



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

MVP

05 February 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-2025-01211-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 C \(Location J\) is an approximately 0.02-acre \(750 square foot\) depressional basin surrounded by uplands 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. 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 subject aquatic resource is located within an approximately 0.02-acre review area identified by the light blue cross-hatched polygon seen on the figure labeled MVP-2025-01211-PJH AJD Page 2 of 3. The review area is located in Baxter, Crow Wing County, Minnesota. Center coordinates are approximately 46.325708.°, -94.320347°. The review area is located in Section 22, Township 133 North, Range 29 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.

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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, 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

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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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 C \(Location J\) is a depressional basin surrounded by uplands that is non-jurisdictional. The wetland can be seen on the figure labeled MVP-2025-01211-PJH AJD Page 2 of 3. The wetland is not a Traditional Navigable Water \(TNW\), territorial sea, or interstate water, therefore, is not an \(a\)\(1\) water. The wetland does not physically abut a relatively permanent \(a\)\(2\) impoundment or jurisdictional \(a\)\(3\) tributary. The closest tributary to the subject aquatic resource is the Gull River. The Gull River is located approximately 1.25 miles east of Wetland C \(Location J\). The subject aquatic resource does not have a continuous surface connection \(CSC\) to the Gull River or any other jurisdictional water. Aerial imagery, the National Hydrography Dataset \(NHD\) and National Wetland Inventory \(NWI\) support this determination. Wetland C \(Location J\) is a non-tidal wetland that does not have a CSC to a relatively permanent jurisdictional water, and as such does not meet the definition of adjacent and cannot be evaluated as an \(a\)\(4\) adjacent wetland; therefore, it is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.](#)

⁷ 88 FR 3004 (January 18, 2023)

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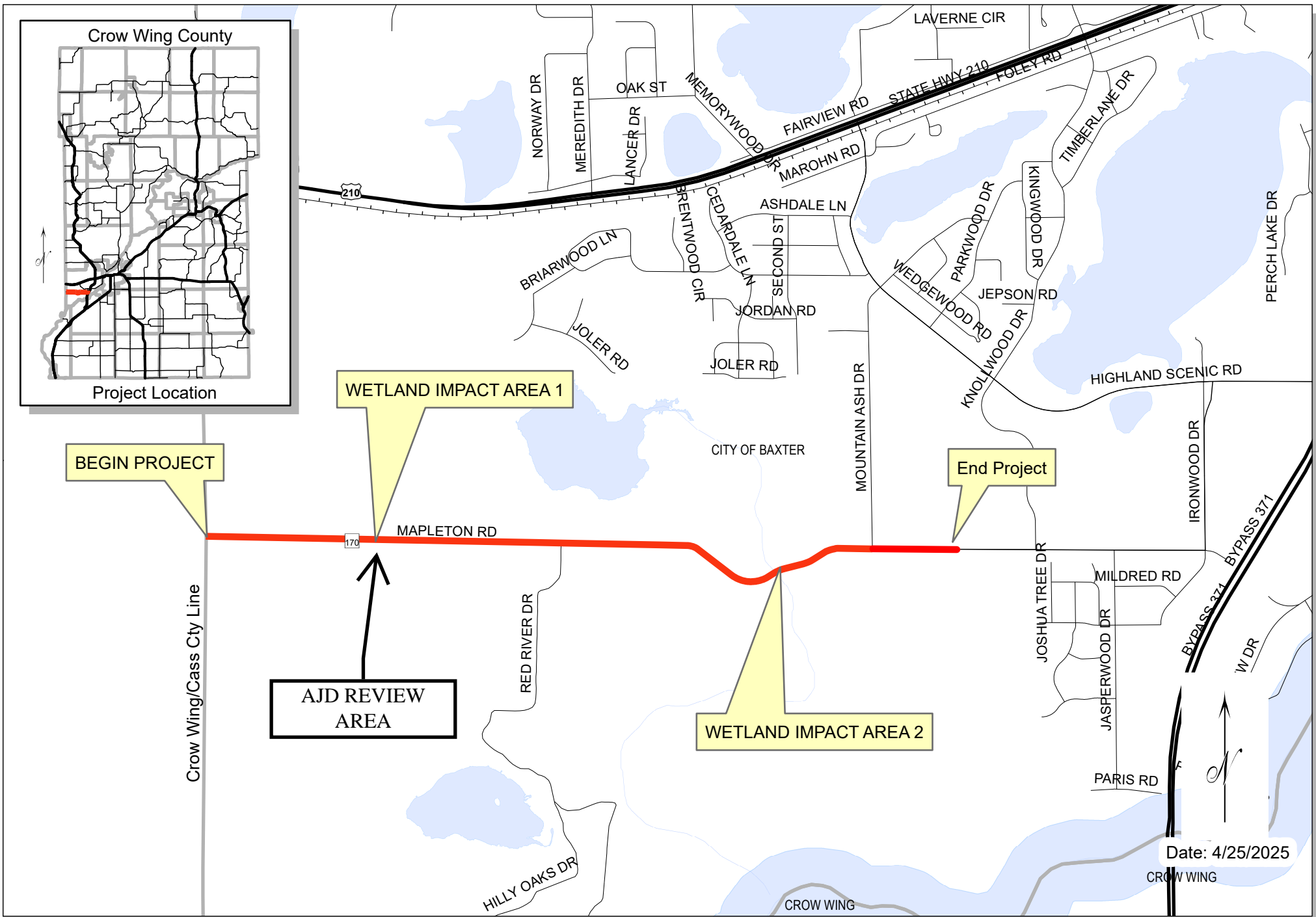
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2025-01211-PJH](#)

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 conducted December 10, 2025 – February 2, 2026](#)
 - b. [Aerial Imagery: Google Earth Pro, MN NAIP 2019, MN NAIP 2019-CIR](#)
 - c. [LiDAR: MNDNR Hillshade – 2016, 3DEP Hillshade](#)
 - d. [3DEP Digital Elevation Model \(DEM\), 3DEP Slope, MN Contours – 2 ft](#)
 - e. [National Wetland Inventory \(NWI\), National Hydrography Dataset \(NHD\)](#)

10. OTHER SUPPORTING INFORMATION.

[This approved jurisdictional determination is associated with a proposed project to reconstruct portions of County Road \(CR\) 170 in Crow Wing County, Minnesota.](#)

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.



Wetland Impact Area 1

40150521

AJD REVIEW
AREA

COUNTY
170

Wetland C (type 2: sedge meadow)

40220513

1190

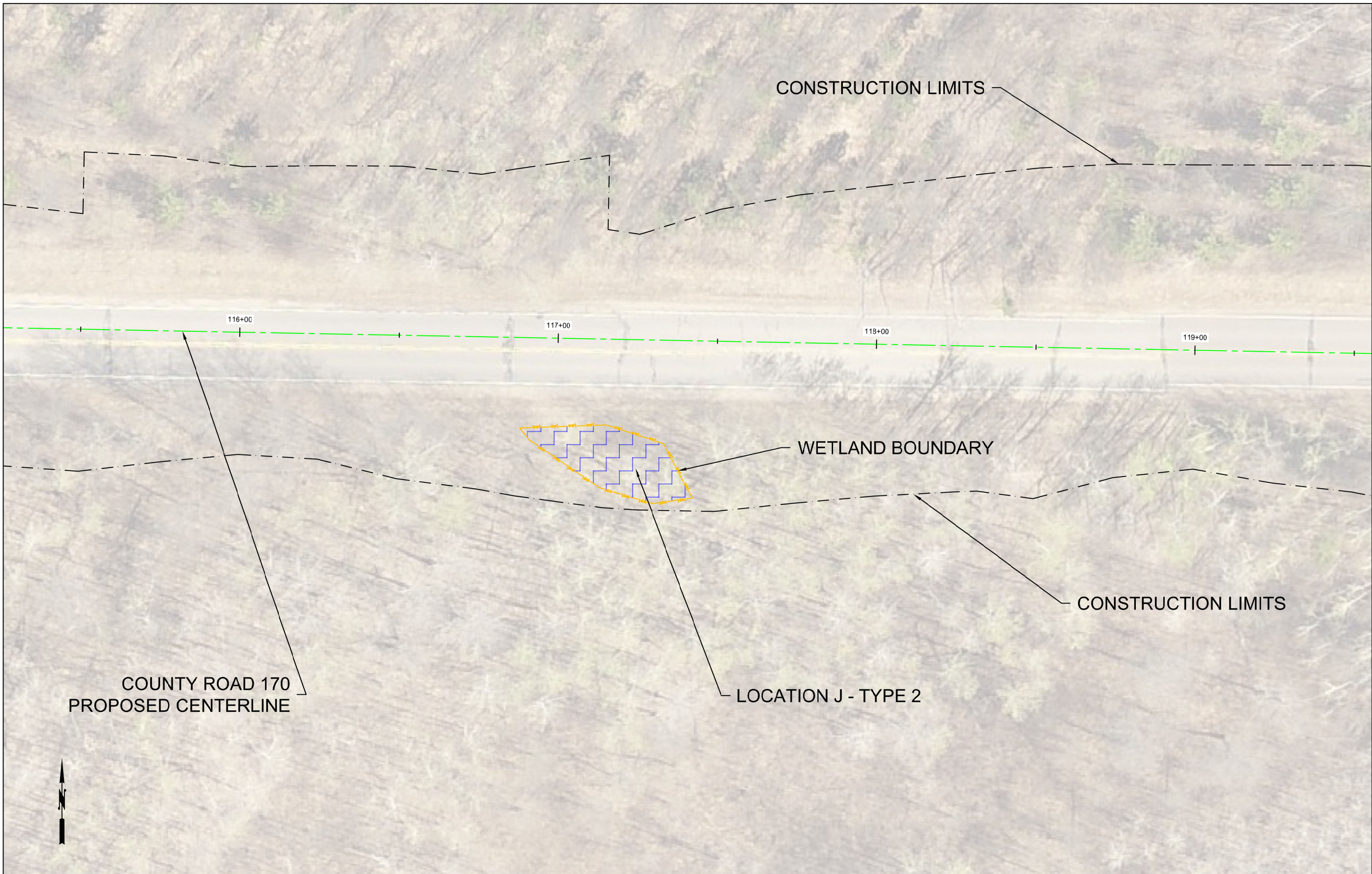
County Road 170

-  Project Boundary
-  Delineated Wetlands
-  Parcel Lines (from County)
-  10 ft Contours
-  2 ft Contours



0 25 50 100 Feet

Wetland Determination Conducted on 10-5-23 by:
Mitch Brinks, Certified Wetland Delineator #1007
Aerial Photo Source: Crow Wing County, 2019



COUNTY ROAD 170
PROPOSED CENTERLINE

CONSTRUCTION LIMITS

WETLAND BOUNDARY

CONSTRUCTION LIMITS

LOCATION J - TYPE 2