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-2026-00546-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,

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[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.

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
Wetland 2	Non-Jurisdictional	NONE
Wetland 3	Non-Jurisdictional	NONE
Wetland 5	Non-Jurisdictional	NONE
Wetland 6	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): 50
   b. Location Description: The project/review area is located in Section 35, Township 021N, Range 018E, Outagamie County, Wisconsin.
   c. Center Coordinates of the Project Site (in decimal degrees)
      Latitude: 44.248630 Longitude: -88.284520
   d. Nearest City or Town: Kaukauna
   e. County: Outagamie

f. State: Wisconsin
g. Other associated Jurisdictional Determinations (including outcomes): NA

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 WATERS[7]: 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.

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[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.

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 the historical aerial photography, USGS topographic maps, Wisconsin DNR Surface Water Data Viewer, soil mapping, and the information submitted by the applicant for the following wetlands:

- Wetland 1 (3,148 sq. ft.)
- Wetland 2 (3,776 sq. ft.)
- Wetland 3 (527 sq. ft.)
- Wetland 5 (822 sq. ft.)
- Wetland 6 (32,482 sq. ft.)

[9] 88 FR 3004 (January 18, 2023)

Wetlands 1, 2, 3, and 5 are depressional and linear wet meadow features situated within a cultivated agricultural field. The boundaries of these wetlands distinctly correspond with topographic lows where surface water collects due to dense underlying parent material. Based on LiDAR, soil mapping, and aerial review, Wetlands 1, 2, 3, and 5 are surrounded by uplands and do not possess a continuous surface connection to any relatively permanent water (RPW) or other waterbody.

Wetland 6 is a linear depressional drainage feature located in the western portion of the review area, approximately 216 linear feet east of the nearest Relatively Permanent Water (RPW), an unnamed tributary to the Fox River. Field evaluations and aerial imagery confirm that Wetland 6 lacks a bed, bank, Ordinary High Water Mark (OHWM), and a continuous surface connection to the RPW. Specifically, an existing roadway along the western site boundary physically severs any potential surface water flow path, meaning the wetland is not indistinguishable from the tributary. Consequently, lacking a continuous surface connection to an RPW, Wetland 6 does not meet the current definition of a Water of the United States and is not subject to jurisdiction under Section 404 of the Clean Water Act.

Wetlands 1, 2, 3, 5, and 6 are not traditionally navigable waters (TNWs), territorial seas, or interstate waters, and do not meet the criteria for (a)(1) waters. These wetlands do not physically abut a relatively permanent water, are not located within a paragraph (a)(2) impoundment, and are not adjacent to a jurisdictional (a)(3) tributary. Consistent with the *Sackett v. EPA* decision and the March 12, 2025, Memorandum Concerning the Proper Implementation of "Continuous Surface Connection," these features lack the required physical connection to jurisdictional waters. As non-tidal wetlands that do not meet the definition of “adjacent,” Wetlands 1, 2, 3, 5, and 6 cannot be evaluated under paragraph (a)(4). Therefore, under the 2023 Revised Definition of “Waters of the United States” (Conforming Rule, 88 FR 61964), Wetlands 1, 2, 3, 5, and 6 are 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. [Office evaluation conducted May 19, 2026]

   b. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, Hillshade layer and DEM layer accessed on May 19, 2026.]

c. [Wetland Delineation Report, prepared by Davel Engineering and Environmental, Inc dated May 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.

MVP-2026-00546-RJH

0 0.5 1 2
mi

Map Center: 88.291688°W 44.257976°N

Map Created by: RJH

Date: 5/19/2026

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere

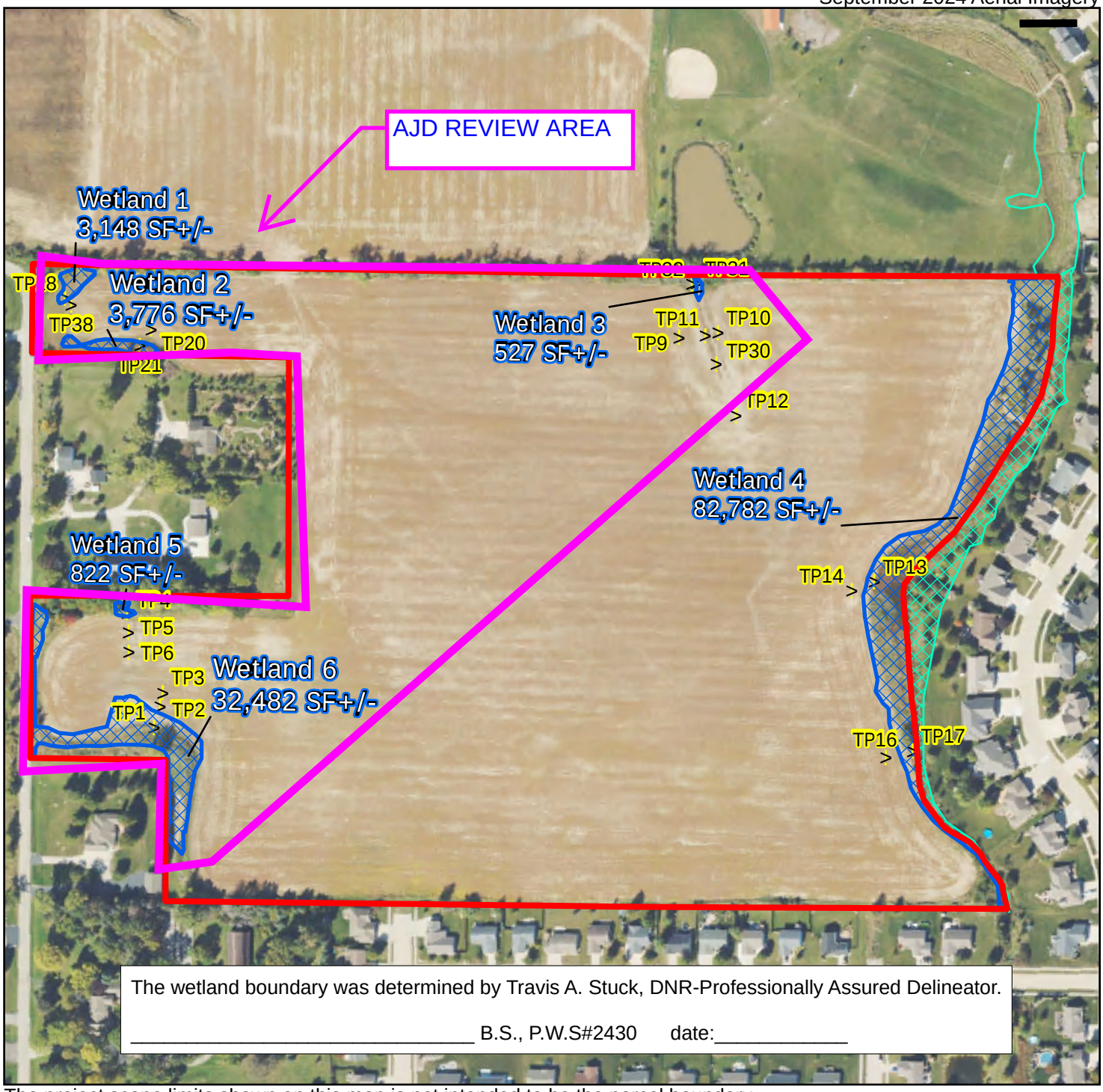
Wetland Delineation Overview Map 1:3600

High Pointe Meadows

Part of Sec. 35, T21N, R18E, City of Kaukauna, Outagamie County, WI

For: Dercks Builders & Masonry c/o Dercks 5, LLC

September 2024 Aerial Imagery



The wetland boundary was determined by Travis A. Stuck, DNR-Professionally Assured Delineator.

_____ B.S., P.W.S#2430 date:_____

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

DAVEL ENGINEERING & ENVIRONMENTAL, INC.
Civil Engineers and Land Surveyors
1164 Province Terrace, Menasha, WI 54952
Ph: 920-991-1866 Fax: 920-441-0804
www.davel.pro

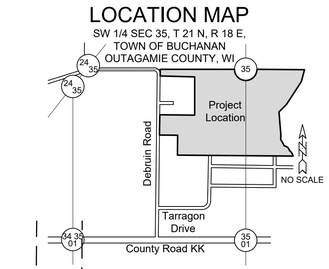
0 150 300 450 600 Feet

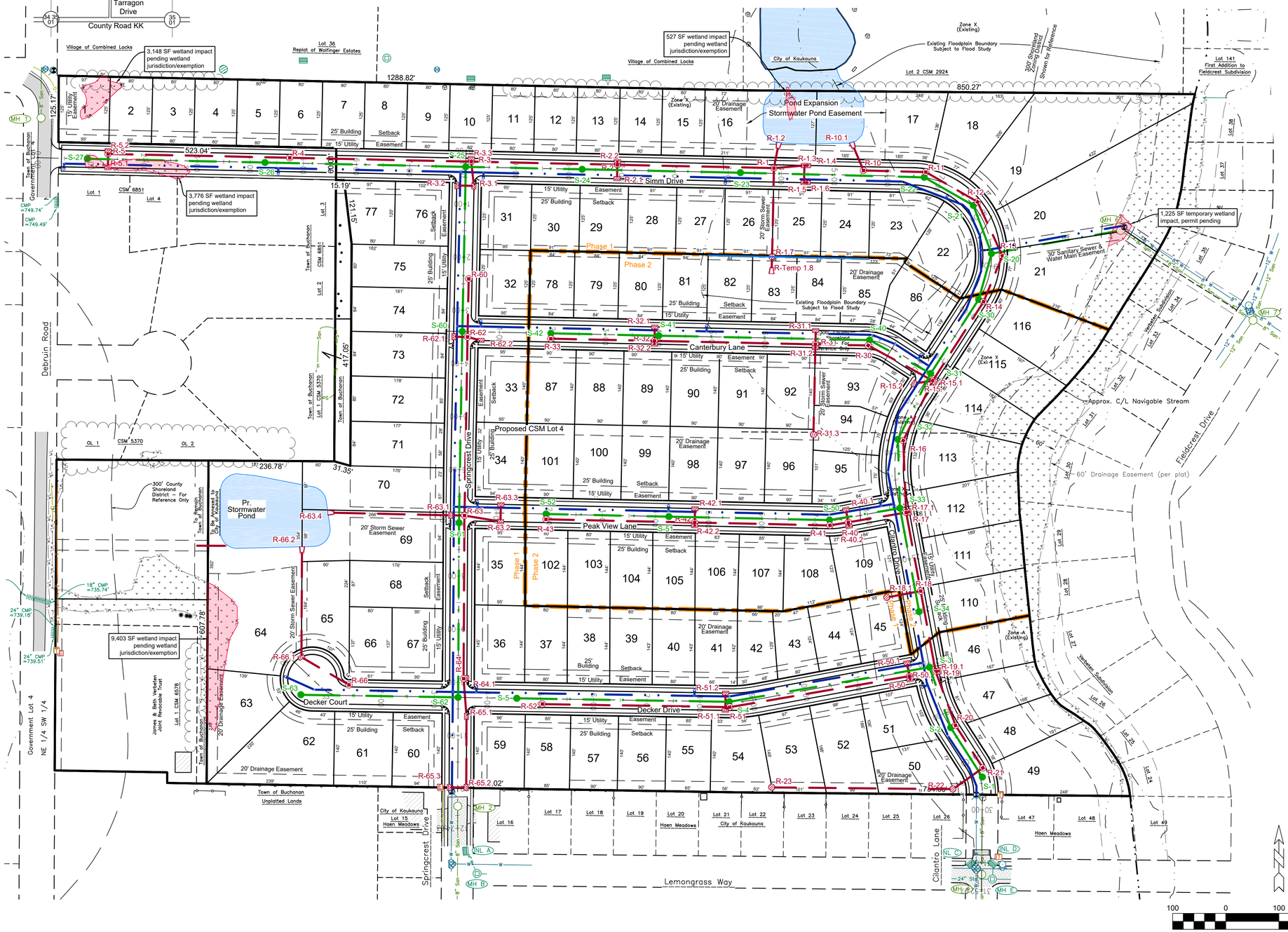
Legend

- Project Scope
- Wetland
- Wetland (Out of Scope)
- Estimated Offsite Wetland Line
- Test Plot

High Pointe Meadows

City of Kaukauna, Outagamie County, WI





Sewer and Water shall be constructed in accordance with the State of Wisconsin Standard Specifications for Sewer and Water Construction, and all Special Provisions of Kaukauna Utilities and City of Kaukauna. Provision include but not limited to:
1. All storm outfall shall be concrete endwalls with minimum three (3) joint ties per endwall.
2. Three (3) existing temporary hydrants shall remain property of Kaukauna Utilities once removed from system, Contractor to communicate for pick up.

Streets shall be constructed in accordance with the State of Wisconsin Standard Specifications for Highway and Structures Construction, and all Special Provisions of the City of Kaukauna.

Contractor shall locate all buried facilities prior to excavating. This plan may not correctly or completely show all buried utilities.

The Contractor shall verify all staking and field layout against the plan and field conditions prior to constructing the work and immediately notify the Engineer of any discrepancies.

The Contractor shall comply with all conditions of the Erosion Control Plan and the Storm Water discharge Permit. All Erosion Control shall be done in accordance with the Plan and Wisconsin DNR Technical Standards.

Pipe lengths are measured to center of structure. Endwalls are included in pipe length.

Wetland impacts are pending approvals from State and Federal authorities.

Flood elevations are pending analysis.

SITE INFORMATION:
Parcel #s: 323220600 & 323220800 (City), Part 030062307 & 030063500 (Annexation)
Current Use: Vacant/Cultivation
Proposed Use: Single-Family Housing

Current Zoning: RSF (City) / Annexation
Proposed Zoning = RSF

DEVELOPER:
Dercks Builders & Masonry, Inc.
W857 County Road ZZ
Kaukauna, WI 54130

LEGEND

- Underground Cable TV
- Underground Fiber Optic
- Overhead Utility Lines
- Utility Guy Wire
- Sanitary Sewer (Pipe Size)
- Storm Sewer (Pipe Size)
- Underground Electric
- Underground Gas Line
- Underground Telephone
- Water Main (Pipe Size)
- Fence - Steel
- Fence - Wood
- Fence - Barbed Wire
- Treeline
- Railroad Tracks
- Culvert
- Index Contour - Existing
- Intermediate Contour - Existing
- Delineated Wetlands
- Proposed Storm Sewer
- Proposed Sanitary Sewer
- Proposed Water Main
- Proposed Contour
- Proposed Swale
- Proposed Culvert
- Sanitary MH / Tank / Base
- Clean Out / Pull Box
- Storm Manhole
- Inlet
- Catch Basin / Yard Drain
- Water MH / Well
- Curb Stop
- Hydrant
- Utility Valve
- Utility Meter
- Utility Pole
- Light Pole / Signal
- Guy Wire
- Electric Pedestal
- Electric Transformer
- Electric Manhole
- Air Conditioner
- Telephone Pedestal
- Telephone Manhole
- +799.9 Ex Spot Elevation
- Proposed Sanitary Manhole
- Proposed Storm Manhole
- Proposed Curb Inlet
- Prop. Catch Basin / Yard Drain
- Proposed Endwall
- Proposed Hydrant
- Proposed Valve
- Proposed Curb Stop
- Proposed Cleanout
- CATV Pedestal
- Gas Regulator
- Railroad Signal
- Sign
- Tower / Silo
- Post / Guard Post
- Satellite Dish
- Large Rock
- Flag Pole
- Deciduous Tree
- Coniferous Tree
- Bush / Hedge
- Stump
- Soil Boring
- Benchmark
- Asphalt Pavement
- Concrete Pavement
- Gravel
- Proposed Reducer
- Proposed Plug
- Proposed Water MH
- Proposed Tee
- Proposed Cross
- Proposed 90° Bend
- Proposed 45° Bend
- Proposed 22.5° Bend

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IMPROVEMENT PLANS

DAVEL ENGINEERING & ENVIRONMENTAL, INC.
Civil Engineers and Land Surveyors
1164 Province Terrace, Menasha, WI 54952
Ph: 920-991-1866
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Project Number: 9254
May 7, 2026

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