



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

CEMVS-RD

May 5, 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> [MVS-2025-258 \(MFR 1 of 1\)](#)<sup>2</sup>

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>3</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>4</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>5</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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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> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</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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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [[MVS-2025-258](#)]

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) Pond A, 5.72-acre (non-jurisdictional)
- 2) Pond B, 0.66-acre (non-jurisdictional)
- 3) Wetland A (PEM), 1.27-acre (non-jurisdictional)
- 4) Wetland A (PFO), 0.72-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. Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of "Waters Of The United States" Under The Clean Water Act" (March 12, 2025).

3. REVIEW AREA. [The Review Area consists of approximately 27-acres of undeveloped, vacant land located adjacent to the existing Waste Management of Illinois, Inc. Cottonwood Hills Recycling and Disposal Facility at 10400 Hillstown Road, Marissa, St. Clair County, Illinois. Approximate geographic coordinates for the site are Latitude 38.2575° and Longitude -89.7832°.](#)

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. [Surface drainage that exits the Review Area would eventually enter Doza Creek along the western limits of the Review. Doza Creek flows west to the Kaskaskia River. The Kaskaskia River is a Section 10 water from mile 0 to mile 36.2 at the grade control structure near Fayetteville, Illinois.](#)

6. SECTION 10 JURISDICTIONAL WATERS<sup>6</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>7</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](#)
  - 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

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<sup>6</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>7</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.

within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>8</sup> [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 (PEM & PFO)** is a depressional, emergent and forested wetland that is surrounded by uplands and collects surface run-off from direct precipitation. The wetland exists as a result of historic strip-mining activities. One discrete feature, a culvert was identified along the access road that forms the Review Area's western boundary. The culvert conveys surface flows from the wetland through a series of excavated depressions and upland ditches throughout the landfill facility. Wetland A, therefore, does not abut a relatively permanent water (RPW, a requisite water). Thus, Wetland A does not have a continuous surface connection to a RPW and, consistent with *Sackett*, are not "adjacent."

**Ponds A and B** are generally greater than 6.6-feet in depth and collect surface run-off from direct precipitation. The ponds exist as a result of historic strip-mining activities. No discrete features or non-RPW tributaries were identified entering or exiting the ponds nor do the ponds abut or impound a relatively permanent water (RPW, a requisite water). These features have no connection to interstate or foreign commerce.

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. Cottonwood Hills Site Visit Summary Letter – SCI (April 18, 2025)
  - b. USGS Topographic Maps, 1:24,000 Scale, New Athens East, IL Quad
  - c. USGS NHDPlus
  - d. Antecedent Precipitation Tool
  - e. USDA-NRCS Soil Survey for St. Clair County, Illinois
  - f. USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale
  - g. Illinois Height Modernization (ILHMP) LiDAR Data
  - h. Illinois Historic Aerial Photography – ISGS Geospatial Data Clearinghouse
  - i. Google Earth Pro Aerial Imagery, Various Aerial Images

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<sup>8</sup> 88 FR 3004 (January 18, 2023)

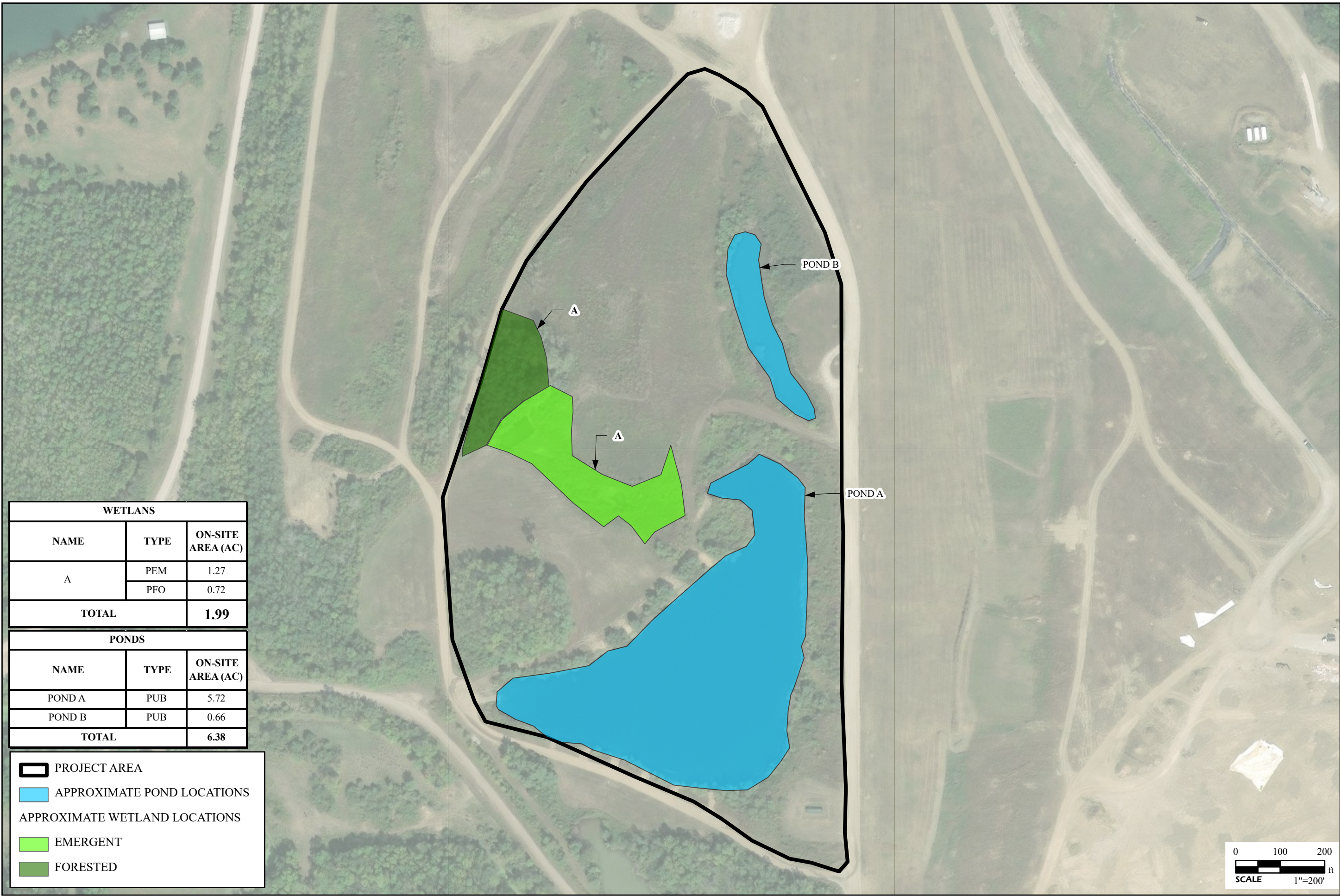
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10. OTHER SUPPORTING INFORMATION. [N/A](#)

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.





WETLANDS		
NAME	TYPE	ON-SITE AREA (AC)
A	PEM	1.27
	PFO	0.72
TOTAL		1.99

PONDS		
NAME	TYPE	ON-SITE AREA (AC)
POND A	PUB	5.72
POND B	PUB	0.66
TOTAL		6.38

PROJECT AREA

APPROXIMATE POND LOCATIONS

APPROXIMATE WETLAND LOCATIONS

EMERGENT

FORESTED

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

COTTONWOOD HILLS  
MARISSA, ILLINOIS

WETLAND DELINEATION &  
AERIAL PHOTOGRAPH

JOB NUMBER  
2024-0117.30  
FIGURE DATE  
04/09/2025  
DRAWN BY  
ACV  
CHECKED BY  
MSH  
FIGURE  
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