



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

MVP-R

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-2026-00198-RJH (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,

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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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland Area 1	Non-Jurisdictional	NONE

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.

- a. Project Are Size (in acres): 13.78
- b. Location Description: The project/review area is located in Section 07, Township 029N, Range 023E, Marinette County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 45.003260 Longitude: -87.750560
- d. Nearest City or Town: Peshtigo
- e. County: Marinette
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes): NA

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [NA]⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [NA.]
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

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.

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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- 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).⁹ [N/A]
- 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).

We have reviewed and evaluated the historical photography, Google Earth photography, Google Street View, soil mapping, and the information submitted by the applicant for the following wetlands:

- Wetland 1, non-jurisdictional

Wetland 1 is a depression wet meadow wetland located within an active agricultural field. Based on LiDAR and aerial review, Wetland 1 is surrounded entirely by uplands, no discrete conveyance feature is evident and does not abut any other waterbody. Wetland 1 has an unimproved road forming its western border, no culvert is evident that would connect the wetland to any other aquatic resource. There is one mapped tributary, an unnamed tributary to Lake Michigan, located outside of the review area. The unnamed tributary is located

⁹ 88 FR 3004 (January 18, 2023)

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approximately 813 linear feet west of Wetland 1. Wetland 1 does not abut this tributary or any other relatively permanent water.

Wetland 1 is a not traditionally navigable waters (TNWs), territorial seas, or interstate waters, and does not meet the criteria for (a)(1) waters. Wetland 1 does not physically abut a relatively permanent water, is not located within a paragraph (a)(2) impoundment, and is not adjacent to a jurisdictional (a)(3) tributary. As a non-tidal wetland that does not meet the definition of “adjacent,” Wetland 1, cannot be evaluated under paragraph (a)(4). Therefore, under the 2023 Revised Definition of “Waters of the United States” (Conforming Rule, 88 FR 61964), Wetland 1 is not considered jurisdictional.

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. [Office evaluation conducted February 19, 2026]
 - b. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland Inventory layer, Hillshade layer and DEM layer accessed on February 19, 2026]
 - c. [Wetland Delineation Report, prepared by Star Environmental, Inc dated January 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.

Location Map



<https://mcgis.marinetcounty.com>

10/8/2025 3:13:31 PM



Notice/Disclaimer: The land records site is intended to be a general guide to property and land information, and does not represent a survey of real property nor should it be used or referenced to for conveyance of real property, guaranteeing title thereto or making official determinations of building development, permitting or other activity. Contact the appropriate County Department to obtain original source documents or for official determinations. This information has been developed from various sources and although efforts have been made to ensure accuracy and reliability; errors, omissions and variable conditions originating from compilation and sources used to develop the information may be reflected herein. In addition, land information is constantly changing and the most current or accurate data might not be represented. The information accessible through this site is represented "as is" without warranty of any kind, either expressed or implied, or statutory, including, but not limited to, the implied warranties or merchantability and fitness for a particular purpose. No guarantee of accuracy, completeness or currentness is granted nor is any responsibility for reliance thereon assumed. The user assumes the entire risk as to the quality, use and reliability of the entire information. Marinette County does not accept any liability for damages or misrepresentation of any kind caused by inaccuracies in the information and in no event shall Marinette County, its elected or appointed officials or employees be liable for direct, indirect, incidental, consequential or special damages of any kind.

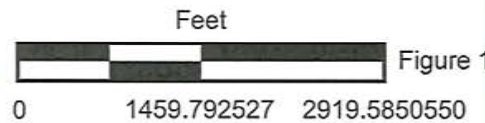
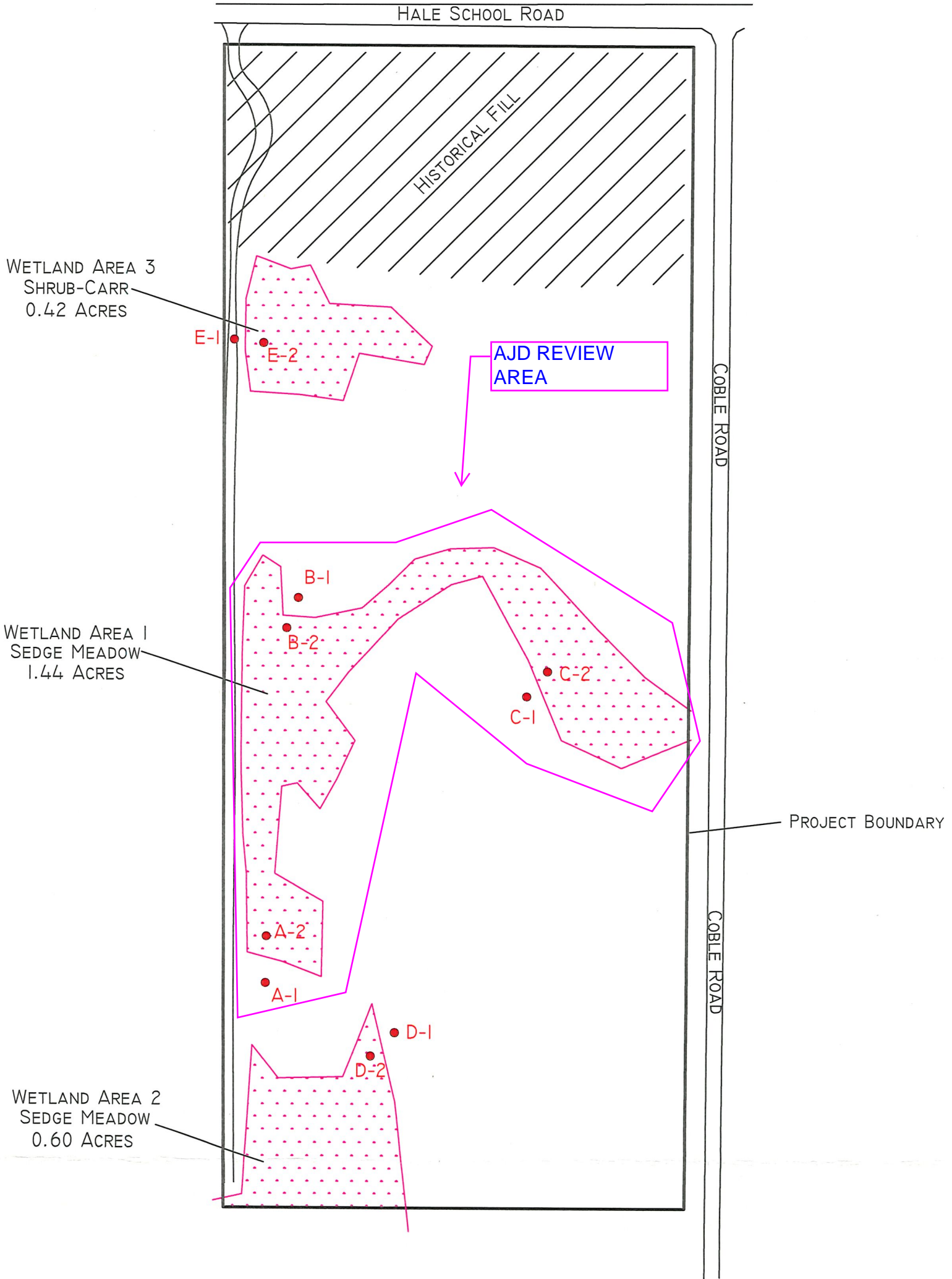


Figure 1

WETLAND DELINEATION MAP

NEPHTHAR WATCHTOWER, LLC. SITE LOCATED IN THE NORTHEAST 1/4, NORTHWEST 1/4,
SECTION 7, TOWNSHIP 29 NORTH - RANGE 23 EAST, TOWN OF PESHTIGO, MARINETTE COUNTY, WISCONSIN



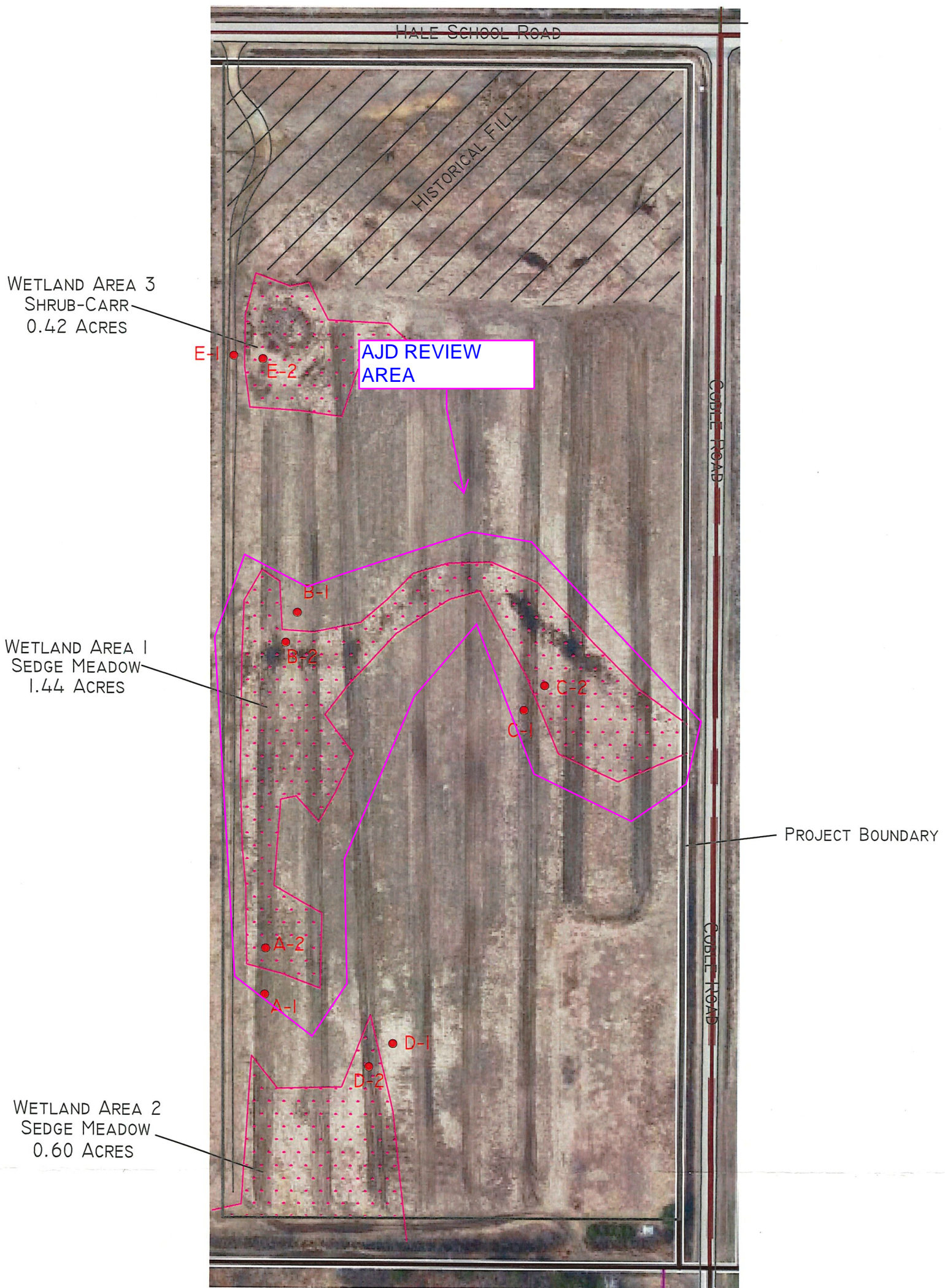
CREATED BY:



STAR ENVIRONMENTAL, INC.
 PO BOX 434 MARATHON, WI 54448
 PHONE: (715) 443-6115
 EMAIL: STARENVIRONMENTAL@HOTMAIL.COM

WETLAND DELINEATION MAP

NEPHTHAR WATCHTOWER, LLC. SITE LOCATED IN THE NORTHEAST 1/4, NORTHWEST 1/4,
SECTION 7, TOWNSHIP 29 NORTH - RANGE 23 EAST, TOWN OF PESHTIGO, MARINETTE COUNTY, WISCONSIN







SCALE: 1" = 120' UNLESS NOTED



THIS IS NOT A CERTIFIED SURVEY MAP

LEGEND:

-  PROJECT BOUNDARY
-  PAST FILL
-  WETLAND BOUNDARY
-  SAMPLE POINT

CREATED BY:



8

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APPLETON REGIONAL OFFICE
3215 WEST LAWRENCE STREET, SUITE 6
APPLETON, WI 54914
P. 920.733.2800

CLIENT:
REVISION ARCHITECTURE

CLIENT ADDRESS:
133 GRAPE STREET
PHILADELPHIA, PA 19127

PROJECT:
**NEPHTHAR
WATCHTOWER
DEVELOPMENT**

PROJECT LOCATION:
COBLE ROAD
PESHTIGO, WI 54157
MARINETTE COUNTY

PLAN MODIFICATIONS:

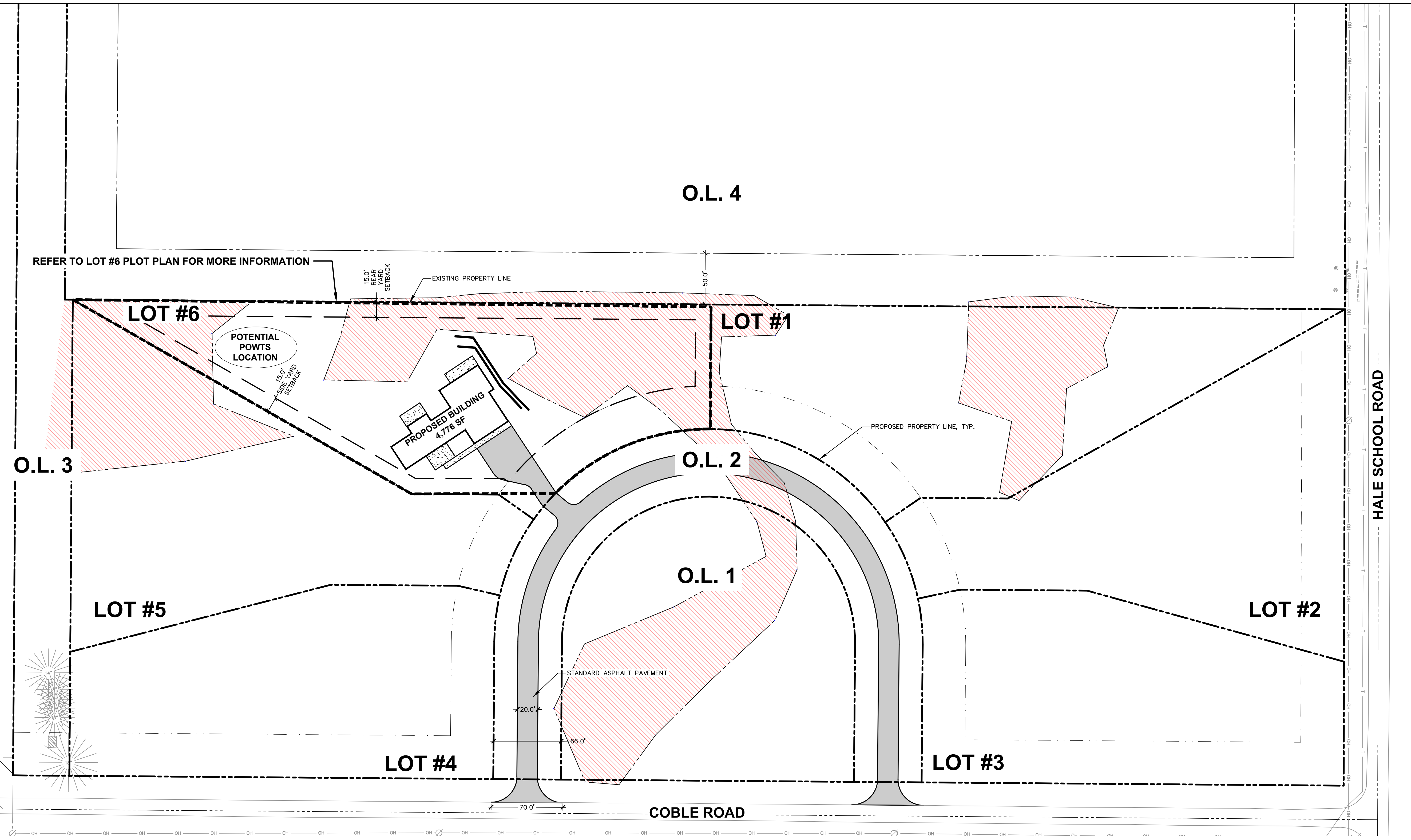
#	Date:	Description:
1	01.16.26	CONSTRUCTION DOCUMENTS - PERMIT SET
2		
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Designed By: APM/KJM
Reviewed By: APM
Approved By: PMP

SHEET TITLE:
SITE PLAN

SHEET NUMBER:
C1.0

JSD PROJECT NO: 22-12059



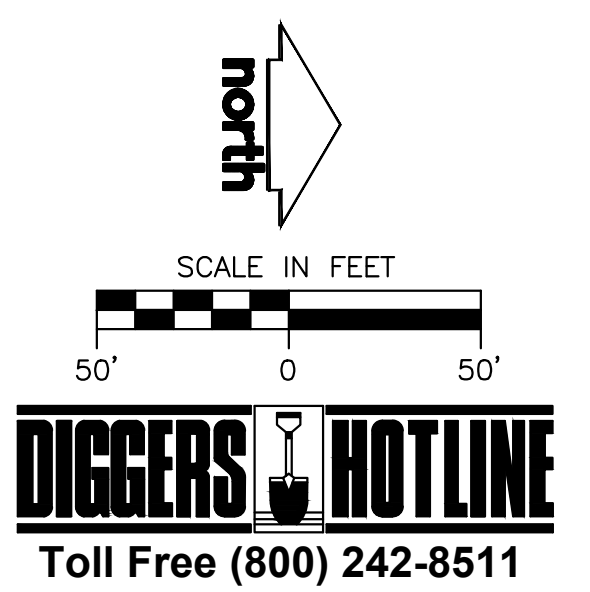
LEGEND

---	PROPERTY LINE
- - - -	RIGHT-OF-WAY
- · - · -	EASEMENT LINE
▭	BUILDING OUTLINE
▭	BUILDING OVERHANG
▭	BUILDING SETBACK LINE
▭	EDGE OF PAVEMENT
▭	ASPHALT PAVEMENT
▭	CONCRETE PAVEMENT
▭	STORMWATER MANAGEMENT AREA
▭	WETLAND AREA

SITE INFORMATION BLOCK

SITE ADDRESS	COBLE ROAD
PROPERTY ACREAGE	13.78 ACRES
NUMBER OF BUILDING STORIES	2 (TYP)
TOTAL BUILDING SQUARE FOOTAGE	4,776 SF
EXISTING VS. PROPOSED SITE COVERAGE	
EXISTING IMPERVIOUS SURFACE AREA	0 SF
EXISTING PERVIOUS SURFACE AREA	600,203 SF
EXISTING IMPERVIOUS SURFACE AREA RATIO	0.0
PROPOSED IMPERVIOUS SURFACE AREA	
PROPOSED IMPERVIOUS SURFACE AREA	60,588 SF
PROPOSED PERVIOUS SURFACE AREA	539,615 SF
PROPOSED IMPERVIOUS SURFACE AREA RATIO	0.11

REVIEW DRAWING
NOT TO BE USED FOR CONSTRUCTION
DATE OF ISSUE 01-28-2026



File: \USDINC\app\projects\PROJECTS\2022\2212059\DWG\Civil Sheets\2212059 Con Docs.dwg Layout: C1.0 - SITE PLAN User: kal.mchugh Plotted: Jan 30, 2026 - 2:49pm Xref's:

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