



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

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-2026-00151-ALH [[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 2	Non-Jurisdictional	N/A
Wetland 3	Non-Jurisdictional	N/A
Wetland 4	Non-Jurisdictional	N/A
Wetland 5	Non-Jurisdictional	N/A
Wetland 6	Non-Jurisdictional	N/A
Wetland 7	Non-Jurisdictional	N/A
Wetland 8	Non-Jurisdictional	N/A
Wetland 9	Non-Jurisdictional	N/A
Wetland 10	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)

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3. REVIEW AREA.

- a. Project Are Size (in acres): approximately 15 acres
- b. Location Description: The project/review area is located in Section 06, Township 15N, Range 18E, Fond du Lac County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.792800 Longitude: -88.394900
- d. Nearest City or Town: Fond Du Lac
- e. County: Fond du Lac
- 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

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

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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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
- 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).

⁹ 88 FR 3004 (January 18, 2023)

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[Wetlands 2, 3 and 8 are depressional wetlands entirely within the delineated area that are surrounded by uplands according to the wetland delineation report. Wetlands 2, located in the southwestern portion of the review area, and 8, located in the northeastern portion of the review area, are small depressional wetlands in active agricultural fields. Wetland 3 is approximately 50 linear feet away from a linear ditch feature just south of the delineated area that runs east/west. The Elevation Profile tool on the National Regulatory Viewer shows a distinct rise in elevation showing a separation between Wetland 3 and the feature to the south. The National Wetland Inventory layer on the National Regulatory Viewer does not indicate the presence of wetlands where Wetlands 2 and 8 are located. The 2-ft Contours layer, multiple years of aerial imagery and the Hillshade layer generally confirm the size and shape of the wetlands and where they transition to uplands. Multiple years of aerial imagery do not show many changes in the last decade.

According to the wetland delineation report, Wetlands 1 and 4 are surrounded by delineated uplands except for where they continue offsite to the west and north. They are bordered by US Highway 151. Both wetlands appear to continue offsite to the west where they meet a roadside ditch along US Highway 151. The Digital Elevation Model (DEM) layer and 2-ft Contours layer show that the flow direction along the east side of US Highway 151 is northeast. There is a culvert that crosses under the curve of US Highway 151 just to the north of the delineated area. The National Wetland Inventory (NWI) layer shows that there is a mapped waterway going through the delineated area and through this culvert then further north connecting to Lake Winnebago. The entire reach of this NWI mapped tributary was considered; however, multiple years of historic aerial imagery indicate that this feature is no longer present and does not indicate the presence of a channel with relatively permanent flow or an Ordinary High-Water Mark (OHWM) going through this culvert. Between this culvert and Lake Winnebago, there is a large agricultural field where this mapped waterway was historically located. Multiple years of aerial imagery show no evidence of a channel with relatively permanent flow or an OHWM through this field. The mapped waterway is classified as intermittent and seems to have been heavily manipulated by agricultural practices within the agricultural field, and it is no longer present where NWI has it mapped. Aerial imagery shows what appears to be an agricultural ditch with no evidence of relatively permanent flow entering and agricultural pond that was constructed sometime between 1980 and 1992. This agricultural pond appears to be a closed basin with no outfall. Therefore, these wetlands do not abut a relatively permanent jurisdictional water.

According to the wetland delineation report, Wetlands 5, 6, 7, 9 and 10 abut each other in the delineated area and then continue offsite to the north. The DEM and

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2-ft Contours layer shows that these wetlands flow north into the same culvert that crosses under US Highway 151 as Wetlands 1 and 4. As stated above, since this culvert has no indication of a relatively permanent flow or an Ordinary High-Water Mark going through it, these wetlands do not abut a relatively permanent jurisdictional water.

These wetlands are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. The wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The wetlands are nontidal wetlands that do not abut a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, the wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.]

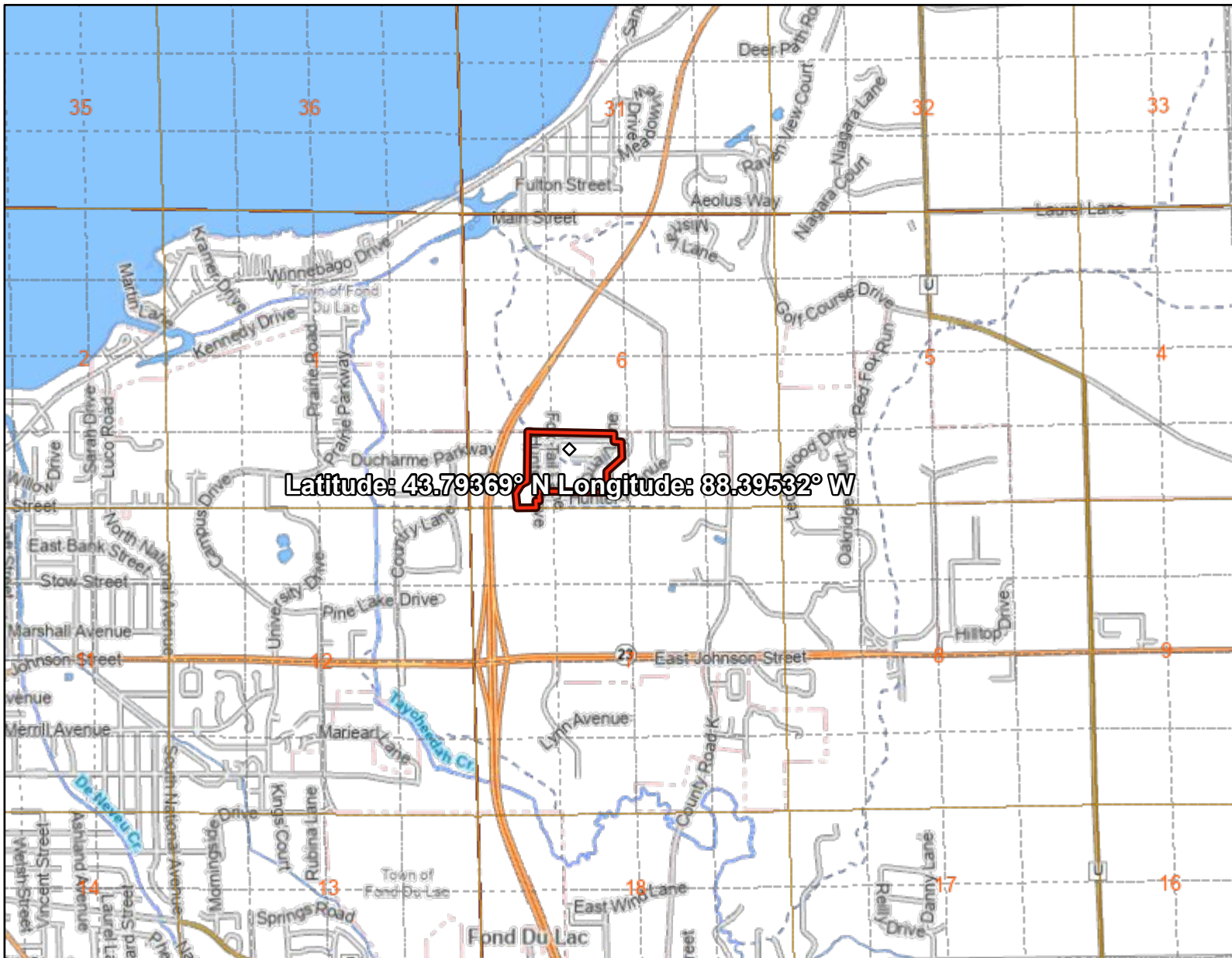
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. [Multiple office evaluations were conducted in February and March 2026.]
 - b. [Routine Wetland Delineation of Hunters Grove by Davel Engineering & Environmental, Inc. dated December 4, 2025.]
 - c. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, Hillshade layer, DEM layer, Digital Elevation Tool, 2-ft Contours, and WNDN Imagery 2022, 2020 and 2015 accessed on March 12, 2026.]
 - d. [Google Earth Aerial Imagery dated 10/2002 and 9/2005 accessed on March 12, 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.



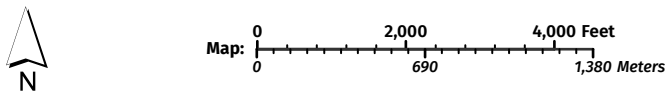
MVP-2026-00151-ALH FIGURE 1 OF 2



Legend: (some map layers may not be displayed)

- PLSS Sections
- PLSS Q-Q Sections
- PLSS Townships
- Municipality**
- City or Village
- Township
- State Boundaries
- County Boundaries
- Major Roads**
- State Highway
- US Highway
- County and Local Roads**
- County HWY
- Local Road
- Rivers and Streams
- Intermittent Streams
- Open Water

Notes:



Service Layer Credits:
PLSS (Town/Range/Section) Boundaries: , Detailed feature basemap:

Map projection: NAD 1983 HARN Wisconsin TM

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

This map is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. The user is solely responsible for verifying the accuracy of information before using for any purpose. By using this product for any purpose user agrees to be bound by all disclaimers found here: <https://dnr.wisconsin.gov/legal>

Date Printed: 8/12/2025 1:43 PM

Wetland Delineation Overview Map

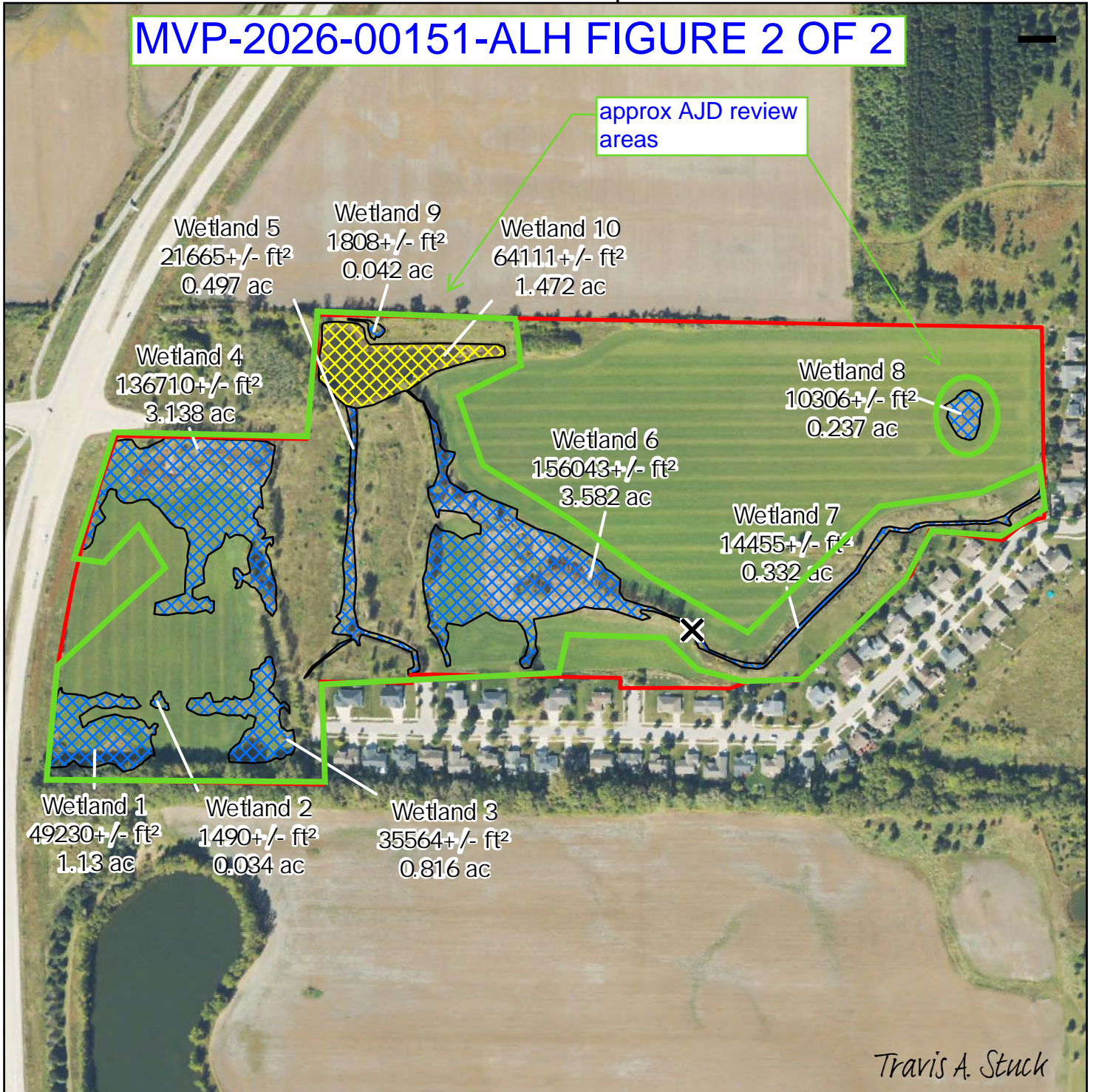
Hunters Grove

Part of Sec. 06, T15N, R18E, City of Fond du Lac, Fond du Lac County, WI

For: Pat Hietpas

September 2024 "Wet" 3mo. AP

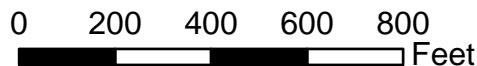
MVP-2026-00151-ALH FIGURE 2 OF 2



The project scope limits shown on this map is not intended to be the parcel boundary



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Legend

- Project Scope
- Wetland
- Pond/Wetland
- X Culvert Crossing