

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2026-00164-JLK

MVP

March 31, 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 MVP-2026-00164-JLK [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 4	Non-Jurisdictional	None
Wetland 5a	Non-Jurisdictional	None
Wetland 6	Non-Jurisdictional	None
Wetland 7	Non-Jurisdictional	None
Wetland 9	Non0Jurisdictional	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)

3. REVIEW AREA.

- a. Project Area Size (in acres): 1.52
- b. Location Description: The project/review area is located in Township 26N, Range 25E, Door County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.6955 Longitude: -87.4797
- d. Nearest City or Town: Forestville
- e. County: Door
- 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
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. NA
6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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. NA
 - 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

⁶ 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.

⁷ 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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- 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).⁸

Wetlands 4 and 5a are linear features running north to south along the western side of STH 42 while Wetlands 6 and 9 are linear features running north to south along the eastern side of STH 42. Additionally, Wetland 7 is the easternmost end of another linear feature running east to west on the western side of STH 42. Aerial photos also show Wetland 7 is an erosional feature lacking in flowing/standing water, indicating it does not have a relatively permanent flow. Review of historical aerial photos shows these ditches were constructed sometime before 1951 to provide drainage for the roadway. The Wisconsin Surface Water Data Viewer shows no mapped wetlands within the footprint of all above listed wetlands and no mapped hydric soils within the footprint of Wetlands 4, 5a, 6, and 7 and most of Wetland 9. Aerial and street-level photos show there is no standing or flowing water, no bed and bank, and no ordinary high water mark (OHWM) in any of the features, indicating they are not relatively permanent waters. Additionally, the delineation report shows that wetland indicators are confined to the limits of the constructed ditches, and these features do not drain other waters. Based on this information, Wetlands 4, 5a, 6, 7 and 9 are not jurisdictional under exclusion (b)(3) of the 2023 Revised Definition of “Waters of the United States”: confirming 88 FR 61964 Final Rule.

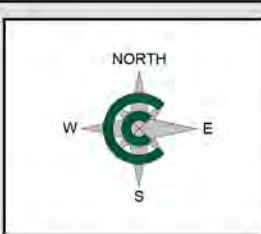
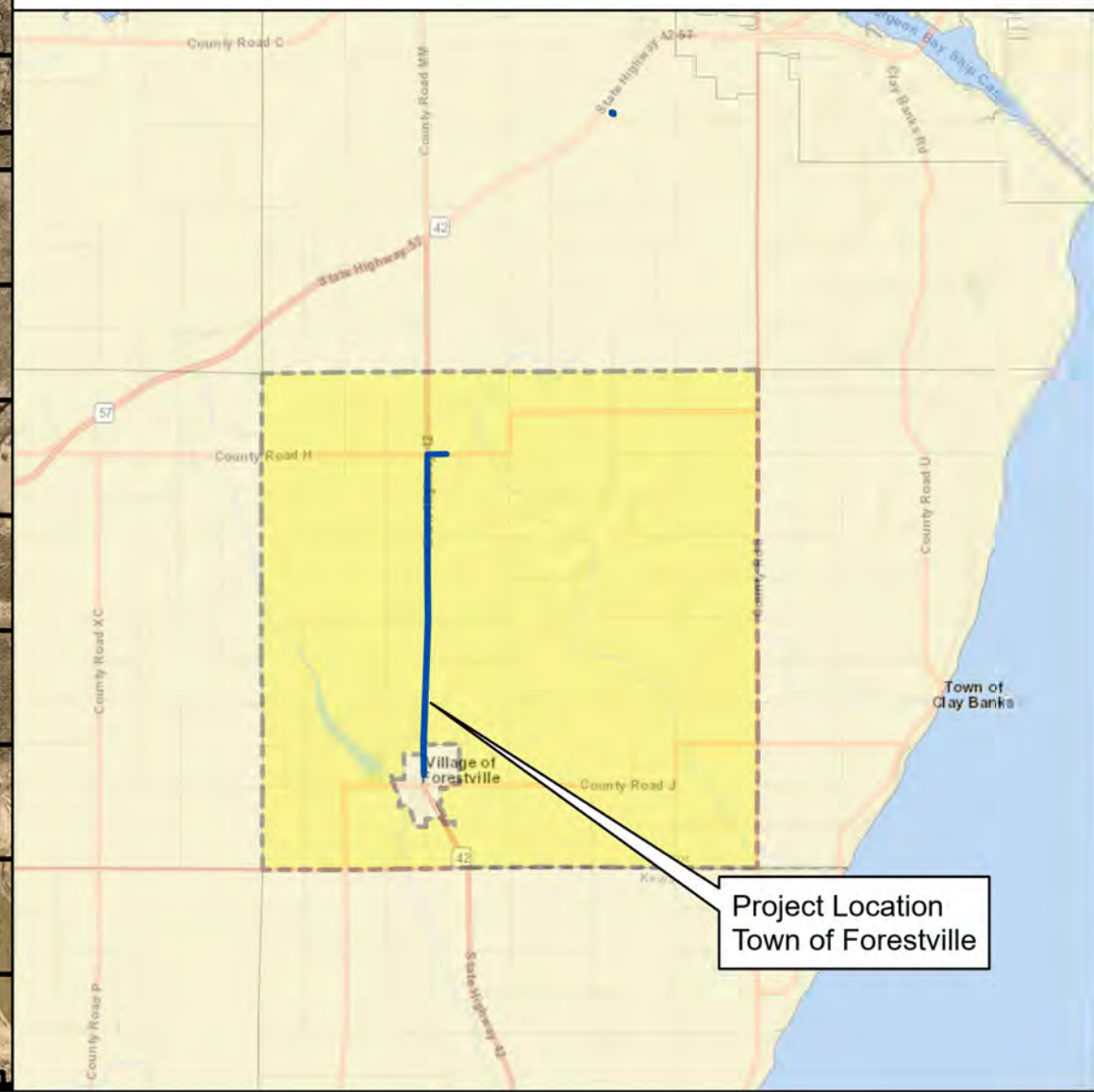
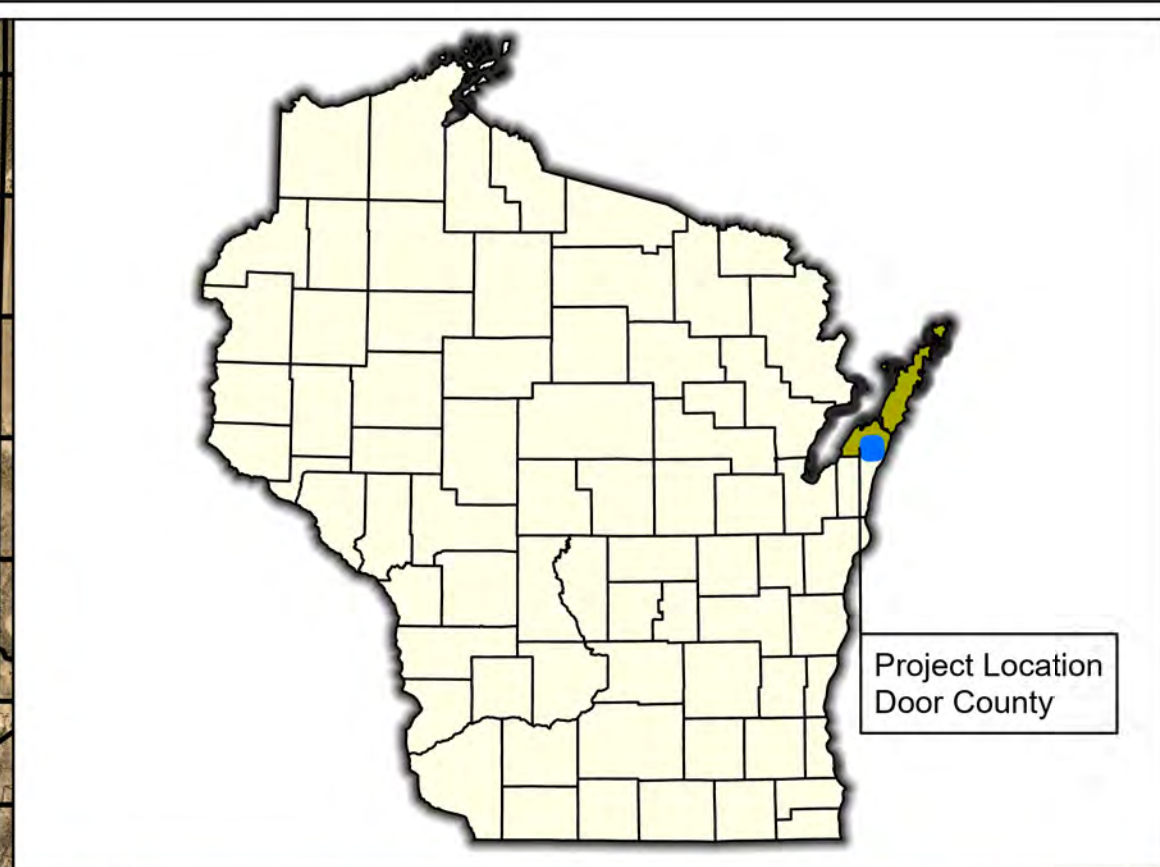
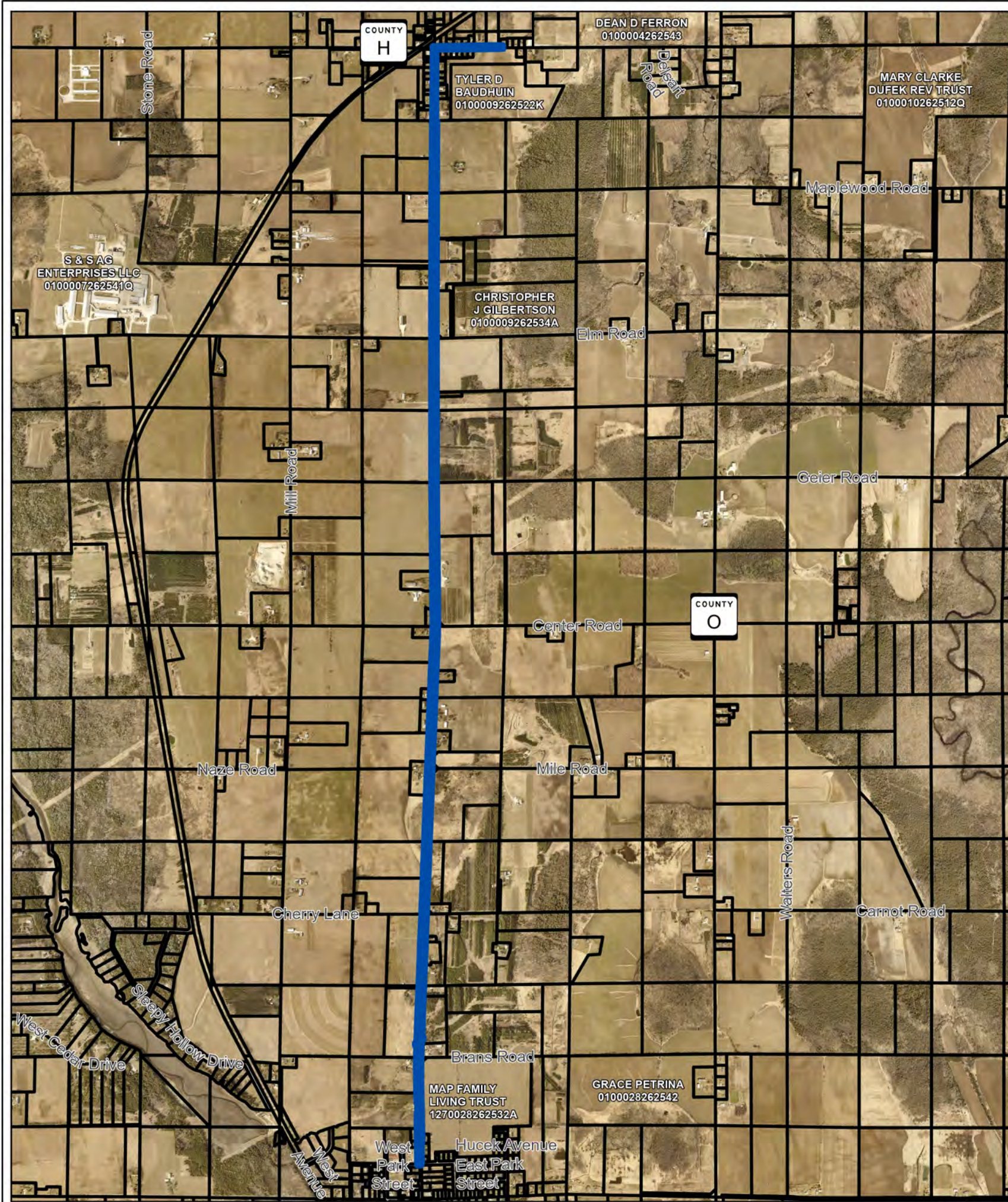
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). NA

⁸ 88 FR 3004 (January 18, 2023)

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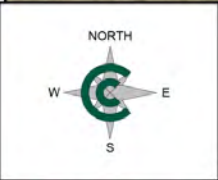
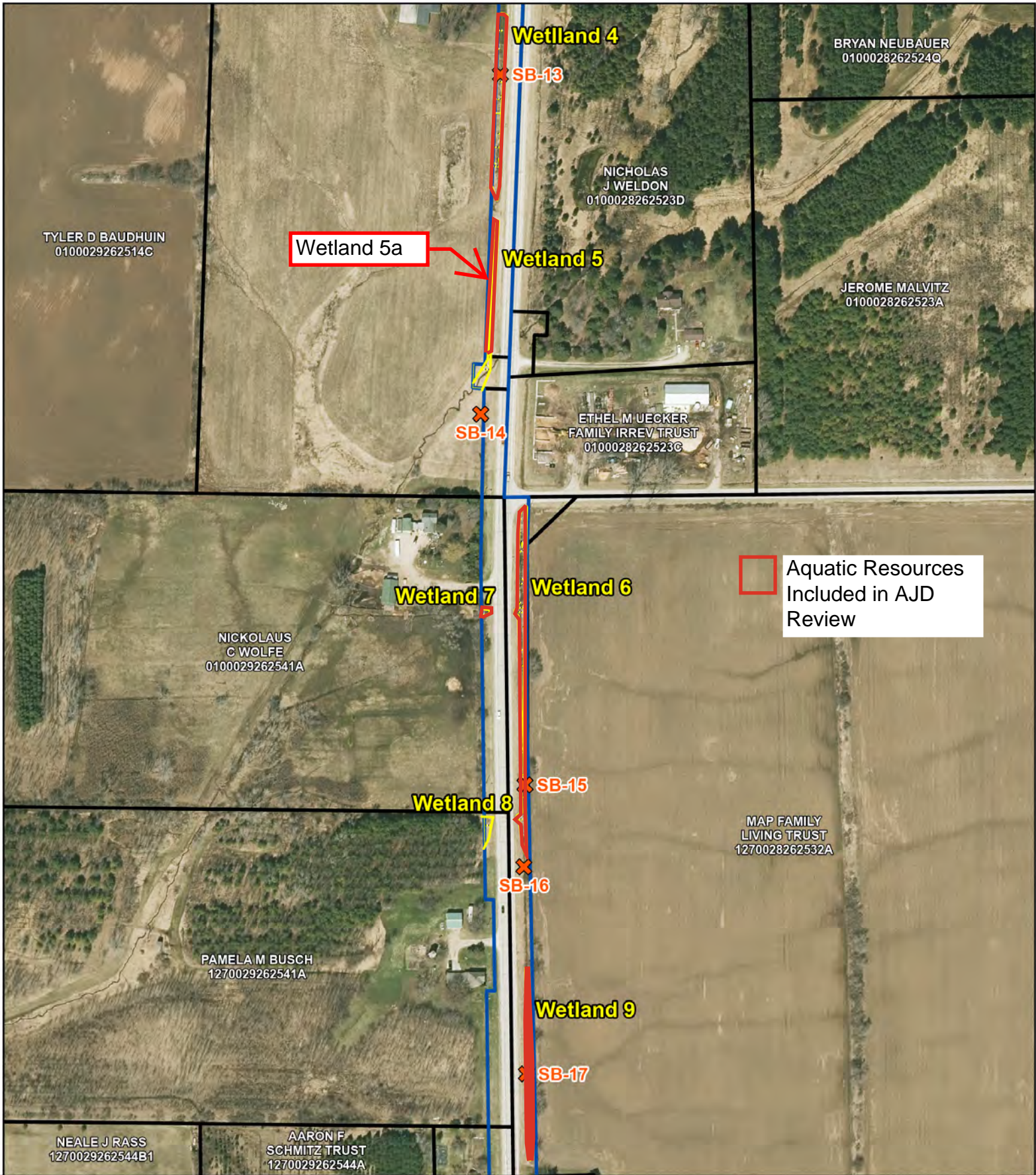
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9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Office evaluation conducted on February 6, 2026.
 - b. STH 42 Forestville, Town of Forestville, Door County Wetland Delineation Report provided by Cedar Corporation dated August 25, 2025.
 - c. National Regulatory Viewer-Lidar Data and Google Earth Pro assessed February 6, 2026.
 - d. Historic Aerials Viewer assessed February 6, 2026.
10. OTHER SUPPORTING INFORMATION. NA
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.



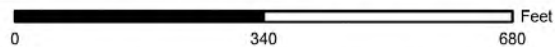
Site Location Map
STH 42 Forestville
 STH 42
 TOWN OF FORESTVILLE
 DOOR COUNTY, WI

JOB NO.	R7279-001
DATE	7/7/2025
FIGURE	1



STH 42 Forestville

Surveyed Wetland Boundary



The information on this map is from a computer database accessed using a Geographic Information System (GIS). Cedar Corporation cannot guarantee the accuracy of the information contained on this map. Each user of this map is responsible for determining its suitability for their intended use or purpose.

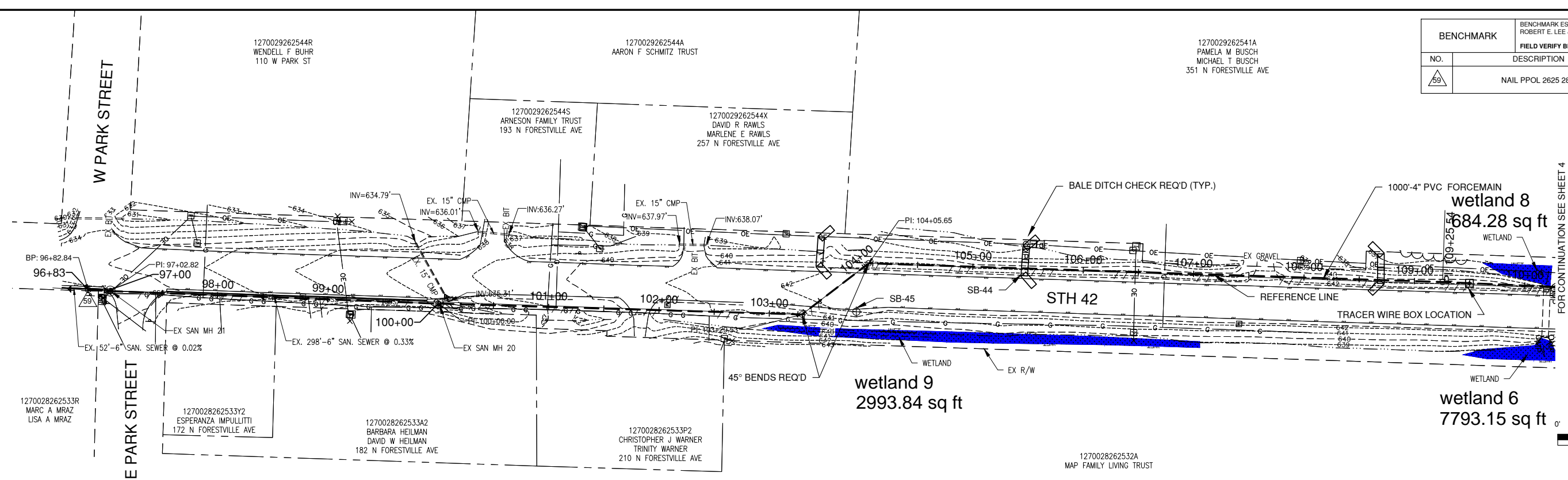
Legend

- Project Location
- Parcels
- X Soil Boring
- Wetline
- Wetland

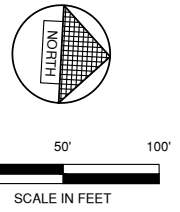
JOB NO. R7279-001
DATE 8/25/2025
FIGURE 2c



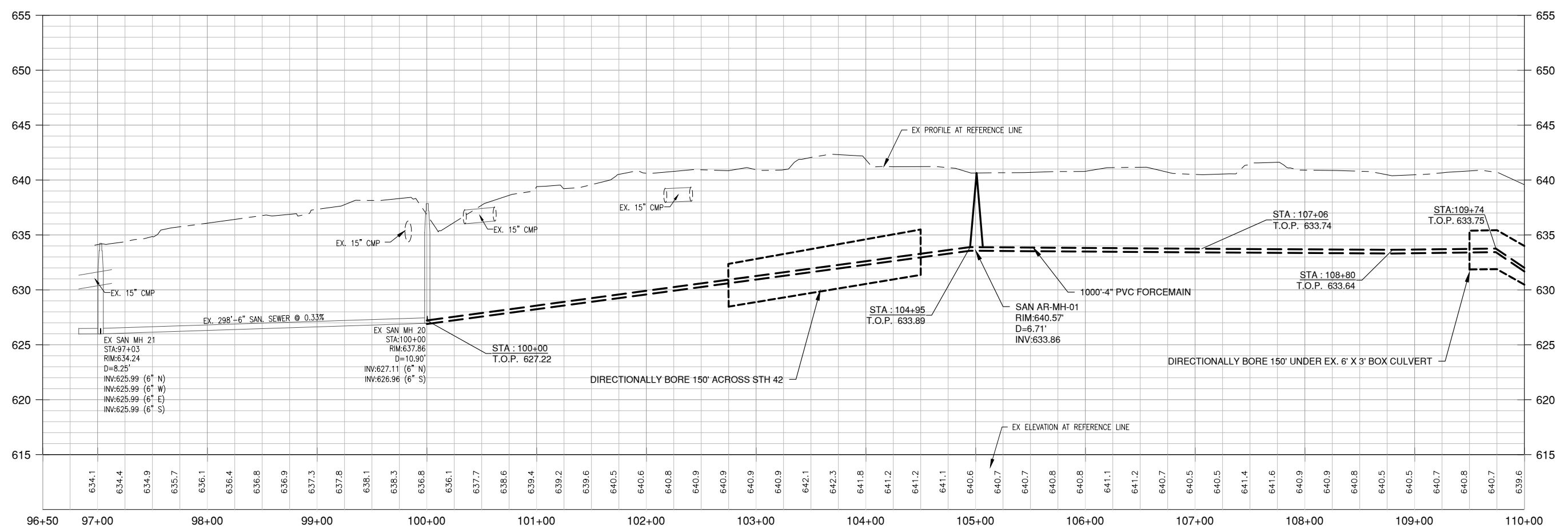
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NO.	DESCRIPTION	EL.
59	NAIL PPOL 2625 28L24	635.82



FOR CONTINUATION SEE SHEET 4



NOTE:
MAINTAIN A MINIMUM DEPTH OF 6.5' OVER FORCEMAIN



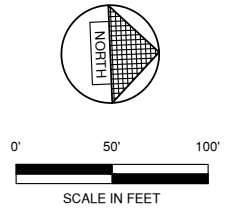
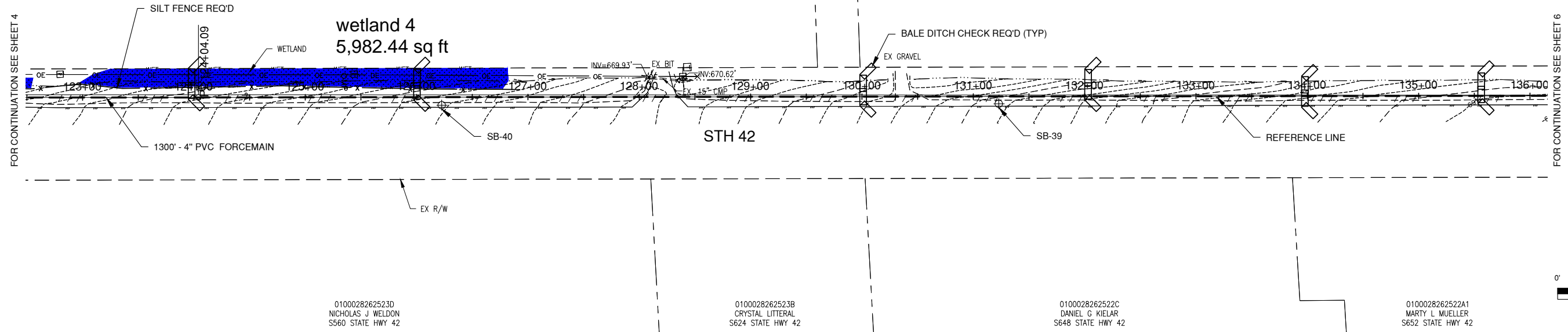
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Plot Date: Jan 29, 2026 - 3:14pm
LAYOUT: A_MAPLEWOOD_1

NO.	DATE	APPROV.	REVISION	NO.	DATE	APPROV.	REVISION	DRAWN MPNB	CONTRACT NO. 2055-25-02 REGIONALIZATION FORCEMAIN CONSTRUCTION MAPLEWOOD SANITARY DISTRICT NO. 1 DOOR COUNTY, WISCONSIN	DATE 09/20/25 FILE A_MAPLEWOOD_1 JOB NO. 2055010	 1250 Centennial Centre Blvd Hobart, WI 920-662-9641 releinc.com	SHEET NO. 3
								CHECKED				
								DESIGNED JSL				

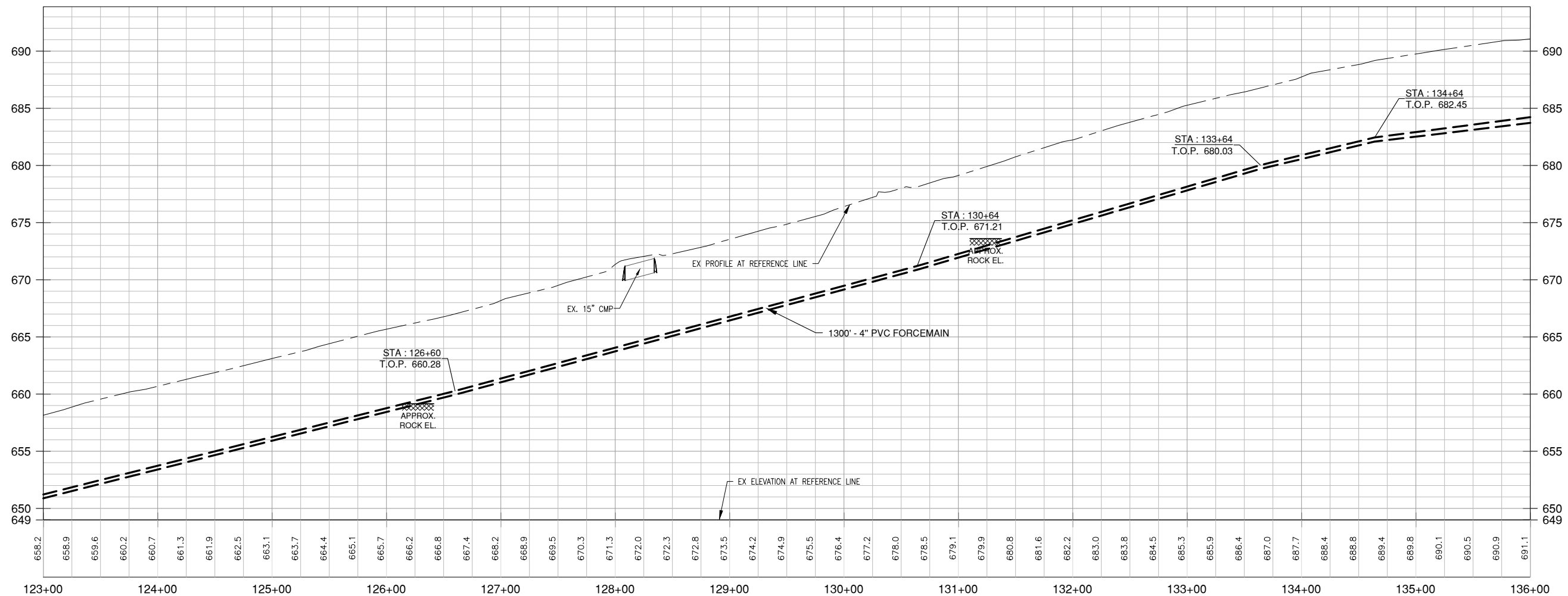
2026-00164-JLK (Figure 3 of 5)

0100029262514A
MICHAEL J KASTEN
MAVIS A KASTEN
S601 STATE HWY 42

0100029262511A
DANIEL G KIELAR
JULIE E KIELAR
S625 STATE HWY 42



NOTE:
MAINTAIN A MINIMUM DEPTH OF 6.5' OVER FORCEMAIN



File: R:\2005\2055\2055010_Veg_V_MapLEWOOD_1.dwg
 Plot Date: Jan 29, 2026 - 3:14pm
 Layer: A_MAPLEWOOD_3

NO.	DATE	APPROV.	REVISION	NO.	DATE	APPROV.	REVISION

DRAWN: MPNB
 CHECKED: [Signature]
 DESIGNED: JSJL
 CONTRACT NO. 2055-25-02
 REGIONALIZATION FORCEMAIN CONSTRUCTION
 MAPLEWOOD SANITARY DISTRICT NO. 1
 DOOR COUNTY, WISCONSIN

STH 42
 STA. 123+00 TO STA. 136+00
 DATE: 09/20/25
 FILE: A_MAPLEWOOD_1
 JOB NO.: 2055010

SHEET NO. **5**

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