



**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): [August 13, 2020](#)

ORM Number: [NAE-2019-03169](#)

Associated JDs: [N/A](#)

Review Area Location¹: State/Territory: [Vermont](#) City: [New Haven](#) County/Parish/Borough: [Addison](#)

Center Coordinates of Review Area: Latitude [44.121940 N](#) Longitude [-73.164336 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	
Existing Conveyance Swale	350 within the review area	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The stream labeled "Existing Conveyance Swale" drains into a naturally occurring unnamed surface channel out of the review area which flows to another unnamed stream. This stream then flows into Little Otter Creek which drains into Lake Champlain, a traditional navigable water (TNW). Based on a site visit, aerial photos and USDA Addison County Soil Survey, issued October 1971, and Stream Stats the feature labeled "Existing Conveyance Swale" is considered an intermittent stream. Although the stream has been ditched it

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
			continues to meet the flow conditions of an (a)(2) water. 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 NH-203(S)	0.10 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland NH-203(S) directly abuts "Existing Conveyance Swale", 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
NH-203(N)	0.36	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.
NH-204	65	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	This features is a natural surface waterway connecting two parts of Wetland NH-203, it is not an (a)(1), (2), (3), or (4) feature. See below for additional rationale.
NH-010	0.02	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.

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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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: [Site plan titled "PROPOSED LAYOUT & WETLAND IMPACTS", dated "AUGUST 2020" ; Wetland Delineation data sheets prepared by Stantec, dated "10/11/2017", "11/1/2017" and "07/18/19".](#)

This information is sufficient for purposes of this AJD.

Rationale: [Based on a 15 July 2020 site visit and review of the information submitted by the applicant 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 consistent with conditions in the field and the wetland boundary is acceptable and sufficient for preparation 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: [15 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: [Web Soil Survey reviewed 4 August 2020 and Addison County Vermont soil survey issued October 1971.](#)
- ☐ USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)
- ☒ USGS topographic maps: [Monkton Boro 7.5 minute Quada, 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	Web Soil Survey reviewed 4 August 2020, Stream Stats viewed 10 August 2020.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): On 15 July 2020, the Corps conducted a field visit to review the wetland delineation and to determine jurisdiction. During the field visit, surface water was noted flowing south in the feature labeled "Existing Conveyance Swale" about 500 feet outside of the Review Area. The APT report for 15 July 2020 concludes that at the time of the site visit drier than normal conditions exist during mild drought conditions. Based on observing surface flow in the stream just outside the review area, visual signatures on aerial photographs, the feature being labeled an intermittent stream in the October 1971 soil survey for Addison County, and shown as a stream on Stream Stats it is reasonable to conclude that the swale is an intermittent stream, an (a)(2) water.

C. Additional comments to support AJD: This AJD is based on a site visit, and review of information available on public, state and federal web sites and information provided by the applicant. The feature labeled "Existing Conveyance Swale" is clearly identified in 1962 and 1995 aerial photograph (see Figure 3 and 4). The feature is located in a natural low area between two fields. The feature has likely been ditched, but not relocated. Permit



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number NAE-2004-00856, issued December 21, 2005, authorized the construction of the New Haven Substation which included about 0.04 acre impact to the "Existing Conveyance Swale" outside the current review area. The authorized impact was for the construction of an access road across the intermittent stream and adjacent wetland. There are no known breaks in flow from the intermittent stream on the project site and where it drains into Lake Champlain, a TNW. Wetland NH-203(S) directly abuts the ordinary high water mark of this stream and is therefore an adjacent wetland, an (a)(4) water. This palustrine emergent wetland is about 0.10 acre in size.

Stream NH-204 is about 65 linear feet long originating at the southern, low end, of Wetland NH-203(N) and drains into Wetland NH-203(S). Based on visual observation and documentation provided by the applicant Stream NH-204 is a (b)(3) ephemeral feature. No flowing water was identified in the feature during the site visit or is there any water visible in numerous years of available aerial photos. The applicant's agent has indicated that the stream is ephemeral; water is only present for short durations as a direct result of heavy rain fall. Wetland NH-203(N) is a palustrine scrub/shrub and emergent wetland in an agricultural field that is about 0.36 acre in size. This wetland does not directly abut the ordinary high water of an (a)(1), (a)(2), or (a)(3) water, nor does the wetland receive flow from the Existing Conveyance Swale, the (a)(2) water onsite. Wetland NH-203(N) is about 65' away from the (a)(2) water and about 10' higher in elevation and would not be inundated by flooding from the stream in a typical year. Therefore, Stream NH-204 and Wetland NH-203(N) are not jurisdictional waters.

Wetland NH-010 is a palustrine emergent wetland about 0.02 acre in size located at the outlet of a culvert installed beneath an existing filled area to drain the higher side. This feature is the direct result of the development and is (b)(1) water. This wetland does not directly abut an (a)(1), (a)(2), or (a)(3) water, nor does it receive flow in a typical year from the "Existing Conveyance Swale" which is about 400' away. Therefore, Wetland NH-010 is not a jurisdictional water.

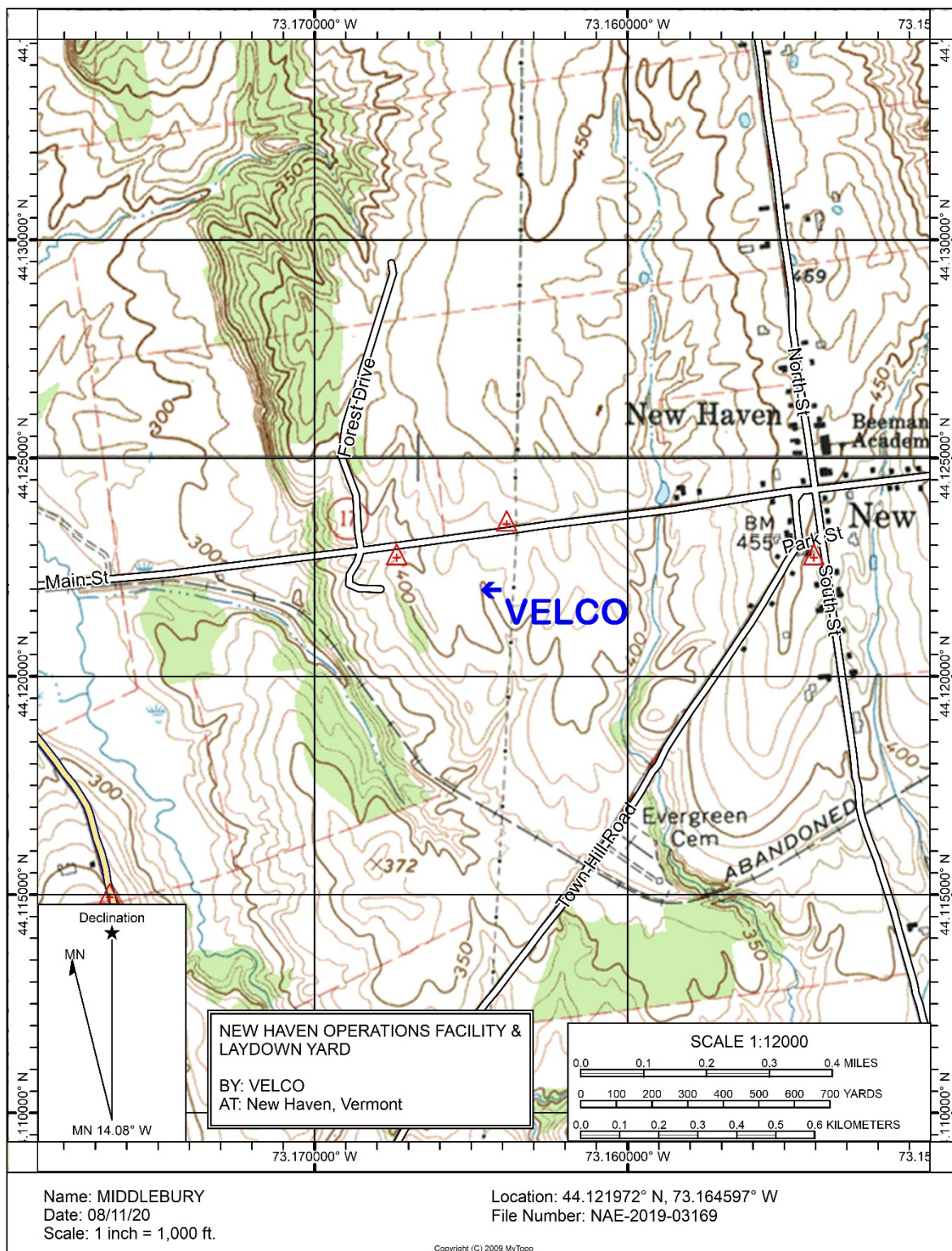
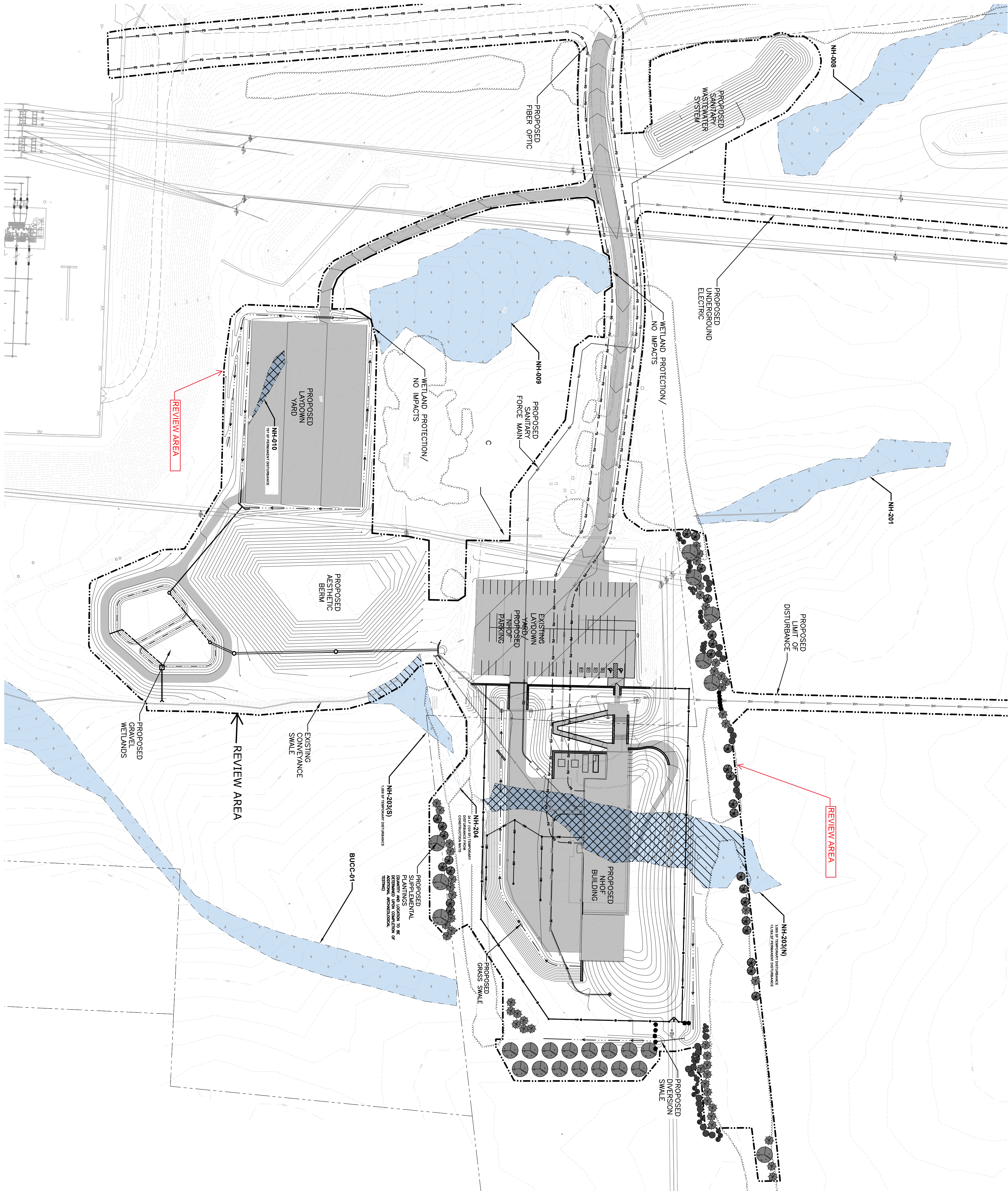


Figure 1 – Vicinity Map – From USGS Middlebury, VT QUAD

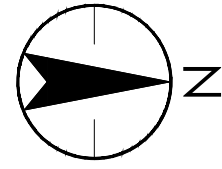


PROPOSED LAYOUT & WETLAND IMPACTS

SCALE: 1"=180'
0 180' 360'

LEGEND

- WETLAND
- PROPOSED IMPERVIOUS AREAS
- WETLAND IMPACTS (TEMPORARY)
- WETLAND IMPACTS (PERMANENT)
- PROPOSED LIMIT OF DISTURBANCE
- EXISTING MINOR CONTOUR
- PROPOSED MAJOR CONTOUR
- PROPOSED MINOR CONTOUR
- PROPOSED MAJOR CONTOUR
- PROPERTY LINE



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Consultant

AUGUST 2020

Permit/Seal

**PRELIMINARY
NOT FOR
CONSTRUCTION**

Not for permit, pricing or other official purposes. This document has not been completed or checked and is for general information or comment only.

Client/Project
VELCO

NEW HAVEN
OPERATIONS FACILITY &
LAYDOWN YARD

New Haven, Vermont

Figure 2

Project No.: 195610843

Task Name: 195610843

Scale: AS SHOWN

Drawn: PH AL 2020.05.13

Checked: YYY/MM/DD

Title
PROPOSED LAYOUT
& WETLAND IMPACTS

Revision: 1 Sheet: 1 of 1
Drawing No.

FIG. 3

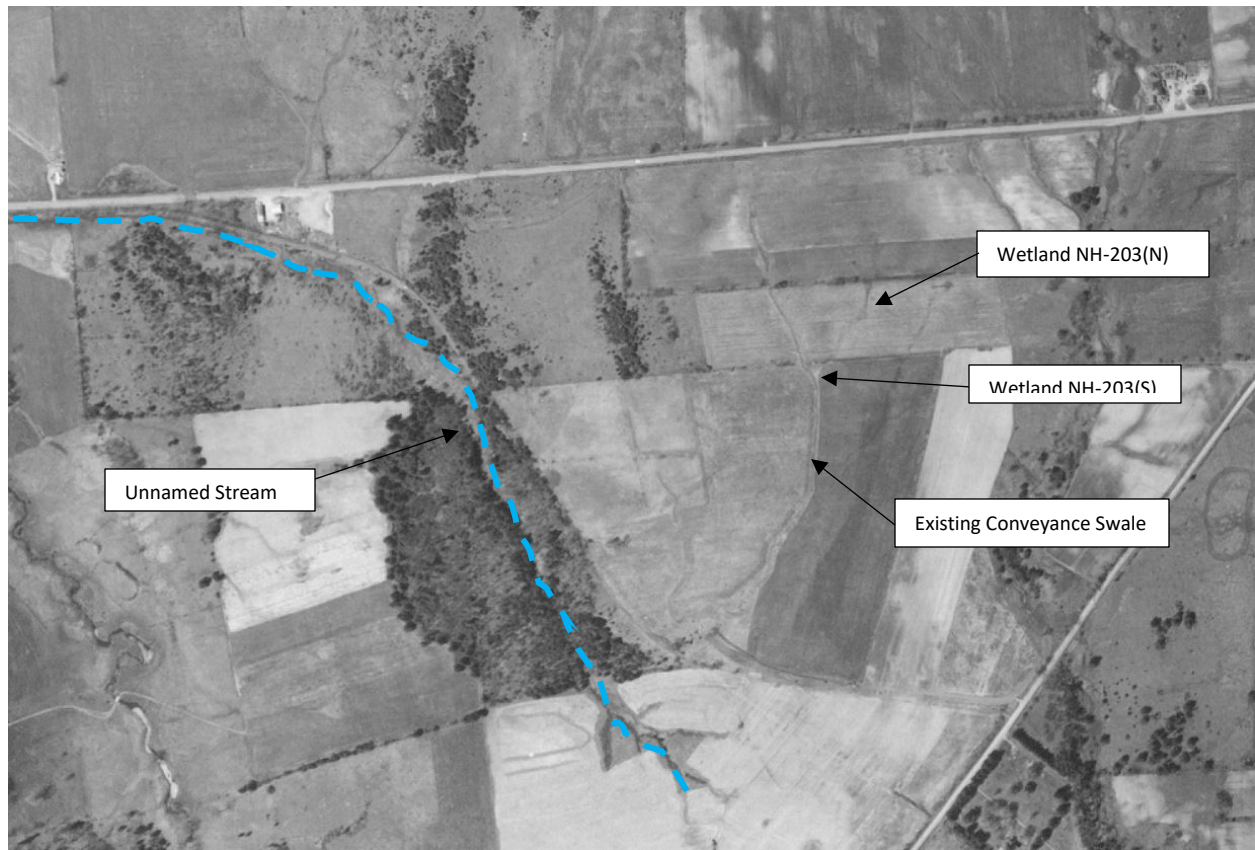


Figure 3 – 1962 Aerial photo of project site.



Figure 4 – 1995 Aerial photo from Google Earth



Figure 5 – 2018 Aerial photo from Google Earth showing existing conditions



Figure 6 – Screen Shot of Stream Stats showing Existing Conveyance Swale.

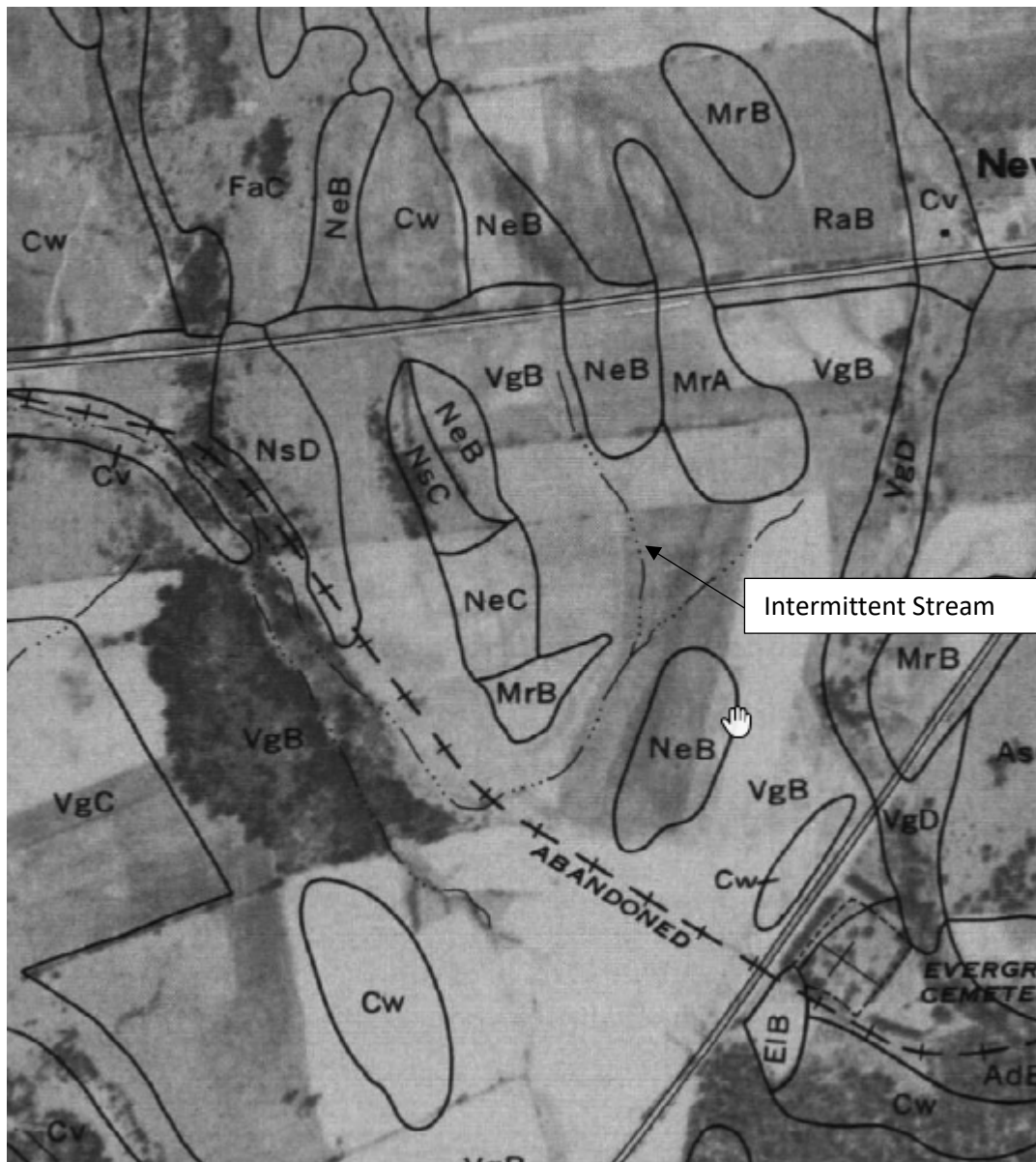


Figure 7 – Screen shot from USDA SCS Addison County Soil Survey issued October 1971



Photo taken 15 July 2020. Facing southeast from within Wetland NH-010.

Figure 8a



Photo taken 15 July 2020. Facing downstream towards Existing Conveyance Swale below access road crossing authorized in 2005.

Figure 8b



Photo taken 15 July 2020. Facing north looking upstream towards Existing Conveyance Swale.

Figure 8c



Photo taken 15 July 2020. Facing upstream toward ephemeral feature NH-204 in between Wetlands NH-203(S) and NH-203(N) from edge of Wetland NH-203(S).

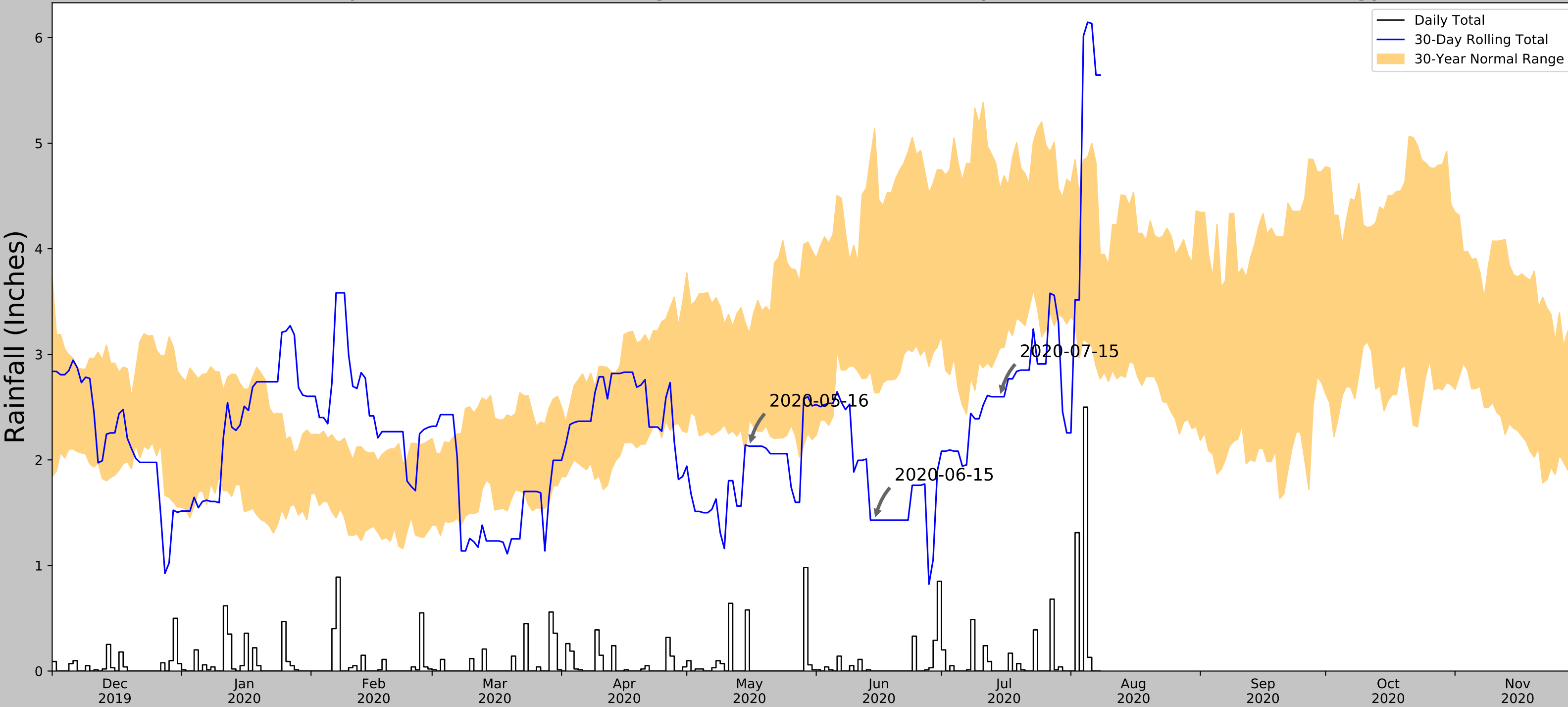
Figure 8d



Photo taken 15 July 2020. Facing north towards Wetland NH-203(N) from upstream end of ephemeral stream NH-204.

Figure 8e

Antecedent Precipitation vs Normal Range based on NOAA's Daily Global Historical Climatology Network



Coordinates	44.121940, -73.164336
Observation Date	2020-07-15
Elevation (ft)	410.07
Drought Index (PDSI)	Mild drought
WebWIMP H ₂ O Balance	Dry Season

30 Days Ending	30 th %ile (in)	70 th %ile (in)	Observed (in)	Wetness Condition	Condition Value	Month Weight	Product
2020-07-15	3.060236	4.566142	2.598425	Dry	1	3	3
2020-06-15	2.636221	5.134646	1.429134	Dry	1	2	2
2020-05-16	2.376772	3.197244	2.129921	Dry	1	1	1
Result							Drier than Normal - 6



Figure and tables made by the
Antecedent Precipitation Tool
Version 1.0

Written by Jason Deters
U.S. Army Corps of Engineers

Weather Station Name	Coordinates	Elevation (ft)	Distance (mi)	Elevation Δ	Weighted Δ	Days (Normal)	Days (Antecedent)
BURLINGTON INTL AP	44.4683, -73.15	330.053	23.942	80.017	12.69	11352	90

Figure 9