



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

CEMVP- RD

December 27, 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),<sup>1</sup> MVP-2022-01088-MWV.

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.

1. SUMMARY OF CONCLUSIONS.

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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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- a. Wet Ditch 1 (0.03 acre), non-jurisdictional, excluded feature
- b. Wet Ditch 2 (212 square feet), non-jurisdictional, excluded feature
- c. Wet Ditch 3 (0.03 acre), non-jurisdictional, excluded feature
- d. Wet Ditch 4 (0.02 acre), non-jurisdictional, excluded feature
- e. Wet Ditch 5 (0.02 acre), non-jurisdictional, excluded feature
- f. Wet Ditch 6 (0.08 acre), non-jurisdictional, excluded feature
- g. Wet Ditch 7 (0.05 acre), non-jurisdictional, excluded feature
- h. Wet Ditch 8 (0.07 acre), non-jurisdictional, excluded feature
- i. Wet Ditch 9 (0.10 acre), non-jurisdictional, excluded feature
- j. Wet Ditch 10 (0.02 acre), non-jurisdictional, excluded feature
- k. Wet Ditch 11 (0.02 acre) non-jurisdictional, excluded feature

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 eleven roadside ditches labeled as Wet Ditch 1 (0.03 acre), Wet Ditch 2 (212 square feet), Wet Ditch 3 (0.03 acre), Wet Ditch 4 (0.02 acre), Wet Ditch 5 (0.02 acre), Wet Ditch 6 (0.08 acre), Wet Ditch 7 (0.05 acre), Wet Ditch 8 (0.07 acre), Wet Ditch 9 (0.10 acre), Wet Ditch 10 (0.02 acre), and Wet Ditch 11 (0.02 acre), on the enclosed figures labeled MVP-2022-01088-MWV Figures 1 of 15 through 15 of 15.

- a. Location Description: The project/review area is located in Section 18, Township 114N, Range 20W, Dakota County, Minnesota.
- b. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 44.681260 Longitude: -93.265610
- c. Nearest City or Town: Lakeville
- d. County: Dakota
- e. State: Minnesota
- f. Other associated Jurisdictional Determinations (including outcomes): N/A

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A

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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
  - 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

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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.

- 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>

The features identified in the review area are Wet Ditch 1 (0.03 acre), Wet Ditch 2 (212 square feet), Wet Ditch 3 (0.03 acre), Wet Ditch 4 (0.02 acre), Wet Ditch 5 (0.02 acre), Wet Ditch 6 (0.08 acre), Wet Ditch 7 (0.05 acre), Wet Ditch 8 (0.07 acre), Wet Ditch 9 (0.10 acre), Wet Ditch 10 (0.02 acre), and Wet Ditch 11 (0.02 acre). These features were constructed in upland, drain only upland, do not carry relatively permanent flow, and none of these features is a relocated tributary.

Wet Ditches 1 through 11 are roadside ditches that were constructed in uplands to convey runoff along the 185<sup>th</sup> Street right-of-way. This was confirmed by reviewing the wetland delineation submitted by the applicant and desktop resources. The features are surrounded by upland and were constructed in upland. Other resources reviewed to support this determination include Google Earth aerial imagery, US Geological Service 3DEP Hillshade and DEM maps; MNDNR 2-foot contour maps; NWI maps; NHD data; and NRCS hydric soil data.

Considering the information above, these features have been determined to be a Paragraph (b)(3) excluded ditch 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

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

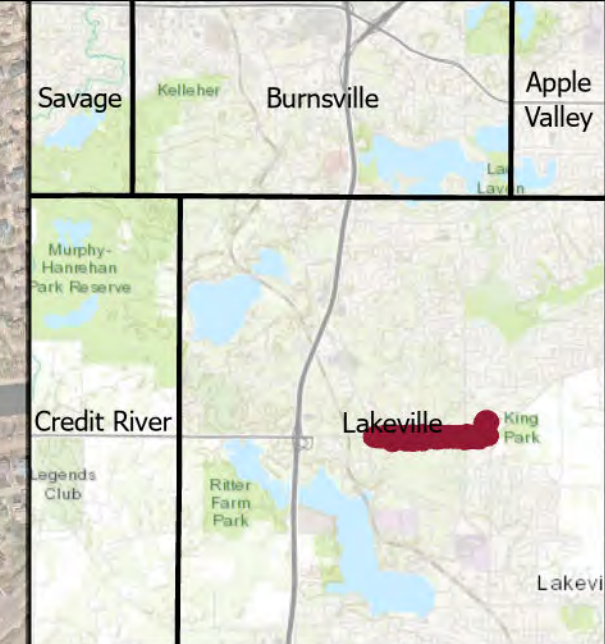


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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2022-01088-MWV

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. Minnesota Historical Aerial Photographs Online, dated 1957. Accessed December 11, 2024.
  - b. USGS 3DEP Elevation. Accessed December 11, 2024.
  - c. USDA NRCS Soil Survey SSURGO and STATGO, Accessed December 11, 2024.
  - d. USFWS National Wetland Inventory (MapServer). Accessed December 11, 2024.
  - e. USGS TNM – National Hydrography Dataset. Accessed December 11, 2024.
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.





## Legend

Construction Limits

## 185th St Reconstruction Project Location

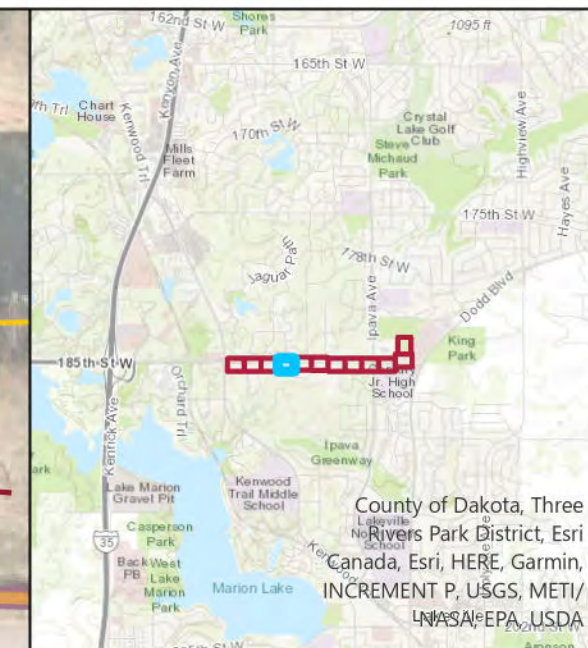
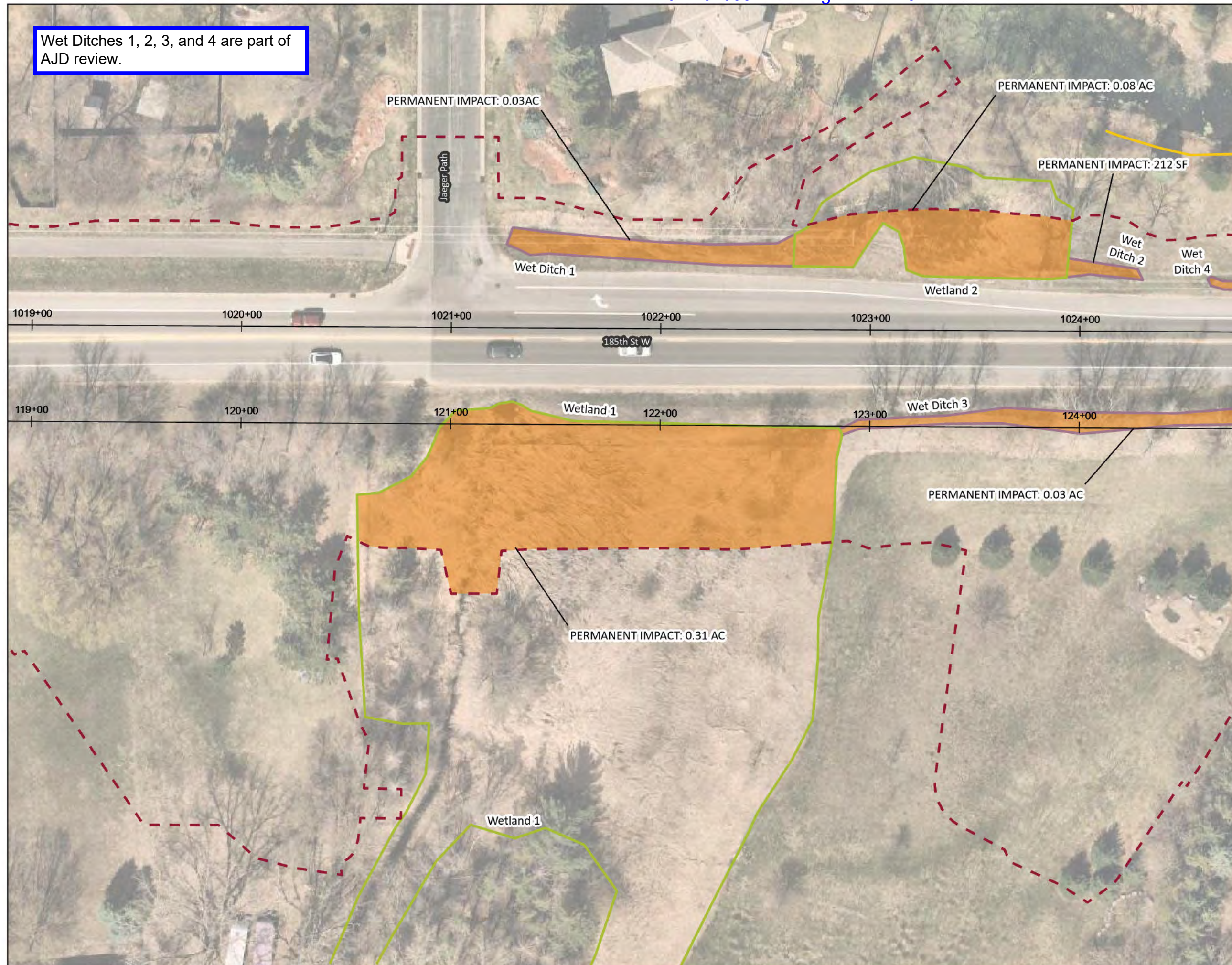
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Wet Ditches 1, 2, 3, and 4 are part of  
AJD review.



**Legend**

- Permanent Wetland Impacts
- Proposed Alignment Stationing
- Construction Limits

**Wetland Delineation**

- Stormwater basin
- Wet Ditch
- Wetland

**Figure 2**  
**185th St Reconstruction**  
**Wetland Impact Exhibit**

Page 4 of 12

N  
0 30 60 US Feet

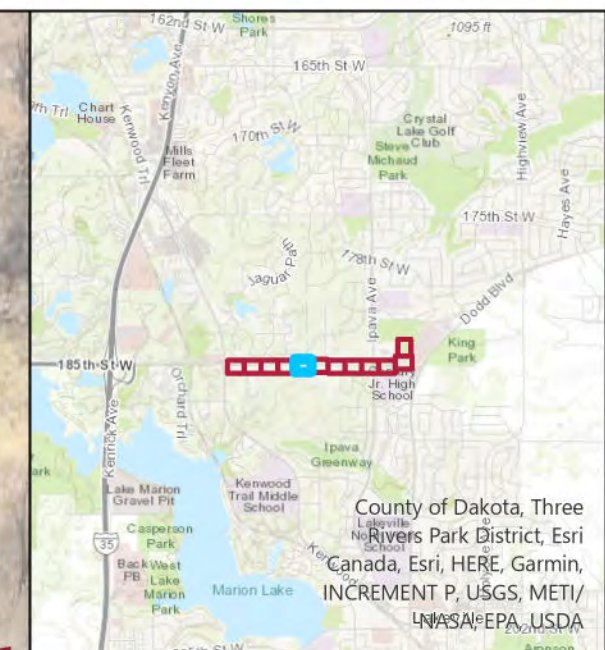
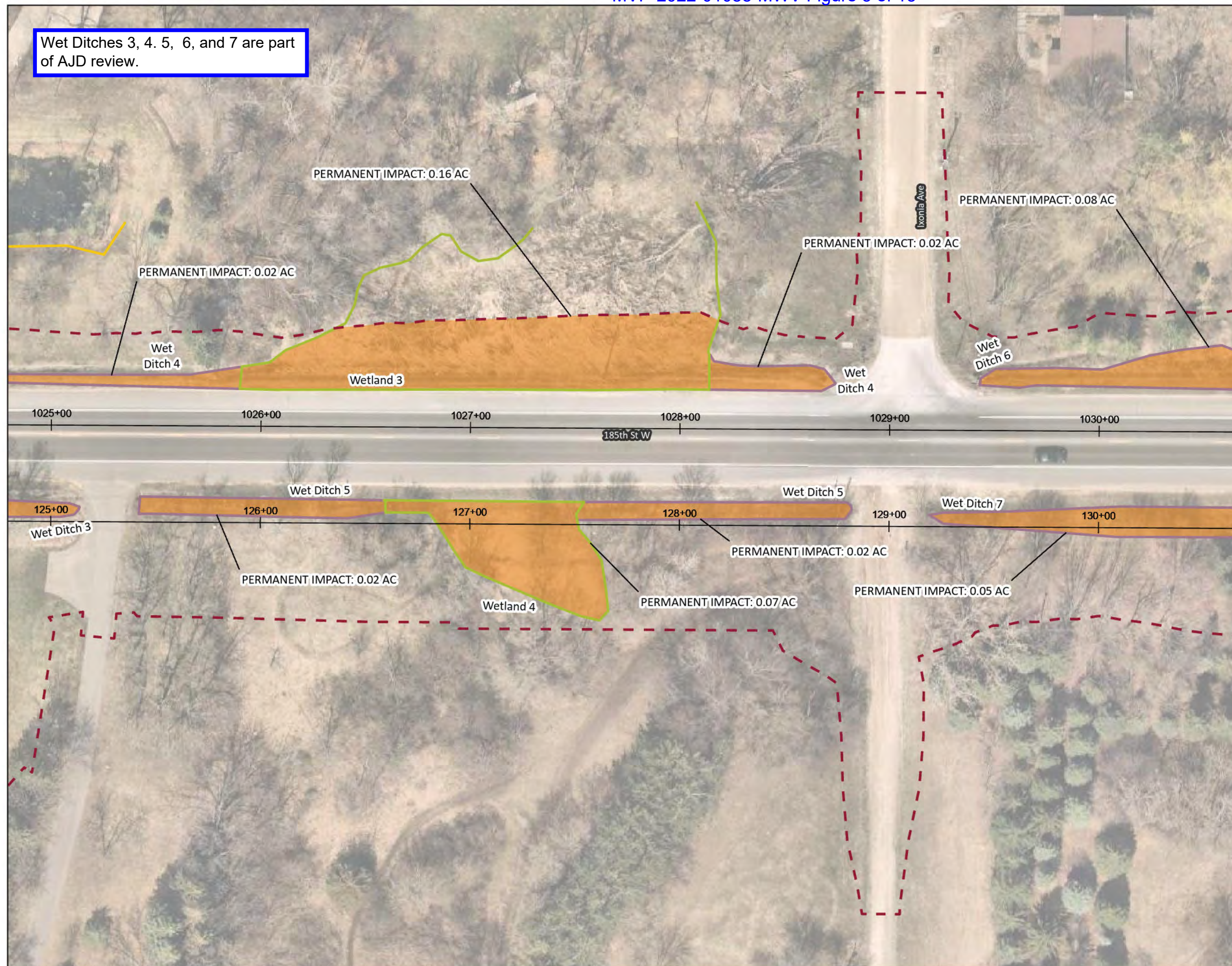
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Date Exported: 9/16/2024



Wet Ditches 3, 4, 5, 6, and 7 are part of AJD review.



**Legend**

- Permanent Wetland Impacts
- Proposed Alignment Stationing
- Construction Limits

**Wetland Delineation**

- Stormwater basin
- Wet Ditch
- Wetland

**Figure 2**  
**185th St Reconstruction**  
**Wetland Impact Exhibit**

Page 5 of 12

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0 30 60 US Feet

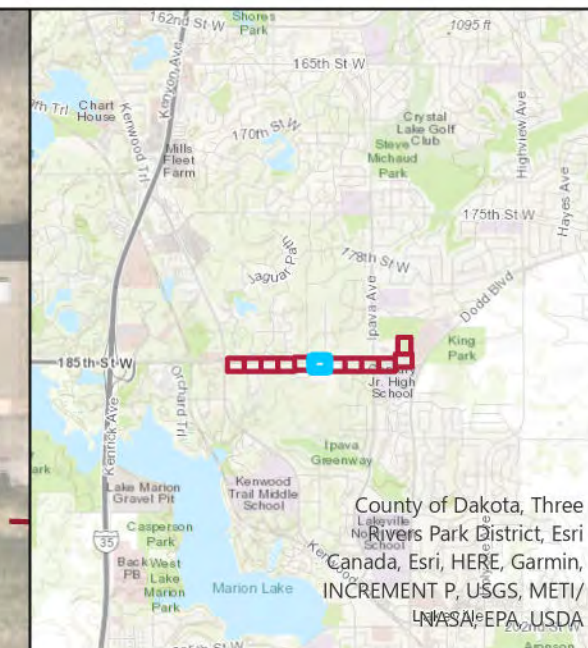
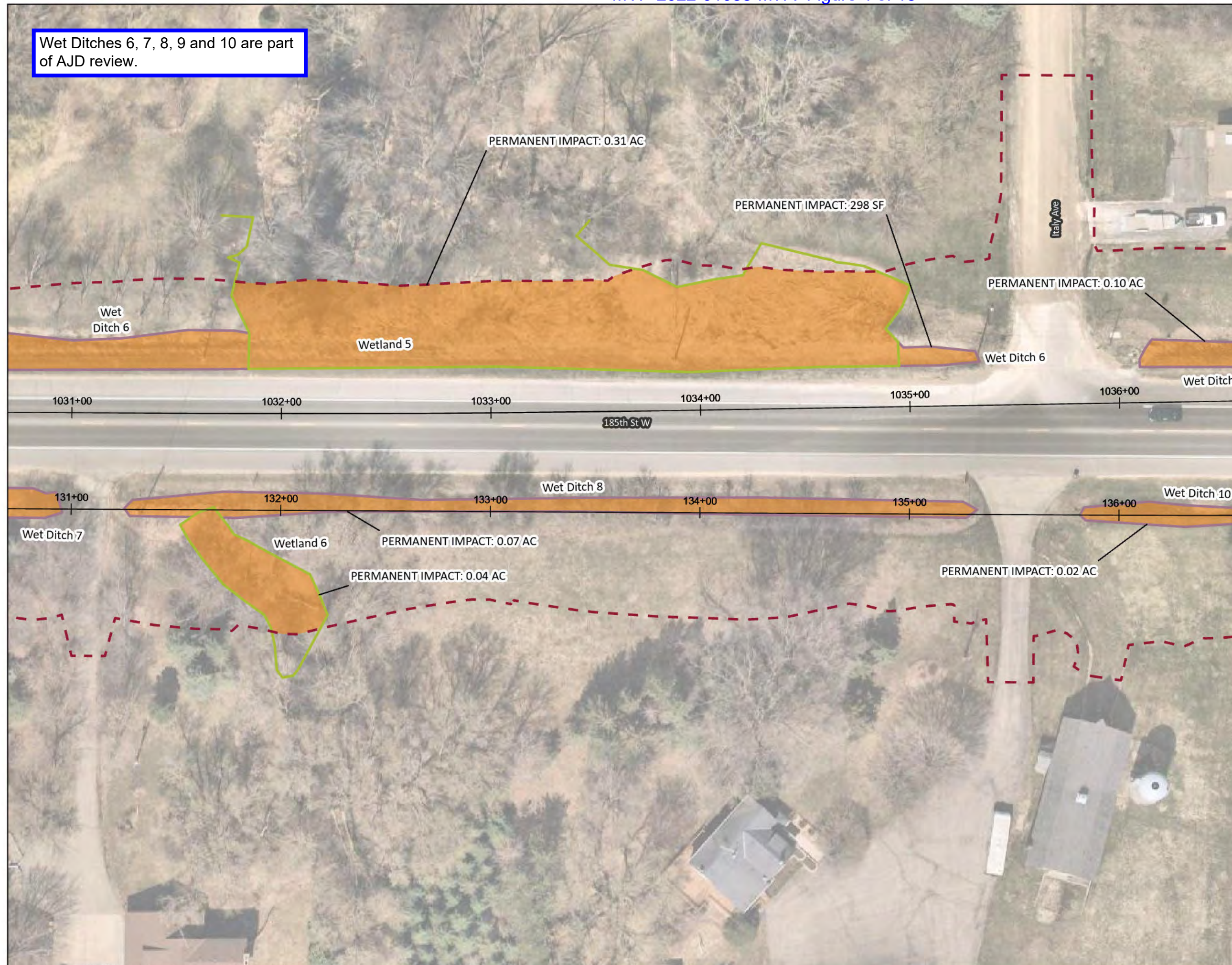
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Wet Ditches 6, 7, 8, 9 and 10 are part of AJD review.



**Legend**

- Permanent Wetland Impacts
- Proposed Alignment Stationing
- Construction Limits

**Wetland Delineation**

- Stormwater basin
- Wet Ditch
- Wetland

**Figure 2**  
**185th St Reconstruction**  
**Wetland Impact Exhibit**

Page 6 of 12

N  
0 30 60 US Feet

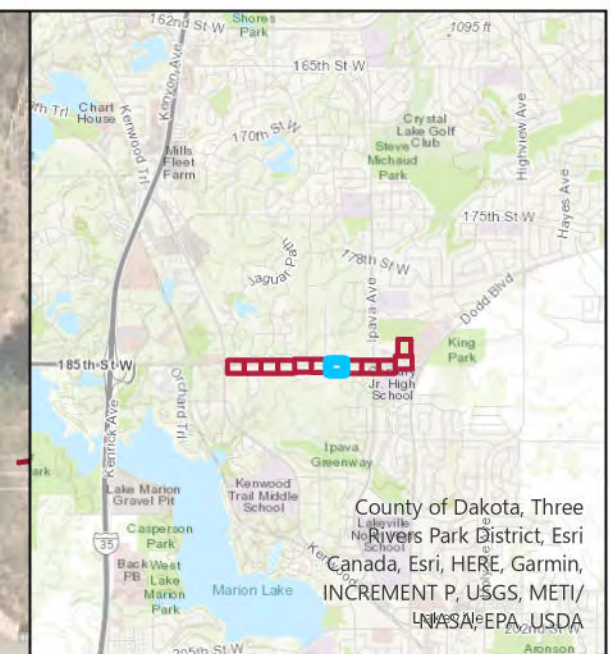
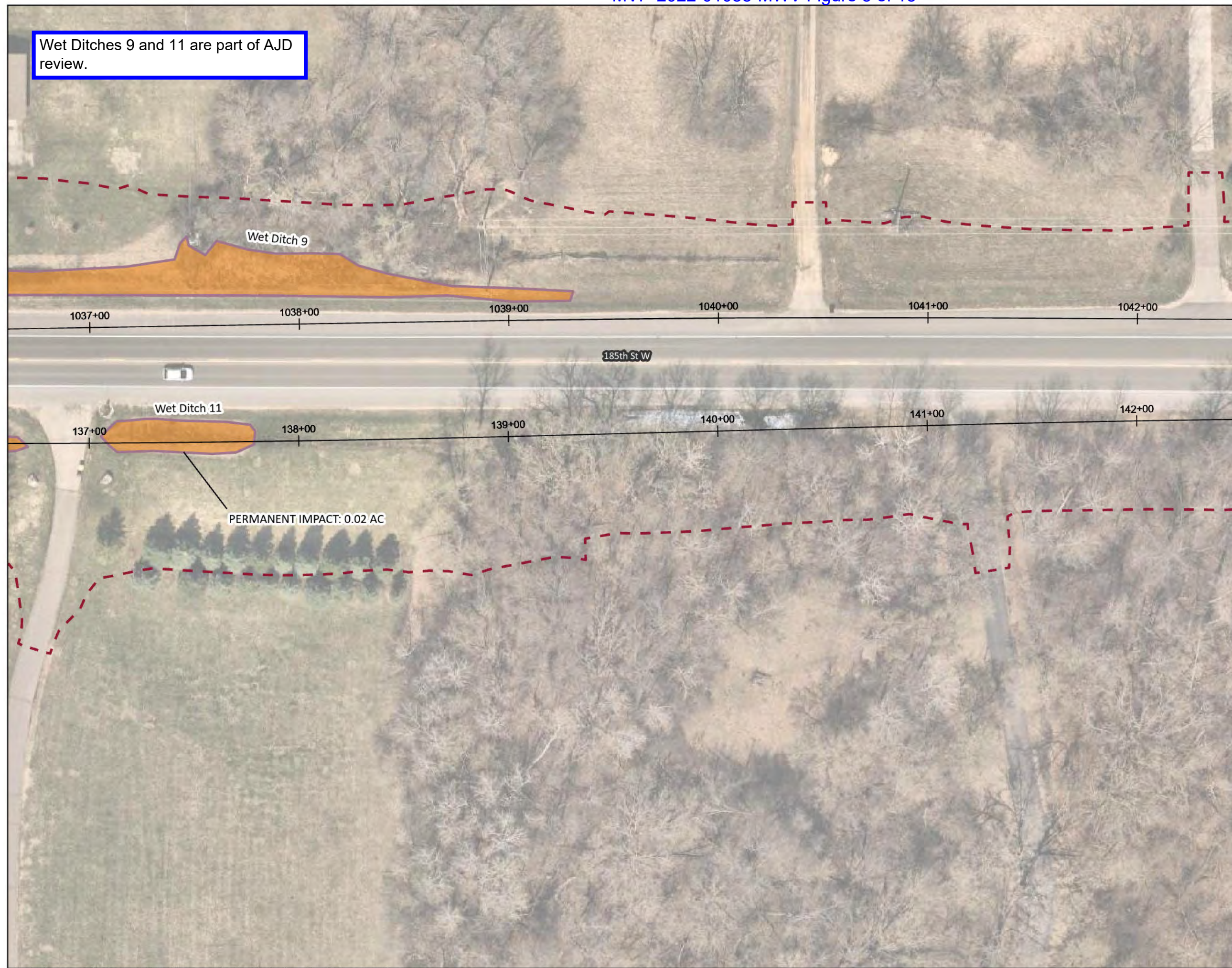
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Wet Ditches 9 and 11 are part of AJD review.



### Legend

- Permanent Wetland Impacts
- Proposed Alignment Stationing
- Construction Limits
- Wetland Delineation**
- Stormwater basin
- Wet Ditch
- Wetland

**Figure 2**  
**185th St Reconstruction**  
**Wetland Impact Exhibit**

Page 7 of 12



Source: MnGeo WMS, Twin Cities metro, 2023 color Dakota 6 in



Date Exported: 9/16/2024



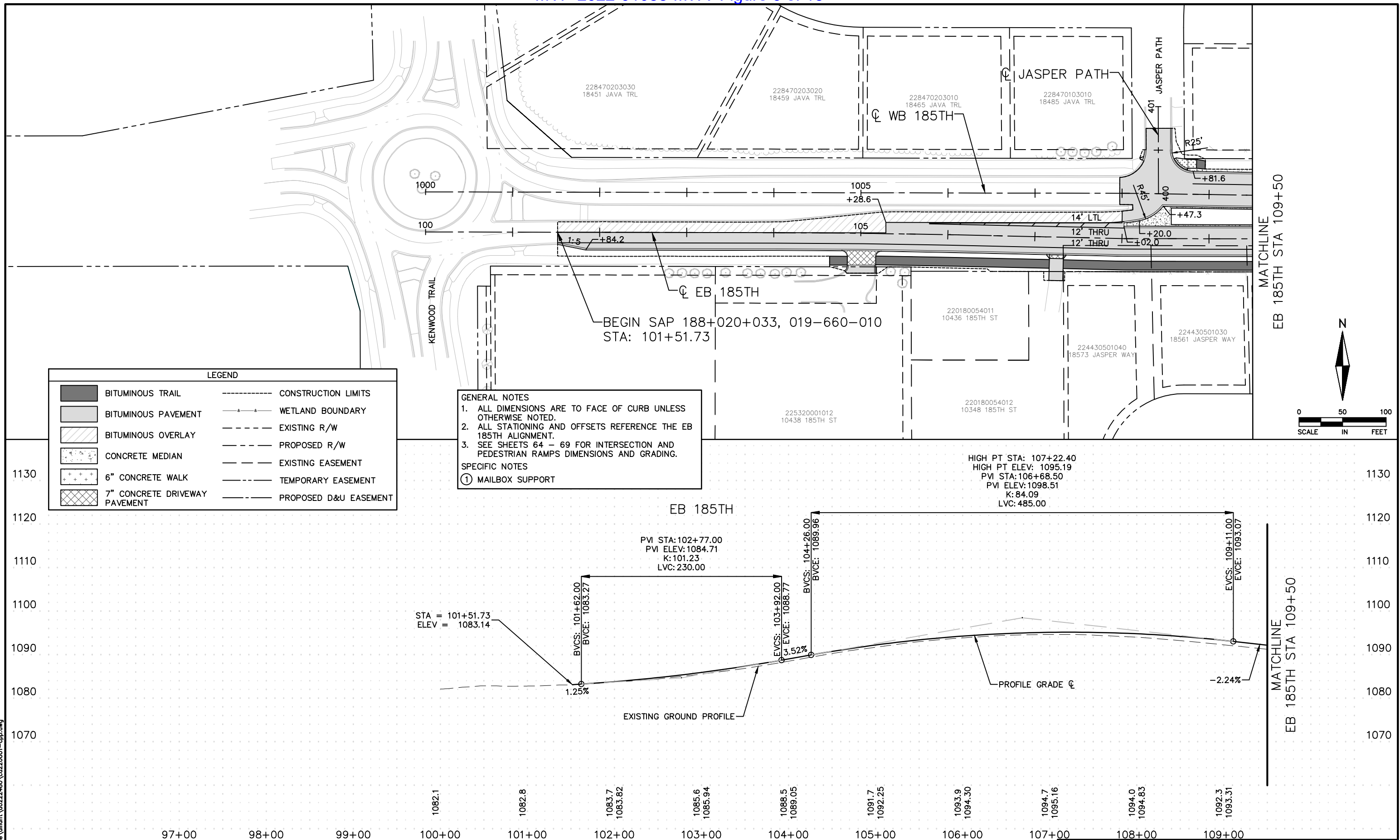


Figure 3. Construction Plan (Page 1 of 5)

NO	DATE	DWN	CKD	REVISIONS



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BY ME OR UNDER MY DIRECT SUPERVISION AND THAT  
I AM A DULY LICENSED PROFESSIONAL ENGINEER  
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PRINT NAME: KATIE BECKER

SIGNATURE: \_\_\_\_\_

DATE 09/10/24 LICENSE # 61797

CONSTRUCTION PLAN AND PROFILE  
EB 185TH - BEGIN PROJECT TO STA 109+50

CITY PROJECT NO. 25-04, DAKOTA COUNTY PROJECT NO. 60-27				
S.A.P. 188-020-033, S.A.P. 019-660-010				
185TH STREET (CSAH 60) IMPROVEMENTS PROJECT				
SHEET NO. 55 OF 165 SHEETS				

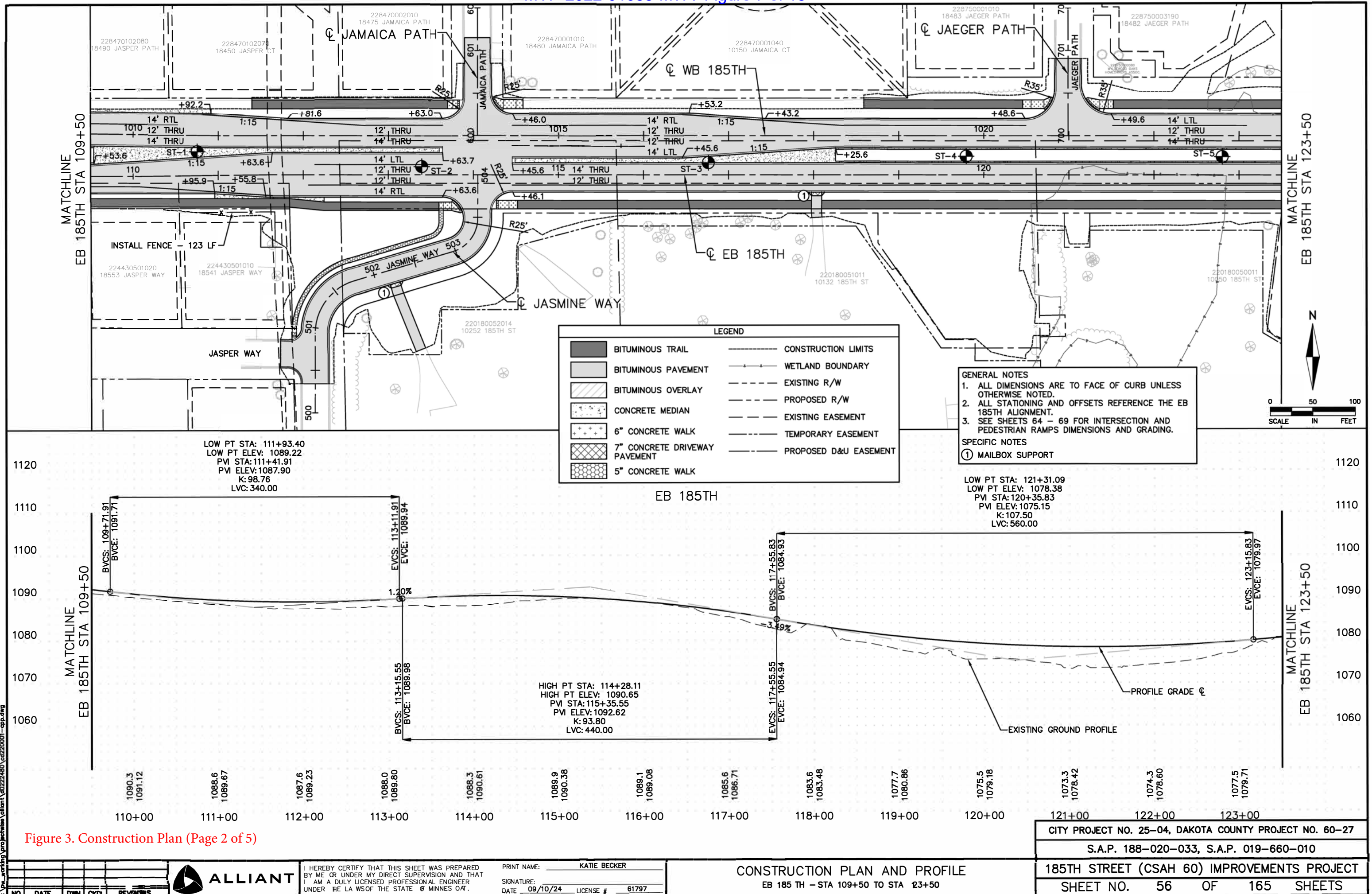


Figure 3. Construction Plan (Page 2 of 5)

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 DATE: 09/10/24 LICENSE #: 61797

CONSTRUCTION PLAN AND PROFILE  
 EB 185 TH - STA 109+50 TO STA 123+50

CITY PROJECT NO. 25-04, DAKOTA COUNTY PROJECT NO. 60-27  
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 SHEET NO. 56 OF 165 SHEETS



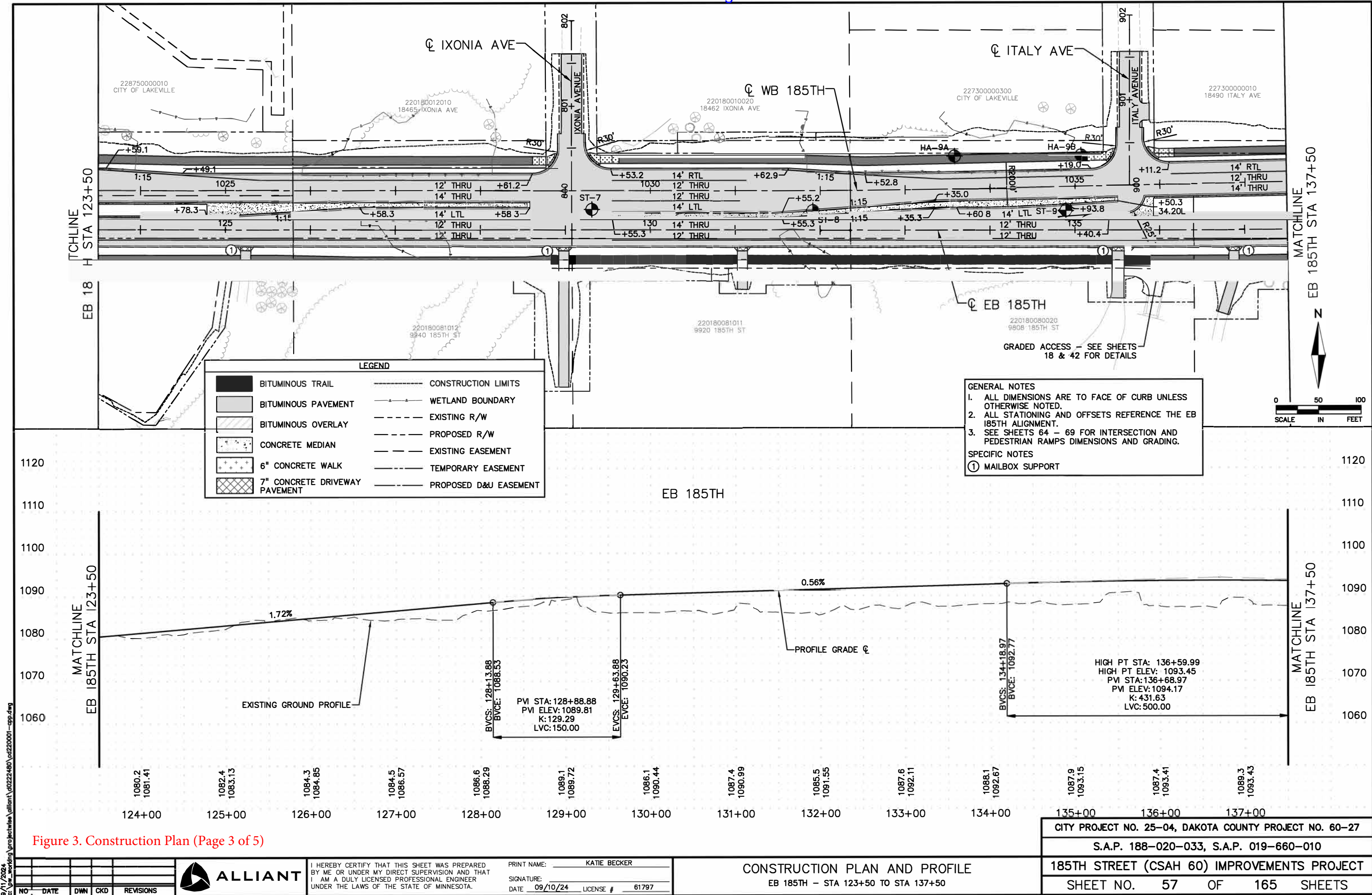


Figure 3. Construction Plan (Page 3 of 5)

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DATE 09/10/24 LICENSE # 61797

CONSTRUCTION PLAN AND PROFILE  
EB 185TH - STA 123+50 TO STA 137+50

CITY PROJECT NO. 25-04, DAKOTA COUNTY PROJECT NO. 60-27			
S.A.P. 188-020-033, S.A.P. 019-660-010			
185TH STREET (CSAH 60) IMPROVEMENTS PROJECT			
SHEET NO.	57	OF	165 SHEETS

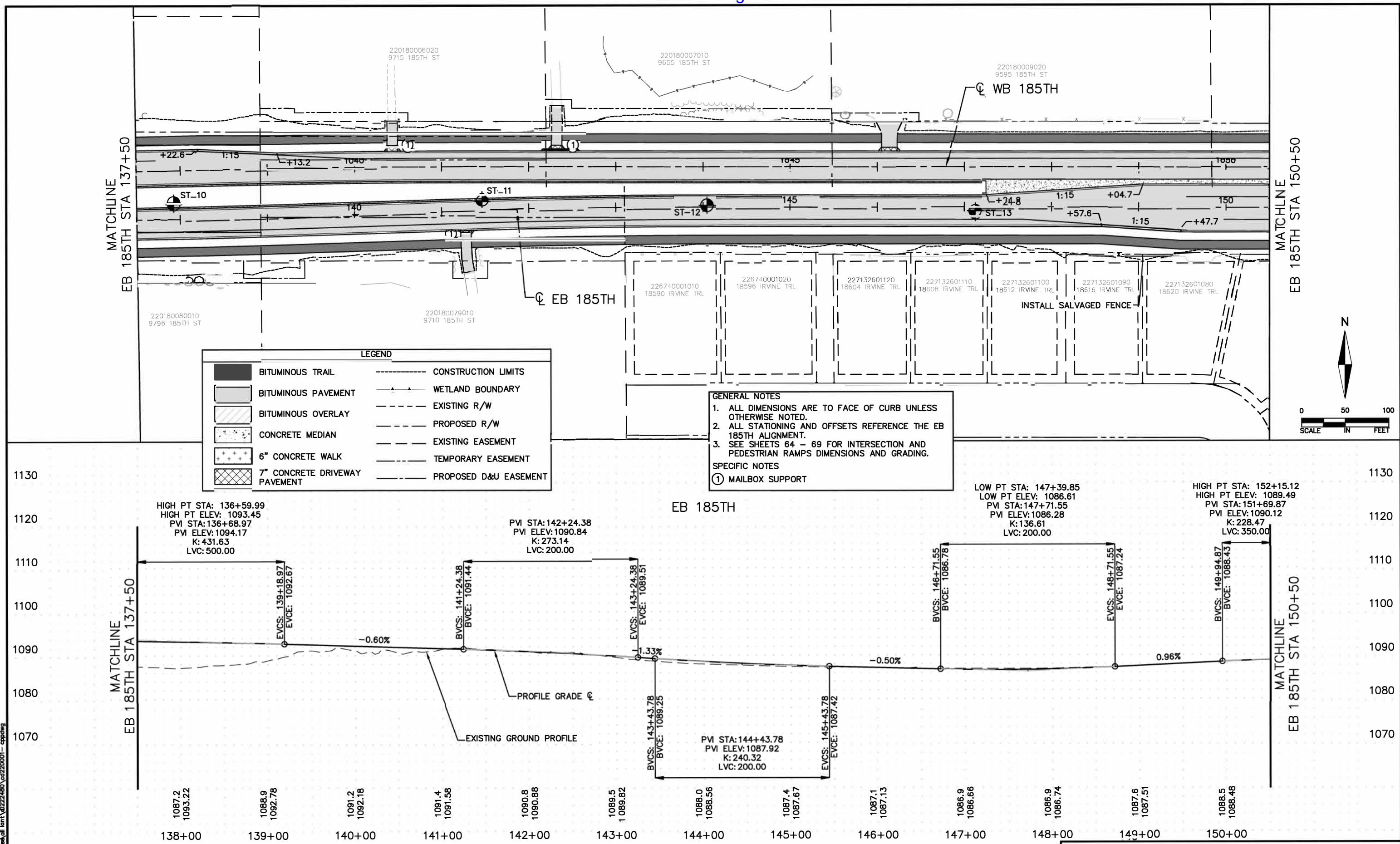


Figure 3. Construction Plan (Page 4 of 5)

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CONSTRUCTION PLAN AND PROFILE  
EB 185TH - STA 137+50 TO STA 150+50

CITY PROJECT NO. 25-04, DAKOTA COUNTY PROJECT NO. 60-27  
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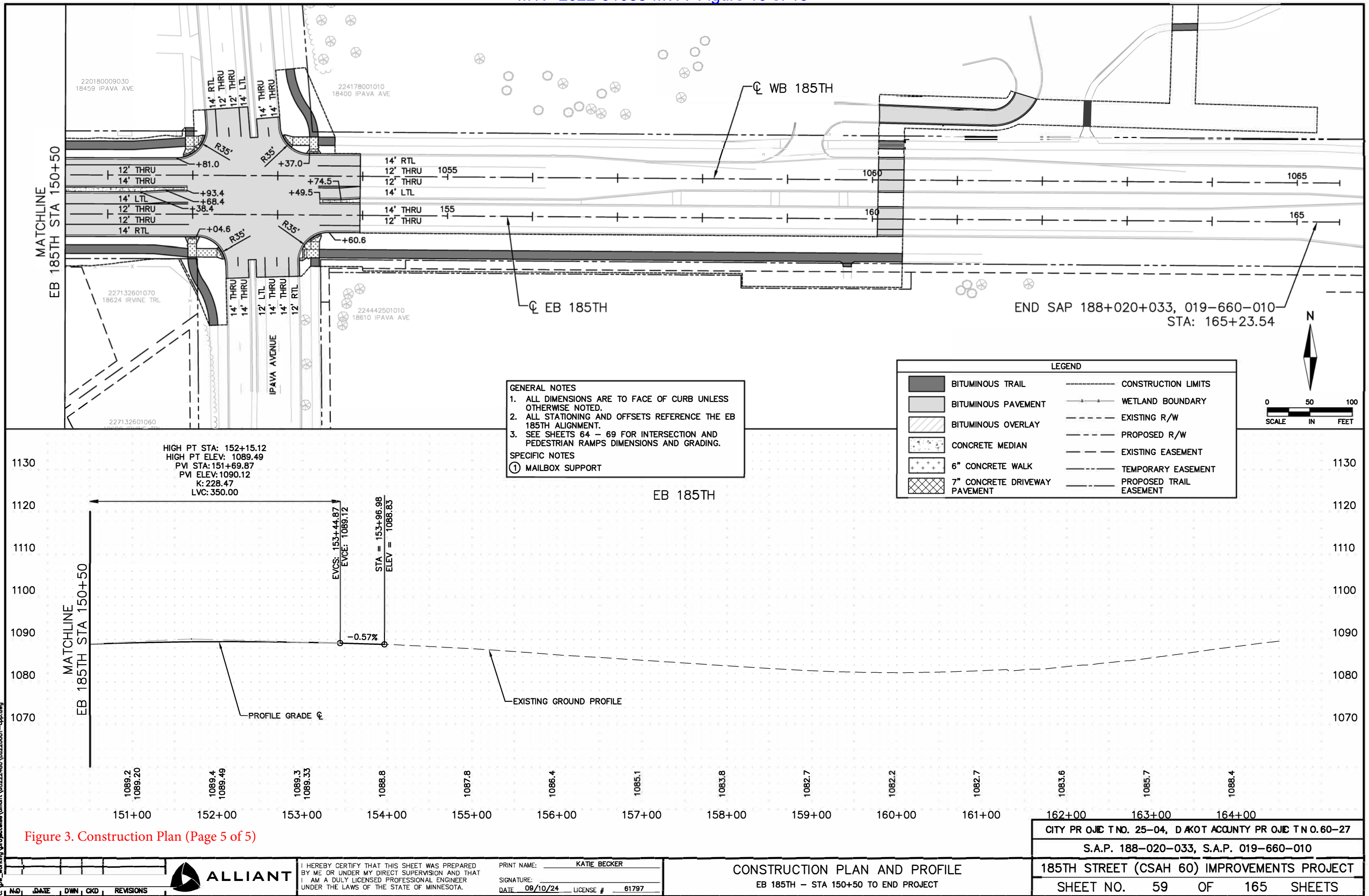


Figure 3. Construction Plan (Page 5 of 5)

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CONSTRUCTION PLAN AND PROFILE  
EB 185TH - STA 150+50 TO END PROJECT

CITY PROJECT NO. 25-04, DAKOTA COUNTY PROJECT NO. 60-27			
S.A.P. 188-020-033, S.A.P. 019-660-010			
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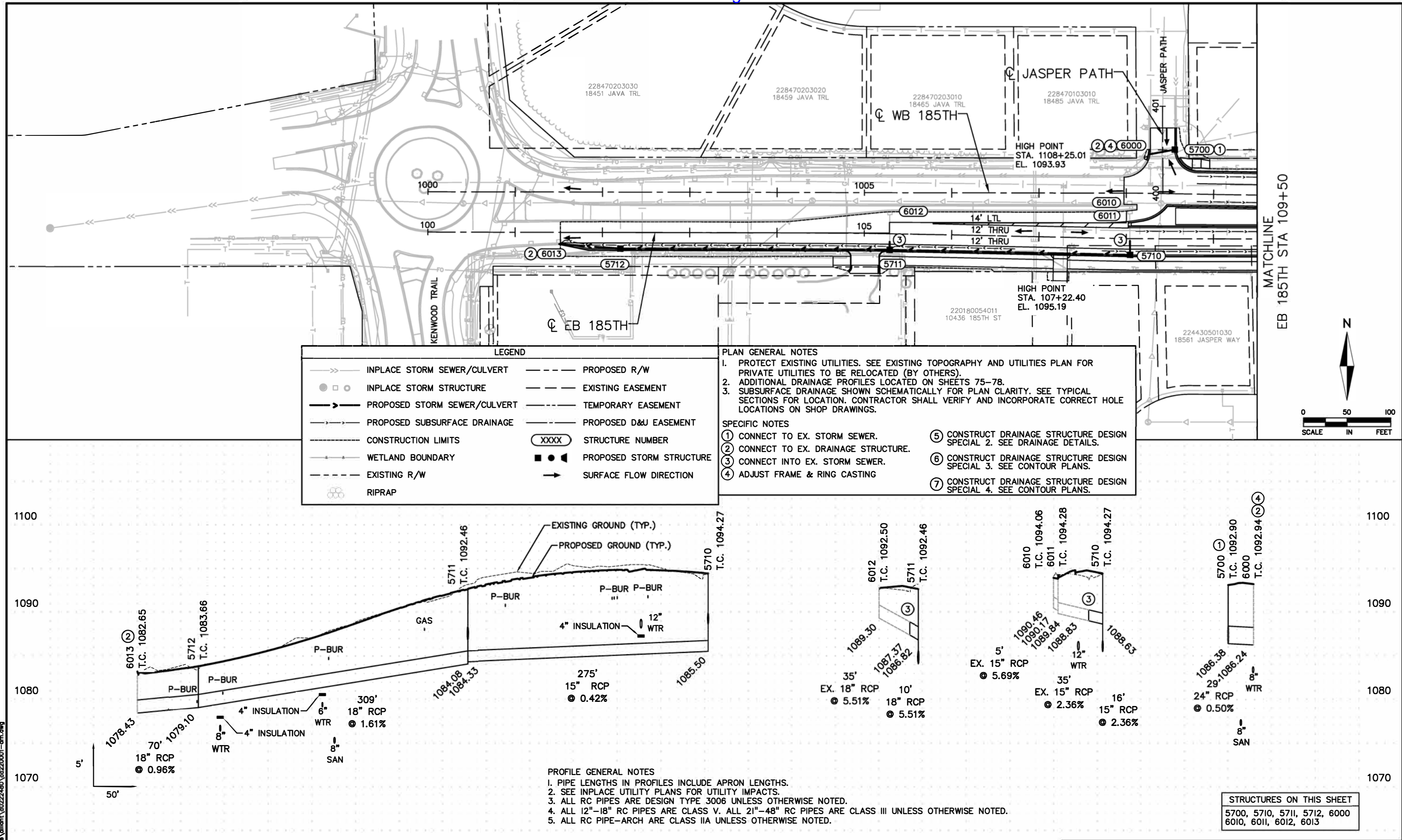


Figure 4. Drainage Plan (Page 1 of 5)

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DATE 09/10/24 LICENSE # 58698

DRAINAGE PLAN AND PROFILE  
EB 185TH - BEGIN PROJECT TO STA 109+50

CITY PROJECT NO. 25-04, DAKOTA COUNTY PROJECT NO. 60-27			
S.A.P. 188-020-033, S.A.P. 019-660-010			
185TH STREET (CSAH 60) IMPROVEMENTS PROJECT			
SHEET NO.	70	OF	165 SHEETS



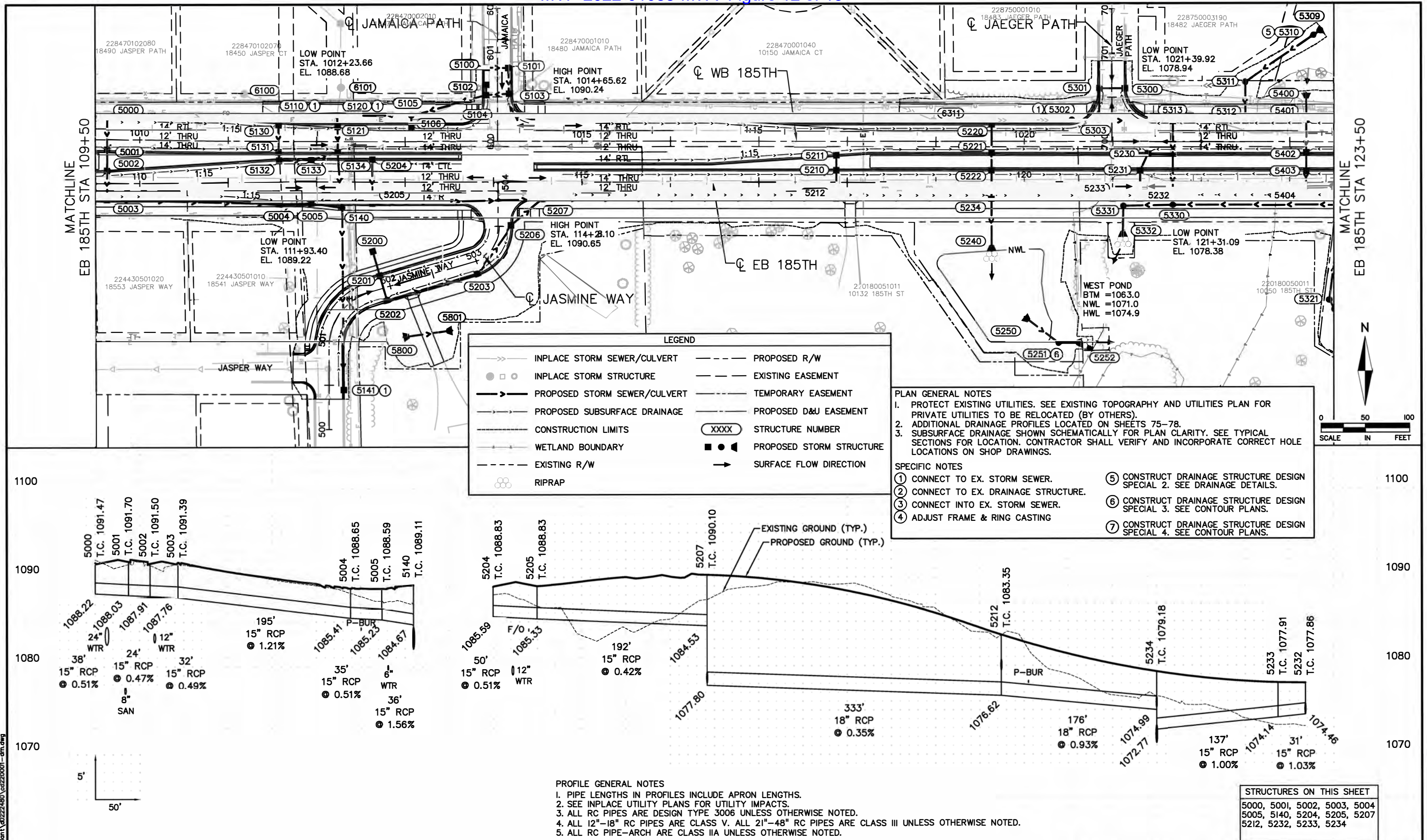


Figure 4. Drainage Plan (Page 2 of 5)

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DATE: 09/10/24 LICENSE #: 58698

DRAINAGE PLAN AND PROFILE  
EB 185TH - STA 109+50 TO STA 123+50

CITY PROJECT NO. 25-04, DAKOTA COUNTY PROJECT NO. 60-27  
S.A.P. 188-020-033, S.A.P. 019-660-010  
185TH STREET (CSAH 60) IMPROVEMENTS PROJECT  
SHEET NO. 71 OF 165 SHEETS



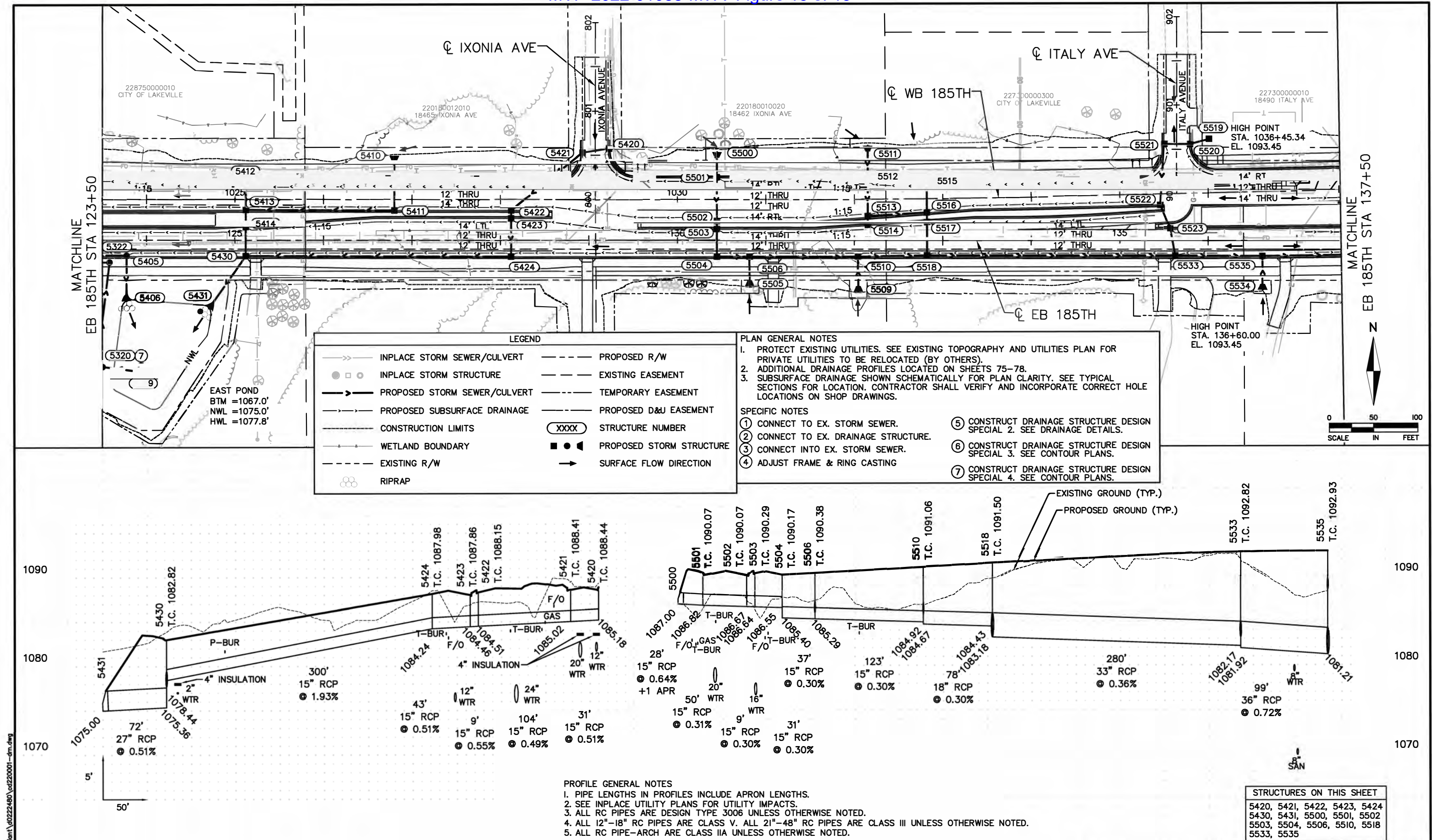


Figure 4. Drainage Plan (Page 3 of 5)

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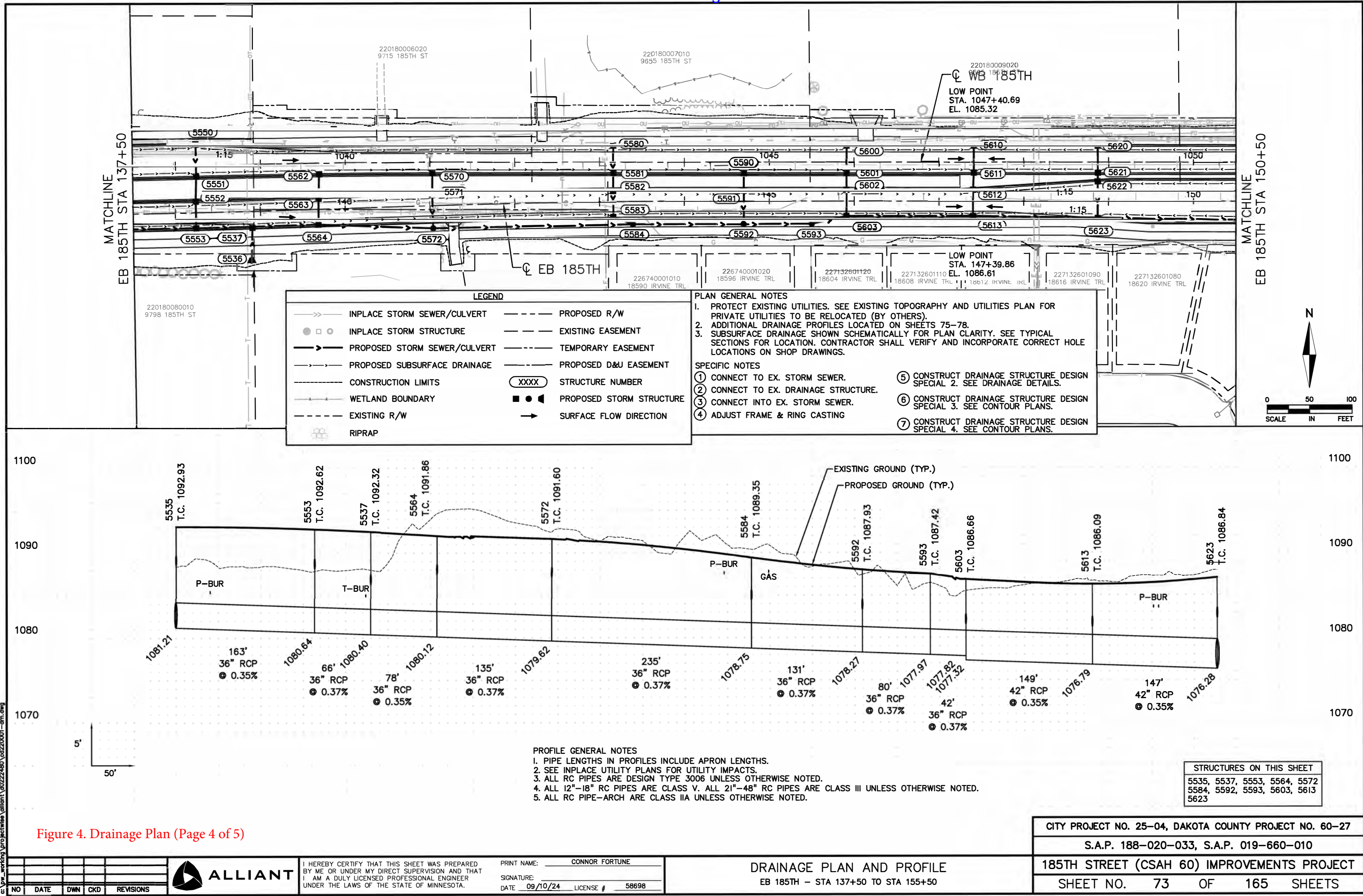
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DATE: 09/10/24 LICENSE #: 58698

DRAINAGE PLAN AND PROFILE  
EB 185TH - STA 123+50 TO STA 137+50

CITY PROJECT NO. 25-04, DAKOTA COUNTY PROJECT NO. 60-27
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185TH STREET (CSAH 60) IMPROVEMENTS PROJECT
SHEET NO. 72 OF 165 SHEETS





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DATE 09/10/24 LICENSE # 58698

**DRAINAGE PLAN AND PROFILE**  
EB 185TH - STA 137+50 TO STA 155+50

CITY PROJECT NO. 25-04, DAKOTA COUNTY PROJECT NO. 60-27			
S.A.P. 188-020-033, S.A.P. 019-660-010			
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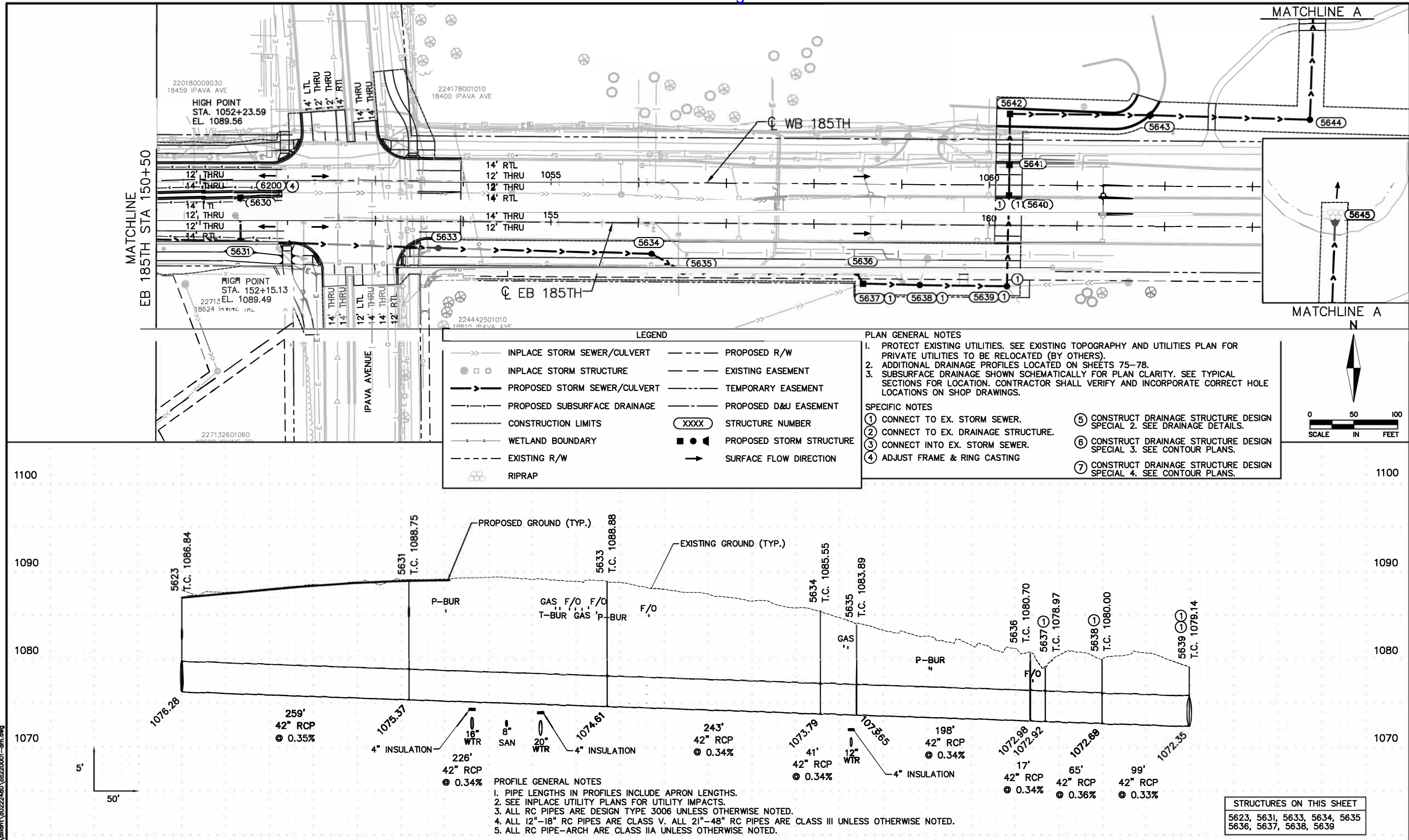


Figure 4. Drainage Plan (Page 5 of 5)