



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

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-2025-00928-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.

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00928-CJB

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
Wetland 1	Non-Jurisdictional	N/A
Wetland 2	Non-Jurisdictional	N/A
Wetland 3	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): 51
- b. Location Description: The project/review area is located in Section 14, Township 24N, Range 21E, Brown County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.550358 Longitude: -87.911511
- d. Nearest City or Town: Green Bay
- e. County: Brown
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

CEMVP-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00928-CJB

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,

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.

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

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 area for this JD contains three wetlands identified as Wetland 1, Wetland 2, and Wetland 3. Lake Michigan is located approximately 175 feet to the west of the review area and an unnamed tributary to Lake Michigan, generally flowing in the northern direction, is located along the eastern boundary of the review area. Wetlands 1, 2, & 3 were reviewed to determine if they would

⁹ 88 FR 3004 (January 18, 2023)

meet one or more categories of water of the United States under the 2023 Rule as amended.

Wetland 1 is located near the southeastern boundary of the review area. This wetland is bordered by an agricultural field to the west, residential homes to the south and east, and an access drive to the north. Based on review of LiDAR and contour maps, Wetland 1 gradually slopes to the north. A culvert drainage feature and access drive are located along the northern boundary of this wetland. This culvert appears to direct surface water under the access drive north towards an unnamed tributary approximately 70 feet to the northeast of Wetland 1. We have determined that the culvert is a non-jurisdictional feature because an ordinary high-water mark of a relatively permanent water does not extend through the culvert to touch Wetland 1 based on review of current and historic aerial photos. Additionally, it was determined the access drive does not divide Wetland 1 and another wetland because of a distinct change in elevation north of the access drive as seen in LiDAR and contour maps and no wetlands were identified adjacent to the north side of the access drive within the National Wetland Inventory or the Wisconsin Wetland Inventory layers. Therefore, Wetland 1 does not abut a jurisdictional water and does not meet the continuous surface connection requirement.

Wetlands 2 & 3 are located within the southeast portion of the review area. These wetlands are depressional wetlands surrounded by uplands and are entirely within the delineated area according to the wetland delineation report. The National Wetland Inventory layer within the National Regulatory Viewer does not indicate the presence of wetlands where Wetlands 2 and 3 are located. According to LiDAR consisting of Hillshade and DEM layers, there are no indications of discrete drainage features near these wetlands. Therefore, Wetlands 2 and 3 do not abut a jurisdictional water and do not meet the continuous surface connection requirement.

Wetlands 1, 2, and 3 are not traditional navigable waters, territorial seas, or interstate waters and therefore are not (a)(1) waters. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetlands 1, 2, and 3 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 1, 2, and 3 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).

CEMVP-RD

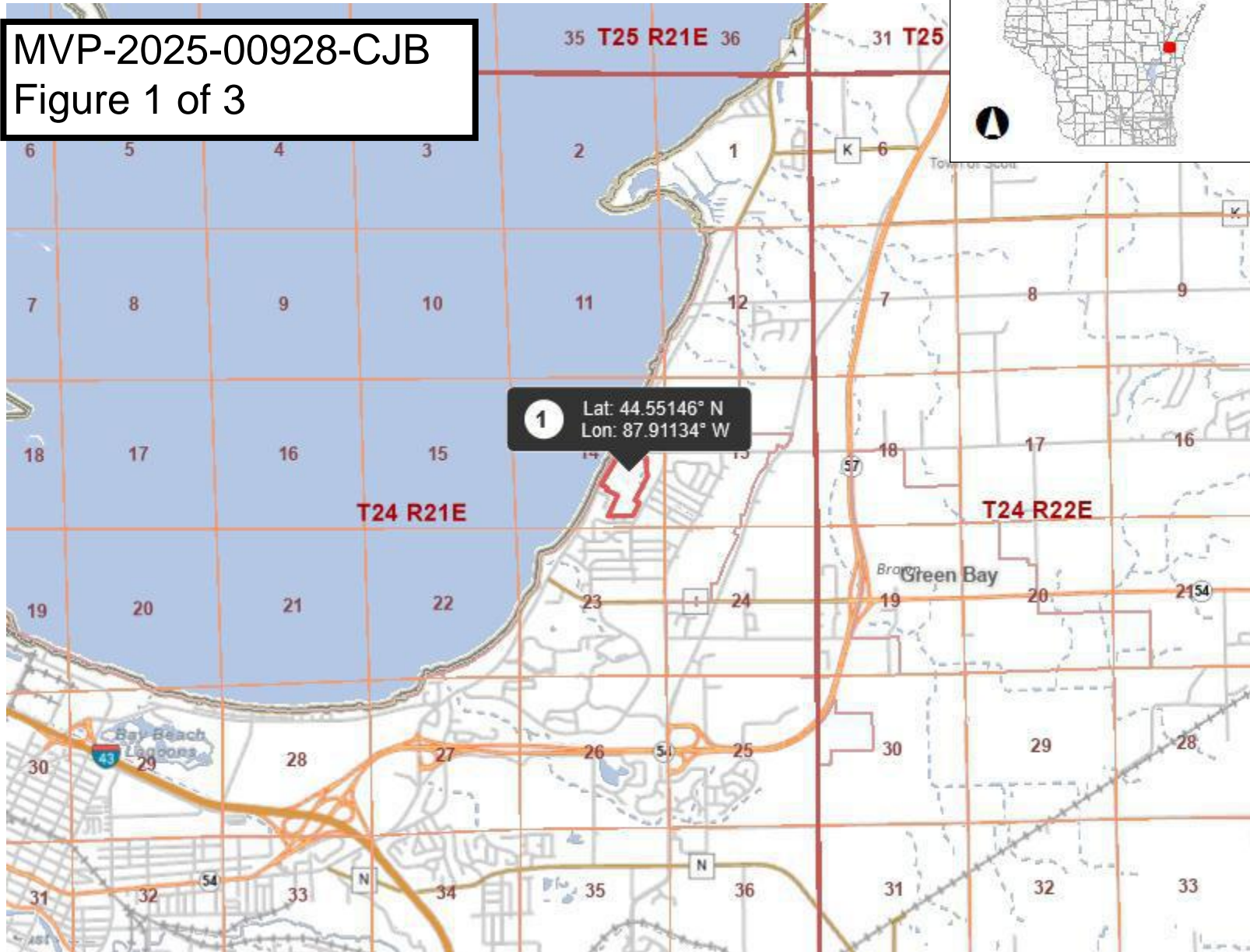
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00928-CJB

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 conducted on November 13, 2025
 - b. Wetland Delineation Report, completed by Davel Engineering & Environmental, Inc., dated June 26, 2025
 - c. National Regulatory Viewer, Layers consisting of DEM, Hillshade, National Wetland Inventory, and current WIDNR Imagery, accessed November 13, 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.

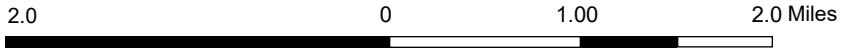


Surface Water Data Viewer Map

MVP-2025-00928-CJB
Figure 1 of 3



- Legend**
- Township
 - Section
 - County Boundary
 - Cities, Towns & Villages
 - City
 - Village
 - Civil Town
 - Municipality
 - State Boundaries
 - County Boundaries
 - Major Roads**
 - Interstate Highway
 - State Highway
 - US Highway
 - County and Local Roads**
 - County HWY
 - Local Road
 - Railroads
 - Tribal Lands
 - Rivers and Streams
 - Intermittent Streams
 - Lakes and Open water



NAD_1983_HARN_Wisconsin_TM

1: 63,360

DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <http://dnr.wi.gov/legal/>

Notes

Wetland Delineation Map

Nicolet Heights

Part of Sec. 14, T24N, R21E, City of Green Bay, Brown County, WI

For: Apple Tree - Jason Mroz

September 2024 "Wet" 3mo. AP

MVP-2025-00928-CJB

Figure 2 of 3



AJD Review Area
Outlined in Red

Wetland 2
1751.9 +/- ft²
0.040 +/- ac

Wetland 1
26122.6 +/- ft²
0.471 +/- ac

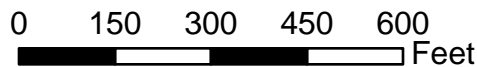
Wetland 3
2734.5 +/- ft²
0.063 +/- ac

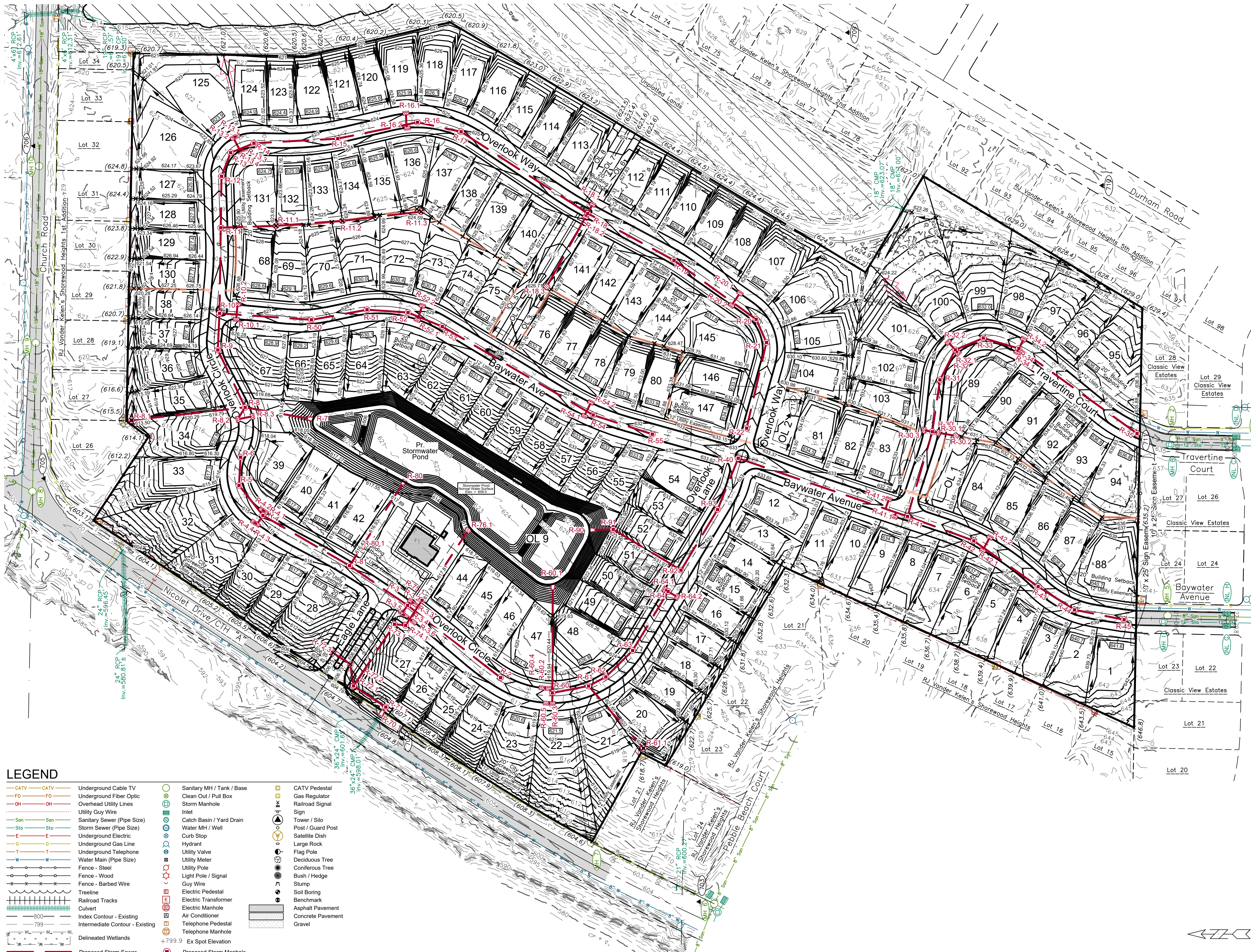
The project scope limits shown on this map is not intended to be the parcel boundary

Legend

- Project Scope
- Wetland Boundary
- Test Plot

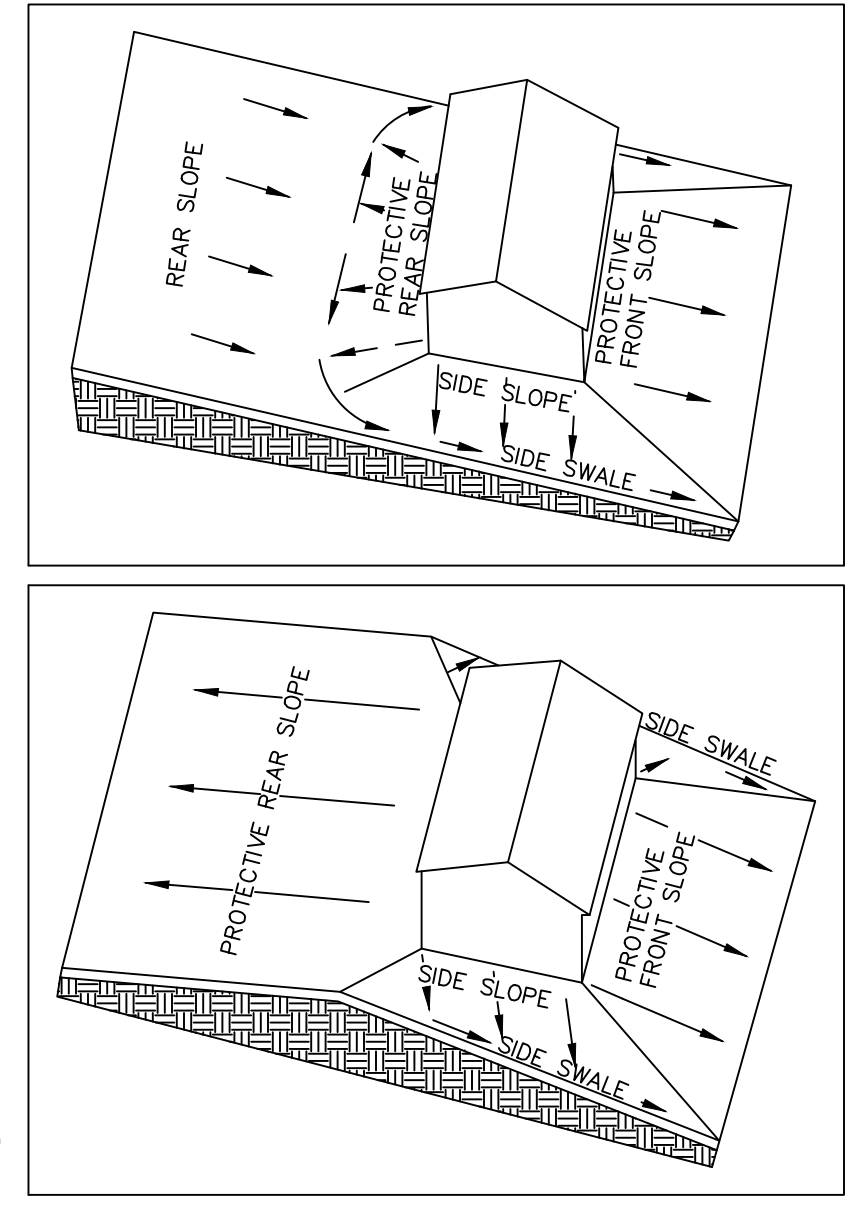
DAVEL ENGINEERING & ENVIRONMENTAL, INC.
Civil Engineers and Land Surveyors
1164 Province Terrace, Menasha, WI 54952
Ph: 920-991-1866 Fax: 920-441-0804
www.davel.pro





LEGEND	
— CATV	Underground Cable TV
— FO	Underground Fiber Optic
— OH	Overhead Utility Lines
— UGW	Utility Guy Wire
— SS	Sanitary Sewer (Pipe Size)
— STS	Storm Sewer (Pipe Size)
— E	Underground Electric
— G	Underground Gas Line
— T	Underground Telephone
— WM	Water Main (Pipe Size)
— F-Steel	Fence - Steel
— F-Wood	Fence - Wood
— F-Barbed	Fence - Barbed Wire
— Treeline	Treeline
— RR	Railroad Tracks
— Culvert	Culvert
— 800	Index Contour - Existing
— 799	Intermediate Contour - Existing
— Dotted	Delineated Wetlands
— 608	Proposed Storm Sewer
— Dashed	Proposed Contour
— Solid	Proposed Swale
— Dashed	Proposed Culvert
— Dotted	Adjacent Plat Grade
— 608.73	Prop. Lot Corner Elevation
— 608.73	Proposed Spot Elevation
— 608.73	Existing Grade
— Circle	Sanitary MH / Tank / Base
— Square	Clean Out / Pull Box
— Triangle	Storm Manhole
— Diamond	Inlet
— Circle	Catch Basin / Yard Drain
— Square	Water MH / Well
— Triangle	Curb Stop
— Circle	Hydrant
— Square	Utility Valve
— Circle	Utility Meter
— Square	Utility Pole
— Circle	Light Pole / Signal
— Square	Guy Wire
— Circle	Electric Pedestal
— Square	Electric Transformer
— Circle	Electric Manhole
— Square	Air Conditioner
— Circle	Telephone Pedestal
— Square	Telephone Manhole
— Circle	Ex Spot Elevation
— Square	Proposed Storm Manhole
— Triangle	Proposed Curb Inlet
— Diamond	Prop. Catch Basin / Yard Drain
— Circle	Proposed Endwall
— Square	Proposed Rip Rap
— Circle	Prop. Drainage Direction
— Square	Prop. Garage Floor Grade at Door
— Triangle	Emergency Overflow for Runoff
— Square	CATV Pedestal
— Circle	Gas Regulator
— Triangle	Railroad Signal
— Square	Sign
— Circle	Tower / Silo
— Square	Post / Guard Post
— Circle	Satellite Dish
— Square	Large Rock
— Circle	Flag Pole
— Square	Utility Meter
— Circle	Coniferous Tree
— Square	Bush / Hedge
— Circle	Slump
— Square	Soil Boring
— Circle	Benchmark
— Square	Asphalt Pavement
— Circle	Concrete Pavement
— Square	Gravel

MVP-2025-00928-CJB Figure 3 of 3



HOUSE ELEVATIONS:

The house elevations shall be set to provide positive drainage away from the building in all directions as shown in the above details. House elevations and driveway locations may need to vary depending on size, location, and architecture of the home. Changes to the grading plan or house elevations can be allowed only if an individual lot grading plan is prepared by a professional engineer.

- NOTES:**
- Existing utilities shown are indicated in accordance with available records and field measurements. The contractor shall be responsible for obtaining exact locations & elevations of all utilities, including sewer and water from the owners of the respective utilities. All utility owners shall be notified by the contractor 72 hours prior to excavation. Contact Digger's Hotline (1-800-242-8511) for exact utility locations.
 - 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 minimize the area disturbed by construction as the project is constructed. Disturbed areas shall be seeded as soon as final grade is established. Contractor shall replace topsoil and then seed, fertilize and mulch all lawn areas within 1 week of topsoil placement.
 - Contractor shall remove all excess materials from the site. Earthwork contractors shall verify topsoil depth.
 - Barina Creek flood elevation is 621.2 per FEMA map no. 5500220191.

