



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, [ST. PAUL] DISTRICT
[332 MINNESOTA STREET SUITE E1500]
[ST.PAUL MINNESOTA 55101]

[MVP]

[14 NOVEMBER 2024]

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 [2024-00229-TJH] [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. [Wet Ditch 4, 0.006, non-jurisdictional]
 - ii. [Wet Ditch 6, 0.012, 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)

3. REVIEW AREA. [The review areas for this determination include the roadside ditches labeled as Wet Ditch 4 and Wet Ditch 6 on the attached figures 2024-00229-TJH Figure 8 of 14 through Figure 10 of 14. The review areas are located East of CSAH 2. A Level Two site delineation and desktop review were performed and found that the ditches were constructed in upland, drain only upland areas, and do not carry relatively permanent flow. The review areas are within Section 31, Township 58N, Range 10W, Lake County, Minnesota.
Wet Ditch 4 (47.470273, -91.645903)
Wet Ditch 6 (47.482791, -91.647191)]

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A]⁶

⁶ 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.

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A]
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ [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]

⁷ 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.

⁸ 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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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).⁹ [Wet Ditch 4 and Wet Ditch 6 are roadside ditches constructed in upland within the CSAH 2 right of way based on a 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. The two ditches are dominated by stalked bulrush (*Scirpus pedicellatus*) and Canada blue joint (*Calamagrostis canadensis*). Based on the wetland delineation and desktop resources reviewed, these aquatic resources were excavated wholly in and draining only uplands and do not carry a relatively permanent flow and, according to exclusion (b)(3) of the 2023 Rule, as amended, are not waters 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).
[N/A]

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. [WSB Wetland Delineation Report, dated September 19, 2023]

b. [Office evaluation conducted on October 16, 2024.]

c. [USGS LiDAR, 3DEP Elevation Model, USGS TNM – National Hydrography Dataset, USFWS NWI Maps, and USDA/NRCS Soil Survey Maps.]

⁹ 88 FR 3004 (January 18, 2023)

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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.

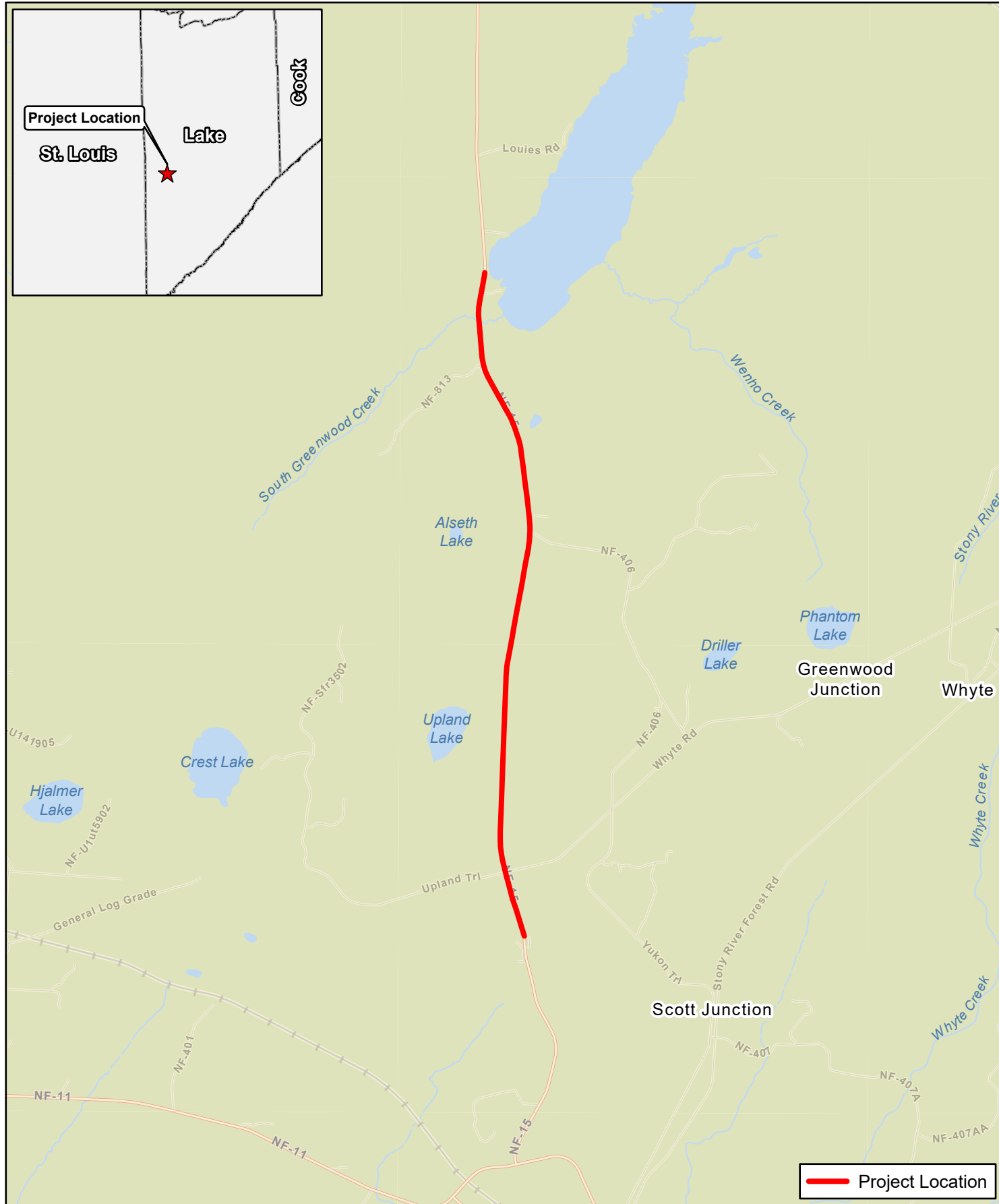


Figure 1 - Project Location

CSAH 2 Wetland Delineation
Lake County, MN



0 6,000
Feet
1 inch = 6,000 feet





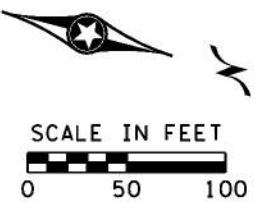
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PERMANENT IMPACT - FILL:
0.001 AC. (47 SF)
TEMPORARY IMPACT - CUT:
0.001 AC. (41 SF)



WETLAND 1A

PERMANENT IMPACT - STREAM:
0.004 AC. (180 SF)

WETLAND 1B

PERMANENT IMPACT - FILL:
0.053 AC. (2203 SF)

139+00

MURPHY CREEK

MATCH LINE STA. 143+57.00
SEE BELOW

INDEX MAP

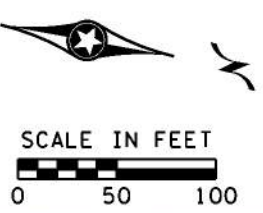
CSAH 2

CSAH 2

GREENWOOD LAKE

LEGEND

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	PERMANENT IMPACT - FILL		WETLAND DELINEATION
	TEMPORARY IMPACT - CUT		SURFACE FLOW DIRECTION
	TEMPORARY IMPACT - FILL		CROSS SECTION LOCATION
	PERMANENT IMPACT - STREAM		



PERMANENT IMPACT - FILL:
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TEMPORARY IMPACT - CUT:
0.002 AC. (100 SF)

TEMPORARY IMPACT - CUT:
0.0009 AC. (40 SF)
PERMANENT IMPACT - FILL:
0.006 AC. (248 SF)

SCLIP 1

WETLAND 2B

WETLAND 2A

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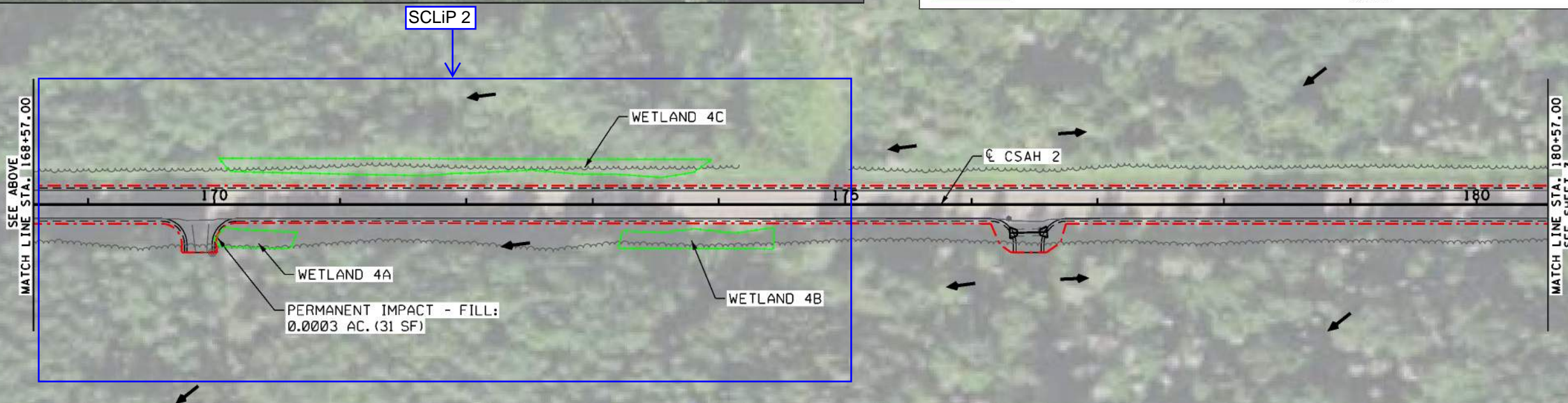
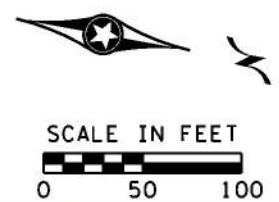
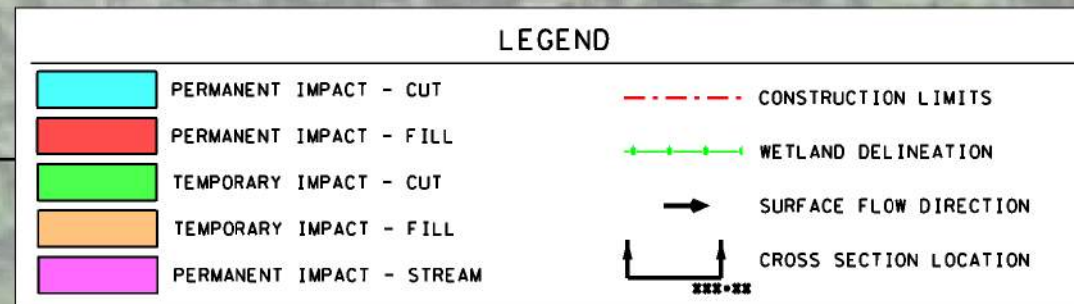
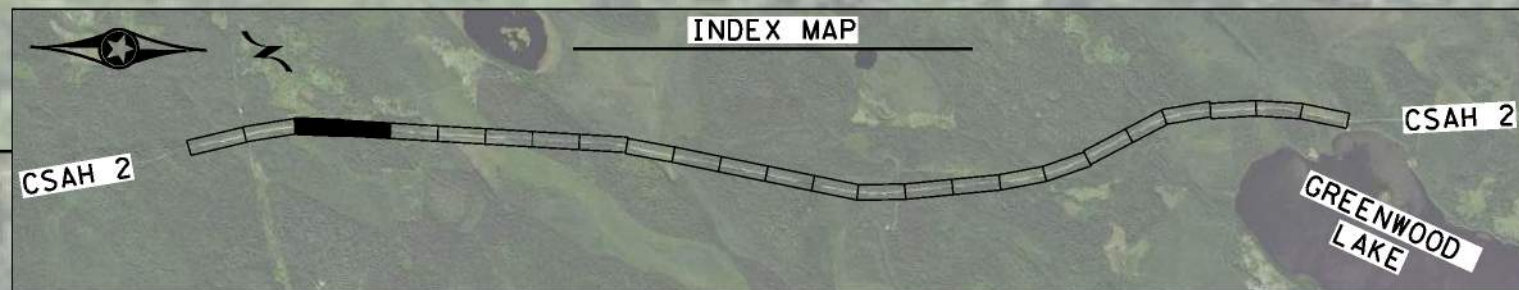
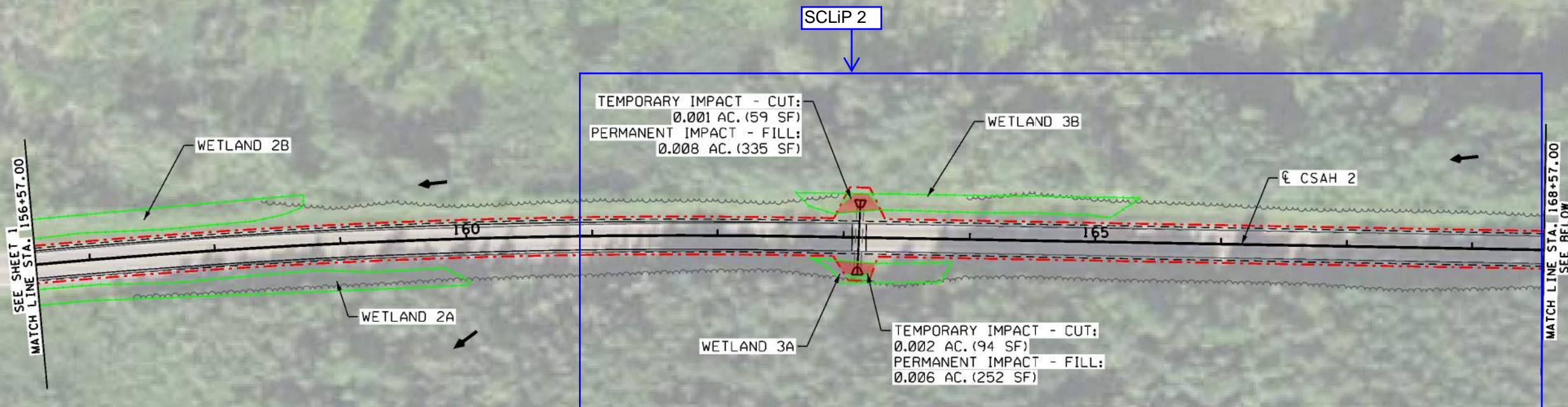
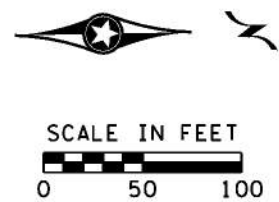
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MATCH LINE STA. 156+57.00
SEE SHEET 2

Wetland Impact Exhibit CSAH 2 Rehabilitation Lake County, MN

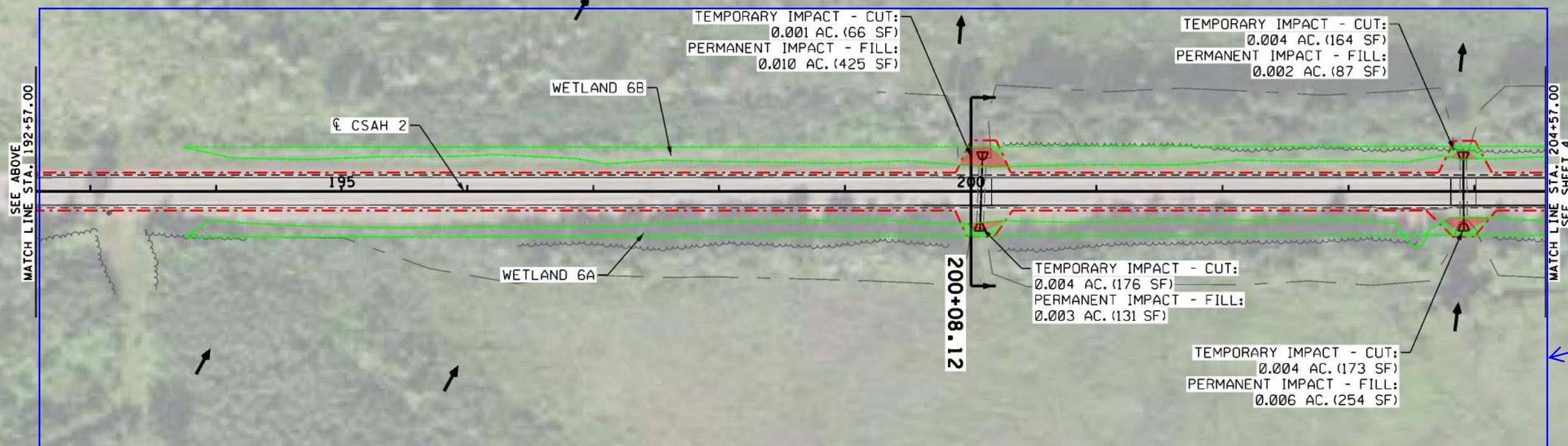
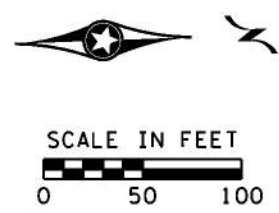
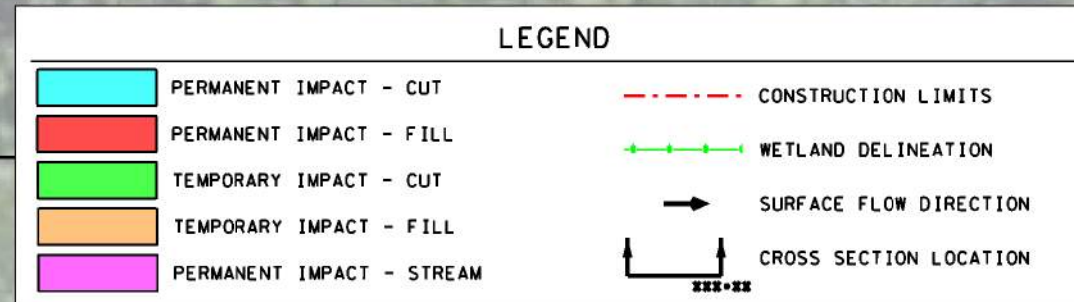
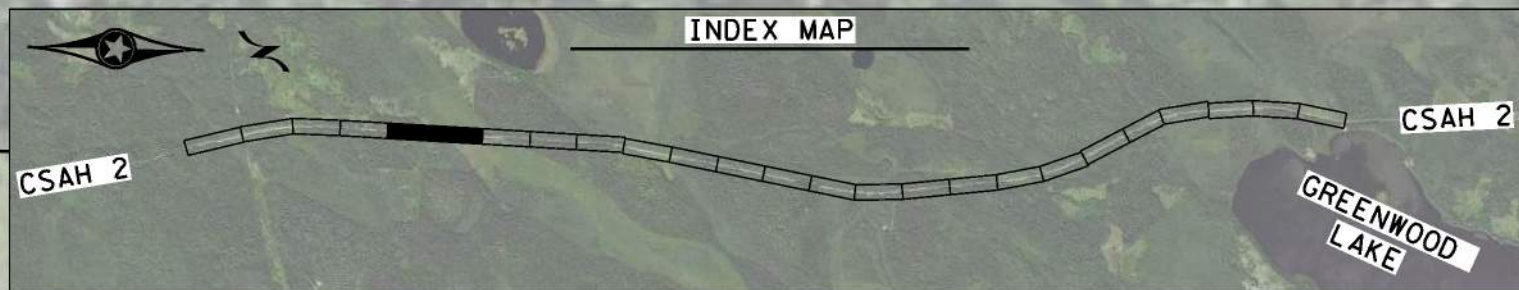
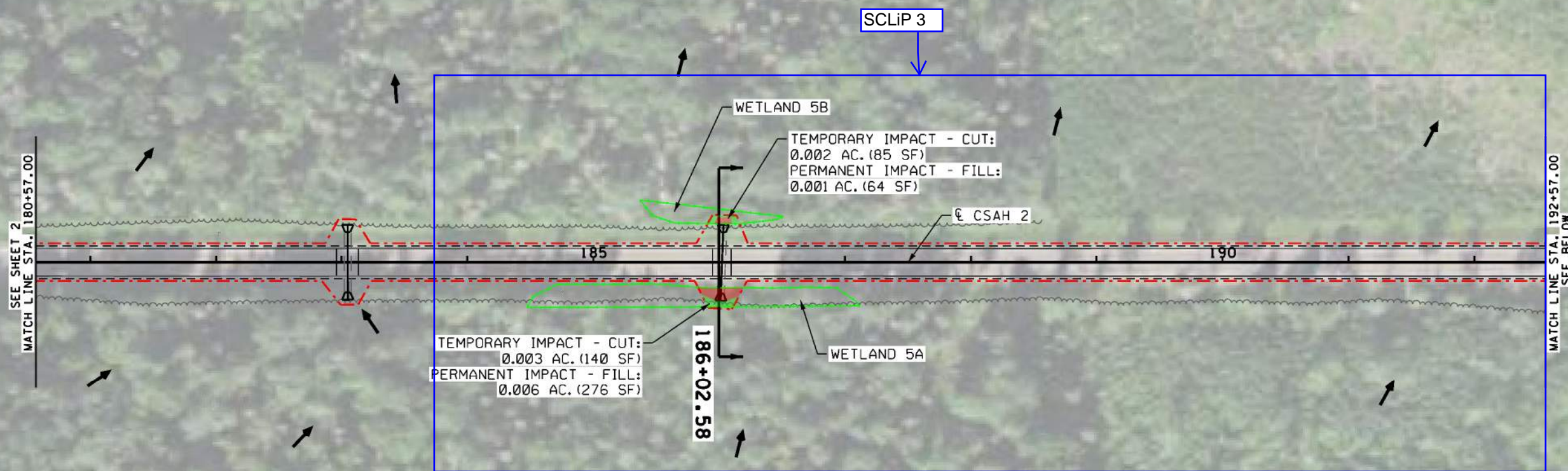
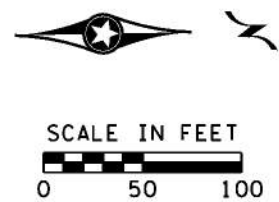


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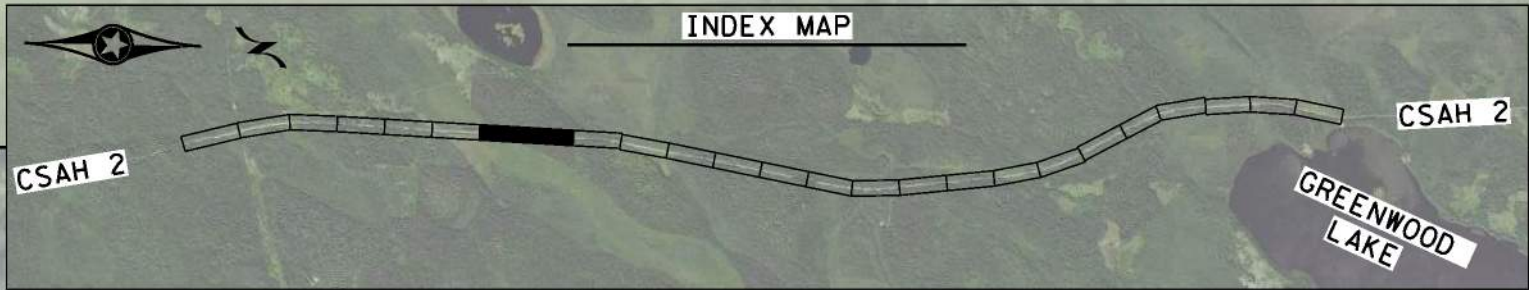
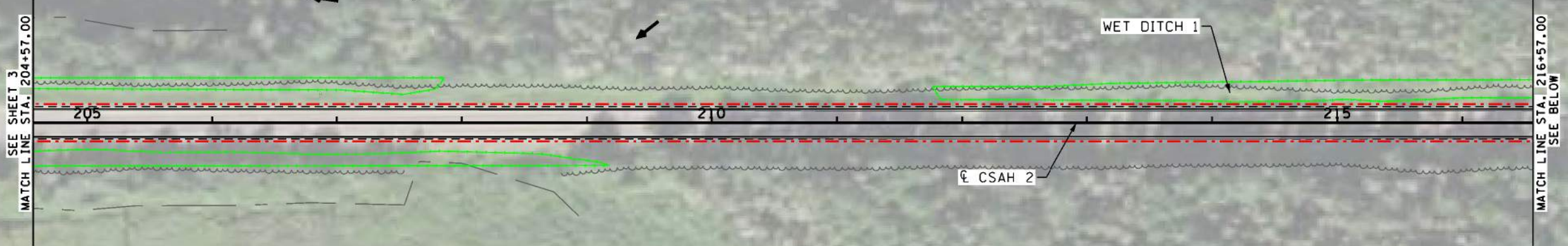


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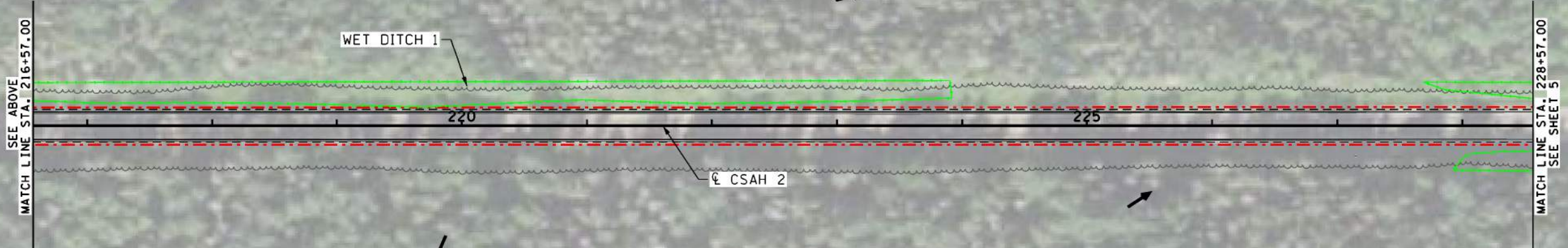
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---	WETLAND DELINEATION
→	SURFACE FLOW DIRECTION
↑ ***	CROSS SECTION LOCATION

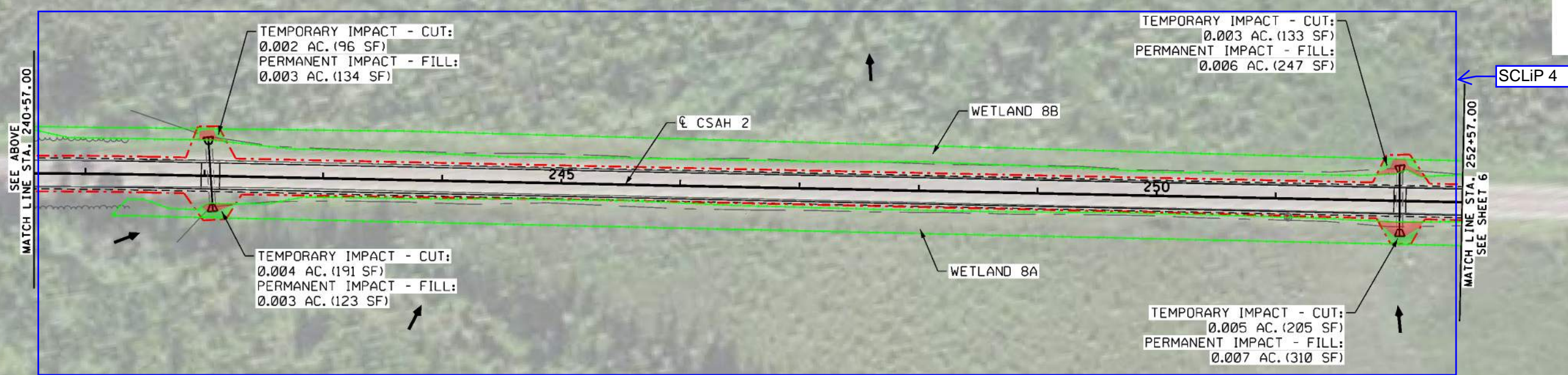
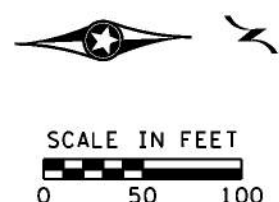
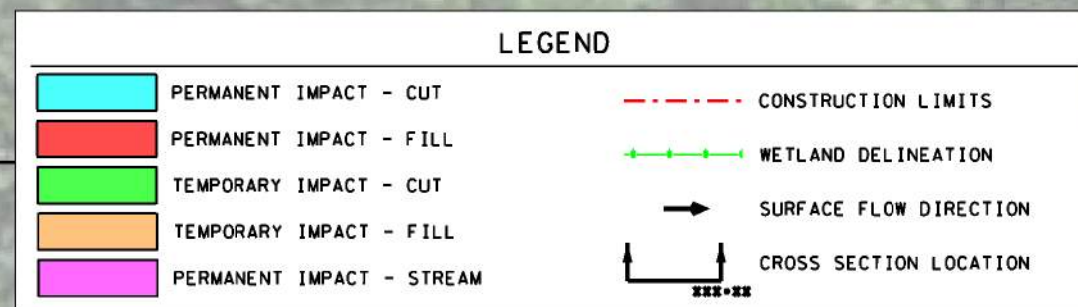
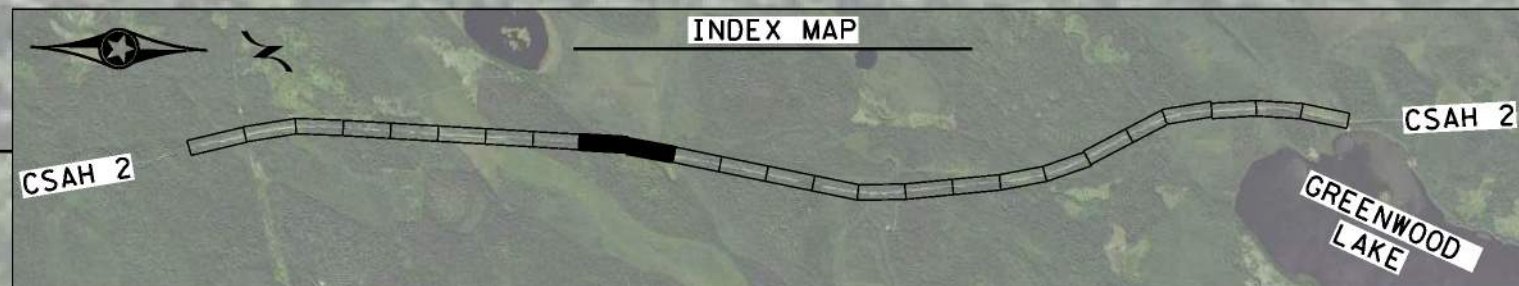
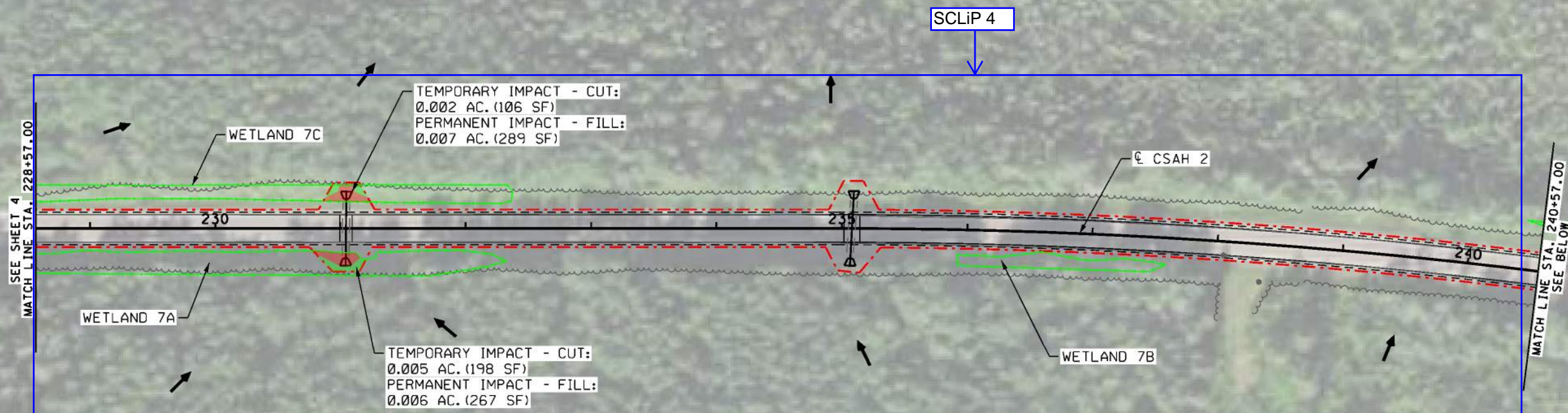
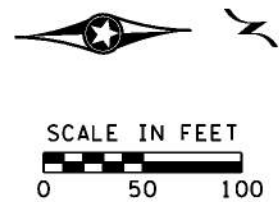


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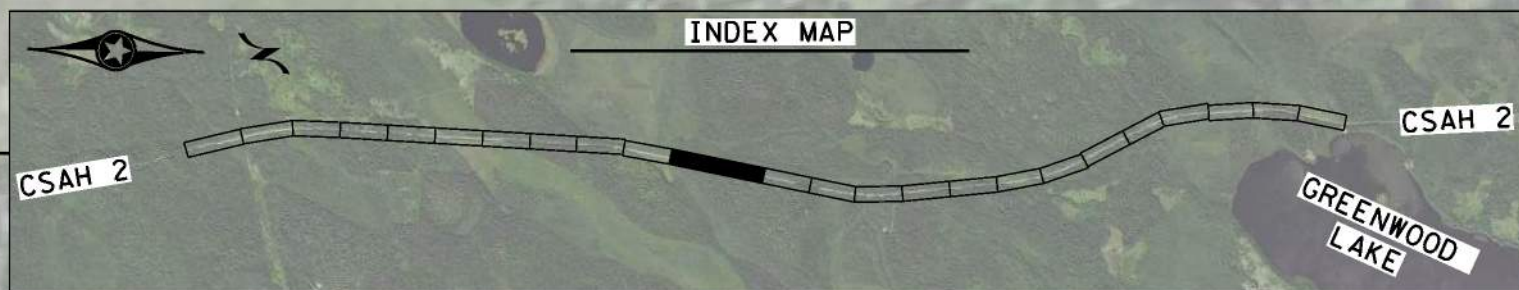
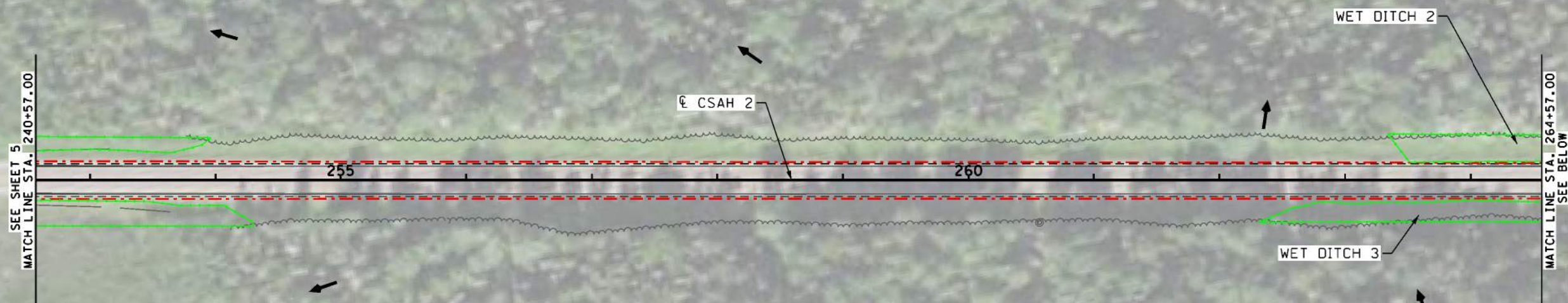
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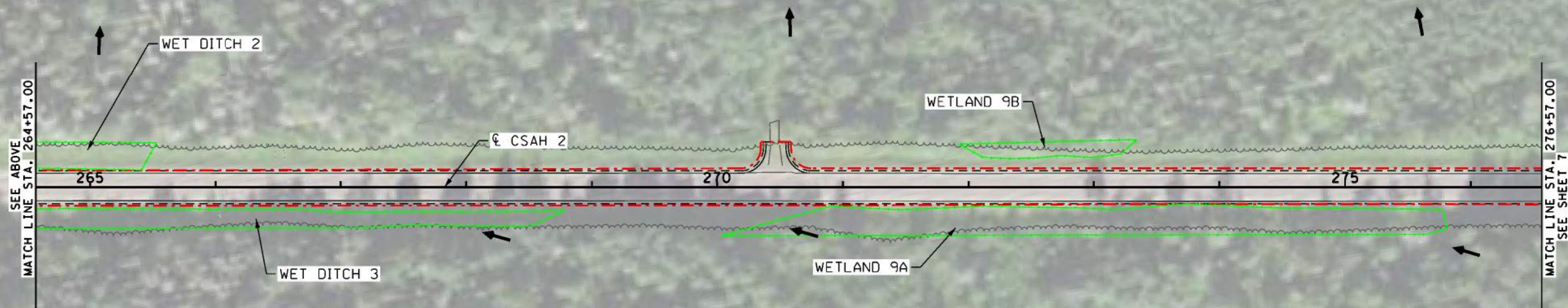
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	SURFACE FLOW DIRECTION
	CROSS SECTION LOCATION

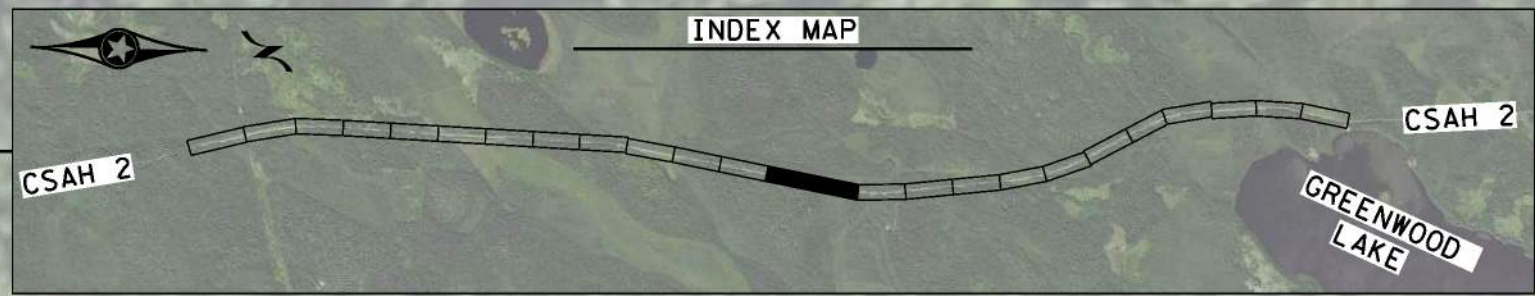
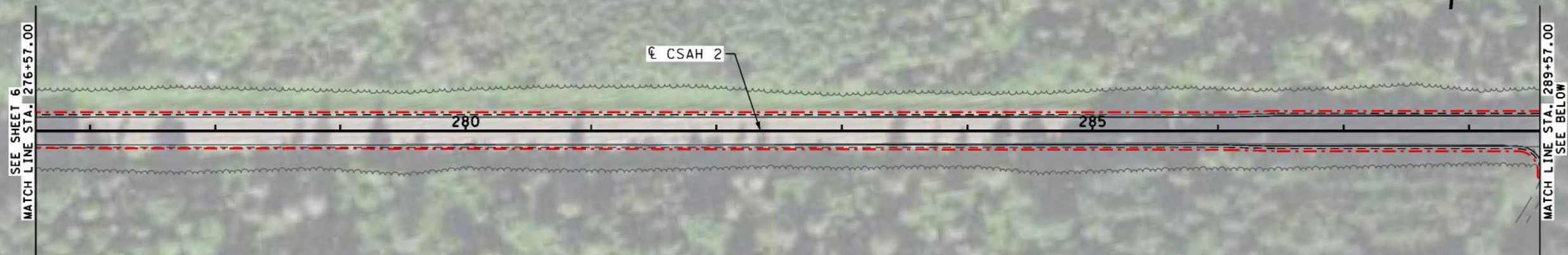
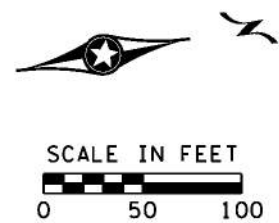


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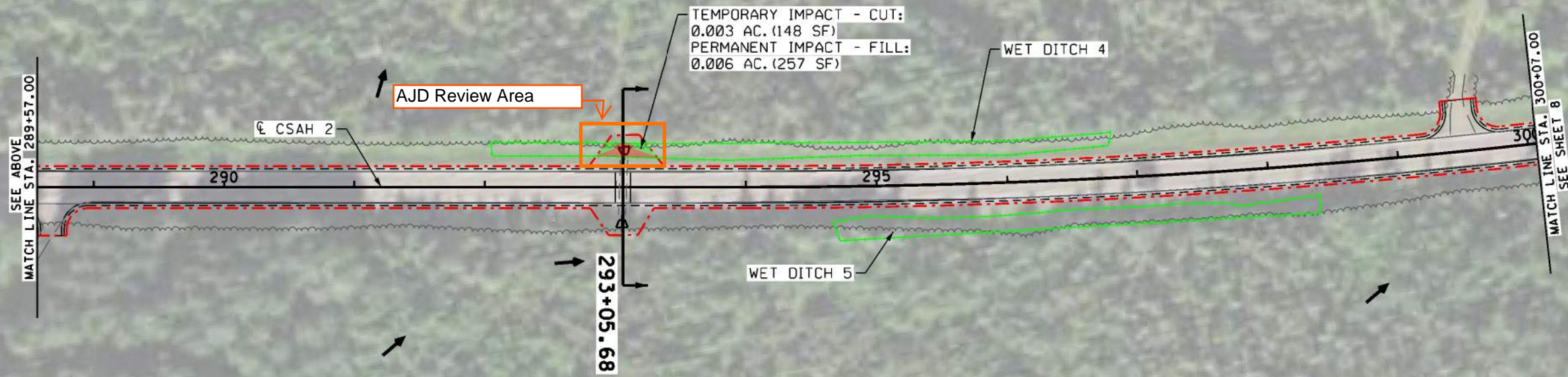
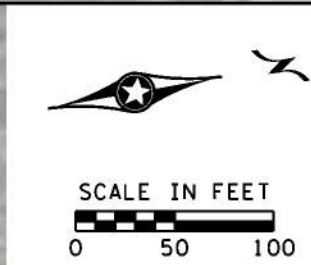


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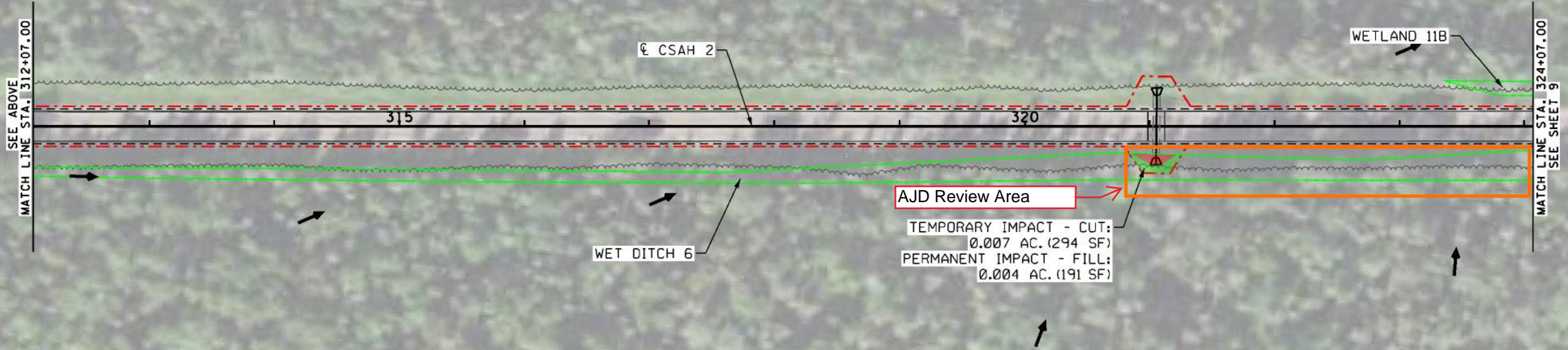
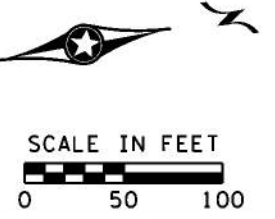
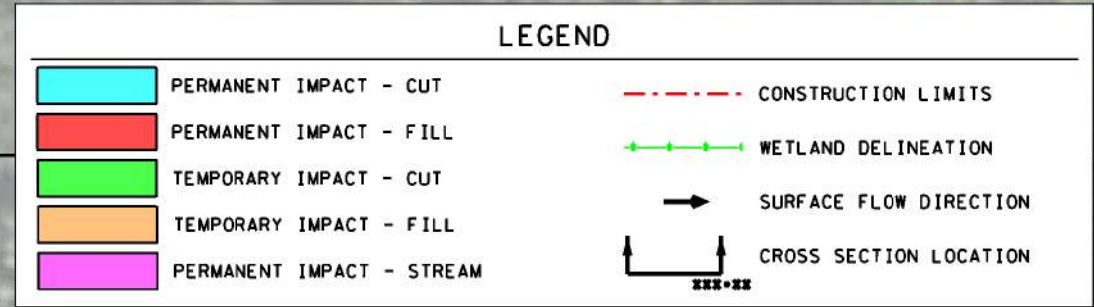
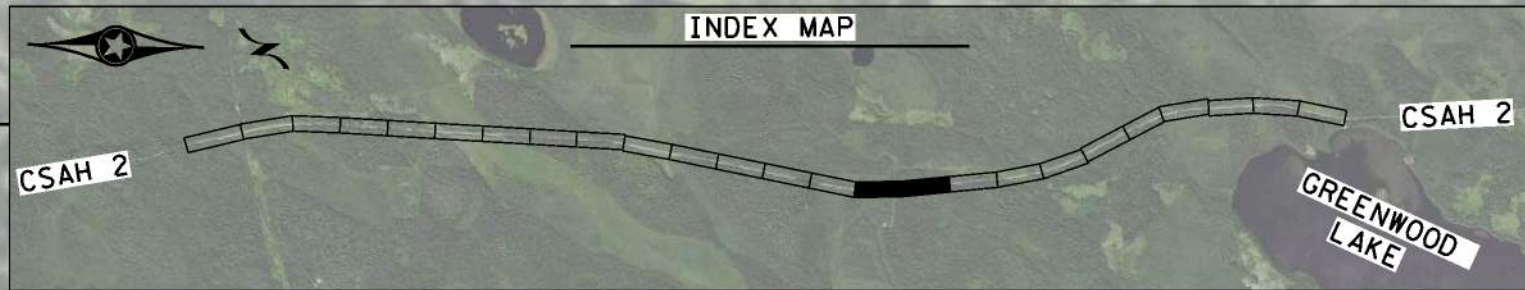
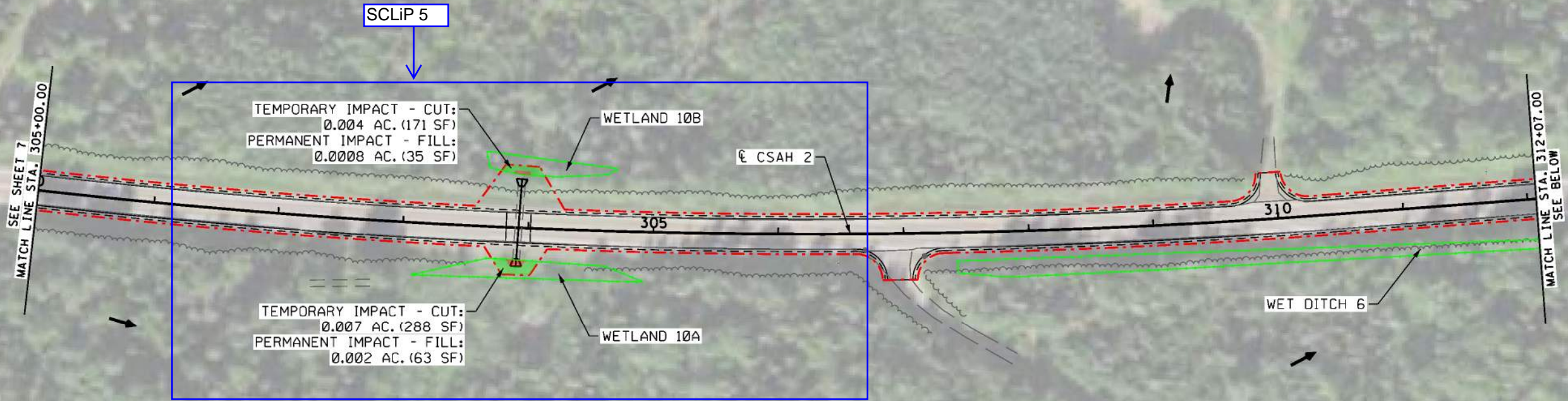
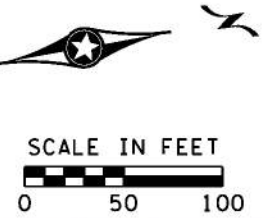
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→	SURFACE FLOW DIRECTION
***	CROSS SECTION LOCATION



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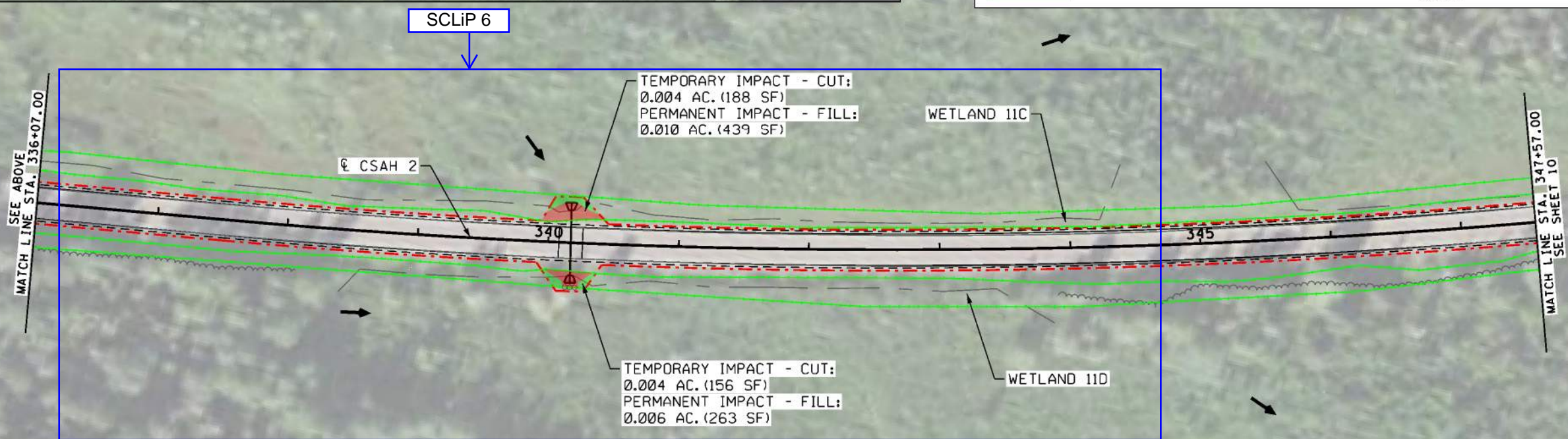
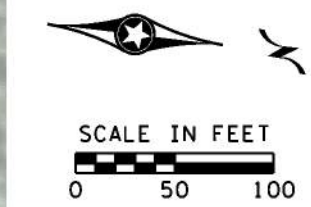
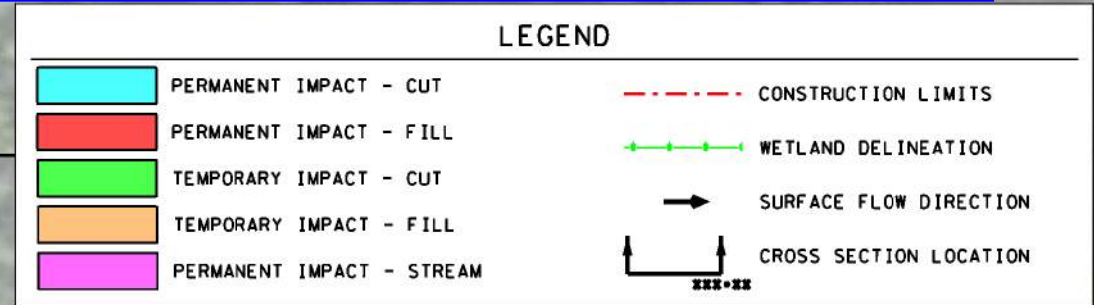
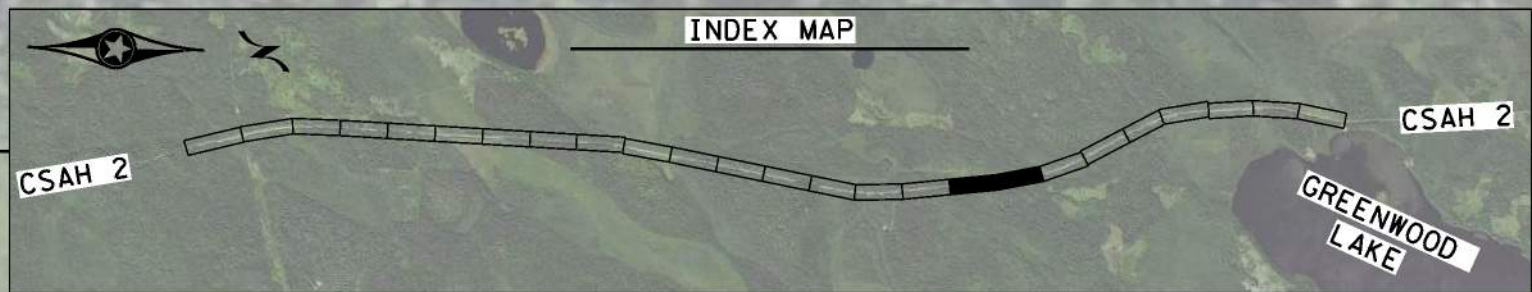
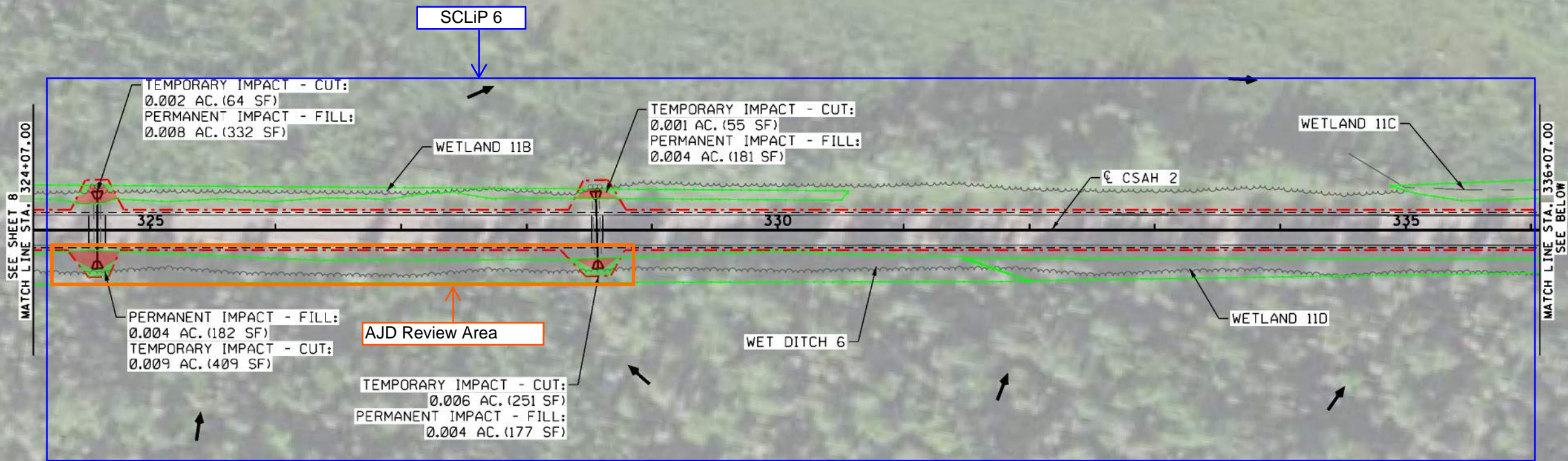
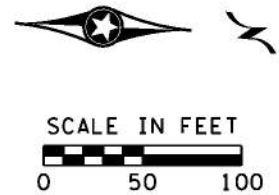


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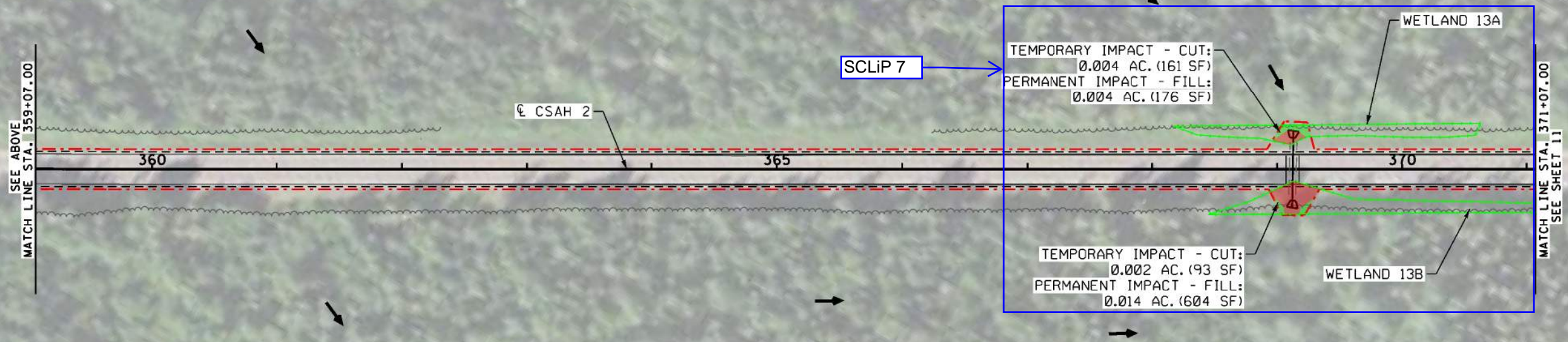
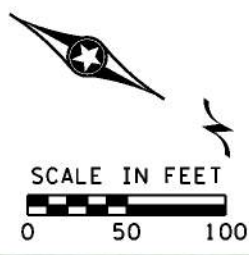
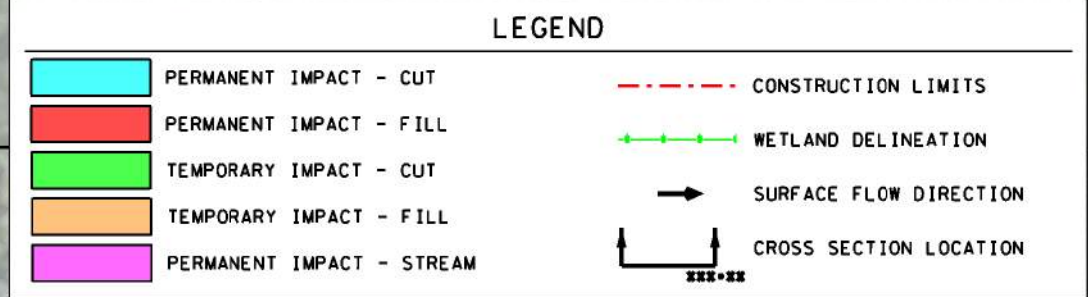
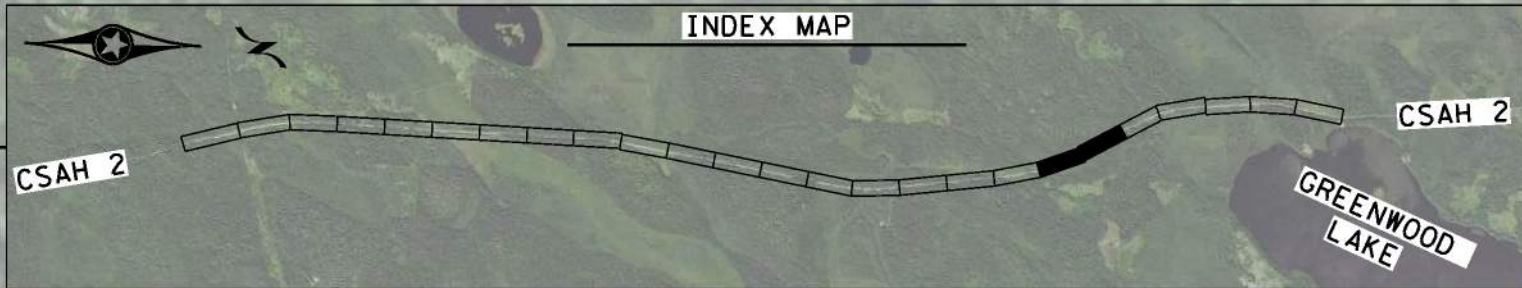
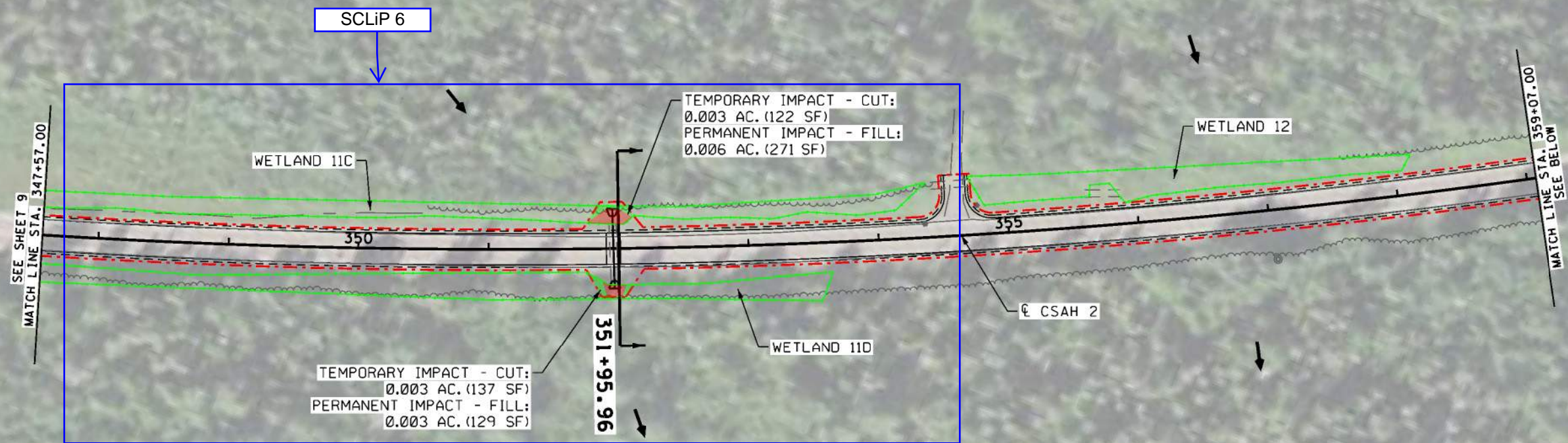
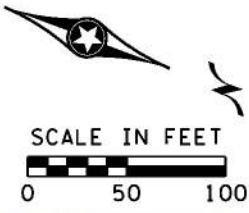




Wetland Impact Exhibit
CSAH 2 Rehabilitation
Lake County, MN



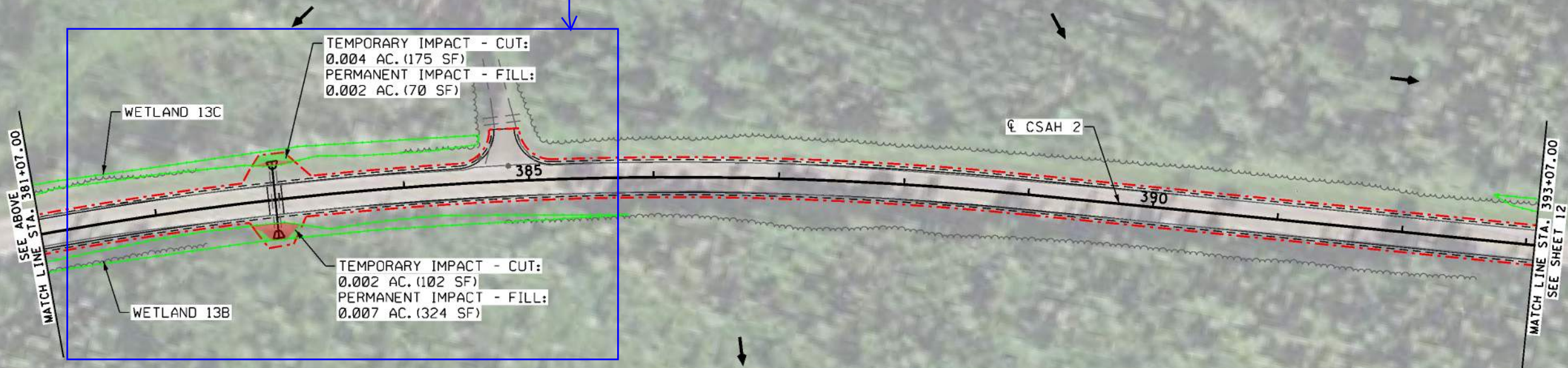
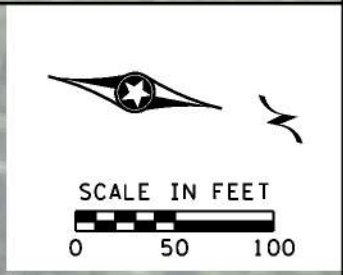
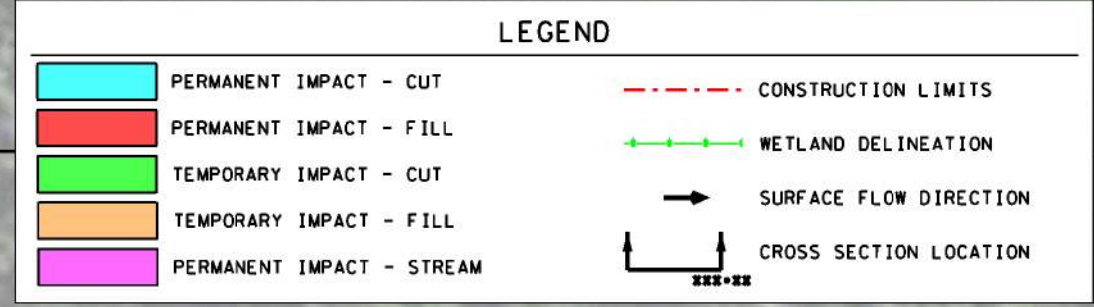
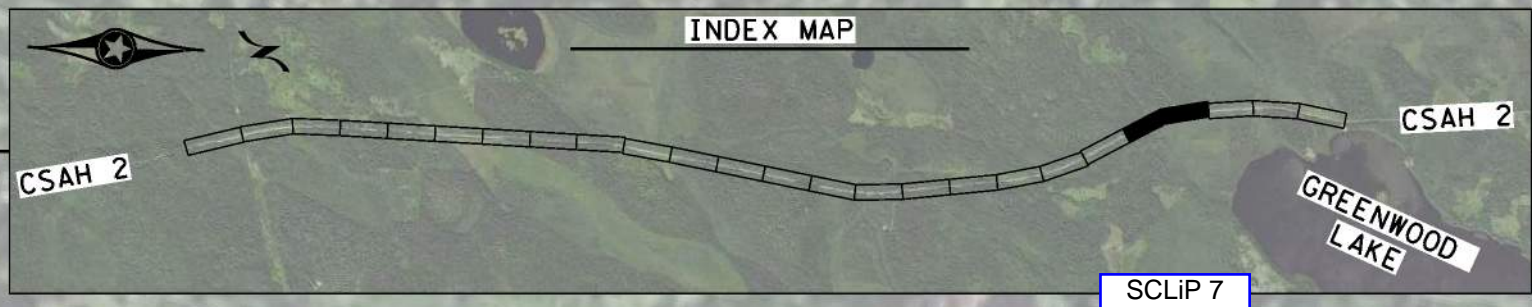
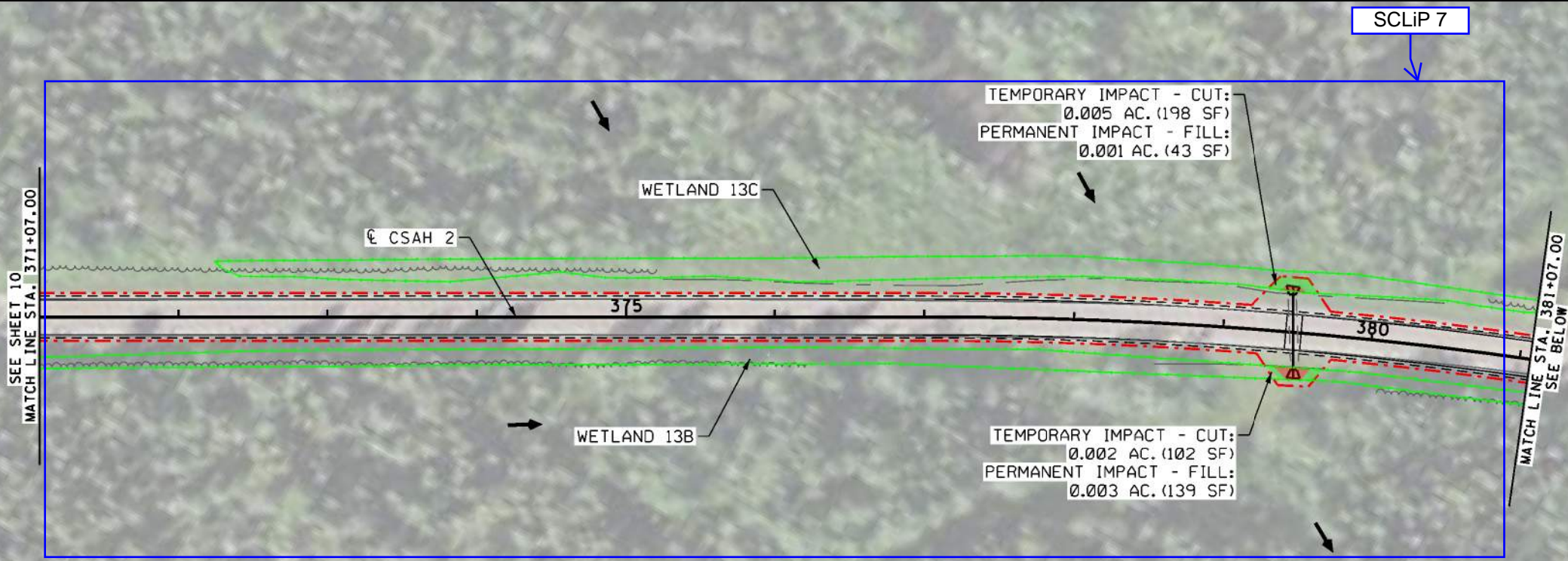
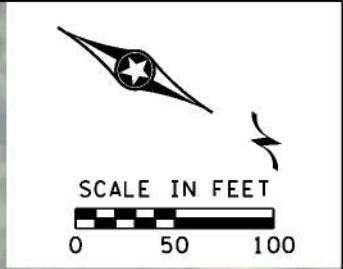
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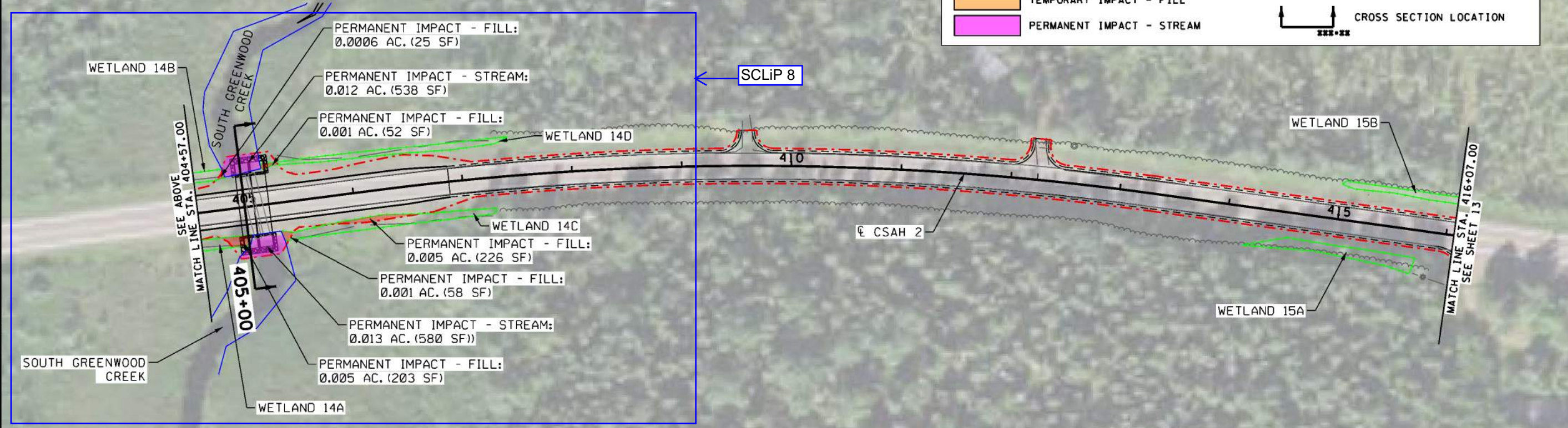
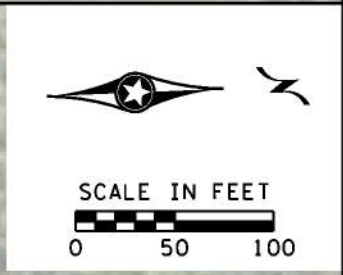
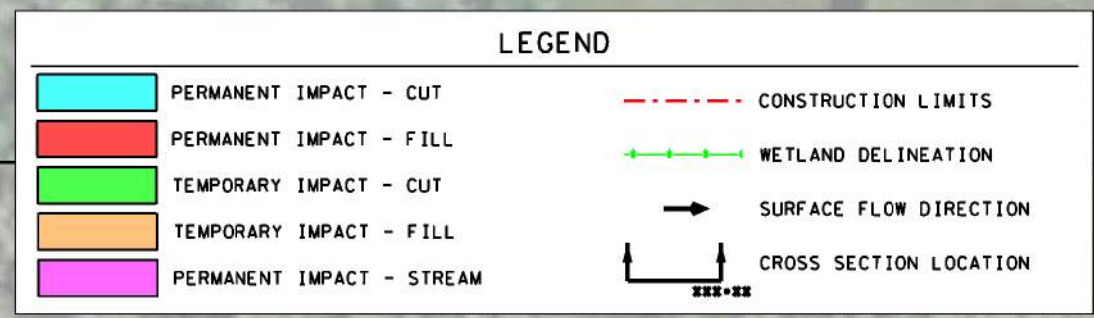
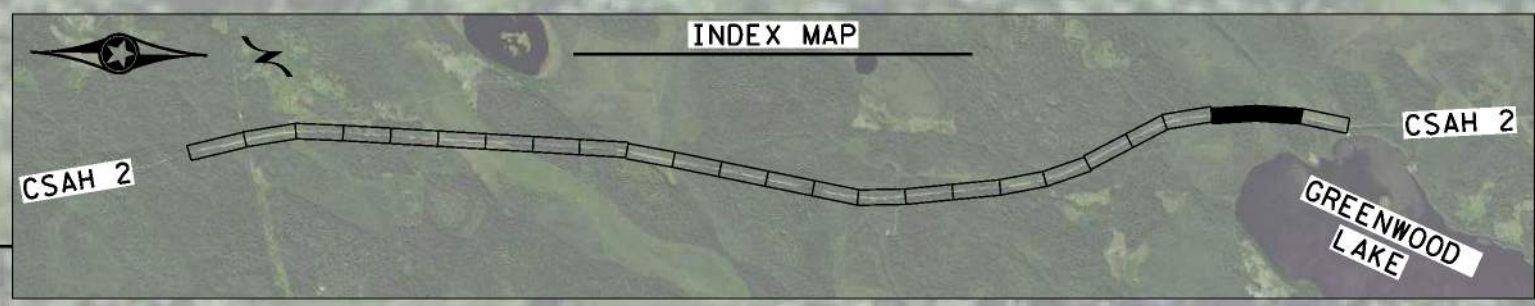
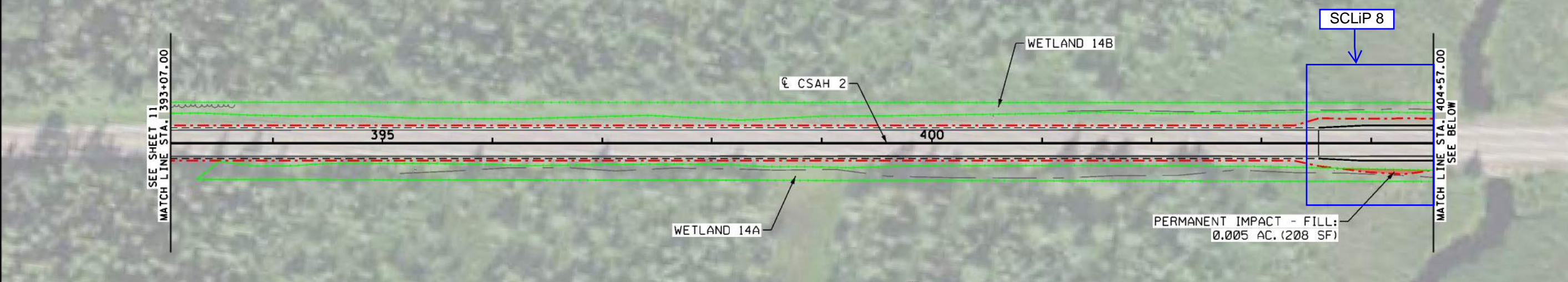
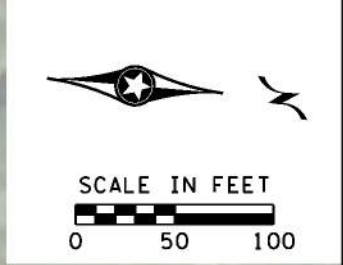
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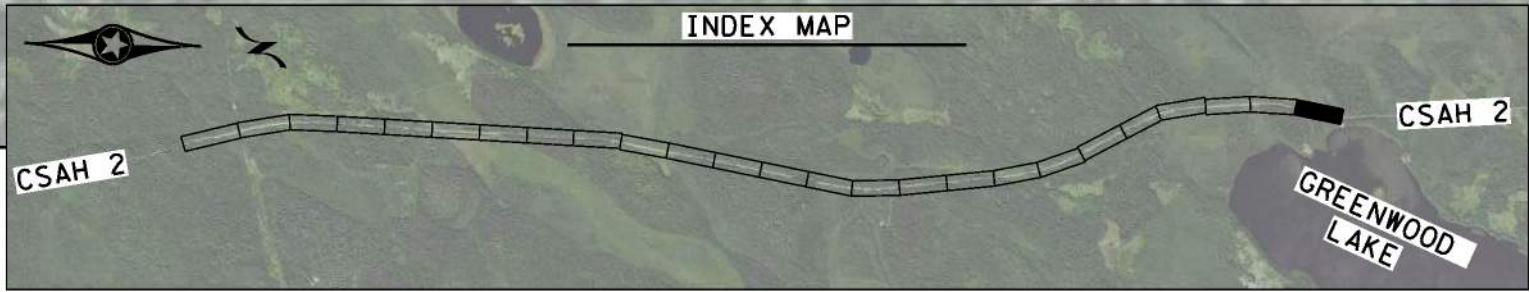
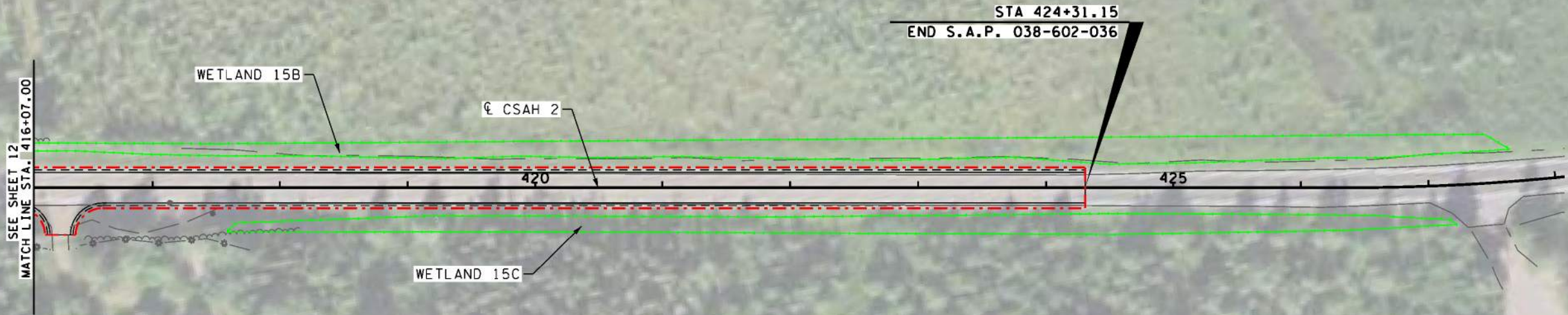
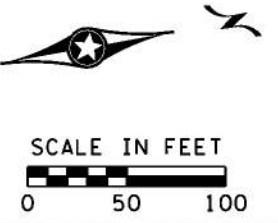
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Date: 3/22/2024
WSB Filename: K:\022863-000\0001\Exhibits\Wetland Impacts\Adjusted Limits Impacts\022863-000_wetimp12.dgn



LEGEND	
	PERMANENT IMPACT - CUT
	PERMANENT IMPACT - FILL
	TEMPORARY IMPACT - CUT
	TEMPORARY IMPACT - FILL
	PERMANENT IMPACT - STREAM
	CONSTRUCTION LIMITS
	WETLAND DELINEATION
	SURFACE FLOW DIRECTION
	CROSS SECTION LOCATION

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