

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-01248-JLK

MVP

December 10, 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) ,¹ MVP-2025-01248-JLK [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 1	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)

3. REVIEW AREA.

- a. Project Area Size (in acres): 4.1
- b. Location Description: The project/review area is located in Section 32, Township 20N, Range 19E, Calumet County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.161519 Longitude: -88.263257
- d. Nearest City or Town: Harrison
- e. County: Calumet
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. NA

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6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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. NA
 - 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

⁶ 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.

⁷ 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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- 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).⁸ NA
- 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 1 is not a TNW, territorial sea, or interstate water and therefore is not an (a)(1) water. Topographic maps, Google Earth Pro aerial imagery, and site photos provided in the delineation report show Wetland 1 is surrounded by uplands involving a well-marked cemetery to the north, northwest, and west, a residential driveway to the south, and a forested area to the south, west, and east. The wetland delineation report shows the wetland extends to the south outside of the review area while Lidar data suggests this wetland extends beneath the residential driveway. Further review of Lidar data and topographic maps indicate an increase in elevation approximately 200 feet further south of the review area and an increase in elevation to the west and east within the forested area. Review of aerial photos confirms this wetland transitions to uplands involving the forested area to the west and east, and a gravel roadway and manicured lawn approximately 200 feet south of the review area.

Based on the above information, Wetland 1 does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and is not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. Therefore, Wetland 1 is not jurisdictional under the 2023 Revised Definition of “Waters of the United States”: Conforming” 88 FR 61964 Final Rule.

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 December 9, 2025.

⁸ 88 FR 3004 (January 18, 2023)

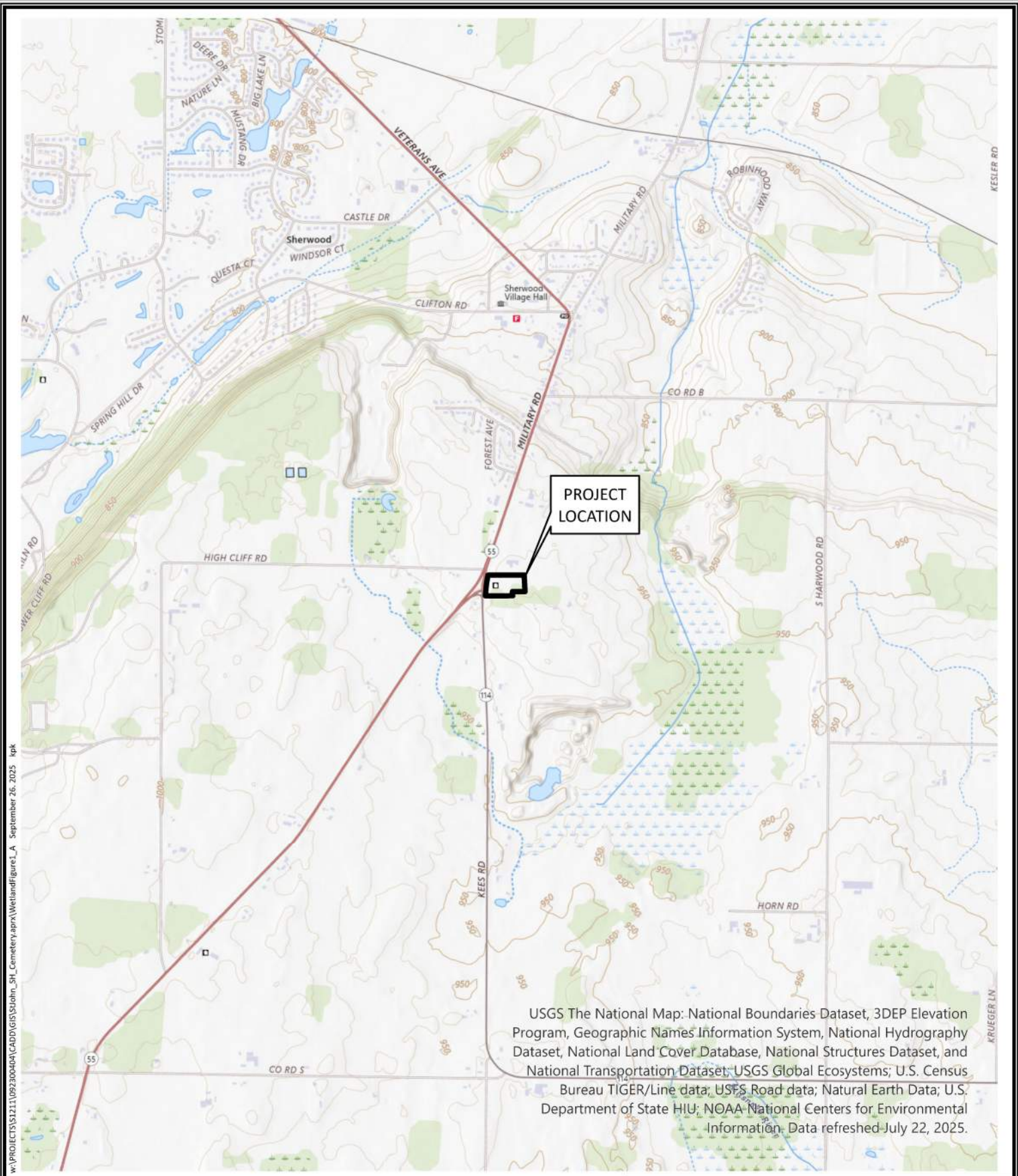
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- b. St. Johns Sacred Heart Parish, Village of Harrison, Calumet County Wetland Delineation Report provided by McMahon Associates, Inc., dated December 1, 2025.
- c. National Regulatory Viewer-Lidar Data and Google Earth Pro assessed December 9, 2025.

10. OTHER SUPPORTING INFORMATION. NA

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.



w:\PROJECTS\1211\09230404\CADD\GIS\SJohn_SH_Cemetery.aprx\WetlandFigure_L_A_September 26, 2025 4pk

USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road data; Natural Earth Data; U.S. Department of State HIU; NOAA National Centers for Environmental Information. Data refreshed July 22, 2025.

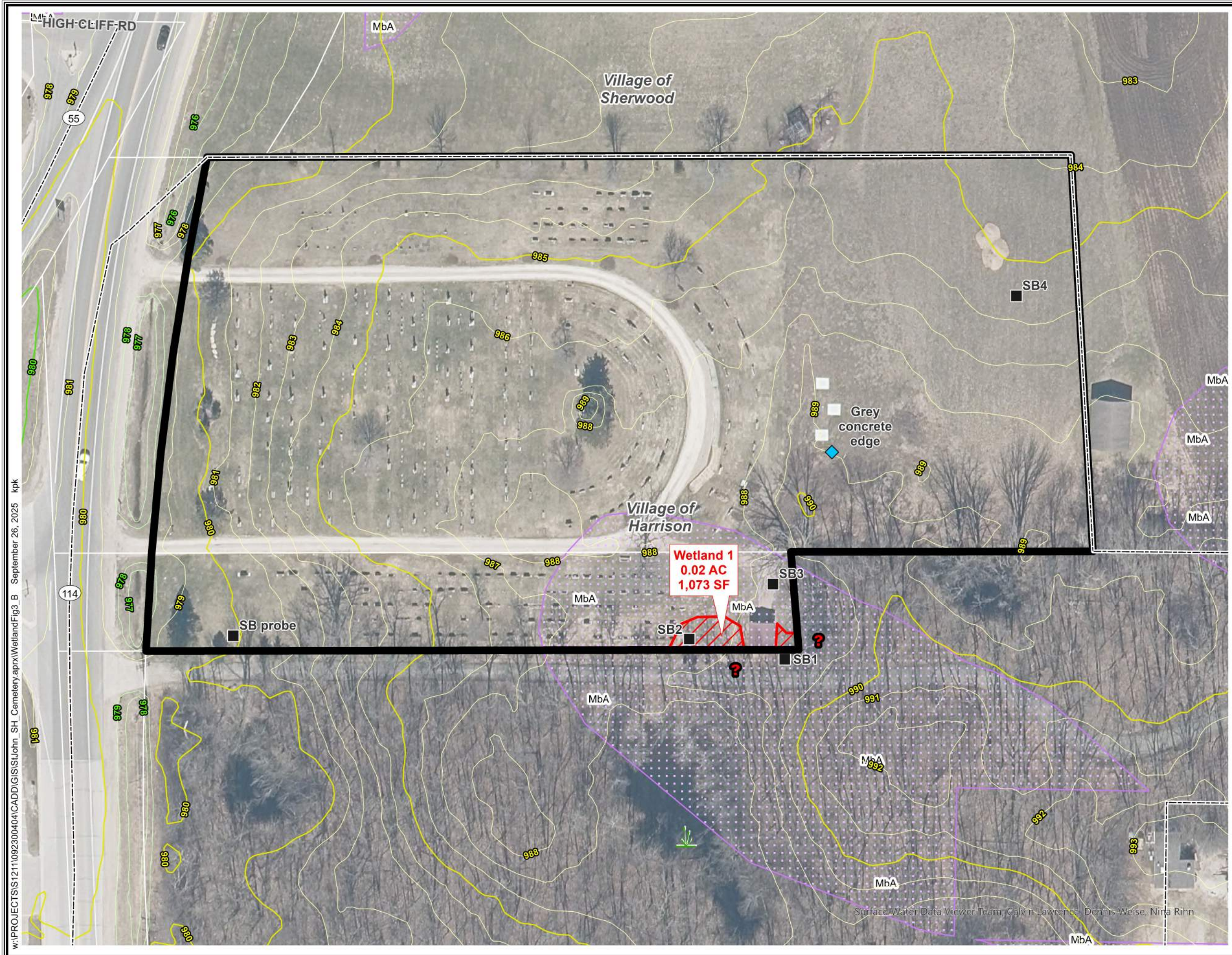


1 inch equals 2,000 Feet

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FIGURE 1
SITE LOCATION & TOPOGRAPHIC MAP
ST. JOHN-SACRED HEART CEMETERY
VILLAGE OF HARRISON
CALUMET COUNTY, WISCONSIN



Mapped Features

- Review Area Boundary (4.10 acres)
- Wetland Area (0.02 acres / 1,073 SF)
- SB 1**
- Soil Boring and ID
- Wetlands Extend Beyond Review Area
- WDNR Wetlands Less Than 2 Acres
- WDNR Wetland Indicator
- WDNR Wetland Inventory (NA)
- Municipal Boundary
- Parcel Line
- Index Contour
- Intermediate Contour
- Index Depression Contour
- Intermediate Depression Contour

Project No: S1211 - 09-23-00404
 Wetland Delineation Date: September 25, 2025
 Data Sources: Calumet County, 2018-25; WDNR, 2025
 Imagery: Calumet County, 2024

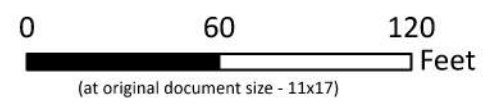
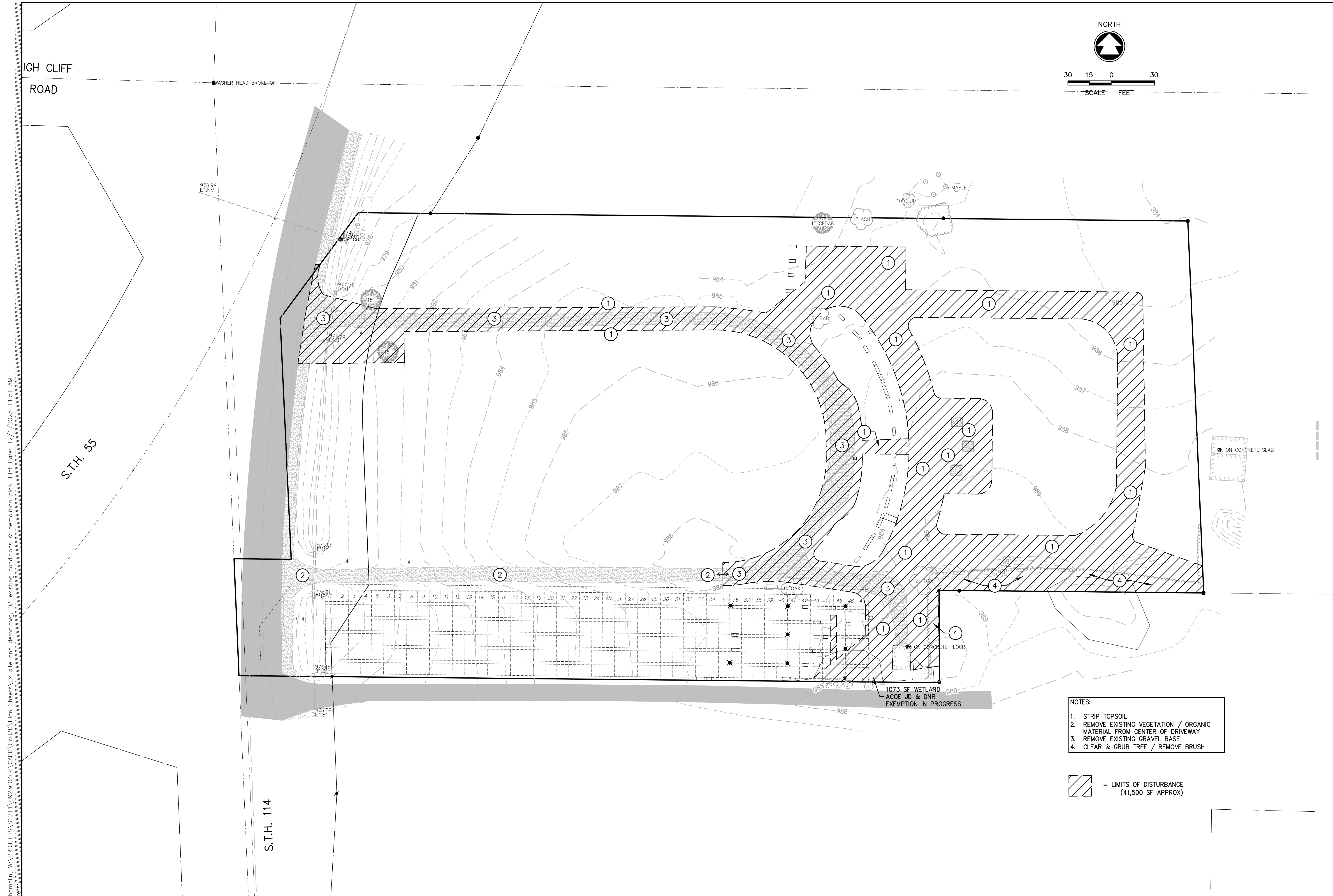


FIGURE 3
WETLAND DELINEATION MAP
 ST. JOHN-SACRED HEART CEMETERY
 VILLAGE OF HARRISON
 CALUMET COUNTY, WISCONSIN

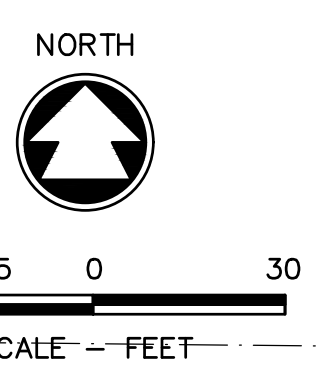
W:\PROJECTS\S1211\092300404\CADD\GIS\John_SH_Cemetery.aprx\WetlandFig3_B September 26, 2025 kpk



- NOTES:
1. STRIP TOPSOIL
 2. REMOVE EXISTING VEGETATION / ORGANIC MATERIAL FROM CENTER OF DRIVEWAY
 3. REMOVE EXISTING GRAVEL BASE
 4. CLEAR & GRUB TREE / REMOVE BRUSH

= LIMITS OF DISTURBANCE (41,500 SF APPROX)

bhamblin, W:\PROJECTS\S1211\092300404\CADD\Civil3D\Plan_Sheets\Ex site and demo.dwg, 03 existing conditions & demolition plan, Plot Date: 12/1/2025, 11:51 AM, sheets



McMAHON
ENGINEERS ARCHITECTS
 McMAHON ASSOCIATES, INC.
 1445 McMAHON DRIVE NEENAH, WI 54956
 Mailing: P.O. BOX 025 NEENAH, WI 54957-1025
 PH 920.751.4200 FX 920.751.4284 MCMGRP.COM

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NO.	DATE	REVISION

SACRED HEART CEMETERY ADDITION
VILLAGE OF HARRISON, CALUMET COUNTY, WI
EXISTING CONDITIONS & DEMOLITION PLAN

DESIGNED CKA	DRAWN CKA
PROJECT NO. S1211-09-23-00404	
DATE OCTOBER 8, 2025	
SHEET NO. 03	