



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

MVP-RD

[26 November 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-2023-00866-TMS \(MFR 1 of 1\)](#)]

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.

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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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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 1 \(0.07 acre\), non-jurisdictional](#)]
  - ii. [[Wetland 2 \(0.15 acre\), non-jurisdictional](#)]
  - iii. [[Wet Ditch 10 \(0.08 acre\), non-jurisdictional](#)]
  - iv. [[Wetland 11 \(0.05 acre\), non-jurisdictional](#)]
  - v. [[Wet Ditch 12 \(25 square feet\), 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 approximately 0.35 acre in size and is located at Lat. 45.244353, Long. -92.795810, in Scandia, Washington County, Minnesota. The review area is located in the immediate vicinity of Oakhill Road North and is mostly located within the road right-of-way. The review area is circled in yellow in the enclosed figures.](#)]

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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](#)]<sup>5</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [[N/A](#)]
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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>7</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](#)]

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<sup>5</sup> 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.

<sup>6</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>7</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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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](#)]

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>8</sup> [[Wet Ditches 10 and 12 are manmade ditches excavated in dry land, only drain dry land, and do not carry relatively permanent flow, therefore meeting the \(b\)\(3\) exclusion under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule. A review of topographical maps, digital elevation modeling, and Google Street View indicate that Wet Ditches 10 and 12 were excavated and graded out of uplands during construction of Oakhill Road North to direct runoff away from the road. The ditches’ bottom elevations are lines with grassy and herbaceous vegetation, which indicates that the ditches do not appear to experience relatively permanent flow.](#)]
- 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, 1, 2, and 11 are not Traditionally Navigable Waters, territorial seas, or interstate waters and are therefore not \(a\)\(1\) waters. The wetland delineation, application, aerial imagery, topographical maps, and digital elevation modeling indicate that Wetlands 1, 2, and 11 do not physically abut a relatively permanent \(a\)\(2\) impoundment or a jurisdictional \(a\)\(3\) tributary and are not separated by a natural berm, bank, dune, or similar landform. Wetland 1 extends outside the review area to the northeast and drains to the northeast into a pond located in a](#)

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<sup>8</sup> 88 FR 3004 (January 18, 2023)

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depressional area which does not appear to have a continuous surface connection to a relatively permanent water (RPW). Wetland 2 extends outside the review area to the northwest. Wetland 2 is located in a depressional area with no apparent outlet or continuous surface connection to an RPW. There does not appear to be a culvert draining Wetland 2 under Oakhill Road North, but if there is a culvert then Wetland 2 would drain into off-site wetlands to the southwest, which drain into a pond in a depressional area that has no apparent outlet or continuous surface connection to an RPW. Wetland 11 extends outside the review area to the west. Wetland 11 is located in a depressional area with no apparent outlet or continuous surface connection to an RPW. There does not appear to be a culvert draining Wetland 11 under Oakhill Road North, but if there is a culvert then Wetland 11 would drain into Wetland 1. Wetlands 1, 2, and 11 are located in low areas that are fed by precipitation from surrounding uplands and up-slope ditches. Wetlands 1, 2, and 11 are non-tidal wetlands that do not have continuous surface connections to a relatively permanent jurisdictional water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands. For these reasons, Wetlands 1, 2, and 11 are not jurisdictional waters 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.

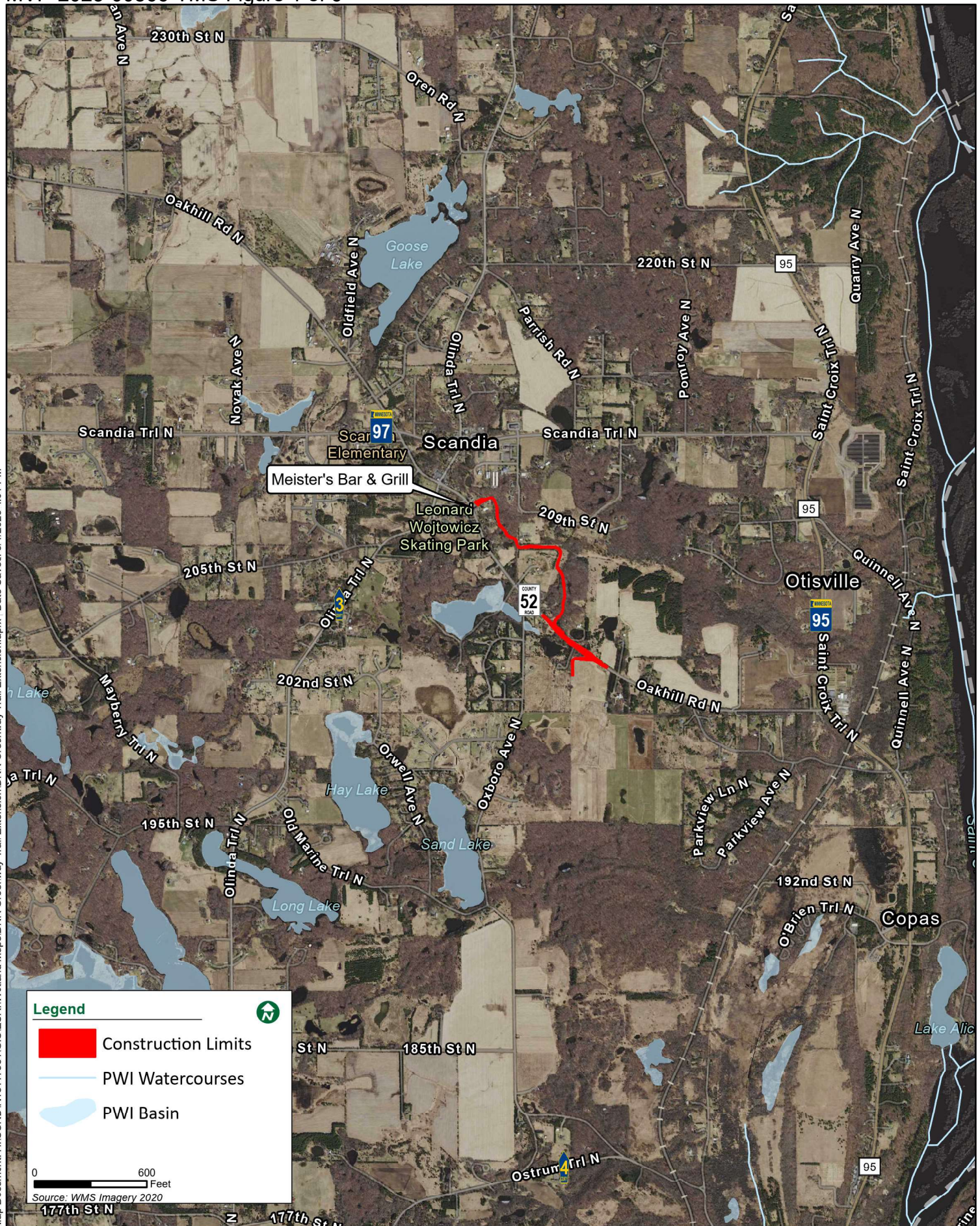
- a. [[Application and AJD Request, Bolton and Menk, dated October 14, 2025](#)]
- b. [[National Regulatory Viewer, 2023 data sources](#)]
- c. [[Google Earth Pro and Google Street View](#)]
- d. [[Desktop Evaluation, November 20, 2025](#)]

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.



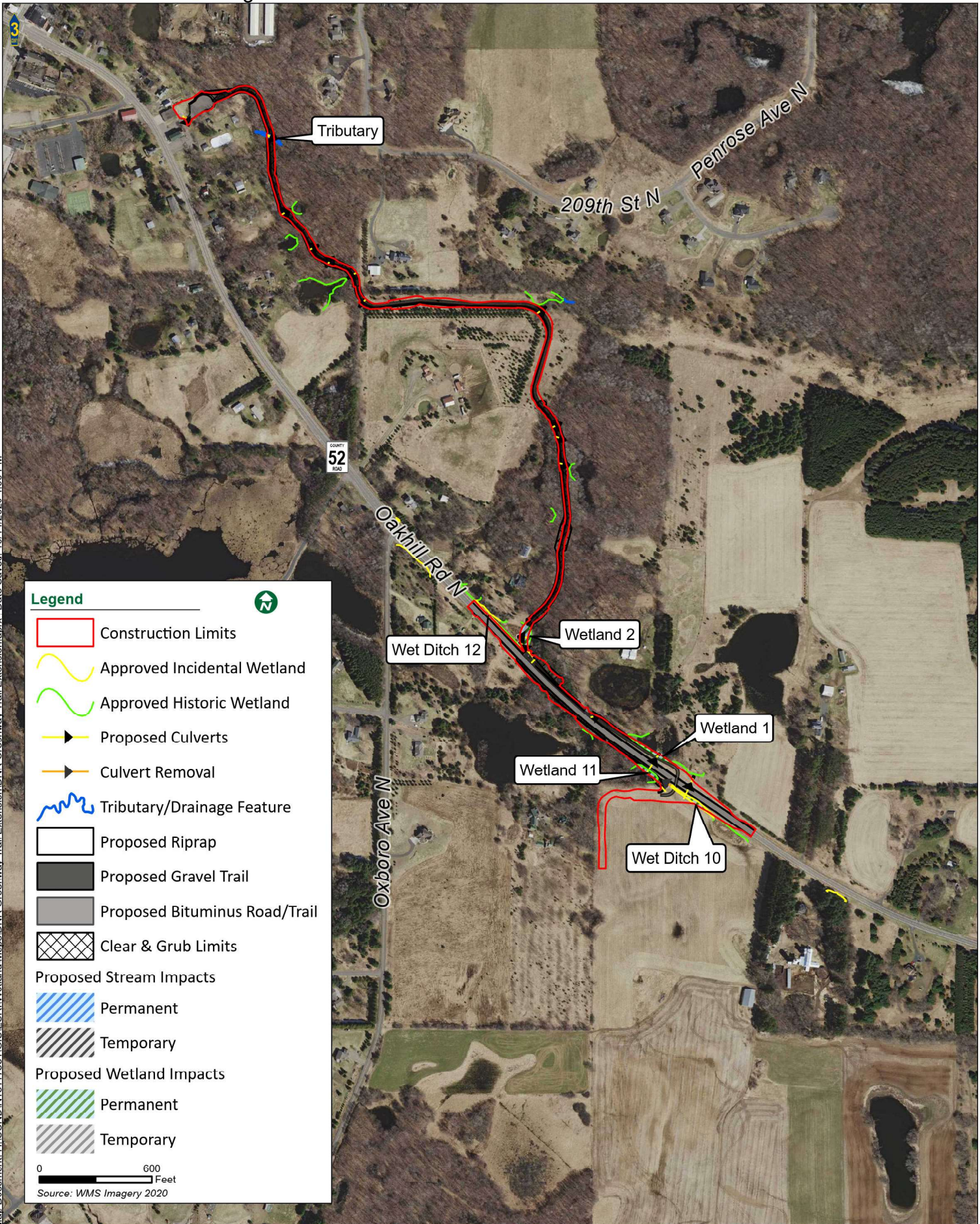
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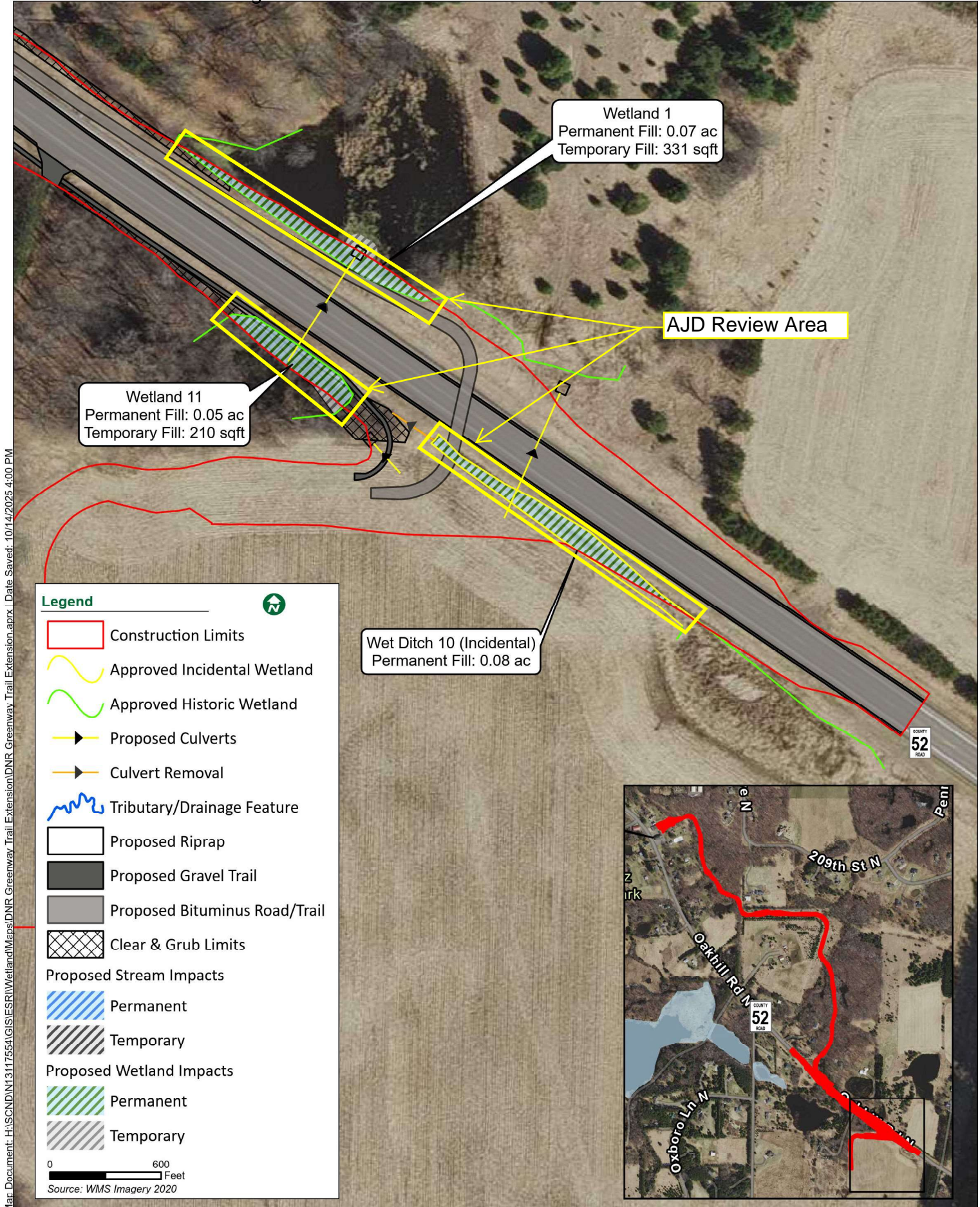
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Map Document: H:\SCND\N13117551\GIS\ESRI\Wetland\Maps\DNR Gateway Trail Extension\Wetland\Map1.aprx Date Saved: 10/14/2025 4:00 PM



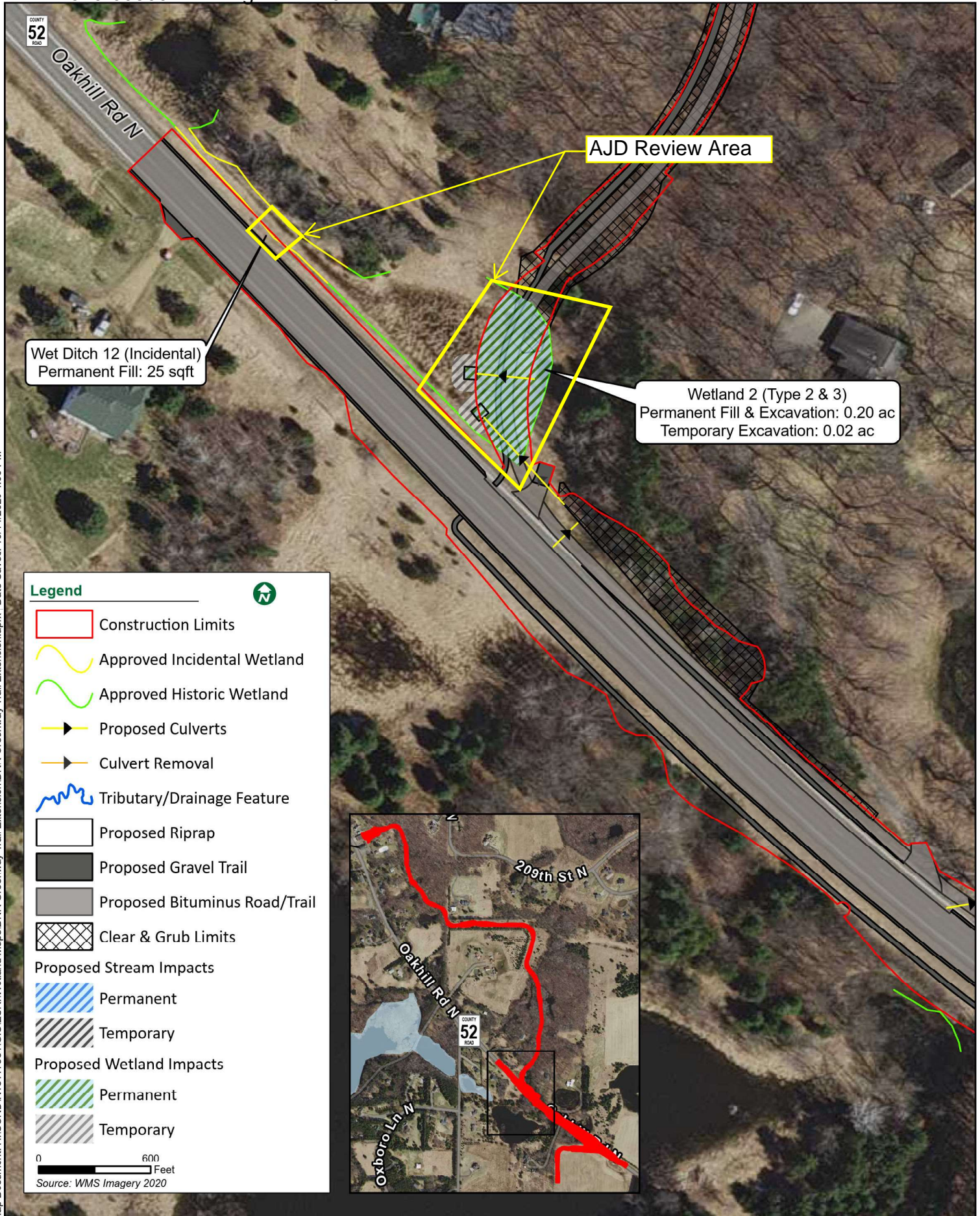


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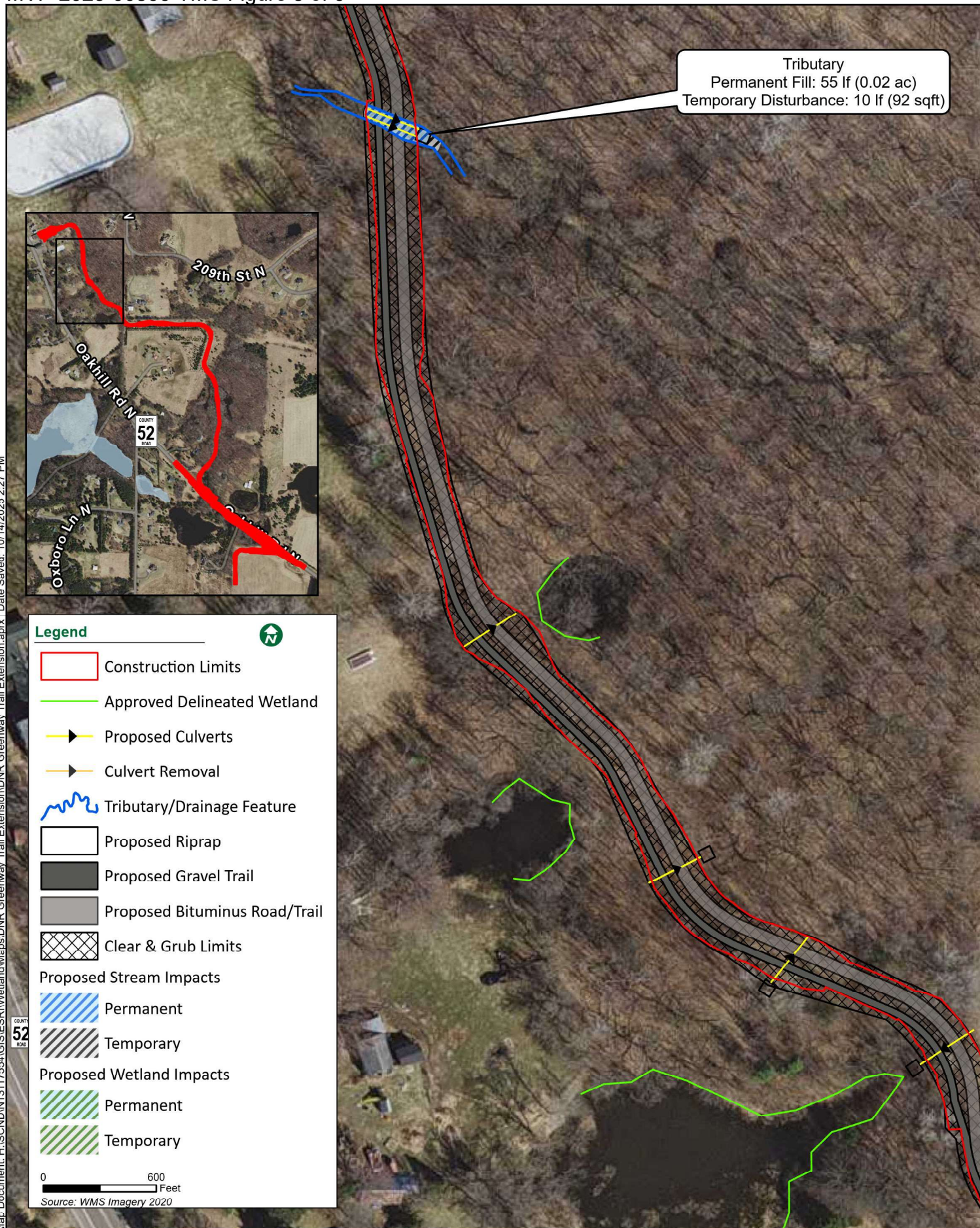


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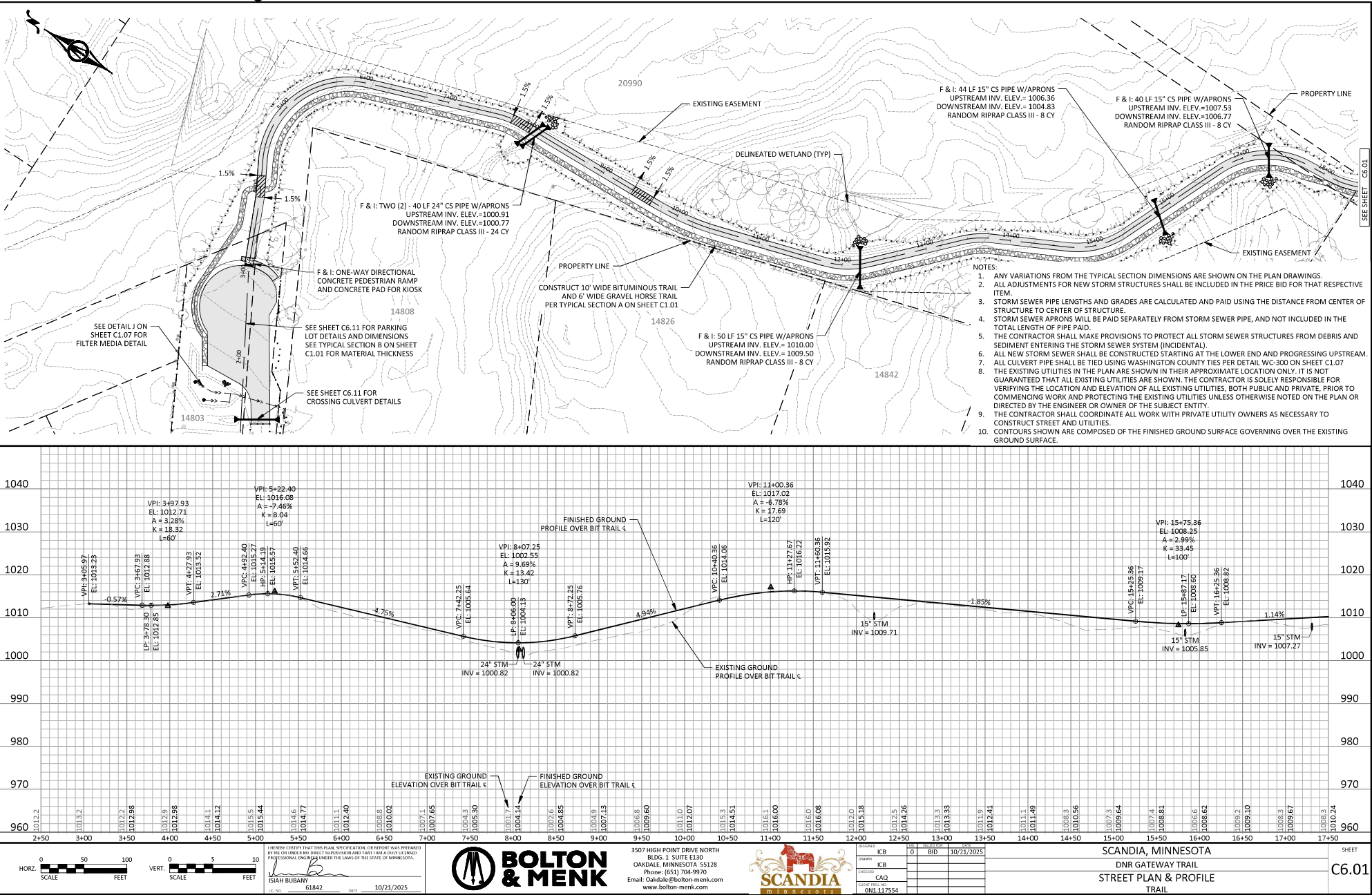


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**SCANDIA**  
MINNESOTA

PROJECT	KB	0	BID	10/21/2025
DRAWN	KB			
CHECKED	CAQ			
DATE PLOTTED	09/11/2024			

SCANDIA, MINNESOTA  
DNR GATEWAY TRAIL  
STREET PLAN & PROFILE  
TRAIL

SHEET  
C6.01