



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

MVP

22 May 2025

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-2025-00060-CCK, MFR 1 of 1²

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).
 - i. Wetland 1 (1.15 acres), non-jurisdictional
 - a. Drainage feature (770 linear feet), non-jurisdictional
 - ii. Wetland 2 (0.92 acre), non-jurisdictional

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. January 2023 Rule preamble at 88 FR 3090
- e. "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 Area Size (in acres): approximately 9 acres
- b. Location Description: The review area is located within Section 1, Township 28 North, Range 1 East, Clark County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees) Latitude 44.9412164772207, Longitude -90.334514579959
- d. Nearest City or Town: Colby
- e. County: Clark
- f. State: Wisconsin

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- g. Other associated Jurisdictional Determinations (including outcomes): none
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 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.
 - 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

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

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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- 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).⁸ 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).

Wetland 1 and Wetland 2 are one contiguous wetland. The wetlands abut a drainage feature that occurs within Wetland 1. A site visit was conducted on 8 May 2025 to evaluate the drainage feature. The drainage feature is vegetated and lacks a defined channel, bed and bank, and ordinary high-water mark. Therefore, the drainage feature is not a relatively permanent water. The drainage feature extends off-site through a driveway culvert to a roadside ditch, through another culvert under Hilene Road and finally into a vegetated swale. The drainage feature does not provide a continuous surface connection to a requisite jurisdictional water.

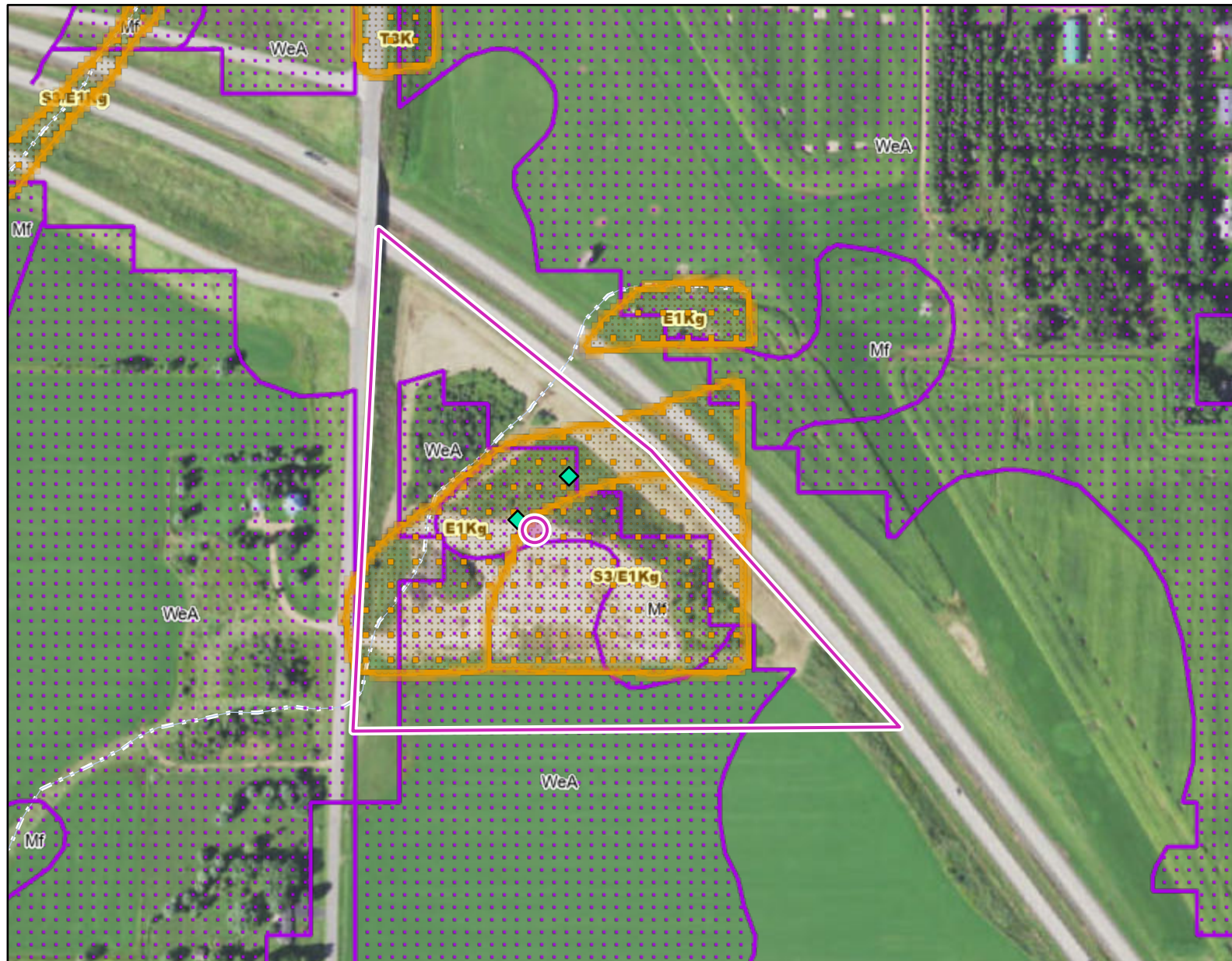
Wetland 1 and Wetland 2 are not TNWs, territorial seas, or interstate waters and are therefore not (a)(1) waters. The wetlands are not abutting a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. Wetland 1 and Wetland 2 are not an (a)(4) adjacent wetland and are not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

⁸ 88 FR 3004 (January 18, 2023)

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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. Wetland Delineation Report on the Central WI Holdings, LLC Property dated September 26, 2022 prepared by Star Environmental, Inc.
 - b. US Geological Survey, 3DEP Bare Earth DEM Dynamic service – hillshade and 3DEP DEM, accessed on April 14, 2025
 - c. Google Earth aerial imagery (1991 – present), accessed May 14, 2025
 - d. United States Geological Survey, National Hydrography Dataset, accessed on May 14, 2025
 - e. United States Fish and Wildlife Service, National Wetland Inventory, accessed May 14, 2025
 - f. Wisconsin Department of Natural Resources, Surface Water Data Viewer, accessed May 14, 2025.
 - g. Site visit by Corps staff, 8 May 2025.
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.



Legend: (some map layers may not be displayed)

- Wetland Identifications and Confirmations
- Wetland Class Areas
- Wetland Indicators
- 24K Streams and Rivers
- 24K Intermittent Streams
- Latest Leaf On Imagery
- City or Village
- State Boundaries
- County Boundaries
- Major Roads
 - Interstate Highway
 - State Highway
 - US Highway
- County and Local Roads
 - County HWY
 - Local Road

Notes:



Map: 0 310 620 Feet
0 90 180 Meters

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>

Service Layer Credits:
Wisconsin Wetland Inventory NWI (cached); Wetland Indicators & Soils: Surface Water Data Viewer Team, EN Basic Basemap WTM Ext; 2022 Leaf On; Wild Rice Waters: Wisconsin Department of Natural Resources, Water Quality Bureau, Priority Navigable Waterways: Waterway Protection, WDNR, Fisheries Management; WI Dept. of Natural Resources, Water Division, Wisconsin Wetland Inventory NWI (Dynamic): Calvin Lawrence, Dennis Weise, Nina Rihn, Paper FIRMS: Federal Emergency Management Agency, Wisconsin

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WETLAND DELINEATION MAP

Delineated: 8-31-22

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Central WI Holdings, LLC
SW1/4,NW1/4,Sec.1,T28N.-R.1E.
Town of Colby, Clark County

Created By:

Star Environmental, Inc.
PO Box 434 Marathon, WI 54448
Phone: (715) 443-6115
Email: Starenvironmental@hotmail.com

Project Boundary and
Property Lines

Center of Drainage
Ditch or mapped
intermittent stream

Note: Indicated location of Ditch or
mapped intermittent stream
on aerial photos is not
accurate

Wetland
Boundary

Wetland Cover
Type Boundary

Highway 29

Hi Line Dr

Wetland 1
Fresh (Wet) Meadow
1.15 acres

Wetland 2
Shrub-carr
0.92 acre

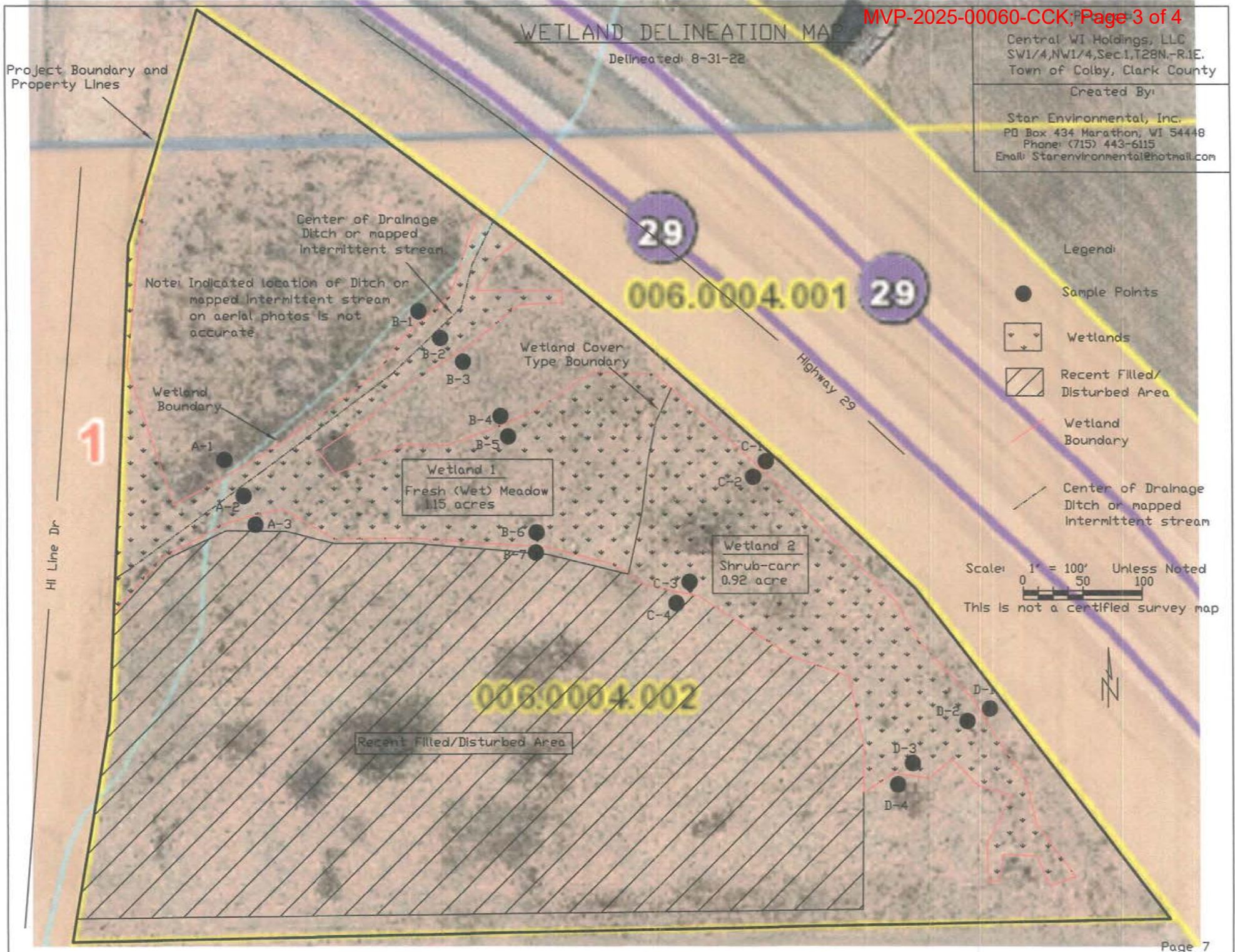
Recent Filled/Disturbed Area

Legend:

- Sample Points
- ☐ Wetlands
- ▨ Recent Filled/
Disturbed Area
- Wetland
Boundary
- - - Center of Drainage
Ditch or mapped
intermittent stream

Scale: 1" = 100' Unless Noted
0 50 100
This is not a certified survey map





Central WI Holdings, LLC. Property

2021 Aerial Photograph

Legend



Google Earth

Image © 2022 Maxar Technologies