



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

CEMVS-RD

3 February 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-2023-143](#)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).

- i. [Wetland 1, 1.8-acres, 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) (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 13.4-acres of undeveloped, vacant land comprising two parcels under the single ownership \(Latitude 38.7893°, Longitude -89.9589\). The property is located at the northwest corner of the intersection of Illinois State Route 159 and Governors Parkway, in Edwardsville, Madison County, Illinois.](#)

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 exits the Review Area through a series of ditches, culverts, and unnamed tributaries to the Cahokia Creek, from south to north. The Cahokia Creek turns into the Cahokia Diversion Channel which eventually intersects 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.
 - 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**

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.

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 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 1 is an emergent wetland that intersects a non-RPW ditch along the toe-of-slope of a historic railbed and abuts a culvert. The culvert (215 feet) carries surface drainage to a non-RPW ditch (260 feet) between the historic rail embankments followed by a secondary culvert (100 feet). Flows then empty into a first-order tributary (140 feet) in which flows coincide with precipitation events prior to ultimately entering a second-order RPW tributary that carries flows at least seasonally at Latitude 38.7935° and Longitude -89.9589°.

- Flow Path: Wetland 1 -> culvert (215 feet) -> non-RPW ditch (260 feet) -> culvert (100 feet) -> non-RPW tributary (140 feet) -> RPW tributary (Requisite Water).

Based on the length of the flow path (715 feet) through four (4) drainage features, the Corps has determined that the physical connection between the wetland and the relatively permanent water is long, and the connection is via non-RPW tributaries, culverts, and other non-relatively permanent waters that have varying physical indicators of flow frequency, and duration. As such, it was determined the connection between this wetland and the requisite covered water is not physically close enough to meet the continuous surface connection requirement. Thus, Wetland 1 does not have a continuous surface connection to the downstream relatively permanent tributary and, consistent with *Sackett*, is not “adjacent.”

⁸ 88 FR 3004 (January 18, 2023)

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 December 2023](#)
- b. [USACE Site Visits \(3-15-23 & 9-26-23\)](#)
- c. [USGS Topographic Maps, 1:24,000 Scale, Edwardsville IL Quad](#)
- d. [USGS NHDPlus](#)
- e. [USGS Stream Stats](#)
- f. [Antecedent Precipitation Tool](#)
- g. [USDA-NRCS Soil Survey for Madison County, Illinois](#)
- h. [USFWS National Wetland Inventory, Color Infrared, 1980's, 1:58,000 Scale](#)
- i. [Illinois Height Modernization \(ILHMP\) LiDAR Data](#)
- j. [Illinois Historic Aerial Photography – ISGS Geospatial Data Clearinghouse](#)
- k. [Google Earth Pro Aerial Imagery, Various Aerial Images](#)

10. OTHER SUPPORTING INFORMATION.

Joint Policy Memorandums: [NWK-2024-00392](#), [POH-2023-187](#), [NWK-2022-00809](#),
[NAP-2023-01223](#), & [SWG-2023-00284](#)

Antecedent Precipitation Tool Results – Delineation & USACE Site Visit Dates:

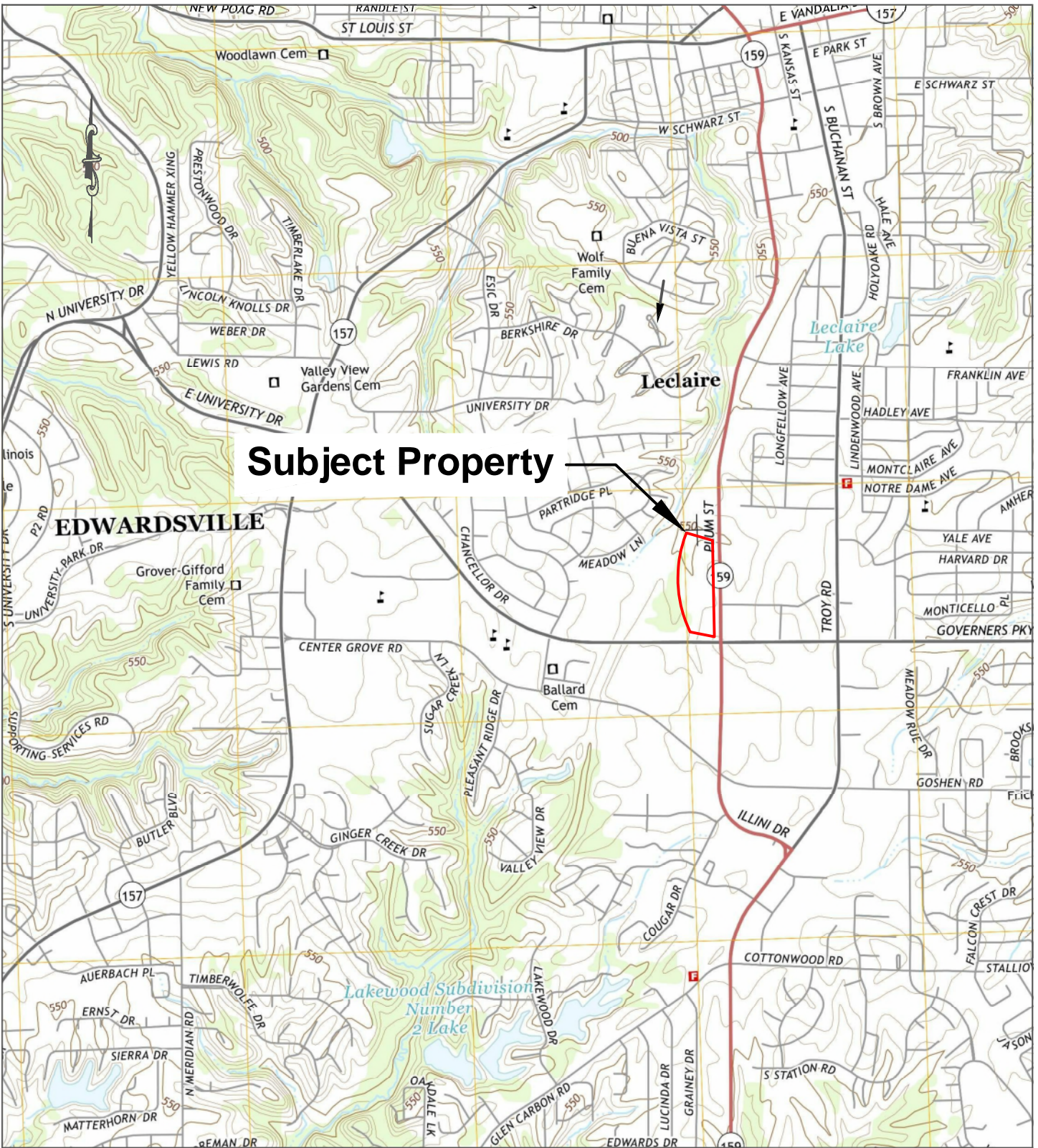
Date of Visit (Company): WebWIMP Balance / Condition / PDSI

February 6, 2023 (Midwest): Wet Season / Normal Cond. / Mild Wetness

March 15, 2023 (USACE/Midwest): Wet Season / Normal Cond. / Mild Wetness

September 15, 2023 (USACE): Dry Season / Normal Cond. / Incipient Drought

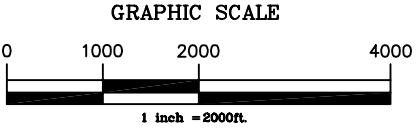
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional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



Subject Property

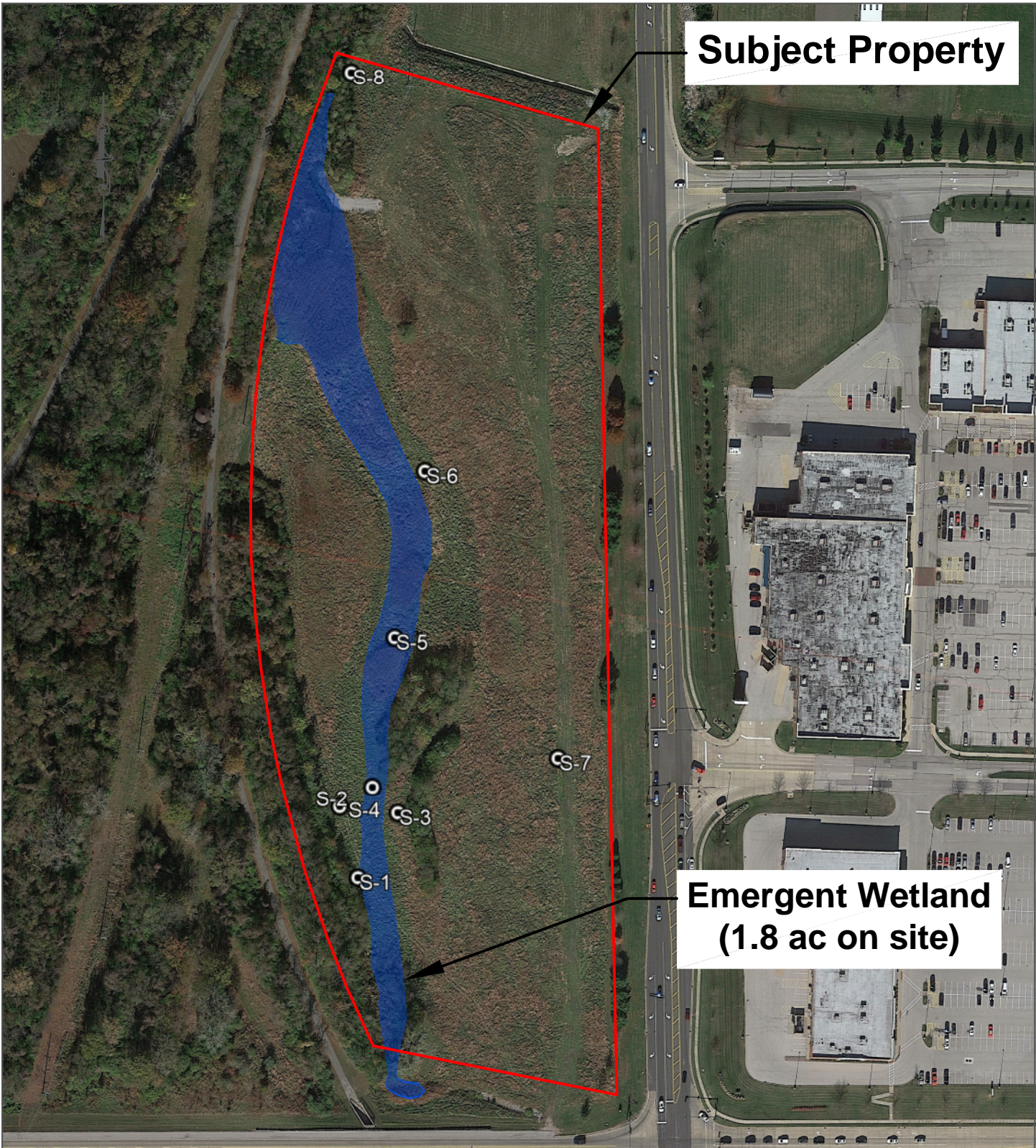


Figure 1
 Location Map
 13.4-Acre Property
 Edwardsville, Illinois



2015 Edwardsville, Illinois 7.5-Minute
 USGS Quadrangle

MT Job No. 15604

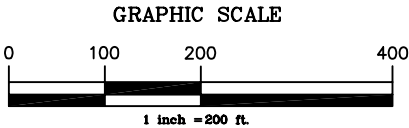


Subject Property

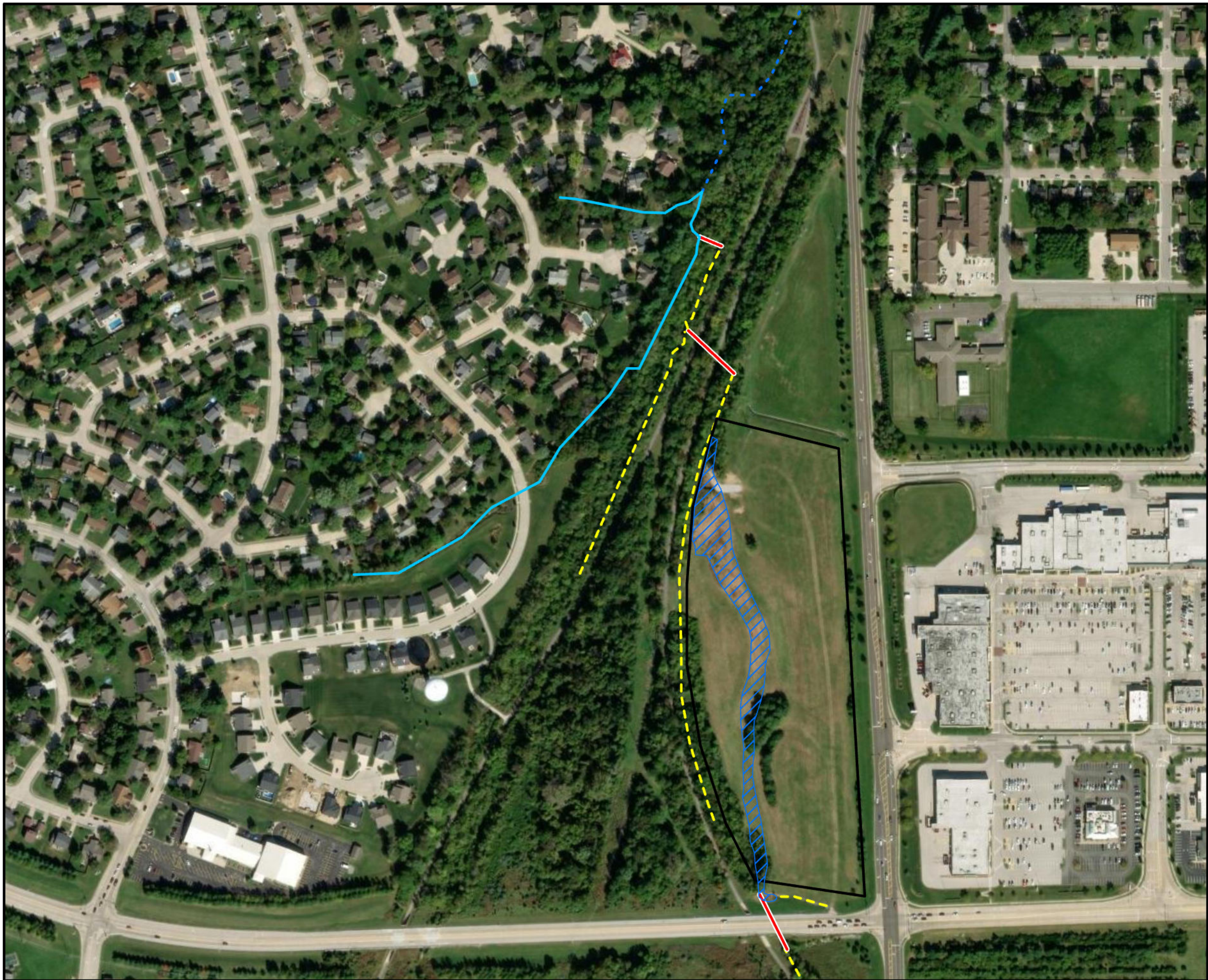
**Emergent Wetland
(1.8 ac on site)**




Figure 2
Aquatic Features Plan
13.4-Acre Property
Edwardsville, Illinois



MT Job No. 15604



Legend

-  Emergent Wetland
-  Review Area
-  Culvert
-  Ditch (Non-RPW)
-  Tributary (Non-RPW)
-  Ditch (RPW)
-  Tributary (RPW)



**US Army Corps
of Engineers®**
St. Louis District

**Exhibit #1
Drainage Overview**

Plum Street Development
MVS-2023-143
Madison County, Illinois



0 300 600
Feet
Map Scale: 1 inch equals 300 feet

Date map created: January 30, 2025
Drawn by: USACE-MVS-Regulatory

Service Layer Credits: World_Imagery: Maxar