



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

MVP-2024-00716-JMK

29 July 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 MVP-2024-00716-JMK 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 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-2024-00716-JMK

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. Wetland 2, non-jurisdictional

- ii. Wetland 4, 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 2 non-jurisdictional roadside ditches, as identified in Section 1(a) of this MFR and on the attached figures labeled 2024-00716-JMK Page 1-9 of 9. The review area is located at 43.469140 N, -88.053740 W in the City of Farmington, Washington County, Wisconsin. There are no other JDs associated with the 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

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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.

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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

- Wetland 2 (0.051 acre), and Wetland 4 (0.067 acre) within the review area are linear roadside drainage ditches constructed in upland and drain only upland based on a review of US Geological Service 3DEP Hillshade and DEM maps. Recent aerial photos do not show relatively permanent flow in the aforementioned aquatic resources. Based on the desktop resources reviewed Wetland 2 and 4 are linear roadside drainage ditches constructed in upland, drain only upland, and do not carry a relatively permanent flow of water. Therefore, Wetland 2 and 4 have been determined to be Paragraph (b)(3) excluded ditches 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.

- a. Figure 1 of 9 through 9 of 9 titled MVP-2024-00716-JMK.
- a. Wetland Delineation Report “County Road A Wetland Delineation” dated September 2023
- b. Minnesota Regulatory Viewer: 3DEP Hillshade and DEM layer.

10. OTHER SUPPORTING INFORMATION. N/A

⁷ 88 FR 3004 (January 18, 2023)

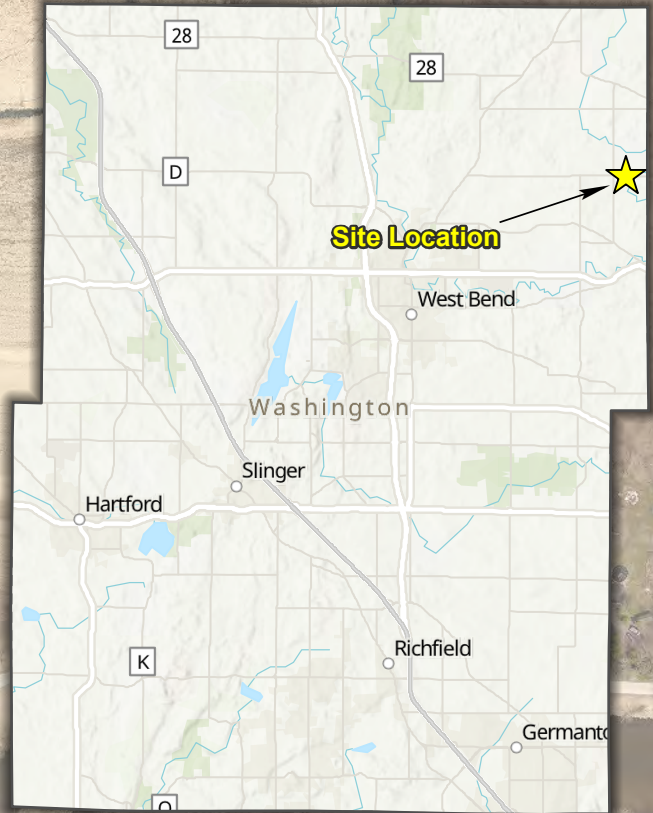
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11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance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

Legend

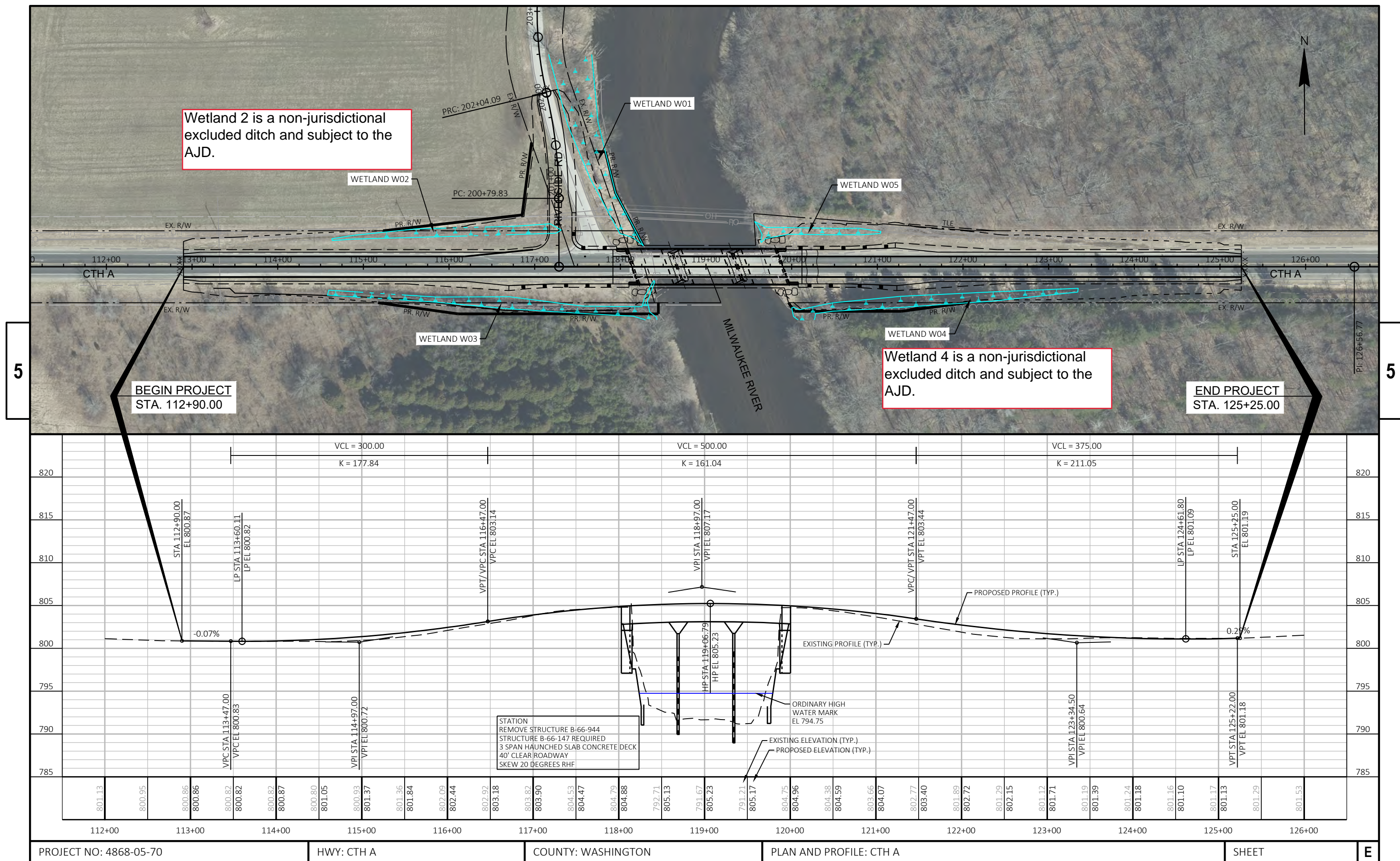
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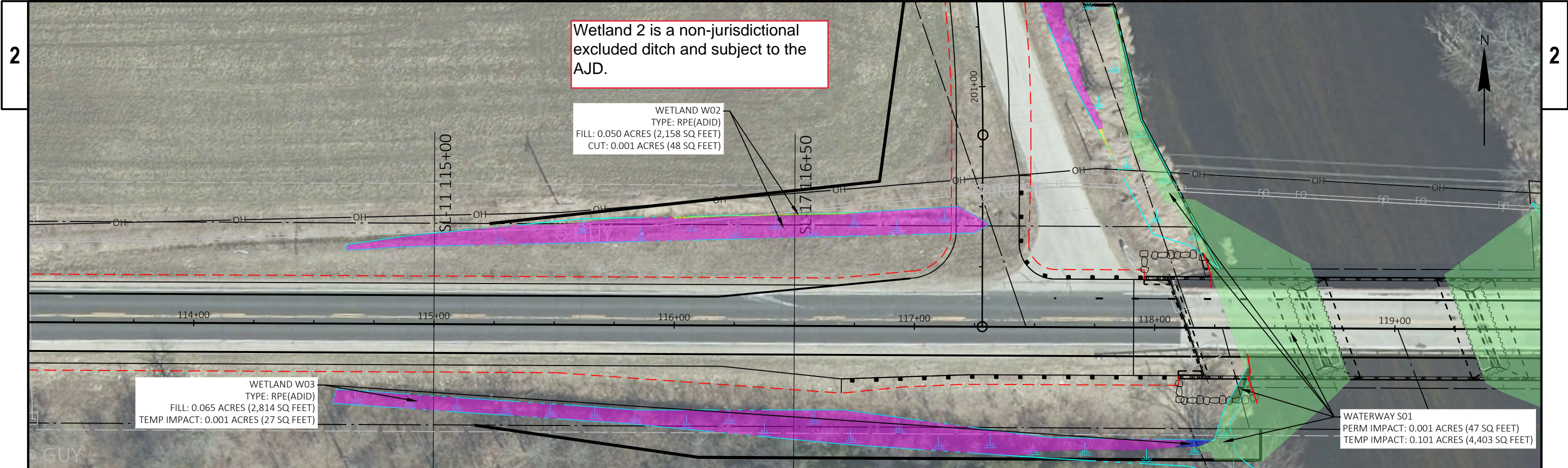


0 150 300
Feet
1 in = 300 ft

PROJECT ID: 4868-05-00
CTH A MILWAUKEE RIVER BRIDGE
B-66-944
TOWN OF FARMINGTON
WASHINGTON COUNTY, WISCONSIN

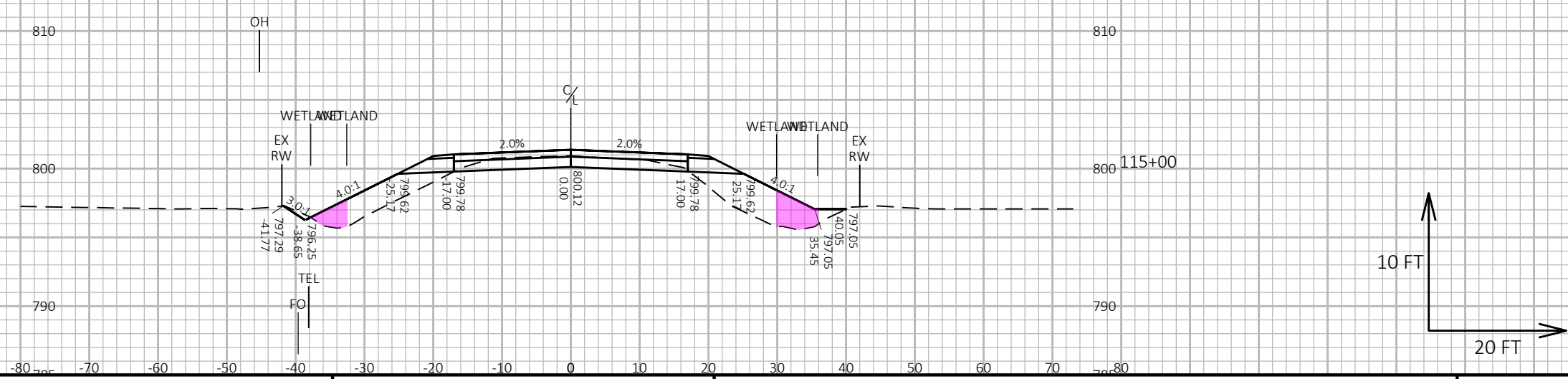


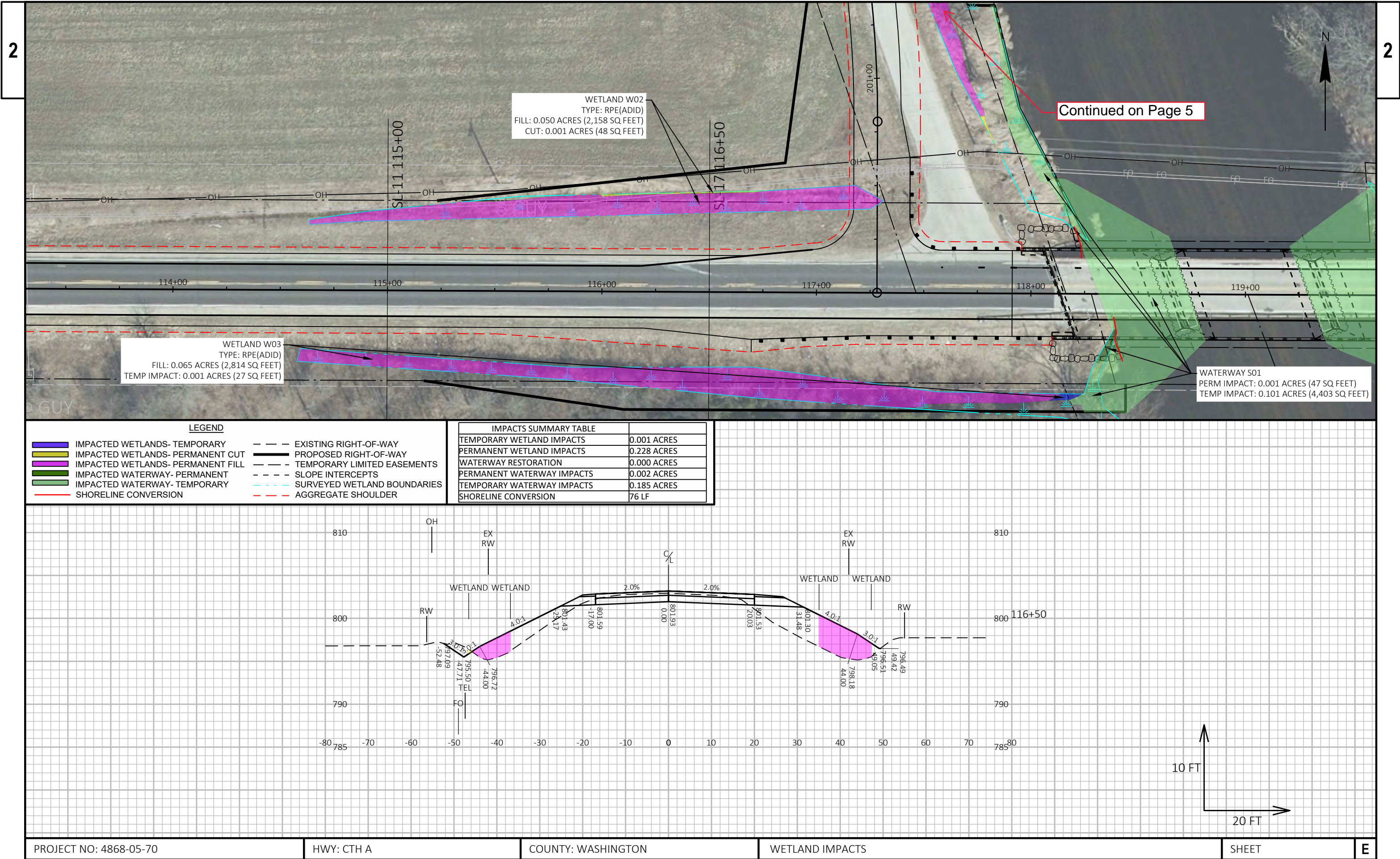


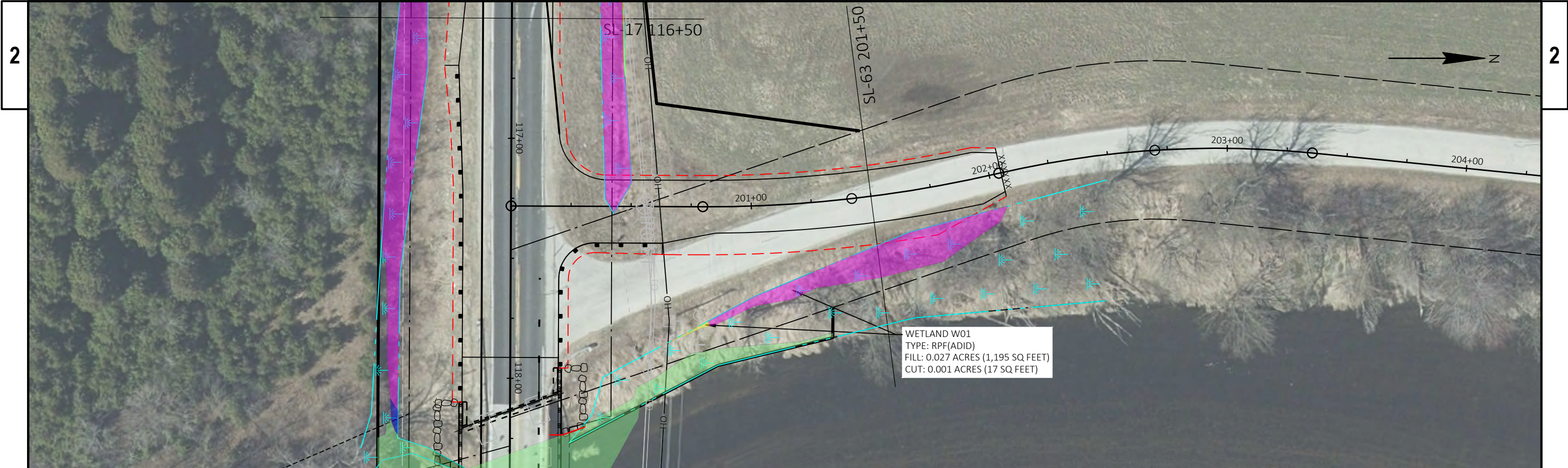


LEGEND	
	IMPACTED WETLANDS- TEMPORARY
	IMPACTED WETLANDS- PERMANENT CUT
	IMPACTED WETLANDS- PERMANENT FILL
	IMPACTED WATERWAY- PERMANENT
	IMPACTED WATERWAY- TEMPORARY
	SHORELINE CONVERSION
	EXISTING RIGHT-OF-WAY
	PROPOSED RIGHT-OF-WAY
	TEMPORARY LIMITED EASEMENTS
	SLOPE INTERCEPTS
	SURVEYED WETLAND BOUNDARIES
	AGGREGATE SHOULDER

IMPACTS SUMMARY TABLE	
TEMPORARY WETLAND IMPACTS	0.001 ACRES
PERMANENT WETLAND IMPACTS	0.228 ACRES
WATERWAY RESTORATION	0.000 ACRES
PERMANENT WATERWAY IMPACTS	0.002 ACRES
TEMPORARY WATERWAY IMPACTS	0.185 ACRES
SHORELINE CONVERSION	76 LF

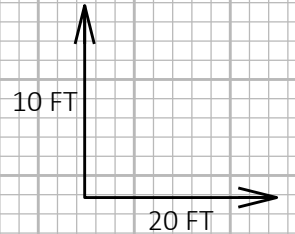
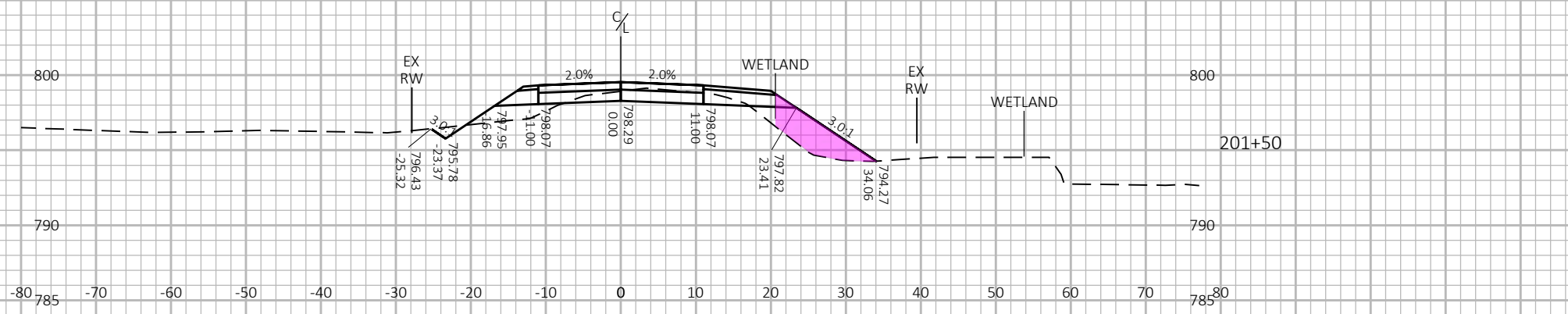


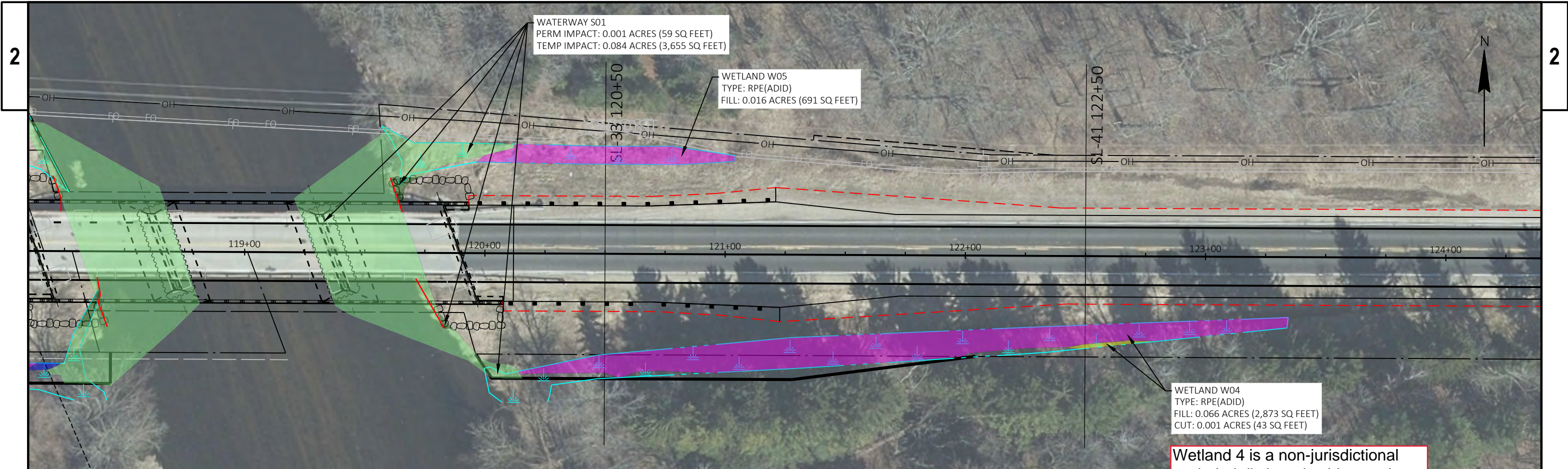




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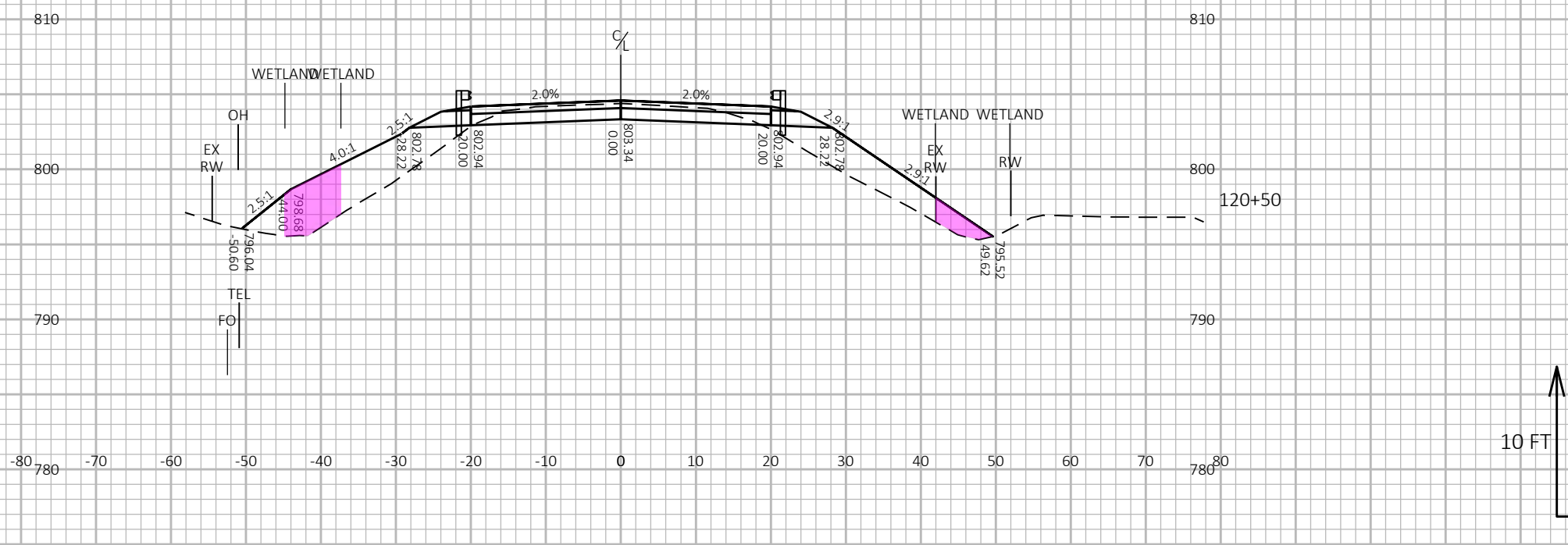


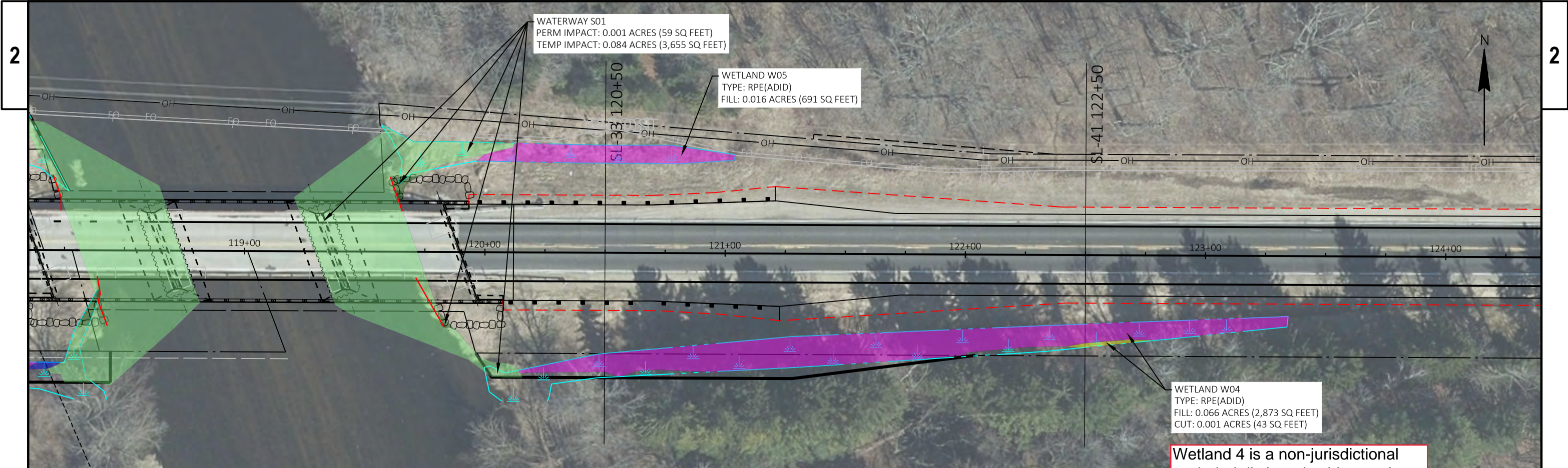


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Wetland 4 is a non-jurisdictional excluded ditch and subject to the AJD.

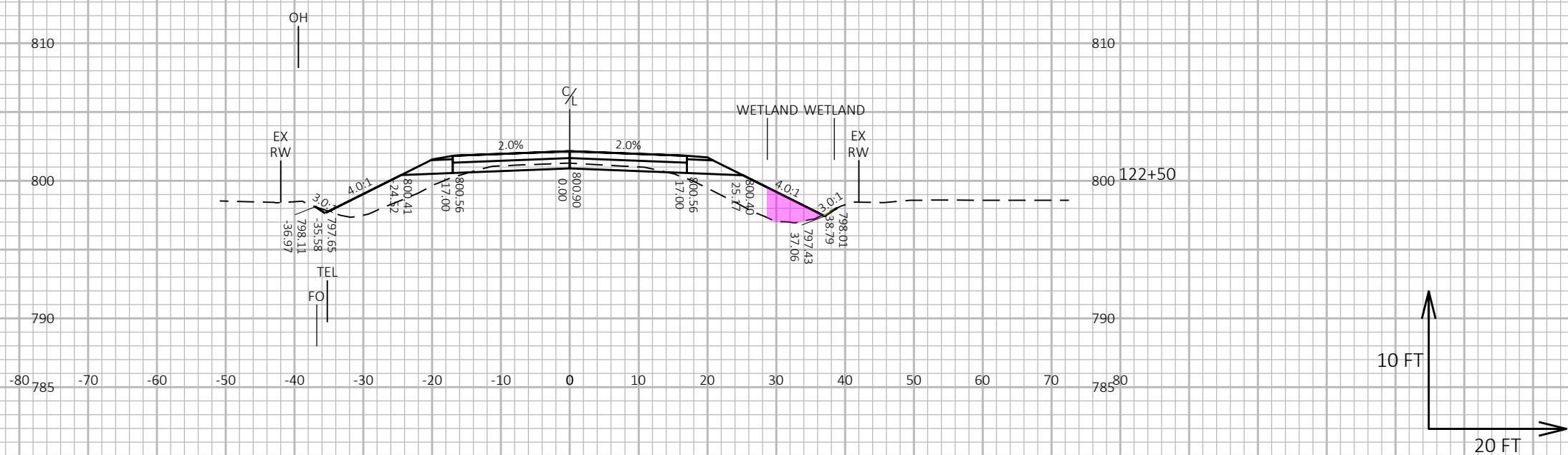


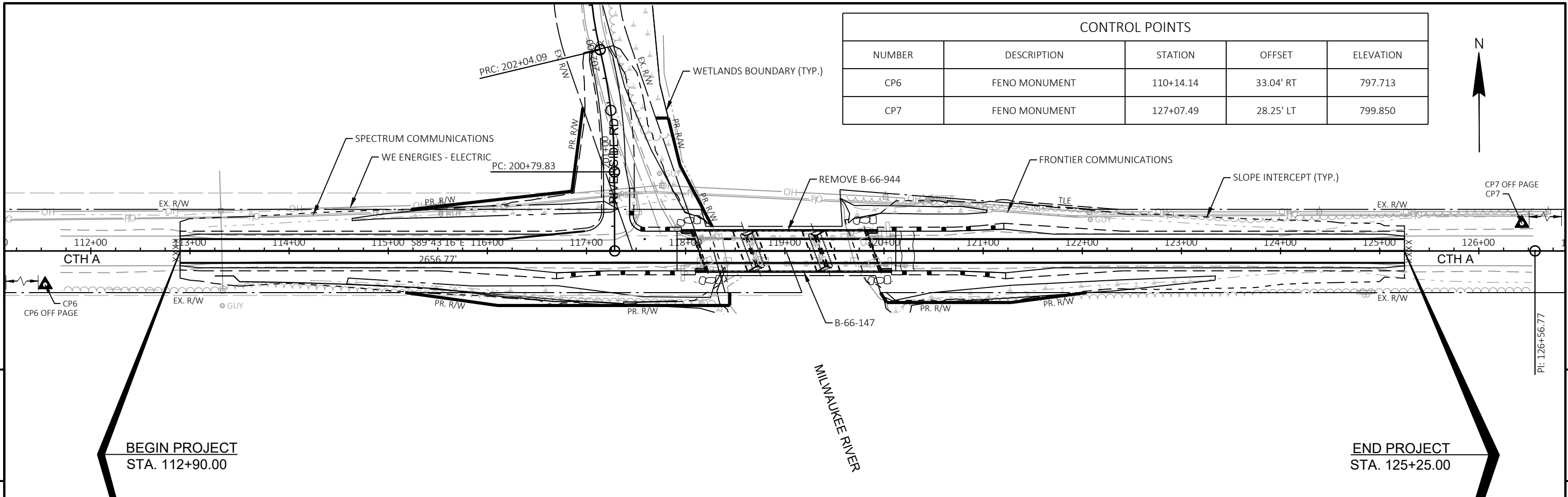


LEGEND	
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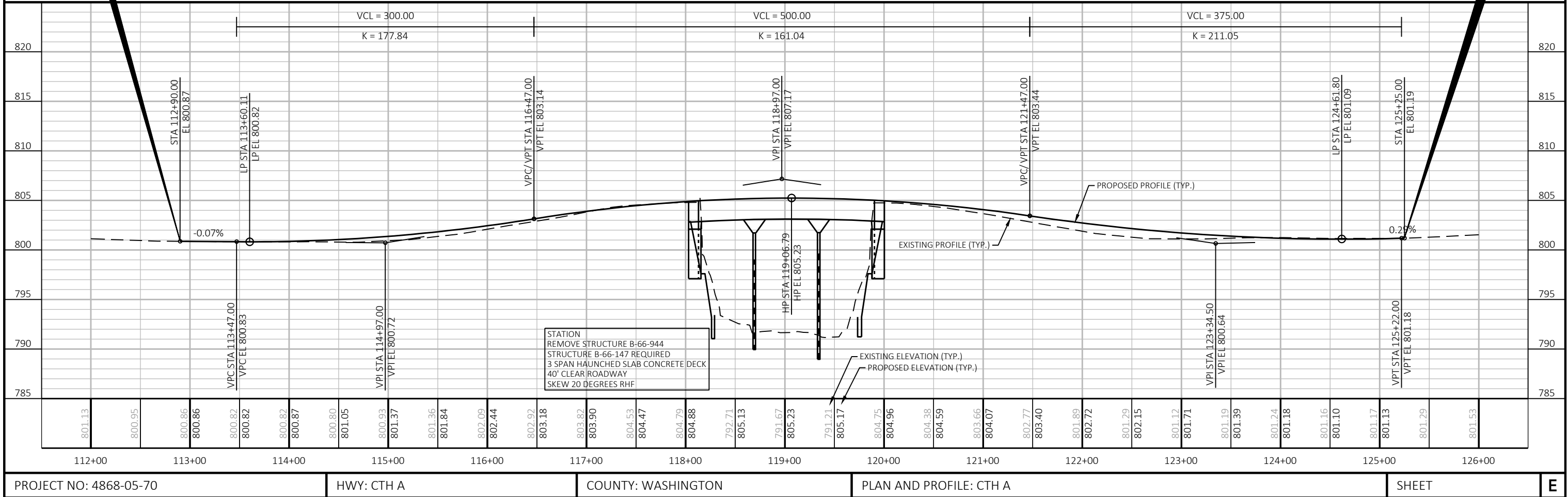
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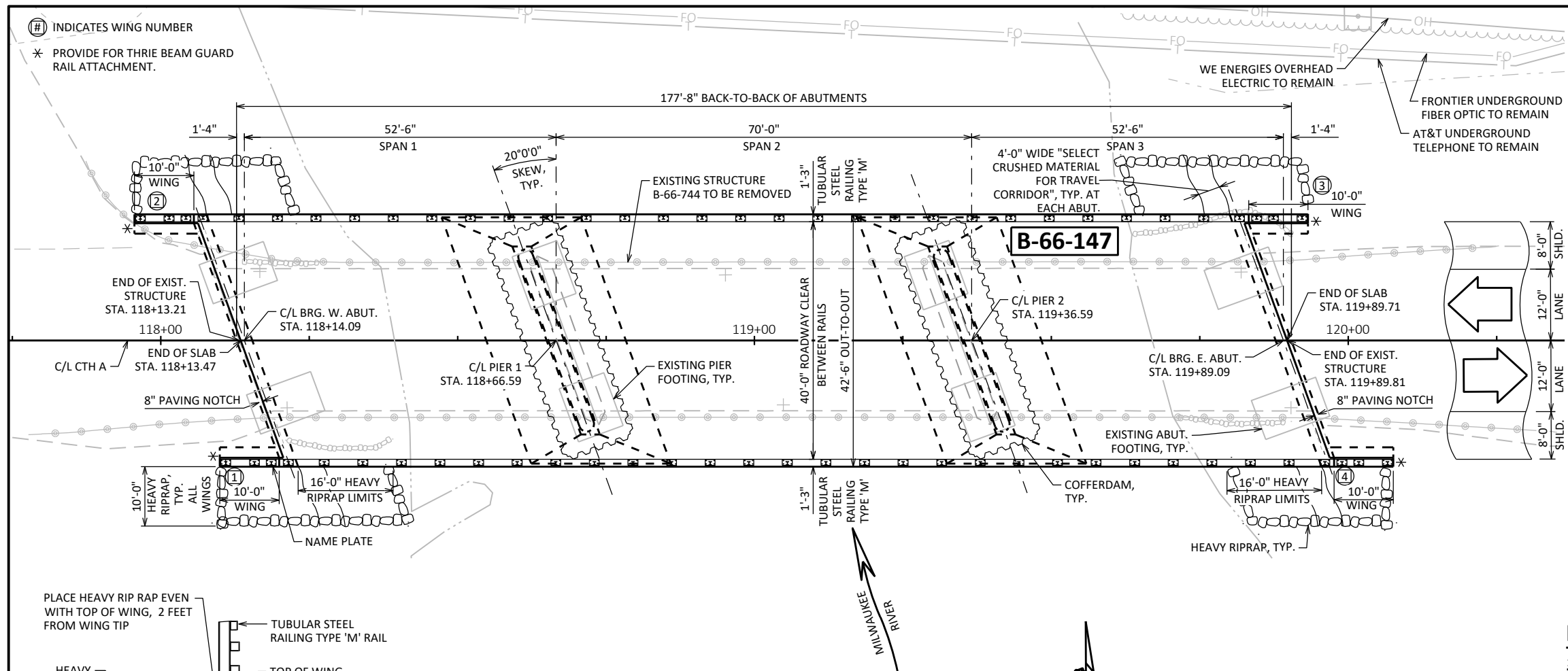
Wetland 4 is a non-jurisdictional excluded ditch and subject to the AJD.





CONTROL POINTS				
NUMBER	DESCRIPTION	STATION	OFFSET	ELEVATION
CP6	FENO MONUMENT	110+14.14	33.04' RT	797.713
CP7	FENO MONUMENT	127+07.49	28.25' LT	799.850





PLAN

3-SPAN HAUNCHED CONCRETE SLAB BRIDGE

DESIGN DATA

LIVE LOAD:

DESIGN LOADING: HL-93
INVENTORY RATING: RF = 1.22
OPERATING RATING: RF = 1.58
WISCONSIN STANDARD PERMIT VEHICLE (WIS-SPV): 250 (KIPS)

STRUCTURE IS DESIGNED FOR A FUTURE WEARING SURFACE OF 20 POUNDS PER SQUARE FOOT.

MATERIAL PROPERTIES:

CONCRETE MASONRY:
SUPERSTRUCTURE $f'_c = 4,000$ PSI
ALL OTHER $f'_c = 3,500$ PSI

BAR STEEL REINFORCEMENT
GRADE 60 $f_y = 60,000$ PSI

STEEL PILING
ASTM A572 $f_y = 50,000$ PSI

FOUNDATION DATA

ABUTMENTS TO BE SUPPORTED ON HP 12 x 53 PILING DRIVEN TO A REQUIRED DRIVING RESISTANCE OF 130 TONS ** PER PILE AS DETERMINED BY THE MODIFIED GATES DYNAMIC FORMULA.
ESTIMATED 30'-0" LONG AT WEST ABUT.
ESTIMATED 30'-0" LONG AT EAST ABUT.

PIERS TO BE SUPPORTED ON HP 12 x 53 PILING DRIVEN TO A REQUIRED DRIVING RESISTANCE OF 220 TONS ** PER PILE AS DETERMINED BY THE MODIFIED GATES DYNAMIC FORMULA.
ESTIMATED 40'-0" LONG AT PIER 1
ESTIMATED 40'-0" LONG AT PIER 2

**THE FACTORED AXIAL RESISTANCE OF PILES IN COMPRESSION USED FOR DESIGN IS THE REQUIRED DRIVING RESISTANCE MULTIPLIED BY A RESISTANCE FACTOR OF 0.5 USING MODIFIED GATES TO DETERMINE PILE CAPACITY.

HYDRAULIC DATA

100-YEAR FREQUENCY:

Q_{100} TOTAL = 10,764 C.F.S.
 Q_{100} BRIDGE = 7,820 C.F.S.
 Q_{100} ROADWAY = 2,944 C.F.S.
 $V_{100} = 5.64$ F.P.S.
 $HW_{100} =$ EL. 802.27
WATERWAY AREA = 1,386.14 SQ. FT.
DRAINAGE AREA = 265 SQ. MI.
SCOUR CRITICAL CODE = 5

ROADWAY OVERTOPPING FREQUENCY:

Q_{50} TOTAL = 8,368 C.F.S.
 $HW_{50} =$ EL. 801.44

2-YEAR FREQUENCY:

$Q_2 = 2,250$ C.F.S.
 $V_2 = 2.78$ F.P.S.
 $HW_2 =$ EL. 796.83

TRAFFIC DATA

FEATURE ON: CTH A

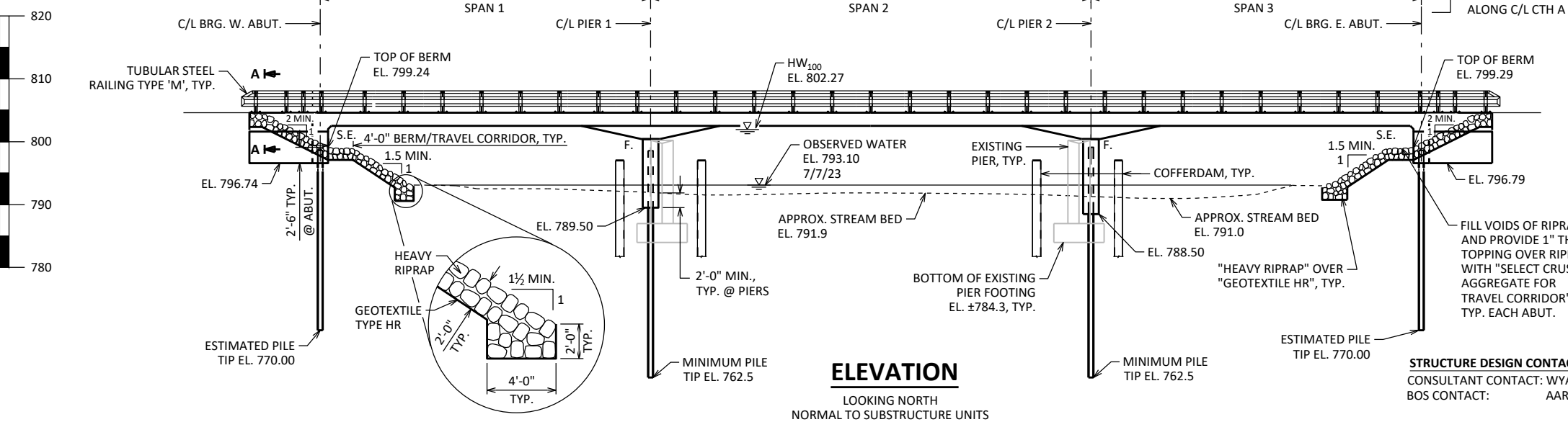
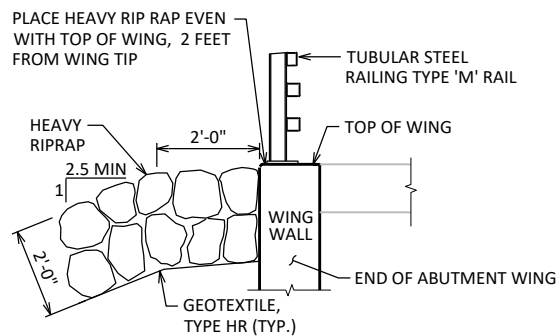
ADT = 3,130 (2045)
R.D.S. = 60 MPH

LIST OF DRAWINGS:

- GENERAL PLAN & ELEVATION
- CROSS SECTION & QUANTITIES
- SUBSURFACE EXPLORATION
- WEST ABUTMENT
- WEST ABUTMENT DETAILS
- EAST ABUTMENT
- EAST ABUTMENT DETAILS
- PIER 1
- PIER 2
- SUPERSTRUCTURE
- SUPERSTRUCTURE DETAILS
- SUPERSTRUCTURE BILL OF BARS
- TUBULAR STEEL RAILING TYPE 'M'

SECTION A-A

TYPICAL FILL SECTION AT WING TIPS



STRUCTURE DESIGN CONTACTS:

CONSULTANT CONTACT: WYATT ROZMENOSKI (414) 266-9066
BOS CONTACT: AARON BONK (608) 261-0261

NO.	DATE	REVISION	BY
<div> <div>275 W. Wisconsin Avenue Suite 300 Milwaukee, WI 53203 414 / 259 1500 414 / 259 0037 fax www.graef-usa.com</div> <div> <div>STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION</div> <div>ACCEPTED _____ CHIEF STRUCTURES DESIGN ENGINEER DATE</div> </div> </div>			
STRUCTURE B-66-147			
CTH A OVER MILWAUKEE RIVER			
COUNTY	WASHINGTON	TOWN	FARMINGTON
DESIGN SPEC. AASHTO LRFD BRIDGE DESIGN SPECIFICATION			
DESIGNED BY	WAR	CK'D	BY
WAR	CK'D	DRAWN BY	WAR
WAR	CK'D	PLANS	CK'D
GENERAL PLAN & ELEVATION			SHEET 1 OF 13

I.D. 468-05-00

DATE:

SCALE =