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): Final 12/14/15

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha, JD Request for County Highway 149 (464th Ave), in Hartford, Minnehaha County, NWO-2015-1777-PIE.

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Sections 22 & 23, 14 & 15, 10 & 11, 2 & 3, T102N, 51W; Sections 34 & 35, 26 & 27, T103N, 51W. The review area consists of a stretch of County Highway 149 approximately 5.7 miles in length and 100 feet east and 100 feet west of the centerline (See Figures 1 and 2). Collectively, a total of 21 wetlands exist within the review area. See Table 1 for an informational summary of all wetlands. Currently, land use in the vicinity of the review area is largely agricultural with increasing encroachment of urban development. Wetlands and waterways in the review area were previously disturbed when the road was originally constructed and has likely undergone multiple maintenance and modification activities over the years with increasing urbanization of the area.

State: SD County/parish/borough: Minnehaha City: Hartford
Center coordinates of site (lat/long in degree decimal format): Lat. 43.662158 **N; Long.** -96.930315 W
Universal Transverse Mercator: 14
Name of nearest waterbody: West Branch Skunk Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Big Sioux River
Name of watershed or Hydrologic Unit Code (HUC): 10170203
☒ 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: 11/18/15
☐ 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. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are and are not** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☒ Non-RPWs that flow directly or indirectly into TNWs
      ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet: width (ft) and/or acres.
      Wetlands: 4.39 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
      Elevation of established OHWM (if known): .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: **Wetlands F (0.08 acres), H (0.19 acres), and I (0.07 acres), have been identified as being non-jurisdictional, (Refer to Figures 5 and 7). These wetlands do not exhibit a discernible hydrological outlet to (or interaction with) any WOUS. In addition, these waters are intrastate, non-navigable water bodies with no nexus to interstate commerce** .

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: .

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) General Area Conditions:
   Watershed size: **3,309 square miles**
   Drainage area: **446 square miles**
   Average annual rainfall: **23.8** inches
   Average annual snowfall: **38.2** inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☒ Tributary flows through **2** tributaries before entering TNW.

[3] Supporting documentation is presented in Section III.F.
[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters are **20-25** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **10-15** aerial (straight) miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: **Wetlands A, B and C flow through two unnamed tributaries, then to Skunk Creek (RPW), then to Big Sioux River (TNW). Wetlands D and E flow through one unnamed tributary, then to Skunk Creek (RPW), then to Big Sioux River (TNW). Wetland G flows through two unnamed tributaries, then to Skunk Creek (PRW), then to Big Sioux River (TNW). Wetlands J, K and O flow through one unnamed tributary, then to Skunk Creek (RPW), then to Big Sioux River (TNW). Wetlands L and P flow through one unnamed tributary, then to Skunk Creek (RPW), then to Big Sioux River (TNW). Wetland Q flows through one unnamed tributary, then to Skunk Creek (RPW), then to Big Sioux River (TNW). Wetlands M, N, R, and S, flow through one tributary, then to Skunk Creek (RPW), then to Big Sioux River (TNW). Wetland T (T-1 and T-2) flow through West Branch Skunk Creek (RPW), then to Skunk Creek (RPW), then to Big Sioux River (TNW). Wetland U flows through one unnamed tributary, then to Skunk Creek (RPW), then to Big Sioux River (TNW)**.
Tributary stream order, if known: **Streams are variable at 1st, 2nd and 3rd order**.

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: **Most of the tributaries are in a natural state with road crossings straightened out during construction of County Highway 149 and Highway 38. Water flow is also manipulated via multiple culverts and ditching installed along the roads to facilitate water flow through the tributaries**.

Tributary properties with respect to top of bank (estimate):
Average width: **5-25** feet
Average depth: **< 1** feet
Average side slopes: **2:1.**

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☒ Cobbles	☒ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **Generally stable**.
Presence of run/riffle/pool complexes. Explain: **Riffle/ pool complexes observable via aerial photography in West Branch Skunk Creek**.
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): **Typically < 2** %

(c) Flow:
Tributary provides for: **Seasonal flow**
Estimate average number of flow events in review area/year: **6-10**
Describe flow regime: **West Branch Skunk Creek is a perennial stream. Surface flow on all other unnamed tributaries primarily occurs during snow melt and rainfall events**.
Other information on duration and volume: .

Surface flow is: **Discrete and confined.** Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☒ vegetation matted down, bent, or absent	☒ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

☒ sediment deposition
☐ water staining
☐ other (list):
☐ multiple observed or predicted flow events
☐ abrupt change in plant community
☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by:
☐ oil or scum line along shore objects
☐ fine shell or debris deposits (foreshore)
☐ physical markings/characteristics
☐ tidal gauges
☐ other (list):
☐ Mean High Water Mark indicated by:
☐ survey to available datum;
☐ physical markings;
☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: **Water quality is unknown, however, it is likely that water quality is affected by urban and agricultural runoff**.
Identify specific pollutants, if known: **Specific pollutants are unknown, however, pollutants associated with urban and agricultural runoff likely affect the system**.

(iv) Biological Characteristics. Channel supports (check all that apply):
☐ Riparian corridor. Characteristics (type, average width): .
☒ Wetland fringe. Characteristics: **Wetlands abut the tributaries**.
☒ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☒ Aquatic/wildlife diversity. Explain findings: **The tributaries provide low to moderate habitat for a variety of wildlife species within the context of an urban and agricultural environment**.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Wetland size: acres
Wetland type. Explain: .
Wetland quality. Explain:**All wetlands within the review area are degraded and of low to moderate quality due to urban development and farming activities**.
Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:
Flow is: **Intermittent flow**. Explain: **Runoff from precipitation and snowmelt is the primary source of water for stream flow for wetlands A, B, C, D, E, G, J, K, L, M, N, O, P, Q, R, S, and U. Perennial flow occurs for wetland T (T-1 and T-2)**.

Surface flow is**: Discrete and confined**
Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
☒ Directly abutting
☐ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain: .
☐ Ecological connection. Explain: .
☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW
Project wetlands are **20-25** river miles from TNW.
Project waters are **5-10** aerial (straight) miles from TNW.
Flow is from: **Wetland to navigable waters.**
Estimate approximate location of wetland as within the **50 - 100-year** floodplain.

[7]Ibid.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: **Typical, shallow, wetlands, prairie streams and drainages**.

Identify specific pollutants, if known: **Pesticides, herbicides, fertilizers, salts and gravel likely enter the wetlands and tributaries along the entire project area**.

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width): .

☒ Vegetation type/percent cover. Explain:**Cropland vegetation in agricultural fields, haylands, tame grasses in urban areas, native and non-native herbaceous vegetative cover, percentages highly variable**.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings:**Wetland habitats are of low to moderate quality due to mowing of vegetation and pollutants from urban and agricultural activities**.

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **20-25**

Approximately (**4.39**) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Wetland Name	Directly abuts? (Y/N)	Size (in acres)
A	**Y**	**0.02**
B	**Y**	**0.2**
C	**Y**	**0.1**
D	**Y**	**0.08**
E	**Y**	**0.05**
G	**Y**	**0.12**
J	**Y**	**0.09**
K	**Y**	**0.03**
L	**Y**	**0.11**
M	**Y**	**0.92**
N	**Y**	**1.20**
O	**Y**	**0.06**
P	**Y**	**0.04**
Q	**Y**	**0.02**
R	**Y**	**0.02**
S	**Y**	**0.20**
T-1	**Y**	**0.25**
T-2	**Y**	**0.41**
U	**Y**	**0.47**

Summarize overall biological, chemical and physical functions being performed: **Refer to Figures 3, 4, 6, 8, 9, 10, 11, and 12. Only wetland T (T-1 and T-2), is located in a named tributary (West Branch Skunk Creek, RPW). West Branch Skunk Creek flows to Skunk Creek (RPW), then to the Big Sioux River, a TNW. The remainder of the wetlands flow through multiple unnamed tributaries, all of which flow to Skunk Creek, then to the Big Sioux River. Land use surrounding the wetlands consists of a mix of agricultural lands and urban development. The reviewed wetlands moderate the downstream transport of stormwater generated from agricultural and urban lands. Similarly, the wetlands have some capacity to capture and process pollutants associated with storm water runoff. The wetlands also provide a low to moderate level of habitat for a variety of wildlife species in an agricultural and urban environment.**

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: **The non-RPW tributaries and adjacent wetlands, identified as wetlands A, B, C, D, E, G, J, K, L, M, N, O, P, Q, R, S, and U have a significant nexus to the Big Sioux River, a TNW. Functionally, they are a part of the TNW's tributary system such that they impact the biological, physical and chemical integrity of the Big Sioux River. Land use surrounding the wetlands consists of urban and agricultural lands and moderate the downstream transport of stormwater generated from this landscape. Similarly, the wetlands have low to moderate ability to capture and process pollutants associated with stormwater runoff. The wetlands provide a low to moderate degree of habitat for a limited array of wildlife species in an urban and agricultural environment**.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: **NHD data shows West Branch Skunk Creek as a 3rd order stream and a Feature Class Code identified as H11, a perennial stream. Consultant report also states that wetland T is a permanent stream**.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☒ Tributary waters: **230** linear feet**20** width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☒ Tributary waters: **3,832** linear feet **varies from 5 to 20 feet** width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

[8]See Footnote # 3.

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **Wetland T (identified as T-1 and T-2) directly abuts West Branch Skunk Creek which is a perennial stream (based on NHD data). West Branch Skunk Creek flows to Skunk Creek which is also identified as a perennial stream (based on NHD data). Skunk Creek then flows to the Big Sioux River, a TNW.**

   ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: **0.66**acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: **Refer to Figures 3, 4, 6, 8, 9, 10, 11 and 12. Wetland A = 0.02 acres, Wetland B = 0.20 acres, Wetland C = 0.10 acres, Wetland D = 0.08 acres, Wetland E = 0.05 acres, Wetland G = 0.12 acres, Wetland J = 0.09 acres, Wetland K = 0.03 acres, Wetland L = 0.11 acres, Wetland M = 0.92 acres, Wetland N = 1.20 acres, Wetland O = 0.06 acres, Wetland P = 0.04 acres, Wetland Q = 0.02 acres, Wetland R = 0.02 acres, Wetland S = 0.20 acres, Wetland U = 0.47 acres; Total = 3.73**acres.

7. **Impoundments of jurisdictional waters.**[9]
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

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):[10]

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
   Identify type(s) of waters: .
☐ Wetlands: acres.

[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

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): .

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: **Refer to Figures 5 and 7. Isolated, non-jurisdictional wetlands include Wetland F = 0.08 acres, H = 0.19 acres and I = 0.07 acres. Total wetland acres = 0.34**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:**Provided by Applicant**.
- ☒ 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: **SD Hartford South 1:24K**.
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☒ National wetlands inventory map(s). Cite name:**Obtained through Google Earth**.
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):**Provided by consultant and accessed through Google Earth**.
  or ☐ Other (Name & Date): .
- ☐ 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: .

Figure 1. Aerial view of review area. Review area consists of a stretch of County Highway 149 approximately 5.7 miles in length and 100 feet east and west of the centerline. Review area shown in red.

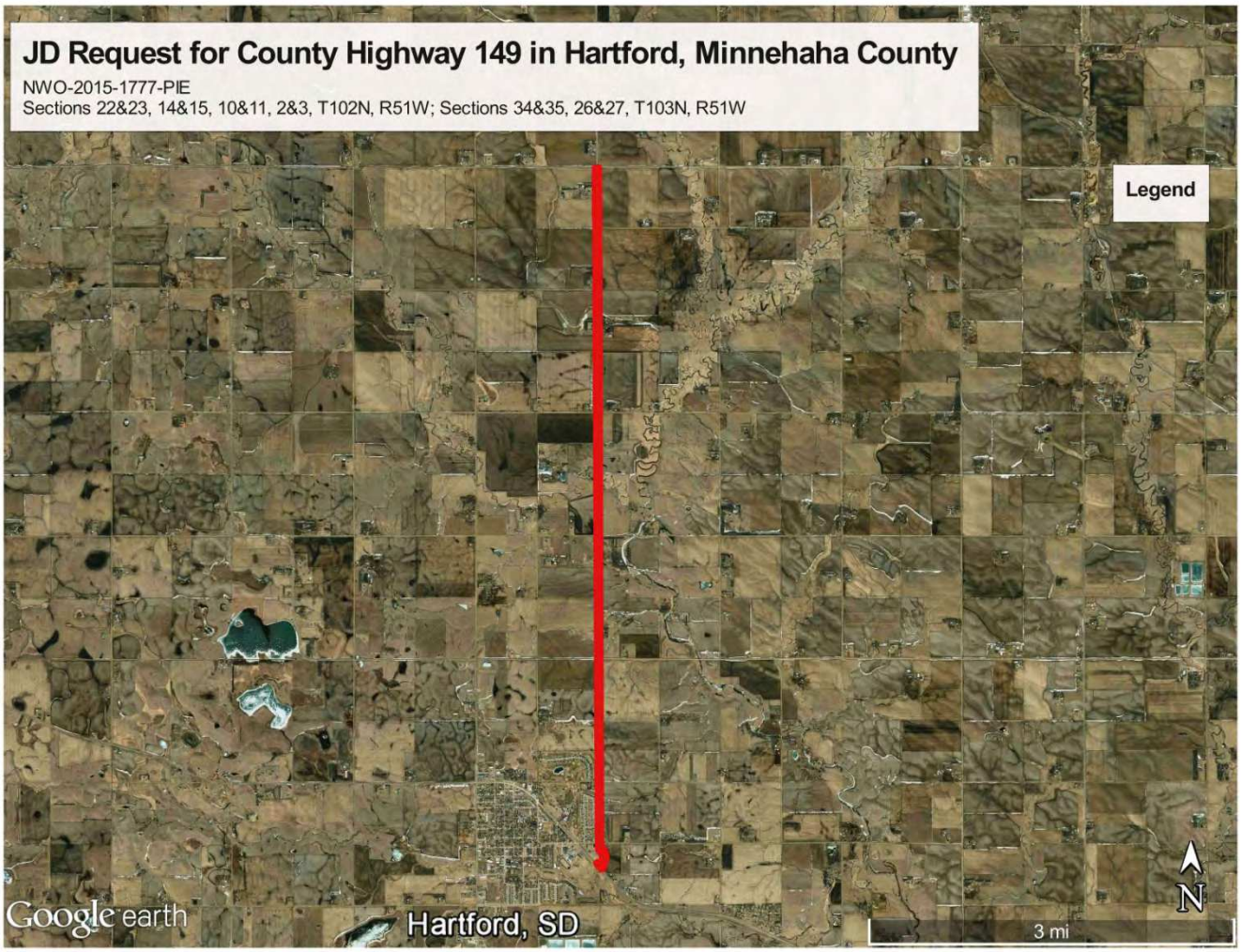

Figure 2. Topographic map of review area shown in red.

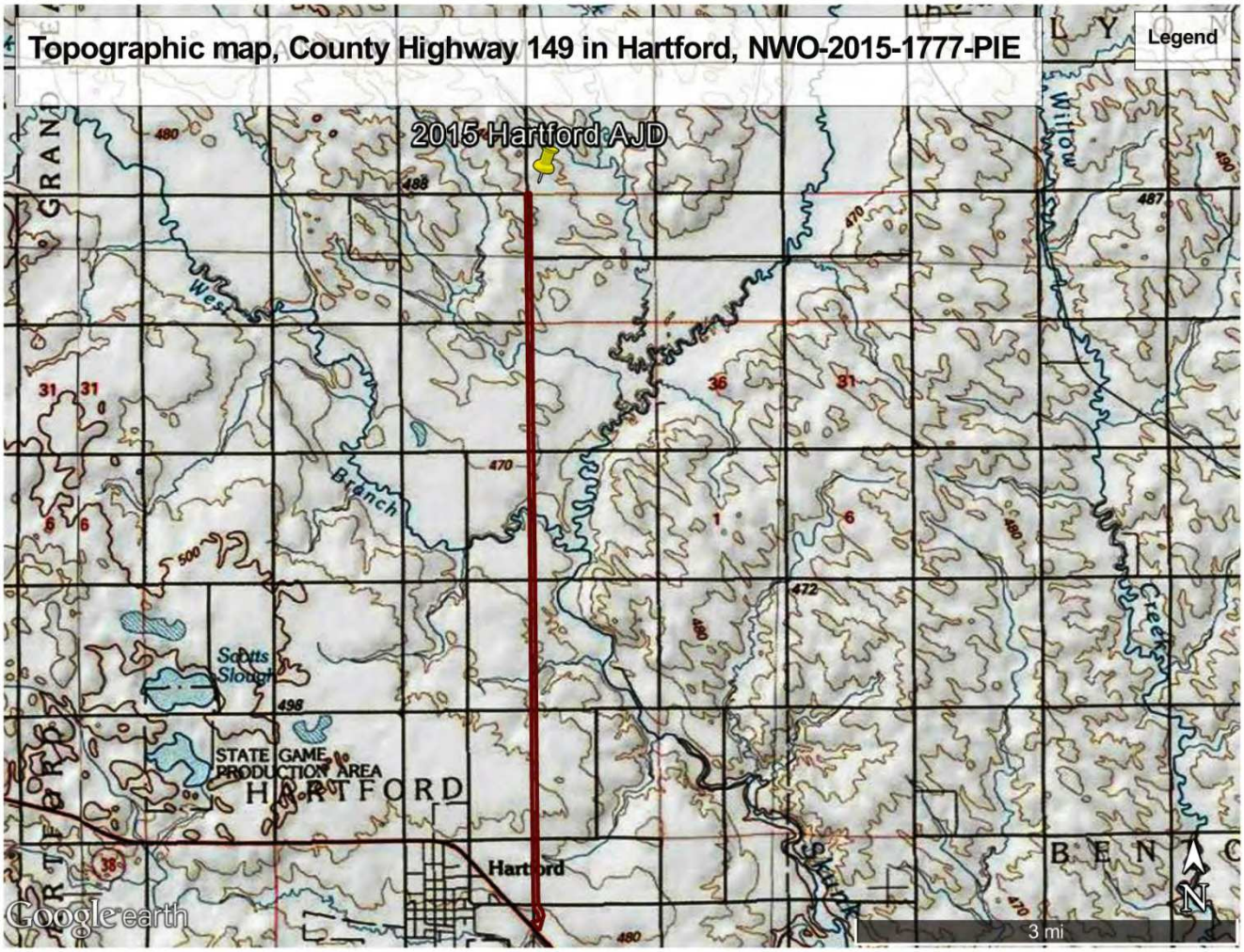

Figure 3. Aerial view of jurisdictional wetlands A, B and C .

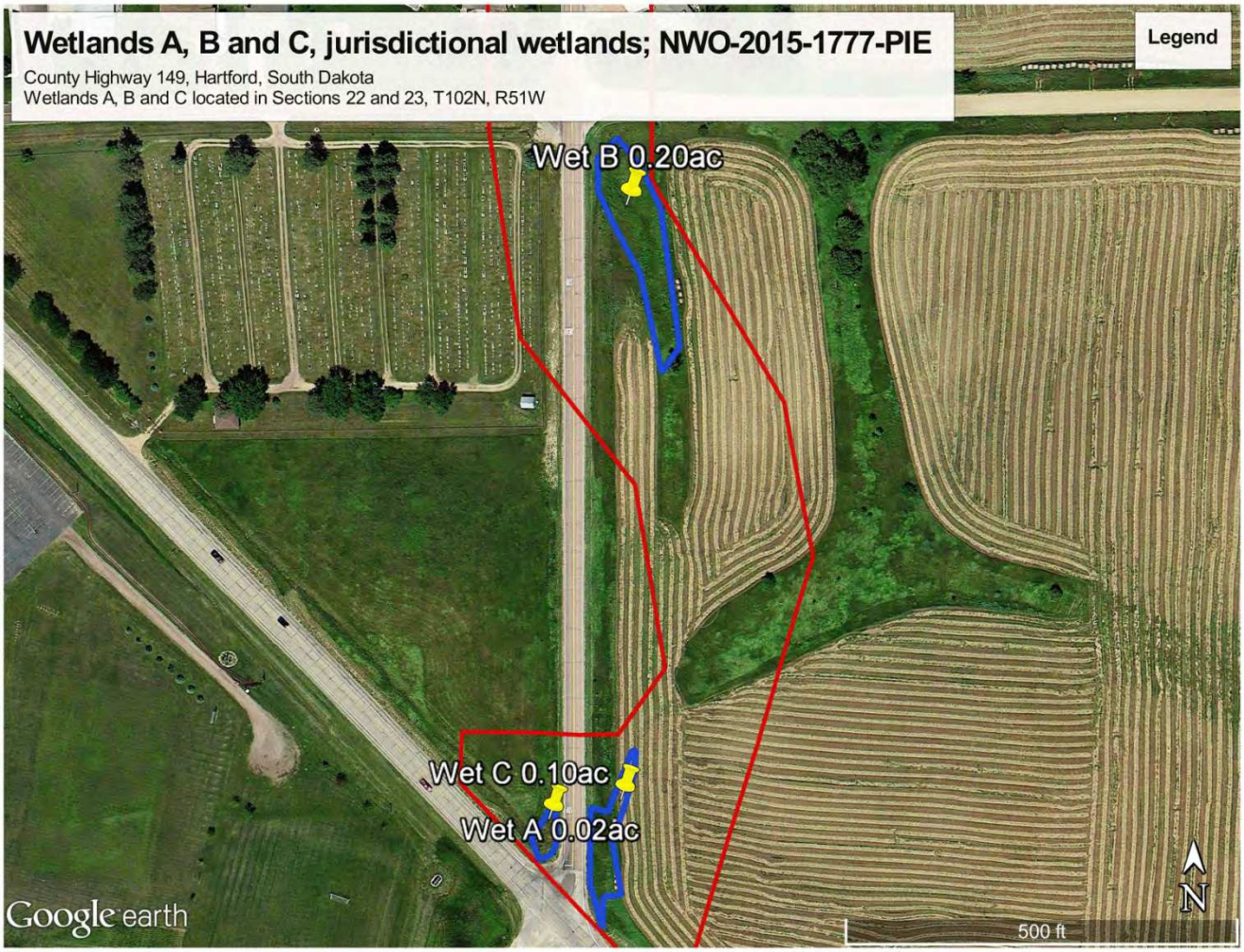

Figure 4. Aerial view of jurisdictional wetlands D and E.

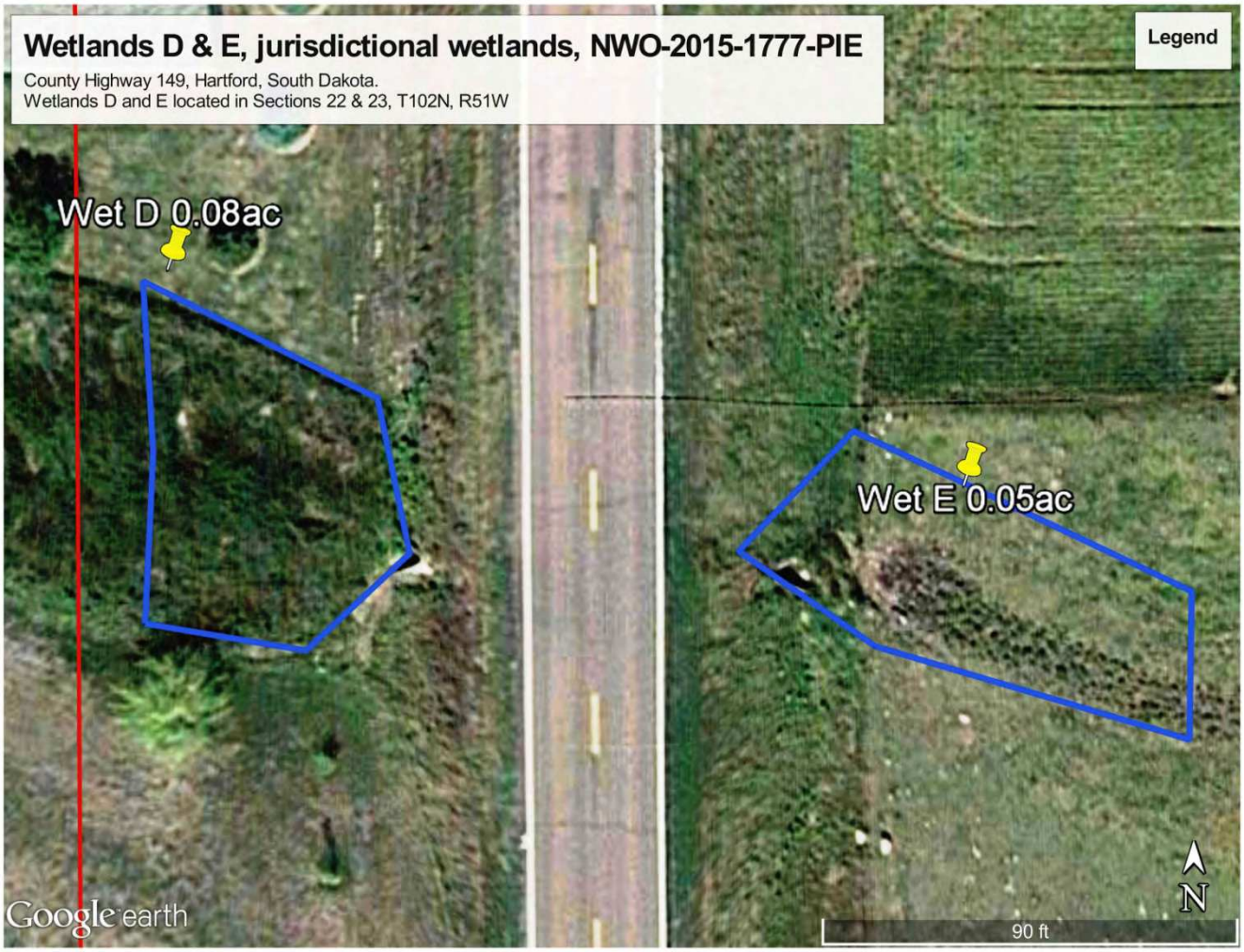

Figure 5. Aerial view of non-jurisdictional wetland F.

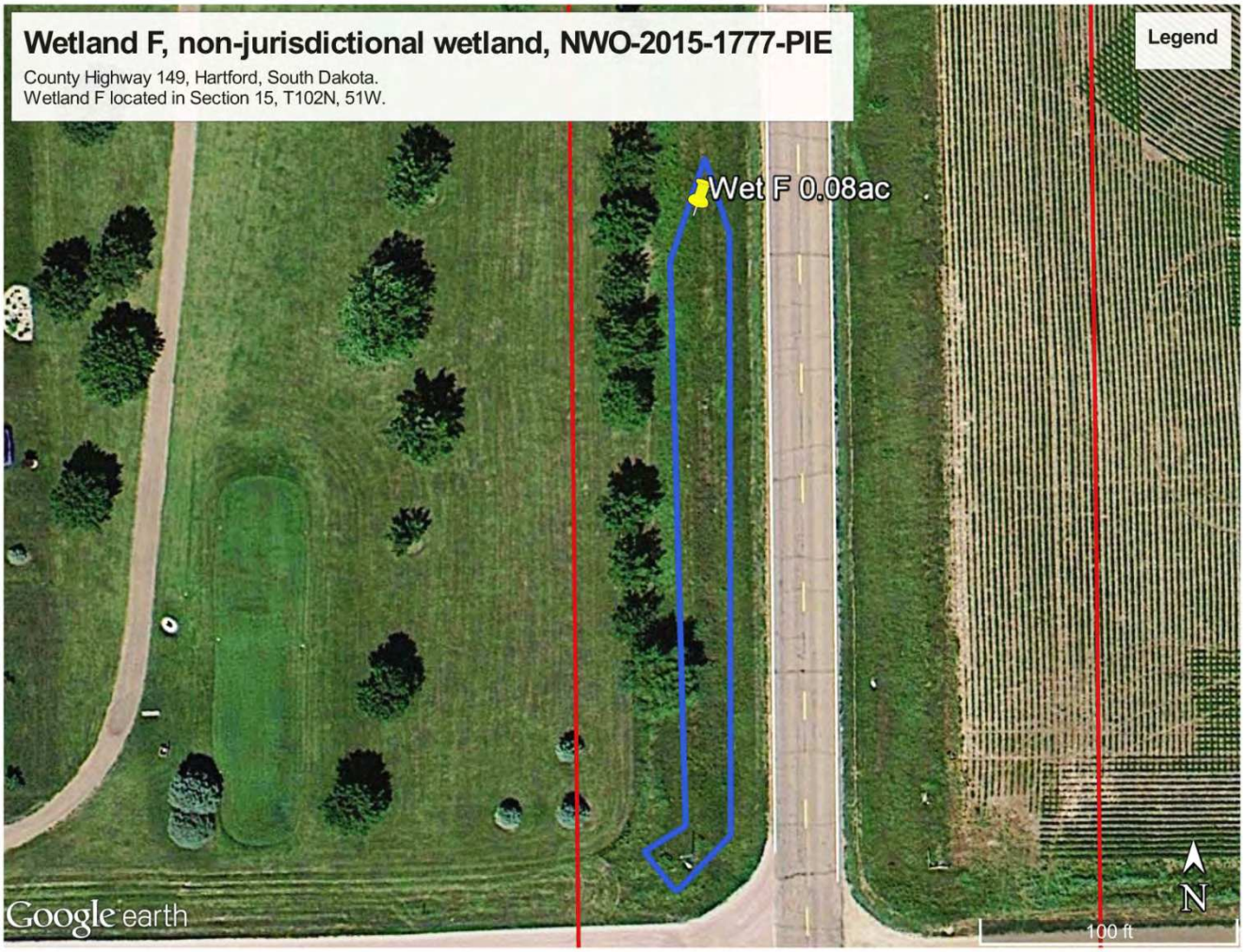

Figure 6. Aerial view of jurisdictional wetland G.

Figure 7. Aerial view of non-jurisdictional wetlands H and I.

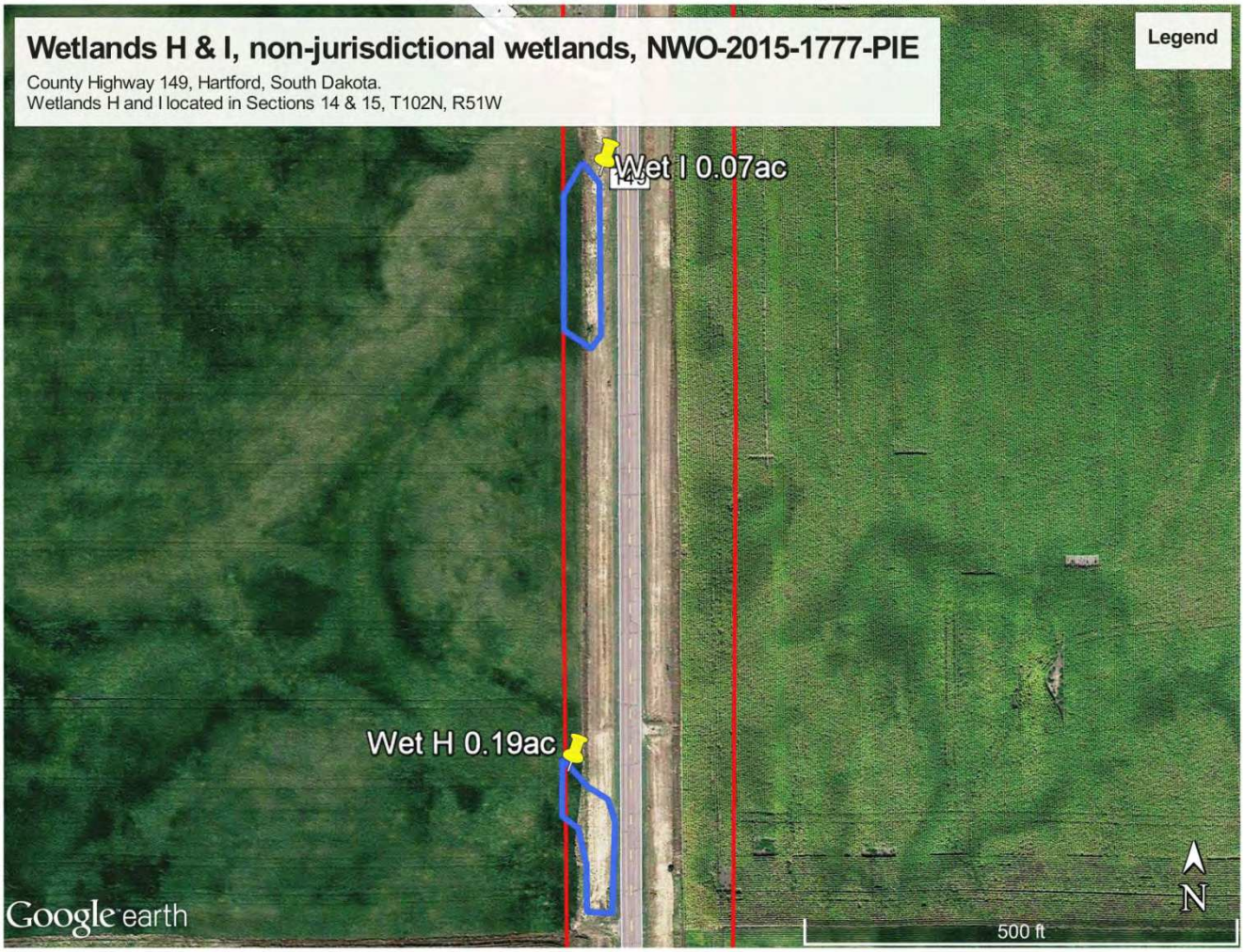

Figure 8. Aerial view of jurisdictional wetlands J, K and O.

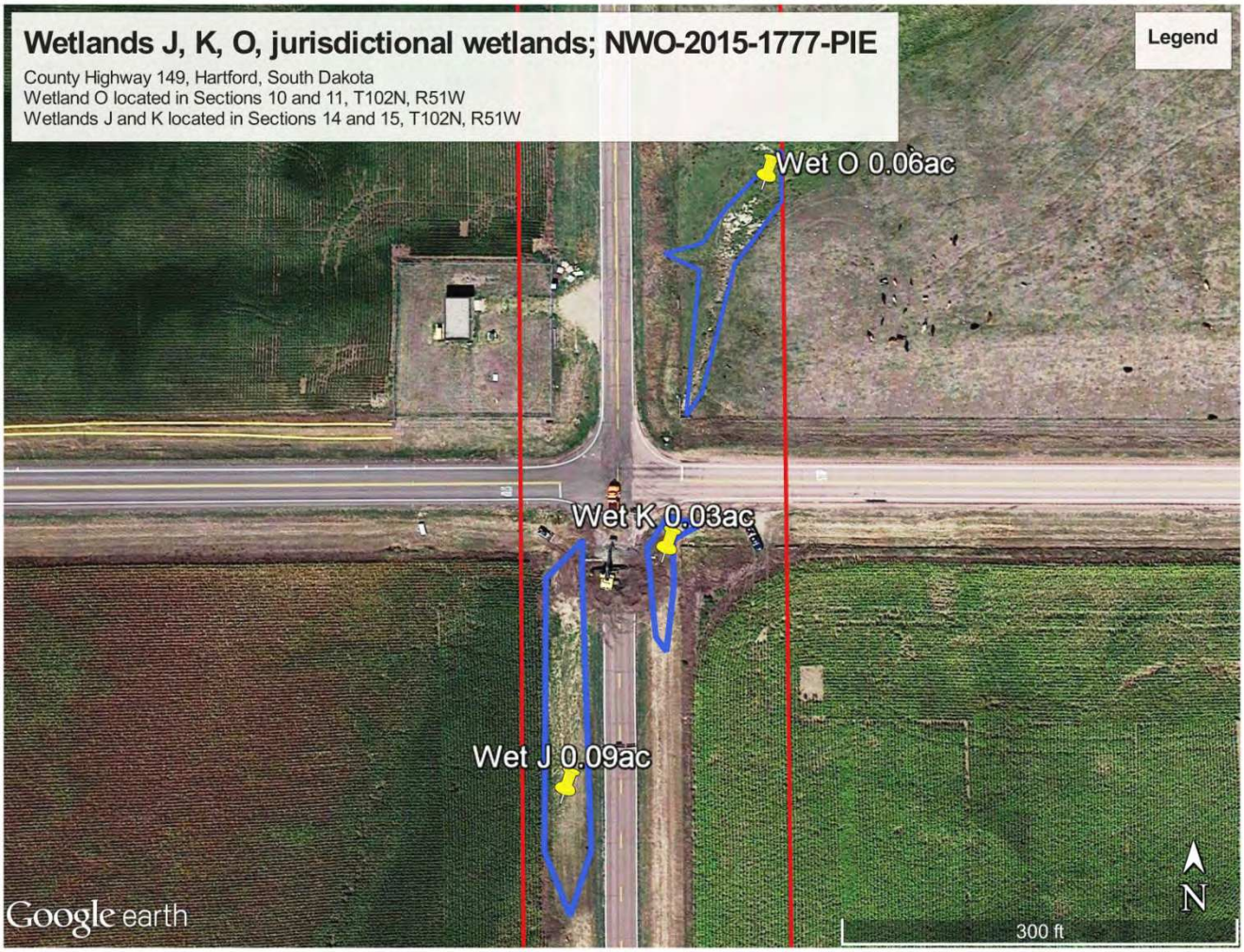

Figure 9. Aerial view of jurisdictional wetlands L and P.

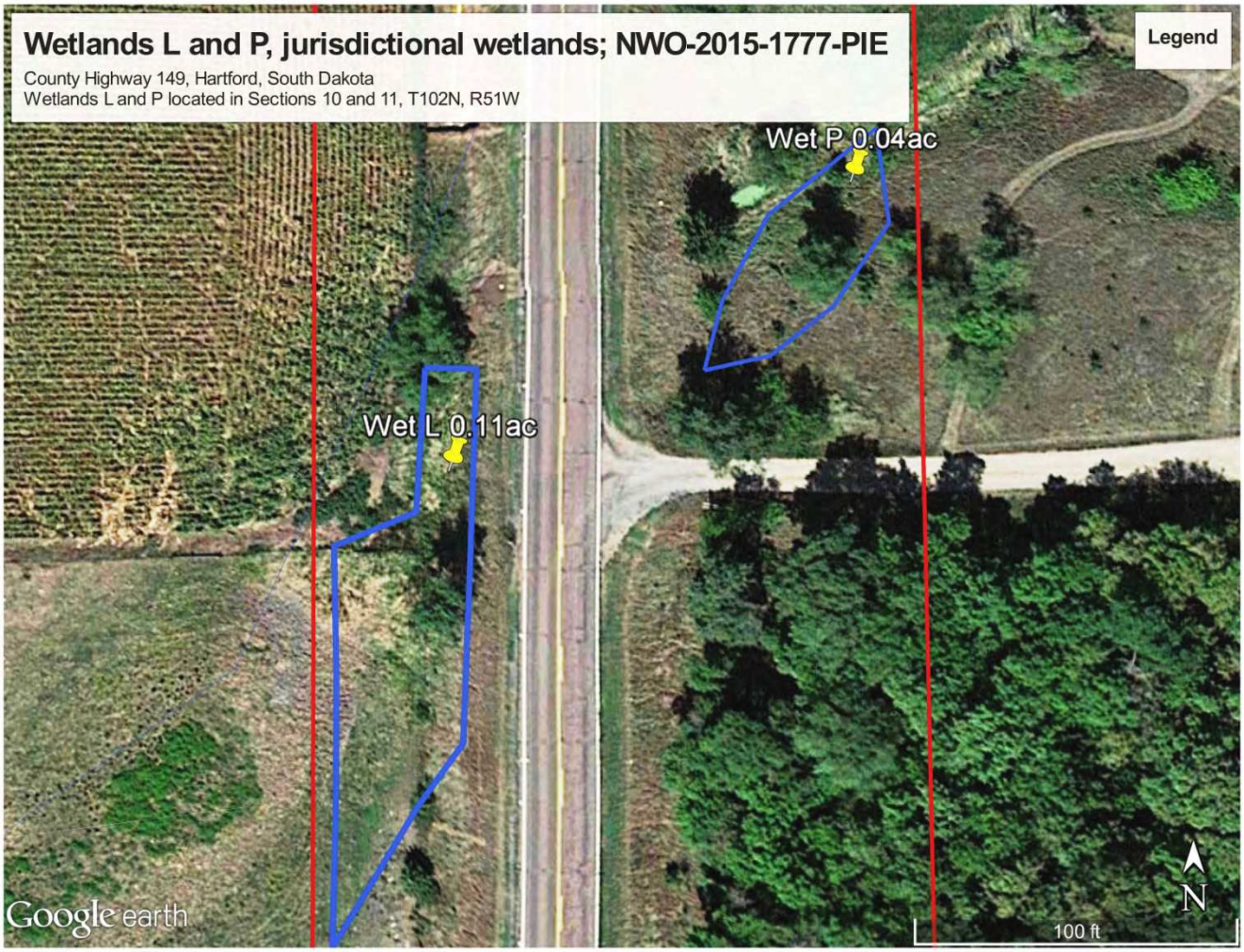

Figure 10. Aerial view of jurisdictional wetland Q.

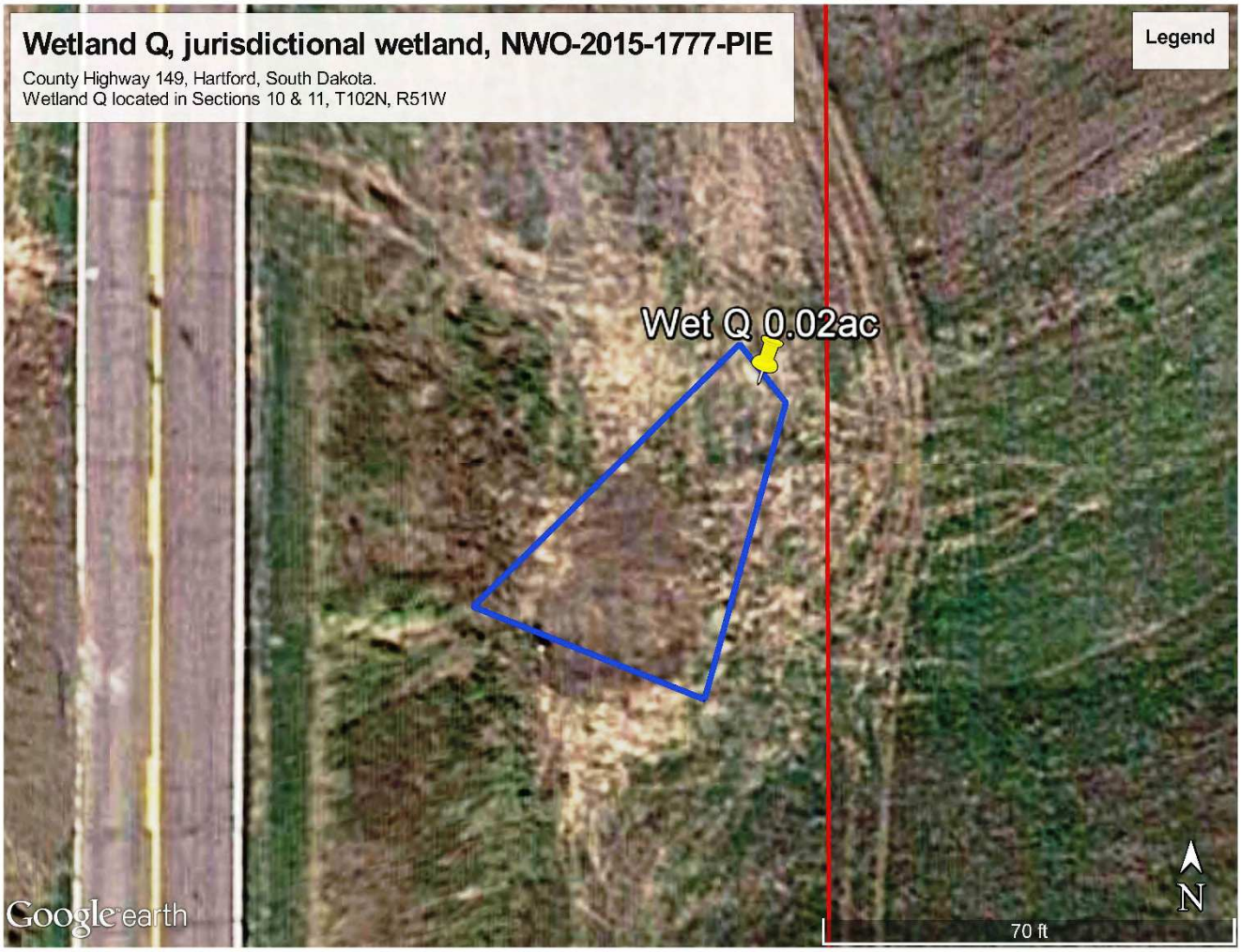

Figure 11. Aerial view of jurisdictional wetlands M, N, R, S.

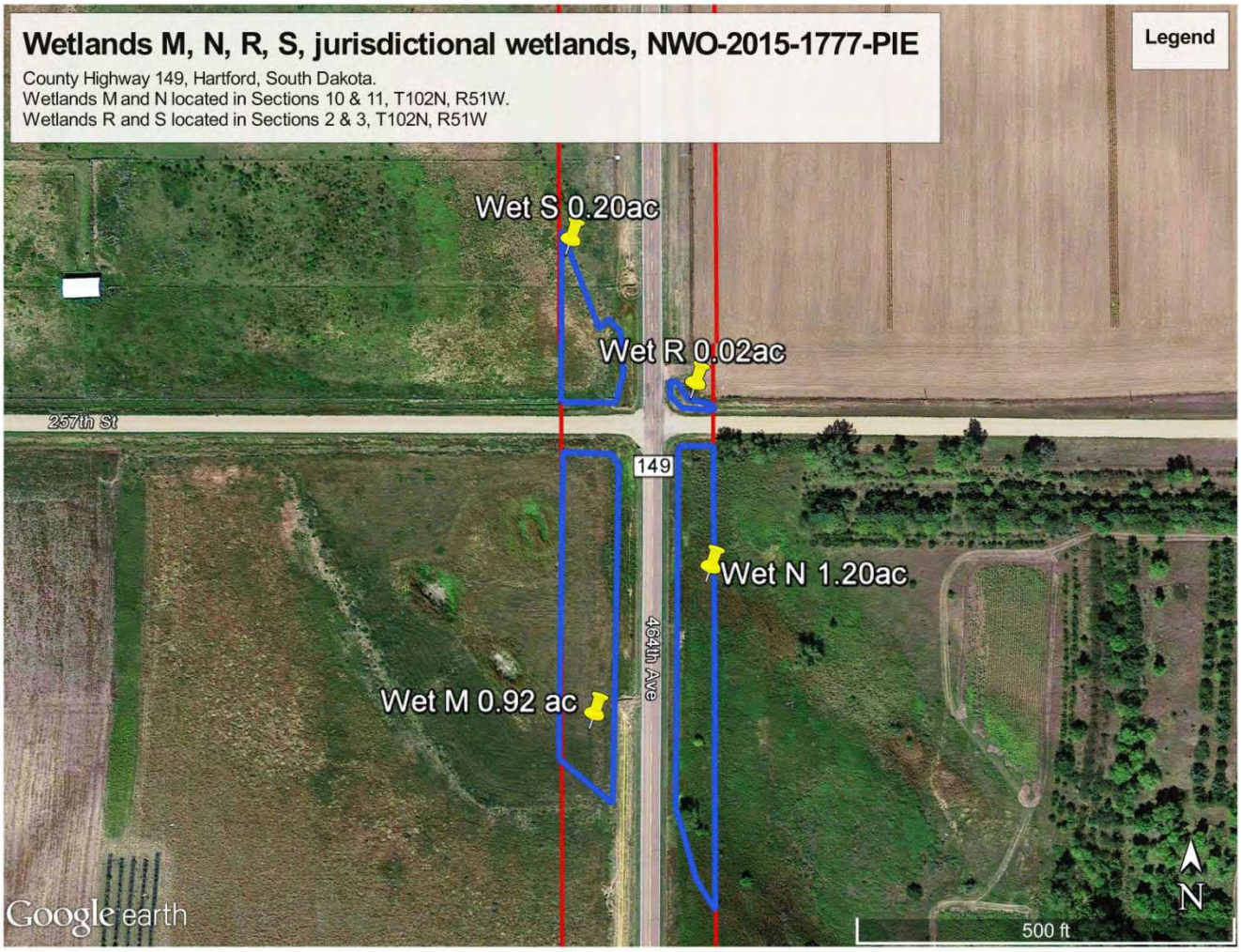

Figure 12. Aerial view of jurisdictional wetland T.

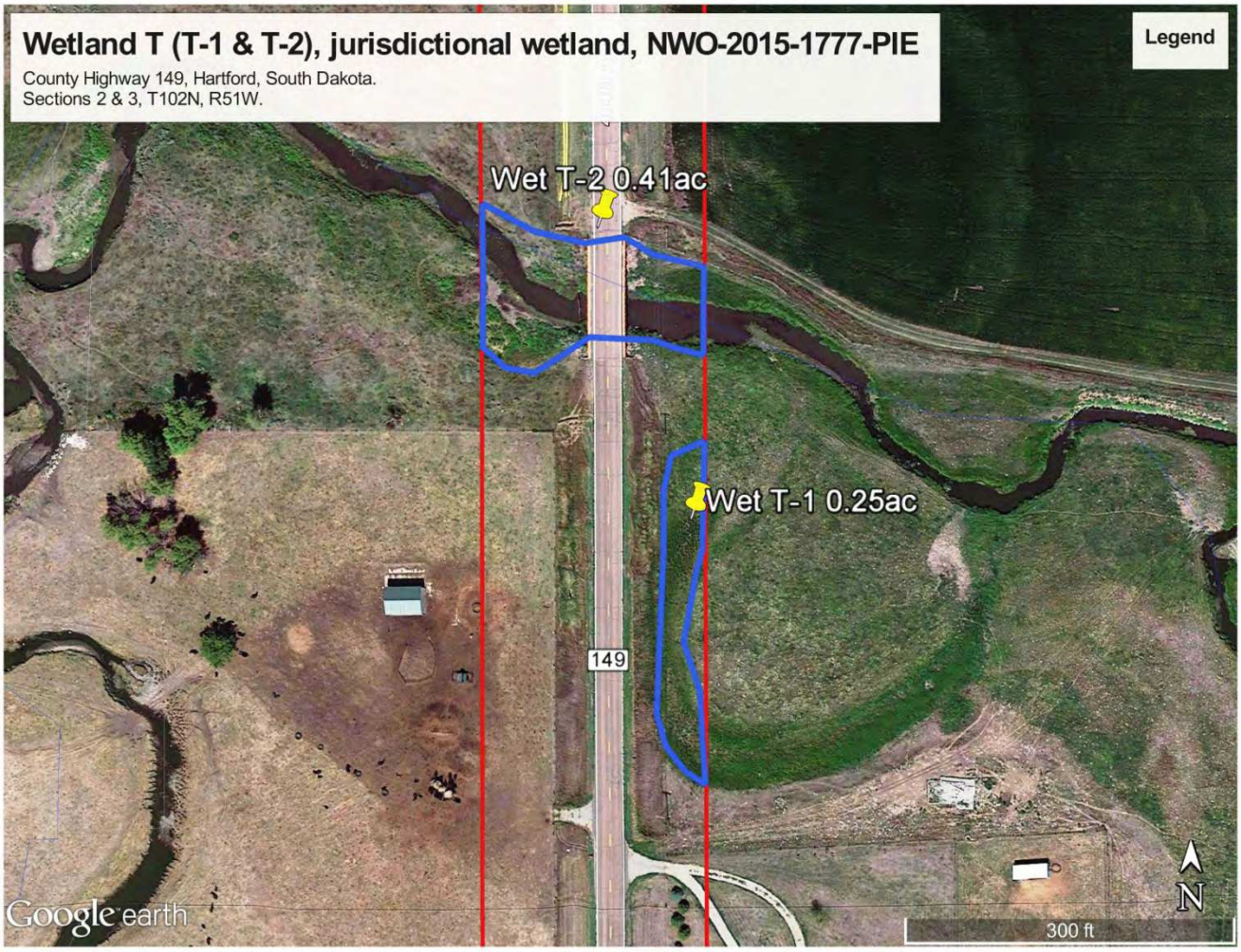

Figure 13. Aerial view of jurisdictional wetland U.

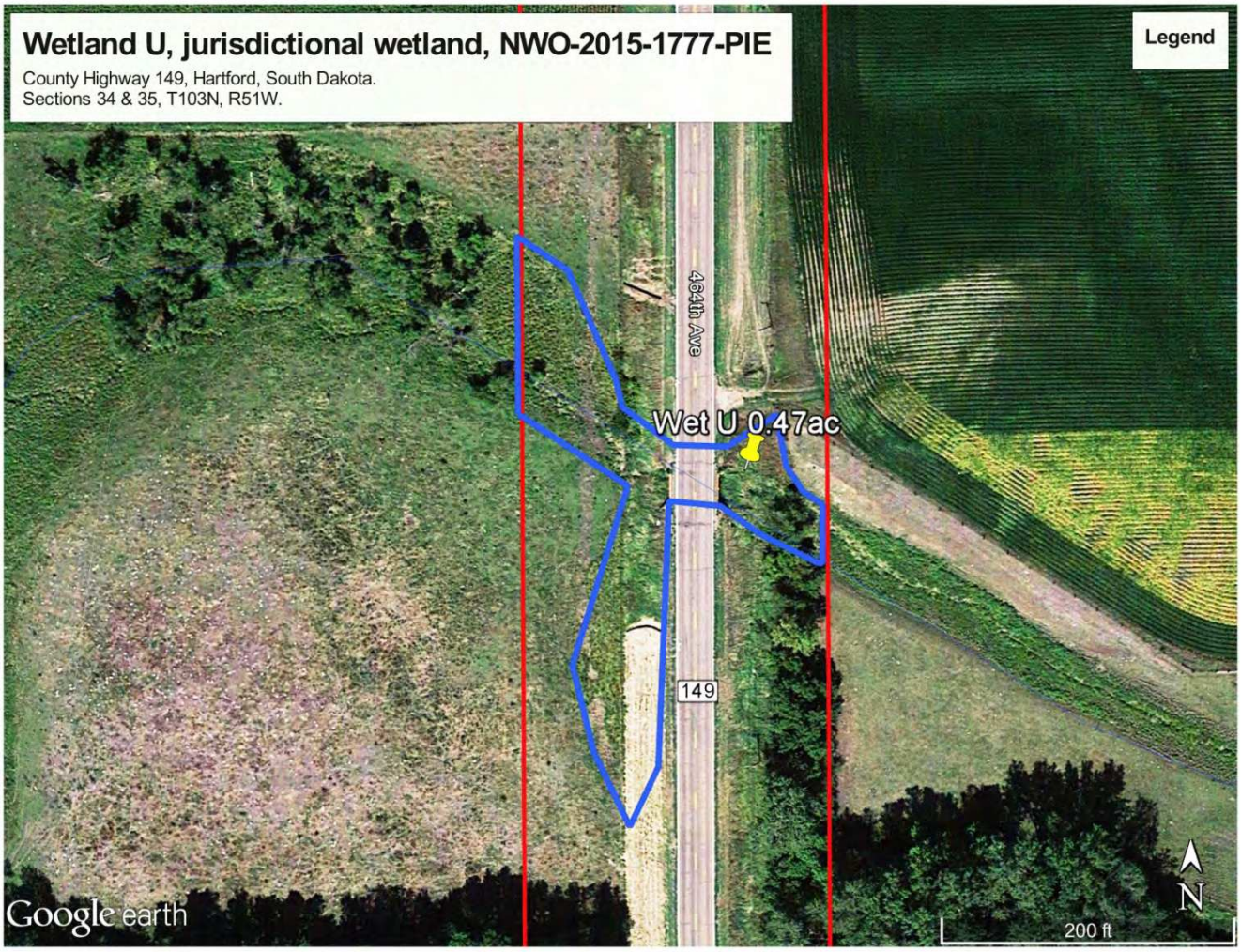

Table 1. Wetland identity, NWI label, location, size, applicable hydrogeomorphic model, and jurisdictional status for wetlands reviewed in this Jurisdictional Determination.

Wetland ID / NWI label	Latitude	Longitude	Size / HGM	Jurisdictional Determination
A / none	43.62102	-96.93039	0.02 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
B /none	43.62329	-96.92993	0.20 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
C / none	43.62099	-96.93005	0.10 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
D / none	43.62916	-96.93036	0.08 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
E / none	43.62916	-96.93008	0.05 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
F / none	43.63104	-96.93039	0.08 ac. / Depressional	Isolated wetland
G / none	43.63226	-96.93008	0.12 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
H / PEMAd	43.63856	-96.93074	0.19 ac. / Depressional	Isolated wetland
I / none	43.64024	-96.93061	0.07 ac. / Depressional	Isolated wetland
J / none	43.64492	-96.93058	0.09 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
K / none	43.64517	-96.93014	0.03 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
L / PEMA	43.64911	-96.93058	0.11 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
M / none	43.65931	-96.93053	0.92 ac. / Depressional	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
N / none	43.65934	-96.93006	1.20 ac. / Depressional	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
O / none	43.64596	-96.92996	0.06 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
P / none	43.64929	-96.93024	0.04 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
Q / none	43.65346	-96.93017	0.02 ac. / Depressional	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
R / none	43.65988	-96.93015	0.02 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
S / PEMA	43.65993	-96.93039	0.20 ac. / Depressional	Direct surface connection via non-RPW tributary to Skunk Creek (RPW)
T-1 / R4USF	43.66662	-96.93016	0.25 ac. / Linear	West Branch Skunk Creek (RPW) is a tributary to Skunk Creek (RPW)
T-2 / R4USF	43.66740	-96.93032	0.41 ac. / Linear	West Branch Skunk Creek (RPW) is a tributary to Skunk Creek (RPW)
U / PEM/FOC	43.68615	-96.93039	0.47 ac. / Linear	Direct surface connection via non-RPW tributary to Skunk Creek