



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

CEMVS-RD

January 22, 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-2024-679](#)<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.

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) [Wetland 1 \(2.43-acre\), non-jurisdictional](#)
- 2) [Wetland 2 \(0.52-acre\), non-jurisdictional](#)
- 3) [Wetland 3 \(0.25-acre\), 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) (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 28-acres located at the northeast corner of the intersection of Old US Highway 50 and Linden Grove Road, east of Aviston, Clinton County, Illinois. The Review Area generally lies in Section 18, Township 2 North, and Range 4 West. Approximate coordinates for the Review Area are Latitude 38.6134° and Longitude -89.5747°.](#)

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 exits the Review Area through roadside drainage ditches, which all ultimately flow east along Old US Highway 50 into Bull Branch, a tributary of Sugar Creek. Sugar Creek is a](#)

primary tributary to the Kaskaskia River. The Kaskaskia River is a Section 10 water from mile 0 to mile 36.2 (navigation project) at the grade control structure near Fayetteville, Illinois within the St. Louis District.

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

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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.

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).<sup>8</sup>

- 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, Wetland 2, and Wetland 3** are depressional wetlands within an active agricultural field that collect surface run-off and abut roadside drainage ditches. Each of the abutting upland drainage ditches converge at the Linden Grove Road intersection with Old US Highway 50 where they flow east for approximately 1,240 feet before intersecting Bull Branch. Based on the length of the flow path (1,240+ feet) from the wetlands to an RPW through upland drainage ditches, the Corps has determined that the approximately 0.30-mile physical connection between the wetlands and the relatively permanent water is long, and the connection is via upland non-RPW features. After consideration of flow, the types, and the length of connection, the requisite covered water is not physically close enough to the wetlands to meet the continuous surface connection requirement. Thus, Wetland 1, Wetland 2, and Wetland 3 do not have a continuous surface connection to the downstream relatively permanent tributary and, consistent with *Sackett*, is not “adjacent.”

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 September 11, 2024
  - b. USGS Topographic Maps, 1:24,000 Scale, Breese, IL Quad
  - c. USGS NHDPlus
  - d. USGS Stream Stats
  - e. Antecedent Precipitation Tool
  - f. USDA-NRCS Soil Survey for Clinton 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

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

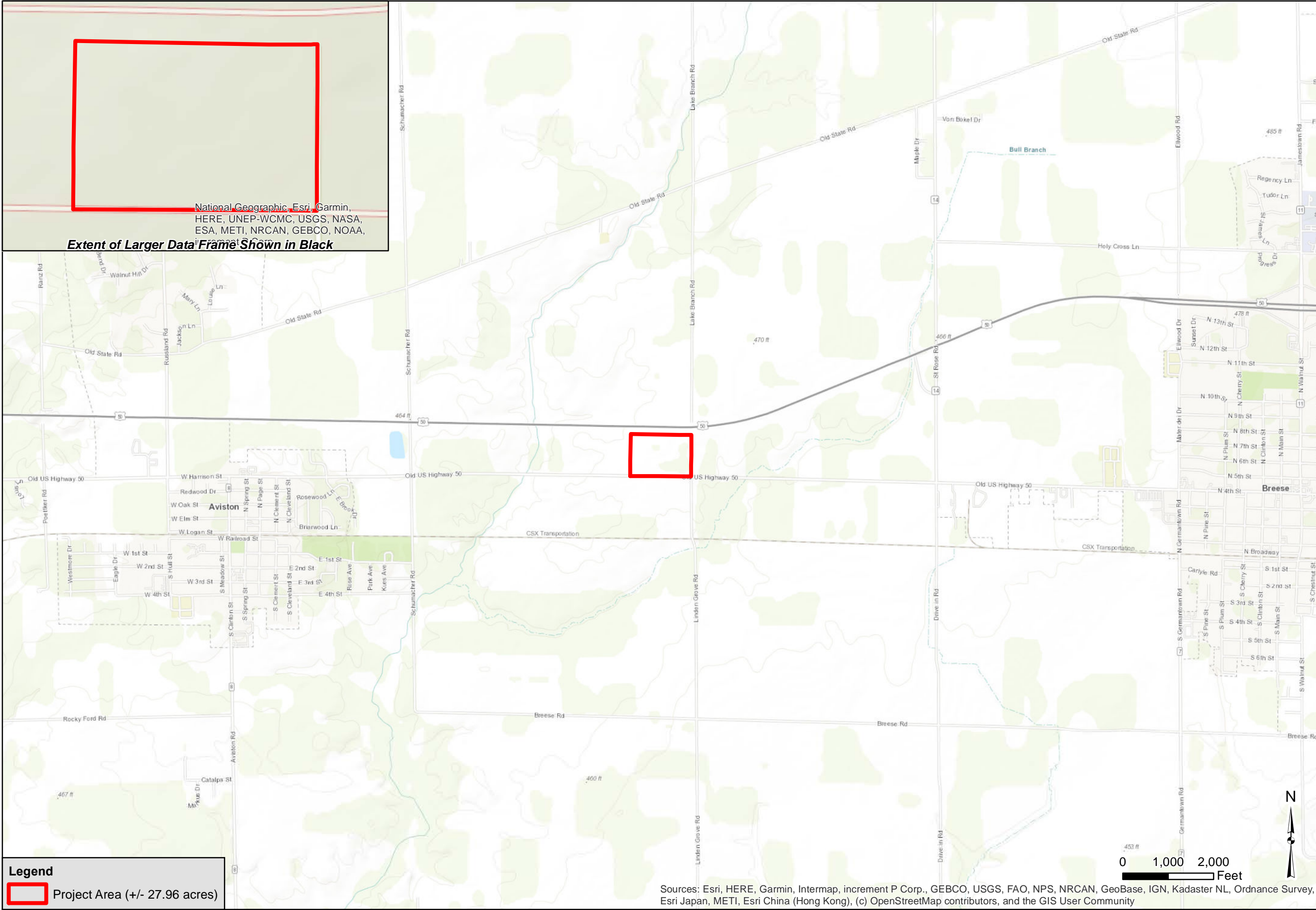
CEMVS-OD-F

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [MVS-2024-679](#)

10. OTHER SUPPORTING INFORMATION.

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

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.



National Geographic, Esri, Garmin, HERE, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, iCnemat

**Extent of Larger Data Frame Shown in Black**

**Legend**

Project Area (+/- 27.96 acres)

**FIGURE 1**  
**SITE LOCATION MAP**

**DIMENSION RENEWABLES ENERGY, LLC**  
**KIEL SOLAR SITE**  
**CLINTON COUNTY, ILLINOIS**

*Located in Section 18, T2N, R4W  
Town of Breese  
Clinton Co., IL*

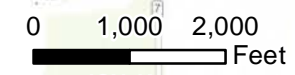
Drawn: RLS 8/7/2024

Approved: 8/7/2024

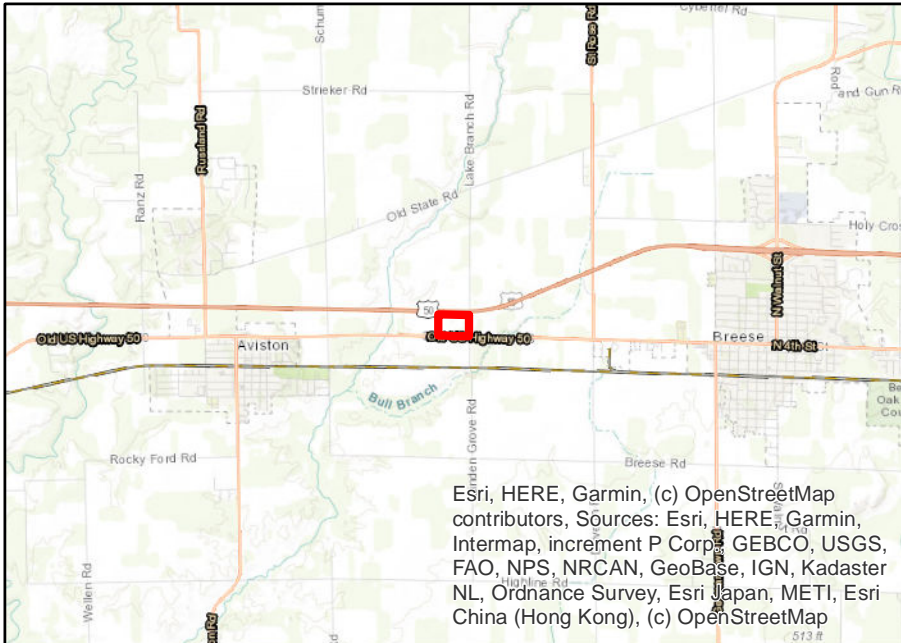
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Project Number: 2403528

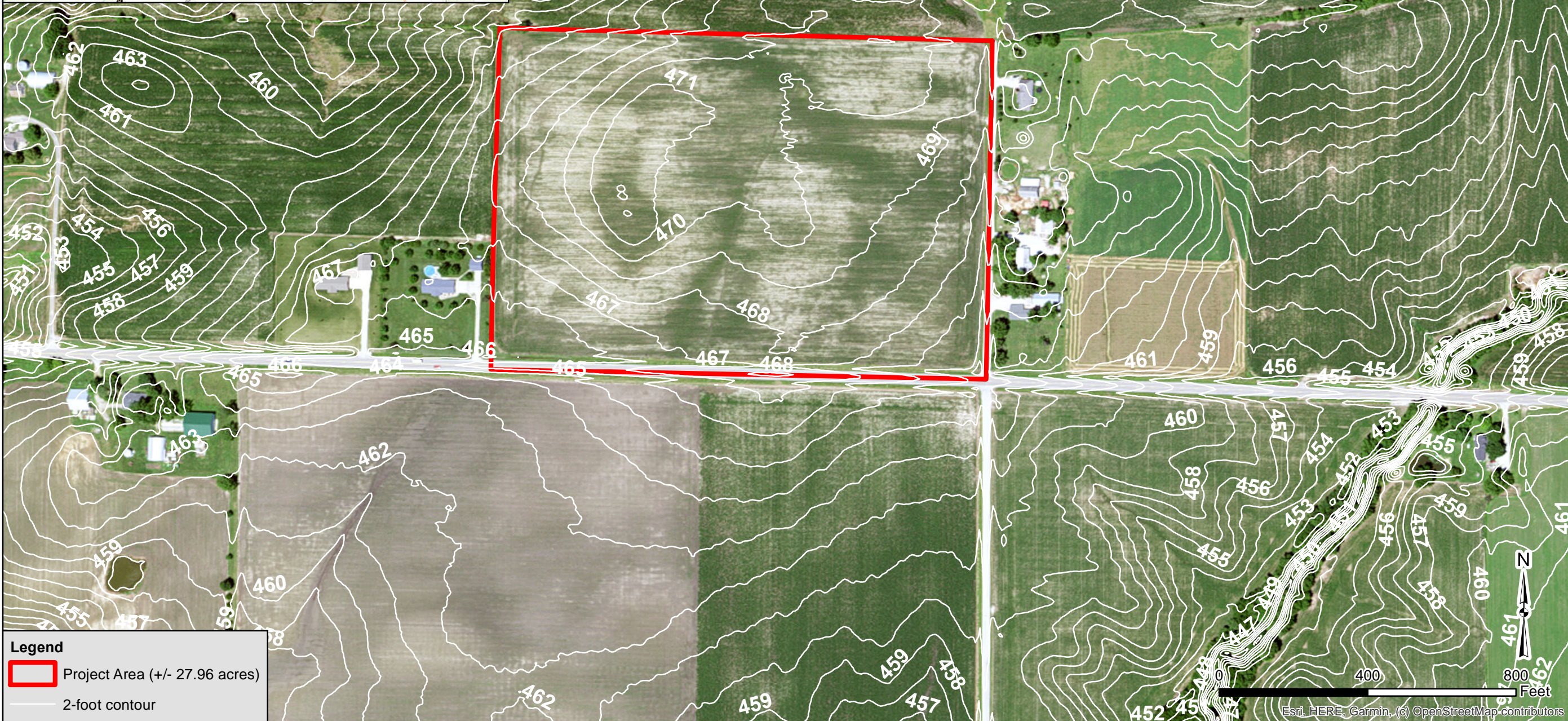
Figure Number: 1



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community



Esri, HERE, Garmin, (c) OpenStreetMap contributors, Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap



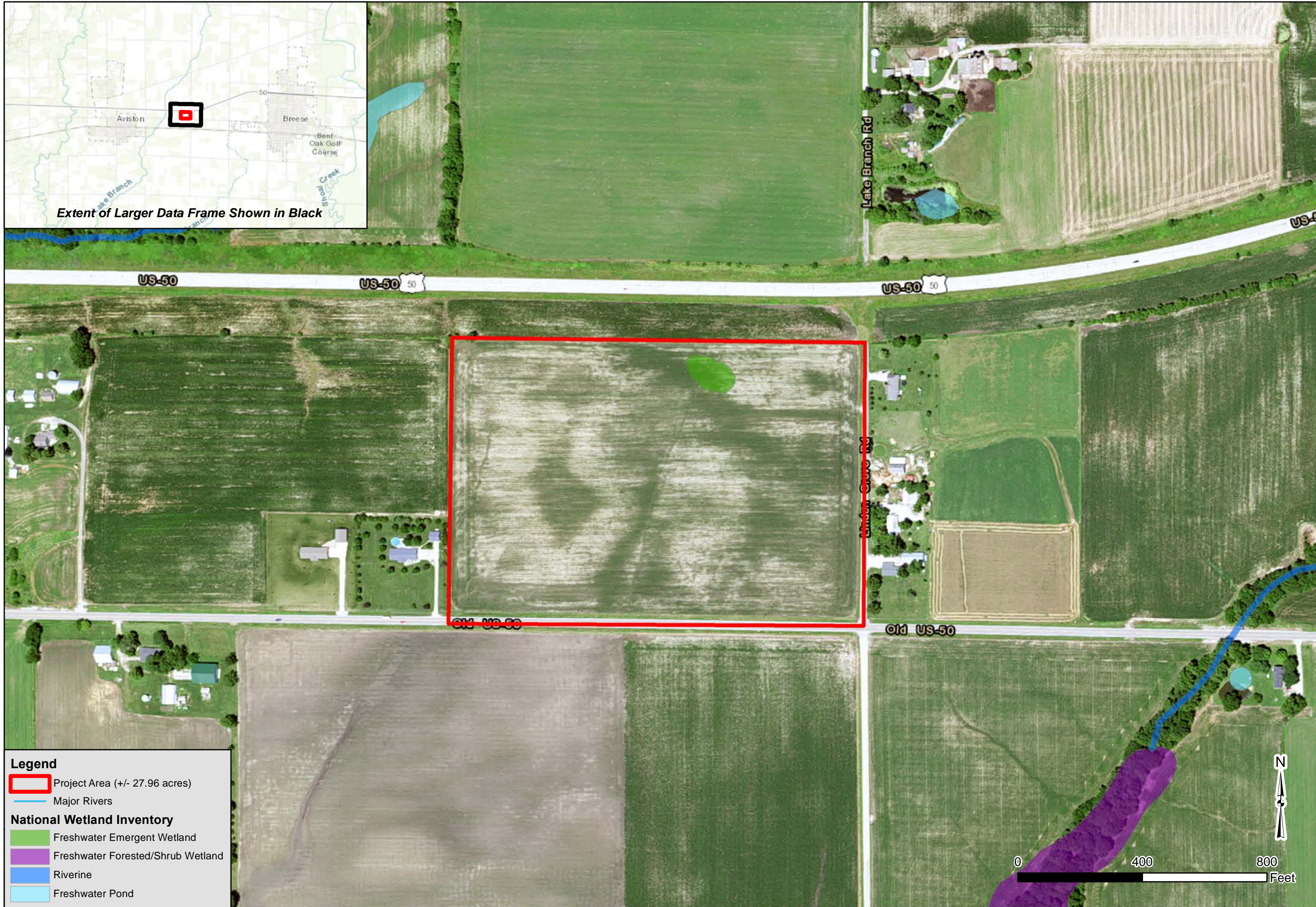
**Legend**

- Project Area (+/- 27.96 acres)
- 2-foot contour

**FIGURE 2**  
**2-FOOT CONTOUR MAP**

DIMENSION RENEWABLES ENERGY, LLC  
KIEL SOLAR SITE  
CLINTON COUNTY, ILLINOIS

Drawn: RLS 8/13/2024
Approved: 8/13/2024
Scale: As Shown
Project Number: 2403528
Figure Number: 2



**Legend**

- Project Area (+/- 27.96 acres)
- Major Rivers

**National Wetland Inventory**

- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Riverine
- Freshwater Pond

**FIGURE 3**  
**NATIONAL WETLAND INVENTORY AND NATIONAL HYDROGRAPHY MAP**  
  
DIMENSION RENEWABLES ENERGY LLC  
KIEL SOLAR SITE  
CLINTON COUNTY, IL

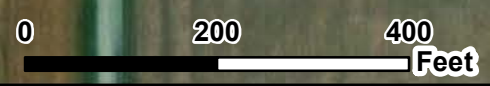


**FIGURE 5**  
**WETLAND DELINEATION MAP**  
DIMENSION RENEWABLES ENERGY, LLC  
KEIL SOLAR SITE  
CLINTON COUNTY, ILLINOIS



**Legend**

Project Area (+/- 27.96 acres)	<b>Delineated Wetland</b>
Sample Plot	Wetland Boundary
Culvert	<b>National Wetland Inv. Classification</b>
Drainage Ditch	Emergent Wetland (+/- 3.21 acres)
Drainage Swale	



Drawn: JJR 8/19/2024
Approved: MO 8/19/2024
Scale: As Shown
Project Number: 2403528
Overview Map