



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

MVP

05 May 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-2025-00342-PJH 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.<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. 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).
  - i. [Wastewater Pond 1 is an approximately 2.42-acre man-made wastewater treatment pond that is non-jurisdictional.](#)
  - ii. [Wastewater Pond 2 is an approximately 1.05-acre man-made wastewater treatment pond that is non-jurisdictional.](#)
  - iii. [Wetland 1 is an approximately 0.31-acre depressional basin that is non-jurisdictional.](#)
  - iv. [Wetland 2 is an approximately 1.21-acre depressional basin that is 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 subject aquatic resources are within an approximately 17.50-acre review area identified by the blue polygon in the figure labeled MVP-2025-00342-PJH Page 2 of 3. The review area is located in Comstock, Clay County, Minnesota. Center coordinates are 46.668989°, -96.746919°. The review area is located in Section 21, Township 137 North, Range 48 West.](#)

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

[The nearest downstream Traditional Navigable Water \(TNW\) to which the subject aquatic resources are connected to is the Red River of the North. The Red River of the North is an \(a\)\(1\)\(ii\) interstate water that is regulated under Section 10 of the River and Harbors Act of 1899.](#)

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

The subject aquatic resources are connected to an (a)(3) tributary, Wolverton Creek, via an 8-inch diameter plastic discharge pipe. The discharge pipe transports wastewater from a nearby treatment facility to Wolverton Creek twice a year on average. The discharge pipe does not serve as a continuous surface connection as the flow does not meet the relatively permanent standard. From the discharge outlet, Wolverton Creek flows approximately 5 miles in a northwest direction to its confluence with the Red River of the North.

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](#)

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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.

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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](#)

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>

[Wastewater Pond 1 consists of an approximately 2.42-acre man-made wastewater treatment pond and can be seen on the figure labeled MVP-2025-00342-PJH Page 2 of 3. The man-made pond was created for the purpose of collecting and treating wastewater from the nearby community. The pond is currently being used for the function for which the system was designed. Wastewater Pond 1 meets the definition of a \(b\)\(1\) exclusion; therefore, is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule. The regulations exclude waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act.](#)

[Wastewater Pond 2 consists of an approximately 1.05-acre man-made wastewater treatment pond and can be seen on the figure labeled MVP-2025-00342-PJH Page 2 of 3. The man-made pond was created for the purpose of collecting and treating wastewater from the nearby community. The pond is currently being used for the function for which the system was designed. Wastewater Pond 2 meets the definition of a \(b\)\(1\) exclusion; therefore, is not jurisdictional under the 2023 Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 Final Rule. The regulations exclude waste treatment](#)

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

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systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act.

- 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).

Wetland 1 is an approximately 0.31-acre depressional basin that is non-jurisdictional. The wetland is not a Traditional Navigable Water (TNW), territorial sea, or interstate water, therefore is not an (a)(1) water. The wetland does not physically abut a relatively permanent (a)(2) impoundment or jurisdictional (a)(3) tributary. The closest tributary, Wolverton Creek, is located approximately 0.52 miles East of Wetland 1 and can be seen on the figure labeled MVP-2025-00342 AJD Page 2 of 3. The wetland does not have a continuous surface connection (CSC) to Wolverton Creek. Wetland 1 is a non-tidal wetland that does not have a CSC to a relatively permanent jurisdictional water, and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, is not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

Wetland 2 is an approximately 1.21-acre depressional basin that is non-jurisdictional. The wetland is not a Traditional Navigable Water (TNW), territorial sea, or interstate water, therefore is not an (a)(1) water. The wetland does not physically abut a relatively permanent (a)(2) impoundment or jurisdictional (a)(3) tributary. The closest tributary, Wolverton Creek, is located approximately 0.51 miles East of Wetland 2 and can be seen on the figure labeled MVP-2025-00342 AJD Page 2 of 3. The wetland does not have a continuous surface connection (CSC) to Wolverton Creek. Wetland 2 is a non-tidal wetland that does not have a CSC to a relatively permanent jurisdictional water, and as such does not meet the definition of adjacent and cannot be evaluated as an (a)(4) adjacent wetland; therefore, is not jurisdictional under the 2023 Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 Final Rule.

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. Multiple office evaluations conducted April 25, 2025 – April 30, 2025.
  - b. Aerial Imagery: Google Earth Pro, MN NAIP 2019, MN NAIP-2019-CIR

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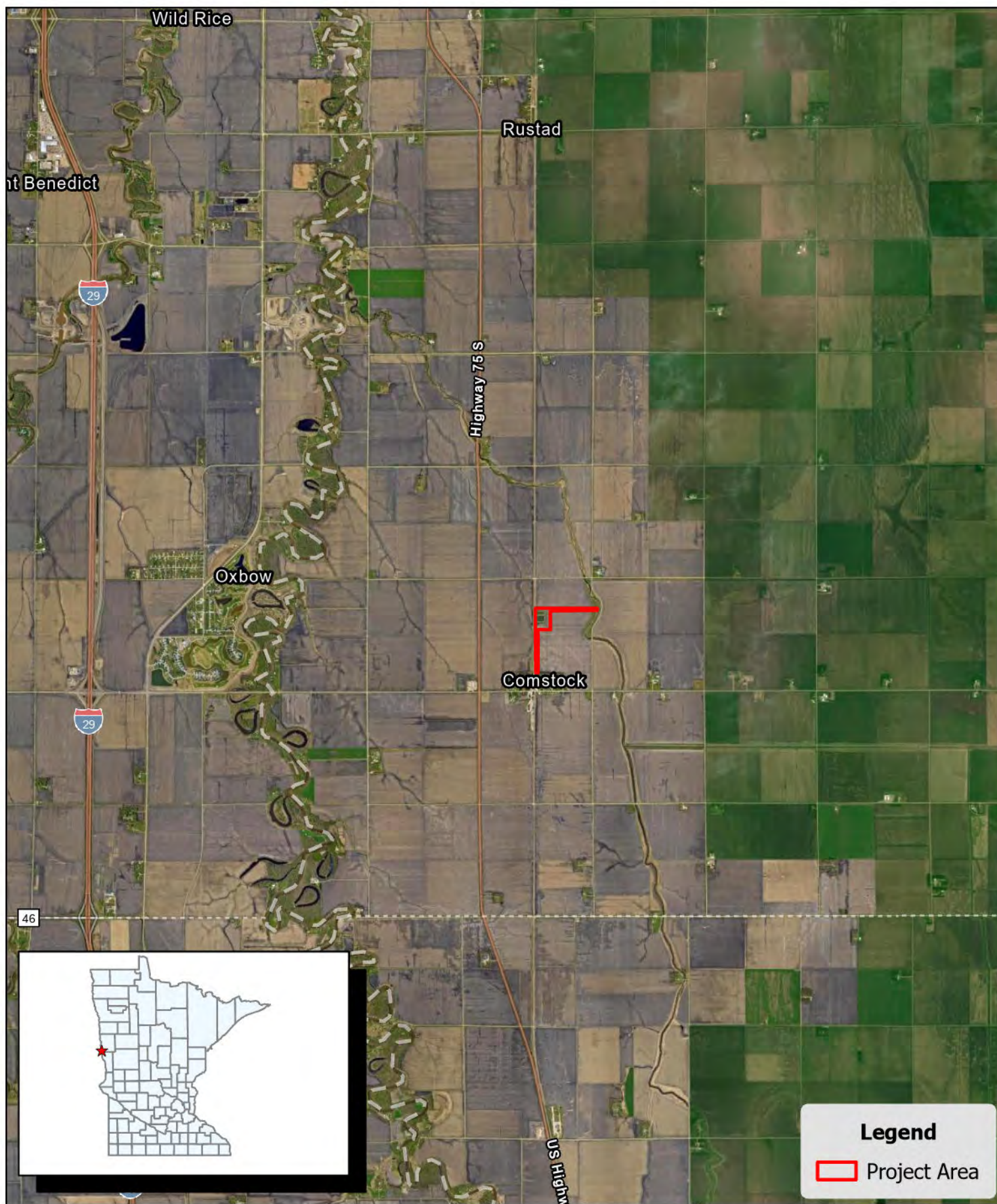
- c. [LiDAR: MNDNR Hillshade – 2016, 3DEP Hillshade](#)
- d. [3DEP Digital Elevation Model \(DEM\), 3DEP Slope, MN Contours – 2ft](#)

#### 10. OTHER SUPPORTING INFORMATION.

[This jurisdictional determination is associated with a proposed project to modify and expand existing wastewater treatment ponds and the connected infrastructure.](#)

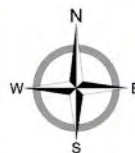
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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





**Figure 1- Site Location Map**  
**Comstock Lagoons**  
**City of Comstock, Minnesota**

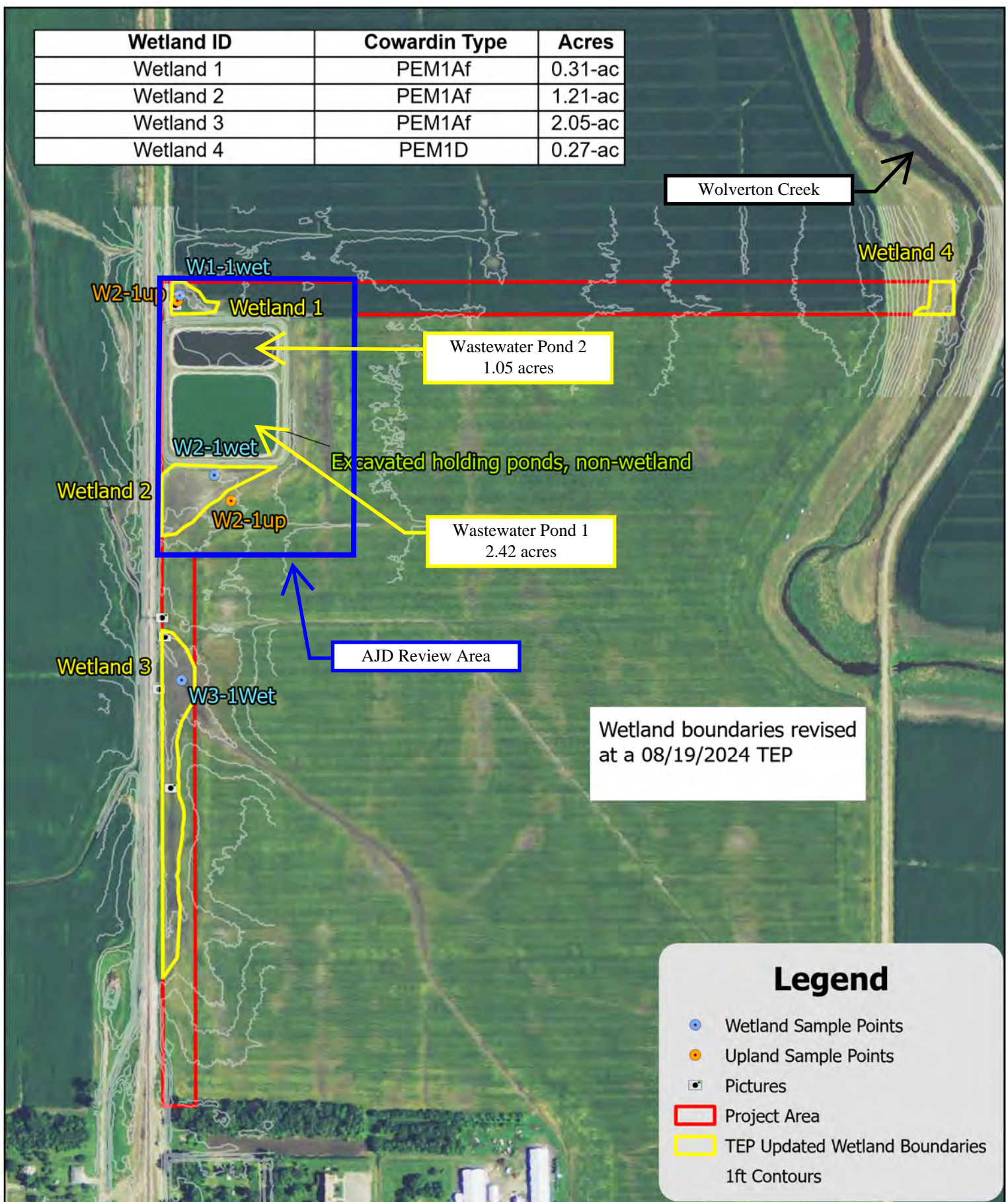
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engineering, inc.

Created By: MA Date Created: 05/21/24 Date Saved: 05/23/24 Date Exported: 05/21/24  
Delineated By: MA (Moore Engineering, Inc) Delineated on: 05/01/24 Aerial Image: 2021 County NAIP SIDS  
T:\Projects\21500\21571\10\_ArcPro\WetlandCollection\_21571\Environmental\WetlandCollection\_221571.aprx





**Figure 3 - TEP Updated Delineated Aquatic Features  
Comstock Lagoons  
City of Comstock, Minnesota**

0 500 1,000  
Feet



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**SANITARY SEWER SYSTEM  
COMSTOCK, MINNESTOA**

Created By: TJS Date Created: 01/11/22 Date Saved: 01/13/22 Date Plotted: NEVER Date Exported: 01/13/22  
Plotted By: tanner.schmidt Parcel Date: 12/20/21 Aerial Image: 2020 FM Metro Elevation Data: Lidar  
Horizontal Datum: NAD 1983 HARN Adj MN Clay Feet Vertical Datum: NAVD1988  
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