

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): October 26, 2018

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Xcel Energy Property - Poleyard Expansion Project, MVP-2018-03158-EMN

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Marathon City: Abbotsford
Center coordinates of site (lat/long in degree decimal format): Lat. 44.95265° N, Long. -90.31327° W.
Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Porky Creek

Name of watershed or Hydrologic Unit Code (HUC): Wisconsin River (07070002)

- ☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- ☒ Office (Desk) Determination. Date: October 23, 2018
☒ Field Determination. Date(s): October 18, 2018

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no “*navigable waters of the U.S.*” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are no “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.: N/A

2. Non-regulated waters/wetlands (check if applicable):¹

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: **There are two intrastate wetlands within the review area as shown on the attached wetland delineation map (Page 2 of the attachments). Wetland 1 is classified as a palustrine emergent wetland dominated by reed canary grass and is approximately 0.08 acre in size. Wetland 2 is classified as a palustrine emergent wetland that formed in the bottom of an upland-cut roadside ditch and is approximately 0.09 acre in size. The ditch (Wetland 2) and depressional area (Wetland 1) are located within the Withee soil unit which is an upland soil, which may contain hydric soil inclusions. A review of historic aerial photos from 1938, 1951, and 1965 do not show the presence of a wetland or any wet signatures in the locations of these features within the review area. The landowner provided information that the ditch was constructed between 2005-2010 for stormwater purposes when the surrounding area was developed. In addition, aerial photographs from 1997-2012 show evidence of grading, soil stockpiles, and construction activity within the area where Wetland 1 was delineated in the 2018 delineation conducted by Wetlands & Waterways, LLC. Based upon this information and on-site photos within the delineation report, we have determined the ditch was constructed in dry land, does not have a relatively permanent flow of water, and is not a water of the United States. The determination of no jurisdiction is in accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330) and the 2008 Rapanos Guidance. In addition, it was determined that Wetland 1 is not a water of the United States as it was created due to grading, filling, and past construction activities in previously dry land. In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following waters to be waters of the United States: waterfilled depressions created in dry land incidental to construction activities.**

SECTION III: CWA ANALYSIS

¹ Supporting documentation is presented in Section III.F.

- A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): N/A
- C. SIGNIFICANT NEXUS DETERMINATION: N/A
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): N/A
- E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY): N/A
- F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
 - ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - ☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
 - ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
 - ☒ Other (explain, if not covered above): **Reference Section II.B.2.**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

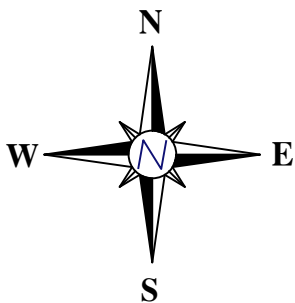
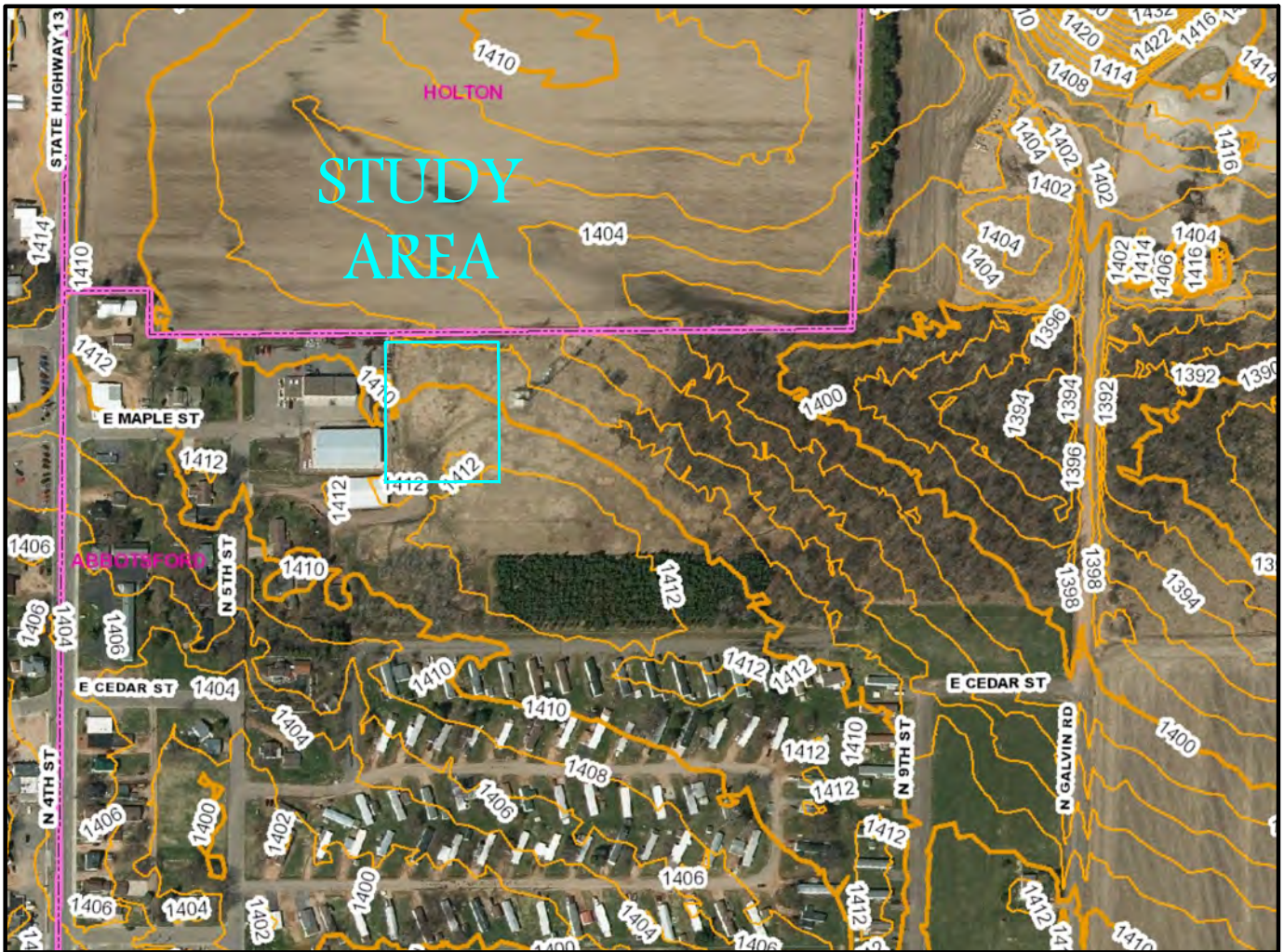
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

- A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):


- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **Wetlands & Waterways, LLC - 2018 Wetland Delineation Report - Xcel Energy Property**
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☒ Office concurs with data sheets/delineation report.
 - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☒ U.S. Geological Survey Hydrologic Atlas:
 - ☒ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K WI - Abbotsford**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Marathon County**
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): **Wisconsin Wetland Inventory**
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **1938 USDA Aerial; 1951, 1965, 1999 USGS Aerials; 1994, 1997, 2002, and 2012 WDOT Aerials, and 2005 NAIP Aerial.**
 - or ☐ Other (Name & Date): **Ground level photos from delineation report (2018)**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Reference attachments for historical aerial photos and captions showing the ditch construction and past construction activities on-site.

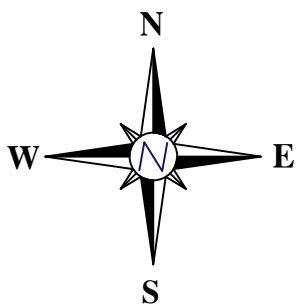
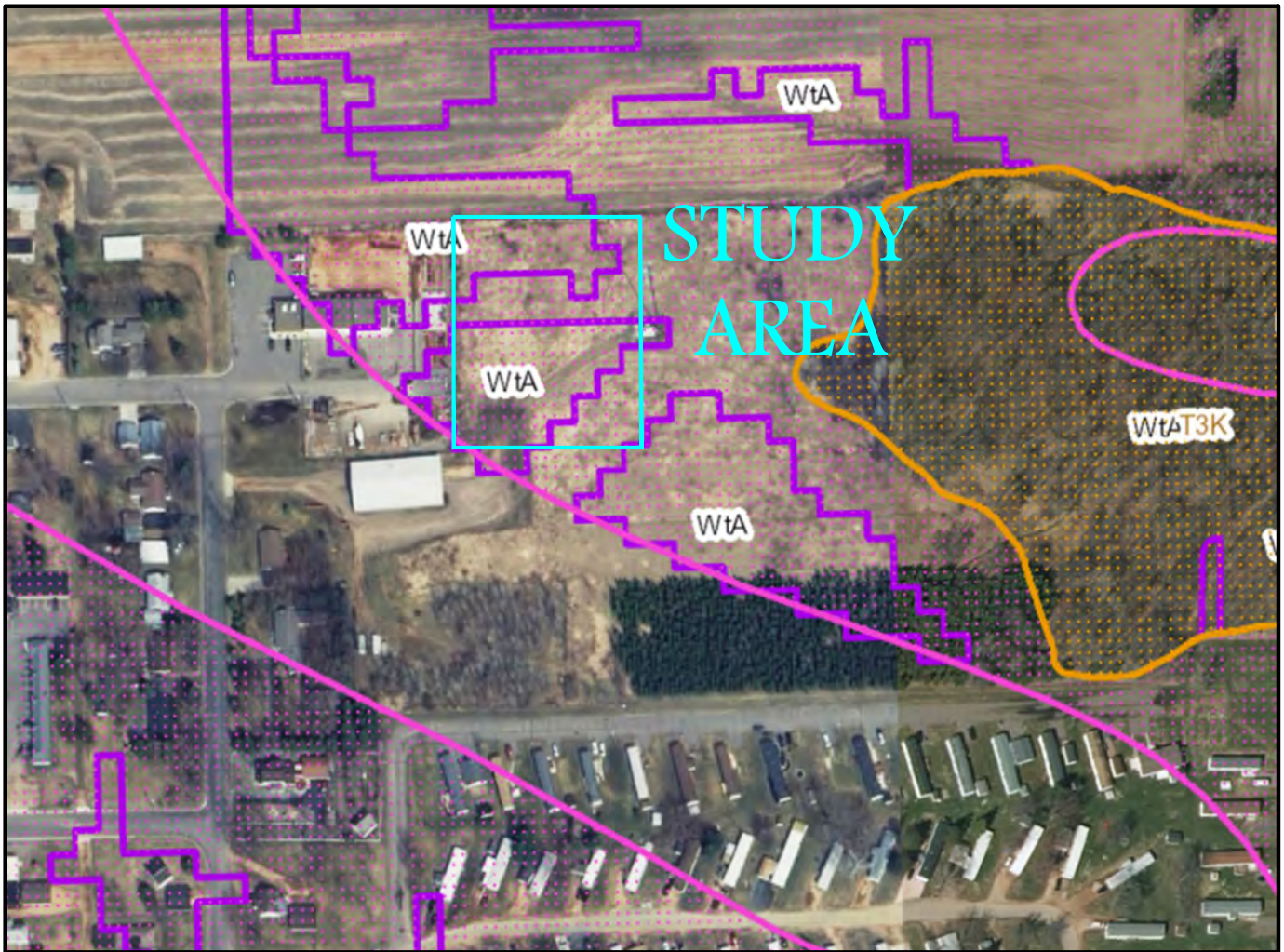


QUADRANGLE LOCATION

BASE MAP SOURCE: USGS 7.5 MINUTE QUADRANGLE, ABBOTSFORD, WISCONSIN, 1981 (NATIONAL GEOGRAPHIC HOLDINGS, INC.)


SITE LOCATION & LOCAL TOPOGRAPHY	APPROVED BY: AMK DRAWN BY: NLB	THIS DRAWING AND ALL INFORMATION CONTAINED THEREON IS THE PROPERTY OF WETLANDS & WATERWAYS LLC, AND SHALL NOT BE COPIED OR USED EXCEPT FOR THE PURPOSE FOR WHICH IT IS FURNISHED.	 Wetlands & Waterways LLC	PROJECT NUMBER: 497 FIGURE NO. 1
XCEL ENERGY PROPERTY SEC. 31, T29N, R2E, CITY OF ABBOTSFORD, MARATHON COUNTY, WISCONSIN	DATE: 7-24-18 SCALE: NONE			

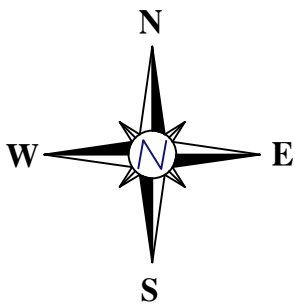




QUADRANGLE LOCATION

BASE MAP SOURCE: WISCONSIN WETLAND INVENTORY MAP

WISCONSIN WETLAND INVENTORY MAP	APPROVED BY: AMK DRAWN BY: NLB	THIS DRAWING AND ALL INFORMATION CONTAINED THEREON IS THE PROPERTY OF WETLANDS & WATERWAYS LLC, AND SHALL NOT BE COPIED OR USED EXCEPT FOR THE PURPOSE FOR WHICH IT IS FURNISHED.	 Wetlands & Waterways LLC	PROJECT NUMBER: 497 FIGURE NO.
XCEL ENERGY PROPERTY SEC. 31, T29N, R2E, CITY OF ABBOTSFORD, MARATHON COUNTY, WISCONSIN	DATE: 7-24-18 SCALE: NONE			3




SOILS LEGEND:

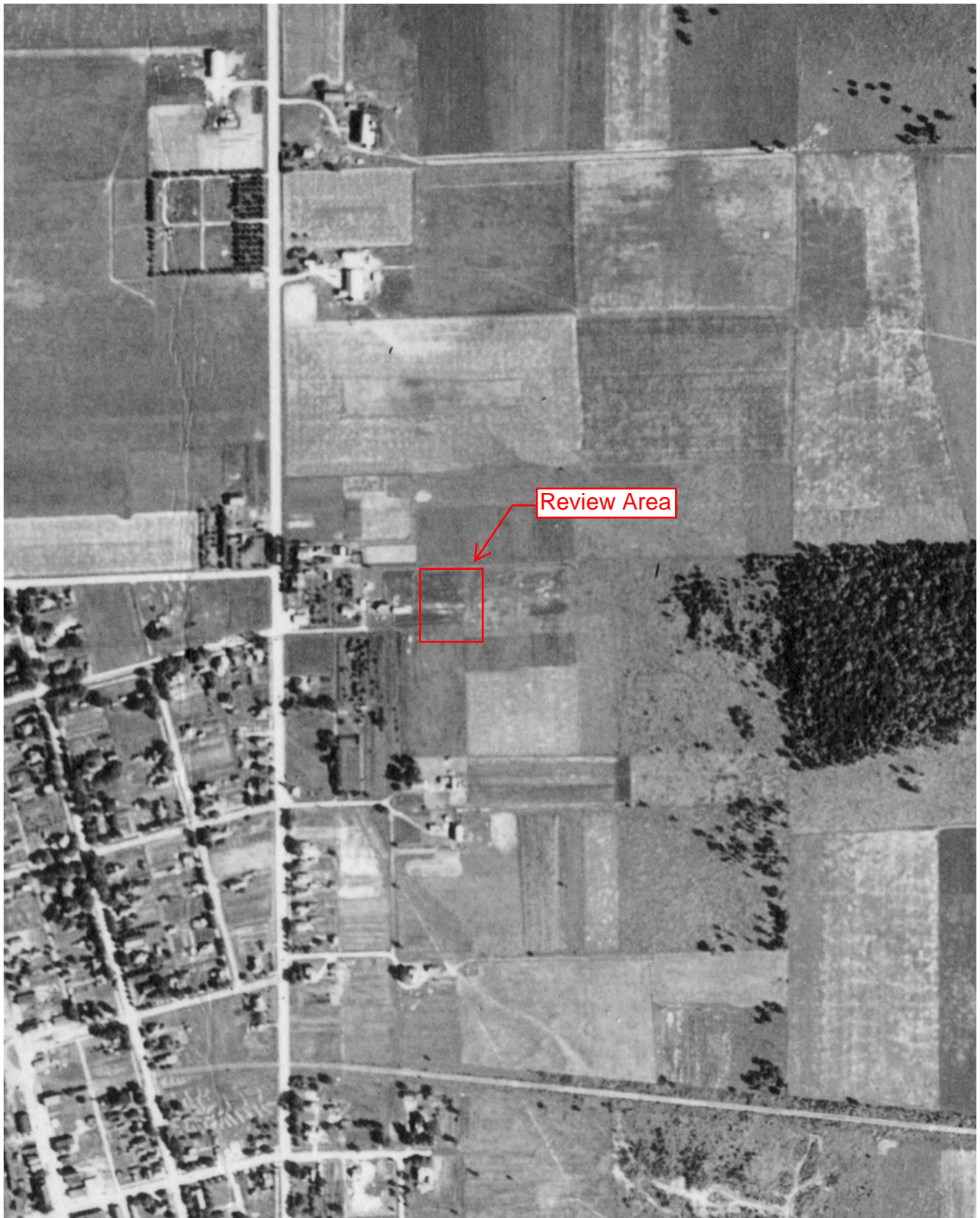
WtA
 Withee silt loam, 0 to 3 percent slopes



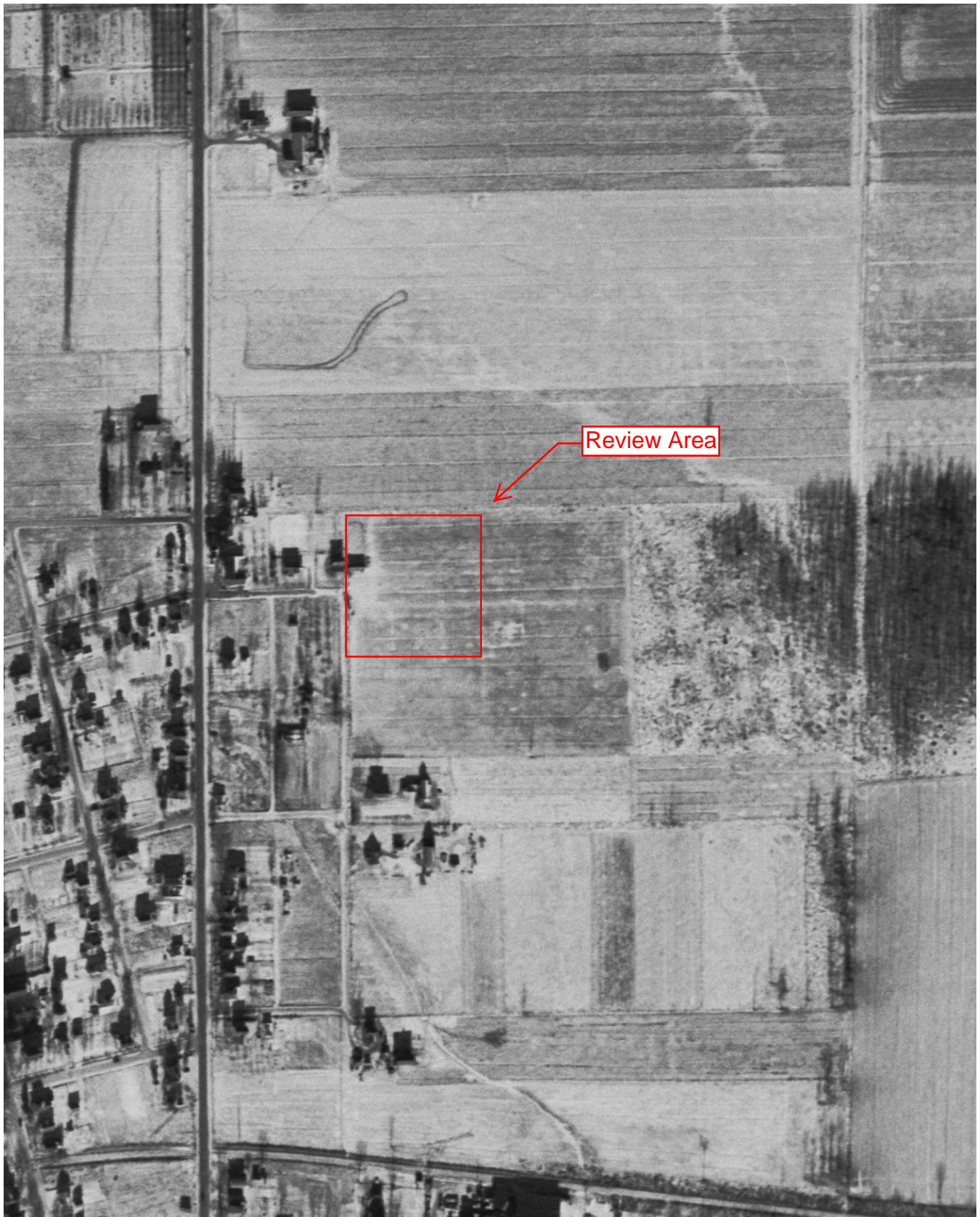
QUADRANGLE LOCATION

BASE MAP SOURCE: MARATHON COUNTY SOIL SURVEY MAP

MARATHON COUNTY SOIL SURVEY MAP	APPROVED BY: AMK DRAWN BY: NLB	THIS DRAWING AND ALL INFORMATION CONTAINED THEREON IS THE PROPERTY OF WETLANDS & WATERWAYS LLC, AND SHALL NOT BE COPIED OR USED EXCEPT FOR THE PURPOSE FOR WHICH IT IS FURNISHED.	 Wetlands & Waterways LLC	PROJECT NUMBER: 497
XCEL ENERGY PROPERTY SEC. 31, T29N, R2E, CITY OF ABBOTSFORD, MARATHON COUNTY, WISCONSIN	DATE: 7-24-18 SCALE: NONE			FIGURE NO. 4



1938 Aerial Photo – USDA



1951 Aerial Photo – USGS



1965 Aerial Photo – USGS



1994 Aerial Photo – WDOT



1997 Aerial Photo – WDOT



1999 Aerial Photo – USGS



2002 Aerial Photo – WDOT



2005 Aerial Photo – NAIP



2012 Aerial Photo – WDOT (right side is edge of original photo)