



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

MVP-2023-01353-JMK (SP 010-596-014)

16 May 2025

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) ,<sup>1</sup> MVP-2023-01353-JMK Phase II 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.<sup>2</sup> 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.<sup>3</sup>

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),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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).
  - i. Non-jurisdictional Ditches: Wetland 22B, Wetland 22E, Wetland 22F, Wetland 33A, Wetland 33D, Wetland 41 and Wetland 42
  - ii. Non-jurisdictional Stormwater Pond: Wetland 1F
  - iii. Non-jurisdictional Wetlands: Wetland 3, Wetland 9, Wetland 22C, Wetland 22D, and Wetland 33C,

## 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 review area for this determination includes five non-jurisdictional wetlands, one non-jurisdictional stormwater feature, and seven non-jurisdictional roadside ditches, as identified in Section 1(a) of this MFR and shown on the attached figures labeled 2023-01353-JMK Phase II AJD Figures 1-5 of 5.
  - a. Project Area Size (in acres): 1.74 acres
  - b. Location Description: The project/review area is located in Sections 7, 8, 9, 12, 13, 16, and 18, Township 116 North, Ranges 23 and 24 West, Carver County, Minnesota.
  - c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.8665 Longitude: -93.6180
  - d. Nearest City or Town: Chanhassen and Victoria
  - e. County: Carver
  - f. State: Minnesota

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- g. Other associated Jurisdictional Determinations (including outcomes):  
Phase I AJD issued on April 4, 2024, included 9 non-jurisdictional stormwater features and 42 non-jurisdictional ditches.
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
6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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.<sup>6</sup> 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

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<sup>5</sup> 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.

<sup>6</sup> 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).<sup>7</sup>

Wetland 22B (0.16 acre), Wetland 22E (62 sq.ft.), Wetland 22F (0.01 acre), Wetland 33A (0.13 acre), Wetland 33D (33 sq.ft.), Wetland 41 (0.07 acre) and Wetland 42 (121 sq.ft.) are linear roadside drainage ditches constructed in upland and draining only upland based on the following:

- Delineation report titled, “Hwy 5 Project – Arboretum Area Type & Boundary Application” dated September 26, 2023.
- US Geological Service 3DEP DEM and MNDNR 2-foot contour maps shows the ditches are located in areas of the project that are higher in elevation and supportive of uplands.
- NHD data revealed none of the ditches are relocated or captured tributaries.
- Recent aerial photos do not show relatively permanent flow in the aforementioned aquatic resources.

Based on the wetland delineation and desktop resources reviewed Wetland 22B, Wetland 22E, Wetland 22F, Wetland 33A, Wetland 33D, Wetland 41 and Wetland 42 are linear roadside drainage ditches constructed in upland, draining

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<sup>7</sup> 88 FR 3004 (January 18, 2023)

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only upland, and do not carry a relatively permanent flow of water. Therefore, these aquatic resources have been determined to be Paragraph (b)(3) excluded ditches and not subject to Section 404 of the Clean Water Act (CWA).

Wetland 1F (0.08 acre) within the review area is a stormwater feature constructed in upland to collect and retain water as a settling basin based on the following:

- US Geological Service 3DEP Hillshade and DEM and MNDNR 2-foot contour maps shows the pond is located in areas of the project that are higher in elevation and supportive of uplands.
- NWI maps do not display presence of mapped wetlands in the area the pond has been constructed.
- Historical aerials from 1972 and 1984 indicate Wetland 1F was constructed within uplands.
- Recent aerial photos show that ponds are located in close proximity to a parking lot and consists of a geometry indicative of being manmade to store stormwater from these developments.

Based on the wetland delineation and desktop resources reviewed Wetland 1F is a stormwater pond constructed in uplands. Therefore, this feature has been determined to be Paragraph (b)(5) excluded artificial lake and pond and not subject to Section 404 of the 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).

Wetland 3 (55 sq.ft.), Wetland 9 (0.10 acre), Wetland 22C (0.09 acre), Wetland 22D (0.13 acre), and Wetland 33C (1.15 acres) are not traditionally navigable waters (TNW), territorial seas, or interstate waters and therefore are not (a)(1) waters. Topographic maps, LiDAR data, and recent aerial imagery indicate these wetlands are depressional basins surrounded entirely by upland. Wetland 3, Wetland 9, Wetland 22C, Wetland 22D, and Wetland 33C do not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary. Wetlands 3 and 9 are located approximately 0.16 miles from the nearest requisite jurisdictional water, Stieger Lake, located west of the review

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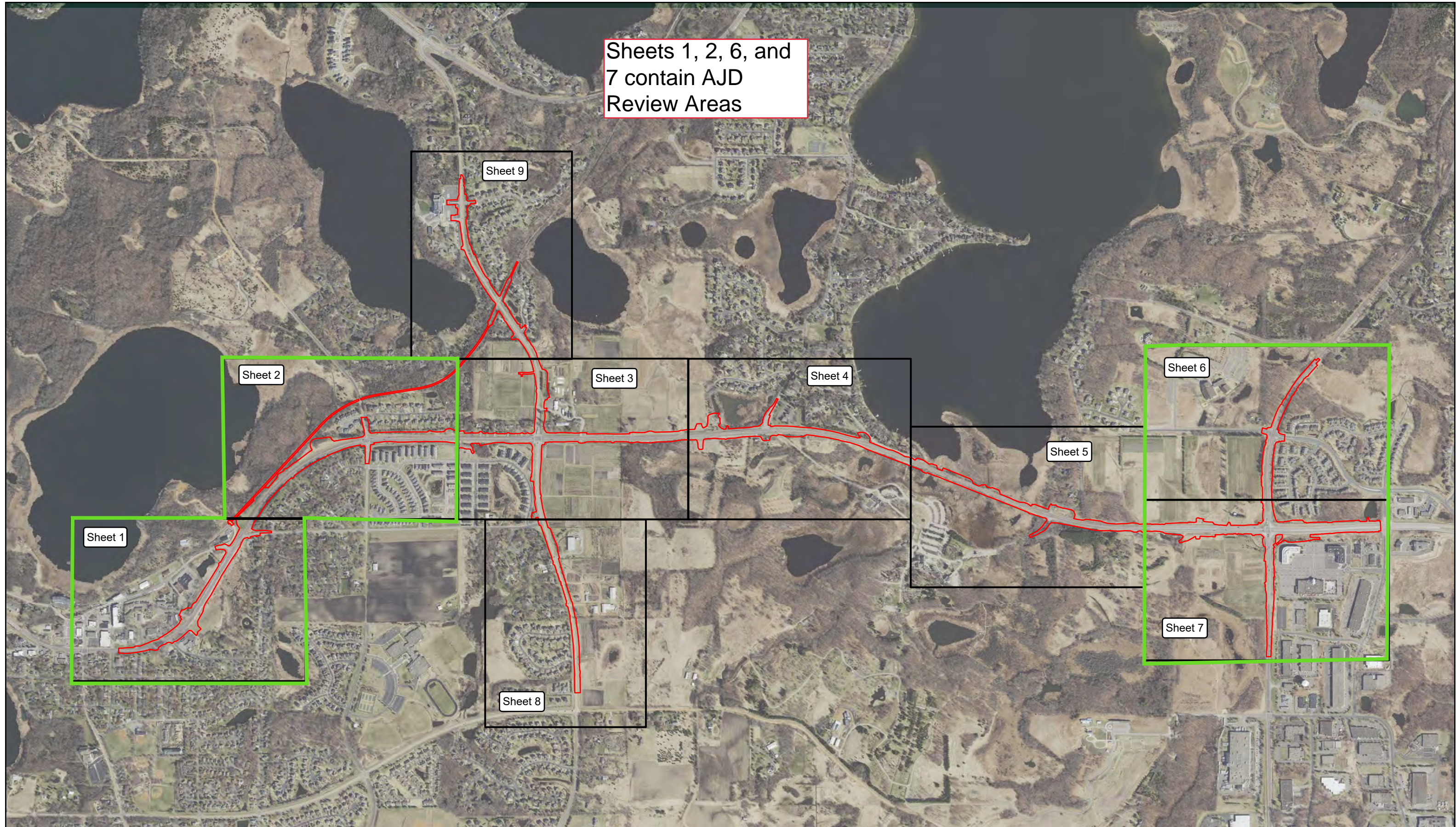
area and Wetland 22C, Wetland 22D, and Wetland 33C are located approximately 0.60 miles from the nearest requisite jurisdictional water, Lake Minnewashta, located west of the review area. Wetland 3, Wetland 9, Wetland 22C, Wetland 22D, and Wetland 33C are non-tidal wetlands that do not abut a relatively permanent jurisdictional water and, as such, do not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, these wetlands are not jurisdictional under 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.

- a. Delineation report titled, "Hwy 5 Project – Arboretum Area Type & Boundary Application" dated September 26, 2023.
- b. Historical aerial imagery dated 1972 and 1984.
- c. Minnesota Regulatory Viewer: 2016 MNDNR Hillshade layer, MNDNR 2-foot contour layer, US Geological Service 3DEP Digital Elevation Model (DEM) and NHD layers, and USFWS NWI layer.

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.



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Phase II AJD  
Figure 2 of 5

**LAYOUT LEGEND**

- MNDNR (OHWL)
- MINNESOTA LANDSCAPE ARBORETUM
- MINNEHAHA CREEK WATERSHED DISTRICT (MCWD)
- CITY OF CHANHASSEN
- MNDOT RIGHT-OF-WAY
- JURISDICTIONAL WETLANDS
- NON-JURISDICTIONAL WETLANDS
- TEMPORARY IMPACT
- PROPOSED R/W
- PROPOSED PERMANENT EASEMENT
- PROPOSED TEMPORARY EASEMENT
- CONSTRUCTION LIMITS

Wetland 1F Phase II AJD Review Area

WETLAND NAME: 1E  
PROPOSED IMPACTS  
TYPE 2: 67 SQ FT  
FILL: 67 SQ FT  
TOTAL: 67 SQ FT

WETLAND NAME: 4C  
PROPOSED IMPACTS  
JURISDICTIONAL  
TYPE 2: 0.01 AC  
TYPE 3: 0.15 AC  
FILL: 0.16 AC  
TOTAL: 0.16 AC  
A/L 78TH ST OVERPASS

WETLAND NAME: 1B  
PROPOSED IMPACTS  
TYPE 1: 0.03 AC  
TYPE 2: 0.12 AC  
TYPE 3: 0.12 AC  
FILL: 0.27 AC  
TOTAL: 0.27 AC

TEMP IMPACT: 1B  
TOTAL: 0.10 AC

TEMP IMPACT: 1F  
TOTAL: 0.01 AC

WETLAND NAME: 1F  
PROPOSED IMPACTS  
TYPE 4: 0.07 AC  
CUT: 0.03 AC  
FILL: 0.04 AC  
TOTAL: 0.07 AC

WETLAND NAME: 4B  
PROPOSED IMPACTS  
TYPE 2: 0.18 AC  
TYPE 3: 0.32 AC  
CUT: 0.02 AC  
FILL: 0.48 AC  
TOTAL: 0.50 AC













TEMP IMPACT: 4B  
TOTAL: 0.03 AC

WETLAND NAME: 1A  
PROPOSED IMPACTS  
TYPE 2: 0.02 AC  
TYPE 3: 0.10 AC  
FILL: 0.12 AC  
TOTAL: 0.12 AC

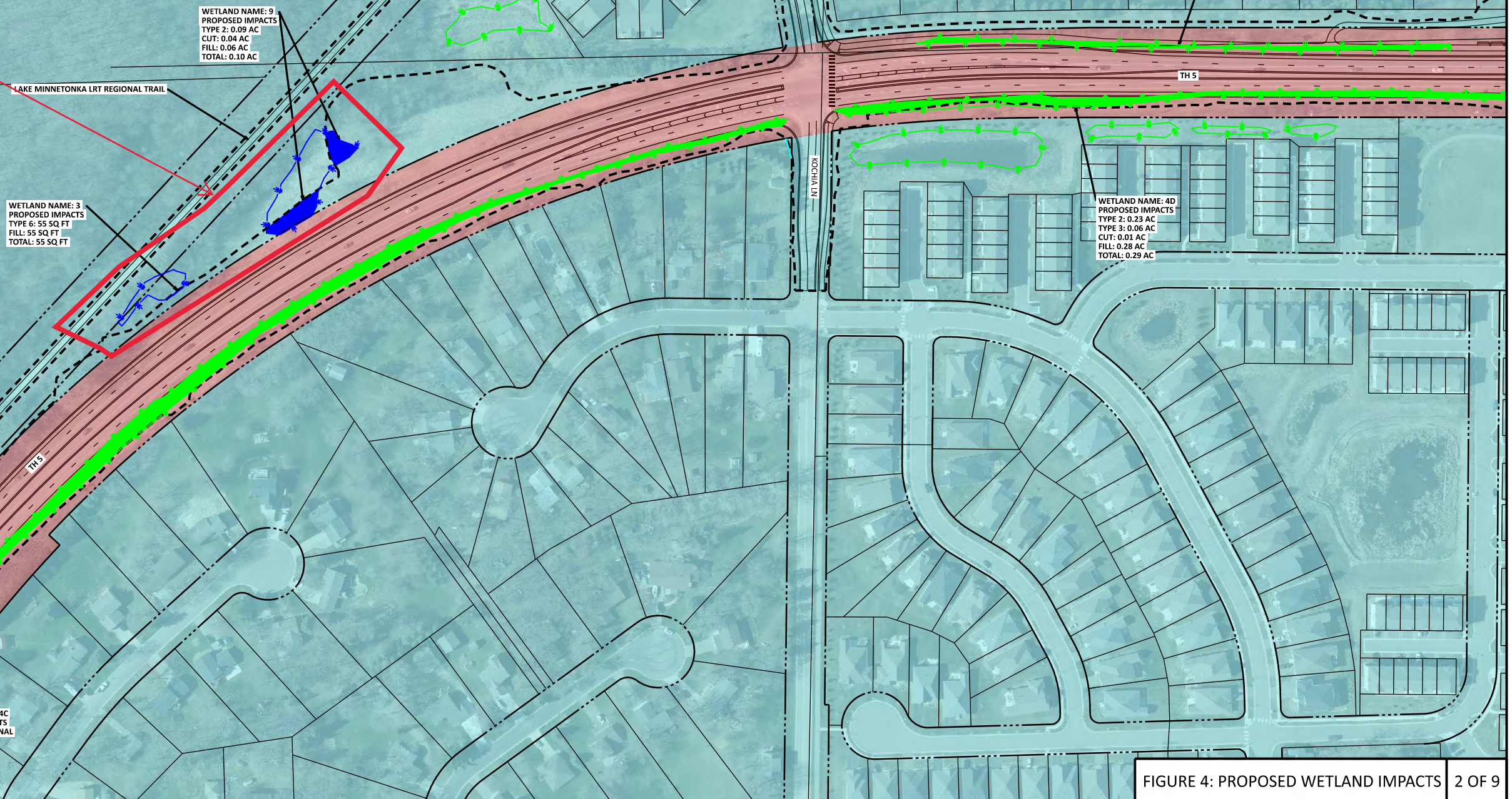
WETLAND NAME: 4A  
PROPOSED IMPACTS  
TYPE 2: 0.07 AC  
CUT: 0.06 AC  
FILL: 0.01 AC  
TOTAL: 0.07 AC

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Phase II AJD  
Figure 3 of 5

**LAYOUT LEGEND**

-  MNDNR (OHWL)
-  MINNESOTA LANDSCAPE ARBORETUM
-  MINNEHAHA CREEK WATERSHED DISTRICT (MCWD)
-  CITY OF CHANHASSEN
-  MNDOT RIGHT-OF-WAY
-  JURISDICTIONAL WETLANDS
-  NON-JURISDICTIONAL WETLANDS
-  TEMPORARY IMPACT
-  PROPOSED R/W
-  PROPOSED PERMANENT EASEMENT
-  PROPOSED TEMPORARY EASEMENT
-  CONSTRUCTION LIMITS













Wetland 3 and 9  
Phase II AJD  
Review Area



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Phase II AJD  
Figure 4 of 5

**LAYOUT LEGEND**

-  MNDNR (OHWL)
-  MINNESOTA LANDSCAPE ARBORETUM
-  MINNEHAHA CREEK WATERSHED DISTRICT (MCWD)
-  CITY OF CHANHASSEN
-  MNDOT RIGHT-OF-WAY
-  JURISDICTIONAL WETLANDS
-  NON-JURISDICTIONAL WETLANDS
-  TEMPORARY IMPACT
-  PROPOSED R/W
-  PROPOSED PERMANENT EASEMENT
-  PROPOSED TEMPORARY EASEMENT
-  CONSTRUCTION LIMITS

Wetland 41 and 42  
Phase II AJD  
Review Area

WETLAND NAME: 41  
PROPOSED IMPACTS  
TYPE 3: 0.07 AC  
FILL: 0.07 AC  
TOTAL: 0.07 AC

WETLAND NAME: 42  
PROPOSED IMPACTS  
TYPE 2: 121 SQ FT  
FILL: 121 SQ FT  
TOTAL: 121 SQ FT

W 78TH ST

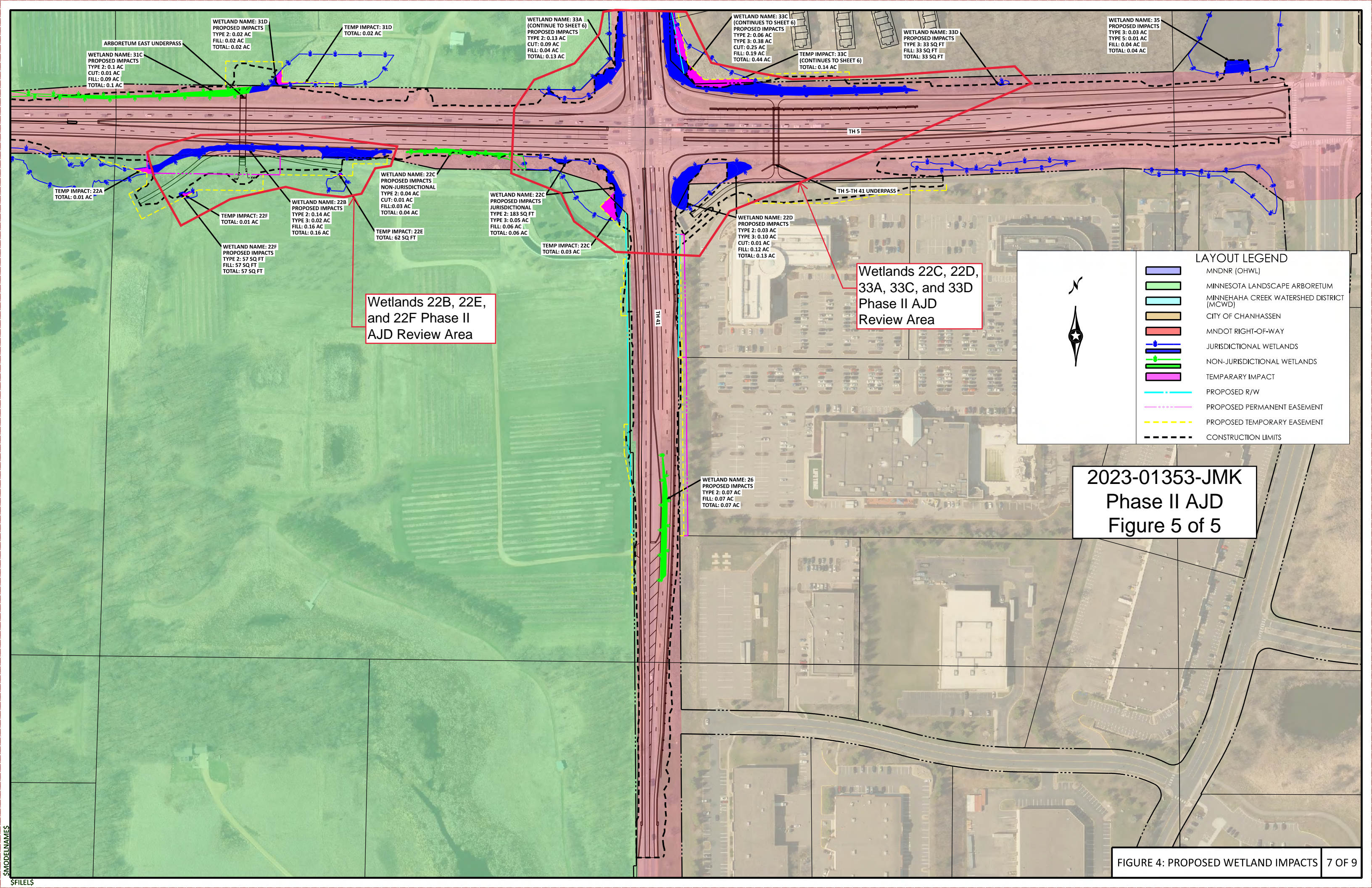
Wetland 33C  
Phase II AJD  
Review Area

WETLAND NAME: 33B  
PROPOSED IMPACTS  
TYPE 2: 0.35 AC  
TYPE 3: 0.01 AC  
CUT: 0.28 AC  
FILL: 0.08 AC  
TOTAL: 0.36 AC

TEMP IMPACT: 33C  
(CONTINUES TO SHEET 7)  
TOTAL: 0.11 AC

WETLAND NAME: 33C  
PROPOSED IMPACTS  
TYPE 2: 0.06 AC  
TYPE 3: 0.40 AC  
CUT: 0.26 AC  
FILL: 0.20 AC  
TOTAL: 0.46 AC

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Wetlands 22B, 22E, and 22F Phase II AJD Review Area

Wetlands 22C, 22D, 33A, 33C, and 33D Phase II AJD Review Area

**LAYOUT LEGEND**

- MNDNR (OHWL)
- MINNESOTA LANDSCAPE ARBORETUM
- MINNEHAHA CREEK WATERSHED DISTRICT (MCWD)
- CITY OF CHANHASSEN
- MNDOT RIGHT-OF-WAY
- JURISDICTIONAL WETLANDS
- NON-JURISDICTIONAL WETLANDS
- TEMPARARY IMPACT
- PROPOSED R/W
- PROPOSED PERMANENT EASEMENT
- PROPOSED TEMPORARY EASEMENT
- CONSTRUCTION LIMITS

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Phase II AJD  
Figure 5 of 5