



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

CEMVS-RD

October 10, 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-2024-486](#)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 1 (0.08-acre), non-jurisdictional (excluded)
- 2) Wetland 2 (0.001-acre), non-jurisdictional (excluded)
- 3) Wetland 3 (0.09-acre), non-jurisdictional (excluded)
- 4) Wetland 4 (0.10-acre), non-jurisdictional (excluded)
- 5) Wetland 5 (0.04-acre), non-jurisdictional (excluded)
- 6) Wetland 6 (0.02-acre), non-jurisdictional (excluded)
- 7) Wetland 7 (0.04-acre), non-jurisdictional (excluded)

Note: Multiple drainage swales and drainage ditches are illustrated on the Wetland Delineation Exhibit – these features lack an OHWM and therefore are only included in analyses for other aquatic resource with respect to providing physical connection(s).

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 117-acres proposed for solar development near Trenton, Clinton County, Illinois. The Review Area generally lies in Section 30, Township 2 North, and Range 5 West. Approximate coordinates for the Review Area are Latitude 38.5849° and Longitude -89.6904°.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Kaskaskia River \(TNW\)](#)
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [An unnamed tributary to Sugar Creek, south of the Review Area, is the receiving waters for all the surface drainage that leaves the Review Area. Sugar Creek eventually intersects the Kaskaskia River, a TNW. The Kaskaskia River is a Section 10 water from mile 0 to mile 36.2 \(navigation project\) at the grade control structure near Fayetteville, Illinois.](#)
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): [N/A](#)

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.

- 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).⁸

[Wetlands 1 through 7](#) are emergent wetlands confined to the limits of constructed agricultural and roadside ditches, that do not replace previously existing aquatic resources within their respective locations. The ditches and associated wetlands are illustrated on aerial images dating back to 1938. As such, these seven (7) wetlands are excluded as paragraph (b)(3) waters as they lie within constructed ditches that were excavated wholly in and draining only dry land and do not carry relatively permanent flows.

- 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).
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 Delineation Report dated June 28, 2024](#)
 - b. [USGS Topographic Maps, 1:24,000 Scale, Trenton, IL Quad](#)
 - c. [USGS NHDPlus](#)
 - d. [USGS Stream Stats](#)
 - e. [Antecedent Precipitation Tool](#)
 - f. [USDA-NRCS Soil Survey for Clinton County, Illinois](#)
 - g. [USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale](#)
 - h. [Illinois Height Modernization \(ILHMP\) LiDAR Data](#)
 - i. [Illinois Historic Aerial Photography – ISGS Geospatial Data Clearinghouse](#)
 - j. [Google Earth Pro Aerial Imagery, Various Aerial Images](#)

⁸ 88 FR 3004 (January 18, 2023)

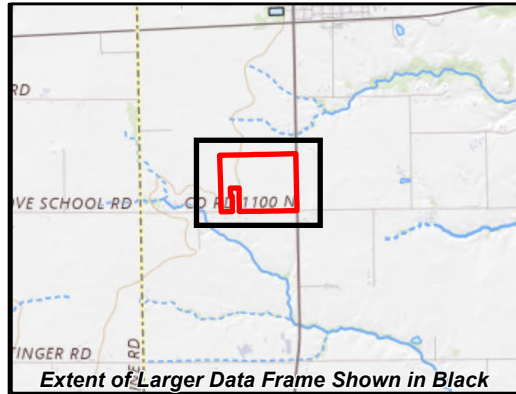
CEMVS-RD

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVS-2024-486](#)

10. OTHER SUPPORTING INFORMATION.

Joint Policy Memorandums: [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.



Proposed Lease Boundary. Please note - this lease boundary has not been finalized.

Legend

Property Boundary (+/-117.45 acres)

Culvert-Box

Culvert-Pipe

Parking Lot SW Discharge Point

Drainage Ditch

Drainage Swale

Rip-Rapped Drainage Swale

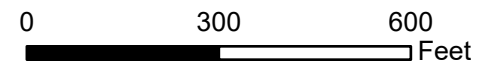
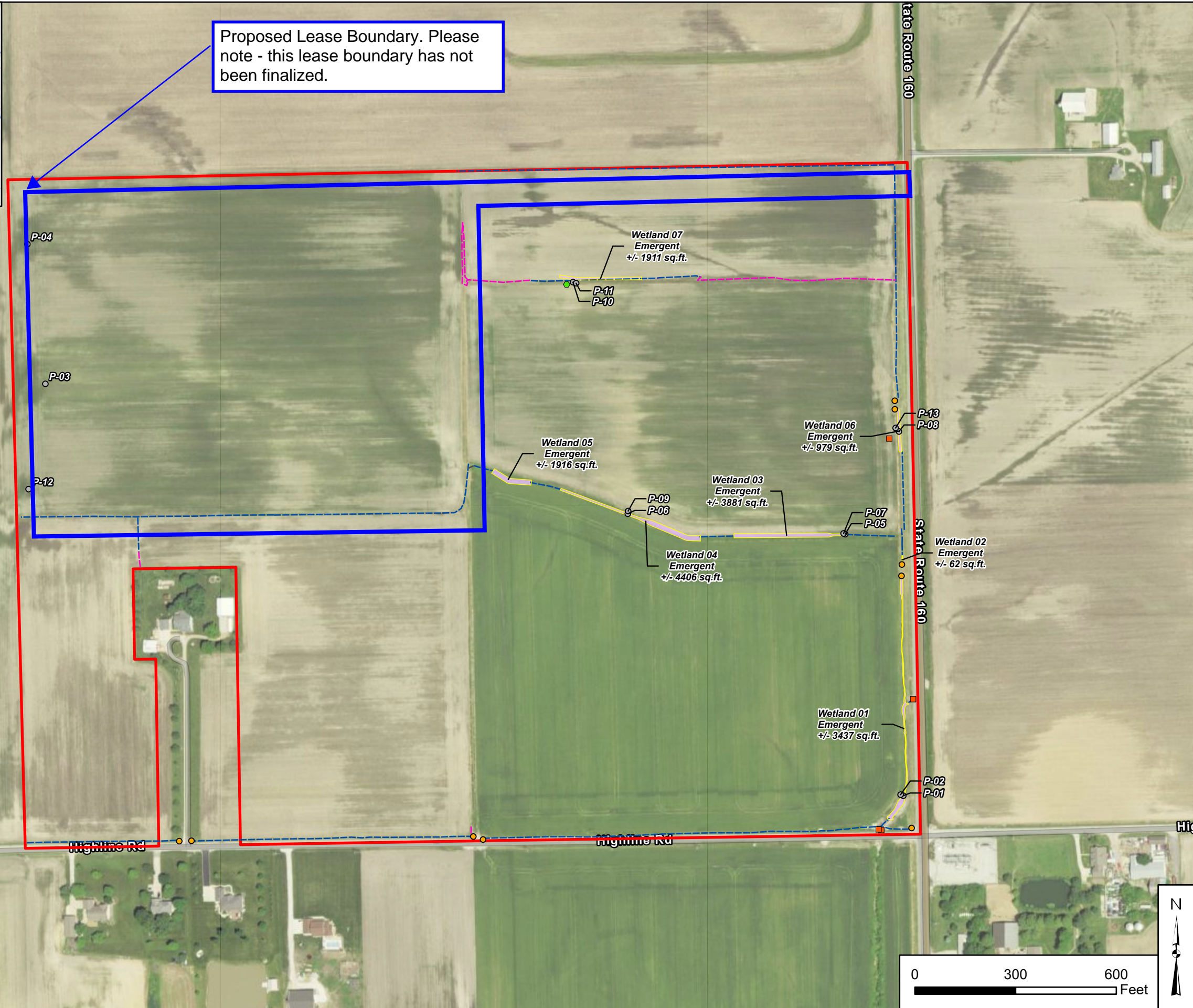
Sample Plot

Delineated Wetland

Wetland Boundary

National Wetland Inv. Classification

Palustrine Emergent Wetland (+/-16593 sq. ft.)



GEI

Consultants

3159 Voyager Drive

Green Bay, WI 54311

www.geiconsultants.com

FIGURE 5

WETLAND DELINEATION MAP

DIMENSION RENEWABLES ENERGY, LLC

GRAESSER SOLAR SITE

CLINTON COUNTY, ILLINOIS

Drawn: 6/25/2024

Approved: 6/25/2024

Scale: As Shown

GEI Project No: 2403528

Figure 5

Document Path: B:\Working\DIMENSION ENERGY\2403528 Home-Grown Illinois Solar Portfolio\05_GIS\ArcGIS_Pro\Wetland Delineation\2403528 Home-Grown Illinois Solar Portfolio_WetlandDelineation.aprx

Source Credits: USGS The National Map