



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

MVP

June 12, 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-2025-00295-CCK 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>2</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>3</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>4</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>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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.

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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 2 (0.445 acre)	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)
- 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 an approximate 16.71-acre property located west of the intersection of County Road Q and County Road K (Stark Road), and directly east of the CN Superior Subdivision railroad line near the town of Unity. The review area includes two aquatic resource areas identified as Wetland 1 and Wetland 2 in the enclosed project figures, however only Wetland 1 is being evaluated. The nearest tributary is the South Fork Popple River and is located approximately 0.24 miles west of the review area. There are no other JDs associated with this review area.

- a. Project Area Size (in acres): 16.71 acres
- b. Location Description: The project/review area is located in Section 7, Township 27N, Range 01E, Clark County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.840329      Longitude: -90.419817
- d. Nearest City or Town: Unity
- e. County: Clark
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes) NA

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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](#)
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</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>6</sup> [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](#)

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<sup>5</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>6</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.

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- e. Tributaries (a)(3): [N/A](#)
- 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).<sup>7</sup> [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 review area is limited to Wetland 2. Wetland 2 is not a TNWs, territorial seas, or interstate waters and therefore is not an \(a\)\(1\) water. Wetland 2 does not physically abut a relatively permanent category \(a\)\(2\) impoundment or a jurisdictional category \(a\)\(3\) tributary. This determination is supported by the national wetland and hydrography datasets which do not identify any aquatic resources or other potential surface connections 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 Wetland 2 is a depressional wetland, surrounded by upland. Historic aerial imagery from the 1930's indicate Wetland 2 was at one time an isolated farm pond, surrounded by agricultural fields.](#)

[Wetland 2 is approximately 0.24 miles from the closest tributary, west of the review area. Wetland 2 is a non-tidal wetland that does not 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](#)

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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wetlands; therefore, this wetland is not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

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.

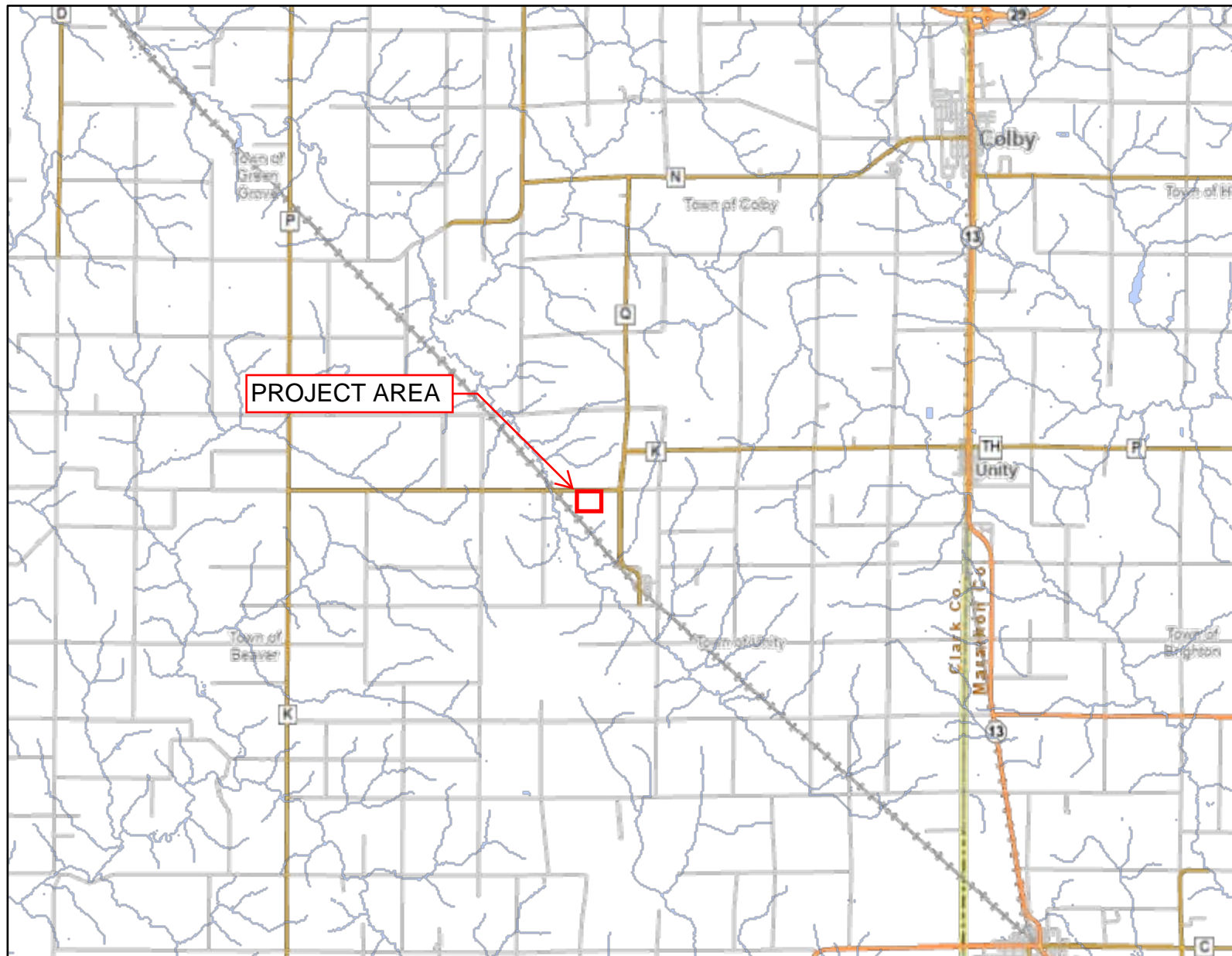
- a. Badger Holsteins 2025 Manure Storage Wetland Delineation Report, Town of Unity, Clark County, Wisconsin. May 2025
- b. US Geological Survey, 3DEP Bare Earth DEM Dynamic service –3DEP DEM, accessed on 11 June 2025
- c. Google Earth aerial imagery (1991 – present), accessed 11 June 2025.
- d. Wisconsin Historic Aerial Imagery Finder (<https://maps.sco.wisc.edu/whaifinder/?center=-89.900%2C44.750&level=7>) (1930 – present), accessed 11 June 2025
- e. USGS NHD Map Service. Accessed 11 June 2025.
- f. Google Earth imagery dated 2003, 2004, 2006, 2010, 2013, 2015, 2017, 2018, 2019, 2020, 2023 and 2024.

10. OTHER SUPPORTING INFORMATION.

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.



# Figure 1 - Location Map



## Legend: (some map layers may not be displayed)

- Rivers and Streams
- Intermittent Streams
- Open Water
- City or Village
- County Boundaries
- Major Roads
  - State Highway
  - County and Local Roads
  - County HWY
  - Local Road
- Railroads

## Notes:



Map: 0 9,000 18,000 Feet  
0 2,500 5,000 Meters

Service Layer Credits:  
Cities, Roads & Boundaries: , Surface Water (Cached): WiDNR, USGS, and other data

Map projection: NAD 1983 HARN Wisconsin TM

This map is a product generated by a DNR web mapping application.

This map is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. The user is solely responsible for verifying the accuracy of information before using for any purpose. By using this product for any purpose user agrees to be bound by all disclaimers found here: <https://dnr.wisconsin.gov/legal>

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# FIGURE 6 - WETLAND BOUNDARIES

Badger Holsteins 2025 Manure Storage

Town of Unity  
Clark Co, WI

Wetland Data Point

Photo

Wetland Boundaries

Emergent/Wet Meadow

Emergent/Wet Meadow-Disturbed

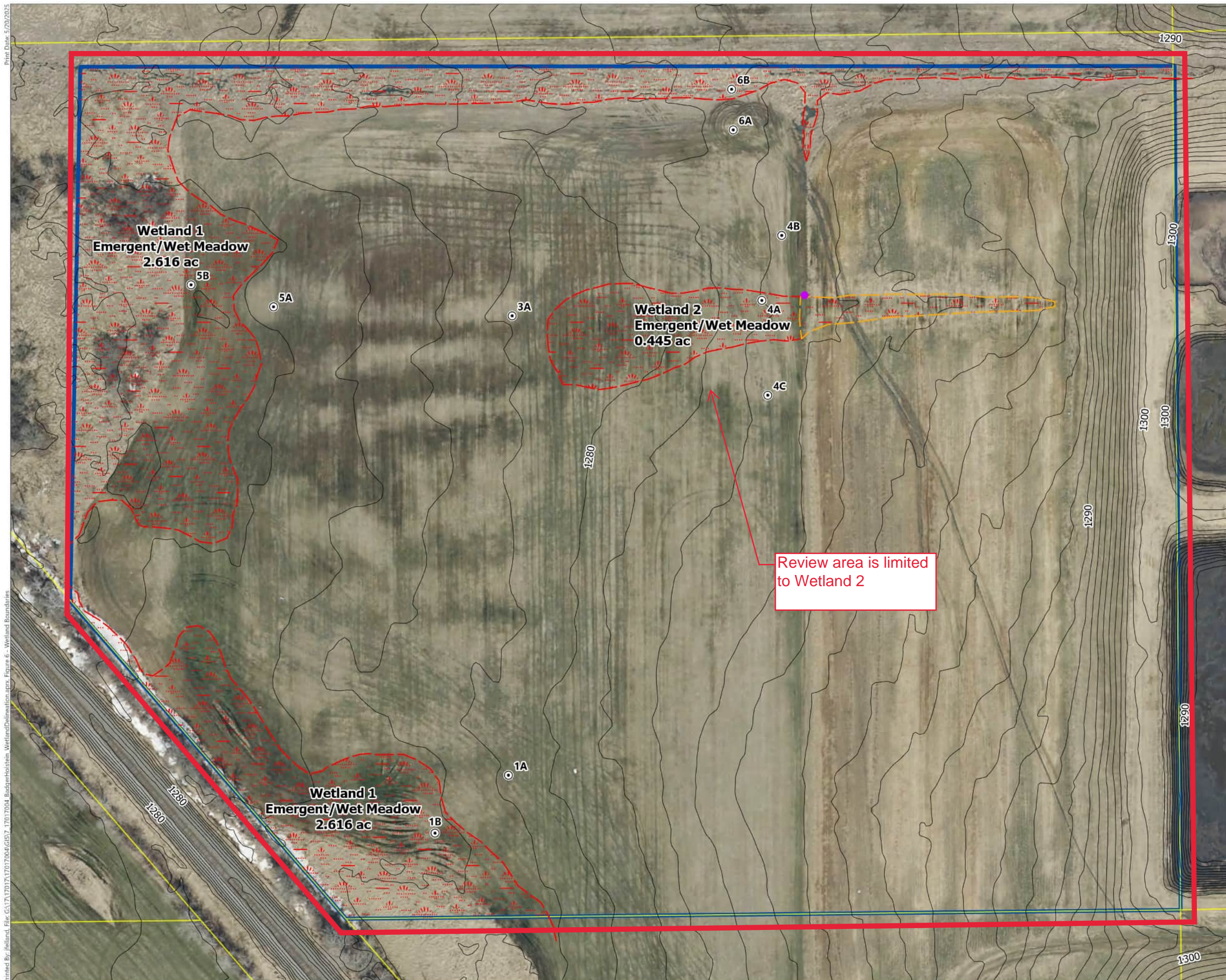
Wetland Areas

Emergent/Wet Meadow

Investigation Limits

1 ft Contours

Parcels



Review area is limited to Wetland 2

All data shown in this exhibit is approximate for display purposes only and does not reflect actual survey data.

Data Sources:  
Clark County GIS (2018)  
WDIIR Latest Leaf Off Aerial