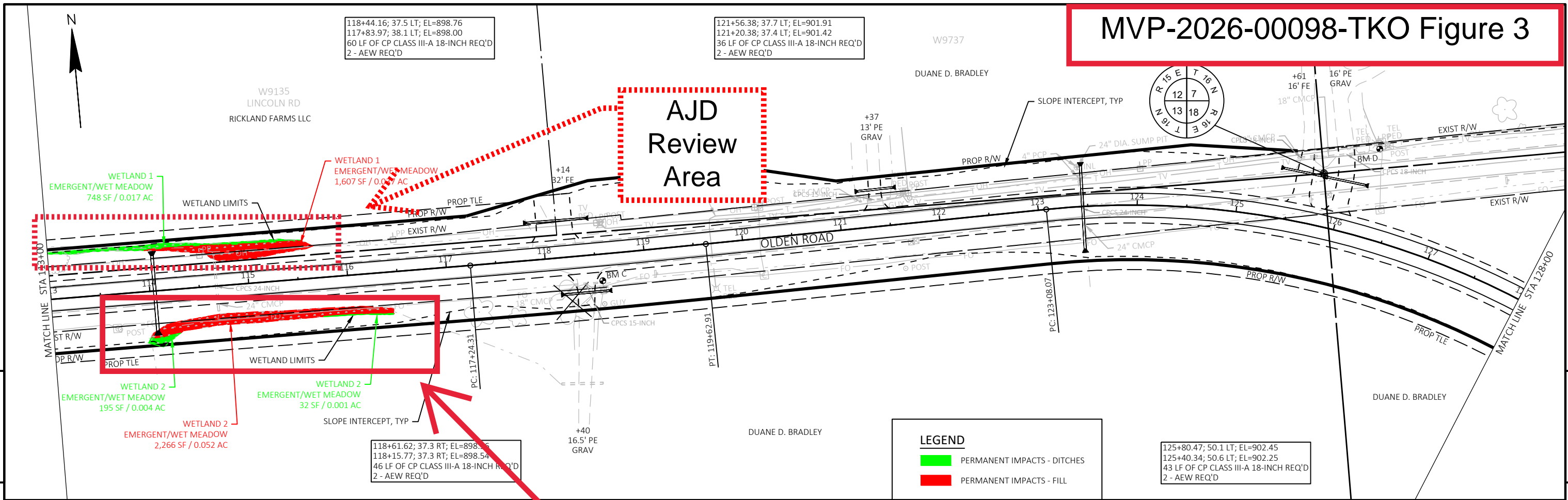


Legend

- Wetland Indicators
- Lake Class Areas
- Riverine/ditch Class Areas
- Wetland Class Areas
- Wetland Class Points
- Dammed pond
- Excavated pond
- Filled/draind wetland
- Wetland too small to delineate
- Filled excavated pond
- Filled Points
- Wetland Class Areas
- Filled Areas
- Lake Class Areas
- Riverine/ditch Class Areas
- Wetland Class Areas
- Wetland Class Points
- Dammed pond
- Excavated pond
- Filled/draind wetland
- Wetland too small to delineate
- Filled excavated pond
- Filled Points
- Wetland Class Areas
- Filled Areas
- Wetland Identifications and Confirmations
- NRCS Wetspots
- Municipality
- State Boundaries
- County Boundaries
- Major Roads**
 - Interstate Highway
 - State Highway
 - US Highway

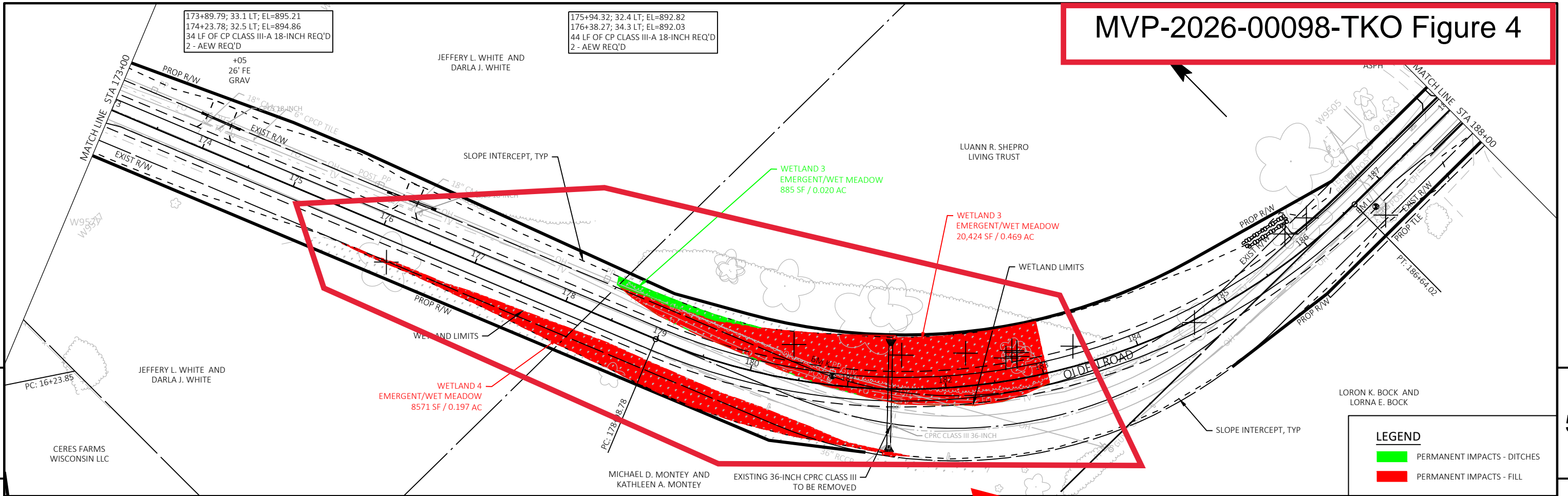
Notes

MVP-2026-00098-TKO Figure 3



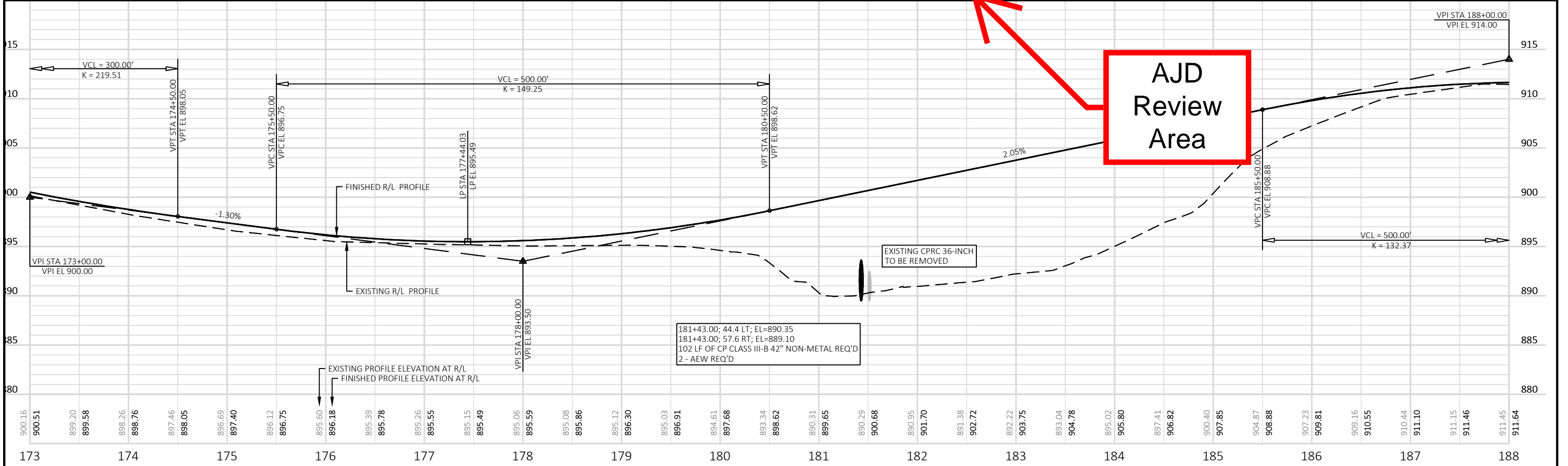
PROJECT NO: 600424	HWY: OLDEN ROAD	COUNTY: FOND DU LAC	PLAN AND PROFILE: OLDEN ROAD	SHEET	E
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MVP-2026-00098-TKO Figure 4



LEGEND

- PERMANENT IMPACTS - DITCHES
- PERMANENT IMPACTS - FILL



PROJECT NO: 600424	HWY: OLDEN ROAD	COUNTY: FOND DU LAC	PLAN AND PROFILE: OLDEN ROAD	SHEET	E
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