



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

CENAE-RD

13 November 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-2025-01685.

1. 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.

2. 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 A (13,630 sq. ft. within the review area) is a non-jurisdictional wetland.

### 3. 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)

4. REVIEW AREA. The AJD Review Area (Figure 1) includes a portion of a 23.89 acre parcel off the north side of Center Road (VT Route 15) in Essex Junction, Vermont. (Latitude/Longitude Coordinates: 44.51188°, -73.07059 °). On 22 July 2025, USACE conducted a site visit to review the aquatic resources at the site that were delineated by Fitzgerald Environmental Associates.

5. 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 1.98 miles south of the site as the crow flies.<sup>5</sup>

6. 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.

7. 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

8. 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

## 9. 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 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

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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.

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

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- 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 non-adjacent wetland and has no relatively permanent water adjacent or abutting that provides a continuous surface connection to a Waters of the United States. The wetland was delineated with the 1987 USACE manual and the 2012 Northcentral and Northeast Regional Supplement manual. The hydric soils at the site are loamy/clayey over sandy soils with distinct redox concentrations. Hydrology indicators at the site include high water table and meet FAC-Neutral Tests, and vegetation is dominated by *Typha* sp., *Onoclea sensibilis* and *Juncus effusus*. Wetland A is approximately 0.31 acre emergent wetland within a depression area that appears to have been altered by adjacent development. The wetland abuts an existing driveway toe-of-slope on the west side and a manmade grass berm along the east side. Mowed lawn areas abut the wetland's north and south sides. There is not a relatively permanent, standing or continuous flow into or out of the wetland. The wetland is not jurisdictional.

10. 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 O'Leary-Burke, titled "20-Scale Overall Site Plan", dated "12-29-2020", last revised "3/13/2025" (Figure 1).
- b. Additional remote tools and mapping resources were used to analyze the review area:
  - a. Figure 2. Location Map from VT Natural Resources Atlas
  - b. Figure 3. USGS StreamStats
  - c. Figure 4. Google Earth Photos
  - d. Figure 5. Site Visit Photos

A site visit was conducted by USACE staff on 22 July 2025. See additional details of the visit in the administrative record in a memorandum, dated 25 July 2025, and attached photos.

11. OTHER SUPPORTING INFORMATION. N/A

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12. 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.

# Zoning Information

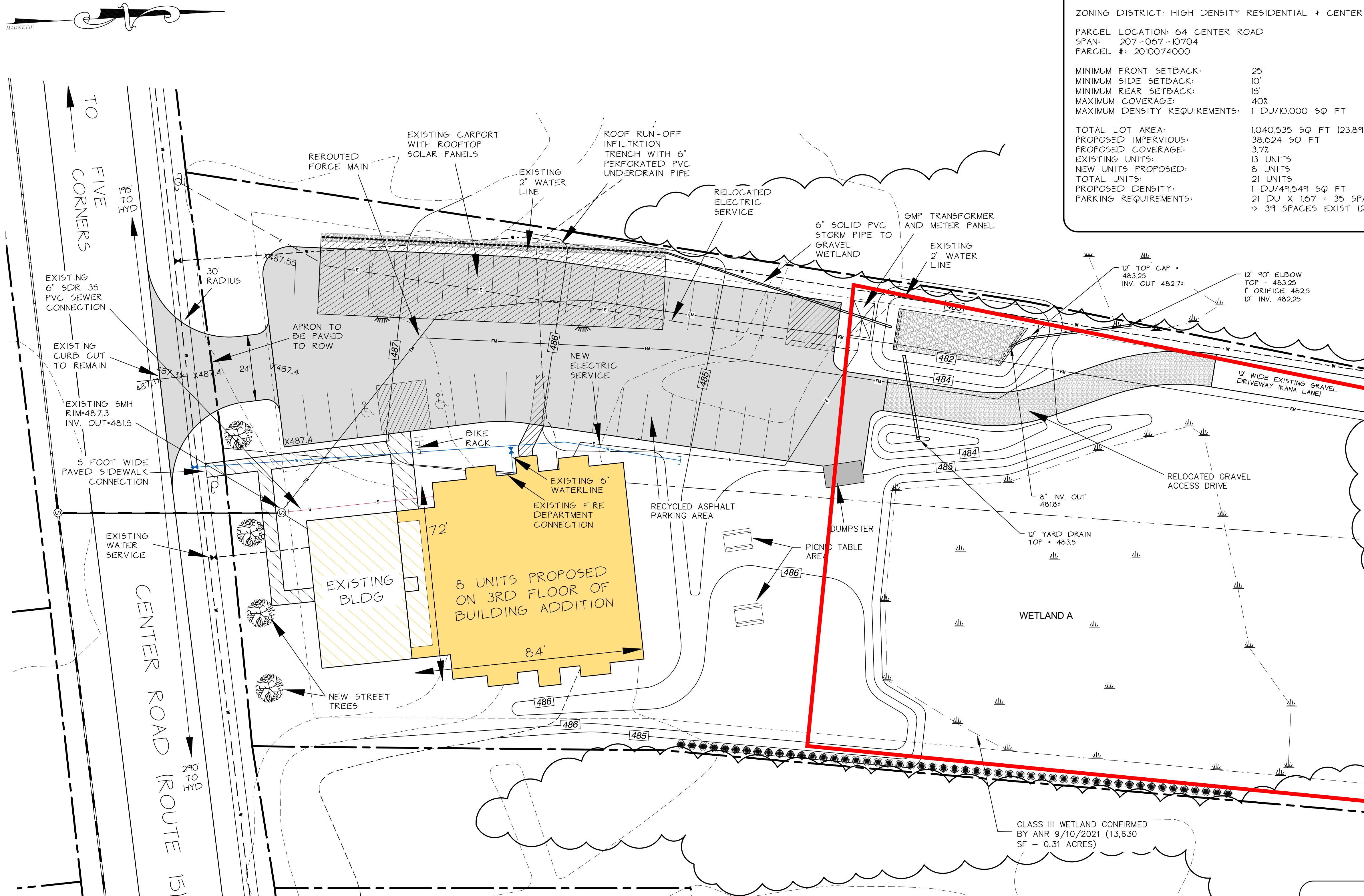
ZONING DISTRICT: HIGH DENSITY RESIDENTIAL + CENTER  
 PARCEL LOCATION: 64 CENTER ROAD  
 SPAN: 207-067-10704  
 PARCEL #: 2010074000

MINIMUM FRONT SETBACK: 25'  
 MINIMUM SIDE SETBACK: 10'  
 MINIMUM REAR SETBACK: 15'  
 MAXIMUM COVERAGE: 40%  
 MAXIMUM DENSITY REQUIREMENTS: 1 DU/10,000 SQ FT

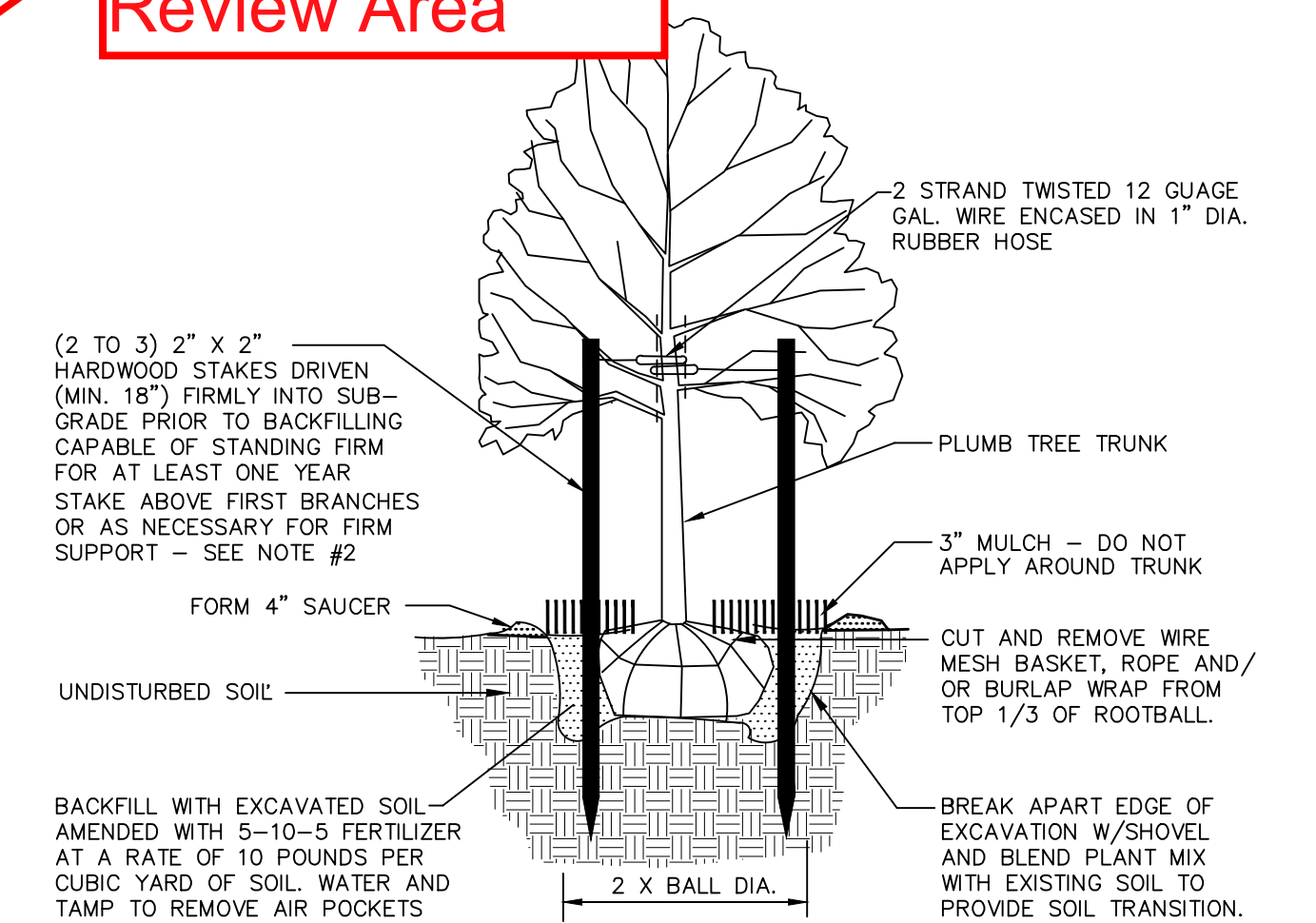
TOTAL LOT AREA: 1040,535 SQ FT (23.89 ACRES)  
 PROPOSED IMPERVIOUS: 38,624 SQ FT  
 PROPOSED COVERAGE: 3.7%  
 EXISTING UNITS: 13 UNITS  
 NEW UNITS PROPOSED: 8 UNITS  
 TOTAL UNITS: 21 UNITS  
 PROPOSED DENSITY: 1 DU/49,549 SQ FT  
 PARKING REQUIREMENTS: 21 DU X 167' = 35 SPACES REQUIRED  
 → 39 SPACES EXIST (2 HANDICAP)

# Legend

- PROJECT BOUNDARY
- PROPERTY LINE TO BE DISSOLVED
- PROPOSED PROPERTY LINE
- SETBACK
- SIDELINE OF EASEMENT
- CONTOUR LINE (U.S.G.S. DATUM)
- PROPOSED FINISH GRADE CONTOUR
- EDGE OF WOODED AREA
- EXISTING SEWERLINE
- PROPOSED SEWER SERVICE
- PROPOSED SEWER FORCE MAIN
- EXISTING WATERLINE
- PROPOSED WATER SERVICE
- EXISTING ELECTRIC SERVICE
- SOIL TYPE + BOUNDARY
- PROPOSED LIGHTS
- PROPOSED ELECTRIC SERVICE
- WETLAND LIMIT



**2025 USACE JD Review Area**



VT CONSERVATION MIX GRASS SEED		
% BY WEIGHT	LBS. LIVE SEED PER ACRE	TYPE OF SEED
24.50	29.4	TALL FESCUE
19.20	23.0	ORBIT CREEPING RED FESCUE
14.75	17.7	ANNUAL RYEGRASS
12.50	15.0	PERENNIAL RYEGRASS
10.70	12.8	NAVIGATOR II CREEPING RED FESCUE
8.75	10.5	KENTUCKY BLUEGRASS
4.39	5.3	BOREAL CREEPING RED FESCUE
2.85	3.4	DUTCH WHITE CLOVER
2.36	2.8	OTHER
100	120 # LIVE SEED PER ACRE	

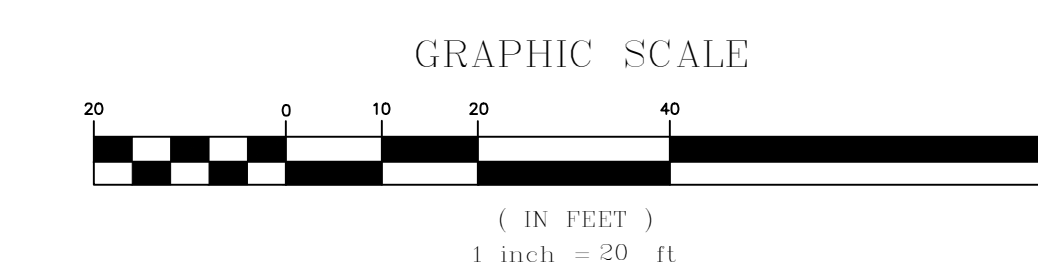
### LANDSCAPING SPECIFICATIONS

ALL DISTURBED AREAS SHALL BE STABILIZED WITH SEEDING AND MULCHING PRIOR TO NOVEMBER 1 OF EACH YEAR. ANY DISTURBED AREAS SHALL BE IMMEDIATELY SEEDED AND MULCHED WITHIN 15 DAYS. ANY WORK PERFORMED AFTER NOVEMBER 1 OF EACH YEAR SHALL BE STABILIZED WITH MULCH OR NETTING SUFFICIENT TO PREVENT EROSION AND SHALL BE IMMEDIATELY SEEDED AND REMULCHED AS SOON AS WEATHER PERMITS IN THE SPRING. ALL DISTURBED AREAS SHALL RECEIVE A MINIMUM OF 4" OF TOPSOIL AND BE SEEDED, FERTILIZED, LIMED, AND MULCHED IN ACCORDANCE WITH THE FOLLOWING:

- SEED MIXTURE IN ALL AREAS SHALL BE VT CONSERVATION MIX CONFORMING TO THE TABLE SHOWN ON THE PLANS. FOR SEEDING BETWEEN SEPTEMBER 1 AND NOVEMBER 1, WINTER RYE SHALL BE USED AT AN APPLICATION RATE OF 120 POUNDS PER ACRE.
- FERTILIZER SHALL BE STANDARD COMMERCIAL GRADE CONFORMING TO THE STATE FERTILIZER LAW AND TO THE STANDARDS OF THE ASSOCIATION OF OFFICIAL AGRICULTURAL CHEMISTS. DRY FERTILIZER, IF USED, SHALL BE APPLIED AT THE RATE OF 500 POUNDS PER ACRE. LIQUID FERTILIZER, IF USED, SHALL BE APPLIED IN A 1-2-1 RATIO WITH THE MINIMUM RATE TO INCLUDE 100 POUNDS OF NITROGEN, 200 POUNDS OF PHOSPHATE, AND 100 POUNDS OF POTASH PER ACRE.
- LIMESTONE SHALL CONFORM TO ALL STATE AND FEDERAL REGULATIONS AND TO THE STANDARDS OF THE ASSOCIATION OF OFFICIAL AGRICULTURAL CHEMISTS. THE LIMESTONE SHALL BE APPLIED AT A RATE OF TWO TONS PER ACRE OR AS DIRECTED.
- WITHIN 24 HOURS OF APPLICATION OF FERTILIZER, LIME, AND SEED, THE SURFACE SHALL BE MULCHED WITH A HAY MULCH. MULCH SHALL BE SPREAD UNIFORMLY OVER THE AREA AT A RATE OF TWO TONS PER ACRE OR AS ORDERED BY THE ENGINEER.

**Owner/Applicant**  
 KANA ASSOCIATES LLC  
 1 KANA LANE  
 ESSEX JCT, VERMONT 05452

**Owner 5 Kana Lane**  
 JEFFREY AND DAWN LYON  
 5 KANA LANE  
 ESSEX JCT, VERMONT 05452



### Proposed Landscaping Schedule

SYMBOL	QUANTITY	COMMON NAME	BOTANIC NAME	SIZE
	4	RED MAPLE	ACER RUBRUM	2-2 1/2 CALIPER
	51	HEMLOCK	TSUGA CANADENSIS	2-4 FEET

DATE	REVISION	BY	SEC
3/13/2025	REVISION REVISED FOR 8 ADDITIONAL UNITS. NO SITEWORK PROPOSED.		
1/13/2023	REVISION PLOTTED FOR CONSTRUCTION		
9/27/2023	REVISION REVISED FOR TOWN FINAL		
7/17/2023	REVISION REVISED FOR SITE PLAN AMENDMENT		
12/29/2021	REVISION REVISED FOR PLAN CHANGES		
1/12/2021	REVISION ADDED NEW 2" WATER LINE FOR 8 UNIT BUILDING		

DESIGN: OBICA  
 DRAWN: OBICA  
 CHECKED: OBICA  
 SCALE: 1"=20'

13 CORPORATE DRIVE  
 ESSEX JCT, VT  
 PHONE: 878-9590  
 FAX: 878-9589  
 E-MAIL: obca@o'burburke.com

PLAN OF A PORTION OF LANDS OF  
**JEFFREY & DAWN LYON**  
 1 & 5 KANA LANE ESSEX VERMONT

2020-96-526  
 PLAN SHEET # **2**

**20-Scale Overall Site Plan**

Figure 1