



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

September 26, 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) ,¹ MVP-2017-03648-JST-JST 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.² 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.³

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

1. SUMMARY OF CONCLUSIONS.

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 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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. 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 5 (0.02 acre)	Non-Jurisdictional
WETLAND 6 (0.09 acre)	Non-Jurisdictional
WETLAND 7 (0.09 acre)	Non-Jurisdictional
WETLAND 8 (0.06 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. __, 143 S. Ct. 1322 (2023)
- d. January 2023 Rule preamble at 88 FR 3090

2. REVIEW AREA. The review area is located within Section 3, Township 118 North, Range 23 West, Medina, Hennepin County, Minnesota. The center coordinates for the site are Latitude: 45.060196, Longitude: -93.578929. The review area is limited to Wetlands 5, 6, 7, and 8 as identified on the enclosed project figures. The review area is located north of Chippewa Road, east of Willow Drive, west of Mohawk Road, and southeast of Cates Ranch Drive. The nearest waterway is an unnamed tributary located approximately 0.4 miles southeast of the review area. There is one previous AJD associated with this review area.

- a. Other associated Jurisdictional Determinations (including outcomes):

Action ID	Type	Outcome
MVP-2017-03648-MMJ	Rapanos AJD	Wetlands 1, 4, 5, 6, 7 and 8 were determined to be non-jurisdictional (excluded waters) under this AJD.

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3. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [N/A](#)
4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [N/A](#)
5. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ [N/A](#)
6. 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](#)

⁵ 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.

⁶ 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](#)

7. 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).⁷ [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 Wetlands 5, 6, 7 & 8 are not TNWs, territorial seas, or interstate waters and are therefore not \(a\)\(1\) waters. This determination is supported by the national wetland inventory and hydrography dataset, which do not identify any aquatic resources or other potential connections between these aquatic resources and any other waters.](#)

⁷ 88 FR 3004 (January 18, 2023)

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Wetlands 5, 6, 7, & 8 are farmed seasonally flooded basin wetlands that are surrounded by uplands, and have no swales, erosional features, streams, or ditches connecting them to any stream or river. This is supported by USGS LiDAR and hillshade data that indicate these wetlands are within depressions and only hold water seasonally. The wetlands are not mapped on the national wetland inventory dataset and are not mapped within a hydric soil unit. These wetlands do not physically abut an (a)(2) impoundment or (a)(3) tributary and are not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The wetlands within the review area do not have a continuous surface connection to a 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.

Because the Supreme Court in *Sackett* adopted the *Rapanos* plurality standard and the 2023 rule preamble discussed the *Rapanos* plurality standard, the implementation guidance and tools in the 2023 rule preamble that address the regulatory text that was not amended by the conforming rule, including the preamble relevant to the *Rapanos* plurality standard incorporated in paragraphs (a)(3), (4), and (5) of the 2023 rule, as amended, generally remain relevant to implementing the 2023 rule, as amended.

8. 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. Request to Extend Approved Delineation – Brindle Path prepared by Kjolhaug Environmental dated November 20, 2023.
 - b. USGS 3DEP DEM. Accessed September 17, 2024.
 - c. USGS 3DEP 25-ft Contour. Accessed September 17, 2024.
 - d. USGS 3DEP 10-ft Contour. Accessed September 17, 2024.
 - e. USGS 3DEP 5-ft Contour. Accessed September 17, 2024.
 - f. USGS NHD Map Service. Accessed September 17, 2024.
 - g. USFWS NWI Map Service. Accessed September 17, 2024.
 - h. NRCS Web Soil Survey Dataset. Accessed September 17, 2024.
9. OTHER SUPPORTING INFORMATION. N/A

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10. 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.

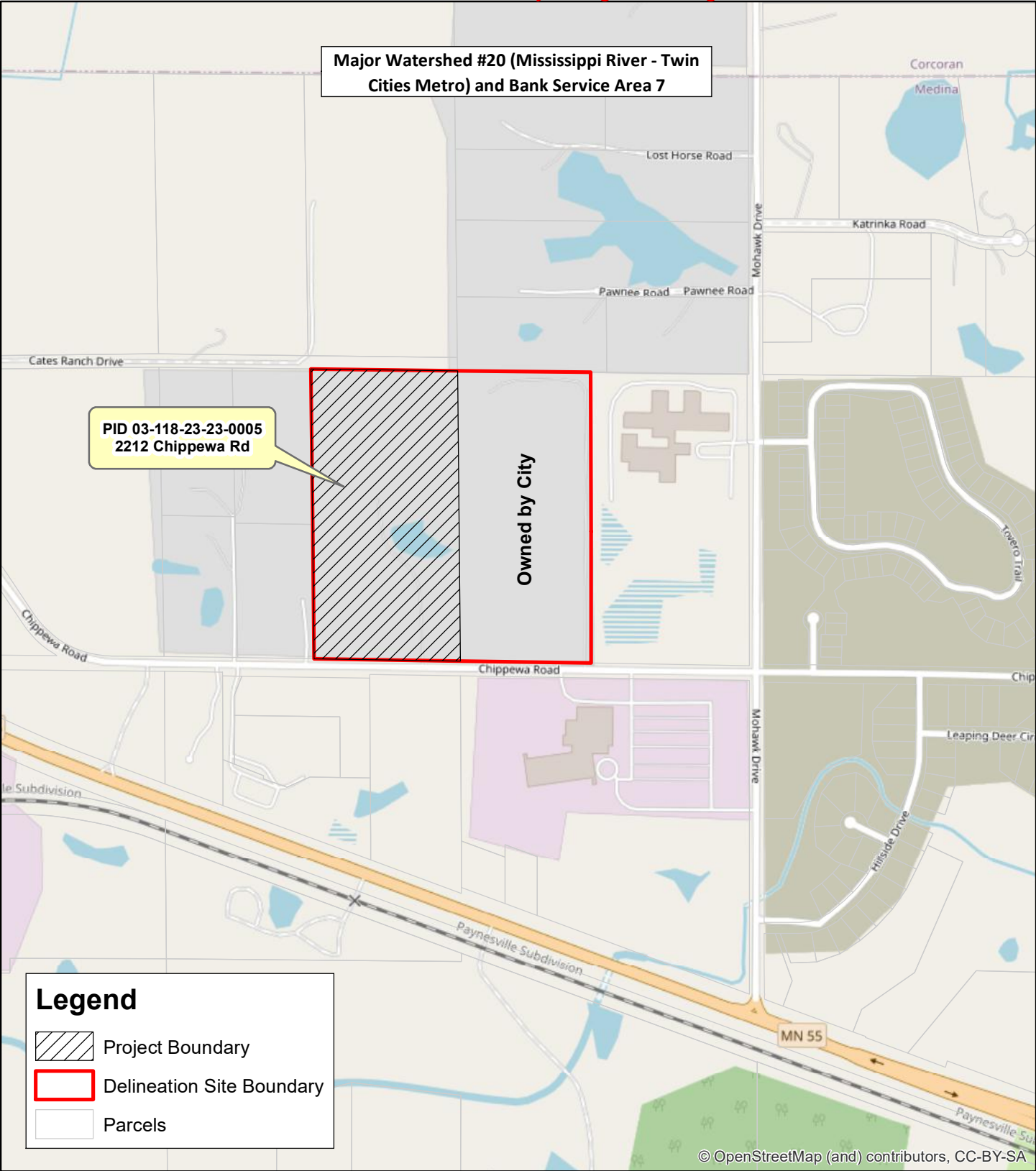



Figure 1 - Site Location



KJOLHAUG ENVIRONMENTAL SERVICES COMPANY
Source: ESRI Streets Basemap

N

0 1,000 Feet

Brindle Path (KES 2024-126)
Medina, Minnesota

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.



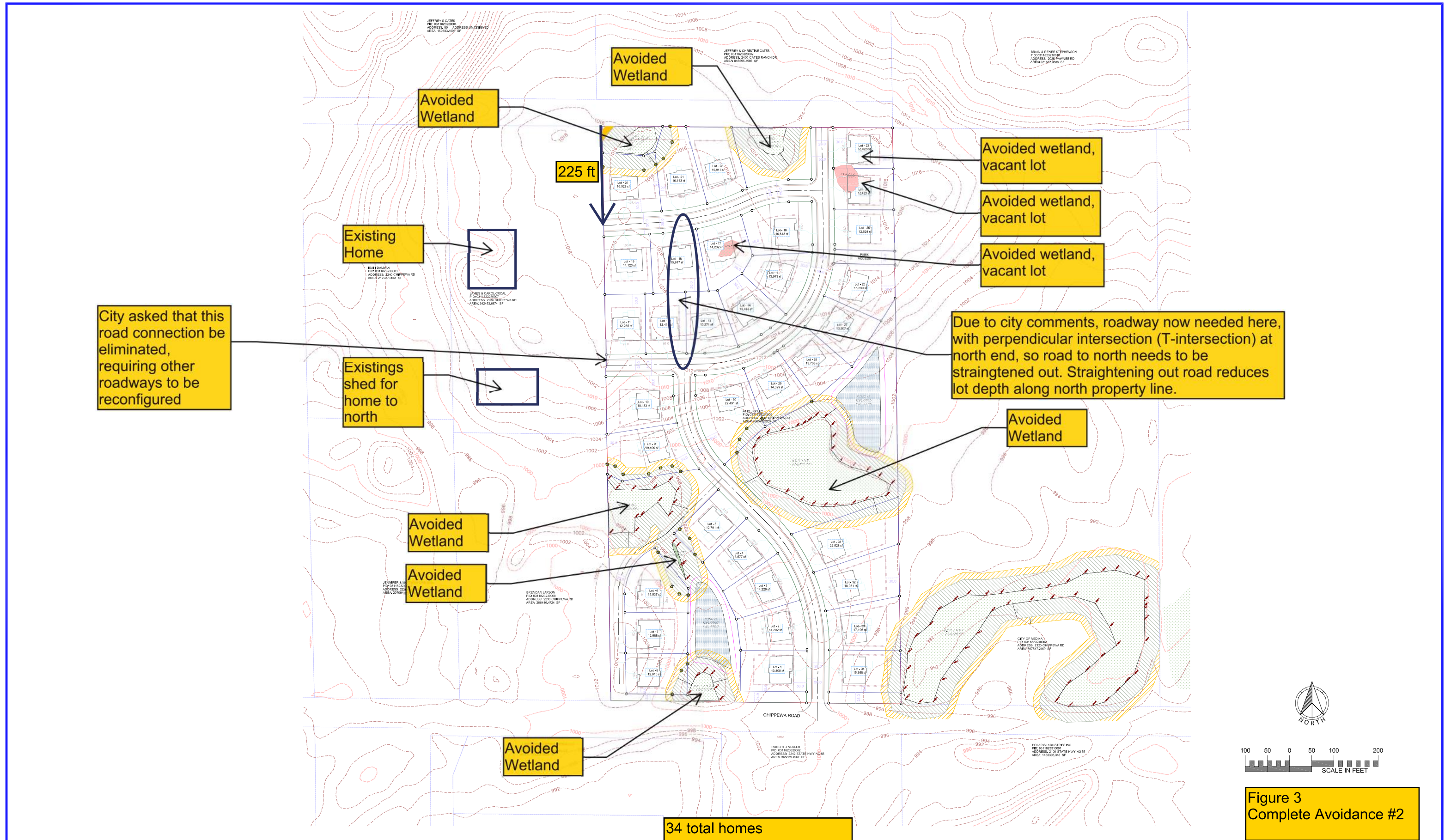
Figure 2 - Existing Conditions & Proposed Impact Areas (2024 Henn County Photo)

KJOLHAUG ENVIRONMENTAL SERVICES COMPANY
Source: MNGEO Spatial Commons

0 250 Feet

Brindle Path (KES 2024-126)
Medina, Minnesota

Note: Boundaries indicated on this figure are approximate and do not constitute an official survey product.



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DRAWING NAME	NO.	BY	DATE	REVISION
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DATE				
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Name, P.E. _____
Date: _____ Lic. No. _____

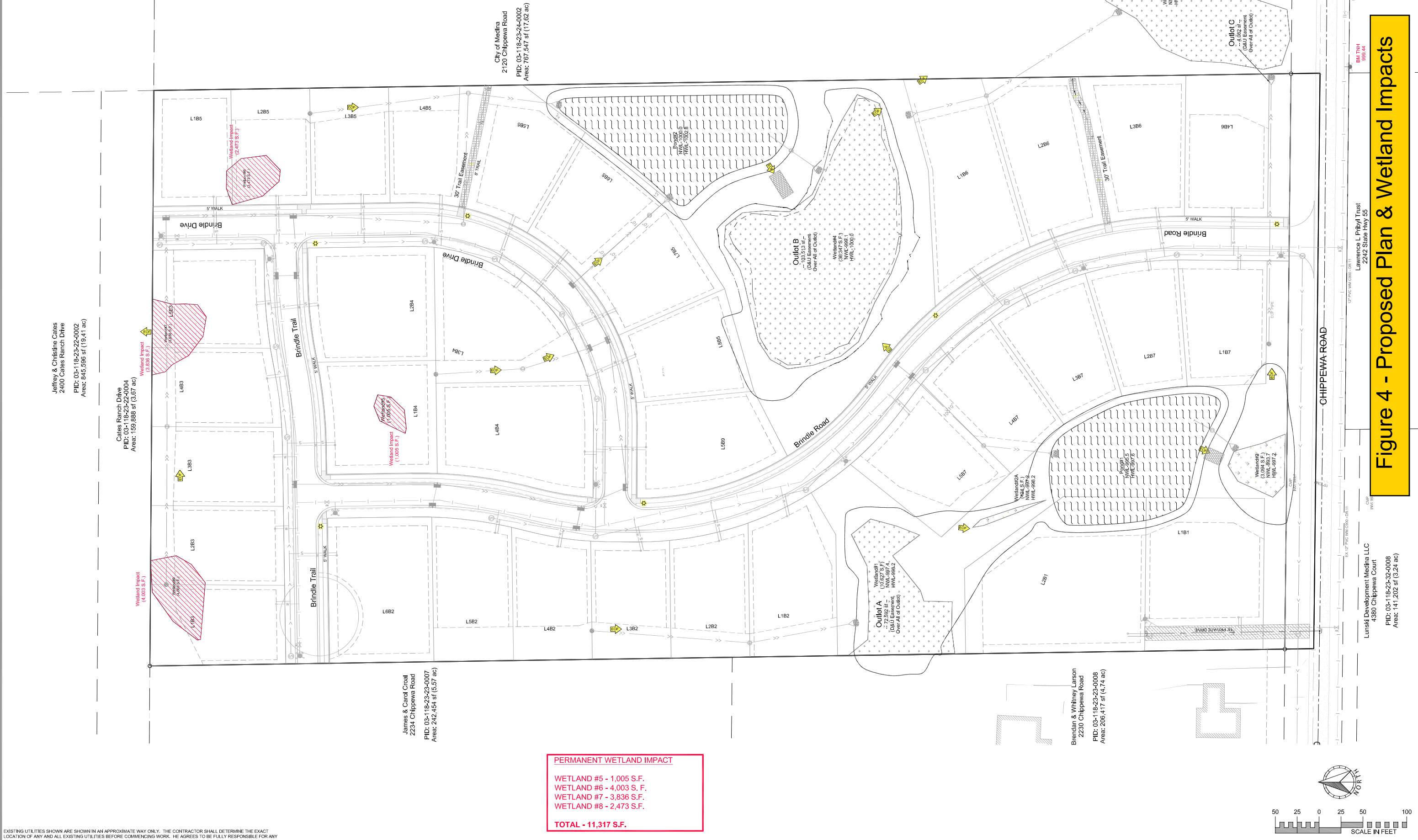


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CONCEPT PLAN (w-topo) 021224
JKP PARCEL
TWIN CITIES LAND DEVELOPMENT

FILE NO. 91935-001
X
X



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DRAWING NAME	NO.	BY	DATE	REVISION
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Robert S. Molstad
ROBERT S. MOLSTAD, P.E.
Date: 06-28-2024 Lic. No. 26728

ENGINEERS
DESIGNERS
SURVEYORS
PLANNERS

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CITY PROJECT NO.

**MEDINA,
MINNESOTA**

WETLAND IMPACT PLAN
BRINDLE PATH
TWIN CITIES LAND DEVELOPMENT

FILE NO.
91935-001

WI

PERMANENT WETLAND IMPACT

WETLAND #5 - 1,005 S.F.
WETLAND #6 - 4,003 S. F.
WETLAND #7 - 3,836 S.F.
WETLAND #8 - 2,473 S.F.

TOTAL - 11,317 S.F.

Jeffrey & Christine Cates
2400 Cates Ranch Drive
PID: 03-118-23-22-0002
Area: 845,696 sf (19.41 ac)

Cates Ranch Drive
PID: 03-118-23-22-0004
Area: 139,666 sf (3.17 ac)

Wetland Impact
(3,836 S.F.)

Wetland Impact
(4,003 S.F.)

Wetland Impact
(2,473 S.F.)

Wetland Impact
(1,005 S.F.)

James & Carol Creal
2234 Chippewa Road
PID: 03-118-23-23-0007
Area: 242,454 sf (5.57 ac)

City of Medina
2120 Chippewa Road
PID: 03-118-23-24-0002
Area: 767,547 sf (17.62 ac)

Wetland#1
(1,007 S.F.)
NWL-387.4
HWL-387.2
Over All of Outlot

Wetland#4
(1,007 S.F.)
NWL-387.4
HWL-387.2
Over All of Outlot

Wetland#2A
(324 S.F.)
NWL-387.5
HWL-387.5
Foggy

Wetland#3
(3,836 S.F.)
NWL-387.7
HWL-387.2

Lunski Development Medina LLC
4380 Chippewa Court
PID: 03-118-23-32-0008
Area: 141,202 sf (3.24 ac)

Lawrence L Pribyl Trust
2242 State Hwy 55
BM TNH
995.44

Figure 4 - Proposed Plan & Wetland Impacts