

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): JUN 21 2018

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: CEMVP-OP-R, 2015-00930-BGO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota County/parish/borough: Dakota/Hennepin City: Burnsville/Bloomington

Center coordinates of site (lat/long in degree decimal format): Lat. 44.8° N, Long. -93.29° W.

Universal Transverse Mercator: UTM Zone 15N

Name of nearest waterbody: Minnesota River

Name of watershed or Hydrologic Unit Code (HUC): Lower Minnesota Watershed - 07020012

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: April 30, 2018

☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.: N/A

2. Non-regulated waters/wetlands (check if applicable):¹

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: The review area for this determination contains four roadside ditches labeled as Ditch #1, Ditch #1Wa, Ditch #1Wb, and Ditch #3 and two stormwater ponds labeled as Stormwater Pond 2 and Stormwater Pond 3a/3b on the attached figures labeled MVP-2015-00930-BGO MnDOT SP 1981-124 AJD Attachments, Page 1-7 of 7.

The roadside ditches were constructed in uplands, drain only uplands, and do not carry a relatively permanent flow of water into waters of the U.S. (WoUS). Per the Rapanos decision, the evaluated ditches are not WoUS because they are not tributaries and do not have a significant nexus to traditionally navigable waters. This was confirmed by reviewing aerial photography and the wetland delineation report dated June 1, 2017.

The stormwater ponds were designed and constructed in uplands by the Minnesota Department of Transportation (MnDOT) in the 1990's as part of a separate construction project located along the same segment of I-35W. This was confirmed by reviewing historical aerial photography and topographic maps from 1956-1991, which shows the stormwater ponds were constructed in uplands and areas that were previously disturbed by road and bridge construction. A no permit required decision was also issued to MnDOT on April 20, 1994 for the construction of Stormwater Pond 3a/3b. The April 20, 1994 no permit required decision was based on the geographic jurisdiction of the project area, which was comprised entirely of uplands at the time of the decision. The non-jurisdictional determination for these stormwater ponds is in accordance with the preamble to the 1986 Corps Regulations (CFR Parts 320-330), which states that the Corps generally does not consider the following waters to be Waters of the United States; "Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing."

¹ Supporting documentation is presented in Section III.F.

Please note that the remainder of the aquatic resources shown on the attachments have been addressed in other jurisdictional determinations.

SECTION III: CWA ANALYSIS

- A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): N/A
- C. SIGNIFICANT NEXUS DETERMINATION: N/A
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): N/A
- E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY): N/A

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
- ☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- ☒ Other (explain, if not covered above): **See Section II.B.2, above.**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: June 1, 2017 SP 1981-124, I35W

Wetland Delineation Report

- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- ☒ Office concurs with data sheets/delineation report.
- ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☒ U.S. Geological Survey Hydrologic Atlas:
- ☒ USGS NHD data.
- ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24K Bloomington
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ National wetlands inventory map(s). Cite name: FWS NWI and MnDNR NWI
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Aerial photography from 1930-2017
- or ☐ Other (Name & Date):
- ☐ Previous determination(s). File no. and date of response letter:

- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A

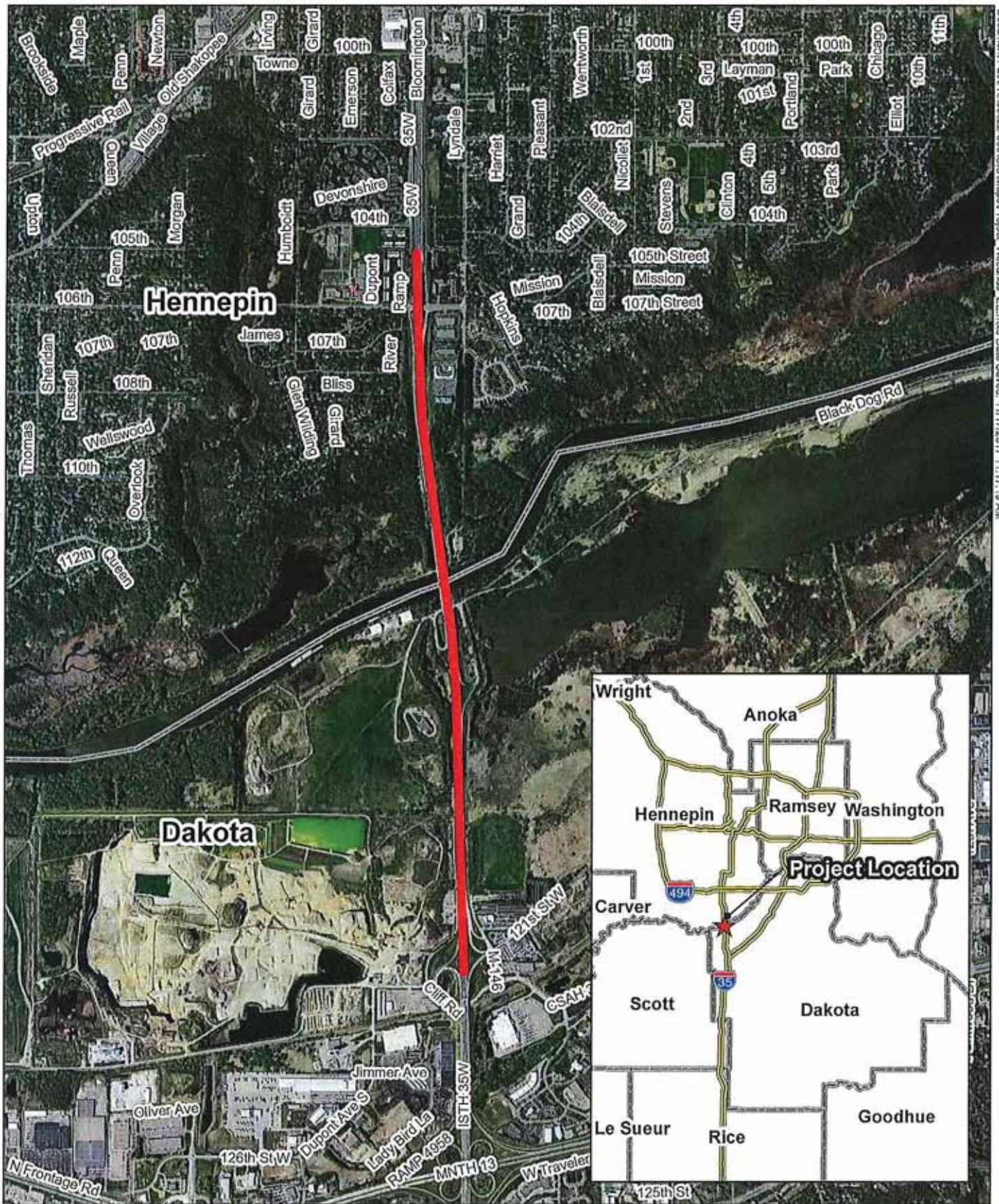
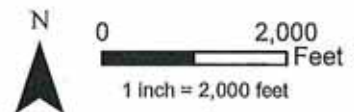
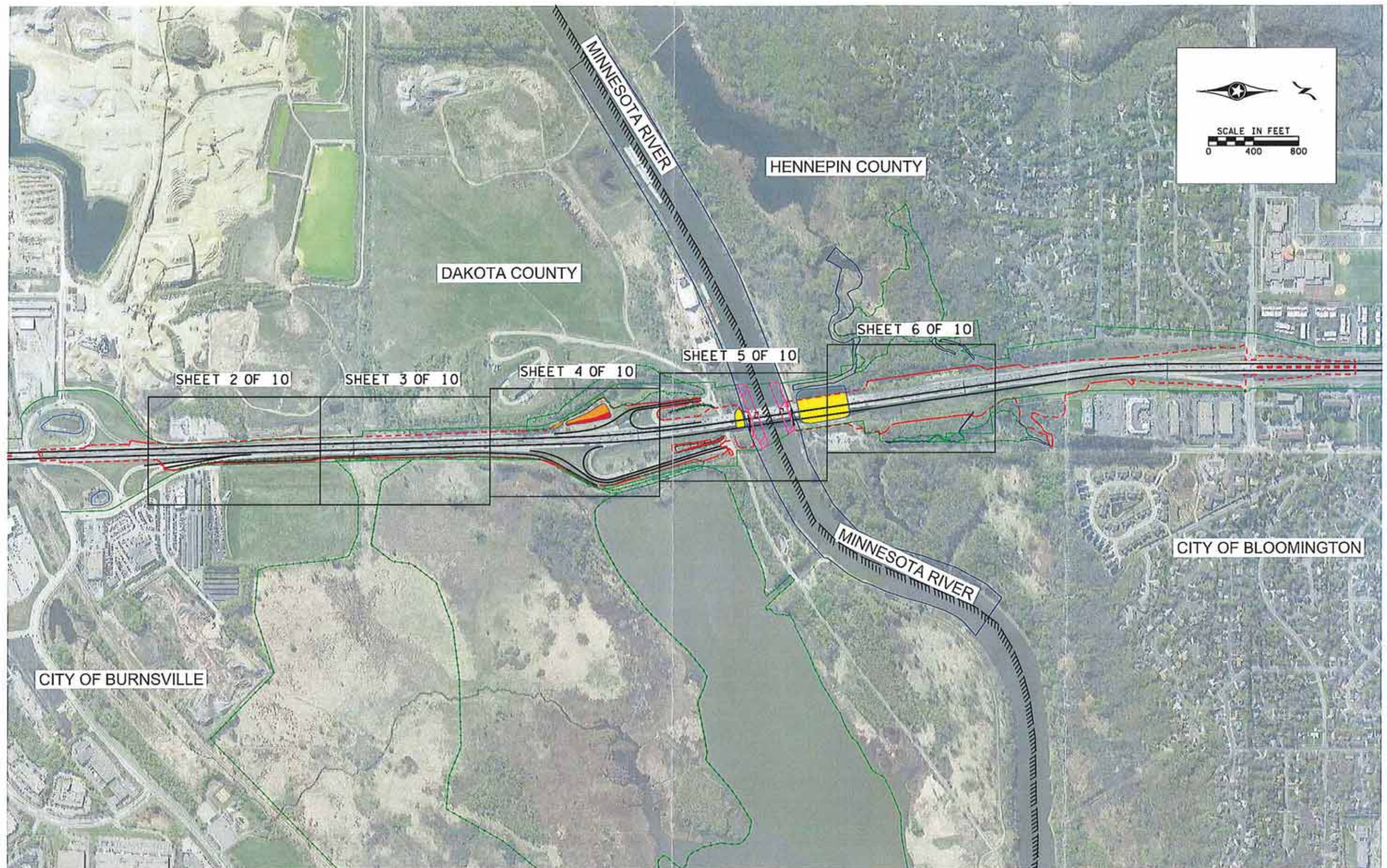


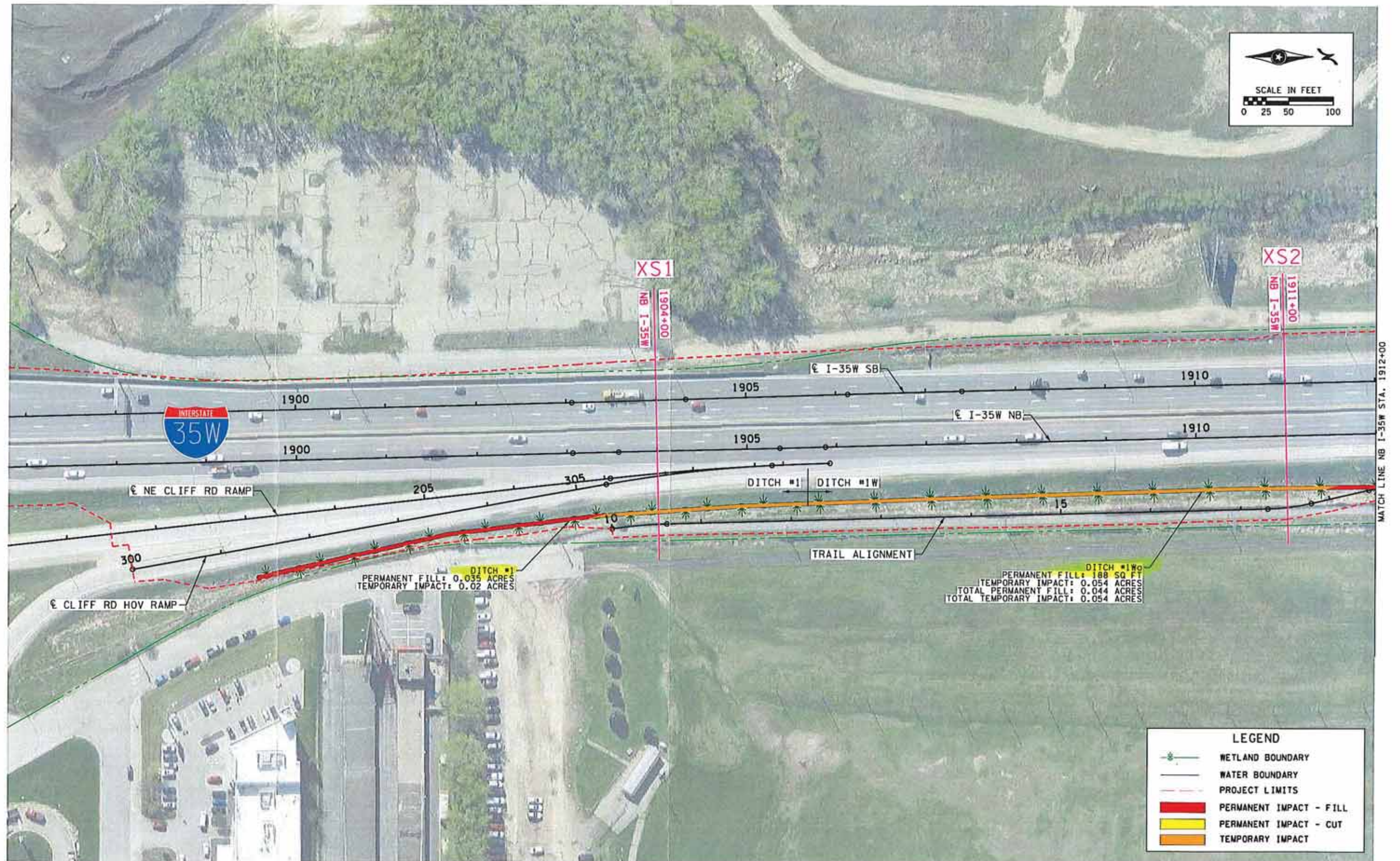
Figure 1: Project Location
I-35W over the Minnesota River
MnDOT



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I-35W MN RIVER BRIDGE PROJECT

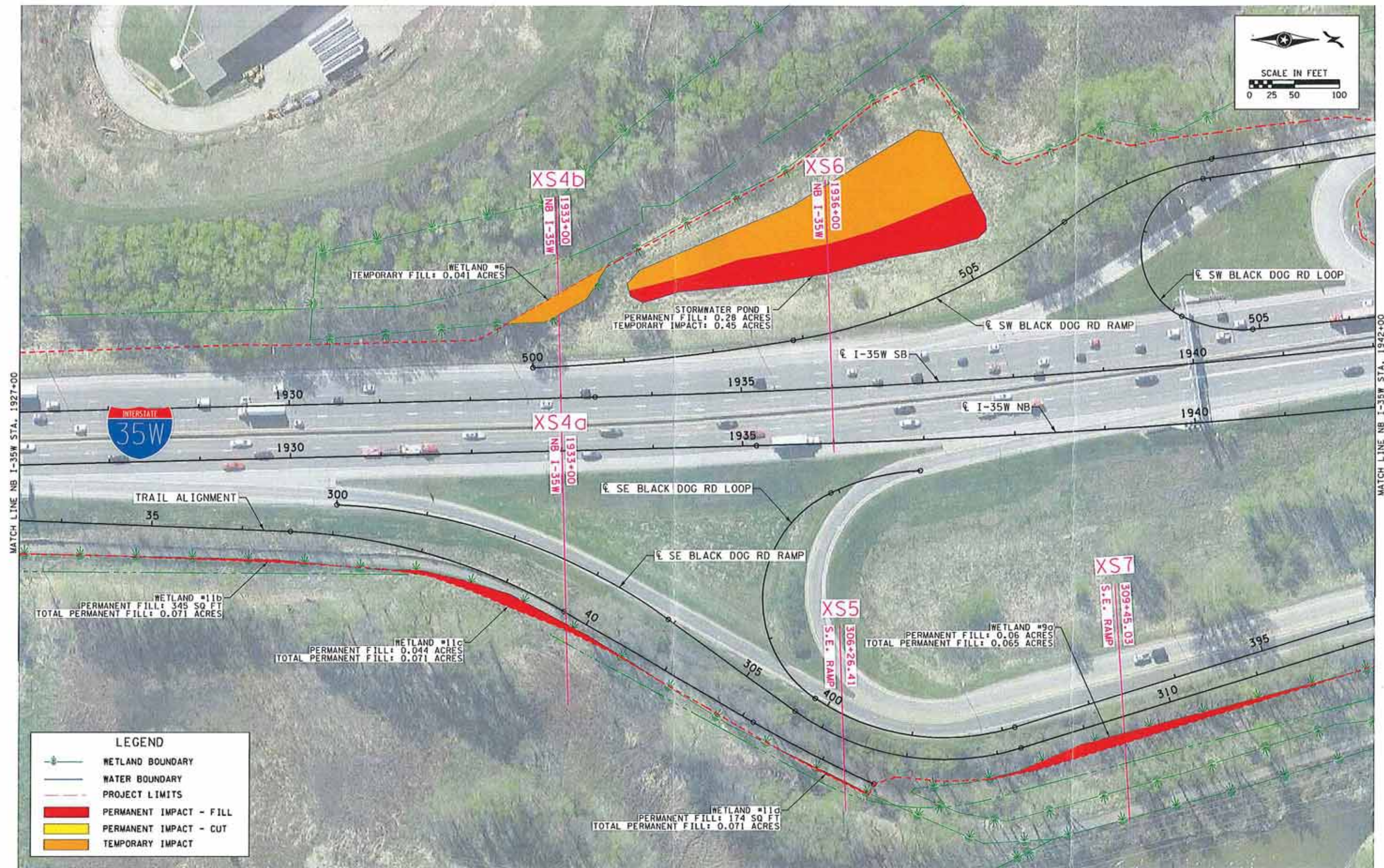


MINNESOTA DEPARTMENT
 OF TRANSPORTATION

PLAN VIEW
 WETLAND IMPACT FIGURE

STATE PROJ. NO. 1981-124 (I-35W)
 Sheet No. 3 of 10 Sheets

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I-35W MN RIVER BRIDGE PROJECT

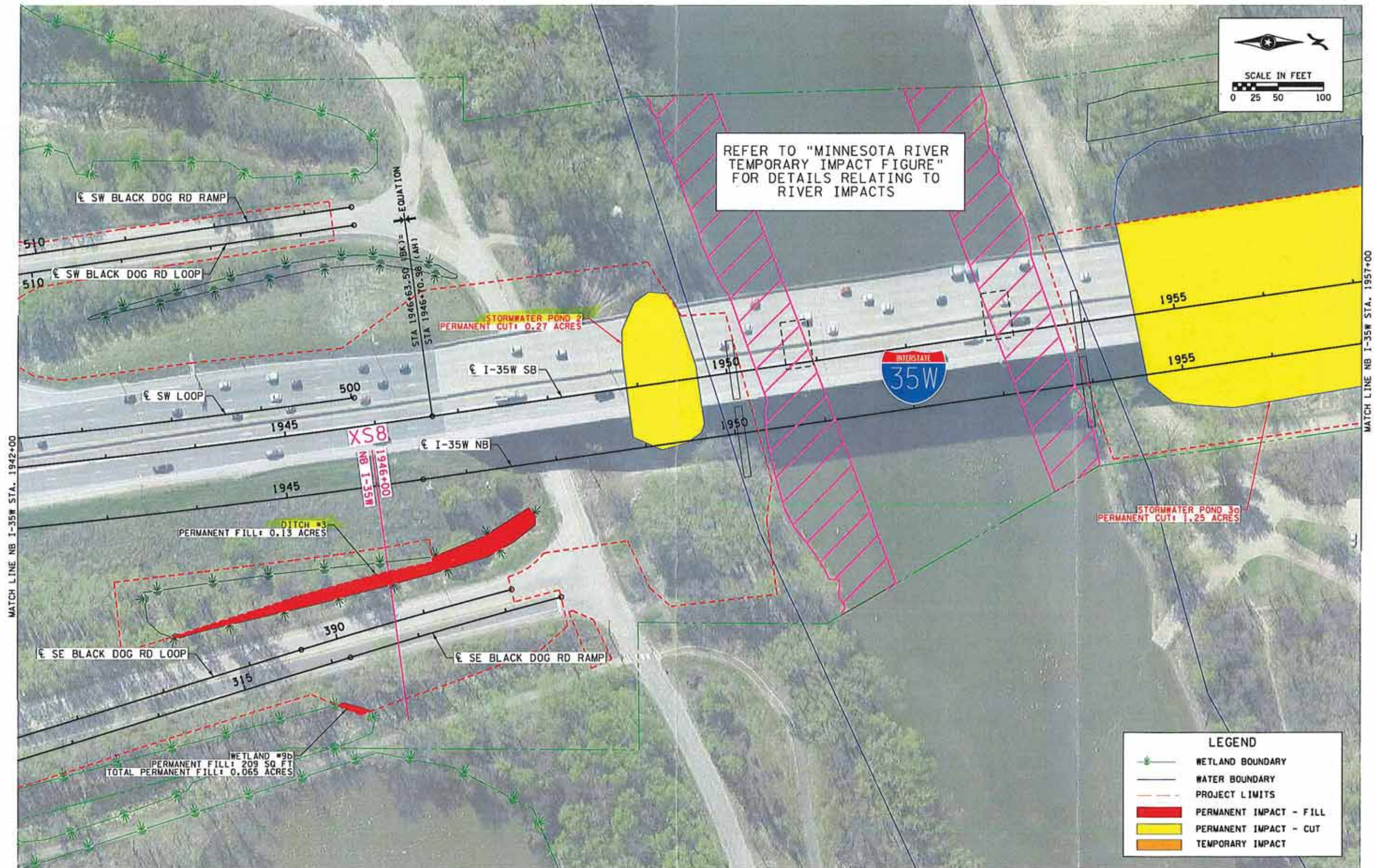


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PLAN VIEW
 WETLAND IMPACT FIGURE

STATE PROJ. NO. 1981-124 (I-35W)
 Sheet No. 4 of 10 Sheets

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I-35W MN RIVER BRIDGE PROJECT



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PLAN VIEW
 WETLAND IMPACT FIGURE

STATE PROJ. NO. 1981-124 (I-35W)
 Sheet No. 5 of 10 Sheets

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I-35W MN RIVER BRIDGE PROJECT

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PLAN VIEW
WETLAND IMPACT FIGURE

STATE PROJ. NO. 1981-124 (I-35W)

Sheet No. 6 of 10 Sheets