



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

CEMVP-RD

May 23, 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),<sup>1</sup> MVP-2025-00048-JST 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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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<sup>1</sup> 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.

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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.

- 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	JD or Non-JD
Wetland 1 (0.80 acre)	Non-Jurisdictional
Wetland 4 (0.11 acre)	Non-Jurisdictional, excluded water
Wetland 7 (0.01 acre)	Non-Jurisdictional, excluded water
Wetland 6 (0.05 acre)	Non-Jurisdictional, excluded water
Wetland 5 (0.005 acre)	Non-Jurisdictional, excluded water
Wetland 3 (0.30 acre)	Non-Jurisdictional
Wetland 9 (0.01 acre)	Non-Jurisdictional, excluded water
Wetland 2 (0.13 acre)	Non-Jurisdictional
Wetland 8 (0.06 acre)	Non-Jurisdictional, excluded water
Stormwater Pond (0.02 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)

2. REVIEW AREA. The review area for this determination includes six non-jurisdictional roadside ditches and four non-jurisdictional wetlands as identified in Section 1(a) of this MFR and shown on the attached figures labeled MVP-2025-00048-JST AJD Figures – Page 1-4 of 4.
  - a. Project Area Size (in acres): 2,950 linear feet
  - b. Location Description: The project/review area is located in Section 31, Township 128N, Range 037W, Douglas County, Minnesota.
  - c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 45.860080 Longitude: -95.372150
  - d. Nearest City or Town: Alexandria
  - e. County: Douglas
  - f. State: Minnesota
  - g. Other associated Jurisdictional Determinations (including outcomes):  
There are no other AJDs associated with this project area.
3. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A<sup>6</sup>
4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
5. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup>  
N/A

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<sup>6</sup> 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 (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.

<sup>7</sup> 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.

<sup>8</sup> 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.

6. 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. N/A
  - 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

7. 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).<sup>9</sup> N/A

The aquatic resources identified as Wetland 4 (0.11 acre), Wetland 5 (0.005 acre), Wetland 6 (0.05 acre), Wetland 7 (0.01 acre), Wetland 8 (0.06 acre), and Wetland 9 (0.01 acre) are linear roadside drainage ditches constructed in upland

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

and draining only upland. This determination is supported by the NRCS hydric soils layer which indicates that the area is mapped within mostly non-hydric soils. The National Hydrography Dataset (NHD) and National Wetlands Inventory (NWI) also do not show any features overlapping with the subject features. A review of historic Google Earth Aerial imagery also does not show the features carrying a relatively permanent flow. Historic aerial imagery collected from the Minnesota Historical Aerial Photographs Online (MNHAPO) database indicate that these features were constructed in conjunction with the road development to store stormwater runoff. A review of the US Geological Service 3DEP Hillshade, DEM, and MNDNR 2-foot contour maps shows that these features are located within depressional areas in higher elevations, indicating these features were constructed in uplands. These features were constructed as a stormwater drainage feature to convey runoff from the roadway. Based on a review of desktop resources, these subject features are linear roadside drainage ditches constructed in upland, draining only upland, and do not carry a relatively permanent flow of water. Therefore, these aquatic resources have been determined to be Paragraph (b)(3) excluded ditches and are not subject to Section 404 of the Clean Water Act (CWA).

The aquatic resource identified as 'Stormwater Pond' (0.02 acre) within the review area is a stormwater feature constructed in upland to collect and retain water as a settling basin based on the following:

- US Geological Service 3DEP Hillshade and DEM and MNDNR 2-foot contour maps shows the pond is located in areas of the project that are higher in elevation and supportive of uplands.
- NWI maps do not display presence of mapped wetlands in the area the pond has been constructed.
- Historical aerals from 1965 indicate this feature was constructed within uplands.
- Recent aerial photos show that ponds are located in close proximity to a parking lot and consists of a geometry indicative of being manmade to store stormwater from these developments.

Based on the wetland delineation and desktop resources reviewed, this feature is a stormwater pond constructed in uplands. Therefore, this feature has been determined to be a Paragraph (b)(5) excluded artificial lake and pond and not subject to Section 404 of the 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).

Wetland 1 (0.80 acre), Wetland 2 (0.13 acre), and Wetland 3 (0.30 acre), are not traditionally navigable waters (TNWs), territorial seas, or interstate waters and therefore are not (a)(1) waters. Topographic maps, LiDAR data, and aerial imagery indicate that these wetlands are located within depressional areas south of CSAH 46 and are surrounded by upland. Wetlands 1, 2, and 3 are located south of CSAH 46. Wetlands 1, 2, and 3, extend offsite to the south. A large wetland complex is located offsite to the south adjacent to the review area but does not directly abut any requisite jurisdictional waters. The nearest requisite jurisdictional water is Victoria Lake located approximately 1.27 miles east of the review area. The surrounding area consists of agricultural fields, commercial developments, and residential neighborhoods within the City of Alexandria. Wetlands 1, 2, and 3, do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetlands 1, 2, and 3 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.

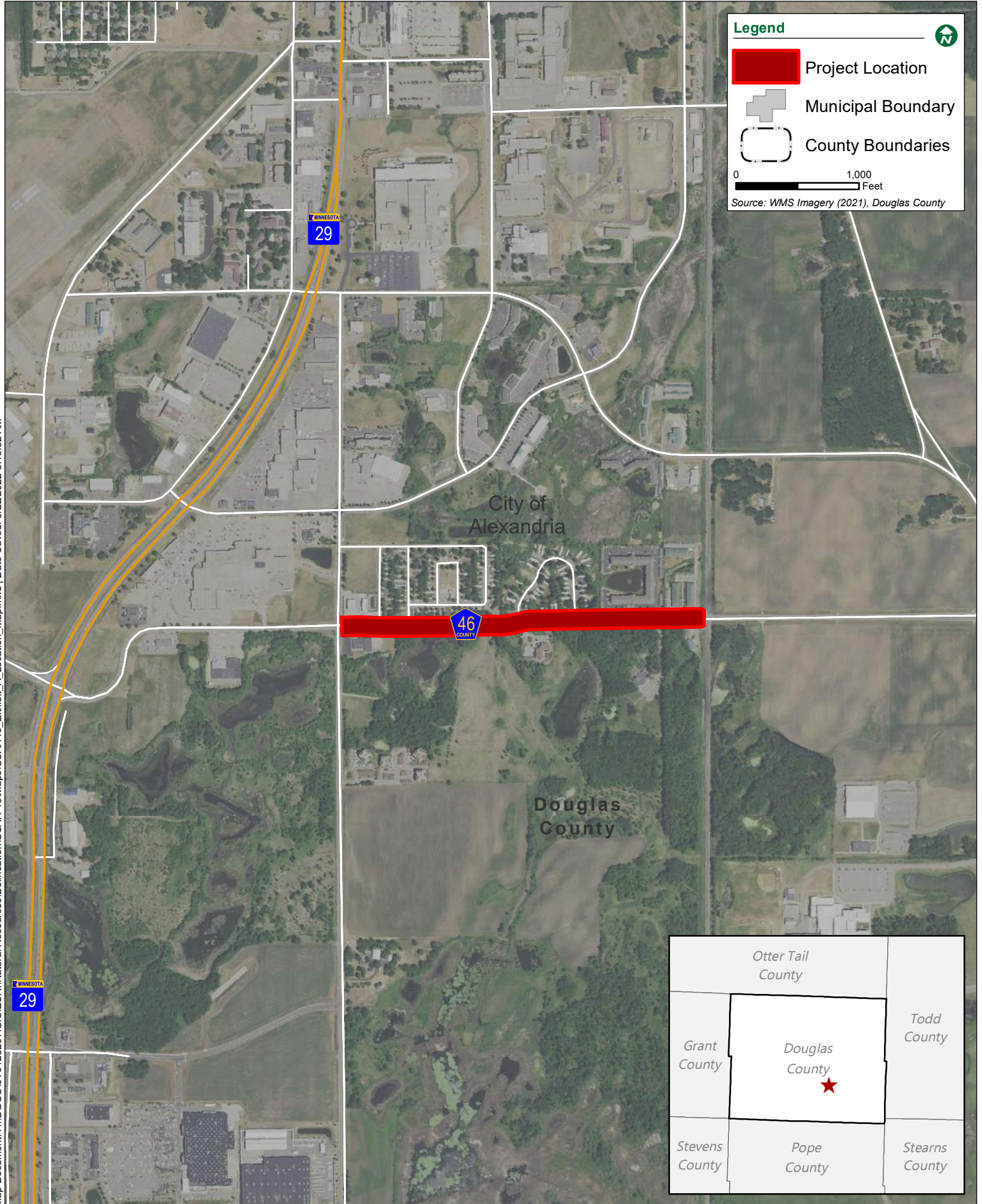
8. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. CSAH 46 Delineated Aquatic Resources Report prepared by Bolton & Menk Inc. dated September 23, 2022.
  - b. Google Earth Aerial Imagery dated 2016 and 2020.
  - c. Minnesota Regulatory Viewer: 3DEP Hillshade layer, MNDNR 2-foot contour layer, US Geological Service 3DEP Digital Elevation Model (DEM) and NHD layers, and USFWS NWI layer.
  - d. MNHAPO historic imagery dated 1965.
9. OTHER SUPPORTING INFORMATION. N/A

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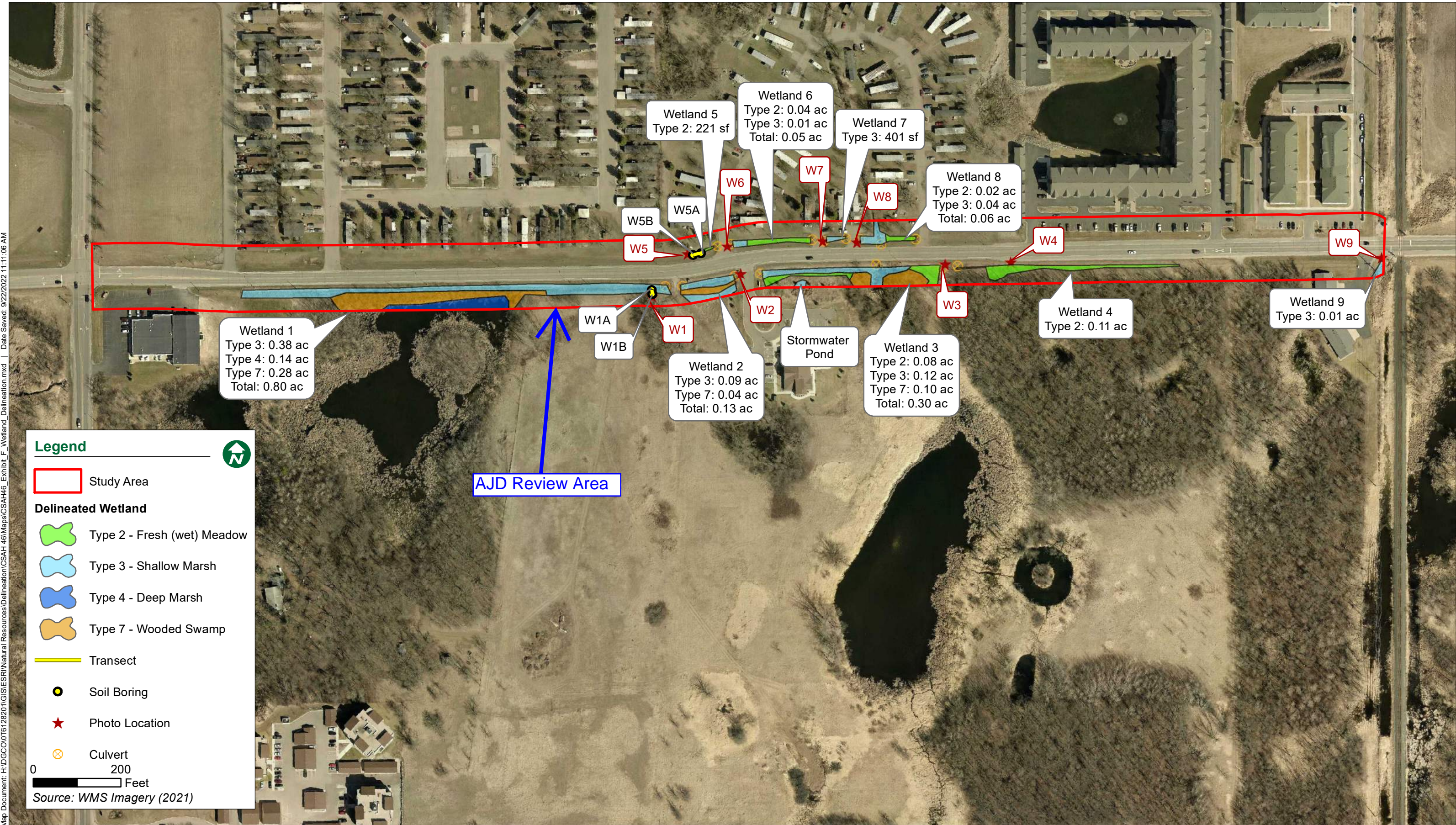
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00048-JST

10. 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.



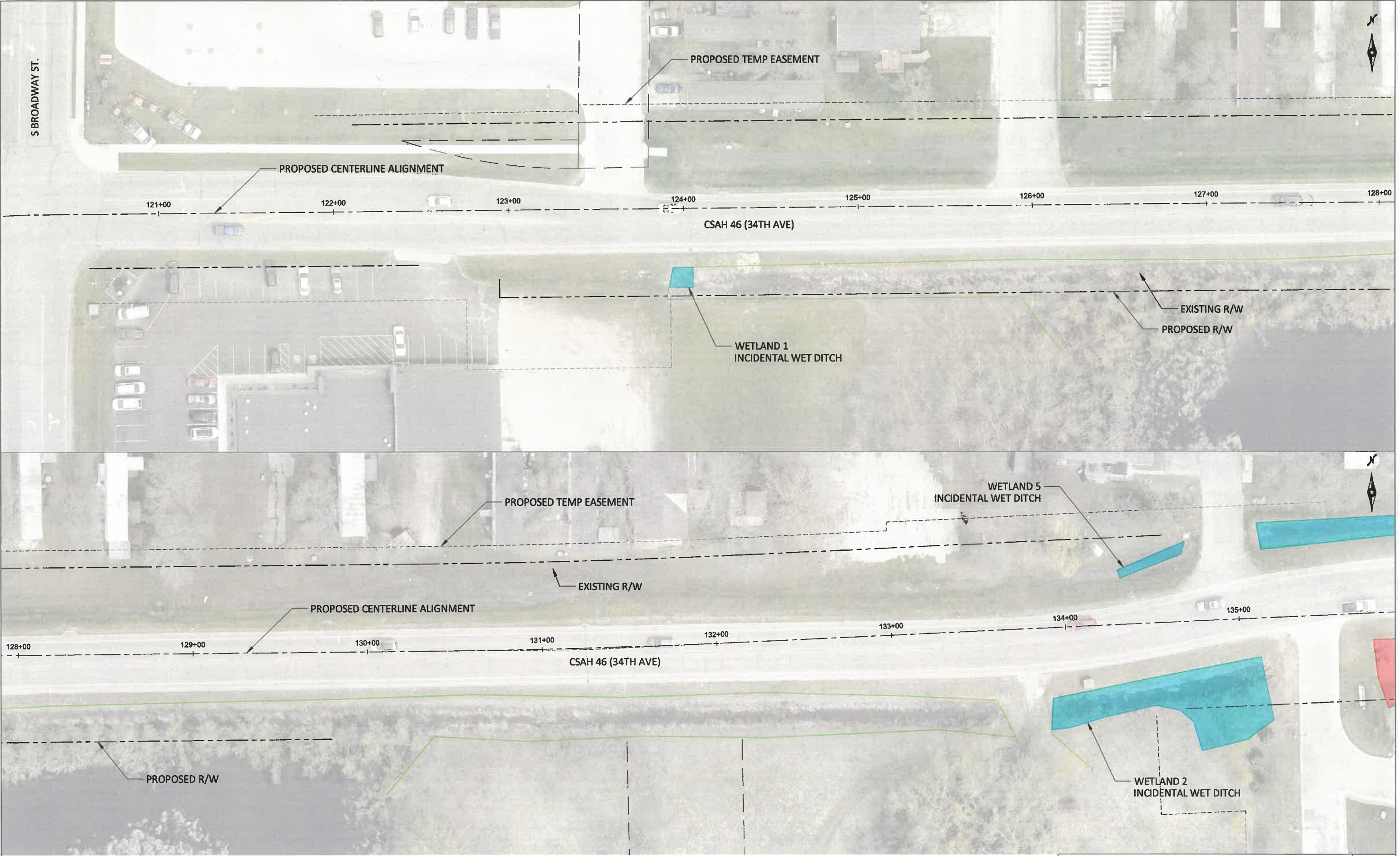






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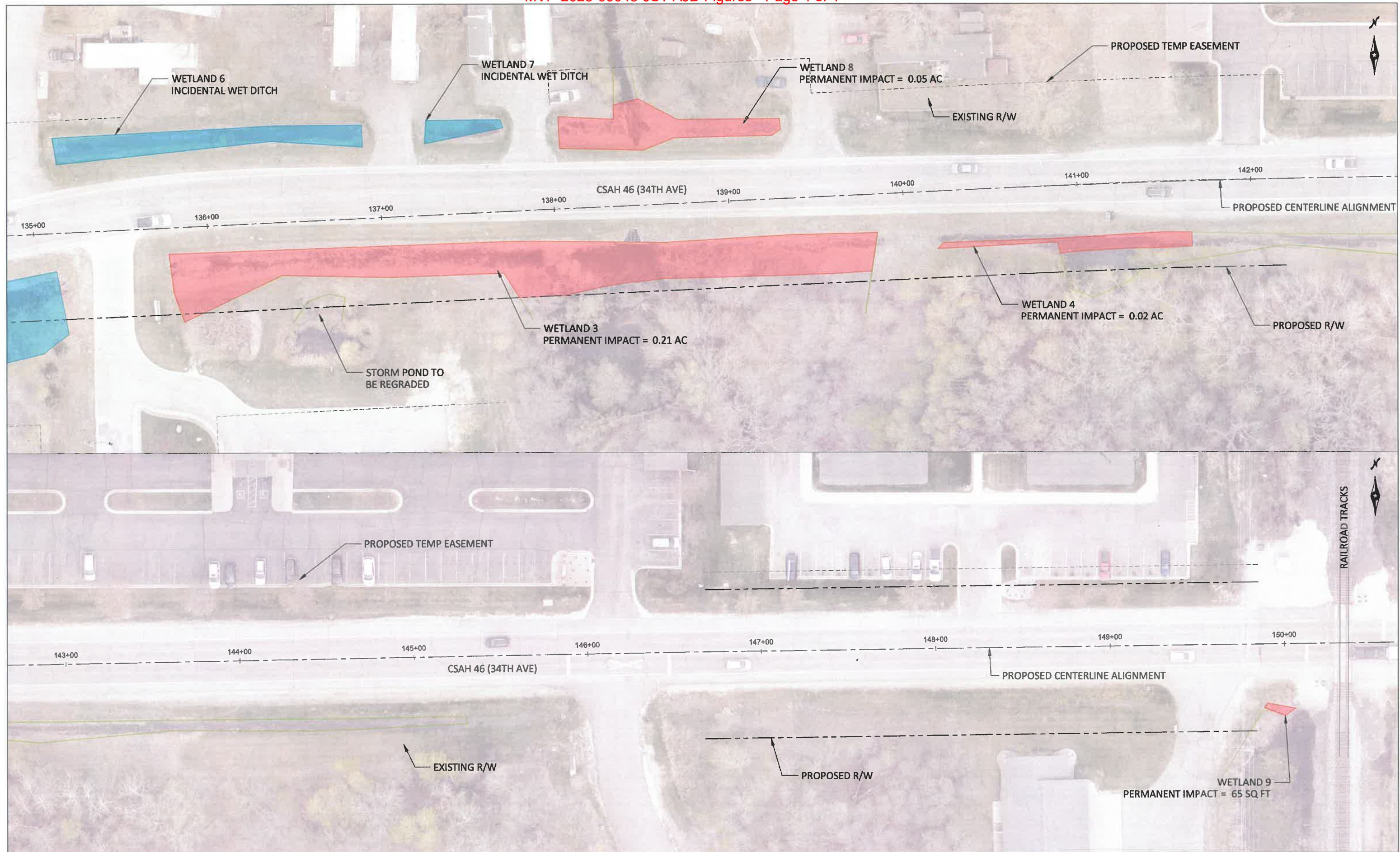




S.A.P 021-646-012
C.S.A.H. 46 RECONSTRUCTION - BROADWAY ST. TO RR TRACKS
WETLAND EXHIBITS

SHEET  
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OF  
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S.A.P 021-646-012
C.S.A.H. 46 RECONSTRUCTION - BROADWAY ST. TO RR TRACKS
WETLAND EXHIBITS

SHEET  
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