



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

October 8, 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-2025-01010-JMB MFR 1-1.

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.<sup>2</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>3</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>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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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- 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. Wetland Area 1 (630 square feet); non-jurisdictional

- ii. Wetland Area 2 (6,341 square feet); non-jurisdictional

- iii. Wetland Area 3 (811 square feet); 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.

- a. Project Are Size (in acres): 0.60 acres
- b. Location Description: The project/review area is located in Section 31, Township 032N, Range 006E, Lincoln County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 45.210840 Longitude: -89.783600
- d. Nearest City or Town: Merrill
- e. County: Lincoln
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</sup>  
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

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<sup>5</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>6</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.

- 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>7</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).

Wetland Area 1 (630 square feet), Wetland Area 2 (6,341 square feet), and Wetland Area 3 (811 square feet) are not a TNW, territorial sea, or interstate water and therefore are not an (a)(1) water. Topographic maps w/Lidar and Google Earth aerial imagery indicate that Wetland Areas 1, 2, and 3 are depressional wetlands, surrounded by upland. The 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. The wetlands are located approximately 0.5 miles south of the Wisconsin River, the nearest Relatively Permanent Water (RPW) located north of the review area. However, there are no ditches, swales, pipes, or culverts that connect these wetlands to a downstream jurisdictional water. The wetlands are nontidal and do not have a continuous surface connection to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as a (a)(4) adjacent wetland; therefore, Wetland Areas 1, 2, and 3 are not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

Wetland Areas 1, 2, and 3 all extend beyond the review area, but they were confirmed by the consultant to be enclosed depressions on the landscape, located between Von Besser Road to the north and Edward Drive to the south, that do not have a continuous surface connection to any relatively permanent jurisdictional water, and are not jurisdictional.

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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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. Wetland Delineation Report from Star Environmental, Inc. (dated September 2025)
  - b. LiDAR 2' contours – Lincoln County (included with Wetland Delineation Report)
  - c. Wisconsin Wetland Inventory Map (dated September 2025)
  - d. Offsite aerial imagery review from Google Earth (dated 1938, 1952, 1970, 1980, 1992, 2001, 2004, 2005, 2008, 2010, 2013, 2015, 2020, 2021, and 2023)
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.





## Location Map

Author:

Date Printed: 7/29/2025



The information depicted on this map is a compilation of public record information including aerial photography and other base maps. No warranty is made, express or implied, as to the accuracy of the information used. The data layers are a representation of current data to the best of our knowledge and may contain errors. It is not a legally recorded map and cannot be substituted for field-verified information. Errors should be reported to the Land Services Department, 801 North Sales St, Merrill, WI, 54452. Phone (715) 539-1087.

Figure 1





- Legend:** (some map layers may not be displayed)
- Maximum Extent Wetland Indicators
  - Wetland Class Points
  - Wetland too small to delineate
  - Wisconsin Leaf-Off Digital Orthophotography
  - Red: Band\_1
  - Green: Band\_2
  - Blue: Band\_3

**Notes:**

Figure 4



Service Layer Credits:  
WI Wetland Inventory (12920 and below): Calvin Lawrence, Dennis Weise, Nina Rihn, Wisconsin Leaf-Off Digital Orthophotography. Wetland Indicators: Surface Water Data Viewer Team

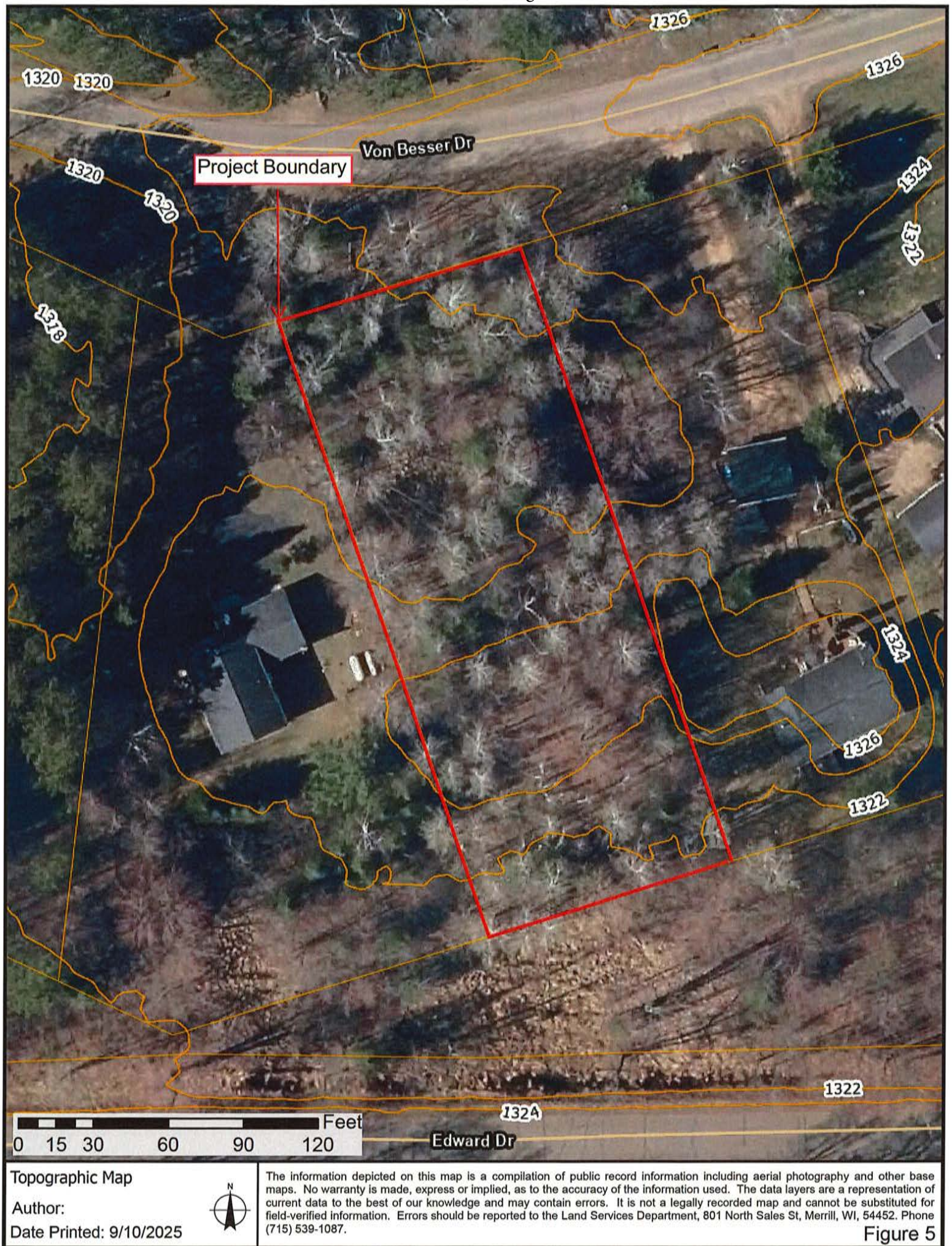
Map projection: NAD 1983 HARN Wisconsin TM

Map: 0 60 120 Feet  
0 10 20 Meters

This map is a product generated by a DNR web mapping application.  
This map is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. The user is solely responsible for verifying the accuracy of information before using for any purpose. By using this product for any purpose user agrees to be bound by all disclaimers found here: <https://dnr.wisconsin.gov/legal>

Date Printed: 7/29/2025 8:13 AM

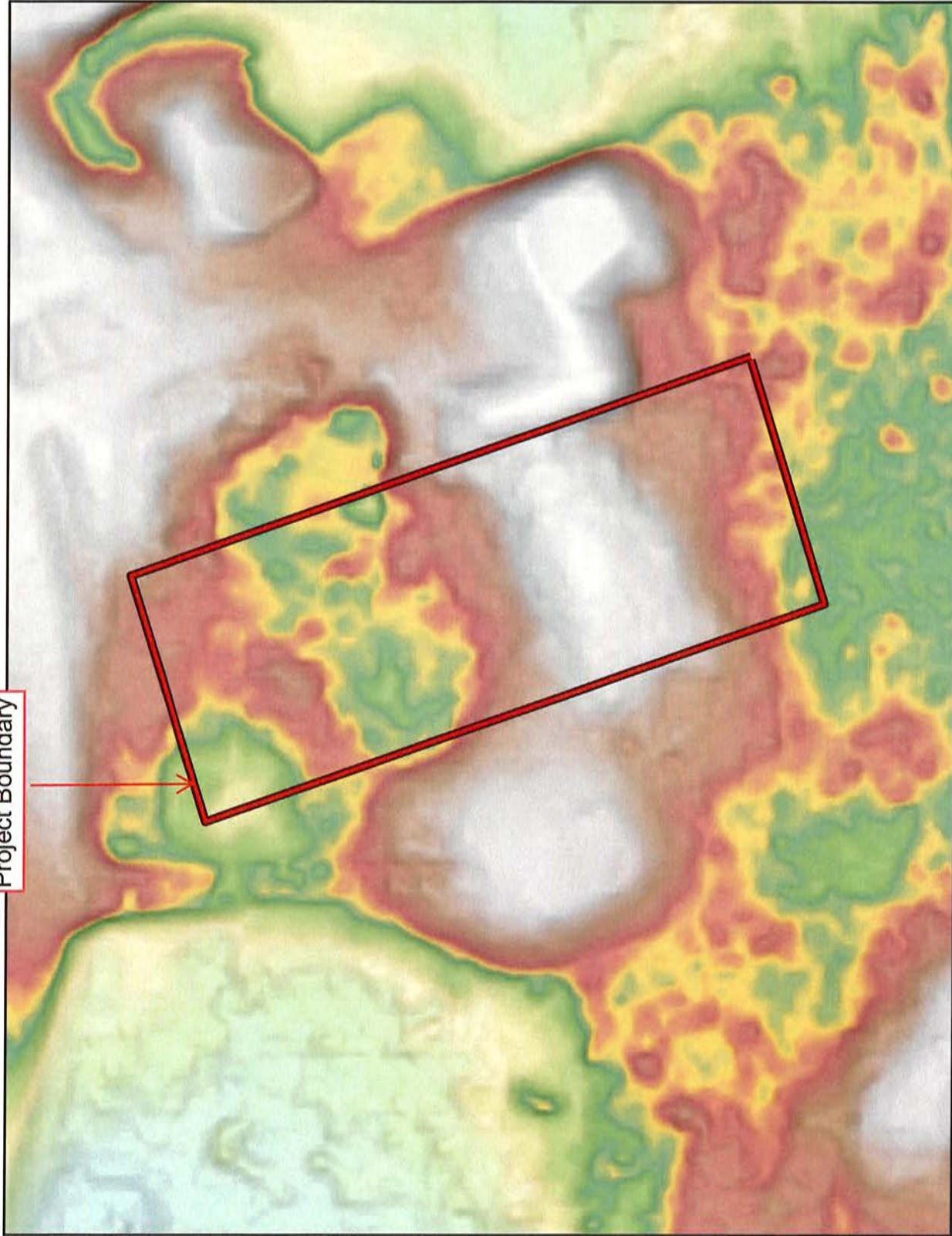








Project Boundary



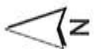
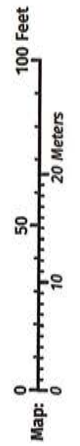
**Legend:** (some map layers may not be displayed)  
Wisconsin Leaf-Off Digital  
Orthophotography  
Red: Band\_1  
Green: Band\_2  
Blue: Band\_3

**Notes:**

Figure 6

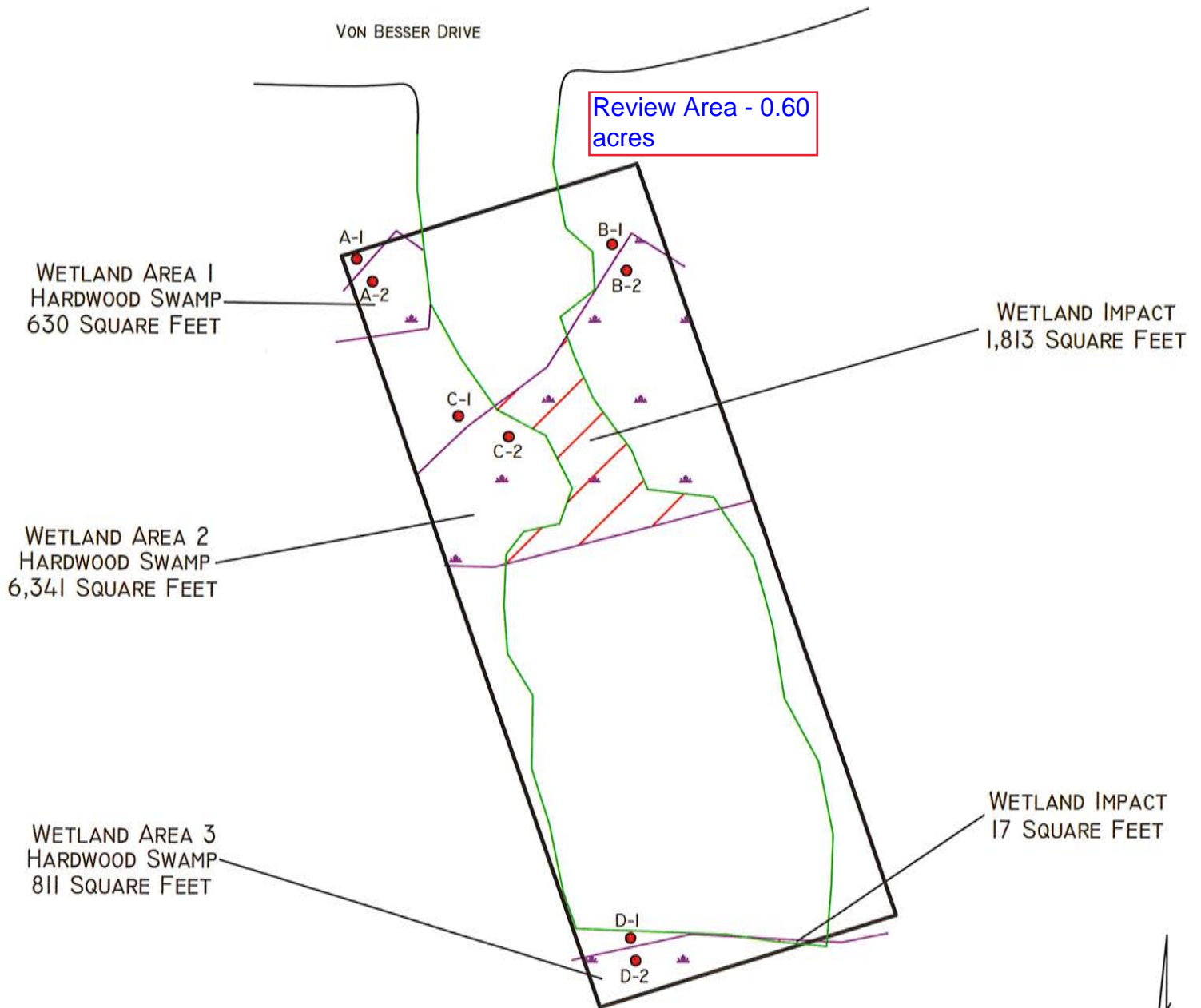


Map projection: NAD 1983 HARN Wisconsin TM  
Service Layer Credits:  
LIDAR Elevation: Wisconsin Leaf-Off Digital Orthophotography: LIDAR-derived Slope:



# WETLAND DELINEATION MAP

DEWAR PROPERTY LOCATED IN LOT 8, BLOCK 8, WEST ALEXANDER LAKE PLAT, SECTION 31  
TOWNSHIP 32 NORTH - RANGE 6 EAST, TOWNSHIP OF HARDING, LINCOLN COUNTY, WISCONSIN



SCALE: 1" = 50' UNLESS NOTED



NOT A CERTIFIED SURVEY MAP

## LEGEND:

- |                  |                |
|------------------|----------------|
| PROJECT BOUNDARY | RECENT FILL    |
| WETLAND BOUNDARY | WETLAND IMPACT |
| SAMPLE POINT     |                |

CREATED BY:



705 3RD STREET, PO Box 434  
MARATHON, WISCONSIN 54448  
PHONE: (715) 443-6115  
STARENVIRONMENTAL@HOTMAIL.COM





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