DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
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CESWL-RD 22 May 2026

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023) ,[1] SWL-2025-00201

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.[2] 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.[3] For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),[4] the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in this state due to litigation.

[1] While the Supreme Court’s decision in *Sackett* 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] 33 CFR 331.2.
[3] Regulatory Guidance Letter 05-02.
[4] 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. Stream R-1, Section 404, Non-jurisdictional

2. REFERENCES.

    a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

    b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).

    c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)

    d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The 60-acre review area consists of two separate tracts in Section 29, Township 29N, Range 31W, Carthage, Jasper County, Missouri. The approximate center coordinates of the northern parcel include 37.202377, -94.329936 and the southern parcel includes 37.195165, -94.330339.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Grand (Neosho) River (Lat/ Lon: 35.869618, -95.230020). The Grand (Neosho) River was determined to be the nearest TNW, because of its listing on on the Tulsa District (SWT) List of Navigable Waters subject to Section 10 RHA (see Section 9b below for source information).[5]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. Using USGS National Hydrography Dataset (NHD) onsite aquatic resources drain downstream into a man made retention basin which discharges into Spring River. The remaining flow path to the nearest TNW is as follows:

[5] This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

Spring River → Grand Lake O' the Cherokees (an impoundment of the Neosho River) → Neosho River (drains out of the Grand Lake O' the Cherokees) → Hudson Lake (an impoundment of the Neosho River) → Neosho River drains out of Hudson Lake → Fort Gibson Reservoir (an impoundment of the Neosho River) where the Neosho River becomes a TNW at the Fort Gibson Dam.

6. SECTION 10 JURISDICTIONAL WATERS[6]: 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 pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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. TNWs (a)(1): N/A

   b. Interstate Waters (a)(2): N/A

   c. Other Waters (a)(3): N/A

   d. Impoundments (a)(4): N/A

   e. Tributaries (a)(5): N/A

   f. The territorial seas (a)(6): 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.

g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified as "generally non-jurisdictional" in the preamble to the 1986 regulations (referred to as "preamble waters").[8] Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.N/A

b. Describe aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A

c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A

d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A

e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in "*SWANCC*," would have been jurisdictional based solely on the "Migratory Bird Rule." Include the size of the aquatic resource or feature, and how it was determined to be an "isolated water" in accordance with *SWANCC*. N/A

[8] 51 FR 41217, November 13, 1986.

f. 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 pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Stream R-1 was identified in the applicant's delineation report, totaling approximately 1,284 linear feet within the southern review area. Identifying characteristics of the stream include an intermittent flow regime, riffle-run-pool complexes, mud and cobble substrate, an OHWM height averaging 3 feet, and moderate bed and bank. Although the stream possesses qualities representative of a Relatively Permanent Water (RPW), Stream R-1 appears to lack adequate hydrology to sustain flow longer than three months out of a year because of the site's modified drainage. Therefore, Stream R-1 is considered a non-RPW intermittent stream which is non-jurisdictional under the Supreme Court's decision in *Sackett*.

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. Office evaluation conducted May 22, 2026.

b. Imagery viewed using the Corps National Regulatory Viewer (NRV), which references the following resources: Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, iPC, State of Florida, Maxar, Microsoft, accessed May 22, 2026.

c. USFWS, National Wetlands Inventory (NWI) Mapper, May 22, 2026.

d. USGS 3D Elevation Program (3DEP) Bare Earth DEM, May 22, 2026.

e. Web Soil Survey, https://websoilsurvey.nrcs.usda.gov/app/accessed, May 22, 2026.

f. Google Earth Pro (years of record 1994-2025), May 22, 2026.

g. NAVIGABLE WATERS SUBJECT TO SECTION 10 RIVERS AND HARBORS ACT OF 1899, https://www.swt.usace.army.mil/Missions/Regulatory/Section-10-Waters/, May 22, 2026.

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.

Legend

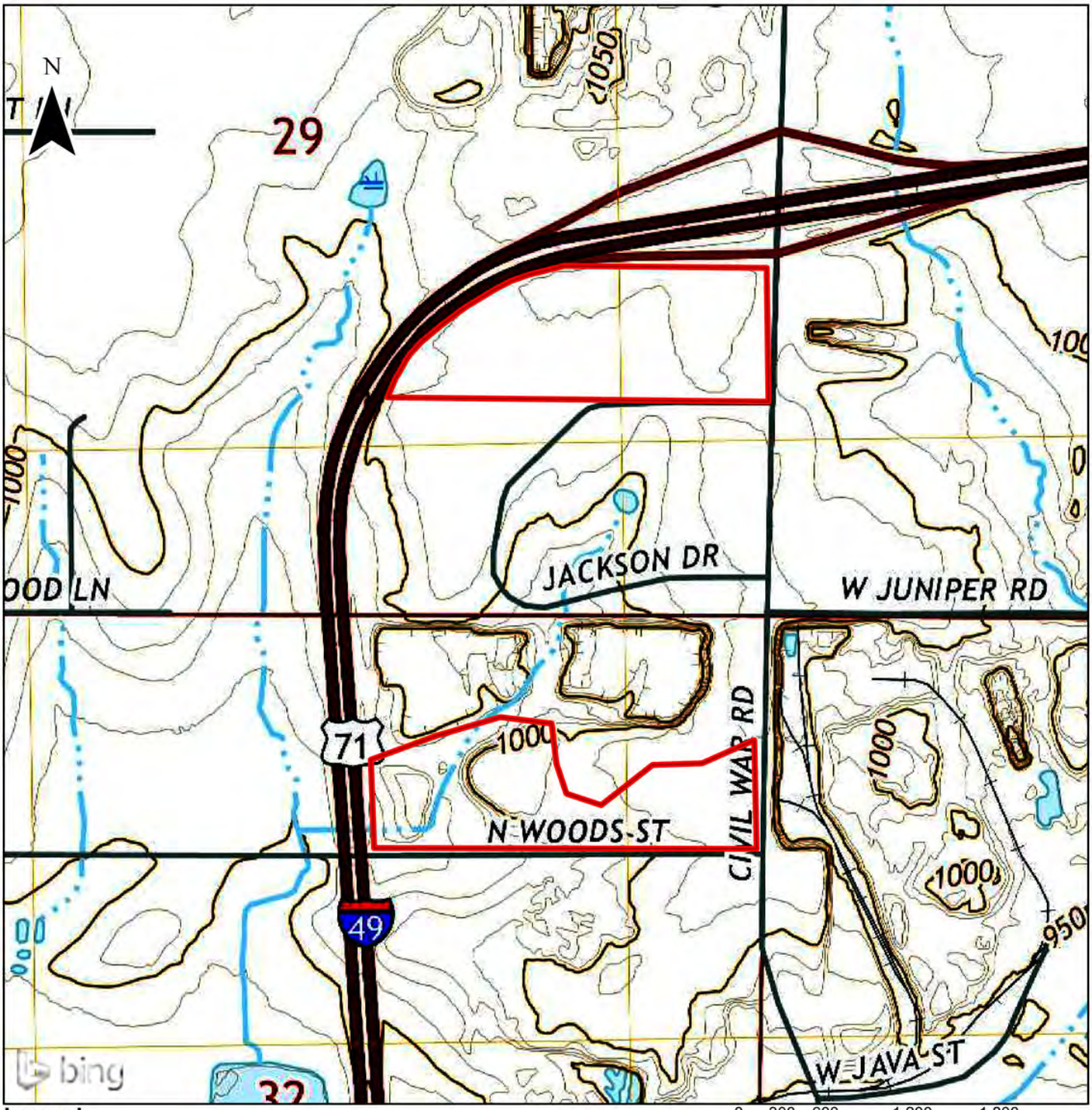
Study Area

0 300 600 1,200 US Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery, OpenStreetMap
Gould Group

Coordinate System: WGS 84
Scale: 1:7,200

Project No.: 25247541 Date: Dec 2024 Drawn By: AGK Reviewed By: PD	Terracon 10625 W I70 Frontage Rd N Ste 3 Denver, Colorado 80033 PH. (303) 423-3300 terracon.com	**Aerial Map** Carthage MO Solar Jasper County, Missouri Prepared for Gould Group	**Exhibit** **1.0**



Legend

Study Area (55 ac)

0 300 600 1,200 1,800 Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery, OpenStreetMap
FEMA NFHL Layer , effective 11/1/2012
Gould Group

Coordinate System: WGS 84
Scale: 1:12,000

Project No.: 25247541 Date: Dec 2024 Drawn By: AGK Reviewed By: TVC	Terracon 10625 W I70 Frontage Rd N Ste 3 Denver, Colorado 80033 PH. (303) 423-3300 terracon.com	**Topographic Map** Carthage MO Solar Jasper County, Missouri Prepared for Gould Group	**Exhibit** **2.0**

Legend

Study Area (55 ac)

NWI Feature

Freshwater Pond

Riverine

0 300 600 1,200 Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery, OpenStreetMap
USFWS NWI Database, accessed December 2024.

Coordinate System: WGS 84
Scale: 1:7,200

Project No.: 25247541 Date: Dec 2024 Drawn By: AGK Reviewed By: PD	Terracon 10625 W I70 Frontage Rd N Ste 3 Denver, Colorado 80033 PH. (303) 423-3300 terracon.com	**National Wetlands Inventory Map** Carthage MO Solar Jasper County, Missouri Prepared for Gould Group	**Exhibit** **3.0**

Legend

Study Area

USDA NRCS Soils

- 40016: Eldorado very gravelly silt loam, 3 to 8 percent slopes, very stony
- 40017: Maplegrove silt loam, 1 to 3 percent slopes
- 40019: Newtonia-Eldorado silt loams, 1 to 3 percent slopes
- 99100: Pits, gravel and quarry

0 300 600 1,200 Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery, OpenStreetMap
USDA NRCS, accessed Dec 2024.
Scale 1:7,200

Project No.:	25247541
Date:	Dec 2024
Drawn By:	AGK
Reviewed By:	PD

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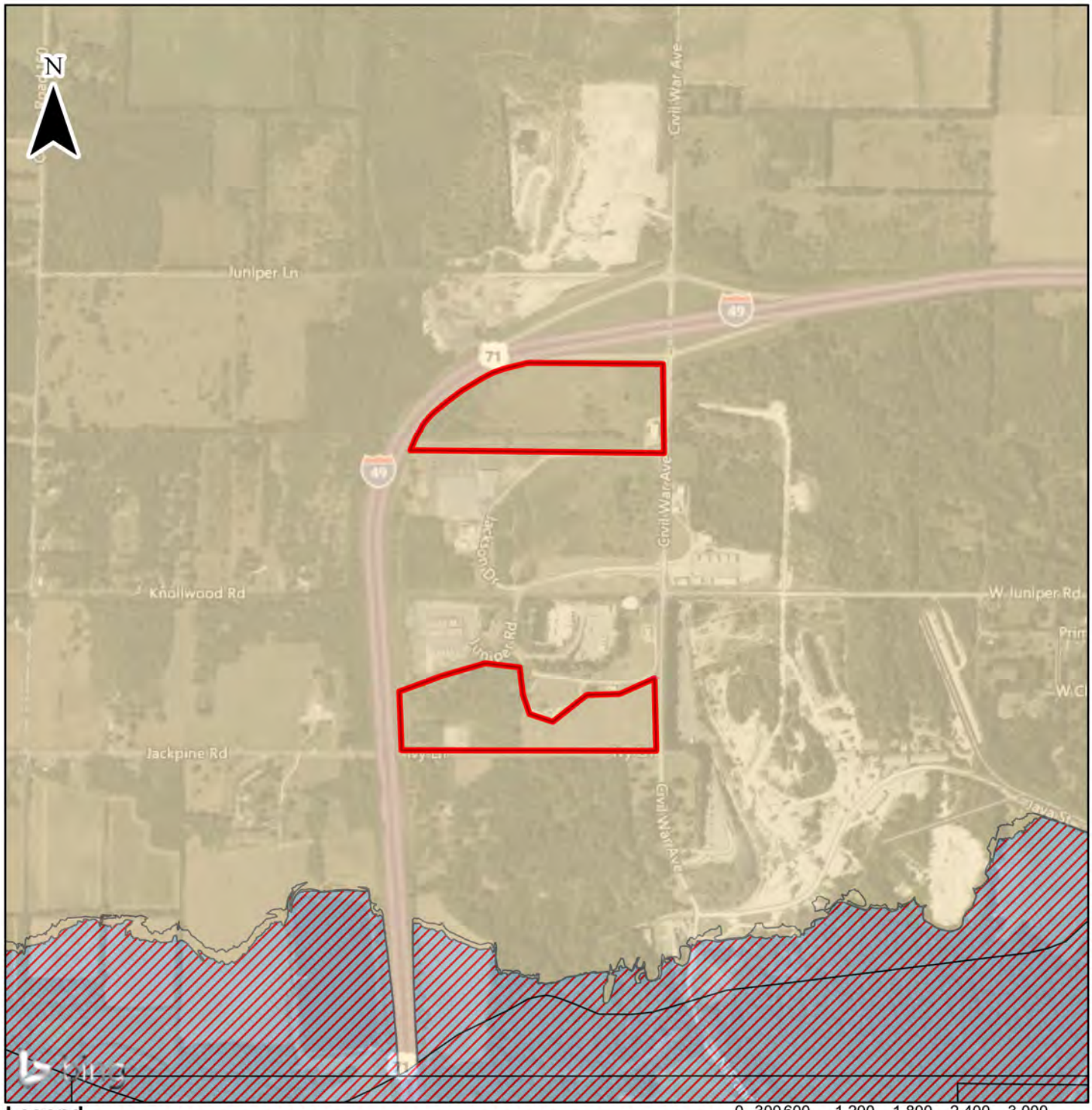
USDA NRCS Soil Map

Carthage MO Solar
Jasper County, Missouri
Prepared for Gould Group

Exhibit

4.0



Legend

Study Area (55 ac)

FEMA Flood Zone

AE: Regulatory Floodway

X: Area of Minimal Flood Hazard

0 300 600 1,200 1,800 2,400 3,000 Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery, OpenStreetMap
FEMA NFHL Layer , effective 11/1/2012
Gould Group

Coordinate System: WGS 84
Scale: 1:18,000

Project No.: 25247541 Date: Dec 2024 Drawn By: AGK Reviewed By: PD	Terracon 10625 W I70 Frontage Rd N Ste 3 Denver, Colorado 80033 PH. (303) 423-3300 terracon.com	**FEMA Flood Hazard Map** Carthage MO Solar Jasper County, Missouri Prepared for Gould Group	**Exhibit** **5.0**

Legend

Point Data

- Data Point
- Reference Photo Point

0 75 150 300 Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery
Gould Group
Scale 1:1,800

Project No.:	25247541
Date:	Dec 2024
Drawn By:	AGK
Reviewed By:	PD

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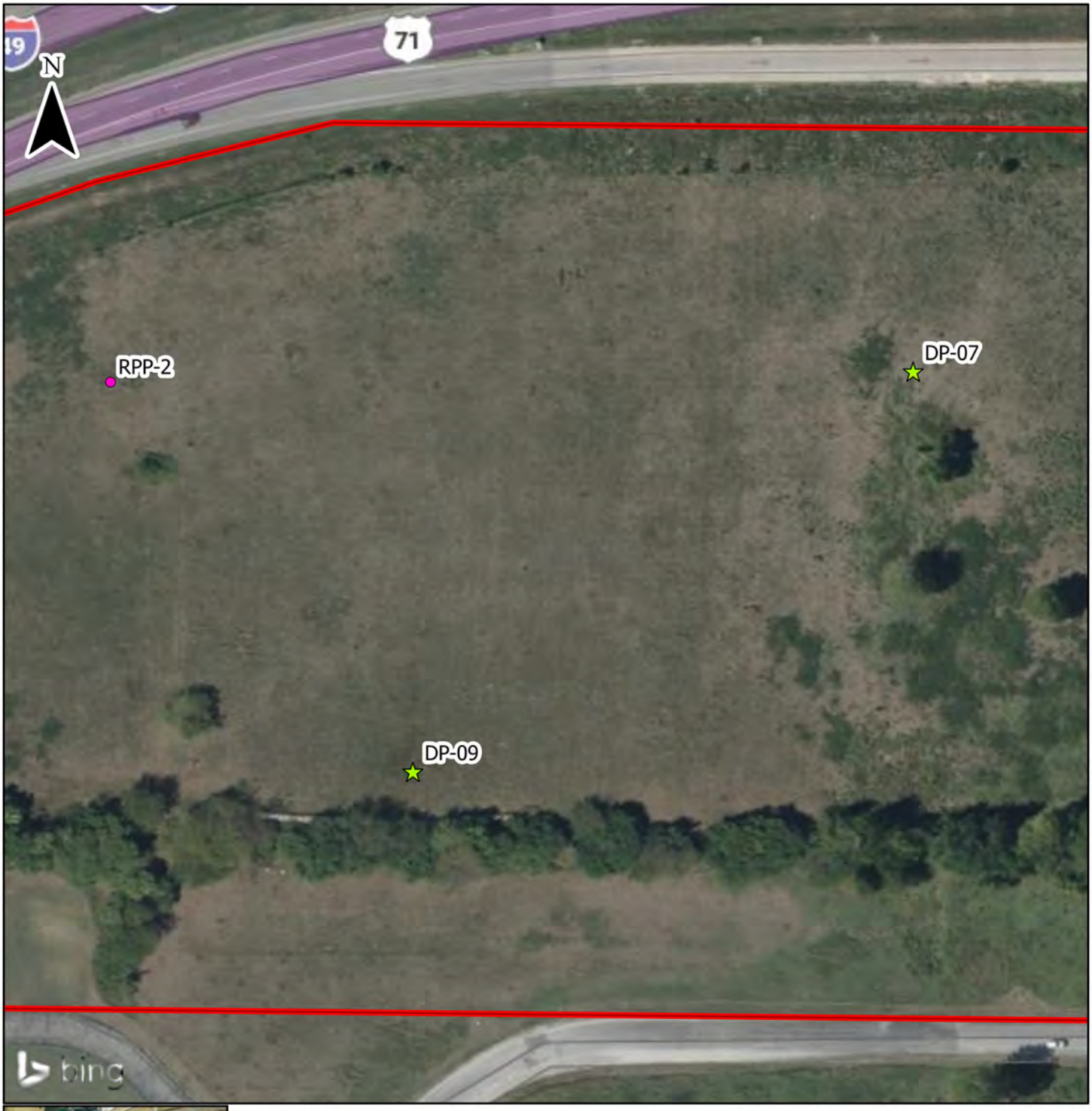
Delineation Map

Carthage MO Solar
Jasper County, Missouri
Prepared for Gould Group

Exhibit

6.1



Legend

Point Data

- Data Point
- Reference Photo Point

0 75 150 300 Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery
Gould Group
Scale 1:1,800

Project No.:	25247541
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Delineation Map

Carthage MO Solar
Jasper County, Missouri
Prepared for Gould Group

Exhibit

6.2

Legend

Point Data

☆ Data Point

0 75 150 300 Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery
Gould Group
Scale 1:1,800

Project No.:	25247541
Date:	Dec 2024
Drawn By:	AGK
Reviewed By:	PD

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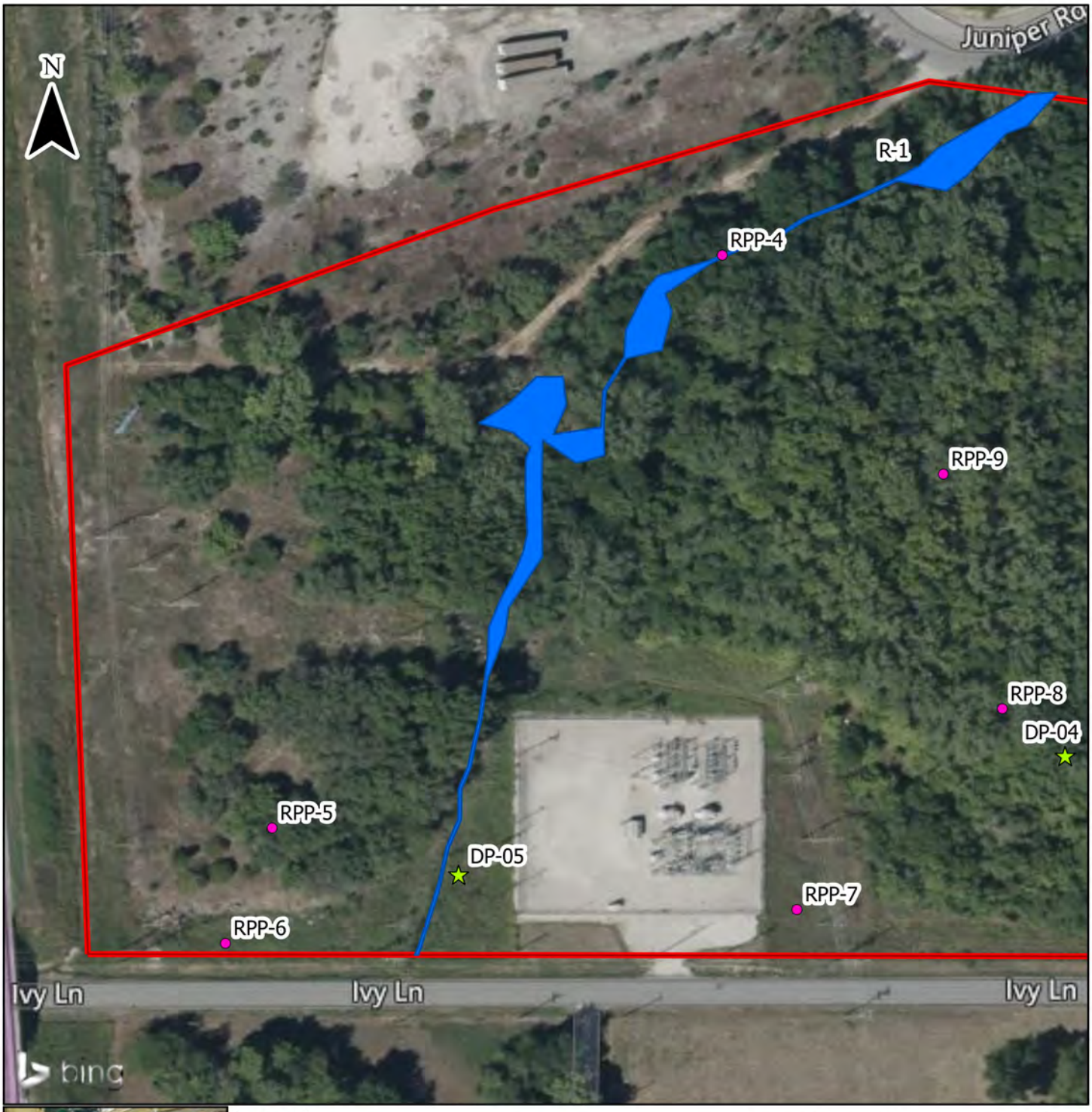
Delineation Map

Carthage MO Solar
Jasper County, Missouri
Prepared for Gould Group

Exhibit

6.3



Legend

Point Data

- Data Point
- Reference Photo Point

Delineated Features

- Riverine (1,284 LF)

0 75 150 300 Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery
Gould Group
Scale 1:1,800

Project No.:	25247541
Date:	Dec 2024
Drawn By:	AGK
Reviewed By:	PD

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Delineation Map

Carthage MO Solar
Jasper County, Missouri
Prepared for Gould Group

Exhibit

6.4

Legend

Point Data

- Data Point
- Reference Photo Point

Delineated Features

- Riverine (1,284 LF)

0 75 150 300 Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery
Gould Group
Scale 1:1,800

Project No.:	25247541
Date:	Dec 2024
Drawn By:	AGK
Reviewed By:	PD

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Delineation Map

Carthage MO Solar
Jasper County, Missouri
Prepared for Gould Group

Exhibit

6.5

Legend

Point Data

☆ Data Point

0 75 150 300 Feet

DATA SOURCES:
ESRI WMS - World Aerial Imagery
Gould Group
Scale 1:1,800

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Date:	Dec 2024
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Reviewed By:	PD

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Delineation Map

Carthage MO Solar
Jasper County, Missouri
Prepared for Gould Group

Exhibit

6.6