



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

MVP

[29-July-2024]

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-2016-03042-LAH MFR 1 of 1

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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- 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 (0.01 acre), non-jurisdictional
 - ii. Wetland 3 (0.02 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. __, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is approximately 0.6 acre in size and is identified by the red polygon on the attached 2016-03042-LAH Figures 1 of 2 through 2 of 2. The review area is located at 44.303115, -88.442672 on W. Grand Chute Boulevard, in the Township of Grand Chute, Outagamie County, WI. 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 WATERS⁵: 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

⁵ 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 10.⁶ 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

⁶ 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).⁷ 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 2 and Wetland 3 are not TNWs, territorial seas, or interstate waters, and therefore are not defined as (a)(1) waters. A review of topographic maps, LiDAR, Google Earth aerial imagery, the delineation report, and Mississippi Valley Division NRV indicates that these wetlands are depressional wetlands, surrounded by upland. The review area is comprised of fill piles and these wetlands appear to have been formed within those fill piles through poor grading practices. The surrounding area is comprised of mowed and agricultural fields, commercial facilities, and residential areas. Lindale Drive to the west, Grand Chute Boulevard to the south, and White Hawk Drive to the east. Wetland 2 and Wetland 3 do not physically abut 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. An unnamed tributary of Mud Creek is located approximately 200 feet west of these wetlands, yet they do not maintain a continuous surface connection to this jurisdictional water.

Wetland 2 and Wetland 3, located centrally within the review area, are described in the delineation report to be emergent and artificially created through human manipulation of the landscape and added fill material to uplands. Historic aerials images and a 2008 report provided for fill verification were evaluated to confirm the application of fill material and grading that has resulted in Wetland 2 and Wetland 3 depressional areas which contain no ditches, swales, pipes, or culverts that connect these wetlands to downstream waters. Wetland 2 and Wetland 3 are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water, and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. Therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of “Waters of the United States” Conforming 88 FR 61964 Final Rule.

⁷ 88 FR 3004 (January 18, 2023)

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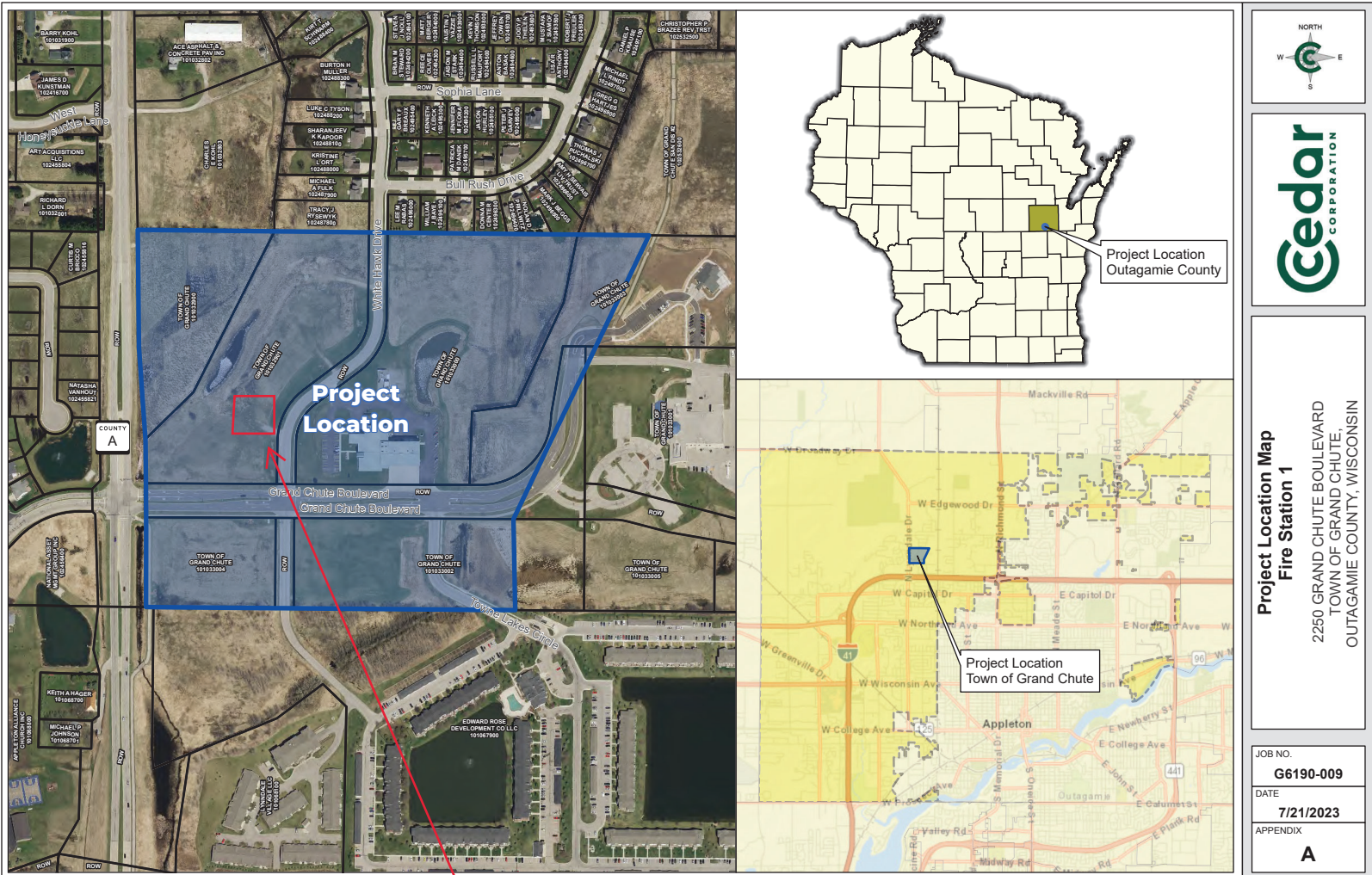
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Office evaluation conducted on July 24, 2024 and completed on July 25, 2024.
 - b. Cedar Corporation Wetland Delineation Report performed for Town of Grand Chute dated December 12, 2023.
 - c. Historic Filling and Grading Report completed by McMahon Associates for Town of Grand Chute dated August 5, 2008.
 - d. Mississippi Valley Division NRV, 3DEP DEM and Hillshade layers accessed July 24, 2024.
 - e. Google Earth aerial imagery dated 1992, 2005, 2006, 2008, 2010, 2011, 2015, 2017, 2018, 2019, 2020, 2021, 2022, 2023, and 2024. Accessed July 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 additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

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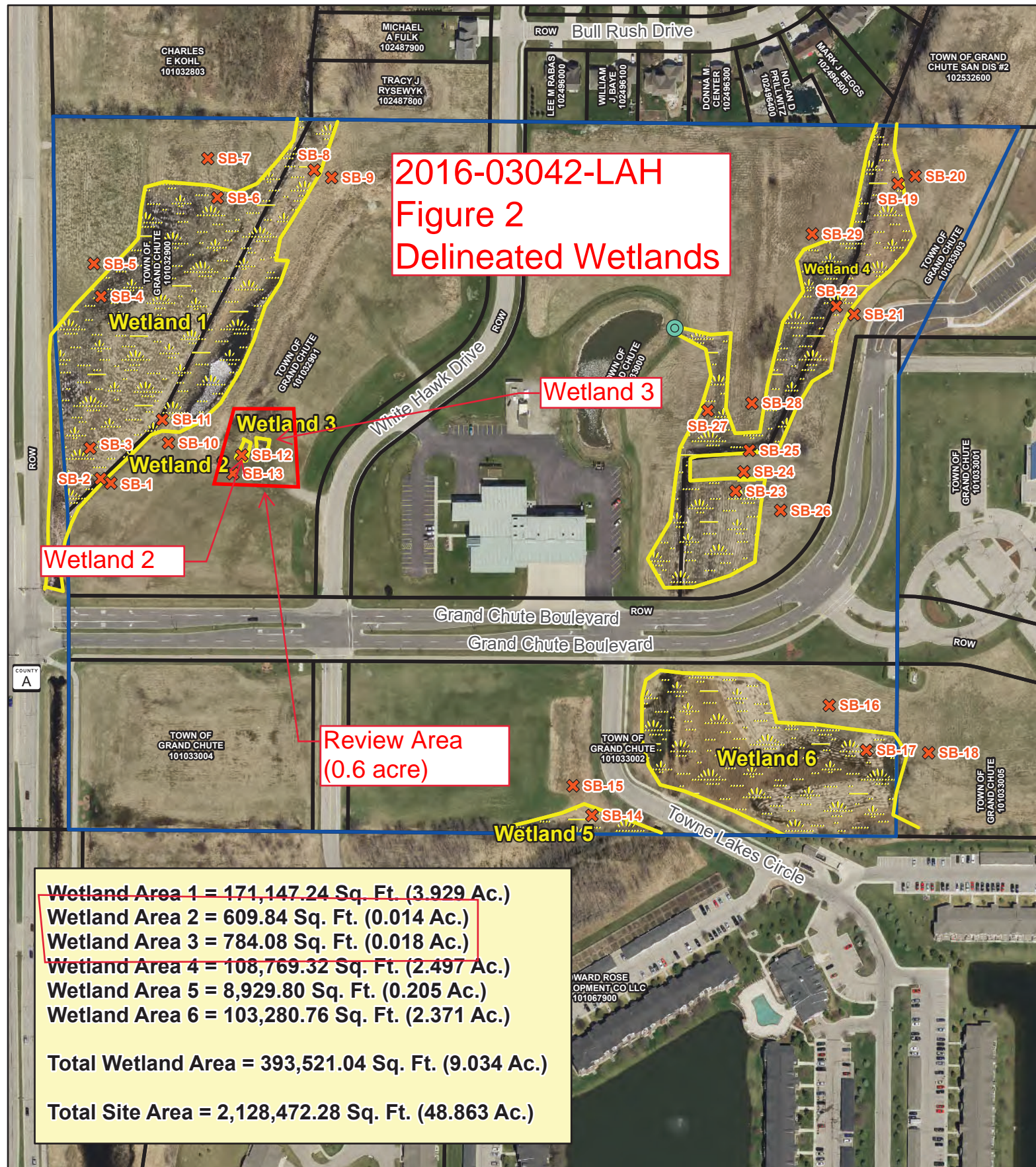
Figure 1

USACE 2024

Review Area



Review Area



2016-03042-LAH
Figure 2
Delineated Wetlands

Wetland Area 1 = 171,147.24 Sq. Ft. (3.929 Ac.)
 Wetland Area 2 = 609.84 Sq. Ft. (0.014 Ac.)
 Wetland Area 3 = 784.08 Sq. Ft. (0.018 Ac.)
 Wetland Area 4 = 108,769.32 Sq. Ft. (2.497 Ac.)
 Wetland Area 5 = 8,929.80 Sq. Ft. (0.205 Ac.)
 Wetland Area 6 = 103,280.76 Sq. Ft. (2.371 Ac.)

 Total Wetland Area = 393,521.04 Sq. Ft. (9.034 Ac.)
 Total Site Area = 2,128,472.28 Sq. Ft. (48.863 Ac.)

Fire Station 1 - Grand Chute
 Surveyed Wetland Boundary

0 310 620 Feet

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

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

JOB NO.

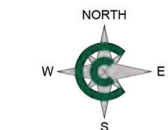
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DATE

9/28/2023

APPENDIX

B



Cedar
CORPORATION