



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

CENAE-RD

24 September 2025

MEMORANDUM FOR RECORD

SUBJECT: U.S. Army Corps of Engineers (USACE) Approved Jurisdictional Determination in accordance with the “Revised Definition of ‘Waters of the United States’”; (88 FR 3004 (18 January 2023) as amended by the “Revised Definition of ‘Waters of the United States’; Conforming” (08 September 2023),¹ NAE-2018-02455

1. **BACKGROUND:** An Approved Jurisdictional Determination (AJD) is a USACE document stating the presence or absence of waters of the United States (U.S.) on a parcel or a written statement and map identifying the limits of waters of the U.S. 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 18 January 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 (18 January 2023) (“2023 Rule”). On 08 September 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 USACE 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.

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.

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2. 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).

Name of Aquatic Resource	JD or Non-JD	Section 404/Section 10
Wetland (Dovertown Drive to Wetland Flag FWL152)	Non-JD	N/A

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., 143 S. Ct. 1322 (2023).

4. REVIEW AREA:

- A. Project Area Size (in acres): 20.5-Acre Parcel. Determination request limited to 1,380-square-foot proposed access road (identified as X4 on the attached figure).
- B. Center Coordinates of the Project Site (in decimal degrees)
Latitude: 41.071278, Longitude: -73.662988
- C. Nearest City or Town: Greenwich
- D. County: Fairfield
- E. State: Connecticut

The parcel consists of an approximate 20-acre, residentially-zoned, undeveloped property (Figure 1). The action proposes to cross one state wetland (the subject of this jurisdictional determination) and two other previously identified federal wetlands for a driveway to a single-family residence. The two federal wetlands are established as jurisdictional and are not subject of this review.

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5. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED: Byram River. The nearest TNW identified from USACE National Channel Framework GIS polygons.⁵

6. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER:

N/A. The subject aquatic resources at Crossing No. 4 under review in this MFR are considered non-jurisdictional.

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

The project area is located in non-tidal waters. The East Branch Byram River is also a non-tidal water. Therefore, there are no Section 10 waters present within the proposed project area.

An intermittent watercourse is located approximately 10 feet southwest of the drainage ditch subject to this JD. This intermittent non-tidal wetland flows south-southwest, and through a series of streams and wetlands where it joins with the East Branch Byram River after 0.5 miles.

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

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.

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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):

On 12 March 2025, the U.S. Environmental Protection Agency (EPA) and Department of the Army announced a joint memorandum issuing guidance to field staff on implementation of “continuous surface connection” in light of the U.S. Supreme Court’s May 25, 2023, decision in the case of *Sackett v. Environmental Protection Agency (Sackett)*.

The review area in question is the first crossing (designated as Crossing No. 4 [identified as X4] on Figure 2) that disturbs a small corner of state-designated wetlands and a drainage ditch.

Crossing No. 4

Crossing No. 4 is shown in the vicinity of a drainage channel that extends south from Dovertown Drive (approximate coordinates at latitude 41.071343° and longitude -73.662989°) to Wetland Flag FWF152 (approximate coordinates at latitude 41.071164° and longitude -73.663118°) in the northern portion of the property and proposed action area.

The channel (identified as a non-permanent watercourse) exists as a result of surface water runoff flowing south from Dovertown Drive into the vegetated area downgradient of the paved surface. According to documents the applicant provided, the ditch conveys water from an approximately 0.96-acre area, almost exclusively stormwater runoff from the paved Dovertown Drive.

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The ditch was formed entirely in dry land and does not carry a relatively permanent flow of water. The ditch is an erosional feature that is characterized by low-volume, infrequent, and short duration flows.

The applicant identifies the terminus of the drainage ditch and the beginning of an intermittent watercourse (non-tidal wetlands) approximately 10 feet southwest of Wetland Flag FWF152 at approximate coordinates at latitude 41.071145° and longitude -73.663143°.

No upgradient wetlands, waterways or other sources are contributing to the presence of the drainage ditch. U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) identifies the presence of non-tidal wetlands downgradient of the drainage ditch and intermittent watercourse approximately 350 and 450 feet south and southwest of Crossing No. 4, respectively (Figure 3). These wetlands will be avoided during construction activities of the remainder of the property. No other wetlands are identified in the proposed action area.

Crossings Nos. 4 and 5

The second and third crossings (designated as Crossing No. 5 [X5] and No. 6 [X6] respectively) are proposed to be avoided using by construction of timber pile bridges. The bridge decks will sit above the wetlands and will be supported by timber piles hammered into the ground. The pile supported bridge will span across the intermittent watercourse (not a Navigable Water of the United States) and above the wetlands (Figure 2).

Per the Code of Federal Regulations, “*Placement of pilings in waters of the United States that does not have or would not have the effect of a discharge of fill material shall not require a Section 404 permit.*” Refer to the Low-Impact Timber Bridge Construction narrative to further describe the proposed leading-edge, top-down construction methods. This construction methodology avoids the discharge of fill material and protects the integrity of the wetland areas while delivering safe and structurally sound bridge crossings.

Review of historical aerial imagery shows that Dovertown Drive was constructed between 1963 and 1971 (Figures 4 and 5). Dovertown Drive was not present in the 1960 USGS Glenville Quadrangle (1966 ed.) with the 1973 edition having Dovertown Drive constructed. Aerial imagery shows that region in the vicinity of the proposed action area as undeveloped land, single-family residence and possible farm land.

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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 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).

The wetlands upgradient of Wetland Flag FWF152 is described as a non-relatively permanent water and a non-tidal wetland that does not have a continuous surface connection to a jurisdictional water.

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. USGS Glenville Quadrangle Topographic Map, 11 March 2025.
- b. Construction Drawings, 11 March 2025.
- c. Site Photographs.
- d. Federal Wetlands Delineation Reports, 09 through 18 May 2005, 08 September 2022, 06 October 2028.
- e. Jurisdictional Determination, Redniss and Mead, 24 July 2025.
- f. USACE Jurisdictional Review of Drainage Ditch, 19 June 2025.
- g. Low-Impact Bridge Construction Summary, 24 June 2025
- h. Narrative for Tree Removal, 04 September 2025.
- i. Aerial Imagery, Connecticut GIS Office, 08 September 2025.
- j. USGS 3D Elevation Program Hillshade Imagery, 19 Aug 2021.
- k. USGS 3D Elevation Program Digital Elevation Model Imagery, 15 Aug 2025.

⁸ 88 FR 3004 (January 18, 2023)

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- I. USGWS National Wetlands Inventory Maps.
- m. Aerial Imagery, Historical Aerials, 1960, 1963, 1971.
- n. Topographic Maps, USGS, 1960, 1962.

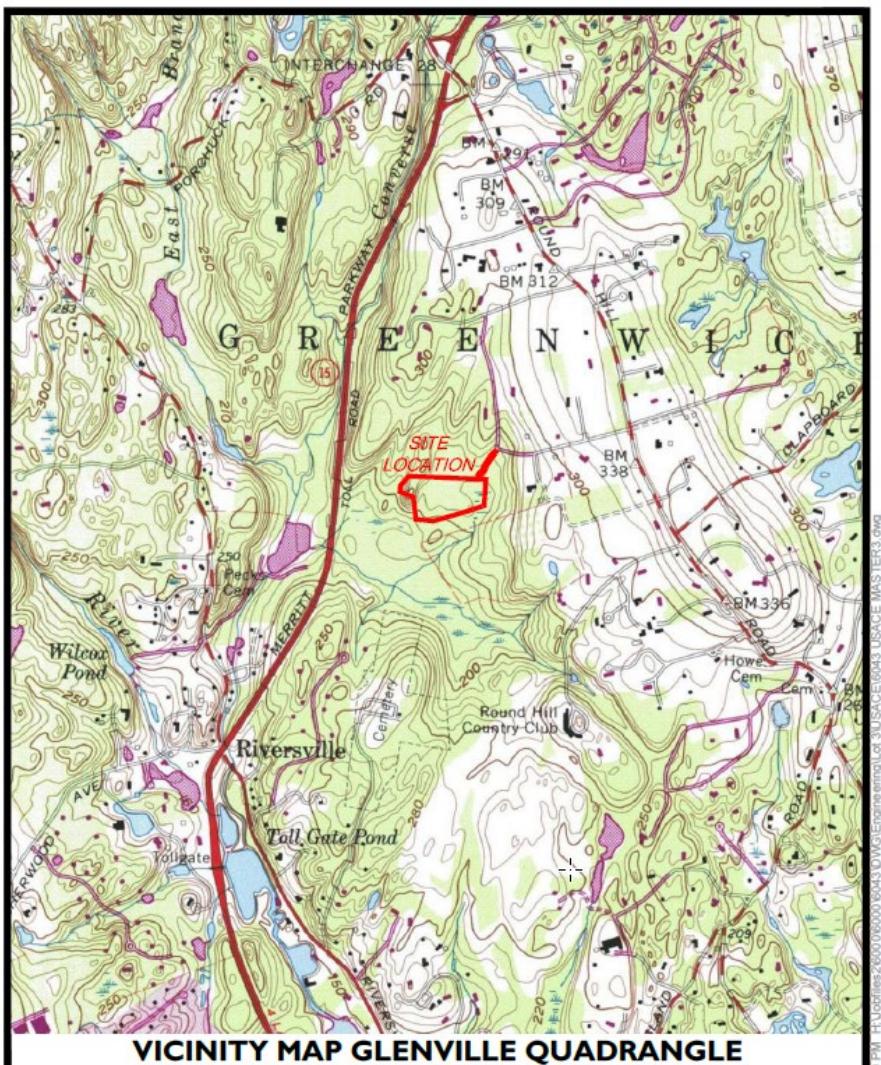
11. OTHER SUPPORTING INFORMATION: N/A

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.

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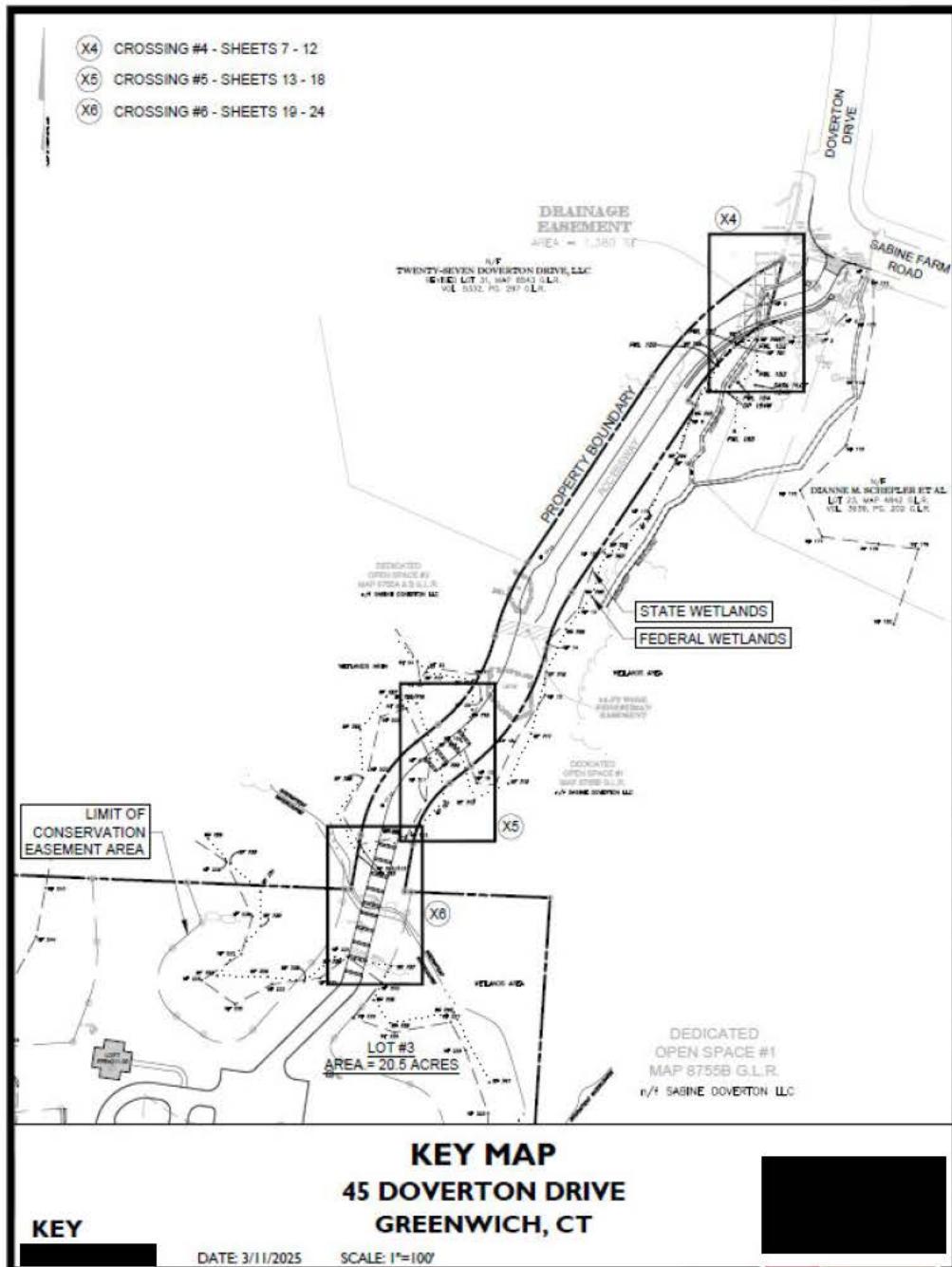
Figure 1: Site Locus Map



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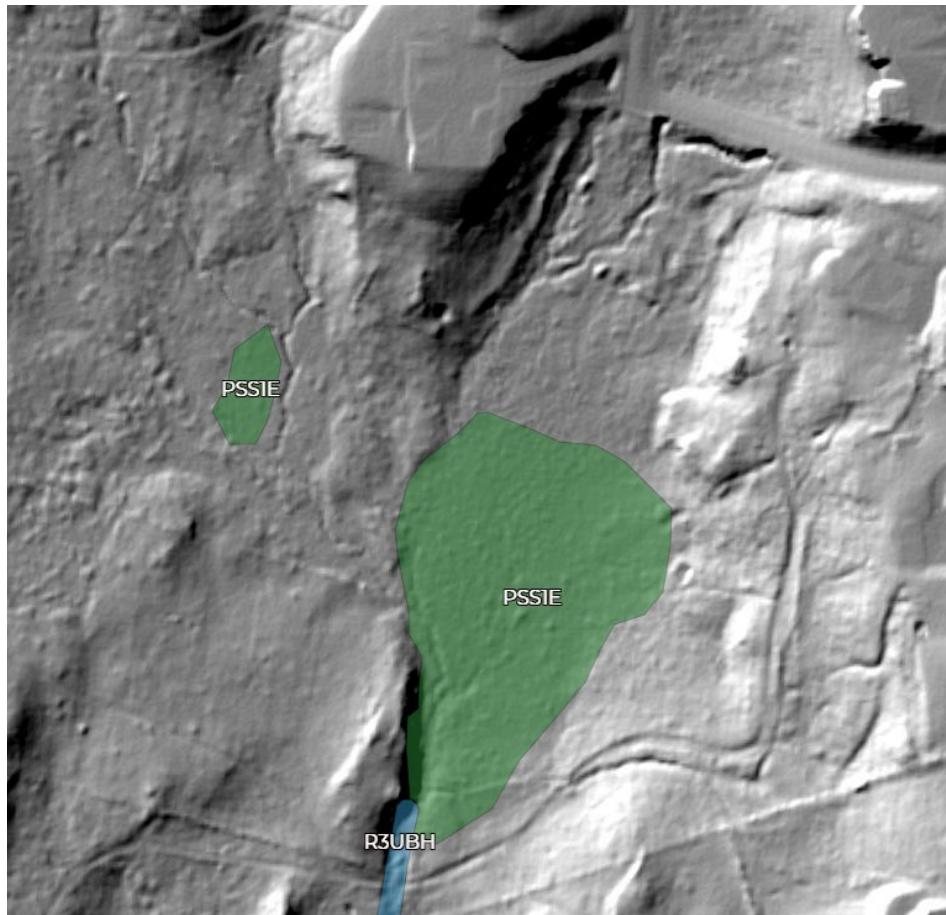
Figure 2: Project Location



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Figure 3: National Wetland Inventory Map



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Figure 4: 1963 Aerial Image

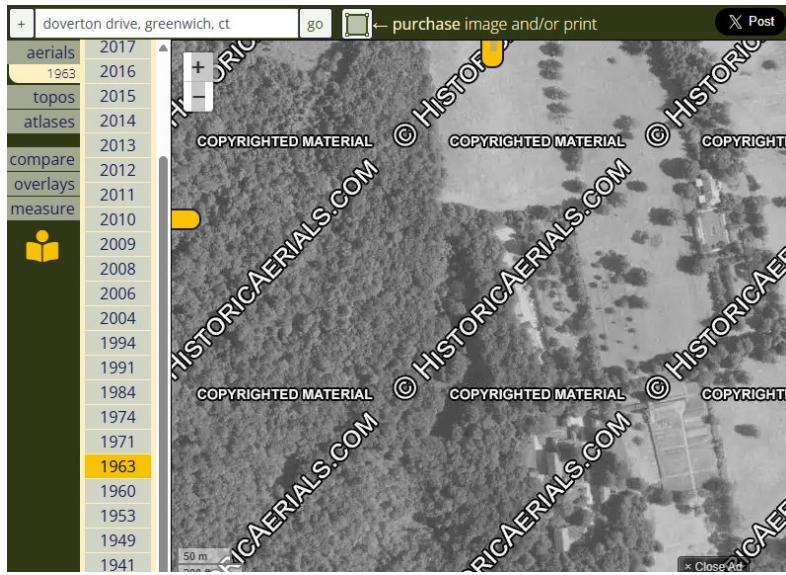
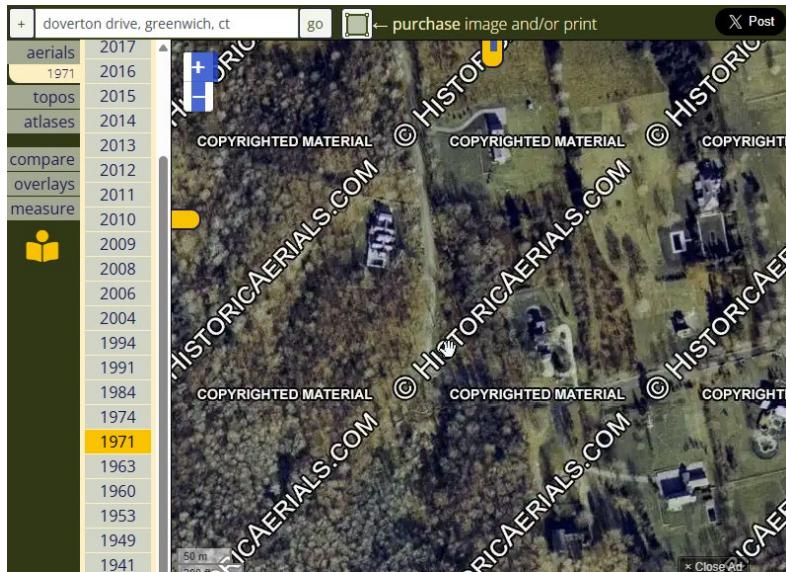


Figure 5: 1971 Aerial Image



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Figure 6: USGS 1960 (1966 ed.) Glenville, CT Quadrangle Map

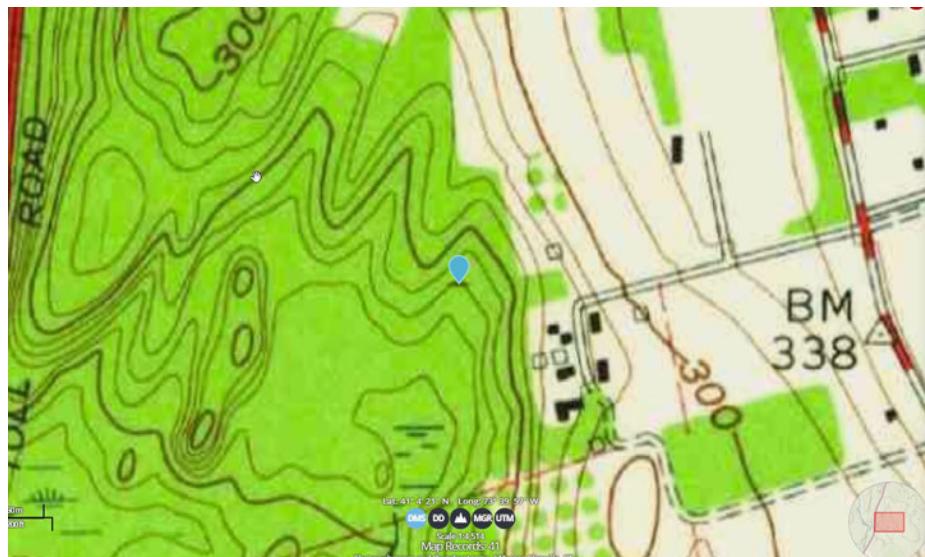


Figure 7: USGS 1960 (1973 ed.) Glenville, CT Quadrangle Map

