



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

CENAE-RDC

December 22, 2025

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),<sup>1</sup> NAE-2025-02061 MFR 1 of 1<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> 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 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

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<sup>1</sup> 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.

<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, interstate water, or territorial seas 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.

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. 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. Wetland D non-jurisdictional. This wetland is a mixed PFO/PSS/PEM1/4E habitat. It is 5,823 square feet in size. Its hydrology support comes from high groundwater and surface runoff from other wetlands. It doesn't have a hydrologic surface connection. Vegetation is made up of red maple, eastern hemlock, yellow birch, pussy willow, glossy buckthorn, blackberry, witch hazel, summer grape, swamp dewberry, cinnamon fern, fringed sedge, and colts foot. This wetland does not have a continuous surface connection to an (a)(1), (a)(2), and/or (a)(3) water and is therefore non jurisdictional.
  - ii. Wetland BCO-3 non-jurisdictional. This wetland is primarily a wet meadow (PEM1). It is 3,733 square feet in size. This feature appears to have been created due to being used as a timber laydown area. Its hydrology comes from the surrounding surface run-off, high groundwater, and poorly draining soils. Predominately the floor comprises of wood slash. This wetland does not have a continuous surface connection to an (a)(1), (a)(2), and/or (a)(3) water and is therefore 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 entire lot is 72 acres in size. However, the review area is roughly a 400 foot square. The center of the review area coordinates are 43.0522, -71.27155 which is located off of Diamond Hill Road in Candia, New Hampshire. This location is vacant land that has been forested within the last couple of years.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A
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 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

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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.

- e. Tributaries (a)(5): N/A
- f. The territorial seas (a)(6): N/A
- 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”).<sup>8</sup> 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. NA
- 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.

Wetland D is a PFO/PSS/PEM1/4E wetland 5,823 square feet in size.  
Wetland BCO-3 is a PEM1 wetland 3,733 square feet in size.

These wetlands are non-jurisdictional as they are wetlands that do not have a continuous surface connection to a relatively permanent body of water connected to traditional interstate navigable waters.

- 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

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<sup>8</sup> 51 FR 41217, November 13, 1986.

CENAE-RDC

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NAE-2025-02061

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

- 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).

Wetland D is a PFO/PSS/PEM1/4E wetland 5,823 square feet in size.

Wetland BCO-3 is a PEM1 wetland 3,733 square feet in size.

These wetlands do not meet the pre-2015 regulatory regime definition of waters of the United States as defined by 40 CFR 230.3 (s) including Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of 40 CFR 230.3 (s); waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

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. NWI dated September 12, 2025
- b. USGS Topographic Map
- c. EXISTING CONDITIONS PLAN dated February 20, 2025
- d. FVA PHOTOGRAPHIC LOG dated 6/3/25

#### 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.



September 12, 2025

## Wetlands

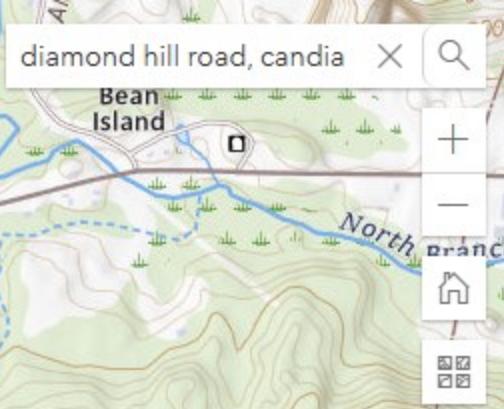
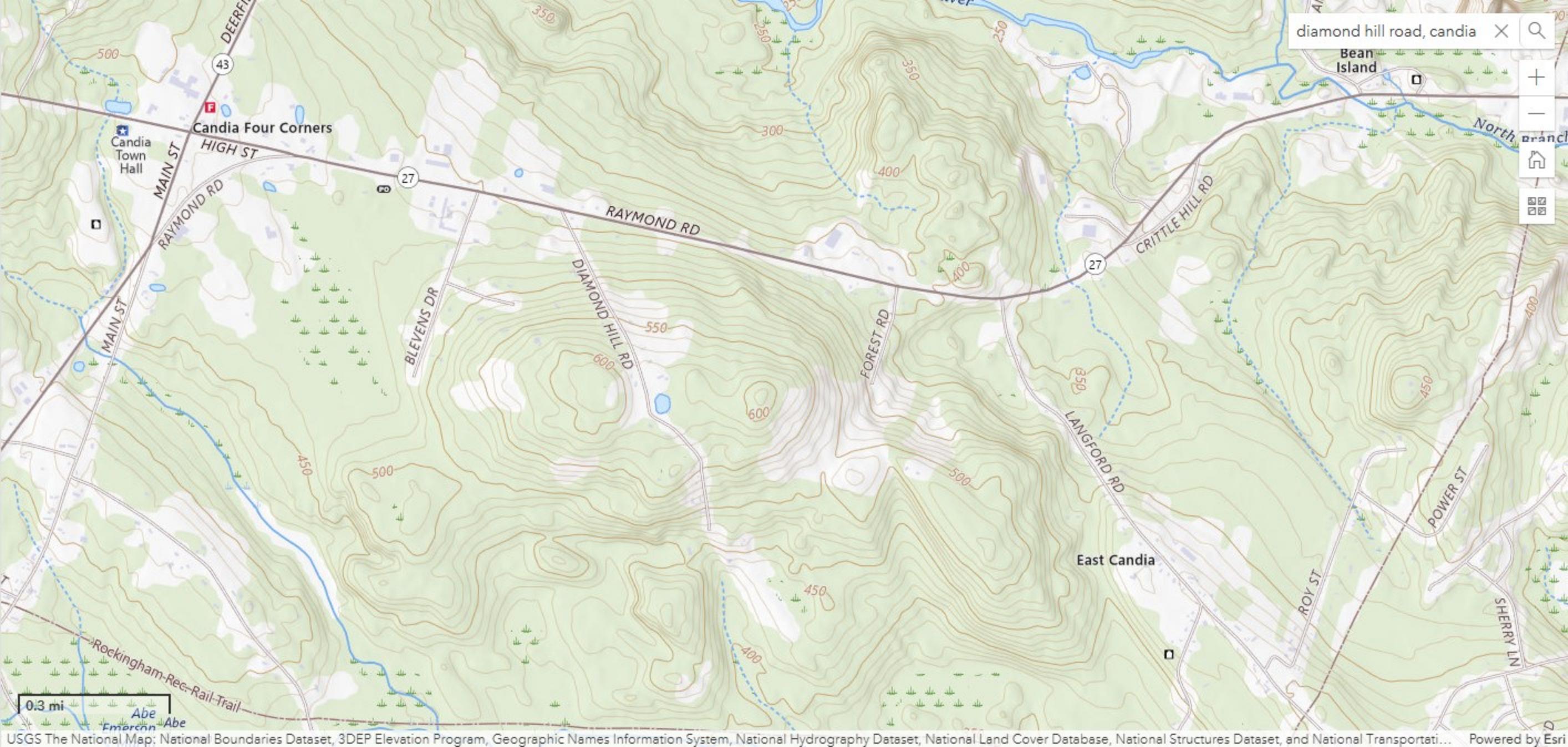
-  Estuarine and Marine Deepwater
-  Estuarine and Marine Wetland

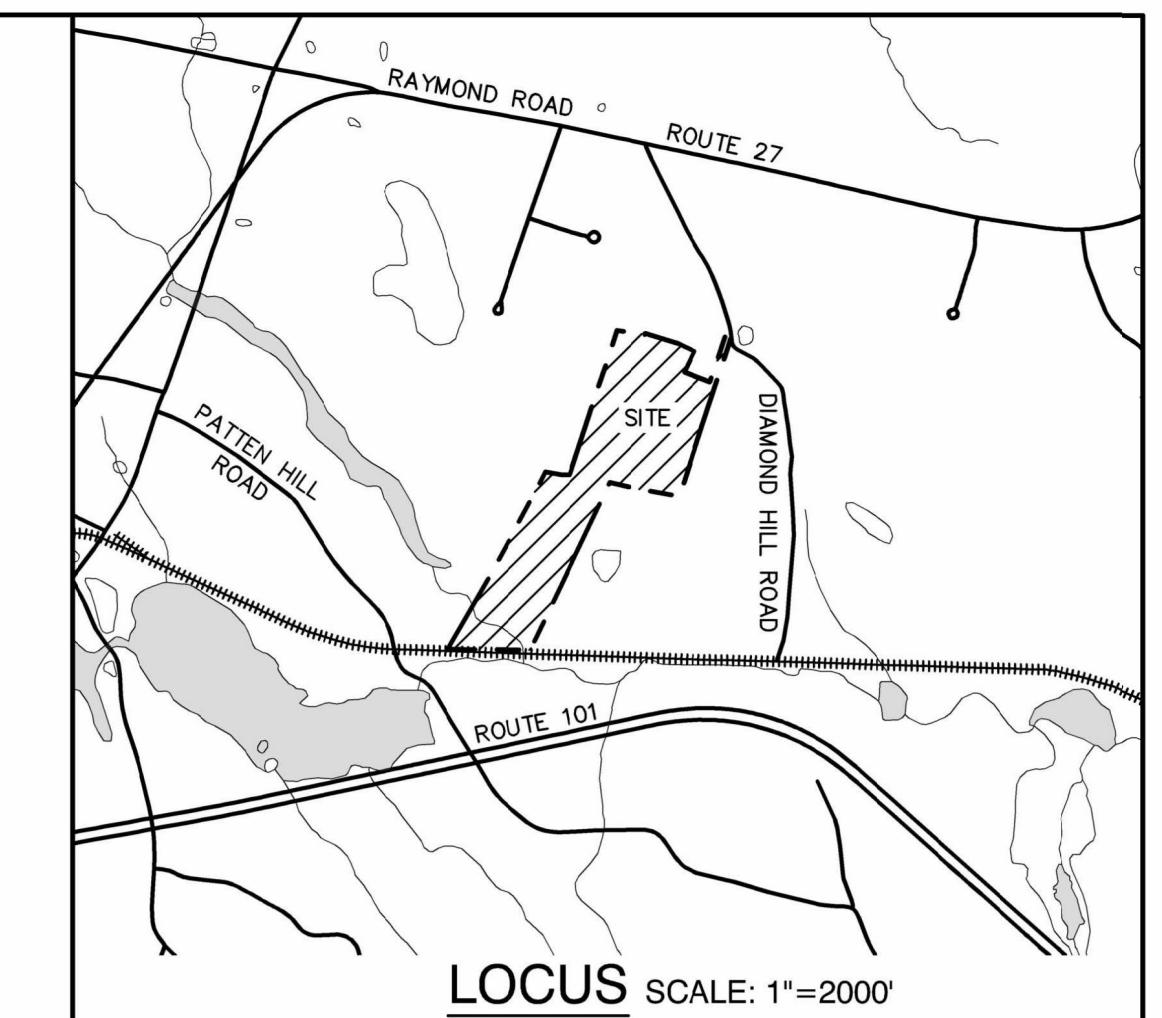
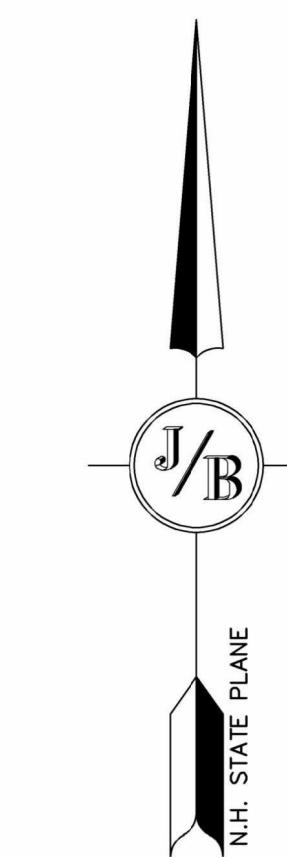
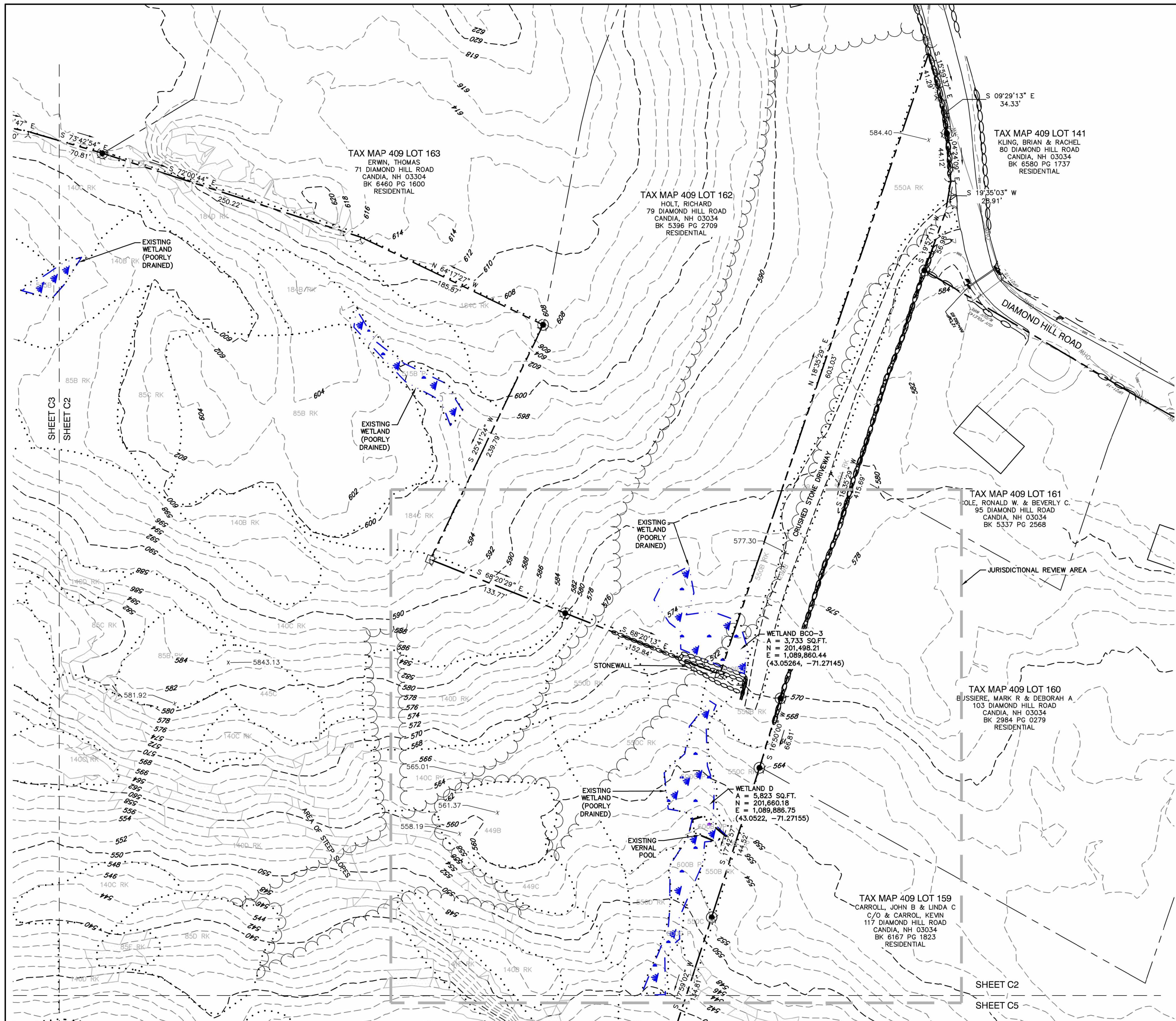


Legend for wetland types:

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

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.





#### SOILS LEGEND:

SITE SPECIFIC SOILS WERE COMPLETED BY JOHN HAYES III, CSS PER THE GUIDELINES OUTLINED IN THE SITE SPECIFIC MAPPING STANDARDS FOR VERMONT AND NEW HAMPSHIRE, VERSION 4 DATED NOVEMBER 2024. ON SITE MAPPING WAS CONDUCTED OCTOBER 28-30, 2024.

85RK B-E	HOLLIS SERIES
135 B-D	CHATFIELD VARIANCE/NEWFIELDS COMPLEX
140RK B-E	CHATFIELD HOLLIS CANTON COMPLEX
141RK B-E	HOLLIS ROCK OUTCROP/CHATFIELD COMPLEX
184RK B-E	HOLLIS/CHATFIELD COMPLEX
445 B-D	NEWFIELDS
449 B-D	SCITUATE (VERY STONY)
515/P A-E	LEICESTER

WELL DRAINED, HYDROLOGIC GROUP D

MODERATELY WELL DRAINED, HYDROLOGIC GROUP B

WELL DRAINED, HYDROLOGIC GROUP B/D

WELL DRAINED, HYDROLOGIC GROUP D/B

MODERATELY WELL DRAINED, HYDROLOGIC GROUP B

MODERATELY WELL DRAINED, HYDROLOGIC GROUP C

Poorly Drained, Hydrologic Group C

#### HUMAN DISTURBED SOILS:

299(dcedb) A-B	UDORTHENTS	SATURATED HYDRAULIC CONDUCTIVITY HIGH, HYDROLOGIC GROUP B
550/RK(ccedb/d) B-D	UDORTHENTS	SATURATED HYDRAULIC CONDUCTIVITY HIGH TO VERY HIGH, HYDROLOGIC GROUP B/D
600/r(cecd) A-C	ENDOAQUENTS	SATURATED HYDRAULIC CONDUCTIVITY MOD. HIGH TO HIGH, HYDROLOGIC GROUP C
600/vp(gcedb) B	ENDOAQUENTS	SATURATED HYDRAULIC CONDUCTIVITY MOD. HIGH TO HIGH, HYDROLOGIC GROUP D

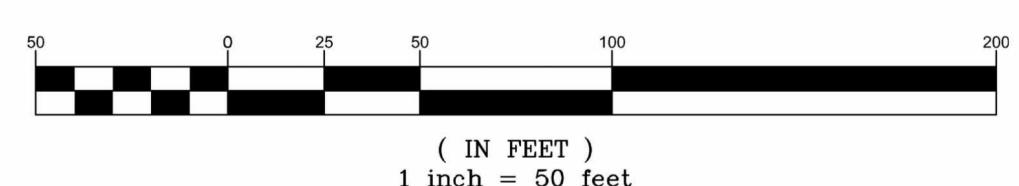
#### SLOPE LEGEND:

SLOPE SYMBOL:	RANGE:
A	0-3%
B	3-8%
C	8-15%
D	15-25%
E	25-50%
F	>50%

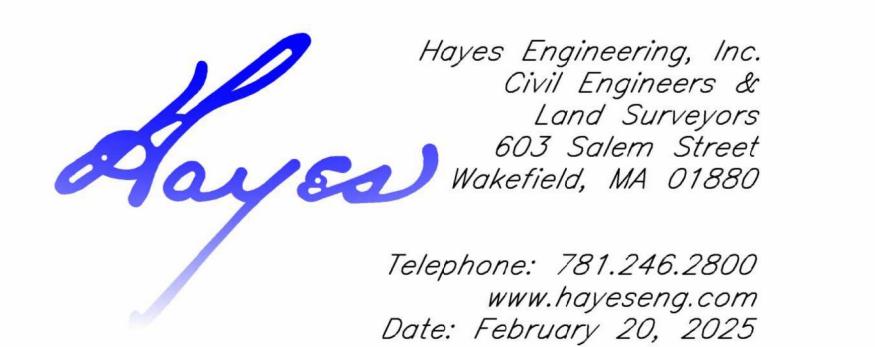
#### GENERAL LEGEND

EXISTING	DESCRIPTION
—	PROPERTY LINES
—	SETBACK LINES
—	CENTERLINE
—	FRESHWATER WETLANDS LINE
—	VERNAL POOL LINE
—	STONEWALL
—	SOIL BOUNDARY
—	MAJOR CONTOUR
—	MINOR CONTOUR
—	EDGE OF PAVEMENT
—	DRAINAGE LINE
—	OVERHEAD ELECTRIC
—	UNDERDRAIN
—	IRON PIPE/IRON ROD
—	DRILL HOLE
—	STONE/GRANITE BOUND
—	UTILITY POLE
—	LIGHT POLES
—	FRESHWATER WETLANDS
—	STEEP SLOPES

#### GRAPHIC SCALE



PROJECT PARCEL  
TOWN OF CANDIA  
TAX MAP 409, LOT 228

  
Hayes Engineering, Inc.  
Civil Engineers &  
Land Surveyors  
603 Salem Street  
Wakefield, MA 01880  
Telephone: 781.246.2800  
www.hayeseng.com  
Date: February 20, 2025

APPLICANT/OWNER  
AV DEVELOPMENT, LLC  
2 GRANITE RAIL COURT  
QUINCY, MA 02169

TOTAL LOT AREA  
±72 ACRES

Design: JPT Draft: KDR Date: 03/25/25  
Checked: BWG Scale: AS SHOWN Project No.: 24025  
Drawing Name: 24025-PLAN.dwg  
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN  
PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE).  
ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE  
AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.

08/28/25	REVISED PER AOT COMMENTS	BWG
04/23/25	REVISED PER ENGINEER COMMENTS	BWG
03/25/25	REVISED PER ENGINEER COMMENTS	BWG
02/20/25	REVISED PER PB COMMENTS	BWG
11/18/24	ISSUED FOR REVIEW	BWG
REV. DATE	REVISION	BY

 Jones & Beach Engineers, Inc.  
Designed and Produced in NH  
Civil Engineering Services 603-772-4746  
85 Portsmouth Ave. PO Box 219 Stratham, NH 03885  
E-MAIL: JBE@JONESANDBEACH.COM

Plan Name: EXISTING CONDITIONS PLAN  
Project: DIAMOND HILL SUBDIVISION  
MAP 409 / LOT 228: DIAMOND HILL ROAD, CANDIA, NH  
Owner of Record: AV DEVELOPMENT, LLC  
2 GRANITE RAIL COURT, QUINCY, MA 02169

DRAWING No. C2  
SHEET 9 OF 31  
JBE PROJECT NO. 24025



## FVA PHOTOGRAPHIC LOG

Client Name: Jones & Beach Engineers		Site Location: Diamond Hill Road Candia, NH	Project No. 25-015
Photo No. 21	Date: 6/3/25		
<b>Description:</b>  Looking northwest offsite from the gravel road at the O-series created wet meadow wetlands. This wetland overflows in a southeasterly fashion and is contributory to the drainage saddle of Wetland D.			
Photo No. 22	Date: 6/3/25		
<b>Description:</b>  Looking southeast from offsite at the landscape position of the created wet meadows which pond then contribute to the hydrology of Wetland D via overflow and scouring through marginal, sandy soils.			



## FVA PHOTOGRAPHIC LOG

Client Name:		Site Location:	Project No.	
Jones & Beach Engineers		Diamond Hill Road Candia, NH	25-015	
Photo No.	Date:			
1	6/3/25			
<b>Description:</b>		<p>Looking south at the extended forested wetland drainage saddle of Wetland D which conveys runoff to the small semi-permanent ponded area from generally offsite upgradient created wet meadows via scoured channels into this forested portion of the wetland.</p>		
Photo No.	Date:			
2	6/3/25	<p>Looking north at disturbed Wetland D.</p>		
<b>Description:</b>				



## FVA PHOTOGRAPHIC LOG

<b>Client Name:</b> Jones & Beach Engineers		<b>Site Location:</b> Diamond Hill Road Candia, NH	<b>Project No.</b> 25-015
<b>Photo No.</b> 3	<b>Date:</b> 4/20/23		
<b>Description:</b>  Looking west at the historically excavated basin of wetland D. This feature fills then overflows from upgradient stormwater runoff and, given the moderate gradient has scoured an ephemeral channel (photograph 4 below) which drains to the south and terminates as the slope levels.			

<b>Photo No.</b> 4	<b>Date:</b> 6/3/25	
<b>Description:</b>  Looking south at the wetland fringe of the shrub scrub/emergent Wetland D. The scoured channel is located downgradient of the small, excavated basin. Drainage emanates from upstream stormwater runoff and high groundwater associated with shallow to bedrock soils.		