



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. LOUIS DISTRICT
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103

CEMVS-RD

November 3, 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 [MVS-2024-445](#)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.

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).

- 1) Wetland A (0.94-acre), jurisdictional (Section 404)
- 2) Wetland B (3.49-acres), non-jurisdictional
- 3) Wetland C (0.57-acre), non-jurisdictional
- 4) Pond A (0.23-acre), jurisdictional (Section 404)
- 5) Open-Water Ditch (0.84-acre), jurisdictional (Section 404)

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) (2023 Rule, as amended)
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
- d. Citing to the 27 September coordination memo, specifically to the language which reads, "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."

3. REVIEW AREA. The Review Area consists of approximately 48-acres near Granite City, Madison County, Illinois. The Review Area generally lies in Section 19, Township 3 North, and Range 8 West. Approximate coordinates for the Review Area are Latitude 38.7038° and Longitude -90.0338°.

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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [Drainage from the Review Area enters the Open-Water Ditch where water accumulates until the Metro East Sanitary](#)

District (MESD) lift station activates pumping water into the adjoining Cahokia Canal. Cahokia Canal flows west-southwest to another MESD pump station, that has a gravity drain, leading to the Mississippi River, a TNW. The Mississippi River is a Section 10 water throughout the St. Louis District Area of Review.

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ **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):
 - **The Open-Water Ditch and Pond A** are perennially pooled open-water resources that meet the Relatively Permanent Standard (RPS) by capturing water from an approximately 250-acre watershed within a low-lying area along the leveed Cahokia Canal. The relatively permanent flow characteristics observed at the reach's downstream limit near the lift

⁶ 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.

⁷ 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.

station remain representative of the entire reach extending west and north through the series of ponds outside the Review Area. Neither feature was observed with a tributary entering or exiting the limits of the OHWM nor was either feature constructed on a tributary that would have previously met the definition of a water of the United States; however, in combination with the lift station, both features indirectly contribute flow to Cahokia Canal. The excavated resources, which share an Ordinary High-Water Mark (OHWM) connect Wetland A, and other off-site aquatic resources to a lift station at Latitude 38.7058° and Longitude -90.0302°. Based on conversations with the operator, the lift station, which lacks a gravity drain, activates at a particular water surface elevation (WSE) within the Open-Water Ditch. Any ½-inch or greater rain event would raise the WSE enough to activate the lift station when the features are at capacity. Based on this information pump would run at least 15-25 times per year (based on APT precipitation event data from 1-year). At adequate WSE, the lift pump activates sending water vertically approximately 12-feet, then east through a 12-inch pipe through the Cahokia Canal levee system. The outfall for the lift station is approximately 12-feet above the ordinary high-water mark of Cahokia Canal inside the levees, which allows for continued conveyance during flood events. The elevational difference between the Open-Water Ditch (406' above mean sea level (amsl)) and the receiving water - Cahokia Canal (410' amsl) is 4 feet.

f. Adjacent Wetlands (a)(4):

- **Wetland A** is a depressional forested wetland abutting Pond A. The wetland receives hydrology from the south (upslope) as well as from Pond A when it is at or above its OHWM. Wetland A abuts and has a continuous surface connection to Pond A and the Open Water Ditch, a relatively permanent tributary connected to the Mississippi River, a TNW.
 - Flow Path: Wetland A -> Pond A / Open-Water Ditch (RPW)

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).⁸

- 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 B** and **Wetland C** are depressional wetlands that collect surface run-off from within and south of the Review Area. Both features are sparsely vegetated forested wetlands that are oriented south to north following historic drainage patterns throughout the floodplain area. The features terminate shy of the northern limits of the Review Area. An upland maintained right-of-way and spoil berm lies between the wetlands and the Open-Water Ditch. Wetland C begins south of the review area, near the edge of the agricultural field where it continues north into the Review Area. An access road with a culverted crossing bisects Wetland C. Both wetlands are surrounded by upland areas. No discrete features or non-RPW tributaries were identified exiting the wetland features downslope; therefore, Wetlands B and C do not have a continuous surface connection (CSC) to a requisite water.

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. Wetland and Waterbody Delineation Report dated July 18, 2024
- b. USACE Site Visit; September 17, 2024
- c. USGS Topographic Maps, 1:24,000 Scale, Monks Mound, IL Quad
- d. USGS NHDPlus
- e. USGS Stream Stats
- f. Antecedent Precipitation Tool
- g. USDA-NRCS Soil Survey for Madison County, Illinois
- h. USGS Illinois Geologic Maps
- i. USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale
- j. Illinois Height Modernization (ILHMP) LiDAR Data
- k. Illinois Historic Aerial Photography – ISGS Geospatial Data Clearinghouse
- l. Google Earth Pro Aerial Imagery, Various Aerial Images

⁸ 88 FR 3004 (January 18, 2023)

10. OTHER SUPPORTING INFORMATION.

Antecedent Precipitation Tool Results

Delineation Field Evaluation Dates:

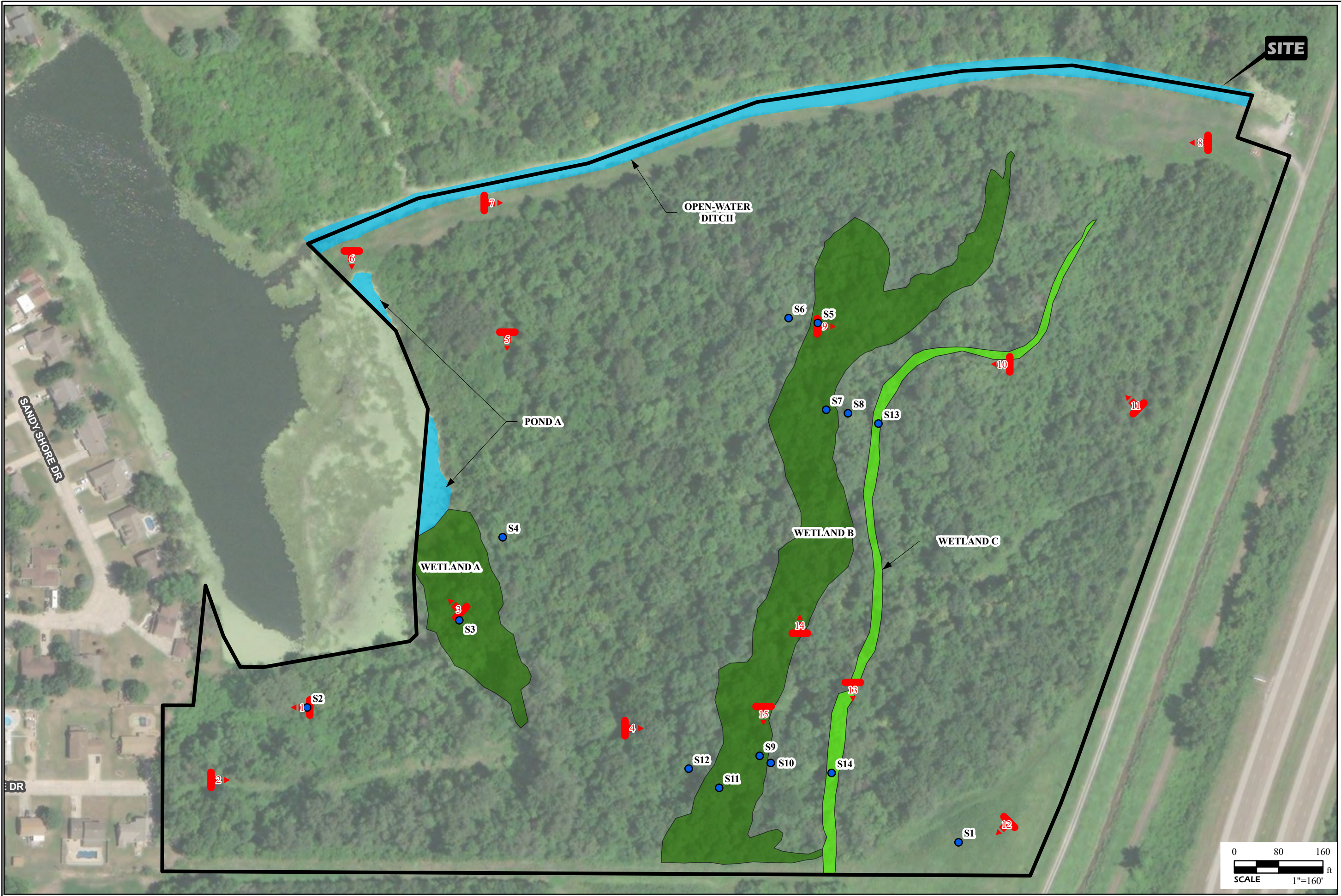
June 7, 2024: Dry Season / Wetter than Normal

Table 1. Aquatic Resources Identified within the Review Area

Wetland ID	Latitude	Longitude	Area (Acres)	Wetland Type	CSC	WOTUS
Wetland A	38.7034°	-90.0355°	0.94	PFO	Yes	Yes
Wetland B	38.7025°	-90.0338°	3.49	PFO	No	No
Wetland C	38.7025°	-90.0331°	0.57	PEM/PFO	No	No
Pond A	38.7040°	-90.0358°	0.23	Open-Water	N/A	Yes
Open-Water Ditch	38.7060°	-90.0323°	0.84	Open-Water	N/A	Yes

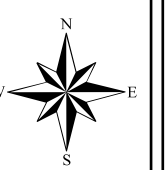
- [Joint Policy Memorandums on NWK-2022-00809, NAP-2023-01223, & SWG-2023-00284](#)

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.

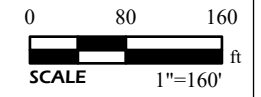


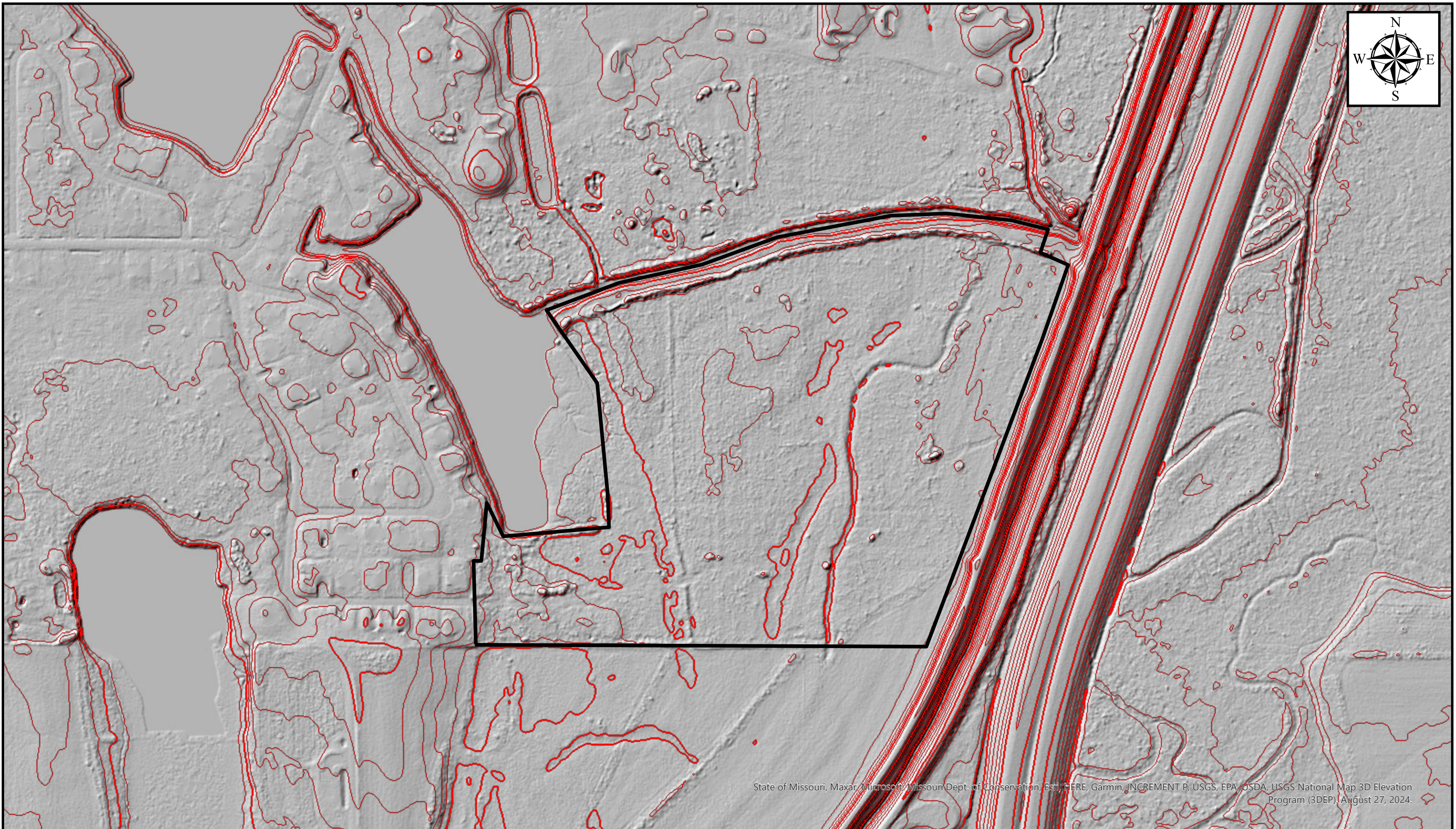
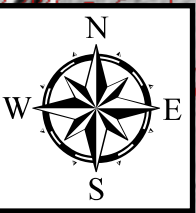
GENERAL NOTES/LEGEND
 AERIAL PHOTOGRAPH OBTAINED FROM ARCGIS ONLINE, WORLD IMAGERY.
 DIMENSIONS AND LOCATIONS ARE APPROXIMATE; ACTUAL MAY VARY. DRAWING SHALL NOT BE USED OUTSIDE THE CONTEXT OF THE REPORT FOR WHICH IT WAS GENERATED.

PROJECT NAME
 MORRISON FARM
 GRANITE CITY, ILLINOIS
 WETLAND DELINEATION &
 AERIAL PHOTOGRAPH



JOB NUMBER
 2024-0712.30
 FIGURE DATE
 07/18/2024
 DRAWN BY
 ACV
 CHECKED BY
 MSH
 FIGURE
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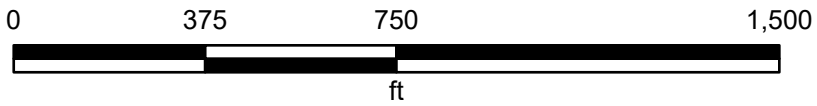




State of Missouri, Maxar, Microsoft, Missouri Dept. of Conservation, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, USGS National Map 3D Elevation Program (3DEP), August 27, 2024.



MVS-2024-445



Map Center: 90.034319°W 38.704148°N

Map Created by: K. Metzger

Date: 9/18/2024

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