



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

CEMVP-RD

October 6, 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-2024-01107-CJB, 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, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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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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 1A	Non-Jurisdictional	N/A
Wetland 2	Non-Jurisdictional	N/A
Wetland 4	Non-Jurisdictional	N/A
Ditch 1	Non-Jurisdictional	N/A
Settling Basin 1	Non-Jurisdictional	N/A

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)
- e. Memorandum on LRB-2021-01386, U.S. Environmental Protection Agency and the Office of the Assistant Secretary of the Army for Civil Works (OASACW) at the U.S. Department of the Army

3. REVIEW AREA.

- a. Review Area Size (in acres): 5.3
- b. Location Description: The review area is located near the north side of Zacher Drive, approximately 250 feet northwest of the intersection of Zacher Drive and Hillwood Run.

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- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.086158 Longitude: -88.513928
- d. Nearest City or Town: Oshkosh
- e. County: Winnebago
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2024-01107-LAH	AJD	Wetland 1, Wetland 5, and Wetland 6 were determined to be non-jurisdictional (excluded waters) under the AJD

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

N/A

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

N/A

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

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.

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 within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁹

Ditch 1 (0.164 acre) extends laterally through the southwestern portion of the review area. Based on review of historic aerial images and the wetland delineation report, this wetland area was historically farmed but was converted to

⁹ 88 FR 3004 (January 18, 2023)

a drainage system for a nearby residential neighborhood sometime between 1976 and 1994. Review of historic aerial photos prior to construction of the ditch (1957, 1976) indicates this wetland area lacked wet soil signatures and was upland prior to construction. Lack of predominately hydric soil in the area of this ditch provides additional support that Ditch 1 was constructed in upland. Based on review of the wetland delineation report, aerial photos, and on site photos, wetland conditions have developed in the bottom of this ditch, but this ditch drains only dry land and do not actively drain other wetlands. Based on current aerial photos, historic aerial photos, and onsite photos from the wetland delineation report, Ditch 1 does not carry relatively permanent flow, lacks a bed and bank, and does not have an Ordinary High Water Mark. Therefore, Ditch 1 meets the definition of a category (b)(3) ditch and is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

Settling Basin 1 (0.30 Acre) extends laterally through the southeastern portion of the review area. Based on review of historic aerial images and the wetland delineation report, this wetland area was historically farmed but was converted to a drainage system for a nearby residential neighborhood. This conversion can begin to be seen in the July 2004 aerial photo within the wetland delineation report. Based on review of historic aerial photos, a 1976 aerial photo identifies a wetness signature near the eastern limits of Settling Basin 1. However, due to lack of wetness signatures in other years (1957, 1994, 1997, 2000) this wetness signature appears to be atypical. Based on lack of wetness signatures in the area of Settling Basin 1 on a consistent basis and the absence of predominately hydric soil, it appears Settling Basin 1 was excavated in dry land. Therefore, Settling Basin 1 meets the definition of a category (b)(5) artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing and is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

- 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).

Based on review of the wetland delineation report and aerial photos, Wetland 1A, 2, and 4 are depressional wetlands that do not abut a water of the United States. These wetlands are not TNWs, territorial seas, or interstate waters; therefore,

they are not category (a)(1) waters. These wetlands are not impoundments or tributaries; therefore, they are not category (a)(2) or (a)(3) waters. Based on review of the WI 24k Hydro Flowlines Stream Order layer within the National Regulatory Viewer, the closest RPW appears to be Lake Winnebago located approximately 700 feet to the east of the review area. Topographically, the review area consists of a generally downward slope from west to east towards Lake Winnebago.

Wetland 1A is located near the western boundary of the review area. Hydrologic inputs appear to be from surface water runoff and from a previously excluded ditch (Wetland 1) located to the south of this wetland. A culvert and access drive are located along the eastern boundary of this wetland that appear to separate Wetland 1A and Wetland 2. However, due to the presence of partially hydric soil, trees in aerial photos obstructing aerial review, and lack of onsite photos at the culvert site, Wetland 1A and Wetland 2 were assumed to be functioning as a single wetland for the purpose of assessing wetland adjacency. Wetland 2 extends laterally through most of the northern half of the review area, gradually decreasing in elevation in the eastward direction. Based on review of aerial photos within the delineation report, around 2015 residential construction occurred along the eastern delineated boundary of Wetland 2 creating a topographic break and a ditch feature. However, lack of flowing water and wetness signatures in this area in historic aerial photos, lack of predominantly hydric soil in USA Soils Hydric Class layer, and lack of mapped wetlands in the National Wetland Inventory and the Wisconsin Wetland Inventory, suggests Wetland 2 does not extend outside the review area. Therefore, Wetland 1A and Wetland 2 do not abut an RPW.

Wetland 4 is located near the southwestern boundary of the review area. Based on the wetland delineation report, this wetland is located in a depression hydrologically connected to drainageways via culverts located on its west, south, and east sides. These culverted connections are to non-RPW's (see 2024-01107-LAH and Section 8a above) and do not contain the presence of an ordinary high water mark of an RPW. Therefore, Wetland 4 does not abut an RPW.

Wetlands 1A, 2, and 4 are non-tidal wetlands that do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. These wetlands are not intrastate lakes or ponds that meet the relatively permanent standard and cannot be evaluated as (a)(5) waters: lakes and ponds not identified in (a)(1) – (a)(4). Wetlands 1A, 2, and 4 are surrounded by uplands and do not directly abut a water of the United States; therefore, these wetlands are not jurisdictional under the “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule (September 8, 2023).

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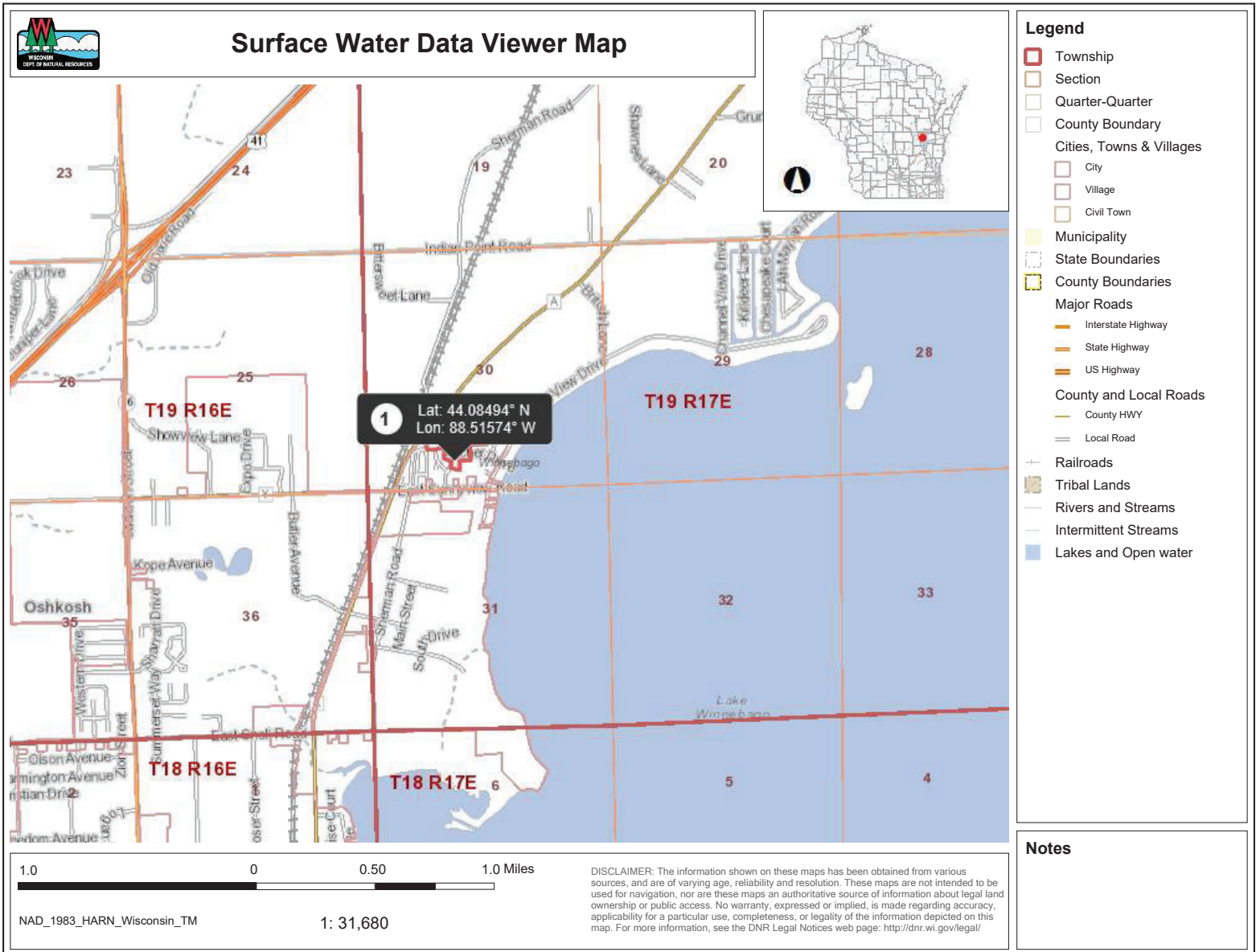
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Office (Desk) Determination: 9/24/2025
Date(s) of Field Determination (if applicable): N/A
- b. Data sources used to support this determination (included in the administrative record).
 - i. Routine Wetland Delineation, completed by Davel Engineering & Environmental, Inc., dated October 7, 2024
 - ii. USACE National Regulatory Viewer, layers consisting of Hillshade, DEM, National Wetland Inventory, Wisconsin Wetland Inventory, USA Soils Hydric Class, WI 24k Hydro Flowlines Stream Order, accessed September 25, 2025
 - iii. Google Earth Street View, accessed September 25, 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.

MVP-2024-01107-CJB Figure 1 of 3



Routine Wetland Delineation Overview Map

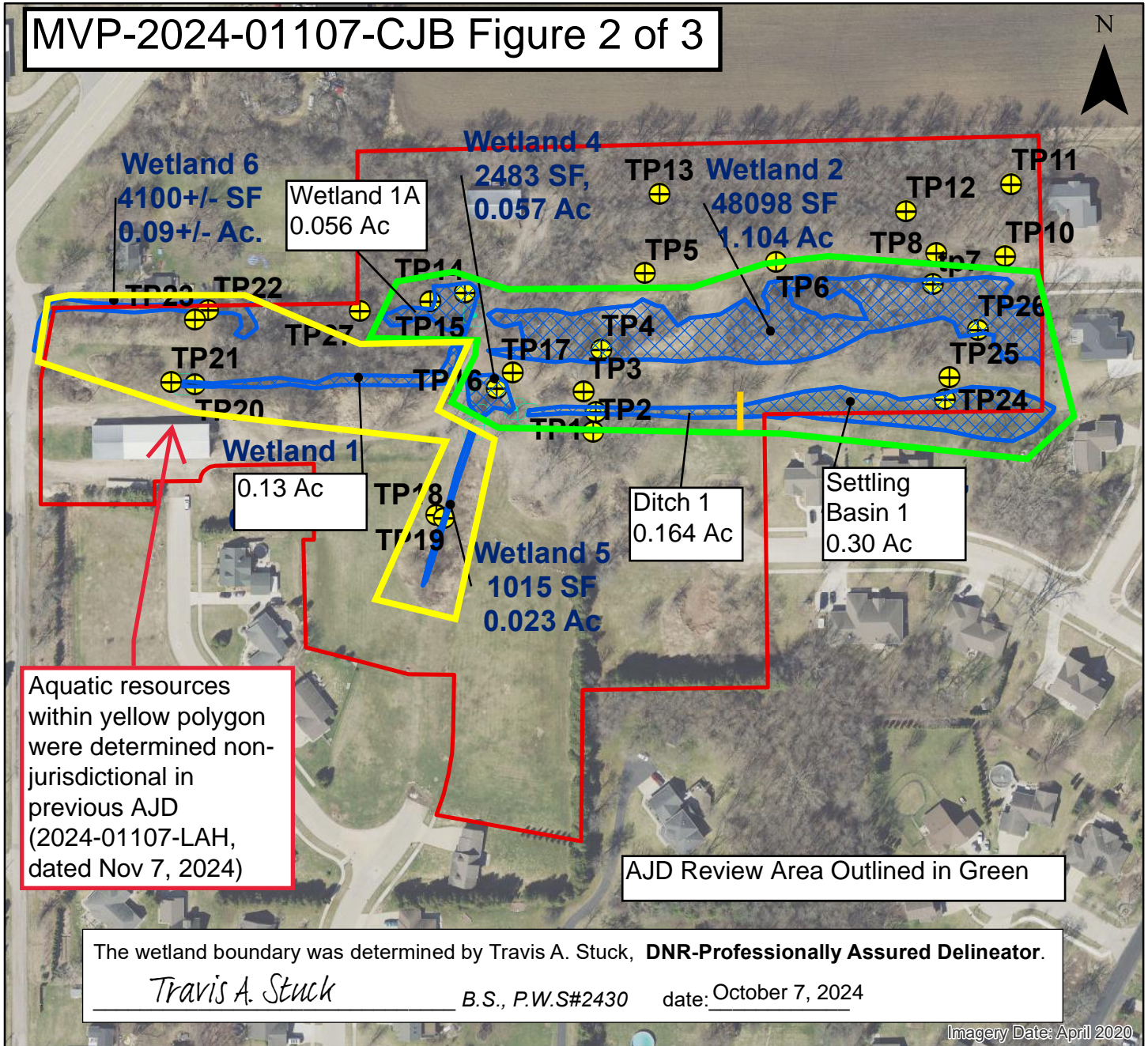
Island View Estates

Part of Sec. 30, T19N, R17E, City of Oshkosh, Winnebago County, WI

For: Wildflower Landscapers, LLC

2020 Aerial

MVP-2024-01107-CJB Figure 2 of 3



Aquatic resources within yellow polygon were determined non-jurisdictional in previous AJD (2024-01107-LAH, dated Nov 7, 2024)

AJD Review Area Outlined in Green

The wetland boundary was determined by Travis A. Stuck, **DNR-Professionally Assured Delineator**.
Travis A. Stuck B.S., P.W.S#2430 date: October 7, 2024

Imagery Date: April 2020

The project scope limits shown on this map is not intended to be the parcel boundary. This map does not indicate jurisdiction or regulation. This map is only to identify wetlands identified on the landscape..

- ### Legend
- Project Scope
 - field_delineation
 - ⊕ Test Plots updated
 - Culverts



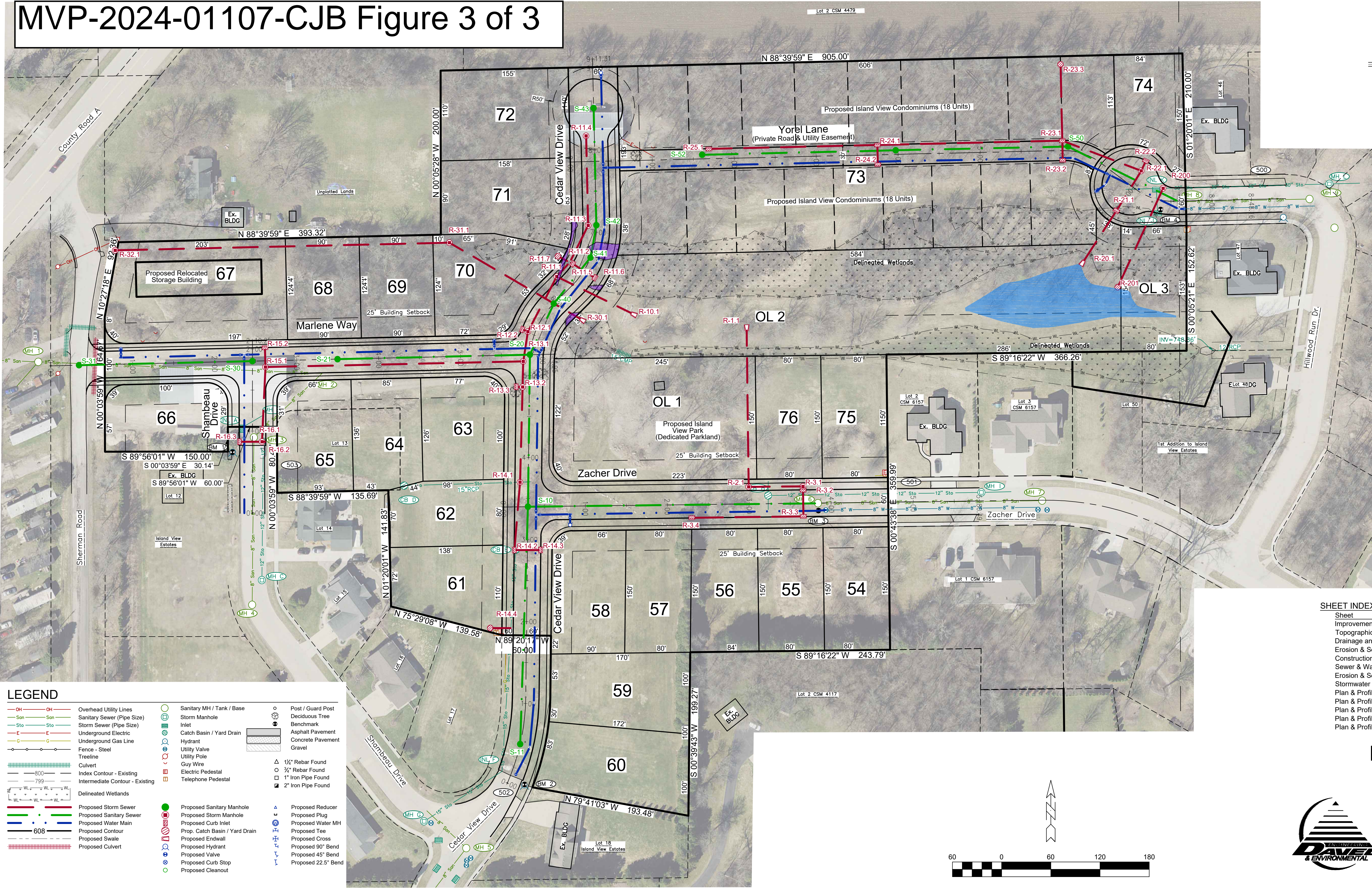
DAVEL ENGINEERING & ENVIRONMENTAL, INC.
 Civil Engineers and Land Surveyors
 1164 Province Terrace, Menasha, WI 54952
 Ph: 920-991-1866 Fax: 920-441-0804
 www.davel.pro

2nd Addition to Island View Estates

City of Oshkosh, Winnebago County, WI
For: Wildflower Landscapers, LLC



MVP-2024-01107-CJB Figure 3 of 3



Sewer and Water shall be constructed in accordance with the State of Wisconsin Standard Specifications for Sewer and Water Construction, and all Special Provisions of the City of Oshkosh.

Streets shall be constructed in accordance with the State of Wisconsin Standard Specifications for Highway and Structures Construction, and all Special Provisions of the City of Oshkosh.

Contractor shall locate all buried facilities prior to excavating. This plan may not correctly or completely show all buried utilities.

The Contractor shall verify all staking and field layout against the plan and field conditions prior to constructing the work and immediately notify the Engineer of any discrepancies.

The Contractor shall comply with all conditions of the Erosion Control Plan and the Storm Water discharge Permit. All Erosion Control shall be done in accordance with the Plan and Wisconsin DNR Technical Standards.

The contractor shall coordinate with provider for electric, gas, and telecommunication service connection and relocations.

Pipe lengths are measured to center of structure. Endwalls are included in pipe length.

LEGEND

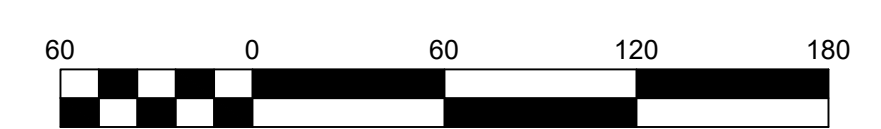
	Overhead Utility Lines		Sanitary MH / Tank / Base		Post / Guard Post
	Sanitary Sewer (Pipe Size)		Storm Manhole		Deciduous Tree
	Storm Sewer (Pipe Size)		Inlet		Benchmark
	Underground Electric		Catch Basin / Yard Drain		Asphalt Pavement
	Underground Gas Line		Hydrant		Concrete Pavement
	Fence - Steel		Utility Valve		Gravel
	Treeline		Utility Pole		1/4" Rebar Found
	Culvert		Guy Wire		3/4" Rebar Found
	Index Contour - Existing		Electric Pedestal		1" Iron Pipe Found
	Intermediate Contour - Existing		Telephone Pedestal		2" Iron Pipe Found
	Delineated Wetlands		Proposed Sanitary Manhole		Proposed Reducer
	Proposed Storm Sewer		Proposed Storm Manhole		Proposed Plug
	Proposed Water Main		Proposed Curb Inlet		Proposed Water MH
	Proposed Contour		Prop. Catch Basin / Yard Drain		Proposed Tee
	Proposed Swale		Proposed Hydrant		Proposed Cross
	Proposed Culvert		Proposed Valve		Proposed 90° Bend
			Proposed Curb Stop		Proposed 45° Bend
			Proposed Cleanout		Proposed 22.5° Bend

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IMPROVEMENT PLANS

DAVEL ENGINEERING & ENVIRONMENTAL, INC.
Civil Engineers and Land Surveyors
1164 Province Terrace, Menasha, WI 54952
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