



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

MVP-R

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-2025-01142-RJH [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
Wetland 3	Non-Jurisdictional	NONE
Wetland 3: Upland Ditch	Non-Jurisdictional	NONE
Wetland 6	Non-Jurisdictional	NONE
Wetland 1	Non-Jurisdictional	NONE
Wetland 2	Non-Jurisdictional	NONE
Wetland 4	Non-Jurisdictional	NONE
Wetland 5	Non-Jurisdictional	NONE

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): 13.28
- b. Location Description: The project/review area is located in Section 06, Township 20, Range 19, Calumet County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)

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Latitude: 44.236370 Longitude: -88.280260

- d. Nearest City or Town: Darboy
 - e. County: Calumet
 - f. State: Wisconsin
 - g. Other associated Jurisdictional Determinations (including outcomes): NA
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [NA]⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [NA]
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.

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.

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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

- [Wetland 3 \(Upland Ditch\), non-jurisdictional](#)

[Based on evaluation of the available data, lack of wetland signatures in historical aeriels, and the lack of hydric soils surrounding the above listed wetland area, we have determined that portions of Wetland 3 \(871 linear feet\), as identified in the attached figures, is a ditch that was excavated wholly in and draining only dry land and does not carry a relatively permanent flow of water. In 2011, the entire site was graded to prepare the area for the construction of a new commercial building \(Banta Corporation\). The development was abandoned however, several features were constructed onsite including an upland ditch to convey excess surface water off site. The upland ditch connects Wetland 1 and Wetland 3 to an unnamed tributary to Kankapot Creek, a perennial water. The upland](#)

⁹ 88 FR 3004 (January 18, 2023)

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ditch serves as a grassed waterway and lacks bed and bank, OHWM characteristics, and therefore is not considered a surface connection.

The resource listed above is not jurisdictional under the 2023 Revised Definition of 'Waters of the United States': Conforming" 88 FR 61964 Final Rule.

- 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).

We have reviewed and evaluated the historical photography, Google Earth photography, soil mapping, and the information submitted by the applicant for the following wetlands:

- Wetland 1, non-jurisdictional
- Wetland 2, non-jurisdictional
- Wetland 3, non-jurisdictional
- Wetland 4, non-jurisdictional
- Wetland 5, non-jurisdictional
- Wetland 6, non-jurisdictional

Wetlands 2, 5, and 6 are depressional wet meadow wetlands located within an agricultural field. Based on LiDAR and aerial review, Wetlands 2, 5, and 6 are surrounded entirely by uplands, no discrete conveyance features are evident and do not abut any other waterbody. Wetland 4 is located along the west border of the review area and consists of the ROW ditch along Hwy 55. We have determined that the Wetland 4, the ROW ditch, is not a relatively permanent waters because it does not have an ordinary high-water mark, bed and bank, or flowing surface water. There is one mapped unnamed tributary to Kankapot Creek located approximately 1,124 linear feet East of Wetland 3. Wetlands 2, 4, 5, and 6 do not abut this tributary or any other relatively permanent water.

Wetland 1 and Wetland 3 are depressional wet meadow wetlands located within an agricultural field that appear to have been created due to the 2011 construction activities. Wetland 1 is connected to the excavated ditch portion of Wetland 3 via culvert. The excavated portion of Wetland 3 is a grassed waterway that appears to connect to an unnamed tributary to Kankapot Creek. The excavated ditch portion of Wetland 3 lacks bed and bank, OHWM characteristics, and therefore is not considered a surface connection between Wetlands 1 and 3

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to the unnamed tributary. In accordance with current WOTUS guidance and the U.S. Supreme Court decision in *Sackett v. EPA* (2023), manmade features such as roadside ditches or grassed waterways excavated in uplands, cannot serve as a continuous surface connection between wetlands and relatively permanent waters. The excavated portion of Wetland 3 is not a relatively permanent water and does not create a jurisdictional connection to any relatively permanent water.

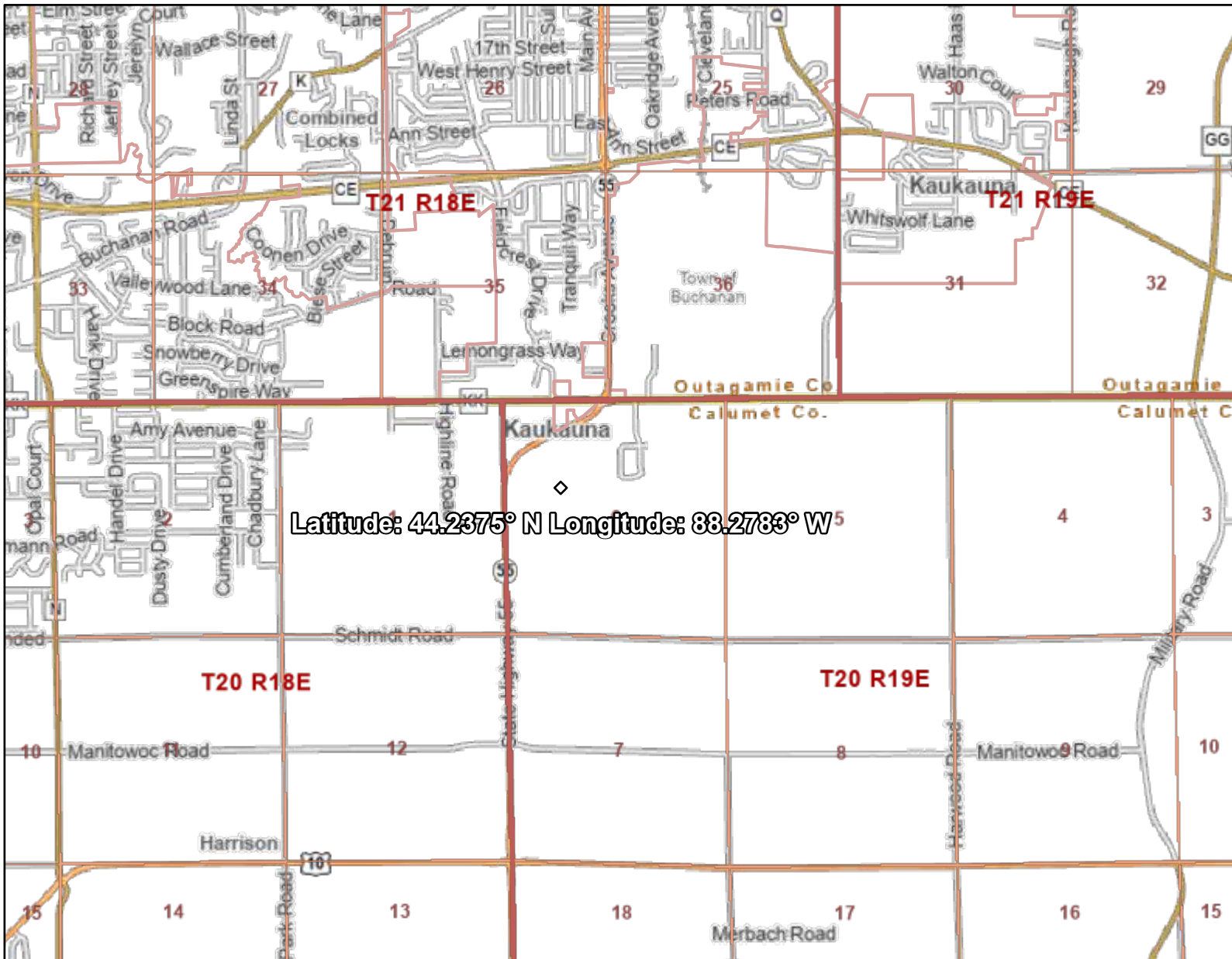
Wetlands 1 through 6 are not traditionally navigable waters (TNWs), territorial seas, or interstate waters, and do not meet the criteria for (a)(1) waters. Wetlands 1 through 6 do not physically abut a relatively permanent water, are not located within a paragraph (a)(2) impoundment, and are not adjacent to a jurisdictional (a)(3) tributary. As non-tidal wetlands that do not meet the definition of “adjacent,” Wetlands 1 through 6, cannot be evaluated under paragraph (a)(4). Therefore, under the 2023 Revised Definition of “Waters of the United States” (Conforming Rule, 88 FR 61964), Wetlands 1 through 6 are not considered jurisdictional.

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 December 03, 2025]
- b. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, Hillshade layer and DEM layer accessed on December 03, 2025.]
- c. [Wetland Delineation Report, prepared by Davel Engineering & Environmental dated September 2025]
- d. [Google Earth and Google Street View]

10. OTHER SUPPORTING INFORMATION. [N/A]

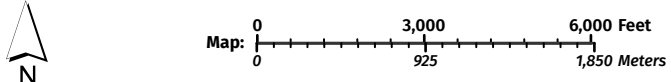
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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



Legend: (some map layers may not be displayed)

- Township
- Section
- Cities, Towns & Villages
- City
- Village
- Civil Town
- City or Village
- County Boundaries
- Major Roads
- State Highway
- US Highway
- County and Local Roads
- County HWY
- Local Road
- Railroads

Notes:



Service Layer Credits:
Cadastral, Cities, Roads & Boundaries:

Map projection: NAD 1983 HARN Wisconsin TM

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>

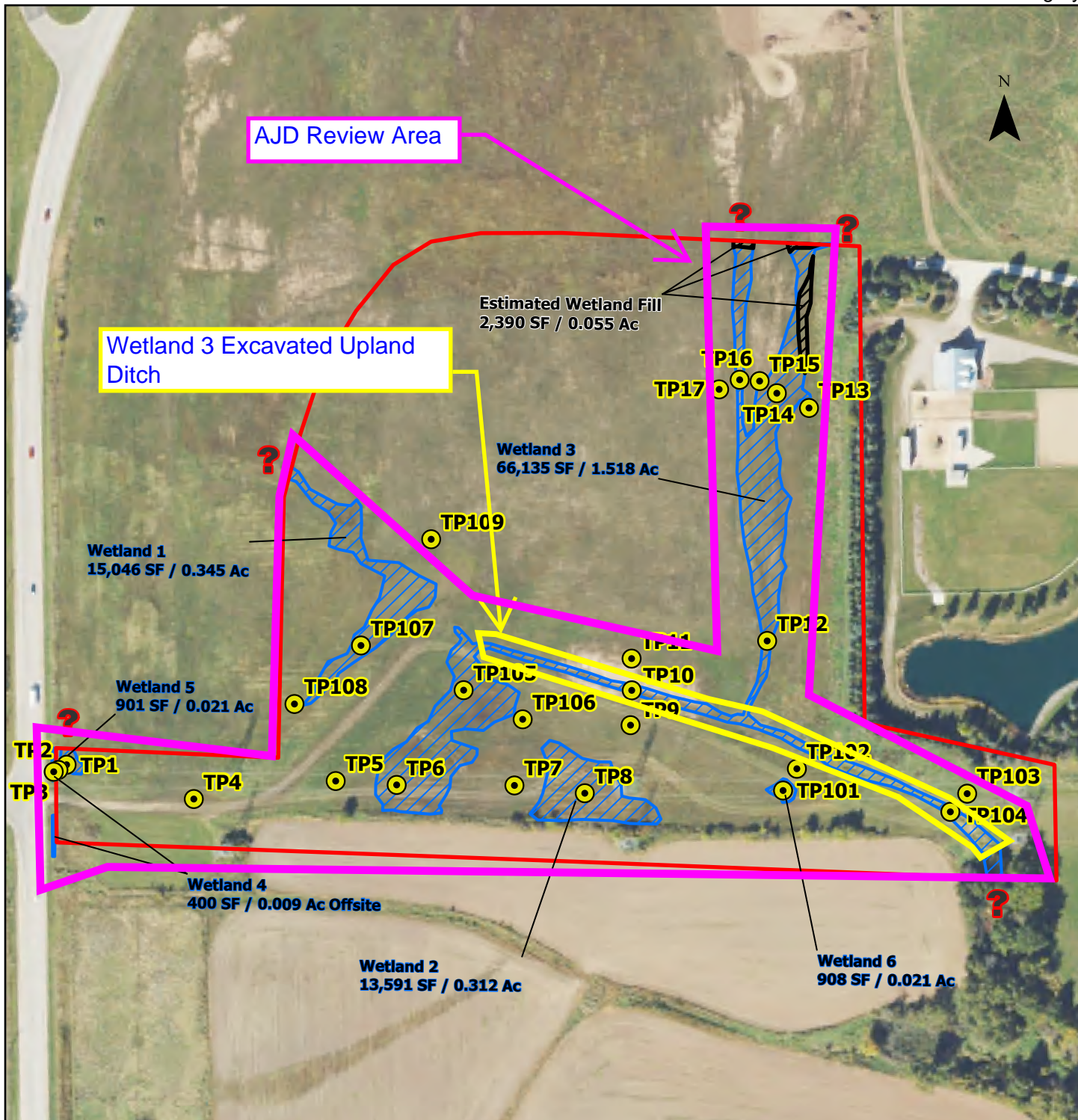
Date Printed: 4/23/2025 1:25 PM

Wetland Delineation Map

Frederickson Land - Crossroads

Part of Sec. 6, T20N, R19E, Village of Harrison, Calumet County, WI

2024 Imagery



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

Legend

- Test Plots
- Project Scope
- Estimated Wetland Fill
- Wetland Delineation



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