

THE NAVIGABLE WATER PROTECTION RULE (NWPR)

USACE REGULATORY PROGRAM IN VERMONT, JURISDICTIONAL DETERMINATIONS AND IMPLEMENTATION TOOLS

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Vermont Project Office
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US Army Corps
of Engineers®



WHAT ARE THE IMPLICATIONS OF NWPR IN VT?

The NWPR clarifies the definition of waters of the U.S.

- Does **not** change the types of activities regulated under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act
- Does **not** change the USACE permitting process in Vermont
- Does **not** change the permitting process or jurisdiction of the Vermont Department of Environmental Conservation (DEC) Lakes & Ponds Program, Wetlands Program, or Rivers Program
- Does **not** change any local permitting processes or jurisdiction



REGULATORY AUTHORITIES



Section 404 of the Clean Water Act:

The discharge of dredged or fill material into all waters of the U.S.

Section 10 of the Rivers and Harbors Act:

Structures and work that are located in, under or over navigable waters of the U.S. that affect the course, location, or capacity of such waters; or the excavating from or depositing material in navigable waters.





WHAT IS A JURISDICTIONAL DETERMINATION?

A jurisdictional determination (JD) is a **written** Corps determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act or under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 CFR 331.2).

- Two types: **Preliminary** Jurisdictional Determination (PJD)
Approved Jurisdictional Determination (AJD)
- JDs are typically made at the request of the landowner or project proponent. USACE generally does not issue a JD of any type when a JD is not requested.
- Additional information can be found in the Corps Regulatory Guidance Letter (RGL) 16-01, including a request form
<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Guidance-Letters/>



PRELIMINARY JURISDICTIONAL DETERMINATION

A PJD is a written advisory that there ***may be*** waters of the U.S. present, thereby treating all aquatic resources that could be jurisdictional as if they are jurisdictional for the purposes of permit processing (i.e. impacts and compensatory mitigation).

- Not appealable
- Recipient of a PJD may request an AJD at any time



APPROVED JURISDICTIONAL DETERMINATION

An AJD is a definitive, official determination stating the **presence or absence of waters of the U.S.**

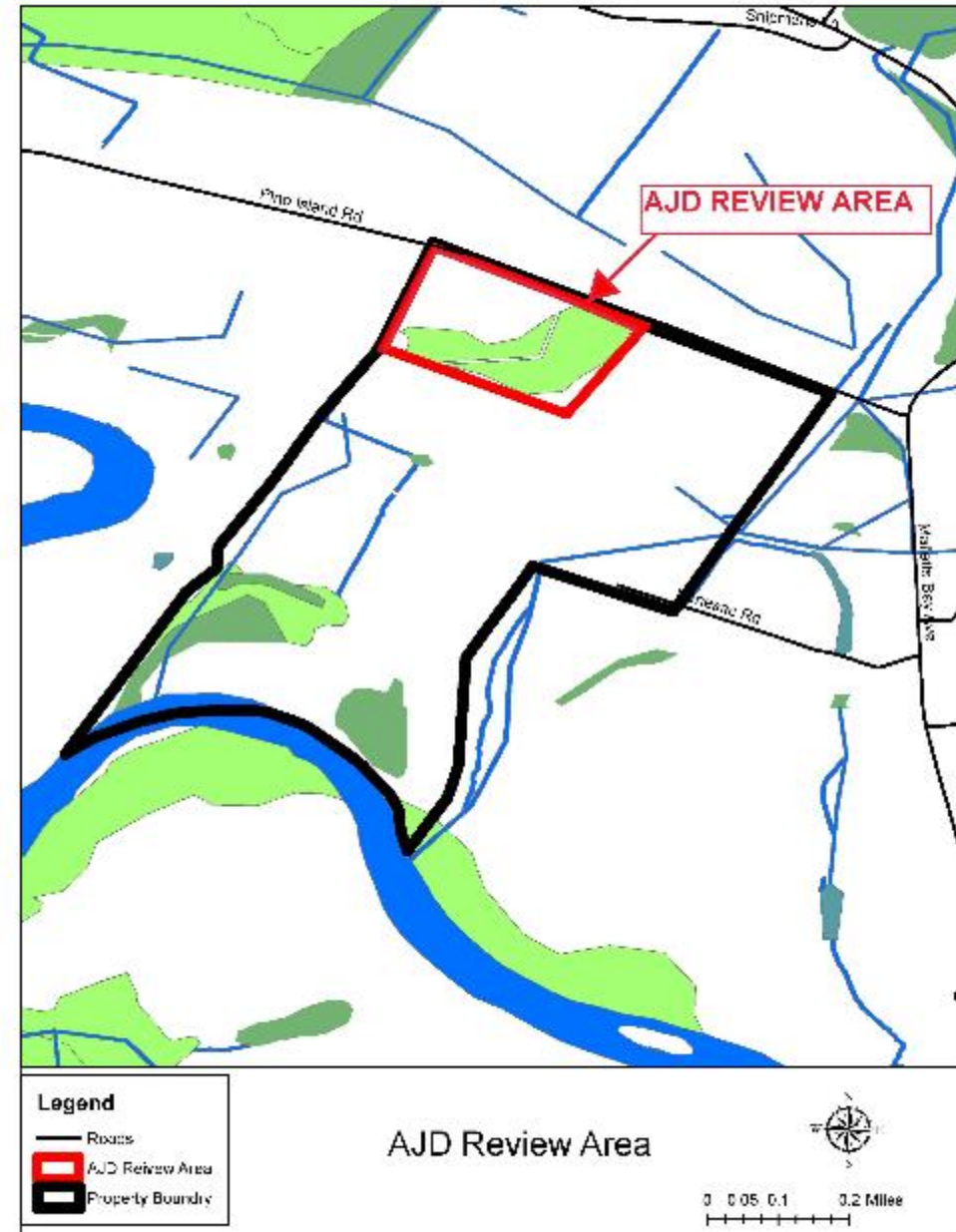
- It is the only USACE process for determining that an aquatic feature is **NOT** jurisdictional
 - (b)(1)-(12) exclusions
- Includes a basis of jurisdiction and indicators used to support the determination.
- Often require a site visit by USACE
- Appealable by the recipient
- Typically valid for 5 years
 - AJDs issued prior to NWPR remain valid unless new information warrants a revision, or the recipient requests a new AJD under the NWPR.



AJD REVIEW AREA

An AJD “review area” should be identified and may consist of the entire parcel of land, or a portion of the parcel.

If several aquatic resources are identified on the site but the requestor is only questioning the jurisdictional status of one feature, the AJD review area can be limited to that single feature.





PJD, AJD OR NO JD?



STEP 1:

Delineate all aquatic resources on the parcel

*Wetland delineation datasheets and indicators of OHWM



STEP 2:

Contact USACE to discuss PJD, AJD or No JD

PJD or No JD:

- Applicant intends to design project to avoid and minimize impacts to aquatic resources
- Applicant is not questioning jurisdiction
- Work will occur in a navigable water of the U.S.
- Work may qualify for Self-Verification (minimal impact)
- Applicant seeking faster review
- Proposed activity is exempt

AJD:

- Applicant only seeks to avoid impacts to jurisdictional aquatic resources
- Requestor wants confirmation that an aquatic feature is *not* jurisdictional

STEP 3:

If impacts cannot be entirely avoided, proceed with permit process

If all aquatic resources are determined non-jurisdictional, then no further action is needed for USACE

STEP 3:

If aquatic resources are jurisdictional and can't be avoided, proceed with permit process



USACE PERMITS



Vermont General Permits (VTGPs) Consist of 21 activity-based GPs

Self-Verification (SV)

- Project proponent confirms that project will comply with all terms and general conditions (GCs) of VTGPs
 - Impact threshold is generally <5,000 sq. ft. for each GP
 - GC 21: In-stream work must occur between July 1 – Oct. 1
 - Etc. – see VTGPs and all GCs

Pre-Construction Notification (PCN)

- Requires application submittal and project plans
 - Impacts >5,000 sq. ft., but <1acre
 - Req'd when in-stream work may occur outside July 1 – Oct. 1
 - Required when historic properties or Threatened & Endangered Species may be affected
 - Etc. – see VTGPs and all GCs

Individual Permit

- Impacts exceed 1 acre

General Permit No.: NAE-2017-02232
Applicant: General Public in the State of Vermont

Effective Date: December 6, 2017
Expiration Date: December 6, 2022

DEPARTMENT OF THE ARMY
GENERAL PERMITS FOR THE
STATE OF VERMONT





USACE VERMONT PROJECT OFFICE

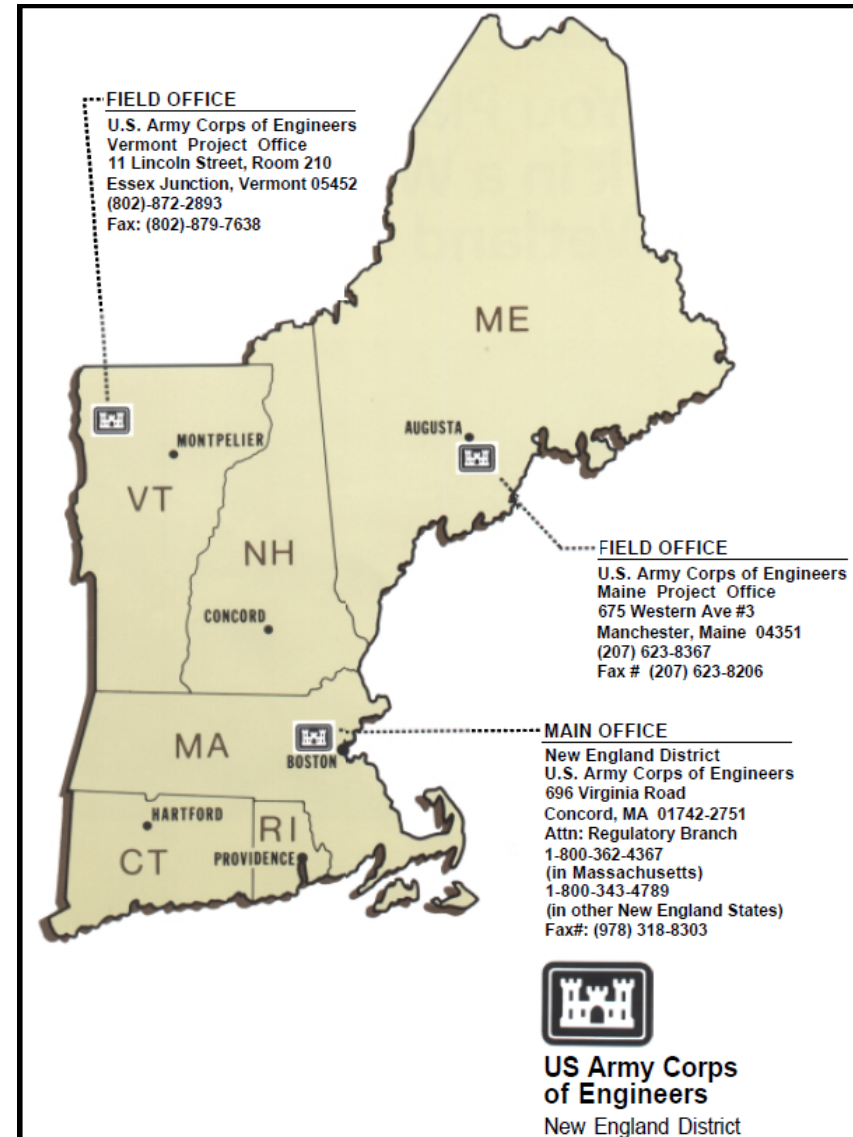


Contact USACE to discuss
jurisdiction and **permit**
requirements

U.S. Army Corps of Engineers
Vermont Project Office
11 Lincoln Street
Essex Junction, Vermont

802-872-2893

cenae-r-vt@usace.army.mil

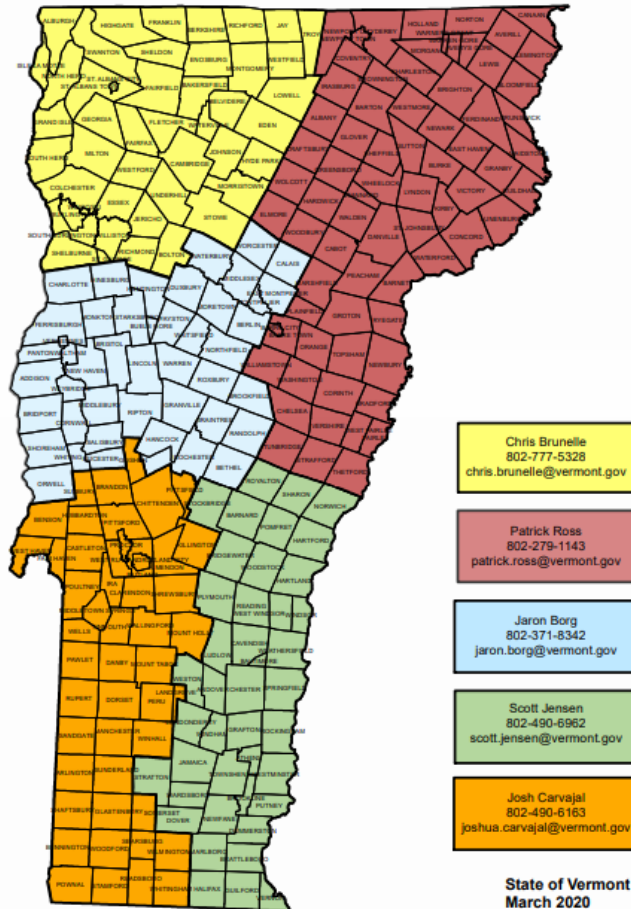




VERMONT DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)



<https://dec.vermont.gov/>



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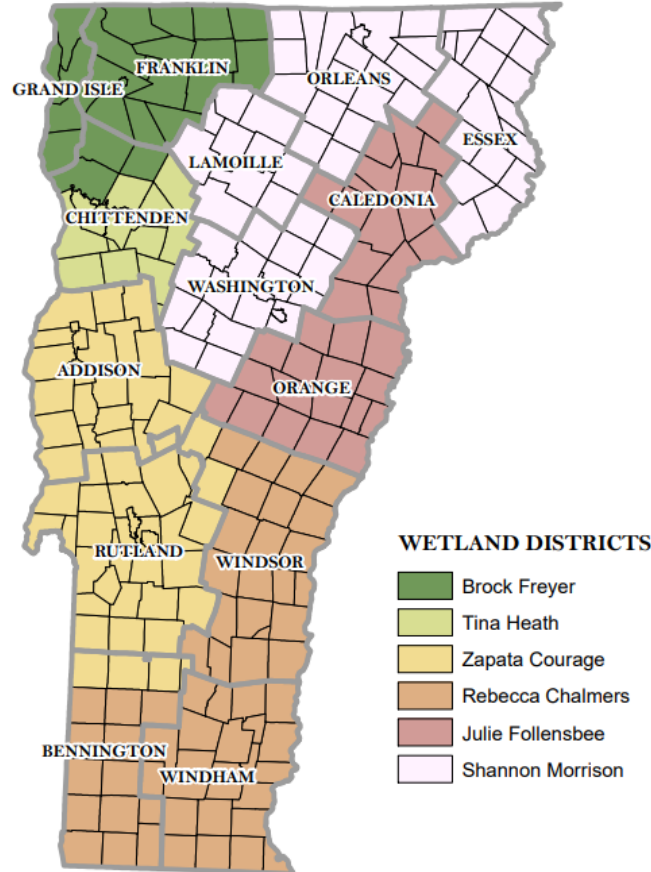
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State of Vermont
March 2020

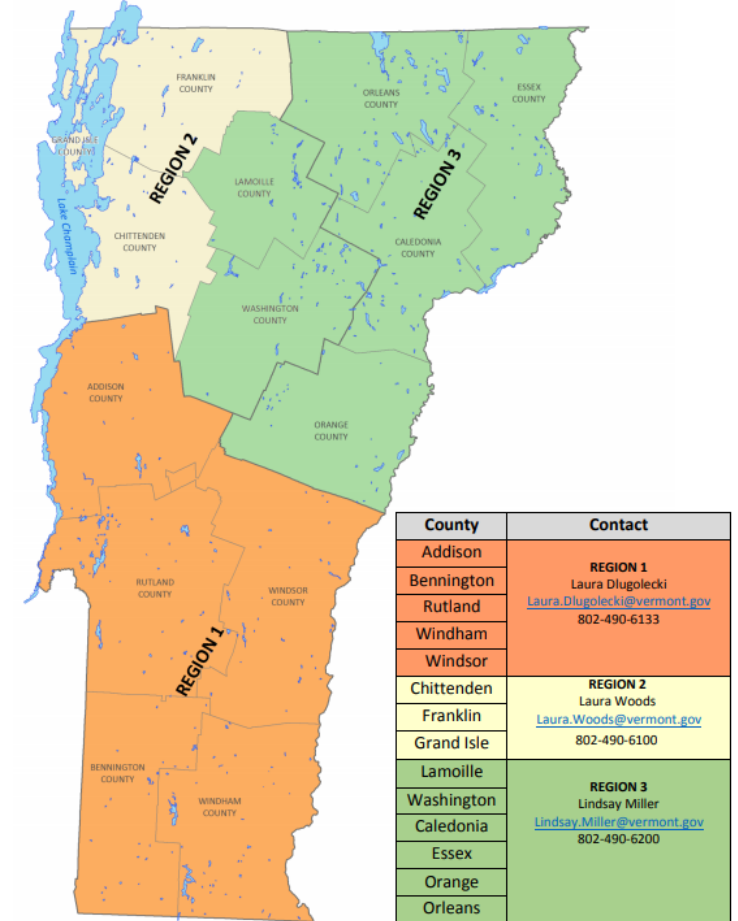
Rivers Program



WETLAND DISTRICTS

- Brock Freyer
- Tina Heath
- Zapata Courage
- Rebecca Chalmers
- Julie Follensbee
- Shannon Morrison

Wetlands Program



County	Contact
Addison	REGION 1 Laura Dlugolecki Laura.Dlugolecki@vermont.gov 802-490-6133
Bennington	
Rutland	
Windham	
Windsor	REGION 2 Laura Woods Laura.Woods@vermont.gov 802-490-6100
Chittenden	
Franklin	
Grand Isle	
Lamoille	REGION 3 Lindsay Miller Lindsay.Miller@vermont.gov 802-490-6200
Washington	
Caledonia	
Essex	
Orange	
Orleans	

Lakes and Ponds Programs



TOOLS TO HELP IMPLEMENT NWPR

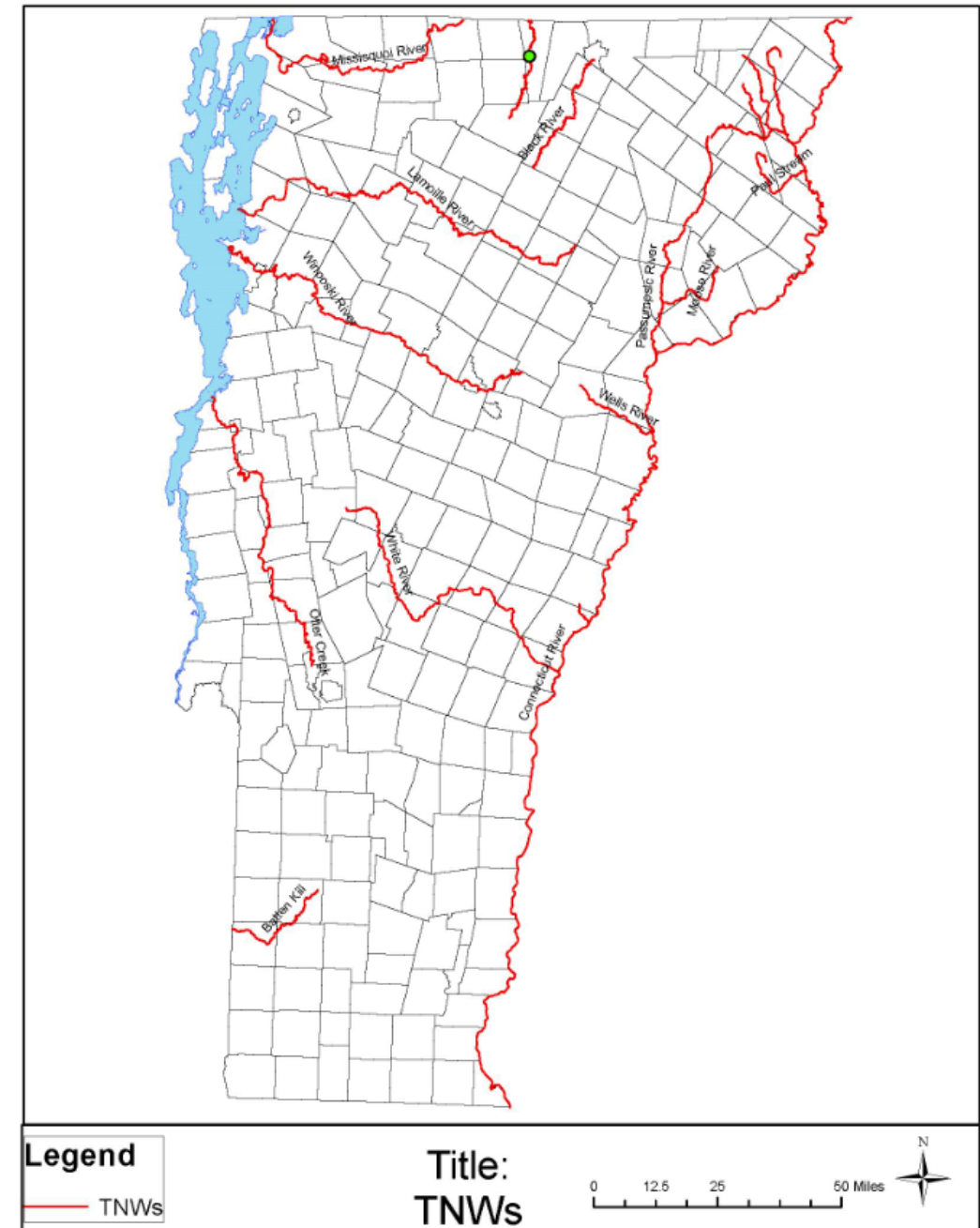


TERRITORIAL SEAS & TRADITIONAL NAVIGABLE WATERS (a)(1):

TNWs did not change

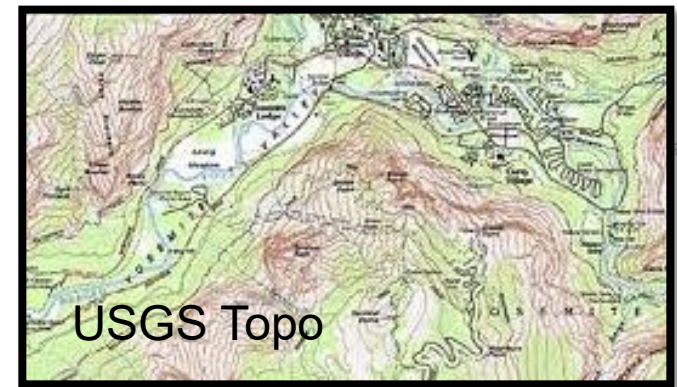
TNWs in Vermont:

- Lake Champlain
- Lake Memphremagog
- Moose River
- Winooski River
- Connecticut River
- Otter creek
- White River
- Missisquoi River
- Black River
- Wells River
- Ompompanoosuc River
- Lamoille River
- Waits River
- Batten Kill
- Paul Stream
- Passumpsic River
- East Branch Passumpsic River
- Nulhegan River
- East Branch Nulhegan River
- Black Branch Nulhegan River
- Yellow Branch Nulhegan River



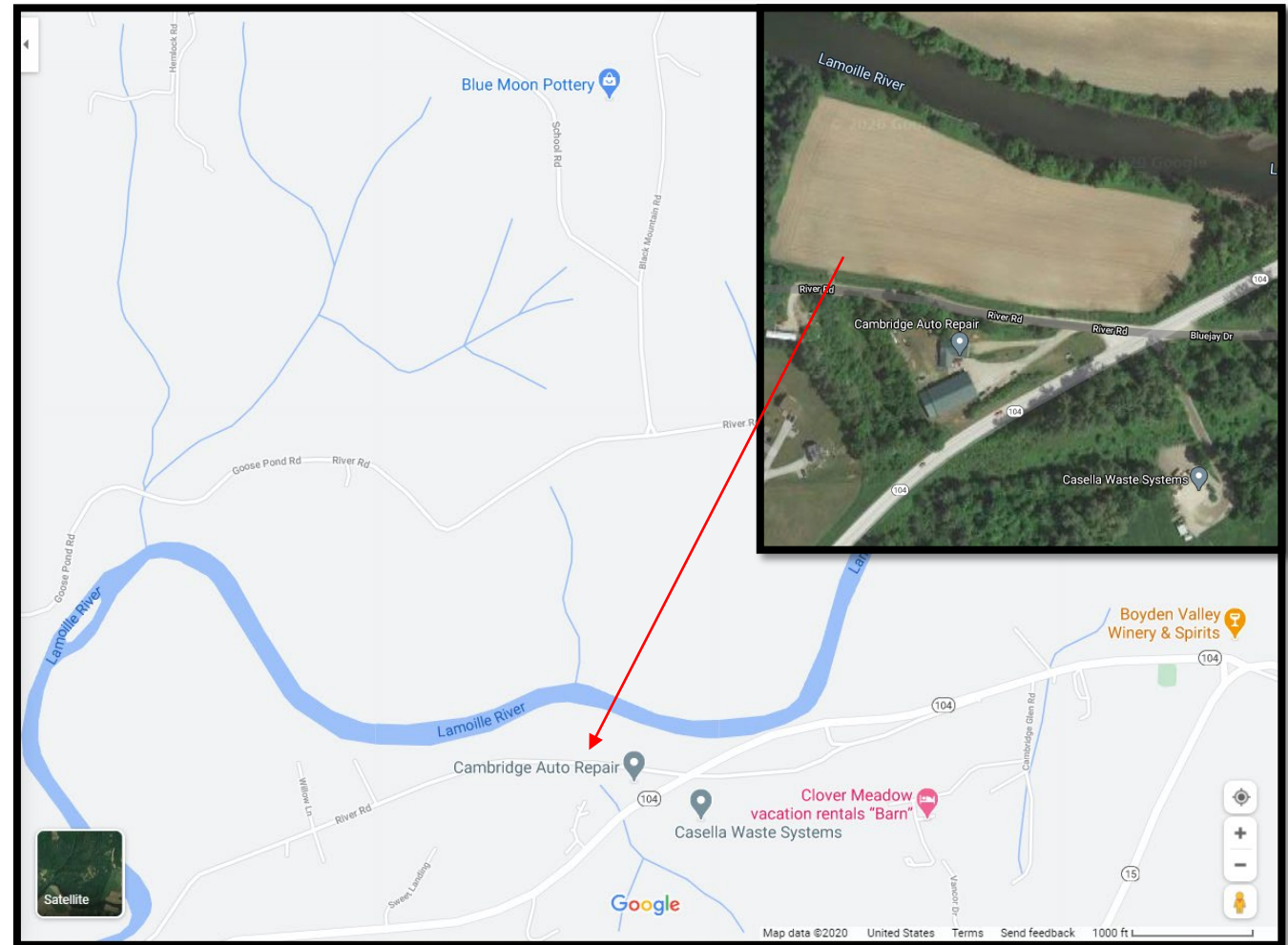
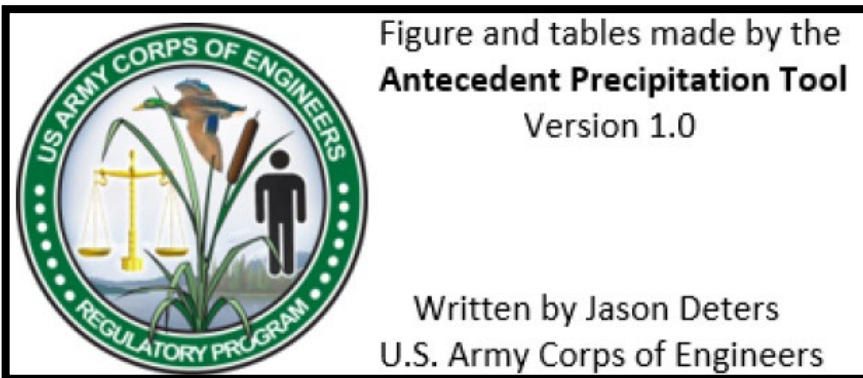


TRIBUTARIES (a)(2):



How does USACE determine if a water is a tributary?

- Connectivity
- Stream flow
 - Perennial, Intermittent or Ephemeral Flows
 - Typical Year





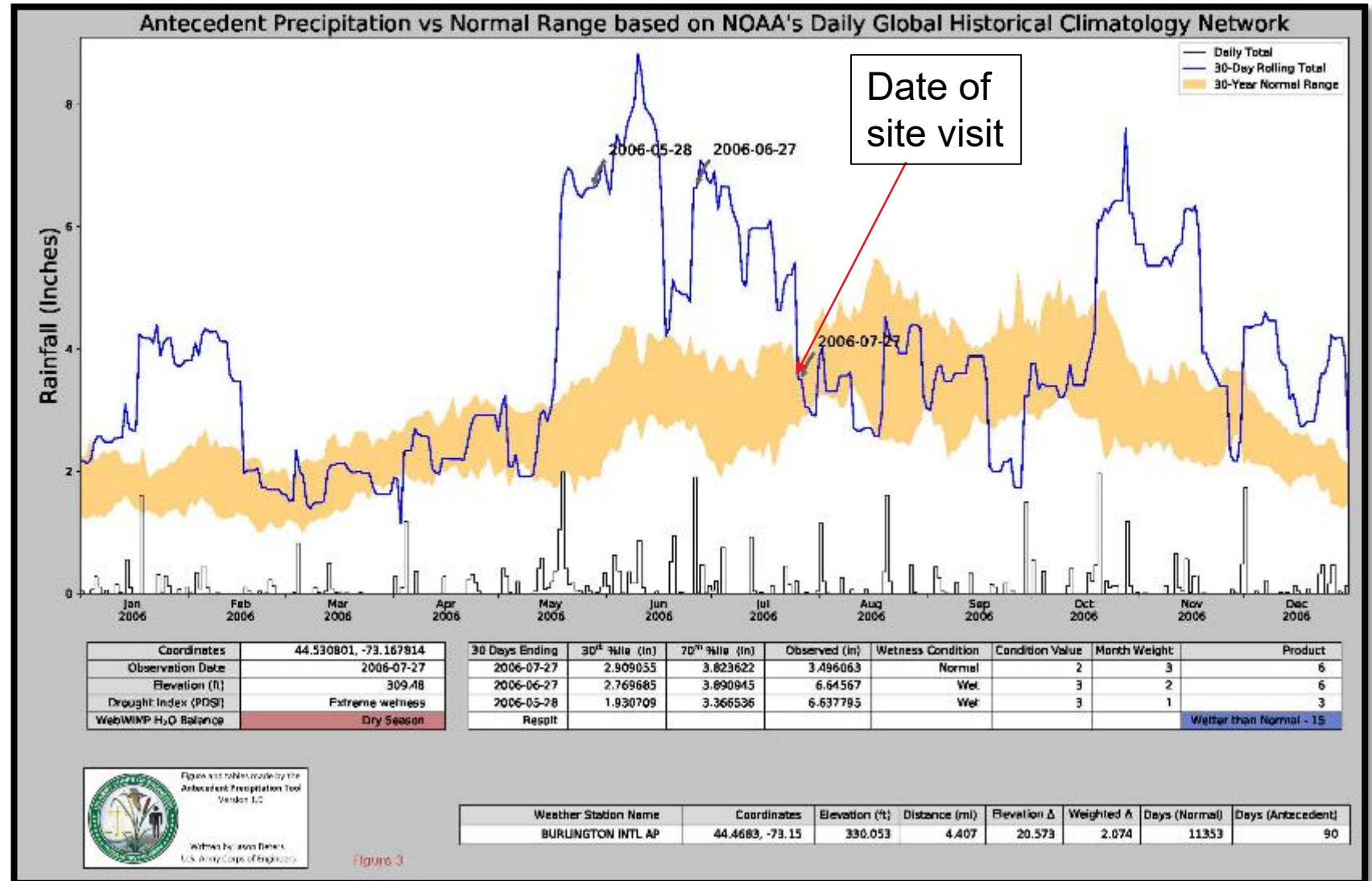
ANTECEDENT PRECIPITATION TOOL (APT)

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Link: <https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool/releases/tag/v1.0.13>

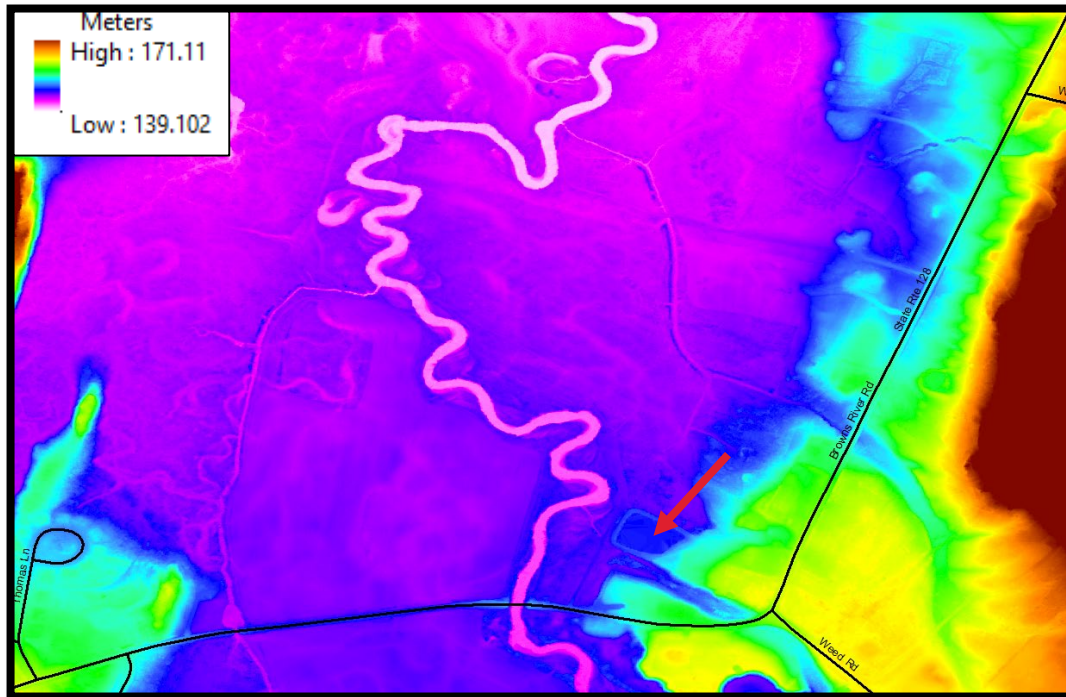
- Developed by the USACE.
- Assesses rainfall data from the preceding 30 years.
- The APT is automated and provides a consistent methodology.
- Includes information from the Web-based Water-Budget Interactive Modeling Program (WebWIMP) and Palmer Drought Severity Index.



LAKE, PONDS, AND IMPOUNDMENTS (a)(3):

How does USACE determine if a lake, pond or impoundment is inundated by flooding from a paragraph (a)(1) through (a)(3) water in a typical year?

- Lidar and compare to gage data

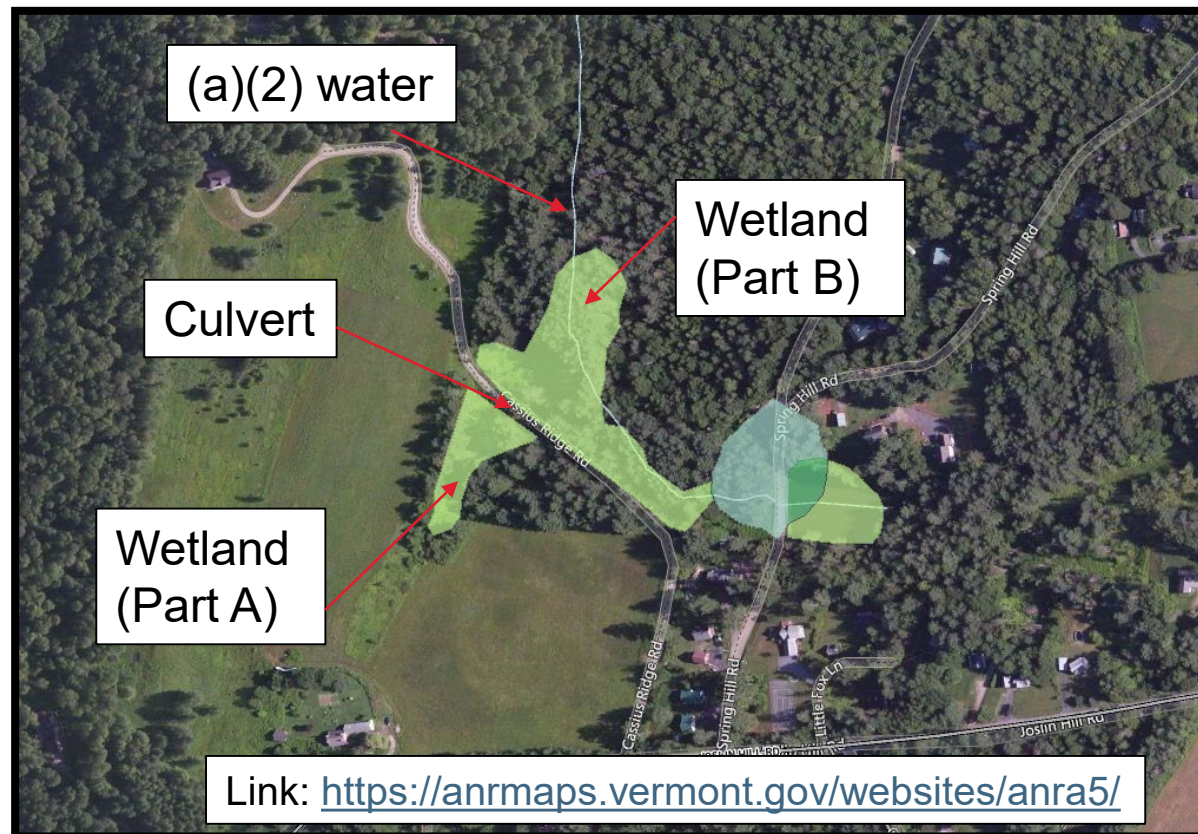


ADJACENT WETLANDS (a)(4):



How does USACE determine if a water is an adjacent wetland?

- Vermont State Wetland Mapper (VT ANR)
- National Wetland Inventory Mapper (USFWS)
- Site Visits





DITCHES:



How does USACE determine if a ditch is constructed in a tributary, relocates a tributary, or is constructed in an adjacent wetland?

- Historical aerial photography
- NRCS Historical Soil Surveys





RESOURCES FOR NWPR:



Please Contact:

U.S. Army Corps of Engineers
Vermont Project Office
11 Lincoln Street
Essex Junction, Vermont

Phone: 802-872-2893

Angela Repella: Angela.C.Repella@usace.army.mil

Amanda Sayles: Amanda.L.Sayles@usace.army.mil

For more training information: <https://www.epa.gov/nwpr/training-and-implementation-materials>