



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

CENAE-RDC

May 14, 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),<sup>1</sup> NAE-2026-00336 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 3 non-jurisdictional. Wetland 3 (W-3) is 0.299 acres in size and classified as a combination of PEM1C and Palustrine, Forested, Broad Leaved Deciduous, Saturated (PFO1B). functions and values include groundwater recharge/discharge, sediment/toxicant retention and nutrient removal. Dominant wetland vegetation includes species of saw sedge, wool grass, sensitive fern, swamp dewberry, deer-tongue, pointed broom sedge, cinnamon fern, glossy false buckthorn, interrupted fern, swamp oak, red maple, royal fern (*Osmunda regalis*), steplebush (*Spiraea tomentosa*), summer grape (*Vitis aestivalis*), and maleberry (*Lyonia ligustrina*). Soils sampled within Wetland 3 meet the A11 (Depleted Below) and A12 (Thick Dark Surface) hydric soil indicators. Observed indicators of wetland hydrology include B1 (Water Marks), B8 (Sparse Vegetation), B9 (Water-Stained Leaves), B10 (Drainage Pattern), and D4 (Microtopographic Relief). 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 4 non-jurisdictional. Wetland 4 (W-4) is 0.076 acres in size and classified as PEM1C. Functions and values include groundwater recharge/discharge, sediment/toxicant retention and nutrient removal. Dominant wetland vegetation includes species of saw sedge, wool grass, broom sedge, royal fern, cinnamon fern, glossy false buckthorn, interrupted fern, swamp oak, red maple, steplebush, sensitive fern, dewberry, summer grape, deer-tongue, and maleberry. Soils sampled within Wetland 4 meet the A11 (Depleted Below) and A12 (Thick Dark Surface) hydric soil indicators. Observed indicators of wetland hydrology include B1 (Water Marks), B8 (Sparse Vegetation), B9 (Water-Stained Leaves), B10 (Drainage Pattern), and D4 (Microtopographic Relief). 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.
  - iii. Wetland 5 non-jurisdictional. Wetland 5 (W-5) is 0.066 acres in size and classified as a combination of PFO1B and PSS1C. Wetland 5 functions and values include toxicant retention, and wildlife habitat. Dominant wetland vegetation includes species of sensitive fern, royal fern, red maple, glossy false buckthorn, swamp oak saplings, oriental bittersweet, poison ivy, white pine saplings, steplebush and sarsaparilla (*Aralia nudicaulis*). Soils sampled

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within Wetland 5 meet the S5 (Sandy Redox) hydric soil indicator. Observed indicators of wetland hydrology include B9 (Water-Stained Leaves) and D2 (Geomorphic Position). 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 85 acres in size. However, the review area is roughly 2.14 acres. The center of the review area coordinates are 42.991129, -71.396054 which is located off of 1751 Lake Shore Road Manchester, New Hampshire. This location is an undeveloped woodland, with a gravel road along its eastern boundary and several old access roads traversing its southern limits. In the northeastern quadrant of the Site, there is a designated stockpiling area for soil and pavement materials. Many portions of the Study Area appear to have been previously disturbed, with evidence of logging activities and some excavation and grading, which may have altered the site's hydrology and contributed to the formation of existing wetlands. 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
  - 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

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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.

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- 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 3 (W-3) is 0.299 acres in size and classified as a combination of PEM1C and Palustrine, Forested, Broad Leaved Deciduous, Saturated (PFO1B).

Wetland 4 (W-4) is 0.076 acres in size and classified as PEM1C.

Wetland 5 (W-5) is 0.066 acres in size and classified as a combination of PFO1B and PSS1C.

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 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

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

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- 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 3 (W-3) is 0.299 acres in size and classified as a combination of PEM1C and Palustrine, Forested, Broad Leaved Deciduous, Saturated (PFO1B).

Wetland 4 (W-4) is 0.076 acres in size and classified as PEM1C.

Wetland 5 (W-5) is 0.066 acres in size and classified as a combination of PFO1B and PSS1C.

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 Mapper dated March 2, 2026
- b. Figure 1: USGS Site Location Map
- c. EXISTING CONDITIONS PLAN dated February 20, 2025
- d. VHB PHOTOGRAPHIC LOG dated 6/26/25

10. OTHER SUPPORTING INFORMATION. N/A

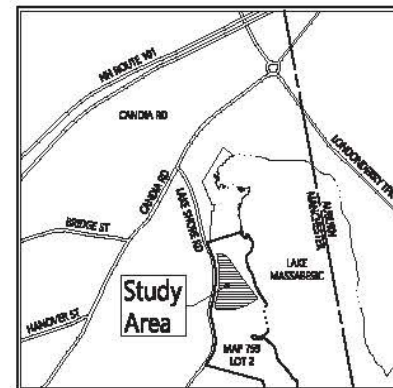
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



11) THE WETLANDS DEPICTED WERE DELINEATED BY JAKE TINUS CERTIFIED WETLAND SCIENTIST (NH CWS #2220) AND TRENT DELEHANTY CERTIFIED WETLAND SCIENTIST (NH CWS #553) ON JUNE 26 AND JULY 11, 2025, AND REFERENCE JURISDICTIONAL WETLANDS AND SURFACE WATERS WITHIN THE PROJECT SITE. THE WETLAND DELINEATION WAS PERFORMED IN ACCORDANCE WITH THE PROCEDURES AND STANDARDS OUTLINED IN THE 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL AND THE REGIONAL SUPPLEMENT TO THE U.S. ARMY CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTH-CENTRAL AND NORTH-EAST REGION, VERSION 2.0 (JANUARY 2012), SUPPLEMENTED WITH FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN THE UNITED STATES, VERSION 8.2, PUBLISHED BY THE NATURAL RESOURCE CONSERVATION SERVICE, AND THE FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4.0, PUBLISHED BY THE NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION. DOMINANT WETLAND VEGETATION WAS ASSESSED USING THE NORTH-CENTRAL AND NORTH-EAST REGIONAL WETLAND PLANT LIST PUBLISHED BY THE U.S. ARMY CORPS OF ENGINEERS. WETLANDS AND SURFACE WATERS WERE CLASSIFIED USING THE USFWS METHODOLOGY CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES (COMMANDER ET AL. 1978, REVISED 1983).

### Wetland Classification Codes

| <u>CODE</u> | <u>CODE DESCRIPTION</u>                                                        |
|-------------|--------------------------------------------------------------------------------|
| PEM1B       | PALLISTRINE, EMERGENT, PERSISTENT, SATURATED                                   |
| PEM1C       | PALLISTRINE, EMERGENT, PERSISTENT, SEASONALLY FLOODED                          |
| PEM1E       | PALLISTRINE, EMERGENT, PERSISTENT, SEASONALLY FLOODED/SATURATED                |
| PRO1B       | PALLISTRINE, FORESTED, BROAD-LEAVED DECIDUOUS, SATURATED                       |
| PRO1C       | PALLISTRINE, FORESTED, BROAD-LEAVED DECIDUOUS, SEASONALLY FLOODED              |
| PSS1C       | PALLISTRINE, SCRUB-SHRUB, BROAD-LEAVED DECIDUOUS, SEASONALLY FLOODED           |
| PSS1E       | PALLISTRINE, SCRUB-SHRUB, BROAD-LEAVED DECIDUOUS, SEASONALLY FLOODED/SATURATED |



Locus Map  
(NOT TO SCALE)

Legend

- [illegible]

### General Notes

- 1) THE PURPOSE OF THIS PLAN IS TO DEPICT THE EXISTING CONDITIONS OF A PORTION OF MAP 759, LOT 2.
- 2) THE RIGHT-OF-WAY SHOWN IS APPROXIMATE AND SHOWN FOR INFORMATIONAL PURPOSES ONLY.
- 3) THE LOCATIONS OF UNDERGROUND UTILITIES SHOWN ON THIS PLAN WERE MAAPPED PER AMERICAN SOCIETY OF CIVIL ENGINEERS (ASCE) STANDARD 38-22, QUALITY LEVEL "C" AS SPECIFIED IN THE CONTRACT BETWEEN THE CLIENT AND V.H.B. PLEASE NOTE THAT WHILE BEST PRACTICES WERE FOLLOWED, NOT ALL UTILITIES MAY BE SHOWN AND THE ACCURACY OF UTILITY LOCATIONS CANNOT BE GUARANTEED.
- 4) HORIZONTAL DATUM IS BASED ON NH GRID SYSTEM, NAD 1983/2011, ELEVATIONS SHOWN ON THIS PLAN REFER TO NAVD 83.
- 5) THE SURVEYED PORTION OF THE LOT LIES ENTIRELY WITHIN ZONE X (UNSHADED) (AREAS TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR HILLSBOROUGH COUNTY, NEW HAMPSHIRE, MAP NUMBER 330110082D, EFFECTIVE DATE SEPTEMBER 25, 2009.
- 6) THE SURVEYED PORTION OF THE LOT LIES ENTIRELY WITHIN THE CONSERVATION DISTRICT (CV) AS SHOWN ON THE "CITY OF MANCHESTER ZONING MAP", DATED FEBRUARY 14, 2022. MUNICIPAL FACILITIES ARE PERMITTED WITHIN THE CONSERVATION DISTRICT AND THERE APPEAR TO BE NO DIMENSIONAL REQUIREMENTS FOR THE (CV) AT THE TIME OF THIS SURVEY.
- 7) THE SURVEYED PORTION OF THE LOT LIES WITHIN THE "LAKE MASSABESIC PROTECTION OVERLAY DISTRICT" AS SHOWN ON THE CITY OF MANCHESTER ZONING MAP.
- 8) THE TREE SYMBOL OUTLINE SHOWN ON THIS PLAN DOES NOT REPRESENT THE ACTUAL TREE CANOPY.
- 9) THIS SURVEY WAS PREPARED WITHOUT A CURRENT TITLE REPORT AND MAY BE SUBJECT TO ADDITIONAL INFORMATION THAT SUCH A REPORT WOULD DISCLOSE.

### Survey Endorsement

THIS PLAN WAS PREPARED UNDER MY SUPERVISION, BASED ON A FIELD SURVEY PERFORMED IN JUNE 2025.

THIS PLAN IS INTENDED SOLELY TO DEPICT THE EXISTING TOPOGRAPHIC FEATURES ON THE SUBJECT PROPERTY, AS OUTLINED AND SHOWN HEREON, INCLUDING BUT NOT LIMITED TO ELEVATIONS, CONTOURS, STRUCTURES, AND OTHER VISIBLE SURFACE FEATURES AT THE TIME OF THE SURVEY.

THIS SURVEY DOES NOT CONSTITUTE A BOUNDARY SURVEY AND SHOULD NOT BE USED OR RELIED UPON FOR THE PURPOSE OF ESTABLISHING PROPERTY LINES OR BOUNDS.



2 Bedford Farms Drive  
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603.391.3900

**Manchester Water  
Works**

Lake Shore Road  
Manchester, New Hampshire

[illegible]

## Existing Conditions Plan of Land

Drawing Number

**Sv-1**

Sheet 1 of 1

Project Number  
53220.00



U.S. Fish and Wildlife Service

# National Wetlands Inventory

NWI Mapper March 2, 2026



U.S. Fish and Wildlife Service, National Standards and Support Team,  
wetlands\_team@fws.gov

March 2, 2026

## Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland

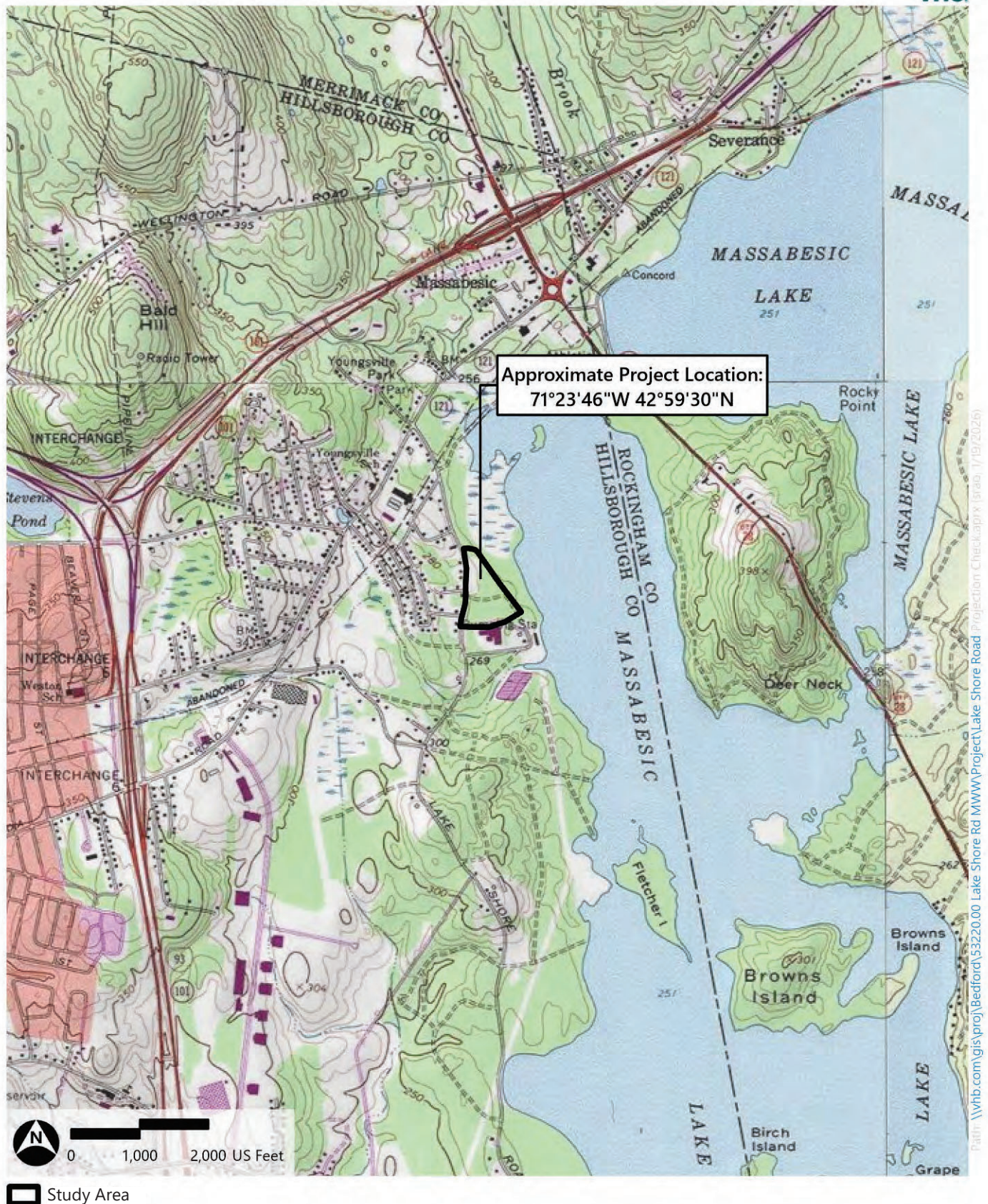
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond

- 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.

**Figure 1: USGS Site Location Map**

Manchester-LBA Lake Shore Road Municipal Build | Manchester, NH





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## PHOTOGRAPHIC LOG

**Photo No:** 5

**Photo Date:** 06/26/2025

**Orientation:** W

**Description:**

Western view of the western portion of Wetland 3 (PEM1C/PFO1B).



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## PHOTOGRAPHIC LOG

**Photo No:** 6

**Photo Date:** 06/26/2025

**Orientation:** S

**Description:**

Southern view of the eastern portion of Wetland 3 (PEM1C/PFO1B).





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## PHOTOGRAPHIC LOG

**Photo No:** 7

**Photo Date:** 06/26/2025

**Orientation:** W

**Description:**

Western view of Wetland 4  
(PEM1C/PFO1B)



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## PHOTOGRAPHIC LOG

**Photo No:** 8

**Photo Date:** 06/26/2025

**Orientation:** E

**Description:**

Eastern view of Wetland 4  
(PEM1C/PFO1B).



## PHOTOGRAPHIC LOG

**Photo No:** 9

**Photo Date:** 07/11/2025

**Orientation:** N

**Description:**

Northern view of the southern portion of Wetland 5 (PFO1B/PSS1C).



## PHOTOGRAPHIC LOG

**Photo No:** 10

**Photo Date:** 07/11/2025

**Orientation:** S

**Description:**

Southern view of the northern portion Wetland 5 (PFO1B/PSS1C).

