



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

December 3, 2025

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-2005-00231-CJB, 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 13	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. Review Area Size (in acres): 0.13
- b. Location Description: The project/review area is located in Section 23, Township 23N, Range 21E, Brown County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.450951 Longitude: -87.922104
- d. Nearest City or Town: Bellevue
- e. County: Brown
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2005-00231-CJB	AJD	Wetland 1, Wetlands 5-7, Wetlands 9-12, and Wetlands 14 and 15 were

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		determined to be non-jurisdictional under the AJD
MVP-2025-00851-MJC	AJD	Wetland 1, Wetland 2, and Ditched Portion of Wetland 3 were considered to be non-jurisdictional under the AJD

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶

N/A

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

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.

“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 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).

Wetland 13 was identified in the wetland delineation report as a 0.13 acre depressional wet meadow/drainage swale wetland located along an exterior

⁹ 88 FR 3004 (January 18, 2023)

edge of an agricultural field. The drainage swale portion of Wetland 13 (approximately 0.02 acres) initially appeared to be an excavated linear drainage feature; however, during review of historic aerial photos of the area where the linear drainage feature is located, it was unclear if the feature was excavated in dry land. Therefore, the linear portion of Wetland 13 was not reviewed as an excluded feature and the entire delineated boundary of Wetland 13 was reviewed to determine if it would meet one or more categories of waters of the United States. A recently completed AJD (MVP-2005-00231-CJB, dated September 8, 2025) determined 10 wetlands within the nearby agricultural field were non-jurisdictional. This September 8, 2025, AJD did not include Wetland 13. Due to new site information provided by the requestor, Wetland 13 is being evaluated to determine if it abuts a jurisdictional water.

The western boundary of Wetland 13 appears to extend offsite to the west so the area to the west of the review area was reviewed. Wetland 13 appears to connect to a drainage feature (identified as Wetland 2 on the figure label MVP-2005-00231-CJB Figure 4 of 4) that directs water to the south to an unnamed tributary to Bower Creek. A recently completed AJD (MVP-2025-00851-MJC, dated September 5, 2025) determined that Wetland 2 was an excluded feature that does not carry a relatively permanent flow of water. Based on review of the wetland delineation report, LiDAR, aerial photos, and topographic maps, Wetland 13 is located within a depressional area that collects surface water from the adjacent hillslopes of a nearby agricultural field. No discrete conveyance features carrying a relatively permanent flow of water were observed in LiDAR or aerial imagery near the exterior boundary of Wetland 13. Therefore, Wetland 13 does not abut a jurisdictional water and does not meet the continuous surface connection requirement.

Wetland 13 is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. Wetland 13 does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and is not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. Wetland 13 is a nontidal wetland 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, Wetland 13 is 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.

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- a. Office evaluation, conducted November 19, 2025
- b. Wetland delineation report, completed by BAY Environmental Strategies, Inc., dated August 9, 2024
- c. National Regulatory Viewer, WI 24k Hydro Flowlines Stream Order layer, LiDAR consisting of Hillshade and DEM, accessed on November 19, 2025
- d. Previous AJD, MVP-2025-00851-MJC, dated September 5, 2025
- e. Previous AJD, MVP-2005-00231-CJB, dated September 8, 2025

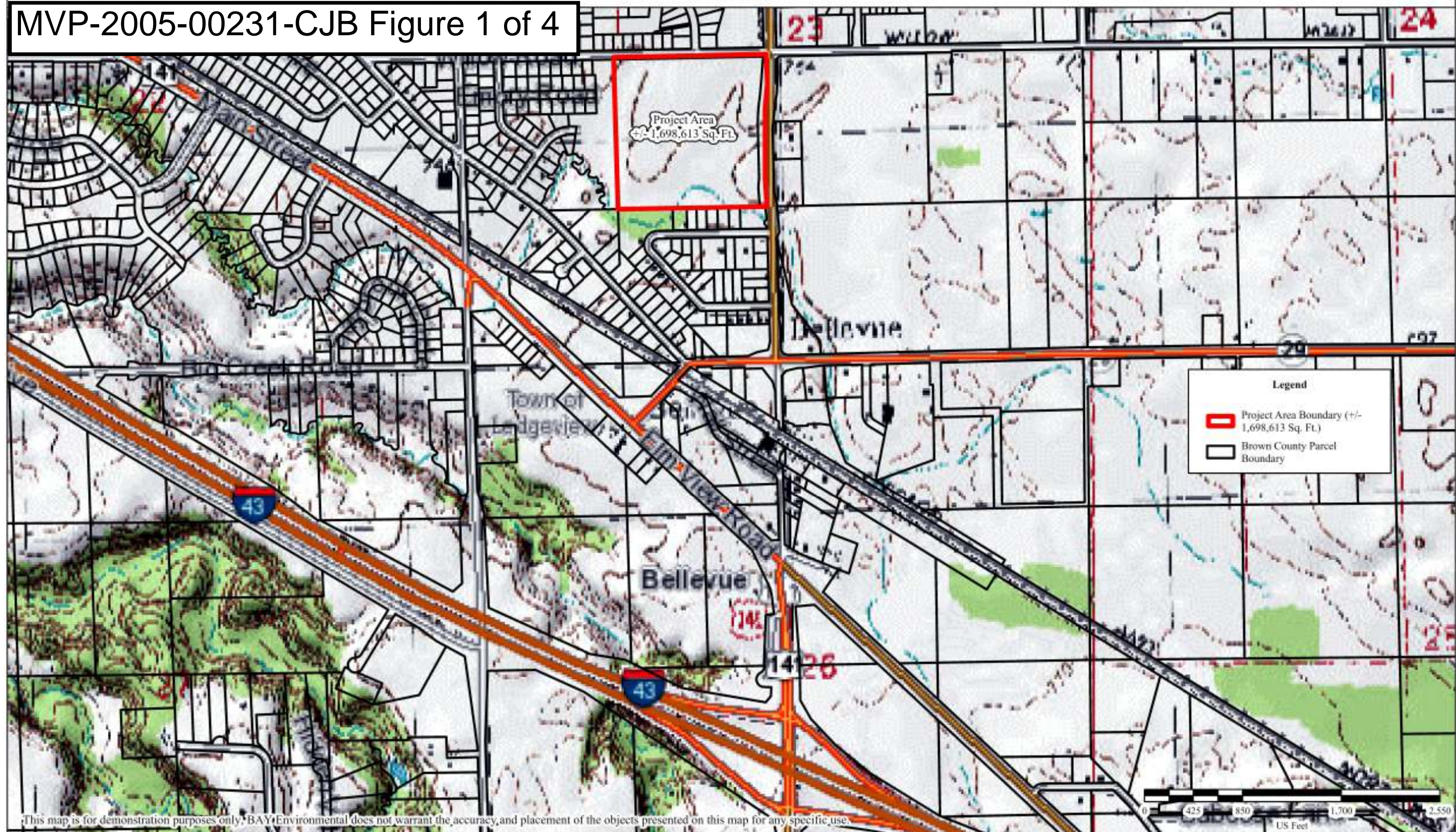
10. OTHER SUPPORTING INFORMATION.

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.

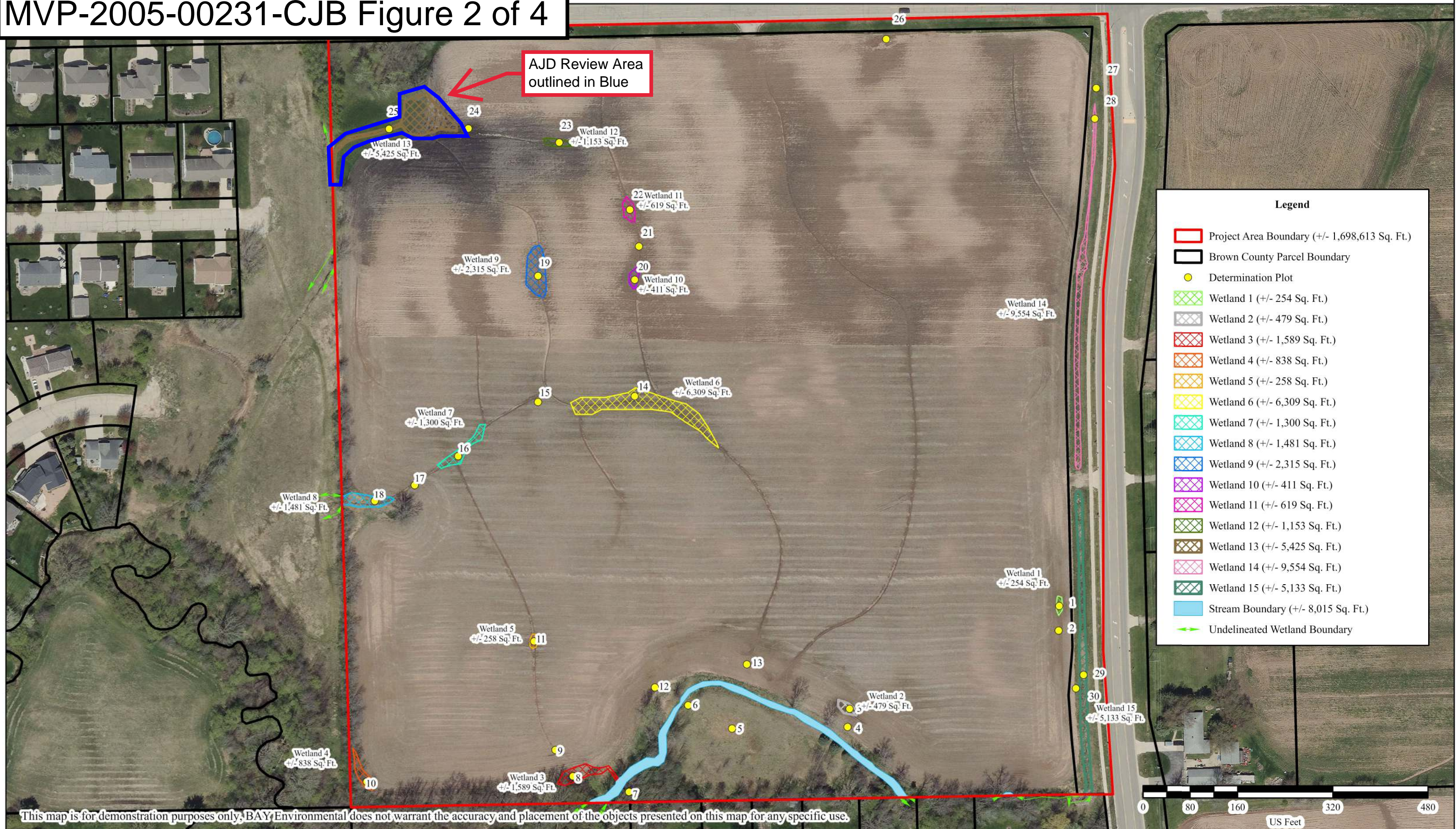


MVP-2005-00231-CJB Figure 1 of 4



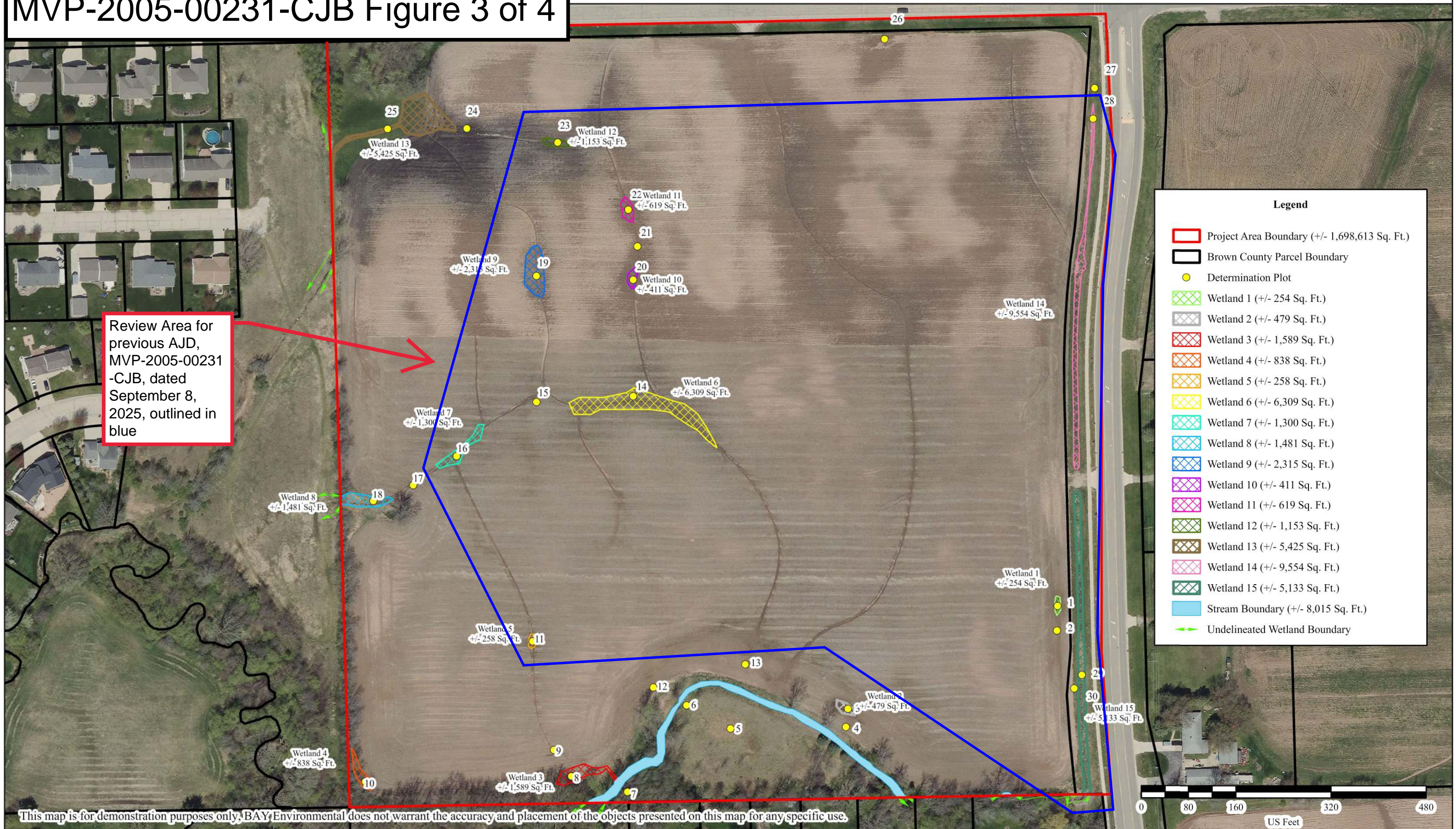


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Review Area for
previous AJD,
MVP-2005-00231
-CJB, dated
September 8,
2025, outlined in
blue



Legend

- Site Boundary
- Sample Point
- Picture Location
- Wetland Line
- Wetland
- Parcels
- Eroded Channel
- Approx. OHWM
- Stormwater Inlet

Wetland Delineation was conducted by
Shyann Banker, Environmental Scientist
WDNR Professionally Assured Wetland Delineator
with assistance from Chad Fradette, EP, Chem,
WDNR Professionally Assured Wetland Delineator

Outlot 1 of Rose-Em-Nine
Wetland Delineation Map
Crab Apple Lane
Village of Bellevue
Brown County, WI

Project: BRN25-255-01

