



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

December 20, 2019

Regulatory Division
File Number: NAE-2018-01794

Frederick M. D'Annolfo
19 Farmstead Lane
Sudbury, Massachusetts 01776

Dear Mr. D'Annolfo:

This letter responds to a request submitted on your behalf by Dennis Griecchi of Andover Consultants, Inc. for a determination of jurisdiction for three wetland areas located on a 10.2 acre parcel which encompasses 2 Frederick Drive in Andover, Massachusetts. The parcel and the three wetland areas- labeled as A, D, and E- are indicated on the enclosed plan entitled "EXISTING CONDITIONS PLAN FREDERICK DRIVE ANDOVER, MASS." dated "MARCH 7, 2017" with a revised date of "JULY 5, 2018." Portions of two additional wetlands- labeled B and C- are shown on the plan as well- but they were not included in the jurisdictional determination request and are therefore not part of this determination.

Ruthann Brien of our Regulatory Division conducted a field inspection of the site on October 18, 2019. Based on site observations as well as remote desktop tools, we have determined that Wetlands A, D, and E are not waters of the United States and are therefore not within the jurisdiction of the U.S. Army Corps of Engineers.

Should you disagree with this determination, the Corps has implemented an administrative appeals process for instances when you object to the terms and conditions of jurisdictional determinations, permit denials, and proffered permits. A combined Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form and flow chart explaining the appeals process and your options are enclosed. However, in order to retain your right to appeal, you must submit the enclosed NAP form within 60 days of this letter's date.

For appeals of approved jurisdictional determinations, you must complete Section II of the NAP form ("Request for Appeal") and submit it along with any supporting or clarifying information to George Nieves, Chief Operations and Regulatory (CENAD-PD-OR), U.S. Army Corps of Engineers Fort Hamilton Military Community, 301 General Lee Avenue, Brooklyn, New York 11252-6700; or george.nieves@usace.army.mil. Mr. Nieves's phone number is (347) 370-4556. Direct questions regarding the Corps appeals process to Mr. Robert DeSista, Chief, Policy and Technical Analysis Branch, at (978) 318-8879 or robert.j.desista@usace.army.mil.

In order for the Corps to accept a Request for Appeal (RFA), the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that our Division

Office in Brooklyn, New York has received it within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by February 19, 2020. It is not necessary to submit an RFA form to the Division Office if you do not object to the jurisdictional decision in this letter.

Enclosed is a form and supporting documentation explaining the basis for our jurisdictional determination. **This determination is valid for a period of five years from the date of this letter.** If you have any questions please contact Ruthann Brien of my staff at 978-318-8054.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Newman".

Barbara Newman
Chief, Permits and Enforcement Branch
Regulatory Division

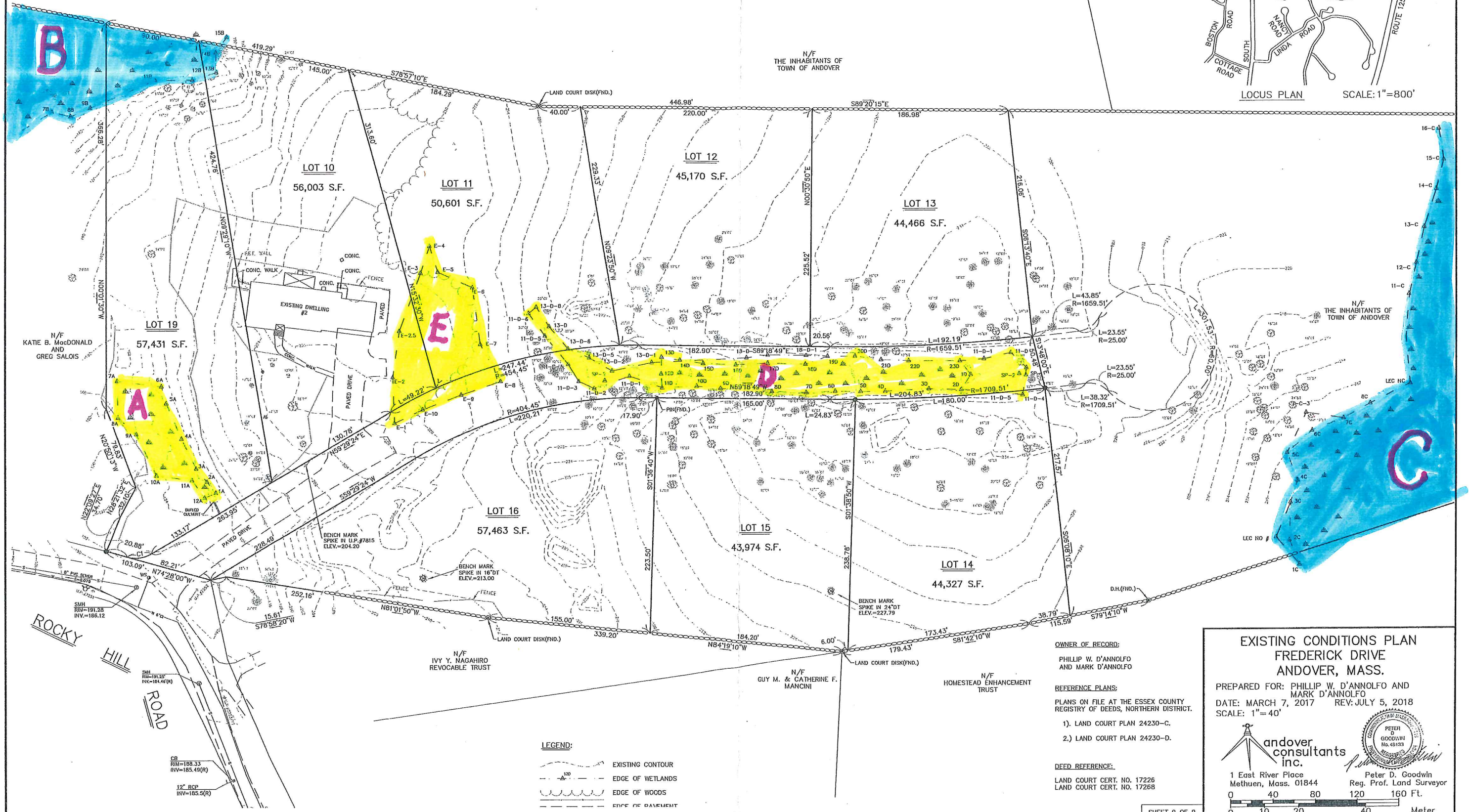
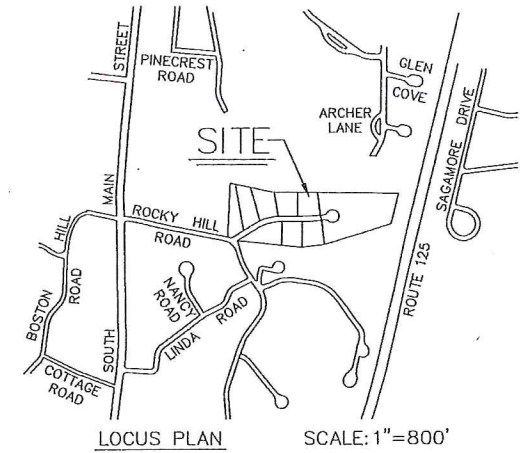
Enclosures

cc:

Jackie Leclair, U.S. EPA; leclair.jackie@epamail.epa.gov

Dennis Griecci, Andover Consultants, Inc; dgriecci@andoverconsultants.com

- NOTE:
- 1.) THE DELINEATION OF THE WETLAND SERIES B, C, D, AND E ARE CONSISTENT WITH THE ANDOVER CONSERVATION COMMISSION'S ORDER OF RESOURCE AREA DELINEATION DATED AUGUST 20, 2015, MA-DEP FILE NO. 090-1233 ("ORAD"). HOWEVER THE LANDOWNER HAS APPEALED THE ORAD, SPECIFICALLY THE DELINEATION OF WETLAND SERIES D AND E, AND SUCH APPEAL IS CURRENTLY PENDING AS ESSEX SUPERIOR COURT CIVIL ACTION NO. 15-1626A.
 - 2.) THE DELINEATION OF THE WETLAND SERIES A IS CONSISTENT WITH THE ORAD AND IS DEFINED AS AN ISOLATED FRESHWATER WETLAND NOT JURISDICTIONAL UNDER THE WETLAND PROTECTION ACT AND/OR THE ANDOVER WETLANDS PROTECTION BY-LAW.



OWNER OF RECORD:
PHILLIP W. D'ANNOLFO
AND MARK D'ANNOLFO

REFERENCE PLANS:
PLANS ON FILE AT THE ESSEX COUNTY
REGISTRY OF DEEDS, NORTHERN DISTRICT.

- 1.) LAND COURT PLAN 24230-C.
- 2.) LAND COURT PLAN 24230-D.

DEED REFERENCE:
LAND COURT CERT. NO. 17226
LAND COURT CERT. NO. 17268

EXISTING CONDITIONS PLAN FREDERICK DRIVE ANDOVER, MASS.

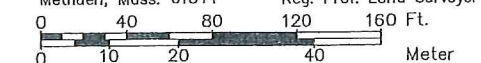
PREPARED FOR: PHILLIP W. D'ANNOLFO AND
MARK D'ANNOLFO
DATE: MARCH 7, 2017 REV: JULY 5, 2018
SCALE: 1"=40'



1 East River Place
Methuen, Mass. 01844



Peter D. Goodwin
Reg. Prof. Land Surveyor



NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: PHILLIP and MARK D'ANNOLFO		File Number: NAE-2018-01794	Date: 12/20/19
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Mr. Robert J. DeSista
Chief, Policy and Technical Support Branch
U.S. Army Corps of Engineers, New England District
696 Virginia Road
Concord, MA 01742-2751
Phone: 978-318-8879
Email: robert.j.desista@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Mr. George Nieves
Chief Operations and Regulatory (CENAD-PD-OR)
U.S. Army Corps of Engineers, Fort Hamilton Military Community
301 General Lee Avenue
Brooklyn, NY 11252-6700
Phone: 347-370-4556
Email: George.Nieves@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

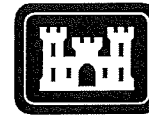
Date:

Telephone number:



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Regulatory Program



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

This form should be completed by following the instructions provided
in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): 12/20/19

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NAE-2018-01794

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Massachusetts

County/parish/borough: Essex

City: Andover

Center coordinates of site (lat/long in degree decimal format): Lat. 42.620000, Long. -71.118888.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: ☐ attached ☒ in report/map titled "EXISTING CONDITIONS PLAN FREDERICK DRIVE ANDOVER, MASS." dated "MARCH 7, 2017" with a revised date of "JULY 5, 2018."

☐ Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1):

D. REVIEW PERFORMED FOR SITE EVALUATION:

☐ Office (Desk) Determination Only. Date:

☒ Office (Desk) and Field Determination. Office/Desk Dates: Dec. 11, 2019 Field Date(s): Oct. 18, 2019.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: "EXISTING CONDITIONS PLAN FREDERICK DRIVE ANDOVER, MASS." dated "MARCH 7, 2017" with a revised date of "JULY 5, 2018."

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

☒ Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: Done by Robert Prokop on 5/4/19.

☐ Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date:

☐ Data sheets prepared by the Corps. Title/Date:

☐ Corps navigable waters study. Title/Date:

☒ CorpsMap ORM map layers. Title/Date: ORM JD VIEWER.

☐ USGS Hydrologic Atlas. Title/Date:

☐ USGS, NHD, or WBD data/maps. Title/Date:

☐ USGS 8, 10 and/or 12 digit HUC maps. HUC number:

☐ USGS maps. Scale & quad name and date:

☒ USDA NRCS Soil Survey. Citation: From OLIVER Mass GIS site.

☒ USFWS National Wetlands Inventory maps. Citation: From ORM JD Viewer.

☐ State/Local wetland inventory maps. Citation:

☐ FEMA/FIRM maps. Citation:

☒ Photographs: ☒ Aerial. Citation: April 2008 Google Earth. or ☒ Other. Citation: Submitted by consultant.

☐ LiDAR data/maps. Citation:

☐ Previous JDs. File no. and date of JD letter:

- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

- ☐ "navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. Check all that apply.

- ☐ (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

- ☐ This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

- ☐ (a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

- ☐ (a)(3): The territorial seas.

- **Complete Table 3 - Required**

- ☐ (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

- ☐ (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

- ☐ (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

- ☐ Bordering/Contiguous.

Neighboring:

- ☐ (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

- ☐ (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

- ☐ (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

- ☐ (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

- ☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- ☐ (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- ☐ The review area is comprised entirely of dry land.
- ☐ Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
- ☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- ☒ Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
- ☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- ☐ Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Table 10 - Required**
- ☐ (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- ☐ (b)(2): Prior converted cropland.
- ☐ (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- ☐ (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- ☐ (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- ☐ (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- ☐ (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- ☐ (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
- ☐ (b)(4)(iv): Small ornamental waters created in dry land.¹
- ☐ (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- ☐ (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
- ☐ (b)(4)(vii): Puddles.¹
- ☐ (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
- ☐ (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
- ☐ (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- ☐ Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD:

This AJD request includes three wetlands- Wetland A, Wetland D, and Wetland E- on a 10.2 acre parcel which includes a single family home at 2 Frederick Drive off Rocky Hill Road in Andover, MA. Portions of two other wetlands are located on the parcel, Wetland B along the northwest property line and Wetland C along the eastern property line.

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

However, they are not part of the AJD request and therefore are not addressed here. A site visit was conducted on Oct. 18, 2019 and remote tools were also used to analyze the site and the three wetlands in question.

Wetland A: This 4,151 square foot (0.1 acre) wetland is located within SPOE 1 according to the ORM JD Viewer jurisdictional determination tool and drains to the southwest to the Merrimack River TNW approximately 20 miles away. Wetland A is not an (a)(1)-(a)(5) water. It is also not an (a)(6) water for the following reasons: 1) It is not located within 100 feet of the ordinary high water mark (OWHM) of the nearest (a)(1)-(a)(5) water. Based on Google Earth imagery and kmz files provided by the consultant, Wetland A is 175 feet from the nearest (a)(5) water feature that drains to the Merrimack River. 2) It is not located within the 100-year floodplain of the nearest (a)(1)-(a)(5) water. 3) It is not located within 1,500 feet of the high tide line of an (a)(1)-(a)(3) water. There are no (a)(7) waters in New England. Wetland A has to be reviewed as a potential (a)(8) water because it is located within 4,000 feet of an (a)(5) water. The ORM JD Viewer did not find any "similarly situated" wetlands in the landscape. Wetland A is in the same SPOE as the other two wetlands that are being assessed- Wetlands D and E. In addition, these wetlands are in fairly close proximity to each other. However, the vegetation is somewhat different among these three wetlands as Wetland A is more scrub-shrub, Wetland E is emergent, and Wetland D is more forested. The three wetlands will be analyzed individually instead of as being "similarly situated", but the jurisdictional outcome would be the same regardless. Wetland A consists of scrub-shrub vegetation. There is a potential 15' X 40' "upland island" within Wetland A that was delineated by a consultant. The applicant did not request confirmation of this 600 square foot upland area but if the determination were accurate that would lower the size of Wetland A to 3,551 square feet (0.08 acre). There is a small, broken, partially buried culvert at the southern end of the wetland that was installed when the road was put in. It was uncertain the day of the visit if any flow still travels through this structure into the wetland. The ORM JD viewer indicated that the watershed for this wetland is small, at approximately 2.22 acres. On the day of the site visit there was a small amount of water bubbling up from a leaking pipeline that needs to be fixed. The applicant submitted documentation indicating that a company had been hired to identify the leak and another document giving an estimate to do the repair work. A significant nexus determination was conducted for Wetland A. This wetland does not have a significant nexus to the Merrimack River, the nearest Traditional Navigable Water (TNW) and therefore is not a jurisdictional water of the U.S. (see Table 9 for more details)

Wetland D: This 12,675 square foot (0.29 acre) wetland is also located within SPOE 1 based on the ORM JD Viewer jurisdictional determination tool and drains to the southwest to the Merrimack River TNW approximately 20 miles away. Wetland D is not an (a)(1)-(a)(5) water. It is also not an (a)(6) water for the following reasons: 1) It is not located within 100 feet of the ordinary high water mark (OWHM) of the nearest (a)(1)-(a)(5) water. Based on Google Earth imagery and kmz files provided by the consultant, Wetland D is 560 feet from the OWHM of the nearest (a)(5) water feature that drains to the Merrimack River. 2) It is not located within the 100-year floodplain of the nearest (a)(1)-(a)(5) water. 3) It is not located within 1,500 feet of the high tide line of an (a)(1)-(a)(3) water. There are no (a)(7) waters in New England. Wetland D has to be reviewed as a potential (a)(8) water because it is located within 4,000 feet of an (a)(5) water. The ORM JD Viewer did not find any "similarly situated" wetlands in the landscape. Wetland D is in the same SPOE as the other two wetlands that are being assessed- Wetlands A and E. In addition, these wetlands are in fairly close proximity to each other and they all have sandy soils. However, the vegetation is somewhat different among these three wetlands as Wetland D is more forested, Wetland E is emergent, and Wetland A is more scrub-shrub. The three wetlands will be analyzed individually instead of as being "similarly situated", but the jurisdictional outcome would be the same regardless. Wetland D was formed out of uplands a few decades ago when the father of the current property owners got a permit to develop a 6-lot subdivision. A swath of land running west to east was excavated in anticipation of putting in a cul-de-sac road (Frederick Drive) for a development. The subdivision project was abandoned before the road was installed but the area was never filled back in. This low area resulting from the excavation for the road developed into wetlands. This site history is evident in the datasheets for Wetland D which mention that there is a lack of topsoil on the site and that there is not a normal soil profile. As the road was placed in a former high spot in the landscape, not much drains into this wetland nor does this wetland naturally interface with the natural wetlands lower in the landscape to the east. The ORM JD viewer indicated that this wetland had a watershed of 1.11 acres. A significant nexus determination was conducted for Wetland D. This wetland does not have a significant nexus to the Merrimack River, the nearest Traditional Navigable Water (TNW), and therefore is not a jurisdictional water of the U.S. (see Table 9 for more details).

Wetland E: This 1,990 square foot (0.05 acre) wetland is also located within SPOE 1 based on the ORM JD Viewer jurisdictional determination tool and drains to the southwest to the Merrimack River TNW approximately 20 miles away. Wetland E is not an (a)(1)-(a)(5) water. It is also not an (a)(6) water for the following reasons: 1) It is not located within 100 feet of the ordinary high water mark (OWHM) of the nearest (a)(1)-(a)(5) water. Based on Google Earth imagery and kmz files provided by the consultant, Wetland A is 426 feet from the nearest (a)(5) water feature that drains to the Merrimack River. 2) It is not located within the 100-year floodplain of the nearest (a)(1)-(a)(5) water. 3) It is not located within 1,500 feet of the high tide line of an (a)(1)-(a)(3) water. There are no (a)(7) waters in New

England. Wetland E has to be reviewed as a potential (a)(8) water because it is located within 4,000 feet of an (a)(5) water. The ORM JD Viewer did not find any "similarly situated" wetlands in the landscape. Wetland E is in the same SPOE as the other two wetlands that are being assessed- Wetlands A and D. In addition, these wetlands are in fairly close proximity to each other and have sandy soils. However, the vegetation is somewhat different among these three wetlands as Wetland E is emergent, Wetland D is more forested, and Wetland A is more scrub-shrub. The three wetlands will be analyzed individually instead of as being "similarly situated", but the jurisdictional outcome would be the same regardless. Wetland E is a very small wetland swale feature (0.05 acre) that is vegetatively part of a maintained lawn. A significant nexus determination was conducted for Wetland E. This wetland does not have a significant nexus to the Merrimack River, the nearest Traditional Navigable Water (TNW) and therefore is not a jurisdictional water of the U.S. (see Table 9 for more details).

Jurisdictional Waters of the U.S.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
N/A	Choose an item.		Choose an item.	

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
N/A	N/A	N/A

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
SPOE 1	Wetland A	Merrimack River	<p>The Single Point of Entry (SPOE) watershed for Wetland A was drawn to the Merrimack River, the nearest TNW. Based on the ORM JD viewer, there are no other similarly situated waters identified within a contiguous area of land that has relatively homogeneous soils, vegetation, and landform. Wetland A is in close proximity to Wetland D and Wetland E and the three wetlands have sandy soils. However, the vegetation is somewhat different among these three wetlands as Wetland A is more scrub-shrub, Wetland E is emergent, and Wetland D is more forested. The three wetlands will be analyzed individually instead of as being "similarly situated", but the jurisdictional outcome would be the same regardless. Wetland A does not significantly impact the chemical, physical, or biological integrity of the nearest TNW (Merrimack River). There is no single function or combination of functions performed by this wetland that contributes significantly to the nearest TNW. The functions considered include sediment trapping, nutrient recycling, pollutant trapping, transformation, filtering, and transport, retention and attenuation of floodwaters, runoff storage, contribution of flow, export of organic matter, export of food resources, or provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a traditional navigable water. Due to its distance from the Merrimack River and the lack of hydrological connection to this waterway, Wetland A does not have the opportunity to significantly affect the chemical, physical, or biological integrity of the nearest TNW. Wetland A does not have a significant nexus to the Merrimack River.</p>
SPOE 1	Wetland D	Merrimack River	<p>The SPOE watershed for Wetland D was drawn to the Ipswich River, the nearest TNW. Based on the ORM JD viewer, there are no other similarly situated waters identified within a contiguous area of land that has relatively homogeneous soils, vegetation, and landform. Wetland D is in the same SPOE as the other two wetlands that are being assessed- Wetlands A and E. In addition, these wetlands are in fairly close proximity to each other and they all have sandy soils. However, the vegetation is somewhat different among these three wetlands as Wetland D is more forested, Wetland E is emergent, and Wetland A is more scrub-shrub. The three wetlands will be analyzed individually instead of as being "similarly situated", but the jurisdictional outcome would be the same regardless. Wetland D does not significantly impact the chemical, physical, or biological integrity of the nearest TNW (Ipswich River). There is no single function or combination of functions</p>

		<p>performed by Wetland D that contribute significantly to the nearest TNW. The functions considered include sediment trapping, nutrient recycling, pollutant trapping, transformation, filtering, and transport, retention and attenuation of floodwaters, runoff storage, contribution of flow, export of organic matter, export of food resources, or provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a traditional navigable water. Wetland D was formed out of uplands a few decades ago when the previous property owner got a permit to develop a 6-lot subdivision. A swath of land running west to east was excavated in anticipation of putting in a cul-de-sac road (Frederick Drive). However, the subdivision project was abandoned before the road was installed. This low area resulting from the excavation for the road developed into wetlands. This site history is evident in the datasheets for Wetland D which mention that there is a lack of topsoil on the site and that there is not a normal soil profile. As the road was placed in a formerly high spot in the landscape, not much drains into this wetland nor does this wetland naturally interface with the natural wetlands lower in the landscape to the east. Due to its distance to the Ipswich River and lack of hydrological connection to this waterway, Wetland D does not have the opportunity to affect the chemical, physical, or biological integrity of the nearest TNW. Wetland D does not have a significant nexus to the Merrimack River.</p>
SPOE 1	Wetland E	<p>The SPOE watershed for Wetland E was drawn to the Merrimack River, the nearest TNW. Based on remote tools, there are no other similarly situated waters identified within a contiguous area of land that has relatively homogeneous soils, vegetation, and landform. Wetland E is in the same SPOE as the other two wetlands that are being assessed- Wetlands A and D. In addition, these wetlands are in fairly close proximity to each other and they all have sandy soils. However, the vegetation is somewhat different among these three wetlands as Wetland E is emergent, Wetland A is more scrub-shrub, and Wetland D is more forested. The three wetlands will be analyzed individually instead of as being "similarly situated", but the jurisdictional outcome would be the same regardless. Wetland E is a very small wetland feature (0.5 acre) that is a depressional swale that is part of a maintained lawn. Wetland E does not significantly impact the chemical, physical, or biological integrity of the nearest TNW (the Merrimack River). There is no single function or combination of functions performed by Wetland E that contribute significantly to the nearest TNW. The functions considered include sediment trapping, nutrient recycling, pollutant trapping, transformation, filtering, and transport, retention and attenuation of floodwaters, runoff storage, contribution of flow, export of organic matter, export of food resources, or provision of life cycle dependent aquatic habitat (such as foraging, feeding, nesting, breeding, spawning, or use as a nursery area) for species located in a traditional navigable water. The functions of this wetland are minimal. Due to its distance from the Merrimack River and lack of hydrological connection to this waterway, Wetland E does not have the opportunity to affect the chemical, physical, or biological integrity of the nearest TNW. Therefore Wetland E does not have a significant nexus to the Merrimack River.</p>

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.