



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

MVP

April 18, 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-2025-00252-SRK [MFR 1 of 1]²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- 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 5 (0.01 acre), non-jurisdictional
 - ii. Wetland 20 (0.01 acre), non-jurisdictional
 - iii. Wetland 21 (0.01 acre), non-jurisdictional
 - iv. Wetland 27 (0.06 acre), non-jurisdictional
 - v. Wetland 28 (0.03 acre), non-jurisdictional
 - vi. Wetland 29 (0.01 acre), non-jurisdictional
 - vii. Wetland Ditch D (0.01 acre), excluded feature

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 for this determination includes seven non-jurisdictional wetlands labeled as Wetlands 5, 20, 21, 27, 28 and 29 as well as one non-jurisdictional roadside ditch labeled as Wetland Ditch D on the attached figures labeled as 2025-00252-SRK Figures 1 of 10 through 10 of 10. A wetland delineation report was completed for the project site on February 14, 2025. The review area is located along an approximately 16.5-mile-long segment of Trunk Highway (TH) 28 from the City of Cyrus to the City of Starbuck, Stevens and Pope Counties, Minnesota. The approximate starting coordinates near the City of Roseau are

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Latitude: 45.607, Longitude: -95.880. There are no other JDs associated with this review area.

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 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

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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- 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

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

Wetland Ditch D is a roadside ditch constructed in upland within the TH 28 right of way based on review of the wetland delineation report and desktop resources including US Geological Service 3DEP Hillshade and DEM maps; MNDNR 2-foot contour maps; MNDNR NWI Wetland Finder/NWI maps; NHD data; and NRCS hydric soil data; and aerial imagery from Google Earth Pro. Recent aerial photos do not show relatively permanent flow. Based on the wetland delineation and desktop resources reviewed, this aquatic resource was excavated wholly in and draining only uplands and does not carry a relatively permanent flow and, according to exclusion (b)(3) of the 2023 Rule, as amended, is not a water of the United States.

- 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).

Wetlands 5, 20, 21, 27, 28 and 29 are not a traditionally navigable waters (TNW), territorial seas, or interstate waters and therefore are not (a)(1) waters. The wetland delineation and desktop resources, including topographic maps, LiDAR imagery, and Google Earth aerial imagery indicate that Wetlands 5, 12, 20, 21,

⁸ 88 FR 3004 (January 18, 2023)

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27, 28 and 29 are depressional basins surrounded entirely by upland and non-jurisdictional roadside ditches with no continuous surface connection to jurisdictional waters. The wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary.

Wetland 5 extends past the project review area but was evaluated in its entirety. Wetland 5, in its entirety has no surface connection to a jurisdictional water and is approximately 1.36 miles from the nearest relatively permanent water, Roseau Creek, located to the West of the project corridor.

Wetland 20 is approximately 1.37 miles from the nearest relatively permanent water, Little Chippewa Creek, located to the East of the project corridor.

Wetland 21 is approximately 1.37 miles from the nearest relatively permanent water, Little Chippewa River, located to the East of the project corridor.

Wetlands 27 and 28 are wetlands located within the same topographic area along TH 28. These wetlands are surrounded by uplands or other non-jurisdictional waters and do not have a direct hydrologic surface connection to potential downstream waters. NHD data includes a relict tributary feature that is mapped within this topographic area and continues southeast to Outlet Creek. However, based on the delineation, there is no longer a defined tributary channel within this area and all these wetlands are physically separated from the Outlet Creek by several upland breaks within the agricultural fields on the south side of the highway.

Wetland 29 is approximately 0.69 miles from the nearest relatively permanent water, Outlet Creek, located to the South of the project corridor.

These wetlands are non-tidal wetlands that do 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 an (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.

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. MnDOT District 4 wetland delineation report dated February 2025.

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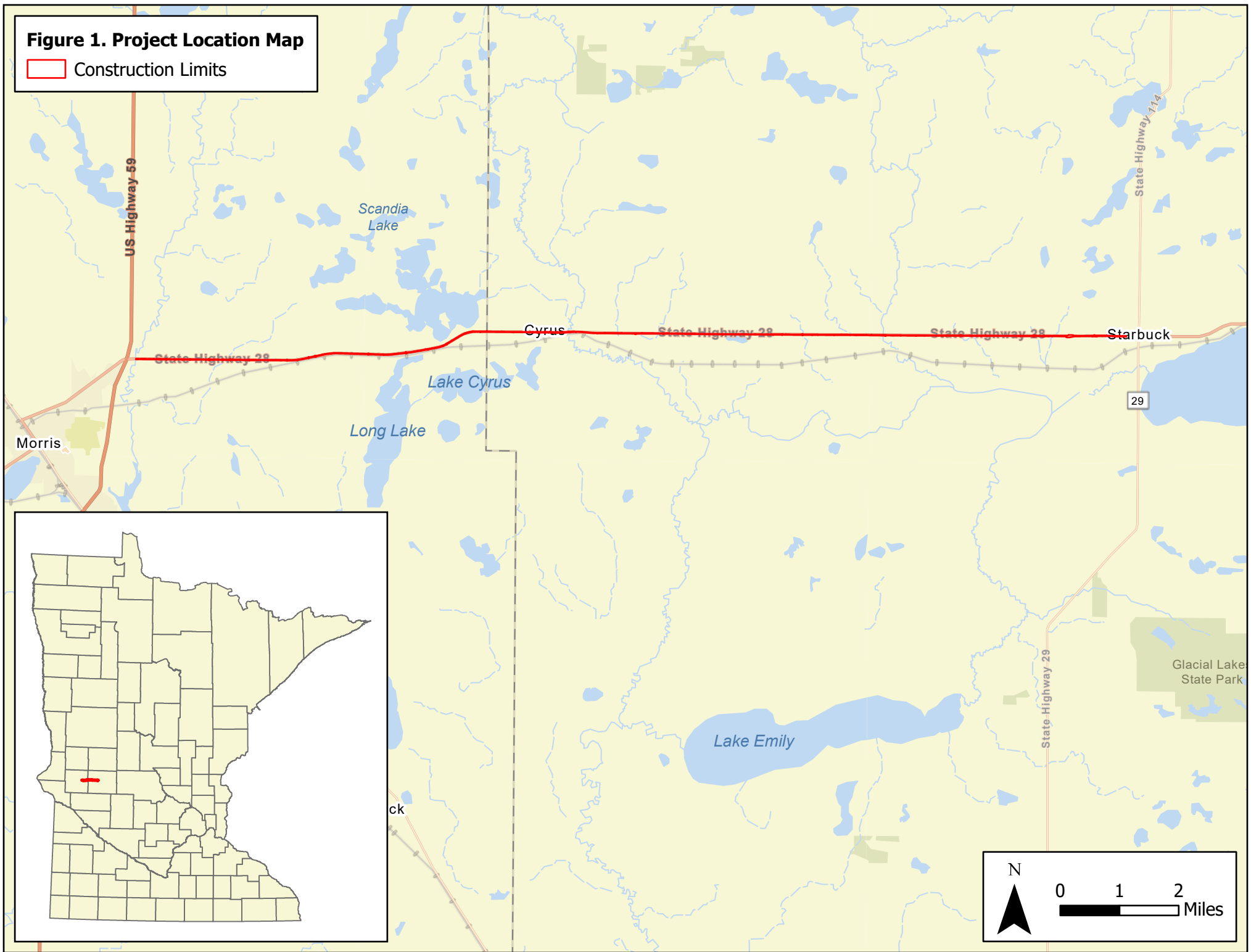
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- b. Desktop evaluation conducted April 3, 2025
- c. USGS LiDAR, 3DEP Elevation Model, USGS TNM – National Hydrography Dataset, USFWS NWI Maps, and USDA/NRCS Soil Survey Map

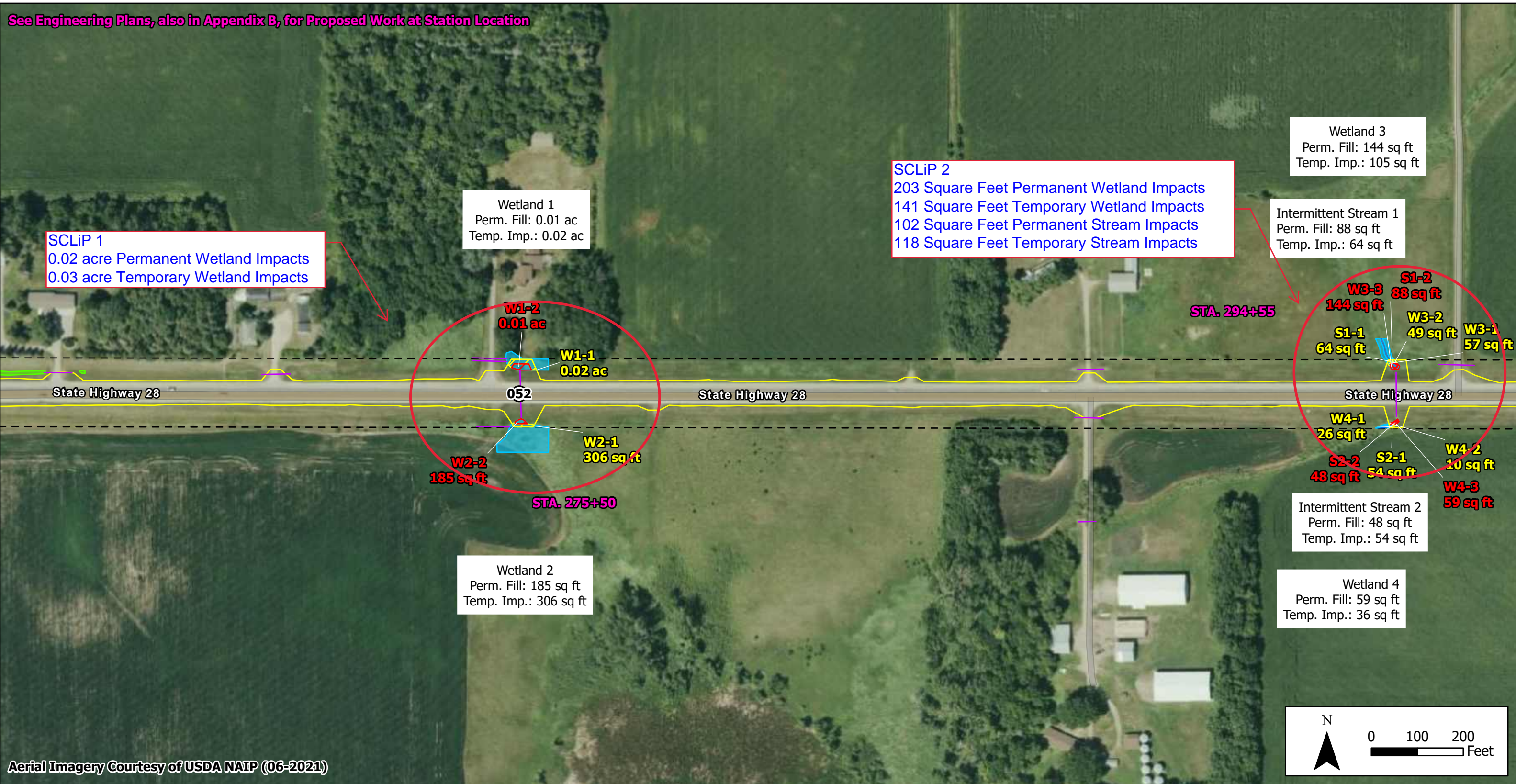
10. OTHER SUPPORTING INFORMATION. N/A

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.

Figure 1. Project Location Map
Construction Limits



See Engineering Plans, also in Appendix B, for Proposed Work at Station Location



SCLiP 1
 0.02 acre Permanent Wetland Impacts
 0.03 acre Temporary Wetland Impacts

Wetland 1
 Perm. Fill: 0.01 ac
 Temp. Imp.: 0.02 ac

SCLiP 2
 203 Square Feet Permanent Wetland Impacts
 141 Square Feet Temporary Wetland Impacts
 102 Square Feet Permanent Stream Impacts
 118 Square Feet Temporary Stream Impacts

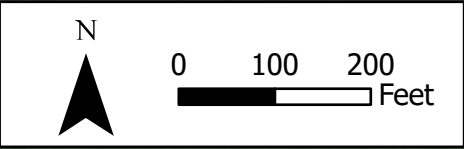
Wetland 3
 Perm. Fill: 144 sq ft
 Temp. Imp.: 105 sq ft

Intermittent Stream 1
 Perm. Fill: 88 sq ft
 Temp. Imp.: 64 sq ft

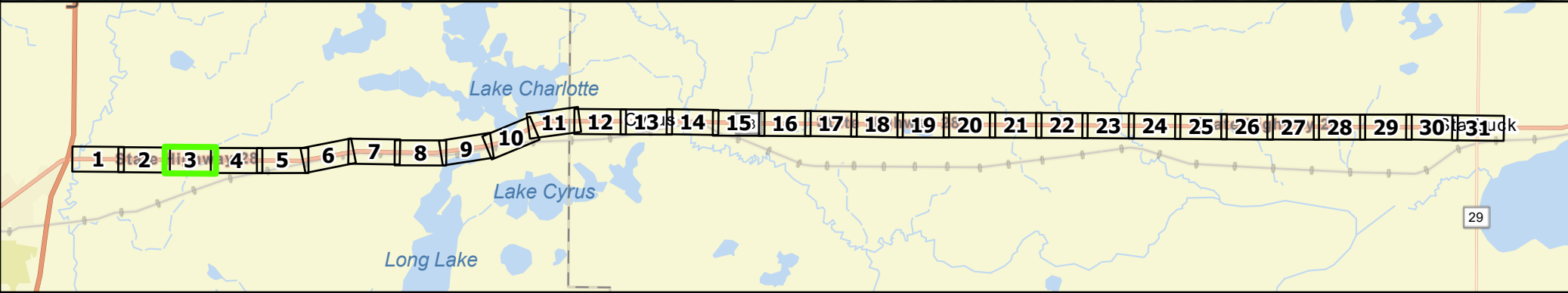
Wetland 2
 Perm. Fill: 185 sq ft
 Temp. Imp.: 306 sq ft

Intermittent Stream 2
 Perm. Fill: 48 sq ft
 Temp. Imp.: 54 sq ft

Wetland 4
 Perm. Fill: 59 sq ft
 Temp. Imp.: 36 sq ft



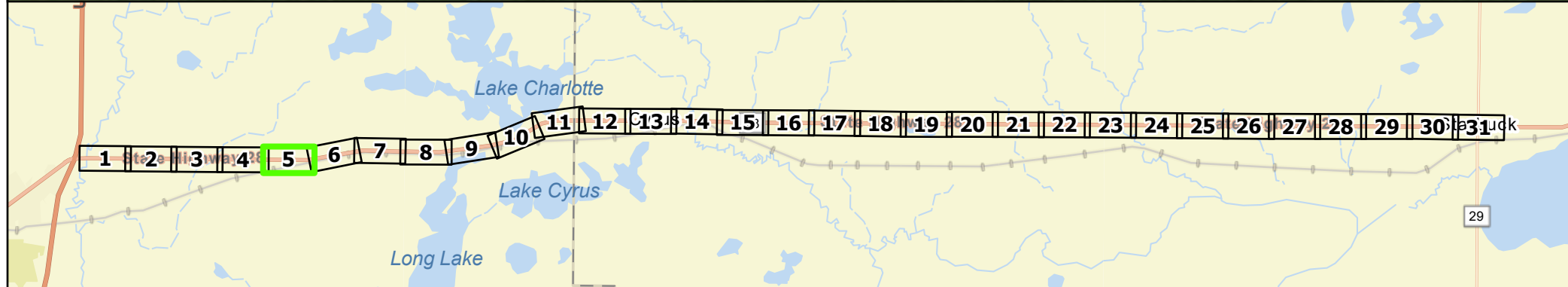
Aerial Imagery Courtesy of USDA NAIP (06-2021)



Wetland Impacts - 3 of 31

Reference Posts	Permanent Fill	Level 1 Delineated Features
Pipes	Permanent Cut	Stream
MnDOT Right of Way	Temporary Impact	Wetland

See Engineering Plans, also in Appendix B, for Proposed Work at Station Location

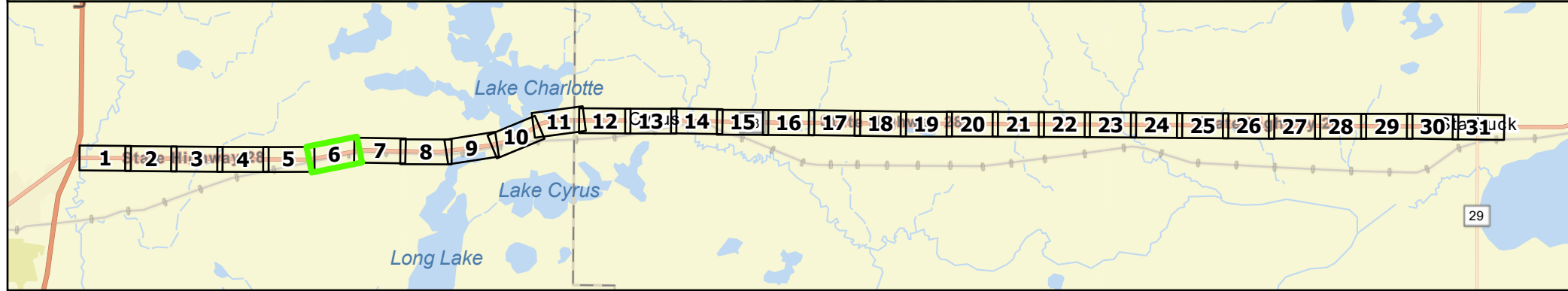
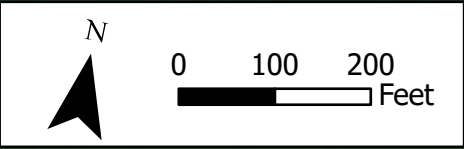
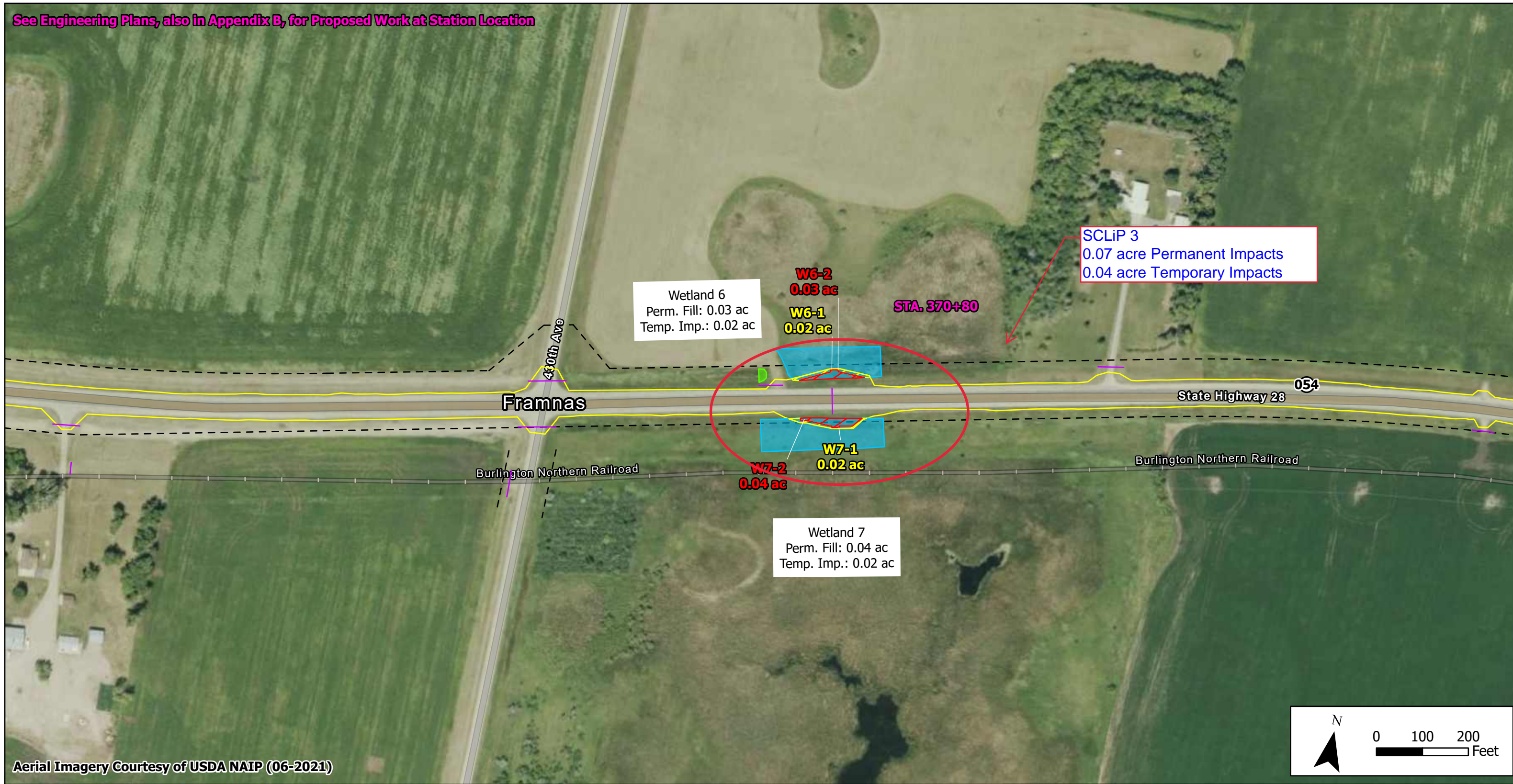


Wetland Impacts - 5 of 31

○ Reference Posts	▨ Permanent Fill	Level 1 Delineated Features
— Pipes	▨ Permanent Cut	▨ Wetland Ditch
--- MnDOT Right of Way	▨ Temporary Impact	▨ Stream
		▨ Wetland

Aerial Imagery Courtesy of USDA NAIP (06-2021)

See Engineering Plans, also in Appendix B, for Proposed Work at Station Location



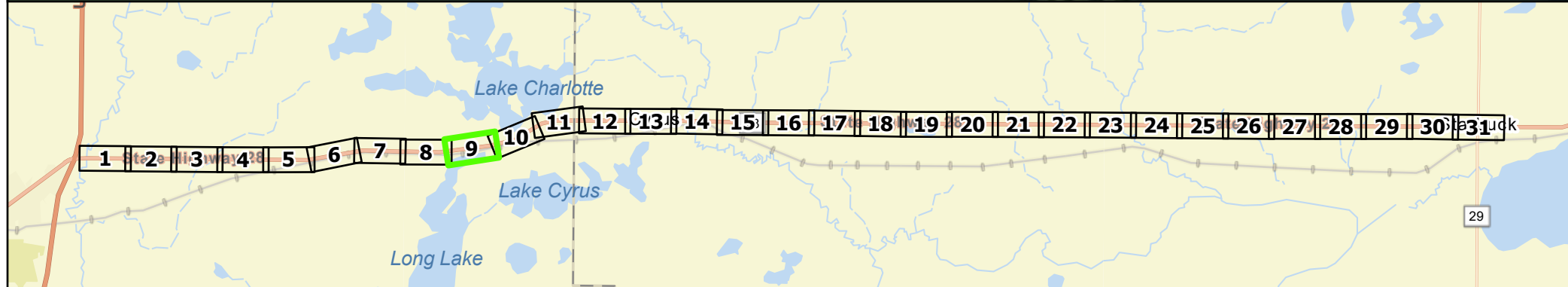
Wetland Impacts - 6 of 31

○ Reference Posts	▨ Permanent Fill	Level 1 Delineated Features
— Pipes	▨ Permanent Cut	▨ Wetland Ditch
--- MnDOT Right of Way	▨ Temporary Impact	▨ Stream
		▨ Wetland

See Engineering Plans, also in Appendix B, for Proposed Work at Station Location



Aerial Imagery Courtesy of USDA NAIP (06-2021)



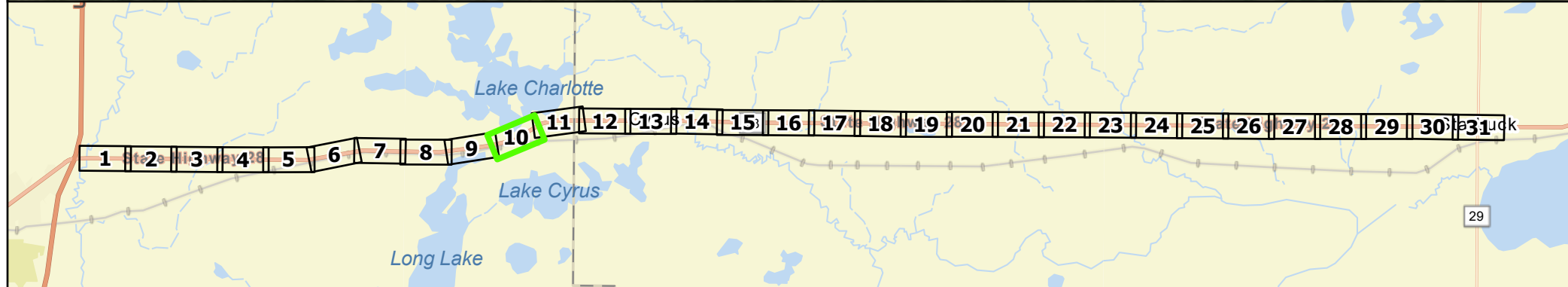
Wetland Impacts - 9 of 31

○ Reference Posts	▨ Permanent Fill	Level 1 Delineated Features
— Pipes	▨ Permanent Cut	▨ Wetland Ditch
--- MnDOT Right of Way	▨ Temporary Impact	▨ Stream
		▨ Wetland

See Engineering Plans, also in Appendix B, for Proposed Work at Station Location



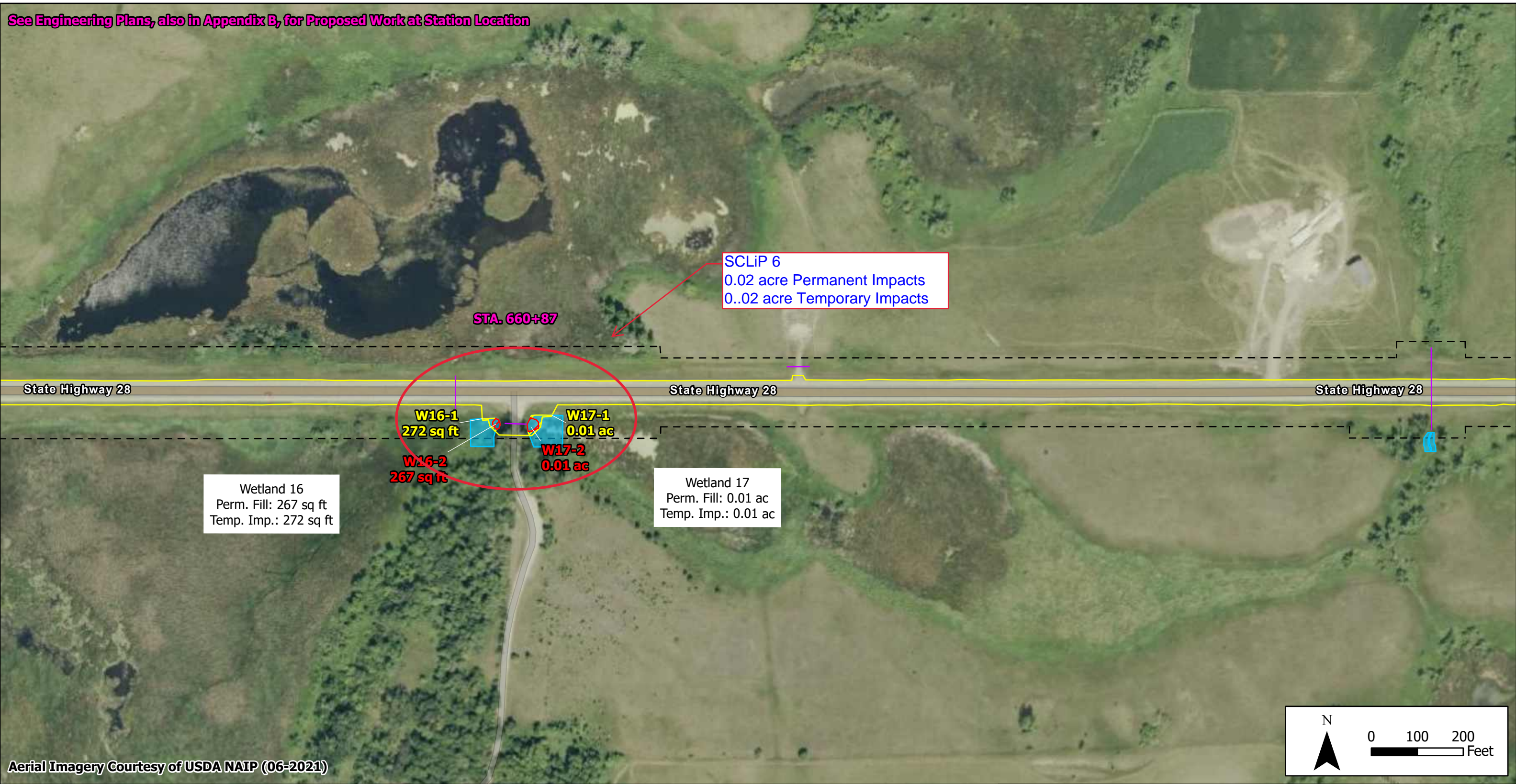
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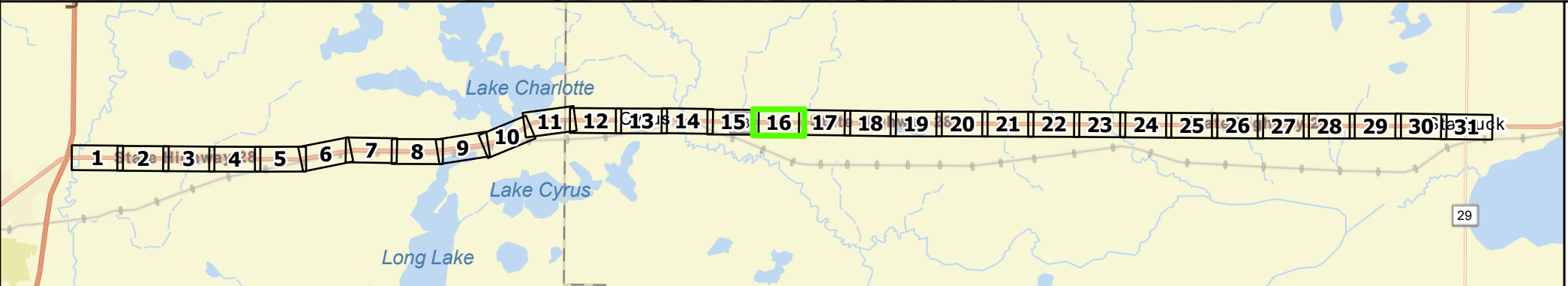
Wetland Impacts - 10 of 31

○ Reference Posts	▨ Permanent Fill	Level 1 Delineated Features
— Pipes	▨ Permanent Cut	▨ Wetland Ditch
--- MnDOT Right of Way	▨ Temporary Impact	▨ Stream
		▨ Wetland

See Engineering Plans, also in Appendix B, for Proposed Work at Station Location



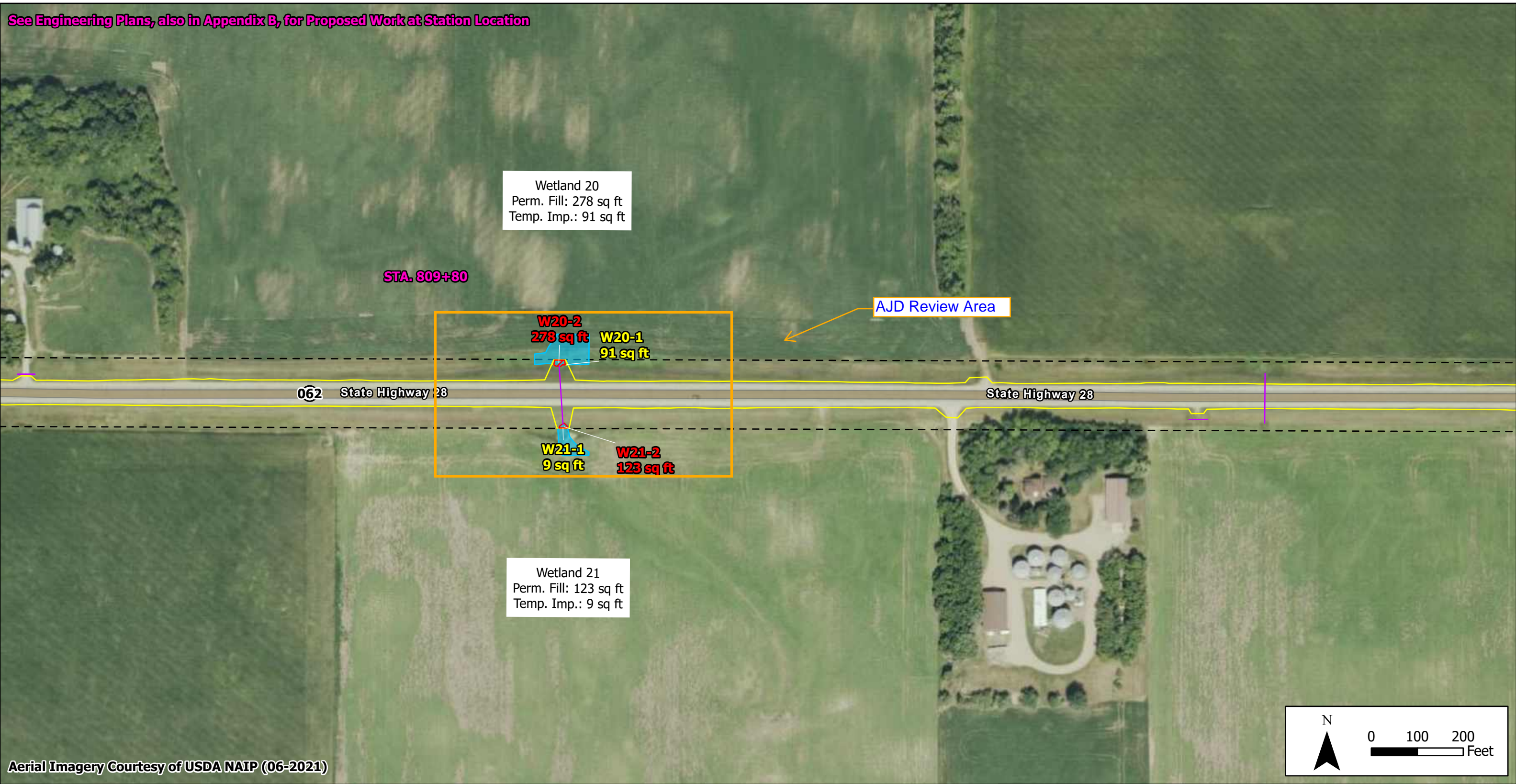
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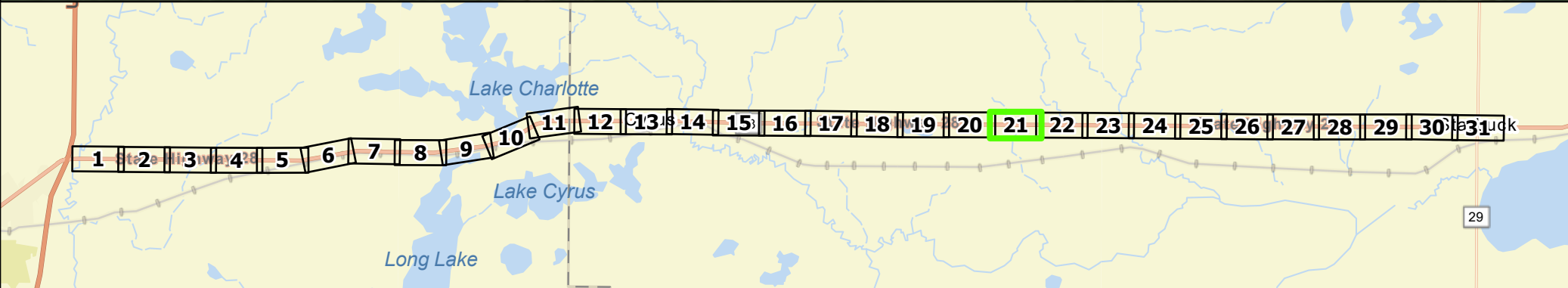
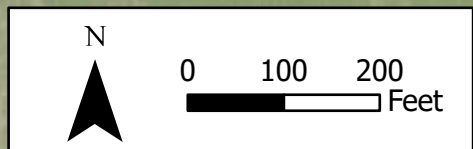
Wetland Impacts - 16 of 31

○ Reference Posts	▨ Permanent Fill	Level 1 Delineated Features
— Pipes	▨ Permanent Cut	▨ Wetland Ditch
--- MnDOT Right of Way	▨ Temporary Impact	▨ Stream
		▨ Wetland

See Engineering Plans, also in Appendix B, for Proposed Work at Station Location



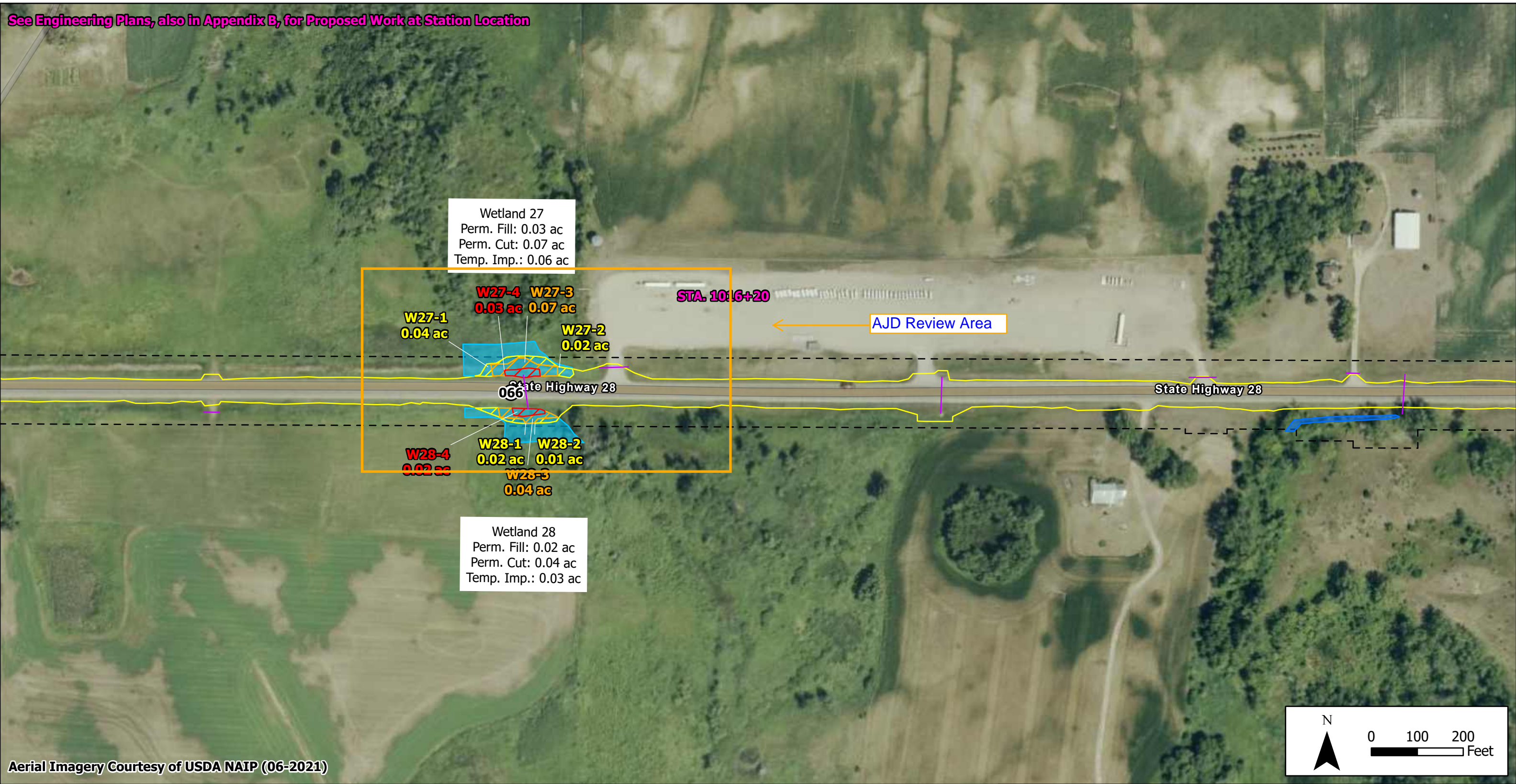
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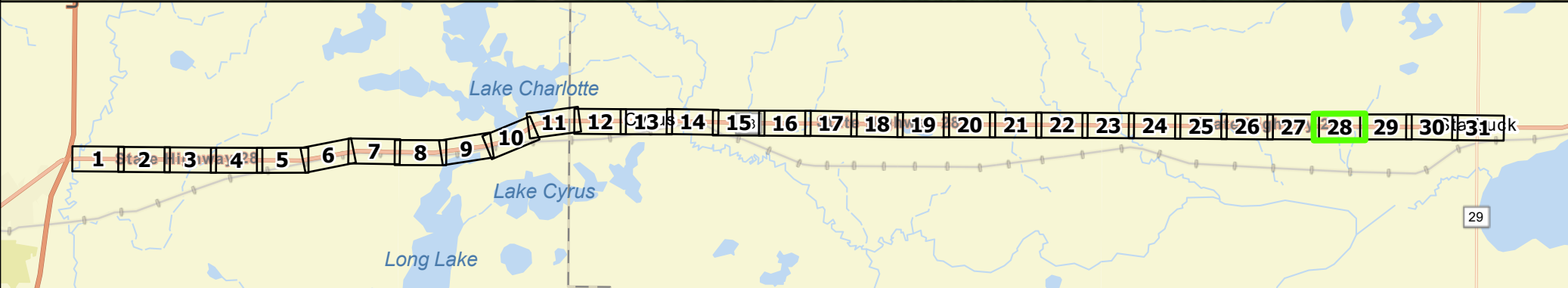
Wetland Impacts - 21 of 31

○ Reference Posts	▨ Permanent Fill	Level 1 Delineated Features
— Pipes	▨ Permanent Cut	▨ Wetland Ditch
--- MnDOT Right of Way	▨ Temporary Impact	▨ Stream
		▨ Wetland

See Engineering Plans, also in Appendix B, for Proposed Work at Station Location



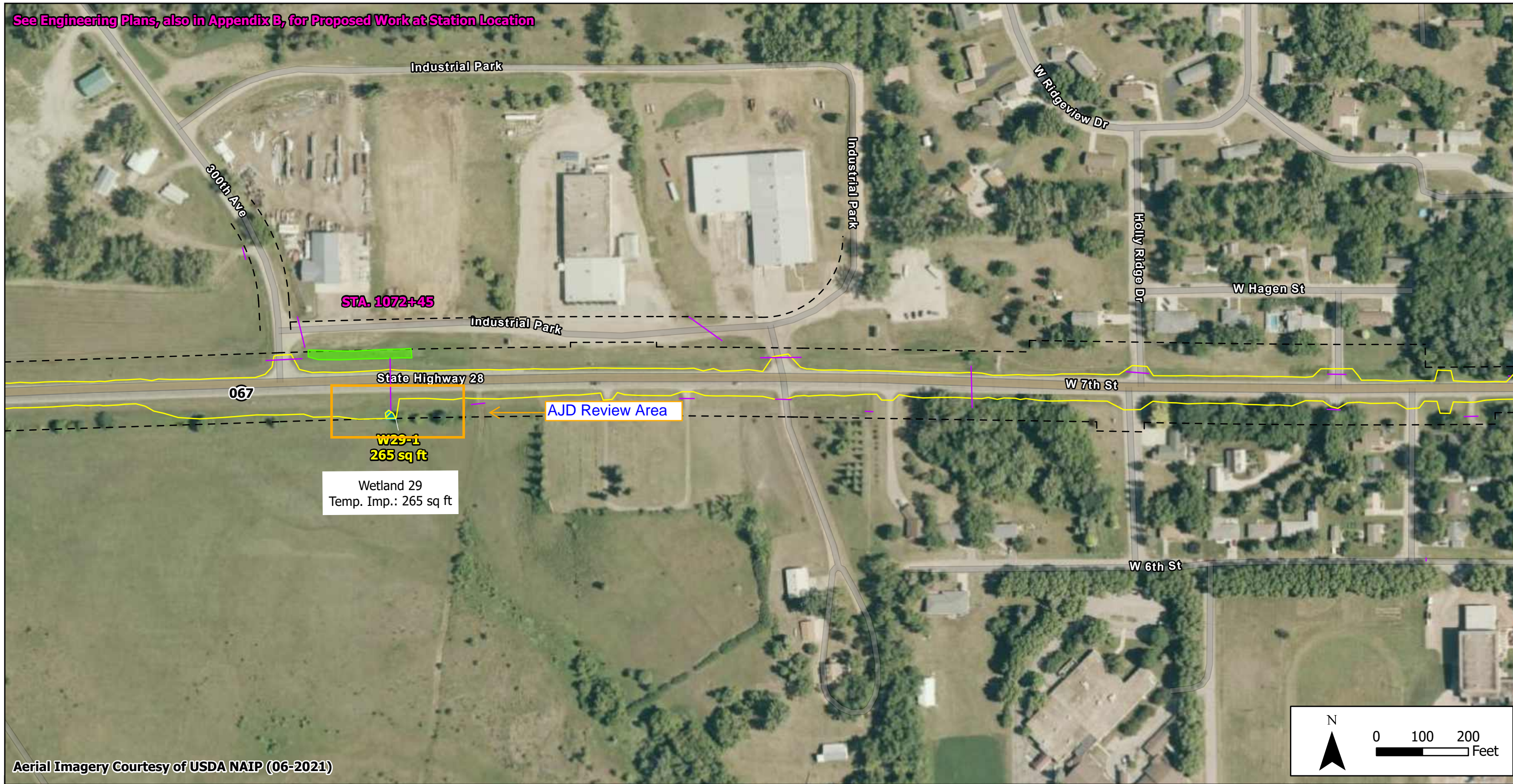
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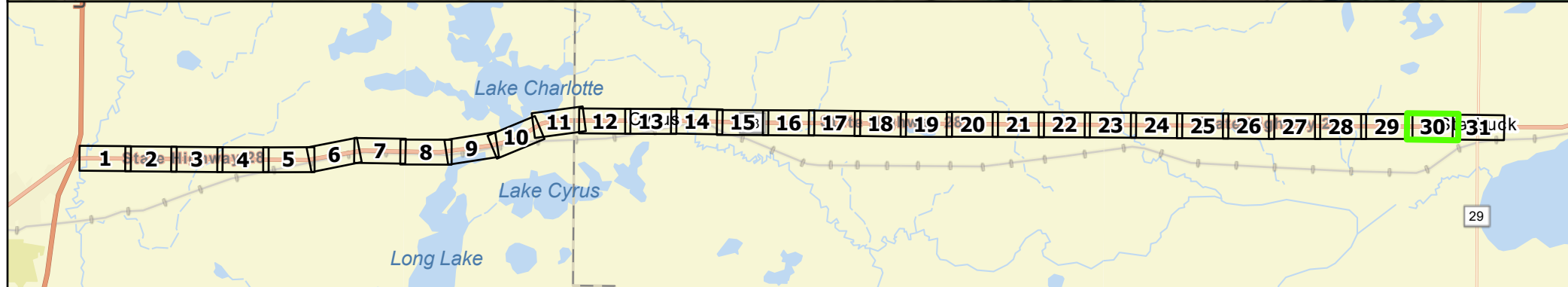
Wetland Impacts - 28 of 31

○ Reference Posts	▨ Permanent Fill	Level 1 Delineated Features
— Pipes	▨ Permanent Cut	■ Wetland Ditch
--- MnDOT Right of Way	▨ Temporary Impact	■ Stream
		■ Wetland

See Engineering Plans, also in Appendix B, for Proposed Work at Station Location



Aerial Imagery Courtesy of USDA NAIP (06-2021)



Wetland Impacts - 30 of 31

○ Reference Posts	▨ Permanent Fill	Level 1 Delineated Features
— Pipes	▨ Permanent Cut	▨ Wetland Ditch
--- MnDOT Right of Way	▨ Temporary Impact	▨ Stream
		▨ Wetland