

CE-MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2007-00878-CJB

CE-MVP-RD

July 8, 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) ,<sup>1</sup> MVP-2007-00878-CJB, MFR 1 of 1.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended,

---

<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

CE-MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2007-00878-CJB

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 D	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): 0.18
- b. Location Description: The project/review area is located in Section 01, Township 003N, Range 021E, Racine County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 42.74910    Longitude: -87.95651
- d. Nearest City or Town: Yorkville
- e. County: Racine
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2007-00878-MWM (dated March 14, 2023)	AJD	Two wetlands, Wetlands G and H, were determined 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.<sup>6</sup>

N/A

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

N/A

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup>

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.

---

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

- 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).<sup>9</sup>

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).

The review area for this JD includes one wetland identified as Wetland D. This wetland is situated approximately 25 feet to the south of a large wetland complex (Wetland A) that extends off site to the west. Based on site construction plans from 2023 and historic aerial photos, a culvert was in place between Wetland D and Wetland A. Site modifications that took place sometime after 2023, as seen in aerial photos from years 2023 and 2025 and in construction plans from 2023, included the construction of a stormwater pond and storm sewer pipe infrastructure. Based on conversations with the primary contact for this JD, the 2023 construction plans, aerial photos, and LiDAR consisting of DEM and Hillshade images, Wetland D drains to the northwest to the stormwater pond through the recently

---

<sup>9</sup> 88 FR 3004 (January 18, 2023)

constructed storm sewer system. Therefore, based on the information above and review of aerial photos and LiDAR images of the entire exterior boundary of Wetland D, Wetland D does not abut a relatively permanent waterway.

Wetland D is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. This wetland is not a tributary and has not been created by impounding a water of the U.S.; therefore, this wetland is not a category (a)(2) or (a)(3) water. Wetland D is a non-tidal wetland that does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland. Wetland D is not an intrastate lake or pond that meets the relatively permanent standard and cannot be evaluated as an (a)(5) water: lakes and ponds not identified in (a)(1) – (a)(4). Wetland D does not physically abut a jurisdictional water; therefore, Wetland D is not jurisdictional under the “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule (September 8, 2023).

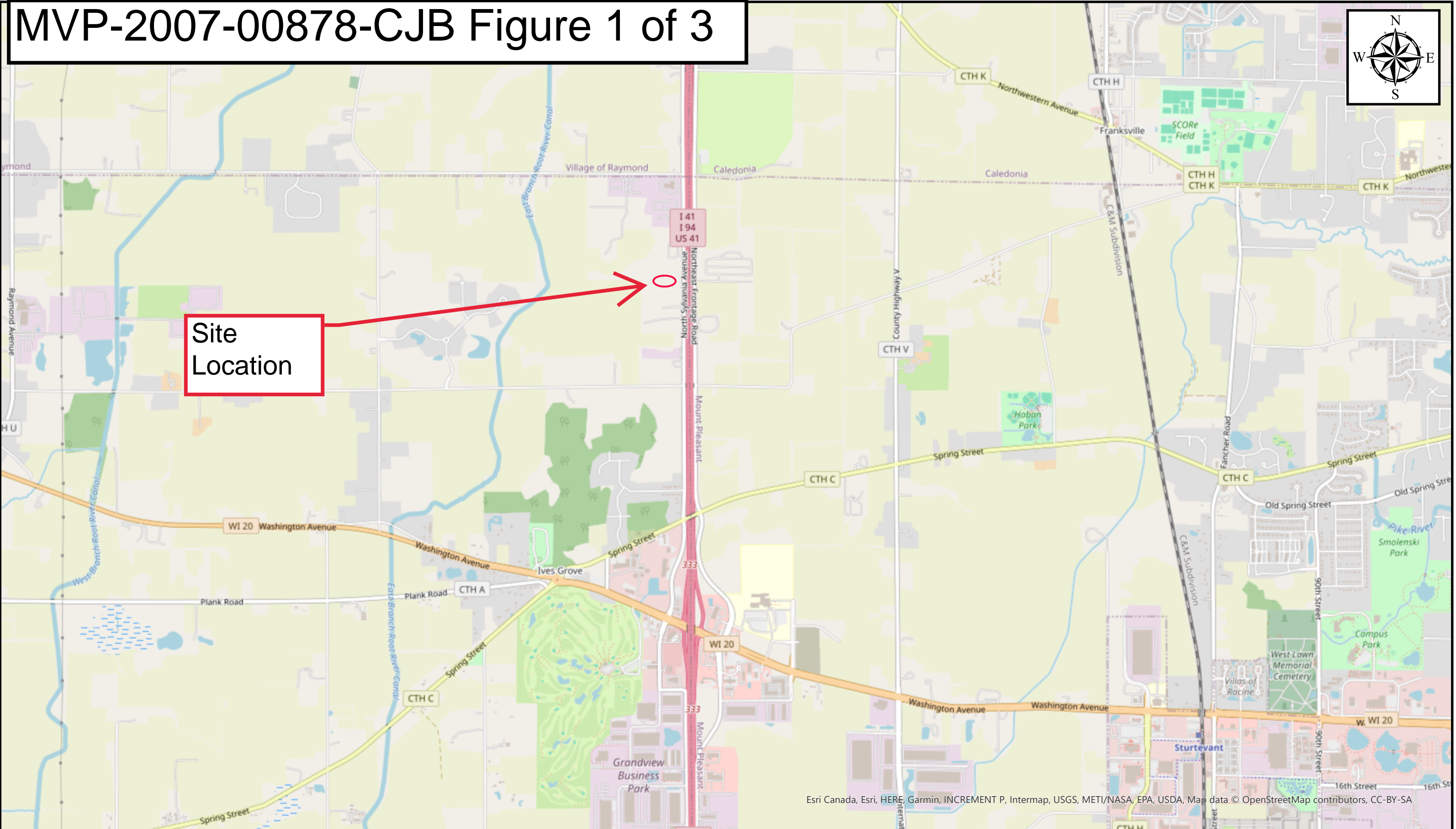
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. Office Evaluation conducted June 23, 2025
  - b. Wetland Delineation Report, completed by Wetland & Waterway Consulting, LLC, dated August 23, 2022.
  - c. National Regulatory Viewer, LiDAR Hillshade and DEM
  - d. ESRI World Imagery Wayback, accessed June 23, 2025
  - e. Conversation with primary contact, completed on June 17, 2025
  - f. 2023 Construction Plans, received June 17, 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.

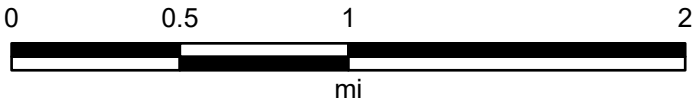
# MVP-2007-00878-CJB Figure 1 of 3



Esri Canada, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA, Map data © OpenStreetMap contributors, CC-BY-SA



MVP-2007-00878-CJB



Map Center: 87.950624°W 42.74033°N

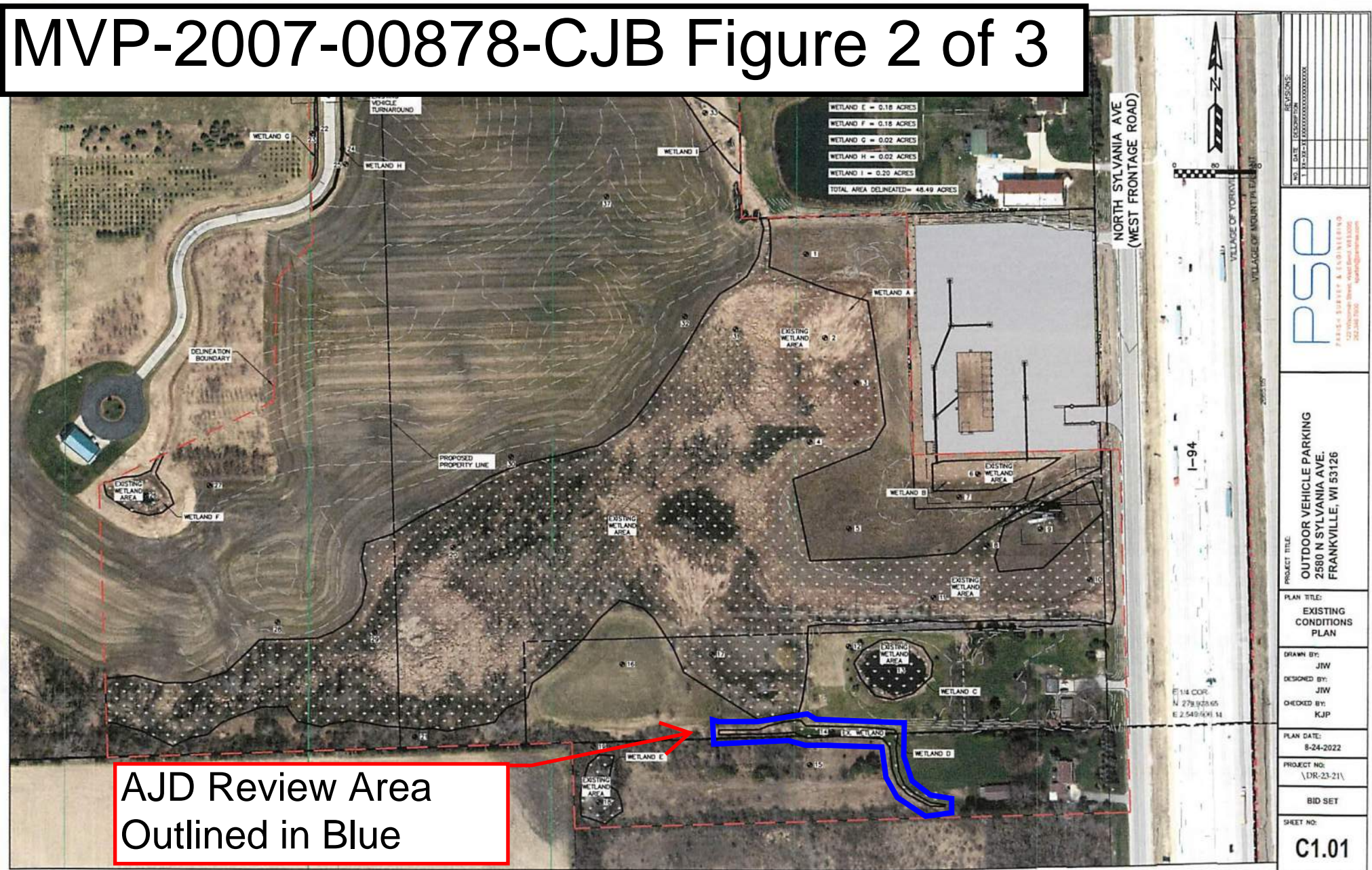
Map Created by: Cam Brock

Date: 6/24/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere  
Projection: Mercator Auxiliary Sphere



MVP-2007-00878-CJB Figure 2 of 3





**LEGEND:**

- 896 - EXISTING MINOR CONTOUR.
- 895- - EXISTING MAJOR CONTOUR.
- OHEL - OVERHEAD ELECTRIC LINE.
- BuEl - BURIED ELECTRIC LINE.
- BuTel - BURIED TELEPHONE LINE.
- FO - FIBER OPTIC LINE.
- GAS - GAS LINE.
- SAN - SANITARY MAIN OR LATERAL.
- WAT - WATER MAIN OR SERVICE.
- STM - DRAIN TILE LINE.
- STORM SEWER LINE.
- TREELINE.
- POWER POLE.
- ST - STORM SEWER MANHOLE.
- SW - STORM SEWER INLET.
- T - TELEPHONE PEDESTAL.
- DELINEATED WETLAND.
- DELINEATED WETLAND TO BE FILLED.

**PAVING LEGEND**

- CRUSHED ASPHALT  
10" CRUSHED AGGREGATE BASE COURSE  
4" CRUSHED ASPHALT
- CONCRETE APRON  
6" CRUSHED AGGREGATE BASE COURSE  
7" CONCRETE (4,000 P.S.I.)

**WETLAND NOTE:**

1. WETLANDS LOCATED ON THIS PROPERTY AND THE PROPERTIES TO THE NORTH WERE DELINEATED BY WETLAND & WATERWAY CONSULTING, LLC BETWEEN AUGUST 2, 2022 AND AUGUST 9, 2022.

EXISTING WETLAND "A"

INSIDE CREST BOUNDARY OF SOUTH POND

MOVE 26'X45' BUILDING FROM FRONT OF LOT

CRUSHED ASPHALT

EXISTING WETLAND "B"

EXISTING WETLAND "C"

OA MH=20'

OA MH=20'

25' SETBACK

20' SETBACK

20' SETBACK

12" TYP


40' TYP

50' TYP

50'X41'07"E 164.99'

S88°08'50"W 13'

714'



**PSE**  
**PARISH SURVEY & ENGINEERING**  
 122 Wisconsin Street, West Bend, WI 53095  
 262.346.7800 [www.parishse.com](http://www.parishse.com)

PLAN TITLE:

**SOUTH LOT  
SITE PLAN**

PLAN DATE:  
**06.03.2025**

**WETLAND PERMIT**

SHEET NO:

**C1.02**