



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-2023-01358-MMP (SAP-214-594-002)

April 17, 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 2023-01385-MMP. 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.² 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.³

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2023-01385-MMP

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 1B, 0.08 acre. Excluded water, not a Water of the US.

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)

3. REVIEW AREA. The review area for this determination includes one excluded feature, labeled as Wetland 1B as identified on the enclosed figures labeled MVP-2023-01358-MMP Figures X f x through x of oX. The review area is approximately 0.08 acre, located in Section 18, Township 32 North, Range 21 West, Washington County, Minnesota. The review area is located at approximately Latitude: 45.2628, Longitude: -93.0108.

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 WATERS⁵: 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 10.⁶
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
 - e. Tributaries (a)(3): N/A
 - f. Adjacent Wetlands (a)(4): N/A
 - g. Additional Waters (a)(5): N/A

⁵ 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.

⁶ 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.

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).⁷

The feature within the review area is Wetland 1B, as shown on Figure 2 and 3 of 11 on the attached figures, which is an excluded feature fits the definition of a b(5) water as the feature was created by excavating dry land to collect and retain water.

Wetland 1B is associated with the construction of Eureka Avenue near the intersection of 220th Street North. The roadway was constructed in 2010, according to an aerial photo. Contour maps indicate that Wetland 1B is in a depression approximately 6-8 feet lower than the elevation of the adjacent roadways. A culvert is present in the southeast quadrant of the feature under Eureka Avenue.

In a review of USGS Topographic Maps from 1953, 1955, 1974 and 1991, prior to construction of the roadway, wetlands are not identified in the area of Wetland 1B. Additionally, a Wetland Delineation report was prepared by SRF Consulting Group, Inc. in October of 2008, which covered the review area. The wetland delineation did not identify an aquatic resource within the area of Wetland 1B, concluding that the feature was constructed in upland.

Considering the information above, Wetland 1B has been determined to be a Paragraph b(5) excluded water not subject to Section 404 of the Clean Water Act (CWA).

- 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).
N/A

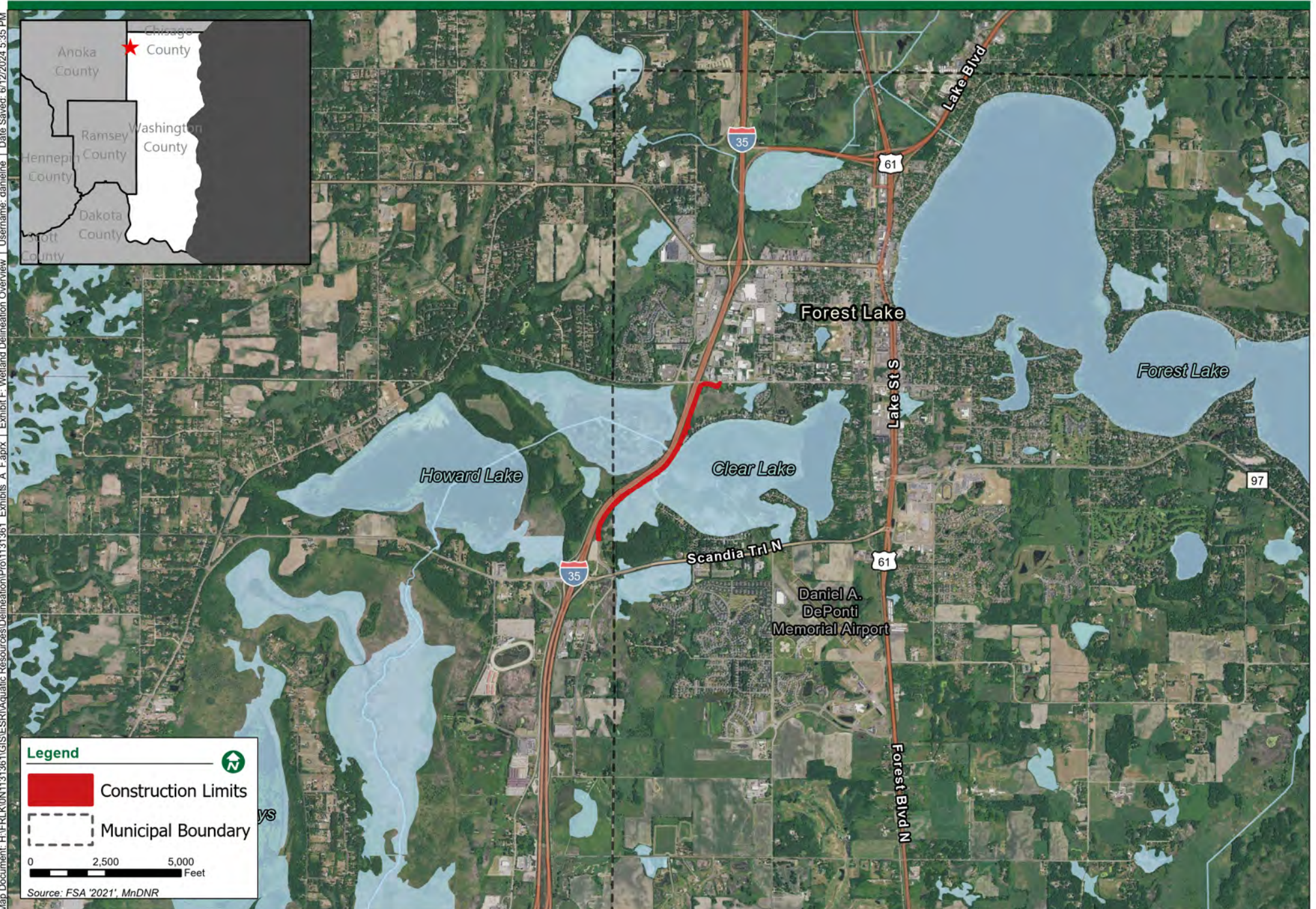
⁷ 88 FR 3004 (January 18, 2023)

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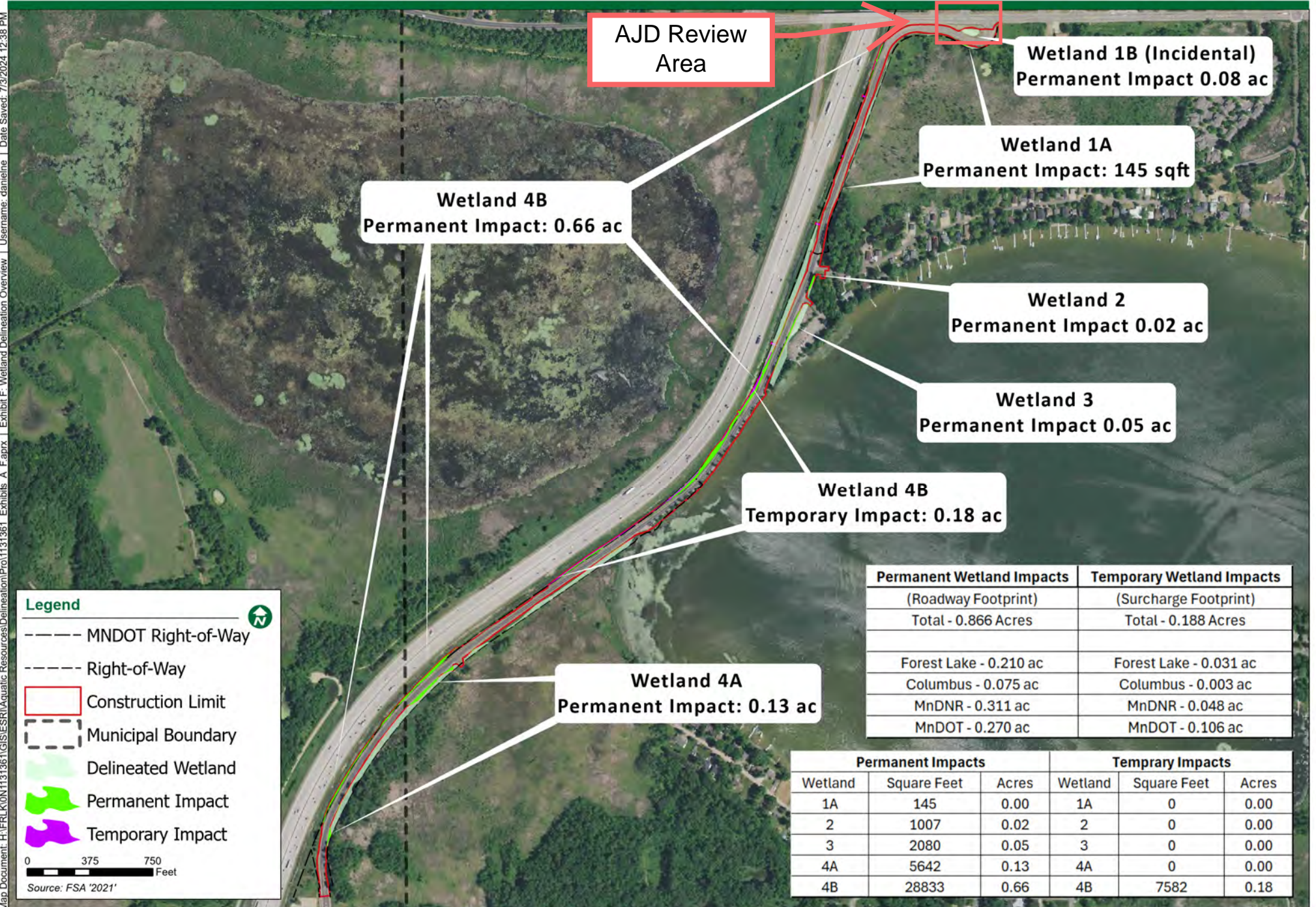
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2023-01385-MMP

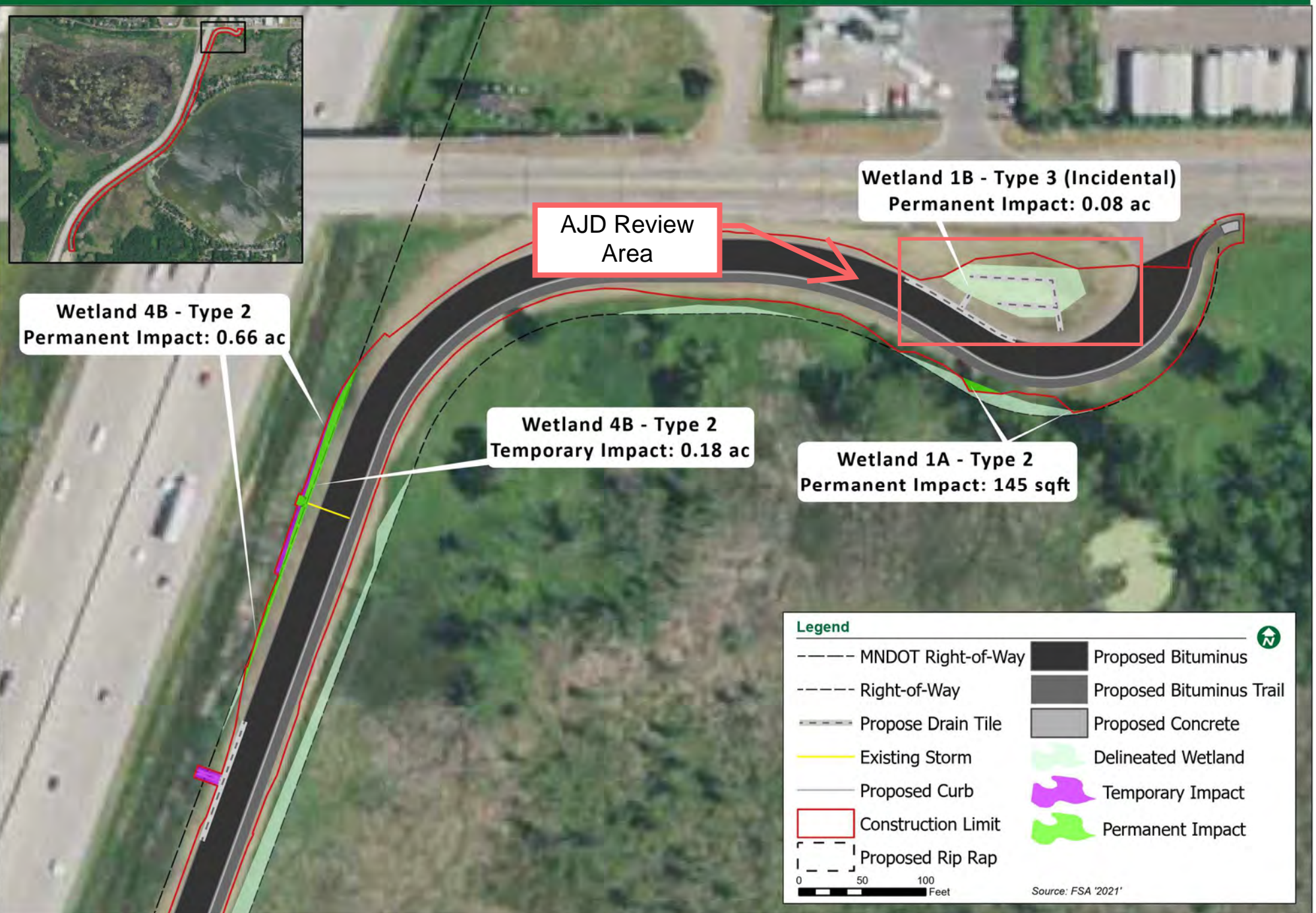
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Wetland Delineation report completed by SRF Consulting Group, Inc. in October of 2008 (submitted to the Corps October 16, 2008, associated with MVP-2009-03698).
 - b. USGS Topographic Maps from 1953, 1955, 1974 and 1991.
 - c. Aerial photo from 2010 accessed from Historic Aerials by Netronline.
 - d. 3DEP 25-ft Contour, 3DEP 10-ft Contour, 3DEP 5-ft Contour, 3DEP 2-ft Contour, MN Contours—2 ft, MNDNR Hillshade – 2016, and 3DEP Digital Elevation Model (DEM) accessed from the National Regulatory Viewer.
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.

Map Document: H:\FRL\KON1131361\GIS\ESRI\Aquatic Resources\Delination\Pro1131361 Exhibits A, F, Aprx. | Exhibit F: Wetland Delineation Overview | Username: danielne | Date Saved: 6/12/2024 5:35 PM



MVP-2023-01358-MMP Figure 2 of 11







Wetland 4B - Type 2
Permanent Impact: 0.66 ac

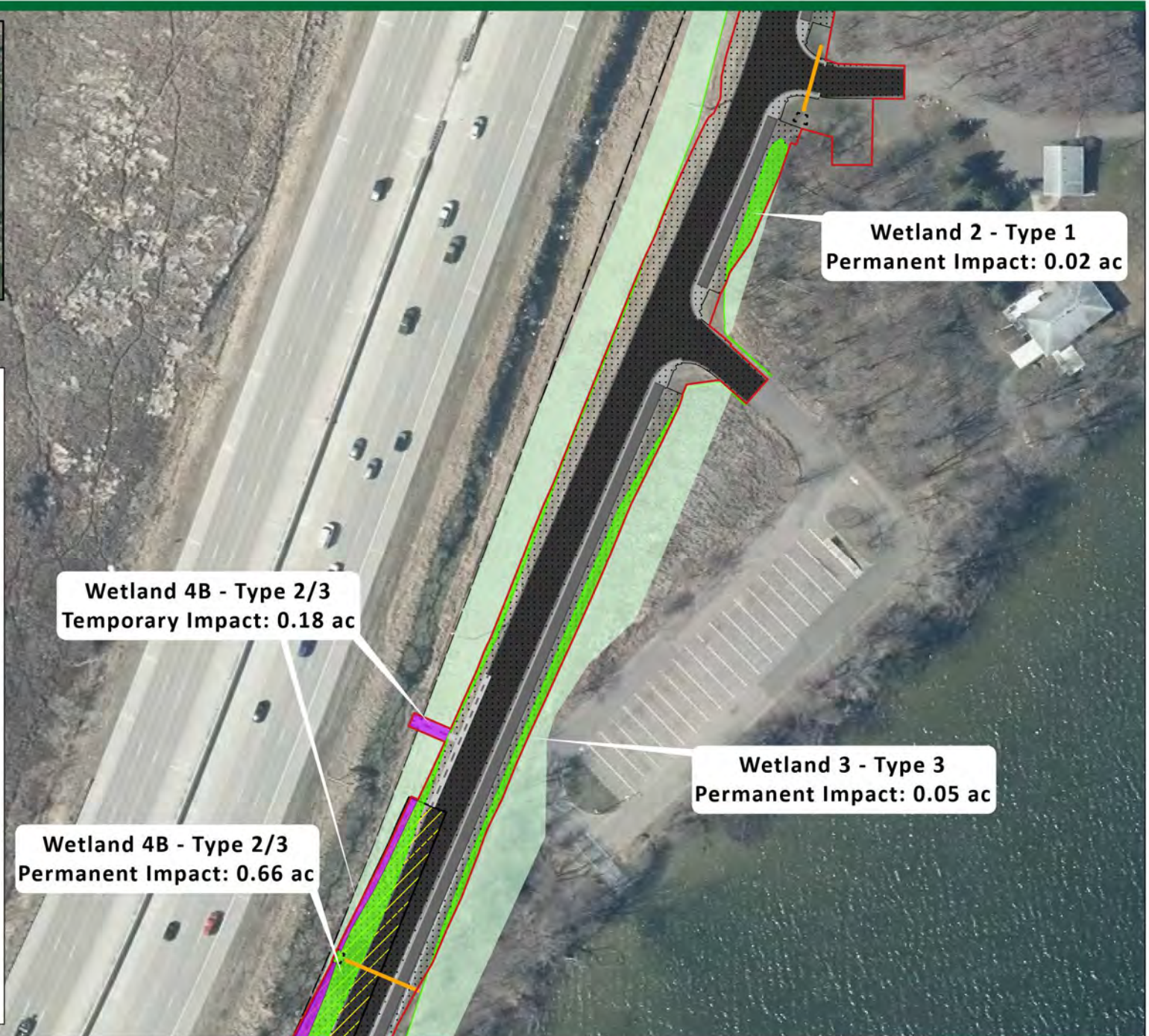
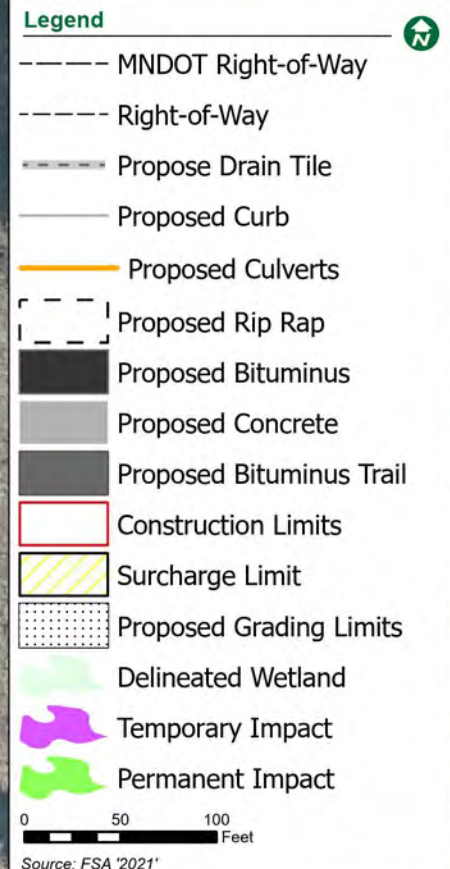
Wetland 4B - Type 2
Temporary Impact: 0.18 ac

Legend

- MNDOT Right-of-Way
- Right-of-Way
- Propose Drain Tile
- Proposed Curb
- Construction Limits
- Proposed Bituminus
- Proposed Bituminus Trail
- Delineated Wetland
- Temporary Impact
- Permanent Impact

0 50 100 Feet

Source: FSA '2021'





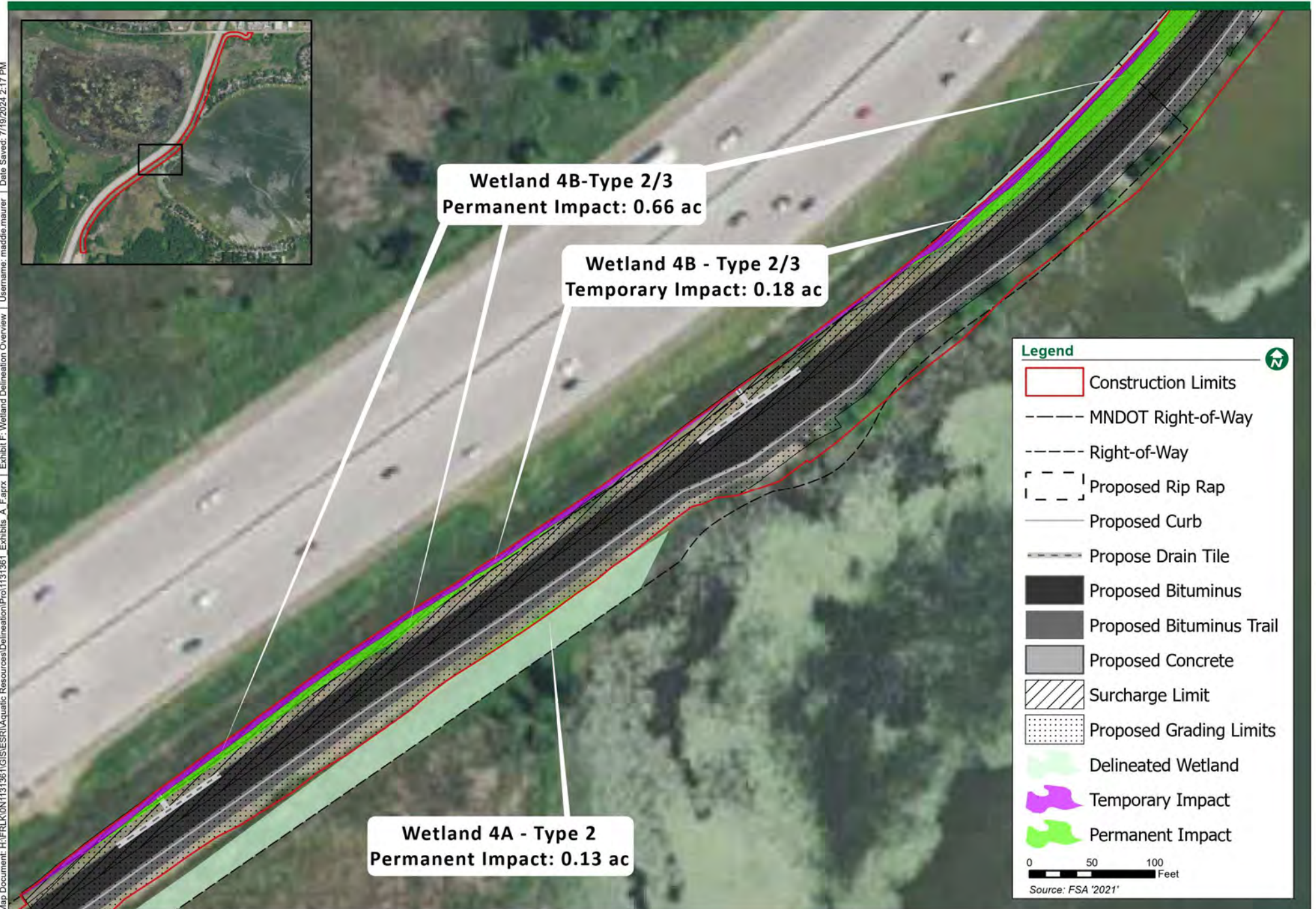
Legend

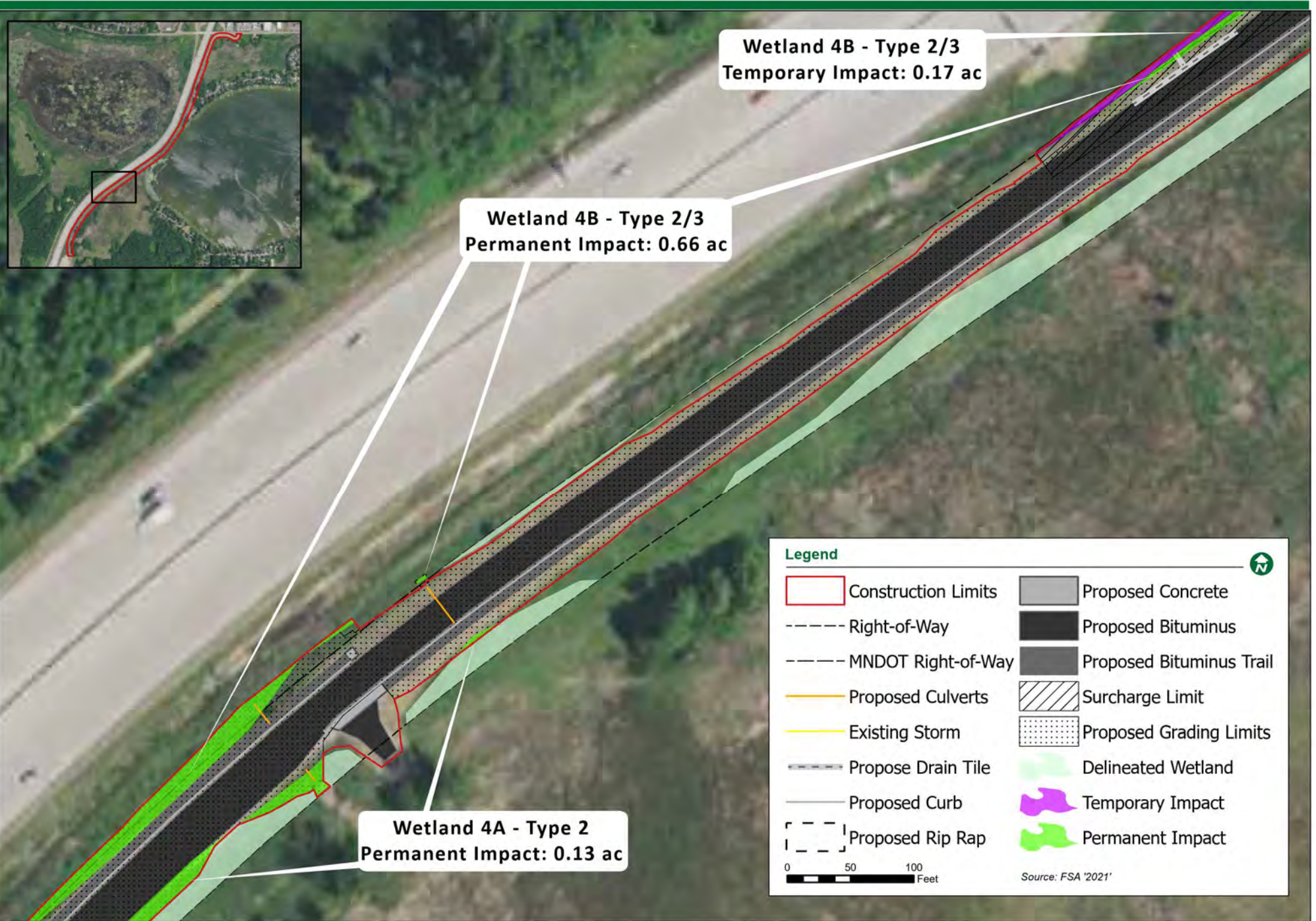
- MNDOT Right-of-Way
- Right-of-Way
- Propose Drain Tile
- Proposed Storm
- Existing Storm
- Proposed Curb
- Proposed Concrete
- Proposed Bituminus
- Proposed Bituminus Trail
- Proposed Rip Rap
- Construction Limits
- Surcharge Limit
- Proposed Grading Limits
- Delineated Wetland
- Temporary Impact
- Permanent Impact

0 50 100 Feet

Source: FSA '2021'









Wetland 4B - Type 2/3
Permanent Impact: 0.66 ac

Wetland 4A - Type 2
Permanent Impact: 0.13 ac

Legend

- Construction Limits
- Right-of-Way
- MNDOT Right-of-Way
- Propose Drain Tile
- Proposed Curb
- Proposed Concrete
- Proposed Bituminus Trail
- Proposed Bituminus
- Municipal Boundary
- Proposed Grading Limits
- Delineated Wetland
- Temporary Impact
- Permanent Impact

0 50 100
Feet

Source: FSA '2021'



Columbus
Forest Lake



Wetland 4B - Type 2/3
Permanent Impact: 0.66 ac

Wetland 4A - Type 2
Permanent Impact: 0.13 ac

Columbus
Forest Lake



