



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

MVP

February 10, 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-2026-00101-RMH 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).

Name of Aquatic Resource	Jurisdictional or Non-jurisdictional
Wetland Number 2/3 (0.37 ac)	Non-Jurisdictional
Wetland Number 4 (0.11 ac)	Non-Jurisdictional
Wetland Number 5 (.005 ac)	Non-Jurisdictional
Wetland Number 11 (0.02 ac)	Non-Jurisdictional
Wetland Number 12 (0.07 ac)	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. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is limited to the project corridor as identified in the enclosed project figures. The review area is approximately 18.5 miles and crosses through Goodhue and Wabasha counties in Minnesota. There are no other JDs associated with this 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. 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

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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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 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).

The wetlands within the review area are identified in the table above. All of the wetlands were evaluated as potential (a)(4) waters but do not have a continuous surface connection to a jurisdictional water. These wetlands are not TNWs, territorial seas, or interstate waters and are therefore not (a)(1) waters. The wetlands are not adjacent to (a)(1) or (a)(2) waters. This determination is supported by the national wetland and hydrography datasets which do not identify any aquatic resources or other potential connections (either surface or subsurface) between these aquatic resources and any other waters. Topographic maps, soils maps, 3DEP 2-ft contours, 3DEP Digital Elevation Model, 3DEP Hillshade and Google Earth aerial imagery indicate that wetlands are depressional wetlands, surrounded by upland.

These 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 distance to the closest tributary varies but none of the wetlands are adjacent to, abut or have a continuous surface connection to a relatively permanent tributary. In addition, there are no ditches, swales, pipes, or culverts that connect these wetlands to downstream jurisdictional waters. These wetlands are non-tidal wetlands that do not

⁷ 88 FR 3004 (January 18, 2023)

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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.

Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 rule preamble discussed the *Rapanos* plurality standard, the implementation guidance and tools in the 2023 rule preamble that address the regulatory text that was not amended by the conforming rule, including the preamble relevant to the *Rapanos* plurality standard incorporated in paragraphs (a)(3), (4), and (5) of the 2023 rule, as amended, generally remain relevant to implementing the 2023 rule, as amended.

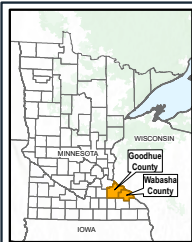
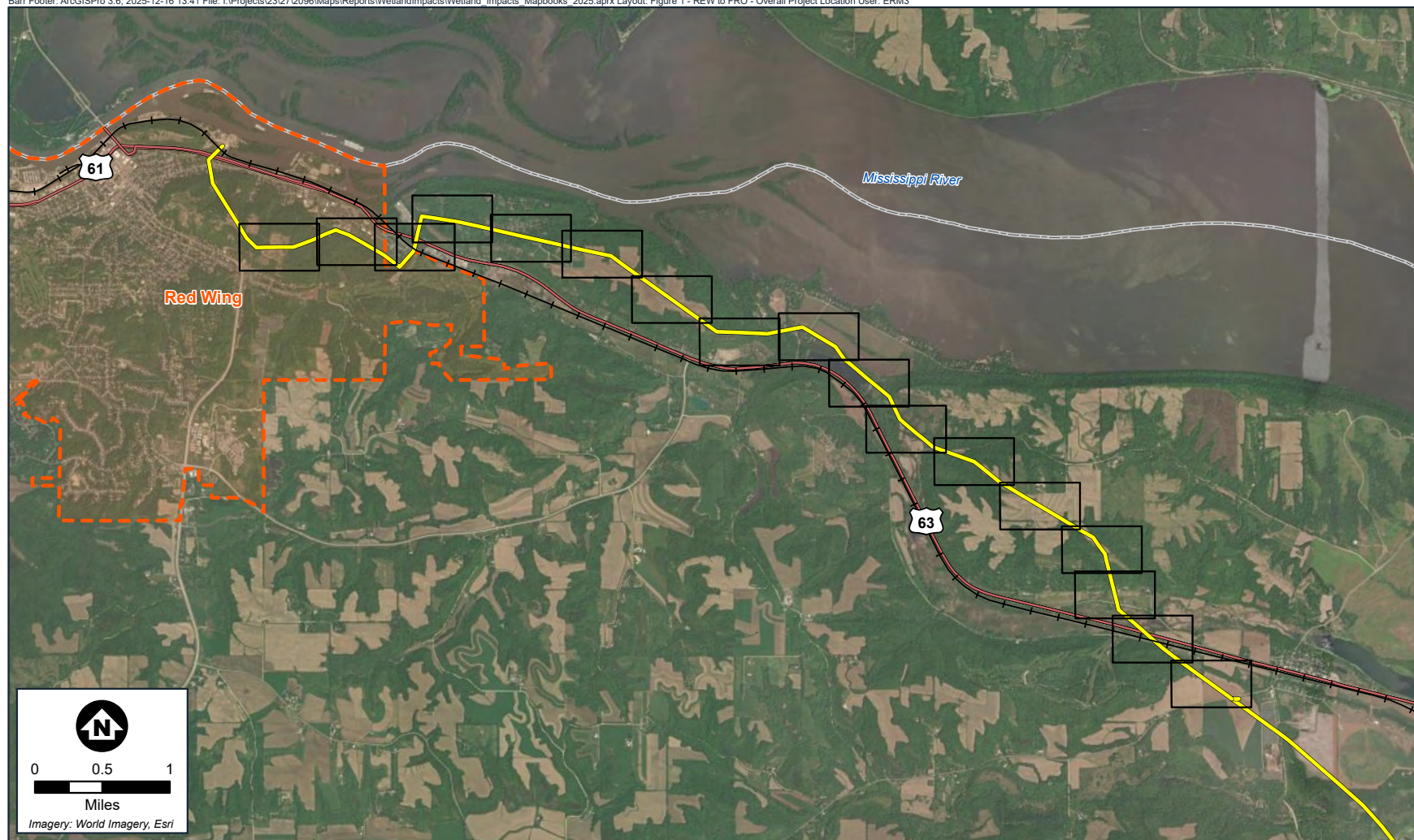
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. [Joint Application Request packet for Xcel Energy dated January 15, 2026.](#)
 - b. [United States Fish and Wildlife Service, National Wetland Inventory Map Service. Accessed January 27, 2026.](#)
 - c. [United States Geological Survey GS 3D Elevation Program DEM. Accessed January 27, 2026](#)
 - d. [United States Geological Survey, National Hydrography Dataset, accessed on January 27, 2026.](#)
 - e. [Google Earth imagery dated 1991, 2003, 2004, 2006, 2008, 2009, 2010, 2011 2013, 2015, 2020, 2021, 2022 and 2024. Accessed January 27, 2026, and February 10, 2026.](#)






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.

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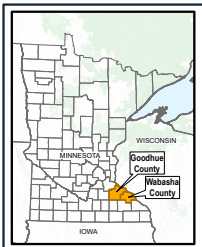
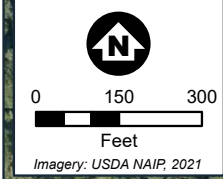
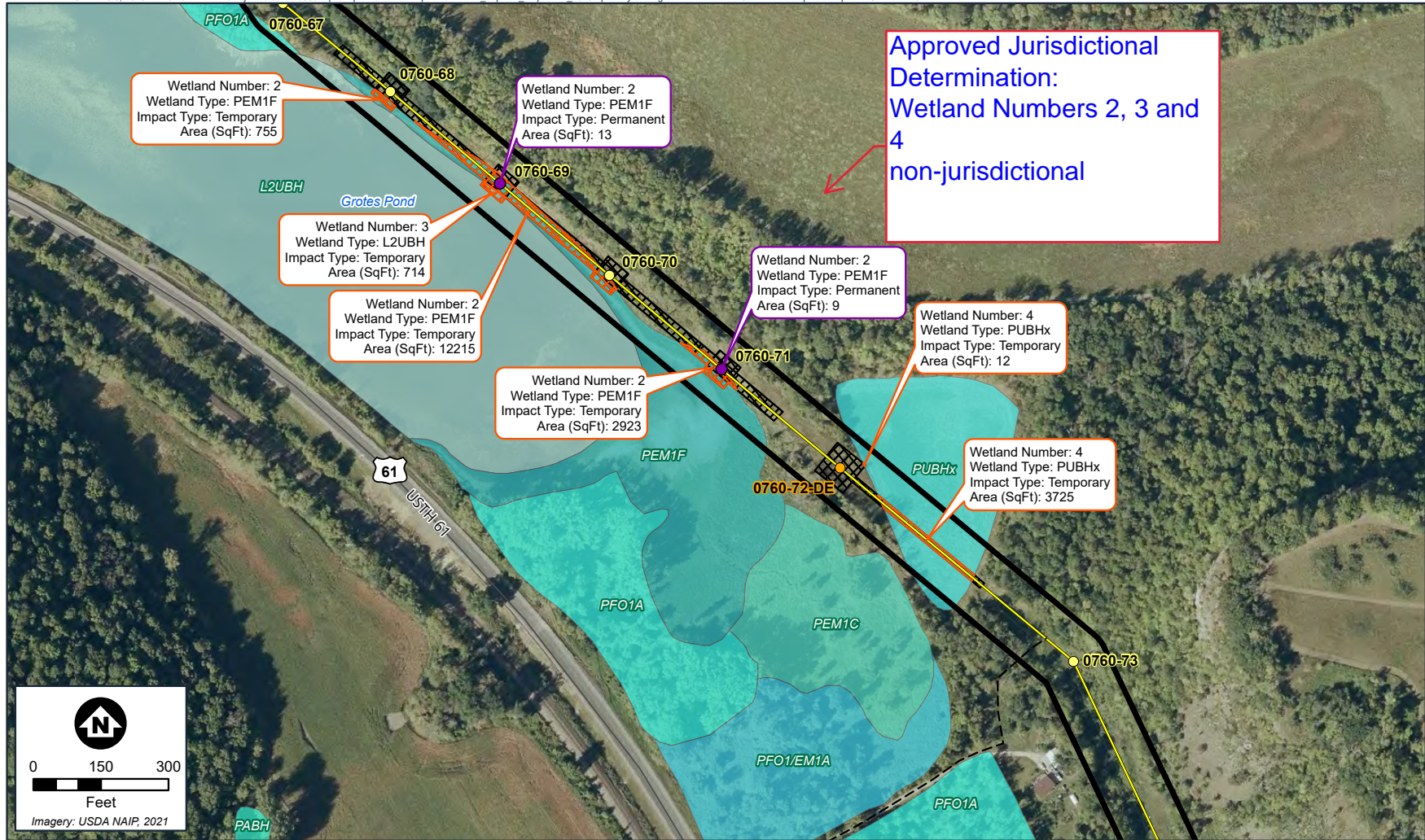
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-  County Boundary
-  City Boundary
-  Minnesota Rail Lines
-  Centerline
-  Map Extent

Wetland Impacts
REW-FRO
Line 0760
Goodhue County and
Wabasha County, Minnesota
FIGURE 1





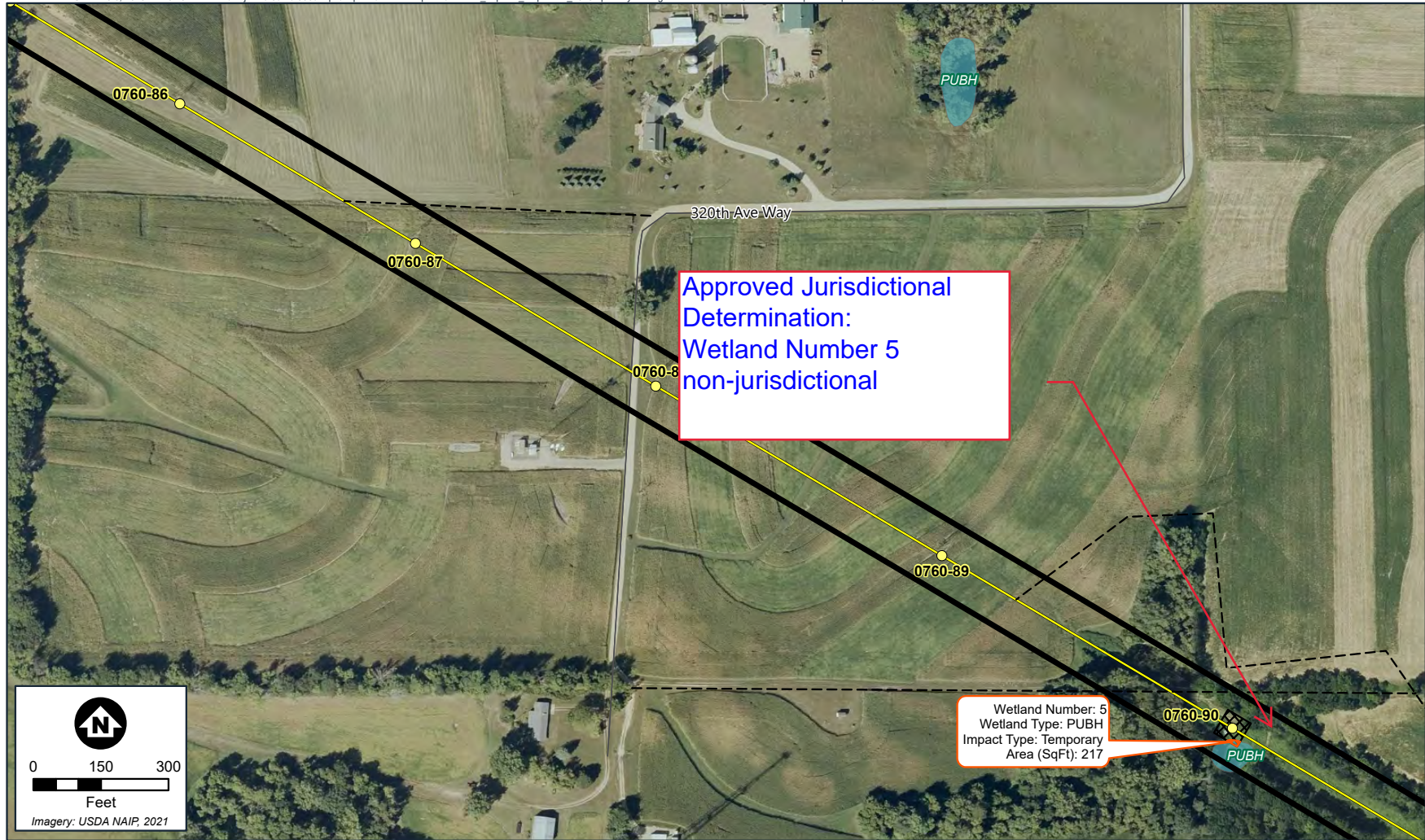
- Direct Embed Foundation
- Foundation
- Substation
- Structure Permanent Wetland Impact
- Centerline
- - - Access Road
- ▭ ROW (75ft buffer)
- ▭ Laydown Yard
- ▭ Grading
- ▭ Vegetation Removal
- ▭ Temporary Access Matting
- ▭ Temporary Wetland Impact

- National Wetlands Inventory (NWI) Class**
- L2UBH
 - PABH
 - PEM1C
 - PEM1F
 - PFO1/EM1A
 - PFO1A

● PUBHx

Wetland Impacts
Line 0760
Goodhue County and
Wabasha County, Minnesota

FIGURE 1 - 10

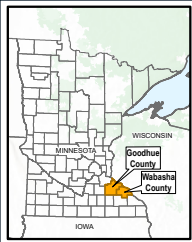
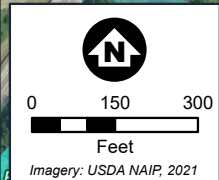
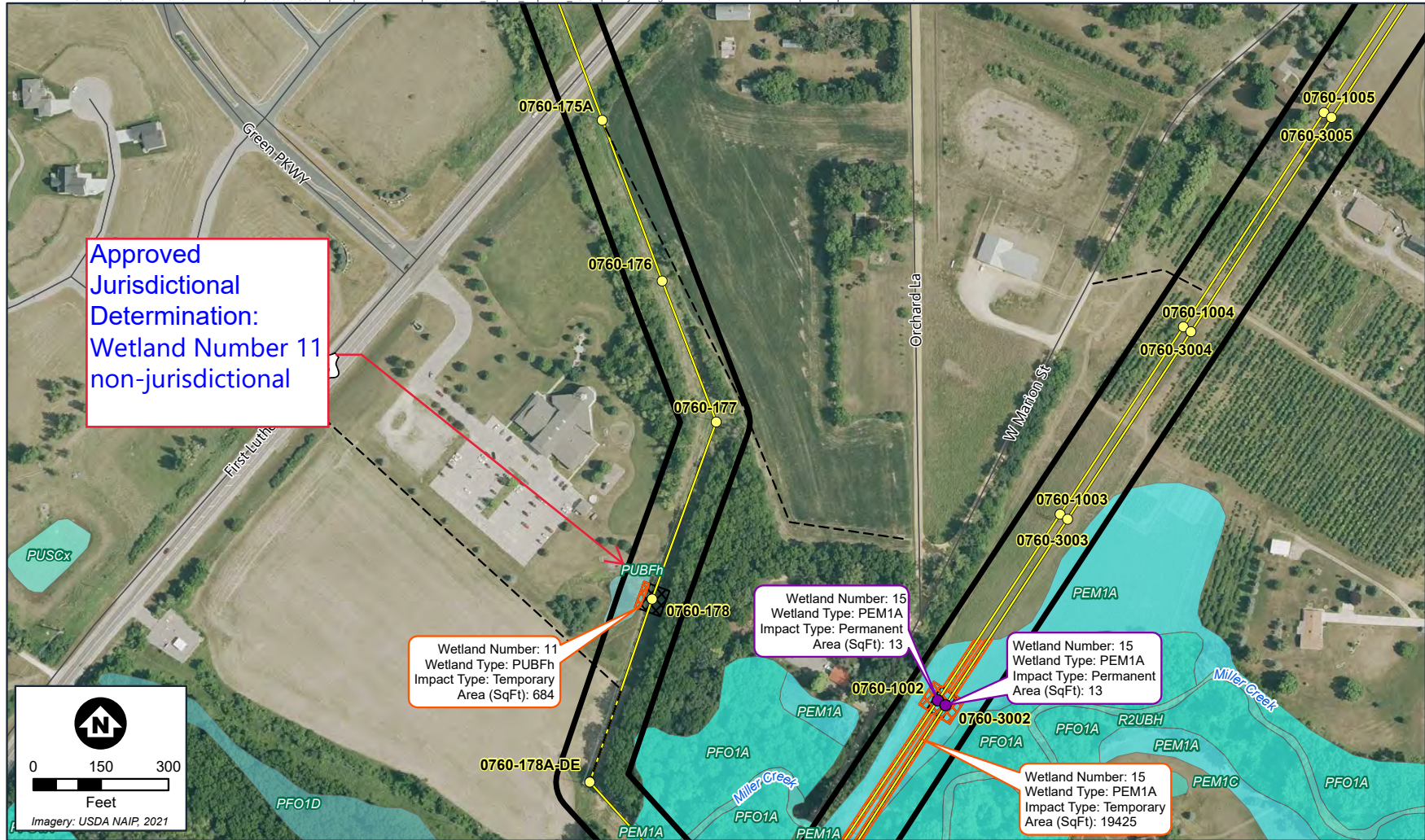


- Direct Embed
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National Wetlands Inventory (NWI) Class
 PUBH

Wetland Impacts
 Line 0760
 Goodhue County and
 Wabasha County, Minnesota

FIGURE 1 - 13



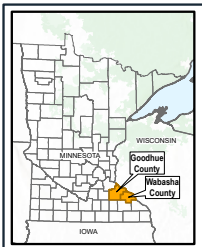
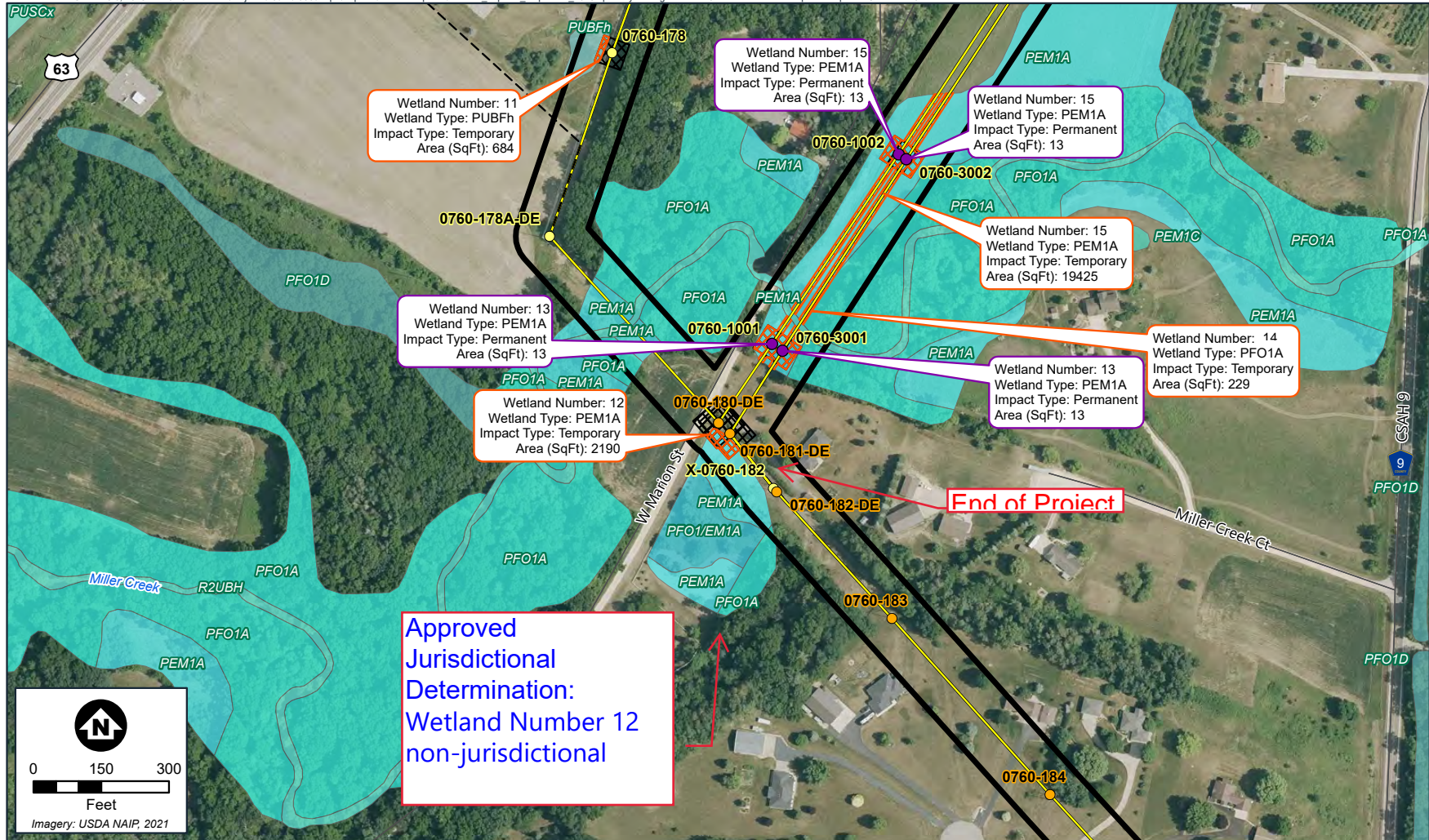
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 - PEM1C
 - PFO1A
 - PFO1D
 - PUBFh
 - R2UBH

PUSCx

Wetland Impacts
Line 0760
Goodhue County and
Wabasha County, Minnesota

FIGURE 2 - 18



- Direct Embed
- Foundation
- Substation
- Structure Permanent
- Wetland Impact
- Centerline
- - - Access Road
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- ▭ Matting
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- National Wetlands Inventory (NWI) Class**
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 - PEM1C
 - PFO1/EM1A
 - PFO1A
 - PFO1D
 - PUBFh

- R2UBH
- PUSCx

Wetland Impacts
 Line 0760
 Goodhue County and
 Wabasha County, Minnesota

FIGURE 2 - 19

