



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
ST. PAUL DISTRICT OFFICE
332 MINNESOTA STREET SUITE E1500
ST. PAUL MN 55101-1323

MVP

June 10, 2025

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-2025-00405-TJH [[MFR 1 of 1](#)]

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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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- 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 (Point)	JD or Non-JD	Section 404/Section 10
Wetland 110 (W-9)	Non-Jurisdictional	Non-WOTUS
Wetland 111 (W-11)	Non-Jurisdictional	Non-WOTUS
Wetland 112 (W-12)	Non-Jurisdictional	Non-WOTUS
Wetland 113 (W-13)	Non-Jurisdictional	Non-WOTUS
Wetland 114 (W-14)	Non-Jurisdictional	Non-WOTUS
Wetland 131 (W-32)	Non-Jurisdictional	Non-WOTUS
Wetland 136 (W-40)	Non-Jurisdictional	Non-WOTUS
Wetland 148 (W-52)	Non-Jurisdictional	Non-WOTUS
Wetland 149 (W-53)	Non-Jurisdictional	Non-WOTUS
Wetland 152 (W-58)	Non-Jurisdictional	Non-WOTUS
Wetland 153 (W-59)	Non-Jurisdictional	Non-WOTUS
Wetland 154 (W-60)	Non-Jurisdictional	Non-WOTUS
Wetland 155 (W-61)	Non-Jurisdictional	Non-WOTUS
Wetland 167 (W-70)	Non-Jurisdictional	Non-WOTUS
Wetland 173 (W-76)	Non-Jurisdictional	Non-WOTUS
Wetland 174 (W-77)	Non-Jurisdictional	Non-WOTUS
Wetland 187 (W-92)	Non-Jurisdictional	Non-WOTUS

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)

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- 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.

The review area for this determination includes 9 non-jurisdictional wetlands, labeled as Wetland 148 (W-52), Wetland 149 (W-53), Wetland 152 (W-58), Wetland 153 (W-59), Wetland 154 (W-60), Wetland 155 (W-61), Wetland 173 (W-76), Wetland 174 (W-77), and Wetland 187 (W-92), and 8 non-jurisdictional ditches labeled as Wetland 110 (W-9), Wetland 111 (W-11), Wetland 112 (W-12), Wetland 113 (W-13), Wetland 114 (W-14), Wetland 131 (W-32), Wetland 136 (W-40), Wetland 167 (W-70), on the attached figures labeled as 2025-00405-TJH AJD Figures 1 of 13 through 13 of 13. A wetland delineation report was completed for the project site December 11, 2023. The review area is located along an approximately 20-mile-long segment of State Trunk Highway (STH) 13 and adjacent rural land near Section 25, Township 42 North, Range 2 West, Ashland County, Wisconsin. The approximate center coordinates of the site (in decimal degrees) are Latitude: 46.094060, Longitude: -90.561720. There are no other JDs associated with this review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶
N/A

⁵ 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.

⁶ 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.

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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).⁷

Wetland 110 (W-9), Wetland 111 (W-11), Wetland 112 (W-12), Wetland 113 (W-13), Wetland 114 (W-14), Wetland 131 (W-32), Wetland 136 (W-40 and Wetland 167 (W-70) are roadside ditches constructed in upland within the STH 13 right of

⁷ 88 FR 3004 (January 18, 2023)

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way based on review of the wetland delineation report and desktop resources including US Geological Service 3DEP Hillshade and DEM maps; Wi DNR 2-foot contour maps; Wi DNR NWI Wetland Finder/NWI maps; NHD data; and NRCS hydric soil data; and aerial imagery from Google Earth Pro. Recent aerial photos do not show relatively permanent flow. Based on the wetland delineation and desktop resources reviewed, these aquatic resources were excavated wholly in and draining only uplands and do not carry a relatively permanent flow and, according to exclusion (b)(3) of the 2023 Rule, as amended, are not waters of the United States.

- 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).

Wetland 148 (W-52), Wetland 149 (W-53), Wetland 152 (W-58), Wetland 153 (W-59), Wetland 154 (W-60), Wetland 155 (W-61), Wetland 173 (W-76), Wetland 174 (W-77), and Wetland 187 (W-92) are not a traditionally navigable water (TNW), territorial sea, or interstate water and therefore is not an (a)(1) water. The wetland delineation and desktop resources, including topographic maps, LiDAR imagery, and Google Earth aerial imagery indicate that these are depressional wetlands surrounded entirely by upland with no continuous surface connection to jurisdictional waters. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary.

These wetlands range between approximately 0.05-0.2 mile from the nearest relatively permanent water. The wetlands are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and, as such, do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. Therefore, these wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

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. Wetland Delineation report prepared by Ayers Associates, December 11, 2023.
 - b. Desktop evaluation conducted May 16, 2025.

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- c. USGS LiDAR, 3DEP Elevation Model, USGS TNM – National Hydrography Dataset, USFWS NWI Maps, and USDA/NRCS Soil Survey Map

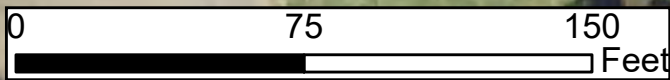
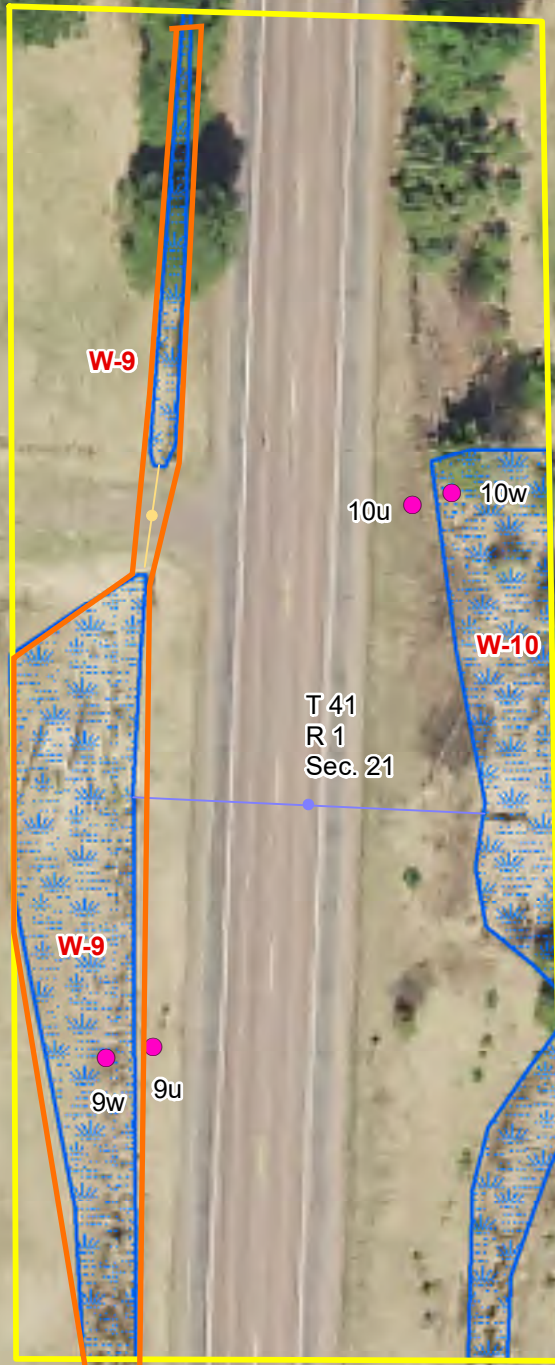
10. OTHER SUPPORTING INFORMATION. N/A

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.

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections

Corps AJD review area is limited to Wetland 110 (W-9) shown within the orange polygon



AVRES
 3433 Oakwood Hills Parkway
 Eau Claire, Wisconsin 54701

Location
 STH 13
 Ashland County, Wisconsin

Project Information
 Project Number: 41-0883.00
 Modified: 10/26/2023



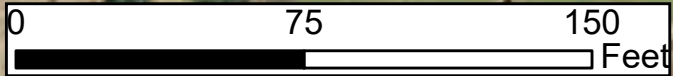
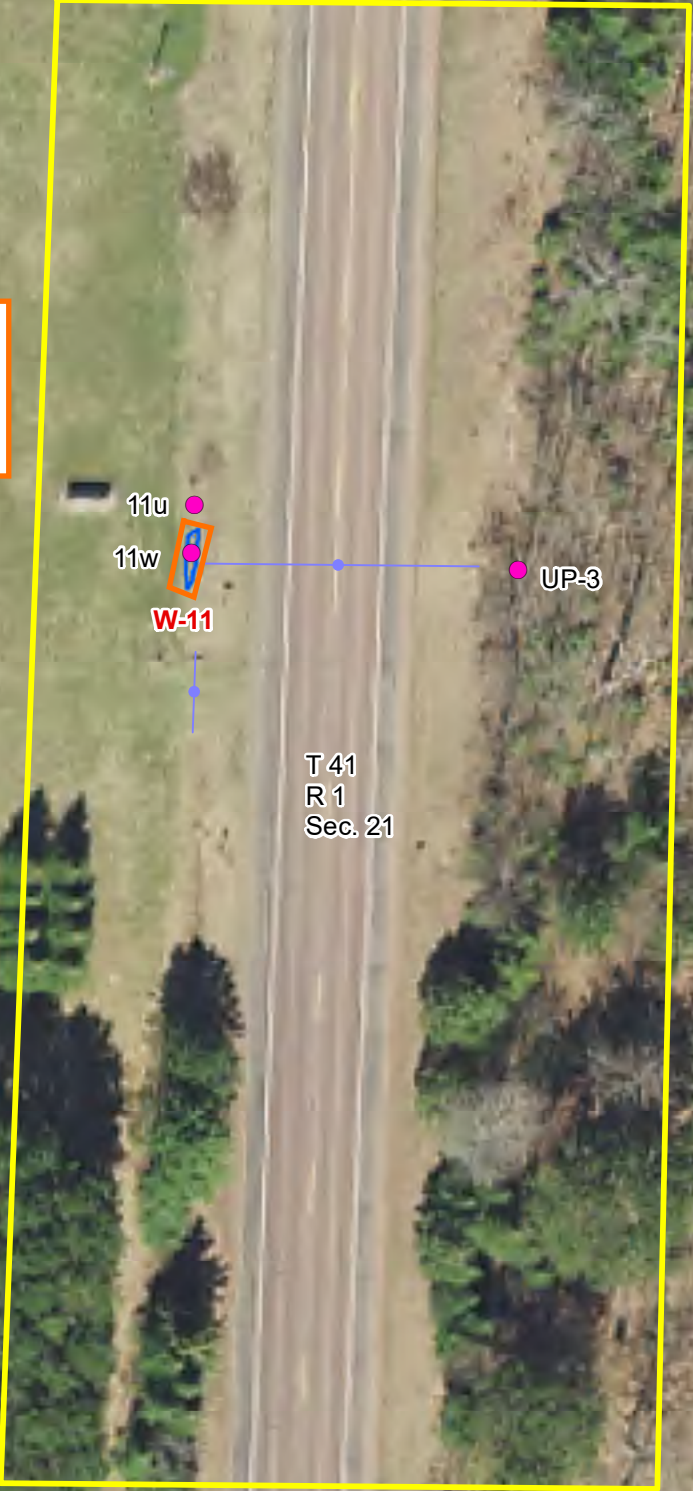
**Figure 4-6 (STA 234+50)
 Wetland Delineation Map**

STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections

Corps AJD review area is limited to Wetland 111 (W-11) shown within the orange polygon



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Figure 4-7 (STA 242)
Wetland Delineation Map

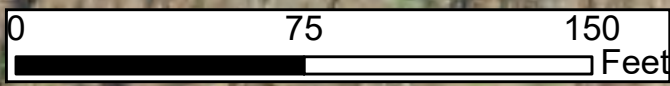
STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections



Corps AJD review area is limited to Wetland 112 (W-12) shown within the orange polygon



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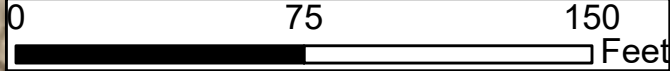
Figure 4-9 (STA 270+07)
Wetland Delineation Map

STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections

Corps AJD review area is limited to Wetland 113 (W-13) shown within the orange polygon



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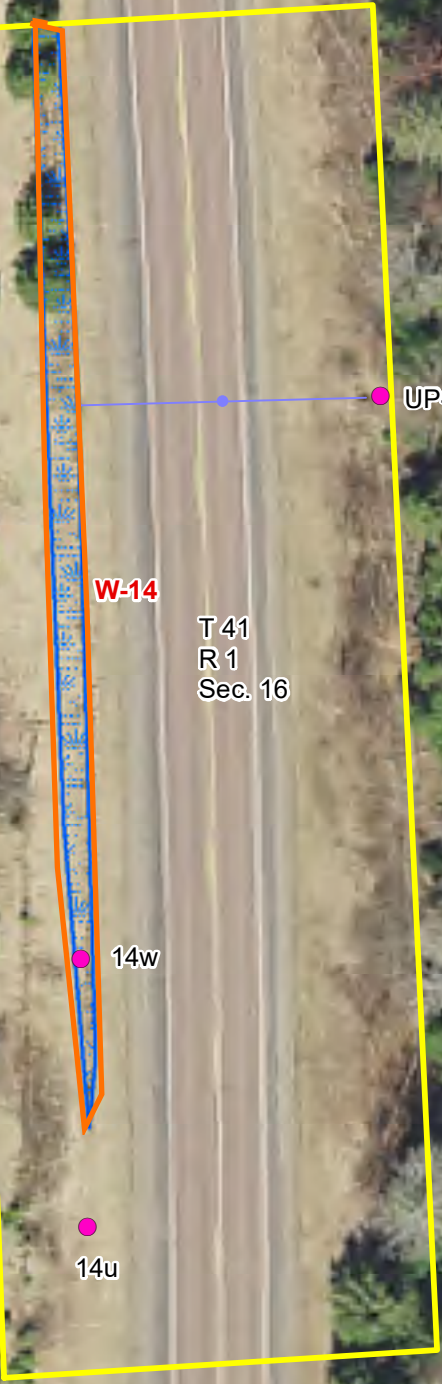
**Figure 4-10 (STA 281+19)
 Wetland Delineation Map**

STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections

Corps AJD review area is limited to Wetland 114 (W-14) shown within the orange polygon



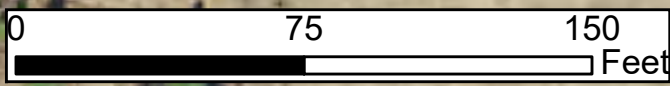
T 41
R 1
Sec. 16

W-14

14w

14u

UP-9



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Eau Claire, Wisconsin 54701

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**Figure 4-11 (STA 285+50)
Wetland Delineation Map**

STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections

Corps AJD review area is limited to Wetland 131 (W-32) shown within the orange polygon

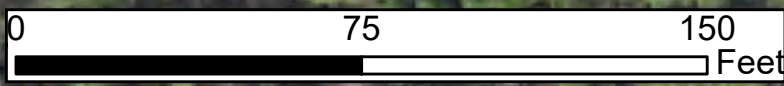
T 41
R 1
Sec. 5

UP-11

W-32

32w

32u



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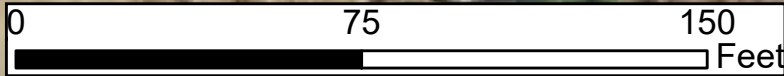
**Figure 4-22 (STA 408+55)
Wetland Delineation Map**

STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections

Corps AJD review area is limited to Wetland 136 (W-40) shown within the orange polygon



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**Figure 4-25 (STA 458+43)
 Wetland Delineation Map**

STH 13 (1610-00-11)



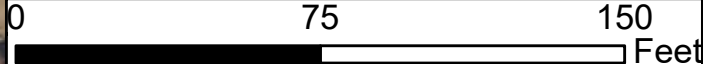
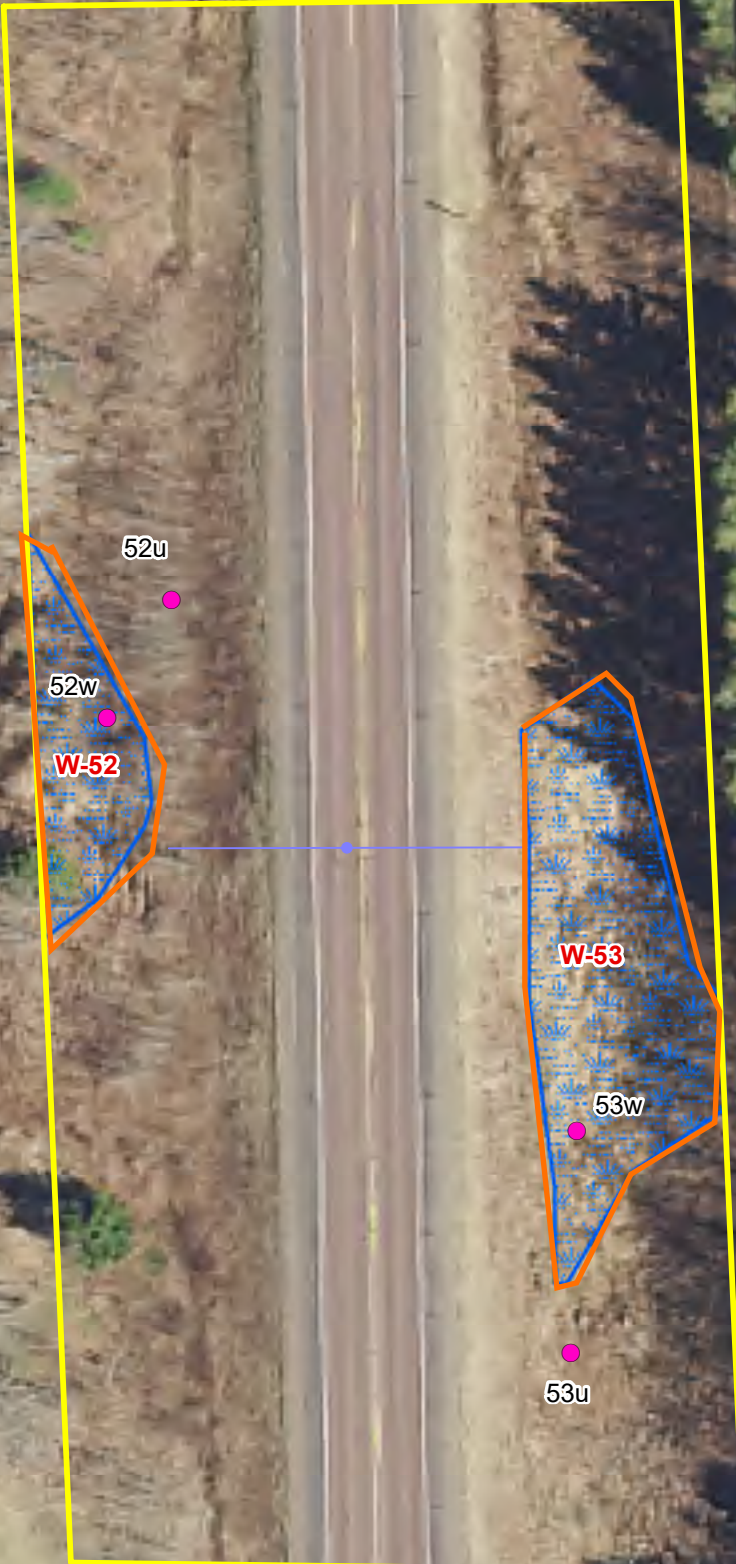
Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections

Corps AJD review area is limited to Wetland 148 (W-52) and Wetland 149 (W-53) shown within the orange polygons

T 42
R 2
Sec. 25

T 42
R 1
Sec. 30



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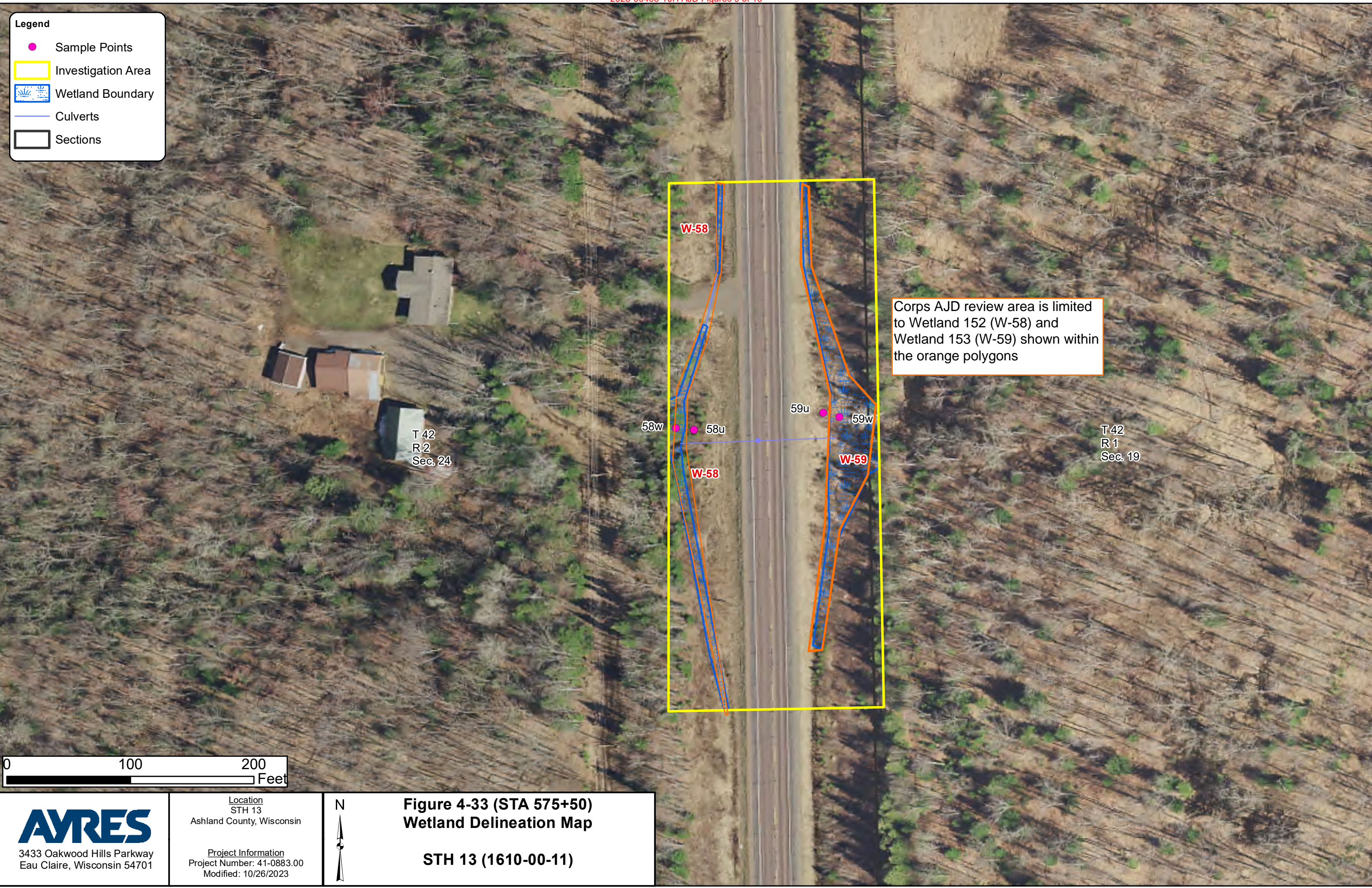


**Figure 4-30 (STA 534+50)
Wetland Delineation Map**

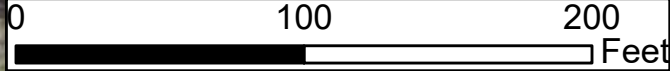
STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections



Corps AJD review area is limited to Wetland 152 (W-58) and Wetland 153 (W-59) shown within the orange polygons



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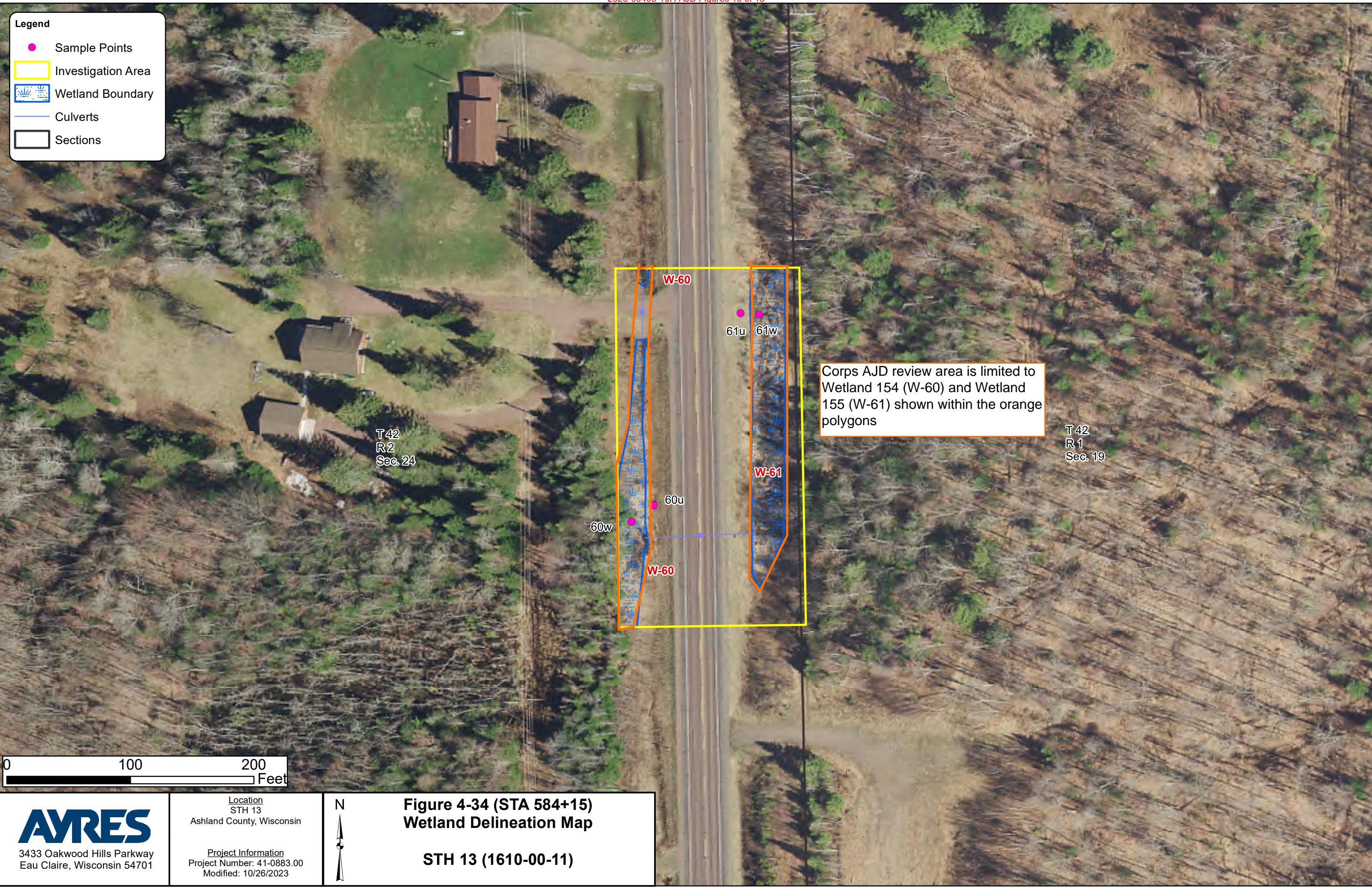


**Figure 4-33 (STA 575+50)
 Wetland Delineation Map**

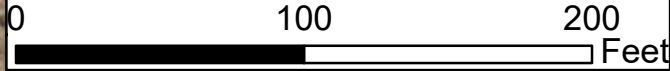
STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections



Corps AJD review area is limited to Wetland 154 (W-60) and Wetland 155 (W-61) shown within the orange polygons



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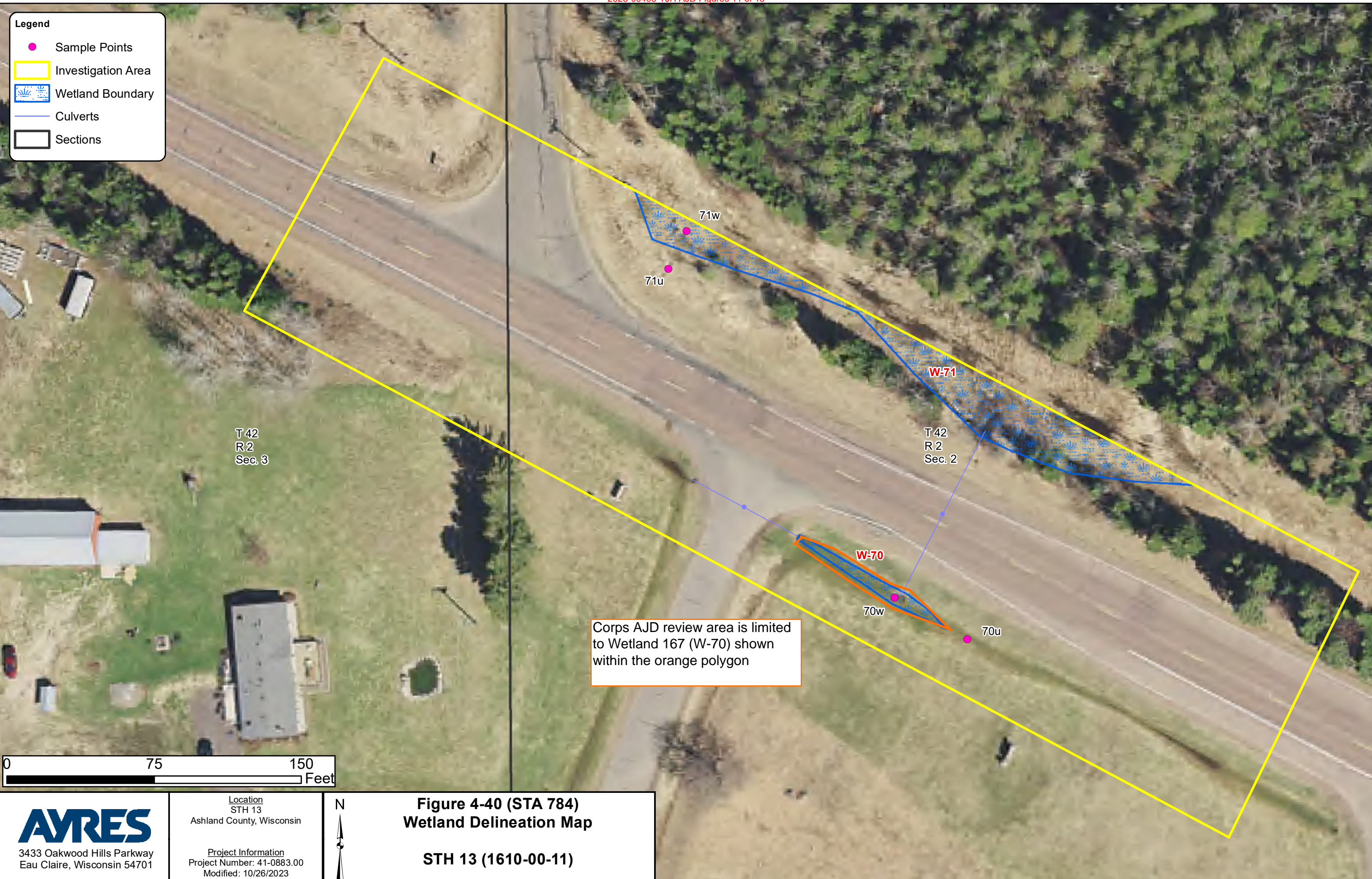


**Figure 4-34 (STA 584+15)
 Wetland Delineation Map**

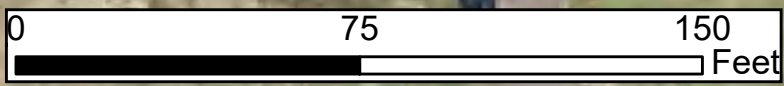
STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections



Corps AJD review area is limited to Wetland 167 (W-70) shown within the orange polygon



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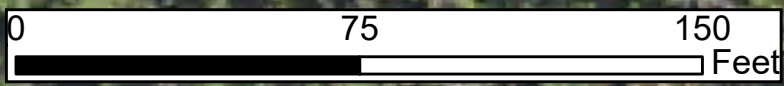
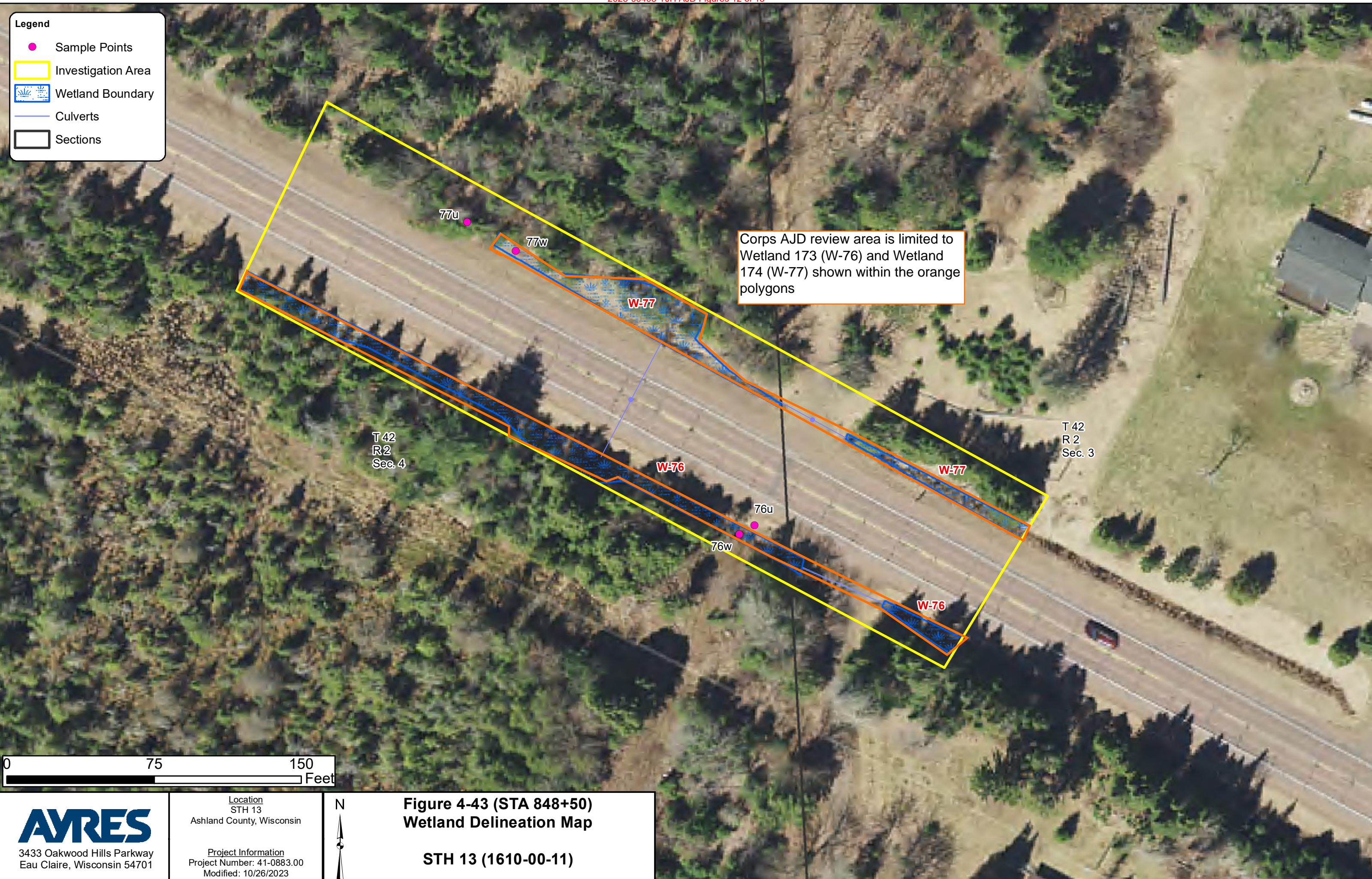


Figure 4-40 (STA 784)
Wetland Delineation Map

STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
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- Culverts
- Sections



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**Figure 4-43 (STA 848+50)
 Wetland Delineation Map**

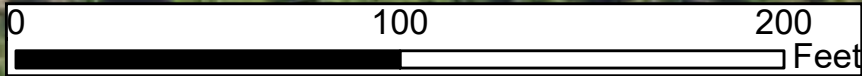
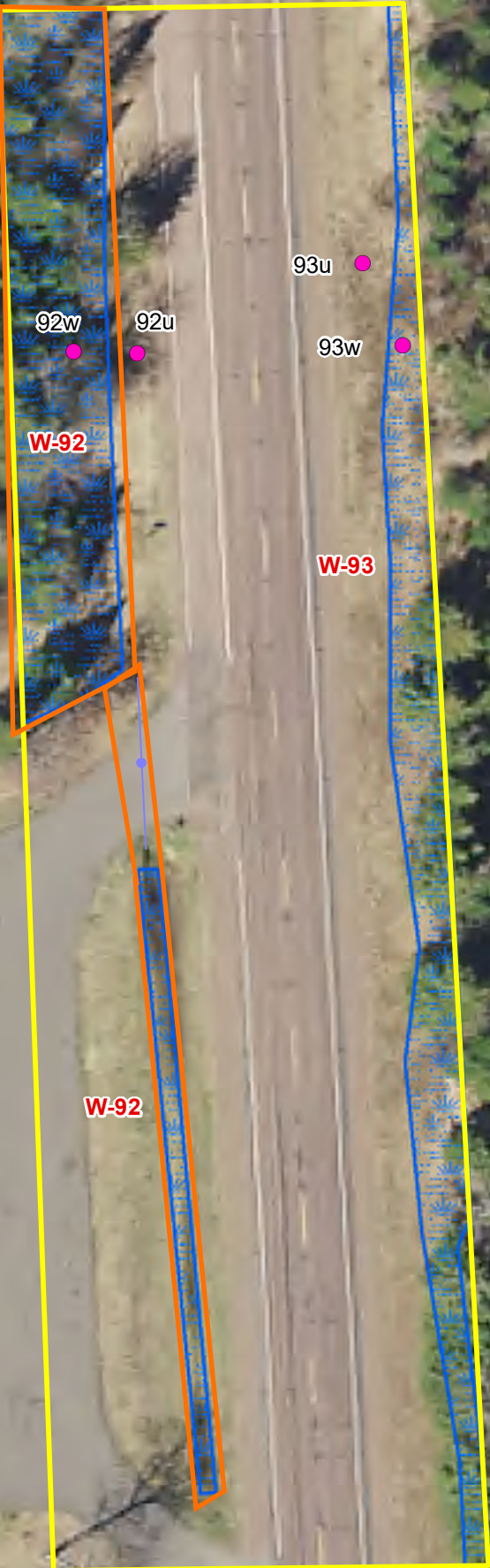
STH 13 (1610-00-11)

Legend

- Sample Points
- Investigation Area
- Wetland Boundary
- Culverts
- Sections

Corps AJD review area is limited to Wetland 187 (W-92) shown within the orange polygon

T43
R2
Sec. 21



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**Figure 4-51 (STA 984+50)
Wetland Delineation Map**

STH 13 (1610-00-11)