



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

April 28, 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-2026-00053-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
Ditch 1	Non-Jurisdictional	N/A
Wetland 1	Non-Jurisdictional	N/A
Wetland 2	Non-Jurisdictional	N/A
Wetland 3	Non-Jurisdictional	N/A
Wetland 4	Non-Jurisdictional	N/A
Wetland 5	Non-Jurisdictional	N/A
Wetland 6	Non-Jurisdictional	N/A
Wetland 7	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): 16.1

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- b. Location Description: The project/review area is located in Section 09, Township 18N, Range 15E, Winnebago County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.043720 Longitude: -88.712070
- d. Nearest City or Town: Omro
- e. County: Winnebago
- 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

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.

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

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

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

⁹ 88 FR 3004 (January 18, 2023)

- Ditch 1, non-jurisdictional

Based on the wetland delineation report, Ditch 1 (0.108 acre) is a roadside ditch feature along Springbrook Rd. This drainage way is evident in LiDAR images and topographic maps and can be seen in historic aerial images as far back as 1937. Based on review of historic aerial images and the wetland delineation report, this ditch was excavated sometime prior to 1937. Lack of wetness signatures in aerial photos from 1937 to present in the area of Ditch 1 suggest this ditch was excavated wholly in dry land. Review of the hydric soils layer within the National Regulatory Viewer indicates a general lack of hydric soil in the area of Ditch 1, providing further support that this ditch was constructed in uplands. Based on review of current aerial photos, historic aerial photos, and onsite photos from the wetland delineation report, Ditch 1 does not carry a relatively permanent flow, lacks a bed and bank, and does not have an ordinary high water mark. Therefore, Ditch 1 meets the definition of a category (b)(3) ditch and 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).

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 under the categories of waters of the United States:

- Wetlands 1-7, non-jurisdictional

Wetland 1 (0.09 acre) is located within a depression along Ditch 1 at the northern end of the review area. Based on LiDAR review and the submitted delineation report, this wetland is hydrologically connected to Ditch 1; however, it was determined that this ditch does not carry a relatively permanent flow, lacks a bed and bank, and does not have an ordinary high water mark. With the exception Ditch 1, additional review of LiDAR, aerial photos, and the wetland delineation report, indicates this wetland is surrounded by uplands. Therefore, Wetland 1 does not abut a jurisdictional water and does not meet the continuous surface requirement.

Wetland 2 (0.168 acre) and Wetland 3 (0.474 acre) are located within closed depressions in an agricultural field near the center of the review area. Based on

LiDAR review and the submitted delineation report, these wetlands are surrounded entirely by uplands with no discrete conveyance features evident and they do not abut any other waterbodies. Therefore, Wetland 2 and Wetland 3 do not abut a jurisdictional water and do not meet the continuous surface requirement.

Wetland 4 (0.148 acre) is located in a closed depression along the southwestern edge of the review area with a residential development to the west and north, commercial development to the south, and an agricultural field to the east. According to the wetland delineation report, this wetland is fed by surface water runoff from adjacent slopes. Based on review of LiDAR, topographic maps, and the delineation report, Wetland 4 is bordered by a topographic rise on all sides and is surrounded by upland. Additionally, no discrete conveyance features were evident in LiDAR review and this wetland does not abut any other waterbodies. Therefore, Wetland 4 does not abut a jurisdictional water and does not meet the continuous surface requirement.

Wetland 5 (0.135 acre) is located in a closed depression near the western edge of the review area. According to the delineation report, this wetland is fed by surface water runoff from adjacent slopes. Based on the review of aerial photos, the delineation report, and LiDAR, this wetland is surrounded entirely by uplands with no discrete conveyance features evident and does not abut any other waterbodies. Therefore, Wetland 5 does not abut a jurisdictional water and does not meet the continuous surface requirement.

Wetland 6 (0.035 acre) is located in a closed depression near the southeast corner of the review area along the edge of an agricultural field. According to the delineation report, this wetland is fed by surface water runoff from adjacent slopes. This wetland extends outside of the review area; however, based on review of LiDAR, aerial images, and the delineation report, this wetland is surrounded entirely by uplands with no discrete conveyance features evident and does not have a continuous surface connection to an RPW outside of the review area. Therefore, Wetland 6 does not abut a jurisdictional water and does not meet the continuous surface requirement.

Wetland 7 (1.55 acres) is a man-made pond fed by surface water runoff from adjacent slopes. The (b)(5) exclusion regarding artificial lakes and ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing, was considered; however, it was unclear if Wetland 7 was excavated in upland so Wetland 7 was reviewed to determine if it would meet one or more categories of waters of the United States under the 2023 Rule as amended.

Based on review of LiDAR, aerial images, and the delineation report, this wetland is surrounded entirely by uplands with no discrete conveyance features evident and does not abut any other waterbodies. Additional information from the requestor provided further support to the lack of discrete conveyance features by affirming no pipes entering or leaving Wetland 7 were found during the wetland delineation in 2025. Therefore Wetland 7 does not abut a jurisdictional water and does not meet the continuous surface requirement.

Wetlands 1-7 are not TNWs, territorial seas, or interstate waters 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 1-7 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). Wetlands 1-7 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 April 8 and April 21, 2026
 - b. Wetland Delineation, completed by Davel Engineering & Environmental, Inc., dated January 6, 2026 (field portion completed August 21, 2025)
 - c. GIS Layers consisting of LiDAR (Hillshade, DEM), WI 24k Hydro Flowlines Stream Order, accessed from the National Regulatory Viewer on April 8 and April 21, 2026.
 - d. Wisconsin Historic Aerial Imagery Finder, accessed on April 8 and April 21, 2026

10. OTHER SUPPORTING INFORMATION.

N/A

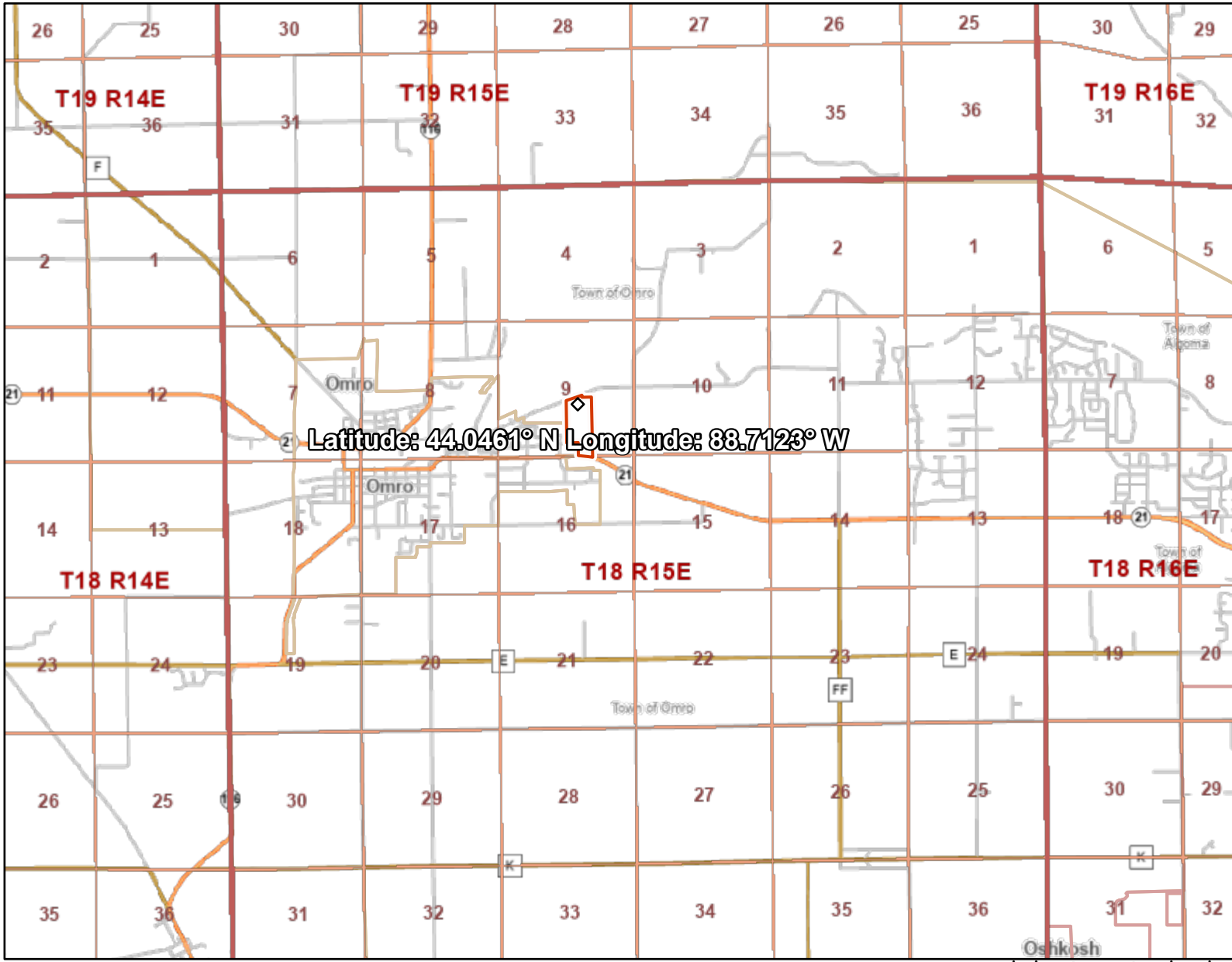
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement

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

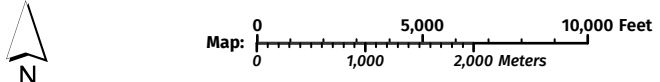
MVP-2026-00053-CJB Figure 1 of 2



Legend: (some map layers may not be displayed)

-  Township
-  Section
- Cities, Towns & Villages
-  City
-  Civil Town
-  City or Village
-  County Boundaries
- Major Roads
-  State Highway
- County and Local Roads
-  County HWY
-  Local Road
-  Railroads

Notes:



Service Layer Credits:
Cadastral: , Cities, Roads & Boundaries:

Map projection: NAD 1983 HARN Wisconsin TM

This map is a product generated by a DNR web mapping application.

This map is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. The user is solely responsible for verifying the accuracy of information before using for any purpose. By using this product for any purpose user agrees to be bound by all disclaimers found here: <https://dnr.wisconsin.gov/legal>

Date Printed: 3/12/2025 9:00 AM

Wetland Delineation Map Overview

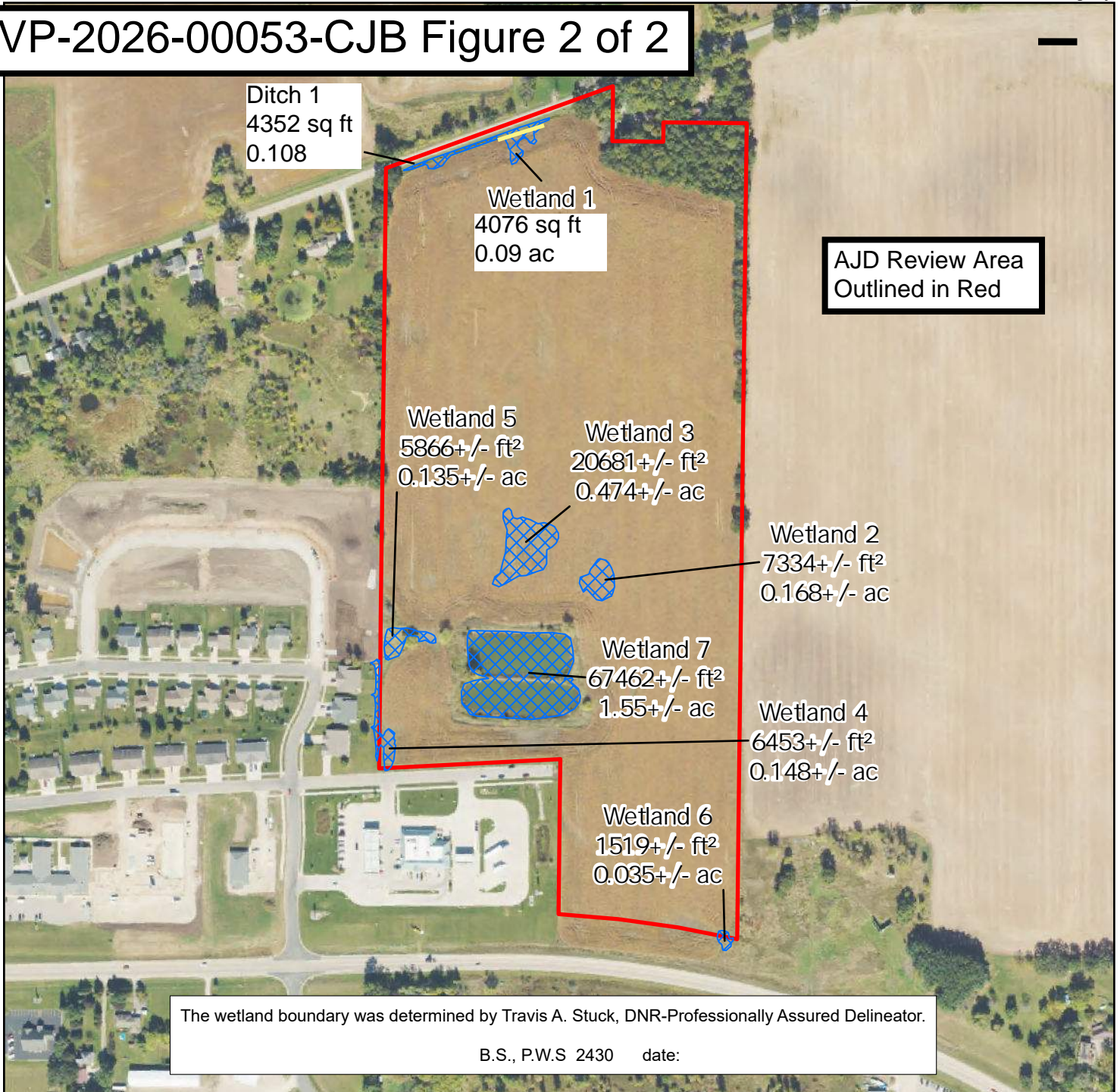
Springbrook Road (Omro Development)

Part of Sec. 09, T18N, R15E, Town of Omro, Winnebago County, WI

For: Michael Bennett

September 2024 Aerial Imagery

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The project scope limits shown on this map is not intended to be the parcel boundary

Legend

- Project Scope
- Wetland



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