**DEPARTMENT OF THE ARMY**
**U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT**
**JACOB K. JAVITS FEDERAL BUILDING**
**26 FEDERAL PLAZA**
**NEW YORK, NEW YORK 10278**

CENAN-OP-RM

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) ,[1] NAN-2025-00139-MMI[2]

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.[3] 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.[4]

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),[5] the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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[1] 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.
[2] When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).
[3] 33 CFR 331.2.
[4] Regulatory Guidance Letter 05-02.
[5] 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.

1. SUMMARY OF CONCLUSIONS.

   a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

      i. Water 1 – Little Creek – Jurisdictional – Section 404
      ii. Wetland 1 – Jurisdictional – Section 404
      iii. Wetland 2 – Jurisdictional – Section 404

2. 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)

3. REVIEW AREA.

   The review area consists of the Rider Avenue Park at 395 Rider Avenue in Patchogue, Suffolk County, New York (40.751074, -73.006524). The park includes multiple ball fields, parking lots as well as the aquatic resource. The park area is approximately 14.73 acres and includes two artificial freshwater ponds that were constructed between 1966 and 1970. The artificial ponds were created via excavating upland material around Little Creek which flowed through the park to Great South Bay. At the north end of the park, Little Creek flows directly into the northern pond/Wetland 1. The southern pond/Wetland 2 is separated by an upland area between the ponds but the Village of Patchogue believes there is a deep buried culvert located between the two ponds allowing for conveyance of Little Creek into the southern pond and then continues via another culvert constructed beneath Smith Street to the tidal portion of Little Creek which extends to Great South Bay.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Great South Bay[6]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

   Little Creek which flows through the project site directly into the northern pond/Wetland 1. It is then believed that an unidentified submerged culvert connects the northern pond and southern pond which then flows through the southern pond through a second culvert to the tidal portion of Little Creek which then drains to the Great South Bay. The southern pond/Wetland 2 is subject to some tidal influence and low levels of salinity are detected within the pond.

6. SECTION 10 JURISDICTIONAL WATERS[7]: 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 resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.[8] N/A

7. 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.

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[6] 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.

[7] 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.

[8] 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.

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): Little Creek – Approximately 1,130 linear feet through the site including through the two ponds/Wetlands.

f. Adjacent Wetlands (a)(4):

Wetland 1 – Approximately 1.961 acres consisting of a pond that receives flow from Little Creek on the northern end of the property. The pond is surrounded by freshwater wetland vegetation around the perimeter of the pond, mostly dominated by invasive species with select wetland plant species like Groundsel Bush and rose mallow among others.

Wetland 2 - Approximately 1.626 acres consisting of a pond that receives flow from Little Creek on the northern end of the property. The pond is surrounded by freshwater wetland vegetation around the perimeter of the pond, mostly dominated by invasive species with select wetland plant species like Groundsel Bush and rose mallow among others. Wetland 2 was detected to have low levels of salinity around 0.25 ppt. The tidal portion of Little Creek has intermittent inundation during very high tide stages with the pond via the culvert beneath Smith Street.

g. Additional Waters (a)(5): N/A

8. 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).[9] N/A

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). N/A

9. 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. Field Visit and site photographs dated June 5, 2025;

   b. NRCS Soil Boundary Map (Figure 2) dated January 8, 2025;

   c. NWI and NYSDEC Mapped Wetlands (Figure 3) dated January 8, 2025; and

   d. Historic Aerial Photos ranging from 1938 through 2019 from various sources.

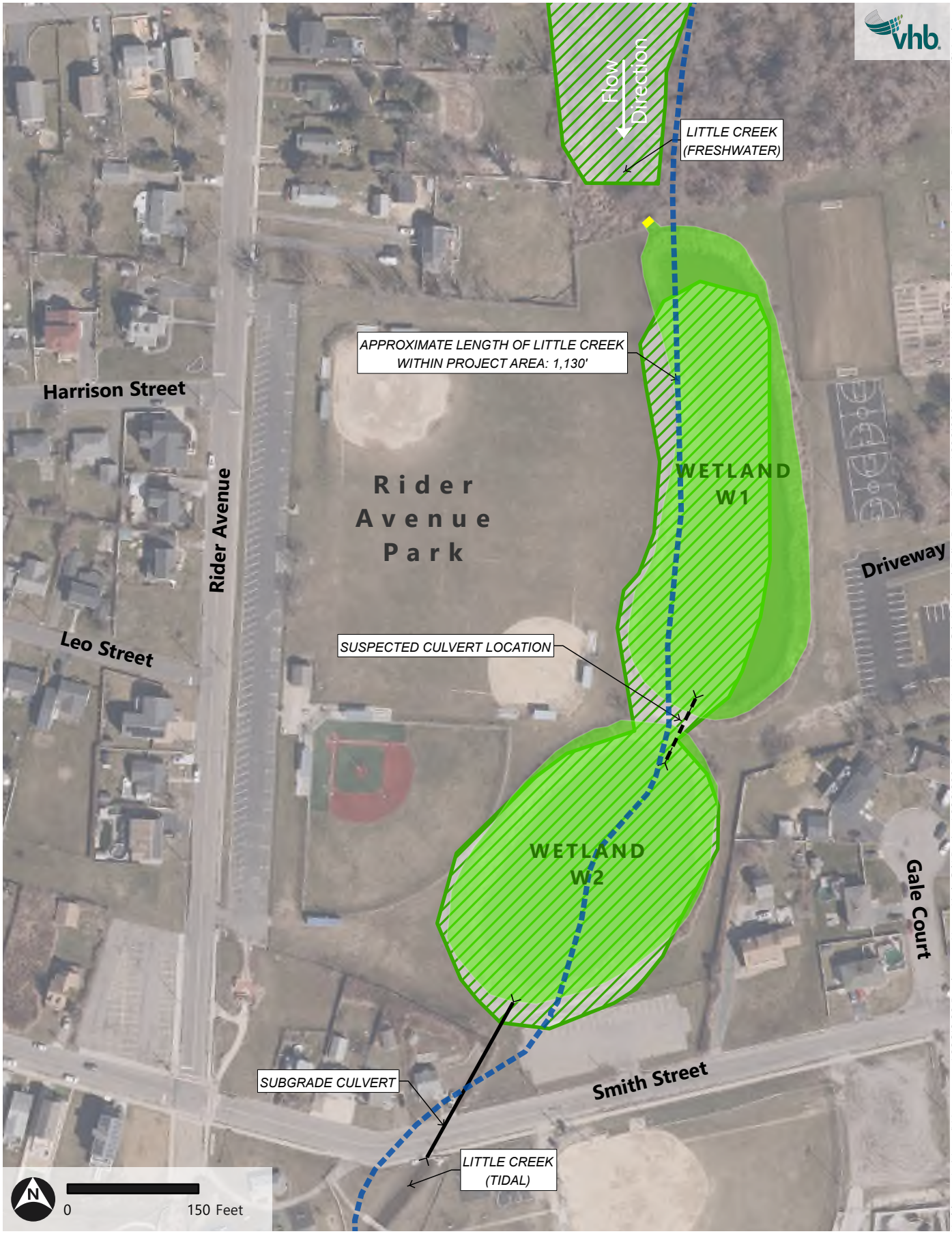
10. OTHER SUPPORTING INFORMATION. N/A

11. 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.

[9] 88 FR 3004 (January 18, 2023)

## Figure 1: Site Location

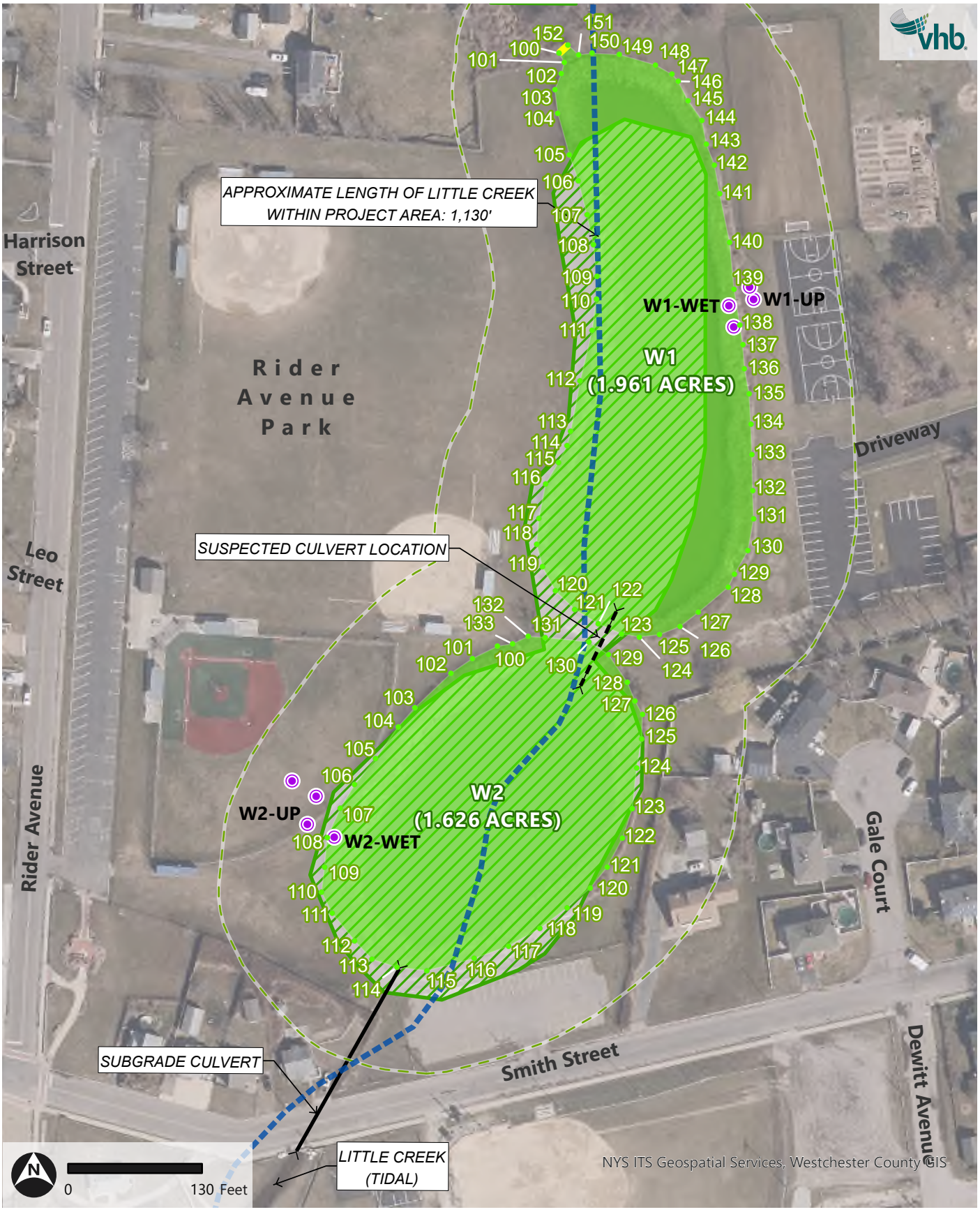
Rider Avenue Park | 395 Rider Avenue, Village of Patchogue, Suffolk County, New York *July 14, 2025*




*sources: Background imagery from NYS GIS Program (2023);Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, NYS ITS Geospatial Services, Westchester County GIS*

## Figure 5: Wetland Delineation Map

Rider Avenue Park | 395 Rider Avenue, Village of Patchogue, Suffolk County, New York *July 14, 2025*




Delineated Wetland (VHB)
Feature Continues
Data Plot
GPS Wetland Flag
Culvert
Suspected Culvert
Wetland Adjacent Area (100' buffer)
Previously Mapped Freshwater Wetlands (NYSDEC)
Streams (NYSDEC)

*Source: Background Imagery from NYS GIS (2023); Wetland acreage is preliminary and based on GPS accuracy.*
Wetland boundary delineated by VHB on December 19, 2024.