



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, MVP DISTRICT
ST. PAUL OFFICE
332 MINNESOTA ST E1500
ST. PAUL MN 55101

MVP

September 5, 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-2025-00691-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, 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 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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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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Linear Ditch 4	Non-Jurisdictional	Non-WOTUS
Linear Ditch 5	Non-Jurisdictional	Non-WOTUS
Linear Ditch 6	Non-Jurisdictional	Non-WOTUS
Linear Ditch 2	Non-Jurisdictional	Non-WOTUS
Wetland 3	Non-Jurisdictional	Non-WOTUS

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 for this determination includes one non-jurisdictional wetland labeled as Wetland 3, and four linear ditches labeled as Linear Ditch 2, Linear Ditch 4, Linear Ditch 5, and Linear Ditch 6 on the attached figures labeled as 2025-00691-TJH Figures 1 of 9 through 9 of 9. A wetland delineation was completed at this site February 7, 2025. The review area is located along Trunk Highway (TH) 27 and the immediately adjacent urban area, in Section 17, Township 42 North Range 25 West, Mille Lacs County, Minnesota. The approximate center coordinates of this site (in

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decimal degrees), Latitude: 46.120250, Longitude: -93.520820. There are no other JDs associated with this review area.

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 WATERS⁶: 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 10.⁷
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

⁶ 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.

⁷ 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).⁸

Linear Ditch 2, Linear Ditch 4, Linear Ditch 5, Linear Ditch 6, were constructed in upland within the TH 27 right of way based on 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, 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).

Wetland 3 is not a traditionally navigable water (TNW), territorial sea, or interstate water and therefore are not an (a)(1) waters. The wetland delineation and desktop resources, including topographic maps, LiDAR imagery, and Google Earth aerial imagery indicate that Wetlands 3 is a depressional basin surrounded entirely by upland and non-jurisdictional roadside ditches with no continuous

⁸ 88 FR 3004 (January 18, 2023)

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surface connection to jurisdictional waters. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. The wetland is approximately 0.23 mile from the nearest relatively permanent water, Mille Lacs Lake located to the northwest of the project. This wetland is a non-tidal wetland that does not have a continuous surface connection to a relatively permanent jurisdictional water and, as such, do not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, this wetland is not jurisdictional 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. Minnesota Department of Transportation Delineation Report, dated February 7, 2025
 - b. Desktop evaluation conducted August 29, 2025
 - 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.

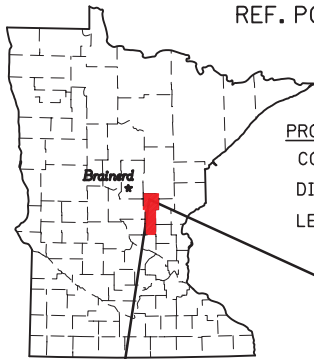
MINNESOTA DEPARTMENT OF TRANSPORTATION

CONSTRUCTION PLAN FOR URBAN RECONSTRUCTION AND ADA

LOCATED ON TH 27 100 FT W OF CHIPPEWA AVE. TO 0.1 MI E OF 3RD ST IN WAHKON

STATE PROJ. NO. 4804-23

REF. POINT 184+00.654 TO REF. POINT 185+00.102

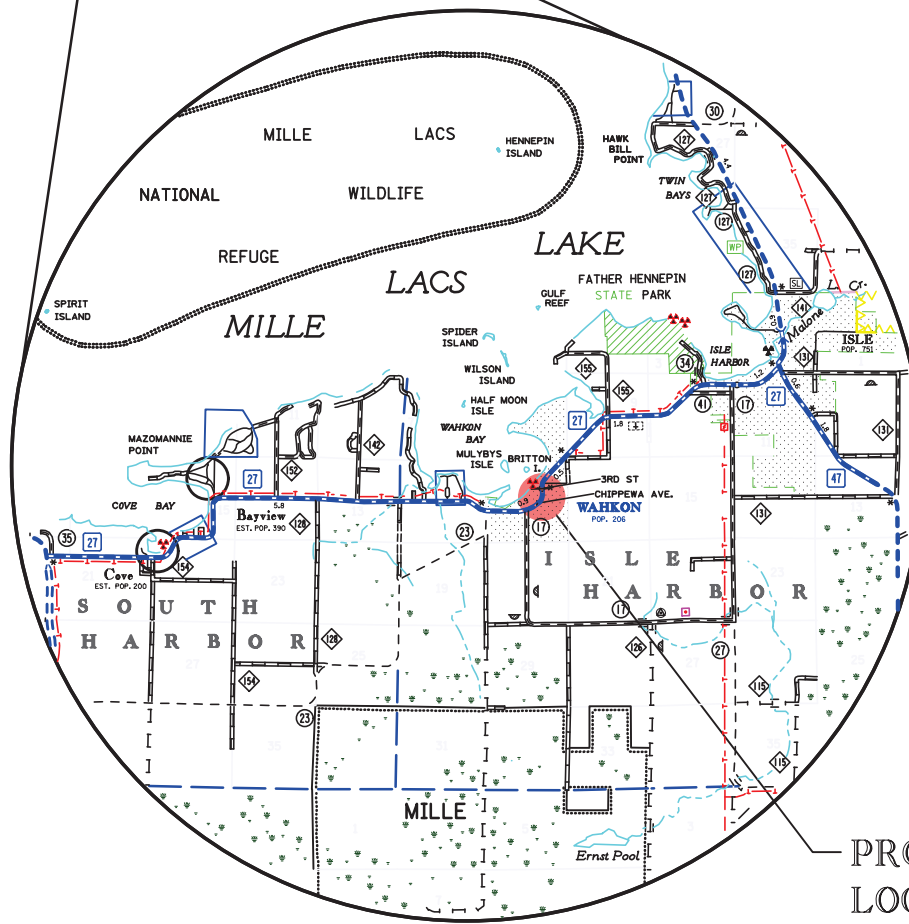


PROJECT LOCATION

COUNTY : MILLE LACS

DIST./DIV. : D3 BAXTER

LENGTH : 0.448 MILES

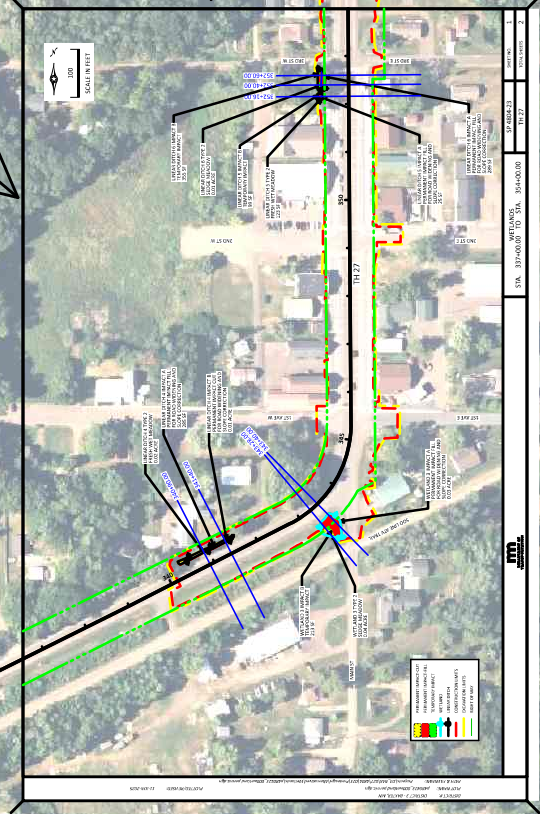
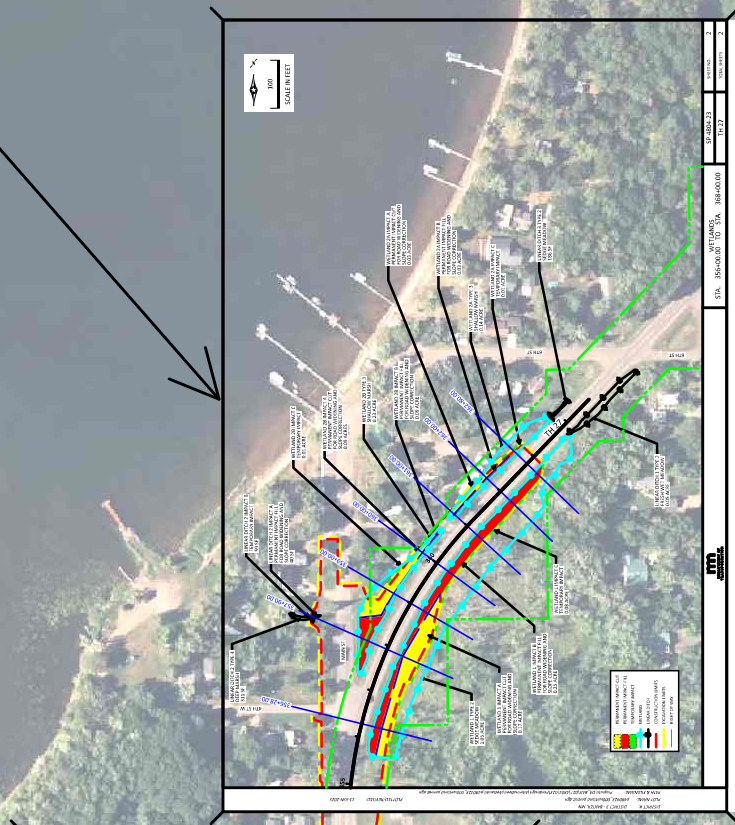


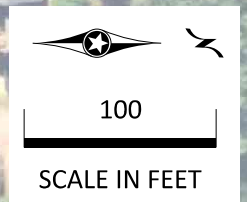
PROJECT LOCATION

PAGE 2

PAGE 1

CITY OF WAHKON





Corps' AJD review area is limited to Wetland 3, Linear Ditch 4, Linear Ditch 5, and Linear Ditch 6 within the orange polygons

DISTRICT #: DISTRICT 3 - BAXTER, MN
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 PLOTTED/REVISED: 28-MAY-2025

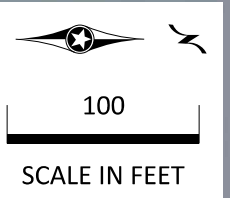


	PERMANENT IMPACT-CUT
	PERMANENT IMPACT-FILL
	TEMPORARY IMPACT
	WETLAND
	LINEAR DITCH
	CONSTRUCTION LIMITS
	EXCAVATION LIMITS
	RIGHT OF WAY



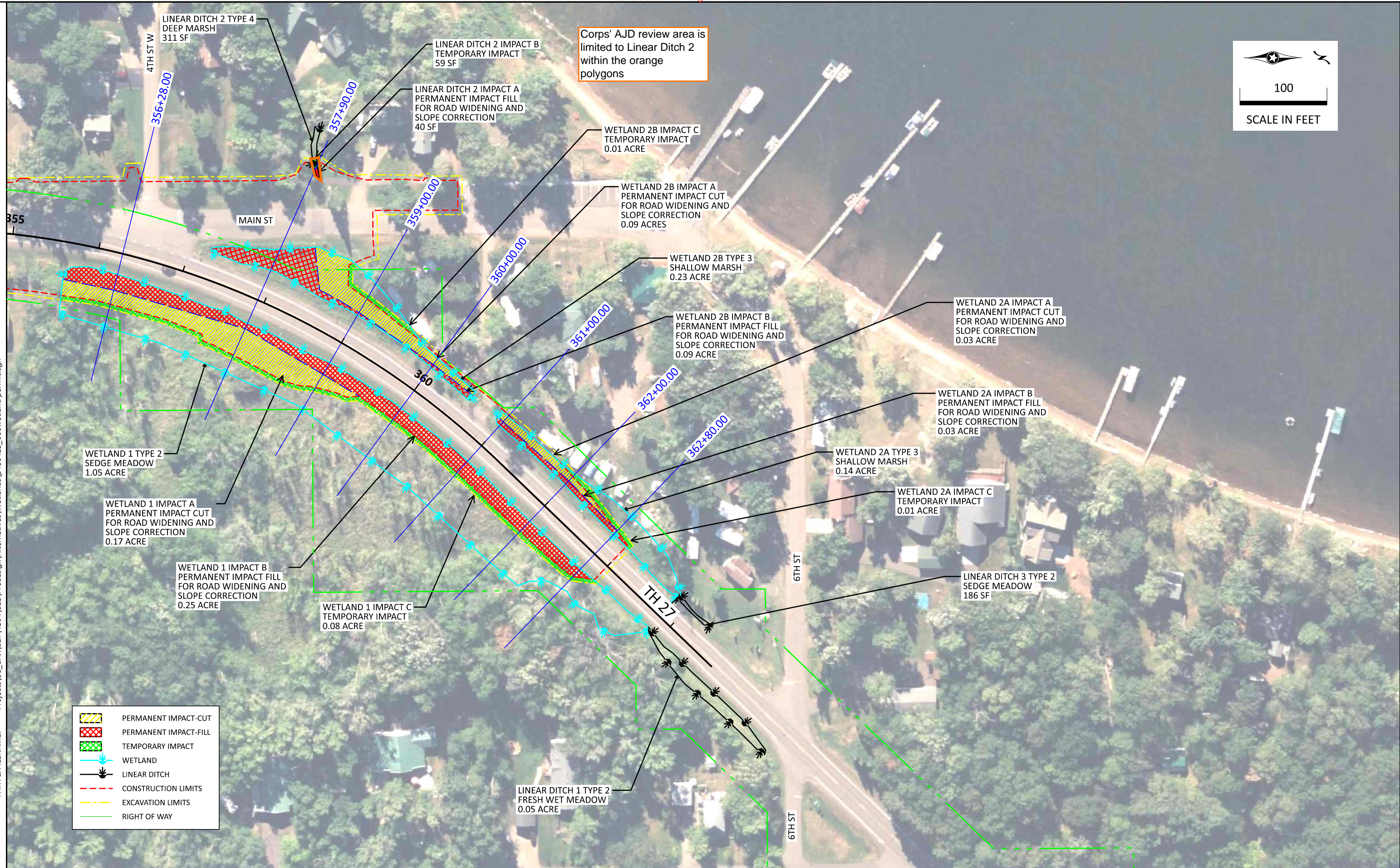
WETLANDS
STA. 337+00.00 TO STA. 354+00.00

SP 4804-23	SHEET NO.	1
TH 27	TOTAL SHEETS	2



Corps' AJD review area is limited to Linear Ditch 2 within the orange polygons

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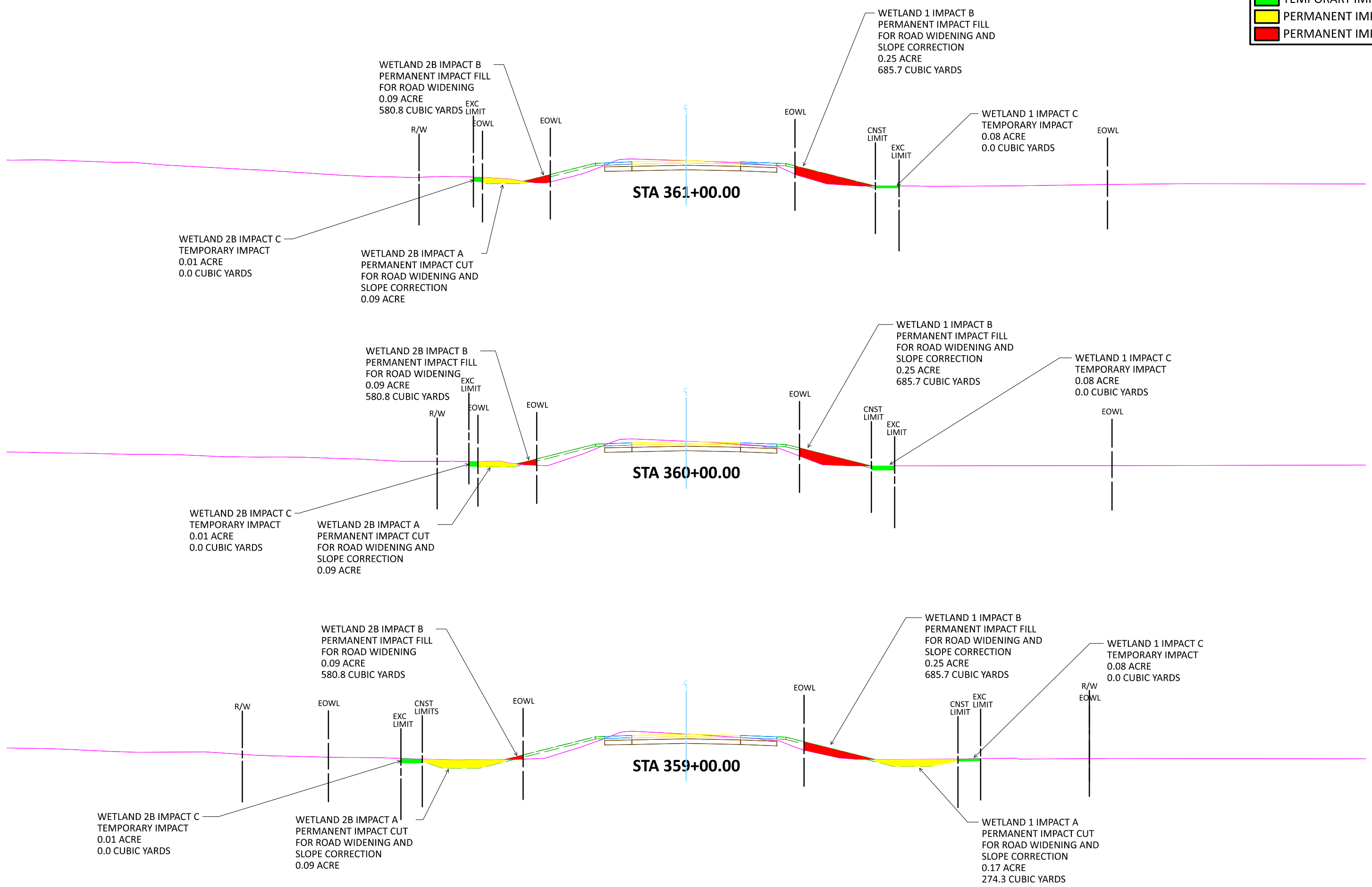
	PERMANENT IMPACT-CUT
	PERMANENT IMPACT-FILL
	TEMPORARY IMPACT
	WETLAND
	LINEAR DITCH
	CONSTRUCTION LIMITS
	EXCAVATION LIMITS
	RIGHT OF WAY



WETLANDS
STA. 356+00.00 TO STA. 368+00.00

SP 4804-23	SHEET NO.	2
TH 27	TOTAL SHEETS	2

	TEMPORARY IMPACT
	PERMANENT IMPACT-CUT
	PERMANENT IMPACT-FILL



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 PLOTTED/REVISED: 11-JUN-2025



CROSS SECTIONS STA. 359+00.00 TO STA. 361+00.00	SP 4804-23	SHEET NO. 4
	TH 27	TOTAL SHEETS 5

