



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

CENAE-RD

2 March 2026

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 NAE-2025-02004.

1. 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

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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

2. SUMMARY OF CONCLUSIONS.

- a. There are four (4) delineated aquatic feature within the project's review area:
 - i. Wetland C (66,943 square feet), Wetland B (19,964 square feet), Wetland D (907 square feet) and Drainage Ditch are non-jurisdictional aquatic resources.

3. 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)

4. REVIEW AREA. The AJD Review Area (Figure 1) includes about 5.20 acres of a 23.65 acre parcel near 7900 Williston Road in Williston, Vermont. (Latitude/Longitude Coordinates: 44.436232°, -73.073207°). On 9 September 2025, USACE conducted a site visit to review the aquatic resources at the site that were delineated by DuBois & King, Inc.

5. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A. The aquatic resources are not connected to a TNW, the territorial seas, or interstate waters. The Winooski River is the closest TNW, about 1.95 miles east of the site as the crow flies.⁵

6. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A. The aquatic resources are not connected to a TNW, the territorial seas, or interstate waters.

7. 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

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 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.

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.

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. 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

9. 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
 - i. Drainage Ditch is a stormwater feature constructed from the I-89 Interstate right-of-way to the back (south) side of the Town of Williston's municipal buildings. The ditch was likely constructed in the 1960's after the Interstate was constructed to direct runoff from the road off the agricultural fields. The very shallow ditch is heavily vegetated with reed *Phalaris arundinacea* and difficult to discern from adjacent upland in some areas. The Drainage Ditch traverses Wetland B and extends another 24 feet before leaving the Review Area. The feature does not carry a relatively permanent flow of water and meets the definition of excluded (b)(3) water. The Drainage Ditch is not jurisdictional.
- 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).
 - i. Wetlands C, B and D in the Review Area are non-adjacent palustrine emergent wetlands dominated by hydrophytes, including *Phalaris arundinacea*, *Juncus effusus* and *Carex vulpinoidea*. Wetland C is 66,943 square feet (1.54 acres) in size. Wetland B is 19,964 square feet (0.45 acre) in size. Wetland D is 907 square feet (0.02 acre) in size. Each wetland is very close in proximity to each other and have the same characteristics. Hydrology support comes from high groundwater and surface runoff from surrounding property. The hydric soils at the site are silt loam and mapped as Cabots. Hydrology indicators at the site include oxidized rhizospheres and geomorphic position. The wetlands are within a former agricultural field with a distinct plow and restrictive layer below ten inches in depth. Wetlands C, B and D are not adjacent to an (a)(1) water and are not adjacent to a relatively permanent, standing, or continuously flowing body of water identified in paragraph (a)(2) or (a)(3) of the rule. Wetland C, B and D do not have continuous surface connections to such waters. Due to this lack of surface connection to waters of the U.S., Wetland C, B and D are not jurisdictional.

10. 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. Overall Plan View of Review Area drafted by DuBois & King, Inc., titled "NATURAL RESOURCES IDENTIFICATION EXHIBIT", dated "AUG. 2025" (Figure 1).
- b. Additional remote tools and mapping resources were used to analyze the review area:
 - a. Figure 2. Location Map from VT Natural Resources Atlas, titled "WILLISTON TOWN FIELDS", dated "2 MARCH 2026".
 - b. Figure 3. USGS StreamStats
 - c. Figure 4. Google Earth Photos
 - d. Figure 5. Site Visit Photos of 9 September 2025

A site visit was conducted by USACE staff on 9 September 2025 to review the wetland delineation determine jurisdiction.

⁸ 88 FR 3004 (January 18, 2023)

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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAE-2025-02004

11. OTHER SUPPORTING INFORMATION. N/A

12. 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.

PROFESSIONAL SEAL
**NOT FOR
 CONSTRUCTION
 PRELIMINARY
 PLANS**

NO.	DATE	DESCRIPTION	BY	CK'D

TOWN OF
 WILLISTON

WILLISTON
 TOWN FIELDS

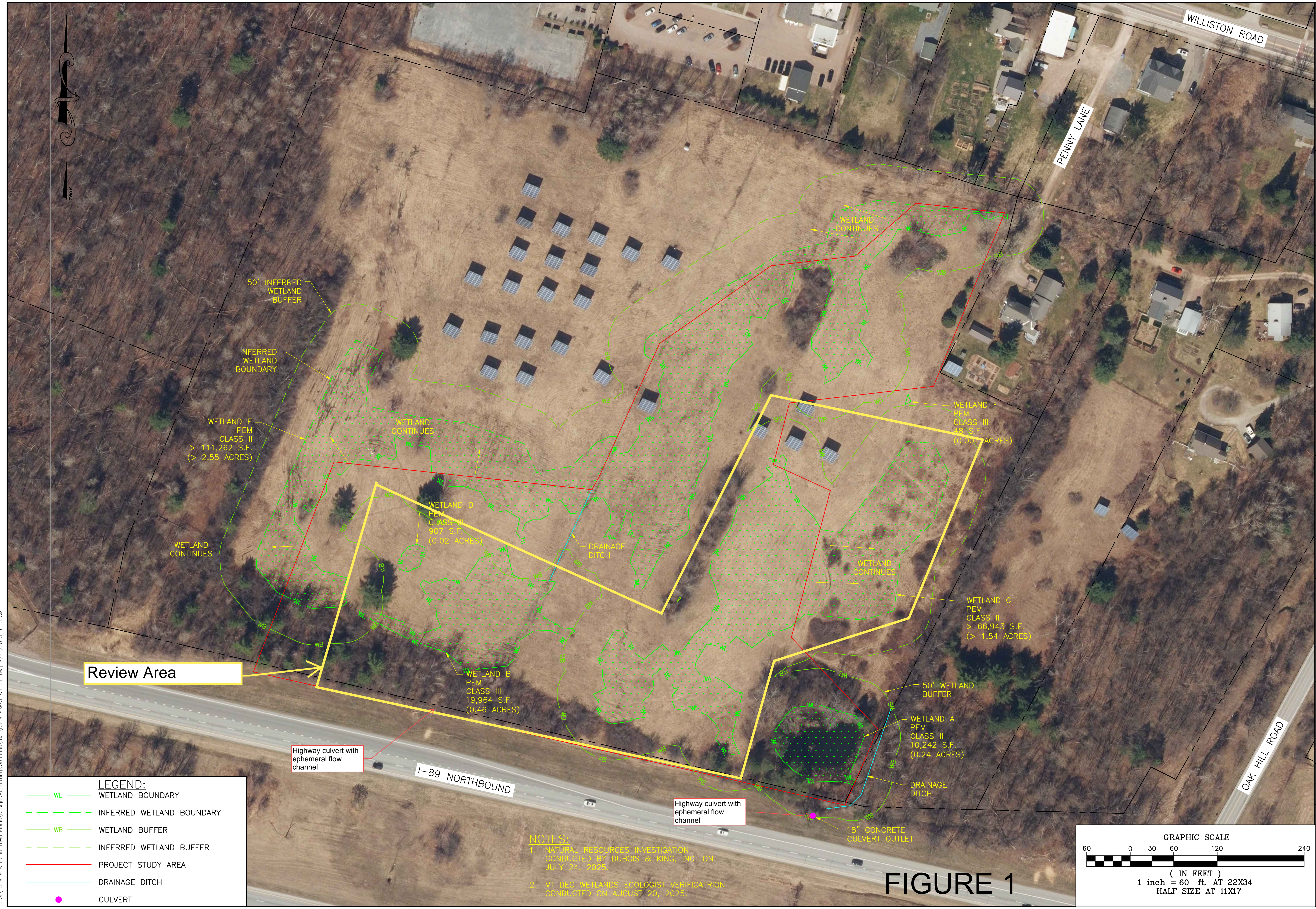
PENNY LANE
 WILLISTON, VT
 05495

SHEET TITLE
 NATURAL
 RESOURCES
 IDENTIFICATION
 EXHIBIT

DRAWN BY	DATE
JWP	AUG. 2025
CHECKED BY	D&K PROJECT #
ANR	430959L
PROJ. ENG.	D&K ARCHIVE #
ANR	

SHEET NUMBER

C-1



I:\A\430959\Williston_Town_Fields\Design\Permitting\Wetlands\dwg\Wetland.dwg, 8/21/2025, 9:15 AM

LEGEND:

— WL	WETLAND BOUNDARY
- - -	INFERRED WETLAND BOUNDARY
— WB	WETLAND BUFFER
- - -	INFERRED WETLAND BUFFER
—	PROJECT STUDY AREA
—	DRAINAGE DITCH
●	CULVERT

NOTES:
 1. NATURAL RESOURCES INVESTIGATION CONDUCTED BY DUBOIS & KING, INC. ON JULY 24, 2025.
 2. VT DEC WETLANDS ECOLOGIST VERIFICATION CONDUCTED ON AUGUST 20, 2025.

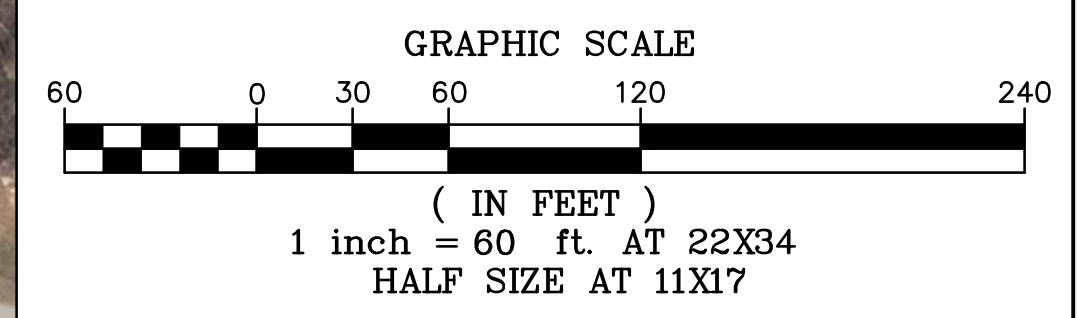


FIGURE 1