



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

MVP-2023-01033-JMK (SP 013-610-012)

22 March 2024

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-2023-01033-JMK 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 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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-01033-JMK

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).

- i. Wetland 2, non-jurisdictional
- ii. Wetland 15, non-jurisdictional
- iii. Wetland 25, non-jurisdictional
- iv. Wetland 32, non-jurisdictional
- v. Wet Ditch 4, non-jurisdictional
- vi. Wet Ditch 6, non-jurisdictional
- vii. Wet Ditch 9, non-jurisdictional
- viii. Wet Ditch 10, non-jurisdictional
- ix. Wet Ditch 11, non-jurisdictional
- x. Wet Ditch 12, non-jurisdictional
- xi. Wet Ditch 13, non-jurisdictional
- xii. Wet Ditch 16, non-jurisdictional
- xiii. Wet Ditch 20, non-jurisdictional
- xiv. Wet Ditch 21, non-jurisdictional
- xv. Wet Ditch 24, non-jurisdictional
- xvi. Wet Ditch 34, non-jurisdictional
- xvii. Wet Ditch 37, non-jurisdictional
- xviii. Wet Ditch 39, non-jurisdictional

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-01033-JMK

- xix. Wet Ditch 40, non-jurisdictional
- xx. Wet Ditch 41, non-jurisdictional
- xxi. Wet Ditch 42, non-jurisdictional
- xxii. Wet Ditch 43, non-jurisdictional
- xxiii. Wet Ditch 47, non-jurisdictional
- xxiv. Wet Ditch 49, non-jurisdictional
- xxv. Wet Ditch 54, non-jurisdictional
- xxvi. Wet Ditch 55, non-jurisdictional
- xxvii. Wet Ditch 56, non-jurisdictional

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. ___, 143 S. Ct. 1322 (2023)
3. REVIEW AREA. The review area for this determination includes 4 non-jurisdictional wetlands and 23 roadside ditches, as identified in Section 1(a) of this MFR and on the attached figures labeled 2023-01033-JMK AJD Figures 1-9 of 9. The review area is located at 45.5831 N, -93.1076 W in the City of Cambridge, Chisago County, Minnesota. There are no other JDs associated with the 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

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-01033-JMK

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
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

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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-01033-JMK

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
 - Wet Ditch 4 (105 linear feet), Wet Ditch 6 (1,232 linear feet), Wet Ditch 9 (1,216 linear feet), Wet Ditch 10 (205 linear feet), Wet Ditch 11 (108 linear feet) Wet Ditch 12 (108 linear feet) Wet Ditch 13 (108 linear feet) Wet Ditch 16 (108 linear feet) Wet Ditch 20 (108 linear feet) Wet Ditch 21 (108 linear feet) Wet Ditch 24 (108 linear feet) Wet Ditch 34 (108 linear feet) Wet Ditch 37 (108 linear feet) Wet Ditch 39 (108 linear feet) Wet Ditch 40 (108 linear feet) Wet Ditch 41 (108 linear feet) Wet Ditch 42 (108 linear feet) Wet Ditch 43 (108 linear feet) Wet Ditch 47 (108 linear feet) Wet Ditch 49 (108 linear feet) Wet Ditch 54 (108 linear feet) Wet Ditch 55 (108 linear feet) and Wet Ditch 56 (108 linear feet) within the review area are linear roadside drainage ditches constructed in upland and drain only upland based on a review of US Geological Service 3DEP DEM map; MNDNR 2-foot contour maps; NWI maps; and NHD data. Recent aerial photos do not show relatively permanent flow in the aforementioned aquatic resources. Based on the desktop resources reviewed Wet Ditch 4, 6, 9, 10, 11, 12, 13, 16, 20, 21, 24, 34, 37, 39, 40, 41, 42, 43, 47, 49, 54, 55, and 56 are linear roadside drainage ditches constructed in upland, drain only upland, and do not carry a relatively permanent flow of water. Therefore, Wet Ditch 4, 6, 9, 10, 11, 12, 13, 16, 20, 21, 24, 34, 37, 39, 40, 41, 42, 43, 47, 49, 54, 55, and 56 have been determined to be Paragraph (b)(3) excluded ditches and not subject to Section 404 of the Clean Water Act (CWA).
- 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).

⁷ 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-01033-JMK

All of the wetlands within the review area are depressional wetlands located adjacent to the County State Aid Highway 10 roadway. MNDNR 2-foot contour maps indicate all of these wetlands are situated within closed contour basins. Based on the following review, the assessed wetlands 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, the assessed wetlands are not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

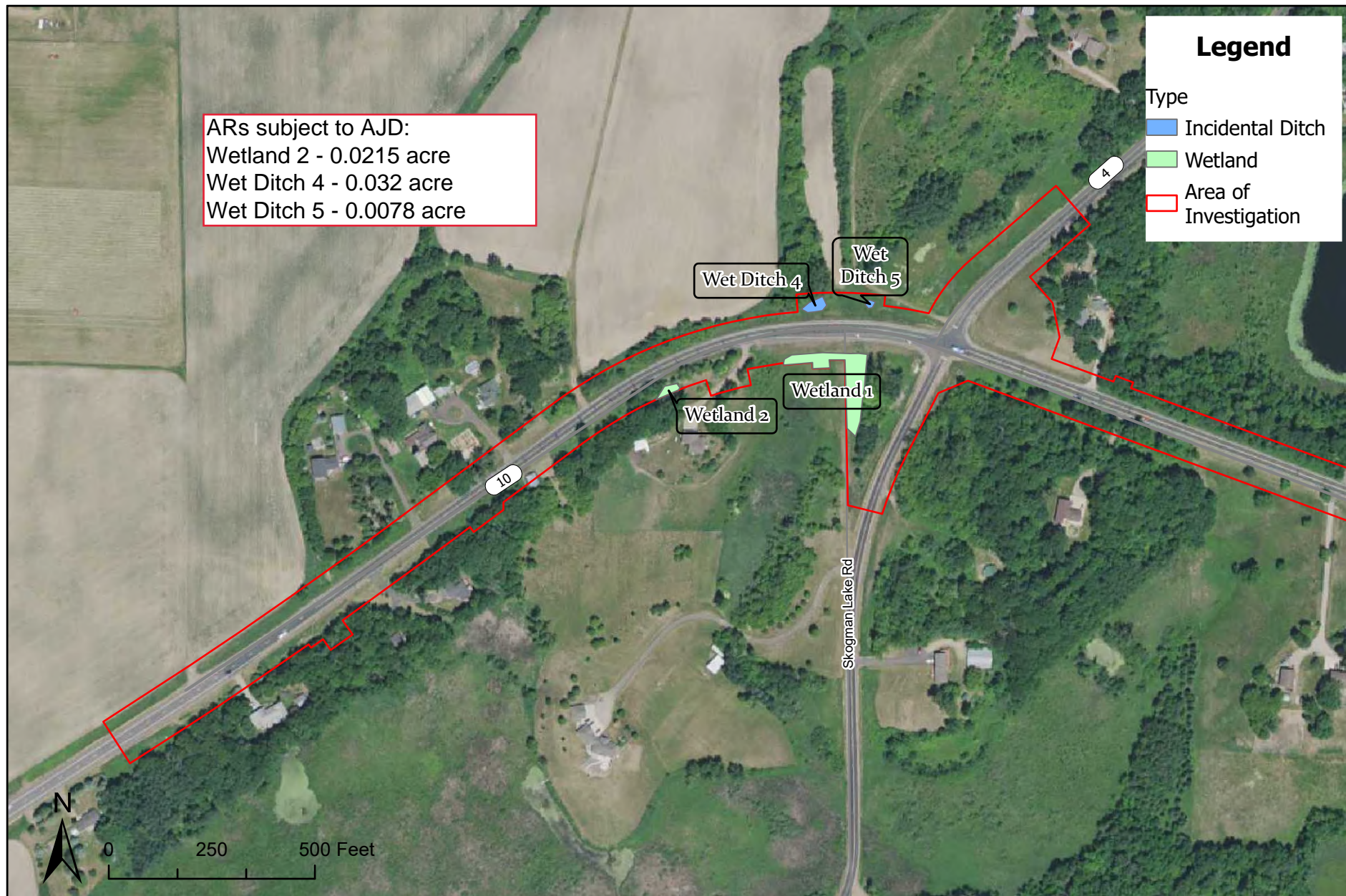
- Wetland 2 (0.0215 acre) is located within the 970' elevation based on the MNDNR 2-foot contour maps. The LiDAR 3DEP Digital Elevation Model indicates a fully enclosed basin with no discrete features that could provide a continuous surface connection. There are no ditches, swales, pipes, culverts, or other topographical features that connect this wetland to downstream jurisdictional waters.
- Wetland 15 (0.0583 acre) is located within the 980' elevation based on the MNDNR 2-foot contour maps. The 2016 MNDNR Hillshade data indicates a fully enclosed basin with no discrete features that could provide a continuous surface connection. There are no ditches, swales, pipes, culverts, or other topographical features that connect this wetland to downstream jurisdictional waters.
- Wetland 25 (0.0262 acre) is located within the 958' elevation based on the MNDNR 2-foot contour maps. The 2016 MNDNR Hillshade data indicates a fully enclosed basin with no discrete features that could provide a continuous surface connection. There are no ditches, swales, pipes, culverts, or other topographical features that connect this wetland to downstream jurisdictional waters.
- Wetland 32 (0.0132 acre) is located within the 954' elevation based on the MNDNR 2-foot contour maps. The 2016 MNDNR Hillshade data indicates a fully enclosed basin with no discrete features that could provide a continuous surface connection. There are no ditches, swales, pipes, culverts, or other topographical features that connect this wetland to downstream jurisdictional waters.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2023-01033-JMK

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. Figure 1 of 9 through 9 of 9 titled MVP-2023-01033-JMK.
 - b. Minnesota Regulatory Viewer: 2016 MNDNR Hillshade layer, MNDNR 2-foot contour layer, US Geological Service 3DEP Digital Elevation Model (DEM) and NHD layers, and USFWS NWI layer.
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.

Path: X:\AEC\CHISA\172313\env-study-regs\30-env-doo\90-wetlands\GIS\CHISA 172313\CHISA 172313.aprx



3535 VADNAIS CENTER DR.
 ST. PAUL, MN 55110
 PHONE: (651) 490-2000
 FAX: (651) 490-2150
 WATTS: 800-325-2055
 www.sehinc.com

Project: CHISA 172313
 Print Date: 9/7/2023

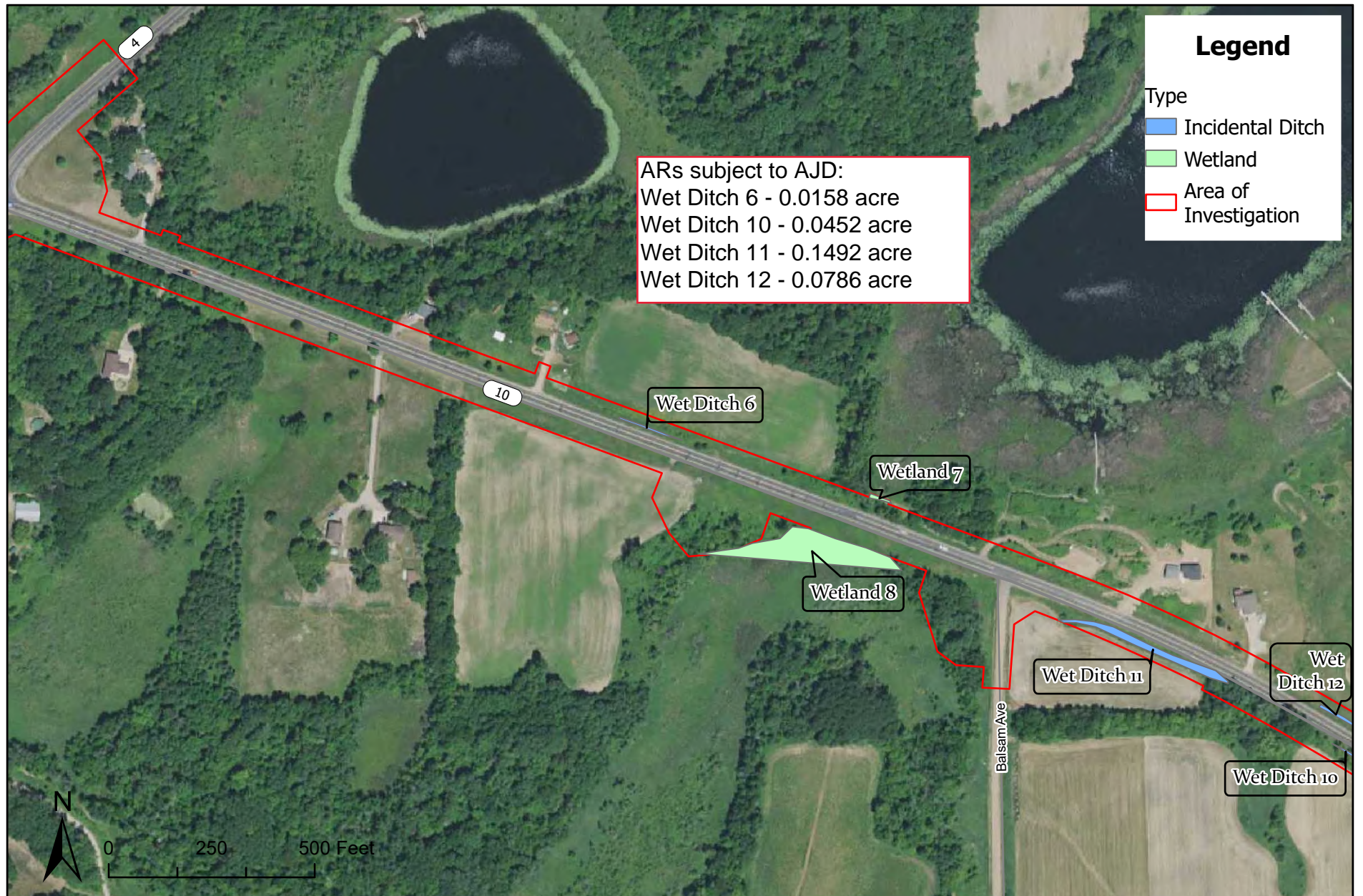
Map by: amack
 Projection: NAD 83 UTM Zone 15N
 Source: ESRI, SEH, Google, MnGEO
 Chisago County

Wetland Impacts

CSAH 10

Fish Lake Twp, Chisago County, Minnesota

Figure
 4 - 1



3535 VADNAIS CENTER DR.
ST. PAUL, MN 55110
PHONE: (651) 490-2000
FAX: (651) 490-2150
WATTS: 800-325-2055
www.sehinc.com

Project: CHISA 172313
Print Date: 9/7/2023

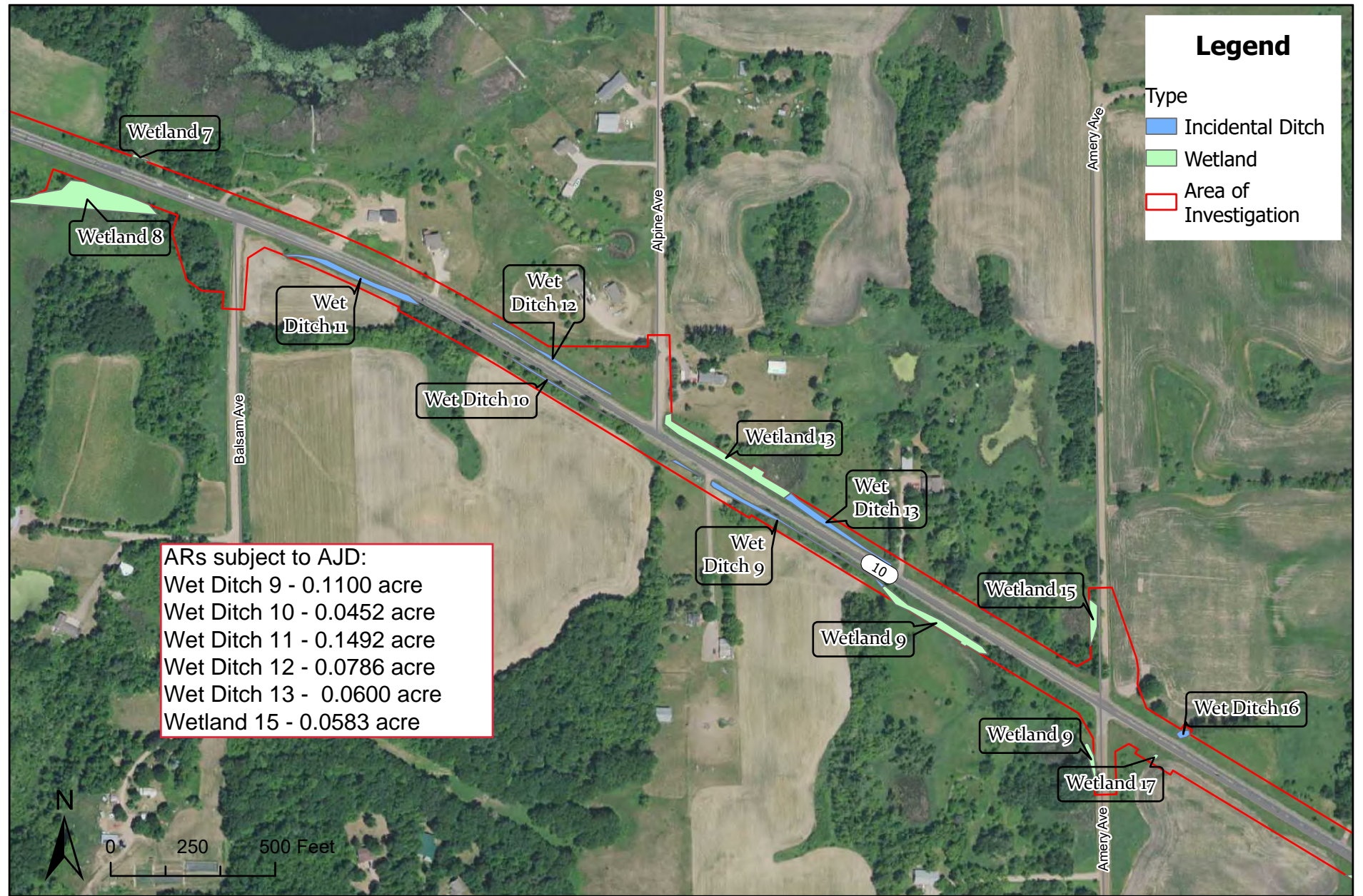
Map by: amack
Projection: NAD 83 UTM Zone 15N
Source: ESRI, SEH, Google, MnGEO
Chisago County

Wetland Impacts

CSAH 10

Fish Lake Twp, Chisago County, Minnesota

Figure
4 - 2



3535 VADNAIS CENTER DR.
ST. PAUL, MN 55110
PHONE: (651) 490-2000
FAX: (651) 490-2150
WATTS: 800-325-2055
www.sehinc.com

Project: CHISA 172313
Print Date: 9/7/2023

Map by: amack
Projection: NAD 83 UTM Zone 15N
Source: ESRI, SEH, Google, MnGeo
Chisago County

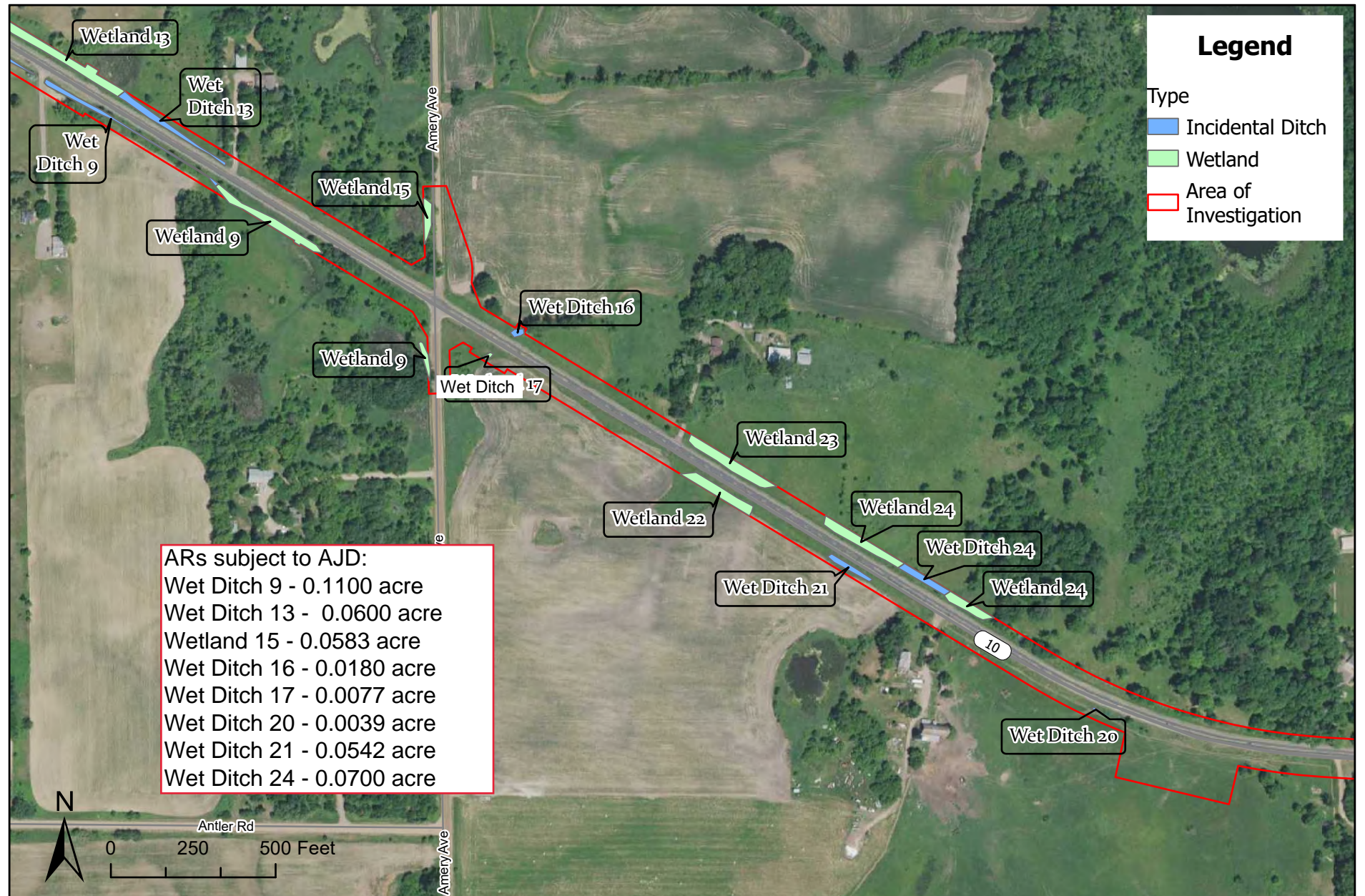
Wetland Impacts

CSAH 10

Fish Lake Twp, Chisago County, Minnesota

Figure
4 - 3

Path: X:\AEC\CHISA\172313\env-study\regs\30-env-doo\90-wetlands\GIS\CHISA_172313\CHISA_172313.aprx



3535 VADNAIS CENTER DR.
ST. PAUL, MN 55110
PHONE: (651) 490-2000
FAX: (651) 490-2150
WATTS: 800-325-2055
www.sehinc.com

Project: CHISA 172313
Print Date: 9/7/2023

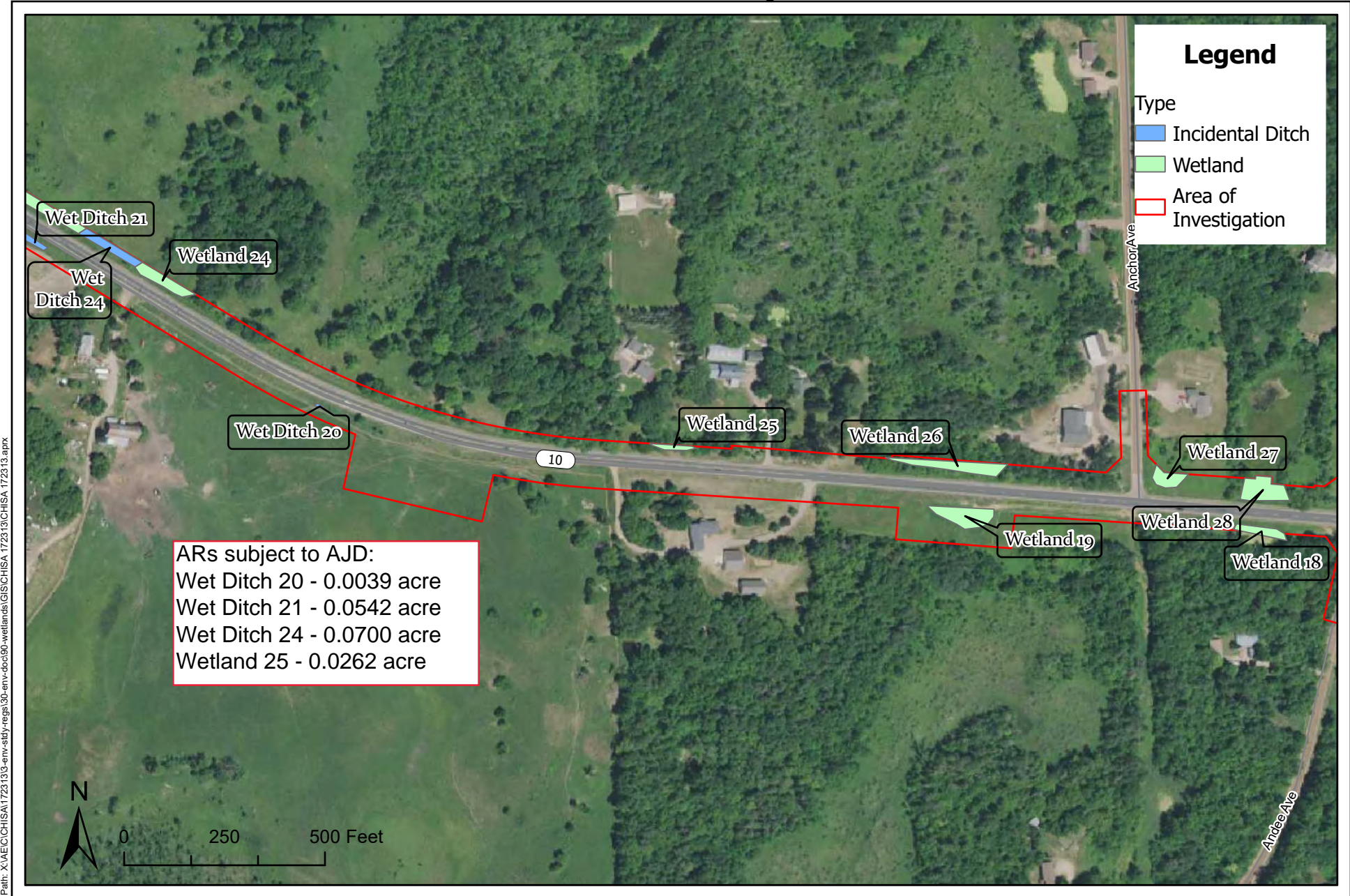
Map by: amack
Projection: NAD 83 UTM Zone 15N
Source: ESRI, SEH, Google, MnGEO
Chisago County

Wetland Impacts


CSAH 10

Fish Lake Twp, Chisago County, Minnesota

Figure
4 - 4



Path: X:\AEC\CHISA\1723133-env-study-regs\30-env-don\90-wetlands\GIS\CHISA_1723133.aprx

	<p>3535 VADNAIS CENTER DR. ST. PAUL, MN 55110 PHONE: (651) 490-2000 FAX: (651) 490-2150 WATTS: 800-325-2055 www.sehinc.com</p>	<p>Project: CHISA 172313 Print Date: 9/7/2023</p> <p>Map by: amack Projection: NAD 83 UTM Zone 15N Source: ESRI, SEH, Google, MnGEO Chisago County</p>	<p>Wetland Impacts</p> <p>CSAH 10</p> <p>Fish Lake Twp, Chisago County, Minnesota</p>	<p>Figure 4 - 5</p>
-------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------	-------------------------

This map is neither a legally recorded map nor a survey map and is not intended to be used as one. This map is a compilation of records, information, and data gathered from various sources listed on this map and is to be used for reference purposes only. SEH does not warrant that the Geographic Information System (GIS) Data used to prepare this map are error free, and SEH does not represent that the GIS Data can be used for navigational, tracking, or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. The user of this map acknowledges that SEH shall not be liable for any damages which arise out of the user's access or use of data provided.

Path: X:\AEC\CHISA\172313\env-study-regs\30-env-dool90-wetlands\GIS\CHISA 172313\CHISA 172313.aprx



3535 VADNAIS CENTER DR.
ST. PAUL, MN 55110
PHONE: (651) 490-2000
FAX: (651) 490-2150
WATTS: 800-325-2055
www.sehinc.com

Project: CHISA 172313
Print Date: 9/7/2023

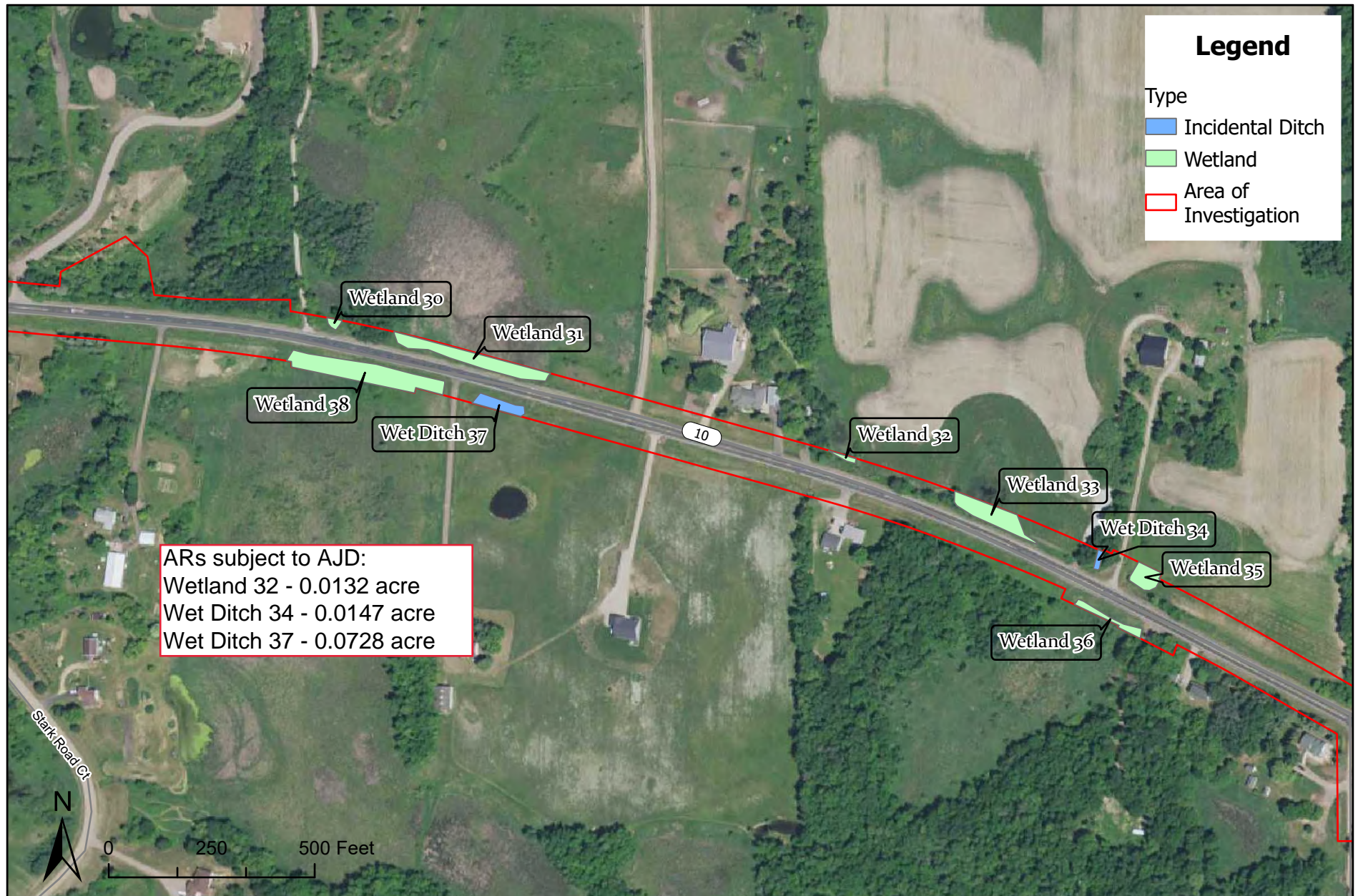
Map by: amack
Projection: NAD 83 UTM Zone 15N
Source: ESRI, SEH, Google, MnGEO
Chisago County

Wetland Impacts

CSAH 10

Fish Lake Twp, Chisago County, Minnesota

Figure
4 - 6



Path: X:\AEC\CHISA\172313\env-stb\regs\30-env-doo\90-wetlands\GIS\CHISA 172313\CHISA 172313.aprx



3535 VADNAIS CENTER DR.
 ST. PAUL, MN 55110
 PHONE: (651) 490-2000
 FAX: (651) 490-2150
 WATTS: 800-325-2055
 www.sehinc.com

Project: CHISA 172313
 Print Date: 9/7/2023

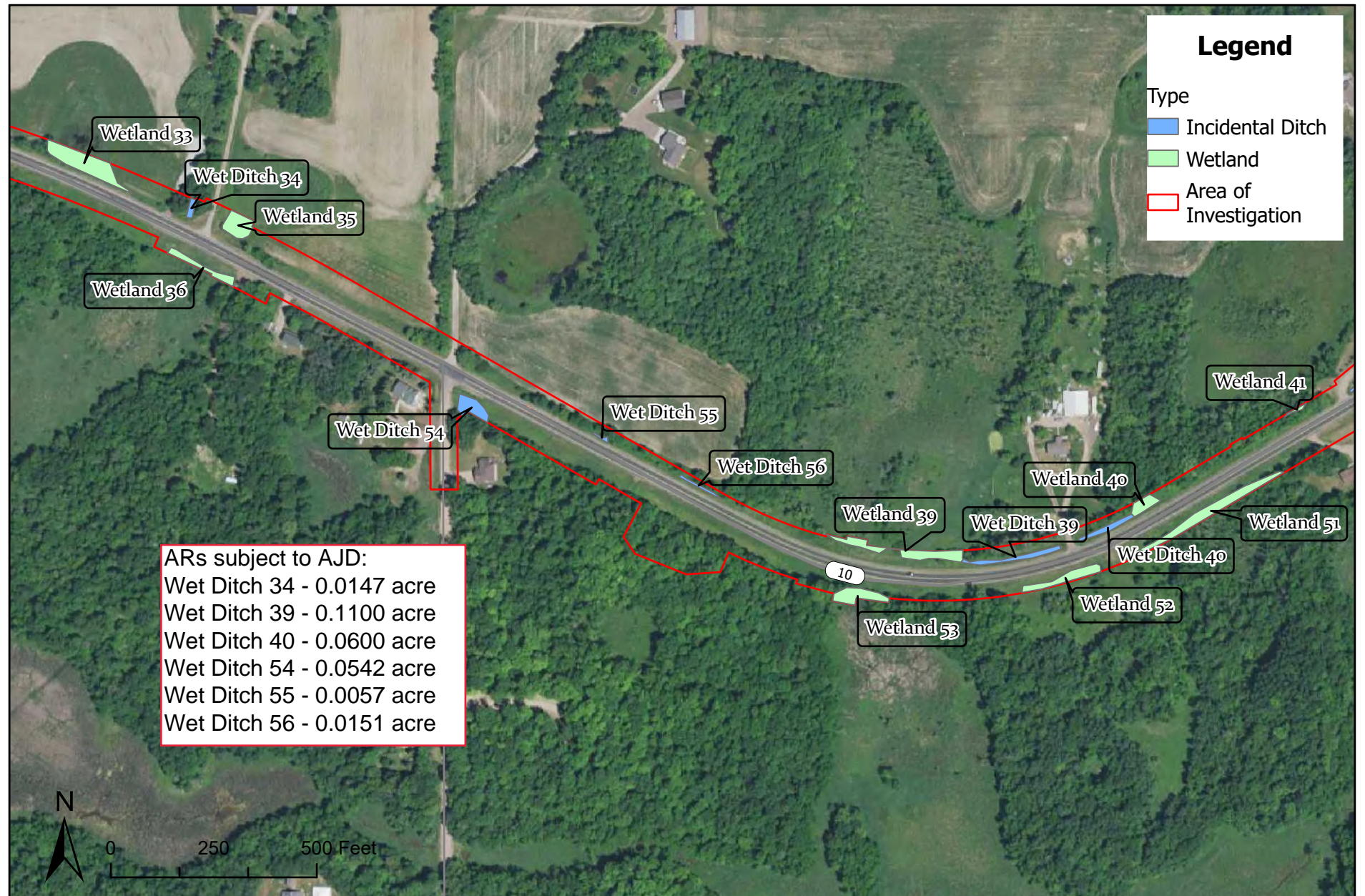
Map by: amack
 Projection: NAD 83 UTM Zone 15N
 Source: ESRI, SEH, Google, MnGEO
 Chisago County

Wetland Impacts

CSAH 10

Fish Lake Twp, Chisago County, Minnesota

Figure
 4 - 7



3535 VADNAIS CENTER DR.
ST. PAUL, MN 55110
PHONE: (651) 490-2000
FAX: (651) 490-2150
WATTS: 800-325-2055
www.sehinc.com

Project: CHISA 172313
Print Date: 9/7/2023

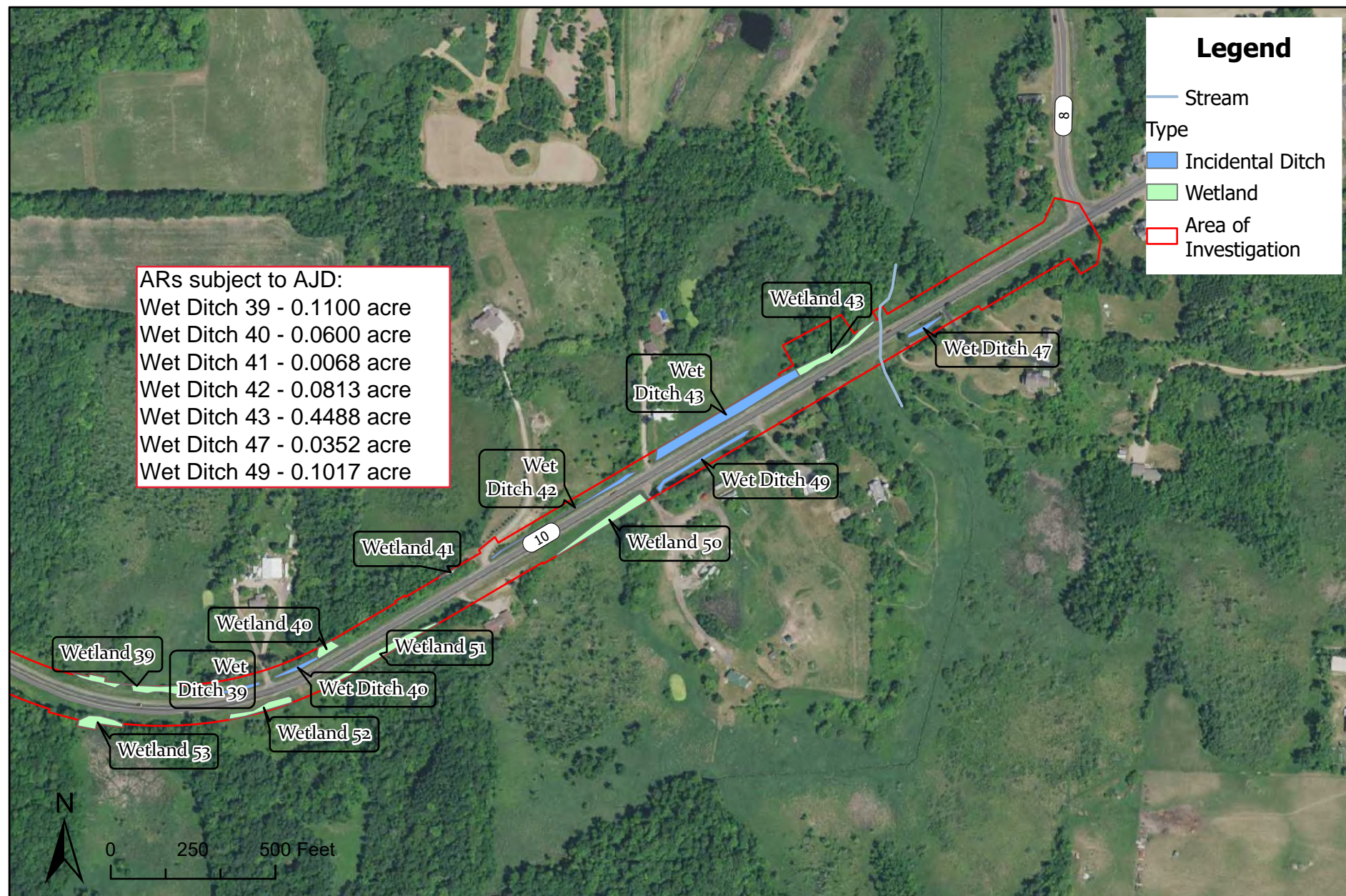
Map by: amack
Projection: NAD 83 UTM Zone 15N
Source: ESRI, SEH, Google, MnGEO
Chisago County

Wetland Impacts

CSAH 10

Fish Lake Twp, Chisago County, Minnesota

Figure
4 - 8



3535 VADNAIS CENTER DR.
ST. PAUL, MN 55110
PHONE: (651) 490-2000
FAX: (651) 490-2150
WATTS: 800-325-2055
www.sehinc.com

Project: CHISA 172313
Print Date: 9/7/2023

Map by: amack
Projection: NAD 83 UTM Zone 15N
Source: ESRI, SEH, Google, MnGEO
Chisago County

Wetland Impacts

CSAH 10

Fish Lake Twp, Chisago County, Minnesota

Figure
4 - 9