



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

CEMVS-RD

August 7, 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-2025-402 \(MFR 1 of 1\)](#)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).

Wetland 1, 0.25-acre (non-jurisdictional)	Wetland 17, 0.31-acre (non-jurisdictional)
Wetland 2, 0.13-acre (non-jurisdictional)	Wetland 18, 1.42-acre (non-jurisdictional)
Wetland 3, 4.10-acre (jurisdictional - 404)	Wetland 19, 0.41-acre (non-jurisdictional)
Wetland 4, 2.19-acre (non-jurisdictional)	Intermittent Stream 1, 152 feet (jurisdictional - 404)
Wetland 5, 0.12-acre (non-jurisdictional)	Intermittent Stream 2, 4,976 feet (jurisdictional - 404)
Wetland 6, 0.07-acre (non-jurisdictional)	Intermittent Stream 3, 363 feet (non-jurisdictional)
Wetland 7, 0.43-acre (jurisdictional - 404)	Intermittent Stream 4, 1,433 feet (jurisdictional - 404)
Wetland 8, 1.03-acre (non-jurisdictional)	Ephemeral Stream 1, 578 feet (non-jurisdictional)
Wetland 9, 0.03-acre (non-jurisdictional)	Ephemeral Stream 2, 441 feet (non-jurisdictional)
Wetland 10, 0.02-acre (non-jurisdictional)	Ephemeral Stream 3, 281 feet (non-jurisdictional)
Wetland 11, 4.12-acre (jurisdictional - 404)	Ephemeral Stream 4, 284 feet (non-jurisdictional)
Wetland 12, 0.14-acre (non-jurisdictional)	Ephemeral Stream 5, 86 feet (non-jurisdictional)
Wetland 13, 0.05-acre (non-jurisdictional)	Ephemeral Stream 6, 59 feet (non-jurisdictional)
Wetland 14, 0.07-acre (non-jurisdictional)	Ephemeral Stream 7, 176 feet (non-jurisdictional)
Wetland 15, 0.40-acre (non-jurisdictional)	Ephemeral Stream 8, 142 feet (non-jurisdictional)
Wetland 16, 0.27-acre (non-jurisdictional)	Ephemeral Stream 9, 1,215 feet (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).

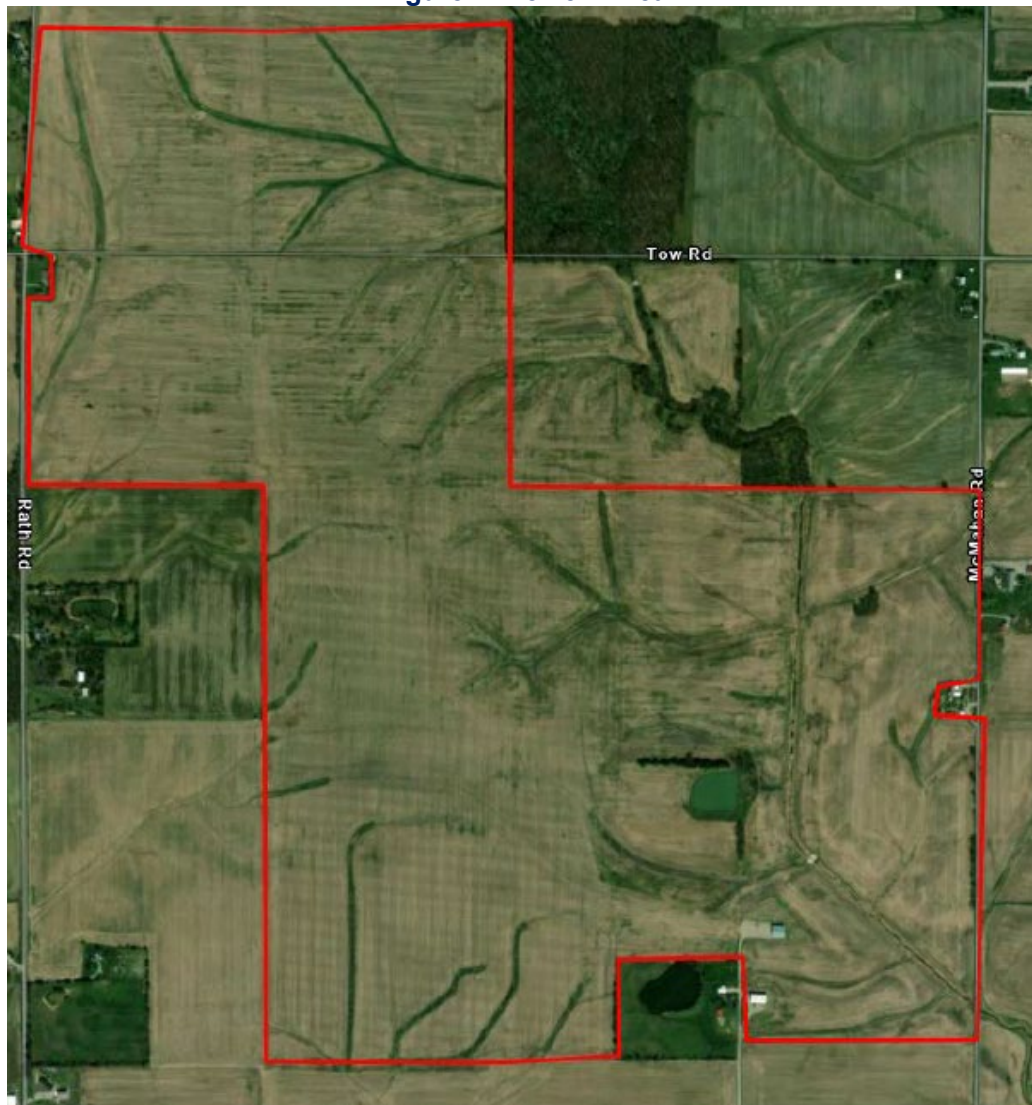
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3. REVIEW AREA.

The Review Area consists of approximately 487-acres of undeveloped, vacant agricultural land located north of Elkville Road and west of McMahan Road in Vergennes Township, Jackson County, Illinois. Approximate geographic coordinates for the site are Latitude 37.9146° and Longitude -89.3080°.

Figure 1. Review Area



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

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Glenn Fork and an unnamed tributary of Beaucoup Creek are the receiving waters for all the surface drainage that leaves the Review Area. Both the unnamed tributary and Glenn Creek are tributaries to Beaucoup Creek, which eventually intersects the Big Muddy River, a TNW. The Big Muddy River is a Section 10 water from mile 0 to mile 51.9, near DeSoto, 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):** Three (3) tributaries were determined to meet the definition of an (a)(3) water: **Intermittent Stream 1** (152 feet), **Intermittent Stream 2** (4,976 feet), and **Intermittent Stream 4** (1,433 feet). Intermittent Stream 4 possesses 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.

~300-acre watershed and is a first order tributary¹ of Intermittent Stream 2, a second-order tributary¹ of Glenn Creek that drains approximately 1,200 acres. Intermittent Stream 1 is a first order tributary¹ that drains roughly 875-acres directly to Beaucoup Creek. At the time of the delineation, during the wet season, each stream reach was observed with flowing water. Each of the tributaries have been manipulated to some degree within the Review Area to facilitate drainage through the agricultural landscape. Observed physical characteristics combined with the presence of flowing water during the site visits and the systems watershed conditions provide weight-of-evidence that the tributaries have continuous flow at least seasonally or flowing water continuously during certain times of the year (i.e. wet season), which is necessary to meet the relatively permanent standard.

¹Stream orders were determined using NHD as the extent of the tributary systems extend beyond the Review Area.

- f. **Adjacent Wetlands (a)(4):** Three (3) wetlands were determined to meet the definition of (a)(4) waters: **Wetland 3** (4.10-acre), **Wetland 7** (0.43-acre), and **Wetland 11** (4.12-acre). Each of these three wetlands directly abut an (a)(3) water within the Review Area. Although portions of these wetlands lie within the limits of constructed agricultural waterways or ditches, desktop resources and historic aerial photographs indicate the presence of saturated soils, drainage patterns, and surface flow paths in their location(s) prior to their construction. As such these features were not constructed in uplands and therefore, would not be excluded similar to other aquatic resources on site.

- 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).

⁸ 88 FR 3004 (January 18, 2023)

Fifteen (15) wetlands were determined to be non-jurisdictional because they do not meet the definition of (a)(4) waters (do not abut a RPW): **Wetland 1, Wetland 2, Wetland 4, Wetland 5, Wetland 6, Wetland 8, Wetland 9, Wetland 10, Wetland 12, Wetland 13, Wetland 14, Wetland 15, Wetland 16, Wetland 17, and Wetland 19**. Each of these wetlands abut another non-jurisdictional feature (i.e. erosional feature / non-RPW tributary) or exist as a depressional, isolated wetland. Many of these wetlands also lie within the limits of constructed agricultural waterways or ditches, which were constructed in uplands, do not convey relatively permanent flows, or drain wetlands.

One (1) aquatic resource, **Wetland 18**, exists as a deepwater aquatic habitat and collects surface run-off from direct precipitation. The pond is a manmade feature that was likely constructed for past livestock watering. The pond does not abut or impound a relatively permanent water (RPW). The feature has no connection to interstate or foreign commerce.

Ten (10) tributaries were determined to be non-jurisdictional because they do not meet the definition of (a)(3) waters: **Intermittent Stream 1, Ephemeral Stream 1, Ephemeral Stream 2, Ephemeral Stream 3, Ephemeral Stream 4, Ephemeral Stream 5, Ephemeral Stream 6, Ephemeral Stream 7, Ephemeral Stream 8, Ephemeral Stream 9, and Ephemeral Stream 10**. Each of these headwater tributaries lie within the upper extents of small agricultural watersheds ranging from 5-acre to 50-acre in size. The onset of streamflow coincides with precipitation events and cease shortly after the termination of overland run-off. 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. Based on its location within the local watershed and the lack of standing or flowing water for more than a short duration in direct response to precipitation, these features would not meet the Relatively Permanent Standard.

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 – Kimley-Horn and Associates (June 2023)
 - b. USGS Topographic Maps, 1:24,000 Scale, Vergennes, IL Quad
 - c. USGS NHDPlus
 - d. USGS StreamStats
 - e. Antecedent Precipitation Tool
 - f. USDA-NRCS Soil Survey for Jackson County, Illinois
 - g. USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale

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- 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.

Figure 2. Review Area (Approximate) on 1938 Aerial Photograph

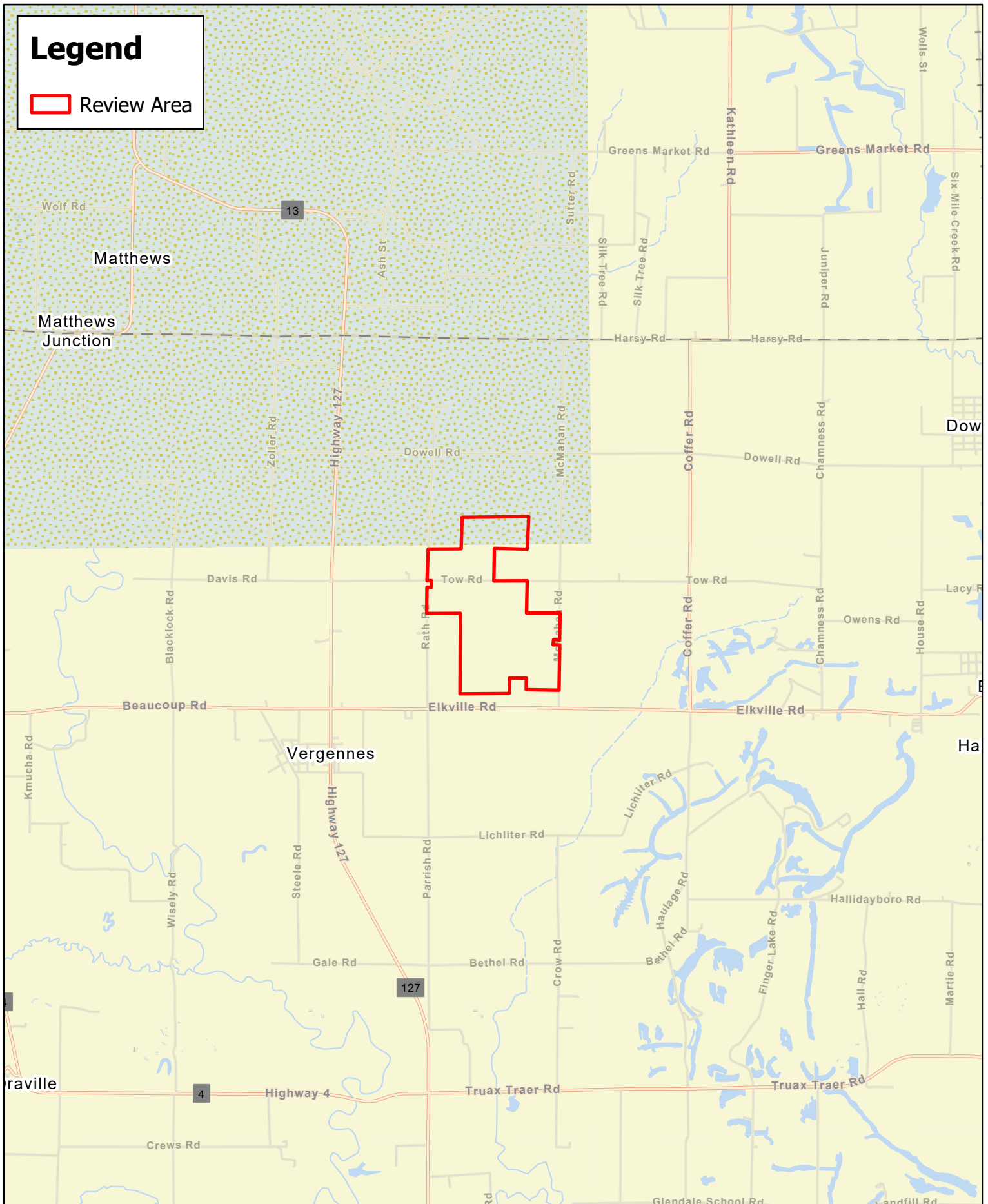


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Grass-lined swales and erosional features illustrated on Figure 2 do not possess an OHWM and therefore were not included in this Approved Jurisdictional Determination. The features are illustrated to demonstrate connection and/or anticipated flow paths.

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.



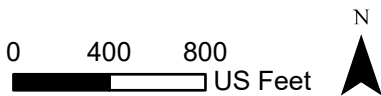
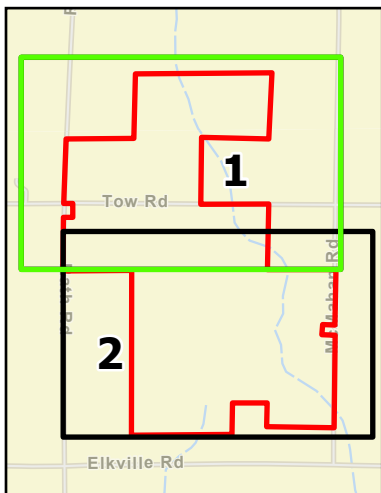
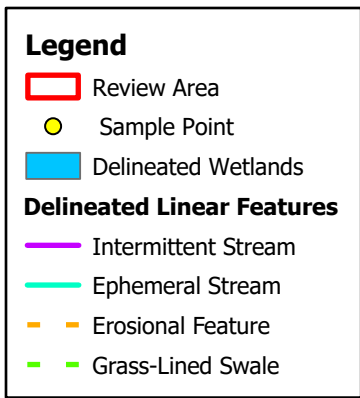
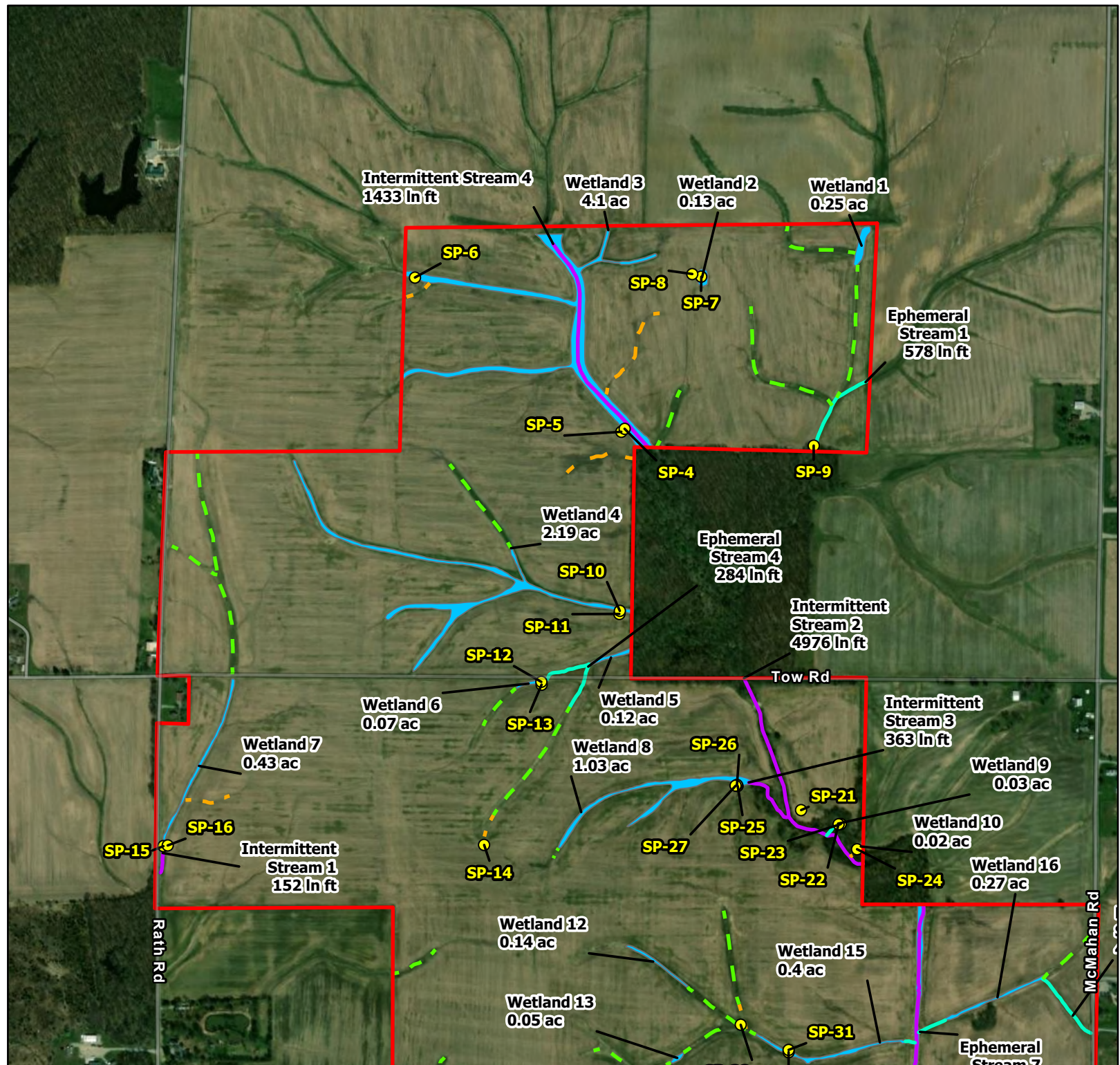


Figure 2.1 Delineated Resources
 Vergennes Township,
 Jackson County
 Birch Creek Development, LLC



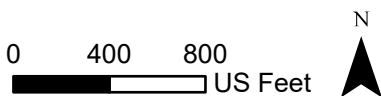
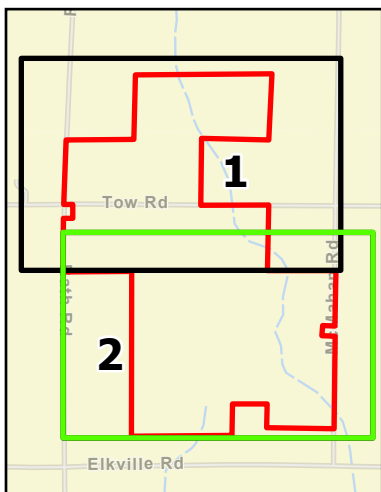
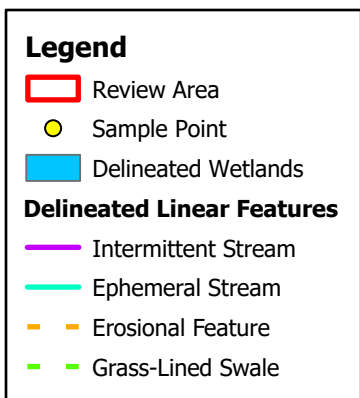


Figure 2.2 Delineated Resources
 Vergennes Township,
 Jackson County
 Birch Creek Development, LLC

