

CE-MVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01212-CJB

CE-MVP-RD

June 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) ,¹ MVP-2024-01212-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,

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
W-3	Non-Jurisdictional	N/A
W-4	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)

3. REVIEW AREA.

- a. Review Area Size (in acres): 0.26
- b. Location Description: The project/review area is located in Section 35, Township 28N, Range 26E, Door County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.851640 Longitude: -87.310640
- d. Nearest City or Town: Sturgeon Bay
- e. County: Door
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
N/A	N/A	N/A

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

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.

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.

- 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

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).

The review areas for this JD include two wetlands identified as Wetland 3 and Wetland 4. The delineation report that was submitted with the JD request identifies Wetland 3 as a shallow marsh/wet meadow and Wetland 4 as a farmed wetland. These wetlands are depressional features surrounded wholly by uplands located within an agricultural field.

Based on the wetland delineation report, Wetland 3 contains surface water suggesting groundwater sustains the wetland. Additionally, surface water runoff from an adjacent feed storage area flows into the wetland from the southeast. Based on review of current and historic aerial imagery and LiDAR images consisting of DEM and Hillshade, this wetland does not abut a relatively permanent waterway.

⁹ 88 FR 3004 (January 18, 2023)

Based on the wetland delineation report, Wetland 4 is surrounded by an upland agricultural field and collects surface water from the surrounding landscape. Based on review of current and historic aerial imagery and LiDAR images consisting of DEM and Hillshade, this wetland does not abut a relatively permanent waterway.

Wetland 3 and Wetland 4 are not TNWs, territorial seas, or interstate waters and therefore are not (a)(1) waters. These wetlands are not tributaries and have not been created by impounding a water of the U.S.; therefore, these wetlands are not category (a)(2) or (a)(3) waters. Wetland 3 and Wetland 4 are non-tidal wetlands that do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. Wetland 3 and Wetland 4 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). Wetland 3 and Wetland 4 do not physically abut a jurisdictional water; therefore, Wetland 3 and Wetland 4 are not jurisdictional under the “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule (September 8, 2023).

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, June 11, 2025
 - b. Wetland Delineation Report, prepared by Ruekert & Mielke, Inc., dated October 23, 2023
 - c. National Regulatory Viewer, Hillshade and DEM layers, accessed June 11, 2025

10. OTHER SUPPORTING INFORMATION.

N/A

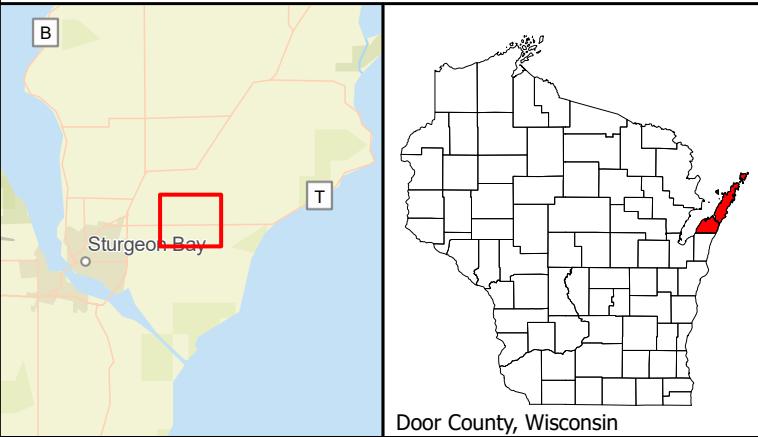
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Farm Expansion
Gilbert Farms, Ltd.
Town of Sevastopol



Site Location Map

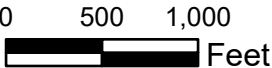
Project #: 8539-10000
Drawn By: TPS
Approved By: TPS
Name: 1SiteLocation
Date Saved: 9/11/2023

Figure 1



Legend

-  Area of Investigation (77.1 Acres)
-  Public Land Survey System

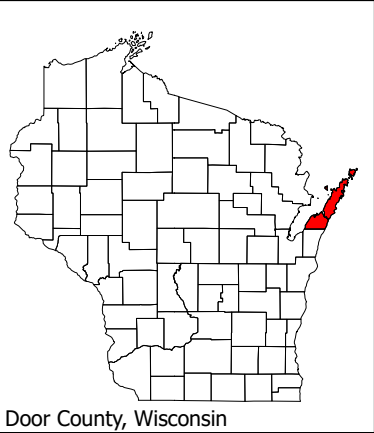
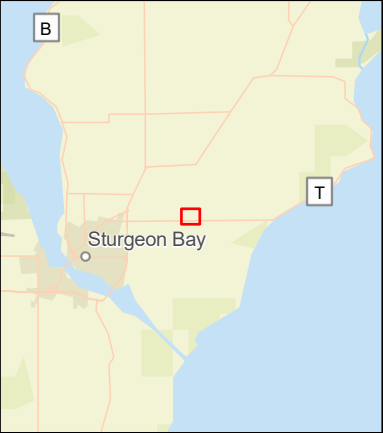


Farm Expansion
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Town of Sevastopol

Wetland Boundary Map

Project #: 8539-10000
Drawn By: TPS
Approved By: TPS
Name: 2WetlandBoundary
Date Saved: 9/11/2023

Figure 2

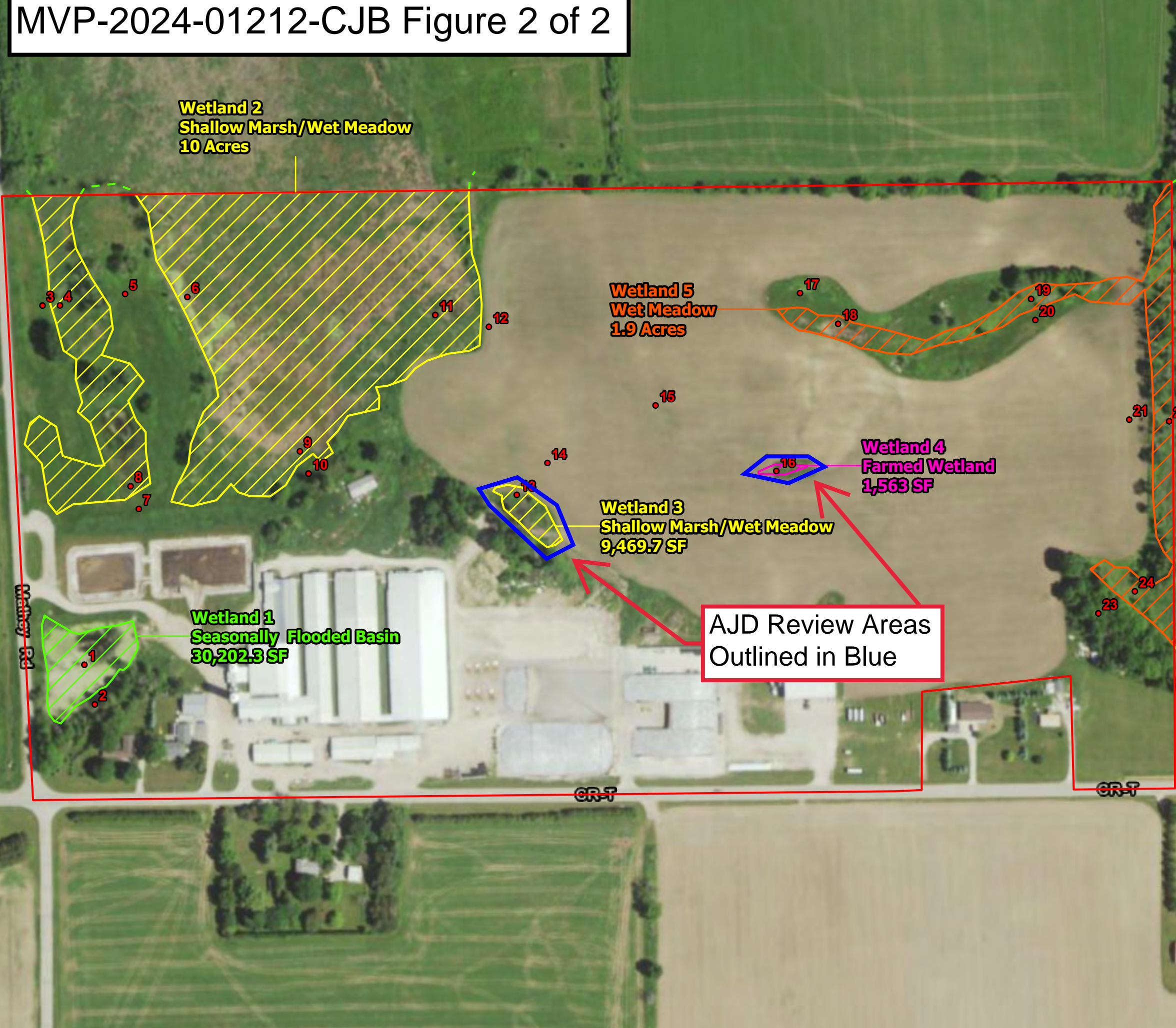


Legend

- Sample Point
- - - Off-site Wetland
- Area of Investigation(77.1 Acres)
- Delineated Wetland (12.9 Acres)
- Farmed Wetland (1,563 SF)
- Seasonally Flooded Basin (30,202.3 SF)
- Shallow Marsh/Wet Meadow (10.2 Acres)
- Wet Meadow (1.9 Acres)



0 150 300 Feet



AJD Review Areas
Outlined in Blue

Wetland 2
Shallow Marsh/Wet Meadow
10 Acres

Wetland 5
Wet Meadow
1.9 Acres

Wetland 4
Farmed Wetland
1,563 SF

Wetland 3
Shallow Marsh/Wet Meadow
9,469.7 SF

Wetland 1
Seasonally Flooded Basin
30,202.3 SF