



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 22, 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) ,¹ MVP-2026-00048-CJB, 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-1	Non-Jurisdictional	N/A
W-3	Non-Jurisdictional	N/A
W-4	Non-Jurisdictional	N/A
W-5	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): 13.5
- b. Location Description: The project/review area is located in Section 23, Township 2N, Range 15E, Walworth County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 42.618752 Longitude: -88.680949
- d. Nearest City or Town: Darien
- e. County: Walworth
- f. State: Wisconsin

g. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
N/A	N/A	N/A

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶

N/A

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

N/A

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

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.

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).⁹

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 current and historical aerial photography, LiDAR, ground level site photography, soil mapping, and the information submitted by the applicant for the following features:

⁹ 88 FR 3004 (January 18, 2023)

- W-1, non-jurisdictional
- W-3, non-jurisdictional
- W-4, non-jurisdictional
- W-5, non-jurisdictional

The wetland delineation report completed by Burns and McDonnell Engineering Company, Inc. describes W-1 (0.97 acre) as a palustrine emergent wetland and W-4 (0.02 acre) and W-5 (0.05 acre) as farmed palustrine emergent wetlands. These wetlands are located along the northern boundary of the review area within an agricultural field and along the southern Interstate 43 roadway ditch. This ditch is located outside the review area but was reviewed to determine if relatively permanent flow was present within the ditch. Based on current and historic aerial photos, ground level site photos, and LiDAR, this ditch does not carry a relatively permanent flow of water, does not have a defined bed and bank, and an ordinary high water mark was not observed. No other discrete conveyance features were observed in LiDAR or aerial imagery along the boundaries of these wetlands. Therefore, W-1, W-4, and W-5 does not abut a jurisdictional water and does not meet the continuous surface requirement.

W-3 (1.65 acre) is described in the wetland delineation report as a palustrine emergent wetland. W-3 is located along the southeastern boundary of the review area within an agricultural field and is bordered by the Lawson School Road's western ditch. This ditch is located outside the review area; however, due to the close proximity to W-3, the roadway ditch was reviewed to determine if relatively flow was present. Based on current and historic aerial photos, ground level site photos, and LiDAR, this ditch does not carry a relatively permanent flow of water, does not have a defined bed and bank, and an ordinary high water mark was not observed. Based on the wetland delineation report, W-3 receives water through two culverts; both culverts are located under the existing raised two-track farm road along the southern boundary of the review area. Based on the Wisconsin Wetland Inventory, W-3 extends to the south within a neighboring agricultural field and outside of the review area. This extension of W-3 is evident in observed wetness signatures in aerial photos, topographic maps, and LiDAR. However, no discrete conveyance features carrying a relatively permanent flow of water were observed in the delineation report, LiDAR or aerial imagery near the exterior boundary of this extension of W-3. Therefore, W-3 does not abut a jurisdictional water and does not meet the continuous surface requirement.

Wetlands W-1, W-3, W-4, and W-5 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. Wetlands W-1, W-3, W-4, and W-5 are nontidal wetlands that do not

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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). Wetlands W-1, W-3, W-4, and W-5 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).

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 14, 2026
- b. Wetland Delineation Report, completed by Burns and McDonnell Engineering Company, Inc., completed on November 13, 2025
- c. National Regulatory Viewer, layers consisting of LiDAR (DEM, Hillshade), WI 24k Flowlines Stream Order, WI Wetland Inventory, National Wetland Inventory, accessed on January 14, 2025
- d. Google Maps Street View, accessed on January 14 & 15, 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.

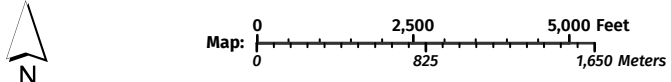


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- Legend:** (some map layers may not be displayed)
- Local Park (Labels Only)
 - DNR Owned
 - Open

Notes:

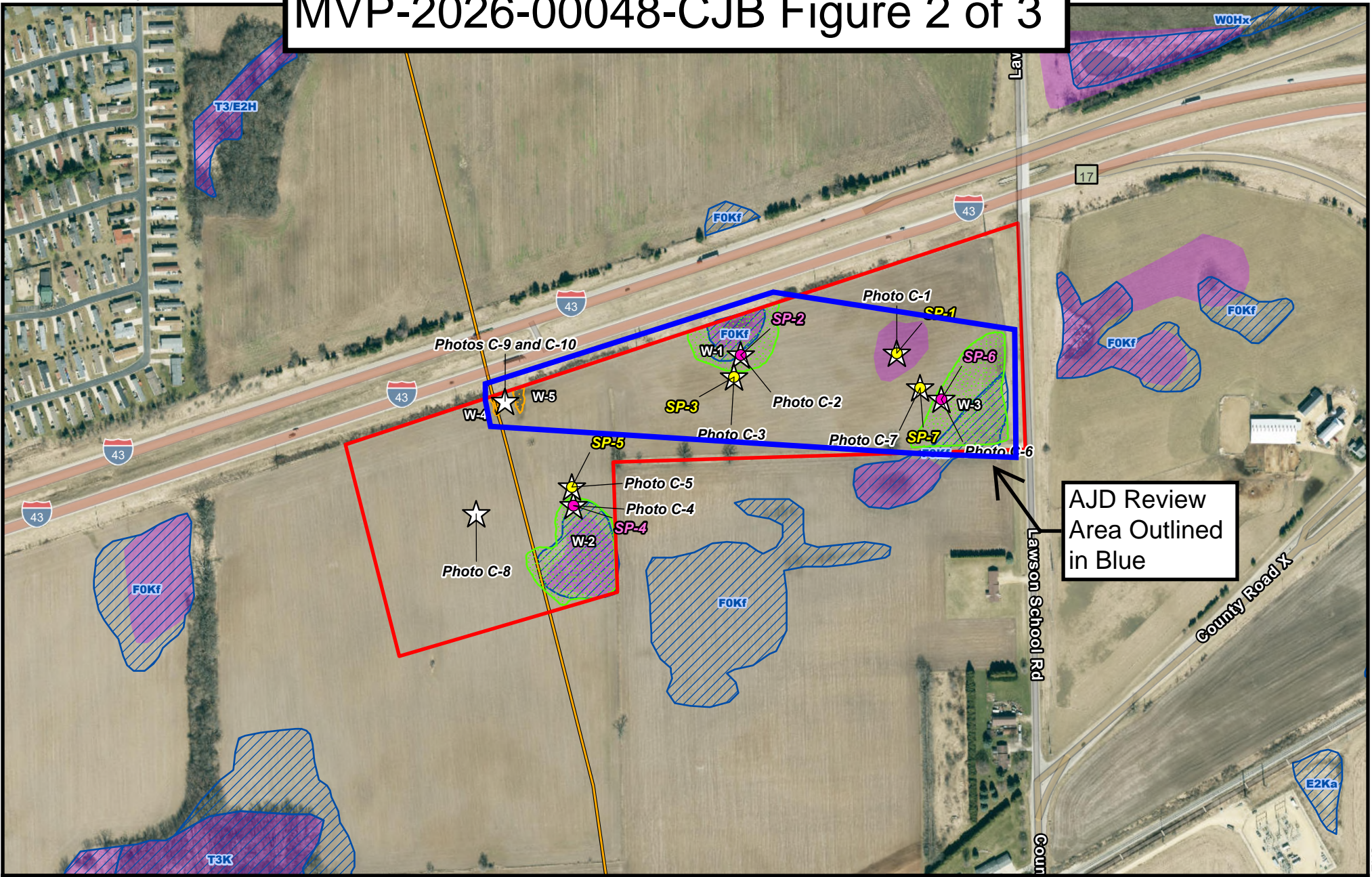


Map projection: NAD 1983 HARN Wisconsin TM

Service Layer Credits:
 ROADS AND CITIES: , RIVERS AND LAKES: WiDNR, USGS, and other data, Public Land: DNR-IT, US Forest Service, National Park Service, US Fish and Wildlife Services, Wisconsin County Forests, Bureau of Commissioners of Public Lands, Non-DNR Stewardship Funded Property: Community Finance / CAES, Recreation Trails: Department of Natural Resources, Bureau of Facilities and Lands, Mazo Beach Closed Area: WI DNR Bureau of Facilities and Lands, State Natural Area: WI DNR; Bureau of Natural Heritage

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AJD Review Area Outlined in Blue



- Survey Area
- Pipeline Centerline
- Sample Plot Type**
- Upland
- Wetland
- ☆ Photo Point

- Wisconsin Wetland Inventory
- NWI Wetland

- Delineated Wetland**
- Palustrine Emergent (PEM)
- Farmed Palustrine Emergent (PEMf)

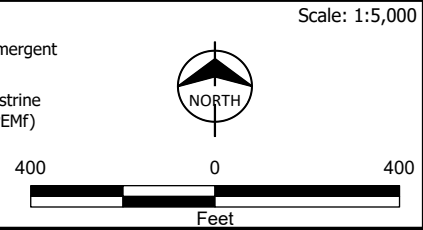
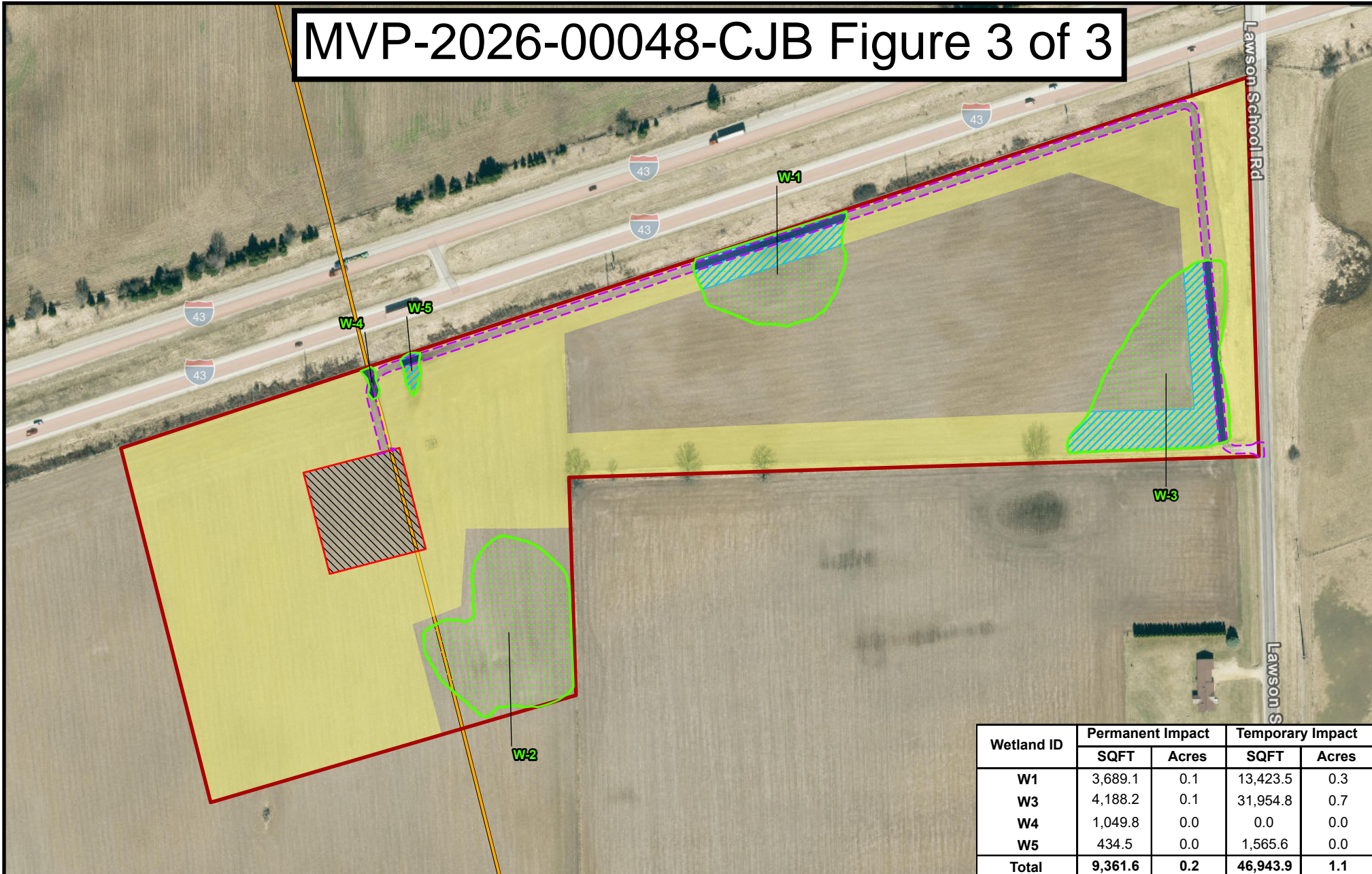


Figure 3
Field Delineated Features
GPL Delevan MS Project
Walworth County
Wisconsin

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Wetland ID	Permanent Impact		Temporary Impact	
	SQFT	Acres	SQFT	Acres
W1	3,689.1	0.1	13,423.5	0.3
W3	4,188.2	0.1	31,954.8	0.7
W4	1,049.8	0.0	0.0	0.0
W5	434.5	0.0	1,565.6	0.0
Total	9,361.6	0.2	46,943.9	1.1



- Pipeline
- Survey Area
- Access Road
- Permanent Meter Station
- Temporary Workspace

- Permanent Impact - Gravel Road (0.21 acre fill)
- Temporary Impact - Timber Matting (0.47 acre fill)
- Delineated Wetland

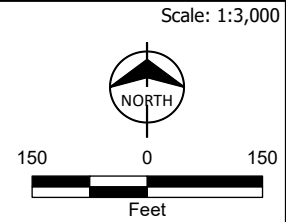


Figure 4
Proposed Wetland Impacts
GPL Delevan MS Project
Walworth County, WI