



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

MVP-2025-00401-MMP (SP-4104-90)

June 25, 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 2025-00401-MMP. 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.

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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 6, 0.06 acre. Non-jurisdictional.
 - ii. Wetland 7, 0.10 acre. Non-jurisdictional.
 - iii. Wet Ditch 1, 0.05 acre. Non-jurisdictional, excluded water.
 - iv. Wet Ditch 3, 0.06 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 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 2 excluded features and 2 non-a(4) waters, as identified on the enclosed figures labeled MVP-2025-00401-MMP Figures 2 and 3 of 9. The review area is located in Section 4, 5, 8, Township 109 North, Range 46 West, in Verdi Township, Lincoln County, Minnesota. The review area is along Trunk Highway (TH) 14 between Latitude: 44.2695 and Longitude -96.4164 and Latitude: 44.2695, Longitude: -88.3846.

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

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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.

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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

The excluded features within the review area include Wet Ditches 1 and 3, as shown on Figure 2 of 9 on the attached figures. These features are being evaluated as Paragraph (b)(3) excluded waters because they were constructed in upland, drain only upland, do not carry relatively permanent flow, and are not relocated tributaries.

Wet Ditches 1 and 3 are roadside ditches that were constructed in upland to convey runoff along TH 14 according to a wetland delineation report completed by Sambatek staff, on behalf of the applicant, and desktop resources, including the USA Soils Hydric Class and the National Wetland Inventory (NWI), which do not identify wetlands or hydric soils in the area of Wet Ditches 1 and 3. Additionally, a USGS topographic map from 1953 identifies the area of Wet Ditches 1 and 3 as upland. This topographic map denotes TH 14 as a roadway with more than two lanes. Wet Ditch 1 and 3 drain upland and were constructed in upland.

Considering the information above, Wet Ditches 1 and 3 meet the criteria for exclusion under Paragraph (b)(3) of the 2023 “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule and are not subject to regulation under 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 6 and 7 are not traditionally navigable waters (TNW), territorial seas, or interstate waters and therefore are not (a)(1) waters.

⁷ 88 FR 3004 (January 18, 2023)

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The wetland delineation report, topographic maps, digital elevation modeling, and recent aerial imagery indicate these wetlands are depressional basins connected via culver under TH 14 surrounded entirely by upland. Wetland 6 drains to the south into Wetland 7, the entire boundary of Wetland 7 is delineated within the wetland delineation boundary. An intermittent tributary is mapped on topographic maps south of Wetland 7. Recent aerial photos and LiDAR data show an upland break between Wetland 7 and the mapped tributary.

Wetlands 6 and 7 do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. These wetlands are located approximately 320 feet from the nearest requisite jurisdictional water, the unnamed tributary to Medary Creek (I-074), located south of the review area.

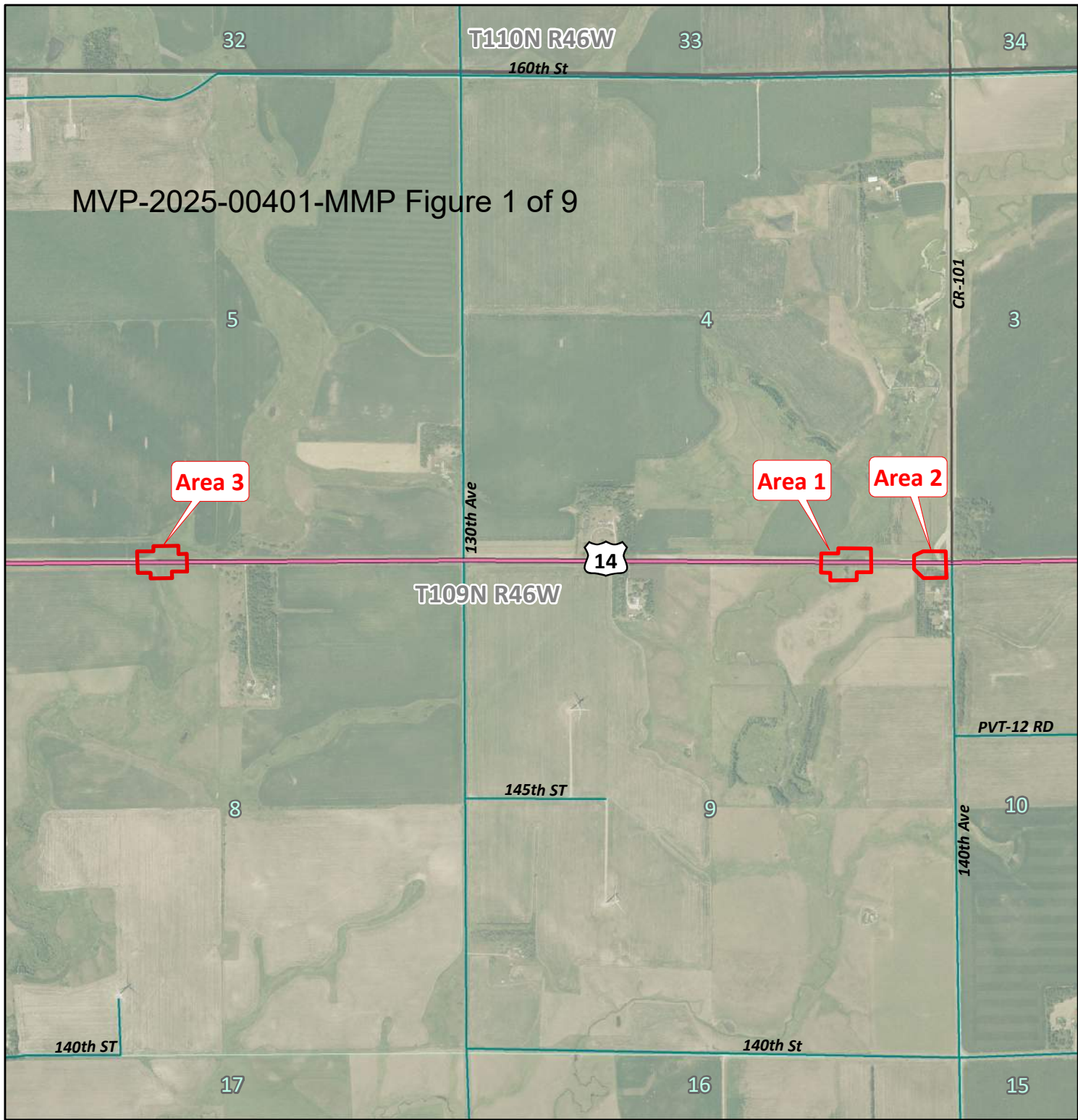
Wetlands 6 and 7 are non-tidal wetlands that do not have a continuous surface connection to a relatively permanent jurisdictional water and, as such, do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands are not jurisdictional under the 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.

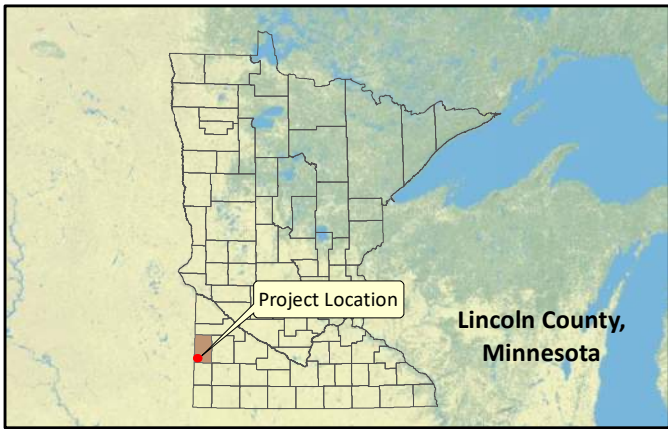
- a. Wetland Delineation Reports completed by Sambatek (January 2023) and KLJ (December 2024), on behalf of the applicant.
- b. USGS Topographic Map from 1954 and 2022.
- c. Google Earth aerial photos from 2020 and 2022.
- d. 3DEP 2-ft, 5-ft, 10-ft, and 15-ft Contour maps, MNDNR- Hillshade, USA Soils Hydric Class, and NWI accessed on the National Regulatory Viewer.

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.



Document Location: K:\Projects\State\MN\DOT\2302-00438_Wetland Delineation for District 8\Enviro\12_SP 4101-90\Wetland Delineation\GIS\2302_00438_12_SP4101_90_Aquatic_1\Location.mxd

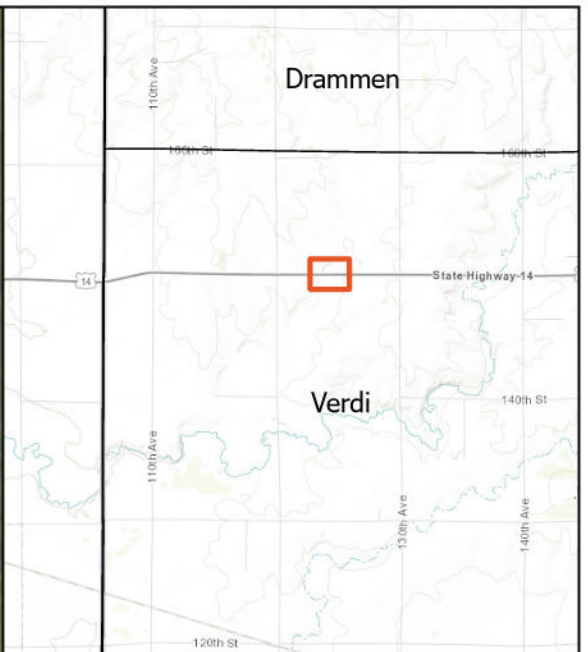
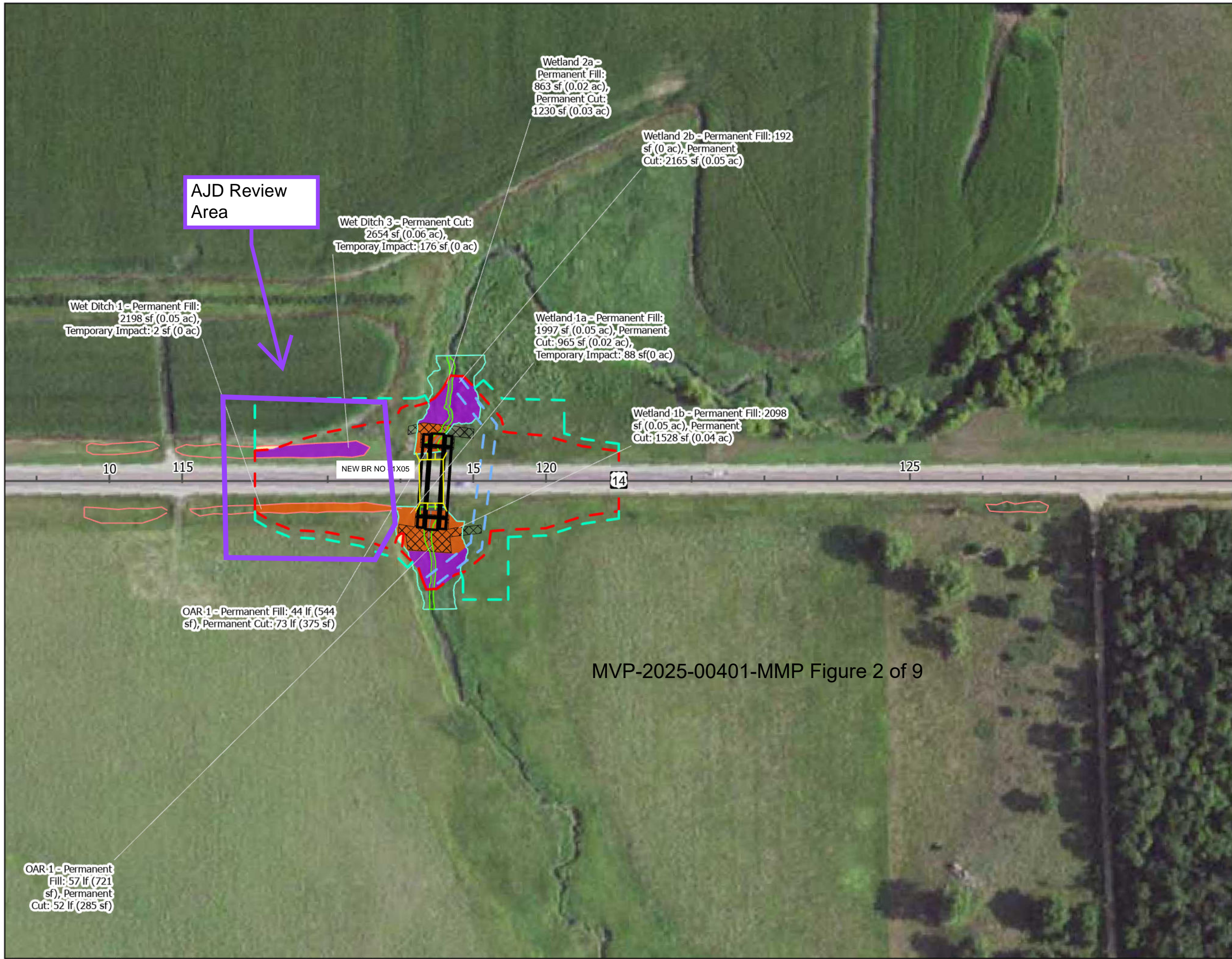


SP 4101-90
Aquatic Resource Delineation
Lincoln County, MN
Project Location Map

 Study Area



KLJ Project Number: 2302-00438
 Date Created: 12/18/2024
 Created By: Jeff Price

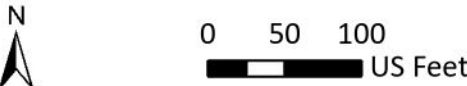


Legend

- Limit of Disturbance
- Construction Limit
- Temporary Bypass Channel
- Existing Culvert
- Proposed Culvert
- Riprap
- Stream Impact Length
- Wetland Impact**
- Cut
- Fill
- Temporary Impact**
- Wetland Delineation**
- OAR
- Type 2: Fresh (wet) meadow
- Type 2/3: Fresh (wet) meadow/shallow marsh
- Wet Ditch

MVP-2025-00401-MMP Figure 2 of 9

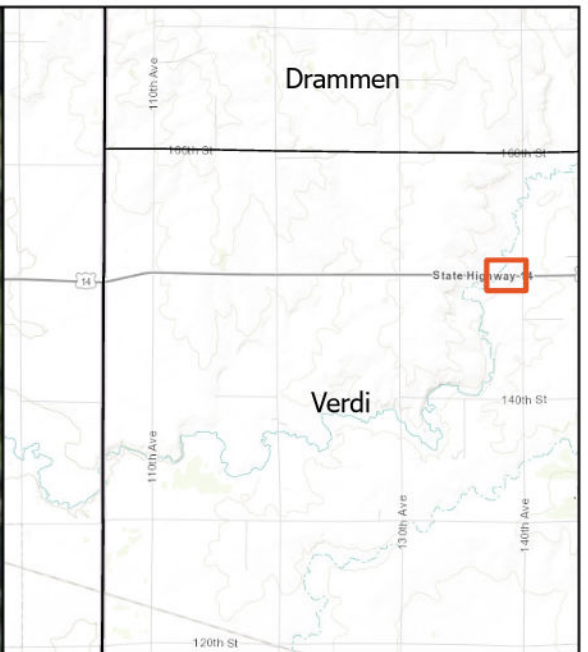
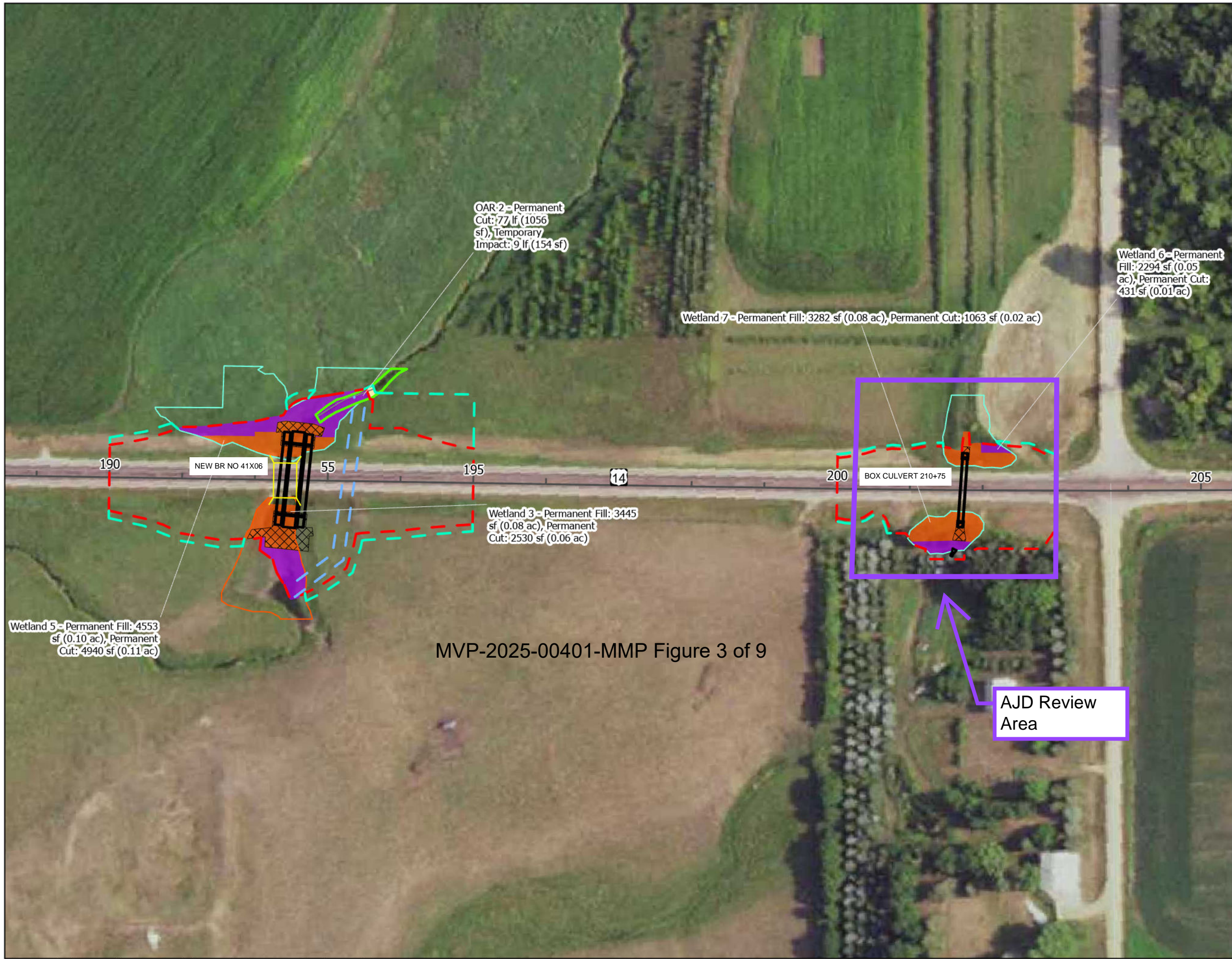
Wetland Impacts - Plan View
S.P. 4101-90 (TH 14)
Verdi Township,
Lincoln County, Minnesota



Source: MnGEO WMS 2021 Statewide Aerial



Date Exported: 3/24/2025



Legend

- Limit of Disturbance
- Construction Limit
- Temporary Bypass Channel
- Existing Culvert
- Proposed Culvert
- Riprap
- Stream Impact Length

Wetland Impact

- Cut
- Fill

Temporary Impact

-

Wetland Delineation

- OAR
- Type 2: Fresh (wet) meadow
- Type 2/3: Fresh (wet) meadow/shallow marsh
- Wet Ditch

Wetland Impacts - Plan View
S.P. 4101-90 (TH 14)
Verdi Township,
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Source: MnGEO WMS 2021 Statewide Aerial



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