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## Regulatory Program



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### **INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM**

#### **U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

#### **SECTION I: BACKGROUND INFORMATION**

**A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD):** September 25, 2019

**B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ):** NAE-2004-03856

#### **C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Connecticut

County/parish/borough: Windham

City: Plainfield

Center coordinates of site (lat/long in degree decimal format): Lat. 41.674765, Long. -71.897847.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: ☒ attached ☐ in report/map titled

☒ Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): A Preliminary Jurisdictional Determination has been completed for multiple aquatic resource features on the subject parcel.

Additionally, the site and the aquatic feature (Water 6) subject to this review was the subject of approved jurisdictional determination (SWANCC) in 2007 under the same file number.

#### **D. REVIEW PERFORMED FOR SITE EVALUATION:**

☒ Office (Desk) Determination Only. Date: May 9, 2019.

☐ Office (Desk) and Field Determination. Office/Desk Dates: March 12, 2004 and February 22, 2006. Field Date(s): Historical site inspections on

#### **SECTION II: DATA SOURCES**

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date:

• Rex Project Management, Inc. Existing Conditions Plan E-1 and Rex Project Management, Inc. Schematic Plan SP-2, prepared by Fuss & O'Neill and dated February 15, 2006.

☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☒ Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: Fuss & O'Neill, July 29, 2019.

☐ Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date:

☐ Data sheets prepared by the Corps. Title/Date:

☐ Corps navigable waters study. Title/Date:

☒ CorpsMap ORM map layers. Title/Date: Connecticut Permit Evaluation USGS NHD, USGS NED, Capitol Region Council of Governments (CRCOG), FEMA, NRCS, USFWS NWI accessed on various dates.

☐ USGS Hydrologic Atlas. Title/Date:

☐ USGS, NHD, or WBD data/maps. Title/Date:

☐ USGS 8, 10 and/or 12 digit HUC maps. HUC number: Topo map;

☒ USGS maps. Scale & quad name and date: Source ORM2, accessed September 12, 2019.

☒ USDA NRCS Soil Survey. Citation:

USDA SSURGO, Windham County accessed from Soil Web, UC Davis on May 2, 2019.

☐ USFWS National Wetlands Inventory maps. Citation:



- ☐ State/Local wetland inventory maps. Citation:
- ☐ FEMA/FIRM maps. Citation:
- ☒ Photographs: ☐ Aerial. Citation: See Below  
 -Federal Wetland Delineation Site Photos by Cori M. Rose obtained on 3/12/2004; 4/22/19 Google Earth Aerial  
 or ☐ Other. Citation:
- ☐ LiDAR data/maps. Citation:
- ☒ Previous JDs. File no. and date of JD letter: NAE-2004-03856 dated August 16, 2007.
- ☒ Applicable/supporting case law: 2015 Clean Water Rule 33 CFR Part 328 and associated technical documentation including preamble.
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

### **SECTION III: SUMMARY OF FINDINGS**

**Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required**

#### **A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:**

- ☐ "navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

**• Complete Table 1 - Required**

**NOTE:** If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

#### **B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.****

- ☐ (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

**• Complete Table 1 - Required**

- ☐ This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

- ☐ (a)(2): All interstate waters, including interstate wetlands.

**• Complete Table 2 - Required**

- ☐ (a)(3): The territorial seas.

**• Complete Table 3 - Required**

- ☐ (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

**• Complete Table 4 - Required**

- ☐ (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

**• Complete Table 5 - Required**

- ☐ (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

**• Complete Table 6 - Required**

- ☐ Bordering/Contiguous.

Neighboring:

- ☐ (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

- ☐ (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

- ☐ (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

- ☐ (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

**• Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

- ☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- ☐ (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**
- ☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

#### C. NON-WATERS OF THE U.S. FINDINGS:

##### **Check all that apply.**

- ☐ The review area is comprised entirely of dry land.
- ☐ Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
- ☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- ☐ Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
- ☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- ☒ Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Table 10 - Required**
- ☐ (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- ☐ (b)(2): Prior converted cropland.
- ☐ (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- ☐ (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- ☐ (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- ☐ (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- ☐ (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- ☐ (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.<sup>1</sup>
- ☐ (b)(4)(iv): Small ornamental waters created in dry land.<sup>1</sup>
- ☒ (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- ☐ (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.<sup>1</sup>
- ☐ (b)(4)(vii): Puddles.<sup>1</sup>
- ☐ (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.<sup>1</sup>
- ☐ (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.<sup>1</sup>
- ☐ (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water

<sup>1</sup> In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.



distributary structures built for wastewater recycling.

- ☐ Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

• **Complete Table 11 - Required.**

**D. ADDITIONAL COMMENTS TO SUPPORT AJD:**

The "review area" is identified as an approximately 121 acre parcel in Windham County, Town of Plainfield, Connecticut identified as Map 025, Block 36, Lot 32 owned by Rex Project Management, LLC at Latitude 41.67477 North Longitude -71.89785 West. The review area for the Approved Jurisdictional Determination request is specific to a single water in the southwest corner of the parcel, closest to Colonial Road (see attached plans and figures). The feature was delineated by Wetland Scientist John Ianni in 2004 as a variant to the original Town of Plainfield wetland maps and further investigated by Fuss & O'Neill in 2006. We refer to it as Water 6, as the feature has been delineated by the presence of an ordinary high-water mark, rather than wetland boundaries. **THIS APPROVED JURISDICTIONAL DETERMINATION IS BEING COMPLETED ONLY FOR WATER 6.** The other aquatic resources within the Review Area (multiple waters and wetlands) are being treated as potential jurisdictional aquatic resource features under a separate Preliminary Jurisdictional Determination (PJD) form. A PJD is being completed for these aquatic resource areas as they are located outside of the proposed project development area.

The Review Area, and the parcels that abut it, have a history of modification from historical agriculture (fields and an orchard), and excavation/fill for farm and forested management roads. Waterways at the site have been impounded and culverted. This activity was confirmed through review of various historical topographic maps and aerial photographs back to, at least, 1934. The site straddles two separate drainage basins where the rear center of the parcel serves as a saddle to divide the drainage area. The eastern portion of the project site is associated with the Fry/Mill Brook watershed which travels in a northwesterly direction with tributary lengths totaling approximately 1.24-miles, a mean basin elevation of 489-feet and a drainage area upstream of the parcel of approximately 0.50-sq. mile. The western and southern portion of the parcel is associated with the Lathrop Brook watershed which travels in a westerly direction with tributary lengths totaling approximately 8.34 miles, a mean basin elevation of 417-feet and a drainage area upstream of roughly 2.5-sq. miles. Perennial Fry/Mill Brook drains northwest across corner of site, under Plainfield Pike Rt 14a and intersects with perennial Fry Brook to become a major tributary to the Quinebaug River. Intermittent watercourse drains west from hillside seep discharging into Lathrop Brook just north of Dow Road. Lathrop Brook is a tributary to Fry/Mill Brook. The site is bounded by residential subdivisions to the southwest, south and southeast, undeveloped land to the east and west and state route 14 (Plainfield Pike) to the north. Approximately three quarters of the parcel is wooded (half of that being wetland associated with the two tributaries identified above), and a third is abandoned agricultural land (apple orchard).

Because a wetland delineation for the project was last completed in 2006, Corps staff requested additional information to ensure that aquatic resource conditions, or scope of waters, had not significantly changed. Additionally, the WOTUS regulation identifies exclusions specifically for features constructed in "dry land". In order to address the dry land requirement, we requested a transect sample point between the Lathrop Brook tributary and its associated wetland to inform our evaluation and confirm that Water 6 was indeed created in dry land. The wetland agent submitted revised data forms on September 5, 2019 (attached). The forms submitted by the consultant confirm our original understanding of the site in that it is not in any way hydrologically connected to the adjacent tributary system and it was constructed in upland incidental to agricultural road construction.

Jurisdictional Waters of the U.S.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

**Table 5. (a)(5) Tributaries**

<b>(a)(5) Waters Name</b>	<b>Flow Regime</b>	<b>(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows</b>	<b>Tributary Breaks</b>	<b>Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.</b>
N/A	N/A	N/A	N/A	N/A

**Table 6. (a)(6) Adjacent Waters**

<b>(a)(6) Waters Name</b>	<b>(a)(1)-(a)(5) Water Name to which this Water is Adjacent</b>	<b>Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.</b>
N/A	N/A	N/A

**Table 7. (a)(7) Waters**

<b>SPOE Name</b>	<b>(a)(7) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Table 8. (a)(8) Waters**

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Non-Jurisdictional Waters**

**Table 9. Non-Waters/No Significant Nexus**

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
N/A	N/A	N/A	
N/A	N/A	N/A	

**Table 10. Non-Waters/Excluded Waters and Features**

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
Water 6	Water 6 is a wetland depression within well-drained soils of the Woodbridge series which are underlain by a compact glacial till and where hillside seep wetland may sometimes occur along concave areas at the base of slopes. The wetland agent incorporated this feature into the original wetland boundary of scrub-shrub wetland features. We conducted a site visit in 2004 and 2006 and confirmed that it is not hydrologically connected via surface water to any other wetland or waterway features associated with the intermittent tributary approximately 300 feet to the south. Anecdotal information given to the applicant is that the small, approximately 0.12-acre, feature was created by the owner during agricultural use and was used to obtain borrow material for construction and/or upgrade of the adjacent farm road. The feature has an ordinary high-water mark and the soils are hydric. Vegetation within the area, however, are not hydrophytic. Based on the provided information and our site-specific review Water 6 appears to be a depression created in dry land incidental to previous excavation to obtain material for construction of a farm road and it meets the criteria for exclusion per (b)(4)(ii).

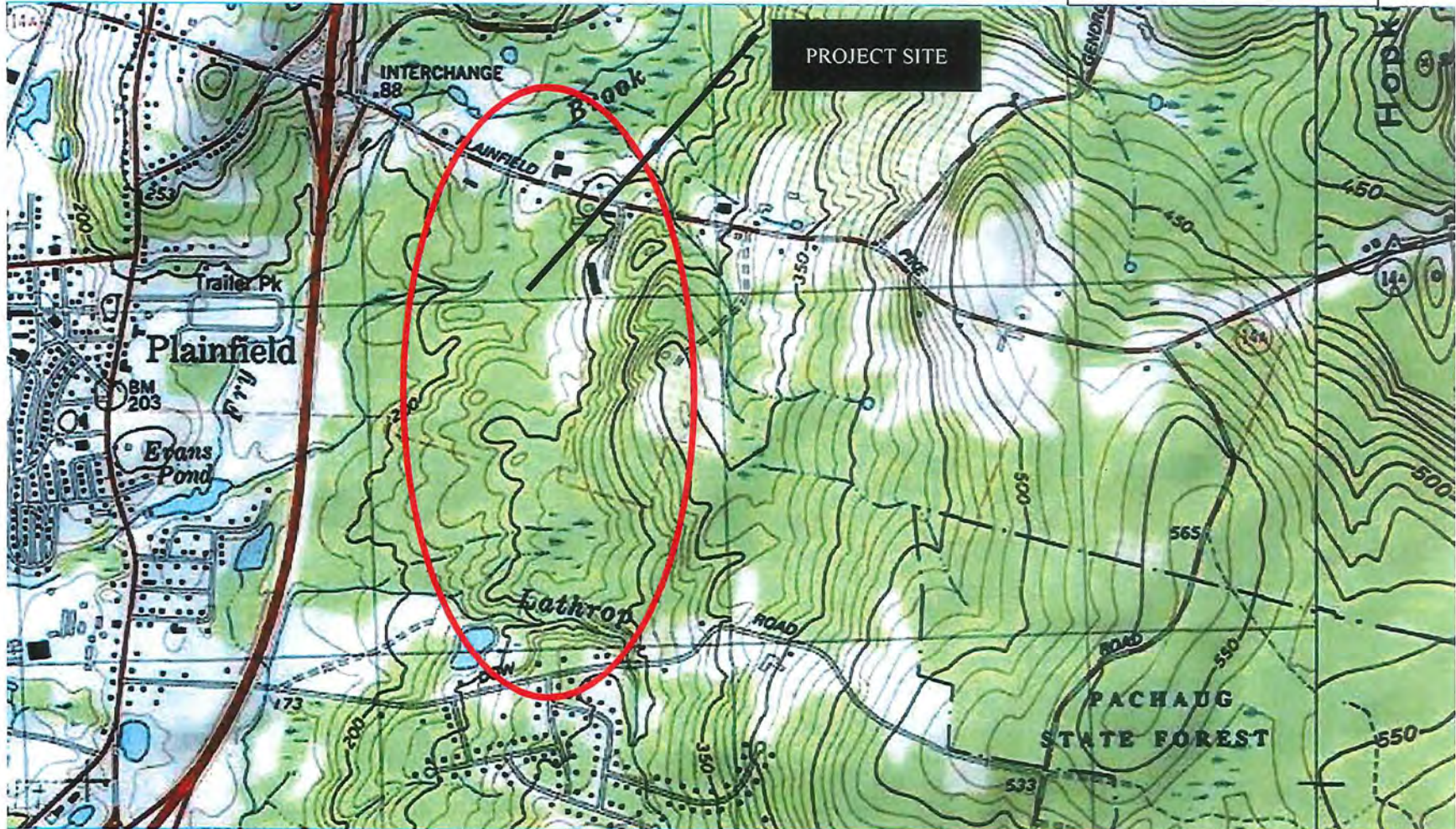
**Table 11. Non-Waters/Other**

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A



REX PROJECT MANAGEMENT, CT NAE-2004-03856  
PROJECT LOCATION

FIGURE 1A



Source: USGS  
Accessed: May 2, 2019  
Created by: Cori M. Rose, USACE



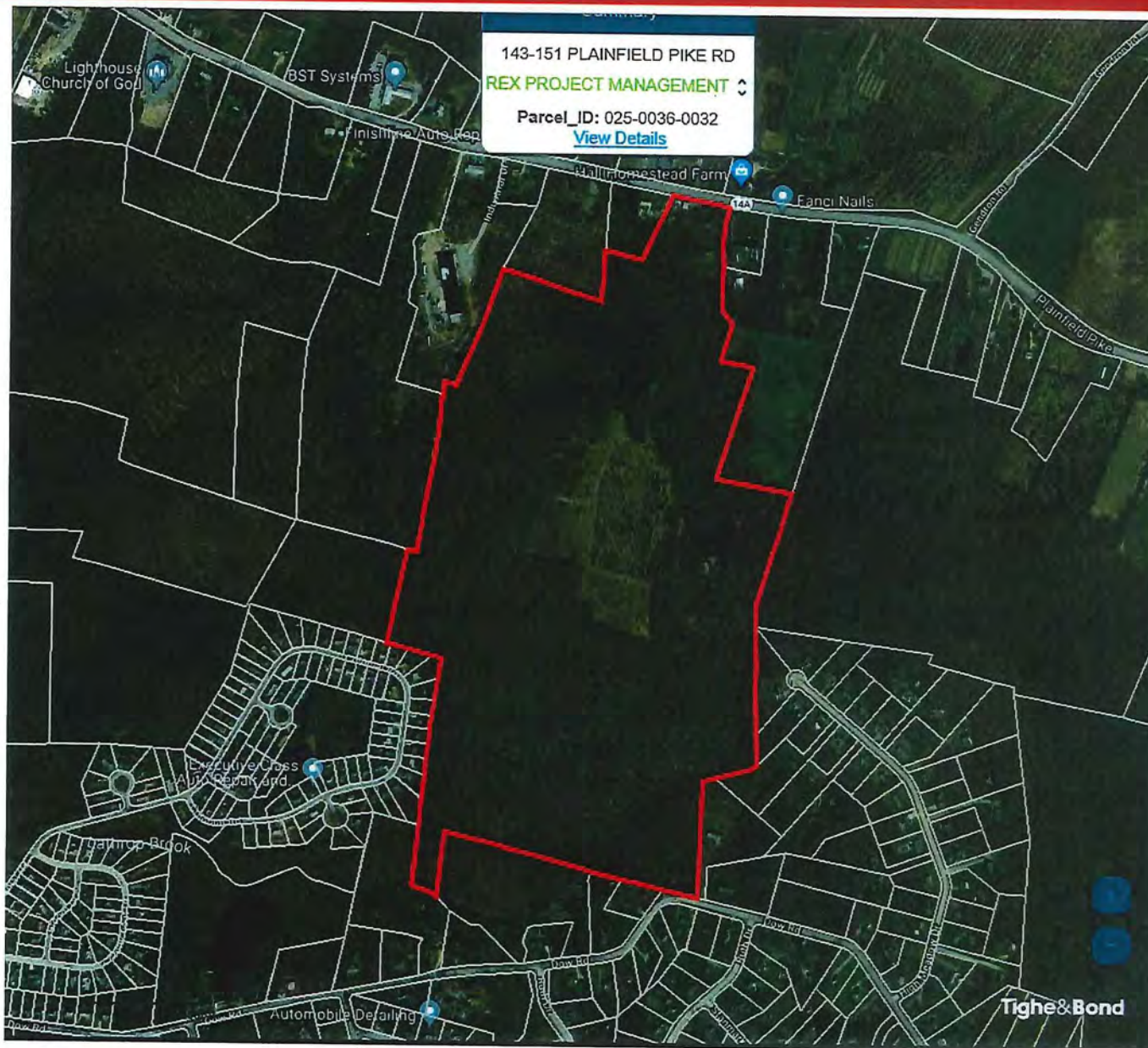
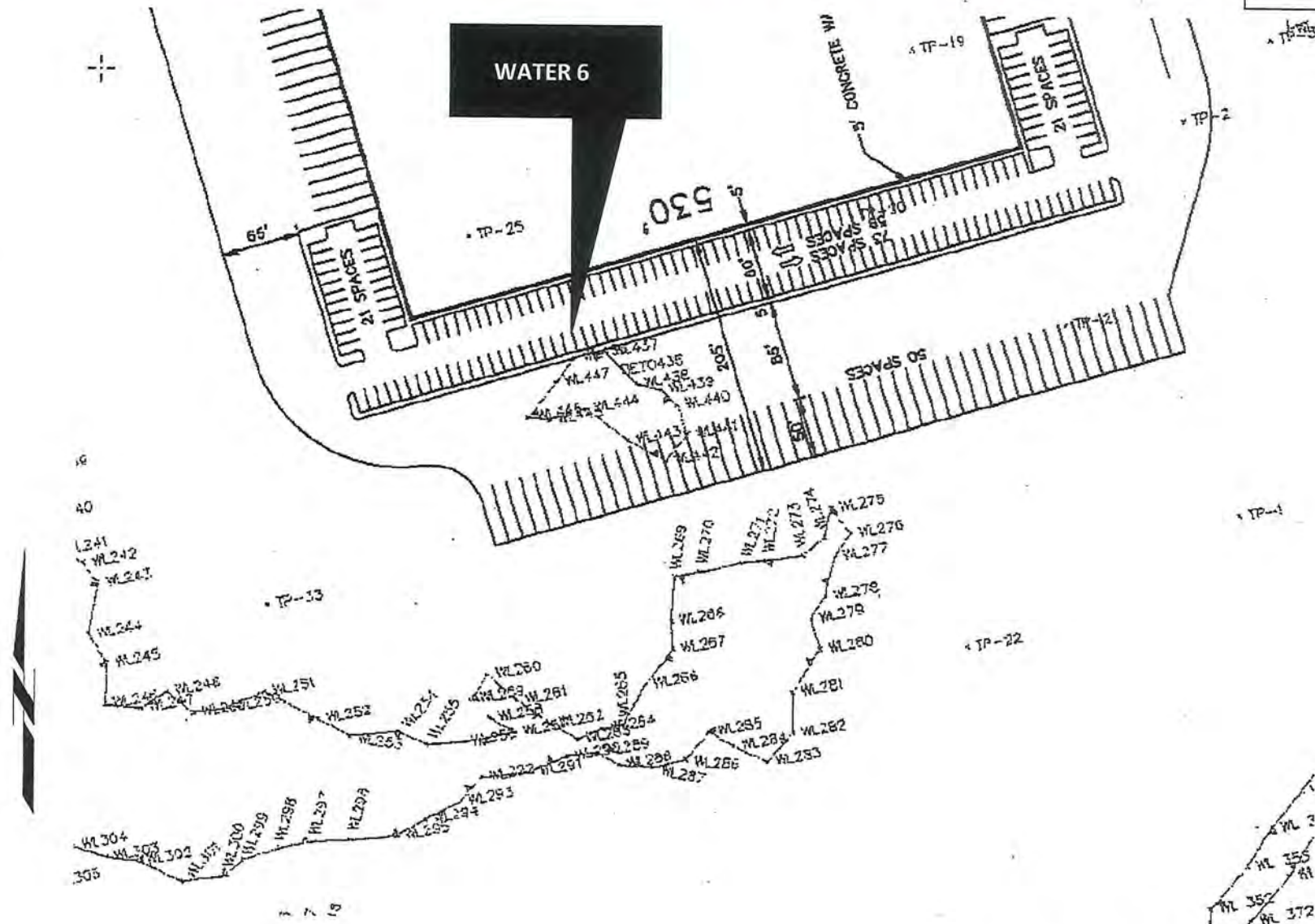


FIGURE 1B

Source: Google, Tighe & Bond, Town of Plainfield  
Accessed: May 2, 2019  
Created by: Cori M. Rose, USACE

REX PROJECT MANAGEMENT, CT NAE-2004-03856  
WATER 6 WL-436 to WL-447

FIGURE 6



Source: Fuss & O'Neill  
Accessed: Undated Plan  
Created by: Cori M. Rose, USACE