



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

MVP-2024-01253-TRS

20 November 2024

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-2024-01253-TRS 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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-01253-TRS.

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).

- i. Non-Wetland Field 2 (88.98 Acres), Non-Jurisdictional

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)

3. REVIEW AREA:

The review area is limited to 88.98 acres (Field 2) of Prior Converted Cropland and is identified by the red polygon on the attached AJD figure 1. The review area is located at Lat: 43.273865, Long: -89.404845) in Dane County, Wisconsin. There are no other JDs associated with the review area. See the enclosed Figure labeled MVP-2024-01253-TRS, AJD Figure 1.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶

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

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.

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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

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

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.

exclusions listed in 33 CFR 328.3(b).⁹ The review area for this determination is comprised of approximately 88.98 acres (Field 2 PC/NW). The AJD requestor (Heartland Ecological Group Inc) stated in their request that the property is currently in an agricultural use and would remain in an agricultural use. A Certified Wetland Determination completed by the USDA-NRCS on September 25, 2023, determined the entire 88.98 acres in the review area to be Prior Converted Cropland and Non-Wetland. In accordance with 33 CFR § 328.3 (b)(2), the Corps does not consider Prior Converted Cropland to be waters of the U.S.

- 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).
N/A

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. September 25, 2023, USDA-NRCS Certified Wetland Determination (Heartland Ecological Group Inc.)
- b. USACE Regulatory Viewer Accessed November 19, 2024
- c. WDNR - Surface Water Data Viewer Accessed November 19, 2024

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.

⁹ 88 FR 3004 (January 18, 2023)

Farm: 23111

Tract: 16393

Geographic County: Dane

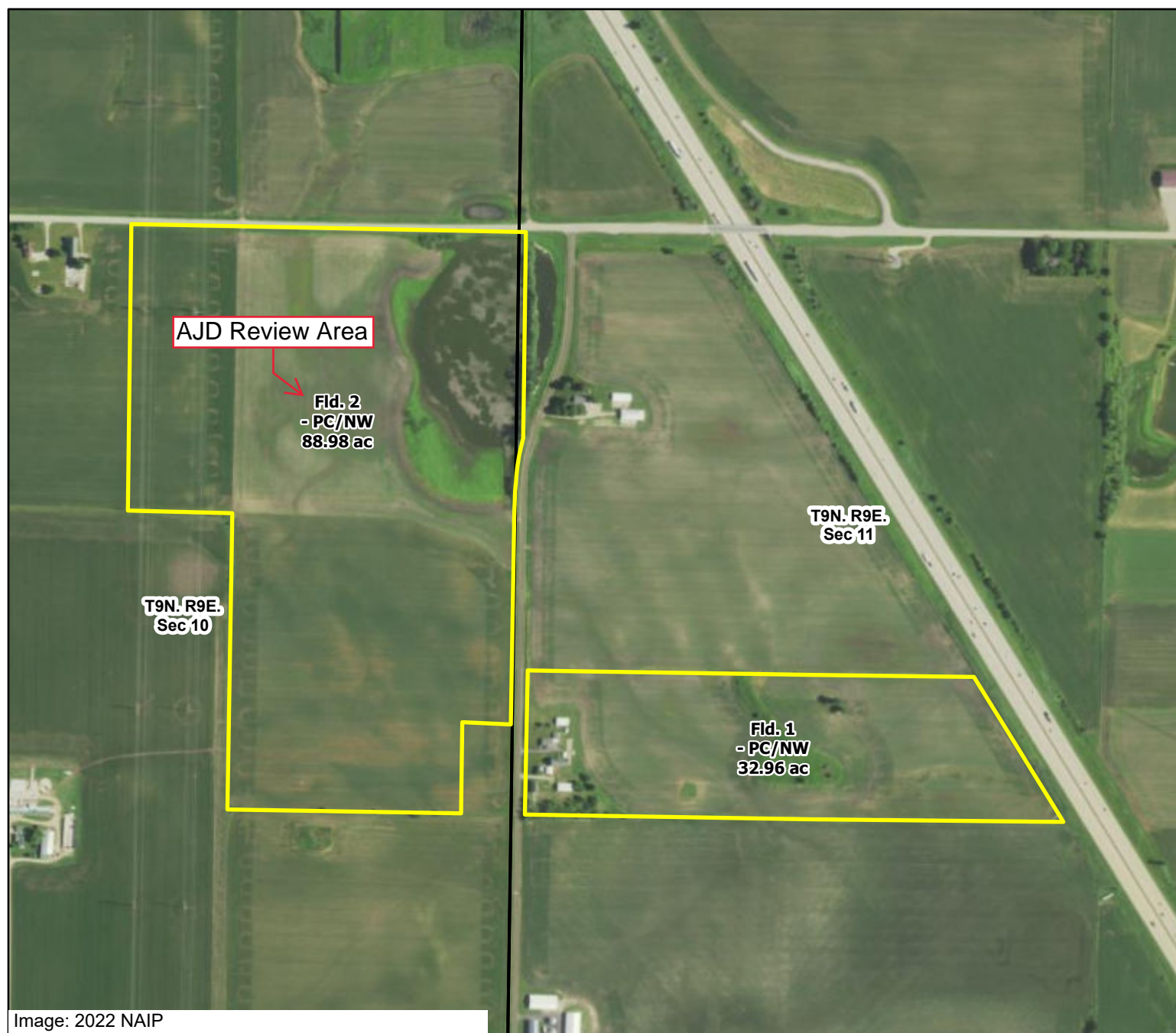
Administrative County: Dane

Customer: Blue Star Dairy Farm Partnership

Wetland Determination



Map Creation Date: 9/15/2023



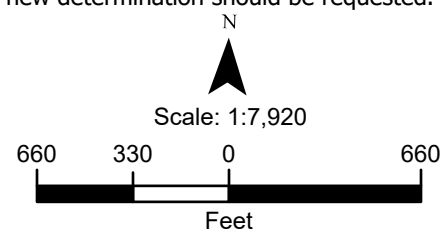
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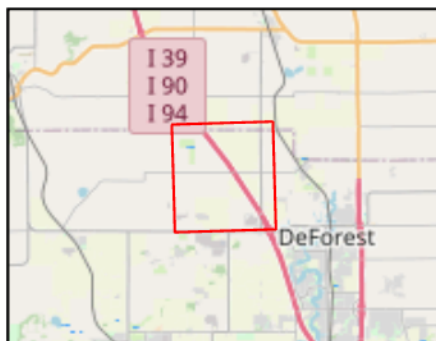
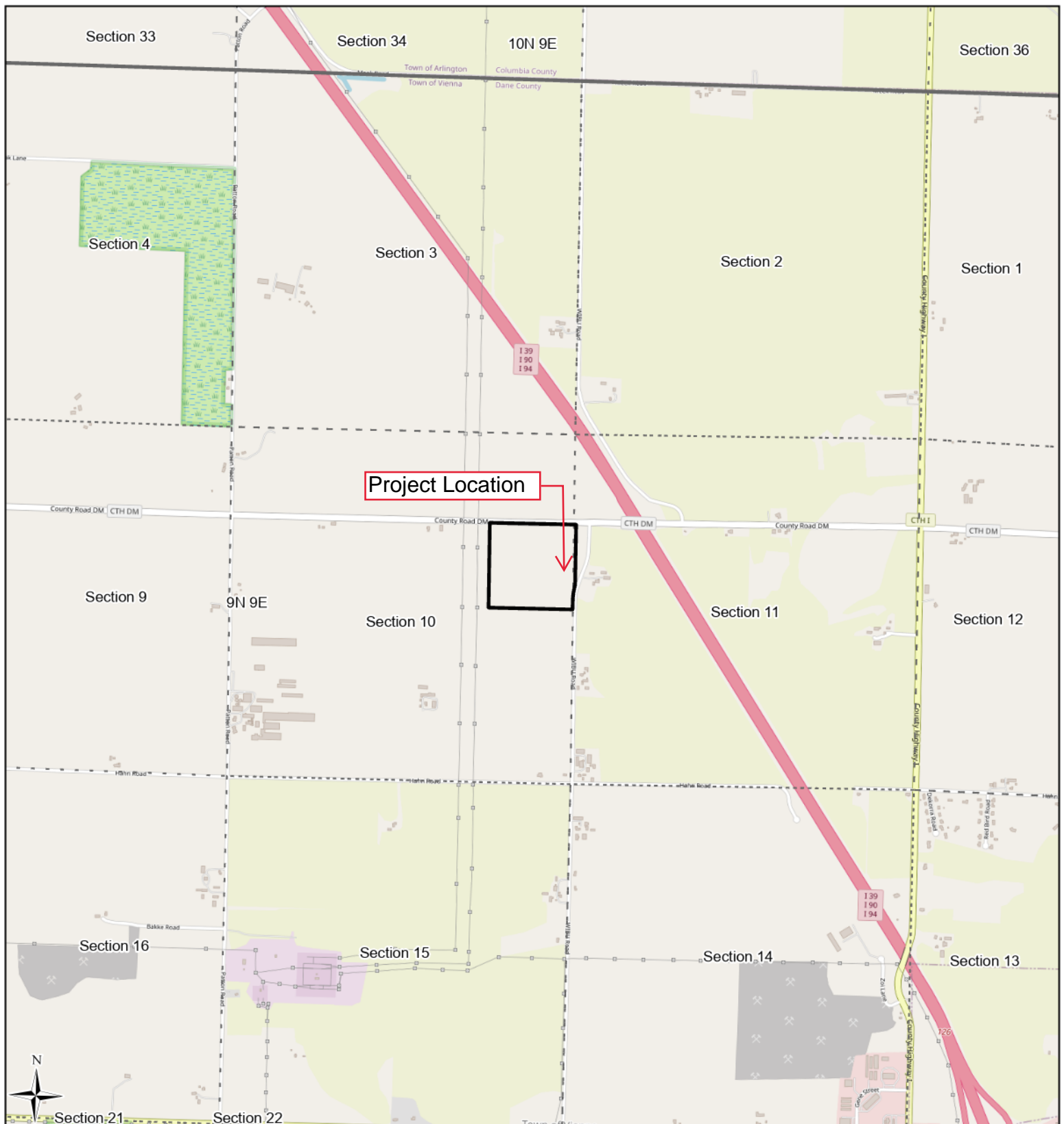
Wetland Label

PC/NW

WI Sections

This certified wetland determination has been conducted for the purpose of implementing the wetland conservation provisions of the Food Security Act of 1985, as amended. No determination is made or implied in the unlabeled portions of the map. If land manipulations are planned in unlabeled areas which do not have previous determinations, a new determination should be requested.





- Study Area (38.58 ac)
- Township
- Section

0 1,000 2,000
Ft

Heartland
ECOLOGICAL GROUP INC

Figure 1. Project Location

Blue Star Dairy Farm
Project # 20241196
T9N, R9E, S10
T Vienna, Dane Co

OpenStreetMap
ESRI

LRR: NCNE

Figure Created: 2/14/2024

Farm: 23111

Tract: 16393

Geographic County: Dane

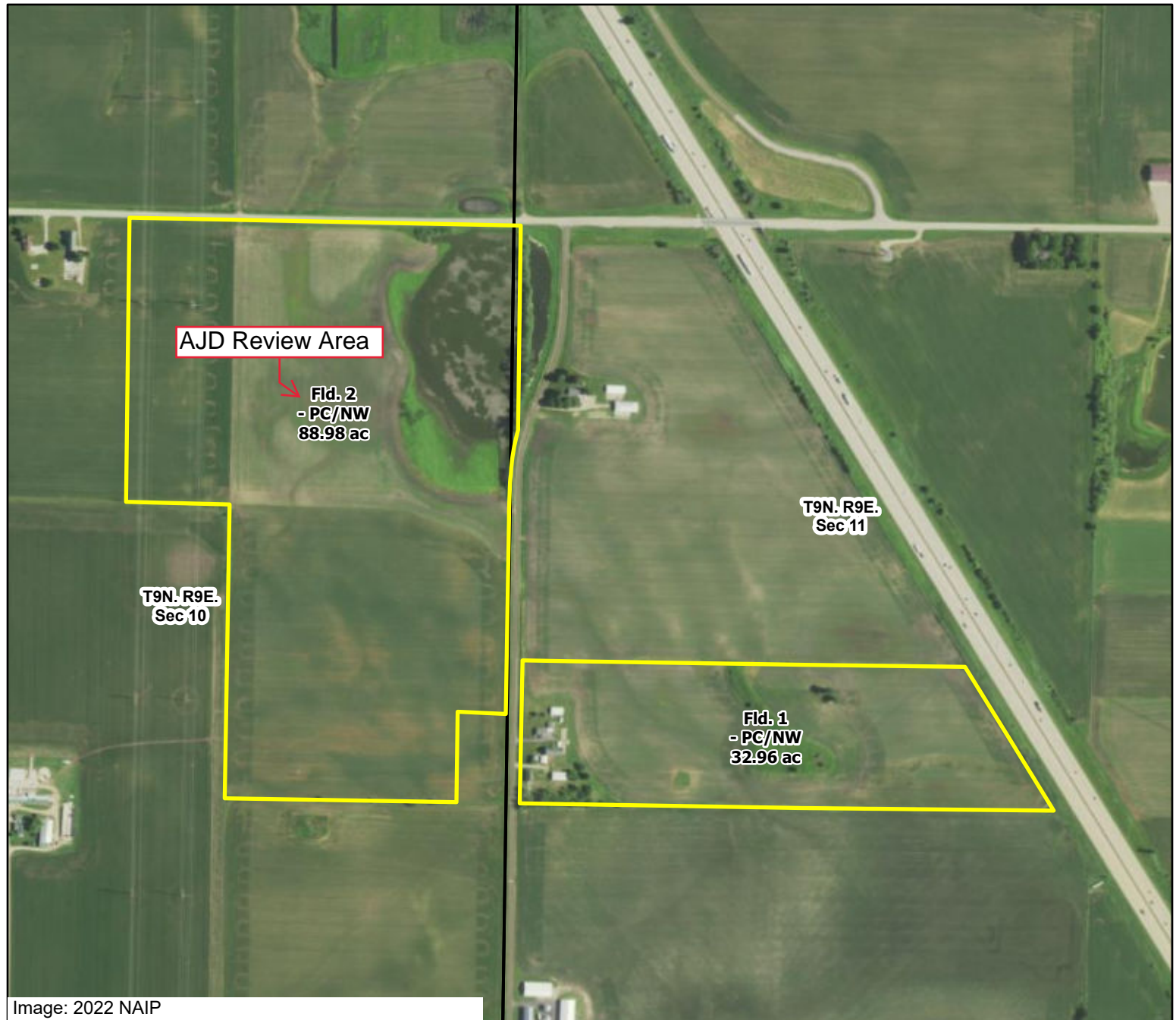
Administrative County: Dane

Customer: Blue Star Dairy Farm Partnership

Wetland Determination



Map Creation Date: 9/15/2023



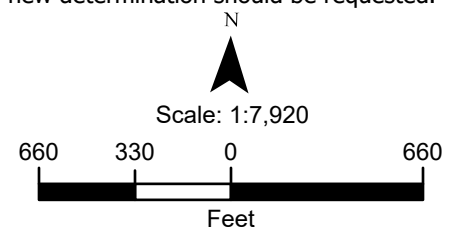
Site_CWD

Wetland Label

PC/NW

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United States
Department of
Agriculture

Dane County, Wisconsin

Entire Tract: IR / NI GR / FG unless
Name/Shares: _____ otherwise
labeled

Farm 23111

Tract 16393

2023 Program Year

CLU	Acres	HEL	Crop
1	49.32	UHEL	
2	36.68	UHEL	
3	27.3	UHEL	
5	3.88	UHEL	NC
6	1.79	UHEL	NC
7	2.98	UHEL	NC

Page Cropland Total: 113.3 acres



Map Created March 03, 2023

Common Land Unit

- Cropland
- Non-Cropland
- Tract Boundary
- PLSS

NAIP Imagery 2022

Wetland Determination

- Restricted Use
- Limited Restrictions
- Exempt from Conservation Compliance Provisions

USDA FSA maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or the NAIP imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. The USDA Farm Service Agency assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact NRCS.

Farm: 23111

Tract: 16393

Geographic County: Dane

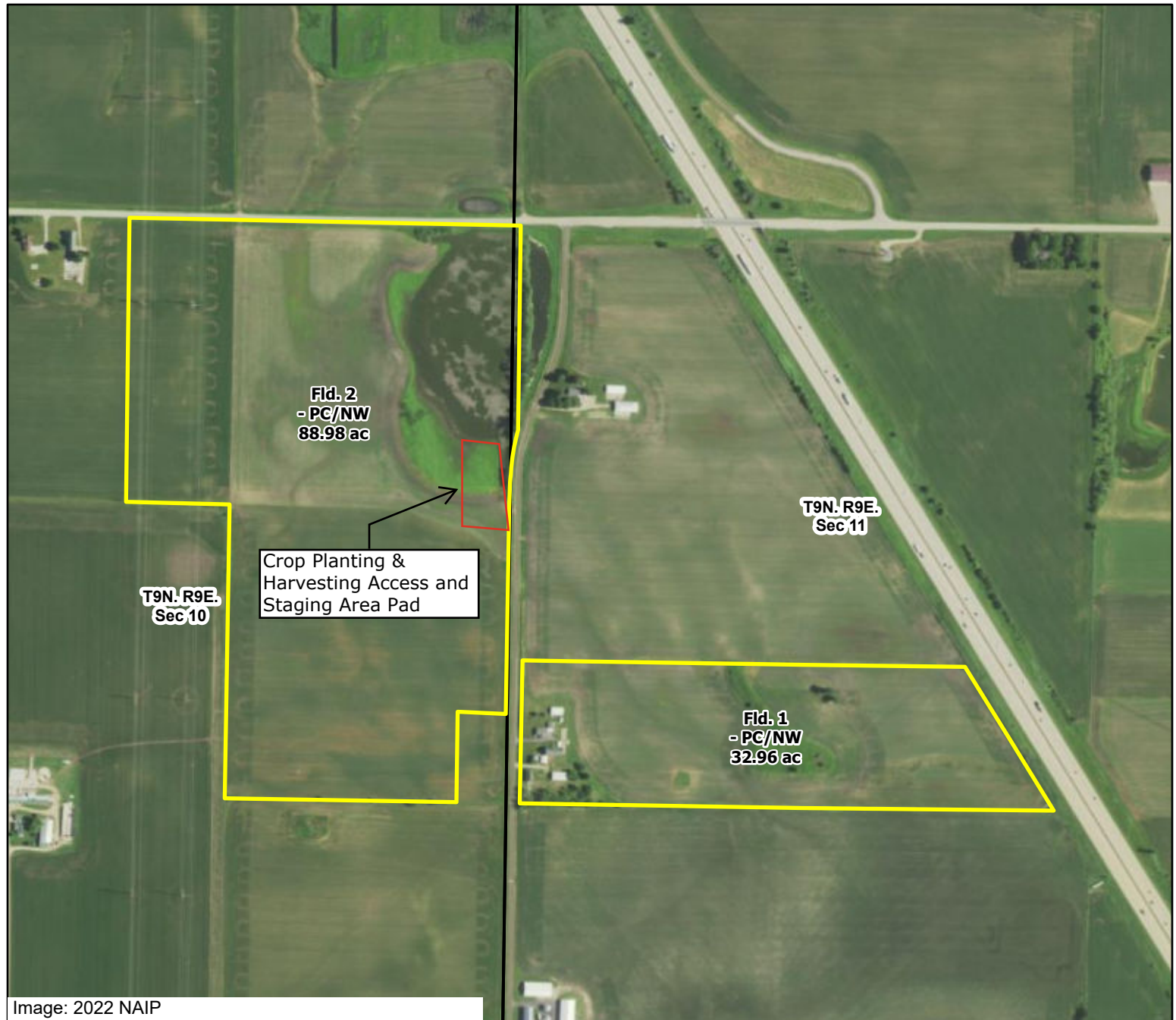
Administrative County: Dane

Customer: Blue Star Dairy Farm Partnership

Wetland Determination



Map Creation Date: 9/15/2023



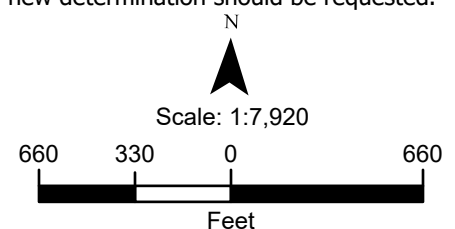
Site_CWD

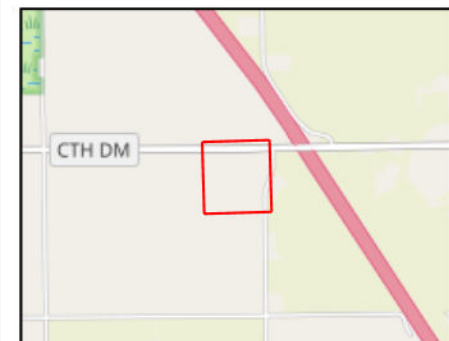
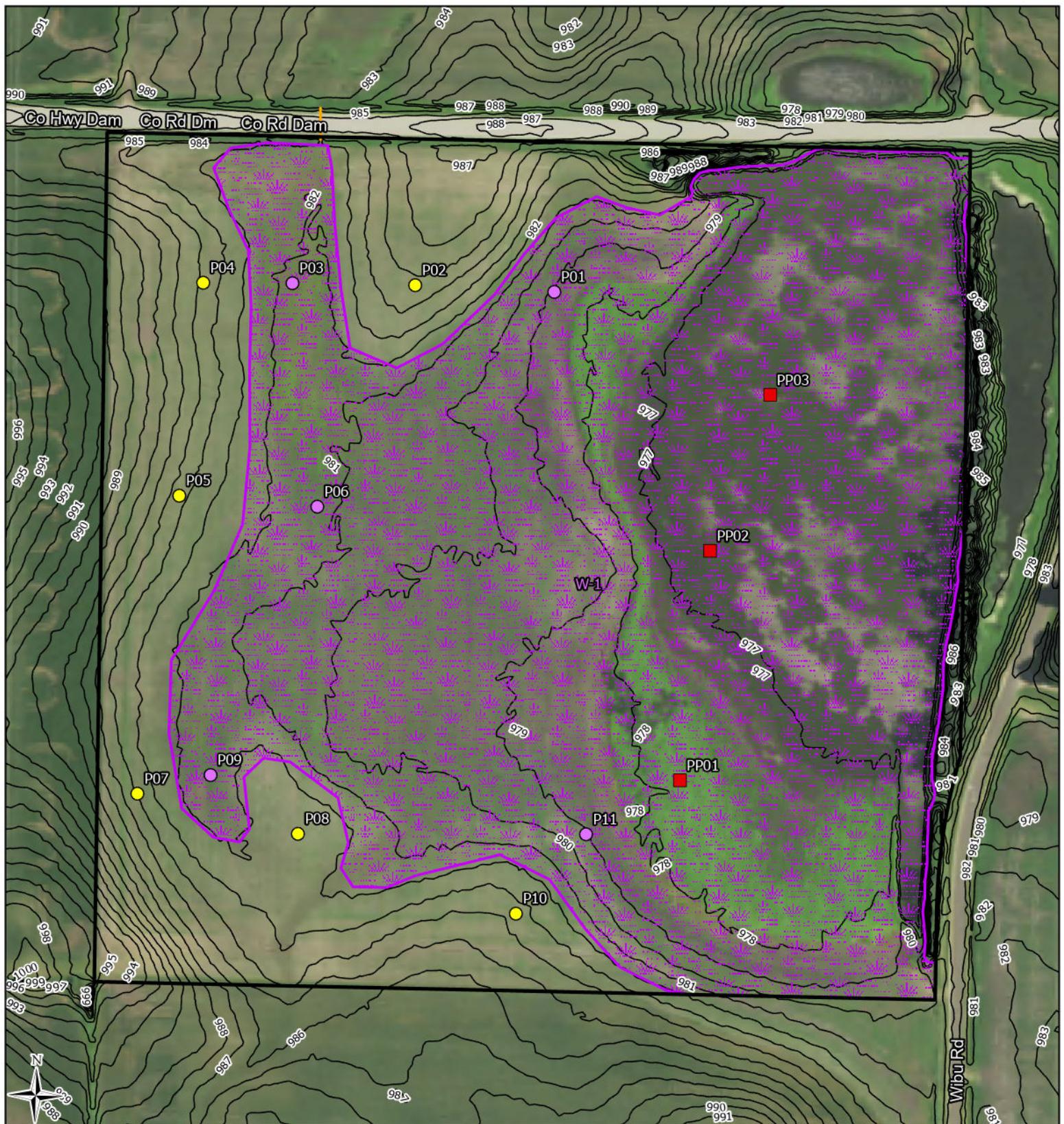
Wetland Label

PC/NW

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- Study Area (38.58 ac)
 - ~ Dane Co 1' Contours
 - Photo Point Locations
 - Wetlands Delineated Via Offsite Methods (27.29 ac)
- Sample Points**
- Upland
 - Wetland

0 200 Ft

Heartland
ECOLOGICAL GROUP INC

Figure 7. Wetlands
Delineated via Offsite
Methods

Blue Star Dairy Farm
Project #20241196
T9N, R9E, S10
T Vienna, Dane Co

2022 NAIP
Dane Co, HEG

LRR: NCNE

Figure Created: 3/21/2024