



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

CEMVS-OD-F

March 4, 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-2024-80](#)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).

Tributaries

- 1) S-1 (793 feet), non-jurisdictional
- 2) S-2 (7,643 feet), jurisdictional (Section 404)
- 3) S-3 (419 feet), non-jurisdictional
- 4) S-10 (300 feet), non-jurisdictional
- 5) S-11 (492 feet), non-jurisdictional

Wetlands

- 6) W-2 (0.01-acre), non-jurisdictional
- 7) W-5 (0.15-acre), non-jurisdictional
- 8) W-6 (0.01-acre), non-jurisdictional
- 9) W-7 (0.10-acre), non-jurisdictional
- 10) W-8 (0.03-acre), non-jurisdictional
- 11) W-9 (0.17-acre), non-jurisdictional
- 12) W-10 (0.06-acre), non-jurisdictional
- 13) W-11 (0.01-acre), non-jurisdictional
- 14) W-12 (0.22-acre), non-jurisdictional
- 15) W-17 (0.09-acre), non-jurisdictional
- 16) W-19 (0.02-acre), non-jurisdictional
- 17) W-25 (2.90-acre), non-jurisdictional

See Tables 1 and 2 in Section 10 for more detailed information relating to each aquatic resource presented above.

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. ___, 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.”

- e. Citing to the “Technical Support Document for the Final “Revised Definition of ‘Waters of the United States’” Rule dated December 2022.
3. REVIEW AREA. The Review Area is limited to the Limits of Disturbance (LOD) and anticipated impacted water features associated with approximately 483 acres of land proposed for the development of a 44-megawatt solar and battery energy storage system near Coffeen, Montgomery County, Illinois. Approximate coordinates for the center of the Review Area are Latitude 39.0769° and Longitude -89.3969°.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Kaskaskia River](#)
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. [Coffeen Lake is the receiving water for all the surface drainage within the Review Area. Coffeen Lake flows into East Fork Shoal Creek, which eventually flows into Shoal Creek and the Kaskaskia River, a TNW at its downstream extent.](#)
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

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.

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):

- [S-2 \(7,643 feet\)](#) is a first-order tributary (per NHD) to Coffeen Lake with a 627-acre watershed at its downstream most extent within the Review Area. Both intermittent and perennial flow characteristics were observed throughout the relevant reach during the field evaluations by the agent. S-2 collects hydrology through overland flow and headwater drainage features at its northern extent. As S-2 continues south, the feature gains a seasonal groundwater connection, which maintains baseflows. Physical characteristics combined with the systems watershed conditions provide weight-of-evidence that the system contains flow continuously for extended periods of time, which is necessary to meet the relatively permanent standard.

- 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
- 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

⁸ 88 FR 3004 (January 18, 2023)

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).

- **S-1 / S-10 / S-11:** Each of these 3 non-RPW tributaries are first-order drainages that are not identified by NHD. Each feature lies within small, localized watersheds, where the onset of streamflow coincides with precipitation events and ceases shortly after the termination of overland run-off and/or soil profile discharge. Even with presumed back-to-back or multiple storm events throughout their watersheds, these systems would not sustain baseflows for extended periods of time, but rather maintain a repeated sequence of streamflow, flow cessation, and channel drying throughout the year. Their watershed sizes do not provide enough overland flow to maintain continuous seasonal flow without the presence of an elevated groundwater connection during the wet season for extended periods. The features physical characteristics and watershed conditions provide weight-of-evidence that the systems do not contain flow continuously for extended periods of time, which is necessary to meet the relatively permanent standard.
- **S-3** is a non-RPW drainage feature that appears to lie within a previously constructed ditch or waterway. The drainage connects to W-12 at its northernmost extent and continues due south before terminating into overland flow. The feature does not continue downslope or connect to a discrete feature.
- **W-12** abuts a non-RPW drainage channel (S-3); however, the channel does not contribute hydrology downslope to an RPW via other discrete features or non-RPW tributaries. Flow through the feature eventually dissipates into overland flow.
- **W-2, W-5, W-6, W-7, W-8, W-9, W-10, W-11, W-17, W-19** and **W-25** are depressional wetlands located within agricultural fields or previous agricultural fields that have since been disturbed due to adjacent power plant operations. No discrete features or non-RPW tributaries were identified entering or exiting the wetland features. W-2 and W-6 lie in proximity to non-RPW tributaries, but they do not abut, nor are they separated from the features by natural or manmade berms.

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 August 18, 2023
- b. USGS TopoView Topographic Maps, 1:24,000 Scale, Coffeen, IL Quad
- c. USGS NHDPlus, Accessed February 28, 2024
- d. USGS Stream Stats
- e. Hydrologic Modeling System (HEC-HMS)
- f. Antecedent Precipitation Tool
- g. USDA-NRCS Soil Survey for Montgomery 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. Google Earth Pro Aerial Imagery, Various Aerial Images

10. OTHER SUPPORTING INFORMATION.

Antecedent Precipitation Tool Results

Delineation Field Evaluation Dates:

Aug 18, 2021: Dry Season / Wetter than Normal (Moderate Wetness)

June 01, 2022: Dry Season / Drier than Normal (Mild Wetness)

March 14, 2023: Wet Season / Wetter than Normal (Mild Wetness)

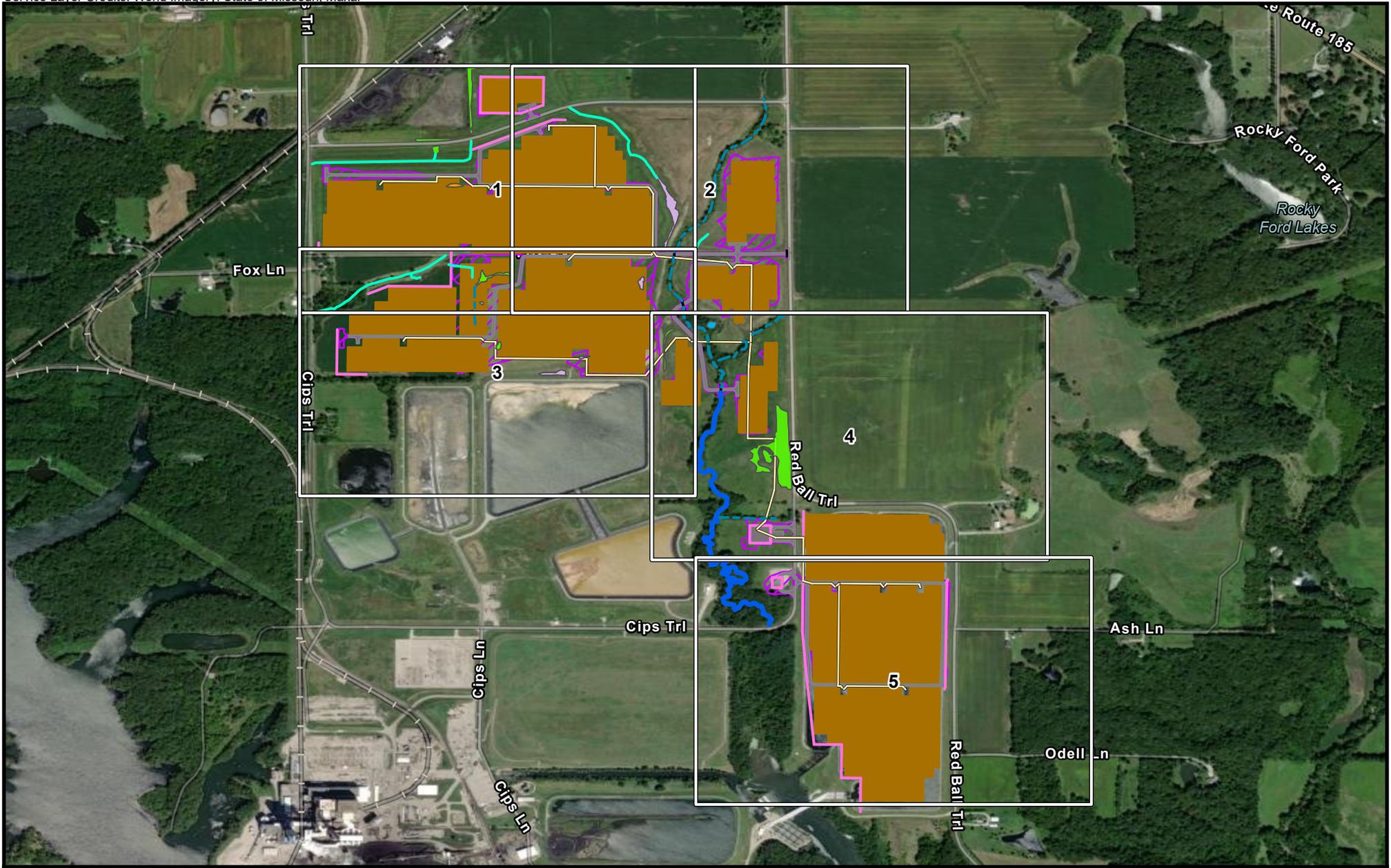
Table 1. Tributaries Identified within the Review Area

Feature ID ³	Latitude	Longitude	Length	Watershed Size (acres)	Flow Characteristics	WOTUS
S-1	39.0724	-89.3913	793	76	NRPW	No
S-2	39.0705	-89.3921	7,643	627	RPW	Yes
S-3	39.0736	-89.3991	419	<10	NRPW	No
S-10	39.0748	-89.3995	300	<10	NRPW	No
S-11	39.0675	-89.3913	492	36	NRPW	No

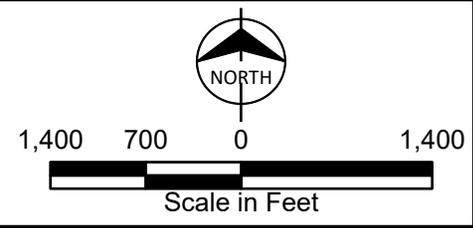
Table 2. Wetlands Identified within the Review Area

Wetland ID	Latitude	Longitude	Area (Acres)	Wetland Type	CSC	WOTUS
W-2	39.0729	-89.3912	0.01	PUB	No	No
W-5	39.0726	-89.3936	0.15	PEM	No	No
W-6	39.0737	-89.3933	0.01	PSS	No	No
W-7	39.0745	-89.3942	0.10	PEM / PSS	No	No
W-8	39.0721	-89.3960	0.03	PEM / PSS	No	No
W-9	39.0717	-89.3967	0.17	PEM / PSS	No	No
W-10	39.0725	-89.3984	0.06	PEM	No	No
W-11	39.0737	-89.3989	0.01	PEM / PSS	No	No
W-12	39.0747	-89.3983	0.22	PEM	No	No
W-17	39.0771	-89.3998	0.09	PEM	No	No
W-19	39.0734	-89.3993	0.02	PEM	No	No
W-25	39.0687	-89.3903	2.90	PEM	No	No

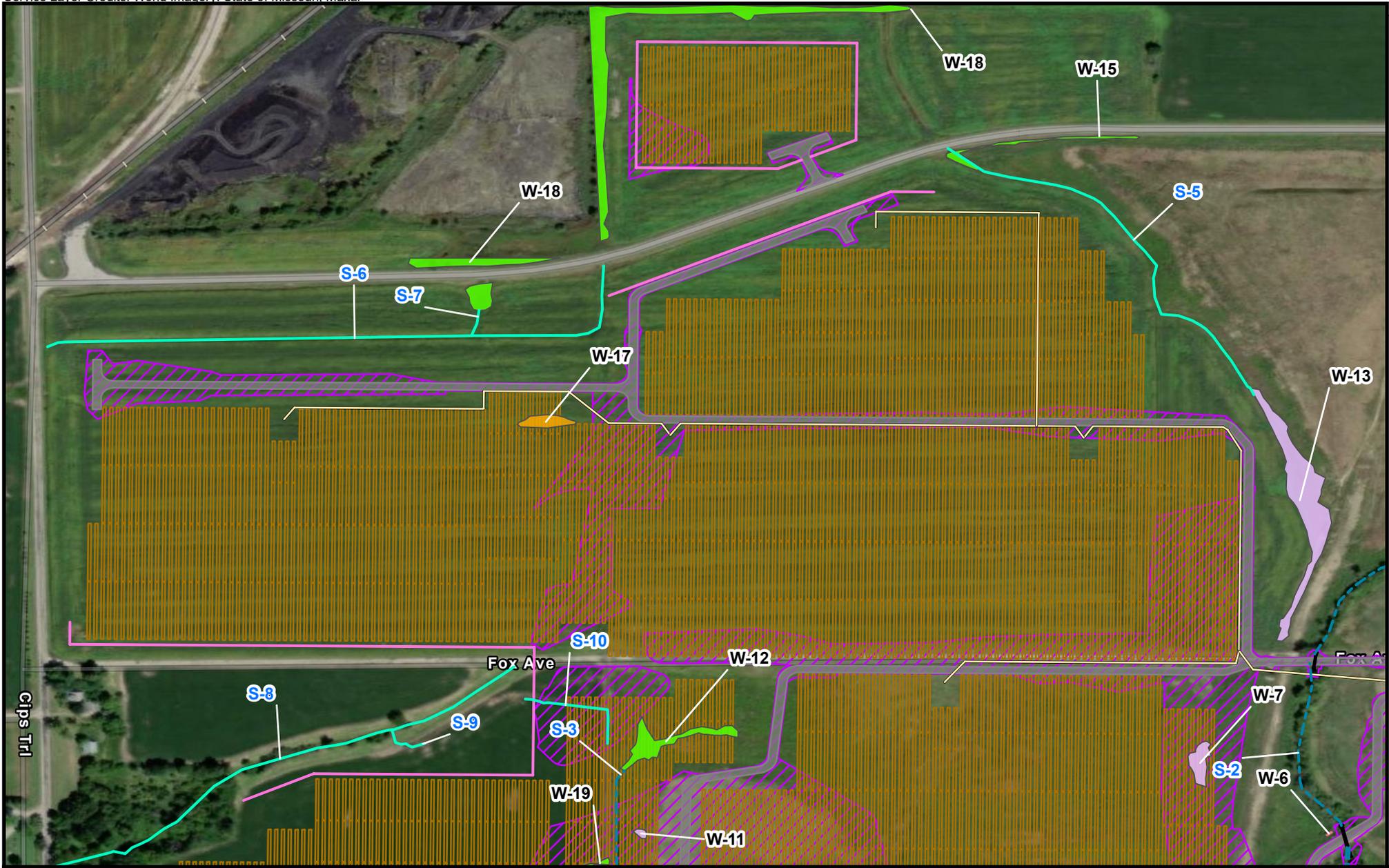
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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



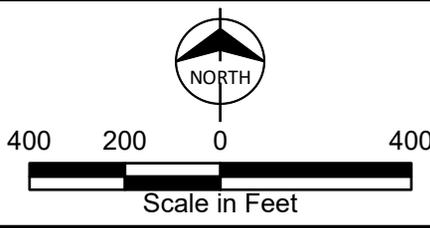
	Stream (S)	Wetland (W)
Solar Array	Ephemeral	PEMf
Grading Limits	Intermittent	PEM
Proposed Road	Perennial	PEM/PSS
Culvert		PSS
Fenceline		PUB
MVWiring		



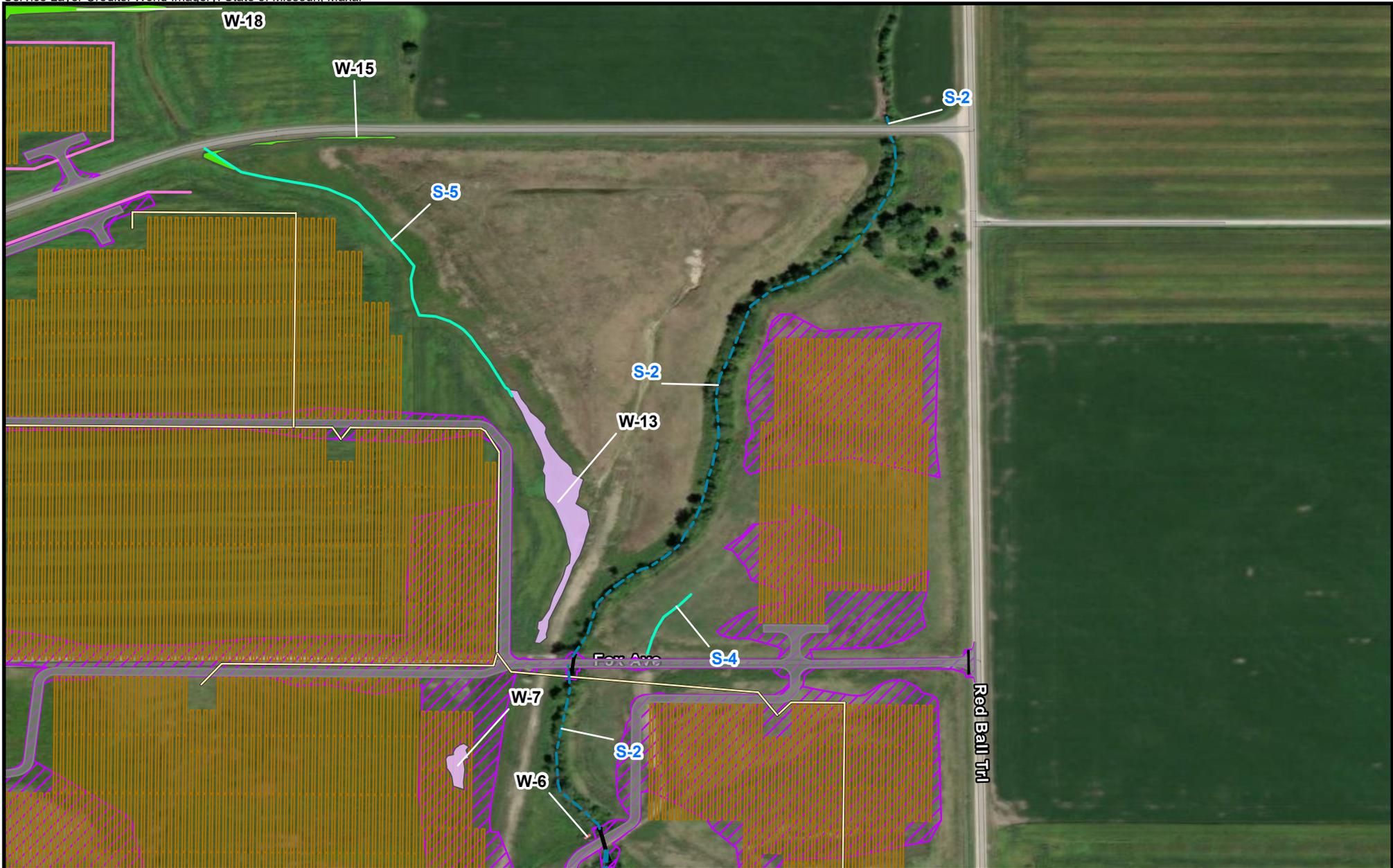
AJD Request
 Wetland and Surface Water Overview Map
 Coffeen Solar & Energy Storage Facility
 Coffeen Solar BESS LLC
 Montgomery County, Illinois



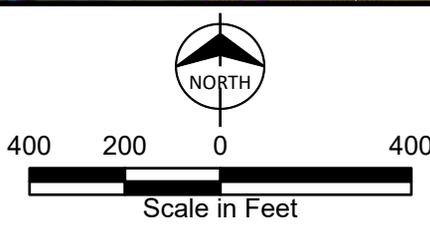
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Proposed Road	Perennial	PEM/PSS
Culvert		PSS
Fenceline		PUB
MVWiring		



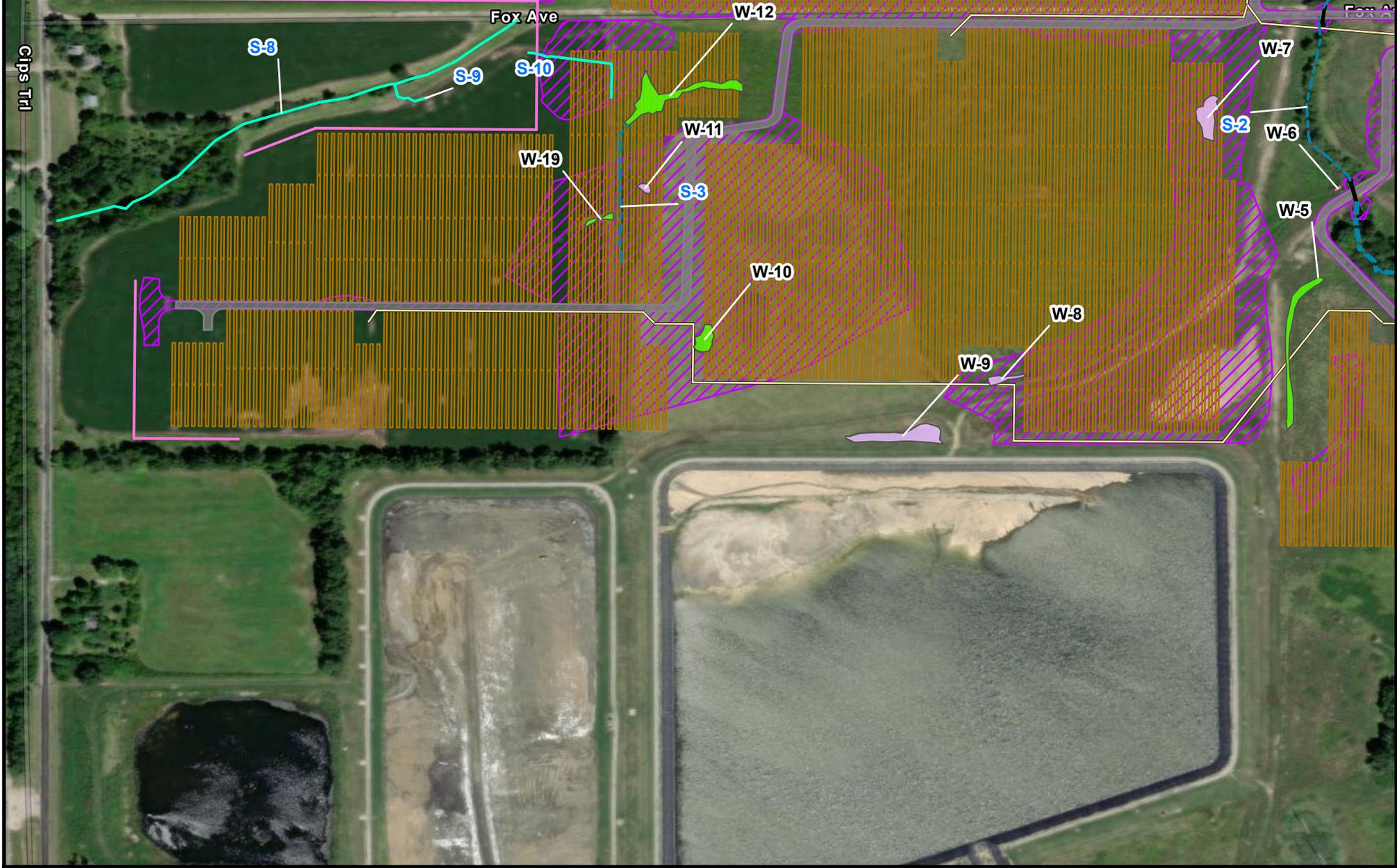
AJD Request
 Wetland and Surface Water Map
 Coffeen Solar & Energy Storage Facility
 Coffeen Solar BESS LLC
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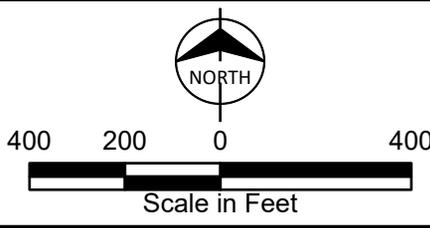
	Stream (S)	Wetland (W)
Solar Array	Ephemeral	PEMf
Grading Limits	Intermittent	PEM
Proposed Road	Perennial	PEM/PSS
Culvert		PSS
Fenceline		PUB
MVWiring		



AJD Request
 Wetland and Surface Water Map
 Coffeen Solar & Energy Storage Facility
 Coffeen Solar BESS LLC
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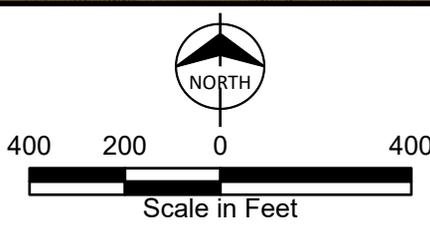
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Culvert		PSS
Fenceline		PUB
MVWiring		



AJD Request
 Wetland and Surface Water Map
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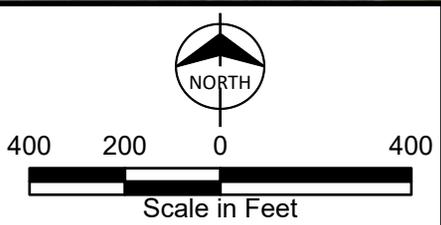
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Fenceline		PUB
MVWiring		



AJD Request
 Wetland and Surface Water Map
 Coffeen Solar & Energy Storage Facility
 Coffeen Solar BESS LLC
 Montgomery County, Illinois
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Solar Array	Ephemeral	PEMf
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