



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
ST. PAUL OFFICE EAST BRANCH
322 MINNESOTA STREET SUITE E1500
ST. PAUL MINNESOTA 55101

MVP-R

July 14, 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-2010-02510-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, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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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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).

- [Wetland B, \(0.1 acre\): 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.

- a. Project Are Size (in acres): 1.53
- b. Location Description: The project/review area is located in Section 06, Township 012N, Range 023E, Ozaukee County, Wisconsin.
- c. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 43.537620 Longitude: -87.792922
- d. Nearest City or Town: Cedar Grove
- e. County: Ozaukee
- f. State: Wisconsin
- g. Other associated Jurisdictional Determinations (including outcomes):

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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, soil mapping, and the information submitted by the applicant for the following wetlands:

i. Wetland B, (0.1 acre): Non-jurisdictional

Wetland B is a shrub-carr depressional wetland dominated by American elm, box elder, green ash, wild black currant, jewelweed, and reed canary grass located within the central portion of the project area.

A review of the Digital Elevation Model (DEM) data, LiDAR imagery, and aerial photography indicate that Wetland B does extend beyond the review area. Based on the change of elevation, we have determined that Wetland B transitions into uplands and is not adjacent to a relatively permanent water (RPW). Wetland B is located approximately 157 linear feet from Lake Michigan, which is classified as a navigable water.

⁹ 88 FR 3004 (January 18, 2023)

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Wetland B is a not traditionally navigable waters (TNWs), territorial seas, or interstate waters, and does not meet the criteria for (a)(1) waters. Wetland B does not physically abut Lake Michigan, is not located within a paragraph (a)(2) impoundment, and is not adjacent to a jurisdictional (a)(3) tributary. As non-tidal wetlands that do not meet the definition of “adjacent,” Wetland B 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 B 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.

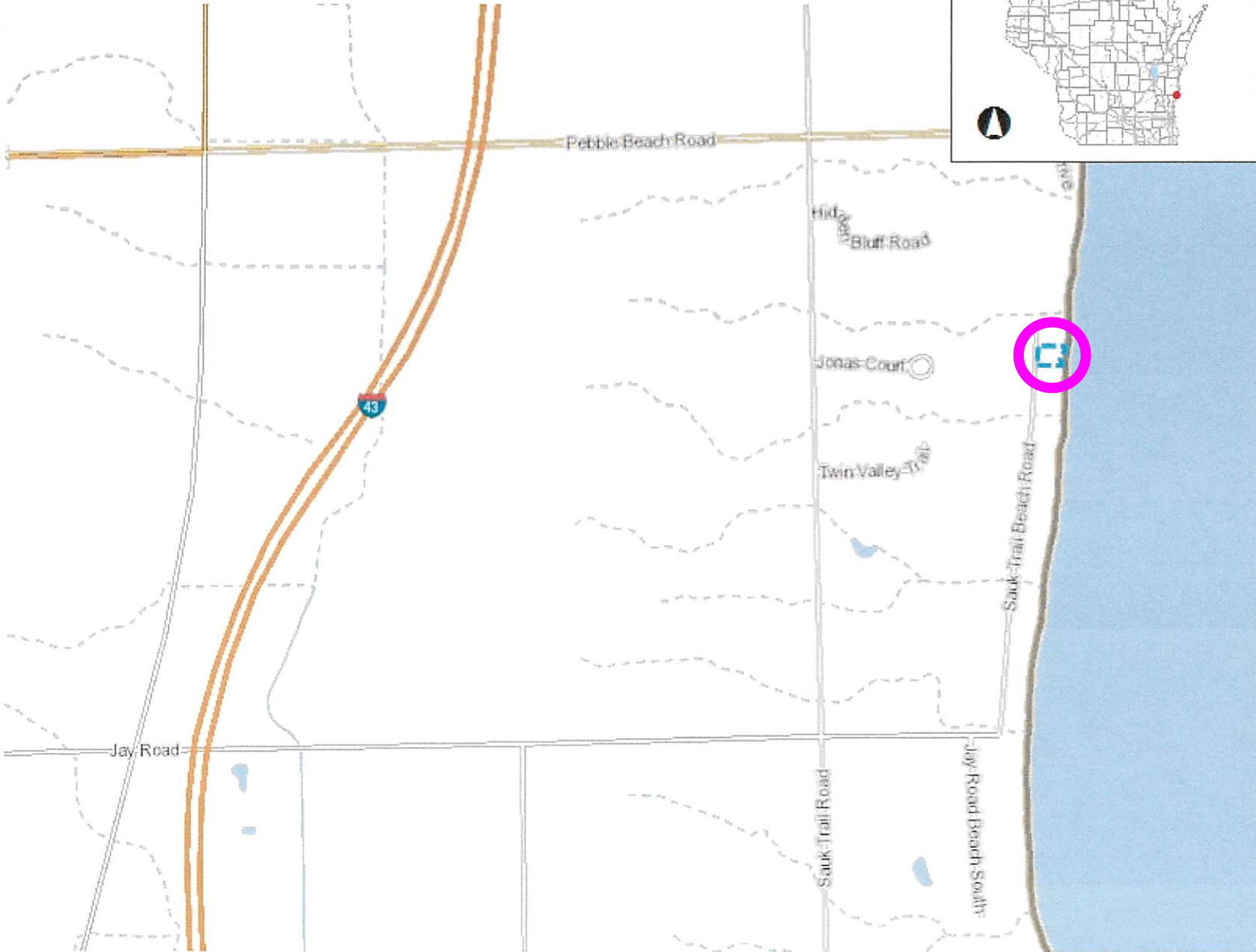
- a. [Office evaluation conducted 14 July 2025]
- b. [National Regulatory Viewer – USA Soils Hydric Class layer, National Wetland
- c. Inventory layer, Hillshade layer and DEM layer accessed on 14 June 2025.]
- d. [Wetland Delineation Report, submitted by Wetland & Waterway Consulting, LLC, dated October 2023.]

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.



Surface Water Data Viewer Map



- ### Legend
- Municipality
 - State Boundaries
 - County Boundaries
 - Major Roads**
 - Interstate Highway
 - State Highway
 - US Highway
 - County and Local Roads**
 - County HWY
 - Local Road
 - Railroads
 - Tribal Lands
 - Rivers and Streams
 - Intermittent Streams
 - Lakes and Open water

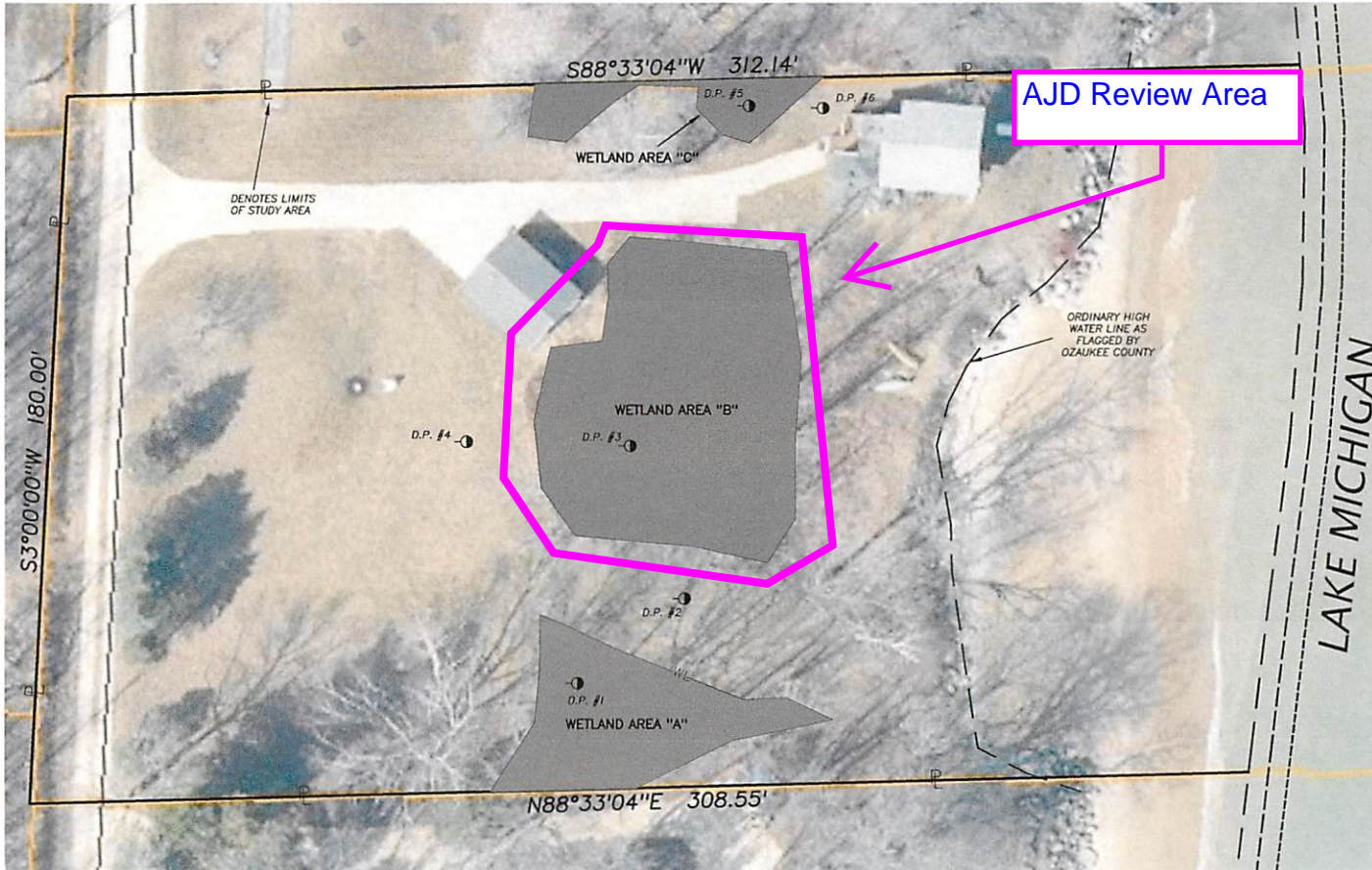


NAD_1983_HARN_Wisconsin_TM

1: 15,840

DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <http://dnr.wi.gov/legal/>

Notes



Property Coverage Statistics:

Total Property Area = 1.001 acres / 43,600 sq. ft. to the O.H.W.M.

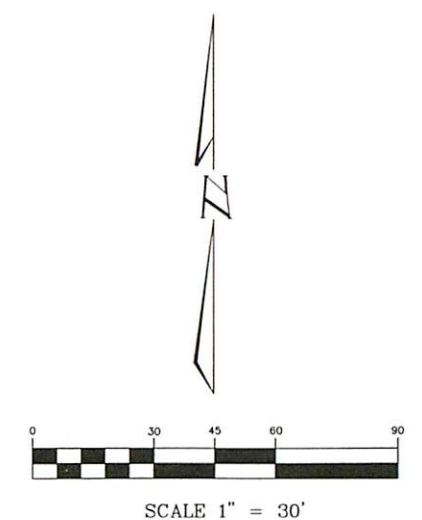
Wetland Area A = 0.041 acres / 1,796 sq. ft.

Wetland Area B = 0.102 acres / 4,422 sq. ft.

Wetland Area C = 0.014 acres / 603 sq. ft.

Total Wetlands = 0.157 acres / 6,821 sq. ft.


WETLANDS WERE DELINEATED BY WETLAND & WATERWAY CONSULTING LLC ON SEPTEMBER 20, 2023 AND LOCATED BY NSE ON SEPTEMBER 29, 2023



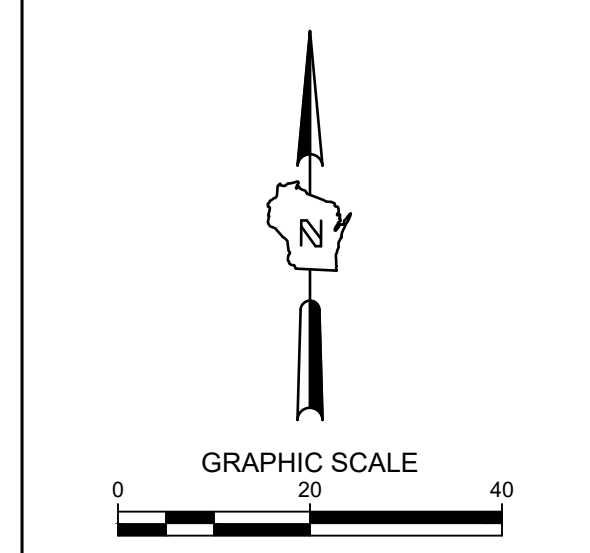
LEGAL DESCRIPTION :

Lots 55, 56, and 57 in "SAUK TRAIL BEACH", a Subdivision in Fractional 6, Township 12 North, Range 23 East, in the Town of Belgium, Ozaukee County, Wisconsin.

OWNER:
KRISTOFF & KRISTIN KIPP
7140 SAUK TRAIL BEACH RD
BELGIUM WI 53013

MARK	DATE	REVISION	BY	APPROD
 NORTH SHORE ENGINEERING, INC. Consulting Engineers & Land Surveyors 11433 N. Port Washington Rd., Shegoon, Wisconsin 53092 (262) 241-9400 • FAX: (262) 241-5337 www.northshoreengineering.net				

"WETLAND EXHIBIT"		
for Kristoff Kipp		
7140 Sauk Trail Beach Road Belgium, WI		
DATE:	OCTOBER 3, 2023	DRAWN BY: J.R.S.
FIELD CREW:	E.A.J. & S.F.Z.	1st No. LS-5607-23 WETLANDS



KRISTOFF KIPP
7410 SAUK TRAIL BEACH ROAD
CEDAR GROVE, WISCONSIN
SITE PLAN

PRELIMINARY
NOT FOR
CONSTRUCTION

ISSUANCE	DATE
NO. REVISION	DATE

PROJECT NO:	24221
DESIGN DATE:	---
PLOT DATE:	2025.07.08
DRAWN BY:	---
CHECKED BY:	---
APPROVED BY:	---
SHEET NO:	---

C100

LEGEND:	
---	SECTION 1/4 SECTION LINE
---	PROPERTY LINE
---	EASEMENT
-X-X-	CHAIN LINK FENCE
-O-O-	GUARD RAIL
-□-□-	METAL FENCE
-□-□-	WOOD FENCE
-○-○-	TREE LINE
---	OVERHEAD UTILITY LINE
OH	OVERHEAD UTILITY LINE
E	ELECTRIC
T	TELEPHONE
FO	FIBER OPTIC
CTV	CABLE TV
SAN	SANITARY SEWER
FS	FORCE MAIN
ST	STORM SEWER
W	WATER MAIN
G	GAS
670	EXISTING CONTOUR
WET	WETLAND
FP	FLOODPLAIN
⊕	UNKNOWN MANHOLE
⊙	SANITARY MANHOLE
⊗	STORM MANHOLE
⊕	ELECTRIC MANHOLE
⊙	MMSD MANHOLE
⊕	TELEPHONE MANHOLE
⊙	CLEANOUT
⊕	CATCH BASIN
⊙	CATCH BASIN (ROUND)
⊕	ROOF DRAIN
⊕	CULVERT END
⊕	HYDRANT
⊕	WATER VALVE
⊕	GAS VALVE
⊕	GAS METER
⊕	ELECTRIC METER
⊕	UTILITY PEDESTAL
⊕	HANDHOLE
⊕	VENT
⊕	MONITORING WELL
⊕	IRON PIPE FOUND/SET
⊕	REBAR FOUND/SET
⊕	CHISELED CROSS FOUND/SET
⊕	PK NAIL FOUND/SET
⊕	SPIKE/NAIL
⊕	MONUMENT
⊕	BENCHMARK
⊕	SIGN
⊕	PARKING METER
⊕	FLAG POLE
⊕	8" DECIDUOUS TREE
⊕	8" CONIFEROUS TREE
⊕	BUSH
⊕	POST
⊕	SOIL BORING
⊕	TRAFFIC SIGNAL
⊕	LIGHT POLE
⊕	UTILITY POLE
⊕	GUY WIRE
⊕	GUY POLE



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