



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

CEMVP-RD

June 6, 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) ,¹ [MVP-2012-05107-JST 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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2012-05107-JST](#)

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
Wetland 1 (0.30 acre)	Non-Jurisdictional
Wetland 2 (0.09 acre)	Non-Jurisdictional

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 is located within Section 18, Township 115 North, Range 22 West, Shakopee, Scott County, Minnesota. The center coordinates for the site are Latitude: 44.764874, Longitude: -93.519756. The review area is limited to the aquatic resources identified on the enclosed project figures labeled MVP-2012-05107-JST AJD Figures – Pages 2-4 of 4. The review area is located east of Townline Avenue, west of Patterson Dr, south of Hillwood Dr, and north of Barrington Dr E. The nearest waterway is O’Dowd Lake located approximately 1.06 miles south of the review area. An Approved Jurisdictional Determination \(AJD\) was issued for this site on October 10, 2014, under file number MVP-2012-05107-MTS and it stated that Wetlands 1 and 2 were non-jurisdictional.](#)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2012-05107-JST](#)

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A](#)⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A](#)
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](#)
 - c. Interstate Waters (a)(1)(iii): [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.

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2012-05107-JST](#)

- 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).

The aquatic resources within the review area identified as ‘Wetland 1’ and ‘Wetland 2’ are not TNWs, territorial seas, or interstate waters and are therefore not (a)(1) waters. This determination is supported by the national wetland and hydrography dataset, which do not identify any aquatic resources or other potential connections between these aquatic resources and any requisite covered waters. Wetland 1 is located along the western portion of the site and extends off-site to the north and the offsite portion is surrounded by uplands. Wetland 2 is located within a closed depression in the south-central portion of the site and is surrounded by uplands. The site is comprised of mostly upland grassland, turf grass, and a small woodland area. The surrounding area is mostly residential and commercial developments within the City of Shakopee. These wetlands do not physically abut an (a)(1) water, (a)(2) impoundment, or (a)(3) tributary. The subject aquatic resources do not have a continuous surface connection to any relatively permanent water and as such do not meet the definition of adjacent and cannot be evaluated as (a)(4) wetlands; therefore, these aquatic resources are not jurisdictional under the 2023 Revised definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule.

⁹ 88 FR 3004 (January 18, 2023)

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVP-2012-05107-JST](#)

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.

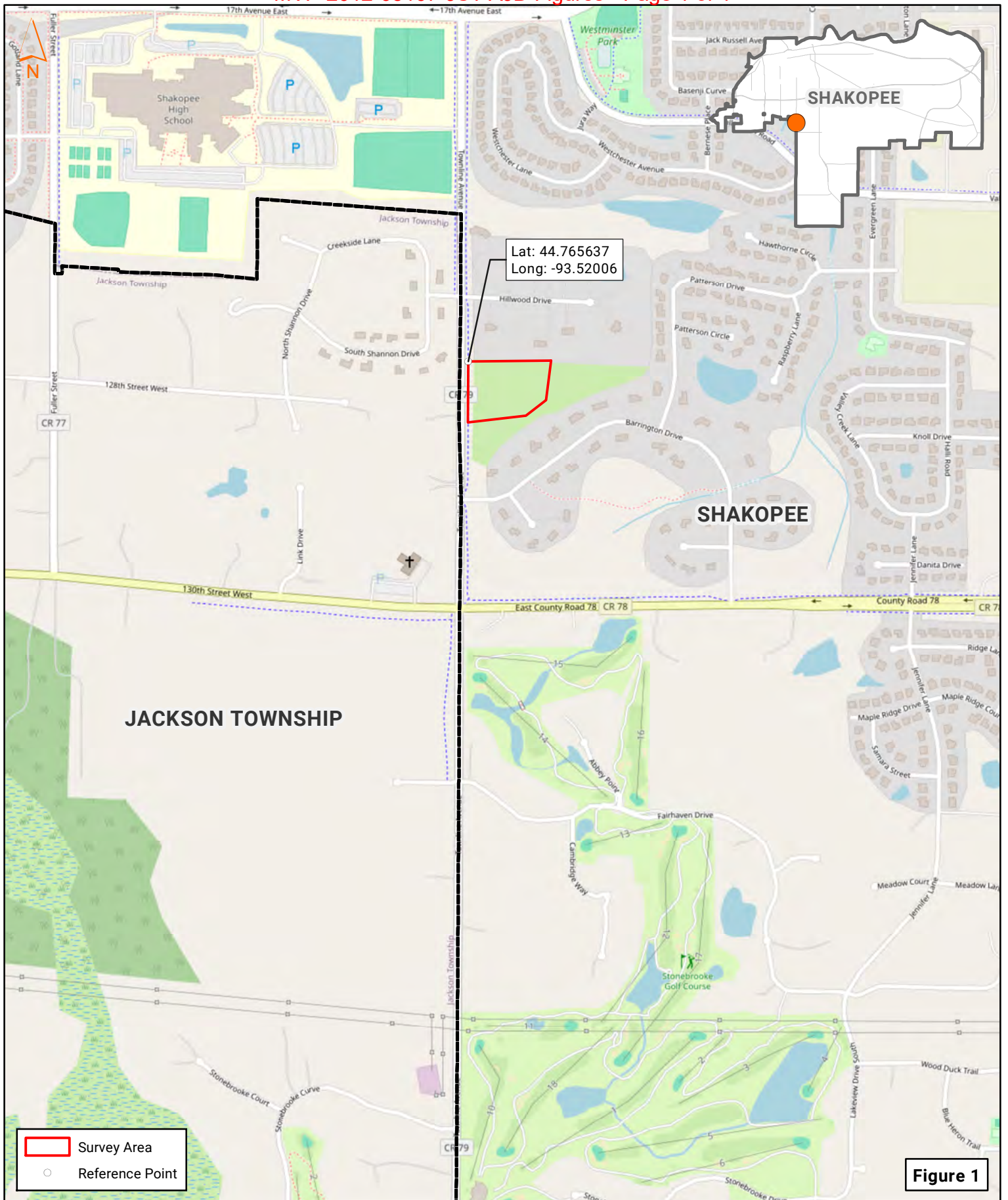
a. [Minnesota Regulatory Viewer: 3DEP Hillshade Layer, US Geological Service 3DEP Digital Elevation Model \(DEM\), and NHD layers, and USFWS NWI layer.](#)

b. [Google Earth aerial imagery dated 2012, 2017, 2020, 2023.](#)

c. [Wetland Delineation Report – Townline Road Site prepared by Midwest Natural Resources Inc. dated May 31, 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.



Sources: OpenStreetMap, US Census Bureau, Date: 5/30/2024

Site Location
Richland Homes
Richland Court
Shakopee, MN



0 500 1,000
Feet



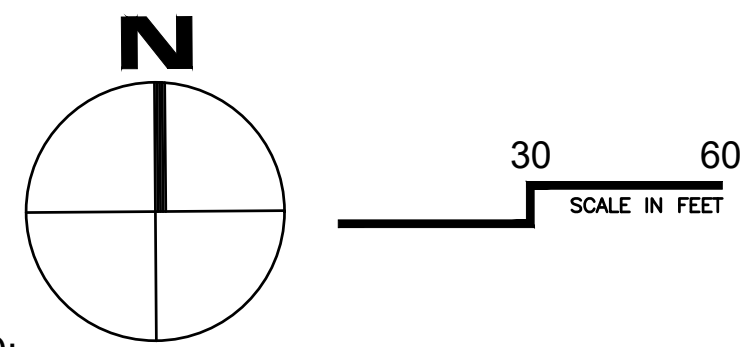
Figure 2

Sources: USDA Farm Service Agency NAIP Imagery, 2023, MnGeo, MN Department of Natural Resources, US Census Bureau, Date: 5/12/2025

Delineated Wetlands
Richland Homes
Richland Court
Shakopee, MN



0 75 150 Feet



Appendix A

SITE DEMOLITION LEGEND:

- SAWCUT
- UTILITY PIPE REMOVAL
- EXISTING TREE LINE.
- WETLAND FILL
- PAVEMENT REMOVAL
- CLEARING AND GRUBBING. SEE LANDSCAPE PLAN FOR TREE INVENTORY
- EXISTING BITUMINOUS TO REMAIN. CONTRACTOR TO PROTECT

KEY NOTES

- 1** WETLAND FILL
- 2** CLEARING AND GRUBBING. SEE LANDSCAPE PLAN FOR TREE INVENTORY
- 3** REMOVE BITUMINOUS PAVEMENT
- 4** REMOVE EXISTING STORMSEWER PIPE
- 5** PROTECT EXISTING UTILITIES TO REMAIN
- 6** PROTECT EXISTING PAVEMENT, CURB AND GUTTER, SIGN OR OTHER SITE FEATURES TO REMAIN
- 7** PROTECT EXISTING TREES TO REMAIN

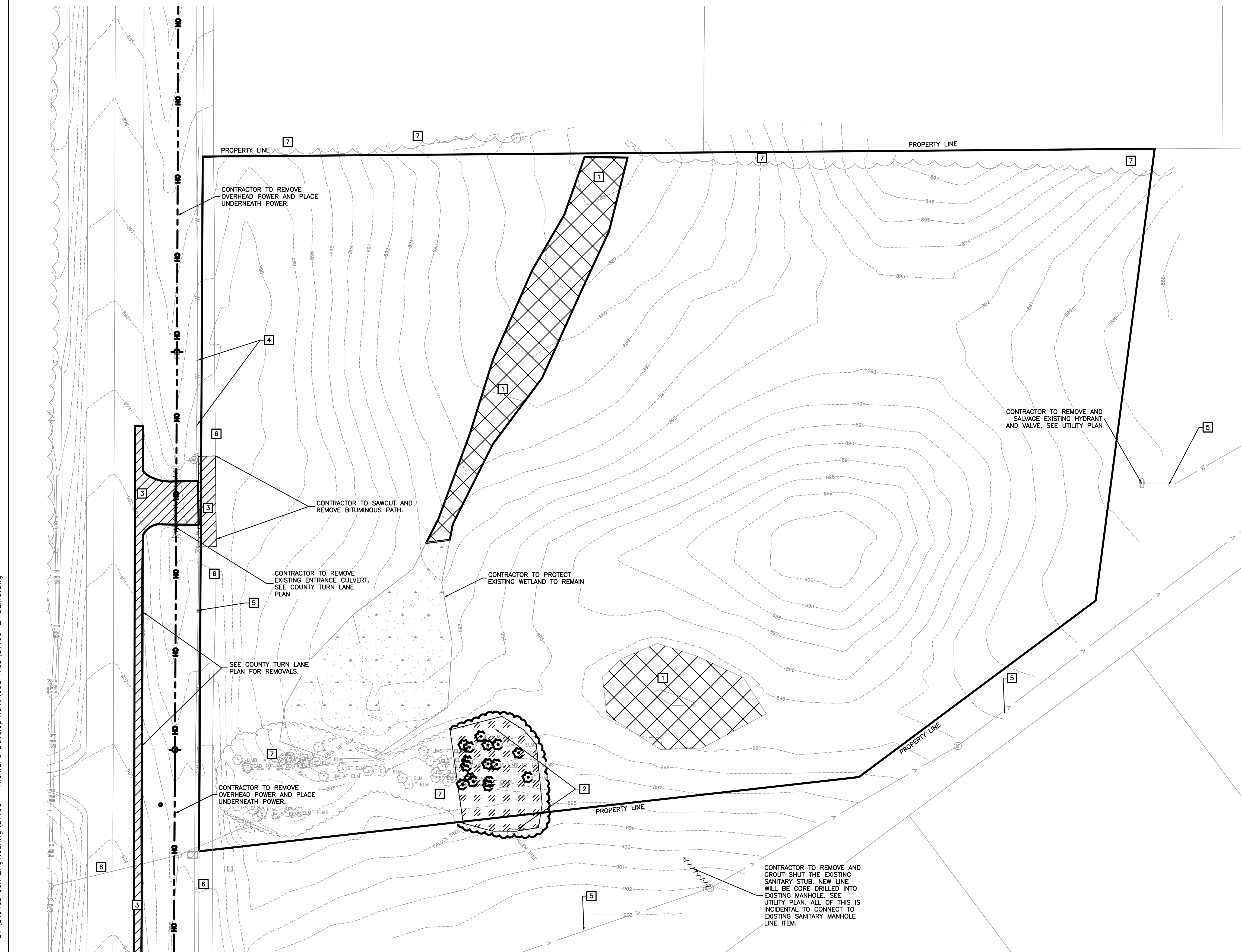
GENERAL SITE DEMOLITION AND CLEARING NOTES:

1. CONTRACTOR SHALL COORDINATE LIMITS OF REMOVALS WITH PROPOSED IMPROVEMENTS AND SHALL BE RESPONSIBLE FOR PROTECTING EXISTING SITE FEATURES (STRUCTURES, CURBS, WALKS, PAVEMENTS, UTILITIES, SIGNAGE, FENCES, ETC.) WHICH ARE TO REMAIN. REPAIR OR REPLACE, TO OWNER'S SATISFACTION, ANY DAMAGE TO EXISTING PROPERTY OR SITE FEATURES WHICH ARE TO REMAIN, AT NO ADDITIONAL COST.
2. COORDINATE DISRUPTION OF UTILITY SERVICES WITH THE OWNER'S PROJECT REPRESENTATIVE AND UTILITY OWNER. PUBLIC OR PRIVATE. CONTRACTOR TO PROVIDE TEMPORARY UTILITIES AS NECESSARY TO MAINTAIN BUILDING SERVICES.
3. THE OWNER'S ACTIVITIES MAY CONTINUE ON THE SITE DURING CONSTRUCTION. THE CONTRACTOR SHALL COORDINATE SEQUENCE OF WORK WITH THE OWNER.
4. CONTRACTOR TO PROVIDE AND MAINTAIN FOR TEMPORARY FENCING AND PROTECTION REQUIREMENTS TO PROTECT PEDESTRIANS, VEHICLES, AND COMPLETED WORK FROM HARM/DAMAGE
5. PRIOR TO START OF ANY WORK, ALL EROSION AND SEDIMENT CONTROL PROTECTION MEASURES SHALL BE IN PLACE. SEE EROSION CONTROL PLAN OR SWPPP FOR DETAILS.
6. CONTRACTOR SHALL PRESERVE ALL VEGETATION NOT TO BE REMOVED BY CONSTRUCTION. CONTRACTOR SHALL BE RESPONSIBLE FOR RE-SEEDING OR SODDING AREAS DISTURBED BY CONSTRUCTION.
7. CLEARLY IDENTIFY AND LABEL EACH TREE THAT IS TO REMAIN PRIOR TO STARTING SITE CLEARING. CONTACT OWNER'S PROJECT REPRESENTATIVE FOR SITE INSPECTION AFTER ALL "TO REMAIN" TREES HAVE BEEN IDENTIFIED. TREES THAT ARE TO BE PROTECTED SHALL HAVE TEMPORARY FENCING PLACED AT THE DRIP LINE AROUND EACH TREE.
8. STOCKPILE TOPSOIL FOR REUSE ON SITE. VERIFY THE STRIPPED TOPSOIL MEETS SPECIFICATIONS FOR THE PROPOSED USE. VERIFY THE AMOUNT OF TOPSOIL NEEDED AND REMOVE EXCESS FROM SITE.
9. ALL MATERIAL REMOVED SHALL BE DISPOSED OF OFF-SITE AND IN A LEGAL MANNER.
10. MATERIAL TO BE SALVAGED FOR REUSE BY OWNER SHALL BE REMOVED UNDAMAGED IN USABLE CONDITION. TEMPORARY PROTECTED STORAGE ON-SITE MAY BE REQUIRED.
11. ON-SITE BROKERAGE OF MATERIALS SALVAGED BY CONTRACTOR FROM MATERIALS TO BE REMOVED IS NOT PERMITTED WITHOUT PRIOR OWNER APPROVAL.
12. LOCATION AND ELEVATIONS OF IMPROVEMENTS TO BE MET (OR AVOIDED) SHALL BE CONFIRMED BY THE CONTRACTOR THROUGH FIELD EXPLORATIONS PRIOR TO CONSTRUCTION. CONTRACTOR SHALL REPORT TO THE ENGINEER ANY DISCREPANCIES BETWEEN THEIR MEASUREMENTS AND THESE PLANS. CONTRACTOR SHALL ALSO MAKE EXPLORATION EXCAVATIONS AND LOCATE EXISTING UNDERGROUND UTILITIES SUFFICIENTLY AHEAD OF CONSTRUCTION TO PERMIT REVISIONS TO PLANS IF REVISIONS ARE NECESSARY BECAUSE OF ACTUAL LOCATION OF EXISTING FACILITIES. CONTRACTOR IS REQUIRED TO TAKE PRECAUTIONARY MEASURES TO PROTECT THE UTILITY LINES SHOWN AND ANY OTHER EXISTING LINES NOT OF RECORD OR NOT SHOWN ON THESE PLANS.



STATE LAW: 48 HOURS BEFORE EXCAVATING OR DEMOLISHING BUILDINGS, CALL 811 FOR FIELD LOCATION OF UNDERGROUND UTILITY LINES. THIS SERVICE LOCATES UTILITY OWNED LINES BUT NOT PRIVATE LINES.

THE LOCATIONS OF UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED. THE EXACT LOCATION OF ALL UTILITIES (PUBLIC AND PRIVATE) MUST BE DETERMINED BEFORE COMMENCING WORK.



Apr 26, 2025 - 8:35pm - D:\Stonebrook Engineering\S1169 - Richland Development\cad files\S1169-2-DEMO.dwg

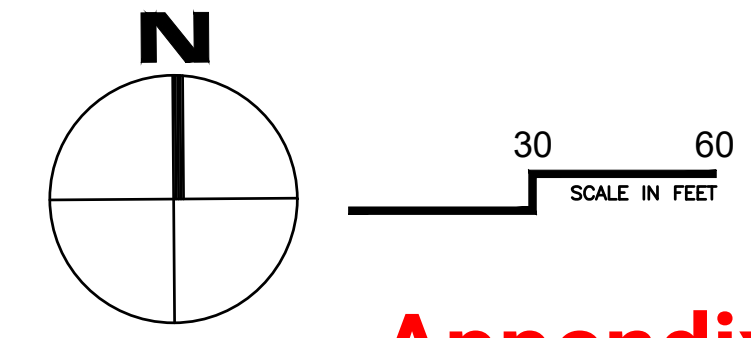
REV. NO.	DATE	BY	CHK	DESCRIPTION

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

NAME Tom Anderson LIC. NO. 25502 DATE 4/28/2025



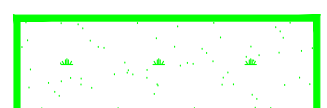

DESIGNED
AJP
DRAWN
AJP
CHECKED
AJP/TA

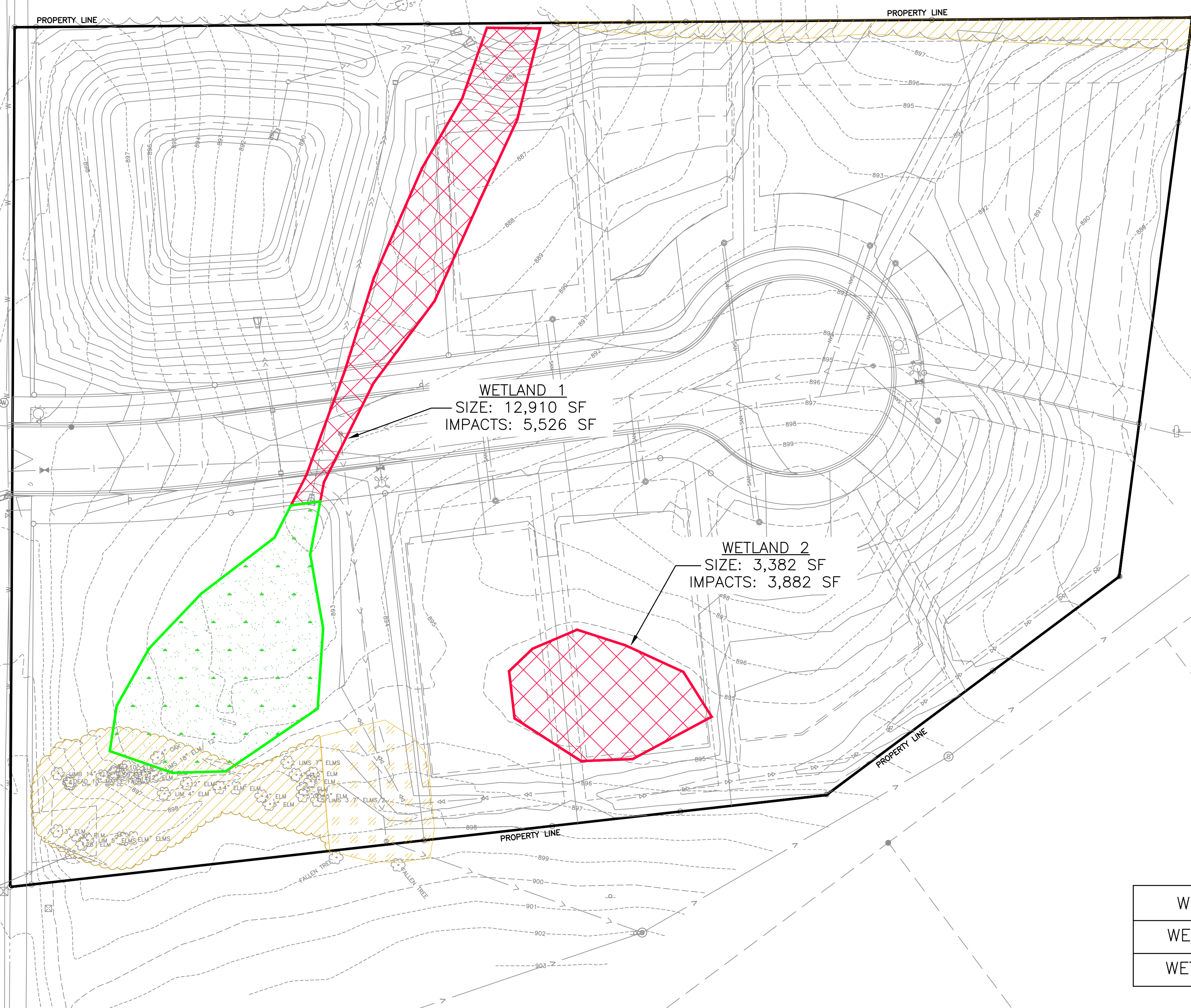




Appendix C

LEGEND:

-  SAVED TREE CANOPY
-  REMOVED TREE CANOPY
-  DELINEATED WETLAND (NO IMPACT)
-  WETLAND IMPACT



WETLAND	IMPACT AREA (SF)	IMPACT AREA (AC)
WETLAND 1	5526 SF	0.13 AC
WETLAND 2	3882 SF	0.09 AC

May 04, 2025 9:14pm D:\Stonebrook Engineering\S1169 - Richland Development\cod files\S1169-11-wetladn exhibit.dwg

REV. NO.	DATE	BY	CHK	DESCRIPTION

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

NAME _____ LIC. NO. _____ DATE _____

DESIGNED
AJP
DRAWN
AJP
CHECKED
AJP/TA



RICHLAND HOMES - SHAKOPEE DEVELOPMENT
 WETLAND EXHIBIT

W 1.0