



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT  
332 MINNESOTA STREET SUITE E1500  
ST. PAUL MN 55101

MVP-RD

February 20, 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),<sup>1</sup> MVP-2024-01209-TKO [1 of 1]<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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<sup>1</sup> 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.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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
W-1 (0.29-acre)	Non-Jurisdictional	NA
W-2 (0.05-acre)	Non-Jurisdictional	NA

## 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. \_\_, 143 S. Ct. 1322 (2023)
- d. "MEMORANDUM ON NWK-2024-00392" (Nov 2024)

## 3. REVIEW AREA.

- a. Project Area Size (in acres): 0.57-acre
- b. Location Description: The project/review area is located in Section 22, Township 25N, Range 20E, Brown County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.623690 Longitude: -88.059290
- d. Nearest City or Town: Green Bay
- e. County: Brown
- 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]<sup>6</sup>

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<sup>6</sup> 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 WATERS<sup>7</sup>: 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.<sup>8</sup> [NA]
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

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(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.

<sup>7</sup> 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.

<sup>8</sup> 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.

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).<sup>9</sup> [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).

[Wetlands W-1 and W-2 are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. Review of the September 2024 Bay Environmental Strategies, Inc. delineation report, recent and historic aerial images, and LiDAR (hillshade and DEM GIS layers from the Mississippi Valley Division Regulatory Viewer) indicate that the assessed wetlands are depressional wetlands, surrounded by upland. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform.

Wetlands W-1 and W-2 are described as wet meadow wetlands which sit within the far northern and western portion of the proposed project area. Review of aerial imagery, county contours, and LiDAR shows both wetlands sitting in a mostly closed depressional area, bound by Siesta Lane to the north. Topography transitions to delineated upland at the east and west boundary. At their northern extents, both W-1 and W-2 connect to the south ditch of Siesta Lane. Review of LiDAR shows that topography within the ditch slopes down into the wetland area, providing hydrologic input. The connection with this ditch would not serve a continuous surface connection to any downstream water. Wetland W-2 sits within a swale in the western project area and bisects (north/south running) W-1. Review of the delineation report shows both W-1 and W-2 continue off-site, to the south. Here, the swale continues for approximately 460 linear feet (LF) where it

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

drains to a larger wetland complex. The swale is not identified as wetland on either the National or Wisconsin Wetland Inventory (NWI and WWI). Portions of the swale are mapped as containing partially to hydric soils and are noted as possessing wetland indicators on the WI DNR Surface Water Data Viewer (SWDV). However, review of the ground level and aerial images indicate the swale does not carry a relatively permanent flow of water. No standing or ponded water is evident, and ground level images show the swale to lack a defined bed and bank. Additionally, ground level photos show dense vegetative growth lining the full width (approximately 9 ft) of the swale, indicating the lack of any channel with relatively permanent flow. Review of LiDAR shows two separate discrete drainage features entering the swale approximately halfway between Wetlands W-1 and W-2 and the receiving complex. These appear to be drainage features which direct drainage from adjacent uplands toward the wetland system, contributing to downstream flows. From the point at which the swale enters this complex, topography slopes down to the east for approximately 265 LF (725 LF total length of connection), where the wetland drains through a 35 LF culvert (760 LF total length of connection) beneath Overlook Court. The culvert drains through a discrete channel (part of wetland) into another wetland complex, where topography continues to slope down to the east and the south, where it drains to another culvert, approximately 970 LF (1,730 LF total length of connection). Review of LiDAR and aerial imagery shows this 35-foot culvert crosses a set of railroad tracks, draining to a ditched area on the east. Here, the ditch continues south for approximately 190 LF (1,955 LF total length of connection), where it drains to a culvert crossing Harbor Lights Road. This 40-foot culvert (1,995 LF total length of connection) outlets to a final wetland complex which abuts an unnamed tributary (WBIC: 410500) to Green Bay (Lake Michigan).

Wetlands W-1 and W-2 sit approximately 1,995 linear feet from the closest tributary (RPW). As described above, both W-1 and W-2 exhibit traceable physical connections to a relatively permanent jurisdictional tributary. Per the Joint Decision Memorandum on NWK-2024-00392, and after consideration of flow, the number, the types, and the length of connections, the 1,995-foot length of connection here between the reviewed wetlands and the requisite covered waters are not physically close enough to meet the continuous surface connection requirement. The above-mentioned wetlands are non-tidal wetlands with lengths of connections that are so far removed from the requisite waters they do not meet the continuous surface connection requirements to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetlands. The 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).

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Therefore, Wetlands W-1 and W-2 are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.]

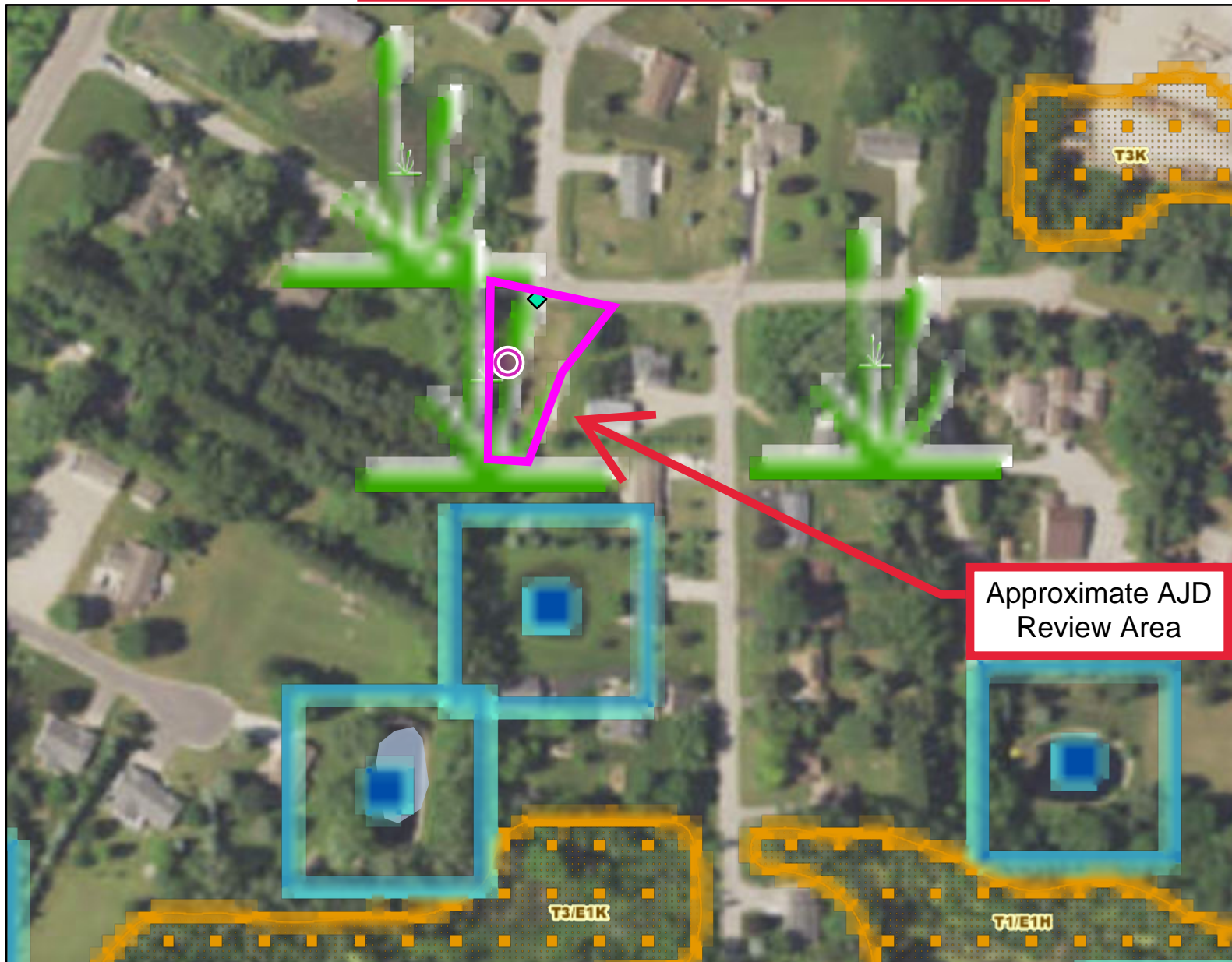
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. No field visits were conducted. Desktop review evaluation was completed on 01/07/2025.
- b. General Permit Application "2024-01209-TKO 20241104 APP.pdf" in the administrative record.
- c. "MEMORANDUM ON NWK-2024-00392" (Nov 2024), 01/07/2025
- d. Mississippi Valley Division Regulatory Viewer, 01/07/2025.
- e. Wisconsin DNR Surface Water Data Viewer, 01/07/2025.
- f. Brown County GIS and Land Information Interactive Maps, 01/07/2025.
- g. ESRI World Imagery Wayback (<https://livingatlas.arcgis.com/wayback/>), 01/07/2025.
- h. Google Earth Pro, 01/07/2025

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.





**Legend:** (some map layers may not be displayed)  
◆ Wetland Identifications and Confirmations

Wetland Class Points

□ Excavated pond

Wetland too small to delineate

Wetland Class Areas

24K Lakes and Open Water

Latest Leaf On Imagery

City or Village

State Boundaries

County Boundaries

Major Roads

Interstate Highway

State Highway

US Highway

County and Local Roads

County HWY

**Notes:**



Map: 0 160 320 Feet  
0 40 80 Meters

Service Layer Credits:  
Wisconsin Wetland Inventory NWI (cached): , EN Basic Basemap WTM Ext: , 2022 Leaf On: , Wisconsin Wetland Inventory NWI (Dynamic): Calvin Lawrence, Dennis Weise, Nina Rihn

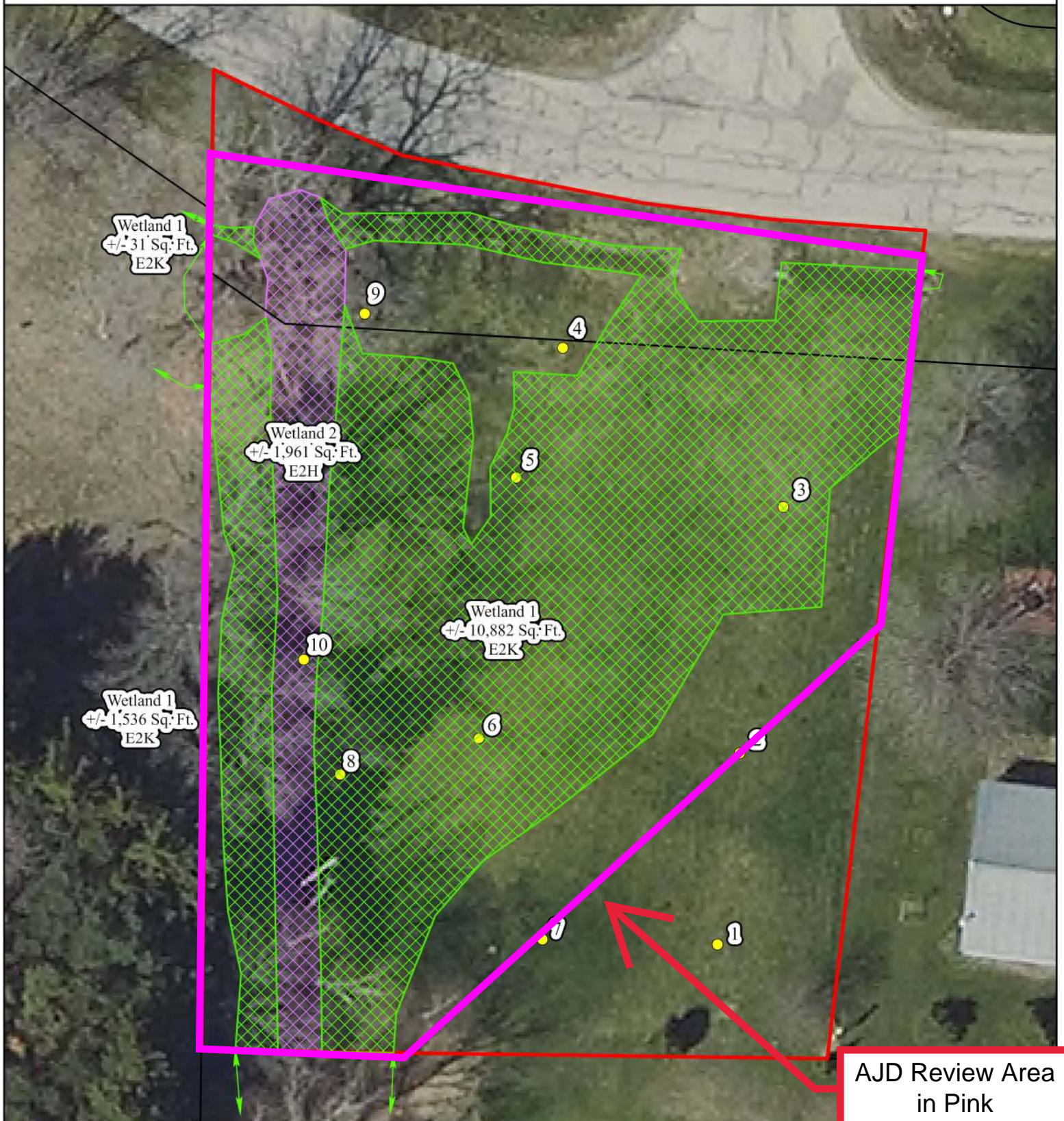
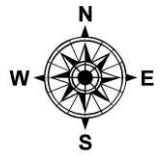
Map projection: NAD 1983 HARN Wisconsin TM

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**Legend**

- |  |                                |
|--|--------------------------------|
| Project Area Boundary (+/- 25,038 Sq. Ft.) | Wetland 1 (+/- 12,449 Sq. Ft.) |
| Parcel Boundary (+/- 20,219 Sq. Ft.)       | Wetland 2 (+/- 1,961 Sq. Ft.)  |
| Determination Plot                         | Undelineated Wetland Boundary  |

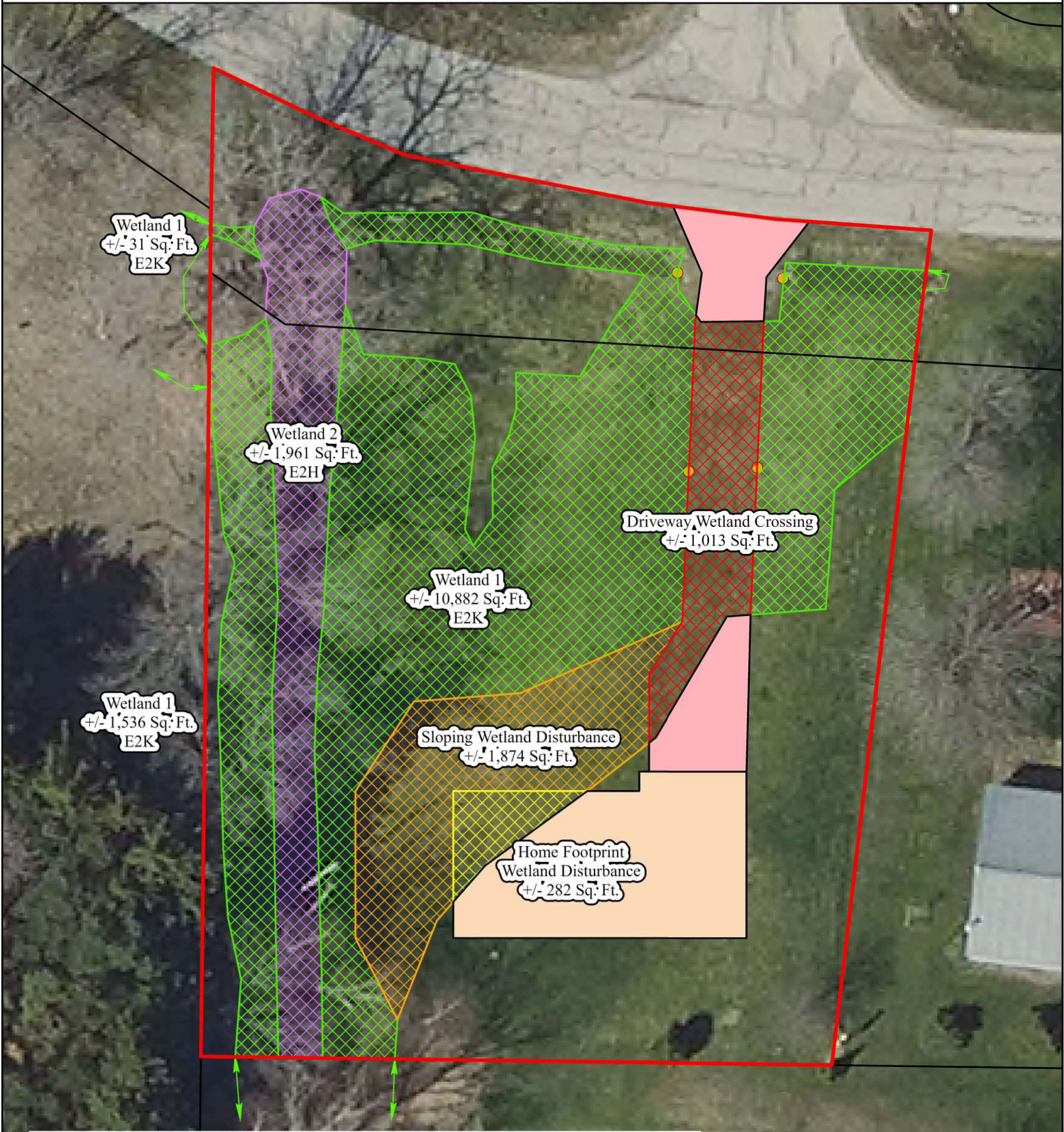
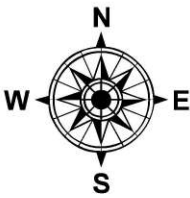


This map is for demonstration purposes only; BAY Environmental does not warrant the accuracy and placement of the objects presented on this map for any specific use.





Figure 6 - Proposed Residential Development Map  
Parcel SU-1594  
Village of Suamico, Brown County, Wisconsin  
October 28, 2024



Legend		
Project Area Boundary (+/- 25,038 Sq. Ft.)	House Footprint	Culvert location
Parcel Boundary (+/- 20,219 Sq. Ft.)	Home Footprint Wetland Disturbance (+/- 282 Sq. Ft.)	Wetland 1 (+/- 12,449 Sq. Ft.)
Driveway	Sloping-Grading Footprint Wetland Disturbance (+/- 1,874 Sq. Ft.)	Wetland 2 (+/- 1,961 Sq. Ft.)
Driveway Crossing Wetland Disturbance (+/- 1,013 Sq. Ft.)		Undelineated Wetland Boundary



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