

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): **MAY 15 2018**

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: WIS 142 to WIS 20, MVP-2018-00053-ANM

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin** County/parish/borough: **Racine and Kenosha** City: **Several**
Center coordinates of site (lat/long in degree decimal format): Lat. **42.672621° N**, Long. **-87.953323° W**.
Universal Transverse Mercator: **Zone 16 (421884.695429, 4724901.465181)**

Name of nearest waterbody: **Kilbourn Road Ditch**

Name of watershed or Hydrologic Unit Code (HUC): **Great Lakes Region (04040002) to the north; Upper Mississippi Region (07120004) to the south**

- ☒ 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: **May 2, 2018**
☐ Field Determination. Date(s):

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: **The review area contains many linear ditches as shown on the enclosed figures labeled MVP-2018-00053-ANM Figures 1 through 8. Figure 1 includes 1.85 miles of linear ditch associated with WIS 20 crossroads. Figures 1 and 2 include 1.76 miles of linear ditch associated with Interstate 94 (I-94) located between WIS 20 and WIS 11. Figures 2, 3, and 4 include 2.01 miles of linear ditch associated with WIS 11 interchange. Figures 4 and 5 include 1.26 miles of linear ditch associated with I-94 located between WIS 11 interchange and County KR interchange. Figure 5 includes 1.64 miles of linear ditch associated with County KR interchange. Figures 5 and 6 include 1.28 miles of linear ditch associated with I-94 located between County KR interchange and County E interchange. Figure 7 includes 2.53 miles of linear ditch associated with County E interchange. Figures 7 and 8 include 0.98 mile of linear ditch associated with I-94 between County E interchange and WIS 142. Per review of the 2015, 2016, and 2017 Graef wetland delineation reports and aerial photos, the ditches were constructed wholly in uplands and drain only uplands. Site photos in the delineation reports and Google Earth street view indicate that these ditches do not have a relatively permanent flow of water. These ditches are not waters of the U.S. and the determination of no jurisdiction is in accordance with the 2008 Rapanos Guidance. The review area in Figure 7 also includes two stormwater detentions ponds (W-3 and W-79) constructed in uplands between 2008-2010 and are not waters of the U.S. This was confirmed by reviewing aerial photos and WisDOT plan sheets for Project I.D. 1030-23-71 in Corps file #2007-05896-DJP. The determination of no jurisdiction for the two stormwater detention basins is in accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), which states that the Corps does not generally consider the following to be waters of the U.S.; artificial lakes or ponds created by excavating and/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.**

¹ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

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): **The linear ditches and two stormwater ponds (W-3 and W-79) are not waters of the U.S. as detailed in 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.

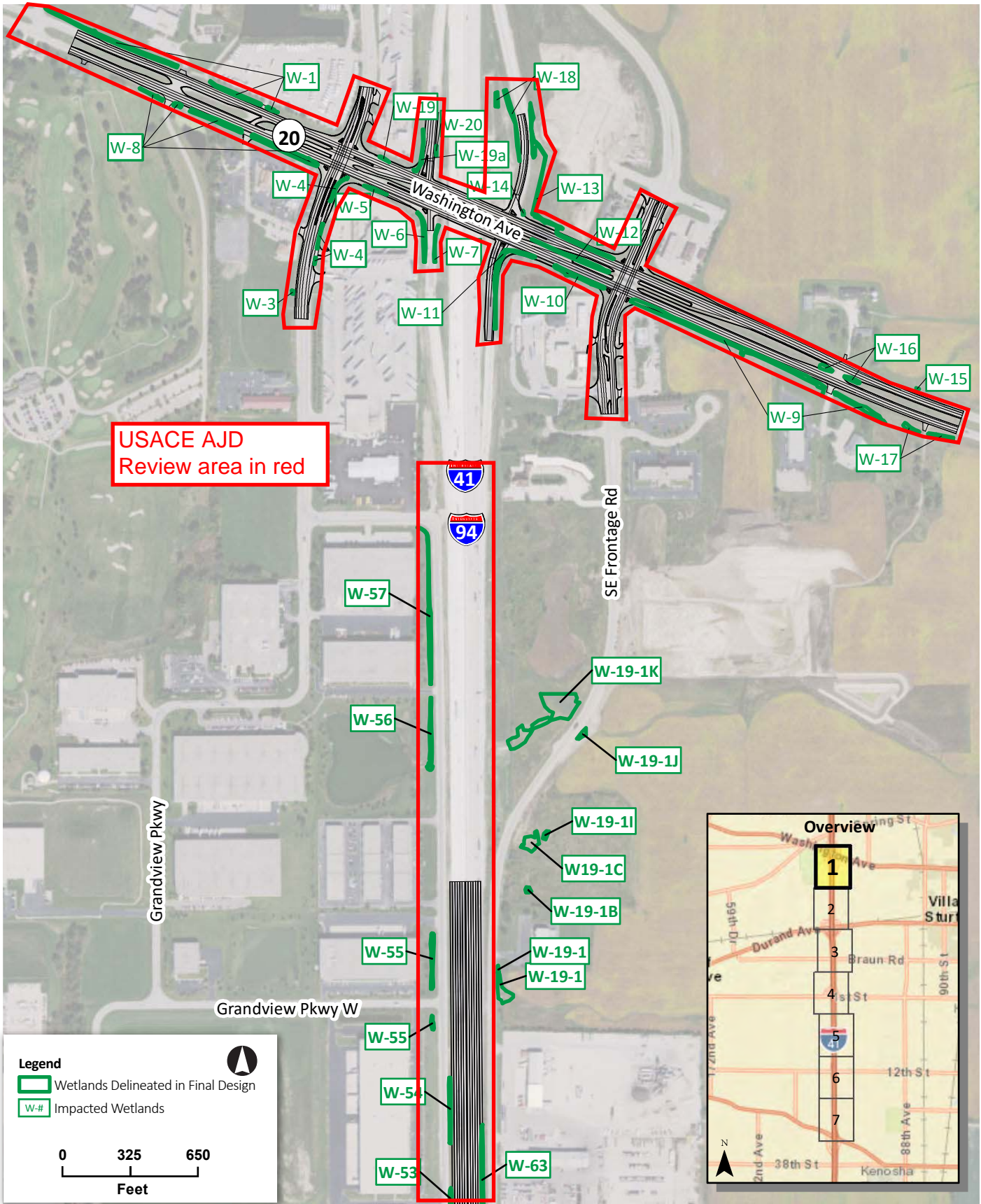
SECTION IV: DATA SOURCES.

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: 2015 Graef IH 94 wetland delineation report, 2016 Graef STH 20 wetland delineation report, and 2017 Graef IH 94 wetland delineation report
- ☒ 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:
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ 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): ground level photos in delineation reports
or ☒ Other (Name & Date): Google Earth street view
- ☐ Previous determination(s). File no. and date of response letter:

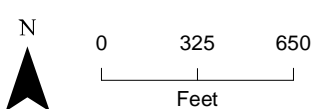
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD:





Note: 2015 Imagery source: ESRI ArcGIS Online World Imagery





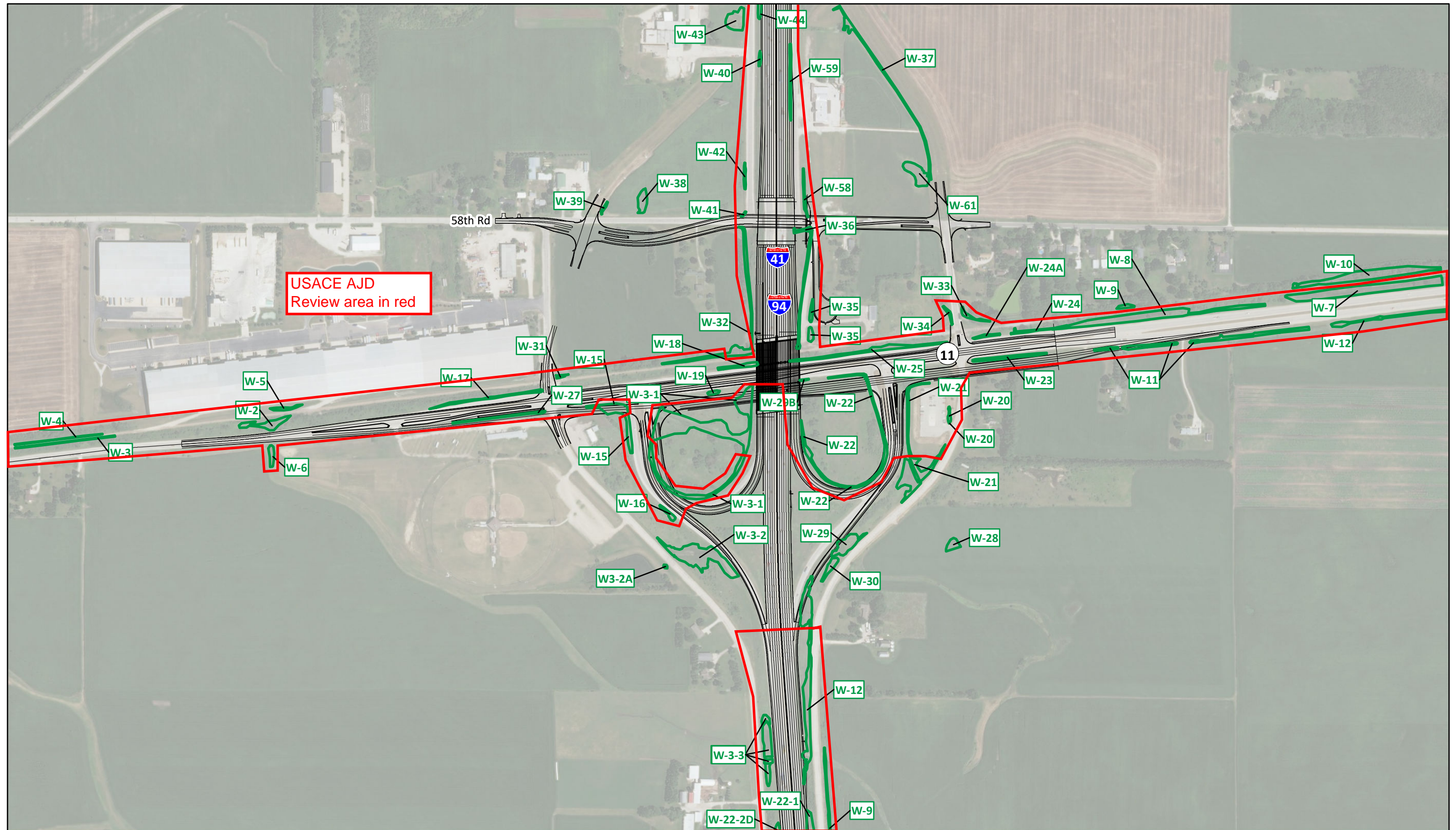
Legend

 Wetlands Delineated in Final Design

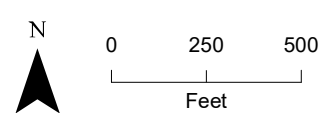
 Impacted Wetlands

Note: 2015 Imagery source: Esri ArcGIS Online World Imagery

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USACE AJD
Review area in red



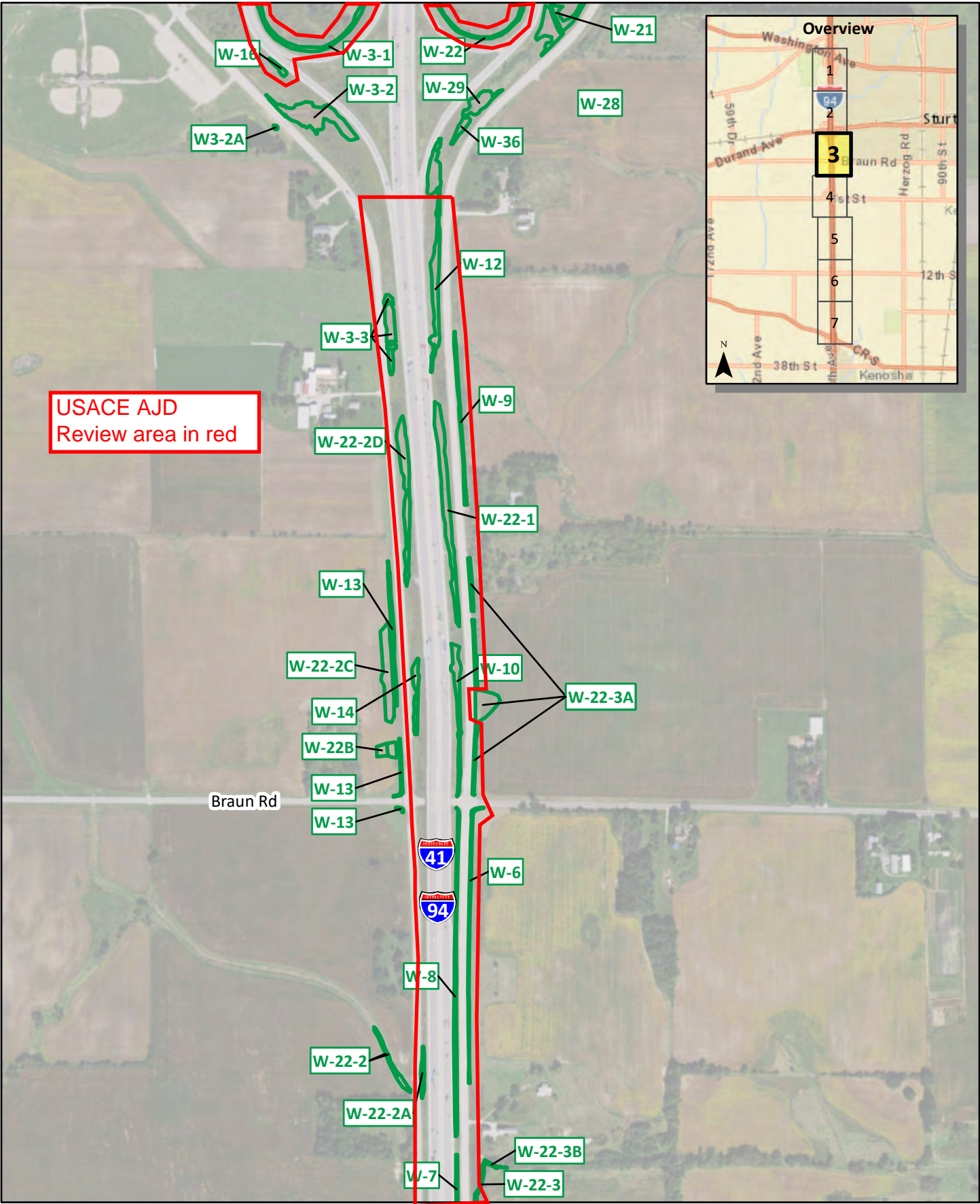
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 Wetlands Delineated in Final Design

 Impacted Wetlands

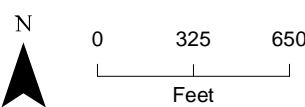
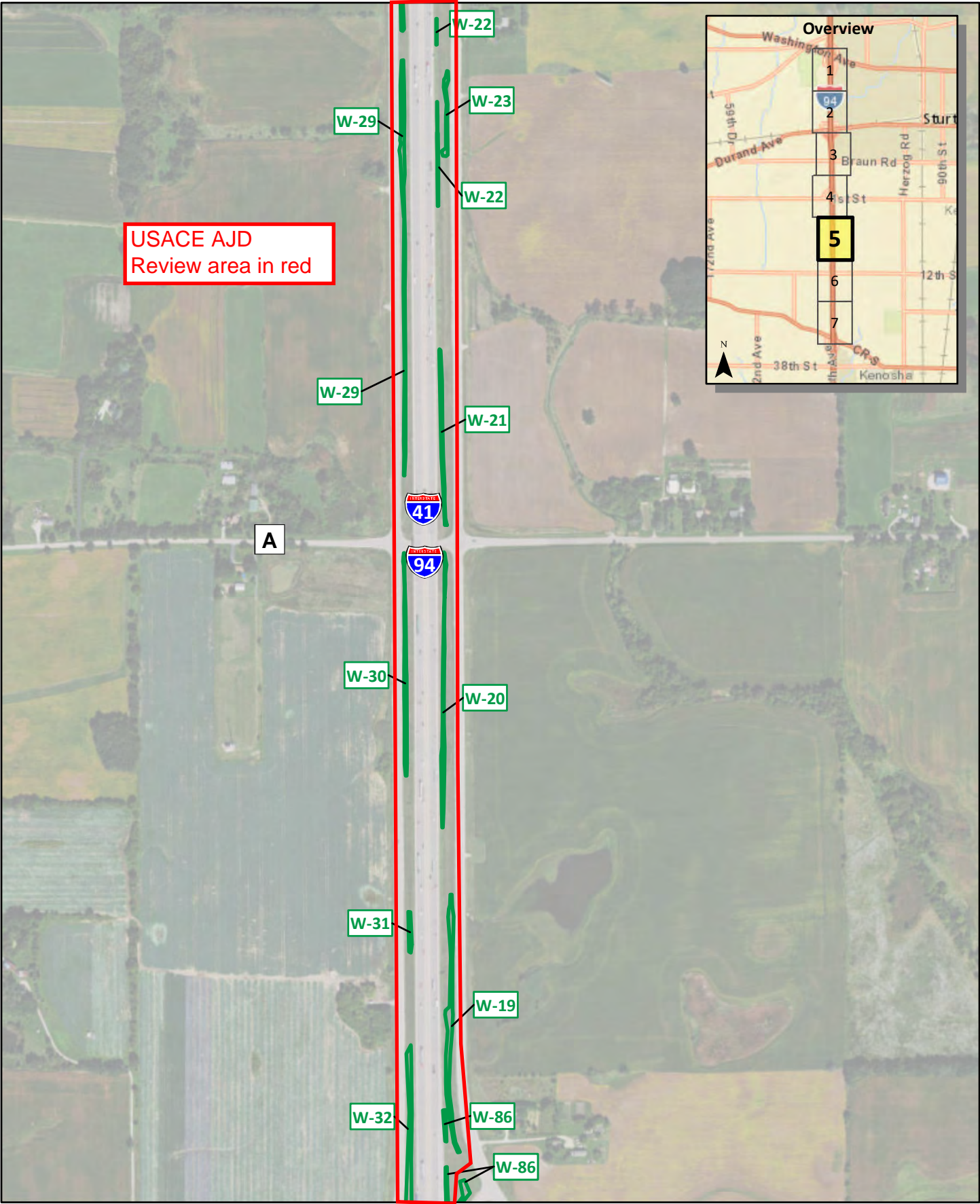
Note: 2015 Imagery source: Esri ArcGIS Online World Imagery

Wetland Location Overview Map - STH 11



Wetland Location Overview Map 3 of 7

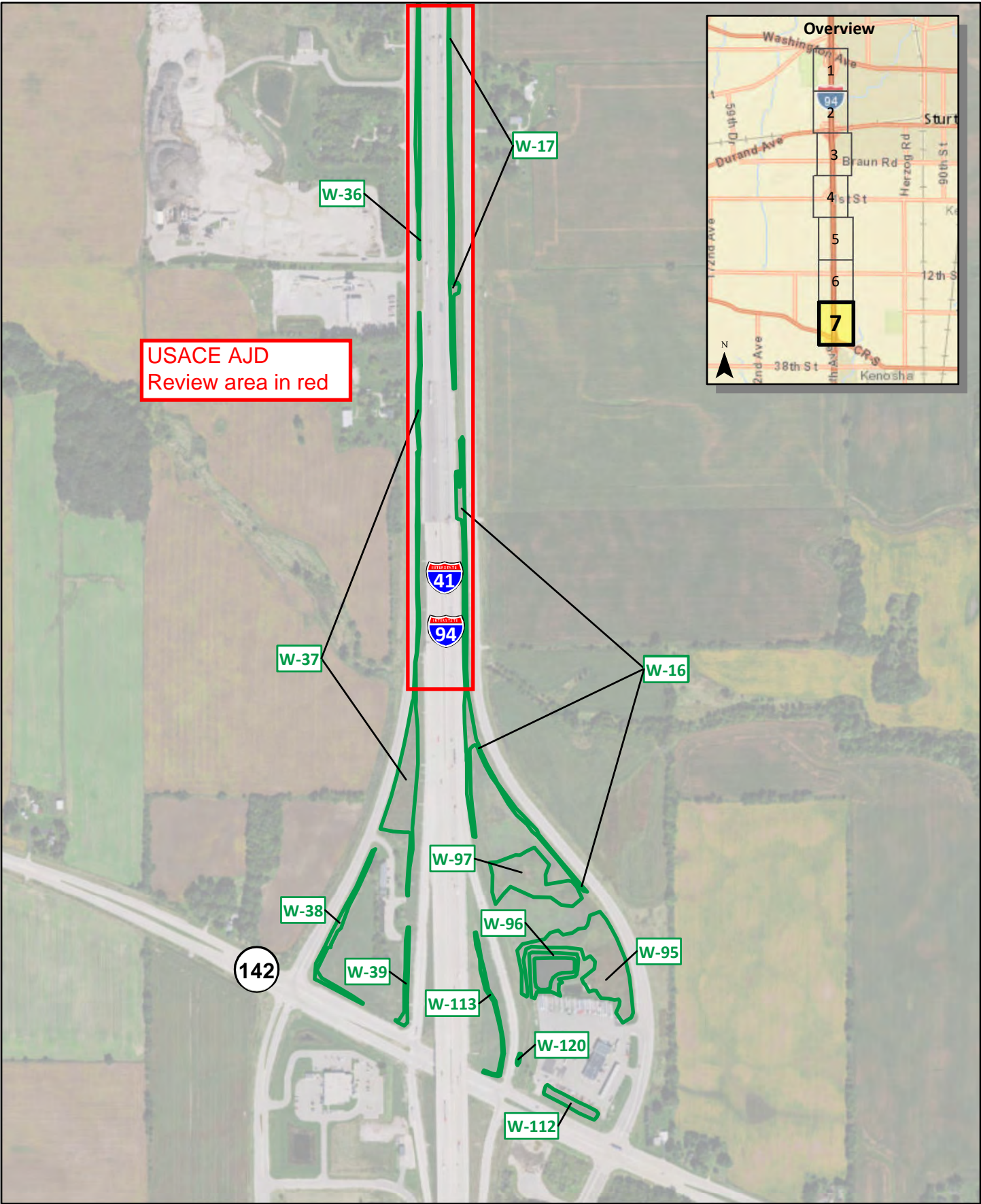




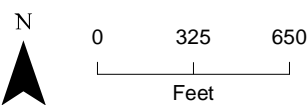
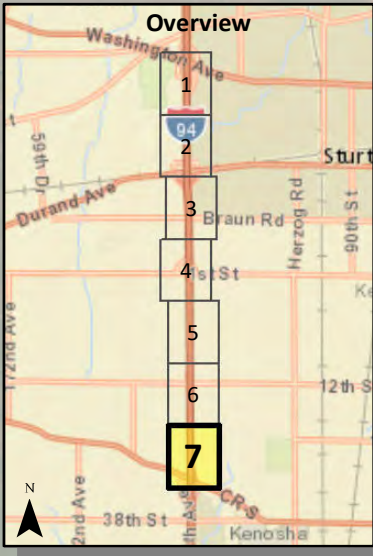
Legend
[Green outline box] Wetlands Delineated in Final Design
[Green box with W-#] Impacted Wetlands

Note: 2015 Imagery source: Esri ArcGIS Online World Imagery

Wetland Location Overview map 5 of 7



USACE AJD
Review area in red



Legend
Wetlands Delineated in Final Design
W-# Impacted Wetlands

Wetland Location Overview Map 7 of 7