



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

October 25, 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 2024-00985-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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-00985-TJH

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. Linear Ditch 17, 0.005 acre, 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 area for this determination includes the roadside ditch labeled as Linear Ditch 17 on the attached figures 2024-00985-TJH Figures 1-6 of 6. The review area is located to the East of TH 238 just North of Pike Creek. A Level One site delineation and desktop review were performed and found that the ditch was constructed in upland, drains only upland areas and does not carry relatively permanent flow. It is dominated by Reed Canary grass (*Phalaris arundinacea*). The review area is within Section 23, Township 129N, Range 30W, Morrison County, Minnesota, (45.972985, -94.409449).]

- a. Review Area Size (in acres): 0.005 acre
- b. Location Description: The review area is located in Section 23, Township 129N, Range 30W, Morrison County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 45.972985 Longitude: -94.409449
- d. Nearest City or Town: Little Falls
- e. County: Morrison
- f. State: Minnesota
- g. Other associated Jurisdictional Determinations (including outcomes): N/A

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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.]⁶
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]

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.

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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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]

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 [Linear Ditch 17 is a roadside ditch constructed in upland within the TH 238 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. 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). [N/A.]

⁹ 88 FR 3004 (January 18, 2023)

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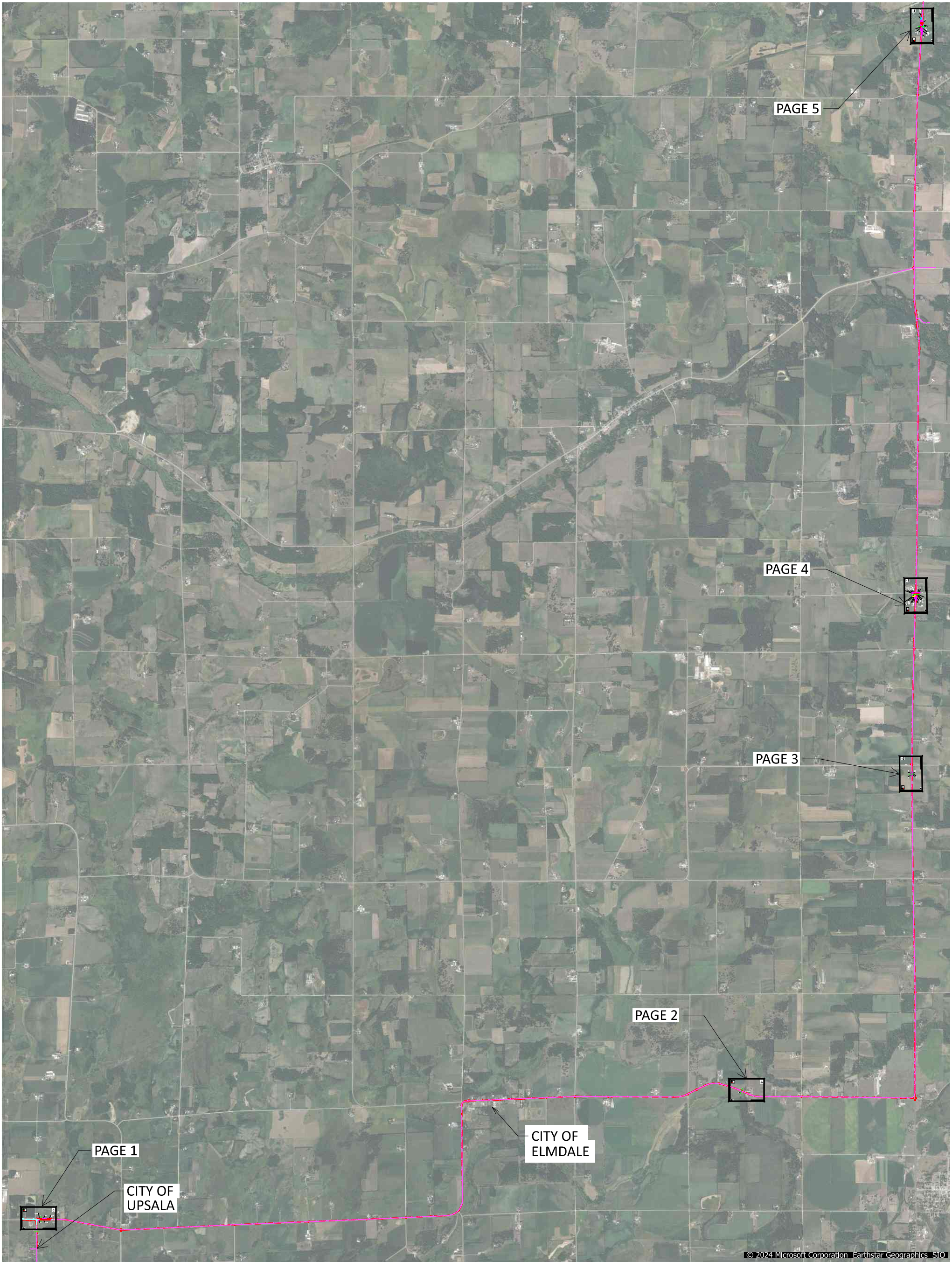
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), 2024-00985-TJH

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 Wetland Delineation Report, dated August 21, 2024](#)]
- b. [[Office evaluation conducted on October 12 and 15, 2024.](#)]
- c. [[USGS LiDAR, 3DEP Elevation Model, USGS TNM – National Hydrography Dataset, USFWS NWI Maps, and USDA/NRCS Soil Survey Maps.](#)]

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.

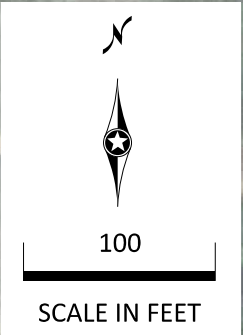


DISTRICT #: DISTRICT 3 - BAXTER, MN
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PATH & FILENAME: Projects\03_BAX\238\4913\026\Predesign\Alternatives\WETLAND\Permits\09-05-2024\p491326_003wet permit.dgn

16-SEP-2024

PLOTTED/REVISED:

- PERMANENT IMPACT-FILL
- TEMPORARY IMPACT
- WETLAND
- LINEAR DITCH
- TRIBUTARY
- CONSTRUCTION LIMITS



WETLAND 1 IMPACT A
PERMANENT IMPACT-FILL
FOR ROAD WIDENING
AND SLOPE CORRECTION
0.02 ACRES

SCLiP 1

WETLAND 1

WETLAND 1 IMPACT B
PERMANENT IMPACT-FILL
FOR ROAD WIDENING
AND SLOPE CORRECTION
0.01 ACRES

4TH AVE W

TH 238

WETLAND 2

WETLAND 2 IMPACT A
PERMANENT IMPACT-FILL
FOR ROAD WIDENING
AND SLOPE CORRECTION
0.11 ACRES

1000

1005

150

1010

120

TH 238

145

1008+50

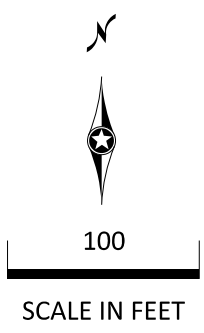


	STA. 145.+00.00	TO	STA. 122+00.00	
STATE PROJ. NO.	4913-26	(TH 238)	SHEET NO.	1 OF 5 SHEETS

DISTRICT #: DISTRICT 3 - BAXTER, MN
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PATH & FILENAME: Projects\03_BAX\238\4913\026\Predesign\Alternatives\WETLAND\Permits\09-05-2024\p491326_003wet permit.dgn

16-SEP-2024
PLOTTED/REVISED:

- PERMANENT IMPACT-FILL
- TEMPORARY IMPACT
- WETLAND
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	STA. 495+00.00	TO	STA. 511+00.00	
STATE PROJ. NO.	4913-26	(TH 238)	SHEET NO. 2	OF 5 SHEETS

DISTRICT #: DISTRICT 3 - BAXTER, MN
PLOT NAME: p491326_003wet permit.dgn
PATH & FILENAME: Projects\03_BAX\238\4913\026\Predesign\Alternatives\WETLAND\Permits\09-05-2024\p491326_003wet permit.dgn

PERMANENT IMPACT-FILL

TEMPORARY IMPACT

WETLAND

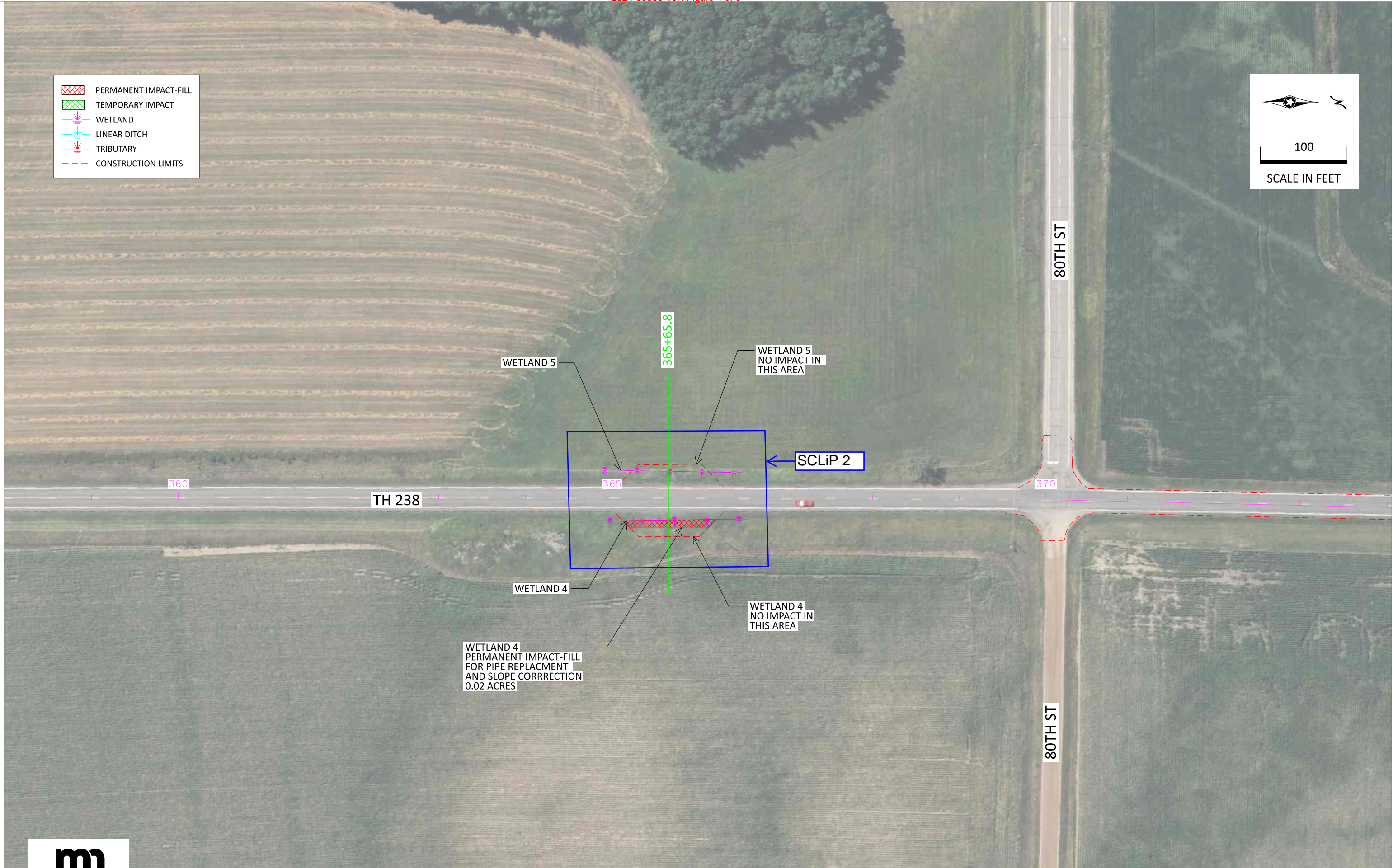
LINEAR DITCH

TRIBUTARY

CONSTRUCTION LIMITS

100

SCALE IN FEET



	STA.	359+00.00	TO	STA.	373+00.00
STATE PROJ. NO.	4913-26	(TH 238)	SHEET NO.	3	OF 5 SHEETS

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PLOT NAME: p491326_003wet permit.dgn
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16-SEP-2024
PLOTTED/REVISED:

- PERMANENT IMPACT-FILL
- TEMPORARY IMPACT
- WETLAND
- LINEAR DITCH
- TRIBUTARY
- CONSTRUCTION LIMITS



100

SCALE IN FEET

DNR PWW IMPACT B
PERMANENT IMPACT-FILL
FOR ROAD WIDENING,
PIPE REPLACEMENT AND
SLOPE CORRECTION
64 SF

DNR PWW IMPACT A
PERMANENT IMPACT-FILL
FOR ROAD WIDENING,
PIPE REPLACEMENT AND
SLOPE CORRECTION
0.01 ACRES

EDGE OF DNR PWW
EDGE OF CATTAILS

WETLAND 7A IMPACT A
PERMANENT IMPACT-FILL
FOR ROAD WIDENING
AND SLOPE CORRECTION
0.02 ACRES

WETLAND 7A

TH 238

445

450+09.06

45

455

WETLAND 6A

WETLAND 6A IMPACT A
PERMANENT IMPACT-FILL
FOR FOR ROAD WIDENING
AND SLOPE CORRECTION
0.09 ACRES

TRIBUTARY 8

TRIBUTARY 8 IMPACT C
PERMANENT IMPACT- FILL
FOR ROAD WIDENING , PIPE
REPLACEMENT AND SLOPE
CORRECTION
0.03 ACRES
56 LF

TRIBUTARY 8 IMPACT D
TEMPORARY IMPACT
0.02 ACRES
11 LF

95TH ST

TRIBUTARY 8 IMPACT A
TEMPORARY IMPACT
309 SF
15 LF

TRIBUTARY 8 IMPACT B
PERMANENT IMPACT- FILL
FOR ROAD WIDENING , PIPE
REPLACEMENT AND SLOPE
CORRECTION
0.02 ACRES
47 LF

WETLAND 7B AND
EDGE OF DNR PWW
EDGE OF CATTAILS

DNR PWW IMPACT IMPACT C
PERMANENT IMPACT-FILL
FOR ROAD WIDENING
AND SLOPE CORRECTION
0.01 ACRES

SCLiP 3

WETLAND 6B

WETLAND 6B IMPACT A
PERMANENT IMPACT-FILL
FOR SLOPE CORRECTION
0.05 ACRES

95TH ST



	STA.	442+00.00	TO	STA.	457+00.00
STATE PROJ. NO.	4913-26	(TH 238)	SHEET NO.	4	OF 5 SHEETS

DISTRICT #: DISTRICT 3 - BAXTER, MN
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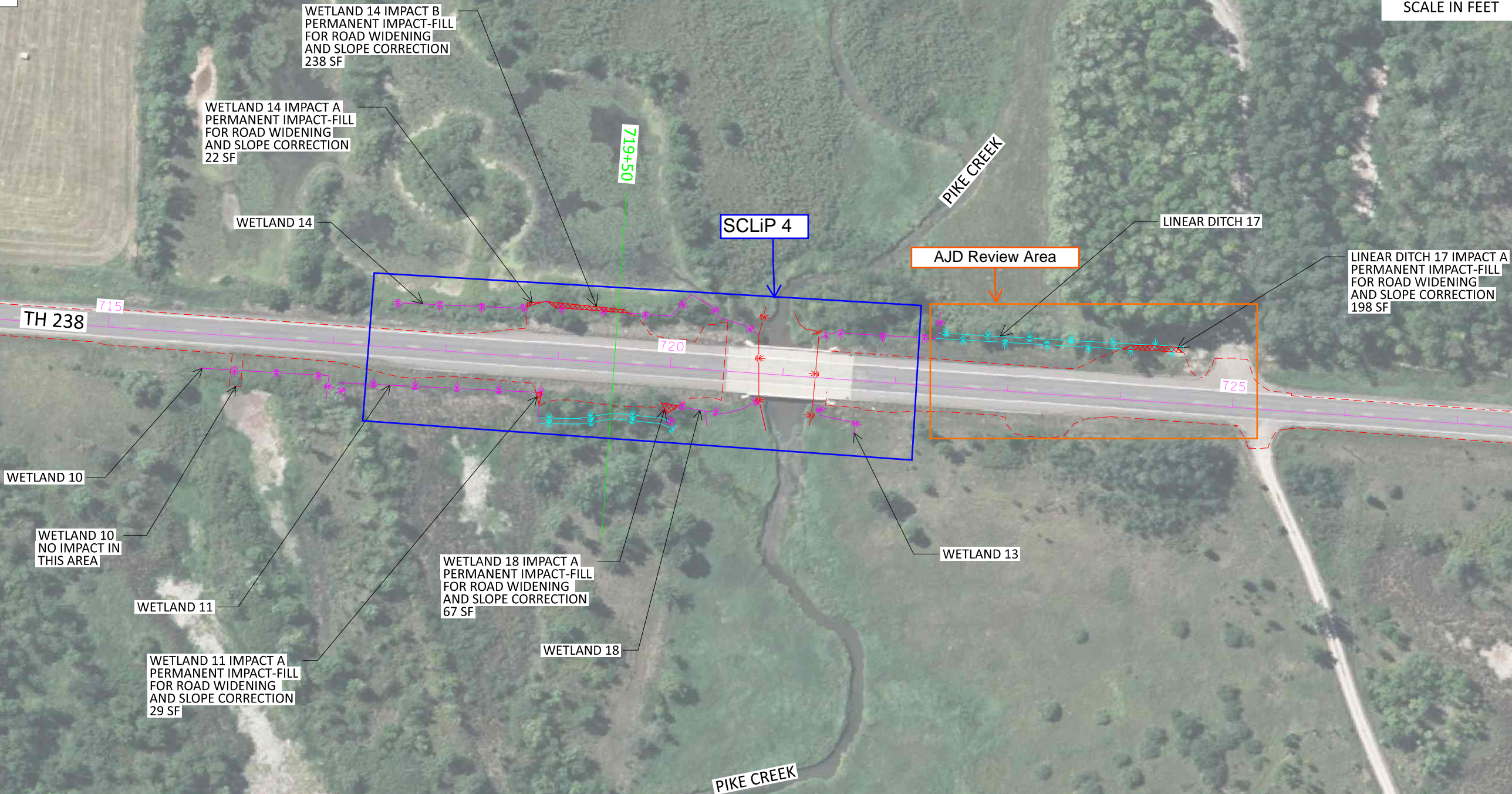
PLOTTED/REVISED:

- PERMANENT IMPACT-FILL
- TEMPORARY IMPACT
- WETLAND
- LINEAR DITCH
- TRIBUTARY
- CONSTRUCTION LIMITS



100

SCALE IN FEET



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STATE PROJ. NO.	4913-26	(TH 238)	SHEET NO.	5 OF 5 SHEETS