



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

January 28, 2026

CEMVP-RD

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-2021-02492-JST 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. 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.

- 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
Wetland A (0.68 acre)	Non-Jurisdictional	Does not meet (a)(4)
Wetland 1 (0.46 acre)	Non-Jurisdictional	Does not meet (a)(4)
Wetland 2 (0.34 acre)	Non-Jurisdictional	Does not meet (a)(4)
Wet Ditch C (0.08 acre)	Non-Jurisdictional	Excluded (b)(3)
Wet Ditch D (0.13 acre)	Non-Jurisdictional	Excluded (b)(3)
Wet Ditch 1 (0.01 acre)	Non-Jurisdictional	Excluded (b)(3)
Wet Ditch 2 (0.70 acre)	Non-Jurisdictional	Excluded (b)(3)
Wet Ditch 3 (0.09 acre)	Non-Jurisdictional	Excluded (b)(3)
Wet Ditch 4 (0.03 acre)	Non-Jurisdictional	Excluded (b)(3)

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 three non-jurisdictional wetlands and six excluded ditches as identified in Section 1(a) of this MFR and by the blue review area polygons identified on the attached figures labeled MVP-2021-02492-JST AJD Figures – Pages 1-9 of 9.

- a. Project Area Size (in feet): 10,300

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- b. Location Description: The project/review area is located in Sections 1 & 2, Township 29N, Range 21W; Sections 35 & 36, Township 30N, Range 21W, Washington County, Minnesota.
 - c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 45.035100 Longitude: -92.884680
 - d. Nearest City or Town: Lake Elmo
 - e. County: Washington
 - f. State: Minnesota
 - g. Other associated Jurisdictional Determinations (including outcomes):
No previous jurisdictional determinations have been completed in the review area.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁵
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

⁵ 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.

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.

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. N/A

- 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

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

The features identified as Wet Ditch C, Wet Ditch D, Wet Ditch 1, Wet Ditch 2, Wet Ditch 3, and Wet Ditch 4 are linear roadside drainage ditches constructed in upland and draining only upland. This determination is supported by the NRCS Web Soil Survey which indicates that these areas are mapped in non-hydric soils. The National Hydrography Dataset (NHD) and National Wetlands Inventory (NWI) also do not show any features overlapping with the above referenced resources. A review of Google Earth Aerial Imagery indicates that these features do not have standing or flowing water and are located adjacent to the roadway. A review of the US Geological Service 3DEP Hillshade, DEM, and 2-ft Contour

⁸ 88 FR 3004 (January 18, 2023)

shows that these features are located within depressional areas in higher elevations, indicating that these features were constructed in uplands. Therefore, these features were constructed as drainage features to convey runoff from the roadway. Based on a review of desktop resources, Wet Ditch C, Wet Ditch D, Wet Ditch 1, Wet Ditch 2, Wet Ditch 3, and Wet Ditch 4 are linear roadside drainage ditches constructed in upland, draining only upland, and do not carry a relatively permanent flow of water. Therefore, these aquatic resources have been determined to be Paragraph (b)(3) excluded ditches and are not subject to regulation under 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).

The features identified as Wetland A, Wetland 1, and Wetland 2 are not traditionally navigable waters (TNW), territorial seas, or interstate waters and therefore are not (a)(1) waters. This determination is supported by topographic maps, LiDAR imagery, and Google Earth imagery which indicates that these wetlands are depressional wetlands surrounded entirely by uplands and are adjacent to Trunk Highway 36 (TH 36). The National Wetland Inventory (NWI) and National Hydrography Dataset (NHD) also does not show any features overlapping with these wetlands or any potential connections between these features and any downstream waters. These wetlands do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. These wetlands are non-tidal wetlands that do not abut 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, these wetlands are 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 Regulatory Viewer – 3DEP Hillshade, 3DEP Digital Elevation Model (DEM), 3DEP 2-ft Contour, National Wetland Inventory, National Hydrography Dataset, USDA Soils Hydric Class. Accessed January 27, 2026.
 - b. Google Earth Imagery dated 2018, 2025.

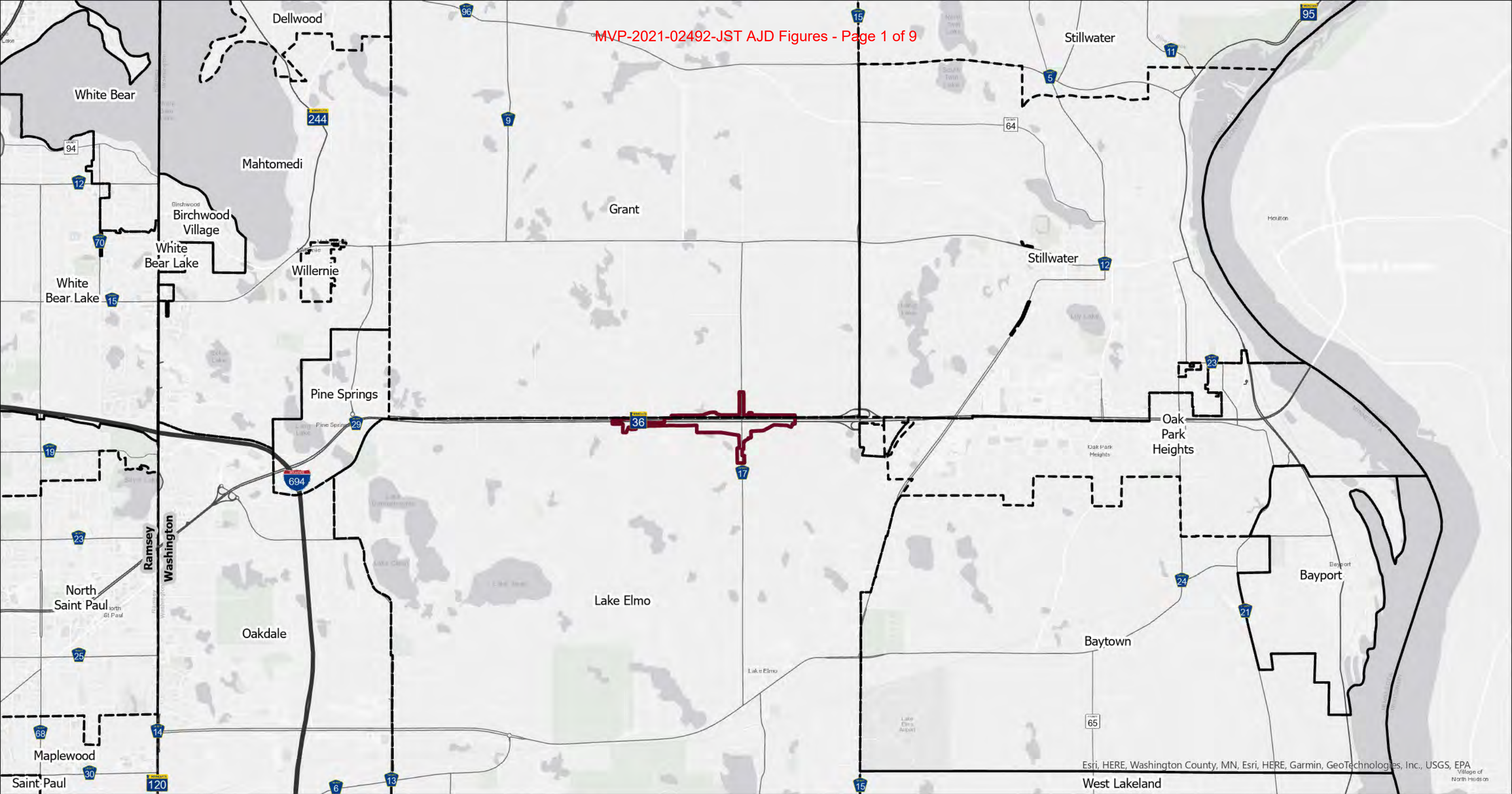
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- c. SP 8204-57: TH 36 at CSAH 17 Wetland Replacement Plan dated December 23, 2025.


10. OTHER SUPPORTING INFORMATION. N/A

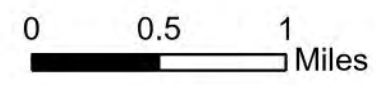
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



TH 36 and CSAH 17
Figure 1
Project Location

Legend

 Study Area - Updated 2024





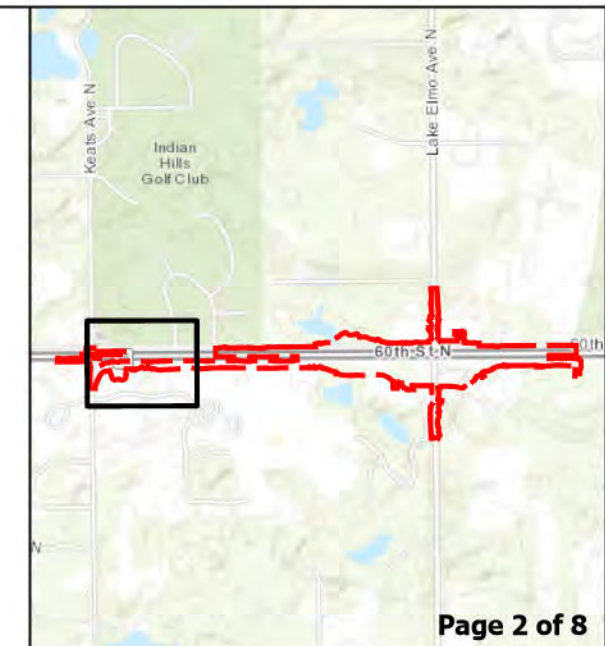
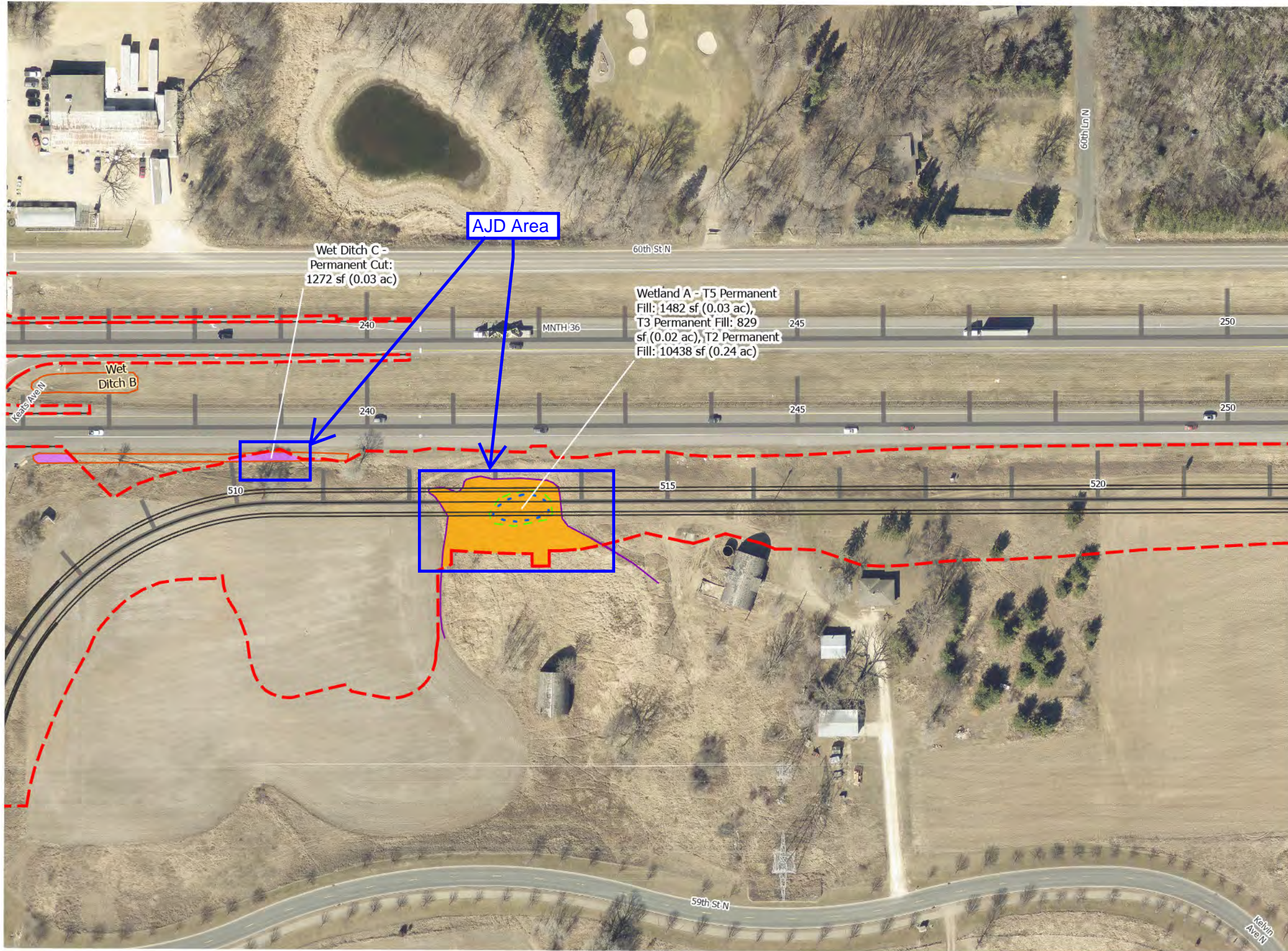
- Legend**
- - - Construction Limits
 - Geometry
 - Proposed Alignment
 - Wetland Delineation
- Wetland Impact**
- Permanent Cut
 - Permanent Fill
- Wetland Type**
- Drainage Swale
 - Pond
 - Type 2: Wet Ditch
 - Type 2: Wetland
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Wetland Impacts - Plan View
S.P. 8204-57
TH 36 at CSAH 17
Lake Elmo, Washington County,
Minnesota



Source: Washington County Aerials 2024





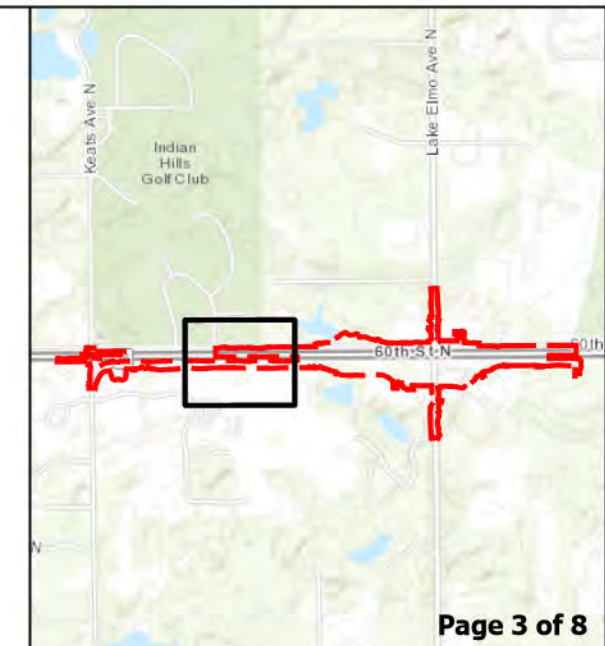
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N
 0 50 100
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Source: Washington County Aerials 2024





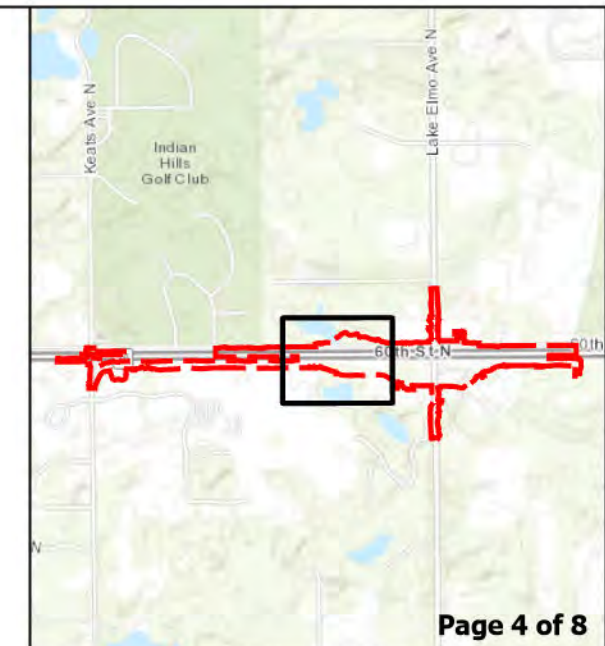
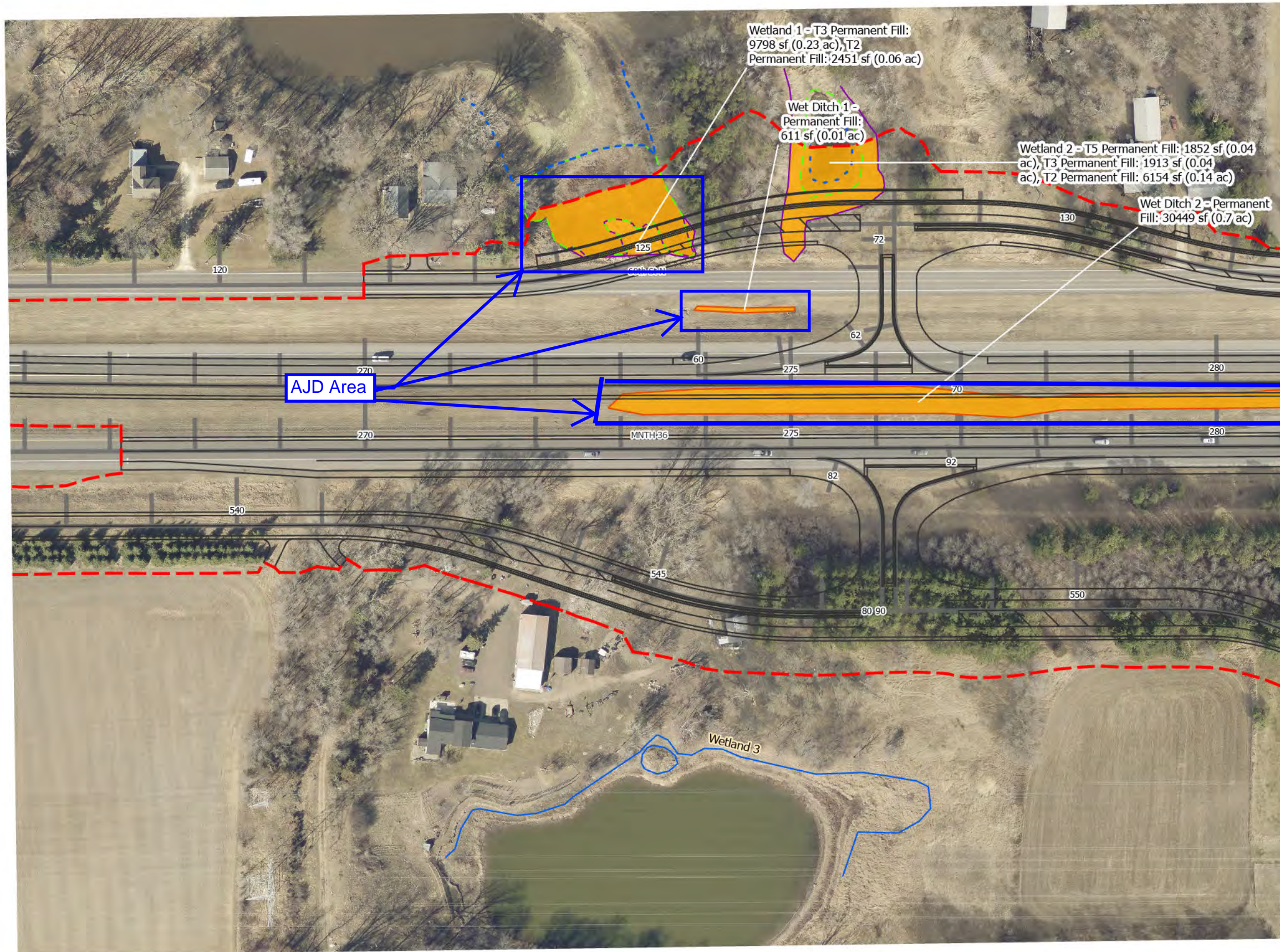
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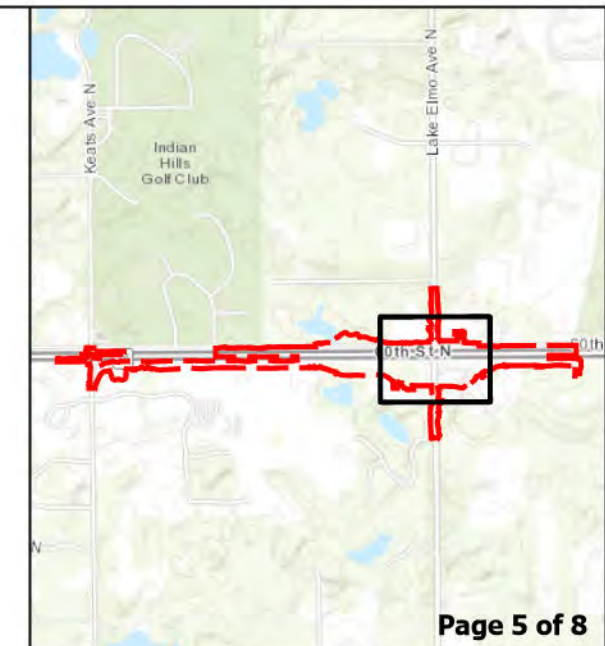
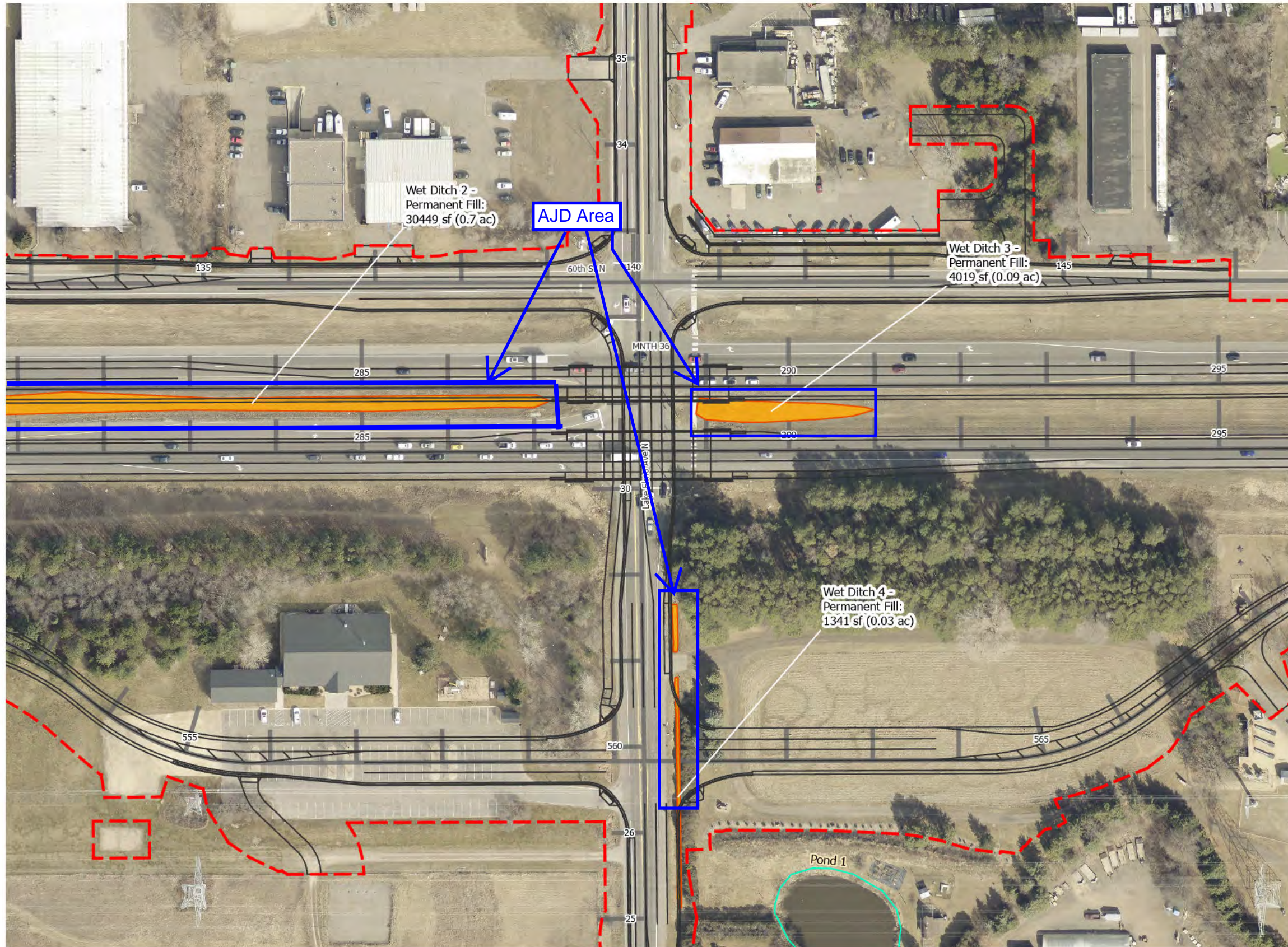
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0 50 100
 US Feet

Source: Washington County Aerials 2024





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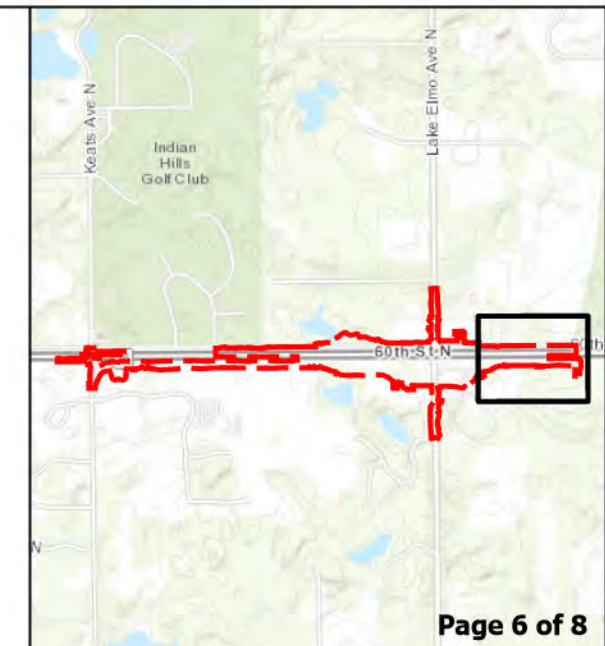
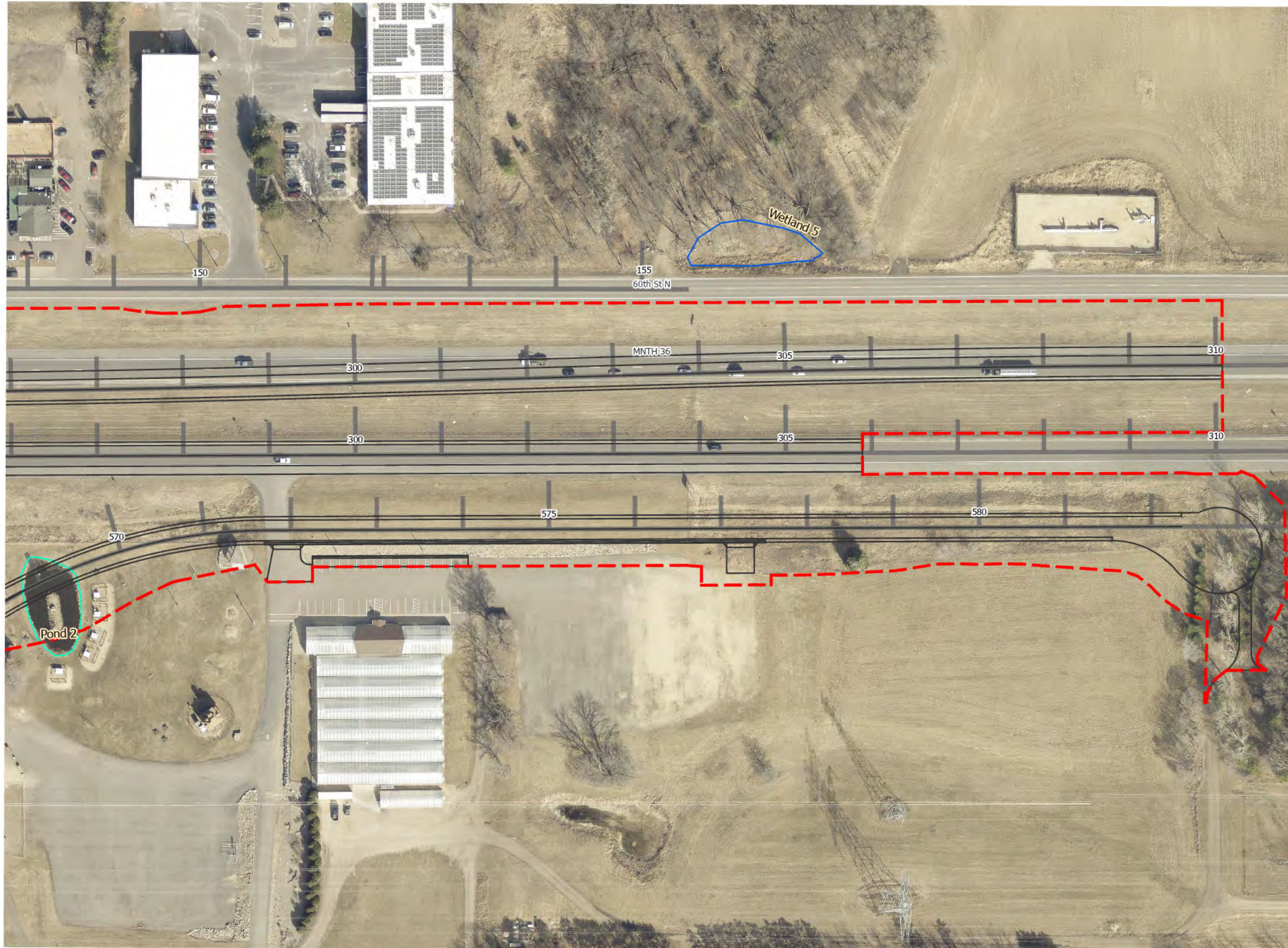
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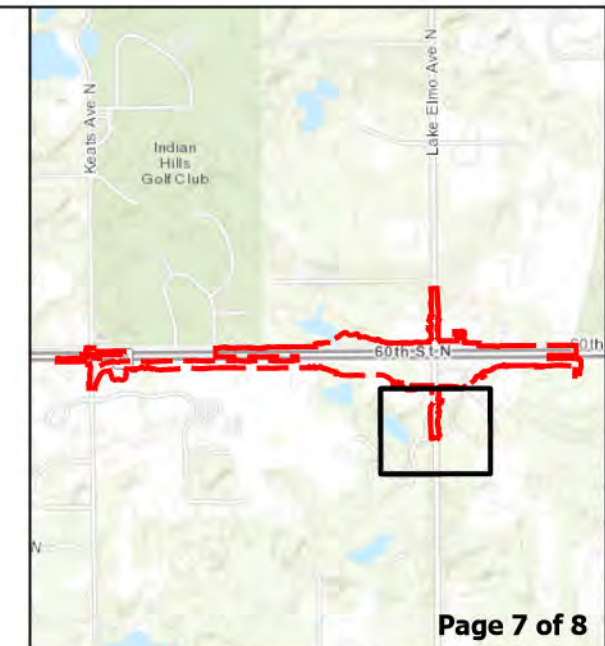
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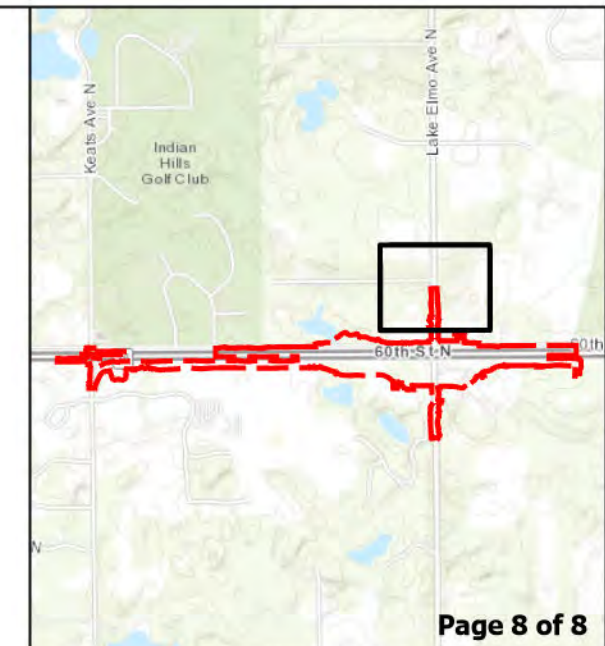
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