APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): October 20, 2010

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:NAE-2010-1442

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Massachusetts County/parish/borough: Berkshire City: Lee
Center coordinates of site (lat/long in degree decimal format): Lat. 42.278231° Pick List, Long. -73.269754° Pick List.
Universal Transverse Mercator:
Name of nearest waterbody: Housatonic River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: no known surface water connection to Housatonic River
Name of watershed or Hydrologic Unit Code (HUC): 1100005, Housatonic River
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☐ Office (Desk) Determination. Date:
☒ Field Determination. Date(s): September 24, 2010

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There Pick List *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Pick List *"waters of the U.S."* within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☒ TNWs, including territorial seas
      ☒ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: 400linear feet: 75width (ft) and/or acres.
      Wetlands: 0.98 acres.

   c. **Limits (boundaries) of jurisdiction** based on: Pick List
      Elevation of established OHWM (if known):unknown.

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain:

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: **Housatonic River.**

   Summarize rationale supporting determination: The reaches of the Housatonic River are well known by kayakers and canoists (see attached information from the Housatonic Valley Association website).

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": The wetlands, upland forest, and Housatonic River are within Natural Heritage Endangered Species Priority Habitats for wood turtle. Massachusetts Natural Heritage and Endangered Species Program has requested a wood turtle conservation and management plan to protect wood turtles that migrate between the Housatonic River and uplands and wetlands within the project site (letter to the Corps from Berkshire Engineering, Inc., dated July 6, 2010). Wood turtles breed and overwinter in slow moving rivers including the Housatonic River. In summer they move away from the river to forage in forest uplands, wetlands and meadows up to 600 feet from the river channel (Natural Heritage Endangered Species Program). The wetlands in the Jurisidictional Determination are about 325 feet upslope of the main channel Housatonic River. The wetlands in this jurisdiction are identified on the attached plan as "AERIAL LOCUS AND PROPOSED LIMIT OF DEVELOPMENT" as isolated wetland and wet meadow, 098 acre.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) **General Area Conditions:**
   Watershed size: Pick List
   Drainage area: Pick List
   Average annual rainfall: inches
   Average annual snowfall: inches

   (ii) **Physical Characteristics:**
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☐ Tributary flows through Pick List tributaries before entering TNW.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters are Pick List river miles from TNW.
Project waters are Pick List river miles from RPW.
Project waters are Pick List aerial (straight) miles from TNW.
Project waters are Pick List aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: .
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: Pick List.

Primary tributary substrate composition (check all that apply):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: Pick List
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: Pick List
Estimate average number of flow events in review area/year: Pick List
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: Pick List. Characteristics: .

Subsurface flow: Pick List. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank ☐ the presence of litter and debris
☐ changes in the character of soil ☐ destruction of terrestrial vegetation
☐ shelving ☐ the presence of wrack line
☐ vegetation matted down, bent, or absent ☐ sediment sorting
☐ leaf litter disturbed or washed away ☐ scour
☐ sediment deposition ☐ multiple observed or predicted flow events
☐ water staining ☐ abrupt change in plant community
☐ other (list):
☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☒ High Tide Line indicated by: ☒ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects ☐ survey to available datum;
☐ fine shell or debris deposits (foreshore) ☐ physical markings;
☐ physical markings/characteristics ☐ vegetation lines/changes in vegetation types.
☐ tidal gauges

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

☐ other (list): [redacted]

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: [redacted].

Identify specific pollutants, if known: [redacted].

(iv) Biological Characteristics. Channel supports (check all that apply):

- ☐ Riparian corridor. Characteristics (type, average width):
- ☐ Wetland fringe. Characteristics:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: Pick List. Explain:

Surface flow is: Pick List

Characteristics:

Subsurface flow: Pick List. Explain findings:

- ☐ Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain:
  - ☐ Ecological connection. Explain:
  - ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are Pick List river miles from TNW.

Project waters are Pick List aerial (straight) miles from TNW.

Flow is from: Pick List.

Estimate approximate location of wetland as within the Pick List floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width):
- ☐ Vegetation type/percent cover. Explain:
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings:
  - ☐ Fish/spawn areas. Explain findings:
  - ☐ Other environmentally-sensitive species. Explain findings:
  - ☐ Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: Pick List

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☒ TNWs: 400linear feet75width (ft), Or, acres.
   - ☒ Wetlands adjacent to TNWs: 0.98acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☒ Tributary waters: [ ] linear feet [ ] width (ft).
- ☒ Other non-wetland waters: [ ] acres.
  Identify type(s) of waters: [ ].

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   ☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☒ Tributary waters: [ ] linear feet [ ] width (ft).
   - ☒ Other non-wetland waters: [ ] acres.
     Identify type(s) of waters: [ ].

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: [ ].

   - ☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: [ ].

   Provide acreage estimates for jurisdictional wetlands in the review area: [ ] acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☒ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: [ ] acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: [ ] acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☒ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☒ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☒ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
- ☒ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☒ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☒ which are or could be used for industrial purposes by industries in interstate commerce.
- ☒ Interstate isolated waters. Explain: [ ].
- ☒ Other factors. Explain: [ ].

Identify water body and summarize rationale supporting determination: [ ].

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process deseribed in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ■ Tributary waters: linear feet width (ft).
- ■ Other non-wetland waters: acres.
  - Identify type(s) of waters: .
- ■ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
- ■ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ■ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - ☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ■ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- ■ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
- ■ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- ■ Lakes/ponds: acres.
- ■ Other non-wetland waters: acres. List type of aquatic resource: .
- ■ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
- ■ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ■ Lakes/ponds: acres.
- ■ Other non-wetland waters: acres. List type of aquatic resource: .
- ■ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:AERIAL LOCUS AND PROPOSED LIMIT OF DEVELOPMENT.
- ■ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ■ Data sheets prepared by the Corps: .
- ■ Corps navigable waters' study: .
- ■ U.S. Geological Survey Hydrologic Atlas: .
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ■ U.S. Geological Survey map(s). Cite scale & quad name: .
- ■ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ■ National wetlands inventory map(s). Cite name: .
- ■ State/Local wetland inventory map(s): .
- ■ FEMA/FIRM maps: .
- ■ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):AERIAL LOCUS AND PROPOSED LIMIT OF DEVELOPMENT.
  or ☒ Other (Name & Date):Ground photos, Sept 24 2010 in trip report dated October 15, 2010.
- ■ Previous determination(s). File no. and date of response letter: .
- ■ Applicable/supporting case law: .
- ☒ Applicable/supporting scientific literature:Wood Turtle Fact Sheet, Natural Heritage Program website.
- ☒ Other information (please specify):Trip Report by John Sargent dated October 15, 2010.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Natural Heritage website for priority habitats; Wood Turtle Conservation and Management plan for Mead/Westvaco Property, Route 102, South Lee, MA, December 2009 by Emily Stockman, Stockman Associates. The site is located off Route 102 , Map 30 lot 71 in Lee, Massachusetts.

US Army Corps of Engineers®
New England District

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

1. Report completion date for Preliminary Jurisdictional Determination (JD):
1/28/2011

2. Name and Address of Person Requesting Preliminary JD:
Robert Cleary, Columbia Gas of Massachusetts, 300 Friberg Parkway, Westborough, MA 01581

3. District office, file name and number:
CENAE-R-PEA; File Number: NAE-2010-02156

4. Project location(s) and background information:
Summer Street, Brockton, Massachusetts 02301

The proposed project activities at the Vinegar Swamp Storm Drain (VSSD) outfall include ~2,133 CF of discharge and surface grading within the VSSD ditch and below the OHW of the Salisbury Plain River. The following activities are to occur: 1) the relocation of VSSD ditch outfall to the river (32 ft SE) including the reconfiguration of rip-rap structure and culvert extension, 2) installation of temporary sandbag dike/coffer dam and silt curtain at confluence with the river, 3) installation of liner and organoclay barrier, and 4) installation of pipe-bedding material (min 6 in.) for culvert extension.

See attached table of waters and wetlands

State: MA County: Plymouth City: Brockton
Coordinates of site (lat/long in degree decimal format):
Beginning Lat. 42' 04' 25" ° N, Long. 71' 00' 40" ° W
End Lat. ° N, Long. ° W
Universal Transverse Mercator: 19

Name of nearest waterbody: Salisbury Plain River

Identify (estimate) amount of waters in the review area:
Non-wetland waters: linear feet: 50; width (ft) 20; and/or acres.
Cowardin Class: R2SB3Htn
Stream Flow:
Wetlands: acres
Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:
Tidal:
Non-Tidal:

5. Review performed for site evaluation (check all that apply):

X Office (Desk) Determination. Date: 1/28/11

☐ Field Determination. Date(s):

a. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

b. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

This preliminary JD finds that there *"may be"* waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

c. **Supporting Data. Data reviewed for Preliminary JD** - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

X Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:

☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

X Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps:
☐ Corps navigable waters' study:
☐ U.S. Geological Survey Hydrologic Atlas:
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
X U.S. Geological Survey map(s). Cite scale & quad name: Brockton Quad
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☐ National wetlands inventory map(s). Cite name:
☐ State/Local wetland inventory map(s):
X FEMA/FIRM maps: 250261 0005C
X 100-year Floodplain Elevation is:< 85 ft (National Geodectic Vertical Datum of 1929)
☐ Photographs: Aerial (Name & Date):
or **X** Other (Name & Date):Appendix B "Site Photographs"
☐ Previous determination(s). File no. and date of response letter:
☐ Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Michael Nardos 1/28/11
NAME Date
Regulatory Project Manager

DELETE:
Signature and date of
Regulatory PM (Required)

_____
NAME Date
COMPANY IF APPLICABLE

DELETE:
Signature and date of person
person requesting preliminary JD
(Required, unless obtaining