



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

CEMVP-RD

23 APR 2026

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-2025-00664 MFR 1 of 1.

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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- 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. Offsite W-2 (1.89 acres); non-jurisdictional
 - II. Wetland 1 (303 sf) 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. 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.

The review area is approximately 1.57- acres and is identified by the polygon on the attached Figure 2. The review area is located in Section 33, Township 8N, Range 11 East the center coordinates (in decimal degrees) of Latitude: 43.11477 and Longitude: -89.19898 located on the west side of CTH N right-of-way, Village of Cottage Grove, Dane County, Wisconsin. An AJD review (2019-01955-SJW) for Off-site W-2 was completed November 22, 2019, listing the aquatic resource as isolated.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁵

⁵ 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.

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

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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 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).

Off-site W- 2 was identified in the August 2019 Heartland Delineation Report as a mesic woodland associated with an eroded intermittent drainageway that transitions to a shallow marsh at the lower reaches. The shallow marsh portion of the wetland was typically farmed in row crop when conditions allow. The boundaries of the report that are within this review area have been determined to be accurate for this AJD. Off-site W-2 drains to the east.

Wetland 1 was identified as a ruderal wet meadow wetland in the revised January 2026 Hey and Associates, Inc. Assured Wetland Delineation Report. Wetland 1 appears to be originally designed as a drainage ditch along CTH N that received runoff from the south but met all three parameters to be identified as a wetland. Wetland 1 drains east to a culvert under CTH N. The Off-site W-2 and Wetland 1 are adjacent to each other but are separated by an upland strip.

The wetlands are not TNWs, territorial seas, or interstate waters and therefore are not category (a)(1) waters. None of the wetlands have a continuous surface connection to jurisdictional waterways or WOUS. They 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

⁸ 88 FR 3004 (January 18, 2023)

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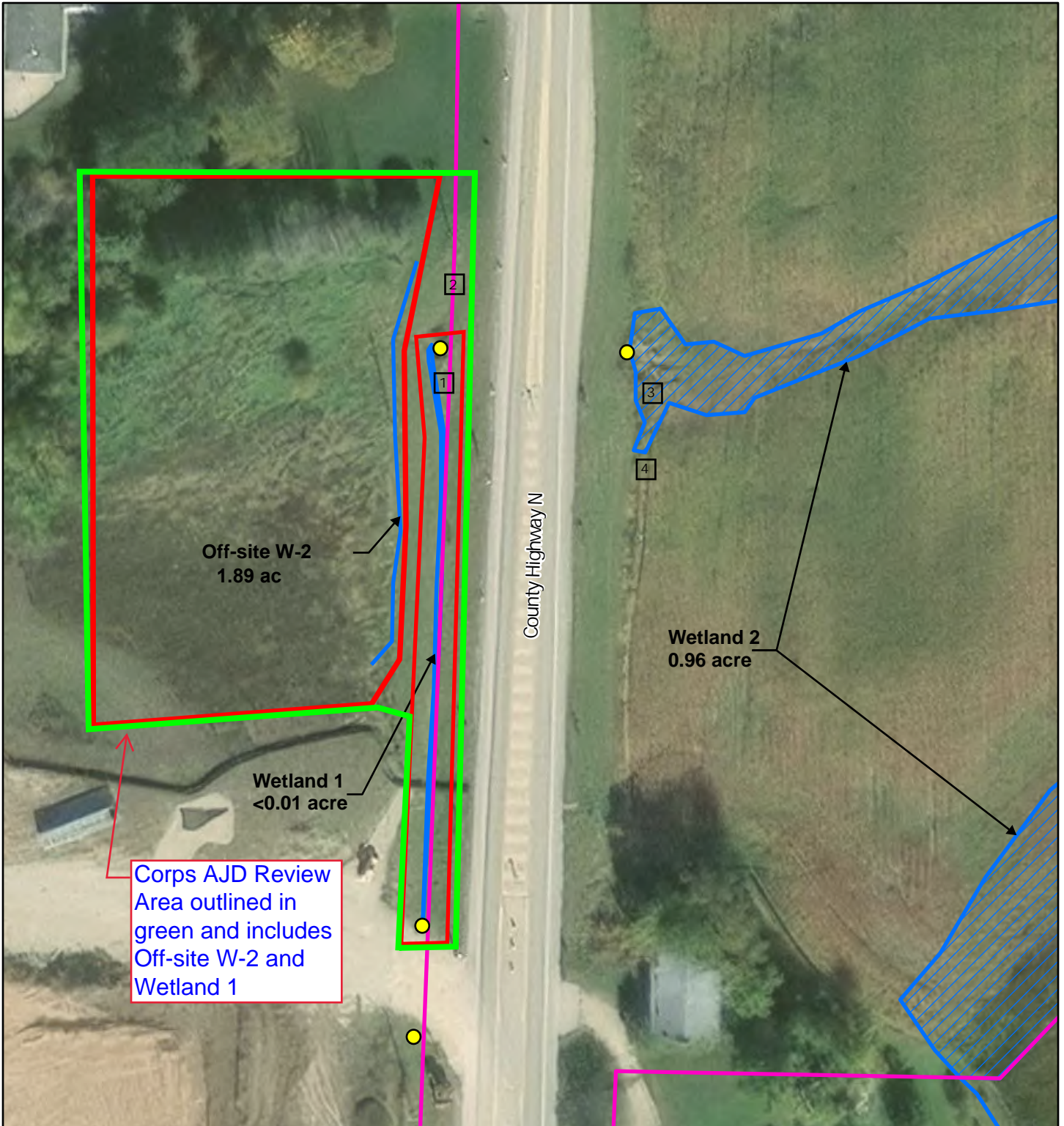
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00664

landform. As non-tidal wetlands that do not have continuous surface connection to a relatively permanent jurisdictional water, Off-site W-2 and Wetland 1 do not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetlands; therefore, they 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. An office evaluation was conducted on April 22, 2026.
 - b. Wetland Delineation Reports from Hey and Associates, Inc (revised), dated January 23, 2026, and Heartland Ecological Group, Inc report dated August 30, 2019, which included the following maps: USGS Topographic Map, National Wetland Inventory, Wisconsin Wetland Inventory, NRCS Walworth Co. Soil Survey. Other reference materials/methods included in the report were aerial and site photos, the Wisconsin Historic Aerial Imagery Finder, the U.S. Geological Survey, National Hydrology Dataset, the USACE Antecedent Precipitation Tool (APT), Midwestern Regional Climate Center. (2014), and the National Oceanic and Atmospheric Administration (NOAA).
 - a. The Army Corps of Engineers 1987 Manual as well as the Midwest Regional Supplement. The NRCS Field Indicators of Hydric Soils in the US. The 2016 National Wetland Plant List.

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.



Scale:



Project Number: 25-0103

Prepared by:

Orientation:



Date: 11/12/2025

Legend:

- Project Boundary
- Surveyed Wetland Boundary
- Of-site Surveyed Wetland
- Data Point Location
- Culvert Location

Project Name:

CTH N & CTH TT - Cottage Grove

Prepared for:

Pinnacle Engineering Group

Aerial Date:

2024

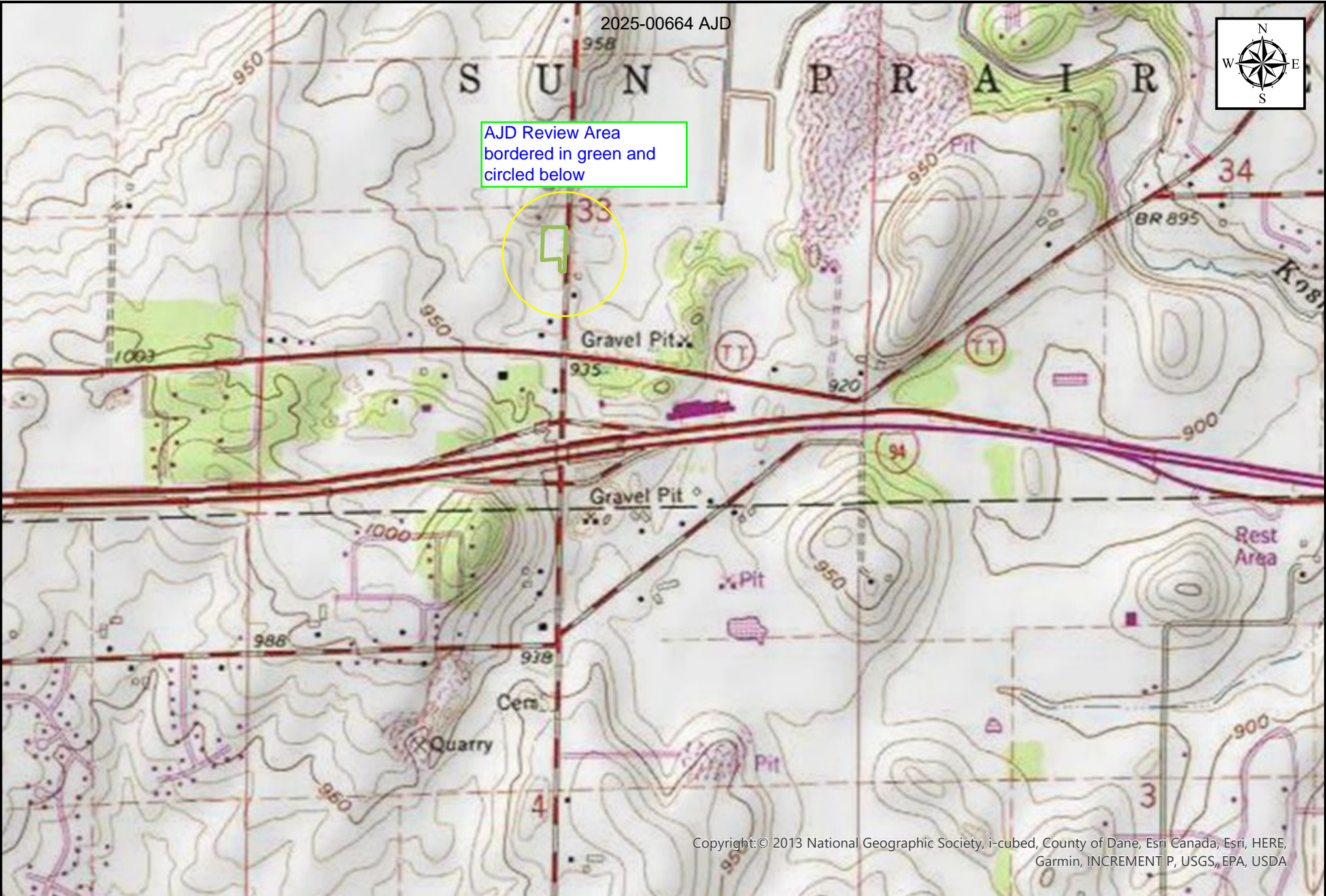
Exhibit Title:

Surveyed Wetland Boundaries 7A
(North)

Exhibit:



AJD Review Area
bordered in green and
circled below

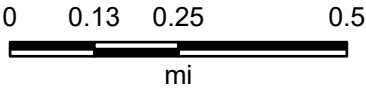


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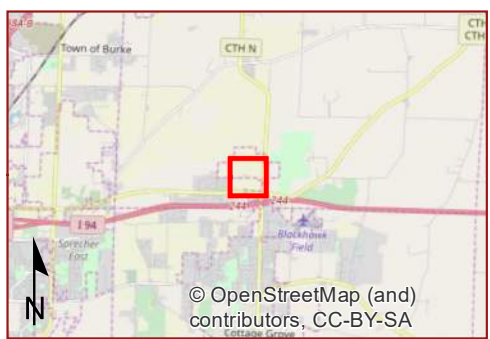






Map Center: 89.19589°W 43.109688°N

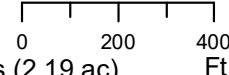
Map Created by: KME

Date: 4/22/2026

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere



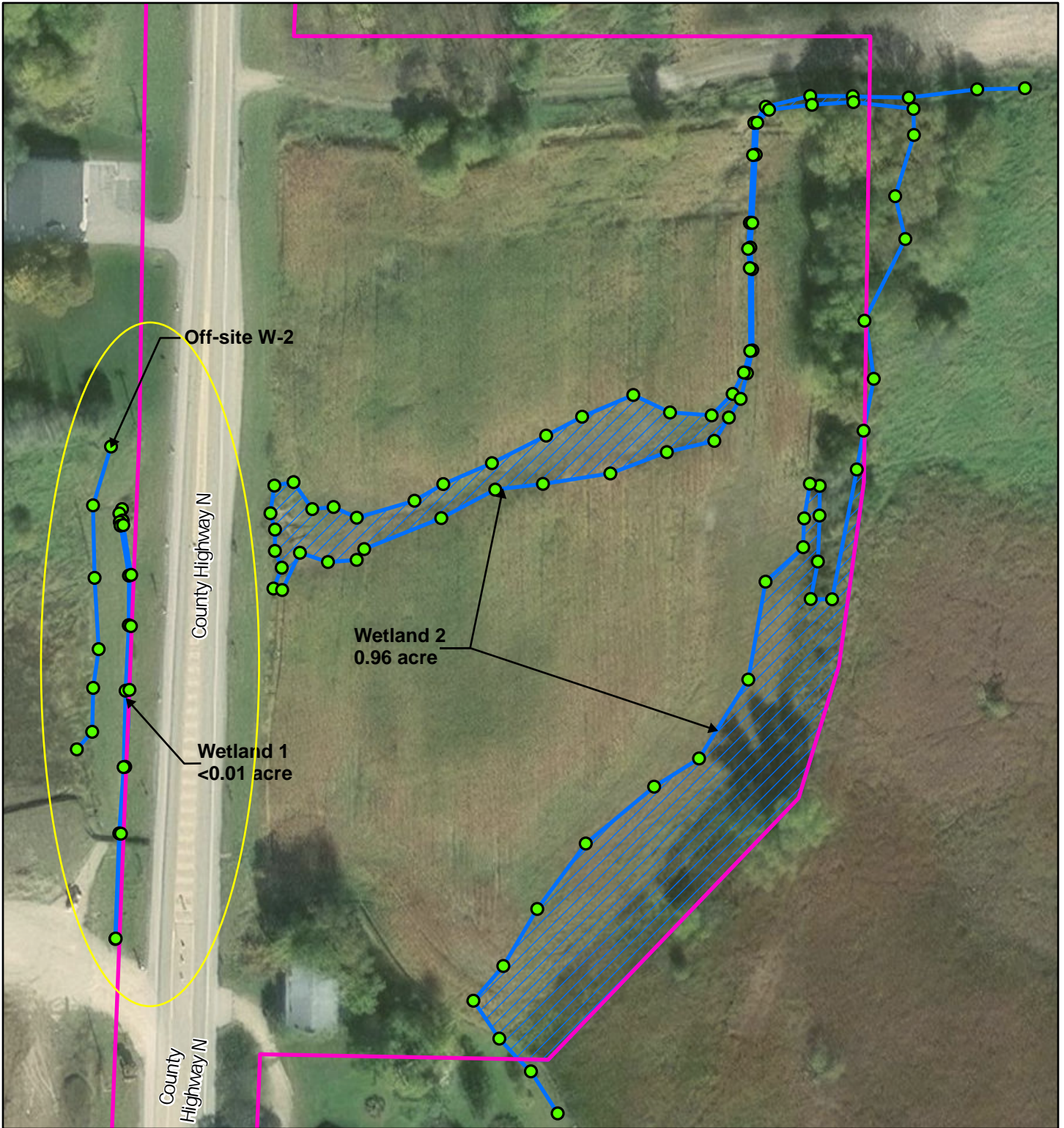
-  Study Area (126.97 ac)
-  Field Delineated Wetlands (2.19 ac)
- Sample Points**
-  Upland
-  Wetland



Heartland
 ECOLOGICAL GROUP INC

Figure 6. Field Delineated Wetlands
 Cottage Grove Business Park
 Project #20190230
 T8N, R11E, S33
 T Sun Prairie / V C. Grove
 Dane Co, WI

2018 NAIP
 Data: Dane Co, HEG 8/16/2019



Scale:



Project Number: 25-0103

Prepared by:

Orientation:



Date: 11/12/2025

Legend:

- Project Boundary
- Surveyed Wetland Boundary
- Of-site Surveyed Wetland
- 25-0103 WL Flags

Project Name:

CTH N & CTH TT - Cottage Grove

Prepared for:

Pinnacle Engineering Group

Aerial Date:

2024

Exhibit Title:

Surveyed Wetland Boundaries 7C

Exhibit: