



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

13 January 2026

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-2026-00045, 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, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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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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).

- i. Wetland 1 (0.63 acre) 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. The Corps review area is 2.74-acres located on the 1947 Barber Drive Property in the Town of Dunn, Dane County, WI in Section 26, Township 6 North, Range 10 East (Lat: 42.95155, Long: -89.27782) and is shown on the enclosed figures labeled 2026-00045-TRS, AJD Figures Page 1 of 7.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶

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

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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
 - 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

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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- a. 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 classified as an Emergent/Wet Meadow Wetland as labeled on the Wisconsin Surface Water Data Viewer (SWDV). The SWDV also indicated from a wetland classification point that Wetland 1 was excavated. It is unknown when the wetland was excavated. Wetland 1 is landlocked/surrounded by Barber Dive to the North, Lake Kegonsa Road to the West, County Highway B to the South, and uplands to the East. Wetland 1 is not a TNWs, territorial seas, or interstate waters; therefore, Wetland 1 is not category (a)(1) waters. Current and historic aerial photos indicate Wetland 1 is not a tributary and was not created by impounding a water of the U.S.; therefore, Wetland 1 is not category (a)(2) or (a)(3) waters. Based on review of the wetland delineation map and additional referenced material from Section 9 in this MFR, Wetland 1 does not directly abut a jurisdictional water identified in paragraph (a)(1), (a)(2), or (a)(3), of the conforming rule. The closest waterway is an unnamed stream (WBIC 5037178) located approximately 0.10 miles East Southeast of the Corps review area. One culvert was identified on Lake Kegonsa Road; however, it was found that the culvert does not provide a continuous surface connection to a nearby RPW and has no ordinary high-water mark. Wetland 1 is surrounded by uplands and roadway surfaces, and there are no ditches, swales, pipes, or culverts that provide a surface connection from Wetland 1 to the unnamed stream or Lake Kegonsa. Wetland 1 is a non-tidal wetland that does not have a continuous surface connection to a relatively permanent water and as such does not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; 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. Heartland Ecological Group Preliminary Field Delineated Wetland Map Dated January 5, 2026, for the 1947 Barber Drive Property.
 - b. USACE National Regulatory Viewer Accessed: January 12, 2026.

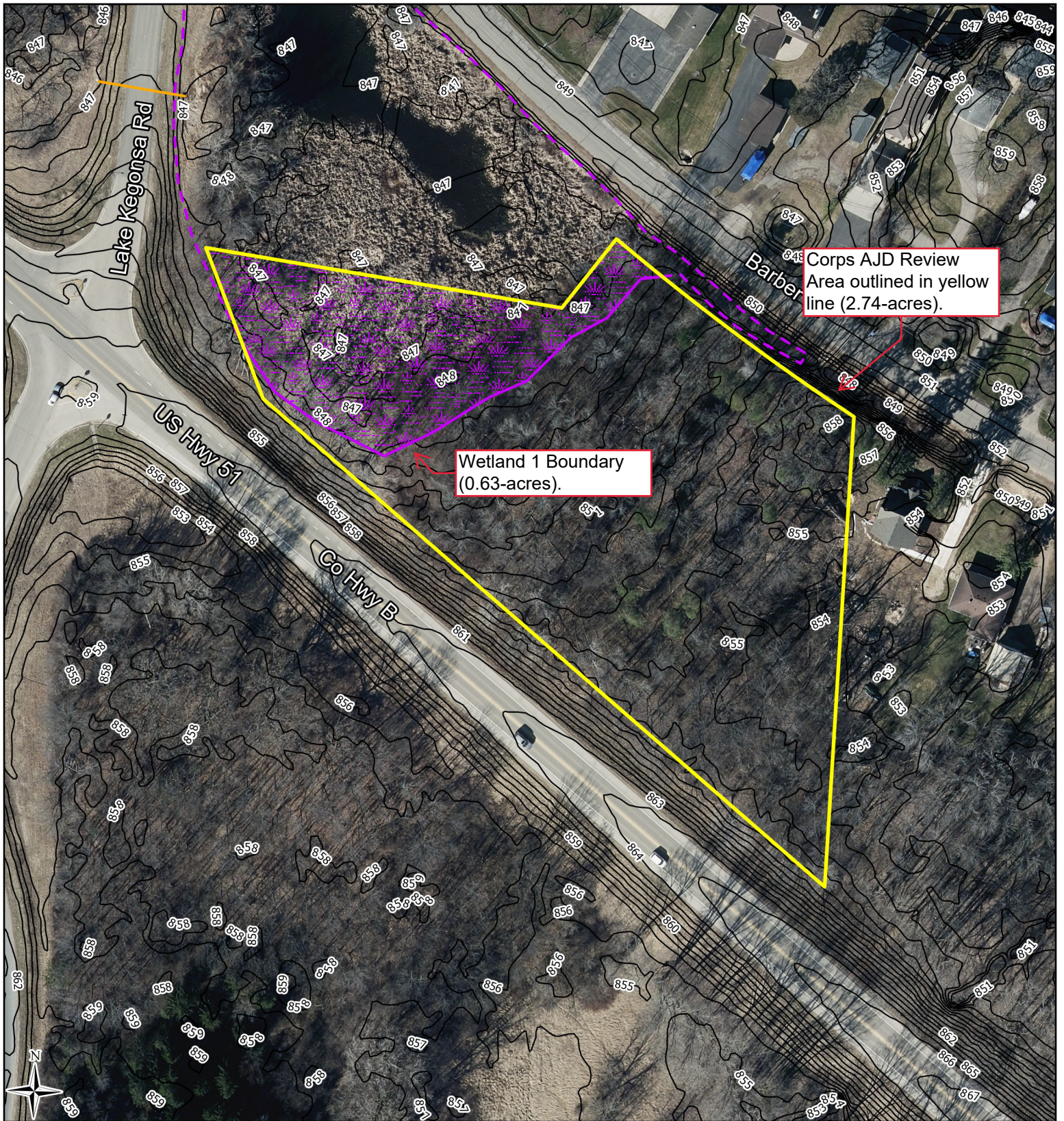
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- c. WDNR - Surface Water Data Viewer Accessed: January 12, 2026.
- d. Google Earth Imagery Accessed: January 12, 2026.
- e. Wisconsin Wetland Inventory, USDA Web Soil Survey, and USGS NHD and Topographic Maps Accessed: January 12, 2026.
- f. USGS 1:24K Quad Name: Rutland
- g. Office evaluation conducted on: January 12, 2026

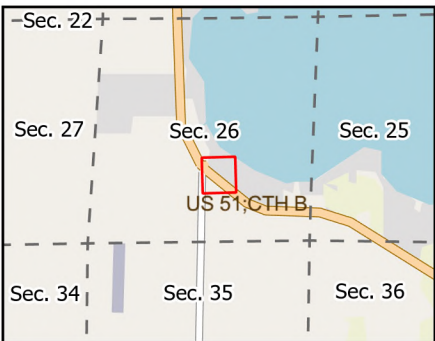
10. OTHER SUPPORTING INFORMATION. N/A

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.



Corps AJD Review Area outlined in yellow line (2.74-acres).

Wetland 1 Boundary (0.63-acres).



- Study Area (2.74 ac)
- Dane Co 1' Contours
- Culverts
- Preliminary Field Delineated Wetlands (0.63 ac)
- Preliminary Offsite Wetland Boundaries



Heartland
ECOLOGICAL GROUP INC

Figure 7. Preliminary Field Delin. Wetlands
Barber Drive Property
Project #20251716
T6N, R10E, S26
T Dunn, Dane Co

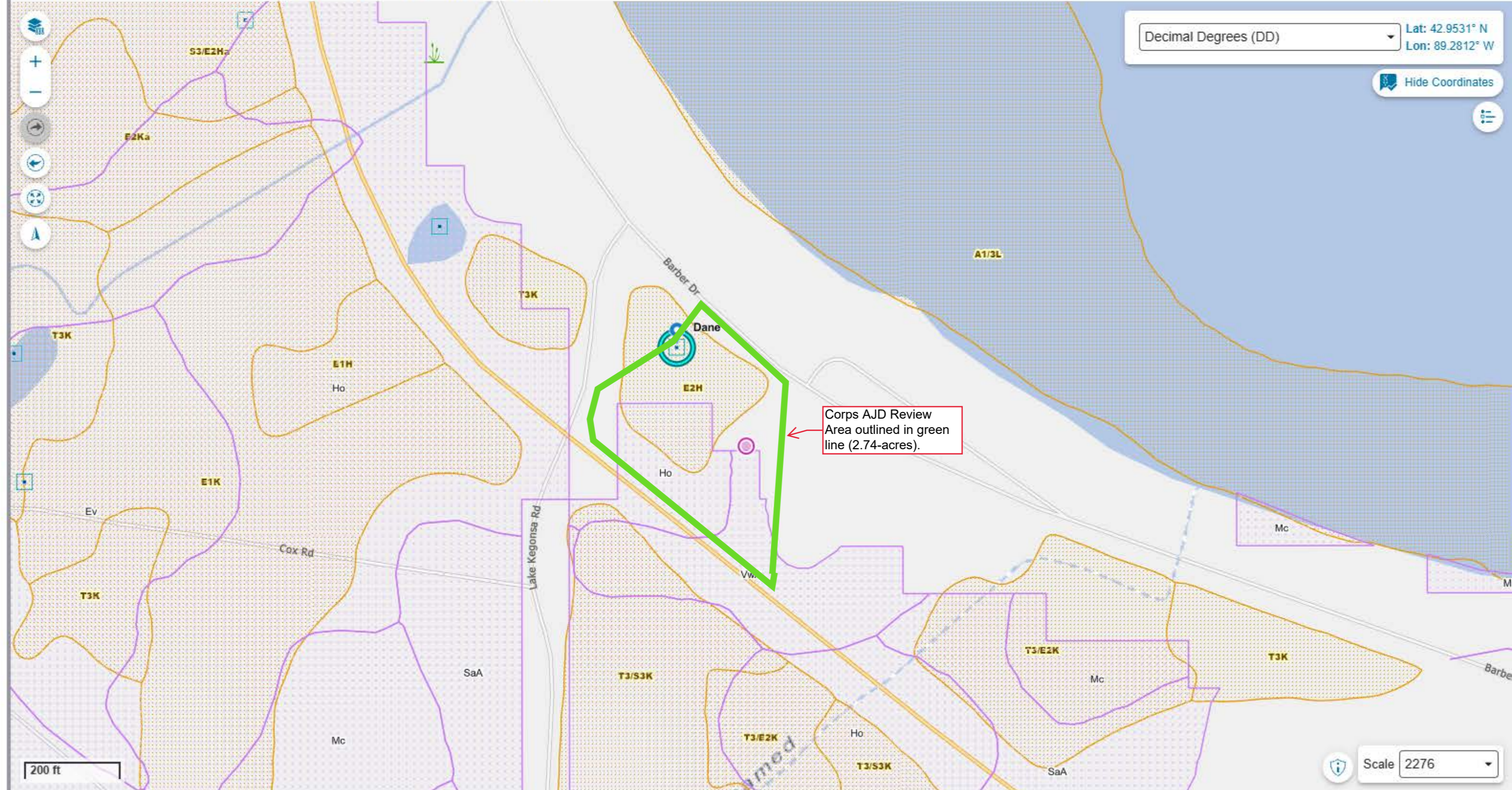
2024 Orthophoto
Dane Co, HEG
LRR: NCNE
Figure Created: 1/5/2026



Filter layers by title ...

- > Monitoring Sites & Data
- > Watershed Boundaries
- > Boat Access & Shore Fishing
- > Dams & Floodplains
- > Clean Water Act Standards & Uses
- > Assessments & Impairments
- > Priority Navigable Waterways
- > Fisheries Management
- > Fish Consumption Advice
- > Grant Locations
- > Permits & Determinations^
- > Mapped Wetlands^
- > Wetland Indicators & Soils^
- > Wild Rice Waters
- > Surface Water
- > Administrative, Political & Cadastral
- > Base Maps

Identify Tools Query Find Locations Address Find Coordinates Plot Coord. & Note Clear All



Corps AJD Review Area outlined in green line (2.74-acres).

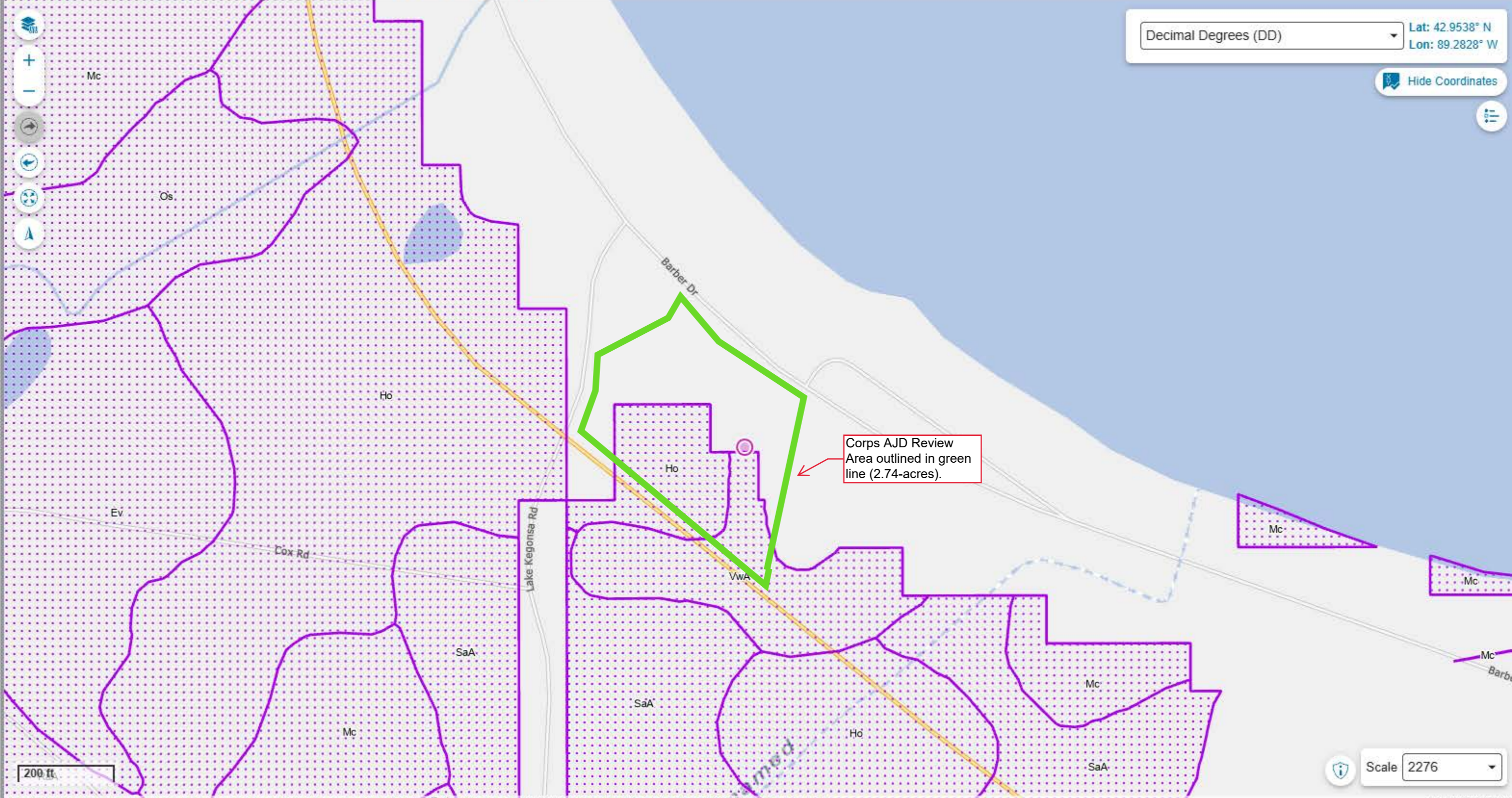


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- Clean Water Act Standards & Uses
- Assessments & Impairments
- Priority Navigable Waterways
- Fisheries Management
- Fish Consumption Advice
- Grant Locations
- Permits & Determinations^A
- Mapped Wetlands^A
- Wetland Indicators & Soils^A
- Wild Rice Waters
- Surface Water
- Administrative, Political & Cadastral
- Base Maps

- Identify Tools
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Decimal Degrees (DD) Lat: 42.9538° N
Lon: 89.2828° W
Hide Coordinates

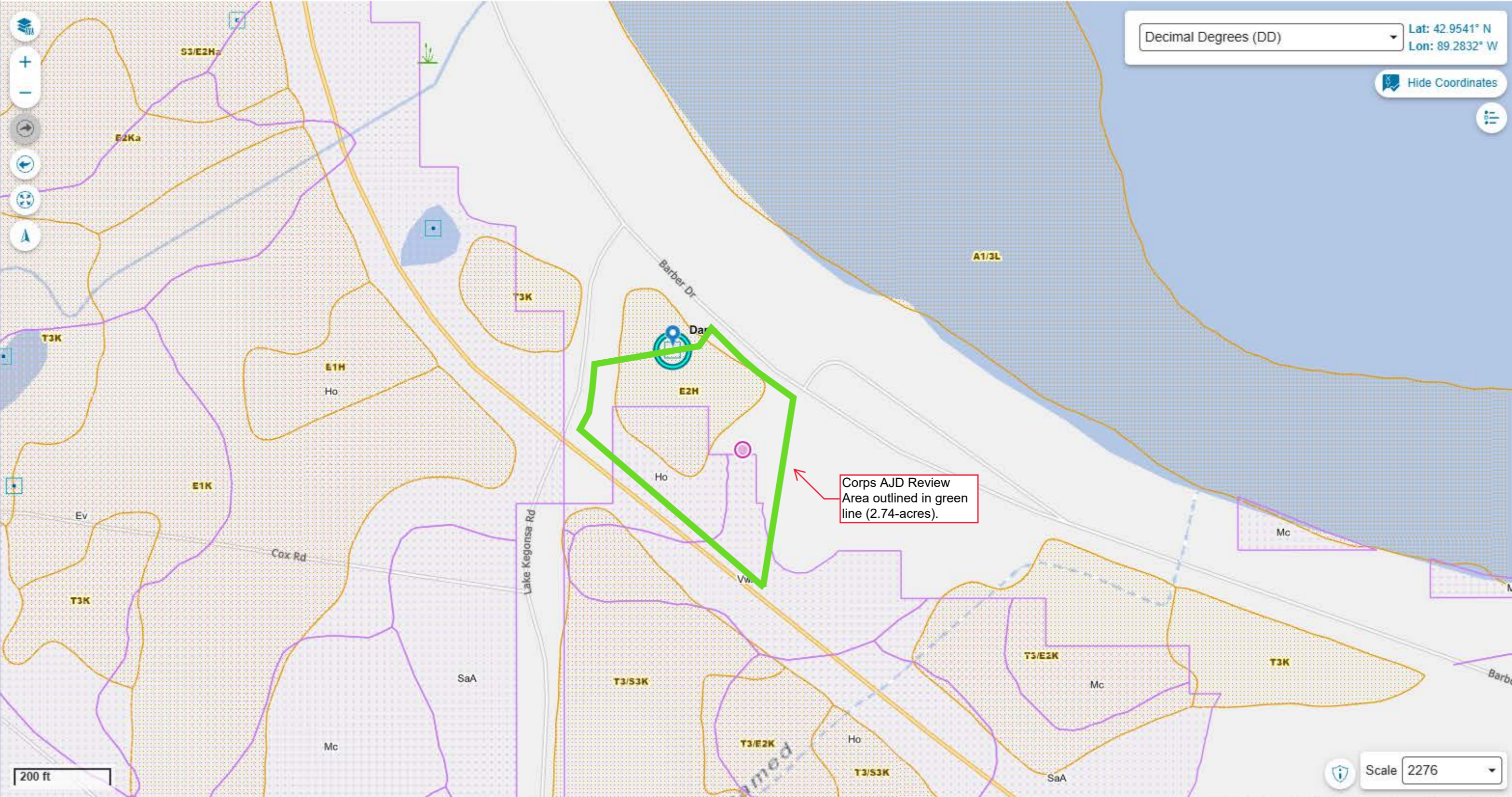


Dane



County Code	13
County Name	Dane
Point Description	Excavated pond
Digitization Date	01/03/2013
Last Hardcopy Update Date	
Last Point Update	
Reason for Update	
Last Digitization Update Date	
Basemap Date	
Airphoto Date	2008
Basemap Source	Rectified aerial photography
Wetland ID	13731694446
Filled Flag	
MAPPING_STATUS	

Identify Tools Query Find Locations Address Find Coordinates Plot Coord. & Note Clear All

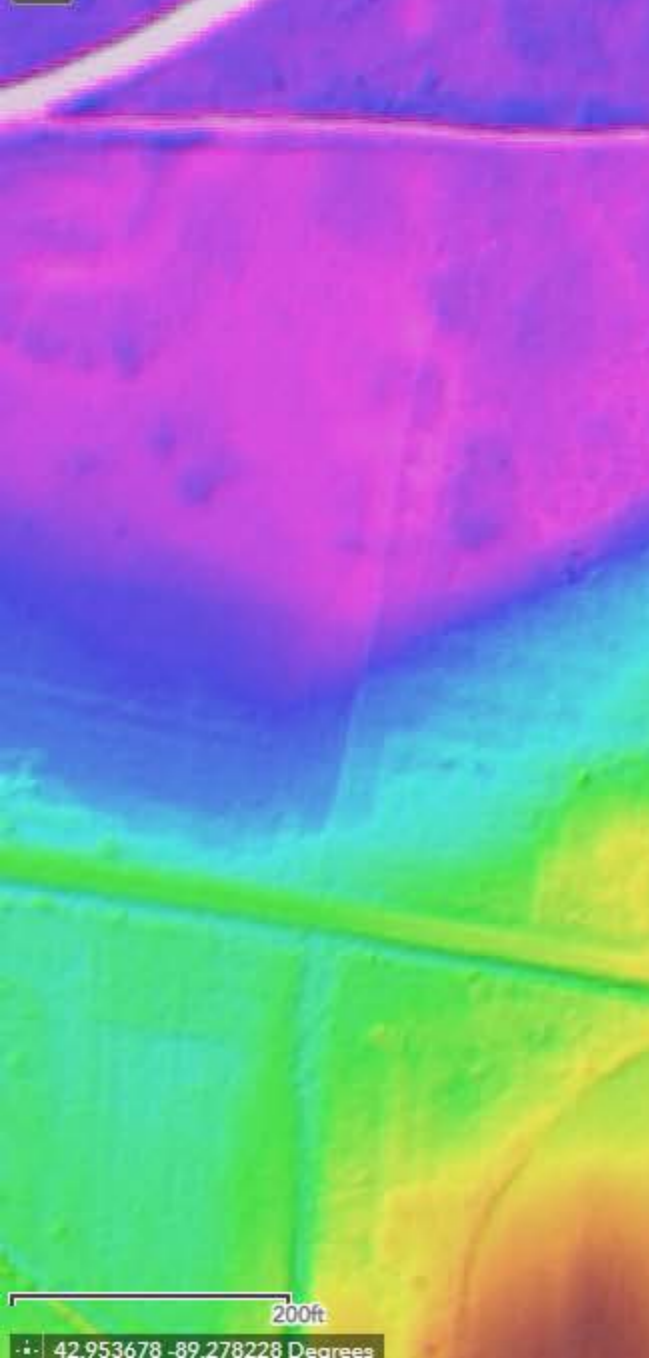


Decimal Degrees (DD) Lat: 42.9541° N Lon: 89.2832° W

Hide Coordinates

Corps AJD Review Area outlined in green line (2.74-acres).

42.95155, -89.27782
Show search results for 42.95155, -89...



Corps AJD Review Area outlined in green line (2.74-acres).

Imagery

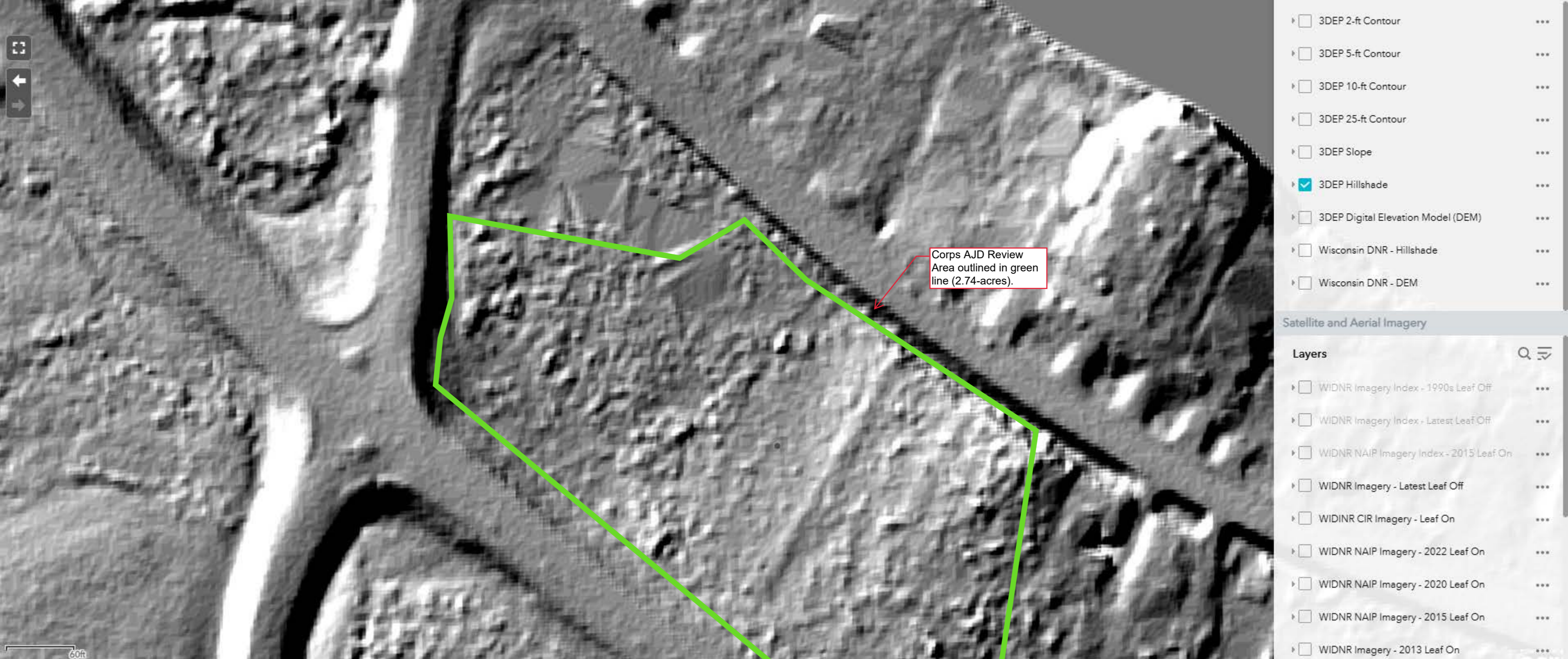
- Lidar
 - WI DNR 2ft Contour from LiDAR
 - 3DEP 2-ft Contour
 - 3DEP 5-ft Contour
 - 3DEP 10-ft Contour
 - 3DEP 25-ft Contour
 - 3DEP Slope
 - 3DEP Hillshade
 - 3DEP Digital Elevation Model (DEM)
 - Wisconsin DNR - Hillshade
 - Wisconsin DNR - DEM

Satellite and Aerial Imagery

- Layers
- WIDNR Imagery Index - 1990s Leaf Off
 - WIDNR Imagery Index - Latest Leaf Off
 - WIDNR NAIP Imagery Index - 2015 Leaf On
 - WIDNR Imagery - Latest Leaf Off
 - WIDNR CIR Imagery - Leaf On
 - WIDNR NAIP Imagery - 2022 Leaf On
 - WIDNR NAIP Imagery - 2020 Leaf On
 - WIDNR NAIP Imagery - 2015 Leaf On
 - WIDNR Imagery - 2013 Leaf On

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Show search results for 42.95155, -89...

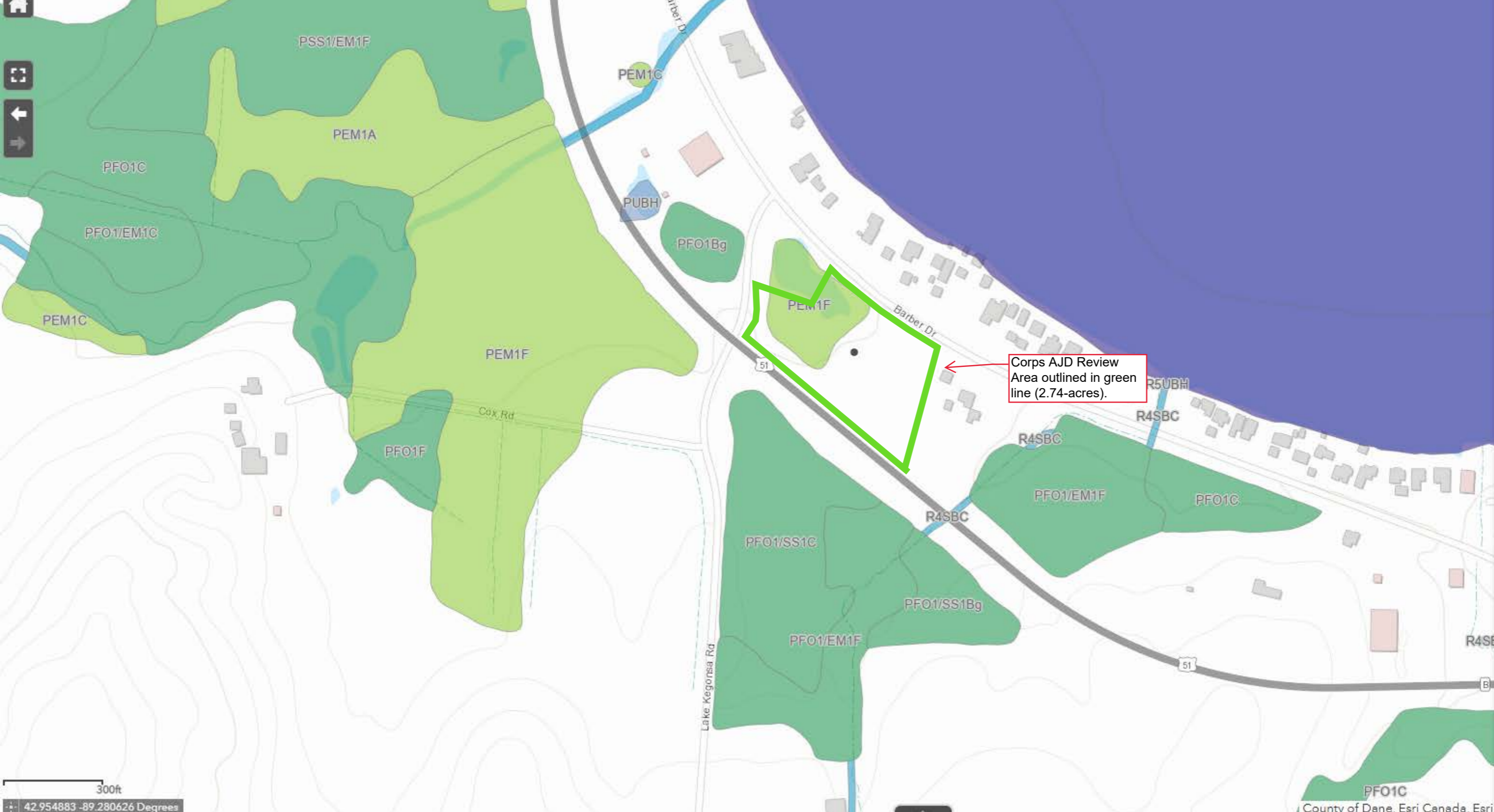


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- ### Imagery
- Lidar
 - WI DNR 2ft Contour from LiDAR ...
 - 3DEP 2-ft Contour ...
 - 3DEP 5-ft Contour ...
 - 3DEP 10-ft Contour ...
 - 3DEP 25-ft Contour ...
 - 3DEP Slope ...
 - 3DEP Hillshade ...
 - 3DEP Digital Elevation Model (DEM) ...
 - Wisconsin DNR - Hillshade ...
 - Wisconsin DNR - DEM ...

- ### Satellite and Aerial Imagery
- #### Layers
- WIDNR Imagery Index - 1990s Leaf Off ...
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 - WIDNR Imagery - Latest Leaf Off ...
 - WIDNR CIR Imagery - Leaf On ...
 - WIDNR NAIP Imagery - 2022 Leaf On ...
 - WIDNR NAIP Imagery - 2020 Leaf On ...
 - WIDNR NAIP Imagery - 2015 Leaf On ...
 - WIDNR Imagery - 2013 Leaf On ...

42.95155, -89.27782
Show search results for 42.95155, -89...



Corps AJD Review Area outlined in green line (2.74-acres).

Reference Layers

National Layers

- NPS Boundary Layer
- USDA MLRA 2022
- Upper Mississippi River Pool Boundaries
- USFWS National Wildlife Refuge System Boundaries
- Topo Quad Index (7.5 Minute)
- National Wetland Inventory (NWI)
- NHD Plus HR

USACE Regulatory

Layers

- Wetland Regions
- ORM: Compliance Eligibility Reports - FS
- MVP LPM By County
- TSB Bank Site Visits List 2025
- Regulatory File Management
- Section 10 - Rivers

State Layers

Layers

- WI 24k Hydro Flowlines Stream Order
- Airport Locations (center point of airport)
- Wisconsin DNR - 24k Hydro Shoreline (Banks)
- Wisconsin Wetland Inventory - Wetland Class
- Wisconsin Wetland Inventory - Hydrologic Description

