



**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): 8/13/2020
 ORM Number: NAE-2017-02842
 Associated JDs: N/A
 Review Area Location¹: State/Territory: VT City: Colchester County/Parish/Borough: Chittenden
 Center Coordinates of Review Area: Latitude 44.531097° N, Longitude -73.168365° 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
Stream 2	1655	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
Stream 1	1717	linear feet	(a)(2) Perennial tributary contributes

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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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
		surface water flow directly or indirectly to an (a)(1) water in a typical year.	Lake Champlain, a TNW. See below for additional rationale.

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
Wetland 1	5.33 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 1 directly abuts the ordinary high water mark of Stream 1 an (a)(2) water.
Wetland 2	3.22 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 2 directly abuts the ordinary high water mark of Stream 2 an (a)(2) water.
Wetland 3	0.68 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 3 continues off the site to the north outside of the AJD review area and directly abuts ordinary high water mark of Stream 2 an (a)(2) water.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland J	0.12 acre(s)	(b)(1) Non-adjacent wetland.	The water does not meet the conditions of (b)(2) through (b)(12) exclusions and is not an (a)(1), (2), (3), or (4) water. See below for additional rationale.
Wetland K	0.10 N/A.	(b)(1) Non-adjacent wetland.	The water does not meet the conditions of (b)(2) through (b)(12) exclusions and is not an (a)(1), (2), (3), or (4) water. See below for additional rationale.
Wetland I	0.04 N/A.	(b)(1) Non-adjacent wetland.	The water does not meet the conditions of (b)(2) through (b)(12) exclusions and is not an (a)(1), (2), (3), or (4) water. See below for additional rationale.

III. SUPPORTING INFORMATION

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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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: [Site plan titled "Existing Conditions", dated "6-2-2020"](#) ; [Wetland Delineation data sheets prepared by Brian Tremback \(Lamoureux & Dickinson\), dated "6-5-2020"](#).

This information is sufficient for purposes of this AJD.

Rationale: [Based on a 9 July 2020 site visit and review of the information submitted by the applicants agent the wetlands on the site were delineated using the methodology in the 1987 "Corps of Engineers Wetlands Delineation Manual" and Regional Supplement. The limits of the wetlands shown on the plans were consistant with conditions in the field and the wetland boundary is acceptable and sufficient for prepartation of an AJD.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial and Other: See attached Figures](#)
- Corps site visit(s) conducted on: [27 July 2006, 5 October 2007, 8 November 2017 and 9 July 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\)](#).
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\)](#).
- USFWS NWI maps: [Title\(s\) and/or date\(s\)](#).
- USGS topographic maps: [Colchester 7.5 minute Quad, 1:24,000](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	Stream Stats reviewed 23 July 2020
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	Vermont Interactive Map Viewer reviewed 23 July 2020.
Other Sources	N/A.

B. Typical year assessment(s): On 27 July 2006, 5 October 2007, 8 November 2017 and 9 July 2020 the Corps conducted field visits to review the wetland delineations and to discuss the proposed project. During these field visits flowing water was observed within the (a)(2) waters onsite. The APT report for 27 July 2006 concludes that at the time of the field visit wetter than normal conditions exist, although we are in a dry season (Figure 3). The APT report for 5 October 2007 concludes that at the time of the field visit drier than normal conditions exist during a wet season (Figure 4). The APT report for 8 November 2017 concludes at the time of the field visit normal conditions exist and for 9 July 2020 drier than normal conditions exist (Figure 5 & 6). Based on observing flowing water in the streams during summer and fall months while under normal and drier than normal conditions it is reasonable to conclude that the streams have flow in them during a typical year and are Tributaries ((a)(2) waters).

C. Additional comments to support AJD: Based on field visits made by the Corps and photographs provided by the applicants agent surface water flow has been observed flowing continuously during the year in the (a)(2) waters on the site. Water is visible in Google earth aerial photography. USGS topography and NRCS Stream Stats show Streams 1 and 2. Stream 1 flows into Stream 2 off site north of the parcel. There are no breaks in flow in Stream 2 between the project site and were it drains into Malletts



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Bay of Lake Champlain, a TNW. Stream 1 and 2 are naturally occurring surface water channel that contributes water flow to an (a)(1) waters in a typical year. The Corps has concluded that the streams are perennial.

Wetland 1 directly abuts ordinary high water of Stream 1 and is therefore an adjacent wetland, (a)(4) waters. Wetland 2 and 3 directly abut ordinary high water of Stream 2 and are therefore adjacent wetlands, (a)(4) waters.

Wetland K is a palustrine emergent wetland that is about 0.10 acre in size. The wetland is naturally separated by upland from Wetland 2 and does not physically abut Stream 2 which is approximately 420' away. Wetland K is about 30' higher in elevation than the closest reach of Stream 2 and would not be inundated by flooding of Stream 2 in a typical year.

Wetland I is a palustrine emergent wetland that is about 0.04 acre in size located in a depression off the shoulder of US Route 2 and 7. The wetland is separated by upland from Stream 1 and adjacent Wetland 1 approximately 300' away. Wetland I is about 40' higher in elevation than the closest reach of Stream 1 and would not be inundated by flooding of Stream 1 in a typical year.

Wetland J is a palustrine emergent/forested wetland that is about 0.12 acre in size. This wetland is located atop of a hill between Stream 1 and 2. The wetland is physically separated from the streams by forested upland and is about 50' higher in elevation that the streams. Typical year water flows in the streams would not inundate Wetland J.

There are no hydrological connections between Wetlands K, I and J to on-site Streams 1 and 2, or to Lake Champlain. Lake Champlain, a TNW is about two miles away "as the crow flies". The wetlands are clearly non-navigable, isolated and intrastate.