



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

CEMVS-RD

March 31, 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) ,¹ [MVS-2025-123 \(MFR 1 of 1\)](#)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.

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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).
 - i. [Old Channel Wood River North, 5.37-acres \(non-jurisdictional\)](#)
 - ii. [Old Channel Wood River South, 1.54-acres \(non-jurisdictional\)](#)
 - iii. [Pond A, 1.09-acre \(non-jurisdictional\)](#)
 - iv. [Wetland A, 0.66-acre \(non-jurisdictional\)](#)
 - v. [Wetland B, 0.31-acre \(non-jurisdictional\)](#)
 - vi. [Wetland C, 1.02-acre \(non-jurisdictional\)](#)
 - vii. [Wetland D, 0.55-acre \(non-jurisdictional\)](#)

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)
- d. [Citing the 12 March 2025 Memorandum to the field between USACE and EPA concerning the proper implementation of "Continuous Surface Connection" under the definition of "Waters of the United States under the Clean Water Act specifically to the language which reads, "an interpretation of "continuous surface connection" which allows for wetlands far removed from and not directly abutting covered waters to be jurisdictional as adjacent wetlands has the potential to violate the direct abutment requirement for "adjacent wetlands" under the plurality's standard and now *Sackett's* endorsement of that standard. Therefore, any components of guidance or training materials that assumed a discrete feature established a continuous surface connection are rescinded."](#)

3. REVIEW AREA. [The Review Area consists of approximately 105-acres of undeveloped, vacant land located within the Envirotech Business Park along Enviro Way in Wood River, Madison County Illinois. Approximate geographic coordinates for the site are Latitude 38.8605° and Longitude -90.1130°.](#)

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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. [Surface drainage can only exit the Review Area through a culvert \(w/ sluice gate\) under State Route 3 near the eastern edge of Old Channel Wood River South. The culvert outfalls into a flood control basin that is connected to a second culvert \(w/ sluice gate\) and a pump station. The second culvert and pump station outfall into the Mississippi River, a TNW. The Mississippi River is a Section 10 water from mile 0 to mile 300, near, Saverton, Missouri.](#)
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.

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.

- 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
- 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 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).

Wetland A, Wetland B, Wetland C, and Wetland D are depressional, forested wetlands that collect surface run-off from direct precipitation and during flood events, when relief wells for the Wood River Levee System, put water onto the Review Area. No discrete features or non-RPW tributaries were identified entering or exiting the wetland features nor do the wetlands abut a relatively permanent water (RPW, a requisite water). Thus, Wetland A, Wetland B, Wetland C, and Wetland D do not have a continuous surface connection to a RPW and, consistent with *Sackett*, are not “adjacent.”

Pond A exists as a wetland, as surface water within the feature seasonally fluctuates and is generally less than 6.6-feet in depth. Pond A was not observed with any aquatic resources or discrete features entering or exiting the limits of its OHWM but receives its hydrology from surface run-off during direct precipitation. Pond A does not abut a RPW. Thus, Pond A, does not have a continuous surface connection to a RPW and, consistent with *Sackett*, is not “adjacent.”

⁸ 88 FR 3004 (January 18, 2023)

Old Channel Wood River North is an open water wetland that collects surface run-off from direct precipitation and during flood events, when relief wells for the Wood River Levee System, push water into the Review Area. The feature is the historic channel of Wood River, which was relocated prior to 1941. Following its relocation, the remainder of the floodplain was leveed, and numerous impacts and alterations occurred including the filling and isolation of the four channel remnants that remain today. After reaching capacity, the wetlands flow disperses east across upland areas with limited indicators of flow frequency or duration towards Old Channel Wood River South. No discrete features or non-RPW tributaries were identified entering or exiting the wetland nor does the wetland abut an RPW. Thus, Old Channel Wood River North does not have a continuous surface connection to a RPW and, consistent with *Sackett*, are not “adjacent.”

Old Channel Wood River South is an open water wetland that collects surface run-off from direct precipitation and during flood events, when relief wells for the Wood River Levee System, put water onto the Review Area. The feature is the historic channel of Wood River, which was relocated prior to 1941, removing its hydrology. Following its relocation, the remainder of the floodplain was leveed, and numerous impacts and alterations occurred including the filling and isolation of the four channel remnants that remain today. An approximately 300-foot culvert (w/ sluice gate at outlet) is present above the eastern limits of the features OHWM and conveys non-relatively permanent flows under State Route 3 to a flood control basin when it exceeds capacity. According to the levee district, the sluice gate at the culvert outlet has likely not been closed since it was constructed in 1962 as retention of water on the west side of State Route 3 has not been necessary during periods of flooding. The presence of 18-inches of freeboard within the culvert (48”) provides supporting evidence that the culvert conveys low volumes and velocities, some of which stagnate while the flood basin is also at capacity. As Old Channel Wood River South does not meet the definition of an (a)(2) impoundment or (a)(3) tributary, the feature was evaluated as an (a)(4) wetland. No non-RPW tributaries were identified entering or exiting the wetland nor does the wetland abut an RPW. The culvert does provide physical and hydrologic connection to an (a)(2) impoundment; however, the feature does not abut the feature, itself. Thus, Old Channel Wood River South does not have a continuous surface connection to a RPW and, consistent with *Sackett*, is not “adjacent.”

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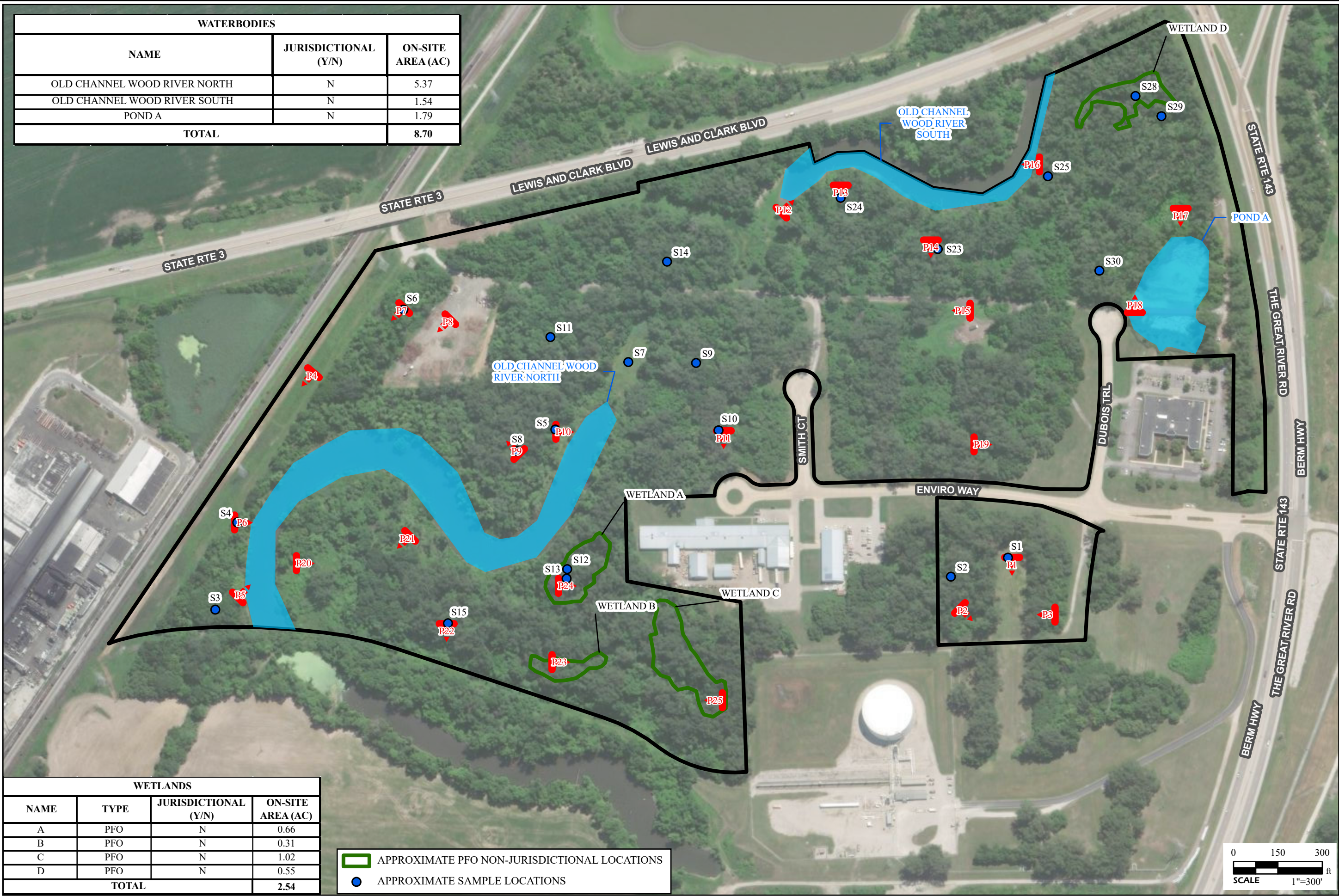
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. Wetland and Waterbody Delineation Report – SCI (January 3 2025)
- b. USACE Visit: 2-27-2025
- c. USGS Topographic Maps, 1:24,000 Scale, Fiatt, IL Quad
- d. USGS NHDPlus
- e. Antecedent Precipitation Tool
- f. USDA-NRCS Soil Survey for Madison 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

10. OTHER SUPPORTING INFORMATION.

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.

WATERBODIES		
NAME	JURISDICTIONAL (Y/N)	ON-SITE AREA (AC)
OLD CHANNEL WOOD RIVER NORTH	N	5.37
OLD CHANNEL WOOD RIVER SOUTH	N	1.54
POND A	N	1.79
TOTAL		8.70



WETLANDS			
NAME	TYPE	JURISDICTIONAL (Y/N)	ON-SITE AREA (AC)
A	PFO	N	0.66
B	PFO	N	0.31
C	PFO	N	1.02
D	PFO	N	0.55
TOTAL			2.54

- APPROXIMATE PFO NON-JURISDICTIONAL LOCATIONS
- APPROXIMATE SAMPLE LOCATIONS

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

ENVIROTECH BUSINESS PARK
WOOD RIVER, ILLINOIS

WETLAND DELINEATION &
AERIAL PHOTOGRAPH

JOB NUMBER

2024-1970.30

FIGURE DATE

03/03/2025

DRAWN BY

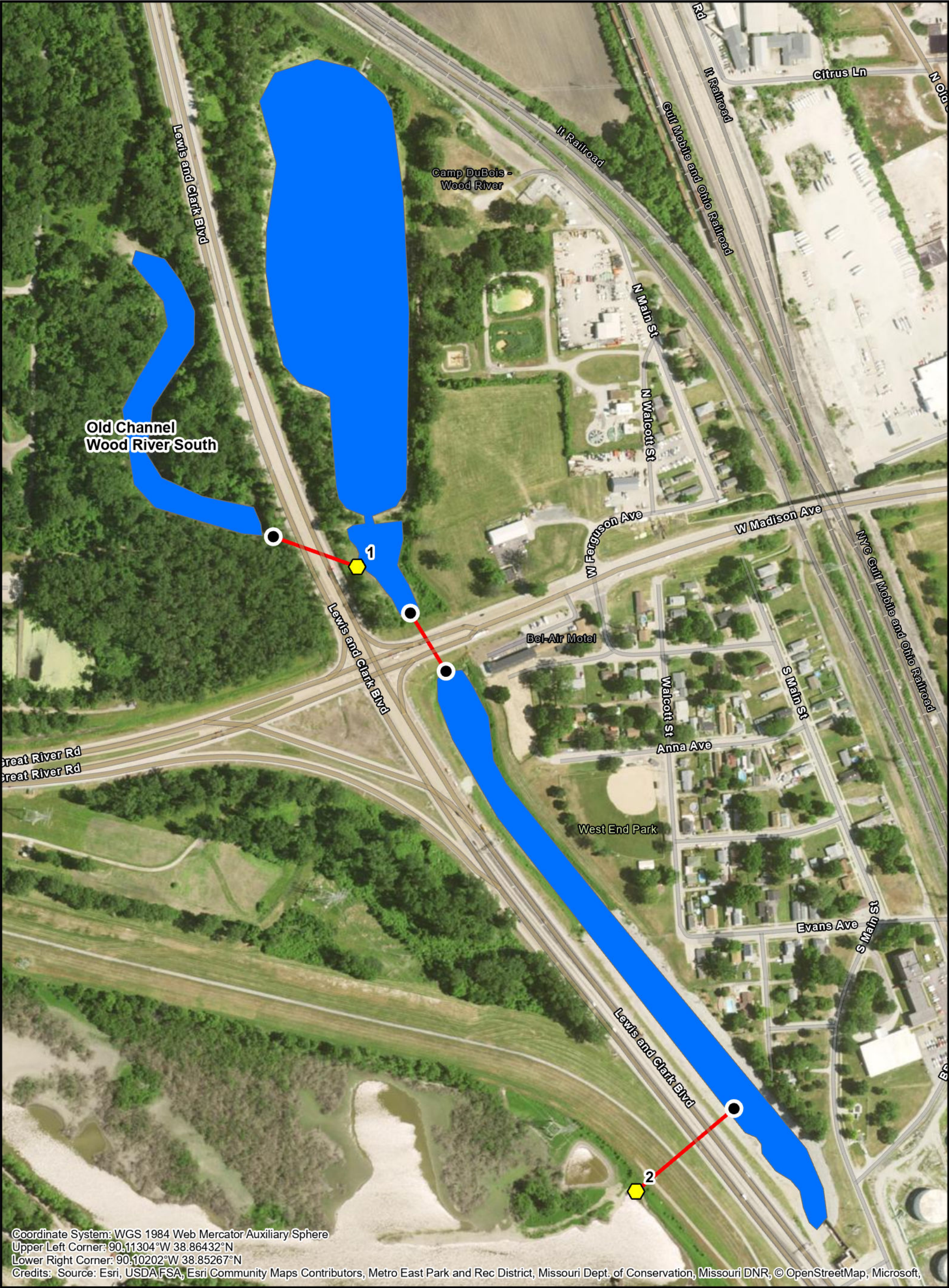
RCV

CHECKED BY

MSH

FIGURE

4



Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Upper Left Corner: 90.11304°W 38.86432°N
Lower Right Corner: 90.10202°W 38.85267°N
Credits: Source: Esri, USDA/FSA, Esri Community Maps Contributors, Metro East Park and Rec District, Missouri Dept. of Conservation, Missouri DNR, © OpenStreetMap, Microsoft,

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PROJECT	
MVS-2025-123 Envirotech Business Park	
TITLE	AUTHOR
Flow Path	K. Metzger
03256501,3001,950	
Scale in Feet	

LEGEND	
Culvert Inlet/Outlet	Aquatic Resources
Sluice Gate	
Culverts	
FIGURE	
NO. 1 of 1	
REVISION	
NO. 0	
DATE	
3/5/2025	