



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

CENAE-RD

8 April 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> NAE-2024-02271.

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>2</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>3</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>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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.

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- a. There is one (1) delineated aquatic feature within the project's review area:
  - i. Wetland 2 (12,527 sq. ft. within the review area) is a non-jurisdictional wetland.

## 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)
  - c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)
3. REVIEW AREA. The AJD Review Area (Figure 1) includes an area adjacent to North Main Street (VT Route 118) at the Montgomery Recreation Center in Montgomery, Vermont. (Latitude/Longitude Coordinates: 44.880705°, -72.613794°). On 9 October 2024, USACE conducted a site visit to review the aquatic resources at the site that were delineated by Hoyle, Tanner & Associates.
4. 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 Missisquoi River is the closest TNW, about 5.5 miles west of the site as the crow flies.<sup>5</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A. The aquatic resource is not connected to a TNW, the territorial seas, or interstate waters.
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

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<sup>5</sup> 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.

<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.

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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 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

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<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.

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> 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 one (1) wetland within the Review Area is a regularly mowed field that is part of the Montgomery Recreation Center. The wetland is located atop of a water main pipe. The vegetation in this aquatic feature has been treated as Problematic Hydrophytic Vegetation – Managed Plant Communities per Chapter 5(4)(d) of the Northeast Regional Supplement to the USACE Wetland Delineation Manual. The hydric soils at the site are loamy/clayey over sandy soils with distinct redox concentrations. Hydrology indicators at the site include surface water, high water table, saturation and oxidized rhizospheres on living roots. The swale shaped wetland drains to a culvert beneath the parcel's driveway into a catch basin located in the front yard of the neighboring property to the north. Flow from the catch basin outlets to a culvert beneath VT Route 118 and eventually to Trout River. There is not a relatively permanent, standing or continuous flow through the culverts. The culverts create a clear demarcation between “waters” and the “wetland”. The wetland is not jurisdictional.
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. Overall Plan View of Review Area drafted by Hoyle Tanner, titled “AJD Wetland Delineation Map”, dated “Tuesday, April 8, 2025” (Figure 1).
  - b. Additional remote tools and mapping resources were used to analyze the review area:
    - a. Figure 2. Location Map
    - b. Figure 3. Location Map from VT Natural Resources Atlas
    - c. Figure 4. USGS StreamStats
    - d. Figure 5. Google Earth Photos
    - e. Figure 6. Site Visit Photos

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



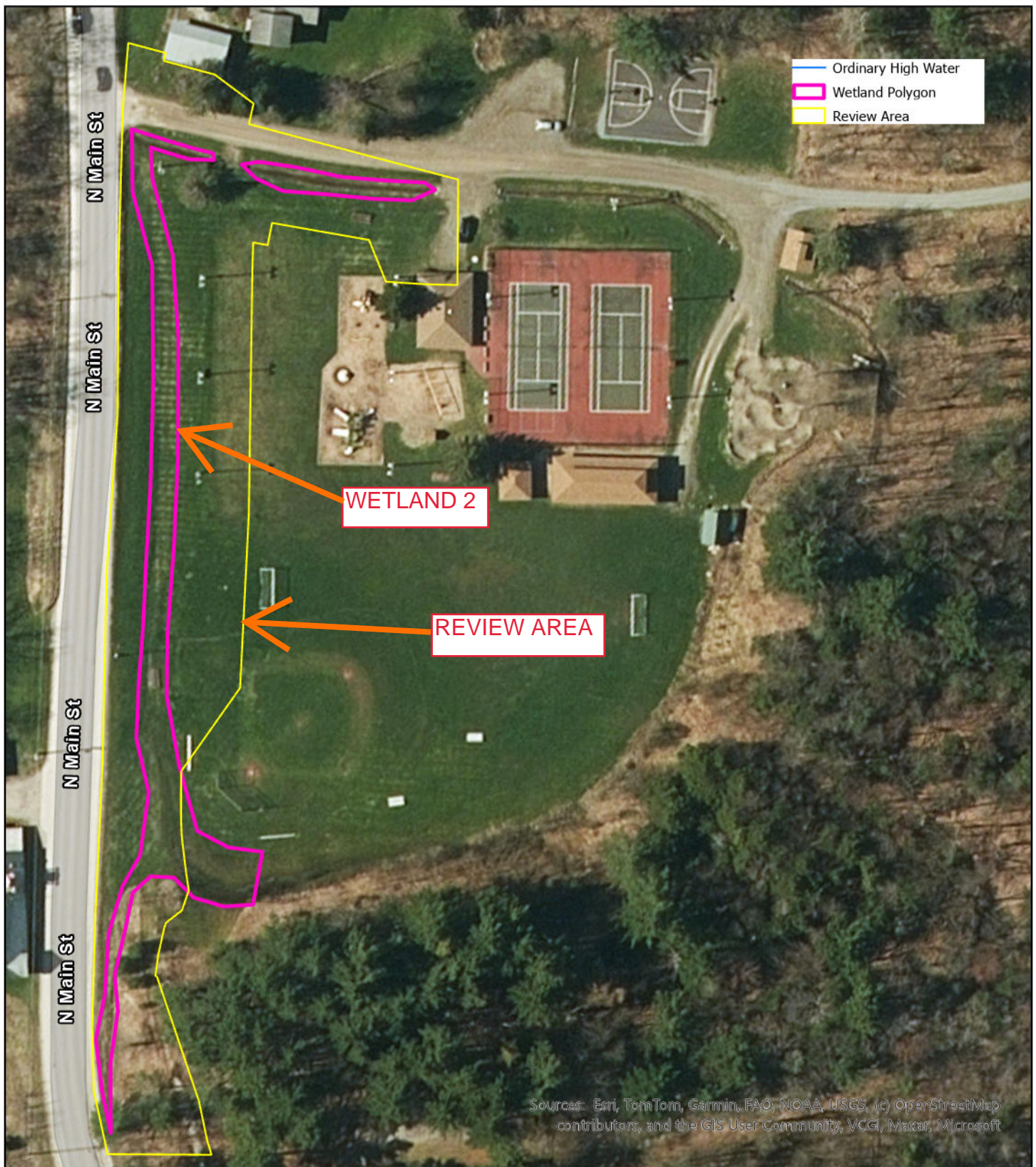
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A site visit was conducted by USACE staff on 9 October 2024. See additional details of the visit in the administrative record in a memorandum, dated 15 October 2024, and attached photos.

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.





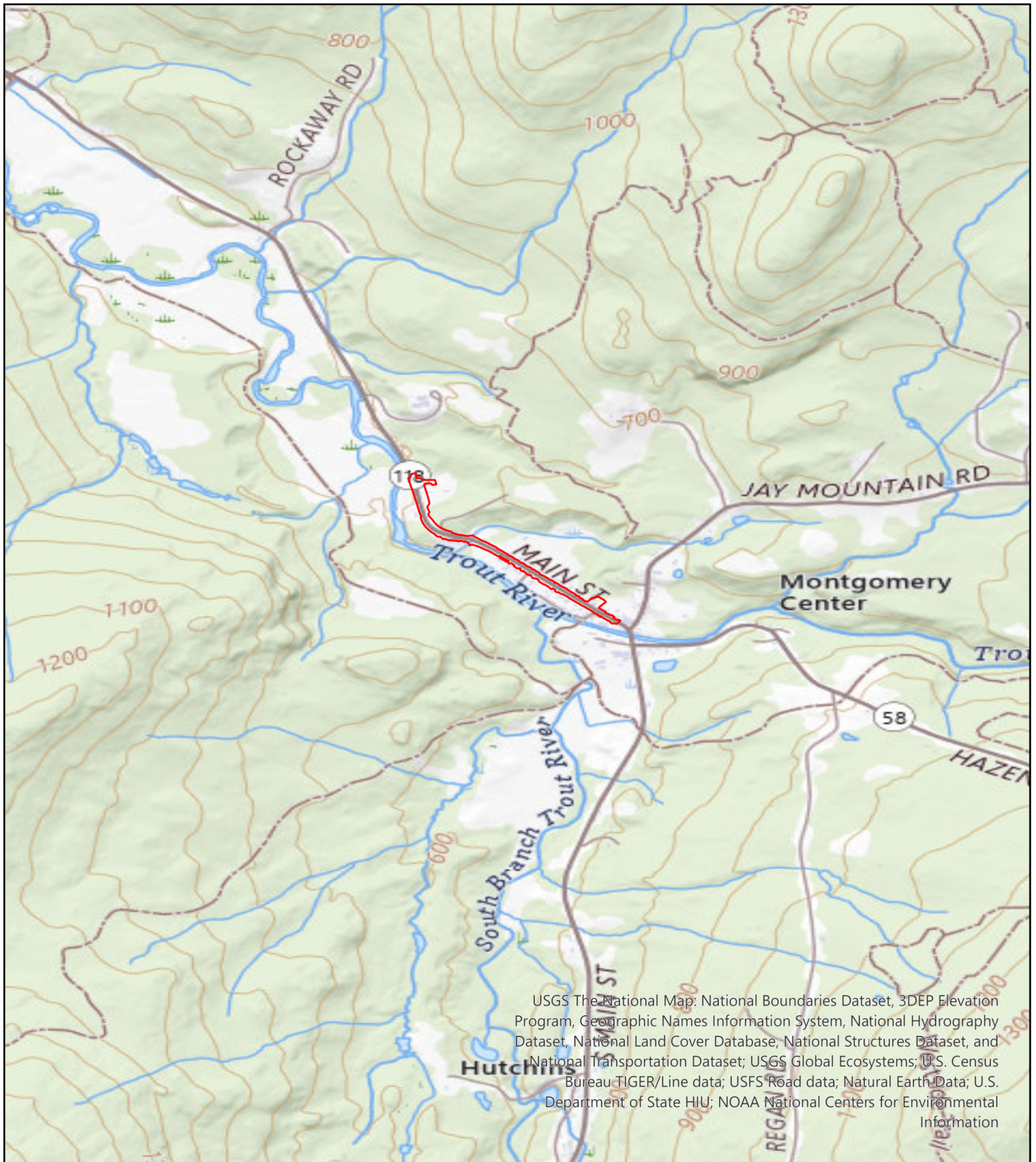
|   |  |   |
|---|--|---|
|  <p><b>HOYLE<br/>TANNER</b></p> <p>150 Dow Street<br/>Manchester, NH 03101<br/><a href="http://www.hoyletanner.com">http://www.hoyletanner.com</a></p> | <p>Montgomery Streetscapes Project<br/>North Main Street/VT Route 118<br/>Montgomery, VT</p> | <br><br><p><b>SCALE</b><br/>1 inch = 84 feet</p> |
|   | <p><b>AJD Wetland Delineation Map</b></p>  |   |
|   | <p><small>Last updated on Tuesday, April 8, 2025 by jtheriault</small></p>                   |   |

Figure 1





150 Dow Street  
Manchester, NH 03101  
<http://www.hoyletanner.com>

## Montgomery Streetscapes Project North Main Street/VT Route 118 Montgomery, VT

### Project Location Map

Last updated on Tuesday, September 17, 2024 by jtheriault



SCALE  
1 inch = 2,000 feet

Figure 2

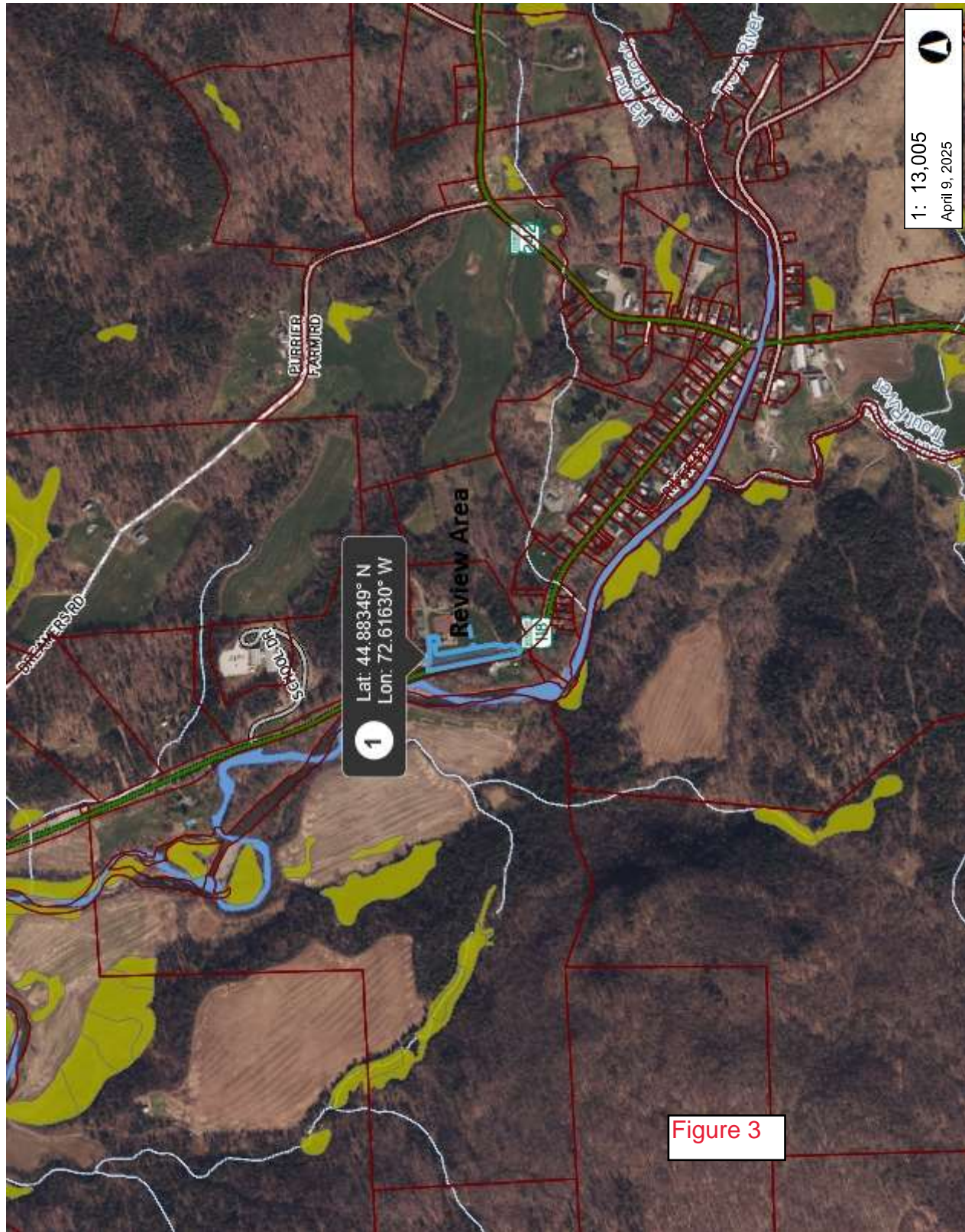




# LOCATION MAP

Vermont Agency of Natural Resources

vermont.gov



1: 13,005  
April 9, 2025



## LEGEND

- Wetland - VSWI
  - Class 1 Wetland
  - Class 2 Wetland
  - Wetland Buffer
- Parcels (standardized)
- River Area
- Stream
- Intermittent Stream
- Roads
  - Interstate
  - US Highway: 1
  - State Highway
  - Town Highway (Class 1)
  - Town Highway (Class 2,3)
  - Town Highway (Class 4)
  - State Forest Trail
  - National Forest Trail
  - Legal Trail
  - Private Road/Driveway
  - Proposed Roads
- Town Boundary

## NOTES

BY: Town of Montgomery  
AT: VT Route 118, Montgomery, VT

DISCLAIMER: This map is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. ANR and the State of Vermont make no representations of any kind, including but not limited to, the warranties of merchantability, or fitness for a particular use, nor are any such warranties to be implied with respect to the data on this map.

661.0 0 330.00 661.0 Meters  
1" = 1084 Ft. 1cm = 130 Meters  
THIS MAP IS NOT TO BE USED FOR NAVIGATION  
WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
© Vermont Agency of Natural Resources

Figure 3





StreamStats

Figure 4



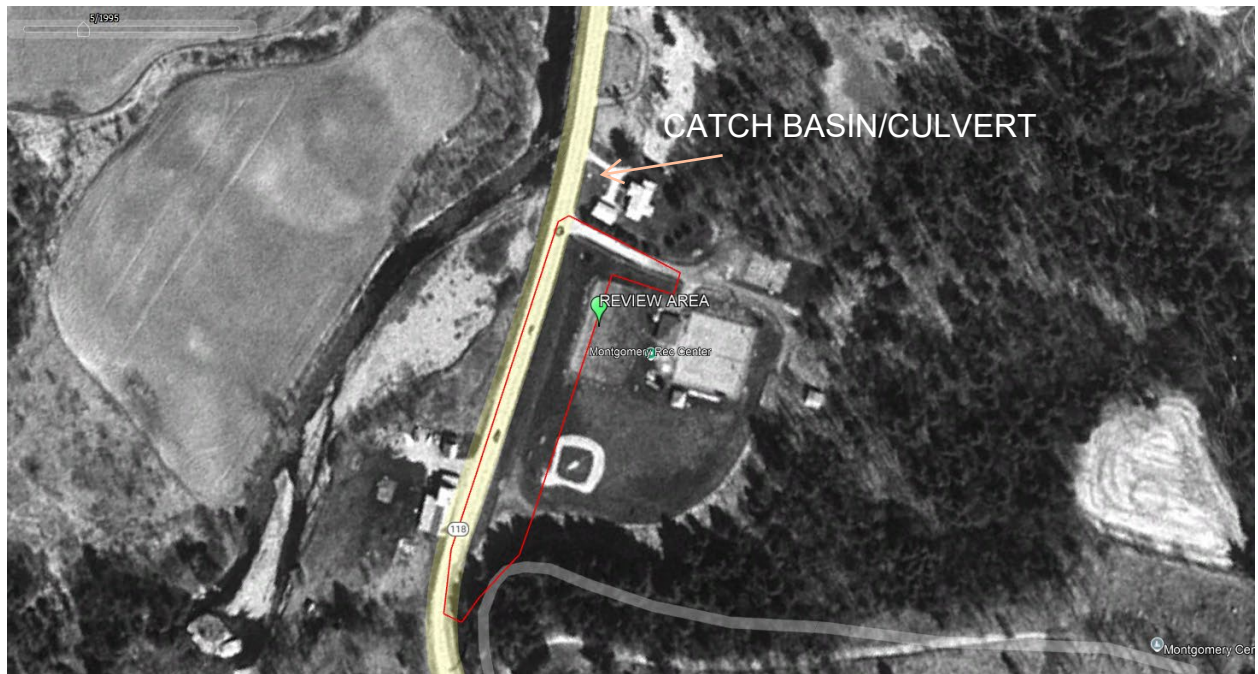


Google Earth 2021



Google Earth 2009

Figure 5a



Google Earth 1995

Figure 5b





Photo Taken 9 October 2024. Facing south towards mowed wetland from access road.



Photo taken 9 October 2024. Facing north toward culvert beneath the access road.



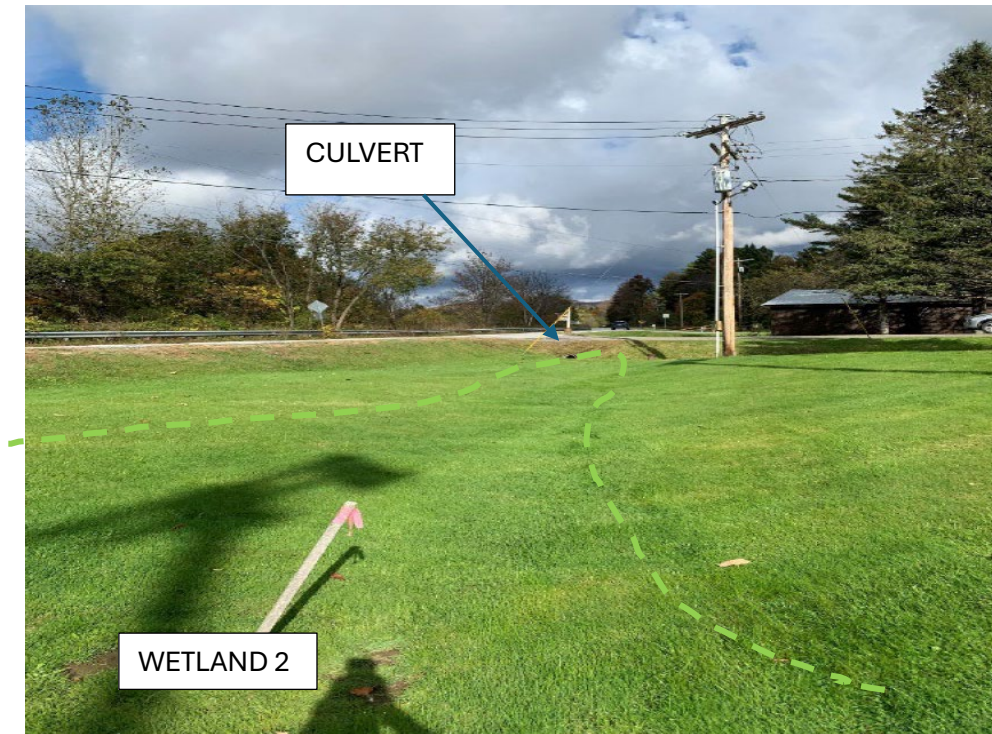


Photo taken 9 October 2024. Facing north overlooking the mowed wetland.



Photo taken 9 October 2024. Facing south from VT Route 118 looking at catch basin on neighboring parcel.