



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

MVP-RD

14 November 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-2024-00381-PJH 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).
 - i. [Wetland w01 is a 0.43-acre depressional basin that is non-jurisdictional.](#)
 - ii. [Wetland w02 is a 0.08-acre depressional basin that is non-jurisdictional.](#)
 - iii. [Wetland w03 is a 0.07-acre depressional basin that is non-jurisdictional.](#)
 - iv. [Wetland w04 is a 0.83-acre depressional basin that is non-jurisdictional.](#)
 - v. [Wetland w05 is a 0.11-acre depressional basin that is non-jurisdictional.](#)
 - vi. [Wetland w06 is a 0.04-acre depressional basin that is non-jurisdictional.](#)
 - vii. [Wetland w07 is a 0.08-acre depressional basin that is non-jurisdictional.](#)
 - viii. [Wetland w08 is a 0.32-acre depressional basin that is non-jurisdictional.](#)
 - ix. [Wetland w09 is a 0.16-acre depressional basin that is non-jurisdictional.](#)
 - x. [Wetland w10 is a 0.42-acre depressional basin that is non-jurisdictional.](#)
 - xi. [Wetland w11 is a 0.12-acre depressional basin that is non-jurisdictional.](#)
 - xii. [Wetland w12 is a 0.16-acre depressional basin that is non-jurisdictional.](#)
 - xiii. [Wetland w13 is a 0.05-acre depressional basin that is non-jurisdictional.](#)
 - xiv. [Wetland w14 is a 0.37-acre depressional basin that is non-jurisdictional.](#)
 - xv. [Wetland w17 is a 0.55-acre depressional basin that is non-jurisdictional.](#)
 - xvi. [Wetland w20 is a 0.35-acre depressional basin that is non-jurisdictional.](#)
 - xvii. [Wetland w21 is a 0.08-acre depressional basin that is non-jurisdictional.](#)
 - xviii. [Wetland w24 is a 0.46-acre depressional basin that is non-jurisdictional.](#)
 - xix. [Wetland w25 is a 0.09-acre depressional basin that is non-jurisdictional.](#)

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- xx. Wetland w26 is a 0.04-acre depressional basin that is non-jurisdictional.
- xxi. Wetland w27 is a 0.11-acre depressional basin that is non-jurisdictional.
- xxii. Wetland w28 is a 0.04-acre depressional basin that is non-jurisdictional.
- xxiii. Wetland w29 is a 0.01-acre depressional basin that is non-jurisdictional.
- xxiv. Wetland w30 is a 0.08-acre depressional basin that is non-jurisdictional.
- xxv. Wetland w31 is a 0.04-acre depressional basin that is non-jurisdictional.
- xxvi. Wetland w32 is a 0.09-acre depressional basin that is non-jurisdictional.
- xxvii. Wetland w33 is a 0.21-acre depressional basin that is non-jurisdictional.
- xxviii. Wetland w34 is a 0.02-acre depressional basin that is non-jurisdictional.
- xxix. Wetland w45 is a 0.05-acre depressional basin that is non-jurisdictional.
- xxx. Wetland w46 is a 1.03-acre depressional basin that is non-jurisdictional.
- xxxi. Wetland w47 is a 0.07-acre depressional basin that is non-jurisdictional.
- xxxii. Wetland w51 is a 0.57-acre depressional basin that is non-jurisdictional.
- xxxiii. Wetland w52 is a 0.13-acre depressional basin that is 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 subject aquatic resources are within an approximately 186.74-acre review area identified by the black dotted polygon located on the figures labeled MVP-2024-

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00381-PJH Pages 2 through 14. The review area is located near the City of Detroit Lakes, Becker County, Minnesota. Center coordinates are 46.807690°, -95.715458°. The review area is located in Sections 27, 28, 29, 33, 34, 35, and 36, Township 139 North, Range 40 West, and Section 31, Township 139 North, Range 39 West. No previous jurisdictional determinations have been completed in 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

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,

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.

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

[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).

[Wetland w01 \(approximately 0.43 acres\), Wetland w02 \(approximately 0.08 acres\), Wetland w03 \(approximately 0.07 acres\), Wetland w04 \(approximately 0.83 acres\), Wetland w05 \(approximately 0.11 acres\), Wetland w06 \(approximately 0.04 acres\), Wetland w07 \(approximately 0.08 acres\), Wetland w08 \(approximately 0.32 acres\), Wetland w09 \(approximately 0.16 acres\), Wetland w10 \(approximately 0.42 acres\), Wetland w11 \(approximately 0.12 acres\), Wetland w12 \(approximately 0.16 acres\),](#)

⁷ 88 FR 3004 (January 18, 2023)

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Wetland w13 (approximately 0.05 acres), Wetland w14 (approximately 0.37 acres), Wetland w17 (approximately 0.55 acres), Wetland w20 (approximately 0.35 acres), Wetland w21 (approximately 0.08 acres), Wetland w24 (approximately 0.46 acres), Wetland w25 (approximately 0.09 acres), Wetland w26 (approximately 0.04 acres), Wetland w27 (approximately 0.11 acres), Wetland w28 (approximately 0.04 acres), Wetland w29 (approximately 0.01 acres), Wetland w30 (approximately 0.08 acres), Wetland w31 (approximately 0.04 acres), Wetland w32 (approximately 0.09 acres), Wetland w33 (approximately 0.21 acres), Wetland w34 (approximately 0.02 acres), Wetland w45 (approximately 0.05 acres), Wetland w46 (approximately 1.03 acres), Wetland w47 (approximately 0.07 acres), Wetland w51 (approximately 0.57 acres), and Wetland w52 (approximately 0.13 acres) are depressional basins surrounded by upland. Aerial imagery, LiDAR, and the National Wetland Inventory (NWI) support this determination. The wetlands are not Traditional Navigable Waters (TNWs), territorial seas, or interstate waters, therefore are not (a)(1) waters. The wetlands do not physically abut relatively permanent (a)(2) impoundments or jurisdictional (a)(3) tributaries and are not separated from jurisdictional waters by man-made dikes, barriers, or natural landforms (river berm, beach, dune, etc.). The closest tributary, the Otter Tail River, is located within the review area and can be seen on the figure labeled MVP-2024-00381 Page 10 of 14. None of the wetlands have a continuous surface connection (CSC) to the Otter Tail River. The wetlands are not connected to (a)(1) waters by discrete features such as a ditch, swale, pipe, or culvert. The wetlands are non-tidal wetlands that do not have a continuous surface connection to relatively permanent jurisdictional waters, and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, 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. Multiple office evaluations were conducted July 19, 2024 – November 7, 2024.
 - b. Erie-Erie 69 kV Transmission Line Project Wetland and Other Surface Waters Delineation Report, May 2024
 - c. Erie-Erie 69 kV Transmission Line Attachment B Supporting Information, July 2024
 - d. Aerial imagery: Google Earth Pro, MN NAIP 2019, MN NAIP 2019-CIR
 - e. USFWS NWI of MN
 - f. LiDAR: MNDNR Hillshade – 2016, 3DEP Hillshade

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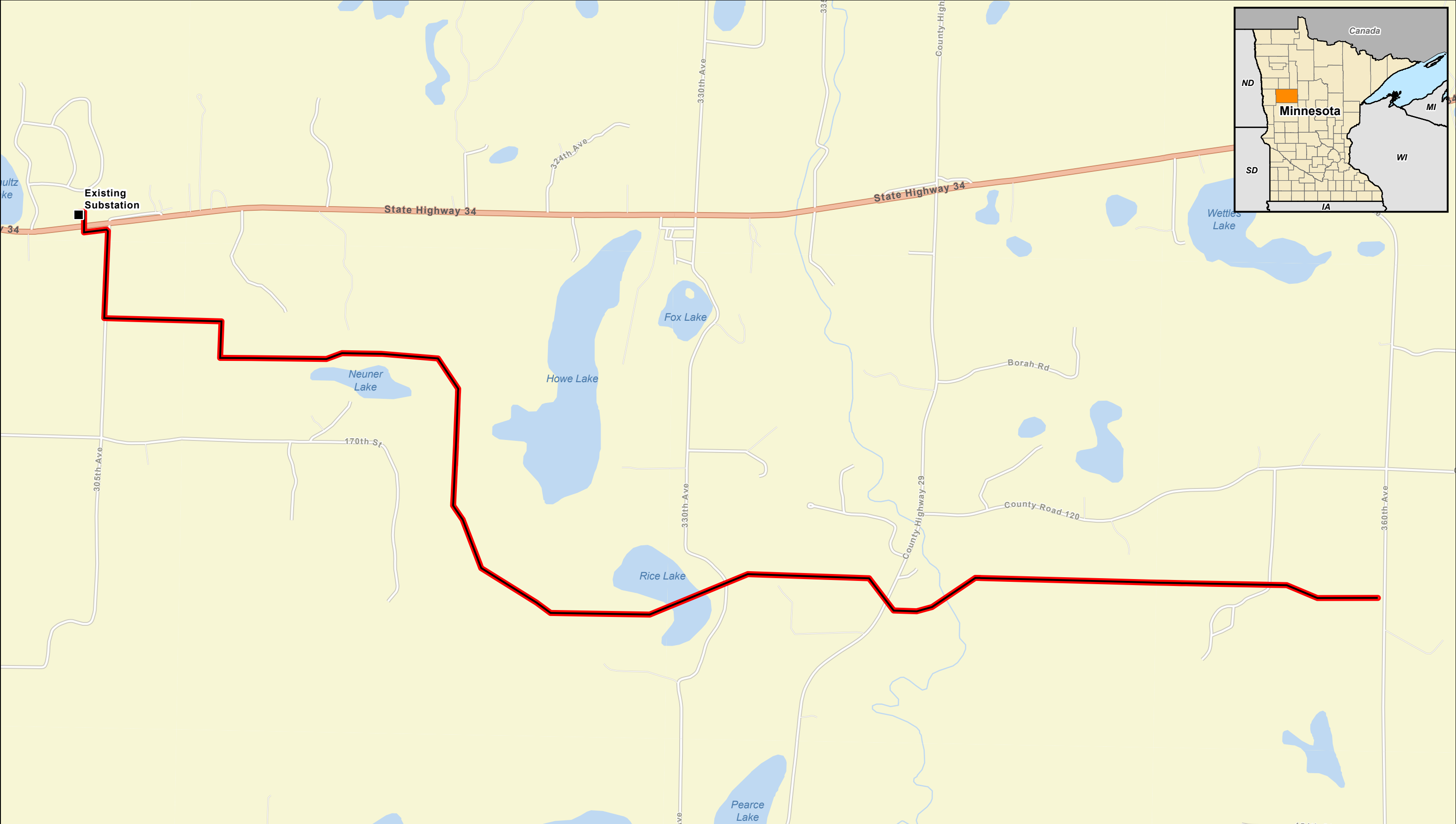
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2024-00381-PJH](#)

- g. [3DEP Digital Elevation Model \(DEM\)](#), [3DEP Slope](#), [MN Contours – 2ft](#)

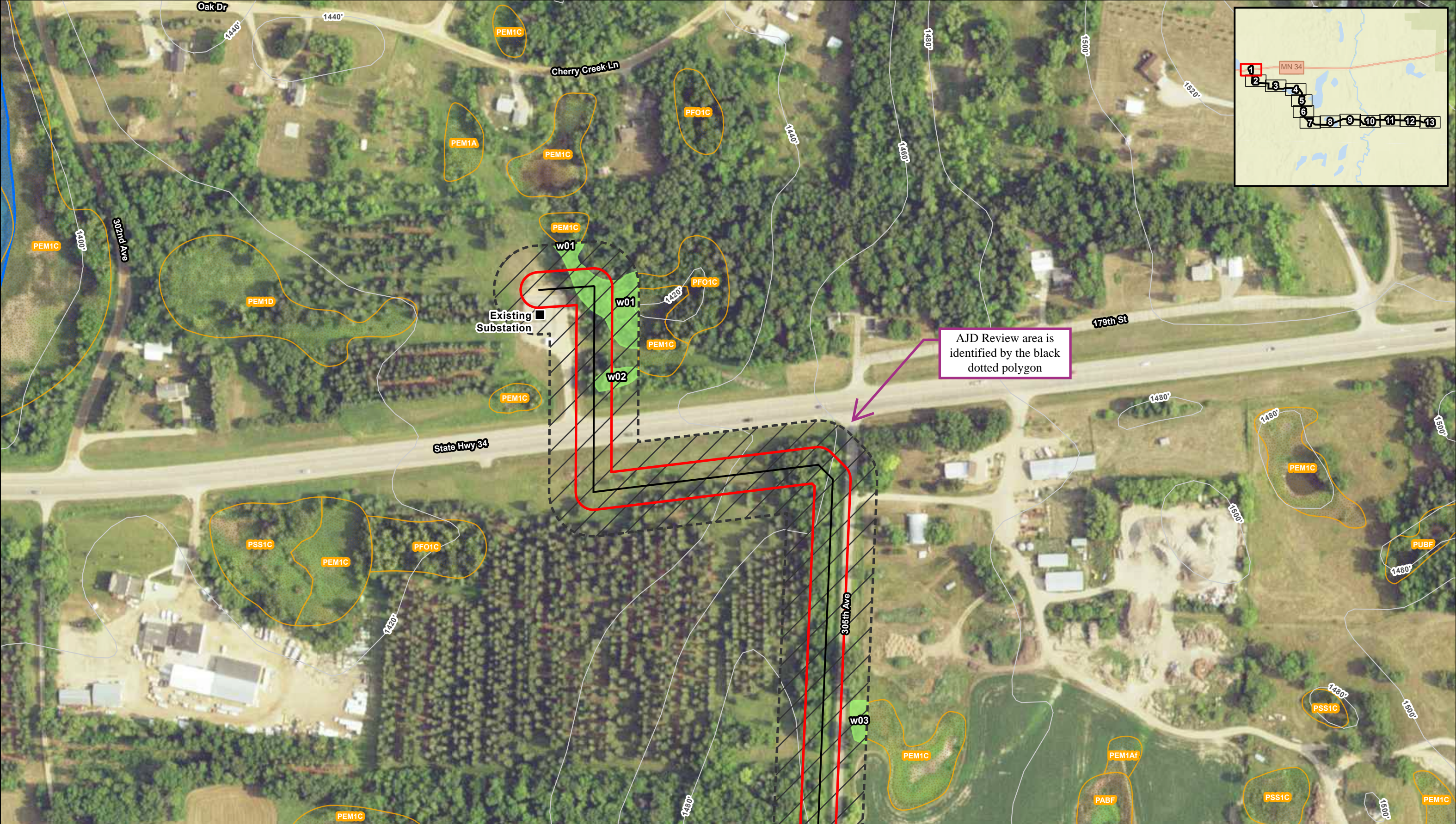
10. OTHER SUPPORTING INFORMATION.

[Wetland w15](#), [Wetland w16](#), [Wetland w18](#), [Wetland w19](#), [Wetland w22](#), [Wetland w23](#), [Wetland w35](#), [Wetland w36](#), [Wetland w37](#), [Wetland w38](#), [Wetland w39](#), [Wetland w40](#), [Wetland w41](#), [Wetland w42](#), [Wetland w43](#), [Wetland w44](#), [Wetland w48](#), [Wetland w49](#), [Wetland w50](#), and [Wetland w53](#) are located within the review area. However, these wetlands are not being reviewed for this jurisdictional determination.

- 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.



<p>0 1,000 2,000 Feet</p> <p>1 inch = 2,000 feet</p>	<p>Figure 1: Project Location Minnkota Power Cooperative Erie-Erie 69 kV Transmission Line Project Becker County, Minnesota</p>	<p>■ Existing Substation</p> <p>— Proposed 69 kV Transmission Line</p> <p>□ Proposed Project Right-of-Way</p>	
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0100200

Feet

1 inch = 200 feet

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Figure 2: Potential Isolated Wetlands

Minnkota Power Cooperative

Erie-Erie 69 kV

Transmission Line Project

Becker County, Minnesota

■ Existing Substation

— Proposed 69 kV Transmission Line

▭ Proposed Project Right-of-Way

▨ Survey Area

10' Elevation Contour

◌ Potentially Isolated Wetland

◌ Potentially Adjacent Wetland

— NHD Waterway

— NHD Waterbody

◌ NWI Wetland

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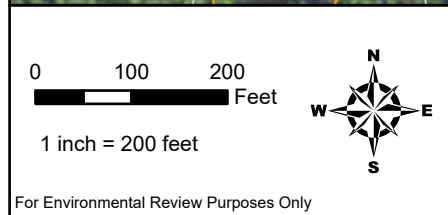
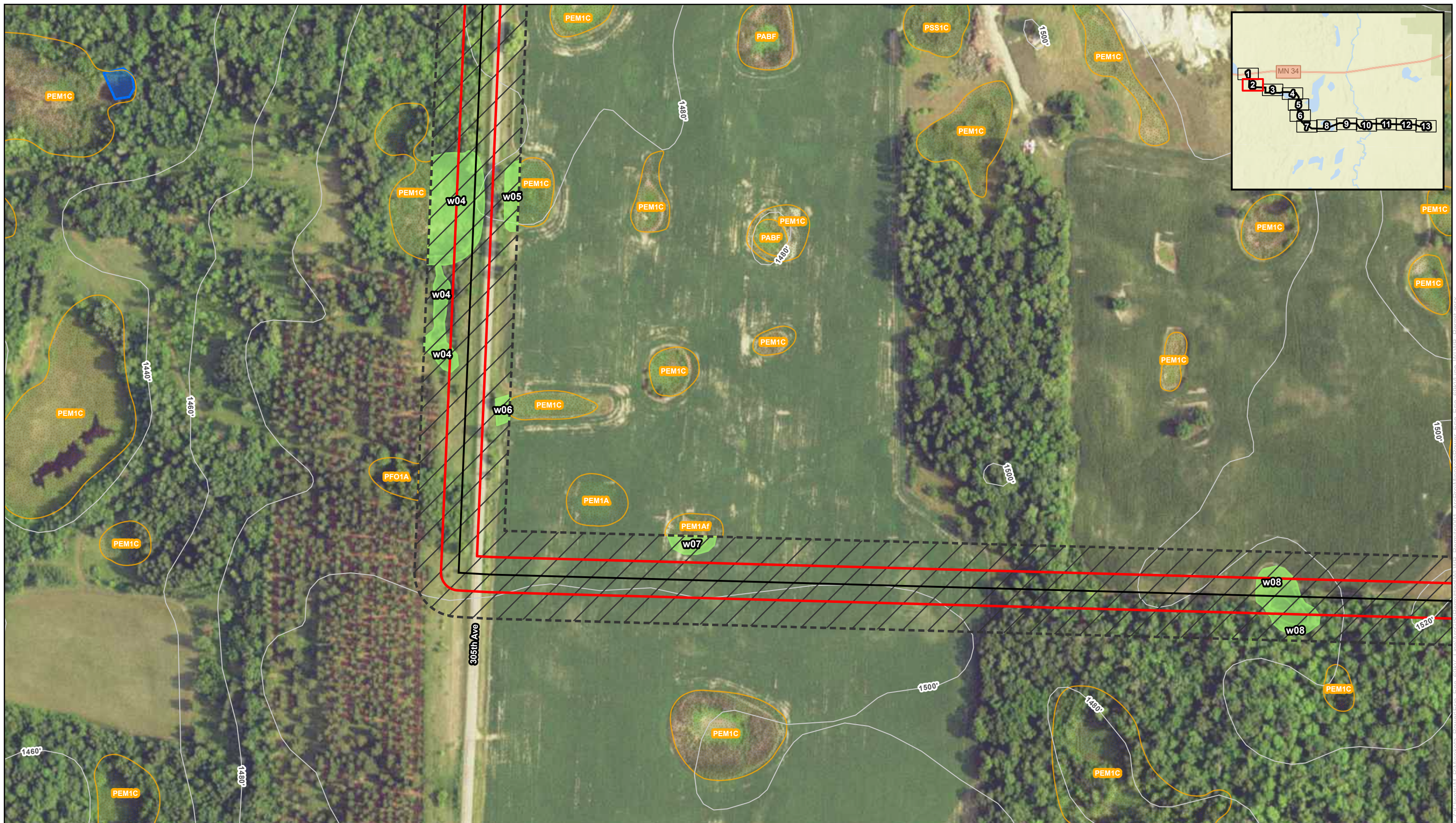
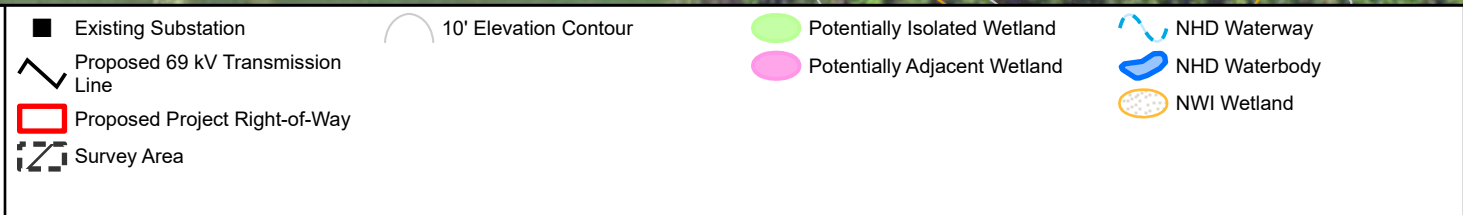
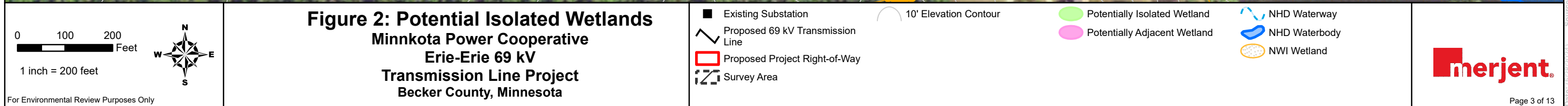
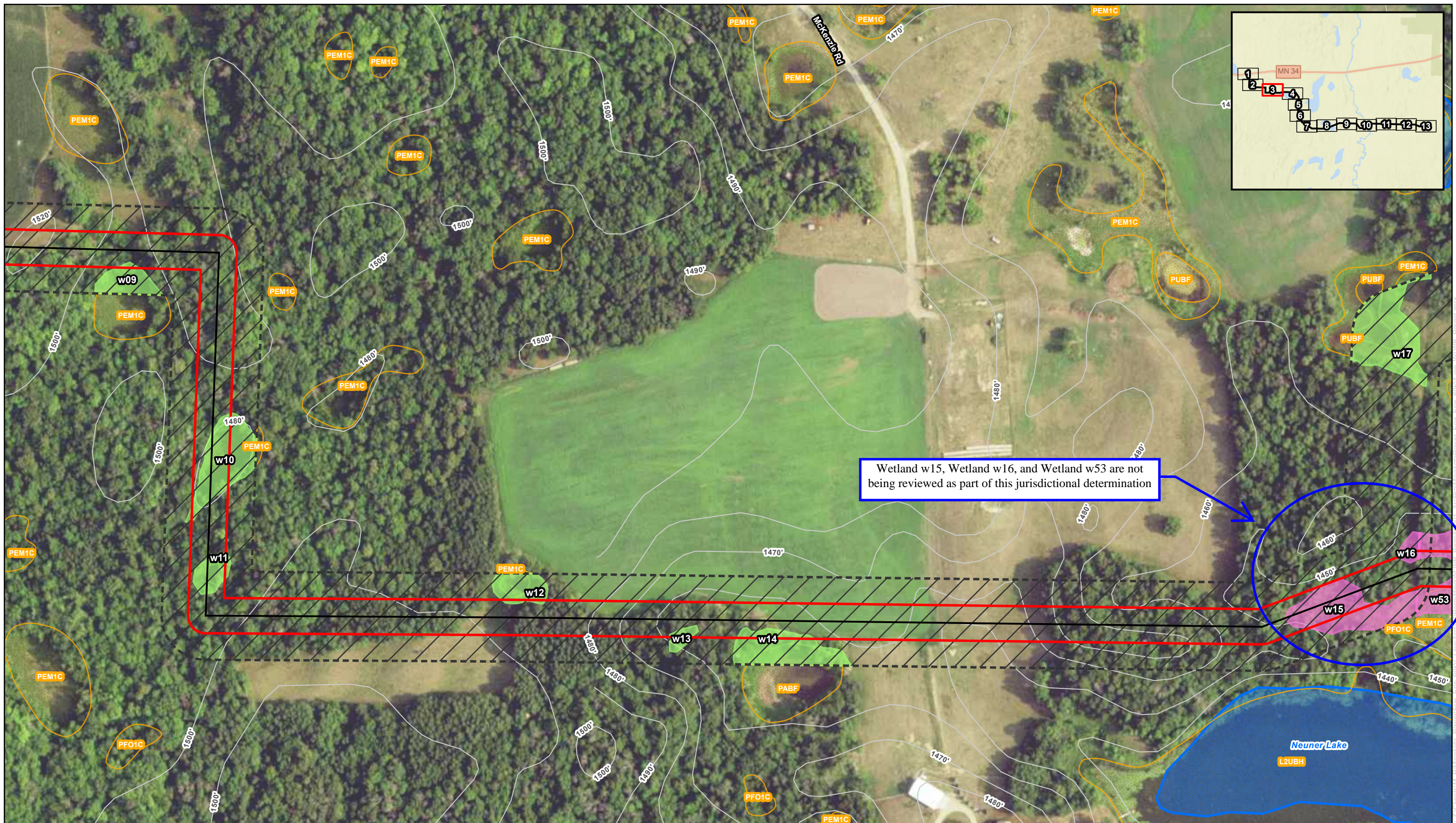
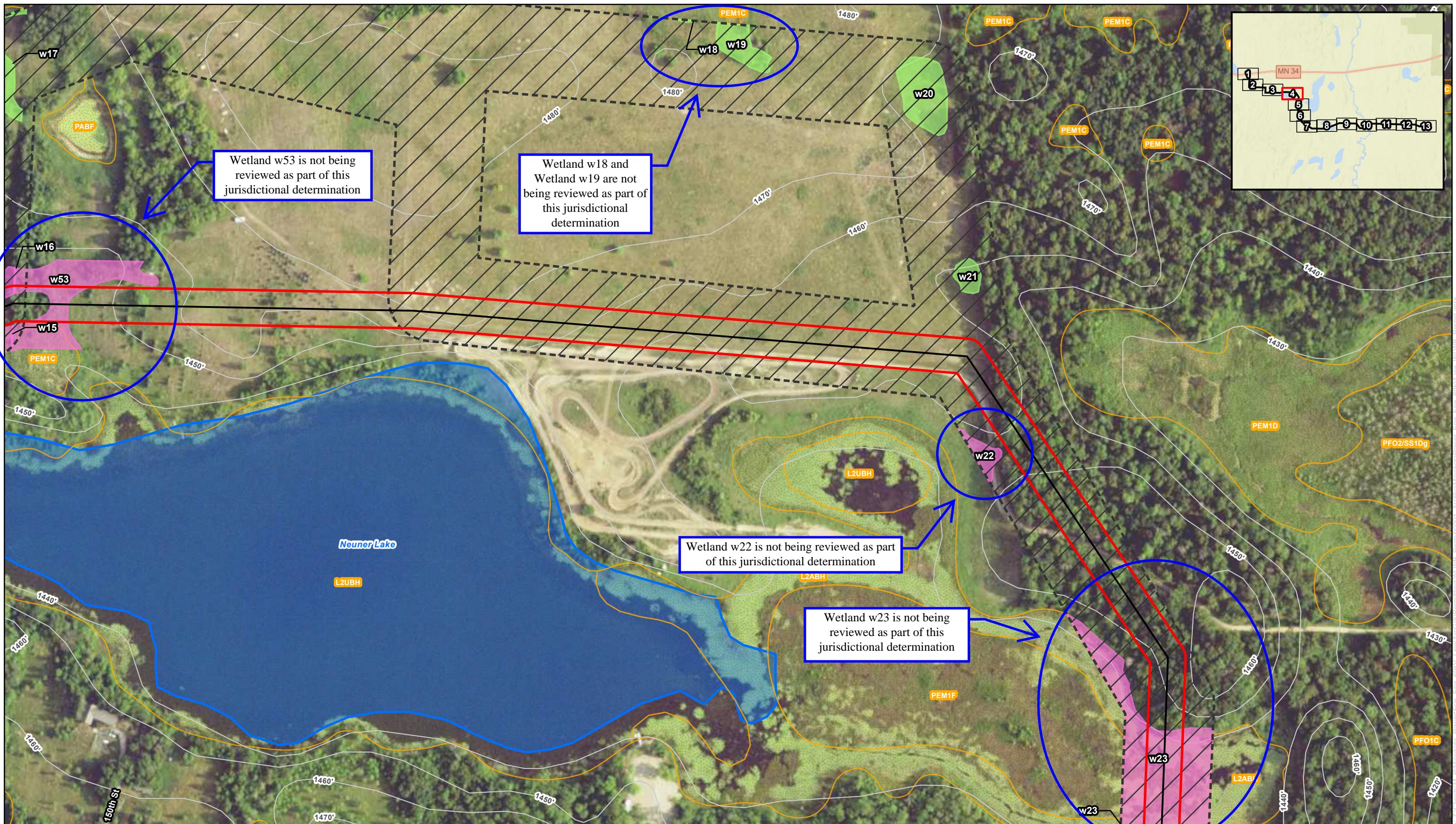


Figure 2: Potential Isolated Wetlands
Minnkota Power Cooperative
Erie-Erie 69 kV
Transmission Line Project
Becker County, Minnesota







0 100 200 Feet

1 inch = 200 feet

For Environmental Review Purposes Only

Figure 2: Potential Isolated Wetlands

Minnkota Power Cooperative
Erie-Erie 69 kV
Transmission Line Project
Becker County, Minnesota

- Existing Substation
- Proposed 69 kV Transmission Line
- ▭ Proposed Project Right-of-Way
- ▨ Survey Area
- 10' Elevation Contour
- Potentially Isolated Wetland
- Potentially Adjacent Wetland
- NHD Waterway
- NHD Waterbody
- NWI Wetland

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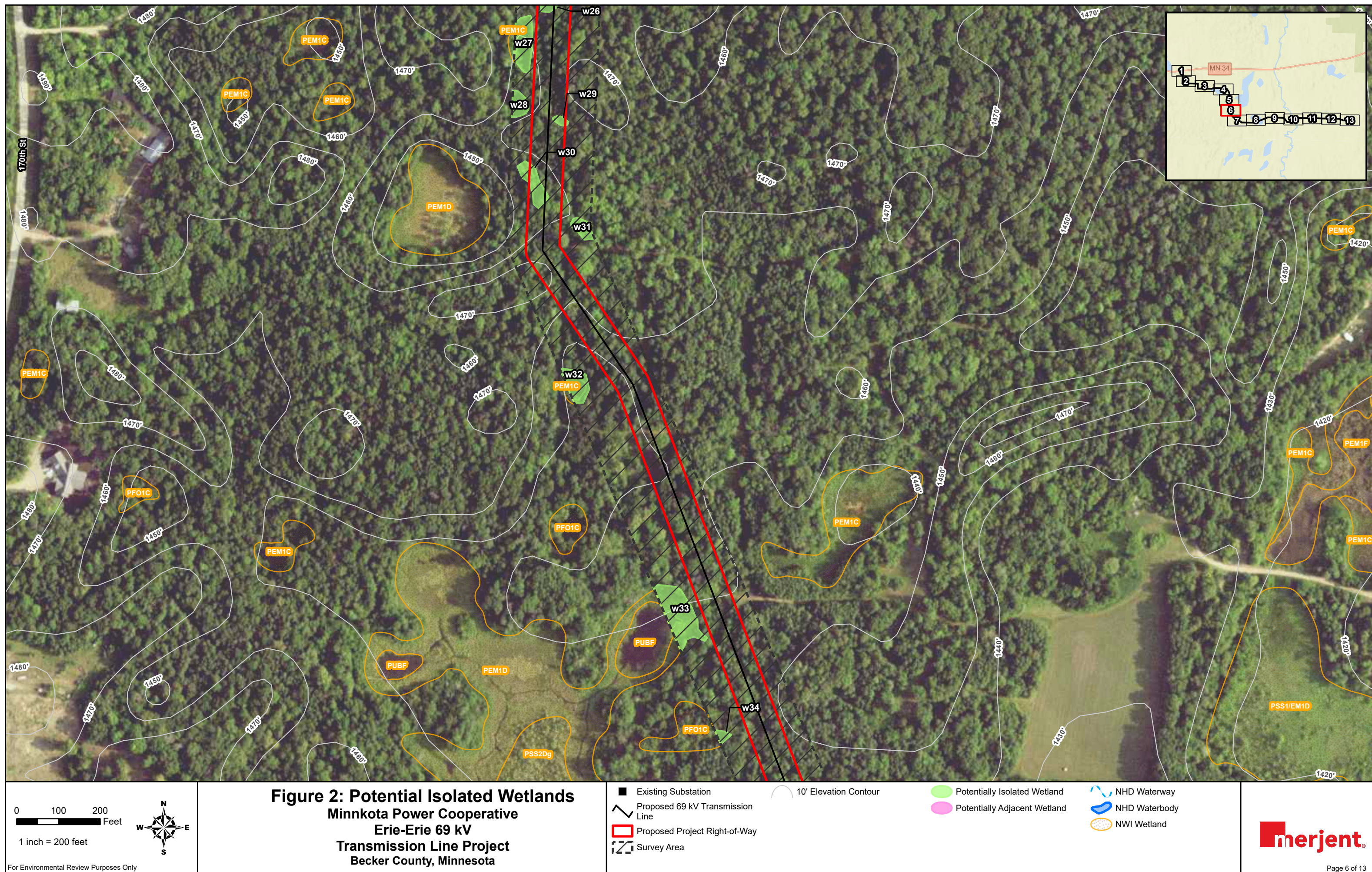
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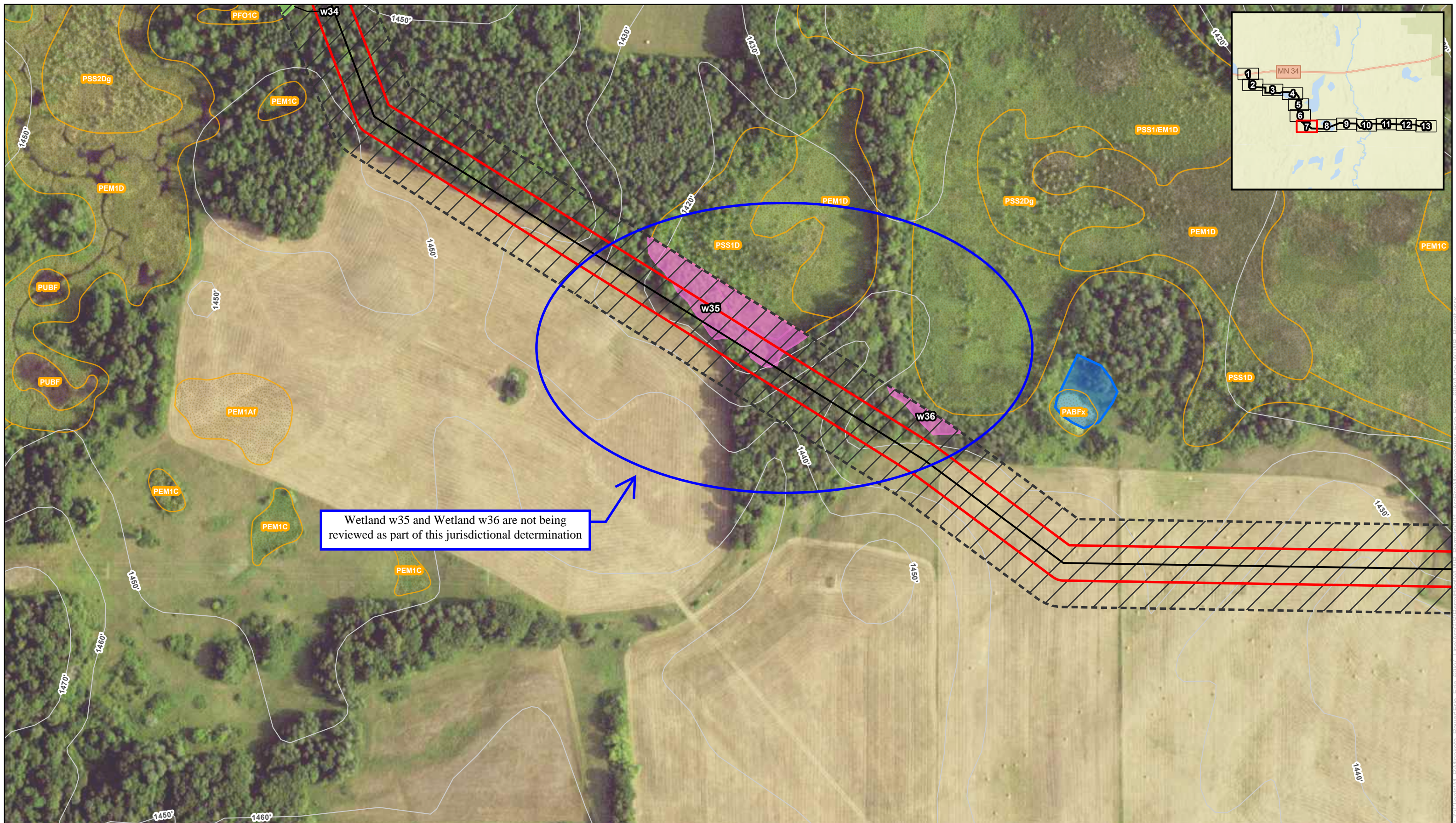
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Wetland w23 is not being reviewed as part of this jurisdictional determination

<p>0 100 200 Feet</p> <p>1 inch = 200 feet</p>	<p>Figure 2: Potential Isolated Wetlands</p> <p>Minnkota Power Cooperative</p> <p>Erie-Erie 69 kV</p> <p>Transmission Line Project</p> <p>Becker County, Minnesota</p>	<p>■ Existing Substation</p> <p>— Proposed 69 kV Transmission Line</p> <p>▭ Proposed Project Right-of-Way</p> <p>▨ Survey Area</p> <p>○ 10' Elevation Contour</p>	<p>● Potentially Isolated Wetland</p> <p>● Potentially Adjacent Wetland</p>	<p>— NHD Waterway</p> <p>— NHD Waterbody</p> <p>— NWI Wetland</p>	<p>Date: (5/26/2024)</p> <p>Page 5 of 13</p>
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Wetland w35 and Wetland w36 are not being reviewed as part of this jurisdictional determination

0100200

Feet

1 inch = 200 feet

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Figure 2: Potential Isolated Wetlands

Minnkota Power Cooperative

Erie-Erie 69 kV

Transmission Line Project

Becker County, Minnesota

■ Existing Substation

— Proposed 69 kV Transmission Line

▭ Proposed Project Right-of-Way

▨ Survey Area

10' Elevation Contour

○ Potentially Isolated Wetland

○ Potentially Adjacent Wetland

— NHD Waterway

— NHD Waterbody

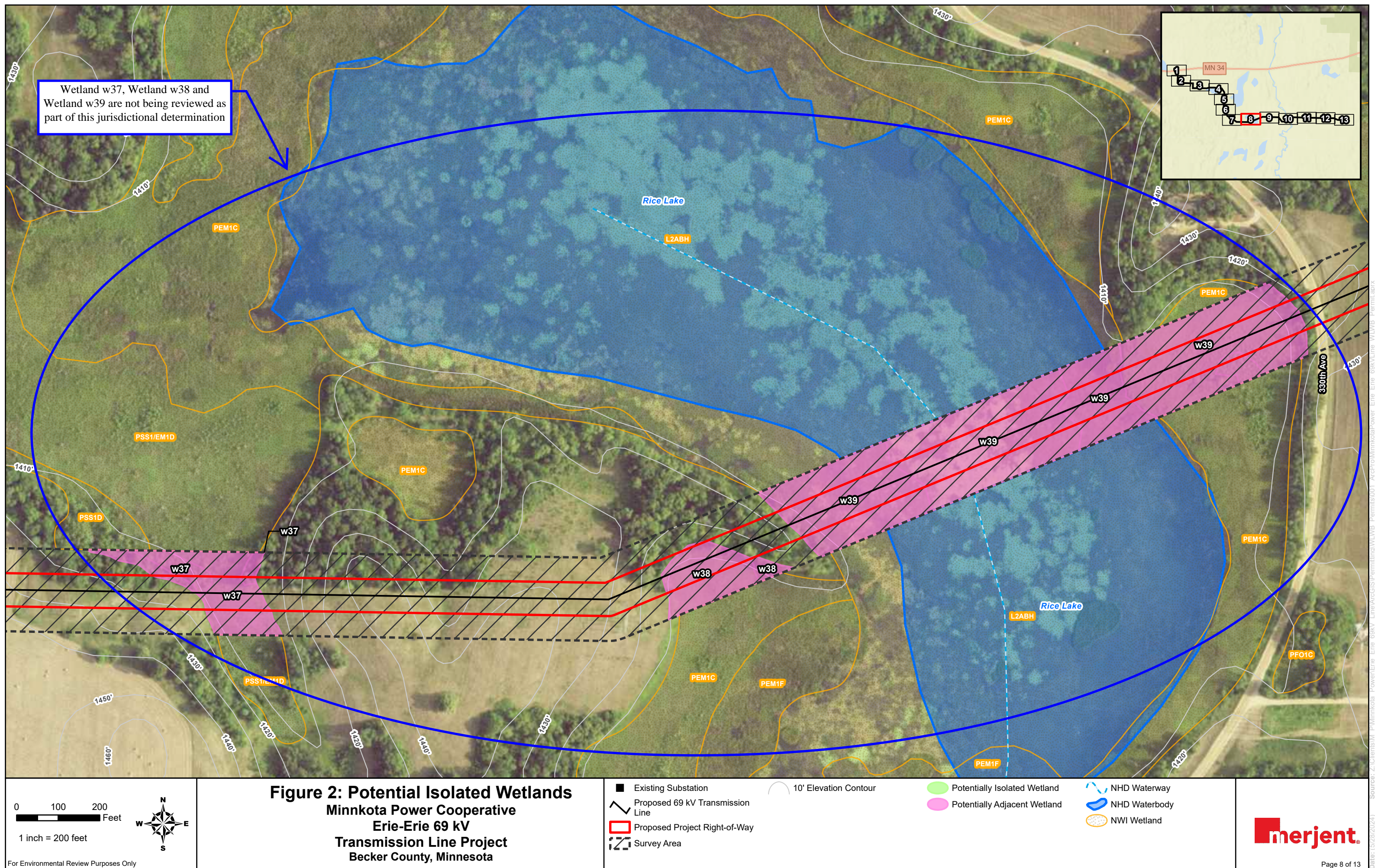
○ NWI Wetland

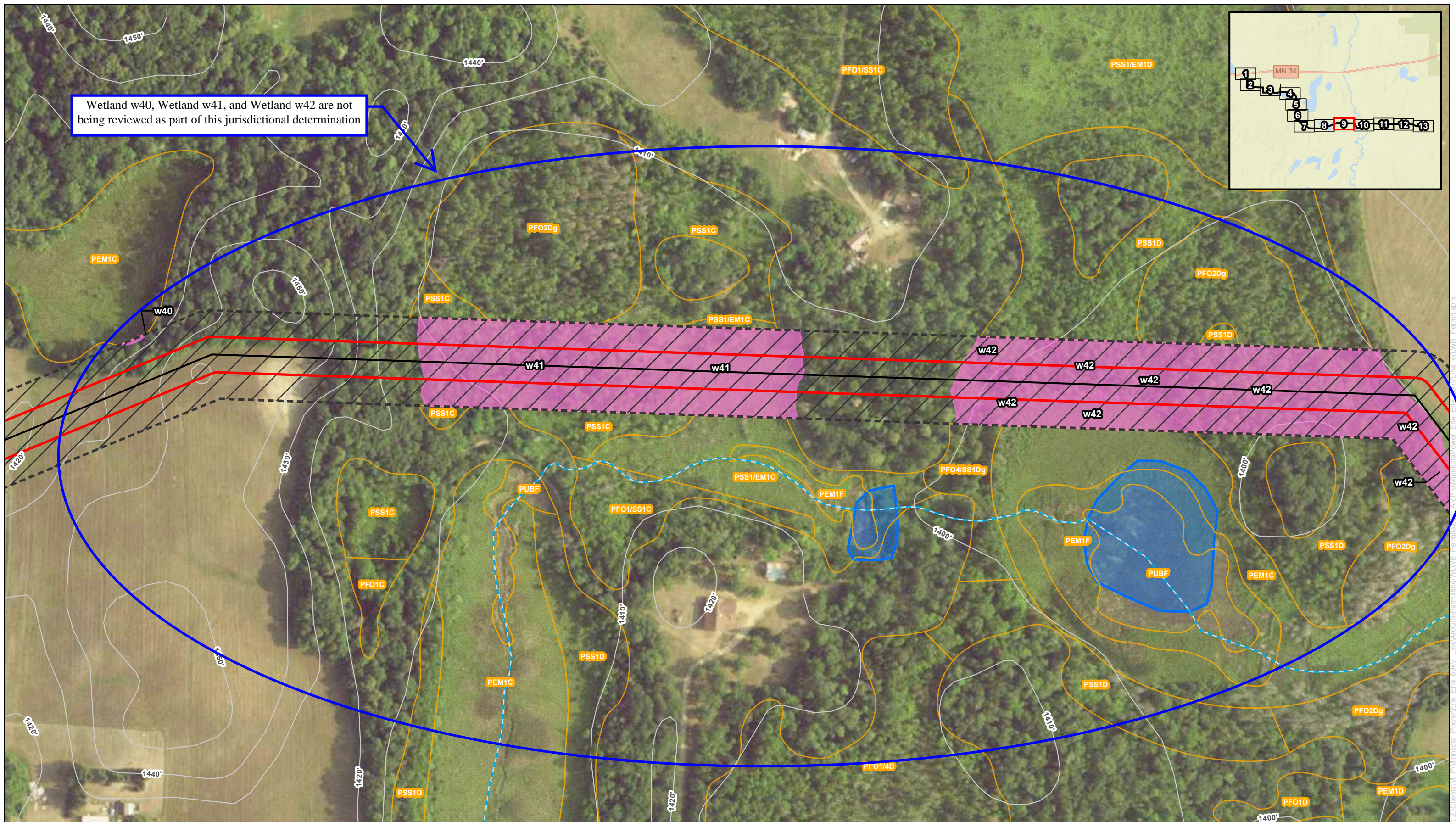
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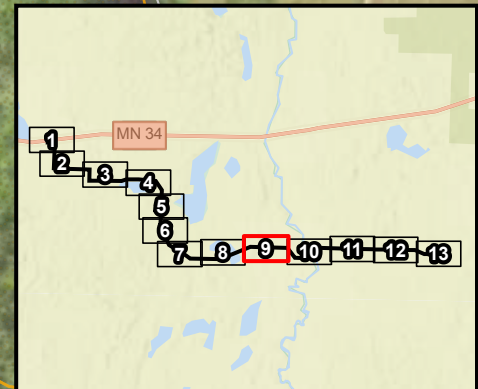
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Wetland w40, Wetland w41, and Wetland w42 are not being reviewed as part of this jurisdictional determination



0 100 200 Feet

1 inch = 200 feet

Figure 2: Potential Isolated Wetlands

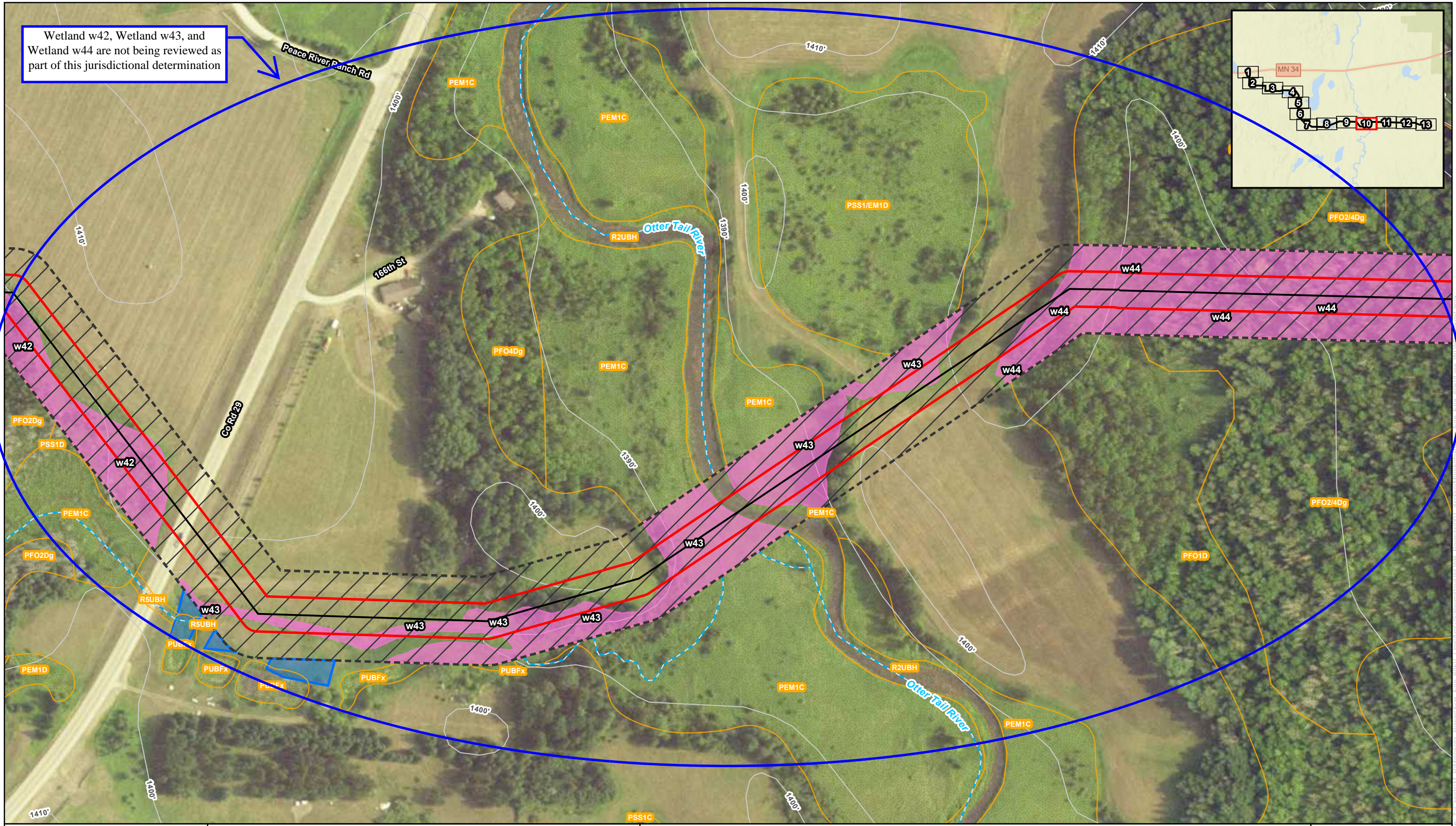
Minnkota Power Cooperative
Erie-Erie 69 kV
Transmission Line Project
Becker County, Minnesota

■ Existing Substation	○ 10' Elevation Contour	○ Potentially Isolated Wetland	○ NHD Waterway
— Proposed 69 kV Transmission Line		○ Potentially Adjacent Wetland	○ NHD Waterbody
□ Proposed Project Right-of-Way			○ NWI Wetland
□ Survey Area			

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Date: (5/20/2024)

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0 100 200 Feet

1 inch = 200 feet

Figure 2: Potential Isolated Wetlands
Minnkota Power Cooperative
Erie-Erie 69 kV
Transmission Line Project
Becker County, Minnesota

Existing Substation

Proposed 69 kV Transmission Line

Proposed Project Right-of-Way

Survey Area

10' Elevation Contour

Potentially Isolated Wetland

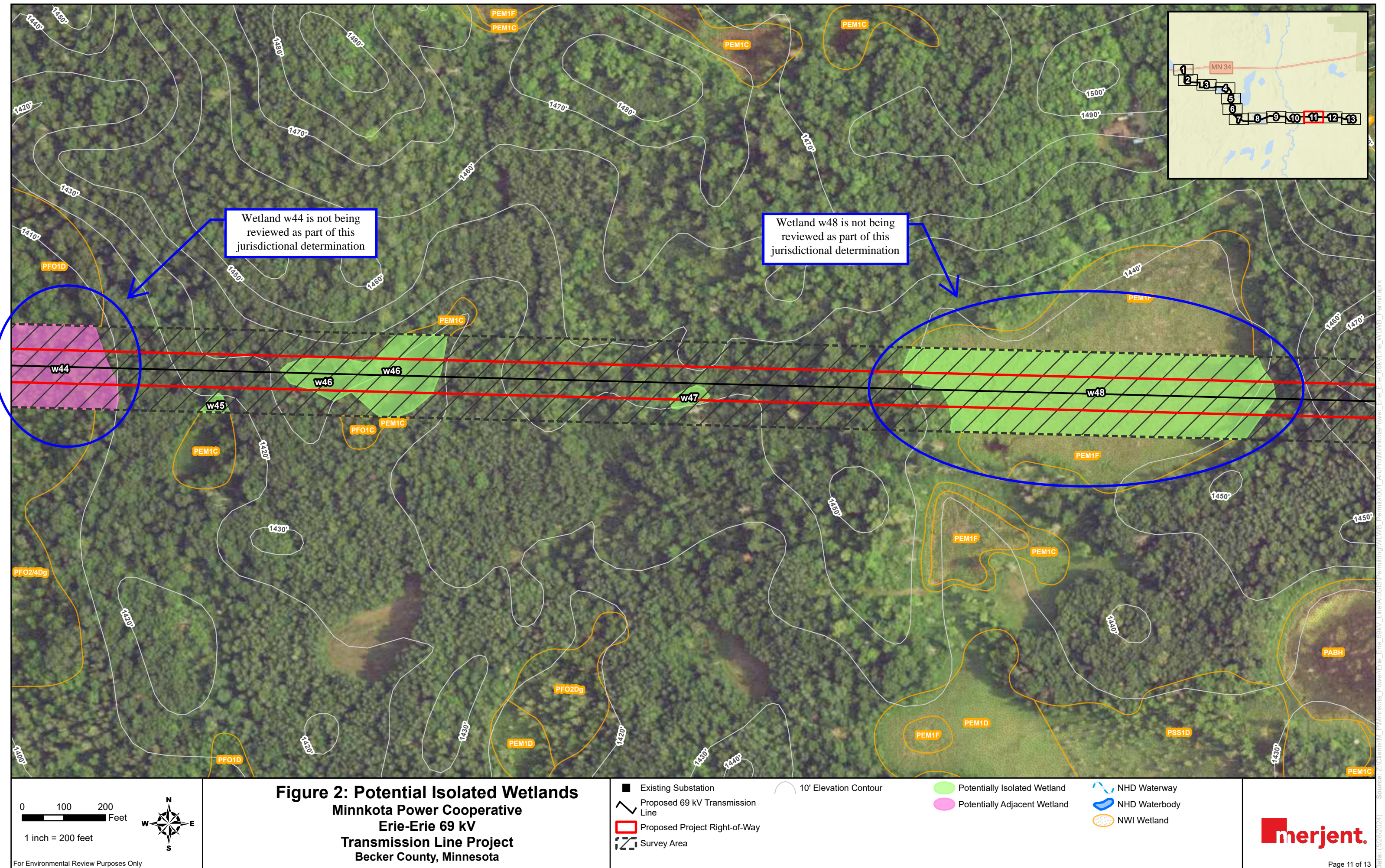
Potentially Adjacent Wetland

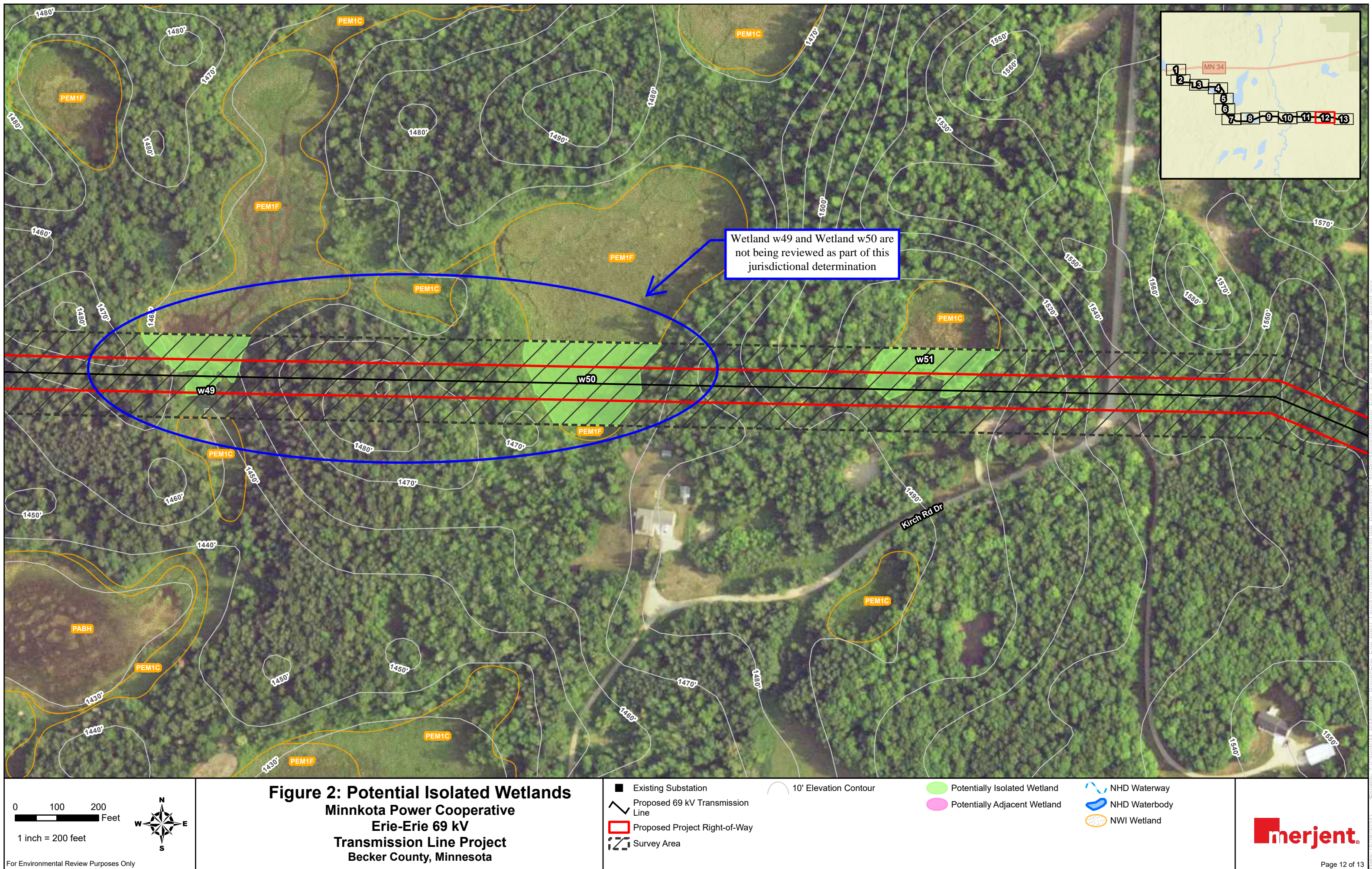
NHD Waterway

NHD Waterbody

NWI Wetland

Date: (5/20/2024)





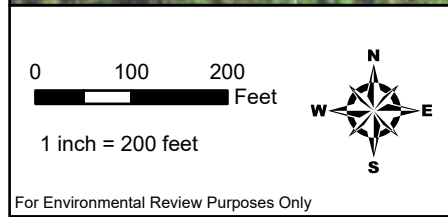
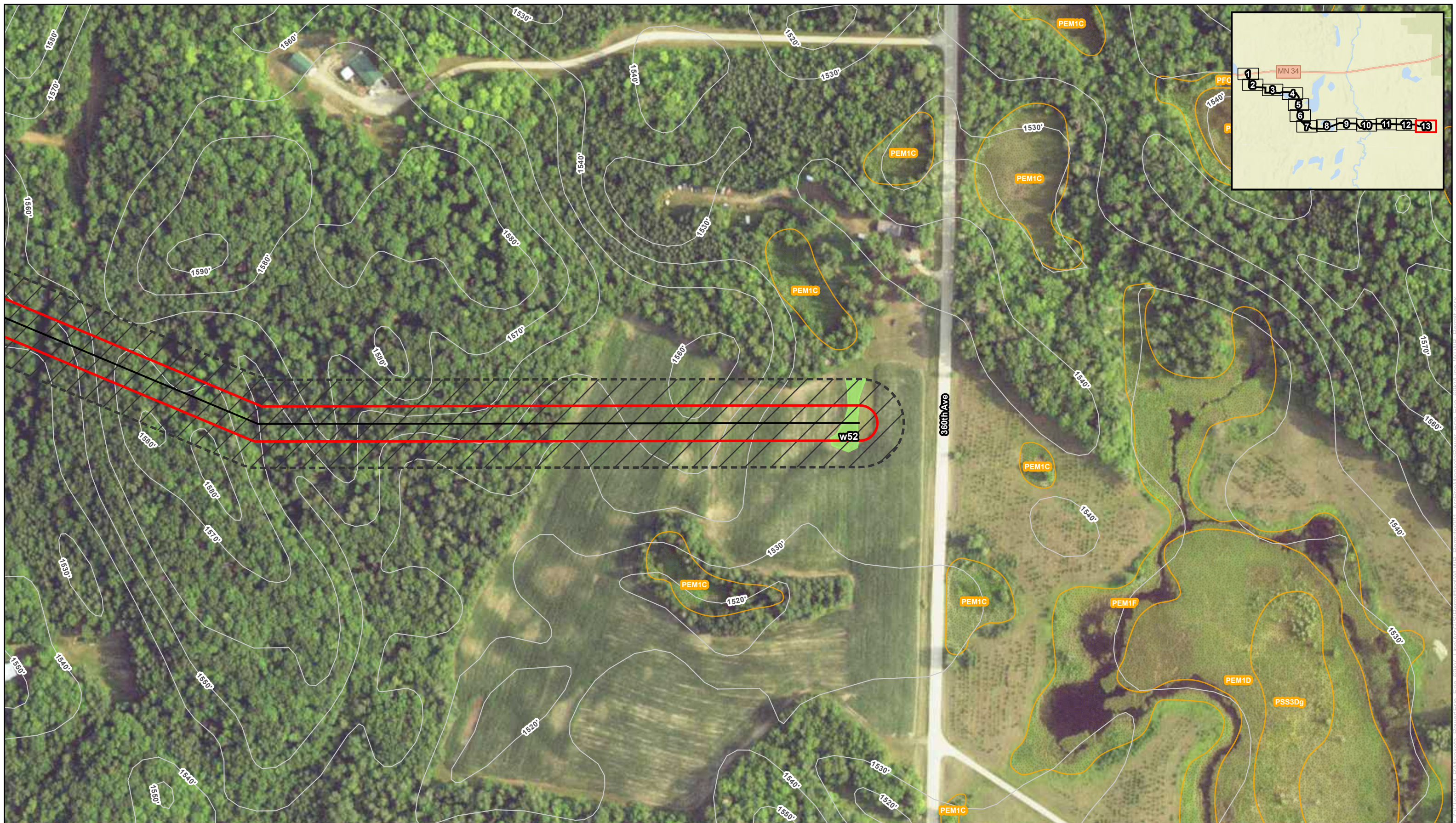


Figure 2: Potential Isolated Wetlands
Minnkota Power Cooperative
Erie-Erie 69 kV
Transmission Line Project
Becker County, Minnesota

- Existing Substation
- Proposed 69 kV Transmission Line
- Proposed Project Right-of-Way
- Survey Area

10' Elevation Contour

- Potentially Isolated Wetland
- Potentially Adjacent Wetland

- NHD Waterway
- NHD Waterbody
- NWI Wetland

