

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** February 21, 2019

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** Meyer Feed and Seed Expansion, MVP-2019-00338-EMN

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Wisconsin County/parish/borough: Iron City: Mercer  
Center coordinates of site (lat/long in degree decimal format): Lat. 46.13178° N, Long. -90.01536° W.  
Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Manitowish River

Name of watershed or Hydrologic Unit Code (HUC): Chippewa (07050002)

- ☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.  
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- ☒ Office (Desk) Determination. Date: February 12, 2019  
☐ Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There are no “*navigable waters of the U.S.*” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There are no “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

**1. Waters of the U.S.:** N/A

**2. Non-regulated waters/wetlands (check if applicable):<sup>1</sup>**

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **There is one borrow pit with a wetland in the bottom that was delineated within the review area as shown on the attached wetland delineation map (Page 1 of the attachments). The wetland is classified as a palustrine emergent wetland and is approximately 1-acre in size at the bottom of the borrow pit. There are old embankments completely surrounding the borrow pit making it a closed depressional basin with no inlet or outlet. The borrow pit is located within the Rubicon sand soil unit which is an excessively-drained soil with no hydric soil inclusions. A review of historic aerial photos from 1938 and 1953 do not show the presence of a wetland or any wet signatures at this location within the review area. The review area was cropped in those years and there are no visible signs of crop stress in the 1938 or 1953 aerial photos. The agent (Ann Key - Wetlands and Waterways, LLC) provided information that the wetland developed in the bottom of the old borrow pit when a contractor mined gravel and borrow material in 1955-56 for a highway reconstruction project on USH 51. WisDOT confirmed that a highway project occurred along this section of USH 51 at that time and the as-built construction plans did not show any mapped wetlands in close proximity to the highway in this location. The wetland first became visible in the 1976 aerial photograph and became less visible in subsequent years of aerial photography as white pines and other trees grew up on the embankment around the borrow pit. Based upon this information and on-site photos provided by the agent, we have determined the borrow pit was constructed in dry land and the wetland that formed in the bottom is not a water of the United States. The determination of no jurisdiction is in accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330) and the 2008 Rapanos Guidance.**

<sup>1</sup> Supporting documentation is presented in Section III.F.

### **SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs:** N/A

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):** N/A

**C. SIGNIFICANT NEXUS DETERMINATION:** N/A

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):** N/A

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):** N/A

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- ☒ Other (explain, if not covered above): **Reference Section II.B.2.**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):      linear feet      width (ft).
- ☐ Lakes/ponds:      acres.
- ☐ Other non-wetland waters:      acres. List type of aquatic resource:      .
- ☐ Wetlands:      acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams):      linear feet,      width (ft).
- ☐ Lakes/ponds:      acres.
- ☐ Other non-wetland waters:      acres. List type of aquatic resource:      .
- ☐ Wetlands:      acres.

### **SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **Wetlands & Waterways, LLC**  
provided historical aerial photographs, maps, and supplemental information
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☐ U.S. Geological Survey Hydrologic Atlas:
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K WI - Mercer**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Iron County**
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): **Wisconsin Wetland Inventory**
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is:      (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **1938, 1953, 1976, and 2016 Aerials.**  
or ☒ Other (Name & Date): **Ground level photos from review area (taken in fall of 2018)**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** Reference attachments for historical aerial photos, topographic maps, and on-site photographs supporting this jurisdictional determination.





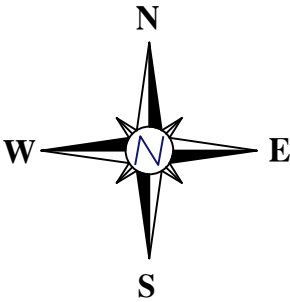
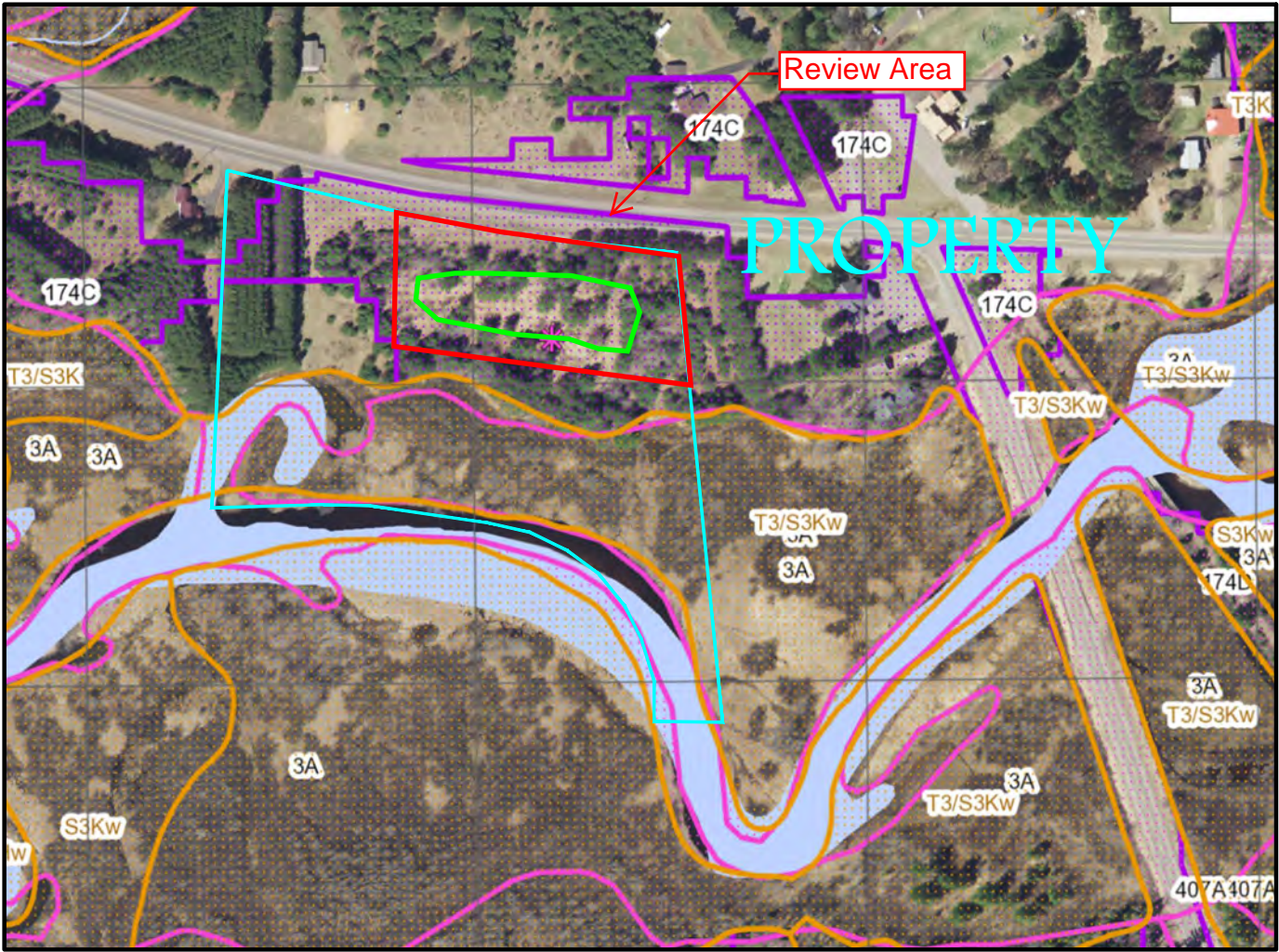
|                               |  |                  |                   |                   |
|-------------------------------|--|------------------|-------------------|-------------------|
| WETLAND DETERMINATION<br>AREA | THIS DRAWING AND ALL INFORMATION<br>CONTAINED THEREON IS THE PROPERTY<br>OF WETLANDS & WATERWAYS LLC, AND<br>SHALL NOT BE COPIED OR USED EXCEPT<br>FOR THE PURPOSE FOR WHICH IT IS<br>FURNISHED. |                  |                   |                   |
|                               | APPROVED BY:<br>AMK  | DRAWN BY:<br>NLB | DATE:<br>12-13-18 | SCALE:<br>1"=100' |
|                               | MEYER PROPERTY<br>SEC. 8, T42N, R4E, TOWN OF MERCER,<br>IRON COUNTY, WISCONSIN   |                  |                   |                   |



Wetlands &  
Waterways  
LLC


|                        |                        |
|------------------------|------------------------|
| PROJECT NUMBER:<br>517 | FIGURE NO.<br><b>2</b> |
|------------------------|------------------------|



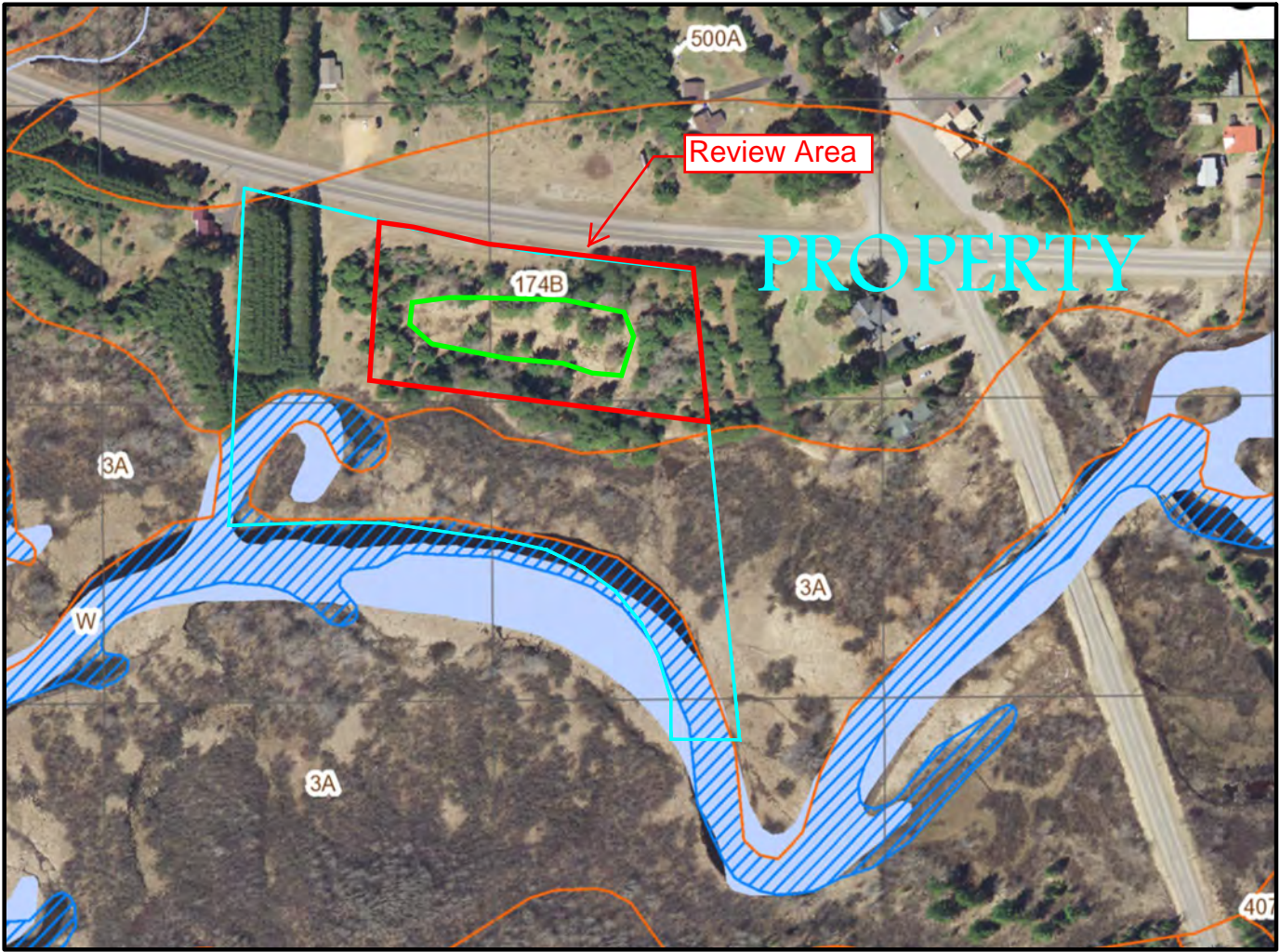


QUADRANGLE LOCATION

BASE MAP SOURCE: WISCONSIN WETLAND INVENTORY MAP

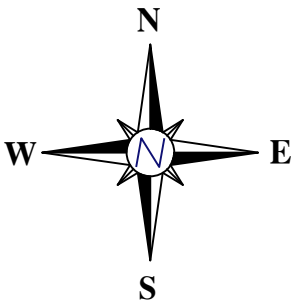
|  |                     |  |   |                        |
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| WISCONSIN WETLAND<br>INVENTORY MAP   | APPROVED BY:<br>AMK | THIS DRAWING AND ALL INFORMATION<br>CONTAINED THEREON IS THE PROPERTY<br>OF WETLANDS & WATERWAYS LLC, AND<br>SHALL NOT BE COPIED OR USED EXCEPT<br>FOR THE PURPOSE FOR WHICH IT IS<br>FURNISHED. |  Wetlands &<br>Waterways<br>LLC | PROJECT NUMBER:<br>517 |
|  | DRAWN BY:<br>NLB    |  |   | FIGURE NO.             |
| MEYER PROPERTY<br>SEC. 8, T42N, R4E, TOWN OF MERCER,<br>IRON COUNTY, WISCONSIN | DATE:<br>12-13-18   |  |   | 3                      |
|  | SCALE:<br>NONE      |  |   |                        |





SOILS LEGEND:

- 3A  
Totagatic-Bowstring-Ausable complex, 0 to 2 percent slopes, frequently flooded
- 174B  
Rubicon sand, 0 to 6 percent slopes
- 500A  
Croswell sand, 0 to 4 percent slopes

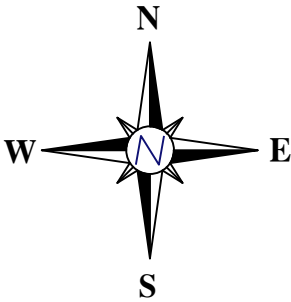
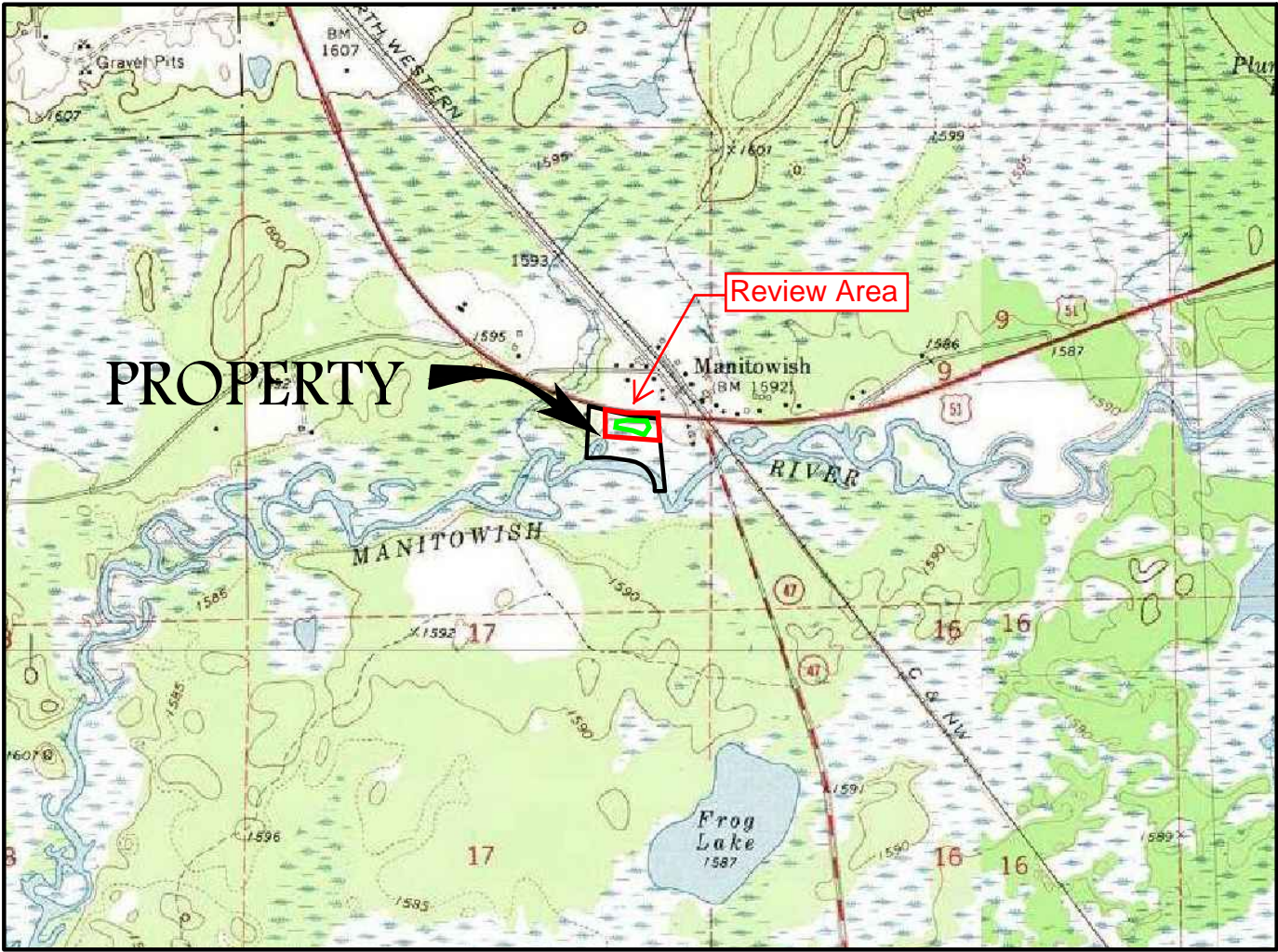


QUADRANGLE LOCATION

BASE MAP SOURCE: IRON COUNTY SOIL SURVEY MAP

|  |                     |  |  |                        |
|--|---------------------|--|--|------------------------|
| IRON COUNTY<br>SOIL SURVEY MAP   | APPROVED BY:<br>AMK | THIS DRAWING AND ALL INFORMATION<br>CONTAINED THEREON IS THE PROPERTY<br>OF WETLANDS & WATERWAYS LLC, AND<br>SHALL NOT BE COPIED OR USED EXCEPT<br>FOR THE PURPOSE FOR WHICH IT IS<br>FURNISHED. |  | PROJECT NUMBER:<br>517 |
|  | DRAWN BY:<br>NLB    |  |  | FIGURE NO.             |
| MEYER PROPERTY<br>SEC. 8, T42N, R4E, TOWN OF MERCER,<br>IRON COUNTY, WISCONSIN | DATE:<br>12-13-18   |  |  | 4                      |
|  | SCALE:<br>NONE      |  |  |                        |





SCALE IN FEET

1" = 2000'




CONTOUR INTERVAL 10 FEET

NATIONAL GEODETIC VERTICAL DATUM OF 1929



QUADRANGLE LOCATION

BASE MAP SOURCE: USGS 7.5 MINUTE QUADRANGLE, MERCER, WISCONSIN, 1981 (NATIONAL GEOGRAPHIC HOLDINGS, INC.)

|  |   |  |   |                            |
|--|---|--|---|----------------------------|
| <b>SITE LOCATION &amp;<br/>LOCAL TOPOGRAPHY</b>                                | APPROVED BY:<br>AMK<br><br>DRAWN BY:<br>NLB | THIS DRAWING AND ALL INFORMATION<br>CONTAINED THEREON IS THE PROPERTY<br>OF WETLANDS & WATERWAYS LLC, AND<br>SHALL NOT BE COPIED OR USED EXCEPT<br>FOR THE PURPOSE FOR WHICH IT IS<br>FURNISHED. |  Wetlands &<br>Waterways<br>LLC | PROJECT NUMBER:<br>517     |
| MEYER PROPERTY<br>SEC. 8, T42N, R4E, TOWN OF MERCER,<br>IRON COUNTY, WISCONSIN | DATE:<br>12-13-18<br><br>SCALE:<br>1"=2000' |  |   | FIGURE NO.<br><br><b>1</b> |

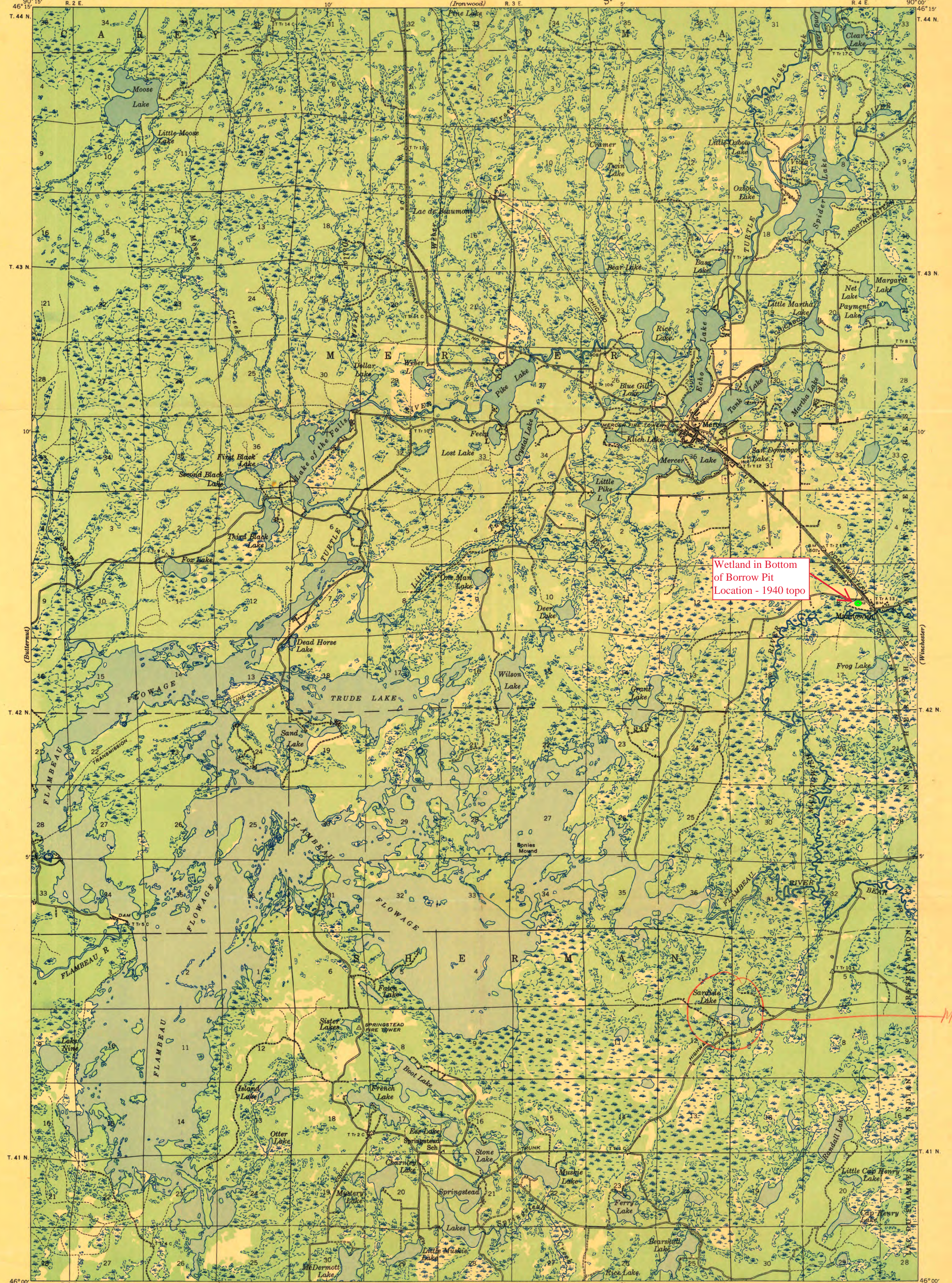


UNITED STATES  
DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY

STATE OF WISCONSIN

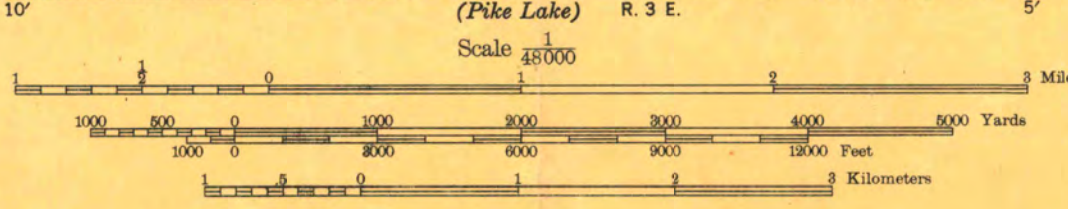
WISCONSIN  
(IRON COUNTY)  
MERCER QUADRANGLE  
15-MINUTE SERIES

Advance sheet  
Subject to correction



Compiled by Geological Survey  
from aerial photographs  
Field examination in 1940

TRUE NORTH  
MAGNETIC NORTH  
APPROXIMATE MEAN  
DECLINATION, 1940

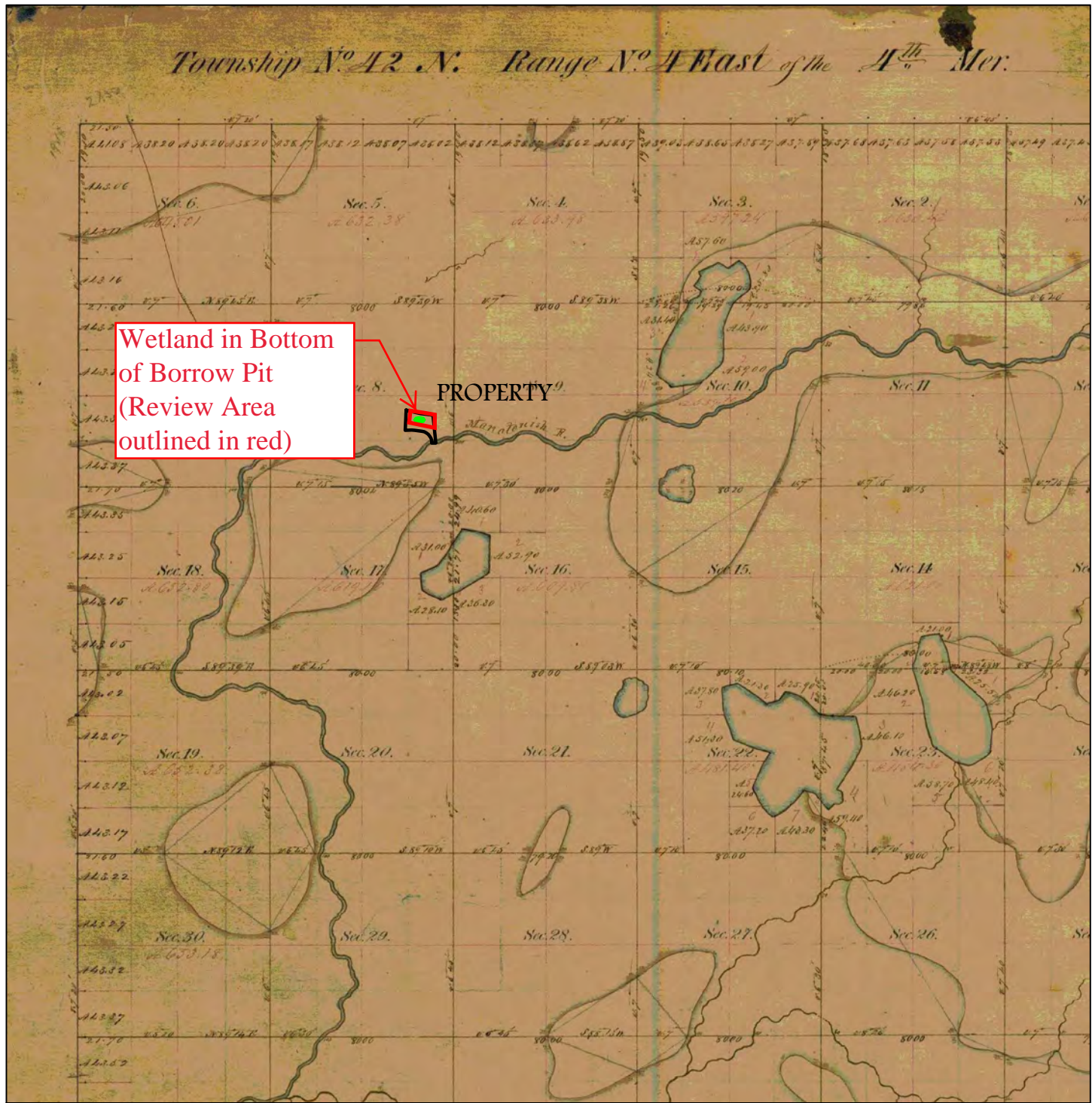


Polyconic projection. 1927 North American datum

Board on Geographic Names  
Class  
Sheet No.  
Date  
SEP 1 1949


MERCER, WIS.  
N 4600—W 9000/15



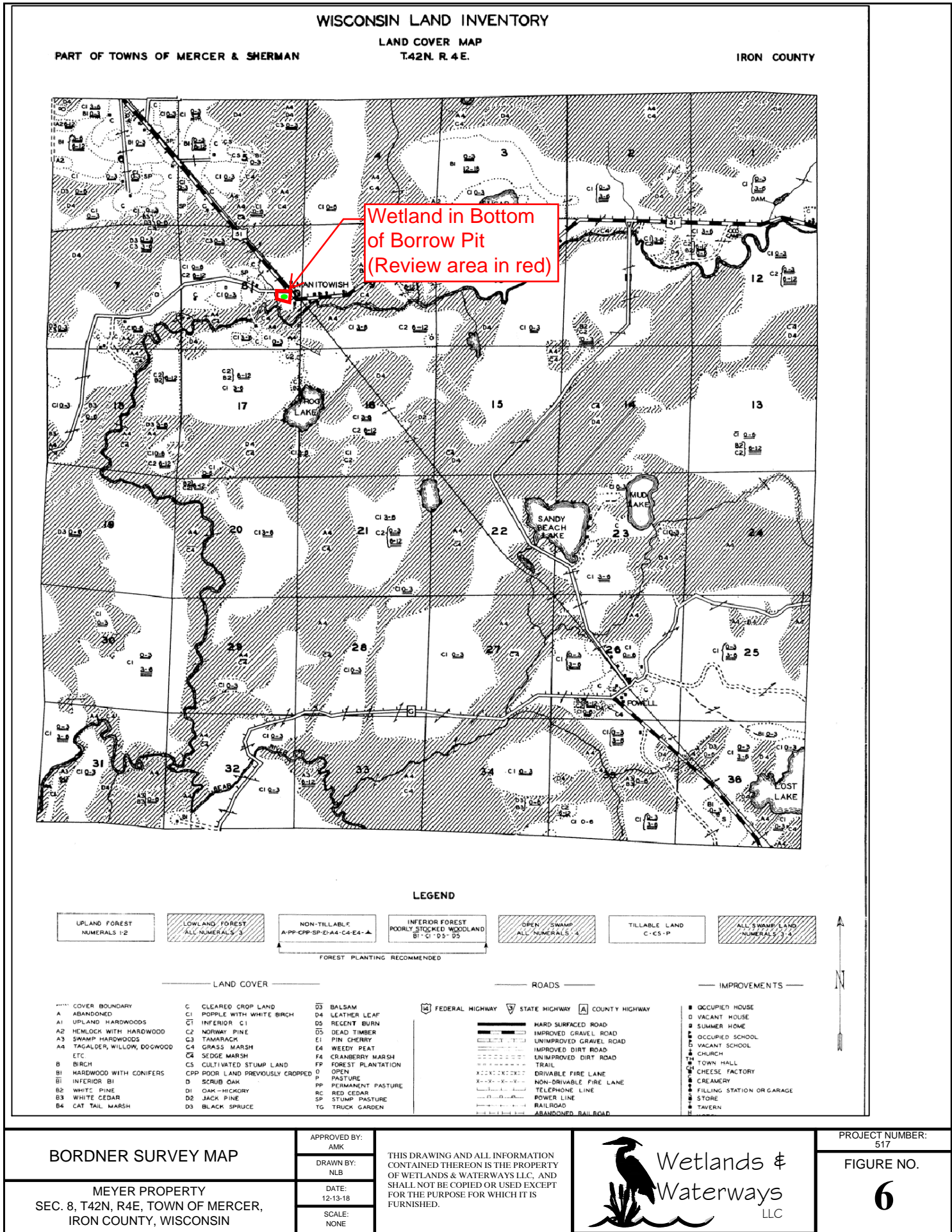


QUADRANGLE LOCATION

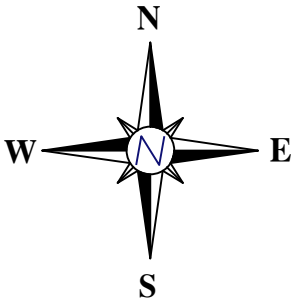
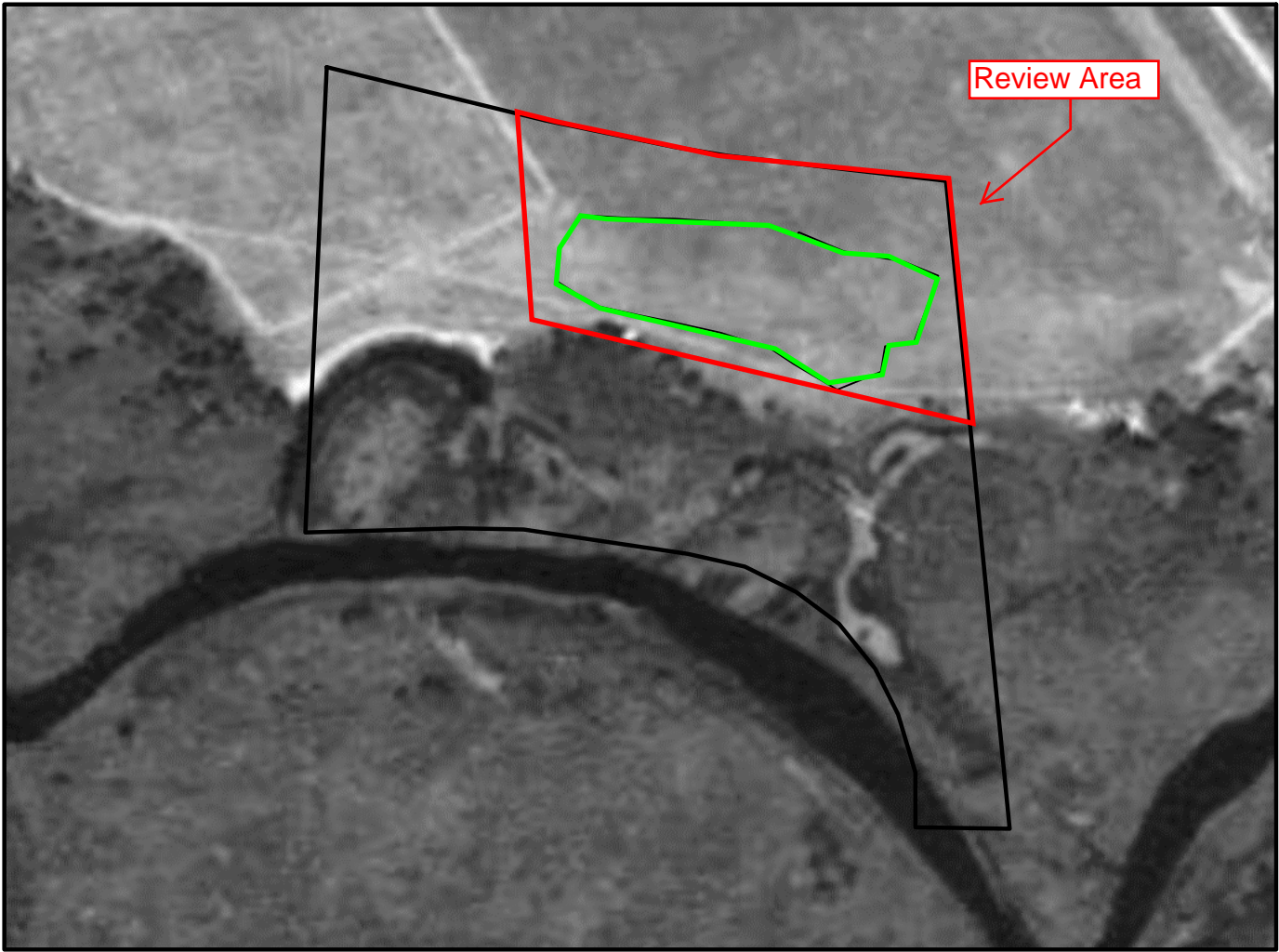
BASE MAP SOURCE: ORIGINAL SURVEY MAP

|  |                     |   |                        |
|--|---------------------|---|------------------------|
| ORIGINAL LAND SURVEY MAP   | APPROVED BY:<br>AMK | THIS DRAWING AND ALL INFORMATION CONTAINED THEREON IS THE PROPERTY OF WETLANDS & WATERWAYS LLC, AND SHALL NOT BE COPIED OR USED EXCEPT FOR THE PURPOSE FOR WHICH IT IS FURNISHED. | PROJECT NUMBER:<br>517 |
|  | DRAWN BY:<br>NLB    |   |                        |
| MEYER PROPERTY<br>SEC. 8, T42N, R4E, TOWN OF MERCER,<br>IRON COUNTY, WISCONSIN | DATE:<br>12-13-18   |   | FIGURE NO.<br><b>5</b> |
|  | SCALE:<br>NONE      |  Wetlands &<br>Waterways<br>LLC   |                        |





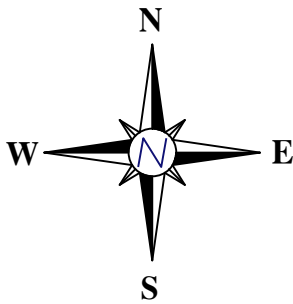




1938 AERIAL  
MEYER PROPERTY  
SEC. 8, T42N, R4E, TOWN OF MERCER,  
IRON COUNTY, WISCONSIN



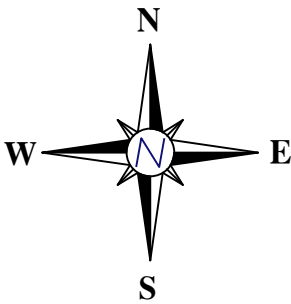




1953 AERIAL  
MEYER PROPERTY  
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IRON COUNTY, WISCONSIN



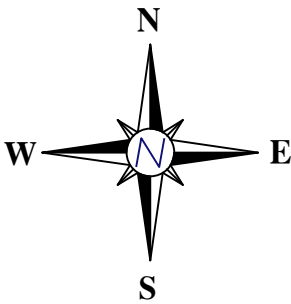
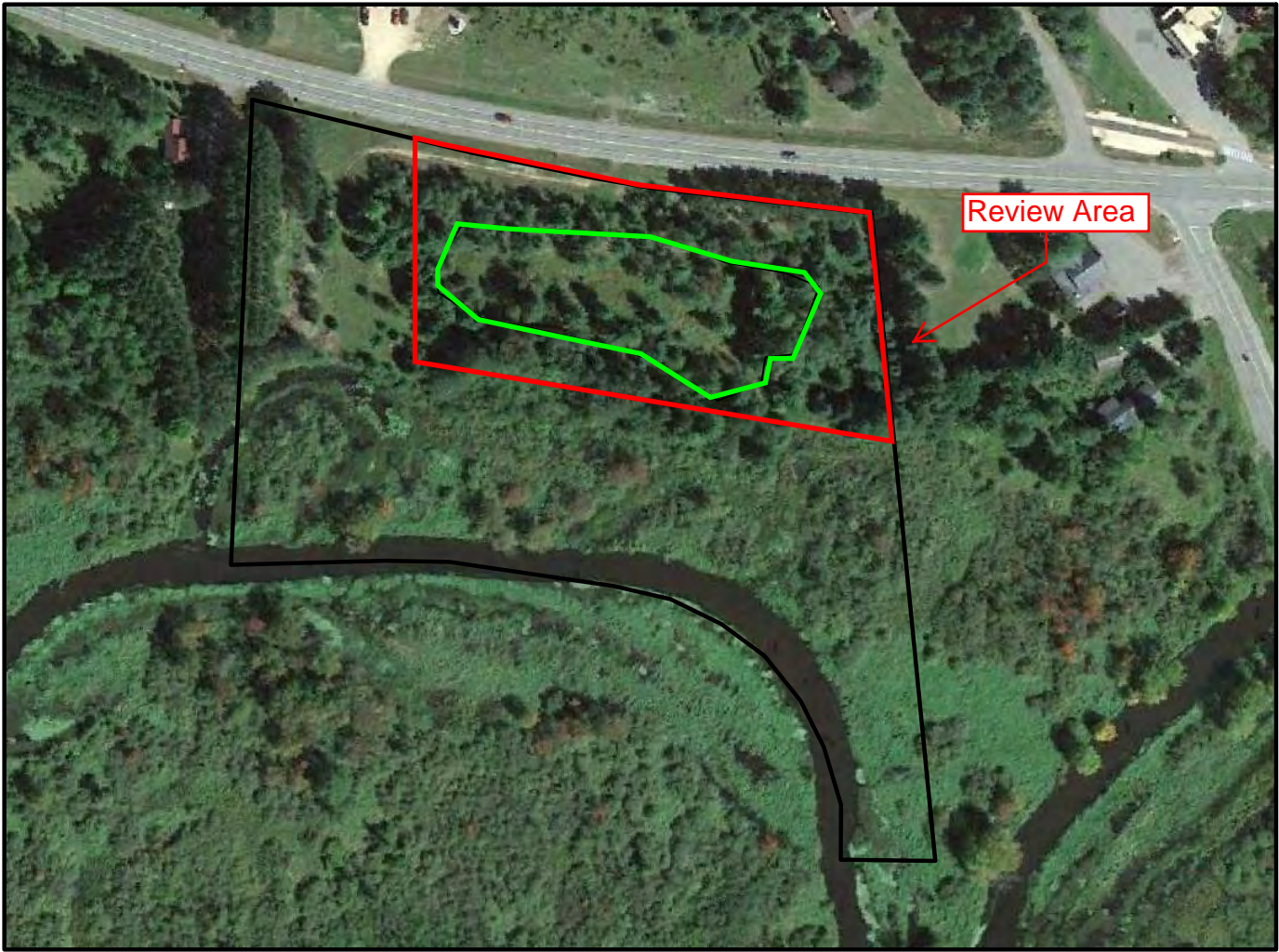




1976 AERIAL  
MEYER PROPERTY  
SEC. 8, T42N, R4E, TOWN OF MERCER,  
IRON COUNTY, WISCONSIN







2016 AERIAL  
MEYER PROPERTY  
SEC. 8, T42N, R4E, TOWN OF MERCER,  
IRON COUNTY, WISCONSIN





MEYER FEED AND SEED  
ARTIFICIAL WETLAND EXEMPTION  
SITE PHOTOS



NORTHEAST SIDE OF REVIEW AREA - LOOKING WEST



EAST END OF REVIEW AREA - LOOKING EAST AT UPLAND EMBANKMENT



MEYER FEED AND SEED  
ARTIFICIAL WETLAND EXEMPTION  
SITE PHOTOS



SOUTH EDGE OF REVIEW AREA - LOOKING WEST AT UPLAND EMBANKMENT



WEST END OF REVIEW AREA - LOOKING SOUTH AT UPLAND EMBANKMENT



MEYER FEED AND SEED  
ARTIFICIAL WETLAND EXEMPTION  
SITE PHOTOS



WETLAND IN BOTTOM OF BORROW PIT - LOOKING EAST



WETLAND IN BOTTOM OF BORROW PIT - LOOKING SOUTH