



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

October 21, 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-2022-00133-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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland A (2025)	Non-Jurisdictional	None
Wetland C (2025)	Non-Jurisdictional	None
Wetland D (2025)	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 Are Size (in acres): 25
- b. Location Description: The project/review area is located in Section 17, Township 002N, Range 022E, Kenosha County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 42.638370 Longitude: -87.920090
- d. Nearest City or Town: Somers
- e. County: Kenosha
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): NA

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

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

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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
 - 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

(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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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 A, non-jurisdictional
- Wetland C, non-jurisdictional
- Wetland D, non-jurisdictional

Wetlands A, C and D are depression wet meadow wetlands located within an agricultural field. Based on LiDar and aerial review, Wetland C is surrounded entirely by uplands, no discrete conveyance features are evident and does not abut any other waterbody. The boundaries of Wetlands A and D extend off-site. Wetland A is a linear depression that starts near the center of the review area and extends north into the ROW ditch along 12th Street. Wetland D is located near the southwest border of the review area and has a distinct ditch feature heading west into the ROW of 93rd Ave. We have determined that the ROW ditch along 12th Street and 93rd Ave are not a relatively permanent waters because they do not have an ordinary high-water marks, bed and banks, or flowing surface water. There is one mapped unnamed tributary to Pike Creek

⁹ 88 FR 3004 (January 18, 2023)

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located approximately 990 linear feet East of Wetland A. The wetland features do not abut this tributary.

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 Wetlands A and D extend into the ROW ditch along 12th Street and 93rd Ave and Poplar Street, the ROW Ditches are not relatively permanent waters and do not create a jurisdictional connection to any relatively permanent water.

Wetlands A, C, and D are not traditionally navigable waters (TNWs), territorial seas, or interstate waters, and do not meet the criteria for (a)(1) waters. Wetlands A, C and D do not physically abut a relatively permanent water, are not located within a paragraph (a)(2) impoundment, and are not adjacent to a jurisdictional (a)(3) tributary. As non-tidal wetlands that do not meet the definition of “adjacent,” Wetlands A, C and D, cannot be evaluated under paragraph (a)(4). Therefore, under the 2023 Revised Definition of “Waters of the United States” (Conforming Rule, 88 FR 61964), Wetlands A, C, and D are 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 October 21, 2025]
 - b. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, Hillshade layer and DEM layer accessed on September 16, 2025.]
 - c. [Wetland Delineation Report, prepared by Wetland & Waterway Consulting dated January 2021]
 - d. [Google Earth and Google Street View]

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

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

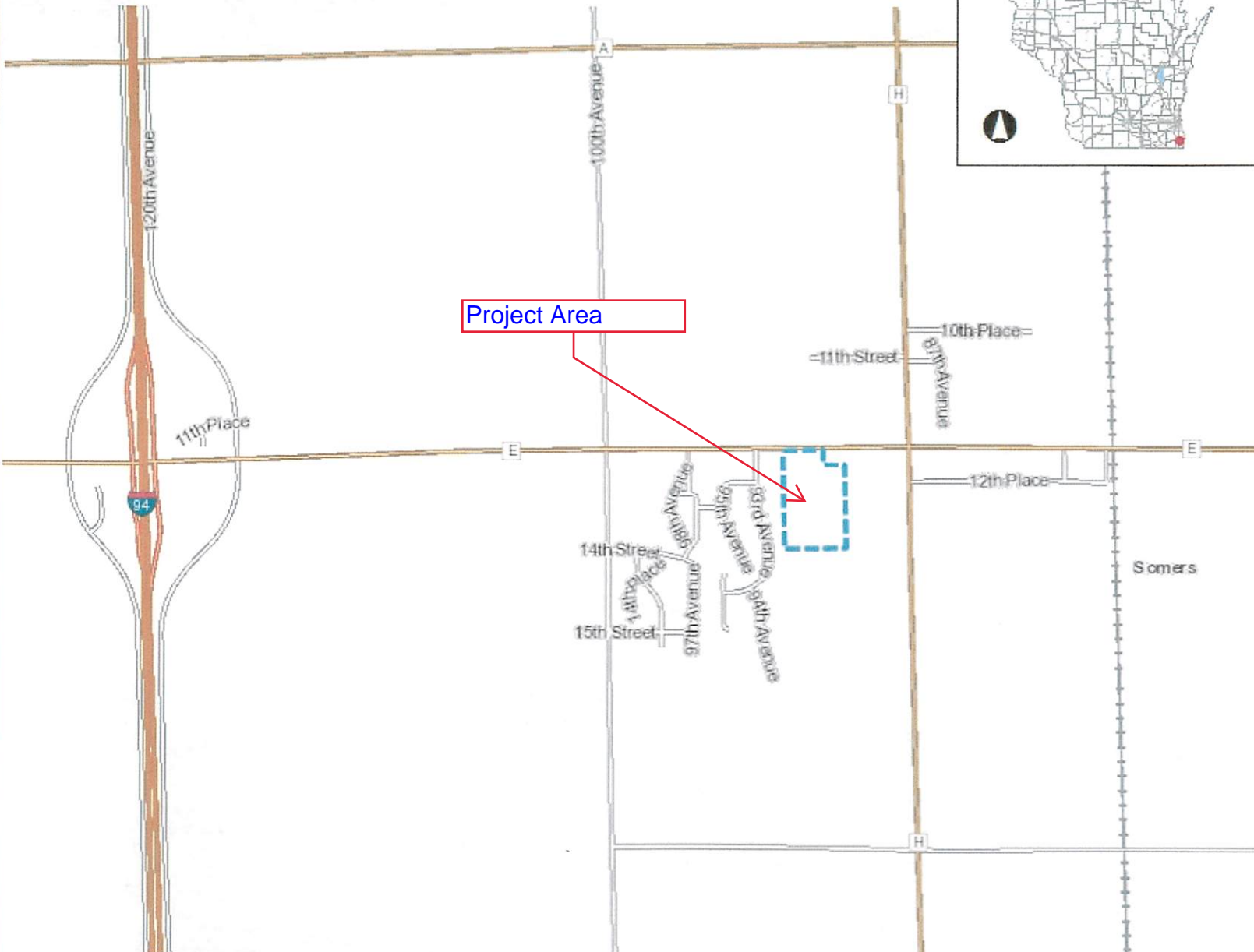


Surface Water Data Viewer Map



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



0.8 0 0.38 0.8 Miles

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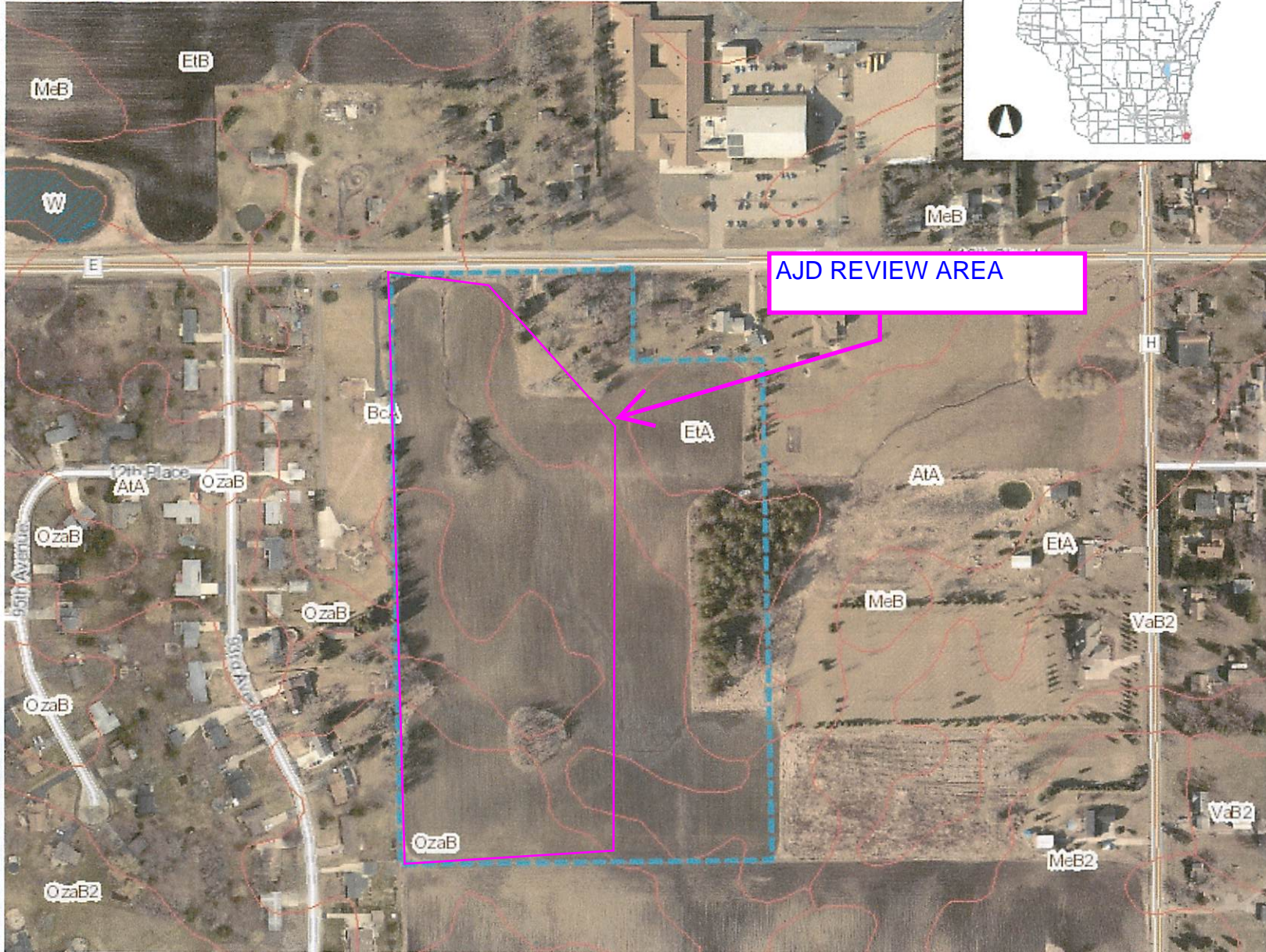
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Notes



Surface Water Data Viewer Map



Legend

- NRCS Wisconsin Soils
 - Soil Mapping Unit
 - Water
- Municipality
- State Boundaries
- County Boundaries
- Major Roads
 - Interstate Highway
 - State Highway
 - US Highway
- County and Local Roads
 - County HWY
 - Local Road
- + Railroads
- Tribal Lands
- Index to EN_Image_Basemap_Leaf_Off

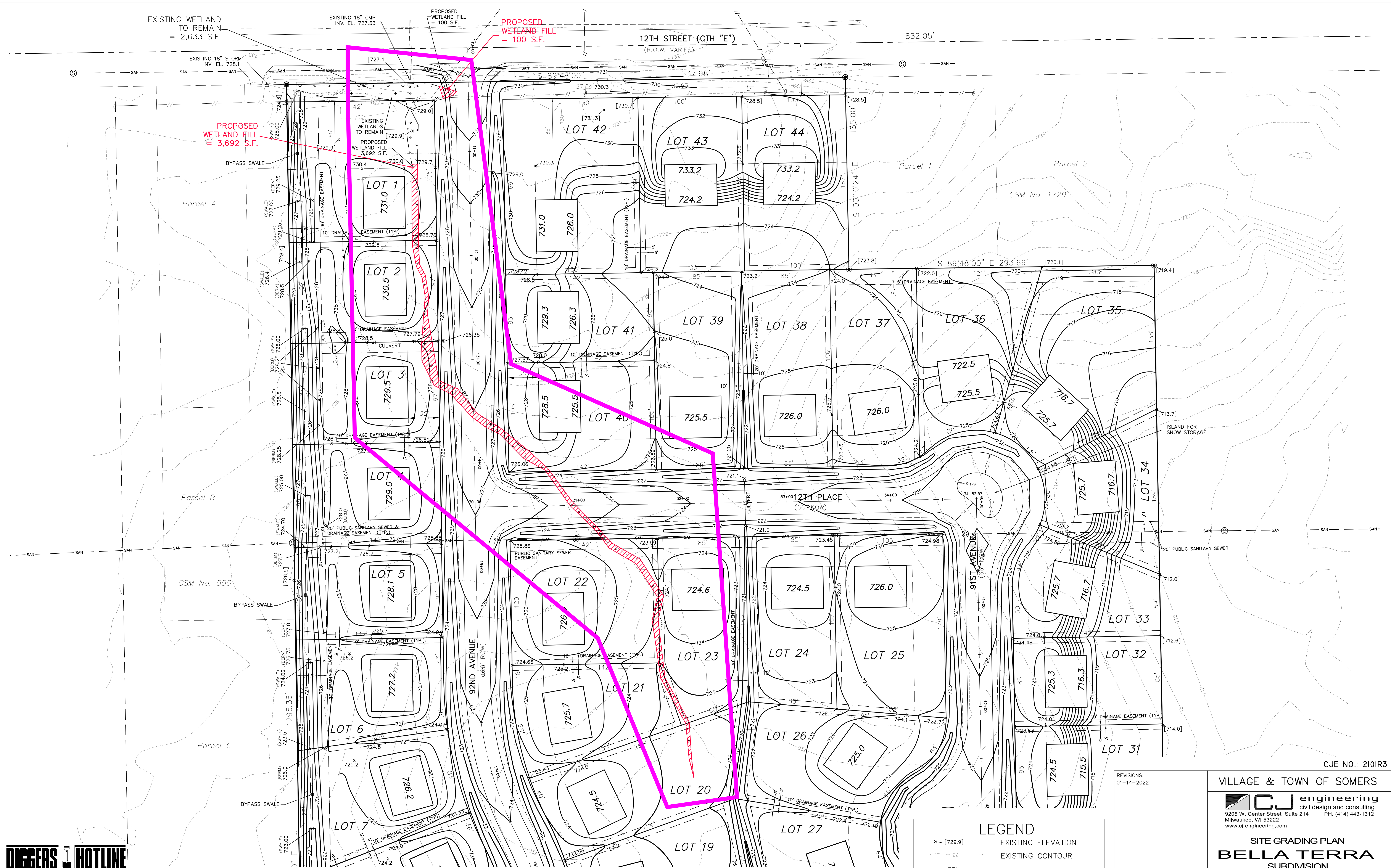
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Notes



EXISTING WETLAND TO REMAIN = 2,633 S.F.

PROPOSED WETLAND FILL = 100 S.F.

PROPOSED WETLAND FILL = 3,692 S.F.

DIGGERS HOTLINE
 Toll Free (800) 242-8511
 Milwaukee Area (414) 259-1181
 Hearing Impaired TDD (800) 542-2289
 www.DiggersHotline.com

NOTE:
 1. SUGGESTED BUILDING PAD LOCATION AND YARD GRADES HAVE BEEN SHOWN FOR EACH LOT. ANY DEVIATION IS THE RESPONSIBILITY OF THE LOT OWNER/BUILDER SUBJECT TO THE REQUIREMENTS OF THE VILLAGE/TOWN OF SOMERS.

LEGEND

- x [729.9] EXISTING ELEVATION
- - - EXISTING CONTOUR
- 731 PROPOSED CONTOUR
- x 730.4 PROPOSED SPOT GRADE
- ST — PROPOSED STORM SEWER/CULVERT

REVISIONS:
 01-14-2022

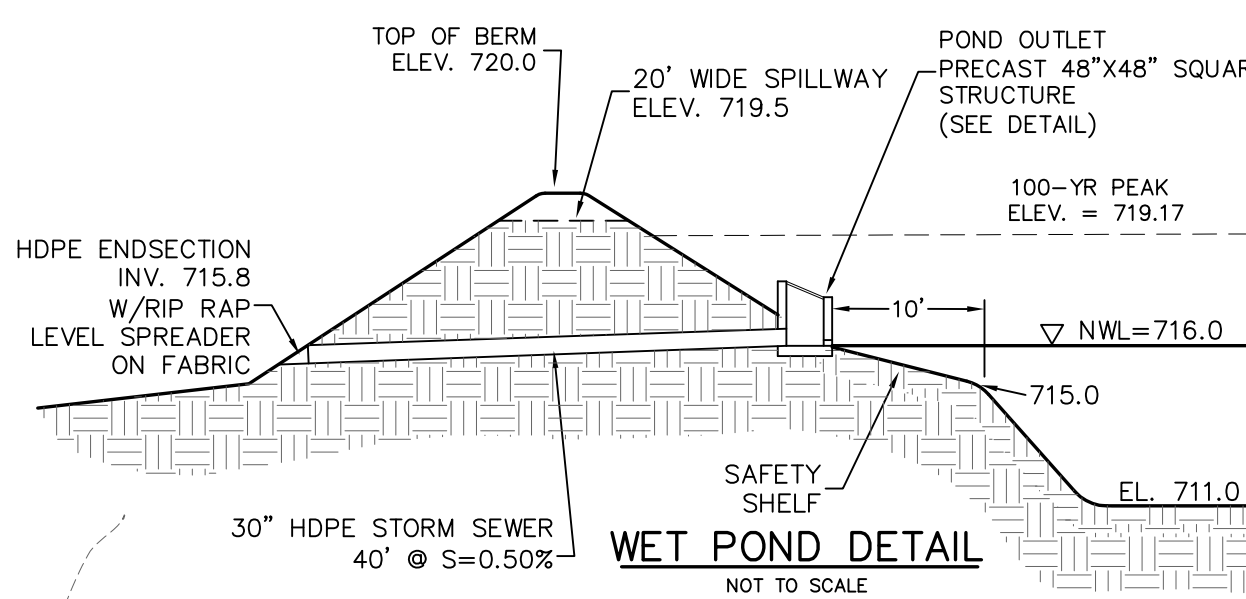
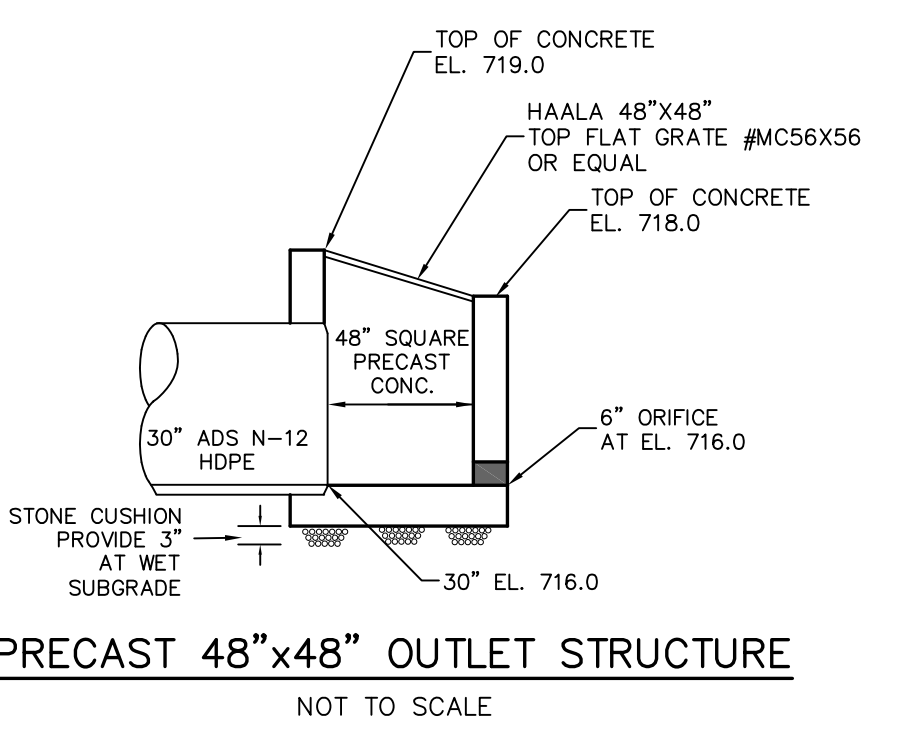
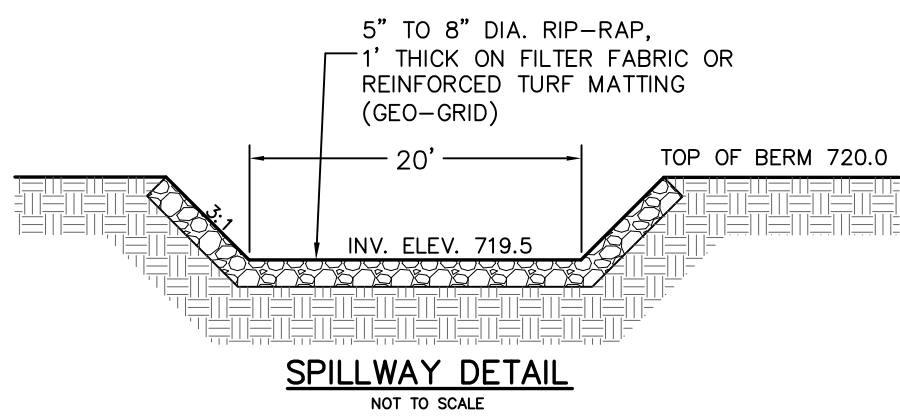
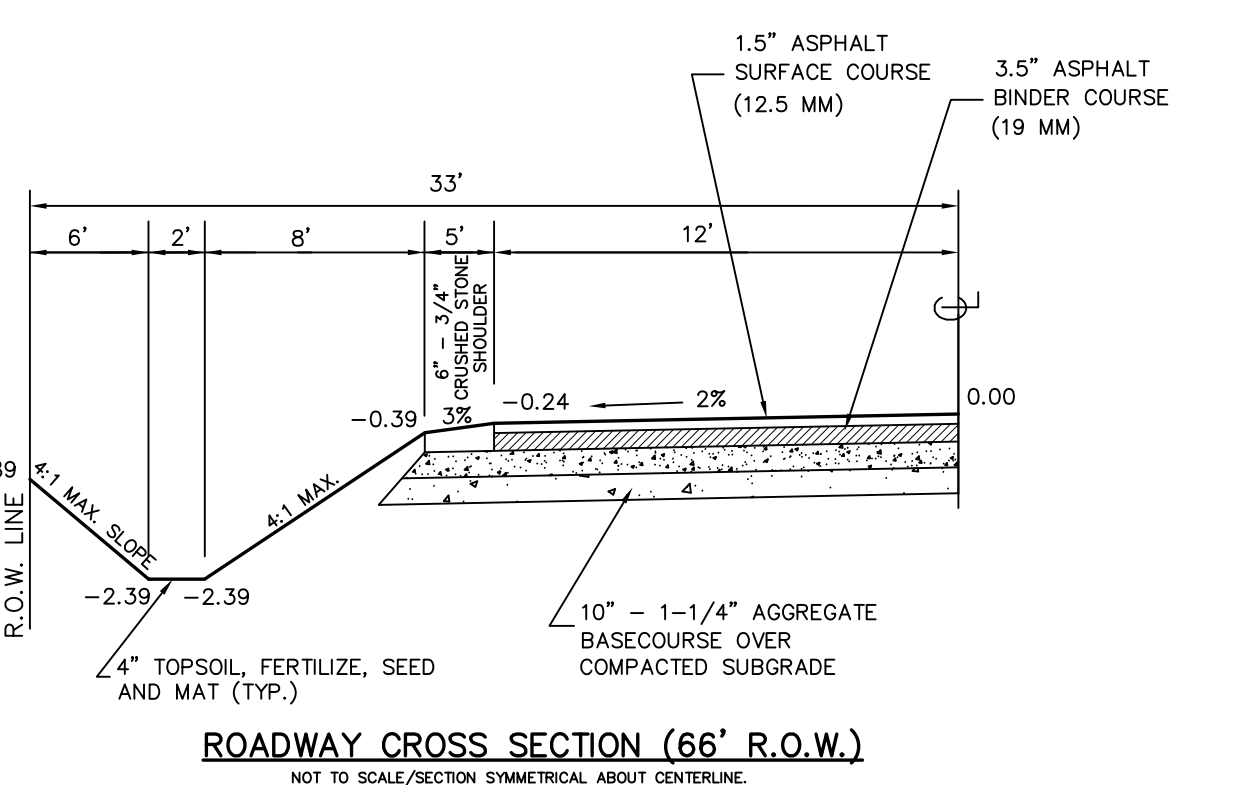
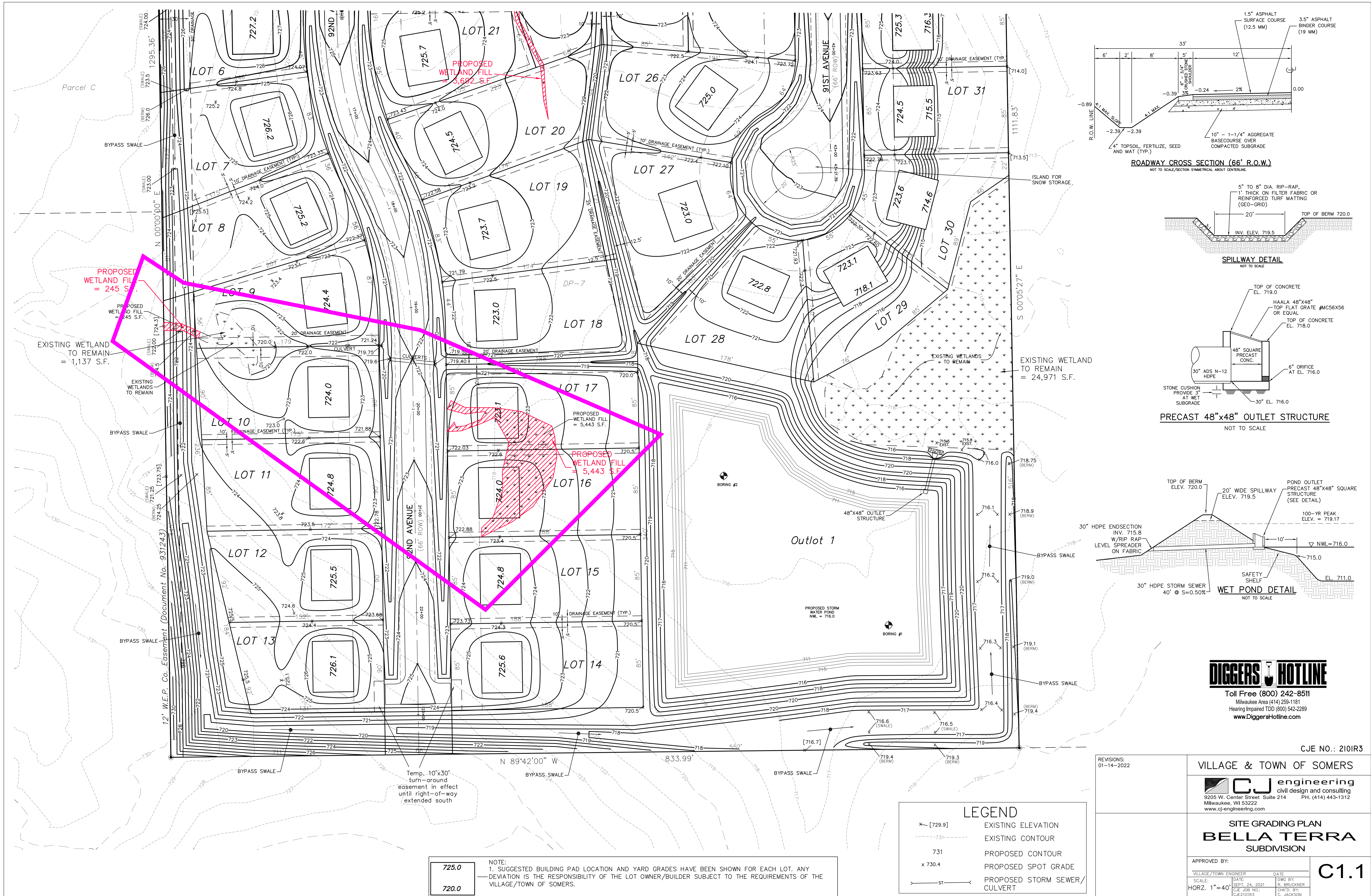
CJE NO.: 210IR3

VILLAGE & TOWN OF SOMERS

CJ engineering
 civil design and consulting
 9205 W. Center Street Suite 214 PH. (414) 443-1312
 Milwaukee, WI 53222
 www.cj-engineering.com

SITE GRADING PLAN
BELLA TERRA
 SUBDIVISION

APPROVED BY:		C1.0
VILLAGE/TOWN ENGINEER	DATE	
SCALE: 1" = 40'	DATE: SEPT. 24, 2021	
HORZ. 1" = 40'	CJE JOB NO.: CJE210IR3	



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LEGEND

x [729.9]	EXISTING ELEVATION
--- 731 ---	EXISTING CONTOUR
731	PROPOSED CONTOUR
x 730.4	PROPOSED SPOT GRADE
--- ST ---	PROPOSED STORM SEWER/CULVERT

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VILLAGE & TOWN OF SOMERS

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SITE GRADING PLAN
BELLA TERRA
 SUBDIVISION

APPROVED BY:

VILLAGE/TOWN ENGINEER	DATE	DWG BY:
R. BRUCKNER	SEPT. 24, 2021	R. BRUCKNER
CJE JOB NO.: CJE210IR3		CHK'D. BY: C. JACKSON

C1.1