



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

CEMVP-RD

25 JUN 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 2025-00287-MMP.

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 1, (0.09 acre). Non-jurisdictional, excluded water.
 - ii. Wetland 2, (0.01 acre). Non-jurisdictional, excluded water.
 - iii. Wetland 3, (0.13 acre). Non-jurisdictional.
 - iv. Wetland 4, (0.16 acre). Non-jurisdictional, excluded water.
 - v. Wetland 5, (0.02 acre). Non-jurisdictional, excluded water.
 - vi. Wetland 6, (0.12 acre). Non-jurisdictional, excluded water.
 - vii. Wetland 7, (0.12 acre). Non-jurisdictional.
 - viii. Wetland 8, (0.01 acre). Non-jurisdictional.
 - ix. Wetland 9, (0.06 acre). Non-jurisdictional, excluded water.
 - x. Wetland 10, (0.07 acre). Non-jurisdictional, excluded water.
 - xi. Wetland 11, (0.01 acre). Non-jurisdictional, excluded water.
 - xii. Wetland 12, (0.63 acre). Non-jurisdictional.
 - xiii. Wetland 13, (0.51 acre). Non-jurisdictional.
 - xiv. Wetland 14, (0.14 acre). Non-jurisdictional.
 - xv. Wetland 15, (0.16 acre). Non-jurisdictional.
 - xvi. Wetland 16, (0.28 acre). Non-jurisdictional.
 - xvii. Wetland 17, (0.03 acre). Non-jurisdictional.
 - xviii. Wetland 18, (0.01 acre). Non-jurisdictional, excluded water.
 - xix. Wetland 19, (0.04 acre). Non-jurisdictional, excluded water.
 - xx. Wetland 20, (0.07 acre). Non-jurisdictional, excluded water.
 - xxi. Wetland 21, (0.61 acre). Non-jurisdictional.
 - xxii. Wet Ditch 1, (0.14 acre). Non-jurisdictional, excluded water.
 - xxiii. Wet Ditch 2, (0.12 acre). Non-jurisdictional, excluded water.
 - xxiv. Wet Ditch 3, (0.15 acre). Non-jurisdictional, excluded water.
 - xxv. Wet Ditch 4, (0.06 acre). Non-jurisdictional, excluded water.
 - xxvi. Wet Ditch 5, (0.01 acre). Non-jurisdictional, excluded water.

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. 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

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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 of this determination includes 26 aquatic resources (16 excluded features and 10 non-a(4) waters), as identified on the enclosed figures labeled MVP-2025-00287-MMP Figures 1 of 6 through 6 of 6. The review area is located in Sections 14-23, Township 101 North, Range 39 West. The western terminus is located at Latitude: 43.5436, Longitude: -95.5738, the eastern terminus is located at Latitude: 43.4506, Longitude: -95.4741. The review area is located in Nobles County, Minnesota along County State Aid Highway 4.
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

Wetlands 1, 2, 4-6, 9-11, and 18-20, and Wet Ditch 1-5 within the review area, shown on Figures 2 through 6 of 6 on the attached figures, are being evaluated as excluded features since they meet the definition of a b(3) water since the features were constructed in upland, drain only upland, do not carry relatively permanent flow, and are not relocated tributaries.

Wetlands 1, 2, 4-6, 9-11, and 18-20, and Wet Ditch 1-5 are roadside ditches that were constructed in upland to convey runoff along County State Aid Highway (CSAH) 4, based on the Wetland Delineation Report completed by Widseth, on behalf of the applicant, and desktop resources, including National Wetland Inventory (NWI), NRCS's Hydric Soil Rating, topographic maps, and aerial imagery. A USGS Topographic Map from 1954 identifies the area of these features as upland. CSAH 4 is first denoted as a (secondary) highway in 1960 by

⁷ 88 FR 3004 (January 18, 2023)

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USGS, prior maps in 1954 and 1958 denote CSAH 4 as a road. Additionally, aquatic resources adjacent to CSAH 4 are first identified in 1960 concluding that these features were constructed in upland and are not relocated tributaries. Other resources reviewed to support this determination include 3DEP Hillshade and 3DEP 2-ft, 5-ft, 10-ft, and 25-ft Contour maps and recent aerial imagery which support these features were constructed wholly in and draining only dry land and do not carry a relatively permanent flow of water.

Considering the information above, Wetlands 1, 2, 4-6, 9-11, and 18-20, and Wet Ditch 1-5 have been determined to be excluded waters 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).

Wetlands 3, 7, 8, 12-17, and 21 are not traditionally navigable waters (TNW), territorial seas, or interstate waters and therefore are not (a)(1) waters.

The wetland delineation report, topographic maps, digital elevation modeling, and recent aerial imagery (data sources listed below) indicate these wetlands are depressional basins surrounded entirely by upland.

Wetlands 3, 7, 8, 12-17, and 21 do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. These wetlands are located approximately 0.44 miles from the nearest requisite jurisdictional water, the County Ditch 1 (I-040-007), located south of the review area.

Wetlands 3, 7, 8, 12-17, and 21 are non-tidal wetlands that do not abut 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 completed by Widseth in August of 2023.

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- b. MN Public Waters Basin and Watercourse Delineations. Accessed June 11, 2025.
- c. USDA NRCS Soil Survey SSURGO and STATGO. Accessed June 11, 2025.
- d. USGS 3DEP Digital Elevation Model (DEM), Contour (2-ft, 5-ft, 10-ft, and 25-ft), and Hillshade. Accessed June 11, 2025.
- e. USGS Topographic Maps from 1954, 1965, and 1960. Accessed June 12, 2025.
- f. USFWS NWI (MapServer). Accessed June 11, 2025.
- g. Google Earth aerial photos from 2023 Accessed June 11, 2025.

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.

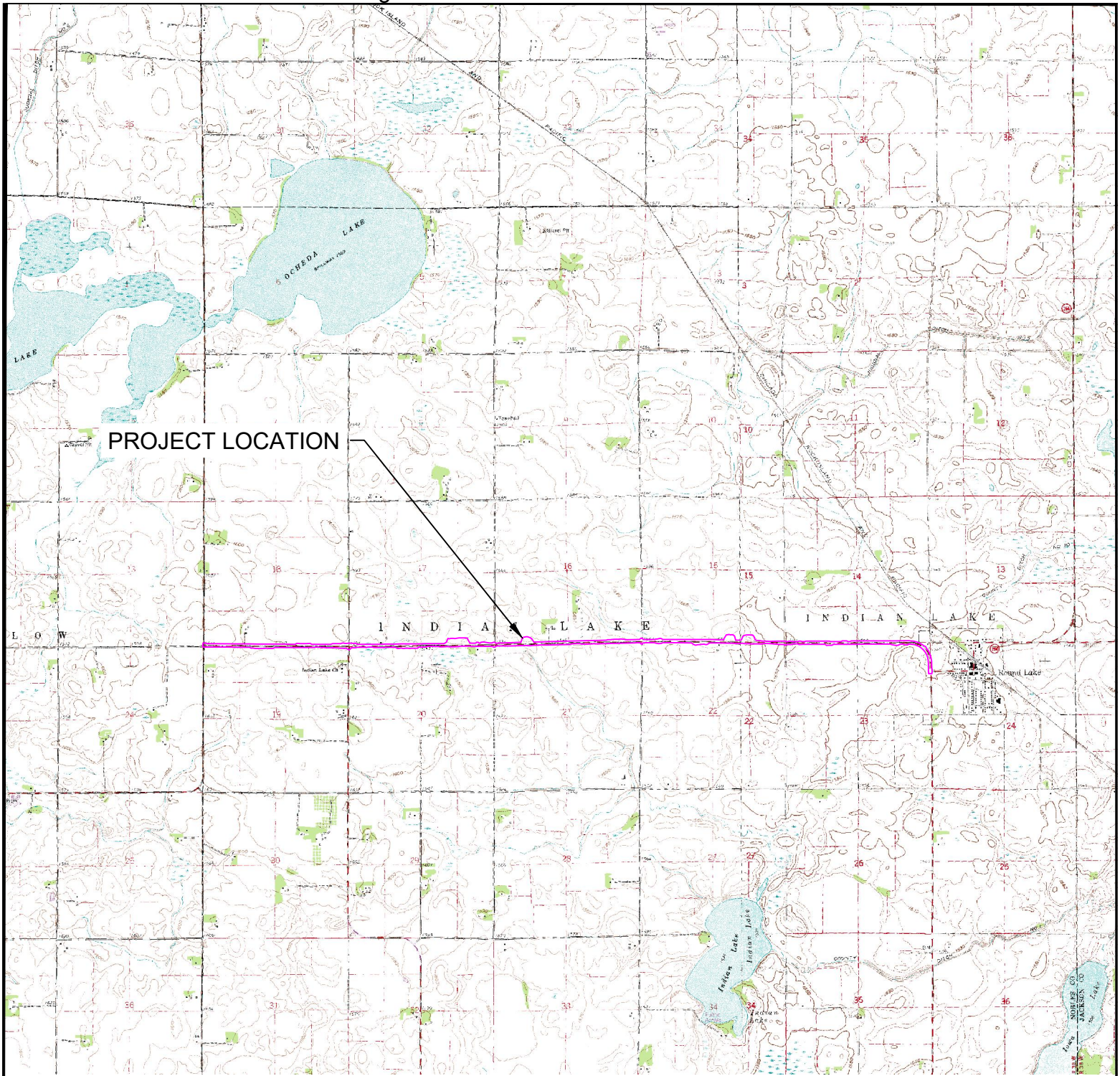
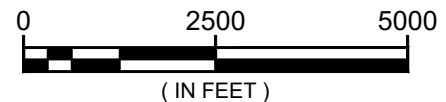
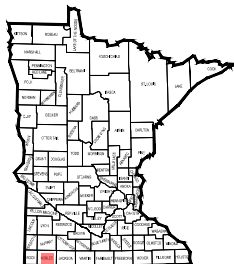


IMAGE: UNITED STATES DEPARTMENT OF THE INTERIOR GEOLOGICAL SURVEY © 2025 WIDSETH SMITH NOLTING

AREA LOCATION



U.S.G.S. QUADRANGLE MAPS:

PUBLISHED: 1982
PHOTOREVISED: NA

MVP-2025-00287-MMP Figure 1 of 14

WIDSETH
ARCHITECTS ■ ENGINEERS ■ SCIENTISTS ■ SURVEYORS

CSAH 4 WIDENING
NOBLES COUNTY PUBLIC WORKS
NOBLES COUNTY, MN

SITE LOCATION MAP

DATE:

MARCH 2025

JOB No.

2023-10253

FIGURE

1

**FIGURE 6A: WETLAND
DELINEATION**

Nobles County
CSAH 4

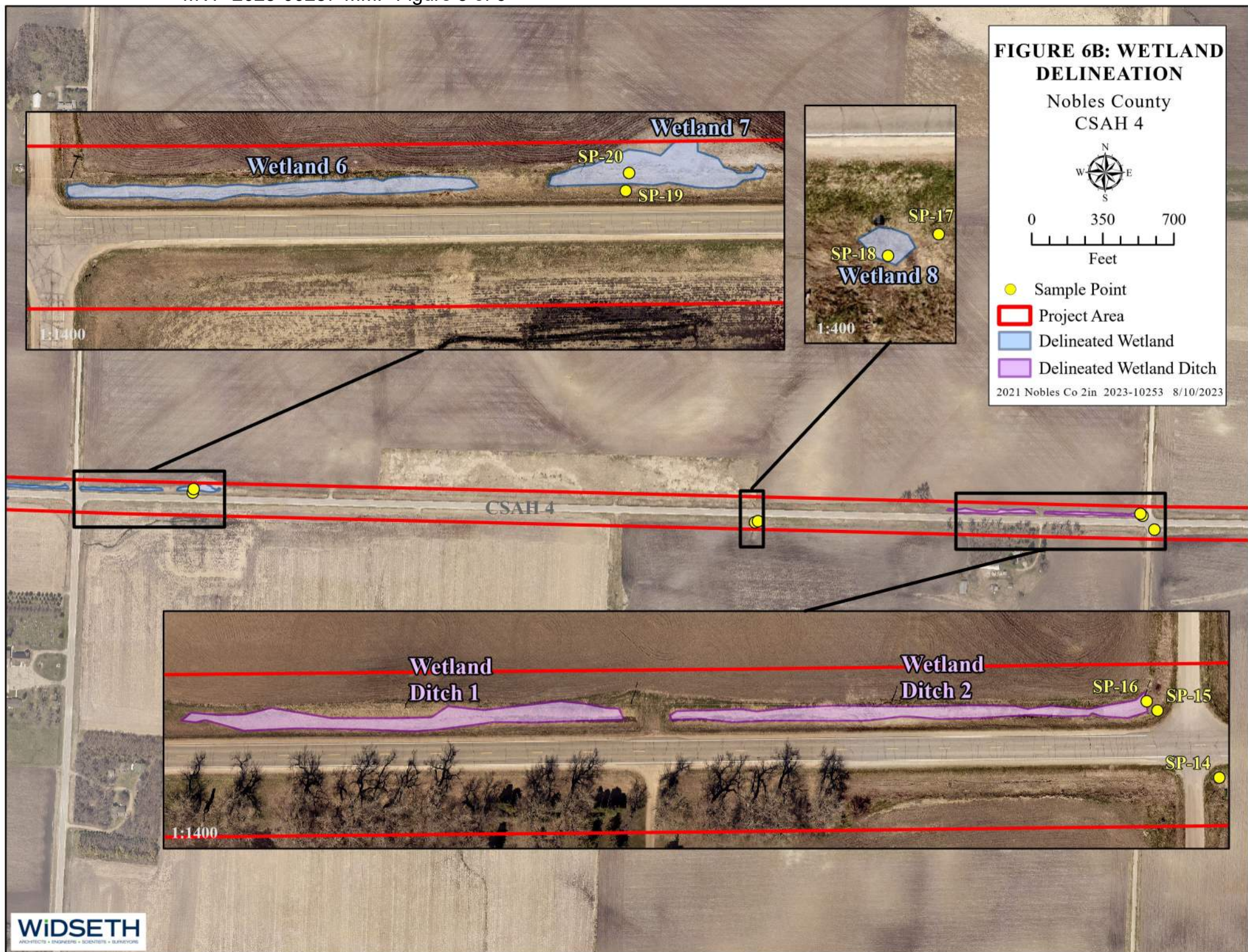


0 350 700
Feet

- Sample Point
- Project Area
- Delineated Wetland
- Delineated Wetland Ditch

2021 Nobles Co 2in 2023-10253 8/9/2023





**FIGURE 6C: WETLAND
DELINEATION**

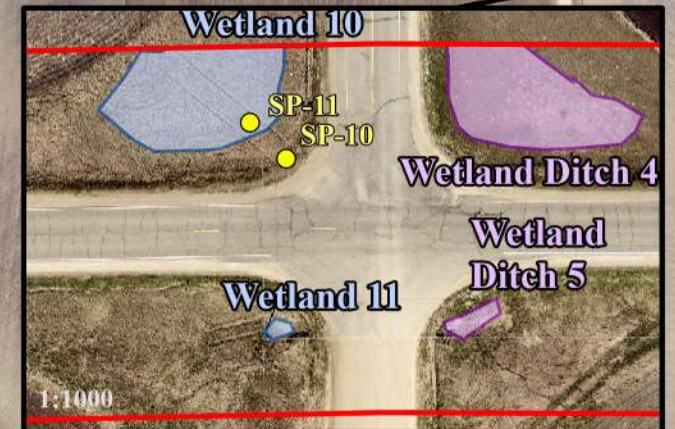
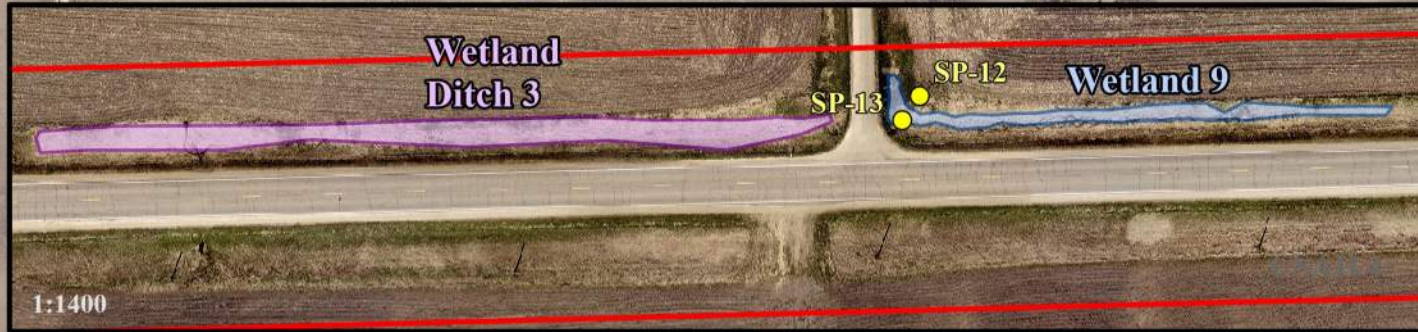
Nobles County
CSAH 4



0 350 700
Feet

- Sample Point
- Project Area
- Delineated Wetland
- Delineated Wetland Ditch

2021 Nobles Co 2in 2023-10253 8/9/2023



**FIGURE 6D: WETLAND
DELINEATION**

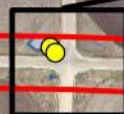
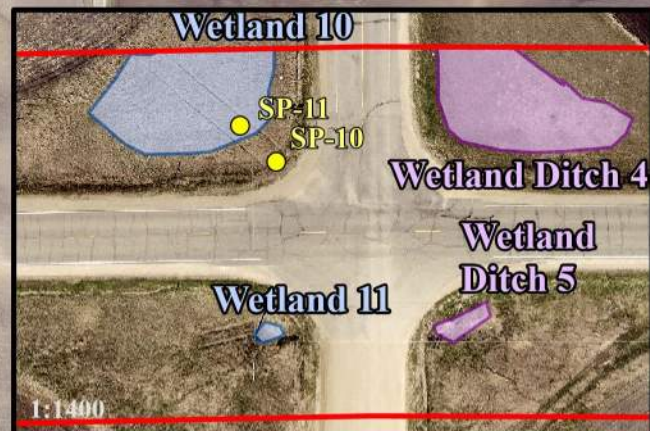
Nobles County
CSAH 4



0 350 700
Feet

- Sample Point
- Project Area
- Delineated Wetland
- Delineated Wetland Ditch

2021 Nobles Co 2in 2023-10253 8/9/2023



**FIGURE 6E: WETLAND
DELINEATION**

Nobles County
CSAH 4



0 350 700
Feet

- Sample Point
 - Project Area
 - Delineated Wetland
 - Delineated Wetland Ditch
- 2021 Nobles Co 2in 2023-10253 8/10/2023

