



**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

January 26, 2026

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) ,<sup>1</sup> MVP-2025-01184-CJB, MFR 1 of 1.<sup>2</sup>

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>3</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>4</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>5</sup> the 2023 Rule as amended,

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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> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</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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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
Filled Wetland	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): 3.57
- b. Location Description: The project/review area is located in Section 34, Township 23N, Range 20E, Brown County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.416260 Longitude: -88.064550
- d. Nearest City or Town: De Pere
- e. County: Brown
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
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2007-02651-LMK (dated May 8, 2007)	Approved Jurisdictional Determination	Wetland was determined to be isolated and non-jurisdictional
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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.<sup>6</sup>

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>7</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>8</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

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<sup>6</sup> 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.

<sup>7</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>8</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.

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 exclusions listed in 33 CFR 328.3(b).<sup>9</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).

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

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

- Wetland 1, non-jurisdictional
- Filled Wetland, non-jurisdictional

Wetland 1 (0.12 acre) and Filled Wetland (0.04 acre) are part of a wet meadow wetland complex located along the western boundary of the review area. In 2024, a portion of the wet meadow on site was filled; therefore, a full site history review was completed. Based on the wetland delineation report, this site has been in agricultural production dating back to 1938. An aerial photo from 1960 depicts a drainage swale entering the northcentral part of the site, angling southwest, and then turning directly south along the western portion of the review area. This swale is visible in aerial photos until 1999 when the construction of a nearby roadway (Millenium Court) was completed. Remnants of the drainage swale southwest of the review area are evident in LiDAR and topographic maps. A 2008 aerial photo from the delineation report identifies construction of access drives, buildings, and building foundations, to the west and adjacent to the review area. This work resulted in wetland fill and was reported as a potential violation; however, a Corps Jurisdictional Determination was completed (2007-02651-LMK, dated May 8, 2007) concluding that the area filled was not under Corps jurisdiction and did not require a Corps permit. Additional site modifications adjacent to the review area are observed in aerial photos from 2010 to 2024, when an access road connecting to Millenium Court was constructed. This 2024 access road construction resulted in filling a portion of the wet meadow wetland located in the review area. However, based on review of current and historic aerial photos, LiDAR review, and the delineation report, these wetlands are surrounded entirely by uplands and do not abut any other waterbodies. Additionally, the previously identified drainage swale does not appear to carry relatively permanent flow and did not appear to carry relatively permanent flow prior to 2024. Therefore, these wetlands do not abut a jurisdictional water and do not meet the continuous surface connection requirement.

Wetland 1 and Filled Wetland are not TNWs, territorial seas, or interstate water 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. Wetland 1 and Filled Wetland are nontidal wetlands that do not abut a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as an (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). Wetland 1 and Filled Wetland 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).

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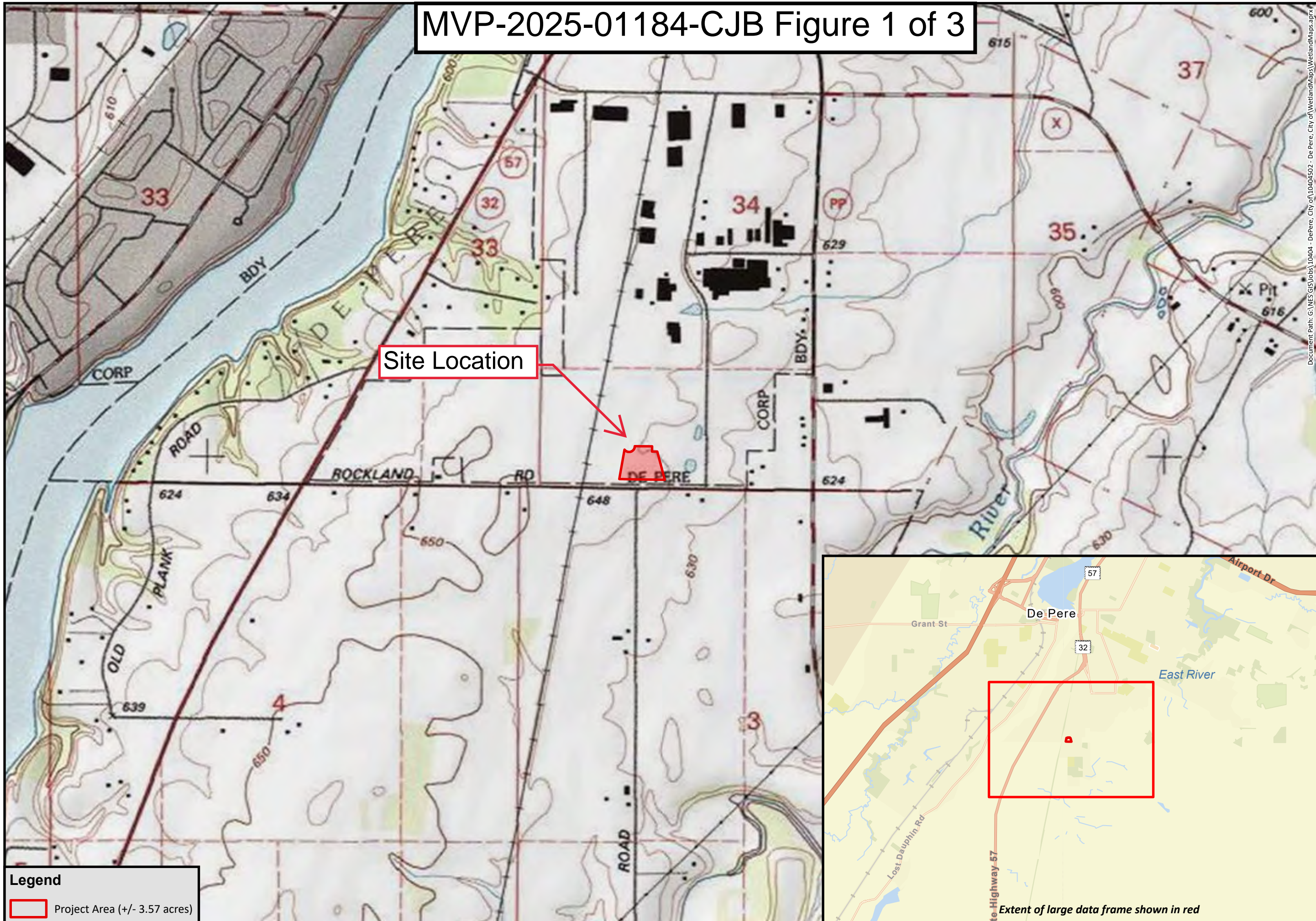
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. Office Evaluation Conducted on January 15 & 16, 2025
  - b. Wetland Delineation Report, completed by NES Ecological Services, dated October 10, 2025 (field work completed May 22, 2025)
  - c. National Regulatory Viewer, layers consisting of LiDAR (DEM & Hillshade), accessed January 15, 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.

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**Legend**  
Project Area (+/- 3.57 acres)

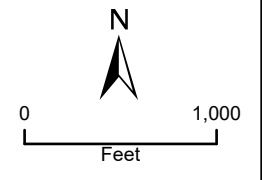


**Site Location**

4/29/2025

City of De Pere  
Wetland Delineation  
NES Project No. 10404502  
City of De Pere  
Brown County, Wisconsin

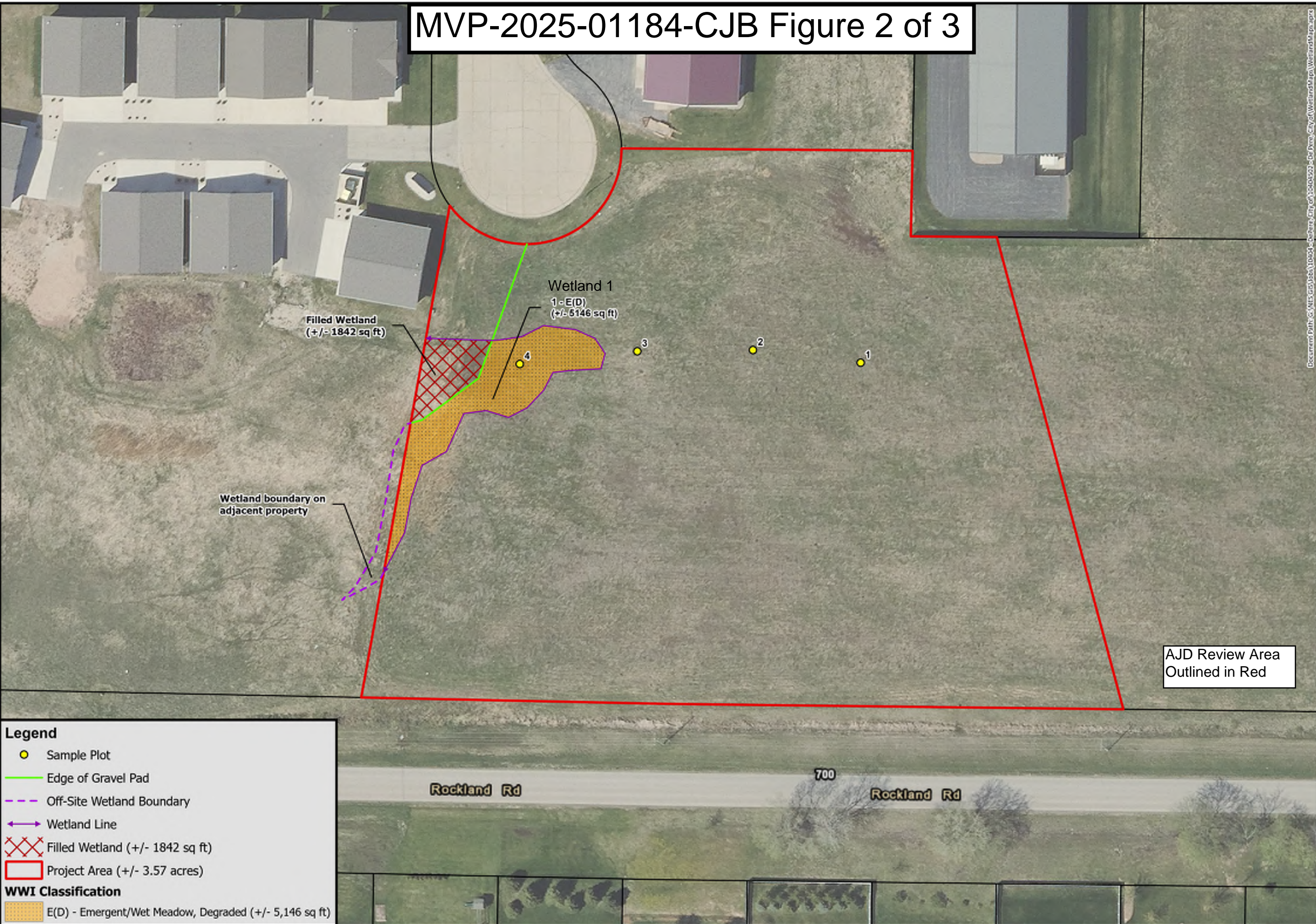
Located in part of:  
Section 34, T23N, R20E  
City of De Pere  
Brown County  
Wisconsin



Document Path: G:\NES\GIS\Jobs\10404 - DePere, City of\10404502 - DePere, City of\WetlandMaps\WetlandMaps.aprx

Extent of large data frame shown in red

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Document Path: C:\Users\mlyb\Documents\10254-Subarea\_CityofDePere\10254-Subarea\_CityofDePere\WetlandMap.mxd



**Delineated Wetland**  
10/10/2025

**City of De Pere**  
**Wetland Delineation**  
**NES Project No. 10404502**  
**City of De Pere**  
**Brown County, Wisconsin**

**Legend**

- Sample Plot
- Edge of Gravel Pad
- Off-Site Wetland Boundary
- Wetland Line
- XXXX Filled Wetland (+/- 1842 sq ft)
- Project Area (+/- 3.57 acres)

**WWI Classification**

- E(D) - Emergent/Wet Meadow, Degraded (+/- 5,146 sq ft)

AJD Review Area  
Outlined in Red

Sources: Robert E. Lee & Associates, Inc., Brown County

Disclaimer: Robert E. Lee & Associates, Inc. makes every effort to ensure this map is free of errors but does not warrant the map or its features are either sparsely or temporarily accurate or fit for a particular use. Robert E. Lee & Associates, Inc., provides this map without any warranty of any kind whatsoever, either expressed or implied.

