

**APPENDIX E**  
**CASE 10-T-0139**  
**REVISED DEVIATION ZONE JUSTIFICATION**  
**Package 2**

## **Appendix E**

### **Case 10-T-0139**

## **JUSTIFICATION FOR DEVIATION ZONE EXCURSIONS**

### **Segment 3-Package 2**

#### **1.0 INTRODUCTION**

Champlain Hudson Power Express (now CHPE LLC and CHPE Properties, Inc.) (collectively the "Certificate Holders" or "CHPE") hold a Certificate of Environmental Compatibility and Public Need ("Certificate") issued April 18, 2013 by the New York State Public Service Commission ("PSC") pursuant to Article VII of the New York Public Service Law (PSL) to construct and operate the transmission project known as the Champlain Hudson Power Express Project (the "Facility") (PSC Case 10-T-0139). In the April 2013 Order approving the Certificate, and in amendments approved between August 2020 and February 2022, the PSC approved a Facility route, as depicted on a series of maps included as Appendix B of a Joint Proposal reached among the parties to case 10-T-0139 (and as amended). The Facility route, as depicted on a series of maps included in Appendix B of the Joint Proposal and as amended, consists of a nominal centerline (the "Centerline") and an Allowed Deviation Zone ("ADZ"). Those portions of the ADZ that are ultimately determined to be actually affected by construction of the Facility, as well as certain areas outside the ADZ that are needed temporarily for site investigation, access, and construction, are referred to as the "Construction Zone." When the Facility is completed, the Certificate Holders will have either control of-via fee, easement, or other appropriate interest-or rights granted by a governmental authority to use such authority's permanent right-of-way (ROW), and certain adjacent areas as defined in Certificate Condition #5, which states:

*The portions of the Allowed Deviation Zone to be occupied by the Facility once construction is complete are referred to herein as the Facility ROW. The Certificate Holder shall also acquire and maintain the continuing right to enter onto and use certain additional lands immediately adjacent to the Facility ROW needed for repair and maintenance purposes, including preclusion of vegetative encroachment, on terms prohibiting the owners of such land from taking any action on that land that would interfere with such repair and maintenance activities.*

The Certificate Conditions require that, should cable installation work be proposed outside of the

ADZ, an explanation for the proposed deviations must be provided pursuant to Certificate Condition 157. Provided that criteria are met, Condition 157 of the Certificate confers discretion on the Public Service Commission to approve Environmental Management Construction Plan ("EM&CP") filings which include "deviations from the design depth, height, and location of facilities or structures." Specifically, Condition 157 states that deviations "shall be allowed for appropriate environmental or engineering reasons without modification to [the] Certificate, except where a conflict with a specific provision of this Certificate would be created." The purpose of this memorandum is to demonstrate the appropriate environmental and engineering reasons for the proposed modification to the Allowed Deviation Zone in Segment 3-Package 2, and to show that the deviation creates no conflict with the other Certificate Conditions.

As part of the EM&CP filing of Segment 3, the Certificate Holders are proposing minor shifts in the proposed conduit outside of the ADZ as described in Table 1.3 of the Environmental Construction and Management Plan (EM&CP) and Table 1 below. This memorandum provides the required supporting materials necessary for DPS staff to review and approve this minor deviation as part of the EM&CP process. Specifically, this includes:

1. A detailed description of and justification for the ADZ Excursion areas based upon appropriate environmental and engineering reasons, including a demonstration that the exceedance is limited to the minimum extent necessary (i.e. the smallest deviation zone exceedance area plausible based on design and construction constraints).
2. Confirmation that Certificate Holders have either (1) obtained or are in the process of obtaining rights to occupy and use the land(s) associated with any such ADZ Excursions (Excursion Areas) and the consent of any and all landowners owning any part of the Exceedance Area to the occupancy and use of their land(s) for Facility purposes and are in the process of recording those rights with the appropriate County office, where required, (see Easement Table 4.4 in EM&CP), and/or (2) have provided notice to any and all landowners owning any part of the ADZ Excursions with a written offer to such landowner for such rights to occupy and use their land(s) for Project purposes as would be needed for Certificate Holders under Section 11 of the Transportation Corporations Law.
3. A demonstration that any net incremental environmental impacts arising as a result of the construction, operation, and maintenance of the Facility in the ADZ Excursion Area are not material.
4. A demonstration that installation of the Facility cables in the ADZ Excursion Area will not substantially change the overall character of the

Facility or otherwise conflict with the other Certificate Conditions.

## **2.0 DEVIATION ZONE EXCURSIONS SUMMARY**

The ADZ in Segment 3-Package 2 is located predominately adjacent to existing CP Rail ROWs. In the southern end of Package 2, the alignment leaves the ROW in order to install three HDD's to cross a road, stream and an area with wetlands. The Certificate Holders have endeavored to keep the Facility located within the currently approved ADZ; however, certain physical limitations and obstacles have resulted in necessary shifts in the Facility location. Excursions from the ADZ have been identified at 14 unique locations along the Segment 3-Package 2 Project Corridor. Table 1 identifies each excursion, their location on the Plan and Profile Drawings (Appendix C of the EM&CP), a justification for the excursion, and if there is any change in environmental impact (see also Table 1.3 of the EM&CP). It is worth noting that some of these excursions consists mainly of construction via trenchless technologies (e.g., horizontal directional drill [HDD]) such that additional earth disturbance or adverse impacts can be avoided. Overall, these changes do not substantially change the overall character of the Facility or the proposed route, which still generally runs parallel to the CP Rail ROW as approved in the Certificated Route.

### **2.1 DESIGN CONSTRAINTS WITHIN SEGMENT 3 – PACKAGE 2**

#### **2.1.1 HDD**

In several areas in the vicinity of HDD crossings, the alignment was shifted outside the ADZ due to the following reasoning:

1. Limited space between the railroad (CP Rail) and the road (Excursion S3-P2#2).
2. Weak soils – A geotechnical analysis indicated that HDD pathways be increased in depth to prevent potential impacts to the wetlands and streams by inadvertent returns of drilling fluids.
3. Curvature – The curvature of the road and railroad (CP Rail) require adjustment of one or both ends of the HDD bore paths.

#### **2.1.2 General Trench Design for Installation Conduit and Subsequently Cable**

Other shifts outside of the ADZ in Segment 3 – Package 2 not related to HDD crossings were due to the following reasoning:

1. Slope – A review of the slope on the east and west sides of the railroad and road determined that the slope was too steep to construct the alignment on either side of the track.



**Table 1 - Deviation Zone Excursions in the Segment 3 – Package 2**

Deviation Zone Excursion Number	Parcel ID	Sheet Number	Location (Approximate – see Drawings for Details)		Justification for Revision	Change in Environmental Impact
			Start	Stop		
Excursion S3-P2#1	103.-1-5	C-113 to C-114	20192+50	20204+00	HDD#12A (2 <sup>nd</sup> conduit)	None
	103.-1-6.22	C-114	20204+00	20206+75		
	103.-1-11	C-114	20206+75	20209+00		
Excursion S3-P2#2	103.-1-35	C-117	20249+50	20254+35	HDD#13 – Design constraints (second conduit). Available space between RR and road	Wetland G-R-DD in HDD work areas
	103.-1-11	C-117 to C-118	20254+35	20269+94		
Excursion S3-P2#3	112.10-4-2	C-119 to C-120	20284+00	20290+00	HDD#13A Second conduit	Crossing under Stream G-R-S-C No impacts (all work outside DZ is below grade)
Excursion S3-P2#4	112.10-5-8.1 112.00-3-20	C-121 to C-122	20300+50 20310+50	20304+60 20320+50	Narrow ROW and design criteria requirements for offset of access road and alignment from tracks.	Open trench crossing of Stream G-R-S-R and G-R-S-S and Wetland G-R-GG
Excursion S3-P2#5	112.00-3-20	C-122 to C-123	20329+74	20332+00	Design Constraints for HDD14A	Wetland G-R-GG
Excursion S3-P2#6	121.00-1-6	C-126	20383+09	20385+00	Design constrains for Baldwin Road Crossing	Wetland WLF-CD by access road (not conduit)
Excursion S3-P2#7	121.00-1-6, 121.00-1-14, 121.00-1-14.2, 121.-1.17, 130-3-1 130-3-7.3	C-126 to C-130	20388+74	20449+00	Design Constraints with other utilities closest to railroad	Wetlands WLF-CD, CE, CF, CG ) Stream G-R-S-T (by HDD), G-R-S-U (open cut) G-R-S-V (open cut), and P2-G -Agricultural lands for parcels 121.00-1-17, 130.-3-1, 130-3-7.3
Excursion S3-P2#8	130-3-7.4, 130.3-7.1, 130-3-7.5	C-132 to C-133	20473+00	20485+00	Design Constraints for splice location 55 and narrow ROW	Wetland G-R-MM Agricultural lands. Land for all three parcels

Deviation Zone Excursion Number	Parcel ID	Sheet Number	Location (Approximate – see Drawings for Details)		Justification for Revision	Change in Environmental Impact
			Start	Stop		
Excursion S3- P2#9	130.-3-7.5, 139.- 1-12	C-134	20498+40	20501+10	Work Area for HDD#16	No resources present
Excursion S3- P2#10	138.-1-21.1	C-139	20578+35	20580+40	Design constraints for crossing stormwater culvert	Agricultural Land
Excursion S3- P2#11	138.-1-24	C-140	20587+30	20590+06	Design constraints for crossing stormwater culvert	Agricultural Land.
Excursion S3- P2#12	147-1-15	C-144	20647+88	20656+16	Permanent easement where alignment separates from CP Rail for HDD#18. Avoidance of Wetland G-R-RR.	Wetland G-R-RR in HDD work areas (crossing under via HDD#18)
Excursion S3- P2#13	155.-1-8	C-148	20715+50	20718+00	Minor Excursion to cross stormwater culvert	Wetland G-R-RR (state wetland); Utility (stormwater culvert)
	155.-1-9					
Excursion S3- P2#14	155.-1-4 155.-1-14.1 154.-1-15 154.-1-16 154.-1-17 154.-1-18	C-149 to C-154	20733+00	20801+71	Permanent easement where alignment separates from CP Rail for HDD#20. Permanent easement where alignment separates from CP rail for U.S. 196 crossing. Permanent easement for where alignment separates from CP Rail for HDD#21 and HDD#21A.	<ul style="list-style-type: none"> <li>- HDD#20 and #21 and #21A</li> <li>- NY Route 196</li> <li>- Ag Land Properties 154.-1-15, 154.-1-16</li> <li>- Potential avoidance of Stream G-R-S-Z</li> <li>- Potential avoidance Wetland G-R-SS</li> </ul>

2. Streams – As identified in Appendix M of the EM&CP several streams were identified adjacent to and within the vicinity of the alignment. The alignment was constrained by these streams and adjusted in order to avoid impacting these streams by crossing under them at the required off-site distance from the railroad tracks.
3. Utilities – The alignment was shifted outside the ADZ in order to avoid impacts to utilities located at close proximity to the railroad.

## **2.2 EXCURSION S3-P2 #1**

### **2.2.1 Description of the Excursion Area**

The alignment exits the CP Rail ROW to accommodate the second conduit for HDD#12A from approximately 20192+50 to 20209+00. Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Area S3-P2#1 and ultimate Facility ROW is included in the attached figure set.

#### **2.2.2 Justification**

The slight excursion is required in order to accommodate HDD#12A and is entirely below grade. See Section 2.1 for a discussion on design constraints related to HDDs. Due to this spatial requirement, the alignment will run underground outside and generally parallel to the ADZ for a total of approximately 1,650 linear feet. This ADZ Excursion request is grounded in engineering reasons and is the minimum necessary to feasibly achieve the installation.

#### **2.2.3 Environmental Impact**

There are no agricultural or archeological resources, threatened or endangered species, or wetlands/waterbodies in the area Excursion S3-P2#1. The excursion area is entirely below grade.

## **2.3 EXCURSION S3-P2 #2**

### **2.3.1 Description of the Exceedance Area**

The alignment exists the CP Rail ROW to accommodate the second conduit for HDD#13 from approximately 20249+50 to 20269+94. Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Area S3-P2#1 and ultimate Facility ROW is included in the attached figure set.

### **2.3.2 Justification**

The slight excursion is required in order to accommodate HDD#13 and is entirely below grade with the exception of the entry and exit pits. See Section 2.1 for a discussion on design constraints related to HDDs. Due to this spatial requirement, the alignment will run underground outside and generally parallel to the ADZ for a total of approximately 2,044 linear feet. This ADZ Excursion request is grounded in engineering reasons and is the minimum necessary to feasibly achieve the installation.

### **2.3.3 Environmental Impact**

#### **2.3.3.1 Agricultural Resources**

The Excursion area S3-P2#2 is not located within agricultural lands. Therefore, additional adverse impacts to agricultural resources will not occur from this change.

#### **2.3.3.2 Archaeological Resources**

The Excursions area S3-P2#2 have no known archaeological sites. The ROW is very narrow due to its proximity on to the canal on the east side of the ROW. The deviation zone excursion is in the narrow previously disturbed area between the Railroad ROW and Route 4. The only portion of the excursion areas that are above grade are the entry and exit pits for HDD#13.

#### **2.3.3.3 Threatened and Endangered Species**

Excursion area S3-P2#2 described above will not result in any changes to the Facility's impacts on federally listed or state-listed species or habitat.

#### **2.3.3.4 Wetlands and Streams**

The entry pit for S3-P2#2 will result in a temporary impact to wetland G-R-DD as described in Table 9.2 of the EM&CP. However, HDD#13 avoids impacting additional portions of wetland G-R-DD and state-protected stream 830-485 (G-R-S-P). The use of HDD#13 enables Certificate Holders to achieve an overall reduction in wetland impacts in this location, which would have been much more significant had the Certificated Route been constructed using trenched installation methods.

## **2.4 EXCURSION S3-P2 #3**

### **2.4.1 Description of the Excursion Area**

The alignment exits the CP Rail ROW to accommodate the second conduit for HDD#13A from approximately 20284+50 to 20290+00. Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Area S3-P2#3 and ultimate Facility ROW is included in the attached figure set.

### **2.4.2 Justification**

The slight excursion is required in order to accommodate HDD#13A and is entirely below grade. See Section 3.0 for a discussion on design constraints related to HDDs. Due to this spatial requirement, the alignment will run underground outside and generally parallel to the ADZ for a total of approximately 550 linear feet. This ADZ Excursion request is grounded in engineering reasons and is the minimum necessary to feasibly achieve the installation.

### **2.4.3 Environmental Impact**

There are no agricultural or archeological resources, threatened or endangered species, or wetlands/waterbodies in the area Excursion S3-P2#3. The excursion area is entirely below grade.

## **2.5 EXCURSION S3-P2 #4**

### **2.5.1 Description of the Excursion Area**

The alignment exits the CP Rail ROW on the east side because the narrow ROW does not allow for space to accommodate existing utilities and the design constraints of the conduit placement across existing streams and CP Rail culverts. The first small area is approximately from 20300+50 to 20304+60 to cross stream G-R-S-R. The second small area from 20310+50 to 20320+50 is to cross stream G-R-S-S. Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Area S3-P2#4 and ultimate Facility ROW is included in the attached figure set. The length of the excursion is approximately 1,410 linear feet.

### **2.5.2 Justification**

The slight excursion is required in order to meet the CP Rail clearance requirements for culverts. This ADZ Excursion request is grounded in environmental and engineering reasons and is the

minimum necessary to feasibly achieve the installation while avoiding impacts to waterbodies, culverts and conflicts with railroad infrastructure and operations.

### **2.5.3 Environmental Impact**

#### **2.5.3.1 Agricultural Resources**

The Excursion area S3-P2#4 is not located within agricultural lands. Therefore, additional adverse impacts to agricultural resources will not occur from this change.

#### **2.5.3.2 Archaeological Resources**

The Excursions areas S3-P2#4 have no known archaeological sites.

#### **2.5.3.3 Threatened and Endangered Species**

Excursion area S3-P2#4 described above will not result in any changes to the Facility's impacts on federally listed or state-listed species or habitat.

#### **2.5.3.4 Wetlands and Streams**

Within the excursion areas, the conduit will be crossing two intermittent streams, G-R-S-R and G-R-S-S (State Designated C/C 830-469). A temporary access road and culvert will be placed while construction is occurring. These streams would require crossing within the DZ as well so the impact is not significantly different and best management practices will be followed as described in Section 9.1 to minimize any impacts from temporary construction activities. S3-P2#4 will result in a temporary impact to wetland G-R-GG as described in Table 9.2 of the EM&CP. Approval of the ADZ Excursions at this location will enable the use of HDD installation to avoid impacts to culverts and intermittent streams which would have resulted from installation using trenched methods.

## **2.6 EXCURSION S3-P2 #5**

### **2.6.1 Description of the Excursion Area**

HDD 14A is an HDD used to cross from the east side of the track to the west side of the tracks. In order to accommodate the design constraints for this HDD entry pit, a small deviation zone occurs from 20329+74 to 20332+00. Pursuant to Condition 138, a detailed map showing the location and

boundary of the Exceedance Area S3-P2#5 and ultimate Facility ROW is included in the attached figure set. The length of the excursion is approximately 226 linear feet.

## **2.6.2 Justification**

The slight excursion is required in order to meet the design constraints for HDD14A to cross the railroad tracks. See Section 2.1 for a discussion on design constraints related to HDDs. This ADZ Excursion request is grounded in engineering reasons and is the minimum necessary to feasibly achieve the installation while avoiding conflicts with existing utilities and railroad operations.

## **2.6.3 Environmental Impact**

### **2.6.3.1 Agricultural Resources**

The Excursion area S3-P2#5 is not located within agricultural lands. Therefore, additional adverse impacts to agricultural resources will not occur from this change.

### **2.6.3.2 Archaeological Resources**

The Excursions area S3-P2#5 has no known archaeological sites.

### **2.6.3.3 Threatened and Endangered Species**

Excursion area S3-P2#5 described above will not result in any changes to the Facility's impacts on federally listed or state-listed species or habitat.

### **2.6.3.4 Wetlands and Streams**

Excursion area S3-P2#5 will result in a temporary impact to wetland G-R-GG as described in Table 9.2 of the EM&CP. However, it is unlikely that the Certificated Route could have been constructed at this location without resulting in wetland impacts; these ADZ Excursions do not substantially increase impacts to wetland resources as compared with the Certificated Route.

## **2.7 EXCURSION S3-P2 #6**

### **2.7.1 Description of the Excursion Area**

The alignment exits the CP Rail ROW to accommodate crossing Baldwin Road (under the bridge) approximately 20383+09 to 20385+00. Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Area S3-P2#6 and ultimate Facility ROW is included in the attached figure set. The length of the excursion is approximately 1,91 linear feet.

### **2.7.2 Justification**

The slight excursion is required in order to accommodate crossing under the bridge (avoiding the bridge abutments) for Baldwin Road. This ADZ Excursion request is grounded in engineering reasons and is the minimum necessary to feasibly achieve the installation while avoiding conflicts with existing road and bridge infrastructure.

### **2.7.3 Environmental Impact**

There are no agricultural, archeological threatened or endangered species, or wetlands/waterbodies in the area Excursion S3-P2#6. Wetland CD will be temporarily impacted by the access road, but the trench/conduit outside the deviation zone was designed to avoid the wetland. Moreover, it is unlikely that the Certificated Route could have been constructed at this location without resulting in wetland impacts; these ADZ Excursions do not substantially increase impacts to wetland or cultural resources as compared with the Certificated Route.

## **2.8 EXCURSIONS S3-P2 #7 AND S3-P2#8**

### **2.8.1 Description of the Excursion Area**

For Excursion Area S3-P2#7, starting at approximately certified route milepost 125, the railroad ROW becomes narrow, the tracks are in the center of the ROW with fairly steep slope drop off on either side of the tracks with the toe of the slope at the edge of the ROW boundary. As a result, the alignment was shifted to the east on private property from 20388+74 to 20449+00 Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Area S3-P2#7 and ultimate Facility ROW is included in the attached figure set. The length of the excursion is approximately 6,026 linear feet.



Excursion S3-P2#8 is a similar scenario as Excursion S3-P2#7. However, for Excursion area S3-P2#8, the ROW is wide enough to accommodate the alignment at the eastern edge, except for the installation of Splice Location 055 which requires a slightly larger work area. The alignment shifts to the east of the ROW outside the deviation zone from 20473 to 20485 for the installation of the Splice Location and then shifts back into the Railroad ROW. Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Area S3-P2#8 and ultimate Facility ROW is included in the attached figure set. The length of the excursion is approximately 1,200 linear feet.

## **2.8.2 Justification**

A review of the slope on the east and west sides of the railroad and road determined that the slope was too steep to construct the alignment on either side of the track within the ROW boundaries. The splice work area must be placed perpendicular to the alignment and therefore there is not enough space for the splice work area between the tracks and the alignment at this location. Due to this spatial requirement, the alignment leading up to and out of the splice, and the splice itself will be placed outside and parallel to the ADZ for a total of approximately 1,200 linear feet. This ADZ Excursion request is grounded in engineering reasons and is the minimum necessary to feasibly achieve the installation.

## **2.8.3 Environmental Impact**

### **2.8.3.1 Agricultural Resources**

The Excursion area S3-P2#7 does include parcels 121.00-1-17, 130.-3-1, 130-3-7.3 which are designated as agricultural land. The Excursion area S2-P2#8 includes parcels 130.-3-7.4, 130.-3-7.1, 130.-7.5, which are designated as agricultural land. The permanent infrastructure will be installed using best management practices described in Section 4.4.1 of the EM&CP. Temporary construction activities will be performed in accordance with Agricultural BMPs as described in Sections 4.10.4, 4.10.5, 7.1, and 14.5 in the EM&CP.

### **2.8.3.2 Archaeological Resources**

The Excursions areas S3-P2#7 and S3-P2#8 have no known archaeological sites. However, Appendix O and Section 11 of the EM&CP describe an area within S3-P2#7's farm field (station 20422+00 to 20466+00) within the DZ Excursion that will require monitoring during construction. No areas within S3-P2#8 were identified.

### **2.8.3.3 Threatened and Endangered Species**

Excursion areas S3-P2#7 and S3-P2#8 described above will not result in any changes to the Facility's impacts on federally listed or state-listed species or habitats.

### **2.8.3.4 Wetlands and Streams**

The east side of the tracks was chosen because there are fewer wet areas (and fewer wetlands). Excursion S3-P2#7 includes HDD#17 to cross under stream P2-S1/G-R-S-T. Several additional streams including G-R-S-U, G-R-S-V and P2-G will be crossed by placing a temporary culvert installation and the best management practices described in Section 9.1 of the EM&CP. The alignment will also result in an impact to wetlands along the toe of the slope of the railroad ROW on the edge of the agricultural fields including Wetlands CD, CE, CF, and CG (as described in Table 9.2). These impacts would likely have been impacted had the construction remained within the railroad ROW since the area would have had to be filled to allow for the construction of an access road for the equipment used to place conduit and install the cable within the conduit. Thus, these ADZ Excursions do not substantially increase impacts to wetlands or cultural resources as compared with the Certificated Route and, in fact, utilize some HDD installation methods to decrease wetland impacts.

Excursion S2-P2#8 includes unavoidable wetland impacts to G-R-MM as described in Table 9.2.

## **2.9 EXCURSION S3-P2 #9**

### **2.9.1 Description of the Excursion Area**

The alignment exits the CP Rail ROW to accommodate the entry pits for HDD#16 from approximately 20498+40 to 20501+10. Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Area S3-P2#9 and ultimate Facility ROW is included in the attached figure set. The length of the excursion is approximately 270 linear feet.

### **2.9.2 Justification**

The slight excursion is required in order to accommodate HDD#16 entry pit. See Section 2.1 for a discussion on design constraints related to HDDs. This ADZ Excursion request is grounded in engineering reasons and is the minimum necessary to feasibly achieve the installation.

### **2.9.3 Environmental Impact**

There are no agricultural or archeological resources, threatened or endangered species, or wetlands/waterbodies present in the area of Excursion S3-P2#9.

## **2.10 EXCURSION S3-P2 #10 AND S3-P2#11 AND S2-P2#13**

### **2.10.1 Description of the Excursion Area**

The alignment exits the CP Rail ROW on the east side because the narrow ROW does not allow for space to accommodate existing utilities and the design constraints of the conduit placement across existing CP Rail culverts. The area is approximately from 20578+35 to 20580+40 for S3-P2#10, from 20587+30 to 20590+06 for S3-P2#11, and from 20715+50 to 20718+00 for S3-P2#13. Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Areas S3-P2#10, S3-P2#11, and S3-P2#13 and ultimate Facility ROW is included in the attached figure set. The length of the excursion S3-P2#10 is approximately 205 linear feet, S3-P2#11 is approximately 276 linear feet and S3-P2#13 is approximately 250 linear feet.

### **2.10.2 Justification**

The slight excursion is required in order to meet the CP Rail clearance requirements for culverts. This ADZ Excursion request is grounded in environmental and engineering reasons and is the minimum necessary to feasibly achieve the installation while avoiding impacts to stormwater drainage culverts and conflicts with railroad infrastructure and operations.

### **2.10.3 Environmental Impact**

#### **2.10.3.1 Agricultural Resources**

The Excursion areas S3-P2#10 and S3-P2#11 are located within agricultural land. The permanent infrastructure will be installed using best management practices described in Section 4.4.1 of the EM&CP. Temporary construction activities will be performed in accordance with Agricultural BMPs as described in Sections 4.10.4, 4.10.5, 7.1, and 14.5 in the EM&CP. S3-P2#13 is not located on agricultural land.

### **2.10.3.2 Archaeological Resources**

The Excursions areas S3-P2#10, S3-P2#11, and S3-P2#13 have no known archaeological sites.

### **2.10.3.3 Threatened and Endangered Species**

Excursion areas S3-P2#10, S3-P2#11, and S3-P2#13 described above will not result in any changes to the Facility's impacts on federally listed or state-listed species or habitat.

### **2.10.3.4 Wetlands and Streams**

Excursion areas S3-P2#10 and S3-P2#11 will not impact any wetlands. The culvert crossings are stormwater drainage pipe. For S3-P2#13, some areas of Wetland G-R-RR could not be avoided. Wetland G-R-RR is a state regulated wetland (HF-10) and activities are in the regulated adjacent area. It is unlikely that the Certificated Route could have been constructed at this location without resulting in wetland impacts; these ADZ Excursions do not substantially increase impacts to wetland or cultural resources as compared with the Certificated Route.

## **2.11 EXCURSION S3-P2 #12**

### **2.11.1 Description of the Excursion Area**

HDD 18 is an HDD used to cross a stream and avoid wetland G-R-RR. In order to accommodate the design constraints for this HDD entry and exit pit, as well as the second conduit, a small deviation zone occurs from 20647+88 to 20656+16. Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Area S3-P2#12 and ultimate Facility ROW is included in the attached figure set. The length of the excursion is approximately 828 linear feet.

### **2.11.2 Justification**

The slight excursion is required in order to meet the design constraints for HDD18. With the exception of the entry and exit pits, this DZ Excursion is entirely below grade and will not result in any land disturbance. See Section 2.1 for a discussion on design constraints related to HDDs. This ADZ Excursion request is grounded in environmental and engineering reasons and is the minimum necessary to feasibly achieve the installation while avoiding impacts to streams and wetlands.

### **2.11.3 Environmental Impact**

#### **2.11.3.1 Agricultural Resources**

The Excursion area S3-P2#12 is not located within agricultural lands. Therefore, additional adverse impacts to agricultural resources will not occur from this change.

#### **2.11.3.2 Archaeological Resources**

The Excursions area S3-P2#12 has no known archaeological sites.

#### **2.11.3.3 Threatened and Endangered Species**

Excursion area S3-P2#12 described above will not result in any changes to the Facility's impacts on federally listed or state-listed species or habitat.

#### **2.11.3.4 Wetlands and Streams**

S3-P2#12 will result in a temporary impact to wetland G-R-RR (State wetland HF-10) and the regulated adjacent area in the areas of the entry and exit pit as described in Table 9.2 of the EM&CP. It is unlikely that the Certificated Route could have been constructed at this location without resulting in wetland impacts; these ADZ Excursions do not substantially increase impacts to wetland or cultural resources as compared with the Certificated Route.

### **2.12 EXCURSION S3-P2 #14**

#### **2.12.1 Description of the Excursion Area**

Between certified route mile marker 131.4 and the end of Package 3, the railroad crosses NY State Route 196, Bond Creek, and several other wetland areas in the vicinity. As such HDD20, 21 and 21A were designed to provide the least impact on these features. In order to accommodate the design constraints for this HDD entry and exit pits, as well as the second conduit, the alignment leaves the railroad ROW from 20733+00 to 20801+71. Pursuant to Condition 138, a detailed map showing the location and boundary of the Exceedance Area S3-P2#14 and ultimate Facility ROW is included in the attached figure set. The length of the excursion is approximately 6,871 linear feet but the areas of actual disturbance will be limited to HDD entry and exit work areas and access roads.

### **2.12.2 Justification**

The excursion is required based on design constraints to HDD under NY Route 196, Bond Creek and wetlands described in Table 1. With the exception of the entry and exit pits and access roads, this DZ Excursion is entirely below grade and will not result in any land disturbance. See Section 2.1 for a discussion on design constraints related to HDDs. This ADZ Excursion request is grounded in environmental and engineering reasons and is the minimum necessary to feasibly achieve the installation while avoiding impacts to streams and wetlands, as well as a State Highway.

### **2.12.3 Environmental Impact**

#### **2.12.3.1 Agricultural Resources**

The Excursion area S3-P2#14 is located within parcels 154.-1-15 and 154.-1-16 which is considered agricultural land. The permanent infrastructure will be installed using best management practices described in Section 4.4.1 of the EM&CP. Temporary construction activities will be performed in accordance with Agricultural BMPs as described in Sections 4.10.4, 4.10.5, 7.1, and 14.5 in the EM&CP.

#### **2.12.3.2 Archaeological Resources**

The Excursion area S3-P2#14 has no known archaeological sites. However, Appendix O and Section 11 of the EM&CP describe an area within S3-P2#14's HDD entry and exit work areas (station 20737 to 20742, 20742 to 20749, 20757 to 20791, 20732 to 20736, and 20747 to 20796) within the DZ Excursion that will require monitoring during construction.

#### **2.12.3.3 Threatened and Endangered Species**

Excursion area S3-P2#14 described above will not result in any changes to the Facility's impacts on federally listed or state-listed species or habitat.

#### **2.12.3.4 Wetlands and Streams**

Excursion area S3-P2#14 will result in a temporary impact to wetland G-R-RR (State wetland HF-10) and the regulated adjacent area in the areas of the entry exit pit for HDD#20 as described in Table 9.2 of the EM&CP. It is unlikely that the Certificated Route could have been constructed at this location without resulting in wetland impacts; these ADZ Excursions do not



substantially increase impacts to wetland or cultural resources as compared with the Certificated Route.

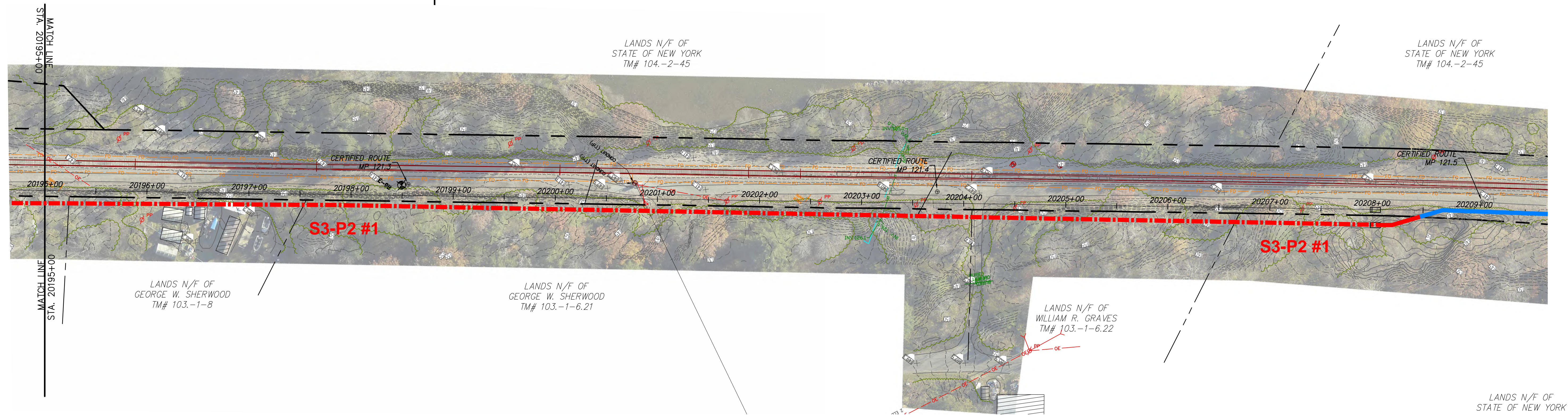
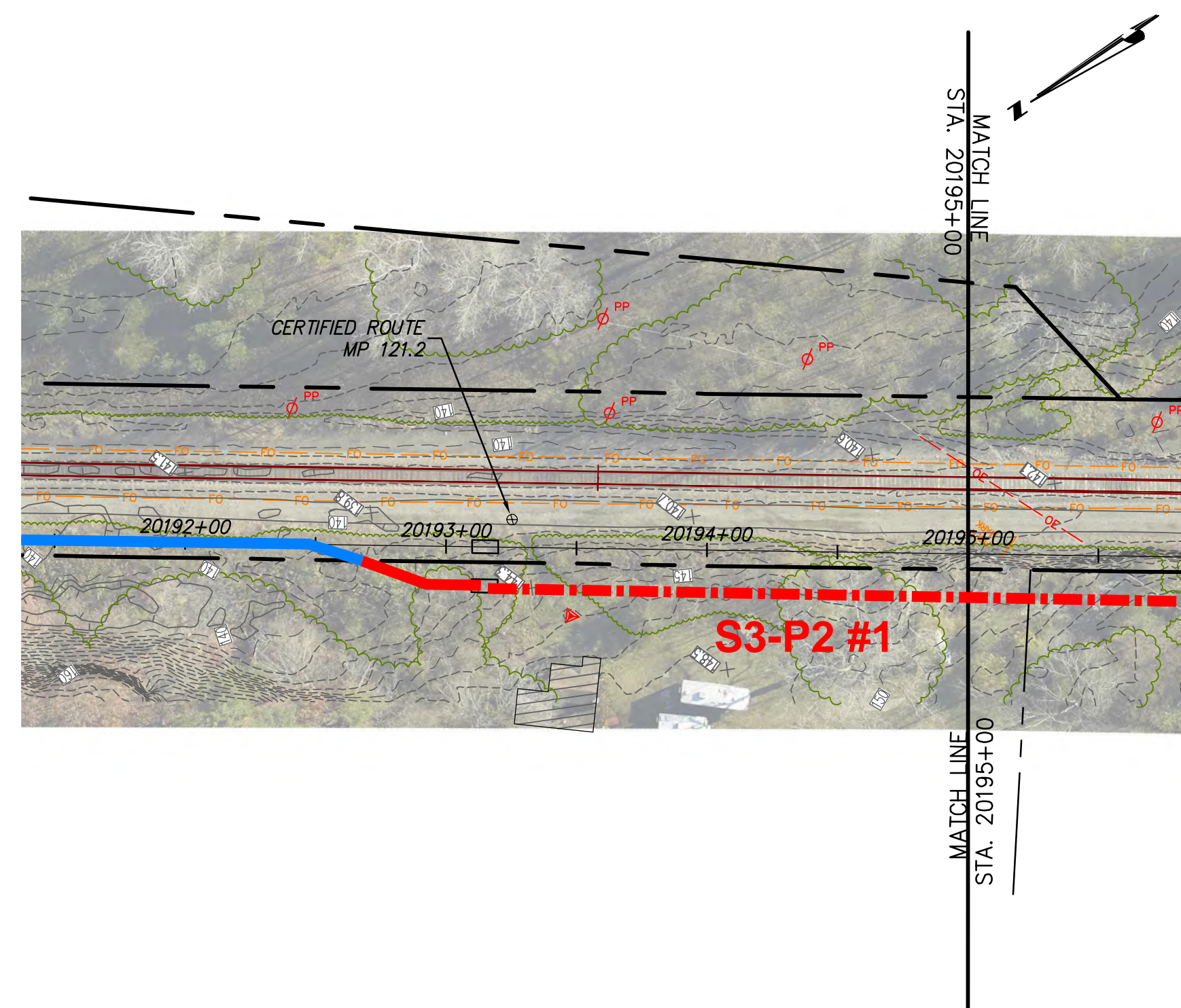
### **3.0 CONCLUSION**

The adjusted route at the various excursions in Segment 3– Package 2 presented above do not significantly increase adverse environmental impacts. Impacts associated with this work have been minimized and mitigated and can be addressed by the Certificate Conditions already approved by the Commission for the Facility. The deviations requested are necessary for appropriate engineering and environmental reasons and does not conflict with the other Certificate Conditions. The Certificate Holders have kept the proposed excursions to the minimum area necessary to ensure construction of the Facility is feasible, while attempting to reduce impacts and stay within the approved ADZ to the extent practicable.

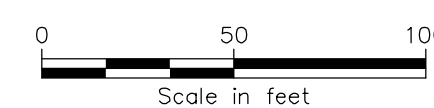
On that basis, the Certificate Holders respectfully request that DPS Staff approve this deviation from the ADZ with the Segment 3 – Package 2 EM&CP without modification to the Certificate.

In the alternative, should DPS Staff determine that a Certificate amendment is required to effectuate any of these changes to the ADZ, Certificate Holders respectfully request that the PSC consider this submission in lieu of a separate petition for an amendment, given that this EM&CP submission materially adheres to the same general procedural and substantive requirements which would otherwise be required for such an amendment (such as the dissemination of legal notices to affected landowners, notice to the public and host communities, and a robust justification for the changes requested). The ADZ changes will not result in any material increase in environmental impacts from the Facility—and, in fact, are intended to decrease environmental impacts at certain locations—and do not substantially change the location of the Facility for the reasons described in this memorandum. While the Certificate Holders do not believe that the adjustments outline in this memorandum constitute an amendment to the Certificate, should an amendment be necessary, Certificate Holders submit that a hearing is not required or warranted in accordance with PSL Section 123(2).

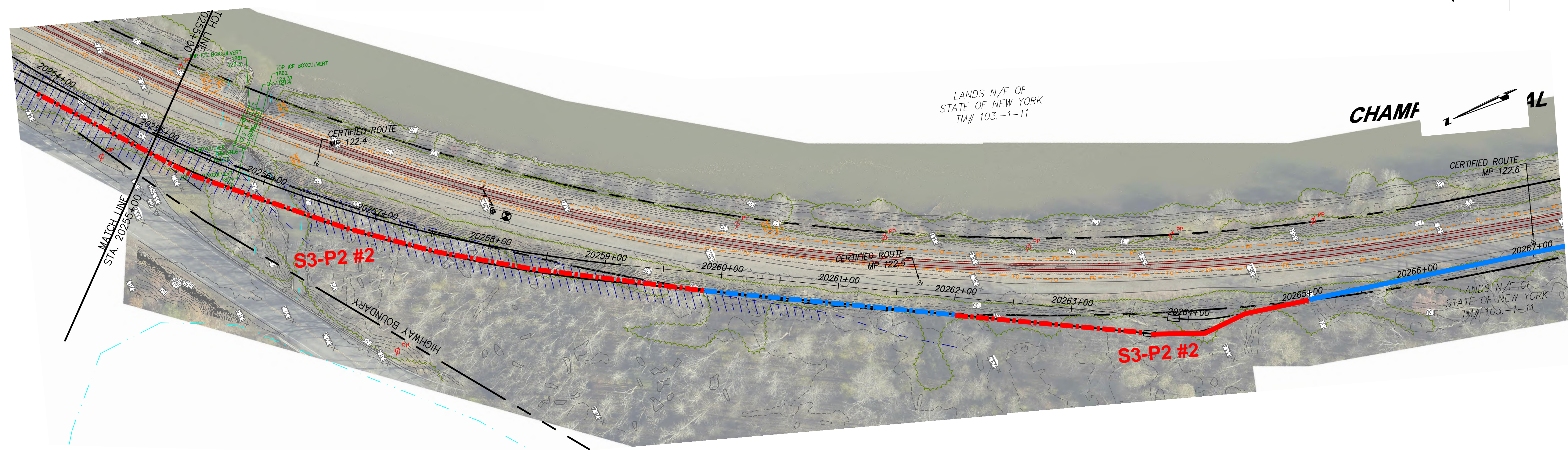
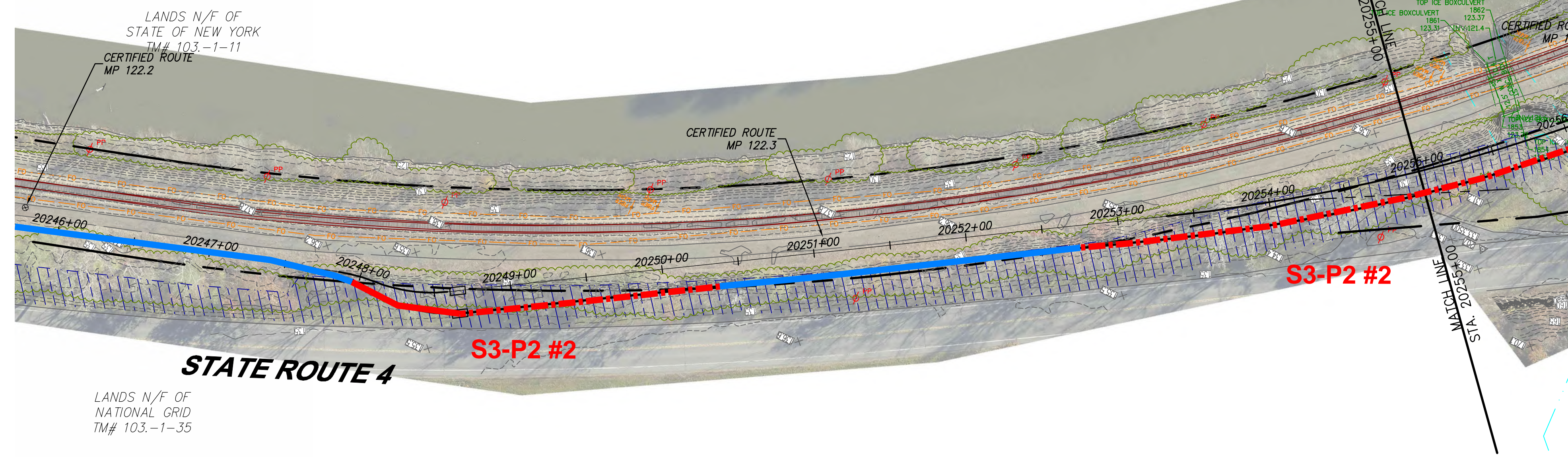









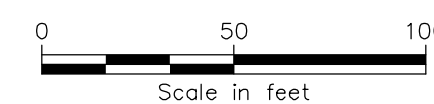
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- - - Segment 3 Alignment Under Ground Excursions
- Segment 3 Alignment
- Delineated Wetlands
- - - - - Deviation Zone



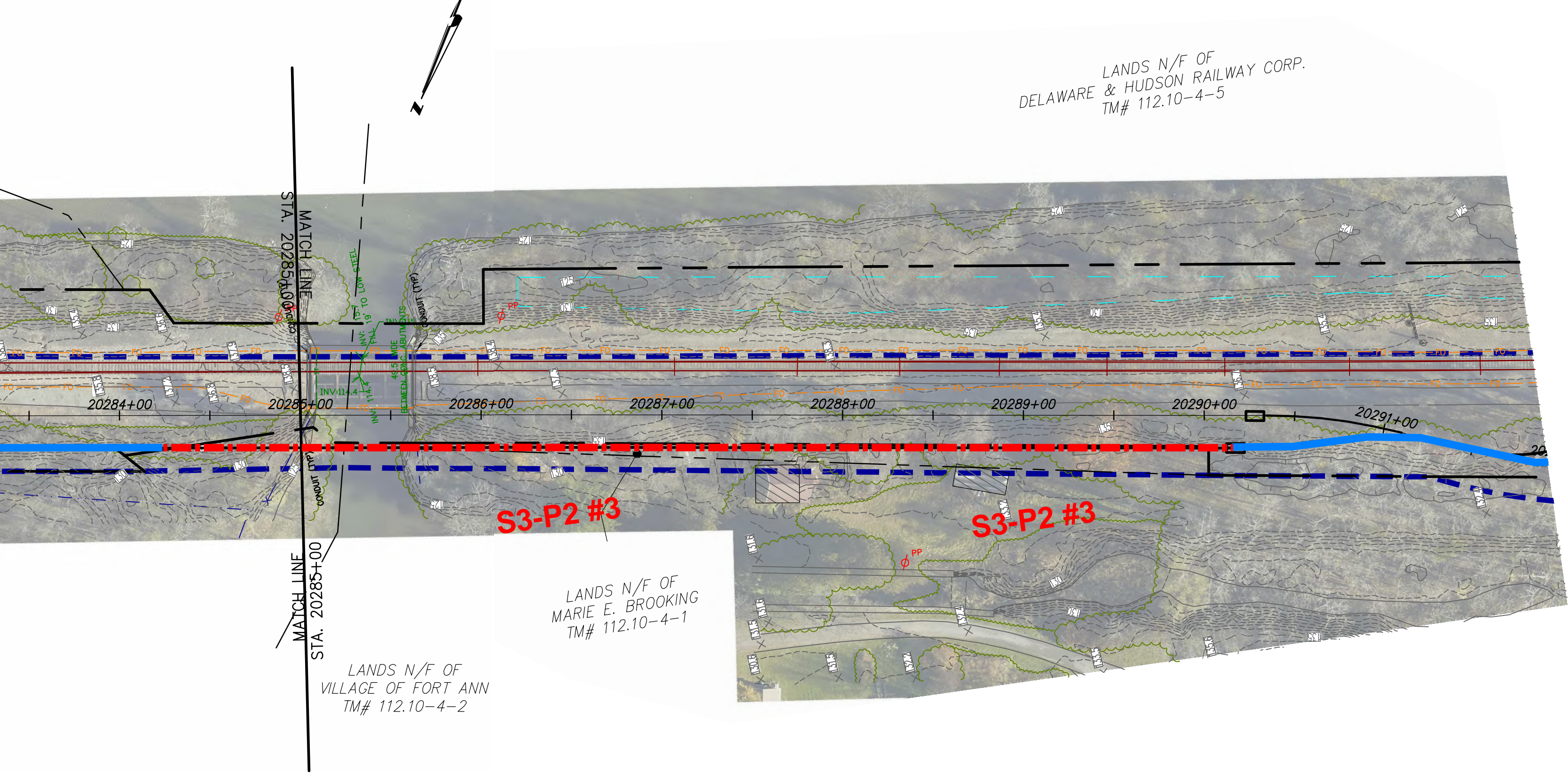




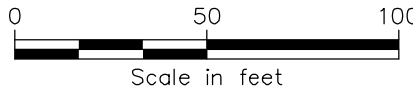
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 Segment 3 Alignment  
 Delineated Wetlands  
 Deviation Zone







- Segment 3 Alignment Excursions
- Segment 3 Alignment Under Ground Excursions
- Segment 3 Alignment
- Delineated Wetlands
- Deviation Zone



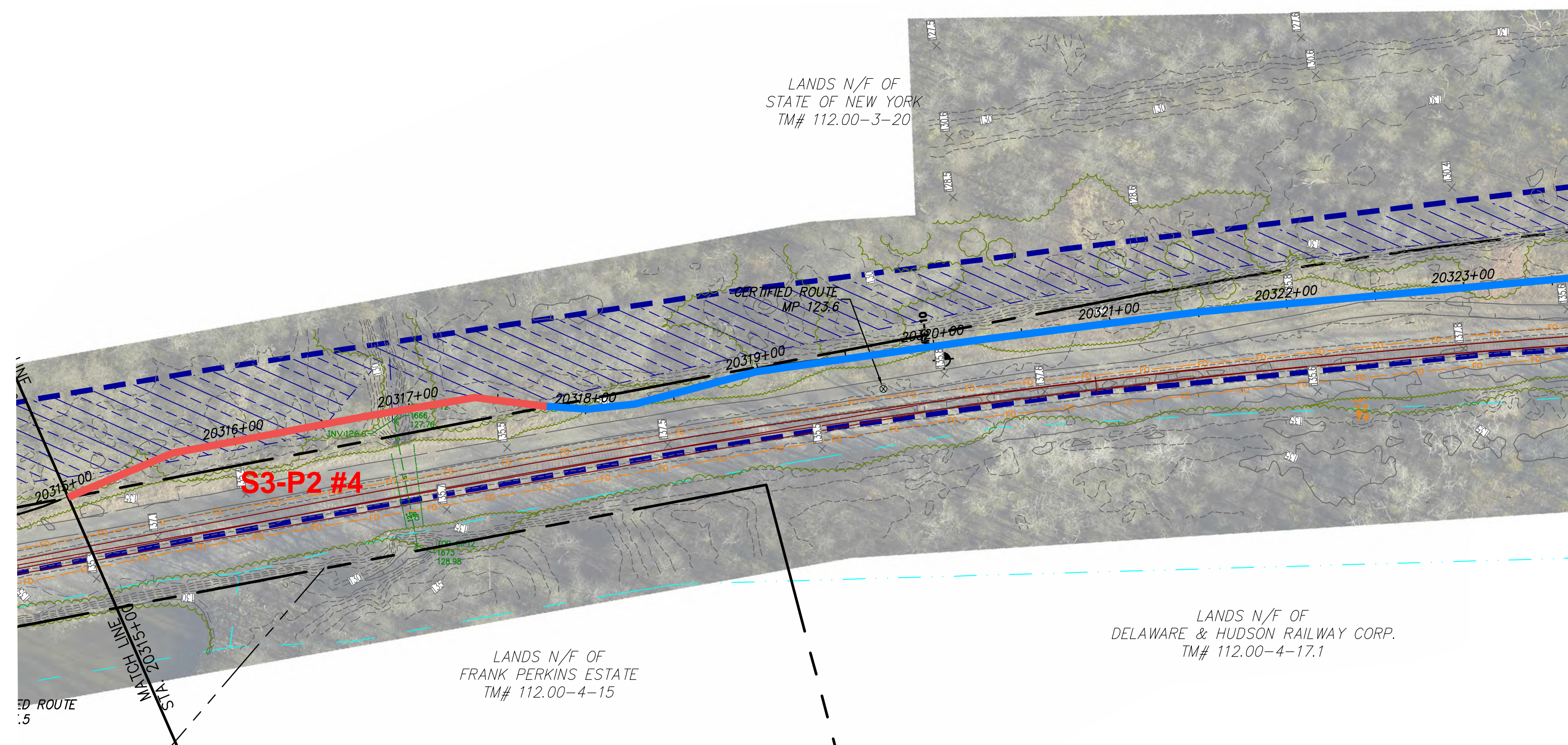
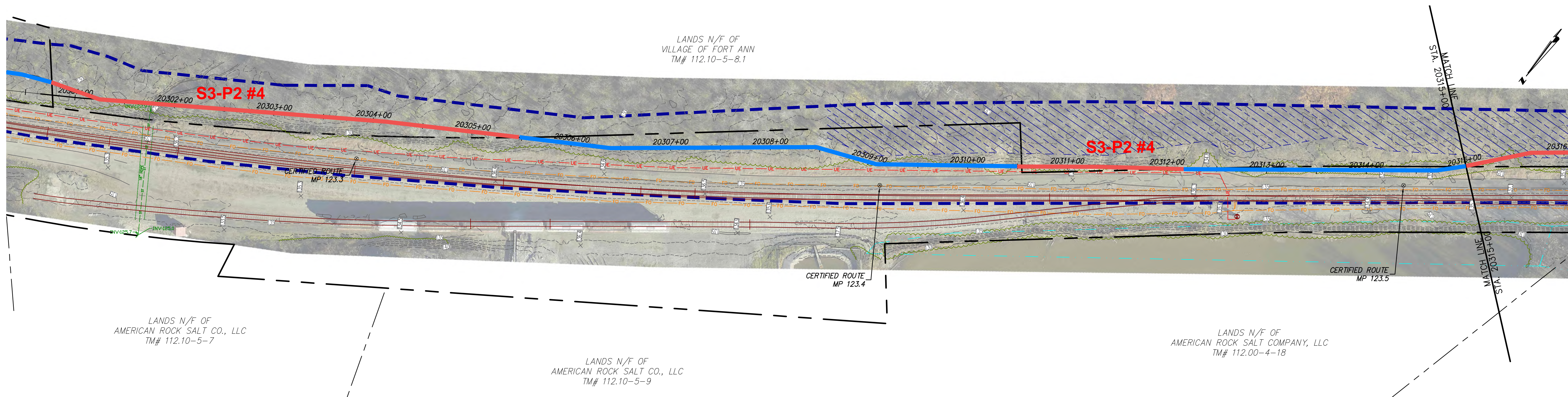


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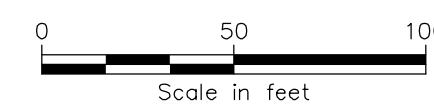
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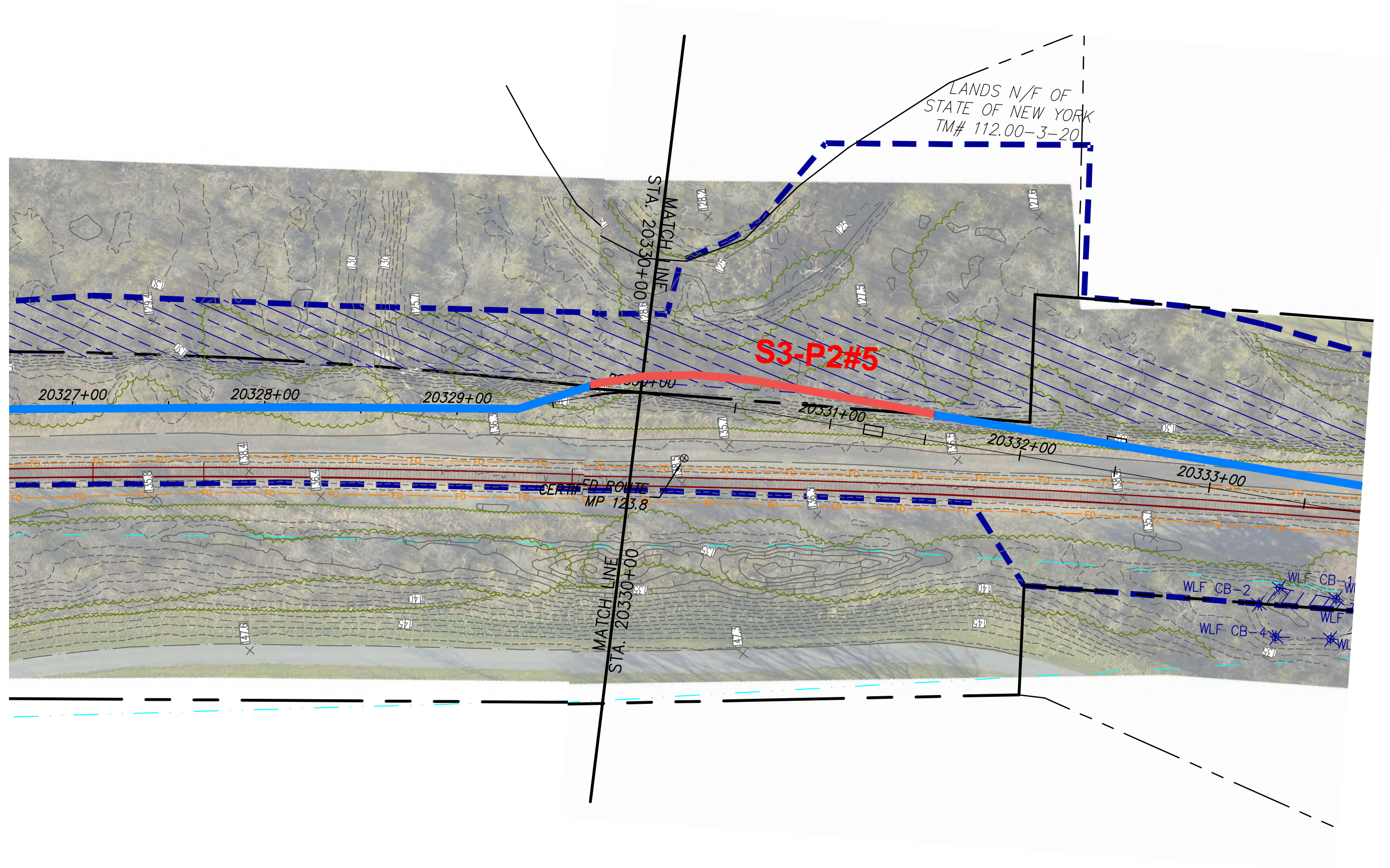
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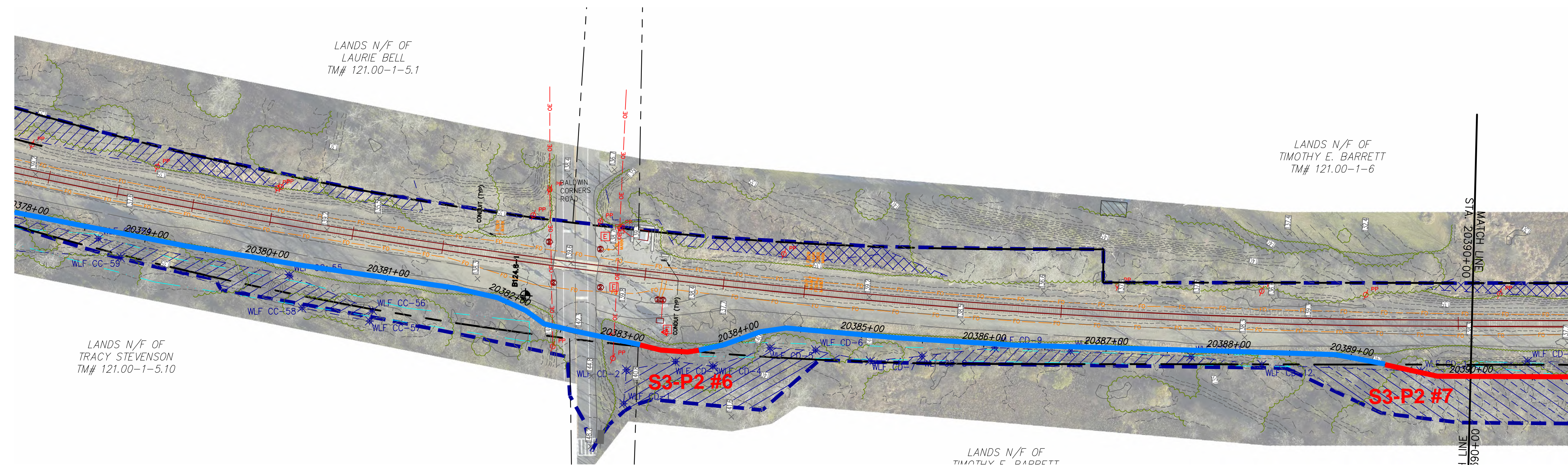
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- Segment 3 Alignment Under Ground Excursions
- Segment 3 Alignment
- Delineated Wetlands
- Deviation Zone











- Segment 3 Alignment Excursions
- Segment 3 Alignment Under Ground Excursions
- Segment 3 Alignment
- Delineated Wetlands
- Deviation Zone

0 50 100  
Scale in feet





- 
- A scale bar labeled "Scale in feet" with markings at 0, 50, and 100 feet.



LANDS N/F OF  
STATE OF NEW YORK  
TM# 121.00-2-3

LANDS N/F OF  
STATE OF NEW YORK  
TM# 121.00-2-3

LANDS N/F OF  
CV LAND HOLDINGS, LLC  
TM# 121.00-1-17  
AG LAND  
(SEE TABLE 1.4 ON  
SHEET G-011)

LANDS N/F OF  
VALENTIN KUSTER  
TM# 130.-3-1  
AG LAND  
(SEE TABLE 1.4 ON  
SHEET G-011)

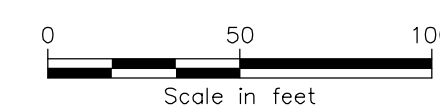
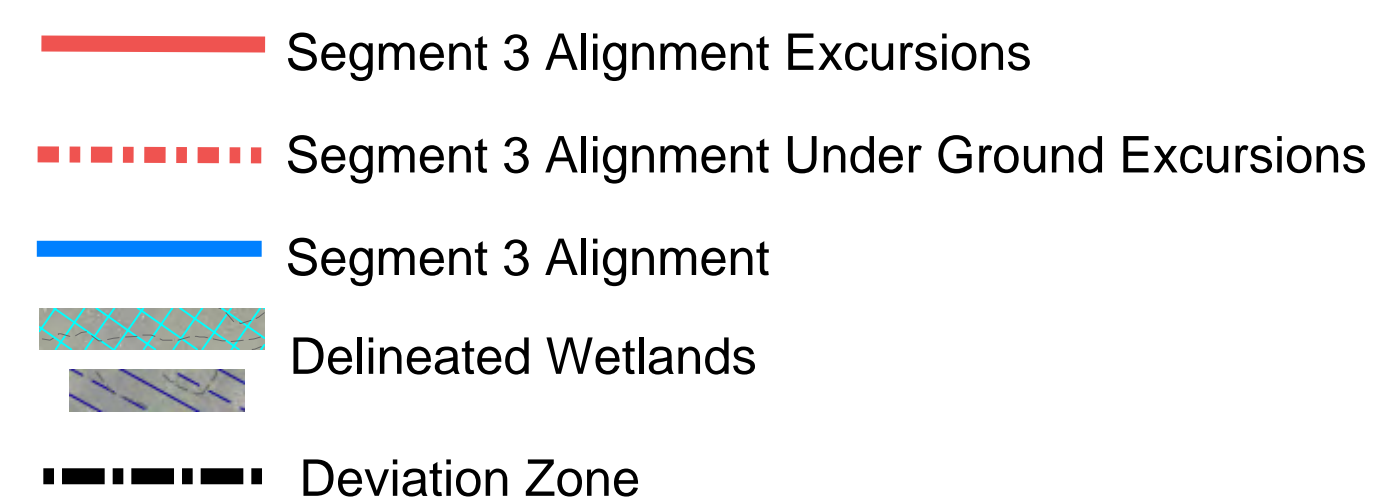
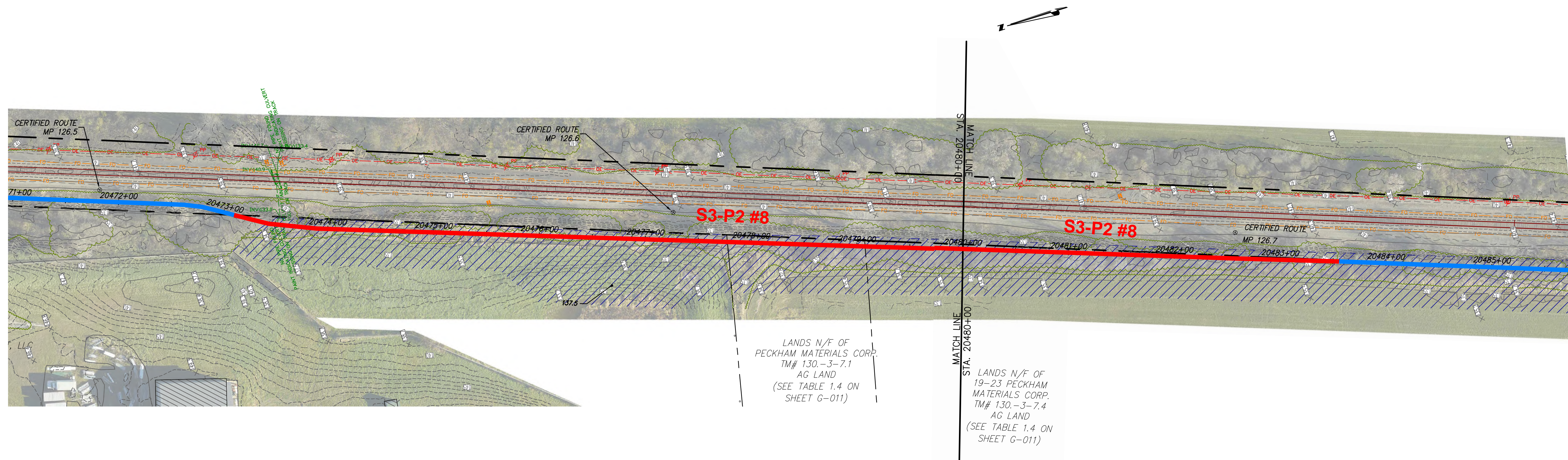
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TM# 130.-3-1  
AG LAND  
(SEE TABLE 1.4 ON  
SHEET G-011)

LANDS N/F OF  
VALENTIN KUSTER  
TM# 130.-3-7.3  
AG LAND

- Segment 3 Alignment Excursions
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- Segment 3 Alignment
- Delineated Wetlands
- - - - - Deviation Zone

0 50 100  
Scale in feet

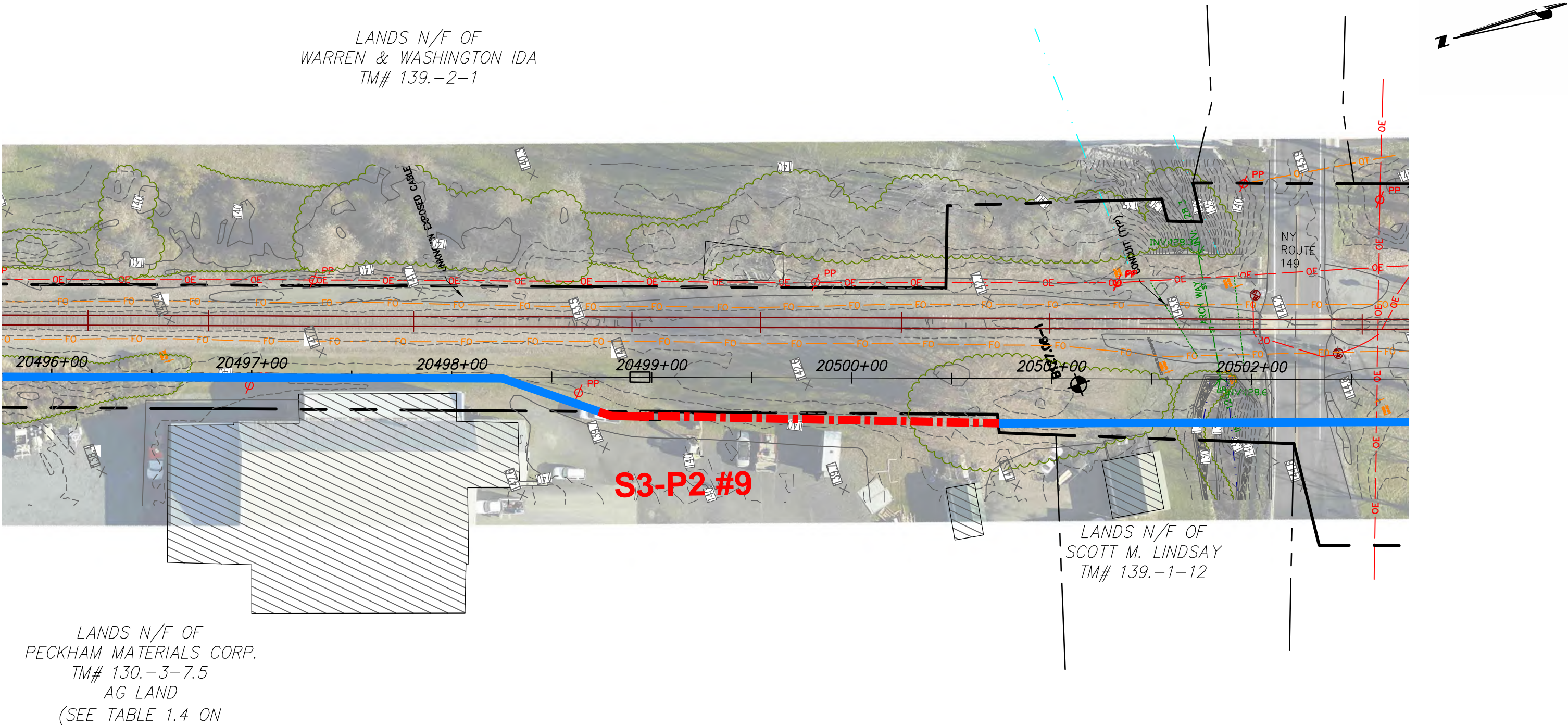




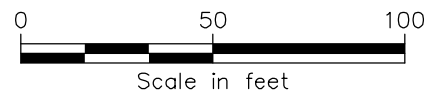


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B

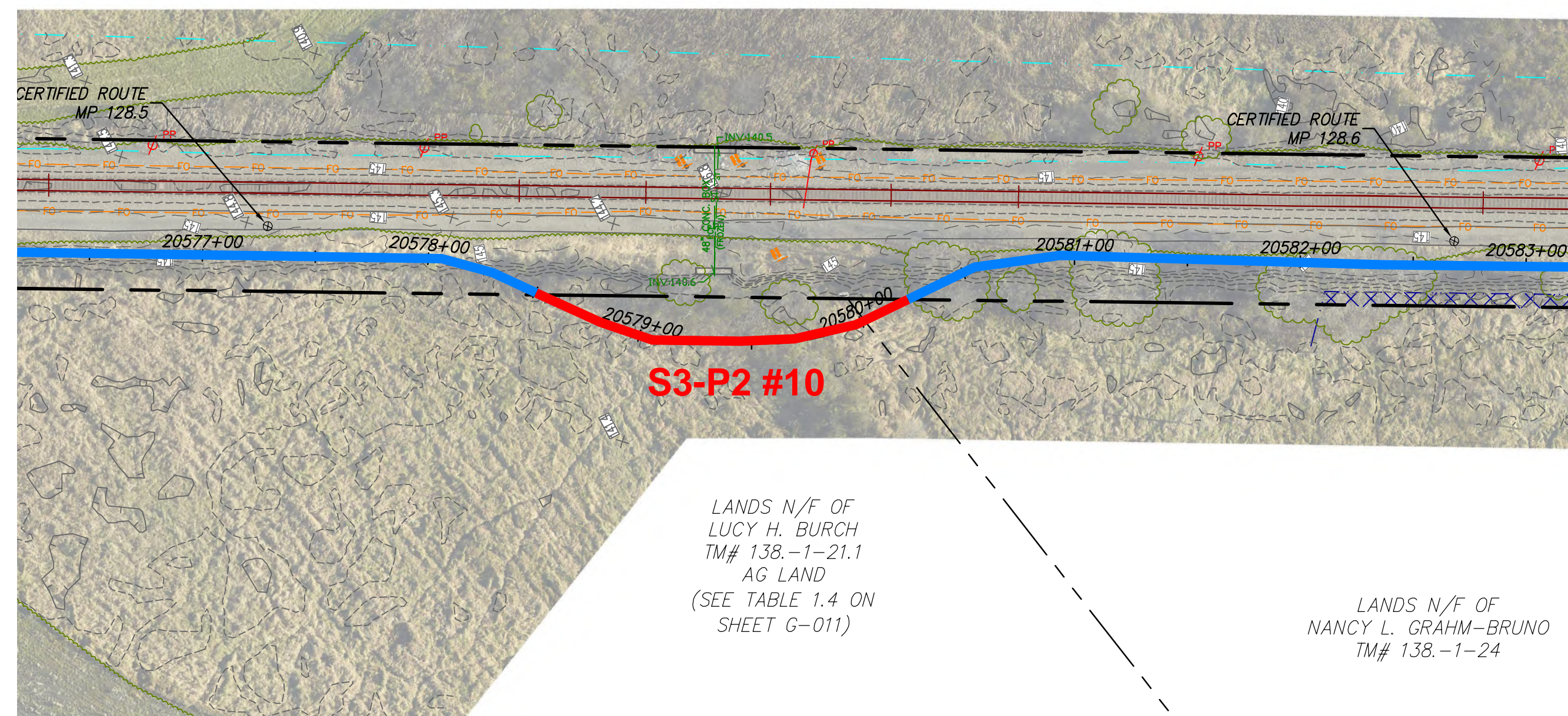


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- Segment 3 Alignment
- Delineated Wetlands
- Deviation Zone

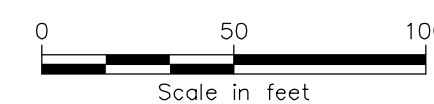




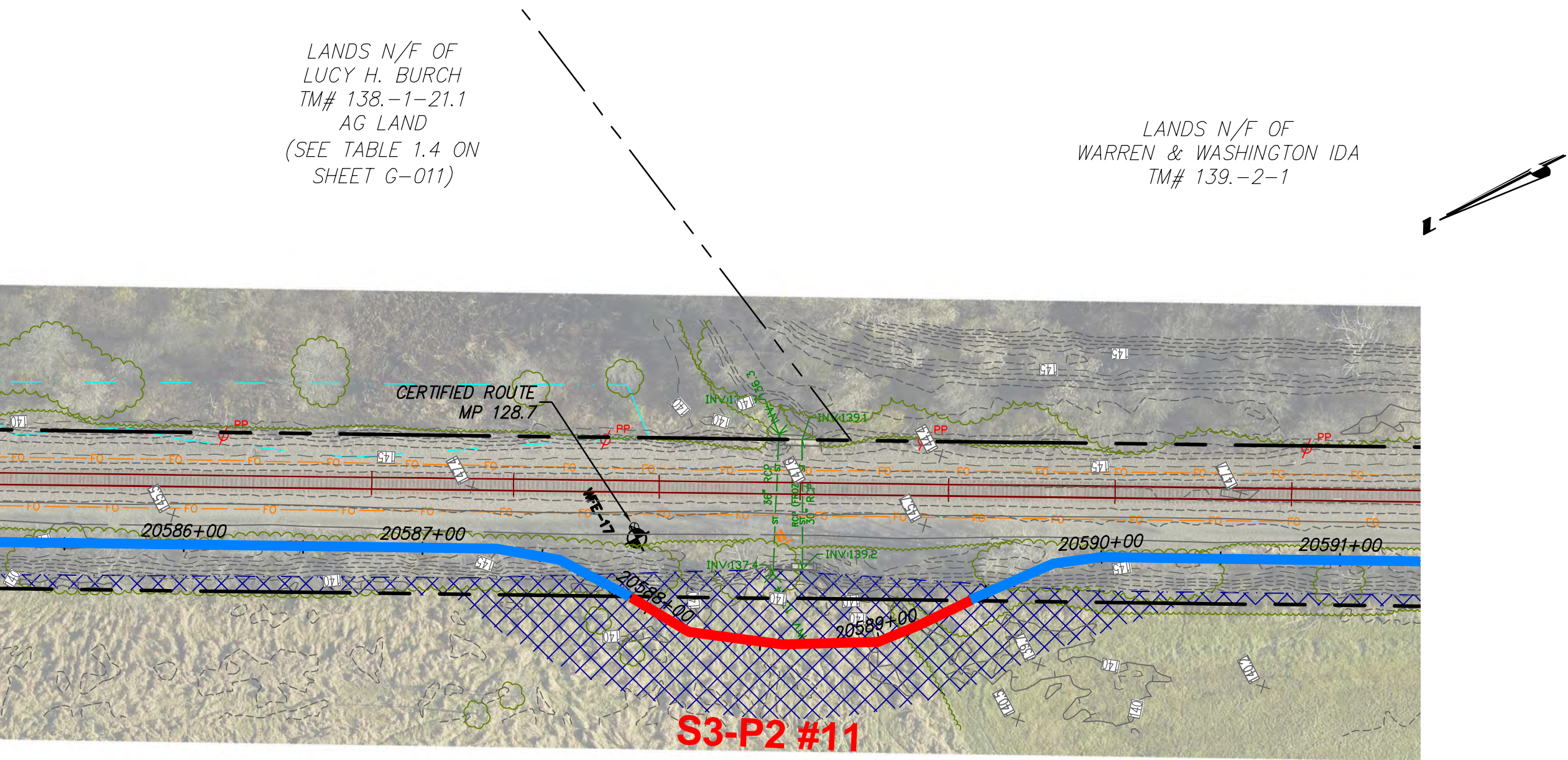
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AG LAND  
(SEE TABLE 1.4 ON  
SHEET G-011)



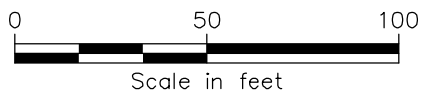
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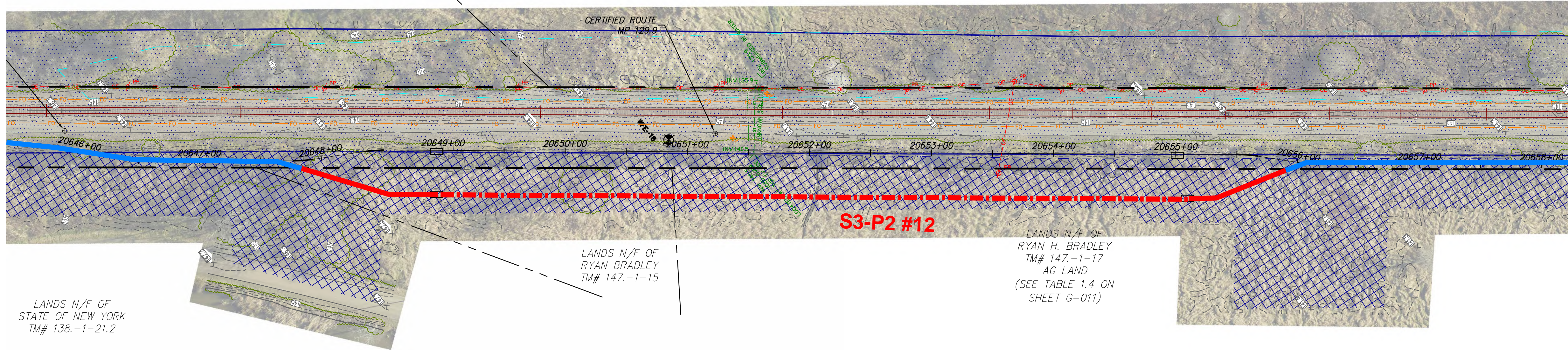
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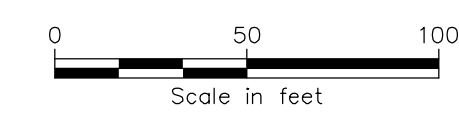


LANDS N/F OF  
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TM# 147.-1-14

LANDS N/F OF  
RYAN H. BRADLEY  
TM# 147.-1-16



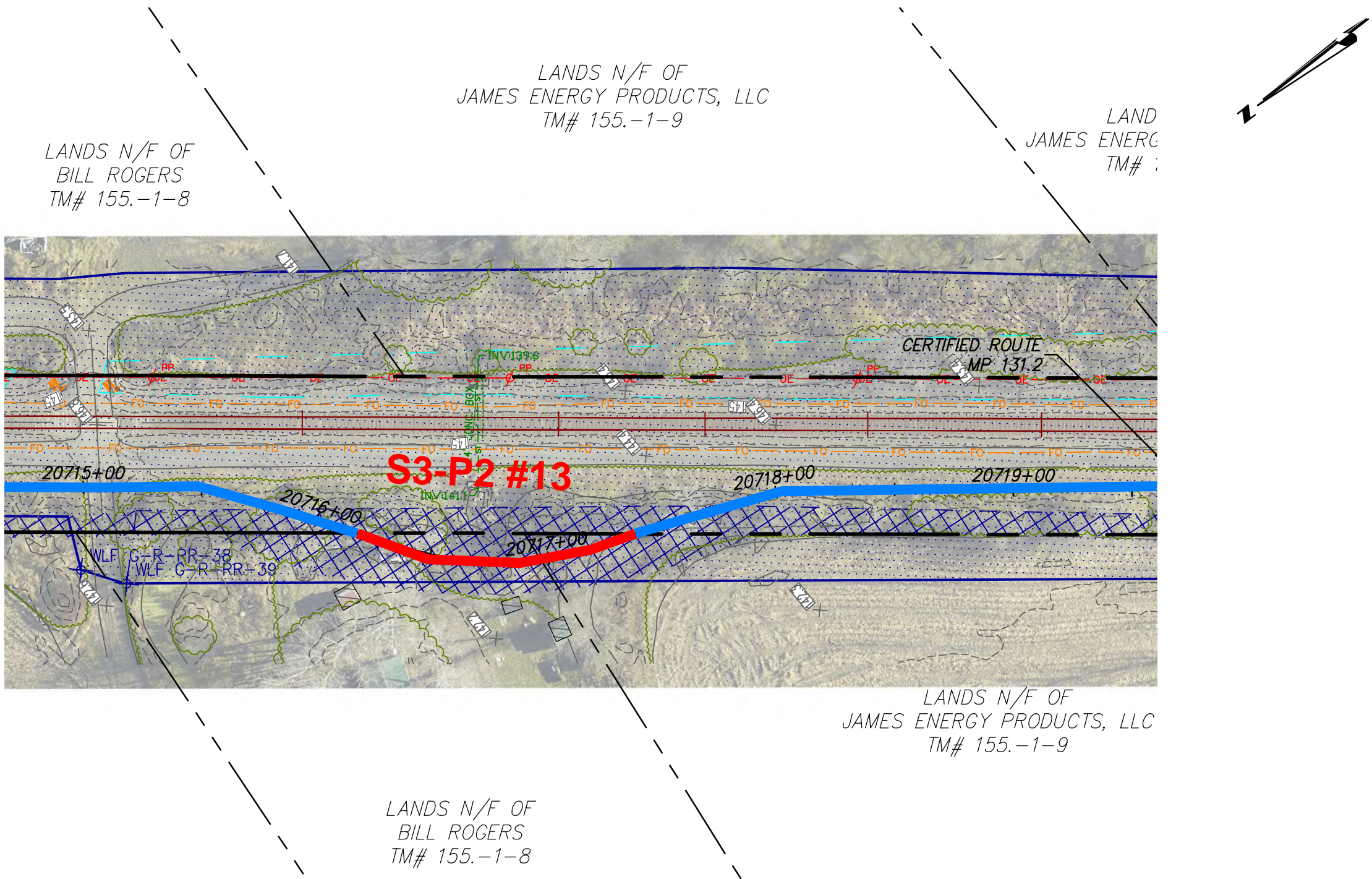
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A

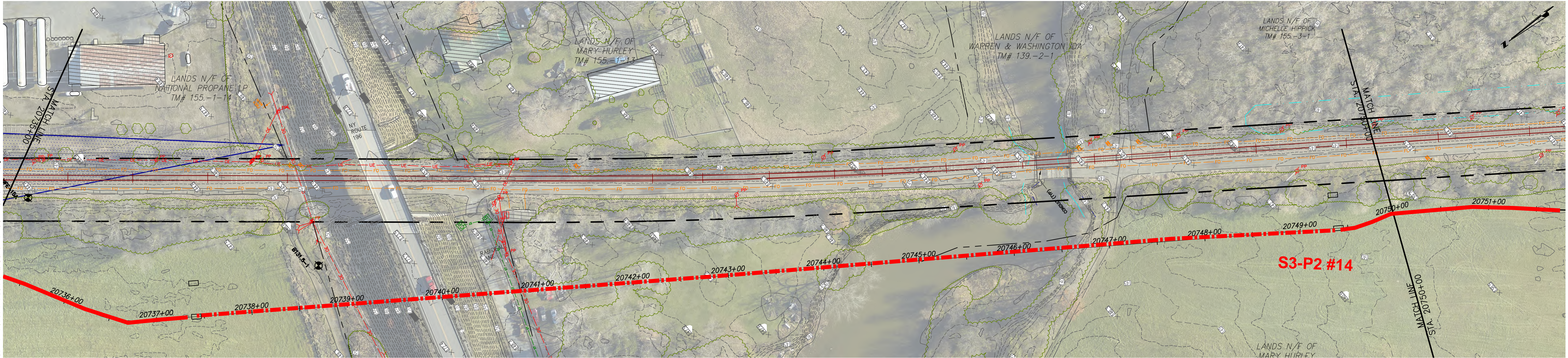
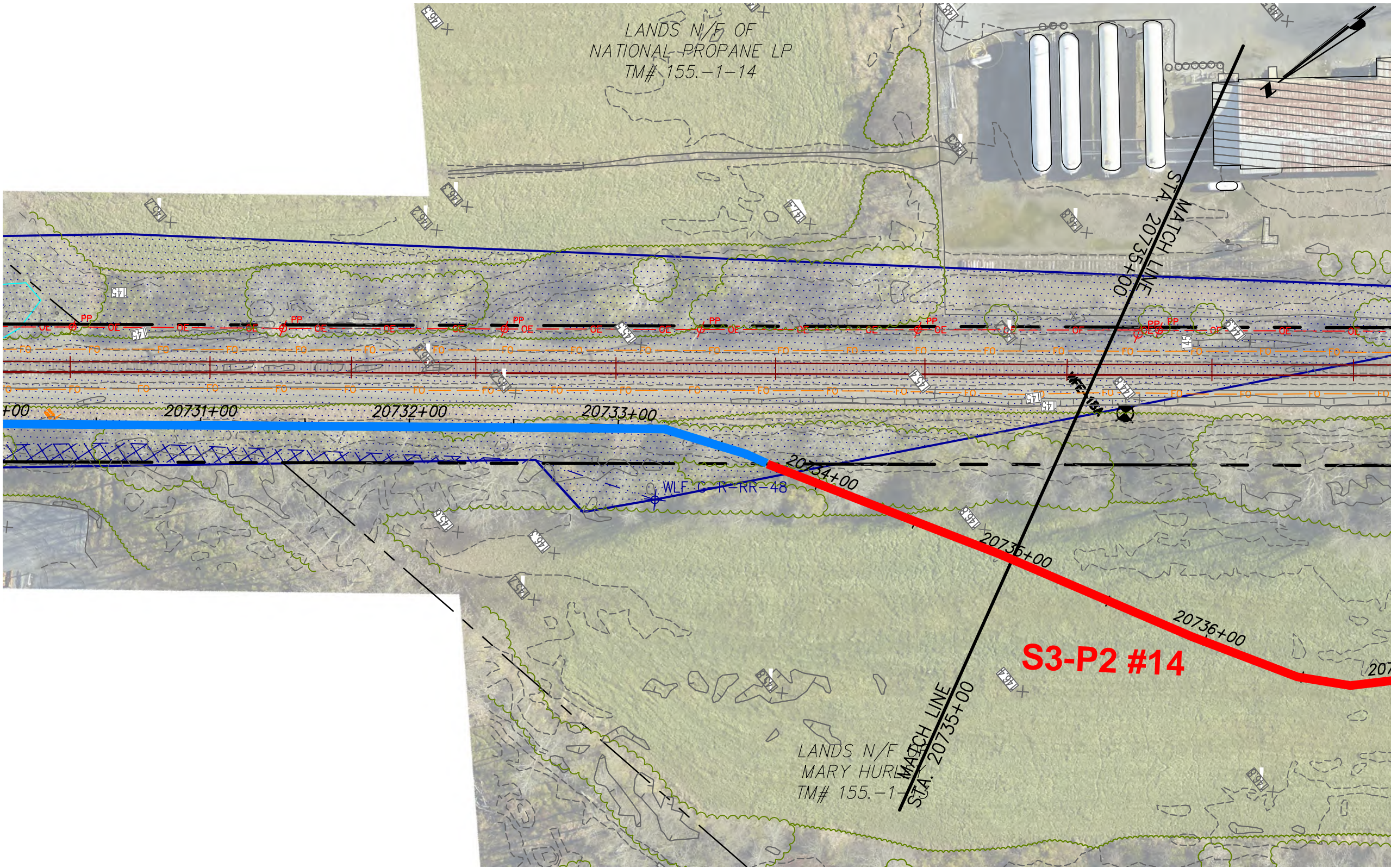
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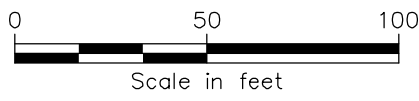
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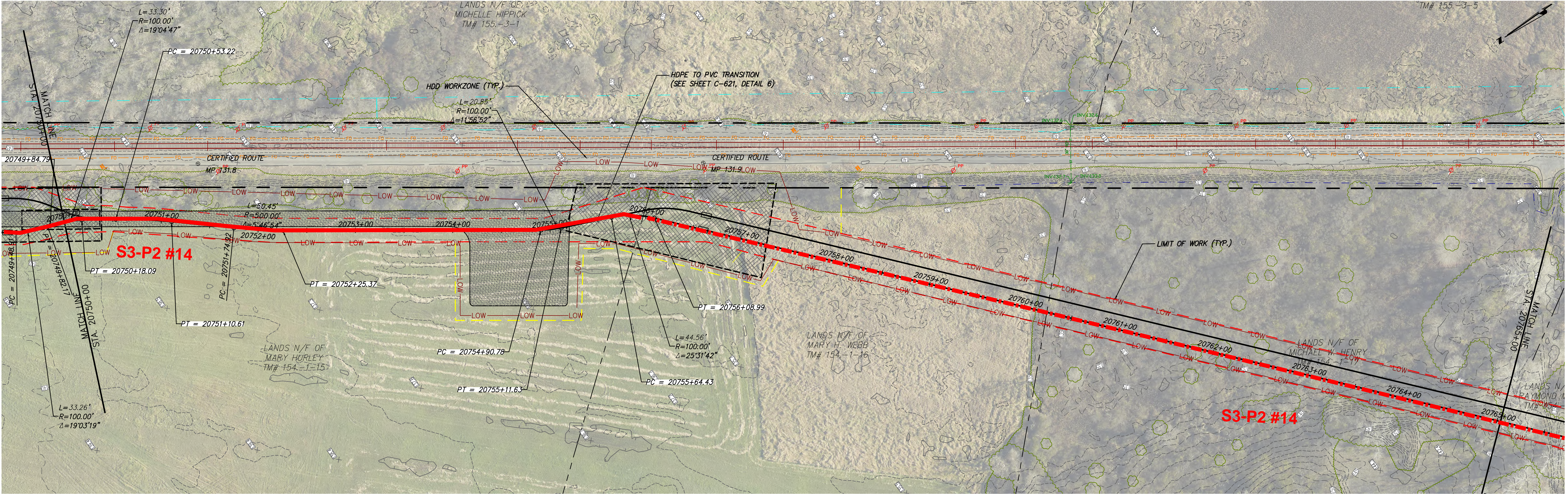




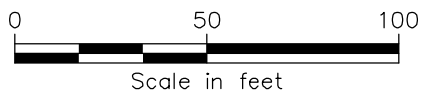
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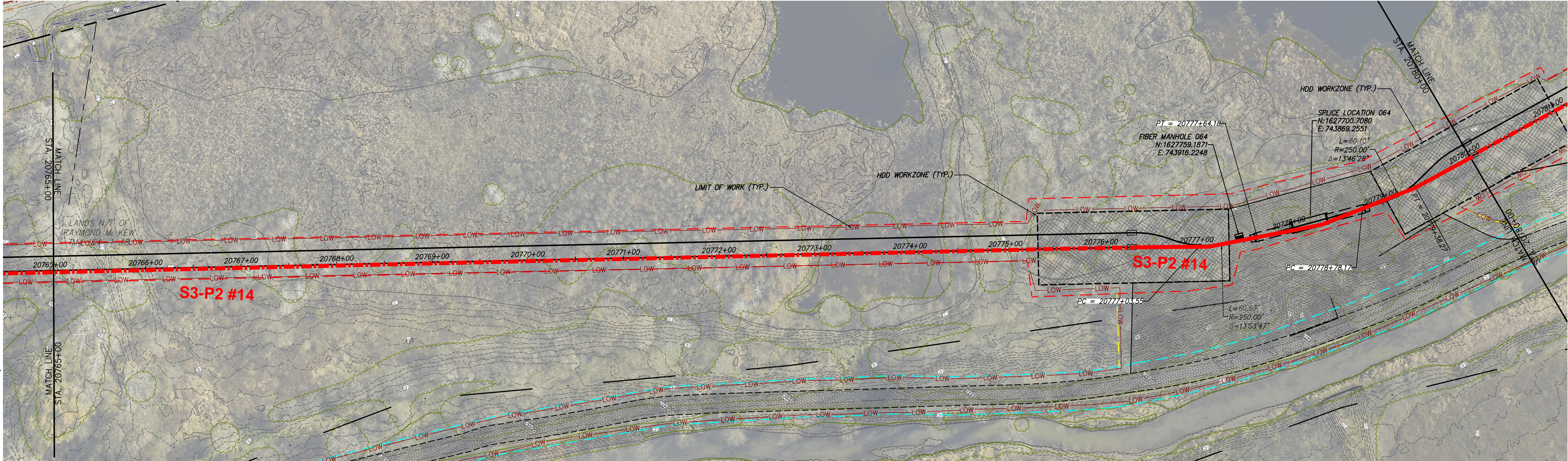




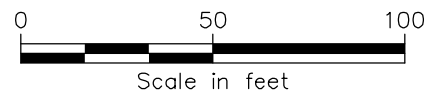
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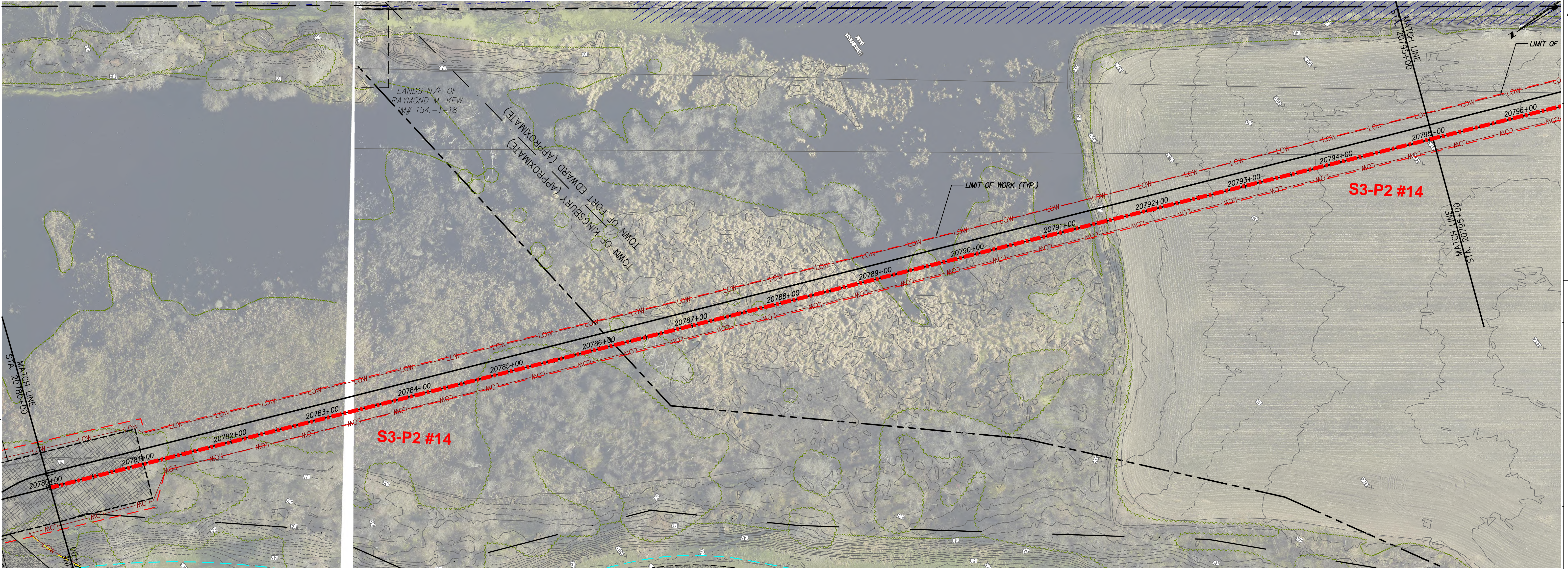




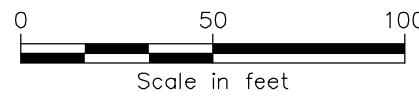
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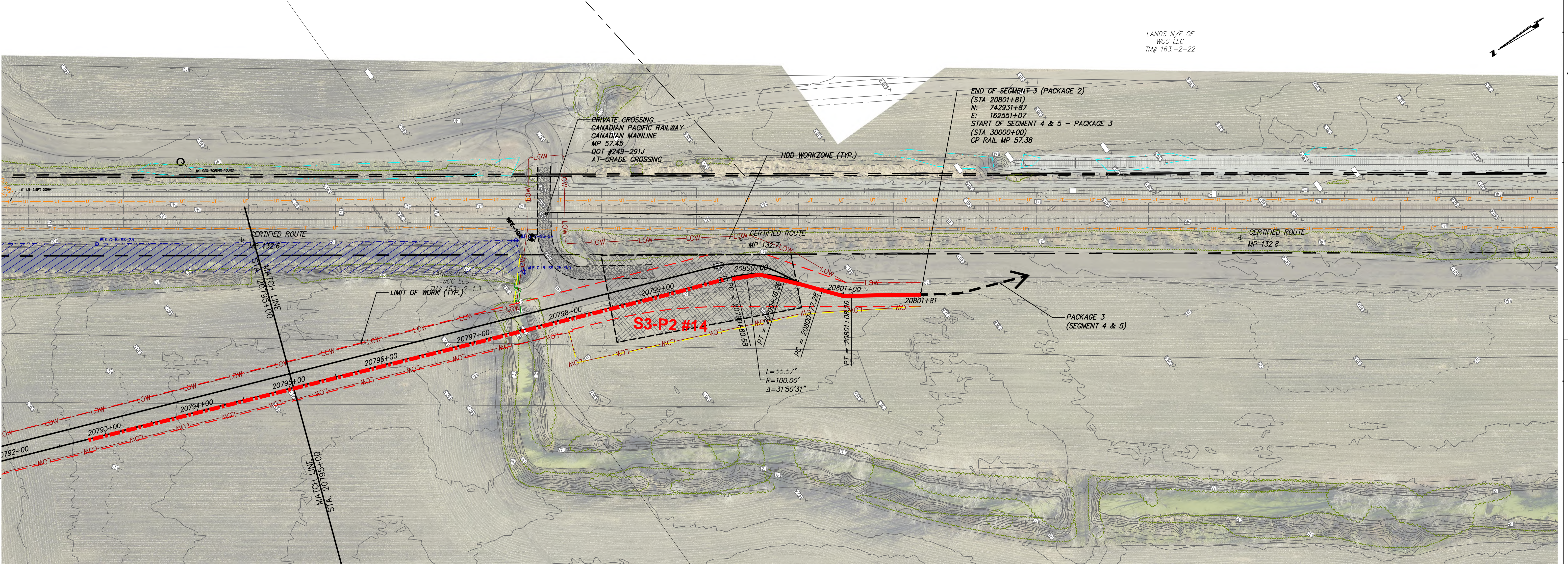




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