

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**



**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO  
ATTENTION OF

December 20, 2012

Regulatory Division  
CENAE-R-PEA  
File Number: NAE-2012-1324

Mr. Andrew Petty, Director of Public Health  
Mary Alley Municipal Building  
7 Widger Road  
Marblehead, Massachusetts 01945

Dear Mr. Petty:

This letter responds to your request for a determination of jurisdiction for wetlands areas located at the Marblehead Landfill, off Woodfin Terrace, in Marblehead, Massachusetts.

Kevin Kotelly of our Regulatory Division conducted a field inspection of the site on October 31, 2012. During this inspection, areas labeled on the enclosed plans as "Bordering Vegetated Wetland A", "Isolated Vegetated Wetland C", and "Isolated Vegetated Wetland D" were reviewed for potential jurisdiction. We have made a preliminary jurisdictional determination that the areas labeled Bordering Vegetated Wetland A and Isolated Vegetated Wetland C are waters of the United States per 33 CFR 328.3(c) and subsequent guidance; as they are adjacent to a tributary to the Atlantic Ocean. Accordingly, Section 404 of the Clean Water Act (33 U.S.C. 1344) requires a Department of the Army permit for the discharge of dredged or fill material in Wetlands A or C. Please review the attached Preliminary Jurisdictional Determination Form, sign page 3, and return the form to the Corps.

We have also determined that the area labeled Isolated Vegetated Wetland D is isolated. These wetlands are not considered waters of the United States. An Approved Jurisdictional Determination for this wetland is also attached.

The delineation of waters of the United States, including jurisdictional wetlands, represented by the lines identified by flag #'s A-1 to A-44 for Wetland A, C-1 to C-16 for Wetland C, and D-1 to D-9 for Wetland D on the drawing you submitted entitled, "Figure 2 – REC Wetflag Series A, C, & D," is accurate. Our verification of this project's wetland delineation under the Corps of Engineers January 1987 Wetlands Delineation Manual and the January 2012 Northcentral and Northeast Regional Supplement is valid for a period of five years from the date of this letter unless new information warrants revision of the determination before the expiration date.

The Corps of Engineers has implemented an administrative appeals process for approved jurisdictional determinations; permit denials and proffered permits for which you object to the terms and conditions. A combined Notification of Appeal Process (NAP) and Request for Appeal (RFA) form and flow charts explaining the appeals process and your options are enclosed with this letter. 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 permit denials, proffered permits and 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 Michael G. Vissichelli, Administrative Appeals Review Officer, North Atlantic Division, Corps of Engineers, North Atlantic Fort Hamilton Military Community, Bldg. 301, General Lee Avenue, Brooklyn, NY 11252-6700 Telephone: (718) 765-7163, E-mail: Michael.G.Vissichelli@usace.army.mil. Direct questions regarding the Corps of Engineers appeals process to Ms. Ruth Ladd, Chief, Policy and Technical Analysis Branch at (978) 318-8818 or at the above address.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office 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 January 24, 2013. It is not necessary to submit an RFA form to the Division Office if you do not object to the permit decision in this letter.

Enclosed with this letter are forms explaining the basis for our jurisdictional determination. If you have any questions please contact Kevin Kotelly, of my staff, at 978-318-8703.

Sincerely,

  
Jennifer L. McCarthy  
Chief, Regulatory Division

Enclosures

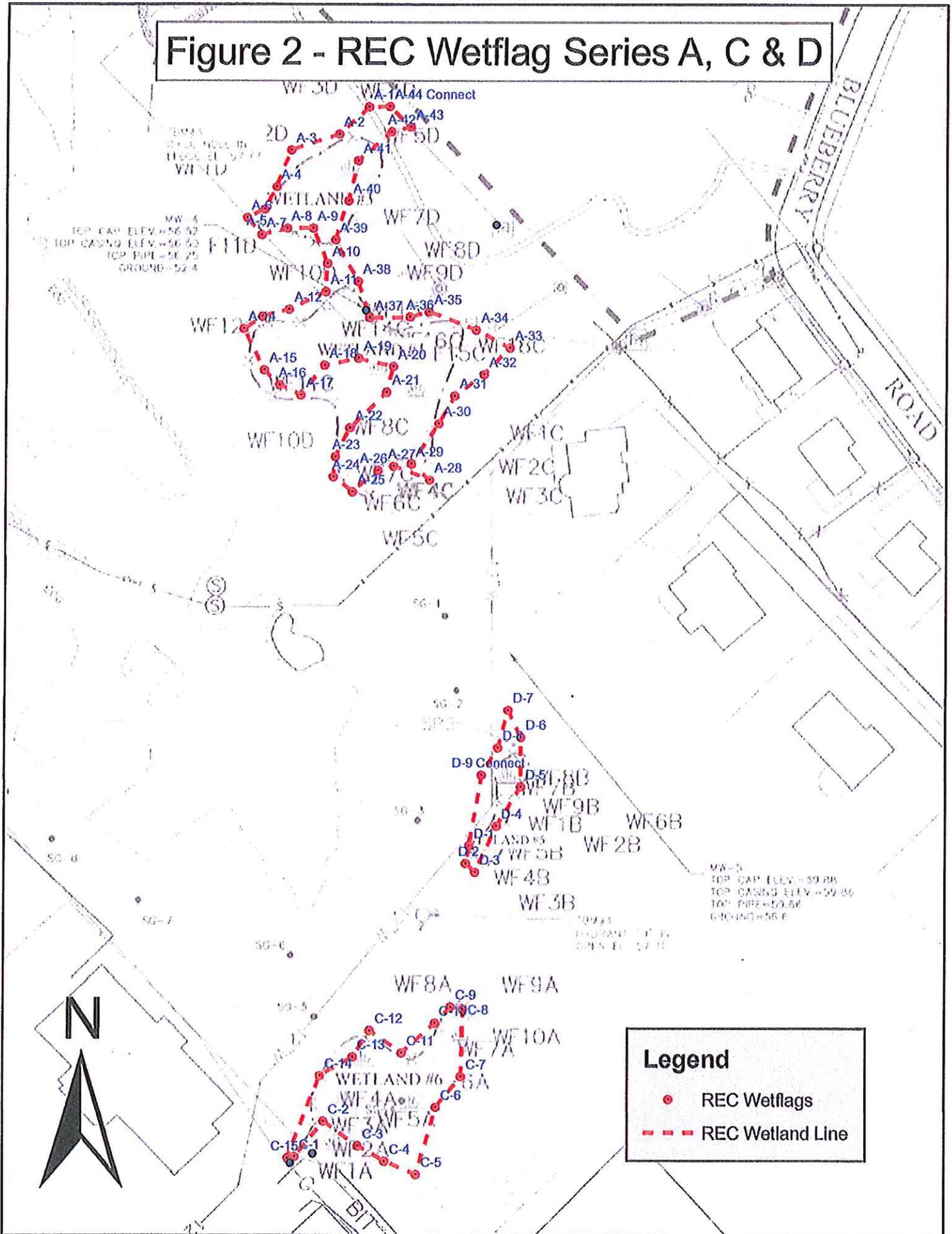
Copies furnished:

Stephen E. Wright, PE, Kleinfelder, 215 First Street, Suite 320, Cambridge, Massachusetts  
02142

Mary Rimmer, Rimmer Environmental Consulting, LLC, 30 Green Street, Newburyport,  
Massachusetts 01950

1 in = 80 ft

# Figure 2 - REC Wetflag Series A, C & D



**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

Applicant: Town of Marblehead, Massachusetts		File Number: NAE-2012-1324	Date: 12/20/12
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	
X	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://usace.army.mil/inet/functions/cw/cecwo/reg> 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 in care of "Regulatory Division." 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, in care of the Chief, Regulatory Division, as specified in the last paragraph of the coverletter. Your objections must be received 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 in care of "Regulatory Division." 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 in care of: Michael G. Vissichelli, Administrative Appeals Review Officer, North Atlantic Division, Corps of Engineers, North Atlantic Fort Hamilton Military Community, Bldg. 301, General Lee Avenue, Brooklyn, NY 11252-6700 Telephone: (718) 765-7163, E-mail: Michael.G.Vissichelli@usace.army.mil. The Division Engineer must receive this form 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 in care of: James W. Haggerty, Regulatory Appeals Review Officer, US Army Engineer Division, North Atlantic Fort Hamilton Military Community, Bldg. 301, General Lee Avenue, Brooklyn, NY 11252-6700. Telephone: (718) 765-7150, E-mail: James.W.Haggerty@nad02.usace.army.mil. The Division Engineer must receive this form 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 in care of: Michael G. Vissichelli, Administrative Appeals Review Officer, North Atlantic Division, Corps of Engineers, North Atlantic Fort Hamilton Military Community, Bldg. 301, General Lee Avenue, Brooklyn, NY 11252-6700 Telephone: (718) 765-7163, E-mail: Michael.G.Vissichelli@usace.army.mil. The Division Engineer must receive this form 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 at the address below 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:**

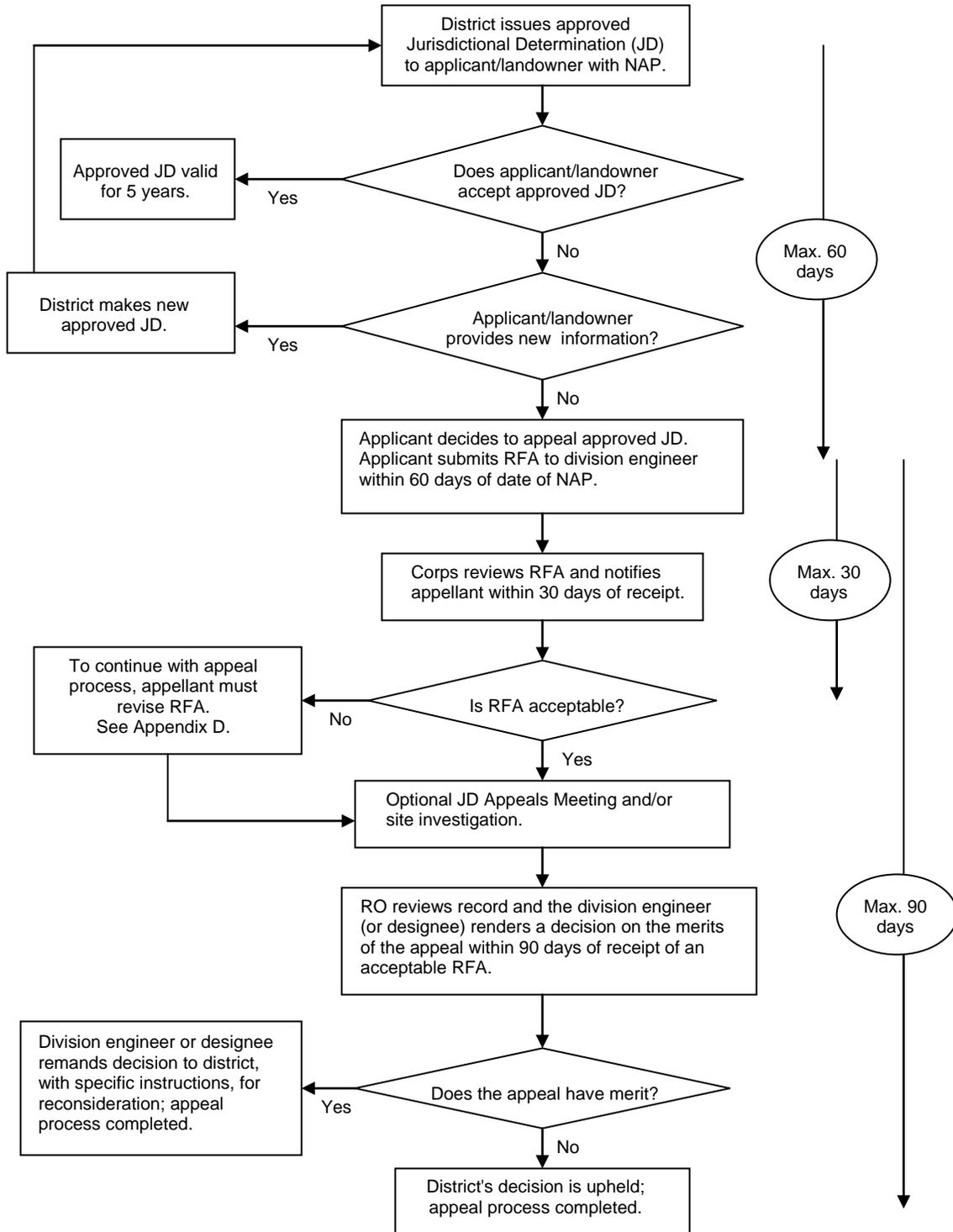
If you have questions regarding this decision and/or the appeal process you may contact Ms. Ruth Ladd at:

Chief, Policy Analysis and Technical Support Branch  
Corps of Engineers  
696 Virginia Road  
Concord, MA 01742 or by calling (978) 318-8818

**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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## Administrative Appeal Process for Approved Jurisdictional Determination



# APPROVED JURISDICTIONAL DETERMINATION FOR WETLAND "D"

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): **December 19, 2012**

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: **New England District, NAE-2012-1324, Marblehead Landfill Closure**

### C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **MA** County/parish/borough: **Essex** City: **Marblehead**  
Center coordinates of site (lat/long in degree decimal format): Lat. **42.51299° N**, Long. **70.8573° W**.  
Universal Transverse Mercator: **19**

Name of nearest waterbody: **Atlantic Ocean**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **None**.

Name of watershed or Hydrologic Unit Code (HUC): **North Coastal**

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): **October 31, 2012**

## SECTION II: SUMMARY OF FINDINGS

### A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "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 **Are no** "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):<sup>1</sup>

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (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:  linear feet:  width (ft) and/or  acres.

Wetlands:  acres.

##### c. Limits (boundaries) of jurisdiction based on: **Not Applicable**.

Elevation of established OHWM (if known): .

#### 2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: **Wetland Area D was assessed and determined to be isolated. Therefore it is not jurisdictional.**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> 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: [REDACTED].

Summarize rationale supporting determination: [REDACTED].

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

#### 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<sup>4</sup> 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: [REDACTED] Pick List

Drainage area: [REDACTED] Pick List

Average annual rainfall: [REDACTED] inches

Average annual snowfall: [REDACTED] inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [REDACTED] tributaries before entering TNW.

Project waters are [REDACTED] river miles from TNW.

Project waters are [REDACTED] river miles from RPW.

Project waters are [REDACTED] aerial (straight) miles from TNW.

Project waters are [REDACTED] aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: [REDACTED].

Identify flow route to TNW<sup>5</sup>: [REDACTED].

Tributary stream order, if known: [REDACTED].

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> 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.

(b) General Tributary Characteristics (check all that apply):

- Tributary is:**  Natural  
 Artificial (man-made). Explain: [redacted].  
 Manipulated (man-altered). Explain: [redacted].

**Tributary properties with respect to top of bank (estimate):**

- Average width: [redacted] feet  
Average depth: [redacted] feet  
Average side slopes: **Pick List**.

**Primary tributary substrate composition (check all that apply):**

- |  |   |                                   |
|--|---|-----------------------------------|
| <input type="checkbox"/> Silts                       | <input type="checkbox"/> Sands                                | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles                     | <input type="checkbox"/> Gravel                               | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock                     | <input type="checkbox"/> Vegetation. Type/% cover: [redacted] |                                   |
| <input type="checkbox"/> Other. Explain: [redacted]. |   |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: [redacted].

Presence of run/riffle/pool complexes. Explain: [redacted].

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): [redacted] %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: [redacted].

Other information on duration and volume: [redacted].

Surface flow is: **Pick List**. Characteristics: [redacted].

Subsurface flow: **Pick List**. Explain findings: [redacted].

Dye (or other) test performed: [redacted].

Tributary has (check all that apply):

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

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by:   | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> 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].

<sup>6</sup>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.

<sup>7</sup>Ibid.

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

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

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: [redacted] acres

Wetland type. Explain: [redacted].

Wetland quality. Explain: [redacted].

Project wetlands cross or serve as state boundaries. Explain: [redacted].

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: [redacted].

Surface flow is: **Pick List**

Characteristics: [redacted].

Subsurface flow: **Pick List**. Explain findings: [redacted].

Dye (or other) test performed: [redacted].

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: [redacted].

Ecological connection. Explain: [redacted].

Separated by berm/barrier. Explain: [redacted].

(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: [redacted].

Identify specific pollutants, if known: [redacted].

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

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

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

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

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

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Summarize overall biological, chemical and physical functions being performed: [REDACTED].

### 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: [REDACTED].
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: [REDACTED].
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: [REDACTED].

### 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: [REDACTED] linear feet [REDACTED] width (ft), Or, [REDACTED] acres.
  - Wetlands adjacent to TNWs: [REDACTED] acres.
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: [REDACTED].
  - 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: [REDACTED].

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: [redacted] linear feet [redacted] width (ft).
- Other non-wetland waters: [redacted] acres.  
Identify type(s) of waters: [redacted].

**3. Non-RPWs<sup>8</sup> 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: [redacted] linear feet [redacted] width (ft).
- Other non-wetland waters: [redacted] acres.  
Identify type(s) of waters: [redacted].

**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: [redacted].
  - 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: [redacted].

Provide acreage estimates for jurisdictional wetlands in the review area: [redacted] 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 jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

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):<sup>10</sup>**

- 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: [redacted].
- Other factors. Explain: Wetland Area D was observed to have no surface water connection and no biological connection to other aquatic resources.

<sup>8</sup>See Footnote # 3.

<sup>9</sup>To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>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 described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

**Identify water body and summarize rationale supporting determination:** Wetland Area D was observed to have no surface water connection and no biological connection to other water resources.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: [redacted] linear feet [redacted] width (ft).
- Other non-wetland waters: [redacted] acres.  
Identify type(s) of waters: [redacted].
- Wetlands: [redacted] 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: **Wetland Area D was observed to have no surface water connection and no biological connection to other aquatic resources.**
- Other: (explain, if not covered above): [redacted].

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): [redacted] linear feet [redacted] width (ft).
- Lakes/ponds: [redacted] acres.
- Other non-wetland waters: [redacted] acres. List type of aquatic resource: [redacted].
- Wetlands: [redacted] 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): [redacted] linear feet, [redacted] width (ft).
- Lakes/ponds: [redacted] acres.
- Other non-wetland waters: [redacted] acres. List type of aquatic resource: [redacted].
- Wetlands: **0.04** 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: **Plans and other information submitted by the applicant.**
- 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: [redacted].
- Corps navigable waters' study: [redacted].
- U.S. Geological Survey Hydrologic Atlas: [redacted].
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: [redacted].
- USDA Natural Resources Conservation Service Soil Survey. Citation: [redacted].
- National wetlands inventory map(s). Cite name: [redacted].
- State/Local wetland inventory map(s): [redacted].
- FEMA/FIRM maps: [redacted].
- 100-year Floodplain Elevation is: [redacted] (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): [redacted].  
or  Other (Name & Date): **Corps site visit conducted on October 31, 2012.**
- Previous determination(s). File no. and date of response letter: [redacted].
- Applicable/supporting case law: [redacted].
- Applicable/supporting scientific literature: [redacted].
- Other information (please specify): [redacted].

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The Corps of Engineers attended a site visit at the Marblehead Landfill on October 31, 2012. Wetland D was observed to be a small wetland of less than 2000 SF full of thick vegetation, most of which was invasive species. Wetland D was observed to have no surface water connection. Wetland D was also observed to most likely not have a substantial biological connection with other nearby wetlands due to the low quality of the wetland and its distance of approximately 200 feet from other wetlands. Therefore, the Corps of Engineers has made the determination that Wetland D is an isolated, non-jurisdictional wetland.



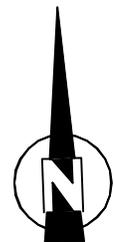
UTM:  
 4708273 mN  
 347493 mE

# FIGURE 1

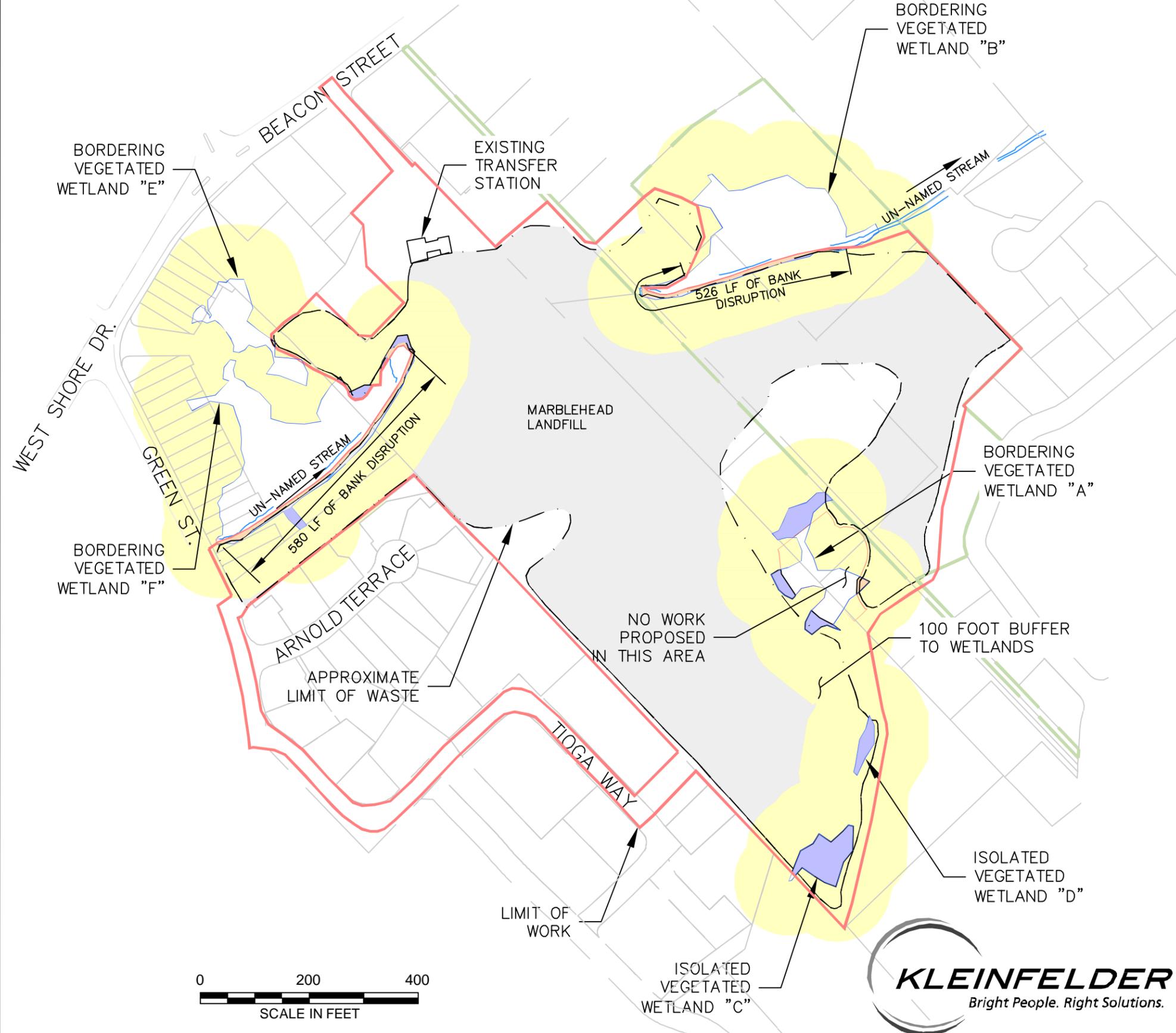
## MARBLEHEAD LANDFILL SITE LOCUS MARBLEHEAD, MASSACHUSETTS

SCALE 1:24,000

USGS TOPOGRAPHIC  
 QUADRANGLE,  
 DECEMBER 1995



# EXISTING WETLAND RESOURCE AREAS ON PROJECT SITE



## LEGEND

-  WETLAND BOUNDARY
  -  WETLANDS WITHIN LIMIT OF WORK (PERMANENT DISTURBANCE)
  -  RESOURCE AREAS WITHIN LIMIT OF WORK (TEMPORARY DISTURBANCE)
  -  100 FT BUFFER TO WETLANDS
  -  LIMIT OF WORK
  -  APPROXIMATE LIMIT OF WASTE
- SEE SHEETS C-20, C-21 & C-22 FOR ENLARGED PLANS OF WETLAND IMPACTS



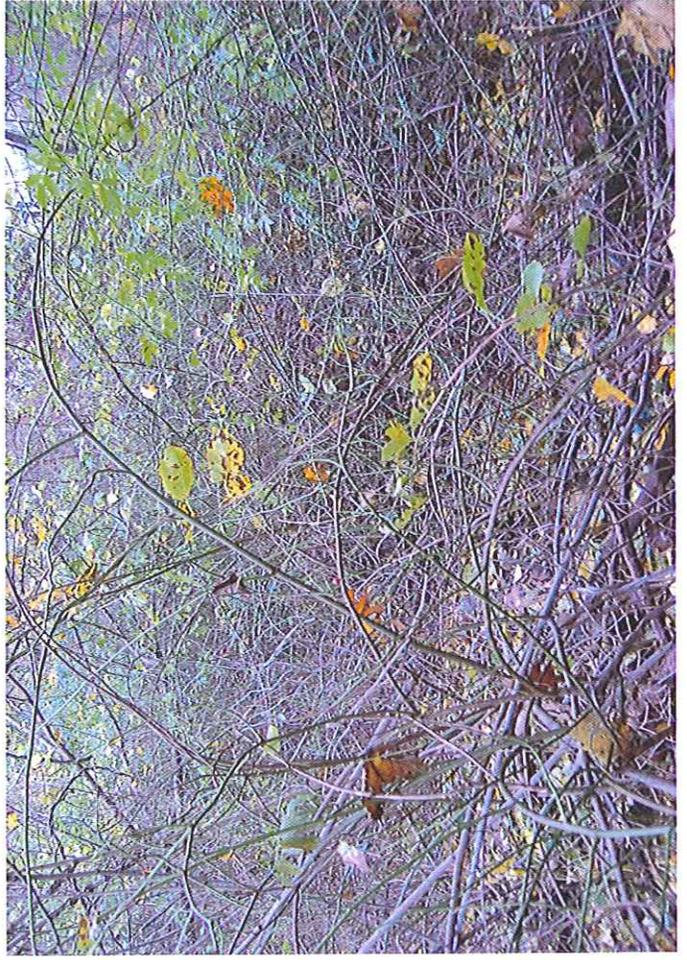
### FIGURE 2

Scale	AS SHOWN	Client	TOWN OF MARBLEHEAD, MASSACHUSETTS
Date	AUGUST 2012	Project	LANDFILL CLOSURE AND TRANSFER STATION DESIGN
Project No.	2008127	Design	EXISTING WETLAND RESOURCES & BUFFER ZONES
Designed by	RJK		
Drawn by	JMO		
Checked by	RJK		
Approved by	SEW		

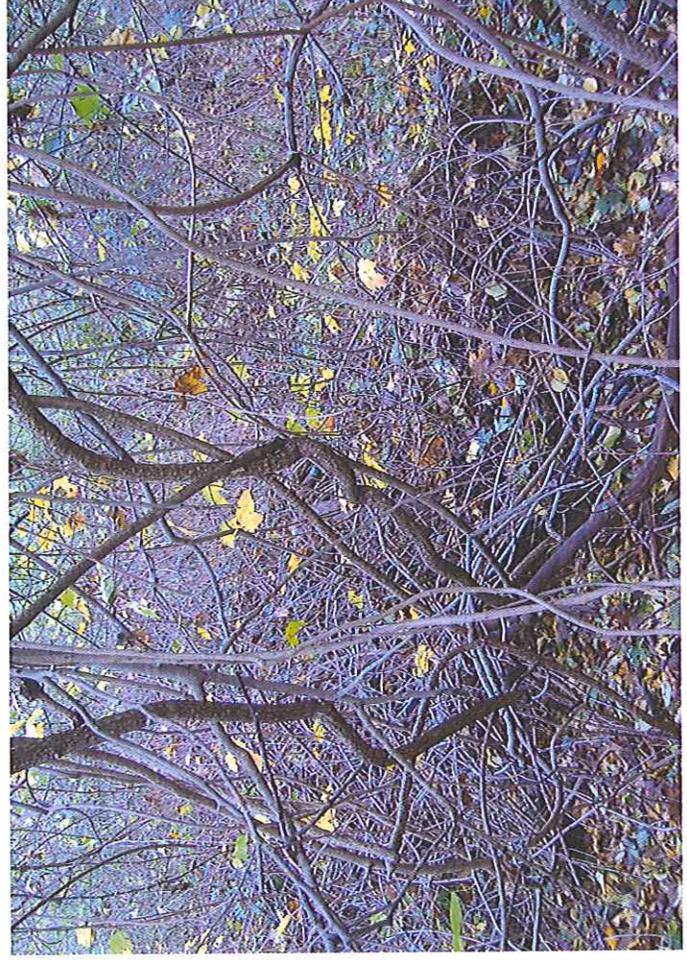
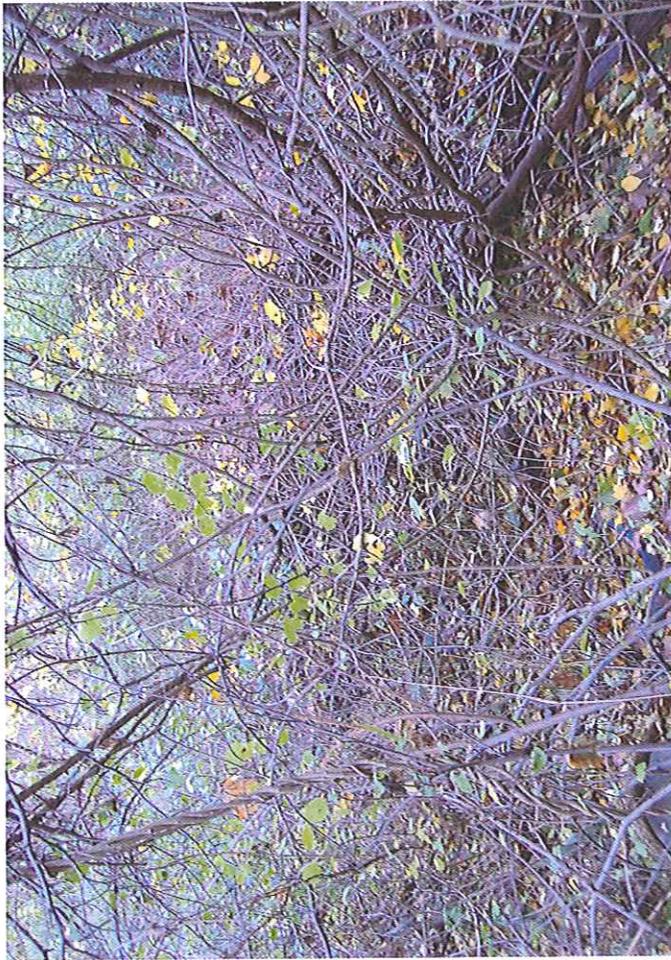


PLOT DATE: 9/22/2012 5:48:04 PM USER: JESSICA ORMSBY FILENAME: G:\clients\Marblehead\LF & TS Design\LF - 2008127\FIGURE2\FIGURE2NOI\_wetland\_resources.dwg

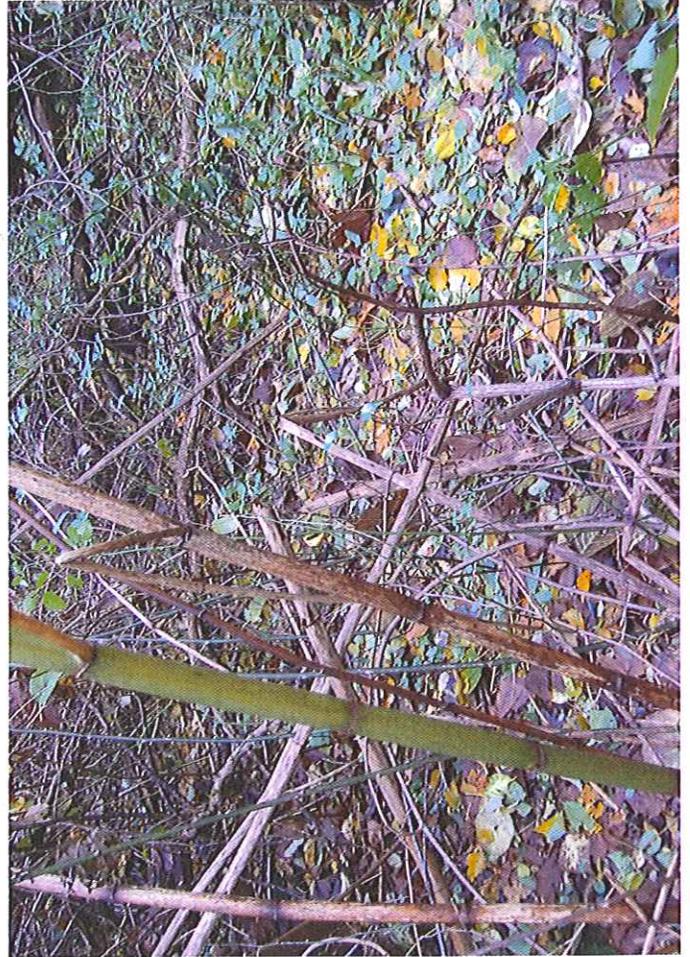
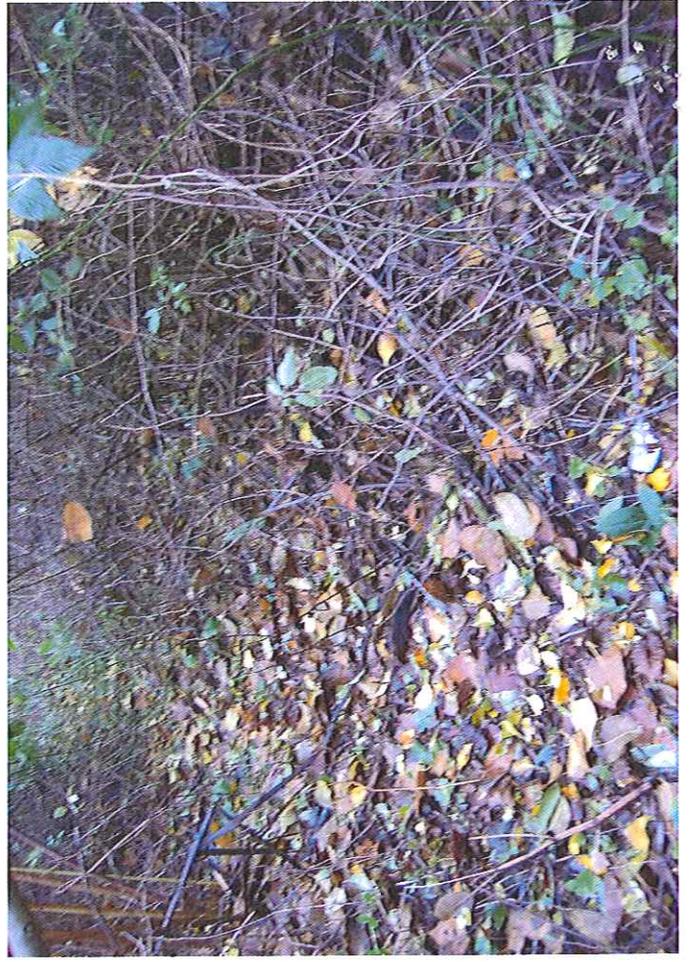
"D"



WETLAND



WETLAND "D"





**US Army Corps  
of Engineers**®  
New England District

**PRELIMINARY JURISDICTIONAL  
DETERMINATION FORM**

**BACKGROUND INFORMATION**

- 1. Report completion date for Preliminary Jurisdictional Determination (JD):** November 20, 2012
- 2. Name and Address of Person Requesting Preliminary JD:** Mr. Andrew Petty, Director of Public Health, Mary Alley Municipal Building, 7 Widger Road, Marblehead, Massachusetts 01945
- 3. District office, file name and number:** New England District, Marblehead Landfill Closure, NAE-2012-1324
- 4. Project location(s) and background information:** The Marblehead Landfill, off Woodfin Terrace, Marblehead, Massachusetts

**See attached table of waters and wetlands**

State: MA            County: Essex            City: Marblehead  
Coordinates of site (lat/long in degree decimal format): Lat. 42.51299° N, Long. 70.8573° W  
Universal Transverse Mercator: 19

Name of nearest waterbody: Atlantic Ocean

Identify (estimate) amount of waters in the review area:

Non-wetland waters:            linear feet:            width (ft) and/or            acres.  
Cowardin Class:  
Stream Flow:  
Wetlands: 0.44 acres.

Wetland A has been determined to be adjacent to a non-tidal stream that flows to the Atlantic Ocean which is less than ½ mile away.

Wetland C has been determined to be hydraulically connected to the Atlantic Ocean less than ½ mile away via conveyance through a catch basin and underground drainage culverts. The culverts outlet into a stream and wetland system about 400 feet across an adjacent parking lot. The stream flows toward the Atlantic Ocean via surface flow and culverts.

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):**

- Office (Desk) Determination. Date:
- Field Determination. Date(s): October 31, 2012

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.

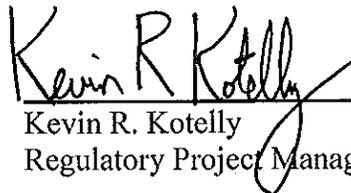
b. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring “pre-construction notification” (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has 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):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Plans and other information submitted by the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
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- Photographs:  Aerial (Name & Date):  
or  Other (Name & Date): Corps site visit conducted on October 31, 2012.
- 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.**

 11/20/12  
Kevin R. Kotelly                      Date  
Regulatory Project Manager

\_\_\_\_\_  
Stephen E. Wright                      Date  
Kleinfelder



UTM:  
 4708273 mN  
 347493 mE

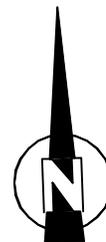
# FIGURE 1

## MARBLEHEAD LANDFILL SITE LOCUS

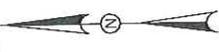
MARBLEHEAD, MASSACHUSETTS

SCALE 1:24,000

USGS TOPOGRAPHIC  
 QUADRANGLE,  
 DECEMBER 1995



# EXISTING WETLAND RESOURCE AREAS ON PROJECT SITE



## LEGEND

- WETLAND BOUNDARY
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  - RESOURCE AREAS WITHIN LIMIT OF WORK (TEMPORARY DISTURBANCE)
  - 100 FT BUFFER TO WETLANDS
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- SEE SHEETS C-20, C-21 & C-22 FOR ENLARGED PLANS OF WETLAND IMPACTS

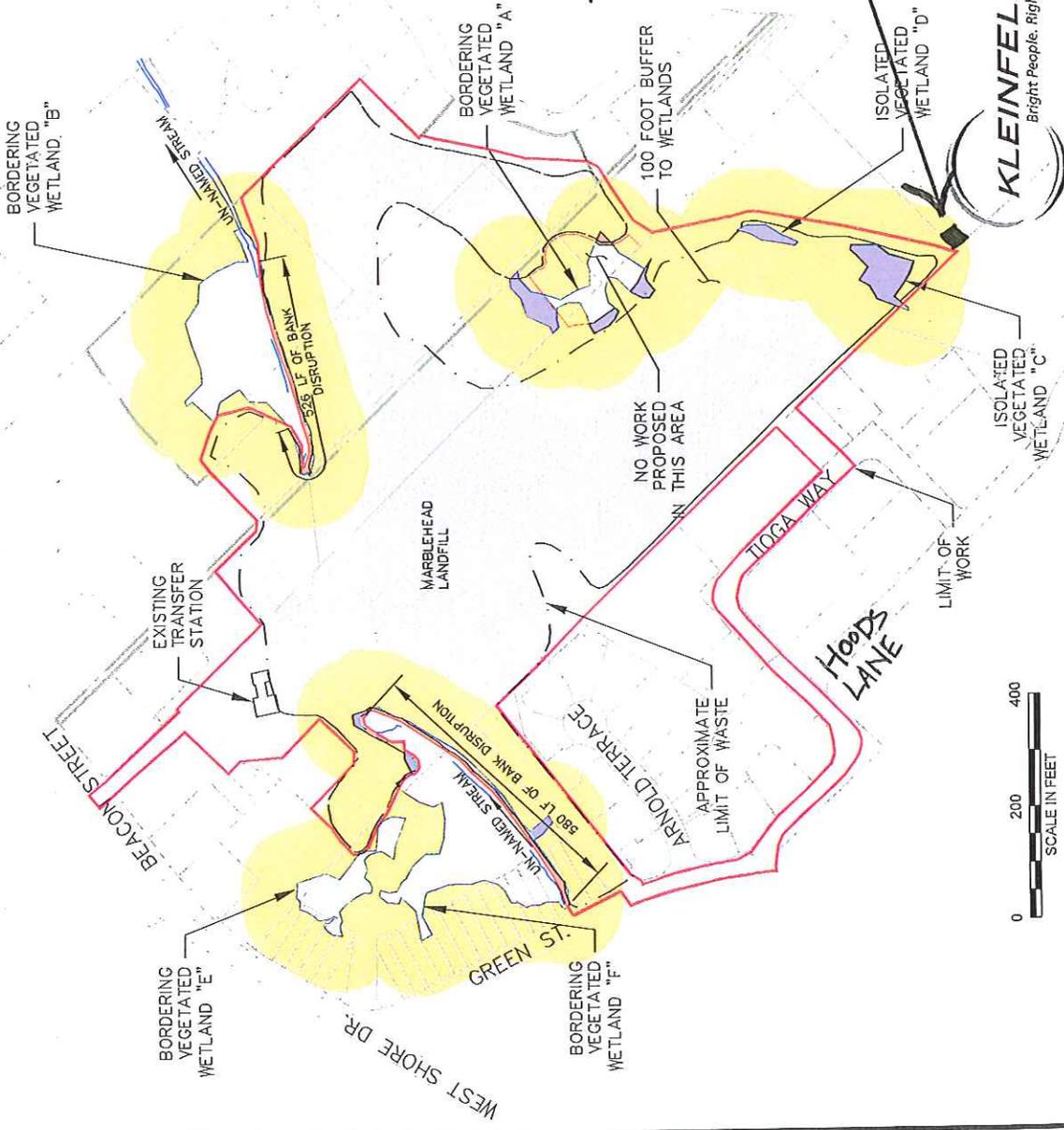


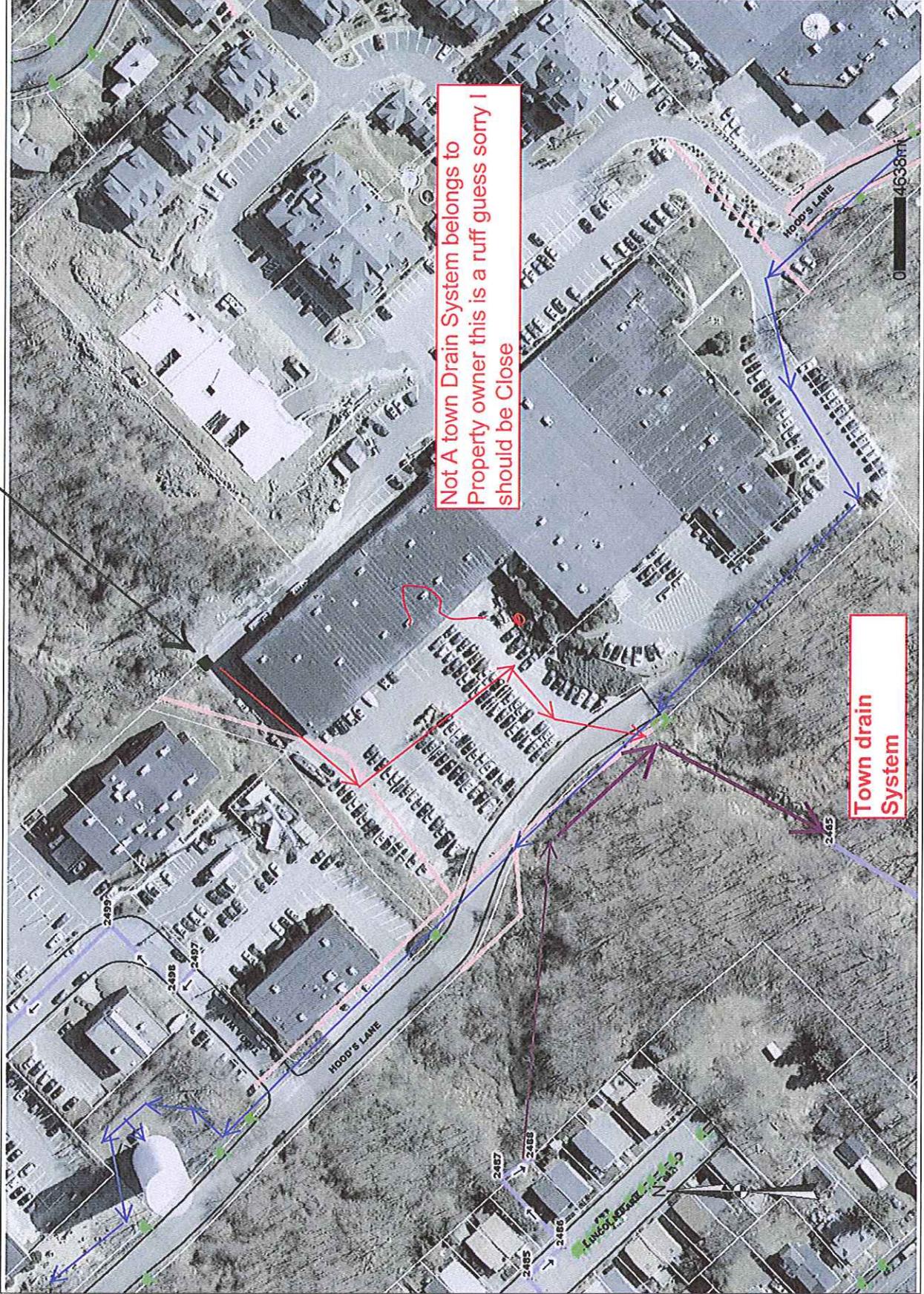
FIGURE 2

Scale	As Shown	Client	TOWN OF MARBLEHEAD, MASSACHUSETTS
Date	AUGUST 2012	Project	LANDFILL CLOSURE AND TRANSFER STATION DESIGN
Drawn by	JMO	Checked by	JMO
Approved by	JMO	Project No.	2008032
		Drawn	EXISTING WETLAND RESOURCES & BUFFER ZONES



EXISTING  
CATCH BASIN

Hoods Lane Drain System



Not A town Drain System belongs to  
Property owner this is a ruff guess sorry I  
should be Close

Town drain  
System

RED = DRAIN  
BLUE = WATER  
PURPLE = SURFACE FLOW

