



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

MVP-2025-00402-DWW

1 May 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 MVP-2025-00402-DWW MFR 1 of 1²

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,

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.

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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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 1 (0.94 acre), non-jurisdictional]
 - ii. [Wetland 2 (0.05 acre), non-jurisdictional]
 - iii. [Wetland 3 (0.05 acre), non-jurisdictional]
 - iv. [Wetland 4 (0.04 acre), non-jurisdictional]
 - v. [Wetland 5 (0.07 acre), non-jurisdictional]
 - vi. [Wetland 6 (0.08 acre), non-jurisdictional]
 - vii. [Wetland 7 (0.05 acre), non-jurisdictional]
 - viii. [Wetland 8 (0.14 acre), non-jurisdictional]
 - ix. [Wetland 9 (0.01 acre), non-jurisdictional]
 - x. [Wetland 10 (0.08 acre), non-jurisdictional]
 - xi. [Wetland 11 (0.06 acre), non-jurisdictional]
 - xii. [Wetland 12 (0.96 acre), non-jurisdictional]
 - xiii. [Wetland 13 (0.54 acre), non-jurisdictional]
 - xiv. [Wetland 14 (0.31 acre), non-jurisdictional]
 - xv. [Wetland 15 (0.25 acre), non-jurisdictional]
 - xvi. [Wetland 16 (0.15 acre), non-jurisdictional]
 - xvii. [Wetland 17 (0.56 acre), non-jurisdictional]

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- xviii. [[Wetland 18 \(0.12 acre\), non-jurisdictional](#)]
- xix. [[Wetland 19 \(0.13 acre\), non-jurisdictional](#)]
- xx. [[Wetland 20 \(0.06 acre\), non-jurisdictional](#)]
- xxi. [[Wetland 21 \(0.11 acre\), non-jurisdictional](#)]
- xxii. [[Wetland 22 \(0.40 acre\), non-jurisdictional](#)]
- xxiii. [[Wetland 23 \(0.34 acre\), non-jurisdictional](#)]
- xxiv. [[Wetland 24 \(0.05 acre\), non-jurisdictional](#)]
- xxv. [[Wetland 25 \(0.03 acre\), non-jurisdictional](#)]
- xxvi. [[Wetland 26 \(0.09 acre\), non-jurisdictional](#)]
- xxvii. [[Wetland 27 \(0.13 acre\), 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. 651, 143 S. Ct. 1322 (2023)
3. REVIEW AREA. The AJD review area is approximately 46.14 acres in size and is identified by the red polygon boundary on the attached Drawings MVP-2025-00402-DWW 2-4 of 4. The review area is located in Section 19, 20, and 21, Township 160 North, Range 30 West, 48.671242 N, -94.558925 W, Gudrid Township, Lake of the Woods County, Minnesota.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]⁶

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

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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 "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]

(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.

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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 [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).

Subject features: Wetlands 1 through Wetland 27 in the review area are not a TNW, territorial sea, or interstate water and therefore are not an (a)(1) water. The submitted Lake of the Woods County wetland delineation report dated April 8, 2025, indicated that topographic changes and the transitions from wetland to upland were used to determine the overall wetland boundaries. These subject wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The nearest relatively permanent water information from aerial imagery shows these wetlands are nearest a roadway corridor directly west of Silver Creek. However, there are no ditches, swales, pipes, or culverts that connect these wetlands to a downstream jurisdictional water. These wetlands 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 an (a)(4) adjacent wetland; 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.

⁹ 88 FR 3004 (January 18, 2023)

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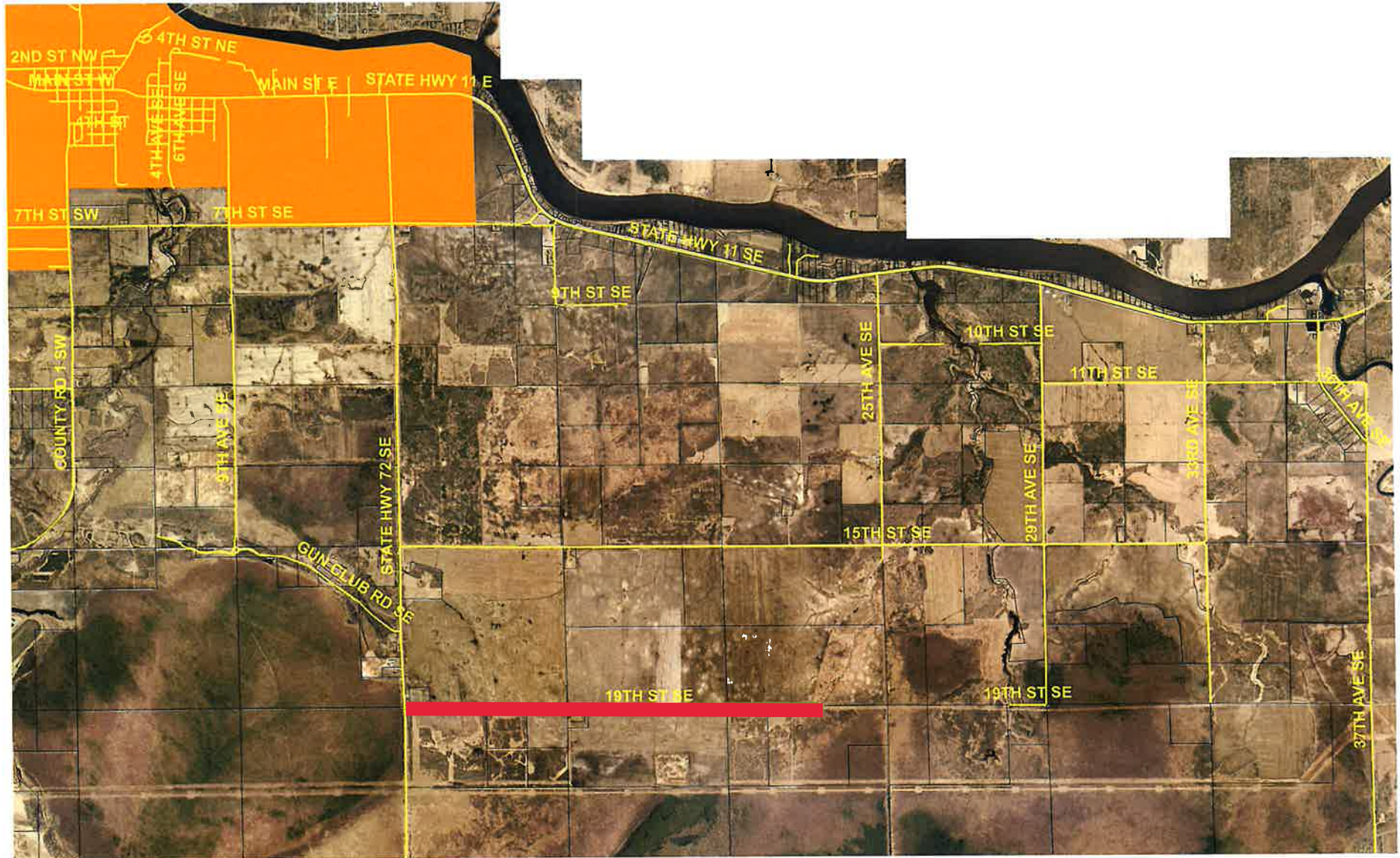
- a. Lake of the Woods County Wetland Delineation dated 4/8/2025 for Holte Road corridor (13,400 linear feet).
- b. Google Earth maps dated 2011, 2014, 2019, 2020, 2024.
- c. National Regulatory Viewer 3DEP Slope map.

10. OTHER SUPPORTING INFORMATION. Roadside ditch on the south side of Holte Rd, but no roadside ditch system on north side of Holte Rd (review area).

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.

Holte Road Replacement s. 19/20/21, T. 160N, 30W Site Location Map

2025-00402-DWW Drawing 1
Figure 2



Legend

- lowroads
- TR 80 Disturbance Boundary
- Parcels

0 0.5 1 2 Miles



Holte Road Replacement
s. 19, T. 160N, 30W
Wetland Basin Map

2025-00402-DWW Drawing 2
Figure 9



Legend

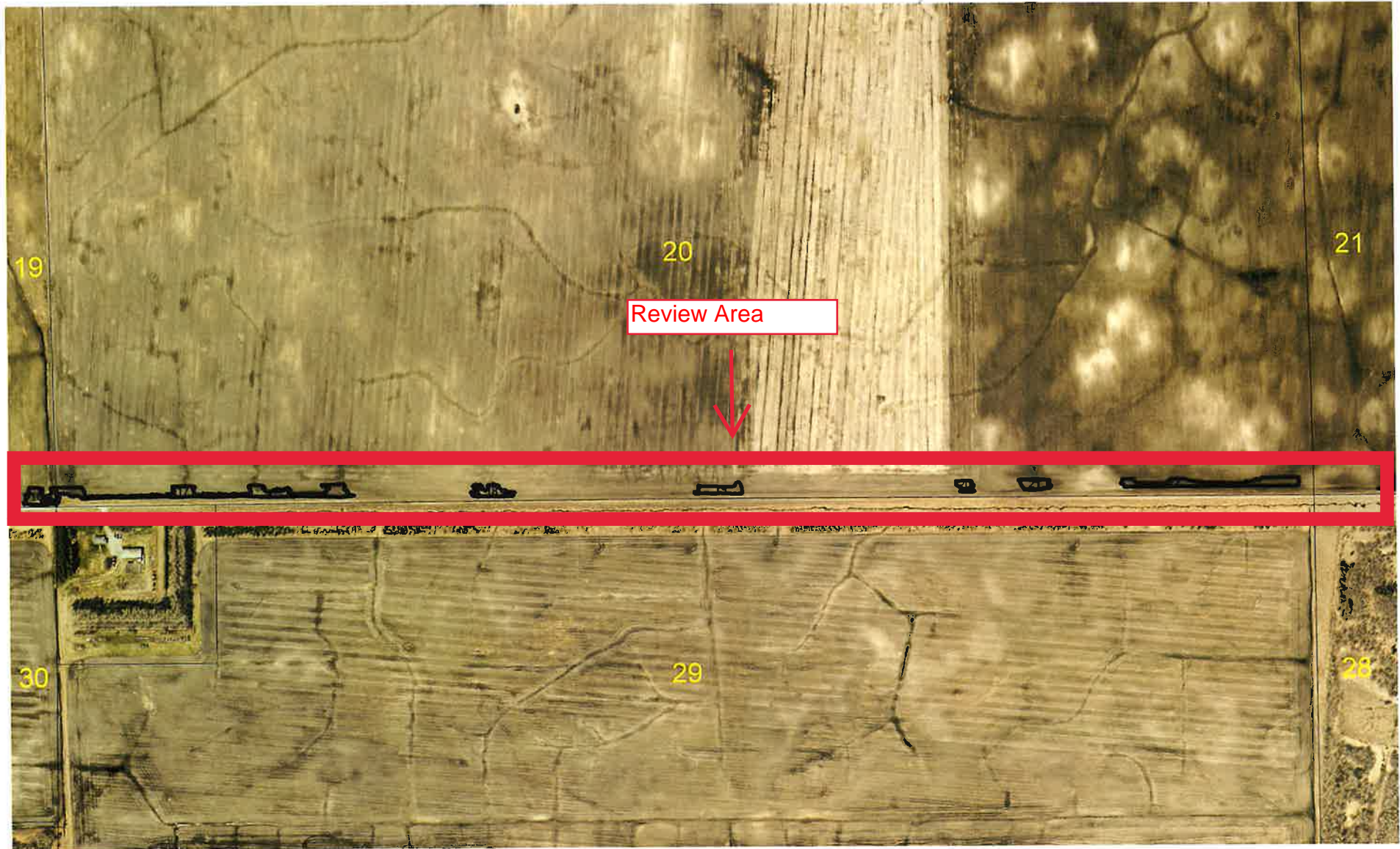
-  Holte_Road_Impacts
-  Parcels

0 300 600 1,200
Feet





Holte Road Replacement
s. 20, T. 160N, 30W
Wetland Basin Map

2025-00402-DWW Drawing 3
Figure 10



Legend

-  Holte_Road_Impacts
-  Parcels

0 300 600 1,200
Feet



Holte Road Replacement
s. 21, T. 160N, 30W
Wetland Basin Map

2025-00402-DWW Drawing 4

Figure 11



Legend

-  Holte_Road_Impacts
-  Parcels

0 300 600 1,200
Feet

