



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 7/29/2021

ORM Number: NAE-2021-01702

Associated JDs: N/A

Review Area Location¹: State/Territory: Vermont City: Charlotte County/Parish/Borough: Chittenden

Center Coordinates of Review Area: Latitude 44.278623 N Longitude -73.222883 W

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A	N/AN/A.	N/A.	N/A

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A.	N/A

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	0.04	acre(s)	(b)(1) Non-adjacent wetland.	Wetland A is a non-adjacent wetland. The wetland is physically remote and isolated from jurisdictional waters. See Section C below for additional rationale.
Ditch A	380	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Ditch A is not an (a)(1) or (a)(2) water. The ditch was constructed in upland to convey runoff from Mt Philo Road. The ditch did not relocate a tributary and was not constructed in a tributary or an adjacent wetland. See Section C below for additional rationale.
Ditch B	440	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Ditch B is not an (a)(1) or (a)(2) water. The ditch was constructed in upland to convey runoff from the hillside, an existing parking area and Humphreys Road. The ditch did not relocate a tributary and was not constructed in a tributary or an adjacent wetland. See Section C below for additional rationale.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: Existing condition site plan titled “Mt Philo State Park AJD Map,” dated “7/20/2021” (Figure 1).

This information is sufficient for purposes of this AJD.

Rationale: The site was delineated using the methodology in the 1987 Corps of Engineers Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region. The wetland boundary was field verified and accepted by the Corps during a site visit on June 29, 2021. The limits of the wetland shown on the plans are consistent with conditions in the field and the wetland boundary is acceptable and sufficient for preparation of this approved jurisdictional determination (AJD).

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Based on a desktop review, the Vermont Department of Environmental Conservation (VTDEC) District Wetlands Ecologist determined that Wetland A is Class III and therefore not jurisdictional to the state of Vermont (see “#2021-273 Wetland Classification Report,” dated “June 18, 2021” in the file). The report states that the “wetland is very small and isolated from other wetlands and waterbodies”.

- Data sheets prepared by the Corps: N/A
- Photographs: Aerial and Other: Photos taken during a June 29, 2021 (Figure 2a.-f.); 1962 Aerial Photo (Figure 3)
- Corps site visit(s) conducted on: June 29, 2021 (see details in Section C below)
- Previous Jurisdictional Determinations (AJDs or PJDs): N/A
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: N/A
- USFWS NWI maps: N/A
- USGS topographic maps: “VICINITY MAP” dated “07/19/21” (Figure 2)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	“VICINITY MAP”, dated “07/19/21 (Figure 4) “StreamStats” dated “July 19, 2021” (Figure 5)
USDA Sources	N/A
NOAA Sources	N/A.
USACE Sources	N/A
State/Local/Tribal Sources	Vermont Interactive Map Viewer showing Lidar, titled “Mt Philo AJD Map 1” and “Mt Philo AJD Map 2” dated “July 19, 2021” (Figures 6 and 7, respectively)
Other Sources	N/A

B. Typical year assessment(s): Not required. There are no (a)(1) – (3) waters in close proximity to Wetland A. Ditch A and B are (b)(5) excluded features.

C. Additional comments to support AJD: This Approved Jurisdictional Determination (AJD) is based on review of information available on public, state, and federal websites, information provided by the wetland consultant, and a site visit conducted by the Corps of Engineers.

On June 29, 2021 Angela Repella (Corps of Engineers) met with Rodrigue Spinette of Fitzgerald Environmental Associates, LLC at the project site located at 5425 Mt Philo Road in Charlotte, Vermont. The wetland delineation was verified and accepted by the Corps. Wetland A is a palustrine emergent wetland dominated by Phalaris arundinacea and exhibits drainage patterns and microtopography. The wetland is 1,722 sq. ft. (0.04 acre) in size. Wetland A is located within an open meadow and does not have a defined inlet or outlet. The wetland is physically isolated from any other surface waters and is approximately 75’ upslope of Ditch A, which runs north-south along Mt Philo Road. Wetland A is not inundated by flooding in a typical year from any (a)(1)-(3) waters and is therefore a (b)(1) excluded feature.



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Ditch A originates in the northeastern quadrant of the intersection between Mt Philo Road and State Park Road. Ditch A did not exhibit any surface water flow during the June 29, 2021 site visit. Based on the surrounding upland landscape and review of aerial photography (Figure 3), it is reasonable to conclude that Ditch A was originally constructed in upland for the purposes of conveying stormwater and runoff from Mt Philo Road and the surrounding area. Ditch A crosses beneath Mt Philo Road through a culvert at the northwestern corner of the AJD review area and ultimately enters Kimball Brook to the west (see Figure 3). Ditch A was constructed in upland and is not a relocated tributary. Therefore, Ditch A is not an (a)(1)-(3) water and is a (b)(5) excluded feature.

Ditch B is located at the toe of slope of Mt. Philo and to the east of the existing parking lot servicing Mt. Philo State Park. Based on the surrounding upland landscape and review of aerial photography (see Figure 3), it is reasonable to conclude that Ditch B was originally constructed in upland for the purposes of conveying stormwater and runoff from the surrounding landscape. Ditch B terminates in the northeastern corner of the AJD review area. Based on Lidar imagery (Figures 4 & 5), a surface water conveyance enters Ditch B from the hillside to the east. However, any water conveyed by Ditch B ultimately dissipates and infiltrates into the adjacent open meadow. Ditch B was constructed in upland and is not a relocated tributary. Ditch B is disconnected from any other (a)(1)-(3) waters and is a (b)(5) excluded feature.



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Angela C. Repella
Project Manager

Angela Repella Digitally signed by Angela Repella
Date: 2021.07.27 10:59:25 -04'00'

Paul Minkin
NWPR AJD Team

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Frank J. DelGiudice
Branch Chief

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Robert J. DeSista
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Tammy R. Turley
Chief Regulatory Division

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