



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

MVP

9 JUNE 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-2025-00565-KME 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 A (0.5 acres); non-jurisdictional
 - II. Wetland B (0.1 acres); non-jurisdictional
 - III. Wetland C (0.7 acres); 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 review area is 5 acres and is identified by the polygon on the attached Figure 2. The review area is located in Section 11, Township 35N, Range 7W at the center coordinates (in decimal degrees) of Latitude: 45.528486 and Longitude: -91.205931 in the Town of Thornapple, Rusk County, Wisconsin. There are no other JDs associated with the review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁵

⁵ 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.

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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 WATERS⁶: 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 10.⁷ 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

⁶ 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.

⁷ 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).⁸ 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 A, Wetland B, and Wetland C are closed depressions, surrounded by uplands. They are not TNWs, territorial seas, or interstate waters and therefore are not category (a)(1) waters. There are no ditches, swales, pipes, or culverts that provide a continuous surface connection to jurisdictional waterways or WOUS. They 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. All three of the delineated wetlands are non-tidal wetlands that do not have 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 wetlands; therefore, they are not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

Wetland A extends offsite to the southeast but was confirmed by the consultant in the field to be a closed depression on the landscape. It is entirely surrounded by uplands.

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.

⁸ 88 FR 3004 (January 18, 2023)

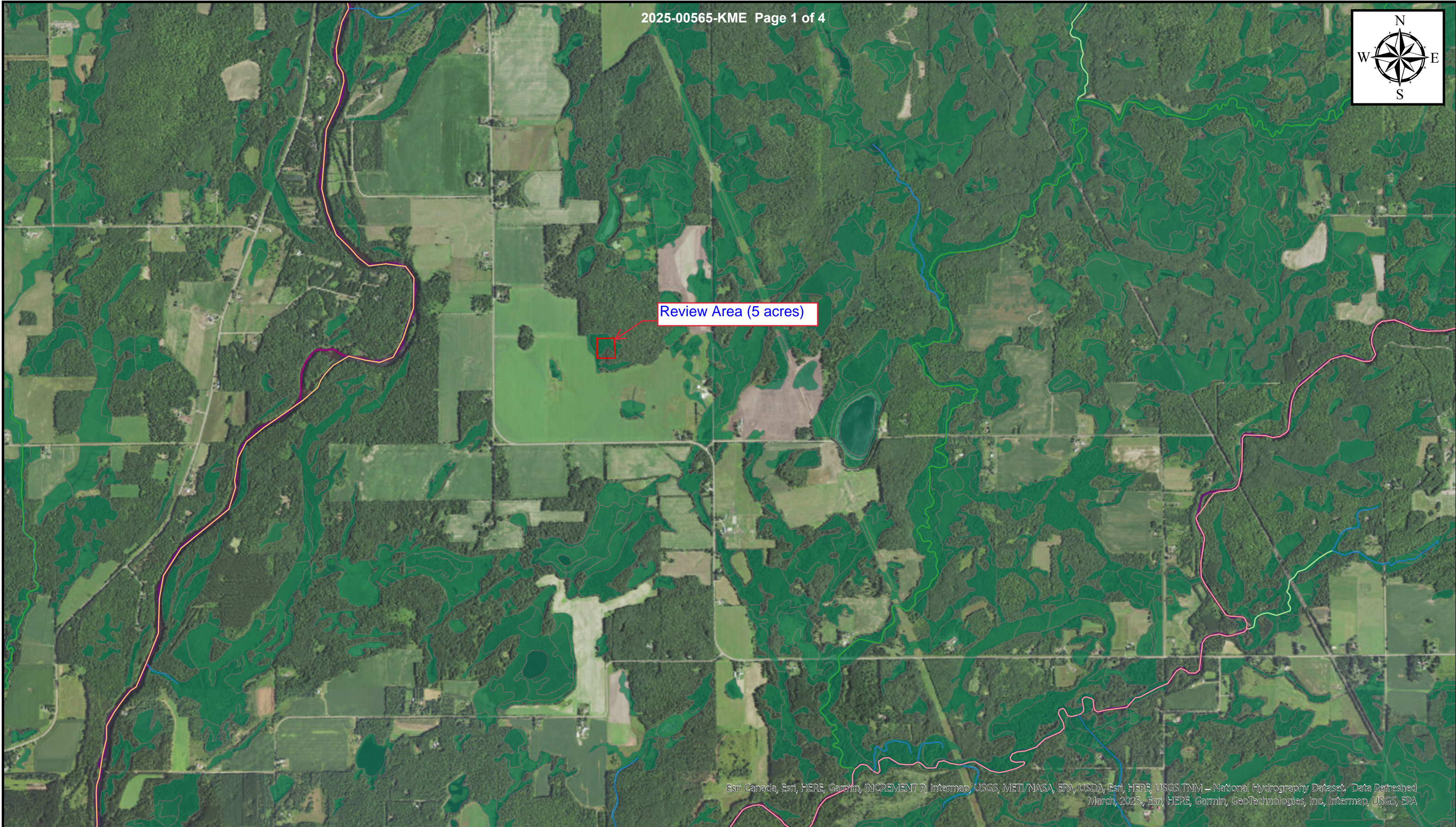
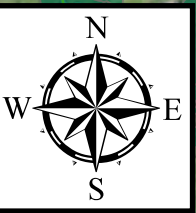
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- a. An office evaluation was conducted on June 5, 2025.
- b. Wetland Delineation Report from Bopray Environmental Services dated May 29, 2025, which included the following maps: USGS Topographic Map with site location, Auth Consulting and Associates survey map, and Rusk County USDA Soils Map, the Wisconsin Surface Water Data Viewer (WWI) mapping, USFWS NWI mapping, FEMA floodplain mapping, Hydric Soils maps. Other reference materials/methods included in the report were aerial photos, the Wisconsin State Climatology Office's webpage and the USACE APT method antecedent precipitation, Munsell Soil Color Charts.
- c. Level 2, "Routine Determinations" section of the U.S. Army Corps of Engineers "Wetland Delineation Manual" (Technical Report Y87-1, 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region.

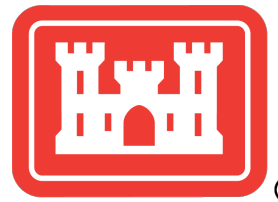
10. OTHER SUPPORTING INFORMATION. N/A

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.

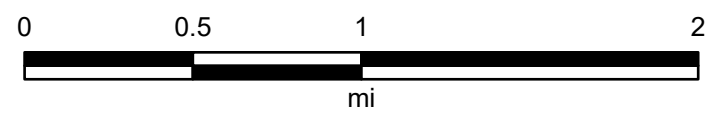


Review Area (5 acres)

Esri Canada, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA, Esri, HERE, USGS TNM – National Hydrography Dataset, Data Refreshed March, 2025, Esri, HERE, Garmin, GeoTechnologies, Inc, Intermap, USGS, EPA



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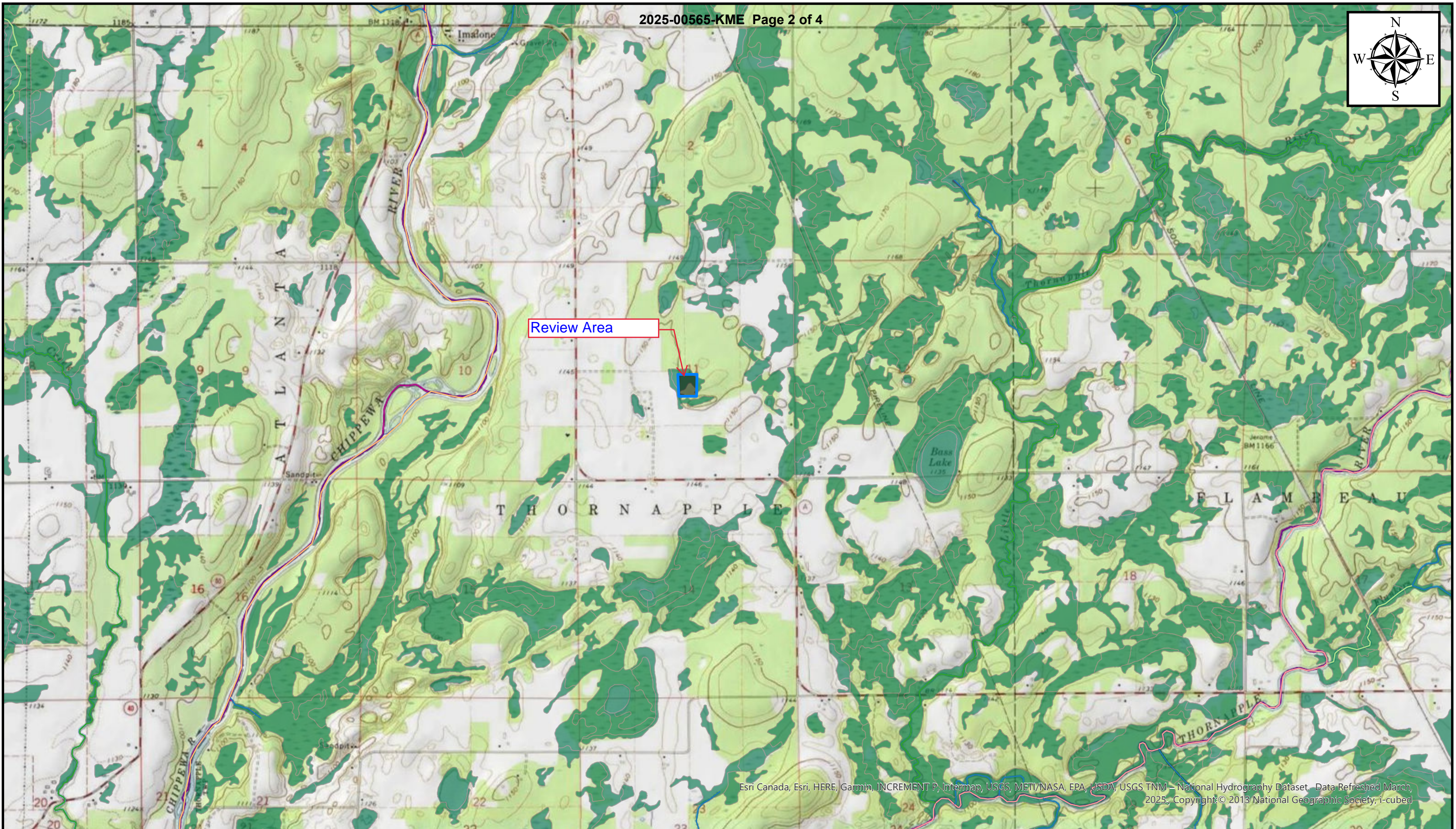
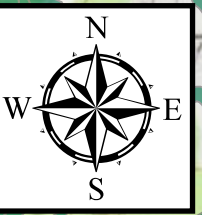


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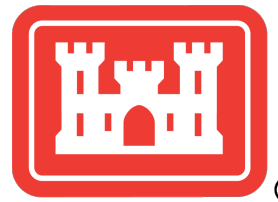
Map Created by: KME

Date: 6/4/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere



Esri Canada, Esri, HERE, Garmin, INCREMENT P, Intermap, USGS, METI/NASA, EPA, USDA, USGS TNM - National Hydrography Dataset, Data Refreshed March, 2025, Copyright © 2013 National Geographic Society, i-cubed



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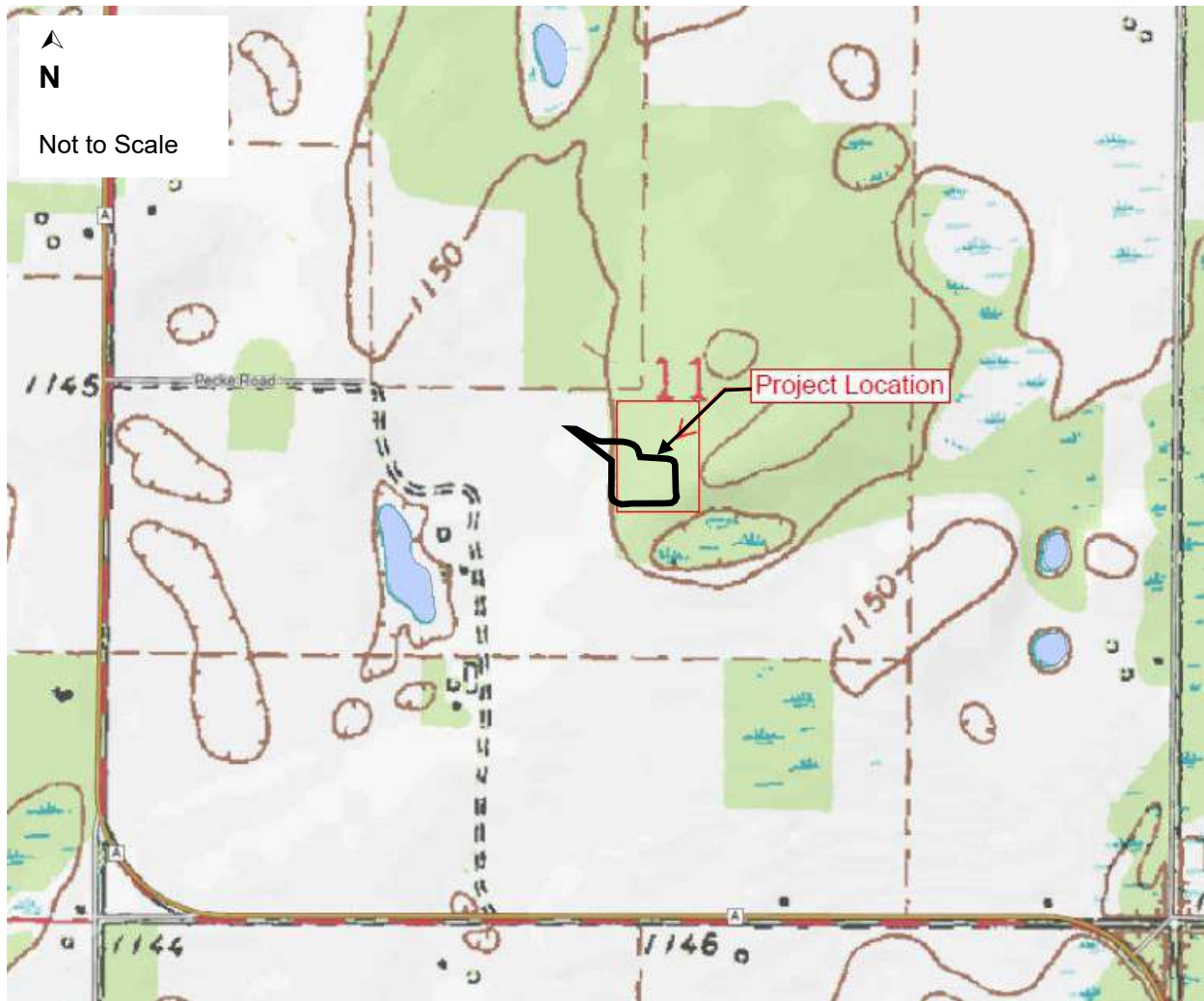


Map Center: 91.201372°W 45.526473°N

Map Created by: KME

Date: 6/5/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere



**Figure 2. U.S.G.S.
Quadrangle Map**
Jeffery Potter Manure Pit Site
Town of Thornapple, Wisconsin

WETLAND AREA IMPACTED BY PROJECT

WETLAND A - 0 SF
 WETLAND B - 575 SF
 MOSAIC C - 53,878 X 55% = 29,633 SF
 TOTAL IMPACT - 29,633 + 575 = 30,208 SF
 = 0.7 AC

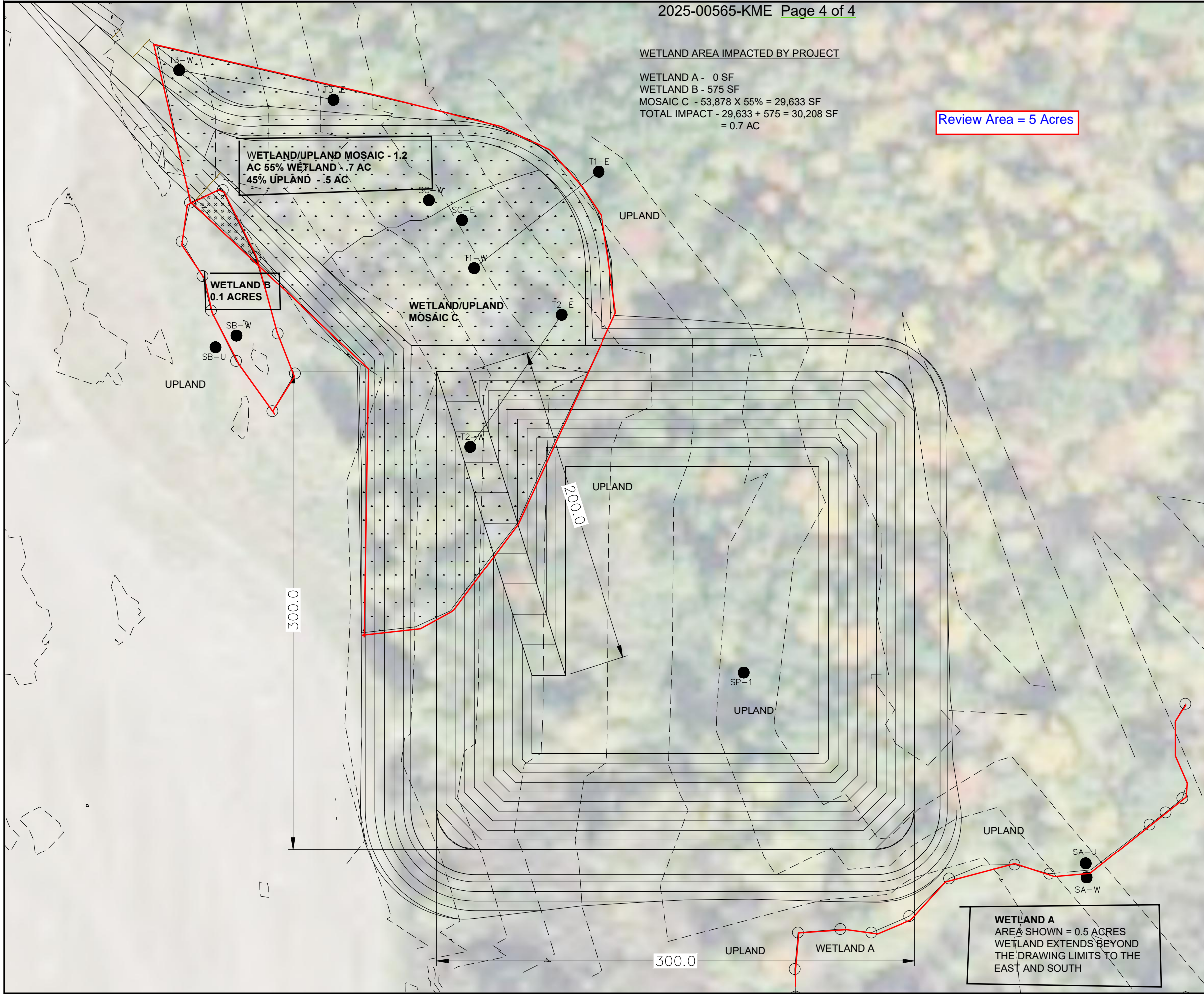
Review Area = 5 Acres

WETLAND/UPLAND MOSAIC - 1.2 AC
 55% WETLAND - .7 AC
 45% UPLAND - .5 AC

WETLAND B
 0.1 ACRES

WETLAND/UPLAND MOSAIC C

WETLAND A
 AREA SHOWN = 0.5 ACRES
 WETLAND EXTENDS BEYOND THE DRAWING LIMITS TO THE EAST AND SOUTH



LEGEND

- 850 - - - - - EXISTING 5 FT CONTOURS
- 851 - - - - - EXISTING 1 FT CONTOURS
- 850 - - - - - PROPOSED 5 FT CONTOURS
- 851 - - - - - PROPOSED 1 FT CONTOURS
- [Hatched Box] EXISTING BUILDING OR STRUCTURE
- [Hatched Box] PROPOSED BUILDING
- [Black Box] PROPOSED GRAVEL/ACCESS ROAD
- INV = INVERT ELEVATION
- R.O.W = RIGHT OF WAY
- U.N.O = UNLESS NOTED OTHERWISE
- (WELL) = WELL LOCATION
- (Circle) WELL SETBACK
- (Dashed Line) PROPERTY LINE
- (Dashed Line) PROPERTY LINE SETBACK

DRAWN BY: JVF		CHECKED BY: DAM		DATE: 10.29.19		DWG FILE: 393-008		REF FILE: 393-008.DWG		JOB NUMBER: 393-008	
OWNER REVIEW		AGENCY REVIEW		BID DOCUMENT		FOR CONSTRUCTION		AS-BUILT DOCUMENT		REVISION DESCRIPTION:	
BRANCH OFFICE		408 Technology Drive East		Suite 101		Menomonee, WI 54751		Tel 715-282-8400		authconsulting.com	
COMPANY OFFICE		2920 Baber Street		Suite 101		Hudson, WI 54016		Tel 715-381-8277		authconsulting.com	
PROJECT:		NORTH STAR ACRES		WETLAND REPORT		TOWN OF THORNAPPLE, RUSK COUNTY, WI		SHEET NO. WTLND2		DATE:	
PROJECT:		NORTH STAR ACRES		WETLAND REPORT		TOWN OF THORNAPPLE, RUSK COUNTY, WI		SHEET NO. WTLND2		DATE:	