

MVP

March 6, 2026

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-2024-00416 [MFR 1]²

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.³ 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.⁴

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),⁵ 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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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-2024-00416

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).

Name of Aquatic Resource	Size	JD or Non-JD	Section 404/Section 10
Ditch 1	193 linear feet, 0.0048 acres	Non-Jurisdictional	N/a
Ditch 2	1112 linear feet, 0.0801 acres	Non-Jurisdictional	N/a
Ditch 3	500 linear feet, 0.0393 acres	Non-Jurisdictional	N/a
Stream 3	320 linear feet, 0.0352 acres	Non-Jurisdictional	N/a
Wetland 7	0.18 acres	Non-Jurisdictional	N/a

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)
- d. January 2023 Rule preamble at 88 FR 3090
- e. 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.

- a. Project Are Size (in acres): 4.6 miles
- b. Location Description: The project/review area is located in Section 20, 21, 22, 23, 25, 26, and 27, Township 113N, Range 015W, Goodhue County, Minnesota.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00416

- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 44.565430 Longitude: -92.567320
 - d. Nearest City or Town: Red Wing
 - e. County: Goodhue
 - f. State: Minnesota
 - g. Other associated Jurisdictional Determinations (including outcomes):
N/a
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. ⁶
N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.
N/A
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸
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

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

⁷ 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.

⁸ 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-2024-00416

“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).⁹

Ditch 1 is classified as a swale under 33 CFR 328.3(b)(8) due to its infrequent or short-duration flow. This section of the channel exhibits erosional characteristics and lacks continuous flow. During a site visit conducted on February 13 2026, no evidence of a defined bed or bank was observed, as the channel was not topographically obvious. There was no evidence of an Ordinary High Water Mark. Based on its erosional features and the absence of relatively permanent flow, this channel does not qualify as a water of the United States under the exclusions outlined in 33 CFR 328.3(b)(8).

- 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

⁹ 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-2024-00416

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).

Ditch 2 and 3, wetland 7 and stream 3 are all not TNWs (Traditional Navigable Waters), territorial seas, or interstate waters and is therefore not considered (a)(1) waters. Stream 3 flows down from the bluffs to the south to connect to wetland 7 but wetland 7 does not abut any other wetlands or tributaries, either on-site or off-site. Ditch 2, 3 and Wetland 7 were each evaluated as potential (a)(4) waters but none of the three of them have a continuous surface connection to a jurisdictional water.

The National Wetland Inventory (NWI) was reviewed for the site and identified Ditch 2 and 3 as PEM1F, Wetland 7 as PEM1C and Stream 3 as R2UBH. The National Hydrography Dataset (NHD) was also reviewed for the site and did not indicate the presence of Ditch 2 and 3 nor Wetland 7 and Stream 3. The NHD showed the nearby Cannon River to Wetland 7 and Stream 3 and Spring Creek to the west of Ditch 2. Soils within this area are described as a mix of all hydric and predominantly hydric, according to the Soil Survey and USA Soils Hydric Class.

Wetland 7 and Stream 3 are located in a topographically low area, separated from the off-site wetland complex and the Cannon River to the northwest by the existing Cannon Valley Trail. A site visit and review of project plans confirmed that no culvert connects Wetland 7 across the trail to the wetland complex. Wetland 7 and Stream 3 are situated at the base of the bluffs, between the bluffs and the Cannon Valley Trail. The bluffs to the southeast of Wetland 7 and south of Stream 3 rise to an elevation of 796 feet above sea level, while Wetland 7 is at 683 feet. The trail elevation is 686 feet before sloping downward toward the river, reaching a low point of 677 feet.

An analysis of the elevational profile indicates that Wetland 7 is a depressional feature, hydrologically isolated from the nearby wetland complex by the Cannon Valley Trail. A review of hillshade imagery and 3DEP (3D Elevation Program) Digital Elevation Modeling (DEM) for the area did not reveal any continuous surface connection between Wetland 7 and a jurisdictional water. Additionally, no other aquatic resources were identified in this portion of the site.

Ditch 2 and 3 were reviewed during the site visit and were observed to not connect to any culverts or offsite waters that would connect these waters to any other aquatic resources. Via an analysis of the elevational profile of Ditch 2 and 3 compared to the North, where the floodplain for the Minnesota river is located, showed that Ditch 2 and 3 are at elevation 715 feet and the flood plain was down the bluff at 674 feet. A review of hillshade imagery and 3DEP (3D Elevation Program) Digital Elevation Modeling (DEM)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00416

for the area did not reveal any continuous surface connection between Ditch 2, Ditch 3 and a jurisdictional water.

Ditch 2 and 3 were both evaluated as potential (a)(3)s water and were found to not meet this category because it is not a relatively permanent water with a continuous surface connection to a paragraph (a)(1) or (a)(3) water. During a site visit, there was no evidence of a defined bed or bank was observed. There was no evidence of an Ordinary High Water Mark. Based on the absence of relatively permanent flow, this channel does not qualify as a water of the United States under (a)(3).

Ditch 2, 3, Wetland 7, and Stream 3 do not have any continuous surface connection to a relatively permanent jurisdictional water and, as such, do not meet the definition of "adjacent." Therefore, Wetland 7 cannot be evaluated as an (a)(4) adjacent wetland and, consequently, Ditch 2, 3, and Stream 3 are tributaries evaluated under (a)(3) and determined to not be a relatively permanent water with a continuous surface connection to a paragraph (a)(1) or (a)(3) water; therefore, this non-relatively permanent feature is not jurisdictional under the 2023 "Revised Definition of 'Water 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. Cannon Valley Trail Bridge & Trail Replacement Wetland and Waters Delineation Report dated July 18, 2024
- b. [US Geological Survey, 3DEP Bare Earth DEM Dynamic service – hillshade and 3DEP DEM, accessed on March 4, 2026
- c. Google Earth aerial imagery (1991 – present), accessed March 6, 2026
- d. United States Geological Survey, National Hydrography Dataset, accessed on March 4, 2026
- e. United States Fish and Wildlife Service, National Wetland Inventory, accessed on March 4, 2026
- f. USA Soils Hydric Class accessed on March 4, 2026
- g. US Geological Survey, Elevational Profile map at coordinates 44.574684, -92.615775 accessed on March 4, 2026

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2024-00416

10. OTHER SUPPORTING INFORMATION.

USACE site visit on Feb 13, 2026

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.

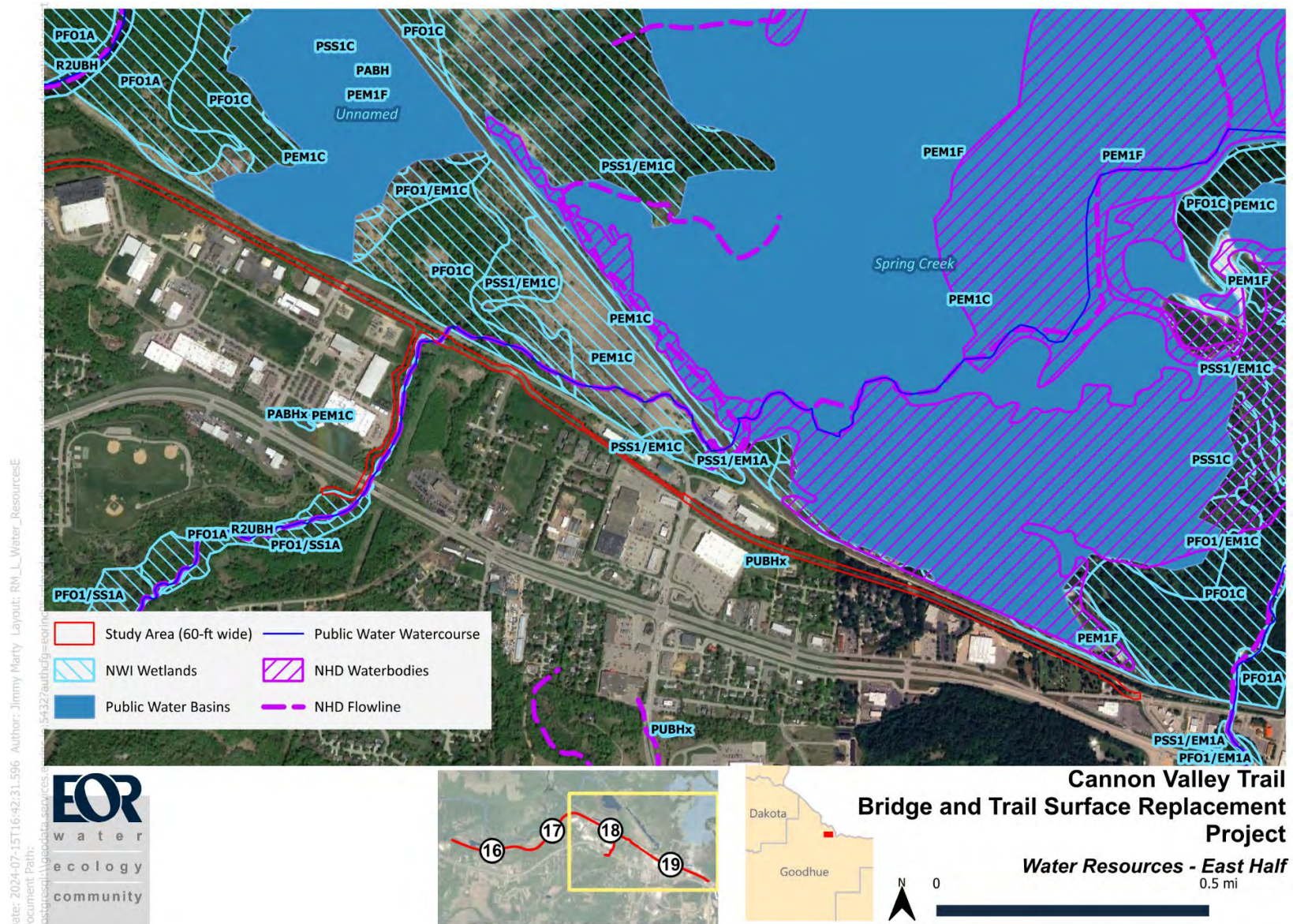


Figure 7. Water resources mapped within the east half of the Study Area.

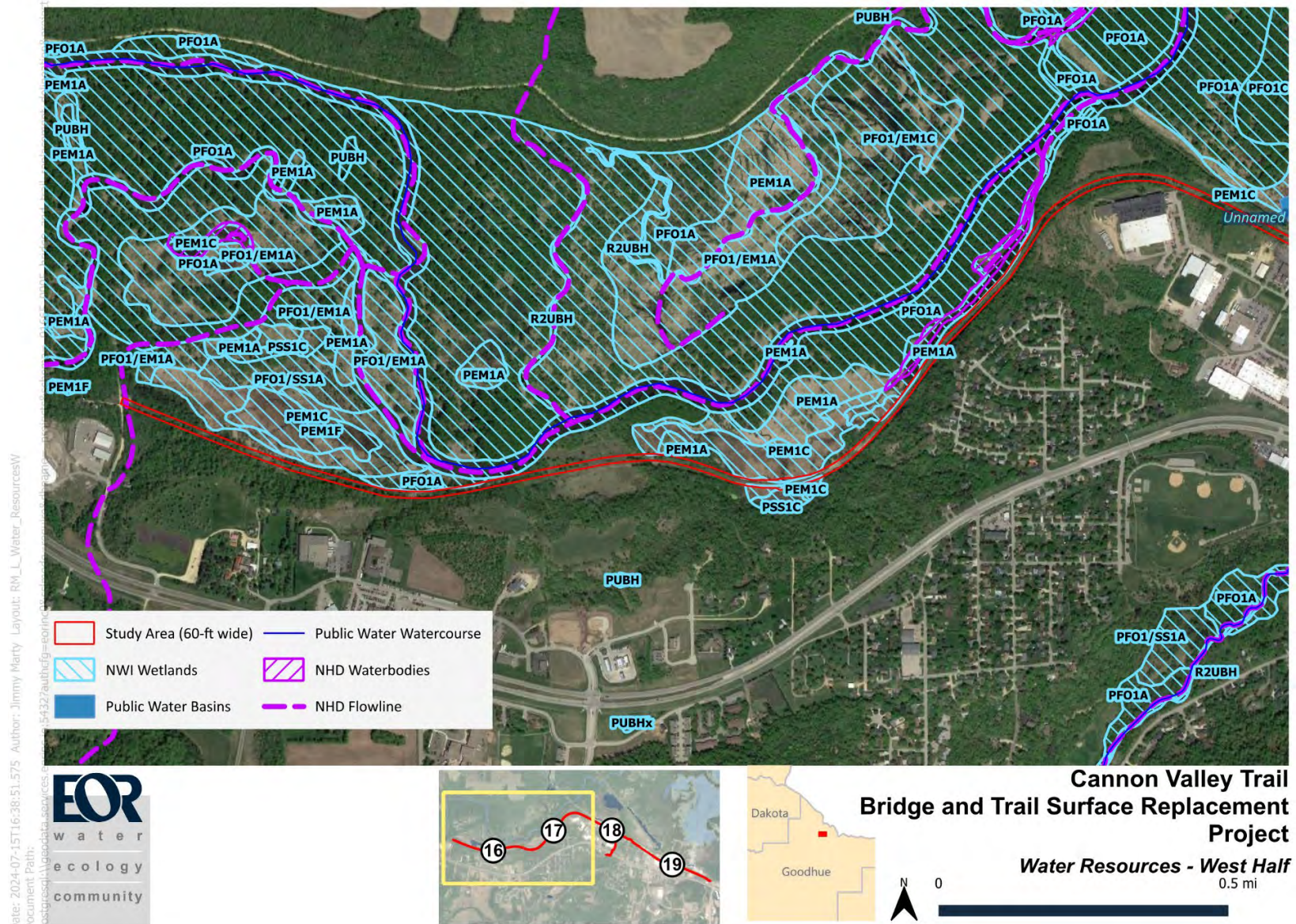


Figure 8. Water resources mapped within the west half of the Study Area.

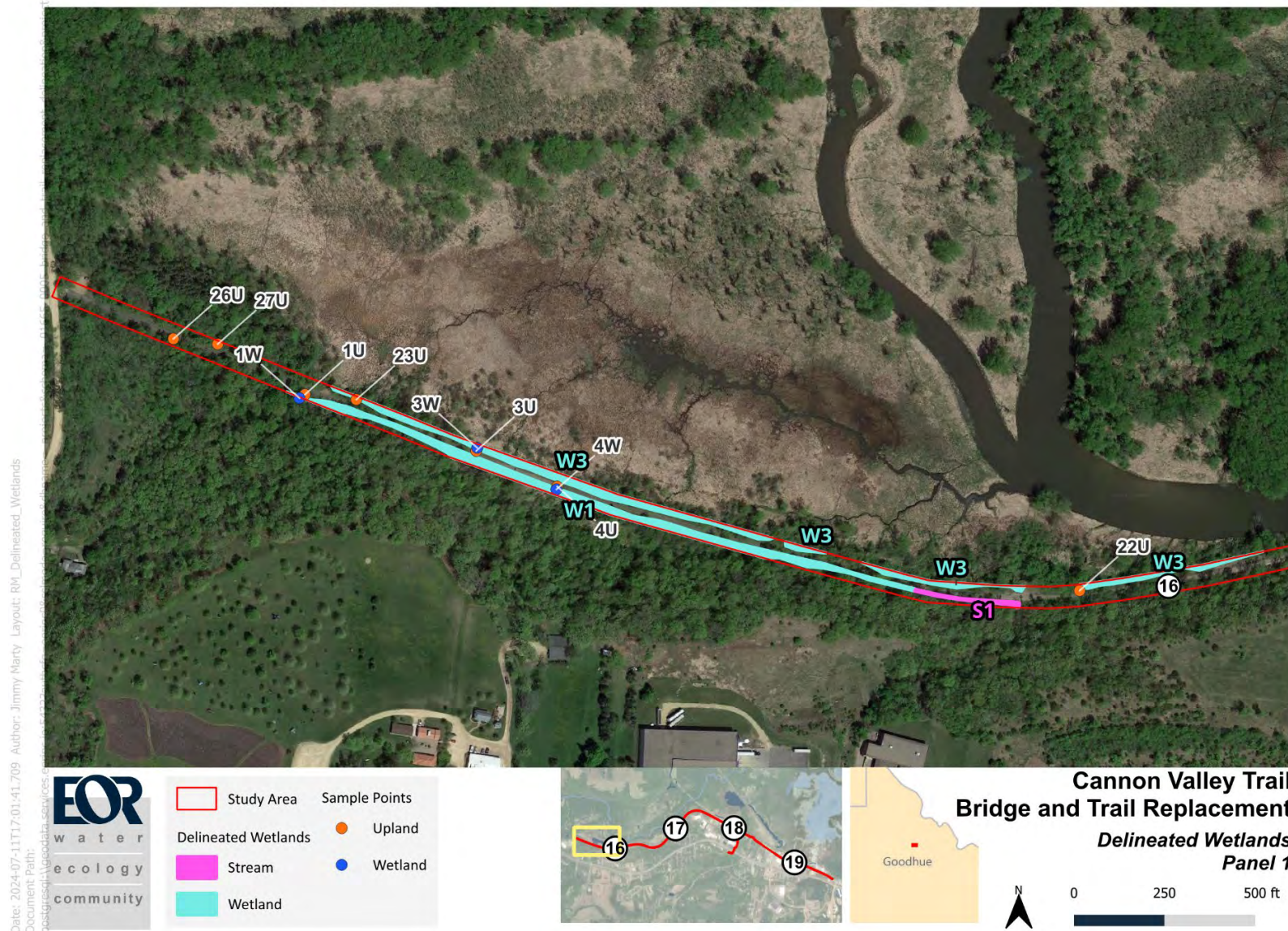


Figure 11. Wetland delineation results, panel 1.

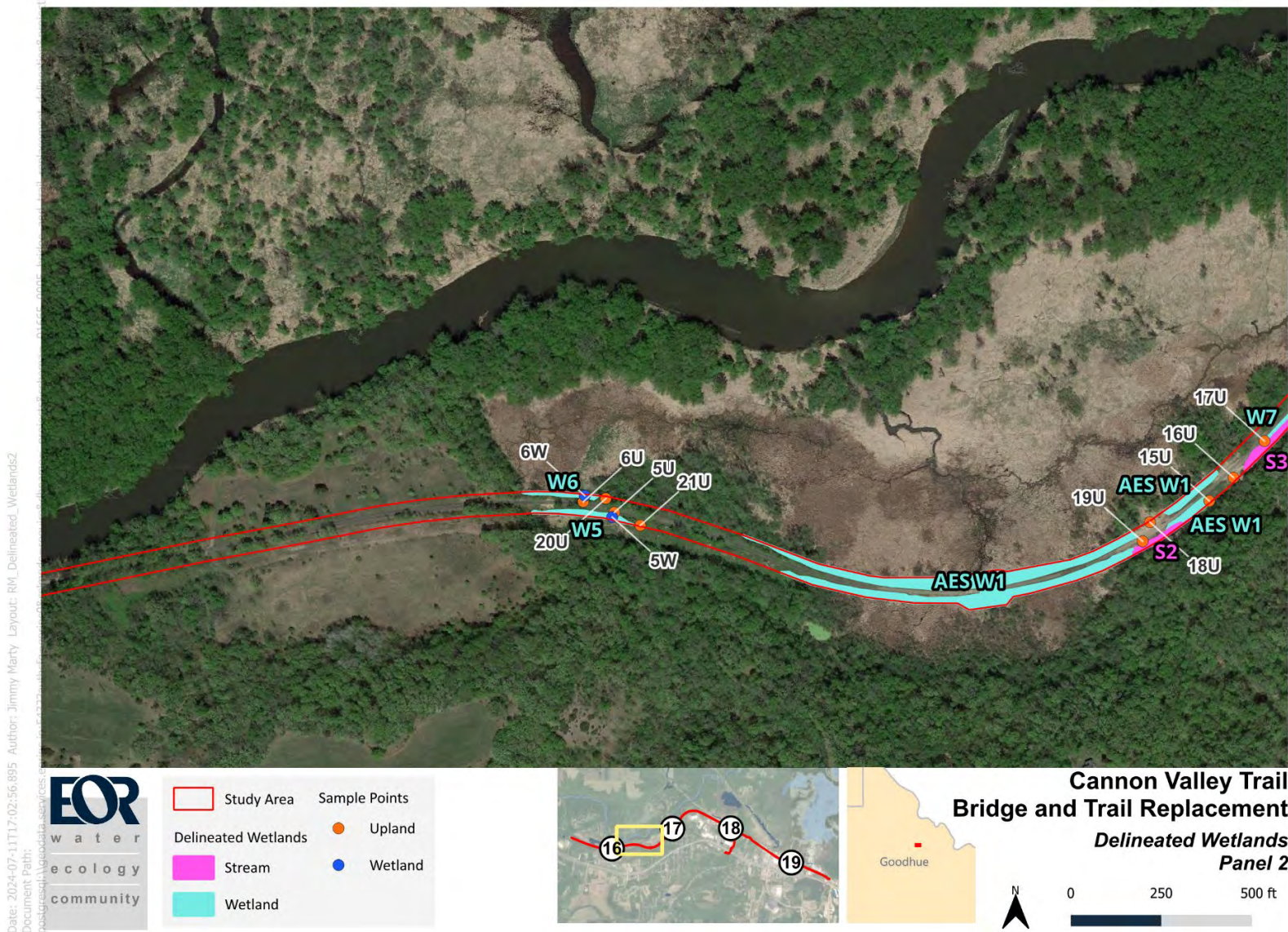


Figure 12. Wetland delineation results, panel 2.

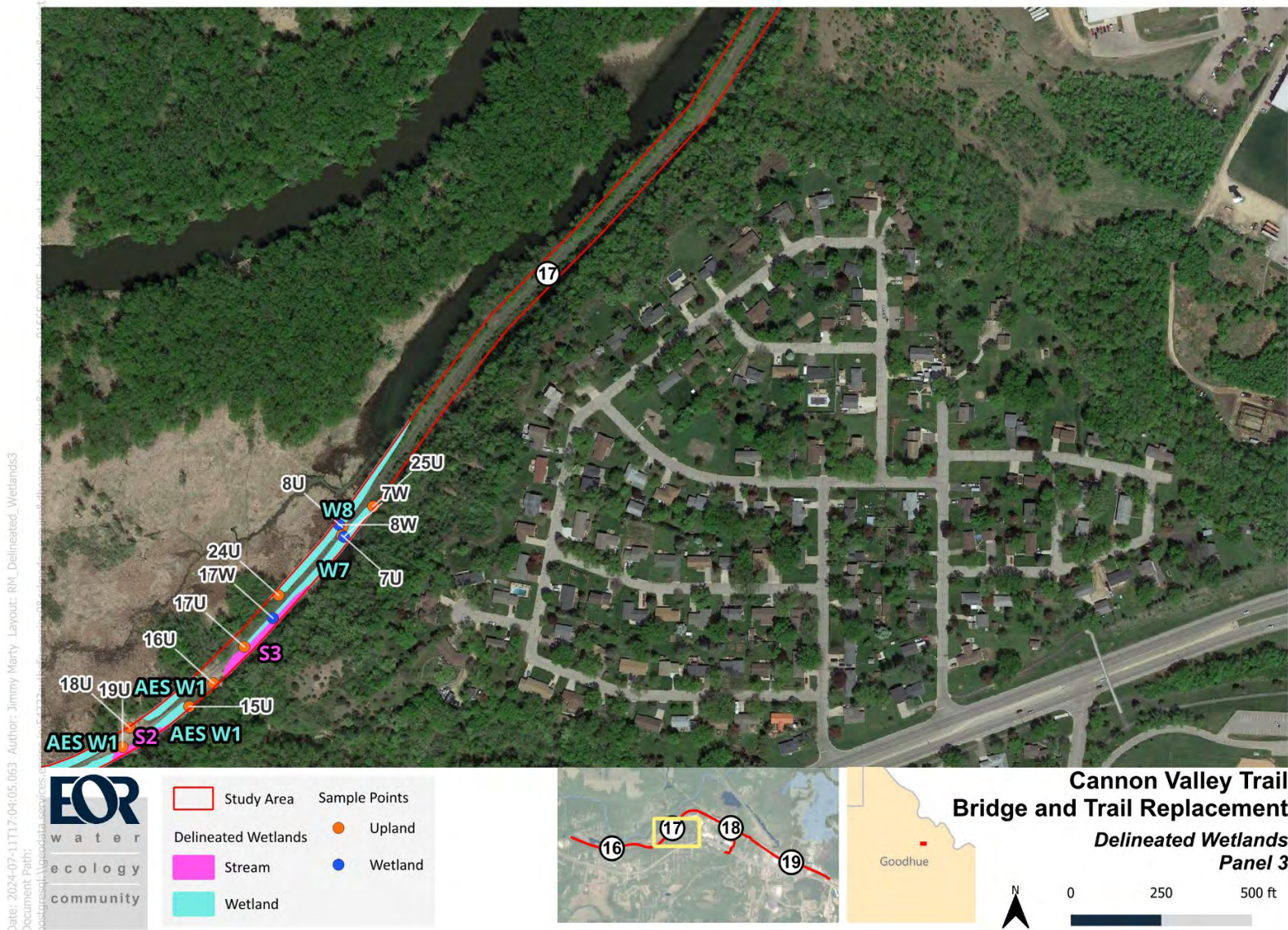


Figure 13. Wetland delineation results, panel 3.



Figure 17. Wetland delineation results, panel 7.

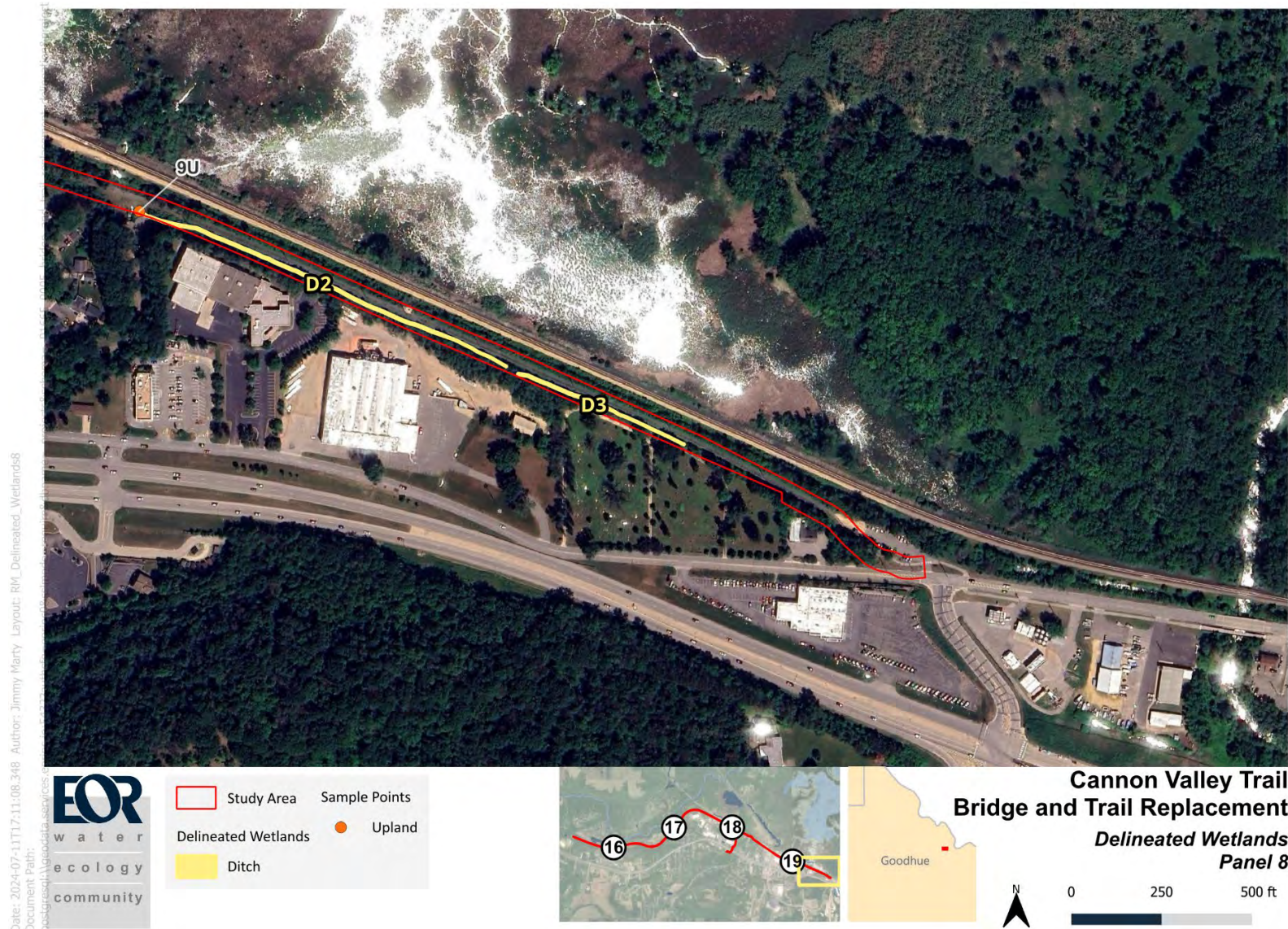


Figure 18. Wetland delineation results, panel 8.