

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2019-01233

MVP

October 29, 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-2019-01233 [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 1	Non-Jurisdictional	None
Wetland 2	Non-Jurisdictional	None
Wetland 3	Non-Jurisdictional	None
Wetland 4	Non-Jurisdictional	None

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.

- a. Project Area Size (in acres): 19.78
- b. Location Description: The project/review area is located in Section 16, Township 20N, Range 18E, Calumet County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.212590 Longitude: -88.347120
- d. Nearest City or Town: Village of Harrison
- e. County: Calumet
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. NA
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. NA
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. NA
 - 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

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.

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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- 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 NA
- 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).

Wetlands 1, 2, 3, and 4 are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. Topographic maps, Google Earth Pro aerial imagery, and site photos provided in the delineation report, indicate Wetlands 2 and 3 are depressional wetlands located in the western/central portion of the review area and surrounded by uplands involving an agricultural field in all directions. Topographic maps and Google Earth Pro aerial imagery also shows Wetlands 1 and 4 are depressional wetlands located in the northwestern and southern portions of the review area. The wetland delineation report shows Wetland 1 extends outside of the review area to the west. However, a review of Lidar data demonstrates a gradual increase in topography heading further west, indicating this wetland transitions to uplands involving an additional agricultural field. Lidar data also shows a shallow ditch-like feature angling southwest away from the wetlands. However, this feature appears to become shallower further south until it eventually transitions into uplands. Wetland 1 also meets a roadside ditch associated with Woodland Road immediately north. However, a review of Google Earth Pro historical aerial photos and street level photos demonstrates this ditch is shallow with no flowing or standing water present, indicating this feature is not a relatively permanent water. The wetland delineation also shows Wetland 4 extends outside of the review area to the east, west, and south.

⁸ 88 FR 3004 (January 18, 2023)

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However, lidar data illustrates Wetland 4 continues outside of the review area until to transitions to uplands involving residential development further south. The wetland delineation figure shows a mapped tributary running north to south approximately 470 feet west of the review area. Lidar data and aerial photos show the bottom elevation of the feature increases northward until it transitions to uplands involving the existing agricultural field. Bottom elevation of the feature appears to decrease moving southward until it intercepts with a roadside ditch traversing east to west at which time the bottom elevation appears to increase again. Lidar data suggests there may be a connection between this ditch and Wetland 4 to the east. However, Google Earth Pro street level photos show thick vegetation within this portion of the feature with no observable bed and bank, or ordinary high water mark. Additionally, a review of historical aerial photos provided via the National Regulatory Viewer show a lack of standing or flowing water, demonstrating this feature is not a relatively permanent water. Lidar data also shows a ditch-like feature at the southwestern corner of the forested area continuing southward along the eastern side of Eisenhower Drive. However, further review of Google Earth Pro street level photos demonstrates this ditch is shallow and most historical aerial photos show a lack of flowing or standing water, indicating this feature is not a relatively permanent water. Wetlands 1, 2, 3, and 4 do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Therefore, Wetlands 1, 2, 3, and 4 are 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.
 - a. Office evaluation conducted on October 21, 2025.
 - b. Gem Family, LLC., Village of Harrison, Calumet County, WI Wetland Delineation Report provided by McMahon Associates, Inc. dated June 18, 2025.
 - c. National Regulatory Viewer-Lidar Data and Google Earth Pro assessed October 21, 2025.

10. OTHER SUPPORTING INFORMATION. NA

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

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

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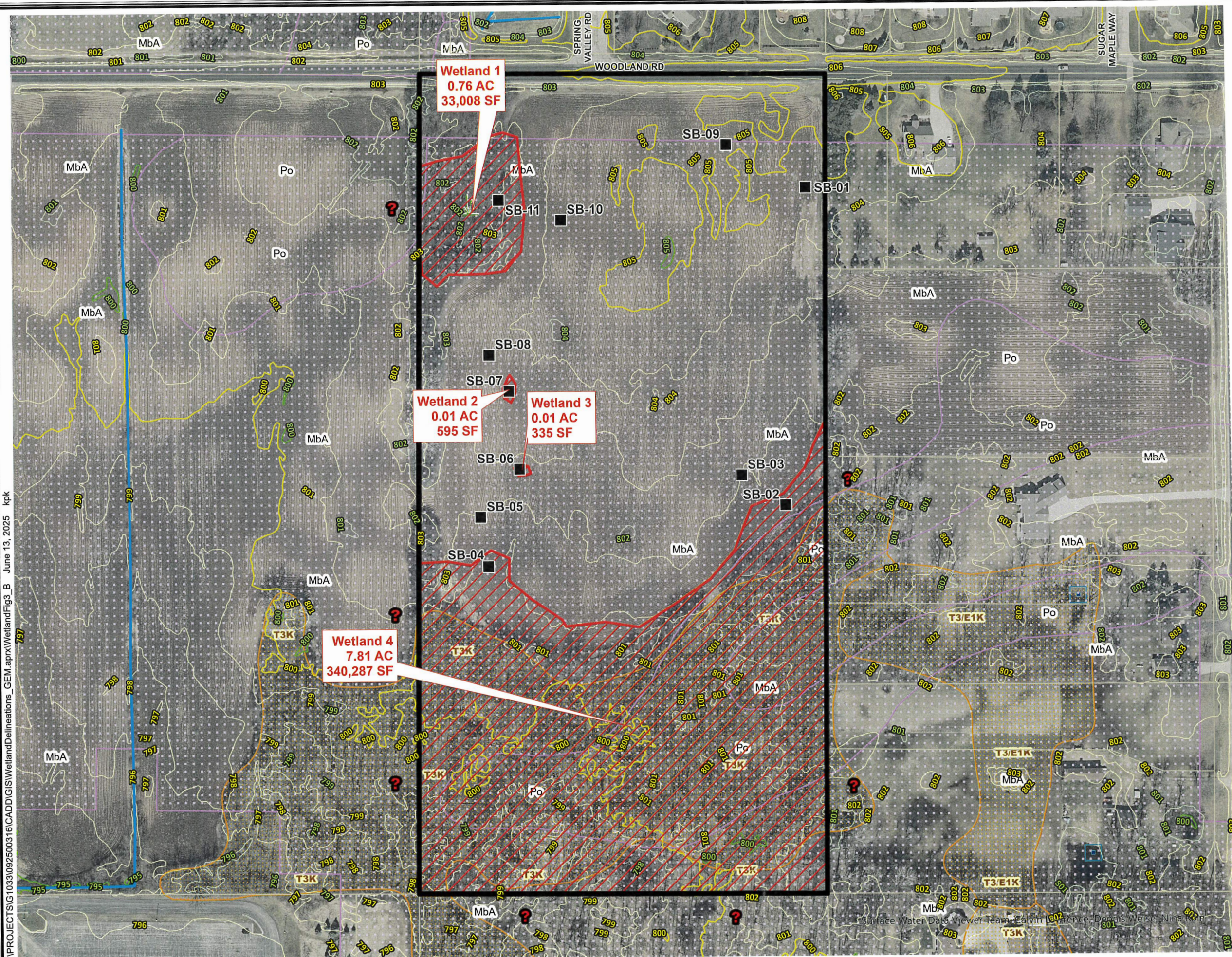
1 inch equals 2,000 Feet

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FIGURE 1
SITE LOCATION & TOPOGRAPHIC MAP
PARCEL 33598
VILLAGE OF HARRISON
CALUMET COUNTY, WISCONSIN

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Mapped Features

- Review Area Boundary (19.78 acres)
- Wetland Area (8.59 acres / 374,225 SF)
- SB-01 Soil Boring and ID
- Wetlands Extend Beyond Review Area
- WDNR Wetland Indicator
- WDNR Wetland Inventory
- Waterway
- Parcel Line
- Index Contour
- Intermediate Contour
- Index Depression Contour
- Intermediate Depression Contour

Project No: G1033 - 09-25-00316

Wetland Delineation Date: May 14, 2025

Data Sources: Calumet County, 2024; WDNR, 2025
Imagery: Calumet County, 2023



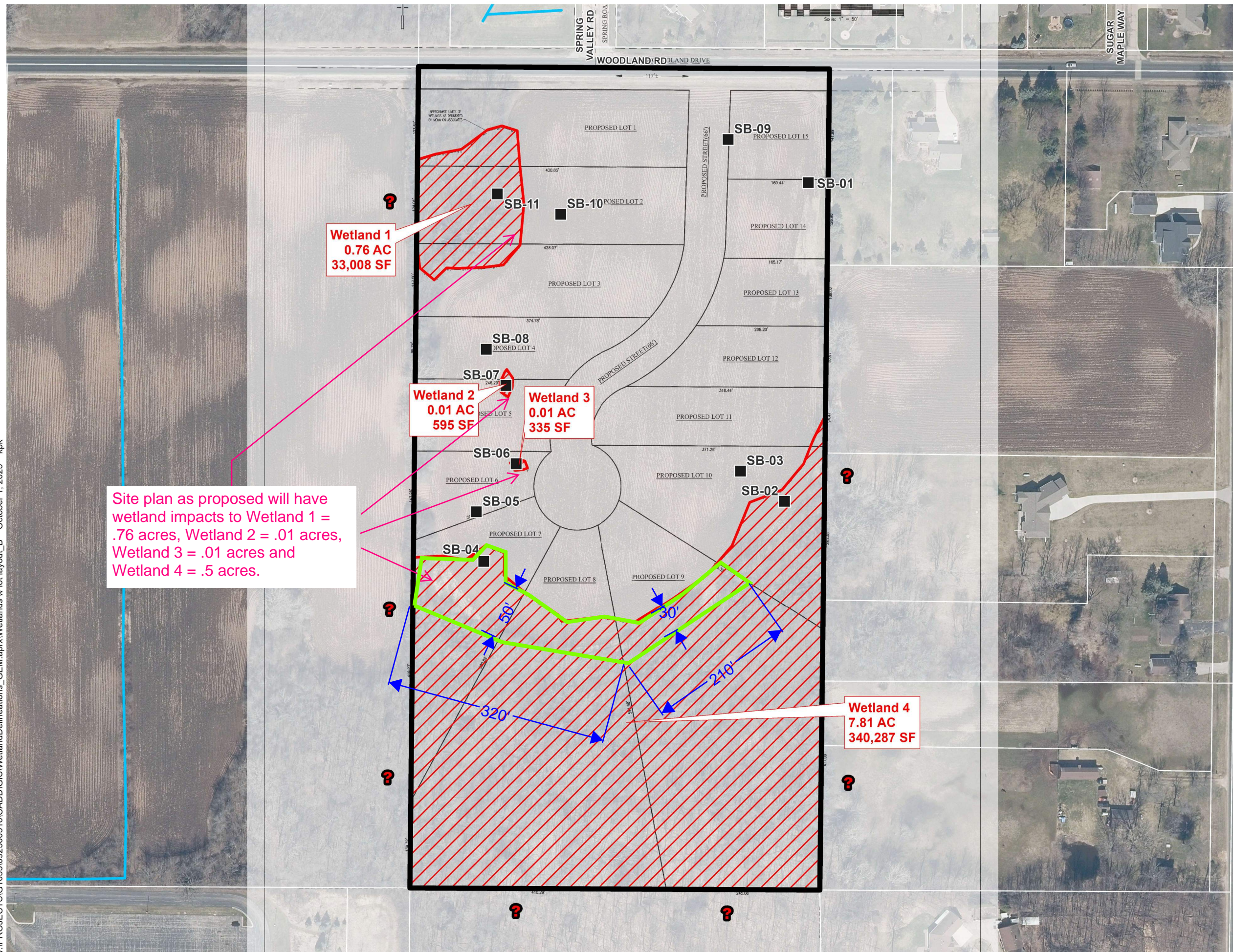
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FIGURE 3
WETLAND DELINEATION MAP
PARCEL 33598
VILLAGE OF HARRISON
CALUMET COUNTY, WISCONSIN

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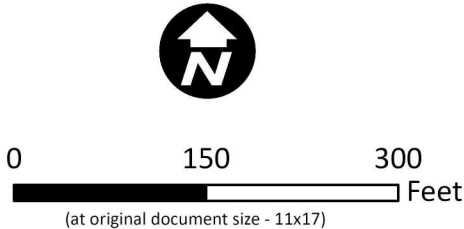
w:\PROJECTS\G1033\092500316\CADD\GIS\WetlandDelineations_GEM.aprx\Wetlands w lot layout_B October 1, 2025 kpk



Mapped Features

- Review Area Boundary (19.78 acres)
- Wetland Area (8.59 acres / 374,225 SF)
- SB-01 Soil Boring and ID
- Wetlands Extend Beyond Review Area
- WDNR Wetland Indicator
- WDNR Wetland Inventory
- Waterway
- Existing Parcel Line
- Proposed Development Layout
- Index Contour
- Intermediate Contour
- Index Depression Contour
- Intermediate Depression Contour

Project No: G1033 - 09-25-00316
Wetland Delineation Date: May 14,, 2025
Data Sources: Calumet County, 2024; WDNR, 2025
Imagery: Calumet County, 2023



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**WETLAND DELINEATION MAP AND
PROPOSED DEVELOPMENT LAYOUT**
PARCEL 33598
VILLAGE OF HARRISON
CALUMET COUNTY, WISCONSIN

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