



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

MVP

24 April 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-2025-00314-KDZ](#), [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, 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 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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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 2 \(0.10 acre\), non-jurisdictional](#)
- ii. [Wetland 3 \(0.01 acre\), 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)

3. REVIEW AREA. [The review area is limited to Wetlands 2, and 3 as shown on the attached Figure 1. The review area is located at 43.119958, -89.498869 in the City of Middleton, Dane County, Wisconsin. There are no other JDs associated with the review area.](#)

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

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.

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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

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

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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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 2 and 3 \(W-2, W-3\) were identified in the January 7, 2025, Heartland Ecological Group, Inc. Wetland Delineation Report as being situated within the bottom of a roadside ditch on the west side of High Road. A review of the USGS Topo Map, NHD layer, USDA Soil Mapping, and Wisconsin Wetland Inventory, all indicate that W-2 and W-3 were created within upland areas, drain only uplands, and do not exhibit relatively permanent flow. Accordingly, the Corps has determined that W-2 and W-3 are excluded from Section 404 jurisdiction under \(b\)\(3\) of the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule as ditches \(including roadside ditches\) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water.](#)

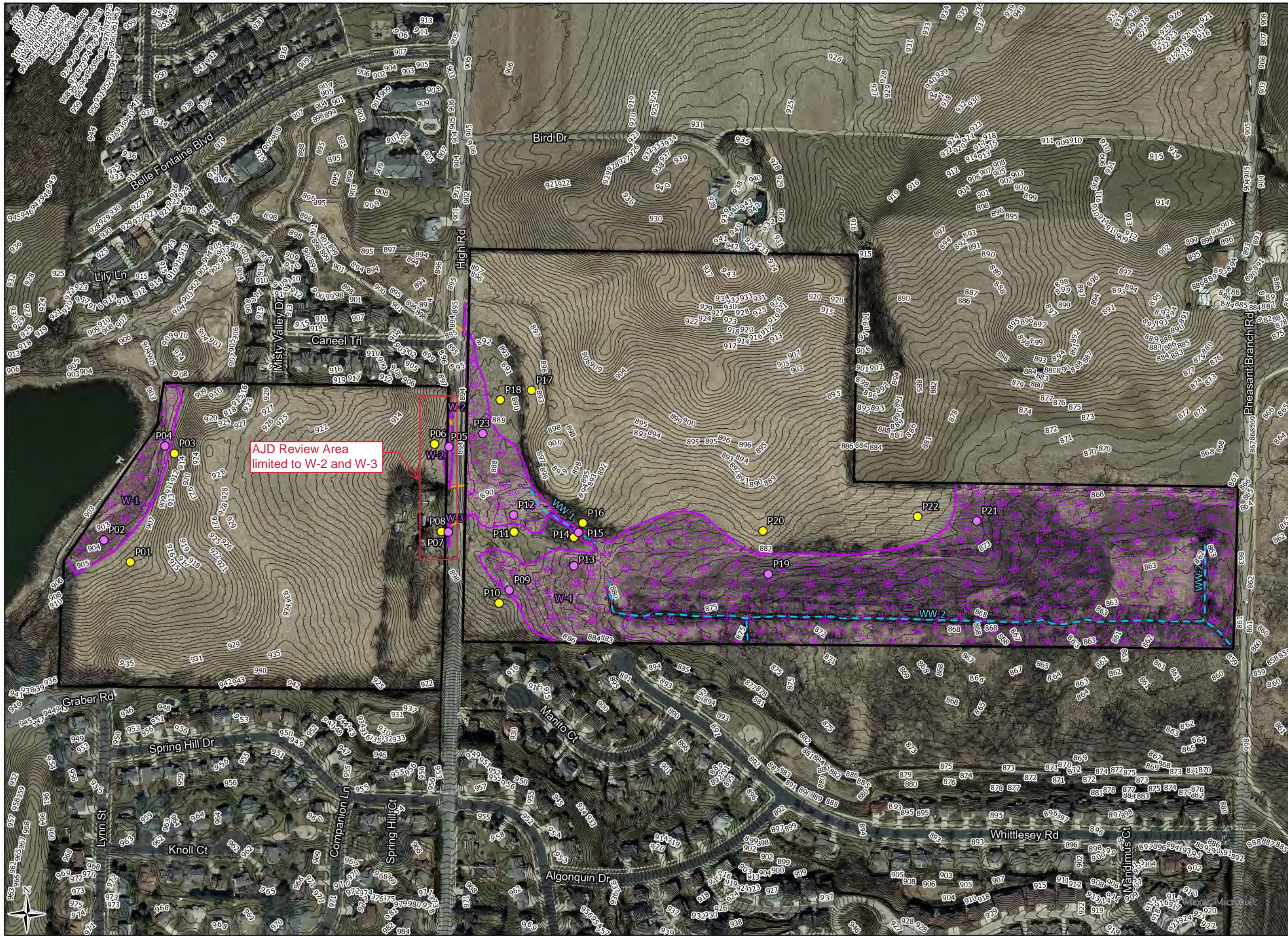
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).
9. 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 April 24, 2025.](#)
 - b. [January 7, 2025, Heartland Ecological Group, Inc. Wetland Delineation Report](#)
 - c. [Wisconsin Wetland Inventory, USDA Web Soil Survey, USGS NHD, USGS Topographic Maps, WDNR Surface Water Data Viewer, USACE National Regulatory Viewer.](#)
 - d. [Google Earth imagery dated 1999, 2010, 2011, 2015, 2018, 2019, 2020, 2021, and 2022. Accessed April 24, 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

⁸ 88 FR 3004 (January 18, 2023)

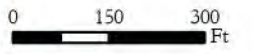
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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



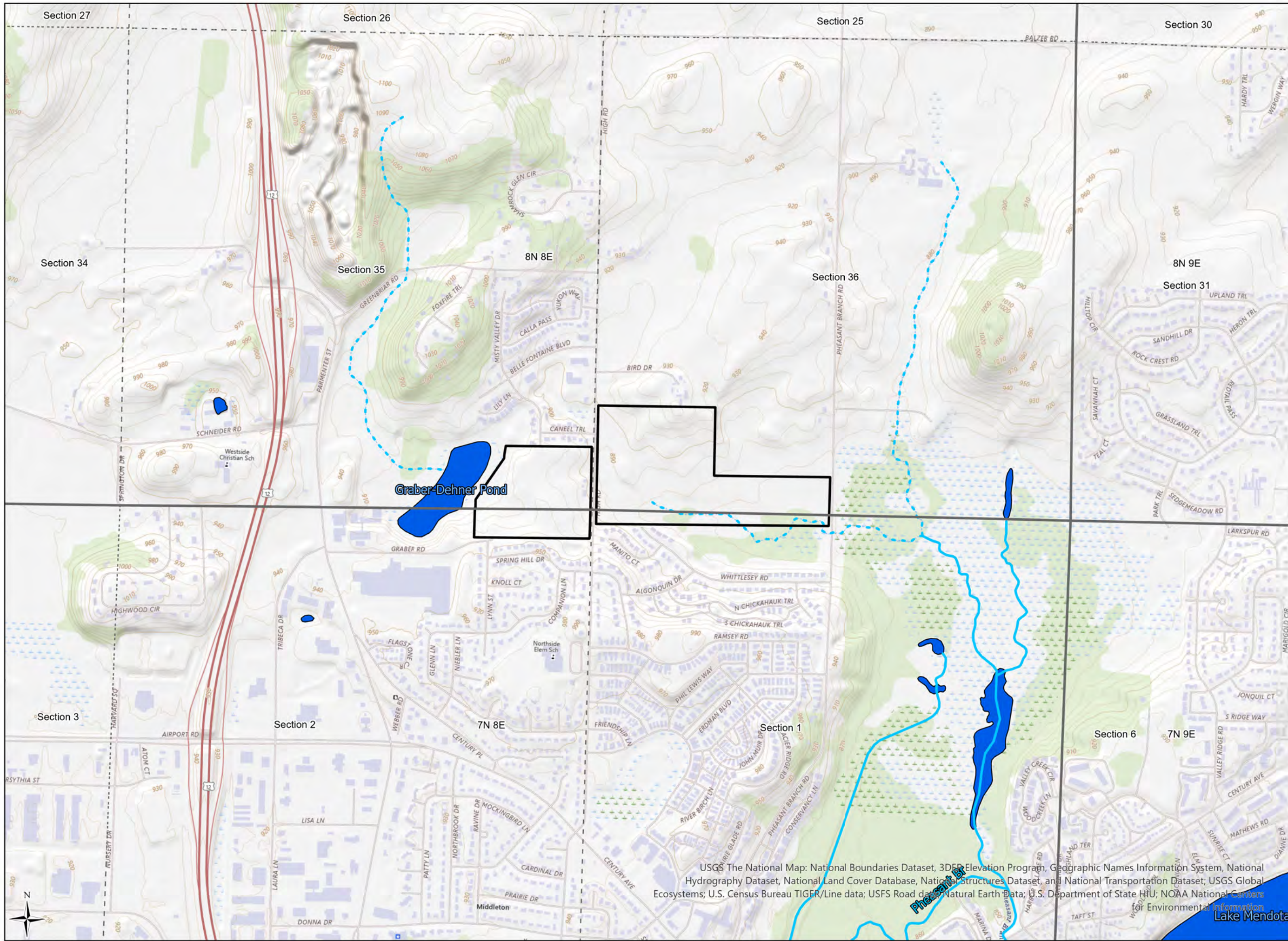
- Study Area (83.88 ac)
 - Dane Co 1' Contours
 - Waterways
 - Culverts
 - Field Delineated Wetlands (27.75 ac)
- Sample Points**
- Upland
 - Wetland



Heartland
ECOLOGICAL GROUP INC

Figure 7. Field Delineated Wetlands
Ziegler High Road
Project #20241306
T7N, T8N, R8E, S35, 36
T Springfield & Middleton, C Middleton,
Dane Co
2022 Orthophoto
Dane Co, HEG

LRR: NCNE
Figure Created: 8/9/2024



- Study Area (83.88 ac)
- Township
- Section
- Perennial Streams
- Intermittent Streams
- Waterbodies

0 500 1,000
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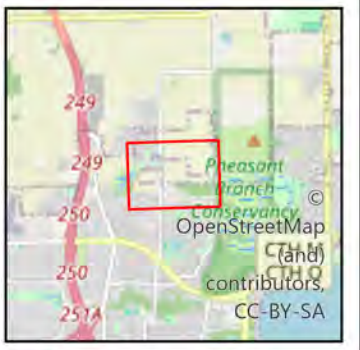
Heartland
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Figure 2. USGS
Topography
Ziegler High Road
Project #20241306
T7N, T8N, R8E, S35, 36
T Springfield & Middleton, C Middleton,
Dane Co
USGSTopo
USGS

LRR: NCNE

Figure Created: 6/27/2024

USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road data; Natural Earth Data; U.S. Department of State HUI; NOAA National Centers for Environmental Information
Lake Mendota



Study Area (83.88 ac)

NRCS Soil Survey Data

- Hydric (100%)
- Predominantly Hydric (85-99%)
- Partially Hydric (16-84%)
- Predominantly Non-Hydric (1-15%)
- Non-Hydric (0%)



Heartland
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Figure 3. NRCS
Hydric Soils
Ziegler High Road
Project #20241306
T7N, T8N, R8E, S35, 36
T Springfield & Middleton, C Middleton,
Dane Co
2022 NAIP
NRCS

LRR: NCNE

Figure Created: 6/27/2024



Study Area (83.88 ac)
 SWDV Wetland Indicators



Heartland
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Figure 4. SWDV
 Wetland Indicators
 Ziegler High Road
 Project #20241306
 T7N, T8N, R8E, S35, 36
 T Springfield & Middleton, C Middleton,
 Dane Co
 2022 NAIP
 WDNR

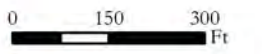
LRR: NCNE

Figure Created: 6/27/2024



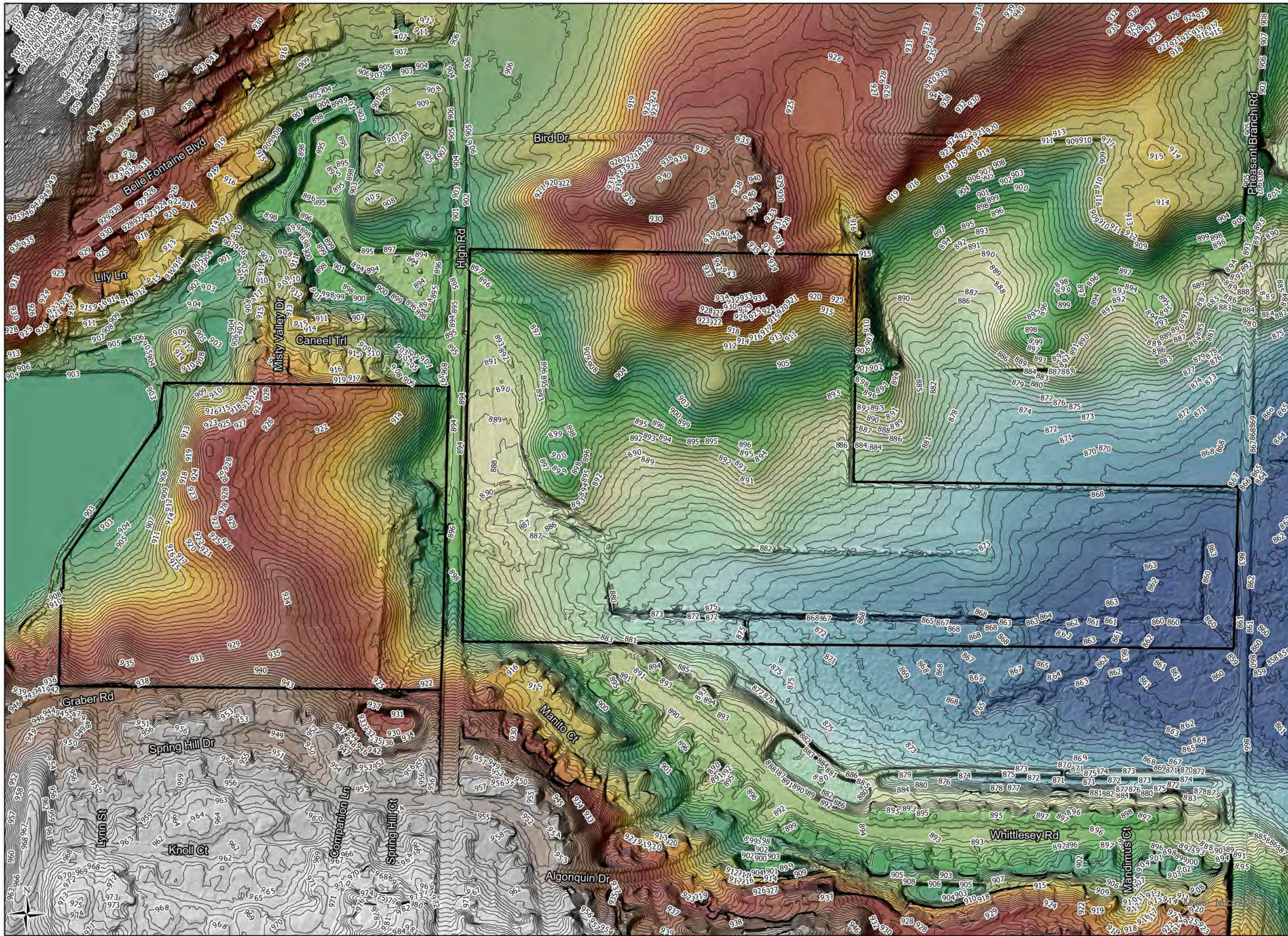


- Study Area (83.88 ac)
- WVI Polygons (New Mapping Methodology)
- WVI Points
- Perennial Streams (None in Map Extent)
- Intermittent Streams
- Waterbodies



Heartland
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Figure 5. Wisconsin Wetland Inventory
 Ziegler High Road
 Project #20241306
 T7N, T8N, R8E, S35, 36
 T Springfield & Middleton, C Middleton,
 Dane Co
 2022 NAIP
 WDNR, USGS
 LRR: NCNE



Study Area (83.88 ac)
~ Dane Co 1' Contours



Heartland
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Figure 6. Color-Stretch
 Digital Elevation Model
 Ziegler High Road
 Project #20241306
 T7N, T8N, R8E, S35, 36
 T Springfield & Middleton, C Middleton,
 Dane Co
 DNR Lidar Service
 Dane Co., WDNR

LRR: NCNE

Figure Created: 6/27/2024