



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-2025-01196-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
W-2	Non-Jurisdictional	NONE
W-2: Excavated Ditch	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): 19.28
- b. Location Description: The project/review area is located in Section 25, Township 011N, Range 019E, Washington County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.388950 Longitude: -88.178956
- d. Nearest City or Town: West Bend
- e. County: Washington
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

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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. 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

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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- 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

- W-2 (Excavated Ditch), non-jurisdictional

Based on evaluation of the available data, lack of wetland signatures observed in historical aerials, (prior to 1980, before construction) and the lack of hydric soils surrounding the above listed wetland area, we have determined that portions of W-2 (266 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. The ditch connecting wetland W-2 to wetland W-1 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).

⁹ 88 FR 3004 (January 18, 2023)

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

- W-2, non-jurisdictional

W-2 is a 1.25 acre wet meadow wetland located within a fallow field. Based on LiDAR review, submitted delineation report, and aerial review, W-2 does not abut any other waterbody. A ditch/swale feature, depicted as W-2 (Excavated Ditch), on the attached figures appears to have been created connecting W-2 to another wetland, W-1. The ditch connecting W-2 and W-1 does not exhibit a defined bed and bank, an ordinary high water mark (OHWM), or sufficient hydrology to qualify as a relatively permanent water and is not considered a surface connection. The nearest relatively permanent water is Silver Creek, approximately 1,475 linear feet south of the review area.

W-2 is not a traditionally navigable waters (TNWs), territorial seas, or interstate waters and does not meet the criteria for (a)(1) waters. W-2 is not located within a paragraph (a)(2) impoundment and is not adjacent to a jurisdictional (a)(3) tributary. As non-tidal wetlands that do not meet the definition of “adjacent,” W-2 cannot be evaluated under paragraph (a)(4). Therefore, under the 2023 Revised Definition of “Waters of the United States” (Conforming Rule, 88 FR 61964), W-2 is 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. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, Hillshade layer and DEM layer accessed on November 25, 2025]
 - b. [Office evaluation conducted November 25, 2025]
 - c. [Wetland Delineation Report, prepared by NES Ecological Services, dated August 2022.]

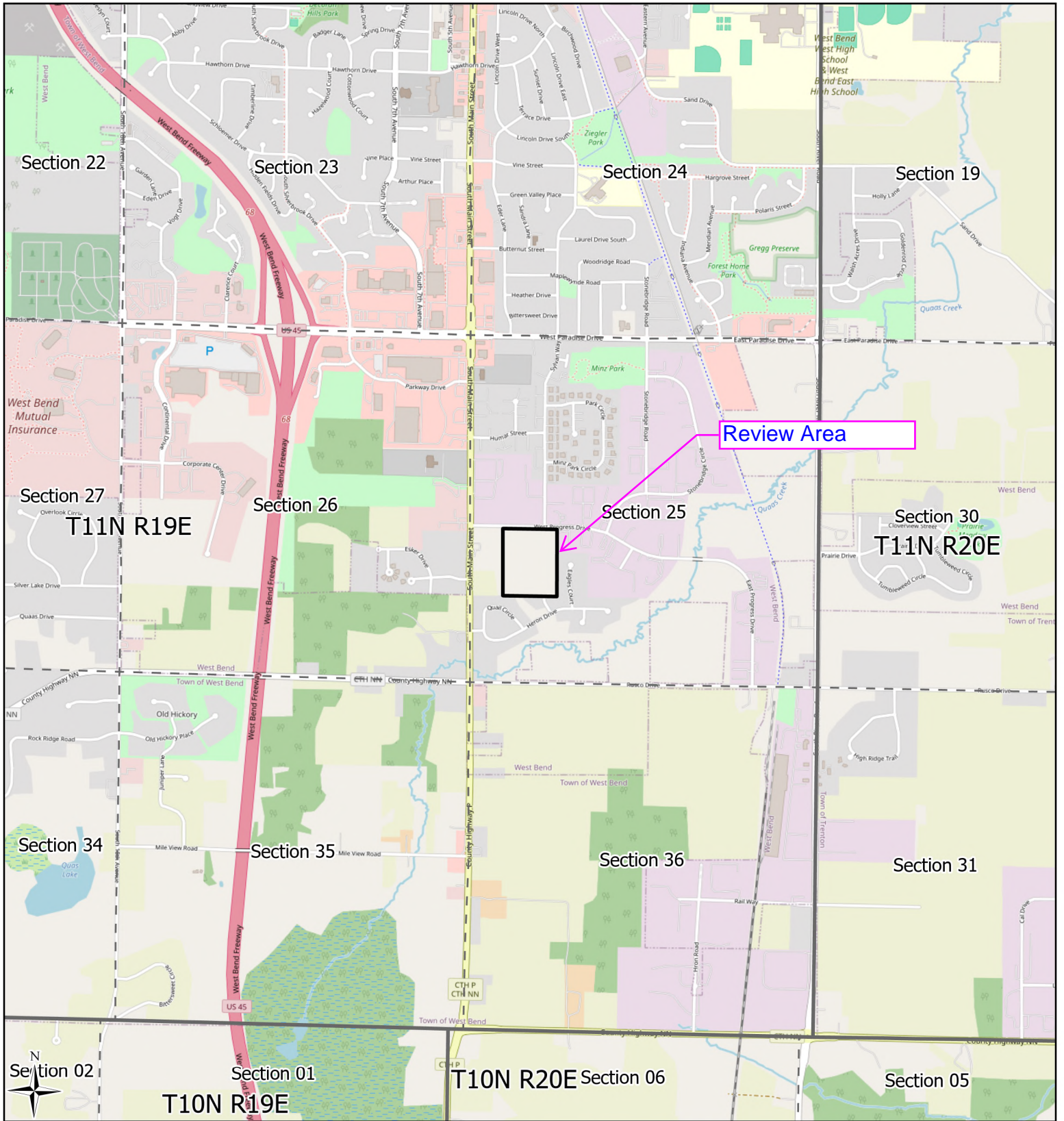
10. OTHER SUPPORTING INFORMATION. [N/A]

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

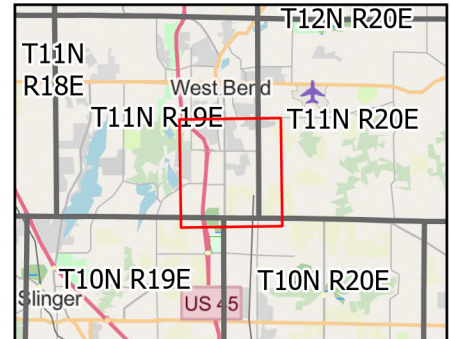
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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



- Study Area (19.28 ac)
- Township
- Section



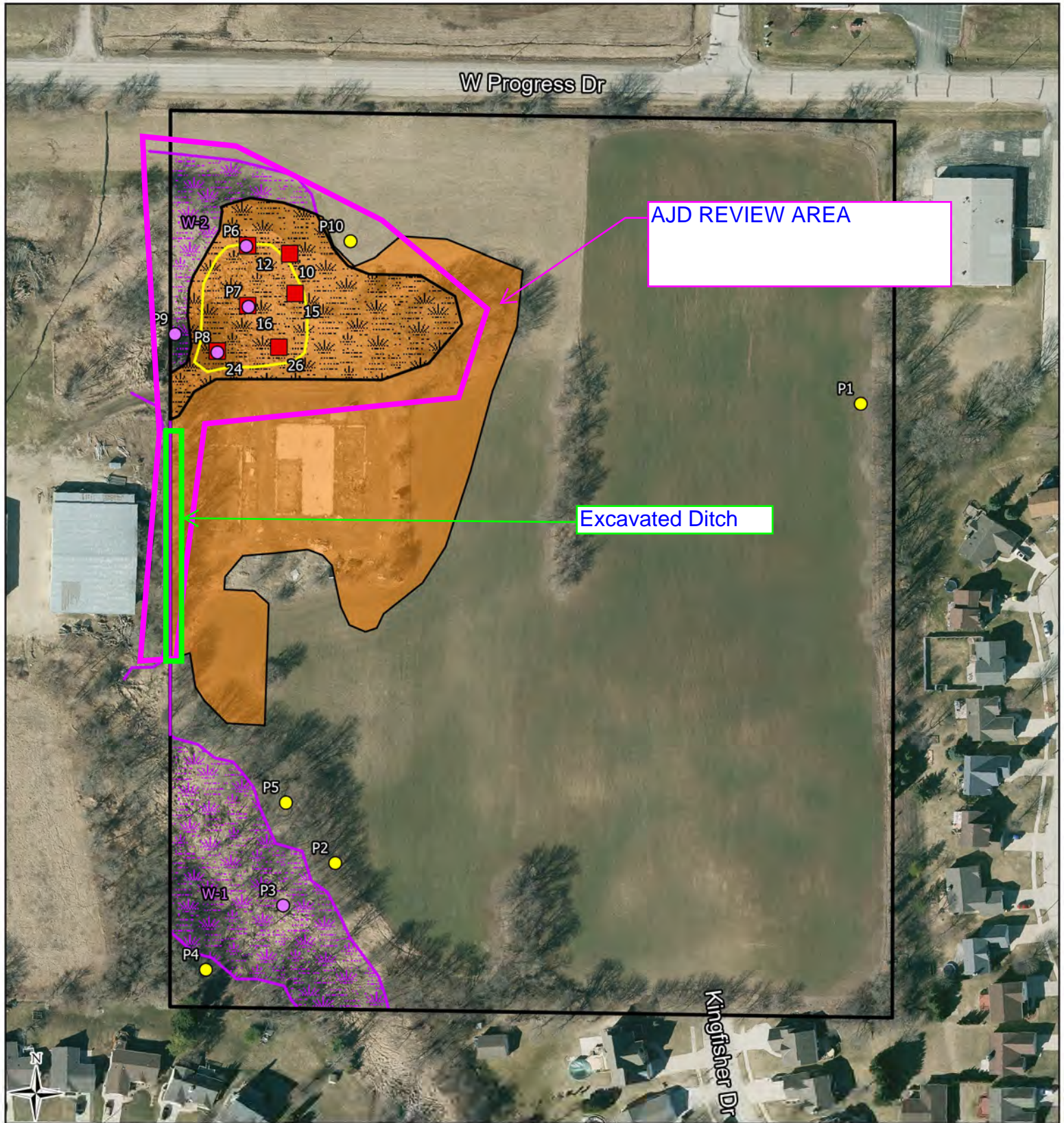
Heartland
 ECOLOGICAL GROUP INC

Figure 1. Project Location
 Progress Drive
 Project #20251565
 T11N, R19E, S25
 C W. Bend, Washington Co

OpenStreetMap
 ESRI

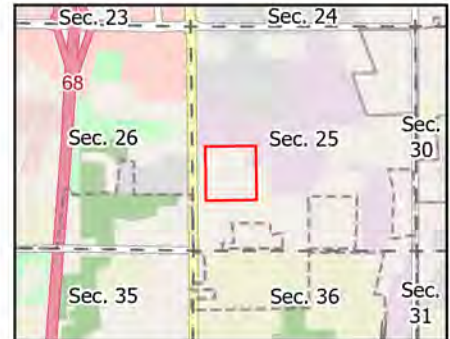
LRR: NCNE

Figure Created: 7/17/2025

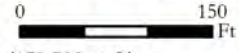


AJD REVIEW AREA

Excavated Ditch



- Study Area (19.28 ac)
 - Graded Area - Not Normal Circumstances (3.50 ac / 152,508 sq ft)
 - Fill Depth Greater Than 12 Inches
 - Observed Depth to Native Soils (Inches)
 - Approx. Previous Wetland Boundary
 - Approx. Previous Wetland Area (1.07 ac / 46,456 sq ft)
 - Field Delineated Wetlands (1.25 ac)
- Sample Points**
- Upland
 - Wetland



Heartland
 ECOLOGICAL GROUP INC

Figure 7. Field Delineated Wetlands

Progress Drive
 Project #20251565
 T11N, R19E, S25
 C W. Bend, Washington Co

2024 Orthophoto
 Washington Co, HEG LRR: NCNE

Figure Created: 7/17/2025

