

MVP

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), MVP-2025-00579-BCB

MVP

July 1, 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-2025-00579-BCB (MFR 1 of 1)<sup>2</sup>

**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>3</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>4</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>5</sup> the 2023 Rule as amended,

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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> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</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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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).

Basin 3 Wetland      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)

3. REVIEW AREA. The feature within the review area includes one wetland within a red polygon as shown on the attached figures labeled MVP-2025-00579-BCB Page 1 – 6 of 6.

- a. Project Area Size (in acres): 0.05
- b. Location Description: The project/review area is located in Section 17, Township 34 North, Range 26 West, Sherburne County, Minnesota.
- c. Center Coordinates of the Project Site (in decimal degrees)  
Latitude: 45.430880 Longitude: -93.599460
- d. Nearest City or Town: Zimmerman
- e. County: Sherburne
- f. State: Minnesota
- g. 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<sup>6</sup>

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<sup>6</sup> 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

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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>7</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>8</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

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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.

<sup>7</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>8</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.

MVP

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- 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>9</sup> 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).

Basin 3 wetland is not a TNWs, territorial sea, or interstate water and therefore is not an (a)(1) water. National Regulatory Viewer: USGS 3DEP map and hill shade, indicate that wetland 3 is a depressional wetland. The wetland is identified on the National Wetland Inventory database. The wetland does not physically abut a relatively permanent paragraph (a)(2) impoundment or a jurisdictional (a)(3) tributary and is not separated from a jurisdictional water by a natural berm, bank, dune, or similar natural landform. The wetland is approximately 1.42 miles west of Tibbits Brook which is a tributary to the Elk River. However, there are no ditches, swales, pipes, or culverts that connect this wetland to downstream jurisdictional waters. Wetland 3 is a non-tidal wetland that does not have a continuous surface connection to a relatively permanent jurisdictional water and as such does not meet the definition of adjacent and cannot be evaluated as (a)(4) adjacent wetlands; therefore, the wetland is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule. Thus, the wetland is not subject to Section 404 of the Clean Water Act (CWA).

- 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.

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

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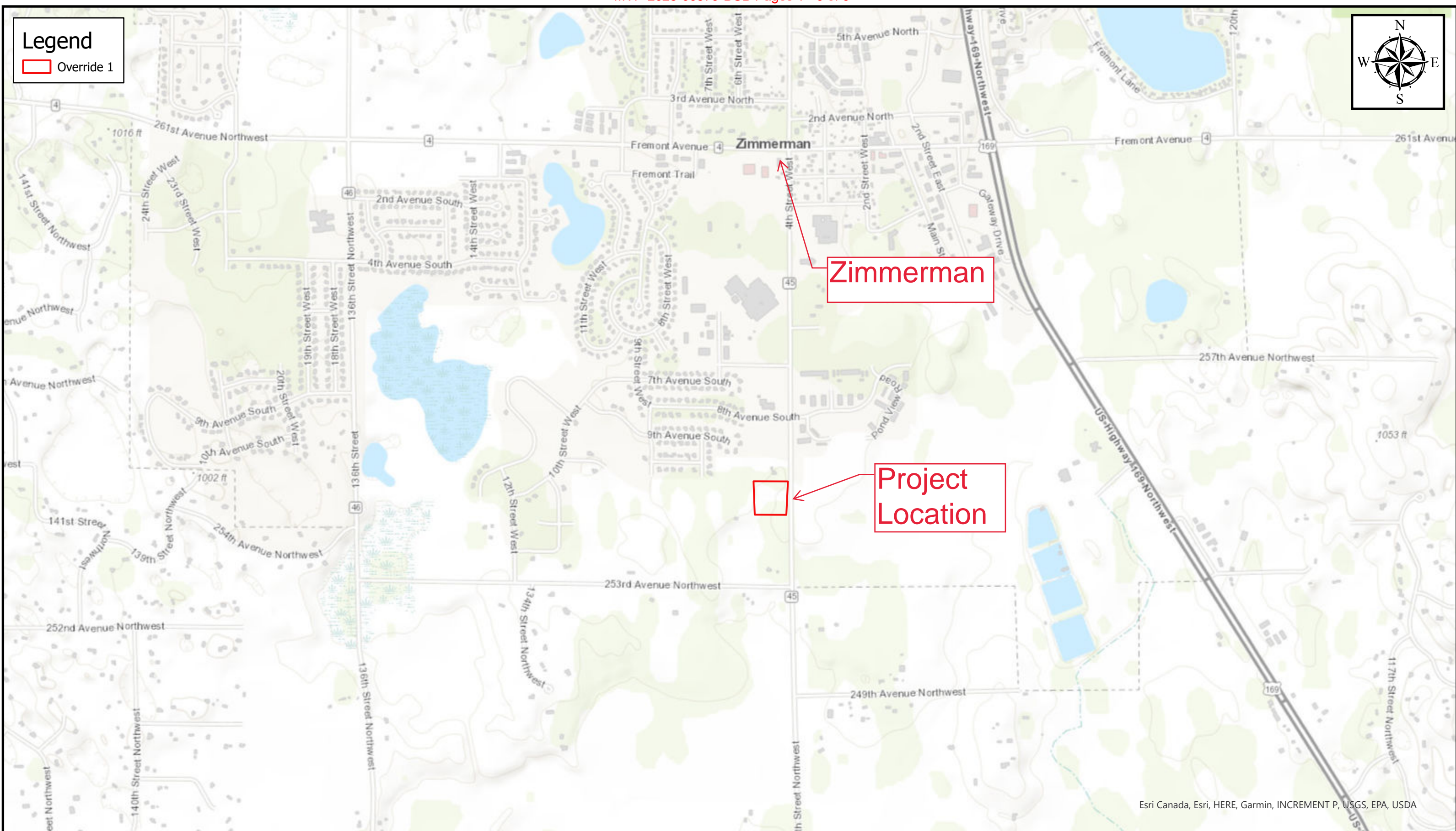
- a. USGS 3d Elevation Program (3DEP Map) 06/24/2025
- b. USGS Hill shade 06/24/2025
- c. NRV 06/24/2025
- d. NWI 06/24/2025

10. OTHER SUPPORTING INFORMATION. N/A

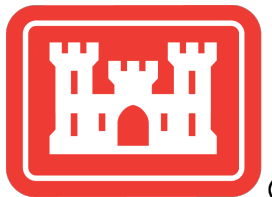
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

**Legend**

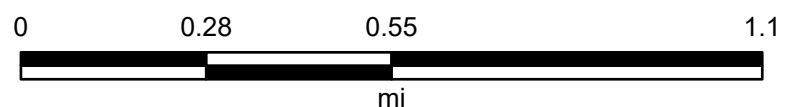
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Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA



**Project Location**



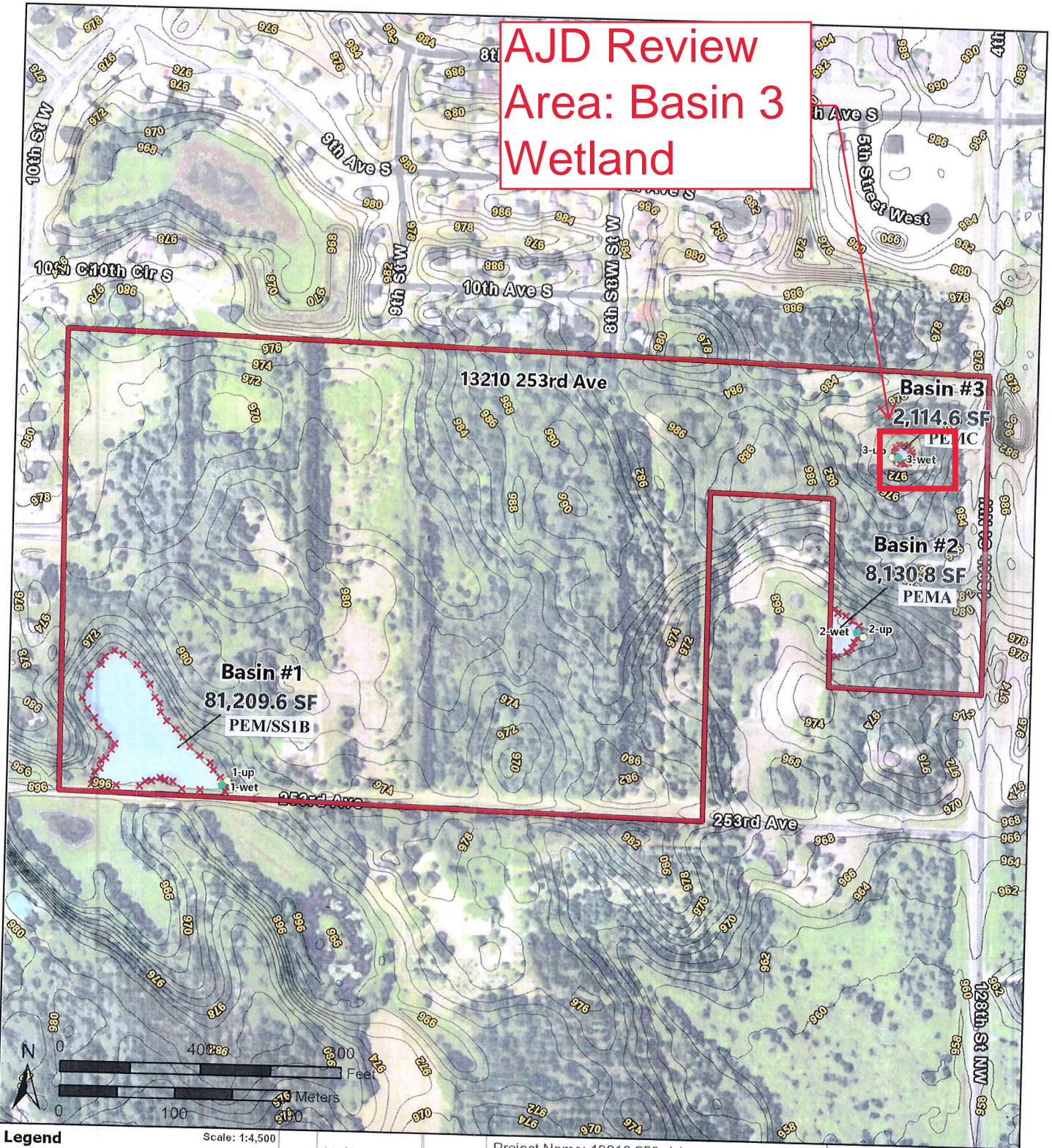
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Map Created by: Ben Bejcek

Date: 6/17/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere  
Projection: Mercator Auxiliary Sphere

**AJD Review  
Area: Basin 3  
Wetland**



- Legend**
- ✕ Wetland Delineation Points
  - Upland Sample Points
  - Wetland Sample Points
  - ▭ Subject Property
  - ▭ Wetland Boundary (On Site)
  - 1' USGS Contours

Scale: 1:4,500

Mille Lacs	
Sherburne	★
Wright	

Project Name: 13210 253rd Ave  
MDX Name: 2024-196 13210 253rd Ave

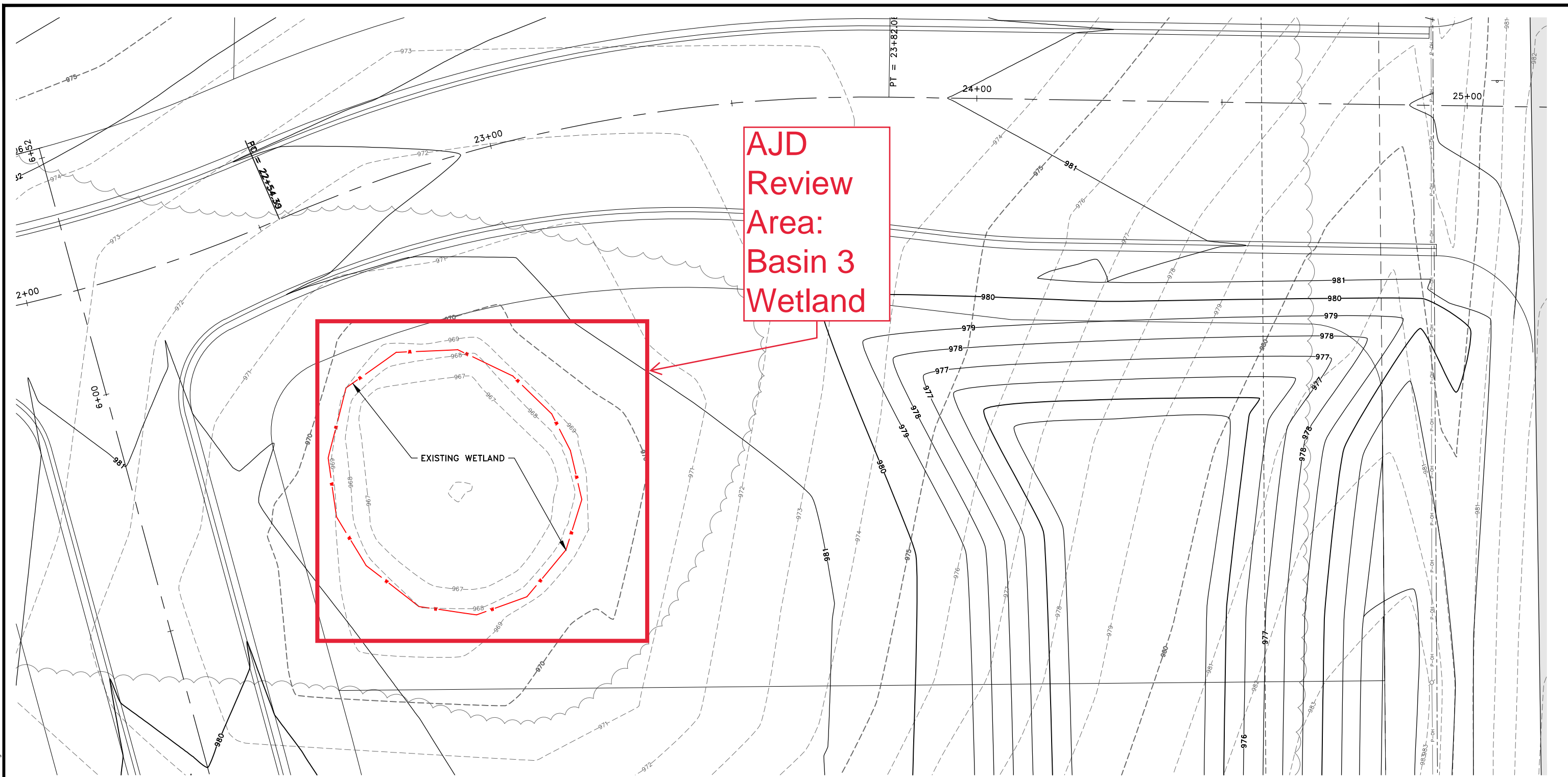
Date: 11/24/2024  
Project Number: 2024-196

**Figure 5:**  
**Jurisdictional Delineation Map**

Jacobson Environmental, PLLC.  
Phone: (612)-802-6619  
E-mail: jacobsonenv@msn.com



Source: Esri, USDA, FSA, Airbus, USGS, NGA, NASA, CGIAR, NCEAS, NLS, OS, NMA, Geodatastyrelsen, GSA, GSI and the GIS User Community. Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community



**AJD  
Review  
Area:  
Basin 3  
Wetland**

**EXISTING WETLAND**

May 19, 2025 - 4:25pm  
K:\PRIVATE\21-35.34\ENGINEERING\BASE DWG\21-35.34\_BA.dwg

DATE	REVISION



**Hakanson Anderson**  
Civil Engineers and Land Surveyors  
3601 Thurston Ave., Anoka, Minnesota 55303  
763-427-5860 FAX 763-427-0520  
www.hakanson-anderson.com

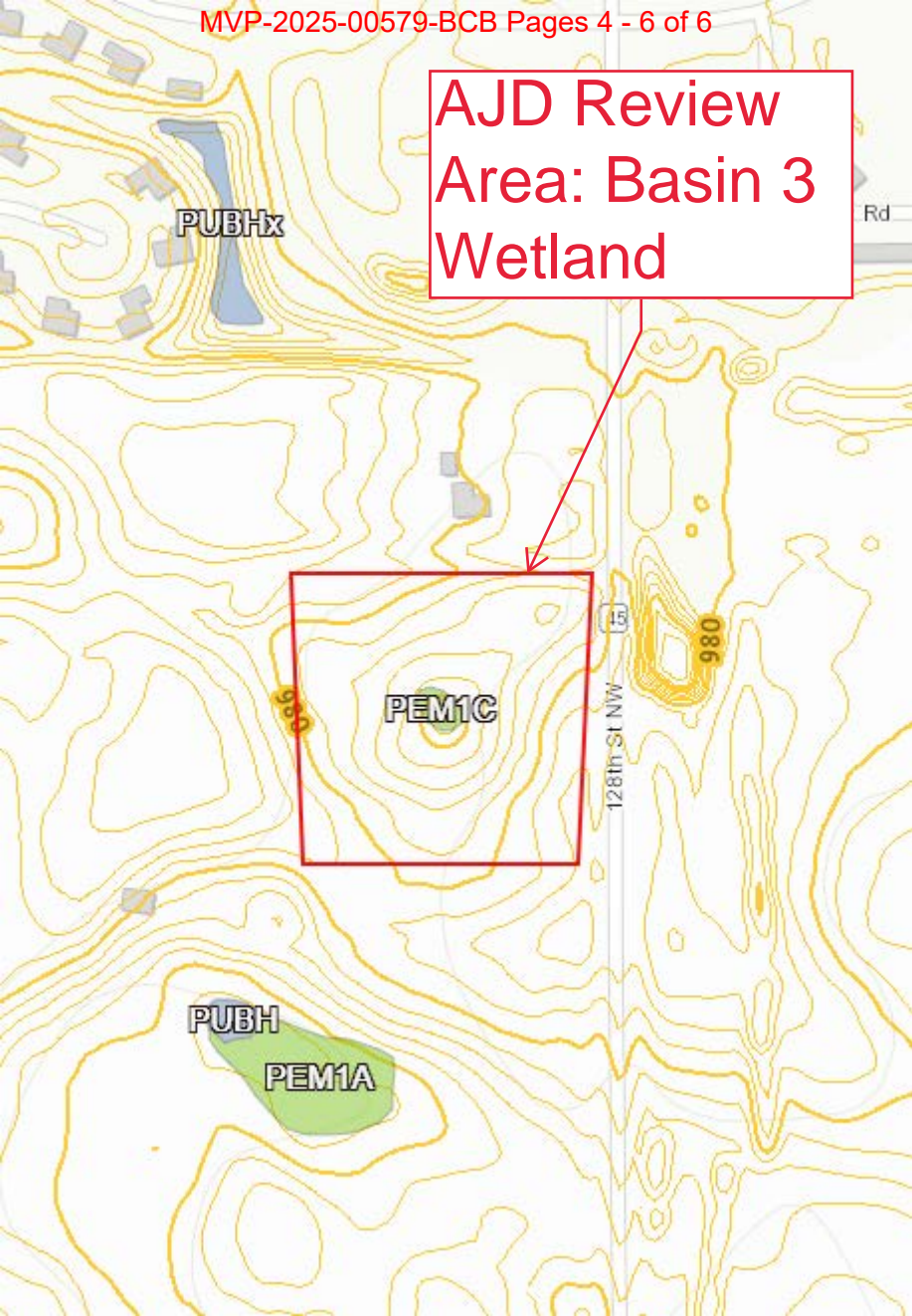
THE HOMES AT FREMONT

EXHIBIT 5 - PREFERRED ALTERNATIVE

CITY OF ZIMMERMAN, MINNESOTA

SHEET  
1  
OF  
1  
SHEETS

**AJD Review  
Area: Basin 3  
Wetland**



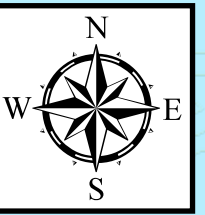
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MN Contours - 2ft

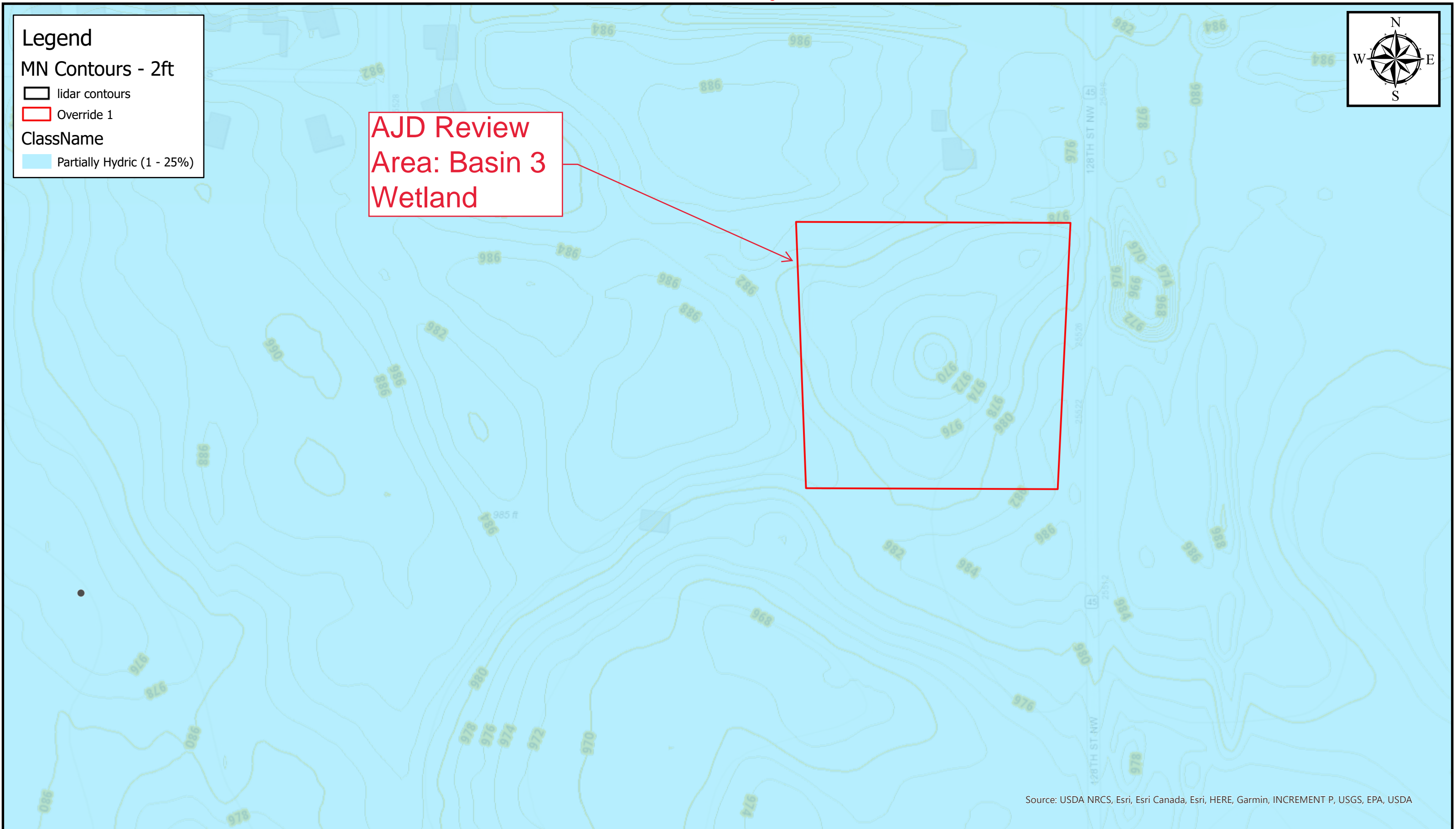
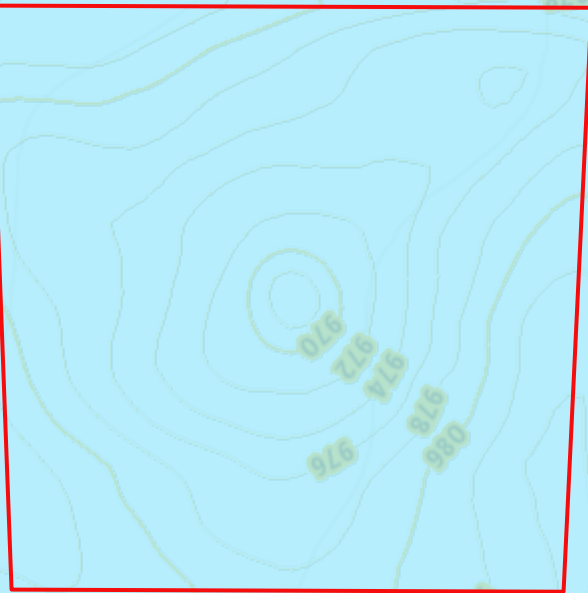
- lidar contours
- Override 1

**ClassName**

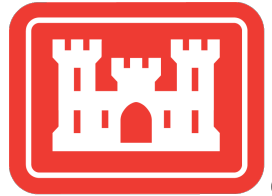
- Partially Hydric (1 - 25%)



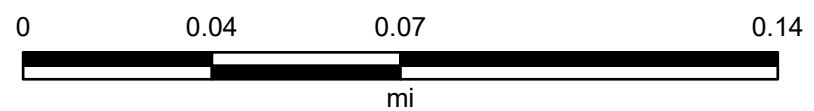
**AJD Review  
Area: Basin 3  
Wetland**



Source: USDA NRCS, Esri, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA



**Hydric Soils**

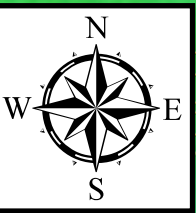


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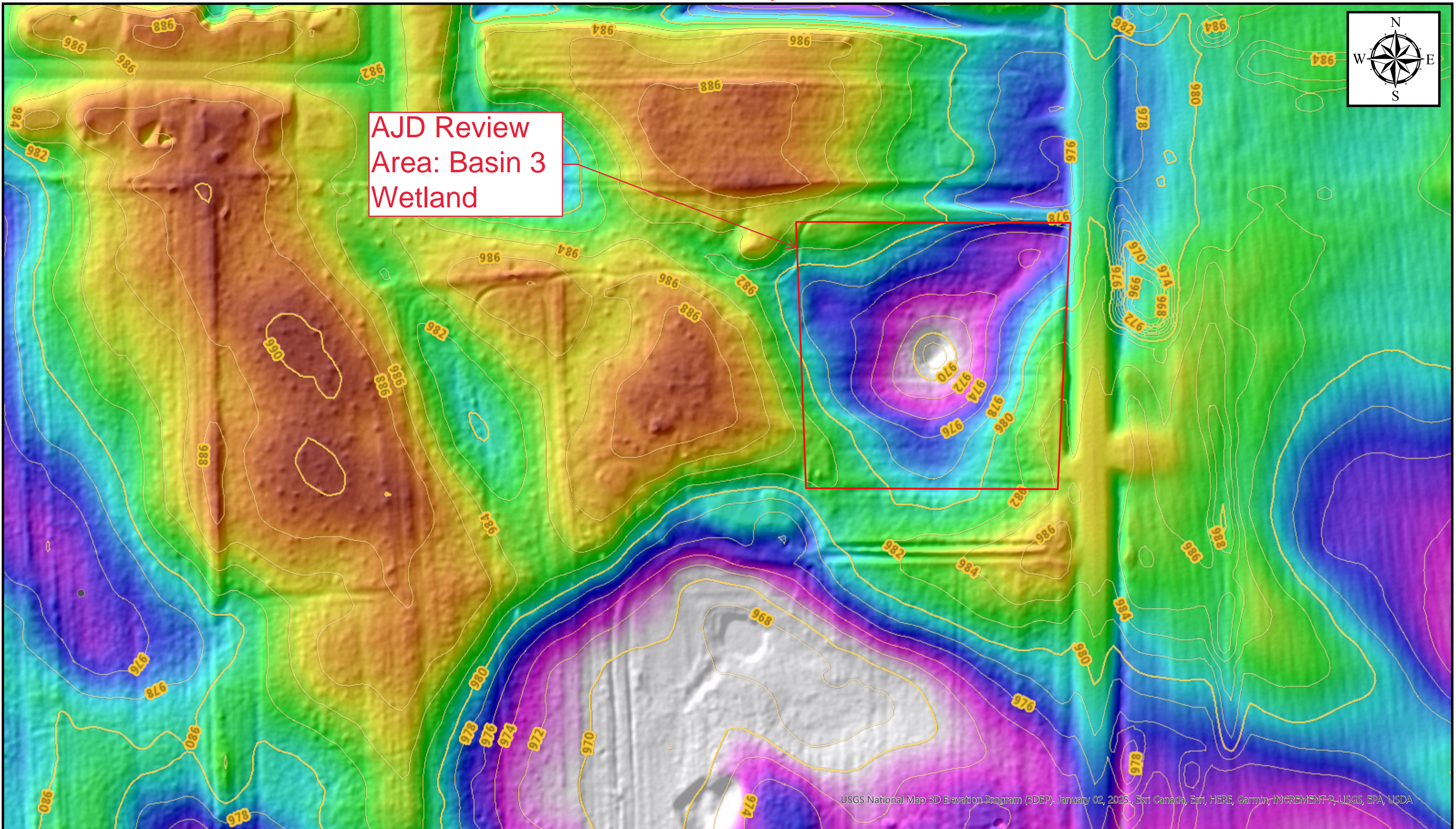
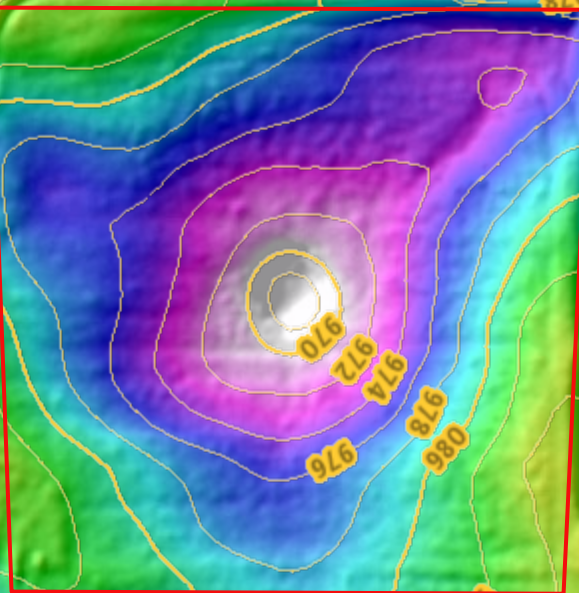
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Date: 6/17/2025

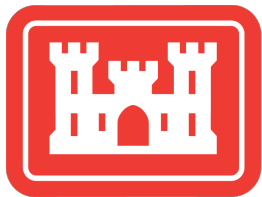
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Projection: Mercator Auxiliary Sphere



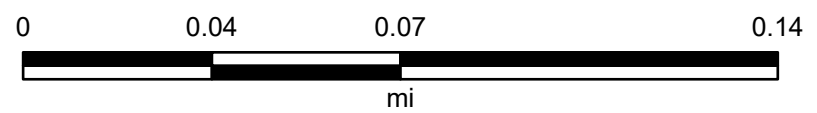
AJD Review  
Area: Basin 3  
Wetland



USGS National Map 3D Elevation Program (3DEP). January 02, 2025. Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA



3DEP Map with Contours



Map Center: 93.595659°W 45.431608°N

Map Created by: Ben Bejcek

Date: 6/17/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere  
Projection: Mercator Auxiliary Sphere