



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

CEMVP - RD

February 13, 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-2024-01266-MWV

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. SUMMARY OF CONCLUSIONS.

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), MVP-2024-01266-MWV

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wet Ditch NB-01 (0.1 acre)	Non-jurisdictional	Excluded feature
Wet Ditch SB-11 (0.12 acre)	Non-jurisdictional	Excluded feature
Wet Ditch SB-14 (0.03 acre)	Non-jurisdictional	Excluded feature
Wet Ditch NB-19-2 (0.02 acre)	Non-Jurisdictional	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)

3. REVIEW AREA. The review area for this determination includes 4 roadside ditches labeled as Wet Ditch NB-01 (0.1 acre), Wet Ditch SB-11 (0.12 acre), Wet Ditch SB-14 (0.03 acre), and Wet Ditch NB-19-2 (0.02 acre) on the enclosed figures labeled MVP-2024-01266-MWV Figure 1 of 10 through figure 10 of 10.

- a. Location Description: The approximate midpoint of review area is located in Section 34, Township 61N, Range 20W, St. Louis County, Minnesota.
- b. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 47.732890 Longitude: -92.867450
- c. Nearest City or Town: Angora
- d. County: St. Louis
- e. State: Minnesota
- f. Other associated Jurisdictional Determinations (including outcomes): N/A

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 features identified in the review area are Wet Ditch NB-01, Wet Ditch SB-11, Wet Ditch SB-14, and Wet Ditch NB-19-2. These features were constructed in upland, drain only upland, do not carry relatively permanent flow, and are not relocated tributaries.

Wet Ditch NB-01, Wet Ditch SB-11, Wet Ditch SB-14, and Wet Ditch NB-19-2 are roadside ditches that were constructed in uplands to convey runoff along the road. The Corps confirmed this by reviewing various desktop resources including the National Wetland Inventory (NWI), which does not identify wetlands in the area of Wet Ditch NB-01, Wet Ditch SB-11, Wet Ditch SB-14, or Wet Ditch NB-19-2. These features are surrounded by upland and were constructed in upland. Other resources reviewed to support this determination include Google Earth aerial imagery, US Geological Service 3DEP Hillshade and DEM maps; MNDNR 2-foot contour maps; NWI maps; NHD data; and NRCS hydric soil data.

Considering the information above, the Corps has determined that this feature is a Paragraph (b)(3) excluded ditch and 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

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.

⁷ 88 FR 3004 (January 18, 2023)

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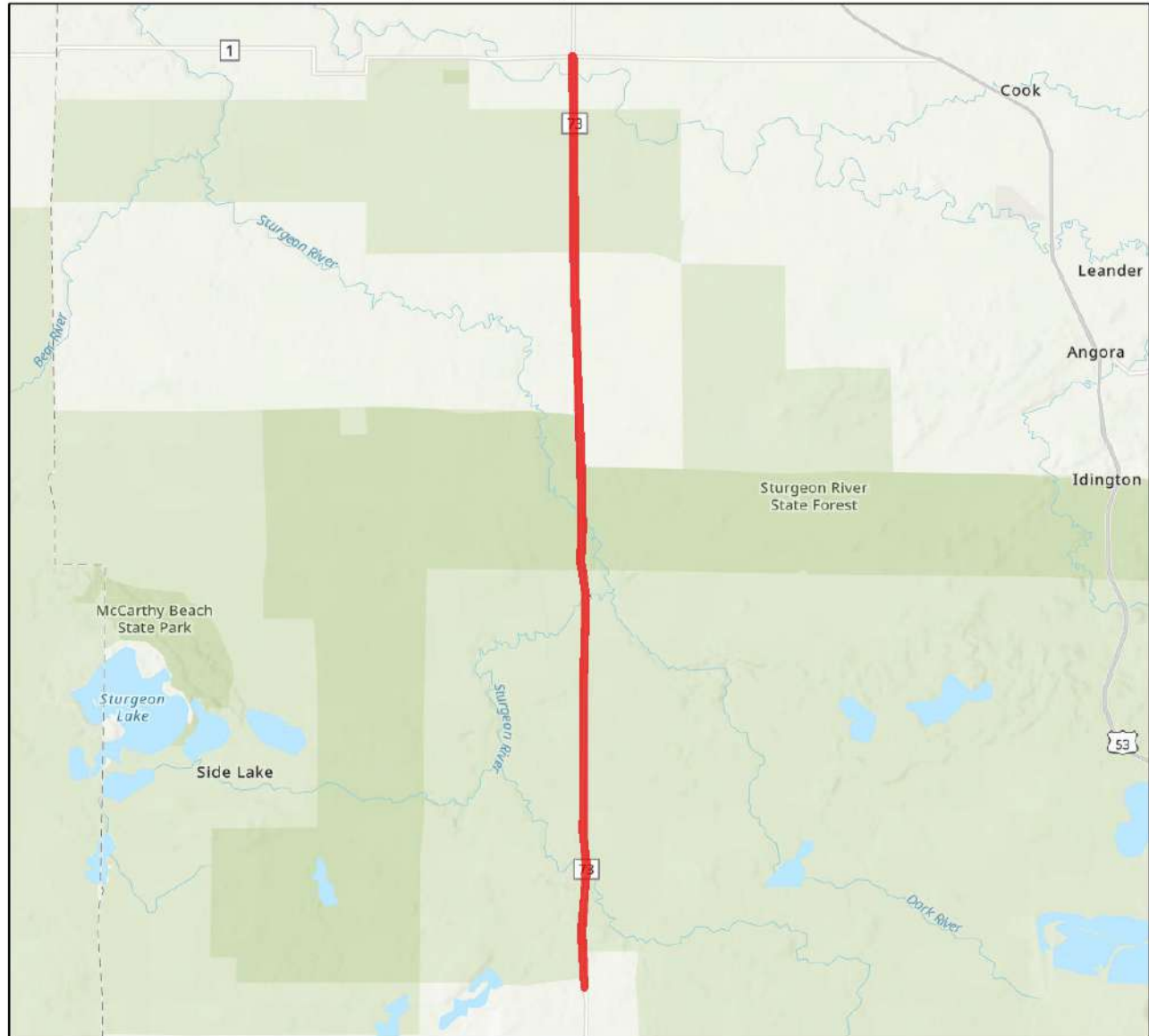
- a. Google Earth Imagery dated 2003, 2009, 2011, 2013, 2023, and 2024. Accessed February 10, 2025.
- b. USGS 3DEP Elevation. Accessed February 10, 2025.
- c. USDA NRCS Soil Survey SSURGO and STATGO. Accessed February 10, 2025.
- d. USFWS National Wetland Inventory (MapServer). Accessed February 10, 2025
- e. USGS TNM – National Hydrography Dataset. Accessed February 10, 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.

SP 6930-41, TH 73

USA Topo Basemap With Locator Map



0 1.25 2.5 5 7.5 10 Miles

Project_Boundary

Project Type: Transportation, Bridges, Culverts, Roads

Project Size (acres): 661.02

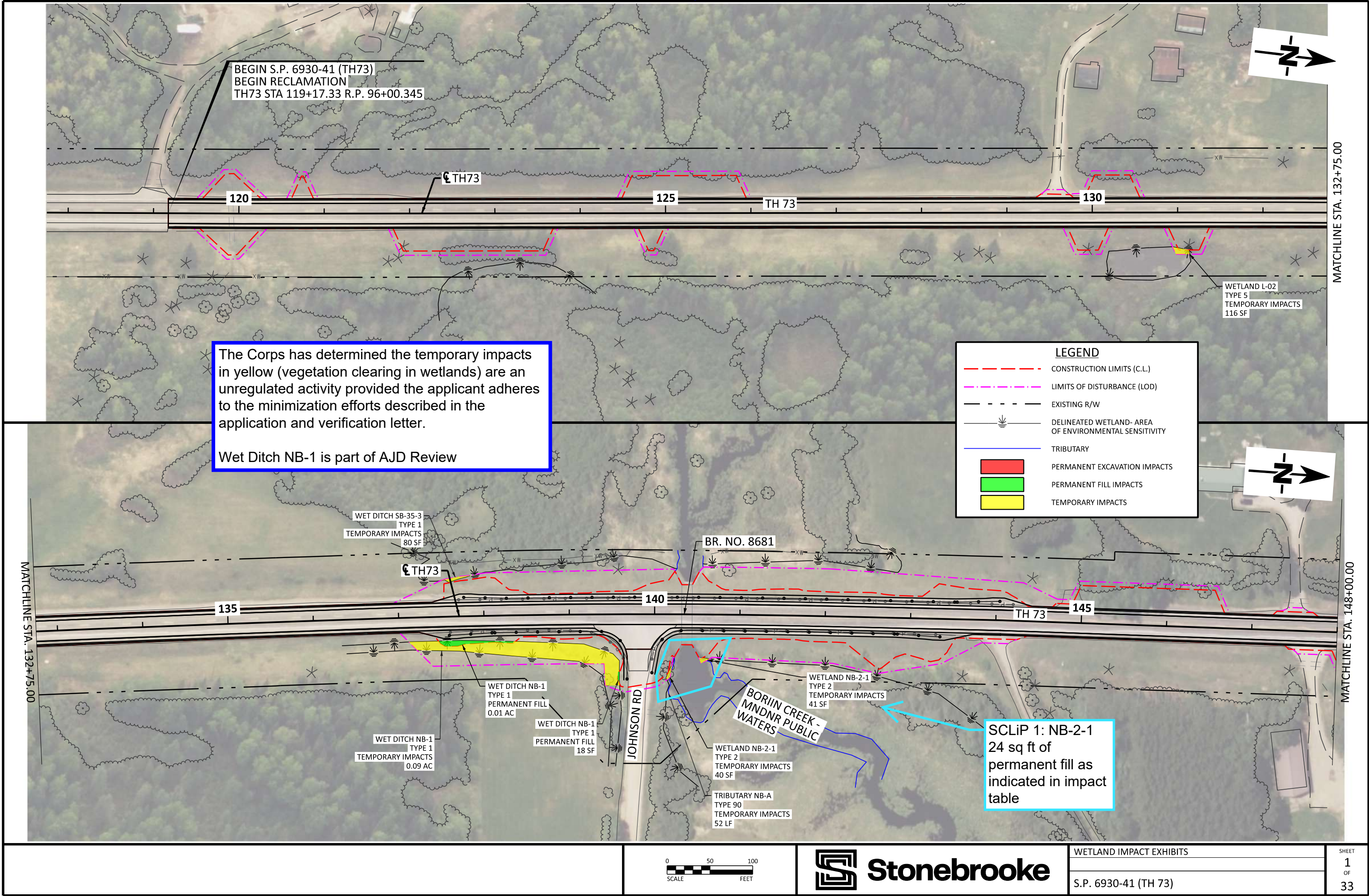
County(s): St. Louis

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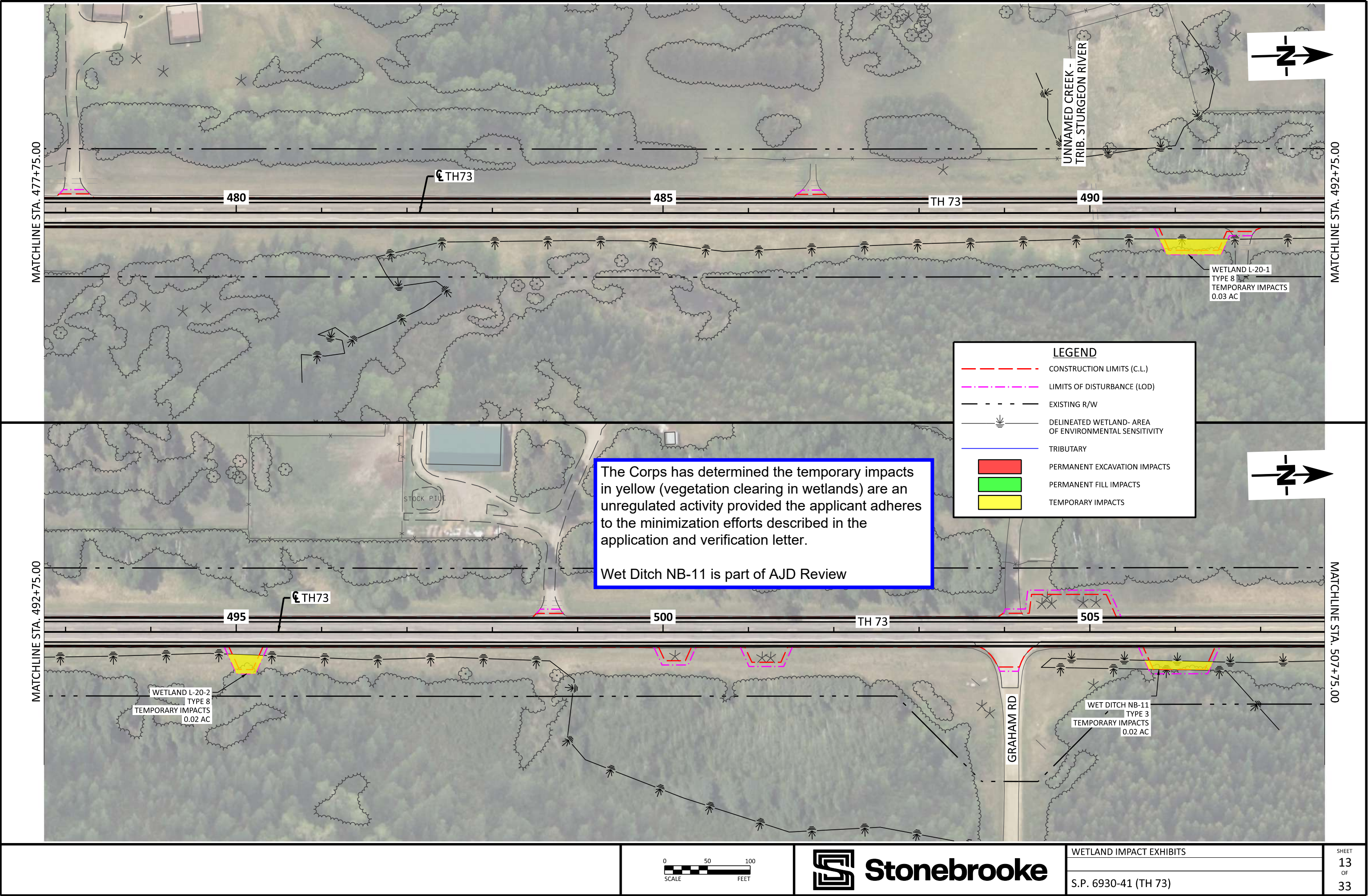
Esri, TomTom, Garmin, FAO, NOAA, USGS, EPA, USFWS
Esri, NASA, NGA, USGS
Province of Ontario, St. Louis County (MN), Esri, TomTom, Garmin, SafeGraph,



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MATCHLINE STA. 507+75.00

MATCHLINE STA. 522+75.00

MATCHLINE STA. 522+75.00

MATCHLINE STA. 537+75.00

The Corps has determined the temporary impacts in yellow (vegetation clearing in wetlands) are an unregulated activity provided the applicant adheres to the minimization efforts described in the application and verification letter.

Wet Ditch NB-11 is part of AJD Review

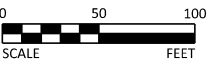
SCLIP 2: NB-13-1 and NB-13-3

EXCEPTION (148.50')
BR. NO. 6554

STURGEON RIVER -
MNDNR PUBLIC WATERS

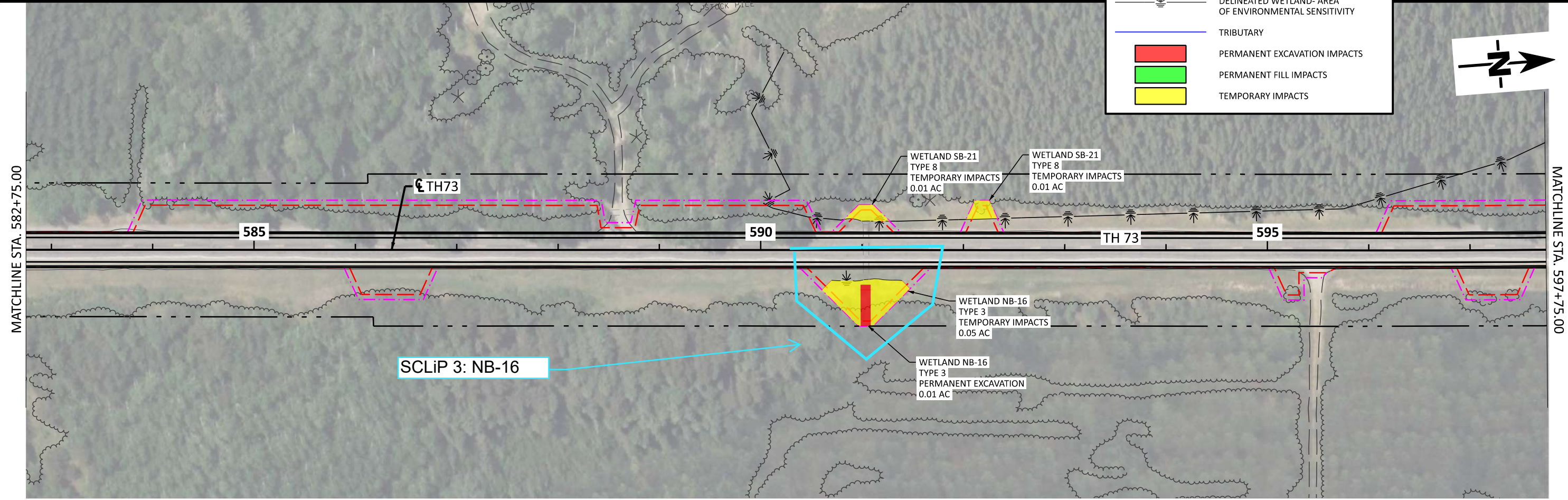
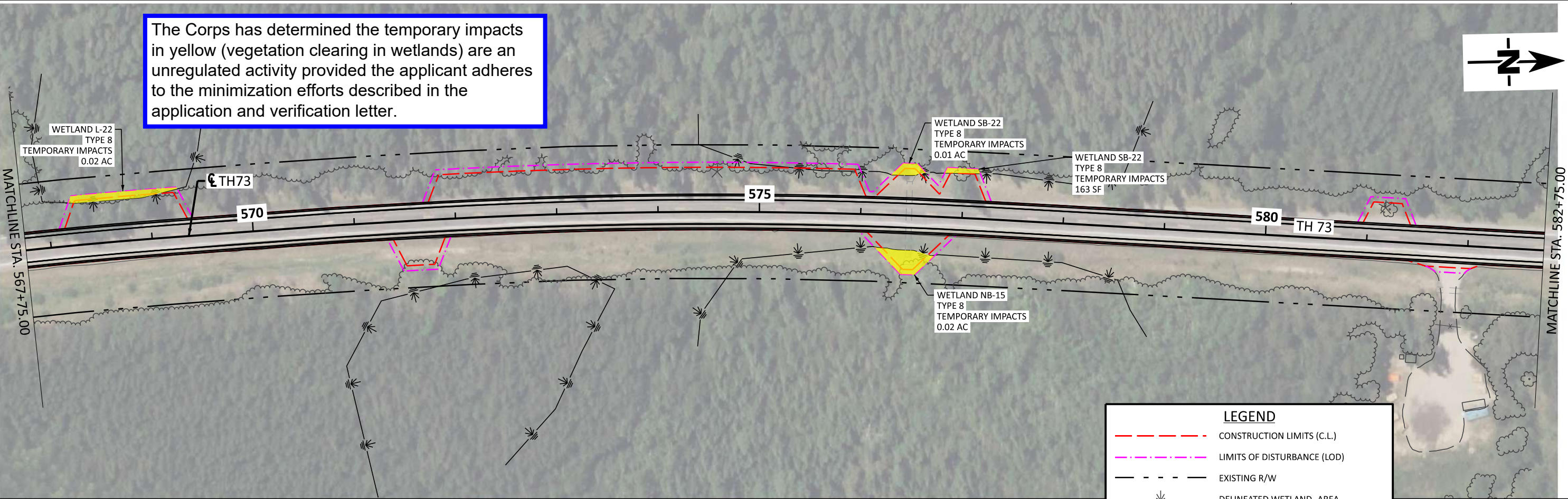
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- .-.- LIMITS OF DISTURBANCE (LOD)
- - - EXISTING R/W
- DELINEATED WETLAND- AREA OF ENVIRONMENTAL SENSITIVITY
- TRIBUTARY
- PERMANENT EXCAVATION IMPACTS
- PERMANENT FILL IMPACTS
- TEMPORARY IMPACTS



WETLAND IMPACT EXHIBITS
S.P. 6930-41 (TH 73)

The Corps has determined the temporary impacts in yellow (vegetation clearing in wetlands) are an unregulated activity provided the applicant adheres to the minimization efforts described in the application and verification letter.



LEGEND

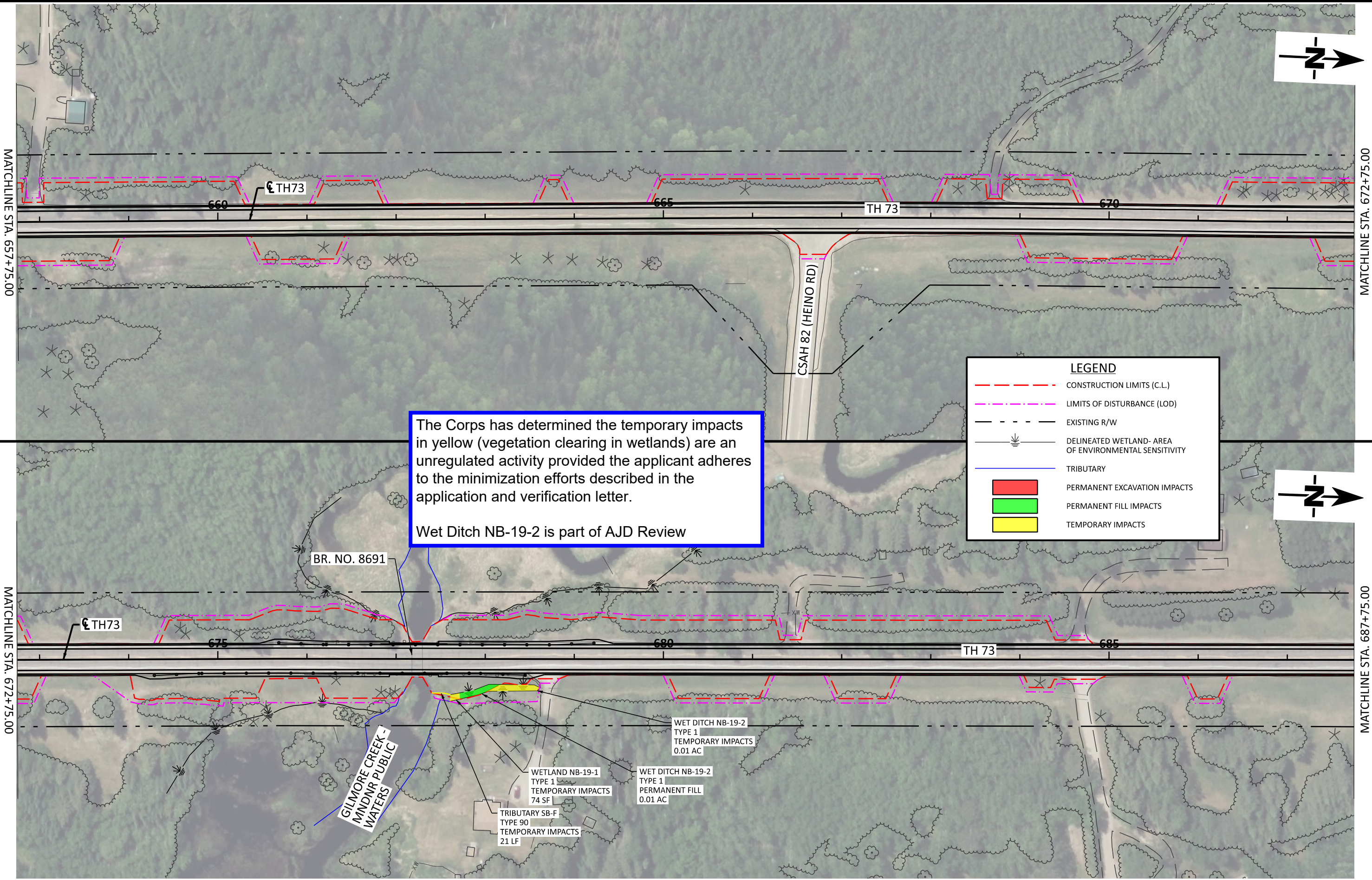
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- PERMANENT FILL IMPACTS
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Stonebrooke

WETLAND IMPACT EXHIBITS

S.P. 6930-41 (TH 73)

SHEET
19
OF
33

The Corps has determined the temporary impacts in yellow (vegetation clearing in wetlands) are an unregulated activity provided the applicant adheres to the minimization efforts described in the application and verification letter.

Wet Ditch SB-14 is part of AJD Review

MATCHLINE STA. 687+75.00

MATCHLINE STA. 702+75.00

MATCHLINE STA. 702+75.00

MATCHLINE STA. 717+75.00

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WETLAND IMPACT EXHIBITS

S.P. 6930-41 (TH 73)

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The Corps has determined the temporary impacts in yellow (vegetation clearing in wetlands) are an unregulated activity provided the applicant adheres to the minimization efforts described in the application and verification letter.

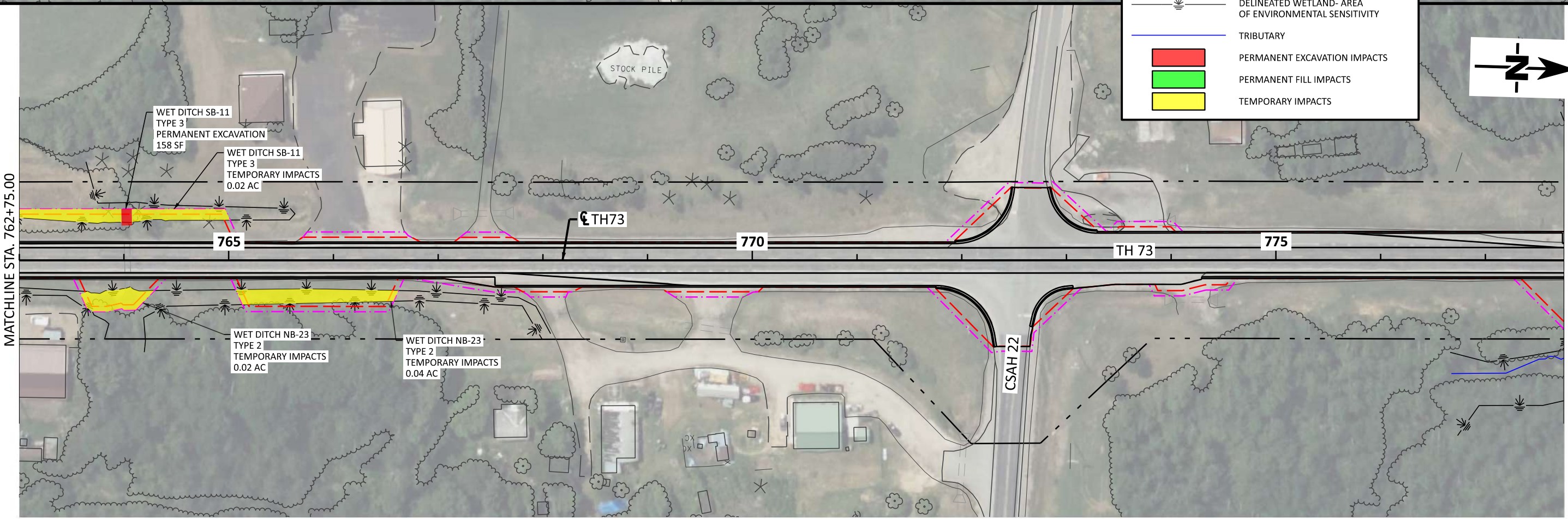
Wet Ditch SB-11 is part of AJD Review

MATCHLINE STA. 747+75.00

MATCHLINE STA. 762+75.00

LEGEND

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- DELINEATED WETLAND- AREA OF ENVIRONMENTAL SENSITIVITY
- TRIBUTARY
- PERMANENT EXCAVATION IMPACTS
- PERMANENT FILL IMPACTS
- TEMPORARY IMPACTS

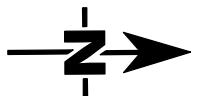


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WETLAND IMPACT EXHIBITS
S.P. 6930-41 (TH 73)

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MATCHLINE STA. 867+75.00

MATCHLINE STA. 882+75.00

WETLAND SB-6
TYPE 8
TEMPORARY IMPACTS
0.01 AC

WETLAND SB-6
TYPE 8
TEMPORARY IMPACTS
0.01 AC

WETLAND NB-28
TYPE 8
TEMPORARY IMPACTS
0.01 AC

TH73

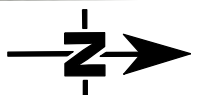
875

TH 73

880

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- PERMANENT FILL IMPACTS
- TEMPORARY IMPACTS



SCLiP 4:
NB-28 0.01 ac permanent
impact within coniferous bog

PCN is required for this SCLiP.

MATCHLINE STA. 882+75.00

MATCHLINE STA. 897+75.00

WETLAND SB-6
TYPE 8
TEMPORARY IMPACTS
0.04 AC

885

890

TH 73

895

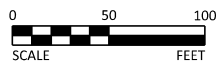
WETLAND SB-6
TYPE 8
TEMPORARY IMPACTS
0.04 AC

WETLAND NB-28
TYPE 8
TEMPORARY IMPACTS
0.08 AC

WETLAND NB-28
TYPE 8
PERMANENT FILL
0.01 AC

WETLAND NB-28
TYPE 8
TEMPORARY IMPACTS
0.10 AC

TH73



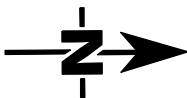
WETLAND IMPACT EXHIBITS

S.P. 6930-41 (TH 73)

SHEET
26
OF
33

The Corps has determined the temporary impacts in yellow (vegetation clearing in wetlands) are an unregulated activity provided the applicant adheres to the minimization efforts described in the application and verification letter.

SCLiP 5:
NB-28 93 sf
permanent impact

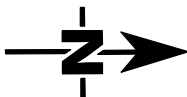


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MATCHLINE STA. 942+75.00

LEGEND

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- PERMANENT FILL IMPACTS
- TEMPORARY IMPACTS



MATCHLINE STA. 942+75.00

MATCHLINE STA. 957+75.00

COOK AREA
SNOWMOBILE
TRAIL CROSSING

WETLAND SB-5
TYPE 8
TEMPORARY IMPACTS
0.08 AC

WETLAND NB-28
TYPE 8
TEMPORARY IMPACTS
0.01 AC

WETLAND NB-28
TYPE 8
TEMPORARY IMPACTS
0.05 AC

WETLAND NB-28
TYPE 8
TEMPORARY IMPACTS
0.01 AC

WETLAND NB-28
TYPE 8
TEMPORARY IMPACTS
0.02 AC



WETLAND IMPACT EXHIBITS

S.P. 6930-41 (TH 73)

SHEET
28
OF
33