



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

MVP-R

August 11, 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-2020-00728-RJH (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).

- [Wetland 1, \(4.48 acre\): 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)
- 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. Project Are Size (in acres): 4.48
- b. Location Description: The project/review area is located in Section 35, Township 021N, Range 018E, Outagamie County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.247074 Longitude: -88.2739956
- d. Nearest City or Town: Kaukauna
- e. County: Outagamie
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):
 - i. AJD Issued 6/22/2020 under NWPR
 1. Wetland 1, non-jurisdictional
 2. Wetland 2, non-jurisdictional
 3. Stream 1, non-jurisdictional

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [NA.]⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [NA]
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 "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

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.

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- 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).

We have reviewed and evaluated the historical photography, Google Earth photography, soil mapping, and the information submitted by the applicant for the following wetlands:

- Wetland 1 (4.48 acres)

Wetland 1 is primarily supported by seasonal and intermittent surface water runoff that collects in low-lying areas, including a roadside ditch adjacent to Highway 55 (Crooks Ave). Vegetation within the drainage ditch is dominated by hybrid cattails and reed canary grass, while the rest of the wetland supports weedy pioneer species like barnyard grass and pigweed. The wetland boundary ranges from clear to diffuse, with a subtle topographic transition, especially along the south side of the ditch.

⁹ 88 FR 3004 (January 18, 2023)

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Wetland 1 is located approximately 5,226 linear feet from Kankapot Creek, the nearest mapped perennial water.

In accordance with current WOTUS guidance and the U.S. Supreme Court decision in *Sackett v. EPA* (2023), manmade features such as roadside ditches cannot serve as a continuous surface connection between wetlands and relatively permanent waters. Although Wetland 1 extends into the ditch, this feature does not create a jurisdictional connection to any relatively permanent water. Based on the change of elevation and the boundaries depicted in the wetland delineation report, we have determined that Wetland 1 transition into uplands along the north, south, and west boundaries and is not adjacent to a relatively permanent water (RPW).

A mapped unnamed tributary to Kankapot Creek (Stream 1) is located within and extending through Wetland 1. This feature was determined to be non-jurisdictional under a previously issued AJD does not create a jurisdictional connection to any relatively permanent water.

Wetland 1 is a not traditionally navigable waters (TNWs), territorial seas, or interstate waters, and does not meet the criteria for (a)(1) waters. Wetland 1 does not physically abut Kankapot Creek, is not located within a paragraph (a)(2) impoundment, and is not adjacent to a jurisdictional (a)(3) tributary. As non-tidal wetlands that do not meet the definition of “adjacent,” Wetland 1 cannot be evaluated under paragraph (a)(4). Therefore, under the 2023 Revised Definition of “Waters of the United States” (Conforming Rule, 88 FR 61964), Wetland 1 is not considered jurisdictional.

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 30 July 2025]
 - b. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, Hillshade layer and DEM layer accessed on 30 July 2025.]
 - c. [Google Earth Street View and Aerial Photography]

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d. [Wetland Delineation Report, submitted by Davel Engineering dated May 2019]

10. OTHER SUPPORTING INFORMATION. [Additional Site photos to confirm non-RPW status of the mapped unnamed tributary provided by Rober E Lee Inc on 8/4/2025]

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.



Location Map



Legend

- Municipality
- State Boundaries
- County Boundaries
- Major Roads**
- Interstate Highway
- State Highway
- US Highway
- County and Local Roads**
- County HWY
- Local Road
- Railroads
- Tribal Lands
- Rivers and Streams
- Intermittent Streams
- Lakes and Open water

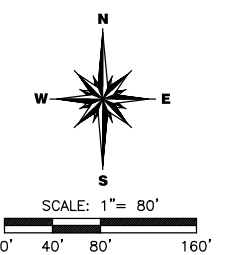
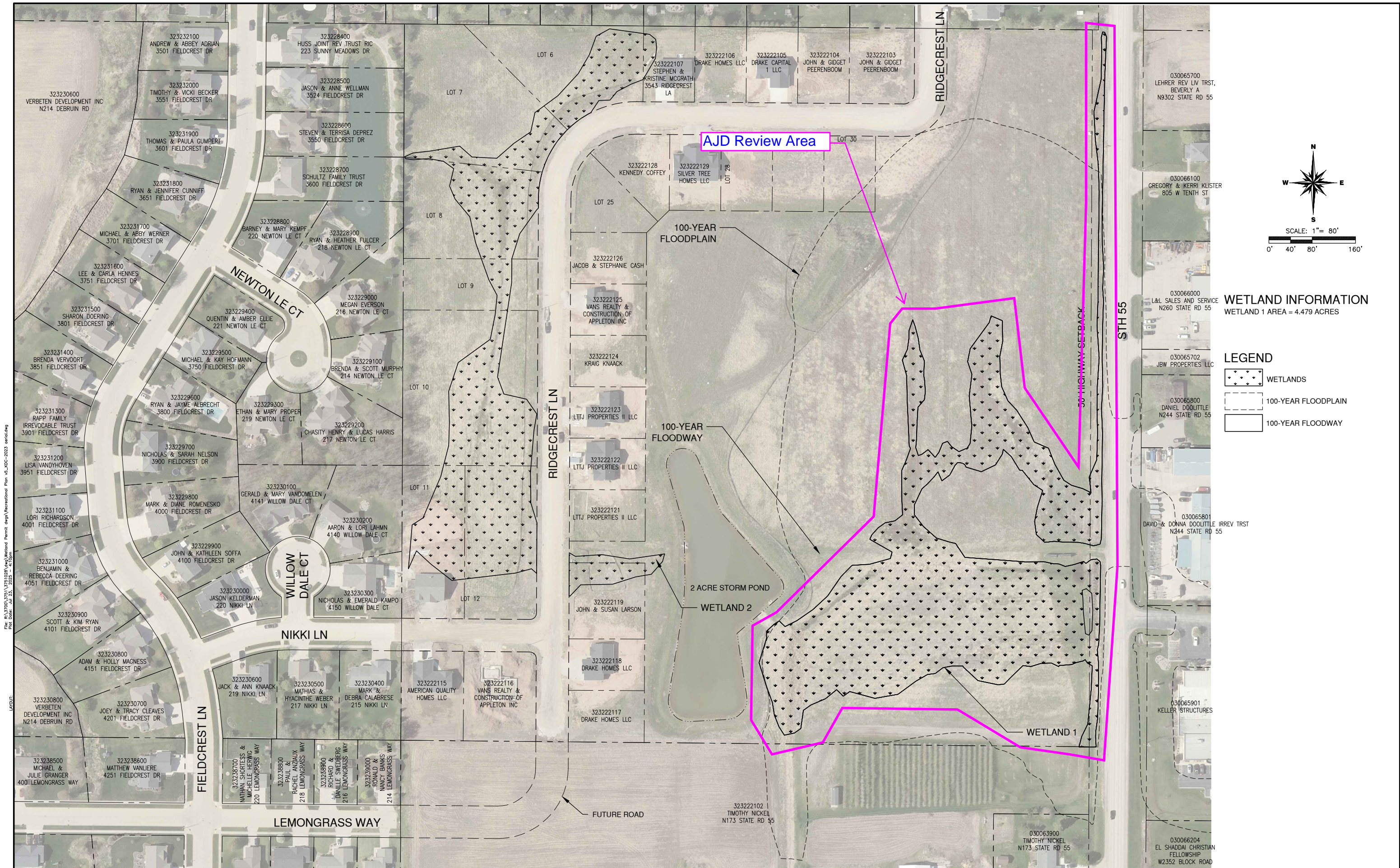
0.5 0 0.25 0.5 Miles

NAD_1983_HARN_Wisconsin_TM

1: 15,840

DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <http://dnr.wi.gov/legal/>

Notes



WETLAND INFORMATION
WETLAND 1 AREA = 4.479 ACRES

- LEGEND**
- WETLANDS
 - 100-YEAR FLOODPLAIN
 - 100-YEAR FLOODWAY

File: H:\3700\3701\3751228\Wetland Permitt.dwg (Recreational Plan v5_IDC-2023 aerial.dwg)
Plot Date: Jul 25, 2023 - 4:03pm

NO.	DATE	APPROV.	REVISION	NO.	DATE	APPROV.	REVISION

DRAWN: JSL
CHECKED: []
DESIGNED: []

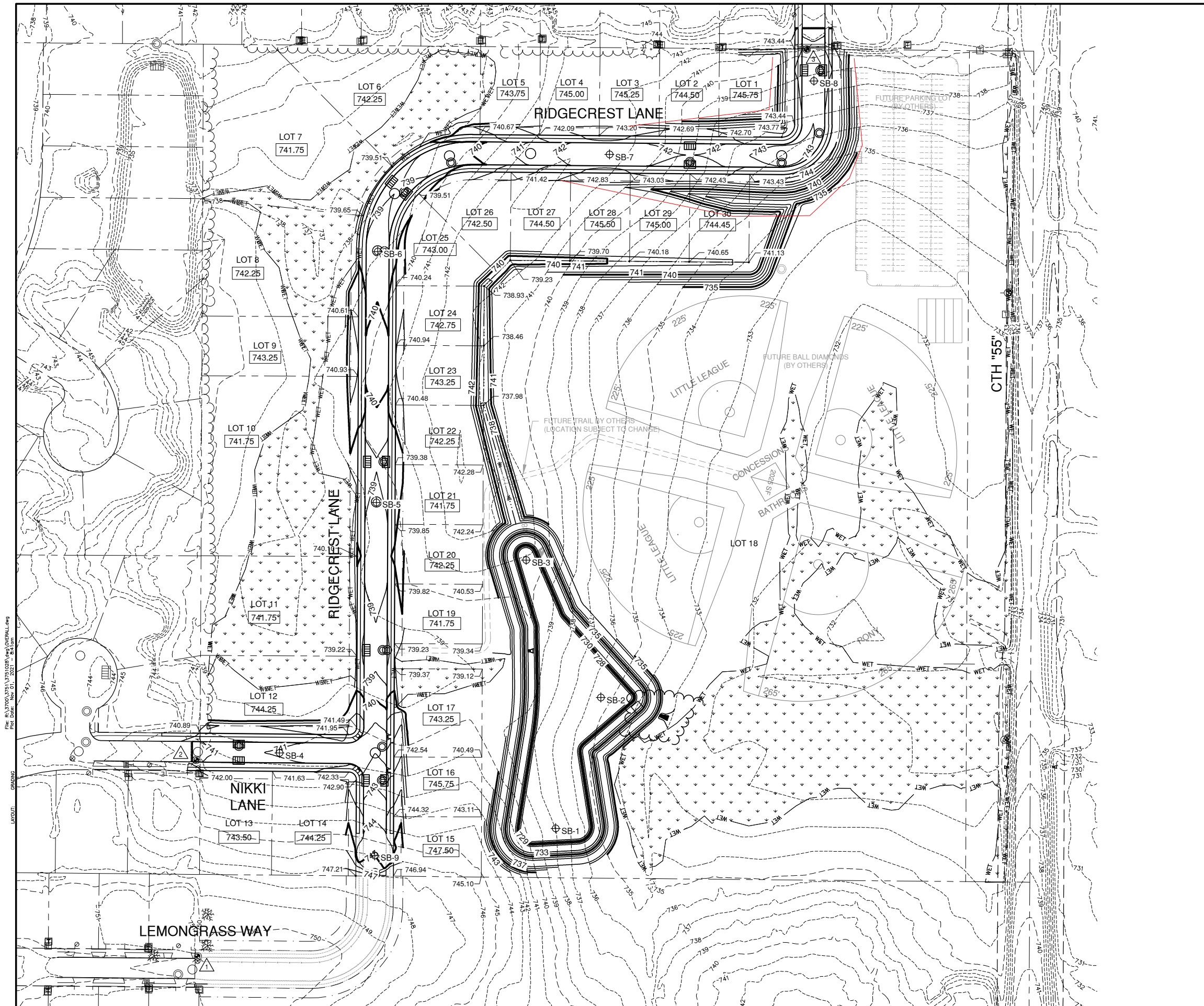
INSIDE THE PARK PLACE
CITY OF KAUKAUNA
OUTAGAMIE COUNTY

WETLAND MAP WITH 2023 AERIAL

DATE: 04/20/23
FILE: RECREATIONAL PLAN V5_IDC-2023 AERIAL
JOB NO.: 3751041

1250 Centennial Centre Blvd | Hobart, WI | 920-662-9641 | releinc.com

SHEET NO. 1



LEGEND

- T/C 999.99 TOP OF CURB ELEVATION
- F/L 888.88 FLOW LINE ELEVATION
- S/W 666.66 TOP OF SIDEWALK ELEVATION
- E/P 555.55 EDGE OF PAVEMENT ELEVATION
- R/W 444.44 TOP OF RETAINING WALL ELEVATION
- 333.33 GROUND ELEVATION
- DRAINAGE SWALE
- DRAINAGE DIVIDE
- FLOW ARROW
- SOIL BORING LOCATION

BENCHMARK		BENCHMARK ESTABLISHED BY: ROBERT E. LEE & ASSOCIATES, INC.
FIELD VERIFY BENCHMARKS FOR ACCURACY.		
NO.	DESCRIPTION	EL.
1	BURY TAG BOLT ON FIRE HYDRANT	752.80
2	BURY TAG BOLT ON FIRE HYDRANT	744.53
3	BURY TAG BOLT ON FIRE HYDRANT	744.20

File: R:\2020\10-21\10-21-2020\Overall.dwg
 Plot Date: Nov 01, 2021 - 8:41 am
 LAYOUT: GRADING



NO.	DATE	APPROV.	REVISION	NO.	DATE	APPROV.	REVISION
1	10/19/2021	JSL	PLAN UPDATES				
2	11/01/2021	JSL	STORM SEWER AND PROFILE UPDATES				

DRAWN: LLP
 CHECKED: LGN
 DESIGNED: JSL
PROJECT 10-21
INSIDE THE PARK PLACE
UTILITY AND GRADING
CITY OF KAUKAUNA, OUTAGAMIE CO., WI

OVERALL GRADING PLAN

DATE: 05/20/21
 FILE: OVERALL
 JOB NO.: 3751028

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SHEET NO. **10R**