



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

MVP-2026-00029

January 9, 2026

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-2026-00029 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).
 - Wetland 1, (1,137 sq. ft.) - Non-Jurisdictional
 - Wetland 2, (786 sq. ft.) - Non-Jurisdictional
 - Wetland 3, (2,791 sq. ft.) - Non-Jurisdictional
 - Drainage Swale 1 - Non-Jurisdictional
 - Drainage Swale 2 - 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. 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 Corps review area is limited to Wetlands 1, 2 and 3 and drainage swales 1 and 2 located along the Badger State Trail in Section 20, Township 04, Range 08, Green County, Wisconsin and is shown on the enclosed figures labeled MVP-2026-00029.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. 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.

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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
 - 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

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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and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁹

- Wetlands 1, 2 and 3 were identified in the GEI Wetland Delineation Report for the 24E7S Stewart Tunnel Repair. These wetlands are situated within the bottom of roadside ditches along the Badger State Trail. These wetlands contain hydrophytic vegetation however, a review of the wetland delineation and desktop data listed below shows that these wetlands were created in uplands, drain only uplands and do not carry relatively permanent flow of water. These features, described as wetlands, were constructed in uplands to provide drainage off the Badger State Trail. No mapped wetlands (National Wetland Inventory or Wisconsin Wetland Inventory) were identified at the location of Wetlands 1, 2 and 3 providing further evidence the ditch features were constructed wholly in upland. Finally, additional evidence provided by the applicant (site photos and aerial imagery) confirms no relatively permanent flow of water was observed, and the features do not have a continuous surface connection to any relatively permanent jurisdictional water. Accordingly, the Corps has determined that Wetlands 1, 2 and 3 are excluded from Section 404 jurisdiction under (b)(3) of the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule as ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water.
- Drainage Swales 1 and 2 were identified in the GEI Wetland Delineation Report for the 24E7S Stewart Tunnel Repair. Drainage Swales 1 and 2 are not relatively permanent, lack an ordinary high-water mark, and have flow frequencies that are sporadic, occurring most frequently in direct response to precipitation events. These features were constructed in uplands to provide drainage off the Badger State Trail. An unnamed tributary was mapped on the NHI in the location of drainage swale 2 however historical aerial photos and site photos show no evidence of a tributary (no OHWM, bed and bank, or flow that extends offsite). Drainage Swales 1 and 2 do not have a relatively permanent flow of water, and the features do not have a continuous surface connection to any relatively permanent jurisdictional water. Additionally, no mapped wetlands (National Wetland Inventory or Wisconsin Wetland Inventory) were identified at the location of Drainage Swales 1 and 2 providing further evidence the ditch features were constructed wholly in upland. Accordingly, the Corps has determined that Drainage Swales 1 and 2 are excluded from Section 404 jurisdiction under (b)(3) of 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.

⁹ 88 FR 3004 (January 18, 2023)

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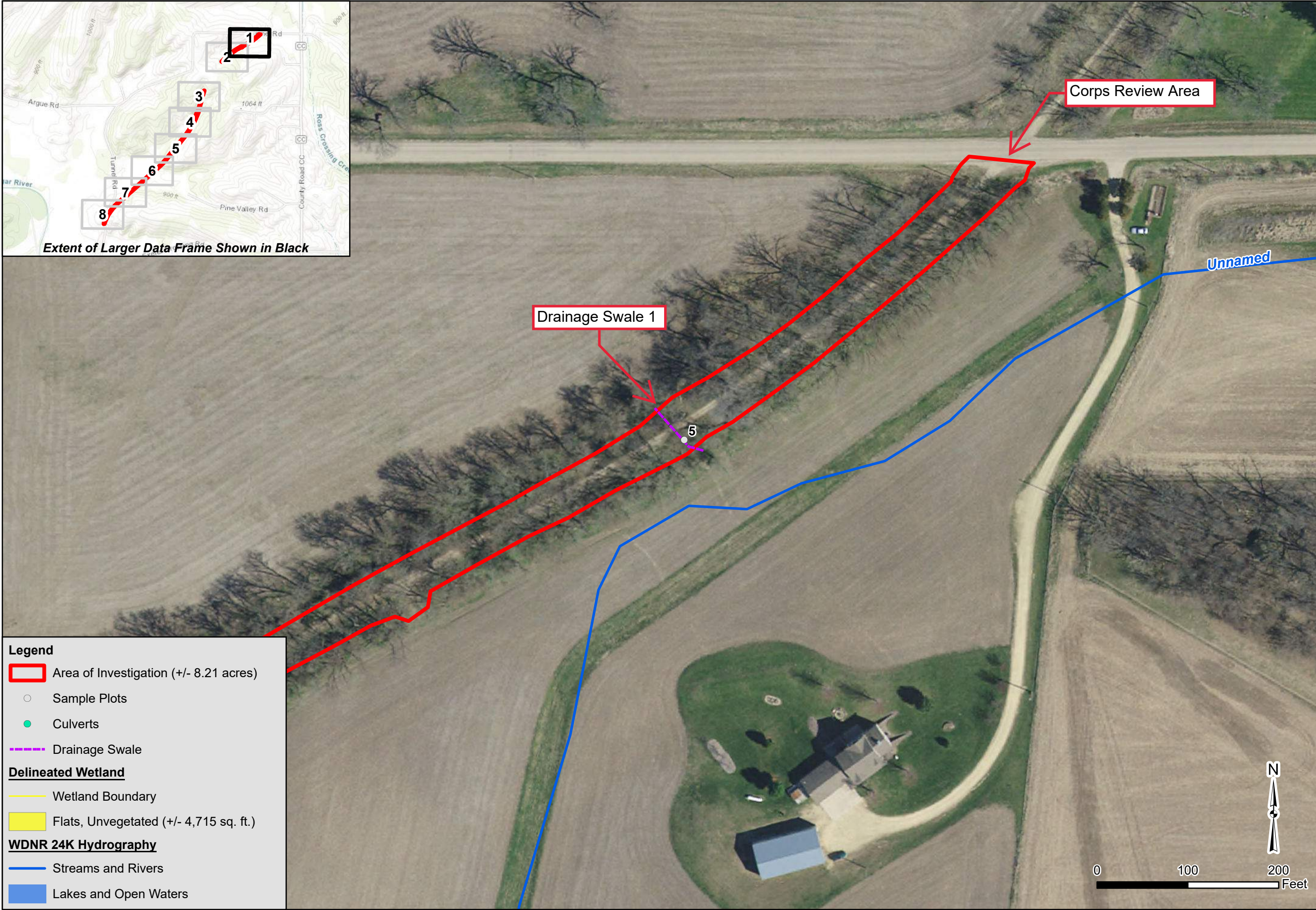
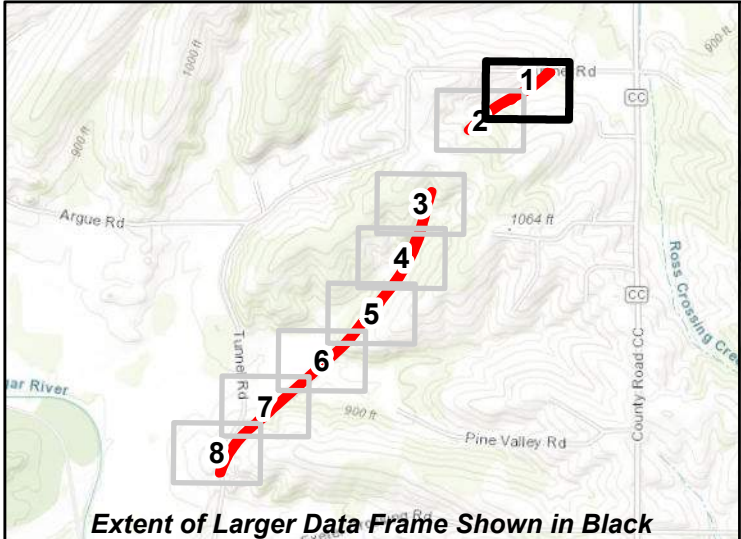
- a. GEI Wetland Delineation Report for 24E7S Stewart Tunnel Repair - Badger State Trail Dated June 23, 2025.
- b. USACE Regulatory Viewer Accessed: January 7, 2026
- c. WDNR - Surface Water Data Viewer Accessed: January 7, 2026
- d. Google Earth Imagery Accessed: January 7, 2026
- e. Wisconsin Wetland Inventory, USDA Web Soil Survey, and USGS NHD and Topographic Maps Accessed: January 7, 2026
- f. USGS 1:24K Quad Name: Belleville
- g. Office evaluation conducted on: January 7, 2026

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.



3159 Voyager Drive
Green Bay, WI 54311
www.geiconsultants.com



Legend

- Area of Investigation (+/- 8.21 acres)
- Sample Plots
- Culverts
- Drainage Swale

Delineated Wetland

- Wetland Boundary
- Flats, Unvegetated (+/- 4,715 sq. ft.)

WDNR 24K Hydrography

- Streams and Rivers
- Lakes and Open Waters

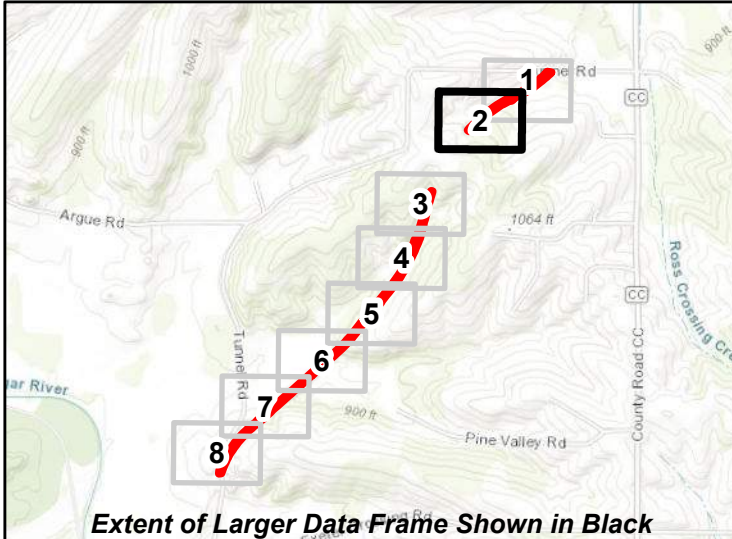
FIGURE 5
WETLAND DELINEATION MAP
WISCONSIN DEPARTMENT OF ADMINISTRATION
24E7S BADGER STATE TRAIL STEWART TUNNEL
TOWN OF EXETER
GREEN COUNTY, WISCONSIN

Drawn: MNO 5/22/2025
Approved: MLO 5/22/2025
Scale: As Shown
Project Number: 2406947
Page 1 of 8

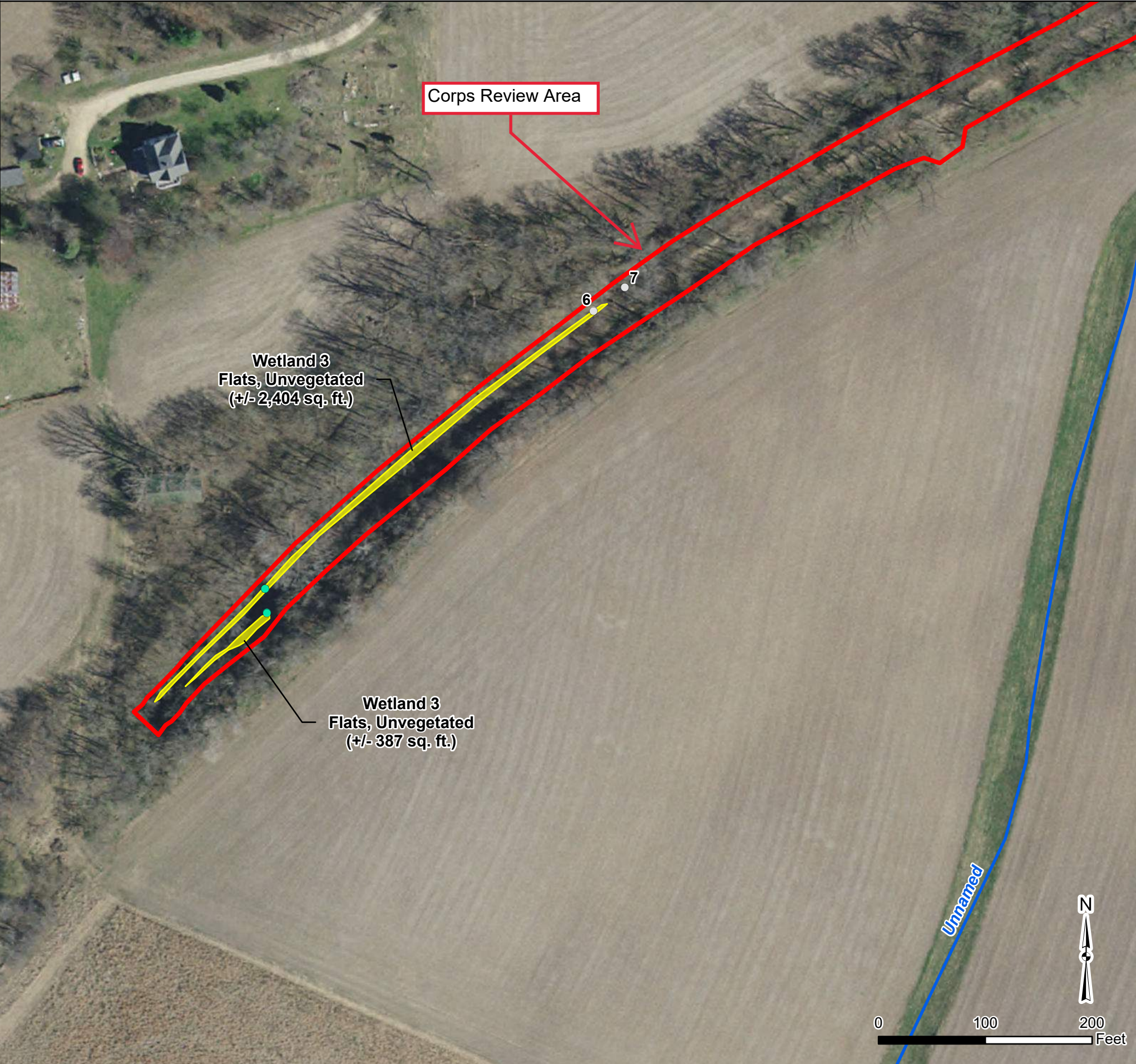




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Extent of Larger Data Frame Shown in Black



Legend

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Delineated Wetland

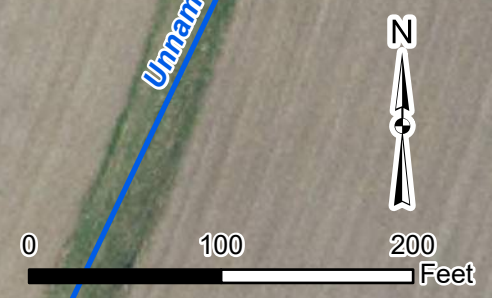
- Wetland Boundary
- Flats, Unvegetated (+/- 4,715 sq. ft.)

WDNR 24K Hydrography

- Streams and Rivers
- Lakes and Open Waters

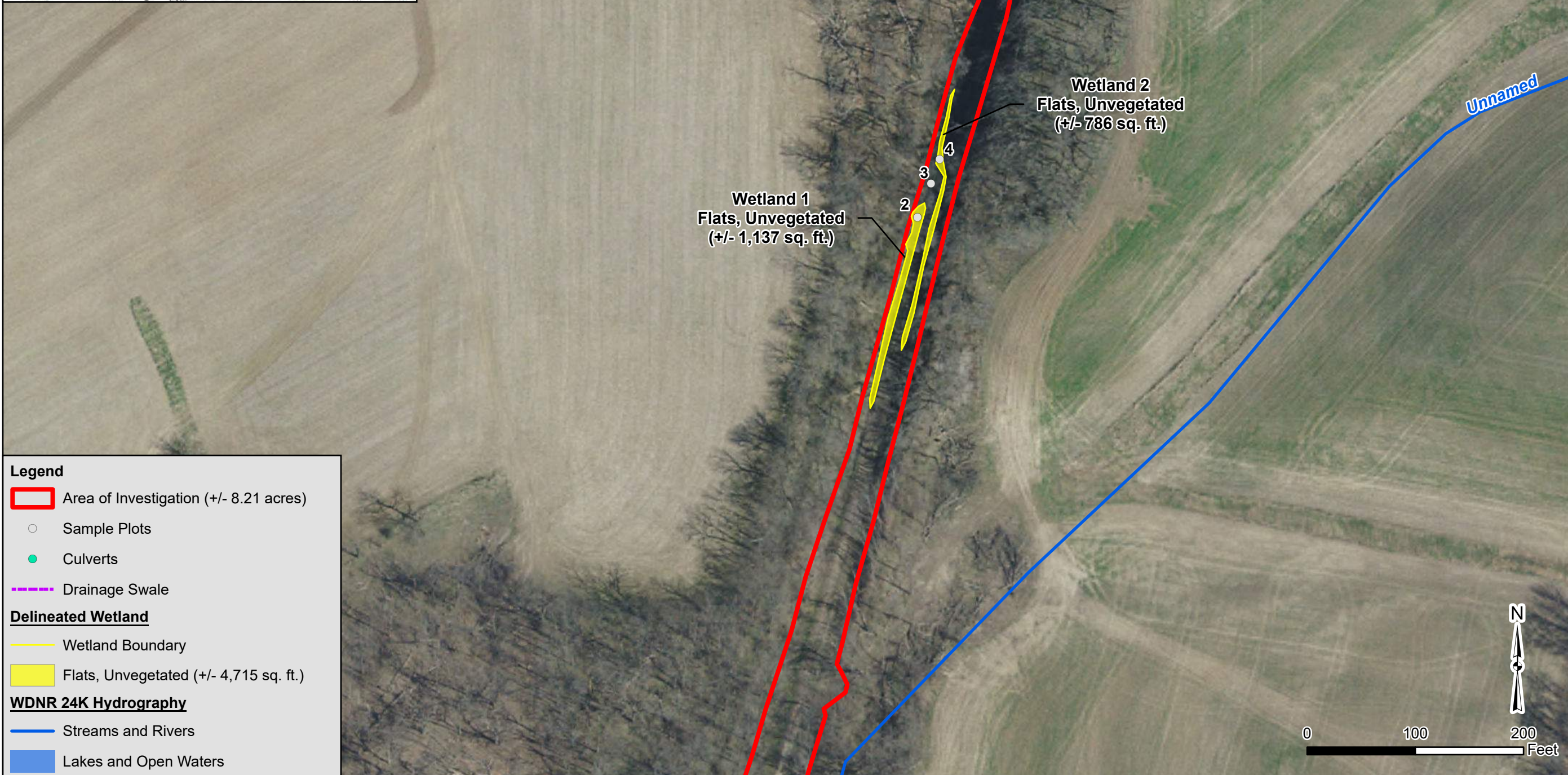
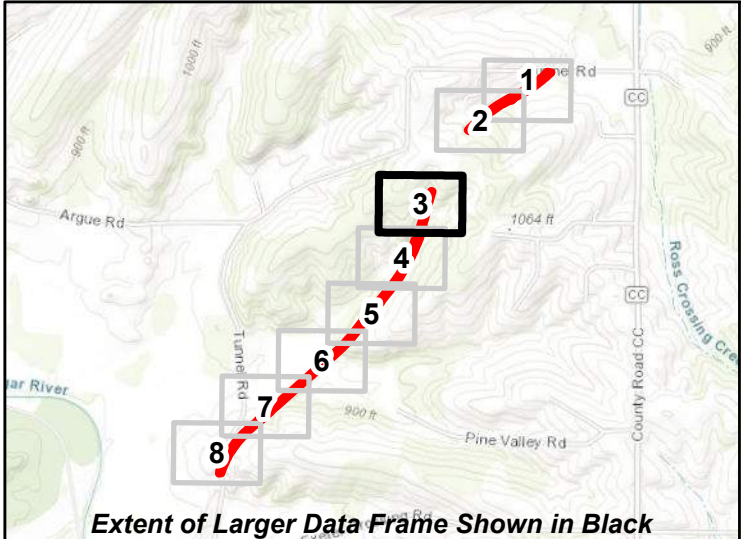
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Delineated Wetland

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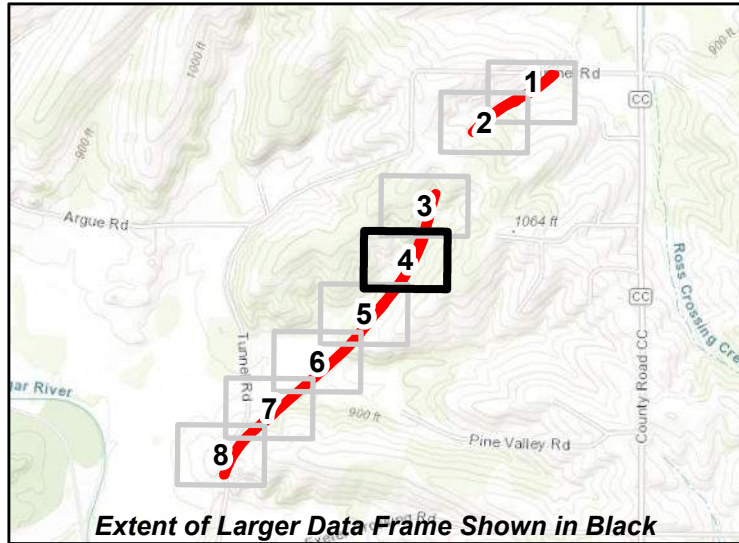
WDNR 24K Hydrography

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FIGURE 5
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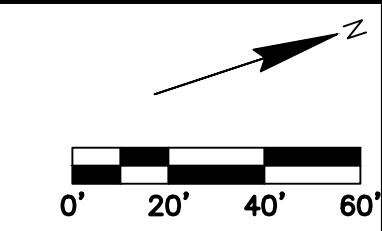
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PI STA = 153+35.65
 Y = 211670.859
 X = 630155.804
 DELTA = 14°05'08"LT
 D = 2'09'44"
 T = 327.39'
 L = 651.47'
 R = 2650.00'
 PC STA = 150+08.26
 PT STA = 156+59.73



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 1600 ASPEN COMMONS
 SUITE 680
 MIDDLETON, WI 53562
 (608)807-0502

Kapur
 4654 S BILTMORE LN.
 MADISON, WI 53718
 PHONE: 608.673.4400
 KAPURINC.COM
 PROJECT NUMBER: 22.0241

State of Wisconsin
 Department of Administration
 Division of Facilities Development

Badger State Trail Stewart Tunnel
 Town of Exeter, WI

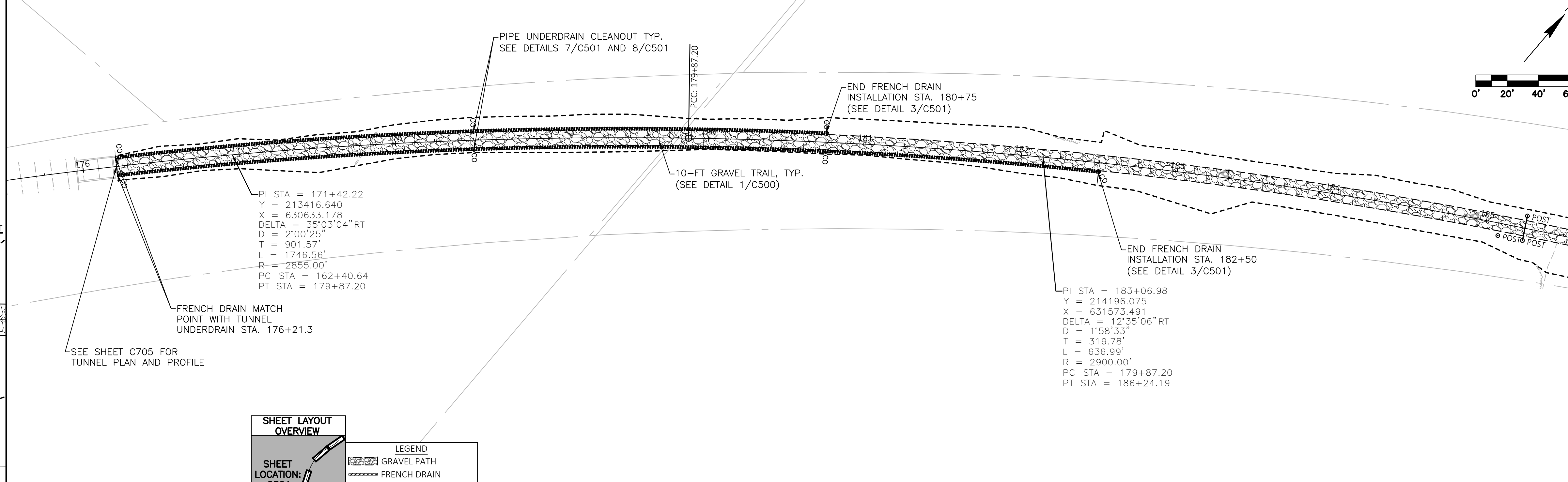
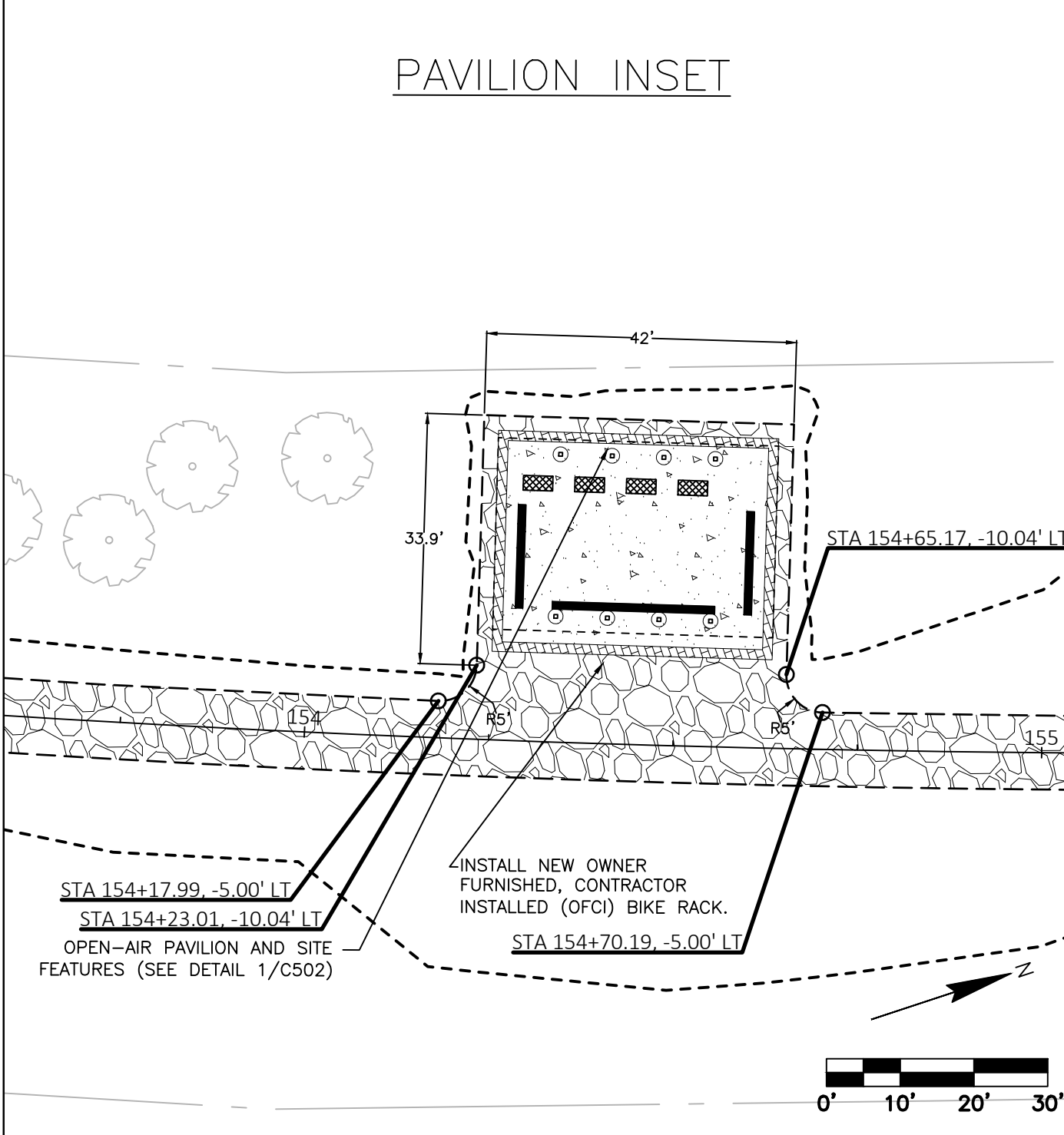
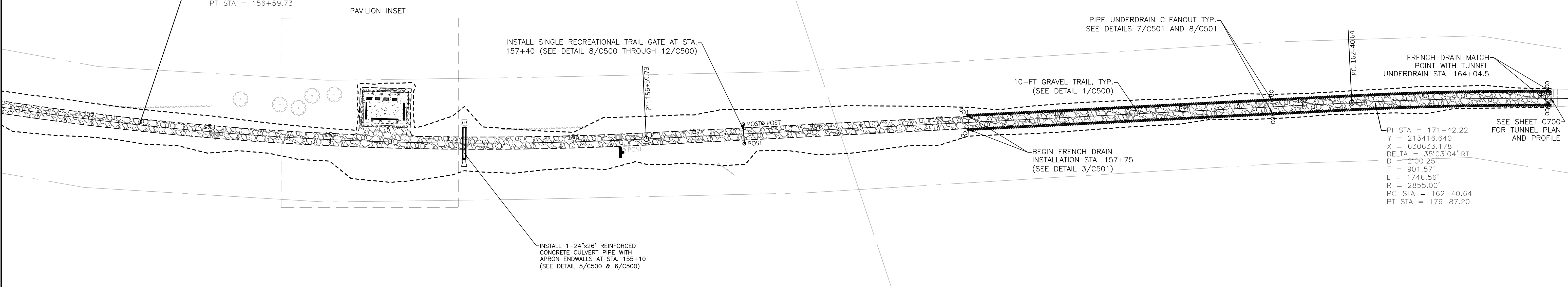
Stewart Tunnel Repair
 Badger State Trail
 Department of Natural Resources
 Green County, Wisconsin

Sheet Title: SITE LAYOUT PLAN

Revisions:

No.	Date:	Description:

Graphic Scale	VARIES
DFD Number	24E7S
Set Type	FR
Date Issued	12/02/2025
Sheet Number	C301

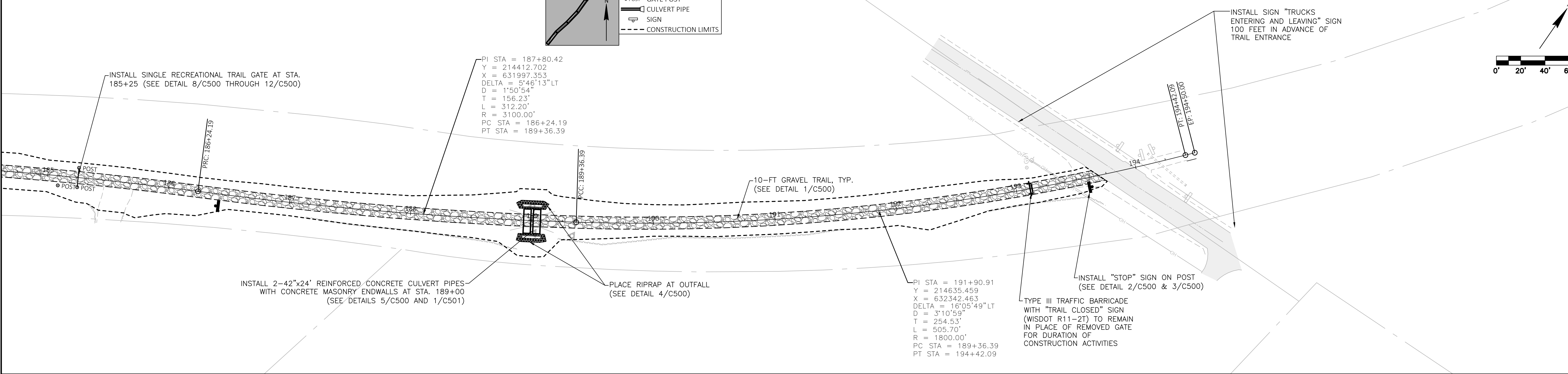


SHEET LAYOUT OVERVIEW

SHEET LOCATION: C301

LEGEND

- GRAVEL PATH
- FRENCH DRAIN
- POST GATE POST
- CULVERT PIPE
- SIGN
- CONSTRUCTION LIMITS



S:\DFD\240788_24E7S Stewart Tunnel Repair\03 Drawings\Civil\24E7S-06-FR-C300.dwg - 12/22/2025