

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2022-00962-JLK

MVP

August 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-2022-00962-JLK [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.

MVP

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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 4	Non-Jurisdictional	None
Wetland 6	Non-Jurisdictional	None
Wetland 9	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): 52.75
 - b. Location Description: The project/review area is located in Section 25, Township 23N, Range 19E, Brown County, Wisconsin.
 - c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.442659 Longitude: -88.143902
 - d. Nearest City or Town: De Pere
 - e. County: Brown
 - f. State: Wisconsin
 - g. Other associated Jurisdictional Determinations (including outcomes):
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. NA

MVP

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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 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
 - e. Tributaries (a)(3): N/A
 - f. Adjacent Wetlands (a)(4): 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.

MVP

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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 4 and 6 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 these wetlands are depressional wetlands located in the eastern/central portions of the review area. The wetland delineation report was completed in May 2022 however, since this time, the Corps issued a permit in August 2023 authorizing wetland impacts associated with a proposed residential development. As a result, Wetland 4 is now surrounded by uplands involving residential development in all directions while Wetland 6 is surrounded by uplands involving residential development to the north, east, and west, and a stormwater pond approximately 40 feet further south. Based on a site level photo provided by the consultant, the southern boundaries of Wetland 6 transitions to uplands with a clear increase in topography that separates Wetland 6 from the stormwater pond. Both Wetlands 4 and 6 do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Therefore, both wetlands are not jurisdictional under the 2023 Revised Definition of “Waters of the United States”: Conforming” 88 FR 61964 Final Rule.

Wetland 9 is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. Topographic maps, Google Earth Pro aerial imagery, and site photos provided in the delineation report, indicate this wetland is a depressional, linear-shaped wetland located in the southwestern portion of the review area. The previously mentioned Corps permit issued in August 2023, authorized

⁸ 88 FR 3004 (January 18, 2023)

MVP

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impacts involving the construction of a roadway and culvert through the central portion of Wetland 9. The wetland delineation report showed the northeastern most edge of Wetland 9 is approximately 20 feet from a mapped tributary. Lidar data shows fill piles were previously placed between the northeastern boundary of Wetland 9 and the tributary. Due to the proximity between Wetland 9 and the tributary, a site visit was completed on August 20th, 2025, which confirmed the northeastern most boundary of Wetland 9 is separated from the tributary by uplands involving the fill pile and a natural increase in elevation to the east side of the fill pile. Therefore, Wetland 9 is not adjacent to the tributary. The delineation map also shows Wetland 9 extends outside of the review area to the southwest while aerial photos and Lidar data suggest Wetland 9 may reach a ditch-like feature that continues approximately 490 feet further west before reaching an artificial pond associated with residential development. However, the same data sources show the ditch-like feature lacks an ordinary high water mark and a bed and bank. Additionally, a review of historical aerial photos demonstrates no flowing or standing water present. Based on this information, the ditch-like feature is not a relatively permanent water (RPW). Data sources also show the ditch-like feature and artificial pond are surrounded by manicured lawns lacking wet signatures and other wetland indicators, indicating these features are surrounded by uplands. Based on this information, Wetland 9 is surrounded mostly by uplands involving forested areas, the newly paved roadway, and the residential development with the ditch-like feature to the southwest. This wetland does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Therefore, Wetland 9 is 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 August 6, 2025.
 - b. National Regulatory Viewer-Lidar Data and Google Earth Pro assessed August 6, 2025.
 - c. Parcel ID’s HB-350, HB-351, HB-353, and HB-357, Village of Hobart, Brown County, Wetland Delineation Report provided by Robert E. Lee & Associates, Inc. dated May 27, 2022.
 - d. Site evaluation conducted on August 20, 2025.

MVP

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

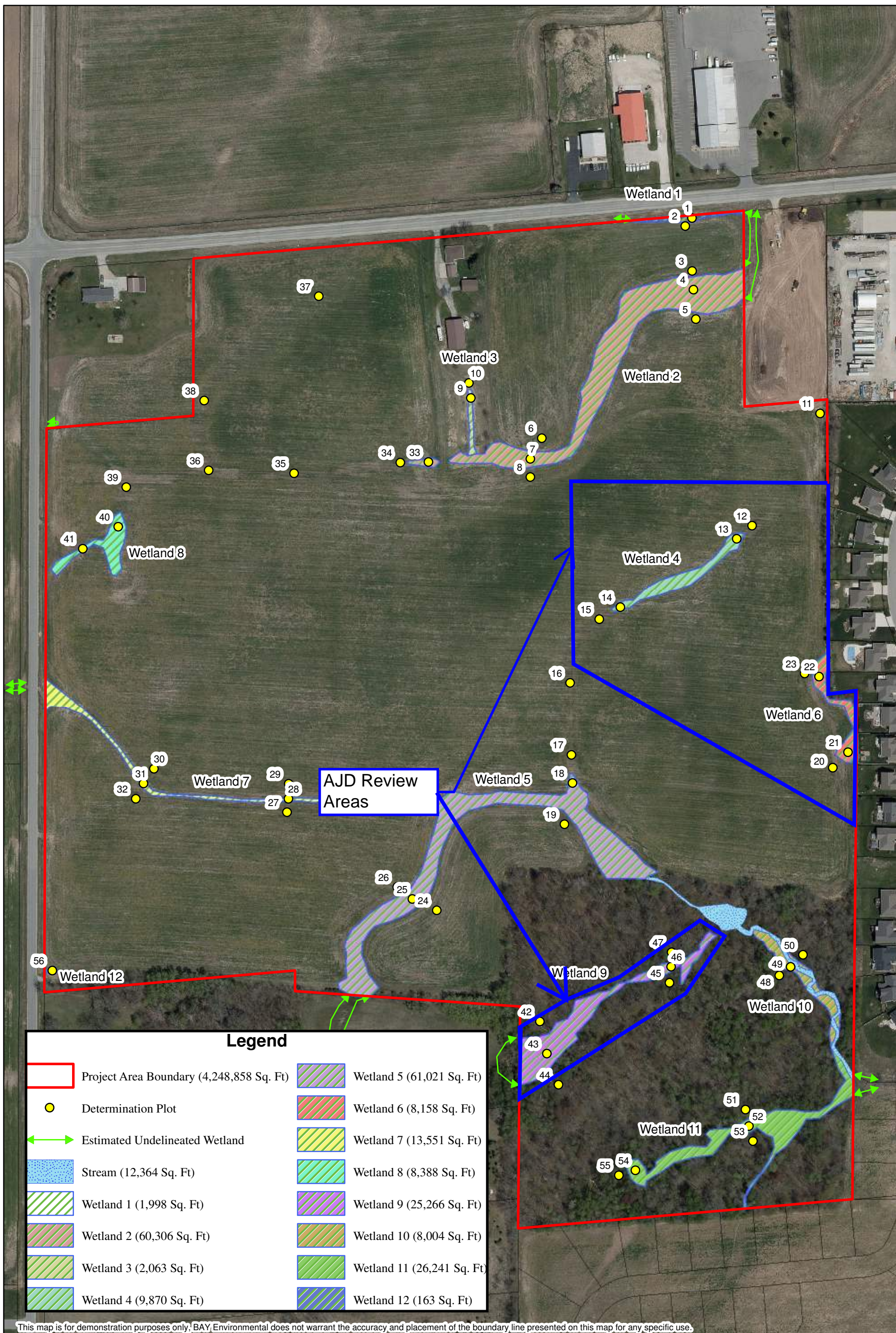


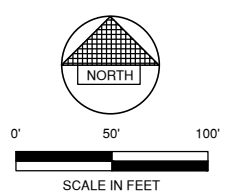
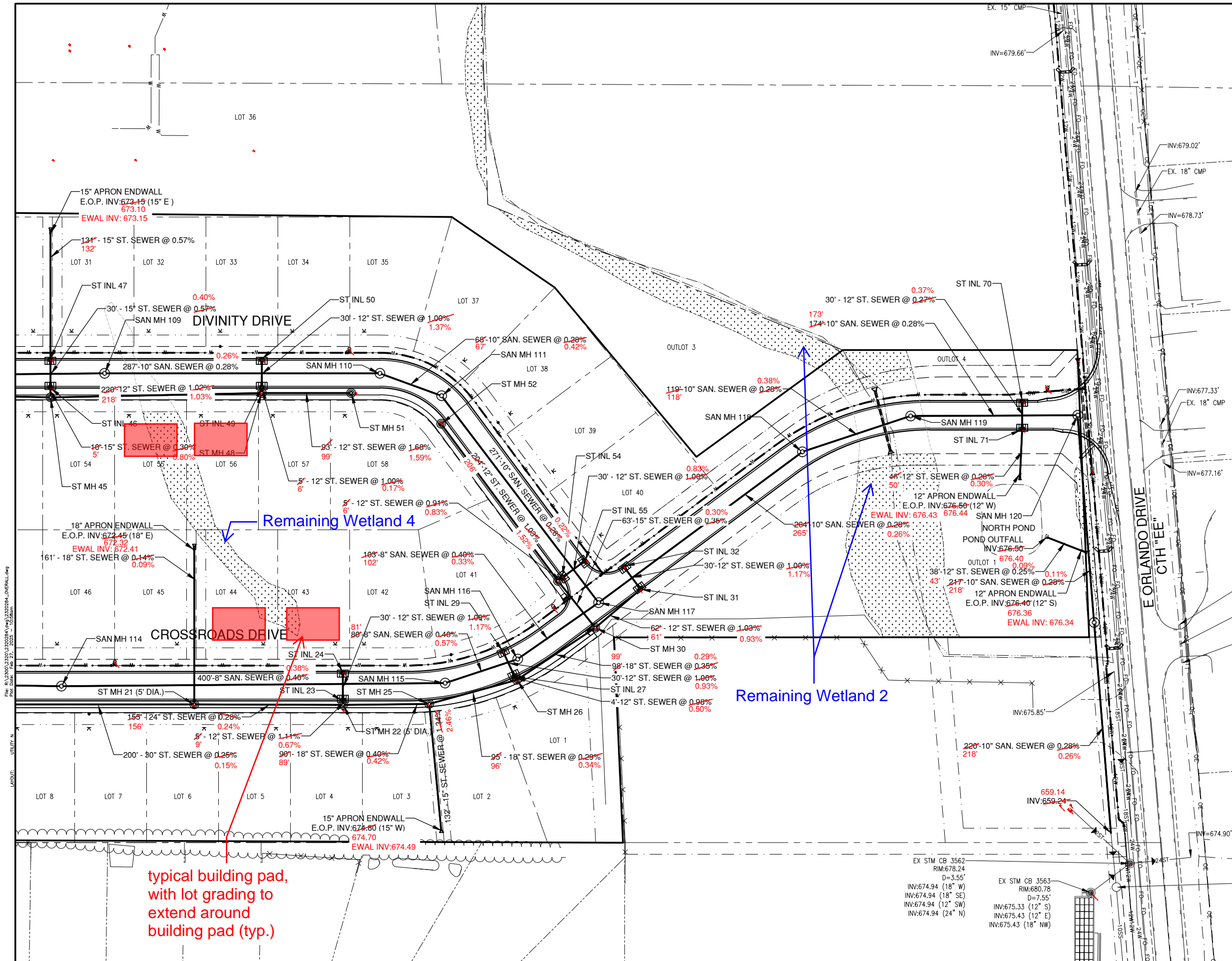
Figure 5 - Wetland Delineation Map
Parcel ID's HB-350, HB-351, HB-353, and HB-357
Village of Hobart, Wisconsin
5/16/2022

NOTE

1. A MINIMUM OF 6.5 FEET OF COVER SHALL BE MAINTAINED OVER ALL WATERMAIN.
2. SANITARY SEWER, WATERMAIN AND STORM SEWER SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR SEWER AND WATER CONSTRUCTION IN WISCONSIN AND ADMINISTRATIVE CODE CHAPTERS COMM 81-87.
3. FIELD VERIFY LOCATION OF EXISTING UTILITIES. IF EXISTING LOCATIONS DIFFER FROM WHAT IS INDICATED ON THE PLANS, **CONTACT ENGINEER**, PRIOR TO CONTINUED WORK.
4. ALL SANITARY SEWER, STORM SEWER AND WATER SERVICES / MAINS SHALL BE PROVIDED WITH TRACER WIRE OR OTHER METHOD TO BE LOCATED.
5. EXISTING GAS, ELECTRIC, CABLE TELEVISION AND TELEPHONE TO BE REMOVED AND/OR RELOCATED BY OTHERS. WORK SHALL BE COORDINATED BY GENERAL CONTRACTOR.

LEGEND

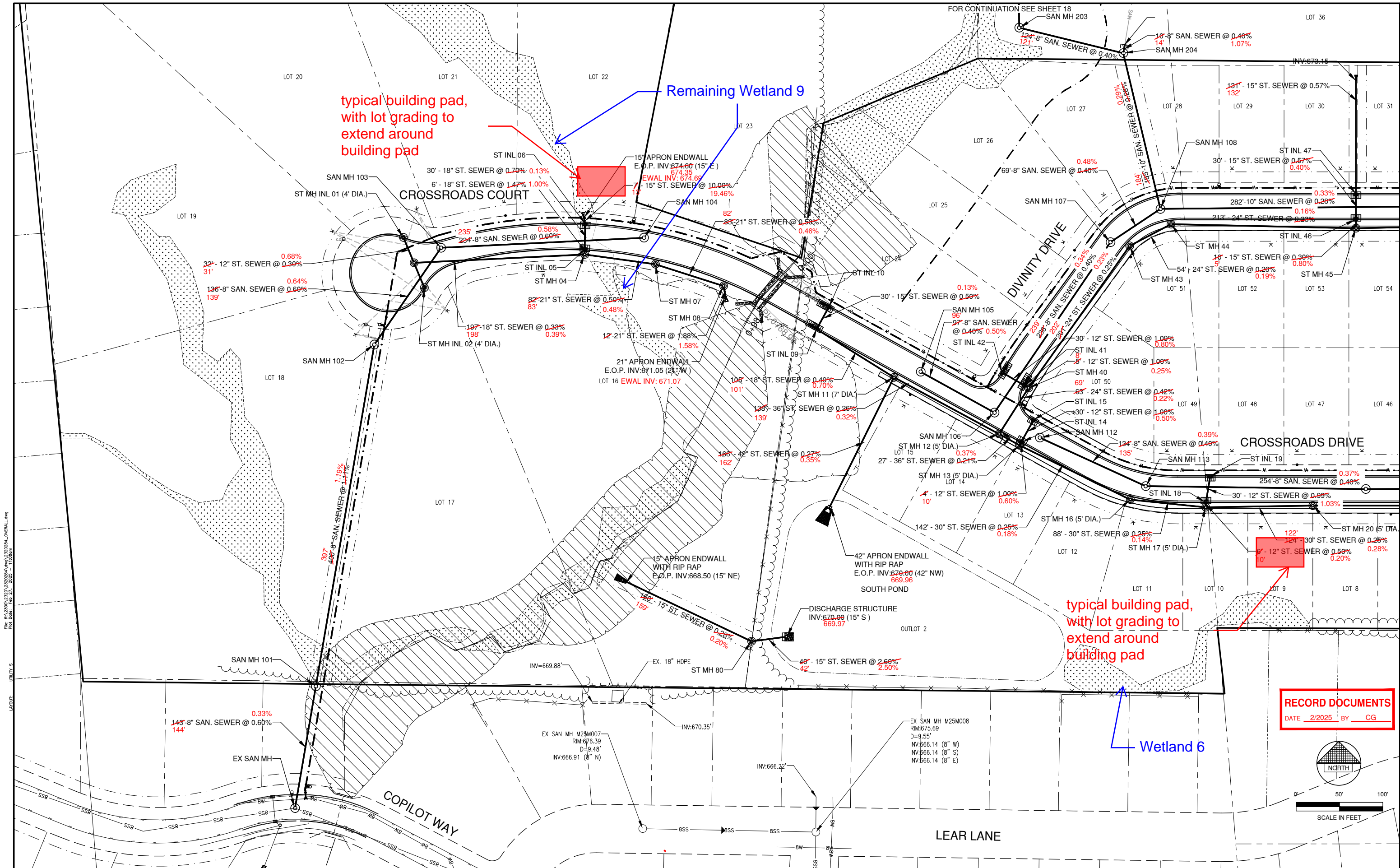
- BSS — BSS — PROPOSED SANITARY SEWER
 - BSS — BSS — EXISTING SANITARY SEWER (SIZE NOTED)
 - 10ST — 10ST — PROPOSED STORM SEWER
 - 10ST — 10ST — EXISTING STORM SEWER (SIZE NOTED)
 - 6W — 6W — 6W — PROPOSED WATERMAIN
 - 6W — 6W — 6W — EXISTING WATERMAIN (SIZE NOTED)
-
- PROPOSED
 - EXISTING
 - ⊗ FIRE HYDRANT
 - ⊗ WATER VALVE/CURB STOP
 - ⊗ WATER MANHOLE
 - ⊗ REDUCER/INCREASER
 - ⊗ SANITARY MANHOLE
 - ⊗ LIFT STATION
 - ⊗ TRACER WIRE SIGNAL CONNECTION BOX
 - ⊗ CLEANOUT
 - ⊗ STORM MANHOLE
 - ⊗ STORM CATCH BASIN
 - ⊗ STORM INLET
 - ⊗ STORM INLET MANHOLE
 - ⊗ YARD DRAIN
 - ⊗ STANDPIPE
 - ⊗ ROOF DOWNSPOUT
 - ⊗ DISCHARGE STRUCTURE



RECORD DOCUMENTS
 DATE 2/2025 BY CG

NO.	DATE	APPROV.	REVISION	NO.	DATE	APPROV.	REVISION	DRAWN LLP	CONTRACT NO. 2320-23-02 2023 GATEWAY ESTATES UTILITY AND STREET CONSTRUCTION VILLAGE OF HOBART, BROWN COUNTY, WI	OVERALL UTILITY PLAN NORTH	DATE 03/2023	1250 Centennial Centre Blvd Hobart, WI 920-662-9641 releinc.com	SHEET NO. 24
								CHECKED JGS			FILE 2320284 OVERALL		
								DESIGNED AUB			JOB NO. 2320284		

2022-00962-JLK (Figure 3 of 4)



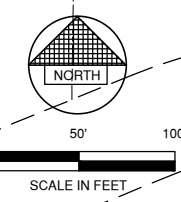
typical building pad, with lot grading to extend around building pad

Remaining Wetland 9

typical building pad, with lot grading to extend around building pad

Wetland 6

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

DRAWN LLP CHECKED JGS DESIGNED AJB	CONTRACT NO. 2320-23-02 2023 GATEWAY ESTATES UTILITY AND STREET CONSTRUCTION VILLAGE OF HOBART, BROWN COUNTY, WI	OVERALL UTILITY PLAN SOUTH	DATE 03/2023 FILE 2320284 OVERALL JOB NO. 2320284	1250 Centennial Centre Blvd Hobart, WI 920-662-9641 releinc.com	SHEET NO. 25
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2022-00962-JLK (Figure 4 of 4)